Harlem shuffle
The implications of the *Companies Act 2014* for corporate restructuring

Dangerous maverick
The *Gazette* talks to veteran solicitor Max Abrahamson about life and the law

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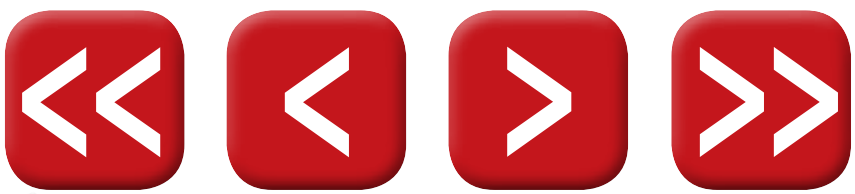

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THE HUMAN COST OF MEDICAL NEGLIGENCE

The recent *Prime Time* programme on legal costs, and the perception from some quarters that certain costs are excessive, reminded me of the story of the doctor and lawyer in conversation at a party. Their engagement is constantly interrupted by people describing their ailments and asking the doctor for free medical advice. After an hour of this, the exasperated doctor turns privately to the lawyer and asks: "What do you do to stop people from asking you for legal advice when you're out of the office?"

"I give it to them," replies the lawyer, "and then I send them a bill."

The doctor is shocked, but agrees to give it a try. The next day, still feeling slightly guilty, the doctor prepares the bills. When he goes to place them in his mailbox, he finds a bill from the lawyer!

On *Prime Time*, director general Ken Murphy – who was interviewed in a pre-recorded segment – put in a very professional performance. In studio, Bar Council chairman David Barniville equally held his own.

This recent interest in legal fees in the area of medical negligence arose from the appearance of one of the medical defence organisations before the Oireachtas Health Committee last January. It suggested that excessive legal costs were at the root of all that was wrong in this highly specialised area of litigation.

For our part, I was delighted to attend before the same committee, along with our esteemed colleague Ernest Cantillon, where we made the case that crude arguments on economic costs alone fail to encapsulate the human cost of medical negligence. I would, however, acknowledge that the recent decision of the President of the High Court in *Sheehan v Corr* on the matter of legal costs in medical negligence cases merits careful scrutiny as to how we need to be managing our files.

When in Rome

I was delighted to attend, as a guest of the Law Society of Northern Ireland, their splendid annual conference in Rome. It was wonderful to exchange views and ideas with so many of their colleagues, both during and after the business sessions, and the Government, through its ambassador in Rome, Bobby McDonagh, also provided a very generous reception at his residence to the entire delegation.

I look forward to welcoming the president of the Law Society of Northern Ireland, Arleen Elliott, to our own conference at the very accessible Lough Erne Resort on 8 and 9 May and expect that some of the local colleagues will join us also. I hope sincerely that you can come too and would urge you to make a reservation now (see p42). It's a great way to meet colleagues socially, to enjoy one another's company, and frequently tease out professional issues. It promises to be an equally stimulating occasion – although without the rugby!

Interaction with our own colleagues is a central theme of my presidency and, in recent weeks, I have travelled, accompanied by the director general, and met with colleagues in Wexford, the Midlands and Louth. In coming months, I hope to fulfil a comprehensive nationwide itinerary. As always, these are terrific occasions to hear what's going on in the profession and, from the perspective of the Law Society, to hear of the issues affecting colleagues locally and see how we might best assist our members.

May I conclude by wishing each and every one of you a happy Easter. I do hope you can take time out to relax with your loved ones and get the chance to celebrate life and all of its blessings at this beautiful time of the year.

Kevin O'Higgins
President

LAW SOCIETY OF IRELAND

> Crude arguments on economic costs alone fail to encapsulate the human cost of medical negligence

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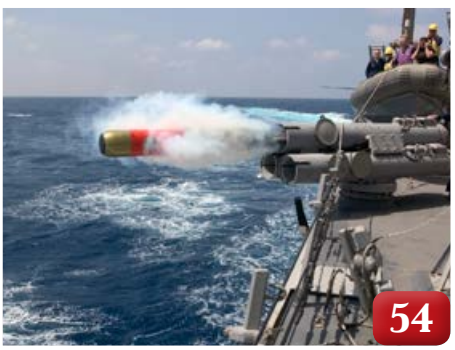

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nationwide

News from around the country

Keith Walsh is principal of Keith Walsh Solicitors, where he works on civil litigation and family law cases

DUBLIN

Germany calling, Germany calling…

When the late Ronnie Reagan encouraged Mr Gorbachev to tear down the Berlin Wall, he must have suspected, eventually, that it would only be a matter of time before the DSBA would charge over the rubble to occupy the five-star Ritz Carlton Hotel for its annual conference. JFK might have said "Ich bin ein DSBA-er" in Berlin, if he'd inhaled.

Helmut Kohl – who is as famous for advocating buying bigger suits instead of dieting as he is for uniting Germany – would, no doubt, welcome the Dublin solicitors and invite them to join him for ein Bit und ein currywurst.

It has only taken 26 years and the leadership of Deutsch-sprechen Aaron McKenna to finally bring Dublin solicitors to the Teutonic capital for four days and three nights of education and light entertainment from 17-20 September 2015. To join the DSBA in Berlin, visit the annual conference link at www.dsba.ie. Places are limited, so book early to avoid disappointment.

SLIGO

Sligo's summer soirée

Colette Breen (PRO), Laura Reid (CPD officer), Maurice Galvin (president), Karena Boyle (secretary), Noel Kelly (treasurer) and Michael Monaghan (vice-president)

The AGM of the Sligo Solicitors' Bar Association was held on 26 February. President Maurice Galvin thanked last year's committee members for their dedication throughout the previous year. Mr Galvin was re-elected president for a fourth term. Michael Monaghan was elected vice-president, the intention being that he will be nominated as president next year and may be elected, subject to a vote. Noel Kelly was re-elected treasurer (for what he admits may be his 20th term in office), Karena Boyle was elected secretary (having stood in as secretary during the past year due to the emigration of the previous two office holders), with Colette Breen assuming the position of PRO and Laura Reid that of CPD officer.

The new committee is determined to organise a summer soirée and aims to achieve increased interaction between SSBA members through a new LinkedIn account, which will encourage practitioners to ask questions and share views.

CORK

Supreme Court makes history in Cork

The Supreme Court made history when it visited Cork on 2 and 3 March 2015 – the first time it has sat in formal session outside of the capital since the foundation of the State. While Cork people have long been permitted to sit on the Supreme Court, this was the first time that the Supreme Court was permitted to sit among Cork people.

Two divisions of the court sat hearing cases in the Washington Street Courthouse on 3 March 2015, dealing with cases that had been specially fixed and that involved Cork litigants and their legal teams.

Peter Groarke (Southern Law Association president) welcomed the Chief Justice and the Supreme Court judges to Cork. He thanked them for their generosity in giving seminars, workshops, lectures and talks to the SLA, the Bar, legal academics and law students in University College Cork.

PIC: GERRY CURRAN

Chief Justice Susan Denham and Peter Groarke (SLA president)

Mr Justice Frank Clarke provided a CPD lecture to SLA members. His presentation on 'The practicalities of the new appellate structure' was delivered to an enthusiastic gathering of solicitors. Mr Justice Clarke outlined the changes brought about by virtue of the inception of the new Court of Appeal structure, which came into being last October.

representation

News from the Society's committees and task forces

GUIDANCE AND ETHICS COMMITTEE

'We Quote' project will provide transparency on solicitors' fees

The Law Society is about to launch an innovative project called 'We Quote'. The aim is to make it easier for prospective clients to get quotes for legal services.

The project is all about transparency and setting the relationship between the solicitor and his/her potential client. There is a wide perception that solicitors' fees are expensive. The best way of addressing this is to provide clients with information that explains the manner in which fees are charged.

We believe that one of the most effective ways of doing this is to inform the client of the work involved and the risks involved for the client if matters are not attended to professionally.

The Guidance and Ethics Committee has been working on this project for the last two years. In addressing the issue, we focused on the importance for solicitors of finding out what is involved in a transaction before offering a quote.

To this end we have prepared detailed questionnaires in relation to four areas of practice: purchase of residential property, sale of residential property, wills, and probate.

These are now available on the Law Society website under the 'solicitors' tab (selecting 'representation' from the drop-down menu), or go to www.lawsociety.ie/wequote (login required). It is intended that these questionnaires will be used by solicitors when contacted by phone or email by a prospective client.

The benefit of using these questionnaires is twofold:

- It will inform the solicitor of the likely work involved in the particular transaction and give the information required to provide an informed quote, and
- It will inform the client as to the amount of work involved and provide insight into the job of the solicitor and the level of work involved.

Our aim is to enlist a minimum of 100 firms who will engage in the initial phase of this project.

The only commitment that is required of these firms is to process requests for quotes received during this period.

In addition, the questionnaires will also act as a very useful risk tool for solicitors to make sure that all appropriate steps in a standard transaction are attended to in a timely fashion.

For more information and to opt in, please login to the Law Society website and visit the 'We Quote' page.

LAW SOCIETY OF IRELAND

LPT SYSTEM

Is the LPT system working for you?

The Taxation, Technology and Conveyancing Committees are committed to making representations to Revenue to ensure that the local property tax (LPT) system is workable and efficient. We ask for feedback from practitioners regarding their experiences with the LPT system. Please email LPT@LawSociety.ie with your comments and suggestions.

INTELLECTUAL PROPERTY LAW COMMITTEE

Fast-track procedure for CTM applications

The Office for the Harmonisation of the Internal Market (OHIM) has introduced a fast-track procedure to accelerate the processing of the first stage of an application for a community trademark (CTM). OHIM states that 'Fast Track' applications will be published in half the time, or less, than regular applications. Prior to the introduction of Fast Track publishing, the CTM application took, on average, eight to 11 weeks from filing.

Applicants who wish to use Fast Track must select the goods and services to be included in the CTM application from OHIM's approved list of goods and services, which have been pre-validated by OHIM and are pre-translated.

An applicant for a CTM filing a priority or seniority claim as part of its CTM application must also either import the trademark on which the claim is based from OHIM's database, 'TMVIEW', or attach the trademark's registration certificate. The application fees must be paid up front, and cannot be deferred when using Fast Track.

Applicants can use Fast Track for word marks, figurative marks, 3D marks and sounds, but Fast Track cannot be used in the following scenarios:

- **Custom colours cannot be specified for figurative or 3D trademarks, and only colours on OHIM's pre-approved list can be used in Fast Track,**
- **A description of the trademark may not be included in the CTM application,**
- **A disclaimer may not be included in the CTM application, and**
- **A request for a limitation of goods and services may not be included in the CTM application.**

The CTM application must not be deficient in any way in order to remain on Fast Track. If any deficiencies or registrability issues are identified by OHIM, the application will be taken off Fast Track and will be examined and published in the usual way. If this occurs, OHIM will inform the applicant or its representative of the status change in writing.

As a result of the introduction of Fast Track, some CTMs will be registered more quickly and within six months of filing the application. Fast Track is also likely to increase instances of filing for international trademark registrations under the *Madrid Protocol* using CTM applications.

Fast Track is not appropriate for all CTM applications. Collective trademarks are not eligible for Fast Track. It may not be suitable for CTM applications based on foreign trademarks where the trademark owner wants consistent goods and services descriptions in its trademarks. This is because foreign trademark offices do not use OHIM's preapproved goods and services descriptions, and often have different rules on the use of colour in trademarks. Therefore, it is necessary to consider each CTM application individually prior to deciding whether or not to use Fast Track.

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Committee for Judicial Studies' national conference date changed

Due to Government business now taking place in Dublin Castle on Friday 20 November 2015, the venue is no longer available to the Committee for Judicial Studies to hold its national conference on that date. The national conference will now take place in Dublin Castle on Friday 30 October 2015.

The dates for Committee for Judicial Studies conferences are as follows:

- The 2015 national conference will take place on Friday 30 October 2015. No cases should be listed for any court on Friday 30 October 2015, save on the instruction of the judiciary.
- The 2016 national conference will take place on Friday 18 November 2016. No cases should be listed for any court on Friday 18 November 2016, save on the instruction of the judiciary.
- The 2015 District Court conference will be held on Friday 22 May 2015 and Saturday 23 May 2015. No cases should be listed for any District Court on Friday 22 May 2015, save on the instruction of the judiciary.
- The 2015 Circuit Court conference will take place on Friday 3 and Saturday 4 July 2015. No cases should be listed for any Circuit Court on Friday 3 July 2015, save on the instruction of the judiciary.
- The Supreme Court, Court of Appeal and High Court conference will take place on Friday 17 July 2015. No cases should be listed for the Supreme Court, the Court of Appeal or the High Court on Friday 17 July 2015, save on the instruction of the judiciary.

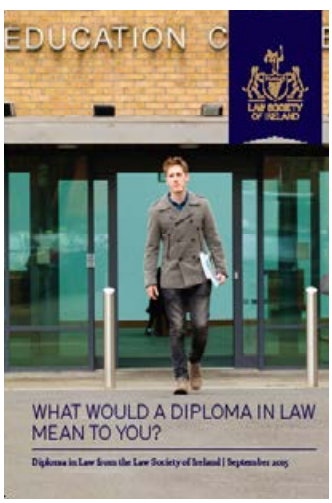
The following dates have also been booked provisionally:

- Friday 15 July 2016 for the Supreme Court, Court of Appeal and High Court conference,
- Friday 14 July 2017 for the Supreme Court, Court of Appeal and High Court conference.

Diploma in Law open evening

The Diploma Centre will showcase the facilities the Law Society has to offer at an open evening for this year's Diploma in Law on Thursday 7 May from 6pm to 8pm. There will be tours of the lecture theatres, seminar rooms and library, as well as demonstrations of Moodle, webcasting and the Law School app.

Would-be students will have the opportunity to meet with staff, see the campus and learn more about the course, which begins on Friday 11 September 2015. For more information and to register for the open evening, visit www.lawsociety.ie/diplomalaw.



Places booking fast for probate seminar

Stephenson Solicitors' 27th probate seminar will take place on Friday 24 April 2015 in the Westbury Hotel. Places are going fast, so you should book early to avoid disappointment. Booking forms are available in the insert that was included in the March *Gazette* or at www.stephensonsolicitors.com.

The distinguished speakers include probate judge Ms Justice Marie Baker and Una Burns, who has recently been made a partner in the firm.

Insolvency law firm of the year

Bill Holohan, partner in Holohan Law

Holohan Law has won 'Insolvency Law Firm of the Year – Ireland' at the British M&A Awards 2015.

The awards "champion the best in their respective fields", the organisers say, adding that this year saw an "unprecedented number of shortlisted firms, providing strong competition in every category".

The names of all winners will be published in the annual awards winners' guide, which will be distributed to over 400,000 M&A professionals across Ireland and Britain.

FOCUS ON MEMBER SERVICES

eZines to beat the band

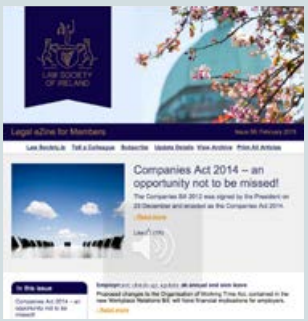
The ever-popular member *eZine* has increased in frequency from six to 11 issues this year. This is being done due to the *eZine's* popularity and the increasing number of articles in each issue.

Nearly doubling the number of issues will allow the Society to cut by 50% the number of articles in each email. This should make the *eZine* more reader-friendly and give greater focus to the most important issues of the day.

The *eZine* is emailed exclusively to members and contains articles written by Law Society staff on legislative change, practice management, information for members, Council and committee updates, as well as key legal events.

The new schedule will also help to ensure that members receive more timely information. The focus of the *eZine* will continue, overwhelmingly, to be on sharing practice-related information.

In addition, *eZine* subscribers also receive the president's *eBulletin*. This is used by the Society's president to inform members of urgent and important issues as they arise.



To view the latest issue and the archive of *eZines* and *eBulletins*, log in to the members' area of the website in order to view the eNewsletters page (under 'Solicitors/Representation/eNewsletters') or go to www.lawsociety.ie/enewsletters.

If you have any queries about the *eZine* or wish to ensure that the Society has your latest email address for this member service, please contact *eZine* editor Carmel Kelly at ezine@lawsociety.ie.

PIC: WIKIMEDIACOMMONS

Another *eBulletin* from the president – sorry, we mean Zeus – is successfully delivered

Avoiding defective enduring power of attorney documents

In response to the issue of defective enduring power of attorney (EPA) documents being presented to the Office of the Wards of Court, the Law Society commissioned Tyrrell Associates to develop and distribute to all members a software package to automatically generate the full suite of documents complying with the stringent rules are set out in SI 196 of 1996.

Unlike other case management/template solutions, Tyrrell Associates' EPA Generator produced the required suite of documents with text struck out as appropriate, based on pre-programmed rules. This eliminated the risk of incorrect portions of the documents being struck out or of failing to generate the complete suite of documents.

In 2006, all legal practices received a CD of the software as an accompaniment to their existing case-management systems. While this has served many practitioners very well over the years, the platform on which it is based, Microsoft *Windows XP*, is no longer supported from this month and is, consequently, a security risk.

Following the success of the application, Tyrrell Associates has redeveloped and extended the existing software on a new web-based platform available online at www.enduringpower.ie.

The service is available on a subscription or pay-as-you go basis. For that, the user will get:

- Documents that will pass scrutiny in the Office of the Wards of Court,
- Implementation of any future changes in the legislation free of charge,
- Free maintenance, technical support and new releases.

For more information, contact Thérèse at 086 811 0693 or email therese@tyrrellassociates.com.

Proposals for a new procurement regime

The Office of Government Procurement (OGP) intends to initiate several new procurements over the next 12 months for legal services to the public sector.

Details of individual procurements will be advertised in due course. In advance of this procurement, the OGP is inviting members to a seminar to:

- **Provide solicitors with an overview of procurement reform, the operating model within OGP and its significance for the future procurement of legal services from solicitors, and current OGP thinking as it relates to future service-delivery models,**
- **Seek the views of the legal services market on potential service-delivery models.**

Service providers, regardless of their size, have an opportunity to shape and influence the future of procurement and the provision of these services across the public sector.

Attendees will have the opportunity after this seminar to submit their views in writing, which will be taken into consideration in designing the procurement strategies.

This market engagement seminar is from 9.30 to 11.30 am on Wednesday 22 April at Blackhall Place. To book a place, please forward your name and the name of your firm to lspt@lawsociety.ie on or before 12 noon on Friday 17 April 2015.

Booking will on a 'first-come, first-served' basis. Only those persons who have registered to attend will be permitted to participate in the event, subject to the availability of places.

Countdown to the 2015 Irish Law Awards

Announcing the AIB Private Banking Irish Law Awards 2015 are Dr Eamonn Hall, Miriam O'Callaghan and Patrick Farrell (head of AIB Private Banking)

The AIB Private Banking Irish Law Awards 2015 will take place at a black-tie gala evening ceremony at the DoubleTree by Hilton, Burlington Road, Dublin, at the end of April. Finalists were announced on 26 March. The awards ceremony will be hosted by RTÉ broadcaster Miriam O'Callaghan.

Four new categories have been added this year: 'Dublin Law Firm of the Year', 'Service Provider to the Legal Profession Award', 'Young Lawyer of the Year (Under 35)' and 'Irish Language Practitioner of the Year'.

Other categories include 'Lifetime Achievement Award' (sponsored by Friends First), 'Law Firm of the Year' (sponsored by AIB Private Banking), 'Banking, Finance/Restructuring and Insolvency Team/Lawyer of the Year', 'Family Law Team/Lawyer of the Year', 'Public Sector Team/Lawyer of the Year', 'Employment Law team/Lawyer of the Year', 'Legal Executive of the Year' and the 'Bar Council's Human Rights Award' (sponsored by the Bar Council of Ireland).

The judging panel is chaired by Dr Eamonn G Hall. The charity partners for the awards include the Solicitors' Benevolent Association, the Barristers' Benevolent Society and the Peter McVerry Trust.

For more information, visit www.irishlawawards.ie.

Tech law MOOC a first

The Law Society's Diploma Centre is introducing a free massive open online course (MOOC) in technology law. Launching on Tuesday 12 May, the course will explore emerging issues of relevance to entrepreneurs who seek to exploit opportunities in the digital age. It will also apply to existing organisations that must engage online in order to prosper.

The first MOOC of its kind in Ireland, the course will take place online over a six-week period and will feature contributions from technology experts, leading lawyers and industry leaders.

This MOOC is open anyone with an interest in learning about technology and the law and is free to access. To find out more and to register, visit the Diploma Centre page on the Law Society's website.

THERE'S AN APP FOR THAT

Hoots mon – so sweet!

APP: HOOTSUITE **PRICE:** FREE

If, like me, you're trying to develop and maintain an online presence via Twitter, LinkedIn and Facebook and you feel like you're constantly hopping from one app to another, posting more or less the same thing on each and wondering whether there's 'an app for that', the answer is yes, *writes Dorothy Walsh*. It's called *Hootsuite*, a free-to-download app. *Hootsuite* will post your status update or comment, article, or opinion to all of your social media accounts at the same time, without you having to access each one to do so manually.

How does this app work? Well, after you've downloaded the app from the App Store, it will ask you which accounts you wish to link with. I have chosen LinkedIn, Twitter and my firm's Facebook page. There is a list of various social media options open to you – you simply chose the ones you want. You then set up each account by typing in your username and password, which then links those social media accounts to *Hootsuite*.

What does the app give you? Well, you have the ability to post to all your accounts at once. You can also view all of the news feeds from your Twitter account, Facebook page and LinkedIn account simultaneously through this one app, and can retweet, forward and post directly in each account via *Hootsuite*, without having to hop between each one. If you are viewing your Facebook account, you can share the relevant post on your Twitter feed and on LinkedIn (you are not confined to reposting in the specific account being currently viewed).

You can also schedule posts to go out to the public and your followers at specific times of the day. This means that you can set up a certain set of tweets, Facebook posts and LinkedIn comments and articles in the evening, and schedule all to post and issue at different times the next day. You are then in a position to maintain a presence online throughout the day when, in fact, you are off running your practice, attending court, or dealing with client consultations.

Maintaining a social media and online presence can be perceived to be all-consuming and laborious but, with *Hootsuite*, you get a one-stop shop for viewing, sharing and posting all of your social media content. This gives the user an entire social-media-management system that doesn't require major management and allows practitioners to be 'ever present' online with the minimum of fuss.

Law Society challenges *Prime Time* high-fees claims

"The proposition that solicitors have been immune to the recession is nonsense. They have suffered considerably in the recession – as everybody has."

So said the Law Society's Director General Ken Murphy, responding to claims reported by Richard Downes on RTÉ's *Prime Time* programme on 19 March that legal fees were "just too expensive".

The focus of the *Prime Time* 'Legal High' programme was initially on the rising cost of professional insurance for medical practitioners, with the blame being laid firmly at the feet of lawyers.

John Tiernan, spokesman for the Medical Protection Society (MPS), claimed that legal fees were "disproportionate" compared with the awards made to patients who had suffered as a result of medical negligence. He was backed up in his views by Dr Sharon Moss, a gynaecologist at the Beacon Hospital in Dublin. The rising cost of professional insurance was, she claimed, threatening her ability to stay in private practice.

Murphy: 'The market for solicitors' services in Ireland is highly competitive'

Barniville: 'Nobody can charge whatever they like'

False claim

The doctors' insurance scheme, the Medical Protection Society, claimed that the reason for such high premiums was due to increased compensation being awarded to patients – and the legal fees being paid to patients' lawyers. The false claim that Ireland's legal fees were "the highest in the world" was put forward without any challenge from RTÉ's broadcasters.

Richard Downes reported that doctors were looking for "the type of system that operates in Australia, including a limit on the amount of legal fees. So if an award is for €100,000, then legal fees can only be, say, €20,000.

"The suggestion is dismissed by the Law Society, which says the real problem is the negligence of doctors and the culture of deny and deflect, which they say leads to prolonged litigation and ramps up costs."

Director general Ken Murphy had pointed this out, adding: "It seems to us that this concern the MPS is expressing is exaggerated. In any case, there is a cost to justice and there is a tendency in the MPS assertions to focus on the economic interests of the MPS and its members – but perhaps not taking into account, in sufficient balance, the human cost of medical negligence.

"Medical negligence cases only occur because there's been medical negligence and error which has caused damage – sometimes serious, sometimes catastrophic injury – to people."

In relation to taxation of costs, Richard Downes asked Murphy whether the Law Society was arguing that it was okay for solicitors to 'try it on' by inflating fees by as much as 50%, because they knew that their fees would be reduced by the taxing master in any event.

The director general completely rejected this claim, stating that "this simply doesn't happen".

"The great majority of cases where costs are awarded are agreed between the parties – between the solicitors and the legal cost accountants on both sides. They don't go to taxation at all. Only a tiny minority go to taxation. The cases where there are substantial reductions are relatively rare. So the contention that this is a major problem and that there are many, many cases of costs being reduced is incorrect. What it actually shows is that the system is working."

"There are always grounds for legitimate debate with the taxing master and with the legal cost accountants who are experts in this field," he continued, "to see what should be allowed, and what should not be allowed."

The director general pointed out that legal charges in Ireland were subject to the normal forces of supply and demand, as for everything else.

"The market for solicitors – for legal services in Ireland – is highly competitive. There are about 2,200 solicitors firms all in competition with each other. Obviously, there are different segments of the market, but the competition is intense on cost and on quality – solicitors compete on other things as well – and on expertise. It's a very good market for the public."

Studio battle

Back in the studio, things got hot for the Chairman of the Bar Council, David Barniville. Interviewer David McCullagh challenged him directly on the issue of barristers' fees.

He demanded answers as to how a barrister might justify a brief fee of €80,000. "Surely it comes down to the number of hours per day or the number of hours worked?"

"It doesn't actually," the Bar Council chairman responded, "because ultimately the fee I charge will be open to assessment by the taxing master".

Pressed on whether barristers should calculate their fees on an hourly basis, Barniville retorted: "I'm sure you're not suggesting that hourly billing is the appropriate way to go. In fact we would think hourly billing is quite inappropriate.

"Nobody can charge whatever they like. The vast majority of cases that barristers do are done on the basis that, if the case isn't successful, they will not get paid.

"The Taxing Master does not take as read a fee marked on the basis of any particular basic percentage, whether it's junior counsel or anybody else. The taxing master's job is to look at the amount of work done, to assess the value of that work, and to decide whether to allow the fee or not. He or she does not do that on the basis of any prescribed percentage," he concluded.

Practical tools, tips and strategies for success

Walt Hampton JD is a trial lawyer from the US who practised corporate and commercial litigation for nearly 30 years. Recently, he relocated to West Cork, where he engages in what he's passionate about – achieving personal and professional balance.

Trained in clinical psychology and executive coaching, Walt is a leading authority on the application of positive psychology in the workplace: "My experience has been that solicitors are suffering from stress, overwhelm, fatigue, burnout, conflict, the adversarial nature of the profession and economics. What they want is more time and less overwhelm. The way we work simply doesn't work."

Hampton argues that there is a better way. He has researched this in detail for a series of best-selling books for professionals, including *Journeys on the Edge: Living a Life That Matters* and *The Power Principles of Time Mastery: Do Less, Make More, Have Fun*.

In order to "change the way you practise forever", join Walt and a team of speakers for a one-day 'Wellness for Success' programme on 14 May in the calm surroundings of the newly refurbished Green Hall at Blackhall Place. Hampton promises that solicitors attending will gain "practical tools, tips and strategies that you can put to use right away. You'll enjoy a relaxing day with colleagues, and you'll leave ready to take on the world in a whole new way."

For full details and booking, visit www.lawsociety.ie/lspt or contact lspt@lawsociety.ie.

DWF expands into Dubai

British law firm DWF, which has a growing office in Dublin, is expanding into Dubai to support its clients across the construction, energy, insurance and transport sectors in the Middle East and North Africa.

The Dubai office will be the firm's first office outside of Ireland and Britain and will comprise a team of four, including two partners, led by Chris Ryan, who has been a partner at DWF since 2011.

DWF is one of Britain's top 20 law firms, employing over 2,500 people across 12 locations.

Clonakilty marketing mojo wows in Washington

Cork-based solicitor Flor McCarthy recently travelled to Washington DC to address more than 350 lawyers from the US, Canada, Australia and Britain at the Great Legal Marketing Summit.

Flor was chosen as a finalist to compete with three other US-based lawyers from among hundreds of law firms in the Great Legal Marketing Network in the 'Marketer of the Year' contest at the summit.

"Just being shortlisted for this event was a huge deal," said Flor. "These are some of the savviest and most sophisticated marketers on the planet, working in some of the most competitive marketplaces out there. To be chosen as a finalist in a panel of four to present to this group about what we are doing was an extraordinary experience.

Flor McCarthy speaks at the Great Legal Marketing Summit in Washington DC

"While the 'Marketer of the Year' event is pitched as a contest, it is really about lawyers opening up their practices to one another and sharing their best ideas with the entire audience. It was great to be part of this fantastic event."

Great Legal Marketing was founded by Virginia-based lawyer Ben Glass and promotes effective, ethical and imaginative practice building for lawyers who are primarily based across the US and Canada. Flor is a member of the Great Legal Marketing Network.

Reflecting on the experience at the summit, he said: "Sometimes I had to wonder what on earth a guy from West Cork was going to tell these guys about marketing their legal practices – but they certainly seemed to be interested in hearing what I had to say."

Meep, meep: the Calcutta Run is coming

Wile E Coyote always had the Road Runner in his sights. This year, if Wile E were entering the Calcutta Run, he'd have to set his Acme rocket pack to maximum in order to achieve the ambitious €200,000 target that the charity has set for its two recipient charities – GOAL and the Peter McVerry Trust.

All those taking part – runners, walkers and their supporters – will be making a significant difference for the homeless in Calcutta and Dublin.

Thanks to last year's proceeds, the Peter McVerry Trust was able to open a new supported temporary accommodation service in Dublin's city centre. This service provides six-month placements to 35 individuals and couples who would otherwise be at risk of sleeping rough or would require access to one-night-only accommodation.

Beneficiaries of the Peter McVerry Trust also received intensive support from the charity's staff on site. There has been a staggering 21% rise in numbers of people sleeping rough in Dublin, so it's vital that the €200,000 target is achieved.

Although not on our doorstep, 70,000 people are homeless in Calcutta. GOAL used the money raised by Calcutta Run supporters last year to fund several projects, including the protection of child sex workers and safeguarding the rights of young people with disabilities.

Through one particular project, 200 children were provided with education, health and counselling services through non-formal education centres, while 148 mothers were taught about personal health and hygiene, as well as safe-sex practices.

Another project helped 85 young female survivors of abuse and trafficking and integrated them back into society. A total of 53 children with disabilities were admitted to school, while 100 teachers received training.

Over the last 16 years, more than €3 million has been raised for both charities. You can take part this year by:

- Signing up for the 5k or 10k routes,
- Encouraging your friends, family and colleagues to join you in this challenge,
- Enter a team for the DX All-Firm Challenge and encourage competition among firms (www.calcuttarun.com/dx-challenge), and
- Organise a fundraising day in your firm and set up your own online fundraising page.

Plenty of fundraising tips are available at www.calcuttarun.com.

Training plans, nutritional advice and helpful tips can be found on the website (see the training section), or you can address queries to Hilary Kavanagh at hilary@calcuttarun.com.

Thanks to everyone who has already signed up. And like Wile E Coyote, keep focused, remain ambitious and give it everything you've got.

Get your Lycra on!

Cycling is a new element to the Calcutta Run this year. Law Society President Kevin O'Higgins is appealing to all solicitor cyclists and their friends for support.

The idea is that solicitors in a firm or area, along with their family and friends, will put together a small cycling group to do a cycle of a route and distance of their choice, ending up at Blackhall Place at 1.30pm on Saturday 16 May 2015 – joining over 1,000 runners/walkers for the 'Finish Line Festival', which will include a barbecue, bar, music, children's sports and family activities. All cyclists will receive a special goodie bag and there will be a secure compound for their bikes.

Each cyclist is being asked to raise a minimum of €100 for the Peter McVerry Trust and GOAL. If you'd like to organise a cycling satellite group, visit www.calcuttarun.com for details.

Among those who attended the recent meeting of the Meath Solicitors' Bar Association were *(front, l to r)*: Audrey O'Reilly, Helen McGovern, Martina Sheridan, Elaine Byrne, Pat O'Reilly (president, MSBA), Adrian Shanley (council member), Teresa Coyle and Michael Keaveny. *(Back, l to r)*: Paddy Rogers, Paul Brady, Jimmy Walsh, Maurice Regan, Aine Keenan, Joe Curran, Oliver Shanley, Conor Brady, Aisling O'Callaghan, Aisling O'Callaghan, Barry McAlister, Aileen Dempsey, Michael Finnegan, Hugh Thornton and Dara Fitzsimons

PIC: JOHN WALSH PHOTOGRAPHY

At the annual general meeting of the Wexford Solicitors' Association (WSA) were *(front, l to r)*: June O'Hanlon, Damien Jordan (secretary, WSA), Ken Murphy (director general), Kevin O'Higgins (president, Law Society), Helen Doyle (president, WSA), Noeleen Redmond and Aoife Pettitt. *(Back, l to r)*: Ciara Doyle, Colette Culleton, Dermot Davis, Orlagh Wafer, John O'Leary, Annette McCarthy, Michael Cullen, Susan Murphy, John Murphy, Julie Breen, Val Stone and Siobhan Dunne

Human rights lawyer pays visit to Ireland

Human rights lawyer and visiting fellow at Harvard Law School Dr Teng Biao visited Ireland from 11 to 17 March and spoke at a number of university events, as well as at the Law Society.

Dr Biao is president of China Against the Death Penalty and co-founder of the Open Constitution Initiative. He was in Ireland as the guest of Front Line Defenders, which sets itself the aim of protecting 'at risk' human rights defenders.

Dr Biao has been at the forefront of the human-rights' movement in China for over a decade. He holds a PhD from Peking University Law School and practised law in Beijing before his law licence was revoked in 2008.

PIC: CONOR MCCABE

During his visit to Ireland, Dr Teng Biao met with members of the Society's Human Rights Committee at Blackhall Place

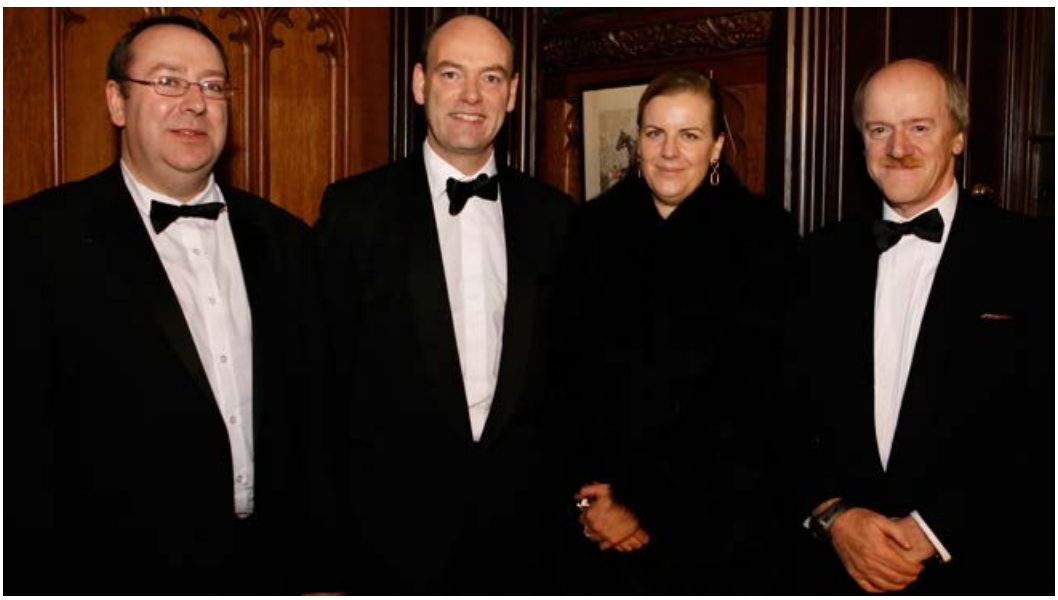
Down on the corner, out on the street

On 19 February, Judge Colm Mac Eochaidh presented certificates to the 2014/15 PPC1 volunteers who participated in the Street Law programme

Launched last year and run by the Law Society's Diploma Centre, 'Street Law' has already placed over 70 PPC1 trainees in a number of designated schools participating in the DEIS (Delivering Equality of Opportunity in Schools) programme. Trainee solicitors teach a six-week law programme to transition year students.

Central to the success of the programme is the Diploma Centre's collaboration with Georgetown University, where the world's most extensive Street Law programme is organised. The programme's underlying principle is that the best way for law school trainees to learn is through teaching. The Society's 2014/15 programme began last October with an induction weekend for volunteers, which was run by Prof Richard Roe (Georgetown) and Sean Arthurs (Harvard). Representatives from the University of Ulster, the National University of Ireland Galway and the University of Northumbria attended to learn more about the initiative. The Diploma Centre also works with Trinity College Access Programme, which has proved to be a very valuable partnership.

"The orientation weekend model and approach was absolutely new to us," says Rachel Barry, a trainee solicitor with Arthur Cox. "It was a really useful way of thinking about a problem in a different way. Rather than being just being shown what to do, we actually experienced how the Street Law approach empowered the student. When we went to the classrooms, we weren't just lecturing them – they were figuring out the concepts for themselves and were really enthusiastic and engaged."



Pictured at the Newry and Banbridge Solicitors' Association dinner recently were: *(from l to r)*: Conor MacGuill (president, Louth Bar Association), Mr Justice Donald Binchy (guest of honour), Ms Arleen Elliott (president, Law Society of Northern Ireland) and Mr Donal P O'Hagan (honorary life-time member, County Louth Solicitors' Bar Association)

Robert Hammond, at 18 months, is taking after his solicitor dad Richard and solicitor mother Joyce – both of HG Legal Chambers, Mallow, by reading the *Gazette* from cover to cover. (Other images supplied showed that he was mainly interested in the photos – not much different from most of our other readers, then!)

letters

The benefits of keeping it in the family?

From: Paul Tweed, senior partner, Johnsons, Belfast, Dublin, London

The introduction of the ***Legal Services Regulation Bill*** will include the appointment of a new regulator to examine the controversial issue of 'one-stop shops', whereby the services of barristers, solicitors and accountants will be available as one combined facility. This is likely to result in yet further pressure on smaller solicitors' practices, already struggling to compete in a constantly shrinking market.

Not only will these firms be coming up against much broader and more flexible services relating to both transactional work and contentious litigation, but existing firms will have to accommodate ever more demanding clients who are already becoming increasingly selective in the legal advice they require in relation to specialised issues, for which they will still expect the best and most cost-effective solutions.

And it is not just a question of the survival of the fittest, or indeed the largest firms, but it is more likely to be those practices that demonstrate a willingness to adapt and innovate, and think outside the box, who are going to be in a position to meet these challenges over the coming years.

However, the fundamental difficulty facing most of us in the solicitors' branch of the profession is that there will always be a limit in all but the very large firms for the scope and type of professional services required by some of our more entrepreneurial clients. Inevitably, therefore, a substantial chunk of otherwise lucrative business has to be passed on to other firms with more appropriate expertise, thereby causing the original solicitor not only a loss of valuable income, but also, potentially, a longstanding client.

Perhaps, therefore, the time has come to follow the Californian model, where transactional lawyers will normally have a relationship with litigators in other firms, whereby contentious work is passed to them for the purpose of handling specific tasks and keeping the first attorney in control in the background, as this particular aspect of the work is taken forward.

The originating lawyer retains control and, in American parlance, 'still calls the shots', and acts as the primary conduit with the client. Accordingly, the attorney receives the benefit of not only the expertise of his litigator colleague, but also in sharing the credit for a successful outcome, which is normally subject to a flexible fee-sharing arrangement.

I can see no reason why – as in my case as a specialist media law and commercial litigation practitioner – the same principles and considerations should not apply to all those who can offer specific expertise right across the board, from corporate litigation to intellectual property disputes.

The client will also benefit from his own personal solicitor's knowledge and experience in deciding upon and selecting the expertise of a particular professional colleague, rather than simply depending on online research or the recommendation of someone outside the profession with no direct knowledge of the range of expertise available from within the profession.

A joint approach of this nature in taking on multidisciplinary practices could herald the advent of an entirely fresh structure, not dissimilar to the London chambers system. In that jurisdiction, solicitors are able to select from an extensive choice of barristers' chambers, with their noted specialisations, but still having the benefit of an individual counsel's specific skills.

Changing times and legislation require lawyers to utilise all the resources and talent available to them from within the broader legal family. The days are long gone when we can rest on our laurels in the belief that a job well done will ensure the continued support of an increasingly demanding client base.

viewpoint

DO YOU WANT YOUR AUL' LOBBY WASHED DOWN?

The *Regulation of Lobbying Act* will place obligations on solicitors who act for clients who engage in specific 'lobbying activities'. Cormac Ó Culáin marks your cards

Cormac Ó Culáin is a solicitor and the Law Society's public affairs executive

The *Regulation of Lobbying Act*, set to commence this September, will place obligations on solicitors and firms where they act for clients on certain issues. Clients should also be educated on the provisions that apply to certain communications made by them directly.

The act compels those engaged in specific 'lobbying activities' to publicly register the fact of having communicated with certain designated public officials. The registration obligation extends to details of clients, the name of the designated public official, the subject matter of those communications, and the results they were intended to secure.

As the lobbying register will be an online register – maintained by the Standards in Public Office Commission (SIPO) – many of the fields required to be input will be in a drop-down, predefined format, hopefully reducing confusion and minimising the administrative task involved.

While no explicit provision has been allowed for legal privilege, the act does provide for a number of exempted communications. Furthermore, the definition of 'relevant matter' should also guide practitioners.

An advisory group, which includes the Law Society, has been established by SIPO to assist in drafting comprehensive guidance and communications for those affected by the act, in addition to advising on the online portal. In order to assess whether activity falls within the act, questions to be asked include:

- Who is doing the lobbying activity, and are they exempted?
- What are they lobbying about, and is the matter exempted or relevant?
- Who are they communicating with – is the public official designated under the act?

Communications by whom?

A person undertakes lobbying activities when he or she "makes, or manages or directs the making of, any relevant communication, on behalf of another for payment", does so for themselves, or the matter relates to development or zoning of land, as defined.

Employers with less than ten full-time employees and communicating on their own behalf are not required to register. A further exemption to register applies to wholly voluntary bodies. Where the body has at least one full-time employee, their role and function should be examined to ascertain reporting obligations.

The concept of 'relevant communications' requiring registration is probably more easily understood by reference to what is not registrable – namely 'excepted communications' and the definition of 'relevant matter'.

Fourteen classes of 'excepted communications' are provided for at section 5(5). Exceptions most likely to impact on practitioners' work include:

- "Communications on behalf of an individual relating to his/her private affairs, barring development and zoning of lands, with the exception of the person's principal private residence",
- "Communications requesting factual information or providing information in response to a request from an official".

Likewise, there is no requirement to register the communication where it relates "only to the implementation of a policy, programme, enactment or award, or of a technical nature". Where the communication relates to the initiation, development or modification of any public policy or programme, or the preparation of an enactment or the award of a grant or contract, there will be an obligation to register, where other provisions are also satisfied.

The boundary between 'implementation' and 'development or modification' of public policy will create difficulties, particularly where practitioners themselves must assess whether a communication should be registered. A risk arises in respect of an unnecessary registration where it could damage client relations and have wider implications. SIPO is currently formulating guidance notes on these boundary issues.

To whom are we communicating?

The act seeks to capture the existence of relevant communications made by certain person on relevant matters, and addressed to prescribed designated

FOCAL POINT

next steps

Guidance notes will be issued by SIPO in April, together with targeted communications. It is intended that the online register will be open to potential registrants from May, allowing a three-month period for users to familiarise themselves. Records of lobbying activities will need to be maintained for the first period of registration, commencing September to December. Members are encouraged to:

- **Familiarise themselves with the provisions and obligations of the act and carefully examine guidance notes when published,**
- **Consider how internal processes will have to change – record-keeping, attendance notes and advices to client – in advance of making a relevant communication,**
- **Assess the limitations of delayed publication to relevant communications.**
- **Assess the implication of publication on your clients' affairs, in particular their commercial and public-relations activities.**

PIC: iSTOCK

public officials. Currently, these officials include ministers, TDs, MEPs, councillors, special advisers, assistant secretary generals, and secretary generals of Government departments. It is intended that the scope of the registration regime will extend to principal officers after 12 months.

The register

The 'lobbying register' is to be updated three times a year through an online portal. Part 2 of the act sets out the extent of information to be included in relation to a registrable communication, such as the details in relation to the lobbying person and their client. SIPO anticipates that registered activity will be fully searchable by lobbyist, client, and designated public official.

As details contained on the register will be publicly available, they will undoubtedly be of interest to the media, client competitors, and other stakeholders. Not least, they will spark innumerable freedom-of-information requests to Government bodies and departments. Accordingly, an unnecessary registration may have serious implications for your client and your firm.

Delayed publication

The act does provide for delayed publication of a registration, where publication could reasonably be expected to have a serious adverse effect on business interests, cause material financial loss, or prejudice a client's competitive position. Colleagues are strongly advised to familiarise themselves with the wider provisions of section 14. Where SIPO agrees to delay publication, it can only be delayed for a maximum of six months.

As each particular application should be considered on its own merits, and where 'business-interest' grounds could subsist for a considerable period, it is unclear what the policy rationale is in respect of this maximum delayed period of six months. It would appear unnecessarily short and could impact negatively on otherwise practical and mutually beneficially communications with the State.

> **A risk arises in respect of an unnecessary registration where it could damage client relations and have wider implications. SIPO is currently formulating guidance notes on these boundary issues**

Legal professional privilege versus duty to confidentiality

The Society's key concerns with the act relate to the obligations that may be placed on our members in the context of their relationship as legal advisors to their clients and as professionals with a genuine interest in public policy.

The solicitor/client relationship is founded on client confidentiality and legal professional privilege. These tenets occupy the core of the proper administration of the legal system. The *Regulation of Lobbying Act* has more of an impact on the former tenet, as it requires disclosure of the very existence of the solicitor/client relationship.

The Society submitted that any interference or competing public interest with these long-established norms must be carefully considered against the possible damage to the integrity of the legal system, the independence of legal advisors, and their role in the administration of justice.

Notwithstanding that privilege applies between the client and the solicitor, communications that would ordinarily benefit from confidentiality may, in many instances, be saved by both the 'factual information', and the 'implementation of policy' exemption. The Society has noted that other common law jurisdictions (notably Australia and England and Wales), in addition to the regime applying to the European institutions, accommodate legal professional privilege to some degree.

Penalties and liability

The act provides for a number of contraventions, including making a late return, failing to make a return, or making a false or misleading return. A person committing such a 'relevant contravention' is liable, in the first instance and at the discretion of SIPO, to a fixed payment of €200. Failure to comply could result in a summary conviction to a class C fine (up to €2,500), or on conviction on indictment, to imprisonment for a term not exceeding two years.

SIPO and the Department of Public Expenditure do not intend to apply penalties for the first 12 months, in an effort to 'bed-in' the new regime and allow for a period of familiarisation.

Notwithstanding this temporary reprieve, the issue of offences and liability (section 20) should be examined carefully. Where an offence under the act is committed by a body corporate with the consent of an officer of the body, that person as well as the body corporate shall be liable. This provision is particularly relevant where a number of employees undertake 'lobbying activities', and underlines the need for robust internal recording processes.

news in depth

CHILDREN OF THE REVOLUTION

iPads are leading the way in the learning revolution for trainee solicitors and those investing in their ongoing legal education. Mark McDermott taps into the Law School's latest technology

Mark McDermott is editor of the Law Society Gazette

The iPad tends to split people right down the middle – you either love or hate the iconic device. English television entertainer Bruce Forsyth is very much in the 'yes' camp, admitting: "It's the combination of marrying a beautiful woman three decades younger, and my iPad, that keeps me young."

The American documentary film-maker and political activist Michael Moore couldn't be more scathing of Apple products: "First of all, the American people are inundated with advertisement after advertisement of you buy, buy, buy! You've got to have the latest thing. The iPad 1 isn't any good anymore – you've got to have the iPad 2. The iPhone 4, now you've got to have iPhone 4S, now you've got to have the 5b, now you've got to have the 6c."

> **'Our primary motivation was to encourage people to move with the times. Part of our vision was to encourage students to see the iPad as more than simply a learning device'**

Debate at the Law Society's Education Centre has long since ceased on the topic. It has embraced the tablet technology enthusiastically. The Law School's initial goal was to simplify learning for students by digitising its course materials for easy distribution.

The school offers training for trainee and qualified lawyers, through to post-graduate certificates and professional development: "As a result, we're looking to engender a specific degree of competency across the board," says director of education T P Kennedy. "This includes the use of technology in the world of business."

Information technology has always been a priority for the Law School, but T P says that computers never seemed to measure up to the school's exacting standards. He comments: "For years, we looked at investing in laptops as something we could issue to students, but we never could find a machine we were terribly happy with. Then the iPad came along."

When iPads were introduced on its professional practice courses, it was challenging centuries of paper-based learning traditions in Irish legal education.

This advance was originally led by solicitor and course manager Joanne Cox in 2013, starting with the PPC2's Technology and Intellectual Property Law course. Joanne developed digital content to optimise the use of iPads as a learning tool and was involved in the creation of an interactive, multi-touch ebook, which incorporated over 70 pieces of interactivity, designed to explain challenging legal concepts and practices to students in innovative ways.

Says Joanne, "We wanted tomorrow's lawyers to have the best training that technology delivers – and to use the tools that would make them effective and efficient in professional practice in the future."

From the start, the Law School gave students a huge library of course materials, extracts from legislation, cases, precedents and so on. All of this material was migrated to the iPad.

Mouth-watering array

It was inevitable that such content-heavy courses would require a content-management system. Apple's stable platforms and robust operating system allowed the Education Centre to consider doing much more than using iPads as repositories for PDFs.

T P recalls: "Our first thought was that, if we were going to proceed with investing in iPads, how could we take full advantage of the device?"

On offer was a mouth-watering array of tools, including: *iTunes U* and *iTunes U Course Manager, iBooks Author, iBooks* and the App Store's comprehensive 'education' categories.

Content for the Law School's professional practice courses is now distributed using *iTunes U* – the 'U' stands for 'university' – for the iPad. (They're in good company: Harvard, Oxford, Cambridge and UC Berkeley all use *iTunes U*.)

Custom *Multi-Touch Books*, along with course materials like legislation and case studies, are easily accessible online. Tutors and students use the iPad and Apple TV to work collaboratively and present results in class. The use of paper has been cut to a minimum.

One thing is certain, the Education Centre's acheivements in getting the most from the available technology and software would not have been possible without the invaluable assistance of Apple, in particular their education

FOCAL POINT

stuck in the moodle with you

All lecture information, online evaluation forms, discussion forums and chat-room links are available to Diploma Centre students on Moodle – a learning management system that has been designed specifically to meet users' needs.

PIC: ISTOCK

officer for Ireland, Éanna Ó Brádaigh.

The Law School uses a range of iPads, including the iPad mini and iPad Air. And in order to ensure that students feel confident with the technology, the Law School's IT Department, headed by Caroline Kennedy, and supported by Paul Mooney and Aaron Duggan, are at hand to help with all queries.

Training events are also organised for the tutors and students. These are run in conjunction with computer firm Compu b, which is the Education Centre's chief supplier of Apple equipment.

Separately, course managers use *iBooks Author* to create interactive content for *iTunes U*, while students use their iPads to read books, take notes, study for exams, practise as trainees – and even check social media.

The results have been encouraging, says T P: "Our primary motivation was to encourage people to move with the times," he explains. "Even if they do use social media, it's still bringing them into the environment. Part of our vision was to encourage students to see the iPad as more than simply a learning device."

I did it my way

The Law School's course managers are encouraged to think of new ways of delivering content. They have devised interactive textbooks, 'walkthrough' videos, podcasts and webcasts.

"The iPad has empowered our staff in the dissemination of up-to-date, easily accessible course material," says Caroline Kennedy (IT co-ordinator for the Education Centre), "while keeping the Law School's commitment to pedagogy for our students.

"It has proved to be an invaluable educational tool that provides students with an enhanced learning experience and greater flexibility about how and where they study for the exams that are critical to their professional careers."

Robert Lowney, course administrator, adds: "The iPad's greatest strengths are its portability, customisability and versatility. We applied these principles when redesigning courses. Because iPads are their own mobile, personal learning environment, students can take what we give them and approach it in their own flexible way, letting them progress at their own pace. This makes learning more meaningful and beneficial."

Course manager Jane Moffatt has been delighted with the outcomes for students: "We'd been trying to get them to become more engaged – it has been so much easier with the iPad. It's had a huge, huge impact on results. Last year we had an 80% pass rate. This year, it increased to 94%. The iPad has made a real difference," she says.

> **"We'd been trying to get students to become more engaged – it has been so much easier with the iPad. It's had a huge, huge impact on results. Last year we had an 80% pass rate. This year, it increased to 94%. The iPad has made a real difference"**

Robert has been impressed, too: "During PPC2, it was great to walk around the building and see students in classrooms helping each other study – using the iPad and Apple TV to collaborate and exhibit their work. It has really helped peer learning and facilitated group learning as well – something we'd never really seen in a course before."

Trainees, too, are enthusiastic about the technology. Trainee solicitor Michelle Dunne comments: "I really like *Pages* and *Mail* – they're handy as you're constantly on your iPad. Communicating is a lot easier and more convenient now. I'm in a small firm and my bosses use their iPads all the time. It's good to be able to keep in contact with them."

Separately, the Diploma Centre's customised app makes downloading webcast lectures to iPhones and tablet devices a doddle, allowing busy professionals to refresh their memories while commuting, at the gym or during downtime in court. Education is now, literally, a 'Martini' experience: 'anytime, anyplace, anywhere'.

FOCAL POINT

the future of law

The rise of social media has led to the emergence of a new area of law. The Education Centre has put together a series of lectures on areas of general law affected by social media, which it offers as a free course. It is hosted on *iTunes U* and can be downloaded for viewing to any Apple device.

best served COLD

Stephen Fitzpatrick is a barrister specialising in civil law, in particular internet law, personal injuries and employment law. He extends his thanks to Pauline Walley SC for reviewing this article

There are many phenomena of the IT age that challenge established law and the practitioners who seek to navigate it. Of all these, perhaps the most insidious is that of 'revenge porn', writes Stephen Fitzpatrick

The common perception of so-called 'revenge porn' involves a situation where, usually after a couple have broken up, intimate photos or videos of a pornographic or erotic nature, which may have been exchanged between the couple as tokens of affection, are shared to third parties with the aim of humiliating their subject. These materials are often uploaded to the internet and can spread across the world – indeed, entire websites are devoted to such materials.

In August 2014, in an incident distastefully referred to online as 'The Fappening', the social media accounts of numerous celebrities, such as Jennifer Laurence and Avril Lavigne, were hacked and hundreds of nude 'selfies' were uploaded onto the internet. Half a year later, the FBI is still investigating the matter, and much of the material remains online.

at a glance

- 'Revenge porn' is when intimate photos or videos of a pornographic or erotic nature are shared to third parties with the aim of humiliating their subject
- Where such material has not yet gone viral, the threat of criminal action can be used as leverage to have material taken down by the uploader
- The LRC's 2014 *Issues Paper on Cyber-crime* highlighted that Irish harassment laws may be too narrowly drafted to deal with revenge porn
- The key to dealing with these situations is speed – removing the material before the feeding-frenzy of internet virality takes hold

When celebrities suffer from such leaks, these can be a double-edged sword. Some suffer grotesque invasions of their privacy; there are many people interested in the material and so it becomes viral, at great personal cost. Other celebrities have managed to assert their copyright over these materials, and have made large, unexpected fortunes from leaked 'sex tapes'.

For the ordinary person, the outcome is rarely so rosy. So what are the possible remedies available to a person who suddenly finds that private materials of an erotic nature, thoughtlessly given in the summer of love, have been callously placed on public view?

More common?

The expansion of the internet, the ubiquity of social media, and the increasing cheapness of hi-tech personal devices has meant that material that once would have required enormous effort, money and time to create and distribute can now be filmed and then dispersed worldwide in mere seconds. The underlying urges have not changed – it is the time for reflection that has vanished.

Further, the development of apps such as *Snapchat* (which allows the sharing of photos with an automatic deletion after ten seconds) have made the practice of sharing nude photos appear safer.

That these actions are not entirely new is amply underlined by an American case initiated in 1980. In *Wood v Hustler*, a young lady won damages against the magazine *Hustler*. *Hustler* offered rewards for erotic photos from amateur models. A thief stole nude photos of the plaintiff, taken consensually by her husband, and

> Couples habituated to technology are more and more willing to carelessly share with each other materials of an explosive and potentially devastating nature

PIC: iSTOCK

submitted them to claim the reward. They were published nationwide, accompanied by uncommon erotic fantasies falsely attributed to the plaintiff.

Criminal law

Where erotic material has not yet gone viral, the threat of criminal action can be used as leverage to have material taken down by the uploader.

Due to several high-profile cases, other jurisdictions have recently legislated on revenge porn. In England in 2014, nude pictures of the nanny of a high-ranking member of Cabinet appeared on the internet. Further, ordinary victims such as Folami Prehaya, whose erotic images were viewed over 50,000 times, began to publicise their stories. This led to a section of the *Criminal Justice and Courts Act 2015* making revenge porn a crime. Japan has specific laws on this issue, as do several US states, such as California or New Jersey. Canada introduced legislation this year.

Currently, Ireland has no specific laws against revenge porn, a situation which may well be unsatisfactory.

Unlike in other jurisdictions, the Irish offence of harassment requires that the behaviour be performed 'persistently'. This potentially excludes the majority of revenge porn cases, as most involve a single act or spree of uploading. In *DPP v Lynch*, the term 'persistently' was given a wide definition by the High Court, covering a spate of incidents in a time frame of a few hours. Even at this high-water mark, it is not clear that the uploading of revenge porn would be covered under Irish law.

The Law Reform Commission, in its 2014 *Issues Paper on Cyber-crime*, highlighted that Irish harassment laws may be too narrowly drafted to deal with revenge porn. It sought opinions on the creation of a specific crime of single serious interference, through cyber technology, with another person's privacy, and the alteration of the law of harassment to cover 'indirect harassment', where a person was harassed by a party communicating information to a third party.

While the new English law is perhaps overly broad, it would be a welcome development if Ireland were to legislate on this issue. Not only would it give wronged persons a cosh with which to threaten the miscreant who posted their intimate media, but it could potentially open the operators of websites trafficking in this material to a host of inchoate offences.

> If Ireland were to legislate on this issue, it would give wronged persons a cosh with which to threaten the miscreant and could potentially open the operators of websites trafficking in this material to a host of inchoate offences

The position of infant victims is somewhat more protected. Sexual material involving infants could fall foul of the *Child Trafficking and Pornography Act 1998* if it meets the definition of child pornography contained in the act. The act sets out the offence of knowingly producing or distributing child pornography and makes it an offence to possess child pornography.

There have been a number of cases in the United States where criminal charges have been brought against teens who engaged in 'sexting'. However, a word of caution must be added. Under the wording of the legislation, it is possible that the minor who took their own picture and sent it could be found to have distributed child pornography.

Damages

At this point it is settled law that it is possible, in certain circumstances, to claim for damages for breach of one's constitutional right to privacy or for breach of confidence. In the absence of specific precedent in this jurisdiction, it is conceptually difficult to see how the publication or dissemination without consent of private erotic materials produced and shared within a romantic or sexual relationship, regardless of duration, would not constitute such a breach.

In the 2015 Australian case of *Wilson v Ferguson*, the plaintiff was awarded damages for breach of confidence and injunctive relief restraining further publication when her boyfriend, shortly after their breakup, placed a selection of their shared intimate materials on his Facebook page. Both parties worked in the same mine, and so a large number of their co-workers saw the images.

The defendant illustrated his malicious intent by taunting the plaintiff using vitriolic texts, fully reproduced in the judgment. The materials were removed from the internet by the defendant on the same day, after the plaintiff pleaded with him to do so.

This case is notable in two respects. The lesser is that the plaintiff was awarded damages for loss of earnings as she felt unable, due to her humiliation, to return to work for three months. The greater is that the material was only online for a matter of hours before being taken down, yet substantial damages were still awarded.

Copyright protection

In other jurisdictions, several plaintiffs have attempted to use copyright law to have materials taken down from the internet. The basic concept is simple: if the photos are 'selfies' then the copyright vests in the person who took the photo; therefore, the subject of the material owns the copyright and can apply for relief to have it taken down. This avenue is controversial for several reasons, not least because some jurisdictions require the public

FOCAL POINT

domestic violence

Many cases of revenge porn involve ordinary people lashing out in pain. It must be recognised, however, that revenge porn can play a part in domestic violence situations, the threat of its release being used to control the other party.

Women's Aid confirmed in their submissions to the Law Reform Commission that this phenomenon is occurring in Ireland and noted that, often, there is little that women can do to remedy these situations. Gardaí often cannot provide assistance, and few victims of domestic violence are in a position to take defamation actions.

Some situations may fall under the offence of making an unwarranted demand with menaces, under section 17(1) of the *Criminal Justice (Public Order) Act 1994*.

***R v Tomlinson* (1895) holds that the threat to publicise sexual matters (adultery) can constitute 'menaces'.**

This may be particularly advantageous, as the *Criminal Justice Act 2007* provides that, where a person is convicted on indictment of an offence under section 17, the court shall consider making a monitoring or protection order. A protection order allows the court to prohibit the defendant from engaging in any behaviour that, in the opinion of the court, would be likely to cause the victim of the offence fear, distress or alarm.

PIC: iSTOCK

registration of copyright.

In the ongoing case of *Doe v Elam*, an anonymous Californian law student is seeking damages and an injunction for breach of copyright in what could be a significant test case, helped by a project (which boasts over 100 active cases) run by an American law firm.

The problem is that copyright law is not designed to deal with these issues. It will not be applicable – or only partially applicable – to the material in many cases, and often highlights the existence of the material. It is designed for the public assertion of rights, not the elimination of private material.

> **'Copyright law is designed for the public assertion of rights – not the elimination of private material'**

Data protection

The ECJ decision in *Google Spain v Gonzalez*, establishing the 'right to be forgotten', can also potentially provide some relief. In essence, it held that internet search engine operators are responsible for the processing that they carry out of personal information that appears on web pages published by third parties. This means that search engines have an obligation to comply with data protection law.

Under the *Data Protection Directive*, data subjects have the right to seek rectification of their data and the erasure of this data. Subsequent to this case, most search engines, including Google, have developed specific tools to allow for the making of applications for removal under data protection law.

This does not remove the material from the site hosting it, but can be used to slow the spread of the material, acting as a useful stop-gap until the owners of the offending site can be discovered, contacted or injuncted.

The sphere of personal privacy is contracting, with the publication of details of one's life now being the norm, not the exception. Couples habituated to technology, personal transparency, and the general prevalence of sexual imagery are more and more willing to carelessly share with each other materials of an explosive and potentially devastating nature.

The key to dealing with these situations is speed – removing the material before the feeding-frenzy of internet virality takes hold. This material spreads fast and, as well as being downloaded onto computers, where it can potentially fester forever, it can also be shared through social media – each click increasing its potential audience by many thousands.

If the material enters restricted circles, such as private profiles on social media, to which the wronged party has no access, then it is entirely possible that the material will lurk in the ether forever, always at risk of surfacing once more. In the near future, the advancement of internet search technology may raise many personal leviathans.

Currently, victims are forced to try and shoehorn their situation into the existing law. Until there is reform, entirely innocent parties – their dignity and privacy in shreds – may need to take actions for damages and injunctions, risking great personal expense and further public humiliation, to remove private erotic material from the internet – their only crime being to have loved unwisely.

look it up

Cases:

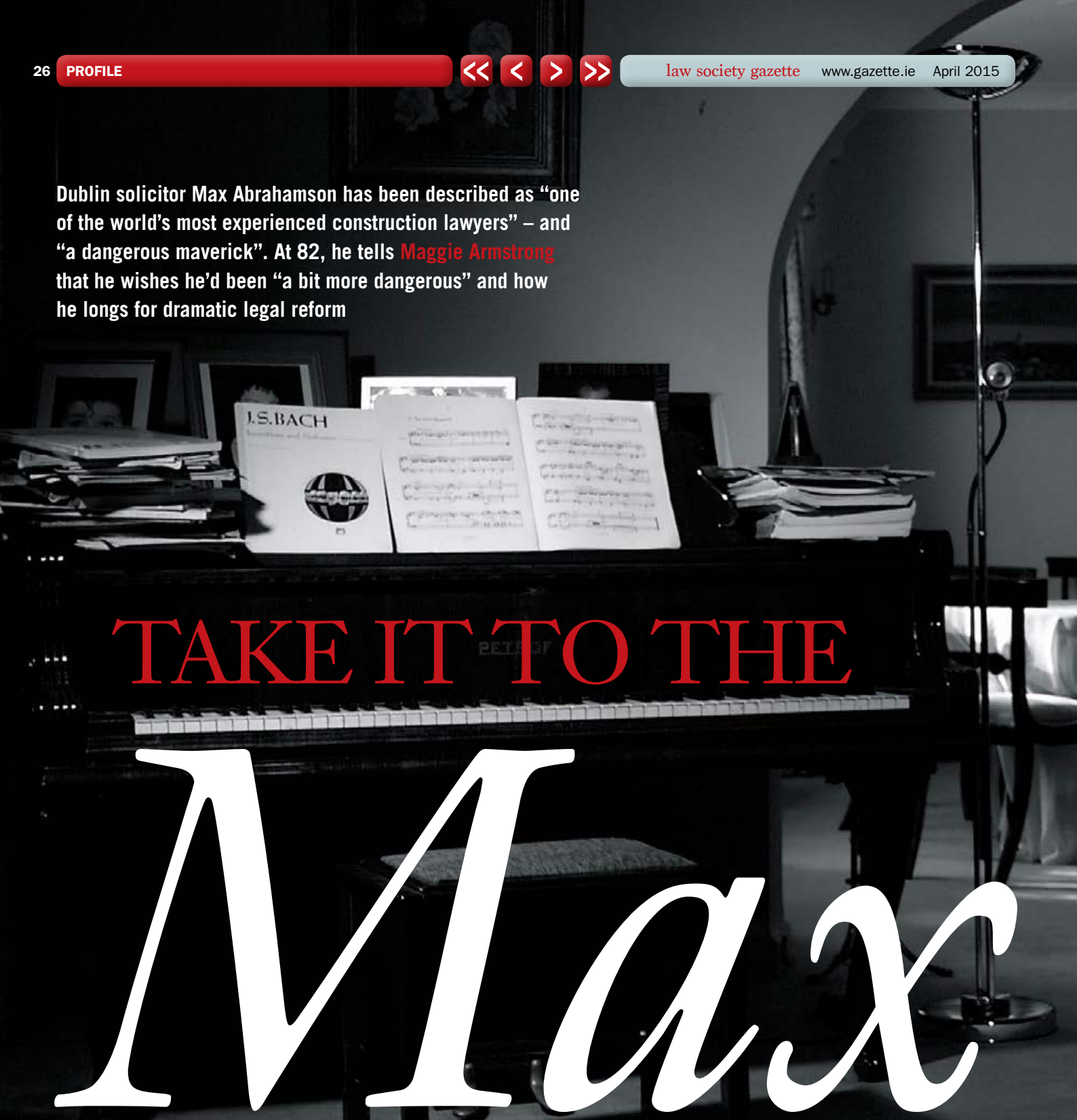
- *Director of Public Prosecutions (O'Dowd) v Lynch* [2010] 3 IR 434
- *R v Tomlinson* [1895] 1 QB 707
- *Google Spain v Gonzalez* (C-131/12)
- *Wilson v Ferguson* [2015] WASC 15
- *Wood v Hustler* 736 F.2d 1084 (5th Cir 1984)

Legislation:

- *Child Trafficking and Pornography Act 1998*
- *Criminal Justice Act 2007*, section17
- *Criminal Justice and Courts Act 2015* (England), section 33
- *Criminal Justice (Public Order) Act 1994*, Section 17(1)

Literature:

- Law Reform Commission, *Issue Paper on Cyber-crime*
- The Cyber Rights Project
- Women's Aid submission to LRC



Dublin solicitor Max Abrahamson has been described as "one of the world's most experienced construction lawyers" – and "a dangerous maverick". At 82, he tells Maggie Armstrong that he wishes he'd been "a bit more dangerous" and how he longs for dramatic legal reform

TAKE IT TO THE Max

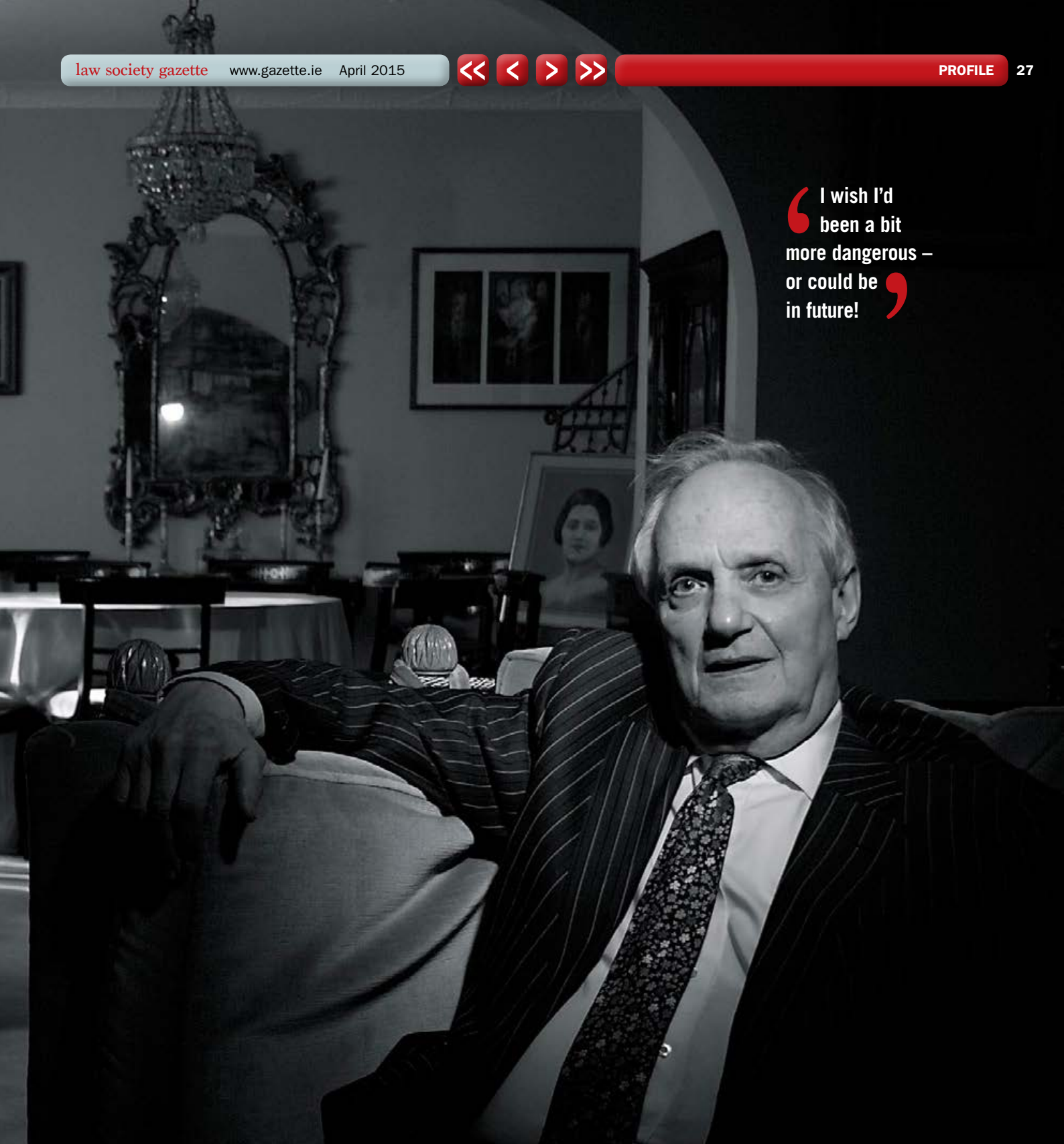
Maggie Armstrong is a freelance journalist

Max Abrahamson faked it 'til he made it. At the age of 25, he opened a solicitor's office upstairs in the family home on Fitzwilliam Place. It was swish, designed by the architect of the Abbey Theatre, Michael Scott, according to a '60s fashion for contrasting walls. But the place lacked clients.

"I began to find myself in a position where I had more children than clients!" jokes Ireland's eminent construction lawyer, who is currently 'visiting practitioner' at UCD. "When clients were coming in, I would get as many papers as I could and place them on my desk to give the impression of a busy office. Then I'd ring my wife and say, 'please call me – there's going to be a client here."

His wife, Edna, thus helped create the illusion of a thriving practice. "Sometimes, she would forget, and then, after the client was gone, the phone would go and I'd think, 'Oh, a client'!"

But such dissembling was in the name of business, and



> I wish I'd been a bit more dangerous – or could be in future!

at a glance

- Creating the illusion of a thriving practice
- The great privilege of serving justice
- On his dad, Leonard Abrahamson – a pioneering physician and one of the leading lights of the Jewish community in Dublin during the Second World War
- How specialisation led him to working on cases in 65 countries, without qualifying as a solicitor outside of Ireland
- His dislike of the solicitor/barrister divide in the legal profession
- Law as a craft

ALL PICS: DAVID MURPHY

certainly didn't extend to his professionalism over the next 60 years. Shifting between what he calls "my rants" and "my anecdotage", Max returns again and again to the principles of integrity, impartiality, justice. "Justice is distorted," he argues, "when law is treated as a game."

"Anyone in the legal business who has the great privilege of being associated with the idea of justice (whatever that is) – and who treats it as a game – is betraying themselves, their profession, and not doing it for human rights."

What's in a name?

In an interview at his home in Dublin's Rathfarnham, Abrahamson reveals a desert-dry wit and a mind that enjoys conversational tangents that return effortlessly to the original subject matter.

He had just come from lecturing law students in UCD and, at 82, is "looking for disciples" to research how lawyers could exploit the use of computing intelligence.

On his wall hangs a wood carving he made, of Napoleon crossing the Alps. The painting it's based on hangs in the Louvre. Max thought the horseman would look impressive placed within a circle, so he carved his own version.

Max and his twin, David, were born in 1932 to Leonard and Tilly Abrahamson, Jewish immigrants to Ireland whose families had escaped pogroms in Russia and Poland.

Leonard Abrahamson (1896-1961) was a pioneering physician and one of the leading lights of the Jewish community in Dublin during the Second World War. Max is not certain what year he came to Ireland: "In those years, you didn't talk about that."

A star linguist at Trinity College, Leonard Abrahamson promoted free speech and, on one occasion, invited Pádraig Pearse to a college debate against the provost's orders and had the team suspended.

Max studied law at Trinity and, like his father Leonard and son Lenny, he was made a scholar. Jurisprudence was his most valued subject – "essential to a lawyer". He graduated in 1953 and, within a few years, found himself back in Trinity lecturing part-time in industrial law and contract law. Still in his 20s, he was appointed to give lectures on construction law to practising engineers, where he admits to having to 'wing it'.

"I bought a big construction textbook. I was just a few pages of the book ahead of the people I was lecturing. I had to do that or semi-starve, because I wasn't getting vast numbers of conveyances."

He then wrote a small book based on his ten lectures, which was published in 1969 as *Engineering Law and the ICE Contracts*, which, by 1979, was in its 500-page fourth edition and renowned as the 'engineers' bible'. Word spread: specialisation brought him to work on cases in 65 countries, without qualifying as a solicitor anywhere else, though he is an honorary attorney in Jamaica.

> Anyone in the legal business who has the great privilege of being associated with the idea of justice (whatever that is) – and who treats it as a game – is betraying themselves, their profession, and not doing it for human rights

Disliking division

In 1973, Max's practice worked "in association with" what is now McCann FitzGerald. His specialist practice continued to expand and to include other solicitors who became leaders in the field, such as Tim Bouchier-Hayes and Michael O'Reilly. In 1991, Max merged his practice with McCann FitzGerald.

The solicitors mentioned became partners, but Max remained as a consultant: "I was doing a different kind of work and I wanted to be independent," he says. "I couldn't have been chosen by a better firm really –

FOCAL POINT

law, art and creativity

Max has tried to convince his (multi-IFTA-winning) film director son Lenny that lawyers are creative and artistic too.

"I don't think he's quite convinced. But law is creative and artistic. If you go to look into masses of paper in the hope that you'll find a diamond shining there that's a solution to the problem, you'll be wrong, because there isn't a ready-made solution. You always have to help make the solution with the materials that most judges apply – a mixture of the merits and a framework of law."

Lenny's latest film, *Frank*, starred Michael Fassbender and Maggie Gyllenhaal. "It's really great", he says, "to be so proud of him and all my children."

His favourite fim? "All of them," he laughs, "Lenny is constantly refining his art."

and I'm not just saying that; I have worked with many firms abroad. They were amazing people who invited me to join – Alexis FitzGerald, Tony Dudley, Robert Johnson – none of them are left, sadly. Even now, when the firm invites me back, I always think to myself how very nice and exceptional the lawyers and support staff are."

Max describes himself as outspoken, but his tone is deceptively mild. Among his so-called 'rants' is an opposition to the division in the profession: "I dislike the division because it creates this huge gulf. An awful lot of information goes into the big gap between the solicitor and the barrister."

He believes it is "distressing" and even "demeaning" for a client that, in court, they must put their trust in an advocate who is good at "making up a brief", although new to the people involved and their case.

"The number of times you hear solicitors say, 'If only the barrister had listened to me', or a barrister complain about the information he got from the solicitor. I did advocacy in Irish and international arbitration, and then from about 1982 in the High and Supreme Courts."

What would he propose instead? He strongly supports the *Legal Services Regulation Bill*, which proposes allowing solicitors and barristers to join together fully. But he asks "bigger questions" than the bill addresses.

"I wonder whether there is a university that certain media interviewers and some lawyers go to together, where they both learn the mistaken idea that interviewing – cross-examining – means 'examining crossly'? The idea that we define ourselves as an adversarial system is no longer appropriate. Sometimes my little grandchildren are quite adversarial towards each other. What I say to them is we should be doing 'interactive enquiries' – investigating and analysing the facts and justice together, with you assisting me as the judge – not, of course, in those exact words! It mystifies me that the judge makes the final decision and yet, generally, he's not trusted to intervene to any substantial degree during the hearing."

He pauses: "I sometimes wonder at this age, not having that much breath left, why I wasted so much of it?"

> "I dislike the division in the legal profession because it creates this huge gulf. An awful lot of information goes into the big gap between the solicitor and the barrister"

How has he wasted his breath? "I've had a few awards from the construction industry and so on, but the one that I cherish most is from the Law Society because, many years ago, the then president said to me that I was a dangerous maverick. That's the 'award' I am most proud of, although I wish I'd been a bit more dangerous – or could be in future!

I just wish more had happened really. Because there's not necessarily much justice – but that's all the more reason to try to increase it.

"I always thought justice was like a target where you had to hit the bullseye. But it is, in fact, a wide target, and that's one reason for non-adversarial alternative dispute resolution. Imagine that the judge has got the bow and arrow – he's trying to hit the target, but is being jostled on one side by one set of advocates, and on the other side by another set, so may miss the target altogether. The courts and the alternatives for minimising, managing and resolving disputes must be synchronised and integrated, with all the help now available from science and technology."

Artificial intelligence

Here Max considers the question of whether artificial intelligence will be superior to human. He is excited by scientific and technological developments. He hails the arrival of computing that can crunch data and discover patterns, and asks, *à la* Richard Susskind, if this means "the end of lawyers".

"Science is beginning to realise that we're not as clever as we thought we were, not as rational. We're going down and computers are going up – and computers move fast. They can also augment each other in a way we can't."

In a courtroom, "you could have 100 judges, but you couldn't synchronise them, because they're individuals. Whether the ultimate human judgement will remain superior is an open question. But we must make the best of our potential by combining our fundamental principles with growing new equipment. Not just tinkering with what we have kept well past its shelf-life."

One of Max's 'lesser rants' relates to legal services: "You sell your services – you don't sell yourself." He admits that he was never good at selling: "I used to say I couldn't network in a shoal of cod."

Max is self-effacing when explaining how he came to be a construction law guru, admitting only to stumbling into his specialism. "I was lucky enough to get in very early," he reflects. "I always saw it as a service business, and I was pleased and proud to serve – and criticise – the industry, and, I guess, there was a lot of luck abroad.

"I do think you have to be prepared to give running advice to the people who do the work and who are at risk of causing a calamity on a building site or in a court. I think it was the fact that I was prepared to do that, which opened doors. If people rang up, I would give advice. That, and brevity – at least in drafting documents."

He adds with a smile: "The odd time I used to have to say to a client on the phone, 'hold on, there's someone at the door'. Then I'd run like mad to get a book out of the shelves – preferably my own. I never told them that though…"

FOCAL POINT

law as craftsmanship

I first met Max in the basement of Buswell's Hotel, where he was playing rare Jewish opera recordings for the Count John McCormack Society. Asked about this hobby, he refers to a record he has of Maria Callas rehearsing with other stars, a full orchestra and chorus – and returns, neatly, to computing, intelligence and the law: "We need that level of synchronisation and that kind of order, purpose, professionalism and craftsmanship. I do think a lot of law is craftsmanship."

Music has helped Max Abrahamson to raise four children and travel the world – not to mention staying married. He talks enthusiastically about wood carving and sculpture: "It wasn't so well known, but many Jews were very much craftspeople. Working so much with paper as a lawyer, 'chiselling away' I must say was very beneficial."

SHUFFLING *the deck*

The *Companies Act 2014* will have significant implications for corporate restructurings and reorganisations. Lorcan Tiernan and David O'Mahony set out the procedure under the new act for Irish private companies to perform mergers and divisions

Lorcan Tiernan is partner and head of corporate at Dillon Eustace

David O'Mahony is a corporate solicitor with Dillon Eustace

The *Companies Act 2014*, which is expected to become operative in June 2015, should make it easier for companies to do business in and through Ireland. The act will also have significant implications for corporate restructurings and reorganisations. In addition to retaining the established mechanisms for reorganising companies – for example, schemes of arrangement – the act will introduce new procedures for the merger and division (within Ireland) of private companies.

The merger and division of domestic PLCs are covered under chapters 16 and 17 of the act. Cross-border mergers between Irish and EEA companies are still governed by the *European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2008*.

Merger process

Part 9, chapter 3, of the act deals with mergers and is based on the EC regulations applicable to cross-border mergers. At least one of the merging companies must be a company limited by shares, and none of the merging companies may be a PLC for this part to apply.

The first stage of the process requires certain reports to be prepared and approved.

The directors of the merging companies must first draft and agree common draft terms of the proposed merger. The minimum requirements for these terms are set out in the act. The directors of each merging company must also prepare, except in the case of a merger by absorption, an explanatory report explaining the common draft terms and the legal and economic grounds for, and implications of, the common draft terms. Section 467(4) of the act sets out certain exceptions to this requirement that may be applicable.

at a glance

- Cross-border mergers between Irish and EEA companies are still governed by the *European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2008*
- The act provides for three different types of merger: acquisition, absorption, and by formation of a new company
- There are two types of division provided for under section 487 of the act: division by acquisition and division by formation

> Civil liability can arise for directors and experts for any misconduct in preparing or implementing a merger

PIC: iSTOCK

FOCAL POINT

merger, she wrote

The act provides for three different types of merger:

1) ***Merger by acquisition*** **means a transaction in which a company acquires all of the assets and liabilities of another company (or companies) dissolved without going into liquidation, in exchange for the issue to the members of that company (or those companies) of shares in the first-mentioned company, with or without any cash payment,**
2) ***Merger by absorption*** **means a transaction whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and liabilities to a company that is the holder of all the shares representing the capital of the first-mentioned company,**
3) ***Merger by formation*** **of a new company means an operation in which a company (or companies), on being dissolved without going into liquidation, transfers all its (or their) assets and liabilities to a company that it (or they) form – the 'other company' – in exchange for the issue to its (or their) members of shares representing the capital of the other company, with or without any cash payment.**

Subject to certain exceptions, such as for a merger by absorption, one or more experts must be appointed to examine and make a report to the merging companies' shareholders on the common draft terms. The expert's report must, among other things, state the method used to arrive at the share exchange ratio and give an opinion as to its fairness and adequacy. The full list of requirements for the experts report is listed at section 468.

The common draft terms and a notice (in the form prescribed in section 470 of the act) must be registered in the CRO at least 30 days before the respective resolutions approving the common draft terms are passed. Notice of the delivery of these documents to the CRO must also be published in the *CRO Gazette* and in one national newspaper. The publication requirements may be avoided where, among other requirements, the common draft terms are published on the company website for at least two months. The members of each merging company have a right to inspect the relevant documents free of charge.

> The changes to the mergers and divisions regimes under the new Companies Act are a welcome improvement on the existing methods of reconstruction and reorganisation of companies in Ireland

Approval of the merger

The next step is for the merger to be approved by the merging companies. The act provides two procedures for approving mergers: the summary approval procedure and the alternative approval procedure.

The summary approval procedure is provided for in chapter 7 of part 4 of the act. This is a new validation procedure involving the passing of a special resolution by the shareholders of a company and the swearing by the directors of that company of a statutory declaration of solvency. As the procedure is worthy of an article of its own, we don't propose to go into detail on it here, save as it applies to mergers.

In using the summary approval procedure for a merger, each of the merging companies may, by unanimous resolution of its members and its directors making certain declarations, authorise the merger to be put into effect in accordance with the common draft terms without the need for court confirmation. The approval of the merger by summary approval procedure has the same effect as if the merger had been confirmed by court order.

The requirements of the directors' declaration for the summary approval procedure are set out in the *Companies Act 2014* at section 202.

The declarations of both companies' directors must then be delivered to the CRO within 21 days.

Sections 473 to 482 of the act provide an alternative to the summary approval procedure for merging companies. Each of the merging companies must approve the common draft terms of the merger by special resolution at a general meeting. The merger must then be confirmed by the court.

The act also provides for the situation where the merger has been approved and a minority shareholder wishes to have his or her shares bought out by the successor company. The price for the shares is determined by the stock exchange ratio set out in the common draft terms of the merger.

Court confirmation

The next step of the process is for all of the merging companies to make a joint application to court for an order confirming the merger.

The procedure for the confirmation order is set out at section 480 of the act. If the merger is confirmed, a certified copy of the order is sent to the CRO. Creditors of the merging companies also have a right to be heard in relation to the confirmation of the merger.

On the making of the confirmation order by the court, the following automatically occurs:

- All of the assets of the transferor company transfer to the successor company,
- If the merger is a merger by acquisition or merger by formation of a new company, the members of the transferor company or companies become members of the successor company,
- Any legal proceedings pending against

FOCAL POINT

liability

Civil liability can arise for directors and experts for any misconduct in preparing or implementing a merger. Shareholders may take a claim where they have suffered a loss or damage as a result of misconduct or untrue statements in any of the relevant documents.

Directors could also be criminally liable for untrue statements and exposed to a maximum penalty of €50,000 and/or five years in prison.

Civil and criminal liability can arise for directors and experts for any misconduct in preparing or implementing a division in the same way as applies to a merger.

the transferor company continue against the successor company, and
- The transferor company or companies are dissolved and are replaced in every contract and agreement to which they are a party by the successor party (even if agreement is stated to be personal and unassignable.

It should also be noted that section 504 of the act gives the court power, if it deems it necessary, to authorise the giving of financial assistance for the acquisition of shares that would otherwise be unlawful.

Long division

It is now possible for an Irish company to be divided, so that its undertaking is distributed between two other Irish companies. Chapter 4 of part 9 of the act deals with divisions. The rules in relation to divisions are largely similar, though not identical, to those that apply to mergers.

In this regard, the procedure for mergers and divisions are almost identical. The directors of the participating companies must draft and approve common draft terms of division and an explanatory report, which should both be along the same lines as required for a merger.

Each of the participating companies must approve the division. However, it should be noted that the summary approval procedure available to merging companies is not available for the purposes of giving effect to a division of companies. Instead, the act provides for one unified approval and confirmation procedure.

The procedure for the purchase of minority shares applicable to mergers is also applicable to divisions under section 499 of the act.

FOCAL POINT

the division bell

There are two types of division provided for under section 487 of the act.

Division by acquisition **means a transaction consisting of the following:**

a) Two or more companies, of which one or more but not all may be a new company, acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation, and

b) Such acquisition is:

i) In exchange for the issue to the shareholders of the transferor company of shares in one or more of the successor companies, with or without any cash payment, and

ii) With a view to the dissolution of the transferor company.

Division by formation **of new companies means an operation consisting of the same elements as a division by acquisition consists of, save that the successor companies have been formed for the purposes of the acquisition of the assets and liabilities referred to in that subsection.**

Once the division has been approved by each of the participating companies, they must then apply to court for an order confirming the division.

The order of the court confirming the division shall, from the effective date, have the following effects:
- Each asset and liability of the transferor company is transferred to the relevant successor company or companies,
- Where no request has been made by minority shareholders under section 499, all remaining members of the transferor company except any successor company (if it is a member of the transferor company) become members of the successor companies or any of them as provided by the common draft terms of division,
- The transferor company is dissolved,
- All legal proceedings pending by or against the transferor company shall be continued with the substitution, for the transferor company, of the successor companies or such of them as the court before which the proceedings have been brought may order, and
- The relevant successor company or companies is, or are, obliged to make to the members of the transferor company any cash payment required by the common draft terms of division.

As is the case for a merger, the court may authorise the giving of financial assistance for the acquisition of shares in relation to a division that would otherwise be unlawful.

The changes to the mergers and divisions regimes under the new *Companies Act* are a welcome improvement on the existing methods of reconstruction and reorganisation of companies in Ireland.

Caught in a TRAP

Gary Hayes is a Dublin-based barrister and is a volunteer with the Free Legal Advice Centres. He wishes to thank Jacqueline O'Brien SC for reviewing this article

A word of warning to those who wish to institute proceedings against the administrators of estates of deceased persons – beware the pitfalls in order to avoid being statute-barred, cautions Gary Hayes

The 2012 judgment in *Bank of Scotland Plc v Randal Gray and Mark Edmund Doyle* addresses whether initiation of proceedings against prospective administrators of a deceased's estate – prior to the formal grant of letters of administration – constitutes a fundamental defect in proceedings.

The judgment went some way to clarifying a plaintiff's position against administrators of estates, though questions still remain as to the circumstances where proceedings will be nullified and when they will be permitted to continue.

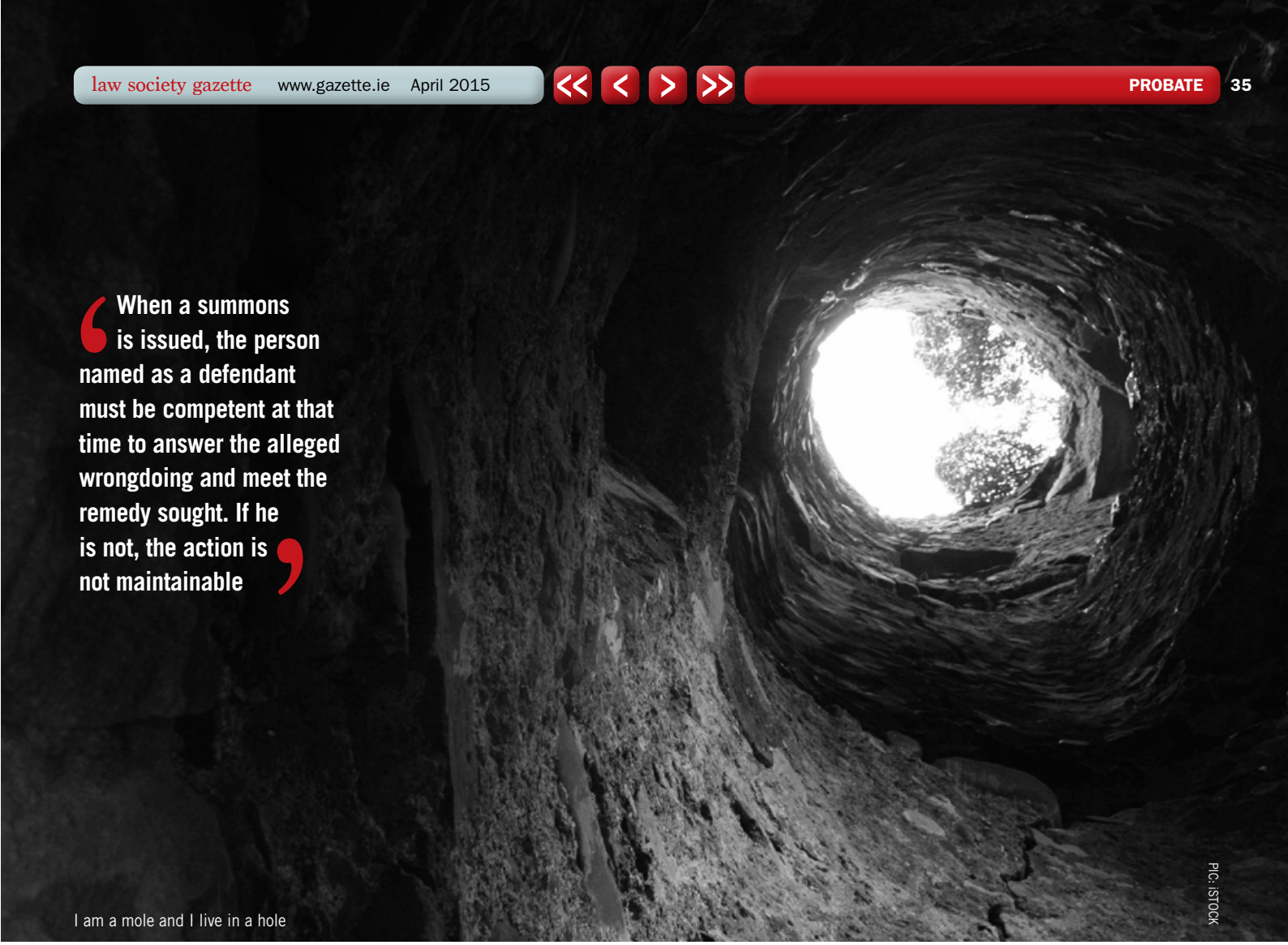
Two other judgments dealt with the same issue: Laffoy J in *Gaffney v Faughan* (2005) and McKechnie J in *Finnegan v Richards* (2007). Reflecting on the judgments, Finlay Geoghegan J observed that, while decided on different facts, the "inescapable conclusion" was that McKechnie J decided he was not bound to follow Laffoy J in *Gaffney v Faughan*.

Procedural rules

The unfortunate position in which a plaintiff may find themselves where they seek to bring an action against the estate of a deceased arises out of two procedural rules. The first is the two-year limitation period under section 9(2)(b) of the *Civil Liability Act 1961* relating to surviving actions against a deceased's estate. The second is that those estates will not vest in the administrator before letters of administration are granted.

at a glance

- *Bank of Scotland Plc v Randal Gray and Mark Edmund Doyle* arose from a summary summons debt-collection matter involving a number of creditors
- A party wishing to recover against the estate must institute proceedings within two years of the death of the estate owner
- Plaintiffs cannot issue proceedings against an estate that has no administrators, however, and may find themselves out of time while they wait for administrators to extract the letters of administration
- When they don't wait and serve on the party who they believe will extract letters of administration, they may find that their proceedings constitute a nullity because they have sued a party not entitled to have service of proceedings
- Three recent judgments in the area have applied the law in slightly different ways



> When a summons is issued, the person named as a defendant must be competent at that time to answer the alleged wrongdoing and meet the remedy sought. If he is not, the action is not maintainable

I am a mole and I live in a hole

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In the case of a complex estate or where an executor fails to execute or renounces their position, the two-year time limit may prove too brief a period in which letters of administration are granted. It is not uncommon that letters are not granted before the expiration of the two-year limitation, which can leave a plaintiff without a party from whom to seek satisfaction.

Laffoy J outlined in *Gaffney*: "It is a fundamental principle of law that the authority of an administrator of the estate of a deceased person derives from the grant of letters of administration and that, until he obtains the grant, the estate of the deceased person does not vest in him."

While the intended individuals may ultimately be appointed administrators of the estate, they may have no capacity to accept service of proceedings from a plaintiff prior to the grant of letters of administration. A prospective plaintiff may find themselves in a quandary where they initiate proceedings against individuals in whom the estate of a deceased has not vested in an effort to comply with the limitation period.

In all three cases, plaintiffs initiated proceedings prior to the grant of letters of administration in order to comply with the limitation period. In each case, the defendant (who ultimately became the administrator after the initiation of proceedings) challenged the validity of the proceedings.

Proceedings properly constituted?

Bank of Scotland v Gray and Doyle arose out of a summary summons on foot of loans made to the deceased during his lifetime. A delay in the grant of administration occurred due to renunciation by the executor and the resulting uncertainty as to who need apply to the court for leave to appoint the administrator. Further contributing to the delay was an assertion by another creditor of the estate, who argued that the estate should be administered in bankruptcy.

In April 2011, the defendants issued a motion pursuant to section 27(4) of the *Succession Act 1965*, which states: "Where by reason of any special circumstances it appears to the High Court (or, in a case within the jurisdiction of the Circuit Court, that court) to be necessary or expedient to do so, the court may order that the administration be granted to such person as it thinks fit."

The motion was heard in July 2011, resulting in an order granting the applicants liberty to apply for a grant of letters of administration at which the plaintiff was a notice party supporting the application.

In the following months, correspondence ensued between the parties, in which the defendants referred to themselves as administrators of the estates (which is worthy of note) and formal payment was sought from them by the plaintiff. Letters of administration were subsequently granted to the defendants, and when the matter was later admitted to the Commercial Court, directions were given, including an exchange of affidavits. At this point, the second-named defendant delivered an affidavit in which, for the first time, the issue as to whether or not the proceedings were properly constituted was raised.

In *Finnegan v Richards*, McKechnie J held, in reference to correspondence that had passed between the parties: "The defendants

have assured the plaintiffs of their confidence in obtaining letters of administration imminently, and thus putting beyond question their capacity to be sued. In addition, why should such a drastic result [the nullification of the proceedings] follow when the defendants raised no objection to the plaintiff suing, and when prior to the grant they entered an unconditional appearance."

McKechnie J held that an inference could be drawn from the conduct of the defendants that the plaintiffs had been led to believe that they were correct to sue the defendants as administrators of the estate. This inference appears to have been drawn due to the fact that the solicitors for the defendant had confirmed that they were authorised to accept service of the pleadings, as well as their subsequent entry of an unconditional appearance.

> These technicalities are a blot on the administration of the law, and everyone except the successful party dislikes them

Unlike McKechnie J, Finlay Geoghegan J in *Gray and Doyle* drew no inferences from the correspondence between the parties, notwithstanding that the correspondence was arguably analogous to that between the parties in *Finnegan v Richards*.

The doctrine of 'relation back'

The doctrine of 'relation back' was examined by Laffoy J and McKechnie J as a possible retrospective remedy to the absence of administrators at the stage of initiation of proceedings. McKechnie J referred to the 1944 judgment in *Ingall v Moran*, in which Luxmore LJ touched upon 'relation back'. In that case, Luxmore LJ distinguished the role of executor from that of an administrator and stated: "It is well established that an executor can institute an action before probate of his testator's will is granted, and that, so long as probate is granted before the hearing of the action, the action is well constituted … an administrator is, of course, in a different position, for his title depends solely on the grant of administration … in order to maintain an action, the plaintiff must have a cause of action vested in him at the date of issue of the writ."

McKechnie J took issue with the fact that the case of *Austin and Others v Hart* (1983) had not been opened to Laffoy J in Gaffney. While the facts of *Austin v Hart* were not relevant to the proceedings in question, the case dealt with 'relation back', where, if employed, it would remedy the plaintiff's inability to validly initiate proceedings against an executor where the limitation had expired.

McKechnie J cited the judgment of Lord Templeman, who referred to previous judgments expressing unease at a plaintiff's apparent inability to properly constitute proceedings where letters of administration had not yet been granted. One of the authorities cited by McKechnie J as exemplifying such judicial unease was the judgment of Singleton LJ in the 1953 case of *Finnegan v Cementation Company Limited*: "These technicalities are a blot on the administration of the law, and everyone except the successful party dislikes them."

McKechnie J and Laffoy J's views diverge on the applicability of the doctrine of 'relation back', however. Contrary to the views of McKechnie J in *Gaffney*, Laffoy J held in stark terms: "When a summons is issued, the person named as a defendant must be competent at that time to answer the alleged wrongdoing and meet the remedy sought. If he is not, the action is not maintainable. If he subsequently obtains a grant of administration, that will not cure the fundamental defect and render the action maintainable."

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Unusual circumstances

McKechnie J held, however, that in light of the fact that *Austin v Hart* was not opened to Laffoy J: "In these unusual circumstances, I cannot be sure that *Gaffney v Faughan* represents the conclusive views of Laffoy J on the point. Therefore, I feel free to consider the matter myself."

McKechnie J held that, where there was a *prima facie* case against the estate of the deceased, he saw no reason why the facts could not fall comfortably within the doctrine of 'relation back'. Further, he stated that even if, as in *Ingall v Moran*, the writ was premature and irregular, there was no reason why he should hold that that finding should result in the nullification of proceedings. This was true especially where the plaintiff was assured by the defendant that they would obtain letters of administration imminently and had, therefore, put beyond question their capacity to be sued: "Even if I should be incorrect in these conclusions, there is another reason why I would refuse the defendants application [to have pleadings declared a nullity]", where, "in such circumstances it would be entirely unconscionable to permit the defendants to now rely upon this point."

> **An inference could be drawn from the conduct of the defendants that the plaintiffs had been led to believe that they were correct to sue the defendants as administrators of the estate**

McKechnie J referred to *Doran v Thompson* (1978) in which Henchy J stated: "In a claim for damages, a defendant has engaged in words or conduct from which it is reasonable to infer, and from which it was, in fact, inferred that liability would be admitted and, on foot of that representation, the plaintiff has refrained from instituting proceedings within the period described by statute, the defendant will be held stopped from escaping liability by pleading the statute. The reason is that it would be dishonest or unconscionable for the defendant, having misled the plaintiff … to escape liability."

McKechnie J, referring to Henchy J in *Doran v Thompson*, stated: "The principles outlined in that passage apply with equal force and directness to this case. Accordingly … I would conclude that the defendants are estopped from raising what I have described as 'Issue No 1' in this case."

The relevant case

Finlay Geoghegan J distinguished the facts of *Gray and Doyle* on the unique circumstance of the High Court order of 11 July 2011. The judge went on to say that, after this order was made: "They still had to comply with certain formalities in accordance with the *Rules of Court* before the grant of administration issued. However, when the grant issued, on its face it records that it is being issued to them as 'the persons appointed by the court pursuant to section 27(4) of the *Succession Act 1965* to be the administrators with said will annexed to the estate of the deceased'."

Finlay Geoghegan J found that: "It cannot be said that the defendants had 'no status' in relation to the estate of the deceased subsequent to 11 July 2011."

She stated that the existence of the High Court order required a different conclusion than that reached by Laffoy J in *Gaffney*. Namely, that the defendants were "contingently competent" to represent the estate in circumstances where they had been appointed in a representative capacity as administrators. The existence of that contingent competence was, in her judgment, sufficient to enable valid proceedings to be issued against them in a representative capacity where a claim was being made against the estate. The status imputed to the defendant appears to be based on a species of 'relation back', though not explicitly stated as such by Finlay Geoghegan J.

Potential risk

Of note is Finlay Geoghegan J's caution that, in a different situation, a potential risk may arise for a plaintiff instituting proceedings against persons in whose favour an order under section 27(4) of the *Succession Act 1965* had been made, prior to the issue of a grant.

The possibilities of what courses of action are left to a plaintiff had not been addressed if, for example, the individual in whose favour the order had been made did not then extract the grant. A plaintiff may be forced to keep a close eye on the activities of the defendant to ensure that, where an order had been made under section 27(4) of the 1965 act, the plaintiff subsequently extracts the grant of letters.

As outlined by McKechnie J, the appointment of an administrator *ad litem* in order to come within the limitation period would be essential to secure the issue of properly constituted proceedings.

look it up

Cases:

- *Austin and Others v Hart* [1983] 2 WLR 866
- *Bank of Scotland Plc v Randal Gray and Mark Edmund Doyle* [2012] IEHC 545
- *Doran v Thompson* [1978] IR 233
- *Finnegan v Cementation Company Limited* [1953] QB 688, 699
- *Finnegan v Richards* [2007] IEHC 134
- *Gaffney v Faughan* [2005] IEHC 367
- *Ingall v Moran* (1944) KB 160

Legislation:

- *Civil Liability Act 1961*, section 9(2)(b)
- *Succession Act 1965*, section 27(4)

dance of the seven VEILS

A recent High Court judgment concerned the disclosure requirements of the principal shareholder in a group of companies in family law proceedings. Ann Fitzgerald looks at piercing the corporate veil and candour in family law

Ann FitzGerald is a Cork-based barrister

In an application for judicial separation in *SQ v TQ* (2014), the wife had sought the usual range of ancillary orders. The husband, with a controlling interest in a group of companies, had been a director and chief executive of the parent company holding 90% of the shares. The group employed some 500 worldwide and, in the husband's affidavit of means sworn in March 2013, he valued his shares at US$5 million.

Later, the husband arranged for an accountant's report on his shareholding, and the court noted that nothing in the report "reflects any concern on the part of the company or the husband that they may have risked a breach of their fiduciary duty to the company or that they were improperly disregarding the separate legal personality of the company".

The wife sought disclosure from the husband to assist the forensic accountants appointed by her to value the husband's shareholding. The husband refused the request, saying that he was "was neither prepared nor in a position to provide information pertaining to the company its operations, its management or accounts".

The wife sought an order under section 38 of the *Family Law Act 1995* for particulars of his property or income, and a direction to comply, and an order for discovery under order 70A of the *Rules of the Superior Courts*. In seeking discovery, the wife requested a direction of the court that the husband should not be entitled to pursue or defend ancillary proceedings, save as permitted by the court.

> **The court found that the wife's request for disclosure did not amount to piercing the corporate veil of the companies in which the husband had an interest**

In addressing disclosure, the court placed reliance on the 2013 judgments of the British Supreme Court in *Prest v Petrodel*, where the court conducted an analysis of the limited circumstances in which a court may 'pierce the corporate veil' and include a company's assets *per se* in making provision for a spouse.

'Neither relevant nor necessary'

The husband contended that the information sought was neither relevant nor necessary and asserted that the material listed in the request from the wife was not within his possession or power, having regard to the separate legal personality of the company.

The court disposed of the first leg of the husband's argument by reference to the fact that the husband's accountants had been given unfettered access to such documentation and information required to arrive at a valuation, and that it was fair and just for the wife's accountants to have similar access and "in aid of the discharge by the court of its quasi-inquisitorial role".

Later, Keane J declared that the "obligations of the court ... go significantly further than they would in respect of discovery in adversarial litigation generally". The court explicitly distinguished the obligations both of the court and the parties, which it found to be qualitatively different in family law matters than in litigation generally, and set the bar for such disclosure at the highest level.

Inquisitorial role

The court referred to the 2008 judgment of Abbott J in *W v W*, where the court found that its obligation to enquire as to the adequacy of provision in judicial separation or divorce

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derived from the provisions of article 41 of the Constitution.

Mr Justice Keane then quoted, with approval, from the judgment of Baroness Hale in *Prest* that "there is a public interest in spouses making proper provision for one another ... This means that the court's role is an inquisitorial one. It also means that the parties have a duty, not only to one another but also to the court, to make full and frank disclosure of all the material facts which are relevant to the exercise of the court's powers ... if they do not do so, the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities in deciding what the facts are."

Keane J accepted this statement as an appropriate description of the jurisdiction of the court when the obligation to make proper provision arises. Given the Constitutional backdrop, it is likely that the inquisitorial role of the court will be carried out with rigour.

Piercing the corporate veil?

The provisions of section 16(2) of the 1995 act sets out that the court is obliged to ensure that "proper provision" is made for each of the spouses and any dependent children, having regard to the property and

at a glance

- Disclosure to the highest level will be required of all financial information, whether of an individual or of a company, in family law proceedings
- The court adopts an inquisitorial role and may draw an inference from a spouse's failure to be candid and forthcoming in disclosure
- There is no provision under Irish law permitting the court to pierce the corporate veil – save in the limited circumstances outlined in *Prest*. This applies in family law as it does in other areas of the law
- A court may find that a company holds assets on a resulting trust for a shareholding spouse, and this is a highly fact-specific issue

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financial resources of the parties now and in the foreseeable future. In *Prest*, the court found that "the breath and inclusiveness of this definition of the relevant resources of the parties means that a spouse's ownership and control of a company, and practical ability to extract money or money's worth from it, are unquestionably relevant to the court's assessment of what his resources really are. It does not follow that while one spouse's worth may be boosted by his access to the company's assets, that those assets are specifically transferrable to the other."

In addressing the second leg of the husband's argument in *SQ v TQ*, where he contended that the court should have regard to the separate legal personality of the company, the court found that the wife's request for disclosure did not amount to piercing the corporate veil of the companies in which the husband had an interest.

The court found that the wife's request merely sought to carry out an assessment of the husband's worth and did not concern a proposal – as in *Prest* – to transfer any of the company's assets to the wife. Mr Justice Keane continued: "For the avoidance of doubt ... I accept that it would be wrong in law to make any order directed to the company (which is not a party to the proceedings or to the present application) or to make any order that treats the property of the company as in effect that of the husband."

This forthright statement of the law in this jurisdiction makes it abundantly clear that piercing the company veil will not be permissible, save possibly in the limited kind of circumstances outlined in *Prest*.

(The husband in *Q* argued, in addition, that the documents sought by the wife were not within his possession or power. The court undertook a review of the recent Irish case law, which I will not examine here.)

Candour and disclosure

In *Prest*, the appeal to the British Supreme Court concerned a number of companies belonging to the Petrodel group, which the judge found to be wholly owned and controlled by the husband. A number of companies were joined as additional respondents to the wife's application for ancillary relief. The issue was whether the court had power to order the transfer of seven properties to the wife, given that they legally belonged not to the husband, but to his companies.

Lord Sumption, giving the lead judgment of the court in *Prest*, found that "the proper exercise of these powers [under British legislation] calls for a considerable measure of candour by the parties in disclosing their financial affairs, and extensive procedural powers are available to the court to compel disclosure if necessary. In this case, the husband's conduct of the proceedings has been characterised by persistent obstruction, obfuscation and deceit, and a contumelious refusal to comply with rules of court and specific orders."

> This forthright statement of the law in this jurisdiction makes it abundantly clear that piercing the company veil will not be permissible, save possibly in the limited kind of circumstances outlined in Prest

In his judgment, Lord Sumption found that the court's power to 'pierce the corporate veil' may only arise in limited circumstances where a person, under an existing legal obligation, liability, or legal restriction deliberately evades or frustrates their enforcement by interposing a company under his control.

He was of the view that the facts in *Prest* could not justify the lifting of the corporate veil by reference to any general principle of law. He explained that, if the company's property is to be treated as property to which its principal shareholder is entitled, then the company's assets would be vulnerable to a property adjustment order being made over its assets, even where "the sole shareholder scrupulously respects the separate legal personality of the company and the requirements of the *Companies Acts*". This could not be contemplated, save in exceptional circumstances, which did not apply in *Prest*.

(The other judgments of the Supreme Court in *Prest* also envisage that instances where the corporate veil might be pierced were likely to be very rare.)

Resulting trust

In *Prest*, the court went on to examine the circumstances in which the seven relevant properties had been acquired by the companies in the first instance and found that, after close scrutiny, they were held by them on a resulting trust for the husband. This paved the way for orders to be made transferring the properties to the wife in satisfaction of provision for her.

Lord Sumption concluded that the question of whether a trust has been established is "a highly fact-specific issue and the court was entitled to be sceptical about whether the terms of occupation [of the family home] are really what they are said to be, or are simply a sham to conceal the reality of the husband's beneficial ownership".

This trust issue was not relevant in *Q*, but may be an avenue worth exploring should circumstances present themselves – where assets are held by a company, such that the beneficial ownership thereof lies elsewhere, with a shareholding spouse.

look it up

Cases:

- *Prest v Petrodel* [2013] UKSC 34
- *SQ v TQ* [2014] IEHC 389
- *W v W* [2008] IEHC452

Legislation:

- *Family Law Act 1995* (sections 9 and 16)
- *Family Law (Divorce) Act 1996* (sections 14 and 20)
- *Rules of the Superior Courts*

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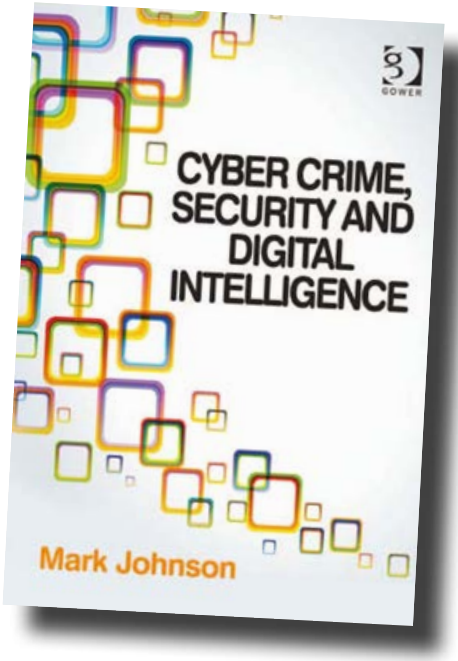


Mark Johnson. Gower Publishing (2013), www.gowerpublishing.com. ISBN: 978-1-4094-5449-6. Price: Stg£70 (incl VAT).

In the preface, the author outlines the freedom that the internet has given him and all of us, and recounts the fears that cybercrime and cyber-threats pose in his consultancy business. He first became involved in high-technology risk management in the late 1980s, when he joined Cable & Wireless as a communications fraud manager and so has extensive experience in this area.

Since 2001, he has been operating his own consulting business, the Risk Management Group, providing consultancy in cybercrime, and he has engaged with major fraud, revenue assurance, cyber-security and corporate digital intelligence projects worldwide.

This book is his second on high-technology risk. His experience and depth of knowledge is evident in the clear analysis and explanation of the topic. He focuses on how cybercrime has evolved and the nature of the latest threats, and he sets out the issues that have yet to be addressed by codified rules and practice guidelines. As well as being a technically detailed book, he also includes many non-technical explanations of how cyber-attacks are executed, avoided, and to be controlled.

Some parts of the book are quite technical, but his conclusions at the end of each chapter are crisp and succinct. He drives home a message that there is a need for business in strategic sectors to adopt cyber-security protocols and standards that live up to national cyber-security resilience benchmarks – which, manifestly, is not being done by a large number of corporations at present. Who – other than the larger firms – has a threat assessment, an asset register, controls assessment, a risk register and response plan that will provide a sound basis for prioritising fixes, for training staff, for defining audit and penetration testing tasks, and for reporting on risks to senior management? In answer to that, he sets out controls that all businesses should apply. He also details an interesting chapter on biometrics and the emerging technologies in that field.

Finally, he sets out an interesting chapter on encryption, which will enlighten any reader. Unfortunately, with the pace of development in technology and the internet in general, his book will be out of date relatively shortly but is, currently, a very good explanation of cyber-risk to all interested.

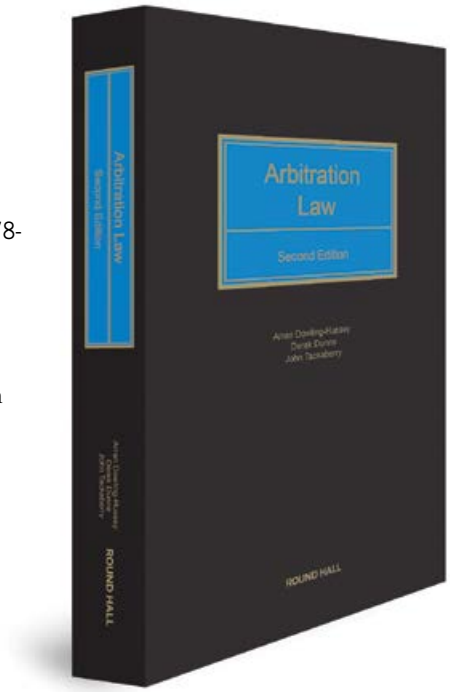
Greg Ryan is principal of Dublin law firm Greg Ryan Solicitors.

new books available to borrow

- Carr, Indira and Peter Stone, *International Trade Law* (5th ed; Routledge, 2014)
- Feeney, Michael, *The Taxation of Companies 2015* (19th ed; Bloomsbury Professional, 2015)
- Hober, Kaj and Howard S Sussman, *Cross-examination in International Arbitration* (OUP, 2014)
- Hodgkinson, Tristram and Mark James, *Expert Evidence: Law and Practice* (4th ed; Sweet & Maxwell, 2015)
- Hughes, Christopher and Stephen Hughes, *Criminal Procedure in the District Court: Law and Practice* (Clarus Press, 2015)
- Merkin, Robert, *Colinvaux's Law of Insurance* (10th ed; Thomson Reuters, 2014)

Arbitration Law (2nd ed)

Arran Dowling-Hussey and Derek Dunne.
Round Hall (2014), www.roundhall.ie. ISBN: 978-0-4140-349-07. Price: €285 (incl VAT).



It can rarely be truly said of a publication that "this is a book that the legal professions have been eagerly awaiting". However, this is a book that the legal professions have been eagerly awaiting.

In 2008, the authors produced an authoritative account of arbitration law in Ireland, the publication of which coincided with the publication of the *Arbitration Bill 2008*, which proceeded to become the *Arbitration Act 2010*, repealing the entire preceding legislative framework for arbitration. Consequently, while still comprised of salient information, the first edition had a somewhat truncated shelf-life.

Updated to take account both of the *Arbitration Act 2010* and recent High Court judgments, the new edition also includes analysis of cases in respect of legal provisions from the statutes repealed and yet largely re-enacted by the *Arbitration Act 2010*, and analysis of cases from other jurisdictions relevant to the interpretation of the new law in Ireland.

The chapters are divided in a logical manner, beginning with an analysis of arbitration in context; then detailing the qualifications, duties and powers of an arbitrator; before discussing the arbitration agreement, together with considering the essential elements and enforceability thereof.

The next three chapters discuss the fundamental elements of the arbitration itself, the arbitral award, and costs in arbitration. These topics, being crucial for any practitioner or arbitrator, are treated in great depth and with cogent detail.

Notwithstanding that the *Arbitration Act 2010* reduced the potential for court involvement in arbitration, some scope for involvement remains, and this is assessed by the authors in the next two chapters examining potential court involvement – before, during, and after the arbitration. The final chapter looks at the practice and procedure involved in the various court proceedings that may arise.

The book concludes with a useful appendix of precedent documents and pleadings, though it is to be regretted that an updated precedent 'award on merits' and 'award on costs' (as appeared in the first edition) were not included.

Now that the second edition is available, the Irish legal professions have the benefit of a contemporary seminal tome dedicated to arbitration law and Ireland, for which the authors are to be commended.

Richard Hammond is a partner at Hammond Good Solicitors in Mallow and is a fellow of the Chartered Institute of Arbitrators.

new books available to borrow

- Plender, Richard *et al*, *The European Private International Law of Obligations* (4th ed; Thomson Reuters, 2015)
- Sommerlad, Sonia *et al*, *The Futures of Legal Education and the Legal Profession* (Hart, 2015).
- Stilton, Andrew, *Sale of Shares and Businesses: Law, Practice and Agreements* (4th ed; Thomson Reuters, 2015)
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BRENDAN LARNEY 1958 – 2015

On 19 February 2015, a tremendous sadness descended upon those who knew and loved Brendan Larney on hearing of his death after a long illness.

Brendan was the eldest of five children. He was born in Toronto on 20 August 1958 and was reared in Louth when his family settled back there in 1960. After attending National School until 1970, he moved to Patrician High School in Carrickmacross from 1970 to 1972 and completed his secondary level education in De La Salle College, Dundalk. His student years – 1975 to 1978 – were spent at UCD, where he was conferred with a BCL.

He loved Gaelic football and soccer. He played Gaelic for St Mochta's GFC and, in 1981, won a Co Louth Intermediate Championship Medal. He was also a lifelong follower of Southampton FC. He was on the committee responsible for overseeing the restoration of the Church of the Immaculate Conception in Louth Village after the church was destroyed by fire in 2005.

In 1981, Brendan became apprenticed to Brian Berrills of Berrills & Crilly, Solicitors, with offices in Dundalk and Carrickmacross. Brendan qualified as a solicitor in Trinity Term 1985. In that year, he took up employment in the firm of Wells & O'Carroll, Carrickmacross, where he remained until 1990, when he rejoined Berrills in Dundalk.

It was always Brendan's ambition to set up his own practice in Carrickmacross, and he finally did so in April 1991. He practised as Brendan Larney & Co, firstly at Main Street and then at Farney Street, where his practice still continues.

He married his beloved wife, Kathrina (née Cunningham), in Carrickmacross on 25 August 1995 and they took up residence at Drumgowna, Co Louth, before moving to Crann Nua, Carrickmacross, about 16 years ago. They were blessed with three beautiful children: Patrick (18), Emma (14) and Megan (10).

Brendan was fully aware of the seriousness of the illness from which he was suffering over the past number of years, but he bore that suffering and that knowledge with incredible fortitude. He rarely spoke about his illness and carried on with his life as if he were in his full health. He had been receiving treatment in a Dublin hospital at the same time as his late lamented colleague, Niall Dolan, who passed away last June. Even up to two weeks before his death, Brendan made light of his illness. His greatest joy was to spend time with his family and friends (for whom he made all the time in the world).

Brendan had a wonderful sense of humour and treated everybody just the same. Indeed, it has been said that he ran his practice in an old-fashioned way and, if that means with an innate sense of decency, openness and courtesy (which reflected his personality as a gentle, kind, honest and loyal man), then he was, indeed, old-fashioned. The huge attendance at his funeral by colleagues, clients and friends was testament to the extraordinary esteem and regard in which he was held.

He will be missed most of all by Kathrina, Patrick, Emma and Megan, all of whom he loved so dearly. He will also be profoundly missed by his mother Bridget and siblings Paschal, Declan, Mary and Patrick; sisters-in-law Bernadette and Máire; and his nieces and nephews. (His father, Patrick (Pat), predeceased him on 1 May 2009.) Our thoughts and prayers are with all of them. Outside of his family, he will be sorely missed by his staff (not least Imelda) and his colleagues and friends who had come to enjoy his company so much. His memory will ever live on in their hearts and minds.

"And then I came to the haggard gate,
And I knew as I entered that I had come
Through fields that were part of no earthly estate."
(*Tarry Flynn*, Patrick Kavanagh)

Curae leves loquuntur ingentes stupent.

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SPRING PROGRAMME	DATE	FEE
Certificate in Data Protection Practice	Thursday 16 April	€1,200
Certificate in Charity Law, Trusteeship and Governance* (new)	Friday 17 April	€1,200
Certificate in Advanced Negotiation**	Friday 24 April	€1,650
Certificate in Conveyancing and Property Law	Tuesday 5 May	€1,200
Certificate in Banking Law, Practice and Bankruptcy	Friday 22 May	€1,200
Certificate in Company Secretarial Law and Practice (new)	Tuesday 16 June	€1,300
ADVANCE NOTICE		
Diploma in Law	Friday 11 September	€4,400
FREE COURSE		
MOOC in Technology Law (Register or learn more at: https://mooc.lawsociety.ie)	Tuesday 12 May	Free

* 10% discount for solicitors and members of The Wheel
** Module 1: 24 & 25 April, Module 2: 22 & 23 May and Module 3: 26 & 27 June

CONTACT DETAILS

E: diplomateam@lawsociety.ie
T: 01 672 4802
W: www.lawsociety.ie/diplomacentre

Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

CONVEYANCING COMMITTEE

Change of ownership of domestic septic tanks

Under section 4 of the *Water Services Act 2007* (as inserted by section 70D of the *Water Services (Amendment) Act 2012*), a person who sells a premises connected to a "domestic waste water treatment system" (which would include a septic tank) is obliged to furnish a valid certificate of registration in respect of the treatment system to the purchaser of the premises.

After completion of the sale, it is the purchaser of the premises who is obliged to notify the relevant water services authority of the change of ownership of the premises. It is not recommended that solicitors take on the obligation of making this notification. Purchasers should be informed of this obligation.

At present, there is not a form for notification of change of ownership on the website www.protectourwater.ie, which is a web-site shared by the various water services authorities. However, purchasers can notify change of ownership:

- **By email to support@protectourwater.ie, or**
- **By post to Protect Our Water, PO Box 12204, Dublin 7.**

The particulars to be furnished are the number of the certificate of registration and the name and address of the purchaser. The purchaser will then receive a new certificate of registration by post.

GUIDANCE AND ETHICS COMMITTEE

Ten top tips for outstanding client care

In running our business, we are always trying to obtain new clients. We take the most extraordinary measures. We advertise in expensive magazines, we put up websites, we print leaflets, we go on Facebook, we go on LinkedIn and, indeed, we try out virtually every method we can to generate work. This is a very desirable process, but if we don't look after clients or treat them well, then all our efforts are in vain.

We may get them on a one-off basis, but they never return. Holding the client is the real secret because, if we hold the client, then he or she brings in more business, more clients and more goodwill, and so our business is generated on an ongoing basis. Over the last 45 years, I have devised a number of tips that I believe are helpful when it comes to client care.

1) Have the reception in your office designed in such a way that the client feels relaxed and welcome. An offer of a cup of tea can help and a few flowers can achieve the same result. For many, going to a solicitor can be a daunting experience, especially after an accident or where there has been a death in the family or the prospect of a marital breakup. Tension can be even greater when there are criminal charges with the prospect of imprisonment.
2) Welcome the client when you meet him/her and introduce a few trivialities, just to lighten up the situation and reduce tension.
3) If you see the client in a consultation room, try not to separate yourself from him/her with a desk or table. This creates a barrier. Sit facing the client without any obstruction.
4) Talk generally about his/her problem first and before taking notes.
5) Always look the client in the eye and show genuine concern. Never give the appearance of being in a rush. Even if the legal advice being sought is trivial, show concern. Talk about section 68 when it is diplomatic to do so, and when you have properly assessed the case or problem.
6) Always return telephone calls, preferably fully briefed. When you receive a call or return one, and find yourself in a situation where you either cannot remember the client or cannot remember the facts of the case, stay cool. Tell him/her you don't have the file before you and invite the client to talk. Very often when this happens, you will remember the facts of the case. If this still does not work, tell the client you need the file because his/her business is important and promise to return the call straightaway. Review the file and be sure to honour your promise. Usually the client's main concern is that the file is being dealt with and that you are on top of the situation.
7) Always reply to correspondence quickly. In the case of email, try to do it on the same day.
8) Where you have a difference of opinion with the client, tell him/her that the office procedure is to have another colleague inspect the file and try and resolve the problem. Hand over the file to your colleague quickly and hope that by so doing the problem is actually resolved. Normally it is.
9) Where you have a problem file that you find hard to deal with, hand it over to someone else in the office, who will probably see it in a different light. Don't sit idly by. Your partner or assistant may, with a fresh outlook, resolve the issue fairly promptly.
10) Give the client a small token if you can. Pens and key rings are highly acceptable and usually bring a smile. I have gone so far as to produce telephone cards, which went down extremely well. I also gave the clients old Irish pennies in mint condition. Some of the clients have these after many years and still talk about them. Nobody expects to walk into a solicitor's office and walk out with a present. They will always remember the gesture.

I honestly believe that, with good client care and a job well done, very little advertising is necessary and, as the barristers say, "nothing further occurs".

John Glynn is a member of the Guidance and Ethics Committee.

SBA report and accounts

Solicitors' Benevolent Association

151st report, 1 December 2013 to 30 November 2014

The Solicitors' Benevolent Association (an independent organisation not in any way under the control or management of the Law Society) had its origin in the year 1863 when, to perpetuate the memory of the late Richard Meade, a fund was collected to found a memorial. It was subsequently resolved that the fund should be applied in a manner consistent with Meade's known benevolence and philanthropy. Accordingly, the sum collected was handed over to the trustees as the foundation of a society to be called 'The Meade Benevolent Association for the relief of necessitous members of the solicitors' profession, their wives and families'.

Subsequently, on 11 June 1864, it was resolved to extend this scheme, and the name was altered to that of 'the Solicitors' Benevolent Association, Ireland, founded in memory of Mr Richard Meade'.

In 1865, the first full year of operation, the association distributed the sum of £80. Last year, the figure grew to €500,436. By 1894, just 25% of solicitors contributed to the funds. Last year, the equivalent number was 78%.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, 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 of 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 John P Shaw, past-president of the Law Society of Ireland, Richard Palmer, past-president of the Law Society of Northern Ireland, Ken Murphy (director general), Alan Hunter (chief executive), and the personnel of both Societies.

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, Ashfield Media Group Ltd, Donegal Bar Association, Dublin Solicitors' Bar Association, Kildare Bar Association, Limavady Solicitors' Association, Local Authorities Solicitors Bar Association, Medico-Legal Society of Ireland, Midland Solicitors' Bar Association, Sheriffs' Association, Southern Law Association, Tipperary Bar Association, and Wexford Bar Association.

I would also appeal to those solicitors who are applying for membership only of the Law Society to pay the subscription to the association, which is only €50 per year.

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. Information can also be obtained from the association's website at www.solicitorsbenevolentassociation.com. 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 p33 of the *Law Directory 2014*.

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

RECEIPTS AND PAYMENTS A/C FOR THE YEAR ENDED 30 NOV 2014

	2014	2013
RECEIPTS	€	€
Subscriptions	**375,477**	385,755
Donations	**157,341**	251,948
Legacies	**10,000**	–
Investment income	**47,004**	42,861
Bank interest	**2,872**	3,000
Currency gain	**2,127**	3,928
Repayment of grants	**52,550**	500
	647,371	687,992
PAYMENTS		
Grants	**500,436**	479,420
Bank interest and fees	**1,338**	918
Administration expenses	**46,232**	43,390
	548,006	523,728
OPERATING SURPLUS FOR THE YEAR	**99,365**	164,264
Profit on disposal of investments	**183**	84,484
Provision for write down of quoted investments in prior periods no longer required	**69,479**	12,871
SURPLUS FOR THE YEAR	**169,027**	261,619

DIRECTORS AND INFORMATION

Directors
Thomas A Menton (chairman)
Brendan Walsh (deputy chairman)
Caroline Boston (Belfast)
Liam Coghlan (Killarney)
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 TD O'Dwyer (Ballyhaunis)
Colm Price (Dublin)
James I Sexton (Limerick)
John Sexton (Dublin)
Andrew F Smyth (Dublin)
Brendan J Twomey (Donegal)

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

Secretary
Geraldine Pearse

Auditors
Deloitte & Touche,
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

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

Law Society of Northern Ireland,
Law Society House,
96 Victoria Street,
Belfast BT1 3GN

Charity number: CHY892

legislation update

10 February – 9 March 2015

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

SELECTED STATUTORY INSTRUMENTS

Commission of Investigation (Mother and Baby Homes) and Certain Related Matters Order 2015

Number: SI 57/2015

Establishes and sets out terms of reference for the Commission of Investigation into Mother and Baby Homes.

Commencement: 17/2/2015

Derelict Sites (Urban Area) Regulations 2015

Number: SI 54/2015

Prescribe areas in the counties of Carlow, Cavan, Clare, Cork, Donegal, Galway, Kerry, Kilkenny, Limerick, Longford, Louth, Mayo, Meath, Monaghan, Offaly, Sligo, Tipperary, Waterford, Westmeath, Wexford and Wicklow indicated to be urban areas for the purposes of the *Derelict Sites Act 1990*.

Commencement: 3/2/2015

European Communities (Freedom to provide Services) (Lawyers) (Amendment) Regulations 2015

Number: SI 45/2015

Extend the *European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979-2008* to lawyers from the Republic of Croatia and thereby give further effect to Council Directive 77/249/EEC, which facilitates the exercise by lawyers from other member states the freedom to provide services in the State.

Commencement: 2/2/2015

European Communities (Lawyers' Establishment) (Amendment) Regulations 2015

Number: SI 46/2015

Extend the *European Communities (Lawyers' Establishment) Regulations 2003-2008* to lawyers from the Republic of Croatia and thereby give further effect to Directive 98/5/EC, which facilitates lawyers whose qualifications were obtained in another member state to practise in the State.

Commencement: 2/2/2015

European Union (Application of Patients' Rights in Cross Border Healthcare) (Amendment) Regulations 2015

Number: SI 65/2015

Give further effect to Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 and Commission Implementing Directive 2012/52/EU of 20 December 2012.

Commencement: 23/2/2015; regulation 7: 31/3/2015

National Vehicle and Driver File (Access) Regulations 2015

Number: SI 64/2015

Prescribe the persons or categories of person who may have access to the National Vehicle and Driver File records established under section 60 of the *Finance Act 1993* and the purpose for such access.

Commencement: 19/2/2015

A list of all recent acts and statutory instruments is published in the free weekly electronic newsletter LawWatch. *Members and trainees who wish to subscribe, please contact Mary Gaynor, m.gaynor@lawsociety.ie.*

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 Elizabeth McGrath, a solicitor formerly practising as O'Connell McGrath Solicitors, 5 Athlunkard Street, Limerick, and in the matter of the *Solicitors Acts 1954-2011* [11016/DT118/12 and High Court record 2014 no 23SA]
Law Society of Ireland (applicant)
Elizabeth McGrath (respondent solicitor)
On 8 October 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Allowed a minimum deficit of €80,000 on her client account as of 30 September 2011,
2) Allowed this minimum deficit to increase to €91,026.84 as of 20 December 2011,
3) Allowed client ledger debit balances amounting to €66,565.49 to arise as of 30 September 2011,
4) Made payments of €40,082.28 from the client account for wages and drawings and other business expenses up to 30 September 2011,
5) Made further payments of €4,714.11 in respect of wages, drawings and office expenses from the client account in October 2011,
6) Made further payments of €4,411.74 in respect of wages and other drawings from other office expenses drawn from the client account in November 2011,
7) Retained €16,450 in the client account in respect of stamp duty that should have been paid in March 2010 and left the deed unstamped,
8) Transferred one round sum amount of €12,500 to the office account in respect of costs and disbursed the VAT element of some costs from the client account.

The tribunal recommended that the matter be sent forward to the High Court and, on 28 April 2014, the President of the High Court ordered that the name of the respondent solicitor should be struck from the Roll of Solicitors and that the respondent solicitor pay the Society the costs of the proceedings before the disciplinary tribunal and the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Heather Perrin, formerly practising as Heather Perrin, Solicitor, 54 Fairview Strand, Fairview, Dublin 3, and in the matter of the *Solicitors Acts 1954-2011* [4732/DT154/12]
Named client (applicant)
Heather Perrin (respondent solicitor)
On 18 November 2014, the Solicitors Disciplinary Tribunal found the respondent guilty of misconduct in her practice as a solicitor in that she:

1) Failed adequately to account for funds that she acknowledged stood to the applicant's credit in her accounts,
2) Failed to provide the applicant with any supporting documentary evidence in respect of the payments that she says that she made to him in cash.

The tribunal ordered that the respondent:

1) Do stand censured,
2) Pay a sum of €5,000 to the compensation fund,
3) Pay the whole of the costs of the applicant including any person appearing before them as taxed by a taxing master of the High Court in default of agreement.

In the matter of James M Sweeney, a solicitor formerly practising as James M Sweeney at 14 New Cabra Road, Phibsborough, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3572/DT110/13 and High Court record 2014 no 155SA]
Law Society of Ireland (applicant)
James M Sweeney (respondent solicitor)
On 11 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he had:

1) Misappropriated €180,000 of client moneys in relation to the purchase of a property at Dublin 1 on behalf of a named client,
2) Breached regulation 4(1) of the regulations by not paying client moneys received by him into the client account,
3) Did not complete the conveyancing transaction for his client,
4) In addition to the payment of €172,000 out of the Society's compensation fund, caused a further sum of €5,888 to be paid out of the fund in order to complete the transaction, and
5) Failed to attend a meeting of the Regulation of Practice Committee when required to do so.

The tribunal ordered that the Society bring such findings of the tribunal in respect of the respondent solicitor before the High Court and, on 19 January

1) That the name of the respondent solicitor should be struck off the Roll of Solicitors and
2) The respondent solicitor pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

The solicitor had previously been struck off the Roll of Solicitors by order of the High Court on 21 May 2012.

In the matter of John Martin Carr, solicitor, formerly practising in the firm of Rhatigan & Co, Solicitors, Liosbaun House, Tuam Road, Galway City, Galway, and in the matter of the *Solicitors Acts 1954-2011* [4214/DT97/13 and High Court record 2014 no 95SA]
Law Society of Ireland (applicant)
John Martin Carr (respondent solicitor)
On 30 April 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply with an undertaking expeditiously, within a reasonable time, or at all given by him in respect of a named client to the Bank of Ireland Mort-

NOTICES: THE HIGH COURT

In the matter of James M Sweeney, formerly practising as James M Sweeney at 14 New Cabra Road, Phibsboro, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 155SA]
Take notice that, by order of the High Court made on 19 January 2015, it was ordered that the name of James M Sweeney, formerly practising as James M Sweeney at 14 New Cabra Road, Phibsboro, Dublin 7, be struck off the Roll of Solicitors. The solicitor's name was previously struck off the Roll of Solicitors by order of the court on 21 May 2012.

In the matter of J Finbar O'Gorman, a solicitor, and in the matter of the *Solicitors Acts 1954-2013* [2014 no 115SA]
Take notice that, by order of the High Court made on Monday 9 February 2015, it was ordered that the name of J Finbar O'Gorman, solicitor, previously practising at Mayfield House, Hollyfort Road, Gorey, Co Wexford, be struck off the Roll of Solicitors.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland,
27 February and 2 March 2015

gages under letter of undertaking dated 19 November 2008,
2) Gave an undertaking on behalf of a named client to Bank of Ireland Mortgages on 19 November 2008, signing same and misrepresenting himself as a partner when he was in fact not a partner in the firm of William Davis & Co, Solicitors,
3) Gave an undertaking on behalf of a named client to Bank of Ireland Mortgages on 19 November 2008 when he did not hold a practising certificate at the time of giving the undertaking,
4) Failed to reply adequately or at all to the first complainant's correspondence, in particular letters dated 25 November 2011 and 18 March 2011 respectively,
5) Failed to reply adequately or at all to the Society's correspondence, in particular letters dated 16 September 2011, 28 October 2011, 28 November 2011, 14 December 2011, 16 January 2012 and 16 February 2012 respectively in respect of the first complainant,
6) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him to Springboard Mortgages Ltd on behalf of named clients,
7) Gave an undertaking dated 21 November 2008 to Springboard Mortgages Ltd on behalf of named clients, misrepresenting himself as a partner when he was not a partner in the firm of William Davis & Co, Solicitors,
8) Gave an undertaking on behalf of named clients to Springboard Mortgages Ltd on 21 November 2008 when he did not hold a valid practising certificate at the material time of giving the undertaking,
9) Failed to reply adequately or at all to the second named complainant's correspondence, in particular letters dated 14 July 2011 and 7 September 2011 respectively,
10) Failed to respond to the Society's correspondence and, in particular letters dated 28 September 2011, 26 October 2011, 7 December 2011, 16 January 2012 and 16 February 2012 respectively in respect of the second complaint.

The tribunal ordered that the matter go forward to the High Court and, on 12 January 2015, the President of the High Court ordered that the name of the respondent solicitor be struck off the Roll of Solicitors.

In the matter of John Martin Carr, solicitor, formerly practising in the firm of Rhatigan & Co, Solicitors, Liosbaun House, Tuam Road, Galway City, Galway, and in the matter of the *Solicitors Acts 1954-2011* [4214/DT123/12 and High Court record 2014 no 109 SA]
Law Society of Ireland (applicant)
John Martin Carr (respondent solicitor)

On 25 July 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of his clients to AIB Bank plc, dated 20 February 2007,
2) Misled AIB Bank plc by stating in the signed undertaking dated 20 February 2007 that he was a partner of the firm when this was not the case and he is prohibited from practising as a partner,
3) Failed to respond to the Society's correspondence, causing the Society to issue an application to the High Court pursuant to section 10A of the *Solicitors (Amendment) Act 1994* (as amended by substitution).

The tribunal ordered that the matter go forward to the High Court and, on 12 January 2015, the President of the High Court ordered that the name of the respondent solicitor be struck off the Roll of Solicitors.

In the matter of John Martin Carr, solicitor, formerly practising in the firm of Rhatigan & Co, Solicitors, Liosbaun House, Tuam Road, Galway City, Galway, and in the matter of the *Solicitors Acts 1954-2011* [4214/DT142/12 and High Court record 2014 no 110 SA]
Law Society of Ireland (applicant)
John Martin Carr (respondent solicitor)

On 25 July 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him dated 10 May 2006 to ACC Bank plc,
2) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him dated 26 November 2006 to ACC Bank plc,
3) Failed to reply adequately or at all to the complainant's correspondence, in particular letters dated 26 August 2010, 27 September 2010, 13 December 2010 and 7 June 2011 respectively,
4) Failed to respond adequately or at all to the Society's correspondence and, in particular, letters dated 15 June 2011, 1 November 2011, 7 December 2011, 5 March 2012, 20 March 2012 and 3 April 2012 respectively,
5) Failed to comply with the direction of the Complaints and Client Relations Committee meeting dated 2 May 2012 to pay a contribution towards the cost of the Society's investigations in the sum of €550.

The tribunal ordered that the matter go forward to the High Court and, on 12 January 2015, the President of the High Court ordered that the name of the respondent solicitor be struck off the Roll of Solicitors.

eurlegal

News from the EU and International Affairs Committee
Edited by TP Kennedy, Director of Education, Law Society of Ireland

BRUSSELS I RECAST – COURTING FAVOUR

On 10 January 2015, a number of significant amendments to the EU provisions for determining the jurisdiction of courts and providing for the recognition and enforcement of judgments in civil and commercial matters came into force. From that date, the previous regulation on the subject, known colloquially as *Brussels I*, was replaced by a new regulation, now known colloquially and variously as *Brussels I Recast*, *Brussels Ia* or *I bis*. In this article, for ease of reference, this regulation is called *Brussels I bis*.

Later in the year, on a date yet to be determined, the EU is to ratify the *Hague Choice of Court Convention 2005*, which makes provision regarding the recognition and enforcement of orders of courts whose jurisdiction derives from a choice of court or prorogation clause. This action by the EU will bring the convention into force.

In this article, an overall description is given of the changes brought about by these instruments, with more detailed analysis of the drafting, purpose and effects of the more important elements, notably as regards the *Brussels I bis Regulation*.

Background

Brussels I bis (Regulation (EU) no 1215/2012 of 12 December 2012) is the successor to the *Brussels I Regulation*, which came into force on 1 March 2002 (Regulation no 44/2001). A report on the functioning of the regulation was required to be presented by the commission to the council and parliament. The report was presented in April 2009. The commission report drew on research (*Report on the Application of the Brussels I in the Member States*) written by Professors Burkhard Hess, Thomas Pfeiffer and Peter Schlosser. The commission's *Proposal for Review of the Regulation Brussels I* came out as a hybrid text in December 2010. The original text was shown 'recast' with amendments reflecting the policy proposals by the commission, hence the informal name given to the instrument. The text was adopted by the justice ministers at the Council on 6 and 7 December 2012. Regulation 1215/2012 has replaced Regulation 44/2001 in its entirety.

Ireland, Britain and Denmark

The regulation applies to all the EU member states, including Ireland and Britain, which had opted in to the adoption and application of the regulation in accordance with article 3 of the protocol on the position of those two member states. Denmark does not take part in the adoption of any instrument in the EU civil justice *acquis* under article 81 of the TFEU, but has a separate agreement with the EU, which it entered into on 19 October 2005, to apply *Brussels I*. By letter of 20 December 2012 to the commission, Denmark gave notice, in accordance with article 3(2) of that agreement, of its decision to implement the contents of Regulation (EU) 1215/2012. This means that the provisions of *Brussels I bis* will be applied to relations between Denmark and the remaining EU member states.

Major substantive changes

The substantive contents of the *Brussels I bis*, insofar as it effects changes to the previous regime, can be characterised as including relatively major changes on the one hand and rather minor changes on the other.

Jurisdiction:

- Amendments as regards the position of third-state domiciliaries,
- Prorogation – strengthening of 'party autonomy',
- *Lis pendens* within the EU – priority to the court chosen – *Gasser* reversed,
- *Lis pendens vis à vis* proceedings in third states – rules applied to allow priority, among other things, to third-state proceedings commenced first in a chosen court – relates to the provisions of the *Hague Choice of Court Convention 2005*,
- Arbitration – attempt to clarify the relationship between court proceedings and arbitration under the regulation.

Recognition and enforcement:

- *Exequatur* – abolished in all but name, so no requirement for a declaration of enforceability,
- Some changes to the procedures for opposing recognition and enforcement,
- Provisional and protective measures – some to be enforced as judgments.

Minor changes

Substantive (not further discussed here):

- Additional exclusion from scope,
- Some new definitions – 'court of origin', 'member state of origin', 'member state addressed',
- 'Judgment' defined – important for provisional and protective measures,
- Additional ground of jurisdiction – cultural objects – see article 7(4),
- Submission – will not create jurisdiction over a submitting 'protected' party unless information has been given as to the possibility to contest jurisdiction and of the consequences of entering or not entering an appearance (article 26(2)).

Structural:

- New definitions – article 2,
- Definitions of 'authentic instrument' and 'court settlement' are contained in the definitions article, though without any change in substance,
- List of exorbitant grounds of jurisdiction removed from the text itself,
- Revised provisions as to information over courts and powers of delegated legislation,
- NB – correlation table in annex III shows the relationship between the new text and the previous texts.

Jurisdiction

Third-state domiciliaries are still to be subject to the 'exorbitant' jurisdiction grounds in the national law of member states as proscribed for intra-EU jurisdiction, now by article 6. However, henceforth, the rules regarding consumers and employees set out respectively in article 18(1) (consumers) and 21(2) (employees) will prevail over any national rules of member states.

The effect of this is that jurisdiction of courts in an EU member state as regards non-EU domiciliaries will be determined generally under the national jurisdiction rules of that member state. However, as regards consumers and employees, the EU rules in these cases giving *forum actoris* jurisdiction in favour of the 'weaker party' will apply, irrespective of the national rules.

Thus, if under the national rules of the EU member state, the consumer would have to sue in the domicile of a defender business domiciled outside the EU, the application of the consumer jurisdiction rules of the regulation will enable the consumer to sue in the member state of the consumer's domicile in those cases


PIC: WIKIMEDIA COMMONS

The torpedo – a pretty effective means for delaying litigation

covered by the EU rules.

Further, as regards exclusive jurisdiction and prorogation, the EU rules will continue to be preferred over the national rules in relations with third-state domiciliaries – as was the case under the previous *Brussels I* text – however, the effect of this will change given the new rules on prorogation and *lis pendens*.

Prorogation of jurisdiction

Along with the new rules on *lis pendens*, these are the most significant changes in the *Brussels I bis*. Under the prorogation provisions, subject to the protective jurisdiction rules for consumers, employees and insured persons, the parties could choose a court to determine any dispute that was competent and, under the jurisdiction rules, would have exclusive jurisdiction unless the parties chose otherwise. This, it had been assumed widely if naively, gave the chosen court priority, even if seised after another court not chosen, thereby supporting the principle of party autonomy. The CJEU held, however, that notwithstanding the existence of an exclusive choice of court agreement, if a party, in breach of the choice of court agreement, first seised a court other than that chosen, then that court would have first call on the case under the *lis pendens* rules, provided that it had jurisdiction under the remaining jurisdiction rules in the regulation. This line of decision was also applied as regards related actions and in the case of agreements to go to arbitration.

> **The application of the consumer jurisdiction rules of the regulation will enable the consumer to sue in the member state of the consumer's domicile in those cases covered by the EU rules**

As a result, situations arose whereby courts were seised that had not been chosen often in a bid to block litigation in the chosen court. Known colloquially as 'the torpedo', this tactic was deployed to delay litigation often by raising an action for a declarator of non-liability in a jurisdiction whose courts were known to be slow. As was held by the CJEU in a number of cases, anti-suit injunctions were not permitted by the court to combat this practice.

Major changes in the new text, therefore, are designed to support party autonomy and, effectively, reverse the CJEU decision in Case C-116/02 *Gasser v MISAT*. Thus:

- The effect of the CJEU jurisprudence that a court first seised which is *not* that chosen by the parties under a valid exclusive choice of court agreement would have first call on the case under the *lis pendens* rules has been changed,
- The new prorogation rules also exclude the possibility that another court can hear arguments that the prorogation agreement is not valid – that can only be done in the chosen court under the law of the chosen member state, and
- The choice of court agreement is severable from the contract to which it relates so that, if that contract is declared to be void, the choice of court agreement nevertheless survives.

The new rules on choice of courts in article 25 involve the following:

- Regardless of where they are domiciled (previously, at least one party had to be domiciled in an EU member state), choice by the parties of a court in an EU member state confers jurisdiction on the chosen court, thus supporting the effectiveness of any choice of court agreement even between

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parties both (or all) of whom/which are non EU domiciliaries,
- The court prorogated has exclusive jurisdiction, unless parties have agreed otherwise,
- The choice of court agreement must not be null and void under the law of the member state of the chosen court – so, effectively, the court chosen determines substantive validity applying its own law,
- As regards formal validity, the previous rules are retained whereby the choice of court agreement has to be in writing – including electronic means providing a 'durable' record of the agreement – in a form that accords with practices established between the parties or in a form that accords with practice or a usage in international trade or commerce widely known to and used by the parties,
- In an important innovation, prorogation clauses are to be 'severable' from other parts of a contract, so if the rest of the contract is void, the prorogation clause survives and will have effect, provided that it is itself valid, thus removing the possibility of challenging the validity of a prorogation clause solely on the ground that the contract of which it is a part is invalid (article 25 (5)).

Lis pendens

The *lis pendens* rule, now to be found in article 29(1), is qualified by a new special rule applicable in cases where a court has been chosen. It reads: "Without prejudice to article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different member states, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. "

The rule in article 31(2) states: "Without prejudice to article 26, where a court of a member state on which an agreement as referred to in article 25 confers exclusive jurisdiction is seised, any court of another member state shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement."

Along with these articles, there should be read recital 22, which gives some clarification of the policy intention behind the new provisions, among other things: "This [the special *lis pendens* rule on choice of court] is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it" and "the designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings". Plus: "This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised."

Having regard again to the policy as stated in recital 22, the intended effects of the new *lis pendens* provisions as regards choice of courts can be summed up as follows:
- The court chosen is given precedence even if it is seised second,
- Courts not chosen shall stay the case until the court designated has declined jurisdiction even if seised first,
- Where the court designated in a prorogation agreement establishes jurisdiction, any other court shall decline jurisdiction in favour of the chosen court, and
- Only the chosen court decides the substantive validity and the application of the choice of court clause/agreement.

The exception for the 'protected jurisdiction rules' preserves the special rules on prorogation as regards such cases, so these *lis pendens* rules do not apply where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer, or the employee is the claimant and the agreement is not valid under a provision contained within those sections.

The new text does not go so far as to make similar provision as regards arbitration agreements – these are dealt with in recital 12.

Lis pendens and third state courts

The new provisions allow for implementation in the EU of the provisions of the *Hague Choice of Court Convention* – article 33(1) is about cases where jurisdiction is based on the domicile of a defender in a EU member state, under the contract/delict and other special rules (article 7), the rules on multiple defenders/third parties (article 8) and liability in relation to operation of ships (article 9).

Where a case is already pending in a third state at the time when the EU court is seised, that court may stay the proceedings if it is expected – presumably by the latter court – that a judgment from the third state court is likely to be capable of recognition and, where applicable, enforcement in the EU state and the stay is necessary for the proper administration of justice. The EU court can continue the proceedings if there is a stay in the third state, the EU court thinks that the third state court will take too long, or to do so is required for the proper administration of justice.

If the third state court grants a judgment capable of recognition and enforcement in the EU member state concerned, the EU court is to dismiss the action before it. The EU court applies the article of its own, if it can do so, under national law or otherwise on the application of one of the parties. Similar provisions apply to related actions (article 34).

This provision applies generally to an action under way in a third state court, whether chosen by the parties in a choice of court agreement or otherwise, and so enables the EU member states to implement and participate in *the Hague Choice of Court Convention*. It is, however, circumscribed by the extra conditions as regards duration of process and enforceability, which do not apply to cases before courts within the EU.

Peter Beaton is a Scottish solicitor based in The Hague who is a consultant in EU civil and private international law.

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WILLS

Boyd, Philomena (deceased), late of 40 Arthur Griffith Park, Lucan, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 24 March 2014, please contact Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; reference 9522/CK; tel: 01 676 4067, email: c.keane@vealesolicitors.com

Browne, Thomas (deceased), late of McBride Nursing Home, Westport, in the county of Mayo, formerly of Ballinacorriga, Sheeaune, Westport, in the county of Mayo, who died intestate on 8 December 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Dermot Morahan, Oliver P Morahan & Son, Solicitors, James Street, Westport, Co Mayo; tel: 098 25075, email: info@morahans.ie

Fallon, Lily, orse Lizzie, orse Elizabeth (deceased), late of Lismagroon, Knockcroghery, Co Roscommon, who died on 11 January 2015. Would any person having knowledge of any will executed by the above-named deceased please contact Patrick J Neilan and Sons, Solicitors, Golf Links Road, Roscommon; DX 90 004 Roscommon; tel: 090 662 6115, fax 090 662 6990, email: marie@patrickjneilan.ie

Farrell, Patrick (deceased), late of 201 Corrib Road, Terenure, Dublin 6W, who died on 29 April 2003. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding said will, please contact Malcolm O'Donnell, Solicitors, Premier Business Centre, 3013 Lake Drive, Citywest Business Campus, Dublin 24; tel: 01 469 3771/469 3159, email: malodonnell@hotmail.com

Fitzsimons, Michael (deceased), late of Killydream, Loughduff, Co Cavan, who died on 28 January 1978. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Angela Dolan, Rory Hayden & Co, Solicitors, 23 Farnham Street, Cavan; tel: 049 436 1334, email: angela@roryhayden.com

Geraghty, Margaret (otherwise Myra) (deceased), late of Archdeaconry, Moynalty Road, Kells, in the county of Meath, and formerly of St Brigid's Terrace, Kells, in the county of Meath. Would any person having knowledge of any will made by the above-named de-

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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*.

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ceased, who died on 31 July 2014, please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 928 0718, email: law@nlacy.ie

Goulding, Patrick (deceased), late of 155 Oxmantown Road, off North Circular Road, Dublin. Would any person having any knowledge of any will made by the above-named deceased, who died on 16 October 2013, please contact Porter Morris, Solicitors, 10 Clare Street, Dublin 2; tel: 01 676 1185, email: portermorris@securemail.ie

Griffin, William (deceased), late of Letteragh, Rahoon, Galway, and 182 Corrib Park, Galway. Would any person with any knowledge of a will executed by the above-named deceased, who died on 23 January 2015, please contact Messrs Padhraic Harris & Co, Solicitors, Merchants Gate, Merchants Road, Galway; tel: 091 562 066, fax: 091 566 653, email: cirwin@harrissolrs.ie

Higgins, Denise (deceased), late of 19 Shanliss Avenue, Santry, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died on 19 August 2014, please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: mjk@mjksolicitors.com

McDonald, Joseph (deceased), late of 51 Coolatree Road, Beaumont, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died on 17 February 2015, please contact Neil Maguire, solicitor, of Maguire McErlean, Solicitors, 78-80 Upper Drumcondra Road, Dublin 9; tel: 01 836 0621, email: neil@maguiremcerlean.ie

Murphy, Mary Kate (otherwise Maura) (deceased), late of The Gate House (otherwise St Conleth's), Daingean Reformatory, Daingean, Co Offaly, and formerly of 28 Canfield Gardens, London NW6 3LA, England. Would any person having any knowledge of or holding a will made by the above-named deceased, who died at the Midlands Regional Hospital, Tullamore, Co Offaly, on 6 March 2012, please contact Kelly & Ryan, Solicitors, Teeling Street, Sligo; tel: 071 916 2855, fax: 071 916 2225, (ref: Noel Kelly); and Pothecary Witham Weld, Solicitors, 70 St George's Square, London, England SW1V 3RD; tel: 00 44 207 821 8211, fax: 00 44 207 630 6484 (ref: Patrick Herschan)

O'Connell, Felix (deceased), late of 27 Lios An Oir, Lismore, Co Waterford, and 8 Michael Burke Terrace, Cobh, Co Cork, who died on 9 December 2014. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Frank Kelleher & Co, Solicitors, 1 Pearse Square, Cobh, Co Cork; tel: 021 481 6300, email: ykelleher@fks.ie

O'Toole, Patrick James (deceased), late of Garranty, Inishturk Island, Co Mayo (postal address Co Galway). Would any person having knowledge of any will made by the above-named deceased, who died on 11 August 2013, please contact Oliver P Morahan & Son, Solicitors, James Street, Westport, Co Mayo; tel: 098 25075, email: info@morahans.ie

Spollen, Helen (deceased), late of 43 Addison Road, Fairview, Dublin 3. Would any person having knowledge of any will made by the above-named deceased please contact Cairbre Finan, solicitor, Wilkinson & Price, Solicitors, Main Street, Naas, Co Kildare; tel: 045 897 551, email: cfinan@wandp.ie

Turner, Gertrude Eileen (deceased), late of 2 Doonamana Road, Dun Laoghaire, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 22 March 2014, please contact Thomas Montgomery & Son, Solicitors, 5 Anglesea Building, Upper Georges Street, Dun Laoghaire, Co Dublin; ref: TUR002/01; tel: 01 280 8632, email: david@montgomerysolicitors.ie

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Circuit Court record no E282/2009, Northern Circuit, county of Leitrim: in the matter of the *Succession Act 1965* and in the matter of the estate of Peter McManus (deceased), late of Buggaun, Manorhamilton Co Leitrim, between Patrick Munday (plaintiff) and Teresa Kelly (defendant)

Pursuant to an order of his honour Judge O'Hagan made on 18 November 2014 in the above matter, all persons claiming to be incumbrancers of any nature, which

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affect the real or personal estate of the deceased, are on or before 2pm on Monday 30 March 2015 to send by pre-paid post to the county registrar of the county of Leitrim at his offices at Courts Office, Courthouse, Carrick-on-Shannon, in the county of Leitrim, their full names and addresses and full particulars of their claims and the nature of the securities held by them or, in default thereof, they will be excluded from the benefit of any further order of this court.

Every person holding any incumbrance is to produce the same before the county registrar at the Courts Office, Courthouse, Carrick-on-Shannon, Co Leitrim on Thursday 2 April 2015 at 3pm, being the time appointed for adjudication on claims and of which sittings all persons interested are hereby required to take notice.

Date: 5 February 2015

Signed: Joseph Smith, County Registrar, The Courthouse, Carrick-on-Shannon, Co Leitrim

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 the premises known as 11 South William Street, Dublin 2, and an application by Maria Madigan

Take notice that any person having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those that portion of the house and premises described in the lease dated 8 March 1832 and made between Samuel Warren of the one part and Robert Milner of the other part (the head lease), being more particularly described in a lease dated 1 November 1965 made between JJ Nicholl Limited of the one part and Francis V Heavey and others of the other part (the sublease) and known as 11 South William Street in the parish of St Bride and city of Dublin, held under the sublease and therein described as "all that portion of the house and premises known as 11 South William Street in the parish of St Bride and city of Dublin, consisting of the area in the basement thereof, portion of the basement, the ground floor, including portion of the return at the rear thereof, the three floors over the ground floor, and the return at the rear of the first floor, all of which said premises are more particularly delineated and described on the sectional drawing thereof annexed to the [sublease] for the term of 7,500 years from 1 September 1965, subject to the yearly rent thereby reserved and to the covenants on the part of the lessee and conditions therein contained".

Take notice that Maria Madigan intends to submit an application to the county registrar for the city of Dublin for 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, Maria Madigan 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 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: 2 April 2015

Signed: Mason Hayes & Curran (solicitors for the applicant), South Bank House, Barrow Street, Dublin 4 (CFE/AGN)

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 no 29 Lower Drumcondra Road, Drumcondra, Dublin 9, and upon an application being made by Harry Burns and Eileen Burns

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises demised by indenture of lease dated 25 May 1880 and made between Francis Butterlee of the one part and William Diggins, La Touche, Richard Johnson, the Right Honourable Arthur Edward Barron Ardilaun, Henry Augustus Johnson and the Right Honourable Michael Harrison of the other part for a term of 195 years, which premises are described as no 29 Lower Drumcondra Road, Drumcondra, Dublin 9, in the city of Dublin.

Take notice that the applicants, Harry Burns and Eileen Burns, intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, 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, the applicants intend 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 city of Dublin for directions as may be appropriate on the basis that the person is beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 2 April 2015

Signed: Mahon Sweeney (solicitors for the applicants), Elphin, Co Roscommon

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 premises known as 276/278 Lower Rathmines Road, Dublin 6, and in the matter of an application by George Draper, Vivien Draper and Stuart Draper

Take notice that any person having

any interest in the freehold estate of the following property: all that and those the hereditaments and premises known as 276/278 Lower Rathmines Road, Dublin 6, in the city of Dublin, held under an indenture of fee farm grant (hereinafter called 'the fee farm grant') dated 29 February 1872 and made between Francis McEvoy of the one part and John Holmes of the other part, held forever subject to a perpetual fee farm rent of £45 sterling per annum, the subject premises being indemnified against the said fee farm rent.

Take notice that George Draper, Vivien Draper and Stuart Draper, being the persons currently entitled to the interest of the said John Holmes under the fee farm grant, intend to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 2 April 2015

Signed: Michael J Horan (solicitors for the applicants), Floor 1, Millennium House, Stephen Street, Sligo

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 premises known 276/278 Lower Rathmines Road, Dublin 6, and in the matter of an application by George Draper, Vivien Draper and Stuart Draper

Take notice that any person having any interest in the leasehold estate of the following property: all that and those the hereditaments and premises known as 276/278 Lower Rathmines Road, Dublin 6, in the city of Dublin, held under an indenture of lease dated 23 November 1964 and made between Rev Rupert Lennon and Sheila Lennon of the one part and Hamilton Long & Company Limited of the other part, held for a term of 99 years from 25 June 1964, yielding and paying therefor and thereout during the continuance of the said term unto the lessors the yearly rent of £650 per annum.

Take notice that George Draper, Vivien Draper and Stuart Draper, being the persons currently entitled to the lessee's interest under the said lease, intend to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 2 April 2015

Signed: Michael J Horan (solicitors for the applicants), Floor 1, Millennium House, Stephen Street, Sligo

contra mundum

Judges sacked for watching porn

Three judges have been sacked for viewing pornographic material via their official IT accounts, Britain's Judicial Conduct Investigations Office has said, as reported by the BBC.

While the pornography found was not illegal in content, the Lord Chancellor and the Lord Chief Justice concluded that it was an "inexcusable misuse" of the judges' official accounts and "wholly unacceptable conduct for a judicial office holder".

A district judge, immigration judge, and deputy district judge and recorder have been removed from office. The three judges were not linked in any way. A fourth judge found to have viewed similar material via his judicial IT account resigned before the official inquiry concluded.

Critique of 'impure' reason

One of the fathers of modern philosophy, Immanuel Kant, was the inspiration behind a beer-fuelled row that led to an air-gun shooting in Rostov-on-Don in southern Russia, *The Independent* reports.

The dispute occurred when two men waiting for a beer got into a bitter argument over the work of Immanuel Kant, the Prussian author of the significant philosophical text *Critique of Pure Reason*.

The row ended with one of the men producing an air-gun and firing several rubber bullets at his opponent. The gunman was detained after fleeing the scene. The victim ended up in hospital with non-life-threatening wounds. The attacker faces up to ten years in prison for intentional infliction of serious bodily harm.

Kant's theory of duty-based ethics were grounded on the principle that no decision should be made unless morally good in itself, regardless of predicted consequences, which he called the 'categorical imperative'. No doubt, he would have had strong opinions about the predicted consequences of arguing over his theories.

Black beauty

Incompetent car thief Jose Espinoza came up with what he thought was a cunning plan to escape pursuing police – he spray-painted himself black. The plan failed, due to the fact that he attempted to hide against a white wall at the scene of the crime, CNN reports.

Madera Police Department in California later posted his mugshot on Facebook, with the caption: "The camouflage was ineffective."

Espinoza has been charged with the unlawful taking or driving of a vehicle and receiving stolen property.

White House brushes off 'attack of the drones'

A man who crashed a small drone into the grounds of the White House last January won't be charged by federal prosecutors, Slate.com reports. A Secret Service investigation found that Shawn Usman had not been in control of the device when it landed in the early hours of the morning.

The 31-year-old employee of the National Geospatial-Intelligence Agency had borrowed the small quadcopter from a friend. He decided to try out the gizmo from his apartment window in the early hours, following a pizza and two glasses of wine, when it suddenly shot into the air and he lost control.

Because it was low on battery, Usman assumed it would soon fall back to earth and so decided to go to bed before launching a search in the morning. Seeing news reports the following morning saying that a drone had crashed onto the White House lawn, he rang the Secret Service.

"It was literally the worst place on the planet it could have landed," said Usman. "Flying it out the window was, in retrospect, a bad idea – but never in my wildest dreams did I imagine this would have happened."

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General Counsel - Multinational Company

Our client is seeking to hire a senior legal counsel to join their legal team. The work will be predominantly international in nature. The ideal candidate will have experience working internationally and may come from a multitude of specialisms including Corporate, Litigation, Tax and Finance. This role is suitable for both solicitors and barristers.

Commercial Litigation Lawyer - Dublin

This is an exciting opportunity to join one of the most distinguished dispute resolution departments in Dublin. The ideal candidate will have extensive commercial court experience, be a team player with a strong client focused approach and have excellent communication & organisational skills.

Capital Markets Lawyer - Dublin

Our client, one of the leading Capital Markets firms in Ireland, is seeking a Capital Markets Lawyer to join their team. This position is ideal for a candidate with experience working in a leading commercial firm in Dublin, or someone returning to Ireland from an international firm. Excellent candidates who have been working in-house will also be considered.

Corporate Partner (Equity or Salaried) - Dublin

This 'boutique' commercial firm has developed a reputation for excellence and has seen impressive growth over the past 10 years. They are seeking to add another Corporate Partner to their team. Equity is available for a candidate who has a strong following. A strong senior associate looking to take the step up to salaried partner will also be considered.

Commercial Property Partner - Dublin

Our client is a mid-sized business law firm who are seeking to expand their profitable real estate department with the addition of a new partner. The role will involve advising on all aspects of commercial property. The firm are looking for a proven business developer or someone with excellent potential to do so.

London Calling

We are currently searching for solicitors, trained in leading Irish firms, who are seeking a move to London. Any candidates with specialisms in Tax, Corporate, Energy, EU Competition, Financial Services and Litigation are of particular interest. Opportunities are available in both Magic and Silver Circle firms.

John Macklin
LL.B, LL.M, MBA, Attorney-at-Law
Director Legal Division
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For further information please contact Debbie Goodall on 01225 718087 or e-mail Debbie.Goodall@wiltshire.gov.uk

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This role is politically restricted. This means that if you are successfully appointed to this role you may not at the same time be politically active. This includes standing as a Member of Parliament, canvassing on behalf of others who wish to become a Member of Parliament or have an active role in a Political party. Further details will be provided to you by the recruiting manager.

You will be required to undertake driving as part of your duties. You will be required to produce your original driving licence as part of the selection process as well as agree to a live DVLA licence check.

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In-house Senior Legal Counsel, Financial Services, Dublin €100,000 - €110,000

Our client, an international insurance firm is seeking to recruit a Senior Legal Counsel. Successful applicants should be qualified lawyers and have extensive experience within the insurance industry. The role will include providing advice on corporate governance issues, key compliance reporting protocols as well as drafting and reviewing contracts, outsourcing agreements and confidentiality agreements. For further information on this role please email m.minogue@brightwater.ie

Banking Solicitor, Dublin €70,000 - €90,000

Our client, a top tier firm is seeking to recruit a Banking Solicitor with experience in domestic and cross border finance transactions and financial services to join its market leading team. For further information on this role please email m.minogue@brightwater.ie

Healthcare Litigation Solicitor, Dublin €60,000

Our client, a top tier firm, is seeking to recruit a Junior Healthcare Litigation Solicitor to join their Healthcare group. This is an exciting opportunity for the successful candidate to progress their career and work alongside some of the country's leading and award winning legal professionals. For further information on this role please email a.mccarthy@brightwater.ie

Corporate Solicitors, Belfast £30,000 - £55,000 stg

Our client, a global law firm is currently recruiting for a number of corporate lawyers (1 at senior and 2 at junior level) for their Belfast office. This is an exciting opportunity to work on large multi-jurisdictional corporate transactions in a dynamic environment. Successful applicants must be qualified solicitors with previous corporate transactional experience. For further information, please email l.mccracken@brightwaterNI.com

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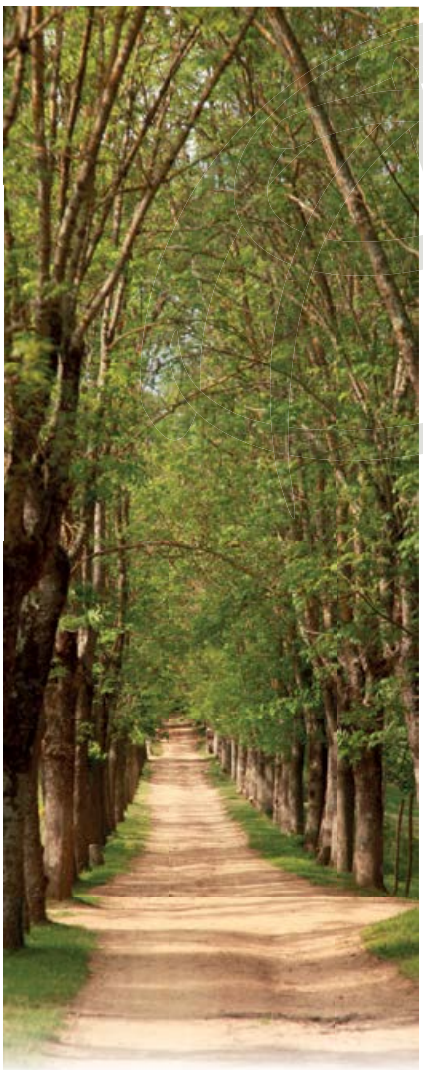

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Opportunities

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Our Client, a highly respected top tier Irish law firm, has a number of vacancies for top calibre experienced Banking Solicitors to join their growing finance department. Successful applicants will have solid experience in advising on corporate banking transactions to include secured and unsecured lending, property finance, acquisition finance, syndicated lending and debt restructuring. These opportunities will suit ambitious lawyers seeking to fast track their career.

Finance Associate – Capital Markets, Dublin

Our Client, a highly respected top tier Irish law firm, has an opportunity for an outstanding Lawyer to join their Capital Markets Group in their Dublin office. The team advises on capital markets, structured finance, cross-border financing and related issues and on a broad range of debt capital markets transactions including corporate and high-yield bonds, medium term note and commercial paper programmes. The successful candidate must have solid experience with a leading or boutique finance law firm in Ireland or overseas.

In-House Funds Lawyer, Dublin

This is an exciting role in a highly respected global organisation. It will suit a Funds solicitor who is looking for a challenging change from the private practice environment to an existing Legal Services team with the support and resources of a large professional organisation. You will have solid experience in the investment funds industry and an in-depth knowledge of UCITS, Non-UCITS & Hedge products as well as a clear understanding of the AIFMD regulatory framework. Leading Irish or International firm experience is preferred.

Corporate Lawyers, Dublin

Our Client, a leading law firm is seeking top calibre Corporate Lawyers from recently qualified level upwards. You will have the opportunity to work on cutting edge projects in a dynamic and driven environment. Excellent transactional, drafting and communication skills are essential. Top 20 law firm background is preferred.

In-House Corporate Solicitors x 3, Dublin

Our Client is one of the leading global service providers in insurance, banking and asset management. Their EMEA headquarters is based in Dublin. They are looking for three Corporate Lawyers to join their expanding corporate assistance team. Experience in corporate assistance, employee assistance or insurance is desirable as well as exposure to cross border regulatory environments. Ambitious lawyers with more general corporate/ commercial experience will be considered.

Commercial Property Solicitors, Dublin

Our Client's property department is at the forefront of commercial property law in Ireland. They are currently recruiting for a number of Commercial Property Solicitors to join the firm. The successful applicants will advise clients on every aspect of commercial property law, in particular on commercial land acquisitions, commercial property developments and tax based property acquisition/development. Excellent drafting & negotiation skills are essential as is property experience from a large, medium or boutique Commercial Property firm.

Lawyers, Hong Kong and Dubai

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Commercial Property – Assistant to Associate – PP0313
Our client is searching for an experienced commercial property lawyer to advise both domestic and international clients on the full range of property matters including multi-jurisdiction sales and acquisitions, sale and leasebacks, re-financings and investments.

Conveyancing solicitor – Associate to Senior Associate – PP0228
Our client is a successful and dynamic practice seeking a highly competent practitioner who will take on a broad range of transactions to include commercial developments and acquisitions as well as commercial landlord & tenant matters.

Commercial Litigation – Associate to Senior Associate
A leading Dublin firm is seeking a commercial litigation practitioner to deal with high caliber commercial court work. You will be working with a highly regarded team dealing with challenging and often complex cases.

Company Secretary – Junior and Senior – J00272
Our client, a front ranking practice, is seeking experienced Company Secretaries to join their busy Company Secretarial Department. You will be ICSA qualified with excellent know-how and IT skills.

Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471
This Dublin based firm is seeking a solicitor to join their Corporate/ Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424
Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/unsecured loans.

Energy & Renewables – Associate – J00486
This is an excellent opportunity to join a highly respected legal practice whose client base includes banks, commercial lenders and government agencies. The department advises on the full range of energy transactions and the successful candidate will be dealing with significant project and debt finance related matters.

Litigation –Healthcare Assistant Level
An excellent opportunity has arisen for an ambitious practitioner to join the Healthcare Department of this Top 6 Dublin based law firm which has a first rate client base. You will be dealing with interesting and challenging work. Significant previous experience in insurance defence matters is essential, preferably with medical negligence exposure.

Pensions –Newly Qualified to Associate
Top flight firm requires candidates with a strong academic background and an interest in pensions law and practice to join its well established team with a first rate client base.

Tax Lawyer – Associate to Senior Associate – J00337
A Top 5 Dublin law firm is looking to recruit a Senior Tax Assistant with solid general tax experience to slot into a fast growing partner led team. You will advise Irish and European clients on structuring transactions, such as complex cross-border acquisitions, real-estate investment, private equity public offerings of debt and equity securities and joint ventures.

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