

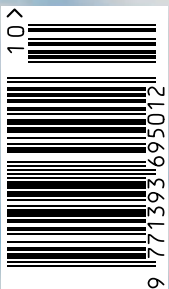


# LAW SOCIETY Gazette

€3.75 October 2009

## EUTHANASIA:

Helping hand or  
finishing touch?





# Essential reading for conveyancing solicitors...

## The Land and Conveyancing Law Reform Act 2009: Annotations and Commentary

By JCW Wylie, LLM (Harvard), LLD (Belfast), Consultant to A&L Goodbody, Solicitors

### Your practical guide to The Land and Conveyancing Law Reform Act 2009

This timely NEW book takes you step-by-step through each section of The Land and Conveyancing Law Reform Act 2009, explaining fully the background and practical aspects of this substantial new Act.

You will benefit from clear annotations explaining the purpose and meaning of every provision, and the authoritative commentary provided by the primary draftsman of the Act.

### Written by the Irish land law expert

The author of this essential book, JCW Wylie, was also the primary draftsman of The Land and Conveyancing Law Reform Act 2009. He played a leading role in the Joint Project with the Department of Justice, Equality and Law Reform which led to the production of the Bill which became The Land and Conveyancing Law Reform Act 2009.

*The Land and Conveyancing Law Reform Act 2009: Annotations and Commentary* is the definitive text for all legal practitioners dealing with land and conveyancing law. **Ensure there's a copy on your bookshelf.**

ISBN: 978 184766 1005  
Publication date: Dec 09  
Format: Paperback  
Price: €140.00 (approx)



## Irish Conveyancing Precedents

Looseleaf Service

*'a superb looseleaf service that provides everything a busy conveyancing practitioner requires'*

General Editor: Deborah Wheeler, BL  
Consultant Editor: JCW Wylie, LLM (Harvard), LLD (Belfast), Consultant to A&L Goodbody, Solicitors  
Editor: Margaret Walsh, Partner, Sheil Solicitors

**The Land and Conveyancing Law Reform Act 2009 is being enacted... access the very latest conveyancing precedents and take full advantage of a superb special offer!**

This authoritative collection of precedents is an essential tool for all conveyancing practitioners. Practical and user-friendly, it will ensure you are kept right up-to-date throughout the year with the KEY precedents and commentaries.

**Special offer. Two invaluable mainwork binders plus a full updating issue free of charge (pub. Date Dec 2009), all for just €742\***

Ensure the latest essential precedents arrive on your desk at the earliest possible moment. Take out your new Irish Conveyancing Precedents subscription TODAY.

ISBN: 978 185492 8490  
Format: Looseleaf + CD-ROM  
List price: €990\*  
**Special offer price: €742\***

Updates charged for on publication

\* plus vat at 7.7%  
(exempt if VAT number supplied)



## To place your order simply:

Visit: [www.bloomsburyprofessional.com](http://www.bloomsburyprofessional.com)  
or call Bloomsbury Professional on: (01) 637 3920. Fax to: (01) 662 0365  
Email: [direct.orders@marston.co.uk](mailto:direct.orders@marston.co.uk) Post to: Jennifer Lynch, Bloomsbury Professional,  
The Fitzwilliam Business Centre, 26 Upper Pembroke Street, Dublin 2

# Bloomsbury Professional



# Keeping things in perspective



**A**s I write this – my penultimate ‘President’s Message’ – the country is facing momentous decisions that will shape our future. It is now quite clear that the past is a different place. I cannot predict the month ahead, let alone the year ahead, except to say that the profession that comes out of this recession will be very different to the one that went into it.

The most obvious sign of this is the turmoil in the professional indemnity insurance (PII) market. It looks like we will all be paying a significant price this year for the extraordinary level of public protection that is offered by way of the statutory compulsory insurance that we must have. However, as I said in my first ‘President’s Message’, it is important to keep things in perspective.

## **Painful adjustment**

The older and perhaps wiser members of the profession are wont to remind me that PII premiums were extraordinarily high before the SMDF came into existence. For a long period, we have had relatively low premiums, but we have now hit a perfect storm, and that means all practitioners have to make a painful adjustment.

On a positive note, I am encouraged by a couple of emails I have received recently from a young solicitor. In the first email, he remarked on the ability of solicitors to turn their hand to just about anything. This is a message

***“For a long period, we have had relatively low premiums, but we have now hit a perfect storm, and that means all practitioners have to make a painful adjustment”***

that I have delivered at each parchment ceremony – there is no restriction on what you can do.

In the second email, he suggested that solicitors need to sharpen up their marketing skills. As an illustration, he noted that it is perhaps more correct to say that an auctioneer will find a buyer for your house, whereas in fact it is the solicitor who ‘sells’ the house.

I would agree that there is a tendency to undersell the services we offer, and communication with our clients has never been more important. There is a wealth of advice and assistance available to all practitioners from the Society through the Practice Management Task Force, the Client Care Task Force, the CPD unit, the career development advisor, the library service and the various advisory committees.

I do not underestimate the difficulties facing many practices but, equally, I am confident that each and every solicitor has the skills to get by – but it will mean having to change and adapt. As I’ve said before, we can only learn by looking backwards – but we can only live by looking forwards.

**John D Shaw**  
**President**



**On the cover**

Britain's DPP has released his interim policy on prosecuting those who may have assisted the suicide of another. We take a look at the state of the law in other jurisdictions and the fallout from the recent *Pretty* and *Purdy* cases

PIC: JUPITER UNLIMITED



Volume 103, number 8  
Subscriptions: €57



15



40



58

# LAW SOCIETY Gazette

## October 2009

**REGULARS**1 **President's message**4 **News**10 **Analysis**10 **News feature:** stamp-duty changes – online stamping12 **News feature:** 40 years taking the FLAC15 **Comment**

15 Letters

40 **People and places**42 **Student spotlight**43 **Obituary**

John Quinlan

44 **Book reviews***Make Your Will* and *Family Law in Practice*46 **Briefing**

46 Council report – 27 August 2009

47 Practice notes

48 Legislation update: 11 August – 11 September 2009

49 Solicitors Disciplinary Tribunal

56 Firstlaw update

58 Eurlegal: guidelines on cartel sentencing

62 **Professional notices**

**Editor:** Mark McDermott. **Deputy editor:** Garrett O'Boyle. **Designer:** Nuala Redmond.  
**Editorial secretaries:** Catherine Kearney, Valerie Farrell. For professional notice rates (lost land certificates, wills, title deeds, employment, miscellaneous), see page 63.

**Commercial advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9; tel: 01 837 5018, fax: 01 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie.

**Printing:** Turner's Printing Company Ltd, Longford.

**Editorial board:** Stuart Gilhooly (chairman), Mark McDermott (secretary), Paul Egan, Richard Hammond, Simon Hannigan, Michael Kealey, Mary Keane, Aisling Kelly, Patrick J McGonagle, Ken Murphy.



## Get more at lawsociety.ie

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at lawsociety.ie.

You can also check out:

- **Current news**
  - **Forthcoming events**, including details of the Technology Committee conference, 'Your Technology and Your Profitability', on 16 October in Mullingar
  - **Employment opportunities**
  - **The latest CPD courses**
- ... as well as lots of other useful information

**PROFESSIONAL NOTICES:** send small advert details, with payment, to: Gazette Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie.  
**ALL CHEQUES SHOULD BE MADE PAYABLE TO: LAW SOCIETY OF IRELAND.**

**COMMERCIAL ADVERTISING:** contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie

**HAVE YOU MOVED?** Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

**HOW TO REACH US:** Law Society Gazette, Blackhall Place, Dublin 7.  
 Tel: 01 672 4828, fax: 01 672 4877, email: gazette@lawsociety.ie



FSC independently-certified wood and paper products used by the Law Society Gazette come from ecologically-managed forests. Visit: [www.fsc.org](http://www.fsc.org)

PEFC certifies that wood and paper products used by the Law Society Gazette are sourced by suppliers from sustainable, managed forests. Visit: [www.pefc.org](http://www.pefc.org)



## FEATURES

### 16 COVER STORY: Live and let die

The legal and medical ethics door has been pushed further ajar with the landmark *Purdy* euthanasia decision and the British DPP's interim policy on assisted suicide. Michaela Herron peeks inside

### 22 The life of PII

Significant changes to the *Professional Indemnity Insurance Regulations* will come into force on 1 December 2009. John Elliot sets out a practical guide, flagging the changes that will directly affect solicitors' firms

### 28 Cost cutters

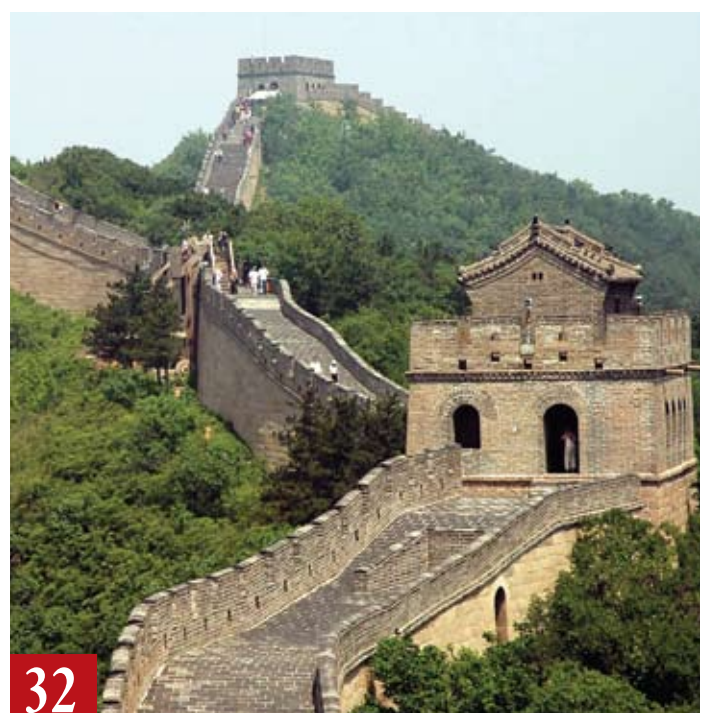
Despite recent media coverage to the contrary, the number of clinical medical negligence cases reported to the State Claims Agency has been declining. Michael Boylan sharpens his scalpel

### 32 Chinese whispers

Napoleon famously said "When China wakes, it will shake the world" – well, the alarm clock has gone off. Marguerite Glynn examines some things that legal advisors need to be aware of when advising clients on Chinese opportunities

### 36 Forced to be free?

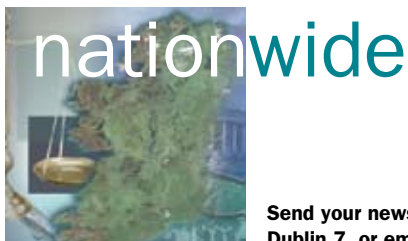
In an edited version of the essay that won the annual Human Rights Essay Prize, Gordon Wade considers the value of mediation in ensuring access to justice in the context of article 6 of the ECHR



The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.  
 Email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie) Website: [www.lawsocietygazette.ie](http://www.lawsocietygazette.ie)





Send your news to: **Law Society Gazette, Blackhall Place, Dublin 7, or email: [nationwide@lawsociety.ie](mailto:nationwide@lawsociety.ie)**

#### ■ LIMERICK

President of the Limerick Bar Association (LBA) Elizabeth Walsh tells me that colleagues in the mid-west are coping well with the current vicissitudes of life, namely NAMA and swine flu. That aside, the annual Dermot Morrissey Murphy Golf Classic took place in Dromoland on 10 July, with the proceeds going to local charities. Despite the economic woes, it was very well supported.

Says Elizabeth: "Now, we are eagerly looking to the law ball on 27 November in Dunraven Arms, as we have not had one for some time."

A number of Canadian lawyers, who had been in Dublin for their conference in mid-August, made their way to the mid-west, where they were entertained by members of the LBA.

#### ■ ROSCOMMON

The Roscommon Bar Association held a very enjoyable working session in good weather in late July, followed by a meal in a local restaurant. The association hopes to make this an annual event. A bowling night is next on the agenda for later in the year.

#### ■ DUBLIN

It was a great pleasure to join with President of the Law Society John D Shaw and others in welcoming the 700-800 Canadian lawyers who travelled over in mid-August on the occasion of their annual conference. While the social events were extensive, there was a serious edge to the business format, with John Shaw,



President of the Canadian Bar Association, Guy Joubert, presented Law Society president John D Shaw with an original sculpture in soapstone entitled 'Dancing Bear', at the CBA annual conference in Dublin in August. The piece was carved by Inuit sculptor Peter Kooyoo

director general Ken Murphy and junior vice-president James McCourt doing an excellent job representing Ireland's practitioners.

Conference highlights included the address in Dublin Castle by former President Mary Robinson, the private performance of *Riverdance* in the Gaiety Theatre, the Guinness Hops Store experience, and the visits to Trinity College, the Book of Kells and Kilmainham Gaol. During their days here, the Canadians seemed genuinely enraptured by the city, its environs and people, proving that, even in difficult times, we are still capable of the *céad míle fáilte*.

As DSBA president, I was, together with the chairman of the Bar Council, Michael Collins SC, delighted and honoured to afford a reception in honour of the Canadian delegates in the Mansion House.

There is great concern among colleagues as we await our professional indemnity renewal. The DSBA has arranged an open meeting with President John Shaw, Ken

Murphy, John Elliot and others for 28 September, on which more in the next issue.

Approximately 110 delegates joined me in Chicago for the DSBA conference. It is not for me to extol how well the conference went. I enjoyed it hugely and was flattered by the comments of so many others who were bowled over by all that the 'Windy City' had to offer. We were kindly hosted by the Chicago Bar Association for the extensive business programme, which concentrated on a comparative law analysis between both jurisdictions, relating to the civil and criminal justice systems in both jurisdictions and their respective codes of ethics. Other working sessions focused on practice management issues of interest to Chicago and Dublin practitioners. My thanks to Cahir O'Higgins, Stuart Gilhooly, James Cahill, John P O'Malley, James McCourt and Linda O'Shea Farren, who represented our side impeccably.

A visit to the courts was kindly arranged, with tours of Obama's home place, Millennium Park,

a Chicago Cubs baseball game, Sears Tower Skydeck and, of course, the 'architectural' boat cruise. Some of us who got there early enough in the week managed to welcome U2 to the city, where they were just starting their American tour and played two nights.

#### ■ LEITRIM

A CPD seminar was held by the Leitrim Bar Association at the Bush Hotel, Carrick-on-Shannon, in early September. Members of the Property Registration Authority (PRA) attended and outlined recent developments in digital mapping, electronic registration and compulsory registration. The significant turnout found it informative and beneficial. According to bar association president Noel Quinn: "The PRA has clearly invested in the most advanced technological equipment and now provides a fast and efficient service, which practitioners should be in a position to avail of for the benefit of their clients."

The PRA's speakers were Tom Brosnahan (regional mapping director), Peter McHugh (e-services manager) and John O'Shea (examiner of titles). The bar association wishes to thank all three for their excellent contributions.

#### ■ CORK

Elsewhere, Mortimer Kelleher and his group of colleagues were taking the pulse of the good people of Lisbon in advance of our own referendum. We await their findings with interest! **G**

*'Nationwide' is compiled by Kevin O'Higgins, principal of the Dublin law firm Kevin O'Higgins.*



# New opportunities for firms

A conference on new and emerging business opportunities for solicitors will take place in November – organised by the Society's Career Support service, in co-operation with CPD Focus.

Experts in sustainable development, EU law, governance, compliance and social accountability will provide overviews on how these areas are developing internationally. They will outline, also, how Irish legal firms and lawyers can capitalise on the associated emerging work and business opportunities.

The €140-million takeover of the Dublin-based international carbon trading firm, EcoSecurities, that is currently under way, and the sale of Airtricity for more than €1 billion last year both highlight the significance of the opportunities in these new business areas.

Governance, social accountability and wide ranging aspects of compliance, for example, are all very topical areas at the moment and are all poised for huge growth in Ireland and internationally.



Career development advisor,  
Keith O'Malley

"These are areas that law firms can, and should be, centrally involved in," says the Law Society's career development advisor, Keith O'Malley. "If law firms and solicitors don't move in and establish themselves as experts in growth areas like corporate social responsibility here in Ireland, the opportunity will be quickly lost to another profession."

"For instance, codes of rules and procedures have been developed and organisations increasingly require independent verification

that their operations are in compliance. This is work that solicitors, through their training and aptitude, are suited to," he says.

Much work arising in new business areas is negotiated and often delivered internationally. Existing players regularly collaborate with firms in other countries. The conference will facilitate international networking by providing an opportunity to meet with people and firms from other countries who are pioneering, and at the forefront of, new developments.

It is expected that the kinds of opportunities that will be explored at the November conference will be of most interest to larger law firms with corporate clients and to the growing number of boutique firms that focus on providing expertise in niche commercial areas.

An exhibition featuring international firms involved in these emerging business areas will run alongside the conference. Participants will be able to review a range of associated services and talk to the people involved.

## ■ OUT OF COMMISSION

The refurbishment of New Ross courthouse has been delayed, according to a statement issued by the Courts Service to New Ross-based Sean Connick TD. The renovations are being delayed by five years. Mr Connick said he was "furious" with the decision. "I do not believe that this statement by the Courts Service is an acceptable option ... This will mean sittings of New Ross District Court will be absent from the courthouse for almost ten years and would give a good excuse to the Courts Service to make the move to Wexford permanent," he added.

## ■ TESCO'S LEGAL WEBSITE

Tesco has launched an online legal service in Britain. It is providing a cheap will-writing and storage service. From as little as s t£7.49 visitors to the website can access DIY divorce kits without the intervention of a solicitor. It is also providing letting agreements, business start-up kits and all the necessary forms to set up a limited company. For more complex legal advice, the website offers a directory for solicitors, which could lead to other companies offering competition to traditional law firms. The Law Society of England and Wales has said that Tesco's legal service is an innovative addition to the market.

## ■ EMAIL SCAMS

Australian law firms are the latest victims of a Nigerian bank-style scam that swept through North America last year, targeting millions kept in lawyers' trust accounts, reported by the *Sydney Morning Herald*. The Law Society of New South Wales issued a warning after several firms reported fraudulent approaches from Asian companies seeking assistance with debt-collection matters. The fake clients usually ask the firm to write a stern letter to collect a debt from a company in Australia. The 'debtor' then sends a cheque for hundreds of thousands of dollars to the firm, and the 'client' asks for an electronic refund – minus the firm's fee – before the counterfeit cheque has finished processing.

# Litigation Committee continues dialogue over commercial undertakings

As practitioners may be aware, a practice direction was issued by the President of the High Court in late May of this year, directing, among other things, that solicitors wishing to have a client's case admitted to the Commercial Court list would have to provide an undertaking that the court's directions be complied with in full.

It was immediately drawn to the attention of members of the Society's Litigation Committee, who entered into discussions

with the President of the High Court and the Commercial Court Users' Group solicitor representatives – Rosaleen Byrne and Noreen Howard. It was agreed that this was a matter that should be dealt with by the users' group and some considerable dialogue has taken place over the course of two months within the confines of the users' group.

In the meantime, the Commercial Court list has continued to run in its usual efficient manner but, most

importantly, the presiding judge, Mr Justice Peter Kelly, has indicated that he is willing to accept undertakings from solicitors to use their best endeavours to comply with the court's directions in full. This is a stance with which the Litigation Committee is in complete agreement (see practice note page 47). The matter continues under review within the users' group and it is hoped that an official clarification will be forthcoming in the near future.



# Update your practice details now

**A**s the time for the receipt of confirmation of professional indemnity insurance (PII) cover and the renewal of practising certificates approaches, the Society is endeavouring to ensure that all solicitor and firm details on its records are up to date. It is the responsibility of the profession to ensure that these records are updated when appropriate. Solicitors are urged to update practice details with the Society prior to 1 December 2009.

In relation to PII cover, a firm's details, as noted on the Society's records, should be the same as those noted on the form the Society receives confirming a firm's PII cover. This is to ensure that the PII cover details provided may be updated on the Society's records. It is vital that a firm's PII details are recorded on the Society's records within ten working days from 1 December 2009, as provided for in the *Professional Indemnity Insurance Regulations*, that is, by 15 December 2009.

Solicitors may access their firm's details on the Society's website ([www.lawsociety.ie](http://www.lawsociety.ie)) in order to check the details currently on record regarding their firm, for instance:

- If a branch office has been



opened during the year,

- If the firm's telephone number has changed,
- If the firm has a website address not currently reflected on the Society's records.

Such matters should be advised to the Society as part of the update process.

## Application form

Each solicitor who has changed offices, and who has not advised the Society, should inform it accordingly (as provided for in section 81 of the *Solicitors Act 1954*). The solicitor should include the date they left their former firm and the date they joined another firm, together with the

name and address of the new firm.

Alternatively, if a solicitor has not yet recommenced in practice, they should provide the date they ceased practice. Such a solicitor may wish to provide a new address to which the *Gazette* and correspondence from the Society can be sent.

A solicitor may provide an email address and/or mobile telephone number for noting, as this may facilitate the Society in communicating with them.

A solicitor applying for a practising certificate for the practice year 2010 must complete the appropriate application form and ensure that it is returned to the Society with the appropriate payment on or before 1 February 2010, so that the practising certificate can issue with effect from 1 January 2010.

## Wrong address?

It is, therefore, in the interest of all solicitors that the application form for obtaining a practising certificate for 2010 is sent to solicitors at the appropriate address. Solicitors should not wait until the end of January 2010 to seek an application form for a practising certificate for 2010. *If you have moved and have not informed the Society of your change of address before 1 December 2009, a practising certificate application form may be sent to the wrong address.*

All correspondence relating to such details should be forwarded to the Registration Section, Regulation Department, George's Court, George's Lane, Dublin 7, or alternatively by email to [m.mcdermott@lawsociety.ie](mailto:m.mcdermott@lawsociety.ie). A failure to apply for a practising certificate on or before 1 February 2010 may have disciplinary implications.

## ITechLaw's European conference

**T**he International Technology Law Association (ITechLaw) will hold its 2009 European conference in Brussels, Belgium, at the Radisson Blu Royal, from 5-6 November 2009.

More than 250 attendees are expected from all over the world. They will hear about the latest industry trends, participate in important business discussions affecting legal practices today, and will network with some of the brightest minds in technology law.

The two-day program will offer detailed insights from renowned speakers into important industry topics, with the two-track programme including:

- The impact of the global economy on technology transactions,
- Green standards in ICT procurement,
- Healthcare IT,
- Cloud computing, and
- Social networking, among other topics.

A welcome reception will take place on 4 November before the formal session begins on 5 November, with a formal gala dinner the same night. A reception will also be held at the close of conference sessions on 6 November.

## More information

For more information and to register, visit [www.itechlaw.org/brussels09/index.html](http://www.itechlaw.org/brussels09/index.html) or email ITechLaw Member Services at [memberservices@itechlaw.org](mailto:memberservices@itechlaw.org).



# IBA president expresses concern over delays in fiscal regulation

The president of the International Bar Association (IBA), Dr Fernando Peláez-Pier, has expressed concern over the time that national governments are taking to implement new fiscal regulations, *writes Tom Rowe*. The president, speaking to the *Law Society Gazette* during a recent visit to Dublin, said: "The longer it takes for governments to implement new regulations, the more difficult it will be [to do so], as we are seeing some kind of recovery in the US, in France, in Germany. That is risky, because things might become 'normal' [and] people will say we might not need to introduce any major changes. The organs should continue to correct all the deficiencies in the existing regulations that permitted all the situations that generated the [current] crisis."

In Dublin to speak to the Canadian Bar Association at its annual conference, the president said that he did not foresee or desire *global* economic regulations to be put in place, however. He believes that if the major economies have their own clear regulations, this should leave the global economy in a good position.

Dublin has been chosen as the



IBA president Dr Fernando Peláez-Pier

venue for the IBA's 2012 annual conference, being "one of the main capitals of Europe" – an honour last bestowed on the city in 1968. The conference moves between Europe, the Americas and Asia annually, with Madrid this year, Vancouver next year, followed by Dubai in 2011. Up to 4,000 lawyers, barristers, judges and academics are expected to descend on the Spanish capital in early October for the largest annual gathering of legal minds in the world.

At the end of the Dubai conference in 2011, the IBA council will meet to define the programme for Dublin. Between November and January, the Irish

host committee will be chosen – this is normally composed of representatives of the national law society and leading local law firms.

This year, the global financial crisis will be a major topic of the Madrid conference, but given the range of interests of its members, the IBA attempts to cover everything. Two 'showcases' will concentrate on the financial crisis, but there will be 150 working sessions also, organised by different specialised committees that make up the Legal Practice Division of the IBA.

The IBA's Public Professional Interest Division, which deals

with all the non-commercial issues that affect members, will hold special fora on money laundering in Madrid. In addition, the Bar Issues Commission will focus on the independence of the judiciary. "Every year, the themes are dependent on the different interests of the committees," says the president.

With the financial crisis still raging, Dr Peláez-Pier has been overseeing the work of the IBA's Financial Taskforce – consisting of 12 leading lawyers from the US, Europe and Asia, who are poring over material produced on various national economies. They will make recommendations to governments, but "are not working with governments", says the president, somewhat ruefully. "Governments are working with their own teams, [and] are not inviting outsiders to give advice or comments, as we have had had in the past."

Nonetheless, the IBA will highlight issues it feels are relevant. While it will encourage new financial regulations to be more restrictive, it will continue to advocate for liberal markets and against protectionism, through regulation.

## Make a date with the new CourtDate website

A new website, [www.courtdate.ie](http://www.courtdate.ie), has been set up to promote, not only solicitors local to any specific District Court, but other practitioners from surrounding towns who would not appear on a geographically-based search.

As a new sole practitioner located in Dunboyne, Adrian Shanley's closest District Court was in Dunshaughlin (12km), but since his practice was not

located there, he would not appear on searches undertaken by members of the public for this court. Given that Dunshaughlin District Court is now closed and is sitting at Navan (31km away), Adrian was going to be at an even greater disadvantage.

Necessity being the mother of invention, Adrian decided to create a website where solicitors could list their practice for

any specific District Court. Members of the public can view information not only about solicitors with practices in those District Court towns, but also other solicitors willing to travel from surrounding towns for appearances in that court. In addition, practitioners looking for agents to move matters in other courts can use the website to locate suitable practitioners.

At present, the listing of

solicitors' practices is free until 1 November 2009 but, to celebrate the site's launch, CourtDate is offering to extend free listing for each practice until the beginning of April 2010. This free listing is restricted to one specific District Court of choice per practice. Thereafter, the annual cost of each listing per court will be €299, inclusive of VAT. (This is the equivalent of one legal aid assignment a year.)



# Preparing for retirement – today

**S**et up under trust in 1975, the Law Society's Retirement Trust Scheme aims to provide members of the Law Society with a tax-efficient way of saving for retirement.

If you are self-employed or in non-pensionable employment and under 75 years of age, you can join the scheme.

You can contribute any amount, at any time. You can save regularly, make one-off contributions, and start or stop saving at any time. You choose how to invest your contributions across a range of tax-exempt funds. These are monitored by a professional trustee and the nominated committee of the Law Society. The assets of the managed, all-equity and cash funds are with Mercer investment managers. The long-bond fund is with Bank of Ireland Asset Managers.

When you draw your benefits, the accumulated value of your fund can be used to provide a combination of a lump sum, regular income and/or continuing investment in an approved retirement fund.

## Where does the money go?

Contributions are invested according to your choices. In general, the aim is to increase the value of your fund over time, thereby increasing your benefits at retirement. To change your mind about how your fund is invested, simply make new investment choices.

The fees associated with investing cover all costs of running the scheme.

## Fixed fee

- Managed fund: 0.95%
- All-equity fund: 1.00%
- Long-bond fund: 0.35%
- Cash fund: 0.20%

## When do you see benefits?

Some of the benefits are tax related – you receive tax relief on the amount you contribute, up to Revenue-imposed, age-related limits. Tax exempt investments allow your fund to build, tax free.

You'll also see the benefits at draw-down when you make your benefit choices.

## Why would you join?

In general, people are living

longer, which means they are living longer in retirement.

Even with potential changes to the tax treatment, the scheme still offers you tax incentives and flexible saving options.

For information, contact Brian King, tel: 01 411 8273 at Mercer, Charlotte House, Charlemont Street, Dublin 2. Phone 1890 275 275 or email: JustASK@mercerc.com.

## What can you do?

Consider maximising your pension contributions for 2008 and 2009 to avail of the current tax treatment.

If you are over the age of

60 and may be affected by the potential changes, you may wish to consider your retirement options immediately.

You can take up to 25% of your fund tax free now, and avoid the consequences of what might happen in the budget. The balance of the fund can be used to provide a combination of a lump sum, regular income and/or continuing investment in an approved retirement fund.

You can then rejoin the scheme and continue to make contributions.

You should seek financial advice when considering your options.

## PROPOSED CHANGES TO TREATMENT OF PENSIONS

The Commission on Taxation has recommended changes to the current pension legislation. One is a limit of €200,000 on the amount of tax-free cash that can be taken. Also recommended is that current tax relief for contributions are replaced by a matching exchequer contribution of €1 for each €1.60 contributed by the taxpayer – having the effect of reducing the benefit for higher-rate taxpayers.

Lump sums	Current situation on personal pensions	Recommendations	Implication
	Take up to 25% of your accumulated retirement fund tax free (max €1.3m)	Cap the amount available as a tax-free lump sum to €200,000 – 20% tax payable on the balance (25% limit to remain)	Additional taxation for retiring members with a tax-free lump sum entitlement greater than €200,000 (includes all retirement benefits)
Contributions	Top rate taxpayers, can claim tax relief at 41% on contributions between 15% and 40% of "net relevant earnings", subject to age-related limits. Earnings limit is €275,239 for 2008 and €150,000 for 2009	Reduced tax relief on pension contributions	The opportunity for tax savings will be restricted, but not removed

## All Land Registry folios now in fully electronic format

**T**he Property Registration Authority (PRA) has completed its programme to upgrade all its folios to a fully digitised format.

This project included the conversion of more than

807,000 individual folios – regarded as a key building block for future developments in electronic registration (e-registration) and electronic conveyancing (e-conveyancing).

The completion of this

project, together with the digital mapping project, is on schedule for completion before the end of 2010.

The PRA's land registry records – folios, maps and indices – will shortly be

available online through its [www.landdirect.ie](http://www.landdirect.ie) portal.

**The attention of practitioners is directed to an important notice relating to lost land certificates on p62 of this *Gazette*.**



# Become a Master practitioner!

**T**he Law Society's law school and the Faculty of Law at University College Cork (UCC) are offering a collaborative LLM (Practitioner) programme for solicitors and barristers. The Master's level degree programme is an important development for solicitors seeking to secure an internationally-recognised, practice-based qualification, and extends the law school's firmly-established links with UCC.

The programme combines the university's highly-regarded legal academic experience with the Law School's expertise in developing courses focused on legal practice.

Attendance and the pace of progression on the LLM programme will be flexible. The course can be taken over a minimum period of 12-months (full-time) or a maximum of 36 months (part-time).

To qualify for the Master's level award, a student must earn 90 credits. This can be done by studying six individual modules (each worth ten Master's level credits, one of which is a compulsory clinical practice/reflective learning module) and completing a thesis (30 Master's level credits).

If, however, you have successfully completed one or more of the Law Society's diplomas, as a student embarking on the LLM programme, you will receive credit for those awards. Each diploma will count as an individual module (that is, ten Master's level credits), up to a maximum of two such diplomas (that is, 20 Master's level credits). In addition, it is also possible to complete individual UCC modules on a stand-alone basis, so that a large proportion of the 90 credits required may be gained at your own pace in advance of formally enrolling in the full LLM programme.



The flexibility of the programme also extends to the method of delivery of individual modules, which are designed to meet the needs of practitioners who may not be able to easily attend UCC or the Law Society on a weekly basis. To this end, those responsible for the delivery of the programme intend, where possible, to incorporate elements of distance learning, to include online learning.

## What if it proves too much?

The current curriculum has further elements of flexibility incorporated into the structure. It may be that, after formally signing up to the LLM programme, a practitioner may opt not to proceed to Master's level, but rather be awarded a

Postgraduate Certificate in Law (Practitioner), which requires 30 credits for completion. Alternatively, depending upon the extent of the progress made, a Postgraduate Diploma in Law (Practitioner), requiring 60 credits, can be awarded.

## Tailoring your preferences

There are a wide number of elective modules available and, as such, the programme can be tailored to your own particular career path and practice areas.

The existing Law Society diploma programme includes a number of broad, practice-based courses, such as the diplomas in civil litigation, employment law, family law, and insolvency and corporate recovery, which have proved extremely popular with the profession.

From UCC's list of modules, a practitioner can choose from a large variety of specific interest areas – of great value to individual practitioners – including terrorism, dissonance and criminal justice; internet regulation; international criminal law; and advanced EC competition law. There are approximately 27 individual modules to choose from, so it's possible to devise a programme of study truly adapted to your individual professional needs.

The final requirement of the LLM (Practitioner)

programme is the completion of a minor thesis of 12,500 words on a subject relevant to your professional practice – but facilitating a concentrated examination and reflection upon a particular area of interest.

## What next?

This programme represents an exciting opportunity for solicitors who wish to further their formal education in a broad range of practice areas and gain a valuable qualification while remaining in full-time employment. The programme is open to solicitors and barristers with two years' post-qualification experience. (Individual Law Society diplomas can be completed prior to that date.)

There will be an initial offering of modules starting in January 2010, with the compulsory elements of the course, such as the clinical practice/reflective-learning module and thesis becoming available from September 2010 onwards.

For further information on the programme, please contact Prof Steve Hedley (Dean of Law, UCC) at tel: 021 490 3990, or Veronica Calnan (postgraduate administrator) at tel: 021 490 3990, or contact Rory O'Boyle (Law Society) at tel: 01 881 5708.

## Traveller movement opens law centre

**T**he Irish Traveller Movement (ITM) has established a new law centre with the aim of advancing Traveller rights in Ireland. The new centre, which opened on 2 June, replaces the legal unit that was attached to the ITM from 2003-08. The ITM will provide a specialist legal service to Travellers.

The law centre will operate independently within the ITM

and is one of five independent law centres in the country (namely, Northside Community Law Centre, Ballymun Community Law Centre, FLAC and the Immigrant Council of Ireland).

It aims to:

- Advance the ability of members of the Travelling Community to access expert legal advice and representation,

- Proactively advance Traveller human rights under the various legislative frameworks,
- Advance recognition of Travellers as an ethnic minority,
- Develop the capacity of Traveller organisations to respond to legal issues facing Travellers, and
- Take a series of test cases to challenge laws that attack Traveller culture.



# Get ready for Revenue's

**From next December, Revenue will introduce a new system for stamping deeds, to include a comprehensive stamp-duty return, a new format of stamp and a facility to stamp deeds online**

**R**evenue will introduce a new system for stamping deeds next December. The main changes being introduced under the new system include a comprehensive stamp-duty return, a new format of stamp and a facility to stamp deeds online. Revenue expects that the new system will result in significant time and cost savings for practitioners.

Under the new system, a stamp-duty return must be completed and filed for every instrument from December 2009. The completed stamp-duty return will contain all the information needed to stamp an instrument. Once received and validated by Revenue, the return will be used to generate the stamp. The current foil/hologram stamp will be replaced by a new format of stamp, called a 'stamp certificate'. The stamp certificate will be in the form of an A4 page to be affixed to the instrument to denote it has been stamped. A valid stamp certificate will contain a unique ID number and specific details that will associate it with one particular instrument only. The form ST21 will no longer be required.

Revenue will no longer examine the instrument before stamping, except in certain cases such as adjudication cases, refund applications and penalty mitigations.

A full description of the changes coming in December, as well as examples of the forms and a specimen of a stamp certificate, are available on the Revenue website at [www.revenue.ie/estamping](http://www.revenue.ie/estamping).

## Online stamping

As part of the new system, Revenue will introduce an

'e-stamping' facility to allow practitioners to use the internet to file a stamp-duty return in electronic format, pay the stamp duty and receive a stamp certificate in the same online transaction.

E-stamping caters to every stamp-duty eventuality and allows practitioners to file

returns on-line for the most complex transfers. It will be simple to use and will have significant advantages for practitioners over the paper return. These include:

- Automatic navigation to the appropriate screens for data entry, depending on the circumstances of each case, resulting in no more than six screens being presented for completion. In the paper return, the practitioner is obliged to navigate his/her own way manually through each of the 14 sections of the paper return with numerous selection options in each section.
- Online validation of tax reference numbers for all parties. The online system will advise the practitioner immediately if an incorrect tax number is entered, whereas the practitioner filing a paper return will not be

aware of an incorrect number until the return is rejected by Revenue.

- Automatic calculation of the stamp duty. In the paper return, the practitioner is obliged to make their own calculations and any underpayment will delay stamping pending correction.

- An offline facility will allow the practitioner to review and correct the information entered before filing the return. The offline return can be completed at any stage and will allow practitioners to complete internal checks and office accounting procedures, and so on, in advance of uploading the final, approved return to Revenue.

***"E-stamping allows practitioners to file returns online for the most complex transfers. It will be simple to use and will have significant advantages for practitioners over the paper return"***

## How it will work

E-stamping will be quick and simple to use. For example, in the case of a practitioner completing an online return for a client who is an owner/occupier buying a second-hand house, the process would typically involve six screens and it would take about five minutes to enter all the particulars affecting stamp duty.

In fact, the only typing work for the practitioner will be in entering the tax registrations

and tax types for all parties, the address of the property (or a description in the case of shares) and the consideration involved. All other entries affecting the calculation of stamp duty will be done by selecting from drop-down menus that display automatically. Each screen that displays is tailored by reference to earlier selections on previous screens that describe the type of instrument, the type of property, the type of contract, and so on.

When all the data is entered on the screens, the system will calculate the amount due and a summary and calculation screen will appear showing certain key information entered by the user, together with a breakdown of how the stamp duty was calculated. When the practitioner is satisfied that all is in order, (s)he proceeds to the ROS payment section and then on to 'sign and submit' the online return.

The system displays the bank account details the practitioner has authorised, so that ROS can electronically deduct the amount due to Revenue by ROS direct debit for each specific return. When the practitioner is satisfied that this is in order, (s)he enters his/her ROS password and clicks the 'sign and submit' button. It is possible also to file a return without paying; the practitioner can simply file now and pay later. However, no stamp certificate will issue until the liability (if any) is met.

The practitioner's ROS inbox immediately shows three new items, including a copy of all the entries made for that online return, an acknowledgement of the ROS payment and a stamp certificate for the return filed. Practitioners can also pay and file



# stamp-duty changes



Revenue expects that the new system for stamping deeds will result in significant time and cost savings for practitioners

online in adjudication cases, but a stamp certificate will not issue until after a Revenue official has adjudicated on the case.

## Registering with ROS

To use the e-stamping system, practitioners must be registered with Revenue's Online Service

(ROS). There are three steps involved in registering, and the process usually takes approximately two weeks to complete:

- 1) Step one invites the practitioner to apply for a 'random access number' (RAN), which will be posted

to him/her after (s)he has entered their tax registration number and tax type to which it applies, for example, the firm's VAT registration number.

- 2) Step two applies after receiving the RAN (from step one) in the post. The

practitioner keys in the RAN and awaits his/her ROS password, which will be posted to him/her by Revenue.

- 3) Step three allows the practitioner to download the ROS digital certificate to his/her own computer, enabling (s)he to file and pay taxes and duties online. This applies after (s)he has received his/her ROS password in step two. The practitioner will then be registered with ROS and ready to use e-stamping to file stamp-duty returns online.

A prototype of the e-stamping system will be available to individual practitioners from October 2009 to allow them to familiarise themselves with the online system.

To use the prototype, the practitioner must be registered for ROS. Practitioners who are not already registered are advised to begin the process as soon as possible to be in a position to use the prototype immediately following its release.

You should visit [www.ros.ie/PublisherServlet/info/setupnewcust](http://www.ros.ie/PublisherServlet/info/setupnewcust) to begin the registration process. **G**



## BRIEF COUNSEL LTD

**Are you being served by the Bar?**

We organise competent counsel at competitive costs for your case.

**Free for Solicitors**

Please visit [www.briefcounsel.ie](http://www.briefcounsel.ie) to find out more today.

6 Ellis Quay, Dublin 7 | Email: [info@briefcounsel.ie](mailto:info@briefcounsel.ie) | Phone: (01) 6728946



# 40 years on – FLAC still

**Forty years on from its founding, FLAC continues to work towards the realisation of a comprehensive civil legal aid scheme, reports Colin Murphy**

**“W**e put Santa Claus in jail.” Judge Catherine McGuinness is recalling her early years at the Bar, in the late 1970s. She had become involved with the Free Legal Advice Centres (FLAC), and regularly found herself in the District Court in Dun Laoghaire, taking family cases before Judge Sean Delap.

FLAC had been set up in 1969, and the degree to which the organisation quickly became an intrinsic part of the legal system was evidenced by the fact that, as McGuinness recalls, they would often receive calls from the Courts Service: “We have a client down here who we think needs FLAC representation,” they would say.

One Christmas, Catherine McGuinness represented a local woman who was seeking a barring order against her husband. The man was employed as the local Santa Claus.

“Unfortunately, as a side



At an event to mark FLAC's 40th anniversary were (l to r): FLAC senior solicitor Michael Farrell, Dublin deputy lord mayor Emer Costello, Joe Costello TD and FLAC director general Noeline Blackwell

issue, he was inclined to beat his wife.”

So ‘Santa’ was brought before Judge Delap, who took a dim view of wife-beating. Santa wasn’t helped, alas, by the fact that his manner was somewhat inappropriate.

“He didn’t realise that you shouldn’t shout at the judge in court,” recalls Catherine McGuinness. And so Santa

ended up in jail.

FLAC is this year celebrating its 40th anniversary and, on 25 April last, held a dinner in the Mansion House at which President Mary McAleese spoke.

## Civic commitment

The success of FLAC, which now has 70 volunteer law centres throughout the country,

shows how important it was “that in every generation there are men and women who don’t just see the problem, but who have the civic commitment and conscience that drives them to construct solutions – even with the most modest of resources”, the President said.

In the case of FLAC, those men were David Byrne (who subsequently served as attorney general and European commissioner), Denis McCullough (now a senior counsel), Vivian Lavin (now a High Court judge), and Ian Candy (now a judge of the High Court in Hong Kong).

Speaking afterwards, Vivian Lavin summed up the spirit that animated them at the time: “Carnaby Street ... San Francisco ... flowers in your hair ... we could *do* things!”

He recalls FLAC’s somewhat inauspicious origins at the turn of the year 1968 to 1969, when he and David Byrne were in their final year as law students.

“I had spent Christmas in London and I had arranged with David Byrne to collect me at the airport. He collected me and said: ‘I have been to a conference about legal aid for people who cannot afford legal representation. I want to talk about it. I have a half bottle of Hennessy brandy.’

“We devoured the Hennessy and then we got together with Denis McCullough and Ian Candy, and we said, ‘Let’s go!’ We hadn’t a penny.”

The four students decided they would establish FLAC as a once-weekly volunteer centre, offering free legal advice by law students, who would be backed up by a duty solicitor.

According to David Byrne,



A group voting at a FLAC extraordinary general meeting at the Ormond Hotel, Dublin, in April 1979



# strives for legal aid goals

they had three aims. “We were aware that there was a market there for the provision of legal services to people who could not afford it, and that there were people who were not getting access to legal representation and legal advice. We were also aware that there would be an advantage to the students involved, because there would be an exposure to the practical side of

‘lawyering’. And the third aim was to lobby the government to provide funding for civil legal aid.”

## Initial resistance

The students approached the legal professional bodies for support, but met with some initial resistance, with understandable concerns about the prospect of students undertaking to give legal advice.

As Lavin puts it: “We were not qualified lawyers, but we recognised that people needed advice. We were final-year law students

and we also had the vision [that] we were going to invite qualified lawyers to support us.”

“The Law Society wanted to do a ‘merger and acquisition’,” recalls Byrne, “but we were determined that we wanted it to be a student-run organisation. To avoid the risk of being taken over by any one body, I invited a representative of the Law Society, the Bar Council and the law faculties at UCD and

Trinity to sit on our council.” (The late Professor John Kelly represented UCD, and Kader Asmal, formerly Minister for Education in South Africa, joined from Trinity.)

With that backing, the Dublin Solicitors’ Bar Association came on board, and agreed to provide the crucial ‘duty solicitor’ to attend the centre on its weekly night of

operation. “That was a safeguard and support,” says Byrne.

“Next,” recalls Vivian Lavin, “we needed publicity. So we arranged for an interview between David Byrne and Gay Byrne. The most important part was that he was *not* to ask us if we were professionally qualified, because we were (still) law students.

“And that seemed to be accepted. So the four of us arrived in David’s Wolseley Hornet, and

he went into the interview, and [afterwards] he came to us and said, ‘He asked me that question’.

“And we understood, of course, FLAC was finished. So we sent David back in to Gay Byrne, and he told him that if he put out the interview as recorded, we were finished. And Gay Byrne scrapped the interview, and re-did it.”

The first FLAC centre was

**“And we understood, of course, FLAC was finished. So we sent David back in to Gay Byrne, and he told him that if he put out the interview as recorded, we were finished. And Gay Byrne scrapped the interview, and re-did it”**



President Mary McAleese speaking at an event to mark FLAC's 40th anniversary

opened in the St Vincent de Paul facility at Ozanam House on Mountjoy Square in Dublin, thanks to the efforts of David Byrne's uncle, who was involved in the St Vincent de Paul. The pre-publicity insured that there was an immediate stream of people seeking advice.

“We found early on that mostly the people who came to see us were women – mostly middle-aged women, and mostly with marital problems,” says Byrne. “It became evident pretty quickly that there was a strong need for the provision of legal advice to people in situations of marital breakdown. That came as a surprise to people. There was not an awareness in Ireland at that time of this as an issue.”

## Steady growth

FLAC subsequently opened centres in Molesworth Street and Crumlin and grew steadily from there. In 1975, FLAC opened the first community law centre at Coolock (now

an independent organisation – the Northside Community Law Centre) and, in 1979, the European Court of Human Rights ruled in the case of *Airey v Ireland* that the state was obliged to provide a scheme of free legal aid.

Forty years on from its founding, FLAC continues to work towards the realisation of a comprehensive civil legal aid scheme. And it continues to be guided by the vision of the founders.

As David Byrne puts it: “One of our objectives was to lobby for the provision of civil legal aid, but we knew that the best way to do that was to provide the evidence: ‘These are the cases; here is the size of the unmet legal aid; you have got to do something about it’.

“That was a strong lesson: if you want to create change, you have to provide the evidence. Marching is good, but providing evidence is better.” **G**

PICTURE: DEREK SPIERS



# SEE WHAT'S NEW THIS AUTUMN



## EASEMENTS – 2ND EDITION

BY PETER BLAND

This edition explores the extensive reform of the law of easements following the repeal of the Prescription Act 1832, the abolition of the former methods of prescription and the introduction of a single statutory mechanism for the acquisition of rights by prescription in the Land and Conveyancing Law Reform Act 2009.

PRICE: €265.00

November 2009



## CIVIL PROCEDURE IN THE DISTRICT COURT

BY KARL DOWLING & BRENDAN SAVAGE

Written by practitioners for practitioners, it is the first time that District Court practice and procedure has been compiled and analysed to this degree. The result is a unique work that formulates the law and procedure in the District Court in a thorough and complete manner.

PRICE: €225.00

November 2009



## LAND AND CONVEYANCING LAW REFORM ACT 2009 – A COMMENTARY

BY NEIL MADDOX

A commentary is provided in a section-by-section manner making it quick and easy for you to locate the section you are looking for and making clear the impact of each part of the legislation.

PRICE: €165.00

October 2009



**PLACE YOUR  
ORDER TODAY!**

To order, or for more information, simply call us on  
+353 (0)1 662 5301 or visit [www.roundhall.ie](http://www.roundhall.ie)



# letters



Send your letters to: **Law Society Gazette, Blackhall Place, Dublin 7**, or email: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

## FLAC says thanks for 40 years of support

*From: Noeline Blackwell, director general, FLAC*

**T**his year, FLAC, the Free Legal Advice Centres organisation, is 40 years in existence (see page 12 of this *Gazette*). To mark the occasion, we are sending each practising lawyer in the country a copy of our quarterly newsletter, which explains the work that we do, and the difference for good that we hope FLAC makes in the lives of many marginalised and disadvantaged people in Ireland. Through the pages of the *Gazette*, we would be most grateful for the opportunity to thank the many volunteers who have allowed us reach this milestone.

In 2008, FLAC provided free legal advice to over 7,500 people at its evening centres. This was an increase of 53% from 2007. From returns that we have so far, we expect figures for 2009 to be considerably higher. We also answered some 9,250 information queries via our lo-call information and referral line. These figures, too, will increase in 2009. FLAC gave basic free legal assistance on a wide breadth of subjects, including family law, employment law, debt and consumer law, immigration law and social welfare.

The work done by approximately 400 FLAC lawyers on a voluntary basis in some 70 centres around the country remains an essential stepping stone in the overall aim of achieving justice for all. Without that first-stop legal advice offered by dedicated volunteers, many people would



A FLAC protest march outside the Dail in December 1978, marking the first anniversary of the *Pringle Report on Civil Legal Aid*

not be aware of their rights and responsibilities and would be unable to partake in important legal processes affecting them. FLAC is also grateful to the

various legal experts who help to provide first-class training and information in various areas of law to our volunteers at seminars and sessions throughout the year.

In addition, the money that FLAC has received through donations from lawyers has been, and continues to be, an essential source of income for our work.

FLAC wishes to publicly acknowledge all those who support its work, the volunteers who have worked with us throughout the years, staff at the Citizens' Information Centres who facilitate our work, the lawyers who support us, our staff and volunteer governing body, and all those who donate to our efforts. Together, we will keep striving to ensure the realisation of equal access to justice for all.

## Spanish lawyer seeks to collaborate

*From: Alberto Valero, Valero Abogados, c/Emili Grabit, Girona, Spain*

**M**y name is Alberto Valero (45) and I am a lawyer practising in Spain with more than 20 years' experience. As a Spanish lawyer, I would like to collaborate with Irish lawyers who have clients who run businesses in Spain.

I specialise in civil law in general and, in particular, patrimonial law and related branches (administrative law, taxation, dealings with the public administration, etc). I act in all types of judicial proceedings related with my activity, whether civil or criminal. In my firm in Spain, we handle all areas of law, with a special focus on labour law, company law (in general) and fiscal law.

It is essential for me to

improve my English for professional reasons and so, completely disinterestedly and without financial remuneration, I would like to offer my collaboration to my Irish colleagues with regards to Spanish legal issues during my visits to Ireland. In exchange, the only thing that interests me is to be able to practise English

in a work situation.

My visits to Ireland will be of approximately a fortnight every two months. My next visit will be from 19 October to 31 October 2009.

Please feel free to email me at [alberto@valeroabogados.com](mailto:alberto@valeroabogados.com) or tel: 0034 0660 515 751 (mobile number) or 0034 0972 208 000 (landline).

## Proposed court of appeal

*From: RW Nairn, Ashfield, Ballincar, Sligo*

**I** have heard mention of a proposed court of appeal in civil cases to ease the burden on the Supreme Court.

May I suggest, in lieu of this arrangement, that a total number of nine judges of the Supreme Court (the

President of the High Court being an *ex officio* one) should sit in two divisions simultaneously of five and three judges, but thereby giving each appellant a right of recourse to the highest court within the jurisdiction.

Are there any observations on this suggestion? **G**



**The legal and medical ethics door has been pushed further ajar with the landmark *Purdy* euthanasia decision and the British DPP's interim policy on assisted suicide. Michaela Herron peeks inside**

# LIVE AND

**T**he term 'euthanasia' derives from the Greek, meaning 'the bringing about of a gentle and easy death' (*eu* 'well' and *thanatos* 'death'). Essentially, euthanasia is an act or omission that, of itself, causes death. One of the chief ethical issues emerging in recent times centres on whether terminally ill individuals should be permitted to obtain medical assistance in 'dying with dignity'.

Euthanasia can be 'active' or 'passive'. 'Active' euthanasia is carried out through some *act* of killing, for example, administering a lethal injection. 'Passive' euthanasia is carried out by *failing* to perform some act that would, if performed, have extended the life of the patient.

While active euthanasia is illegal in most jurisdictions, passive euthanasia is permitted in some form in many countries. Active euthanasia is permitted in a limited form – as physician-assisted suicide – in Oregon, USA, under the *Death with Dignity Act 2007* and – in a broader form – in the Netherlands under the *Termination of Life on Request and Assisted Suicide (Review of Procedures) Act 2002*. (Both of these legislated forms of euthanasia in Oregon and the Netherlands are voluntary.)

Euthanasia can consist of (see panel, p23):

- An involuntary act, or
- A non-voluntary act, or
- A voluntary act.

This article deals solely with the latter.

Voluntary euthanasia consists of:

- 'Voluntary active euthanasia', where a doctor ends

the patient's life after determining that the patient has made a free and informed request and wants her life to end, and

- 'Physician-assisted death', where the doctor provides the means of death.

## Dr No

Ireland does not permit euthanasia. Section 4(1) of the *Criminal Justice Act 1964* states: "Where a person kills another unlawfully, the killing shall not be murder unless the accused person intended to kill, or cause serious injury to, some person, whether the person actually killed or not." Murder can be established where it is proven that the accused caused the death of the deceased with the intention of killing or causing serious injury. Therefore, a doctor who ends a patient's life commits the offence of murder. The law does not concern itself with however humane the doctor's motives may be.

Suicide ceased to be a crime in Ireland under section 2(1) of the *Common Law (Suicide) Act 1993*. The 1993 act abolished the criminal responsibility of a person who commits or attempts to commit suicide. However, suicide must be achieved without assistance from anyone, as section 2(2) of the 1993 act states that a person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

In Ireland, a doctor cannot assist with the death of a patient or actively end their life for them.

Euthanasia constitutes murder under English law.



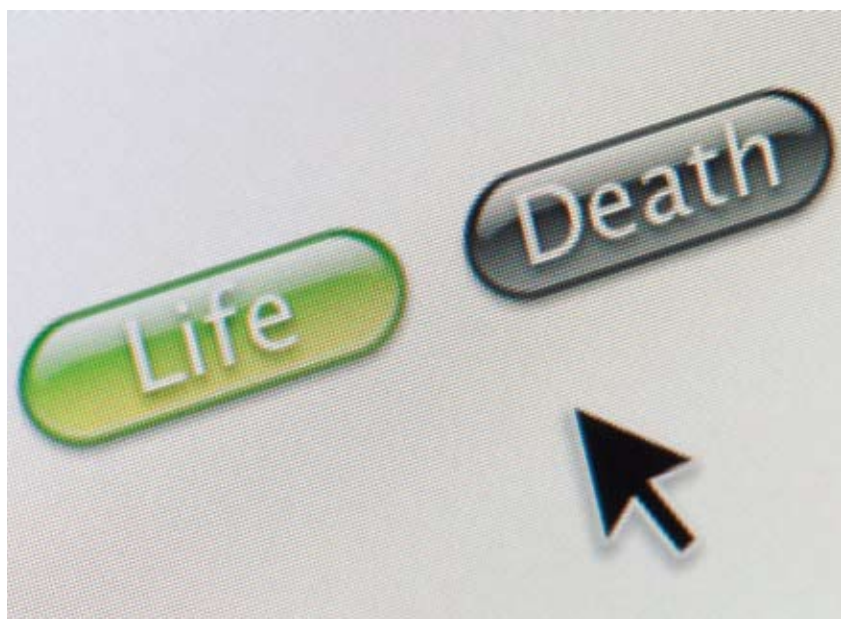
A photograph of two hands reaching towards each other against a bright blue sky with scattered white clouds. The hands are positioned one above the other, with fingers slightly spread, creating a sense of tension or reaching. The skin tone is light, and the lighting is bright, casting soft shadows.

# LET DIE

## MAIN POINTS

- Voluntary euthanasia
- The legal situation in Ireland and abroad
- Arguments for and against





**“The Lords said it would be a breach of her human rights not to allow her to end her life with dignity and criticised the DPP’s refusal to advise on when a prosecution would be brought”**

Neither the consent of the victim nor the accused’s motives are relevant in relation to guilt or innocence, although, according to section 269 of the *Criminal Justice Act 2003*, a belief by the accused that the murder was an act of mercy is a relevant factor counting towards reduction of the minimum period prescribed for murder. Assistance with suicide, whether or not by a doctor, is prohibited by section 2(1) of the *Suicide Act 1961* and, like in Ireland, a person who aids, abets, counsels or procures the suicide of another or an attempt by another to commit suicide shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years. Under section 2(4), any prosecutions can only be brought with the consent of the director of public prosecutions (DPP) and, in reality, few prosecutions have been brought.

#### Die another day

In the case of *Dianne Pretty*, the courts dealt with the question of whether the prohibition on assisted suicide complied with the *European Convention on Human Rights* (ECHR). Dianne Pretty, a motor-neuron-disease sufferer, requested an advance assurance from the DPP that her husband would not be prosecuted if he assisted in her suicide. She appealed the DPP’s refusal to provide such an assurance through the English courts and then to the European Court of Human Rights (ECtHR), but was ultimately unsuccessful.

Six years later, Ms Debbie Purdy, a multiple-sclerosis sufferer, brought a case against the DPP, challenging his refusal to promulgate and publish a policy as to when he would consent to a prosecution under section 2(4). Although she failed initially and in the Court of Appeal, she was ultimately successful in the landmark ruling of the House of Lords, which agreed that the law on assisted suicide was unclear. The ruling forces the Crown Prosecution Service to state exactly when it would take action against those who help their loved ones end their lives abroad. The Lords

said it would be a breach of her human rights not to allow her to end her life with dignity, and criticised the DPP’s refusal to advise on when a prosecution would be brought.

#### License to kill

In April 2002, Holland became the first country to legalise euthanasia. Dutch legislation permits voluntary active euthanasia (VAE) and physician-assisted death (PAD) and, therefore, recognises that whatever the law says, terminally ill people will look for and obtain help to die. The *Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002* simply placed successive court decisions on a statutory footing. Under the act, euthanasia and assisted suicide remain criminal offences, but may be decriminalised in certain circumstances. VAE and PAD are available only at the patient’s request. The patient must have reached the age of 12 years and must be capable of making a reasonable appraisal of their interests and the doctor must comply with the ‘due care criteria’.

Under these criteria, a doctor must ensure that the following safeguards are met. The doctor must:

- 1) Be satisfied that the patient has made a voluntary and carefully considered request,
- 2) Be satisfied that the patient’s suffering is unbearable and terminal,
- 3) Have informed the patient about her situation and her prospects,
- 4) Have concluded, together with the patient, that there is no reasonable alternative in light of the patient’s situation,
- 5) Have consulted at least one other independent physician, who must have seen the patient and given a written opinion based on the due care criteria, and
- 6) Have ended the patient’s life or provided assistance with the suicide with due medical care and attention.

If a doctor fails to meet these conditions, the doctor will be liable to prosecution and up to 12 years’ imprisonment.

The act established regional review committees to examine all assisted deaths. Each committee consists of a legal expert, a doctor and an expert on ethical or moral issues. Any doctor who assists in a patient’s suicide or ends a patient’s life at their request must notify the municipal pathologist of the cause of death. The municipal pathologist then refers the matter to the regional review committee for consideration.

Supporters of the Dutch legalisation say it has certain virtues. Firstly, giving terminally ill people the choice to decide how they die respects personal choice. Secondly, regulating euthanasia and assisted suicide brings it into the open, and reporting mechanisms promote dialogue between doctors and patients. Thirdly, terminally ill Dutch adults are not forced to suffer through the final debilitating stages of their illness. Furthermore, its supporters suggest that there is five times more non-voluntary euthanasia in countries that prohibit assisted dying than there



## THE MAN WITH THE GOLDEN GUN

As the *Gazette* was going to press, the British DPP released his interim policy on prosecuting cases of assisted suicide. Keir Starmer called for public participation in a 12-week consultation on the factors he has identified that will be taken into account when considering whether prosecutions will be brought.

He said: "Assisting suicide has been a criminal offence for nearly 50 years, and my interim policy does nothing to change that. There are also no guarantees against prosecution, and it is my job to ensure that the most vulnerable people are protected, while at the same time giving enough information to those people who want to be able to make informed decisions about what actions they may choose to take."

"I also want to make it perfectly clear that this policy does not, in any way, permit euthanasia. The taking of life by another person is murder or manslaughter – which are among the most serious criminal offences."

The public interest factors in favour of prosecution identified in the interim policy include:

- The victim was under 18 years of age,
- The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty,
- The victim did not have a clear, settled and informed wish to commit suicide – for example, the victim's history suggests that his wish to commit suicide was temporary or subject to change,
- The victim did not indicate unequivocally to the suspect that she wished to commit suicide,
- The victim did not ask personally on his own initiative for the assistance of the suspect,
- The victim did not have a terminal illness, or a severe and incurable physical disability, or a severe degenerative physical condition from which there was no possibility of recovery,
- The suspect was not wholly motivated by compassion – for example, the suspect was motivated by the prospect that they or a person



closely connected to them stood to gain in some way from the death of the victim,

- The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so, and did not take reasonable steps to ensure that any other person did not do so.

The public interest factors against a prosecution include:

- The victim had a clear, settled and informed wish to commit suicide,
- The victim indicated unequivocally to the suspect that he or she wished to commit suicide,
- The victim asked personally on his or her own initiative for the assistance of the suspect,
- The victim had a terminal illness, or a severe and incurable physical disability, or a severe degenerative physical condition from which there was no possibility of recovery,
- The suspect was wholly motivated by compassion,
- The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship,
- The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance that the suspect provided was as a consequence of their usual lawful employment.

is in Holland, where non-voluntary euthanasia is decreasing.

Assisted suicide and euthanasia were also legalised in Belgium in 2002. Only assisted suicide is legalised in Switzerland, provided that there is no self-interest involved. Assisted suicide can be performed by physicians and non-physicians.

### Shaken, not stirred

If the purpose of article 8 of the ECHR is the protection of privacy and family life while an individual

is alive, it is arguable that this should extend to how individuals choose to organise their death.

There have been various conflicting opinions from both domestic and European courts about the extent to which article 8(1) embraces personal autonomy. In *Pretty*, the House of Lords stated emphatically that article 8 was not engaged but, following Mrs Pretty's appeal to the ECtHR, the court adopted a more liberal interpretation and seemed to confirm that article 8 did encompass end-of-life decisions. Accordingly, the House of Lords in *Purdy* followed the ruling of the





# Gwen Malone.

Stenography Services

Commercial & Civil Litigation Specialists

## Capturing the Spoken Word

- Real-Time Transcript Streaming
- Digital Audio Transcription
- Disciplinary Hearings
- AGM & Board Meetings
- Public Inquiries & Confidential Meetings
- Tribunals
- Video Conferencing Facilities
- Secure Transcript Web Casting
- Same Day, Door-To-Door Transcript Delivery

Tel: +353 1 878 2000

Gwen Malone Stenography Services The Law Library, 145-151 Church Street, Dublin 7.  
Fax: +353 1 878 2058 After Hours: +353 872 491 316 +353 1 845 4456 gmalone@gmss.ie  
DX1071



Gwen Malone  
Stenography Services

[www.gmss.ie](http://www.gmss.ie)

Educating, Developing & Representing



**Irish Taxation  
Institute**

**At the heart of every business decision, there  
is one common factor – taxation.**

**Enhance your business skills. Become an AITI qualified Registered Tax Consultant.**

The ITI School of Taxation is Ireland's leading provider of professional tax qualifications. Our AITI programme qualifies you as a Registered Tax Consultant, the recognised tax experts in Ireland, and provides you with a highly marketable skills set of technical tax knowledge and advisory skills.

**Discover what the AITI qualification can offer you.**

For more information on our autumn programme and exemptions for members of the Law Society of Ireland, please contact our education team on +353 1 6631700 or visit [www.taxireland.ie/education](http://www.taxireland.ie/education).



## 'VOLUNTARY', 'INVOLUNTARY' AND 'NON-VOLUNTARY' EUTHANASIA

- Voluntary euthanasia is where the patient is:
  - a) Sufficiently informed and competent to request or consent to it, and
  - b) Does, in fact, request or consent to it.
- Involuntary euthanasia is where the patient is competent but does not request or consent to euthanasia. Either she refuses euthanasia and her views are overridden, or she doesn't express an opinion about it and is not consulted.
- Non-voluntary euthanasia involves euthanasia of a patient who is either not in a position to have, or not in a position to express, any views on the matter.

ECtHR and accepted its application to end-of-life decisions. It is now clear that article 8(1) should be construed in light of an individual's right to autonomy. By accepting the engagement of article 8, the House of Lords has recognised that autonomy in death is often a central consideration to terminally ill persons.

Article 2 of the ECHR was lengthily discussed by the ECtHR in *Pretty*. The court was not persuaded that article 2 could be interpreted as involving a negative aspect. Further, it was stated that it could *not*, without a distortion of the language, be interpreted as conferring the diametrically opposite right on an individual – namely, a right to die; *nor* can it create a right to self-determination in the sense of conferring the entitlement to choose death rather than life.

Article 3, read concurrently with article 1 of the ECHR, requires states to ensure that individuals are not subjected to torture or inhuman or degrading treatment or punishment, including such treatment administered by private individuals. The ECtHR held in *Pretty* that suffering that flows from naturally occurring illness may attain the minimum level of severity so as to be covered by article 3, where it is, or risks, being exacerbated by treatment that could be prevented or ameliorated by the state and the state does not do so. However, the ECtHR in *Pretty* rejected the argument that, in denying Mrs Pretty the opportunity to bring her suffering to an end, Britain would subject her to such treatment.

### Quantum of solace

Supporters of euthanasia propose its legalisation on the basis of several arguments. Firstly, it is argued that people ought to have a right of self-determination to choose to die with dignity. Values imposed by society do not make one's life better; it is an individual's values that inspire their sense of their own best interests. Indeed, at the moral core of medical practice is the imperative duty to respect the patient's right of self-determination and sense of their best interests.

Secondly, there are issues around the quality of life. Life embraces self-awareness, the ability to communicate with others, and to be conscious of and respond meaningfully to our surroundings. When such attributes are gone, quality of life is diminished. Prohibiting persons suffering from terminal illnesses from a dignified death, because society thinks it is right

for them to live as long as possible, forces them to continue to suffer and deprives them of their ability to decide what makes their life valuable.

Thirdly, compassion for their suffering should not be denied to those who seek a merciful release from a life that has become a meaningless burden and for whom there is no prospect for remission or cure.

Finally, even where euthanasia is illegal, it is still being obtained in secret or by travelling abroad. It is argued that, if it were regulated, it would be easier to safeguard the rights of people who wish to die with dignity.

### You only live twice

In addition to the religious arguments against euthanasia – and that it is a rejection of the importance and value of human life – opponents of euthanasia argue that the answer to the problem is not to legalise euthanasia but to improve clinical understanding and practice in the area of palliative care services. It is also argued that euthanasia would damage the very moral core of the medical profession and its healing role.

Secondly, there are fears that allowing euthanasia would undermine the government's commitment to providing life-sustaining care to terminally ill persons. In the future, they might be less likely to make proper provision for the care of vulnerable people if euthanasia were seen to be an acceptable option.

Thirdly, it is submitted that most terminally ill people who seek voluntary euthanasia are depressed and therefore lack the rational capacity to make undistorted decisions. It is feared that, for seriously or terminally ill patients, depression increases the likelihood of a preference for hastening death.

### Casino Royale

Euthanasia has again come to the forefront in the legal and medical world since the landmark decision in *Purdy*. The unavailability of euthanasia in Ireland and in most European countries has led to the new phenomenon of so-called 'death tourism', where people travel abroad to avail of euthanasia in countries where it is legalised.

In 1998, Dignitas – a Swiss 'assisted dying' group that facilitates those with terminal illness, severe physical and mental illnesses to die assisted by qualified doctors and nurses – was established. As of May 2008, five Irish people had travelled to Switzerland to die, with another 29 on waiting lists. No one has yet been prosecuted in the country for assisting with these deaths by travelling with their loved ones.

With the number of such cases on the increase, it will be interesting to see what steps might be taken in the future to put euthanasia on a proper legal footing – or to firmly shut the door on those who seek to obtain medical assistance in ending their lives. **G**

*Michaela Herron is a final-year trainee at A&L Goodbody.*

## LOOK IT UP

### Cases:

- *Queen on the Application of Dianne Pretty v UK*, 2002 35 EHRR 1
- *R (on the application of Purdy) v DPP*, 2009 UKHL 45

### Legislation:

- *Common Law (Suicide) Act 1993*, section 2(1)
- *Criminal Justice Act 1964*, section 4(1)
- *Criminal Justice Act 2003*, section 269 (Britain)
- *Death with Dignity Act 2007* (USA)
- *European Convention on Human Rights*
- *Suicide Act 1961*, section 2 (Britain)
- *Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002* (Netherlands)



# The life

**Significant changes to the *Professional Indemnity Insurance Regulations* will come into force on 1 December 2009. John Elliot sets out this practical guide, flagging the changes that will directly affect solicitors' firms**

## MAIN POINTS

- Significant changes to PII regulations
- Reduced minimum level of cover
- Commercial undertakings
- Detailed proposal forms
- Ceasing practice and run-off cover

**O**n 11 September 2009, the President of the Law Society issued a letter by email to members about professional indemnity insurance (PII). The president stated that full details of changes to the PII regulations would be posted on the Law Society's website and a detailed explanatory article would appear in this issue of the *Law Society Gazette*.

Significant changes to the PII regulations will come into force at the start of the next indemnity period on 1 December 2009. This article is intended as a practical guide to the profession regarding these changes. The article does not set out a definitive statement or interpretation of the law. The article is a guide to the changes that directly affect solicitors' firms and does not address issues affecting only

insurers. The article is based on the assumption that coverage terms offered to your firm do not exceed the mandatory minimum terms and conditions.

There are some important points to be aware of before looking at the detail of the changes, which are:

- 1) The PII regulations prescribe only the minimum level of cover required. Your firm should consider whether the value and nature of the work carried out by your firm requires additional cover and whether your firm should seek to limit by contract its liability to clients to the minimum amount permitted by law, which from 1 December 2009 will be €1.5 million.
- 2) PII is provided on a 'claims made' basis, which means that a transaction that your firm believes requires additional cover will need that additional

## PII IN THE SPOTLIGHT

For many months now, the Law Society has been monitoring developments in the professional indemnity insurance (PII) market. A special Law Society task force has taken independent expert advice from a number of sources in Ireland and in London. In addition, certain task force members have met with all of the current approved insurers and with some potential market entrants.

A combination of the industry's losses in investment markets and a very substantial increase in the number and size of negligence claims relating to property transactions – including failures to comply with undertakings following the collapse of the overvalued property market – has produced unsustainable losses for all insurers in the Irish market.

The insurers have told the Society's task force that there is very likely to be reduced availability of insurance – and potentially huge increases in premiums – in the renewals for next year.

The Law Society convened a special Council meeting to deal with this issue on 27 August 2009. The Council considered changes to the Society's PII regulations that might help reduce the very substantial increase in premiums inevitably on the way.

The Society's task force proposed, and the Council agreed, that a number of changes be made to the Society's regulations, which

set out the minimum terms and conditions of PII insurance. These changes make some reductions in the protection of clients and of solicitors, but increase the likelihood that a competitive market will exist for PII renewals this year. Among the changes agreed that will take effect from 1 December 2009 are:

- A reduction in the minimum cover from €2.5 million to €1.5 million,
- The exclusion of cover for certain undertakings given to financial institutions in commercial conveyancing work.

All of the changes to the regulations were immediately communicated to the existing and potential new insurers in the market and to the major insurance brokers active in the market.

Law Society President John D Shaw says: "While we hope that these changes will encourage the insurers, it is primarily the losses referred to above that will dictate the terms offered for the coming year. The insurance market is ultimately beyond the control of the Society or, indeed, of anyone. It is the insurance market, not the Law Society, that sets premiums. The insurance market is currently putting in place the arrangements for the coming year, and the situation should become clearer in the next few weeks."



# of PII

PIC: JUPITER UNLIMITED



cover renewed in subsequent indemnity periods, as a claim in respect of the transaction may arise after the end of the indemnity period in which the transaction is carried out.

- 3) Claims will be covered only if they are notified to the insurer in the correct indemnity period, which will be the indemnity period in which the claim is first made against your firm. Your firm

will be exposed to liability for the full amount of a claim if your firm does not notify the claim in the correct indemnity period. A new indemnity period starts each year on 1 December and ends on 30 November in the following year.

- 4) Changes include significant reductions in coverage for liability in connection with undertakings in commercial property transactions,



# 'EASY-TO-FOLLOW' PII CHANGES TABLE

The following table aims to summarise the changes in an 'easy-to-follow' format. The footnotes to the table explain certain points in more detail.

PROVISION	BEFORE <sup>1</sup>	AFTER <sup>2</sup>	ACTION <sup>3</sup>	LOOK IT UP <sup>4</sup>
<b>Amount insured for each and every claim (exclusive of defence costs)</b>	€2,500,000	€1,500,000	<p>Firms are advised by the Law Society to consider whether the new reduced amount insured will be adequate, given the value and nature of the work carried out by the firm and, if appropriate, to seek top-up cover.<sup>5</sup> Due to the 'claims made' basis of insurance cover,<sup>6</sup> it is recommended that any top-up cover should be renewed for at least six years after the most recent relevant transaction. If your firm does not obtain top-up cover, claims in excess of €1,500,000 will be at the firm's own risk.</p> <p>Your firm can limit by contract its liability to clients to the minimum amount insured.<sup>7</sup> Therefore, from 1 December 2009, your firm can limit its liability to €1,500,000.</p>	<p>MT&amp;C 3.1</p> <p>Reg 11(c)</p>
<b>Claims arising as a result of provision of certain common types of commercial undertakings to financial institutions<sup>8</sup></b>  <b>Note: for this purpose, commercial undertakings include certain undertakings in residential 'buy-to-let' transactions</b>	Covered.	<p>Undertakings provided before 1 December 2009 where claim is by financial institution and to the extent that liability arises from wrongful acts or omissions:<sup>9</sup>  <b>Not</b> covered.</p> <p>Undertakings provided on or after 1 December 2009:<sup>10</sup>  <b>Not</b> covered.</p>	<p>No action required. The new position will be no worse than existed pre-2008.</p> <p>If your firm chooses to give uninsured undertakings, that will be at the firm's own risk. The Law Society would expect banks to decline uninsured undertakings. Firms are advised by the Law Society not to give the designated types of undertakings without obtaining additional cover. Cover will not necessarily be available to all firms. Due to the 'claims made' basis of insurance cover, the additional cover should be renewed for at least six years after the undertaking is given. A possible consequence of this change is a return to the 'third solicitor' system. Pre-2008, undertakings were covered where liability did not arise from wrongful acts and omissions.</p>	<p>MT&amp;C 7.15, 7.16</p> <p>Reg 11(e)(ii), (iii)</p>
<b>Claims covered by a particular indemnity period</b>	Claim must be first made against your firm during the indemnity period.	Claim must be first made against your firm <b>and notified to the insurer</b> during the indemnity period.	All claims made against your firm should be notified as soon as possible. In particular, claims made between 1 December 2009 and 30 November 2010 must be notified by 30 November 2010. Special care will be needed towards the end of the indemnity period in case the deadline is missed. The new position will be no worse than existed pre-2008.	<p>MT&amp;C 2.2</p> <p>Reg 11(b)</p>
<b>Claims for fraud or dishonesty</b>	<p>Guilty partner or employee: not covered.</p> <p>Innocent partner or employee: covered.</p>	All partners and employees, whether guilty or innocent: <b>Not</b> covered.	Consider seeking additional cover for innocent partners and employees. The new position will be no worse than existed pre-2008.	<p>MT&amp;C 7.5</p> <p>Reg 11(e)(i)</p>
<b>Fraudulent misrepresentation or non-disclosure in placing the insurance</b>	Cover for claimants cannot be avoided by the insurer, but your firm must indemnify the insurer for all claims.	<p>Claims by financial institutions: <b>claims can be declined</b> by the insurer.</p> <p>Claims by non-financial institutions: cover for claimants cannot be avoided by the insurer, but your firm must indemnify the insurer for all claims.</p>	No new action required. In any event, it goes without saying that proposal forms must be completed correctly in all respects and all relevant information provided to the insurer. The new position will be no worse than existed pre-2008.	<p>MT&amp;C 5.3, 7.17</p> <p>Reg 11(d), (e)(iv)</p>

TABLE CONTINUED ON NEXT PAGE



## ‘EASY-TO-FOLLOW’ PII CHANGES TABLE (contd)

PROVISION	BEFORE <sup>1</sup>	AFTER <sup>2</sup>	ACTION <sup>3</sup>	LOOK IT UP <sup>4</sup>
<b>Failure of your firm's insurer<sup>11</sup></b>	Time allowed to obtain replacement cover: 20 working days.	Time allowed to obtain replacement cover: <b>30</b> working days.	No action required unless there is a failure by your firm's insurer. Pre-2008, failure of your firm's insurer not specifically regulated.	Reg 7
<b>Premium for cover by assigned risks pool (ARP)<sup>12</sup></b>	Set by ARP manager.	Set by fixed schedule of charges to be published. <sup>13</sup>	No action required. Pre-2008, set by the Law Society's Professional Indemnity Insurance Committee.	Reg 6, 8(i), (ii), (iii), (iv), 9
<b>Consequences of non-payment of premium for cover by ARP</b>	Enforcement action may be taken.	Enforcement action may be taken <b>and firm will be reduced to defaulting firm status.</b> <sup>14</sup>	If your firm enters the ARP, make all premium payments promptly. Pre-2008, no cover provided.	Reg 8(ii), (iii)

### FOOTNOTES

- |   |  |
|---|--|
| <p>1 Summary of current position during 2008/09 indemnity period ending 30 November 2009.</p> <p>2 Summary of new position for 2009/10 indemnity period commencing 1 December 2009.</p> <p>3 Action to be considered by your firm.</p> <p>4 Where in new minimum terms and conditions (MT&amp;C) and/or amending regulations (Reg) the change is provided for. See the 'News' area on the home page of <a href="http://www.lawsociety.ie">www.lawsociety.ie</a>.</p> <p>5 It should not be assumed that liability for claims for breach of undertaking will necessarily be limited to the current value of the property over which a financial institution holds security – it is possible that liability will equal or exceed the outstanding amount of the loan in question.</p> <p>6 'Claims made' basis means that the insurance policy that will meet a claim is the policy that is in place when the claim is made and notified to the insurer, or the policy that is in place when the insurer is notified of circumstances that may give rise to a claim – not necessarily the policy in place when the alleged negligence occurred.</p> <p>7 Provided by section 44 of the <i>Civil Law (Miscellaneous Provisions) Act 2008</i>. See practice note on page 58 of the May 2009 issue of the <i>Gazette</i>.</p> | <p>8 The position in relation to commercial undertakings is explained in more detail in a section elsewhere in this article.</p> <p>9 Wrongful acts or omissions are any dishonest, fraudulent, criminal or malicious acts or omissions by your firm or any acts or omissions that were done by your firm knowing them to be wrongful.</p> <p>10 Including where the claim is by a non-financial institution and regardless of whether liability arises from wrongful acts or omissions.</p> <p>11 Failure by your firm's insurer would occur if the insurer went into examinership, receivership or liquidation, or another similar event occurred, or if the insurer lost its regulatory authorisation.</p> <p>12 The ARP is the assigned risks pool, which is the pooling arrangement participated in by each qualified insurer through which firms not covered by the market may be granted coverage that incorporates the minimum terms and conditions. All firms entering the ARP undergo a risk management audit at the cost of the firm. A seriously adverse risk management audit report may lead to the firm being compelled to cease practice.</p> <p>13 The charges are expected to significantly exceed the premium levels available in the market. The ARP should be seen as an insurer of last resort.</p> <p>14 Defaulting firm status is explained in more detail in a section elsewhere in this article.</p> |
|---|--|

which for this purpose include all 'buy-to-let' residential property transactions. Your firm should seek additional cover if it proposes to give commercial property undertakings.

- c) Furnishing the relevant financial institution with title deeds to, or
- d) Payment of any stamp duty accruing due in connection with, or registration of title to

### Commercial undertakings

The types of undertakings affected are relevant undertakings in the course of a commercial property transaction, where the undertaking was given by the firm (acting either for a client borrower alone, or for a client borrower and a financial institution jointly), in connection with the provision by the relevant financial institution of financial accommodation to the firm's client to permit that client to effect the relevant commercial property transaction.

Relevant undertakings are undertakings that relate to:

- a) Discharge of security on, or a loan advanced on the security of
- b) Furnishing the relevant financial institution with a certificate relating to title to

any land or buildings the subject of the relevant commercial property transaction, or undertakings to procure any of these actions.

Commercial property transactions are any transactions other than residential property transactions but, for this purpose, commercial property transactions include the acquisition of a building or part of a building as a dwelling exclusively with a view to earning rental income, sometimes called 'buy-to-let'. Purchases of principal private residences and second homes, such as holiday homes, are not affected.

It is only liability in respect of claims arising directly or indirectly as a result of the provision of the relevant undertaking that will be excluded. Therefore, if a borrower client suffers loss as a result of negligence committed by the firm in the course of a



# Legal Indemnities Title Insurance Defective Title Insurance

- The most experienced underwriters in Ireland
- Underwriting response within 24 hours
- Policies underwritten by Liberty Legal Indemnities at Lloyds
- Competitive premiums and comprehensive policy cover

Phone 01/2375403  
Fax 01/2375407  
Email [enquiries@selectlegal.ie](mailto:enquiries@selectlegal.ie)  
DX 154 Dublin  
Web [www.selectlegal.ie](http://www.selectlegal.ie)



Working with, not competing against,  
legal professionals.

Colaba Limited trading as Select Legal Indemnities is regulated by the Financial Regulator.



## [www.CourtDate.ie](http://www.CourtDate.ie)

Do you attend the same Court regularly? Do you wish members of the public and your fellow practitioners to know you are available to take instructions in a particular Court? By registering your Practice or individual Solicitors on **[www.CourtDate.ie](http://www.CourtDate.ie)** your details will appear on the District Court of your choice and members of the public will be in a position to contact you and arrange representation for their CourtDate.

**To celebrate the site's launch, CourtDate is offering to extend FREE LISTING for each practice until 1st April 2010. This free listing is restricted to one specific District Court of choice Per Practice. Otherwise, the annual cost of each listing per court will be €299, inclusive of VAT. This is the equivalent of one legal aid assignment per year.**

IT'S EASY – GO TO [WWW.COURTDATE.IE](http://WWW.COURTDATE.IE) – LIST YOUR FIRM – SELECT YOUR DISTRICT COURT



transaction, which does not arise directly or indirectly as a result of the provision of the undertaking (for example, failure to examine title to property), the borrower client will still be able to make a claim that will be insured.

### Detailed proposal forms

Firms should expect to be required to provide significantly more comprehensive information than previously to be able to secure cover for the next indemnity period. The Law Society expects this will be the case with all insurers, including the Solicitors' Mutual Defence Fund. As a consequence, firms need to act quickly to prepare their submissions to prospective insurers. Firms should obtain detailed claims information from their insurer, not only to support renewal negotiations with their existing insurer, but also to approach other potential insurers. Firms also need to provide commentary regarding claims, particularly those that are outstanding, and cite what action has been taken to eliminate these mistakes in the future.

### Firms considering ceasing practice: cost of run-off cover

Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice where there is no succeeding practice. If your firm ceases practice without there being a succeeding practice, your firm will require run-off cover for six years, for which your firm will have to pay your current insurer. The concept of 'succeeding practice' is explained in the practice note starting on page 47 of the July 2009 issue of the *Gazette*. In brief, generally, run-off cover should only be an issue for sole principals. If you are a sole principal ceasing practice, and if you have the opportunity to do so, you should be able to avoid the need for run-off cover if you take on a partner, merge your practice, or arrange for your practice to be taken over prior to ceasing practice. Sole principals considering ceasing practice (including sole principals who have recently commenced practice) need to plan for cessation of practice, either for securing a succeeding practice or for financing the cost of run-off cover.

The contractual terms governing the cost of run-off cover are those that apply under the policy in force on the date your firm ceases practice. Premium

levels are expected to rise substantially from 1 December 2009. If your firm ceases practice on or before 30 November 2009, the cost of run-off cover will be fixed by your firm's current policy. If your firm ceases practice on or after 1 December 2009, the cost of run-off cover will be fixed by your firm's new policy in force from 1 December 2009, and the cost is expected to be substantially higher than under your firm's current policy.

If your firm is considering ceasing practice in the near future without there being a succeeding practice, the cost of run-off cover will probably be less – possibly significantly less – if your firm ceases practice on or before 30 November 2009, rather than on or after 1 December 2009.

The cost of run-off cover is a competitive issue. The cost may vary considerably from insurer to insurer. Seeking competitive quotes may reap significant benefits in terms of lower run-off costs.

### Assigned risks pool (ARP) contribution

An 'ARP contribution' payable by all firms will be introduced with effect from the next but one indemnity period, which is the 2010/11 indemnity period starting on 1 December 2010. The ARP contribution will be 2% of the premium payable for the minimum level of cover (excluding government levy).

### Defaulting firms

Any firm for which confirmation of cover is not received by the Law Society within *ten working days* of the renewal date of 1 December 2009 (that is by 15 December 2009), and that has not applied, and been admitted to, the assigned risks pool, will be classified as a 'defaulting firm'. The ARP will automatically provide such firms with PII cover as a defaulting firm. The premium is expected to be very significantly higher than that available in the market. If claims arise while the

ARP is providing a defaulting firm with cover, such claims will be dealt with by the ARP, but the ARP will have recourse against the firm for recovery of the full amount of the claim.

It is expected that the Law Society will seek a High Court order compelling any defaulting firm, which does not regularise its position swiftly, to cease practice. Obviously, it is in the interests of all firms to avoid becoming a defaulting firm. **G**

*John Elliot is the Registrar of Solicitors and director of regulation of the Law Society.*



***"If your firm is considering ceasing practice in the near future without there being a succeeding practice, the cost of run-off cover will probably be less – possibly significantly less – if your firm ceases practice on or before 30 November 2009, rather than on or after 1 December 2009"***



# COST CUT

**Despite recent media coverage to the contrary, the number of clinical medical negligence cases reported to the State Claims Agency has been declining. Michael Boylan sharpens his scalpel**

**I**n recent months, there has been considerable media coverage on the issue of medical negligence litigation damages and costs to the state. In these dire financial times for the state, newspaper headlines quoting the cumulative total paid out by the state over several years are distorting the fundamental truth underlying the statistics.

In an attempt to separate fact from fiction, I have reviewed the last three annual reports of the National Treasury Management Agency (NTMA), the latest published in July 2009 (for the year 2008). What is clear from comparing the 2006, 2007 and 2008 reports is that the trend for clinical negligence cases is downward – notwithstanding newspaper headlines creating a contrary impression. These reports disclose that the number of new claims reported to the State Claims Agency (SCA) declined rapidly between 2004 and 2005 and, thereafter, the trend remained stable between 2005 and 2007. It declined slightly once again in 2008. There is certainly no ‘rising tide’ of cases. Indeed, in numerous places in these reports, the trend is described as “flat”.

## Surgical steel

The ‘flat’ trend in claims frequency is in stark contrast to the number of medical accidents being reported to the SCA. Reported medical accidents have nearly doubled in 2008 and now stand at nearly 84,000 (see *Clinical Indemnity Scheme Newsletter*, March 2009, ‘STARSWeb 2008 Statistics’, p7), whereas the number of new claims made in 2008 was just 521. It can be concluded that so few claims are brought, not because of the quality of our health service, but because of the enormous difficulties that such cases pose for plaintiffs to win. These cases are often extremely complex and costly to mount (unlike in Britain, there is no legal aid or legal costs insurance available), have a two-year statute of limitations, are vigorously defended by the state, and the legal principles of negligence applied by the courts to the claims, if anything, favour the defendant.

The 2008 report does not disclose how many claims were resolved without any financial liability, but the 2006 report disclosed that 43% of claims

resolved in that year had no financial liability for the state. Such statistics merely highlight the difficulties posed for plaintiffs to succeed in such claims. Experienced solicitors are well aware of these problems and, therefore, are very selective in the types of cases they choose to pursue.

The following key statistics from 2008 report are illuminating:

- In the year 2008, the total paid out for medical negligence actions – both damages and costs – amounted to €25.5 million (it would appear that this total cost is the result of the settlement of about 410 medical negligence actions for the year in question – see the graph reproduced from p35 of the NTMA’s annual report 2008),
- Medical negligence damages and costs represent less than half of the total amount of the state’s liability for damages (€53.8 million).

This latter point is surprising, given that medical negligence claims are likely to be far more expensive given the serious nature of the injuries usually inflicted, including catastrophic birth injury cases.

## Occam’s razor

The report does not disclose how much of the €25.5 million total is for legal costs. However, if one accepts the comments attributed to the SCA in the recent print media (for example, *Irish Examiner*, 9 July 2009), for every €1 paid in damages, a further 56 cent is paid in legal costs. If these figures are correct, it follows that the damages would be approximately €16.3 million and the legal costs (defence and plaintiff) would be approximately €9.2 million. Assuming the same division as for all cases settled by the SCA in 2008, the apportionment between plaintiff and defence costs is approximately 55% to 45% respectively. Thus the plaintiffs’ costs would amount to approximately €5.06 million and the defence costs €4.14 million. These figures include all medical and other expert fees, solicitors’ and barristers’ fees, other disbursements and VAT.

It is not surprising that the plaintiff’s legal costs exceed those of the defendant when one considers that the plaintiff has the onus of proving all elements

## MAIN POINTS

- **Clinical medical negligence**
- **NTMA annual reports reveal downward trend**
- **Saving legal costs**
- **Legal ‘duty of candour’**



# TERS

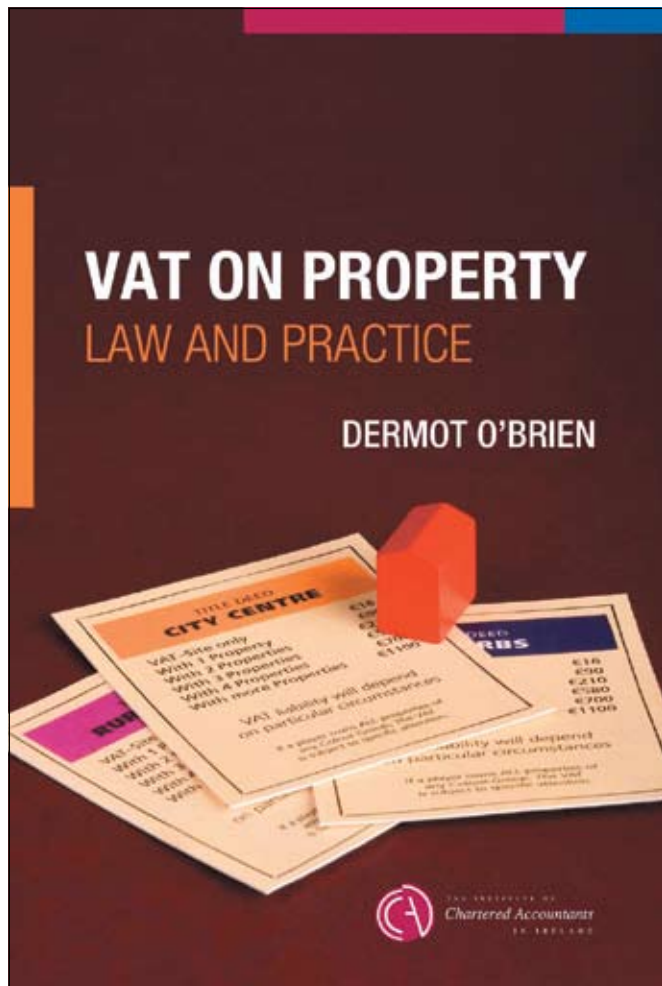
PIC: JUPITER UNLIMITED

of their case and must expend considerable time in gathering all relevant factual evidence. This is in contrast with the defendant, who possesses all of the crucial information from the outset and which is readily shared with the defendant's lawyers. The costs on the defence side do not put a value on the considerable work done in-house by the risk management department of each hospital, nor the work done by the medical defence organisations (for example, the Medical Defence Union and Medical Protection Society) or other indemnifiers of individual medical consultants. Nor does it include the considerable costs or value of the work carried out by the in-house qualified legal, risk management

and claims-handling staff of the SCA itself. On this latter point, it is noted that the annual cost for running the SCA (specified by the NTMA 2008 annual report), with a staff of 60, amounted to €7.53 million. It is reasonable to argue that, when you include all these additional costs on the state's side in order to compare 'like with like', the costs expended by the defence greatly exceed the costs of the plaintiff and thus there is no basis for suggesting that the plaintiff's legal costs are excessive or disproportional.

It should also be noted that the plaintiff's lawyers not only have the onus of winning the case, but they usually will not be paid a penny unless they are successful. Would a teacher agree to work on the





A new book from Chartered Accountants Ireland

## VAT on Property Law and Practice

Dermot O'Brien

THIS NEW book explains all the details and subtleties of the new VAT code as it applies to property transactions, and is currently the only up-to-date commentary available to include the amendments made by the Finance Act (No. 2) Act 2008.

Dermot O'Brien is the Principal of a leading, independent VAT consultancy firm. He has 30 years' experience working in VAT, having commenced his career with the Revenue Commissioners. Dermot is a former President of the Irish Taxation Institute and has written and lectured extensively on VAT, both in Ireland and overseas.

**Price:** €60.00; £53.00



### To order:

Telephone +353 1 637 7233

E-mail [publications@charteredaccountants.ie](mailto:publications@charteredaccountants.ie)

Online [www.charteredaccountants.ie/shop/books/](http://www.charteredaccountants.ie/shop/books/)

## Immigration Information and Support – SUBSCRIPTION SERVICE NOW AVAILABLE

### Operated by the Immigrant Council of Ireland – Independent Law Centre

As part of the continued development of the Immigrant Council of Ireland (ICI), we are happy to inform you that we are now offering solicitors, barristers and law firms the opportunity to subscribe to our information and advice services.

The ICI is an Independent Law Centre\* and is a quality source of expertise and knowledge on immigration legislation and policy. Subscribers will benefit from the expertise and experience of our legal team in dealing with immigration related casework.

The benefits of subscribing to the ICI's Information and Referral service are:

- Access via telephone service to the expertise, advice and support of the ICI's dedicated team of qualified immigration solicitors and legal information officers\*\*
- Ability to tap into the ICI's knowledge and experience in the provision of direct information and legal support to immigrants
- Receipt of regular 'Immigration Updates' on immigration policy and legislation, available only to subscribers
- Access to the ICI's training services at a reduced rate
- Comprehensive support in relation to immigration law and policy as well as legislative and procedural changes
- Receipt of the ICI's press releases and fortnightly newsbulletin on developments in the field of immigration including regulatory/policy changes, upcoming events and campaign updates

### Fees

- Solicitors/Barristers/Law Firms:  
One year: €200  
Two years: €360

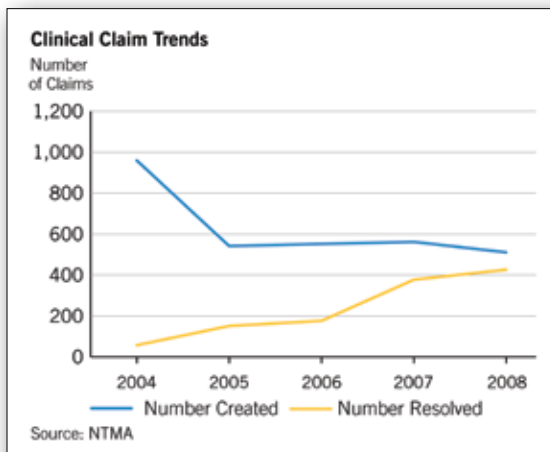
### Want More Information?

If you would like more information or would like to subscribe to the service, please contact Brian Killoran, Information and Referral Coordinator in the Immigrant Council of Ireland. You can call him direct on: 01 645 8044 or email him at: [brian@immigrantcouncil.ie](mailto:brian@immigrantcouncil.ie)



\*Under the Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations 2006. \*\*Please note that from December 1st 2009, solicitors, barristers and legal firms must subscribe to access the ICI's information and advice services





basis that they would not get paid unless the pupil passed the exam? Would a doctor agree to work on the basis that he would not get paid unless he effected a cure?

### Sword of Damocles

Behind every case is a personal human tragedy for patients and families, which often has lifelong consequences for them. The state robustly defends these cases and, often, where liability should be immediately admitted, they are defended vigorously until the eve of trial – by which stage very significant (but avoidable) extra legal costs have been incurred. Invariably, the plaintiff's lawyers will only get paid if they win the case and will only get paid what is reasonable given the necessary work undertaken. The taxation of costs system can and is availed of by the state if it considers that the costs being sought by the plaintiff are too high. It can be utilised without penalty of stamp duty for the state, as the court stamp duty will go into state coffers in any event.

The concern is that, should legal costs be arbitrarily reduced, it would make it impossible for all but the most affluent of injured patients to pursue such claims. The victims of medical accidents should not be denied further access to justice in circumstances where so few of the 84,000 patients

injured last year in Irish hospitals will be able to pursue a claim. Instead, the state could save itself a considerable amount in legal costs and spare patients and their families enormous unnecessary trauma by following the recommendations of the Department of Health and Children's Commission on Patient Safety and Quality Assurance report, entitled *Building a Culture of Patient Safety*, published in July 2008.

The report stated: "Doctors should make full disclosure of medical errors to their patients, as well as enhancing patient safety by the acknowledgement that an error had occurred. It is also in keeping with the ethical commitment of honesty to patients. Failure to communicate effectively with patients following errors therefore damages the integrity of the profession. Studies show that openness can decrease the trauma felt by patients following an adverse event and that patients often forgive the medical error when it is disclosed promptly, fully and compassionately, and action is taken to make sure it does not happen to another patient."

It concluded: "The overriding principle accepted by the commission is that patients are entitled to expect honest and open communication in relation to adverse events that may have caused them harm."

### Texas chainsaw massacre

If the state were to respect these recommendations, a significant amount of legal costs would be saved by early acceptance of fault and settlement of these claims, apart altogether from reducing the distress and trauma suffered by injured patients, who are, after all, citizens of the state. Until there is a change in ethos so that avoidable medical errors causing patient harm are quickly admitted to, I fear that the legal costs of claims will remain stubbornly high.

There would be great merit in introducing a positive statutory duty on doctors working for the state/HSE in public hospitals to have a 'legal duty of candour' to patients, so that they would be obliged to advise them candidly when they know they have caused a patient injury due to avoidable medical error. Such candour by servants of the state to its citizens/patients would undoubtedly save the state huge legal costs. Why should doctors and other healthcare professionals, whose salaries are paid for from the public purse, not have a positive legal duty of candour to their patients? Why shouldn't the injured patient be told about the medical error that injured them? Such a reform might seem very radical, but is being actively campaigned for at present in Britain (see [www.avma.org.uk/pages/legal\\_duty\\_of\\_candour\\_-\\_robbies\\_law.html](http://www.avma.org.uk/pages/legal_duty_of_candour_-_robbies_law.html)).

However, if the state instead continues to put every obstacle in front of patients pursuing the truth and facts about how they were injured, then it can hardly complain when legal costs mount up. **G**

*Michael Boylan is a partner in Augustus Cullen Law, Wicklow.*

***"If the state instead continues to put every obstacle in front of patients pursuing the truth and facts about how they were injured, then it can hardly complain when legal costs mount up"***

## LOOK IT UP

### Websites:

- Action against Medical Accidents, [www.avma.org.uk](http://www.avma.org.uk)
- Clinical Indemnity Scheme Newsletter, March 2009: [www.stateclaims.ie/ClinicalIndemnityScheme/publications/2009/CISnewsletterMarch.pdf](http://www.stateclaims.ie/ClinicalIndemnityScheme/publications/2009/CISnewsletterMarch.pdf)
- Department of Health and Children Report, *Building a Culture of Patient Safety*, July 2008: [www.dohc.ie/publications/building\\_culture\\_patient\\_safety.html](http://www.dohc.ie/publications/building_culture_patient_safety.html)
- NTMA 2008 annual report: [www.ntma.ie/Publications/2009/NTMA\\_Annual\\_Report\\_2008.pdf](http://www.ntma.ie/Publications/2009/NTMA_Annual_Report_2008.pdf)



# Chinese

**Napoleon famously said ‘When China wakes, it will shake the world’ – well, the alarm clock has gone off. Marguerite Glynn examines some things that legal advisors need to be aware of when advising clients on Chinese opportunities**

**C**hina’s emergence as a major player has radically changed the world economy and the prospect is that this process will continue. It is widely assumed that China will, in the coming decades, overtake the US as the world’s largest economy. China’s manufacturing and service industries will rapidly climb the value chain. All companies with an international dimension would be well advised to implement a ‘China strategy’ if they have not already done so. In order to guide clients looking to take advantage of the opportunity presented by the Chinese economy, legal advisors need first of all to be aware of the industry-specific legal restrictions on foreign investment and of the investment vehicle structure options.

## Investment advice

After joining the World Trade Organisation in 2001, China began a series of modifications to its trade regulations to conform to WTO standards. Various economic sectors and certain industries were gradually opened to foreign investment, including its banking sector.

The *Catalogue for Guiding Foreign Investment in Industries* (the centrepiece of China’s foreign-investment regime) essentially divides China’s economy for foreign-investment purposes into four categories:

- Prohibited,
- Restricted,
- Permitted, and
- Encouraged.

All categories are subject to different examination, approval and registration requirements from local, municipal, provincial or state authorities, depending on the size and/or industry of the projects.

*Prohibited* foreign investments include projects that are harmful to state security or impair public interest, pollute the environment, are destructive to natural resources and detrimental to human health, occupy excessive farmland, or are unfavourable to the protection and development of land resources.

*Restricted* foreign investments include projects that are technologically behind, unfriendly to resources in the environment, engaged in the exploitation of specific types of minerals that are specifically protected by the state, or are classified as industries that the government is opening up in stages.

*Encouraged* foreign investments, which make up about two-thirds of the catalogue, mainly include:

- Projects related to new agricultural technology, construction and the operation of energy sources, transportation and exportation of raw materials to certain industries,

## MAIN POINTS

- Opportunities in China’s growing economy
- Industry-specific legal restrictions on foreign investment
- Investment vehicle structure options





# whispers

- Projects using new or advanced technology, including those that can improve product quality, save energy and raw materials, increase economic efficiency and alleviate shortages in the domestic market,
- Projects that meet international market demand to improve or add value to the industry,
- Projects that involve the integrated use of China's resources or renewable resources involving new technology or equipment for preventing and controlling environmental pollution, and
- Projects that can develop the manpower and resources of central and western China.

Projects not listed in the catalogue are generally classified as 'permitted'.

Projects in the 'encouraged' category are usually eligible for preferential treatment, for example, a reduced tax rate of 15% for qualified new high-technology companies; 50% super-deductions for

qualified research and development expenses; or tax holidays for specified infrastructure, primary industry resource-saving or environmentally friendly projects.

#### **Vestments are nice**

The 2007 tax reform unified the income tax treatment of domestic and foreign enterprises. Effective from 1 January 2008, the *New Enterprise Income Tax Law* provides for a 25% statutory rate for both domestic and foreign-funded enterprises.

Special rates apply to small and thin-profit enterprises (20%) and state-encouraged new high-technology enterprises (15%). Furthermore, Ireland has the benefit of a favourable double taxation treaty with China, signed in 2000. Ireland is one of the few jurisdictions that offer an exemption from Chinese tax in respect of the disposal of shares in a Chinese company, regardless of the percentage size of the shareholding (provided the shares do not derive the majority of their value from real estate in China).



## ALPHABET SOUP

- AIC – Authority for Industry and Commerce
- COFCOM – Bureau or Commission of Commerce
- IPR – intellectual property rights
- JV – joint venture
- MOFCOM – Ministry of Commerce
- RO – representative office
- SIPO – State Intellectual Property Office
- WFOE – wholly foreign-owned enterprise
- WTO – World Trade Organisation

This treaty exemption, combined with Ireland's domestic capital gains tax legislation, provides for a potential tax-free exit from an investment made in China.

Poor protection of intellectual property (IP) is often cited as one of the major risks to foreign companies considering doing business in China. However, China has aligned its IP legislation with the WTO requirements of the *Trade-Related Aspects of Intellectual Property Protocol*, which contains general standards for intellectual property rights (IPR) enforcement. China has implemented the *Patent Law*, the *Trademark Law* and the *Copyright Law*. Recent IPR improvements include the passing of the *Third Amended Patent Law* at the end of December 2008, which is scheduled to take effect on 1 October 2009. Changes include those that relate to novelty of inventions, location of first filings, co-ownership, double patenting and prior art defence, as well as increased damages awards and a larger role and increased powers for the State Intellectual Property Office (SIPO) in IP cases. While inconsistent enforcement of IP protection laws can be a concern, with professional help, companies can adopt smart IP strategies to minimise risks significantly.

### Best mince and rice

Currently, the most common entities through which foreign investors can establish a presence in China are wholly foreign-owned enterprises and representative offices and, to a lesser extent, joint ventures with Chinese partners.

For companies looking to invest in China and establish a direct profit-making presence, a wholly foreign-owned enterprise (WFOE), in the form of a limited liability company, is normally the preferred vehicle, as it allows foreign investors to have sole control of the business operation and avoids lengthy negotiations with a Chinese partner. The establishment of a WFOE must be approved by the Ministry of Commerce (MOFCOM) or its

local office, known as the Bureau or Commission of Commerce (COFCOM). Most COFCOMs are required to decide whether or not to approve the application within 90 days. In practice, however, some COFCOM branches can make this decision in a shorter time.

Both prior to applying for approval to COFCOM and after approval has issued, there are various local and state authorities with which the WFOE must register before it can begin trading. It is this bureaucratic process that can cause difficulties for foreign investors, and professional advice is strongly recommended. The good news is that the process is a lot more efficient and predictable compared to even just four or five years ago, as most authorities are now very experienced in approving foreign investments.

When a foreign company considers seeking opportunities and making a direct investment in China before conditions are completely mature for the establishment of a WFOE, the establishment of a representative office (RO) can be a prudent choice. A foreign RO is not a limited liability company or entity under Chinese laws. The parent company is responsible for the business activities conducted in China by its RO.

While an RO is not permitted to conduct any direct business activities (for example, execute sales contracts), it can conduct information gathering, product promotion, market research, exchange of technology and ancillary activities. The RO can be used to promote the business of the parent and facilitate transactions between the parent company and its customers in China.

Like a WFOE, an RO must also prepare and submit various applications to, and register with, certain local and state authorities. However, no equity investment is required and the registration process is faster and simpler compared to a WFOE. The company needs to entrust a local organisation or entity that is acceptable to the Authority for Industry and Commerce (AIC) to file the application process on its behalf (local qualified agent). Within 30 days, the AIC must give its decision.

**“All companies with an international dimension would be well advised to implement a ‘China strategy’ if they have not already done so”**

### Rest hints for mice

Forming a joint venture (JV) with a Chinese company can be a drawn out and complex business, involving extensive research and due diligence. While not popular (and generally not recommended if avoidable) due to frequent problems with Chinese partners, a JV does have some potential advantages, such as the knowledge of the local partner about the local market and local practices and direct access to distribution networks. During the seven years after China's



## LOOK IT UP

### Websites:

- [www.china.org.cn/business](http://www.china.org.cn/business)
- [www.cia.gov/library/publications/the-world-factbook/geos/ch](http://www.cia.gov/library/publications/the-world-factbook/geos/ch)
- [www.enterprise-ireland.com](http://www.enterprise-ireland.com)
- [www.irelandchina.org](http://www.irelandchina.org)

### Legislation:

- *Catalogue for Guiding Foreign Investment in Industries* (2007 revision)

- *Decision of the State Council on Reforming the Investment System* (no 20 2004)
- *Ireland/China Double Taxation Agreement* (19 April 2000)
- *New Enterprise Income Tax Law of the People's Republic of China* (16 March 2007)

### Literature:

- *Doing Business in China – A Guide for Irish Companies* (Enterprise Ireland)

accession to the WTO, restrictions were imposed on the establishment of a WFOE and, as such, a joint venture with a Chinese partner was the only way foreigners could establish an active presence in China. Now that the seven-year transition period has passed, the WFOE is the vehicle of choice for the majority of companies. However, it should be noted that China is still in the process of opening up all its industries, and therefore, for certain industries, foreigners can still only invest via a JV at the present time (for example, telecom and auto industries).

contracts expected to generate €65 million in export sales in the following 12-18 months. In 2007, Irish merchandise exports to China were €1.3 billion, which was a 50% increase on the previous year. According to Enterprise Ireland, more than 80 Irish companies now have operations established in China. Now, more than ever, Irish business is under pressure, with falling demand and high running costs. China presents an obvious solution to these problems. As its economy continues to open up to foreign investment, Irish industry and Irish legal advisors must wake up to China. **G**

### Purple monkey dishwasher

During the Enterprise Ireland trade mission to China in October 2008, Irish companies signed

*Marguerite Glynn is an associate solicitor with Brian O'Donnell & Partners.*

Remember the  
humble donkeys  
in your Will  
and we'll  
remember  
you!

With appallingly overgrown feet and an untreated leg injury caused by a piece of wire that had become ingrown, this lovely donkey, Paddy OD, will need our expert care and attention for the rest of his life.



Before



After

To find out how your contribution can help prevent the suffering of donkeys and how you will be remembered for your kindness, please contact:

Paddy Barrett, The Donkey Sanctuary, (Dept LSG), Liscarroll, Mallow, Co. Cork.

Tel (022) 48398 Fax (022) 48489 Email [info@thedonkeysanctuary.ie](mailto:info@thedonkeysanctuary.ie)

Website [www.thedonkeysanctuary.ie](http://www.thedonkeysanctuary.ie)



A charity registered with the Charity Commission for England and Wales No.264818



# FORCED TO

**This edited version of Gordon Wade's essay on mediation and article 6 of the ECHR was this year's winner of the annual Human Rights Essay Prize, sponsored by the Law Society**

In any legal system, respect and protection for human rights can be guaranteed only by the availability of effective judicial remedies. Access to justice is of fundamental importance and an essential component of the rule of law. The hallmark of every stable, thriving and strong liberal democracy is a government that implements policies and develops institutions that promote, support and ensure equitable access to justice for all. An introduction of a scheme of compulsory/mandatory mediation may not violate the provisions of article 6 of the *European Convention on Human Rights*.

## Access to justice

Article 6, which enshrines the right to a fair trial, represents one of the most fundamental guarantees for the respect of democracy and the rule of law on the European continent. The right of access to justice comes from an extensive interpretation of article 6. With the passing of time, the notion of a right of access to justice has developed into one of the article's fundamental guarantees in civil cases *par excellence*. In *Airey v Ireland*, the European Court of Human Rights held that the ECHR is "intended to guarantee, not rights that are theoretical or illusory, but rights that are practical and effective".

Mediation can constitute a way to vindicate the rights embodied in article 6, as it can allow parties to obtain the justice they seek more expeditiously, less expensively, more privately and, ultimately, in a way that they have complete control over. Just because there is a constitutional right of access to justice and the courts, this does not mean that there is an effective remedy for preventing excessively long delays in proceedings.

Irish constitutional justice incorporates the rule of law – and the principle that everyone is subject to the rule of law – as a concept at the core of our legal system, which should be public and determined by an independent court system. Within this constitutional structure is the right of access to justice, which should not be denied solely on the issue of cost, where the high cost of litigation is a concern.

## Efficient instrument

Mediation may be a very efficient instrument to aid access to justice, and it can have very positive effects. Given the importance attached to the right to a fair trial, if mediation is ever substituted for court action, it is important to establish that this does not result in a breach of the ECHR. Procedural rules are usually

formal and complex, which consequently gives rise to indispensable and always costly legal advice. However, dissatisfaction with the administration of justice is as old as the law itself. In the context of an ineffective judicial system (which inhibits access to justice), mediation has a crucial role to play in providing wider access to justice.

Today, the length of proceedings in civil cases represents, statistically, the most frequently invoked violation of article 6. This is extremely serious, because the length of proceedings may have adverse consequences for the good administration of justice. As access to justice has become a concern, mediation has emerged as a possible partial solution to what many have come to believe is an insoluble problem. Mediation should be seen as an integral part of the civil justice system. Given that compulsory mediation systems see the replacement of the court system with another body, the rights stemming from article 6 must still be guaranteed.

Mediation is, by its very nature, a purely voluntary procedure. Without this essential principle of voluntariness, other underlying principles of mediation – notably party empowerment, flexibility, and confidentiality – cannot ensue. At first sight, it is difficult to see how mandatory mediation can be effective: to compel parties to mediate if one, or both, of them does not wish to do so. However, the rationale is that mediation may ultimately be productive even if one (or more) of the parties is initially a reluctant participant.

## Barrier to access?

In the 1990s, Lord Woolf, in his review of the civil courts in England and Wales, stopped short of recommending compulsory mediation, on the grounds that it was wrong in principle to deny citizens their entitlement to seek a remedy from the civil courts. The most compelling question is whether forcing parties to have recourse to mediation, particularly when they do not wish to do so, represents a barrier to the right of access to the courts, and thus justice. Britain has been at the vanguard of this process in Europe, and any developments there undoubtedly will have an impact in Ireland. In *Halsey v Milton Keynes General NHS Trust*, Dyson LJ stated that "the court's role is to encourage, not to compel [mediation]. The form of encouragement may be robust."

Here, the court felt that to compel unwilling parties to mediate would only add costs and might

## MAIN POINTS

- The ECHR and access to justice
- Mediation as a way of vindicating article 6 rights
- Compulsory mediation and article 6 rights



# BE FREE?



PG: JUPITER UNLIMITED

infringe article 6 of the ECHR. The decision establishes a difference between encouraging mediation, even in the strongest terms, and ordering the parties to do so.

Existing Irish legislative provisions do not present

a clear picture on this issue. Pursuant to section 15 of the *Civil Liability and Courts Act 2004*, mediation in a personal injuries action can only be initiated at the request of one of the parties, thereby creating the situation where a court might direct that the parties





*Law Society of Ireland*

# LAW SOCIETY ANNUAL CONFERENCE

9<sup>th</sup>/10<sup>th</sup> April 2010

LYRATH ESTATE HOTEL  
Kilkenny

## Headaches over Missing Beneficiaries? Here's the Remedy!

- Fixed or Contingency Fee.
- Full Report for Indemnity Insurance.

**MASSEY & KING LTD.**

Specialist Legal Genealogists  
& Probate Researchers

[www.masseyandking.com](http://www.masseyandking.com)

tel: 01 492 8644 email: [info@masseyandking.com](mailto:info@masseyandking.com)

## MOON BEEVER SOLICITORS

### UK PROBATE AND PRIVATE CLIENT SERVICES

Moon Beever is a long established Law Firm based in central London and we can offer you and your clients specialised services including:

- Extracting UK Grants of Probate/ Administration and re-sealing Irish Grants in the UK
- Administration of UK Estates
- Advice on UK Inheritance Tax and domicile
- Wills for non UK domiciled individuals dealing with UK situs assets
- Purchase and sale of properties and businesses

Contact Julian Hay on 020 7612 7743 or  
Email: [jhay@moonbeever.com](mailto:jhay@moonbeever.com)

#### Moon Beever Solicitors

24-25 Bloomsbury Square, London, WC1A 2PL

Tel: 020 7637 0661 Fax: 020 7436 4663

Email: [info@moonbeever.com](mailto:info@moonbeever.com)

Website: [www.moonbeever.com](http://www.moonbeever.com)



## LOOK IT UP

### Cases:

- *Airey v Ireland* [1979] 2 EHRR
- *Halsey v Milton Keynes General NHS Trust* [2004] EWCA (Civ) 576

### Legislation:

- *Civil Liability and Courts Act 2004*, section 15
- *European Convention on Human Rights*, article 6
- *Mediation Directive*, article 3(2)
- *Rules of the Superior Courts (Commercial Proceedings) 2004*

must meet to discuss and attempt to settle the action in a mediation conference. However, should neither party request the holding of a meeting, the court cannot compel the parties to consider mediation. By contrast, the *Rules of the Superior Courts (Commercial Proceedings) 2004* introduced a mechanism by which the court may, on application to the court or by its own motion, adjourn the proceedings for up to 28 days to facilitate a reference of the dispute to mediation. It is clear from the 2004 act and the 2004 rules that there is a thin line between *strongly encouraging* parties to consider alternative dispute resolution (ADR) and *compelling* parties to attempt ADR – and that there is no consistency in how this is achieved.

Compelling parties to enter into a mediation or conciliation to which they object could add to the costs to be borne by the parties, possibly postpone the time when the court determines the dispute, and damage the perceived effectiveness of the mediation process. By contrast, the courts have a fundamental role in integrating mediation into the civil justice system by encouraging parties to consider mediation in appropriate cases.

### ‘Necessary palliative’

With mandatory mediation, access to the courts is only temporarily suspended, and disputants cannot be forced into an agreement. So, in this regard, mandatory mediation does not contradict article 6. Mandatory mediation orders would not deny access to court, only leading to a very short, temporary delay and, moreover, in most cases, would allow parties to initiate parallel legal proceedings at any stage.

Lightman LJ feels that mediation is a “necessary palliative” to those denied real access to justice in the courts. It could provide an approximation to justice. However, he also added that, to do so, there is a need to remove the obstacle placed in its path

by the *Halsey* decision – the finding that a court cannot require a party to proceed to mediation against his will, because this would defeat his right of access to a court under article 6. Justice Lightman criticises the *Halsey* decision because a number of jurisdictions have introduced compulsory mediation processes, and on this point he is right. The EU itself acknowledges in article 3(2) of the *Mediation Directive* that the encouragement it offers to mediation is made “without prejudice to national legislation making the use of mediation compulsory ... provided that such legislation does not interfere with the right of access to justice”.

Does entering into a mediation process on the order by a judge mean that the parties have waived their rights to a trial? Perhaps not. Mediation should be seen, not as ancillary to the litigation process, but as an integral part of it. In the same vein, parties can be compelled to go to court – so parties should be compelled to go to mediation in appropriate circumstances.

**“A system of mediation must contain an element of compulsion, while accepting that, by definition, the process requires the disputants to enter it voluntarily”**

### Compulsory yet voluntary

It is not possible in a modern democracy to deny disputants access to courts. It will never be possible, therefore, to compel disputants to resort to mediation as the only means of resolving their disputes. This would undoubtedly violate the protection provided by article 6. In order to avoid this, it appears that a system of mediation must contain an element of compulsion, while accepting that, by definition, the process requires the disputants to enter it voluntarily.

The possession of rights without effective mechanisms for their vindication would be meaningless.

In Ireland, with our wealth of constitutional jurisprudence on human rights, giving effect to the ECHR in national law can only add to the protection and promotion of human rights values. A system of mandatory mediation that results in the saving of court and judicial time is an entirely satisfactory way of fulfilling the state’s duty under article 6 to vindicate the right of access to justice. When the use of ADR is compulsory, it is imperative that the ECHR rights can be implemented in their entirety prior to exhaustion. Along with freeing up court resources for more meritorious disputes, steps must also be taken to safeguard article 6 by having the mediation tribunal either offer the rights guaranteed by article 6 itself or supervised by a body that does. **G**

*Gordon Wade has a BA in law and business (UCD) and an LLM (TCD). He is currently engaged in consultancy, mediation case management and systems design under Oliver J Connolly BL of Friarylaw in Dublin.*



## Cavan Bar Association meeting



PIC: LENS MEN

At the CBA event were (front, l to r): Maire Barr, Niall Dolan, Ken Murphy (director general), Rory Dolan (CBA president), John D Shaw (Law Society president), John Keaney and Joan Smith. (Middle, l to r): Winifred Gallagher, Dennis McDwyer, Larry Burke, Jacqueline Maloney, Helena Brady, Eirinn McKiernan, Norah Conlon, Bridget Brennan and George Maloney. (Back, l to r): James Glynn, Damien Glancey, Noel O'Gorman, Damien Rudden, Michael Ryan, John Quigley and Mary McAveety

The members of the Cavan Bar Association (CBA) met at Cavan Courthouse on 9 July 2009, where they were addressed by Law Society President John D Shaw on matters of importance to solicitors.

The president referred to

the impact of the recession on the legal profession and what the Society has been doing to assist members. He updated them, also, on the latest news on professional indemnity insurance, as well as the radio advertising campaign, the Legal

Services Ombudsman, the Society's meetings with the Irish Banking Federation, new restrictions on solicitors giving undertakings to secure loans for themselves, and the Society's views of the *Criminal Justice (Amendment) Bill 2009*. The

president advocated members to consider taking up retraining and reskilling opportunities during the downturn.

Afterwards, both he and director general Ken Murphy took questions, which resulted in a lively discussion.



### Head of security retires

The Law Society's head of security, William King, has retired. Many members will be familiar with the imposing and proud figure of William standing on the steps as they entered or left the main building in Blackhall Place. He also policed many of the student functions there, where he struck a balance between ensuring everybody's safety, while not dampening the fun! William was head of security for the last six years and lived on the Blackhall Place site with his wife Ailish. The Kings are moving to the warmer climes of Spain. We wish William and Ailish a peaceful retirement and *buen viaje*. William is seen here (right) receiving a presentation of a Malton print of Blackhall Place from director of finance Cillian MacDomhnaill in early September

## Reddy, steady, go!

Recession or not, Sadhb Reddy has decided it's time to spread her wings and establish her own practice. A tax solicitor, Sadhb has relocated to her native Carlow after almost ten years working with a long-established Dublin firm.

Reddy Solicitors officially opened on 7 September 2009 in the Carlow Gateway Business Centre. The firm advises on wills, probate, trusts, estate planning and all associated legal and taxation matters. Its full list of services can be viewed at [www.reddysolicitors.com](http://www.reddysolicitors.com).

Having qualified as a solicitor five years ago, Sadhb qualified last year as a trusts and estates practitioner and, this year, has



completed her AITI tax training with the Irish Taxation Institute. She has recently been appointed as a committee member on the Probate and Taxation Committee of the Dublin Solicitors' Bar Association.



## Leitrim's 'landmark' event



At the working lunch organised by the Leitrim Bar Association in the Landmark Hotel, Carrick-on-Shannon, on 9 July were (*front l to r*): Mary O Connell, Doireann Ní Riain, Ken Murphy (director general), John D Shaw (Law Society president), Noel Quinn, Berna Gibbons, Gabriel Toolan and Elenor Davis. (*Back, l to r*): Kieran Ryan, Aoife McDermott, Orla Ellis, Conor Maguire, James Faughnan, Niamh McGovern, Sonia Heney, Niamh Bolger, Carol Ní Chormaic and Mary McDermott

## No 'Italian job' for Irish tennis team

**T**he Italian Lawyers' Tennis Association pulled out all the stops for the European Lawyers' Tennis Championships, held in Rome from 8-12 June 2009, at Le Molette Tennis Club. There were handsomely-stocked goodie bags for the players and a local television crew on hand to record proceedings. In between tennis matches, there were excursions to the Vatican, Tivoli, some of the finer Roman restaurants and a gala dinner on the last evening beside the tennis club's impressive swimming pool.

The Irish team faced England in its opening match, and took on a somewhat weakened Italian side for its next game. In its last match, Ireland was well beaten

by Hungary, which went on to win the event for the first time.

The tennis was, generally, of a high standard, with the matches being played in a blistering 30-degrees Celsius plus. The Irish fared better at the competitive socialising than they did on court.

Ireland was represented by: Brian O'Gorman, Donnough Shaffrey, John Mark Downey (capt), John Black, Frank Egan and Patricia Lord.

The next European championship event will take place in Germany in 2011. Anybody interested in playing or attending should email [johnmark.downey@bankofscotland.ie](mailto:johnmark.downey@bankofscotland.ie).



Representing Ireland in Italy were (*l to r*): John Black, John Mark Downey (captain), Frank Egan and Patricia Lord

PIC: PETER MORTON

## South African trainee lawyers visit Ireland



A number of South African trainee lawyers from underprivileged backgrounds travelled to Ireland this summer to gain experience working with some of Ireland's top law firms. They were guests of the Law Society at Blackhall Place on 28 August 2009 (*l to r*): Khutso Masenya, Renita Punnoch, Peter Adonis Lehlohonolo and Mzomhle Wisman Tshaka

PIC: LENS MEN



Irish players taking a well-earned break from the 30-degree heat (*l to r*): John Black, John Mark Downey (captain) and Brian O'Gorman

PIC: PETER MORTON





## student spotlight

### Windy City blows hot and cold for Ireland

**T**his summer, Michelle Foster (trainee, Mattheson Ormsby Prentice) and Jonathan O'Doherty (trainee, Concanon & Meagher) travelled to the John Marshall Law School, Chicago, where they donned the green for Ireland at the finals of the International Negotiations Competition (INC).

The INC encourages the development of negotiation skills in the context of international transactions and disputes. Each party has 50 minutes to 'broker a deal' – based on a set of general and confidential facts. This is preceded by five minutes of outlining goals and strategies before the judges, with a

humble, but honest, self-analysis following.

Having fought through three rounds at Blackhall's Education Centre and the national finals for the honour of representing Ireland, it was off to Chicago for the INC. The competition consists of three rounds against 32 teams from countries around the world. The first outing was a four-party negotiation. With each party struggling to be heard, it proved challenging to achieve the cohesion of standard two-way debates, but the Irish duo fared well and were ranked first in its group.

Round two was against a charismatic Singapore duo. The judges were complimentary as



Representing Ireland at the International Negotiations Competition 2009 in Chicago were (l to r): Michelle Foster and Jonathan O'Doherty, with team coach Alison Gallagher (Law Society)

Ireland moved towards the final stages.

The team was matched

against Nigeria, but owing to visa complications, a stand-in 'team' from the John Marshall Law School was arranged. With the competition consisting of only one member, Ireland's equilibrium was affected. The judges were less accommodating and the results did not go in Ireland's favour. At the final gala dinner in the Union League Club, the team was ranked in sixth place, with the USA named as winners.

Thanks to Alison Gallagher (Law Society), Gemma Neylon (Mason Hayes & Curran) and Gareth Murphy (Arthur Cox) for all their support, and to all who cheered us on with messages from home.

## DUBLIN SOLICITORS

DO YOU HAVE CLIENTS IN THE DUBLIN AREA WHO:

**ARE IN NEGATIVE EQUITY?**

**HAVE A PROBLEM WITH THEIR MORTGAGE REPAYMENTS?**

PLEASE GIVE US A RING AND WE MAY BE ABLE TO HELP YOU TO HELP THEM

**BARGAIN SHELF LTD**

**TEL: 068 22224**

E-MAIL: [INFO@BARGAINSHelf.IE](mailto:INFO@BARGAINSHelf.IE)

## harvestLaw



IRELAND'S LEADING ACCOUNTS SOFTWARE FOR SOLICITORS

- Complete management accounts
- Used by over 500 Irish legal firms
- Free conversions from other accounting systems where possible
- Contact us for a demonstration



**HARVEST SOFTWARE,**  
UNIT 37, JOHNSTOWN BUSINESS PARK, WATERFORD

**TEL 051-872111**

FAX 051-872880 E-MAIL [sales@harvestsoftware.ie](mailto:sales@harvestsoftware.ie)

**[www.harvestsoftware.ie](http://www.harvestsoftware.ie)**



# JOHN QUINLAN

## 1926–2009



I met John Quinlan for the first time almost 50 years ago. He was one of a 'band of brothers' – members of what was then known as the 'Estate Duty Office', where the public service kept its best legal brains. Many older solicitors will remember dealing with John there. The estate duty office was a source of legal knowledge, although its remit was dealing with the assessment and collection of capital taxes – at that time, death duties. This office remained responsible for capital acquisitions tax after its introduction, and John remained familiar with CAT.

John was a barrister and it was only later in his public service career, when the concept of 'departmentalisation' within the Revenue was abandoned, that his true potential was recognised and he was deployed in various important roles for the Revenue Commissioners for the remainder of his career there. When he retired, as a principal officer, he went into tax consultancy.

He was a man of many talents – sportsman, singer, public servant, barrister and, above all, a family man. He was devoted to his beloved wife Olive, to his children, Robert, Mary, Raymond and Aidan, and to his grandchildren. He delighted in their achievements and boasted many times to me about them. He lost his beloved wife Olive shortly before his own death and was, in fact, buried beside her on the first anniversary of her death.

John's interests in life varied considerably, from the time as a proud Cork man when he 'clashed the ash' with the likes of Jack Lynch, to his singing talents, and his legal talents. He was a very accomplished tenor and sang with Jomac in the '50s and '60s, and later under the guidance of Father John O'Brien in the St James' Choir.

John will be best remembered by

solicitors, however, as a lecturer, advisor and consultant in tax matters, particularly capital taxes. He started lecturing trainee solicitors in the Law Society in 1974 and will be remembered by the countless solicitors who had the pleasure of attending his lectures and learning from him for almost two decades after that. Even up to shortly before he died, he was still advising and acting as consultant to many solicitors and accountants in relation to tax matters. It was only in the last few months before he died that he had to resile somewhat and, eventually, retire.

We all have our particular and special memories of John – happy and funny memories, some sad, but always endearing memories. However, our sympathies and condolences, at this time, must go to his family for the loss they have suffered. They have lost their beloved father; for the rest of us, we have lost a dear friend.

*Ar dbeis Dé go raibh a anam.*

BAB





## books

# Make Your Will: The Irish Guide to Putting your Affairs in Order

**John G Murphy and Jason Dunne.** Liberties Press (2009), Guinness Enterprise Centre, Taylor's Lane, Dublin 8. ISBN: 9781905483594. Price: €9.99.

I was struck by the dedication in this publication to the memory of Nuala O'Faolain, whose last will and testament, the reader is advised, should be an inspiration to us all. My curiosity has been aroused, and I feel I should go to the Probate Office to take up a copy.

This little book is a handy item for clients who ask too many questions. It is a waffle-free account of what constitutes a will, what a will looks like, and how it should be written. The authors also correctly take the view that a will should be seen as a number of building blocks, and the essence of a successful will is simplicity and understanding the elements of those blocks. Less than 100 pages long, its physiognomy takes us through the contents in a systematic way, culminating in suggested sample wills based on

particular living circumstances.

It begins by stressing the role of the solicitor, and if every client presented with the knowledge that this book contains, then the job of taking instructions would be all the lighter. We are invited to make our wills in one of two ways: in five steps or in one. The one step way is to see your solicitor.

Choosing two people whom you trust with your life to act as your executors may be an anachronism, but the message is there. I would have liked to have seen a little more on this vital aspect of will making. There is no reference to the role of professional executors.

The delicate subject of conflict of interest is touched upon, and the hazardous area of tax is given respectful



treatment without labouring the subject. Reference to tax thresholds, *Settled Land Acts* and *Conveyancing Acts* in a year of expected law reform illustrates the publisher's dilemma in producing a book like this. It is likely to be out of date in many respects before Christmas.

As a practising solicitor, reviewing a book like this in its simplicity, one cannot help but draw attention to the few items that are not mentioned, such as the mischievous effects of section 98 (relating to grandchildren and predeceased children) and section 63 (advancements) contained in the *Succession Act*. The idea of a discretionary fund in favour of the executors is not considered, and neither is the idea of a letter of wishes. Perhaps matters like these just serve to complicate the subject.

For what it is, the book is good value and should find favourable readership among the curious and the conscientious.

*Justin McKenna is chairman of the Law Society's Probate, Administration and Trusts Committee.*

## New Practice?

Partner for Windows Legal Accounts Special offer **€995** for single user.

Market leading software & expertise. Flexible payment plans to help you get off the ground.

Call Margaret now at **021-482 6320** for more information.

**Legal IT**  
 Westpoint Business Campus, Link Road, Ballincollig, Co. Cork.  
**E:** info@legalit.ie | **W:** www.legalit.ie

LEGAL TECHNOLOGY  
AWARDS 2009

Integrated System  
of the Year  
**WINNER**



# Family Law in Practice

**Carol Coulter.** Clarus Press (2009), Griffith Campus, South Circular Road, Dublin 8. ISBN: 978-1-905536-22-1. Price: €29.

**F**amily Law in Practice provides a detailed text with unique analysis and commentary on Circuit Court family law cases. Written by Dr Carol Coulter, the legal affairs editor of *The Irish Times*, it fulfils all of the expectations of her readers. One of the many strengths of this work arises from the fact that it outlines legal developments in a clear, jargon-free manner. Another impressive feature of the book is its width of coverage.

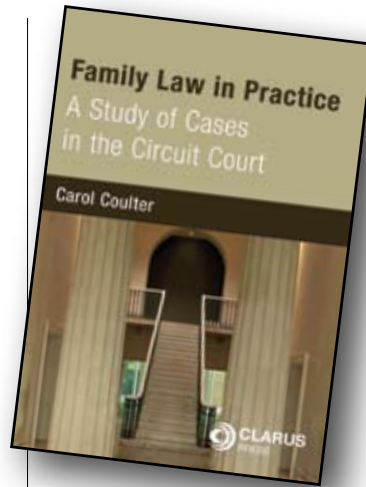
The introduction of divorce marked a watershed in Irish legal and social history and led to the introduction of a substantial and wide-ranging new body of law. Inevitably, when the legal landscape changes to this degree, there are difficulties and uncertainties. The need for a publication that keeps practitioners up to date is therefore clear.

*Family Law in Practice* is emerging as the family law landscape changes due to the economic downturn. Moreover, the increasing complexity of practice and the law in the area of family law, coupled with the *in camera* nature of family law proceedings, have resulted in a clamour for guidance by practitioners. The pension adjustment provision contained in the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*, and the recent requirement under international law that children be heard, clearly illustrate this trend.

It is clear from some of the developments detailed in *Family Law in Practice* that factors beyond the textbook law have been responsible for shaping and constructing our family law system, with the result that the manner in which remedies are currently being utilised in areas such as judicial separation and divorce may bear little resemblance to the

intention of the legislature that passed the original statutes. Until the publication of this book, empirical data was in short supply. Ancillary relief on divorce and judicial separation, particularly at Circuit Court level, appeared to be a highly discretionary regime, in which we knew a lot about underlying principles and seemed to be learning about professional practice and the impact of procedural innovation, but we seemed to know little about outcomes across the range of personal financial circumstances other than in respect of cases that reach the High Court and Supreme Court. This book fills this gap. In fact, this book is the first systematic examination of ancillary relief orders on judicial separation and divorce.

Dr Coulter's work puts the principles set out in the *Family Law Acts* in a historical and social context and draws on empirical research conducted by the author. This book is about family law in practice and provides a unique insight into the workings of the family justice system at Circuit Court level. Reported High Court and Supreme Court cases may, by definition, be untypical, but this book provides a wealth of information about the family law jurisdiction at Circuit Court level, where 99% of all family law cases were disposed of in 2006. Twelve years after the introduction of divorce, Ireland now has a developed and sophisticated family law system. Separation and divorce are life events for an increasing number of couples and their children. Under the *Family Law Acts*, judges are given unfettered discretion to deal with the assets of the parties to a marriage. The manner in which judicial discretion has been exercised has not, until this book, been subject to public scrutiny. The absence



of such scrutiny can only lead to a lack of public confidence in the family law system. This work has considerably assisted in removing the mystique behind judicial discretion in the divorce and judicial separation cases heard at Circuit Court level.

*Family Law in Practice* is written in a very attractive style that makes the law comprehensible. The first chapter of this book contains a comprehensive review of the family law literature. It also sets out the methodology for the empirical research carried out by the author between October 2006 and October 2007.

Part 2, chapter 1 of the book contains a comprehensive account of the outcomes of the divorces and judicial separations granted by the Circuit Court in the month of October 2006. The sample of 511 judicial separation and divorce cases surveyed represents all the family law cases decided in the Circuit Court in October 2006. As the author points out at p32, "this is a considerably greater proportion than the sample taken by polling organisations in conducting professional surveys".

Part 2, chapter 2 contains a detailed examination of a representative sample of 12 cases concerning children, ten cases concerning maintenance or other financial issues, and nine

concerning the family home. The representative nature of the case studies across the eight Circuit Court areas makes this book a particularly valuable addition to the family law library. The author skilfully identifies differences in emphasis across the eight Circuit Court areas. It is a matter of some comfort that she concludes that "cases generally fall within certain parameters".

Throughout the past decade of divorce, a number of unsatisfactory aspects of family law have come to light. The final chapter of this book draws attention to some of these and makes recommendations for change. In addition, the chapter signals some of the developments at an international level that will inevitably inform Irish divorce law and decisions taken under it.

*Family Law in Practice* traces the historical background of modern family law. It gives the first detailed account of the typical ancillary orders granted at Circuit Court level. It also provides, with admirable clarity, a detailed general exposition of the complex issues arising in family law cases at Circuit Court level. *Family Law in Practice* will be an indispensable resource, not only for those who practise in family law, but for any person with an interest in the family justice system.

Dr Carol Coulter has written an impressive, lucid and practical analysis of family law in the Circuit Court. It contains a timely and comprehensive account of an area of litigation that is, unfortunately, growing in importance. It is an excellent book that no solicitor, barrister, social worker, psychologist, psychiatrist and judge should be without. **G**

*Geoffrey Shannon is the Law Society's deputy director of education.*





## council report

### Law Society Council meeting, 27 August 2009

#### **Motion: Professional Indemnity Insurance Regulations**

*'That this Council approves the proposed amendments to the Solicitors Acts 1994 to 2002 (Professional Indemnity Insurance) Regulations 2007.'*

**Proposed:** Michael Quinlan

**Seconded:** John Glynn

The president noted that the special meeting of the Council had been convened specifically to deal with the motion. The chairman of the PII Task Force, Niall Farrell, outlined the contents of the *Report of the PII Task Force*, together with the draft *PII (Amendment) Regulations 2009*. He explained that the situation regarding professional indemnity insurance (PII) was still very uncertain and, while the task force was satisfied that there would be insurers in the market in 2010, there was considerable uncertainty regarding a number of current insurers.

Mr Farrell noted that the new regulations that had been introduced in 2007 had extended protection for both clients and solicitors and were

a significant improvement on what had pertained before. In the absence of the avalanche of claims resulting from the property crash, he believed that they would have stood the test of time. However, the profession was facing very difficult times, and unusual steps were being taken throughout the economy.

Mr Farrell said that the measures proposed by the PII Task Force were an attempt to ensure stability in the market for the forthcoming year in the hope that the claims situation would improve. The task force had met with all of the insurers and had taken on board their views. What was being presented to the Council were those proposals that the task force believed provided the best response that the Society could give to the insurers' requests, while still retaining the protection that solicitors and clients required.

Mr Farrell emphasised that the serious losses being suffered by the insurers resulted from the deluge of claims and not from the 2007 regulations. However, it had become clear to the task force that a number of changes

to the regulations could improve stability in the market. He emphasised that the proposed changes did not put solicitors in any worse a position than they were in 2006. He also noted that the regulations prescribed the minimum insurance that insurers must provide, but it was open to practices to seek further insurance in the market if they so wished.

#### **Society engaged in discussions with insurers**

The Society's insurance adviser, Ray Brown, from Marsh in London, said that current difficulties being experienced by insurers had not arisen solely from the current economic crisis, and their claims experience had been deteriorating steadily since 2004. He also emphasised that there was no guarantee that any particular insurer would continue to write insurance business in the Irish market following the proposed amendments to the regulations. However, what was being sought by the PII Task Force was a situation that would make it more palatable for them to do so. In addition, the Society was engaged in discussions with

a number of new insurers who did not currently write in the Irish market. Most had indicated that they wished to wait for a year before entering the market. Nevertheless, the Society was actively engaged in trying to encourage new participants to provide insurance to Irish solicitors. Mr Brown noted that most of the insurers had responded positively to the proposals made by the PII Task Force, but were not prepared to give a guarantee to write business if the proposals were approved. In short, the market was still very uncertain, but the feedback in relation to the proposals made by the PII Task Force was very positive.

Niall Farrell addressed each of the ten recommendations of the task force in turn. Following a discussion by the Council in relation to each recommendation, the Council approved the proposed amendments to the regulations. (For details of each amendment, including the Society's advice on what action should be taken by firms in relation to each, see the article on pages 22-27 of this *Gazette*.) **G**

# Get more at [gazette.ie](http://gazette.ie)

Gazette readers can access back issues of the magazine as far back as Jan/Feb 1997 right up to the current issue at [gazette.ie](http://gazette.ie). You can also check out current news, forthcoming events, employment opportunities and the latest CPD courses, as well as lots of other useful information at [lawsociety.ie](http://lawsociety.ie).



## practice notes



## COMMERCIAL COURT – PRACTICE DIRECTION

Following the publication of the practice direction of the President of the High Court last May, as displayed below, the Litigation Committee has considered the terms of the practice note, and in particular paragraph 2. It is of the opinion that the provision of an unconditional undertaking “to ensure that the

court’s directions will be complied with in full” is extremely unwise. While the Litigation Committee is anxious that the Commercial Court continues to function in its current effective manner, it simply may not be possible for a solicitor to comply with all of the court’s directions due to circumstances outside

the solicitor’s control. It is the committee’s understanding that Mr Justice Peter Kelly, who presides over the Commercial Court list, recognises this position and that he, in addition to other judges taking the list, will accept undertakings that are qualified in a manner that allows for the solicitor “to use his/her

best endeavours to comply with the court’s directions”.

The committee strongly recommends that any practitioner wishing to have a case admitted to the Commercial Court list provide an undertaking in these terms and not without such a condition.

*Litigation Committee*

## Trinity term 2009

As a result of an increased incidence in solicitors failing to comply with pre-trial directions given by the court, it has become necessary to issue the following practice direction, which will come into force on 1 June 2009.

## Practice direction

1) The Solicitors Certificate issued pursuant to O63(a), r4(2) of the *Rules of the Superior Courts* grounding an application to enter a case in the Commercial List must be signed by an individual solicitor who is and will be responsible for the conduct of the case. It is not sufficient

that the certificate be signed in the name of a firm.

2) Such certificate, in addition to containing the other material prescribed by the rules, must also contain an undertaking to the court from the solicitor that, in the event of the case being admitted to the Commercial List, that solicitor will ensure that the court’s directions will be complied with in full.

3) An application to enter a case in the Commercial List grounded on a certificate which does not comply with the provisions of paras 1 and 2 of this direction will be refused.

4) When a case is entered

into the Commercial List, the respondent will be required to nominate an individual solicitor who will be responsible for ensuring compliance with the directions of the court.

5) Henceforth, papers lodged in the List Room for consideration by the judge in charge of the Commercial List as part of the normal motion list on a Monday must include all previous orders made by the court.

6) Papers for trials must be delivered to the List Room not later than 4.30pm on the Wednesday preceding the week in which the trial is due to begin.

7) Commencing on Friday 12 June 2009, and on every Friday thereafter during term, there will be a call-over before the judge in charge of the Commercial List of the cases listed for trial during the following week. The purpose of this call-over is to ensure that all pre-trial directions given by the court have been complied with in full.

8) In the event of a case settling prior to its trial date, it is the duty of the solicitor for the moving party to inform the court of that fact immediately.

*Richard Johnson,  
President of the High Court,  
May 2009*

## ‘ALL SUMS DUE’ MORTGAGES AND PARTNERSHIPS AND OTHER CO-OWNING ENTITIES

The Conveyancing Committee wishes to remind the profession about the dangers inherent in the use of ‘all sums due’ mortgage documents in cases where loans are made to partnerships, joint ventures, syndicates and

other forms of co-ownership. Such ‘all sums due’ mortgage deeds usually provide that each partner/borrower is jointly and severally liable for all debts due to the lender by the other partners/borrowers unless there are

appropriate limited recourse provisions written into the text of the relevant loan documentation. Solicitors reviewing such loan documentation should advise the parties of the necessity to negotiate with the lending

institution the insertion of appropriate non-recourse or limited recourse provisions into the loan documentation. It is best practice that any limitation on recourse is carried through to the mortgage deed.

*Conveyancing Committee*



## CONSULT A COLLEAGUE

The Consult a Colleague helpline is available to assist every member of the profession with any problem, whether personal or professional

01 284 8484

THE SERVICE IS COMPLETELY CONFIDENTIAL AND TOTALLY INDEPENDENT OF THE LAW SOCIETY





# legislation update

## 11 August – 11 September 2009

### **Companies Fees Order 2009**

**Number:** SI 304/2009

**Contents note:** Provides for filing fees where certain documents are filed electronically or in paper form with the Registrar of Companies.

**Commencement date:** 1/9/2009

### **Criminal Justice (Miscellaneous Provisions) Act 2009 (Commencement) (No 3) Order 2009**

**Number:** SI 330/2009

**Contents note:** Appoints 25/8/2009 as the commencement date for part 2 (amendments to the *European Arrest Warrant Act 2003*) and sections 45 and 46, 48 (other than paragraph (c)(iii)) and 49-51 of the act.

**Commencement date:** 25/8/2009

### **Finance Act 2008**

#### **(Commencement of Section 76(1)) Order 2009**

**Number:** SI 322/2009

**Contents note:** Appoints 31/7/2009 as the commencement date for section 76(1) of the *Finance Act 2008*. This section provides for the repeal or revocation of provisions relating to excise duties on firearms permits and other firearms-related authorisations.

**Commencement date:** 31/7/2009

### **Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Commencement) Order 2009**

**Number:** SI 335/2009

**Contents note:** Appoints 23/8/2009 as the commencement date for section 69 of

the act. This section designates the Irish Auditing and Accounting Supervisory Authority (IAASA) as a competent authority under section 21(3) of the *Companies Act 1990*, which deals with the security of information obtained during statutory investigations undertaken by the Office of the Director of Corporate Enforcement (ODCE). By being designated as a competent authority, IAASA will be able to receive confidential information arising from the exercise by the ODCE of its statutory investigative powers.

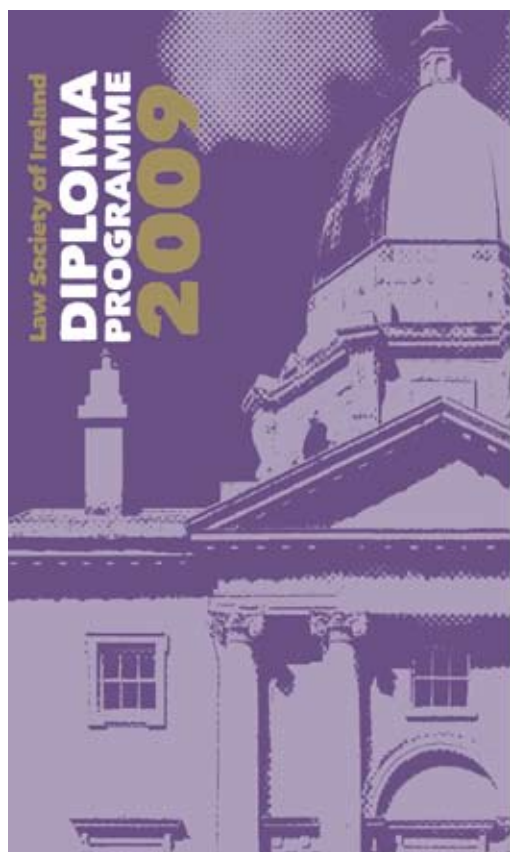
**Commencement date:** 23/8/2009

### **Shareholders' Rights (Directive 2007/36/EC) Regulations 2009**

**Number:** SI 316/2009

**Contents note:** Give effect to the provisions of directive 2007/36/EEC on the exercise of certain rights of shareholders attaching to voting shares in relation to general meetings of companies that have their registered office in the state and whose shares are admitted to trading on a regulated market situated or operating within a member state. The regulations amend various sections of the *Companies Act 1963* dealing with the subject matter of the directive, the effect of which is to enhance some existing rights contained in Irish company law and provide for some new rights in this area.

**Commencement date:** 6/8/2009 **G**



## Diploma Programme Autumn 2009

The Diploma Team is delighted to announce an expanded and diverse portfolio of courses for our Autumn 2009 Programme. In total there are fourteen courses on offer, which includes the launch of three new diplomas, namely our Diploma in Insolvency & Corporate Restructuring, our Diploma in Civil Litigation and our Diploma in Intellectual Property & Information Technology Law. In addition, we will also run three new certificates as part of our Autumn 2009 Programme, a Human Rights course and two certificates in Cork, a Taxation course and a Litigation course.

### Our full Autumn 2009 Programme is as follows:

• Diploma in Trust & Estate Planning	23 September
• Cert. in Criminal Litigation and Procedure	26 September
• Diploma in Finance Law	29 September
• Diploma in Family Law	03 October
• Dip. Insolvency & Corporate Restructuring	08 October
• Diploma in Civil Litigation	10 October
• Dip. Intellectual Property & Information Technology Law	20 October
• Certificate in Human Rights	10 October
• Critical Legal Issues in Recessionary Times	13 October
• Certificate in Judicial Review	17 October
• Certificate in Litigation (Cork)	16 September
• Certificate in Taxation (Cork)	22 September
• Diploma in Legal French	14 October
• Certificate in Legal German	22 September

Full details of the above courses are available on the web [www.lawsociety.ie/diplomaprogramme](http://www.lawsociety.ie/diplomaprogramme) or by contacting a member of the Diploma Team at [diplomateam@lawsociety.ie](mailto:diplomateam@lawsociety.ie) or Tel. 01 672 4802.



## NOTICE: THE HIGH COURT

**Record no 2009 no 1 SA**

**In the matter of Charles A Kelly, solicitor, practising as Douglas Kelly & Son, Solicitors, Swinford, Co Mayo, and in the matter of the Solicitors Acts 1954-2008**

Take notice that, by order of the High Court made on Monday 2

March 2009, it was ordered:

- 1) That the respondent solicitor shall not be permitted to practise as a sole practitioner or in partnership and that he be permitted only to practise as an assistant solicitor for ten years under the direct control and supervision of another solicitor of
- at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) That the respondent solicitor do pay the sum of €50,000 to the Compensation Fund of the Law Society – that he have three months to pay same,
- 3) That the Law Society do

recover the cost of the proceedings herein and the cost of the proceedings before the Solicitors Disciplinary Tribunal when taxed and ascertained.

*John Elliot,  
Registrar of Solicitors,  
July 2009*

## Solicitors Disciplinary Tribunal

**Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1994**

**In the matter of John B McGlynn, a solicitor formerly carrying on practice as John McGlynn & Company at 11 Castle Street, Athlone, Co Westmeath, and in the matter of the Solicitors Acts 1954-2002 [7068/DT90/07 and High Court record no 2009 no 5 SA]**  
*Law Society of Ireland (applicant)*  
*John B McGlynn (respondent solicitor)*

On 21 October 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to extract a grant of probate to the estate of a named client and did not gather in liquid assets of approximately IR£100,000,
- b) Misappropriated clients' money from three other clients' ledger accounts, including IR£60,000 from one of the three ledger accounts, to pay the beneficiaries of the estate of a named client,
- c) Misappropriated clients' money of €4,000 from the ledger account of a named client and used the money to make a payment for another client,
- d) Misappropriated two client account cheques for a total of either €3,000 or €5,000 for his own personal purposes and caused the cheques to be debited to the clients' ledger account of a named client,
- e) Misappropriated IR£50,000 for his own personal use out of IR£120,000 received for a named client,
- f) Misappropriated €106,703.56 from the clients' ledger account of a named client to discharge the mortgage of another named client, after having previously misappropriated the money that should have been used to discharge the mortgage,
- g) Falsely entered on the cheque stub for the above cheque for €106,703.56 that the payment related to a named client, which caused the bookkeeper to make a false entry in the books of account,
- h) Misappropriated €30,000, €3,723 and €5,500 from the clients' ledger account of a named client,
- i) Falsely entered on the cheque stubs for the above three cheques that the payments related to a named client, which caused the bookkeeper to make three false entries in the books of account,
- j) Falsely entered on a client account lodgement stub that the sum of €65,000 was received for a named client, when it was actually received for another named client, which caused the bookkeeper to make a false entry in the books of account,
- k) Caused a debit balance of €15,484.70 on the clients' ledger account of a named client because he had previously misappropriated the named client's money,
- l) Failed to discharge the mortgage on a named client's property because he was unable to do so, as he had previously misappropriated the named client's money,
- m) Misappropriated €5,000 or €6,000 from an estate and used the money to buy things for his new house,
- n) Misappropriated the amounts of IR£20,000 and €1,200 received from clients to pay stamp duty,
- o) Obtained €100,000 from a named client after telling him untruthfully that there was an investment opportunity that would earn 30% after six months; he then misappropriated €92,500 of the €100,000,
- p) Untruthfully represented to his former solicitor partner in a named firm of solicitors and his reporting accountant that the €100,000 obtained from a named client was a loan to him (the respondent solicitor) from the named client; this caused his reporting accountant in his report dated 28 June 2005 to understate the deficit in client monies by €100,000,
- q) Misappropriated €100,000 from the clients' ledger account of a named client; he paid the €100,000 to his brother,
- r) Obtained a total of €100,000 from a named client and another named client on the false pretence that the money would be invested in a building development for a return of 30% or 35%, and he then used the money to reimburse the clients' ledger account of another named client,
- s) Concealed his misappropriations of clients' moneys through a system of systematic teeming and lading in the books of account of a named firm of solicitors and another named firm of solicitors,
- t) Failed to keep books of account while in sole practice,
- u) Left deficits totalling €166,278 on four files when



- he left a named firm of solicitors,
- v) Left deficits totalling €484,533 on various files when he left another named firm of solicitors, €63,500 of which was carried forward from the practice of another named firm of solicitors,
  - w) Created a deficit of €147,051 in the client account of John McGlynn & Co, €128,655 of which was created when he paid that amount to clear part of the deficit in his previous practice,
  - x) Obtained a total of €185,000, to clear part of the deficit in a named firm of solicitors, from two relatives and a named client by stating to his relatives that he had "financial commitments on leaving the practice" of the same named firm of solicitors and he informed the same named client that he needed the money to set up in practice,
  - y) Gave a loan of €12,000 to a named client from a client account, which was a personal loan and was not authorised by the client whose ledger account was debited with the payment,
  - z) A number of times failed to make a full disclosure when given the opportunity to do so.

The tribunal recommended that:

- a) The respondent solicitor is not a fit and proper person to be a member of the solicitors profession, and
- b) His name be struck off the Roll of Solicitors.

The tribunal directed that the matter be referred forward to the High Court and, on 16 February 2009, the President of the High Court ordered that:

- 1) The respondent solicitor is not a fit and proper person to be a member of the solicitors, profession,
- 2) The name of the respondent solicitor be struck from the

- Roll of Solicitors,
- 3) The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Michael A Petty, a solicitor formerly practising under the style and title of M Petty & Company, Solicitors, Parliament Street, Ennistymon, Co Clare, and in the matter of the Solicitors Acts 1954-2008 [3387/DT09/09]**  
*Law Society of Ireland (applicant)*  
*Michael Petty (respondent solicitor)*

On 9 June 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to reply to any correspondence from the Society in relation to the investigation of the complaint of a named complainant and, in particular, the Society's letters of 24 May 2007, 6 June 2007, 18 June 2007, 28 June 2007, 19 July 2007, 14 August 2007, 19 September 2007, 1 October 2007, 9 October 2007, 22 October 2007,
- b) Failed to comply with a notice issued pursuant to section 10 of the *Solicitors (Amendment) Act 1994* and dated 19 September 2007 in a timely manner, and failed to produce his file to the Society until compelled to do so by order of the High Court made on 26 November 2007,
- c) Failed to attend a meeting of the Complaints and Client Relations Committee on 17 October 2007, despite being required to do so.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €2,500 to the

- compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

**In the matter of John Kilraine, a solicitor formerly practising as Kilraine & Company, Solicitors, at Nile Lodge Corner, Galway, Co Galway, and in the matter of the Solicitors Acts 1954-2008 [6868/DT89/07 and High Court record no 2009 no 64 SA]**  
*Law Society of Ireland (applicant)*  
*John Kilraine (respondent solicitor)*

On 4 November 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to prepare CGT returns for two clients after having been paid for doing the work,
- b) Failed to stamp seven deeds/leases for clients within the requisite time after having been paid for the work,
- c) Delayed in registering up to 38 deeds/leases for clients over a period from 1997 to 2005 after having been paid for the work,
- d) Breached regulation 12 of the *Solicitors' Accounts Regulations 2001* by failing to keep books of account written up to date,
- e) Failing to maintain professional indemnity insurance cover for the period 1 January 2006 to 3 April 2006 in breach of the *Professional Indemnity Insurance Regulations*,
- f) Failed to comply with directions of the Regulation of Practice Committee to complete stamping and registration within a specified time,
- g) Failed to attend a meeting of the Regulation of Practice Committee when asked to attend.

The tribunal directed that:

- i) The respondent solicitor should not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- ii) The respondent solicitor pay the whole of the costs of the Law Society of Ireland to be taxed in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 29 June 2009, the President of the High Court ordered that:

- 1) The respondent solicitor be permitted only to practise as an assistant solicitor in the employment of, and under the direct control and supervision of, another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) The Law Society do recover the costs of the proceedings herein and the cost of the proceedings before the Solicitors Disciplinary Tribunal when taxed and ascertained.

**In the matter of John Kilraine, a solicitor formerly practising as Kilraine & Company, Solicitors, at Nile Lodge Corner, Galway, Co Galway, and in the matter of the Solicitors Acts 1954-2008 [6868/DT56/08 and High Court record no 2009 no 65 SA]**  
*Law Society of Ireland (applicant)*  
*John Kilraine (respondent solicitor)*

On 4 November 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to progress adequately



the complainant's claim in the recovery of his special damages arising out of a road traffic accident claim initially heard at Loughrea District Court on 9 March 2007,

- b) Failed to pay the balance sum of €500 towards the costs of the Society's investigation, as directed by the Complaints and Client Relations Committee at its meeting held on 28 November 2007,
- c) Failed to adequately respond to the Society's correspondence and, in particular, letters dated 28 August 2007, 10 September 2007, 20 September 2007, 28 September 2007, 18 October 2007, 14 November 2007, 3 December 2007, 28 January 2008, 4 February 2008 and 23 April 2008,
- d) Failed to attend the Complaints and Client Relations Committee meeting on 28 November 2007 as required without any adequate explanation,
- e) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting of 23 January 2008 to attend its meeting of 4 March 2008,
- f) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting of 4 March 2008 to attend its meeting of 16 April 2008.

The tribunal directed that

- i) The respondent solicitor should not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- ii) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 29 June 2009, the President of the High Court ordered that:

- 1) The respondent solicitor be permitted only to practise as an assistant solicitor in the employment of, and under the direct control and supervision of, another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) The Law Society do recover the costs of the proceedings herein and the cost of the proceedings before the Solicitors Disciplinary Tribunal when taxed and ascertained.

**In the matter of Fergal T Kelly, solicitor, of Harmony Hill, Sligo, Co Sligo, and in the matter of the *Solicitors Acts 1954-2002* [9451/DT21/08 and High Court record no 2009 no 37 SA] *Law Society of Ireland (applicant)*  
**Fergal T Kelly**  
*(respondent solicitor)***

On 13 January 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that:

- a) He caused a deficit in client account of €3,044 at 30 September 2006,
- b) He caused debit balances of €21,615.42 in the clients' ledgers,
- c) In the course of acting for a named client in a purchase of property, interest and penalty on the stamp duty of €7,630 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- d) In the course of acting for a named client in a purchase of property, interest and penalty on the stamp duty of €86,850 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,

- e) In the course of acting for named clients in a purchase of property, interest and penalty on the stamp duty of €9,880 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- f) In the course of acting for the same named clients in a purchase of another property, interest and penalty on the stamp duty of €8,198.79 were avoided because he 'updated' the lease to a date close to when the lease was submitted to the Revenue,
- g) In the course of acting for named clients in a purchase of a property, interest and penalty on the stamp duty of €14,300 were avoided because he 'updated' the lease to a date close to when the lease was being submitted to the Revenue,
- h) In the course of acting for a named client (being the same client as referred to in paragraph (d)) in a purchase of another property, interest and penalty on the stamp duty of €72,000 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- i) In the course of acting for a named client in a purchase of a property, interest and penalty on stamp duty of €33,000 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- j) In the course of acting for the same named client in a purchase of another property, interest and penalty on the stamp duty of €5,100 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- k) In the course of acting for named clients in a purchase of a property, interest and penalty on the stamp duty of €4,350 were avoided because he 'updated' the deed

to a date close to when the deed was submitted to the Revenue,

- l) In the course of acting for a named client (being the same client referred to in paragraphs (d) and (h)) in a purchase of another property, interest and penalty on the stamp duty of €18,000 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- m) In the course of acting for named clients in a purchase of a property, interest and penalty on the stamp duty of €2,760 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- n) In the course of acting for named clients in a purchase of a property, interest and penalty on the stamp duty of €5,555 were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue,
- o) He delayed in completing stamping and registration,
- p) He provided incorrect information to the Revenue in a letter dated 6 June 2006, while in the course of acting for a named client (being the same client referred to in paragraph (j)), when he stated that the deed of transfer was sent to the Revenue on 21 April 2006,
- q) He provided incorrect information to a named bank when he informed the bank that 12 contracts had been executed in relation to a development being carried out by a client who is a builder,
- r) During the investigation, he gave incorrect information to the investigating accountant when he stated that the transfer to his named clients was exempt from stamp duty because the clients were first-time buyers, and also when he stated that he had no un-



stamped deeds that should have been stamped,

- s) He failed to keep copies of some stamped deeds,
- t) Fees were debited to the office ledger when the costs were received instead of when the bills were issued.

The tribunal recommended that the respondent solicitor:

- a) Not be permitted to practise as a sole practitioner; that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society,
- b) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 27 April 2009 and 6 July 2009, the President of the High Court ordered that:

- 1) The respondent solicitor should not be permitted to practise as a sole practitioner; that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) The Law Society do recover the costs of the proceedings herein and before the said tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the Solicitors Acts 1954-2008 [4316/DT07/08 and High Court record no 2009 no 72 SA]**

**Law Society of Ireland (applicant)**

**Ciaran R Callan (respondent solicitor)**

On 25 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant in letter dated 11 January 2000, whereby he undertook to deal with all reasonable Land Registry queries in relation to a transaction involving a named property for a named client,
- b) Failed to honour an undertaking given to the Complaints and Client Relations Committee on 12 September 2007, whereby he undertook to send a written report by 5 October 2007 to the Society regarding the current position as to his compliance with the undertaking given by him to the complainant,
- c) Misled the Society in a telephone conversation on 12 July 2007, informing the Society that the matter was resolved, when it was not,
- d) Misled the Society in a letter dated 19 July 2007, stating that the deed was re-executed, whereas it still required a second signature.

The tribunal recommended that:

- a) The respondent solicitor is not a fit and proper person to be a member of the solicitors' profession,
- b) The name of the respondent solicitor be struck off the Roll of Solicitors,
- c) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to

the High Court and, on 13 July 2009, the President of the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the Solicitors Acts 1954-2008 [4316/DT09/08 and High Court record no 2009 no 73 SA]**

**Law Society of Ireland (applicant)**

**Ciaran R Callan (respondent solicitor)**

On 25 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant contained in a letter dated 13 June 2002, whereby he undertook to furnish a certificate of title and title documents to a named property formerly belonging to a named client, deceased, to the complainant's client, a named financial institution,
- b) Failed to honour an undertaking given to the Complaints and Client Relations Committee on 12 September 2007, whereby he undertook to send a written report by 5 October 2007 to the Society regarding the current position as to his compliance with the undertaking given to the complainant.

The tribunal directed that:

- a) The respondent solicitor is not a fit person to be a mem-

ber of the solicitors' profession,

- b) The name of the respondent solicitor be struck off the Roll of Solicitors,
- c) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the Solicitors Acts 1954-2008 [4316/DT10/08 and High Court record no 2009 no 74 SA]**

**Law Society of Ireland (applicant)**

**Ciaran R Callan (respondent solicitor)**

On 25 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant contained in letter of 10 May 2002, whereby he undertook to furnish certificate of title together with the title deeds to a named financial institution in respect of a named property,
- b) Failed to provide an adequate response to the same



named financial institution's letters to him dated 25 October 2005 and 2 December 2005 respectively, and to the complainant's letters dated 20 October 2006, 8 November 2006, 8 December 2006 and 7 February 2007 respectively,

- c) Failed to honour an undertaking given to the Complaints and Client Relations Committee on 12 September 2007, whereby he undertook to send a written report to the Society by 3 October 2007 regarding the current position with regard to compliance with the undertakings previously given by him to the complainant,
- d) Failed to reply in a timely manner to the Society's correspondence, in particular to letters from the Society dated 21 March 2007, 1 May 2007, 23 May 2007 and 12 June 2007.

The tribunal directed that:

- a) The respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) The name of the respondent solicitor be struck off the Roll of Solicitors,
- c) The respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the Solicitors Acts 1954-2008 [4316/DT11/08 and High Court record no 2009 no 75 SA]**

*Law Society of Ireland (applicant)*  
*Ciaran R Callan (respondent solicitor)*

On 25 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant contained in a letter of 14 December 2005 whereby he undertook to furnish an amended scheme map and to deal with all Land Registry queries regarding the registration of named clients' title to a named property,
- b) Failed to provide an adequate response to the complainant's enquiries and, in particular, to the complainant's letters dated 18 April 2006, 1 February 2007, 15 February 2007, 26 March 2007 and 10 April 2007 respectively,
- c) Failed to honour an undertaking given to the Complaints and Client Relations Committee on 12 September 2007, whereby he undertook to send a written report to the Society by 3 October 2007 regarding the current position with regard to compliance with the undertakings previously given by him to the complainant.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor

pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the Solicitors Acts 1954-2008 [4316/DT12/08 and High Court record no 2009 no 76 SA]**

*Law Society of Ireland (applicant)*  
*Ciaran R Callan (respondent solicitor)*

On 25 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant contained in letter of 1 July 2004, whereby he undertook to furnish an original deed of assurance dated 4 March 1998 duly registered,
- b) Failed to honour an undertaking given in a letter dated 1 July 2004 to the complainant, whereby he undertook to extract a grant of probate to the estate of a named client, deceased, and upon issue of same, execute a deed of assignment of the leasehold interest in the premises to a

named client,

- c) Failed to honour an undertaking given in a letter dated 1 July 2004 to the complainant, whereby he undertook to furnish a vesting certificate duly registered in the Registry of Deeds,
- d) Failed to honour an undertaking given in a letter dated 1 July 2004 to the complainant, whereby he undertook to furnish a certificate of clearance from capital acquisitions tax in the estate of a named client,
- e) Failed to honour an undertaking given in a letter dated 1 July 2004 to the complainant, whereby he undertook to discharge any outstanding waste charges if necessary,
- f) Misrepresented the position to the complainant from in or around July 2004 by stating all was in order in respect of the extraction of the grant of probate to the estate of a named client, when in fact it was not,
- g) Misrepresented to the Society in a series of letters dated 5 September 2006, 15 December 2006, 30 January 2007 and 14 March 2007 that the matter of the complaint was being resolved and that an application in respect of *de bonis non* grant in the estate was being made, when it is apparent that no progress has been made on this issue,
- h) Failed to honour an undertaking given to the Complaints and Client Relations Committee meeting on 12 September 2007, whereby he undertook to send a written report to the Society regarding the current position with regard to compliance with the undertakings previously given by him to the complainant by 3 October 2007,
- i) Failed to provide an adequate response to the Society's enquiries during this investigation and, in particular, failed to respond properly or at all to the Society's letters of 9



October 2006, 18 October 2006, 26 October 2006, 22 March 2007, 20 April 2007, 15 May 2007, 31 May 2007, 8 June 2007, 18 June 2007, 19 July 2007, 29 August 2007, 13 September 2007, 9 October 2007 and 23 October 2007 respectively.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the *Solicitors Acts 1954-2008* [4316/DT13/08 and High Court record no 2009 no 77 SA]**

*Law Society of Ireland (applicant)*

*Ciaran R Callan (respondent solicitor)*

On 25 June 2008, the Solicitors Disciplinary Tribunal found the

respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to honour an undertaking given to the complainant contained in a letter of 29 September 2000, whereby he undertook to furnish a certificate of compliance relating to a transaction between his named client and the complainant's named clients in respect of a named property,
- b) Failed to provide an adequate response to the complainant's enquiries and, in particular, to the complainant's letters dated 19 February 2001, 12 March 2001, 25 April 2001, 11 May 2001, 21 June 2001, 9 August 2001, 14 November 2001, 28 February 2002, 16 August 2002, 3 September 2002, 5 December 2002, 3 March 2005 and 16 August 2005 respectively,
- c) Persisted to misrepresent the position in relation to an undertaking by giving assurances to the complainant, which subsequently were not honoured, by letters dated 5 March 2002 and 21 August 2002,
- d) Failed to honour an undertaking given to the Complaints and Client Relations Committee on 12 September 2007, whereby he undertook to send a written report to the Society by 3 October 2007 regarding the current position in relation to compliance with the undertakings previously given by him to the complainant,
- e) Failed to provide any adequate response to the Society's enquiries during this investigation and, in particular, failed to respond properly or at all to the Society's letters of 21 November 2005, 8 June 2006, 30 June 2006, 20 July 2006, 17 August 2006, 31 August 2006, 19 October 2006, 3 November 2006, 13 November 2006, 24 April 2007, 30 April 2007, 31 May 2007, 11 June 2007 respectively.

The tribunal directed:

- a) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- b) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- c) That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

**In the matter of Ciaran R Callan, a solicitor formerly practising as Callan & Company, Solicitors, River Bank House, Dodder Park Drive, Dublin 14, and in the matter of the *Solicitors Acts 1954-2008* [4316/DT79/08 and High Court record no 2009 no 78 SA]**

*Law Society of Ireland*

*(applicant)*

*Ciaran R Callan*

*(respondent solicitor)*

On 12 March 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Admitted an estimated deficit of €1,900,000 to exist on the client account as at 12 November 2007,
- b) Failed to keep proper books of accounts in compliance with regulation 12(1) of the *Solicitors' Accounts*

*Regulations 2001,*

- c) Failed to keep such proper books of account, in compliance with regulation 12(2) of the *Solicitors' Accounts Regulations 2001*, that would show the true financial position in relation to each client and the monetary transactions of the client,
- d) Failed to keep the minimum books of accounts, in breach of regulation 20 of the *Solicitors' Accounts Regulations 2001*, including failing to keep cash books showing all monies received and paid on behalf of each client, failing to keep proper office and client ledgers, failing to keep a proper record of all monies as lodged, failing to keep a record of all monies transferred between ledger accounts, failing to keep copies of each draft obtained in connection with any client matters, failing to keep copies of each bill of costs furnished to clients,
- e) Failed to keep the books of account written up to date in breach of the regulations,
- f) Transferred monies between the ledger accounts of different clients, in breach of regulation 9 of the *Solicitors' Accounts Regulations 2001*, so as to conceal the underlying deficit he created in the client accounts,
- g) Caused a deficit to arise on client accounts by paying monies to clients where funds were not held for those clients, in breach of regulation 7(2)(b), and caused debit balances to arise,
- h) Failed to prepare balancing statements on client accounts within two months of the balancing date, in breach of regulation 12(7),
- i) Failed to prepare balancing statement on office account within two months of the end of the accounting year,
- j) Transferred monies for outlays not yet disbursed to office account, in breach of



- regulation 7(1)(a)(ii),
- k) Failed to maintain proper books of account and caused fundamental errors to arise on the books of accounts, thus discrediting the reliability of the accounting records as at 30 April 2006 and earlier dates due to errors found on ledger cards as detailed in appendix 1 to the interim investigation report dated 15 March 2007,
- l) Overstatement of client balances in Leixlip office of €288,000 and overstatement of client balances in Ennis office of €11,000,
- m) Failed to stamp and register deeds on certain client files, despite being put in funds to carry out stamping and registration of deeds. The respondent solicitor failed to stamp and register deeds on the following files:
- File C/16/04 for the sum of €8,400,
  - File M/13/05 stamp duty due €43,410,
  - File B/11/05 stamp duty due €31,125,
  - File P/4/05 stamp duty due €223,200,
- v) File Leixlip T/1/06 stamp duty due €39,600.
- The tribunal directed:
- That the respondent solicitor is not a fit and proper person to be a member of the solicitors' profession,
  - That the name of the respondent solicitor be struck off the Roll of Solicitors,
  - That the respondent solicitor pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court, in default of agreement.
- The tribunal directed that the matter be referred forward to the High Court and, on 13 July 2009, the President of the High Court ordered:
- That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
  - That the Law Society do recover the costs of the proceedings herein and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained. **G**



*“As a society, perhaps the most sensitive measurement of our maturity is the manner in which we care for those who are facing the ultimate challenge – the loss of life.”*

(REPORT OF THE NATIONAL ADVISORY COMMITTEE ON PALLIATIVE CARE, 2001)

## QUALITY HOSPICE CARE FOR ALL



Over 6,000 people use hospice care each year.

Hospice care involves the total care of patients and their families at the stage in a serious illness where the focus has switched from treatment aimed at cure, to ensuring quality of life. It seeks to relieve the symptoms of illness and cater for a person's entire needs – physical, emotional, psychosocial and spiritual.

The demand for hospice care is growing. While the service has expanded in recent years, much more needs to be done to ensure quality end-of-life care for all.

Please remember the Irish Hospice Foundation when drafting a will.

Irish Hospice Foundation, Morrison Chambers, 332 Nassau Street, Dublin 2

Tel: 01 679 3188; Fax: 01 673 0040

[www.hospice-foundation.ie](http://www.hospice-foundation.ie)

No-one should have to face death without appropriate care and support.





# BRIEFING

## firstlaw update

**News from Ireland's online legal awareness service**  
Compiled by Bart Daly for FirstLaw

### CONTRACT

#### Insurance

*Company law – indemnity – interpretation – winding up – occurrence within the period of the policy – Companies Act 1963, as amended.*

The plaintiff, an importer and distributor of oil products, claimed an indemnity in a policy of insurance for catastrophe credit from the defendant. The issue arose on appeal as to whether, when a winding-up petition for insolvency was presented, but the winding-up order was made after the expiration of the policy, the liquidation could be said to have occurred within the period of the policy. The High Court held that the term 'insolvency' had to be interpreted in favour of the plaintiff by reference to the date of the commencement of a winding up as opposed to the date on which a winding-up order was made.

The Supreme Court, per Kearns J (Denham, De Valera JJ concurring), allowed the appeal, holding that it had been open to the parties to use the term contended for by the plaintiff. The interpretation contended for by the plaintiff would cause significant problems in practice and would flout business sense where the presentation of a winding-up petition might not result in any winding-up order being made. Open-ended exposure of the insurer could exist after the policy had expired. The issue of whether the insolvency of the insured buyer had occurred within the period of insurance under the policy would be answered in the negative.

**Emo Oil Ltd (plaintiff/respondent) v Sun Alliance & Lon-**

**don Insurance Company (defendant/appellant), Supreme Court, 22/1/2009 [FL16095]**

### EMPLOYMENT

#### Contract

*Terms and conditions – implied terms – collective agreement – effect of collective agreement – whether intended to create legal relations between individual members – whether collective agreement implying terms into individual employment contracts – whether plaintiff acquiescing in terms of agreement – whether employee bound by outcome of collective agreement – whether implied term that employee's retirement age 65.*

The plaintiff had been employed by the defendant as a firefighter since 1980. He had not been provided with a written contract of employment but, at that time, the retirement age for firefighters was 65. Subsequently, a collective agreement had been entered into between trade unions representing firefighters and their employers. The terms of that agreement included one whereby the retirement age would be lowered to 58. The defendant purported to retire the plaintiff on his 58<sup>th</sup> birthday on the grounds, among other things, that the prevailing retirement age when the plaintiff was hired was capable of being changed and had been changed, or that retirement age was not a condition of service. The plaintiff sought a declaration that he was entitled to retire at 65 and an injunction restraining the defendant from retiring him before that age.

Ms Justice Laffoy granted the reliefs sought, holding that the prevailing retirement age

when the plaintiff joined the service became a term of his service and could not be varied unilaterally by the defendant. No evidence had been tendered that, under the rules of the plaintiff's trade union, he could be bound by the collective agreement, nor that he acquiesced in it. Accordingly, he was not bound by it and it was not effective to vary the terms of his contract of employment that he should retire at 65.

**Reilly (plaintiff) v Drogheda Borough Council (defendant), High Court, 19/11/2008 [FL16144]**

### IMMIGRATION AND ASYLUM

*Fair procedures – credibility – Refugee Appeals Tribunal – whether decision maker entitled to rely on knowledge acquired in course of experience and training – whether duty on tribunal to disclose nature of that experience and training.*

The applicant sought leave to apply for a judicial review of the decision of the respondent refusing his appeal against the recommendation of the Refugee Applications Commissioner that he be refused asylum in this state. The tribunal member based her decision on her assessment that the identity card relied upon by the applicant was altered or falsified and that, accordingly, the applicant was not from the country he stated to be from. She referred to and relied upon the experience gained at a training conference for asylum assessors that she had attended, which dealt with the assessment of such identity cards. The applicant complained that the materials pertaining to the training

conference had not been disclosed to him.

Hedigan J refused leave to apply for judicial review, holding that the applicant had not established substantial grounds for contending that the decision was invalid. It was open to the respondent to highlight inconsistencies in the applicant's evidence and to draw negative credibility findings from those discrepancies. A decision maker was entitled to rely on knowledge acquired in the course of his experience and training, and it would be irrational if decision makers were precluded from relying on objective information with which they gain familiarity through their work.

**S(O) (applicant) v Refugee Appeals Tribunal (respondent), High Court, 4/11/2008 [FL15971]**

### PRACTICE AND PROCEDURE

#### Ward of court

*Disclaimer – fraudulent conveyance – stop order – MIBI – Irish Statute of Fraudulent Conveyances 1634 – whether defendants disclaimer designed to defeat the MIBI.*

The deceased wife of the second defendant suffered serious injuries in a road traffic accident while being driven by the second defendant without valid insurance. A settlement was made that was her only asset on death. A stop order was obtained that the transfer of the funds in court be stayed pending further order. The second and third defendants executed disclaimers to lose rights to any share in the deceased's estate. The plaintiff sought dec-



larations that the disclaimers purportedly executed by the defendants were done with the intention of delaying, hindering and defeating the claims of the bureau and that the purported disclaimers constituted a fraudulent conveyance, disposition or preference and were void pursuant to section 10 of the *Irish Statute of Fraudulent Conveyances 1634* and/or alternatively that a remedial constructive trust applied.

Laffoy J held that the act of depriving the creditors of the second defendant and third defendant of recourse to assets, which otherwise would have been available, brought the disclaimers within section 10. There was no evidence of the intent of the second defendant and third defendant in executing the disclaimers, so that fraud had not been expressly proved as a fact. The result of the defendants disclaiming their share of the estate was to delay, hinder and defeat the payment of the debt due as assignee of the deceased's judgment against them. Thus, fraud had been proven. The disclaimers were actions of the type to which section 10 of the 1634 act applies, and they were done with the intent to defraud the bureau. The argument based on the concept of remedial constructive trust was wholly misconceived.

**MIBI (plaintiff) v Stanbridge & others (defendants), High Court, 8/12/2008 [FL16122]**

## TORT

### Personal injuries

*Contributory negligence – consumption of alcohol – apportionment of damages – reduction in award – second accident – self-intoxication – significance – whether passenger who elected to travel in motor car aware of the intoxication of the driver could be subject to a finding of contributory negligence.*

The plaintiff suffered injuries in a road traffic accident when she travelled in a motor vehicle where the defendant driver had consumed alcohol. The trial judge concluded that the plaintiff had been guilty of contributory negligence, and her award was reduced by 40%. The proceedings related to a road traffic accident and the manner in which contributory negligence was to be assessed in the case of a person who elected to travel as a passenger in a motor car when the driver had consumed alcohol.

The Supreme Court, per Kearns J (Geoghegan, Finnegan JJ concurring), held that the court could, where a passenger voluntarily elects to travel in a motor vehicle where they knew that the driver had consumed alcohol, penalise them in contributory negligence. The court had to approach the issue on an objective basis, although the test was not absolutely objective. Self-intoxication could not be used to avoid a finding of contributory negligence.

There were changes in society as to how such behaviour was perceived. The plaintiff must have been aware that the ability of the defendant driver had been impaired. The apportionment of 40% liability for contributory negligence was not to be disturbed. The trial judge had ample grounds for doubt and unease as to the plaintiff's candour as to her injuries and the significance of a second accident that had occurred to her after the immediate accident. The award made was generous, and the appeal would be dismissed.

**Hussey (plaintiff/appellant) v Twomey (defendant/respondent), Supreme Court, 21/1/2009 [FL16101]**

### Road traffic accident

*Practice and procedure – MIBI – joinder of parties – MIBI agreement – untraced driver – whether proceedings properly constituted.*

The plaintiffs were the parents of the deceased, who died in a road traffic accident. The first three plaintiffs claimed damages for nervous shock. The second-named defendant was insured on the occasion in question. The first-named defendant was not insured. The Motor Insurers' Bureau of Ireland (MIBI) agreement provided that the MIBI could be joined as a co-defendant where the offending motorist was identified and traced, but uninsured. The MIBI asked, in 2002, that a co-defendant be joined but

then, in 2004, contended that the proceedings were improperly constituted on the basis of a possible involvement of an untraced driver in the accident. The MIBI sought to dismiss the plaintiffs' claim against the MIBI for noncompliance with the MIBI agreement.

The Supreme Court, per Kearns J (Denham, Hardiman JJ concurring), dismissed the appeal, holding that, in the interests of justice, an order would be appropriate prior to trial providing for the disjoinder of issues pursuant to order 18 of the *Rules of the Superior Courts*. It would be a superfluous requirement to require the plaintiffs to institute a second set of proceedings where the MIBI had been validly joined in a particular capacity in the first instance and where the possible involvement of an untraced motorist had been flagged from the time of the originating letter. There was no irregularity in the form and constitution of the proceedings. The delay in moving for reliefs in the case was such as to disentitle the MIBI to the reliefs sought. The appeal would be dismissed.

**O'Flynn & Others (plaintiffs) v Buckley & Others (defendants), Supreme Court, 22/1/2009 [FL16081] G**

*This information is taken from FirstLaw's legal current awareness service, published every day on the internet at [www.firstlaw.ie](http://www.firstlaw.ie).*



Law Society of Ireland

## WEDDING CEREMONY AND RECEPTION IN ELEGANT BLACKHALL PLACE

### NEW WEDDING RATES FOR MEMBERS OF THE PROFESSION

Full catering and bar services for up to 200 people • Private grounds with extensive car parking  
Attractive location for photographs, both inside and outside • Centrally located and easily accessible  
Prestigious premises designed by Thomas Ivory • Available to solicitors' families and friends

#### CONTACT OUR CATERING MANAGER

Tel: 01 672 4800, fax: 01 672 4801, e-mail: [a.gilhooly@lawsociety.ie](mailto:a.gilhooly@lawsociety.ie), website: [www.lawsociety.ie](http://www.lawsociety.ie)

Law Society of Ireland, Blackhall Place





**News from the EU and International Affairs Committee**

Edited by TP Kennedy, Director of Education, Law Society of Ireland

## Irish court lays down guidelines on cartel sentencing

In a much-anticipated judgment on 11 May 2009, the Irish Central Criminal Court handed down detailed written guidance on cartel sentencing. The 42-page judgment represents the first time that such guidance has been provided by an Irish court and will undoubtedly have far-reaching implications for cartel enforcement in Ireland. In addition, the court's findings that certain pleas in mitigation, which are typically accepted by Irish courts, should not be available to white-collar criminals may well have broader implications.

### The crime

The court found that, from April 1995 to February 2004, a number of Citroën car dealers in Ireland operated a "wanton criminal conspiracy" of price fixing under the auspices of the Citroën Dealers' Association. According to both informant testimony and documentary evidence (including minutes of 48 association meetings and agreed price lists), the Citroën Dealers' Association employed two independent companies to police the cartel. This policing involved, among other tactics, mystery shopping surveys and the fining of members for breach of the cartel's rules.

Following refusal to pay one such fine and threats of further sanction by the association, a disgruntled dealer blew the whistle on the cartel, making 13 statements to the Competition Authority and producing over 160 relevant documents.

A lengthy investigation ensued, with a number of dealers



The Citroën C4 – inside, it's dancing

pleading guilty to cartel participation. One of those was Patrick Duffy – joint owner and co-director of Duffy Motors (a Dublin-based dealer of Citroën cars) and ex-treasurer of the Citroën Dealers' Association. On 26 January 2009, Mr Duffy pleaded guilty before the Central Criminal Court to entering into and implementing an agreement with other dealers to fix the prices of Citroën cars.

### The verdict

As well as fines of €50,000, the court imposed a nine-month suspended sentence on Mr Duffy, meaning that no jail term will actually be served unless Mr Duffy breaks good behaviour-style conditions on the basis of which the sentence is suspended. So, although Mr Duffy had been convicted

of a serious criminal offence, the suspension of his sentence meant that he walked out of court a free man.

The court made clear, however, that Mr Duffy's sentence was suspended only because the court felt constrained, pursuant to "the principle of equality before the law", not to require Mr Duffy to serve time in prison. This was because, in two previous cases involving convicted members of the same cartel, both sentences had been suspended (albeit by a lower court). Referring to those previous cases, the judge in Mr Duffy's case said: "If I had been dealing with [those] cases ... the results would not necessarily have been as they were." In light of "the principle of equality before the law," however, the court considered that

"a genuine sense of grievance could follow if I were to impose a sentence and demand its service by Mr Duffy".

### Implications

Importantly, the case provided the Central Criminal Court with the opportunity to hand down a precedent-setting written judgment giving guidance on future sentencing of cartel offenders.

The judgment used exceptionally strong language in condemning cartels, stating that they are "odious practices", "offensive and abhorrent", and "in every sense antisocial". It concluded that "it is therefore clear beyond argument and must so be declared that cartels operate one of the most serious forms of anticompetitive behaviour which exists, inflicting the most



harm on customers, consumers and the public alike”.

Against that background, the Central Criminal Court judgment provides clarity on a number of key issues that can be taken into account in sentencing convicted cartel participants.

First, the judgment expressly accepts that deterrence has “an important role to play” in relation to such offences (as well as other white-collar crime offences, such as insider trading). According to the court, the “particularly pernicious” nature of competition crimes “means that, in order to be effective, sanctions must be designed and utilised for, and have the purpose of, deterring offenders from committing crimes in the first place”.

Second, the judgment clarifies that typical pleas in mitigation (including the absence of previous convictions, the out-of-character nature of the conduct, and any demonstrably low likelihood of recidivism) will not generally be available to competition law criminals or, reading the judgment more generally, to white-collar criminals.

Third, by effectively endorsing the British approach to sentencing, the judgment confirms that the following factors are relevant in sentencing cartel offenders: (a) the duration of the offences, (b) the degree of culpability of the defendant in implementing and enforcing the cartel agreement, (c) whether the defendant’s conduct was contrary to company compliance guidelines, and (d) other possible mitigating factors, such as whether the defendant was compelled to participate in the cartel under duress.

Fourth, the judgment confirms that the courts may grant leniency to cartel participants that cooperate with the Competition Authority investigation, even if those participants do not benefit from the agency’s immunity programme (which is generally only available to the first cartel participant to report the cartel). Equally, however, the court’s verdict suggests that guilty pleas may not necessarily lessen the risk of jail sentences being imposed.

Finally, the judgment clarifies that, under Irish rules (which, as well as imprisonment of up to five years, provide for fines of up

to 10% of company turnover), the court can take into account the turnover of the firm’s entire business in setting the level of the fine, and not just the Irish turnover or the turnover in the market(s) implicated in the cartel.

#### Comment

Since cartel activity was first criminalised in Irish law (in 1996), the Competition Authority has successfully uncovered and, with the Director of Public Prosecutions, prosecuted three cartels, resulting in a total of 26 convictions on indictment. While this number of convictions emphasises the risks that cartelists operating in Ireland now run, the fact that all custodial sentences imposed to date have been suspended has been a source of some frustration to the Competition Authority and has led it to argue for the introduction of some general guidance on sentencing for hard-core cartel offences.

According to the director of the Cartels Division, Carolyn Galbreath, “the principal attractions of sentence guidelines are the increased predictability they create for those firms and

individuals who were willing to freely admit wrongdoing in order to mitigate culpability for their antitrust crimes”. In the absence of sentencing guidelines of the kind found in some other jurisdictions, the Central Criminal Court’s judgment in the Duffy case is an important step forward. It is likely to assist in meeting two of the Competition Authority’s objectives in this area: to deter cartel activity and, where it exists, to incentivise cartel participants to avail of the authority’s immunity programme.

Certainly, the Central Criminal Court’s judgment increases predictability: it now seems increasingly likely that future sentences for hard-core cartel violations will not be suspended (absent pre-trial admissions of wrongdoing, cooperation, and/or clear evidence of mitigating factors). On the positive side, however, the explicit judicial endorsement of compliance programmes shows one means by which companies can seek to limit risk. **G**

*Philip Andrews is a partner with the Competition, Regulated Markets and EU Law Group of McCann FitzGerald.*

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

## ENGLISH LAW AGENCY SERVICES

**Fearon & Co**  
SOLICITORS  
*Established 1825*

Fearon & Co specialise in acting for non-residents in the fields of Probate, Property and Litigation. In particular:-

- Obtaining Grants of Representation for Estates in England, Channel Islands, Isle of Man and elsewhere
- Administering English Estates
- Buying and selling homes and business premises
- Recovering compensation for accident victims
- Litigation including Debt Recovery and Matrimonial

Our offices are within easy reach of the London Airports and Central London Stations

**VISIT OUR WEBSITE**  
[www.fearonlaw.com](http://www.fearonlaw.com)

Westminster House, 6 Faraday Road,  
Guildford, Surrey GU1 1EA, United Kingdom  
Tel: 00 44 (0)1483 540840 Fax: 00 44 (0)1483 540844  
General Email: [enquiries@fearonlaw.com](mailto:enquiries@fearonlaw.com)

**LITIGATION**  
Martin Williams  
00 44 (0)1483 540843  
[mw@fearonlaw.com](mailto:mw@fearonlaw.com)

**PROPERTY**  
John Phillips  
00 44 (0)1483 540841  
[ajp@fearonlaw.com](mailto:ajp@fearonlaw.com)

**PROBATE**  
Francesca Nash  
00 44 (0)1483 540842  
[fn@fearonlaw.com](mailto:fn@fearonlaw.com)

*Regulated by the Solicitors Regulation Authority of England and Wales*



## Recent developments in European law

### AIR TRAVEL

Case C-549/07, *Friederike Wallentin-Hermann v Alitalia*, 22 December 2008. The applicant booked three seats on a flight with Alitalia from Vienna to Brindisi (via Rome). The flight was scheduled to leave at 6.45am and to arrive in Brindisi at 10.35am. After checking in, the passengers were informed, five minutes before the scheduled departure time, that their flight had been cancelled. They were transferred to an Austrian Airlines flight to Rome, where they arrived at 9.40am, 20 minutes after the time of departure of their connecting flight to Brindisi, which they therefore missed. They arrived in Brindisi at 14.15. The flight cancellation resulted from a complex engine defect in the turbine, which had been discovered the day before during a check. Alitalia had been informed of the defect during the night preceding the flight. The applicant claimed compensation of €250 and €10 for telephone charges. The applicant brought legal proceedings concerning the non-payment of compensation. Regulation 261/2004 provides that, in the event of a flight cancellation, passengers have the right to compensation by the carrier unless they are informed of the cancellation of the flight in due time. A carrier does not have to pay that compensation if it can prove that the cancellation is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken. The Commercial Court of Vienna made a reference to the ECJ on whether the technical problems that led to the cancellation of the flight were covered by 'extraordinary circumstances'. The ECJ said that various technical problems arise in the context of air transport. The resolution

of a technical problem caused by failure to maintain an aircraft must be regarded as inherent in the normal exercise of an air carrier's activity. Thus, technical problems that come to light during maintenance of aircraft or on account of failure to carry out such maintenance do not constitute, in themselves, 'extraordinary circumstances'. Technical problems may be covered by 'exceptional circumstances' to the extent that they stem from events that are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. This would be the case if it was revealed by the manufacturer of the aircraft comprising the fleet concerned that those aircraft are affected by a hidden manufacturing defect that impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism. As not all extraordinary circumstances confer exemption, the onus is on the party seeking to rely on them to establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight. The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that the carrier has taken all reasonable measures so that it is relieved of its obligation to pay compensation.

### EMPLOYMENT

Joined cases C-350/06 and C-520/06, *Schultz-Hoff v Deutsche Rentenversicherung Bund; Stringer and Others v Her Majesty's Revenue and Customs*, 20 January 2009. In the

first case, a worker was unable to exercise his right to paid annual leave on account of incapacity for work, which meant that he had to retire. German legislation provides that a worker's entitlement to paid annual leave not taken is extinguished at the end of the calendar year concerned. It does not allow for a carry-over period of three months. In the second case, a worker, in the course of an indefinite period of sick leave, asked her employer if she could take, during the two months following her request, a number of days' paid annual leave. The ECJ held that the right to sick leave and the conditions for the exercise of that right are not governed by EC law. It is up to member states to lay down the conditions for the exercise and implementation of paid annual leave. The entitlement of paid annual leave in the *Working Time Directive* does not preclude either the authorisation of paid annual leave during a period of sick leave or the prohibition of such paid annual leave. Any such prohibition must be subject to the condition that the worker in question has the opportunity to exercise his right to leave during another period. The conditions for carrying over leave not taken are subject to certain limits. The entitlement to annual leave of a worker on sick leave cannot be made subject to the obligation actually to have worked in the course of the leave-year laid down by a member state. Thus, a member state may provide for the loss of the right to paid annual leave at the end of a leave-year or of a carry-over period only if the worker concerned has actually had the opportunity to exercise his right to leave. A worker who is on sick leave for the whole leave year is denied any opportunity to benefit from his paid annual leave. The same is also true of a worker who has

worked for part of the leave-year before being put on sick leave. The right to paid annual leave is not to be extinguished in these circumstances. The court finally looked at the right, on termination of the employment relationship, to an allowance in lieu of the paid annual leave that the worker has been unable to take. It ruled that the allowance must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship.

### FREE MOVEMENT

Case C-318/07, *Hein Persche v Finanzamt Lüdenscheid*, 27 January 2009. German law provides for the deduction for tax purposes of gifts to charitable bodies in Germany that satisfy certain requirements. It excludes that tax advantage for gifts to bodies established and recognised as charitable in another member state. The applicant was a German national who had made a charitable donation of €18,180 to a charity in Portugal. He claimed a tax deduction for this, and it was refused. A German court asked the ECJ whether a member state may make a deduction for tax purposes subject to the condition that the beneficiary is established in that state. The court pointed out that a claim for a tax deduction for a cross-border charitable gift within the EU comes within the compass of the treaty provisions on the free movement of capital. As the possibility of obtaining a tax deduction can have a significant influence on the donor's attitude, the inability in Germany to allow deductions for donations to charities established in other member states is likely to affect the willingness of German taxpayers to make gifts to such bodies. The German legislation



is, therefore, a restriction on the free movement of capital. The court held that the restriction was not justified. Where a body is recognised as charitable in one member state, and it satisfies the requirements imposed for that purpose by the law of another member state, and where its subject is the promotion of the very same general public interest, so that it would be likely

to be recognised as charitable in the latter member state, the authorities of that state cannot deny that body the right to equal treatment solely on the ground that it is not established in its territory. The German legislation was not justified by the need to safeguard the effectiveness of fiscal supervision. The tax authorities could require the taxpayer to provide such proof as they consider nec-

essary to determine whether the conditions for deducting expenditure have been met and whether or not it is appropriate to allow the deduction claimed.

Case C-210/06, *Cartesio*, 17 December 2008. *Cartesio* was a company incorporated in accordance with Hungarian legislation, with its seat in Hungary. It transferred its seat to Italy, but wished

to retain its status as a company governed by Hungarian law. Under Hungarian law, the seat of a company governed by Hungarian law is to be the place where the central administration is located. The ECJ considered whether this Hungarian legislation was compatible with articles 43 and 48 of the treaty. It held that such legislation was not precluded by articles 43 and 48. **G**

## LAW SOCIETY OF IRELAND

# CPDFOCUS

**Fulfil your three-hour management and professional skills requirement for 2009 by attending any ONE of the following events**

### NEW REDUCED FEES

Date	Course title	Skillnet/public sector fee	Full fee	Out of work solicitors	Management hours
19 October	Communication and articulation skills (Cork)	€66	€110	€66	3
21 October	Tactical negotiation skills for lawyers workshop (Dublin)	€70	€116	€70	3
31 October	How to create and publish an e-newsletter (Dublin)	€70	€116	€70	4
9 November	Foundation course in collaborative practice (two-day course, Dublin)	€280	€468	€280	11
13 November	Annual corporate and public sector conference (Dublin)	€99	€198	€99	4
18 November	Tactical negotiation skills for lawyers workshop (Dublin)	€70	€116	€70	3
25 November	PowerPoint for beginners (three-day course, Cork)	€105	€165	€105	7.5
28 November	How to create and publish an e-newsletter (Dublin)	€70	€116	€70	4
5 December	How to create and publish an e-newsletter (Dublin)	€70	€116	€70	4
9 December	Tactical negotiation skills for lawyers workshop (Dublin)	€70	€116	€70	3
11 December	Practice management conference	€99	€198	€99	4.5

**To book your place on any of these courses visit our webpage, [www.lawsociety.ie/cpdfocus](http://www.lawsociety.ie/cpdfocus), or contact a member of the CPD FOCUS team on:**

**P: 01 881 5727 F: 01 672 4890 E: [cpdfocus@lawsociety.ie](mailto:cpdfocus@lawsociety.ie) W: [www.lawsociety.ie/cpdfocus](http://www.lawsociety.ie/cpdfocus)**



## LOST LAND CERTIFICATES

### Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held. *Property Registration Authority, Chancery Street, Dublin 7* (published 2 October 2009)

Regd owner: Patrick O'Shea; folio: 853F; lands: Ballyroughan Big and barony of St Mullin's Lower; **Co Carlow**

Regd owner: Patrick Joseph Campbell, Drumbannon, Bailieborough, Co Cavan; folio: 19612; lands: Drumbannan; **Co Cavan**

Regd owner: Oliver Kierans and Patricia Kierans, 31 Drumbannon, Bailieborough, Co Cavan; folio: 17629; lands: Bracklin; **Co Cavan**

Regd owner: Patrick Mullally; folio: 823L; lands: townland of Knockballynameath and barony of Bunratty Lower; **Co Clare**

Regd owner: Timothy Hurley and Christina Hurley; folio: 29118F; lands: property situate in the townland of Nedinagh East and barony of Carbery East and in the county of Cork; **Co Cork**

Regd owner: Daniel O'Rourke (deceased); folio: 37798F; lands: property situate in the townland of Ballydahin and barony of Fermoy and in the county of Cork; **Co Cork**

Regd owner: Harold Samuel Moore, Bready, Carrigans, Co Donegal; folio: 3057; lands: Monreagh; **Co Donegal**

Regd owner: Denis G Ryan, 10 Cabinteely Green, Longmeadow, Cabinteely, Co Dublin; folio: 35502; lands: Ryelands; **Co Donegal**

Regd owner: William Vial and Geraldine Vial, Meenyoohan, Killybegs, Co Donegal; folio: 1746F; lands: Meenyoohan; **Co Donegal**

Regd owner: Noel J Cassidy and Elizabeth Cassidy; folio: 16502L; lands: the property situate to the north of the Yellow Walls to Swords Road in the town of Malahide; **Co Dublin**

Regd owner: David N Collins, Ash-

## IMPORTANT NOTICE:

### Abolition of land certificates and certificates of charge

Section 73(1) of the *Registration of Title Act 2006* provides that the Property Registration Authority (PRA) shall cease to issue land certificates and certificates of charge under the *Registration of Title Act 1964*. The section commenced on 1 January 2007.

The subsection also provides that section 105 of the *Registration of Title Act 1964* (requirement to produce land certificates or certificates of charge) will only apply to certificates issued before commencement, and then only for a three-year period after the commencement of the section.

Section 73(2) of the 2006 act provides that land certificates and certificates of charge issued before commencement of section 73 that are not already cancelled will cease to have force or effect three years after the commencement of the section, that is on 31 December 2009. Until that date, land certificates must be furnished with all applications by the registered owner. Certificates of charge, where issued, must be produced on all releases of charge except where such release is by discharge.

**From 1 January 2010, both land and charge certificates will cease to have any force and effect and should not be lodged with applications.** In the interim, if an application is lodged without the land certificate, where one issued, it will be rejected. If the land certificate is not forthcoming, the application should be held over and relodged after 31 December 2009.

### Registration of lien created through deposit or possession of land certificate or certificate of charge

Section 73(3)(b) of the 2006 act provides that a holder of a lien may apply to the authority for registration of the lien in such manner as the authority may determine.

The section applies to a person holding a lien. This may include a solicitor's letter of undertaking to lodge a land certificate or certificate of charge.

The application shall be on notice by the applicant to the registered owner and must be accompanied by the original certificate (see section 73(3)(c)).

**The last date for lodgement of applications is 31 December 2009. Applications lodged after that date will not be accepted.** Applicants must therefore ensure that the prescribed notices are served in good time, as the application may only be lodged after the expiration of 26 days from such service.

Where the certificate is claimed to be lost or destroyed, the applicant for a lien must first apply for its production to be dispensed with, pursuant to rule 170(2) *Land Registration Rules 1972*.

This procedure can be lengthy, as the authority must satisfy itself that the certificate has been lost or destroyed and has not been pledged as security (other than in respect of the application before it). Proofs would include affidavits from the applicant and registered owner and notices would be directed in the *Law Society Gazette* and a local or national newspaper.

ling, Bohernabreeba, Tallaght, Dublin 24; folio: 57991F; lands: townland of Bohernabreena and barony of Uppercross; **Co Dublin**

Regd owner: Patrick Keys and Donal Keys (as tenants in common), 23 Ardilas, Dundrum, Dublin 14; folio: 71814L; lands: townland of Blackthorn and barony of Rathdown; **Co Dublin**

Regd owner: Desmond Irwin and Catherine Irwin; folio: 9683L; lands: property situate to the west side of Ballymun Road and barony of Coolock; **Co Dublin**

Regd owner: Paul Noctor; folio: (1) DN18187, (2) DN100662F, (3) DN31227L; lands: (1) property situate in the townland of Diswellstone and barony of Castleknock, (2) property situate on the north side of the old hill in the parish of Lucan and town of Lucan, (3) property situate in the townland of Blanchardstown and barony of Castleknock; **Co Dublin**

Regd owner: Áine Tiernan; folio: 6157F; lands: townland of Killeany and barony of Aran; **Co Galway**

Regd owner: Patrick Walsh (deceased), Patricia Walsh (deceased) and Dolores Walsh; folio: 20521F; lands: townland of Ballagh and barony of Galway; **Co Galway**

Regd owner: Patrick Mahon and Siobhan Mahon; folio: 33835F; lands: townland of Newtown (ED Maynooth) and barony of North Salt; **Co Kildare**

Regd owner: Patrick Ryan (deceased);

folio: 5886; lands: townland of Bishopsland and barony of Naas South; **Co Kildare**

Regd owner: Patrick Ryan and Margaret Ryan; folio: 12694F; lands: Ballyfasy Upper and barony of Ida; **Co Kilkenny**

Regd owner: Michael Fogarty; folio: 8122F; lands: Newtown and barony of Clarmallagh; **Co Laois**

Regd owner: Michael McCarthy; folio: 27777F and 24303F; lands: townland of Darranstown and barony of Coshlea; **Co Limerick**

Regd owner: Jane Frances Cunningham, Mooremount, Dunleer, Co Louth; folio: 1223; lands: Mooremount; **Co Louth**

Regd owner: Patrick McLoughlin, Moneen, Louisburgh, Co Mayo; folio: 17299; lands: townland of Moneen, Balloor, Legan and barony of Murrisk; **Co Mayo**

Regd owner: Martin Joseph Heffernan (deceased); folio: 28191F; lands: townland of Rathmacostello and barony of Tirawley; **Co Mayo**

Regd owner: Patrick Walsh; folio: 11458; lands: townland of Friarsquar West and barony of Kilmahine; **Co Mayo**

Regd owner: Margaret Mary Magee, Latton, Castleblayney, Co Monaghan; folio: 14600; lands: Latton; **Co Monaghan**

Regd owner: Noel Corrigan; folio: 14199; lands: townland of Clonmore and barony of Geashill; **Co Offaly**

Regd owner: James F Golden (de-

ceased); folio: 22212; lands: townland of Creemully, Aghagad Beg, Derryhippo, Bracklin and barony of Athlone North, Ballymoe; **Co Roscommon**

Regd owner: Rinny Farm Limited; folio: 18991F; lands: townland of Carrowkell and barony of Roscommon; area: 4.148 hectares; **Co Roscommon**

Regd owner: Thomas O'Dwyer; folio: 27217; lands: townland of Ballyhusty and barony of Clanwilliam; **Co Tipperary**

Regd owner: Joan Murphy (deceased) and Barry Murphy, Ballinascullogue, Manor Kilbride, Blessington, Co Wicklow; folio: 2575; lands: townland of Ballinascullogue Lower and barony of Talbotstown Lower; **Co Wicklow**

## WILLS

**Carberry, Edward (deceased)**, late of 6 Reilly's Avenue, Dolphin's Barn, Dublin 8, who died on 17 August 1986. Would any person having knowledge of the whereabouts of the original will, executed by the above-named deceased on 21 February 1983 in the offices of Walsh O'Connor & Company, Solicitors, 39 Fitzwilliam Place, please contact the office of Keith Walsh, Solicitors, 8 St Agnes Road, Crumlin, Dublin 12; DX 82004 Walkinstown; tel: 01 455 4723, email solicitor@kwsols.ie



**Dooley, Christopher (deceased)**, late of St Monica's Ward, St Otteran's Hospital, Waterford city, who died on 2 February 2009. Would any person with knowledge of the whereabouts of the father of the late Christopher Dooley please contact Gerard Halley of MM Halley & Son, Solicitors, Presentation House, Slievekeale Road, Waterford; tel: 051 874 073

**Faherty, John (deceased)**, late of Coolachy, Clifden, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 16 February 2009 in Wolverhampton, West Midlands, United Kingdom, please contact Alex O'Neill, Solicitors, 22 Barrington, Limerick; tel: 061 313 844, fax: 061 313 845

**Finn, Claire, (deceased)**, late of 64 Moyglare Village, Maynooth, Co Kildare, who died on 2 September 2007. Would any person having knowledge of a will made by the above-named deceased please contact Emer Foley, solicitor, of Reidy & Foley, Solicitors, Parliament House, Parliament Street, Kilkenny; tel: 056 776 5065 or DX27004 Kilkenny

**Kennedy, Peter (deceased)**, late of 14 Lakeview, Virginia, Co Cavan, and formerly of 1 Selskar Road, Skerries, Co Dublin, who died 8 June 2009. Would any person having knowledge of a will made by the above-named deceased please contact Gerrard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin; tel: 01 841 2115, fax: 01 841 2037, email: info@glmcgowan.ie

**Moore, Derek (deceased)**, late of Aghalatty, Carrigart, Co Donegal. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact Thomas Simmons, solicitor, VP McMullin, Solicitors, 11 Limavady Road, Londonderry, BT 6JU, Northern Ireland; tel: 048 713 42 184, email: tsimmons@vpmmcullin.com

**Moran, Sean (deceased)**, late of 66 Grange Road (formerly 23 Grange Road), Baldoyle, Dublin 13. Would any person having knowledge of a will executed by the above-named deceased, who died on 9 March 2001, please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, fax: 01 839 3663, email: info@mjsolicitors.ie

**Radford, Thomas Henry (deceased)**, late of Bunreagh, Croghan, Boyle, Co Roscommon and formerly of 25 The Lawns, Wooton Wawen,

# Gazette

## PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €144.50 (incl VAT at 21.5%)
- **Wills** – €144.50 (incl VAT at 21.5%)
- **Title deeds** – €144.50 per deed (incl VAT at 21.5%)
- **Employment/miscellaneous** – €144.50 (incl VAT at 21.5%)

**These rates will apply from January 2009 until further notice**

**HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA**

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Deadline for November *Gazette*: 21 October 2009. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Solihull, West Midlands, England, who died on 10 November 2004 at Croghan, Boyle, Co Roscommon. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, or if any firm is holding the same, and for any individuals with that information, please contact George Lynch & Son, Solicitors, Carrick-on-Shannon, Co Leitrim; tel: 071 962 0017/962 1127, fax: 071 972 0600, email: george-lynchsolicitors@eircom.net. File ref: HMcG/B38

**Tuner, Bridget, (deceased)**, late of 17 Summerhill, Wicklow Town, Co Wicklow who died on 10 December 2003. Would any person having knowledge of a will made by the above-named deceased please contact Houghton McCarroll & Co, Solicitors, 2 Church Street, Wicklow; tel: 0404 68344 or email: arian@haughtonmccarroll.ie

### MISCELLANEOUS

**Reduce your overheads – outsource your bookkeeping/accounts.** Westside Bookkeeping Services. Specialising in all aspects of solicitors' accounts/payroll. Experienced bookkeeper available on a contract basis – on site. Excellent references available. Contact: Michelle Ridge at 087 293 0347, email: mridge@indigo.ie

**Small solicitors' practice for sale in south Dublin area.** Please reply to box no 1009/01

**Rosemary Connelly Solicitors.** Employment and equality law specialists. Offices in Belfast and Warrenpoint. Established over 15 years and recognised as expert providers in our field. Available for agency work in all employment law related matters in Northern Ireland. Please contact us directly or see our website for further details; 2 The Square, Warrenpoint, Co Down BT34 3JT; tel: +44 0284175 3121, fax: +44 0274175 3141; Elmwood House, 44-46 Elmwood Avenue, Belfast BT9 6AZ; tel: +44 0289066 0823; www.solicitorsni.net

### WORRIED ABOUT PI COVER, OVERHEADS ETC IN A DECLINING MARKET?

Thinking of retiring, downsizing or disposing of your practice but still want to earn income from your files? We have devised an innovative "Fileshare Scheme" so that you can still get the value of your files without the stress of managing a practice. Contact us today to find out more. All replies will be treated with the strictest of confidence.

Contact Seamus Connolly  
Moran & Ryan Solicitors,  
35 Arran Quay, Dublin 7.

Tel: 01 8725622  
Email: sconolly@  
moranryan.com



### OFFICE TO LET SARSFIELD QUAY, DUBLIN 7

LOCATED WITHIN WALKING DISTANCE OF THE FOUR COURTS AND THE NEW CRIMINAL COURT COMPLEX ON PARKGATE ST  
COMPETITIVE RENTAL LEVELS & FLEXIBLE LEASE TERMS AVAILABLE

01.664.5500

www.kellywalsh.ie

### E-DISCOVERY SUPPORT SERVICE

Wood Printcraft DocStore professional service from €500 per GB.  
ISO 27001 compliant;  
tel: (01) 2454800,  
email: crogan@wpg.ie  
or website:  
www.wpg.ie/docstore.htm

### ROBIN HILL CLINIC Rushbrooke, Cobh Co Cork

Relax and heal in a time warp, set in beautiful tranquil surroundings overlooking Cork Harbour. Two accommodation options self-catering or B&B available. Massage and pamper treatments tailored to help you unwind. Specialist clinics and retreat packages available.

Tel: 021-4812222  
www.robinhillclinic.com  
www.corknaturalfertility.com



**Selling or Buying  
a seven-day liquor  
licence  
Contact 0404 42832**



A Caring Legacy:  
bequests to The Carers  
Association (CHY10962) help  
to support home-based family  
care in Ireland.

For information:  
Emma at 057 9370210.  
fundraising@carersireland.com  
or www.carersireland.com.

#### TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Joseph O'Reilly**

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 19 Moore Street and 11A Moore Lane in the city of Dublin, the property comprised in a fee farm grant dated 26 July 1862 made between (1) the Honourable Charles Spencer Cowper, (2) Alexander Norman and (3) Susan Newton, subject to the perpetual yearly rent of £4.37.

Take notice that Joseph O'Reilly, being the person entitled to the grantee's interest in the said grant, intends to apply to the Dublin county registrar for the acquisition of the fee simple estate and all intermediate interests

#### PRACTICE FOR SALE

SOUTH COUNTY DUBLIN  
PRINCIPAL RETIRING  
SHORT TERM PARTNERSHIP  
ON GENEROUS TERMS

#### YOUR CREDENTIALS?

SUBSTANTIAL EXPERIENCE  
& CAPITAL

\*\*\*\*\*

CONTACT: JAMIE O'BRIEN  
086-300-2104

in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Joseph O'Reilly intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 2 October 2009

Signed: William Fry (solicitors for the applicant), Fitzwilson House, Wilton Place, Dublin 2

#### The Circuit Court, Eastern Circuit, Co Kildare

**In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1986*: Hilary Timmins and Christopher Timmins, applicants**

*Notice of motion*: Take notice that application will be made to the county registrar sitting at the Courthouse, Naas, in the county of Kildare, on 16 October 2009 at 11.30am for the following relief:

- 1) An order determining the entitlement of the applicants herein to acquire the fee simple and any intermediate interests in the premises

#### NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

Solicitor looking to acquire an interest in a litigation or general practice with a turnover between €200-600K per annum in the greater Dublin area. This would suit a practitioner who wishes to retire in 2-3 yrs time, working alongside this Solicitor in the meantime.

#### CONTACT:

David Rowe at **Outsource**  
01 6788 490  
dr@outsource-finance.com

Established Solicitors Practice for sale in the South East.

Ideal base for a start up practice

#### CONTACT:

David Rowe at **Outsource**  
01 6788 490  
dr@outsource-finance.com

more particularly described in the schedule hereto,

- 2) An order determining the purchase price to be paid by the applicants herein in respect of the acquisition of the fee simple and all such intermediate interests,
- 3) If necessary, an order apportioning the said purchase price between the various interests as affect the said lands,
- 4) If necessary, an order pursuant to the provisions of section 8(3) of the *Landlord and Tenant (Ground Rents) Act 1967* appointing an office of the court to execute any necessary documentation, including an assurance in respect of the said property or any interest therein for and on behalf of any unascertained owner of same.

Which said application will be grounded upon the notice of intention to acquire the fee simple dated 16 March 2009, the nature of the case and the reasons to be offered.

*Schedule*: All that and those that

portion of land situate at Laurel Grove, Dublin Road, Celbridge, in the county of Kildare, as more particularly delineated on the map annexed hereto and thereon edged in red, held under indenture of lease dated 1 August 1967, John Joseph King of the one part and James Price of the other part, being demised for the term of 71 years from 1 January 1967, subject to the yearly rent of £5 and as to portion thereof under lease, 31 December 1968, John Joseph King of the one part and James Price of the other part, being demised for the term of 70 years from 1 January 1968, subject to the yearly rent of £5.

Date: 2 October 2009

Signed: LC O'Reilly Timmins & Co (solicitors for the applicants), The Harbour, Kildock, Co Kildare

#### RECRUITMENT

**Solicitor's apprenticeship sought** by hard-working, highly qualified law graduate soon to become AITI-registered tax consultant. Passed all FEIs, trained typist and excellent work experience. Tel: 086 331 3039

## FREE JOB SEEKERS REGISTER

**For Law Society members seeking a solicitor position, full-time, part-time or as a locum.**

Log in to the new self-maintained job seekers' register in the employment opportunities section on the members' area of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: [t.murphy@lawsociety.ie](mailto:t.murphy@lawsociety.ie)



Law Society of Ireland

## FREE EMPLOYMENT RECRUITMENT REGISTER

**For Law Society members to advertise for all their legal staff requirements, not just qualified solicitors.**

Log in to the new expanded employment recruitment register in the employment opportunities section on the members' area of the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie), or contact Trina Murphy, recruitment administrator, at the Law Society's Cork office, tel: 021 422 6203 or email: [t.murphy@lawsociety.ie](mailto:t.murphy@lawsociety.ie)



Law Society of Ireland



## GLOBAL OPPORTUNITIES

### PROFESSIONAL NEGLIGENCE Negotiable DUBLIN

This firm is looking to recruit an ambitious associate who has experience in the professional negligence market. You will be familiar with dealing with insurers and the insured alike and will adopt a commercial approach to cases handled by you. You will have gained experience within a well established law firm in London and are ready for a move to Dublin. You will have very strong academics and will be technically excellent. Strong salary and package on offer to attract the appropriate individual. **Ref: S2024**

### TAX ASSOCIATE Negotiable LONDON

This is an opportunity for a corporate tax lawyer to join a first rate city firm and undertake a broad mix of work. You will be involved in providing support to transactional teams within the firm particularly structured finance, corporate, acquisition finance, property and capital markets. Ideally you will demonstrate relevant solid tax experience in two or more of the above mentioned products. The ideal candidate will have excellent academics and be technically competent. Perfectly suited to an ambitious and enterprising individual with great rewards. **Ref: S2019**

### MEDICAL NEGLIGENCE Negotiable DUBLIN

Hugely successful law firm with a truly international client portfolio welcomes applications from accomplished medical negligence lawyers. You can look forward to working on exceptionally good quality work in a most supportive working environment with real prospects for progression and professional development. Particular interest will be shown to accomplished lawyers able to handle large scale files and to deal with cases sensitively while at the same time adopting a pragmatic and efficient solution. **Ref: S2025**

### CONSTRUCTION LITIGATION Negotiable DUBLIN

The contentious construction team of this firm are committed to delivering a comprehensive service in all aspects of construction and engineering project disputes. This opportunity offers exposure to dispute avoidance and resolution for contractors, developers and others, principally within the infrastructure and property development sectors. It will involve contract risk analysis, adjudication and litigation. Undertaking business development and marketing activities are also a key part of this role. **Ref: S2015**

### CAPITAL MARKETS £90k LONDON

Our clients' debt capital markets team advises on innovative and complex structures in both the public and private arena. The team works closely with project and project finance, utilities and financial institution specialists. You will be given the opportunity to help build a practice, carry out deals and help to further develop relationships with banks and issuers. You will be at associate level and have had experience in dealing with DCM (bonds, medium term notes, tier 1, structured products or a combination) from a leading international law firm. **Ref: S2022**

### PROFESSIONAL INDEMNITY €100k Basic DUBLIN

A mid sized practice is now seeking a senior associate/partner to join their ever expanding team. You will have a general insurance litigation background with expertise in professional indemnity work and dispute resolution. You will have familiarity with Insurers and Court processes. You will also be expected to get involved in business development. You will be able to work as part of a team while at the same time demonstrate shrewd commercial judgement coupled with entrepreneurial flair. **Ref: S2018**

### TECHNOLOGY Not disclosed LONDON

Our client is an ambitious mid tier firm. They are seeking to recruit a qualified mid level associate who will be involved primarily in the drafting, review and negotiation of IT contracts. You will form part of a dynamic team and there will be particular emphasis on IT/telecoms outsourcing work. You will assist with non contentious IP work on occasion. The ideal candidate will be expected to have excellent interpersonal and time-management skills. A strong remuneration package is on offer to attract the right individual. **Ref: S2027**

### PARTNERS

If you are a solicitor with a following of business in any area of law and are looking for new opportunities, or if you are a firm seeking merger/acquisition opportunities please contact in confidence

Carol McGrath +353-1-631 9132 or email  
[carolmcgrath@makosearch.ie](mailto:carolmcgrath@makosearch.ie)





# True Pedigree



## *Partnership Positions*

Our clients are searching for high calibre candidates at both Salaried and Equity level in the following practice areas:

**Commercial Property**

**Insolvency**

**Banking & Financial Services**

**Funds**

**Defamation**

**Employment**

## *Associate / Senior Associate Positions*

Good opportunities exist for first class practitioners with strong exposure to the following practice areas:

**Banking: Senior Associate**

**Corporate/Commercial: Senior Associate**

**Funds: Associate and Senior Associate**

**Professional Indemnity: Associate and Senior Associate**

**Construction Litigation: Senior Associate**

**Insolvency: Senior Associate**