



Paying peanuts?

Advising on claims under the minimum wage legislation



Rights of way

The PRA's new scheme of registration of profits *à prendre* and easements



President's selection

President Higgins was guest of honour at the Society's annual dinner

LAW SOCIETY

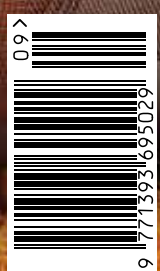
GAZETTE

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CONVEYANCING CONFLICTS

You will be aware by now that, at its meeting on 13 July, the Council approved the report of the Conveyancing Conflicts Task Force and voted by a margin of 25 votes to four to implement its recommendations in substantially the form of the regulations appended to the task force report – subject to certain minor amendments to be made in the light of submissions received from the profession.

In general terms, the effect of the regulations is to prohibit solicitors from acting on both sides in any conveyancing transaction, including voluntary transactions, with effect from 1 January 2013. While it is obvious that not all members of the profession are in agreement with the prohibition, it is clear from the submissions received that a substantial majority is in favour of the prohibition insofar as it relates to transactions for value. A smaller majority is in favour of the prohibition in relation to voluntary transactions, although only 25% expressed themselves satisfied with the present position as regards the latter. The introduction of the prohibition will bring to an end an issue that has raised its head on a number of occasions over the last three decades, usually following upon adverse judicial comment that the practice of acting on both sides was not prohibited by regulation.

Over the years, the profession has resisted the prohibition – in more recent years, on the grounds that sending one of the clients for independent advice afforded an adequate safeguard against conflict of interest. It is clear, however, that the mood in the profession has changed and that the majority is now uncomfortable in acting on both sides in any circumstances and favours a prohibition. It is also clear that the background against which such transactions have been undertaken by one firm of solicitors, until now, has changed significantly in the light of the complex society in which we now practise.

Separate legal advice

The task force was, in particular, influenced by the study undertaken by the HSE and UCD in 2010 about the abuse and neglect of older people. Indeed, the chair of the HSE/UCD group submitted to the Law Society that, “where voluntary transfers of property are being entered into, it be made mandatory for solicitors to ensure individual family members obtain separate legal advice to ensure that there is no conflict between the interest of the older person and the donee of the property”.

While there has not been an avalanche of claims arising from solicitors acting on both sides, it is probably fair to say that there is far more abuse of the elderly than is reported.


Apart from protecting the elderly, these regulations will also help to protect solicitors against claims by other family members – post-transaction – that a family member was unduly influenced in the transfer. I believe that the time is right for the introduction of these regulations and that the Society, in adopting them, is closing the stable door before the horse bolts.

I know that some practices – in all probability my own included – may lose clientele as a result of these regulations, but it is to be hoped that this will be balanced by new clients that will be referred by other colleagues.

Future of the Society

You will be aware, from a letter sent to you by John Shaw (chairman of the Future of the Law Society Task Force), that the Society is to undertake a survey through Millward Brown Lansdowne to ascertain the views of the profession as to the direction the Society should take in representing and providing services to its members upon the enactment of the *Legal Services Regulation Bill* (see page 12 of this issue).

I would strongly urge you to take the time, not just to complete the survey, but to reflect upon the issues raised and to give your considered views in your responses. It is clear from the work already carried out by the task force that many members consider that the Society should represent them better – but, very often, this is expressed in a general way. Members need to think about exactly what this means – does it mean providing legal assistance to members against whom complaints are made to the new Legal Services Regulation Authority? Does it mean seeking to engage more robustly with the media? Does it mean making more submissions in relation to law reform? Does it mean providing more services to members?

Whatever your views, please share them with us so that we can make them count. 



“The majority is now uncomfortable in acting on both sides in any circumstances and favours a prohibition”

Donald Binchy
President



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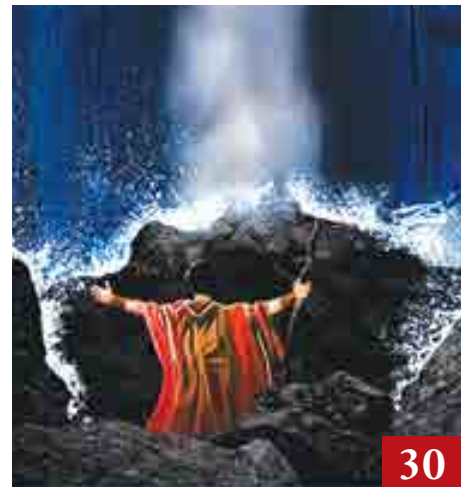
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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

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 the **Property Law Conference on 27 and 28 September in Belfast**
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

Nationwide

Compiled by Kevin O'Higgins



Kevin O'Higgins has been a Council member of the Law Society since 1998

A good walk ruined

DUBLIN

The DSBA Golf Society continues to grow. The golf society is open to all DSBA members and is a registered member of the Golfing Union of Ireland. The concluding event of the summer took place at Killeen Castle (Captain's Prize).

Previous events in the summer were held in The K Club, Elm Park (see report on page 47) and Luttrellstown.

With the summer coming to a close, the DSBA's annual tennis tournament took place on 30 June at Elm Park and was a great success.

As I write, it's all systems go for the DSBA conference, which takes place in Bordeaux in mid August.

Geraldine Kelly has put together a stimulating itinerary of events, both social and professional, as well as a robust business session. Already, the conference has attracted a full house, with more than 120 delegates expected to attend.

A day at the races

GALWAY

James Seymour tells me that the annual gathering of colleagues at Galway Race Week was a great success and has become an annual event in the Galway legal year. A report and photos will appear in the next issue.

Limerick solicitors support Pieta House

LIMERICK

Limerick-based solicitors got together on 13 July to hear about 'The use of PR and social media in promoting your business'. The seminar was organised by Eileen Whelan (Dermot G O'Donovan Solicitors) to help out Pieta House, a non-profit organisation working to prevent self-harm and suicide in Ireland. Proceeds from the event went to Pieta's Mid-West Branch, based in Mungret, Co Limerick. Further information is available at www.pieta.ie.

Thanks to PR professionals Niamh Quinn (Quinn Communications) and Orla Clancy (Orla Clancy PR) who delivered the seminar, which formed part of the bar association's annual CPD training.



At the River Bistro were (l to r): Niamh Quinn, Nora Conway (Pieta House), Carmel O'Callaghan, Eileen Whelan (Dermot G O'Donovan Solicitors) and Orla Clancy

PICT: KEITH WISEMAN PHOTOGRAPHY

Gearing up for the IBA

DUBLIN

The IBA conference takes place this year in Dublin at the end of September and into the first week of October, and an avalanche of lawyers will descend upon the capital city. A myriad of events and activities have been arranged. The Law Society, the DSBA and many of the larger firms will be intrinsically involved in welcoming our international colleagues.

Interested colleagues should consult the IBA website for a list of events. One such event is being held in Blackhall Place, where the IBA, in conjunction with the Young Dublin Solicitors, the Society of Young Solicitors and the Law Society Finuas Network are hosting a Young Solicitors Conference Day on Saturday 29 September 2012. The topic is on the fundamentals of international legal practice.

This day-long course is part of an ongoing programme devised by the IBA's Public and Professional Interest Division to assist young lawyers and junior members of the profession with their understanding of international legal practice. The registration fee of €50 includes lunch, a drinks reception and a speed-networking session. The course is eligible for five CPD credits.

No buts, it's got to be 'Butler'

KILKENNY

The Kilkenny Bar Association held its summer party at Butler House, Kilkenny, on 26 July 2012. Prior to the festivities, the association met with Law Society President Donald Binchy and director general Ken Murphy to discuss the *Legal Services Regulation Bill 2011*. A detailed discussion followed on the proposed amendments to conveyancing

practice that have been suggested by the Conveyancing Conflicts Task Force, during which there was a frank exchange of views.

A barbecue followed in the beautiful surroundings of Butler House, where special guests included the county registrar Mary Enright and Courts Services manager Liam Nolan (see photo, page 41).

Social climbing

MAYO

There was a fantastic turnout for the climb of Croagh Patrick on Saturday 14 July, organised by the Mayo Solicitors Bar Association. The climb raised significant funds for Temple Street Children's Hospital (see page 41). G

Decisions about contact

A conference for professionals entitled 'Decisions about contact' will be held on Saturday 22 September 2012 at the Maudlins House Hotel, Naas, Co Kildare. It will focus on decision making in the context of contact/access for children and birth parents. The chairman will be District Court judge Conal M Gibbons. The price is €145. For further details, visit www.childandfamilysolutions.ie.

Human Rights Essay Prize

The winner of the Annual Human Rights Essay Prize 2012 is Aisling Dillon, LLM student (child and family law), University College Cork.

The Human Rights Committee of the Law Society awards annual prizes for essays that identify a particular aspect of human rights law that they believe will have importance in the application or interpretation of Irish law.

Personal injuries conference

The Association of Personal Injury Lawyers (APIL) is holding a one-day conference on Friday 28 September, at the Radisson Blu Royal Hotel, Dublin. It will focus on:

- New costs regime in 2012,
- Class action: PIP cases,
- Management of defence litigation,
- Damages update,
- Legal update, and
- Advertising rules.

Fees are from Stg£200 for APIL members and Stg£250 for non-members (plus VAT). For online booking, visit www.apil.org.uk/event-details.aspx?ID=2005.

In News this month...

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| 9 Annual CPD day in Monaghan | |

Irish course a winner



The Law Society's Elementary and Advanced Legal Practice Irish Project has been awarded the European Language Label (An Séala Eorpach Teanga 2012).

The label is an award that encourages new initiatives in the field of teaching and learning languages. It rewards new

techniques in language teaching, spreading the knowledge of their existence – thereby promoting good practice. Each year, the label is awarded to the most innovative language-learning projects in each country participating in the scheme. The awards ceremony will be held in October.

Head in the cloud, feet on the ground

The Data Protection Commissioner has published guidance on his website to assist any person or corporate body using or considering using a cloud computing solution to hold or manage the personal data for which they are responsible.

This guidance for Irish-based entities is as a result of directions published at a European level, as well as recent useful guidance produced by the National Standards Authority of Ireland, in conjunction with the Irish Internet Association.

To view the commissioner's guidance, see: www.dataprotection.ie or www.bit.ly/prqje.



Aileen takes big STEP

Solicitor and tax consultant Aileen Keogan has been shortlisted for the prestigious 'Boutique firm of the year award' by the Society of Trust and Estate Practitioners. Other Irish shortlisted candidates for the awards include William Fry and O'Connell Brennan. The awards ceremony will take place in London in September.

Holohan garners award

Cork and Dublin-based law firm Holohan Solicitors has been awarded the *Acquisition International Magazine* award as 'Irish insolvency law firm of the year 2012'. The firm has two offices – one at Water

View House, 16 Sundays Well Road, Cork, and the other at Suite 319, The Capel Building, Dublin 7.

The win follows the firm being named a finalist at the Irish Law Awards 2012.



Annual human rights conference 2012

The tenth Annual Human Rights Conference of the Law Society and the Irish Human Rights Commission will take place on Saturday 13 October 2012.

This year, the conference will examine the impact of the Irish Constitution, the European Convention on Human Rights and EU law in advancing human rights protection in Ireland.

The role of Irish courts, quasi-judicial and administrative bodies will also be considered.

DATE FOR YOUR DIARY

LAW SOCIETY
ANNUAL CONFERENCE

10th/11th May 2013



DATE FOR YOUR DIARY



Law Society of Ireland

10th/11th May 2013

HOTEL EUROPE
Killarney

80% see career support service as beneficial to members

The results are now in on a survey of the Society's Career Support service. A very large response was recorded, with 829 people submitting completed forms – or 40% of everyone surveyed.

The survey's objective was to get a clearer understanding of the benefits that the Career Support service has delivered to Society members, to better understand how members view it, and what they most want from it.

Over 79% of respondents considered the service to be 'beneficial' or 'very beneficial'. Comments included: "I am glad the Society is supporting



84% of respondents and as 'important' by 12%.

The legal vacancies facility on the Society's website was considered to be the second most important service, with 77% of respondents reporting it as 'very important' and 17% as 'important'.

Third most prominent (at 89%) were the training events and workshops, which were followed by one-to-one consultations with a career advisor and the Skillnet Job Seekers' Support Programme (both selected by 82%).

Respondents suggested that more information might be provided on opportunities overseas, organising job fairs, and a stronger focus on opportunities for newly qualifieds. A total of 58% of respondents described themselves as unemployed, doing unpaid work or in a job under threat.

A full report on responses received to the survey is available at: www.lawsociety.ie/Home/Pages/CareersEmployment-members/Career-Support-members/Alternatives-to-Practice.

Keep a card up your sleeve!

Many solicitors' practices find that clients look to pay for services with credit or debit cards. Some firms already use card-payment terminals very successfully – they are a useful tool in helping to manage cash flow and can save time and effort in chasing payment.

The Law Society is pleased to announce that it has secured preferential rates for credit/debit card terminals for Law

Society members from Elavon Merchant Services, free engineer installation of your terminal and training on the day.

Terminal rental starts at €18 per month. Elavon can be contacted by telephone at 1800 995 085, by email at sales@elavon.com or, or visit www.make-payments-easy.com. Don't forget to ask for the Law Society's preferential rates.

this work, as this is a very difficult time for many solicitors, especially younger members of the profession" and "As a dual qualified solicitor, I have found the Irish Law Society services to members to be far better than those offered in Britain."

Updates on opportunities and market developments, which are emailed twice weekly to registered members, were reported as 'very important' by

Orchestrate a career move by investing in knowledge

A focused approach to lifelong learning can directly benefit a solicitor's career and practice. By undertaking continuing professional development (CPD), solicitors improve and update their professional knowledge, skills and abilities. CPD events also provide valuable opportunities for solicitors to network and share experiences with colleagues.

Now is a good time to invest in knowledge. In recognition of this fact, more firms are appointing CPD coordinators to identify education/training needs, plan training and ensuring compliance by the firm's solicitors with CPD obligations. These responsibilities may often be taken on by an

existing employee.

This is also a good time to check that you are on target to complete the 2012 CPD requirement by 31 December 2012. The 2012 CPD requirement is 13 hours' CPD including the minimum three hours' 'management and professional development skills' requirement; and the minimum one-hour 'regulatory matters' requirement.

The current CPD scheme booklet, regulations and record card are available to download from the CPD scheme section on the members' area of the Society's website (www.lawsociety.ie).

For advice on the CPD scheme generally, tel: 01 672 4802 or email: cpdscheme@lawsociety.ie.

Diploma prospectus free for members with your *Gazette*

This issue of the *Gazette* includes a complimentary copy of this academic year's Diploma Programme, courtesy of the Diploma Team. The prospectus is packed with details of diploma courses for the year 2012/13, along with useful information on how to apply for a course, webcasting explained, a focus on lecturers and testimonials from students.

All lectures are webcast and available for the duration of the course, so that if you can't attend every lecture in person, you can watch the lecture live, via the

web, or archived.

Upcoming courses include the Diploma in Finance Law, the Diploma in Intellectual Property and Information Technology Law (including iPad), as well as the new Diploma in Aviation Leasing and Finance, the Certificate in Child Law, and the Diploma in Investment Funds.

If you would like another copy or a PDF version of the prospectus, contact a member of the Diploma Team at tel 01 672 4802; email diplomateam@lawsociety.ie; or visit www.LawSociety.ie/diplomas.

OUTLAWS AND INLAWS

Lives less ordinary



FERGUS MCCARTHY
Tax consultant
Fergus is one of Ireland's leading experts

in the area of capital taxes and is co-author of *Bohan: Capital Acquisitions Tax*, published by Bloomsbury – generally acknowledged as the leading Irish reference book on capital acquisitions tax.

He qualified in 1993 with McCann FitzGerald. Then, having developed a particular interest in tax, Fergus joined Ernst & Young, followed by PricewaterhouseCoopers, where he specialised in CAT and estate planning.

Fergus joined Kennelly Tax Advisers and became a partner in that firm, but left in 2010 to start his own firm, McCarthy Tax Limited. He has written and lectured extensively about taxation and has been published in most major professional publications and national newspapers.

JOSEPHINE MCDONNELL

Innovation Academy
Josephine qualified initially in England. In 2003, after being made redundant in London,

she embarked on a round-the-world trip. On her travels she met her future husband and they settled in Ireland in 2005.

The next few years were spent as associate solicitor in the commercial litigation department of McEvoy Partners – a job she loved. Josephine took time off to have a family, which extended into a five-year career leave while she had two daughters.

Earlier this year, she took on a part-time role in the TCD/UCD Innovation Academy. This job has evolved into her current role of 'springboard administrator'.

She describes her job as "helping people's dreams come true". She's involved in ever-changing activities aimed at assisting unemployed postgraduates to find work or create it through the academy's Springboard course – the Postgraduate Certificate in Innovation and Entrepreneurship.

MICHAEL FARRELL

Free Legal Advice Centres
Michael Farrell came to the law by an interesting and

unusual route. He was a leader in the Northern Ireland civil rights movement during the '60s and '70s. Michael then progressed into journalism in the 1980s and was involved in campaigns to have several major miscarriage-of-justice cases in Britain and Ireland reversed.

It's a compliment to the profession that Michael decided to take up law in his late 40s. He qualified as a solicitor in 1993 because, he believed, this would make him more effective in campaigning for social justice and the rule of law.

Michael became chair of the Irish Council for Civil Liberties and then, seven years ago, joined the Free Legal Advice Centres as senior solicitor.

He has a huge range of other involvements, such as his membership of the Irish Human Rights Commission. He was also recently appointed Irish member of the European Commission Against Racism and Intolerance and is a member of the Council of State.

Practitioner support goes nationwide



'Practitioner support' is a Law Society initiative designed to support practitioner members – especially sole practitioners – with information on matters such as practice management, marketing and winning new business.

Wide-ranging information is available on the Society's website. From the start of September onwards, Practitioner Support will collaborate with bar associations nationwide to deliver local briefing sessions to groups of practitioners on a wide range of matters. The briefing session on marketing and business development will cover matters like best practice in marketing professional services, how to create an effective website, and utilising social media and new technology.

The session on people management will cover

techniques that can be adopted in order to optimise staff performance, how to handle performance appraisals and the management of poor performers.

As the *Gazette* goes to press, the briefing sessions organised for September and early October include:

- Meath – 10 September
- Leitrim – 13 September
- Limerick – 14 September
- Kilkenny – 17 September
- Kildare – 20 September
- Wexford – 21 September
- Inishowen – 22 September
- Clare – 24 September
- Monaghan – 26 September
- Mayo – 27 September
- Cavan – 28 September
- Sligo – 1 October
- Kerry – 3 October
- Cork – 4 October
- Waterford – 11 October
- Wicklow – 25 October.

NALA gives new precedent contract the 'thumbs up'

The Guidance and Ethics Committee has published a new precedent contract for solicitors to use when taking on new business. The document is available at www.lawsociety.ie.

The committee chairman, Brendan Twomey, explains: "As with any written contract, the document is protection for both the solicitor and the client. This document has been granted the 'Plain English'

logo by the National Adult Literacy Agency (NALA)."

The contract sets out the general terms under which the work will be carried out. Section 68 information can be appended to the document or solicitors may prefer to write their usual section 68 letter separately.

The precedent is available on www.lawsociety.ie. For more information, see practice notes on page 53.

Saddle sore and weary – 24 hours from Malin and Mizen

Leman solicitors have taken to the roads once again in a 24-hour cycling challenge – from Malin and Mizen to Galway – in aid of Our Lady's Hospital for Sick Children, Crumlin.

Two teams from the firm raced from either end of the country to reach Galway on 8 September 2012. Both teams covered a combined distance of 620km in an effort to raise €15,000 for the hospital.

The firm is covering the



transport, logistics and accommodation costs but are asking supporters to make a contribution, which can be done by visiting www.cmrf.org/sponsorshipPage/show/1107.

Supporters are asked to sponsor a kilometre or more, at €25 per kilometre. For updates on the fundraising tally, follow Leman on Twitter (@LemanSolicitors) or like them on Facebook. The firm says it would appreciate all sponsorship offers.

Monaghan gives annual CPD day the old 'one-two'!

The Monaghan Bar Association is holding a CPD day that will pack a lot of punch on 19 October 2012. Justine Carty (Barry Healy & Co) and Lynda Smyth (Coyle Kennedy McCormack) have organised an impressive line-up of speakers:

- Muriel Walls (solicitor, McCann FitzGerald) – 'Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010',
- William Johnston (solicitor, Arthur Cox) – 'Security reviews from a bank's perspective – identifying security defects bearing on enforceability and security remediation and managing your undertakings',
- Michael Comyn – 'The fearless organisation: stress management',
- Frank Buttimer (solicitor) – 'Recent updates in criminal law',
- Des Peelo (forensic accountant) – 'Problems, perils and opportunities for solicitors and the *Solicitors' Accounts Regulations*',
- Ercus Stuart SC – 'Employment laws and regulations and compensation on dismissal',
- DJ Hegarty SC – 'Updates in family law' and 'Managing a family law file and clients' expectations', and
- Mr Justice Peter Kelly – 'Commercial litigation with emphasis on its conduct in the Commercial Court'.

Seven CPD points will be available on the day (three management, one regulatory and three general). Seven points are the maximum points allowable in one day by the Law

Society's regulations. The fee for attending is €70. Certificates of attendance will be provided at the end of the day.

For further details and to reserve your place, contact

Justine Carty, Barry Healy & Co, Laurel Lodge, Hillside, Monaghan, Co Monaghan; DX 34 006 Monaghan; tel 047 71556; email justinec@healylaw.ie.

Hibernian Law Journal launches 11th volume



(From l to r): Carol Eager, Cian Moriarty, Donal Hamilton, Mr Justice Michael Peart, Emer O'Connor, Bebhinn Dunne, Christopher Bollard and TP Kennedy (director of education)

The 11th volume of the *Hibernian Law Journal* was launched at the Law Society on 26 July.

The event was well attended and the journal's judge-in-residence, Mr Justice Michael Peart, spoke of the value of

academic legal research, particularly during difficult economic times.

"If our country is to emerge successfully from its current plight," he said, "it will be because bright and motivated

young people achieve their potential."

Mr Justice Peart complimented the contribution that the journal has made to Irish legal scholarship and wished it well in its second decade.

Green Street Courthouse comes alive

A packed Unitarian Church on Dublin's Stephen's Green recently played host to a fascinating lecture by Mr Justice Hardiman on the extraordinary trial of Robert Emmet. Over 150 guests were treated to a flamboyant introduction by Emmet biographer, Patrick Geoghegan, before Mr Justice Hardiman gave an insightful and entertaining lecture on this historic trial.

Robert Emmet was tried at Green Street Courthouse for his part in the chaotic rebellion of 1803. Mr Justice Hardiman explained how Emmet was sentenced to death for the crime of high treason, contrary to the *Treason Act 1351*. "A highly tendentious interpretation of this ancient statute was used to kill him, unchallenged by his counsel or by the court," he said.

The evening was a highly successful fundraiser for a forthcoming play, *Green Street*, by theatre company Percolate. Generously supported by the legal community, the event raised close to 30% of the overall funds required for this site-specific production.

The play, inspired by the rich history of Green Street Courthouse, runs at the courthouse itself from 14 to 22 September as part of Absolut



Is that epitaph written yet?

Fringe, with shows at 7pm and 9pm daily. Early booking is advisable at www.fringefest.com. Telephone bookings open on 21 August at 1850 374 643.

Fundraising for the production continues. If you would like to donate, contact percolategreestreet@gmail.com. See also www.facebook.com/percolate.dublin.

Percolate will be making donations from the box office takings to the Solicitors' Benevolent Association and the Barristers' Benevolent Association.

Finally, Percolate is delighted to offer readers of the *Gazette*

five pairs of tickets for various dates during the run (dates on a first come, first served basis) as prizes in our Emmet competition for this issue. Correct answers to the following question should be emailed to gazettestaff@lawsociety.ie by 3pm on Thursday 13 September 2012, to be entered into a draw: What was the name of the radical nationalist lawyer who was secretly in the pay of Dublin Castle and who was to receive a special bonus for the information he supplied about Emmet?

Winners will be notified by email by close of business on 13 September 2012.

Case searching moves into the 21st century

Case searching has just got a whole lot easier, thanks to www.MyLegalDiary.ie. This new cloud-based resource for solicitors and barristers automates case tracking and searching.

Normally, solicitors are notified about court dates through www.courts.ie, which is updated daily. If a court date is imminent, the legal practitioner must check the site daily. It's not possible to search for specific cases, so searches involve tedious trawling through lists of cases to find the relevant one. As a result, it's possible to miss a listing and then miss a court date. The cost of reinstating a missed case is

more than €500 – not to mention the problems that can arise with a dissatisfied client.

MyLegalDiary allows solicitors to easily find their cases and to add an alert to them, as required. The website emails the solicitor an alert the moment their case is due for hearing, or when any other changes are made to the listing on www.courts.ie. A solicitor can track other cases as they wish, even those not specifically their own.

The MyLegalDiary.ie database holds details for more than 460,000 cases – and growing. All of these cases are simple to search for and only relevant results will be shown.

For example, a search for 'Ryanair' will immediately produce a list of 1 to 313 cases, all with full details about each case.

Another advantage of this new service is that legal practitioners who subscribe to it can search not only for High Court cases, but also for all Circuit and Supreme Court cases too. In addition, solicitors can add their own notes to any case listing.

The developers of MyLegalDiary describe it as a proactive system for solicitors, giving access to details on thousands of court cases, nationwide.

For more information, visit www.mylegaldialry.ie.

Neary and Rowe announce new 'Q Standard'

Anne Neary (Anne Neary Consultants) and David Rowe (Outsource) have announced the merging of their risk-management standards to form a unified risk-management standard for the solicitors' profession, to be called the 'Q Standard'.

The new standard is offered on three levels:

- The Q 3000 – the basic or entry level
- The Q 6000 – the intermediate level
- The Q 9000 – ISO 9000:2008 compliant.

The Q Standard is fully compatible with the QM Excel and Essentials Standards and the LQ Foundation and LQ Basic Standards. The Q Standard also complies with risk-management requirements of professional indemnity insurers as set out in the common proposal form.

A single quality standard combined with the common proposal form should make the 2012 PII renewal process easier for accredited firms.

The new standard will be managed and run by a new institute called the Institute of Legal Research and Standards.

The remit and purpose of the institute is to provide management resources and management expertise for law firms.

The institute can be contacted at 01 676 6406; by email: administrator@lrsinstitute.com; or website: www.lrsinstitute.com.

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Society sets up new IP Law Committee

INTELLECTUAL PROPERTY LAW COMMITTEE

In the current economic climate, intellectual property (IP) and the way it is protected has a key role to play in both the development and protection of indigenous industries and in the continued encouragement of overseas investment in Ireland.

The Law Society recognises the contribution that the solicitors' profession can make to this process and has established a dedicated Intellectual Property Law Committee, chaired by Patricia McGovern.

The new committee began its life as a sub-group of the Business Law Committee. Over recent years, members of this sub-group have been increasingly busy. This led to the Council of the Society recognising that it was time to form a dedicated IP Law Committee due to the growing demand for legal services in the area of IP.

The purpose of the committee is to provide a support to the solicitors' profession and a resource to business, government and those involved in the development and enforcement of IP rights.

The Society wants to ensure that the profession is ready to meet the increase in demand for IP law services. At an EU level, there are ambitious plans for an overhaul of the IP legal framework over the next three to five years as the creative industries are seen as key to future economic growth. The IP Law Committee intends to participate fully in the consultation process underpinning this exercise.

Domestically, the committee is also keen to ensure that any reforms to the Irish courts system will ensure that Ireland becomes one of Europe's most cost-effective and expeditious venues to resolve IP-related

disputes, irrespective of quantum or complexity.

In addition to making submissions, the committee is planning to hold regular meetings with organisations that have an interest in IP

issues. Traditionally, the Law Society has been seen as a body to consult with when proposed developments are being formulated in areas of the law. We want to ensure that this occurs in relation



to IP issues. The committee welcomes any commentary from the profession. Please email the committee's secretary, Katherine Kane at k.kane@lawsociety.ie.

Seminar says technology is the key to working smarter – not longer!

TECHNOLOGY COMMITTEE



At the Technology Committee seminar were (l to r): Adrian Weckler (*Sunday Business Post*), Colm Fagan (Epsilon Intelligence), Frank Nowlan (chairman, Technology Committee) and Raymond Smith (vice-chairman, Technology Committee)

Over 80 solicitors turned up at the Education Centre on 29 June to learn more about the topic of 'Working smarter, not longer! Using technology for a more efficient practice'. The seminar was organised by the Society's Technology Committee.

Adrian Weckler (*Sunday Business Post*) reviewed the current business uses of emerging technologies, cloud computing and the development of mobile technologies.

Joe Kane (Joseph Kane & Co, Solicitors) gave a practical explanation of how he came to make use of cloud computing and other easily available applications to make his working

environment more efficient.

The editor of *Siliconrepublic*, John Kennedy, provided an overview of the top ten apps and devices that could assist in making the working environment easier.

Dealing with security matters, Colm Fagan (Epsilon Intelligence) gave an overview of the security

issues that need to be considered in order to make mobile technologies secure.

The Technology Committee is currently planning a social media blogging workshop that will provide hands-on and interactive training. The workshop will take place in Dublin on 10 October.

Get more at 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.

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.

HAVE YOUR SAY ON THE FUTURE OF YOUR LAW SOCIETY

In September 2012, Millward Brown Lansdowne will conduct an independent survey of members of the Law Society, asking them for their vision of the future of the Society. **Emma-Jane Williams** reports



Emma-Jane Williams is the Law Society's policy development executive

In September 2012, research agency Millward Brown Lansdowne will conduct an independent survey of Law Society members. The Future of the Law Society Task Force, established by President Donald Binchy in November 2011, is leading this research.

According to John P Shaw, the chairman of the task force, it was formed to make recommendations to the Law Society's Council about the future role of the Society. "At our first meeting in December 2011, we recognised the importance of consulting with the profession about the future of the Society. An integral part of our research is to ascertain the views of solicitors and, in this way, the views of the profession will not only shape the task force's recommendations, but, ultimately, the future role of the Law Society.

"There is an opportunity now, during this time of regulatory change, for the Society to reflect, not only on its regulatory function, but also its broader role to represent, to provide member services and educate solicitors.

"We believe that consultation with the profession is vital to inform the recommendations we will make to the Council. Findings from the study will be used to shape the Society in future years, with the ultimate aim of trying to add value to existing membership, becoming more relevant to members and driving members' participation in the Society itself."

"The views of the profession will not only shape the task force's recommendations, but, ultimately, the future role of the Law Society"

Independent and inclusive research

The task force decided it was necessary to engage expert consultants to conduct this research for a variety of reasons. Primarily, the task force recognised a need to ensure both the independence of the research's outputs and to facilitate as inclusive as possible consultation with all members of the profession. While the task force consulted with representatives of 24 of the 29 bar

associations earlier in the year, regarding a wide range of topics, in the main, the majority of these representatives were partners or sole practitioners. As such, the outputs of the research with the representatives from bar associations

THE RESEARCH METHODOLOGY

QUALITATIVE: 16 IN-DEPTH INTERVIEWS

Qualitative research was carried out by Millward Brown Lansdowne in early August. It took the form of 16 unstructured confidential interviews of 16 solicitors in a free-flowing conversation, which was directed to topics of interest by an independent experienced qualitative facilitator.

In choosing these solicitors, Millward Brown Lansdowne ensured that a complete solicitor demographic was represented, as far as possible. The solicitors selected represented practitioners in small, medium and large-sized firms; in city and rural practices; those practising in-house; and out-of-work solicitors. Number of years

qualified and gender demographics were also included.

QUANTITATIVE: AN ONLINE CENSUS SURVEY

The online survey – which will form the quantitative research aspect of the project – will be carried out in September. This research will assess the extent to which perceptions identified in the earlier qualitative phase are commonplace throughout the membership, or whether they are held by smaller and varied groups within it.

The large sample sizes associated with quantitative research will allow Millward Brown Lansdowne to 'mine' the data, to explore views of different solicitor types and how each has

an impact on the total.

The research agency has recommended an online survey of all solicitors for whom direct desktop email addresses are available, so that they can email them an invitation to participate. A smaller telephone survey will be run in tandem, which will contact a sample of solicitors – approximately 100 – for whom the Society does not have email addresses.

WORKSHOPS: TURNING THE RESEARCH INTO ACTION

Millward Brown Lansdowne will then discuss the results of the research with the task force in order to determine the next steps. Millward has recommended the medium of workshops, which will

include formal presentations of the research, interactive question-and-answer sessions, mining of data for new insight, and an opportunity for task force members to pose 'what if' hypotheses through working with moderators.

Working with the research agency, the task force will explore the initiatives identified in the research and through the workshops that will make the Law Society more relevant for all of its members. It will identify where the potential exists to further engage with members.

Millward Brown Lansdowne will take away the results from the workshops and compile a report on the views expressed at these sessions.



JOHN P SHAW

John P Shaw is chairman of the task force. John was born in Dundalk, Co Louth, and was educated in UCD and Blackhall Place, graduating in 1984. He has worked in the litigation department of Michael Houlihan & Partners since 1984.

He was managing partner at Michael Houlihan & Partners for seven years and is currently county solicitor to Clare County Council. He has represented clients before the Moriarty and Mahon Tribunals.

John has served on the Law Society Council for 12 years. In that time, he has contributed to the work of many committees and has chaired the Guidance and Ethics Committee and the Complaints and Client Relations Committee.

He served as junior vice-president of the Society in 2010.

risked not reflecting as broad a spectrum of members as possible in terms of age, gender, number of years qualified etc. Nonetheless, the input from the representatives of the bar associations greatly contributed to the Society's brief to the research consultants.

Earlier this year, this broad research brief was circulated to a number of research agencies seeking their suggestions to design a research methodology for this consultation. A number of research agencies were selected for interview.

Ultimately, Millward Brown Lansdowne was selected, on the bases that their methodology was the most appropriate, they have unparalleled experience in conducting membership studies for membership organisations, and a competitive price.

Their research methodology will be threefold and will comprise both qualitative and quantitative research, the results of which will be explored through workshops.

How will the survey work?

Millward Brown Lansdowne will email an electronic

invitation to all members and practising certificate holders in September.

The survey will take approximately 15 minutes to complete.

The electronic invitation can only be sent to unique direct desktop email addresses, for example, addresses such as:

'yourname@nameofyourfirm.ie' and not 'info@nameofyourfirm.ie'.

What can solicitors expect?

The survey is currently being independently designed by Millward Brown Lansdowne who will base its questions on the views of the 16 solicitors interviewed by them during the qualitative stage of the research (see panel).

The broad research brief given to Millward Brown Lansdowne asked it to conduct research to obtain members' views on the Society's representative, member services and regulatory functions – both now and for the future – which will inform the Society's communication strategy. It is likely that these topics will appear in the research. 

FUTURE OF THE LAW SOCIETY TASK FORCE

- John P Shaw (chairman)
- William Aylmer (Council member)
- Donald Binchy (president)
- Chris Callan (solicitor in practice, Roscommon)
- Mary Keane, (deputy director general)
- Liam Kennedy (Council member)
- Ronan Kennedy (solicitor in practice, Tipperary)
- TP Kennedy (director of education)
- James McCourt (Council member)
- Ken Murphy (director general)
- Kevin O'Higgins (Council member)
- Emma-Jane Williams (secretary to the task force).

FAILURE OF REGULATION IS 'A SOURCE OF RIGHTEOUS ANGER'

At the Society's annual dinner, President Michael D Higgins addressed the regulatory and ethical failures inherent in the collapse of the 'Celtic Tiger' and the resulting collapse of trust in Ireland's institutions. **Mark McDermott** reports



Mark McDermott
is editor of the Law
Society Gazette

"In present circumstances, as our citizens try to cope with the severe impact of the recent and current ongoing economic downturn, issues of accountability for the failures that occurred are a source of their righteous anger," President Michael D Higgins stated during his speech at the Law Society's Annual Dinner on 13 July 2012.

"The failure to deliver vigilance on behalf of citizens, on the part of persons and institutions in whom trust had been placed, has had devastating consequences and is a source of righteous anger among the public."

Speaking at Blackhall Place, President Higgins said that the building of trust in institutions was now urgent, but had to take place in a context that recognised those areas where comprehensive damage had been inflicted by institutions – not only on themselves, but on the public.

"The crisis in the financial system was not just a technical failure or the failure of regulation," he said. "The problem was also an intellectual one. Certain assumptions about economic models were allowed to constitute an orthodoxy that went unchallenged – even in the face of empirical evidence that a speculation-based boom was unsustainable and would inevitably lead to bust.

"I was a legislator in that period when the mantra of 'regulation with a light touch' was a central paragraph in the prepared and approved speeches of those who were key decision makers and opinion leaders," he added. "The tragedy of so many professions – accounting, auditing, law, civil, state, and even clerical – is that a philosophy of 'regulation with a light touch' became a slide towards a practice with a laxity on ethics."

He went on to say that the "ethical problem" was a serious one. An aggressively speculative model that aimed to maximise short-term profits might have been legally compliant, he said, but it was at some distance from being morally justifiable or socially sustainable. "That gap has to be closed, cannot be ignored, if we are to have the ethos of a republic of which we can be proud."

He said that Ireland needed to craft a better and fairer society for all its citizens – "one that can again engender trust, a trust that has been squandered in so many ways, in so many areas of life.

"The economic recovery that we hope for cannot be about simply rewinding the tape to the days of the so-called 'Celtic Tiger'. Its concentration must be on creating an economy that, as well as being efficient and competitive, is sustainable, operates on ethical principles, and allows all our citizens to fairly participate in its prosperity."

Loss of trust

Addressing his audience, which consisted chiefly of legal practitioners, President Higgins said that, as lawyers, they were all very conscious of the important ethical contribution that the vast majority of members of the legal profession make "week in and week out" to upholding standards of probity and integrity in the field of law. "You are also aware of the important contribution that ethics and concepts of social justice have to make to a renewed and transformed Ireland.

"You will regret, as I do, that our citizens have lost trust not only in institutions in general but, in particular, trust in the self-regulating professions, including the legal profession – on whom a deep respect had lodged over generations.

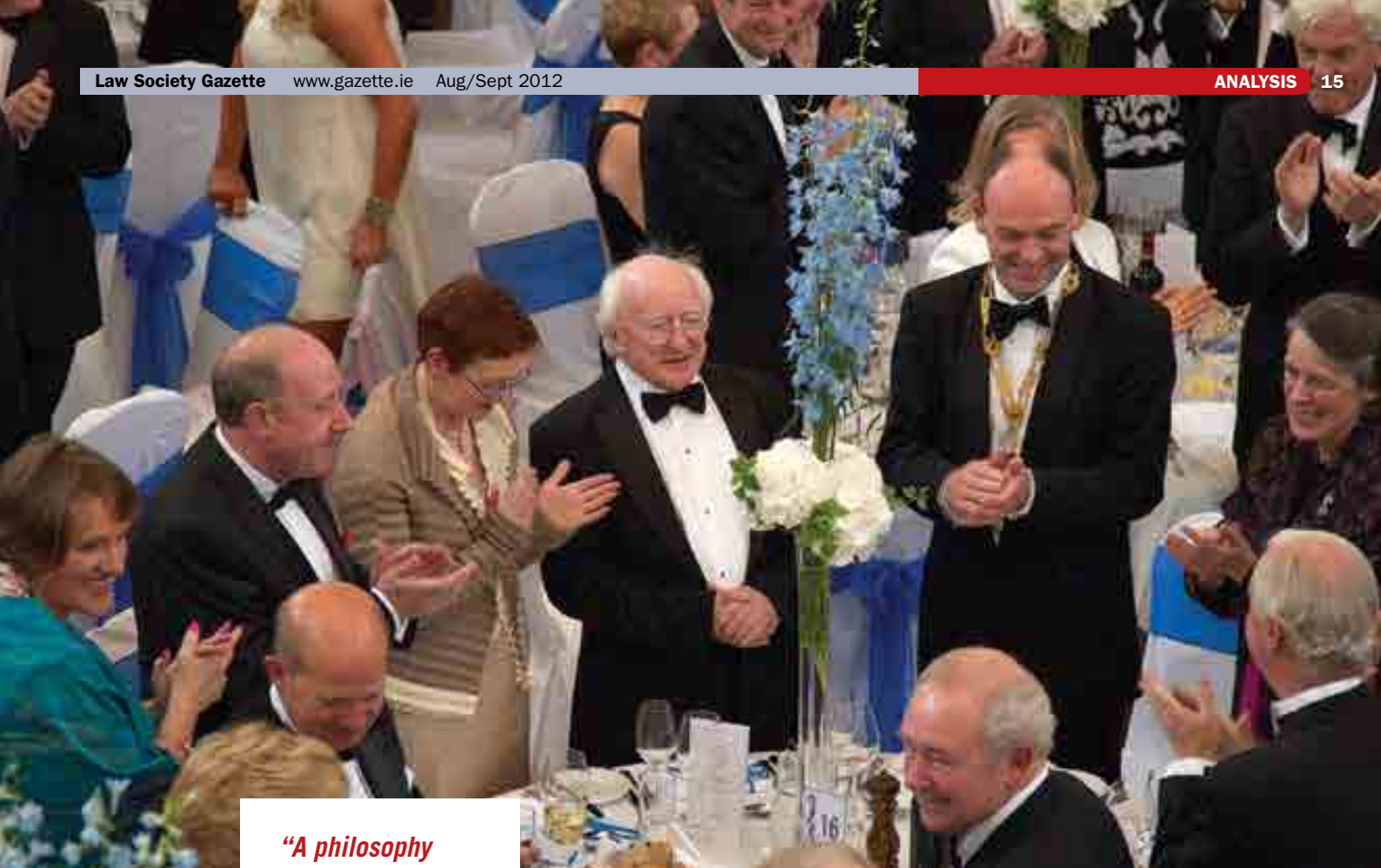
"If we are not to repeat the mistakes of the past and if we are to ensure that the economy we are now trying to build is just and sustainable, then we need to encourage a learning culture to prevail – including in the formation of the professions – where these moral, intellectual and ethical dimensions receive adequate attention; where students are encouraged to think critically, to challenge the prevailing orthodoxies and

to ask the awkward questions; where the professionals of the future do not fall victim to the prevailing norms of the moment but maintain their capacity to think critically, and be moved to evaluate the integrity and value of the work they do."

He added that preparation for a life in the field of law must be "preparation for citizenship", where legal skills had a valuable contribution to make to what he called 'active citizenship', "in the full realisation that it is possible to be modern and ethical at the same time, and that a modernity of lifestyle or consumption, without ethics or social commitment, is hollow".

Moving to the subject of legislative reform, he acknowledged that the legal profession was facing times of

"Preparation for a life in the field of law must be 'preparation for citizenship' in the full realisation that a modernity of lifestyle or consumption, without ethics or social commitment, is hollow"



President Michael D Higgins received a warm welcome at the Law Society's Annual Dinner

“A philosophy of ‘regulation with a light touch’ became a slide towards a practice with a laxity on ethics”

“great change and transformation” as it prepared for legal and other regulatory reforms. “The issue of the law and its reform is, however, far more fundamental than establishing where we are in terms of the historical evolution of legal systems or the precise form of their governance arrangements,” he said.

He quoted the former president of the Law Reform Commission, Mrs Justice Catherine McGuinness (a guest at the annual dinner) who, in her foreword to the commission’s Third Programme of Law Reform 2008-2014, wrote: “It goes without saying that the law has a significant impact on all our lives and, as our society changes, it is necessary for our laws to respond to these changes.”

He commended the commission for its excellent work on statute law restatement and the legislation directory, which, as President, he found “invaluable”. “Restating

and codifying laws also makes the law more accessible to citizens,” he said. “This ought to be an enduring value in the promotion of the rule of law.”

Continuing with this theme, the President added that an advocacy that stopped at legislation was “clearly insufficient”. “Advocacy has to address the reality that the negation of a legislative advance by a negative or ritualistic administrative practice not only is possible, but the evidence is there that it has happened again and again.”

Fundamental cornerstone

Moving to the topic of human rights, President Higgins spoke warmly about the role of lawyers who, by virtue of the public service they perform, belong to “a global community of human rights defenders”. The importance of a just, impartial and even-handed legal system as a fundamental cornerstone of a society based on human rights and equality could

not be overstated, he said.

“Committed lawyers understand that learning about the law does not cease upon graduation from law school and does not rely on fighting cases purely on well-trodden procedural grounds,” he said. “He or she will constantly study, and stay aware of, the law as it evolves and absorb the learning from court decisions to best serve the interests of our fellow citizens.

“A committed lawyer must, in short, be unafraid. She or he must be independent in their practice of the law, but never be tardy when there is a choice to be made between defending the rights of others and looking the other way.

“Over many years as a politician, and an academic with an interest and involvement in the promotion of human rights, I saw at first hand the risks that had to be faced by advocates for justice to advance the development of laws and policies – laws and policies that endeavoured to place vulnerable groups and other minorities on an equal footing, as participants in society, with those more powerful and with those

who have more ready access to resources.

“The slow but steady improvements, which we in Ireland have witnessed in this regard, have occurred as human rights principles and values have come to increasingly inform and influence our national political and legal discourse,” he added. “We must, I suggest, hold fast to and seek to extend that forward movement, and continue to build upon it, if we are to achieve a truly inclusive society. A policy of assisted citizenship, for example, has been suggested as a potential significant advance in the provision of their rights for those with disability and is so worthy of support.

“At the most general level of society at home and abroad, the need to actively combat prejudice and discrimination while promoting equality, integration and inclusion remains acute, and law practitioners of all fields have a role to play in the promotion of such equality, which, in my view, is fundamentally connected to the achievement of justice.” **G**

IWLA CELEBRATES TENTH ANNIVERSARY IN STYLE

The Irish Women Lawyers' Association is ten years old this year. To celebrate, it held a 'Women celebrating women lawyers' gala dinner during the summer at Blackhall Place

The Irish Women Lawyers' Association (IWLA) was launched in Dublin Castle in 2002, by the then Attorney General Rory Brady and Minister for Justice Michael McDowell, to facilitate the advancement of women lawyers in providing a professional and social network. IWLA membership includes judges, solicitors, barristers and academics who share knowledge and experience with fellow women practitioners, trainees, pupils, students and others at IWLA conferences, seminars and social events.

The IWLA, which is affiliated to the European Women Lawyers' Association, marked its tenth anniversary at a gala dinner at

the Law Society on 30 June 2012, in collaboration with Law Society Skillnet, represented on the night by Michelle Ní Longáin (chairman, Law Society Skillnet), Deirdre Fox (solicitor) and by the Bar Council of Ireland representatives Mary Rose Gearty SC and Julie Gillan BL.

Honorary IWLA membership was conferred on six women lawyers by IWLA President Ms Justice Maureen Clark, in recognition of their distinguished achievements. The honorees included:

- Mary Robinson (president of the Mary Robinson Foundation – Climate Justice, former President of Ireland and former UN High Commissioner for Human Rights),

- Chief Justice Susan Denham,
- Ms Justice Catherine McGuinness (retired Supreme Court judge and member of the Council of State),
- Claire Loftus (Director of Public Prosecutions),
- Eileen Creedon (Chief State Solicitor), and
- Deirdre Curtin (Professor of European Law at the University of Amsterdam and

Director of the Amsterdam Centre for European Law and Governance).

“IWLA President Ms Justice Maureen Clark highlighted challenges faced by women lawyers who juggle similarly busy professional and personal lives, emphasising that the latter warrants prioritisation”

Role models
Judge Clark addressed the 180 women present, profiling the honorees as role models for all women lawyers, and women in general, through their professional achievements, leadership and work/life balance. She highlighted challenges faced by women lawyers who juggle similarly busy professional and personal lives, emphasising that the latter warrants prioritisation, in

particular when sharing family responsibilities.

Each honoree referred to women lawyers in Ireland who had inspired them. Trailblazers included the first women to become:

- A law graduate, Lelita Walkington (1888),
- A lawyer to hold public office, Georgie Frost (1919),
- Barristers, Frances Kyle and Averil Deverell (1921),
- A solicitor, Mary Heron (1923),
- A law professor, Frances Moran (1925),
- A judge, Eileen Kennedy (1963), and
- A High Court judge in Ireland, Mella Carroll (1980).



IWLA founder members (front, l to r): Judge Mary Faherty, Senator Ivana Bacik, Paulyn Marrinan Quinn SC (Defence Forces Ombudsman), Gráinne McMurrow SC and Judge Patricia McNamara. (Back, l to r): Judge Mary Ellen Ring, Jennefer Aston (LawBooks Ireland), Aoife Goodman BL, Pauline Walley SC and Ann Harnett-O'Connor BL



IWLA honorees, founder members, president and standing committee members with Law Society Skillnet representatives at the association's tenth anniversary gala dinner, held at the Law Society of Ireland. (Front, l to r): Mary Robinson (president of the Mary Robinson Foundation – Climate Justice), Chief Justice Susan Denham, Ms Justice Catherine McGuinness, Professor Deirdre Curtin, Eileen Creedon (Chief State Solicitor) and Claire Loftus (Director of Public Prosecutions). (Middle, l to r): Judge Mary Ellen Ring, Ms Justice Maureen Clark (president IWLA), Maura Butler (chairperson IWLA), Sinéad Ní Chúlacháin BL, Lucy McRoberts BL, Denise Roche (solicitor), Miriam McColgan (trainee solicitor), Jennefer Aston (LawBooks Ireland), Dr Patricia Conlan (UL), Lauren Tennyson BL, Emma Egan (trainee solicitor), Gráinne McMorrow SC, Judge Mary Faherty and Judge Patricia McNamara. (Back, l to r): Ciara Hanley (solicitor), Páulyn Marrinan Quinn SC (Ombudsman for the Defence Forces), Aoife Goodman BL, Senator Ivana Bacik BL, Deirdre Fox (solicitor), Jane Murphy BL, Michelle Ní Longáin (chairman, Law Society Skillnet), Elaine Wall (solicitor), Elaine Conlan (solicitor) and Pauline Walley SC

(These women lawyers and similar pioneers are profiled in *Gender inJustice: Feminising the Legal Profession?* by Ivana Bacik, Cathyn Costello and Eileen Drew; Dublin: Trinity College, 2003.)

Further inspiration was drawn from the 2011 IWLA honorees, Attorney General Máire Whelan, Moya Quinlan (solicitor), and Ann Power-Forde, judge of the ECtHR.

Chairperson of the IWLA, Maura Butler, praised the vision of the association's founding committee members and acknowledged the sad passing in intervening years of two founder members, Twinkle Egan BL and Judge Miriam Reynolds. Maura recommended the supportive

professional network that is the IWLA to all women lawyers and encouraged women who are non-lawyers to become associate members.

The IWLA's programme of activities will recommence in the Michaelmas term and will be advertised on the association's website, www.iwla.ie. The IWLA will continue to highlight the lack of parity demonstrated in the numbers of women lawyers who become judges, senior counsel and managing partners in circumstances where, in 2012, they comprise a majority of undergraduate law students and solicitors and 40% of full-time members of the Law Library. ☺



IWLA standing committee members at the gala dinner at the Law Society. (Front, l to r): Lucy McRoberts BL (treasurer), Ciara Hanley (solicitor), Maura Butler (chairperson), Jane Murphy BL (secretary) and Jennefer Aston (vice-chairperson). (Back, l to r): Denise Roche (solicitor), Miriam McColgan (trainee solicitor), Sinéad Ní Chulacháin BL, Elaine Wall (solicitor), Elaine Conlan (solicitor), Lauren Tennyson BL, Dr Patricia Conlan (University of Limerick) and Emma Egan (trainee solicitor)

LIFELONG HONORARY IWLA MEMBERSHIP

Honorees received a presentation of 'Lifelong honorary membership of IWLA' from the President of the IWLA, Ms Justice Maureen Clark.



Mary Robinson (president of the Mary Robinson Foundation – Climate Justice)



Chief Justice Susan Denham



Ms Justice Catherine McGuinness



Claire Loftus (Director of Public Prosecutions)



Eileen Creedon (Chief State Solicitor)



Professor Deirdre Curtin

EU COURT SHINES LIGHT ON DISABILITY HATE CRIME

The European Court of Human Rights recently passed judgment on its first disability hate-crime case.

Sarah McDonald reports on *Dordevic v Croatia*



Sarah McDonald is the Law Society's human rights executive

On 24 July 2012, the European Court of Human Rights published its Chamber judgment in the case *Dordevic v Croatia* (application no 41526/10). The court held that there had been violations of article 3 (prohibition of inhuman or degrading treatment), article 8 (protection of private and family life) and article 13 (the right to an effective remedy) of the *European Convention on Human Rights*.

The case concerned the complaint by a mother and her mentally and physically disabled son that they had been harassed, both physically and verbally, for a period of over four years by children living in their neighbourhood, and that authorities had failed to protect them.

The court found that Croatian authorities had failed to effectively address and put an end to the harassment, despite their knowledge that the children had targeted the son and that future abuse was very likely.

Under articles 43 and 44 of the convention, this Chamber judgment is not final. During the three-month period following the delivery of the judgment, any party may request that the case be referred to the Grand Chamber of the court. If such a request is made, a panel of five judges will consider whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver the final judgment.

If the referral request is refused, the Chamber judgment will become final on that day.

Continual harassment

The applicants, Radmila and Dalibor Dordevic, are two Croatian nationals of Serbian ethnicity living together in social housing provided in the Zagreb Municipality.

Dalibor Dordevic is both mentally and physical disabled. He is dependent on his mother for feeding, dressing, personal hygiene and moving about.

Both Dalibor and his mother complained that they had been continuously harassed between July 2008 and February 2011 by pupils from a nearby primary school and that authorities had failed to adequately protect them. A series of incidents were recorded throughout that period, with children ringing the family doorbell at odd times, spitting on Dalibor,

vandalising the family property and shouting obscenities at them. Some of the incidents that occurred were extremely serious, including on one occasion when Dalibor received cigarette burns to his hands and another when his head was hit against iron park railings. The attacks left Dalibor deeply disturbed, afraid and anxious. According to his mother, the harassment and abuse was triggered by Dalibor's disability and their Serbian origin.

Dalibor and his mother complained on numerous occasions to various authorities, including social services, the police, the Ombudsman for Persons with Disabilities, and school authorities. They telephoned the police on numerous occasions reporting incidents and seeking help. Following each call, the police arrived at the scene, sometimes too late and sometimes only to tell the children to disperse or to stop making noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards Dalibor, they were too young to be held criminally responsible for their actions.

In a number of medical reports on Dalibor's condition, doctors recorded his deep distress and fear as a result of the children's attacks on him. Psychotherapy was recommended, as well as a secure, safe and calm environment.

An application – relying in particular on articles 3, 8, 13 and 14 (the prohibition of discrimination) – was lodged to the European Court of Human Rights on 12 July 2010.

The decision of the court

In relation to article 3, the court observed that Dalibor had been continuously harassed and, as a result, had been distressed and afraid for long periods of time. He had also been physically hurt. The court held that the violence and the continuous threat of violence that he had suffered could therefore in principle meet the minimum level of severity necessary to amount to a violation of article 3 – the right to freedom from torture and inhuman and degrading treatment.

The court noted further that the Croatian government had not indicated which authority could

“The court held that the violence and the continuous threat of violence that he had suffered could therefore in principle meet the minimum level of severity necessary to amount to a violation of article 3”



“The issues highlighted in the case outline the need to establish the obligations and duties on states in the context of disability hate crime”

have been held responsible for taking adequate measures to stop the harassment. As early as July 2008, Dalibor’s mother had informed the police about the ongoing harassment and abuse of her son. Afterwards, she had repeatedly contacted them with additional complaints, which she had also brought to the attention of the Ombudsman for Persons with Disabilities and the social services. The authorities had therefore been well aware of the family’s situation.

While the police had interviewed some children about the incidents, they had made no serious attempts to assess what had really been going on. The police had reported that the children had been pestering Dalibor, but it had never been followed by any concrete action, such as adopting policy decisions and monitoring mechanisms to be put in place in order to recognise and prevent future harassment and abuse. The court also made particular reference to the lack of any true involvement by the social services.

The court concluded that, apart from the responses to specific incidents, no relevant action of a general nature had been undertaken by the relevant authorities, despite their knowledge that Dalibor had been systematically targeted and

that future abuse was very likely. As a result, the court found that there had been a violation of Dalibor’s human rights under article 3 of the convention.

In relation to article 8, the court reiterated that states were not only obliged not to harm individuals, they also had a duty to act in order to protect people’s moral integrity from the acts of others. Given the fact that Dalibor and his mother had been subjected to repeated harassment, the mother’s private and family life had been negatively affected too. In the same way that authorities had failed to put in place any particular measures to prevent future abuse and harassment of her son, the authorities had also failed her. There had therefore, also been a violation of article 8.

In relation to article 14 – the prohibition of discrimination – the court noted that the *Croatian Prevention of Discrimination Act* contained specific provisions covering discrimination based on health conditions or disability, as well as ethnic origin. The court further noted that discrimination is likewise prohibited under the Croatian Constitution and the *European Convention on Human Rights*, which is directly applicable to Croatia. Therefore, the court acknowledged that Dalibor and his mother could

have brought proceedings before the ordinary Croatian courts and, in the event that they did not get redress, before the Constitutional Court. As Dalibor and his mother had not attempted to exhaust those remedies in the domestic courts, their complaint under article 14 was rejected and inadmissible.


The court previously acknowledged that it had been impossible for Dalibor and his mother to complain about the acts of harassment and violence. Therefore, it concluded that they had not had an effective remedy in connection with their complaints under article 3 and article 8 of the convention and therefore there was also a violation of article 13.

The court held (under article 41 – just satisfaction) that Croatia was to pay Dalibor and his mother jointly €11,500 in respect of non-pecuniary damage, and €3,856 for costs and expenses.

Interights, who acted as advisors in this case to counsel, Zagreb-based lawyer Ms Ines Boje, has stated that this case is the first disability hate-crime

case decided by the European Court of Human Rights. The issues highlighted in the case outline the need to establish the obligations and duties on states in the context

of disability hate crime – in particular, the need for specific responses from authorities, including early intervention, effective inter-institutional cooperation and measures set in place to support the victims of disability hate-related crimes.

This case clearly outlined the failure of various state agencies to react to the abuse and harassment being endured by Dalibor and Radmila Dordevic. Each of the involved state institutions looked at the situation facing the Dordevic family as belonging to someone else. The inherent failure by state agencies to protect the Dordevic family is not only a problem facing Croatian authorities. The tragic deaths of Fiona Pilkington and Francessca Hardwick in Britain highlighted the urgency of addressing disability hate crime five years ago. It is hoped that this judgment contributes to greater awareness of disability hate crime throughout Europe. 

Hourly billing fails the 'diligent, the efficient and the able'

From: *Chris Ryan, Chris Ryan Solicitors, 18 North King Street, Dublin 7*

With reference to the July issue and the taxing master's speech delivered on 26 June last, I am sure the majority of the legal profession welcome the efforts made to reduce legal costs in these times; however, in my view, valuing one's services by simply allowing fees based on time spent on files and attendance notes is not the way to achieve the objective.

From the client's perspective, a fair fee is often described as being both predictable and providing value commensurate with the money spent. In many situations, hourly billing does neither. And from the practitioner's perspective, a fair fee is one that rewards the solicitor's efficiency and expertise and provides a return on the solicitor's investment in technology and related systems. Hourly billing provides none of these benefits.

We can all boast about producing an incredible result with great value to the client in a short amount of time, based on our expertise, wisdom and prominence in a particular practice area.

Unfortunately, we have all seen too many examples of the opposite – an inefficient or inexperienced firm spending too much time on a case without creating much value and ending



up with a dissatisfied client and an unpaid legal bill. While the profession is now, more than ever, being conditioned to think in terms of hours, time charges are not intuitive to clients, particularly business clients, who are trained to think in terms of planning and budgeting in the context of risk and reward.

Hourly billing is disliked by many solicitors as well as many of the clients we serve. Simply stated, hourly billing provides all the wrong incentives. It puts far too much focus on the process and the mechanics of practising law, and not enough attention on the value of the service delivered or the result achieved.

Hourly billing causes our life

to be consumed by the need to log an increasing number of billable hours. Firms tend to become 'hours factories' and the quality of the representation may decline.

One could argue that firms that base their hourly charges simply on the costs of running an office do not deserve to succeed, or even survive.

Some form of fixed costs for legal work, particularly in litigation, would be a more viable alternative.

Hourly billing, at best, could lead to inefficient practices; at worst, it could end up rewarding and incentivising inefficiency, and it could penalise those who are able to bring cases to a close

quickly. It could also penalise those with greater professional knowledge and skill, as they will tend to work at a more efficient rate.

Hourly billing fails to reward the diligent, the efficient and the able: its focus on the cost of time, a truly movable feast, simply does not reflect the value of work.

An approach to litigation costs based on value pricing rather than hourly billing is one that urgently needs to be worked out and applied.

Rather than treating time as the commodity that is being sold, we should be adopting an approach where skill and experience are the commodities that are sold.

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Call for change in debt-collection procedure injustices

From: Richard E McDonnell, Richard H McDonnell, Market Square, Ardee, Co Louth

I would like to use your pages to invite the Law Society to lobby for a change in current District Court procedures in proceedings for the recovery of a 'debt or liquidated sum'. As practitioners will be aware, a summons is served on a defendant that invites the defendant to file and serve a notice of intention to defend.

It is my experience that most non-solicitors do not fully understand what requires to be done (which is why many consult solicitors in the first place), but fearing that they cannot afford to engage the services of a solicitor – although, particularly outside the major urban

areas, this ought not to be an issue, as most solicitors will help people in difficulty on a *pro bono* basis – they decide to appear themselves in court on the date specified for hearing. I know of innumerable cases where such a defendant (very often with a perfectly *bona fide* defence) duly attends the court, sits there all day until eventually, around 4pm, plucks up the courage to ask the court clerk when his case might be dealt with. What he doesn't know, of course, is that his case will not have been listed at all because no notice of intention to defend has been filed. By then, it is too late for him, as the mechanism takes on a life of its own at that stage and the solicitors for the creditor or plaintiff can simply

apply for judgment in the office the next day.

Usually, months pass by until the unfortunate defendant is served with the summons requiring him to attend court to give evidence as to his means (the precursor to an instalment order being granted). He then returns to the court and tries to explain to the judge that he was there previously to defend the case and sat in court all day, only for the judge to (quite correctly, of course) point out to him that the horse has already long since galloped across the horizon and that there is nothing he can do for the debtor, save deal with the application for an instalment order. This is, of course, grossly unfair, as now the debtor is left in the situation whereby

the only way he can possibly have the judgment against him overturned is to lodge the entire sum due in court, which, in most cases, a defendant is simply not in a position to do.

I am therefore asking the Society to lobby the necessary Government department or court rules office so as to bring about a change whereby even an uncontested summons should at least be listed on its initial return date, so that if a defendant without the benefit of legal advice turns up on the first day, he will have his opportunity to be heard. Apart from anything else, it will save the courts and the profession a huge amount of unnecessary work in subsequently trying to undo these injustices on a regular basis.

'Diversionary tactics' ignored the Prison Inreach service

From: Dr Conor O'Neill (consultant forensic psychiatrist), Mary Fitzpatrick (community mental health nurse), Martin Caddow (community mental health nurse), Fintan Caddow (community mental health nurse), Dr Myles Doyle (registrar in forensic psychiatry), Dr Mary Davoren (senior registrar in forensic psychiatry, Prison Inreach and Court Liaison Service)

We read with interest the article 'Diversionary tactics' by Charles O'Mahony in the June 2012 issue of the *Law Society Gazette* (see 'Human Rights Watch', p16). The article stated that "effective diversionary procedures [to enable diversion of people with mental health problems away from the criminal justice system] ... are wholly underdeveloped in Ireland. There is a clear need to develop, fund and monitor these types of programmes."

Readers may not be familiar with the Prison Inreach and Court Liaison Service (PICLS) based at Cloverhill Prison, Ireland's main remand centre. This service has been delivered by the National Forensic Mental Health Service since 2006, with a full-time multidisciplinary team in place since 2007. The service provides a systematic screening process to identify people with major mental illness remanded

to Cloverhill, which receives the majority of remands nationally. The service conducts comprehensive assessments for people thus identified, as well as following referral from the courts, other prisons and other agencies. PICLS arranges diversion to community inpatient and outpatient settings, the Central Mental Hospital, and a range of other treatment locations, including addiction treatment facilities and nursing homes. Such diversions to community settings are arranged using existing bail laws, as

well as the *Mental Health Act 2001* and *Criminal Law (Insanity) Act 2006* when required.

The PICLS service has systematically screened over 20,000 new remands and arranged over 500 diversions of persons with mental-health problems from the criminal justice system through the courts to community treatment settings to date, within existing legislation. The Prison Inreach and Court Liaison Service received awards for best hospital project and best overall healthcare project at

the Irish Healthcare Awards 2009.

The service has been described in numerous legal and healthcare settings in Ireland and abroad, including presentations to the annual meeting of the Association for Criminal Justice Research and Development (14 October 2011), the International Association of Forensic Mental Health Services (May 2012), a previous article in the *Judicial Studies Institute Journal* (McInerney and O'Neill, 2008:2, pp147-158) and in the national mainstream press.

A textbook case for SA government

From: Emma Keane BL, Law Library, Four Courts, Dublin 7; DX 811110

The South African government is violating the constitutional right of students to an education by failing to give them textbooks. I felt glad, but slightly wary, when reading the ruling of the South African High Court in Pretoria on 17 May 2012. The court went so far as to order that the relevant education department form a plan to resolve the issue by 15 June 2012. The court was fully entitled to do this, South Africa being the only jurisdiction with an extensive list of directly enforceable socioeconomic



rights in its constitution.

The High Court ruling reminds me of an important case decided by the South African Constitutional Court in 2000, *Government of the Republic of South Africa v Grootboom*. This concerned squatters who were

homeless as a result of eviction from their informal settlement on private land. The court ordered that the various government departments devise, fund, and implement measures to provide relief to those in desperate need. Unfortunately, however, the order was not effectively carried out. Grootboom, the woman in whose name the case was taken, died in 2008, still homeless and penniless.

I sincerely hope that the High Court's ruling will be followed and that the 1.7 million students who stand to be directly affected by the order will truly benefit from it.

REAP

what you

SOW



Aisling Meehan is a solicitor, tax consultant and farmer who practises under the name Aisling Meehan Agricultural Solicitors. She would like to thank Oliver Ryan-Purcell, solicitor, for his input.

Farm partnerships have an important role to play in the development of Ireland's largest indigenous industry, and milk production partnerships are currently the most prevalent. Aisling Meehan milks the system

In 2010, the Department of Agriculture published a report entitled *Food Harvest 2020*, which was and continues to be a comprehensive roadmap for the development of Ireland's key indigenous sector.

The title of the report neatly encapsulates the Food Harvest Committee's conviction that this sector can deliver real returns and be at the forefront of our economic recovery. The targets set by the committee are challenging, but they are also achievable.

The report highlights the need to accelerate the restructuring process at farm level and includes the recommendation that "any remaining obstacles to partnership formation or other new models of farming should be removed".

Following on from *Food Harvest* was a report published by the National Rural Network (NRN) in February 2012, which was prepared in order to inform the Department of Agriculture and other

agencies, organisations and stakeholders on specific changes that could be made to the farm partnerships concept and approach in order to widen their appeal to farm families. Among the recommendations in the NRN report was the need to promote the concept of

farm partnerships. The report recognised that information needed to be provided both farmers and professionals (consultants, advisers, accountants and solicitors).

Home on the range

Milk production partnerships (MPPs) are the prevalent type of formalised partnerships currently in operation on Irish farms. MPPs are governed by regulation 32 of the *European Communities (Milk Quota) Regulations 2008* (SI 227 of 2008) (as amended). Regulation 41 provides for the making of detailed rules. These rules are available from Teagasc and were last updated on 8 November 2011. Teagasc is the appointed registrar for the registration of MPPs. An MPP may not operate until a

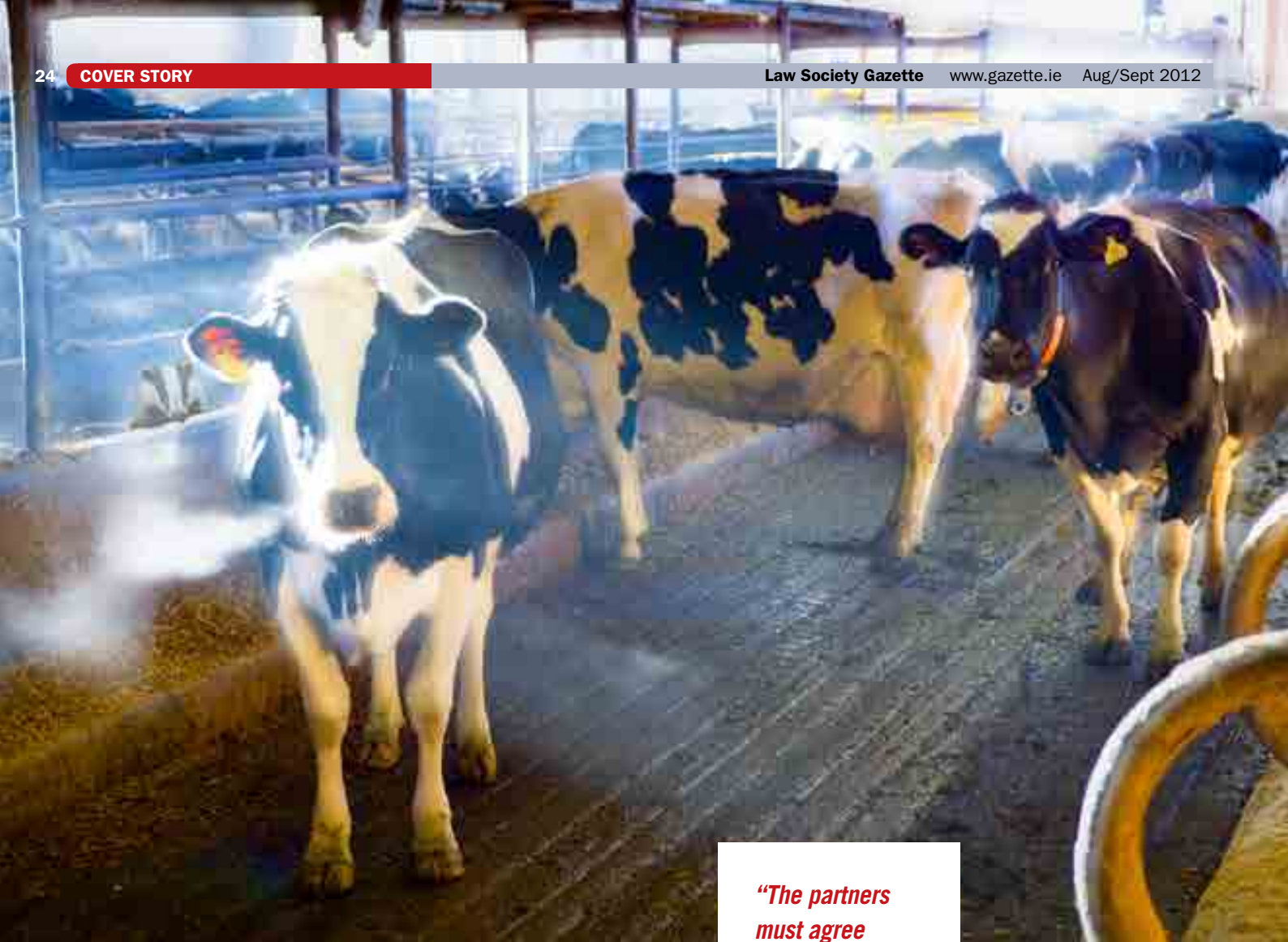
"The agricultural sector can deliver real returns and be at the forefront of our economic recovery"



FAST FACTS

- > Agri-food, fisheries and forestry represent Ireland's largest indigenous industry
- > Collectively, they employ 150,000 people
- > They have an annual output of over €24 billion, including a multi-billion export industry





Mad cows? That'll be the cold hands

certificate of registration is obtained from Teagasc following approval of an application to have an MPP registered.

An MPP has been defined by Teagasc as “a minimum of two partners, as specified under ‘Who can be partners in a milk production partnership?’, comprising of natural or legal persons who carry on business as a partnership within the meaning of the *Partnership Act 1890* in respect of milk production and have been approved and registered by Teagasc”.

In order to form an MPP, the partnership must consist of at least one milk producer who has produced and delivered milk in each of the two milk quota years preceding the milk quota year in which the partnership is established. The partnership can also consist of persons from the following categories:

- A new entrant with the appropriate qualifications who is participating with a parent who is a milk producer,
- Other farmers who have been farming in their own right for a minimum of two years immediately preceding the milk quota year in which the partnership is established, or

- A farm manager with the appropriate qualifications followed by at least three years employment in farm management.

A person will be deemed to continue to qualify under each of the above categories if, for part or all of the period concerned, they have incorporated their status and continue to hold a majority shareholding in the relevant company. Access to a milk quota under the Milk Quota Trading Scheme for each category of partner will be set out in the detailed rules of that scheme. Other persons aside from those described in the categories above may also be registered as participants in the partnership, but will not have access to a milk quota in their own right from the Milk Quota Trading Scheme or the Temporary Leasing Scheme.

Eggs in one basket

The rules provide that the partners must agree to pool all agricultural land, assets,

“The partners must agree to pool all agricultural land, assets, entitlements and quota owned, leased or at their disposal”

entitlements and quota owned, leased or at their disposal within the State at the time of the partnership agreement and acquired during the period of the agreement, subject to specified limited exceptions. These assets are then licensed to the partnership for the term of

the agreement, the minimum term of which is five years. There is no minimum or maximum input requirement. The partnership must operate through a joint bank account in the name of the partnership. Off-farm (non-partnership) income of new entrants and farm managers has a ceiling of €40,000. There is a distance limit between partners’ lands, which shall not exceed 100km. The family homes of the partners are excluded from the partnership agreement.

Assets such as stock, machinery and cash contributions are normally transferred by the partners to the MPP at an agreed value on the commencement of the partnership and form the initial capital contribution of each of the partners to the partnership. The

DOWN ON THE FARM

A Teagasc study of milk production partnerships (MPPs) was undertaken between 2008 and 2012. The study identified the following potential benefits of farm partnerships:

- The development of larger farm enterprises by merging two previously independent enterprises,
- Access to additional milk quota in certain circumstances,
- Increased efficiency by consolidating land and facilities and by developing new management strategies and business plans,
- The sharing of workloads to cope with the extra work involved in up-scaling and applying new technologies on the farm,
- The introduction of new skills, specialisations and occupational preferences

- to enhance farm operations,
- The fostering of diversification of farm enterprises by bringing in new expertise and business interests,
- The facilitation of off-farm employment,
- The sharing of decision-making between members of farm families,
- Reduced isolation in farmers' working lives and improved farm safety,
- The easing of farm family domestic issues, such as the sharing of childcare responsibilities,
- Allows farmers time off to pursue other interests and take holidays, improving their quality of life.

Source: Maken-Walsh (2011)

profits and losses are shared in accordance with the specific agreement of the partners, and the percentage share is based on normal business considerations such as the relative contribution of labour and management, the capital contributed, assets put at the disposal of the partnership (rent free), the recent profits made by each, or a specific budgeted figure.

Stable door

The detailed rules for the operation of MPPs provide that every application for registration of an MPP should contain a copy of a formal written partnership agreement. The farm partnership agreement contains the principal provisions of the partnership, including provisions governing the formation and dissolution of the MPP. Normally an on-farm agreement is also prepared in the formation of an MPP.

The on-farm agreement governs the day-to-day work and management details between the partners and is supplemental to the partnership agreement. In the event of contradiction between the two agreements, the precedent farm partnership agreement provides that the provisions of the farm partnership agreement shall prevail. A specimen farm partnership agreement and on-farm agreement are available in the precedent section of the Law Society website (see 'Look it up').

The specimen farm partnership agreement provides for each partner to give a number of warranties. Any digressions from the warranties have to be disclosed

in a disclosure letter.

The specimen farm partnership agreement provides that the partners shall be liable for the debts of the partnership in the proportions in which they are entitled to share profits. It further provides for partners to indemnify the other partners in certain circumstances for personal liabilities and/or partnership debts.


Bringing home the bacon

A number of tax concessions have been negotiated with Revenue to ensure that a farmer moving into or out of a milk production partnership is not disadvantaged by not remaining as a sole trader. Revenue have published a booklet *Taxation Issues for Milk Production Partnerships* to explain the principal features of the Irish tax system as it relates to farmers establishing and registering an MPP, which is available on the Revenue website. There is a separate booklet, *VAT Issues for Milk Production Partnerships*, outlining the principal features of the VAT system as it relates to MPPs.

Each partner's share of the profits or losses is treated for tax purposes as profits or losses of a separate business carried on by that partner, and the partners are obliged to make their own self-assessment tax returns. Arising from a recommendation in the NRN report, the *Finance Act 2012* provides for enhanced stock relief for MPPs. This provision applies to accounting periods between 1 January 2012 and 31 December 2015; however, it is subject to an order of the Minister for Finance, which at the time of

writing has not been signed. Section 20 of the *Finance Act 2012* provides that, where a person (other than a 'qualifying farmer') is a partner in a registered farm partnership, 50% of the increase in the value of trading stock will be available to offset against trading profits, rather than 25% as currently applies.

Sow the seed

Farm partnerships have an important role to play in the development of Irish agriculture and the achievement of the targets in the *Food Harvest 2020* report. The NRN report cites as one of the main barriers to farm partnerships a lack of awareness of what partnerships have to offer and of the information/advice available. The report specifically recommends that promoting the concept of farm partnerships and involving farmers are the most fundamental issues that need to be addressed. Given the role of solicitors in this process, I would urge colleagues to familiarise themselves with the concept, if they have not already done so, and promote it among their farming clients. 

LOOK IT UP

Legislation:

- *European Communities (Milk Quota) Regulations 2008* (SI 227 of 2008) (as amended)
- *Finance Act 2012*
- *Partnership Act 1890*

Literature:

- Department of Agriculture, Fisheries and Food, *Food Harvest 2020 – a Vision for Irish Agri-food and Fisheries*, July 2010;
- National Rural Network, *Potential of Farm Partnerships: to Facilitate Entry into and Establishment in Farming*, February 2012
- Specimen farm partnership agreement and on-farm agreement available at www.lawsociety.ie/Pages/Members-Advice-Guidance-and-Policy-CMS/Precedents-for-Practice/
- Revenue Commissioners, *Taxation Issues for Milk Production Partnerships* available at www.revenue.ie/en/tax/it/leaflets/index.html
- Teagasc, *Brief Guide to Milk Production Partnership Regulations*, www.teagasc.ie/advisory/milk_partnership/Brief_Guide_to_MPP_Regulations_2008.pdf
- Teagasc, *Collaborative Farming Arrangements*, www.teagasc.ie/collaborativearrangements/index.asp
- Revenue Commissioners, *VAT Issues for Milk Production Partnerships*, available at www.revenue.ie/en/tax/vat/leaflets/index.html

“One of the main barriers to farm partnerships is a lack of awareness of what partnerships have to offer”

debt

BE NOT PROUD

Many solicitors' clients now find themselves financially over-extended and have difficulty in balancing the books. **Bill Holohan** offers some simple advice for those who are having difficulty with their creditors



Bill Holohan is partner in Holohan Solicitors and the author of Bankruptcy Law and Practice

*"Debt, be not proud, though some have called thee
Mighty and dreadful, for thou art not so"*
(with apologies to John Donne, 1572-1631)

There was a time when life was straightforward enough for Ireland's business professionals. Having qualified in accountancy, architecture, engineering, medicine, veterinary science, dentistry, law and so on, they were safe in the knowledge that their practices would ensure them comfortable livelihoods, allowing them to invest wisely in safe bets, like bank shares and holiday homes.

Even in recession, professionals were a 'necessary evil', and one could always make a comfortable living.

Then came the property boom. A widespread frenzy took hold. People who once were happy (but only after very careful and prolonged thought) investing in a small holiday home in Connemara or West Cork were suddenly persuaded to put their money into projects such as five-star spa hotels in rural areas of the former Yugoslavia, apartment developments in the Cape Verde Islands, office blocks in eastern Germany, and Bulgarian ski resorts that they never saw before, during or after parting with their money.

Professional advisers convinced themselves that they were missing out on a good thing and became players in the property game themselves, all jumping on the property development bandwagon. No one enquired why they would contemplate burying money in an unseen bog in Bulgaria, when they would not bury it in an unseen bog in Ireland.

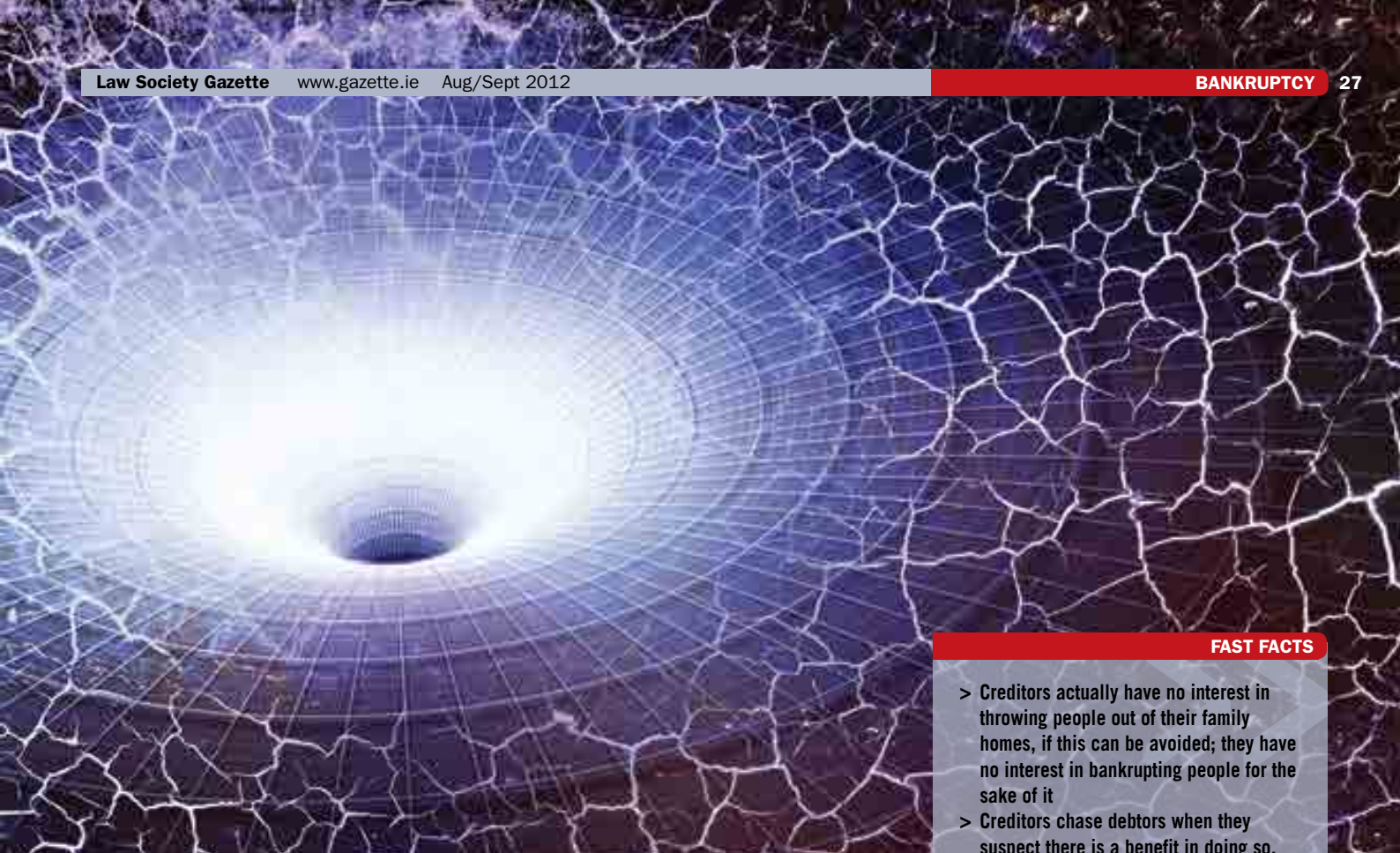
What goes up

It appears that many were deluded into thinking that property values could only continue to rise and that they need have no worries, capital appreciation in values taking care of everything. Suddenly, people did not hesitate to offer open-ended personal guarantees, thereby exposing all their personal assets, including family homes, in circumstances where they would never have done so if there was any perception of actual risk. Even the auctioneers and valuers were not exempt.

Since 2009, people have come to me enquiring about insolvency options, not only because of capital borrowings deficits, but also because of a severe contraction

in incomes and, in the case of some construction industry professionals, its complete disappearance. Large numbers of professionals now find themselves financially over-extended and have difficulty in balancing the books.

"Creditors operate on the basis of evaluating the costs and benefits of alternative courses of action"



Many are saddled with partially completed or empty developments, with little or no income coming in to allow them to service interest on, or repay loans. No longer self-financing ('washing its face'), these projects have now become financial millstones. Supplementing shortfalls from income is no longer an option. Many find themselves unable to sustain their previous lifestyles.

In certain professions, including dentistry and construction, the loss of state-funded income meant practices had to close completely, leaving people struggling to deal with residual debts and liabilities, but with little or no income to service them.

Must come down

Consequently, many clients worry to the point of stress-induced illnesses or worse (including depression and suicidal thoughts), particularly where they are hiding the truth from spouses and or life/business partners. The problem is, some of them worry alone, when there is no need to do so. The old cliché, that when you owe the bank €50,000, you have a problem, but when you owe them €500,000, they have the problem is very true – as is the cliché that a problem shared is a problem halved.

Sometimes, I find that I am the first person with whom debtors have chosen to share their worries. Some of these people would be known to me professionally and would have

hesitated long and hard, perhaps out of a sense of embarrassment, before coming to see me. Some would even resort to the subterfuge that they are enquiring on behalf of others, only abandoning the subterfuge when they realise that their situation is not uncommon and that there is no need for embarrassment. Otherwise sane, sober, sensible individuals behave in a way in which they would never advise others to do – avoiding dealing with the situation, ignoring, and in some cases thereby infuriating and alienating creditors unnecessarily.

In my experience, creditors actually have no interest in throwing people out of their family homes, if this can be avoided. They achieve nothing or very little by doing this. They have no interest in bankrupting people for the sake of it. They would only do this if there is some particular purpose to be achieved by it.

Anyone who has ever come to me saying they want to make themselves a bankrupt has been greeted with the comment that they may well be of a different view when they have been advised as to what bankruptcy actually involves. Over the years, only one person who initially came to me saying they wanted to make themselves a bankrupt has gone away from such a meeting of the same view.

“Bankruptcy is to be avoided if at all possible and, in the vast majority of cases, is easily avoided”

FAST FACTS

- > Creditors actually have no interest in throwing people out of their family homes, if this can be avoided; they have no interest in bankrupting people for the sake of it
- > Creditors chase debtors when they suspect there is a benefit in doing so, obtaining a judgment only when they perceive an advantage in doing so
- > In the absence of full information, creditors will assume that there is some point in pursuing a debtor. If there is no point, then they need to be told this
- > The golden rule is to communicate with creditors and inform them

Frank McCourt spoke of there being miserable Irish childhoods and then there being miserable Limerick childhoods. In comparable bankruptcy terms, Irish bankruptcy is still in the category of Limerick childhoods. It is to be avoided if at all possible and, in the vast majority of cases, is easily avoided. Creditors operate on the basis of evaluating the costs and benefits of alternative courses of action, and if there is an easy route to the same level of recovery as one involving considerable trouble and expense, even if this means accepting a considerable write-down of their debts, more often than not they will be open to agreement.

The real deal

The first step in dealing with creditors is to stop taking the 'ostrich approach'. Creditors chase debtors when they suspect there is a

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benefit in doing so, obtaining a judgment only when they perceive an advantage in doing so. (With larger debts, they will obtain a judgment as a matter of course.) They will not do so when they know there is no benefit. In the absence of full information, creditors will assume that there is some point in pursuing a debtor. If there is no point, then they need to be told this. The golden rule is to communicate with creditors and inform them.

The following are some simple suggestions:

- Solicitors should advise their clients not to wait for creditors to contact them. Clients should make the first contact, telling them that they are having trouble meeting their commitments.
- Your clients should draw up a budget, and make sure it is realistic. It is better to make smaller payments with certainty of payment than to promise too much and miss payments. If a repayment is to be funded out of the sale of property, then a realistic valuation needs to be put on the property, not an overly optimistic one. It is better to exceed expectations than not to meet them. The client should explain why they are in financial trouble, what they are doing about it and whether their financial situation is likely to get better or worse. It's important to be realistic, frank and open. They should be prepared to provide evidence to back up what they are saying by, for example, completing a budget and a formal statement of affairs and to have it verified. This can be a simple two-pager showing assets and liabilities on one page, and income and

"The first step in dealing with creditors is to stop taking the ostrich approach ... the golden rule is to communicate with creditors"

expenditure on the other, all the way up to the NAMA form of statement of affairs available for download at www.nama.ie/about-our-work/debtor-business-plans/. Advice on budgeting is available from the Money Advice and Budgeting Service website at www.mabs.ie/self-help-guide.

- Clients should know exactly what they can and cannot afford to do. If they cannot afford to make the payment sought by creditors, then they should evaluate what they can afford to pay and when. They should decide on what they are going to suggest in respect of payments and how much would be paid to each creditor, and when. If they are unlikely to be able to repay their creditors, or if there is likely to be some shortfall in payment, then the reasons for this should be explained


clearly. Rather than fighting about the balance, the creditor may be willing to accept what can realistically be recovered, as a full and final settlement. In this way, the family home can usually be protected.

- Follow up on and confirm agreed arrangements in writing. Letters are proof of what has been agreed, so it is vital that the client, or someone acting on their behalf, confirms everything in writing. Keep a copy of every letter sent and received.
- Clients should tell creditors about other debts they have if they are not giving them a full statement of affairs. Also, they should tell them if, and when, other creditors have accepted their offers. It might persuade them to accept as well, particularly if they do not wish to be seen as acting unreasonably. If

clients are seen to be dealing fairly, reasonably and equally with all creditors, they may hold off.

- When making reduced payments, it is worth asking creditors to reduce or waive interest for a while. Creditors do not have to agree to reduce or waive interest, but they might, especially if the client is good at keeping to agreements and making regular payments (even if these are reduced payments). If creditors do agree, you can be quite sure that they will bring the normal charges back in if clients start missing payments.
- Clients should not be pressured into paying more to creditors simply because they 'shout the loudest'. Payments should be based on an evaluation of the consequences of not paying any particular debt, the overall amount of the debts, and the amount the client owes to that particular creditor.
- Clients should be advised to pay something, even if they cannot afford the full amount. They should pay what they have said they can afford, even if the creditor has turned down the offer. If the client ends up in court, it is vital to show that they are trying to do their best.

Remember that bankruptcy suits no one. If lenders on property are looking at a negative equity situation, then they certainly will not want to go down the bankruptcy route, as that would trigger a capital loss. It would be better for them to wait and play a long game, with some interest payments being made, in the hope that, in a future, controlled-sale environment, they could recover the maximum amount possible.

Most important of all: your client should not suffer alone – encourage them to talk to someone. 



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WHAT DOES IT *profit* A MAN?

The law of easements and profits *à prendre* acquired by prescription is complex, and it appears that any attempts to legislate have been problematic. The *Land and Conveyancing Law Reform Act 2009* changed the manner in which a legal right to an easement or profit *à prendre* could be acquired (section 34).

That is, it introduced a statutory scheme based on a user period of 12 years (section 33) – the legal right only being acquired on registration of a court order (section 35(4)). It provided for a three-year transitional period within which claims acquired or in the process of being acquired under the old law could be established until 30 November 2012 (section 38). Any claims to such rights after that date would be based on the new statutory scheme.

No changes in the *Land Registration Rules* or practice were required as a result, as – both before and after the 2009 act – the only way in which such rights could be registered was on foot of a court order under section 69(1)(h) of the *Registration of Title Act 1964*.

New method of prescription

Under the 2009 act, acquisition under both common law and the doctrine of lost modern grant were abolished. The *Prescription Act 1832* was repealed and replaced with a new single statutory method of prescription. The transitional provisions provided for claims under the old law to be established until 30 November 2012.

However, the statutory scheme led to difficulties being encountered by practitioners on the closing of sales. The most common easement causing difficulty was a right of way, as purchasers were not willing to close without the benefit of a court order, duly registered as appropriate, on sales that included rights claimed by prescription. Prior to the 2009

act, parties were willing to exchange contracts on the basis of a statutory declaration as to user.

As a result of the difficulties that were encountered, amending legislation in the form of the *Civil Law (Miscellaneous Provisions) Act 2011* was passed on 2 August 2011, which provided in parts 12 and 13 for an alternative mechanism for registration by way of application directly to the PRA under section 49A of the *Registration of Title Act 1964* (that is, as an alternative to a court application) for uncontested claims. Changes to the *Land Registration Rules* and forms were required and introduced under SI 559 of 2011 from 2 November 2011.

New form of application

Section 37(1)(b) of the 2011 act amended section 35 of the 2009 act and provided for an application to be made directly to the PRA under a new section 49A of the *Registration of Title Act 1964*. It confers jurisdiction on the PRA to register easements and profits *à prendre* acquired by prescription upon:

- An application by the dominant owner, and
- On the basis that there is no dispute between the dominant and servient owners.

If there is a dispute, or if the PRA is not otherwise satisfied that the claim has been substantiated, it will refuse the application and the claimant can appeal to

court under section 19(2) of the *Registration of Title Act 1964* or under section 35 of the act of 2009. A party may apply to court *ab initio*.

Subsection 2 of the new section 49A provides that subsection 1 applies only in relation to claims in respect of which the land benefited by the easement or profit *à prendre* is registered land, or the claim is made as part of an application for first registration of that land. Therefore, if the property benefiting from the right (the dominant tenement) is unregistered, an application for first registration must be made at the

“It appears in the applications lodged by the PRA to date that Form 5A is not being fully adhered to. Practitioners are advised to fully consult the notes to the form and incorporate suitable averments into the application”

A new scheme of registration of easements and profits *à prendre* has been operated by the Property Registration Authority since 2 November 2011. **John Deeney** and **Liz Pope** walk the walk



John Deeney is former deputy registrar of the Property Registration Authority



Liz Pope is a barrister and examiner of titles in the Waterford office of the PRA

FAST FACTS

- > The *Land and Conveyancing Law Reform Act 2009* changed the manner in which a legal right to an easement or profit *à prendre* could be acquired
- > Acquisition under both common law and the doctrine of lost modern grant were abolished
- > Transitional provisions provided for claims under the old law to be established until 30 November 2012
- > However, the statutory scheme led to difficulties being encountered by practitioners on the closing of sales, and amending legislation was passed on 2 August 2011

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same time to open a new folio for the dominant land.

Section 38 of the 2011 act amends section 38 of the 2009 act by substituting “within 12 years” for “within three years”. This extends the period during which a claim can ‘ripen’ under the older methods of prescription until 30 November 2021. A person claiming such rights can protect them by registration, either by way of application under the new scheme or by application directly to court.

Registration

An application is grounded on affidavit in Form 5A of the *Land Registration Rules 2011*, accompanied by a suitable map, fees (currently €25) and Form 17.

It is to be noted that the section 49A procedure is purely for applications based on prescription. It is not appropriate for rights acquired by implication of law (for example, rights based on the common intention of the parties or rights of way of necessity). These matters are appropriate for court.

It appears in the applications lodged by the PRA to date that Form 5A is not being fully adhered to. Practitioners are advised to fully consult the notes to the form and incorporate suitable averments into the application. A bald statement of user for the requisite period will not be sufficient to ground a claim.

An applicant must establish that, at all material times:

- There was a capable grantor and grantee,
- The right was capable of forming the subject matter of a grant, and
- There was not a public right of way, customary right, franchise or licence.

The requisite period of user must be shown and, also, that the exercise of the right has been without force, secrecy or permission. It must be shown how, and against whom, the relevant user period has been acquired. As most applications are lodged in anticipation of a sale, fully grounded applications can be expedited. However, the absence of enough information grounded in Form 5A will lead to further rulings being issued and delays in processing an application.

All known details for service of notice on the servient registered owner must be provided. If the registered owner is deceased, suitable enquiries must be made to establish if he or she died testate or intestate and whether a grant issued in the estate. If not, full details of next of kin entitled to a share on date of death are required for service of notice.

An ‘easement’ is a right that an owner of land has, by virtue of his ownership of his land, over the land of a neighbour – for example, right of way, light, support and water. A ‘profit’ is a right to go on another person’s land and take natural material from it, and may be held ‘in gross’, that is, independently of any dominant tenement, for example, fishing rights.

Such rights may be acquired by express grant or reservation, implied grant or reservation, or by prescription – that is, the presumption of a grant of an easement or profit *à prendre* based on evidence of long enjoyment of the right claimed.

Prescription at common law is based on the presumption that long enjoyment has a lawful origin. As a grant is presumed, any claim must be for a right that is capable of forming the subject matter of a grant (for example, there can be no prescriptive claim to a right of privacy or a grant contrary to public policy). This is expressed in the general rule that all

easements and profits lie in grant – that is, it cannot be vague or uncertain and must not amount to ownership or possession of the land. The right must be capable of precise definition and there must be a capable grantor and grantee.

There were three methods of acquiring easements and profits *à prendre* by prescription:

- Under common law – that is, the easement had been enjoyed since time immemorial,
- Under the legal fiction known as ‘lost modern grant’ – that is, a presumption that an easement had been granted at some stage but that documentation had been lost,
- Under the *Prescription Act 1832* (commenced in Ireland from 1 January 1859 under the *Prescription (Ireland) Act 1858*).

To succeed in acquiring an easement or profit by prescription, it is necessary to show user as of right without force/secrecy or permission for the requisite user period.

The application must be accompanied by a suitable map with the right(s) claimed clearly highlighted and identified thereon.

Notice will be served on all interested

parties. In suitable circumstances, a newspaper notice may be required.

Registration will proceed in the absence of valid grounds of objection.

Applications for registration of such interests fall into the following categories:

- a) The dominant and servient lands both comprise registered land – registration of both the appurtenant right attaching to the dominant land and registration of a burden on the servient land may be entered on the register,
- b) The dominant land

is registered and the servient land is unregistered – registration of an appurtenant right attaching to the dominant land will be entered on the register,

- c) The dominant land is unregistered and the servient land is registered land – an application for first registration of the dominant tenement must be made at the same time as the application for registration of the easement or profit *à prendre*, and registration will proceed as at (a),
- d) Both dominant and servient lands are unregistered – an application for first

registration must be made in respect of the dominant land, and registration of an appurtenant right attaching to the dominant land will be entered on the register.

It is anticipated that the new scheme will be of significant benefit to both practitioners and applicants. Applications that are sufficiently grounded and correctly mapped can be processed quickly and provide a cheaper and more efficient registration mechanism for uncontested claims.

It is also fully consistent with the statutory function of the PRA to ensure that that the State will have, as quickly as is possible, a complete and comprehensive land register in order to take full advantage of the recent reforms in the law of property and the inevitable arrival of electronic registration and electronic conveyancing.

All information, legislation and practice direction can be found on www.prai.ie. ©

“The transitional provisions provided for claims under the old law to be established until 30 November 2012. However, the statutory scheme led to difficulties being encountered by practitioners on the closing of sales”

LOOK IT UP

Legislation:

- *Civil Law (Miscellaneous Provisions) Act 2011* (sections 35-42)
- *Land and Conveyancing Law Reform Act 2009* (sections 33-38)
- *Land Registration Rules 2011* (SI 559 of 2011)
- *Prescription Act 1832* (Britain)
- *Registration of Title Act 1964* (section 49A)

WAGES of sin

Bringing a claim under the *National Minimum Wage Act* can be fraught with traps. **Richard Grogan** uncovers some of the trickiest hazards for those bringing claims for employees – or those defending against them



Richard Grogan is principal of Richard Grogan & Associates, Solicitors, Dublin

There has been a considerable increase recently in the number of claims being brought under the *National Minimum Wage Act* (NMW). A significant number of claims brought by employees are being lost, however, where the provisions of

section 23 are not being complied with. For example, under section 23 of the NMW, an employee may request from his or her employer a written statement of the employee's average hourly rate of pay for any pay reference period, other than the employee's current pay reference period, falling within the 12-month period immediately preceding the request.

In practice, this means that if the employee is paid on a weekly basis, the pay reference period is for one week. If paid monthly, the pay reference period is for one month. For example, if an employee is paid monthly and a request is being made in September 2012, the request will be for the month of August 2012.

There is a slight anomaly here. The fact that the employee may be paid the national minimum wage for that particular pay period does not mean that a claim cannot succeed. It is simply that a request must be made.

It is in the provisions of section 23(2) that the *National Minimum Wage Act* causes a particular problem. If, during that pay period, the hourly rate of pay exceeds 150% of the national minimum wage, then the request is not valid.

Claim period

Claims are also being dismissed because they are being lodged within one month of a notice being served under section 23, thus falling foul of the

provisions of section 23(1) of the NMW.

Under the provisions of section 24, a claim cannot be made to a rights commissioner unless a request has been made under section 23, and either the employee has received a response under section 23 or the employer has failed to respond within one month of such a request having been made.

A claim cannot issue, then, before one or other of these events occurs. In practice, the practitioner should hold the complaint form for just over four weeks before submitting it.

Among some employers, there is a misconceived view that the employee must prove that they were not paid the national minimum wage of €8.65. Following a recent decision of the Labour Court, this is wrong. In addition, some employers fail to recognise the potential length of time in which a claim can be brought.

When acting for employers, some representatives are of the view that the NMW is similar to the payment of wages legislation, in that the employee can only go back six months. This is not correct. Once an employee has issued a request under section 23 and subsequently lodged a complaint under the provisions of section 24(1), the employee effectively has a period of six months from serving the said notice under section 23 to bring a claim. The rights commissioner is not subject to any six month period going back in time – in theory, the employee can go back to the start of the period of his or her

employment. In reality, however, it would appear that a limit of six years applies – though this matter has not been finally determined.

“The onus of proof in a claim under the legislation rests with the employer. This is set out in section 22(1) of the act. It provides that an employer shall keep such records as are necessary to show whether the act is being complied with in relation to the employee”



FAST FACTS

- > Claims brought by employees under national minimum wage legislation are being lost where the provisions of section 23 are not being complied with
- > Claims are also being dismissed because they are being lodged within one month of a notice being served under section 23, thus falling foul of the provisions of section 23(1) of the *National Minimum Wage Act*
- > Under the provisions of section 24, a claim cannot be made to a rights commissioner unless a request has been made under section 23
- > Once an employee has issued a request under section 23, and subsequently lodged a complaint under the provisions of section 24(1), the employee effectively has a period of six months from serving the said notice under section 23 to bring a claim
- > The Labour Court has held that the onus of proof in a claim under the legislation rests with the employer
- > Records must be retained by the employer for at least three years from the date of their making

The Labour Court, in the recent case of *Durban House Bed & Breakfast and Marius Sereika*, has held that the onus of proof in a claim under the legislation rests with the employer. This is set out in section 22(1) of the act. It provides that an employer shall keep such records as are necessary to show whether the act is being complied with in relation to the employee. These records must be retained by the employer for at least three years from the date of their making.

Subsection 3 provides that when an

employer fails to keep such records, the onus of proving that the provisions were complied with, in proceedings before a rights commissioner or the Labour Court, lies with the employer.

Evidential burden

An issue not addressed in the legislation is just how far an employee needs to go to present their case. While the provisions of section 24 of the *National Minimum Wage Act* is different from the provisions of section 27 of



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the *Organisation of Working Time Act (OWT)*, I would be of the view that similar conditions may be required.

In the case of *Nolan Transport and Jakonis Antanas*, which is a decision of the Labour Court dealing with the OWT, the Labour Court, in dealing with section 27(2) of the act, held that that section suggested that the evidential burden is on the claimant to produce such evidence as is available to support a storable case of non-compliance with the relevant provisions of the act.

The court set out that, as a matter of basic fairness, the claimant should be required to provide sufficient particularity in order to allow the respondent to know, in broad terms, the nature of the complaint and the case they are expected to meet. In that case, the Labour Court pointed out, as per Lord Devlin in *Bratty v Attorney General of Northern Ireland*, that an evidential burden is satisfied where evidence adduced is sufficient to “suggest a reasonable possibility”. This would appear to me to mean that once an employee, for example, claimed that they worked 50 hours a week and received €400 gross per week (being €8 per hour, which is less than the national minimum wage), that that would be sufficient to satisfy the evidential burden.

In such circumstances, the respondent would then be called upon to put records required under the act in evidence, showing compliance with the relevant provisions at issue. If the records were produced, the legal burden would still be on the employer to show compliance. Saying that, the employee as claimant may be required to satisfy the rights commissioner or Labour Court at the appeal that the records should not be accepted as evidence of compliance.

Where records in the prescribed form are not produced, then the claimant will have satisfied the evidential burden, and it will be for the employer to establish on credible evidence that the relevant provisions were complied with in relation to the claimant. Saying this assumes that the Labour Court will apply the provisions of section 24(5) of the NMW, as they apply to section 27(2) of the OWT. This is not entirely clear from the wording of the section 24(5), as there may be a lower threshold for an employee. That said, where an employee has issued a notice

“Under the provisions of section 24, a claim cannot be made to a rights commissioner unless a request has been made under section 23, and either the employee has received a response under section 23 or the employer has failed to respond within one month of such a request having been made”

a company, also by registered post, for the purposes of having a record to show that it was delivered. If the notice is returned or undelivered, that would appear to be sufficient, but it may be better practice to reissue it by a way of certificate of posting.

When acting for an employer, it is also important to be aware that certain payments, as set out in the schedule of the act, are not taken into account in calculating the national minimum wage. This would include, for example, any non-taxable expenses paid. Where a representative claims that non-taxable expenses should be taken into account for calculating wages, then there is the potential that a rights commissioner might be required, under the provisions of section 40 of the NMW, to refer the matter to the Revenue Commissioners or the Minister for Social Protection, as these payments would not have



Dog-walking for below the minimum wage proved a trial too far for Hercules

under section 23 and if the employer has failed to respond, then it would appear that it is reasonable to place the burden of proof on the employer.

Increased number of claims

I am seeing a considerable increase in the number of claims now being brought under the national minimum wage legislation. A significant number of claims brought by employees are being lost where the provisions of section 23 are not being complied with. It is thus advised that, if a notice under section 23 is being served, it should always be served by registered post – and where the employer is

been taxed nor subjected to social welfare. Such a claim could result in the employer being subjected to tax evasion or a social welfare fraud claim, having to pay tax on these sums, and still having to make up the shortfall of the national minimum wage.

These claims are becoming more prevalent. In the past, the majority of these claims were brought by non-Irish nationals. This is due to a particular tax evasion scheme that is becoming pervasive in one particular industry. I am now seeing such claims being brought by Irish nationals. There is also a significant increase in the number of such claims being made. There is also the potential that, where such a claim is made, the employer may have fallen foul of the *Organisation of Working Time Act* regarding the payment of holiday pay and public holiday pay, which may leave the employer open also to a claim for compensation under those acts.

Familiarising oneself with these traps for the unwary should help colleagues avoid difficulties when bringing or defending such claims. ☺

LOOK IT UP

Cases:

- *Bratty v Attorney General of Northern Ireland* (1963) AC386
- *Durban House Bed & Breakfast and Marius Sereika* (DWT1233; 2012)
- *Nolan Transport and Jakonis Antanas* (DWT1117; 2011)

Cases:

- *National Minimum Wage Act 2000*
- *Organisation of Working Time Act 1997*

CONDITION CRITICAL



Joseph Thomas is a member of the Society's Conveyancing Committee and is convenor of the task force within the committee that deals with planning matters

The planning warranty in General Condition 36 of the standard contract for sale gives rise to a high proportion of arguments when conveyancing colleagues are negotiating on behalf of their respective clients. Joseph Thomas rolls up his sleeves

General Condition 36 of the standard Law Society General Conditions of Sale – which, in the words of Prof John Wylie, “deals with another very difficult area of the law for conveyancers” – provides that, “unless the special conditions contain a stipulation to the contrary”, the vendor warrants in respect of the subject property that either (a) there has been no development of the property since 1 October 1964 for which planning permission is required or (b) in the alternative, that all planning permissions and building bye-law approvals required for the development on the property have been obtained and that the conditions thereof have been complied with.

The vendor also warrants, in the absence of a special condition to the contrary, that, where applicable, the design, development and use of the property is in accordance with the building regulations made under the *Building Control Act 1990*.

There is a helpful proviso that the warranty does not extend to building bye-law approvals in respect of works carried out prior to 13 December 1989, which are deemed by reason of section 22(7) of the *Building Control Act* to be compliant.

The General Conditions of Sale are used in all property transactions. They were designed with the intention of being fair to both vendor and purchaser. Any departure from the General Conditions of Sale is by way of special condition, which should make clear the nature and the extent of the departure from the General Conditions of Sale and also the reason therefor.

The fundamental difficulty with General Condition 36 is as described by John Gore Grimes: “The warranty which the vendor offers in General Condition 36 is now so wide and it goes back for so many years, that it is almost impossible to stand over it except in cases of recent development with a complete record of planning and environmental history.”

This view is echoed by Prof Wylie, writing in 1996:

“This warranty does not, however, extend to cover development or works executed prior to 1 October 1964, when the modern planning system came into operation. It would clearly be unreasonable to expect a vendor to give a warranty in respect of matters which took place over 30 years ago and, in any event, the likelihood of any action being taken against the property or its owners or occupiers at the present time must be remote in the extreme.”

It's not unusual

There is an attitude abroad within the profession that the purchaser has a right and entitlement to the benefit of the planning warranty. This, I respectfully submit, is simply not the case. Each case should be viewed on its own facts. There is a strong, if not compelling, case that the vendor should provide a warranty in the case of a newly

constructed property or perhaps on the sale of a property where a vendor, regardless as to the length of time of his or her ownership, is in a position to provide such a warranty from his or her personal knowledge.

However, what of the very many properties, both residential and commercial, that were constructed prior to 1 October 1964, but perhaps have been developed

“There is a very clear need for a general planning amnesty, which should provide, on a rolling basis, that a development is planning compliant after the passing of a reasonable period of time”



periodically since then? Some properties may have changed hands many times. Some may have been let for long periods of time and a tenant may have carried out a development without the knowledge or consent of the landlord. Also, there is the increasingly common situation where a vendor originally acquired the property from a mortgagee in possession, liquidator or receiver where no planning warranty was afforded the vendor when he acquired the property. It is just not reasonable in such circumstances to expect a vendor to provide a warranty so broad that it may encompass not only matters of planning but also compliance with the building regulations to include design. It

is not unreasonable for a mortgagee in possession, liquidator or receiver to refuse to give any warranty. They should, however, give whatever planning documentation they have in their possession.

A key point to remember is that, since the warranty is the vendor's warranty, it is very important that a solicitor acting for a vendor should make sure that his client understands the nature and extent of such a warranty.

Suspicious minds

General Condition 36 reverses the usual rule of *caveat emptor*: if the warranty is removed, the risk passes to the purchaser. Such a move tends to be resisted by a purchaser's solicitor,

FAST FACTS

- > The General Conditions of Sale were designed to be fair to both vendor and purchaser
- > Any departure from the General Conditions of Sale is by way of special condition, which should make clear the nature and the extent of that departure and also the reasons for it
- > The planning warranty in General Condition 36 of the standard contract for sale is always topical – and usually controversial for practitioners

often because of badly-worded special conditions that simply seek to delete General Condition 36 without any explanation whatsoever.

Purchasers' solicitors are immediately suspicious in such circumstances, fearing that the property may not be planning compliant. A useful guide as to best practice is contained in a practice note published by the Conveyancing Committee in October 1995, which provides: "The committee considers

it important for an intending vendor, prior to contract, to put the prospective purchaser in possession of all material information in the spheres of planning, building control and kindred legislation, and that any inability to fulfil the requirements of General Condition 36 be dealt with through the medium of special condition.”

It is also important for purchasers' solicitors to remember that any amendment to General Condition 36 in circumstances where a certificate of title is being furnished to a bank needs to be brought to the attention of the bank as a qualification of the undertaking and certificate of title and approved in advance of drawdown by the bank. It would not be unreasonable for a bank to seek a clear and cogent reason for the qualification, which should be the detailed reason(s) why the vendor is not in a position to provide same.

In my opinion, there is a very clear need at this point in time for a general planning amnesty, which should provide, on a rolling basis, that a development is planning (to include building control) compliant after the passing of a reasonable period of time.

In the absence of such a planning amnesty, the purchaser's protection lies essentially in sections 154(4)(b) and 160(6)(b) of the *Planning and Development Act 2000*, which provides a seven-year time limit to the taking of enforcement action in respect of non-

compliant developments (which includes change of use). Particular care and attention should, however, be paid to the fact that, where a planning permission has issued for a development, the period of seven years expires seven years after the life of the

planning permission (generally five years) and further that there is no limitation period where there is a non-compliance with a use that has been specified in a planning permission.

It should also be noted that enforcement proceedings in respect of unauthorised development of quarries and peat extraction are not subject to any limitation period in consequence of the provisions of the *Environment (Miscellaneous Provisions) Act 2011*. In addition, although a development may be immune from prosecution, there are often potential adverse consequences associated with the non-compliance with the *Planning Acts* – for example, on a compulsory purchase, compensation may not be payable in respect of the

unauthorised development, or a development that would otherwise be an exempted development will not be such if it is an extension to an unauthorised structure, to name but two!

Time is on my side

Given the lapse of time, the fact that, in very many cases, local authority records

are incomplete, the number of times a property may have changed hands, and the current environment, where large numbers of properties are being sold by banks as mortgagees in possession or by receivers, where the default position is to delete General Condition 36, it is very difficult to see how a great number of vendors would be in a position to provide the broad warranties covered in General Condition 36.

The Law Society has been campaigning for a planning amnesty for many, many years to no avail. General Condition 36 has been described in CLE lectures on the 2001 edition of the General Condition of Sale as placing a heavy onus on an innocent vendor and an unreasonable burden on solicitors. When a vendor is not in a position to provide a planning warranty, the Conveyancing Committee practice note referred to above should be followed.

As we approach the 50th anniversary of the *Local Government (Planning and Development) Act 1963*, common sense should apply on both sides when it comes to the practical realities of a vendor giving a planning warranty in the terms of General Condition 36. ©

“There is an attitude abroad within the profession that the purchaser has a right and entitlement to the benefit of the planning warranty. This, I respectfully submit, is simply not the case. Each case should be viewed on its own facts”

LOOK IT UP

Legislation:

- *Building Control Act 1990*
- *Environment (Miscellaneous Provisions) Act 2011*
- *Local Government (Planning and Development) Act 1963*
- *Planning and Development Act 2000*, 154(4)(b) and 160(6)(b)

JOB-SEEKERS' register

For Law Society members seeking a solicitor position, full-time, part-time or as a locum

Log in to the members' register of the Law Society website, www.lawsociety.ie, to upload your CV to the self-maintained job seekers register within the employment section or contact career support by email on careers@lawsociety.ie or tel: 01 881 5772.



LEGAL vacancies

For Law Society members to advertise for all their legal staff requirements, not just qualified solicitors

Visit the employment section on the Law Society website, www.lawsociety.ie, to place an ad or contact employer support by email on employersupport@lawsociety.ie or tel: 01 672 4891. You can also log in to the members' area to view the job seekers register.





There was a fantastic turnout for the climb of Croagh Patrick on Saturday 14 July, organised by the Mayo Solicitors' Bar Association (MSBA). The climb raised significant funds for Temple Street Children's Hospital. MSBA president Evan O'Dwyer expressed his delight with the support from MSBA members and thanked Mayo businesses for their great response to the bar association's plea for support. Congrats to Fintan Morahan who did the climb, carrying his niece, piggy-back, up and down the Reek – no mean feat!



At the recent meeting of the Wicklow Bar Association in the Parkview Hotel were (*seated, l to r*): Dervla Quinn, Barry Kelly (secretary, WBA), David Lavelle (president, WBA), Ken Murphy (director general) and James McCourt (senior vice-president, Law Society). (*Back, l to r*): David O'Brien, Gus Cullen, Dermot Hickey, Denis Hipwell, Sheila Dillon, David Tarrant, Donal O'Sullivan, Maria Byrne, Eamon O'Beirne, Caroline Murphy, Catriona Murray, Pdraig Hyland, Mairead Leyne, Clifford Sullivan, Pauline O'Toole, Emma Lynch, Doran O'Toole, Patrick Jones, Karl Hutchinson, Andrew Tarrant, Richard Joyce, Keira O'Reilly, Michael O'Loughlin, Jonathan White, Paddy McNeice and Aisling Costello



At the Kilkenny Bar Association's summer party at Butler House, Kilkenny, on 26 July 2012 were (*front, l to r*): Joe Fitzpatrick, Ken Murphy (director general), John G Harte, Donald Binchy (Law Society president), Laurence Grace (president, KBA), Michael Lanigan and Tony Canny. (*Middle, l to r*): Christopher Hogan, Martin O'Carroll, Eugene O'Sullivan, Tim Kiely, Nicky Harte, Owen Sweeney (secretary, KBA), Seamus Brennan, Dermot Reidy and Maeve Meaney. (*Back, l to r*): John Hickey, Claire Quinlan, Matt Malone, Rosanne Byrne, John Foley, Jane Harte, Emer Foley, Owen O'Mahony and Des Foley

Law Society welcomes President Higgins to Blackhall Place

President of Ireland Michael D Higgins and his wife Sabina were the guests of honour at the Law Society's annual dinner on Friday 13 July 2012, held at Blackhall Place. They were warmly welcomed to the Society by President of the Law Society Donald Binchy and his wife Claire Cusack, senior vice-president James McCourt, junior vice-president Simon Murphy and director general Ken Murphy.

Other special guests included Dominick Chilcott (British Ambassador to Ireland), Alan Shatter (Minister for Justice, Equality and Defence), Pat Rabbitte (Minister for Communications, Energy and Natural Resources), David Stanton (chair of the



Oireachtas Committee on Justice, Equality and Defence, Sean Conlon TD (Fine Gael), Brian Purcell (secretary general of the Department of Justice and Equality) and Garda Commissioner Martin Callinan.

Legal luminaries included Attorney General Maire Whelan SC, Mrs Justice Susan Denham (Chief Justice), Mr Justice Frank Clarke (Supreme Court), Mr Justice John MacMenamin (Supreme Court), Mr Justice John Murray (Supreme Court), Mr Justice Nicholas Kearns (President of the High Court), Claire Loftus (Director of Public Prosecutions), Brendan Ryan (chief executive officer of the Courts Service), Muriel Walls (chair of the Legal Aid Board) and Brian O’Gorman (managing partner of Arthur Cox).

Invited members of the press included Carol Coulter (legal affairs editor, *The Irish Times*), Dearbhail McDonald (legal affairs correspondent, *Irish Independent*) and Kieron Wood (senior assistant editor, *Sunday Business Post*).

President Higgins spoke warmly about the role of lawyers who, by virtue of the public service they perform, belong to “a global community of human rights defenders”. The importance of a just, impartial and even-handed legal system as a fundamental cornerstone of a society based on human rights and equality could not be overstated, he said.

The *Gazette* presents a photo montage of the evening’s proceedings.



IWLA marks 'Tin' anniversary

Women lawyers travelled from all over Ireland, and some from mainland Europe, on 30 June to mark the tenth anniversary of the establishment of the Irish Women Lawyers' Association (IWLA). They were joined by non-legal women who support the ethos of IWLA, which counts among its aims to pursue gender balance at all levels of Ireland's institutions.

Founder members and friends enjoyed the reunion, recently qualified lawyers networked with experienced colleagues, and all were inspired by celebrating with

those successful high-profile women lawyers who were being honoured on the night (see page 16).

Survey feedback since the celebrations has indicated that non-members who were in attendance now wish to join IWLA as full or associate members and all look forward to sharing their experiences at future networking and training events. The collaboration of Law Society Skillnet and the Bar Council of Ireland was critical to the success of this inspiring celebration.



(L to r): Cecelia O'Neill, Elaine Wall, Mary Robinson, Elaine Conlan and Denise Roche

ALL PICS: SUSAN KENNEDY, LENSEMEN



IWLA founder members with Ms Justice Maureen Clark (IWLA president) included (front, l to r): Judge Patricia McNamara, Ann Harnett O'Connor BL, Ms Justice Maureen Clark (holding a photo from the 2002 launch of IWLA), Pauline Walley SC and Aoife Goodman BL. (Back, l to r): Judge Mary Ellen Ring, Senator Ivana Bacik BL, Jennefer Aston and Paulyn Marrinan Quinn SC



(L to r): Senator Ivana Bacik, Ellen O'Malley Dunlop (CEO Dublin Rape Crisis Centre), Norah Gibbons (advocacy director, Barnardos) and Kate Mulherrins (policy director, Office of the DPP)



(L to r): Gemma Neylon, Ciara Hanley, Alison Mitchell and Avril Mangan



(L to r): Mary O'Toole SC, Grainne McMurrow SC, Paulyn Marrinan Quinn SC (ombudsman, Defence Forces) and Geraldine Kelly (DSBA president)

Minister for Finance is guest at Limerick's Midsummer Ball



At the Limerick Midsummer Ball were (l to r): Judge Henry Abott (High Court), Judge Daniel O'Keeffe (High Court), Minister for Finance Michael Noonan, Donal Creaton (president, LSBA) and Judge Carroll Moran (Circuit Court)

The Limerick Solicitors' Bar Association held its midsummer ball at the Savoy Hotel Limerick on 8 June. Special guests included Minister for Finance Michael Noonan, Judge Henry Abbott, Judge Carroll Moran, Judge Tom O'Donnell and his wife Jean, Judge Daniel

O'Keeffe and his wife Patricia, Judge Eamonn O'Brien, Chief Superintendent David Sheahan and his wife Colette, and Brian McEnery and his wife Patricia. Our Lady's Hospital for Sick Children was the chief beneficiary from the proceeds on the night.



Mark Murphy and Anne Murphy enjoying Limerick's midsummer ball



Attending Limerick's midsummer ball were Sandra Egan and Edward Leahy (treasurer, LSBA)



Pictured at the ball were Mary Creaton and Donal Creaton (president, LSBA)



The Institute of Legal Research and Standards

About the Institute

The Institute of Legal Research and Standards has been set up to manage the Q Standard which is the new single risk management standard for solicitors in Ireland. The Institute draws on the combined expertise of the leaders in this field and aims to provide a practical, cutting edge and cost effective service to its members.

The Institute offers membership to solicitors firms and provides them with unique guides and support services in the area of risk management and professional indemnity insurance.

The Q Standard

The Q Standard replaces the LQ Basic and Intermediate Standards and the QM Essentials and Excel Standards. Firms which have achieved accreditation to any of these standards will qualify for the appropriate level of the Q Standard and all their work will be recognised by the Q Standard.

The Q Standard is offered on three levels:

- the **Q3000** which is the basic or entry level
- the **Q6000** which is the intermediate level
- the **Q9000** which is ISO 9000:2008 compliant and will be offered in 2013.

Our Website – www.Lrsinstitute.com

The Institute's website aims to provide up to date and relevant information on topical issues, including this year a section on **Meet the Insurers** and **Meet the Brokers**.

Application forms for the Q Standard are also available, as are detailed guides to the Q3000 and Q6000.

Members Area

Our dedicated members' area will have risk management and practice management materials which will provide invaluable guidance including our

- Guide to the Common Proposal Form 2012
- Guide to PII Renewal 2012
- Regular updates on market developments as the PI insurance renewal period proceeds
- Tips on practice management and profitability.
- Discounts on legal and practice management publications.

Contact details:

administrator@lrsinstitute.com Phone: (01) 6766406 Fax: (01) 6788491

Address: Hambleden House 19-26 Lower Pembroke St, Dublin 2 and also at 173 Rathgar Road Dublin 6

Directors: Anne Neary 086 1955919 David Rowe 086 256 6758

Elm Park prang fails to dent golf-outing enthusiasm

All in a week! *Monday, 16 July* – there I was sitting in the Mater waiting for a small procedure when my phone rang, writes *Patricia Holohan*. The caller apologised for calling me on my mobile but it was urgent, she said. Urgent indeed! My old friend and colleague from Meath, Kevin Martin, wanted to talk to me about golf on Thursday. Was I still on for the inaugural countrywide bar association golf outing in Elm Park, being organised by the DSBA, he enquired, or had the Louth scouts approached me? Surprisingly ‘no’ to the latter, and ‘yes’ to the former, I replied. A small matter of a medical procedure to overcome, but don’t you concern yourself about that – I won’t let you down.

Thursday, 19 July – bruised and stitched, I turned up. Glorious day. Dolly Parton belting out a few crackers. Life good. A very fine old and imposing, handsome clubhouse draped in leaves, lawn tennis courts, plenty of car-parking. Early for a change. Now where will I park, I thought. Beside the clubhouse? Near the locker rooms? Plenty of choice you see, which makes it quite surprising that I managed to reverse into a



nice ‘one-lady-driver-only’ type car. Or was it the car of a retired male ‘senior’ civil servant, as one of my playing partners later helpfully suggested?

Having made a surprising number of new acquaintances in a very short space of time, including a golf director and caddy master, and an accident report form

having been duly completed (which consisted of a yellow Post-it drafted by the caddy master and displaying a large arrow in the direction of my offending ‘Could do with a wash’, somewhat guilty-looking Ford S Max), I bravely dismissed any fleeting thought of going on the run and went to meet the golfing gang.

Well, what can I say! A lovely scenic course. A great game of golf (marred only every three or four holes when I would get that sick feeling in the pit of my stomach and remember not to look at my phone to see if my ‘crashee’ had phoned). No, that could wait.

Careful lady driver

We played with Ger O’Herlihy and Marie Dennehy from Waterford, who were great company (and great golfers).

Job done. Back to the clubhouse. A great barbeque, *caint agus craic!*

Congratulations to John Kieran and Elaine Connolly (from the Dundalk branch of the family) who won the competition with consummate ease.

Postscript: Friday, 20 July – the ‘careful lady driver’ (because I know you want to know) called me – finally! She turned out to be terribly forgiving and understanding. She said that she had been minding the car as she had only bought it three weeks previously and had purposely parked it away from other cars. She supposed that the car park must have filled up in the meantime. I said nothing. She said I wouldn’t want to know the peculiar kind of week she had had. Words don’t often fail me, but...!

Judge Dempsey’s Royal win

The annual Meath County Registrar’s golf and dinner outing was held on 29 June in seasonably good sunshine at the Knightsbrook Hotel and Golf Resort, Trim, Co Meath. Guests included judges Matthew P Smith (retired, High Court), Petria McDonnell (Circuit Court), Dermot Dempsey (District Court), Patrick McMahon (District Court Judge), Mary O’Malley (County Registrar, Meath), Mairead Ahern (County Registrar, Louth), Maire Tehan (County Registrar, retired), Meath Solicitors’ Bar Association (MSBA) president James Walsh, honorary treasurer and secretary Elaine Byrne, and previous incumbent, Katie Barbour.

The overall prize went to Judge Dermot Dempsey. Other prizes

included ‘Best lady golfer’, won by Kate O’Donnell BL. Thanks to County Registrar Mary O’Malley

and Kevin Martin (Malone & Martin Solicitors) for their ongoing support and help with this event.



(L to r): Maire Tehan (former county registrar), Mary O’Malley (current county registrar), Judge Dermot Dempsey (overall winner), James Walsh (president, MSBA), Elaine Byrne (honorary secretary and treasurer)

Succession Act 1965 and Related Legislation: A Commentary

Brian E Spierin. Bloomsbury Professional (2011), www.bloomsburyprofessional.com. ISBN: 978-1-84766-896-7. Price: €175 (incl VAT).

If simply comparing the contents page of the fourth edition with its predecessor third edition, it would be forgivable to speculate that both books were identical. However, as this is a commentary on the *Succession Act 1965* and related legislation, the layout of the book reflects that of the original *Succession Act*, which has been amended beyond recognition by a combination of the *Land and Conveyancing Law Reform Act 2009*, together with the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*. So, too, has the text of this succession law theme changed substantially, thus keeping

practitioners abreast of the new provisions.

There have been many cases of note determined by the courts since the previous edition was published. This is reflected in the new edition, where observations and analysis in respect of important cases are interspersed throughout the commentary on the related sections from the primary statute.

Pivotaly, the new edition provides commentary in relation to the recent legislative changes, particularly in relation to part IX of the *Succession Act* in respect of the rights of a testator's spouse,

civil partner and children. There is a substantial review of the new rights of cohabitants to apply for provision from a deceased's estate.

Doubtless, as cases arising from the recent amending statutes come before the courts, there will be a further edition required but, in the interim, this new edition will be of assistance to practitioners, whether dealing with the familiar elements of the *Succession Act* or its latest enhancements.

Richard Hammond is principal of Hammond Good Solicitors, Mallow, Co Cork.



Extradition and Transnational Criminal Procedure (4th edition)

Michael Forde and Kieran Kelly. Thomson Reuters (2011), www.roundhall.ie. ISBN: 978-1-85800-622-2. Cost: €165 (hardback).

Extradition law has grown from what was once a niche practice area to take up the full-time resources of one High Court judge nowadays.

This book covers all areas of its topic in a well-structured manner. The authors provide an excellent aid to the regular practitioner, as well as a great start to any lawyer new to this area of practice. It follows a logical layout, allowing the practitioner to quickly find the relevant

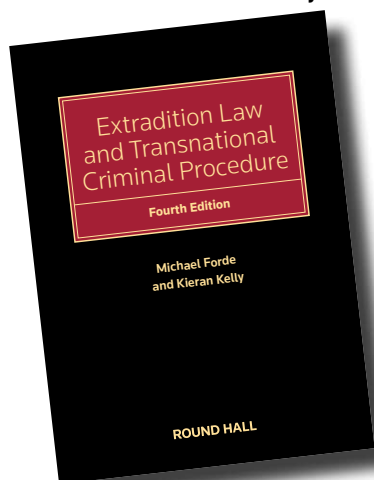
section for study or practice.

While up to date in just about all respects, it contains only the High Court decision for the very recent case of *Minister for Justice v Bailey* ([2011] IEHC 177) – the Supreme Court decision having been delivered after publication.

One of the most valuable aspects of this work is the inclusion of seven appendices, including the amended *European Arrest Warrant Act 2003* and the *Extradition Act 1965*. This book

is well worth a read, even if your only interest has been the few high-profile cases in the area. The inclusion of extraterritorial jurisdiction, political offences and terrorism, and international criminal tribunals only adds to the book's usefulness.

Brian Leaby is a Cork-based barrister practising in the areas of extradition, crime, judicial review, personal injuries and general practice.



Civil Service Regulation

Brian Gallagher and Cathy Maguire. Bloomsbury Professional (2011), www.bloomsburyprofessional.com. ISBN 978-1-84766-551-5. Price: €130 (incl VAT).

The authors of this work have performed a very useful service by compiling, in an accessible format and in one volume, the principal source material one should consult in order to understand the legal framework within which the Irish Civil Service functions.

The book is divided into three parts: part I (the shortest) is a very concise digest of Irish superior court judgments that have considered matters relevant to the employment status of civil

servants. Part II is an extremely helpful restatement of the primary legislation that regulates this area. Each individual act is reproduced as amended by subsequent enactments, thus obviating the need to consult the chronological tables in order to verify the current legislative position.

Part III reproduces a selection of the most important official circulars that currently impact on the operation of the Civil Service. A knowledge and understanding

of the relevant circulars is indispensable when advising on any employment law or industrial relations issue that arises in a Civil Service context.

The main text of the book is accompanied by the usual comprehensive tables of cases, statutes and statutory instruments. This book is an excellent addition to the ever-expanding library of Irish legal texts and a 'must have' for any professional whose work requires an understanding of the



regulation of the Irish Civil Service. ©

Alan Haugh is a senior associate with A&L Goodbody and is currently seconded to the Department of Jobs, Enterprise and Innovation.

Core books for general practice

What core books should solicitors' firms in general practice have on their shelves? **Mary Gaynor** fills your shopping cart



Mary Gaynor is head of library and information services at the Law Society of Ireland

Affordability and value for money are important when purchasing law books in the current economic climate. The growth of Irish legal publishing in the last decade has led to the availability of many textbooks covering key areas such as practice and procedure, probate, conveyancing, licensing, employment, debt collection, criminal law and so on. Ten years ago, a core collection of Irish law books might have filled a couple of shelves, but a library containing a copy of every Irish law book published in the last ten years – never mind the well-worn but still regularly used older classics – would need to assign some serious space to accommodate what is available. E-books are of course becoming an option for some titles, but for a communally used collection, they may not be the most appropriate format.

A shopping cart for the core library might include the following selection, with current catalogue prices included, leaving little change out of €7,500! Occasionally, publishers offer discounts or sales, so watch out for those offers.

District Court practice and procedure

- Coonan & O'Toole, *Criminal Procedure in the District Court* (Round Hall, 2011; €225)
- Dowling & Savage, *Civil Procedure in the District Court* (Round Hall, 2009; €265)
- Woods, James, *District Court Practice and Procedure in Criminal Proceedings* (3rd ed, 2010; €240)
- Woods, James, *District Court Practice and Procedure in Civil, Licensing and Family Law Proceedings* (Woods, 1997)

Circuit Court practice and procedure

Dowling, Karl, *Civil Procedure in the Circuit Court* (Round Hall, 2008; €349)

Superior Courts practice and procedure

Delany & McGrath, *Civil Procedure in the Superior Courts* (3rd ed, Round Hall, 2012; €445)

Road traffic offences

- *Offences Handbook 2010* (3rd ed, Round Hall, 2010; €103)
- Pierse, Robert, *Road Traffic Law: the 1961-2011 Road Traffic Acts – Annotated Legislation*, (Bloomsbury Professional, 2011; €140)
- Woods, James, *Road Traffic Offences* (2nd ed, Woods, 2005)

JUST PUBLISHED

New books available to borrow

- Borg-Barthet, Justin, *The Governing Law of Companies in EU Law* (Oxford: Hart Publishing, 2012)
- Law Society (UK), *Conveyancing Quality Scheme Toolkit* (2nd ed, 2012)
- Law Society (UK), *Lexcel Financial Management and Business Planning Toolkit 2011*
- Law Society (UK), *Lexcel Risk Management Toolkit* (2011)
- Law Society (UK), *Lexcel Client Care Toolkit* (2nd ed, 2011)
- Law Society (UK), *Lexcel People Management Toolkit* (2011)
- Law Society (UK), *The Solicitor's Handbook 2012*
- Lynch-Fannon, Irene and Gerard Murphy, *Corporate Insolvency and Rescue* (2nd ed, Bloomsbury Professional, 2012)
- McManus, John P, *Intellectual Property: from Creation to Commercialisation: a Practical Guide for Innovators and Researchers* (Cork: Oaktree Press, 2012)
- Madigan, Josepha, *Appropriate Dispute Resolution (ADR) in Ireland: a Handbook for Family Lawyers and their Clients* (Bristol: Jordans, 2012)
- Magee, Barry, *Investigating Unregistered Title* (Dublin: Bloomsbury Professional, 2012)
- Round Hall Thomson Reuters, *Employment Law Conference 2012*
- Tweed, Paul, *Privacy and Libel Law: the Clash with Press Freedom* (UK: Bloomsbury Professional, 2012)

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Probate

- Bracken and Campbell, *Probate Handbook and Probate Handbook Companion* (Clarus Press, 2012; €40 each)
- Keating, Albert, *Probate* (4th ed, Round Hall, 2011; €425)
- Mongey, Eamonn, *Probate Practice in a Nutshell* (3rd ed, 2006)
- Spierin, Brian, *Wills – Irish Precedents and Drafting* (1999; new edition due October 2012; €160)

Land law/conveyancing

- Laffoy, *Irish Conveyancing Precedents* (Bloomsbury Professional; updated; two loose-leaf volumes, plus online access; €1,070 plus VAT)
- Lyall, Andrew, *Land Law in Ireland* (3rd ed, Round Hall, 2010; €100)
- Magee, Barry, *Investigating Unregistered Title* (Bloomsbury Professional, 2012; €185)
- Wylie, J, *Irish Land Law* (4th ed, Bloomsbury Professional, 2010; €195)
- Wylie and Woods, *Irish Conveyancing Law* (4th ed due October 2012, Bloomsbury Professional; €225)

- *Irish Property Online* (Bloomsbury Professional, including the Bloomsbury Professional titles listed above and other property titles available with a single-user licence only at discounted subscription of €495 to end of September 2012 – normal subscription €695 annually)

Personal injuries

Jennings, Colin *et al*, *The Law of Personal Injuries* (Round Hall, 2011; €265)

Licensing

- Cassidy, Constance, *Licensing Acts* (Clarus Press, 2010; €199)
- Woods and Andrews, *Liquor Licensing Laws of Ireland* (4th ed, Woods, 2011)

Employment

- *Arthur Cox Employment Law Yearbook 2011* (Bloomsbury Professional, 2012, paperback and e-book; €75)
- Cox, Neville, *Employment Law in Ireland* (Clarus Press, 2009; €185)
- Daly, Brenda and Michael Doherty, *Principles of Employment Law* (Clarus Press, 2010; €80)

- Houston, Eugenie, *Transfers of Undertakings in Ireland* (Bloomsbury Professional, 2011; €175)
- Redmond, Mary, *Dismissal Law in Ireland* (2nd ed, Bloomsbury Professional, 2007; €143)
- Regan, Maeve, *Employment Law* (Bloomsbury Professional, 2009; €195)

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Law Society Council meeting 13 July 2012

Motion: conveyancing conflicts

"That this Council approves the report and the recommendations of the Conveyancing Conflicts Task Force."

Proposed: John P Shaw

Seconded: Brendan Twomey

The chairman of the task force, Catherine Treacy, indicated that the Council could be immensely proud of the input and commitment of each member of the task force. She briefed the Council on the task force's views on the many representations made by the profession and others as part of the extensive consultation process in which the task force and the Council had engaged.

Ms Treacy noted that the task force had to engage in a balancing act between those who argued that the current system worked well and the evidence disclosed by independent studies and objective statistics, particularly those presented in the joint study by UCD and the HSE. Many submissions had argued that family farms should be excluded and, yet, the UCD/HSE report indicated that conflicts represented a greater problem in rural areas. In addition, a recent WHO report indicated that up to 80% of elder family abuse went unreported. It was clear that there was a problem in relation to elder abuse, even if some colleagues had not come across it in practice.

Because it was an international problem, the task force had met with colleagues from other jurisdictions and had considered the rules and guidelines operating throughout the world. The task force was unconvinced by those systems that were based on guidelines, but with a significant number of exceptions requiring subjective judgement.

Ms Treacy reassured the Council that the task force had thoroughly examined every aspect of the matter and had

concluded with a recommendation of a prohibition on solicitors acting on both sides of a conveyancing transaction with very limited exceptions, that is, the family home and 'qualified parties', neither of which involved subjective judgements. She urged that the Society should not apologise for any increased cost that might be involved as a consequence of the introduction of the proposal, which was far outweighed by the proper governance that would follow.

John P Shaw noted that a small number of amendments to the draft regulations had been identified in relation to the definitions of 'conveyancing transaction', 'home reversion agreement' and 'lifetime mortgage', together with a slight amendment to the definition of 'solicitors' firm' and an amendment to deal with an issue that had been raised in relation to bare trusts. Otherwise, it was proposed that the draft regulations as circulated to the profession would be adopted at the September Council meeting with a commencement date of 1 January 2013.

Following a lengthy discussion, during which different Council members expressed views in favour and against the proposal, the Council approved the report and recommendations of the Conveyancing Conflicts Task Force, with 25 votes in favour and four votes against.

eConveyancing Project – update

Eamonn Keenan and Gabriel Brennan from the eConveyancing Task Force updated the Council on the eConveyancing Project, including progress with system development workshops, process-flow design and a legislative review.

Residential Undertakings Task Force – update

John D Shaw noted that the Council had approved the proposed *Residential Property Transactions Regulations* in

principle at a previous Council meeting. It was now intended that the regulations would be circulated to the profession for comment, and that the Society would also engage in a short consultation process with the lending institutions.

Legal Services Regulation Bill

The president briefed the Council on a conference on regulatory reform hosted by the Minister for Justice on the previous Friday. The conference had been addressed by the minister, Prof Colin Scott (dean of law, UCD), Mr Steve Mark (legal services commissioner, New South Wales) and Mr Chris Kenny (chief executive, Legal Services Board for England and Wales).

The director general noted that a considerable amount of work was being done by the Society in the preparation of legislative wording to reflect the recommendations approved by the Council in respect of the bill. Work was also ongoing on the issue of legal costs, consideration of appropriate oversight and control measures for the regulatory costs of the Legal Services Regulation Authority and new disciplinary tribunal and the issue of LLPs and limited liability companies.


Future of the Law Society Task Force

John P Shaw reported that the task force had engaged Millward Brown Lansdowne to conduct both a qualitative assessment, by way of telephone interview of a limited number of members of the profession, but across a broad profile, together with a quantitative online survey of the entire profession, to be conducted during September.

Council election dates 2012

The Council approved Monday 17 September 2012, as the final date for receipt of nominations for the Council election and Thursday 25 October 2012, as the close-of-poll date.

Committee submissions

The Council noted, with approval, two submissions to Government on the *Personal Insolvency Bill* – one from the Business Law Committee and a joint submission from the Litigation and Human Rights Committees. A submission by the Employment and Equality Law Committee on the implications arising from the increase in the State pension age was also approved, as were two submissions by the Intellectual Property Law Committee on the Unified Patent Court Proposals, and by the Copyright Review Committee. 

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Practice notes

PII run-off fund: notification of closure

Firms ceasing in practice are required to provide the special purpose fund manager, Capita Commercial Insurance Services, with a written notice of their intention to cease practice by whichever is the earliest of the following:

- At least 60 days prior to the firm ceasing practice, or
- At least 60 days prior to the expiry of the firm's coverage period.

The run-off fund provides run-off cover for firms ceasing in practice:

- Who have renewed their professional indemnity insurance for the current indemnity period, and
- Subject to meeting eligibility criteria, including that there is no

succeeding practice in respect of the firm.

All firms carry the same self-insured excess into run-off that they had in their last coverage period in practice. This standard excess is separate from any additional self-insured excesses that may be applied in certain cases. Firms obtaining run-off cover through the run-off fund will not be required to bear any additional excesses for run-off cover, provided they meet certain cessation obligations in the required timeframes. Timely notification of closure by a firm to the special purpose fund manager is one of these cessation obligations.

The written notice of intention to cease practice can be in the form

of the Notice of Closure Form available on the Society's website or in any written form provided that includes the information contained in the Notice of Closure Form.

Any notification of closure must be accompanied by the following:

- A copy of the firm's most recent completed proposal form, and
- A copy of the firm's most recent policy of qualifying insurance.

Additional self-insured excesses will be applied to firms commensurate with any failure to meet the cessation obligations. In the case of notification of closure, an additional self-insured excess of €15,000, in accordance with schedule 2 of the run-off rules, will be applied for failure to meet the requirements

for notification of closure within the stated timeframes. Additional self-insured excesses will be applied as aggregate excesses for each indemnity period in the future (not for each and every claim).

More information on run-off cover and other cessation obligations, together with the relevant forms, regulations and documentation can be found on the Society's website at www.lawsociety.ie/Pages/PII/Run-off-Cover/.

Firms seeking further information on the run-off fund should contact the special purpose fund manager, Capita Commercial Insurance Services, at 40 Dukes Place, London, EC3A 7NH; tel: 0044 207 397 4539, email: spf@capita.co.uk.

NOTICE TO ALL PRACTISING SOLICITORS

Effect of adjudication in bankruptcy

Under section 50 of the *Solicitors Act 1954*, adjudication in bankruptcy of a solicitor operates immediately to suspend his or her practising certificate (if any) until:

- The practising certificate expires, or
- The adjudication in bankruptcy is annulled and an office copy of the order annulling the adjudication is served on the Registrar of Solicitors, or
- The suspension is terminated under section 51 of the *Solicitors Act 1954*, whichever first occurs.

Under section 51 of the *Solicitors Act 1954*, as now in force, where a practising certificate is suspended by virtue of section 50, the solicitor may, at any time before the certificate expires and the adjudication in bankruptcy is annulled, apply to the Law Society to terminate the suspension, and the Law Society may terminate the suspension unconditionally or subject to such terms and conditions as the Law Society thinks fit, or refuse the application.

Where the Law Society, on such an application, refuses the applica-

tion or terminates the suspension subject to any terms or conditions, the solicitor may appeal to the President of the High Court and the president may:

- Terminate the suspension unconditionally or subject to such terms and conditions as he thinks fit,
- Vary any terms or conditions to which the termination of the suspension has been made subject, or
- Refuse the appeal.

The power to deal with applications under section 51 has been delegated to the Regulation of Practice Committee of the Law Society. The committee will deal with any such applications taking account of the facts applicable to each individual case.

Solicitors who are faced with the prospect of bankruptcy should prepare a wind-down plan and contact the Law Society regarding their cessation obligations, which include, but are not limited to:

- Divesting of client files,
- Submitting a closing reporting accountant's report,
- Dealing with requirements relating

to run-off cover from the run-off fund, and

- Providing an address for the purpose of future correspondence.

Useful guidance in relation to cessation obligations and run-off cover can be found in the 'closing a practice' section in the members' area of the Law Society's website.

The provisions of the *Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011* (SI no 409 of 2011) pertaining to run-off cover apply to a firm that has ceased to carry on practice as a result of its principal or all its partners becoming bankrupt in the same way as to any other firm that has ceased to carry on practice.

One of the consequences of adjudication in bankruptcy is that the solicitor's client bank accounts will be subject of a freezing order. Client account cheques issued prior to adjudication that have not been presented for payment will not be honoured. Any solicitor about to be adjudicated in bankruptcy should desist from issuing client account cheques in the period immediately

prior to adjudication. Where cheques have issued prior to adjudication and have not been presented for payment, the solicitor should notify the parties concerned that the cheques will not be honoured when presented for payment. Such payments should be brought to the immediate attention of the official assignee.

By reason that a third party, probably another solicitor, will be dealing with the clients' affairs, the solicitor must ensure that the books of account of the practice, in particular the client and office ledgers, are completely up to date and that recent transactions are recorded in these ledgers.

If you require further information with regard to the consequences of bankruptcy for a solicitor, for either yourself or on behalf of a colleague, please contact Sorcha Hayes, practice regulation manager, at s.hayes@lawsociety.ie. The Society can deal with such queries on a confidential, no-name basis if requested.

*John Elliot,
Registrar of Solicitors and
Director of Regulation*

Withdrawal from use of four old forms of Law Society/IBF undertakings

CONVEYANCING COMMITTEE

The Conveyancing Committee recommends that undertakings in any one of the four forms of undertaking previously agreed between the Law Society and the IBF in the late 1970s or early 1980s should no longer be given by solicitors to lending institutions.

This recommendation is made on the basis that these forms of undertaking no longer reflect the

current practices of banks making deeds available on ATR for inspection or other reason, or for bridging facilities, and so on.

The four forms of undertaking in question are:

- Form 1 – Inspection and Return of Documents (previously on white paper),
- Form 2 – Sale or Mortgage and Account for Net Proceeds (previously on pink paper),

- Form 3 – Deliver Deeds to Bank Following Purchase or Refinancing (previously on blue paper),
- Form 4 – Bridging Finance (previously on yellow paper).

These were published in appendix 6 of the Law Society's *Conveyancing Handbook*, which is available to practitioners:

- In the members' area of the So-

ciety's website,

- On the CD-ROM of the handbook issued by the Society to practising solicitors in 2006 and which may still be in solicitors' offices.

The Society has requested the IBF to notify its members that these forms of undertaking should no longer be used or requested by its members from solicitors.

Terms and conditions of business

GUIDANCE AND ETHICS COMMITTEE

The Guidance and Ethics Committee is pleased to introduce a new 'terms and conditions of business' document for solicitors. The earlier solicitors' terms and conditions of engagement document, published in May 2008, has been revised and updated and several new topics have been added.

The precedent is available on the Law Society website, www.lawsociety.ie, both in PDF and Word format, so that the precedent can be amended freely to suit a firm's needs.

In the past, it was not common for solicitors to use formal contract documents for the provision of legal services. It has now become clear that there are enormous advantages attached to their use. In addition, the professional indemnity insurers have indicated that they expect firms to use these documents as a matter of routine.

Purpose

The 'terms and conditions of business' document sets out the terms and conditions on which the solicitor's firm will carry out work

for the client. It defines the relationship between them and forms the basis of the contract for legal services.

From the client's point of view, the document is drafted to be a helpful explanation of what is involved when a client contracts for legal services. Many clients will not have dealt with a solicitor before.

This precedent also aims to ensure that there is no gap between the client's expectations of service and the reality of what is being offered. The client may expect a result that the solicitor is unlikely to achieve. The client may expect a level of contact with the solicitor higher than that which is possible. It is important that the solicitor deals with these expectations and ensures that the client has a realistic view of the possible outcomes.

As with any written contract, the document is protection for both parties – the solicitor and the client.

Solicitors are reminded that it is illegal to issue contracts with unfair terms.

Format used

The Guidance and Ethics Committee decided on a format using a simple introductory letter with a document attached. This can easily be put in a brochure format for those who wish to do that. A 'section for details' has been added to allow solicitors to add information that will be individual to each firm, and to each transaction.

SI 353 of 2010

The committee has endeavoured to ensure that the document presented is in compliance with the *EU (Provision of Services) Regulations 2010*. However, it is the responsibility of every firm to ensure their own compliance.

Legal charges (s68)

This document covers the issue of legal charges only in general terms. While an appendix has been provided where information in relation to the client's particular transaction can be inserted, it is expected that solicitors will be more likely to write the usual section 68 letter separately to the



client. (See www.lawsociety.ie for practice notes outlining the current requirements in relation to section 68.)

Letter of disengagement

A precedent letter of disengagement is also provided. It can be accessed at www.lawsociety.ie.

'Plain English' logo

As with the earlier precedent, this document has been granted the 'plain English' logo by the National Adult Literacy Agency. Solicitors are encouraged to explain the document to the client and, in particular, to invite the client to raise queries.

Consumer leaflets

The public area of the website has several consumer leaflets that can be given to clients in addition to the 'terms and conditions of business' document.



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BRIEFING

Legislation update 9 June – 12 August 2012

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie, and recent statutory instruments are available in PDF at www.attorneygeneral.ie/esi/esi_index.html

ACTS PASSED***Companies (Amendment) Act 2012***

Number: 22/2012

Amends sections 1 and 2 of the *Companies (Miscellaneous Provisions) Act 2009*.

Commencement: 4/7/2012 for all sections

Competition (Amendment) Act 2012

Number: 18/2012

To strengthen competition law enforcement by providing for new and increased sanctions and penalties. Amends the *Competition Act 2002*, amends the *Companies Act 1990* and provides for related matters.

Commencement: 3/7/2012 for all sections (per SI 236/2012)

Credit Guarantee Act 2012

Number: 26/2012

Provides for the establishment of a credit guarantee scheme for SMEs, which is intended to address specific market failures that prevent banks lending to some commercially viable businesses by providing a 75% guarantee to banks against losses on qualifying loans to job-creating firms.

Commencement: Commencement order(s) to be made as per s12(2) of the act

Criminal Justice (Search Warrants) Act 2012

Number: 33/2012

Amends the provisions of the *Offences Against the State Act 1939*, the *Misuse of Drugs Act 1977* and the *Criminal Justice (Drug Trafficking) Act 1966* relating to the issue of search warrants, and provides for related matters.

Commencement: 25/7/2012 as per s4 of the act

Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

Number: 24/2012

Provides, in connection with the protection of children and certain vulnerable adults, for offences of withholding information relating to the commission of certain arrestable offences (including certain sexual offences) against children, or some such offences against such adults, in certain circumstances; provides for the amendment of section 9 of the *Offences Against the State (Amendment) Act 1998* and provides for related matters.

Commencement: Commencement order(s) to be made as per s12(2) of the act

Dormant Accounts (Amendment) Act 2012

Number: 23/2012

Amends the *Dormant Accounts Acts 2001 to 2005* so as to dissolve the Dormant Accounts Board and transfer the statutory functions of the board to the Minister for Environment, Community and Local Government, and provides for related matters.

Commencement: Commencement order(s) to be made as per s15(3)

Electoral (Amendment) Act 2012

Number: 27/2012

Inserts a new subsection 13(3A) into the *Electoral Act 1992* to provide that information in the electoral register prepared under section 13 of that act, including any draft register or supplement to the

register, may be used for the purpose of selecting citizen members of the Constitutional Convention.
Commencement: 18/7/2012 for all sections

Electoral (Amendment) (Political Funding) Act 2012

Number: 36/2012

Amends the *Electoral Act 1992*, the *Electoral Act 1997* and *Local Elections (Disclosure of Donations and Expenditure) Act 1999* to establish a register of corporate donors; to provide for reductions in donation and donation declaration limits; to provide for disclosure of accounts by political parties; to amend the law relating to state funding of political parties; to provide that political parties will lose half their state funding if they do not have at least 30% women and 30% men candidates at the next general election, this figure rising to 40% women and 40% men candidates seven years after that at the general election held next after that.

Commencement: Commencement order(s) to be made as per s1(4) of the act

European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012

Number: 30/2012

To enable the application of provisions of the *European Arrest Warrant Act 2003* to states other than EU member states and to make a number of amendments, mainly of a procedural or technical nature, to the *European Arrest Warrant Act 2003* and to the *Extradition Acts 1965 to 2001*.

Commencement: 24/7/2012

European Communities (Amendment) Act 2012

Number: 21/2012

Amends the *European Communities Act 1972* in order to provide that the protocol amending the protocol on transitional provisions annexed to the *Treaty on European Union*, to the *Treaty on the Functioning of the European Union* and to the treaty establishing the Euro-

pean Atomic Energy Community shall form part of the domestic law of the State. Amends the *European Communities Act 1972* to provide that the European Council decision amending article 136 of the *Treaty on the Functioning of the European Union* with regard to a stability mechanism for member states whose currency is the euro shall form part of the domestic law of the State.

Commencement: Commencement order(s) to be made as per s2(3) of the act

European Stability Mechanism Act 2012

Number: 20/2012

To further facilitate, in the public interest, the financial stability of the European Union by establishing a permanent stability mechanism to assume the tasks of the European Financial Stability Facility and the European Financial Stabilisation Mechanism in providing, where needed, financial assistance to euro area member states.

Commencement: 3/7/2012 for all sections

Gaeltacht Act 2012

Number: 34/2012

Provides for a statutory language planning process to support the Irish language and provides for amendments to the board and functions of Údarás na Gaeltachta. Amends the *Ministers and Secretaries (Amendment) Act 1956*, *Údarás na Gaeltachta Act 1979* as amended, the *Electoral Act 1997* and the *Litter Pollution Act 1997* as amended.

Commencement: Commencement order(s) to be made for all parts other than parts 3 and 4 as per s1(2) of the act

Industrial Relations (Amendment) Act 2012

Number: 32/2012

Reforms the existing system for the making of both Employment Regulation Orders (EROs) and Registered Employment Agreements (REAs) and provides for their continued operation in the context of fairer procedures that

One to watch: new legislation

Industrial Relations (Amendment) Act 2012

The *Industrial Relations (Amendment) Act 2012* came into effect on 1 August 2012 by way of the *Industrial Relations (Amendment) Act 2012 (Commencement) Order*. The act amends the *Industrial Relations Acts 1946 to 2004*.

The main provisions of the act implement the commitment in the Programme for Government to reform the Joint Labour Committee system and rectify deficiencies in the legal framework highlighted in the High Court judgment in the *John Grace Fried Chicken* case. The recently enacted legislation also reflects recommendations for reform that were set out in the Independent Review of Employment Regulation Orders (ERO) and Registered Employment Agreement (REA) wage setting mechanisms in April 2011.

Reason for the change

In July 2011, the High Court ruled, in the case of *John Grace Fried Chicken Limited v the Catering JLC* ([2011] IEHC 277), that the Joint Labour Committee (JLC) system was unconstitutional, as the provisions of the *Industrial Relations Acts 1946 and 1990* were held to be unconstitutional and the ERO made by the defendant in the case was invalid as a consequence.

Following a High Court decision, all Employment Regulation Orders ceased to have statutory effect from 7 July 2011. Employees who were covered by an ERO prior to the 2011 High Court judgment have existing contracts of employment that govern their pay and conditions of work. The pay and conditions of employees who started work after 7 July 2011 are governed by employment legislation such as the *National Minimum Wage Act 2000*.

Both EROs and REAs set out

legally binding minimum pay and conditions for workers in different sectors of the economy. An ERO is set by a JLC made up of representatives of workers and employers, while an REA is an agreement by workers and employers that is registered at the Labour Court. Both EROs and REAs are vetted by the Labour Court and ultimately the minister before being legally enforceable.

EROs

The new legislation sets out the principles and policies to be set by the JLC when constructing an ERO. It gives guidance as to what can be laid down with regard to pay and other conditions in the ERO and also sets out a mechanism for the Labour Court to sort out disagreements at the JLC.

The amended act also sets out a mechanism whereby an employer may seek a temporary derogation or exemption from the obligation to abide by the terms of an ERO. The Labour Court will be permitted to conduct a five-year review of each JLC, setting out the grounds on whether the JLC should be retained, abolished or amalgamated. Employees or trade unions can now go to a rights commissioner with a complaint within six months, with an appeal to the Labour Court within six weeks. Any compensation awarded will be given priority in the distribution of assets relating to bankrupt companies or companies winding up.

REAs

The new measures ensure that parties to an agreement are substantially representative of the workers and employers in the sector in question. There are new policies and procedures to be taken into account by the Labour Court before an agreement is registered by the court, including ratification by the Oireachtas. Measures for cancellation and variation are also included. Ⓞ

are more responsive to changing economic circumstances. Provides that EROs and REAs will be given legal effect in future by ministerial order and for Oireachtas scrutiny of them. Amends the *Industrial Relations Acts 1946 to 2004*, the *Employment Permits Act 2006*, the *Organisation of Working Time Act 1997*, the *Protection of Employees (Employers' Insolvency) Act 1984* and the *Terms of Employment (Information) Act 1994*, and provides for related matters.

Commencement: Commencement order(s) to be made as per s1(6) of the act

Microenterprise Loan Fund Act 2012

Number: 31/2012

Provides for the establishment of a micro-enterprise loan fund and provides for the formation of a private company to lend to micro-enterprise and to manage the fund. The fund is targeted at start-up, newly established, or growing micro-enterprises across all industry sectors, employing not more than ten people. The company will be empowered to provide loans of up to €25,000 for commercially viable proposals that do not meet the conventional risk criteria applied by commercial banks. The minister will pay the company €10 million of exchequer funding, and provides for additional exchequer funding if necessary, subject to a cap of €25 million before further Oireachtas approval is required.

Commencement: 24/7/2012

Public Service Pensions (Single Scheme and other Provisions) Act 2012

Number: 37/2012

Provides for a new Single Public Service Pension Scheme for all new entrants to the public service.

Commencement: Commencement order(s) to be made for s3 and parts 2, (other than s51(5) and (6), and 3 as per s1(2) of the act

Qualifications and Quality Assurance (Education and Training) Act 2012

Number: 28/2012

To provide for the establishment

of the Qualifications and Quality Assurance Authority of Ireland; to define its functions; to provide for the dissolution of the National Qualifications Authority of Ireland, the Higher Education and Training Awards Council and the Further Education and Training Awards Council; to repeal the *Qualifications (Education and Training) Act 1999*; to amend the *Higher Education Authority Act 1971*, the *Regional Technical Colleges Act 1992*, the *Freedom of Information Act 1997*, the *Universities Act 1997* and certain other acts; and to provide for connected matters.

Commencement: Commencement order(s) to be made as per s1(2) of the act

Residential Institutions Statutory Fund Act 2012

Number: 35/2012

Provides for the establishment of a body to support the needs of former residents, to be known as the Residential Institutions Statutory Fund Board, and to define its functions; provides for the making of contributions by certain persons; amends the *Residential Institutions Redress Act 2002*; amends the *Commission to Inquire into Child Abuse (Amendment) Act 2005*, and provides for related matters.

Commencement: Commencement order(s) to be made as per s1(2) of the act

Statute Law Revision Act 2012

Number: 19/2012

Repeals Irish private statutes enacted from 1751 to 1800, private acts of Great Britain enacted from 1751 to 1800, United Kingdom private acts enacted from 1801 to 1922, and United Kingdom local and personal acts enacted 1851 to 1922, with the exception of four lists set out in schedule I of the acts that are specifically preserved.

Commencement: 2/7/2012 for all sections

Veterinary Practice (Amendment) Act 2012

Number: 25/2012

To enable persons other than veterinary practitioners and vet-

BRIEFING

erinary nurses to carry out certain procedures on or in relation to animals, for those and other purposes to amend the *Veterinary Practice Act 2005*, and to provide for related matters.

Commencement: 18/7/2012 for all sections

Wildlife (Amendment) Act 2012
Number: 29/2012

Amends the *Wildlife Acts* to make provision for an extension of the current hunting licence provisions of the *Wildlife (Amendment) Act*

2010, which allow a hunter who is in possession of a firearm certificate for a shotgun to shoot wild birds and hares during the open seasons before 1 August 2012. The date is removed by this act.

Commencement: 24/7/2012 for all sections

SELECTED STATUTORY INSTRUMENTS

District Court (Domestic Violence) Rules 2012

Number: SI 286/2012

Amend the *District Court Rules* by

substitution of Forms 59.1 and 59.3 to expand the categories of person entitled to seek a safety or barring order.

Commencement: 18/7/2012

District Court (Service) Rules 2012

Number: SI 285/2012

Amends the *District Court Rules* by the substitution of order 10 and associated forms to prescribe procedure for service of documents, including personal service and service by document exchange,

subject to certain conditions, of a document on a solicitor.

Commencement: 18/7/2012

Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012

Number: SI 208/2012

Includes a revised code of practice for the purposes of the *Employment Equality Act 1998* as amended.

Commencement: 31/5/2012 

Prepared by the Law Society Library

Social Media for Solicitors – part 2

CREATING AND UPDATING YOUR OWN WORDPRESS WEBSITE



Law Society of Ireland

The Technology Committee is building on the success of its recent seminars and workshop on social media with an intensive 'blogging' workshop to take place at the IT Centre, Blackhall Place on Wednesday, 10th October. The workshop will provide interactive training in creating and maintaining a blog as a potential key business tool for solicitors. A blog can be used as an additional information and business resource or as a potential substitute for a full website.

Blogs are easy to maintain and manage and the workshop will concentrate on the key requirements to get set up and take the first steps. A blog can facilitate improved client communications, identify niche practice areas and generally improve the market presence of practitioners. Blogs allow for easy and timely circulation of comment, information or opinions.

We are delighted to welcome back Martin Molony Lecturer in Communication, Journalism and Public Relations in DCU and consultant in the corporate and voluntary sectors as the facilitator for this workshop. Martin has collaborated with the Committee in a number of our presentations and workshops in this area. He promises a lively, informative and fruitful session on 10 October!!

Law Society Technology Committee Seminar

INTERACTIVE WORKSHOP

IT Lab, Education Centre, Law Society,
Blackhall Place, Dublin 7

Wednesday 10 October 2012,
6pm – 8.45pm. Fee €100
Maximum 20 participants

3 hours CPD
(management and professional
development Skills)

SOCIAL MEDIA FOR SOLICITORS – PART 2. CREATING AND UPDATING YOUR OWN WORDPRESS SITE

VENUE: IT Lab, Education Centre, Law Society, Blackhall Place, Dublin 7. **TIME:** 6pm to 8.45pm. **DATE:** Wednesday 10 October 2012. **FEE:** €100

Name: _____ Firm: _____

Address: _____

DX: _____ Phone: _____

Please reserve _____ place(s) for me on the above course. I enclose cheque for € _____

Signature: _____

PLEASE RETURN TO: VERONICA DONNELLY, LAW SOCIETY OF IRELAND, BLACKHALL PLACE, DUBLIN 7.

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 BK Lindsay, a solicitor formerly practising as Lindsay & Co at 47 Wellington Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2008* [3483/DT63/11]

Law Society of Ireland (applicant)
John BK Lindsay (respondent solicitor)

On 23 February 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to reply or arrange to reply to multiple letters from the Society,
- b) Through his conduct, effectively prevented his clients from dealing with their property.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €4,000 to the compensation fund,
- c) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Dermot F Conway, a solicitor practising as Conway Solicitors at Conway House, 35 South Terrace, Cork, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2008* [9007/DT61/10]
Law Society of Ireland (applicant)
Dermot F Conway (respondent solicitor)

On 29 March 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Caused a substantial deficit in client monies as of 31 October 2009, in breach of regulation 7,
- b) Created debit balances by drawing monies from the client account where either there were no funds or insufficient funds on the

relevant client ledger, in breach of regulation 7,

- c) Recorded monies in the books of account as 'fees' when no such fees had been received, so that the books did not show the true financial position, in breach of regulation 12,
- d) Described in the books of account monies drawn to the office account as 'interest' when it was not, in breach of regulation 12,
- e) Used client account monies of €26,000, of monies originally received from one named client and credited to the client ledger of another named client, to make up a shortfall in stamp duty in relation to another third named client,
- f) Utilised client monies to pay personal expenditure, in breach of regulation 7.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Michael Kieran Griffin, a solicitor formerly practising as Kieran Griffin & Co, Exchange House, Ballincollig, Co Cork, and in the matter of the *Solicitors Acts 1954-2008* [10174/DT41/11]

Law Society of Ireland (applicant)
Michael Kieran Griffin (respondent solicitor)

On 20 October 2011, 9 February 2012 and 3 May 2012, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in that he:

- a) Failed to use his best endeavours to recover counsel's fees in connection with a *habeas corpus* application, totalling €12,100, in respect of a hearing on 20 and 24 June 2003 in a timely manner or at all,

NOTICES: THE HIGH COURT

High Court 2012 no 27SA

In the matter of Deirdre A Foley, a solicitor formerly practising in the practice of Foley McNally Goldberg at 42 Pope's Quay, Cork, and in the matter of the *Solicitors Acts 1954-2011*

Take notice that, by order of the High Court made on Monday 9 July 2012, it was ordered that the name of Deirdre Foley, formerly practising in the practice of Foley McNally Goldberg, 42 Pope's Quay, Cork, be struck off the Roll of Solicitors.

John Elliot, Registrar of Solicitors,
17 July 2012

- b) Failed to comply with an undertaking given in writing to the Society on 29 April 2009 to discharge the sum due to counsel,
- c) Failed to respond to numerous letters from the Society, including those dated 23 June 2008, 15 July 2008, 12 September 2008, 17 October 2008, 17 November 2008, 7 January 2009, 30 January 2009, 23 February 2009, 9 July 2009, 29 July 2009, 18 August 2009, and 2 September 2009 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- a) Do stand advised and admonished,
- b) Pay a sum of €250 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 McDonough, a solicitor formerly practising as a partner in the firm of McDonough & Breen Solicitors, Distillery House, Distillery Lane, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2008* [5813/DT29/11; High Court record no 2012 no 42SA]

Law Society of Ireland (applicant)
John McDonough (respondent solicitor)

On 8 March 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Allowed a deficit of €286,478 to

High Court 2012 no 62SA

In the matter of Noel Brennan, solicitor, and in the matter of the *Solicitors Acts 1954-2011*

Take notice that, by order of the High Court made on Monday 23 July 2012, it was ordered that the name of Noel Brennan, solicitor, formerly practising as Joy Brennan & Company, Solicitors, at 1 New Quay, Clonmel, Co Tipperary, be struck off the Roll of Solicitors.

John Elliot, Registrar of Solicitors,
7 August 2012

- occur in respect of client funds of his practice, as set out in the report of KMR dated 14 July 2010,
- b) Concealed the existence of this deficit by a practice of teeming and lading, whereby funds were moved from one client ledger to another, which had the effect of concealing the existence of the deficit,
- c) Updated a deed from July 2005 to 16 June 2008 for the purposes of minimising or avoiding the payment of stamp duty penalties and interest,
- d) Failed to stamp and register 28 deeds in a timely manner, which necessitated the lodgement of those deeds with the Revenue on 10 March 2010,
- e) Made payments to clients of €30,500 and €35,730 at a time when there were no funds in the relevant client accounts and thereby creating a debit balance, which was rectified by transferring funds from the office account, set out in the investigation report of March 2012, in breach of the *Solicitors' Accounts Regulations*.

The tribunal recommended that the matter be sent forward to the President of the High Court and, on 11 June 2012, the President of the High Court ordered by consent that the respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, and that he be permitted only to practise as an assistant solicitor in the employment 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. **E**

BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

Recent developments in European law

CONSUMER LAW

Case C-112/11, *ebookers.com Deutschland GmbH*, 19 July 2012



Regulation 1008/2008 sets out common rules for the operation of air services in the

EU. It seeks to provide greater transparency in airfares for flights departing from the EU. Sellers of air tickets are required at all times to indicate the final price. This is the price of the flight in addition to all taxes, fees and surcharges that are essential for the purposes of that flight. 'Optional price supplements' relating to additional services that are not compulsory must be communicated clearly at the start of any booking process and accepted by the customer on an 'opt in' basis.

Ebookers.com Deutschland operates an online portal by which it sells air travel. When a flight is selected, its cost is listed in the top right corner of the page. Under the heading 'your current travel costs', there is a list of the price of the flight, taxes, fees, and cancellation insurance, calculated automatically. A notice at the bottom of the page indicates how the customer should proceed if he wishes to reject the cancellation insurance. This could be done by way of an 'opt out'. When the consumer pays after finalising his booking, ebookers pays the flight cost to the air carrier, the taxes and fees to the appropriate authority, and the insurance premium to the insurance company.

A German consumer protection association took proceedings against ebookers.com before the German court, with a view to requiring that company to refrain from automatically including cancellation insurance with the airfare. The Higher Regional Court of Cologne asked the CJEU

whether the prices of such services provided by third parties, which are charged to the customer by the company offering the flight, together with the airfare as part of a total price, are 'optional price supplements', with the result that the services in question must be offered on an 'opt-in' basis.

The court pointed out that EU law seeks to ensure that there is information and transparency with regard to the prices for air travel, thus contributing to safeguarding consumer protection. 'Optional price supplements' relate to services that supplement the air service itself. They are not necessary for the purposes of flight, and the consumer may choose to accept or refuse them. The acceptance must be on an 'opt in' basis. This is required to prevent a consumer from being induced to purchase additional services that are not necessary for the purposes of the flight unless he chooses expressly to purchase them and to pay the corresponding price supplement. It would be at odds with the objective of protecting consumers if that protection were to depend on whether the optional service is provided by an air carrier or by another party that is legally separate from that carrier.

EMPLOYMENT LAW

Case C-154/11, *Abmed Mabilia v Algeria*, 19 July 2012



The applicant has both Algerian and German nationality. He worked for the Algerian state as a driver at its embassy in Berlin. He was dismissed and contested this before the German courts, claiming compensation. Algeria argued that, as a foreign state, it enjoys immunity from German jurisdiction. It also relied on a clause in his contract providing that, in the event of a dispute, only the

Algerian courts were to have jurisdiction. This appeared to conflict with Regulation 44/2001, which allows an employee to sue an employer domiciled outside the EU in the courts of the member state in which the employer's 'establishment' in which the employee works is situated.

The CJEU held that the regulation applied to a contract of employment with an embassy where the functions carried out by the employee do not fall within the exercise of public powers. It then found that an embassy of a non-EU state is an 'establishment' within the meaning of the regulation. Like any other public entity, the embassy can acquire rights and obligation of a civil nature. This is the case where it concludes contracts of employment with persons who do not perform functions that fall within the exercise of public power. An embassy may be equated with a centre of operations that has the appearance of permanency, as required by the regulation. An employment dispute has a sufficient link with the functioning of the embassy with respect to the management of its staff. State immunity is not absolute. It is generally recognised where the dispute concerns sovereign acts. It may be excluded, by contract, if the legal proceedings relate to acts that do not fall within the exercise of public powers. Thus, state immunity does not preclude the application of Regulation 44/2001 to an employment dispute, where the court before which the case is brought finds that the functions carried out by the employee do not fall within the exercise of public powers.

The court held that an agreement on jurisdiction concluded before a dispute arises cannot prevent an employee from bringing proceedings before the court that has jurisdiction under the special rules for employees in the regulation. If it were otherwise, the objective

of protecting the employee as the weaker party to the contract would not be attained.

Case C-78/11, *Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Federación de Asociaciones Dindicales (FASGA) and Others*, 21 June 2012

The *Working Time Directive* (2003/88) entitles all workers to annual leave. In Spain, leave periods are agreed between the employer and employee, in accordance, and where appropriate with the provisions of relevant collective agreements. Spanish law also provides that, where a leave period coincides with a period of temporary incapacity for work resulting from pregnancy, labour or breastfeeding, the worker is entitled at a later point in time to take leave corresponding to the period of incapacity. A collective agreement for department stores for 2009-2010 contains a similar provision. However, Spanish law does not address situations in which the period of leave coincides with a period of sick leave on account of temporary disability.

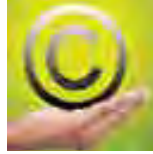
A number of trade unions brought collective actions before the Spanish court for recognition of the right of workers subject to the collective agreement for department stores to paid annual leave, even where such leave coincides with periods of sick leave owing to temporary incapacity for work. ANGED opposed these claims. It argued that workers who are temporarily incapacitated before starting a period of leave or during such a period are not entitled to take leave at a later date except in the situations expressly provided for by national legislation. The Spanish Supreme Court asked the CJEU whether the directive precludes the Spanish legislation under which a worker who becomes unfit for work during a period of paid annual leave is not entitled subsequently

to that annual leave where it coincides with the period of unfitness for work.

The CJEU held that the entitlement of paid annual leave is a particularly important principle of EU social law, a principle expressly enshrined in the EU *Charter of Fundamental Rights*. This right cannot be interpreted restrictively. The purpose of an entitlement to paid annual leave is to enable the worker to rest and enjoy a period of relaxation and leisure. The purpose of sick leave is different, as it enables a worker to recover from an illness that has caused him to be unfit for work. The court has already held that a worker who is unfit for work before the commencement of a period of paid annual leave is entitled to take that leave at another time that does not coincide with the period of sick leave. The court stated that the point at which the temporary incapacity arose is irrelevant. A worker is entitled to take paid annual leave that coincides with a period of sick leave at a later point in time, irrespective of the point at which the incapacity for work arose. It would be arbitrary and contrary to the purpose of the entitlement to paid annual leave to grant workers the right to paid leave only if they are already unfit for work when the period of paid annual leave commences. The new period of annual leave may be scheduled, if necessary, outside the corresponding reference period for annual leave.

INTELLECTUAL PROPERTY

Case C-5/11, *Titus Alexander Jochen Donner*, 21 June 2012



Mr Donner is a German national who was found guilty by a Munich court of aiding and abetting the prohibited commercial exploitation of copyright-protected works. He had distributed replicas of furniture in the 'Bauhaus' style, which is protected by German copyright, to German consumers. The replicas originated in Italy, where they were not protected by copyright. They were offered for sale by an Italian undertaking, Dimensione Direct, to German consumers through advertisements and supplements in newspapers, direct publicity letters, and a German-language website. For transport, Dimensione recommended using the Italian transport undertaking InSpEm, of which Mr Donner was the principal director. His drivers collected the items ordered by German customers in Italy and paid the purchase price to Dimensione. Ownership of the goods was transferred legally to the German customers in Italy. The transfer of the power or disposal over the goods did not take place until the goods were handed over to the purchaser in Germany with the help of Mr Donner. According to the Munich court, the distribution for the purposes of

copyright did not take place in Italy but rather in Germany, where it was prohibited in the absence of authorisation from the copyright holders.

The German appellate court asked the CJEU whether the application of German criminal law gives rise, in the present case, to an unjustified restriction on the free movement of goods as guaranteed under EU law. The CJEU observed that the application of criminal law in this case presupposes that there has been a distribution to the public under Directive 2001/29 on copyright in Germany. A trader who directs his advertising at consumers residing in a given member state and who creates a specific delivery system and payment method or allows a third party to do so, thereby enabling those members of the public to receive delivery of copies of works protected by copyright in that same member state, makes in the member state where the delivery takes place such a distribution. The CJEU left it to the national court to determine whether there is evidence supporting a conclusion that the trader did actually make such a distribution to the public. The prohibition on distribution in Germany that is sanctioned by national criminal law is a restriction on the free movement of goods. This restriction may be justified by reasons relating to the protection of industrial and com-

mercial property. The restriction is based on the differing conditions of copyright protection operating across the EU. These differences are directly linked to the very existence of those rights. In this case, the protection of the right of distribution cannot be deemed to give rise to a disproportionate or artificial partitioning of the market.

The application of criminal law provisions may be considered necessary to protect the specific subject matter of the copyright that confers the exclusive right of exploitation. The restriction in question thus seems to be justified and proportionate to the objective pursued.

PROBATE



On 4 July, the EU published a new regulation on succession and wills. Regulation

650/2012 sets out rules on jurisdiction, choice of law, recognition and enforcement of decision and accept and enforcement of authentic instruments in matters of succession. It also creates a European certificate of succession.

The regulation will apply from 17 August 2012 to the succession of persons who die on or after this date. It will apply to all EU member states other than Ireland, Denmark and Britain. ©

Law Society of Ireland
NEWSLETTER



The Law Society's e-zine is the legal newsletter of the solicitors' profession. The e-zine issues once every two months and brings news and information directly to your computer screen in a brief and easily-digestible manner. If you're not receiving the e-zine, or have opted out previously and would like to start receiving it again, you can sign up by visiting the members' section on the Law Society's website at www.lawsociety.ie. Click on the 'e-zine and e-bulletins' section in the left-hand menu bar and follow the instructions. You will need your solicitor's number, which is on your 2010 practising certificate and can also be obtained by emailing the records department at: 1.dolan@lawsociety.ie.

Are you getting your e-zine?

NOTICES

WILLS

Barry, Ellen (otherwise Elsie Barry) (deceased), late of 78 Priory Lawn, Ballybeg, Waterford. Would any person having knowledge of a will made by the above-named deceased, who died on 28 April 2012, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin 7; ref: DS/2054; tel: 01 888 6231, fax: 01 872 2681

Bradley, Alfred Joseph (deceased), late of 11 Harelawn Crescent, Clondalkin, Dublin 22, who died on 13 June 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Michelle Egan of Sean Costello & Co, Solicitors, Haliday House, Arran Quay, Dublin 7; tel: 01 872 5376, email: michelle.egan@costellosolicitors.ie

Brady, Mary, Newtown, Moate, Co Westmeath. Would any person having knowledge of a will made by the above-named Mary Brady, who is not deceased, please contact the Office of the General Solicitor for Minors and Wards of Court, Courts Service, 15/24 Phoenix Street North, Smithfield, Dublin, 7; ref: GSO2017; tel: 01 888 6231, fax: 01 872 2681

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Deadline for October *Gazette*: 19 Sept 2012. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Brennan, Arthur C (deceased), late of 43 Wyattville Close, Ballybrack, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 27 April 2012, please contact Murphy McElligott, Solicitors, of 69 Patrick Street, Dun Laoghaire, Co Dublin

Brien, Terence (deceased), late of 3 Green Park Terrace, Green Park Road, Bray, Co Wicklow, who died on 3 February 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Hammond & Associates, Solicitors, 23 Upper Albert Road, Glenageary, Co Dublin; tel 01 280 0990, email: info@hammond.ie

Carey, Helena Gertrude (otherwise Eileen) (née Moore), late of Tore, Tyrrellspass, Co Westmeath, and formerly of Rathgarret, Tyrrellspass, Co Westmeath, who died on 15 June 2012. Would any person having knowledge of a will made by the above-named deceased please contact Moore McGivern, Solicitors, 46 Moyglare Abbey, Maynooth, Co Kildare; tel: 01 629 3941, email: info@mooremcgivernsolicitors.ie

Carney, Hugh (deceased), late of 4 Killarney Glen, Herbert Road, Bray, Co Wicklow, who died on 21 June 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased after 8 November 2005 please contact Wolfe & Co, Solicitors, Market Street, Skibbereen, Co Cork; tel: 028 21177, email: info@wolfe.ie

Corr, Eileen (deceased), late of Vierwinden, Ballinteer Road, Dundrum, Dublin 16, who died on 27 April 2012. Would any person who has any knowledge of the whereabouts of any will made by the above-named deceased please contact David Walsh, G&D Walsh, Solicitors, 31 Sandyford Office Park, Sandyford, Dublin 18; tel: 01 217 8870, fax: 01 294 1119, email: david@gdwalsh.ie

Cousins (otherwise MacUillis/MacVillis), Fintan (deceased), late of Derreen House, Clondra,

Co Longford, who died on 21 April 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3, tel: 01 833 3097, fax: 01 833 2515, email: info@baldwinlegal.com; ref MOD/11128

Donnelly, Eamonn (deceased), late of Motabower, Craanford, Gorey, Co Wexford, and formerly of High Street, Clonegal, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 21 May 2005, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow, tel: 0402 32928, fax: 0402 32272, email: fergus@cookekinsella.ie

Doyle, Maria (deceased), late of 3 High Street, Wexford, Co Wexford, who died on 1 April 2012. Would any person having knowledge of a will made by the above-named deceased please contact Ciaran Martin of Acumen & Trust Pension Trustees Ltd, 4 The Avenue, Beacon Court, Sandyford, Dublin 18; tel: 01 293 6500, email: ciaran.martin@acumen.ie

Duignan, John Francis (otherwise Seán) (deceased), late of Church View, Drumlion, Carrickon-Shannon, Co Roscommon, who died on 8 July 2012. Would



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RATES

any person having knowledge of the whereabouts of any will made by the above-named deceased, please contact O'Dowd, Solicitors, Bridge Street, Boyle, Co Roscommon; tel: 071 966 2861, email: info@odowsolicitors.com

Dwyer (otherwise O'Dwyer), Bridget (deceased), late of Churchview Nursing Home, New Cabra Road, Phibsboro, Dublin 7, and formerly of Regina Coeli Hostel, North Brunswick Street, Dublin 7 and Ballyboy East, Clogheen, Co Tipperary, who died on 18 July 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Henry Shannon & Co, Solicitors, Kickham Arch, Davis Road, Clonmel, Co Tipperary; tel: 052 612 700, email: muireann@hshannon.ie

Fitzsimons, Bernard (Brian) (deceased), late of Cornelstown, Dunboyne, Co Meath, who died on 28 February 2012. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Niall Finnegan, solicitor, of Branigan Cosgrove Finnegan Solicitors, 31 Pembroke Road, Dublin 4; tel: 01 668 2477, email: niall@bcf.ie

Hall, Shane (deceased), late of Flat 642, Iveagh Trust, New Bride Street, Dublin 8, who died on 14 March 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Karen Hall; tel: 0044 121 454 7646, email: hallkaren_anne@hotmail.com

Horsburgh, Isabel Jean (deceased), late of Donnelly's Well, Newtown, Ballyvaughan, Naas, Co Kildare, who died on 26 July 2012. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Arthur E MacMahon, Solicitors,

Poplar Square, Naas, Co Kildare; tel 045 897 936, fax: 045 897 615

Kennedy, Eileen (deceased), late of 1 Glasha, Tallann, Donn, Co Limerick, who died on 27 April 2012. Would any person who holds a will or knows of the whereabouts of a will of the above-named deceased please contact James O'Brien & Co, Solicitors, 30 Castle Street, Nenagh, Co Tipperary; DX 20 008 Nenagh; tel: 067 31218

McKenna, Barney (deceased), late of 15/16 Church Street, Howth, Co Dublin. Would any person having knowledge of a will executed by the above-named, who died on 5 April 2012, please contact O'Leary Maher, Solicitors, 191 Howth Road, Killester, Dublin 3; tel: 01 833 1900, fax: 01 833 4991, email: mail@olearymaher.ie

Mariotti, Pietro Paolo (deceased), aka Roberto, late of 4 The Birches, Boroimhe, Swords, Co Dublin, who died on 23 December 2011. Would any person having knowledge pertaining to the existence of a last will and testament made by the above-named deceased please contact the Embassy of Italy, 63/65 Northumberland Road, Dublin 4; tel: 01 660 1744, email: consolare.ambdublino@esteri.it

Molloy, Michael (deceased), late of 17 Community Centre, Carnew, Co Wicklow, and formerly of Motabower, Craanford, Gorey, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 27 February 2007, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, fax: 0402 32272, email: fergus@cookekinsella.ie

O'Dea, Joseph (deceased), late of The Weir, Kilcolgan, Co Galway, who died on 23 May 2012. Would any person having knowledge of a will made by the above-named

deceased please contact William F Semple & Co, Solicitors, Lough Corrib House, Waterside, Galway; tel: 091 567 373, fax: 091 567 374, email: wfsemplelrs@eircom.net

O'Farrelly, Madeleine (deceased), late of 89 Trimleston Gardens, Booterstown, Co Dublin, who died on or about 5 July 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Martin Cosgrove, AB O'Reilly, Dolan & Co, Solicitors, 27 Bridge Street, Cootehill, Co Cavan; tel: 049 555 2110; email: oreillydolan@eircom.net

O'Rourke, John (deceased), late of 7 St Martin's Park, Lower Kimmage Road, Dublin 12, who died on 5 August 1992. Would any person who has any knowledge of the whereabouts of any will made by

the above-named deceased please contact Peter Doyle, Solicitors, 5 Rathfarnham Road, Terenure, Dublin 6W; tel 01 490 0500, fax: 01 490 0501, email: admin@peterdoylesolicitors.ie

Stanley, Kathleen (deceased), late of 22 St Patrick's Terrace, Edgeworthstown, Co Longford, who died on 24 May 2010. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact JA Shaw & Co, Solicitors, Marlinstown Office Park, Mullingar, Co Westmeath; reference: JS/FIN008-3; tel: 044 934 8721, email: jshaw@jshaw.ie

Tisdall, Anna (deceased), late of 21 Cambridge Terrace, York Road, Dun Laoghaire, Co Dublin, who died on 15 July 2012. Would any person having knowledge of the whereabouts of any



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NOTICES

will made by the above-named deceased please contact O'Neill Regan & Co, Solicitors, 12 Carysfort Avenue, Blackrock, Co Dublin; tel: 01 288 2100, email: info@onregan.ie

Turley, William (otherwise Bill) (deceased), late of Raharabeg, Shannonbridge, Co Offaly who died on 2 May 2012. Would any person holding or having knowledge of a will made by the above-named deceased please contact Noel Smyth & Partners, Solicitors, 22 Fitzwilliam Square, Dublin 2; tel: 01 632 1000, fax: 01 661 3979; email: ageorge@nspartners.ie

TITLE DEEDS

Farrell, Eugene & Loretto, of Knockdowney, Moate, Co Westmeath. Would any person having knowledge of the whereabouts of the title deeds relating to the above-mentioned premises please contact Start Mortgages Ltd, Trimleston House, Beech Hill Office Campus, Clonskeagh, Dublin 4; DX 152 Dublin; tel: 01 209 6300, fax: 01 209 6363, email: deeds@start.ie

Title deeds for 6 Laurelton, Meadowbank, Bushy Park Road, Terenure, Dublin 6, owned by the late Mr John Stewart. If any person has knowledge of the whereabouts of the above title deeds, please contact O'Gradys Solicitors, 4th Floor, 8-34 Percy Place, Dublin 4; tel: 01 661 3960, email: reception@ogradysolicitors.ie

Landlord and Tenant (Ground Rents) (No 2) Act 1978 – notice of intention: notice to immediate lessor of intention to apply for the fee simple pursuant to section 21(1) of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 – to: Kevin Finucane of 4 Thormanby Road, Howth, Co Dublin

Description of lands: all that and those the dwellinghouse and

premises known as 183 Killester Avenue, Killester, Dublin 5, held with other premises under an indenture of lease dated 3 July 1947 and made between Cecil Parker Glorney of the one part and Annie Nolan of the other part for the term of 999 years from 1 May 1947 and therein referred to as site no 7 on the maps attached to the said lease, situate on lands known as Killester North in the parish of Clontarf, barony of Collock and county and borough of Dublin.

Particulars of Assignment: Assignment dated 17 December 2010 and made between Thomas Fay and Maureen Lowther of the one part and Liam Fay of the other part.

Duration: For all of the unexpired residue of the term, subject to the apportioned rent and the covenants on the part of the lessee and the conditions in the lease, insofar as they relate to the premises, but otherwise free from encumbrances.

Rent: £73.10s.0d (€93.33) (based on a rent of £10.10s.0d (€13.33) for each site).

Take notice that I, Liam Fay of Highfield, Ardaghay, Co Monaghan, being a person entitled under part II of the above act propose to apply, after 21 days from the date hereof, to the Registrar of Titles to vest in me under section 22 of the said act the fee simple in the property set out in paragraph 1 hereof.

Date: 7 September 2012

Signed: Wilkie and Flanagan (solicitors for the applicant), Main Street, Castleblayney, Co Monaghan

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (No 2) (Ground Rents) Act 1978 (as amended) and in the matter of an application by Michael Bolton – premises at 9 Lower Camden Street in the city of Dublin

All that and those the premises known as 9 Lower Camden Street in the city of Dublin, being the

premises comprised in and held under indenture of lease dated 11 October 1951 between Sarah Elizabeth Grahame Day of the one part and Peter Hanlon of the other part: the premises demised to the said Peter Hanlon for a term of 99 years from 29 September 1950, subject to the yearly rent of £75.

Take notice that Michael Bolton, being the person currently entitled to the lessee's interest under the said lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the said Michael Bolton intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 7 September 2012

Signed: Taylor & Buchalter (solicitors for the applicant), Greenside House, 45-47 Cuffe Street, Dublin 2

MISCELLANEOUS

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RECRUITMENT

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RECRUITMENT**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).**

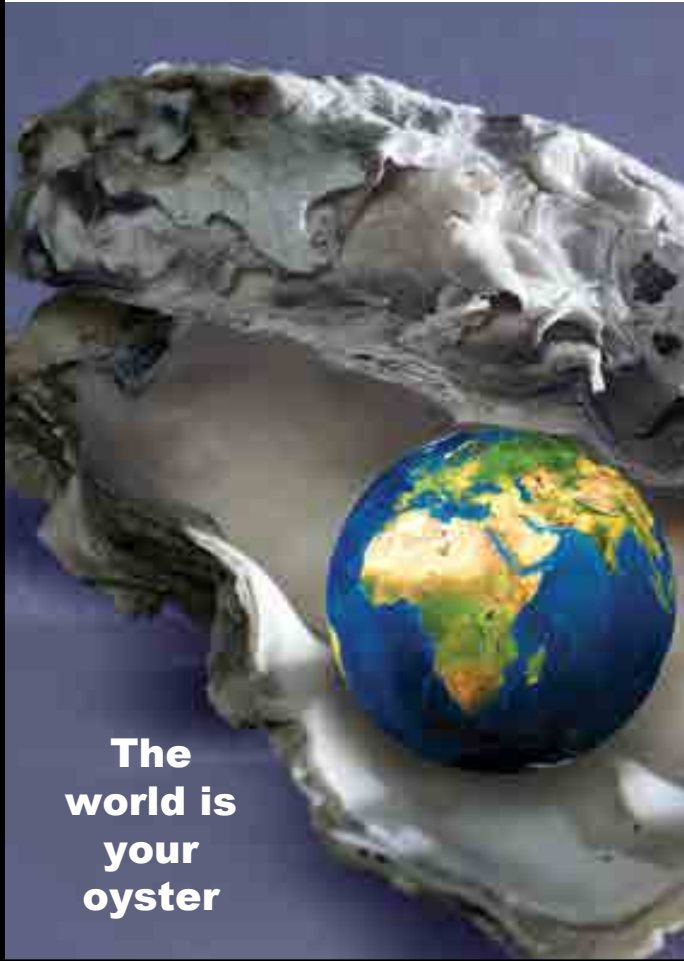
The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

POSITION AVAILABLE

Want to place your recruitment advertisement here?

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Panel of Assessors – Expressions of Interest Sought

The Central Bank of Ireland (the “Bank”) has an important role in the area of securities markets regulation, the purpose of which is to promote an efficient and fair securities market. Securities markets regulation is concerned with overseeing the circulation of information about securities that are traded, monitoring the market for the abuse of information or financial resources to manipulate market and prices, and supervising the corporate governance of organised markets.

The legal framework for securities markets regulation is derived from EU law and includes the Market Abuse (Directive 2003/6/EC) Regulations 2005, the Prospectus (Directive 2003/71/EC) Regulations 2005 and the Transparency (Directive 2004/109/EC) Regulations 2007 (which entire body of law is collectively referred to as the “Regulatory Framework”). Where the Bank has reason to suspect that a prescribed contravention of the Regulatory Framework is being or has been committed, the Bank may appoint an assessor or multiple assessors to carry out an assessment as to whether or not the contravention has been committed and if so, the sanction, if any, which should be imposed.

The Bank is inviting expressions of interest from persons who could be subsequently invited to apply for inclusion on a panel (or panels) from which members would be appointed.

It is likely that panel members will have significant prior experience of tribunals, arbitration and/or court procedures. Knowledge of the securities market and/or the Irish constitutional and administrative law framework would be a distinct advantage. You are asked to highlight any prior experience of these types.

Expressions of interest from persons residing outside Ireland are welcome, on the basis that the candidate would be available to travel to Ireland to conduct assessments.

Assessors will be remunerated for their services and the precise terms will be set out on appointment.

Expressions of interest, enclosing a comprehensive curriculum vitae, should be addressed to:

The Regulatory Decisions Unit
The Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2
Ireland

Alternatively, applications may be e-mailed to rdu@centralbank.ie.

The closing date for receipt of expressions of interest is 30 September 2012.

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WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD



Detroit man gets \$1.5m in ATM error... and then gambles it all away

A Detroit man faces 15 months in jail, and a court order to pay \$1.5 million to his bank, after a glitch allowed him to withdraw unlimited cash from his bank account – which he then lost through gambling.

According to *ABC News*, Roland Page had kept an average balance of around \$100 in an

account that, thanks to a Bank of America glitch, classified his account as 'pay all' – giving him access to unlimited funds.

Once Mr Page became aware of this error, he withdrew the equivalent of €1.21 million within 17 days – but blew it all due to a gambling habit. Bank of America has asked him to repay

the \$1.5 million he borrowed without authorisation but says that, so far, he has refused to repay it, and he appears to be unable to do so.

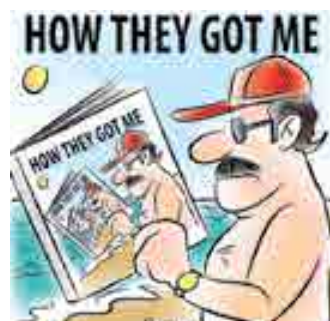
"The fact that the defendant acted on an impulse does not minimise the seriousness of his conduct and the need for a custodial sentence," the bank said.

Life's a beach for dopey don

A recent trip to the beach in southern Italy proved the undoing of alleged mafia boss, Roberto Matalone, who had managed to evade the police for two years. Surveillance footage showed him heading to the beach in shorts and a baseball cap, with a towel over his shoulder. Police arrested him as he raised his umbrella soon after arriving at Joppolo beach with his family.

The arrest is the latest in a crackdown by Italian police on the 'Ndrangheta mafia. Italian authorities claim that it controls 80% of drug trafficking into Europe in a business worth €27 billion a year.

According to the website of Italian newspaper *Corriere della Sera*, his beach reading material turned out to be a tad ironic – a book called *Mafia Hunters* about how Italian police track mafiosi!



'Bear-faced' cheek

Authorities in Belarus have arrested and fined two journalists for posing for photographs holding teddy bears after hundreds were dropped by air on the country in a pro-democracy stunt, claims the Belarussian Association of Journalists.

The 4 July exploit involved a light aircraft chartered by a Swedish PR firm, which dropped 800 toy bears carrying pro-democracy messages over Belarussian territory. The ploy prompted the country's president Alexander Lukashenko to sack his air defence and

border-guard chiefs and expel Sweden's ambassador.

"Those who came and prepared the violation of the state border worked together with the [Swedish] embassy. We have proof of this," Lukashenko was quoted as saying by the Belarus state news agency Belta.

The two journalists, Irina Kozlik (who works for *Komsomolskaya Pravda* newspaper) and Yulia Doroshkevich (a press photographer) were each fined 3 million Belarussian roubles (about €325) at separate court hearings in Minsk and released.

'Uttar' theft – but don't be a bandit

Shivpal Singh Yadav, a minister in India's most politically crucial state, Uttar Pradesh, has said bureaucrats can steal a little as long as they work hard. His comments have sparked a national outcry, reports India's NDTV.com.

"If you work hard, and put your heart and soul into it ... then you are allowed to steal some. But don't be a bandit," Yadav told a gathering of local officials.

His comments were caught by a local TV camera and then played on newscasts across the country.

Yadav, a minister for public works who belongs to the state's ruling Samajwadi Party, quickly sought to control the damage, calling a news conference to explain that the comments had been taken out of context and that he had been discussing how to combat corruption.



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Jazz Pharmaceuticals plc is a global speciality biopharmaceutical company incorporated in Ireland and listed on NASDAQ. In the last twelve months, the organisation whose worldwide headquarters are in Dublin City Centre, has trebled its global headcount, doubled its market cap and greatly increased the number of its offices. The business now seeks to appoint Corporate Counsel Ireland, a key role in delivering on the strategic objectives for the business.

Based in Dublin, the appointee will work closely with the Tax, Finance and Business Development departments and have responsibility for all Irish law matters for Jazz Pharmaceuticals plc as well as group corporate activities. Working alongside senior stakeholders across the business globally, including the members of the executive committee, the appointee will have a broad remit encompassing advisory, contractual and transactional legal matters with a view in time to becoming lead in-house counsel on international corporate transactions. Corporate Counsel Ireland will also manage corporate governance matters and work directly with the CEO in preparation for and management of meetings of the Board of Directors.

Technically expert in Irish corporate law the successful candidate will be confident, credible and proactive in their approach and be clear and unambiguous in their legal advice. Suitable applicants will be team players, effective decision makers and capable of working autonomously when necessary. Candidates will be considered from either an in-house or top-tier private practice background, previous pharmaceutical industry experience would be preferred.

This outstanding opportunity will be remunerated appropriately and in line with the importance of the role. Interested candidates should contact our retained recruitment partner, HRM Recruit:

Bryan Durkan | t: (+353 1) 6321852 | e: bryan.durkan@hrmrecruit.com

All conversations and applications will be treated in strict confidence, third party applications will be forwarded to HRM Recruit.



New Openings



We have received significant new instructions from our clients in Private Practice who are actively searching for high calibre candidates. We set out below a selection of current positions. Full details of these and other new opportunities can be found at our website www.benasso.com

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Litigation-Financial Services

Company Secretary-Funds: Associate

EU/Competition: Associate

Funds: Assistant to Senior Associate

Financial Regulation-Insurance Advisory: Assistant

Healthcare: Assistant to Associate

IP/IT: Senior Associate

IP/IT: Associate

Insolvency: Associate to Senior Associate

Tax: Assistant

Tax: Associate

Tax: Senior Associate

Pensions: Associate

Solicitor Roles

Banking: Associate to Senior Associate

Corporate: Senior Associate

Corporate: Associate

Corporate Insurance: Associate to Senior Associate

For more information on these or other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
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