Elephant in the room
The *Companies Act* is the largest piece of legislation ever passed in the State

The justice league
Bryan Stevenson talks to the *Gazette* about combatting injustice in the USA

One louder
The law regulating the planning of outdoor concerts is past its sell-by date

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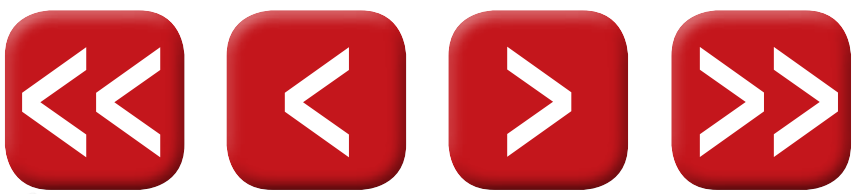

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Wednesday 13th May 2015 **Double Tree by Hilton Hotel, Burlington Road Dublin**

CELEBRATING THE BEST IN IRISH RUGBY

Hibernia College Dublin

IRUPA

Hibernia College IRUPA Rugby Players' AWARDS 2015

The Irish Rugby Union Players' Association and all of our members are delighted to host the Hibernia College IRUPA Rugby Players' Awards 2015 on the 13th of May. The awards night is Ireland's only National rugby awards. Come and celebrate the best in Irish rugby and all that has been achieved on and off the playing field. The night will be littered with a host of rugby greats to honour the achievements of the professional rugby players in Ireland.

Find out who will be the 2015 Hibernia College IRUPA Player's Player of the Year, the Nevin Spence Young Player of the Year and other coveted titles. The much loved Q&A session will round up the evening with a special World Cup theme this year so this once off session should not be missed.

For further information or to secure your table of 10 at the event at a price of €2050 + VAT please contact Keith on +353 1 676 9680 or email keith.young@irupa.ie. This event sold out completely last year so hurry and get booking!

SMASHING THE GLASS CEILING

As pointed out in the last issue of the *Gazette* (p20), women now numerically eclipse men in the profession. From a standing start in 1919 – before which women were not allowed to apply to become solicitors (the first woman qualified in 1923) – to a situation 96 years later when women have moved beyond parity – this is nothing short of remarkable.

In the 1960s, the number of women colleagues was a mere 37. Up to 1990, they could be numbered in the hundreds. Since the mid 1990s, however, there has been an upsurge in the intake of female solicitors – this is very much to be welcomed.

This growth in the number of women in the solicitors' profession is mirrored elsewhere in Ireland's legal system. Currently, the most significant of the country's legal positions are held by women.

As director general Ken Murphy (and others) have commented, it shouldn't matter, since "Lady Justice is blind and all are equal before the law. Being a solicitor takes intelligence, determination and hard work. Gender doesn't come into it – nor should it."

Career development

But what does it mean if the obstacles and barriers to the career development of women solicitors continue to impede the proper progression of our female colleagues? The 'glass ceiling', with its invisible barriers, still prevents large numbers of women from obtaining and securing top positions elsewhere. It is no different within the legal profession.

In Britain, the intake at qualification stage is 60/40 in favour of women. This continues for ten to 15 years post-qualification. Yet by the time women reach the 40-year age bracket, male predominance takes over. The conclusion to be drawn is that many female colleagues leave the profession – just when they should be at the top of their game. How can we address this?

Why is it that, in Britain, only 20% of women make partner? We have no data for Ireland – and we intend to do something about that – but I would suggest that the percentage of partners is even smaller here. Unless the profession as a whole seeks to address this issue, we will not be a profession of true equals.

International issue

In a paper delivered to the Dublin Solicitors' Bar Association on 10 October last, the President of the District Court, Rosemary Horgan, stated: "Further work needs to be done in reconciling the work/life balance, the gender balance in decision-making, and the fact that there is still a gender gap across all areas of employment." She noted that EU data shows a wage disparity of 14% and that, in the legal profession, female lawyers are earning 70% of the salaries of their male counterparts.

From what I have read, and from people I have spoken to (including our own Irish Women Lawyers' Association), the conclusions are that workplace culture needs to change – and to change fundamentally. This can be achieved by the adoption of a flexible working culture.

New attitude

This so-called flexitime culture applies to both men and women and should include a panoply of measures that are designed to enable colleagues – of whatever gender – to achieve their optimum work/life balance.

This new attitude, if it is to have a real chance of success, needs to be led by managing partners – by ensuring that women *and* men can harness flexible working at differing points in their career in order to pursue long-term career paths, and thus not lose interest in the profession in their late 30s.

Critically, those at senior level in firms need to ensure that such colleagues are not penalised for this in their performance reviews or in decisions affecting pay, recognition and promotion.

While expressing my heartfelt belief that we have a long way to go, I would also acknowledge that many enlightened legal practices are beginning to 'get it'. I heartily commend them in that respect and urge them to continue to innovate and respond in a meaningful way to the work/life demands of their staff.

Kevin O'Higgins
President

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Many female colleagues leave the profession – just when they should be at the top of their game. How can we address this?

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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

GALWAY

City of Tribes marks judicial appointments

The Galway Solicitors' Bar Association is holding a dinner in conjunction with the Western Circuit on Friday 20 March at the Meyrick Hotel, Eyre Square, to mark the appointment of two colleagues, John Hannon and Francis Comerford, to the Circuit Court bench. Tickets are selling fast and, accordingly, payment should be made promptly to vice-president David 'Medvedev' Higgins, c/o Berwick Solicitors, 16 Eyre Square, Galway (DX 4534), to secure a place, as no bookings will be taken without payment.

The GSBA has announced two upcoming dates for its CPD 2015 programme. Two seminars are being held on Friday 6 March 2015 and Friday 20 March 2015 at Galway Courthouse. The starting time for both is 2pm. The final list of speakers and topics will be revealed shortly. GBA president James Seymour says: "We intend to provide up to 30 hours of CPD this year to all paid-up GSBA members." The annual subscription of €50 per solicitor should be forwarded to GSBA treasurer Cairbre O'Donnell, c/o John C O'Donnell & Son, Atlanta House, Prospect Hill, Galway (DX 4501).

CORK

Supreme Court goes Leeside, making history

The Supreme Court made its first visit to Cork on 3 March 2015. A number of events were held to mark the occasion, which were organised in collaboration between the Supreme Court, the Courts Service, the UCC Law Faculty, the Southern Law Association and the Bar.

The first was an afternoon reception at the courthouse on Washington Street, hosted by the Chief Justice Mrs Justice Susan Denham, members of the Supreme Court, and the Courts Service.

This was followed by a lecture in the Aula Maxima in honour of the late High Court judge, Mr Justice Kevin Feeney. Entitled 'Courts for today's Ireland – a civil procedure review to mark the State's centenary,' the lecture was delivered by Mr Justice Frank Clarke. The event was hosted by Prof Ursula Kilkelly (dean of the School of Law, UCC) and was chaired by Chief Justice Denham.

A dinner was held the same evening for Cork's legal practitioners and academics at Áras na Mac Léinn on the UCC campus. Special guests included the family of the late Mr Justice Kevin Feeney, Chief Justice Susan Denham and other Supreme Court judges, members of the School of Law at UCC, and members of the Southern Law Association and the Bar.

DUBLIN

Magical mystery tour

PIC: LEONARDO.STABILE, WIKIMEDIA COMMONS

Tell me it's not Recife – the favourite Brazilian hideaway haunt of disgraced former solicitor Michael Lynn

The most closely guarded secret in Dublin Solicitors' Bar Association circles is the location of this year's annual conference in mid September. Rumours are rife about a South American venue, although the smart money is on one of the leading EU countries. President Aaron McKenna and vice-president Eamonn Shannon were uncharacteristically tight-lipped when contacted by *Nationwide* to reveal the destination. The only news we can reveal about the conference is that Colette O'Malley (Marketing Initiatives), who has run several very successful DSBA conferences to Madrid and Bordeaux, is on the job again.

Other news is the relocation of the association's offices from beside Byrne Wallace in Harcourt Street to Dawson Street in the coming weeks. *The Parchment* is due to hit the desks before Easter.

DSBA president Aaron McKenna tells me that the association has a full line-up of seminars planned for March. For details, visit www.dsba.ie.

MONAGHAN

Taxing times down on the farm

Monaghan Solicitors' Bar Association is holding a CPD evening on 24 March 2015 in the Hillgrove Hotel, Monaghan, from 5pm to 8pm. The topics are as follows:

- 'VAT on property – what you need to know to close the contract' (Rose Tierney, tax consultant),
- 'The limitation of actions and time limits (and associated practical issues) in probate practice' (Karl Dowling BL),
- 'Farm entitlements and farm transfer for 2015' (Kevin Connolly, Teagasc financial management specialist).

For non-members, the cost to attend is €30. For further information, contact Justine Carty at justinec@healylaw.ie or tel: 047 71556.

representation

News from the Society's committees and task forces

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Making an offer you can't refuse

The ADR Committee is keen to promote awareness among the profession of the benefits of ADR as a means of resolving disputes. To that end, the committee is seeking the collaboration of other Law Society committees, with a view to highlighting the benefits of ADR as a method of dispute resolution and the general obligation on practitioners to advise clients of ADR. In this context it is observed that:

- Disputes arise in all walks of life,
- The resolution of disputes is not confined to litigation, but has an application in all areas of law, be they commercial, property, family, partnership, administration of estates, and so on,
- Litigation is the fallback for having a dispute determined if the parties have not agreed on an alternative,
- As litigation can be slow, expensive and unpredictable, alternatives are always worth considering,
- Alternatives may allow the parties to resolve their disputes in a more productive, efficient and cost-effective manner,
- Because disputing parties may not be disposed to agree on anything after their dispute has arisen, it is best for solicitors and their clients to consider the ADR options before any dispute has arisen.

The use and significance of ADR has grown substantially in recent years, both in Ireland and abroad, and there is now a general obligation on practitioners to inform clients of ADR as a method of dispute resolution.

While previous events organised by our committee have been well attended, it is noted that audiences regularly comprise the same group of practitioners. Accordingly, in order to avoid 'preaching to the converted', the committee is seeking the collaboration of other Law Society committees by allowing it a short five-to-ten-minute presentation at a CPD event in which a committee may have an involvement. The assistance of committees with this initiative would be very much appreciated. Any committee interested in taking up the CPD presentation offer being presented by the ADR Committee should contact committee secretary, John Lunney, at email: j.lunney@lawsociety.ie or tel: 01 881 5722. We look forward to hearing from you.

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DATE FOR YOUR DIARY

8-9 May 2015

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FULL DELEGATE PACKAGE, €300:

- Access to full conference,
- Black Tie Gala Dinner on Friday 8 May,
- B&B accommodation for one night sharing with another delegate or registered accompanying person, and
- A light lunch on Friday and Saturday, all in Lough Erne Resort.

If you will not be sharing and request a single room, a single supplement of €75 will be charged.

ACCOMPANYING PERSON PACKAGE, €200: One night's B&B accommodation (Friday 8 May) sharing with a delegate, Black Tie Gala Dinner on Friday 8 May, light lunch on Saturday 9 May.

ADDITIONAL NIGHT, €200: B&B accommodation per room.

Investec

Register online at: **www.lawsociety.ie/AnnualConference**

'Soldiers and law in the Irish Revolution'

The Courts Centenary Commemoration Committee continues its lecture series with a talk titled 'Soldiers and law in the Irish Revolution'. It will take place on Thursday 26 March 2015 in the Round Hall, Four Courts, Inns Quay, Dublin 7, at 5pm.

The speaker will be Prof Charles Townshend (professor of international history at Keele University). His many acclaimed publications include *Easter 1916: The Irish Rebellion* and *The Republic: The Fight for Irish Independence*.

The lecture will include an analysis of the approach of the authorities to the trials of the rebels in 1916, and how the martial law regime of 1920 to 1921 set up a conflict between law and what was perceived as the need for order.

Free entry with ticket. Apply by email to courtscentenaryevents@courts.ie.

PIC COURTESY OF JAMES LANGTON

1916: As they tried to take the Four Courts (background), soldiers of the South Staffordshire Regiment killed more than a dozen innocent people

Canadian lawyers win privilege battle 7-0

In a recent 7-0 ruling, the Supreme Court of Canada has ruled that parts of anti-terrorism and money-laundering legislation are unconstitutional and breach solicitor/client privilege.

Canadian lawyers took on this major battle in a bid to protect solicitor/client privilege.

The Financial Transactions and Report Analysis Centre of Canada (FINTRAC) requires anyone involved in financial entities – including lawyers – to report suspicious financial activity and hand over client data.

The Supreme Court of Canada ruling (2015 SCC 7, case no 35399) declared that lawyers, unlike accountants and financial institutions, should be exempt from the law, which would have allowed lawyers' offices to be searched without warrants.

SBA AGM

The 151st annual general meeting of the Solicitors' Benevolent Association will be held at Blackhall Place on Monday 13 April at 12.30pm. It will consider the annual report and accounts for the year ended 30 November 2014, elect directors, and deal with other matters appropriate to a general meeting.

21st Century Fox for Dublin

Fox Rodney Search opened a new Dublin office on 23 January. FRS is a global legal executive search firm focusing on partner and associate searches, general counsel and head of legal searches, as well as due diligence investigations.

Portia White will lead the Irish office. She will focus on private practice, commerce and industry, and financial services. Portia has over nine years of experience within the Irish market.

District Court appointments

The Government has nominated two solicitors, Marie Keane and John King, for appointment by the President to the District Court. The vacancies arise from the elevation to the Circuit Court of Judge Eugene O'Kelly on 27 November 2014 and the retirement of Judge Eamon O'Brien on 24 January 2015.

Marie Keane holds a BA (1988) and LLB (1991) from the National University of Ireland, Galway, and qualified as a solicitor in 1994. A partner in Callinan Keane in Ennis, Co Clare, Marie holds a Diploma in Commercial Conveyancing (2006) and a Certificate in Mental Health Law (2011). She is a member of the Law Society's Family Law Committee, is an accredited mediator, and the co-founder of the Family Lawyers Mediation Group (Mid-West).

John King holds a BA (1987) and LLB (1989), also from the National University of Ireland, Galway. He was enrolled as a solicitor in 1993. He has extensive experience in civil litigation in the District, Circuit and High Courts and is a partner in Hennessey & Co, Bantry, Co Cork. He has wide experience in conveyancing, probate, revenue law, personal injury and criminal law.

Red tape would hamper reaction to large-scale crisis here

In the event of a large-scale humanitarian crisis in Ireland, vital international assistance would be thwarted by bureaucracy – and by the lack of a cogent legal and policy framework. So says a report commissioned by the Irish Red Cross, *writes Lorcan Roche*.

Compiled by the Centre for Humanitarian Action (CHA) at University College Dublin, the report highlights a "general reluctance" on the part of the international community to create an "explicit legal obligation to either provide or receive international assistance".

The CHA posits several plausible scenarios that might require international assistance:

- Major flooding (which would require high-capacity pumping, water purification, flood containment and flood-rescue strategies),
- A major cyber incident (which could carry with it "unpredictable cascading effects"),
- A major terrorist incident (the report notes the reduced threat of domestic terror following the relative success of the peace process and the near elimination of 'dissidents', but cites increased tension in the Middle East and North Africa),
- Disruption of energy supply. (Ireland imports most of its gas, and all of its oil needs, and, while there is a 90-day reserve oil supply, the country is, nonetheless, "highly vulnerable" to a disruption of energy supplies that would almost certainly "overwhelm national coping capacity"),
- A major transportation incident (such as a large air crash),
- Pandemic disease,
- Nuclear or radiological emergency (new nuclear power plants may be built "at up to eight separate sites" in Britain by 2025), and
- Finally, tsunami (the probability of the latter is "very low", the report concedes. However, there is historical evidence that the Great Lisbon Earthquake of 1775 caused waves of up to ten metres on the southern coast of Ireland).

Legislation: the key to promoting risk reduction in large-scale humanitarian crises – at home and abroad

Chief author, UCD's Ronan McDermott, highlighted sensitive areas of constitutional constraints, such as the requirement for Garda vetting for any overseas personnel, in particular those working with children, older or vulnerable citizens – and the issue of foreign military assistance. (Note: the *Defence Act 1954* provides that "no person shall enter, land or be in a public place while wearing the uniform of any other State except with the consent in writing of the Minister of State".)

Mr McDermott explained that the report was designed to give relevant actors and authorities time to "put in place legal and policy provisions over a reasonable and realistic timeframe "rather than merely support a continuation of the current, ad hoc approach".

Head of the International Irish Red Cross, John Roche, highlighted the fact that international aid is now "big business" and that the private sector is "heavily represented". He cited the example of Haiti, where 900 separate organisations arrived – chaos ensued.

"New actors are complicating the field ... Legislation is the key tool to promote risk reduction," he said.

Hilary joins JSI Development Panel

Hilary Forde has been appointed to the Just Sport Ireland (JSI) Development Panel. Hilary is director of Racing Governance and Compliance at the Irish Greyhound Board and is a member of the *Gazette's* editorial board.

JSI is a not-for-profit, independent specialised dispute resolution service for Irish sport, offering both mediation and arbitration. Established by the Federation of Irish Sport in 2007 in response to the increasing prevalence of sporting disputes in the courts, the overall objective of JSI is to ensure the confidential, timely and effective resolution of sporting disputes in a cost-effective manner.

At present JSI deals with, on average, eight to ten cases each year, but this is expected to rise as the number of sporting bodies with provision for JSI within their governing rules grows. Currently, 46 national sporting organisations have provided for JSI within their rules. The Irish Sports Council is currently working with an additional 20 organisations to assist them in making similar provision.

JSI deals with all disputes arising in a sporting context, save for issues relating to anti-doping, which are governed by the Irish Sports Council's Anti-Doping Rules. Hilary's involvement with JSI's Development Panel follows on from the recent appointment of JSI's Arbitration and Mediation Panels, full details of which are available at www.justsport.ie.

Hilary says: "I am looking forward to bringing my experience of working within disciplinary and dispute-resolution matters within the horse and greyhound industries to JSI."

Celebrating 800 years of the sealing of the *Magna Carta*

This 15 June will mark the 800th anniversary of the sealing of the *Magna Carta* – or 'Great Charter' – of England. Described as one of the most famous documents in the world, it was originally issued by King John as a practical solution to the political crisis he faced in 1215.

The *Magna Carta* established for the first time the principle that everybody, including the king, was subject to the law. Although nearly a third of the text was deleted or substantially rewritten within ten years – and almost all the clauses have been repealed in modern times – the *Magna Carta* remains a cornerstone of the British constitution and the common law.

Peace treaty

Director general Ken Murphy was invited by RTÉ broadcaster Marian Finucane to explain to listeners on 8 February how the *Magna Carta* had come about, its significance, and subsequent impact on the law in England and throughout the world.

"It was essentially a peace treaty," Murphy said. "There was a civil war brewing in England at the time under the tyranny of King John. King John I – the son of Henry the second, younger brother of Richard the Lion Heart – became king in 1199 and reigned for about 15 years, but he was seen as a tyrant.

"He was in quite a weak position by the summer of 1215. A great many of his barons, who were the senior aristocrats and knights in the land, had risen up against him. They had actually taken London. King John was based at Windsor, so both sides met about halfway at a place called Runnymede, where the charter was drawn up over a number of days and finally sealed."

Marian Finucane: 'Why is it being celebrated all over the world this year?'

Ken Murphy: 'A huge influence of the *Magna Carta* was on the American Revolution'

PIC: WIKIMEDIA COMMONS

King John I seals the *Magna Carta* at Runnymede in 1215

Two key clauses

Most of the 63 clauses granted by King John dealt with specific grievances relating to his rule. Only three of the original 63 clauses remain part of English law, and it is the 39th and 40th clauses that are the most famous.

The director general explains: "Clause 39 gave all 'free men' the right to justice and a fair trial. It reads: 'No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.'

"Clause 40 added: 'To no one will we sell, to no one deny or delay right or justice".

To the *Magna Carta* can be traced kernels of what would emerge later as central to liberal democracies today – the rule of law, individual liberties, due process, the separation of powers and taxation only by popular consent – although it would take many centuries of struggle for these to be truly established.

Echoes in modern legislation

Although *Magna Carta* has developed an iconic status with myths about its contents, it has genuine echoes in modern human rights legislation, including the United States *'Bill of Rights'* (1791), the *Universal Declaration of Human Rights* (1948) and the *European Convention on Human Rights* (1950) and in article 40 of *Bunreacht na hÉireann*.

"And it was only 50 years later, in 1265, when a new phenomenon emerged that would ultimately curb the power of the king – parliament.

"Thereafter, the contesting of power between the king and parliament went on for hundreds of years. We have the emergence also in the *Magna Carta*, for the first time, of the courts being held in one place – and the significance of this is that it separated the king from the justice system.

"And, of course, you can't really have a justice system without independent courts, an independent judiciary and an independent legal profession to support it," the director general said. "That's why lawyers are talking up, this year, the history of the *Magna Carta*.

"A huge influence of the *Magna Carta* was on the American Revolution," Murphy concluded. "The *Magna Carta* has been referred to expressly in over 100 judgments of the US Supreme Court."

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
25 March	Companies Act, 2014 – Overview and Key Provisions – presented in partnership with the Business Law Committee	€150 (Light lunch included in the fee)	€176 (Light lunch included in the fee)	5 General (by Group Study)
13 April	International Conference: Child Protection and the Law presented in partnership with the Child Care Law reporting Project	n/a	€25	5.5 General (by group study)
17 April	General Practitioner Update 2015 The Landmark Hotel – Carrick on Shannon, in partnership with Law Society Skillnet and Leitrim, Roscommon, Sligo and Midland Bar Associations	n/a	€95	5 General plus 1 Regulatory Matters (by Group Study)
Starting: 21 April	Post-Graduate Certificate in Learning Teaching & Assessment in partnership with DIT and Law Society Skillnet	€960	€1,280	Full CPD Hours requirement for 2015 (provided relevant sessions attended)
21 May	In-house & Public Sector Committee Panel discussion		€25	2.5 Management & Professional Development Skills (by Group Study)
Save the Dates – Regional Bar Association Cluster Events				
19 June	West of Ireland Regional Bar Associations Cluster Event – Temple Gate Hotel, Ennis, Co. Clare		€95	Full details TBC
26 June	North West Regional Bar Associations Cluster Event, Donegal, Solis Lough Eske Castle		€95	Full details TBC
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The 2015 CPD requirement is 16 hours in total, to include a minimum of 3 hours Management & Professional Development Skills and a minimum of 1 hour Regulatory Matters. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2015 CPD Cycle
**Applicable to Law Society Skillnet members*

Feel the call to be a negotiation competition judge?

If you have experience in negotiation or dispute resolution, the Law School is encouraging you to volunteer as a judge at the upcoming International Negotiation Competition in Dublin next July.

Solicitors, barristers and law academics are being invited to volunteer to judge various rounds of the competition, which takes place from 6 to 10 July 2015 at Blackhall Place.

The competition is open to student lawyers from around the world, who participate in teams of two. Teams from 20 countries representing all corners of the globe will take part.

The teams will negotiate agreements and deal with myriad issues or problems in the context of the material supplied to them. They will receive a common set of facts known by all participants, as well as additional confidential information known only to the teams representing a particular side in the negotiations. The competition comprises three rounds in total, taking place on (Tuesday, Wednesday and Friday) 7, 8 and 10 July.

Participants at the International Negotiation Competition 2014, which was held in South Korea

Judges will have access to the problems supplied to the teams, as well as a confidential summary specific to the judges. In each round, panels of two or three judges assess two negotiations, each involving two teams. The judging criteria require the judges to address the apparent preparedness of a team, their flexibility in deviating from plans or adapting a strategy, the outcome of the negotiation as it relates to serving the client's interests, teamwork, relationship between the negotiating teams, ethics and self-evaluation.

Lunch and refreshments will be provided to volunteer judges throughout the competition, and all are invited to join the teams at the awards banquet at the Guinness Storehouse on the final night.

Further information on the International Negotiation Competition is available at www.lawsociety.ie/inc2015. If you are interested in volunteering as a judge this July, please contact the competition organiser, Jane Moffatt, by email at j.moffatt@lawsociety.ie.

'LawWithoutWalls' kicks off global gathering in Dublin

Over 200 law students, academics, lawyers and business people from 17 countries gathered at UCD's Sutherland School of Law in mid January for the 2015 LawWithoutWalls launch.

Sponsored by Eversheds, the programme is a part-virtual, global collaboration that educates law students in how to deal with issues that arise where law, business, technology and innovation overlap.

The Dublin event was the starting point for a variety of projects involving teams of up to ten people. The teams will complete their projects, virtually, over the next three months. Each team comprises students and mentors from academia, business and law.

Founded in 2010 by Michele DeStefano (professor of law at the University of Miami), the programme collaborates with 30 law and business schools worldwide, among them Harvard Law School, Stanford Law School, Fordham Law School, IE Business School in Madrid and University College London.

Students learn leadership skills, team work, technology, project management, business acumen, social networking, creative problem solving and dealing with other cultures. Over 450 academics, technologists, venture capitalists, entrepreneurs, business professionals and lawyers from around the world take part in the programme.


Some of the 200 global participants in the LawWithoutWalls programme, held in Dublin on 18 January

Ar mhaith leat a bheith ar Chlár na Gaeilge?

The PPC2 elective Advanced Legal Practice Irish (ALPI)/ Ardchúrsa Cleachtadh Dlí as Gaeilge (CDG Ardchúrsa) is open to practising solicitors who wish to be registered on the Irish Language Register (Law Society)/Clár na Gaeilge (An Dlí-Chumann).

In order to be entered onto the register, a solicitor must take this PPC2 elective course and pass all course assessment and attendance requirements.

The course will run from 16 April until 18 June 2015. The course contact hours (lectures and workshops) will be delivered on Thursday evenings from 6pm-8pm at the Law Society. Lectures in weeks one and two will be made available online, so physical attendance on those particular Thursday evenings is not required.

This is a 'blended learning' course. In addition to physical attendance on the specific Thursday evenings, participants will be required to complete individual and group coursework online in between each session.

Due to the group work logistics of this course, attendance at all the rest of the Thursday evening workshops is essential.

Assessment will combine continuous assessment and an end-of-course oral presentation. It is recommended that course participants have a good level of IT skills and be familiar with web browsing, word processing, uploading/downloading files, and watching online videos. A Leaving Certificate Higher Level standard of Irish is a minimum standard. In advance of course commencement, participants will be invited to attend IT clinics to become familiar with the technology utilised in the course.

This course will fulfil the full practitioner CPD requirement for 2015, that is, 16 hours, including one hour of regulatory matters and three hours of management and professional development skills.

The Advanced Legal Practice Irish Course was awarded the European Language Label 2012.

The fee for 2015 is €625. The closing date for applications is Friday 13 March at 5pm. Further information is available on the Law Society website under 'courses and events'.

For further details and an application form, please contact: Robert Lowney/Roibeard Ó Leamhna; email: r.lowney@lawsociety.ie, tel: 01 672 4952.

FOCUS ON MEMBER SERVICES

Safeguarding your income

Are you self-employed? If so, have you thought about how you will pay your bills if illness, injury or disability prevents you from working? Self-employed workers are not entitled to social welfare disability benefit, so you will need another source of income.

If you are employed, does your employer provide a sick-pay plan or long-term disability cover? The social welfare disability benefit is €188 per week. Would that be enough to cover your financial obligations in the event of illness or an accident?

We insure our home, car and health costs, even our holiday and pets, but many of us fail to insure our income.

The Law Society has engaged Friends First and PenPro to offer an income protection package to members. If you sign up to the scheme, you pay a monthly tax-deductible premium based on your income and health status and, in the event of illness, injury or disability preventing you from working, your policy will pay up to 75% of your net relevant earnings.

The group income protection scheme is open to all members under the age of 60.The cost is €30 per annum per €1,000 of annual benefit regardless of age, gender, smoker or non-smoker. Premiums can be paid annually, half yearly, quarterly or monthly.

Below is a table comparing the group policy premium to an individual policy premium providing €30,000 per annum of benefit, payable after 13 weeks out of work and increasing during payment at 3% per annum.

You can find out more about the scheme, including how to join, by telephoning PenPro on 01 200 0100 or emailing msheehan@penpro.ie. There is also information available on the Law Society website at www.lawsociety.ie/memberbenefits.

Assuming tax relief at 40%, the gross and net cost is as follows:

Benefit	Gross monthly premium	Net monthly premium
€50,000.00	€125	€75
€75,000.00	€187.50	€112.50
€100,000.00	€250	€150

Age	Group policy: smoker and non-smoker rates	Individual policy: non-smoker rates. For smokers increase by 25%
30	€75	€78
35	€75	€97
40	€75	€121
45	€75	€156
50	€75	€206

SOUTHSIDE SOLICITORS CELEBRATE PEARL ANNIVERSARY

Southside Solicitors celebrated their 30th annual dinner on 6 February 2015, organised once again by Justin McKenna. The event provided the opportunity to celebrate the elevation of 'local lad' Kevin O'Higgins to the position of Law Society President, and also marked the saving of the local District Court in 2014.

Over 100 colleagues and friends attended, while Blackrock turned out in force – Kevin's chambers are located on the main street, so he was bound to attract a crowd!

Special guests included Mary Mitchell O'Connor TD, Mr Justice Paul Gilligan (High Court) with his wife Mary Cantrell, Judge David Kennedy (District Court), James Barry (sheriff of the City of Dublin) who was accompanied by Ruth McKenna, and director general Ken Murphy and his wife Yvonne Chapman. The Dublin Solicitors' Bar Association was represented by Eamonn Shannon (vice-president).

Representatives from other groups and offices included the Collaborative Lawyers' Group, PALS, Joanne Sheehan/Angela McCann, Geraldine Kelly and LKG/Mehigan's.

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SOUTHERN LAW ASSOCIATION ANNUAL DINNER

At the annual dinner of the Southern Law Association (SLA) were *(from l to r)*: Don Murphy (vice-president, SLA), Peter Groarke (president, SLA), Kevin O'Higgins (president, Law Society) and Ken Murphy (director general)

(From l to r): Anne Nagle, Una Doyle (both Doyle's), Sandra Daly (Mercy University Hospital) and Karen Watret (Doyle's)

(Front, l to r): Byron Wade BL, Tom Coughlan (solicitor), Gerard Murphy BL, Doireann O'Mahony BL, Máire O'Sullivan (solicitor) and Brian W Cronin. *(Back row, l to r)*: Brendan Kelly BL, Aengus Ó Corráin BL, Audrey Callinan, Michael Riordan, Maurice Murphy, Helen Moakley (solicitor), Karen O'Shea (solicitor), Eamonn Moloney (solicitor) and Gertrude Ahern

Joyce Good and Richard Hammond at the SLA annual dinner

(From l to r): Barry Lonergan with Fiona Twomey (SLA council and annual dinner coordinator)

ALL PICS: TONY O'CONNELL PHOTOGRAPHY

Members of the SLA council attending the annual dinner on 20 February 2015 included: *(front row, l to r)*: Fiona Twomey, Joan Byrne (honorary secretary), Peter Groarke (president, SLA), Don Murphy (vice-president) and Juli Rea; *(back row, l to r)*: Fergus Long, Eamonn Murray, Patrick Dorgan (junior vice-president, Law Society), Emma Meagher Neville, Terry O'Sullivan, Rob Baker, John Fuller, Kieran Moran, Sean Durcan (honorary treasurer), Brendan Cunningham and Richard Hammond

Guests of SLA president Peter Groarke included *(l to r)*: Aaron McKenna (president, Dublin Solicitors' Bar Association, Kevin O'Higgins (president, Law Society), Arlene Elliott (Law Society of Northern Ireland), Peter Groarke, Sean Durcan (honorary treasurer, SLA) and Nicholas Walsh (Waterford Law Society)

Peter Groarke (president, SLA) with his father, retired District Court Judge Uinsinn McGruairc, and his mother Ita Groarke BL, and wife Catherine

Attending the conferral ceremony for the Diploma in Aviation Leasing and Finance recently were Brendan Twomey (vice-chairman, Education Committee), Kevin O'Higgins (president, Law Society), Mr Justice Peter Kelly, Judge Petria McDonnell, Dr Thomas B Courtney (Arthur Cox), Liz Barry (Airbus) and Freda Grealy (head of Diploma Centre), with students Peter Blakeney, Alan Breen, Gerry Burke, Sarah Caprani, Julie Collins, Ciara Cooling, Stephen Gardiner, Gemma Hennessy, Kieran Holland, Lorraine Jordan, William Kavanagh, Neil Long, Raymond Masterson, Ruth Sarah Morgan, Enda Mulkerrin, Michael Murphy, Patrick Neilan, Sorcha Ní Scolaí, Cian O'Toole, Edel O'Kelly, James O'Shea, Barry O'Sullivan, Davina Pratt, Mark Ronayne, Darragh Shannon, Keith Sheridan, David Sullivan, Simon Treanor, KateTuohy and John White

Attending the recent conferral ceremony for the Diploma in Corporate Law and Governance were Brendan Twomey (vice-chairman, Education Committee), Kevin O'Higgins (president, Law Society), Mr Justice Peter Kelly, Judge Petria McDonnell, Dr Thomas B Courtney (Arthur Cox), Liz Barry (Airbus) and Freda Grealy (head, Diploma Centre) with lecturer Paul Egan (Mason Hayes & Curran), and students Louise Boland, Michael P Bourke, Grace Connolly, Gillian Cotter, Martin Craul, Roger Geraghty, Sarah Gill, Emma Hickey, Nicole Muldoon, James A Murray, John O'Connor, Roy O'Carroll, Terence O'Connor, Ronan O'Grady and Padraig Ryan

At the Annual Family Law Conference recently were *(from l to r)*: Jane Moffatt (secretary, Family and Child Law Committee), Geraldine Keehan (Augustus Cullen Law), Noeline Blackwell (FLAC), Donagh McGowan (chairman, Family and Child Law Committee), Inge Clissman SC, Judge Brendan Toale, Dr Geoffrey Shannon (Law Society), Carol Anne Coolican (former chairperson, Family and Child Law Committee), Rachael Hession (Law Society Professional Training) and Sinead Kearney (Byrne Wallace)

Run rabbit, run rabbit, run run run – and be quick about it!

Many of you are seasoned runners and know your bodies well enough to know what foods work best for you in terms of maximising your performance during training – on run days and for post-run recovery.

Some of you might be new to the running bug – having decided to take on the challenge of the Calcutta Run on 16 May – and looking for ways to improve your nutrition. Choosing the right food can help to improve your timings, build strength, become more resilient to injury and illness, and perhaps to lose weight.

Our guest blogger, Nicole Walsh, a trained nutritionist, shares her tips on how best to prepare your body so that it is in top form for the big day.

Regardless of where you are in terms of training, you'll benefit from removing inflammatory foods from your diets. Temporary inflammation is your body's response to intense exercise or injury, whereas systemic inflammation

is your body's response to eating inflammatory foods.

Inflammation can be ongoing and your body will take much longer than normal to recover after runs. You may experience more pain after your run and also tire more quickly than usual while running.

In order to avoid the 'bad' type of inflammation in the body, you should do your best to avoid foods such as refined sugar, high-fructose corn syrup and artificial sweeteners ('artificial' being the key word here).

By replacing these with healthier sweeteners, such as rice malt syrup, raw honey, pure maple syrup, stevia (a natural non-caloric herb), dates and ripe bananas, you will lower the risk of diabetes, high blood pressure, high cholesterol, stroke and heart attacks. Plus, your metabolism becomes stable, thereby burning all the fat that sugar has placed in the body. The result is a loss of body weight.

For regular nutritional tips and training advice from two-time Olympian, Fionnuala Britton, visit www.calcuttarun.com.

At the launch of the Smith & Williamson Survey of Irish Law Firms 2014/15 were *(from l to r)*: Paul Wyse (managing director, Dublin Office of Smith & Williamson), Minister for Justice and Equality Frances Fitzgerald and Mr Justice Sean Ryan

letters

Limited liability is indeed a 'piquant circumstance'

From: Julian Deale, Julian Deale & Co, Solicitors, Monkstown Road, Co Dublin

I note from perusing the current *Law Directory* that a number of firms in Northern Ireland are now trading under the aegis of limited liability. I am surprised that this has not cropped up in this jurisdiction, in that it would seem perfectly proper, given that large numbers of other professions, such as doctors, engineers, architects and others are entitled to the protection of limited liability.

Has anybody in the Law Society bent their mind to this matter? It is an interesting and, indeed, piquant circumstance – I would like to hear the views of other members.

Ken Murphy, director general, responds:

The Law Society 'bent its mind to this matter', recognising it as an important modernising measure, many years ago. The Society made detailed submissions to successive governments, urging that both (a) limited liability partnership and (b) limited liability company models, which are available as optional business models for solicitors' firms in other jurisdictions, should be introduced here also.

A political commitment was given by former Justice Minister Shatter in May 2012 to introduce amendments to the Legal Services Regulation Bill *to provide for this. Work is continuing between the Society and the Department of Justice on this and I am pleased to confirm to Mr Deale that Justice Minister Fitzgerald has promised to introduce amendments at the Seanad stage of the bill.*

Local property tax salary deductions proving onerous for solicitors

From: Fiona Lucey, Padraig J Sheehan Solicitors, Douglas, Cork

I have been experiencing a common trend emerging when it comes to closing sales in cases where the owner of the property has chosen to pay the local property tax (LPT) through their employment. In many cases, the owner/vendor can provide vouching documentation by way of payslips to show the deduction of the charge on a weekly/monthly basis; however, this is of no comfort to the purchaser or their solicitor if the Revenue printout history page provided on or before closing purports to show outstanding charges/arrears in respect of the property.

I find this to be burdensome and frustrating, both for the client and the solicitor, when a sale is near its end.

Conveyancing, by its nature, brings its own risks with undertakings and so on, and I am of the opinion that matters such as LPT are adding more pressure to a solicitor's already busy workload. I wonder whether other practitioners are experiencing the same problem when it comes to finalising the closing of a sale for a client vendor? Perhaps a purchaser's solicitor is also finding it a headache? Has the Conveyancing Committee any comment or suggestion to make in this regard?

The Conveyancing Committee responds:

The Conveyancing Committee has issued a number of practice notes on LPT in the June and October 2013 issues of the Gazette *and by way of information note on the Society's website on 18 November 2013. It can be seen from the practice note published in the June 2013 issue of the* Gazette *that the point raised by solicitors about vendors paying by deduction from salary is addressed:*

- *The second paragraph says, in essence, that a sale of a property brings forward payment of any LPT that is due and must be paid by a vendor prior to closing,*
- *The paragraph numbered 2 (further on in the practice note) deals with the situation where a vendor had been paying by deduction from salary, but is selling during the course of a tax year.*

It should, therefore, not arise that a vendor will be relying on payslips (or that a purchaser will be asked to rely on them) to show how much has been paid to date, and a vendor should not be in a situation where he/she continues to pay from salary after completion.

Unfortunately, the vendor will have to pay the full amount for the year (and any arrears and penalties) up front in order for Revenue's online LPT printout to show on closing that nothing is outstanding – and claim back from Revenue at the end of the tax year any LPT amounts deducted from salary during the year.

A picture speaks a thousand words

From: Mark Eiffe, CommScope EMEA Ltd, Bray, Co Dublin

I just wanted to commend the *Gazette* team on the wonderful parchment ceremony supplement this month. It's a lovely memento and very thoughtful on the Law Society's behalf. Unfortunately, I didn't feature in the close-ups, but it's a great idea going forward. It should become an annual publication rather than be squeezed into the main publication.

Farm repossessions, banks and the law – a novel idea

From: Con Hurley, Reen, Union Hall, West Cork

I am contacting the ***Gazette*** in the hope that some of your members may be able to help me with a project I am undertaking. The project is a novel about a farming couple (and three children) who are in financial difficulty and unable to meet repayments to a bank.

The story begins with a court case in which the bank is seeking a possession order for the farm, so that it can be put up for sale in order for it to recover what is owed. The judge rules in favour of the bank. The rest of the story deals with how the farming couple come to terms with, and deal with, their new situation. This forms the main part of the book.

In order to write an accurate account of what happens during a repossession case, what I need right now is to familiarise myself with the legal processes around possession orders, preferably for farmland, but other property as well. So, I would appreciate any help you can give me with the following:

- Access to someone in the legal profession, who has experience in such cases,
- Access to actual cases that were heard in court,
- Access to a judge who has heard such cases,
- Any other information and contacts that you think would be useful.

It would be most useful if I could talk with people who would be involved in any of the above. Please be assured that I will treat any contacts I get with total confidentiality. I can be contacted on 028 33088 and cohurley@eircom.net, or at the postal address above. I look forward to hearing from you.

Note: Con Hurley is the former dairy editor of the Irish Farmers' Journal. ***He is a qualified 'life coach' and is now a full-time writer, having written two books and a dairy industry report, which has just been published. He has a keen interest in helping farm families achieve success in life, money and farming.***

'Outrage' of taxing master's disallowance of Injuries Board application fees

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

I am regularly told by insurance company solicitors and/or their legal costs accountants that "the taxing master won't allow Injuries Board application fees", which strikes me as an outrage and a total violation of the principle of *restitutio in integrum*.

Rather than wait for the inordinate length of time it takes to get a case to taxation these days and ask him in person, I am inviting the taxing master to respond in this publication to my request that he explain how he justifies a refusal to allow the innocent victim of a third-party's negligence a refund of the application fee that the victim has been obliged by statute to discharge, so as to enable him/her to pursue a perfectly legitimate claim for damages.

Why should this be non-recoverable from the perpetrator and/or his insurers? Why should the insurance industry be given a 'freebie' for these fees (paid to an institution set up after lobbying for years by that insurance industry)? For that matter, why does he refuse a full refund of medical report fees to an *innocent* victim of another's negligence?

His view appears to be that €350 is adequate for a (first) detailed medico-legal report from a highly qualified consultant. That may or may not be so. What is so is that the victim cannot properly present his case to a court without reports from the best medical experts available. Such reports will simply not be written or issued by the relevant consultant without payment of what he or she considers to be a reasonable fee (which, in most cases, is paid by a solicitor from his/her own resources).

Why should the victim be refused a refund of such fees? Is he not entitled to be put back into the situation he would have been in but for the negligent actions of another?

It seems to me that such policies unjustly penalise a victim and reward the insurers of the perpetrator. Why?

viewpoint

EU ACCESSION TO THE ECHR – BACK TO THE DRAWING BOARD

Full accession of the EU to the ECHR would ensure more effective access to justice for citizens, argues James MacGuill, but the CJEU isn't playing ball

James MacGuill is a principal of Dundalk law firm MacGuill and Co

It is 18 December 2014, and throughout the EU, Europhiles and human rights lawyers are posting their letters to that great European, Santa Claus. Top of the list, naturally, is a measure to implement the will of the people as expressed in the *Lisbon Treaty* that the European Union would accede fully to the *European Convention of Human Rights* (ECHR) and become a party with competence both to sue and be sued before the Strasbourg court (ECtHR).

To the many 'fools' (myself included) in the human rights' community, this would achieve both a harmonisation and raising of standards between the *Charter of Fundamental Rights* and the convention and ensure more effective access to justice for citizens, especially where their human rights have been affected, not merely by domestic state conduct but by such conduct mandated by membership of the union.

Little was required other than the approval of the draft accession agreement (DAA) by the Court of Justice of the European Union (CJEU).

Fair enough, that same court had 20 years ago concluded that, on the basis of the then law, there was no competence for the community to accede to the ECHR. In the meantime, however, we have moved beyond TEU (Maastricht) to TFEU (Lisbon), with article 6(2) providing that "the union shall accede to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Such accession shall not affect the union's competences as defined in the treaties."

Nothing could be plainer – or so we all thought.

A process was embarked upon to provide for an agreement between the union and the Council of Europe with the approval of their respective highest courts. The DAA had the support of the three major European Union institutions, the 24 member states that made submissions to the CJEU, and it appeared to satisfy the criteria set out by the representatives of that court in the pre-hearing discussions (an unfamiliar process to common lawyers). Critically, it had the support of Advocate General Kokott's admittedly qualified opinion.

> **It would be a serious understatement to say that this opinion was a major shock to the political, legal and academic firmament. It appears that nobody at all had envisaged this outcome**

While the excited boys and girls across the European Union waited for their end-of-year treat, the full CJEU was wrapping up its boxes of cinders with the following conclusion – that the agreement on the accession of the EU to the ECHR is not compatible with article 6(2) TEU or with protocol no 8 relating to article 6(2) of the *Treaty on the European Union* on the accession of the union to the ECHR.

It would be a serious understatement to say that this opinion was a major shock to the political, legal and academic firmament. It appears that nobody at all had envisaged this outcome.

CJEU objections

The opinion is a complex one, citing many reasons for incompatibility. Some reasons certainly appear familiar to us and carry weight; others less so. In very brief and necessarily inadequate summary form, the objections held by the court include the following.

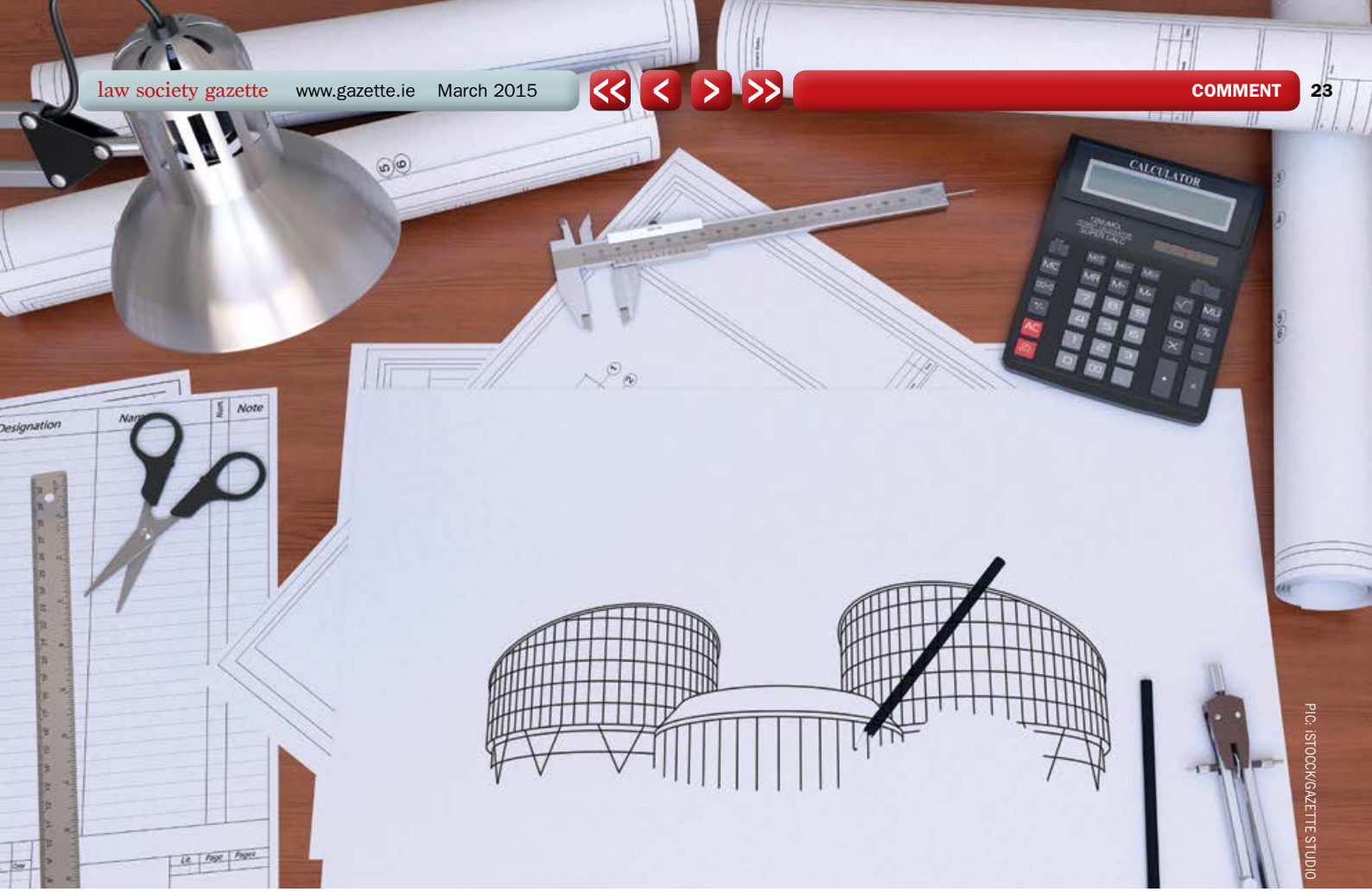
The DAA proceeds on the basis that the EU is a state, which is incorrect. The CJEU has characterised the EU as a "new legal order". The agreement failed to protect the autonomy of EU law and, in the opinion of the CJEU, it would be unacceptable for the ECtHR to call into question the CJEU's findings in relation to the scope of EU law.

This might occur as follows: the agreement might infringe the principles set out by the court itself in the *Melloni* judgment that member states could not have higher standards than the EU charter in cases where the EU has fully harmonised the relevant law.

The agreement violated the principle of mutual trust as, notionally, the ECHR would require each member state to check that the other member states had actually observed fundamental rights. (In passing, I should say that there is already growing frustration throughout the European Union at the artificial deference given to mutual trust, particularly in cases under the European arrest warrant, where requested states are asked to turn a blind eye to glaring shortcomings in the procedures and facilities in requesting states.)

Protocol 16 of the ECHR could enable member states' highest courts to seek advisory opinions from the ECtHR and bypass the CJEU. (Commentators point out that protocol 16 was only signed on 2 October 2013 and is accordingly irrelevant.)

The draft agreement permits the possibility of member states using the ECtHR to settle interstate disputes, in breach of the principle enshrined in article 344 of the TFEU, which provides that EU member states may not submit a dispute concerning the interpretation



PIC: iSTOCK/GAZETTE STUDIO

or application of the treaties to any method of settlement other than those provided for by the treaties.

(Given our country's history of invoking the convention in the case of *Ireland v United Kingdom*, we are well placed to acknowledge that the potential for parallel litigation exists.)

If the agreement had proceeded, it would be open to the European Union to be a co-respondent in proceedings, either at the request of the court or following a court order at its own request. This might entail the European Court of Human Rights assessing the rules of EU law governing the division of powers between the EU and its member states and, as such, violate the autonomy of the European Union.

A related point would be that, in such proceedings, a national court might not refer to the CJEU for a preliminary ruling, but rather resort to the ECtHR.

The agreement might also broaden the scope for challenge to action within the area of common foreign and security policy, where the CJEU has very limited jurisdiction. The ECtHR might itself interpret EU law without the aid of the CJEU – this has the potential to subject the EU, in its own actions, to outside supervision.

I for one can readily identify the senior Irish judicial voices that would articulate exactly such concerns.

Critical reaction

The legal commentators that I have read have almost exclusively been critical of the opinion. Some have likened the opinion to a "clear and present danger to human rights protection". Others have suggested that the CJEU opposing ECHR accession is for fear that this might result in a loss of its own sovereignty – a position uncannily similar to that taken by British Eurosceptics, who desire ECHR membership only on their own terms.

> **The points made by the court are cautious, protective of the autonomy of the European Union and particularly of the position of the court, perhaps even excessively so**

Personally speaking, I feel that there has to be a significant element of wounded pride on the part of commentators who simply did not envisage the possibility of a ruling of this kind. The points made by the court are cautious, protective of the autonomy of the European Union and particularly of the position of the court, perhaps even excessively so. It cannot be said, however, that there is not real substance to some of these concerns, which will have to be addressed if we are, in fact, to achieve a working harmonised human rights' norm.

Those of us who have had experience of the Strasbourg court know that the exercise is so protracted and currently so overburdened with its caseload that it has had to resort to, frankly, unconvincing procedural arguments to sift out cases, so much so that I would not wish that approach to continue into the future.

A harmonising measure that actually worked might achieve what should be our goal: that human rights are enforced at the lowest national level in every member state rather than requiring supervision from on high, as presently applies in many instances.

Some commentators have suggested that a further treaty will be required and a wording has even been proposed by one commentator: "The union shall accede to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, notwithstanding article 6(2) of the *Treaty on European Union*, protocol (number 8) relating to article 6(2) of the *Treaty on European Union*, and opinion 2/13 of the Court of Justice of 18 December 2014."

Personally, I think that is taking a sledgehammer to crack a nut in circumstances where the court addressed real and legitimate concerns, which should be resolved rather than overruled.

viewpoint

LET'S WORK TOGETHER

While the net effect of the *Workplace Relations Bill* is likely to be positive, that should not blind us to its significant defects, argues Loughlin Deegan

Loughlin Deegan is an associate in the employment law department of ByrneWallace. He previously served as special adviser to the Attorney General and as an employment law solicitor in IBEC. He is a member of the Law Society's Employment and Equality Law Committee

The *Workplace Relations Bill 2014* will, when enacted, effect the biggest ever reform of Ireland's employment-rights institutions. It will abolish the Employment Appeals Tribunal. It will incorporate the Equality Tribunal, all rights commissioners, the Labour Relations Commission and the labour inspectorate (NERA) into a new body, called the Workplace Relations Commission. The Labour Court will have both its jurisdiction and its membership significantly expanded.

The outcome will be a simple structure in which contentious cases are initiated before an adjudication officer and may be appealed to the Labour Court. The bill will reduce forum-shopping and duplication of claims, limit rights of appeal to the civil courts, provide for alternative dispute-resolution mechanisms, and expand the powers of the labour inspectorate. It will also make some substantive amendments to the working-time legislation.

> **'The rules of procedure were not developed by the courts for the benefit of lawyers. They evolved to elicit truth and achieve justice for the parties to proceedings'**

The Law Society's Employment and Equality Law Committee has welcomed the main thrust of the bill. The net effect is likely to be a more efficient process for parties involved in employment litigation. Rationalisation of forums will reduce inconsistency and make it easier for solicitors to advise clients as to the likely consequences of their actions.

In particular, we welcome Minister Richard Bruton's commitment to reducing the unconscionable delays that affect the employment-law process. At present, employment claims can take longer to conclude than a High Court action would take.

The many strengths of the bill cannot conceal its significant defects, however. In prioritising institutional efficiency, there is a risk that it may sacrifice substantive fairness. The adjudication process must be more than a system for processing paperwork. It will be a quasi-judicial process, and therefore the rights of parties must be respected.

Serious concerns

One serious concern relates to the bill's provision that cases are to be heard in private at first instance. It is a core principle of our legal system that justice should be done in public. This principle is enshrined in article 6 of the *European Convention on Human Rights* and elsewhere.

At present, some employment statutes provide for private hearings; others for hearings in public. The bill should provide that hearings be public unless there are compelling reasons for them to be held in private. It does not do so. In correspondence with the committee, the minister has defended the bill by saying that many parties prefer private hearings. Even if that assertion is correct, it would not justify a blanket rule shrouding all hearings in secrecy at first instance. Parties to litigation may have a short-term interest in keeping their names out of the newspapers. They may not always understand that public hearings are a necessary component of a transparent, consistent and fair judicial process.

Another significant concern is the proposal to abolish parties' rights of appeal to the Circuit Court in cases under the *Unfair Dismissals Acts*. It is already the case that many employment statutes provide that appeals may only be pursued on points of law. The bill will compound this problem by making this provision universal. Employment law cases are normally decided on questions of fact, meaning that, in most cases, no appeal will be available to the courts. The Labour Court is not a court of law but will, in many cases, enjoy a jurisdiction that is far in excess of that possessed by the Circuit Court. An appropriate avenue of appeal is needed.

Objections addressed

A number of other concerns that the Employment and Equality Law Committee raised have been addressed by the minister.

For example, we objected to the fact that the bill, as published, empowered adjudication officers to refuse to permit parties to be represented. Appropriate amendments have since been secured that ensure a right of audience for legal representatives.

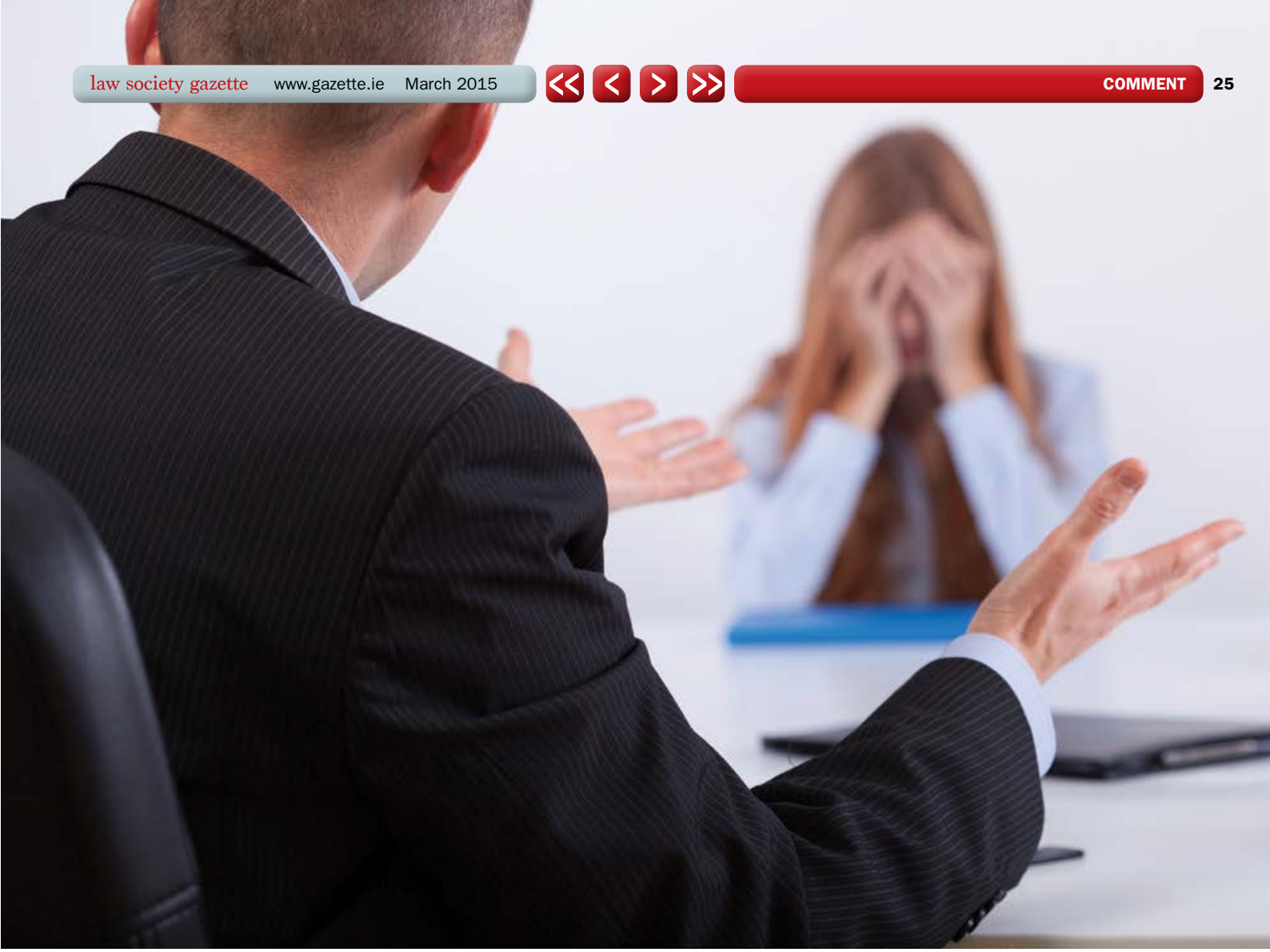
We also expressed concern that the powers of adjudication officers may be inadequate. The bill did not permit adjudication officers to:

- Summon witnesses,
- Require the production of documents,
- Facilitate cross-examination of witnesses, or
- Take evidence on oath.

These omissions were consistent with an evident policy of discouraging legal representation in the employment litigation process.

The bill presumed that unrepresented parties could have justice delivered to them at secret hearings conducted by adjudication officers who would operate with wide discretion but few powers.

This presumption is fundamentally incorrect. The rules of procedure were not developed by the courts for the benefit of lawyers. They evolved over time as the best way to elicit truth and achieve justice for the parties to proceedings. It is not the case that powers to apply correct procedures would necessarily be used in every case. However, such powers should



be available so that they can be used in those cases where they are needed.

The minister responded to some of these concrens. He proposed amendments that permit witnesses to be summoned and documents to be produced. He also gave a commitment that draft regulations (providing for the procedures before adjudication officers) would be published in advance of enactment of the bill. These developments will allow us to assess the ability of the adjudication process to deliver justice to parties and, if necessary, to seek further amendments to the bill.

The absence of a power to cross-examine witnesses under oath remains a very serious omission from any quasi-judicial process.

Consistency in decision-making

We also submitted that, to ensure quality and consistency in decision-making, all adjudication officers should have legal qualifications. The minister's response was to provide that new adjudication officers (those not transferred from the existing institutions) would be recruited to three panels: a legal panel, an industrial-relations panel, and a human-resources panel.

Each panel will be comprised of suitably qualified people. The members of the legal panel will be lawyers with impressive credentials in employment law. The minister has made provision for all new adjudication officers to receive accredited training. These are welcome developments, though it remains to be seen how this panel system will operate in practice.

> **'The absence of power to cross-examine witnesses remains a very serious omission'**

The scope of the bill is not limited to institutional reform. It will also create a new set of powers for the labour inspectorate. Inspectors may serve fixed-payment notices ('on-the-spot fines') for alleged breaches of certain statutory provisions. Employers who decline to pay such fines may be prosecuted for the alleged breaches, but not for declining to pay the fine.

Other new powers will have the effect of criminalising some breaches of employment law that, until now, have been the subject only of civil redress. Inspectors may serve employers with 'compliance notices' that allege breaches of certain statutory provisions. Employers may appeal such notices to the Labour Court, in effect being required to apply to the court to prove their innocence. In the absence of a successful appeal, failure to comply with a compliance notice will be a criminal offence. Failure or refusal to pay a civil award made under the provisions of the bill will also be a criminal offence.

While the net effect of the *Workplace Relations Bill* is likely to be positive, that should not blind us to its significant defects. Secret hearings and truncated procedures might improve institutional efficiency, but they risk undermining substantive justice.

The Law Society will continue to engage constructively with the minister to work towards our shared objective of giving Ireland an institutional framework that is fit for the challenges of the 21st century.

news in depth

SPN CONNECT – A UNIFIED FORCE FOR SOLE PRACTITIONERS

The Sole Practitioner Network has developed a bespoke app – *SPN Connect* – which is doing for sole practitioners what LinkedIn did for professionals looking to link up – but in a much more relevant and powerful way. Lorcan Roche reports

Lorcan Roche is a freelance journalist

Established in 2009 with the primary objective of bringing together sole practitioners in a time of recession, the Sole Practitioner Network (SPN) is now poised to "assume greater collective responsibility, to promote positive changes in attitude, and to offer enhanced opportunities nationwide", according to one of the network's founding members, solicitor Sonia McEntee. In particular, Sonia highlights the development of *SPN Connect*, an innovative web resource that offers unrivalled opportunities for knowledge and information sharing, which has, she says, the potential to become an industry-changing tool (see panel).

Sonia, a specialist in multi-unit rental properties, is based in Butlersbridge, Co Cavan, and also in Harmony Row, Dublin. She describes how SPN – now being supported financially by both AIB and the Law Society – was conceived: "You have to remember the crisis that was unfolding in 2009. Insurance premiums were rising, often by 100% per annum. In fact, premiums rose three years in a row from '09. There were so many adverse factors prevailing, among them high-profile negligence claims involving former solicitors Michael Lynn and Thomas Byrne."

McEntee says there was "an imperative for improved communication" since insurance companies were able to feed off the lack of shared knowledge: "In effect, we were forced to start talking to each other in a way that we hadn't done before."

But McEntee had a vision that went beyond issues of rogue solicitors or escalating premiums. She had previously worked for Ernst & Young: "I was there for four years and had had real sight of how knowledge could be shared, how experts could be identified, of how their expertise could be channelled."

Unified force

Before any similar sharing could occur within the world of sole practitioners and smaller firms, however, a culture change would be required. There was, and still is, she concedes, a mind-set prevalent most especially among rural and older sole practitioners that poaching of clients might be an issue.

"Yes, there was and still can be mistrust, fear. But once sole practitioners engage in information sharing, in particular the kind of information-sharing offered by *SPN Connect*, they begin to understand that ours is an organisation that promotes trust. We are 'collegiate' – I dislike the word; it is so 'American' – but it has important resonances, especially when it comes to sharing knowledge."

She describes how SPN's ethos grew out of the simple fact that members were all sole practitioners – "in precisely the same situation at the same time" – that is, they were worried about rising costs in an environment of increasing competition and uncertainty. "After a series of monthly meetings, we

FOCAL POINT

spn connect – it's only rapid

From its original 2009 presence on LinkedIn, *SPN Connect* has been developed and tailored to meet the specific demands of solicitors, especially those on the move, according to one SPN founder member, solicitor Neil Butler.

It is now an efficient, democratic (that is, it responds to the needs of its users), stand-alone web resource offering a search engine "as rapid as that offered by Google" – making it invaluable for research, ease of review and for finding pertinent topics/people/key words. Unlike LinkedIn, it is fully indexed and, through app or desktop, enables a growing number of sole practitioners to convene meetings with videoconferencing. Unlike LinkedIn, it allows for the uploading of documents and offers free phone calls (as with Hangout and Skype). It also allows for two or more practitioners to collaborate on documents from one interface. It further allows seamless linking to Dropbox, Google Drive, Sharepoint, Box and several other file-sharing platforms. While LinkedIn allows links, those links get deleted over time, in particular as group discussions become more frequent. *SPN Connect*, on the other hand, preserves all links and past discussions.

***SPN Connect* offers an integration in *Outlook* (LinkedIn does not), meaning that the SPN logo appears on the right-hand side of your screen in your *Outlook* window, making access quick and easy.**

It offers more than LinkedIn in terms of private communications for public or group work and, uniquely, also offers polls, which enable users to see what the general mood of a particular group is towards a topic being mooted or discussed.

"This will provide more scientific data for later submissions to the Law Society or the new regulatory authority, giving us 'the power of the group'," according to Butler.

***SPN Connect* comes with both desktop and mobile versions, and the mobile app has already demonstrated "far superior functionality to that of LinkedIn," he says.**

For information and subscription, visit www.spnconnect.ie.

saw how talking openly about our worries created new possibilities. Now, we are determined to become a unified force."

Taking control

McEntee is passionate about reform. She believes that change within the legal profession must come from within. She feels that many of the 'old-world beliefs' and methods of communication (or, more accurately, non-communication) are due an overhaul. "*SPN Connect* is about breaking down professional barriers, about engaging in debate as to where we, as a profession, want to go.

"It is about taking control. I, for one, believe change is imminent, and that it is far wiser for constructive change to occur under our watch than for it to be foisted upon us by outside interests unfamiliar with the day-to-day issues we face." *SPN Connect*, she argues, can therefore "become a platform for much more than knowledge or information-sharing".

> **SPN Connect is an innovative web resource that offers unrivalled opportunities for knowledge and information sharing**

However, like the eight other founding members – Eamonn Carney, Neil Butler, Eamonn Keenan, Michael Monaghan, Terry O'Sullivan, Sue Martin, Bernadette Cahill and James Cahill – McEntee perceives that the immediate attraction of *SPN Connect* lies in the realm of information-sharing.

"Look, we know better than anyone how small solicitors' firms are built, how they operate. It is highly process-driven work – and sharing of information, knowledge and expertise is crucial. It is about building a platform, a forum where expertise can be passed on safely. It is about *not* reinventing the wheel every day of the week. It is about being practical, being smart, being time-efficient, about relieving pressure, sharing templates and precedents, saving on solicitors' own time and allowing for more focused attention to management and care of practice."

Part of the concern that insurance companies had in 2009, she reminds, was that, in times of constraint, solicitors might take on work they were not expert at: "*SPN Connect* allows us to ask questions of our expert peers. It allows us *not* to have to take risk." It might, in time, allow much more.

Entering the BULLPEN

The 'Celtic Tiger' era saw many Irish people investing in property in Spain. It stands to reason that such property owners, when making their wills, should seek expert legal advice when attempting to enter the bullpen that is Spanish succession and inheritance law. Edmund Sweetman waves the red rag

at a glance

- Any non-resident who owns property in Spain and who makes a Spanish will must ensure that it complies with the formalities specified in the Spanish civil code
- It is possible for an Irish citizen to make a will disposing of their Spanish property before a notary public in Ireland, which they can then have 'apostilled' and subsequently lodged in the Register of Last Wills in Spain
- To administer a deceased person's estate in Spain, the heirs must 'accept the inheritance' – there is no exact analogue to the legal figure of the 'executor' or 'administrator' in Spain
- The provisions of a testator's will require careful consideration in order to mitigate the tax consequences for the disposition of the estate

> The most significant difference between Irish and Spanish succession law is the restriction on testamentary freedom that exists under Spanish law

Edmund Sweetman is a barrister, a qualified Spanish lawyer, and a consultant to Spanish Legal Services

The past few decades have seen an explosion of property ownership among Irish people abroad, most particularly in Europe. The majority of such properties are bought as holiday homes, meaning that Spain – with a climate many Irish people would consider enviable – counts many Irish citizens and residents as property owners. It is not uncommon for Irish people to buy property in Spain without any real experience of Spanish society or its legal system, for which reason, when such a real property owner requires legal assistance, they frequently turn to their trusted solicitor in Ireland.

While the need for legal services for the owners of property can be exotic and diverse, there is an inevitable need for expert guidance

when it comes to the law of succession and inheritance. So, where to turn when looking for such guidance when investing in property abroad?

War of the Spanish succession

Any non-resident who owns property in Spain should first be advised to seriously consider making a Spanish will disposing of that property. Such a will must comply with the formalities specified in the *Spanish Civil Code*, namely that the will must be handwritten, dated and signed by them or granted before a notary (with certain exceptions), and should be registered in the Central Registry of Last Wills.

Most Spanish people making a will tend to go to one of the notaries in their locality and make their will, with testators who require a slightly more sophisticated treatment of their affairs having first had a draft prepared by their lawyer, which they in turn present to the notary.

It should be noted that, in accordance with Spanish law, a will cannot be granted via power of attorney, meaning that the testator must travel to Spain to make their will or avail of the consular services of the Spanish Embassy. The option of handwriting their will is not recommended. It is also possible, however, for an Irish citizen to make a will disposing of their Spanish property before a notary public in Ireland, which they can then have 'apostilled' in the Department of Foreign Affairs and subsequently lodged in the Register of Last Wills in Spain.

Where a testator intends making two wills, one disposing of their estate in Spain and another disposing of their other assets, it is essential that the wills are mutually exclusive with regard to the property they dispose of, particularly where different dispositions are made as between the two wills. An estate can be administered using an Irish will and grant of probate, although this is more expensive and time consuming.

Good will hunting

To administer a deceased person's estate in Spain, the heirs must go through a procedure called 'accepting the inheritance'. There is no exact analogue to the legal figure of the 'executor' or 'administrator' as exists in Irish law. The acceptance of the inheritance may be done before a notary or in court. The notarial procedure is generally quicker.

If there is any contest as to the proper division of the estate, the dispute will normally find its way before the courts, with the difference that, as opposed to non-contentious judicial administration of the estate, court taxes must be paid on initiation of the proceedings, which can be very significant indeed.

> The difference between the substantive law applicable to the division of a deceased person's estate in Spanish and Irish law places a particular importance on ensuring that a non-resident owner of property in Spain is properly advised when making a will

Spanish inquisition

The difference between the substantive law applicable to the division of a deceased person's estate in Spanish and Irish law places a particular importance on ensuring that a non-resident owner of property in Spain is properly advised when making a will.

The position according to Spanish law is deceptively simple – article 9.8° of the *Spanish Civil Code* provides that succession shall be in accordance with the national law of the deceased at the time of his death. The position is not so simple in the case of an Irish national (irrespective of domicile or residence) with real property located in Spain. Spanish law says that Irish law is applicable; however, Irish law, following English law, applies a *renvoi* to Spanish law in the case of real property (but not in the case of personal property). This is known as the 'double *renvoi*' and means that Spanish law is once more applicable. As one may appreciate, this may have very significant effects on the distribution of property between various children, widow/widower and other family members – and the testator must be advised of this at the time of making a will.

There is also a view that, in the circumstances of an intestacy, Spanish law provisions for intestacy must apply, although, in the experience of the author, an intestate person's estate in Spain can be administered notarially using an Irish grant of administration, although this tends to take longer and be more expensive.

There is a line of authority emanating from the Spanish Supreme Court that permits the circumventing of problems that might be associated with the double *renvoi* in respect of real property located in Spain. These decisions prohibit the application of different legal regimes to personal and real property and, accordingly, justify the application of the national law to the entire estate. If for no other reason, this may make it well worth a non-resident's time and expense in

FOCAL POINT

testament to the fact

The most significant difference between Irish and Spanish succession law is the restriction on testamentary freedom that exists under Spanish law. Under Spanish law, a portion of the deceased's estate (called *la legitima*) is reserved for certain family members, being primarily the children of the deceased, or great/grandchildren. The testator must leave one-third of their estate equally between his/her children or descendants. The testator has the freedom to dispose of another third of the estate to whichever descendant (s)he wishes (although the spouse retains a life interest over this part), and the testator has complete testamentary freedom in respect of the final third.

If the testator has no issue and no spouse, then his/her parents may inherit half of the estate. Where there is a surviving spouse, the parents or ascendants are entitled to a third, with one-third being reserved for the spouse. If the testator has no ascendants or descendants, then the surviving spouse is entitled to, pursuant to law, two-thirds of the estate.

Where the deceased dies without leaving a will or a valid will, the estate is distributed in equal parts among their children and descendants. In the absence of children or descendants, the estate is distributed among the ascendants of the deceased and, in their absence, the spouse inherits the property in the entire estate. In the event of there being descendants or ascendants, the surviving spouse is, nevertheless, entitled to a life interest in one-third or two-thirds of the estate, respectively.

maintaining a bank account in Spain with a small balance in it.

In any case, in practice, where the national law of the testator provides for free disposition, notaries and registrars will rarely interfere with the dispositions of the will. What one must be conscious of, however, is that a disgruntled family member who would be entitled to inherit under Spanish law as a *legitmario* would be entitled to challenge such a disposition.

As regards foreigners disposing of property in Spain and documentary formalities, the practitioner must have regard to the 1961 *Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions*, which may permit the rescuing of a will that fails to fulfil the Spanish formal requirements but does satisfy Irish law in this respect. Both Ireland and Spain are signatories of the said convention and have transposed the same. EU Regulation no 650/2012 on jurisdiction, applicable law and recognition and enforcement of decisions in matters of succession will lend a great deal more certainty to transnational successions.

Be warned, however: Ireland has, with Britain, derogated from that regulation for the time being. The regulation will apply to deaths after 17 August 2015 and will, nevertheless, have an important indirect effect on the administration of certain estates of Irish people. The regulation will be applicable in Spain, making a 'choice of law' in favour of Irish law in the will binding, without any double *renvoi*. For this reason, as from now, it may be important to specify a choice of law on the basis of nationality in any Irish national's will disposing of Spanish property.

> As from now, it may be important to specify a choice of law on the basis of nationality in any Irish national's will disposing of Spanish property

Death and taxes

The provisions of a testator's will require careful consideration in order to mitigate the tax consequences for the disposition of the estate. Advice should be taken in this regard while drafting a will.

For example, where a married couple with children own a holiday home and wish to ultimately bequeath the home to their children, they may wish to make mutual wills bequeathing their share of the property to their children, with a life estate in favour of the surviving spouse. In this way, a double ration of inheritance tax may be avoided.

While inheritance tax is a competence of the central Spanish state (except in the Basque Country and Navarre), the competence has been transferred to certain autonomous communities to strike the inheritance tax for that community and, as such, rates may vary from one area to another.

In certain autonomous communities, significant tax-free allowances were available to 'residents', which meant that the Irish resident, for example, paid a far higher rate of inheritance tax. Of particular interest in this regard is a recent decision of the European Court of Justice (dated 3 September 2014), which has found that the Spanish state cannot impose a higher tax rate on non-resident owners of Spanish property than Spanish residents. It may be anticipated that many non-residents who have paid these higher inheritance taxes in recent years will be entitled to recover the tax collected from them.

This article has tried to describe, in the most superficial of ways, relevant aspects of Spanish succession law so as to provide a starting point for the Irish practitioner. It cannot purport to replace specific advice by a properly instructed professional.

look it up

Cases:

- *European Commission v Kingdom of Spain*, C-127/12 (judgment not yet available in English)

Legislation:

- Regulation (EU) no 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions in matters of succession
- *Spanish Civil Code*

Literature:

- "Which is the competent authority? Who should I contact? Successions in Europe", www.successions-europe.eu
- William Binchy, *Irish Conflict of Laws* (Bloomsbury, 2nd edition due on 30 July 2015, ISBN: 978-1-8459-210-02)

MAMMOTH task

Paul Keane is chairman of the Law Society's Business Law Committee and managing partner of Reddy Charlton, where he leads the business law team

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PIC: BLUE SKY STUDIOS/GAZETTE STUDIO

at a glance

- Most existing private companies will become private companies limited by shares. The other form of private company will be a designated activity company
- The act makes some very important changes in the laws in relation to directors and their duties
- Other important changes are introduced to the rules on companies giving security
- Four new categories of offences are introduced for *Companies Act* offences

The *Companies Act 2014* – comprising nearly 1,500 sections – is the largest piece of legislation ever passed by the Oireachtas. In the first of a series, Paul Keane and Neil Keenan start dissecting the mammoth

The *Companies Act 2014* sets out our law in a coherent fashion and introduces many welcome improvements. It also imposes additional responsibilities and liabilities on directors and others. The legislation is a challenge, but also an opportunity. The Business Law Committee is focused on arming the profession with the knowledge of company law required to retain our preeminent role as advisers to business and business people. This article is the first of a series that will examine the changes of greatest relevance to solicitors. Readers must check the detail of the legislation in any particular case.

Structure of the act

Unlike earlier legislation, the act takes, as its cornerstone, the private company limited by shares. Volume 1 (parts 1-15) describes, in a structured and accessible manner, the life, activities and demise of that company. Parts 16 to 19 deal with other types of company,

FOCAL POINT

five main types of companies

Private company limited by shares (LTD)

- A simplified single-document constitution,
- Unlimited capacity,
- No objects clause,
- Board (or person registered for this purpose) may bind the company,
- Need only have one director (with a different secretary) and one member,
- May avoid holding AGM, and
- May not offer securities (shares, debt, and so on) to the public or list securities.

Designated activity company (DAC)

- Very similar to an existing private company,
- Objects clause,
- *Ultra vires* does not invalidate transactions with third parties,
- Remedies for members/liability for directors if acting beyond capacity,
- Limited by shares,
- Minimum two directors,
- May avoid holding AGM only if a single-member company, and
- May list certain debentures.

Company limited by guarantee (CLG), public limited company (PLC), and unlimited company (UC)

- The minimum number of members is one,
- Objects clause and *ultra vires* – see DAC,
- Existing law largely restated (but see subsequent articles in this series), and
- CLG may avail of audit exemption.

Names

An LTD must have 'Limited' or 'Ltd' as part of its name. Every other company must include its type of company or the appropriate abbreviation. This can be in capitals. Thus, existing companies that become DACs, CLGs or UCs will need to adjust their names on stationery and elsewhere.

We refer to the company types by the permitted abbreviations, in capitals: LTD, DAC, CLG, UC and PLC.

adopting and adapting the general rules to the requirements of the particular company type. Other parts deal with regulatory, administrative and miscellaneous topics.

Conversion of existing private companies

Most existing private companies will become LTDs. The other form of private company will be a DAC. A DAC will be suitable for companies that must, by law, confine their activities to those objects designated in its constitution, to carry on an activity not permitted to an LTD (such as listing debentures), or where the members wish to limit the company to specific objects.

A key innovation is that the LTD will have full capacity to carry on and undertake any business or activity, or to do any act or enter any transaction. The doctrine of *ultra vires* will no longer be a concern to third parties in transactions with LTDs.

DACs, CLGs, UCs and PLCs will continue to have objects clauses. The shareholders will have remedies, and the directors may have liabilities, if the company strays beyond its objects. However, even in relation to these companies, *ultra vires* has had its day in relation to transactions with third parties.

Moreover, for all companies, the board of directors (and any other person registered for that purpose) is deemed to have authority to exercise any power of the company (other than a power to be exercised by the members and, in the case of a registered person, a power of management) to bind the company in dealings with unconnected parties. This applies regardless of any limitations in the company's constitution.

Constitution

The LTD will have a single-document constitution. It will not have an objects clause or memorandum of association. The constitution may consist of:

- A document with the name,
- The fact that it is a company limited by shares,
- The share capital,
- The fact that the shareholders' liability is limited, and
- The subscription and signature of the subscribers.

'Table A' currently sets out the model regulations of the company, which apply in default of any variation in the specific articles of the company. Table A is no more, save for existing private companies that do not adopt a new constitution. Approximately 150 optional rules are now set out in the relevant parts of the act.

The constitution of the LTD may include supplemental regulations that dis-apply, or vary the optional provisions, or deal with other matters. Examples would include provisions in relation to the offer-round of shares or indemnities in favour of directors.

> For the first time, private companies can avail of a statutory procedure to effect mergers and divisions of companies. This was previously only available to public companies engaging in cross-border transactions

Transition arrangements

It is expected that the act will be commenced on 1 June 2015.

Private companies can choose to convert to an LTD or to a DAC. There will be a transition period of at least 18 months after the commencement of the act that allows the conversion arrangements to become effective with minimum disruption.

Private companies have a number of options.At the end of the transition period, an existing private company will be deemed to have become an LTD, unless it is required to be a DAC or it converts earlier to a DAC. Until the end of the transition period, such a company will be bound by the rules applicable to a DAC.

If the company has not converted prior to the end of the transition period, the directors are obliged to file an amended constitution to reflect the new rules. They may not make any other change. In most cases, this will mean no more than deleting the objects clause and renumbering the subsequent paragraphs. If the directors fail to do so, the existing memorandum and articles of association will continue to have effect, with the exception of the objects clause. The articles will continue to refer to Table A. Though workable, this would be an untidy result.

By special resolution, the company may convert either to an LTD or (if passed before the last three months of the transition period), by ordinary resolution, to a DAC.

The conversion to LTD will require the adoption of a new form of constitution in compliance with the act. This is likely to involve considering what parts of the existing articles are now set out satisfactorily in the optional rules of the act, what variation of the optional rules is desirable, and what further supplemental regulations are required.

In the case of conversion to a DAC, the constitution must be changed so that its name reflects its new status and that the memorandum and articles are presented as a single document. Of course, the members may, by passing a special resolution, make more radical amendments.

Shareholder(s) holding more than 25% of the voting rights may, by notice to the company, insist that the company reregister as a DAC.

Shareholders/creditors holding 15% or more of the company's share capital/debentures may seek an order of court to direct reregistration as a DAC.

A company of one type may reregister as another (for example, LTD to DAC or UC) at any time by passing a special resolution and complying with the statutory requirements.

Directors' duties

The act makes some very important changes in the laws in relation to directors and their duties. Companies and their directors should be made aware of these changes.

It will now be explicit that a director has to be at least 18 years of age. An LTD can have a single director, but a DAC must have at least two directors. Unlike Britain, corporate directors will not be permitted.

Directors' duties – which are currently set out in common law – have been codified, with eight key statutory directors' duties set out in section 228 of the act.

FOCAL POINT

carpe diem

- Tell your clients about the act. Use or adapt the specimen 'client alert' available for download from the 'precedents' section of the Business Law Committee's page on the Law Society's website.
- Follow the series of articles to be published in the *Gazette* over the next few months.
- Attend the major CPD conference on 25 March 2014 that will provide a comprehensive briefing on the act.
- Avail of the specimen new forms of company constitution that will be made available by the Law Society for use by solicitors.

It is now expressly stated that a breach of directors' duties can result in the director having to personally indemnify the company for loss or damage resulting from the breach and to compensate for direct or indirect gains made by the director.

The act provides that a court judgment that is wilfully disobeyed by a company may be enforced by attachment against personal assets of a director if the relevant court order so provides.

There is a specific duty imposed on directors to ensure that auditors have all relevant audit information (for those companies that are subject to audit).

Larger private companies (those with a balance-sheet total of greater than €25 million and turnover of greater than €50 million) must have an audit committee with at least one non-executive director with relevant experience, or explain why not.

The audit exemption for smaller companies has been extended so that it will apply to a wider range of companies and will also now be available to groups and CLGs. Dormant companies may now also be exempt.

Compliance statement

All public limited companies and larger private companies (those with a balance-sheet total of greater than €12.5 million in the relevant financial year and turnover of greater than €25 million) must include in their directors' report a statement on compliance with tax law, company law (those offences that carry the two higher categories of breach), and certain other laws, such as market abuse and prospectus law. The directors must be able to demonstrate that the company has a policy on compliance and has in place structures and arrangements to ensure compliance, or explain why not. These statements are expected to be required with respect to financial years commencing after the commencement of the act.

Directors' interests

The provisions currently contained in part IV of the *Companies Act 1990* on disclosure of interest in shares have been amended and an attempt made to simplify them. Interests of less than 1% of share capital are disregarded, but options over this threshold must be disclosed. There is a procedure that will apply for 18 months after commencement of the legislation to cure inadvertent breach of the old disclosure requirements. The form of notification to the company has been clarified.

The current provisions on directors' loans (section 31 of the 1990 act) have not changed hugely, but it will be possible to use the summary approval procedure (see below) to approve a direct loan and credit transaction, which is not the case under the 1990 act. An auditor's report will not be required, which is also a change from the current position.

If loans from a director to a company and vice versa are not evidenced in writing, the loan will be deemed to be on terms that are very adverse to the director concerned.

It will be a duty of the directors to ensure that the company secretary has the requisite skills and resources to discharge their statutory and other duties (including the maintenance of all non-accounting records). Directors are now going to have to consider whether their secretary has the necessary skills and resources.

> It is now expressly stated that a breach of directors' duties can result in the director having to personally indemnify the company for loss or damage resulting from the breach and to compensate for direct or indirect gains made by the director

Summary approval

A summary approval procedure is introduced for effecting various restricted transactions, such as a voluntary winding-up, approval of financial assistance, statutory merger, loans to directors and a reduction of capital (the procedure does not apply to the division of companies). The procedure can differ depending on the transaction involved but, generally speaking, it involves a declaration of solvency, shareholders' special resolution (and, for some transactions, an auditor's report). Directors should note that giving the declaration without reasonable grounds can expose them to responsibility without limitation of liability for all of the liabilities of the company and not just those caused by the transaction in question.

Borrowings and security

Some very important changes are introduced to the rules on companies giving security. The priority of security will be by reference to the time of filing in the CRO rather than the date of the charge. There will be a procedure for those taking security from a company to notify their intention to create a charge that will lock in priority until the particulars of the charge are filed in the normal way. A wider range of charges (such as charges over cash) will also have to be filed.

An LTD will no longer be required to have an authorised share capital. In addition, a reduction in issued share capital can be effected through the summary approval procedure rather than an application to the High Court, which is the case at the moment. Other important changes are that the requirement that at least 10% of the issued share capital be non-redeemable is being removed. The requirement to have a 21-day period for inspection of a contract for the purchase by a company of its own shares will also be removed.

Another significant change is that it will be possible to have ordinary and special resolutions passed in writing by a majority of shareholders (or three quarters in the case of a special resolution) – currently, written resolutions have to be unanimous. The resolutions will not take effect until the requisite periods, which would otherwise apply for a meeting to pass such resolutions, have expired.

The LTD can dispense with the requirement to have annual general meetings, even if it has more than one member. In addition, AGMs do not have to be in the State as long as shareholders in the State are given facilities to participate electronically.

For the first time, private companies can avail of a statutory procedure to effect mergers and divisions of companies. This was previously only available to public companies engaging in cross-border transactions.

The financial assistance provisions have been reformed in particular, to remove the words 'in connection with', which will bring a lot of transactions outside of the financial assistance net.

Enforcement

Liquidators and examiners will need to have appropriate qualifications.

Four new categories of offences are introduced for *Companies Act* offences: category 1 is the most serious (carrying fines of up to €500,000 and up to ten years in prison), with category 4 being the least serious.

There will be a procedure for directors of insolvent companies to voluntarily elect to have a restriction or disqualification order imposed on them without the need to go to court.

look it up

Legislation:

- *Companies Act 1990*
- *Companies Act 2014*

The life of BRYAN

'If most people saw what I see, they would actually want something very different', US human rights lawyer Bryan Stevenson told Maggie Armstrong recently, before his presentation at the annual Dave Ellis Memorial Lecture, organised by FLAC

Maggie Armstrong is a freelance journalist

Lawyer Bryan Stevenson is dinner-party conversation these days. The author of *Just Mercy*, his 2014 memoir recounts his defence of an innocent black man facing execution for the murder of a white woman. The trial happened in the 1980s in Monroeville, Alabama (the hometown of Harper Lee), which was fictionalised in *To Kill A Mockingbird*.

Stevenson's client, Walter MacMillian, had never heard of the book. As Stevenson writes: "Sentimentality about Lee's story grew even as the harder truths of the book took no root." MacMillian was exonerated in 1993. Stevenson's story of his redemption became a bestseller and one of *The New York Times* '*100 Notable Books of 2014*'.

Stevenson is not only an author and professor of law at New York University, but the founder of the Equal Justice Initiative (EJI), a non-profit organisation that provides legal representation to juvenile offenders and other socially and racially disadvantaged minorities. The NGO has been behind reversals and reduced sentences in a number of death-penalty cases.

His TED talk, 'We need to talk about an injustice', is one of the most watched conference talks ever (if you watch it, you'll see why). He has been described by Archbishop Desmond Tutu as "America's young Nelson Mandela", garnering international acclaim for his role in challenging bias against poor people and people of colour in the US justice system.

Before delivering the Dave Ellis Memorial Lecture, in a meeting attended by Irish lawyers from community law centres, Stevenson told the *Gazette* how he came to study law. Born in 1959 into a poor black community in Delaware, Alabama, his great-grandparents had been enslaved in Virginia.

"I grew up in a community where black children were not allowed into the public school system. Lawyers came into our community when I was a little boy to implement a major US Supreme Court decision that banned racially segregated schools in America – and it changed educational opportunities for African Americans. I had the benefit of seeing these lawyers come in and open up the public schools. But for that implementation, I wouldn't have been to high school or to college. I never forgot it."

He got a scholarship to study philosophy and afterwards graduated from Harvard Law School and the Harvard School of Government. "I was very, very,

at a glance

- Bryan Stevenson is founder and director of the Equal Justice Initiative, an NGO that has been behind reversals and reduced sentences in a number of death penalty cases
- He is the author of *Just Mercy*, a best-seller on *The New York Times* list of '100 Notable Books of 2014'
- His 2012 TED talk, 'We need to talk about an injustice', is one of the most-watched conference talks ever

ALL PICS: DEREK SPIERS

unhappy with my law school education," he says. "I had been motivated by my own interest in how to confront the legacy of racial inequality and how to confront poverty. I didn't hear anybody [there] talk about race, or inequality – or even justice."

Defining success

Meeting a condemned prisoner changed everything, when he went to the Deep South to work with an NGO providing legal assistance to people on death row.

"For me, that was transformative. I met people who were literally dying for legal assistance – there is no right to counsel for condemned prisoners once their trial is over. They had hundreds of people who were facing execution simply because they couldn't find a lawyer; and to file the appeal, it's necessary to block the execution. Coming from a place of so much privilege and so much wealth, to see so many people desperate for legal help made quite an impact.

"It changed my study at Harvard radically. It made me want to engage much more deeply than when I didn't see that pathway," says Stevenson.

"The legal profession has its own norms and values. We define success in a particular way and we can get caught up with that, and before we know it, we're competing to get to this place or that firm, without appreciating whether that's really what's most meaningful to us."

In 1989, he founded the Equal Justice Initiative, which today divides its work into four major strands:

- Challenging discrimination due to race and poverty,
- Representing children in prison,
- Addressing mass incarceration, and
- Banning the death penalty.

EJI is based in Alabama, a state that currently has 192 men and women on Death Row and no state-funded programme to provide legal assistance to condemned prisoners. In the US, over 3,000 people have death sentences hanging over their heads, and children can be sentenced, in Stevenson's stirring phrase, "to die in prison". There is a racial bias to mass incarceration. According to EJI, in America, one out of every three black men born in 2001 will go to jail if current trends continue.

Every society at risk

At the discussion, Stevenson told community-based lawyers that Ireland has come a long way in advancing equality and justice – but it must do more. "Every society has to be really diligent at protecting against the excesses that we see in the US. Every society is at risk."

In a message he reiterated later on in his FLAC lecture, he said: "A society can't be judged by its protection of the rich, the powerful and the privileged. You judge the character of a society, its civility and commitment to the rule of law not by how it treats the affluent, but by how it treats the poor, the incarcerated and the disfavoured."

Stevenson always meets his clients in prison, and described what it means to him to work with the marginalised and disadvantaged. "Working with condemned populations taught me more about myself," he said. "Number one, I have to stay connected. For me, the power of what I do is in [my] proximity to people who are suffering."

This proximity includes staying close to the victims of crime, as well as the condemned and their families. When Stevenson was 16, his maternal grandfather was stabbed to death by armed burglars during a break-in at his home in Philadelphia. When he was growing up, lots of people he knew and cared about from his community ended up in prison. "I was always persuaded that the demonisation and the way we were criminalising people were misguided.

"I've learned that you've got to be attentive to narrative, to the stories we tell about these communities. Ireland is about the same size as the State of Alabama. Your prison population

Peter Ward SC (FLAC chair), Judge Rosemary Horgan (president of the District Court), Bryan Stevenson, Brian Kearney-Grieves and Noeline Blackwell (FLAC)

is 3,700 – under 4,000 – and we have a prison population in Alabama of 30,000 people! I've learned that you've got to be hopeful about things, you've got to believe things you haven't seen, because otherwise you'll get comfortable with the *status quo* and fitted into a role preserving it."

He speaks of the need to step outside one's comfort zone, commenting on "the distance of barristers and solicitors from the needs of the poor, the plight of the poor. I'm interested in bridging that gap and getting those communities to be more intimate."

> **'I met people who were literally dying for legal assistance. They had hundreds of people who were facing execution, simply because they couldn't find a lawyer; and to file the appeal, it's necessary to block the execution'**

Politics of fear

Stevenson congratulated FLAC on its commitment to *pro bono* work (see its PILA project) and as a human rights organisation that promotes equal justice for all. "You want to create as many opportunities for people to do *pro bono* work," he said, adding with a laugh: "I don't believe in mandatory *pro bono* work, because there's a lot of people who I would never want close to any of my clients, who just by training and habit don't have the temperament or the orientation to do effective work! But I think that when we celebrate the work of people who do this kind of stuff, we change the appeal and the visibility and importance of it."

Speculating on a heated political climate in advance of the next general election, Stevenson says: "The politics of fear and anger are very seductive. When you have politicians who are trying to gain power by getting people to be angry and fearful of the Roma, or the Travellers, or immigrants, or other people, there is going to be that temptation to fall into these patterns."

The Dave Ellis Memorial Lecture took place the day that FLAC presented a report to the United Nations, outlining concerns from voluntary organisations over Ireland's record on economic, social and cultural rights over the past decade and highlighting the mortgage arrears crisis. There is an ongoing official UN examination on Ireland that will see a Government delegation go to Geneva in June 2015.

Responding to the mortgage arrears crisis in Ireland – the latest statistics from the Central Bank say that 15.5% of housing borrowers are in arrears, while housing charity, Respond, estimates that 25,000 people are in mortgage arrears since the start of 2015 – Stevenson says: "It's a very familiar problem. We had the same recession where, again, lots of people lost their homes and couldn't afford to pay their mortgages. It has created really long-term problems. I think providing legal aid to that part of the population is really vital. Big institutions such as banks and lenders are always going to have the ability to influence Government policy in ways that disadvantaged, low-income families – or even no-income families that are vulnerable – won't. Providing access to courts and lawyers to this population of people who bear the costs of exploitation and excess or greed really changes that in ways that are comparable to what I've seen in the civil-rights context in America. That's what I mean by having a rights orientation."

Driving home the point about the importance of 'proximity' in a lawyer's work, Stevenson says: "If most people saw what I see, they would actually want something very different. It's not as if people can't recognise inequality, can't recognise abuse, can't recognise injustice. A lot of people are prepared to recognise these things – they're just shielded from them.

"We put up these big prison walls, we put up these big barriers, we segregate the poorest people, we put them in these little housing compounds where they're isolated. Because they don't see it, they [the judiciary] don't recognise it as a problem. A lot of our work [at the EJI] is to make them see it, make it easier for them to see what's going on. That exposure is, I think, critical."

the great OUTDOORS

Anthony Fay is the principal of Anthony Fay & Co. The author would like to thank John Morrissey BL for his helpful comments in relation to this article

There is now a general consensus that the law regulating outdoor concerts in Ireland is not fit for purpose. Anthony Fay plugs in and turns it up to 11. That's one louder…

Political intervention, committee enquiries, ultimatums, threats, media frenzy, damaged reputation – all these subplots could fall comfortably into a modern-day Shakespearian drama. In fact, they all played out in last summer's Garth Brooks debacle.

There is now a general consensus that the law regulating outdoor concerts in Ireland is not fit for purpose. The Minister for the Environment established a review group comprising representatives from local authorities, government departments and other State agencies to formulate recommendations to be put forward for consideration. Written submissions were also invited from interested parties in November 2014.

Part XVI of the *Planning and Development Act 2000* (*PDA 2000*) governs events and funfairs in this jurisdiction. A separate regime had been enacted under this statute taking such matters outside the ordinary scope of planning control by removing the requirement to obtain planning permission (after a number of well-publicised cases where concert promoters were seeking exemptions from planning requirements in the 1990s – see *Butler* and *Mountcharles*). Any proposed reforms should now be drafted as stand-alone law set apart from the PDA legislation.

Under the PDA 2000, an event includes a public performance that takes place wholly or mainly in the open air, or in a structure with no roof or retractable roof, a tent, or similar temporary structure, and that is comprised of music, dancing, displays of public entertainment. An event further requires an audience comprised of 5,000 or more people.

The main *Planning and Development Regulations 2001* (*PDR 2001*) are contained in SI 600 of 2001 (as amended), which provides further detail on the application procedure. Article 187 states that an application must be made at least ten weeks (previously 16 weeks) prior to the date for the holding of the first event(s) at a venue and within a period not exceeding one year.

Shark sandwich

Article 190 specifies that a local authority shall make a decision under section 231(3) of the act not earlier than five weeks after receiving the application. Crucially, however, the legislation does not impose a time limit for the decision to be made (as is usually the case under the *Planning and Development Acts*).This would cause obvious difficulties for concert-goers, residents, the hospitality industry and other stakeholders in the event that the application is refused late, or granted subject to unfavourable conditions (for example, reducing the number of proposed concerts, as was the case last summer).

at a glance

- The practice of advertising and selling tickets 'subject to licence' has become the custom for concert promoters in Ireland
- However, the law states that "any person who (a) organises, promotes, holds or is otherwise materially involved in the organisation of an event to which this section applies, or (b) is in control of land on which an event to which this section applies is held, other than under and in accordance with a licence, shall be guilty of an offence"
- This is a strict or absolute liability offence, and there is no provision made in the legislation for a defence
- There is an opportunity under new legislation to relax these rules, having regard to the economic realities facing the event-management industry

PICS: WIKIMEDIACOMMONS

> The scale of such concerts creates an economic juggernaut, so when an application is made, it is akin to economic duress being placed on the local authority to rubber-stamp the licence

The local authority must notify various prescribed persons or bodies – including the relevant garda chief superintendent, the HSE, and so on – within a week of receipt of the application. Any person may make a submission or observation in writing to the local authority in respect of the application within five weeks of the receipt of the application.

Various factors taken into consideration for a licence application are set out in section 231(3)b of the *PDA 2000*, including any information relating to the application furnished to it by the applicant, any consultation, any submissions made, and whether events have previously been held on the land concerned.

Section 230(3) of the *PDA 2000* is one of the more contentious parts. It states: "Any person who (a) organises, promotes, holds or is otherwise materially involved in the organisation of an event to which this section applies, or (b) is in control of land on which an event to which this section applies is held, other than under and in accordance with a licence, shall be guilty of an offence."

This is a strict or absolute liability offence, and there is no provision made in the legislation for a defence. Notwithstanding this, the practice of advertising and selling tickets 'subject to licence' has become the custom for concert promoters within Ireland (primarily on the basis that tickets are being sold for a contingent event that depends on a licence being granted). Local authorities, as the designated enforcement bodies under section 237 of the *PDA 2000*, have not in general brought prosecutions, thus avoiding a strict interpretation of the section. It is also possible that an individual could bring a private criminal prosecution, although the evidential burden to prove an offence beyond reasonable doubt would be quite onerous.

Difficulties arose when 400,000 tickets were sold without a public event licence in the Brooks debacle. The scale of such concerts creates an economic juggernaut, so when an application is made, it is akin to economic duress being placed on the local authority to rubber-stamp the licence (as opposed to considering it on its merits). There are a number of competing interests here, including the concert promoters, concert-goers, objectors and businesses, whose rights and responsibilities need to be balanced when reaching a decision.

The majesty of rock

There is an opportunity under new legislation to relax these rules, having regard to the economic realities facing the event-management industry (and to avoid the same chaotic results of discommoded fans and cancelled travel and accommodation arrangements). Certain exceptions could be put in place (within specified limits, analogous to planning exemptions), for example, that the number of tickets sold without a public event license shall not exceed 25,000 per concert and the number of concerts shall not exceed two in consecutive nights or four in aggregate over a seven-day period.

This issue of where to draw the line arose in the matter of *Arsenal FC v SSCLG & Islington LBC*, when Arsenal lost a judicial review against Islington Council over the number of

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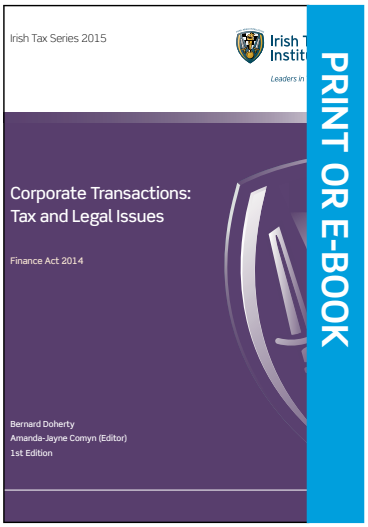

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concerts to be held at the Emirates Stadium. The club had sought to double the number of concerts from three to six per annum, arguing, as one of the reasons, that it needed to compete with other premiership rivals like Manchester City. The application was initially refused by the local authority and subsequently by the planning inspector, who held that the additional concerts would cause significant disruption to the quality of life of residents, that the density of population around the stadium was higher than Twickenham and Wembley Stadiums, and that the events would be concentrated in a narrow window of time (which, for many inhabitants, was a valuable respite from the disruption caused by the football season). He further commented that the top-flight club could not plead poverty if they could recently afford to buy German midfielder Mesut Ozil for Stg£43 million!

Mandatory consultation with the local authority at pre-application stage might also be warranted, having regard to the number of proposed concerts and the local authority's development plan and zoning objectives. The review group convened by the Minister for the Environment will, no doubt, have to tackle these difficult issues.

> **'This legislation was intended to be used on a temporary basis and its prolonged use for a series of concerts or a music festival (particularly in a core residential area) could result in violations of civil liberties'**

The sustain, listen to it

Article 191(4) of the *PDR 2001* states that that the local authority may take whatever measures it considers necessary, including the convening of meetings or the taking of oral submissions, to seek the views of any person in regard to the application. In contrast, An Bord Pleanála will, in general, only agree to an oral hearing request in respect of a complex case or where it considers that significant national or local issues are involved. Other factors that should be considered in any reform of this area include the number of concerts and the establishment of precedent for future applications.

There is no right of appeal provided under part XVI of the *PDA 2000*, which some commentators submit is the correct position under Irish administrative law (having regard to the temporary nature of a concert/event). A compelling argument, however, could be made that, under certain circumstances, it gives a disproportionate amount of power to a local authority (for example, for an application of three consecutive concerts or more).

An Bord Pleanála's functions have been expanded over the years, including dealing with strategic infrastructural development, compulsory acquisition of land by local authorities, appeals under the *Water* and *Air Pollution Acts* and the *Building Control Act*. This independent and quasi-judicial body may have the structures in place to streamline an appeals process where time would be of the essence. It would be the preferred option (as opposed to some proposals that the Minister for the Environment have the power to review an event of national and cultural importance), taking it outside the political realm.

The granting of an event licence for a specified number of concerts does set a precedent for future applications. It is also one of the recognised criteria for applications (see again section 231(3) of the *PDA 2000*). This intensification of use, depending on the particular circumstances, could result in an unjust attack on people's property rights under articles 40.3.2 and 43 of the Constitution (in terms of diminished property values, one's livelihood and quality of life).

Article 8.1 of the *European Convention on Human Rights* further recognises that "everyone has the right to respect for his private and family life, his home and his correspondence". This is not an absolute right and has been invoked in previous cases relating, for example, to environmental nuisance, when it was necessary to show that there was an actual interference with the applicant's private sphere and that a level of severity was attained. It will be interesting to see if the courts adopt a more expansive definition, albeit that concerts/events are transient in nature.

Part III of the *Criminal Justice (Public Order) Act 1994* is often relied upon by the gardaí on event/match days for crowd control and/or to effectively cordon off an area surrounding the event location. I would respectfully submit that this legislation was intended to be used on a temporary basis and that its prolonged use for a series of concerts or a music festival (particularly in a core residential area) could result in violations of civil liberties. This section should also be revisited in any proposed legislation to ensure that these powers are exercised in the least restrictive manner.

Stonehenge

Many sports stadiums in Ireland and overseas are now increasingly being redeveloped and operated as convention/entertainment centres for revenue-raising purposes. This is not always a smooth passage. Horner J, for example, quashed the decision of the Northern Ireland Department of Environment to grant planning permission for the redevelopment of Casement Park, Belfast (*Mooreland and Owenvarragh Residents' Association's Application*). The High Court held in this judicial review case that the department had failed under domestic and European law to make a proper assessment of the effect of a capacity audience attending the new stadium (both for GAA matches and concerts) on the locality and adjoining road-traffic network. Casement Park, interestingly, has been suggested as a potential venue for Ireland's bid to hold the Rugby World Cup in 2023.

Haringey Council made a compulsory purchase order in 2012 for the acquisition of land adjacent to White Hart Lane Stadium. The objective was to allow Tottenham Hotspur FC to redevelop their stadium, which is now being challenged in the High Court by a local business. The hearing is ongoing as we go to press.

Good fences make good neighbours – but this doesn't necessarily hold true in modern society, which now has to face up to these challenges.

look it up

Cases:

- *Arsenal FC v SSCLG & Islington LBC* [2014] EWHC 2620 (Admin)
- *Butler v Dublin Corporation* [1999] 1 IR 565
- *Mooreland and Owenvarragh Residents' Association's Application* [2014] NIQB 130
- *Mountcharles v Meath County Council* [1996] 3 IR 417

Legislation:

- *Criminal Justice (Public Order) Act 1994*
- *European Convention on Human Rights*
- *Planning and Development Act 2000*
- *Planning and Development Regulations 2001*

Literature:

- Morrissey, J (2006), *Criminal Prosecutions Under the Planning and Development Acts 2000-2006* (FirstLaw), p 205
- Morrissey, J (2014), *Local Authority Enforcement* (Bloomsbury), p308
- Simmons, GSC (2007), *Planning and Development Law* (2nd edition, Round Hall)

CLEARING *the undergrowth*

Clearing the procedural undergrowth to identify a key constitutional question, the Supreme Court struck down registered employment agreements and the Labour Court's unlawful delegated legislation. Cliona Boland whips out her machete

Cliona M Boland is a practising barrister and a lecturer. She currently tutors at the Law Society and has tutored in employment law at the King's Inns

The case of *McGowan & ors v the Labour Court & ors* will be of note to employment lawyers and constitutional lawyers alike. As stated by Judge O'Donnell in the Supreme Court, there was – concealed in a thicket of procedural complexity – an important point of constitutional law concerning the *Industrial Relations Act 1946* to be found in these proceedings. The Supreme Court answered, once and for all, the thorny question of whether one of the functions of the Labour Court contravened the provisions of *Bunreacht na hÉireann* by usurping the exclusive law-making power of the Oireachtas.

The *Industrial Relations Acts 1946-2004* (part III of the 1946 act) provided for certain employment agreements to be registered by the Labour Court. This occurred on foot of negotiation by the two sides in an industry or enterprise. Once registered, the provisions of the agreement were legally enforceable in respect of every worker of the class, type or group to which it applied and to all employers in that industry, even if they were not party to the agreement. The Labour Court had jurisdiction for any future variation to these registered employment agreements (REAs) in certain circumstances. At the time that the *McGowan* challenge came into being, there were approximately 45-50 REAs on the register maintained by the Labour Court – some from diverse industries and some relating to specific employers. Only six had been updated in recent years. This, however, could have covered up to 80,000 workers in sectoral employment.

The appellants in this case were complaining about the REA concerning the electrical contracting industry. This REA was registered on 24 September 1990 and had been varied 14 times up to 2008 by order of the Labour Court, under section 28 of the 1946 act. The parties to the agreement were the Electrical Contractors' Association and the Association of Electrical Contractors (Ireland) on the one part, and the Technical Engineering and Electrical Union (TEEU) on the other side. As already pointed out, if you were an employer in the electrical trade sector, you were subject to the provisions of this REA, even if neither of the negotiating contractors' associations represented your interests. Crucially, the REAs were made part of the criminal law, and their existence bound every

at a glance

- At the time of the *McGowan* challenge, a total of 45-50 REAs on the Labour Court register potentially covered up to 80,000 workers in sectoral employment
- In May 2008, application was made to the Labour Court by a large number of contractors seeking total cancellation of the 1990 REA on the ground of their inadequate representation
- The Supreme Court declared the provisions of Part III of the *Industrial Relations Act 1946* to be constitutionally invalid
- The Department of Justice, Enterprise and Innovation has published the heads of bill of the *Industrial Relations (Amendment) Bill 2014*, to deal with employment agreements between individual enterprises and trade unions
- The *Workplace Relations Bill* is due to be enacted in 2015, introducing a substantive revision of the employment law framework in Ireland

> As O'Donnell J put it: 'law' was undoubtedly being made for the State, and by persons other than the Oireachtas

employer who participated in the relevant sector. Therefore, breach of this REA by electrical contractor employers could result in criminal prosecution under a law made, not by the Oireachtas, but rather by private individuals and rubber-stamped by the Labour Court.

Strict rules

The REA provided strict rules for, among other things, the setting of standard working hours, hourly rates of pay for electricians of all levels (including apprentices), overtime rates, country work, tools, sick pay and wage reviews. The stipulations contained in the REA were, of course, highly favourable to electrician workers. Indeed, the Supreme Court eloquently acknowledged this when considering what justified it in addressing the validity of legislation of general application that might be beneficial for many citizens. The court identified that it is the factual matrix of an individual's situation that gives real focus and reality to a claim of unjust infringement of a constitutional provision by another law. Constitutional litigation should be firmly based in the injury that requires a remedy, up to and including the striking down of legislation.

This is where the court saw the 'procedural thicket' before it.

The background to the complaint before the court was complex and involved some 'skirmishing' before the Labour Court, as well as two separate judicial reviews of Labour Court actions.

In May 2008, application was made to the Labour Court by a very large number of contractors seeking total cancellation of the 1990 REA on the ground of their inadequate representation. The impetus for this application was a request by the employee representatives to increase the minimum pay of electricians.

Also in May 2008, a District Court prosecution was commenced against one contractor employer for breach of the REA. This was paused for a consultative case stated to the High Court. When the Labour Court refused to adjourn the applications before it to await the outcome of the case stated, a number of the contractor applicants sought a judicial review and injunction restraining their hearing before the Labour Court. They obtained an interim injunction in June 2008, but this was lifted in October 2008.

The Labour Court duly conducted its hearing over 11 days and refused to increase remuneration, while also refusing the contractors' cancellation application. Another judicial review by the employer contractors sought to challenge the latter refusal.

The three sets of proceedings were amalgamated in the High Court and, despite losing a high number of applicants, they progressed, culminating in the matter being dismissed by the High Court.

The Supreme Court identified the *McGowan* case as coming before it with a wild maze of complications. It wondered if it should decline to hear and determine the issue on the basis

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of those difficulties. Ultimately, the court considered the administration of justice, and, after some active case management, it cleared the thicket to ask the central and important question: does part III of the *Industrial Relations Act 1946* or any section of it contravene article 15.2.1 of the Constitution by delegating the making, variation and cancellation of REAs to the Labour Court and the parties to such agreements?

Repugnant to the Constitution

It is worth reminding practitioners that they may already be familiar with the case of *John Grace Fried Chicken v the Labour Court*, which pertained to a similar area of industrial relations law. In that case, the High Court struck down provisions of part IV of the *Industrial Relations Act 1946* as repugnant to the Constitution.

That decision concerned the catering industry and an employment regulation order. The order provided for an industry where it was deemed that collective bargaining would not take hold, due to the nature of the workforce. The decision of Feeney J in *John Grace* was not appealed. Instead, the Oireachtas enacted the *Industrial Relations (Amendment) Act 2012*, at the time meeting one of its requirements to the 'troika', but also acknowledging the precision and validity of the *John Grace* decision. The 2012 act amended part IV of the 1946 act by setting out a structure for the delegation of the law-making function and also made changes to part III of the act.

It is part III of the act that governs the topic of REAs and, while the 2012 act also took the opportunity to make wide-ranging changes to this part, *McGowan* concerned the provisions of part III in their original form.

In *McGowan*, the Supreme Court noted that the first significant challenge to the law-making power of the Labour Court occurred in 1979 in *Burke v the Labour Court*. That case was eventually decided on a fair-procedures issue, but not before Henchy J said that "the power to make a minimum-remuneration order is a delegated power of a most fundamental, permissive and far-reaching kind". He pointed out that the power vested in the Labour Court was given irrevocably and without parliamentary or ministerial control – the 1946 act was silent on a certain key point.

This point is the enforcing of proper limits on the scope of the delegation of law-making authority, and it was considered in another Supreme Court case that was argued almost contemporaneously with *Burke*. The judgments were delivered within a day of each other.

Cityview Press v An Chomhairle Oiliúna is a landmark case on the validity of subordinate regulation and, as O'Donnell J says in *McGowan*, the leading modern authority on the issue. While the Supreme Court in the *McGowan* case accepted that whether there had been a breach of article 15.2.1 by a delegated body was largely a question of degree, it seemed that, in the case of Labour Court REAs, the question was not just one of degree but rather of structure.

> The court again reiterated the undesirable nature of an agreement being binding on those who were not even party to it. Only the original parties could apply to vary the REA

The judge considered *Cityview Press*, where the delegation or authorisation (to fix and collect a levy from those in the industry) was narrow, the area of decision-making afforded to the body was limited in scope.

This was contrasted with the scope of power given to the Labour Court under the *Industrial Relations Act 1946*. An REA can make provision not merely for remuneration, but for any matter that may be regulated by a contract of employment. The court stated that the "extent of delegation is also of significance". Employer participants in the industry could be the subject of criminal proceedings for a breach of a part of the law of the State, the creation of which had been granted to private persons within that industry. As O'Donnell J put it, 'law' was undoubtedly being made for the State, and by persons other than the Oireachtas.

This conferral of law-making authority is too far-reaching and is not within the test outlined in *Cityview Press*. This could only be done if the process of registration by the Labour Court had sufficient limitation introduced. From a structural analysis of the act, any control of the exercise of the regulation is necessarily flimsy because of the broad discretion afforded to the Labour Court. Furthermore, there is a mandatory element to section 27 of the 1946 act, which results in a sort of double delegation – the Labour Court "shall" register the agreement, after some basic compliance only. Finally, there is no guidance within the section on registration that would sufficiently provide adequate limitation on the Labour Court's power.

The court again reiterated the undesirable nature of an agreement being binding on those who were not even party to it. Only the original parties could apply to vary the REA. The judge pointed out that Oireachtas, which enacted the 1946 act, had no idea of the range of regulation that might be made.

Part III allowed the parties to make any law they wished, and any limitations on the Labour Court were plainly inadequate to bring the exercise of such power without constitutional limit. It was an abdication of the authority of the Oireachtas and, ultimately the people, through the Constitution. The Supreme Court allowed the appeal and declared the provisions of part III of the *Industrial Relations Act 1946* constitutionally invalid.

Effect of *McGowan*

The effect of this decision is to invalidate the registration of employment agreements. The Labour Court no longer has jurisdiction to enforce, interpret, or otherwise apply these agreements. Existing REAs no longer have any application beyond the subscribing parties and are not enforceable in law. However, existing contractual rights of sectoral workers covered by REAs are unaffected by the ruling. Contractual rights may be varied by agreement between the parties involved.

The *Industrial Relations (Amendment) Bill 2014* will address proposed agreements relating to remuneration and conditions of employment. The heads of bill have been published and, when enacted, it should provide for a legislative framework to allow individual enterprises and trade unions to register employment agreements with the Labour Court that will be binding only on the parties to the agreement.

look it up

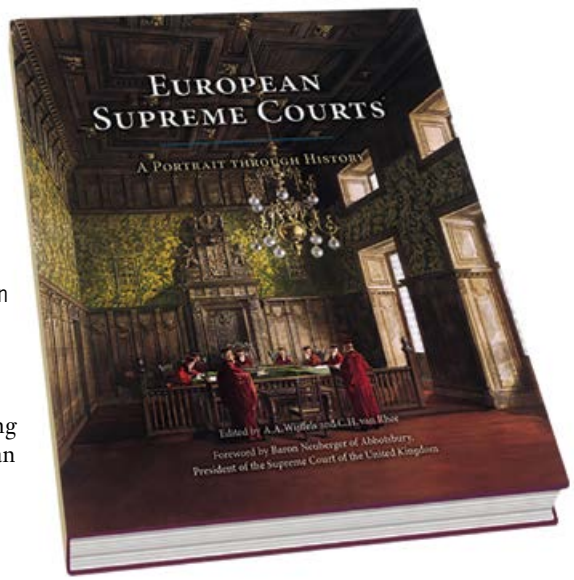
Cases:

- *AA v Medical Council* [2003] 4 IR
- *Burke v the Labour Court* [1979] IR 354
- *Cityview Press v An Chomhairle Oiliúna* [1980] IR 381
- *Dunnes Stores v Ryan* [2002] 2 IR 60
- *John Grace Fried Chicken v the Labour Court* [2011] 3 IR 211
- *McGowan & ors v the Labour Court & ors* [2013] IESC 21

Legislation:

- *Industrial Relations Acts 1946-2004*
- *Industrial Relations (Amendment) Act 2012*
- *Industrial Relations (Amendment) Bill 2014*
- *Workplace Relations Bill 2014*

European Supreme Courts: A Portrait through History



Prof Alain Wijffels and Prof CH van Rhee. Third Millennium Information Group, London (2013), http://tmiltd.com. ISBN: 978-1-9065-074-04. Price: €65 (plus p&p).

It would be easy to assume that a thriving supranational court such as the European Court of Justice is an achievement of modern times. One of the themes of *European Supreme Courts: A Portrait through History* is that a multi-layered legal system and a hierarchy of courts are long-standing European traditions. The book sets out to document the history of supreme courts in Europe up to the present day, both national and supranational, and to assess their relationship.

European Supreme Courts comprises chapters by 28 legal historians affiliated to universities, courts and archives across Europe. The first section examines the history of supreme courts by region, from medieval times to the present day, ranging from Western Europe to the former Ottoman Empire.

The second and shorter section examines the main supranational courts and their origins, including the European Courts of Justice and Human Rights, and the various international criminal tribunals of recent decades.

The subject matter of the book is broader than its title might suggest and encompasses European political history. A common theme is how legal and judicial systems across Europe evolved in parallel with the development of democracy and regional politics. A compelling recent example is the weakening or removal of courts' powers during periods of fascism and communism in the 20th century.

The first chapters examine the various supreme courts in considerable depth, not all of which might be of interest to the reader, but the layout of the book makes it possible to dip in and out. For Irish legal practitioners, the chapters on England and the evolution of the common law are probably of most interest. The author paints a colourful picture of the London courts and the development of the adversarial system. The discussion of 19th century reforms is relevant, given that many of the same challenges persist today, such as delay and expense in litigation. The chapter includes an extract from Dickens' *Bleak House* and its depiction of the interminable *Jarndyce v Jarndyce*.

The volume does not include a section on the Irish Supreme Court, which is disappointing, given Ireland's strong constitutional tradition, but the reason may be that, in relative terms, it is a recent institution.

The final section on supranational courts and international tribunals is highly readable. It includes a considered appraisal of the successes of those institutions and their relationships with national courts and legislators, which continue to be a live political topic.

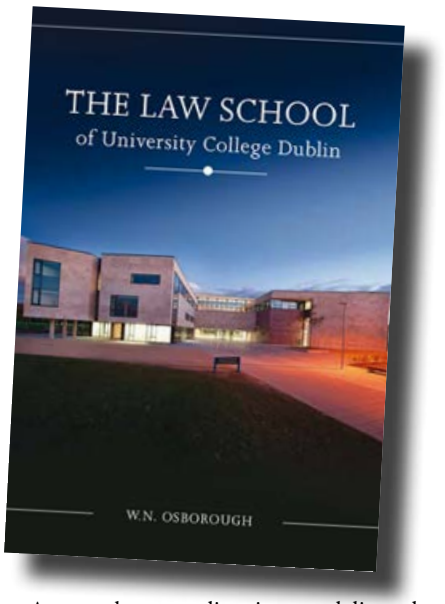
One of the highlights of the book is its large number and variety of illustrations. Each chapter includes colour photographs and images from collections and archives across Europe. These range from photographs of court interiors to portraits of jurists, and from copper engravings to centuries-old legal cartoons. The final chapters include photographs of famous (or infamous) international tribunals and peace conferences, and of the international and European courts in session.

In summary, this is a scholarly yet attractive and well laid-out book that would appeal to readers with an interest in legal history, comparative law, or the history of Europe.

Anna Hickey is a solicitor in the corporate department of Philip Lee.

The Law School of University College Dublin

WN Osborough. Four Courts Press (2014), www.fourcourtspress.ie. ISBN: 978-1-8468-254-22. Price:€45 (hardback).



An author, scholar, mentor and law professor known to generations of law students at University College Dublin and Trinity College Dublin, the author of this remarkable book, Prof Nial Osborough (former dean of law at UCD), is uniquely qualified to write this history.

UCD came into existence as a constituent college of the new federal National University of Ireland, pursuant to the *Irish Universities Act 1908*. The Catholic University of Ireland, founded in 1851 with John Henry Newman (later cardinal) as the first rector, had already floundered. However, Newman's institution was renamed University College Dublin in 1882 and subsequently became part of the Royal University of Ireland – all prior to the 1908 act.

UCD inaugurated its law degree as the BA in Legal and Political Science in 1909. All the subjects of the first two years of this degree were pure 'arts' subjects – a state of affairs that remained substantially unchanged until the 1950s. The arts subjects were abandoned in the 1950s and 1960s. There is a belief among many that English literature ought to be a compulsory subject in the first year of law, as lawyers spend their lives immersed in words.

There is a consideration of the period prior to the establishment of UCD in 1909. Other chapters include 'Fresh beginnings, 1909-25', 'New brooms, 1925-45', 'Challenges and major reforms, 1945-67', 'Merger talk and further growth: the Law School, 1967-2000' and an epilogue on the Law School since 2000.

Among the appendices is an undelivered judgment of Chief Baron Palles from the Palles material in the College Library, and consideration of a mid-19th-century law case in which John Henry Newman had become embroiled.

One of the many delightful features of this book is the biographical 'essay' and sketch on the leading professors and deans of the Law School since its foundation. Some of the assessments quoted by the author, together with the author's own comments on the professoriate and others associated with the Law School of UCD, are literary gems. Sadly, space does not permit your reviewer to offer you examples of such delightful prose and insightful comments.

It is difficult to render justice to this book in such a short notice. In his informative and highly readable book, Prof Osborough has made a profound contribution of permanent value.

Dr Eamonn G Hall, solicitor and notary public, is the director of education at the Institute of Notarial Studies.

new books available to borrow

- Bennett, Tim, *Money-Laundering Compliance* (3rd ed; Bloomsbury Professional, 2014)
- Dillon, David, *The Law of Intoxication: Criminal Defences* (Round Hall, 2015)
- Forlin, Gerard and Louise Smail, *Corporate Liability: Work-Related Deaths and Criminal Prosecutions* (3rd ed; Bloomsbury Professional, 2014)
- Lambert, Paul, *International Handbook of Social Media Laws* (Bloomsbury Professional, 2014)
- Lawson, Richard and Susan Singleton, *Commercial Contracts: a Practical Guide to Standard Terms* (4th ed; Bloomsbury Professional, 2014)
- Phelan, Margaret and James Gillespie, *Immigration Law Handbook* (9th ed; Oxford University Press, 2015)

council report

Council report – 30 January 2015

Younger Members Committee

As mandated by the AGM, the Council approved the establishment of a Younger Members Committee, initially comprising Carol Eager (chair), Emer O'Connor, Jennifer Dorgan, Ciara O'Callaghan, John Costello and Aoife Hennessy. It was agreed that efforts should be made to ensure geographic and gender balance.

The objectives of the new committee were outlined as:

- Identifying the needs of and the issues affecting younger members,
- Engaging with and listening to younger members,
- Representing, protecting and promoting the interests of younger members,
- Enhancing and promoting professional skills/standards and professional development,
- Establishing networks and connecting with colleagues, and
- Fostering collegiality and understanding among younger members.

Meeting with Minister for Justice

The director general and president briefed the Council on a meeting with the Minister for Justice on 8 December 2014, at which a range of issues had been discussed, including proposed provisions in the *Legal Services Regulation Bill*, the next steps and the likely timeline, together with current problems with the taxation of costs, proposed court closures, and the criminal legal-aid budget.

eConveyancing Project

Patrick Dorgan outlined the current position regarding the eConveyancing Project, including the recruitment of two senior executives to complete the implementation team.

Collapse of Setanta Insurance

Stuart Gilhooly updated the Council on the continuing uncertain situation in relation to claimants insured with Setanta Insurance. He noted that a planned *eBulletin* to the profession had been delayed, pending further advices from counsel. In addition, a meeting had been held with the President of the High Court to discuss the situation, given the president's unique role in respect of the Insurance Compensation Fund.

Office of the taxing master

The director general reported that, in the course of the meeting with the minister, she had outlined a number of changes that were to take place in the taxation of costs regime. Under the new regime, taxing master Declan O'Neill was being given an overall management function in relation to the Office of the Taxation of Costs. As a consequence, he would manage progress in relation to the work of both taxing masters. The Chief Justice would also take an active oversight role.

Proposed court closures

The Council noted with approval a submission to the Courts Service in relation to the review of court services in Co Tipperary, in addition to a submission in opposition to the proposed closure of Skibbereen Courthouse. The director general confirmed that both issues had been raised with the minister at the recent meeting, and the Society had reiterated its opposition in principle to any further court closures. The Society had also outlined the very severe problems created by the lack of a Probate Office service in Co Tipperary – uniquely among all other counties.

MPS publication on medical negligence litigation

The Council discussed a recent publication by the Medical Protection Society (MPS) in relation to medical negligence litigation, together with the Society's appearance before the Oireachtas Committee on Health, at which the president and Ernest Cantillon had identified a number of statements in the MPS report that the Society believed were "erroneous and misleading". Oireachtas committee members had been very appreciative of hearing the other side of the story.

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practice notes

Solicitors Accounts Regulations 2014

As announced in the December 2014 issue of the *Legal eZine for Members*, the *Solicitors Accounts Regulations 2014* (SI 516 of 2014) came into law on 1 December 2014. They can viewed on the Law Society website under www.lawsociety.ie/regulations.

Prior to the introduction of the 2014 regulations, regulations relating to solicitors' accounts were set out in the following five statutory instruments:

- *Solicitors Accounts Regulations 2001*,
- *Solicitors (Interest on Clients' Moneys) Regulations 2004*,
- *Solicitor Accounts (Amendment) Regulations 2005*,
- *Solicitors Accounts (Amendment) Regulations 2006*,
- *Solicitors Accounts (Amendment) Regulations 2013*.

From 1 December 2014, there is one statutory instrument to deal with all the solicitors accounts regulations. The primary purpose of the *Solicitors Accounts Regulations 2014* is to consolidate the five statutory instruments. There are no fundamental changes to provisions of the previous statutory instruments. Some additional definitions were included for clarification purposes. Amendments were made to include controlled trusts and insolvency arrangement accounts in the balancing statements that solicitors are required to prepare. Reporting accountants are specifically required to include controlled trusts and insolvency arrangement accounts in their examination of solicitors' accounting records.

Definitions

Additional definitions and amendments to existing definitions have been introduced, including definitions of 'client ledger account', 'controlled trust ledger account', 'deposit account', 'non-controlled trust ledger account', 'matter', 'insolvency arrangement ledger account', 'office account', 'office ledger account' and 'office side of the client ledger account'.

Personal Insolvency Act 2012

In circumstances where there is a conflict between the *Solicitors Accounts Regulations 2014* on the one hand and the provisions of the *Personal Insolvency Act 2012* and the *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013* on the other hand, the *Personal Insolvency Act 2012* and the *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013* take precedence over the *Solicitors Accounts Regulations 2014*.

Interest on client moneys

The provisions on interest on client moneys, previously set out in the *Solicitors (Interest on Clients' Moneys) Regulations 2004*, are now contained within the *Solicitors Accounts Regulations 2014*.

The provisions have been re-drafted for clarity regarding a solicitor's obligation to account for interest on client moneys. There is no change in the substance of the existing obligation. Where client moneys are held in a dedicated account (that is, an account opened and kept by the solicitor in respect of a specific client), the solicitor discharges that obligation by ensuring that all interest that accrues on such account is lodged to the credit of that account as additional, as the case may be, client moneys, controlled trust moneys, non-controlled trust moneys or insolvency arrangement moneys.

Where client moneys are held in a general client account, a solicitor discharges the obligation by accounting for all interest, in excess of €100, that would have been earned on such moneys had they been held as an individual amount to the credit of an interest-bearing dedicated account of the solicitor's choosing at the bank to the practice.

A provision in the *Solicitors (Interest on Clients' Moneys) Regulations 2004*, whereby the reporting accountant was specifically not required to carry out an examination as to whether a solicitor had complied with the regulations in relation to accounting to clients for interest on client moneys, has now been excluded.

Balancing statements

The balancing statements that solicitors are required to prepare must now include the following:

- Credit balances on the controlled trust ledger accounts and insolvency arrangement ledger accounts,
- Balances on the controlled trust ledger control account and the insolvency arrangement ledger control account,
- Balance or balances on each controlled trust bank account and insolvency arrangement bank account opened and kept by the solicitor, as appearing from up-to-date statements from the bank in which the accounts are kept as adjusted for outstanding withdrawals and lodgments.

The office balancing statements must include the total of debit and credit balances as extracted from the office side of the controlled trust ledger accounts and insolvency arrangement ledger accounts.

Controlled trusts

For the avoidance of doubt, it is a breach of the regulations:

- For a debit balance to arise on any controlled trust ledger account, other than a debit balance that is totally offset by a credit balance arising on another controlled trust ledger account, in respect of the same controlled trust, and
- For a solicitor to discharge personal or office expenditure from a controlled trust account.

Non-controlled trusts

For the avoidance of doubt, it is a breach of the regulations for a solicitor to discharge personal or office expenditure from a non-controlled trust account.

Insolvency arrangements

For the avoidance of doubt, it is a breach of the regulations:

- For a debit balance to arise on an insolvency arrangement ledger account, other than a debit balance that is totally offset by a credit balance arising on another insolvency arrangement account in respect of the same insolvency arrangement, and
- For a solicitor to discharge personal or office expenditure from an insolvency arrangement account.

Accounting records

Solicitors are specifically required to maintain a record of lodgments to insolvency arrangement accounts. The bank account register must include a record of all insolvency arrangement accounts. Solicitors are also required to obtain returned paid cheques and copies of bank drafts in relation to insolvency arrangement accounts.

Reporting accountants' reports

All reporting accountants must be approved by the Law Society.

The reporting accountant is required to check the extraction of balances on controlled trust ledger accounts and insolvency arrangement ledger accounts and:

- Compare the total, as shown in such controlled trust ledger accounts and insolvency arrangement ledger accounts, of the liabilities in respect of controlled trusts and insolvency arrangements with the cash book balance on the controlled trust and insolvency arrangement accounts,
- Check the reconciliation of the cash book balance with each controlled trust account balance and insolvency arrangement account balance as confirmed directly to the reporting accountant by the bank concerned, and
- Check the arithmetical accuracy of the books of account by ensuring that the closing balance of the control accounts in respect of controlled trust ledger accounts and insolvency arrangement ledger accounts for the accounting period under review is reconciled to the

individual controlled trust ledger balances and insolvency arrangement ledger balances.

The reporting accountant is not required to extend his or her examination to enquiries concerning the solicitor's compliance with the provisions of the *Personal Insolvency Act of 2012* and the *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013*.

The layout of the reporting accountant's report, in particular appendix 3 (client account and controlled trust account and insolvency arrangement account balancing statement), has been amended to specifically require information in relation to controlled trusts and insolvency arrangements.With regard to the filing of the annual reporting accountant's report, the provisions of the *Solicitors Accounts Regulations 2001-2013* remain in full force in respect of any accounting period that has commenced before 1 December 2014 until such time as the solicitor has duly complied with those regulations as regards the furnishing to the Law Society of a reporting accountant's report for such accounting period. Reporting accountants' reports for firms with an accounting date after 30 November 2015 will have to be submitted in the new format required under the *Solicitors Accounts Regulations 2014*. A closing accountant's report must be filed up to the date the solicitor ceased to receive, hold, control or pay controlled trust money and insolvency arrangement moneys.

John Elliot, Registrar of Solicitors and Director of Regulation

GUIDANCE AND ETHICS COMMITTEE

Ten tips to overcome problem colleagues

From time to time, we are all confronted with a colleague whose approach may be difficult and/or confrontational.

1) Pause before you respond to a provocative verbal comment or written communication. A response delivered in haste may be regretted later.
2) When sending a written communication, remember to ask yourself how you would feel if the letter was read out in an open court.
3) Avoid engaging the personality – stick to the issues.
4) If the view you have is genuine and honest, then don't be put off if your colleague attempts to belittle you. Stand up for yourself, and most importantly, your client.
5) If you find it difficult to have conversations with your colleague, then stick to written communication as much as possible.
6) If the relationship with a colleague becomes stressful, consider asking another solicitor in the office (if there is one) to help you or take over conduct of the file.
7) If the conflict continues, it might be worth asking a trusted colleague to intervene to assist in a mediation capacity.
8) If you form the view that your colleague has done something dishonest, then you must give consideration to reporting the matter to the Law Society.
9) Remember, your overriding duty is to represent your client's best interests. Having a difficult relationship with a colleague may not serve your client's interests. If this is the case, you must consider how you can mend the relationship.
10) If the problem continues to trouble you, contact the Guidance and Ethics Helpline.

CONVEYANCING COMMITTEE

New and updated MUDs precedents

The Conveyancing Committee has completed its work on drafting precedent documentation for the assistance of practitioners under the *Multi-Unit Developments Act 2011*. The entire suite of precedent documents is now available in the members' area of the Law Society's website – in both the general precedents area and the committee's page.

Some of these precedents are entirely new, while others are updated versions of precedents that were previously posted at various times since 2011. Practitioners should ensure they are using the updated precedents – the committee confirms that those precedents on the website will always be the most up-to-date versions.

legislation update

13 January – 19 February 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

ACTS PASSED

Central Bank (Amendment) Act 2015

Number: 1/2015

Amends section 33AK of the *Central Bank Act 1942* to enable officers of the Central Bank to disclose information to the Joint Committee of Inquiry into the Banking Crisis, but not to any other committee, on the condition that the information disclosed remains confidential, thereby respecting the professional secrecy requirement as set out in EU law. Also amends section 33AK to specifically provide that any member of either House of the Oireachtas to whom confidential information is provided and who fails to comply with the provisions of professional secrecy in respect of that information may be subject to the sanction of the Houses of the Oireachtas in accordance with the rules and standing orders of the Houses.

Commencement: 4/2/2015

SELECTED STATUTORY INSTRUMENTS

European Union (Civil and Commercial Judgments) Regulations 2015

Number: SI 6/2015

Make provision for the administrative and procedural arrangements associated with the coming into operation of Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

Commencement: 10/1/2015

Occupational Pension Schemes (Sections 50 and 50B) Amendment Regulations 2015

Number: SI 24/2015

Amend the *Occupational Pensions Schemes (Section 50 and 50B) Regulations 2014* to extend the notification, submission and appeal provisions in those regulations to include a group representing the interests of pensioners and deferred scheme members.

Commencement: 22/1/2015

Air Pollution Act (Marketing, Sale and Distribution and Burning of Specified Fuels) (Amendment) Regulations 2015

Number: SI 30/2015

Clarify regulation 7 the *Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012*. Extend the ban on the burning of bituminous coal and other specified fuels inside specified ban areas to include licensed premises under the *Intoxicating Liquor Act*, such as pubs. Also extend the specified area of Celbridge-Leixlip with effect from 1 June 2015 to include Maynooth Electoral Division, becoming the specified area of Celbridge, Leixlip and Maynooth, and extend the specified area of Wexford, with effect from 1 June 2015, to include Castlebridge and certain other designated townlands.

Commencement: 1/6/2015

Local Government Act 2001 (Part 15) Regulations 2015

Number: SI 9/2015

Revoke and replace the *Local Government Act 2001 (Part 15) Regulations 2004* (SI 770/2004). Prescribe the classes of local authority employees to whom the provisions of part 15 of the *Local Government Act 2001*, regarding an ethical framework, apply. Prescribe the annual declaration form to be furnished by relevant employees and members of local authorities, which includes an undertaking to have regard to the relevant code of conduct, which they declare they have read and understand.

Commencement: 30/1/2015

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 Fergus Appelbe, solicitor, formerly practising in the firm of PJ O'Driscoll, 41 South Main Street, Bandon, Co Cork, and now practising as Appelbe & Co, Solicitors, 34 South Main Street, Bandon, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [2398/DT104/11 and High Court record 2014 no 101 SA]
Law Society of Ireland (applicant)
Fergus Appelbe (respondent solicitor)

On 17 February 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

1) Failed to stamp deeds in respect of named properties at Cork in March 2005 or at an appropriate time,
2) Altered a deed in or about January/February 2010 so as to falsely show the said properties being transferred to the respondent solicitor and his wife for €500,000 instead of €3.285 million, and
3) Updated or caused to be updated the said deed, thereby avoiding interest and penalties for late stamping,
4) Falsely represented to the Revenue Commissioners that the original transfer was to the respondent solicitor and his wife,
5) Falsely represented to the Revenue Commissioners that the warehouse section of the property had been transferred to a named company for a consideration of €300,000 in February 2010 and/or falsely executed such a deed, and/or
6) Falsely represented to the Revenue Commissioners that the balance of the property had been transferred into the sole name of the respondent solicitor's wife with no stamp duty implications in February 2010, and/or
7) Failed to stamp a deed in November 2005 or at the appropriate time in respect of the purchase by the respondent solicitor's daughter of lands and a garage at Bandon, Co Cork, and/or
8) Updated or caused to be updated the said deed in relation to his daughter in the purchase of this property, thereby avoiding interest and penalties for late stamping of the deed, and
9) Gave undertakings to both Bank of Ireland and Allied Irish Banks at the same time in respect of named lands in Bandon, Co Cork.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court made the following orders on 13 October 2014:

1) That the respondent solicitor not be permitted to practise as a sole practitioner or in partnership and that he only be permitted to practise as an assistant solicitor in the employment and under the direct control and supervision of a solicitor of at least ten years' standing, to be approved in advance by the Society,
2) That the respondent solicitor be precluded from acting as a solicitor on his own behalf and/or on behalf of his immediate family and/or any company in which he or they are directors and/or shareholders,
3) That the respondent solicitor pay the Society the whole of its costs, including witness expenses for the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
4) That the respondent solicitor pay the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of David F Gibbons, a solicitor practising as a partner in the firm of Murphy Gibbons Solicitors, Main Street, Newbridge, Co Kildare, and in the matter of the *Solicitors Acts 1954-2011* [6686/DT53/13]
Law Society of Ireland (applicant)
David F Gibbons (respondent solicitor)

On 25 November 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 dated 3 April 2001 furnished in connection with his named clients and a property at The Curragh, Co Kildare, in a timely manner,
2) Failed to respond to the Society's correspondence with him in connection with the complaint and, in particular, the Society's letters dated 14 January 2011, 24 January 2011, 2 February 2011, 5 April 2011, 8 July 2011, 28 October 2011, 14 February 2012, 2 March 2012, and 15 March 2012 in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €1,000 to the compensation fund,
3) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

eurlegal

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

DETERMINING JURISDICTION IN ONLINE COPYRIGHT INFRINGEMENT

In case C- 441/13 *Pez Hejduk v EnergieAgentur.NRW GmbH* (22 January 2015), the Court of Justice of the European Union (CJEU) ruled on the question of where proceedings for online copyright infringement can be brought. Following a long line of case law, the court held that proceedings can be brought in any member state where the relevant website was accessible, although each court is limited in the damages it can award to damages incurred in its own jurisdiction.

Ms Hejduk is a professional photographer, specialising in architectural photography. The defendant company organised a conference and, in its online promotional material for it, allegedly used Ms Hejduk's images without securing a licence. The defendant did not credit the images to her on the conference website. She sued in a Viennese court for damages of approximately €4,000 for breach of copyright. She also sued for the right to publish the judgment and name the defendant in so doing.

The defendant objected to the forum on the grounds that the website was not "directed at Austria" (that is, the Austrian market wasn't its main target market). Its view was that the mere fact of accessibility from a location in the EU was, of itself, insufficient to confer jurisdiction on the Austrian court. And so the proceedings were stayed and became the subject of a referral to the CJEU.

The question referred to the CJEU was as follows: "Was article 5(3) [of Regulation no 44/2001] to be interpreted as meaning that, in a dispute concerning an infringement of rights related to copyright, which is alleged to have been committed by keeping a photograph accessible on a website, the website being operated under the top-level domain of a member state other than that in which the proprietor of the right is domiciled, there is jurisdiction only:

- In the member state in which the alleged perpetrator of the infringement is established, and
- In the member state(s) to which the website, according to its content, is directed?"

The *Brussels Regulation* has subsequently been recast, and the same rule that was at issue in *Hejduk* is currently set out in article 7(2) of Regulation 1215/2015, generally

Recent developments in European law

CONSUMER LAW

Joined cases C-359/11 and C-400/11 *Alexandra Schulz v Werke Schussental GmbH und Co KG* and *Josef Egringhoff v Stadwere Ahaus GmbH*, 23 October 2014

These cases concerned disputes between electricity and gas customer and their suppliers. There had been several price increases between 2005 and 2008. The customers concerned argued that the increases were unreasonable and based on unlawful clauses.

German legislation determined the standard terms and conditions of consumer contracts and incorporated those terms and conditions directly into contracts concluded with standard-rate customers. It allowed the supplier to unilaterally adjust the prices of electricity and gas without indicating the reasons or preconditions for such adjustment. Customers are informed of an increase in charges and can terminate their contract if they wish. The case was referred by the German Federal Court.

The Court of Justice found that the *Electricity Directive* (2003/54/EC) and the *Gas Directive* (2003/55/EC) precluded legislation of this nature. The two directives require member states to ensure that consumers have a high level of protection with regard to the transparency of the contractual conditions.

The CJEU decided that consumers have the right to terminate such contracts, but must also be empowered to challenge price adjustments. Such customers must be informed, with adequate notice before an adjustment, of the reasons for the adjustment and its scope. The court refused to limit the temporal effect of this judgment and determined that it applied to all price adjustments that have taken place in the period during which these directives have been applicable.

INTELLECTUAL PROPERTY

Case C-364/13 *International Stem Cell Corporation v Comptroller General of Patents, Designs and Trade Marks*, 18 December 2014

Directive 98/44/EC on the legal protection of biotechnological inventions provides that the uses of human embryos for industrial or commercial purposes are considered unpatentable.

In case C-34/10 *Brüstle*, the CJEU had held that the concept of a 'human embryo' includes unfertilised ova whose division and further development have been stimulated by parthenogenesis.

The case before the English High Court concerned a dispute over the patentability of processes concerning the use of parthenogentically activated human ova. The High Court asked whether the concept of a 'human embryo' is limited to organisms capable to commencing the process of development that leads to a human being.

The CJEU held that in order to be classified as a 'human embryo', a non-fertilised human ovum must necessarily have the inherent capacity of developing into a human being. The fact that a parthenogentically activated human ovum commences a process of development is not sufficient for it to be regarded as a 'human embryo'.

However, where such an ovum does have the inherent capacity of developing into a human being, it should be treated in the same way as a fertilised human ovum at all stages of its development.

It is for the English court to determine whether or not, in the light of knowledge that is sufficiently tried and tested by international medical science, the organisms that are the subject of application for registration have the inherent capacity of developing into a human being.

LITIGATION

Regulation 606/2013, 12 June 2013

Regulation 606/2013 of 12 June 2013 came into effect on 11 January 2015. This provides for mutual recognition of protective measures. It allows for a swift recognition of measures in support of litigation, such as injunctions.

PIC: WIKIMEDIACOMMONS

'Hejduk' — sounds like hedgehog

known as '*Brussels I Recast*').

The CJEU noted the need – following its earlier case law in case C-360/12 *Coty Germany* – for article 5(3) to be interpreted autonomously and strictly. It noted the rule was a derogation from the key jurisdictional principle set out in article 2 of the *Brussels Regulation* (now article 4 of the *Brussels I Recast*) that a defendant is sued in the place of its domicile.

Plaintiff can choose where to sue

Noting the long line of authority in this area, including the seminal case C-68/93 *Shevill v Presse Alliance*, the CJEU made clear that the concept of a place "where the harmful event occurred or may occur" is intended to cover both the place where the damage occurs and the place where the event giving rise to the damage occurs. Where those are two different member states, the plaintiff can choose which to sue in.

In the case of unregistered rights – such as, in this case, copyright – it can be complex to determine the location of damage. Is it the location where the images are uploaded (even if you, the copyright owner, haven't been there) or is it where the rights first arose before they were even infringed? Advocate General Cruz Villanon, in his opinion, urged the court to seek a causal link between the damage and the jurisdiction at hand.

The CJEU rejected this reasoning and emphasised that there was no need to demonstrate an 'intention to target' [a particular member state's online audience] and that the defendants' arguments on this ground were not relevant. It held that, in the case of this incident, the occurrence of damage arose from the accessibility of the images. It added that the level of damages was not a factor in determining jurisdiction.

It pointed out the broad harmonisation of copyrights within the EU (see Directive 2001/29) and that such rights are subject to the principle of territoriality. The court went on to cite its previous decision in case C-170/12 *Pinckney*, which dealt with the sale of infringing CDs online, regarding the absence of a need to find that a website had been 'directed' at a particular member state in order to find that a harmful event could have occurred there for the purposes of article 5(3).

> **The court found that, at a minimum, to successfully allege that damage to a right occurs in a jurisdiction, then that right must also be protected at law there**

The 'mosaic principle'

The place where the harmful event occurs will vary according to which right is involved; however, the court found that, at a minimum, to successfully allege that damage to a right occurs in a jurisdiction, then that right must also be protected at law there. This wasn't controversial in the case of copyright, which, as the court mentioned, had been harmonised.

The decision of the court is unsurprising given its prior case law. What is of greatest potential impact is the undoubted difficulty there will be in practically assessing damage to copyright owners for such uses, given the ease with which such images can be downloaded and re-used. The decision gives comfort to copyright owners that they can litigate in their home jurisdiction if they so choose; however, their damages are limited there to damages incurred in the jurisdiction they choose to litigate in. This principle is often referred to as the 'mosaic principle' and is a long-established one in the case law of the CJEU.

The decision in *Hejduk*, in many respects, simply gives this principle a footing in the specific context of online copyright infringement. This may mean that copyright owners will decide to bring multiple cases within the EU if they wish to secure maximum damages for infringement cases. Given the mosaic principle, this will clearly be limited to cases unlike *Hejduk*, in which greater levels of damages are involved. g

Jeanne Kelly is an IP and IT law partner at Mason Hayes & Curran.

professional notices

WILLS

Allen, Harold (deceased), late of Doone, Kilbricken, Mountrath, Co Laois, who died on 20 June 2014. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

Coleman, Sean (deceased), late of Cairn Court Estate, Duntahane Road, Fermoy, Co Cork. Would any person having knowledge of any will made by the above-named deceased, who died on 21 December 2014, please contact Jeremiah Healy, solicitor, Healy Crowley & Company, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; 025 32066, email: info@healycrowleysolrs.com

Daniel, Margaret (deceased), late of 13 St Fintan's Park, Sutton, Dublin 13 and formerly of 17 Beechfield Haven, Shankill, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 31 December 2014, please contact Frank Murphy, solicitor, Priory House, Priory Office Park, Stillorgan, Blackrock, Co Dublin; tel: 01 283 5252, email: info@fmlaw.ie

Dowdall, James (deceased), late of Kilrush, Clonmellon, Co Westmeath, who died on19 February 2013. Would any person holding or having knowledge of the whereabouts of any will executed by the above-named deceased please contact Mr Cormac McDonnell of McNamee McDonnell Duffy Solicitors LLP, 10 New Street, Newry, Co Down BT35 6JD; tel: 048 302 54950, email: cormac@mmdsolicitors.co.uk

Ging, Elizabeth (deceased), late of Eyne, Portlaoise, Co Laois, and also Derrydavey, Mountmellick, Co Laois, who died on 31 October 2014. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

Heneghan, Thomas (deceased), late of Milestown Road, Donaghpatrick, Navan, Co Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 5 January 2015, please contact Thea Carolan, solicitor, Nathaniel Lacy & Partners, Kenlis Place, Kells, Co Meath; email: tcarolan@nlacy.ie

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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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*.

Hennessy, Phyllis (deceased), late of 157 Rossmore Road, Ballyfermot, Dublin 10. Would any person having knowledge of any will made by the above-named deceased, who died on 12 December 2014, please contact 086 339 0309

Higgins, Charles J (deceased), late of 5 Merton Park, off South Circular Road, Dublin 8, recently of Belvilla Nursing Home, South Circular Road, Dublin 8. Would any person having knowledge of any will made by the above-named deceased prior to 2001 please contact Flanagan & Co, Solicitors, 2A Lamb's Cross, Sandyford, Dublin 18; 01 206 3956, email: info@flanaganandco.com

Horan, Thomas (Tommie) (deceased), late of 3 Whitethorn Close, Renmore, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 13 May 2014, please contact FG MacCarthy, Solicitors, Loughrea, Co Galway; DX 86 002; tel: 091 841 841, fax: 091 842 180, email: law@fgmaccarthy.com

Kinsella, Dolores Margaret (a ward of court), formerly of 38 Convent Road, Dalkey, Co Dublin. Would any person having knowledge of any will made by the above-named person please contact Mackey O'Sullivan, Solicitors, 10 Merrion Square, Dublin 2; tel: 01 661 5655, email: jhmm@mos.ie

Kinsella, Mona (otherwise Mary Monica) (deceased), late of 38 Convent Road, Dalkey, Co Dublin, who died on 23 June 2014. Would any person having knowledge of any will made by the above-named deceased please contact Mackey O'Sullivan, Solicitors, 10 Merrion Square, Dublin 2; tel: 01 661 5655, email: jhmm@mos.ie

McCann, Thomas (deceased), late of 80 Errigal Road, Drimnagh, Dublin 12, who died on 25 October 2014. Would any person having knowledge of any will made by the above-named deceased please contact Nooney & Dowdall, Solicitors, 16 Mary Street, Mullingar, Co Westmeath; tel: 044 934 8312, email: reception@ndsol.ie

McMahon, Michael (deceased), late of 25 Glen Drive, The Park, Cabinteely, Dublin 18. Would any person having knowledge of any will made by the above-named deceased please contact Neil Maguire, solicitor, Maguire Mc Erlean, 78-80 Upper Drumcondra Road, Dublin 9; tel: 01 836 0621, email: neil@maguiremcerlean.ie

Munday, Deirdre (deceased), late of Brownstown, Kilcloon, Co Meath. Would any person having knowledge of a will or codicil executed by the above-named deceased, who died 13 March 2014, please contact Arthur McLean, Solicitors, 31 Parliament Street, Dublin 2; tel: 01 677 2519, fax: 01 677 2353, email: colm@arthurmclean.ie

O'Dwyer, Michael (deceased), late of Caherelly, Grange, Kilmallock, Co Limerick. Would any person having knowledge of any will made by the above-named deceased please contact Kieran O'Donovan, solicitor, Dorothy Tynan & Co, 78 O'Connell Street, Limerick; tel: 061 314 948, email: kieran@dorothytynan.com

O'Regan, Thomas Joseph (deceased), late of Ballinacarriga, Killeagh, Co Cork, who died on 23 November 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, or if any firm is holding same, please contact Carmel Best & Co, Solicitors, 42 South Mall, Cork, tel: 021 427 1012, email: carmel@bestandco.ie

Power, Robert (Bobby) (deceased), late of 8 St Bridget's Terrace, Dungarvan, Co Waterford. Would any person having knowledge of a will made by the above-named deceased please contact David Burke & Co, Solicitors, 24 Mary Street, Dungarvan, Co Waterford; DX 75005 Dungarvan; tel: 058 44533, email: dermotobrien@davidburke.ie

Reilly, Patrick (otherwise Patsy) (deceased), late of Kilbeg Lower, Carlanstown, Kells, Co Meath. Would any person having knowledge of any will made by the above-named deceased, who died on 18 December 2014, please contact Thea Carolan, solicitor, Nathaniel Lacy & Partners, Kenlis Place, Kells, Co Meath; email: tcarolan@nlacy.ie

Rowand, Ian (deceased), late of 85 Waterloo Road, Dublin 4, and formerly of 46 Lucan Heights, Lucan, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 21 January 2015, please contact Frank Murphy, solicitor, Priory House, Priory Office Park, Stillorgan, Blackrock, Co Dublin; tel: 01 283 5252, email: info@fmlaw.ie

Ryan, Malachy Oliver (deceased), late of 30 Wilfield Road, Sandymount, Dublin 4, who died on 31 January 2105. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding said will, please contact Mary B Morris, MB Morris Solicitor, 10 Ailesbury Grove, Donnybrook, Dublin 4; tel: 01 269 2342, email: mbmorris@eircom.net

ADVERTISEMENT FOR INCUMBRANCERS

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 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, 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

MISCELLANEOUS

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professional notices

TITLE DEEDS

Rostellan, 29 Temple Road, Dartry, Dublin 6. Would anyone knowing the whereabouts or having any information regarding the title deeds to the above property, please contact Ann O'Brien (Kerr) solicitor, tel: 086 812 6666, email annobrienkerr@gmail.com

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of an application by the Most Rev John Robert Winder Neill, Michael JT Webb, Heather Muriel Meates, Hilary J Prentice, Geoffrey Perrin and Rosemary Kearon (the applicants) and in the matter of the property known as Saint Mary's Home, Pembroke Park, Ballsbridge, Dublin 4, in the county of the city of Dublin

Take notice that the applicants, being the parties so entitled under the above mentioned acts, propose to purchase the fee simple and any intermediate interest in the lands described in paragraph 1.

1. Description of land to which this notice refers: All that and those the lands and premises now known as Saint Mary's Home, Pembroke Park, Ballsbridge, Dublin 4, in the county of the city of Dublin, being part of the lands demised in a certain indenture of lease dated 21 July 1891 and made between William Henry Hippisley and Charlotte Antonia Sullivan of the one part and the Reverend Richard Travers Smith of the other part, and therein described as "all that and those the piece or plot of ground part of the lands of Donnybrook adjoining the boundary of the estate of the lessors at the rear of Morehampton Road containing five acres, two roods and 31 perches statute measure" and as more particularly delineated on the map attached thereto.

2. Particulars of applicants' lease: The applicants hold the lessee's interest in the said lands under the said indenture of lease dated 21 July 1891 and made between William Henry Hippisley and Charlotte Antonia Sullivan of the one part and the Reverend Richard Travers Smith of the other part, whereby the applicants' lands were demised (together with other lands not forming part of this application) to the said Reverend Richard Travers Smith for the term of 200 years from 25 March 1891, subject to the total yearly rent of £64 thereby reserved and subject to the covenants and conditions therein contained.

3. Part of lands excluded: Excluding all the lands comprised in the said lease of 21 July 1891 that do not form part of the lands and premises now known as Saint Mary's Nursing Home.

Take notice that the applicants intend to submit an application to the county registrar for the county and city of Dublin sitting in the Four Courts, Inns Quay, Dublin 7, for the acquisition of the freehold interests and any intermediate interest in the aforesaid property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called up to furnish evidenced of title to the said property to the below named solicitors within 21 days of this notice.

In default of such notice being received, the applicants intend to proceed with the application before the county registrar at the end of the 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 that the person or persons beneficially entitled the superior interests, including the freehold reversion, in the aforesaid property are unknown on unascertained.

Date: 6 March 2015

Signed: Whitney Moore Solicitors (solicitors for the applicants), Wilton Park House, Wilton Place, Dublin 2

romanes eunt domus

Rise of the planet of the narcissists

Spurred on by the famous case of the black macaque who took one of the world's most famous selfie images (see *Gazette*, October 2014), a multinational corporation's marketing department, along with staff at Edinburgh Zoo, decided to encourage koalas to do likewise, primaryopinion.com reports.

In what was definitely not a publicity stunt, smartphone manufacturer HTC sponsored a number of small RE cameras that were placed in the animals' pens. The cameras are activated by a grip sensor and start shooting as soon as they are picked up or touched.

So, can we expect another epic battle along the lines of the claim by photographer David Slater against Wikimedia over the macaque photos?

Interestingly, the Edinburgh photos – even though inadvertently taken by animals – seemed to have a copyright credit on them (when posted on *The Express* website).

Another copyright conundrum?

50 shades of they got away

Dozens of prisoners escaped a Brazilian jail after three women reportedly seduced and drugged the guards with promises of an orgy.

Three prison officers were found handcuffed and naked in staff sleeping quarters, beside empty bottles of booze and a bag containing black leather women's 'police' costumes.

According to police, the women arrived in the small hours, asking to be let inside to "chat and drink". The guards – who say they don't remember anything after drinking the whiskey – have been arrested and will be charged with facilitating a jailbreak and embezzlement, after the 28 inmates who left took with them five police-issue firearms.

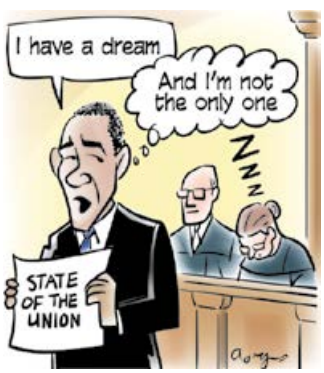
Sober as a judge

US Supreme Court Justice Ruth Bader Ginsburg has admitted that there's a reason she nodded off at the president's state of the union address, BBC.com reports.

She just "couldn't resist the fine wine" at the dinner where, traditionally, some of the court's justices meet before the speech.

Ginsburg was repeatedly seen dozing in her chair as President Obama addressed the joint session of Congress on 20 January.

"The audience for the most part is awake, but they're bobbing up and down all the time. And we sit there as stone-faced, sober judges. But we're not!", joked Justice Ginsburg. "At least I wasn't 100% sober when we went to the state of the union," she said at an event at George Washington University.



Ginsberg (81) is the oldest member of the US Supreme Court.

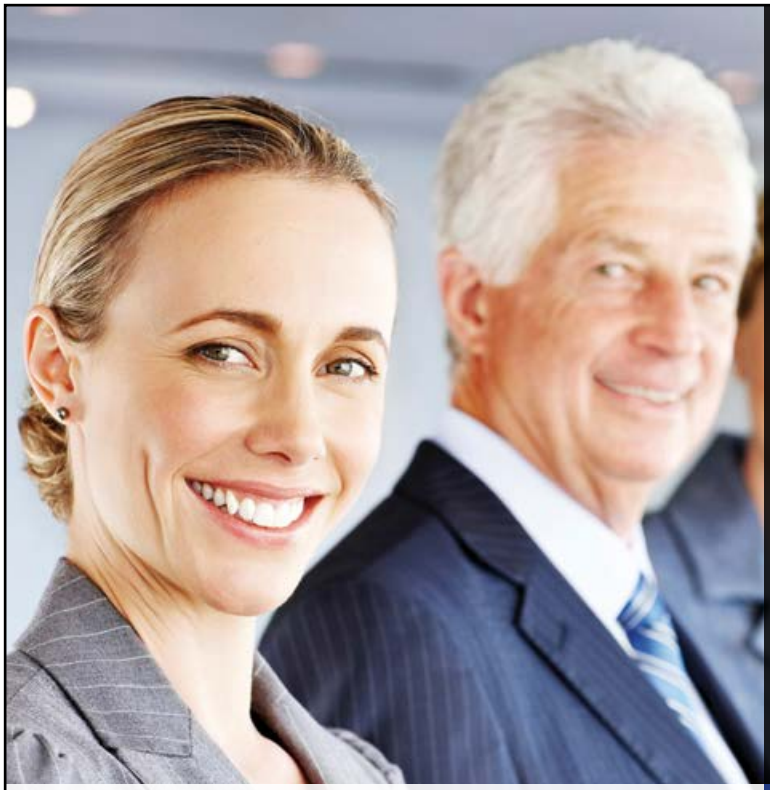
Find thee an editor, and be proof agin the wordl

A simple typo has caused a 124-year-old family business to collapse and cost the British government Stg£9 million in legal bills.

The English High Court found that the British equivalent of the CRO – Companies House – was to blame after an engineering firm called Taylor & Sons, which was based in Cardiff and supplied military equipment during the two world wars, was recorded as being in liquidation.

However, Companies House had inserted a rogue 's' – the actual company that was wound up six years ago was based 200 miles away in Manchester and called Taylor and Son (not 'sons').

Lawyers for Taylor & Sons told the court that the business suffered devastating consequences after all their credit agencies and 3,000 suppliers revoked their services upon seeing the Companies House notice claiming the firm had folded. The company went into administration two months after the error was made, the court heard.



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John Macklin
LL.B, LL.M, Attorney-at-Law
Director Legal Division
jmacklin@lincoln.ie

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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.

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Our Client is one of the leading advisors on pensions law in the country. This specialist team acts as an integral part of the Firm's business advisory services dealing with the establishment, merger, alteration and wind up of pension and employee benefit schemes, corporate governance issues, transactional matters, regulatory compliance and dispute resolution. The team is seeking a Lawyer with excellent technical and drafting skills, ideally with pensions experience, but strong Commercial/Corporate Lawyers with an interest in this area will also be considered.

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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.

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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 two 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

We have a number of exciting roles in Hong Kong and Dubai. Please contact us for further details.

To apply for any of the above vacancies, interested applicants should contact Yvonne Kelly in strict confidence on +353 16401988. Alternatively please email your CV to ykelly@keanemcdonald.com.
For a comprehensive list of our vacancies visit www.keanemcdonald.com

MAXIMISE YOUR MARKET POTENTIAL

ROGERS is a leading legal recruitment consultancy providing professional career advice and specialising in sourcing high calibre professionals for the domestic and international markets.

LONDON

Our clients include **Magic Circle, Silver Circle** and **U.S. firms** based in London. Opportunities exist for junior to mid level solicitors/associates in the following areas:

- **Corporate** (Junior to Mid Level)
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Greg Rogers LL.B, Solicitor
grogers@rogers-recruitment.com

ROGERS Legal

Whether actively searching for a new position or simply curious to know what options are out there for you, contact:
Greg Rogers LL.B, Solicitor in strict confidence on +353 (1) 2091917 or via email to grogers@rogers-recruitment.com
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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
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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.

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For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.
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