HEARD BUT NOT SEEN:
The rules on admitting hearsay evidence were central to a recent case

TAKE IT TO THE TOP:
Solicitor Billy Glynn on being head honcho at the IRFU

THE INSIDE MAN:
In-house lawyers may have to wear many different hats

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COURTS MUST BE RESOURCED

Since I wrote last month, there have been a number of significant announcements made by the Minister for Justice, Equality and Defence, Alan Shatter. At a seminar in Blackhall Place on 2 March, the minister announced the Government's intention to hold a referendum to enable the establishment of a Court of Appeal. This announcement was very well received. I, too, warmly welcome it. This is something that the Law Society has been calling for, for many years. The referendum is scheduled for the autumn, and I hope it will be seen by the people as the introduction of a vital piece of courts infrastructure in the public interest.

At the seminar in Blackhall Place, Chief Justice Denham reported the startling news that an appeal from the High Court to the Supreme Court is now taking up to four years to be heard unless certified as urgent. This is completely unacceptable. The new Court of Appeal must be introduced to deliver justice on a timely basis. As director general Ken Murphy, who served as a member of the Chief Justice's Working Group on a Court of Appeal, stated on behalf of the Society when he addressed the seminar: "The necessary referendum cannot come quickly enough."

Jurisdiction changes

Later in March, the minister published a bill to increase the jurisdictional limit of the District Court from €6,384 to €15,000, and that of the Circuit Court, from €38,092 to €75,000, with the ceiling for personal injury claims to be limited to €60,000. Given that it is more than two decades since the jurisdictions were last amended, a review is certainly warranted.

However, the Society has a serious concern that the District Court and the Circuit Court will not have enough resources to deal with the pressure that, inevitably, will be placed on them by the dramatically increased workload.

More judges and court staff will unquestionably be required in order to avoid increases in the delays that already exist in both courts, and which will be greatly exacerbated by this move. Accordingly, the Society calls on the Government to provide the resources necessary to make these changes in jurisdiction work.

In relation to the proposed change to the *in camera* rule, the Society welcomes this. The Society's Law Reform Committee, over a decade ago, called for a modification of the *in camera* rule along the lines proposed in the bill.

While all of the foregoing can be received as welcome and good news by the profession, we must not lose sight of the need to ensure that adequate and appropriate resources are found, somehow, to provide for the delivery of an efficient and speedy justice system, in the public interest.

Taxation of costs

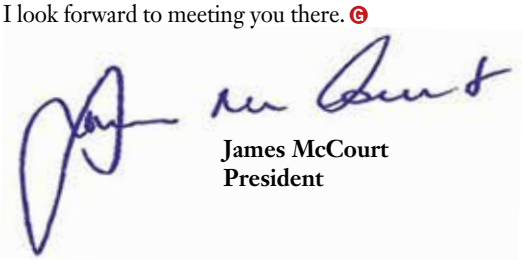
In late February, I wrote to draw the attention of Minister Shatter to an impending crisis in the High Court taxation of costs system. Due to a variety of contributory factors, for which no one is to blame, serious delays are now arising that are causing huge difficulties for practitioners and, by extension, businesses around the country. For solicitors' firms, as for their clients, cash-flow can be a matter of survival or failure in the current economic environment. The worst is not over. In fact, it hasn't even begun. Two tribunals of inquiry will shortly enter the process and will potentially see the taxation system grind to a halt. In addition, when the *Legal Services Regulation Bill* is passed, new pressures will emerge from the larger, more onerous requirements made by the costs provisions in the bill.

"The Society calls on the Government to provide the resources necessary to make these changes in jurisdiction work"

The obvious and urgent solution, it seems to the Society, is to appoint at least one more taxing master. While we appreciate the immense pressure on the exchequer at this time, we believe it would be effectively self-financing. As is well known, 8% stamp duty is placed on taxations, so traditionally the offices of the taxing master have paid for themselves. More taxations would take place, thereby increasing revenue. In addition, the State would reduce the very real prospect of a European Court challenge due to delays in the process, which has already created problems in other areas of the judicial system.

These issues, and more, will be considered at the Society's annual conference, which will take place at the Europe Hotel and Resort in Killarney on 10 and 11 May 2013. I am pleased that Minister Shatter has agreed to be the keynote speaker at the conference on the theme 'Reform of the courts'. In addition to hearing and questioning the minister on these issues, practitioners will be afforded a much-needed opportunity to engage with colleagues and will accrue CPD points.

It is my fervent hope that a sizeable number of you will join me in Killarney in May in the interests of maintaining our collegiate spirit. I look forward to meeting you there.



James McCourt
President

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LAW SOCIETY GAZETTE

REGULARS


18


26

COVER PIC: GAZETTE STUDIO/NUALA REDMOND

COVER STORY


20

FEATURES


38

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You can also check out:

- Current news
- Forthcoming events, including the **Law Society Annual Conference 2013 in the Europe Hotel and Resort, Killarney, on 10/11 May**
- 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

Sign up for CPD soon

GALWAY

The delivery of the CPD programme is in full swing throughout the county, with three hours of well-attended seminars in February.

At the seminar on Holy Thursday, Brendan Glynn BL updated participants on the *Personal Insolvency Act*. Kevin Dineen BL spoke on personal injury law, Alan Ledwith BL on employment law, while Michael J Clancy BL enlightened all present on the topic of 'Are the banks running scared? An update on repossession law in Ireland'.

James Seymour says: "If you have not paid your annual subscription of €50 per solicitor, please do so by sending a cheque to treasurer, Cairbre O'Donnell (c/o John C O'Donnell & Son, Solicitors, Atlanta House, Prospect Hill, Galway; DX 4502). We plan to hold up to 28 hours of free CPD during 2013, and your subscription helps to finance these events."

Property tax CPD event

WEXFORD

Helen Dawson tells me that the next CPD event is on 12 April at the National Heritage Park, with accountant David Dowling speaking on regulatory matters and the new property tax, Rory O'Donnell on new developments in property law, and other speakers to be confirmed.

Danske Bank Irish Law Awards

DUBLIN

The finalists for the Danske Bank Irish Law Awards 2013 have been announced across 22 categories from over 100 law firms throughout Ireland. This year saw almost 300 nominations, in categories such as 'regional law firm of the year', 'sole practitioner of the year', and 'lifetime achievement'. There were more than 25 firms/lawyers nominated for both 'law firm of the year' and 'law firm innovation of the year', but the most popular category for 2013 was the newly introduced 'pro bono and public interest team/lawyer of the year', with 31 nominations making it hard work for the elite panel of judges.

You can find a full list of finalists on www.irishlawawards.ie. The awards event itself will take place on Friday 3 May at a gala luncheon in the Four Seasons Hotel, Dublin 4, and will be hosted by Miriam O'Callaghan. The event was sold out in 2012, so make sure you book your tables early.

Looking south

SOUTHERN LAW ASSOCIATION

PIC: DEE BAUMANN

At the annual dinner of the Southern Law Association on 22 February were Aoife McCann, Emma Comyn, Karen Tobin and Fionnuala Cullinane

CPD news

DONEGAL

The next CPD seminar will be held on Friday 17 May 2013 at the Radisson Hotel, Letterkenny, Co Donegal, 9.30am to 1pm. The speakers will be Padraic Courtney of the Law Society and Anne Stephenson on agricultural relief, capacity issues when drafting wills, and enduring power of attorneys for clients. The fee for attending is €80 and colleagues are asked to return their forms to Alison Parke.

ENDA MARREN RIP

Older colleagues in particular will have been saddened at the recent passing of Enda, a consummate lawyer, proud Mayo man and a considerable enhancer of public and civic life throughout his long and distinguished legal career – perhaps best epitomised by the fact that former President McAleese invited him to serve on her Council of State.

Our commiserations go to Enda's son Paul, who continues to manage the family firm of Marren & Co, and to the family.

Raising a parting glass

WATERFORD

John Goff Senior has retired after over 50 years in practice. John set the standard for the legal profession in Waterford for many years and the Waterford Law Society wishes him well in his retirement.

The death took place on 23 February of former District Court Judge Keenan Johnson in Sligo. The late judge had been assigned to District Number 22, which included Waterford for many years, and was also closely associated with Children's Group Link, based in Waterford. We extend our sympathies to the Johnson family and, in particular, to his son Keenan Johnson and daughter Helen who is a member of the Bar.

FREE LAWCARE SEMINARS FOR BAR ASSOCIATIONS

LawCare's coordinator for Ireland, Mary Jackson, has been given the go-ahead to provide a second round of free LawCare seminars to bar associations, with the backing of the Law Society. With 26 presentations under her belt over the past three years, she's extremely sought after.

Since she has to travel from Britain, ideally she prefers to do two or three seminars at a time. She works part-time but, with enough notice, can be flexible in terms of dates and times. For more information, email: mary@lawcare.ie or tel: 0044 1398 341 790.

Perrin convicted of false accounting

Former District Court judge Heather Perrin, who is currently serving a two-and-a-half-year jail sentence for deception, has had another two years added to her sentence for false accounting. Perrin, however, is not expected to serve any extra time in prison for the new offence.

The former judge was found guilty earlier this year of inducing an elderly client and lifelong friend to leave half of his million-euro estate to her two children when he was a client of her solicitors' firm.

On 13 March, at a sitting of the Dublin Circuit Criminal Court, Judge Mary Ellen Ring sentenced Perrin to an additional two years for falsifying the account of an estate with the intention of making a gain between May 2004 and February 2009.

"It's a breach of trust between solicitor and clients," Judge Ring said. "It's a fundamental breach."

Perrin was the first member of the judiciary in the history of the State to be convicted of a serious crime. She retired from the District Court bench days before she was jailed last year.

In News this month...

Child abduction cases rise

The Department of Justice dealt with 147 new cases of child abduction in 2012 – five more than the previous year. As 129 cases were carried over from 2011, the department dealt with a total of 276 cases last year.

In all, 192 children are involved in the 147 new cases. Applications from the State to other countries numbered 83, while applications into the State from other countries were 64.

Of the 147 new applications received by the Irish Central Authority (see www.justice.ie for more information), the highest number involved Britain (68), followed by Poland (14), Latvia (12), other European countries (36), and other contracting states (17). Of the 129 cases still active from 2011, 69 were outgoing while 60 were incoming.

Minister for Justice Alan Shatter said: "Parental child abduction continues to be a worrying problem. Mediation remains the best way for estranged parents and spouses to resolve their differences and reach lasting agreements that work in the best interests of the children involved."

Young bloods call time on Bar

A total of 179 barristers – many of them "struggling to survive at the Bar" – left the Law Library in 2012. Just 77 barristers left during the 2009/10 legal year, revealing an increase of 132% in the numbers of those leaving.

Chairman of the Bar Council, David Nolan SC says: "The Bar has always been competitive, even in the good times. But now barristers, many with up to ten years' professional experience, are leaving because they cannot survive."

Junior barristers say the figures could be much higher, adding that many colleagues might have left but retained their membership to avoid the stigma of no longer being active members. The number of practising barristers rose from 1,112 in 1998 to almost 2,500 during the boom years.

Lady golfers tee-up for spring

This year's Lady Solicitors' Golf Society spring outing takes place at The Heritage Golf and Spa Resort, Killenard, Co Laois, on Friday 17 May. The event is open to all lady solicitors and their guests. It will comprise an 18-hole competition with a separate guest's prize. The Lady Captain, Mary O'Connor, is encouraging younger colleagues to join the society and to take part in this year's event, alongside its regular supporters.

A very attractive package is on offer from The Heritage: golf only – €40 per person; golf and dinner – €65 per person; golf, dinner, bed and breakfast – €145 per person sharing. A limited number of rooms are available. Participants should contact the Heritage at tel: 057 864 5500, fax: 057 869 5037, email: reservations@theheritage.com.

The Lady Captain asks that participants would inform her so that she can keep track of numbers, by emailing: mary.oconnor@carrollkellyoconnor.com.

Transfer regulation in Ireland

The Employment Law Association of Ireland (ELAI) is holding a meeting at 6.30pm on Tuesday 16 April 2013 at the Radisson Blu Hotel, Golden Lane, Dublin 8, on the current application of the transfer regulations in Ireland. Professor John McMullen, the acclaimed British guru on TUPE (*Transfer of Undertakings (Protection of Employment) Regulations 2006*) is the guest speaker.

The meeting is open to members of ELAI. Non-members who wish to attend should contact Carol Fawsitt (chair of ELAI) at cfawsitt@hayes-solicitors.ie or Lauren Tennyson (membership secretary) at laurentennyson@gmail.com for further information.

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Ann Williams: Cross-Border Taxation Issues

Richard Frimston: EU Succession Regulation

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Electronic payments set to grease the wheels of commerce

Solicitors have, for a number of years, faced negative reactions from clients for the delay in receiving funds. When payment is made by cheque, it can take ten working days before a bank will give access to funds. This delay can be doubled when solicitors act as intermediaries in the flow of money to a client, and it is often the solicitor who is blamed for this delay. The slow clearing time is not unique to Ireland, and arises for two main reasons. First, cheques are a physical instrument and need to be physically transported and processed. Second, a cheque, once written, can be repudiated, leading to a delay in the time a bank is willing to give value for these funds.

While the problems of the legal profession in this regard are not unique, the Irish legal profession is a particularly intensive user of cheques. While the profession only accounts for around 1% of employment, it accounts for around 8% of all cheques issued. The efficiency of the legal profession could be improved by making more use of secure and efficient electronic payment methods, leading to a reduction in the reliance on cheques.

While the time taken to get access to funds after a cheque has been lodged is at the discretion of the banks, the requirement on the bank to make funds available that are transferred by electronic funds transfer (EFT) is guaranteed by law. Under the *Payments Services Directive*, beneficiaries of EFT payments are entitled to value for, and access to, the funds no later than close of the business day following the date of the payment being initiated. In almost all cases, the money is visible and available to beneficiaries at the start of the following working day, that is, the next working day after the transfer has been initiated.

To make the 'next-working-day-value-cycle', transfers must be made by the 'shut-off' time for the sending bank. This is generally mid-afternoon, typically between 3pm and 4pm, but this can vary from bank to bank. Payment instructions received after this daily shut-off time will be processed on the next business day. Solicitors should contact their bank to find out the precise 'shut-off' time that applies to them.

While the regulation sets the latest valuation times for payments, there is nothing to prevent banks and other payment institutions from offering faster settlement times than the regulated minimum. Already, at least one of the main Irish banks is running intra-day cycles, which can result in earlier availability of funds for beneficiaries. It is expected that this will become more available, generally, in the coming years.

In most cases where both sender and beneficiary are with the same bank, the funds will be immediately available to the beneficiary once the transfer is made.

In the coming weeks, the Central Bank will publish the National Payments Plan, which aims to modernise the way we make payments in Ireland. Ireland is one of only four major European countries where cheque usage is widespread, and one of the major goals of the plan will be to greatly reduce this usage.

The plan presents a strategic roadmap for transforming payments in Ireland, and a vision of Ireland joining those countries that are at the forefront of payments in Europe. However, the realisation of this vision will require the full commitment of all areas of the economy, including the legal sector.

Solicitors interested in learning more about how to take full advantage of electronic payments should contact their bank.

Shatter to address Society's annual conference

Minister Alan Shatter will be the keynote speaker at the 2013 Law Society annual conference, on Friday 10 and Saturday 11 May in Killarney. Mícheál Ó Muircheartaigh has also been confirmed for the 2013 conference.

The theme of the conference is 'Firming up for the future: building legal agility and a positive perspective'. It will take place in the Europe Hotel and Resort, Killarney.

Minister Shatter will speak on courts reform and the *Personal Insolvency Act 2012*, while Mr Ó Muircheartaigh will encourage delegates to 'Move up the field and face the ball – exercising a positive perspective'.

The following speakers have also been confirmed:

- **Simon Murphy (Barry M O'Meara & Son Solicitors)**
- **Richard Hammond (Hammond Good Solicitors)**
- **Paul Keane (Reddy Charlton Solicitors)**
- **Chris Callan (Callan Tansey Solicitors)**
- **Sonia McEntee (McEntee Solicitors).**

For more information on conference packages, please visit the 'Events' area of the Society's website.

To ensure your place at the conference, you can book online at www.lawsociety.ie. Queries about bookings should be emailed to the conference organisers at: lawsociety@ovation.ie.

Avail of free iPad clinics and discounts

The Diploma Programme has announced that it will be providing free iPad clinics, in conjunction with Apple retailer Compu b, at the Education Centre, Blackhall Place, in the coming months. In addition, Compu b will be offering discounts to all Diploma Programme students on accessories and devices.

These free iPad clinics are carefully designed around themes and content that will reveal how to get the best out of your tablet using the most apt software.

Clinics

- Thursday 9 May (6pm to 7.30pm) – Introduction to iPad (advanced): topics and apps include organise my iPad, email management, note management, *GoodReader*, *Pages*, and more.
- Wednesday 5 June at 6pm to 7.30pm – Using the iPad as a work tool in practice: topics and apps include *iAnnote*, *LogmeIn*, *Dragon Dictate*, *TrialPad*, *Scanner*, *Notebook*, *Penultimate*, VAT app, and more.

Compu b will introduce the iPad set up, iTunes and the downloading of relevant applications. Specialised IT personnel will be available to answer queries and help in setting up iPads to operate as a personal and professional information manager.

Attendance is free to Diploma Programme students, but pre-registration to secure a place is essential. Email the Diploma Team at diplomateam@lawsociety.ie. Regular clinics will follow over the coming months – further dates will be released on the website.

Discounts

In addition, Diploma Programme students can claim certain discounts from Compu b, as follows:

- 10% off all non-Apple products in Compu b
- 5% off all Apple accessories
- 3% off all devices to Diploma Programme students and lecturers.

To avail of these offers, simply email: diplomateam@lawsociety.ie. The team will supply a letter to Diploma Programme students, which should be presented to Compu b in order to receive the discounts.

The *Gazette* will publish an iPad article by solicitor Dorothy Walsh in the May issue. She will give key tips on getting the best out of the iPad – and the software she finds most useful in meeting the demands of being a busy lawyer.

DAC Beachcroft expands

The Dublin office of international law firm DAC Beachcroft has announced that it will be expanding soon "in response to increasing client demand". The expansion is expected to create up to ten new jobs.

The firm, which is based at Fleming Court, Dublin 4, recently increased the number of staff serving its employment law section, bringing the firm's number of employees from 29 to 39, including 12 partners. The Dublin office opened in March 2009, with just one partner.

Put a 'PIP' in your step!

The recent introduction of the *Personal Insolvency Act 2012* has led to major reform in this area of practice. In order to provide practitioners with the key skills required to become a personal insolvency practitioner, the Law Society's Diploma Programme has launch its new Personal Insolvency Practitioner Certificate.

The course begins in April and comprises four full days of lectures and workshops spread over two weekend sessions (Friday and Saturday). Lectures may be accessed by webcast, but attendance at workshop sessions is mandatory.

Full details, including the application form and dates, are available on our website, www.lawsociety.ie/diplomas.

Please note that, in the opinion of the Insolvency Service of Ireland, an individual who completes this course of study and passes the exam will have met relevant knowledge criteria for submitting an application for authorisation as a personal insolvency practitioner.

Spotlight on EU structural funds

'Community living for all' is the title of a forthcoming conference on the future role of the European Union structural funds in advancing community living for older people and people with disabilities.

The conference is being run in association with the Irish Presidency of the Council of the EU and will take place on Friday 3 May 2013 at Áras Moyola, National University of Ireland, Galway from 9am to 5.30pm.

The event is timely, given that new regulations governing structural funds are due to be concluded in 2013. The conference will be co-directed by Prof Gerard Quinn (NUI Galway) and Senator Katherine Zappone (Seanad Éireann).

Speakers will be drawn from a variety of EU-level institutions, including the European Commission, EU Fundamental Rights Agency, European Group of National Human Rights Institutions and the United States Federal Administration for Community Living.

European-level civil society groups and the United Nations Office of the High Commissioner for Human Rights (European Region) will be represented. The growing role of European philanthropy in community living will be represented by the European Foundation Centre.

The conference, open to all, will cost €40. All queries should be addressed to Suzanne Doyle, Centre for Disability Law and Policy, National University of Ireland, Galway, by email: suzanne.doyle@nuigalway.ie, tel: 091 494 273. Registration can be made at www.conference.ie/Conferences/index.asp?Conference=215.

Celebrating women as global ADR leaders

On International Women's Day on 8 March, a unique multidisciplinary collaborative Dublin conference, entitled 'Conflict resolution: peace, practice, perspectives – celebrating women as ADR leaders', was delivered by the Chartered Institute of Arbitrators (Irish branch), the Irish Women Lawyers' Association, ArbitralWomen and Law Society Skillnet. The event was sponsored by the Edward M Kennedy Institute for Conflict Intervention.

Over 100 participants from numerous countries heard eloquent and passionate presentations from more than 50 speakers across plenary and panel sessions, including: Law Society President James McCourt, Ms Justice Maureen Clark (High Court and president of the Irish Women Lawyers' Association), Delma Sweeney (programme director, Edward Kennedy Institute for Conflict Intervention), Paulyn Marrinan Quinn SC (ombudsman for the Defence Forces), Klaus Reichert SC, Rowena Mulcahy (taxing master of the High Court), Muriel Walls (mediator and collaborative practitioner), Brendan McAllister (founding director, Mediation Northern Ireland) and James Halley (chairman, Chartered Institute of Arbitrators, Irish Branch).

IWLA president Ms Justice Maureen Clark, who launched the conference, and Anne-Marie Blaney (CIArb), highlighted that 8 March each year was a day to celebrate women's economic, political and social achievements through various organisations, governments, charities, educational institutions, women's groups, corporations and the media.

(From l to r): Peter Cassells (NUI Maynooth, Edward M Kennedy Institute for Conflict Intervention), Paulyn Marrinan Quinn SC (ombudsman, Defence Forces), Michelle Nolan (Law Society Skillnet), Anne-Marie Blaney (solicitor, CIArb), James Halley (chairman, CIArb), James McCourt (Law Society President), Mirèze Philippe (ArbitralWomen), Dominique Brown Berset (president, ArbitralWomen), Maura Butler (chairperson, Irish Women Lawyers' Association, Ms Justice Maureen Clark (president, IWLA), and Michael Carrigan (president, Arbitration Ireland)

Gender agenda

'The gender agenda: gaining momentum' was the theme of this year's International Women's Day, with the sub-theme: "Over time and distance, the equal rights of women have progressed. We celebrate the achievements of women while remaining vigilant and tenacious for further sustainable change. There is global momentum for championing women's equality."

Knowledge and capacity of a diverse conflict resolution community was enhanced by expert input from both female and male speakers. The conference highlighted the contribution and expertise of women in dispute resolution, promoted gender equality by identifying that contribution, and addressed issues facing women's participation.

In his welcome address, President McCourt stated that "the time has come whereby solicitors in particular must be required to expressly refer to means of resolving their clients' disputes other than through litigation. I am strongly of the view that the solicitor must act in his or her client's best interest, and in the public interest rather than in his or her self-interest. It may be that a dispute can be resolved. If this results in a reduced fee for a solicitor but it is in his/her client's interests, then so be it."

Plenary topics included:

- 'Is it true that women don't ask?'
- Validating ADRs through a wider lens,
- Ethics and professional standards,
- Taxation of costs,
- Empowering couples to resolve their own family disputes, and
- The quality of our attention.

Panel sessions discussed international mediation and peace perspectives, international dispute resolution, gender research and conflict resolution, restorative justice and practice, mediation, industrial relations/workplace mediation, and family dispute resolution.

ArbitralWomen are launching an initiative for an inclusiveness programme and to capture more data in order to measure progress in the practice of dispute resolution.

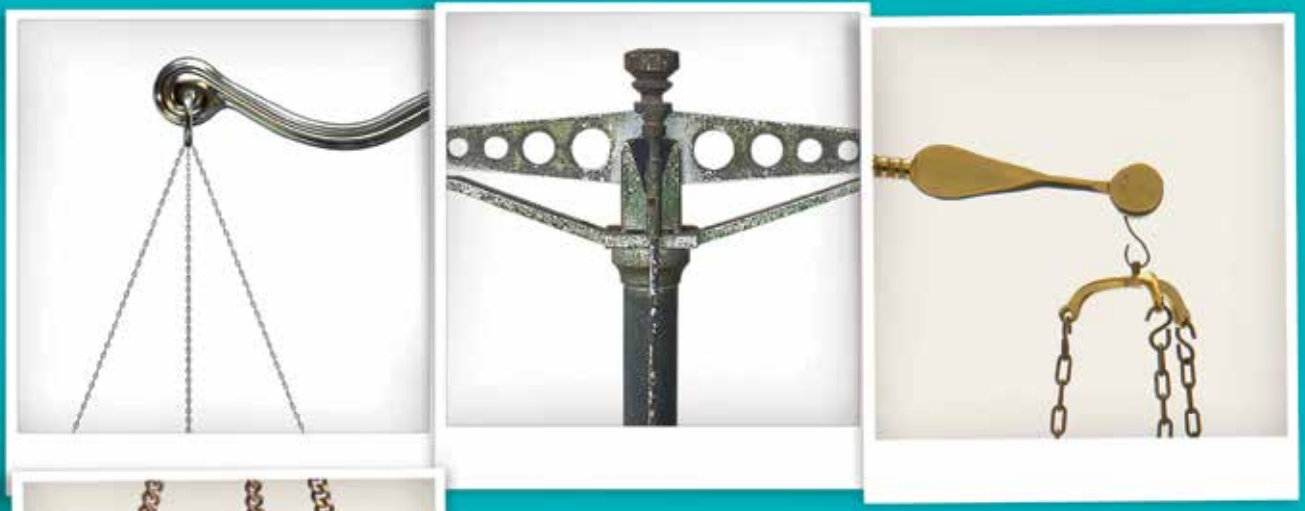
The collaborators in this event plan to continue to work together to promote parity for all in the diverse area of practice that is alternative dispute resolution. The next steps will include the publication and launch of the proceedings of this major conference, which heard from more than 50 speakers, all of whom produced papers. Details will be available in the near future on the respective websites of all collaborators.

Taking a closer look at data protection and privacy

The In-house and Public Sector Committee annual conference, on the subject of data protection and privacy, will take place on Wednesday 20 November 2013, from 1.30pm to 5pm. Speakers will include leading experts and practitioners in the field. Four hours' CPD will be available, including one hour regulatory.

Data protection and privacy has become an increasingly relevant area for all in-house lawyers, especially with the growth of multimedia and the use of the internet as a data resource.

The committee is also organising a panel discussion on the theme of the independence of the in-house solicitor, which is expected to take place sometime during the first two weeks in May. Confirmation of the date and time for the panel discussion will be available on the Law Society's website, www.lawsociety.ie.



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European Union

Statutory obligations on personal representatives of estates

There are a number of statutory obligations on legal personal representatives – whether executors or administrators – to notify particular bodies or persons of the death of a deceased and/or to furnish information regarding the estate or entitlements to the estate.

The Society's Probate, Administration and Trusts Committee has put together the following checklist, which is intended to be a guide to the obligations. It does not purport to be a conclusive guide to all requirements. Appropriate regard should be had to the legislation regarding the matter.

1) *Executor's year*: executors have, in general, a year from the date of death of the deceased within which they cannot be compelled to distribute an estate (section 62 of the *Succession Act 1965*). There are exceptions to the rule, which may extend or reduce the period.
2) *Social welfare payments*:
   a) The legal personal representative must furnish a copy of the schedule of assets (sometimes referred to as the CA24 or Inland Revenue affidavit) to the Department of Social, Community and Family Affairs where a deceased was in receipt of social welfare assistance. This obligation arises where the deceased was in receipt of *any* social welfare assistance at *any* time (section 339 of the *Social Welfare (Consolidation) Act 2005*).
   b) The legal personal representative must notify the Minister for Social Protection of their intention to distribute the assets of an estate three months before commencing the distribution in the circumstances at (a) above.
   c) Once notified, the minister is obliged within this period of three months to notify the legal personal representative that a sum of money is due to the department. If such a notification is received, then the legal personal representative must retain assets sufficient to discharge this liability.
   d) If a legal personal representative fails in his duty to notify, then the legal personal representative can be held personally liable for any such payment due (section 339(3)).
   e) A statutory notice to creditors will *not* provide protection to the legal personal representative from their obligations under section 339.
3) *Nursing Home Support Scheme 'Fair Deal'*: the legal personal representative is obliged to notify the HSE not less than three months in advance of their intention to distribute the estate (section 27 of the *Nursing Home Support Act 2009*). Note that this is in addition to the obligation to notify the Department of Social Protection. It arises where the deceased was in receipt of ancillary State support. In addition, please note that there is an obligation on the personal representative to furnish them with a copy of the Inland Revenue affidavit also.
4) *Capital Acquisitions Tax*: since 14 June 2010, the legal personal representative no longer has any secondary liability for the discharge of CAT on an estate, save where they have been notified by Revenue of such obligation. The legal personal representative, however, retains this secondary liability in the case of non-resident beneficiaries. This liability can extend to solicitors acting for the estate. The obligation of the legal personal representative in such circumstances is limited to the assets of the estate under their control (see section 45 AA *CAT Consolidation Act 2003*). There is provision to afford some protection to the legal personal representative in circumstances where the legal personal representative notifies Revenue in advance of an intention to distribute the assets of an estate (the 'one-month' letter. Note, however, that same can only be sought and relied upon when "reasonable enquiries" are made and the solicitor/legal personal representative "makes a reasonable effort to ascertain the extent of the property"). Further, note that the Revenue will not then seek to enforce secondary liability *except* to the extent of any property remaining under the solicitor's control. Therefore, these provisions are limited and care should be taken when dealing with a non-resident beneficiary or legal personal representative or acting as the agent for such person.
5) *Spouse's/civil partner's legal right share*: the legal personal representative must notify the spouse/civil partner in writing of their right of election under section 115(4) of the *Succession Act 1965*. The spouse/civil partner then has six months from such notification, or one year from the date of extraction of the first grant of representation to so elect.
6) *Spouse's/civil partner's right of appropriation*: the legal personal representative must notify the spouse/civil partner in writing of their right to appropriate the dwelling house under section 56 of the *Succession Act 1965*.
7) *Ex spouses/civil partners*: the legal personal representative has certain obligations in respect of divorced couples and those who have obtained a judicial separation. Under section 18(6) of the *Family Law (Divorce) Act 1996* "the personal representative of a deceased spouse in respect of whom a decree of divorce has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned".

Similar provisions exist under section 15A(6) of the *Family Law Act 1995* in relation to spouses who are judicially separated, and under section 127(7) of the *Civil Partnership and Certain Rights of Cohabitants Act 2010*.

PROFESSIONAL PRIVILEGE NOT EXTENDED TO NON-LAWYERS

A recent English Supreme Court decision highlights the importance of clients instructing lawyers when obtaining legal advice if they wish to claim privilege in subsequent proceedings, write Liam Kennedy and Davinia Brennan

Liam Kennedy is a partner in A&L Goodbody, specialising in litigation and is a Law Society Council member

Davinia Brennan is a professional support lawyer in A&L Goodbody, specialising in litigation

Various non-lawyers and consultants offer quasi-legal and regulatory advice in areas such as property, banking and employment. Clients should be aware that advice from and communications with non-lawyers will generally not be privileged and may be discoverable in any civil or regulatory litigation. If an issue is likely to be contentious, lawyers should be involved as early as possible to ensure that the client's position is not prejudiced.

> **"Avoid giving legal and business advice in the same communication, which will call into question whether the dominant purpose was of a kind that would attract privilege"**

Implications

In *R (on the application of Prudential plc and another) v Special Commissioner of Income Tax and Another* (23 January 2013), the English Supreme Court refused to extend the scope of legal advice privilege to tax advice given by accountants (as opposed to legal advice by qualified lawyers on tax issues). The accountants' advice had to be disclosed to the Revenue Commissioners. The decision confirms the common law position: legal advice privilege only applies to confidential lawyer/client communications. The ruling is consistent with Irish common law.

'Lawyers' in this context includes solicitors, barristers, foreign lawyers, and in-house counsel. However, the position of in-house counsel is complicated when dealing with EU competition law issues. The *Akzo Nobel* decision confirmed that communications within a company with in-house counsel are not privileged in European Commission competition investigations. Accordingly, confidential legal advice from in-house counsel is generally considered privileged in the context of Irish domestic law, but not under EU competition law.

Although the common law position in Ireland and England is similar (legal advice privilege does not cover communications between clients and non-lawyers), *Prudential* would still have been decided differently in Ireland. The statutory right of the Revenue Commissioners to disclosure is subject to different exceptions in Ireland. Under sections 900-905 of the *Taxes Consolidation Act 1997* (as amended by the *Finance (No 2) Act 2008*, section 92), the client is not required to disclose information if a claim to legal professional privilege could be maintained in legal proceedings. A similar exemption applies in Britain.

However, in Ireland, there is another, broader, exemption. The legislation also exempts from disclosure confidential professional advice given to a client (other than as part of a dishonest, fraudulent, or criminal purpose). Accordingly, in Ireland – unlike Britain – confidential tax advice from an accountant would be exempt from disclosure to the Revenue Commissioners under the 1997 act (as amended). However, as such confidential professional advice is not protected by legal advice privilege, it may be discoverable in other legal contexts.

Prudential concerned legal advice alone. A non-lawyer's work product may be protected by litigation privilege if it was prepared for the dominant purpose of preparing for actual or contemplated litigation. It would be better for such advice to be commissioned by and rendered through lawyers in the context of the litigation, in order to show that such work product was in fact prepared for the dominant purposes of the litigation.

The appeal

The specific issue was whether Prudential could refuse to disclose documents in response to a statutory notice to produce documents in connection with its tax affairs, on the grounds that they were covered by legal advice privilege. The legal advice was given by accountants PricewaterhouseCoopers in relation to a tax-avoidance scheme. This raised the question as to whether legal advice privilege should be extended to legal advice given by a non-lawyer. Litigation privilege did not apply, as the advice was in relation to a non-contentious issue.

The Supreme Court dismissed Prudential's appeal by a majority of five to two. Lord Neuberger concluded that legal advice privilege should not be extended to cover advice by professionals other than lawyers, even where that advice is legal advice that the professional is qualified to give. He reached this conclusion for three reasons:

- Legal advice privilege currently

The English Supreme Court: only lawyers' advice is privileged

has clearly defined limits. To declare that legal advice privilege should be determined not by the profession to which the adviser belongs but by the function he is performing (that is, advising on law) would carry an unacceptable risk of uncertainty and loss of clarity.

- The question whether legal advice privilege should be extended to legal advice by non-lawyers raises public policy questions for parliament.
- Parliament legislated on the assumption that legal advice privilege only applies to advice by lawyers, and it would be inappropriate for the court to extend the law.

Tips for preserving privilege

The decision is a salutary reminder of the need for clients to instruct qualified lawyers when seeking legal advice if they wish to claim legal advice privilege in subsequent litigation. Practical tips for preserving legal advice privilege include:

- Involve lawyers as early as possible to reduce the likelihood of any prejudicial communications being subject to disclosure.
- Identify the 'client team' within a company whose role it is to request and receive legal advice from lawyers and limit the dissemination of the legal advice beyond this group as much as possible.
- Label any request for legal advice 'privileged and confidential' or 'for the purposes of legal advice'. The presence or absence of such terminology is not conclusive, however.
- Ensure legal advice is not forwarded unnecessarily to any third parties and that any such provision to third parties is on a basis that does not lead to a waiver of privilege.
- Avoid giving legal and business advice in the same communication, which will call into question whether the dominant purpose was of a kind that would attract privilege. G

UNSUSTAINABLE, UNTENABLE, INDEFENSIBLE

Chief Justice Susan Denham pulled no punches at a recent Department of Justice seminar on the establishment of a Court of Appeal. Lorcan Roche reports

Lorcan Roche is an award-winning writer and journalist

Speeches by attorneys general and chief justices to members of the legal profession tend to be restrained. If and when the Minister for Justice is in attendance, the speeches tend to acquire an achingly diplomatic note. Phrases such as "systemic failure" and "things are getting worse" tend not to be uttered. The speeches are generally not described afterwards as "powerful" or "impressive". The press releases that follow are rarely headlined in one word. Rarely, if ever, is that one headline delivered in bold.

But, in a radical departure from received protocol, the speech by Chief Justice Susan Denham to, among others, Minister for Justice Alan Shatter and assorted members of the profession at Blackhall Place (at the 2 March seminar on the establishment of a Court of Appeal), was headlined 'Unsustainable' – and it was far from restrained.

"The current situation in the Supreme Court and the Court of Criminal Appeal," she stated in her opening salvo, pausing to grant each word maximum effect, "is unsustainable, untenable, and simply cannot be defended."

She continued: "An appeal, certified as ready yesterday, is in danger of not getting a date for hearing in the Supreme Court until mid 2017."

The Chief Justice explained that a "striking feature" of the 2012 Supreme Court workload was the increased number of varied motions that the court had had to deal with: "There has been an increasing trend in recent years for applications for stays, which are time consuming to deal with. This has an impact on the waiting time for appeals. The previous practice of listing shorter appeals on a Friday has, very largely, had to be discontinued as a result of the burden of the increased motion list."

> ***"The Chief Justice pulled absolutely no punches as she described the effect on the economy, and on our society, of the delays, in particular with regard to commercial disputes"***

Then, in wonderfully unrestrained language, the Chief Justice said: "The structure of the superior courts in Ireland was simply not designed to cope with the volume and complexity of the litigation coming before the courts in the 21st century."

Effective rule of law, she explained, was being thwarted by delays, lack of reform, bottlenecks and overall systemic failure.

Denham, who was chair of the 2009 Working Group on a Court of Appeal, noted how there had been increases in the volume of cases, in the number of High Courts and the number of judges, but, incredibly, no parallel increase at the appellate level.

"This creates a bottleneck … the stark reality is that the Supreme Court does not have the capacity to process promptly the volume of civil cases appealed from the High Court."

The complexity of cases, she said, was also a "significant factor" when considering the work laid before the Supreme Court. Cases commonly raised complex issues under Irish statutory, regulatory and constitutional law. Often, they further raised "complicated issues" of EU law. Also, the court was referred "frequently" to the *European Convention on Human Rights*, the

The speakers gathering immediately before the seminar were *(l to r)*: Chief Justice Susan Denham, Attorney General Máire Whelan SC, Bar Council Chairman David Nolan SC, Advisor to the Minister Thomas Cooney, the chairman Professor Gerry Whyte, Law Society Director General Ken Murphy and Minister for Justice, Equality and Defence, Alan Shatter TD

jurisprudence from Strasbourg and relevant law in other jurisdictions. "Consequently, while a case may be listed for some days of oral argument, the significant volume of work takes place before and after the hearing. The work in open court thus reflects an 'iceberg principle' – the vast volume of work is hidden."

Certain initiatives have been introduced to address the problems, including:

- Micro-management (whereby cases are listed before a judge at 9.30am and are managed with the assistance of counsel),
- Arbitration/mediation,
- Case management, and
- Increased and wider use of IT.

But, as a consequence of what the Chief Justice described as the "limited structure" of the appeals system, there were "very serious delays". Currently in the Supreme Court there are 543 cases that are certified and ready to be heard on appeal, of which 71 have priority listing. But general delays now run to four years for an ordinary appeal – and nine months for priority listing.

"Without reform, there will be further delays," said the Chief Justice, "and the situation is getting worse. Last year, there was a 21.2% increase in the number of appeals filed."

NUMBER OF APPEALS FILED	
2012	605
2011	499
2010	466
2009	499
2008	443

MINISTER REITERATES COURT OF APPEAL COMMITMENT

Speaking before the Chief Justice took to the podium, Minister for Justice Alan Shatter reiterated the Government's commitment to take the necessary steps to create a Court of Appeal (as well as to introduce a constitutional amendment to allow for the establishment of a distinct and separate system of family courts). He said he was working on a timeframe that envisaged putting such issues before the people in the autumn.

He, too, underlined the cost to society, and to business, of not having an efficient court system: "Leaving aside the obvious costs faced by parties directly concerned, there is a cost to our reputation as a developed modern democracy."

The minister stated that the 2009 Working Group on the Court of Appeal had provided, in their published report, an "excellent template" for any discussion on the establishment of a Court of Appeal.

"I have no desire," he said, "to pre-judge our deliberations on the shape of that court, but I should say that the intention is that there will be one court, with both criminal and civil jurisdiction. Outside of that, I have an open mind."

"Effective rule of law propels prosperity. The rule of law is, therefore, an important consideration for business people and investors when deciding to do business in a country"

The Chief Justice's manner was calm, very reasoned. Her voice betrayed little or no emotion. She will never be described as a 'drama queen'. But she pulled absolutely no punches as she described the effect of the delays on the economy and on our society, in particular, with regard to commercial disputes: "Speedy resolution of disputes is important in a successful economy … a failure to address the problems posed may be damaging to Irish society and the economy."

She continued: "Effective rule of law propels prosperity. Stronger rule of law boosts foreign investment and lowers unemployment. The rule of law is, therefore, an important consideration for business people and investors when deciding to do business in a country."

The rule of law, she added, is also a key indicator of competitiveness, as outlined by the World Economic Forum (Davos) in its *Global Competitiveness Report 2011-13*. That report, she said, notes that governance structures, such as an independent judiciary and a strong rule of law, enhance business confidence. Economic freedom, she said, rests on the empowerment of the individual, non-discrimination, and open competition: "But none of these requirements can exist in a society that lacks effective rule of law."

She pointed to a finding of the European Court of Human Rights, which did not consider a delay of over three years to be justified in holding an appeal hearing. And she reminded the hushed (and to a degree, mildly astonished) assembly, that the establishment of a permanent Court of Appeal – which would have several divisions to hear appeals in civil and criminal cases – should happen forthwith.

She concluded: "All the other common law countries have a Court of Appeal in their legal system, placed between the High Court and the Supreme Court. The new Court of Appeal should be established in law and provided for in the Constitution."

Need for appropriate inflation index in PPO cases

From: Joice Carthy, solicitor, Augustus Cullen Law, 7 Wentworth Place, Wicklow

I refer to the article 'Paying the piper', published in your March 2013 issue (p20). In her article, Mary Hough, when dealing with the issue of periodic payment orders (PPOs), comments that such payments are to be "linked to an inflation index" and notes how PPOs have operated in Britain. Ms Hough rightly highlights that only following the landmark Court of Appeal decision in *Thompstone* did PPOs become popular in Britain. This is because that decision effectively linked the index to inflation in care costs and not the general Consumer Price Index.

I feel that it is crucial to emphasise at this stage that the report of the Working Group on Medical Negligence and Periodic Payments, dated 29 October 2010 and referred to by Ms Hough, addressed the issue of an appropriate index in detail, both in the report itself and in the executive summary. In that respect, at chapter 2, paragraph 2(v), it recommends as follows: "Provision within the legislation must be made for adequate and appropriate indexation of periodic payments as an essential prerequisite for their introduction as an appropriate form of compensation.

"In particular, the group recommends the introduction of earnings and costs-related indices, which will allow periodic payments to be index-linked to the level of earnings of treatment and care personnel and to changes in costs of medical and assistive aids and appliances. This will ensure that plaintiffs will be able to afford the cost of treatment and care into the future."

I feel it is of the utmost importance to emphasise that the appropriate inflation index *must* be linked to inflation in care costs and not the general CPI, which historically runs at a much lower level, in order to ensure adequate compensation for the injured plaintiffs.

As a solicitor who deals with a large number of medical negligence claims, many of which involve catastrophic injuries and are currently awaiting the introduction of PPO legislation, in the absence of such an appropriate index, I would be strongly advising those clients not to participate in periodic payment arrangements. To do otherwise, would, in my view, be to condone and indeed institutionalise under-provision for the injured party on an annual basis into the future.

Rhetorical question?

From: Richard E McDonnell, Richard H McDonnell Solicitors, Ardee, Co Louth

Here's a rhetorical question for our rulers, in view of the recent sentencing (again) of Mrs Perrin: will the Government now finally relinquish control of judicial appointments and allow the Judicial Appointments Board to have the exclusive right to decide on such appointments and drop the pretence (designed to fool the electorate) that the process is free from political influence?

Answer: **of course not! This is Ireland! (The land Chris Huhne may consider moving to after he has been released from prison in England for fiddling his penalty points.)**

IS POSSESSION NINE-TENTHS OF THE LAW?

Large numbers of Irish families are in unsustainable mortgage debt, but the Government is refusing to do anything to avert an impending economic and social crisis to rival the Great Hunger, says Julie Sadlier

Julie Sadlier is a solicitor with many years of practice experience in commercial and property law. In recent times, she has been applying her skills as a solicitor/mediator, assisting clients of Phoenix Project Ireland. She also lectures on the Law Society's Diploma Course on Insolvency and Corporate Restructuring

The greatest fears of many Irish people at present include losing their family homes and their livelihoods. Not surprisingly, this is causing real stress for those affected by unsustainable mortgage and commercial debt. Patrick O'Reilly SC, in an article in *The Irish Times* on Friday 8 March, pointed out that sustainability needs to be defined by the Central Bank, based on data easily available to it from the banks.

From what it sees on the ground, Phoenix Project Ireland is of the view that, if the data were analysed on the 150,000 home loans now in arrears, they would show a very large number of long-term unsustainable loans.

Phoenix Project Ireland is a not-for-profit registered charity and independent law centre that provides advice and support to holders of distressed home mortgages and commercial loans from all over Ireland. The people Phoenix sees have so much mortgage and other debt that there is no possibility of resolution without substantial write-down or repossession. To date, the Government's policy appears, ultimately, to favour repossession. This is a choice that the Government and regulator are making, which will have very significant social and economic consequences.

Many home loans that are currently sustainable will become unsustainable when shortfalls from the sale of 'buy-to-lets' and other commercial loans are attached to these properties. It would appear that regulators are trying to get out of this problem the same way we got into it – deferring to financial markets without regard to the consumer or the economy.

> ***"If the data were analysed on the 150,000 home loans now in arrears, they would show a very large number of long-term unsustainable loans"***

MARP my words

The Central Bank's *Code of Conduct on Mortgage Arrears* has introduced the Mortgage Arrears Resolution Process (MARP), which banks must use when dealing with distressed home loans. Its only effect at present, however, is to defer repossessions.

MARP consists of the following steps:

1) Communication with borrowers,
2) Financial information,
3) Assessment,
4) Resolution, and
5) Appeals.

The MARP code provides that, if a distressed home borrower engages with their bank, repossession proceedings are effectively stayed for 12 months, and if banks continue to enter into agreements with them, this continues the forbearance on repossession.

The Central Bank's *Code of Conduct for Business Lending to Small and Medium Enterprises 2012* and *Consumer Code 2012* provide some protection for commercial and buy-to-let borrowers in their dealings with banks.

Mixed messages

MARP, personal insolvency legislation – and now Central Bank targets and a proposed updated MARP code – are all being held out as part of the Government's commitment to save family homes. All of these measures fall far short of providing any improvement on the current stalemate. The IMF world economic outlook report 2012 (see chapter 3, which deals with household debt) shows, through studies of other countries, the negative impact of household debt on economic recovery and the glaring need for clear prescriptive state intervention

CENTRAL BANK AND GOVERNMENT PROPOSALS

Phoenix says that the proposals announced by the Central Bank and Government on 14 March 2013 continue to fail to provide for the basic requirements of distressed borrowers, such as:

- **Full independent legal and financial advice,**
- **Measurable definition of sustainability,**
- **Prescribed detailed and transparent resolution options, and**
- **Prescribed bank obligations to mitigate losses.**

Alarmingly, these proposals are removing sometimes life-saving restrictions (a concession introduced in the Central Bank's *Code of Conduct on Mortgage Arrears 2010*) on the number of contacts banks can make with them. Central Bank codes are issued under section 117 of the *Central Bank Act 1989* and can be found on the Central Bank website.

Ireland could soon be seeing mass evictions on the scale of The Great Famine

to resolve a problem of this magnitude.

In recent months, clients (whose reduced payments were accepted up until then) are being deemed unsustainable without reason or explanation – despite MARP – and are put under pressure (usually by phone) to sell or voluntarily surrender their homes, or threatened with repossession proceedings.

Banks show no interest in mitigating loss (ultimately borne by borrowers) related to repossession, maintenance and sale of these properties. Banks seem unable to restructure either sustainable or unsustainable loans for longer than 12 months, despite five years of trying.

> ***"Banks seem unable to restructure either sustainable or unsustainable loans for longer than 12 months, despite five years of trying"***

The *Personal Insolvency Act 2012* is not yet operational but, as banks have a veto on all proposals, it is unlikely to assist with the vast numbers of unsustainable loans that Phoenix sees.

The *Start Mortgages v Gunn* decision is credited with slowing down the rate of repossessions, but the legislative flaw it relies on is expected to be rectified, and it is likely that many more cases will arise under the *Land and Conveyancing Law Reform Act 2009*.

Springboard Mortgages v Fitzell, which was dealt with in great detail in an article by David O'Neill (see *Gazette*, May 2012, p42) and, more recently, *ILP v Duff*, provide that repossession orders will not be granted for family homes if banks fail to comply with MARP. This area of law is likely to develop.

Distressed unsustainable borrowers are severely prejudiced without access to independent legal advice in respect of their property rights, as they are faced with either 'go quietly' voluntary surrender requests or undefended repossession proceedings, without resolution – as promised but not delivered by MARP. Their only remaining exercisable right appears to be to seek every opportunity to defend repossession proceedings and/or await sheriff execution of possession orders in the hope that case law or, more desirably, the Government catches up.

PHOENIX PANEL OF SOLICITORS AND BARRISTERS

Phoenix is currently compiling a panel of solicitors and barristers around the country to whom it can refer clients for advice. (Such a referral panel is already in place for counsellors where clients need ongoing psychological support.) Anybody interested should email: support@phoenixproject.ie.

RISING FROM THE ASHES

Phoenix Project Ireland was founded in 2008 in direct response to the debt crisis by a group of concerned professionals.

Professional advice is available on aspects as diverse as legal, financial, accounting, psychological, social welfare and tax concerns at its premises just off the M7, near Portlaoise.

The service is free of charge and it is funded mostly from private donations. More information at www.phoenixproject.ie.

THE SCRIPT TO PULLING OFF A PERFECT INSIDE JOB

As an in-house lawyer, there are times when your client will want an objective that seems fraught with regulatory obstacles. At these times, you need to be creative. Patrick Ambrose draws the curtains

Patrick Ambrose is a solicitor at Bank of Ireland and a member of the Law Society's In-house and Public Sector Committee. Any views expressed here are personal to the author

At the beginning of the film *Ocean's Eleven*, Danny (played by George Clooney) and Rusty (Brad Pitt) discuss the personnel they will need for the elaborate heist. Rusty says: "Off the top of my head, I'd say you're looking at a Boesky, a Jim Brown, a Miss Daisy, two Jethros and a Leon Spinks, not to mention the biggest Ella Fitzgerald ever."

The references become clear when each conspirator's role is revealed. For example, a 'Miss Daisy' refers to a getaway vehicle, a 'Leon Spinks' to a boxing match upset (caused in the movie by a power blackout), and an 'Ella Fitzgerald' turns out to be a recording of the fake bank vault, in a reference to the jazz singer's famous US audiotape commercials in the 1970s, in which a mere recording of her high notes was enough to shatter a glass, prompting the slogan "Is it live, or is it Memorex?".

In much the same way, being an effective in-house counsel involves many different but interconnected formal functions and informal roles, each requiring a particular set of skills. Off the top of my head, I'd say you're looking at a Bogey, a Jim Branigan, a Miss Frizzle, a Madiba and an Atticus, not to mention the best Mary Fitzgerald ever.

> ***"New legal obligations strew the ever-changing regulatory landscape like autumn leaves in Vallombrosa"***

Bogey

At the core of the in-house counsel role is the investigator – or 'Bogey', in honour of Humphrey Bogart's portrayal of fictional investigators Sam Spade and Philip Marlowe. Although valiant investigators of the film noir genre often succeed because of their uncanny ability to unearth the critical facts that ensure that justice is done, the reality for in-house counsel is less glamorous. However, reputational damage to, or official sanction against, the client can be prevented by asking open, probing questions about suspect actions, and when issues arise that have potential legal consequences, it is often the Bogey who will persuade key decision makers to pursue the matter. Like Kipling, a Bogey has six honest serving men: "What and Why and When and How and Where and Who."

Jim Branigan

Although an in-house counsel must be a team player working towards the overall objective, he or she must be prepared to function as policeman of a client's conduct. Here, reference is made to well-known member of An Garda Síochána and urban legend Jim 'Lugs' Branigan (although a less physical style than that allegedly favoured by Garda Branigan is recommended). Neither a 'yes man' nor a 'naysayer', a Jim Branigan must operate with a strong degree of independence, slowing decisions down until facts are clarified and, on occasion, saying 'no' if no legitimate actions are possible.

Miss Frizzle

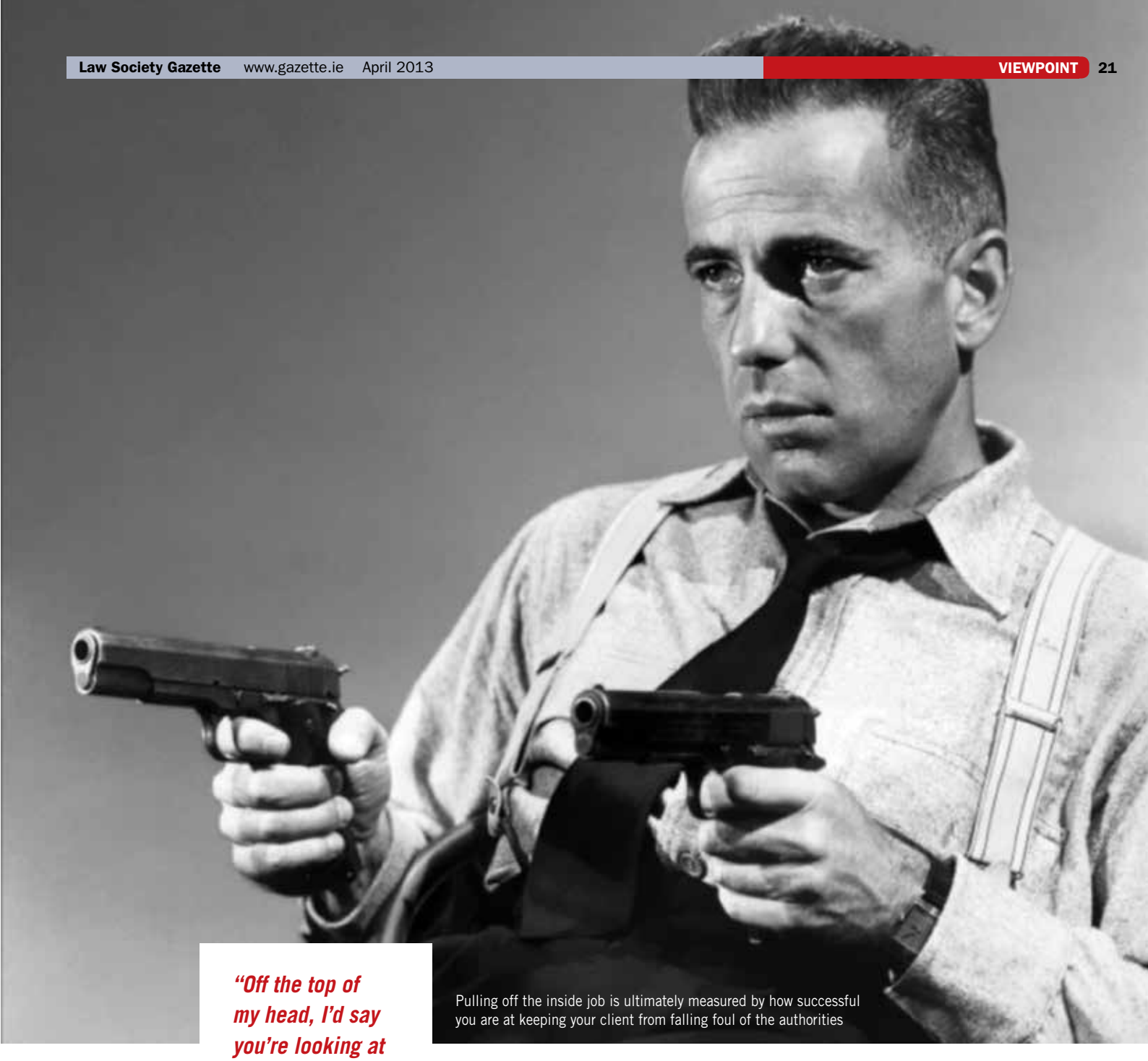
'Miss Frizzle' refers to the enthusiastic teacher made famous by the *Magic School Bus* series of children's books and is used here to refer to the in-house counsel's role as educator. In this role, in-house counsel has a responsibility to inform decision makers about key legal developments and introduce programmes to educate employees at all levels about what they can and cannot lawfully do in pursuit of the entity's objectives. This function is particularly important now, when new legal obligations strew the ever-changing regulatory landscape like autumn leaves in Vallombrosa. It is in this role that in-house counsel can encourage debate about the direction the entity is taking and guide it toward the adoption and consistent implementation of best practices.

Madiba

Although an in-house counsel's ultimate duty is to the company or public sector body it is employed by, and not to the decision makers within it, an honest and candid relationship with these decision makers is essential. In a broad sense, in-house counsel have a role as counsellor, often referred to as the 'lawyer-statesman' role, that involves not just technical proficiency in legal matters, but practical wisdom: sound judgment based on an understanding of the history, culture and ethos of the entity, and the ability to understand both short-term advantage and long-term implications. Who better, then, to epitomise the role of lawyer-statesman than Nelson Mandela, often affectionately referred to by the name of his Xhosa tribe, Madiba.

Atticus

Atticus Finch, the protagonist of Harper Lee's Pulitzer Prize-winning novel *To Kill a Mockingbird*, has served both as a moral hero for many readers of the book and as a model of integrity for lawyers. But it is for his courage, conviction and empathy



Pulling off the inside job is ultimately measured by how successful you are at keeping your client from falling foul of the authorities

"Off the top of my head, I'd say you're looking at a Bogey, a Jim Branigan, a Miss Frizzle, a Madiba and an Atticus, not to mention the best Mary Fitzgerald ever"

in acting for his client that we refer to him here. In particular, his advice – that "You never really understand a person until you consider things from his point of view, until you climb inside of his skin and walk around in it" – could be adopted as the motto of in-house counsel in dealing with their clients. Whatever the advice you give, in-house counsel must have the emotional intelligence to know what it is that the client actually needs, and to strive to meet that requirement in a way that brings clarity and certainty.

Mary Fitzgerald

Whether you are employed by a corporate or public sector entity, there are times when your client will want to achieve an objective that seems fraught with legal or regulatory obstacles. It is at these times that your client needs in-house counsel to be a creative problem solver. Someone like RTÉ's Mary Fitzgerald: the Montrose MacGyver who could fashion anything from rockets to dollhouses from the resources available, often an empty washing-up liquid bottle or a discarded toilet roll. Because, ultimately, that's why in-house counsel is there: to provide the best practical solutions to achieve the desired objective within the constraints that are presented before it. In this role, in-house counsel can add real value by giving decision makers a range of legitimate options with different degrees of risk, explaining the advantages and disadvantages of each and, after careful analysis, making recommendations.

Just like the heist in *Ocean's Eleven*, pulling off the inside job is ultimately measured by how successful you are at keeping your client from falling foul of the authorities. And while it is never possible to be all things to all clients, adopting these essential roles in a dependable and professional way will help you keep your client one step ahead of the law. G

Where's the BEEF?

John McCarthy is a partner with McCarthy & Co, Solicitors, Clonakilty, Co Cork (www.mccarthy.ie) with a particular interest in the area of food law

The recent 'horse burger' scandal has thrust food fraud into the media spotlight and caused Europe's food producers and safety regulators to undertake a radical review of how the processed food supply chain is policed. John McCarthy saddles up

'Food fraud' is the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging, or the use of false or misleading statements about a food product for economic gain.

Apart from good old-fashioned counterfeiting, some of the more common ploys relied upon to dupe consumers are:

- Species swapping (such as farmed salmon being sold as wild),
- Simulation (such as diluting a premium product with a cheaper ingredient),
- Ethical deception (such as purporting that battery-reared animals have been organically produced), and
- Origin fraud (such as holding out produce imported from other countries as being of Irish provenance).

"Perpetrators of food fraud are also liable to infringe the provisions of section 43 of the Consumer Protection Act 2007"

Such practices are nothing new, with prosecutions for the adulteration of wine recorded in annals from ancient Greece and Rome. In Britain in the 19th century, the practice became so widespread, and the substances used so harmful to human health, that numerous acts, such as the *Sale of Food and Drugs Act 1875* (which, incidentally, still remains on our statute books) were passed to proscribe activities such as the adulteration of bread with alum and chalk, beer with strychnine, and boiled sweets with lead, copper or mercury salts.

In more recent times, there has been a worrying rise in the phenomenon, due mainly to the globalisation of food production and the willingness of opulent western societies to pay a premium for foodstuffs that are perceived to be health inducing or of a superlative quality – whether gustatory or ethical.

One estimate, based on a survey carried out by Britain's Food Standards Agency, suggests that 10% of the food products presently sold to consumers in that jurisdiction have colourable attributes, and the United States Pharmacopeial Convention, an independent scientific non-profit organisation, recently announced that its updated database showed that incidences of food fraud increased dramatically in 2011 and 2012.

Horse d'oeuvre

In an effort to tackle the rise in these illicit practices, the Food Safety Authority of Ireland (FSAI) last year established a Food Fraud Task Force, which is made up of representatives from a number of enforcement agencies, including the gardaí, the Customs and Excise Service, the Revenue Commissioners, the Department of Agriculture, the Food Standards Agency of Northern Ireland, the Health Service Executive, the Irish Medicines

Ceci n'est pas un boeuf:

FAST FACTS

- Deliberate adulteration and cross-species contamination present significant challenges for European regulatory and scientific authorities
- Food safety regulators will be taking a much more aggressive approach in attempting to identify and extirpate food fraud from food supply chains at all levels
- Food business operators must carry out such due diligence as is necessary to ensure that both they themselves and their suppliers are in full compliance with all existing labelling rules and consumer protection codes

Board, local authorities and the Sea-Fisheries Protection Authority. The stated aim of the task force is to act as a communications, coordination and networking group where intelligence and research can be shared at both national and international levels.

The consumer protection food-related legislation that has been developed by the European Union breaks down into two distinct categories: those provisions aimed at the protection of human health by proscribing the use of ingredients that are physically harmful, and those intended to facilitate choice and prevent deception by imposing an obligation on food producers to provide information regarding the attributes of the products offered for sale.

The principal manner in which this latter objective is achieved is by means of a comprehensive labelling system. While there are a raft of individual, highly focused provisions regulating the labelling requirements of certain specific categories of foods, the main piece of legislation governing the labelling of foodstuffs in the European Communities is EU Directive No 2000/13/EC on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs. The directive, which has been the subject of several amendments since its original passing – and which will be repealed and superseded by Regulation (EU) No 1169/2011 as from 13 December 2014 – was first transposed into Irish law by the *European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000*. These were subsequently revoked and replaced by the *European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002* (as amended).

Pigs in a blanket

While the labelling obligations laid down by the directive are quite wide ranging, in the context of the recent equine DNA scandal, article 6, which sets down the rules relating to the listing of ingredients, is particularly relevant. Article 6(4)(a) defines an 'ingredient' as meaning any substance, including additives and enzymes, used in the manufacture or preparation of a foodstuff and still present in the finished product, even if in altered form. Article 6(5) goes on to provide that the list of ingredients contained on a food products label shall appear preceded by a suitable heading that includes the word 'ingredients' and shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff.

Regulation 4 of the regulations provides that any person who sells, presents or advertises foodstuffs in a manner that does not comply with the directive and the regulations is guilty of an offence. Regulation 19 provides that the maximum tariff for any offence under the regulations is a fine not exceeding €3,000 or a term of imprisonment not exceeding three months, or both.

Unwitting resellers of prepackaged foodstuffs that are mislabelled may take comfort from regulation 20(1)(a), which provides that, in any proceedings for an offence under the regulations, it shall be a defence for a person to show that he or she received the foodstuffs as being in compliance with the directive and the regulations, together with a written warranty to that effect. Regulation 20(2)(a) goes on to provide that a statement by the manufacturer, importer or seller of foodstuffs in an invoice, or on a label attached to the foodstuffs, or on the packet or container in which the foodstuffs are sold, that the foodstuffs comply with the directive and the regulations shall be deemed to be a warranty for this purpose.

Amuse-bouche

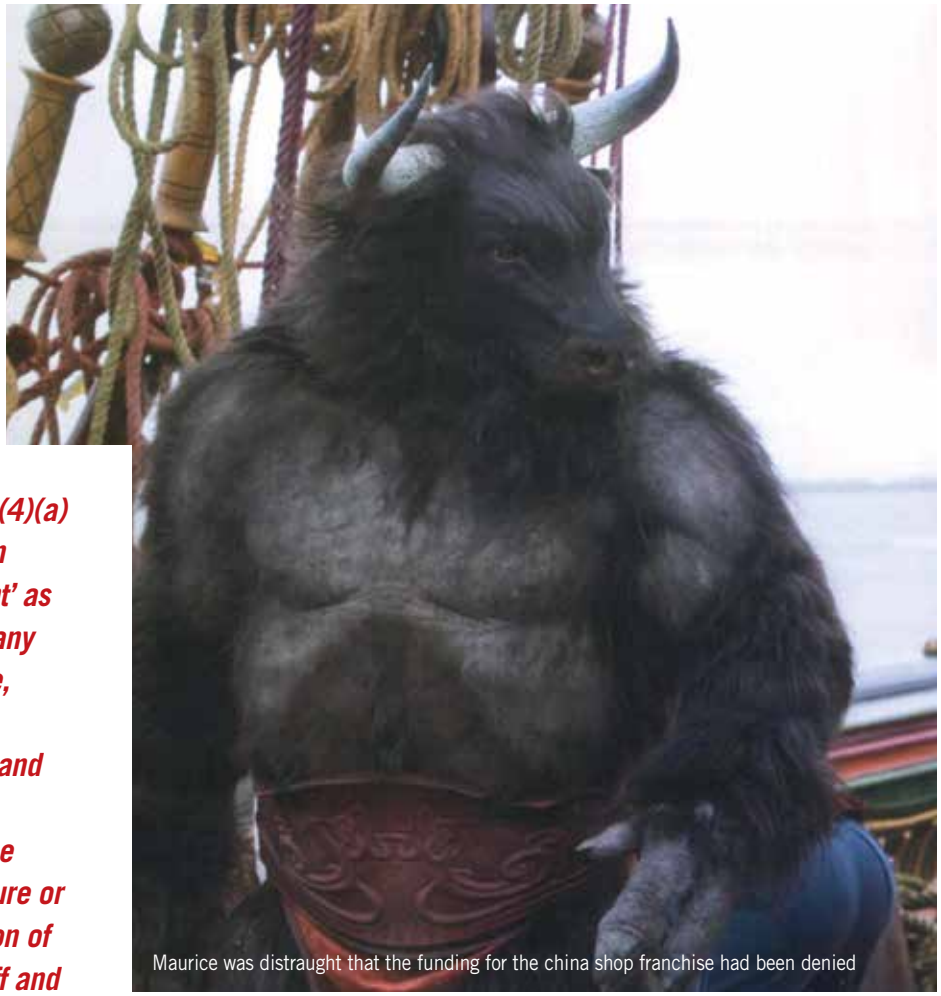
Perpetrators of food fraud are also liable to infringe the provisions of section 43 of the *Consumer Protection Act 2007*, which provides that a commercial practice is misleading if it includes the provision of false information in relation to any matter set out in subsection 3, and that information would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make. In the context of food fraud, those matters set out in section 43(3) that are particularly germane are certain of the main characteristics of a product, including its geographical origin, the risks it presents to consumers, its ingredients, and the grade or standard of the product.

Section 47 provides that a trader who engages in any unlawfully misleading commercial practice commits an offence, and section 79 sets out the possible penalties on both summary conviction and conviction on indictment, with the latter being a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months or both. On any subsequent conviction on indictment for the

same offence or any other offence under the act, the penalties rise to a fine not exceeding €100,000 or imprisonment for a term not exceeding 24 months or both.

Depending on the scale and perceived perniciousness of the fraud (bearing in mind that the European authorities are suggesting that organised crime gangs are at the centre of the horsemeat contamination that has been detected), a charge could also potentially be proffered under section 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*. This provides that a person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act, is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding five years or both.

And what of the remedies open to the unwitting consumer whose rights have been trampled? Thus far, the equine DNA saga would appear to be confined to the 'yuck factor', with no evidence to date that there is any risk posed to human health. In the absence of personal injury, section 74 of the 2007 act provides that a consumer who is aggrieved by an act or practice prohibited under the act shall have a right of action for relief by way of damages, including exemplary damages, against the offending trader. In the event that it were later to transpire that human health had been compromised (by, for example, the contraction of a serious blood disorder associated with the veterinary medicine phenylbutazone, which is used in horses but banned in humans), recourse could be had to the provisions of the *Liability for Defective Products Act 1991*, which assigns responsibility without fault to the producer of a defective product (see *Gazette*, Aug/Sept 2011, p24).



Maurice was distraught that the funding for the china shop franchise had been denied

"Article 6(4)(a) defines an 'ingredient' as meaning any substance, including additives and enzymes, used in the manufacture or preparation of a foodstuff and still present in the finished product, even if in altered form"

Porky pie

On a practical level, having regard to the serious blow to consumer confidence that has been wrought by the horsemeat adulteration debacle, there is little doubt that the FSAI and other European food safety regulators will take a much more aggressive approach in attempting to identify and extirpate food fraud from food supply chains at all levels. It therefore behoves – or, as our American cousins would say, behooves – all food business operators to carry out such due diligence as is necessary to ensure that both they themselves and their suppliers are in full compliance with all existing labelling rules and consumer protection codes.

At a policy level, this recent controversy has shown us that both deliberate adulteration and cross-species contamination present significant challenges for European regulatory and scientific authorities in terms of standardisation and accreditation of test methods and discriminatory detection limits. It is likely that the existing legislation relating to the labelling of foodstuffs will have to be revised to take account of relevant standards for cultural, religious and ethical purposes, with confirmation as to whether or not foods are compliant with religious dietary guidelines being an obvious possible future inclusion arising out of the controversy surrounding the supply of British Muslim prisoners with food products that purported to be Halal but which, in fact, contained traces of pork.

In unearthing the pan-European adulteration of beef products with horsemeat, the FSAI has taken the lead initiative on food chain security and, through transparency and accountability, has vindicated consumer protection interests. However, as the application of the DNA-based testing methods necessary to guarantee the authenticity of multiple-species composite products would present an additional economic burden on the food-processing sector, the requirement to provide such information to consumers would have to be imposed by European Union law for the system to be meaningful and effective. G

LOOK IT UP

Legislation:

- *Consumer Protection Act 2007*
- *Criminal Justice (Theft and Fraud Offences) Act 2001*
- EU Directive No 2000/13/EC
- *European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000* (SI 92 of 2000)
- *European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002* (SI 483 of 2002)
- *Liability for Defective Products Act 1991*
- Regulation (EU) No 1169/2011
- *Sale of Food and Drugs Act 1875*

Good King BILLY

Solicitor Billy Glynn is currently the 125th president of the IRFU. He talks about his luckless – yet lucky – injuries that ended his promising rugby and athletics careers and about being Irish rugby supremo. Maggie Armstrong puts in

Maggie Armstrong is a journalist. Her articles can be read at www.farmstrong.ie

When he was 24, at a time when most wingers are in their prime, Billy Glynn suffered a shaken spinal chord that stunned his whole body and ended his rugby playing career. He had togged out for his local club, Galwegians, against Blackrock. It was "a simple tackle", he says. "I was knocked down. I was conscious. But I was paralysed from the neck down, totally paralysed for 48 hours."

He doesn't recall feeling distressed or afraid in his hospital room in Dun Laoghaire. "You're in shock, so you just sit there. You're absolutely confident you're going to be okay."

He describes how the doctor came in, lifted his hands onto a sheet of timber and asked him to move two fingers. A little movement happened and he was told he was going to be fine. "I was lucky, the spinal chord wasn't severed. A couple of days later, I was walking around perfectly normally. But then, you couldn't ever play rugby football again."

"I was lucky, the spinal cord wasn't severed. A couple of days later, I was walking around perfectly normally. But then, you couldn't ever play rugby football again"

He reveals no emotion at these words, though given his reputation for modesty, it's possible that Billy Glynn is downplaying the effect the event had on him. Only the year before, he had been selected for a final Irish trial and was chosen to represent his country on an under-23 fifteens. Before that, he had won the Leinster Senior Cup with University College Dublin RFC – and 15 caps for Connaught. "Always and ever a winger", at 5ft 7 inches he was small but fast, having also been a serial athletics champion.

Less glamorous role

After the accident, Glynn returned to a less glamorous role in rugby – coaching. During this time, he sustained a neck injury that, at one stage, threatened a brain tumour and which still gives him headaches. But he refuses to mope, saying with the pragmatism that has marked his double career as a solicitor and a rugby administrator: "It's not significant, it's just learning to live with these things."

It's often said that Glynn is synonymous with Connaught rugby, whose squads he has mentored, organised and promoted.

In the year 2000, he was elected to the committee of the Irish Rugby Football Union and has since been chairman of the Medical Committee and the Disciplinary Committee. Today, unsurprisingly – though he does seem surprised – he holds the highest office in Irish rugby football, as the 125th president of the IRFU for 2012/13.

Despite, and perhaps by virtue of, his long-lasting affair with rugby, Glynn has had a distinguished legal career. But he wasn't always going to do either. He was born in 1942 to a solicitor father, James, in the Gaelic football heartland of Tuam where there was no rugby. He was introduced to rugby and athletics at his boarding

PIC: COURTESY IRFU

FAST FACTS

- At the age of 24, a rugby-induced spinal injury put an end to his rugby career
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- In 2000, he was elected to the committee of the Irish Rugby Football Union and has served as chairman of the Medical Committee and the Disciplinary Committee
- Today, he holds the highest office in Irish rugby football, as the 125th president of the IRFU for 2012/13

school, Garbally Park College.

When he went to UCD to study law in 1961, it wasn't his choice. "In my young days you did what you were told to do," he reflects. "There were six of us in the family and my father was a solicitor, so he said, well, you're going to be a solicitor. That was my career guidance. But I actually enjoyed law. I did it and I loved it."

After qualifying at Blackhall Place, he worked for his father at James P Glynn in Tuam.

Child bridegroom

While succession might have been the obvious outcome, in 1967 – the year he married Margaret, whom he met while studying at UCD ("I was a child bridegroom!" he jokes) – he moved to Galway and opened his own practice, William B Glynn.

"I hired a girl and put up my name-plate and sat there waiting for the first client to come in," he says. Thanks to his rugby connections and an acute networking ability, business quickly progressed.

"Rugby people are very loyal … I had a good ability to get clients and hold on to them," he says. These included University College Galway (now NUI Galway), the Health Board, a number of insurance companies and the cream of local business. Over 40 years, he built up the largest firm in Galway along with two other partners.

What he does not tell me, and I learn elsewhere, is that William B Glynn was a remarkably modern, high-tech operation in its time. They bought their first two computers in 1977 and, as early as 1982, each member of staff had their own computer.

Roddy Bourke of McCann FitzGerald, who did his apprenticeship there, remembers a "production line" of secretaries tapping away as you came through the corridor, and the elegant lobby space, carefully stocked library and conference room that put clients at ease. He says Glynn's "shrewdness" lay in his ability to judge character and weigh up situations: "Anything he touched, he applied business principles to."

In 2007, Glynn took some advice from an 82-year-old solicitor friend, Florence McCarthy, at his retirement party: "Don't make the mistake I made. Get out now!" He had also realised the firm could no longer compete for a tender against larger firms outside Galway. They decided to merge with Ronan Daly Jermyn, forming RDJ Glynn in Galway. "They had a very fine firm," he says, adding self-deprecatingly and perhaps rashly: "They had an array of young solicitors, better lawyers than we were, better prepared to meet the challenges facing the profession."

For RDJ, it was an opportunity to expand outside Cork. For Glynn, it was an exit strategy at a precarious time. "And, of course, then we hit the downturn, so I was skipping down the street!"

> ***"I was playing for the first time for Connaught against Leinster in Lansdowne Road. I was confronted by this man – Tony O'Reilly. He was physically a very big man, and there was a significant tackle on the halfway line"***

Combative

Now, at age 70, Glynn is robust, affable and razor sharp. He is as much a raconteur as he is a serious strategist. He is never pessimistic, but he does seem a little disillusioned with the legal profession. Although he remained for five years as a consultant at RDJ Glynn and still checks in every day, he says: "I'm glad I'm out of it [the law]. It's much more competitive now. You have to work twice as hard, for half the money, and ten times the responsibility." When one of his two sons began studying law, he "talked him out of it", saying that there were easier ways of making a living, with a better quality of life.

Although he says he "wouldn't have been anything else" other than a solicitor, the sportsman admits to enjoying the more combative aspects of handling cases. Glynn retired as Revenue Sheriff last summer, an office he held for 26 years in total. "I was largely a litigation lawyer all my life. Litigation involved quite a bit of confrontation, and this ability to deal with confrontation equipped me well for the position of Revenue Sherriff."

Irish rugby is in its 16th year in the professional era, and Billy Glynn agrees it has been an interesting one. "We're having a bit of an up-and-down season as you can see. However, I can't influence that – only the players can. We lack … consistency … that's the word."

Talking tactics

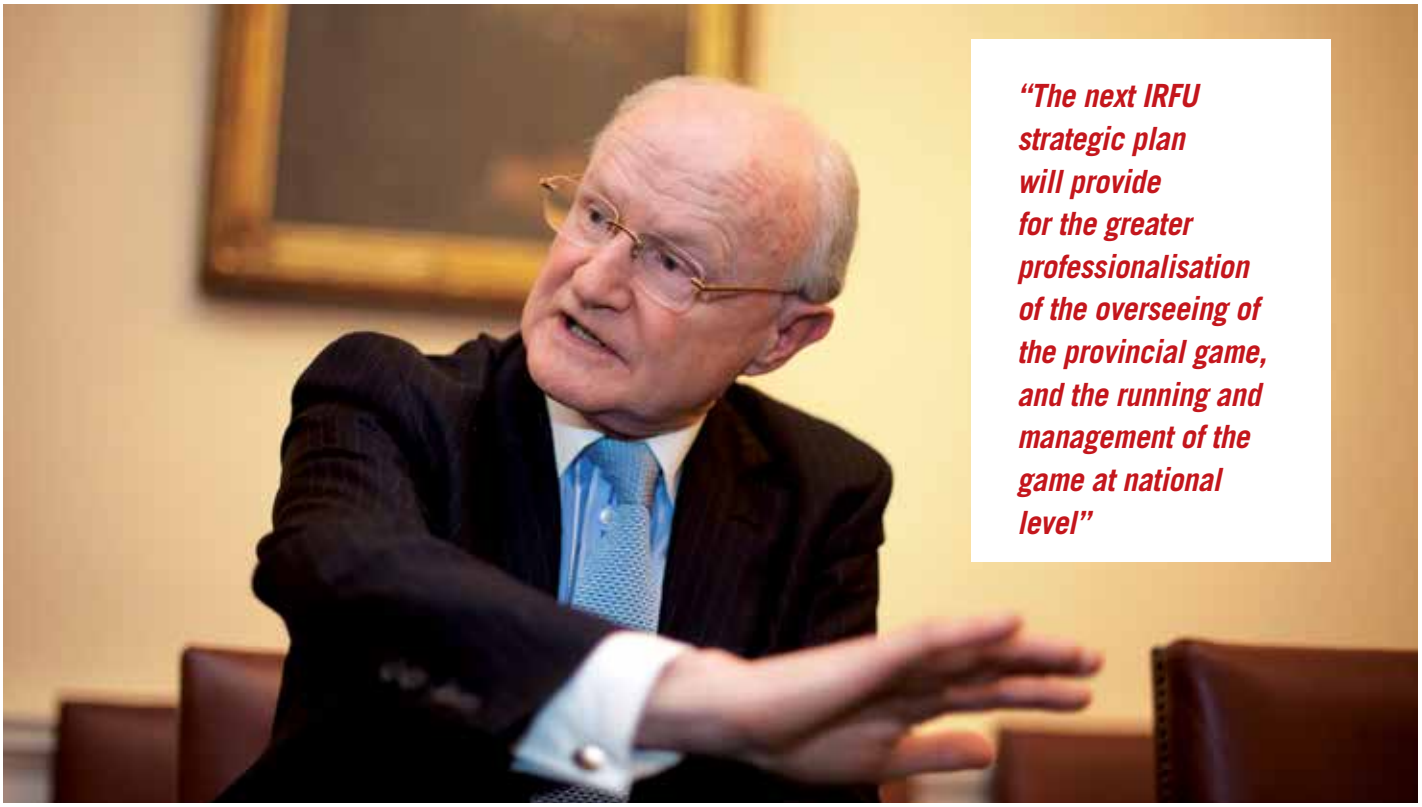
It is the eve of the Six Nations match against France when we meet, but before we get onto tactical matters, he wants to talk about the long-term. Finance is the biggest challenge in the IRFU, and Glynn is very animated about the big structural changes that will take place.

Irish rugby is split like the layers of an onion between national (professional), provincial (professional) and club (domestic). The next IRFU strategic plan will provide for the greater professionalisation of the overseeing of the provincial game, and the running and management of the game at national level. The IRFU hopes to appoint a director of the professional game – "a rugby person … a really high-powered individual – and a new board for the professional game, to do the work that volunteers have been doing".

Glynn hopes to see an embargo on paying players in the domestic game, as it gives rise to "peer pressure to pay" within the clubs and costs the clubs about €4 million a year. Such an embargo will allow clubs to put

SLICE OF LIFE

- **Are you in good physical health?**
  I go to the gym regularly and keep fit. That's absolutely cardinal in my life. And I play golf.
- **Is it true you tackled Tony O'Reilly when you were 18?**
  [Uproarious laughter.] I did actually. I was playing for the first time for Connaught against Leinster in Lansdowne Road. I was confronted by this man – Tony O'Reilly. He was physically a very big man, and there was a significant tackle on the halfway line.
- **What is the most exciting city you have visited as president of the IRFU?**
  Paris. I'm not a big traveller.
- **What class did you fly?**
  Ordinary. When you've small legs like I have you don't have any difficulty.
- **Where are you going to be watching the French game?**
  From the touchline.
- **Do you use Twitter?**
  My nearest thing to technology is a phone in which I have my diary and all my emails. I'm not a Twitter person. Twitter gets you into trouble!
- **What are you reading at the moment?**
  Robert Hughes: *The Fatal Shore*, about the transportation of Irish and British convicts to Australia in the late 18th and early 19th centuries.
- **Are you religious?**
  I go to Mass every Sunday, though I missed one or two there with the rugby weekends. I wouldn't think I'm a particularly religious person.
- **What is your favourite dish?**
  Tagliatelle carbonara. Because I'm able to cook it myself.



PIC: LENSMEN PHOTOGRAPHIC STUDIO

"The next IRFU strategic plan will provide for the greater professionalisation of the overseeing of the provincial game, and the running and management of the game at national level"

the money towards improving facilities and paying coaches to make rugby coaching a viable employment opportunity.

So what are the big highlights of his year in office? For Glynn, they are less the heady clashes of the international spectacles than the ordinary, untelevised experiences. "What it did give me was a great opportunity to go around the country to the small clubs," he explains. "It's fantastic, the enthusiasm with which they're playing, the effort they're putting into recruiting players, and nurturing them."

When asked what he will do after he stands down in July 2014 (he must serve a year as immediate past-president), he says with characteristic precision: "I'll go back to my club then. My club is my first love, after Margaret and my sons Barry and Richard. I'm looking forward to that. I love club rugby because club rugby is the heart of Irish rugby."

I ask him what his most memorable sporting moment is. It is a modest event, one that pre-dated his injury, and one that gives a sense of his dynamism and utter drive.

"I had an experience once that was very interesting," he begins. "I was 21 and I got up one Sunday morning, had my breakfast and went to Mass. I went to the golf club and played 18 holes of golf. I won the competition. I then had a quick lunch and my father drove me to Castlebar. I competed in the heats for the 100 yards and the final; the heats for the 220 yards and final; the long jump, qualifying and jump-off; and the triple jump, qualifying and jump-off. And I won all four. I then came home, went to the golf club and played mixed foursomes, nine holes with a lady – and we won that.

"Then, at ten o'clock, I went for a run and ran six miles. I ran way out into the country on the road and there was nobody around. It was pitch dark, and I just ran and ran and ran and ran. I'd say I could have kept running…"

RUGBY QUIZ

- **Will Declan Kidney see his contract renewed?**
  Declan is a great coach. He's been very successful. He has served his province and country well and has a lot more to contribute to the game.
- **Is Brian O'Driscoll about to retire?**
  He'll decide that. But after 14 years, I suppose we couldn't blame him if he decided to take a rest. I don't know whether there'll ever be a player like him again. He's not just a good guy on the field. He has a huge impact and influence on all around him off the field.
- **What younger players are showing promise?**
  A young fellow from Belfast called Ian Henderson. I think he's probably the big rising star in Irish rugby.
- **What would you say of violence in rugby?**
  One thing we have in the game is great discipline. You do get the odd incident, a rush of blood to the head. That will happen, and they pay the penalty.
- **Can Ireland host a World Cup?**
  I'll be bitterly disappointed if it doesn't happen. I'm very optimistic that we're going to mount a very strong tender.
- **What do you make of drink sponsorship for sporting events?**
  That's becoming a bit of a live issue. The way I look at it is that sport needs support. It's not the sponsorship of sport that's causing binge drinking. It's a very poor substitute to proper legislation for drinking to say: "We'll do it by getting rid of drink sponsorship."
- **Is the women's team as good as the men's?**
  We are punching way above our weight. They're a great bunch of girls, quite a few ex-Gaelic footballers on the team. We're planning to have a sevens squad that will go to the Olympic Games and we're going to invest very big money in ladies' rugby.
- **Can we make the sport less treacherous?**
  I do not accept it is treacherous, but if it were seen to be, then it could be dealt with by changing the rules – but you have to be careful you don't change the character of the game. When you consider the training that the players get, it prepares them for that level of combat.
- **What values must rugby promote?**
  A spirit of participation, togetherness and camaraderie.

I heard it through the GRAPEVINE

Seán Groeger is a solicitor in the Banking and Financial Services Group of Lavelle Coleman, Dublin 2

A recent High Court judgment in a case that hinged on the admissibility of hearsay evidence may have significant repercussions for banks, especially those that have outsourced the management of their loan portfolios. Seán Groeger asks: 'What's going on?'

Mr Justice Michael Peart's judgment in *Bank of Scotland Plc v Julia Stapleton* has highlighted the significance of the rule against hearsay evidence in the context of repossession proceedings. Justice Peart held that, in the circumstances, evidence of a debt was required from an officer or partner of the financial institution concerned.

Hearsay is evidence of a statement made otherwise than in court, which is offered as proof of its content. In the narrow and commonly understood sense, a witness may not generally relay that which another person said on another occasion as evidence of the truth of what that latter person said. This evidence is hearsay and is usually inadmissible.

In this case, the plaintiff had obtained a judgment in the Circuit Court against the defendant for possession of a dwellinghouse after the borrower had fallen into mortgage arrears. The borrower had granted a mortgage over the relevant property to Bank of Scotland Ireland Limited (BOSI). However, all assets and liabilities of BOSI, including the mortgage, had been transferred to Bank of Scotland (BOS) with effect from 31 December 2010. BOS was substituted as the plaintiff on 22 March 2011. The matter was appealed from the Circuit Court to the High Court.

Can I get a witness?

The main issue before the court related to the application of the *Bankers' Books Evidence Acts 1879-1959* to BOS's outsourced service company. BOS had no physical presence in Ireland following the transfer of the assets and liabilities of BOSI to BOS. BOS outsourced the management of its loans portfolio to an independent service company, namely Certus.

An employee of the service company gave evidence in relation to the existence of the debt on behalf of BOS. This was in accordance with a letter from BOS, dated 12 November 2012, whereby the bank purported to give the Certus employee authority to give evidence on behalf of BOS.

The issue before the court was whether this letter of authority was sufficient to render the employee a competent witness as to the arrears of the defendant's mortgage account, or whether her evidence in that regard was inadmissible as hearsay.

The defendant relied on certain provisions of the *Bankers' Books Evidence Act*. The act was designed to allow the admission of evidence on behalf of banks that would otherwise constitute hearsay. This eases the burden of proving matters recorded in routine bank accounts and records. The records themselves are hearsay evidence, in that they are an assertion of the debt and the state of the account by the person who made the manual or data entry of the record.

> ***"It is interesting to note that the rule of hearsay has largely been abolished in other jurisdictions"***

Section 3 of the act provides that "a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and the matters, transactions and accounts thereof recorded". Further, for an entry to be admissible, sections 4 and 5 of the act require that it must be proved that:

- The book was, at the time of the making of the entry, one of the ordinary books of the bank,
- The entry was made in the usual and ordinary course of business,
- The book is in the custody or control of the bank, and
- The copy has been examined with the original entry and is correct, such proof to be given by the person who has examined both copy and original entry.

It was noted that the person who examines the copy document need not be a "partner" or "officer" of the bank; however, the actual proof of the entries in the book itself must be by a partner or office of the bank.

Let's get it on

The plaintiff had sought to rely on *Moore Developments v First Active Plc*. In *Moore*, a submission was made that an official from First Active Plc could not give evidence about aspects of the bank's dealings with the plaintiff group of companies where he was not directly or personally involved. This submission was rejected by Justice Clarke.

Justice Peart distinguished the two cases and noted that the circumstances were materially different. In particular, he noted that the witness in *Moore* was an employee of First Active Plc. He was not, as Justice Peart noted, "an employee of some company to whom the bank had outsourced its management of borrower's loans".

During cross-examination, the employee of the service company accepted that she was neither a partner nor an officer of the plaintiff bank. Further, she accepted that she was not an employee of the plaintiff bank.

FAST FACTS

- **Hearsay is evidence of a statement made otherwise than in court, which is offered as proof of its content**
- **Where a bank needs to provide sworn testimony of the amount that is due by a defendant customer, that evidence must be provided by an officer or partner of the bank**
- **It is not sufficient for an employee of an independent service company to whom the task of collecting the debt has been outsourced to give evidence of the debt**

Justice Peart held that "the *Bankers' Books Evidence Acts 1879-1959* are of no assistance to the plaintiff in this case. There is nothing within that legislation which relieves a bank from the strictures of the rule against hearsay. The purpose of that legislation was to relieve a bank of the burden which would otherwise exist if it was required to produce the original banker's books in court each time evidence as to their contents was required to be given."

He noted that, "while it provides in section 3 that a copy of an entry shall be received as prima facie evidence, section 4 makes it abundantly clear that this is permissible only where it has first been proved, and that this proof must be provided by a partner or officer of the bank. That function cannot be delegated to an employee of some other company to which the bank has outsourced, *inter alia*, its debt collection, even where that company has direct access to the plaintiff's computerised banking records."

Banks cannot simply delegate the task of giving evidence to some other person who is apprised of the relevant facts. The bank's partners or officers must do so. There is no exception to the hearsay rules under the *Bankers' Book Evidence Acts* unless the terms of the acts are strictly complied with.

Justice Peart found that the evidence of the employee was necessarily hearsay and inadmissible. He also added that "the fact that it is inconvenient [for a bank] cannot absolve the bank from complying with the normal rules of evidence". To allow otherwise would, as Justice Peart noted, "be akin to a foreign bank engaging a solicitor here to collect the debt, and that solicitor coming to court and giving evidence as to the amount due to the bank, having been authorised to do so by the bank. This is necessarily hearsay."

"The issue before the court was whether this letter of authority was sufficient to render the employee a competent witness as to the arrears of the defendant's mortgage account, or whether her evidence in that regard was inadmissible as hearsay"

Wherever I lay my hat

This judgment has significant repercussions for banks. This is especially so where a bank has outsourced the management of some or all of its loan portfolio to an independent service company. The judgment emphasises that strict compliance with the acts is necessary in order to come within these terms.

Where a bank needs to provide sworn testimony of the amount that is due by the defendant customer, that evidence must be provided by an officer or partner of the bank. It is not sufficient for an employee of an independent service company to whom the task of collecting the debt has been outsourced to give evidence of the debt. Such evidence is hearsay and is not admissible.

At present, banks are subject to the acts. However, they date back to 1879, and there have been significant developments in the banking world since then. The language used in the acts is out of date and needs to be modernised so as to take account of modern developments. Further, there are many new forms of lender who are not banks in the strict sense.

It is interesting to note that the rule about the inadmissability of hearsay has largely been abolished in other jurisdictions, such as Northern Ireland and England and Wales. In those jurisdictions, subject to certain notices and protections, hearsay is generally admissible.

The Law Reform Commission has recommended that the rule be abolished, but that judges should have discretion to exclude statements made other than in court. As in Northern Ireland, England and Wales, it was proposed that the law would be reformed to provide notices of the proposal to offer hearsay evidence. However, as of yet, these recommendations have not been implemented.

LOOK IT UP

Cases:

- *Bank of Scotland Plc v Julia Stapleton* [2012] IEHC 549
- *Moore Developments Limited & Others v First Active Plc & Others* (unreported, High Court, 9 July 2010)
- *R v Albutt* [1911] 6 Cr App R 55

Legislation:

- *Bankers' Books Evidence Act 1879*
- *Bankers' Book Evidence (Amendment) Act 1959*

Kicked INTO TOUCH

Sean Nolan and Louise Millington-Roberts are partners in the respective Dublin and London offices of Kerman & Co. Sean Nolan is a member of the Law Society's Business Law Committee

An English Supreme Court ruling has required an online ticket exchange to disclose the identity of sellers who had breached English Rugby Football Union ticket-sale terms. Sean Nolan and Louise Millington-Roberts collapse the maul

A landmark ruling in the English Supreme Court last November upheld *Norwich Pharmacal* discovery orders against an online ticket exchange, requiring it to disclose the identity of sellers who had contravened the terms under which English Rugby Football Union tickets were originally sold. What implications does this decision have for the sports and events industry in Ireland?

As with many sporting organisations and rights holders in the events industry, the English Rugby Football Union (RFU) has been fighting a war of attrition with those touting – selling and facilitating the sale of tickets to its fixtures on the black market.

Historically, the advertising and resale of tickets to sporting and similar events on the black market occurred though conventional fora, such as private advertisement in newspapers, street-based ticket touts, and via unofficial hospitality service providers. However, since the advent of the internet, many sales of tickets to sporting and similar events now occur anonymously through online ticket exchanges.

Some sporting organisations have responded by devoting significant resources to curb the existence of a secondary online market in the sale of tickets to their highly coveted sporting events. Measures include ensuring that the terms of sale prohibit the onward sale and subsequent transfer of tickets, and the vigorous enforcement of their terms of sale by policing and taking legal action against identified ticket resellers, ticket touts and those operating in the unauthorised pirate hospitality sector.

> *"The English Rugby Football Union has been fighting a war of attrition with those touting, selling and facilitating the sale of tickets to its fixtures on the black market"*

The proliferation of online platforms that offer a facility for ticket holders to sell anonymously has presented challenges to the sporting sector that, until recently, many considered insurmountable. However, the playing field has been levelled, at least in Britain.

One-way ticket

The landmark ruling by the English High Court in 2011 in *Rugby Football Union v Viagogo Limited* represented a significant victory for sporting organisations and rights holders who require a means to discover the identity of an anonymous ticket seller who offers for sale or sells a ticket on a ticket exchange, in breach of the terms under which it was issued.

Following subsequent appeals before the English Court of Appeal and the English Supreme Court, those rights have been upheld. As a result, the sporting organisations and rights holders now have the ability to secure *Norwich Pharmacal* disclosure orders compelling website exchanges to disclose the identity of hitherto anonymous sellers, thereby paving the way to the effective enforcement of their ticket-sale policy by

legal action against the online sellers.

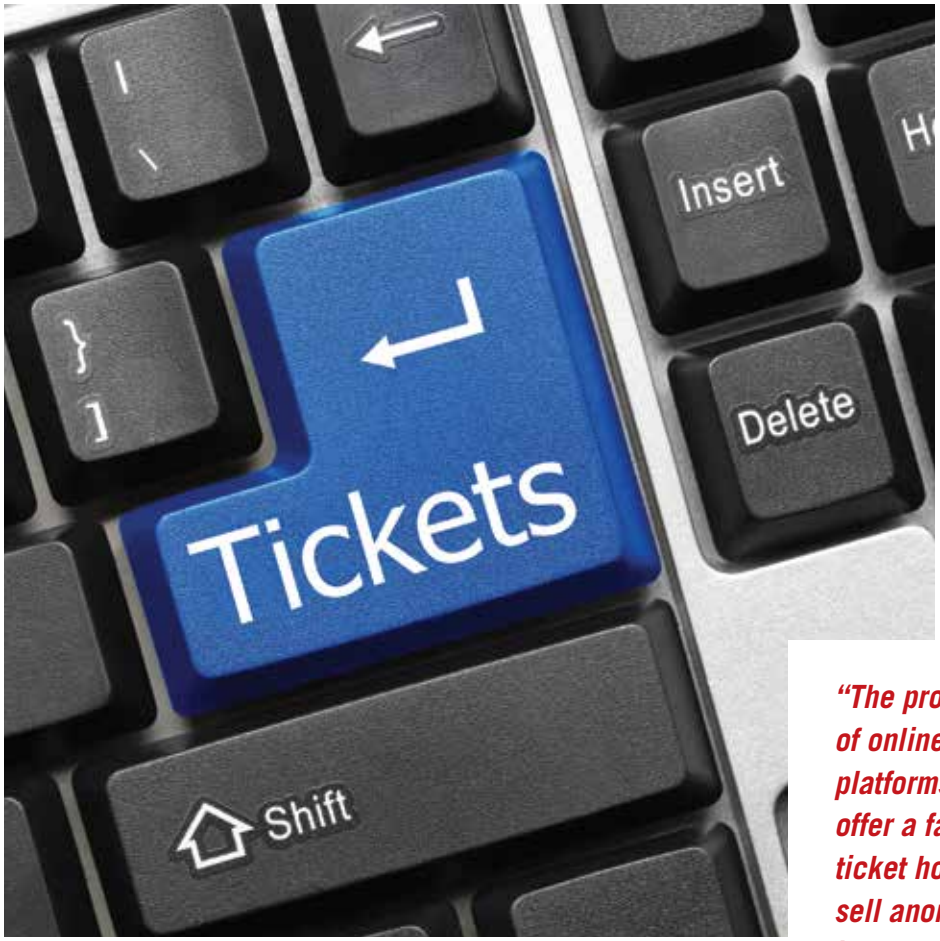
In this case, the RFU sought a disclosure order to secure the identity of those individuals who had breached its terms and conditions of ticket sales by advertising and onselling their tickets through the defendant's ticket exchange.

The application was brought under the *Norwich Pharmacal* principles, which were first established in 1973 in the House of Lords decision in *Norwich Pharmacal Company and others v Customs & Excise Commissioners*. In that case, the court stated that, if a person – through no fault of his own – gets mixed up in the tortious acts of others so as to facilitate their wrongdoing, he may come under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. Those principles have since been accepted as forming part of the law in a number of common law jurisdictions, including Ireland.

Norwich Pharmacal orders have been successfully used in various cases to obtain disclosure of, for example, the identity of persons who have posted defamatory comments on websites, who have made music available for illegal download, and those who have been involved in peer-to-peer file sharing. In *Megaleasing UK Limited v Barrett*, Chief Justice Finlay (at p504) summarised the circumstances where such a *Norwich Pharmacal* order should be granted in Ireland in the following terms: "The remedy should be confined to cases where very clear proof of a wrongdoing exists and possibly, so far as it applies to an action for discovery alone prior to the institution of any other proceedings, to cases where what is really sought is the names and identity

FAST FACTS

- **An online ticket exchange has been forced to disclose the identity of sellers who contravened the terms under which English Rugby Football Union tickets were originally sold**
- **The landmark ruling by the English High Court in 2011 in *Rugby Football Union v Viagogo Limited* represented a significant victory for sporting organisations and rights holders who wished to discover the identity of anonymous ticket sellers in breach of the original terms-of-sale of tickets**
- **Subsequent appeals before the English Court of Appeal and the English Supreme Court have upheld the rights of sporting organisations and rights holders for discovery**



of the wrongdoers rather than the factual information concerning the commission of the wrong."

Norwich Pharmacal orders were granted in Ireland in the above case and in *EMI Records (Ireland) Ltd & Ors v Eircom Ltd & Anor*, *Duhan v Radius Television Production Limited and Ors*, *Ryanair Limited v Unister GmbH and Aeruni GmbH*, and also featured in the recent case of *Anglo Irish Bank Corporation Limited v Quinn Investments Sweden AB and Ors*.

Seeking a conversion

The application by the RFU for a *Norwich Pharmacal* disclosure order against the defendant ticket exchange was held by the High Court to be both proportionate and necessary. Of importance to the High Court were the following:

(a) That the original purchaser and the subsequent reseller were in breach of the contract of sale under which the ticket was sold,
(b) That under the terms and conditions of sale all title and rights in a ticket are extinguished in the event of a breach of contract taking place, and
(c) That the terms and conditions of sale provided that, in the event of a breach of the terms, the ticket becomes void.

The High Court also found that, in such circumstances, the ticket reseller possibly commits the tort of conversion by purporting to sell on a ticket to which he has no title. Importance was also placed on the fact that, under the terms of sale, entry to the event is unauthorised where entry is made by a person on foot of an invalid ticket.

The High Court held that the RFU had established a good arguable case that those individuals who had purchased tickets from the RFU and had resold those tickets (invariably at a higher price) were in breach of contract and, as noted above, had possibly committed the tort of conversion.

It also held that those purchasers who entered the stadium having purchased an invalid ticket in contravention of the RFU's terms and conditions of sale were trespassers. Accordingly, it was ordered that the information sought by the RFU from the defendant's website as to the identity of those individuals was *necessary and proportionate* in order for the RFU to obtain redress and that it was appropriate for the court to exercise its discretion in favour of the RFU.

Blitz defence

In *Viagogo*, before the English Court of Appeal, the defendant raised a new defence that the granting of the *Norwich Pharmacal* order would constitute an unnecessary and disproportionate interference with the rights of the alleged wrongdoers under articles 7 and 8 of the *Charter of Fundamental Rights of the European Union*. This guarantees the protection of personal data and privacy and the wrongdoer's personal rights under the provisions of the (British) *Data Protection Act 1998*. (By virtue of the *Lisbon Treaty* (*Treaty on the Functioning of the European Union*) and the *European Union Act 2009*, articles 7 and 8 of the *Charter of Fundamental Rights of the European Union* are incorporated into Irish law.)

"The proliferation of online platforms that offer a facility for ticket holders to sell anonymously has presented challenges to the sporting sector which, until recently, many considered insurmountable. However, the playing field has been levelled, at least in Britain"

The provisions of the *British Data Protection Act 1998* at issue before the English Court of Appeal are substantially similar to those applicable in Ireland under its *Data Protection Act 1988* and *Data Protection (Amendment) Act 2003*. The data protection legislation in both Britain and Ireland are derived from the relevant EU directive 95/46/EC and are, therefore, subject to ultimate interpretation having regard to the charter.

Article 8 of the charter enshrines the principle that everyone has the right to the protection of personal data concerning them and that such data must be processed fairly for specified purposes and on the basis of the consent of the persons concerned, or some other legitimate basis laid down by law. The charter also upholds the principle that such rights can be limited subject to the principle of proportionality.

The Court of Appeal considered whether it was proportionate to grant the *Norwich Pharmacal* order, thereby requiring the disclosure of the wrongdoers' personal data. In determining proportionality, it was noted that the RFU had established an arguable case against the wrongdoers, that it intended to seek redress against the wrongdoers, and that the granting of an order was necessary, as the RFU had no other means of discovering the identity of the wrongdoers.

In the words of Longmore LJ: "There can be no reasonable expectation of privacy in

respect of data which reveals such arguable wrongs and [the defendant's] own conditions of business point out to their customers that there may be circumstances in which their personal data will be passed on to others."

The English Court of Appeal, therefore, upheld the original High Court decision and dismissed the defendant's appeal.

Interception

The defendant appealed the English Court of Appeal decision to the English Supreme Court, principally on the grounds that the lower courts had applied the wrong test in assessing the proportionality as to whether or not to make a *Norwich Pharmacal* order.

The defendant argued that this required a balancing of the impact that the making of the disclosure order would have on the alleged wrongdoer, against the value to the plaintiff that would be obtained concerning the particular wrongdoer.

The defendant sought to exclude any analysis of the wider implications of making an order, such as the deterrent value that such an order would provide to other purchasers engaging in selling their tickets on the black market.

The Supreme Court found that the notion of excluding the wider implications of the disclosure order to be "somewhat artificial, not to say contrived" and that "it is unrealistic to fail to have regard to the overall aim of the RFU in seeking this information".

The Supreme Court concluded that the value of the disclosure in the wider context must be considered and that the deterrent value was a legitimate interest to be factored into the consideration of proportionality. In concluding that the making of an order was both necessary and proportionate, the Supreme Court considered the following factors:

- Whether or not alternative courses of action were available to the rights holder (of which there were none in this case),
- Whether the defendant knew or ought to have known that it was facilitating an arguable wrong by the ticket holder (the defendant had such knowledge in this case),
- Whether the information could be obtained by the RFU from alternative sources (no such alternative sources were available in this case), and
- The privacy rights of the wrongdoer (the wrongdoer was specifically put on notice by the defendant under its website terms that disclosure of personal data may be required).

Spear tackle

It would be naïve to conclude that the above decision will eradicate the black market for the resale of tickets to major sporting and similar events. Given that the jurisdiction of the courts to grant a *Norwich Pharmacal* order is discretionary and involves a weighing up and balancing between the rights of the rights holder and the privacy rights of the alleged wrongdoer, it is submitted that relief will more readily be available to those sporting organisations that can demonstrate they have sufficient measures in place to control the sale and distribution of tickets to their fixtures (including effective terms and conditions of sale and a policy of strict enforcement of its rights).

In this case, the RFU was able to establish that it had applied a consistent policy of enforcing its terms against ticket touts and unlicensed operators, that it had taken disciplinary action against any member club for any onsale of tickets allocated to the club, that it had engaged in positive monitoring of sales via websites, and that where the identity of wrongdoers had been obtained, cease-and-desist letters had been sent accordingly.

Naturally, the English Supreme Court decision is not binding on the Irish courts. However, given the similarity in the relevant jurisprudence and issues, it is likely that a similar outcome would arise under Irish law.

"It is likely that the decision will deter a significant number of sellers from engaging in sales on the black market through exchange websites, since it will now be possible that their identity will be disclosed, thereby enabling legal action to be taken against them"

It is likely that the decision will deter a significant number of sellers from engaging in sales on the black market through exchange websites, since it will now be possible that their identity will be disclosed, thereby enabling legal action to be taken against them. Whether it will deter the proliferation of exchange websites remains to be seen. G

ALL BLACK MARKET

Many sporting organisations strive to ensure that the price of tickets for admission to the majority of sporting fixtures is kept to a minimum. The ability to maintain reasonable prices can only be achieved by applying measures to restrict the onward sale of tickets and to restrict those who can use a ticket and gain entry to the event.

Naturally, the existence of a black market with higher ticket prices ultimately has the potential to damage the reputational standing of those sporting organisations that aspire to maintain ticket prices at an affordable level. As the black market developed and moved into cyberspace, it has become increasingly difficult for sporting organisations to identify those involved in selling and promoting the online sale of tickets on the black market.

It is in this context that measures have been established by some rights holders to ensure that they can take adequate action against those involved in selling and facilitating the sale of tickets in the black market. Those measures have included a contractual provision in the terms and conditions of ticket sales that prohibits the resale, transfer or advertisement for sale, and the automatic voiding of the contract in the event of breach of the terms and conditions of sale.

LOOK IT UP

Cases:

- *Anglo Irish Bank Corporation Limited v Quinn Investments Sweden AB and Ors* [2012] IEHC 379
- *Duhan v Radius Television Production Limited and Ors* [2007] IEHC 292
- *EMI Records (Ireland) Ltd & Ors v Eircom Ltd & Anor* [2005] IEHC 233
- *Megaleasing UK Limited v Barrett* [1993] IRLM 497
- *Norwich Pharmacal Company and others v Customs & Excise Commissioners* [1974] AC 133
- *Rugby Football Union v Viagogo Limited* [2011] EWHC 764 (QB); [2011] EWCA Civ 1585; 2012] UKSC 55
- *Ryanair Limited v Unister GmbH and Aeruni GmbH* [2011] IEHC 167

Legislation:

- *Charter of Fundamental Rights of the European Union* (7 December 2000)
- *Data Protection Act 1988*
- *Data Protection Act 1998* (Britain)
- *Data Protection (Amendment) Act 2003*
- Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of data
- *European Union Act 2009*
- *Lisbon Treaty (Treaty on the Functioning of the European Union)* of 1 December 2009

House OF A DIFFERENT COLOUR

Abolishing the Seanad would compound the stranglehold that the executive branch, and the Cabinet in particular, already has on our parliamentary process. Reform is the way forward, argues Noel Whelan

Noel Whelan is a barrister and political commentator

Ireland doesn't do political reform well. Indeed, we don't do much of it at all. What our political system does is engage periodically in bouts of intensive talk about the need for redesign or repair of our constitutional infrastructure – only to stall and fail to follow through on implementation.

It remains to be seen if the current spurt of discussion about reform hosted in the Constitutional Convention ultimately leads to any significant change. The initial agenda for its deliberations, focusing as it does on constitutional trivia like the voting age and the length of the presidential term, does not augur well.

It is curious in this context, therefore, that the largest proposal to emerge in recent years about our political system – the suggestion that Seanad Éireann should be abolished – is to be put to the people in a referendum without any reference to the Constitutional Convention.

On 17 October 2009, Fine Gael leader Enda Kenny told his party's presidential dinner that, if elected to government, it would abolish the Seanad. Kenny's address surprised many, including, it seems, many of his own party's leading politicians, who had not had an opportunity to discuss it in advance. Only four months earlier, at the MacGill Summer School in Donegal, Kenny had defended Seanad Éireann and advanced proposals for its reform. The case he made for abolishing it at the Fine Gael dinner, and in follow-up media interviews, was not framed in constitutional theory or plans for parliamentary improvement, but rather heavily couched in the more populist language of saving money and reducing the number of politicians.

The proposal to abolish the Seanad is certainly a change of some magnitude – but it is not political reform. Abolishing the second chamber would do no more than compound the stranglehold the executive branch in general, and the Cabinet in particular, already has on our parliamentary process.

"Although its contribution has been substantial, Seanad Éireann has only scratched the surface of its potential"

Initial design

The initial design for our current Seanad emerged quickly after de Valera abolished the Free State Seanad on 29 May 1936. Just two weeks later, de Valera established a commission, chaired by the then Chief Justice Hugh Kennedy, "to consider and make recommendations as to what should be the functions and powers of the second chamber of the legislature in the event of it being decided to make provision for such [in the new Constitution]".

The Kennedy Commission reported within four months and recommended that no bill should be enacted by Dáil Éireann until it had first been sent to the second house for consideration. However, it recommended that the second house should not have a power of veto, but only the effect of delaying the bill's passage by three months. Kennedy and his colleagues also recommended that the second house would have the power to initiate any bill, other than a money bill. These proposals were inspired by the type of powers that the

FAST FACTS

- Seanad Éireann has managed to perform a significant function in providing an opportunity for reflection in the legislative process and a second opinion on legislation
- However, the narrow and politicised composition of the Seanad electorate has inevitably made it weaker and more compliant than might otherwise have been
- Significant Seanad reform could be done by means of legislative change: a constitutional referendum would not be required

Free State Seanad had enjoyed and were designed to restore the situation where there would be at least some restraint on what would otherwise be the Dáil's absolute parliamentary power. The Kennedy Commission's proposals on the Seanad's role in the legislative process were largely adopted in the provisions relating to Seanad Éireann in the new Constitution.

The Kennedy Commission was also asked, however, to make recommendations on how the second chamber "should be constituted as regard number of members, their qualifications, method of selection and period of office". Its proposals in this regard reflected a desire to broaden participation in the legislature, to ensure representation for particular minorities, and to provide an additional dimension to law-making by including those with particular knowledge and experience in specific policy areas and vocational fields.

They proposed that one-third of the Seanad should be nominated by the head of Government and that the remainder should be "selected from a panel of persons who then are, or have been actively concerned in public interests or services". They recommended that these members of the second house should be elected by a college of electors, to consist of each person who had been a candidate at the immediately preceding Dáil election, each getting one vote for each 1,000 first preferences". They also, interestingly, recommended that "some members of the second house should be women" and that a portion of those nominated should be competent in the Irish language.

"The proposal to abolish Seanad Éireann is certainly a change of some magnitude, but it is not political reform"

When finalised, de Valera's constitution provided that the Taoiseach would nominate 11 members to Seanad Éireann. It also provided that six members would be elected by university graduates, three from Trinity College and three from what is now the National University of Ireland. This move was designed to compensate for the abolition of the Dáil university constituencies in the new Constitution. The new Constitution also provided that the remaining 43 senators be elected as persons "having knowledge and experience" of one of five designated vocational areas.

Having obtained popular approval for the existence of a second house through the referendum adopting the Constitution, de Valera then left it to legislation to determine how these 43 vocational senators would be elected. Legislation subsequently enacted provided for vocational bodies in each area to nominate candidates, but provided for a narrow electoral college of politicians, currently composed of all county and city councillors, outgoing senators and incoming TDs.

Weak mandate

This narrow and politicised composition of the Seanad electorate has inevitably resulted in a Seanad composed primarily of party political candidates. It has led, also, to a weaker and more compliant Seanad than might otherwise have emerged to exert its position within the Irish constitutional framework.

Notwithstanding this weakness in its mandate, Seanad Éireann has, over the course of its 75-year history, managed to perform a significant function in providing an opportunity for reflection in the legislative

process and a second opinion on legislation. Seanad Éireann has often been a forum for debate of a different order and quality than the lower house, as well as a useful means of both legislative restraint and legislative initiative.

It is no accident that one-time controversial legal innovations, such as enabling the general availability of contraception, had their first airing in the upper house, most notably in bills co-authored by Mary Robinson in the 1970s. In recent decades, a raft of substantial law reform, including some initiated by Government, has first been introduced in the upper house and had a more extensive exposition as a result. The *Defamation Act 2009* is a case in point.

The contribution of Seanad Éireann to the legislative process during its current term has included legislation designed to ensure that sub-contractors are paid, in the form of Senator Feargal Quinn's *Construction Contracts Bill*, and amendments to the *Civil Law (Miscellaneous Provisions) Act 2011* successfully introduced by Senator Katherine Zappone, designed to ensure that non-Irish civil partners of Irish people do not have to wait two years longer than non-Irish married spouses in order to be eligible for citizenship.

Reform via legislation

Although its contribution has been substantial, Seanad Éireann has only scratched the surface of its potential. If the Seanad was transformed and given a direct democratic mandate different from that of the Dáil, its impact would be further enhanced. What is not sufficiently appreciated, even in legal and political circles, is that this could be done by means of legislative change. A constitutional referendum would not be required.

Reforming the electoral system for Seanad Éireann would be a means of ensuring more diverse representation in the Oireachtas. Provision could be made for gender quotas, true representation of vocational interests could be achieved, and a representation of citizens living in Northern Ireland and outside the island of Ireland could happen. All of which could be achieved without the need for constitutional change.

> *"If Seanad Éireann was transformed and given a direct democratic mandate different from that of Dáil Éireann, its impact would be further enhanced"*

In the coming months, the Seanad Reform Group will publish a detailed *Seanad Reform Bill* designed to transform the membership of Seanad Éireann by a dramatic extension of its electorate on the basis of 'one person, one vote'. The *Seanad Reform Bill 2013* will be initiated in the Seanad itself by Senators Zappone and Quinn, and it is expected to attract support from most, if not all, of the other independents and, it is hoped, members of various party groupings. The process of having Seanad Éireann adopt a legislative scheme for its own overhaul will serve to emphasise its significance and potential, as well as illustrating the extent to which the Government-dominated Dáil has sought to ensure that the Seanad stays weak.

A reformed Seanad, with an enhanced mandate, could and should perform a significant range of functions. These include closer monitoring of statutory instruments, more proactive input to the making of European legislation and its impact in Ireland, and comprehensive reviewing of the impact of previously enacted legislation.

If a transformed Seanad was achieved by legislation then, having gained general acceptance, the provisions for this reformed Seanad could later be put to the people for inclusion in the Constitution. That would be real political reform. G

OTHER VOICES

Seanad Éireann has, even in its weakened form, provided a forum for many significant voices and those with particular expertise who might not otherwise have been able to contribute to our parliamentary debate and law-making. The more prominent living examples have included former senior civil servant TK Whittaker, historian Joe Lee, lawyer and later Supreme Court justice Catherine McGuinness, and playwright Brian Friel. Seanad Éireann has also hosted a diverse range of voices from Northern Ireland, including the New Ireland group founder John Robb, Seamus Mallon (then deputy leader of the SDLP), and the late Gordon Wilson, a campaigner for reconciliation whose daughter Marie was killed in the Enniskillen bombing. The recently deceased Éamon de Buitléar was also a significant contributor to the Seanad – and not just on issues relating to the natural environment.

Seanad Éireann also provided an introduction to parliamentary life for many who later went on to play leading roles in the lower house, including Mary Harney and Garret FitzGerald. It has also provided a base for some senior party political figures unable or disinclined to compete for Dáil seats, yet wishing to contribute to national life. Fine Gael senator and one-time minister Jim Dooge and the Fianna Fáil businessman Eoin Ryan, a son of former finance and health minister Dr James Ryan, being two examples in point.

ROSCOMMON BAR ASSOCIATION

The annual general meeting of the Roscommon Bar Association was held in the Abbey Hotel, Roscommon, recently. Attending were: *(front, l to r)*: Alan Gannon, Bríd Miller, Mary Rose McNally (CPD officer), Ken Murphy (director general), Marie Conway (incoming president, Roscommon Bar Association), Donald Binchy (then Law Society President), Christopher Callan (outgoing president, Roscommon Bar Association), Brian O'Connor (secretary), Harry Wynne, Gerard F Gannon and Tracy McDermott. *(Middle, l to r)*: Ailbhe Hanmore, Ivan Moran, John Duggan (treasurer), Shane O'Dowd, David Kelly, Aishling McGowan, Marita Dockery, Rebecca Finnerty, Niamh Mahon, Dermot Neilan, Michael O'Dowd and Padraig Kelly (PRO). *(Back, l to r)*: Donal Keigher, Thomas Queally, Dara Callaghan, William Henry, Jonathan Wynne, Sean Mahon, Terry O'Keeffe, Conleth Harlow, Declan O'Callaghan and John Sweeney

PIC: EOIN HENNESSY

Kilkenny solicitor John G Lanigan celebrated 50 years in practice at Michaelmas 2012. John is a partner, with his daughter Sonya, in John Lanigan & Nolan, Dean Street, Kilkenny. To mark the occasion, the Kilkenny Solicitors' Association convened with family and friends at Zuni Restaurant, Kilkenny, on 21 December 2012. John received an engraved crystal vase to mark the event. *(Front, l to r)*: Michael Buggy, Roz Lanigan, John G Lanigan and his daughter Sonya Lanigan. *(Back, l to r)*: Frank Lanigan, Martin O'Carroll, Martin Crotty, Julie Bermingham, John G Harte, Nicholas Harte, David Dunne, Emer Foley, Anthony Canny, Maeve Meaney, Laurence Grace, Michael Lanigan, Owen Sweeney, Kieran Boland and Timothy Kiely

At the seminar in Blackhall Place on 2 March 2013 on the proposal for a Court of Appeal were *(l to r)*: Inge Clissman SC, chairman of the Bar Council David Nolan SC, Chief Justice Susan Denham and director general Ken Murphy

'Appy days

A&L Goodbody has launched Ireland's first dedicated data privacy law app. It should prove to be a useful resource for senior management, privacy law professionals and in-house lawyers who need to respond to increasing data protection and security requirements. The app is free to download to iPhone and iPad at the iTunes App Store. It includes an index of privacy law terms, as well as links to relevant acts and regulations.

This latest app is part of a suite of online tools developed by the firm over the past year, including 'Irish HR Law A-Z', which provides accessible information on employment law facts and regulations.

Putting on the ritz

The annual dinner of the Southern Law Association (SLA) was held in the Maryborough House Hotel, Cork, on 22 February. Special guests included members of the judiciary, Law Society President James McCourt and Ken Murphy (director general).

(From l to r): Judge James McNulty (District Court), Jonathan Lynch (president, SLA) and his father Tom Lynch

(From l to r): Ken Murphy (director general), Jonathan Lynch (president, SLA) and James McCourt (Law Society President)

ALL PICS: DEE BAUMANN

(From l to r): Niamh O'Connor, Amy Murphy and Aoife Byrne

(From l to r): Kevin Hickey, Tom Coughlan, Colleen Spalding-O'Riordan, Joyce Good, Brian Leahy and David Williams

Members of the Southern Law Association Council 2012/13, including *(front, l to r)*: Daniel F Murphy, Joan Byrne, Jonathan Lynch (president, SLA), Catherine O'Callaghan and Fiona Twomey. *(Back, l to r)*: Fergus Long, Terry O'Sullivan, Richard Hammond, Patrick Dorgan, Eamon Murray, Kieran Moran, Brendan Cunningham, Pat Mullins, Peter Groarke and Robert Barker

The beautiful south

Southside solicitors from Dublin gathered at the Royal St George Yacht Club in Dun Laoghaire for the 28th annual dinner on 1 February 2013. The dinner, dedicated to the memory of Dominic Dowling, who practised in Dalkey, was attended by 78 local colleagues, friends from the Bar, judiciary and guests.

ALL PIX: DERMOT BYRNE PHOTOGRAPHER

William Prentice, Sam Clarke, Aongus O Brolcháin SC and Owen McNally

Judge John O'Connor, Ken Murphy (director general), Kevin O'Higgins, Barbara Cotter, James McCourt (Law Society President) and Justin McKenna

Justin McKenna, Stephanie O'Meara, Carina Davidson, Andrew Vallely, Rory O'Riordan, Aimee Dillon, Susan Gray, Cillian McKenna and Nicola Hennessy (all Partners at Law)

Sharon McElligott and Maeve Carney

Josepha Madigan and Finbarr Hayes

Martin Sills, Geraldine Kelly and Kevin O'Higgins

Judge Paul Gilligan, John Miller and Mary Geraldine Miller BL

Calcutta Run aims to move up a gear in 2013

On 20 March, Law Society President James McCourt held a reception to launch an exciting new phase for the Calcutta Run, *writes Eoin MacNeill (A&L Goodbody)*. Managing and senior partners from over 50 firms attended to hear the president outline the aim to establish the Calcutta Run as the annual collective corporate social responsibility/charity fundraising initiative for the entire legal profession.

The Calcutta Run has had great support from within the profession over its 15-year history. The hope is that this support can be taken to a new level by having member firms sign up as 'Calcutta Run Supporters' and promote fundraising efforts within their firms.

To date, over 40 solicitors' firms as well as members of the Bar, have signed up to support Calcutta Run 2013. Many different fundraising efforts are planned across the profession. This level of support bodes well for the initiative, and the hope is that many more firms will sign up as Calcutta Run supporters in the coming weeks. This year's Calcutta Run event takes place on Saturday 25 May. Sign up now at www.calcuttarun.com.

Calcutta Run sponsors *(from l to r)*: Fiona Counihan, Susan Kavanagh, Sarah Kelly (The Panel), Helen Leahy (Bank of Ireland), Joanne Lindsay Martin (Peter McVerry Trust), Barry Andrew (GOAL), Law Society President James McCourt, Carmel Drumgoole (GOAL), Paul D'Alton (Cagney Contract Cleaning) and Frank White (Pearl Audio Visual)

Washington DC beckons for Law Society victors

This Easter, the Law Society's Jessup team travelled to Washington DC to compete in the international rounds of the Philip C Jessup International Law Moot Court Competition. At time of going to press, they were pitted against the cream of 550 law schools from 80 countries in the world's largest moot court event.

The Law Society's team qualified for the international rounds by winning the national championship against teams from the King's Inns, Trinity and University College Cork. It also achieved best written memorials. The Law Society's James Roche and Barry Connolly were ranked first and second in the oralist rankings.

The team members are: Gillian Beechinor (Ronan, Daly Jermyn), Barry Connolly (Flynn O'Driscoll), Rosemary Hennigan (McCann FitzGerald), James Roche (ByrneWallace) and Rebecca Walsh (McCann FitzGerald). The team is coached by Colette Reid.

Pontoon piscatorial paradise

John Purcell (solicitor with Barry M O'Meara & Son, Cork), Jack Mellette (boatman) and Cyril Kelly (Dublin) at the May 2012 event

The annual lawyers' fishing trip has been running for many years, *writes Marc Bairead*. It's a great opportunity to meet like-minded colleagues and to catch up with old friends. Many lawyers from Britain and Northern Ireland also join us.

Last May, we headed for Pontoon, on the shores of Lough Conn, for the fishing period known as 'duffers fortnight' – or the Mayfly season. As it happens, lady luck was on our side and most of the lawyers that took to the water that weekend caught fish. The headlines and top prize, however, went to an up-and-coming Cork solicitor, John Jermyn, who had been absent from the Lawyers' Fishing Club event for 15 years. Over the course of the weekend, 60 trout were caught and many more big ones proved too slippery, being hooked – and lost.

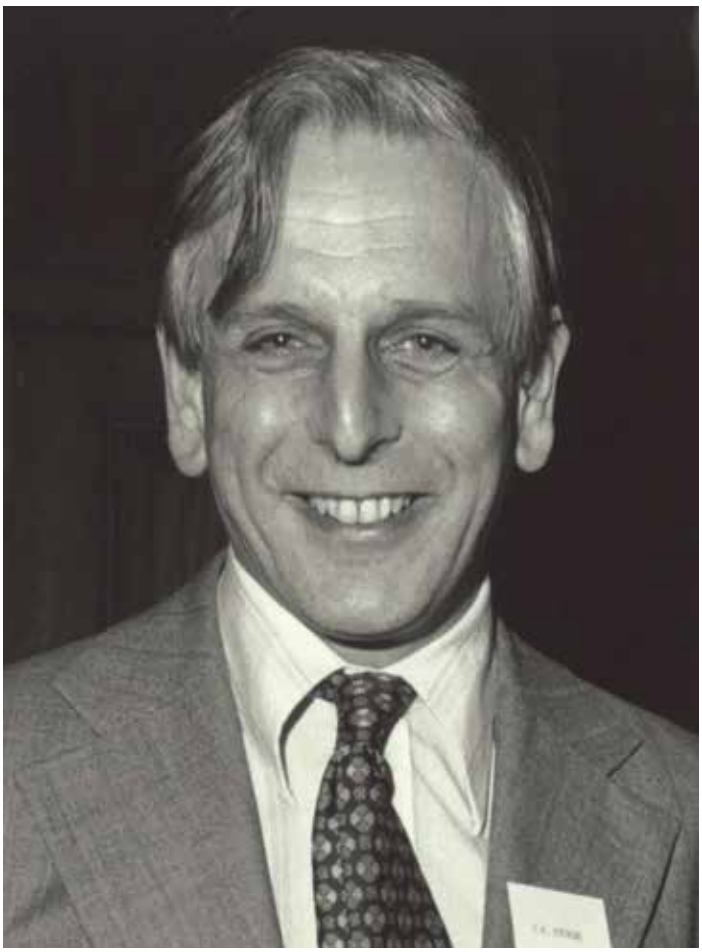
This year's event is taking place on Friday and Saturday 10 and 11 May at the Crover House Hotel on the banks of Lough Sheelin, Co Cavan. A very competitive rate is available from Crover House Hotel for a three-night stay. Anyone interested in joining us or obtaining more details should email Marc Bairead at marc@nossolicitors.com.

BRIAN KINGSBURY OVEREND 1930 – 2013

Brian Overend, for many years A&L Goodbody's senior partner, passed away on 16 January 2013, just two months short of his 83rd birthday.

Brian was the last surviving Overend to have been part of A&L Goodbody. The Overend family shaped and moulded the firm from the early 1910s – taking the baton in the early 1920s from Alfred and Lewis Goodbody, who established the firm. Brian's son Rodney was a corporate lawyer with the firm for a number of years before his untimely death in 1995.

Throughout his career Brian – or 'BKO' as he was known to many – was greatly regarded and admired, particularly for his sound advice, his great humanity, his elegance and good humour. Only behind the wheel of the family car did he ever experience an occasional lapse of temperament. Brian was positively intergenerational, and he was hugely respected by solicitors, both young and old. Anyone who met him quickly came to know that they would always see fair play from a gentleman of the legal profession.



Brian was educated at Castle Park School, St Columba's College (where he was a noteworthy hockey player and cricketer) and Trinity College, Dublin. In 1949, he became apprenticed to his father, Acheson Overend (Achie) at A&L Goodbody. Brian qualified in 1953 and shortly afterwards became the fifth partner in the firm alongside his father, his brother George, and Rowan Blakeney and Synge Millington.

His area of practice was property and private client work. Brian acted for many of the merchant families of Dublin, not just on property, trusts and estate planning, but also as the source of wise counsel on a range of matters. In particular, he was involved in the assembly of the Setanta development site between Dublin's Molesworth Street and Nassau Street in the late 1960s and 1970s, and its later sale to the British Coal Board Pension Fund. This was one of the largest property transactions by value in Ireland up to that time.

He was a director of the Solicitors' Benevolent Association from June 1963 until December 2012 (he attended his last meeting of the association on 10 December 2012). He also made time for several voluntary committees and boards and was a governor of the Rotunda Hospital for many years.

A keen sportsman, he represented Leinster in badminton and played tennis on the first team at Donnybrook LTC. He played golf for over 50 years off scratch or low single figures and was a prominent member of Carrickmines Golf Club, where he was also a well-known bridge player.

While Brian retired after over 40 years in practice, his links with A&L Goodbody never ended; even until the end of last year, he was a familiar and welcome visitor to the firm. He will be particularly remembered by many who worked in the private client area of practice. A&L Goodbody greatly values the long association with Brian and his family.

Brian married Mary (Palmer) in 1956, who passed away unexpectedly after a short illness in 2010. He is survived by his daughters, Jenny and Rosie, together with their families, and his son Rodney's wife Maggie and grandson Scott.

PDW

LOUIS DOCKERY 1928 – 2013

The most important event in Louis Dockery's long life was the occurrence in 1963 of a sharp pain that required his admittance to the Mater Hospital, where he was nursed back to full health by the girl who thereupon became and forever remained the centrepoint of his earthly existence. His courtship of Nóirín was, by all accounts, typical of the man we came to know – patient, thorough, determined and completely successful. It was the template of his career.

Louis, who died recently, was born in Elphin, Co Roscommon, and he rarely missed an opportunity to remind people of his birthplace. After attending primary school there, he went on to Summerhill College, Sligo, where, *inter alia* (as he might say), he excelled in Latin and Greek, inspiring his lifelong insistence on the correct and precise use of language, especially the English language.

He studied law at UCD and the Law Society, graduating with a BA and LLB, and was admitted as a solicitor in 1953. After practising in Co Cavan, he joined the Office of the Chief State Solicitor in 1956, where he showed exceptional ability in discharging the many-faceted duties of that office. He was patient and courteous with all who had dealings with him.

Those of us who knew his work there also knew that his eventual appointment as Chief State Solicitor would be inevitable; he served from 1978 to 1993.

There was much more to Louis than his achievements as a senior legal officer of the State. Nóirín, each of their five children, Desmond, John, Louis, Liam and Mairéad and, later, each of their seven grandchildren, were dearly loved by him and they took precedence over everything else.

He had, however, other loves and passions. His interest, amounting almost to obsession, in military history and military matters was legendary. It originated in his youthful fascination with the stories of veterans of the Boer War and of World War I whom he knew, and it later resulted in his becoming an accomplished military historian. He had a special interest in the Connaught Rangers and in the battlefields of the Great War, which he visited. He had a great admiration for the Irish Defence Forces and was a very popular and respected member of the Defence Forces Legal Service Club, whose functions and outings he loyally attended. He was a member of the Military History Society of Ireland and a subscriber to its journal, *The Irish Sword*. The extent of his knowledge of military history generally, but especially of Irish military history, was quite extraordinary.

On an equal footing stood his love of the GAA. Louis insisted that he had been only an indifferent footballer but, whatever the truth of that, his loyalty to the association was undoubted. His brother, the late (Fr) Desmond, was a most gifted Roscommon senior county footballer. He was a walking encyclopaedia of GAA lore, and none who knew him would be foolish enough to challenge any of his assertions in that area.

Louis was first and last a committed Roscommon man. His love of that beautiful county and many of his eclectic interests are evidenced by his contributions to the Roscommon Association Dublin yearbooks. They include folklore, local lore and stories of the paranormal from around Elphin, a vivid description of a 1940s student's lot in Summerhill, experiences of World War I veterans, as well as details of Irish regiments, battlefields and cemeteries and, poignantly, an account of the enforced end of his lifelong love affair with the pipe. He was the quintessential pipe smoker – calm and reflective.

Louis was a religious and genuinely moral man. He was also a most lovable man. He will be greatly missed.

EMB

Companies Acts 1963 – 2012

Lyndon MacCann and Thomas B Courtney (eds). Bloomsbury Professional (2012), www.bloomsburyprofessional.com. ISBN: 978-1-78043-134-5. Price: €165.

Company law has become extraordinarily complex. No less than 18 acts of the Oireachtas, dozens of statutory instruments, and directly applicable EU regulations constitute the huge and confounding corpus of legislative activity in this area. *Companies Acts* is not merely a consolidation of these enactments (invaluable in itself), but a treasure trove of commentary, analysis of relevant case law and reference to the equivalent English provisions.

The last edition of this work was in 2010. No fundamental legislative initiative has taken place in the interim, but there have been a host of smaller changes and, of course, important cases, which have been incorporated into the text.

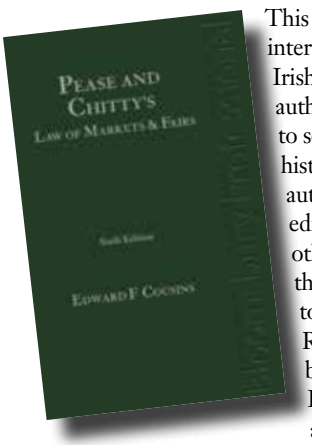
Presumably this will be the last version of this work before the *Companies Bill*, published at the end of last year, is enacted. That bill is a complete restatement and reform of company law and derives from the research and reports of the Company Law Review Group over a number of years. Its 2,000 pages will form the basis of our law for some time to come.

Dr Tom Courtney is, with Lyndon McCann SC, one of the general editors of *Companies Acts* and of course has been chairman of the CLRG throughout the process. One of the contributors is Paul Egan, who also took a leading role in the CLRG. These princes of our profession have done the State considerable service in the modernisation of our company law and have, with other authors, done practitioners invaluable service in the production of this book.

Paul Keane is managing partner at Reddy Charlton, Solicitors, and is chairman of the Business Law Committee of the Law Society.

Pease and Chitty's Law of Markets and Fairs (6th ed)

Edward F Cousins. Bloomsbury Professional (2012), www.bloomsburyprofessional.com. ISBN: 978-1-84766-742-7. Price: stg£125.



This is a surprisingly interesting book for Irish lawyers, local authorities and, to some extent, historians. The author of this edition is, among other things, the adjudicator to HM Land Registry, bencher of Lincoln's Inn and Gray's Inn, and our own King's Inns. The latter position no doubt accounts for his interest in Ireland, as displayed throughout the book.

The book has 12 chapters: the introduction, 'Creation and acquisition of markets and fairs', 'The market place and the place for holding fairs', 'The days and hours for holding markets and fairs', 'Toll and stallage', 'Disturbance'; 'Sales in markets and fairs', 'Forfeiture and extinction of markets and fairs', 'Regulation, administration and control', 'Accounts, rates and taxes', 'Practice, procedure and evidence' and, lastly, a chapter entitled 'The Irish dimension'. However, that chapter is not only of reference to the Irish situation. Irish cases – for example, *Loughrey v Brietry* ([1928] IR 108) – and statutes are mentioned throughout where appropriate. The *Casual Trading Act 1995* is reproduced in full and annotated.

That the law on markets and fairs is alive and well is shown by the extensive reference to *Listowel Livestock Mart Ltd v Bird* ([2009] 4 IR 631). That case referred to the letters patent granted by James I in 1612 and James II in 1696 to hold market and fairs here in Listowel. To this day, horse fairs are held on the public road outside our office.

A small criticism of the book is the rather small print size, especially in the footnotes. Possibly it is my age!

Celebrate our common law tradition. Read this book.

Robert Pierse is partner in Pierse & Fitzgibbon Solicitors, Market Street, Listowel, Co Kerry.

DATE FOR YOUR DIARY

Law Society
Annual Conference
10th/11th May 2013

Minister Alan Shatter will be the keynote speaker at the 2013 Law Society Annual Conference.

Mícheál Ó Muircheartaigh, the legendary GAA commentator, has also been been confirmed for the 2013 conference.

The theme of the conference is **'Firming up for the Future: Building Legal Agility and a Positive Perspective'** and takes place in the Europe Hotel and Resort, Killarney.

Minister Shatter will speak on 'Courts Reform and the *Personal Insolvency Act, 2012*', while Mr Ó Muircheartaigh will encourage delegates to move 'Up the Field and Face the Ball – Exercising a Positive Perspective'.

While the programme for each day is still being finalised, the following speakers have also been confirmed:

Simon Murphy, Barry M O'Meara & Son Solicitors
Richard Hammond, Hammond Good Solicitors
Paul Keane, Reddy Charlton Solicitors
Chris Callan, Callan Tansey Solicitors
Sonia McEntee, McEntee Solicitors
Catherine Guy, ByrneWallace Solicitors

For more information on conference packages, please visit the Events area of the Society's website.

If you have any queries about your booking, please contact the conference organisers at lawsociety@ovation.ie.

CONFERENCE RATES

Full delegate package: €300
Access to full conference, Gala Dinner on Friday, 10th May, B&B accommodation for one night sharing with another delegate or registered accompanying person and a light lunch on Saturday, 11th May, all in Europe Hotel and Resort. If you will not be sharing and request a single room, a single supplement of €75 will be charged.

Accompanying Person package: €200
One night's B&B accomodation (Friday, 10th May) sharing with a delegate, Gala Dinner on Friday, 10th May, light lunch on Saturday, 11th May.

Additional night: €200
B&B accomodation per room

BOOK ONLINE AT
www.lawsociety.ie/annualconference

Law Society of Ireland

10th/11th May 2013

The Europe
HOTEL & RESORT
Killarney

Practice notes

Pre-contract deposit should be stated to be paid to stakeholder or on trust

CONVEYANCING COMMITTEE

In a recent High Court case, *In the Matter of Protim Abrasives Limited (In Liquidation) and In the Matter of the Companies Acts 1963 – 2009* (2009 no 510 COS), it was held by Judge Kevin Feeney that monies paid by a purchaser to a vendor's solicitor by way of a pre-contract deposit, in the absence of a contrary agreement, are paid to the vendor's solicitor as agent of the vendor and not as stakeholder, and were in effect paid to the vendor. When the vendor went into liquidation without having returned the deposit monies to the purchaser, the deposit monies became assets in the liquidation and the purchaser then became an unsecured creditor.

It was also held that General Condition 5(c) of Law Society's Standard Conditions of Sale, which states that the deposit is to be paid to the vendor's solicitors as 'stakeholder', whether the sale is by auction or private treaty, cannot apply and does not bind the vendor until such time as the vendor signs the contract and it is exchanged and becomes binding.

The judgment reviewed the case law in relation to deposits and noted that, in the absence of agreement to the contrary, an auctioneer receives (a pre-contract booking deposit) as stakeholder and not as agent of the vendor.

The case is under appeal and the committee will keep the matter under review. In the meantime, purchasers' solicitors need to take appropriate care. One way of dealing with this issue would be to return the contracts with a cheque for the deposit and to include a paragraph as follows in your covering letter: *"The cheque for the deposit attached is sent subject to the following pre-condition, namely that it will be held by you (or your firm) in trust for the purchaser until contracts are exchanged in a manner acceptable to both vendor and purchaser, from which time the money can be held as stakeholder under the terms of the contract. If you are not willing to accept payment of the deposit subject to this condition, please return it immediately."*

If it is intended to pay the deposit by electronic transfer of funds, the wording of any email and/or letter sent to the vendor's solicitor in advance of transferring the funds and/or forwarding the contract documentation should contain a similar pre-condition.

Fatal delay in referring a matter to arbitration

ARBITRATION AND MEDIATION COMMITTEE

Practitioners should be aware that the *Arbitration Act 2010* repeals the provision of the *Arbitration Act 1954* that gave the court power to extend time for commencing arbitration proceedings where the agreement provides that claims are to be barred unless proceedings are commenced within a specified time.

Section 45 of the 1954 act provided: *"Where (a) the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and (b) a dispute arises to which the agreement applies, the court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, but without prejudice to section 42 of this act, extend the time for such period as it thinks proper."*

Failure to comply strictly with the time limits imposed by an arbitration clause could now be fatal to a claim, as the court would no longer appear to have power to extend time. Accordingly, practitioners should be wary of delay in referring matters to arbitration and commencing arbitration proceedings. Some agreements contain arbitration clauses requiring disputes to be referred to arbitration within a period as short as six months.

In certain instances, there might be relief available if, for instance, time did not start to run because there was not yet a dispute, or where a consumer can show the time bar amounts to an unfair contract term. However, practitioners are urged to exercise caution by checking time limits to ensure claims do not become time barred.

NOTICE FROM THE REGULATION DEPARTMENT

Notice to the profession in relation to office account bank cheques

It has recently come to the attention of the Law Society that one of the financial institutions has advised its customers that it would no longer be returning the original of paid office bank account cheques.

The *Solicitors' Accounts Regulations 2001* (as amended) sets out the minimum accounting records that a solicitor should maintain in regulation 20. Regulation 20(1)(f) requires a solicitor to maintain *"the original of each paid cheque drawn on each client account, controlled trust account and non-controlled trust account, regularly procured by the solicitor from his or her bank or banks and maintained and kept by the solicitor in numerical sequence, together with the corresponding cheque stubs or requisition dockets".*

There is no requirement under the regulations to obtain the return of original office bank account cheques.

The majority of practices did, as a matter of good practice, also obtain the return of the original office account cheques. In the absence of office account returned paid cheques, it is recommended that the solicitor retain a photocopy on file of all office account cheques issued in respect of outlays disbursed on behalf of clients.

In order to ensure continued compliance with the regulations, each solicitor must ensure that their financial institution continues to return the original client bank account cheques.

BRIEFING

Clearance of funds

CONVEYANCING COMMITTEE, BUSINESS LAW COMMITTEE

The Conveyancing and Business Law Committees would like to draw your attention to the news item 'Taking advantage of EFT' at page 7 of this *Gazette* and would urge practitioners to contact their banks if they are experiencing delays in the clearance of funds that are longer than is provided for by law. Solicitors should also contact their banks to find out the relevant 'shut-off' times for sending payments, and so on, as suggested in the news item.

If solicitors find that their banks are not complying with the time limits provided for in the *European Communities (Payment Services) Regulations 2009* (SI no 383 of 2009), they should let the committees know.

The value clearing cycle for bank drafts is usually similar to that for cheques. While bank drafts enjoy a certainty of fate (that is, they will not be returned unpaid unless they have been counterfeited, fraudulently altered, or stolen), they also require clearance through the value clearing cycle.

Cheques drawn outside the Republic of Ireland but lodged in the country may take considerably longer to clear and may be returned unpaid in accordance with the legislation and/or clearing rules of the country in which the cheque is drawn.

Legislation update 2 February – 11 March 2013

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – 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 on a link to electronic statutory instruments from www.irishstatutebook.ie

ACTS PASSED

Euro Area Loan Facility (Amendment) Act 2013
Number: 1/2013
To further facilitate, in the public interest, the financial stability of the European Union and the safeguarding of the financial stability of the Euro Area as a whole and for those purposes: (a) to enable effect to be given, insofar as it relates to the State, to the amendment to the €80 billion *Loan Facility Agreement* done in Brussels on 19 December 2012 and in Athens on 18 December 2012, which lengthened the term of the loan to Greece to a maximum of 30 years and further reduced the margin to 50 basis points; (b) to provide that subsequent amendments to the Greek *Loan Facility Agreement* can be approved by a resolution of Dáil Éireann pursuant to article 29.5.2 of the Constitution, subject to certain conditions; (c) to amend the *Euro Area Loan Facility Act 2010*; and (d) to provide for related matters.
Commencement: 5/2/2013

Houses of the Oireachtas Commission (Amendment) Act 2013
Number: 3/2013
Amends the *Houses of the Oireachtas Commission Act 2003* to provide for the Houses of the Oireachtas Commission to translate statutory instruments made by ministers, or by persons other than ministers (including, for example, statutory bodies), at a cost, when requested by ministers to do so. Also amends the *Houses of the Oireachtas Commission Act 2003* to provide for a definition of An Caighdeán Oifigiúil (the Offical Standard for Irish) to be used in primary and secondary legislation and as the guide for writing in the Irish language, and provides for related matters.
Commencement: Commencement order(s) required as per s5(3) of the act

Irish Bank Resolution Corporation Act 2013
Number: 2/2013
To provide for the liquidation of the Irish Bank Resolution Corporation and for the sale of its remaining assets to NAMA or to other market purchasers.
Commencement: 7/2/2013

SELECTED STATUTORY INSTRUMENTS

Personal Insolvency Act 2012 (Commencement) (No 2) Order 2013
Number: SI 62/2013
This order appoints 1 March 2013 as the date on which the provisions of part 1 (other than section 6), part 2 (other than section 13), sections 25 and 47, sections 126 to 141, part 5 and schedules 2 and 3 of the *Personal Insolvency Act 2012* come into operation. Part 1 of the act provides for the short title and commencement and interpretation of the act, as well as making provision for regulation-making powers, expenses and the interpretation of 'appropriate court' in the act. Part 2 of the act makes provision for the establishment of a new body, the Insolvency Service of Ireland, for the purposes of operating the new debt resolution arrangements provided for in the act. It sets out the functions and powers of the Insolvency Service and governance arrangements for the service. Section 25 is an interpretation section for chapter 1. Section 47 empowers the Insolvency Service to authorise a person or class of person to perform the functions of an approved intermediary under chapter 1. Chapter 5 (sections 126 to 132) provides for offences under part 3, while chapter 6 (sections 133 to 141) makes provision for miscellaneous matters pertaining to the act. Part 5 and schedules 2 and 3 make provision for the regulation, supervision and discipline of personal insolvency practitioners by the Insolvency Service.
Commencement: 1/3/2013

ONE TO WATCH

One to watch: recent case

Fox v Office of the Data Protection Commissioner
In *Fox v Office of the Data Protection Commissioner* ([2013] IEHC 49), the High Court confirmed that the Circuit Court has no jurisdiction to hear an appeal in relation to an opinion by the Data Protection Commissioner (DPC) that a complaint is frivolous or vexatious.

An issue of statutory interpretation arose whereby two complaints written by the applicant to the Data Protection Commissioner on 10 December 2010 and 19 January 2011 were not being investigated, as they were deemed by the commissioner to fall within section 10(1)(b)(i) of the *Data Protection Act 1998* and *2003* (as amended) – that is, they were considered to be "frivolous or vexatious". The applicant held that the DPC's opinion was a 'decision' on his complaints and so he had a right of appeal under section 26.

Section 26 of the acts makes provision for an appeal against "a decision of the commissioner in relation to a complaint under section 10(1)(a) of [the] acts" to the Circuit Court. Under that section, the decision of the Circuit Court is final, except on a point of law only to the High Court. Upon receipt of the commissioner's letter, the applicant appealed to the Circuit Court. Judge Linnane dismissed the applicant's appeal, ruling that a decision by the DPC that a complaint is frivolous or vexatious is not one in respect of which an appeal lay. The applicant appealed this decision to the High Court.

Justice Peart examined section 10(1) of the acts. He noted that section 10(1)(a) provides that the DPC may investigate a complaint, and section 10(b)(i) goes on to require the DPC to investigate a complaint "unless he is of the opinion that it is frivolous or vexatious". In the latter case, the DPC is not required to investigate the complaint at all. According to section 10(b)(ii), where the DPC does investigate the complaint (where it is not deemed to be frivolous or vexatious), he must try and have the matter resolved amicably and, if unsuccessful in that regard, must notify the complainant in writing of his decision and the complainant may, "if aggrieved by the decision, appeal against it to the court under section 26 of [the] act."

In his final judgment, Justice Peart stated: "There is a clear sequencing evident in this section. The complaint does not get even to an attempt to resolve it amicably or a decision upon it until the commissioner is satisfied that it is not a frivolous or vexatious complaint. The reference in section 10(1)(b)(ii) to 'the decision' (as distinct from 'a decision') must in my view relate to the decision made following the investigation. It speaks of only one decision, and that in my view cannot include the opinion formed for the purpose of subsection (1)(b)(i) that the complaint is frivolous or vexatious. It follows in my view that the reference to 'a decision' in section 26 of the act must in turn be read as meaning a decision reached in relation to the complaint after it has been investigated."

Peart J noted that this issue had already been the subject of a judgment in *Nowak v Data Protection Commissioner* ([2012] IEHC 449), where the High Court reached the same decision, that where the DPC declines to investigate a complaint, the Circuit Court has no jurisdiction to hear an appeal. G

BRIEFING

Solicitors' Benevolent Association

149th report, 1 December 2011 to 30 November 2012

The Solicitors' Benevolent Association is a voluntary charitable body consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €480,276, which was collected from members' subscriptions, donations, legacies and investment income. This was less than the grants paid out in the previous year, as the directors had to reduce the amount of the grants paid out to avoid overspending of income. Currently, there are 66 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices at Blackhall Place. They meet at the Law Society in Belfast every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists, in the main, of reviewing applications for grants and approving new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker who, in appropriate cases, can advise on State entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Donald Binchy (past-president of the Law Society of Ireland), Imelda McMillan (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), Alan Hunter (chief executive) and the personnel of both societies.

RECEIPTS AND PAYMENTS A/C FOR THE YEAR ENDED 30 NOV 2012

	2012	2011
RECEIPTS		
Subscriptions	**385,553**	374,368
Donations	**140,062**	165,108
Investment income	**39,574**	39,390
Bank interest	**1,851**	4,836
Currency gain	**1,486**	–
Repayment of grants	**40,000**	10,000
	608,526	593,702
PAYMENTS		
Grants	**480,276**	743,528
Bank interest and charges	**908**	773
Administration expenses	**36,075**	37,510
Currency loss	**–**	166
	517,259	781,977
OPERATING SURPLUS FOR THE YEAR	**91,267**	(188,275)
Profit/(loss) on disposal of investments	**41,465**	(32,298)
Provision for write down of quoted investments in prior periods no longer required	**23,000**	122,000
SURPLUS/(DEFICIT) FOR THE YEAR	**155,732**	(98,573)

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions, and to the following: Law Society of Ireland, Law Society of Northern Ireland, Belfast Solicitors' Association, Donegal Bar Association, Dublin Solicitors' Bar Association, Irish Solicitors' Golfing Society, Kildare Bar Association, Limavady Solicitors' Association, Limerick City and County Solicitors' Bar Association, Local Authorities' Solicitors' Bar Association, Longford Bar Association, Medico-Legal Society of Ireland, Midland Solicitors' Bar Association, Monaghan Solicitors' Bar Association, Northern Ireland Law Society Choir, Sheriffs' Association, Southern Law Association, Tipperary and Offaly Bar Association, Waterford Law Society, and the West Cork Bar Association.

The demands on our association are rising due to the present economic difficulties and, to cover the greater demands on the association, additional fundraising events are necessary. Additional subscriptions are more than welcome as, of course, are legacies and the proceeds of any fundraising events. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at page 33 of the *Law Directory 2012*.

I note with deep regret the death in January last of our colleague Brian Overend, who was a director of the association for many years. During that time, he gave up his time and energy in furthering the aims of the association. His support and contribution at the meetings, and especially the financial meetings of the association, was much appreciated by all the directors, and he will be sadly missed by the board.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

Thomas A Menton, chairman

DIRECTORS AND INFORMATION

Directors
Thomas A Menton (chairman)
John Sexton (deputy chairman)
Caroline Boston (Belfast)
Thomas W Enright (Birr)
Felicity M Foley (Cork)
William B Glynn (Galway)
John Gordon (Belfast)
Colin Haddick (Newtownards)
Dermot Lavery (Dundalk)
Anne Murran (Waterford)
John M O'Connor (Dublin)
John T D O'Dwyer (Ballyhaunis)
Brian K Overend (Dublin)
Colm Price (Dublin)
James I Sexton (Limerick)
Andrew F Smyth (Dublin)
Brendan J Twomey (Donegal)
Brendan Walsh (Dublin)

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(*ex-officio* directors)
John Gordon
John M O'Connor
John Sexton
Andrew F Smyth

Secretary
Geraldine Pearse

Auditors
Deloitte & Touche, Chartered Accountants, Deloitte & Touche House, Earlsfort Terrace, Dublin 2

Financial consultants
Tilman Brewin Dolphin Limited, 3 Richview Office Park, Clonskeagh, Dublin 14

Bankers
Allied Irish Banks plc, 37 Upper O'Connell Street, Dublin 1

First Trust, 31/35 High Street, Belfast BT1 2AL 3

Offices of the association
Law Society of Ireland, Blackhall Place, Dublin 7

Law Society of Northern Ireland, Law Society House, 90/106 Victoria Street, Belfast BT1 3JZ

Charity number: CHY892

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 Patrick McCarthy, a solicitor formerly practising as McCarthy & Co, Second Floor, Building 1000, City Gate, Mahon, Cork, and in the matter of the *Solicitors Acts 1954-2008* [7748/DT03/11]
Law Society of Ireland (applicant) Patrick McCarthy (respondent solicitor)
On 4 May 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:
a) Failed to respond to correspondence from the Society,
b) Failed to attend a meeting of the Complaints and Client Relations Committee on 30 July 2009 when required to do so,
c) Was in serious delay in pursuing the return of monies retained from the purchase monies by solicitors for the vendor builders in a conveyancing matter,
d) Was in serious delay in taking over an undertaking in respect of the complainants from another firm of solicitors,
e) Failed to pursue the question of interest due to the complainants arising out of the retention of the monies concerned for a number of years in reimbursement of the complainants,
f) Failed to attend a meeting of the Complaints and Client Relations Committee on 29 January 2009, notwithstanding that he had been required to so attend,
g) Failed to attend a meeting of the Complaints and Client Relations Committee on 18 March 2009, despite having been required to do so,
h) Failed to attend a further meeting of the Complaints and Client Relations Committee on 28 April 2009, despite being required to do so,
i) Failed to furnish the sum of €361.35 to the complainants, which had been received by him by the solicitors for the vendors in respect of interest,
j) Failed to comply with the direction of the Complaints and Client Relations Committee that he pay a contribution of €1,000 towards the cost of the Society's investigation,
k) Failed to attend the meeting of the Complaints and Client Relations Committee on 28 April 2009, despite being required to do so,
l) Failed to attend a further meeting of the Complaints and Client Relations Committee on 9 June 2009, despite being required to do so.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €500 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 Katherine MA Ryan, a solicitor formerly practising under the style and title of Ryan & Company at 42 Woodley Park, Kilmacud, Dublin 14, and in the matter of the *Solicitors Acts 1954-2008* [6970/DT35/10; 6970/DT75/10; 6970/DT76/10; 6970/DT110/10; 6970/DT124/10 and High Court record no 2012 no 21SA]
Law Society of Ireland (applicant) Katherine MA Ryan (respondent solicitor)

6970/DT35/10
On 13 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 30 April 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001),
b) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

6970/DT75/10
On 13 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to comply with an undertaking given to the complainant's bank on 30 November 2006 in a timely manner,
b) Failed to reply adequately and in a timely fashion or at all to the Society's correspondence and, in particular, the Society's letters of 28 July 2009, 18 August 2009, 2 September 2009, 1 October 2009, and 25 February 2010,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 30 September 2009 that she make a contribution of €550 towards the costs incurred by the Society as a result of her failure to communicate.

6970/DT76/10
On 13 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Delayed in the payment of stamp duty given to her by the complainant on 14 September 2007,
b) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 21 September 2009, 8 October 2009, 29 October 2009 and 23 February 2010 in a timely manner or at all,
c) Failed to attend at a meeting of the Complaints and Client Relations Committee on 25 March 2010, despite being required to do so by letter dated 10 March 2010.

6970/DT110/10
On 13 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to complete the conveyancing work for which she had been paid and, in particular, to stamp and register the title documentation for the complainants in respect of four named properties in Dublin in a timely manner or at all,
b) Misled the Complaints and Client Relations Committee at their meeting on 9 October 2009 by indicating to the committee that she had handed over the complainants' file to another solicitor with their consent, when this was not the case,
c) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 30 July 2009, 17 August 2009, and 2 September 2009 in a timely manner or at all,
d) Failed to attend the Complaints and Client Relations Committee meeting of 29 April 2010, despite being required to attend,
e) Continued to hold monies paid to her by the complainants for stamp duty/registration fees, despite the fact that she held no practising certificate.

6970/DT124/10
On 13 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to comply with the direction in a timely manner or at all made by the Complaints and Client Relations Committee at its meeting on 10 July 2009 that she refund all professional fees

and undischarged outlay paid by the complainant within 21 days,
b) Failed to comply in a timely manner with the direction of the Complaints and Client Relations Committee made on 10 July 2009 that she furnish all of the complainant's files over to his new solicitor, having only furnished those files to the Society at the meeting of 9 October 2009,
c) Brought the profession into disrepute by recklessly disregarding the interests of her client.

Having heard these five matters, the tribunal recommended that the matter be sent forward to the President of the High Court and, in proceedings record number 2012 no 21SA, the President of the High Court on 26 March 2012 made an order:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the respondent solicitor make restitution to the Society in respect of any payments made by the Society from the compensation fund in respect of the solicitor's practice,
c) That the Society do recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

In the matter of Katherine MA Ryan, a solicitor formerly practising under the style and title of Ryan & Company, Solicitors, at 42 Woodley Park, Kilmacud, Dublin 14, and in the matter of the *Solicitors Acts 1954-2008* [6970/DT77/10; 6970/DT78/10; 6970/DT111/10; 6970/DT120/10; 6970/DT121/ 10 and High Court record no 2012 no 22SA]
Law Society of Ireland (applicant) Katherine MA Ryan (respondent solicitor)

6970/DT77/10
On 25 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to furnish evidence that she had stamped and registered her client's title to the property at Amiens Street, Dublin 1, which he purchased in 2006, in a timely manner or at all,
b) Failed to return the deeds relating to that property to the complainant's bank in a timely manner or at all,
c) Failed to respond to the Society's letter of 23 February 2010 in a timely manner or at all,
d) Failed to attend the meeting of the Complaints and Client Relations committee on 25 March 2010, despite being required to do so by letter dated 10 March 2010.

6970/DT78/10
On 25 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to comply with an undertaking given to the complainant bank on 22 September 2004 in a timely manner or at all,
b) Failed to reply adequately and in a timely manner to the Society's correspondence and, in particular, the Society's letters of 24 July 2009 and 29 September 2009 in a timely manner or at all,
c) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 20 October 2009 that she make a contribution of €550 towards the costs incurred by the Society as a result of her failure to respond to its correspondence.

6970/DT111/10
On 25 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to respond to the Society's letter of 23 February 2010,
b) Failed to attend the meeting of the Complaints and Client Relations Committee on 25 March, despite being required to do so by letter dated 10 March 2010.

6970/DT120/10
On 25 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 29 May 2009 that she furnish a progress report and vouching documentation in relation to the complaint within ten days and a further progress report by 26 June 2009,
b) Failed to comply in full, in a timely fashion, or at all with the direction of the Complaints and Client Relations Committee made at its meeting on 10 July 2009 to refund all professional fees paid by the client to the solicitor within 21 days,
c) Failed to attend the Complaints and Client Relations Committee meeting of 29 March 2010, despite being required to do so,
d) Failed to reply to the Society's correspondence in a timely manner or at all and, in particular, letters of 9 July 2008, 24 July 2008, 26 July 2008, 17 September 2008, 15 October 2008, 6 November 2008, 5 December 2008, 7 January 2009, 6 March 2009, 30 March 2009, 23 April 2009 and 23 February 2010.

6970/DT121/10
On 25 October 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:
a) Failed to advise the complainant that her case was statute barred and led the complainant to believe that proceedings were in being and that her case was being processed,
b) Sought instructions from the complainant on a settlement offer without informing the complainant that she, the solicitor, was the source of this offer,
c) Failed to attend the meeting of the Complaints and Client Relations Committee on 10 June 2010, despite being required to do so,
d) By her reckless disregard for the interests of her client, brought the profession into disrepute.

Having heard these five matters, the tribunal recommended that the matter be sent forward to the President of the High Court and, in proceedings record number 2012 no 22SA, the President of the High Court on 26 March 2012 made an order:
a) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
b) That the Law Society do recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

In the matter of Michael Browne, a solicitor practising as Michael Browne, Solicitors, James Street, Westport, Co Mayo, and in the matter of the *Solicitors Acts 1954-2008* [2072/DT90/11]
Law Society of Ireland (applicant) Michael Browne (respondent solicitor)
On 26 July 2012 and on 13 November 2012, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor. The tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2010 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI 421 of 2001).

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) 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 John Sherlock, a solicitor practising as Sherlock & Company, Solicitors, 9/10 Main Street, Clondalkin, Co Dublin, and in the matter of the *Solicitors Acts 1954-2008* [4340/DT128/11 and High Court record no 2012 no 86SA]
Law Society of Ireland (applicant)
John Sherlock (respondent solicitor)
On 9 October 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Allowed a deficit on the client account of €89,000 as of 30 November 2010,
b) Failed to pay monies totalling €75,722.67 due to third parties, notwithstanding the fact that these had been received into the client account,
c) Took fees in advance in relation to clients 5352 and 4738, as set out in paragraph 4.4 of the investigating accountant's report,
d) Allowed debit balances in the client account totalling €21,090.20, which were cleared in November 2010,
e) Failed to maintain proper books of account, as set out in paragraph 4.9 of the investigating accountant's report, in breach of regulation 12,
f) Maintained a personal account in the clients' ledger into which he lodged loans and personal monies and from which personal payments were made, in breach of regulations 5(4) and 7(2)(b),
g) Transferred monies from clients' accounts, which were properly due to third parties, on behalf of clients, in breach of regulation 8(4) of the *Solicitors' Accounts Regulations*,
h) Failed to inform clients of the party-and-party costs received on their behalf, in breach of section 68(6) of the *Solicitors (Amendment) Act 1994*.

The tribunal referred the matter forward to the President of the High Court who, on 17 December 2012, ordered that the respondent solicitor:
a) Be censured,
b) Pay the Society the sum of €15,000 to the Society's compensation fund,
c) Pay the Society the costs of the application to the High Court, to be taxed in default of agreement,
d) Pay the Society the costs of the Solicitors Disciplinary Tribunal, to be taxed in default of agreement.

In the matter of Padraig J Butler, solicitor, formerly practising as Butler Solicitors at 10 Lower Patrick Street Kilkenny, and in the matter of the *Solicitors Acts 1954-2008* [2908/DT121/11 and 2908/DT104/12]
Law Society of Ireland (applicant)
Padraig J Butler (respondent solicitor)
On 18 October 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Misappropriated substantial client monies, and
b) Failed to comply with one or more of the undertakings given by him to furnish discharge of charges in favour of a named financial institution, in respect of the properties identified in the schedule to the affidavit sworn on behalf of the Society on 31 May 2012.

The tribunal recommended that:
a) The respondent solicitor was not a fit person to be a member of the solicitors' profession,
b) The name of the respondent solicitor be struck off the Roll of Solicitors,
c) The respondent solicitor pay the whole of the costs of the Society, to be taxed by the taxing master of the High Court in default of agreement.

On 28 January 2013, the President of the High Court ordered:
a) That the name of the respondent solicitor be struck off the Roll of Solicitors,
b) That the respondent solicitor do pay the Society the costs of the proceedings before the High Court and the costs of the proceedings before the Solicitors Disciplinary Tribunal to be taxed in default of agreement. G

BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

Quality schemes for agricultural products

The skills and determination of EU farmers and producers who keep traditions alive are recognised in the recently adopted Regulation (EU) No 1151/2012 of the European Parliament and of the council on quality schemes for agricultural products and foodstuffs. In short, the regulation provides for (a) protected designations of origin (DO) and protected geographical indications (GI); (b) traditional specialities guaranteed (TSG); and (c) optional quality terms (OPT).

The regulation, which entered into force on 3 January 2013, repeals and replaces Regulations (EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed and (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

The new legislation covers agricultural products intended for human consumption listed in annex I to the treaty, and other products closely linked to agricultural production or to the rural economy, which are set out in annex I to the regulation (for example, wool, leather, beer, beverages made from plant extracts, mustard paste, salt, chocolate and derived products, bread, pastry, cakes, confectionary, biscuits and other bakers' wares). The list of products may be further supplemented by the European Commission by way of delegated acts.

Protected DO and protected GI

The scope for protected designations of origin and protected geographical indications is essentially limited to product where an intrinsic link exists between the product or foodstuff characteristics and the geographical origin. The protected DO and the protected GI – the two identifiers for the link between a product and its geographical origin – are defined in the regulation. Article 5 sets out the requirements for DO and GI.

A DO is a name that identifies a product (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area.

Notwithstanding these requirements, certain names are treated as DO even though the raw materials (that is, live animals, meat and milk) for the products concerned come from a geographical area larger than, or different from, the defined geographical area, provided that (a) the production area of the raw materials is defined; (b) special conditions for the production of the raw materials exist; (c) there are control arrangements to ensure that the conditions referred to in point (b) are adhered to; and (d) the DO in question were recognised as DO in the country of origin before 1 May 2004.

A GI, on the other hand, is a name which identifies a product (a) originating in a specific place, region or country; (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and (c) at least one of the production steps takes place in the defined geographical area.

The regulation also deals with the use of generic terms, conflicts with names of plant varieties and animal breeds, with homonyms and trademarks, as well as product specification. In addition, specific provisions deal with names, symbols and indications, as well as relations between trademarks, DO and GI.

Registration requirements and process are found mainly in articles 8, 10, and 48-54. Provision for transitional national protection is made, but this ceases on the date on which either a decision on registration under the regulation is taken or the application withdrawn. The registration procedure enables any natural or legal person with a legitimate interest from a member state, other than the member state of the application, or from a third country, to notify their opposition.

The option of registering a DO or GI is open to names that relate to products originating in third countries that satisfy the regulation's conditions. Entry in the register facilitates the provision of information to consumers and to those involved in trade. The regulation provides for specific derogations permitting use of a registered name alongside other names, for transitional periods of up to ten years. The scope of protection is described in article 13 and extends to the misuse, imitation and evocation of the registered names on goods as well as on services – the aim is to ensure a high level of protection and to align the protection with that which applies to the wine sector.

Member states are obligated to take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected DO and protected GI that are produced or marketed in their state.

Traditional specialities guaranteed

Provision is also made in the regulation for an improved, clarified and sharpened scheme for traditional specialities guaranteed. The specific objective of the scheme is to safeguard traditional methods of production and recipes by assisting producers of traditional products to market and communicate to consumers the value-adding attributes of their product. The criteria to be fulfilled are set out in article 18, while article 19 deals with product specification and article 23 concerns names, symbol and indication.

Articles 20-21 and 48-54 contain the principal registration requirements and process. The option of registering a name as a TSG is open to third-country producers. Grounds for opposition are set out in article 21. Transitional measures regarding registration of names under Regulation (EC) No 509/2006 are captured in article 25, and a simplified procedure with respect to certain TSG names registered in accordance with article 13(1) of Regulation (EC) No 509/2006 is set out in article 26. TSG registered names are protected against misuse, imitation or evocation, or against any other practice liable to mislead the consumer.

Optional quality terms

In addition, the regulation provides for a second tier of quality systems based on quality terms that add value, can be communicated on the internal market, and are applied voluntarily. Optional quality terms, primarily dealt with in articles 27-34, are expected to refer to specific horizontal characteristics, with regard to one or more categories of products, farming methods or processing attributes that apply in specific areas.

An example of a term that is an OPT is 'mountain product'. It is generally only used to describe products intended for human consumption listed in annex I to the treaty, in respect of which (a) both the raw materials and the feedstuffs for farm animals come essentially from mountain areas, and (b) in the case of processed products, the processing also takes place in mountain areas. By 4 January 2014, the commission is required to present a report to the European Parliament and

OPT-ing in for a 'mountain product'

the council on the case for a new term, 'product of island farming'. OPT are subject to monitoring, based on risk analysis, to ensure compliance.

Common provisions

To ensure that registered names of DO, GI, and TSG meet the conditions laid down by the regulation, applications are examined by the relevant member state's national authorities (see www.agriculture.gov.ie/gi) in compliance with minimum common provisions, including a national opposition procedure. Subsequently, the European Commission scrutinises applications for no manifest errors and to ensure that EU law and the interests of stakeholders outside the member state of application have been taken into account.

The role of groups is recognised in the new regulation. A 'group' in this context is any association, irrespective of its legal form, mainly composed of producers or processors working with the same product. Groups are seen to play an essential role in the application process for the registration of names of DO, GI and TSG, as well as in the amendment of specifications and cancellation requests.

Operators are subject to a system that verifies compliance with the product specification. The symbols, indications and abbreviations identifying participation in a quality scheme, and the rights therein pertaining to the EU, are intended to be protected in third countries as well as in the EU – with the aim that they are used on genuine products and consumers are not misled as to the qualities of products.

Further details on how the regulatory framework will operate is expected to emerge over time, with the commission's adoption of a myriad of delegated acts and implementing acts provided for in the regulation.

In addition, by 4 January 2014, the commission has to present to the European Parliament and the council on the case for a new local farming and direct sales labelling scheme to assist producers in marketing their produce locally.

State aid rules

On 20 December 2012, the commission opened a public consultation on state aid rules for agriculture and forestry (see http://ec.europa.eu/agriculture/stateaid/policy/consultation). Deadline for submissions was 20 March 2013. The consultation is in the context of the expiration of the current rules on 31 December 2013 and the State Aid Modernisation initiative.

Organic production

The commission has also launched a consultation on the future of organic production, which is to assist consideration of a new framework regulation (see http://ec.europa.eu/agriculture/consultations). The consultation runs until 10 April 2013.

CAP reform

On 24 January 2013, the vote on the future reform of the Common Agricultural Policy in the European Parliament Agriculture and Rural Development Committee confirmed the concepts tabled by the commission on 12 October 2011 (see http://ec.europa.eu/agriculture/cap-post-2013/legal-proposals/index_en.htm).

Diane Balding is a member of the Law Society's EU and International Affairs Committee.

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Recent developments in European law

INSOLVENCY

Case C-116/11, *Bank Handlowy w Warszawie SA v Christianapl sp z o o*, 22 November 2012

Insolvency proceedings were commenced in Poland by the applicant in respect of the respondent, which is 90% owned by a French company. Rescue proceedings had already been started in France. The French proceedings had a protective purpose, and the French court approved a ten-year rescue plan for the company. Article 3(3) of the *Insolvency Regulation* (1346/2000) provides that any secondary proceedings opened subsequently must be winding-up proceedings.

The CJEU was asked whether protective proceedings preclude secondary winding-up proceedings. It held that the regulation does not make any distinction according to the purpose of the main proceedings and that, therefore, secondary proceedings may always be opened. They are liquidation proceedings, but the regulation affords various tools to allow the insolvency official appointed in the main proceedings to influence the evolution of the secondary proceedings.

The second issue concerned whether the French proceedings were not, technically speaking, insolvency proceedings. They were pre-insolvency proceedings. The court held that the French '*procedure de sauvegarde*' is an insolvency proceeding within the meaning of the regulation. The French court had not ruled on whether the business was insolvent. The CJEU decided that, in those circumstances, the Polish court could not rule on the issue.

ORDER FOR PAYMENT

Case C-215/11, *Iwona Szyrocka v SiGer Technologie GmbH*, 6 December 2012

In 2011, Ms Szyrocka, a Polish resident, applied to a Polish court

for a European order for payment to be issued against SiGer Technologie Gmbh, a German-based company. The application for the order did not comply with certain formal requirements laid down by Polish law. She had stated the amount of the claim in euro, whereas Polish law required this to be expressed in Polish zloty. She also claimed interest from a specified date until the date of payment of the principal claim.

The matter was ultimately referred to the CJEU. It examined the provisions of the *European Order for Payment Regulation* (1896/2006). The court held that article 7 of the regulation exhaustively governs the requirements to be met by an application for a European order for payment. However, some provisions of the regulation make express reference to national law. Article 25 allows the amount of the court fees to be laid down by domestic law, provided that the rules for this purpose are no less favourable than those governing domestic actions. Article 4 provides that claims for amounts of money must be for specific amounts and be due. Article 7(2)(c) provides that, if interest on the claim is demanded, the application for a payment order must state the interest rate and the period of time for which that interest is demanded.

From a combined reading of both provisions, the requirements that a claim must be for a specific amount and have fallen due do not apply to interest. Article 7(2)(c) should not be interpreted to the effect that it is not possible to claim interest that has accrued up to the date of the payment of the principal, as it might increase the duration and complexity of the European order for payment procedure and add to the costs of such litigation. This could deter applicants from using the procedure.

Law Society of Ireland

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This course is only open to solicitors.

Law Society of Ireland

Diploma Programme

Legal Education for the Real World

COURSE NAME	START DATE	FEES*
Diploma in Technology Law *(new) (incl iPad Mini 16GB)*	Saturday 13 April	€2,470
Diploma in Commercial Litigation	Wednesday 17 April	€2,150
Diploma in Employment Law *(incl iPad Mini 16GB)*	Saturday 27 April	€2,470
Certificate in District Court Advocacy	Saturday 13 April	€1,160
Certificate in Civil Litigation Updates *(new)* *(Friday 5 July, Saturday 6 July, Thursday 11 July, Friday 12 July, assignment due date 26 July)*	Friday 5 July	€1,200**
Certificate in Intellectual Property Rights Management *(new)* *(intensive one week course)*	Monday 15 July to Friday 19 July	€1,200

(*) Fees quoted are for solicitors. Non-legal personnel are subject to an application process and supplemental fee.
(**) Reduced fee of €900 for Skillnet members

For further information:
W: www.lawsociety.ie/diplomas
E: diplomateam@lawsociety.ie
P: 01 672 4802

Law Society of Ireland Diploma Programme
winner of Law School of the Year award
(Irish Law Awards 2012)

NOTICES

WILLS

Barrett-Murphy, Carmel (deceased), late of Maryfield Nursing Home, Lucan Road, Chapelizod, Dublin 20, and previously of 4 St Joseph's, Maryfield, Lucan Road, Dublin 20, 126 Lucan Road, Chapelizod, Dublin 20, and 12 Willow Park Grove, Ballymun, Dublin 9, who died on 17 February 2013. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Corrigan & Corrigan, Solicitors, of 3 St Andrew Street, Dublin 2; tel: 01 677 6108, fax: 01 679 4392, email: sarah.flynn@corrigan.ie

Brady, Emmett (otherwise James Emmett Brady) (deceased), late of 5 Auburn Grove, Malahide, Co Dublin, who died on 12 May 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eleanor Bannon of Bannon Clinch Collins, Solicitors, 1 Drogheda Mall SC, Finglas, Dublin 11; tel: 01 834 6483, fax: 01 834 63322, email: e.bannon@bcclegal.ie

Casey, Sheila (deceased), late of 38 The Rise, Mount Merrion, Blackrock, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 12 December 2012, please contact Jeremiah C McCarthy of Carney McCarthy, Solicitors, of 1 Clonskeagh Square, Dublin 14; tel: 01 269 8855, email: deborah@carneymccarthy.ie

Cunningham, Marie (deceased), late of 47 Connolly Gardens, Inchicore, Dublin 8. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 9 November 2012, please contact Gartlan Furey, Solicitors, 20 Fitzwilliam Square, Dublin 2; reference CUM102/0001; tel: 01 799 8045, email: privateclient@gartlanfurey.ie

Fennell Patrick, (deceased), late of 2 Ikerrin Road, Thurles, Co Tipperary, and formerly of 2 Old Street, Thurles, Co Tipperary; 2 Rockypool Crescent, Blessington, Co Wicklow; and 6 Glenaraneen, Brittas, Co Dublin. Would any person having knowledge of a will (or documents relating to a will) made by the above-named deceased, who died on 10 December 2012, please contact Mooney O'Sullivan, Solicitors, 7 Orchardstown Park, Rathfarnham, Dublin 14; DX 154006 Templeogue; tel; 01 493 9431, email: harry@mooneyosullivan.ie

Fitzsimons, Dermot (deceased), late of Flat 6, Harolds Cross Road, Terenure, Dublin 6W, who died on 15 May 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Bourke & Company, Solicitors, of 167/171 Drimnagh Road, Walkinstown, Dublin 12; tel: 01 456 1155, email: elaine@bourkesolicitors.com

Gallagher, James D, aka Jim (deceased), late of Scenic Road, Gortnasillagh, Glenties, Co Donegal, who died on 9 July 2010. Would any person having knowledge of any will executed by the above-named deceased please contact O'Connell Clarke, Solicitors, Suite 142, The Capel Buildings, Mary's Abbey, Capel Street, Dublin 7; tel: 01 872 2246, fax: 01 872 2247, email: info@oconnellclarke.ie

Kearney, William (deceased), late of 5 Orchard Road, Clondalkin, Dublin 22, and Cherry Orchard Hospital, Dublin 10. Would any person having knowledge of a will made by the above-named deceased, who died on 11 October 2012, please contact Sherrys Solicitors, Palmerstown Avenue, Dublin 20; tel: 01 623 2182, fax: 01 623 2183.

Kearns, Patrick Michael (deceased), late of 20 St Eithne Road, Cabra, Dublin 7. Any person having knowledge of a will made by the above-named deceased, who died on 17 May 2007, please contact Sherrys Solicitors, Palmerstown Avenue, Dublin 20; tel: 01 623 2182, fax: 01 623 2183.

McDevitt, Michael (deceased), late of 25 Monaloe Avenue, Cabinteely, Dublin 18. Would any person having knowledge of a will executed by the above-mentioned deceased, who died on 30 November 2012, please contact O'Mahony's, Solicitors, 6 Clonkeen Road, Deansgrange, Co Dublin, tel: 01 289 2487

O'Brien, Mai (deceased), late of Thomond, Station Road, Ballinasloe, Co Galway. Would any person having knowledge of a will (or documents relating to a will) made by the above-named deceased, who died on 8 February 2013, please contact Noonan & Cuddy, Solicitors, Society Street, Ballinasloe, Co Galway; tel: 09096 42344, email: info@noonancuddy.com

RATES

Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for May *Gazette*: 17 April 2013. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

NOTICES

MISCELLANEOUS

Contents of legal practice for sale, to include a selection of framed antique and modern legal cartoon prints, server, PCs and printers, telephone system, scanner, fax, photocopier, binding machine, Dictaphone Thought Tank with two handsets, stationery press, desks, filing cabinets and associated equipment. Contact: irenedonnelly@eircom.net

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Fergus Lynch
Take notice any person having any interest in the freehold estate of the following property: 2 Le Bas Terrace, Leinster Road West, Rathmines, Dublin 6, being part of the property more particularly described in an indenture of lease dated 17 June 1874 and made between Frederick Stokes of the one part and Samuel Le Bas of the other part for a term of 800 years from 17 June 1874 and subject to the yearly rent of £16.5.0 sterling and to the covenants and conditions therein.

Take notice that Fergus Lynch intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Fergus Lynch intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 April 2013
Signed: Noel Smyth & Partners (solicitors for applicant), 22 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Fergus Lynch
Take notice any person having any interest in the freehold estate of the following property: 3 Le Bas Terrace, Leinster Road West, Rathmines, Dublin 6, being part of the property more particularly described in an indenture of lease dated 17 June 1874 and made between Frederick Stokes of the one part and Samuel Le Bas of the other part for a term of 800 years from 17 June 1874 and subject to the yearly rent of £16.5.0 sterling and to the covenants and conditions therein.

Take notice that Fergus Lynch intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold

NOTICES

a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Fergus Lynch intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 April 2013

Signed: Noel Smyth & Partners (solicitors for applicant), 22 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Fergus Lynch

Take notice any person having any interest in the freehold estate of the following property: 4 Le Bas Terrace, Leinster Road West, Rathmines, Dublin 6, being part of the property more particularly described in an indenture of lease dated 3 September 1873 and made between Frederick Stokes of the one part and James McNally of the other part for a term of 800 years from 3 September 1873 and subject to the yearly rent of £6 sterling and to the covenants and conditions therein.

Take notice that Fergus Lynch intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Fergus Lynch intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 April 2013

Signed: Noel Smyth & Partners, (solicitors for applicant), 22 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Fergus Lynch

Take notice any person having any interest in the freehold estate of the following property: 5 Le Bas Terrace, Leinster Road West, Rathmines, Dublin 6, being part of the property more particularly described in an indenture of lease dated 3 September 1873 and made between Frederick Stokes of the one part and James McNally of the other part for a term of 800 years from 3 September 1873 and subject to the yearly rent of £6 sterling and to the covenants and conditions therein.

Take notice that Fergus Lynch intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Fergus Lynch intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 April 2013

Signed: Noel Smyth & Partners (solicitors for applicant), 22 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-1984*: an application by Maxol Limited

Take notice any person having an interest in the freehold interest of the following property: all that and those that part of the town and lands of Borris Little situate on the Dublin Road between Dublin and Stradbally roads in the rural district of Mount Mellick, barony of Maryborough East and county of Laois, the subject of a lease dated 20 May 1949 and made between Evelyn Gertrude Eyre Kaye, the Ocean Accident and Guarantee Corporation Limited, and Peter Thomas Welsley Sykes of the one part and McMullan Bros Limited of the other part, for a term of 99 years from 18 June 1931, subject to the yearly rent of £20.

Take notice that the applicant, Maxol Limited, intends to submit an application to the county registrar for the county of Laois for the acquisition of the freehold interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the county of Laois for 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 above premises are unknown or unascertained.

Date: 5 April 2013

Signed: Rice Jones (solicitors for the applicant), Castleview House, 22 Sandymount Green, Dublin 4 G

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*.

WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD

Rambler has bare-faced cheek

Naked rambler Stephen Gough of Eastleigh, Hampshire, has been issued with an interim anti-social behaviour order (ASBO) banning him from going nude in public places.

According to the *Belfast Telegraph*, the order was issued at Southampton Magistrates' Court, which states that he must "wear sufficient clothing in public." The order is effective for all of England and Wales until 10 May. If Mr Gough contravenes it, he could be imprisoned.

Mr Gough has served several prison terms for refusing to get dressed in public places, including courtrooms. Eastleigh Borough Council and Hampshire Constabulary jointly applied for the ASBO while a solicitor for the police, Roger Trencher, added that they wanted to clarify the legal position.

He said: "Gough has used a considerable amount of police time in England, Wales and Scotland. This is because he insists on rambling naked. He refuses to be deterred by the criminal law. He believes the law is uncertain on the issue of public nudity".

Don't Bogart that pencil

A man has been sentenced to write a 5,000-word essay after his conviction for cannabis possession.

The Bristol Post reports that Terence Bennett had initially been sentenced to 240 hours' community service as part of a one-year suspended sentence.

However, the probation service sent the case back because Bennett had a shoulder injury that posed a health and safety risk.

Judge Julian Lambert re-sentenced Bennett to write the essay – on the dangers of cannabis. Bennett apparently asked if the essay could include the 'counter argument' in favour of cannabis, but the judge told him to stick to the dangers.

Fake cop copped on 'coptor

A Kenyan man has been charged after allegedly pretending to be an assistant commissioner of police for five years. It was said that Joshua Waiganjo had sacked and recruited police officers in Rift Valley province during this time – but a subsequent report found such allegations to be false.

Waiganjo denied two counts of impersonating a police officer, one of illegal possession of police uniforms and one of robbery with violence. The accused pleaded not guilty to all four charges.

He was reportedly uncovered after flying on a police helicopter to investigate a massacre of 42 police officers who had been killed by cattle rustlers in the Suguta Valley last November – the most deadly attack on the police in the history of the East African nation. Nairobi's Capital FM reported that Mr Waiganjo had not been paid a salary by the police service.

The *Standard Digital News* in Kenya says that the team appointed to probe the Waiganjo affair found that Waiganjo was neither a police officer nor a reservist.

Keeping tabs on patients

A Utah sheriff's office is floating a unique and unproven idea for keeping senior citizens with Alzheimer's disease and dementia safe – by giving them ankle monitors that are more usually associated with criminals under house arrest or on parole.

Davis County Deputy Sheriff Kevin Fielding says that the monitors will allow deputies to find a person quickly who has wandered off, saving lives and taxpayers' money by avoiding time-consuming searches.

The monitors would be offered to residents at a cost of about $4 (€3.10) a day. While Alzheimer's Association officials praised the agency for working to keep people with dementia and Alzheimer's safe, they say that using the bulky ankle monitors is not a realistic solution because people will not want to wear them.

Returning the compliment

"You seem to have more than the average share of intelligence for a man of your background," sneered the lawyer at a witness on the stand.

"If I wasn't under oath, I'd return the compliment," replied the witness."

(Thanks to Richard Hammond of Hammond Good, Mallow, for this one!)

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Opportunities

Senior Associate/Partner – Asset Finance, Dublin

Our Client, a highly respected Irish law firm, has an opening for a Senior Asset Finance Lawyer. You will have extensive experience in asset finance, leasing, structured cross border financing and securitisation transactions including the acquisition, financing, sale and leaseback of aircraft, ships and rail equipment. Relevant experience from a leading Irish or International law firm is essential. This is a superb opportunity for an ambitious Lawyer to take on a lead role in a fast paced, globally focused environment and truly make their mark in the field of asset/aircraft finance.

Banking Solicitor, Dublin

Our Client, a leading law firm is seeking a banking solicitor to join their highly regarded team. The role will entail a mix of mainstream banking work and capital markets transactions. The successful applicant will have achieved excellent academic grades and will have gained solid banking experience within the banking department of a leading law firm either in Ireland or overseas.

Insolvency Solicitor, Dublin

Our Client, a top law firm has an opening for an experienced Insolvency Solicitor. The successful applicant will specialise in insolvency, corporate recovery and enforcement matters. In particular, you will advise on liquidations and receiverships. You will also assist with litigation matters arising out of the corporate recovery practice including offences under the Companies Acts, injunctive relief, and bankruptcy. Top 20 firm experience a preference.

Competition Lawyer, Dublin

Our Client, an expert in the field of competition law, requires an experienced Lawyer to provide expert legal advice on all aspects of EU, Competition and Regulatory matters, including merger control, cartel and dominance cases, public procurement law, state aid rules, competition law audits and compliance, competition litigation and sectoral regulation. The ideal candidate will have solid experience in the field from a leading Irish or International law firm and will have impressive academics. This is a superb opportunity to join a dynamic environment, which offers huge variety in work and excellent career prospects

Litigation Solicitor, Dublin

Our Client, a top law firm, is actively seeking an experienced litigator to join their dedicated white-collar crime unit. This is a unique opportunity for a good litigator to specialise in the rapidly expanding field of corporate crime and fraud litigation. Relevant experience is preferred but not essential. Impressive academics and strong commercial litigation experience from a top 15 firm are a prerequisite.

IP/IT Lawyer, Dublin

Our Client, a top law firm, is actively seeking an experienced IP/IT Lawyer to join their growing team. The successful applicant will have top glass academic grades and will be a qualified Solicitor with experience in advising clients on technology transactions and IP matters. Excellent negotiation and drafting skills are required. This role offers a very attractive salary and benefits as well as a genuine opportunity to fast track your career.

To apply for any of the above vacancies, interested applicants should contact Yvonne Kelly in strict confidence on +353 18415614 or email your CV to ykelly@keanemcdonald.com. For a comprehensive list of our vacancies visit our website at www.keanemcdonald.com

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