INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

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Index compiled by Julitta Clancy, B.A., Dip. Archival Studies,
(Registered Indexer)

1. SUBJECT INDEX

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This is a comprehensive index to subjects covered in the *Gazette*. Subjects are indexed under their specific headings, as well as major headings such as - Articles, Book Reviews, Company Law, Criminal Law, Disciplinary Cases, Editorials, European Union, Labour Law, Law Society, Lawbrief, Mediawatch, People and Places, Practice Notes, Sports Activities, Taxation, Younger Members' News etc.

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The CAJ Handbook on Civil Liberties in Northern Ireland (ed. B. Dickson) 2nd ed. Committee on the Administration of Justice 1993, rev. by N.C. Ryan, **2**: 55
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Current Legal Problems 1994, Vol 47, Part 1, Annual Review (B. Pettet, Ed.) OUP 1994, rev. by E.G. Hall, **6**: 219
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Editor: Barbara Cahalane

Editorial Board:
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Advertising: Seán Ó hOisín. Telephone: 305236 Fax: 307860.

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The front cover shows (clockwise): *Patrick Brennan*, Judge of the District Court, district 3; *Brendan Wallace*, Judge of the District Court, district 18; *John Clifford*, Judge of the District Court, Cork City, and *John Garavan*, Judge of the District Court, district 7.

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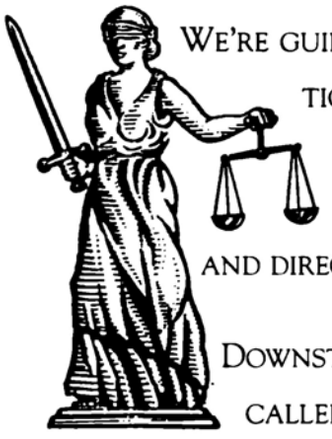

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VIEWPOINT

Public Expenditure – Credit where Credit is Due

It is not often in these pages that we find reason to praise the Government or politicians. However, for those concerned with the administration of justice in this country and with achieving a justice system that offers accessibility on equal terms to all citizens regardless of their means, the Government's expenditure estimates for 1994, published in mid-December, contained some good news. The allocation in the estimates of £23.4m to the courts shows an increase of 38% on expenditure in 1993. Of this, almost £4.25m is being allocated to capital expenditure on courthouse accommodation representing an increase of 145% on the level of spending in 1993. Moreover, the vote for the Department of Equality and Law Reform shows a 68% increase on the 1993 figure, and from this, the allocation to the Legal Aid Board will rise by 56%, increasing its funding by almost £2m to a total of £5m.

In a time of increasing demands on the public purse, these figures indicate a measure of good faith and a responsiveness on the part of Government to submissions made in the recent past by the Law Society and other interested groups. They are a welcome indication of a willingness on the part of the Government to face up to its responsibilities both in relation to improving the courts and providing adequate help to enable people to vindicate their rights. Having said that, it must also be said that the Government has not gone far enough.

Courts Service

In the autumn of 1993 the Law Society and the Bar Council made a joint submission to the Minister for Justice on the Courts Service. The submission identified the shortcomings of the existing service and, in particular, highlighted the problems caused by delay and the appalling conditions and lack of facilities in many courthouses throughout the country. A start is now being made on the building side.

However, the submission noted that the Government had spent less than £1m (in total) over the past five years on information technology in the courts service and argued that modern information technology systems were vital to improve efficiency in administration and to speed up the handling of the vast amount of documentation that goes into court work. Addressing the prizegiving ceremony of the Niall McCarthy Essay Competition last November, the Minister for Justice, Mrs. *Maire Geoghegan Quinn* acknowledged the importance of computerisation in the development of a modern and efficient court service; she said that technology in the courts was an issue that had not moved as quickly as she would have liked but expressed confidence that substantial progress would be made in the future. In this context, it is disappointing that the provision of £721,000 for office machineries and supplies to the courts in 1994 represents a reduction of £100,000 (12%) on the 1993 figure. Such a modest sum would hardly allow for adequate training for staff, or the provision of hardware, let alone investment in the necessary software.

The Law Society/Bar Council submission also argued that the courts were capable of being run in a businesslike manner and that the civil side of court work could, with proper management, be turned into a self financing operation. It is difficult to envisage this being achieved without adequate investment in information technology. The Government should realise that such investment would ultimately pay for itself in terms of the benefits of increased efficiency, saving of staff time and elimination of delay.

Legal Aid

The increase in the budget of the Legal Aid Board by £2m to £5m will go some way towards reducing the appalling waiting lists at Legal Aid Centres throughout the country. However, the Law Society has argued that a comprehensive scheme of civil legal aid could be provided for an expenditure of £8.5m per annum. Given the importance of what is at stake – the right of all citizens to have access to justice on an equal footing, regardless of their means – £8.5m is not a high price to pay. The solicitors' profession has not been a lone voice in highlighting the need for a comprehensive, statutory scheme of legal aid; FLAC, the Bar Council, and civil rights groups have all campaigned on this issue over the years.

The main point made by nearly all of the interest groups that have lobbied on this issue remains valid: in the absence of a comprehensive civil legal aid scheme, reform of the law – particularly the possible introduction of divorce legislation – will ring hollow to those sections of the community that cannot afford to avail of legal services. The record of this Government on law reform during its first year in office is a promising one, but the provision of adequate legal aid is an essential element of any package of law reform if the ultimate goal of achieving an equitable society is to be achieved.

The Law Society has contrasted the provision for legal aid with the allocation in the 1994 estimates to the Department of Agriculture for the development of horse racing and greyhound racing in this country of £7.3m – an increase of 45% over the 1993 figure. This is substantially in excess of the total amount allocated to legal aid. This comparison speaks volumes about the values and priorities of our society; greater concern has been shown for the horse and greyhound racing industries than for the rights of ordinary people to have equal access to the courts to vindicate their rights.

The fact that the Government has begun to address the shortcomings in the courts service, and to allocate additional resources to legal aid is welcome, but only as a first step; much more needs to be done. ❐

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NEWS

Taskforce Established to Resist Capping Proposal

At its meeting on 2 December 1993, the Council of the Law Society authorised the President to establish a taskforce to oversee the Society's campaign to resist the proposal by the Minister of State for Commerce and Technology, *Seamus Brennan*, TD, to place a cap on the amount that could be awarded for pain and suffering in personal injuries cases. The taskforce will comprise the President of the Society, *Michael V. O'Mahony; Noel Ryan*, Director General; *Frank Daly*, Chairman, Public Relations Committee; *Tony Ensor*, Chairman, Litigation Committee; Council members *Bruce St. John Blake, Barry St. J Galvin* and *Gerry Doherty*, and *Eugene O'Sullivan*, a member of the Litigation Committee.

The Council noted that the debate on the issue had moved away from the question of whether Irish compensation levels were or were not higher than European norms. The main focus of the Minister of State's case was that the cost of insurance was affecting competitiveness and was a threat to jobs and that Ireland could not afford to pay large claims regardless of the systems operating throughout Europe.

Michael V. O'Mahony, President, reported to the Council on a recent meeting that had taken place with Minister Brennan and a number of his officials. There had been a frank exchange of views. The Society representatives had, he felt, brought home to the Minister and his advisers the complexities of the issues being addressed and the realities involved in the conduct of personal injury actions in the courts. He said the Minster had listened attentively to all the points made by the Society and, in his view, had been appraised of certain matters for the first time at the meeting. The President said that the Society should continue to argue against the proposal on the basis that it was unfair, unworkable in practice and unconstitutional.

The Council noted that over twelve years ago the Society had identified a number of steps that needed to be taken in order to police safety measures in the workplace and on the roads. Twelve years on, it was clear that these safety measures were not being enforced. It was suggested that the Society should continue to highlight the effects of the level of uninsured driving, the condition of motor vehicles and the standards of roads and driving in the country as contributory factors to the number of claims that occurred.

It was also felt that some members of Cabinet might not be supportive of the Minister's proposal unless it could be shown that it would clearly benefit the consumer. Therefore, it would be important for the Society to continue to lobby at a political level against the proposal on the basis that it involved a shifting of the burden from those people who were at fault to victims who were not at fault.

The Council was informed that a leaflet was being prepared outlining the profession's arguments against the proposal. Copies of the leaflet would be dispatched to members of the profession for the distribution to their clients.

Finance

The Council adopted a proposal from the Finance Committee to increase the Practising Certificate fee for the practice year 1994/95 to £525.00, and to increase the Compensation Fund contribution to £600. The membership fee of the Society was set at £50.00 and the contribution to the Solicitors Benevolent Fund at £25.00. The total contribution from each solicitor will, therefore, be £1200.

The Council suggested that an arrangement should be made with one or more financial institutions so that it would be possible for solicitors to pay their fees in instalments.

The Council also suggested that a letter explaining the necessity for the increases in fee should issue to each member of the profession. (The President of the Society, Michael V. O'Mahony, subsequently wrote to each member of the profession on 28 December 1993, setting out the reasons for the increases and highlighting the activities of the Society on behalf of its members.)

Probate Tax

In the light of indications from the Minister for Finance, *Bertie Ahern*, TD, that he would not be repealing the probate tax, the Council suggested that the Society should, in conjunction with the IFA, convene a meeting of the Alliance Against Probate Tax to highlight its opposition to the tax in advance of the budget.

Review of Requisitions on Title

The Chairman of the Conveyancing Committee reported to the Council that the Committee was commencing a revision of the Requisitions on Title and General Conditions of Sale. The committee would welcome the views of members of the Council and members of the profession.

Compensation Fund

The Council approved a schedule of payments from the Fund (see page 13).

The Chairman of the Compensation Fund Policy Review Committee reported that its work was near completion and that the committee hoped to circulate its report to the Council in the near future. ❐

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An AMCO Member

Debate on "Capping" Continues

The proposal to introduce legislation which would limit the amount that could be paid in compensation for pain and suffering in personal injury awards continued to receive attention in the media during the month of December and in the New Year.

The *Irish Times* and the *Irish Independent* of 2 December 1993, reported on replies by the Minister for Enterprise and Employment, *Ruairi Quinn*, to Dail questions, in which the Minister said that personal injury compensation represented 67% of the cost of motor insurance claims in 1991. The Minister said he was considering a proposal to allow him to have a function in the cost of pain and suffering compensation in personal injury claims. He was not suggesting, he said, that there should not be recourse to the Courts for those personal injury claims which could not be resolved between the parties involved but he believed that the reduction of the cost of pain and suffering compensation required an initiative by the legislature.

A debate in the Seanad on a Progressive Democrats Private Member's motion on the high level of insurance costs was reported in the *Irish Times* of 2 December 1993. The Minister of State for Commerce and Technology, *Seamus Brennan*, said the situation was critical and it was now up to Irish society to decide what it wanted to do. Did it want Irish business to continue paying out £400 million or so a year? If so, then the Irish public would have to realise that the cost of insurance claims would have to be borne by individuals.

Remarks by the President of the High Court, Mr. Justice *Liam Hamilton*, in which he stated that it was not **the size of court awards** in personal injury cases that was creating a problem but the **number of claims,** were reported in the *Irish Independent* of 4 December 1993 and the *Clare Champion* of 10 December 1993. The Judge said that in his view no useful purpose would be served by capping damages. While at times damages might seem to be excessive, he had found that in some cases money regarded as sufficient to ensure care for the rest of a severely injured person's life had later been found to be inadequate because of the high cost of care and hospital treatment.

Proposals to cap insurance awards will be put to the Cabinet early in February, according to an article in the *Irish Independent* of 31 December 1993. The article said that Seamus Brennan, who had already circulated one memorandum on his 'controversial plan', had revised his proposals and these would be discussed at a Cabinet meeting in February.

All the national daily newspapers of 7 January 1994, reported that the Law Society was asking the general public to lobby TDs against the proposal. The papers reported that the Society has published a leaflet setting out the arguments against the proposal and that copies had been sent to solicitors throughout the country for distribution to their clients.

Dublin Corporation – Injury Claims

The *Irish Independent* of 25/27 December 1993, reported that a "leading personal injuries solicitor" *Gerard Doherty*, said the Corporation was 'wasting' £800,000 in costs for every £1 million awarded against them in negligence cases. Mr Doherty pointed out that in some cases the costs awarded against the Corporation had been 104% of the actual settlements to claimants. "The costs should only be a fraction of this amount. They should only run at 10% – 12% of the cases." He said that the high costs were as a result of the difficult and expensive procedures that the Corporation insisted on going through in cases where its liability was manifest.

Solicitors Bill

The Minister of State at the Department of Justice, *Willie O'Dea*, said that the new Solicitors Bill, which would tackle 'shoddy' work and overcharging by solicitors, would be introduced early in the New Year and that he was considering extending the legislation on cover barristers. Mr. O'Dea was interviewed on the *Morning Ireland* programme on Monday 13 December and his views were also reported in the *Irish Independent* and the *Evening Herald* of that day. He said that the Bill would give the Law Society extensive new powers to deal with overcharging, "cutting corners", shoddy work and unnecessary delays. The Minister said that the solicitors' profession itself would have to recognise that there was an over supply of solicitors and that 5,000 were too many for a country the size of Ireland. He said that he was in favour, in principle, of a cap on the amount of compensation that would be paid on any one claim on the Society's Compensation Fund but that he was trying to balance the Society's demand for a cap against the need to protect the public.

Education and Admissions Policy

Brian Dowling, political reporter, *Irish Independent*, reported on 4 January 1994, that a provision which would allow the Law Society to limit access to the solicitors' profession by setting a competitive entrance examination had been rejected by the Government, and instead the Minister for Justice would be reviewing all options taking into account the manner in which other professions,

such as accountants, regulate entry requirements.

Estimates Provide Increased Resources for Courts and Legal Aid

Details of the Book of Estimates for 1994 were published in all the daily papers of 10 December, 1993. The *Irish Independent* reported that a major drive to speed up the administration of justice in the courts by introducing new procedures and appointing extra staff was to be made next year by the Department of Justice. The salaries budget for the courts would increase by 20% to £15.5 million. The *Irish Times* noted that the request by the Law Society and the Bar Council for a £5 million increase in expenditure on courthouse accommodation had been largely met in the 1994 estimates. The net total spending on courts showed an increase of 38% on expenditure in 1993. The papers also noted that the Government spending estimates provided for an increase of almost £2 million to the Legal Aid Board bringing its total provision to £5 million. The *Irish Independent* reported a spokesperson for the Law Society as saying that while the increase in funding for legal aid was welcome the Society estimated that the annual cost of a comprehensive statutory civil legal aid scheme would be £8 million per year.

A statement from the Law Society saying that greater concern was being shown for greyhound and horse racing then the rights of ordinary people to have equal access to the courts to vindicate their rights was published in the *Cork Examiner* on 14 December 1993 and in the *Irish Independent* on 22 December 1993. The Society said that £7.3 million had been allocated for the development of the horse racing and greyhound racing industries while only £5 million was allocated to the Legal Aid Board. The *Irish Independent* of 4 January 1994, reported a response to the Society's statement from a spokesman for Minister Mervyn Taylor who said the sum was the highest ever allocation to legal aid and would significantly cut waiting lists. A spokesman for the Law Society said any involvement by private practitioners would, at the very least, have to be at the same rate of remuneration payable under the criminal legal aid scheme.

Probate Tax to Stay

The *Farmers Journal* of 18 December 1993, reported that the Minister for Finance, *Bertie Ahern*, had told the Dail that he had no plans to abolish probate tax in the 1994 Budget. The article reported that the Alliance Against Probate Tax intended to intensify the campaign to abolish the tax.

Labour Court Rules in favour of Law Society

The *Evening Press* of 17 December 1993, reported that the Labour Court had turned down a 3% PESP "local bargaining" claim by IDATU on behalf of clerical, cleaning and porter grades of staff employed by the Law Society. The Labour Court upheld the arguments of the Society that no exceptional circumstances existed to justify concession of the Union's claim and that the Society could not afford to bear the additional payroll costs. ❐

Barbara Cahalane

North/South Seminar on Criminal Law

The Criminal Law Committee of the Law Society of Ireland and the Criminal Bar Association of Northern Ireland are pleased to announce the holding of their first joint seminar to take place on the weekend of 11, 12 and 13 February 1993, in the Ballymascanlon House Hotel, Dundalk, Co. Louth.

The seminar aims to increase the pool of available legal and practical knowledge in the conduct of criminal cases, and will involve a high degree of participation by those attending. The seminar is open to all solicitors with an interest in criminal law.

Conference Programme

Friday Evening – Welcome reception and registration.

Saturday Morning 10.00 - 12.00 – "The Client in Custody". Keynote speaker: *Alistair Duff*, Solicitor, Edinburgh.

2.00 - 3.00 – "Computerised Litigation Support in the Criminal Practice". Speaker: *Anne Dunne*, Anne Dunne Systems Consultants, Dublin.

8.00 p.m. – Conference Banquet.

Sunday Morning 11.00 - 1.00 – "The Forensic Preparation of the Defence". Keynote speaker: Dr *Noel Spence*, Forensic Scientist, Cambridgeshire.

The cost of the seminar will be £100.00 per person which will include: two nights bed and breakfast (sharing accommodation) lunch and dinner on Saturday, tea and coffee breaks and all conference documentation.

Participants will have full access to the sports and leisure complex of the Ballymascanlon Hotel which has an indoor heated swimming pool, solarium, sauna, gymnasium, squash courts, tennis courts and snooker room. The hotel also has a nine hole private golf course with a green fee of £6.00 per person.

As the aim of the seminar is to achieve a high degree of involvement from all participating, the number of places is necessarily limited.

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Belfast.

❐

Dr. Eamonn G. Hall

Solicitors Liable for Mental Distress

In awarding damages to a plaintiff wrongly convicted of a criminal offence due to his solicitor's negligence, *Scott Baker J* held in *McLeish v Amoo-Gottfried & Co* (Queen's Bench Division), (*The Times*, October 13, 1993) that a court could take into account any loss of reputation which had increased the plaintiff's mental distress.

Solicitors had acted for the plaintiff in criminal proceedings which had resulted in his conviction in September 1989 on two counts of common assault on a police officer and one count of possessing an offensive weapon. The plaintiff was fined £450. In November 1991 the Court of Appeal, Criminal Division, quashed all the convictions.

The solicitors admitted they had acted negligently in the conduct of the plaintiff's defence and the matter came before the court for the assessment of damages. Scott Baker J stated that the plaintiff had claimed general damages under two heads, albeit accepting that one global award should be made. Those heads were: (i) distress and mental anxiety; (ii) injury to reputation.

In the context of the distress and mental anxiety, the very essence of the contract to act for the plaintiff in preparation for and at his trial had been, according to Scott Baker J, to ensure his peace of mind by taking all appropriate steps to secure his acquittal if possible and, if not, to make the best possible case for him. The judge had no doubt that it was foreseeable that the plaintiff would suffer mental distress if the solicitors conducted the preparation and trial negligently.

In the context of injury to reputation, the judge noted that if a vicar's wife was, through her solicitor's negligence, wrongfully convicted of shoplifting and her mental anguish was increased by what she perceived the parishioners though of her, the judge could not see why that would not enhance her award.

If a vicar's wife, was, through her solicitor's negligence, wrongly convicted of shoplifting and her mental anguish was increased by what she perceived the parishioners thought of her, this should enhance her award of damages.

The court considered that the period of mental distress ran from the commencement of the trial, when it first became apparent that the solicitors were not defending the plaintiff properly, until the day the conviction had been set aside.

In fixing the amount of the award, Scott Baker J had in mind in particular; (i) the nature of the offences of which the plaintiff had been convicted and the penalty imposed; (ii) the length of time the conviction had stood and (iii) the particular effect on the plaintiff.

The judge stated that he had to do his best to put into terms of money something that could not really be truly quantified in financial terms. His Lordship regarded awards in libel cases as irrelevant. The court considered the appropriate figure for general damages was £6,000.00.

The clearest Irish authority in this area is *Roche -v- Peilow*, (unreported) July 8, 1986 where Carroll J in the High Court, affirmed by the Supreme Court, awarded damages for mental distress to the plaintiff husband and wife. See Dr. White's *Irish Law of Damages*, p.254.

District Court – Small Claims Procedure

The District Court (Small Claims Procedure) Rules 1993 (S.I. 356 of 1993)[1] which came into operation on December 8, 1993 provide an alternative method of commencing and dealing with a civil proceeding in respect of a small claim to be known as the small claims procedure.

The rules regulate the practice and procedure of the District Court in relation to the small claims procedure and prescribe the forms to be used in connection with such claims. Under the rules a small claim is defined as meaning a civil proceeding instituted under the 1993 Rules:

"(1) in relation to a consumer contract, by the consumer against the vendor in respect of any goods or service purchased, which is not a claim:-

(a) arising from an agreement under the Hire Purchase Acts, 1946 and 1960, or

(b) arising from an alleged breach of a leasing agreement,

(2) in relation to a tort, by the claimant (not being a body corporate) against the respondent in respect of minor damage caused to property belonging to the claimant (but excluding personal injuries),

(3) in relation to a tenancy, by the tenant (not being a body corporate) against the landlord in respect of the non-return of any sum paid by the tenant as rent deposit or any such sum known as "key money",

provided that in every such case the amount of the claim does not exceed the sum of £500.00."

[1]The 1993 Rules which facilitate the extension of the small claims procedure to all District Court areas replace the *District Court (Small Claims Procedure) Rules*, 1991 (S.I. No. 310 of 1991) and the *District Court (Small Claims Procedure) Rules, 1992* (S.I. No. 119 of 1992)

which heretofore confined the small claims procedure to the Dublin Metropolitan District, the District Court Area of Cork city and the District Court Area of Sligo.

The Rules may be purchased from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2 on payment of £1.10 plus postage of 48p.

Fusion of the Legal Professions

The Minister for Justice, *Mrs. Geoghegan-Quinn,* has stated that she has no proposals at present aimed at merging the two branches of the legal profession. However, in reply to Mr. *Jim O'Keeffe,* TD, (Fine Gael) in the Dail on November 25, 1993 she stated that this did not mean that the policy on this issue must continue to be guided for the future by the views put forward by the Fair Trade Commission in its Report of Study into Restrictive Practices in the Legal Profession published in 1990.

The Fair Trade Commission had expressed the view that simply fusing the legal profession would not be a means of eliminating the present restrictive practices in the legal profession, although it might affect some of them, and a fused profession would not guarantee the delivery of more efficient and less costly legal services. The Minister stated that the Commission concluded that any harms caused, or contributed to, by the divided profession were certainly not so great as to warrant a recommendation by the Commission that the two branches of the profession should be compulsorily fused.

It would not be unfair or contrary to the common good if there were to be a single fused profession.

The Minister for Justice concluded that the Commission did not consider that it would be unfair or contrary to the common good if there were to be a single fused profession. The Commission had recommended that nothing should be done to frustrate the development over time of a single fused profession.

Courtroom Tools

Many aspects of human endeavour have been the focus of modern technology. Law is sometimes, or inevitably, behind the times. Lawyers are associated with the judicial arm of government and often depend on Government Departments for resources. Government Departments are sometimes slow in involving themselves with modern technological tools.

In the United States, for example, high tech gadgets are becoming courtroom tools. Lawyers there have been making tentative steps at using computers and video monitors in trials for several years. Lawyers have used computers to re-create plane crashes, highway accidents and even murders. During closing arguments in a 1993 predatory-pricing case, *Continental Airlines -v- American Airlines,* a lawyer for American Airlines endeavoured to convince jurors to trust the company's employees who testified at the trial. In an effort to make sure the jurors remembered the person he was talking about, the lawyer produced pictures in the courtroom of each witness on a 67-inch television screen.

In *American Airlines,* it is impossible to state the effect of the new technology on the jurors. In this five-week antitrust case, the jurors took less than three hours to decide that American Airlines had not unfairly slashed its prices. In that case lawyers had been able to display for the jury portions of documents, videotaped depositions, charts and graphs with the flick of a pen-sized instrument that read bar codes assigned to each of the thousands of exhibits introduced during the trial.

Would jurors and a judge look askance at a courtroom display of technological firepower? One of the lawyers in the case stated that his opinion was that jurors expect you to do this; they see such technological displays on the news every night.

Undoubtedly, computer technology can assist lawyers in coming to grips with a complicated case with thousands of documents. Computerisation assists cross-referencing and key-word searches. Apparently it is possible to put up to twenty thousand documents on a CD-ROM. This will obviously save lawyers renting additional space to store litigation material and spending hours rooting through boxes to find documents.

In *American Airlines,* one of the plaintiff's lawyers considered that the plaintiff airline could not as easily make the point that it was financially harmed by the defendant's allegedly improper fare cutting, if it (the plaintiff) were hauling expensive technology into court. One lawyer for the plaintiff stated it was far easier to show documents by having transparencies made and putting them on an overhead projector. Technology has its limitations; it is not yet possible to have perfect resolution for documents on the computer screen. That will change.

The day will come when courtrooms in Ireland will be equipped with computers and (television) monitors. A lawyer will come into the courtroom ready for trial, in appropriate cases, with his or her CD–ROM.

Courtroom technology will undoubtedly become cheaper and will become more readily available. The day will come when courtrooms in Ireland will be equipped with computers and (television) monitors. A lawyer will come into the courtroom ready for trial, in appropriate cases, with his or her CD–ROM.

Borking Nominees for Legal Posts

New words continue to appear in our dictionaries. The campaign that killed Robert Bork's 1987 US Supreme Court nomination bequeathed the verb "to bork" meaning to barrage an appointee with sensational-sounding

Continued on facing page

Concerned Lawyers Raise £12,000 for the Homeless

At the wine and cheese party run by CLASP were l–r: Don Tidey, Company Chairman and Chief Executive, Quinnsworth; Frank Clarke, SC, Chairman of the Bar Council; Joan Burton, TD, Minister of State at the Department of Social Welfare and The Hon. Mr. Justice Hugh O'Flaherty.

CLASP (Concerned Lawyers Association for the Alleviation of Social Problems) held a very successful wine and cheese party on 17 December last in order to raise funds to aid the homeless. Over £12,000 was raised from the function and all proceeds will be donated to the Salvation Army for its new £4.5m Granby Centre Project which will house more than 100 people. The centre is expected to open in February, 1994.

Guest of honour at the function was *Joan Burton* TD, Minister of State at the Department of Social Welfare. The Bar Choral Society provided the evening's entertainment. CLASP would like to thank all those who supported the venture and made donations. CLASP's fund-raising target for this project is £20,000 and thus, if any member of the legal professions would like to make a donation, it would be gratefully received and can be forwarded to *Rita Walsh*, Tel: 7024600 at the Law Library, Four Courts, Dublin 7.

Among the organisations already helped by CLASP's fund-raising activities are Focus Point, which provides help for the homeless and in particular, homeless young people; the St. Vincent's Trust in Henrietta Street, which provides a day training centre for approximately 65 young people, many of whom have been involved in crime; the Jesuit Centre for Faith and Justice, which runs three hostels for homeless boys on the Northside of the City of Dublin; Exchange House, run by the Dublin Committee for the Travelling People, which provides education and training for the travelling community and the Merchant's Quay, (Dublin) Project, which addresses the problems facing the victims of AIDS and their families. ❐

Lawbrief – *Continued*

excerpts of past opinions, writings or speeches.

During the Reagan-Bush years, liberal attacks on judicial and Justice Department nominees instigated the borking phenomenon. However, now despite the protest about liberal tactics, conservatives in the United States are putting together what has been described as a potent borking machine. Apparently Republican Senator aides compile negative dossiers on nominees; like-minded outside groups endeavour to stir up what may be described as "grass roots" opposition and conservative journalists are given the negative dossiers. All simultaneously raise alarms which can have a potent effect.

The borking phenomenon is unknown in Ireland because it is the Government of the day that appoints persons to the Bench and nobody gets an opportunity to bork or to comment in any manner in advance in relation to such appointments. ❐

Compensation Fund Payments – December, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in December, 1993.

The name of the solicitor in respect of whom the claim occurred is listed in the left hand column.

	IR£
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	25,929.68
John Kiernan Brennan, Mayfield, Enniscorthy, Co. Wexford.	3,743.27
James C. Glynn, Dublin Road, Tuam, Co. Galway.	24,917.57
Peter J. Smith, 41 Arran Quay, Dublin 7.	1,149.50
Conor Killeen & Elio Malocco Chatham House, Chatham Street, Dublin 2.	57,500.00
St. John M. Donovan, "Lawcus", Stoneyford, Co. Kilkenny.	6,689.89
Robert Coffey, 22 Lower Leeson Street, Dublin 2.	530.00
	120,459.91

❐

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FLAC in 1993

Pictured at the FLAC Annual Labour Law Seminar which was held on 30 October 1993, were l–r: Eilish Barry, Barrister; Matt Merrigan, former General Secretary of the ATGWU and Tony Kerr, Barrister and Lecturer in Law at University College Dublin.

The Free Legal Centre (FLAC) has had another busy year. We have continued the campaign for a comprehensive scheme of civil legal. This year has seen some major changes in the State's Scheme of Civil Legal Aid and Advice and, as a result, our work has been largely focused on highlighting and analysing the consequences of these. Furthermore, our newsletter, *FLAC News*, has continued to monitor the waiting lists problems around the country.

In 1993, as before, the FLAC helpline continued to provide an essential advice and referral service. In this year alone we dealt with over 5,000 calls. Many more queries are handled by the volunteers in our 16 evening clinics in and around Dublin and Cork.

Representation in social welfare appeals and Employment Appeals Tribunal cases remain a large part of our work and the latest figures show that we acted in over 50 cases during 1993. High Court actions on behalf of nearly 1,800 married women seeking the recovery of arrears of social welfare due under EU Law remain pending as are other actions concerning the provision of legal aid.

FLAC's work in the area of welfare rights training has increased in the last year, and we organised two twelve-week courses for community groups setting up advice services. We also arranged follow-up and refresher courses for a number of groups. These courses are intended to provide a broad knowledge of family law, and to train for information and advice giving.

Also, as part of the National Social Service Board's nationwide training programme, FLAC was invited to run courses on the Social Welfare Appeals system, civil legal aid and family law.

FLAC, together with the trade union, Manufacturing Science and Finance, has now established a labour law seminar as an annual event. This year it was on the practice and procedure of the Employment Appeals Tribunal and an examination of the new Unfair Dismissals (Amendment) Act.

Our series of guides to welfare payments was expanded with the publication of "A Guide to Unemployment Payments and Employment Schemes". We also brought out a second edition of the very successful "A Guide to Supplementary Welfare Allowance". These guides have proved very popular, especially for those involved in the provision of advice, and we intend to produce further titles next year.

The research work was also maintained. We were commissioned by the Combat Poverty Agency to conduct a feasibility study into the appeals service within the Supplementary Welfare Allowance Scheme nationwide. We are currently seeking funding to publish these findings.

FLAC has an essential role to play in the provision of legal services for those unable to afford paid services, and, with the current changes in the State scheme, our campaigning work is vital. This work requires the encouragement and help of the legal profession and we thank you for your ongoing support over the years.

Sabha Greene
Co-Ordinator
FLAC ❐

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The Health (Nursing Homes) Act, 1990

By Mel Cousins BL

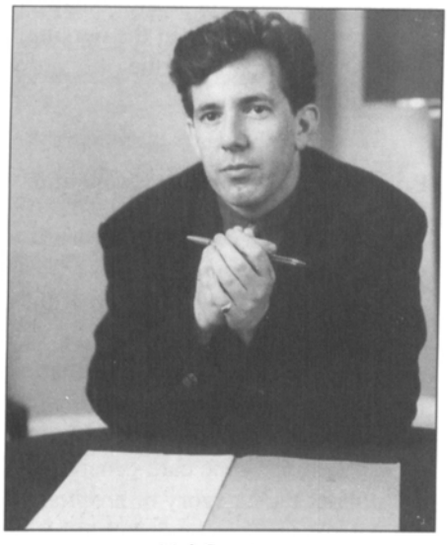
The Health (Nursing Homes) Act, 1990 has been brought into force from 1 September 1993.[1] This article considers the existing situation concerning nursing home care and subventions and the provisions of the new Act and Regulations.[2]

The position concerning the legal regulation of nursing homes and entitlement to public nursing home care in Ireland has been very confused. There has been no legal requirement that nursing homes be registered, although the Health (Homes for Incapacitated Persons) Act, 1964 (repealed by this Act) did set out certain rules concerning the operation of nursing homes and their regulation by health boards. As concerns entitlement to public nursing home care, there has been a considerable difference between the services that people have legally been entitled to and what has been provided in practice[3] and there has been no standardised system for assessing entitlements to public care or to nursing home grants.

The 1990 Act and Regulations are intended to clarify both the legal and practical position, to introduce a registration system for nursing homes and to provide a system for assessing entitlement to public nursing home care and/or subventions towards the costs of care in a private nursing home. These provisions at least clarify the system in practice. However, there remains a major question mark over the legal position concerning entitlement to care.

Registration of Nursing Homes

Nursing home means an institution for the care and maintenance of more than two dependent persons (i.e. persons



Mel Cousins.

who require assistance with the activities of daily living by reason of physical or mental infirmity).[4] Various institutions are excluded from this definition such as 'mental institutions', 'maternity homes' and institutions where the majority of patients are priests or members of religious orders.[5]

All nursing homes must be registered by the local health board which must keep a list of registered nursing homes.[6] This list must be available to the public free of charge. This is a new provision as, under the previous legislation, nursing homes were only obliged to notify the health board of their operation. Section 3 of the 1990 Act provides that a person shall not carry on a nursing home unless the home is registered and the person is the registered proprietor thereof. It is not a criminal offence to operate an unregistered nursing home *per se*. However, where a registered nursing home commences to be carried on by a person other than the registered proprietor, the home ceases to be registered and it is an offence for the person who takes over the carrying on of the home not to apply for registration within four weeks of commencement.[7]

Application for registration is to the local health board and registration is for a three year period.[8] A person who proposes to carry on a home may apply to the board for a declaration that he or she is a suitable person to do so.[9] This can only be refused if he or she has been convicted of an offence under the 1990 Act (or the preceding 1964 legislation) or any other offence 'such as to render the person unfit to carry on a nursing home' or where the person fails or refuses to provide the board with requested information or provides it with information which is false or misleading in a material respect.[10]

The board can only refuse to register a home or remove it from the register it if it is of the opinion that[11]

i) the premises do not comply with the Regulations under the Act, or

ii) the carrying on of the home is or will not be in accordance with the Regulations, or if

iii) the proprietor or person in charge has been convicted of an offence under the 1990 Act (or the preceding 1964 legislation) or any other offence 'such as to render the person unfit to carry on a nursing home', or

iv) the person fails or refuses to provide the board with requested information or provides it with information which is false or misleading in a material respect, or

v) the proprietor of a registered home has, within the last year, contravened the conditions of registration imposed by the board under section 4(8).

If the board proposes to refuse or revoke conditions to registration, it must notify the person involved and give reasons for its proposals.[12] The

person involved has 21 days to make written representations to the board. The final decision must also be notified in writing with reasons for the decision. A registered proprietor of a nursing home who wishes to renew his or her registration may apply to the board not less than 2 months before the expiry of the registration. If the board does not refuse registration before the expiry of the registration, it must renew the registration.[13]

Appeal against a refusal or revocation or registration, a refusal or revocation of a declaration of fitness, or attachment, amendment or revocation of conditions, lies to the District Court within 21 days of notification of the decision.[14]

Nursing Home Standards

The Nursing Homes (Care and Welfare) Regulations, 1993 set out detailed requirements concerning nursing home standards.[15] These cover nursing and medical care, occupational and recreational facilities, privacy, information on current affairs, religious facilities, visits, staffing levels, accommodation and facilities, safety and design, kitchen facilities, hygiene and sanitary facilities, and nutrition. A contravention of these Regulations is an offence.[16] A person convicted of such an offence may, on the application of the health board, be declared by the Circuit Court to be disqualified for carrying on, being in charge of or concerned with a nursing home.[17]

The Regulations introduce the concept of a contract of care between the nursing home and the person cared for.[18] This must set out the care and welfare of that person and include details of the services to be provided and the fees to be charged. It must be provided to each person within two months of admission to the nursing home.

A person in a nursing home (or somebody acting on his or her behalf) may make a complaint to the health board in relation to any matter concerning the home or the maintenance, care and welfare and well being of the person.[19] The board must investigate the complaint and the proprietor or the person in charge of the nursing home must be notified. If the complaint is upheld, the health board can direct the nursing home to take specified action in relation to the complaint and the proprietor must comply with this. The health board must notify the person in the nursing home of the outcome of the complaint.

Entitlement to Nursing Home and Subventions

The Existing Position

Up to 1 September 1993, where a person medically required nursing home care s/he was *legally entitled* to care under the Health Acts 1947 to 1991. Nursing home care generally falls under the category of hospital 'in-patient services' and should be available in the same way as any other hospital in-patient treatment.[20] Therefore a person should be entitled to nursing home care either free (if entitled to a medical card) or subject to limited charges which cannot exceed the person's income. There should be no need to undergo a further means test or to have the circumstances of the person's family taken into account.

However, the position in practice bore no resemblance to the legal position. The health authorities to a large extent ignored the fact that nursing home services came within the definition of in-patient services despite a Supreme Court decision to this effect.[21] Public nursing home care was extremely limited and many persons were forced to rely on a system of means tested grants towards the cost of private nursing home care for which there appeared to be no appropriate legal basis. This meant that the health boards, in many cases, were not fulfilling their legal obligations under the Health Acts.

The 1990 Act and Nursing Homes (Subvention) Regulations, 1993 introduced a separate scheme of entitlement to nursing home care and subventions. However, the 1990 Act *did not* change the fact that people are entitled to 'in-patient services' under the Health Act, 1970 and that nursing home care is generally within the definition of in-patient services. In other words it did not remove the existing legal entitlements. The Minister for Health, recognising this difficulty, promulgated the Health (In-Patient Services) Regulations 1993.[22] These Regulations basically purport to amend section 52 of the Health Act, 1970 so that nursing home services provided under the Health Acts must be provided in accordance with the provisions of the 1990 Act and the Regulations made thereunder, i.e. subject to assessment and additional means testing. However, these Regulations are almost certainly unconstitutional as an attempt by the Minister to amend primary legislation contrary to article 15.2.1 of the Constitution.[23]

The New Rules

Section 7 of the Act provides that

> 'where, following an assessment by a health board of the dependency of a dependent person and of his means and circumstances, the health board is of the opinion that the person is in need of maintenance in a nursing home, and subject to the compliance by the home with any requirements made by the board..., pay to the home such amount in respect of maintenance as it considers appropriate having regard to the degree of the dependency and to the means and circumstances of the person'.

Section 7 appears to envisage solely a system of assessment of entitlement to nursing home subventions. However, the Nursing Homes (Subvention) Regulations, 1993[24] promulgated under this section provide not only for such an assessment but also for a system of assessment of access to public nursing homes and to private subvented care. *Quaere* if the Regulations do not go beyond the scope of the section?

Applications for subventions

Applications for a subvention must be made to the local health board before a person's admission to a nursing

home.[25] Any person who was already in a home on 1 September, 1993 can apply for a subvention. However, after that date any person who is admitted to a nursing home before applying for a subvention (except in an emergency) is debarred from claiming a subvention for 2 years from the date of admission unless the chief executive of the health board decides otherwise. It is arguable that this provision is *ultra vires* the primary legislation which makes no reference to such a restriction and specifically refers to a person who 'enters or is in a nursing home'.[26]

Qualification for a Subvention[27]

To qualify for a subvention the applicant must be

1) sufficiently dependent to require maintenance in a nursing home, and

2) unable to pay any or part of the cost of maintenance in the home.

Assessment of Dependency

Dependency refers to the level of physical or mental dependency of a person applying for a subvention in relation to the person's need for assistance with the activities of daily living such as dressing, eating, walking, washing and bathing arising from physical or mental infirmity.[28] The Regulations establish three levels of dependency; medium, high and maximum.[29]

Each applicant is assessed by the health board. This must include an evaluation of the ability of the person to carry out the tasks of daily living, of the level of social support available to the person and of his or her medical condition. On the basis of this assessment the board will either offer public accommodation or assess entitlement to subvention.

Assessment of Means

Means are the applicant's income and the imputed value of his or her assets. and the income and value of the assets of the spouse.[30] In assessing means, the health board must disregard income equivalent to one fifth of the weekly rate of the old age (non-contributory) pension. The applicant is allowed to keep this for his or her own personal use. The board must disregard the first £6,000 of any assets. In addition, the principal residence will not be taken into account if it is occupied immediately before the application and continues to be occupied by a spouse, or child aged under 21 or in full time education, or a relative in receipt of disabled persons maintenance allowance, blind pension, disability benefit, invalidity pension or old age (non-contributory) pension.

A health board may refuse to pay any subvention if the assets, excluding the personal residence, exceed £20,000 or if the principal residence is valued at £75,000 or more (and is not occupied by a spouse, or child aged under 21 or in full time education, or relative in receipt of disabled persons maintenance allowance, blind pension, disability benefit, invalidity pension or old age (non-contributory pension) and the applicant's income is greater than £5,000 per year.

Assessment of Circumstances

Unlike almost every other means tested scheme, the applicant's children's income can be taken into account.[31] The board can reduce the amount of the subvention based on the applicants' 'circumstances', i.e. its assessment of the children's capacity to contribute to the cost of nursing home care. This provision imposes liability on the children which does not otherwise exist in law. It is not at all clear that this is authorised by the primary legislation. *Quaere* if this provision is not also *ultra vires*?

This rule applies to children aged 21 and over who are living in Ireland. The Regulations say that the board may take account of the person's circumstances which implies that this provision is discretionary rather than mandatory. All sources of income received in the last 12 months which is personal to the son or daughter will be taken into account. The board must allow various deductions from the income.

Rate and Amount of Subvention[32]

The rates of subvention vary from £70 to £120 per week depending on the level of dependency. However, these amounts may be reduced or increased in some circumstances. The board may decrease the appropriate rate of the amount by which the person's means exceed the rate of old age (non-contributory) pension. If the person was in a nursing home when the Act came into force or if was admitted to a home without applying for a subvention (and therefore subject to disqualification from the subvention for 2 years), a health board *may* reduce the subvention by an amount - additional to the amount by which the means exceed the old age (non-contributory) pension - by reference to the actual payments which were being made by the person on his or her behalf. So if the person has been paying £100 per week towards the cost of nursing home care, the board may reduce the subvention by £100 (with the result that no subvention may be payable). Again the Regulations say that the health boards may make these reductions so the application of this provision would appear to be discretionary.

If the means and circumstances (i.e. the ability of the children to contribute to the cost of care) are assessed as less than the weekly rate of old age (non-contributory) pension, the board may pay an amount additional to the normal subvention not exceeding the rate of old age (non-contributory) pension. So, if the person's own means are less than the old age (non-contributory) pension and if his or her children are unable to contribute to his or her support, the board may increase the subvention.

Appeals[33]

If the person applying for the subvention is dissatisfied with a decision in relation to means or circumstances s/he may appeal to an appeals officer appointed by the Minister for Health. The appeal must be made within 28 days of receiving the notification of the decision. The appeals officer must inform the person

or his or her decision within 28 days of receiving the appeal. Decisions of the appeal officer are subject to review by the Ombudsman. There is no appeal in relation to the medical aspects, i.e. as to the existence of or level of dependency. A person can only look for a review of the decision or ask the Ombudsman to investigate the case.

Conclusion

Several aspects of the new legislation are to be welcomed, particularly the improved control of nursing home registration and standards. From a practical point of view the rules concerning subventions at least clarify what has been an extremely vague area. However, it appears that persons who require nursing home care are legally entitled to it under the Health Act, 1970 without having to go through the system of means testing laid out in the more recent legislation. Thus the attempt to regulate access to nursing home care as a separate form of health services is arguably unlawful. In addition there are several points of the Nursing Home (Subvention) Regulations, 1993 which appear to be beyond the scope of the 1990 Act. The recent changes appear to have raised as many questions as they have answered.

Notes

1. Health (Nursing Homes) Act, 1990 (Commencement) Order, 1993 (S. I No. 222 of 1993).
2. Including Nursing Homes (Care and Welfare) Regulations, 1993 (S.I. No. 226 of 1993) and the Nursing Homes (Subvention) Regulations 1993 (S.I. No. 227 of 1993).
3. See M. Cousins 'Nursing Home Care and Grants' (1992) 11 *Irish Social Worker* No. 1 p.21; Ombudsman, *Annual Report for 1992* (Stationery Office, 1993).
4. Sections 1 and 2.
5. Although nursing home subventions may be paid in respect of persons in the latter institutions. Section 7(1)(b).
6. Sections 3 and 4. Section 3(3) allows one year's grace to nursing homes already in operation on 1 September 1993.
7. Section 4(12).
8. Section 4(3). Application and registration fees are set out in the Nursing Homes (Fees) Regulations 1993 (S.I. No. 223 of 1993).
9. Section 4(4).
10. Section 4(4)(b) and (c).
11. Section 4(6).
12. Section 4(13).
13. Section 4(11).
14. Section 5.
15. S.I. No. 226 of 1993. See section 6 of the Act. See also the Homes for Incapacitated Persons Regulations 1985 maintained in force by section 6(6).
16. Section 6 (3) and see sections 11 (penalties) and 12 (procedures).
17. Section 6(4).
18. Article 7 of S.I. No. 226.
19. Article 26.
20. Section 52 of the Health Act, 1970. See *In re McInerney* (1976-77) ILRM 229.
21. *In re McInerney* (1976-77) ILRM 229.
22. S.I. No. 224 of 1993.
23. See *Cooke v. Walsh* (1984) IR 710.
24. S.I. No. 227 of 1993.
25. Article 4.
26. Section 7, my emphasis.
27. Article 6.
28. Section 1 of the Act.
29. First Schedule.
30. Article 8 and the Second Schedule.
31. Article 9 and the Third Schedule.
32. Article 10 and the Fourth Schedule.
33. Article 19. ❐

Blackhall Place Prize Bond Scheme

The following are the winners of the annual prize bond draw, which was conducted at the Annual General Meeting of the Law Society on 14 November 1993.

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At a joint seminar staged by the Law Society and Irish Medical Organisation on Personal Injuries Practice, held on 5 November, 1993, were back row l–r: The Hon Mr. Justice Lardner; Anthony Martin, Accident and Emergency Consultant, UCG Hospital; Dr. Carmel O'Donovan, Medical Defence Union; Dr. Cormac McNamara, former President of the Irish Medical Organisation. Second row l–r: Dr. David Buckley; Professor Bob Daly, Department of Psychiatry, UCC; Gerry Doherty, Law Society Council Member and then Chairman of the Litigation Committee, Neil Matthews, Branigan & Matthews, Solicitors. Front row l–r: Conal Devine, Irish Medical Organisation; Noel Smith, Good & Murray Smith, Solicitors; Barbara Joyce, CLE Co-Ordinator, Law Society; Dudley Potter, Solicitor, CLE Committee Member; Hugh O'Donnell, Rory O'Donnell & Co., Solicitors.

At the Annual Dinner of the County Clare Law Association held on Friday, 10 December, 1993, were back row l–r: John Shaw, Vice President, County Clare Law Association; Niall Casey, Law Society Council Member; Flan O'Reilly, former County Registrar; Rory Casey, Honorary Secretary, County Clare Law Association; His Honour Judge Kevin O'Higgins, Judge of the Circuit Court. Front row l–r: John McNamara, Hon Treasurer, County Clare Law Association; Richard John Halpin, President, Co. Clare Law Association; Gerard O'Neill, Committee member, Limerick Bar Association; Enda Brogan, County Registrar.

Members of the Law Society Council at a dinner hosted by the immediate past Junior Vice-President, Laurence Shields, in honour of the immediate Past-President of the Society, Raymond Monahan.

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Samuel Gill, Chief Clerk, Cork Circuit Court (centre) presenting a copy of his book The Circuit Court – Draft Order Precedents *to Michael A G Enright, Chairman, Litigation Committee, Southern Law Association (left) and Barry St. John Galvin, Law Society Council (right).*

At a luncheon of the Local Authority Solicitors Association held on 26 November, 1993 a presentation was made to Enda Gearty, (Longford) right on his retirement as Secretary of the Local Authority Solicitors Association. Also pictured are l-r: Francis Gleeson, (Tipperary North); John Harte, (Kilkenny), member of the Law Society Council.

Council of the Law Society 1993-1994

Back row l–r: Michael Carroll, Maurice Curran, Ken Murphy, Cormac O'Hanlon, John Harte, Donal Binchy, Fergus Applebe, Edward McEllin, Tim Lucey, John Shaw, James MacGuill. Second row from back l–r: Gerard Griffin, Laurence Shields, Bruce St. John Blake, Gerald Hickey, John Dillon-Leetch, John Fish, Gerard Doherty, P. Frank O'Donnell, Anthony Sheil, John Costello, Anthony Ensor. Third row from back l–r: Geraldine Clarke, Michael Irvine, Michael Staines, Michael D. Murphy, Stephanie Coggans, Ernest Margetson, Justin Condon, Owen Binchy, Philip Joyce, James McCourt, Richard Bennett, Angela Condon, Peter Murphy. Front row (seated) l–r: Barry St. John Galvin, Elma Lynch, Frank Daly, Patrick Glynn, Senior Vice-President; Noel Ryan, Director General; Michael V. O'Mahony, President; Pat O'Connor, Junior Vice-President; Andrew Smyth, Eva Tobin, Brian Sheridan, Moya Quinlan, Raymond Monahan.

Absent from the photograph were: Council members Niall Casey and Ernest Cantillon, and Past-Presidents Brendan Allen, Walter Beatty, Adrian Bourke, John Carrigan, Anthony Collins, Laurence Cullen, Joseph Dundon, Michael Houlihan, John Maher, William Osborne, David Pigot, Peter Prentice and Thomas Shaw.

Systems in the Office. 10 Not-So-Easy Tips

by *Frank Lanigan**

Lawyers are intelligent people. They spend much of their time telling people what to do. They are anarchic, individualistic and hate organisation. Nobody, particularly bean-counting accountants will tell them how to run their offices.

A solicitor setting up in practice will often adopt the system of the office in which he has served his apprenticeship, thereby, at one fell swoop, ensuring that bad habits pass seamlessly from one generation to the next!

It you always wanted to have a good system in your office but were afraid to ask, here are 10 ways to start. First the bad news:

1. A Filing System

You must have files in a condition and order that will make them available without delay. Files must be logically stored and correspondence filed daily. There is no short cut here, no computer system yet which can replace this essential chore.

The most common filing systems are alphabetic and alphanumeric, ie files from a-z or 1-100 or a combination. Some firms divide the files into types of work and then into fee-earners with each fee earner's files in alphabetic or numeric order. Some simply number all files. It does not really matter, provided there is a system, backed up with a listing, card-index or some logical means of finding a file. A filing system does not allow for files on the floor, under the desk or on top of the press. Either you file . . . or you don't. If you have no filing system, stop reading now and start filing. For further details of filing systems see *How to Manage your Law Office*, Altman & Weil (Matthew Bender).

2. Putting Files Away

When a file is finished, does it lie on the floor until it falls apart? What if the client comes back in five years time, looking for something? Can you put your hand on it? File storage (or "archiving", a superior buzz-word!) is very important. There must be a storage method for files, some needing documents, some for professional indemnity purposes, others for internal record. Record the file out of your current filing system. Record the file into a closed system. Keep track by means of a book, card-index or computer database. When storing the file away, remove any unnecessary documents from it. Mark stored files for destruction, saving or otherwise. Review stored files from year to year. Destroy when the Statute of Limitations permits.

Frank Lanigan

3. Wills

A box of wills is worth its weight in gold. List them, put them on a card-index, put them on a computer database, but keep track of them . . . the owners will eventually die! Categorise them, on computer or otherwise, so that legislative changes may be notified to testators.

4. Deeds

List all deeds in a book, card-index or computer system. Keep track of them. If they are released, get receipts and track them, using a deed book or computer listing.

5. Undertakings

Keep a list of all undertakings. Mark off those satisfied. Charge for giving and satisfying undertakings.

6. Accounts

Solicitors accounts systems are infinite in variations of incompetence. A relatively large office may be run on the so-called accounts system originally in use when the senior partner's father was in practice.

The success of an accounts system depends on the logic upon which it is based. The file relates to the client, therefore the account should do so. There is no reason why there should be a different ledger and file reference for the same client.

The current logic is, "one matter/one ledger reference". A client should have the same filing and ledger reference. If there are many matters for the client, each matter should have a subsidiary filing (and ledger) reference. This enables proper accounts to be kept. There is no substitute for this procedure. All computer systems are based on this premise.

7. Financial Control

There is little point in monitoring clients' accounts, if we do not manage our own. Control of expenditure, overheads, labour costs, billing, outlay for clients and other nominal matters is now essential. It is of little use to be told by your accountant (6 months later) that you have given too much credit to your clients. It is possible, even without computers, to monitor expenditure and catalogue it from month to month. See for example, *Best Practice* published by the English Law Society.

Put a reference on every receipt, bill,

cheque and cheque stub or counterpart. Install a house rule "no reference, no cheque". Allow no cheques to be issued in anticipation of payment or transfer from another matter, "no money, no cheque". Insist on the bank returning your paid cheques, without charge. Don't allow chargeable expenditure to be swallowed in the nominal ledger. Don't post office cheques to client account or vice versa; you'll either lose money or be struck off the roll . . . or both!

Index bills furnished by means of a card-index or computer listing. Take them out regularly and send reminders. If you are not paid, get nasty, . . . sue.

Preparing a budget is not as difficult as it sounds. Once you start, it is easy to keep up. This can be modelled manually or on a computer using a spreadsheet. Some computerised accounts systems include this option as an integrated part.

When you set budgets you have to consider office costs in every area e.g. salaries, phones, insurance, heating etc. You will be shocked when you realise the constant increase in these costs as related to your income whether recovered or charged. A solicitor who obliges himself to set his budgets for the year will be more likely to charge his clients realistically. For further details, see *Professional Management of a Solicitors Practice* Andrews & Purton (Longman).

8. Delegation/Structure. Who Does What?

Lawyers must delegate. This needs a system. Decide who delegates what and to whom, and stick to it. Don't allow poaching or hoarding, for any reason (it's surprising how many clients survive despite the death of their solicitors). If you delegate, keep an eye on the work. Have meetings about it; ensure that it gets done. Track the work using a reporting system that obliges the delegate to report progress (or lack of it). This requires a system to be put in place. Whether it is a list on the back of an envelope or a diary based computer system, it is important that the rules of delegation be followed carefully.

Delegation implies a structure or profile for the legal firm. The legal firm will benefit from a system whereby the roles of every member of the firm are spelled out. Prepare an office manual. If you don't want to write one from scratch, a sample *Office Manual* is available in book or computer disk from the Law Society of England and Wales (Contact *Cillian MacDomhnaill*, Practice Management Committee, Law Society, Dublin).

9. Time Recording

Time recording is used as an internal method of assessing better ways to do work and can assist in preparing bills for clients. It requires commitment to implement it successfully.

A computer is not necessary for this purpose but, if you wish to run such a system profitably over a number of members of staff, it is not feasible to carry out time recording without a computer system.

Manual time recording is available from Safeguard or alternatively is described in a publication known as *The Expense of Time* (available from the English Law Society). If you take the trouble and time now to install a time recording method you will be in a position to benefit in the future if time costing becomes the norm.

10. Computers, "The Lies"

What about computers? Some firms thought that they would cure all ills and make pots of money by computerising. No ills were cured, new ills caused, offices in turmoil and nobody made any money (except the computer companies). The cause? . . . solicitors know as little about computers as computer companies know about solicitors' offices.

A computer system will give you word processing, access to precedents quickly, the ability to list clients, wills, deeds, closed files, accounts and record time . . . provided it is handled properly. The writer has heard more nonsense talked about computers than any other subject, particularly by lawyers. Computers are not easy to deal with (no matter what the salesman says); they won't run your office; they won't get you out of a mess and they do break down, usually at the wrong time.

But, if you want to introduce system and method to your practice, computers are the only real answer. Computer suppliers to the legal profession are set out in the *Technology Handbook of the Law Society Technology Committee*, available (free) on request to *Veronica Donnelly* at the Law Society. ❐

•*Frank Lanigan, Solicitor, is a member of the Practice Management Committee of the Law Society.*

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BOOK REVIEWS

Irish Company Secretarial Precedents

By Paul Egan, Ailbhe Gilvarry and Mark Graham, Jordan Publishing Ltd., 1993, xiv + 390pp, hardback, IR£60.00.

Irish Corporate Procedures

By Paul Egan, Jordan Publishing Ltd., 1993, xiv + 188pp, paperback, IR£20.00

A company is an artificial entity. It is invisible and intangible and has no effective mind but the mind of its owners. Yet a company can possess a form of immortality and it allows for a form of perpetual succession; a company can be a powerful force.

Justice Louis Brandeis in *Liggett Company .v. Lee*, 288 U.S. 517, 567 (1933) (dissenting in part) noted that through size, companies once merely an efficient tool employed by individuals in the conduct of private business can possess such a concentration of economic power that so-called private companies are sometimes able to dominate the State. Brandeis used the expression "Frankenstein monster" in the context of a company which the State had facilitated by its corporation laws. A wise commentator once noted that the biggest corporation, like the humblest private citizen, must be held to strict compliance with the will of the people as expressed in the law of the land. This brings your reviewer to company law and the work of *Paul Egan, Ailbhe Gilvarry* and *Mark Graham.*

Paul Egan, Partner in Mason, Hayes & Curran, Solicitors, Dublin, states in the preface to *Irish Corporate Procedures* that the book is a collection of legal information and practical data designed to assist businesses and their professional advisers in forming, administering and finding out about the principal forms of business enterprise in Ireland. The book is intended to be a first point of reference on the relevant formation procedures, accounting requirements, taxation systems and disclosure obligations in relation to limited companies, partnerships, branches of companies and joint ventures.

In an appendix, Paul Curran sets out the standard forms used for formation of a company, registration of a limited partnership, registration of a branch of an overseas company, registration of a European Economic Interest Grouping and registration of a business name of an individual, partnership, Irish company or overseas company on the register of business names.

In *Irish Company Secretarial Precedents,* the authors provide precedents to facilitate a company secretary or professional adviser in relation to management of limited company under the *Irish Companies Acts, 1963 to 1990.* This book is directed mainly at the private company as distinct from the public limited company.

There is an introduction to each set of precedents. Chapter headings provide details of the scope of the work. These deal with, for example, incorporation of a private limited company, alteration to memorandum and articles of association, shares and share capital, borrowing and debentures, annual report, accounts and auditors, dividends and loan interest, registered office, directors, execution of documents and the company seal, statutory and other registers, company meetings, winding up and striking off.

Some practitioners in the past, particularly general practitioners, regarded company law as esoteric. For some, aspects of company law were (and may still be) intellectually incomprehensible. This should not be so. The authors have produced extensive and accessible guides to the intricacies of Irish corporate procedures. These books can be recommended for those seeking accurate, clear and speedy enlightenment.

Dr. Eamonn G. Hall

Lawyers' Skills

(Ed. Philip A. Jones). Legal Practice Course Guides, Blackstone Press Limited, 1993, £14.95 stg, softback, 218pp.

This academic year has seen the introduction of a new, practical training course for solicitors in England and Wales. Over 6,000 students commenced their training at nineteen centres based in universities and the four Colleges of Law sites at Guildford, London, Chester and York. The course is validated and monitored by the Legal Practice Course Board of the Law Society, and is normally covered in the academic year following completion of the law degree. Highly flexible arrangements are in being allowing for qualification through an integrated law degree, part-time courses for those in law-related and other occupations, or none, and through distance learning. A condition of validation of any course – and all are different apart from their common core – is that at least 25% of the training programme is devoted to the five legal skills identified by research as those most commonly exercised by solicitors. They are legal research, drafting and writing, interviewing, negotiation and advocacy.

It is at this large market, both teachers and students, that *Lawyers Skills* is

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aimed. One of a series of Legal Practice Course Guides that mirrors the impressive parallel series for the Bar Vocational Course (first published, also by Blackstone Press, in 1989 with a current 1993/94 edition,) *Legal Skills* cannot fail to prove of value to those to whom it is addressed. Indeed, to the open-minded practitioner prepared to accept that legal skills can be taught and learned, not merely acquired through experience, it could well open one or two windows to enlarge the view. It contains over 200 pages of compact analysis of principles, "how to do it" guidelines, and advice and illustrations of the practices of the different skills addressed. It further condenses and distills many of the insights contained in the increasingly extensive and helpful literature on legal skills such as texts by Fisher and Ury and Gerald Williams on *Negotiation,* Mauet on *Trial Techniques,* Binder on *Interviewing* and Bastress and Harbaugh on *Interviewing, Counselling and Negotiation*. There are, however, some surprising omissions from the further reading lists, although these are generally well chosen. While Mauet is extensively utilised in the chapters in advocacy, Haydock and Sonsteng's equally praised *Trial,* also in wide-spread use in American universities, is not mentioned and the sequel to Fisher's *Getting to Yes – Getting Together* – described by J.K. Galbraith as "the last best word on resolving differences" is likewise omitted.

The chapters on advocacy address the question of solicitors' rights of audience in England and Wales and contain interesting Law Society research findings into the extent of solicitors' current experience of advocacy (over 60%) of whom over half made an average of at least one or two appearances per week. Of those appearing more than three times a week, 52% say they are likely to try for Crown Court and 39% for High Court rights of audience when these become available. Such rights will be subject to passing a test or tests in civil and/or criminal evidence and the completion of appropriate advocacy training. Experience gained in applying the training principles contained in this text is likely to be useful in the design and delivery of training courses for advocacy in the higher courts. We in this jurisdiction may well have lessons to learn from the English experience.

There are good summaries on preparation, analysing the different approaches of different schools, the "theory of the case", the construction of a "story" and the case plan concept developed by Sir David Napley, analysis of law to elicit favourable testimony to advance your own case and how to challenge the opponent's case by discrediting the evidence or by discrediting the witness. Illustrations in the text include exposing inconsistencies and, delicately, impeaching the witness, e.g. a mother appearing as an alibi witness for her son. The latter is a good illustration also of asking only questions in cross-examination to which you know the *probable* answers as distinct from the somewhat unrealistic dictum "never ask a question to which you do not know the answer", so often enjoined on a learner. Other material will not be new to those familiar with Irvine Younger's *Ten Commandments of Cross Examination.*

Five chapters are devoted to the skill of negotiating. They are well written, containing good analysis and illustration of the distinction, not always recognised, between negotiation style and negotiation strategies and the interaction between the two. Anyone who has observed negotiation or analysed an encounter will recognise the hard-ball strategist whose disarming demeanour is one of apparently infinite empathy and desire to please. The one omission from this text, and almost all others, is the scope that exists in the training sphere – to which this series is addressed – for post negotiation feedback by the protagonists. This feature is heavily emphasised in the Irish training course context and is found to be of consistent merit when seriously addressed.

There are also five chapters on legal research and problem solving, three on letter-writing, seven on drafting legal documents and five on interviewing. All contain reminders of principles and systems already familiar to the general practitioner. There may also indeed be much that is novel to many, for example, the process of establishing evidence through narrative technique, simplified charting and the outline system.

In coverage of letter writing, there is a novel illustration of a solicitor's letter containing many characteristics of poor writing. Starting with the letter, it goes on to a diagrammatic critique of its errors, followed by a commentary and closing with a preferred written version. It is a technique which might commend itself to those faced with the difficult task of seeking to teach effective writing. Many of us find difficulty in acknowledging our need for remedial training on effective use of the written word.

This book in conjunction with practical exercises will serve its primary purpose of contributing to the foundation training in solicitors' legal skills. It may well prove attractive to qualified practitioners and is good value at £14.95 sterling.

Laurence Sweeney

The Irish Investment Market

By Alan Molloy, Oak Tree Press, 1993, softback, £9.95.

For some, a visit to the business pages of the daily paper is a quest for knowledge, an exploration that may lead to discovery and opportunity. For others, it is not so much a visit as a mad dash on the way to the sports page or the television columns.

But for many, those pages, stacked with layers of information, stir the imagination to soak in the success of mortals; to follow the fruits of human endeavour; to ogle over the loss of millions. They contain a world of mystery. Yet the knowledge of their contents will grant an awareness of the meaning of power of which even Walter Mitty never dreamt.

To understand how people invest

other people's money or why indeed they bother is there for all to see in those business pages. Getting to grips with the jargon, the abbreviations and the institutions is another matter.

Alan Molloy works as an Investment Director with James Bowen & Associates in Dublin. He succeeds within a hundred pages, using layman's language, in explaining those terms in a succinct and demonstrative fashion. The reader is quickly paving a course through tracker bonds, offshore unit funds, UCITs, section 23 property schemes and leveraged futures. Following the dissertation are another thirty pages of appendices of graphic guidance and a glossary thrown in to keep the mind refreshed.

David Givens of Oak Tree Press has once again shown us that he can spot a writer with a feel for his subject. Already, there would appear to be scope for another edition. The EC has become the EU; The Uruguay Round is over, IBEC is spawning further acronyms. We must wait for it. For those who pause on that journey through the business and finance pages of the newspapers, a brief perusal of Alan Molloy's book will peel away the layers of darkness and enlighten the forager.

Justin McKenna ❐

A Dictionary of Irish Law

By Henry Murdoch, second edition. Topaz Publications, 1993, xii 604pp.

> "There's no better way of exercising the imagination than the study of law. No poet ever interpreted nature as freely as a lawyer interprets truth"
>
> *Jean Giraudoux.*

In this dictionary the author quite rightly does not concern himself with a lawyer's interpretation of the truth, but rather the lawyer's tools of the trade, legal words and terminology, to which he gives simple and readily understandable definitions and explanations.

At the launch of A Dictionary of Irish Law were l–r: Dick Spring, TD, Tanaiste and Minister for Foreign Affairs; Harold Whelehan, SC, Attorney General; the author of the dictionary, Henry Murdoch, and Liam McKechnie, SC, Vice Chairman of the Bar Council.

Sometimes the definitions are dealt with discursively and relevant case law is quoted where necessary. The dictionary is also extensively cross referenced.

It will prove useful for existing lawyers and also those interested in starting the study of law. In the foreword to the first edition, The Hon. *Thomas A. Finlay,* Chief Justice, stated that this dictionary provided an excellent tool in the hands of lawyers while providing at the same time an extremely convenient, if not indispensable, piece of equipment to persons of other disciplines who have, from time to time or consistently, recourse to the law or concern with the law or legal documents.

The second edition has been published to take account of the substantial changes which have occurred in the law in the five years since the first edition. There are many new entries in the second edition and some previous entries have been updated.

The second edition will prove, as did the first, a very useful reference book and source of information, while still fulfilling the basic job of a dictionary; providing concise and intelligible definitions.

Ronan Baird

Basic Documents on Human Rights

Edited by Ian Brownlie, Oxford University Press, 1992. 627 pp.

The third edition of this compendium of International Declarations and Conventions in the Human Rights area has been much expanded to include Conventions Against Torture, on the Rights of the Child, on the Rights of Migrant Workers etc., which were introduced in the 1980s.

The terrible conflict in the former Yugoslavia has drawn attention to the significance of the Conventions on Genocide, Status of Refugees, and the Status of Stateless Persons. Though the contents of the volume are extremely wide ranging, the author suffered from that variation of Murphy's Law which prescribes that if a topic is omitted from or given little attention in any work it will

immediately, after publication, become one on which attention is focused. In this case the author chose to omit "instruments relating to the Humanitarian Law of War and certain United Nations Documents on The Rights of Minorities", all of which have been brought into play by the Yugoslavian situation.

While many of the Conventions are of more significance in the socio-political era, the collection of European Conventions, principally that on Human Rights, makes this a useful source book even for the practitioner.

The worst feature of this otherwise valuable book is the totally inadequate index which for a book comprising 627 pages of text is a mere 2½ pages long and is little more than an expanded list of contents. The high reputation of the Oxford University Press is sadly diminished by such a fall from acceptable standards.

JFB ❐

A Guide to Buying or Selling Your House in Ireland

By Dermot Coyne, Solicitor, 1993, softback, 54 pp. £4.95.

This book was written by *Dermot Coyne* for the general public and specifically for people who have had no experience in either purchasing or selling a house.

The book begins with a chapter on how to select a house and makes 16 suggestions for things to look out for – some of these are very obvious but a number of suggestions are ones that would not readily spring to the mind of a new purchaser. Each topic is dealt with in a short paragraph and is easily readable.

Having dealt with selecting a house, the book moves on to the mechanics of buying which covers areas such as instructing your solicitor and applying for a loan right up to completion of the purchase. Again it is written in a form that is easy to understand. However, when talking about the completion and registration of title it may raise confusion in the mind of a purchaser and be somewhat too detailed for the uninitiated.

The costs of buying are quite clearly defined and are laid out in considerable detail and deal with areas not normally covered such as a mortgage indemnity bond.

Annuity and endowment mortgages are dealt with in some detail though it is a pity that the book failed to refer to mortgage protection policies either under the headings of mortgages or insurance. Endowment mortgages are comprehensively covered and the risks adequately pointed out. "There is a risk that you will now know until the end of the term. If this happens you owe the difference. It may of course be greater in which event you collect the difference."

The book then moves on to selling a house and again deals clearly with each step from putting the house on the market to actually moving out. However, under the heading of dealing with title it fails to mention "the dreaded extension" and this is only mentioned as an after thought in miscellaneous outlay and is misleading. "If you have carried out any extensions to the house *without* planning permission you will be obliged to have an architect inspect and certify that all is in order."

On the question of legal costs confusion arises. In one section it suggests that fees should be negotiated at the outset and a firm commitment given in writing. Later the author suggests an approximate quote based on the transaction running smoothly should be sought. It is also unfortunate that he has listed specific costs for certain items, as the costs of some of these have already increased, for example, £10 for a Land Certificate. This could raise doubts in the mind of a client in relation to his solicitor.

Having read the book I gave it to a first time buyer for his comments. His first comment somewhat disconcerted me: "I did not know you could haggle with your solicitor over fees". Having said that, he went on to say that the book was good as it forced one to add up the total costs involved including the little ones and warned of the many pitfalls that may arise when buying or selling. He also liked the layout of the book as it made for easy reading and thought the drawings were appropriate and amusing.

Oonagh Sheridan. ❐

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SYS Autumn Conference

The Autumn Conference 1993 of the Society of Young Solicitors was held jointly with the Young Barristers Society at Jury's Hotel Cork on 12 November to 14 November 1993.

We were delighted to welcome quite a number of solicitors from Northern Ireland, England and Wales and Holland who travelled to attend the Conference.

The topics discussed were wide ranging.

The Hon Mr. Justice *Hugh O'Flaherty* of the Supreme Court and *Joseph Noonan* of Noonan and Linehan & Co., Cork addressed the topic "The Guardian of Human Rights – State or International Community?". Mr. Justice O'Flaherty led a useful discussion on the vindication of human rights by the organs of State. Mr. Noonan posed the question whether either of these two agencies do so or whether human rights are more effectively guarded by lobby groups.

Discussion on the second topic on Saturday morning, "Mental Health – A Case For Law Reform", was led by *Tom O'Malley*, a lecturer in law at UCG and Director of the Irish Centre for the Study of Human Rights, *Garrett Sheehan*, an experienced practitioner in Dublin and Dr. *Art O'Connor*, Consultant Forensic Psychiatrist, Central Mental Hospital, Dublin.

On Sunday morning a discussion forum considered the proposals by Minister Seamus Brennan to impose limitations on damages in personal injuries actions. Unfortunately, Minister Brennan was unable to attend but the panel of speakers included Professor *Bryan MacMahon*, *Frank Clarke*, S.C. Chairman of the Bar Council and *Michael V. O'Mahoney*, President of the Law Society. The forum which was chaired by Mr. Justice Hugh O'Flaherty focused on the differing points of view which the topic has generated in recent times. There were also some substantial contributions made from the floor, most notably from *Bruce St. John Blake*, Solicitor.

Quite a number of delegates enjoyed the Saturday afternoon golf at Lee Valley Golf & Country Club and the Cork City pub treasure hunt was won by a team led by *David Edwards* of the London Young Solicitors Group.

The Saturday night banquet was also a great success and we were honoured to have the attendance of representatives from the local bar associations.

SYS would like to thank the sponsors, principally the Investment Bank of Ireland Limited, without whose continuing support our conferences could not take place. We are also extremely grateful to our other sponsors: Rank Xerox, Behan & Associates and Rochford Brady, whose assistance and interest we appreciate very much.

Walter Beatty,
Public Relations Officer, SYS ❐

DATE FOR DIARY

The next SYS Conference will be held on Friday 11 March to Sunday 13 March 1994, at the Slieverussell Hotel, Co. Cavan. Brochure enclosed with this *Gazette*.

Cork Solicitors Get Social!

If you are a solicitor or solicitor's apprentice, and based in Cork, aged between 18 and 100 and looking for fun, then read on! The Cork Solicitors Social Club has hit town. So far, events organised have included a barbeque at the Anglers Rest, last July; a bowling tournament, sponsored by Budweiser, held last September (and won by *Martin Kelleher*, Frank Buttimer & Company); a quasar contest against Cork barristers last October (and won by Cork Family Law Centre) and a Karting Grand Prix in November (won by *Annette O'Sullivan*, P.J. O'Driscoll & Sons). The autumn season rounded off with a dinner followed by a late night at the Pavillion.

Events planned for 1994 include:

23 February –
Inter Firms Pub Quiz. Venue: Old Oak, Oliver Plunkett Street, at 8.00pm. Entry fee £20 (four persons per team). Prizes include a weekend for two at a luxury hotel in Killarney, vouchers for dinner for two at various restaurants in Cork. The proceeds of the pub quiz will be donated to the charity of the winner's choice. Please encourage your firm to pay your entry fee and, if interested in participating, contact: *Kieran McCarthy* at Michael Powell & Company or *Patricia Flannagan* at Murphy Condon & Company.

March, 1994 –
Tennis Tournament

April, 1994 –
Paint Ball at Kinsale

May, 1994 –
Water Skiing – Solicitors -v- Gardai followed by barbeque.

For further details of the Cork Solicitors Social Club please contact *Brian O'Shea*, Paddy O'Shea & Company, Midleton; *Yvonne Buckley*, Eoin C. Daly & Company; *Noel Doherty*, Fitzgerald O'Leary & Company; *Annette O'Sullivan*, P.J. O'Driscoll & Sons; or *Emir Houlihan*, Bank of Ireland, Legal Department. ❐

Draft Guidelines on Professional Conduct for Criminal Practitioners

The Criminal Law Committee has, after much discussion, drafted a set of guidelines on professional conduct for practitioners of criminal law. Initially it had been hoped to make this a much wider code; but full consensus was difficult to achieve. The fact that any consensus at all was achieved is to be welcomed when one considers that former committees of criminal lawyers have attempted for years to draft such guidelines without success.

The draft guidelines are published below. If practitioners have any submissions they wish to make they should send them to the Criminal Law Committee to arrive before 31 March, 1994. All submissions will be discussed at the April meeting of the Committee, and it is hoped that the final proposals would be put before the Council of the Society at its meeting in May 1994.

The Committee is aware that no code of ethics can cover every situation and also that a set of guidelines such as these can cause difficulties in certain circumstances to practitioners trying to behave in a careful and professional manner. It is envisaged that practitioners will be able to bring any such difficulties to the attention of the Committee for rulings, and it is hoped that this procedure will obviate any difficulties that may arise.

The following are the proposed amendments to Chapters 1 and 7 of the existing *Guide to Professional Conduct of Solicitors in Ireland*, particularly referable to criminal law practitioners.

1. *Access*

1.1 A solicitor should not approach a prospective client with a view to representing such client.

1.2 Before taking instructions from any person in any criminal case, a solicitor should satisfy him/herself that that person has not already engaged the services of another solicitor.

1.3 In the event of disagreement between solicitors relating to the transfer of a client's case from one solicitor to another in a criminal matter, the matter should be referred to the Law Society for resolution.

2. *Persons in Custody*

2.1 Where a solicitor requires, for consultation purposes, to visit a prisoner in custody within a courthouse or in the immediate vicinity of a court, the solicitor should so inform the court and seek to have the accused's case put to the end of the list in order to enable consultation to take place.

3. *Bail Applications*

3.1 A bail application should not be made on behalf of any person who has been represented by another solicitor until such time as the retained solicitor has been advised of the application.

3.2 Where an accused is brought before a court on charges which may in normal circumstances be described as "new charges" but such person has already retained a solicitor in related proceedings, no solicitor shall accept instructions from such person on those new charges unless he receives instructions in respect of all charges before the court and complies with the provisions of paragraph 6 below in discharging the retainer of a previously instructed solicitor.

4. *Appeals*

4.1 A solicitor may accept an instruction to act for a client in an appeal even if that solicitor did not act for the client in the original proceedings except where another solicitor has previously been retained and is on record in respect of the appeal.

5. *Donations*

5.1 A solicitor should not actively encourage or offer inducements to any person with a view to obtaining instructions from such person.

5.2 A solicitor should not give goods or money by way of gift to any accused person or to any person in custody.

6. *Non Legal Aid Cases*

A solicitor shall not accept instructions to act for a client in a case where another solicitor has already been retained in that matter without ensuring that the first solicitor's retainer is discharged. This provision will not be applicable where a solicitor is assigned by a court to act for the accused on legal aid.

7. *Breach of Code*

A solicitor who is in breach of any of the provisions of this part of this code of conduct will be liable to disciplinary proceedings for unprofessional conduct.

Stock Transfer Forms

Some solicitors had expressed concern to the Society that the Central Bank as Registrar of Government Stocks was

(Continued on page 32)

James W. O'Donovan

James W. O'Donovan, a senior partner in the firm of J.W. O'Donovan & Company, South Mall, was one of the best known legal figures in Cork. He qualified as a solicitor in 1931. He was educated at Presentation Brothers College and was a Past-President of the Past Pupils Union.

A Past-President of the Law Society of Ireland and a Past-President of the Southern Law Association, he had a long and illustrious legal career. As a senior colleague at the Bar put it at his funeral "James W., as he was affectionately known throughout the profession, was one of nature's gentlemen, and a credit to the profession. His clients' interests were always paramount".

The late James W. O'Donovan

James W. was also a dynamic figure in the cultural life of Cork City. A founder member of the Cork Ballet Company and also of the Irish National Ballet, he served as Chairman of both organisations for many years. He was also a Past President of the Cork Orchestral Society. In addition he was a member of the Advisory Board of the General Accident Fire & Life Assurance Company.

On one occasion the late Mr. O'Donovan, who was 83 when he died, stood for Cork Corporation as a member of the now defunct Civic Party.

The President and Council of the Law Society were represented at his funeral by *Barry St. J. Galvin*, Law Society Council member.

CH ❐

Practice Notes – *Continued*

insisting that the signature of transferors on stock transfer forms be witnessed, even though this was not necessary under the Stock Transfer Act.

The Professional Purposes Committee made representations to the Central Bank on the matter. The Central Bank explained that it had introduced this requirement in consideration of its duties of care and attention to its stockholders. The Bank has now agreed that in future it will accept any of the following:

(a) transfer form witnessed by a solicitor, bank manager or stockbroker;

(b) transfer form not witnessed but accompanied by written confirmation from a solicitor on headed notepaper to the effect that the signature is that of the stockholder;

(c) transfer form not witnessed but submitted under cover of a solicitor's letter;

(d) transfer form not witnessed but branded with the stamp of the solicitor's firm;

(e) transfer form not witnessed or branded, provided that the transfer of stock is in respect of payment of death duties.

Professional Purposes Committee ❐

Insurance Premium Refunds Arising on Mortgage Redemptions

When houses are sold vendors normally cancel their home insurance and obtain a refund in respect of the unexpired period of cover. In certain cases insurance cover is arranged and paid for through the lending agency which provided the finance for the purchase of the property. In these cases does anyone think of obtaining a refund?

The Conveyancing Committee takes the view that the application for the refund is a matter between the client, the lending agency and the insurance company. However, practitioners may wish to bring the point to the notice of their clients.

Conveyancing Committee ❐

The Law Directory 1994

The 1994 edition of the Law Directory has now been published and sent to members of the profession.

Additional copies are available from the Society at a cost of £40.00 per copy including postage and packing.

Contact: *Linda Dolan* at the Law Society.

Copyright Protection of Computer Software in Ireland

by Michael Vallely BCL BL LLM (Lond)*

This article takes the reader step-by-step through the EU Directive on the legal protection of computer programs and the Statutory Instrument incorporating it into domestic law and notes its expected effect on the 1963 Irish Copyright Act.

EU Directive for Legal Protection of Computer Programs

Copyright, is, in essence, a right given to creators of works such as novels, paintings, musical compositions, plays etc., to control the copying or other exploitation of their works. In Ireland there is a remarkable dearth of litigation or literature on the legal protection of rights in software despite the importance of the software industry. Yet, it is estimated that the current value of the software industry to Ireland is £2 billion per annum.[1] The touchstone for Irish software protection is found in the rather outdated 1963 Copyright Act, which certainly could not anticipate the advent of the computer program and the problems of protecting it as a copyright work. This – the Principal Act – in s8, affords copyright protection to every original literary, dramatic or musical work. Other jurisdictions, including the United Kingdom, in the Copyright Design and Patent Act 1988, have rather artificially protected software as a literary work considering it a written table or compilation; and s2 of our Principal Act, like the United Kingdom statute, defines a literary work as including any written table or compilation.

However, the Irish courts will not be required to decide whether copyright in software can be protected as a literary work as the EU has intervened, and produced a Directive dealing specifically with computer programs.[2]

Michael Vallely

Council Directive 91/250/EEC. This Directive on 1 January 1993 – the opening day of the single market – required all Member States, including Ireland, to bring in an equivalent protection for the copyright protection of computer programs as literary works. The statutory instrument S.I. No. 26 of 1993 entitled: European Communities (Legal Protection of Computer Programs) Regulations 1993, incorporating the Directive into Irish law, is now the prime source of law for software companies who wish to protect their creations against software pirates or competitors to their packages.

What is protected?

Article 1 of the Directive and Regulation 3 of Statutory Instrument. There is no definition of computer program but it is stated that expression in any form of a computer program will be protected. A useful description of a computer program is found in the Australian Federal Court case of *Apple Computer Inc. & Another -v- Computer Edge Property Ltd*[3] which said 'A program is a concise set of instructions that directs the computer to do the tasks required of it step by step and to produce the desired result'. However, the ideas and principles underlying any element of a computer program are not protected. The reference to expression in effect incorporates the copyright legal idea/expression dichotomy, found in the USA[4] and the United Kingdom, into European Union law and therefore into our domestic legislation. This dichotomy, in basic terms, gives no protection to ideas behind a work but it does afford protection to the expression of the idea. It will be up to the courts to draw the line in each individual case where an idea ends and the expression begins and each judicial interpretation of this demarcation will underscore when copying has occurred or not. Interfaces which allow a program to interoperate with other software or hardware are specifically excluded from protection. This removal of protection appears to be aimed at lower level interfaces of programs with hardware and other programs than higher level interfaces such as the interfaces that guide users through programs which may still receive protection.

It will be up to the courts to draw the line in each individual case where an idea ends and the expression begins

A computer program shall be protected if it is the author's 'own intellectual creation'. Generally, in copyright law, a work to be protected must be original, and sometimes a further aesthetic test must be passed in order to qualify as an original work. The preamble to the Directive expressly excludes any qualitative or aesthetic tests in deciding on originality. This 'own intellectual creation' requirement which stems from French copyright law, appears therefore to demand quite a low standard of originality, similar to that employed in the United Kingdom, which affords protection for works that are simply not copied from others or are as a result of a person's own skill, labour, and effort. In the English case of *University of London Press*

Limited -v- University Tutorial Press Limited[5] Judge Peterson said: "The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of 'literary works' with the expression of thought in print or writing. The originality which is required relates to the expression of thought. But the Act does not require that the expression must be an original or novel form, but that the work must not be copied from another work i.e. it should originate from the author". And in *Independent Television Publications Ltd V Time Out Ltd*[6] TV programme listings were held to be an original literary work because of the time and effort spent in devising them. It is important to note that substantial modifications and improvements to a computer program already in existence may result in the creation of a fresh work that will itself be protectable as an original copyright work.

Authorship and Ownership of Computer Programs

Articles 2 and Regulation 3 and 4. The owner or author of the copyright, is the person or business who creates the computer program and where a work is produced by a group of persons, which is typical in software production, the rights in the computer programs will be owned jointly. An employee who creates a computer program does so for the benefit of the employer unless otherwise provided by contract. Regulation 4 expressly provides that works created in the employment of newspapers, magazines or other periodicals will belong to the employee contrary to s10 (2) Copyright Act 1963. The Directive is surprisingly silent on the ownership of commissioned software works which is the most common business arrangement for custom made packages, and it is assumed that the works will belong to the software house developing the work, unless, as with employees, a contract provides that copyright belongs to the software company who commissions the work.

Who is Entitled to Benefits of Software Protection?

Article 3. Protection is granted to all natural or legal persons eligible under national copyright legislation as applied to literary works. The Primary Act affords the spoils of copyright in s7 (5) to qualified persons, who in the case of individuals, must be Irish citizens either domiciled or resident within the State, and in the case of a corporate body incorporated in Ireland.

What Rights does the Owner of the Copyright Actually Have?

Article 4. Traditionally copyright gives the copyright owners of the work a set of negative rights to prevent others copying their works or in dealing with the works. These restricted acts in Article 4 and Regulation 5 are:

a) not to reproduce the computer program by any means and in any form either temporarily or permanently;

   (this will include the use of pirated disks by users who when starting to run a program will have to copy the program, perhaps just momentarily, to their own computer)

b) not to translate, adapt, arrange or otherwise alter the computer program and the copying of such results;

c) not to distribute the computer program to the public including rental of the software.

(Once a computer program is lawfully put on the market in any Member State, by either the owner of the copyright or with his consent, the copyright owner will be considered to have exhausted his distribution rights to the public and therefore will not be able to prevent any other person selling or distributing the work in other Member States. However, he will still be able to prevent others renting the computer program or copies of it to the public.)

There are some important exceptions to the protected acts above which are found in *Article 5 and Regulation 6 and 7*

A5 (1) A person can copy, translate, adapt, arrange or alter the computer program if necessary to use it but this right is confined to lawful acquirers of the copyright such as purchasers or licencees. This right includes error correction, but will not apply where contractual provisions exclude it. The preamble to the Directive states that such acts are permitted only where technically necessary, which would certainly exclude casual copying or copying for commercial gain.

A5 (2) It is permitted to make a back-up copy of the work which is generally done by users in the event of a disk failing, and this right may not be excluded by contract. This back-up right is already found in most – if not all – software packages.

A5 (3) It is permitted to observe, study and test the functioning of protected computer programs in order to determine their underlying ideas and principles – which as we have already discussed are not protectable – but this right is also only afforded to those who have the right to use a copy of the program and will exclude competitors.

This right to observe and study other works is already catered for in s12 of the Principal Act which allows fair dealing with a protected copyright work.

Decompiling of Computer Programs

Article 6 and Regulation 7. These are the most contentious provisions affecting a software producer's copyright and are compromise provisions, following some intense lobbying throughout the passage of the Directive. Many software houses concentrate on creating computer programs that can be operated in conjunction with the products of the major suppliers of computer software and hardware and they obviously need to study these major products to ensure interoperability with their own packages.

Generally in copyright, it is permitted to copy and translate the code of a protected computer program as long as separate teams are used by usually rival software houses – one to decompile the program in question and

another team to compile a new program with the information from this decompilation. This practice is also known as reverse engineering. There have been major commercial disputes as to whether such techniques meet the copyright requirement of producing an original work, or whether such practices means a substantial part of the copyrighted work has been copied which is a breach of the protected program owner's copyright.

The Directive therefore clarifies that Irish and domestically based foreign software houses can decompile other companies' computer programs but only for the purpose of ensuring interoperability of their own independently created program with other programs. Also, it is only permitted to decompile those parts of a program which are necessary for interoperability and such information must not be already available from other sources.

However, the most important restriction in business terms is that any information discovered in decompiling the program **cannot** be used in connection with the development, production or marketing of a program substantially similar in its expression to that program which has been decompiled. Also, the only persons allowed to decompile and copy others works are those who already have a licence to use the software or are otherwise authorised to use it. Therefore any software house which feels that a competing similar product had been developed as a result of reverse engineering will be able to take a breach of copyright action in light of the EU Directive.

Special Protection

Article 7 and Regulation 8. Member States must in their national legislation provide appropriate remedies against persons putting copies of works into circulation knowing that they are pirate copies; possessing of pirate copies for commercial purposes; putting into circulation devices which remove any protection or safety barriers against copying that may have been put into the computer program.

(It is quite common for software houses to place anti-copying devices in computer programs which they create.)

Term of Protection

Article 8. The term of protection shall be for the life of the author plus 50 years. For works created by businesses such as software houses the term will be for 50 years from the time the program is lawfully made available to the public. The ephemeral nature of software suggests this term of protection is quite liberal and reflects the provisions of the Principal Act.

Continued Application of other Intellectual Property and Legal Rights

Article 9 and Regulation 9. The provisions shall be without prejudice to other legal rights such as patent rights, trade marks, passing-off or contracts. It is not permitted to contractually avoid the rights to decompile or study computer programs protected by the Directive or prevent the making of back-up copies.

Conclusion

The limits of EU harmonisation in the field of copyright protection will become apparent as there will be nothing to prevent an Italian judge considering that an infringement of copyright exists whilst a German judge may only see the copying of ideas. It is clear that the question of what constitutes expression of the ideas behind computer programs will be crucial in deciding whether copying has occurred. It is unclear how the Irish courts will deal with the idea/expression dichotomy and we must await the first domestic court action to protect software copyright to answer this question.

Notes

1. *Sunday Tribune* 18 October 1992
2. Council Directive of 14 May 1991 on the legal protection of computer programs – 91/250/EEC
3. [1986] FSR 537
4. United States Copyright Act 1976, s102(b) 'In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.'
5. [1916] 2 Ch. 601 at 608 to 609.
6. 1984 FSR 64.

* *Michael Vallely is a practising Barrister with three years experience in computer, broadcasting and telecommunications law acquired in London with British Telecom.* ❐

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SADSI News

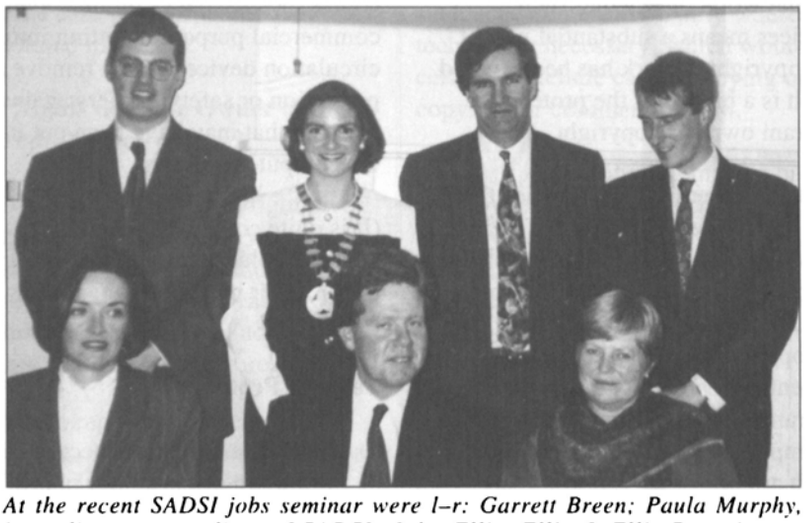
The 109th session of SADSI held its AGM on 2 December 1993 at Blackhall Place bringing matters for 1993 to a close. Congratulations and many thanks to *Paula Murphy* and her committee for a successful and eventful year in 1993.

Philippa Howley was elected as auditor for 1994 after a closely fought contest with *Eamonn Carney*.

SADSI Committee 1993/94

Auditor:	*Philippa Howley*
Treasurer:	*Benedicte Spain*
Secretary:	*Ethna McDonald*
Education Officer:	*John Menton*
Entertainment:	*Cathal De Barra*
	Seamus O'Croinin
Debates Convenor:	*Robert Boland*
PRO:	*Michael Lynn*
Social Secretaries:	*Fidelma McManus*
	Ann Marie Bohan

Regional Representatives:
Annette O'Sullivan (Cork);
Lorcan Tiernan (Limerick);
Tim Kiely (Midlands).



At the recent SADSI jobs seminar were l–r: Garrett Breen; Paula Murphy, immediate past auditor of SADSI; John Ellis, Ellis & Ellis Recruitment Agency; Michael Nugent, Nugent & Co., Solicitors; Julia Burke, A & L Goodbody, Solicitors; John Meade, Partner, Arthur Cox, Solicitors, and Hazel Boylan, Careers Adviser, Law Society.

The SADSI Committee is currently organising events for 1994 including a debate in February, a karaoke and drag queen competition in March, and a ceile and traditional session in April, not to mention the regular events such as the mid-summer's ball, SADSI olympics and much much more!

The Committee looks forward to your support and participation during the forthcoming year and we would welcome any suggestions you might have in relation to events that you would like the Committee to run or that you would like to run yourself. Please contact *Phillipa Howley* at Vincent & Beatty, telephone: 01 6763721 or *Cathal De Barra* at A. & L. Goodbody, telephone: (01) 6613311, or your regional representative. ❐

Document Exchange Approaches Half Century!

More than 1,000% growth in two and a half years. That is the success story of the Irish Document exchange since June 1991. It is now almost eighteen years since the Irish legal profession had the foresight to support the formation of the Dublin Document Exchange, or DDE.

The document exchange system was born in Australia. In the late 1960s, faced with the problems of communicating over great distances and reliance on an inefficient postal system, Australia's lawyers were crying out for a more reliable form of communication with each other. The solution turned out to be Audsoc – The Australian Document Exchange, now a network comprising aircraft, trucks, vans and foot couriers.

In the mid 1970s, a young Australian lawyer arrived in London and was surprised to find that the legal profession in England did not have available to it the system on which her Australian colleagues relied so heavily. With English partners, she helped to set up the London Document Exchange which grew into the present British network of more than 1,000 exchanges serving more than 13,000 members. Ireland followed closely behind when a group of Irish investors backed the establishment of the DDE and, by 1979, leading Dublin solicitors were starting to rely on the DX system for communications with their colleagues. However, significant growth outside Dublin was limited until the European Commission started to make moves to liberalise Community postal services. This has helped to clarify the position of document exchanges as a legitimate form of self-delivery when used only by members for communication between each other.

As a result of this clarification, the Irish Document Exchange has rapidly expanded its network since 1991 to the point where it now covers almost every town in the country through a network that, early in 1994, will comprise 50 document exchanges providing an overnight service every working day to more than 450 firms of Irish solicitors and covering an estimated 65% of the legal profession. ❐

Seminar on European Convention on Human Rights

by Dr G Quinn, UCG Faculty of Law

Ireland and Britain and, possibly, Norway are now the only countries in Europe not to have absorbed the European Convention on Human Rights into their domestic legal orders in some form or other. This was one of the many interesting issues that emerged during a recent seminar on the European Convention on Human Rights which was held on October 30, 1993 in UCG. The UCG Law Faculty is host to the Irish Centre for the Study of Human Rights. The seminar was formally opened by the Minister for Justice, Mrs *Maire Geoghegan-Quinn*, TD, and was presided over by the Hon. Mr Justice *Geoghegan* of the High Court. The event itself was co-sponsored by the Council of Europe and the Irish Centre for the Study of Human Rights. It was attended by well over a hundred lawyers, students and members of other interested voluntary groups from all parts of Ireland, north and south. Several points raised by the various speakers are worthy of note.

In her opening address the Minister noted the overall track record of Ireland under the Convention, Ireland was the first country to accept the right of individual petition to the Court. She adverted in particular to her duty as Minister for Justice to conscientiously respect and enforce the judgments of the European Court and cited the recent Criminal Law (Sexual Offences) Act which enforces the *Norris* decision as one case in point.

Three senior Council of Europe officials, led by *Giuseppe Guarneri*, presented detailed papers concerning the political background to the Convention and the machinery and case law of the European Commission on Human Rights and European Court of Human Rights. The addition of many new East European democracies as parties to the Convention and the increased popularity of the Convention among Western European citizens, has led to profound pressure on its machinery over the last few years. Some ten thousand applications are now registered and outstanding with the Commission which is causing many years of delay. In response to this pressure the combined Heads of State of the member States of the Council of Europe (which now encompasses thirty two States) decided recently at their summit in Vienna to merge the European Commission with the Court. Toward this end it was also formally decided to prepare a protocol to the main Convention which will be opened for signature next year. The new unified Court will total thirty two judges in all and will sit in chambers to combine the functions of the former Commission and the Court. The Commission is likely to survive for a while beyond the creation of the unified Court in order to clear the backlog of registered applications.

At the Seminar on the European Convention on Human Rights were l–r: Lisa Seldon, UCG; Donncha O'Connell, UCG; Stephen Livingstone, QUB; Karen Reid, Secretary, European Commission on Human Rights; Giuseppe Guarneri, Head of Commission on European Human Rights; Maire Geoghegan-Quinn, Minister for Justice; Peter Kempees, European Court of Human Rights; Dr. Gerard Quinn, UCG; and Professor Liam O'Malley, UCG.

In addition to the Council of Europe presentations there were other talks given by various speakers on a panel dealing with the relevance of the Convention in Ireland. *Steven Livingstone* (QUB School of Law) and *Donncha O'Connell* (UCG Law Faculty) spoke about the Irish cases that have been decided at Strasbourg. ❐

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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clarlann na Talun), Chancery Street, Dublin 7.

Published: 30 January, 1994.

Patrick Kelly and Sarah Kelly, Folio: 31577; Land: Reennanallagane; Area: 0(a) 1(r) 19(p). **Co. Kerry.**

Rita Dunne, deceased. Folio: 314L; Land: No. 11 Redemption Road, Parish of St. Anne's, City of Cork. **Co. Cork.**

Michael A Harte, Folio: 2782F; Land: part of the townland of Tomnamuck. **Co. Wexford.**

Mary Ryan, Folio: 1198F; Land: 171 Redford Park, Greystones, Barony of Rathdown and County of Wicklow. **Co. Wicklow.**

Muckalee Co-Operative Dairy Society Limited, Folio: 16285; Land: (1) Muckalee, (2) Muckalee. Area (1) 56(a) 2(r) 7(p), (2) 14(a) 2(r) 1(p). **Co. Kilkenny.**

Henry Collins, Folio: 6707; Land: (1) Redcow, (2) Dowdallshill; Area: (1) 8(a) 1(r) 19(p), (2) 7(a) 1(r) 30(p). **Co. Louth.**

Hans & Aedeamar Hofmann, "Bardowie", Orwell Park, Rathgar, Dublin. Folio: 3891F; Townland: Glencoh; Area: 0(a) 0(r) 34(p); **Co. Galway.**

Frederick Meade, Folio: 1852; Land: Part of the lands of Ballybrook, Area 133(a) 1(r) 39(p). **Co. Meath.**

Charles William Mellon, Folio: 5000; Land: Townland of Howth, Barony of Coolock; **Co. Dublin.**

Edwin Thomas Brown, Folio: 27220; Land: Lisnalea, Model Farm Road, Cork. **Co. Cork.**

Joseph and Imelda Carmody, 10 Upper Market Street, Ennis, Co. Clare, Folio: 16041F; Townland: Clonroad Beg; Area: 0.047 hectares. **Co. Clare.**

Peter Doody, Folio: 15663; Land: (1) Granny, (2) Granny; Area: (1) 52.330 acres, (2) 18.575 acres; **Co. Kilkenny.**

Oliver Reilly and Anthony Reilly, Folio: 1827; Land: Part of the lands of Riverstown; Area; 20(a) 1(r) 12(p). **Co. Louth.**

Julia Mary Greene and James Anthony Greene, Folio: 3014L; Land: Townland of Ballincollig, Barony of East Muskerry and County of Cork. **Co. Cork.**

Patrick Doherty, Folio: 24486; Land: Carrontlieve; Area: 13.955 acres. **Co. Donegal.**

Emily Moore, Folio: 39325; Land: Gurteennasawna, Barony of Carbery East, (West Division) County of Cork. **Co. Cork.**

John Walsh, Folio: 16107; Land: Part of the land of Kiltorcan. **Co. Kilkenny.**

Finbarr O'Neill (deceased) and Letitia O'Neill, Windy Ridge, Rathanker, Passage West, Co. Cork, Folio: 58137; Land: Townland of Rathanker, Barony of Kerricurrihy and County of Cork. **Co. Cork.**

Peadar Curran, Folio: 13814; Land: Townland of Castlekeely, Barony of Clane and County of Kildare. **Co. Kildare.**

Catherine M. Hughes, Folio: 58830; Land: Townland of Dunnycove, Barony of Ibane and Barryroe and County of Cork. **Co. Cork.**

Mark and Denise White, Coilleach, Spiddal, Co. Galway, Folio: 37689F; Townland: Killough. **Co. Galway.**

Patrick Crehan, Folio: 25407; Townland: Castlesampson; Area: 27(a) 5(r) 29(p). **Co Roscommon.**

Philomena Kirk, Folio: 768F; Land: Corkish; Area: 1(r) 29(p). **Co. Cavan.**

Lost Title Deeds

In the Matter of the Registration of Title Act, 1964 and of the Application of Michael Murphy

Application No. 92DN07066

TAKE NOTICE that Michael Murphy of 46 Ovenden Green, Halifax, West Yorkshire, HX3 5ER England has lodged an application for registration of his title of an estate in fee simple free from incumbrances in **ALL THAT AND THOSE** the dwellinghouse and garden situate in the townland of Barnacullia, Sandyford, Parish of Kilgobbin, Barony of Rathdown and County of Dublin as more particularly delineated and described on a map thereof lodged in the Land Registry.

The map and application may be inspected at this Registry.

TAKE FURTHER NOTE that after the expiration of one calendar month from the date of publication of this notice the registration will be proceeded with unless in the meantime good cause is shown to the contrary.

All persons objecting to such registration are hereby required to file their objections in writing duly verified in this Land Registry, Nassau Building, Setanta Centre, Dublin 2.

30 January 1994.

Pat O'Brien,
Chief Examiner of Titles.

Lost Wills

Ni Chuill, Nora Bridget, (otherwise Nora Quill) deceased, late of 10, Richmond Road, Drumcondra, Dublin 9, (formerly 10 St. Mels Terrace, Richmond Road and formerly of 5 Lansdowne Terrace, Shelbourne Road, Dublin) retired school teacher. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased, who died on 29 September 1993, please contact Tynan, Murphy Yelverton & Co., Solicitors, 16 William Street, Limerick (reference GY/PR) Telephone: 061-415888 or Fax: 061-415253.

O'Byrne, (otherwise O'Beirne) Thomas J., late of Windmill Park, Elphin, Co. Roscommon, who died on 2 July 1993 at Windmill Park, Elphin aforesaid. Would any person having knowledge of the whereabouts of any will of the above named deceased please contact Messrs. C.E. Callan & Co., Solicitors, Boyle, Co. Roscommon. Telephone: 079-62019, Fax: 079-62869.

Jennings, Mary Aida, late of 24 Northumberland Road, Dublin 4. Please contact the undersigned office if you are aware of the existence of a will made by the above named deceased who died on 28 October 1993. John O. Plunkett & Co., Solicitors, 175 Howth Road, Killester, Dublin 3. Telephone: 335258, Fax: 335259.

Flynn, Anthony, deceased, late of Allenwood North, Robertstown, Naas, Co. Kildare. Would anyone knowing the whereabouts of a will of the above named deceased who died at Allenwood North, Naas, Co. Kildare, on 22 April 1993, please contact Hanahoe & Hanahoe, Solicitors, 16 North Main Street, Naas, Co. Kildare. Telephone: 045-97784, Fax: 045-76272.

Holohan, Patrick Francis, late of 6 Craigford Avenue, Artane, Dublin 5. Please contact us if you are aware of the existence of a will made by the above named deceased who died on 26 November 1993. Corrigan & Corrigan, Solicitors, 3 St. Andrew Street, Dublin 2. Telephone: 6776108, Fax: 6794392.

McGrath, Thomas, deceased, late of 55 Baker Street, Luton, Bedfordshire, England, and formerly of Parkgarve, Ballyglunin, Tuam, Co. Galway. Will any person having knowledge of the whereabouts of a will of the above named who died at 17 Stanage Green, Mickleoven, Derby, England, on 16 May 1992, please make immediate contact with undersigned solicitors for the deceased's next of kin. A. Gerard Moylan & Co., Solicitors, Loughrea, Co. Galway. Telephone: 091-41356 and 41566.

Bannerton, Michael, deceased, late of Dunlo Street, Ballinasloe, Co. Galway. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 31 October, 1993, please contact M.C. Dolan & Company, 1 Conyngham Road, Dublin 8. Telephone: 6797133, Fax: 6793264.

Employment

Solicitor (1982) recently returned to jurisdiction seeks retraining position with emphasis on family law. Telephone: 6241785.

Locum Solicitor required to cover maternity leave. March 1994. Litigation, debt collection, probate and related court work. Might suit recently qualified solicitor. Replies in writing to Brian Lynch and Associates, 4 The Courthouse Square, Galway.

Experienced Legal Book-keeper seeks full/part-time employment. Reply Box 14.

Miscellaneous

Personal Injury Claims in England and Wales. Specialist PI solicitors can assist in all types of injury claims. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Co., 560-568 High Road, London N17 9TA. Telephone: 0044-81-365-1822, Fax: 0044-81-808-4802.

Second Hand Wills and Deeds Safe required urgently. Telephone: 049-61617/61657.

Wanted Irish Statutes. Reply Box 10.

Solicitor's practice required in Dublin or North East. Reply in confidence to Box 11.

Northern Ireland Agents for all contentious and non contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry. Telephone: 080693-61616 or Fax: 080693-67712.

Solicitor's Practice for Sale in prominent business town in County of Mayo. Reply Box No 12.

Solicitor's Practice with substantial wills/probate base sought by young, expanding practice in Dublin. Terms of acquisition negotiable. Reply in total confidence to Box No 13.

Wanted to Buy Acts of the Oireachtas in good condition for the years 1922-1976 inclusive. Reply Box 15.

Law Society Final Examination Part One Revision Course – Small Group – Individual attention from trained teachers who have passed this exam themselves. Advisory Meeting: Holy Faith School, Haddington Road 19 February, 1994 – 10.00 am. P Duffy – Phone: (01) 6681983 – **Come and Bring the Candidate with you!**

Wanted Spirit or Beer Off Licence. Please contact Oliver O'Sullivan & Co., Solicitors, Castlepollard, Co. Westmeath. Telephone: 044-61460 quoting type and terms.

Connolly Station – Amiens Street Would any colleagues who have been consulted by persons who have been robbed or assaulted in the environs of the above, please contact the undersigned box number with a view to exchanging details. Reply to box 16.

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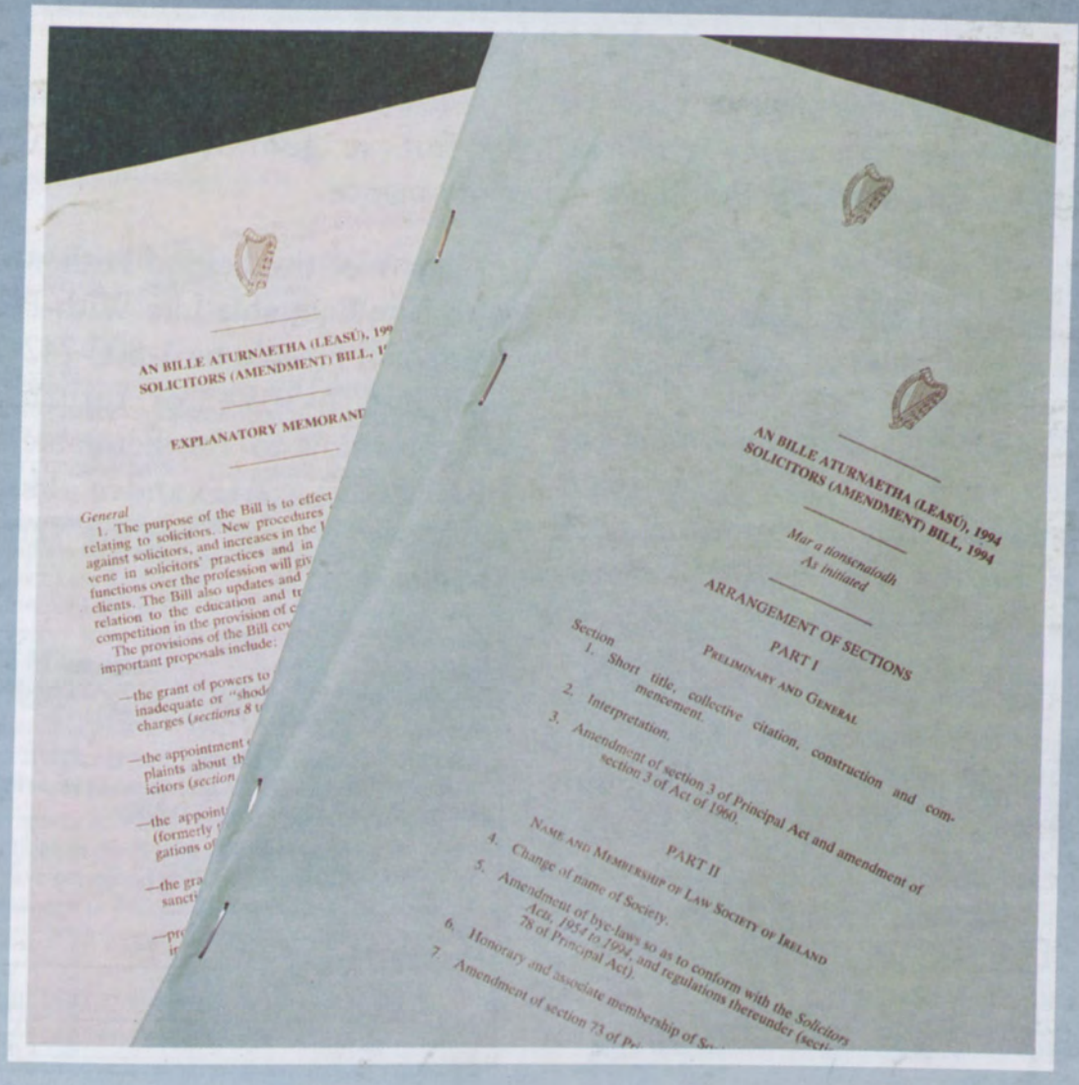
VOL. 88 NO. 2

MARCH, 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE



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Front cover: The Solicitors (Amendment) Bill, 1994 was circulated on 8 February.

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VIEWPOINT

Free the Land Registry!

What has happened to the plans to convert the Land Registry and Registry of Deeds to semi-State status?

In 1988 the Law Society proposed that both Registries should be taken out of the mainstream of the Civil Service and reconstituted as a public corporation so as to allow them freedom to operate as commercial entities. The Society made the case that if this were done, they would be better able to provide "a cheap, simple and effective system of registration" – the stated reason for their existence. An analysis of the workload of the Land Registry showed that, at a time when demand for Registry services was growing (the number of applications to the Registry increased by 10% from 1981 - 1988), staffing levels had actually decreased by 23% with a resultant deterioration in the quality of the service. At the same time, income from fees in most years exceeded State expenditure on the Registries, all of which tended to show that with the right management approach, the service could be improved and additional income generated.

It was also apparent to the Society in 1988 that the Registries were providing a service that was capable of being run on commercial lines and could, at a minimum, be self-financing. Not surprisingly, therefore, the Law Society advanced the view that if the Registries were in a position to chart their own destiny, to re-invest any surplus generated from fees in developing their services, and had the freedom to recruit their own staff, ultimately a better service would be provided to the community.

In 1990, the Government announced that it had decided, in principle, to change the status of the Land Registry and the Registry of Deeds to that of a semi-State organisation and in July, 1992, the then Minister for Justice, *Padraig Flynn TD*, appointed an interim board, on a non-statutory basis, to oversee the changeover.

Over four years on, the legislation needed to effect the legal transformation has not materialised and the move does not seem any nearer. Moreover, it now appears that the energies of the interim Board and the management team in the Land Registry have been diverted to coping with the problems generated by the Government's decision to relocate part of the Registry to Waterford City in line with its policy of decentralising Civil Service Departments and State services. It is ironic that a Board established to oversee a new status for the Land Registry should now fall prey to one of the drawbacks of being linked to the Civil Service.

Whatever merit there may be in a policy of decentralising Government Departments – and we can see the force of the argument for it in economic terms – the timing of this decision is, to say the least, unfortunate. At a time when the new Board is attempting to put in place a whole new infrastructure, new management systems and develop and cope with a new information technology policy, why it should have to cope with such dislocation and disruption is difficult to understand.

Staff in the Registries perform complex work and a high degree of training is required. In the event that a large number of staff decide not to transfer to Waterford – and that is likely to be the case since there will be no compulsion – there is bound to be a time-lag while new staff are properly trained and gain experience. The consequences, in terms of increased delay to users of the service, are obvious.

Another major problem facing the new Board is that it does not have freedom to organise the financing of essential expenditure programmes needed to put in place the proper infrastructure and, consequently, is totally dependent on the State for its budget. This means that the Registries have to take their place in the queue with other Department of Justice services and, of course, inevitably get squeezed. Given that the Registries are capable of operating on a commercial basis and generating income, this is difficult to understand and the question must be asked why the Board cannot, at this stage, be authorised to borrow.

Delay in the Land Registry has been a sorry fact of life for solicitors for many years now. Solicitors have frequently been on the receiving end of the justifiable ire of clients whose land transactions are held up. Such delays frequently act as a brake on the commercial life of the country by impeding property transactions in both urban and rural areas.

Given the constraints under which they operate, the Registrar and her staff have made enormous strides in recent years in implementing computerisation and improving efficiency. It is fair to say that they have shown themselves well capable of driving the future development of the Registries if they were given the freedom to do so. Instead, they remain in unsuitable premises, starved of resources and now have to contend with the added problems posed by the decision to decentralise.

The Law Society believes that we must have a Land Registry and a Registry of Deeds that are in a position to preserve the services they provide and to extend the range of those services. The Registries must have full control of the resources they generate, freedom to plan and develop their services, and freedom to recruit and train staff as appropriate.

(Continued overleaf)

Council Meetings – January and February

Council considers capping proposal, guidelines on undertakings and representation of solicitors before regulatory committees

'Capping' of Personal Injury Awards

At the meetings of the Council of the Law Society on 14 January and 4 February, members of the Council continued to review the progress of the Society's campaign against the proposal by the Minister of State for Commerce & Technology, *Seamus Brennan*, TD, to place a 'cap' on the level of compensation awards for pain and suffering in personal injury actions.

The Council noted that the profession had reacted favourably to the Society's leaflet "Why Should the Victims Have to Pay?" and that a copy of the Society's submission to the Minister in opposition to the proposal had been circulated to all members of the Dail and Seanad. It was agreed that the Society must continue to lobby at political level in opposition to the proposal and that lobbying of opposition spokespersons would also continue. Council members agreed that local bar associations should be encouraged to become active in the campaign and that each Council member would emphasise the importance of the issue at local level and seek to co-ordinate approaches by bar associations to local TDs on the matter. Bar associations would also be encouraged to use their local media as a means of publicising opposition to the proposal. The Council decided to convene a meeting of the presidents and secretaries of bar associations to discuss the issue.

It was also agreed that it was important that other public bodies should become involved in the campaign and that, if possible, the focus should be put on actual victims of accidents so as to show that the awards they got were necessary and even too low in some cases. The Council was informed that the special task force which had been established had identified a number of steps to be taken to strengthen the Society's campaign. A meeting would be sought with the Insurance Federation with a view to discussing alternative approaches to deal with the high cost of insurance. The Society was also seeking a meeting with the Minister for Enterprise and Employment, *Ruairi Quinn*, TD. Further approaches would be made to the Irish Congress of Trade Unions and constituent unions of ICTU to see if they would be prepared to join an umbrella group in opposition to the proposals.

Guide to Professional Conduct – Undertakings

At the meetings, the Council gave consideration to draft guidelines which would amend the portion of Chapter 7 of *A Guide to Professional Conduct of Solicitors in Ireland* that dealt with undertakings. Discussion of the guidelines was adjourned to allow further consideration of the issue of how oral undertakings would be dealt with and also to allow the proposals to be considered by the Solicitors Mutual Defence Fund.

Council Members Acting for Certain Solicitors

The Council considered a motion that no member of the Council, (including a past-president who continued *ex officio* to attend Council meetings) should accept instructions to act on behalf of a solicitor requested to appear before the Compensation Fund Committee, Registrar's Committee, Professional Purposes Committee or a solicitor who was under investigation by the Society for alleged breaches of the Solicitors Acts, the Solicitors Accounts Regulations or any professional practice regulation or code. The Council also considered a second motion that no member of the Council, or past-president, should accept instructions to act on behalf of a claimant against the Compensation Fund. The Professional Purposes Committee was asked by the Council to prepare a detailed memorandum outlining the thinking behind the motions. The motions will be reconsidered at the April meeting of the Council.

Payments from Compensation Fund

The Council approved a schedule of payments of claims on the Compensation Fund (see page 59). The Chairman of the Compensation Fund Committee reported to Council that a list of those solicitors who had not taken out current practising certificates was being prepared and that injunctive proceedings would be instituted by the Society. ❐

Viewpoint – *Continued from p. 45*

Free the Land Registry!

The benefits of registering title are obvious and, as the services of the Registries improve, solicitors will be encouraged to register title voluntarily. The Law Society cannot advocate that compulsory registration should be extended until such time as the service is permitted to develop to an adequate level of efficiency.

"A cheap, simple and effective" system of land registration, once a modest but worthy objective, is now an urgent priority. ❐

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Bank Building, Hill Street, Newry, Co. Down. Tel: (080693) 65311 Fax: (080693) 62096

PRESIDENT'S MESSAGE

Solicitors (Amendment) Bill, 1994

The Solicitors (Amendment) Bill, 1994 was presented to Dail Eireann by the Minister for Justice on 8 February 1994. It is substantially similar to the 1991 Bill, which lapsed on the dissolution of the Dail in November 1992. The Bill contains a number of substantial amendments to the Solicitors Act, 1954 and to the Solicitors (Amendment) Act, 1960, as well as some entirely new provisions.

You will have received my circular letter of 10 February 1994 which highlighted the substantive changes to the 1991 text and the provisions to which the Society had objected, as follows:

1. New Provisions in 1994 Bill:

(a) Compensation Fund – the provisions of a £250,000 'cap' on claims;
(b) education – the extending of the enabling provisions in relation to the professional education/ training of apprentices, solicitors and other persons;
(c) apprenticeship – the reduction of the maximum period to two years;
(d) charges to clients – the prohibition of the charging of fees measured as a percentage or proportion of the damages recovered, except in debt collection.

2. Provisions objected to by Society:

(a) conveyancing/probate services by banks, etc. – these provisions are now likely to be dropped from the Bill by the Minister at Committee Stage;
(b) fee advertising – the Society would not be entitled to "prohibit the advertising of any charge or fee by a solicitor for the provision of any specified legal service";
(c) the imposition of a requirement that the Society would have to fund the Independent Adjudicator – the "Ombudsman" who would investigate complaints concerning the way in which the Society had handled complaints about solicitors from members of the public.

Michael V. O'Mahony, President, Law Society

The 1994 Bill as now presented contains 83 sections – the majority of which extend or elaborate on the regulatory powers of the Society. The extended regulatory provisions should be generally acceptable to the profession, as the need for their application would only arise in the relatively small number of cases where the conduct of a solicitor in one way or another fell below the high professional standards which clients are entitled to expect and to which the vast majority of solicitors readily conform.

The regulatory jurisdiction of the Society will be extended by sections 8 and 9 of the Bill to the investigation of complaints against solicitors of inadequate services (i.e. legal services "not of the quality that could be reasonably be expected of . . . a solicitor") and of the charging of excessive fees. Any decision of the Society to apply the sanctions provided for in these sections would be subject to the right of appeal to the High Court and would be without prejudice to the existing rights of clients to issue proceedings for alleged negligence or to seek taxation of their costs.

'Transparency' is a word of the 1990s. In the context of the Bill, it means providing for regulatory procedures in which both the public and the profession as a whole have confidence. Section 7 of the Bill will enable the Society to appoint to committees of the Council both lay persons and solicitors who are not members of the Council. Also, section 16 of the Bill will enable the President of the High Court to appoint up to five lay members to the Disciplinary Tribunal (the former Disciplinary Committee) in addition to up to ten practising solicitors, so that one lay member will sit as part of the quorum of three in each division of that Tribunal. In advance of these statutory provisions the Society last year appointed two lay 'observers' (*Frank Bracken* and *Lenore Mrkwicka*) to the Registrar's Committee, each of whom will become full members when the Bill is passed.

The Society's Solicitors Bill Committee are now engaged in a detailed examination of the provisions of the Bill. I would invite you to read the full text of the Bill and to submit as soon as possible to the Society any comments you wish to make. The Second Stage of the Bill is likely to commence in the Dail towards the end of March, with the Committee Stage then being taken by the new permanent Dail Committee on Legislation. The Bill is likely to pass all stages of both Houses of the Oireachtas before the end of this year.

Michael V. O'Mahony
President ❐

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Publication of Solicitors (Amendment) Bill, 1994

Government to drop sections on probate and conveyancing by banks

As we go to press, the indications are that the Government will drop the controversial sections of the recently published Solicitors (Amendment) Bill, 1994 which would have permitted banks and other institutions to have engaged in probate and conveyancing work. Following a meeting of the Fianna Fail Parliamentary Party on 23 February, at which strong opposition to those sections was expressed, the Minister of State at the Department of Justice, *Willie O'Dea* TD, was reported in the *Irish Times* of 24 February as agreeing that the section should be dropped. The *Irish Times* also noted that the Taoiseach had expressed reservations about the provisions. The Minister of State was interviewed on *Morning Ireland* RTE 1 on 24 February and said he was "re-thinking" the provisions. He noted that there was now a much greater number of solicitors in practice than at the time when the Fair Trade Commission had made its recommendations that banks and other financial institutions should be allowed to provide conveyancing and probate services.

All the daily papers on 10 February reported on the publication of the Bill, focusing in particular on the protections for clients in the legislation. The newspapers reported the Minister for Justice, *Mrs. Geoghegan-Quinn*, TD, as describing the Bill as "a major consumer-driven legislative reform measure." The Minister had said that she was satisfied that the consumer protection provisions were warranted by the behaviour of some solicitors who had damaged the profession's reputation. An editorial in the *Irish Independent* of that day entitled "Tough But Justified" said it was regrettable that the conduct of a "rogue" minority of solicitors had damaged the reputation of the honest and competent majority and necessitated the undoubtedly severe provisions contained in the measure. "But the public must have protection. The Bill supplies it."

The Minister of State at the Department of Justice, *Willie O'Dea* TD, and the Director General of the Society, *Noel Ryan*, were interviewed on *Morning Ireland* RTE Radio 1 on 10 February. The Minister of State highlighted the consumer protection elements of the Bill. *Noel Ryan* stated that the Society welcomed, and had, indeed, sought many of the provisions in the Bill but he criticised the provisions that would allow conveyancing and probate work to be done by financial institutions. He argued that there was already sufficient competition within the solicitors' profession and, furthermore, that the protection in the Bill for clients who would avail of these services from financial institutions were inadequate. There was no evidence of any demand from the public for these services to be opened up to financial institutions. The Minister of State and the Director General were also interviewed on the RTE TV lunchtime and evening news bulletins.

The Society's statement in response to the Bill, welcoming certain aspects of the legislation, particularly the limit of £250,000 on claims on the Compensation Fund, but opposing the provisions concerning fee advertising, conveyancing and probate and objecting to the Society having to pay for the Legal Adjudicator, was covered extensively in the *Irish Times* and *Irish Press* of 11 February and mentioned briefly in the *Irish Independent* and *Cork Examiner* on that day.

The *Sunday Business Post* of 13 February noted that the Law Society intended to continue to campaign against the provisions in the Bill that would permit financial institutions to provide conveyancing and probate services and that the Society was also opposed to the provision which would permit fees advertising.

The *Irish Independent* and *Irish Press* of 17 February reported that the Government was reconsidering the provision which would place a limit of £250,000 on claims on the Compensation Fund. The articles reported that "Junior Justice Minister, *Willie O'Dea* TD, had disclosed" that the Government was reconsidering the provision in the light of reaction from consumer groups and might increase the limit to £1m.

Proposal to Cap Personal Injuries Awards

The RTE *Tuesday File* programme broadcast on 1 February 1994 examined the growth in personal injuries litigation, the effect of awards on motor insurance premiums and the proposal to place a limit on the amount that could be awarded in compensation for pain and suffering in personal injury claims. The Director General of the Society, *Noel Ryan*, was interviewed and said the profession "would go to the wire" in opposition to the proposal. He defended the right of people who had been injured through no fault of their own to be compensated adequately and stated that Irish levels of compensation were fair.

The *Cork Examiner* of 5 February reported briefly on an address to a recent Parchment Ceremony by the President of the Society, *Michael V. O'Mahony*, in which he had reiterated the Society's opposition to the "capping" proposal. The Society's stance was supported by an editorial in the *Clare Champion* on 11 February

1994, in particular, the argument that it was unlikely that any Minister could guarantee that if compensation awards were reduced there would be a corresponding reduction in the cost of premiums.

Remarks by the Hon. Mr. Justice *Hugh Flaherty*, Senior Ordinary Judge of the Supreme Court, at a book launch, when he argued that the view that workers rights should be sacrificed for increased profits should have no place in our legal system, were published in the *Evening Press* of 8 February 1994. The Judge said there was a misconception among some lawyers and legislators that the law of civil wrongs was a glorified and expensive social welfare system. "The personal injury compensation system recognises the premium which a democratic society places on the citizen's interest in the recognition, and protection, of his right to bodily integrity," he said.

Public Liability Claims

The RTE *Tuesday File* programme screened on 15 February examined the growth in public liability claims, particularly claims that were regarded as fraudulent and the financial effects of having to meet claims on local authorities around the country. The programme noted an increase in the number of claims being brought since 1989 when solicitors started to advertise. The Director General of the Law Society, *Noel Ryan*, who was interviewed on the programme, pointed out that in a pro-competition environment advertising was regarded as good for the consumer and this had led the Society to permit solicitors to advertise although many in the profession had been opposed to it.

Criminal Injuries Compensation Tribunal

The front page of the *Irish Independent* on 21 February highlighted the case of a woman who had been awarded £490 by the Criminal Injuries Compensation Tribunal last June, but had been informed that it would be at least another two years before she would receive payment. The President of the Society, *Michael V. O'Mahony*, was interviewed on RTE Radio News-at-One about the Scheme of Compensation for Personal Injuries Criminally Inflicted. He pointed out that since 1986, when the Tribunal's power to award compensation for pain and suffering under the Scheme had been abolished, the scope of the Scheme had become too narrow. "It is grossly unfair to the ordinary citizen who is the victim of a criminal assault through no fault of his own that he should be excluded from the right to claim for pain and suffering," he said.

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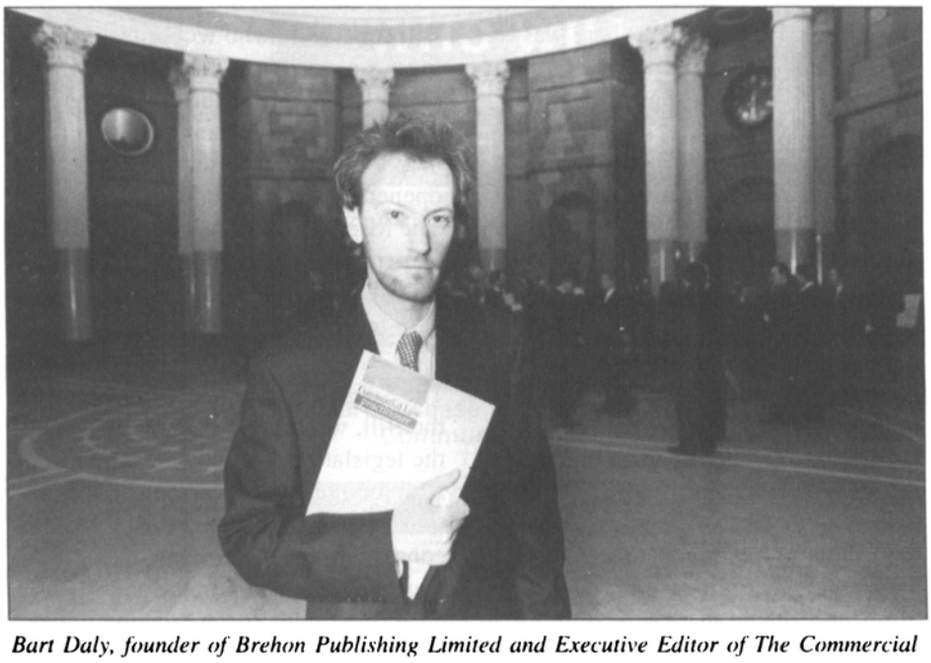
Barbara Cahalane

New Commercial Law Journal Launched

A new commercial law journal *The Commercial Law Practitioner* was officially launched recently by An Taoiseach, *Albert Reynolds* TD. Published by Brehon Publishing Limited the journal will appear monthly and will provide authoritative articles on important areas of commercial law as they affect practitioners. The editor of the journal is *Thomas Courtney*, Solicitor and the Executive Editor is *Bart Daly*.

The new journal will contain select articles targeting the needs of the commercial law practitioner; a digest of recent company and commercial law cases; updates on company and commercial law and recent developments overseas. Each issue will review banking, commercial litigation, insolvency, commercial conveyancing, company law, international commercial law, arbitration and taxation. The Commercial Law Practitioner will retain an independent expert panel to ensure consistently high quality contributions.



Bart Daly, founder of Brehon Publishing Limited and Executive Editor of The Commercial Law Practitioner, at the launch of the publication.

The annual subscription to the journal is £165 and it is available from Brehon Publishing, Brunswick House, Brunswick Place, Dublin 2.

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LAWBRIEF

By Dr. Eamonn G. Hall, Solicitor

Family Law Bill, 1994

The Family Law Bill, 1994[1] sponsored by the Minster for Equality and Law, Reform, became available in late February 1994.

The main objects of the Bill are to enable the court to make financial, property and other ancillary orders following the granting of a decree of nullity of marriage and in cases where foreign decrees of divorce, nullity and legal separation are entitled to recognition in the State; to give the Circuit Court jurisdiction in respect of nullity proceedings; to restate the law, with amendments, on the powers of the court to make declarations in relation to the status of a person's marriage; to raise the minimum age for marriage to 18; provide for notice of marriage and to strengthen the general law on maintenance.

The Bill implements many of the proposals contained in the *White Paper on Marital Breakdown* (September, 1992 Pl. 9104). It takes into account recommendations contained in *The Law of Nullity in Ireland* published by the Office of the Attorney General in 1976; and it takes into account recommendations contained in the following reports of the Law Reform Commission – *Report on the Age of Majority, the Age for Marriage and some Connected Subjects* (LRC 5-1983); *Report on Jactitation of Marriage and Declarations of Status* (LRC 6-1983); *Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and the Hague Convention on the Celebration and Recognition of the Validity of Marriages* (LRC 20-1985); *Report of the Oireachtas Joint Committee on Marital Breakdown* (Pl. 3074) and the *Report of the Combat Poverty Agency on the Financial Consequences of Marital Breakdown.*

Reference

1. Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2, IRP3.20 plus IRP0.72p postage.

Feminine Gender to include Masculine Gender

The Interpretation (Amendment) Act, 1993, (No. 35 of 1993) provides that in every Act of the Oireachtas passed on or after December 22, 1993 and in every instrument made wholly or partly under any such Act, every word importing the feminine gender shall, unless the contrary intention appears, be construed as if it also imports the masculine gender.

The 1993 Act is intended to facilitate the drafting of Bills and statutory instruments in the feminine gender where appropriate.

The Interpretation Act, 1937 and the 1993 Act are to be construed as one and may be cited together as *the Interpretation Acts, 1937 and 1993.*

Court Dress

US Justice Jerome Frank noted in *The Cult of the Robe* (1945) that judicial robes symbolised the notion that courts must preserve the ancient ways; that the past is sacred and change, impious. According to this notion, what has heretofore been done must be right; improvements and experimentation in novelties are always unwise; the populace must never profanely seek to modify inherited customs and institutions. He noted that "robe-ism" is still too much with us.

Readers will recall that late last year the Lord Chancellor, Lord Mackay of Clashfern and the Lord Chief Justice of England and Wales, Lord Taylor, announced that in the light of responses to their 1992 consultation paper on court dress, no changes would be made to the current code. Responses to the studies from jurors, witnesses and members of the public as well as from the legal profession and the judiciary revealed strong support for maintaining the status quo. The majority of those in favour of retaining court dress felt that formal dress had a significant role to play in maintaining respect for the authority and status of the court. Similarly, there was little support for changes to the wearing of formal dress on ceremonial occasions when robes were seen as marks of the importance of tradition.

Justice Jerome Frank noted that judicial robes symbolised the notion that what has heretofore been done must be right; improvements and experimentation in novelties are always unwise; the populace must never profanely seek to modify inherited customs and institutions; "robe-ism" is still too much with us.

The Bar Council of Ireland is in the process of drafting a report which deals with court dress but has not yet finalised its deliberations.

Those who oppose wigs and gowns for the judiciary may be comforted by the fact that court dress for the Irish judiciary is sober in comparison with the court dress of judges in our neighbouring island. There is certainly merit in retention of the judicial gown and the gown for advocate lawyers; the wig is another matter.

Those readers who consider that judicial dress in Ireland never changed with the revolution in 1922 may be interested in details of the ceremonial court dress or daily court dress which judges use in England and Wales.

A High Court judge in ceremonial dress wears knee breeches, hose and buckled shoes and bands worn in winter, beneath a scarlet cloth and fur mantle, and a full bottomed wig. A

black cap is carried. Daily court dress for High Court judges varies, depending on which division of the High Court they are working in. For example, a high court judge in the Chancery and Family divisions will wear a court coat, waistcoat, bands, a skirt or trousers, a black silk gown and a short wig. A High Court judge dealing with civil work in Queen's Bench will wear a black robe faced with fur (in summer, a violet robe faced with silk), a black scarf, girdle and a scarlet tippet.

A Circuit judge in England and Wales when in ceremonial court dress wears knee breeches, stockings, buckled shoes, lace jabot under a violet robe with lilac facings, a lilac tippet, a violet cloth hood with lilac facings and a full-bottomed wig. The daily court dress for a Circuit judge is, on the whole, the same as the ceremonial dress, save that the hood is not worn and a short bottomed wig is worn.

A District judge in England and Wales sitting in open court wears a short wig and a black gown over ordinary dark clothing. On ceremonial occasions the attire is similar but men may wear a short black coat, waistcoat and striped trousers.

Monopolies and Freedom of Expression

The European Court of Human Rights, Strasbourg, has delivered a judgment in *Informationsverein Lentia and Others v Austria* (Cases Nos. 36/1992/381/445-459) on November 24, 1993, *The Times*, Law Report, December 1, 1993) which has ramifications for Ireland in the context of monopoly law and freedom of expression. The court held that the fact that applicants had been prohibited, under Austrian law, from setting up and operating a radio or television station constituted a violation of the freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights.

Article 10.1 of the Convention on Human Rights provides as follows:

> "Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting television or cinema enterprises."

Article 10(2) sets down certain restraints on the exercise of these freedoms.

The applicants complained that they had each been unable to set up a radio station or, in the case of Informationsverein Lentia, a television station, because under Austrian legislation that right was restricted to the Austrian Broadcasting Corporation.

The court observed in the first place that the restrictions in issue amounted to an interference with the exercise by the applicants of their freedom to impart information and ideas. The only question which arose was therefore whether such interference had been justified. The court reiterated that the object and purpose of the third sentence of article 10.1 and the scope of its application had to be considered in the context of the article as a whole and in particular in relation to the requirements of article 10.2 to which licensing measures remained subject. The court reasoned that the purpose of that provision was to make it clear that states were permitted to regulate by a licensing system the way in which broadcasting was organised in their territories, particularly in its technical aspects. (See *Groppera Radio AG and Others v Switzerland*, 1990 Series A. No. 173, paragraph 61.)

The issue arose whether the interferences had been necessary in a democratic society. The court considered that the contracting states enjoyed a margin of appreciation in assessing the need for interference but that margin went hand in hand with European supervision and its extent would vary according to the circumstances.

The Austrian Government had drawn attention to the political dimension of the activities of the audio-visual media which was reflected in Austria in the terms fixed for such media under Article 1.2 of the Constitutional Broadcasting Law of 1974, namely to guarantee the objectivity and impartiality of reporting, the diversity of opinions, balanced programming and the independence of persons and bodies responsible for programmes.

In the Government's view, only the system in force, based on the monopoly of the Austrian Broadcasting Corporation, made it possible for the authorities to ensure compliance with those requirements. The court had frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it served to impart information and ideas of general interest to which the public was moreover entitled to receive. See, for example, mutatis mutandis, *The Observer and The Guardian v United Kingdom*, 1991 Series A No. 216, pp. 29-30 paragraph 59. Such an undertaking could not be successfully accomplished unless it was founded on the principle of pluralism, of which the state was the ultimate guarantor. That observation was especially valid in relation to audio-visual media, whose programmes were often broadcast very widely.

The court was of the opinion that of all the means of ensuring those values were respected, a public monopoly was the one which imposed the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a local cable station.

The far-reaching character of such restrictions meant that they could only be justified where they corresponded to a pressing need. The court considered that as a result of the technical progress made over the last decades, justification for those restrictions could no longer today be found in considerations relating to the number of frequencies and channels available. The Austrian Government accepted this contention.

The court considered that the interferences in issue had been

(Continued on page 57)

BOOK REVIEWS

Murder at Marlhill – Was Harry Gleeson innocent?

By Marcus Bourke, published by Geography Publications, 1993, 123pp, softback, £6.95.

Harry Gleeson was hanged on 23 April, 1941 for the murder of *Mary (Moll) McCarthy* whose body had been found on Gleeson's uncle's farm near New Inn in Co. Tipperary on 21 November, 1940. In all probability, as Mr. Bourke's book contends, Harry Gleeson was innocent and was framed by the real culprits and was the victim of a conspiracy of silence in the locality in the lead-up to his trial and in the period immediately following it.

This is a very readable and illuminating account of an event which is now all but forgotten. Mr. Bourke has delved deep into the records of the case and has studied with great care the transcripts of the depositions and the trial as well as the proceedings in the Appeal Court. He has very skillfully highlighted the inconsistencies in the evidence, the very circumstantial nature of the case against Harry Gleeson, the rather partisan treatment meted out at times to the defence by the trial judge and the generally unsatisfactory nature of the case against the accused. Gleeson was defended by *Sean McBride* who was then a relatively inexperienced junior counsel having been called to the Bar in 1937. His leading counsel was *James Nolan-Whelan,* SC, whose performance at the trial did not enhance his reputation. Gleeson's solicitor in the case was *John J. Timoney* who was born in 1910 and qualified as a solicitor in 1935. Timoney's association with McBride during the case lead him, subsequently, to join Clann na Poblachta and he went on to become a member of the Dail for that party between 1947 and 1951. Both Timoney and McBride worked tirelessly in their defence of Harry Gleeson and, up to the time of his death, Sean McBride believed absolutely in the innocence of Harry Gleeson.

The book is interesting, not just for the light it throws on the details of the case itself, but for the insights we get into the Ireland of the late 1930s and early 1940s. Moll McCarthy, the victim, was an unfortunate woman who lived close Harry Gleeson's home (on his uncle John Caesar's farm) near New Inn. Up to the time of her death, she had had seven illegitimate children all, apparently, by different fathers and, naturally, her presence and her lifestyle were a cause of scandal in the locality and generated local hostility. Mr. Bourke related how, in 1926, some fourteen years before her death, there had been an attempt to burn her out of her dwelling house. The identity of the fathers of the children was apparently the subject of much gossip in the locality and no doubt there were those who would have had good reason for wanting their associations with the dead woman kept quiet. The picture that emerges of the Ireland of that time is one of a rather backward society, the rural population of which, whatever nefarious activities were engaged in privately by some of them, did the bidding of their local clergy. Indeed, the Church itself, in the character of the local parish priest, Fr. James O'Malley, does not come out of this sorry tale with great distinction. Mr. Bourke's account makes it clear that, on the basis of the information given to the priest, he must have had reason to doubt the guilt of Harry Gleeson but does not appear to have put himself out to help. The Garda Siochana is also, unfortunately, shown in a rather poor light and some very serious questions are raised about the handling of the case by certain members of the force.

Harry Gleeson appears to have been a naive, uneducated Irish farm labourer. He seems to have been a man of simple faith who believed in justice and who seems to have thought that, because he was innocent, somehow or other the truth would win out and he would be vindicated. Alas, that was not to happen. I have no doubt, having read Mr. Bourke's account, that if Harry Gleeson were put on trial today on the basis of the evidence against him he would be acquitted. That, of course, is not the same as saying that he was innocent of the crime but I believe Mr. Bourke has demonstrated that in all probability he was. Miscarriages of justice are, of course, rightly regarded as very grave matters and to deprive a person wrongly of his liberty is the very negation of justice. The terrible finality of the death penalty made it all the more vital, in those days, hat convictions for murder were right. In the end, the possibility of miscarriages of justice in capital cases was one of the reasons that led to the abolition of the death penalty for murder.

Mr. Bourke is to be commended for the excellent work he has done in putting this book together. The reader might very well ask whether anything can be done at this stage to reopen the case of Harry Gleeson. Could the proposed new machinery for reopening cases be invoked to re-examine a case so far back?

Mr. Bourke dedicates the book to *Mary Gleeson*, a surviving sister of the unfortunate man, who is now in her 105th year and living in South Carolina. She, as well as others who are still alive and remember the events of that time, remains firmly of the view that an innocent man was hanged.

Noel C. Ryan

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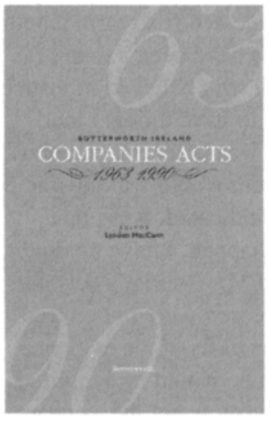

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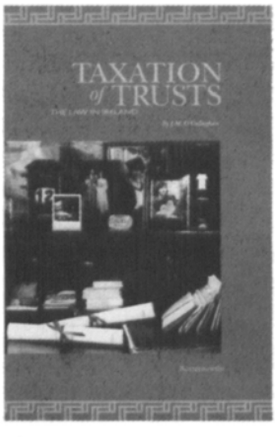

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The CAJ Handbook on Civil Liberties in Northern Ireland

Editor: Brice Dickson, second edition, published by the Committee on the Administration of Justice, Belfast, 1993, softback, 387pp

Over the years, the administration of justice in Northern Ireland has been at the core of the conflict there and those who are familiar with more recent history in Northern Ireland will be aware of the important role played by the Civil Rights Movement in focusing attention on aspects of the administration there before the Stormont Parliament was prorogued.

Although the Government of Ireland Act, 1920, prohibited the Northern Ireland Parliament from discriminating on grounds of religion, nationalists in Northern Ireland felt that, under the old Stormont regime, equality of treatment, especially in housing, employment and, for many years, in local government franchise, was denied them and their citizenship was less equal than that of their Unionist brethren. Their dissatisfaction culminated, in the late 1960s, in an active civil rights campaign which, mainly because of the intransigence and inept handling of the Stormont Government, erupted into civil disorder.

One of the primary objectives of the Anglo-Irish Agreement of 1985 was the establishment of a framework through which nationalists in Northern Ireland could achieve redress in areas of civil liberties, particularly in relation to the administration of justice but also, of course, in relation to employment. The Irish Government was given a role under the Agreement and has, since 1985, acted, in a sense, as the guardian of nationalist rights. Principally through the operation of the Anglo-Irish Secretariat at Maryfield, steady progress has been made in improving the position of nationalists. The Agreement, for the first time, conferred legitimacy on those who aspired, through democratic means, to a united Ireland. The Irish language was given official recognition and Irish language schools have, since the Agreement, been grant-aided. The repeal of the Flags and Emblems Act, which made it unlawful to display the tricolour, was also important symbolically. But perhaps the most important change was the transformation which was brought about in policing and, while much of this took place before the signing of the Agreement (principally the abolition of the special constabulary), the increasing professionalism of the RUC was accelerated after the Agreement and was a matter that prompted much favourable comment on this side of the border. Significant progress was also made in the area of employment by the enactment in 1989 of new Fair Employment legislation which went considerably further than previous legislation in providing a framework for equality and which has, through vigorous monitoring by the Fair Employment Commission in Northern Ireland, kept the spotlight on this vital area.

It is clear, therefore, that civil liberties – in all their diverse aspects – are very much at the heart of the divisions in Northern Ireland and this handbook (which is an updated version of a handbook first published in 1990) will be widely welcomed by people with an interest in the topic. Brice Dickson, its editor, is to be commended for bringing together a very comprehensive range of essays on all aspects of civil liberties in Northern Ireland. The handbook deals not only with issues that have been at the heart of the debate over civil rights in Northern Ireland, such as the powers of the police and the army, the questioning of suspects, and the impact of the Prevention of Terrorism Act but also a wide range of *social issues* such as sex discrimination, rights of disabled people, education and social security rights. This is essentially a textbook that sets out the law applicable in all these areas and practitioners will find it an extremely useful source of information.

None of the essays has been written from any political or ideological standpoint; the writers have attempted to set out in a factual way the prevailing provisions affecting the particular 'right' or 'civil liberty' being discussed. There is not, therefore, very much by way of subjective comment or analysis on the shortcomings of the law and practitioners looking for a straightforward, accurate and concise statement of legal principle will, perhaps, welcome this.

I was personally glad to see the question of a Bill of Rights for Northern Ireland addressed by Brice Dickson in the introductory chapter. Mr. Dickson makes clear that the CAJ believes that a more comprehensive Bill of Rights is required for Northern Ireland. He says that the law of Northern Ireland is quite invasive in the area of civil liberties and places many constraints on the rights of people. These constraints are, in his view, "so far reaching and the discretion conferred on administrative bodies so all-embracing that the resulting liberty is at times very narrow in scope". Mr. Dickson believes that a Bill of Rights would not only increase confidence in the administration of justice but also improve the content of the law and make people more physically secure. The CAJ has, in fact, published its own Bill of Rights for Northern Ireland and has suggested that this should be enshrined in the law.

In a divided society, the protection of individual rights is vital. The publication of this handbook will help to improve understanding of the complexity of the issues involved and of the nature of conflict in such a society.

Noel C. Ryan

The Evidence of Children – The Law and The Psychology

By J.R. Spencer and Rhona Flin, second edition, 1993, Blackstone Press Ltd., 465pp, softback, £21.95 stg.

Recently the English courts and the media have highlighted the evidence of children generally in the sad case of the Jamie Bulger murder in Liverpool. *The Evidence of Children – the Law and the Psychology* is the second edition of a book first published in 1990. The authors are a lawyer and a psychologist.

The book outlines the English and Scottish legal systems mainly and there is also reference to the Northern Ireland legal system of the law relating to the

evidence of children. It also deals with modern technological aspects of children's evidence, including the admissibility of videotaped evidence, and the advantages and disadvantages of such evidence.

As a result of many cases highlighted in England and the United States in the mid 1980s, there have been many changes in the law of evidence. The writers mention in many parts of the book the recent Irish legislation in the Criminal Evidence Act 1992. They refer to this legislation as making it simpler for young persons and those with a mental handicap to give evidence in cases involving physical/sexual abuse by way of video recording or live television link. The authors note that the Irish legislation, under Section 27 (1) of the Act, goes further than the English provision in that it provides that, in any criminal proceedings, the evidence a person under 14 years may be received otherwise than on oath or affirmation if the court is satisfied that he/she is capable of giving an intelligible account of the relevant events. The Irish Act provides further that this provision applies to adults with a mental handicap.

The book contains an essay on the rules of civil and criminal evidence affecting children in England, Scotland and Northern Ireland. It reviews these rules in the light of recent findings of psychologists and social scientists and, indeed, the writers propose some reforms of these rules as a result. For experts giving evidence in cases involving children who are either the victims or witnesses to crimes by children, the book is an invaluable aid. Its limitation, if any, is, in my view, that it has a leaning away from the legal point of view, concentrating more on the psychological aspect. Having said that, the work is an interesting and detailed research into an ever-increasing area of litigation; one that requires a great degree of care and sensitivity.

The authors have also written a critique of the laws of evidence; questioning the primacy of oral evidence, the use of cross examination and the truth-enhancing value of confrontation. Following a review of the training of judges to deal with cases involving children and the provision of experts to assist the courts in such cases, the authors came to a number of conclusions. The courts in the United Kingdom tend to distrust expert evidence in general and the evidence of psychologists and psychiatrists, in particular, probably because lawyers, like other kinds of specialists, tend to be sceptical about areas of expertise other than their own. In the Republic of Ireland this view cannot be sustained, however, and there is plenty of evidence in the Irish courts that the assistance of experts is sought in sexual abuse cases and generally in criminal proceedings involving children.

Certainly the adversarial system in the courts does affirm the authors' view regarding the case of experts. They recommend a system similar to France which has an inquisitorial court system. A list of experts is set up and the expert is obliged to undertake the task assigned by the court. This report and sometimes a joint report is given to assist the court at an early stage, even prior to the trial. The creation of such a system in Ireland would require a radical change in the law.

The book is a fascinating insight into the evidence of children, albeit from a slightly psychological view, suggesting areas for reform and dealing with an area of litigation which has become publicised in the last few years.

Michael Quinlan

At the launch of Your Guide to Irish Law were l-r: Fergal Tobin, Editor, Gill and MacMillan; Mary Faulkner, Lecturer in Law and European Studies, Dublin Institute of Technology; Niamh Bhreathnach, TD, Minister for Education; Gerry Kelly BL and Padraig Turley, Solicitor.

Your Guide to Irish Law

By Mary Faulkner, Gerry Kelly and Padraig Turley. Gill and Macmillan, Dublin, 1993, softback, 185pp £7.99.

Your Guide to Irish Law is a book of definitions and explanations of the legal implications encountered in everyday living. It is a reference book. Before going any further, I must declare a personal interest – I like reference books. I find them fascinating and I do not have to have a particular requirement in order to pick up such a book, flick through the pages and find random items of interest.

Categorising this as a book of reference helps to identify the criteria by which to assess it. It is not a text book nor a comprehensive legal dictionary (nor are such distinctions claimed for it) and while the book deals with a wide variety of subjects, it is not exhaustive. One would have to have the book for some time before deciding how comprehensive it is. However, I had cause to refer to it three times in a few days and achieved a 'hit' each time (I failed on 'affidavit', though I subsequently found it referred to, under another heading).

Your Guide to Irish Law is well written, is concise and clear in its definitions and avoids (amazingly well) legal

terminology. Clarity of description is aided where necessary by examples and the occasional diagram. The layout, printing and indexing all help to make the book easily readable, and perhaps more importantly in such a complex field, understandable to everybody.

Criticisms by me (I leave assessment of legal aspects to others) are few and minor: such as the occasional error in grammar and syntax and a cover that does not, I think, do justice to the book. The general description and statement of purpose, on which the book relies in the absence of an introduction inside, is printed across the cover design and difficult to read.

So, to whom is *Your Guide to Irish Law* likely to be of interest? Apart from those who enjoy dipping into reference books, anyone who has any contact with the law will be glad to have the salient points explained so clearly. The fact that most day-to-day activities have legal implications should be enough to have a copy of the book in every household. Not being a legal person myself, I cannot say if members of the profession will want to have a copy of the book on their shelves for their own use, but it could be the basis of good solicitor/client understanding.

In summary, *Your Guide to Irish Law* is a useful and well presented book which deserves to be widely available. It is recommended to legal professionals and to lay persons alike, albeit for different purposes.

Frank Bracken

The Civil Liability Acts 1961 and 1964.

By Anthony Kerr, Dublin, The Round Hall Press, 150pp, 1993, £32.50, hardback.

Parts of the Civil Liability Code are obscure and complex, their meaning elusive and their effect uncertain. The language is sometimes tortuous. Mr. *Tony Kerr*, a barrister and statutory lecturer in law in University College, Dublin, a Master in his profession, has made the fruits of his research available in this book on this important aspect of the administration of justice.

It may appear trite to some readers, and perhaps a trifle patronising, but hopefully not sycophantic, to state that the level of scholarship from those in the legal academy of our universities is superior now to any time in the history of this island's civilisation. Strong words, yes, but hyperbole I hope not. Mr. Tony Kerr must be ranked among those who have achieved great distinction in publication terms in the legal academy and in his contribution to the development of the law – our jurisprudence. It is a comfort to the writer that his or her work should survive as long as the printed word survives.

The prescription in terms of the amount of words allowed by the Editorial Board entails that this is a mere book notice – a notice to readers about what is on offer in Mr. Tony Kerr's book. In his book, Mr. Kerr provides an annotation to the *Civil Liability Acts 1961 and 1964*. The Acts amended and consolidated the law relating to the survival of causes of action on death, dealt with the law concerning concurrent fault, re-enacted the statutory provisions relating to damages for the benefit of dependents of persons fatally injured and made certain amendments of the law relating to wrongdoing. The book contains an up-to-date text of the legislation, refers to appropriate case law and presents an analysis of the law in a practical fashion.

This work is a definitive guide, a marvellous distillation, and a significant contribution to our knowledge on an important aspect of litigation law. As we have come to expect of him, Tony Kerr's lucid analysis of the law provides us with an understanding of issues at the forefront of civil litigation.

Dr. Eamonn G. Hall

Orientation In USA Law

The University of California is staging an Orientation in USA Law Course for international legal and business professionals. The four week programme will be held from July 10 to August 6, 1994, at the Berkeley and Davis campuses of the University.

The core programme features the US legal system and business and trade law. Participants will receive additional training in one of four areas of specialisation: business and trade, criminal justice, judicial management or pre-LLM preparation. The curriculum also includes visits to law firms; business institutions; local, state and federal courts and government offices.

In addition to the legal education provided by the orientation in USA law programme, participants have the opportunity to enjoy an enriching cross-cultural experience. Participants from 39 countries around the world attended the programme last year.

The cost of the programme is $2,650 and on-campus housing including some meals is available at $1,500.

Application forms are available from:

Beth Greenwood,
Director,
Orientation in USA Law,
University Extension,
University of California,
Davis, CA 95616 - 8727, USA.

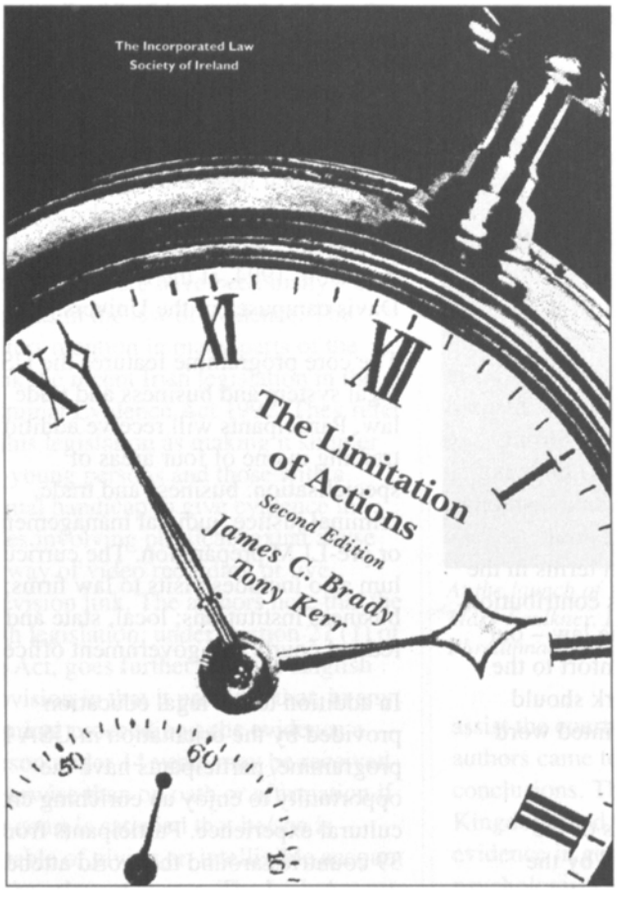
Telephone: 001 916 757 8894
Fax: 001 916 757 8596. ❐

Lawbrief

(Continued from page 52)

disproportionate to the aim pursued and had, accordingly, not been necessary in a democratic society. There had been a violation of Article 10.

These issues were raised a decade ago in Irish courts in *Nova Media Services Ltd v Ireland* [1984] ILRM 161 and in *Sunshine Radio Production Ltd v Ireland* [1984] ILRM 170. The plaintiffs failed in their initial hurdles in interlocutory proceedings and never pursued their case. ❐



The Limitations of Actions

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By James C. Brady and Tony Kerr

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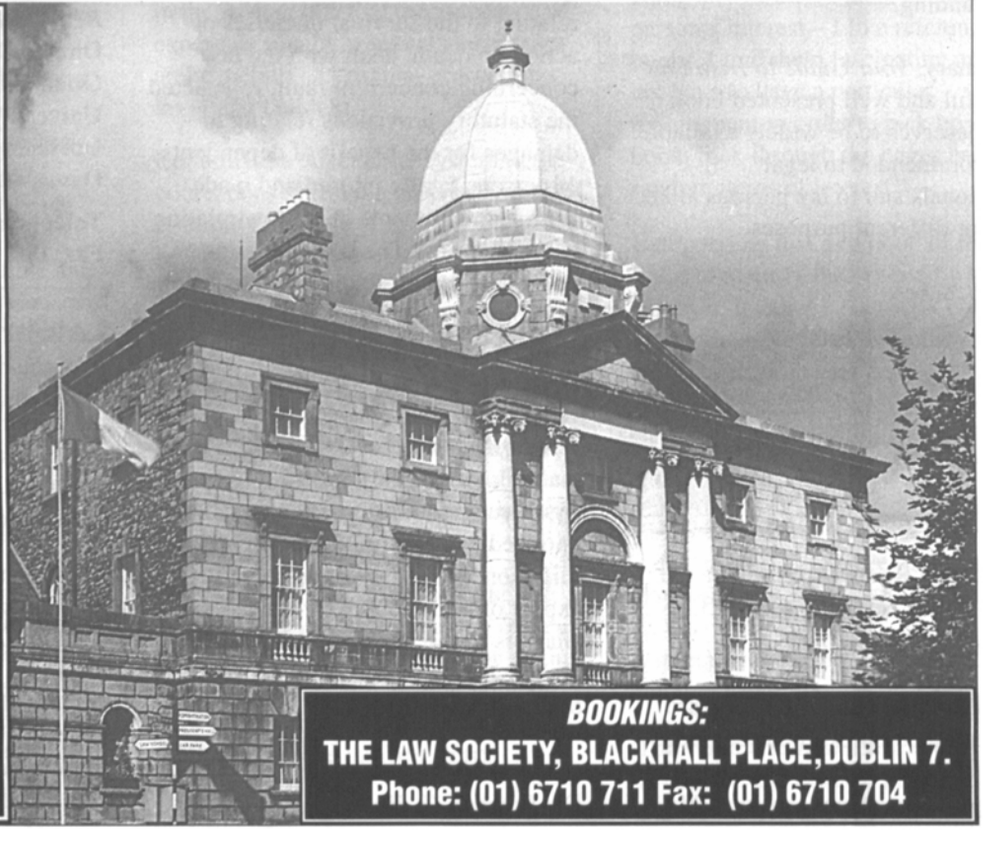


BOOKINGS:
THE LAW SOCIETY, BLACKHALL PLACE, DUBLIN 7.
Phone: (01) 6710 711 Fax: (01) 6710 704

Disciplinary Cases/Compensation Fund

Re: Robert Lee
practising as Lee's solicitors
Lord Edward Street
Kilmallock
Co. Limerick

and at

Lower Main Street
Kilfinane
Co. Limerick

22SA/1993

On 6 December 1993, the Acting President of the High Court ordered that Robert Lee, Solicitor, pay to the Law Society a fine of £3,000 and directed Robert Lee to take all appropriate steps to have the complainants in the disciplinary proceedings registered as owners of property in Co. Limerick.

The costs of both the Disciplinary Committee and the Petition were awarded to the Society, to be taxed in default of agreement.

The Court had before it the report of the Chairman of the Disciplinary Committee of its hearing on 29 June 1993 in which the Committee made a finding that the solicitor was guilty of conduct tending to bring the profession into disrepute in that:

- he failed to have his firm carry out the instructions of the complainants to complete the registration of the complainants' title;
- he allowed his firm to mislead the complainants as to the reasons for the delay in registration of their title;
- he failed to reply fully and frankly to the complainants' queries as to delay in completion of the registration of their title;
- he allowed his firm to cause serious material loss and inconvenience to the complainants by failing to complete their instructions;
- he failed to reply to the Society's correspondence and to furnish information requested by the Society;
- he misled the Society as to his involvement in relation to the non-registration of the complainants' title.

Re: Thomas Baldwin
practising as Early & Baldwin
27/28, Marino Mart
Fairview
Dublin 3

24SA/1993

On 13 December 1993, the Acting President of the High Court ordered:

(a) that Thomas Gerard Baldwin, Solicitor, stand censured regarding his conduct as a solicitor;

(b) that he pay by way of fine to the Law Society a sum of £2,000;

(c) that the said Thomas Gerard Baldwin pay the Society the costs of the proceedings both before the Disciplinary Committee measured in the sum of £350 and also the costs of the Petition to the High Court, to be taxed in default of agreement.

The Court had before it a report of the Chairman of the Disciplinary Committee of a hearing on 27 July 1993 in which the Committee found misconduct on the part of the solicitor in that he:

- failed to take proper action on behalf of the complainants in relation to their respective claims;
- deliberately misled the applicants in relation to the progress of their respective claims;
- wrongly advised the first named complainant in respect of a loss of earnings claim when in fact the claim was one for material damages only;
- misled the complainants and told untruths in respect of actuarial reports, fixing dates for court hearings, settlement talks with General Accident Insurance Company;
- failed to adequately address the problem when it first came to his notice and allowed the complaints to be attended to by an unqualified member of his staff.
- failed to adequately supervise his office and the attention to work by his unqualified staff. ❐

Compensation Fund Payments – January, 1994

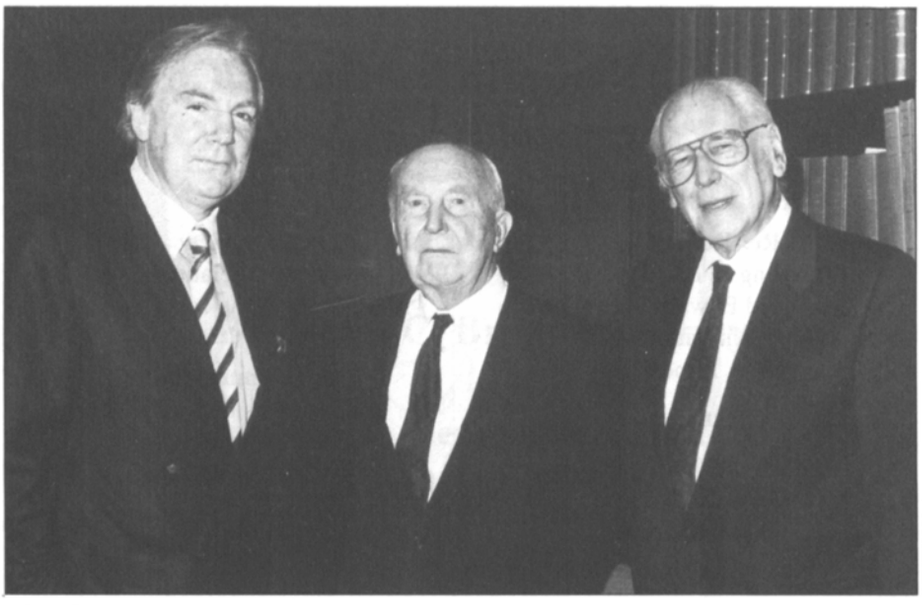
The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in January 1994.

	IR£
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	2,267.50
Conor Killeen & *Elio Malocco,* Chatham House, Chatham Street, Dublin 2.	11,163.53
James C Glynn, Dublin Road, Tuam, Co. Galway.	80,082.66
Peter M. Fortune, 38 Molesworth Street, Dublin 2.	11,768.88
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	7,000.00
	112,282.57

Compensation Fund Payments – February, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in February 1994.

	IR£
John K. Brennan, Mayfield, Enniscorthy, Co. Wexford.	7,114.17
Diarmuid Corrigan, 6 St. Agnes Road, Crumlin, Dublin 12.	619.00
Malocco & Killeen, Chatham House, Chatham Street, Dublin 2.	181,776.00
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	1,000.00
James C Glynn, Dublin Road, Tuam, Co. Galway.	4,290.00
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	92,000.00
	286,799.17



The Chairman of Matheson Ormsby Prentice, Dr. A. J. F. O'Reilly (left), recently made a presentation to Edward Montgomery (centre) to mark his 66 years in practice as a member of the firm and to Peter Prentice (right), a Past-President of the Law Society, to mark his 55 years in practice.

IBEC Seminars on the Claims Culture

IBEC, the employers confederation, is staging a series of half day seminars on "The Claims Culture and New Legal Standards of Care".

The seminars are taking place in Limerick on 14 April, Cork on 15 April and Dublin on 20 April, 1994, and will examine the following themes:

- Dealing with Public Liability Claims.
  Speaker: *Dorothy Dowling*, Claims Manager, CIE.
- Successful Management of Employer Liability Claims.
  Speaker: *Tom Kennedy*, Personnel Manager, Waterford Stanley.
- IBEC Guidelines on Liability Management.
  Speaker: *Tony Briscoe*, Head of OHS Service, IBEC.
- Handling Personal Injury Claims – The Solicitor's Role.
  Speaker: *Noel Smith*, Solicitor.
- Health and Safety Authority Guidance for Employers.
  Speaker: *Tom Walsh*, Director General, HSA.

The cost of attending a seminar is £95 per participant.

Further details and a booking form are available from *Denise Feerick*, IBEC, Baggot Bridge House, Dublin 2. Telephone: (01) 6601011, Fax: 01 6601717. ❐

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Tax Knowledge at Your Fingertips

Readers of the Gazette can purchase the following three tax books at a special price of £40 (plus postage and packing £5), a discount of almost £20 off the normal bookshop price:

Capital Acquisitions Tax (including Probate Tax)

FA 1992 and FA 1993 Supplement, 479 pages, by
Norman Bale, Partner (retired) Stokes Kennedy Crowley and
John F Condon, Solicitor, Partner, McMahon & Tweedy.
Bookshop price £26.00.

The Law of Stamp Duties

FA 1992 Edition, 369 pages, by
Michael O'Connor, Partner, William Fry, and
Patrick S Cahill, Partner, Patrick S Cahill & Co.
Bookshop price £21.00.

Taxation Summary 1993/94

Covers income tax, corporation tax, capital acquisitions tax, capital gains tax, residential property tax, stamp duties, value added tax, Irish tax cases.
FA 1993 Edition, 333 pages, by
Terry Cooney, Partner, Cooney & Taggart
James McLaughlin, Partner, Deloitte & Touche and
Paschal Taggart, Partner, Cooney & Taggart.
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The Institute of Taxation in Ireland
19 Sandymount Avenue,
Dublin 4

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PEOPLE AND PLACES

Recently Mr. Justice John Pringle, Judge of the High Court of Northern Ireland presented the Law Society with a SADSI Gold Medal for Oratory, won in 1897 by his grandfather, James Alexander Pringle. In turn the President of the Society, Michael O'Mahony, presented Mr. Justice Pringle with facsimiles of his grandfather's entry on the Roll of Solicitors and other records. At the presentation were l-r: Michael Davey, Secretary, Law Society of Northern Ireland; Andrew Carnson, President, Law Society of Northern Ireland; Mr. Justice John Pringle Judge of the High Court, Northern Ireland; James Pringle; Michael V. O'Mahony, President, Incorporated Law Society of Ireland; Sue Bryson, Deputy Secretary, Law Society of Northern Ireland and Aidan Canavan, Junior Vice President, Law Society of Northern Ireland.

Recently the firm of Johnson and Johnson, So[illegible]itors, Sligo celebrated its 50th Anniversary in business. At a reception to mark the occas[illegible]n were back row l-r: June Carter, Secretary; Geraldine Dwyer, Secretary; Declan Gallagh[illegible], Solicitor; Thomas E. Tighe, State Solicitor; Patrick Kelly, Solicitor; James McGarry, S[illegible]icitor; Noel Connolly, District Court Clerk; Eamonn Creed, Solicitor; Alan Murphy, Appr[illegible]tice; Kieran McDermott, County Registrar and Bill Cashel, District Court Clerk. Front row [illegible]-r: Nonie Davey, Secretary; Inspector Barnes Murphy; Keenan Johnson; Judge James Gilvar[illegible]; Judge Patrick Keenan Johnson; Judge Bernard Brennan; Raymond Monahan, then Presiden[illegible]of the Law Society; Brendan Johnson; Marie Conroy-Johnson and Superintendent Jim Sher[illegible]an. At the front, Ciara Johnson.

At the parchment ceremony on 4 February, 1994, nine apprentices from the firm of McCann FitzGerald were admitted to the Roll of Solicitors. L-r: Bridin O'Donoghue, Paula Mulooley, Sean Barton, Maura Connolly, Conor Downey, David Cullen, John Kehoe, Louise Keaveney and David Byers with (seated) the President of the Law Society, Michael V. O'Mahony.

Deirdre and Robert Cussen, mother and son, who were admitted to the Roll of Solicitors at the parchment ceremony on 4 February, 1994.

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"100 metres fro[illegible] the Four Courts"

At the launch of the second edition of The Limitation of Actions published by the Law Society were: (seated) The Hon. Mr. Justice Ronan Keane with the authors Tony Kerr, BL, Lecturer in Law, University College Dublin (standing) and James C. Brady, Professor of the Law of Property and Equity, University College Dublin (right).

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Sligo Firm Celebrates 50 Years in Business

The firm of Johnson & Johnson, Solicitors, recently celebrated its 50th anniversary in business. The occasion was marked by a small reception at the Ballymote office of the firm. The special guest of honour was Judge Patrick Keenan Johnson, the founder member of the firm. Other special guests included, Judge James P. Gilvarry, Judge Bernard Brennan, Raymond Monahan, then President of the Law Society, Thomas E. Tighe, State Solicitor and former partner in the firm, Kieran McDermott, County Registrar, Bill Cashell, District Court Clerk and Superintendent Jim Sheridan. A number of solicitors representing other firms in the County also attended the reception.

The firm was founded in 1943 and practised under the style of P. Keenan Johnson, Solicitor, until 1972, when Thomas E. Tighe, the present State Solicitor, joined the firm as a partner and the practice traded under the name of "Johnson & Tighe". Patrick Keenan Johnson was appointed to the District Court Bench in 1975 and the firm continued under the style of Johnson & Tighe until it was purchased by the present partners, Keenan V. Johnson and Brendan L. Johnson, in 1983. In 1983, the firm changed its name to Johnson & Johnson and opened offices in Sligo Town. The firm now has offices at Main Street, Ballymote and 75 John Street, Sligo.

Judge Johnson stated that he was delighted to return to Ballymote to celebrate the 50th anniversary of the firm. Judge Gilvarry, Raymond Monahan, Thomas Tighe, Superintendent Jim Sheridan and Judge Brennan also added their congratulations to all associated with the firm both in the past and at present.

The partners, Keenan and Brendan Johnson, thanked those present for their kind wishes and they expressed special appreciation to their staff. They also thanked their clients for their continued support and looked forward to serving the people of Sligo and Ballymote into the future. ❐

(See also photograph in People and Places)

Family Law and Legal Aid Committee

The Family Law and Legal Aid Committee would be interested in hearing from solicitors who have queries, information or details of recent cases which would be of interest to practitioners in this area. Correspondence should be addressed to the Secretary of the Committee, *Linda Kirwan,* Solicitor, Law Society, Blackhall Place, Dublin 7.

Family Law and Legal Aid Committee

Possession Prior to Closing

As a matter of convenience to both parties a vendor may agree with a purchaser to allow the purchaser into possession prior to the closing date on condition that the purchaser signs a caretaker's agreement and places the balance of the purchase money in a joint deposit account in the names of the vendor's and purchaser's solicitors. This is most common where a closing document is not immediately available.

The solicitors for both vendor and purchaser should, before possession is taken, be satisfied that the outstanding document will ultimately become available.

It is very unwise to allow a purchaser into possession in circumstances where there is an outstanding item which may not become available. In such circumstances both vendor and purchaser should be advised clearly as to the dangers.

Both parties should also be advised of the insurance risk implications.

Conveyancing Committee

New Licence Duty For Pubs Should it be Apportioned?

The Conveyancing Committee received queries from time to time as to whether in particular circumstances it was appropriate that the licence duty chargeable for a public licence should be apportioned as an outgoing. In each case the opinion of the Committee was that it should not. In these cases the Committee's view was strongly influenced by the fact that sales were of a pub business as a going concern.

Up to now licence duty was not substantial enough to generate too much contention but, currently, the duty ranges from £200 to £3,000 depending on the turnover.

The Committee has decided as a matter of principle that it is not appropriate that licence duty be apportioned and the next edition of the contract will have a clause in the general conditions providing accordingly.

In the meantime, the Committee suggests that purchasers might like to add a special condition to a contract for the purchase of a pub making it clear beyond all doubt that the licence duty will not be apportioned. This might save time and trouble at a later stage.

Conveyancing Committee

Capital Acquisitions Tax – Computer Assisted Learning

The Law School has developed a Computer Assisted Learning course to teach the basic principles of Capital Acquisitions Tax. It is now being used in the Law School by apprentices taking the Professional Course. The disc and workbook are now available to solicitors.

To run the programme, you need an IBM compatible computer with a 3½" disc drive and a mouse.

The programme is correct as at June 1993 and will be revised as soon as the Finance Act, 1994 is passed to take account of the changes introduced by that Act.

If you would like a copy of the course disc and workbook, write to the Law School enclosing £10.00 to cover expenses. ❐

ISEL 21st Anniversary Conference

The Irish Society for European Law is the longest-established society in Ireland for the study of all aspects of European law. It holds meetings regularly and publishes The Irish Journal of European Law.

The Society was founded in 1973. This year, to mark its 21st anniversary, the Society will be holding a one-day conference at the Hotel Conrad Hilton in Dublin on 23 April, 1994, to discuss the theme "Ireland and European Union Law: The First Twenty One-Years". The key-note paper will be delivered by Judge *John Murray* of the European Court of Justice. Other speakers will include Judge *Brian Walsh*, Professor *Bryan McMahon* and *Finbarr Murphy*. The morning session will be chaired by Judge *Thomas F. O'Higgins*.

Further details may be had from either *Vincent Power* (Chairman of the Irish Society) at A & L Goodbody, Dublin (01-6613311) or *Jean Fitzpatrick*, Telecom Eireann, Solicitor's Office (01 - 6714444, ext 5929). ❐

The Irish Kidney Association is the only national organisation working solely in the interest of patients with chronic kidney disease.

More and more Irish families are relying on the financial and psychological support they receive from the Irish Kidney Association.

Since 60% of the patients are unemployed the IKA is called on to help with the basic family requirements - rent, electricity, school books and uniforms, drugs and sadly of all burial expenses.

Research, purchases of life saving equipment and printing of the donor cards help improve the quality of life of the patients.

This voluntary organisation is a registered charity and we badly need your help.

Donations and bequests to:-

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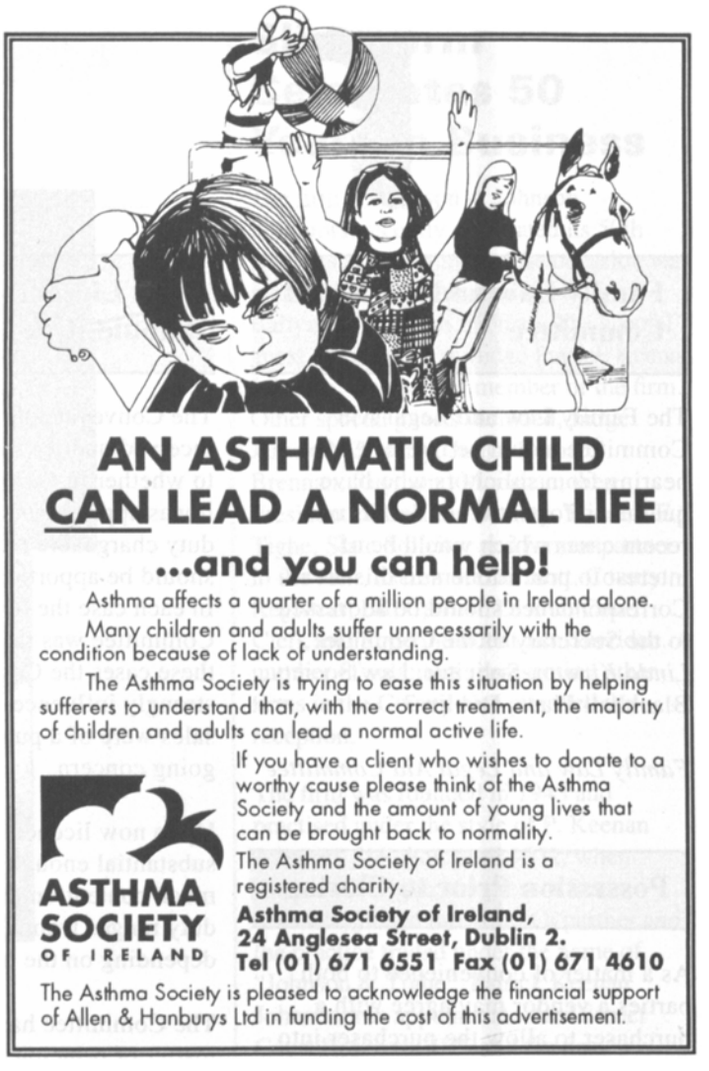

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Early Days for the First Insurance Ombudsman

After one year in her new role as Ireland's first Insurance Ombudsman, Barrister, *Paulyn Marrinan Quinn*, reviews the progress of her Office and notes the relatively high proportion of solicitors who have used this method of alternative dispute resolution on their clients' behalf.

I feel quite at home in my job and, perhaps, in a way that is because I am not in foreign territory in that the relationship between a policyholder and his insurer is not unlike the relationship between a lawyer and his or her client. Often there is more loathing than loving in the relationship particularly when, perhaps, it could be argued that the client's expectations far exceed what is practicable or possible.

At the inauguration of the Insurance Ombudsman Scheme in October 1992, there was considerable interest expressed by the media, who enquired particularly about the independence of the role, to which I replied then, and still firmly reply, that I have been given a job with independence guaranteed. To the minority who suggest that this might be just a public relations exercise, I bring their attention to the fact that the member companies participating in the Scheme have agreed, in advance, to be bound by the Ombudsman's decision and also to make available all files and documentation and any other information which the Ombudsman needs sight of in pursuit of the investigation and review of the dispute.

If, as is often the case, complainants write to me in the first instance, I reply enclosing a copy of the explanatory leaflet, setting out the procedures, in broad terms, and direct them back to their insurance company. I explain that they must first go through the internal complaints procedures and exhaust all existing

Pauline Marrinan-Quinn, BL, Insurance Ombudsman of Ireland.

remedies within those procedures in order to have gone through due process. In referring complainants back to the internal complaints procedures in the companies, it is crucial that they find those procedures accessible and functional.

Every company participating in the Scheme has nominated a member of senior management, whose responsibility it is to review and "sign off" unresolved disputes before they can be referred to me. I have indicated to those members of senior management so nominated that it is helpful if the "signing off" letter contains a brief summary of the reasons for repudiation or otherwise sets out the company's position and/or details of any settlement proposals which have been put to the complainants.

In a report prepared recently in the UK, in which Lord Ackner reviewed the viability of complaints handling systems, the Law Lord concluded that an ombudsman system is better than any arbitration arrangements for handling consumer's investment or other complaints. Alternatives, such as committees or panels, with industry nominees as well as consumer representatives balanced by an independent chairman, as adopted, for example, in Hong Kong and Australia (not to mention LAUTRO'S own complaints sub-committee) do not appear to have been serious contenders. Having investigated the Insurance Ombudsman Bureau model in the UK, Lord Ackner referred to the ombudsman system providing "a unified complaints procedure".

The UK Ombudsman Association was established recently in order to preserve the integrity and credibility of ombudsman schemes. There is a threat that the establishment of sham or bogus ombudsman outfits could denigrate the office and do irreparable damage. The Association has drawn up four fundamental criteria which must be in place before the term "ombudsman" can properly be used:

1. independence from those whom ombudsman has the power to investigate;
2. effectiveness;
3. fairness;
4. public accountability.

Having studied the model in the UK and also in Copenhagen, as part of my initial researches, my objective is to take the best from tried and tested systems, but to do it our way. Ombudsman systems have been working well for many years in Scandinavian countries, where complaint handling systems are open, accessible, transparent and generally accepted to be fair.

It is now well established that in order for an ombudsman scheme to work, the right to complain to the ombudsman should be adequately publicised by those subject to complaint. I would hope, by now, that details of the Ombudsman Scheme have percolated down through the

various departments of the member companies to the "front-house" personnel, who should be briefed on the Scheme, the terminology and the procedures involved.

A substantial (12%) number of complainants have chosen to refer their claims to me with the help of their solicitor. I point out at the first opportunity to solicitors that, as the scheme has no provision for costs, all expenses are the responsibility of the claimant, but this has not been a deterrent.

As the first Insurance Ombudsman, and having made my contribution over the last twelve months to the establishment of the office in this country, the responsibility rests with me to imbue the office with integrity and credibility and to inspire confidence in the functioning of the Ombudsman's role. I would like to record my thanks to all the solicitors who have, so far, used my Office. I would be pleased to give any further information on the operation of the scheme and to supply copies of the explanatory leaflet, which sets out, in broad terms, procedures required in referring a complaint, dispute or claim to me, in addition to a *Guide to Complainants*, which gives a picture of how a case will be handled when it arrives on my desk. Copies of the terms of reference are available from me on request. ❐

Pauline Marrinan-Quinn
Insurance Ombudsman of Ireland.

New Career Opportunities Sought for Solicitors

Did you ever consider recruiting a solicitor for something *other* than your legal problems?

This is the opening salvo of a brochure being widely distributed to employers of graduates in the service, commercial, industrial and State sectors nationwide. The Society's Law School has taken this proactive step in an attempt to relieve the build-up of pressure within the profession. As a high priority, it is currently attempting to create an awareness amongst employers that solicitors are capable of meeting a far wider range of challenges in the marketplace.

Not alone is this opening of the mind relating to the marketability of solicitors necessary amongst employers, solicitors themselves often have a somewhat limited perception of their own versatility and marketability. Many experience little professional satisfaction in a career choice made at eighteen or twenty years of age. Yet to alter course or move laterally is often misconstrued by themselves and others as an admission that they are 'a failed solicitor'. They feel caught between a rock and a hard place.

Feedback to the Law School's Careers Adviser, *Hazel Boylan*, indicates a very high level of interest in alternative career opportunities. Especially among newly-qualified solicitors whose indentures have expired, there is burgeoning pressure to find other openings or opportunities. To this end, Hazel has run several CV development workshops for solicitors seeking to broaden their options. What she has found is a strong enculturation through their professional training – a strict adherence to the letter of the law which they find not only difficult, but frightening, to break. The workshops have two primary objectives: to offer an opportunity to solicitors to realise their transferable skills; and to provide them with non-technical, everyday language to describe what they do.

The brochure for employers poses questions such as: 'How can you identify a person with the ability to understand complex issues such as employers' liability, product liability, contractual obligations and commercial law?' and 'How can you strengthen you negotiations with clients/contractors/suppliers before signing a commitment and be sure that the small print is in your favour and not against you?' It sets out to demonstrate some of the skills and abilities solicitors possess which would enhance any prospective employer's profit or productivity and to encourage potential employers to consider recruiting solicitors because of their wider, added-value professional abilities. ❐

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The Environmental Protection Agency: A Sea of Change in Environmental Law and Practice

By David Meehan, BCL, Solicitor

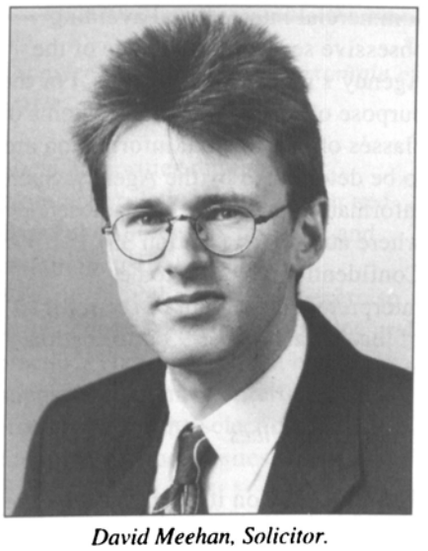
Calls for public inquiries into pollution incidents brought the role of the Environmental Protection Agency (EPA) sharply into focus, barely a fortnight after it was established by ministerial order on 26 July 1993.[1] While in this context it might appear that the Agency is an investigatory body, its main functions in fact relate to pollution licensing, giving expert advice to public authorities, and facilitating public access to information. Moreover, investigation is only one element of its enforcement powers and this enforcement will be greatly assisted by the particularly high penalties for criminal offences committed under the EPA Act, 1992. This article introduces the EPA and surveys its impact on regulatory and administrative aspects of environmental protection in Ireland.

Institutional Matters

The EPA is a statutory body created by Part II of the Environmental Protection Agency Act, 1992. The EPA itself comprises a Director General and four directors, all five being Government appointees. The Agency's headquarters are located in Wexford. It will, however, devolve certain of its functions to regional environmental units (section 43). Where it feels that any of its functions can be better performed by more specialised units, the Agency may set up committees (section 41).

The Advisory Committee

While the EPA is expected to exercise its environmental protection functions with a large degree of independence, it is subject to a number of significant influences. First, the EPA must take on board recommendations of the Advisory Committee (section 27). This committee is composed of a broad church of experts, practitioners



David Meehan, Solicitor.

and interest groups. It provides an external perspective on, for example, the Agency's general work programme (section 28).

The EPA is to have regard to any general policy directives on environmental protection issued by the Minister for the Environmental (section 79). The Agency is also obliged to consult with public authorities and others as appropriate (section 80).

Functions

The EPA's functions are concisely outlined in section 52(1) of the Act. Its principal roles are those of:

- **licensing**, regulating and controlling certain activities;
- **monitoring** emissions and environmental quality;
- collecting and disseminating **information**; and
- providing support and **advisory** services to public authorities.[2]

The EPA is expected to conduct its affairs in a spirit of cooperation. The Agency is to appraise itself of the relevant aims and policies of public authorities and is to adhere to certain general principles (section 52(2)). The functions of the Agency are also coloured by the need to balance costs of environmental protection with exigencies of "infrastructural, economic and social progress and development". These policy considerations find a measure of technical expression in the notion of BATNEEC (best available technology not entailing excessive cost).[3]

Licensing – Integrated Pollution Control

The licensing innovation of the EPA Act is the introduction by Part IV of integrated pollution control (IPC). This concept is not defined in any single provision of the Act. However, it is clear from sections 82 to 84 that integrated pollution control is designed as a comprehensive appraisal of the recognised pollution impacts of major industrial and agricultural activities, with a view to preventing or reducing environmental degradation. Any person pursuing one of the activities listed in the First Schedule to the Act[4] must be in possession of an IPC licence. The licence evaluation process[5] is a complicated one in which the EPA is to:

- have regard to management plans for air quality, water quality and waste, to noise regulations, and to special control area orders;
- ensure that emissions do not (i) contravene quality standards or limit values, (ii) contravene section 106 noise regulations, or (iii) cause significant pollution (section 83(3)); and
- apply BATNEEC.

Having decided to grant an IPC licence, the EPA may attach mandatory conditions.[6]

Monitoring

In its licensing capacity, the EPA is privy to submissions, plans, documents and other information on emissions. However, the Agency has a wider brief of information collection and distribution, especially through monitoring environmental quality, and running data bases (section 52(1) (b)).

The EPA is entitled to information on local and sanitary authority monitoring of drinking water quality (section 58), effluents and receiving waters (sections 59), sewage and receiving waters (section 61) and landfill management (section 62). The EPA may perform its own monitoring to verify this information. In addition, the Agency is obliged to monitor environmental quality and emissions in the context of Integrated Pollution Control (section 96). More generally, the Agency is to organise a programme for monitoring environmental quality (section 65) and to supervise local authority monitoring activities (section 68). Information from private sources may be elicited on an agreed basis (section 69(4) (a)).

The EPA is expected to conduct its affairs in a spirit of cooperation.

Information dissemination

A general duty on the release of information in the possession of the EPA is imposed by section 52(1) (b). This duty is in the main complied with through the issue of publications,[7] and the granting of third party access to data bases, plans[8] and registers.[9]

Not all information in the possession of the EPA is the subject of express dissemination requirements. For instance, section 63(1) empowers the EPA to request a report from a local authority on that authority's performance of a statutory function. This section does not, however, provide for the availability of these reports. In the alternative, access to these and other unpublished items may be sought through the 1993 information regulations.[10]

Confidentiality

Of major concern to any undertaking which is obliged to provide information to the EPA is the issue of business confidentiality. Finding the balance between protecting commercial interests and avoiding obsessive secrecy will be one of the Agency's more sensitive tasks. For the purpose of this Act, particular items or classes of confidential information are to be determined by the Agency. Such information may only be disclosed where authorised (section 39). Confidentiality is also to be interpreted in the light of section 110 of the Act and the 1993 information regulations.

Advisory services

The EPA may on its own initiative, or shall if requested by any Government Minister, impart information or compose recommendations on environmental protection for the benefit of such Minister. Regard must be had to the Agency's advice. This advice is most likely to be sought with respect to environmental aspects of the following:- European Communities primary and secondary law; international agreements to which the State is party; changes to domestic law; policy; guidelines and standards; particular issues and problems (section 55(2) (a)).

With respect to local authorities, section 57 requires the EPA to provide general support and assistance. Section 56 lays down specific provisions on information, advice and recommendations which may be communicated to local authorities, and which must be heeded by them. This advisory function is meant to assist local authorities in matters such as enforcement, application of standards, emissions monitoring, and testing methods.

Enforcement

Offences and penalties

The Act has introduced enormous potential to counter environmental degradation. Where any of its provisions are contravened by any person, an offence is deemed to have been committed by that person, or in the case of a body corporate by the responsible officers, e.g. directors or managers (section 8).

The maximum penalties for convictions on indictment are quite emphatic. Offences are punishable by up to 10 years imprisonment and/or maximum fine of £10,000,000 (section 9).[11] In addition, where a contravention of the Act is maintained after a conviction has been secured, a separate offence is committed on each day by which the contravention is prolonged (section 9(3)). Every such offence exposes the offender to a fine of up to £100,000.

The Act also confers on the EPA significant summary enforcement powers. Section 11(1) enables the Agency to prosecute summary offences itself, amounting in practice to the grant of a policing role. On conviction, the courts may impose a fine of up to £1,000 and/or a prison sentence of up to twelve months. Continuing offences are open to additional fines up to a maximum of £200 per day. While their deterrent potential is great, penalties are to be tempered by the gravity of the offence. The courts are obliged to assess the actual risk of the extent of damage to the environment (section 9(2)).

Court fines are normally paid into the coffers of the State. If, however, the EPA makes the appropriate application, the amount of the fine will be paid over to the Agency itself (section 10), in addition to any costs which may accrue to it on foot of section 12.

Entry onto premises

The EPA is granted a general power to enter premises in order to conduct any business sanctioned by the Act (section 13). It does this by authorising a person to go on site and collect information, make inspections and carry out tests. Any attempt to impede or mislead the work of an

authorised person constitutes an offence.

Investigations and reports

Where a pollution incident occurs, or a matter of environmental protection needs to be examined, the Act has laid down important provisions. Section 104 empowers the EPA to hold investigations into specific occurrences of pollution to uncover the circumstances surrounding their causes.[12] On concluding an investigation, the EPA may draw up a special report. Any report is to be transmitted to the Minister and may be published at the Agency's discretion.

The investigative powers granted to the EPA under section 105 are more sweeping. Where a pollution incident has occurred, or where a matter of environmental protection is at stake, the EPA may set an inquiry in train.[13] A section 105 inquiry is conducted by a person appointed by the EPA. In order to perform the requisite duties, that person is conferred with wide statutory powers including the right to enter onto premises, summons witnesses, discover documents and administer oaths. Persons not complying with the proper inquiries of the EPA shall be guilty of an offence (section 105(4)) and consequently subject to section 9 penalties. On the conclusion of the inquiry a report is to be drawn up. Again, its publication is at the Agency's discretion.

The Relationship between the EPA and Local Authorities

The planning process

The establishment of the EPA has created a complex interaction of Agency and local[14] functions. The most striking impact of the EPA Act on local government will be on the planning process. Up to now, air emission and effluent licences and waste permits have been granted by planning authorities. The allocation of IPC licensing to a specialised agency will relieve the authorities of these complex duties, permitting them to concentrate on stricter planning and development issues.[15]

The Act has introduced enormous potential to counter environmental degratation.

Transfer of functions – the example of waste

Local authorities retain their prominent role in the collection and disposal of domestic, business and certain industrial wastes. Nevertheless, the EPA shall exercise strong control over landfill policy and practice. The Agency is to both impose and monitor criteria and procedures for the selection and operation of landfill sites (section 62).

Further modifications to the local authority waste management role may in future be sanctioned by the Minister who is empowered to transfer to the EPA functions in respect of the hazardous waste regulations listed in the Second Schedule to the Act.[16] This is a particularly interesting aspect of the relationship between the EPA and local authorities. These transfers are an indication of the progressive vesting in the EPA of responsibility for higher risk economic activities. This is a desirable trend as, even in the short term, it will be the EPA's mandate to develop a professional expertise on these more specialist matters of environmental protection.

Other aspects

In the fields of air and water quality, competences may be vested by Ministerial order in the Agency, including the power to draw up management plans (section 102) and the exercise of certain powers under complementary pollution legislation (sections 100 and 101). The EPA also performs a watchdog role with respect to the statutory functions and monitoring activities of local authorities. Accordingly, it may make recommendations, provide assistance and ultimately direct certain courses of action (sections 63 and 68).

Conclusions

The EPA Act projects onto the Agency the leading national role in protecting the State's environment. In addition to its bread and butter licensing control, monitoring and advisory functions, there are two further aspects of the EPA's activities which should be closely observed. First, as the Act clearly states, the EPA is competent to take direct action, not only on cases of actual pollution but on all matters concerned with environmental protection. After its section 104 initiation in Ringaskiddy, the Agency will undoubtedly be working at the heart of investigations into future incidents with environmental repercussions.

Second, the EPA is authorised to accumulate the widest range of information. Armed with this power, the Agency will be in a position to disseminate large volumes of data and documentation to professionals, researchers, enterprises and the general public. As such, it is the ideal catalyst in opening up lines of communication between all environmental players. From this author's perspective, this information aspect will be the most exciting development in Irish environmental law, policy and administration in the years to come.

References

1. Environmental Protection Agency (Establishment) Order (SI No. 213/1993), 22 July 1993. This order established the EPA on 26 July 1993.
2. Other stipulated functions are the promotion and coordination of research and liaison with the European Environment Agency.
3. See section 5. BATNEEC is a policy compromise between the use of best available technology (BAT) and the resources which are available to counteract a given type of environmental degradation. The broad purpose of BATNEEC is to provide a technical yardstick in language which will be understood by researchers, innovators, producers and authorities alike.

Index to Volume 87 1993 Gazette

Readers are requested to note that the index to Volume 87 (1993) of the Gazette is enclosed with this issue. The index, compiled by *Julitta Clancy*, provides a comprehensive guide to all subjects covered in the Gazette in the ten issues from January to December, 1993. There is also a case index of all cases reported in the Recent Irish Cases Supplements and cases examined and/or specially mentioned in articles, editorials etc. A legislation index is also provided.

Please file the index for future reference.

Gazette Binders

Binders, which will store ten issues of the Gazette, are available for sale from the Law Society, priced £10 each including postage and packing. Please contact *Linda Dolan* at the Law Society if you would like to order a binder. ❐

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4. These activities are listed under the following economic sectoral headings:- minerals; energy; metals; mineral fibres and glass; chemicals; intensive agriculture; food and drink; wood, paper, textiles and leather; fossil fuels; cement; waste; surface coatings; and other activities.

5. The form of and procedures pertaining to IPC licensing are to be elaborated in the near future by statutory instrument. For the time being, however, a broad outline of the structure of the system is to be found in section 87(2).

6. Section 84(1) lists 17 types of condition ranging from specific conditions on emissions and substances, through monitoring and testing requirements, to payment of emissions charges.

7. For example, state of the environment reports; annual drinking water quality reports; reports on public authority monitoring; guidelines on environmental audits; eco-label reports; codes of practice; BATNEEC specifications.

8. Most notably air and water quality management plans.

9. Including registers of IPC licences; prescribed substances; quality-controlled laboratories.

10. Access to Information on the Environment Regulations 1993 (SI No. 133/1993).

11. Compare to the far lower maximum penalties under section 12 of the Air Pollution Act, 1987, and section 24 of the Local Government (Water Pollution) (Amendment) Act, 1990.

12. Section 104 came into operation on 10 August 1993; see EPA Act, 1992 (Commencement) Order, 1993 (SI No. 235/1993).

13. As of writing, section 105 has not been commenced.

14. i.e. local, sanitary and planning authorities.

15. Planning authorities will still be responsible for managing the pollution aspects of activities not included in the First Schedule to the Act.

16. On the assignment and transfer of functions in general, see sections 53 and 54; on the extension of powers, see sections 100 to 102.

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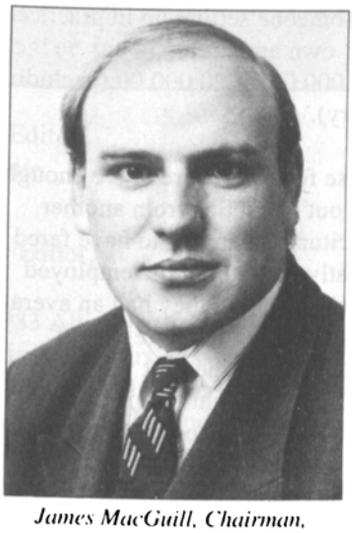
Review of the Education and Training of Apprentices



James MacGuill, Chairman, Education Advisory Committee.

The task of educating and training future members of the profession is an ever-challenging and onerous one. It is necessary from time to time to step back and review the contents of the courses in the Law School and the teaching methodology. The objective is to run an efficient and effective Law School and to ensure that apprentices are receiving quality formation for their future careers.

The Education Advisory Committee, under the chairmanship of *James MacGuill*, has recently set up three working groups with a view to producing comprehensive documents on the following areas:

Review of Current Courses

The objective of this working group is to review the structure and content of all modules which are currently being taught on the Professional and Advanced Courses. A further objective is to try to ensure that all courses have a component which will deal with the ethical and professional difficulties which can arise in practice. This review will seek to make the necessary link between the Professional Course, the Advanced Course, the Continuing Legal Education programme and all the specialist and regulatory committees of the Society. New areas including non-law subjects (for example, practice management and computer training) will be investigated and appropriate modules will be developed. It is also intended to put in place a system which will allow for a regular review of all subjects being taught on Law School courses.

Working Group Co-Ordinator: *John Costello*, Eugene F. Collins & Son.

Teaching Methods: Training and Support for Consultants

The objective of this working group is to evaluate critically the various teaching methods which are currently employed in the Law School. Should we give students more advanced reading? How effective is the tutorial system? How can we ensure more active student participation? How can we ensure the highest teaching standards from our consultants and tutors? The examination and continual assessment system will also be reviewed.

Working Group Co-Ordinator: *Professor Richard Woulfe*, Director of Education.

Apprentice/Master Training Manual

This working group is aiming to compile a user-friendly manual which will be an effective tool for both master and apprentice during the in-office training period.

This manual will set out a training schedule which will cover all the major areas of practice and which will indicate the type of work apprentices should be exposed to in the course of their apprenticeship, the level of responsibility appropriate at each stage and a method for evaluating the training being received. It will provide a barometer for both master and apprentice of the work experience which should be achieved at each stage of the apprenticeship. If there is a clear lack of exposure in particular areas this can be identified in advance and the master and apprentice could make alternative arrangements to cover any lacuna. This manual will incorporate standard documentation including the apprenticeship deed and the memorandum and undertaking of the master. It will also include reading lists, alternative career possibilities and a help section.

Working Group Co-Ordinator: *James MacGuill.*

Readers will recognise that the task of such a comprehensive review as outlined above is a complex and challenging one. We would invite you to put forward your views on any or all of the above directly to the co-ordinator of each of the working groups or, by sending your written contribution to *Harriet Kinahan,* Education Officer, Law School, Blackhall Place. ❐

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Are We Over-Paid?

The Younger Members Committee carried out a salary survey in April, 1993 of all solicitors who qualified within the last seven years. There were 240 replies to the survey with 46% of replies from Dublin and 54% from the rest of the country. It is estimated that there are approximately 1,000 solicitors in practice who have qualified within the relevant seven year period.

Most of the solicitors who responded were employed as assistant solicitors in a firm in the first five years after qualification. These solicitors were paid an average gross salary of £13,000.00 in the first year after qualification. This is broadly in line with the Law Society's recommended salary for assistant solicitors, although it was noted from the survey that some solicitors were paid as little as £5,000 to £7,000 in their first year of qualification. There appears to be a gradual increase in salary for employed solicitors over the first five years of their employment. Those who are promoted to a partnership with the first five years tend to earn somewhat more, in some cases as much as £25,000 by the fifth year after qualification.

The results of the survey indicate that about 10% of those replying were self-employed or partners in a firm. Of those 10% approximately 25% became self-employed by starting their own practice. 50% were promoted within a firm, 20% inherited a practice and the balance bought out a practice. Therefore, only 2.5% of the solicitors who responded had actually set up their own practice within five years of qualification.

The survey showed that in the first year after setting up a practice, a solicitor earned a gross salary of less than £10,000.00. This salary appears to have increased gradually over the years and after five years rose on average to between £17,000.00 and £20,000.00, but against this it has been estimated that the start up costs for someone setting up in practice on their own are not less than £15,000.00 – £20,000.00 (excluding salary).

Those few who were brave enough to buy out a practice from another solicitor also appear to have fared slightly better than the employed solicitor, in that they had an average starting salary in the region of £18,000.00 in the first year after the practice is bought out. However, presumably the cost of borrowing to buy the practice must also be taken into account.

This survey gives a rough guide to what may be expected in the first five years of qualification. When one takes into account the costs of getting through university and the apprenticeship system, it is clear that for the majority of newly-qualified solicitors the legal profession is no gravy train. ❐

Younger Members Committee

SADSI News

Having held its first social event of the year on the 21 January, the 110th session of SADSI is well underway! The "Poxy Dress Dance" in Monkstown RFC was an "unbridled" success, with a particularly large motley crew of apprentices present!!

As you will have noted from Auditor *Philippa Howley's* recent letter, many more events are scheduled for the near future. Check your letter and watch this space! One such event is the upcoming Ceili night on 15 April. Any traditional musicians out there are invited to play either individually or as a group. If interested, contact *Robert Boland* at (01) 6715522.

With the ever-increasing number of solicitors' apprentices, and the problems which they are bound to face from time to time, remember that SADSI is YOUR representative body. In this regard, *John Menton* as SADSI's Education Officer is now a voting member of the Education Advisory Committee. If there are any issues which you feel should be raised on your behalf at these meetings, please contact John at (01) 6764661 or Philippa at (01) 6763721.

Presently, SADSI are compiling the accommodation register to help apprentices seeking short term accommodation while attending courses at Blackhall Place. This has proved to be a great success with previous courses and is being updated with the March/August courses specifically in mind. Anyone who has accommodation to offer or who is seeking accommodation should contact *Fidelma McManus* at (01) 6763721.

Through this column, SADSI hopes to keep you informed of all matters relevant to apprentices. As your Society, we invite any articles, submissions or items of news which you would like featured on this page. Ideas or suggestions you may have in relation to events or the running of the society are most welcome and should be sent to: *Barbara Loftus* (Fax 096-22336) or *Paul Lavery* (Fax 01-8290010). See you next month! ❐

Barbara Loftus and Paul Lavery.

CORRESPONDENCE

Master Leases

The Editor,
Gazette

Dear Editor,

In 1983 Allied Irish Banks Plc and The Irish Farmers' Association with the co-operation of the Incorporated Law Society of Ireland and the Royal Institution of Chartered Surveyors launched a Master Lease for the long term leasing of land. The Master Lease was the result of considerable work done by representatives of AIB, IFA, the Law Society and the Royal Institution of Chartered Surveyors during which I represented IFA. The Master Lease, as a precedent, was made available to practitioners and others through AIB and I understand was reasonably widely used between then and now.

With the on-set of the scheme of Early Retirement from Farming in implementation of Council Regulation (EEC) No. 1079/92 it is believed that the Master Lease will be used much more than heretofore and it has been decided by AIB and IFA to update the Master Lease to take account of changes in the law since then.

The undersigned is advising IFA in this regard and the purpose of this letter is to request any practitioners who may have used the Master Lease and who may have encountered any anomalies or problems to write to me at the address below so that any such anomalies or problems can be given due consideration.

Yours etc.,

Brendan Walsh,
Brendan Walsh & Partners,
18 Herbert Street, Dublin 2,
Tel. 6762207. Fax 6612175

Basic Documents on Human Rights

The Editor,
Gazette

Dear Editor,

I must take issue with the short review of Brownlie's *Basic Documents on Human Rights,* which appeared in the January/February edition of the Gazette, with the byeline "JFB". This piece, by means of contradiction, error and misplaced opinion, fails to do justice to a work which continues to be relied on by grateful practitioners and students alike.

The weaknesses of the review are well displayed at the paragraph in which the book is assessed in terms of applicability to the war in the former Yugoslavia. Here the reviewer fails to acknowledge the generally recognised distinction between the disciplines of human right law and humanitarian law. Also, he or she would appear not to realise that human right law applies throughout the former Yugoslavia and plays a central role in informing international responses to the tragedy. Such unfamiliarity with the field leads the reviewer to make unfair criticism of the Brownlie work.

Problems again crop up in the review's penultimate paragraph. What does the reviewer mean by, "the socio-political era"? Indeed, what is meant by the phrase, "the collection of European Conventions, principally that on Human Rights", given that all the European instruments included in the book are about human rights? More importantly, why does he or she suggest that only the European instruments might be of use to the practitioner? Surely Ireland's recent experience with regard to the International Covenant on Civil and Political Rights has demonstrated the considerable practice potential for solicitors willing to acquaint themselves with global human rights law.

Then there are the comments concerning the book's index. These seem especially misplaced given the Brownlie's work is a compendium of source documents and not a text book or monograph. Indeed, the index seems to be on par with others in the genre and entirely satisfactory for research purposes.

Addressing the issue of the size of the index, the review ends with the comment that, "the high reputation of the Oxford University Press is sadly diminished by such a fall from acceptable standards". Might one not appropriately redirect these words to "JFB" and the *Gazette*?

Yours etc.,

Michael O'Flaherty,
Solicitor,
United Nations Centre for Human Rights.

Willie O'Reilly, RIP

The Editor,
Gazette

Dear Editor,

Brian and I wish to thank all of you for your support and sympathy on the death (on 20 November, 1993) of a much loved husband and father . . . Willie.

To the President, Council, Director General and staff of the Law Society, the Dublin Solicitors' Bar Association, the Society of Young Solicitors, and to others in the profession who also attended the removal and the funeral and to those who wrote us such beautiful letters with mass cards, from all over the country, many thanks.

It was especially poignant to see so many ex-auditors as, of all his commitments, the Debating Society

was the one Willie cherished most. In every letter we got mention was made of all the happy times we had together.

And there were happy times – the Monday night debates, with distinguished chairmen and our own great orators, especially in the fifties. The Saturday night dances, when it was said "through these portals pass the most beautiful girls in Dublin" and the inevitable parties afterwards. The dress dances (as we called them then) in the Gresham; we have all the group photographs.

But the highlight of the year was the Inaugural, when the Auditor was cossetted like a mediaeval Royal Prince, while his handmaidens helped me prepare the feast; they to emerge, that evening in all their beauty, some to collect medals, (sexism was an unknown word then but I doubt if we would have cared) and, of course, the party afterwards which went on until dawn.

The other great day was the election of the Auditor, Officers and Committee. Does anyone remember the Equity Examiner? All the romances were revealed (and some that existed only in the Editor's imagination) and then the "Innings" that night. In the early years, we used to have it in Mills of Merrion Row but we had some other good venues. That was our night to be cossetted.

And the Society of Young Solicitors – a natural follow on. Indeed it was no coincidence that in the early years of the SYS the Chairman was an ex-auditor or one of the ex-officers of SADSI and while the Debating Society never really adjusted to Blackhall Place, the SYS went from strength to strength, to become highly successful. Of course, the highlight of the SYS week-ends, for the privileged few, was the Poker Club.

These memories and many more will ensure that Willie will always be with us.

Yours etc.,
Dymphna O'Reilly

Israeli Attorney Seeks Contact

The Editor,
Gazette

Dear Editor,

I am an Israeli attorney who is interested in making contact with colleagues in Ireland.

Recently, our two nations opened diplomatic relations and I believe that the flow of mutual business transactions will likely grow with the coming years.

Therefore, I would be pleased to establish contact with law offices in Ireland who may be interested in this exchange.

I am a national committee officer in our Israel Bar, an adjunct law instructor at a local law school and engage in a civil and commercial law practice.

I look forward to hearing from you and receiving information on your society.

Yours etc.,

David Leitman,
Adv.,
20 Weizman Street,
Herzliya 46498,
Israel. ❐

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Travel Lawyers Meet In Dublin

The ninth international conference of IFTTA, the International Forum of Travel and Tourism Advocates, is taking place in Dublin from May 23 to May 25, 1994. The conference is being co-sponsored by the International Bar Association Section on Business Law, Travel and Tourism Committee.

The aim of IFTTA is to provide a resource, worldwide, of travel law information such as relevant legislation, regulations, agreements and case law from the members' jurisdictions.

Among the topics that will be dealt with at the conference in Dublin are:

- Tourism in areas of conflict – overcoming prejudice and rebuilding confidence.
- Competition law – the impact on the airline and travel industries.
- Special group travel – legal framework for tour operators and travel agents.
- Protecting our heritage – tourism: the responsible approach.

Further information and conference registration forms are available from:

Helen Higgins,
Conference Co-ordinator,
Ninth International Congress,
IFTTA,
4 Inns Court,
Winetavern Street,
Dublin 8.

Telephone: 01 6794400
Fax: 01 6791463. ❐

Irish Lawyers Fishing Club

This year the Irish Lawyers Fishing Club's Annual Fishing Trip will be to Lough Conn on 13 and 14 May, 1994 (Salmon Fishing on 15 May to be organised).

Further details are available from *Michael O'Byrne* phone 046-40004. ❐

Companies (Amendment) Act, 1990 – Submission suggests greater use of Court Protection

The Department of Enterprise and Employment has invited submissions concerning the court protection legislation with a view to possibly amending such legislation. The Company and Commercial Law Committee of the Law Society made a submission to the Department in January 1994. A copy of the Submission may be obtained from *Eileen Brazil* in the Law Society. In summary, the submission attempted to identify matters which have created difficulties and to suggest measures which may encourage a greater use of the court protection procedure. Legislative schemes dealing with court protection in the United Kingdom, United States and Australia were examined. The submission includes proposals that:

1. A pre-petition report be prepared containing appropriate detailed financial information so that the court may assess correctly whether there is a reasonable prospect of survival for a company if it is granted court protection.

2. A set of objective criteria or purposes be introduced for the granting of court protection. The court would then have to consider that the making of the order would achieve at least one of these purposes before granting a company protection, as currently there is no onus of proof on the petitioner to show that there is either a real or reasonable prospect of the company surviving but only some prospect.

3. Either the court should not consider the appointment of an examiner where a receiver is already in place, or where a receiver is in place for not more than three days a court would appoint an examiner (subject to (1) and (2) above) only where a majority of two-thirds in value of the creditors approve such a course of action.

4. Where a receiver is obliged to cease to act on the appointment of an examiner, the obligations and liabilities of the receiver, including the obligation of the receiver to make payment to preferential creditors (pursuant to section 98 of the Companies Act, 1963), should be terminated.

5. A fixed chargeholder's security should not be diluted by fresh borrowings secured in priority to it and the Australian system whereby fresh borrowings rank in priority to floating charges but not to fixed charges should be considered.

6. A bank's right of set-off be unaffected by the appointment of an examiner.

7. To foster the concept of a "rescue culture" it is suggested that, as provided in the Act, the directors should retain control subject to the direction of the court in certain cases. However, a schedule of the debts which may be repaid should be set out in the pre-petition report to avoid directors re-paying indebtedness to creditors of their choice. In other cases, the examiner should be required to apply to the court before the debts are repaid.

8. There should be a reporting procedure by the directors, possibly through the examiner to the court with regard to the incurring of debts during the protection period.

9. The creditors' committee be comprised of the largest creditors in value and, when necessary, be supplemented by the appointment of representatives of the unsecured creditors.

10. That guarantors may have their guarantees enforced, even if the company is under court protection and, in any event, remain liable for the full amount of the guarantee even if the company debt is written down (with retention of the guarantor's right of subrogation).

11. The present requirement providing that there must be approval of the examiner's proposals by at least one class of affected members and one class of affected creditors be replaced by a requirement that there must be approval by two classes only, at least one of which is a class of creditors. The Act provides that a court may confirm proposals which it considers to be "fair and reasonable" in relation to a class of creditors which has not accepted the proposals. The absence of a definition of "fair and reasonable" leaves much discretion to the court which may lead to uncertainty. It is suggested that guidelines and restrictions similar to those in the United States could be stipulated in the Act.

12. The designated classes of creditors be set out by statute and court approval should be required also in respect of the examiner's establishment of and division into classes (along the lines applicable in the United States).

13. There is inadequate control in the Act and Rules on the content of the proposals formulated by the examiner, particularly in relation to the priority of entitlements of creditors; accordingly, the examiner's discretion in this regard should be controlled.

(Continued on page 78)

Minister Highlights Benefits of Builders Guarantee

In the course of a recent address at the launch of the House Building Manual by the National House Guarantee Scheme, the Minister for the Environment, *Michael Smith* TD, expressed the hope that those involved in giving professional advice, such as solicitors or estate agents, would as a matter of policy advert to the availability, or otherwise, of a guarantee in all new house purchases.

The benefits of buying a new house covered by the NHBGS guarantee include monitoring of construction standards, the attractiveness of the guarantee to lending agencies, cover for the buyer for loss of deposit and a means of redress in the event of structural problems arising after completion.

The Minister also said that the introduction of the Building Regulations, which came into force a year and a half ago, was one of the most significant developments for the construction industry in recent years. "They brought into force for the first time a building code for the country as a whole. Put simply, the objective of the Regulations is to promote good and caring building practice." The Regulations, he said, provided objective guidance as to what actually constituted good building practice. "In keeping with that approach the Regulations do not require certification of compliance by contractors. This does not, of course, in any way diminish the responsibility of builders to ensure that everything they do fully meets the requirements of the Regulations. The law requires compliance and the absence of a certification requirement does not in any way diminish builders' obligations under the law."

Michael Smith, TD, Minister for the Environment

The Minister continued "with approximately 13,700 registrations last year, the vast majority of new homes built for private sale now enjoy the benefits of the NHBGS Guarantee. There is still a small number of new house purchasers who do not have this protection and I would expect that those involved in giving professional advice, such as solicitors or estate agents, would as a matter of policy advert to the availability or otherwise of a guarantee in all new house purchases".

The Minister said that the scope of the guarantee had been improved in 1990 when the scheme was reviewed by the Guarantee Company in consultation with his Department. Purchasers now enjoyed deposit cover and indemnity against a broader range of building defects, backed up by the substantial reserves the company had built up. ❐

Submission on Companies (Amendment) Act

(Continued from page 77)

14. Provision be made for the payment of leasing creditors' current entitlements as an expense of the court protection.

15. The inequitable benefit of the Revenue Commissioners whereby debt written down is treated as a taxable receipt in the hands of the company and liable to corporation tax be removed.

Company and Commercial Law Committee ❐

At the parchment ceremony on 4 February were l-r: Eddie O'Connor who was admitted to the Roll of Solicitors, with his mother, Nancy O'Connor; his father, P. Desmond O'Connor (right) who has been in practice as a solicitor for 42 years and (second from right) Professor Richard Woulfe, Director of Education.

UCD Appoints Visiting Fellow

Brian J. O'Connor has been appointed a Visiting Fellow of the Adjunct Faculty of Law at University College, Dublin.

Mr O'Connor is a senior partner in the firm of McCann FitzGerald and specialises in corporate and banking law. By participating in the UCD law school's Adjunct Faculty Mr O'Connor is making a contribution to his *alma mater* where he had a distinguished undergraduate and postgraduate career (he graduated with BA MA and LLB degrees).

Mr O'Connor has, over the years, in addition to his busy commercial law practice, played an active role in legal education. He lectured in University College Dublin in Company and Commercial Law from 1962 to 1974, and was an examiner in Commercial Law for the Incorporated Law Society. On the inception of the degree of MBA in 1964 he planned the special course in business law and lectured on the topic until 1974. His publications include: *Doing Business in Ireland* (1987); *Defensive Measures Against Hostile Take-overs* (1990); *International Mergers* (1991); *Insider Trading* (1992). Mr O'Connor is a former Chairman of the Law Society's Committee on Company and Commercial Law and is currently the Irish representative on the Company Law Committee of the Council of the Bars and Law Societies of the European Community. He is also a member of the International Bar Association's committee on Banking Law and on Issues and Trading in Securities.

Brian O'Connor, Senior Partner, McCann FitzGerald

In his capacity as Visiting Fellow and Adjunct Faculty member Mr O'Connor will play a part in the law school's Master in Commercial Law degree by holding a series of seminars on the following: (i) Some Problems of Merger Control (ii) Acquisitions of Business Assets (iii) Aspects of Take-Overs of Publicly Quoted Companies (iv) The Role of the Legal Opinion in International Credit Transactions.

Apart from enabling the Law Faculty at UCD to welcome back its alumni, the Adjunct Faculty scheme recognises the valuable contribution which distinguished legal practitioners can make to the law school. Mr O'Connor will join *Maurice Curran* (Mason, Hayes and Curran) who inaugurated the Adjunct Faculty in January, 1993. ❐

Joint North/South Seminar on Criminal Law

The Criminal Law Committee in association with the Northern Ireland Solicitors Criminal Bar Association held its first joint seminar in Dundalk from 11 to 13 February. This seminar provided a forum for solicitors with a particular interest in the area of criminal law to meet with their colleagues from Northern Ireland and to exchange information on the methods of approach to a criminal trial and the protection of clients in custody.

The first guest speaker was *Alistair Duff*, Solicitor, Edinburgh, who represents the Libyans accused of involvement in the Lockerbie air disaster. He gave a broad outline of the Scottish criminal process before specifically dealing with the rights of clients in custody. This talk provoked an animated question and answer session during the course of which we learnt with considerable interest of the adverse conclusions that can be drawn in the North when an accused elects to remain silent and the undertakings that are sometimes required by the authorities before a solicitor can gain access to a client in custody.

The following day, *Dr. Noel Spence*, a forensic scientist, originally from Belfast and now based in Cambridge, gave an extremely useful and informative talk on the subject of forensic evidence in the preparation of a defence to a criminal charge.

The Committee would like to thank *Dermot Lavery*, Solicitor, Dundalk, for a most entertaining after dinner discourse on certain aspects of the Irish Constitution, *Roger McGinley*, President of the Louth Bar Association for the welcome afforded by him to all participants, and *James MacGuill, Barra Mugrory* and *Ciaran Steele* who undertook most of the work in organising what turned out to be a most successful event and one which the Committee hopes to repeat in the not too distant future.

Criminal Law Committee ❐

Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clarlann na Talun), Chancery Street,
Dublin 7.

Published: 14 March, 1994.

Cornelius Tuohy, Cragg, Lahinch, Co. Clare. Folio: 12714F; Land: Lahinch; Area: 0.019 acres. **Co. Clare.**

Michael G. Keody, Faulkerra, Clifden, Co. Galway. Folio: (1) 22303, (2) 28708; Townland: (1) Clifden Demesne; Clifden Demesne (one undivided ninth part of parts); (2) Clifden. Area: (1) 10(a) 2(r) 33(p); 1(a) 3(r) 0(p), (2) 6(a) 0(r) 27(p). **Co. Galway.**

Vincent & Bridie Tedders, 28 Sycomore Drive, Highfield Park, Galway. Folio: 810L; Townland: Blackthorn. Area: 0(a) 0(r) 15(p). **Co. Galway.**

Seamus Naughton, Carrigeen, Rahara, Co. Roscommon. Folio: 7515F; Townland: Galey. Area: 0.420 acres. **Co. Roscommon.**

Noel Coughlan, Folio: 468L; Land: Property known as 11 Pound Street. **Co. Kings.**

John Valentine Hennessy, Folio: 29510; Land: Ballynacourty; Area: 5(a) 3(r) 6(p). **Co. Tipperary.**

Joseph Gilligan, Folio: 924; Land: Cornafurrish; Area: 26(a) 1(r) 11(p); **Co. Kings.**

Laurence Clinton (Farmer), The Grange, Skerries, Co. Dublin. Folio: 2081; Townland: Baltrasna, Barony of Balrothery East; Area: 18.497 hectares. **Co. Dublin.**

Joseph Finnegan, Folio: 935; Land: Cloonagh; Area: 7(a) 2(r) 5(p). **Co. Longford.**

Ellen Kelly, Kincon, Killala, Co. Mayo, Folio: 9966; Townland: Kincon; Area: 26(a) 2(r) 26(p). **Co. Mayo.**

Michael J. McNamara, Kilmihill, Co. Clare. Folio: 29019; Townland: Kilmihill; Area: 0(a) 0(r) 2(p). **Co. Clare.**

Bartholomew Collins, Folio: 1659F; Land: Ballingarrane; Area: 0(a) 2(r) 2(p) **Co. Limerick.**

Joseph Melvin, Cloonargid, Lisacul, Castlerea, Co. Roscommon. Folio: 8876; Townland: Cloonargid; Area; 13(a) 0(r) 10(p). **Co. Roscommon.**

Joseph F. Maguire, Folio: 19802; Land: Grange. **Co. Meath.**

William Moran, Folio: 10155R; Land: Drumcoora; Area: 5(a) 1(r) 37(p). **Co. Leitrim.**

Michael Howard, Derry Corrib, Belmullet, Ballina, Co. Mayo. Folio: 29731; Townland: Derrycorrib, Bunnahowen; Area: 38(a) 3(r) 2(p); 1(a) 0(r) 20(p). **Co. Mayo.**

Westgate Engineering Limited, Folio: 6086F; Land: Toberaheena; Area: 1.006 acres. **Co. Tipperary.**

Matthew Ennis, (deceased), 26 Croakpatrick Road, Navan Road, Dublin. Folio: 3815L; Land: property known as 26, Croakpatrick Road on the north side thereof in the parish of Castleknock, District of Cabragh. **Co. Dublin.**

Sarah Canny, Boleyboy, Irishtown, Claremorris, Co. Mayo. Folio: 46516; Townland: Boleyboy; Area: 26(a) 1(r) 24(p). **Co. Mayo.**

James Kavanagh, Folio: 7908; Land: Barony of Arklow and County of Wicklow. **Co. Wicklow.**

Michael J. Houlihan, Folio: 25197; Land: Part of the lands of Ballyronan; Area: 1(a) 0(r) 0(p). **Co. Kerry.**

Christopher Howard, Folio: 17351; Land: Townland of Old Kilcullen, Barony of Kilcullen and County of Kildare. **Co Kildare.**

Annie Miley, Folio: 8112; Land: Townland of Slievecorragh, Barony of Talbotstown Lower and County of Wicklow. **Co. Wicklow.**

Francis Noel McLoughlin, Folio: 19218L; Land: Townland of Oldbawn in the Barony of Uppercross situated to the east side of Old Bawn Road in the Town of Tallaght. **Co. Dublin.**

Michael Kelly, Folio: 2993F; Land: Knockmay. **Co. Queens.**

Thomas Costello, Folio: 35786; Land: (1) Annagh, (2) Annagh; Area: (1) 67(a) 1(r) 27(p), (2) 1(a) 0(r) 6(p). **Co. Galway.**

Patrick Cummins, Cloonlee, Knock, Co. Mayo, Folio: 22878F; Townland: Cloonlee; Area: 2.214 Hectares. **Co. Mayo.** Solr. Ref: K/MG/C.456

Peter Watson, Kilmocalmock, Drum, Athlone, Co. Westmeath. Folio: 10327F; Land: (1) Kilmocalmock, (2) Kilmocalmock, (3) Taduff East, (4) Kilmocalmock, (5) Kilmocalmock; Area: (1) 5.867 Hectares, (2) –, (3) 4.211 Hectares, (4) 12.461 Hectares, (5) 1.315 Hectares. **Co. Roscommon.**

Michael J. Barrett and Bernadette Barrett, 18 Martello Court, Portmarnock, Co. Dublin. Folio: 15568F; Land: Townland of Saint Helens in the Barony of Coolock. **Co. Dublin.**

Edward J. Byrne, Folio: 18476 closed to Folio 1272F; Land: Ballyhide; Area: 17(a) 0(r) 30(p); **Co. Queens.**

Michael Quinn, Folio: 7551; Land: Gortahile; Area: 51(a) 0(r) 10(p). **Co. Queens.**

Timothy J. Dwyer and Catherine Dwyer, Folio: 27303F; Lands: Townland of Ardmanagh, Barony of Carbery West (West Division). **Co. Cork.**

Donal O'Hanlon, Folio: 46444; Land: Barony of Duhallow and County of Cork. **Co. Cork.**

John A. O'Halloran, Folio: 56203; Land: Townland of Raheens, Barony of Kerrycurrihy and County of Cork. **Co. Cork.**

Laoighis County Committee of Agriculture, Folio: 1695F; Land: Part of the Townland of Maryborough. **Co. Laois.**

Gladys Giles, Folio: 11210; Land: Coolbeggan East. **Co. Waterford.**

Bernard Joseph Forde, Church Street, Strokestown, Co. Roscommon, Folio: 10124; Townland: Cloonshee; Area: 38(a) 2(r) 0(p). **Co. Roscommon.**

Bernard Heneghan, Folio: 39818, Townland: (1) Carrownrooaun, (2) Carrownrooaun; Area: (1) 18(a) 0(r) 28(p), (2) 14(a) 0(r) 34(p). **Co. Galway.**

Michael McHugh, Folio: 818F; Land: Drumbroagh; Area: 0(r) 3(r) 8(p). **Co. Monaghan.**

Mary Farrell, Folio: 16685; Land: Tullylannan; Area: 21(a) 2(r) 9(p). **Co. Leitrim.**

Bernard Harton, (deceased), Folio: 25669; Land: Creighan; Area: 0(a) 1(r) 3(p). **Co. Cavan.**

Lost Wills

Buckley, Sonny (Timothy), deceased, late of "Genzenno", Wesley Terrace, Southern Road, Cork; "Glencar", Douglas Road, Cork; 33 Hillcourt Terrace, Donnybrook, Douglas, Cork; Cossane, Kildinan, Watergrasshill, Co. Cork; Ballinreenlanig, Nohoval, Co. Cork, and England. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased, who died in December 1993, please contact P.J. O'Driscoll & Sons, Solicitors, 73 South Mall, Cork. Telephone: 021 271421 or Fax: 021 274709.

Cruite, Patrick, deceased, late of 24 Corrig Avenue, Dun Laoghaire, Co. Dublin who died on 8 October 1992, at St. Vincent's Hospital, Dublin 4. Would any person having knowledge of the whereabouts of a will of the above deceased please contact Noelle Maguire, Solicitor, 10 Ardee Street, Dublin 8. Telephone: 01 542360 or Fax: 01 536543.

O'Meara, Patrick Gerard (otherwise Gerard O'Meara), deceased, late of 35 Verschoyle Court, Dublin 2, formerly of Killorath, Bruff, County Limerick. Would any person having a knowledge of the whereabouts of the will of the above named deceased who died on 24 December 1993, please contact O'Keefe & Lynch, Solicitors, 30 Molesworth Street, Dublin 2. Telephone: 6761537 or Fax: 6611576.

Byrne, William John, (obit 9 July 1987) and **Byrne, Jean** (obit 15 August 1989) both late of 23 Dunree Park, Coolock, Dublin 5. Would any person have knowledge of the whereabouts of any will in respect of either of the above named kindly contact Hanby Wallace, Solicitors, Unit 4, Sutton Cross Centre, Dublin 13. Telephone: 8390100 or Fax: 8320093.

Lyon, Mary, deceased, late of Port, Abbeyfeale, Co. Limerick. Will any person have knowledge of the will of the above named deceased please contact Gleeson McGrath Baldwin, Solicitors, 29 Anglesea Street, Dublin 2. Telephone: 6718048.

McCabe, Peter, late of 66 Hampton Cove, Balbriggan, Co. Dublin. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died on 4 February 1994, please contact Yvonne R. Gilmer & Company, Solicitors, 129 Cromwellsfort Road, Walkinstown, Dublin 12. Telephone: 4551227/4569309.

Hannon, Edward, deceased, late of Cummerstown, Collinstown, Co. Westmeath. Would any person having knowledge of the whereabouts of any will of the above named deceased please contact Messrs John P. Prior & Company, Solicitors, Cavan Street, Oldcastle, Co. Meath. Telephone: 049 41971 or Fax: 049 41972.

Employment

Able, hardworking, ex-teacher, MA 34, passed latest Final Exam. (Part 1), seeks apprenticeship (starting March '95). Phone Des at 091-92614 for further details.

Solicitor, 15 years post qualification experience, seeks challenging position Dublin area or environs. Ph: 283 1683.

Miscellaneous

Acts of Oireachtas 1970 required. Price please to 094-71321 or fax: 094-62034.

IBEC Conference on Competition Law and Policy. The papers delivered to the IBEC Conference on Competition Law and Policy are available from Ms. Eilin Marsh, IBEC, Kildare Street, Dublin 2. Telephone 6779801, Fax 6777823, at a price of £10. The speakers included Mr. Patrick Lyons, Chairman of the Competition Authority; Mr. John Cooke, SC; Mr. Bill Prasifka, William Fry Solicitors; Mr. John Fingleton, Trinity College; Mr. Gerry Grogan, Chief Executive, John Player & Sons and Mr C D Ehlermann, Director General of Competition for the EC Commission.

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Northern Ireland Agents for all contentious and non contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry. Tel: 080693-61616 or Fax: 080693-67712.

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sq ft. with street frontage being renovated in designated area close to the Four Courts. Reply to Box: 20.

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London West End Solicitors will advise and undertake UK related matters. All areas – Corporate/ Private Client. Resident Irish Solicitor. Reciprocal arrangement and fee sharing envisaged. Agency work also. Contact Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3 DL. Tel. 0044-71-589-0141. Fax. 0044-71-225-3935.

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We are willing to act as agents for Irish Solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, 2/3 The Birtles, Wythenshawe Civil Centre, Manchester, M22 5RF. Telephone: 0044-61-437-0527 – Facsimile: 0044-61-437-3225.

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County Down
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Lost Title Deeds

In the matter of the Landlord and Tenant (Ground Rents) Act, 1967 and the Landlord and Tenant (Ground Rents) (2) Act, 1978 and the application thereunder of Mr Gerard O'Callaghan of Belgrave Court, Rathmines, Dublin 6.

To the estates of Maria Connor of Iniscarra, Glebe in the County of Cork, Henry Connor, late of Lower Pembroke Street in the City of Dublin, Frederick Connor, late of Iniscarra, Glebe in the County of Cork.

Take notice that the above named Gerard O'Callaghan has served Notice of Intention to Acquire Fee Simple on the Dublin County Registrar.

The lands to which the notice refers are ALL THAT AND THOSE that piece or plot of ground at the rear of 13 Belgrave Road, Rathmines in the Barony of Upper Cross, and City of Dublin and held under lease dated the 15th August 1854 between the said Maria Connor and Henry Connor of the first part, the said Henry Connor, Frederick Thomas Connor and the Reverend Francis Connor of Iniscarra, Glebe in the County of Cork of the second part, Daniel Connolly of Fitzwilliam Place in the City of Dublin and Jane Connolly of Fitzwilliam Place in the City of Dublin of the third part and Patrick Joseph Plunkett of Aungier Street in the City of Dublin of the fourth part.

Would any person having knowledge of the whereabouts of the successors in title of the above mentioned lessors please contact Messrs. Frank Lanigan Malcomson & Law, Solicitors, Court Place, Carlow – telephone (0503) 31745.

Probate re: Joseph Carroll Coventry

Would the Solicitor who tried to contact the above named please write to Stephen Carroll at 15 Forge Road, Kenilworth, Warwickshire, England or phone 0926 56214 between 1 and 5 p.m, or 0926 50089 evenings.

TURKS AND CAICOS ISLANDS
AND
THE ISLE OF MAN

Samuel McCleery

Attorney - at - Law and Solicitor of PO Box 127 in Grand Turk,Turks and Caicos Islands, British West Indies and at P. O. Box 7, Castletown, Isle of Man will be pleased to accept instructions generally from Irish Solicitors in the formation and administration of Exempt Turks and Caicos Island Companies and Non - Resident Isle of Man Companies as well as Trust Administration

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I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

Solicitors Benevolent Fund AGM

Notice is hereby given that the One Hundred and Thirtieth Annual General Meeting of the Solicitors Benevolent Association will be held at the Incorporated Law Society's Building, Blackhall Place, Dublin, on Friday 22 April 1994, at 12 noon:

1. To consider the Annual Report and Accounts for the year ended 30 November 1993.
2. To elect Directors.
3. To deal with other matters appropriate to a General Meeting.

Geraldine Pearse,
Secretary.

LAW SOCIETY EMPLOYMENT REGISTER

If you are a solicitor looking for a job you should place your CV on the Law Society's employment register.

If you wish to recruit a solicitor, on a full-time, part-time or locum basis why not use the register?

The service is free.

Phone *Hazel Boylan* at the Law School, 6710200, ext. 542.

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VOL. 88 NO. 3 APRIL, 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

SOLICITORS, DOCTORS, FEES AND SUBPOENAS

DEBATE ON SOLICITORS BILL CONTINUES

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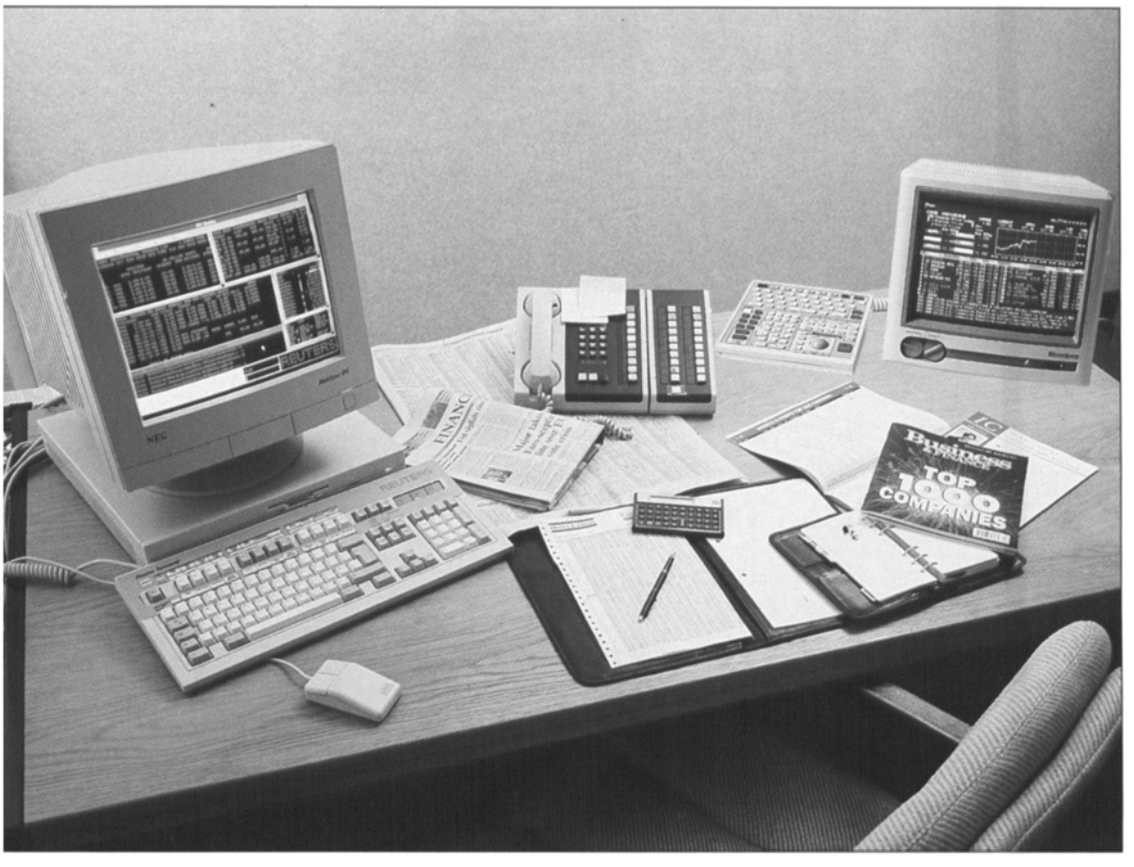

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INCORPORATED LAW SOCIETY OF IRELAND

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Front cover: The President of the Incorporated Law Society of Ireland (right), Michael V. O'Mahony, on the occasion of the Annual Dinner of the Council of the Society, with Andrew Carnson (left), President of the Law Society of Northern Ireland.

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VIEWPOINT

Solicitors, Doctors, Fees and *Subpoenas*

The relationship between solicitors and doctors in personal injury actions has given rise to some controversy in recent times and, in our view, it is a matter of importance that the professional bodies representing solicitors and the medical profession should examine the issues that have arisen so as to eliminate the potential for dispute.

There are essentially three areas where difficulties have arisen – the furnishing of medical reports, attendance by doctors as witnesses in court and the use by solicitors of the *subpoena.*

When a person has a personal injury claim against a third party, it is obviously essential that their claim should be properly substantiated and, in this regard, medical reports from the physician who treated the person are essential to the judicial process. In the recent past, the Medical Council has made it clear that doctors have a 'moral and professional responsibility' to provide a medical report if requested to do so. This is because, according to the Medical Council, failure to comply 'may lead to a patient being deprived of benefits to which he/she may be entitled'. This pronouncement has been helpful and has, at least, put the doctor's duty in relation to medical reports beyond dispute. The Law Society would contend that, for precisely the same reason, a doctor has a duty to attend court to give evidence if requested to do so and it would be surprising if there were many doctors who would have any difficulty with this view.

The problem, however, relates to the question of fees. In straightforward contractual terms, the responsibility for paying for a medical report is that of the patient (the solicitor's client) and not of the solicitor. However, many people pursuing personal injury claims cannot afford to meet the cost of outlay, including medical reports, and so the practice developed of solicitors agreeing to fund the outlay, to be recouped when the case is settled. It may be that, in the past, some solicitors, having accepted responsibility to meet the cost of medical reports, subsequently defaulted in discharging the fees involved and, consequently, many doctors, perhaps for that reason, feel the need to demand payment of their fees *in advance.* In our view, where a solicitor accepts instructions on the basis that he will fund the outlay, he should personally accept responsibility for the doctor's fees for a medical report and should agree an arrangement with the medical practitioner in relation to the discharge of such fees. Failure by the solicitor to pay should, in such circumstances, be a matter of professional misconduct. As against that, it seems to us, as a general principle, that there is no justification for doctors seeking the payment of fees *in advance.* They, like members of other professions, should, where the patient cannot afford to pay, be prepared to accept an undertaking from a solicitor that the fees will be discharged at the end of the case. Where the solicitor has not personally accepted responsibility, a doctor cannot *impose* that on him.

The same general principles should apply in relation to attendance of doctors in court. The Insurance Federation has agreed levels of fees for consultants and these are quite substantial. In addition, there is provision for the payment of stand-by fees where a doctor is put on notice that his attendance may be required on a particular day but he is not subsequently called. Moreover, cancellation fees are also payable. Demanding the payment of such fees *in advance* is unacceptable and an undertaking from a solicitor to discharge the fees at the end of the case ought to be sufficient. It is, of course, perfectly reasonable that doctors should be paid but where the patient cannot afford to pay the doctor may have to 'take his chances' just as solicitors have to do.

Apart from the issue of fees, some doctors have not in the past always appeared willing to accept their responsibility to attend court. Perhaps this resulted in some cases from an insufficient awareness of the duty involved. Where a solicitor has any doubt about a necessary witness attending, the interests of justice (as well as his own professional interest) leave him with no option but to serve a *subpoena.* Doctors understandably resent the *subpoena* process and the accusation has been made publicly that solicitors resort to it in order to evade paying doctors or simply as a demonstration of power. The Law Society has rejected these accusations but, in fairness to the medical profession, there may be a need for clarification of the circumstances in which the subpoena should be invoked by a solicitor.

As we have said, these are important issues affecting virtually all legal practices and medical practitioners. It is time that the Law Society and the medical organisations drew up appropriate guidelines covering the principles of good professional practice in these matters.

❐

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NEWS

Concern re Involvement of Private Practitioners in Legal Aid Scheme

At its meeting on 4 March the Council of the Law Society discussed the involvement of private practitioners in the Scheme of Civil Legal Aid and Advice. Some Council members expressed reservations that in a speech to the Annual Dinner of the Council, the Minister for Equality and Law Reform, *Mervyn Taylor* TD, had conveyed the impression that the Society had co-operated with the Minister's pilot project involving private practitioners in the Scheme, whereas, in fact, the Society had been unable to reach agreement with the Minister on an adequate level of fees for solicitors participating in the project. Council members said that they believed there were indications that the pilot scheme had not been as successful as the Minister had hoped and that a review of the scheme was currently underway. While the increased resources allocated by the Minister to the Scheme of Civil Legal Aid and Advice were welcome, it was disappointing that the Minister had not consulted the Law Society about the expansion of the Scheme.

Council members suggested that there should be further discussions with the Department of Equality and Law Reform concerning the involvement of private practitioners in the provision of legal aid. The research done by the Society's Costs Committee, which indicated that a practitioner needed to earn a minimum of £65.00 per hour to cover overheads, should form the basis of discussions on what would be an appropriate level of fees payable to private practitioners under the Scheme. The President of the Society, *Michael V O'Mahony*, said that the Minister should look at what it cost the Legal Aid Board to process a case and that this might be used as a basis for further discussions on the matter. He said he was hopeful that the Minister would come forward with an improved and more realistic offer.

The Council also expressed concern about the current level of delay in family law cases in circuits throughout the country. The President of the Society asked the Family Law and Civil Legal Aid Committee to consider the matter.

Solicitors Bill

The President informed the Council that the debate on the Second Stage of the Solicitors Bill would commence in the Dail towards the end of March and the Bill would then be referred to a select committee of the Dail. The President emphasised that it was important that members of the profession would forward their views on the Bill as promptly as possible. The Solicitors Bill Committee was already considering detailed drafting amendments. There were, he said, two main areas of principled opposition by the Society to the Bill. The first related to the provision that would prevent the Society from prohibiting advertising on fees, and the second concerned the provision that would oblige the Law Society to bear the costs of the office of the Legal Adjudicator. The President said he believed that this obligation had been placed on the Society because of a view in political circles that the Bill had to be exchequer-neutral. However, if the Society were to bear the cost of the office of the Legal Adjudicator, the independence of the adjudicator might be open to challenge.

Members of the Council queried recent media reports that the provision in the Bill that would place a cap on claims on the Compensation Fund of £250,000 was being reconsidered by the Government. The President and the Director General informed the Council that following discussions with the Department of Justice, and at political level, they believed it unlikely that the provision would be removed though there might be a question about the level of the cap.

Council Members noted with disappointment that the 1994 Bill retained a provision in the earlier 1991 Bill, which had permitted the Society to specify different rates of contribution to the Compensation Fund in relation to different classes of solicitor, despite the fact that in 1992 a policy decision had been taken by the Council of the Society to oppose the provision. The President confirmed that the Society had made it clear to officials of the Department of Justice and the Government that the profession was against the provision.

Proposal to Cap Personal Injuries Awards

The Council was informed that the previous day a meeting had taken place of Presidents and Secretaries of Bar Associations to consider the issue. It has been emphasised to the representatives from the Bar Associations that it was essential to lobby intensively their local TDs and public representatives on the issue. It was felt that it was particularly important to emphasise the injustice that would be created if a limit was placed on the level of compensation awards in personal injuries cases.

Some Council Members expressed unease about what they perceived to be a lack of a sense or urgency in the profession about the proposal although it was acknowledged that it was difficult to mount a campaign against the proposal in the absence of specific details as to how the Minister hoped to give effect to it.

It was also noted that the President and the Director General would be meeting the Irish Congress of Trade Unions, the insurance companies and Insurance Industry Federation for discussions. It was agreed that it was important to maintain lobbying efforts at a political level and to use every opportunity to highlight the inequity of the proposal. ❐

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Debate commences on Solicitors Bill

Changes to the Solicitors Bill and the commencement of the second stage debate of the legislation in Dail Eireann attracted much attention in the print media during the period under review.

Government changes its mind on conveyancing and probate

Following reports in the media on 24 February (see Mediawatch, March *Gazette*, Vol. 88 No. 2) that the Government had decided to drop provisions in the Solicitors Bill which would have permitted banks and other financial institutions to provide conveyancing and probate services, the newspapers of 25 February reported that the Government's decision was coming "under fire" from the banks, consumer groups and the Mortgage Holders Association. In a special report on law, the *Sunday Business Post* of February 27, published an interview with the President of the Law Society, *Michael V. O'Mahony*, in which he welcomed the decision. The article pointed out that the Law Society had expressed grave reservations about the future of the 15,000 people employed as support staff in legal practices throughout the country if banks, building societies, credit unions and insurance companies had been permitted to do conveyancing and probate work.

A one-page feature article in the *Irish Press* of 3 March 1994, focused on the Government's decision to drop the provision and it quoted the Minister of State at the Department of Justice, *Willie O'Dea* TD, as saying that the reason for his change of heart was that he wanted to keep the work within the ambit of the legal profession in order to maintain jobs in the sector. He said he was aware that probate and conveyancing work was the bread and butter of many solicitors' practices throughout the country.

The President of the Law Society, Michael V. O'Mahony, was interviewed on the RTE1 TV *Marketplace* programme on 9 March. Welcoming the Government's decision to drop the sections on conveyancing and probate, Michael O'Mahony said that the decision was in the public interest and not just the interests of the solicitors' profession. He emphasised that importance of people having access to *independent* legal advice when engaging in major transactions. It was important for a client, for example, in a house purchase, to engage the services of a solicitor who would act in and guard the client's – and only the client's – interest throughout the transaction.

Tribunal fees cloud debate

The commencement of the debate in the Dail on the second stage of the Solicitors (Amendment) Bill, 1994, coincided with scrutiny by the Dail Public Accounts Committee of the level of fees paid to barristers appearing for the State at the Beef Tribunal. All the national daily papers of 11 March reported the Minister of State at the Department of Justice, Willie O'Dea TD, at the commencement of the second stage debate, describing the bill as a major reforming measure which was intended to provide a modern framework for the profession. It was prepared, he said, against a background of persistent public concern about the way complaints were dealt with by the Law Society and about difficulties in obtaining redress against solicitors for negligence, shoddy work and overcharging. The Bill was strongly criticised by the Fine Gael spokesman on justice, *Gay Mitchell* TD, who denounced the high level of fees charged by members of the legal profession. Mr. Mitchell said the Bill was a staid and disappointing piece of legislation and there were only a few parts of the Bill which had not been written by the Law Society, but these had now been jettisoned following the intervention of the Fianna Fail lawyers in the house.

A front-page story in the *Evening Herald* of 11 March 1994, entitled "Bill to cap legal fees" reported that the Minister of State, Willie O'Dea, TD, had conceded that growing pressure to introduce legislation to regulate the Bar would have to be addressed. He said that personally he believed there was a need to regulate the Bar but that the matter was one for the Government as a whole to consider. Writing in the *Irish Times* of 12 March, political correspondent, *Denis Coughlan*, said: "the decision to retain the legal profession's monopoly in this area [probate and conveyancing] was taken without consultation with the Labour Party and is, even now, a matter for discussion at Cabinet". Denis Coughlan also reported comments by the Fine Gael justice spokesperson, Gay Mitchell TD, when Mr. Mitchell argued that there was a clear conflict of interest between the duties of the Law Society to represent solicitors while, at the same time, protecting the public. Mr. Mitchell asked for an independent body to be appointed to represent the consumer.

The *Sunday Independent* of 13 March 1994, reported the Minister of State at the Department of Justice, Willie O'Dea, as defending his decision not to allow banks to become involved in the provision of conveyancing and probate services. Mr. O'Dea said banks and insurance companies could have found themselves with a serious conflict of interest. He highlighted the provisions in the Bill which would allow for greater competition and would benefit the consumer such as the fact that the Law Society would be able to deal with complaints about fees and that solicitors would be allowed to advertise their fees which, he claimed, would give people a better

(Continued overleaf)

idea of how much it would cost them to take a case. He also pointed out that solicitors would be obliged to give clients an estimate of the cost of doing work. "There are 4,000 solicitors in practice in this country and I have no doubt now that people can shop around, the competition will be cut-throat," said Mr. O'Dea.

New Career options for solicitors

All the daily newspapers of 1 March, reported that the Law Society had published a brochure aimed at convincing employers of the benefits of hiring newly-qualified solicitors for other than legal posts. The papers noted that the drive to broaden career options was taking place because newly-qualified solicitors were finding it difficult to obtain jobs either in solicitors' practices or by establishing their own firms. The initiative was also the subject of a feature article in the *Cork Examiner* of 11 March which noted that, while in the past a school-leaver who secured a place on a university law course was perceived as being set up for life, today all that had changed as law graduates were finding it increasingly difficult to secure permanent employment in the legal field.

Barbara Cahalane ❐

Seminar on Caring Legally for the Incapacitated

The Public Relations Committee of the Society is staging a half day seminar on Wednesday 27 April 1994, on the theme of "Caring Legally for the Incapacitated – A Practical Response". The list of speakers will include:-

- *John Costello*, Solicitor, Eugene F. Collins
- *Gerry Ryan*, General Secretary of the National Association for the Mentally Handicapped of Ireland
- A representative from the office of the Registrar of Wards of Court.

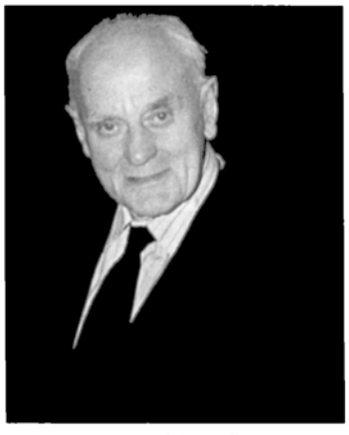
The seminar which takes place from 2.30 – 4.30 p.m. in the Members Extension, Blackhall Place, will examine the legal aspects of caring for mentally incapacitated persons including any special provisions that they may require.

Members of the profession are welcome to attend the seminar. If you would like to book a place please contact *Catherine Kearney* or *Andrea MacDermott*, Law Society, Blackhall Place, Dublin 7. Tel: 6710711 Fax: 6710704.

There is no charge for attending the seminar. ❐

At the final of the Inaugural UCD Law Society Henry Ford Masters Debating Competition were l-r: Eddie Murphy, Strategy/Marketing Director, Henry Ford & Son Limited; Jennifer Curry, Auditor of the 83rd Law Society, UCD; Eimear Scully, 1994 Ford Masters Champion; Elma Lynch, Solicitor and member of the Law Society Council, who was on the adjudicating panel and the Hon. Mr. Justice Vivian Lavan, who chaired the debate.

Bernard J. Seales Retires



Bernard J. Seales.

At the ripe age of almost 89 years *Bernard J. (Bertie) Seales* has decided to retire quietly. This word is chosen with intent because it epitomises the manner in which Bertie practised for so long and competently and with such honour.

On qualifying in 1932 he joined his father Peter in the firm of Peter M. Seales & Son.

Peter Seales had been President of the Society in 1929/30 and died in January 1937. *James (Jimmy) Seales*, another son of Peter, qualified as a solicitor and at his premature death c.50 years ago had been appointed Law Agent to the Hibernian Bank.

Bertie ran the practice successfully at 20 Wicklow Street until 1987 when it amalgamated with that of his nephew, *Peter Fagan*, under the style of Seales & Fagan.

The profession was indeed embellished by the presence, honesty and participation of Bertie and we wish him many years of happy and peaceful retirement.

PF ❐

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LAWBRIEF

by Dr Eamonn G. Hall

The Supreme Court Deflates Legal Egos

Readers of the *Gazette* may appreciate light reading from time to time. Many readers who have seen this small heading may have thought that it referred to the Supreme Court of Ireland. Judges in the Supreme Court of Ireland are far too polite to deflate legal egos; the writer is referring to the Supreme Court of the United States.

For many American lawyers, the ultimate experience in legal advocacy is arguing a case before the United States Supreme Court. One lawyer described the experience as entering a building "four miles high; it takes your breath away".

The nine justices in black robes look down on the lawyers and are just a few feet from the lawyers' lectern; the encounters can be embarrassing. One lawyer was told recently by the Chief Justice of the United States that he had flatly misinterpreted a major precedent. The lawyer said afterwards he felt "like someone punched me directly in the face". Irish judges, in general, are far too polite to tell an advocate that he or she had flatly misinterpreted a major precedent. The Irish judges may certainly disagree with counsel's interpretation, but the judge is unlikely to tell counsel in direct terms that he or she has flatly misinterpreted a major precedent.

Unlike Ireland's Supreme Court, few cases are argued orally in the US Supreme Court each term. Unlike in Ireland, lawyers get 30 minutes to speak before the red light flashes; time is then up. In times past, elite groups of lawyers dominated Supreme Court advocacy. However, many lawyers cannot resist the temptation to argue a case before the Supreme Court – should that lawyer succeed in persuading the highest court of the land to hear the case. Justices have stated, however, that they have noticed a drop in the quality of advocacy.

A recent court watcher noted that the most common reason why lawyers run into trouble in the US Supreme Court is that they arrive seemingly oblivious to what the justices expect from them. Many come thinking that the court is concerned only with the concept of fairness. For example, one lawyer whose case dealt with how an Illinois hospital had wrongly dismissed his client, a nurse, because she complained to colleagues about management, dealt solely with the issue of fairness. The Supreme Court specifically was interested in the case's implication for the First Amendment of the US Constitution which guarantees the right to freedom of speech. Justice *Anthony Kennedy* said: "We didn't take this case to determine who said what to whom in the cafeteria."

Some justices hardly ever ask questions at oral hearings. This should not be interpreted as a sign of disinterest or as a lack of intelligence. On the other hand, some justices talk too much. One Indianapolis lawyer had barely begun an argument on behalf of a convicted killer on Indiana's death row when the justices started querying her about the jury procedures; the justices were unhappy with certain aspects of the case. Exchanges continued for some time until the red light on the lectern flashed; the lawyer's time – 30 minutes – was up. Chief Justice *William Rehnquist* said to the lawyer: "I think you did very well in the four minutes that the court allowed you." The lawyer left puzzled.

Some lawyers have a difficulty, nay a mental block, about answering "yes" or "no" to a question. This irritates the justices and indeed many clients. Many lawyers arrive at the Supreme Court unprepared for predictable queries. Chief Justice Rehnquist's favourite question is: "What authority do you have for that proposition, counsel?" Often counsel has none.

Perhaps there are some lessons we could learn from the United States Supreme Court.

Trial Fair Despite Courtroom Screen

The European Court of Human Rights, Strasbourg, unanimously held in *Stanford v United Kingdom*, Case No. 50/1992/395/473, in its judgment on February 23, 1994 (*The Times*, March 8, 1994) that there had been no violation of article 6, paragraph 1 of the European Convention on Human Rights as regards the inability of Mr Stanford to hear some of the evidence given in the course of his trial.

Article 6 of the Convention stipulates:

"1. In the determination of . . . any criminal charge against him, everyone is entitled to a fair . . . hearing . . . by [a] tribunal . . .

3. Everyone charged with a criminal offence has the following minimum rights . . .

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require,

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in the court."

In June 1988, Mr. Stanford stood trial at Norwich Crown Court on various counts of rape, indecent assault, unlawful sexual intercourse, kidnapping and making threats to kill arising out of his relationship with a young girl. He was subsequently convicted on one count of rape, one of indecent assault, one of kidnapping and one of making threats to kill. He was sentenced to 10 years imprisonment.

During the trial he was placed in the dock, at the front of which was a glass screen. He was unable to hear, *inter alia*, some of the evidence given and complained about that to the prison officer on duty in the dock and to his solicitor and counsel, who decided not to request the judge to have him moved to a place where he could hear. The Court of Appeal refused Mr. Stanford leave to appeal against conviction. The European Commission of Human Rights declared the application admissible.

In its judgment, the European Court of Human Rights held that the court had to consider the proceedings as a whole including the decision of the appellate court. Its task was to ascertain whether the proceedings in their entirety, as well as the way in which evidence was taken, were fair. See, *inter alia, Edwards v United Kingdom*, Series A No. 247-B, pp 34-35, paragraph 34.

The court considered that it was not in dispute between those appearing before the domestic court that the applicant had had difficulties in hearing some of the evidence given during the trial. Nor was it disputed that article 6, read as a whole, guaranteed the right of an accused to participate effectively in a criminal trial. That included not only the right to be present but also to hear and follow the proceedings. The court considered that such rights were implicit in the very notion of an adversarial procedure and could also be derived from the guarantees contained in article 6.3(c), (d) and (e).

In the present case, the Court of Human Rights stated that neither the applicant nor his legal representatives sought to bring his hearing difficulties to the attention of the trial judge at any stage throughout the six-day hearing. Counsel, who had lengthy experience in handling criminal cases, chose for tactical reasons to remain silent about the difficulties and there was nothing to indicate that the applicant disagreed with this decision.

The state could not normally be held responsible for the actions or decisions of an accused's lawyer. It followed from the independence of the legal profession that the conduct of the defence was essentially a matter between the defendant and his representatives.

The applicant maintained that the Government bore responsibility for the poor acoustics of the courtroom. The court considered that the applicant was represented by a solicitor and counsel who had no difficulty in following the proceedings and who would have had every opportunity to discuss with the applicant any points that arose out of the evidence which did not already appear in the witness statements.

The Court of Human Rights considered that, in addition, the Court of Appeal (UK) could not reasonably have been expected in the circumstances to correct an alleged shortcoming in the trial proceedings which had not been raised before the trial judge. See, in that respect, *Edwards v UK* supra at paragraph 39 and authorities cited therein. This dictum has considerable relevance for criminal trials in Ireland.

In the light of the foregoing, the court concluded that there had been no failure by the United Kingdom to ensure the applicant received a fair trial. Consequently, there had been no breach of article 6.1. of the Convention.

Acts of the Oireachtas 1993

A table setting out the Acts of the Oireachtas enacted in 1993 is published overleaf. The following information about how to purchase a copy of the Acts may be of assistance to practitioners.

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ACT/93/05	Social Welfare Act, 1993	130g	5.90
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ACT/93/21	Statistics Act, 1993	40g	3.20
ACT/93/22	Unfair Dismissals (Amendment) Act, 1993	50g	3.20
ACT/93/23	Animals Remedies Act, 1993	100g	5.35
ACT/93/24	Waiver of Certain Tax, Interest and Penalties Act, 1993	60g	4.25
ACT/93/25	European Communities (Amendment) Act, 1993	20g	1.60
ACT/93/27	Social Welfare (Consolidation) Act, 1993	490g	20.00
ACT/93/28	Presidential Elections Act, 1993	110g	5.35
ACT/93/29	Irish Aviation Authority Act, 1993	150g	6.45
ACT/93/30	European Parliament Elections Act, 1993	20g	1.95
ACT/93/31	Local Government (Dublin) Act, 1993	110g	8.80
ACT/93/32	Social Welfare (No. 2) Act, 1993	20g	2.80
ACT/93/33	Diplomatic and Consular Officers (Provision of Services) Act, 1993	20g	1.60
ACT/93/34	Merchant Shipping (Salvage and Wreck) Act, 1993	90g	7.60
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The Constitutionality of the Implementation of EC Directives into Irish Law Revisited

by Noel Travers.*

Introduction

The potentially enormous difficulties posed by the judgment of the High Court, Johnson J in *Meagher v Minister for Agriculture and Food and the AG*[1], which declared unconstitutional the basic mechanism, namely s.3 of the European Communities Act 1972, devised shortly after Ireland's accession to the EC for ensuring timely compliance with the Community obligation to implement EC directives into national law, have already been discussed in this journal.[2] It was therein submitted that the constitutionality of the said legislation should be interpreted in the light of the nature of the directives whose incorporation into Irish law it was designed to facilitate, rather than by the development of a wholly autonomous national concept of what is 'necessitated by [our] obligations of membership'.[3] The recent judgment of the Supreme Court has largely endorsed this approach and thus restored a considerable degree of legal certainty to this vital domestic legal interface with the law of the European Union.[4]

The Article 34.4.5 Judgment of the Supreme Court

The fundamental argument against the constitutionality of s.3 was that the extent of the legal obligation imposed on the State to transpose EC directives into national law does not comprise a mandatory direction as to the precise mode of their implementation.[5] It follows therefore that the use of any particular method, such as that prescribed in s.3, could not be regarded as constitutionally 'necessitated' and that it would thus be subject to the full rigours of the Constitution, including the separation of powers doctrine based principally on Art. 15.2.1 thereof.[6] The State's response was that, in joining the European Communities, Ireland had undertaken to implement fully and efficiently the acts and measures

Noel Travers

adopted by the Communities (and now the European Union). This obligation was essentially twofold:

> (i) the adoption of the necessary national administrative measures to ensure plenary effect to directly applicable Community laws (principally regulations and decisions) which could undoubtedly be done by s.3 ministerial order;
>
> (ii) the adoption of the national measures required to give effect to the terms of sufficiently clear, unconditional and specific directives which, as involving the adoption of essentially administrative measures, could also appropriately be done by s.3 ministerial regulation.

The Supreme Court approved the State's approach. It read s.3 in the light of s.2, which incorporates fully the various EC Treaties into Irish law.[7] The ministerial power conferred by s.3 was designed to guarantee the effectiveness of the commitment undertaken voluntarily by the State through s.2. Having regard to the nature and number of most Community laws, the Court was satisfied that the obligation of membership would necessitate in some, if not most instances, the adoption of ministerial regulations rather than primary legislation. In relation to the exceptional cases where ministerial regulation would not be an appropriate means of implementing EC directives, the Court felt that s.3 should benefit from the presumption of constitutionality.[8] The legislative intention of the Oireachtas should thus be construed as implying that a minister would not contravene the Constitution by purporting to implement such directives by ministerial order; i.e. were this to occur any such order would be invalid as *ultra vires* the power constitutionally conferred by s.3.

The Vires of the Impugned Statutory Instruments

Two separate judgments were delivered by Blayney and Denham JJ.[9] Blayney J, having noted that the ministerial power conferred by s.3 was extremely wide, opined that its exercise would only be valid were it necessary to give effect to Community directives. He approached the issue of necessity from two levels:

> (i) the implementation of a Community measure will be necessary where the State is obliged to implement it;
>
> (ii) the appropriateness of the means thereby employed by the State will depend on what is required of it in order to fulfil its obligation.

Once the State must implement a measure (and this presumably must be determined by reference to Community law), the constitutional requirement of 'necessity' is satisfied. However, as Community law allows the Member States, in so far as directives are concerned, the choice of form and method, mere legal necessity does not give individual ministers a *carte blanche* but, rather, each one will have to be examined to see what national implementing provisions are mandated as '. . . results to be achieved'.
It was accepted by counsel for Mr Meagher that the objective of eradicating the administration to animals of artificial fattening agents

required the creation of compulsory search powers and criminal offences for punishing those farmers who persisted with the retrograde practice. Blayney J also felt that the effective implementation of the aforesaid objective required '. . . an adequate time for the preparation of the prosecutions'. The precise time limit was a matter for the State to decide and it had done so here through Art. 31(8) of the impugned regulations. Where such measures are necessitated for the effective implementation of the directive, they will be national in form only and, thus, will benefit from the Art. 29.4.5 constitutionality immunity.

Denham J undertakes a wider-ranging analysis of the nature of EC directives and of superior Oireachtas legislation envisaged under Art. 15.2.1. Once the subject-matter of a directive is within the scope of the legislative power conferred by the appropriate treaty, its implementation will be legally 'necessitated' within the meaning of the Constitution. If the directive leaves no choice relating to issues of principle and/or policy to the national authorities, a minister may implement it through regulation adopted pursuant to s.3, even where the regulation involves the repeal/amendment of a prior statute because '. . . the policy of the directive must succeed'.

She cites with approval the well-known test formulated by O'Higgins CJ in *City View Press v AnCo* as the means of distinguishing those directives which permit policy choices from those which do not.[10] Thus, where a national implementing measure would comprise little more than filling in the details set out in the directive:

> "To require the Oireachtas to legislate would be artificial. It would be able solely to have a debate as to what has already been decided, which debate would act as a source of information. Such a sterile debate would take up Dail and Senate time and act only as a window on Community directives for the members of the Oireachtas and the nation. That is not the role envisaged for the Oireachtas in the Constitution."

While it is difficult to quibble with the force of this analysis, it should not be taken as a justification for ministers and, arguably, the new Joint Committee on Foreign Affairs, failing to publicise fully the content and anticipated effect of such ministers' orders.

Analysis

The Supreme Court has not abdicated its duty to interpret autonomously the scope of either the original Art. 29.5.3 or its new successor, Art 29.4.5.[12]

It has been argued that the Supreme Court's assessment of the obligations of membership which justify s.3(2) is inadequate.[11] According to this argument the interpretation of what is necessitated by the obligations of membership ought always to be seen exclusively as a question of national constitutional law and ought thus in *Meagher* to have been so determined. It is submitted that the Supreme Court judgment does not deny the constitutional basis of the test but, rather, endeavours to interpret the Constitution in the light of the overriding Community imperative that directives be implemented fully and in a timely fashion. The Supreme Court has not abdicated its duty to interpret autonomously the scope of either the original Art. 29.5.3 or its new successor, Art 29.4.5.[12]

It is arguable that the approach of Blayney J with its emphasis on appropriateness and effectiveness is somewhat more accommodating to government ministers that that of Denham J which emphasises democratic principles. One might tenably argue that in a less obvious case than *Meagher*, where the implementation of a directive involves the repeal/amendment of prior national legislation, to implement it in a certain but for argument's sake unanticipated (and presumably particularly efficacious) manner would go beyond the principles/ policies of the directive itself and would, thus, require legislation. It is difficult however to imagine a hypothetical situation where such a substantive distinction could be drawn between the respective approaches of Blayney and Denham JJ (presumably the other members of the Supreme Court in agreeing with both judges anticipated no such complications). It is submitted therefore that, despite their formal differences, they will in practice be applied concurrently.

One criticism which might be levied at the Supreme Court's judgment is that it rejuvenates a separation of powers doctrine which has long outlived its usefulness . . .

One criticism which might be levied at the Supreme Court's judgment is that it rejuvenates a separation of powers doctrine which has long outlived its usefulness and that, consequently, an opportunity to move away from *City View Press v AnCo* was lost. Only one statutory provision in Ireland has fallen at the hands of the said doctrine, while in the USA the courts have always been able to construe impugned legislative provisions as sufficiently precise to be valid.[13] This has led many American commentators to question the continued relevance of the doctrine in modern constitutional law. While provisions like those contained in ss 1-2 of the Imposition of Duties Act, 1957 are amenable to its application, this may not be the case for most national legislation and Community directives, the latter which, while setting out policy objectives, may still leave many matters such as the when, where, how, and extent of their application to the Member States. It might be more realistic to recognise that in today's complex world it is reasonable to delegate such matters and that the focus, when the *vires* of resultant statutory instruments is impugned, should be on the reasonableness or proportionality of the exercise by the subordinate law-maker of its/his/her powers and not on a metaphysical examination of

whether the national or Community legislature has described the objective to be achieved by the directive in sufficient detail. Would it be heretical to propose, by analogy with Art. 190 EC, that the doctrine be dispensed with, at least for s.3 orders, and as a counterpart alternatively to require ministers to give detailed reasons by way of preamble, when adopting such orders, for the particular regulations that are involved?

S.5 of the European Communities (Amendment) Act, 1993 only confirms existing ministerial orders that fall foul of the aforesaid separation of powers principle to the extent that confirmation is in conformity with the Constitution. The principle of non-retroactivity, particularly of criminal liability, will operate to inhibit confirmation in many cases. The wider question of the extent to which it is permissible to confirm retrospectively statutory instruments declared *ultra vires* in judicial review proceedings will almost inevitably have to be considered by the Supreme Court.

References

1. High Court, 1 April 1993 reported at [1994] 1 ILRM 1, p.5.
2. See *Gazette* Vol. 87 No 9 (September 1993) at p.258.
3. At the time of the enactment of the 1972 Act this was contained in Art. 29.4.3 of the Constitution but, since the enactment of the Eleventh Amendment of the Constitution Act, 1992, it is comprised in Art. 29.4.5 thereof.
4. Supreme Court, 18 November 1993 at [1994] 1 ILRM 1, p. 11.
5. See Art. 189 EC (as renamed by the treaty on European Union). Art. 14 ECSC and Art. 161 EAEC.
6. Exposed to this doctrine, it was argued that the s.3 power must flounder for the other provisions of the 1972 Act do not lay down in sufficient detail the principles governing the exercise of the said power.
7. By virtue of s.2 of the European Communities (Amendment) Act, 1993 this now includes the European Economic Area Agreement to the extent that its provisions and the legislation adopted thereunder is binding on the State through the Community's legal order.
8. Specific reference was made to *East Donegal Co-Operative Livestock Marts Ltd. v AG [1970] IR 317* and to the manner of its construction in *Harvey v Minister for Social Welfare [1990] IR 232* in so far as the exercise of delegated powers by ministers is concerned.
9. Finlay CJ, O Flaherty and Egan JJ concurred with both judgments.
10. [1980] IR 381.
11. D. R. Phelan, '"Necessitated" by the Obligations of Membership? Article 29.4.5 of the Constitution'. (1993) 11 ILT 272.
12. Inserted by the Eleventh Amendment of the Constitution Act, 1992. In his perceptive article, cited by Phelan ibid., A Collins points out as the Court of Justice has no jurisdiction to interpret the provisions of either Titles V or VI of the Treaty on European Union, the need for the Irish High and Supreme Courts to develop an autonomous view of the State's obligations thereunder will be even more acute: see A Collins, 'The Eleventh Amendment: Problems and Perspectives' (1992) 10 ILT 209.
13. See Casey, *Constitutional Law in Ireland* (2nd ed 1992) at p. 185.

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* *Noel Travers BCL, LLM(NUI), Dip AELS(Bruges), BL(King's Inns) is a lecturer in law and Assistant Dean, Faculty of Law, University College Dublin.*

Compensation Fund Payments – March, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in March 1994.

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Peter M. Fortune, 38 Molesworth Street, Dublin 2.	2,500.00
Diarmuid Corrigan, 6 St. Agnes Raod, Crumlin, Dublin 12.	625.03
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	2,312.00
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Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	2,777.73
St. John M. Donovan, "Lawcus", Stoneyford, Co. Kilkenny	5,563.00
	23,879.76

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Solicitors Golfing Society – Captain's Prize

Henry Lappin's Captain's Prize will take place at Headford Golf Club, Kells, Co. Meath, on Monday 23 May, 1994. A time sheet will operate and bookings may be made by telephoning *Carol Mahon* at 8744147/8728233.

William Jolley,
Hon. Secretary. ❐

UCC Appoints Professor of Law

Brian A. Carroll, Solicitor, has been appointed a part-time Professor of Law at University College, Cork.

Mr. Carroll is managing partner in the family firm of Anthony Carroll & Company, Fermoy, and practises in a wide area of commercial law covering companies and taxation, as well as legal problems relating to agricultural matters.

Mr. Carroll comes from a long legal line. His grandfather was the late *Anthony Carroll* who, before the formation of the State, was Crown Solicitor for East Cork; his father *Edmund Carroll*, is now in his seventy third year of active legal practice, and his brother *Declan Carroll,* sister *Valerie Carroll,* and cousin *Justin McCarthy,* continue to practise with him in the family firm. The celebrated advocate, *Tim Healy,* was also related, as was *A.M. Sullivan,* defence counsel for *Roger Casement.*

Brian A. Carroll.

Mr. Carroll has taken a keen interest in legal education. He lectured in University College Cork and he was an extern examiner for the Incorporated Law Society. He has also lectured in the UK and Ireland for many professional bodies. Amongst the seminars presented by him for the Law Society was one on VAT for solicitors when introduced in 1982, and another in 1985 which produced a blueprint of a solicitor's partnership which is still in use. Mr. Carroll also served as a Council Member of the Law Society and of the Institute of Taxation and he is a Fellow of the Chartered Institute of Arbitrators. He is the consultant author of *Carroll's Tax Planning in Ireland (1986).*

Mr. Carroll has also been involved in commercial work in the US and the UK and has been successful in a test case before the European Court of Justice involving joint ventures pioneered by him for farmers.

It is hoped that the re-establishment of a part-time Chair at UCC (an earlier Chair having been held by *Bryan Murphy,* Solicitor) will increase the links between the law students and the practising legal profession and that students will benefit from Brian Carroll's experience of both teaching and being in practice.

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Minister Announces Expansion of Legal Aid Scheme

Addressing the Annual Dinner of the Council of the Law Society on Thursday 3 March 1994, the Minister for Equality and Law Reform, *Mervyn Taylor* TD, announced that he was increasing the number of law centres from 16 to 26 and that a further four part-time centres would be established this year. The Minister said that this was the "single most significant expansion of the services of the Legal Aid Board since its establishment." He stated that the grant-in-aid for the Legal Aid Board for 1994, a sum of £5m, was an increase of 56% over the previous year's expenditure.

The Minister said that the Board would be able to recruit an additional 24 solicitors and a further 34 support personnel comprising of law clerks and clerical staff. There would now be at least one law centre in each county. "The initiative now taken to expand the services of the Legal Aid Board and to make its facilities available on a nation-wide basis will, more than ever before, ensure that those most in need and of limited means will be in a position to avail of legal aid should they so require." Minister Taylor also announced that a Bill to put the Legal Aid Board and its services on a statutory basis was in the final stages of being drafted and would be introduced shortly.

In the course of his address, the Minister also mentioned that the Legal Aid Board would be reviewing the extent to which the pilot project of involvement of private practitioners in the Scheme of Civil Legal Aid and Advice had been a success. The Minister claimed that there had been a good take-up by private solicitors on the establishment of the project, although he acknowledged there had been some differences of opinion between the Law Society and his Department about the project. But, said the Minister, in general, the Department and the Society co-operated fully on important issues which, at the end of the day, worked for the betterment of all interests.

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Norman Bale, Partner (retired) Stokes Kennedy Crowley and
John F Condon, Solicitor, Partner, McMahon & Tweedy.
Bookshop price £26.00.

The Law of Stamp Duties

FA 1992 Edition, 369 pages, by
Michael O'Connor, Partner, William Fry, and
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Bookshop price £21.00.

Taxation Summary 1993/94

Covers income tax, corporation tax, capital acquisitions tax, capital gains tax, residential property tax, stamp duties, value added tax, Irish tax cases.
FA 1993 Edition, 333 pages, by
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The Institute of Taxation in Ireland
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PEOPLE AND PLACES

Recently a delegation from the Law Society of Liverpool visited Ireland and were the guests of the Dublin Solicitors Bar Association at a reception in the Law Society. The photograph shows back row, l-r: Aongus O'Brolchain SC, Justin McKenna, Treasurer, Dublin Solicitors Bar Association; Michael Hill, Caroline Holroyd, Roger Arden, Hugh O'Neill, Secretary, Dublin Solicitors Bar Association; Richard Bark-Jones and Michael D. Murphy, Council Member, Law Society of Ireland. Front row seated, l-r: Daire Murphy, President Dublin Solicitors Bar Association; Andrew Holroyd, President, Liverpool Law Society and Andrew Smyth, Council Member of the Law Society of Ireland.

At the Annual Dinner of the Council of the Law Society were l-r: Frank Daly, Chairman, Public Relations Committee; Ward McEllin Chairman, Compensation Fund Committee; Harold A. Whelehan SC, Attorney Gene ; Geraldine Clarke, Chairman, Registrar's Committee; Tom Shaw, Past-President and Ernest Margetson, Past-President.

At the 22nd Conference of Presidents of Bar Associations and Law Societies in Europe were l-r: Thomas Klestil, President of Austria; Michael V. O'Mahony, President, Law Society of Ireland; Robert Seabrook QC, Chairman, the General Council of the Bar of England and Wales and Ramon Mullerat, Second Vice-President, CCBE.

The President of the Law Society, Michael V. O'Mahony (centre) with a delegation of young dutch lawyers from Deventer who visited Dublin recently and were guests at a luncheon hosted by the Younger Members Committee of the Law Society of Ireland.

BUTTERWORTHS

We are pleased to announce the appointment of Ms Toni Ryder as Area Sales Manager (outside Dublin). She replaces Mr Max Harvey who left the company at the end of 1993. Toni joined Butterworths in 1991 and prior to her appointment held the position of Administrator, Customer Services & Accounts. She may be contacted at: 088 566793 or (01) 971317

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"100 metres from the Four Courts"

The members of the Committee of SADSI for 1994. Back row l-r: Robert Boland, Seamus O'Croinin, and Paul Lavery. Front row l-r: Benedicte Spain, Philippa Howley, Auditor; Ethna McDonald and Cathal de Barra. (Absent from photograph: Michael Lynn, Fidelma McManus, John Menton, Ann Marie Bohan, and Barbara Loftus.)

Annual Dinner of the Council 1994

James Cotter, President, Irish Brokers Association; Joan O'Connor, President, Royal Institute of Architects; Cillian MacDomhnaill, Finance & Administration Executive, Law Society and Peter Prost, Managing Director, Sedgwick Financial Services.

L-r: James Cahill, Secretary, County Registrars Association; Freda Hogan, President, Institute of Legal Executives; John Carrigan, Past-President, Law Society and Colm Price, Kearns Price & Company.

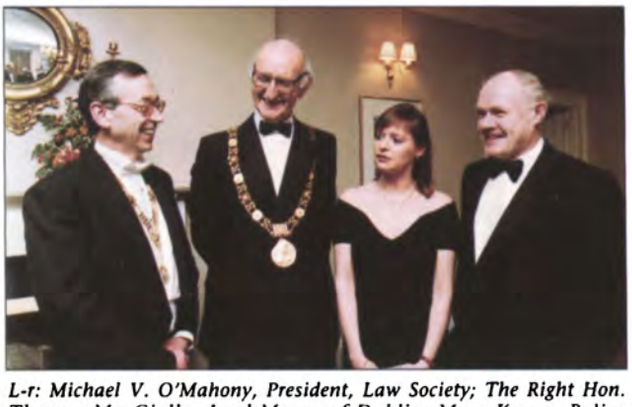
L-r: Angela Condon, Council Member, Law Society; Philip Love, Vice-Chancellor, University of Liverpool and Stephanie Coggans, Council Member, Law Society.

L-r: Professor William Duncan, Law Reform Commissioner; Simon O'Leary, Law Reform Commissioner; Nora Owen TD and the Hon. Mr. Justice Liam Hamilton, President of the High Court.

L-r: John Shaw, Council Member, Law Society; Barbara Cahalane, Editor, Gazette; Frank Bracken, Lay Observer, Registrar's Committee, Law Society and John Dunne, Director General, IBEC.

L-r: Senator Anne Gallagher, Solicitor; Aidrian Bourke, Past-President, Law Society; Michael Davy, Secretary, Law Society of Northern Ireland and Bernie Malone MEP, Solicitor.

Gerard Doherty, Council Member, Law Society; William Early, Managing Partner, McCann FitzGerald; Tim Dalton, Secretary, Department of Justice and Barry St. J. Galvin, Council Member, Law Society.



L-r: Michael V. O'Mahony, President, Law Society; The Right Hon. Thomas MacGiolla, Lord Mayor of Dublin; Mary Keane, Policy Development Executive, Law Society and Michael Buckley, Chief State Solicitor.

The Information Highway: Using the Internet for Legal Research

by Dr Gerard Quinn (Faculty of Law, UCG) & Paul Doyle (Computer Services, UCG).

Introduction

Most solicitors are by now well acquainted with commercial databases in law. Many of these databases are quite extensive and reach beyond purely legal information. They have become indispensable tools in retrieving relevant information efficiently and quickly. The use of these facilities is likely to increase as the modern emphasis appears to be on making computers literate about people and their needs and not the other way round. The old and rather off-putting requirement of computer literacy was seen as a major obstacle to full use of the technology. All that is changing rapidly with the development of intuitive systems that can be mastered within an hour.

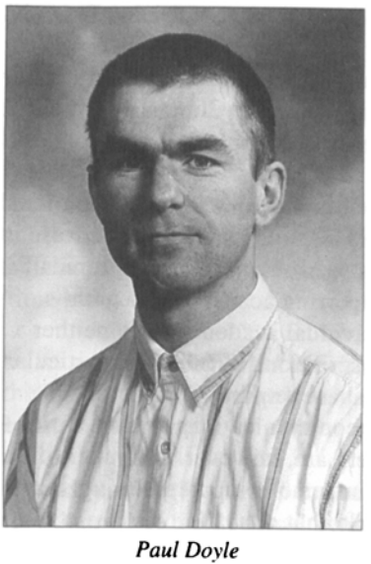
Important though the commercial databases are, there are other electronic resources which solicitors should be aware of. The purpose of this article is to described one such resource, namely the Internet.

What is the Internet?

Most countries in the world have their own academic computing network. These networks carry information from one academic institution to another and also enable researchers to remain in constant contact. Personal contact can be maintained through electronic mail (e-mail) which can carry not only messages but also transmit whole files (e.g. a draft article). The Irish academic network is called HEANET and its British counterpart is called JANET. The global network of which HEANET and JANET form an integral part is called the Internet.

Having access to the Internet enables the user, for example,

Gerard Quinn



Paul Doyle

- to use electronic mailing facilities
- to search the catalogue of many academic libraries around the world (e.g. Harvard, Yale, Oxford law libraries)
- to search the databases of international and regional organisations (e.g. the United Nations, its specialised agencies, the European Commission)
- to search public domain government documentation (e.g. the US Government's databases are vast and searchable)
- to search commercially maintained (fee-based) databases
- to subscribe to specialist mailing lists (of which there are at least one hundred in law alone).

The Legal Information Institute (LII) at Cornell Law School, for example, maintains an extensive library of legal information. Once logged into the LII the user is prompted into more specialist databases which include such diverse areas as recent Supreme Court decisions, constitutional law, health law, environmental law, international organisations, disability law, commercial law, intellectual property, etc. Another extremely interesting and useful law site or host computer is based at Washington & Lee University.

Searching the Databases

Because the amount of information available on-line on the Internet is quite vast there are certain user friendly tools available to help the user navigate to what s/he actually needs. A tool called GOPHER, for example, uses a system of simple menus to carry the user to host institutions that carry relevant information. The World Wide Web tool is based on hypertext (and now hyper or multi-media). This effectively means that a document is displayed with highlighted words which, if clicked on or otherwise invoked, can branch the user out into other documents and databases and so on *ad infinitum*. One can even download audio lectures in law through the LII provided one's hardware has a multi-media capability!

Access

Access to the Internet was generally restricted to the academic community until quite recently but now the majority of new Internet users are private sector based. The Internet is rapidly becoming the *de facto* international standard for conducting electronic business. A useful side-effect of this shift in emphasis with the Internet is that whereas e-mail was

once useful for staying in contact with academic colleagues, it can now also be used to deal with many suppliers or associates in the private sector. Over one million computers are now linked to the Internet worldwide with a growth rate of 10% per month over the last two or three years. This gives the user based in Galway, for example, access to a million users! Even President Clinton's Whitehouse is now accessible.

The Internet was formerly restricted to the academic community because it was seen as a way of electronically supporting academic research. Individual academics pay neither a subscription fee (unless a particular database requires it), a telecommunications fee nor a user fee. There are, however, a number of host mainframe computers throughout the world that allow for what is called 'remote-login' for PC users with modems. Indeed, most computer users (PCs, Macs, Unix workstations) can use the system. This gives the user access to the Internet via these computers. If, however, you login in this way you are liable for the telecommunications charge between you PC and the remote host. Nevertheless, such a login could give the user access to a tremendous amount of legal as well as other information and access to international organisations. Some private (postmaster) companies, such as Ireland-On-Line based in Galway and EuroKom based in UCD, can arrange for this kind of link-up through a modem for a fee.

Conclusion

The amount and breadth of information on the Internet will doubtless explode even further with the advent of the Information Superhighway in the US. Information systems are now becoming more and more intuitive so that the lack of computer literacy *per se* is becoming less and less an obstacle. There are, of course, two full courses in computers and law being taught in law schools in the Republic; one (the older one) in UCG, (under Professor Liam O'Malley) and another more recently established one in UCC (under Ms Maeve McDonagh). Queen's University Law School has had, of course, a long history of involvement in this field and offers a full LL.M. in computers and law. One advantage of the explosion in information technology is that no one need suffer any information disadvantage on account merely of their geographic isolation.

❐

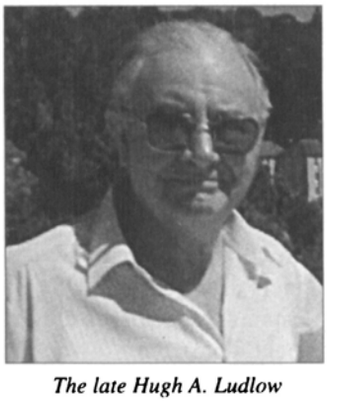
Obituary

Hugh A Ludlow

The death occurred recently of *Mr Hugh A Ludlow*, one of West Cork's most prominent citizens. He came to the West Cork town of Dunmanway in the 1950s where he proceeded to set up his legal practice. The West Cork of the 1950s had a bleak outlook which motivated Mr Ludlow to make his contribution towards alleviating the dire need for employment at that time. Towards this end he worked tirelessly with many local organisations with considerable success.

In his practice he was a highly respected member of the legal profession and, until his retirement in 1986, he held the post of State Solicitor for West Cork; a position which he filled with distinction and in which he established an impeccable record by the manner in which he executed his duties. He was a man of meticulous character, unimpeachable integrity and blessed with a very logical mind. He was content to use his talents not only for the advancement of his profession but also to help the lot of his fellow men in West Cork.

As well as his public efforts and



The late Hugh A. Ludlow

contributions to his local community, he privately helped many people and few will know the full extent of his kind disposition to those whom he helped. Though not a native, he loved West Cork and its people immensely and appreciated very much the natural beauty of the area which he enthusiastically promoted through his contacts at home and overseas. He was a particularly frequent visitor to Glengarriff with his wife and family where they enjoyed the beauty of the woodlands and the many other attractions of that area.

Mr Ludlow died quietly at home over the Christmas season and was laid to rest in the midst of the community in which he had lived for many years. He will be greatly missed by all who knew him, by the community in which he lived in Dunmanway, but most of all he will be missed by his devoted wife, daughter and sons.

Ar dheis lamh de go raibh a anam dilis.

P O'N. ❐

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Emigration – A Taxing Matter

by Richard Grogan, Solicitor.*

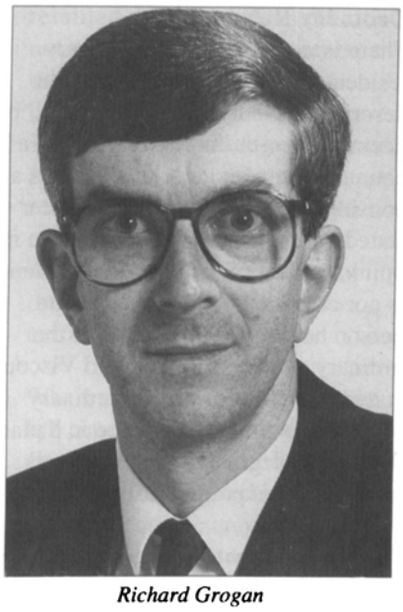
Residence and domicile are vitally important concepts in our tax code. These concepts concern practitioners more frequently as clients become more mobile and leave Ireland either temporarily or permanently to take up employment abroad.

Emigration has been an aspect of our socio-economic national life since the famine. In the past our emigrants left and rarely returned. Nowadays, due to the ease of international travel and the opportunities of fixed short-term foreign employment contracts, emigrants will often return to visit or to take up Irish residence again on the termination of a foreign employment. As practitioners we are called upon to advise these clients as to their tax exposure to Income Tax, CAT, CGT, Residential Property Tax and Probate Tax.

Their tax treatment falls to be determined by reference to their domicile, residence or ordinary residence. This is the area which causes the greatest difficulties but once this matter is clarified their tax treatment is reasonably straightforward[1].

Domicile

An individual acquires a domicile of origin at birth[2]. Citizenship and domicile while normally going hand in hand, may not always be the position. On reaching 18, an individual may acquire a domicile of choice. This is obtained by an individual going to a country other than his domicile of origin with the intention of permanently residing there. If that individual ceases to reside there or to intend to permanently reside there, then the domicile of origin is re-acquired unless a different domicile is acquired[3].



Richard Grogan

There are three general rules for an individual's domicile. Firstly, no individual can be without a domicile, secondly, an individual may have only one domicile at a time and, thirdly, a domicile once acquired is presumed to continue until a new domicile is acquired except in the case of a domicile of origin being acquired.

Deemed Domicile

The concept of "deemed domicile" or "fiscal domicile" is (unlike "domicile" which has no statutory basis) solely the result of legislation and is to an extent a legal fiction. The double taxation agreement between Ireland and the UK is an example of attempting to deal with the area of fiscal domicile. The Revenue authorities in different countries have different rules for determining fiscal domicile. In the case of an Irish or UK citizen, the Revenue authorities will firstly determine his domicile status by reference to national law[4]. If this results in an individual having a deemed or fiscal domicile in both states (for tax purposes), the question is determined by reference successively to permanent home, personal and economic ties, habitual abode and nationality. In default of any clear determination, the matter will be determined by agreement between the Irish and UK tax authorities[5]. For practitioners advising clients who return to Ireland from the UK, section 267 UK Inheritance Tax Act, 1984 introduced "deemed domicile" which provides an individual will be treated as domiciled in the UK for capital transfers (i.e. lifetime gifts) if:-

a. he was domiciled in the UK within the last three years **prior to a capital transfer,**

b. he was resident in the UK in not less than 17 of the 20 fiscal years ending in the fiscal year in which a capital transfer was made.

This deemed domicile is important for Irish nationals returning to live in Ireland after a prolonged period in the UK. UK Capital Taxes differ from our CAT in that it is the tax status of the donor and the value of the property being transferred which determines the tax liability, irrespective of the relationship of the donee to the donor, (unless the donee is the donor's spouse where special exemptions apply). Transfers between spouses in both the UK and Ireland are exempt from UK Capital Tax and Irish CAT unless the transferor's spouse is domiciled in the UK (this includes deemed domicile) and the transferee spouse is domiciled elsewhere, in which case the exemption from UK tax is only £55,000 stg. There is no deemed domicile provision for a transferee spouse in this situation.

Residence

Irish tax law is principally based on the residence of an individual. There is no legislation defining what residence is. An individual will be deemed to be resident in Ireland for the purposes of a potential tax liability if, firstly, he resides in the State for six months in any year of assessment[6]. This is a period of six calendar months not 183 days[7]. A six months

residence in Ireland will not in itself make a person liable to Irish tax. There must be six months residence in a year of assessment.

Secondly, if an individual has a place of abode in Ireland and visits here for whatever period of time, that individual may be deemed to be resident here. There is a relief for Irish citizens working abroad under section 76 ITA, 1967. If an Irish citizen is working abroad for a full tax year engaged in a full time trade, profession or employment, no part of which is carried on within Ireland and no duties are performed in Ireland, Irish tax will only be charged on UK and Irish income and only such "foreign income" as is remitted to Ireland. The Revenue takes the view that if work is done in Ireland of similar importance to work done abroad, the individual will be treated as resident here. The provisions of section 4, Finance Act, 1987 secure that for the tax years 1987/88 onwards the place of abode test will not be applied to an individual with Irish domicile (**note** domicile not citizenship) who is engaged in a full time trade or profession carried on exclusively outside the State or in the exercise of the duties of an office or employment abroad. Accordingly, an individual who fulfils these conditions who would have been liable on UK income solely due to the place of abode test, will no longer be so liable.

Thirdly, an individual who visits Ireland habitually for three months or more over a number of tax years (in practice four years) will be treated as resident here even if that individual's employment and sole residence is abroad.

Fourthly, if an individual comes to Ireland with the intention of permanently residing here, but has been in Ireland for less than six months in any tax year, and has no fixed place of abode, the Revenue will nevertheless – unless the individual is coming from the UK – treat them as resident here from the date of arrival.

In practice there is a ten day allowance so that an individual arriving in Ireland on April 1, 1994 would not be treated as resident here for the tax year 1993/94. If an individual is arriving from the UK, the six months residence in a year of assessment is necessary for an Irish tax liability to arise.

Ordinary Residence

There is no definition of "ordinary residence" in the tax Acts. It can be described as that an individual shall be deemed to be ordinarily resident in a country where an individual spends a considerable time. Lord Buckmaster stated "ordinary residence means in my opinion no more than that the residence is not casual and uncertain, but the person held to reside does so in the ordinary course of life."[8] Lord Viscount stated that "the expression ordinary residence connotes residence in a place with some degree of continuity and apart from temporary absences."[9]

An individual who leaves Ireland for employment purposes, with the intention of returning and is absent for a full tax year will while non-resident for the year of assessment be regarded as ordinarily resident and therefore, strictly speaking, liable for tax on worldwide income and gains. The Revenue have accepted in practice that the measure of income chargeable in Ireland in respect of such earnings from an employment exercised wholly outside the State will be confined to the income remitted to, or brought into, or received in the State.[10]

Tax Treatments

Income Tax

(a) Resident and Domiciled

An individual resident and domiciled in Ireland is liable on worldwide income[11]. Section 76, sub-section 2, Income Tax Act, 1967 is a relieving section whereby an Irish citizen not ordinarily resident is liable only on income arising in Ireland and the UK and on foreign income only to the extent it is remitted to Ireland. Part III, Schedule 6, Income Tax Act, 1967 excludes income arising from UK sources.

(b) Resident but not Domiciled

Liable on Irish source income, UK and foreign income, subject to the exemption in section 76, sub-section 2, Income Tax Act, 1967.

(c) Non-Resident

Liable only on Irish source income[12]. However, an Irish citizen resident abroad due to health reasons relating to themselves or a family member or entitled under a double taxation treaty to the same personal allowance and reliefs as an Irish citizen not resident in the State may claim such relief[13].

Capital Gains Tax

(a) *Resident and Ordinarily Resident and Domiciled:* Worldwide gains.

(b) *Resident or Ordinarily Resident but not Domiciled:* Irish and UK gains and such worldwide gains as are remitted to Ireland.

(c) *Non-Resident:* Liable only on disposal of certain assets as defined by Capital Gains Tax Act, 1975.

Capital Acquisitions Tax

Under the original rules the entire property devised under a gift or inheritance was taxable if:-

(a) the disponer died domiciled in the State, or

(b) the proper law of disposition was the State[15].

This was amended by the Finance Act, 1993[16] in that point (b) no longer is applicable where a gift or inheritance is taken after June 17, 1993, except a gift or inheritance taken under a discretionary trust. Accordingly, a gift or inheritance taken by virtue of a disposition set up under Irish law by a then foreign domiciled person of foreign assets will no longer be liable to Irish CAT.

Probate Tax

(a) Domiciled, Resident or Ordinarily Resident

Worldwide assets are liable.

(b) Neither Resident Nor Domiciled
Only assets situated in Ireland are liable to the tax.

Residential Property Tax

(a) *Domiciled or Resident or Ordinarily Resident*
The operative date for liability is April 5 each year. If an individual is any of the above, they are liable on worldwide relevant residential property subject to the income tax exemptions.

(b) *Non-Resident, Non-Domiciled and Not Ordinarily Resident*
Only liable on property situated in the State.

Commentary

If an Irish domiciled and resident individual goes abroad to work, the exemption for such person will not apply if his salary is paid to an Irish Bank account. An individual who goes to work in the UK for more than three months, even if paid in Ireland and PAYE is deducted here, will also be required to pay UK tax similar to PAYE. The PAYE paid in the UK is refunded if the individual works in the UK for less than six months[17]. One cannot get an Irish Revenue PAYE Nil Rating unless an individual works abroad for more than six months. The Irish Revenue will, however, accept that a UK citizen working in Ireland for less than six months for a foreign company will not be liable for PAYE in Ireland. For the reliefs from Irish Tax to apply to an Irish citizen domiciled and resident in Ireland who goes abroad on a foreign assignment, the Revenue will consider the law of contract, where made and accepted, and where the pay point is. To avoid any difficulties the contract should be made and accepted abroad, not subject to Irish law and payment should be to and from a bank account situated outside Ireland of a non-Irish bank.

For the reliefs from Irish Tax to apply to an Irish citizen domiciled and resident in Ireland who goes abroad on a foreign assignment, the Revenue will consider the law of contract, where made and accepted, and where the pay point is.

The current Revenue practice can be summarised as follows:-

(a) A remittance basis exemption will apply where an individual goes abroad for part of a tax year and will be taxed only on sums remitted to Ireland. This relief is not available to employments in the UK.[18]

(b) Where an individual goes abroad to work in one tax year and returns in a subsequent tax year, tax will be levied on the remittance basis. This equally does not apply to UK employments.

(c) Where an Irish resident takes up full time foreign employment abroad, exercised wholly outside the State for a period including a full tax year, the employment income is not subject to tax even when remitted provided the individual will not be regarded as resident in Ireland pursuant to the General Residence Rules. This relief does apply to UK employments.

(d) Where an individual comes to this country to exercise an employment and remains here for a period which includes a full tax year, that individual is regarded as an Irish resident for that year, and the years of arrival and departure. However, by concession any foreign income arising before arrival or after the date of departure will not be included in the assessment for those years. It may be possible for some individuals to avail of the Diplomatic Relations and Immunities Act, 1967. This not only includes diplomats but also individuals working for specialised agencies of the UN[19]. Such an individual may be exempt from Irish tax regardless of the Residence Rules. In addition, the exempt income is not included in his total income in relation to taxation of Irish source income[20].

Conclusion

When advising individuals on tax minimisation while working abroad their future plans must be clearly identified. For example, by taking action to avoid income tax the principal private residence relief for CGT may be lost.

When advising individuals on tax minimisation while working abroad their future plans must be clearly identified.

As this article has shown there is often a divergence between a strict interpretation of the law and Revenue practice. It must be borne in mind by any individual going abroad to work and intending to return that these concessions will be withdrawn if the Revenue interpret the individual's principal reason for going abroad as a tax avoidance exercise, as opposed to legitimate employment or health reasons where the tax avoidance was a secondary consequence of such actions.

Finally, the writer would caution any practitioner when giving advice to carefully consider individual tax treaties with other countries. While most are drawn up on the OECD Model Treaty, there can be subtle differences.

References

1. Ireland has a number of Double Taxation Treaties with foreign governments. While most are based on the 1963 OECD Model Tax Treaty, there can be anomalies between different countries and care must be taken in this regard.
2. The domicile is that of a person's father. If a child is born after the father's death, or is illegitimate, the domicile is that of its mother.
3. Prior to October 2, 1986, a married woman's domicile was that of her husband. This was amended by the Domicile and Recognition of Foreign Divorces Act, 1986.
4. Article 4(1) Double Taxation Treaty. This replaces the provisions originally introduced by the Income Tax Act, 1967 which confirmed legislation going back to 1926.
5. Article 4(2) Double Taxation Treaty (UK).

6. Section 206 Income Tax Act, 1967.

7. *Wilkie V IRC* – 32 TC 495 and The Interpretation Act, 1937. In practice the Revenue appear to work on a 183 Day Rule.

8. *IRC v Lysaght* – 13 TC 511.

9. *IRC v Leverne* – 13 TC 486.

10. This remittance concession does not apply to employment in the UK, but an Irish domiciled individual can avail of the relief under section 4 Finance Act, 1989.

11. This is subject to the provisions of double tax treaties which may allow for a credit for tax borne abroad. Each treaty should be considered separately in this regard as there may be subtle differences.

12. Section 200, Income Tax Act, 1967.

13. Section 153, Income Tax, 1967. It should be noted a non-resident without this relieving section would receive no personal allowances.

14. Section 4, CGT Act, 1975 allows various relief to individuals similar to the reliefs in the case of Income Tax. See also section 170 and 120 Income Tax Act, 1967.

15. Section 6, sub-section (1)(a) CATA, 1976.

16. Section 122 for gifts and section 124 for inheritances.

17. The refund is repayable by virtue of our double taxation treaty with the UK.

18. UK employment is covered in the Tax Treaty.

19. There must be a specified official pursuant to Article VI of Schedule 4 or Diplomatic Relations and Immunities Act, 1967.

20. Section 153, Income Tax Act, 1967.

**Richard Grogan, Solicitor, is a partner in the firm of Rowan & Co. Solicitors, Dublin.* ❐

Irish Solicitor Admitted to Masters Programme at Yale

The Law Department at Yale is considered to be the best in America and beats Harvard because its classes are so small and select. There are 24 places on the masters programme. Yale receives over 500 applications from over 70 countries worldwide for the placements. Graduates from this programme obtain top posts not only in the private legal sphere in America but also in public service.

Readers of the *Gazette* will no doubt be pleased to note that *Anne Neary* of Rathgar, Dublin 6, has achieved a place on the Masters Programme in Yale University for 1994.

Anne was a member of the Council of the Law Society for five years and a member of the Council of the Dublin Solicitors Bar Association for the previous five years. In considering her application for the programme the Law Faculty in Yale took into account some of her achievements while working as a practitioner in Ireland.

Part IX of the Consumer Credit Bill of 1994 was included due to Anne's intensive lobbying on behalf of mortgage holders in the country. She brought a Section 31 case to Strasbourg. Although she was not successful, the case is regarded as being persuasive in so far as the Government did not renew the ministerial order in 1994. Anne also took the first cases under the Enforcement of Judgement legislation through to the Supreme Court. She drafted the first agreement under the European Economic Interest Grouping Directive in Ireland and acted for the NUJ, SIPTU and the Irish Print Union in various cases which established new judicial precedents in the area of trade union law.

She is now resident in the US and married to *Conor Farren*, Psychiatrist and has recently become a mother. Her only regret as she now embarks on a new career is that she had to sell her practice in Dublin which she ran for eleven years.

Justin McKenna ❐

Anne Neary

CLASP Fund Raising Walk

CLASP (Concerned Lawyers Association for the Alleviation of Social Problems) is holding its annual fund raising walk on Sunday 15 May 1994, at Roundwood, Co. Wicklow. The Association is looking for participants and sponsors.

Murrough O'Rourke, Solicitor, the current Chairman of CLASP, says the walk should be a very pleasant occasion and will be approximately six miles long through the wooded lands around the reservoir with a one hour lunch break half-way through the walk.

Those who would like to participate in the walk, or to offer sponsorship, should contact Murrough O'Rourke at 4 Arran Quay, Dublin 7 or Rita Walsh BL, Law Library, Four Courts, Dublin 7.

New Members sought

CLASP is also seeking new members in order to broaden its activities and fund raising efforts. The annual membership subscription is £10 and all applicants for membership should send their subscription and details of name, address and telephone number to Murrough O'Rourke or Rita Walsh at the addresses listed above. ❐

CORRESPONDENCE

Use of Subpoenas – Medical Witnesses

The Editor,
Gazette,

Dear Editor,

Recently I was subpoenaed to attend a family court. Like a lot of Irish doctors now I reacted with extreme anger. Not only had I not been given the courtesy of a request to attend, but I was given no instruction on why I was needed. The fact that I might have to give evidence against one of my patients and in favour of another did not seem to have been registered by the solicitor.

Let us make it clear that most doctors appreciate that the courts must function and that the functioning of the courts is central to the workings of a democracy. But the medical service also must function; GPs in Ireland are not just certification and prescription writers; we nebulise asthmatics, suture wounds, we provide small scale emergency units and we have to plan to be absent. Using lazy methods like the subpoena with poor notice is very stressful on us when a cheap phonecall with a stand-by arrangement can easily be fitted into most GP's days. Solicitors should also consult with doctors on the necessity for our presence as we often disrupt our clinics to find our evidence worthless or not used at all.

The use of the subpoena is an insult to general practitioners. We feel demeaned as if we are being arm-wrestled into court while very few of us ever have refused to attend courts. It ignores our problems in organising cover while we are away and, at best, it makes us hostile witnesses. It causes major problems between us and our patients and interferes badly with that professional relationship. One realises that doctors who refuse to accept the importance of the courts' functioning must be summoned to court but the vast majority of us show no such reluctance – all we want is notice and the promise of a reasonable stand-by arrangement.

It must be said that I have never met a GP who was subpoenaed by a local solicitor so the problems must be well known and it is the careless few who disrupt the practices by not giving adequate and agreed notice.

Behind it all is the suspicion that some solicitors want to avoid stand-by fees and costs by using this strong-arm method.

In thanking you for allowing me address you in the *Gazette*, I would caution that doctors in general are extremely disturbed by court attendance; we see a plethora of nuisance claims being taken and now we see a method of summons in use which forces us to give evidence where, professionally, we feel a written report could suffice if agreed upon. The anger of GPs in particular at a number of recent problems in providing the service has led to calls of boycott, refusing subpoenas and suggestions on pathways I believe better not followed.

Therefore, I respectfully suggest that the subpoena be used as a last resort, not as a commonplace summons. A more mannerly and arranged approach leads to better communication and better care for the public.

Yours etc.,

Dr. Tony Feeney,
2 Upper Dodsboro Road,
Lucan,
Co. Dublin.

(See Viewpoint on page 89)

Dublin Corporation's Costs

The Editor,
Gazette,

Dear Editor,

I refer to an article under the heading "Debate on "Capping" Continues" in the January/February 1994 edition of the *Gazette*. This quoted a report in the *Irish Independent* of 25/27 December, 1993 where a "leading personal injuries solicitor", *Gerard Doherty*, said the Corporation was wasting £800,000 in costs for every one million pounds awarded against them in negligence cases. I should like to point out that I have done an analysis of costs paid out in such cases for the year 1993 and that the costs represent 40.28% of the amount awarded in damages. Of 240 sets of proceedings, the costs in only 9 cases exceeded the amount of the decree. Of these 9 cases, 8 were in the low range between £2,500 and £5,000 and one was for £8,300.

You will see that Mr. Doherty's statement has misrepresented the actual position.

Yours etc.,

Aveen M. Barry
Law Agent
Dublin Corporation Law Department

❐

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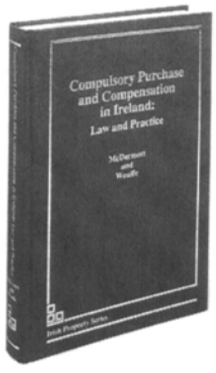

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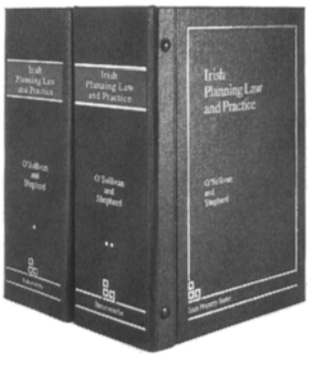

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BOOK REVIEWS

Value Added Tax

By Denis Cremins and Dermot O'Brien, published by The Institute of Taxation in Ireland, 1993, 260pp, £15 (Plus £2 P&P)

Introduction

The third edition of the Institute of Taxation's book on Value Added Tax, written by *Denis Cremins* and *Dermot O'Brien*, is now available from the Institute at the very reasonable price of £15.

This latest edition is a neat, compact, manageable and tidy 260 pages and will be of interest to students, Revenue officials, accountants and lawyers. This book will also be of use to the student of VAT.

The format is the same as that of the earlier editions. I like the way each chapter (which covers a section of the VAT Act) starts with "The Big Picture", or overview, and then goes on to deal with the detail.

For example, chapter 8 starts simply and clearly "Only taxable persons are within the charge to VAT. It is necessary, therefore, for the Act to define who are taxable persons". The rest of the chapter gives the full details about taxable persons.

The book is a technical one and liberally uses the language of VAT. The student who studies this book properly will find that (s)he will gain a true overall understanding of VAT law and not just a handyman's understanding of its application in particular circumstances as sometimes happens with texts on tax which shy away from being technical.

The student will also find many examples which illustrate the concepts. For example, when explaining where the sale of services connected with property takes place it says "under this rule a Dublin auctioneer selling property in London supplies his services outside Ireland". Again, when explaining the package rule a simple example is given to illustrate the point: "For example, the sale of a teddy bear with a child's pyjamas as a unit for one price will make the pyjamas liable to VAT at 21%, rather than the zero rate." Such examples are a refreshing change from the ponderous, pedantic and sterile examples that some authors choose to demonstrate the seriousness and importance of their work.

Chapter 53 of the book deals with Revenue audits and VAT inspections. This will be of great use to the student in giving him or her a knowledge of the practical application of the tax. There is a full explanation of the appeal system in Chapter 54, including an explanation of the role of the European Court of Justice and the inter-action of domestic law with the EC directives.

Revenue Officials, Accountants, Lawyers

The authors, so familiar themselves with the legislation and no doubt fearing a loss of accuracy, have employed a style and usage near the language of the statute often quoting directly from it. This might not appeal to all readers particularly those less versed in VAT than the authors. In addition the book – because of its size – cannot be expected to give the practitioner an insight into the more obscure points, such as composite versus multiple supplies. It would take a far more sizeable book to cover all that.

The needs (but not the objectives, of course) of Revenue officials, accountants and lawyers are similar in that all are seeking to find with ease and speed the VAT law and practice about a particular point. This need is catered for by a comprehensive index. The authors have obviously gone to pains in preparing the index with the result that the reader can get to the relevant section quickly. For example, those who want to find out about input credits will find a reference in the index not only under "I" but also under "D" – Deductible tax, and again under "R" – Relief. The thoroughness of the authors increases the reader's chances of getting to his or her target irrespective of what heading he or she uses.

Because of the section-by-section format of the book, the practitioner or official will have no difficulty in finding his or her way from the text to the relevant section, order or regulation if he/she so needs. There is a useful list of the Statements of Practice on page 237.

The book also has some practical and worthwhile tips such as the one for liquidators and receivers: "In a protracted liquidation or receivership the final disposal of even a small quantity of assets should be delayed, to retain VAT registration and so the right of input credit."

The book is stronger on case law than the earlier editions, with the main Irish, UK and European Court of Justice decisions being given. *Mr and Mrs Romplemann, Ursula Becker* and *Polysar* are all there. Not alone are the cases listed at page 251 but they are referred to in the relevant part of the text and the index is cross-referenced to the text.

For solicitors dealing with VAT this book is a worthwhile purchase.

Fergus Gannon

The Electronic Age – Telecommunication in Ireland

By Eamonn Hall, Oak Tree Press, Dublin 1993, 592pp, hardback £IR35.00

At the launch of The Electronic Age – Telecommunications in Ireland were l-r: the Hon. Mr. Justice Liam Hamilton, President of the High Court; Michael V. O'Mahony, President of the Law Society; Dr. Eamonn Hall, the author and Harold A. Whelehan SC, Attorney General.

In the golden age of Irish monasticism, Christianity clung to the extreme western shores of Europe like barnacles on a distant rock, overlooked by the scouring eyes of barbarian gourmets. Then, our contribution to recivilising Europe was immense. When the radio and television age was ushered in, national concern moved from protecting our population from foreign influences to the possibility of evangelisation by use of the airwaves. So in 1958 the Pope expressed great personal interest in the proposed establishment of an Irish television service as a weapon to combat "irreligion and materialism". Instead of looking inwards, the hope was to establish a transmitter powerful enough to reach trans-oceanic territories. Alas, these hopes were unrealised and Ireland remains an island allowed trans-oceanic communication only by means of the telecommunications network, without even a shortwave radio station and bombarded from the very territories that might once have been touched by our guiding hand.

Doctor *Eamonn Hall*, Company Solicitor for Telecom Eireann, tells the story of the development of telecommunications from the first clumsy attempts with Morse Code, through the reeds stuck to the electro-magnets in the laboratory of *Alexander Bell*, down to the full colour development of the moving pictures that now dominate the national agenda. Even back in the days when one could libel a man with a frown and wink a lady's reputation down, human communication was regulated by law. With every advance in communication the alarming possibility opened up of power and influence seeping through to people who, by the nature of the medium, could be distant from centres of control, possibly unidentifiable and potentially subversive. No government could allow this. In consequence telecommunication is one of the most regulated areas of life. Law can be divorced from its context and presented as a dry imperative the motivation for which might only have been known to the generation that witnessed the spur against the ordinary inertia of government. Since government had to be concerned with introducing the infrastructure of telegraph poles, of telephone exchanges, of radio trans-mitters and a television broadcasting station, politicians were intimately involved in this task of finding money and, in paying the piper, of ensuring that the right tunes were played. Some of the arguments advanced by our leaders on these expenditures could be seen as ludicrous if not put in the context of a thrifty age before vast taxation and European Union largesse. So, in 1959, *Patrick J. Hillery* was seriously concerned that if there were to be Irish television that non-Irish goods should not be advertised as such a step would "tend to have a demoralising influence on national morale". Moreover, the Minister for Finance thought that if people bought television sets that capital availability might shrink the economy. Here was prescience of the dominating age of Japanese electronic exports.

Of course, people have a constitutional right to communicate. The human species could not possibly have evolved, either through hunting or, as *Doctor Morgan* suggests, through communal swimming, to its current babble of voices unless culture was capable of being stored and transmitted through speech. Messages can be delivered from angels but the other side of human nature has its advocates and catalysts as well. So, it has been claimed since medieval times and is still claimed by some, that the devil appears to his followers every seven years and delivers messages in rhyming couplets. The Constitution has always been a parental document, the courts have always been – and continue to be – organised like schools. The benevolent hand of ultimate responsibility can therefore tell us, for our own good, what we ought to see and what we ought to hear. Section 31 of the Broadcasting Act, first invoked in 1960, was lifted just after the publication of this book in 1993 to herald a media deluge of bearded men who owe their allegiance to a higher ideal to which the State does not subscribe and of which the State feared the expression for 33 years. Doctor Hall quotes *Doctor Cruise O'Brien* on the programme used as a justification for tightening section 31 in 1975, broadcast on RTE television and which concerned itself solely with the "violence of British soldiers" something, to which, as far as the programme was concerned "no IRA men had ever contributed". Although section 31 is gone now we may well see its like again. A writer of

Doctor Hall's ability cuts the judgment on freedom of expression through to the expressions of opinion which he judiciously selects from the apparent legal reasoning. These are shown to underlie a court's decision and to be far more important than the strength of the logic that might construct an argument.

Of all the cases that a person might take to law a libel action is, on experience, by far the easiest to lose. The defence inherent in it of "fair comment" on a matter of public interest means merely that the statement is a comment that relates to an issue of public interest. If the public suddenly becomes interested in us then people are free to give whatever opinion about us they may. We again have Doctor Cruise O'Brien to thank for the Broadcasting Complaints Commission. Its powers and functions are explained here and the leading cases give a guide to possible reactions to their censure. Nonetheless, RTE continues to be proud of tendentious broadcasts on the Tallaght Two and the neurosurgery unit in Beaumont Hospital.

More firmly attached than ever to the European land mass, Ireland is now substantially regulated from without. Eamonn Hall explains the historical context and the tensions inherent in a conservative country being pulled by a continental legal system more used both to the idea of leaving the individual alone and to the notion that laws should only be passed or remain in force when someone has an idea of enforcing them. So a television monopoly is justified under the Treaty of Rome as a legitimate expression of national interest provided it does not infringe freedom of movement for goods and services and does not amount to unfair competition. Of more relevance, those goods and services can include the advertising of legal services available in other Community States, but illegal here, such as euthanasia in Holland. The notion that freedom of expression cannot be a contempt of court on an issue of public importance allowed, according to *O'Hanlon J,* a swingeing attack on a litigant for merely commencing judicial review proceedings on the question of the Telecom Eireann site in Ballsbridge. Some people know how to communicate and also have an instinct for communicating lawfully.

The final sections of this book deal with freedoms of expression and the freedom to communicate without being intercepted. RTE is under a duty of objectivity and impartiality and advertisements must "respect human dignity". Manufacturers of fashion knitwear are immune from the same stricture.

This superb book is the product of a mind that has widely ranged through literature, history and law and which has brought them all together in a synthesis that sets a new standard for legal discussion in this country. It is hard to see that any Irish lawyer reading this book would be content in the future to write merely on a legal subject without setting it within the context of the technological developments that make law necessary and the fears and hopes that move people to believe that a new tool can be used to good effect. This is a work full of information presented with a rare combination of wisdom and objectivity. One might hope for more from Doctor Hall but lawyers, politicians, historians and those who in Aristotle's words "love the truth" will already thank him.

Peter Charleton

The Rathmines Style Book

By David Rice, Folens, Dublin 1993, 90pp., £5.95 paperback.

Reading maketh a full man; conference a ready man; and writing an exact man. (Francis Bacon)

What is style? The gift of writing elegant and engaging prose is given to only a few; most of us who have to communicate in writing aspire merely to be understood.

English is a different language; its rules of grammar are peppered with inexplicable exceptions and the scope for ambiguity and imprecision is vast. Yet for lawyers, the ability to use language with clarity and precision – if not stylishly – is essential.

The title of the Rathmines Style Book is, in my opinion, misleading, because I do not believe that style can be learned. It might more properly be called the "Rathmines Guide to Correct Usage" since it sets out in its 90 pages guidelines outlining the correct forms of English usage and highlighting the most common grammatical errors and misuse of words that occur.

The author, *David Rice*, lectures in the Rathmines School of Journalism which, over the years, was the training ground for some of the more respected journalists in the country. Though the style book is intended principally for students of journalism, to inculcate good habits before they commence their careers in the media newsrooms, it would be of practical benefit to any person who has to communicate in writing. One of the merits of the book is that it takes less than one hour to read in full. Having obtained an overview of its entire content, the reader can refer to the style book again and again to check up on specific points of usage.

Ambiguity and sloppy drafting are the enemies of lawyers. Therefore, it is understandable that frequently the general correspondence and writings of lawyers tend to mirror the style and verbiage of an affidavit. However, a client who receives a letter full of 'legalese' such as "aforementioned", "herewith", "undersigned", is likely to raise his eyes to heaven and ask "why can't they write in English?". Another frequent trait in lawyers' writing is the tendency to give ordinary nouns a capital letter (such as lease, court, case, plaintiff, defendant) when there is no reason for doing so – another hangover from affidavits. In a simple and concise manner, David Rice's book explains the correct rules of usage in relation to these matters and other frequent errors – by no means exclusive to lawyers – for example, the failure to distinguish between it's (the abbreviation for it is) and its (the possessive pronoun).

A great merit of the book is that David Rice avoids pedantry. Language is changing all the time. It is arguable, for example, that nowadays, following

years of misuse, the word "anticipate" has the same meaning as "expect". One might mourn the loss of subtlety but if the objective of writing is to communicate with the reader then a balance has to be found between being pedantic and the desire to be understood.

So-called style books abound. (This reviewer's favourites remain *The Economist Pocket Style Book* and *Fowler's Modern English Usage.*) For anyone who has to write, or edit, it is helpful to have at hand a set of guidelines on English usage as an aid to achieving consistency and clarity and it probably does not matter which work is chosen provided it is adhered to and consulted regularly. At £5.95, the *Rathmines Style Book* is good value and its tone is modern and user-friendly, although one cannot help remarking, albeit cynically, that its influence on staff in the newspapers of Ireland has not been total.

Barbara Cahalane.

State Entrepreneurship, National Monopolies and European Community Law

Competition and Free Movement in the Energy, Postal and Telecommunications Markets in the EEC

By J.H.V. Stuyck (ed.) and A.J. Vossestein (ed.), Kluwer Law and Taxation Publishers Deventer – Boston, 1993, 129pp $49.00 or £33 Stg.

A form of control classically exercised by Government in relation in particular to the energy, postal and telecommunication markets has been the creation of a statutory monopoly or some form of privilege. By the reign of *Elizabeth I*, a monopoly essentially embraced exclusive grants of patents and franchises by the Queen to her servants and courtiers. Such exclusive grants resulted in the raising of prices of necessary commodities. The hardship caused by the high prices in victuals and implements of trade and commerce resulted in the celebrated *Case of Monopolies*, 11 Co. Rep. 84 (1602) which prohibited and declared illegal exclusive grants or franchises.

The monopolist not only caused a rise in prices but also restrained trade and manufacturing because of the exclusive nature of his grant. The element of exclusiveness by royal sanction which, in effect, precluded a person from pursuing a livelihood, gave birth to the common law principle that "prima facie trade must be free". Your reviewer is not of course suggesting that in Ireland the statutory monopolies caused rises in prices which were unjustified; regard must be had to the concept of natural monopolies and economies of scale and scope.

This book is as a result of a seminar which was held in December, 1992 in Nijmegen, (the Netherlands) and was organised by the Institute of European Law of the Catholic University Nijmegen. The objective of the seminar was to present an overview of the current state of development of the Internal Market in some specific sectors of the economy, in which Member States traditionally have intervened by granting (public) undertakings exclusive or special rights. Thus, special attention was given to the gas, electricity, telecommunications and postal sectors. For this purpose various experts of the European Commission, the academic world, the bar and the sectors concerned, expressed their views on the specific topics.

There is an increasing need for transparency in the relationship between these undertakings and their Member States. Transparency is essential to ensure that Member States do not distort competition by granting their public undertakings any form of aid, unless it is compatible with the common market.

This book is a timely publication which analyses the different problems which arise by liberalising important sectors of the economy. The book considers questions of the compatibility of national monopolies with the fundamental Treaty provisions on the free movement of goods, the free provision of services, the freedom of establishment and the rules of competition, concepts of "services of general economic interest", "third party access", "cross subsidisation" and the need for transparency in the relationship between Member States and their public undertakings.

This book is an important work of reference for any lawyer involved in the regulated sectors. The book is a valued tool for the specialist. For those who have an interest in European Law, the book provides an excellent way in which to familiarise oneself with Articles 85, 86 and 90 of the Treaty of Rome.

Dr. Eamonn G. Hall

Law Directory 1994 – Corrections

Users of the 1994 Law Directory are kindly asked to note the following additional corrections.

On page 92 (Clare Register) please note the qualifications of Wall, Pamela, B.A. LL.B. Dip. Property Tax.

On page 155 (Dublin Register) please note that in the entries for the firm Dillon and for Dillon, Brendan J, the telephone number should read 2960666 and the fax number 2960982.

At page 179 (Dublin Register) please note that the correct second telephone number for the practice Hughes & Company, Damien, should read 6766763. On page 180 the entry for Hughes, Damien J, should read admitted in England and Wales 1983 and not 1993 as incorrectly stated on the errata sheet published with the March issue of the *Gazette*.

On page 554, please delete Carroll, John, who was incorrectly listed as a Commissioner for Oaths.

SADSI Debates Joint Declaration

The main events of the past month were a very well-received debate on the Downing Street Declaration on February 23 in Trinity College, and a Karaoke night which was held on March 2 in the Oliver St. John Gogarty pub in Temple Bar. Many thanks to *Michael Lynn* (PRO) and *Ethna McDonald* (Secretary) for their input to these events.

The motion for the debate was "that this house believes that the Joint Declaration is a recipe for Irish Unity." The speakers were *Jonathan Stephenson* (SDLP), *Dr. Chris McGimpsey* (UUP), *Eamon O'Cuiv (FF)*, *Maurice Manning* (FG) and *Stephen O'Byrnes* (PD). The debate attracted a large attendance and received impressive media coverage. It received publicity in all the national newspapers and was also recorded by the BBC for their "On The Record" and "Spotlight" programmes. This debate was guaranteed its success by the hard work and dedication of *Michael Lynn* and *John Menton* (Education). SADSI are planning to host another debate later in the year.

In relation to the Karaoke night, a great time was had by all who attended, both on and off the stage. In fact, for some of the amateur singers amongst us, the excitement of stardom became so much it became difficult, as the evening wore on, to retrieve the microphones! The spectators looked on and laughed, longing to put their vocal chords to good use, but unfortunately making it to the bar before the stage, with obvious consequences! There were great spot prizes for those who had provided the best entertainment of the evening. Many thanks to all those entertainers and to our sponsors of the evening.

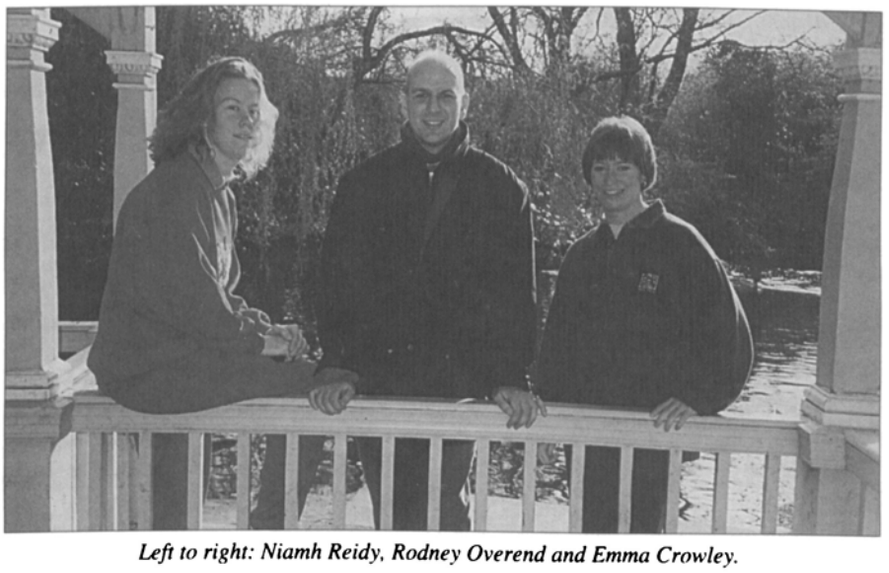
Finally, as pointed out in last month's column, every year SADSI compiles an accommodation register to help apprentices seeking short-term accommodation while attending courses at Blackhall Place. At the moment there is an acute shortage of such accommodation and SADSI would encourage anyone who has accommodation to offer to contact *Fidelma McManus* at (01) 6763721.

Barbara Loftus
Paul Lavery. ❐

Solicitors Run for Bone Marrow Trust

Niamh Reedy, Solicitor, and *Emma Crowley*, Solicitor, (both of A&L Goodbody) are participating in a charity fun run in Helsinki in May, 1994 in aid of the Bone Marrow for Leukaemia Trust. They made the decision to take part in the fundraising run when their colleague, Solicitor *Rodney Overend,* was diagnosed with leukaemia in June, 1993 for which he is still being treated.

Like much in Irish medicine, State funding is insufficient to provide an adequate service to deal with the incidence of leukaemia in Ireland. The Trust has worked in close association with St. James's Hospital in Dublin (the principal centre in Ireland for the treatment of leukaemia and associated diseases) to provide bone marrow transplantation, the most modern and effective type of treatment. The Trust has also supported the research efforts of the Department of Haematology at St. James's, led by *Professor Shaun McCann,* into more effective ways of carrying out bone marrow transplantation and better ways of assessing the results. The Minister for Health, *Brendan Howlin TD*, recently laid the foundation stone for a new £2.98m. bone marrow/oncology/ haematology unit at St. James's and the Trust is currently seeking to raise funds towards equipping the unit.



Left to right: Niamh Reidy, Rodney Overend and Emma Crowley.

Donations would be welcomed and may be made by cheque or money order in favour of the Bone Marrow Fun Run 1994 and either sent directly to the Trust at Apt. 11, St. James's Court, 151-153 James's Street, Dublin 8 or lodged in the Trust's Helsinki Fun Run 1994 deposit account at AIB, Clonskeagh, Dublin 14 (account number 15489090, sort code 93-11-87). ❐

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SVP

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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clarlann na Talun), Chancery Street,
Dublin 7.

Published: 14 April, 1994.

Bernard Gately, 9 Elm Park, Renmore, Co. Galway. Folio: 50896; Land: (1) Corracoolia, (2) Corracoolia; Area: (1) 23(a) 1(r) 39(p), (2) 7(a) 0(r) 8(p). **Co. Galway.**

Bridgid O'Connell, Ballyshore Road, Craughwell, Co. Galway. Folio: 8152F; Townland: Crinnage. **Co. Galway.**

Michael O'Toole and Eva Christine O'Toole, 428 Belgard Heights, Tallaght, Co. Dublin. Folio: 13753F; Townland of Cookstown in the barony of Uppercross, situate to the west of Belgard Road in the town of Tallaght. **Co. Dublin.**

Michael Murphy. Folio: 3858; Land: part of the lands of Courthoyle New; Area: 122(a) 2(r) 22(p). **Co. Wexford.**

Michael Lynch, Folio: 570 closed to 273F; Land: Lavagh; Area: 22(a) 0(r) 30(p). **Co. Leitrim.**

Jean Sanford, Folio: 1176; Land: Part of the lands of Augheiskea; Area: 11(a) 1(r) 13(p). **Co. Meath.**

Annie Elizabeth Griffin, late of 6 Mannix Road, Drumcondra, Dublin; Folio: 869L; Land: property known as 114 Griffith Avenue situate on the south side of said avenue in the Parish of Clonturk and District of Drumcondra. **Co. Dublin.**

Eamonn Gallagher, Folio: 22512; Land: Carnamogagh Upper; Area: 0(a) 3(r) 0(p). **Co. Donegal.**

Thomas & Christine Tobin, both of 105 Edgewood Lawn, Blanchardstown, Co. Dublin. Folio: 45040L; Townland of Corduff in the barony of Castleknock. **Co. Dublin.**

John Gray, Folio: 8821; Townland: Coolboy; Barony: Shillelagh; Area: 0(a) 2(r) 0(p). **Co. Wicklow.**

Land Certificate, Folio 16668, County Westmeath. Registered Owner: Margaret Colgan, Relic Road, Kilbeggan, County Westmeath. Would any person having knowledge of the whereabouts of the above Land Certificate please contact J.D. Scanlon & Company, Solicitors, O'Connor Square, Tullamore, County Offaly, Telephone: 0506 51755 Fax 0506 51759.

Lost Wills

McNasser, Mary C., deceased, late of Skein House, Fermoyle, Calry, Colga P.O. Co. Sligo. Would any person having any knowledge of the whereabouts of the original will of the above named deceased, who died on 10 February 1994, please contact Kelly & Ryan, Solicitors, Manorhamilton, Co. Leitrim, Tel: 072 55034 or 55357.

Kennedy, Maura Mary, deceased, late of Upper Grand Canal Street, Dublin. Any person having knowledge of the whereabouts of a will of the above deceased please contact Messrs. Cahill & Cahill, Solicitors, Castlebar, Co. Mayo. Tel: 094 25500, Fax: 094 25511.

Moore, Patrick, deceased, late of Ballinakill Beg, Castlemahon, Co. Limerick. Please contact us if you are aware of a will made by the above who died on 26 January 1994. Gerard O'Keeffe & Co., Solicitors, Kanturk, Co. Cork. Tel: 025 50154 Fax: 029 50725.

Donnellan, Christopher (orse. Christy), late of Circular Road, Gort, Co. Galway and Fairhill House, Galway. Will anybody having knowledge of the whereabouts of a will of the above named deceased who died on 23 February 1994, please contact Messrs M.G. Ryan, Solicitors, Abbeygate House, 34/36 Upper Abbeygate Street, Galway. Tel: 091 64011 Fax: 091 61527.

Fox (nee Flood), Rose Teresa, deceased, late of Main Street, Athboy, Co. Meath and formerly of Robinstown, Kilskyre, Co. Meath and formerly of Towns Park, Athboy, Kilskyre, Co. Meath. Would anybody knowing the whereabouts of a will of the above named deceased who died on 20 September 1993, please contact O'Donnell Dalton Hogan, Solicitors, Oakfield House, Henry Street, Limerick. Tel: 061 413555 Fax: 061 415530 Ref: BR/JROD/CS.

Conway, Daniel, late of Moher, Derrinagree, Co. Cork. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 4 November, 1993, please contact Patrick A. Hurley & Co., Solicitors,15a Adelaide Street, Cork. Ref: PH/JMG Tel: 021 276225.

Ryan, Eithne Maud, deceased, late of Alexandra College, Milltown, Dublin and of 22 Wilson Road, Mount Merrion, Co. Dublin, retired headmistress. Would any person having knowledge of the whereabouts of any will of the above named deceased please contact Hanley & Lynch, Solicitors, 24 Clonskeagh Road, Dublin 6. Tel: 2697633 or Fax: 2697446.

Sheeran, Thomas (otherwise T. O'Shirin), late of Father Scully House, Grenville Street, Dublin 1, also previously of 225 Phibsborough Road, Phibsborough, Dublin 7 and also Barhauve, Rossport, Belmullet, Co. Mayo. Would any person having knowledge of a will of the above named deceased who died on 8 October 1993, please contact Box No: 30.

Briody, Kathleen, deceased, late of 35 Mount Pleasant Square, Rathmines,

Dublin 6 also late of Leitrim (otherwise known as Corbawn) Dring, Co. Longford. Would anyone having knowledge of the whereabouts of a will of the above named deceased who died on 1 August 1993, please contact Thomas K. Madden & Co., Solicitors, 4 Dublin Street, Longford. Tel: 043 41192.

McGuinness, Agnes, deceased, late of 3 Assaroe, Heights, Ballyshannon, Co. Donegal. Would any person knowing of the whereabouts of a will of the above named deceased who died on 27 September 1993, please contact Brittons, Solicitors, Tirconaill Street, Ballyshannon, Co. Donegal. Tel: 072 51187 or Fax: 072 52057.

Waugh, Barbara, late of 37 Dun na Mara Drive, Renmore, Co. Galway, who died 24 December 1993, at Ville Maria, Delmar, Nursing Home, Barna, Co. Galway. Would any person knowing the whereabouts of the will of the above named deceased please contact C.P. Crowley & Co., Solicitors, Augustine House, Merchants Road, Galway. Tel: 091 66131 or Fax: 091 66133.

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Experienced Solicitor available immediately for part-time or locum work. Any area considered. Phone Dublin 318519 or Reply Box No. 32.

Apprenticeship Sought by mature 25 year old male Arts graduate who has passed Final Examination, Part I. Capable, diligent with good skills and work experience. Write to box No: 33 or telephone 01-2894374.

Locum Solicitor required to cover maternity leave commencing in June 1994 for practice 30 miles north of Dublin. Conveyancing and small amount of probate work. Successful applicant will require substantial experience in these areas and will have to work without assistance. Replies in writing to Box No: 34.

Miscellaneous

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Agents – England and Wales. We are willing to act as agents for Irish Solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, 2/3 The Birtles, Wythenshawe, Civic Centre, Manchester, M22 5RE. Telephone: 0044-61-4370527 Facsimile: 0044-61-4373225.

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Probate re: Joseph Carroll – Coventry. Would the solicitor who tried to contact the above named please write to Stephen Carroll at 15 Forge Road, Kenilworth, Warwickshire, England or phone 0926 56214 between 1 and 5 p.m. or 0926 50089 evenings.

Belfast Solicitors will advise and undertake commercial or private matters throughout Northern Ireland. Regular consultations in Dublin or the West. Contact Paul Nolan or Julie Leonard for information booklet. Paul K. Nolan & Co., Solicitors, 135a Upper Lisburn Road, Belfast BT10 0LH, Tel: 080 232 301933, 080 232 601784.

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry. Telephone: 080693-61616 or Fax: 080693-67712.

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Please note that from 1 April 1994 **Aidan Eames & Robert Dore** who formerly practised at Eames Dore & Company, Solicitors as partners, will henceforth be practising solely under the style of *"Eames & Company"* and *"Dore and Company"* both practising from 2 City Gate, Bridge Street, Dublin 8.

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Notice to advertisers

Members of the profession wishing to advertise in the Professional Information section of the *Gazette* are requested to note the following information. The cost of a lost land certificate notice, or a notice for a lost will, is £18.00 plus VAT @ 21% (total 21.78). All other notices are charged at the rate of £3.00 per printed line plus VAT @ 21%. Boxed advertisements are also available at a cost of £50 per column inch.

If you would like to place an advertisement in this section, please forward the text to the *Gazette*, Blackhall Place, Dublin 7. Your notice will be placed in the next available issue of the *Gazette* and you will be invoiced following publication.

Please note that advertisements for lost land certificates must be accompanied by a schedule from the Land Registry setting out the details of the lost certificate. ❐

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This year the Irish Solicitors Apprentices Rugby Club (SARC) was invited by Freshfields, Solicitors of London Rugby XV to a challenge match on February 20 in the Civil Service Sports Grounds at Chiswick, London.

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We would like to extend our thanks to the Law Society and to the many firms around the country for their generous support of our trip.

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VOL. 88 NO. 4 MAY, 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

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VOL. 88 NO. 4 MAY 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

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Editor: Barbara Cahalane

Editorial Board:
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John F. Buckley
John Costello
Justin McKenna
Noel C. Ryan

Advertising: Seán Ó hOisín. Telephone: 830 5236 Fax: 830 7860.

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Front cover: The front cover shows l-r: the Attorney General of Ireland, Harold Whelehan SC, with Daniel E. Lungren, Attorney General, State of California and Michael V. O'Mahony, President, Law Society, at a luncheon hosted by the Law Society to mark Mr. Lungren's visit to Ireland.

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VIEWPOINT

Fee Advertising – Time for a Re-think

As we go to press, the Committee Stage of the Solicitors (Amendment) Bill, 1994 has commenced and battle lines have already been drawn on a number of key provisions of the Bill. Solicitors throughout the country will be pleased that the Minister of State at the Department of Justice, *Mr. Willie O'Dea* TD, announced at Second Stage that he will be removing those sections of the Bill that would have permitted banks and other financial institutions to provide probate and conveyancing services. The Government has obviously had a change of heart on this particular issue which is welcomed.

We would hope that the Government will, likewise, have a change of heart in relation to one or two other provisions of this Bill. Apart from the provision which would impose an obligation on the Law Society to fund the Office of the Ombudsman (which has been consistently objected to by the Society and, we should point out, by many other commentators recently who see it as a provision that undermines the independence of the Ombudsman) a provision which has aroused sustained and vociferous opposition from solicitors is that which would preclude the Society from prohibiting the advertising of fees by solicitors – *in other words allow fee advertising*. Up to now, despite intense opposition from the profession, the Government has held the line and Deputy O'Dea, at Second Stage, attempted to defend fee advertising as being in the public interest. We would earnestly suggest that he should think again on this matter. It is, perhaps, ironic that one of the most outspoken critics of this provision at the Second Stage was none other than Deputy *Desmond O'Malley*, who, in the course of his contribution, said the following:

> "Some years ago I would have greatly welcomed that, but from my experience of some of the advertising since 1988 it would be very dangerous to allow fee advertising. The Minister and the Government should think about this again before Committee Stage."

The Deputy went on to point out that, in his view, to allow fee advertising would be wrong and contrary to the public interest. This 'Damascus-like' conversion, late and all as it is, is greatly to be welcomed and the Government should take special heed of what Deputy O'Malley has said. He was, after all, the Minister who, before his departure from Government, was responsible for competition policy in this country and it was he, more than anybody else, who 'unleashed the dogs' of competition on the legal profession.

Can anybody seriously doubt the point that Deputy O'Malley has so forcefully made? Does the Minister really believe, at this stage, that the public interest will be served by allowing solicitors to quote publicly in advertisements fees for the provision of legal services? Surely it is clear that the most likely outcome of this is that the public will be at risk of being misled by a minority of solicitors who will advertise low-cost legal services solely to attract clients and will short-cut on quality. The market for legal services is very different to that which prevails in relation to ordinary commercial goods where the buyer can use his own judgement to determine the quality of the article being offered in advance of committing himself to a purchase. Most consumers of legal services are not in a position to do this. They are simply not in a position to assess in advance the quality of the service being offered by the solicitor. When it comes, therefore, to comparing prices as between solicitors, consumers lack a fundamental and vital ingredient to enable them to make an informed choice. They simply cannot compare the quality of service being offered by different solicitors so as to make a judgement as to which offer is best. It is for that reason primarily that fee advertising by solicitors is objectionable.

Nobody can reasonably object to the concept of price competition. There is ample evidence that competition is a healthy practice and is ultimately to the benefit of consumers. However, as we have said, the market for legal services is a complex one and does not readily lend itself to analysis on the basis of ordinary competition rules.

We await with interest the debate on this issue at Committee Stage. A number of opposition deputies have put down amendments to delete this provision from the Bill. The Minister will clearly have to think very hard about this matter. Simply reiterating the philosophy of The Fair Trade Commission, as set out in its 1990 report, will not satisfy anyone. The Minister must address the points now being made. He should ponder hard on the reasons that brought about the 'O'Malley conversion'. We sincerely hope that he will. ❐

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Council Meeting – 22 April 1994

Guidelines On Undertakings

The Council of the Law Society, on 22 April, considered changes to a draft proposed by the Professional Purposes Committee of a new section of *A Guide To Professional Conduct Of Solicitors In Ireland* to deal with undertakings.

The draft sets out a definition of an undertaking and suggests that a breach of undertaking would be *prima facie* evidence of misconduct and consequently the Society would require its implementation as a matter of conduct. It proposes that the following principles would apply to undertakings: an undertaking will be honoured as between giver and recipient only; if the undertaking is ambiguous it will be construed in favour of the recipient; an undertaking is binding even if it is to do something outside the solicitor's control; it does not have to constitute a legal contract to be enforceable as a matter of conduct; a solicitor is responsible for undertakings given by a member of his staff; all partners are responsible for an undertaking given by one partner; a solicitor cannot avoid liability on an undertaking by pleading that to honour it would be a breach of duty owed to his client; a solicitor must notify the recipient of a contingent undertaking if the contingency fails; in addition to the Society's power to enforce undertakings as a matter of conduct, a court, by virtue of its inherent jurisdiction over its own officers, has power of enforcement in respect of undertakings.

Further changes were proposed to the draft and the matter will come before the Council at its meeting in May.

Council Members Representing Solicitors before Regulatory Committees

The Council considered a motion that no member of the Council, including a Past-President of the Society, would accept instructions to act on behalf of a solicitor who was requested to appear before the Compensation Fund Committee, the Registrar's Committee, the Professional Purposes Committee, or a solicitor who was under investigation by the Society for alleged breach of the Solicitors Acts or the Solicitors Accounts Regulations or any professional practice regulation or code. An amendment to the motion was proposed to the effect that a member of the Council would not be precluded from giving informal advice or assistance to a colleague. A motion was also proposed that no member of the Council, including a Past-President, should accept instructions in any legal proceedings before the Society. (Non-Council members employed in the same firm would not be so precluded.) The Council will consider these matters further at its next meeting.

Practice Names

The Council considered the text of a draft Statutory Instrument, entitled Solicitors (Practice, Conduct and Discipline) Regulations 1994, dealing with the appropriate form of names of solicitors' practices. The draft provided that the name under which a solicitor, or firm of solicitors, may practise should consist only of the name or any part of the name of the solicitor, or one or more of the present or former principals of the firm, or such other name as is approved in writing by the Council of the Law Society. The draft also provided that a solicitor, or a firm of solicitors, would be permitted to use any name which was in use at the date the regulations came into force.

The Chairman of the Professional Purposes Committee, *Barry St. J. Galvin*, said the objective of the draft regulations was to improve the relationship between solicitors' practices, colleagues and the public. The Committee believed that inappropriate forms of nomenclature could mislead clients and colleagues. It was noted that the draft instrument did not preclude people from using titles other than their own names, or those of predecessors, provided the consent of the Society was obtained. Some members of the Council put forward the view that the matter of what should appear on a solicitor's or firm of solicitors' notepaper should also be considered and, after some discussion, it was decided to deal with both matters in one set of regulations. A question was raised about whether the regulations could be retrospective in effect and whether the Council could direct solicitors or firms who it was believed had inappropriate names to change them.

While the Council supported, in principle, the thrust of the Statutory Instrument, if referred it back to have to the text redrafted to include the matter of headed notepaper and be presented to the Council for further consideration.

Compensation Fund

The Chairman of the Compensation Fund Committee, *Ward McEllin*, reported that there had been a special meeting of the Compensation Fund Committee in March to monitor solicitors who had not applied for a practising certificate. There had been a 99.39% rate of compliance and only 55 solicitors had not applied for a current practising certificate.

Education

The Chairman of the Education Committee, *Ken Murphy*, reported to Council that, in his view, ACLET, the Advisory Committee on Legal Education and Training, appeared to be moving further in the direction of favouring joint professional education of solicitors and barristers. The Deans

of the Law Schools in the Universities had produced a paper arguing in favour of this view. He believed that the Law Society was under pressure to respond to this. The Council took the view that it would not be possible to formulate a concrete response before the outcome of the Solicitors (Amendment) Bill, 1994, but that the Society should continue to defend its own role in the professional training of solicitors.

The Chairman of the Education Committee reported to Council that some universities were now seeking exemption from the FE-1 for new law degrees they had introduced, for example, mixing law and languages. The Education Committee, he said, was disposed to exempting the degrees subject to a proper system of certification being in place i.e. that the universities would certify that the course content was in accordance with the syllabus laid down by the Law Society. The Council decided that this matter needed further consideration and it was adjourned to the next meeting.

Consumer Credit Bill

Elma Lynch, Chairman of the Parliamentary Committee, reported that the Consumer Credit Bill was currently being debated in Dail Eireann. The Bill had been examined by the Company Law Committee and a submission had been made to the Department of Enterprise and Employment. In particular, representations were made concerning the definition of "mortgage intermediary" in section 96 of the Bill as there was concern that solicitors might fall within the definition. There was similar concern about the definition of "credit intermediary" in section 2. She reported that the Society had sought an exemption for solicitors from the scope of both definitions.

Proposal To 'Cap' Personal Injury Awards

The Director General reported on a meeting that he and the President had had with an official of the Department of Industry and Commerce, at which they had pointed out the difficulties the Society foresaw in trying to devise a system of capping compensation awards that would be fair or workable. The Society had discussed a number of other measures that could be taken to reduce the cost of insurance in this country. The President and the Director General had reiterated fully the Society's opposition to any proposals to limit compensation awards.

The Director General also reported that he and the President had met with the Irish Congress of Trade Unions. It had been a useful meeting and the ICTU officials had made it clear that they were not in favour of reducing compensation levels but had indicated that they were seeking a change in the law so that compensation payable to a worker would not be reduced where it was found that the worker had contributed to an accident by his own negligence. They favoured in principle the introduction of a no-fault system of compensation.

Half-Yearly General Meeting of the Society

The Council considered three motions which had been set down by members of the profession for debate under special business at the Half-yearly General Meeting which would be held at the Annual Conference of the Society on 12 May. It was noted, in relation to the first motion, which sought to discuss the substantial increase in the membership subscription/registration fee for the current year, that the accounts for 1993 had been finalised and were being circulated to all members of the profession along with an explanatory memorandum from the Chairman of the Finance Committee.

Commenting on the second special business motion, which sought to discuss any change of annual contribution to the Compensation Fund whereby different classes of solicitors would contribute at different rates, the President of the Society noted that at the Committee Stage of the debate on the Solicitors (Amendment) Bill, 1994, there would be a motion from the Opposition to delete section 30(2) of the Bill that would permit the Society to prescribe different rates of contribution to the Fund in relation to any class of solicitor. The President noted that it was the policy of the Council to oppose different rates of contribution to the Fund.

The third motion of special business sought to discuss the concept of fee-sharing arrangements between solicitors and persons not qualified to practise as solicitors. The Council noted that there continued to be strong opposition in the profession to the introduction of provisions that would permit the establishment of multi-disciplinary partnerships. ❐

Better light a candle than curse the darkness

Muriel O'Donnell, Solicitor, is involved in fundraising efforts to provide aid in Bosnia. She writes:

"*Richard Hunt* and *Martin Keogh* are both unemployed professional drivers. Early last year, having watched on television the horrific scenes in Bosnia, they bought a 12 year old ambulance, filled it with supplies donated by the public and drove it into the middle of the war zone. They have now completed six deliveries of much-needed aid and are planning a seventh journey as soon as sufficient funds can be raised. Medical supplies are extremely scarce. A bottle of Calpol (used to treat fever in children) can fetch £70 on the black market. Antibiotics are like gold dust.

A fund-raising effort is under way. A quiz night will be held in the Presidents' Hall, The Law Society on 18 May at 8 pm (£24 per table of 4).

Please send what you can to Non-Stop Aid, Bank of Ireland, Rathcoole, A/c No. 41328723, sort code 901298."

Muriel O'Donnell, Solicitor. ❐

Scope of Legal Adjudicator Criticised

A call by the Irish Farm Family Therapy Group (IFFTG), to the Junior Minister for Justice, *Willie O'Dea*, TD, to withdraw the Solicitors (Amendment) Bill, 1994 because the Bill provided for a Legal Adjudicator who would be appointed by the Law Society and not an independent Legal Ombudsman, was reported in the *Sunday Press* of 13 March 1994. The Minister and *Ted Cunningham*, PRO of the IFFTG, debated the issue on the *Pat Kenny Show* on RTE Radio One on 14 March. Mr. O'Dea defended the provisions concerning the Legal Adjudicator and rejected IFFTG criticism that the provision would permit the Adjudicator to deal only with complaints that were referred to him within two years of the determination of the complaint by the Law Society. Mr. O'Dea claimed that if a longer period were permitted it could lead to the Adjudicator being swamped and thus unable to deal effectively with the matters referred to him. The IFFTG was reported in the *Evening Herald* of 29 March as calling for the appointment of a Legal Ombudsman and the paper also reported that the Group was supported by Fine Gael TDs, *Bernard Allen* and *Gay Mitchell*. Deputy Allen was quoted as saying "the days when any profession can regulate itself are long gone . . . The Law Society is a trade union for solicitors and it should not adjudicate on its own members." Deputy Mitchell said that the Adjudicator should not be paid for by the Law Society.

The IFFTG also criticised the cap on Compensation Fund claims provided for in the Bill. On the *Pat Kenny Radio Show* the Junior Minister pointed out that to date no individual client had claimed a sum of more than £250,000 but said he was open to reconsidering the level of the cap provided for in the Bill.
The *Cork Examiner* and *Daily Star* of 13 March reported on a picket on the Dáil by the IFFTG to highlight its dissatisfaction with the provisions in the Bill concerning the Legal Adjudicator and the cap on the Compensation Fund. In the article, a spokesperson for the Law Society was quoted as saying "the Law Society takes its responsibilities to regulate the profession very seriously and we are talking only about a small number of people in the profession who fall below the high standards required."

An article by a private citizen, *Celine Hussey*, criticising the Solicitors Bill, was published in the *Irish Times* on 22 April. She argued that the entire Bill should be withdrawn and replaced with one that paid serious regard to protecting clients interests and provided for a workable system of complaints by way of a Legal Ombudsman paid by the State, which would reduce or even eliminate the Law Society's power to determine clients' complaints. In an article in the *Irish Times* of 26 April, the Minister of State at the Department of Justice, Willie O'Dea TD, defended the Bill. He said he believed that the many provisions in the Bill, which were aimed at benefiting clients, would help to restore public confidence in the complaints machinery for the profession which was "unfortunately lacking at present".

Proposal to 'Cap' Personal Injury Awards

The *Irish Independent* of 24 February and the *Daily Star* of 25 February reported that, according to the latest figures from the Department of Enterprise and Employment, the average cost of motor insurance claims in Ireland was more than four times that of the UK. The article in the *Independent* said that it was understood that the Minister of State for Commerce and Technology, *Seamus Brennan* TD, intended to introduce a schedule of damages for specific injuries. The article quoted *Aidan Cassells*, Chief Executive of the Irish Insurance Federation, as saying that our insurance premiums were likely to stay well ahead of the European average until Mr. Brennan made progress on his proposed cap on personal injury awards. Both articles noted that the Law Society had signalled strong resistance to any capping of court awards.

Inside Business, the journal of the Chambers of Commerce in Ireland, published an article in its April issue in which the Minister for Commerce and Technology and the Director General of the Law Society set out their views on the proposal to 'cap' personal injury awards. The Minister argued that insurance costs were a major penalty on Irish firms and adversely impacted on their competitiveness and ability to create and sustain employment. He said that he would not proceed with his initiative unless he was satisfied that significant savings could be achieved and would be passed on to policy holders. *Noel Ryan* reiterated the Law Society's view that 'capping' of compensation awards was not the right approach because it would be unjust to victims of accidents.
He said that before the Minister published his proposals, he must explain precisely how he could guarantee to the Irish public that insurance costs would come down if awards were reduced.

The national daily newspapers on 23 April quoted the President of the Chambers of Commerce in Ireland, *Dr. Pat Loughrey*, as saying that pain and suffering awards which represented about 80% of personal injuries costs were out of line with Europe and should be capped. He asked: "how can Ireland claim its right to structural funds on the basis of our low income per capita and then pay out awards on insurance claims three and four times the amounts of our wealthier European neighbours?" He welcomed Minister Brennan's proposal but noted that the

Minister was opposed by a "powerful self-interested lobby group in the Law Society and Bar Council."

An editorial in the *Irish Times* on 15 March entitled "Death at Work" said: "it is utterly unacceptable that 63 workers should have died as a result of accidents at work last year – a death rate twice that which applies to workers in Britain – and that 13,000 should have suffered injuries or illnesses as a result of being in their places of work."

The *Irish Independent* and *Evening Herald* of 26 April 1994, reported that Dublin Corporation was commencing a policy of counter-claiming costs in cases that were dropped before going to court. Computer cross-checking and checks with other public bodies were also being carried out and detective agencies were being employed in an effort to identify unmeritorious claimants.

Lawyers' Fees

The *Cork Examiner* of 14 March 1994, reported a statement by the Chairman of the Dail Security and Legislation Committee, *Dan Wallace* TD, in which he suggested that the tendency by some members of the legal profession to overcharge might be as a result of pressure to stay in business in a highly competitive market. He said it was important that more emphasis be placed on manpower planning "if we are to maintain a balance between providing competitive rates for the consumer while ensuring the viability of the vast majority of our legal firms. Smaller and younger practices are particularly vulnerable." Deputy Wallace said that the legal profession as a whole played a vital role in our democracy. Writing in the *Sunday Independent* of 3 April, journalist, *Gene Kerrigan*, in an article entitled "The sharing of the spoils inside our court system", was highly critical of the hierarchical nature of the legal profession. "The Beef Tribunal scandal, in which some laywers appeared to be on the way to millionaire status, is just part of the bigger scandal, one of the chaotic law business cloaking itself in the trappings of prestige but widely held in contempt," he wrote. The journalist criticised no foal – no fee arrangements where, he suggested, if the case was won, a solicitor would take 10% of the award as a fee over and above the party and party costs.

Support for Solicitor Judges

The *Irish Times* of 16 April reported on comments by former Circuit Court Judge, *Frank Martin*, when he criticised as "absolute discrimination" the fact that solicitors could not be appointed as judges of the Circuit and Higher Courts.

Barbara Cahalane ❐

SADSI NEWS

The main highlight of the past month's events was a pub quiz, disco and pound-a-pint night which took place in the Banker's Club on St. Stephen's Green on Wednesday 30 March.

The pub quiz proved to be an extremely competitive affair with the various teams pitting their "intellectual" wits against each other in an effort to win the prize money. Many thanks to *Michael Lynn* for his able job as quizmaster and to *Paul Carolan* who designed the questions for the competition. The quiz was followed by a disco which allowed apprentices to reveal their expert dancing skills, no doubt aided to a large extent by the copious amounts of cheap pints on offer! We would imagine that many solicitors noticed their apprentices looking a little under the weather the following day!

As regards future events, the highlight of SADSI's calendar will be the **Midsummer's Ball** on Saturday, July 23 in The Great Southern Hotel, Eyre Square, Galway. We are confident that it will be an enormous success and, as it is on during a weekend, we hope to see many revellers making not only a night of it in Galway, but an entire weekend as well! Within the next two weeks all apprentices will receive further details of the ball, along with travel and accommodation information. Tickets will be £20 and will be on sale from 7 June. It must be stressed that tickets are limited in number, so please contact us early to avoid disappointment.

As mentioned in previous columns, SADSI is busy working on your behalf on the various pertinent issues which affect apprentices. One issue is the Higher Education Grants Scheme and apprentices' entitlements thereunder. *Philippa Howley* reports as follows:

The Higher Education Grants Scheme

Many apprentices will be aware of the anomalies that exist in the Higher Education Grants Scheme which, in its present form, has been in operation since 1992.

The exclusion from the Scheme of apprentices who do not have a primary degree and apprentices with post-graduate qualifications (whether previously grant-aided or not) are only two examples of the inherent injustices of the Scheme.

SADSI has been in correspondence with the Department of Education regarding the Scheme and I am aware that numerous apprentices have taken up the issue with their local authorities and written directly to the Minister for Education on the matter.

As a result of the foregoing, the entire Scheme is now under review. Department of Education officials have indicated that a decision on the matter will be forthcoming "in a few weeks time". I will keep you informed of all developments and would emphasise that in any event all apprentices should check their entitlement to a grant with their local authority. ❐

Barbara Loftus
Paul Lavery

LAWBRIEF

by Dr. Eamonn Hall, Solicitor

The Criminal Justice (Public Order) Act, 1994

The Criminal Justice (Public Order) Act, 1994 (No. 2 of 1994), came into operation on April 4, 1994. The Act provides for

- the updating of the law in relation to public order offences;
- the creation of an offence specifically aimed at racketeering; and
- the implementation of certain recommendations made by the Committee on Public Safety and Crowd Control.

This note merely informs readers of the 1994 Act; it does not purport to be an analysis of the legislation.

Parts II, III and IV of the Act create new offences and otherwise amend the existing law. New offences and amendments of the law include

- intoxication in a public place (liability to a fine not exceeding £100);
- disorderly conduct in a public place (liability to a fine not exceeding £500);
- threatening, abusive or insulting behaviour in a public place (liability to a fine not exceeding £500 or to imprisonment not exceeding 3 months or to both);
- distribution or display in a public place of material which is threatening, abusive, insulting or obscene (liability to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months or to both);
- failure to comply with directions of members of the Garda Síochána in a public place (liability to a fine not exceeding £500 or to imprisonment not exceeding 6 months or to both);
- wilful obstruction of the free passage of any person or vehicle in any public place (liability to a fine not exceeding £200);
- increase of penalty for common assault or battery to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or to both;
- entering a building as a trespasser with intent to commit an offence (liability to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or to both);
- trespass on any dwelling or the curtilage thereof in such a manner as to cause fear in another person (liability to penalties of £1,000 and £500 and imprisonment for specified terms);
- riot, where twelve or more persons present together at any place (whether that place is a public place or a private place or both) use or threaten to use unlawful violence for a common purpose, and the conduct of those persons, taken together, is such as would cause a person of reasonable firmness present at that place to fear for his, her or another person's safety (liability on indictment to an unlimited fine or imprisonment for a term not exceeding 10 years or to both);
- violent disorder, where three or more persons together at any place (whether that place is a public place or a private place or both) use or threaten to use unlawful violence and the conduct of those persons, taken together, is such as would cause a person of reasonable firmness present at that time to fear for his, her or another person's safety (liability on indictment to an unlimited fine or imprisonment for a term not exceeding 10 years or to both);
- affray, where two or more persons at any place (whether that place is a public place or a private place or both) use or threaten to use violence towards each other (liability on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 12 months or to both, and on indictment to an unlimited fine or to imprisonment for a term not exceeding 5 years or to both);
- blackmail, extortion and demanding money with menaces (liability on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, and on conviction on indictment to an unlimited fine or imprisonment for a term not exceeding 14 years or to both);
- assault with intent to cause bodily harm or commit an indictable offence (liability on summary conviction to a fine not exceeding £1,000 or to 12 months imprisonment or both and on conviction on indictment to an unlimited fine or to a term not exceeding 5 years or to both);
- assault or obstruction of a peace officer acting in the execution of his or her duty or assault of another person acting in the aid of a peace officer (liability on summary conviction to a fine not exceeding £1,000 or to imprisonment for 12 months or to both, and on indictment to an unlimited fine or to imprisonment for a term not exceeding 5 years or to both);
- control of access to certain events by the Garda Síochána in the interests of safety or for the purpose of

preserving order and seizure of intoxicating liquor or any disposable container or other article which could be used to cause injury together with certain powers to search a person going to an event (liability on summary conviction to a fine not exceeding £500);

- prohibition of advertising of brothels and prostitution (liability on summary conviction to a fine not exceeding £1,000 and on conviction on indictment to a fine not exceeding £10,000);

- powers of arrest of the Garda Síochána without a warrant, powers to demand the name and address of any person whom the member suspects with reasonable cause has committed or whom the member finds committing such an offence (liability on summary conviction of a fine not exceeding £500).

Doli Incapax: A Disservice to the Law?

The Queen's Bench Divisional Court held in the case of *C. (a Minor) v Director of Public Prosecutions* (Mann LJ and Laws J, *The Times Law Report*, March 30, 1994) the rebuttable presumption that a minor between the ages of 10 and 14 was incapable of committing a crime no longer existed in English law. The court so held in dismissing an appeal by C, a minor, by way of case stated against his conviction for interfering with a motorcycle with the intention to commit theft.

Mann LJ, giving the judgment of the court, said that the appellant at the age of 12 was presumed to be *doli incapax* (incapable of committing a crime) until that presumption was rebutted by positive proof adduced by the prosecution that in fact he knew what he did was seriously wrong. The justices had found that he had known that what he had done was seriously wrong. The damage to the motorcycle had been substantial and the appellant and his accomplice had run from the police.

The judge stated that whatever had been the position in an earlier age when there was no system of universal compulsory education and when children did not grow up as quickly as they did nowadays, the presumption at the present time was a serious disservice to the law.

Mann LJ considered that the presumption meant that a child over 10 who committed an act of obvious dishonesty or even grave violence was to be acquitted unless the prosecution specifically proved by discrete evidence that he understood the obliquity of what he was doing. Such an approach was unreal and contrary to common sense.

The court considered that aside from anything else, there would be cases where evidence of the kind required could not be obtained but, quite apart from pragmatic considerations, the presumption was in principle objectionable. The court considered that it was not part of the general law that it should be proved that a defendant appreciated that his act was seriously wrong; that additional requirement where the presumption applied was out of step with the general law. The requirement was, furthermore, according to the court, conceptionally obscure.

The rule was also divisive because it attached criminal consequences to the acts of children coming from what used to be called "good homes" more readily than to the acts of others. It was perverse because it tended to absolve from criminal responsibility the very children most likely to commit criminal acts.

It was not surprising that the presumption took root in an era when the criminal law was altogether more draconian, but the philosophy of criminal punishment had obviously changed out of all recognition since those days. The court stated that the presumption had no utility whatever in the present era and ought to go.

The question was whether the court had authority to abolish the presumption. Several arguments were considered.

It had been argued that the presumption was of such long standing that it should only be changed by Parliament or at least a decision by the House of Lords. The court considered that antiquity of itself conferred no virtue upon the legal status quo. The common law was not a system of rigid rules but of principles whose application might alter over time and should be renewed by succeeding generations of judges. In the present case, the court considered the conditions under which the presumption was developed in the earlier law now had no application.

It had also been argued that the court was bound by the doctrine of precedent to adhere to the presumption. The court considered that the rules of *stare decisis* provided a crucial counterpoint to the law's capacity for change; apparently established principles were not to be altered save through the measured deliberation of a hierarchical system. The court opined that although first instance courts did not, on the whole, effect root and branch changes to legal principles, the Divisional Court was in a peculiar position being a first instance court but also an appellate court for cases like the present; and in such cases there was no appeal from its decision save to the House of Lords. The court considered that it was entitled to depart from the premise which lay behind certain decisions of the Court of Appeal. To do so did not involve any departure from any adjudication which that court was required to make upon an issue in dispute before it.

Accordingly, in the circumstances, the presumption relied upon by the appellant was no longer part of the law of England and the appeal therefore was dismissed.

The issue of "mischievous discretion" was considered in the Irish cases of *Green v Cavan County Council*, [1959] IR Jur. Rep. 75 and *Monagle v. Donegal County Council* [1961] IR Jur Rep. 37. It will be interesting to observe how long the principle of *doli incapax* survives in Ireland at least in relation to children between 12 and 14.

"The Shop"

"The shop" is the colloquial title for the retail outlet for Government publications at Molesworth Street, Dublin 2. Mr. *Noel Dempsey* TD, Government Chief Whip and Minister of State at the Office of Public Works officially opened the newly-refurbished Government Publications Sales Office, "the shop", on March 10, 1994.

Most readers of the *Gazette* will be familiar with the shop. Apart from Irish Government publications, the shop sells publications for the European Union, World Health Organisation, UNESCO and many other international organisations. Close links are also maintained with the Government Publications Offices in London and Belfast and many of their publications are on display in the Dublin shop.

The Minister stated that the shop uses modern technology. There were in excess of 20,000 titles on database at present and he expected this to reach 40,000 within the next twelve months. The Minister stated that it was intended to have public access to the database on a touch-screen basis by the end of the year. A pilot study was also being undertaken with a view to providing access to all legislation on CD-ROM. The prototype being developed related to health and safety legislation and the initial responses were promising.

Noel Dempsey TD, Minister of State at the Office of Public Works and Government Chief Whip; Tom O'Donoghue, Manager, Government Sales Office and Tom Costello, Controller, Government Supplies Agency, at the official opening of the newly-refurbished Government Publications Sales Office.

Readers may like to know that the office has appointed a Customer Liaison Officer since the beginning of 1994 to deal with demands, or indeed complaints, on a personal basis.

Company Legislation on Computer Disc

The Companies Acts 1963-1990 and relevant Statutory Instruments are now available on computer disc through "a windows" interface. The disc has been published by the Institute of Chartered Accountants in Ireland and developed by PAS Limited. The legislation comes with an index and a full-search facility. Users can review the sections of the Acts they require on screen and have those sections printed out.

The disc includes the current text of legislation as at January 1, 1994. Updates are available annually or quarterly at the discretion of the user. The system costs £199 plus VAT with annual updates at 25% of the cost price. There is also a network version available at £750 plus VAT.

Further information can be obtained by contacting PAS Limited at 01-661 3742, 13 Herbert Street, Dublin 2. ❐

Apprentice Salaries

Practitioners and their apprentices are informed of a resolution passed by the Council of the Society as follows:–

"From 1 January 1994 the minimum recommended salaries payable to solicitors' apprentices who have entered the offices of their masters following completion of the Professional Course shall be as follows:–

- £115.00 (gross) per week for the first six months.
- £125.00 (gross) per week for the next six months.
- £135.00 (gross) per week for the final period before the apprentice returns to the Society's Law School for the Advanced Course."

The Council appreciates that where an office is paying the apprentice's course fee, this recommendation may have to be modified.

The Council suggests as a guideline that apprentices be paid not less than £95.50 a week during their attendance in the office before embarking on the Professional Course. ❐

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Outlook Positive says Law Society President

Addressing a recent parchment ceremony, at which 55 newly-qualified solicitors were admitted to the Roll, the President of the Law Society, *Michael V. O'Mahony*, said that recent positive economic forecasts augured well for an expansion in the business sector and thus in demand for legal services. He told the newly-qualified solicitors that they were entering the profession at a positive and challenging time. The debate on the Solicitors (Amendment) Bill, 1994, was entering its final stages in Dáil Éireann and, when enacted, would provide a revised statutory framework for the development of the profession over the coming decades. The President said that transparency was the bye-word of the 90s, meaning that procedures would have to be in place that would assure the public that the manner in which the Society performed its regulatory functions and the manner in which solicitors provided legal services was fair and reasonable. The profession should react positively to changes aimed at achieving those ends.

He urged the newly-qualified solicitors to keep up-to-date and to avail of the Continuing Legal Education Courses run by the Law Society. He said that on the passing of the Bill the Society would be empowered to introduce a programme of mandatory Continuing Legal Education similar to that already operating in the UK.

The President emphasised that the solicitors' profession was and should always be a collegiate profession and said that, in particular, he was concerned that sole practitioners would never feel that they had no one to turn to if they had a problem. He urged them to consult with colleagues or to approach the Society for assistance, early rather than later, if they felt the need for it.

The President of the Society also paid tribute to *Professor Richard Woulfe*, Director of Education in the Society's Law School, who would be retiring in June 1994 after sixteen years service to the profession. Professor Woulfe, he said, was seen by those who came into contact with him as above all a fair man, a man of honour and a man of intellect. He congratulated Professor Woulfe on the manner in which he had served the profession and students over his long period of service with the Law Society.

Addressing the newly-qualified solicitors, the President of the High Court, the *Hon. Mr. Justice Liam Hamilton*, told them that the practice of law was a most satisfying profession because the order of society centered around the administration of law with justice. He urged them to give their clients every consideration and assistance. As young solicitors they had a world of opportunity before them, but their objective and the objective of everyone involved in the administration of justice should primarily always be to serve the community. "Never forget that your primary role is to serve justice and to attempt to ensure that everybody gets an equal opportunity. Fair play should be your guiding principle," he said. He asked the newly-qualified solicitors to honour the trust that was being placed in them and said that if they did so they would be playing a vital role in achieving a better society for all. ❐

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PRACTICE NOTES

Section 59 Notices

Section 59 of the Finance Act, 1974 empowers the Revenue Commissioners to serve on any person a notice in writing requiring him to supply to the Revenue Commissioners information in relation to certain transactions involving particular clients where those transactions involve certain offshore jurisdictions. In recognition of the unique position of solicitors, sub-section 3 of section 59 limits the information which a solicitor can be compelled to provide under the section.

It is the view of the Taxation Committee of the Law Society that solicitors must comply if served with a notice under section 59 of the Finance Act, 1974. However, solicitors cannot be compelled to comply with the notice to the extent that the information requested in the notice issued by the Revenue Commissioners contravenes sub-section 3 of section 59. In this regard, it should be noted that the form of notice being sent at present to solicitors by the Revenue Commissioners requires information beyond what a solicitor is obliged to supply under the section (e.g. a solicitor cannot be compelled to furnish the name and address of any other person to whom the solicitor introduced the client for the purpose of completing or carrying out the transaction or operation, which is information regularly requested by the Revenue Commissioners).

Accordingly, when complying with section 59 notices, a solicitor should refer to the text of the section and should supply to the Revenue Commissioners only information that he is obliged to supply pursuant to the section.

If a solicitor has any enquiries in relation to the application of section 59 of the Finance Act, 1974 or as to how to respond to the Commissioners, he should contact the Secretary of the Taxation Committee. ❐

Taxation Committee

Applications for Notaries Public – RSC amended

Recently the Rules of the Superior Courts were amended to enable the Chief Justice to make regulations in relation to applications for appointment as a Notary Public. The order and the text of regulations made under the order by the Chief Justice are published below.

"The following shall be inserted as Order 127 of the Rules of the Superior Courts.

7. **Order 127**

Notaries

1. The Chief Justice may, in the exercise of his discretion and from time to time, make such rules and regulations or give such practice directions as he may think fit as to the form and mode of application to be appointed a Notary Public.

2. Such rules, regulations or directions may require that an applicant satisfy the Chief Justice in advance of the appointment of the applicant that he has the requisite and appropriate knowledge of notarial practice and procedure.

8. These rules may be cited as the Rules of the Superior Courts (No. 2) of 1993 and shall be construed with the Rules of the Superior Courts.

9. These rules shall come into operation on the 9th day of September, 1993."

"Re: Appointment of Notaries Public

Direction

In pursuance of the powers vested in me by Order 127 of the Rules of the Superior Courts (No. 2) of 1993, I hereby make the following directions and regulations concerning the application of persons to be appointed a Notary Public.

1. The applicant shall before making application for appointment satisfy the Faculty of Notaries Public in Ireland that he or she has a sufficient knowledge of notarial matters and procedures and of the particular legal provisions applicable to notarial matters to be a competent and efficient person to carry out the duties of a Notary Public if appointed.

2. In the event of an applicant for appointment as a Notary Public failing to obtain from the Faculty of Notaries Public in Ireland a certificate of competency above referred to the Faculty shall state in writing the reasons why they have declined to grant their certificate.

3. In the event of an intending applicant for appointment as a Notary Public failing to obtain the certificate of competency above referred to he/she shall still be entitled to continue to apply but upon making an application under such circumstances shall exhibit on affidavit the decision issued by the Faculty as to their reasons for declining to grant a certificate and may adduce such other evidence as it is intended to rely upon in making the application with regard to competency."

Thomas A. Finlay,
Chief Justice,
28 March 1994

❐

WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

"I give, devise and bequeath the sum of pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

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The Social Welfare (Consolidation) Act 1993: Extension of a Personal Representative's Liability

by Raphael King, Solicitor*

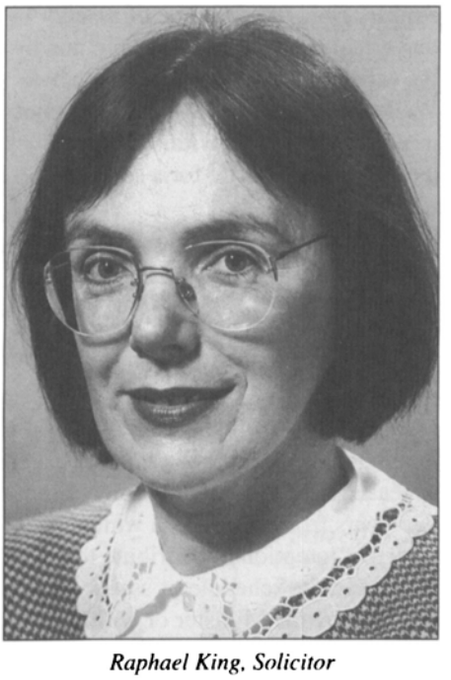
Most solicitors acting in the administration of estates will be aware of the obligations imposed by previous Social Welfare Acts on the personal representatives of deceased old age pensioners. However, they may be unaware of the changes introduced by the Social Welfare (Consolidation) Act, 1993, which have extended these duties and obligations.

The situation which previously obtained related only to deceased persons who had been in receipt of a non-contributory old age pension or a blind pension. Section 174 of the Social Welfare (Consolidation) Act, 1981, as amended by section 33 of the Social Welfare Act, 1991, provided that the personal representative of such a deceased's estate was bound to give three months notice to the Minister for Social Welfare before distribution of the estate and to provide the Department with a copy of the schedule of assets. If the personal representative failed to do so and if there was a refund due, then the personal representative became personally liable to the Minister for the amount due to the Minister from the estate in respect of the overpaid old age pension or blind pension.

The Social Welfare Act, 1993 greatly extended the duty imposed on personal representatives administering estates. This Act has been repealed and replaced by The Social Welfare (Consolidation) Act, 1993.

Section 280 of the Social Welfare (Consolidation) Act, 1993 provides as follows:-

"(1) The personal representative of a person who was at any time in receipt of assistance shall, not less than three months before commencing to distribute the assets of that person:-



Raphael King, Solicitor

(a) inform the Minister, by notice in writing delivered to the Minister, of his intention to distribute the assets, and provide the Minister with a schedule of the assets of the estate, and

(b) if requested in writing by the Minister within three months of the furnishing of the notice and schedule of assets referred to in paragraph (a), ensure that sufficient assets are retained, to the extent (if any) appropriate, to repay any sum which may be determined to be due to the Minister or the State (as the case may be) in respect of:-

(i) payment of assistance to the person at a time when the person was not entitled to received such assistance

or

(ii) payment of assistance to the person of an amount in excess of the amount which the person was entitled to receive.

Section 280 goes on to provide that a personal representative who contravenes sub-section (1) and who distributes the assets of the deceased person without payment of any sum due to the Minister in respect of payments to which the deceased was not entitled or, alternatively, payments of assistance in excess of the amount to which the deceased was entitled, *shall be personally liable* to repay to the Minister an amount equal to the amount which the Minister would have received if, in the course of the administration, the said amount had been duly taken into account and repaid to the Minister.

It is clear that the objective of this section is to allow the Department of Social Welfare the opportunity to see from the schedule of assets whether any overpayment of assistance took place. There is a presumption in section 280 that the assets owned by the deceased at the date of death belonged to him for the entire period during which he was in receipt of assistance. (Ref. section 280(2).) This presumption applies in the absence of evidence to the contrary.

We can see therefore that the 1993 Act introduced radical changes. The situation outlined previously above in relation to the Social Welfare (Consolidation) Act, 1981 applied only to estates where the deceased had been in receipt of a non-contributory old age pension or a blind pension. The situation now is that the personal representative assumes this liability in any situation where the deceased was in receipt of assistance as defined by the Act.

"Assistance" under the Act means Unemployment Assistance, Pre-Retirement Allowance, Old Age (non-contributory) Pension, Blind Pension, Widows and Orphans (non-contributory) Pensions, Deserted Wives Allowance, Prisoners Wives Allowance, Lone Parents Allowance,

Carers Allowance and Supplementary Welfare Allowance, in other words most non-contributory Social Welfare payments.

The extension of the personal representative's liability will in most cases extend in turn to us as solicitors. This is because in the majority of cases the personal representatives will have relied on the advice of a solicitor. The solicitor will more than likely find himself the defendant in a professional negligence suit if he ignores the new provisions of the Social Welfare code in this area.

It is important to note that a statutory notice to creditors will not protect the personal representative from a claim by the Minister for Social Welfare.

Notification

Section 280 (1)(b) provides that the Minister must within three months of notification by the personal representative (probably through his solicitor) request that sufficient assets be retained from the estate to repay any overpayments due.

The practice of the Department is to issue such a request only where it appears from the schedule of assets that a real probability of a claim due by the estate to the Department of Social Welfare exists. If the Minister does **not** issue such a request within the three months then it is safe for a solicitor to distribute.

Time Limit for Claims by the Minister against the Estate

Section 280(4) provides that any proceedings for the recovery of the assistance due from the estate shall be maintainable against the estate of the deceased if brought at any time within two years from the date on which the notice of intention to distribute the assets and the schedule of assets are received by the Minister or within any other period fixed in any other enactment, whichever is the longer.

It follows from the above that solicitors acting for personal representatives will in future have to ascertain whether a deceased was, at any time, in receipt of any Social Welfare Assistance payments.

The instruction sheet used by solicitors acting in the administration of an estate should be amended to ensure that this point is checked with the personal representative. It would be a foolish solicitor who would take it upon himself/herself to assume that no such payments had ever been received at any time in the past and who would accordingly ignore the obligations imposed by Section 280.

Raphael King, Solicitor, is a tutor in wills/probate and administration of estates in the Law Society's Law School.

Forthcoming AIJA Events

Regional Weekend Cork 10 – 12 June

Each year AIJA (the International Association of Young Lawyers) members in Ireland and the UK hold a regional weekend, the venue rotating between England, Scotland and Ireland. This year it is Ireland's turn to act as host and, by popular demand of UK (and many continental) members, the meeting will take place in Cork on the weekend of 10/12 June next. The topic of the seminar (which takes place on Saturday morning) is:

Money Laundering/Tracing of Funds.

The seminar will focus on a practical example of a case involving the tracing of funds through a number of jurisdictions, including the Channel Islands, Ireland and various continental countries and the speakers will include the head of the Fraud Squad in Ireland. In addition, a lively social programme has been arranged.

If you are interested in meeting lawyers from England and Scotland and Wales – this is the ideal opportunity to do so. Those interested in obtaining a copy of the programme, should contact *Petria McDonnell*, McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1, tel: 01 – 8290000, fax: 01 – 8290010 or *Mary Kinsella* at the Law Society for further information.

Annual Congress – 30 August - 3 September

The Annual Congress of AIJA takes place this year in Vichy, France. The working sessions (which will take place in the salons of the Grand Casino) include the following topics:

- Warranties and Disclosures in Corporation Acquisitions
- Know how: Protection and Licensing
- Personal Liability of Directors and Officers in cases of Bankruptcy and Insolvency
- The North American Free Trade Agreement (NAFTA)
- Marketing & Promoting Law Firms
- Tax and the Environment
- Human Rights Protection
- Recent Issues in the Taking of Security
- Trial Procedure – a Comparison of the Common Law and Civil Systems

A full social programme is also offered, including an evening at the opera, a horse race specially organised for AIJA and a reception at one of France's most magnificent castles. There is also a full spouses' programme involving trips to local places of interest. In addition, there will be a specially organised pre-congress day at Euro Disney for AIJA participants.

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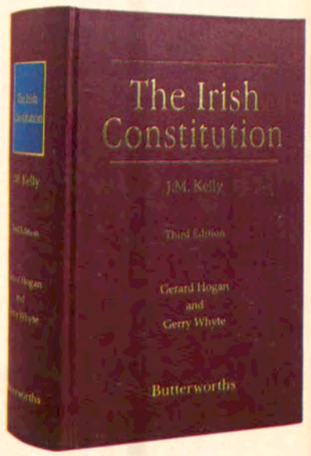
PEOPLE AND PLACES

At the Parchment Ceremony on 22 April 1994 were l-r: Ivan Carter, Manager, AIB, Capel Street, presenting the AIB Conveyancing Prize to John Menton (33rd Professional Course) who was admitted to the Roll of Solicitors, with Harriet Kinahan, Education Officer, Law Society.

Recently, the Limerick Bar Association held a dinner to mark the appointment of Dermot Kinlen as a Judge of the High Court. l-r: Patrick Barriscale, Honorary Secretary, Limerick Bar Association; Mary English, Honorary Treasurer, Limerick Bar Association; The Hon Mr. Justice Dermot Kinlen; Niall Sheehy, President, Limerick Bar Association; His Honour Judge Michael Reilly and His Honour Judge Kevin O'Higgins.

At a presentation by the Council of the Law Society to Bill Mackey, who retired after sixteen years service as Bar Manager in the Law Club of Ireland, were l-r: John Maher, Past-President, Law Society; Bill Mackey; Ernest Margetson, Past-President, Law Society; Michael V. O'Mahony, President, Law Society and Gerald Hickey, Past-President, Law Society.

At the Dublin Solicitors Bar Association Seminar on "Sentencing in Criminal Cases – Striking a Balance" held on 15 April were l-r: Daire Murphy, President, Dublin Solicitors Bar Association; Emer Hanna, Senior Probation and Welfare Officer, Department of Justice; Willie O'Dea TD, Minister of State at the Department of Justice and Frank Martin SC, former Judge of the Circuit Court.



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At the Parchment Ceremony on 22 April were l-r: James Harte with his son, John Harte, who was admitted to the Roll of Solicitors (a member of the fourth generation of the Harte family to be admitted) receiving his parchment from his uncle, John B. Harte, Law Society Council Member.

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BOOK REVIEWS

The Law of Evidence in Ireland

by Caroline Fennell, Butterworths (Ireland) Ltd 1992, 400pp, hardback, £41.00.

Legal practitioners tend to regard a book on the law of evidence as something to be used on an 'ad hoc' basis to get an answer to a legal problem which is procedural as opposed to substantive. *Caroline Fennell's* book is in that functional respect different. Throughout, she approaches each heading of the subject from a principled standpoint – a style not unknown to readers of American law review articles. In view of Ms. Fennell's own US academic experience, this is not altogether surprising. Her approach is arguably the correct one, as, unlike the UK but like the US, the application of our rules of evidence, particularly in criminal cases, is always in the context of what American law calls 'due process' and Irish law calls 'constitutional fair procedures'.

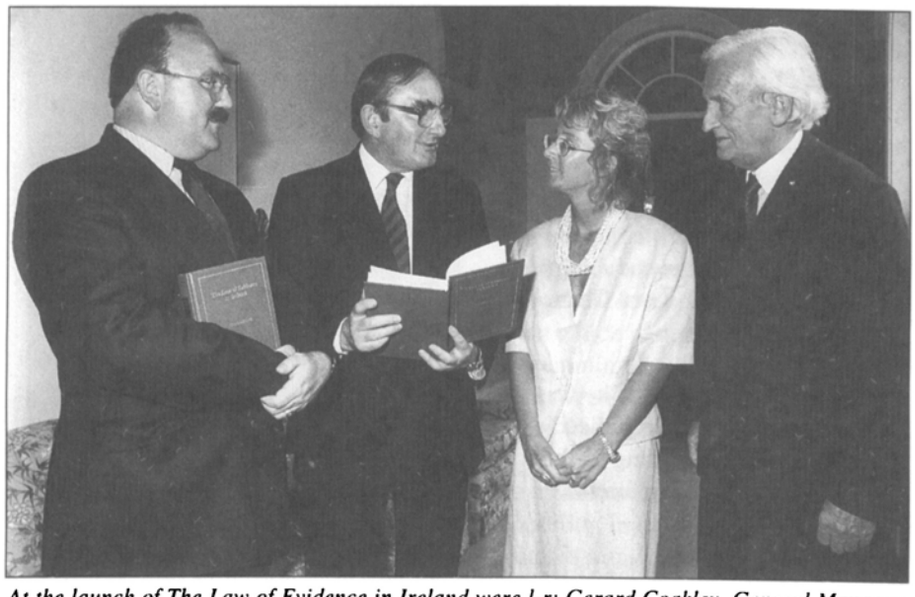
If this jurisdiction is ever to have a judicial training system, it would be likely that participating judges would be recommended to read fully (not just consult!) Ms. Fennell's book.

Those charged with the application of the law of evidence should be aware of its 'balancing' function. Whether the case at hearing be criminal or civil, judges should always be conscious that for the man-in-the-street, exposed to the legal system perhaps for the only time in his life, the way a court hearing is conducted, particularly the way in which 'adjectival' evidential rules are applied, will be for him the *substance* of the law in action.

The inclusion by the author of the American experience will be of interest to the academic and the law student as well as to the practitioner. Our Supreme Court, influenced not least by the late *Mr. Justice Niall McCarthy*, is now as willing to accept, as persuasive, a precedent emanating from the US courts, federal or state, just as much as a precedent from an English, Australian or Canadian court. In her chapter on Opinion Evidence, and of particular contemporary interest here, is the exposition by the author of the current US experience on the acceptability of DNA fingerprint evidence.

The last twenty years has seen the publication of an impressive sequence of books on various topics of Irish law, each adding to the development of our own separate jurisprudence.

Michael V. O'Mahony



At the launch of The Law of Evidence in Ireland were l-r: Gerard Coakley, General Manager, Butterworths Ireland; the Hon Mr. Justice Hugh O'Flaherty, Consultant Editor; Caroline Fennell, Author and the Hon Mr. Justice Anthony Hederman, who launched the book.
Photograph: Sally Kerr-Davis

The Judges in Ireland 1221 – 1921

by F. Elrington Ball, 2 volumes, xxii + 365pp and 408pp (first published by John Murray, London, 1926, republished by Round Hall Press, Dublin, 1993) IR£100.00, boxed £125.00.

Francis Elrington Ball, writer and historian (1863 – 1928), was the son of Lord Chancellor Ball, Lord Chancellor of Ireland from 1875 to 1800. As a son of the Lord Chancellor, the highest office-holder of the law in Ireland, Ball was well known from his earliest years to members of the Irish judicial bench of the time.

The author devoted the best years of his life to the defence of the legislative union between Great Britain and Ireland. As late as 1926 he still considered the legislative union to be necessary for the economic welfare of Ireland.

Ball's years in politics brought him into close contact with members of both branches of the profession. Yet despite his contact with judges, barristers and solicitors, the sketches of the judges of his time are disappointing. Of course this criticism is made from the vantage point of the 1990s. There is a natural tendency for a historian to pay least attention to his or her own time; writers sometimes forget that they publish not only for their present generation but for posterity. However, it is difficult to write

honestly and assess in public those whom one knows in a personal capacity.

The seven centuries covered by the two volumes are divided into six periods. Lists of the judges are set out and there are also short biographical details. The author records that fortunately the resources of the Public Record Office in Ireland had been explored before the building's destruction.

In his approach to his task, the author refers to the words written by the author of *Life of Thomas á Kempis* about his own father, Lord Chancellor Ball;

> "[E]rnest Protestant as he was, he was absolutely unprejudiced and as scrupulous in guarding Catholic interests as if he had been a Catholic."

Ball noted that within his own limitations his aim in these volumes was that he may be thought worthy of a like judgment.

Professor Nial Osborough, University College Dublin, the doyen of Irish legal historians, noted in A.W.B. Simpson (ed), *Biographical Dictionary of the Common Law,* (London, 1984) that Ball's *The Judges in Ireland* was "a product of true scholarship and remain[ed] an indispensable work of reference. . ."

The Judges in Ireland has become a classic; it is also immensely readable. These volumes are a treasure, an invaluable reference which lay a foundation for an active future of criticism and revision in Irish legal history; indeed any person possessing even a slight interest in Irish legal history should read *The Judges in Ireland.*

Dr. Eamonn G. Hall

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Applications to Wind-up Companies

by Derek French; published by Blackstone Press Limited, 1993, 404pp, hardback, £21.95stg.

Although this publication deals with the law of England and Wales, it will nonetheless prove to be useful to any lawyer involved in petitioning for, or opposing, the winding-up of a company. The book recites many Irish and common law decisions other than English. The abundance of recited decisions to support points made makes the publication an essential tool for any lawyer involved in winding-up proceedings. The approach is very specific and specialised to its subject matter. To obtain the full benefit of the publication the reader should have the English Insolvency Act, 1986 to hand so that its comparative provisions in the Companies Act, 1963 may be readily ascertained and applied.

Both the contents and the index are helpful in their detail – an important aspect of the usefulness of any book to a practitioner. The first chapter deals with jurisdiction and recites Irish decisions in its treatment of industrial and provident societies. In particular the chapter deals with the connection a company may have with a particular jurisdiction for an order to be made for its winding-up in that jurisdiction.

The second chapter deals with the actual presentation of a petition – the circumstances in which an order will be made, the standing of the petitioner as well as the purpose of the petitioner. In dealing with the period between the presentation and the hearing, the third chapter covers a number of very practical points of detail which would not generally be covered in other publications.

The fourth chapter deals with the orders of the court and review of orders as well as who may be heard – for instance, authority is given for the statement that a company's managing director "does not have implied authority to make crucial decisions following the presentation of a petition to wind-up the company and, in particular, does not have implied authority to instruct solicitors to oppose the petition." In dealing with the discretion of the court in making a winding-up order reference is made to McCarthy J's judgment in *re Bula Ltd.* An example of where a winding-up was rescinded is given from the decision of *re Virgo Systems Ltd.* where a winding-up order was made against a shelf company after a statutory demand was not complied with (change of registered office had not been notified to the registrar of companies).

The most substantive part of the publication are the chapters on petitions by creditors and contributories – the grounds of the petition. Authority is given for the statement that, "it is not an abuse of process for an unpaid, undisputed creditor of a company to petition for its compulsory winding-up knowing that it is likely that the matter will be settled without a winding-up order being made." Treatment is given to the decisions in *Re Bula Ltd* and in *Re Dublin and Eastern Regional Tourism Organisation Ltd.*

An interesting practical chapter is that of protecting a company's property while a winding-up petition is pending.

In his preface the author indicates that "This book has taken some years to write." It is easy to see why, as the wealth of material which he has assembled and its layout makes this very much a practitioner's book. While, thankfully, practitioners are able to rely more in recent times on publications applicable specifically to Ireland, this publication is a useful and, perhaps, invaluable weapon to any litigation or insolvency lawyer.

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The Brussels Convention and Employment Agreements: Clarified but not Simplified

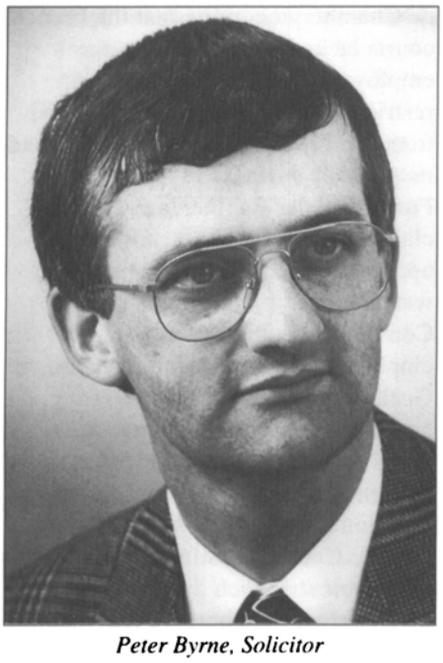
by Peter Byrne*

Mulox v Geels[1] is the latest in a series of cases in which the Court of Justice has given decision (directly, or indirectly[2]) on an application for a preliminary ruling under the 1971 Protocol to the Brussels Convention[3] on the interpretation of the bearing of the special contract jurisdiction of Article 5, 1. of the Brussels Convention on employment contracts. Article 5, 1. is the most litigated provision of the Convention[4] and provides

> "A person domiciled in a Contracting State may, in another Contracting State, be sued:
>
> 1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;"

The difficulty of its application to employment contracts is matched by the commercial significance of that jurisdiction. As will be seen from the facts of the case, given the level of international activity in the Irish economy, jurisdiction in relation to the employment contract of a person with close Irish connections could easily become an issue, e.g. foreign postings and transfers of staff within a group. Often, the legal significance of such changes in the status of the employee are not appreciated at the time when they are made and legal advice is not sought until later or, in the worst case, only after an employment dispute has arisen. The *Mulox* decision may not be as helpful to the practising lawyer as appears at first sight.

The *Mulox* case is also of interest because it considers the effect of the Rome Convention (on the law applicable to contractual obligations)[5] and the Lugano Convention[6] between the EEC and EFTA member states parallel to the Brussels Convention.



Peter Byrne, Solicitor

Likewise, it indicates the necessity for the jurisdiction of the Court of Justice to uniformly interpret these conventions as instruments of Community law. In the *C.I.L.F.I.T.*[7] case, Advocate General Capotorti stressed that the specific purpose of the Treaty of Rome, Article 177 (3), on which the interpretation protocols are based, is to prevent a body of national case law not in accordance with the rules of Community law from coming into existence in any Member State. Referring to arguments in favour of restricting the scope of the obligation on the highest national courts to refer to the Court of Justice, e.g. to prevent delays or increased costs in national proceedings (in an Irish context, similar delays and increased costs can intervene in the form of a constitutional challenge) he stated:

> "That kind of reasoning is not, in my opinion, conclusive. It might be sufficient to object that the meaning of a provision cannot depend on reasons of expediency. However, the reasons which militate in favour of the opposite view should also be borne in mind. The requirement [of Article 177 (3)] . . . is supported by the specific technical and formal characteristics of Community law . . . different language versions; novelty of the content and terminology of Community law. It should be added that there are inevitably differences between the methods of interpretation adopted by the Court of Justice and those on which national courts rely, stemming from the differences between the legal spheres in which the former and the latter operate."[8]

These reasons are particularly compelling in relation to harmonisation measures which the Brussels and Rome Conventions clearly are. Indeed, they show the necessity of a full consideration of the arguments put and accepted or rejected, as the case may be, by the Court of Justice, as the point of departure of any legal analysis of such measures. For considerations of space, the submissions in the *Mulox* case cannot be considered here in detail.

Prior decisions of the Court of Justice

Contractual Obligation

The Court of Justice ruled in *de Bloos v Bouyer*,[9] that

> "the obligation to which reference must be made for the purposes of applying Article 5, 1. of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract . . ."[10]

however, in *Ivenel v Schwab*,[11] specifically in relation to employment agreements

> "the obligation to be taken into account for the purposes of Article 5, 1. of the Convention in

> the case of the claims based on different obligations arising under a contract of employment as a representative binding a worker to an undertaking is the obligation which characterises the contract."[12]

Place of Performance
The Court of Justice ruled in *Tessili v Dunlop,*[13] that

> "the 'place of performance of the obligation in question' . . . is to be determined in accordance with the law which governs the obligation in question according to the rules of conflict of laws of the court before which the matter is brought."[14]

The *Mulox* case raised the issue whether an exception similar to that made in *Ivenel v Schwab* should be made, on the basis of independent criteria to be formulated by the Court of Justice, as regards the 'place of performance' in relation to an employment agreement.

Facts and issues
Geels, a Netherlands national domiciled at Aix-les-Bains, France, was employed by Mulox, domiciled in England, as its director of international marketing with effect from 1 November 1988. He set up office at his home in Aix-les-Bains and was devoted to the canvassing of customers and the establishment of a distribution system for Mulox products in Belgium, Germany, the Netherlands and Scandinavia, where he travelled frequently. French territory was excluded from his area of responsibility until September 1989. From 1 January 1990, Geels worked with Mulox agents in France and serviced French Mulox customers. In May 1990, Mulox informed Geels that the fruits of his efforts were not in proportion to costs which had been incurred and, accordingly, it had decided to terminate his employment and offered him a gross termination payment of 7 1/3 months salary.

Following the termination of his employment, Geels sought a year's salary in lieu of notice and general damages before the Conseil de prud'hommes d'Aix-les-Bains. That court based its jurisdiction on Article 5, 1., applied French law and awarded Geels compensation, ruling largely in his favour.

Mulox appealed to the Cour d'appel de Chambéry claiming that the French courts lacked jurisdiction, as the employment contract was not restricted to France, rather it applied to the whole of Europe and Mulox had its place of business in the UK. Further, under English law which it claimed the parties had chosen to be applicable to the contract and which was indicated by the Rome Convention as the law of the employer's place of establishment, Geels was entitled to no compensation. In the alternative, Geel's claims were unfounded under French law. The court referred to the decision in *Ivenel v Schwab,* noting that the Court of Justice considered it preferable that such disputes were heard before the courts of the State whose law was applicable to the contract. Article 6, 2., (b) of the Rome Convention indicates as the applicable law

> "b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;"

There was nothing to suggest that the parties had chosen French law to be applicable to the contract. If English law was applicable (which it thought probable), should Article 5, 1. of the Convention, on the basis of the *Ivenel* decision, be interpreted as giving jurisdiction to the English courts and not to the French courts? The court stayed its proceedings and referred the following question to the Court of Justice for a preliminary ruling.

> "Does the ground of jurisdiction laid down by Article 5, 1. of the Convention require that the obligation which characterises an employment contract was performed wholly on the sole territory of the State which establishes the jurisdiction of the court seised of the dispute, or does it suffice for its application that one part, perhaps the main part, of the obligation has been carried-out on the territory of that State?" (*translation by the author*)

Opinion of the Advocate General

In his exceptionally diaphanous opinion, dated 26 May 1993, Advocate General Jacobs stated that the place of the business through which the employee was engaged had been clearly rejected as a basis of jurisdiction in the *Six*[15] case as being unfair to the employee. The 1989 Convention amendment to Article 5, 1. took account of this decision:[16]

> "in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the *employer* may also be sued in the courts for the place where the business which engaged the employee was or is now situated."

Turning to the Rome Convention, he pointed out that although the French court regarded the Convention as applicable to the contract between Mulox and Geels, the contract had obviously been concluded before 1 April 1991 on which day the Convention entered into force in both France and the UK. Article 17 of the Rome Convention provides

> "This Convention shall only apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State."

'Place of performance' – national or autonomous interpretation?

Advocate General Jacobs stated

> "But the grounds given by the Court in *Tessili v Dunlop* . . . do not seem nearly so compelling in relation to a contract of employment, especially if the relevant obligation is the obligation to perform work . . .

> "Moreover, the grounds given in *Ivenel v Schwab* and *Shenavai v Kreicher* for treating contracts of employment differently from other contracts as regards the determination of the relevant obligation seem to apply with equal force to the determination of the place of performance of that obligation . . .
>
> "There is little scope for the application of technical rules of law in order to determine where someone does his job; it is largely a question of fact. It may not be an easy question of fact if the person works in more than one place. But no major difficulty would ensue if the Court laid down a uniform test for determining jurisdiction in such cases." [*Opinion, 21, 23*]

'Place of performance' – interpretation

As to the interpretation of the term, 'place of performance' in relation to an employment agreement, he noted that the *Ivenel and Shenavai* decisions did appear to show a preference for conferring jurisdiction on a court which would be able to apply its own law rather than a foreign law.

> "It must also be remembered that jurisdiction under Article 5, 1. is not exclusive and that the plaintiff could in any event choose to sue at the defendant's domicile under Article 2 of the Brussels Convention, regardless of the place of performance. There must be many cases in which a contract of employment is governed by a law other than the law of the country in which the defendant is domiciled.
>
> "I conclude from the above that it would be a mistake to exaggerate the importance of the link between jurisdiction and *lex causae* in employment disputes. As to the reference to mandatory rules in *Shenavai v Kreicher*, it is of course important to prevent an employer from evading the application of legislation which has been enacted for the protection of employees and which cannot be excluded by contract. But that merely begs the question which country's mandatory legislation should be applied. Matters such as working hours, annual leave, maternity leave and unfair dismissal should presumably be governed by the mandatory provisions of the *lex causae*. As regards matters such as safety and hygiene (e.g. rules on fire exits or the use of asbestos as an insulator) it would seem appropriate to apply the mandatory legislation in force at each of the several places of employment. Articles 6 and 7 of the Rome Convention contain provisions which appear to be capable of achieving the desired results, regardless of the country in which the litigation takes place.
>
> "In my view, the true basis for the court's ruling that the relevant obligation, for the purpose of applying Article 5, 1. of the Brussels Convention in employment disputes, is the characteristic obligation under the contract of employment, lies not so much in the desirability of establishing jurisdiction in the country whose law governs the contract, but rather in the simple proposition that the worker should be entitled to sue his employer (and vice versa of course) at the place where he works. This is the natural forum for such disputes and it will in most cases be the most convenient forum for the employee. He should not be deprived of the convenience of suing there simply because his employer is domiciled in another Contracting State. That derogation from the general rule laid down in Article 2 of the Convention is justified by the particularly close connection between the dispute and the courts at the place where the work is done." [*Opinion, 27, 28, 29*]

He agreed with the Commission and the German Government that the danger in permitting a multiplicity of jurisdictions where the employee has performed his work in a number of Member States is that the employer could equally make avail of them. It would hardly be fair to allow the employer to remove the employee from his natural forum simply by requiring him to perform a small part of his duties in some other Member State. He favoured Article 5, 1. being construed as establishing jurisdiction at the principal place of employment (which does not equate with the employee's domicile).

He regarded the fact that Geels used France as a base for his operations and travel and especially the fact that his office was at his residence there as raising a strong presumption that this place was his principal place of employment. It was there that he received instructions from his employer and communicated with customers. Even if he spent more than half the year travelling in other countries and did not visit a single customer in France, it appeared very difficult to him to regard the presumption as having been rebutted.

Decision of the Court of Justice

In its judgment dated 13 July 1993, the Court of Justice ruled

> "Article 5, 1. of the Brussels Convention is to be interpreted as meaning that in the case of an employment contract, the performance of which is effected by the employee in more than one contracting state, the place of performance of the obligation in question within the meaning of that provision, is the place where or from where the employee principally discharges his obligations to his employer."

stating in its decision[16]

> "In order to determine that place, a matter which falls within the competence of the national courts, it is necessary to take account of the circumstance, as occurred in the main proceedings, that the performance of the task assigned to the employee was carried out from an office situated in one of the contracting states where the employee had established his

residence, from where he carried out his activities and to where he returned after any business travel. In addition, *the national court can take into consideration the fact that at the point in time at which the proceedings pending before it commence, the employee performs his work exclusively in the territory of that contracting state.* In the absence of other determining factors, that place should be taken to constitute, for the application of Article 5, 1., the place of performance of the obligation which forms the basis of the legal proceedings relating to a contract of employment." [*Decision, 25 (emphasis supplied) (translation by the author)*]

It is submitted that particular attention should be paid to the emphasised passage by management and legal advisers alike. The *Mulox* case clarifies the application of Article 5, 1. to employments, it does not simplify it.

Finally, it appears to the writer (but this has not been considered in detail) that the employment relationship with Geels may have rendered Mulox under French tax law to be deemed to have an establishment in France, rendering it liable to tax on all business concluded on its behalf by Geels. If this was the case, perhaps Mulox was not adversely affected but taxation is likewise an issue which should be acted on carefully on the basis of prior advice.

References

1. Case C–125/92 *Mulox IBC Limited v Hendrick Geels,* 13 July 1993.
2. Case 266/85 *H. Shenavai v K Kreicher,* 1987 ECR, 0239.
3. See generally, Byrne, Peter; *The EEC Convention on Jurisdiction and the Enforcement of Judgments,* Dublin, 1990, §5.
4. Twelve cases to date. There are a further three cases pending.
5. Rome Convention on the law applicable to contractual obligations, 16 June 1980, 80/934/EEC, 1980 OJ L. 266, p. 1. The Convention but not the 1988 (first) Protocol on its interpretation was ratified in Ireland by the Contractual Obligations (Applicable Law) Act, 1991 (No. 8/91).
6. 88/592/EEC, 1988 OJ L. 319, p. 9. See footnote 15 below.
7. Case 283/81 *Srl C.I.L.F.I.T. v Minister of Health* [1982] ECR 3415.
8. ibid., at p. 3438.
9. Case 14/76 *Ets. A. de Bloos, S.P.R.L. v Bouyer S.A.,* [1976] ECR 1497.
10. ibid, at p. 1511.
11. Case 133/81 *Roger Ivenel v Helmut Schwab* [1982] ECR 1891.
12. ibid, at p. 1902.
13. Case 12/76 *Industrie Tessili Como v Dunlop AG* [1976] ECRR 1473.
14. ibid, at p. 1486.
15. Case 32/88 *Six Constructions Ltd v Paul Humbert,* 1989 ECR 0341.
16. The 1989 Convention on the Accession of Spain and Portugal to the Brussels Convention, Article 4, (89/535/EEC, 1989 OJ L 285, p. 1). The 1989 Accession Convention and the Lugano Convention were ratified in Ireland by the Jurisdiction of Courts and Enforcement of Judgments Act, 1993, (No. 9/93) and came into force on 1 December 1993 (S.I. No. 330/1993 (Pn 0270).

**Peter Byrne, B.C.L., Dip Eur Law, Solicitor, is author of The EEC Convention on Jurisdiction and the Enforcement of Judgments (Dublin, 1990).* ❐

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Seminar Highlights Legal Needs of Mentally Incapacitated Persons

A seminar staged by the PR Committee and Family Law/Legal Aid Committees of the Law Society entitled **Caring for the Mentally Incapacitated – The Legal Response** highlighted the need for changes in the law to meet the legal requirements of mentally incapacitated persons. The seminar, which was held on April 27, was chaired by *Moya Quinlan,* Chairman of the Family Law/Legal Aid Committee and was addressed by *Annie Ryan,* President, National Association for the Mentally Handicapped of Ireland; *Michael Coote,* President, Alzheimer Society of Ireland; *John Costello,* Solicitor and *John Dalton,* Registrar of Wards of Court.

In her address to the seminar, Annie Ryan outlined the worries faced by parents of a mentally incapacitated child. She said in many cases parents would like to be able to ensure that after their death a sibling of the incapacitated person would be made his guardian but if the incapacitated person was over 18 years of age this was not possible. Parents of a person with mental handicap who was in long-term residential care also worried about the kind of care their son or daughter would receive after their death. "I have often talked with the parents who were desperately trying to set up deals in order to extract binding agreements to look after their children for ever. It is worrying for many parents when they come to the realisation that one cannot buy a secure future for one's handicapped children whatever the category of handicap. As parents we would like to have someone appointed to supervise the care of our mentally incapacitated child after our death and we would like to have some basis in law for that arrangement," she said.

Michael Coote, President of the Alzheimer Society, described the nature of Alzheimer's disease and why it is called 'the living death'. "Alzheimer's is a degenerative disease of the brain cells which leads on irrevocably to the destruction of all mental and physical functions. In many ways, relatives may suffer more from the effects of Alzheimer's disease than the victims themselves. In many cases legal and financial problems have to be faced and professional advice sought. Major problems arise when the Alzheimer's victim is the breadwinner in the family. There are still many families where the home, insurance policies, motor car, bank account, investments etc., are in the name of one spouse, usually the husband. Unless this situation is sorted out before the husband/father is considered to be "of unsound mind" the wife and/or family are placed in a very serious position, legally and financially. Making the victim a ward of court is a lengthy, expensive and impersonal way of doing what the spouse in a family could do far more effectively if the law was changed to make it possible," he said.

John Costello, Solicitor and Law Society Council member, identified a number of changes in the law which were required. Noting that in 1989 the Irish Law Reform Commission had recommended a system of enduring powers of attorney, he said: "I understand that at present the Department of Equality & Law Reform is drafting legislation to provide for enduring powers of attorney and I can only urge the Department and the politicians to pass the necessary legislation as soon as possible."

The second area of law requiring reform, he suggested, was adult guardianship. At present, in Irish law, guardians cannot be appointed for adults, regardless of their mental age or capacity. The English Law Commission has recommended that some form of adult guardianship should be provided for. "I personally feel that it should be possible to appoint a guardian for an adult under a will or under an enduring power of attorney, subject to certain safeguards."

He also suggested that there should be some changes made to the Succession Act, 1965. Currently, under Section 117 of the Act, an application can be made to a court on behalf of a child if a deceased person had failed in his moral duty to make proper provision for the child in a will. There is a time limit of one year for the application. John Costello suggested that discretion should be given to the court to extend the time limit when necessary. At present the Succession Act only deals with a situation where the deceased parent has made a will. Where a parent dies intestate a child cannot apply to the court for increased provision. The Irish Law Reform Commission has recommended that the 1965 Act should be extended to include applications on an intestacy and John Costello said that this would be particularly important for protecting the interests of mentally incapacitated people.

John Costello also highlighted that there was no legislation permitting statutory wills in Ireland. Under the English Mental Health Act, 1983 the Court of Protection has power to authorise the execution of a statutory will on behalf of a ward of court, subject to certain safeguards. John Costello suggested that the Irish Law Reform Commission should consider proposals in this area. Mr. Costello also suggested that consideration should be given to the idea of 'living wills'.

(Continued overleaf)

(Continued from p. 153)

Concluding his address, John Costello said: "the Irish law in relation to mentally incapacitated adults and decision making is in the dark ages and urgently needs to be reformed. As a matter of urgency our Government should request the Irish Law Reform Commission to make proposals for reform in this complex area."

The seminar was also addressed by John Dalton, Registrar of Wards of Court, who described the duties, role and functions of the Wards of Court Office. ❐

Tax Practice Notes

Readers are requested to note that from now on the quarterly Tax Practice Notes, published by the Taxation Committee of the Law Society, will be circulated with the *Gazette*. The current edition (Volume 2, Issue 1, May 1994) is enclosed with this *Gazette*.

The Taxation Committee would like to thank Oak Tree Press for its generous sponsorship of the publication of Tax Practice Notes. ❐

Compensation Fund

Compensation Fund Payments – April, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in April 1994.

	IR£
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	46,100.00
John K. Brennan, Mayfield, Enniscorthy, Co. Wexford.	5,531.92
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	10,035.12
John J. O'Reilly, 7 Farnham Street, Cavan, Co. Cavan	455.00
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin	3,118.25
Diarmuid Corrigan, 6 St. Agnes Road, Crumlin, Dublin 12.	441.00
Peter M. Fortune, 38 Molesworth Street, Dublin 2.	5,500.00
John M. O'Dwyer, 40 North Great Georges Street, Dublin 1.	20,083.31
Malocco & Killeen, Chatham House, Chatham Street, Dublin 2.	175,000.00
James C Glynn, Dublin Road, Tuam, Co. Galway.	4,455.50
	270,720.10

❐

ICEL Seminar on New Opportunities for Lawyers

The Irish Centre for European Law is holding a half day conference on the topic "New Opportunities for Lawyers" in the Hamilton Building, Trinity College, Dublin on Saturday, 28 May from 9.00 am to 1.30 pm. The seminar, which will be chaired by the Hon. Mr. Justice Ronan Keane, has been designed with two objectives in mind: firstly, to provide Irish based lawyers with an insight into making optimum use of the different professional/ business opportunities afforded to them by EU law and, secondly, to alert Irish lawyers to the rules governing access to legal practice in the other Member States of the EU.

The programme for the conference is as follows:

9.00 am – 9.30 am
Registration

9.30 am – 10.10 am
New Opportunities for Irish-Based Lawyers in the Practice of European Union Law
Vincent Power, Director of EU & Competition Law, A & L Goodbody

10.10 am – 10.50 am
Freedom to Provide Legal Services in the Single Market
Bernard O'Connor, Partner, Stanbrook & Hooper, Brussels

11.30 am – 12.05 am
A Practising Lawyer's View of Procedures before the Court of Justice and the Court of First Instance
James O'Reilly, SC

12.05 am – 12.40 pm
New Opportunities/Developments in European Competition Law
Gerald FitzGerald, Partner, McCann FitzGerald

12.40 pm – 1.10 pm
Two New Sources of Business: The Commercial Agents and Unfair Contract Terms Directives
Alex Schuster, Director, Irish Centre for European Law

1.10 pm – 1.30 pm
Question and Answer Session

The cost of attending the conference is £45.00 for ICEL members and £85.00 for non-members. A booking form may be obtained from the Irish Centre for European Law at Trinity College, Dublin 2. Tel: 702 1081. Fax: 679 4080. ❐

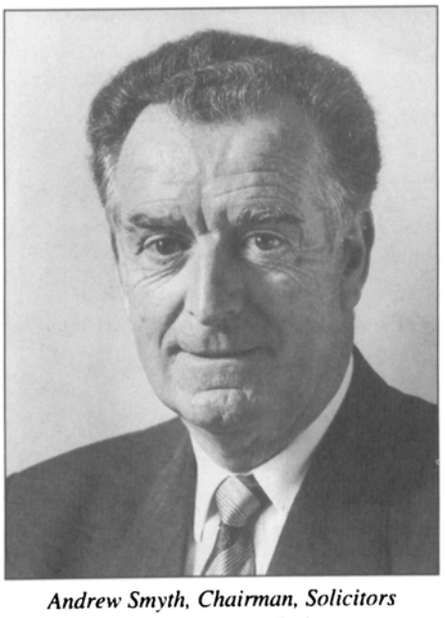
Solicitors Benevolent Association Seeks Your Support

In 1992 I had the honour of being elected Chairman of the Solicitors Benevolent Association in succession to *John O'Connor,* who like his predecessors had carried out trojan work on behalf of the Association and instigated many practical but necessary changes in the operation of the Association and in the investments on its behalf.

I was privileged, for some time prior to my election, to have sat as a Director of the Association and from that experience I felt that the old adage "there but for the grace of God go I" was relevant. This was – and is – an added incentive to all the Directors to ensure that all applications for assistance are dealt with sympathetically and promptly. There is a misconception abroad that all solicitors are very well-to-do and in the upper bracket of the financial stakes. Practitioners themselves are well aware of the reality of legal practice and unfortunately in recent years it has become quite obvious that there are many in the profession who are finding it considerably harder each year to earn a worthwhile living. The reasons for this are many and varied. The function of the Association is to lend a hand to those who find themselves in difficult situations and hopefully to help them bridge the gap, as it were, until their particular circumstances alter for the better.

Fact and figures can be shown to prove any case but it is interesting to note that in 1905 the number of persons assisted by the Association was 60. In 1993 this figure had risen to 72, a mere increase of 12, but the level of assistance had increased from less than £1,000 to in excess of £145,000 approximately in 1993. Even allowing for all types of financial swings and roundabouts it must be accepted that the calls on the Association are increasing rapidly each year.

The Association covers the entire 32 counties of Ireland and we receive tremendous assistance from our colleagues in Northern Ireland, of whom two are Provincial Directors. The problems are as real in the North as in the South and the reasons for the problems do not differ to any degree. It is not the function of the Association to investigate in depth the reasons why colleagues need to apply for assistance, however, careful consideration is given to the factual position in each case, with a view to ascertaining the full level of assistance required and to ensure at the same time that the recipients are aware of their entitlements from other sources.



Andrew Smyth, Chairman, Solicitors Benevolent Association

I am pleased to say that our investment policy, admirably carried into effect by Bloxham Stockbrokers, has resulted in a steady increase in the value of these investments, thus enabling us from time to time when it is found necessary to do so, to dispose of one investment or another and to utilise the proceeds thereof to the best advantage of the Association.

How can you help?

The obvious way of course is to continue to make your annual subscription to the Association and if possible to support the golf outings and other functions which are arranged in various locations around the country. Clearly, however, one method which *could* and, may I say, *should* be utilised would be by advising clients *to leave a charitable bequest to the Association* in the form which is shown overleaf. Indeed, I would ask that individual colleagues might seriously consider making a personal bequest in their *own* wills to the Association in the knowledge that in doing so they will benefit those less well-off than themselves and ensure in quite a number of cases that a reasonable level of assistance is afforded to such colleagues and their next of kin. *Do please give this suggestion your serious consideration now.*

In closing I would again like to thank each and every member of the profession for his/her continued support over the years. It is very gratifying to know that, when called upon, the support is always forthcoming and it makes my position as Chairman of the Association much easier. I would also commend to you the efforts made by individual Directors of the Association on behalf of applicants and families of applicants. One person in particular who merits the thanks of each and everyone of us is *Geraldine Pearse* who took over the mantle of Secretary within the past twelve months. She has measured up to the high standards set by her predecessor and it is hoped that she will continue in her position for many years yet.

Thank you again and do continue with your support.

Andrew Smith
Chairman, Solicitors Benevolent Association

Solicitors Benevolent Association

Bequests
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.....

Fundraising Golf Events

Woodbrook Golf Club – Friday 20 May – Mixed Scramble Time Sheet – Contact Bill Jolley 872 8233

Thurles Golf Club – Friday 8 July – Contact Pat Treacy Telephone 067-31235.

Law Directory 1994

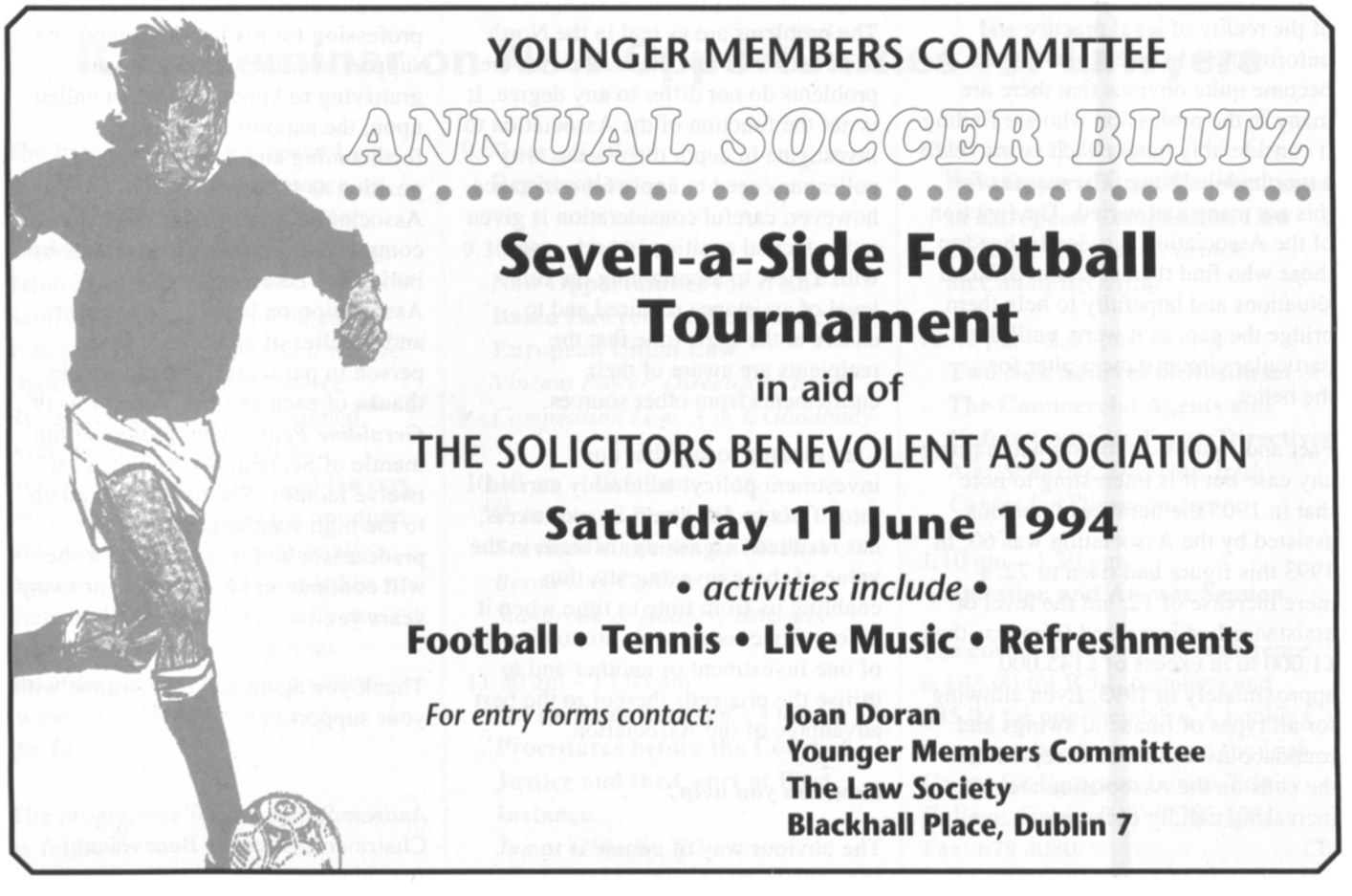
Users of the 1994 Law Directory are asked to note the following corrections to the Cavan Register of Solicitors.

On the entries on page 84 for **Carolan Eamonn M** and **Carolan Patrick J**; please change **Bailieborough** to **Kingscourt**.

In the first entry on page 84 for **Carolan Sheridan & Co.** please change **Bailieborough** to **Kingscourt** in the fifth line of the entry.

In the second entry for **Carolan Sheridan & Company** on page 84 please change **Bailieborough** to **Kingscourt** in the second line of the entry.

On page 86 please add: **tel. 042 65377 and fax 042 65066** to the entry for **Sheridan, Thomas**.



Criminal Law Committee - Current Issues

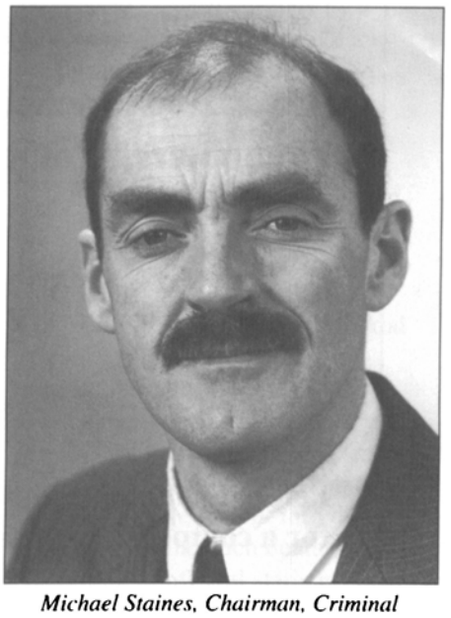
***Michael Staines,* Chairman of the Law Society Criminal Law Committee, reports on recent developments.**

Visits to Production Prisoners

A long standing difficulty in relation to solicitors visiting production prisoners (as opposed to prisoners detained by the Gardai under S.4 Criminal Justice Act, 1984, or S.30 Offences Against the State Act, 1939, or on arrest) in the Bridewell Garda Station in Dublin has now been resolved. The Criminal Law Committee has negotiated with the Garda authorities over the last few months and now a set of procedures have been agreed to govern such visits. Details of these procedures are available for inspection at the Bridewell Garda Station, Dublin, or can be obtained from *Patricia Casey*, Solicitor, Secretary of the Criminal Law Committee, at the Law Society. The Garda authorities have built three new interview rooms for the purpose of allowing solicitors consult with their clients. If there are any difficulties the solicitor can approach the Inspector in the Bridewell Garda Station who will always be available to resolve any problem. The Committee would like to thank Superintendent Joyce for his co-operation. If solicitors experience any further problems they should communicate with the Committee.

Guidelines for Professional Conduct

The Committee was pleased to note that these guidelines, which were published in a recent issue of the *Gazette*, (Vol. 88 no. 1, p.31) obtained general acceptance amongst practitioners. One group of practitioners, however, has written to the Committee querying some of these guidelines and there will be a meeting between any interested solicitors and the Committee on Friday 3 June 1994 at 5.30pm at Blackhall Place.



Michael Staines, Chairman, Criminal Law Committee

Legal Aid Fees

As practitioners are aware, the Committee has been negotiating with the Department of Justice in relation to obtaining a special fee for exceptional cases. The Department has agreed to set up such a scheme but unfortunately, despite intensive negotiations, such a scheme has not yet been put into operation. The Committee is taking a serious view of this failure of the Department to comply with its undertaking to set up such a scheme and there can be little doubt that, unless such a scheme is set up in the near future, stronger action will have to be taken by practitioners. In any event the Committee is insistent that any such scheme will be backdated to cover all exceptional cases dealt with since the conclusion of the strike.

Criminal law practitioners are extremely disappointed at the level of fees paid by the Department of Justice for Circuit Court trials. In the course of the earlier negotiations the Department flatly refused to increase such fee and also refused to break the link between solicitors and barristers. At present solicitors acting under the Legal Aid Scheme are paid approximately one quarter of what they would obtain if costs were granted to them against the State in any trial. We will be commencing negotiations with the Department in relation to Circuit Court trials in the near future.

Police Station Visits

Another compliant of the Criminal Law Committee is that practitioners are not paid under the Legal Aid Scheme for visiting prisoners in Garda stations. This is despite the fact that prisoners have a constitutional right to access to legal advice. Furthermore, a certain aspects of the investigation of a crime cannot proceed in the absence of a solicitor attending at the Garda station, for instance, if a client requests that a solicitor attends at an identification parade, a parade should not take place unless a solicitor attends. Our colleagues in the UK are amazed when they learn that we attend stations at all times of the day and night, at great inconvenience to ourselves, without the hope of any payment. We have already discussed this matter with the Department of Justice and again it is not prepared to sanction such a payment. This will be another subject on the agenda in our negotiations with the Department.

District Court Claims

Dublin practitioners will be pleased to note that they can now claim for their attendance in court when one of their clients is brought in on a warrant and legal aid had already been assigned on that sheet. This is a new departure and we would like to thank *Noel McNaboe*, District Court Legal Aid Office and his staff, for their co-operation in this matter.

Visits to Prisons

The Committee wishes to inform practitioners of the system now operating in Mountjoy Prison in

(Continued on page 159)

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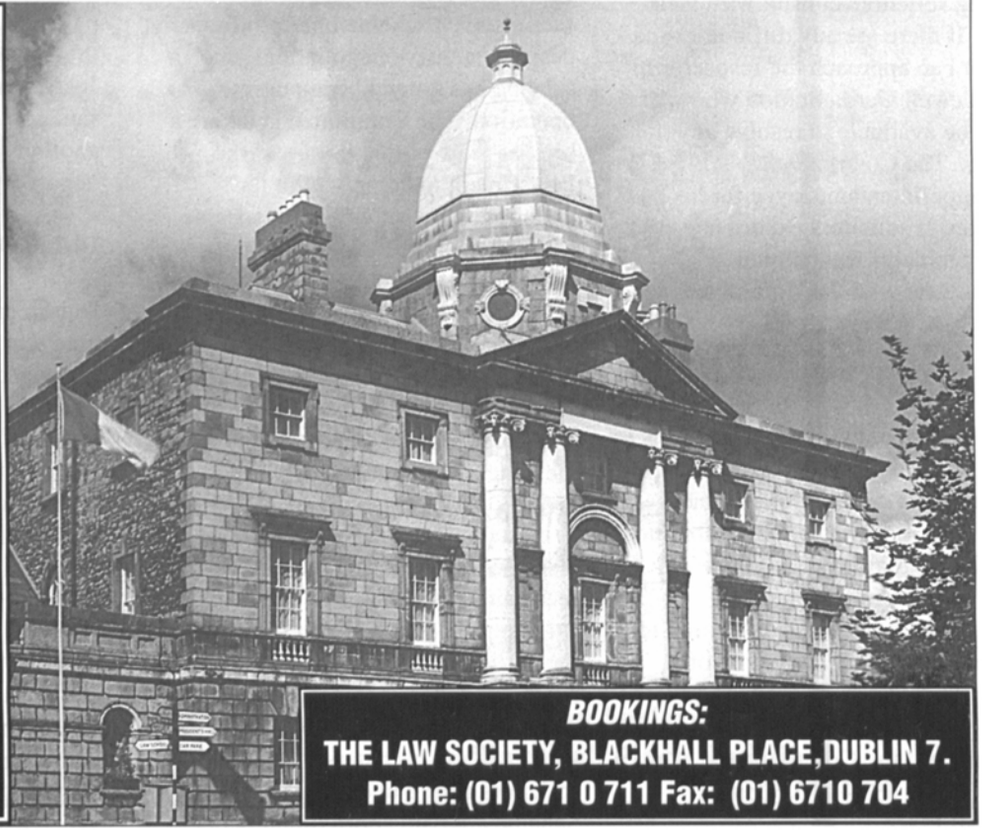

BOOKINGS:
THE LAW SOCIETY, BLACKHALL PLACE, DUBLIN 7.
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The Office of Coroner in Ireland

The office of coroner is one of great antiquity and it is mentioned as far back as 871 AD during the reign of *King Alfred*, but the institution of the office is usually dated from the publication of the Articles of Eyre in 1194.

The reason for the creation of the office of coroner was to establish an official whose primary duty was to protect the financial interest of the crown in criminal proceedings. The title of coroner was derived from this duty of securing a payment to the crown, namely, *a corona*. This fine was imposed by the king where the inhabitants of a district concealed a felony or permitted a guilty person to escape.

The law concerning coronership in Ireland is now governed by the Coroners Act, 1962. Under this Act the primary function or 'general duty' of the coroner is to hold an inquest where he is informed of a violent, unnatural or sudden death in his district. His role is judicial in nature and effects the co-ordination of medico-legal investigation into deaths reported. A coroner must be a 'practising barrister, solicitor or medical practitioner for at least five years'. There are currently forty-nine coroners in Ireland, twenty-three of whom are either solicitors or barristers.

An unusual feature of the role of the coroner is his operational independence. There are elements in this which are common with the operational independence of a judge yet his role is in some measure different in its legal setting from this model. The coroner like a judge frequently reaches verdicts by a judicial procedure, but unlike a judge the coroner's decisions are by no means directly subject to appeal.

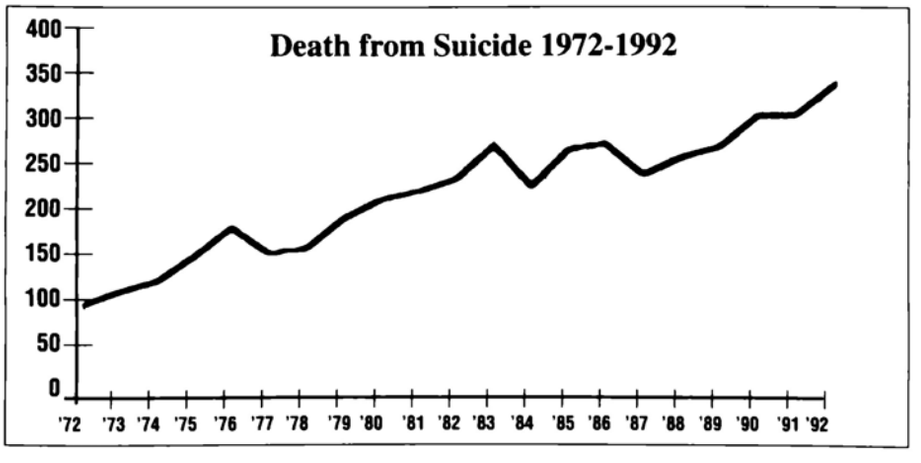
The Office of Coroner in Ireland

In Ireland of the 1990s, the role of coroner is increasingly social and educational in nature. A substantial minority of deaths reported to coroners are deaths that may be ascribable to social breakdown in one form or another and he increasingly has to deal with distressed relatives. He has valuable insight into the social dynamics behind such deaths. According to official statistics the number of deaths from suicide during the period 1972 to 1992 has increased fourfold (See table).

The coroner is in a position where he has great potential to highlight areas of prevention i.e. road safety, potential health hazards and other possible sources of danger or fatal injury both in and outside the workplace.

The quality, calibre and commitment of Irish coroners is evident from the fact that the community place great confidence in the office of the coroner and it is an office that is seen to operate in the public interest.

Coroners Association of Ireland ❐



Criminal Law Committee

(Continued from page 157)

relation to visits to prisoners by solicitors. Visiting solicitors will complete a form setting out the names of the prisoners they wish to visit. Solicitors will then be shown into a waiting room, which has been provided specially for them, until the prisoners are ready. At the termination of the visit the solicitor may obtain a certificate from the warden at the gate indicating the fact of such visit. This form should then be attached to the legal aid claim form and the solicitor will be paid for the visit at the completion of the case. This new procedure obviates the difficulties that have arisen in the past where the prison was unable to confirm visits. Furthermore, the new waiting room is much more comfortable than the old. The Committee has already written to the relevant authorities thanking them for their assistance in this matter and asking them to extend the new procedure to all prisons in the State.

General

The Criminal Law Committee has representatives from each province and hopes that it is dealing with all the problems of practitioners of criminal law throughout the State. However, if there are any local problems affecting practitioners the Committee would be happy to deal with them if the problems are brought to its attention.

Michael Staines,
Chairman,
Criminal Law Committee.

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Young Solicitors Spring Conference Success

The Society of Young Solicitors Ireland Spring Conference 1994 was held jointly with the Northern Ireland Young Solicitors Association at the Slieve Russell Hotel & Country Club, Co. Cavan, from Friday 11 March to Sunday 13 March 1994. It was an historic conference as it was the first ever joint conference of the two Societies.

We were delighted to welcome quite a number of lawyers from England and Wales, Belgium, Scotland, France, Luxembourg and Holland who had travelled to attend the conference.

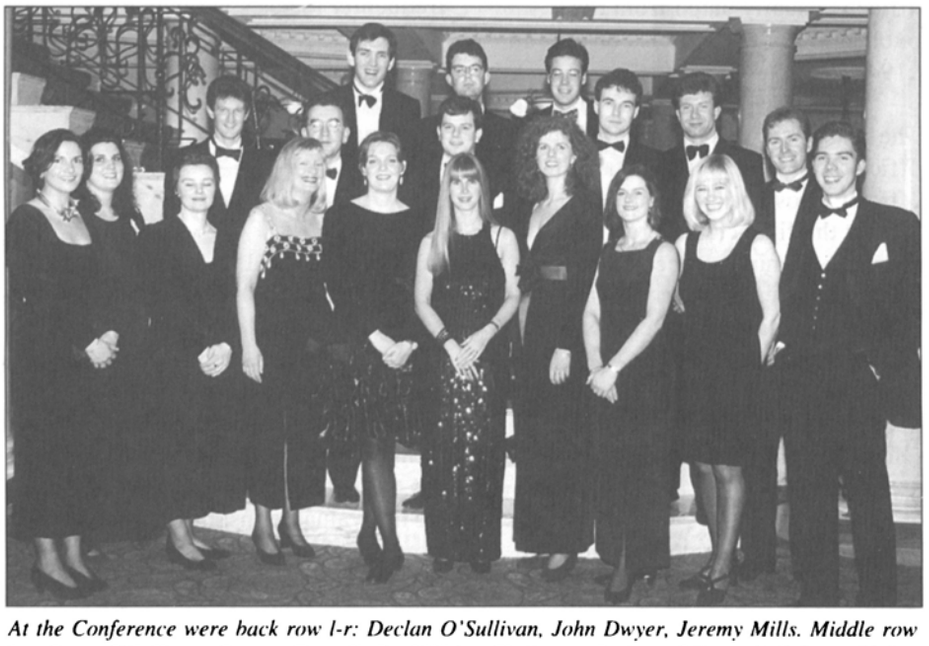
The Lectures chosen were highly topical. *Brian J. Cregan,* BL, addressed the topic "The Implementation of the Commercial Agents Directive in Irish Law". Mr. Cregan outlined the terms of the directive which considerably strengthens the position of commercial agents vis-a-vis their principals.

The second topic on the Saturday morning was the recent decisions and directions of the Irish Competition Authority. *John Meade,* Solicitor, Arthur Cox, reviewed the recent and well-publicised decision of the Competition Authority to refuse to grant a certificate or licence in respect of the proposed takeover by Irish Distillers of Cooley Distillery. On Sunday morning *Ann Harrison,* Harbottle & Lewis, gave a presentation on entertainment law.

Despite the bad weather, quite a number of delegates enjoyed the Saturday afternoon golf at the Slieve Russell Country Club, the horse riding and the Leadership Challenge.

The Conference was also attended by Mr. Justice *Hugh O'Flaherty* of the Supreme Court and Lord Justice *Turlough O'Donnell,* formerly of the Court of Appeal of Northern Ireland.

The Saturday night banquet was a great success, at which we were honoured to have the President of the Cavan Solicitors Bar Association, *George Moloney* and his wife, *Maire.*



At the Conference were back row l-r: Declan O'Sullivan, John Dwyer, Jeremy Mills. Middle row l-r: Owen O'Sullivan, Garrett Fennell, Paul White, Chairman, Society of Young Solicitors; Walter Beatty, Julian Yarr, Gavin Buckley. Front row l-r: Paula Murphy, Denise Magill, Jennifer Clifford, Neasa O'Roarty, Louise Taylor, Jill Downing, Elizabeth Crilly, Chairman, Northern Ireland Young Solicitors Association; Keelin Kirrane, Sandra Duffy, Michael McCracken.

The conference was very well attended and, once again, we would like to thank our sponsors, principally The Investment Bank of Ireland Limited, without whose continued support our conferences could not continue. We are also extremely grateful to our other sponsors, namely, Behan & Associates, Rochford Brady, Rank Xerox, Sweet & Maxwell, Norwel Ireland Limited, Butterworth Ireland Limited, Irish Document Exchange, Oak Tree Press, Doyle Court Reporters, Dooleys, Solicitors Financial Services Limited and Gill & Macmillan Limited.

❐

Walter Beatty,
Public Relations Officer,
Society of Young Solicitors.

European Court Decisions

The EU produces regular reports of the proceedings of the Court Justice and Court of First Instance of the European Communities. The reports are free and available to any solicitor who applies for them.

In 1993 there were approximately 250 decisions reported in 38 issues of the reports. The reports are presented in a format similar to that of the Irish Reports, i.e. a synopsis of the facts and the decision of the Court is given in a head note.

The reports would be of use to solicitors who wish to keep abreast of European Court decisions and their impact on Irish law. Any member of the profession who wishes to receive the reports should write to request an application form to:

Court of Justice of the European Communities,
Information Service,
Ref: Proceedings,
L2925 Luxembourg.

❐

IBA 25th Biennial Conference

The International Bar Association will hold its 25th Biennial Conference in Melbourne, Australia, from 9-14 October 1994.

With an expected attendance of more than 2,500 lawyers from over 100 countries, the conference is one of the largest and most important events in the international legal calendar. The programme includes sessions presented by all 56 Committees of the Association's three Sections, covering both highly-specialised and more general interest subjects,with acknowledged world experts as speakers.

The topics which will be dealt with include:

- Collaboration or collision course? – Lawyers and accountants in the 90s
- Legal skills for the next century: the lawyer as problem solver
- Stopping the presses and turning off the television – pre-publication restraints and injunctions: when should they be issued?
- Legal liability arising from sexual harassment in the workplace.

For the first time a General Interest Programme is being presented covering matters of current interest relevant both to lawyers and to those who live, work and consult with them.

Among the topics included in the General Programme are:

- Stresses on lawyers and their partners – living and working with lawyers.
- Celebrity trials and the role of the media
- Lawyers leaving the law
- Pornography – free speech v the Women's Movement

The conference will be opened by the former Governor-General of Australia, *Sir Ninian Stephen*. The former Prime Minister of Australia, *Bob Hawke*, will address the opening plenary session.

The International Bar Association has over 16,000 members in 163 countries and 146 member Bar Associations and Law Societies which together represent more than 2.5 million lawyers.

Irish Participation

As in the case of previous IBA Biennial Conferences, it is expected that a sizeable delegation of Irish lawyers will attend the conference in Melbourne. The Law Society will be organising a reception at the conference.

Two Irish travel agents are offering flight and accommodation packages. Details may be obtained by contacting *Alan Benson*, Sadlier Travel Limited, 46 Grafton Street, Dublin 2. tel. 677 7300, fax 677 5577 or *John Galligan*, John Galligan Travel, 29 Fitzwilliam Place, Dublin 2, tel. 661 9466, fax 661 0396.

❐

UCC Affinity Cards

University College Cork, in conjunction with the Bank of Ireland, has introduced a new credit card which is available exclusively to UCC staff, graduates and diplomates, all of whom will shortly receive application details.

For every new Affinity card issued, Bank of Ireland will donate £4 to UCC and will contribute a percentage of the revenue from each transaction to the UCC sports fund at no cost to the card holder. Speaking at the launch of the credit card, the President of UCC, *Dr. Michael P. Mortell*, said "the launch of this credit card is part of our ongoing policy to improve conmunication with our graduates. We expect a high response rate from graduates who wish to be associated with the College and it offers us the opportunity to generate on-going income which will enhance our sporting facilities."

One of the benefits to card holders is that the interest rate on the card is two percentage points below the regular Bank of Ireland credit card APR. Card holders will also benefit from £100,000 personal accident travel insurance cover and, as a special introductory offer, no annual fee will be charged on UCC Affinity cards before March, 1996.

Members of the profession who are graduates of UCC might like to avail of the card. Further information is available from *Ruth McDonnell*, Information Officer, University College Cork.

❐

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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clarlann na Talun), Chancery Street,
Dublin 7.

Published: 18 May 1994.

Thomas McGreal, Folio: 25437; Land: Briskagh and Shanid Lower. **Co. Limerick.**

Alfred O'Hea (deceased) and Elizabeth O'Hea, 45 Tyrconnell Park, Inchicore, Dublin. Folio: 2204L; Land: Property known as 45 Tyrconnell Park in the District of Kilmainham and Parish of St. Jude. **Co. Dublin.**

John Sheedy, Ballyphilip, Nenagh, Co. Tipperary. Folio: 1173; Townland: Caher; Area: 30(a) 1(r) 16 (p). **Co. Clare.**

Thomas Anthony O'Brien, Villa Nova, Dublin Road, City of Limerick. Folio: 1004F; Townland: Dromintobin North; Area: 0(a) 3(r) 0(p). **Co.Clare.**

Kate Fitzgerald, Folio: 18972; Land: Barony of Duhallow and County of Cork. **Co. Cork.**

St. Finians Diocesan Trust, Folio: 16334; Land: Kilcoursey. **Co. Kings.**

Michael Manning and John Manning, Folio: 5533; Land: part of the lands of Knocknew; Area: 42(a) 0(r) 27(p) **Co. Kilkenny.**

Augustine Meagher, Folio: 6362F; Land: (1) Shangarry, (2) Shangarry, (3) Lismalin; Area: (1) 47.869 acres, (2) 36.688 acres, (3) 10.306 acres. **Co. Tipperary.**

John Russell, Folio: 11018; Land: Bansha West; Area: 55(a) 2(r) 20(p). **Co. Tipperary.**

Shale Bricks Limited, Folio: 13349; Land: part of the lands of Corratober; Area: 0(a) 2(r) 20(p). **Co. Meath.**

Joseph J. O'Dwyer, Folio: 9080; Land: Kilmalogue; Area: 16(a) 3(r) 0(p). **Co. Kings.**

Frank and Kathleen Neary, 13 Towerview, Meelick, Swinford, Co. Mayo. Folio: 19300F; Townland: Killeen. **Co. Mayo.**

John Leahy and Maura Ní Thuama, Folio: 41007F; Land: Townland of Coolroe, Barony of Muskerry. **Co. Cork.**

Patrick McDermott, Folio: 14733; Land: Mullaghboy; Area: 27.006 acres. **Co. Meath.**

Caffreys (Millbrook) Limited, Folio: (1) 25208, (2) 24219; Land: (1) Tubride, (2) Crossdrum Upper. **Co. Meath.**

Mary de Courcy, Mount Catherine House, Clonlara, Co. Clare. Folio: 12065; Townland: Mount Catherine (part); Area: 7(a) 3(r) 34(p). **Co. Clare.**

John Ambrose, Folio: 5640F; Land: Gortnacreha Lower; Area: 0(a) 2(r) 0(p). **Co. Limerick.**

Brian Gill and Mary Gill, Folio: 6341F; Land: Townland of Newtown, Barony of Salt North and County of Kildare. **Co. Kildare.**

James Power and Helen Power, Folio: 1797; Land: Ballynamoyntragh; Area: 55(a) 1(r) 30(p). **Co. Waterford.**

Margaret Flanagan, 203 Griffith Avenue, Drumcondra, Dublin 9. Folio: 491L; Land: Property known as 203 Griffith Avenue, situate on the north side of said avenue in the District of Drumcondra and Parish of Clonturk. **Co. Dublin.**

Alexander N. O'Neill, Folio: 32542; Land: Ballinknockane; Area: 0(a) 1(r) 14(p). **Co. Kerry.**

Margaret Kinsella, as tenant-in-common of one undivided moiety. Folio: 3491F; Land: Blackhall Big; Area: 0(a) 2(r) 0(p). **Co. Meath.**

Bernard Edward Leddy, Folio: 10507; Land: Drumroe; Area: 32(a) 0(r) 16(p). **Co. Cavan.**

Peter James Clarke, Folio: (1) 15424, (2) 15462; Land: Lisdrumfad; Area: (1) 20(a) 0(r) 0(p), (2) 8(a) 3(r) 8(p). **Co. Cavan.**

Shannon Free Airport Development Company Limited, Folio: 26996; Land: Gotoon and Mullmount. **Co. Limerick.**

Patrick Dawson, Derrygarnie, Aughagower, Westport, Co. Mayo. Folio: 4725F; Townland: part of the townland of Cahernamart, situate to the South of Altamont Street, in the Town of Westport and Barony of Murrisk. **Co. Mayo.** Solr ref. MK/AA/011191

Lost Wills

O'Flaherty, Thomas, deceased, late of Mainistir, Kilronan, Aran Islands and St. Brigid's Hospital, Ballinasloe, Co. Galway who died on 10 November 1993. Would any person having any knowledge of the whereabouts of a will of the above deceased, please contact Eamonn Greene & Co., Solicitors, 7 Northumberland Road, Dublin 4, Tel: 01 668 2355 Fax: 01 668 23982.

Casey, Michael, (Bowsie), deceased, late of Clonroadmore, Ennis and formerly of Crawford Street, Kilrush, Co. Clare. Would any solicitor or person having knowledge of the whereabouts of a will of the above deceased who died on 5 February 1994, please contact O'Doherty, Kelly & Co., Solicitors, Market Square, Kilrush, Co. Clare. Tel: 065 51089 Fax: 065 51843.

Matthews, James, deceased, late of Homefarm Road, Glasnevin, Dublin 9, retired civil servant. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died on 19 March 1994, please contact John J. O'Hare & Co., Solicitors, Merchants House, 27/30 Merchant's Quay, Dublin 8 (Ref. JS) Tel: 01 677 6791 Fax: 01 679 7237.

Roche, Margaret, deceased, late of 19 Kingston Walk, Ballinteer Road, Dundrum, Dublin 16. Would any person having knowledge of the whereabouts of any will of the above deceased who died on 16 February 1994, please contact Kirwan & Kirwan, Solicitors, 4 Cornmarket, Wexford. Tel: 053 43020 Fax: 053 45995.

Lavelle, James, deceased, late of Valley Crossroads, Dugort, Keel, Achill, County Mayo. Would any person having knowledge of the whereabouts of the will of the above named deceased please contact Kevin M. Bourke, Solicitors, Ellison Street, Castlebar, County Mayo. Tel./Fax: 094 22566.

Hannon, Eric, deceased, late of 12 Beechwood Road, Ranelagh, Dublin 6. Please contact us if you are aware of a will made by the above who died on 18 February 1994. David Walsh & Company, Solicitors, 109 Ranelagh, Dublin 6. Tel: 497 3611 Fax: 496 4769.

Ruttle, Charles, deceased late of Crohane, Killenaule, Thurles, Co. Tipperary. Would any person having knowledge of the whereabouts of the will of the above named deceased who died on 3 February 1994, please contact John P. Carrigan & Company, Solicitors, Slievenamon Road, Thurles, Co. Tipperary.

Kelly, Patrick, deceased, late of Fallougher, Ballymote; Co. Sligo, who died on 4 April 1994. Would any person having knowledge of a will which might have been made by the above named deceased please contact the offices of Johnson & Johnson, Solicitors, Ballymote, County Sligo. Telephone 071 83304, 83486 Ref. KJ/GD/K97.

Employment

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Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, 2/3 The Birtles, Wythenshawe, Civic Centre, Manchester, M22 5RF. Telephone: 0044-61-437 0527 – Facsimile: 0044-61-437 3225.

London West End Solicitors will advise and undertake UK related matters. All areas – corporate/private client. Resident Irish solicitor. Reciprocal arrangement and fee sharing envisaged. Agency work also. Contact: Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL. Tel: 0044-71-589-0141 Fax: 0044-71-225-3935.

Anne Hickey, B.C.L., LL.B., Solicitor, is pleased to announce that she has commenced practice at 45 Wine Street, Sligo. Tel: 071 46042.

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry. Tel: 080693-61616 or Fax: 080693-67712.

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Ordinary seven day publican's licence for sale. Contact S. F. Hughes & Company, Solicitors, The Fairgreen, Westport, Co. Mayo. Tel: 098 25402.

Lost Title Deeds

Nos. 5, 6, 7 and 8 Lr. Panorama Tce, Sundays Well, Cork We act for the Owners of Nos 6 Lower Panorama Tce and are anxious to contact any solicitors holding title deeds to Nos 5, 7 and 8. We are also anxious to buy out the freehold and believe the freehold owner to be Jeremiah Murphy of Curraghbeg, Douglas in the County of Cork, builder. We believe Mr. Murphy may now be deceased. Anybody having any information which might be of assistance might kindly contact Patricia Harney & Company, Solicitors, of Shortcastle, Mallow, Co. Cork. Tel: 022 20140 Fax: 022 20299. ❐

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Asio otus (Long-eared owl). Photographed by Richard T. Mills.

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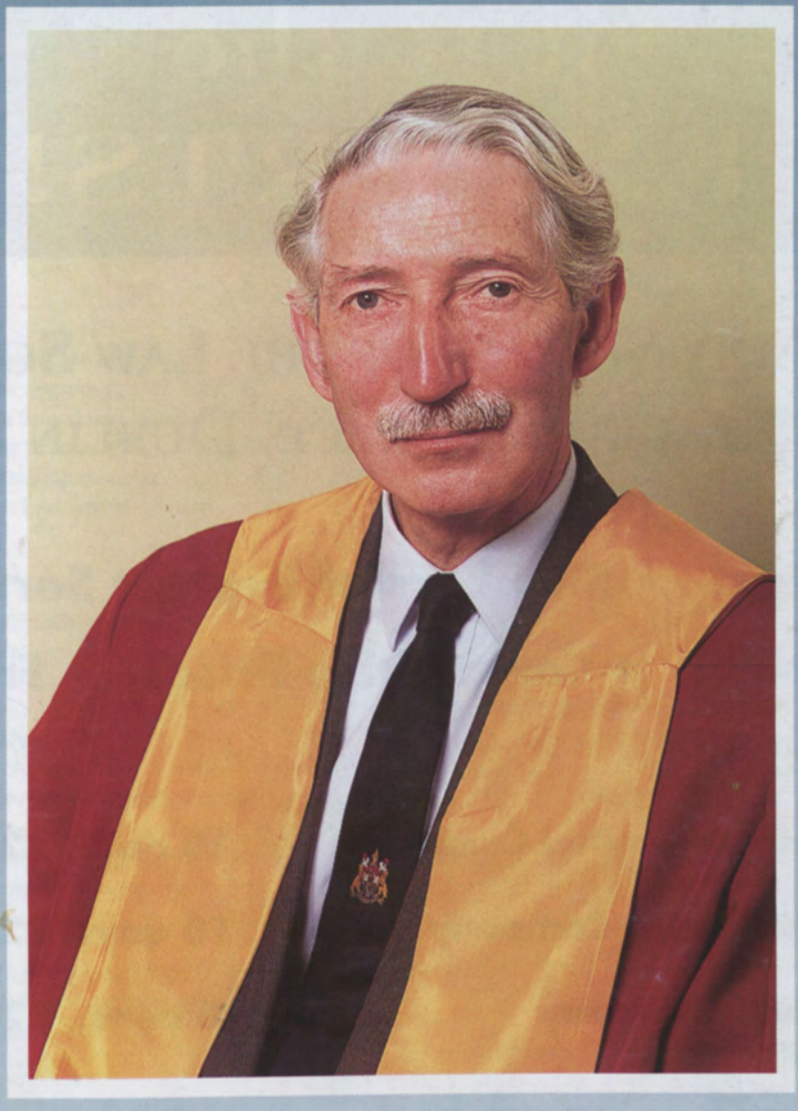
VOL. 88 NO. 5 JUNE, 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE



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VOL. 88 NO. 5 JUNE 1994

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

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Published at Blackhall Place, Dublin 7.
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Front cover: The front cover shows Professor *Richard Woulfe* who retired as Director of Education of the Law School on 17 June after sixteen years service.

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THE ISLE OF MAN

Samuel McCleery

Attorney - at - Law and Solicitor of PO Box 127 in Grand Turk,Turks and Caicos Islands, British West Indies and at P. O. Box 7, Castletown, Isle of Man will be pleased to accept instructions generally from Irish Solicitors in the formation and administration of Exempt Turks and Caicos Island Companies and Non - Resident Isle of Man Companies, Trust Administration Asset Protection.

G.T Office:-
Tel: 001 809 946 2818
Fax: 001 809 946 2819

I.O.M.Office:-
Tel: 00 44 624 822210 Telex : 628285
Samdan G
Fax: 00 44 624 823799

VIEWPOINT

Law Society Expenditure: Getting Value for Money?

There is increasing emphasis nowadays in virtually every walk of life on openness and accountability and, in relation to professional organisations that are spending their members' money, questions inevitably arise about whether those who are footing the bill are getting value for money. The Law Society, as a representative organisation financed through the subscriptions of its members, is no exception. It too is called upon, from time to time, to render an account of its stewardship.

The Society is required under its bye-laws to publish audited accounts to its members each year and the members are entitled, at a general meeting, to discuss the accounts and ask questions. Recently, as a result of the initiative of a particular group of members, an item of special business on the finances of the Society was requisitioned for the half-yearly meeting of the Society held in Connemara. As those members of the Society who were present will recall, the ensuing debate at the meeting was lively and informative.

In the last ten years, the cost of a member's registration fee (practising certificate and member's subscription) has increased by over 97% (from £274 in 1984/85 to £541 (excluding group life assurance scheme) in 1994/95). In the corresponding period, the Consumer Price Index increased by only 39%. It is clear, therefore, that Law Society expenditure has been outstripping inflation. Members are no doubt interested in why this is so and, at the meeting in Connemara, some members sought explanations for the current comparatively high levels of expenditure.

The audited accounts for the year ended 31 December, 1993, show that income from registration fees amounted to about £1.7m while expenditure on running the Society (excluding the Law School and the Compensation Fund) came to £2m. The balance was made up from income derived from other sources – principally the commercial activities engaged in by the Society – so that, overall, there was a small surplus. However, expenditure over the years (including capital expenditure) has been exceeding income and accumulated debt as at the end of 1993 was almost £800,000. In his letter to the profession in January, the President of the Society outlined the steps that were taken to deal with this. Capital expenditure would in future be financed in the main by means of fixed term borrowing and total Society indebtedness would be gradually reduced. The President also spoke about the need to improve facilities at Blackhall Place and also to improve services for members. These desirable objectives necessitated a further increase of £75 in the registration fee for 1994 – an increase of 15%. Not unexpectedly, this increase precipitated discussion at the half-yearly meeting and the meeting passed a resolution calling on the Society to continue to pursue vigorously policies that would bring about an overall reduction in cost to members.

Running a statutory regulatory body, that also has a representative role, for a growing profession of 5,000 solicitors is an expensive business and, in our view, *when regard is had to all relevant considerations*, a registration fee of £575 is not unreasonable. The Society is obliged under statute to discharge its function of registering and licensing solicitors to practice. It must also carry out a disciplinary role, upholding the high ethical and behavioural standards that the members rightly set for themselves. At a time of increasing difficulty and default in the profession, this regulatory role is demanding ever-increasing resources. The evidence suggests that complaints against solicitors are growing and the Solicitors Bill will add further to the volume when the new jurisdiction relating to shoddy work and overcharging is fully operational. The appointment of a legal ombudsman – also a feature of the Solicitors Bill – will also undoubtedly impact further on the administrative costs of the Society, quite apart from the fact that the Society itself will have to fund the office.

The Society, of course, also provides services to members and represents the interests of members in relation to all matters affecting the profession. In recent times, the Society has been taking steps to improve the quality of legal practice in this country. A Practice Management Committee has been established and that Committee is developing practice management 'standards' and intends to promote these throughout the profession. A series of seminars will be held throughout the country. The recently launched *Solicitor Link* service also aims to assist practitioners who are seeking to amalgamate or otherwise reshape their practices. Members will also have observed a much-expanded Continuing Legal Education programme which, to date, has been highly successful. These are just a few of the more recently developed services that have been added to the traditional range of services on professional practice matters including, of course, the excellent library services.

In its representational role we believe that the Society has acquitted itself well in recent times, particularly in its negotiations with the Government on the Solicitors (Amendment) Bill. The Government's decision to remove from the Bill provisions that would have allowed banks and other financial institutions to do probate and conveyancing has been greatly welcomed in the profession. It is clear also that the Society has been working

(Continued overleaf)

Viewpoint

Continued

hard in opposing the proposal that there should be a 'cap' placed on compensation awards in personal injury actions. Moreover, the Society has represented the interests of the profession in seeking improvements in the Courts Service, in the area of legal aid (both civil and criminal) and in dealing with third party returns introduced in the Finance Act, 1992. The profession will also be aware that the Solicitors Bill will contain a 'cap' on Compensation Fund payments and other reforms in relation to the operation of that Fund.

It needs, perhaps, to be emphasised that a professional regulatory and representative organisation can only function with a high quality, professional staff. While it is clear that the staff of the Society has been growing in recent times, so too has the work of the Society in both volume and complexity. Computerisation has also, of course, added very considerably to Society costs in the past two years but this will yield substantial benefits and contain staff costs over time.

Questions have been raised about the financial burden on the Society of maintaining its premises at Blackhall Place. The Society believes that the overall cost of the upkeep and maintenance of the premises are substantially less than it could expect to pay annually by way of rental for a modern downtown office appropriate to its needs. It must be remembered that the Society's headquarters has to provide accommodation for a Law School (that can cater for in excess of 200 students at a time) committee and consultation rooms for 28 committees and the Council and appropriate accommodation for staff, for ceremonial, social and other functions. It must be very doubtful whether it would ever be possible to find a premises better suited to the needs of the Society than those at Blackhall Place.

While the concerns of members in relation to the growing cost of the Society is both appropriate and justified, it is important that the issue is seen in perspective. At the same time it is right that the Society should appreciate that, like the *Skibereen Eagle*, there are members out there keeping a close eye! ❐

Company and Commercial Law Committee News

Company Law Review Group

The Minister for Enterprise and Employment has established a Company Law Review Group to focus on examinerships and recommendations of the Ryan Commission and Small Business Task Force. Committee member, *William Johnston*, of Arthur Cox, has been appointed to the group.

Under the terms of reference of the group they are to report to the Minister by 30 November next on:-

- Companies (Amendment) Act, 1990 (the "Examinership" Act).
- Part II, Companies Act, 1990 (investigations).
- Recommendations of the Ryan Commission, e.g. possible need for a statutory requirement to state compliance with accounting standards, establishment of a review panel, role of auditors, corporate governance issues, etc.
- Part V, Companies Act, 1990 ("insider dealing").
- Examine implementation of any recommendations of the Small Businesses Task Force for changes in company law.
- Chapter I of Part VII of the Companies Act, 1990 – provisions relating to restriction on directors.
- Examine the position of farmer creditors in the event of company liquidation.

Following completion of the tasks it is anticipated that the group will then examine:- (a) technical aspects and any other aspects arising from submissions received on the foregoing or referred to the group by the Minister; (b) the need for a commercial court and (c) possible consolidation of all company law.

The Company and Commercial Law Committee is making various submissions to the group on the matters under review.

Commercial Agents Directive

The Minister for Enterprise and Employment made Regulations on 21 February 1994, entitled European Communities (Commercial Agents) Regulations, 1994 (S.I. 33 of 1994) for the purpose of giving effect to Council Directive 86/653/EEC of 18 December 1986, on the co-ordination of the laws of Member States relating to self-employed commercial agents. The Regulations deal with the relationship between commercial agents and their principals and their respective rights and obligations.

Unfair Contract Terms Directive

EC Directive 93/13 on unfair terms in consumer contracts was adopted on 5 April 1993. The aim of the Directive is to regulate the domestic legislation of Member States on unfair terms in contracts between a seller or supplier and a consumer. Member States are obliged to enact appropriate legislation and to comply with the Directive by 31 December 1994.

Company and Commercial Law Committee

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PRESIDENT'S MESSAGE

Every practice should consider a complaints-handling procedure

In my address to the half-yearly general meeting of the Society on 12 May last, at the commencement of the Society's annual conference in the Connemara Coast Hotel, I suggested that in the context of the Solicitors (Amendment) Bill, 1994, which provides for greater transparency in the manner in which the Society conducts its regulatory duties and the manner in which solicitors conduct their dealings with clients, that the time has come for all firms to consider an "in-house" complaints procedure.

In the course of my address I said that: "One of the essential hallmarks of a profession is that it is able and willing to regulate itself by setting rules and standards of conduct and by disciplining those who transgress. The powers and duties of self-regulation may be enshrined variously in legislation or in professional or ethical rules or regulations accepted as binding by that profession's membership. Whatever the origins of a profession's self-regulation, there must be a common objective to promote effective self-discipline for the good of the profession and in the public interest.

"The emphasis should be on the external 'raison d'etre' of service of the public and the interests of justice, rather than on any internal 'raison d'etre' of the self-interest of the profession itself. If that emphasis is seen by the public to exist, the public in turn will have more confidence in the legal profession and will distinguish it from other organisations which are sometimes perceived as putting their members first.

"As befits a self-regulating profession I would suggest that it is essential that each solicitor's practice should operate its own complaints-handling procedure. Some practices already have such a procedure in place. Such a procedure would ensure that, from the

Michael V. O'Mahony

outset, the client would know that if any problem arose in relation to the legal services being provided, there would be in place a means of resolving the problem without the outside involvement of the Society.

"The Law Society of England and Wales has had, since May 1991, a statutory 'client care' regulation (the so-called 'Rule 15'). The English regulation provides that every principal in private practice must operate a complaints-handling procedure which, *inter alia*, ensures that clients are informed whom to approach in the event of any problem with the service provided. This 'Rule 15' further provides that every solicitor in practice must, unless it is inappropriate in the circumstances –

(a) ensure that clients know the name and status of the person responsible for the day-to-day conduct of the matter and the principal responsible for its overall supervision;

(b) ensure that clients know whom to approach in the event of any problem with the service provided; and

(c) ensure that clients are at all relevant times given any appropriate information as to the issues raised and the progress of the matter.

"The adoption here, by similar regulation, of such a 'client care' requirement would, I believe, reduce significantly the number of client complaints made to the Law Society. Such a requirement would more expeditiously address the main causes of complaint – delay and failure to communicate adequately – and at the same time would more likely ensure that the problem at issue did not fester and result in an irretrievable breakdown in the particular solicitor/client relationship. Once it is accepted that even in the best-run offices problems can arise which cause upset and annoyance to the reasonable client, it makes good sense to provide a procedure for resolving such problems by conciliation at an early stage, if and when they do arise.

"In engaging in this critical self-analysis of our self-regulatory profession, it is important to remind ourselves and the wider public that the vast majority of practising solicitors are honest and provide a good and efficient service to their clients. The Society receives in the order of 1300 complaints per year from dissatisfied clients of solicitors. With some 4,000 practising solicitors in the country, it is reasonable to assume that the level of complaints represents far less than 1% of legal matters actually being handled at any one time throughout the country. But while bad news will make headlines, good news tends not to do so. The solicitor should thus see himself or herself as a custodian of the good name of all solicitors.

"In concluding, let me summarise by observing that the best form of self-interest is in demonstrating an interest

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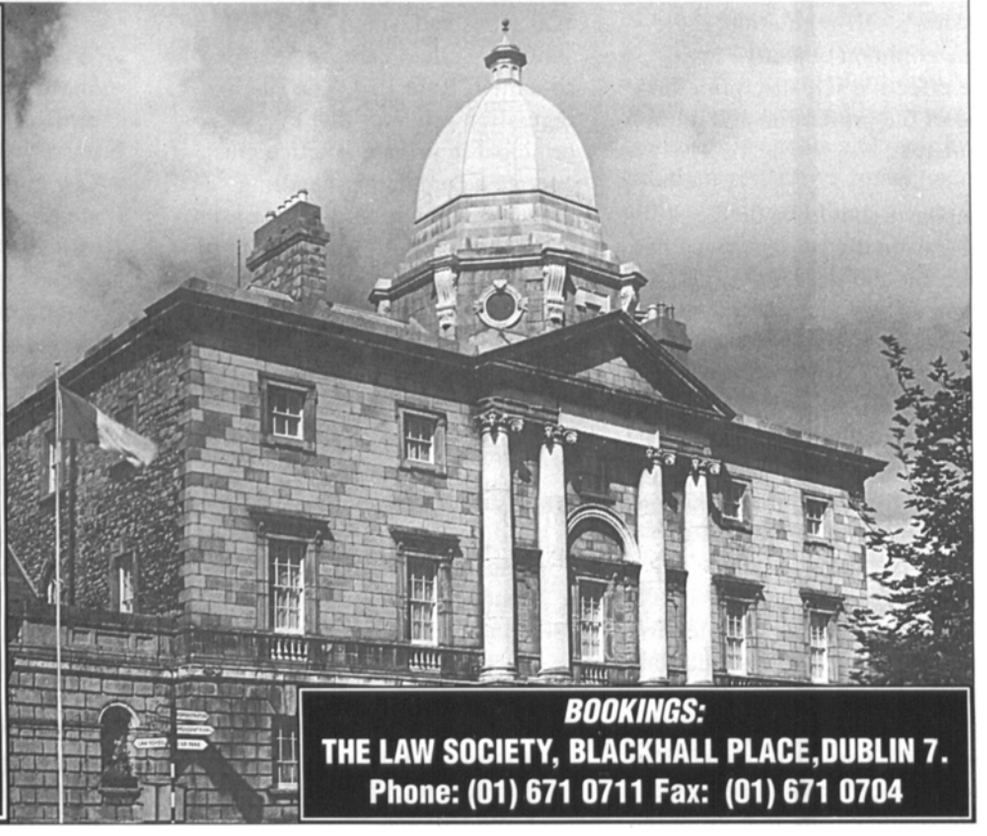

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Are Your Books in Order???

by Jim Dobson

Failure to comply with the Solicitors Accounts Regulations can have serious consequences for both individual solicitors and the profession as a whole. In this article, *Jim Dobson*, Investigating Accountant, Law Society, describes the scope of the regulations, the role of the Compensation Fund Committee and what you need to do to ensure compliance.

A Tradesman's books, like a Christian's conscience, should always be kept clean and clear; and he that is not careful of both will give but a sad account of himself either to God or man. (**Daniel Defoe, The Complete English Tradesman,** 2nd ed, 1727 vol. 1, letter XX.)

A commonplace adage affirms that unpleasantness and disputes between neighbours may be obviated by good fences. Prudent solicitors will realise that it is imperative that a clear demarcation line should exist between clients money and/or trust money **and** the solicitor's own or office monies.

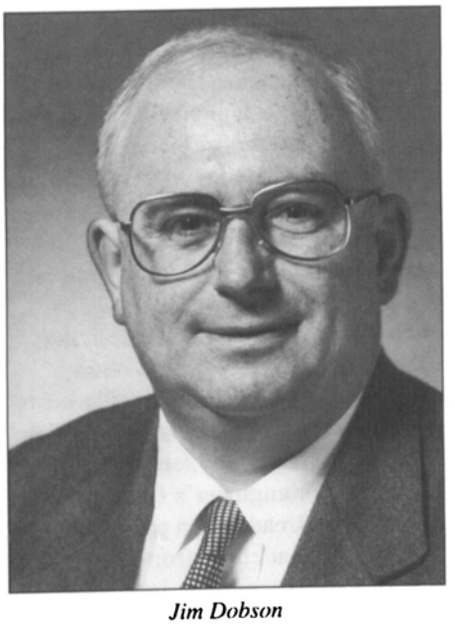
The Solicitors Accounts Regulations establish a legislative framework for such a system of segregation. A comprehensive knowledge of, and adherence to, the provisions of the regulations is obligatory for solicitors engaged in practice.

The regulations currently in force are embodied in the Solicitors Accounts Regulations No. 2 of 1984 (SI No 304, 1984). No solicitor, solicitor's bookkeeper or solicitor's accountant should be without a copy.

The following are some of the salient provisions contained in the regulations:-

Client Accounts

- Clients money, held or received,



Jim Dobson

must be paid into a Client Account at an approved bank, or at any other financial institution authorised by the client in writing (Regulation 4). The account must be in the name of the solicitor and the word **"client"** must appear in the title of the account, (Regulation 2.(1)). The solicitor should, therefore, instruct the bank that the account is to be so described and ensure that the bank complies with this instruction. Regulation 6 specifies permitted exceptions to the general requirement prescribed by Regulation 4.

- Money may be withdrawn from a client (bank) account ***only*** in the particular circumstances set out in Regulation 7 and 8. Debit balances are not permitted in respect of any individual client, (i.e. a client ledger account may not be overdrawn).

- The aggregate of the balances in client (bank) accounts may exceed but should never be less than the total of gross liabilities due to clients as represented by the sum of credit balances due to all of the solicitor's clients as shown by his books and records. When comparing the total of monies held in client (bank) accounts with the total of gross liabilities due to clients at a particular date, a deduction should not be made from the total of credit balances for debit balances reflected in other client ledger accounts. Neither is it permissible to reduce the balance of a client ledger account, as reflected in the ledger, by an amount stated to represent costs or fees due to the solicitor included in that balance but not transferred.

Books of Account

- Every solicitor is required ***at all times*** to keep proper books of account in the prescribed manner ***to show all his dealings*** with –

  – client's money, received, held or paid by him and

  – any other money dealt with by him through a client account, (Regulations 10.(1) and 10.(2)).

- Regulation 10.(2)(a)(i)(b) requires that a record of sums transferred from the ledger account of one client to that of another should be maintained. (This requirement may best be met by the maintenance of a journal. A narrative fully explaining such transfers should accompany the record of the transfer and adequate supporting documentary evidence should be available for inspection.) Regard should also be had to the provisions of Regulation 9 in relation to such transfers.

  In addition, all office account transactions must be recorded in a cast book ledger, (Regulation 10.(2)(6)).

- Regulation 19 sets out the minimum books which a solicitor must keep in connection with his practice. The accounting system may be manual, mechanical or computerised.

- Every solicitor must preserve the accounting records kept under the Solicitors Accounts Regulations for at least 10 years from the date of the last entry, (Regulation 20).

- Where a solicitor-trustee situation exists (see Regulation 2.(1)) and where money which is the subject of such a trust is held, received, or paid, the provisions of Part III of the Regulations apply.

- Each partner of a firm of solicitors is responsible for securing compliance by the firm with the provisions of the Solicitors Accounts Regulations, (Regulation 32).

- Regulation 21 requires that every solicitor to whom the Regulations apply (see Regulation 35) shall deliver to the Society within six months of the accounting date in each practice year an Accountants Report in a prescribed format signed by an accountant approved by the Society.

Sanctions for non-compliance

Failure by a solicitor to comply with the Solicitors Accounts Regulations may result in a direction by the Law Society to the Registrar of Solicitors to refuse the issue of a practising certificate. Furthermore, under the terms of the Solicitors Act 1954 and 1960, contravention of the regulations constitutes misconduct and may be the subject of a report by the Society to the Disciplinary Committee of the High Court.

Monitoring and enforcement – the role of the Compensation Fund Committee

The Compensation Fund Committee of the Society is responsible for enforcing and monitoring compliance with the Regulations. In addition to reviewing annual Accountants Reports submitted in respect of each practice, the Committee also initiates inspections of practices (both on a routine random basis and on a targeted basis) by the Society's in-house team of investigating accountants. The Committee has expressed concern about the frequency with which a number of unsatisfactory procedures and occurrences have been the subject of comment by accountants. In particular, the Committee would like to stress the following matters.

Books of Account

- Books of Account should be maintained on an up to date basis at all times so as to reflect all dealings with clients' money received held or paid, (Regulation 10).

Party and party costs/solicitor and client costs

- Party and party costs and solicitor and client costs represent clients' monies to the extent that these costs include payment for items of outlay (such as stamp duty, counsel's fees, doctor's or engineer's fees) which have not already been paid out on behalf of that client from the office (bank) account **and** there fore the funds received in respect of the undischarged outlay **must be lodged to a client (bank) account.**

Where a remittance received by a solicitor includes payment for solicitor's fees together with undischarged outlay the recommended treatment is to lodge the entirety of the remittance intact to the client (bank) account. Then, from such monies received, a payment for outlay – properly incurred on behalf of the client – may be made from the client (bank) account to the appropriate payee by means of a client account cheque. Where a bill of costs or other written intimation (under Regulation 7(a)(ii) and (iv)) of the amount of the costs incurred has been delivered to the client – a transfer may be effected from the client (bank) account to the office (bank) account in respect of the solicitor's fee and for outlay which has been discharged previously from the office (bank) account on the client's behalf.

Where solicitor's fees are received in advance of the performance of the services to which they relate and where it would be open to the client to sue for recovery of them in the event of the non-performance of the relevant services, such money, when received, should be treated as client's money and it should be lodged to, and retained in a client (bank) account until the legal services to which it relates have been performed.

Settlement monies

- The relationship between solicitors and client is a fiduciary one requiring full disclosure.

Where settlement monies and/or party and party costs are received by the solicitor, the client should be informed **in writing** of the amount received. The client should also be requested to acknowledge in writing receipt of settlement monies paid or handed over to him by the solicitor.

Solicitor/client fees

- Appendix E of the Law Society's **A** *Guide to Professional Conduct of Solicitors in Ireland* deals with solicitor/client fees. The Guide states, inter alia, ". . . When preparing a solicitor and client bill or furnishing an abbreviated form thereof, the solicitor should include the following details in the bill to the client:

(a) particulars of the work done; (b) the professional fee charged; (c) the disbursements; (d) the VAT charged and the rate; (e) credits for payments received by way of party and party charges; and (f) a statement of the client's right to seek taxation thereof."

Balancing and reconciliation

- Six monthly balancing and reconciliation statements (Regulation 10.(3)) should be prepared **twice yearly** on the practice's Reporting Dates (as defined in Regulation 2.(1)). Indeed, over and above this minimum legal requirement, it is good practice to complete this exercise quarterly, or even monthly, so that any errors can be identified and rectified on a timely basis.

- Banks frequently debit bank charges to client (bank) accounts. This may give rise to the creation of a shortfall of clients funds in the client (bank) account as compared with liabilities due to clients. Solicitors should give banks categoric written instructions that bank charges should not be debited to client (bank) accounts but should rather be debited to the office (bank) account of the practice.

- Each practice should be in possession of paid cheques drawn on its bank accounts. The Society considers that paid cheques form part of the records of a solicitor's practice for the purposes of Regulation 20. Therefore, solicitors should arrange with their bankers for the return of paid cheques. Pursuant to an agreement between the Law Society and the Irish Banks Standing Committee, banks will return cheques where the bank has been so requested by individual firms of solicitors. The numerical completeness of cheques returned should be checked by the practice and cheques should be retained in numerical sequence.

- Withdrawals of money should not be made from client (bank) accounts against the proceeds of an uncleared cheque lodged to the client (bank) account. While withdrawal of money against an uncleared cheque is not in itself breach of the Regulations, if the cheque is subsequently not "met" and the amount drawn from the client's account is in excess of the amount held for that particular client, other clients' money will have been used to make the payment. Therefore a breach of the Regulations will have occurred.

- A separate client ledger account should be maintained for each separate client matter, i.e. transactions relating to different matters for the same client should not be intermixed in the same ledger account.

- A solicitor's accounting records should reflect the totality of liabilities to clients, including liabilities to clients represented by sums held by the solicitors in the form of deposit receipts.

- Adequate documentation should be retained on client files to facilitate the vouching (*inter alia* by authorised external accountants) of financial transactions. Such documentation should include sufficient independently generated documentation, correspondence, receipts and acknowledgments of payments made. In addition it is recommended that photocopies of cheques and drafts received for and on behalf of clients and of cheques and drafts paid out to or on behalf of clients should be retained on the file appropriate to the relevant client matter.

Discharge of costs to solicitors

- Payment from client (bank) accounts in discharge of costs due to the solicitor is permitted **only** by means of:-

  (a) a cheque drawn in favour of the solicitors;

  or

  (b) a transfer to a bank account in the name of the solicitor which is not a client (bank) account, (Regulation 8(1)).

  Moreover such payments/transfers may be made ***only*** after a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client ***and*** where it has been made clear to the client in writing that the money held for him is to be applied towards the satisfaction of the costs due, (Regulation 7 (a)(iv)).

  It should be noted therefore that "round sum" payments/transfers "for costs" should not be made from the solicitor's client (bank) account unless the payments/transfers are clearly attributable to identified clients and the provisions of Regulations 8(1) and 7(a)(iv) have been fully complied with.

  A record of all bills of costs and of all written intimations of costs (as therein defined), delivered or made by the solicitor to clients, should be maintained by the practice, (Regulation 19(2)).

  This requirement can best be met by the maintenance in date chronological order of a copy fee note file. A copy of the bill of costs and/or the written intimation should also, of course, be retained on the relevant client file.

Solicitor's own money

- The Solicitors Accounts Regulations permit a solicitor to keep a balance of his own money in a client (bank) account. Where this situation pertains a ledger account should be maintained in the practice's clients ledger, in the name of the solicitor, in which financial transactions relating to such monies and the balance thereof should be recorded.

Interest accruing on a client account

- Where interest is credited to a client (bank) account by a bank, an Interest Account should be maintained in the practice's client ledger. Interest received from the bank should be credited to the Interest Account and the allocation of interest to other client ledger accounts should be debited to the Interest Account.

- Practitioners should be aware of a solicitor's obligation to account to clients for interest earned on clients' money. The Solicitors Professional Practice Conduct and Discipline Regulation 1986 (S.I. No. 405 of 1986) provide, *inter alia,* that there is an obligation on a solicitor to account to, or to pay to a client, interest – at the appropriate rate (as therein defined) – in those instances where that client's money would have yielded interest of not less than IR£50 (after deduction of Deposit Interest Retention Tax), had the client's money been paid into a separate deposit or savings client

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L A W B R I E F

By Dr. Eamonn Hall

Land Registry Delays

The issue of delays in the Land Registry was raised in the Dáil in an Adjournment Debate on April 19, 1994. The Minister of State at the Department of Transport, Energy and Communications, *Noel Treacy,* responded on behalf of the Government.

The Minister stated that since 1990 additional staff had been appointed and a considerable investment had been made in computerisation and information technology. Over each of the past four years annual output in the Land Registry had exceeded the annual intake of business, thus reducing the arrears level.

At the end of 1989 the total arrears in "dealings" amounted to 51,145. At the end of 1993, the corresponding figure was 41,828, representing an improvement of some 18.2 per cent. The Minister stated that the average time taken to have a dealing processed in the Land Registry was between 16 weeks and 24 weeks, depending on complexity and geographic location.

Solicitors were blamed by the Minister for part of the delay. He stated that many solicitors lodged incorrect and incomplete applications which gave rise to non-productive work and represented a poor utilisation of the Registry's scarce resources. However, the Minister said that in cooperation with the Law Society efforts had been made to bring about an improvement in the quality of work lodged. He observed, however, that the results to date had been disappointing. He stated that this would have to be tackled further by solicitors and the Law Society.

There are at present in excess of 500 staff working in the Land Registry and the Registry of Deeds. What was needed was not necessarily more staff but perhaps more investment in technology and business orientation. The conversion of the Registries to a commercial State-sponsored body was well under way. An interim board whose chairman and members had a wide range of business expertise had been appointed in 1992 to assist and advise on the procedures and the legislative changes that would be necessary to bring about the conversion. Additionally the Minister stated that up-to-date information technology and computerisation of a wide range of procedures was being implemented.

"Solicitors who lodge incorrect and incomplete applications in the Land Registry give rise to non-productive work and represent a poor utilisation of the Registry's scarce resources. Efforts to bring about improvements in the quality of work lodged have been disappointing."

Decentralisation of some of the Land Registry's operations to Waterford was in accordance with Government policy and steady progress was being made. The Minister stated that a site was available in Waterford and inquiries had been received from interested developers with a view to building office premises. The Government's programme provided for the transfer of 150 to 200 civil servants to the "beautiful city of Waterford".

The Office of Notary Public

The notary public ranks amongst the most ancient of professions. *Mr. E. Rory O'Connor* in his book *The Irish Notary* (Professional Books, 1987), noted that it was generally accepted "that the earliest civilisations had officials of great intellect, versed in the art of writing, who carried out functions similar to those performed by the notary of today".

The European Parliament in a resolution adopted on January 18, 1994 and published in the *Official Journal of the European Communities* (No. C 44 36, 14.02.1994) urged the European Commission and the Member States and notarial organisations to consult together with a view to instituting the necessary reforms to bring about approximation at European level of certain aspects specific to the organisation and exercise of notarial activities and a sectoral approach to rules for its exercise, insofar as developments in the completion of the internal market justify this.

The Parliament called for measures to be taken to remove, for citizens of the European Union, (without prejudice to other conditions which may be imposed by each State for entry), the nationality requirement for those wishing to enter the profession and for appropriate proposals to be made to supplement the Brussels Convention of September 27, 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters with provisions which take into account the particular aspects of the transfrontier "movement" of notarial acts.

The Parliament called on the Commission and on Member States to use the legal instruments provided for by the EC Treaty to ensure mutual recognition without formalities of notarial acts, particularly Article 220 of the EC Treaty and to reconcile in accordance with subsidiarity the exception on grounds of "order public" provided for in Article 55 with the general principle of equality of treatment provided for in Article 6 of the EC Treaty.

The text of the resolution of the European Parliament is interesting from several perspectives. The Parliament considered that the completion of the internal market would lead to a substantial increase in notarial activity in all Member States of the Community within the single market. Accordingly, the Parliament considered it particularly useful to examine and carry out detailed assessments of the organisation of the profession of notary.

Common characteristics of the notary in the 12 Member States of the Community were considered by the Parliament. The Parliament classified the most important common characteristics as being:

- a partial delegation of State sovereignty to carry out a public service in respect of the authenticity of contracts and evidence;
- independent public-service activity exercised within a liberal profession (subject to exceptions), and subject to supervision by the State – or by the statutory body to which this responsibility is delegated by the public authorities – as regards compliance with requirements governing notarial acts, regulated scales of fees imposed in the interests of clients, access to the profession or the organisation thereof;
- a preventive role in relation to judicial proceedings, by eliminating or reducing the risk of litigation;

and

- an impartial advisory function.

In the context of Article 55 of the EC Treaty (exceptions on the basis of the exercise of official authority by Member States) the European Parliment considered that the existence of a partial delegation of the authority of the State was an element inherent in the exercise of the profession of a notary and this constituted valid grounds for not applying to that profession provisions on freedom of establishment and freedom to provide services which were not to apply to activities which in a State were "connected, even occasionally, with the exercise of official authority".

"The earliest civilisations had officials of great intellect, versed in the art of writing who carried out functions similar to those performed by the Notary of today."

In Ireland, the Dean of the Faculty of Notaries Public is *Mr. Walter Beatty*, Solicitor, a former president of the Law Society, Dublin, and the Registrar of the Faculty is *Mr. Brendan D. Walsh*, Solicitor, Dublin. Interested readers are referred to the Practice Note "Applications for Notaries Public – RSC Amended" published in the *Gazette*, May 1994 (Vol. 88 No. 4, p. 139).

The Irish Society for European Law

The Irish Society for European Law celebrated its 21st anniversary by holding a one-day conference to consider the theme of "European Union Law in Ireland: the First Twenty One Years". The conference was held in the Conrad Hilton Hotel, Dublin, on Saturday April 23, 1994.

The first constituent meeting of the Society was held on October 23, 1973. The objects of the Society include the study of all aspects of the law of the European Communities, of the institutions of the European Communities, the law (both public and private) of the Member States of those Communities and all other European States. Membership of the society is open to all "jurists in Ireland" and to other persons who satisfy the Committee that they are fit and proper persons to be admitted. The Hon. Mr. Justice *Brian Walsh* has been President of the Society since its establishment.

Written papers were presented to the Society on April 23, 1994 by the following:

Mr. *Tony Collins*, Legal Secretary, European Court of Justice, Luxembourg, on "Community Law as a Source of Rights and Remedies in the Irish Legal Order";

Mr. *John Handoll*, Stephenson Harwood, Brussels, on "The Protection of National Interests in EU Law with particular reference to Ireland";

Mr. *Gerard Hogan*, BL, Trinity College, Dublin, on "Implementation of EU Law in Ireland";

Mr. *Vincent Power*, A&L Goodbody, Solicitors and Chairman of the Society, on "EU Competition Law and Ireland";

Mr. *Bryan Sheridan*, Group Legal Adviser, AIB Group, on "EU Financial Services Law in Ireland in relation to Banking";

Judge *John Murray*, Judge of the European Court of Justice, Luxembourg, delivered the key-note address. Mr. *John Cooke*, SC, spoke on "Litigation of EU Law in the Irish Courts" and Professor *Bryan McMahon*, Partner, Ignatius Houlihan, Ennis and Professor of Law at University College Galway, spoke on "European Union Law and the Irish Country Practitioner".

Copies of the written papers are available from the Registrar of the Society, Solicitor's Office, Telecom Eireann, 52 Harcourt Street, Dublin 2, Tel. (01) 671 4444, ext. 5930, fax (01) 679 3980 at a price of £12 including package and postage.

Planning Regulations

The Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994) replace all existing Regulations under the *Local Government (Planning and Development) Acts, 1963 to 1993.*

All Parts of these regulations, other than Parts X and XIII, correspond, subject to additions, omissions and amendments, to provisions of the regulations revoked. Part X establishes a new procedure of public

notice and consultation for specified classes of local authority development. Part XIII specifies certain classes of development by State authorities for the purposes of section 2(1) (a) of the *Local Government (Planning and Development) Act, 1993,* and the provisions of the *Local Government (Planning and Development) Acts* will not apply to development so specified. Part XIII also establishes a procedure of public notice and consultation for certain of the classes of development specified for the purposes of section 2(1) (a) of the 1993 Act.

Parts X and XIII, and article 9(1) (a) in respect of certain classes of exempted development came into operation on June 15, 1994. All other provisions of the regulations came into operation with effect from 16 May, 1994.

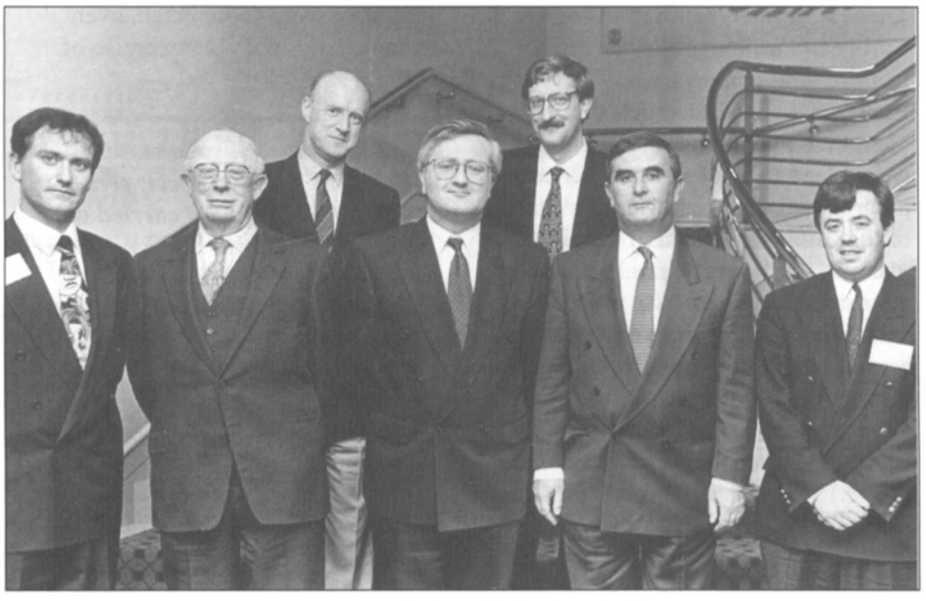
The regulations may be purchased from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2 or by post from Government Publications, 4/5 Harcourt Road, Dublin 2, price: £22 plus £1.20 postage. ❐

President's Message

(Continued from page 171)

towards others. At times, Council Members report 'feedback' from the profession that the Society is seen as sometimes too inclined to presume that every complaint against a solicitor is valid and well-motivated and too inclined to take the side of the complainant. A solicitor who is the subject of what he sees as an unreasonable complaint may very well feel that way, but both the public interest and our own self-interest as an independent self-regulating profession requires that the complaining client is recognised as the weaker party and that any partiality that might arise in the process of investigating a complaint should be towards that weaker party."

Michael V. O'Mahony
President ❐



Photographed at the 21st Anniversary of The Irish Society for European Law *were some of the speakers, l-r: Tony Collins, BL; Judge Tom O'Higgins, John Cooke, SC; Vincent Power, Solicitor, Chairman of the Society; John Handoll, Solicitor; Judge John Murray and Gerard Hogan, BL.*

Are Your Books in Order???

(Continued from page 175)

account for the benefit of the client at the principal bank to the practice of the solicitor. The obligation, however, is subject to any arrangement which may be made in writing between a solicitor and a client for the application of the client's money or interest.

Good accounting pays

The Compensation Fund Committee frequently emphasises that solicitors should look upon *and use* their accounting records as a management resource; that to be an effective management tool the records must be written up to date at all times. The periodic updating of accounting records on a historic basis (for example, yearly or monthly), **does not** constitute compliance with Regulation 10 of the Solicitors Accounts Regulations, (other than in extremely exceptional circumstances where the number of financial transactions handled is infinitesimal). The 1994 update of the Handbook of the American Institute of Certified Public Accountants defines accounting as a "discipline which provides financial and other information essential to the efficient conduct and evaluation of the activities of any organisation". The information which accounting provides is essential for: (1) effective planning, control and decision-making by management and (2) discharging the accountability of organisations to others. Where the organisation in question is a solicitor's practice, the discharge of its accountability to clients is paramount. To be meaningful the information available for these purposes must be current and up to date, not merely historic. *Daniel Defoe* propounded the same message in 1774 when he wrote:-

A tradesman's book (of account) are his repeating clock, which upon all occasions are to tell him how he goes on, and how things stand with him in the world; there he will know when 'tis time to go on, or when 'tis time to give over . . . His books being so essential to his trade, he that comes out of his time without a perfect knowledge of the method of bookkeeping . . . knows not what to do, or what step to take. (Ibid)

❐

Council Approves 'Mixed' Law Degrees

At its meeting on 27 May, the Council of the Society decided to recognise the subject content of certain law degrees for the purpose of exemption from the Society's Final Examination – First Part (FE-1). The Council noted that, in previous years, the Society had encouraged universities to broaden their law courses. A number of universities now provided 'mixed' law degrees, offering, for example, a combination of law subjects and languages, or legal and business subjects. The Council's decision was taken on the basis that the course content of the legal subjects that would qualify for an exemption from the FE-1 was in line with the requirements laid down in the Law School syllabus.

One Council member dissented from the decision. He took the view that recognition would lead to an increase in the numbers seeking admission to the Law School. However, the Council noted that the students taking the mixed law degrees in the main followed exactly the same courses, lectures and exams for their law subjects as students who were following a standard BCL or LLB degree course. Therefore, there was no argument on the grounds of standards for opposing the granting of exemptions in appropriate circumstances.

Progress on Solicitors Bill at Committee Stage

Probate services by banks

The President of the Society, *Michael V. O'Mahony,* informed the Council that the Committee Stage of the debate on the Solicitors (Amendment) Bill, 1994 had concluded on 10 May. The Society had made significant progress on a number of issues of concern. Most notably, the sections in the Bill that would have permitted banks and financial institutions to provide conveyancing and probate services had been deleted. There would still be a provision that would permit credit unions to provide probate services. The President said, however, that it was doubtful whether credit unions would do so, because there were very strict provisions requiring them to provide safeguards for members, compensation arrangements and also a ban on such activities providing a form of cross-subsidisation of the cost of other services offered by them.

Cap on Compensation Fund

The Government had retained the provision of a cap on claims on the Compensation Fund, but was re-considering the level of the cap in the light of suggestions from Opposition Deputies. Democratic Left had suggested deleting the cap, Fine Gael had suggested setting the cap at £350,000 and the Progressive Democrats had suggested £500,000. The President said he was hopeful that the Government would hold the level of the cap at the existing level or that, at most, there would be an increase to around £300,000.

Contributions to Compensation Fund

The Council was informed that Section 30(2) of the Bill, which would have permitted the Society to set different rates of contribution to the Compensation Fund for different categories of solicitors had been deleted. A new subsection would provide that solicitors who resided outside the State and provided legal services outside the State only would not have to contribute to the Compensation Fund in order to obtain a practising certificate.

Fee Advertising

The President informed the meeting that the Government had not been persuaded to delete the section of the Bill which would prevent the Society from prohibiting the advertising of fees. He informed the meeting that the Society was now seeking the inclusion of a provision that would allow for a review of the section after two years. The provision would enable the Society, with the consent of the Minister, to prohibit fee advertising where the Minister was satisfied that fee advertising was not operating in the public interest.

Charging of Fees

Section 68(8) of the Bill, obliges a solicitor, on tendering a bill of costs, to inform the client in writing of the client's right to submit the bill to taxation and/or to make a complaint to the Society that the bill was excessive. The President said that he was hopeful that at Report Stage the Government would be persuaded that this provision need only operate in cases where a dispute had arisen between the solicitor and the client.

Good progress on Solicitors Bill

Council members expressed satisfaction on the progress made on the Bill, particularly in relation to the deletion of the sections concerning conveyancing and probate, while there was disappointment that, despite the Society's best efforts, the Government had not changed its view on fee advertising.

It was suggested that the Society should collate details of all complaints concerning fee advertising received and present them to the Government for the purpose of the two year review, if this was eventually agreed.

"Capping" of Compensation Awards"

The Director General reported to Council that he had attended the annual lunch of the Irish Insurance Federation, at which the Minister of State for Commerce and Technology,

Seamus Brennan TD, had been the guest speaker. The Minister had established an insurance reform group in his department whose first task would be to conduct research to establish the current levels of compensation awards. The Minister had given an undertaking to consult with the legal profession when the research was concluded. The Minister said that he would be implementing the reports of the working Party on Costs in High Court Personal Injury Actions, in which the Law Society and the Bar Council had participated. The President of the Insurance Industry Federation had also spoken at the lunch and had reiterated that the insurance industry was neutral in the debate. The President of the Federation had given an assurance that reductions in cost would be passed on to the public in lower premiums but the Minister had still not given a commitment that this would be legally enforceable.

State work to foreign firms

At the Council meeting one member said there were indications that certain commercial State enterprises were engaging the services of foreign legal firms to do their domestic Irish legal work. The fact that foreign firms, for example, firms in the UK, had to pay a lower rate of VAT to their Governments on the services provided, placed Irish firms at a competitive disadvantage and, in any event, resulted in a loss of VAT revenue to the State. The President of the Society undertook to make representations on the matter to the Minister for Transport Energy and Communications.

Confidential Helpline

The Council noted that the confidential helpline for solicitors, being run under the auspices of the DSBA, had received 109 calls in its first three weeks of operation.
(See advertisement on page 203).

Compensation Fund

The Council approved a schedule of payments out of the Compensation Fund *(see page 182).* ❐

SADSI Mid-Summer's Ball

By now everyone will have received their package containing those essential and, maybe not so essential, details concerning the invasion of Galway by apprentices for the SADSI Mid-Summer's Ball on the weekend of 23 July. With the Ball taking place between Arts Week and Race Week, it is a great chance to join in all the festivities.

The Great Southern Hotel, Eyre Square, is the venue for the Ball which will open with a drinks reception at 7.30pm, followed by dinner and dancing into the early hours.

Our sponsors include solicitors, law searchers, cost accountants, financial institutions, hotels and a well-known brewery and with their support a great night is in store for all! Tickets can be bought from all Committee Members and we would again stress that those seeking accommodation in Galway for the week-end should make plans immediately.

For further information do not hesitate to contact *Ethna McDonald* at 01 668 1711 or *Fidelma McManus* at 01 676 3721. ❐

Irish Solicitors Golfing Society

President's Prize

Michael O'Mahony's President's Prize will take place at Mount Juliet Golf Club, Thomastown, Co. Kilkenny, on **Monday 18 July 1994.**

The time sheet was circulated at Headfort Golf Club on 23 May 1994 to those people who fully participated in the outing. There are still times available on the time sheet from 10.00 a.m. to 12.00 noon and bookings can be made by contacting *Carol Mahon* at 874 4147 or 872 8233.

Henry Lappin's Prize

The results of Henry Lappin's Captains Prize at Headfort Golf Club on 23 May 1994 were:

Winner:
Kieran Pyne – [23] - 42 Points
Second:
Christopher Grogan – [17] - 40 Points
Third:
John Lynch – [8] - 39 Points

St. Patrick's Plate

First:
Denis McSweeney – [11] - 41 Points
Second:
Harry Fehily – [9] - 40 Points

Director General's Cup

Winner:
Kieran O'Connor – [17] - 35 Points

Handicaps 13 – 18

First:
Harry Colley – [17] - 38 Points
Second:
Brian Chesser – [20] - 37 Points

Front Nine

Winner:
Colm Price – [18] - 21 Points

Back Nine

Winner:
David Murphy – [11] - 20 Points

Over 30 miles from Headfort

Winner:
Brendan Duke – [9] - 36 Points

William Jolley,
Hon. Secretary. ❐

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Tel: 0044-483-726272.
Fax: 0044-483-725807.

Poor employment prospects for solicitors reported

Solicitors (Amendment) Bill, 1994

The Irish Times and *Irish Press* of 11 May, reported that *Liz O'Donnell* TD had put forward an amendment to the Solicitors Bill at Committee Stage seeking the introduction of a fine of £1,000 for complainants who gave false or misleading information to the disciplinary tribunal of the High Court. The Minister of State for Justice promised to consider the amendment but said that he did not want to do anything "which would discourage even one person with a genuine complaint from coming forward to the tribunal." On the same day, the *Irish Independent* reported that the Junior Justice Minister had rejected an amendment to the Bill which would have abolished the compulsory examination in Irish.

Accident lead to claims

Remarks by *Dr. Patrick O'Keeffe*, Chairman of the insurance company, FBD, that the level of court awards and the activities of "ambulance chasing" solicitors were costing jobs, damaging tourism and increasing the costs of insurance, were reported in the *Evening Herald* of 17 May and *The Irish Times* and *Independent* of 18 May. The *Independent* and *Cork Evening Echo* of 18 May quoted a spokeswoman for the Law Society who said it was accidents that led to claims, not the activities of solicitors. The spokeswoman stated that the Law Society would defend the right of anyone who had been injured through the fault of someone else to make a valid claim for compensation. Solicitors were entitled to advertise their services and to offer advice to people who had been injured.

Employment prospects for newly-qualified solicitors

In an article focusing on unemployment, *The Irish Times* on 27 April, reported on the case of *Francis Keely*, a 22 year old law graduate with a 2:1 primary degree and a masters degree who had part-time work in Dunnes Stores "and little else to bolster her good humour and optimism in the relentless search for a solicitor's apprenticeship." The article said that before Ms. Keely finished her studies, she dispatched no fewer than 150 applications to solicitors' practices around the country. Since she had obtained her masters degree, she had sent off another 175. The article said that her problem was that she lacked contacts; "ideally this would be a co-operative solicitor who knew her father or mother, say, or better still, happened to be her father or mother."

A full page article in *The Irish Times Education and Living Supplement*, published on 3 May, entitled "the Hard Side of the Law" focused on the difficulty that newly-qualified solicitors were experiencing in obtaining jobs and the initiatives the Law Society was taking to try to widen job opportunities for solicitors. The article also highlighted the delay in obtaining a place on a Professional Course in the Law School. Concluding the article, *Christina Murphy* commented "ironically, the crises in both training places and job opportunities for professional lawyers have come at a time when the extremely high earnings of a small proportion of the professional are being highlighted by the reports of the Beef Tribunal . . . thus making law even more attractive to school-leavers. The reality is that this is just the tip of the iceberg, with many lawyers finding it difficult to make ends meet at all."

The Education and Living Supplement to *The Irish Times* of 24 May reported on graduate employment. The article noted that of 66 students on the Advanced Course who had responded to a survey on their employment prospects last April, 25 has felt they had no prospect of a job, 22 said they had some hope, 8 felt they had a good prospects of a job, 3 had received an offer from the firm where they were apprenticed and 7 had accepted offers of jobs. A spokeswoman for the Society was quoted as saying that while law provided excellent training, school leavers should not think of a law degree solely as a means of becoming a solicitor. "The growth in the numbers of students who want to study law is far greater than the growth in demand for legal services."

Disciplinary/Compensation Fund

Following extensive press coverage in all papers at the end of April and early May of the mortgage difficulties being faced by the entertainer, *Adele Agnew* (Twink), the evening papers of 27 April and the national daily papers of 28 April, reported that Twink was not fully co-operating with the Compensation Fund of the Law Society concerning an outstanding mortgage debt on her former home at Anne Devlin Road, Dublin.

The *Evening Press* of 16 May and all the national daily papers on 17 May reported that the £30,000 mortgage debt on the house had been paid off by the Law Society. The papers reported that Mrs. Agnew's counsel had told Judge *Cyril Kelly* that the requirements of the Law Society concerning details of the claim had been satisfied and agreement had been reached.

The *Irish Press* and *Evening Press* of 17 May reported that papers detailing how a solicitor, *William Keane*, had forged the will of his aunt were to be sent to "the Disciplinary Committee of the Law Society" (sic). In the course of an application to condemn the will, counsel appearing for Mr. Keane informed the court that his

client had applied to the Law Society to retire and the Society had acceded to his application. The article reported that Mr. Keane had stated in his affidavit that he had realised the enormity of what he had done. Some time afterwards, the Law Society had carried out an inspection of his practice. The will and probate were not part of the enquiry. Mr. Keane went on to say "I broke down and disclosed to the Law Society what I had down to create the will. Shortly afterwards I retired from practice as a solicitor." Judge Kevin Lynch granted the application to condemn the will and directed that all papers be sent to the Disciplinary Committee of the Law Society.

The following day the *Irish Independent* reported that William Keane could face penalties ranging from censure to striking off the Roll of Solicitors. The Law Society was quoted as saying that the Disciplinary Committee of the High Court would investigate the matter and on foot of its findings the Society would petition the President of the High Court "for an appropriate sanction, if any".

The matter was the subject of a full-page story in *The Kerryman* on 19 May which claimed that playwright, *John B Keane*, had paid out £20,000 restitution following the discovery of irregularities in his son's legal practice at the end of 1992. A spokeswoman for the Law Society was quoted as saying that at the time of the investigation of Mr. Keane's practice the concern of the Law Society had been to protect the public and clients. A number of considerations had been taken into account in determining the Society's approach to the case including extraordinary, extenuating, compassionate circumstances, the fact that Mr. Keane had given a binding and irrevocable undertaking never to practise again and that full restitution had been made and no claim had arisen on the Society's Compensation Fund.

The *Irish Independent* reported on the matter in a similar manner on 20 May.

All the national newspapers of 19 May reported that a former solicitor, *Gerard Martin*, was given a suspended two year gaol sentence on charges relating to the pursuit of false personal injury claims. The reports noted that Mr. Martin had paid back £180,000 to the Law Society arising from claims on its Compensation Fund, had co-operated with a Law Society investigation and had handed back his practising certificate.

Courts Charter

The Irish Times of 21 April, reported on a call by Fine Gael Justice Spokesman, *Gay Mitchell* TD, that the legislature, in consultation with the judiciary, should provide for a charter of rights for citizens appearing before the courts. Mr. Mitchell said that while the courts must remain independent of the legislature and the Government, this did not mean that went on in them, especially their administration, might not be of legitimate interest to the legislature and the Government. The charter should include a promise of efficiency, an overhaul of procedures to speed-up proceedings, a guarantee of courtesy and consideration, a guarantee of privacy and confidentiality for non-accused persons and a complaints procedure.

Barbara Cahalane ❐

Compensation Fund Payments – May, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in May 1994.

The name of the solicitor in respect of whom the claim(s) arose is listed in the left hand column.

	IR£
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin	2,109.62
John M. O'Dwyer, 40 North Great Georges St., Dublin 1.	14,838.20
Diarmuid Corrigan, 6 St. Agnes Road, Crumlin, Dublin 12.	200.00
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	1,690.00
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	9,900.00
John K. Brennan, Mayfield, Enniscorthy, Co. Wexford.	2,437.50
Malocco & Killeen, Chatham House, Chatham Street, Dublin 2.	36,268.77
James C Glynn, Dublin Road, Tuam, Co. Galway.	1,170.00
Anthony O'Malley, James Street, Westport, Co. Mayo.	2,209.00
	70,823.09

❐

THEIR LIVES ARE OUR CONCERN

If your client is leaving a bequest to charity, please remember the work of CONCERN.

If you would like copies of CONCERN's free advice booklet "Making a Will?" please contact:

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CONCERN WORLDWIDE
1 Upper Camden Street
Dublin 2

Ph: (01) 475 4162

PLEASE MAKE THEM YOURS TOO

The Irish Kidney Association is the only national organisation working solely in the interest of patients with chronic kidney disease.

More and more Irish families are relying on the financial and psychological support they receive from the Irish Kidney Association.

Since 60% of the patients are unemployed the IKA is called on to help with the basic family requirements - rent, electricity, school books and uniforms, drugs and sadly of all burial expenses.

Research, purchases of life saving equipment and printing of the donor cards help improve the quality of life of the patients.

This voluntary organisation is a registered charity and we badly need your help.

Donations and bequests to:-

Irish Kidney Association
'Donor House',
156 Pembroke Road, Ballsbridge, Dublin 4.
Phone: 01 - 6689788/9 Fax: 01 - 6683820

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PEOPLE AND PLACES

At a seminar staged recently on Caring for the Mentally Incapacitated – The Legal Responses *were l-r: Moya Quinlan, Chairman, Family Law/Legal Aid Committee, who chaired the seminar, with the speakers: John Dalton, Registrar of Wards of Court; Annie Ryan, President, National Association for the Mentally Handicapped of Ireland; Michael Coote, President, Alzheimer Society of Ireland and John Costello, Law Society Council Member. The seminar was staged jointly by the Public Relations Committee and the Family Law/Legal Aid Committee of the Society.*

Recently Carlow Bar Association made a presentation to William Early to mark his appointment as a judge of the District Court, the first occasion that a member of the Association has been appointed to the Bench. l-r: Charles J. Bergin, Secretary, Carlow Bar Association; Judge William Early, Michael P. Donnelly, Patrick J. Coady, President, Carlow Bar Association; Michael Coady and John O'Gorman, County Registrar.

At the Yachting Match between the Law Society of England & Wales Yacht Club and the Dublin Solicitors Bar Association were, back row l-r: Nigel Sidebottom (UK), Bruce Lyster (owner of Erris Lannan), Bryan Sheridan, John O'Donnell, Philip Lee and David Hammond. Middle row l-r: Joanne Sheehan, Gerry Sheedy, Martin Tovell (UK), David Gunson (UK), Peter Craig, Barry O'Connor, and Chris Mew (UK). Front row l-r: Richard Hooper (owner of Hobo V), Jean Cullen, Michael O'Reilly, Michael Moran, Duncan Salmon (UK) and John Hooper. Absent from the photograph: Justin McKenna and Nigel Hamilton.

Emer Finnegan (third left), Editor of Eurlegal, who was admitted to the Roll of Solicitors at the Parchment Ceremony on 22 April last, with l-r: Ken Murphy, Law Society Council Member and her parents, Moira and Patrick Finnegan.

BUTTERWORTHS

We are pleased to announce the appointment of Ms Louise Leavy to the position of Legal Editor with effect from May 1994. She replaces Ms Thérèse Carrick who is leaving to pursue further studies. Thérèse will continue her association with Butterworths as a freelance editor.

Louise is a law graduate from University College, Dublin, and is also a qualified solicitor.

26 UPPER ORMOND QUAY, DUBLIN 7.
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"100 metres from the Four Courts"

At the Parchment Ceremony on 22 April were: Catriona Walsh (third left), who was admitted to the Roll of Solicitors, with l-r: her parents, Michael and Nuala Walsh, and Tony Ensor, Law Society Council Member, to whom she was apprenticed.

LAW SOCIETY ANNUAL CONFERENCE

Pictured at the banquet at the Annual Conference of the Society on 14 May were l-r: Philip Comyn, Arthur Comyn & Company, Cork; Gwynne Comyn, Ann Daly and Roderick Bourke, McCann FitzGerald.

At the conference banquet were l-r: Frank O'Donnell, Past-President Law Society; Maeve O'Donnell, Consuelo O'Connor, Brian O'Connor, McCann FitzGerald; Pat Daly and Frank Daly, Council Member, Law Society.

At the conference banquet were l-r: Patricia Fish, Noelle-Ann Curran, Maurice Curran, Past-President, Law Society; Maeve Breen, M.T. O'Donoghue & Company, Wexford and Yvonne Young.

At the conference banquet were l-r: Noel Ryan, Director General, Law Society; Jacqueline O'Mahony, Michael V. O'Mahony, President, Law Society and Una Ryan.

At the conference banquet were l-r: Michael Horan, Horan & Monahan, Sligo; Charlotte Kelly, Alan Dillon, Mary Dillon, M.C. Dolan & Company, Dublin and David Sweetman, CIE, Dublin.

At the conference banquet were l-r: John Dowling, Director, Bar Council; Joan Collins, Rosemary Thomson, Robert Harley, Harley & Browne, New York and Claude Thomson, President, International Bar Association.

At the conference banquet were l-r: Michael Napier, Partner, Pannone Napier, Sheffield, England; Denise Napier, Olivia Montuschi, Walter Merricks, Assistant General Secretary, Law Society of England & Wales; Marie Carroll and Michael Carroll, Council Member, Law Society.

At the conference banquet were l-r: Brian Morgan, Murphy Morgan & Company, Monaghan; Dolores Morgan, Michael Quigley, Mullaneys, Sligo; Kathryn Quigley, Lelia Eames and Aidan Eames, Eames & Company, Dublin.

Husbands and Wives – Undue Influence in Banking Law

by Christopher Doyle BL*

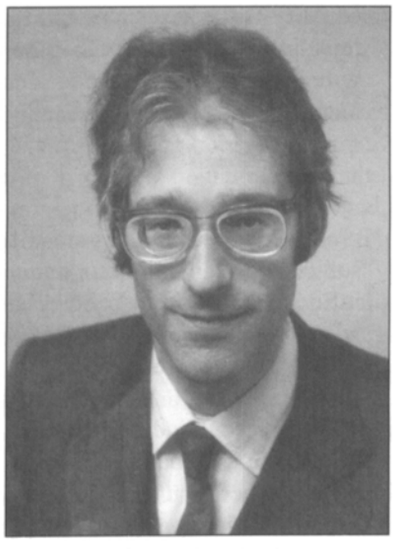
The Nature of Undue Influence

Undue influence occurs where one person (the wrongdoer) without the use of coercion succeeds through a dominating influence in persuading another person to enter a transaction. The victim is entitled to have the transaction set aside as against the wrongdoer and as against a third party who had notice of the undue influence. Undue influence is a form of fraud: where it is proved, the victim need now show loss, since a wrongdoer is never entitled to profit by his wrong.

Undue influence may be actual or presumed. Where actual undue influence is alleged, the person claiming it must prove it. In the case of presumed undue influence, the burden shifts to the alleged wrongdoer to prove that no such influence was exercised. The presumption will be raised where a confidential relationship exists between the parties. There are certain categories of relationship – for example, solicitor and client – where the presumption arises as a matter of law. Banker and customer is not such a relationship; neither, strictly speaking, is husband and wife, although the position here is rather confused.

Undue Influence in Banking Law

Claims of undue influence were infrequent in banking actions until about 1970. Since the 1970s, the law has developed with extraordinary speed in the UK. Certain judges attempted to replace the doctrine of undue influence with one of "inequality of bargaining power". Had the attempt succeeded, the consequences for banks might have been severe. In *National Westminster Bank v Morgan*[1], however, the House of Lords rejected the new doctrine. It also seemed to suggest that undue influence will not usually arise in what it called a "normal banking transaction".



Christopher Doyle

As between banker and account holder, the *Morgan* decision no doubt made life a little easier for banks. However, claims of undue influence frequently arise over secondary obligations entered into by the wife of a customer. *Morgan* did not check the flow of claims by wives who claimed to have entered such transactions through the undue influence of the bank or of their husbands.

The question which has caused the most trouble is whether the bank should be penalised when the undue influence is that of the husband. Numerous decisions by the Court of Appeal failed to settle the matter. Finally, in *Barclays Bank v O'Brien*[2] the House of Lords stated that the bank will normally be prevented from recovering against the wife only where it has notice of the husband's wrongdoing. At the same time, in *CIBC Mortgages v Pitt*[3] the House doubted its previous suggestion in *Morgan* that undue influence is unlikely to arise in normal banking transactions.

Irish law develops more slowly than English. In theory this should give the Irish Courts time to analyse and criticise English decisions. All too often, however, Irish courts merely copy English law. Where the English decisions conflict (as those of the Court of Appeal before *O'Brien* did) it is all too likely that the Irish courts, in copying them, will also conflict. The first two decisions on this point, *Bank of Ireland v Smyth*[4] and *Bank of Nova Scotia v Hogan*[5] show markedly different approaches. In the first Geoghegan J imposed a heavy burden on a bank which seeks to escape being tainted with an husband's undue influence. In the latter, Keane J stated that undue influence does not usually arise in normal banking transactions. Both decisions have been appealed to the Supreme Court.

Undue Influence by the Bank

There is no presumption that a bank unduly influences a customer or a surety: a wife who claims that the bank exerted such influence must prove her case. Claims that the bank itself unduly influenced the wife are relatively uncommon; more often a wife claims that her husband was acting as the bank's agent. In *National Westminster Bank v Morgan* the wife did allege that it was her bank manager who influenced her to create a charge over the family home. The claim failed. There was nothing in the relationship between Mrs Morgan and her bank manager to raise the presumption that he was likely to unduly influence her and she had failed to show on the evidence that any such influence had been exercised. Nor did the House feel that in what it termed a "normal banking transaction" there was any duty on the bank to recommend that the wife take independent legal advice. Further it suggested that even if the bank had exercised undue influence and if it should have recommended legal advice, the transaction would not be set aside unless the wife showed that it was to her "manifest disadvantage". In *CIBC Mortgages v Pitt* this last suggestion was disapproved; it was

stated that where it is proved that undue influence has been exercised, the injured party may always set aside the transaction.

In *Bank of Nova Scotia v Hogan*, the wife did not claim that the bank had actually unduly influenced her to create an equitable mortgage, but that the bank's failure to recommend independent legal advice was sufficient to bar it from recovering. Keane J found that the bank *had* recommended independent legal advice and that Mrs Hogan had acted freely. Further the Judge disbelieved her evidence and showed a certain impatience with her legal arguments; therefore one should be cautious about looking for statements of law in the judgement. The Judge, however, did state that in "normal banking transactions" there is no inequality between the parties which requires the giving of independent legal advice. He relied for this statement on *Morgan*, but we have seen that in *Pitt* the House of Lords made it clear that where undue influence is proved, it makes no difference whether or not a "normal banking transaction" is involved.

The law is therefore:-

1) there is no presumption that a banker unduly influences a customer or a surety, although in a particular case a relationship may exist between two such individuals from which undue influence may be inferred;

2) in general a person who alleges undue influence by a banker must prove it;

3) where undue influence is proved, it is not necessary for the injured party to prove loss;

4) it may be desirable that the banker recommends the other party to seek independent legal advice, but absence of independent legal advice is not in itself proof of undue influence.

Undue Influence by a Husband

The question of whether a husband is presumed to unduly influence his wife has caused much difficulty. As the House of Lords noted in *Barclays Bank v O'Brien* the law has had to adapt to changing social conditions. On the one hand:

> "Society's recognition of the equality of the sexes has lead to a rejection of the concept that the wife is subservient to the husband".

At the same time:

> "In practice many wives are still subjected to, and yield to, undue influence by their husbands. Such wives can reasonably look to the law for some protection".[6]

At one time certain judges believed that a husband as a matter of law was always presumed to unduly influence his wife. In *Hogan* the wife attempted to rely on these decisions. *Keane J* however referred to *Howes v Bishop*[7] which decided that there is no such presumption. Unfortunately *Geoghegan J* in *Smyth* took a rather different view.

In *Barclays Bank v O'Brien* the House of Lords repeated that there is no presumption of law that a husband unduly influences his wife. However, it pointed out that in any individual case there may be a relationship between two people which is such that it may readily be presumed that one unduly influences the other. The Law Lords noted that in many cases husbands and wives will be in such a relationship; but even where they are not, the House accepted that there is a greater than normal risk that a wife will succumb to undue influence by her husband. However, the House of Lords, unlike the Court of Appeal in the same case, did not feel that wives are a category deserving special protection. In *Bank of Ireland v Smyth*, on the other hand, Geoghegan J agreed with the Court of Appeal in *O'Brien* that wives are a "specially protected class".

In the UK therefore the law is:-

1) there is no presumption of law that a husband unduly influences his wife;

2) in any particular marriage, the relationship may be such that it can be presumed that the husband unduly influences his wife;

3) further, the law accepts that there is greater than normal risk that a wife will succumb to undue influence by her husband.

Irish law cannot be stated with certainty.

Undue Influence by Husband Affecting the Bank

The fact that a transaction was procured by the undue influence of a husband over his wife need not affect the bank if the bank is in no way responsible for the undue influence and is unaware of it. If the law presumed that a husband always unduly influences his wife, then it would seem arguable that the bank should always be deemed to be aware of the undue influence: since there is no such presumption, where then will the bank be affected by undue influence?

The wife may claim that her husband should be deemed to be the bank's agent. It is always a question of fact whether or not the husband was so acting. In *O'Brien* however, the House of Lords criticised the notion of agency as "artificial" since a bank which requires its customer to find security rarely takes any further steps itself and may not even specify that it should be the wife who acts as security.

Two grounds for involving the bank have been suggested:-

1) that wives are a class deserving special protection,

2) that the bank will be deemed to have notice of the undue influence if the circumstances would cause a reasonable bank to enquire whether or not the wife was the victim of undue influence.

The first theory was accepted by the Court of Appeal in *O'Brien* and by Geoghegan J in *Smyth*. However it was rejected by the House of Lords in

O'Brien. The Law Lords could see no reason why a limited class of persons in a limited class of transactions should be given a special remedy. Further it feared that such a rule would reintroduce the presumption that a husband unduly influences his wife.

The House of Lords was satisfied that justice only requires the bank to be barred from recovering where it has notice of the undue influence. The test of notice however is stringent: it is for the bank to take steps to ensure that the wife acted freely. While there is no presumption, there is often a real possibility that the wife will succumb to pressure. Where a wife gives security, it is generally true:-

1) that she is acting to her own disadvantage;

2) that there is a risk that the husband will have put pressure on her.

Therefore in such cases the bank will always be under a duty to satisfy itself as to the truth.

This seems a fair and reasonable rule: but it is not clear how far it will be adopted in Ireland. In *Hogan,* in so far as the matter was considered at all, Keane J merely stated that he did not think there was any duty on the bank to ensure that the wife acted freely. His reason was that the House of Lords in *Morgan* had found that in a normal banking transaction there is no duty on the bank to recommend independent legal advice. It is clear from *Pitt* and *O'Brien* however that this is no longer the law in the UK: the fact the wife stands surety for her husband's debt must alert the bank to the possibility of undue influence.

In *Smyth* the issue was whether the wife's consent to the mortgage of her family home was invalid on the ground that she had not been advised to obtain independent legal advice. Geoghegan J found that her consent was invalid, simply because she had not been so advised. He agreed with the Court of Appeal in *O'Brien* that wives are a specially protected class: therefore, whenever a bank is aware that a wife is standing surety for her husband's debt, it is under a duty to ensure that she obtains independent legal advice and, if it does not, it will be deemed that the wife did not act freely.

Geoghegan J unfortunately seems to have missed a crucial difference between *Smyth* and *O'Brien*. The House of Lords in *O'Brien* emphasised that there are two parties to any transaction, both of whom have rights. If there is no undue influence or misrepresentation by the husband, the bank will not be penalised even it failed to act prudently. If there *is* wrongdoing by the husband, the bank will still not be denied a remedy if it warned the wife of the risks involved and recommended independent legal advice.

This is the vital difference between *Smyth* and *O'Brien*. In *O'Brien* the wife proved that her husband had procured her agreement by misrepresentation: the bank lost its claim because it had notice of this. In *Smyth* however there was no evidence of misrepresentation or undue influence by the husband or anyone else. The wife claimed that because she was a person who *might* be a victim of undue influence or misrepresentation, the bank's failure to recommend independent legal advice in itself meant that she did not give her consent freely. With respect, this is neither Irish nor English law. Geoghegan J said vaguely that the principle is found in Irish cases on voluntary deeds. But a deed will not be set aside merely because it is voluntary: the alleged victim must show a recognised wrong, such as unconscionable bargain or undue influence. For unconscionable bargain, it must be shown that one party was actually vulnerable or in need of special protection: Mrs Smyth merely said that she was a person who *might* be vulnerable. Undue influence must be proved or presumed: none was proved, nor did the Judge find it could be presumed. If Mrs. Smyth did not succumb to pressure, how can it be found that she did not act freely?

O'Brien is surely to be preferred to *Hogan* which relieves the bank of any duty at all, or to *Smyth* which places on the bank so heavy a duty that it will be penalised even if the wife was not victimised.

Nature and Extent of the Bank's Duty

It is very difficult for an Irish bank to know where it owes a duty to a wife who acts as surety. Assuming that the duty does exist, what is its nature and extent? Here, Irish and English law more or less agree. The bank has a general duty to ensure that the wife understands the nature of the transaction and a specific duty to recommend that she takes independent legal advice. The nature and extent of the duty will vary according to the circumstances: in a case involving a charge on the family home, it is essential that the wife understands the risk of losing it. In *Smyth* the Judge evidently approved four criteria which had been set out by counsel for Mrs. Smyth:-

1) the wife must be told the amount of the loan and whether the security is to cover future advances;

2) she must have the repayment terms explained to her;

3) she must be recommended to take independent legal advice;

4) the consequences of the non-payment must be explained and in particular that possession of the family home may be recovered by the bank, which may sell it.

Later Geoghegan J suggested that a bank could *either* explain the document itself *or* recommend independent legal advice; but in *O'Brien* the Law Lords thought it must do both. Further, the explanation should be given in the absence of the husband.

What is independent legal advice? Here *Hogan* may cause difficulty. It must be borne in mind that Keane J disbelieved the wife's evidence. Nonetheless his finding that the wife had received independent legal advice is a little odd, since the firm of solicitors who advised her was also the

firm which on the bank's behalf called in the loan. The Judge did note that the solicitors had a dual role but attached too little importance to it. If a firm is later to call in the debt can it truly be said that its advice to the debtor's surety was independent? While it was not the bank's fault that the Hogans employed the same solicitors, should it not have recommended that the wife go to another firm?

Conclusion

It might have been hoped that the Consumer Credit Bill, 1994 would clear up some of the difficulties. The Bill does in fact make some effort to ensure that customers and their sureties have some understanding of what they are agreeing to. However, it seems to have a major weakness: there is no requirement that a creditor recommend a debtor or a surety to take independent legal advice. It is therefore unlikely that the Bill will greatly assist the solution of any claim of undue influence by wife against a bank.

If neither statute nor judge law provides a remedy, banks must rely on their own common sense. In *O'Brien* the House of Lords approved the Code of Banking Practice adopted in the UK in March 1992 which provides:-

> "Banks and building societies will advise private individuals proposing to give them a guarantee or other security for another person's liabilities that:
>
> (1) by giving a guarantee or third party security he or she might become liable for, instead of, or as well as, that other person;
>
> (2) he or she should seek independent legal advice before entering into the guarantee or third party security. Guarantees or other third party security forms will contain a clear and prominent notice to the above effect."

Irish banks should adopt an equally scrupulous approach.

References

1. [1985] AC 686.
2. [1993] 4 AER 416.
3. [1993] 4 AER 433.
4. [1993] 2 IR 102.
5. Keane J, unreported, 21 December 1992.
6. See the judgment of Lord Browne-Wilkinson [1993] 4 AER 416 at 422.
7. [1909] 2 KB 390.

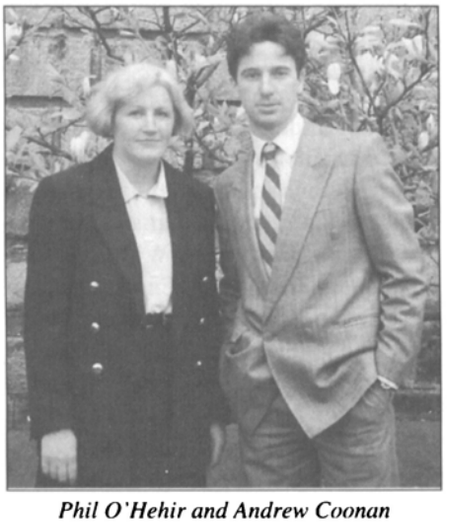
**Christopher Doyle is a practising barrister.* ❐

Irish Apprentices with third place in Client Counselling Competition

The difficult client is the bane of most solicitors' lives and in our daily work we all develop ways of dealing with such clients. However, Professor *Lewis M. Browne* decided in 1962 in the United States to turn this difficult task into an art form and set up an **International Client Counselling Competition**. This year, for the first time, two apprentices from Ireland, *Andrew Coonan and Phil O'Hehir,* participated and came third in the competition against teams from all over the world including the United States, Canada and Australia.

The object of the competition is to show how to deal with a client who comes into your office with a problem. One must make him feel at ease, obtain as much information as possible from him so that he leaves feeling that he has been well looked after by a friendly and professional solicitor. The team which does this best wins.

The competition itself – which was held this year in April in the beautiful grounds of Glasgow University – comprises two heats and a final. Each team is adjudicated by a panel of five international judges. When the client (played by an actor) is introduced to the two apprentices in an office scenario, the apprentices' function is to make the client feel at ease, discover his problem and, if possible, offer some form of solution. The client is instructed to be difficult, nervous and even obstructive at times. The panel of judges adjudicates on how the solicitor deals with the client.



Phil O'Hehir and Andrew Coonan

Not only is the standard of competition very high, but also the judging. The competitors interview each client for half an hour. They then discuss the client among themselves for fifteen minutes, highlighting the most obvious points they have gleaned from the client. They discuss how they should proceed and what action is necessary. After this the judges discuss with the solicitors their strong points and weak points. The Irish team which was narrowly beaten into third place was highly commended by the judges.

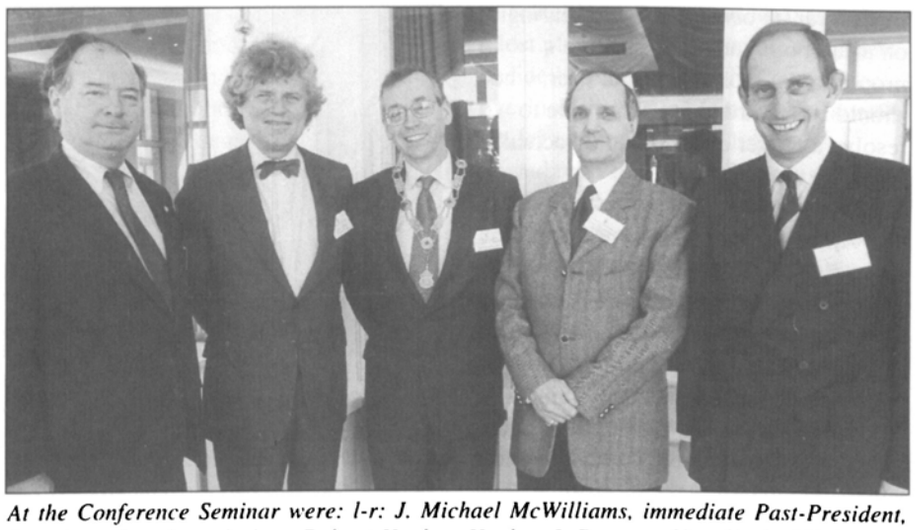
The International Client Counselling Competition has developed steadily since its inception in 1962. To apprentices it offers an excellent opportunity to compete at the highest standard in the world and to see a whole new range of legal systems. For the Law Society itself, it provides an excellent opportunity to bring our own legal system from the outskirts of Europe onto the international stage. For my colleague, *Phil O'Hehir,* and I this was an experience that should undoubtedly benefit our future careers. The competition is both prestigious and beneficial and I hope that this is the first of many years' involvement in client counselling competitions for the Law Society.

Andrew Coonan ❐

NEWS

Conference Considers Civil Litigation in the 90s

Speakers at the Seminar staged at the Law Society's Annual Conference held on 12-15 May in the Connemara Coast Hotel in Furbo, addressed a range of pertinent issues on the theme: Civil Litigation in the 90s.



At the Conference Seminar were: l-r: J. Michael McWilliams, immediate Past-President, American Bar Association; Robert Harley, Harley & Browne, New York; Michael V. O'Mahony, President of the Law Society; Max Abrahamson, Consultant, McCann FitzGerald and Michael Napier, Pannone Napier.

Contingency Fees under Scrutiny in the US

Speaking on the topic: *Contingency Fees in the US, Yesterday, Today and Tomorrow*, the immediate Past-President of the American Bar Association, *J. Michael McWilliams*, told delegates that the underlying principle supporting the contingency fee system in the United States was to enable injured persons who did not otherwise have sufficient funds to file a law suit.

The contingency fee system was frequently criticised on the basis that it encouraged litigation, prompted frivolous law suits and led to excessive fees being paid to lawyers which, in the case of an early settlement, were unrelated to the amount of work performed.

On the other side of the debate, said Michael McWilliams, was the belief that any arguable inconvenience and inefficiency resulting from the contingency fee system was more than compensated for by the resulting availability of justice to the average person. Michael McWilliams quoted the famous US jurist, *Michael Musmanno*: "if it were not for contingent fees, indigent victims of tortious accidents would be subject to the unbridled self-willed partisanship of their tortfeasors."

Particular high-profile cases had led to a renewed attack on the contingency fee system. An example was a case in September 1989 when a delivery truck crashed into a school bus in Texas killing 21 children and injuring dozens of others. The insurers settled the claims of the victims' families quickly for an estimated $122m. Notwithstanding the early resolution of the case the families' lawyers received at least one third of the settlement in contingency fees, which worked out a fee of at least $25,000 an hour to each lawyer involved.

Proposals for the reform of the contingency fee system, said Mr. McWilliams, were attempting to bring a relationship between the amount of work done and the fee charged and also to bring a more reasonable relationship between the contingency fee and the actual risk undertaken by the lawyer.

The latest proposal for reform had come from the Manhattan Institute, which, in a booklet published in January 1994, had made five proposals to reform contingency fee procedures i.e.

1. Contingency fees would not be charged against settlement offers made prior to plaintiff's retention of counsel.
2. All defendants would be given an opportunity to make settlement offers, but no later than 60 days from the receipt of a demand for settlement by the plaintiff. If the offer were accepted by the plaintiff, fees would be limited to hourly rate charges and would be capped at 10% of the first $100,000 of the offer and 5% of any greater amount.
3. Demands for settlement submitted by plaintiffs would be required to include basic, routinely discoverable information designed to assist defendants in evaluating the claim and vice-versa.
4. If plaintiffs rejects defendants' early offers, contingency fees could only be charged against net recoveries in excess of the offer.
5. If no offer was made within the 60 day period, contingency fees contracts would be unaffected by the proposal.

The Manhattan Institute wrote to the American Bar Association calling on its Ethics Committee to agree that, since the ABA code of behaviour already cautioned that contingency fees should be charged only where the arrangement would be beneficial to the client, it followed that contingency fees were unethical unless an early settlement was considered.

Michael McWilliams outlined some of the responses to date to the Manhattan Institute proposal. The American Board of Professional Liability Attornies had described the proposals as "extraordinarily detrimental to the public interest", arguing that the

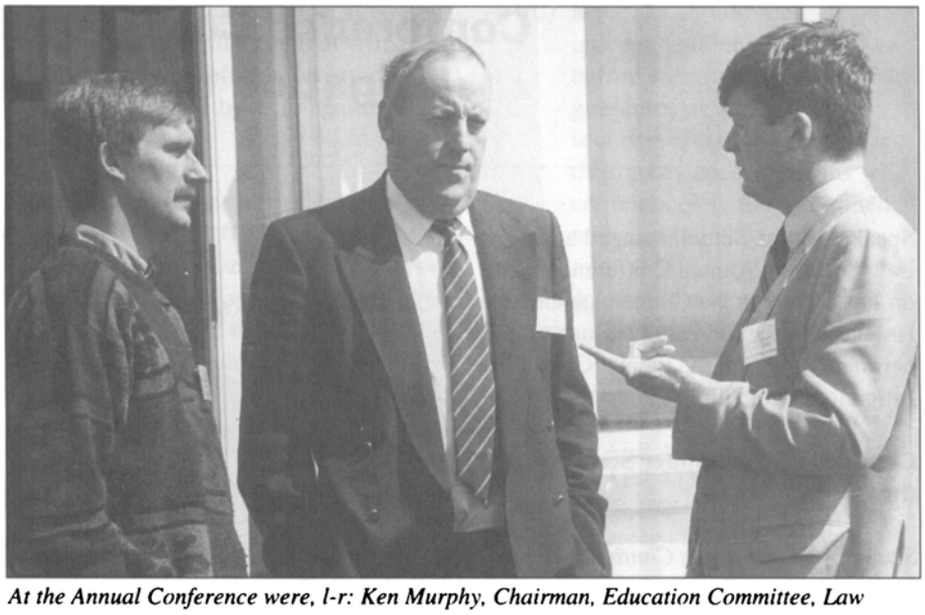
proposals were based on the premise that defendants' insurance companies offered fast settlements, whereas, in reality, insurance companies defended cases – even ones that appeared to be indefensible – to the hilt. The Board also argued that the skill and stature of the lawyer involved has some bearing on a case, but under the Institute's proposal, the more skillful lawyer, who should be rewarded for being able to resolve a matter quickly, would actually receive a much smaller fee.

The American Association of Trial Lawyers had also denounced the proposal, adding that it was masquerading as a "pro consumer initiative". The Association claimed the proposal did not derive from complaints by injured consumers about contingency fees but rather, was the product of a few people who called themselves "an institute" but who neglected to mention that they were funded by insurance, chemical, pharmaceutical and tobacco companies. Contingent fees had not led to a litigation explosion and independent studies had confirmed that the only recent growth in litigation in the US had been in the area of contract and real property.

Analysing the debate, the former ABA President said it was unlikely that there would be any reform of the contingency fees system for some time to come. In his opinion it was important not to lose sight of what the contingency fee system stood for i.e. providing a mechanism for someone without means who was injured to file a suit for fair compensation.

Medical Negligence Capping has not worked in the US

Addressing the Conference Seminar, a prominent US litigation specialist, *Robert Harley,* Harley & Browne, New York said: "the argument in support of caps in medical malpractice cases parallels the argument for caps across the board in all personal injury litigation: the public will save money. Mr. Harley told delegates that the experience in America had been otherwise: *"the truth is that the facts are precisely to the contrary: the cost is high and the savings to the public are non-existent."*



At the Annual Conference were, l-r: Ken Murphy, Chairman, Education Committee, Law Society; Tom Shaw, Past-President, Law Society and Patrick O'Connor, Junior Vice-President, Law Society.

Robert Harley cited examples of States in the US which had introduced caps on awards in medical negligence cases. He told delegates about the case of *Frank Cornelius,* an employee in the insurance industry in the State of Indiana, whose job was to lobby the Indiana legislature to impose caps on medical malpractice cases. The Indiana legislature placed a general cap of $500,000 on the **total** damages that could be awarded in a medical negligence case. A few years later, Frank Cornelius had a minor operation performed on his knee. As a result of what a court subsequently found was medical negligence, he suffered complications and diseases that involved many hospitalisations and operations. Although an economist retained by his attornies evaluated his economic loss at over $5m, his damages under the law he had helped to enact were limited to $500,000.

Meanwhile, between 1980 and 1990, health care costs in Indiana had actually *increased* by 139.4%. Health care costs in the United States in general in that same period went up by 138.7%. There had been no improvement in Indiana's per capita health care costs. In return for denying adequate recovery to the most severely injured victims of medical negligence, the citizens of Indiana had gained nothing, stated Mr. Harley.

Mr. Harley's second example was the State of Colorado which, in 1987, passed a statute limiting total compensation (including both economic and non-economic loss) against the State in a negligence case to $400,000 per **occurrence**. By 1992 this had lowered the State of Colorado's casualty insurance bill by a mere 9%. In 1987, in the course of working on a State highway, some State workers accidentally set a boulder rolling which fell on a bus; eight people were killed and others injured. One survivor was rendered blind and brain damaged and by the date of the trial had expended $328,000 in medical expenses. He had to share with all of the other victims in the $400,000 maximum compensation.

In 1975, the State of California passed a $250,000 cap on pain and suffering compensation awards in medical malpractice cases in order to contain health case costs. Since this statute was passed, general inflation in the State of California had gone up by 169% while the cost of health care had increased by 286%. California's per capita health care cost is 19% higher than the national average.

Mr. Harley continued: "California's lesson is the same as Indiana's and Colorado's. Taking the right to just compensation away from the very tiny number of the most deserving accident victims has had little or no effect on the cost of the entire system."

Mr. Harley told the Conference that constitutional challenges, alleging violation of the State and Federal

Constitutions, have been mounted in most States of the US where caps have been enacted and the challenges have been upheld in two thirds of the States where they have been heard.

Litigation in the United Kingdom

Over the last six months the long-debated problem of access to justice had received major attention in England and Wales said *Michael Napier,* Chairman of the Association of Personal Injury Lawyers in the UK, in his address to the Conference on the topic, *Litigation in the UK – Has it a Future?* It was a debate in which the judiciary had become involved, speaking out in favour of simplifying litigation, reducing delay and cutting costs. While these objectives were desirable they would not, of themselves, necessarily open the door to would-be litigants, said Michael Napier, noting that in 1979 80% of the UK population was eligible for legal aid but, in the wake of Treasury pressure on the Lord Chancellor to cut the rise in the legal aid bill, this figure had been reduced to less than 50% in today's terms.

Conditional Fees

The introduction of a conditional fee system, due to commence next autumn, would go some way to "plugging the legal aid gap", said Michael Napier, who explained that the conditional fee system was different to the American contingency fee. "The basic concept is that in return for agreeing to charge the client no fee if the case is lost, the lawyer can charge the client a **success fee** if the case is won. This is not a percentage taken out of the damages because the success fee is calculated as an uplift on the solicitor's normal costs for conducting the case. The solicitor will recover costs as usual from the losing defendant and the client will simply pay the success fee on top. The success fee can be as low as nil% or as high as 100% of the 'standard' fee in particularly risky cases. Unlike contingency fees in the US, where the lawyer's percentage of the damages is usually around one-third, the conditional fee agreement is more flexible and will require the solicitor to assess the risk of the case in question very carefully because the aim is that the percentage uplift should reflect the risk of losing."

There were many pitfalls to be sorted out on conditional fee agreements, said Michael Napier. So far, the Lord Chancellor had refused to make a regulation providing for a cap on the success fee, though this could be particularly important in a case which resulted in low damages and high costs, because, in reality, while the calculation of the conditional fee was not based on a percentage of the damages, the **payment** of the success fee by the client would come out of his or her damages. Unless this problem could be overcome conditional fees would be virtually unworkable.

However, a solution was on the horizon because the Law Society of England and Wales was close to concluding terms on an "after the event" insurance policy which, for a modest premium, would protect the client against a payment of costs if the case was lost and would also include payment of the plaintiff's own disbursements. "Such insurance will be the key to unlock the door to safe usage of conditional fees for the client. Further protection is provided by regulations which place a high duty on the solicitor to explain the agreement to the client. A cooling off period has also been mooted to allow the client to think it all over before signing up." Michael Napier said there had been an extensive debate on the regulatory aspects of conditional fees. "The prevailing view is that adequate professional regulations already exist to cover conditional fees. There will also be extensive guidance to the profession in explanatory booklets and clients will receive an easy to understand leaflet."

Hired Guns and Champions

In his address to the seminar on *ADR – Paradise Regained?, Max Abrahamson,* Consultant, McCann FitzGerald, commented that he was opposed to contingency fees and that he preferred to practise law rather than money lending. In his view, the two justifications used for unrestrained contingency fees were conflicting: i.e. that a high percentage fee was necessary because of the high risk and secondly, that such fees did not promote disputes because cases were only taken if they had a good chance of success.

Alternative Dispute Resolution, said Max Abrahamson, was sometimes mistakenly seen as an attempt to regain a lost paradise where disputes could be decided equitably, but this was to overlook the real practical (non lawyer-made) complexities of disputes nowadays. ADR thrived because of the belief that ordinary resolution by the courts was unsatisfactory and a view that we had a "Rotweiller" system of advocacy. Yet it was a mistake to see alternative dispute resolution as a form of compromise.

The solicitors' profession should emphasise that it could resolve the imbalance between these two views, said Mr. Abrahamson. Solicitors must persuade the public that they have – and always have had – a dual role of being champion and hired gun, i.e. that they would fight as hard as possible to settle and then go into win. There was nothing inconsistent in this approach and the public should be convinced of it. Solicitors had always practised a form of alternative dispute resolution, for example, by engaging in a frank exchange with a colleague in order to settle a case. Clients must be encouraged to trust their lawyers to perform this role.

Dispute resolution was a very difficult job of work, he said, and it was not necessarily assisted by our current system of advocacy or, indeed, any of its trappings such as "fancy dress which is designed to provoke awe".

A large number of ADR practitioners were not lawyers, and it was essential for the solicitors' profession to promote its expertise and to switch the emphasis towards the *investigation* of the issues in dispute and away from *presentation.* It was necessary to integrate the role of alternative dispute resolution and litigation. Solicitors should do their own advocacy, he stated; they were well capable of it and should not hold back. ❐

Barbara Cahalane

Leases Carved out of Folios

There appears to be amongst the profession, generally, some misunderstanding regarding the above and, accordingly, the Conveyancing Committee has deemed it necessary to issue a practice note covering the position which arises in relation to apartments/flats/commercial properties where the title consists of a lease carved out of a folio. The folio may be freehold or leasehold.

1. If one opts to have the lease registered as a burden on the folio (the lease should contain a consent by the lessor to the registration of the lease as a burden) there must then be opened in the Land Registry a new leasehold folio. (See section 70 Registration of Title Act, 1964.)

   Registration is not mandatory under the Act but is advisable.

2. In order to have the new leasehold folio opened it is necessary to lodge the following documents in the Land Registry:-

   (a) lease and counterpart or a certified copy. (If the counterpart or certified copy is not lodged the Land Registry will retain the original);

   (b) affidavit of discovery;

   (c) verified hand search in the Registry of Deeds against the purchaser/borrower from the date of the lease. The property searched against must include the description " . . . and being part of the lands comprised in folio . . .";

   (d) a judgement search against the borrowers;

   (e) if there is a loan, a mortgage and counterpart or certified copy;

   (f) the usual statutory declarations re the Family Home Protection Act, The Family Law Act, etc.;

   (g) Land Registry fee to cover the registration of the lease and mortgage of £30.00 (first registration).

Conveyancing Committee ❐

Probate Tax – Testamentary Expenses

The Taxation Committee has received the following letter from the Revenue Commissioners:

"The Revenue Commissioners accept that the definition of "reasonable funeral expenses" for purposes of Capital Acquisitions Tax must reflect the current norm in this area. In this regard reasonable disbursement on foot of funeral meals and grave/headstone expenses will be allowed as a deduction for purposes of both Probate Tax and Inheritance Tax.

I might add that when revising the Inland Revenue Affidavit we will adjust any reference to reflect this position.

Yours sincerely,

Pat Burke,
Principal Officer,
Capital Taxes Branch,
Office of the Revenue Commissioners."

Taxation Committee ❐

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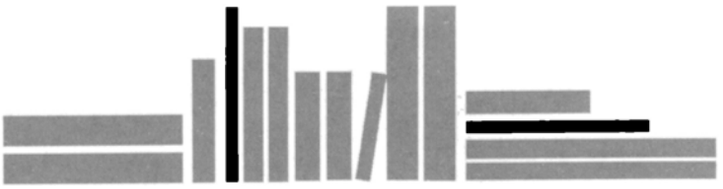
The Society of St. Vincent de Paul, 8 New Cabra Road, Dublin 7. Tel: 01-8384164/8380527 Fax: 01-8387355

BOOK REVIEWS



The Limitation of Actions

Second edition, by James C Brady and Tony Kerr, published by the Incorporated Law Society of Ireland, 1994, 257pp, Hardback, £32:50 + £2.40 p+p.

Any book on the Statute of Limitations will not ordinarily qualify for bedside reading as the subject matter is both technical and specific rather than of general application. The first edition of this work was published in 1984 and this second edition has followed in January, 1994. The new edition contains a substantially enlarged text due to the inclusion of an abundance of case law handed down over the last decade, including quite detailed references to UK and international precedent, which illustrate the comprehensiveness with which the authors have conducted their research. Included is relevant coverage of the Rules of the Superior Courts 1986 together with limitation periods arising from legislation introduced since 1984. The authors have also expanded their commentary generally in some areas which is very useful for the provision of a complete overview on the subject in question.

The first chapter dealing with history and general principles has been considerably expanded and introduces a new heading entitled "Want of Prosecution" which has given rise to a number of reported applications to the court in recent years. This chapter contains a large amount of useful and specific information on a wide variety of points of law and should be read by practitioners purely for general knowledge if nothing else. Chapter two dealing with contract identifies the changes in the law introduced by the Sale of Goods and Supply of Services Act, 1980 and its inter relationship with the Statute of Limitations (Amendment) Act, 1991 ("The 1991 Act") and expresses views on current Irish authoritative texts.

Chapter 3 provides a full analysis of the 1991 Act and its effect on limitation periods in respect of personal injury claims in particular. It comments in detail on the problems which pre-dated the introduction of the 1991 Act, the case law which prompted it and the effect of the Act. This chapter is necessarily significantly larger than that in the first edition. The section dealing with economic loss has also been expanded which is all to the good in the light of the increasing number of these type of actions. Chapter 4 dealing with actions for the recovery of land has also been expanded significantly in relation to the subject of adverse possession and the effect of the running of time in relation to such actions. Chapters 5 and 6 include an expanded analysis of recent case law and there is a particularly good section concerning the effect of fraud on the Statute. Chapter 7 deals with various miscellaneous matters and refers to the most recent legislation in certain areas which assures the reader that the authors have thoroughly researched this work.

This work is an essential guide for all practitioners who wish either to engage in or, alternatively, to avoid litigation. One matter which I would like the authors to consider for their next edition is expanding the contents index at the front of the book as the seven chapter headings in fact encompass an enormous amount of detailed material and it would assist the reader in locating the relevant text to have details in the contents index itself about what is contained in each individual chapter.

Michael Tyrrell

Butterworth (Ireland) Companies Acts 1963 – 1990

Edited by Lyndon MacCann, Butterworth (Ireland) Limited, Dublin, 1993, 1,256 pp, £60.00 paperback.

Mr. Justice Ronan Keane, one of the most eminent judges of our time, in his foreword to Mr. MacCann's text states that when he joined the Law Library nearly forty years ago, the acknowledged expert on company law was an elderly senior counsel named *Henry Moloney*. The Judge recounts that, according to legend, the senior counsel was in the habit of referring to the "new Act" by which he meant the 1908 Act. The Judge states that this was understandable since in Mr. Moloney's young days, he had been a lecturer in company law in one of the Royal University colleges "at a time when that slim and graceful example of Edwardian legislation was merely a twinkle in the eye of the young *Winston Churchill*." The Judge observes – and we all echo the phrase – "How times have changed."

The Judge notes that we now have Acts "bursting with endless complex sections and stuffed with enormous schedules, statutory instruments, European Community Directives and a daunting array of judicial decisions, many unreported and, for some at least, inaccessible". Many readers who encounter intellectual difficulties with company law should take heart at the Judge's words.

The foreword to Mr. MacCann's book, which emphasises the book's importance, is written in such a style which makes it eligible for inclusion in any compendium of the wit and wisdom associated with the law of Ireland. Mr. Justice Keane notes that *Alexis FitzGerald*, Solicitor, liked to recall that the 1908 Act and the 1963 Act both became law on April 1.

Judge Keane observes that perhaps that this was an ironic gesture on someone's part: "The staggering complexity of modern Irish company law sometimes looks very like a practical joke, given the relatively small size of the irish economy."

All lawyers of our time could instantly inform any person that an important anchor of corporate legislation was passed in 1963 – the *Companies Act, 1963*. The Act contains three hundred and ninety nine sections, with thirteen schedules. Practitioners may have some difficulty, however, in remembering all the subsequent legislation. The 1963 Act was followed in the 1970s by the *European Communities (Companies) Regulations, 1973* and the *Companies (Amendment) Act, 1977*. Then we had to comply with our obligations under EC law. This resulted in the *Companies Amendment Acts 1983 and 1986*, the *European Communities (Stock Exchange) Regulations, 1984-1992*, the *European Communities (Mergers and Divisions of Companies) Regulations, 1987*, the *European Communities (European Economic Interest Groupings) Regulations, 1989* and the *European Communities (Companies Group Assets) Regulations, 1992* as well as the *Companies Act, 1990*.

Mr. MacCann describes the contents of these pieces of legislation as "turgid". He notes that the drafting is "in technical and inaccessible language" and that many provisions "are at best bewildering and pose a considerable intellectual challenge to both lawyers and businessmen who try to interpret, and thus to ensure compliance with the law".

Mr. MacCann has produced a comprehensive Irish company legislation handbook which contains in one volume all the *Companies Acts* from 1963 to 1990 and various statutory instruments which are fully consolidated and annotated. There are detailed cross references and extensive case law notes. Each section also cross refers to relevant UK companies legislation. A "how-to-use" section guides the reader on how to maximise the use of the work and there is a detailed index.

At the launch of Butterworth (Ireland) Companies Acts 1963-1990 were, l-r: the Hon. Mr. Justice Declan Costello, who launched the book; Lyndon MacCann, the author; the Hon. Mr. Justice Ronan Keane and Gerard Coakley, General Manager, Butterworth Ireland.

Occasionally lawyers may consider themselves adrift on the shark-infested seas of corporate law. On those occasions, the lawyer who seeks a clear-sighted path and who is endeavouring to avoid the metaphorical sharks will benefit from possessing a copy of Butterworth Ireland's Companies Acts 1963-1990.

Dr. Eamonn G. Hall

Emmins on Sentencing

Second Edition by Martin Wasik, Blackstone Press Limited, 1994, 404pp, £21.95stg, paperback.

Sentencing, like *Mr. Daniel O'Donnell*, arouses few reactions of indifference. *Dr. Paul O'Mahony* in his recent *Crime and Punishment in Ireland* argues cogently that, whilst public concern over increased urban crime is justified and undeniable, a degree of selectivity and distortion in its depiction by some media and local political sources has retarded much debate to an emotional and pejorative level. It is, accordingly, all the more timely and valuable to have in Mr. Martin Wasik's second edition of *Emmins on Sentencing* a substantial and dispassionate account of the relevant law and practice in England and Wales; together with Dr. O'Mahony's more broadly-based and opinionated survey of the Irish situation, the work provides an invaluable summary of relevant information for sentencers, lawyers and all genuinely concerned with this topic.

The author's structured and painstaking approach entails some measure of overlapping and repetition, his style rather equates with some of the Home Office circulars quoted, and the task might arguably have been accomplished in less than its 400 odd pages. Nonetheless, its virtues appreciably outweigh any such reservations. Of particular interest to the rapidly changing Irish situation is the discussion of the competing jurisprudential justifications of punishment for crime between the reductivist or utilitarian approach and the "just deserts" approach, which latter has substantially prevailed in England and Wales by virtue of the Criminal Justice Acts of 1991 and 1993, and which, likewise, holds the upper hand here, as reflected in the Law Reform Commission's Discussion Paper on Sentencing and subsequent legislation. Further, in consequence of the proliferation of sentence appeals to the Criminal Division of the Court of Appeal, both from Crown Courts and certain decisions of Magistrates' Courts and, by virtue of the availability since 1988 of prosecution appeals of sentences perceived to be unduly lenient (recently also provided for here in broadly similar terms), a very substantial corpus of sentencing case-law has been developed by that Court.

In "guideline" decisions, such as *Aramah* as to sentencing in drug cases,

as well as in a wide spectrum of individual decisions on crimes identical or similar to Irish ones, considerable details are furnished of sentences imposed, general and particular factors considered in mitigation or aggravation. In addition, there are fully set forth the principles formulated to deal with particular sentencing scenarios such as where, despite a plea of guilty, the prosecution and defence remain at loggerheads over the particular facts involved. There is almost an embarrassment of detail here and, while some in Ireland would welcome a greater disposition towards issuing guidelines on the part of the Court of Criminal Appeal, it is difficult to imagine an Irish system countenancing the number of piecemeal adjustments of penalties that are non-custodial in the court of first instance that the author refers to. The Irish Superior Courts have in fact set forth certain broad principles applicable to sentencing, as was done by the Supreme Court in regard to rape in *Tiernan*, but have been implicitly more reluctant to stipulate particular tariffs than their cross-channel counterparts, perhaps being wary of seeming to designate a "push-button" approach to sentencing, a course for which the author, whilst formally disowning, appears to have a certain hankering.

Apart from the persuasive importance of the case-law on sentencing, which is clearly and logically set out, Mr. Wasik also summarises helpfully all the relevant procedural areas, including provisions for young offenders. In this regard, although the book necessarily is not concerned with the substantively and administratively separate Scottish legal system, it is a pity that no reference is made to the innovative panel system in force there for children's hearings.

Michael Moriarity SC

Life Assurance and The Family Law Bill, 1994

The Family Law Bill was published on 9 February, 1994. When passed it will give the courts wide powers to make financial and property orders after a marriage is annulled.

There are a number of sections which are relevant to the life assurance industry.

Life Assurance Policies

In certain circumstances the court could make a "financial compensation order" requiring a person to either:

- take out a life assurance policy for the benefit of his/her former spouse and dependants, or
- assign an interest in an existing life assurance policy for the benefit of his/her former spouse and dependants.

Part of the order may also require the person to keep up premium payments.

Splitting of Pension Benefits

The Bill would also allow the courts to make a "pension adjustment order" which would split up the pension scheme entitlement of a pension scheme member in the event of his/her marriage being annulled.

These changes proposed are revolutionary and will lead to a greater need for good personal financial advice in the event of a marriage break-up.

Consult SFS

For further information contact *Tom Kennedy*, Solicitors Financial Services, (tel. no. 676 7591) or write to Solicitors Division, IPT Financial Services, 25-28 Adelaide Road, Dublin 2. ❐

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New Planning and Environmental Law Journal

Brehon Publishing Ltd has launched *Irish Planning and Environmental Law Journal*, a quarterly publication which will provide authoritative articles on the important areas of environmental and planning law as they effect the practitioner. The journal will be edited by *Eamon Galligan*, Barrister and *Bart Daly* will act as Executive Editor.

The journal is intended for solicitors, barristers, architects, engineers, town planners, local authority officers, estate agents and environmental consultants. Regular features will include EU environmental developments, developments in conveyancing practice and updates on primary and secondary legislation relevant to planning and environmental law.

The annual subscription is £90.75 including VAT. An order form may be obtained from Brehon Publishing, Brunswick House, Brunswick Place, Dublin 2. Tel: 677 5111. Fax: 677 5272. ❐

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Dublin Solicitors Fail to Match Law Society Yacht Club

The Law Society of England and Wales were represented by the Yacht Club at the Royal St. George Yacht Club at Dun Laoghaire in May to take on the might of the Dublin Solicitors Bar Association.

The even was masterminded by *Michael Moran*, Solicitor, of De Loitte & Touche. *Richard Hooper* and *Bruce Lyster* put their Sigma 38s at the disposal of the two teams of solicitors for the Match Race.

The Dublin Team was skippered by *John Hooper*. The first race, under the Flag of the Dublin Bay Sailing Club, resulted in a victory for the Law Society Yacht Club and this gave them a three point advantage at the end of the first day's sailing.

After dinner on the Saturday night attended by *Andrew Smyth* representing the President of the Law Society of Ireland and *Daire Murphy*, President of the Dublin Solicitors Bar Association, the boats again took to the water on Sunday for two races run back to back.

Peter Craig acted as Officer of the day on board "Tudor Rose" owned by *Bill Riordan* of Whitney Moore Keller who also happens to be Commodore of the Royal St. George Yacht Club.

The first race was won by Dublin due to the skillful handling of spinnaker and squall.

Everything was to hinge on the final race as the Hooper vessel manoeuvred itself between The Law Society and the Committee Boat at the start and retained a good lead until the last run. Skipper, *David Gunson*, took full advantage of his position behind to overtake to leeward causing John Hooper to take corrective action and, as the boats approached the leeward mark, the Dublin craft made a last desperate attack to round inside the UK boat. The attempt was foiled and red flags were raised. The British crew captured the gun and *Vincent Delaney* was left to hear the protest ashore. The decision went in favour of the visitors whose emblem, by the way, is a shark.

Although the "Law Challenge" Silver Plate has gone to London on this occasion it seems, with little doubt, that it shall return.

(See photograph on page 184).

Justin McKenna

DSBA Team

John Hooper,
Barry O'Connor
David Hammond
Gerry Sheedy
Richard Hooper
Brian Conway
Justin McKenna
John Paget Bourke
Jean Cullen
John O'Donnell
Michael O'Reilly
Deirdre Curtis

The Law Society Yacht Club Team

Bruce Lyster
Nigel Hamilton
Nigel Sidebotham
Michael Moran
David Gunson
Duncan Salmon
Chris Mew
Martin Tovell

The Committee Boat

Bill Riordan
Joanne Sheehan
Peter Craig
Philip Lee
Bryan Sheridan
Protest Officer: Vincent Delaney ❐

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Striking a Balance on Sentencing

Addressing a seminar on *Sentencing a Criminal Cases – Striking a Balance,* organised by the Dublin Solicitors Bar Association, on 15 April, the Minister of State at the Department of Justice, *Willie O'Dea TD,* said: "sentencing is by no means an exact science and it never will be possible to have absolute uniformity in sentencing. What is possible and very desirable is to achieve a reasonable measure of consistency."

Media stimulating fear of crime

Addressing the seminar, Dublin solicitor, *Garrett Sheehan,* discussed the notion that there was no coherent sentencing policy. He referred to case law which underlined the importance of the discretion of the trial judge and which held that, under the constitutional separation of powers, the discretion to select punishment should not be in the hands of the Executive.

Media reporting, which included attacks on the judiciary, could have the effect of undermining confidence in the judicial system. In his opinion, it was regrettable that the judiciary did not respond. He noted that in England the Lord Chancellor did so on occasion. He suggested there were good arguments in favour of the Irish judiciary appointing a senior spokesman who, in appropriate circumstances, would provide an explanation of the reasoning behind a sentence.

Garrett Sheehan noted that a recent publication by *Paul O'Mahony, Crime and Punishment in Ireland,* had questioned whether the public's beliefs and perceptions in relation to crime reflected the reality.

He also recalled an article in *Magill* magazine which had put forward the thesis that some politicians had an electoral interest in keeping crime on the agenda. He questioned whether certain sections of the media were using crime to sell newspapers and whether an inevitable result of programmes such as *Crimeline* was to exacerbate the public's fear and concern about the level of crime.

Right to silence no longer necessary

Addressing the seminar, *Frank Martin SC,* former Judge of the Circuit Court, said that there were three common perceptions among the public. The first was a belief that the level of crime was so high that people could no longer walk the streets without fear. Secondly, there was a perception that the police were ineffective when it came to solving crime. The police were required to solve crime with their hands tied behind their back and, he said, the time had come to remove the right to silence, which was a product of a different age. Now, with facilities to videotape interviews and with an accused's right to have a solicitor present, there was no need to retain the right to silence. The third perception was that judges were too lenient. Mr. Martin asked the question whether these perceptions were media-driven. He said the media had a difficult job. They had to cope with limitations of time and space; for example, a case that might have taken two days to determine would be reported in a couple of paragraphs. This was a very grave responsibility. On occasions, the media went off on a tangent and recent criticisms of particular sentences had been less than accurate or fair. For example, it was often reported that a case was dismissed on a 'technicality'. "What is a 'technicality?' Everyone has a right to have their case heard in accordance with law. It might be no pleasure to a judge to have to dismiss a case, if say, the State failed in an essential proof. However, an accused has a right to trial in accordance with law."

A sentencing policy that was aimed at achieving uniformity and consistency was a nonsense and a recipe for injustice because no two cases were the same, said the former Judge.

Alternatives to Prison

In her address to the seminar, *Emer Hanna,* Senior Probation and Welfare Officer, said that, over the last decade, an acknowledgement that imprisonment was expensive, ineffective in a rehabilitive sense and, indeed, often counter productive, had lead to a questioning of the use of imprisonment. "I believe we would have more chance of striking a balance on sentencing if we saw imprisonment as one option along a continuum of options open to judges, instead of seeing alternatives to custody and prison as diametrically opposed." She described four alternatives to prison provided by the Probation Service, i.e. probation, adjourned supervision, the intensive probation scheme and community service orders.

Ms. Hanna said "economic factors have played a part in the establishment of alternatives to custody as community-based alternatives are considerably cheaper than incarceration. A positive spin-off of these alternatives is that schemes like community service orders, probation and intensive probation do seem to be effective in reducing offending behaviour. Where this is the case I believe we must expand and develop these services."

Judicial Studies Board

Tom O'Malley, lecturer in law at UCG, made a wide-ranging address to the seminar dealing with the policies that should guide punishment, reforms which could be undertaken to assist in the development of a more coherent and rational sentencing framework and the strategies available for structuring judicial sentencing discretion.

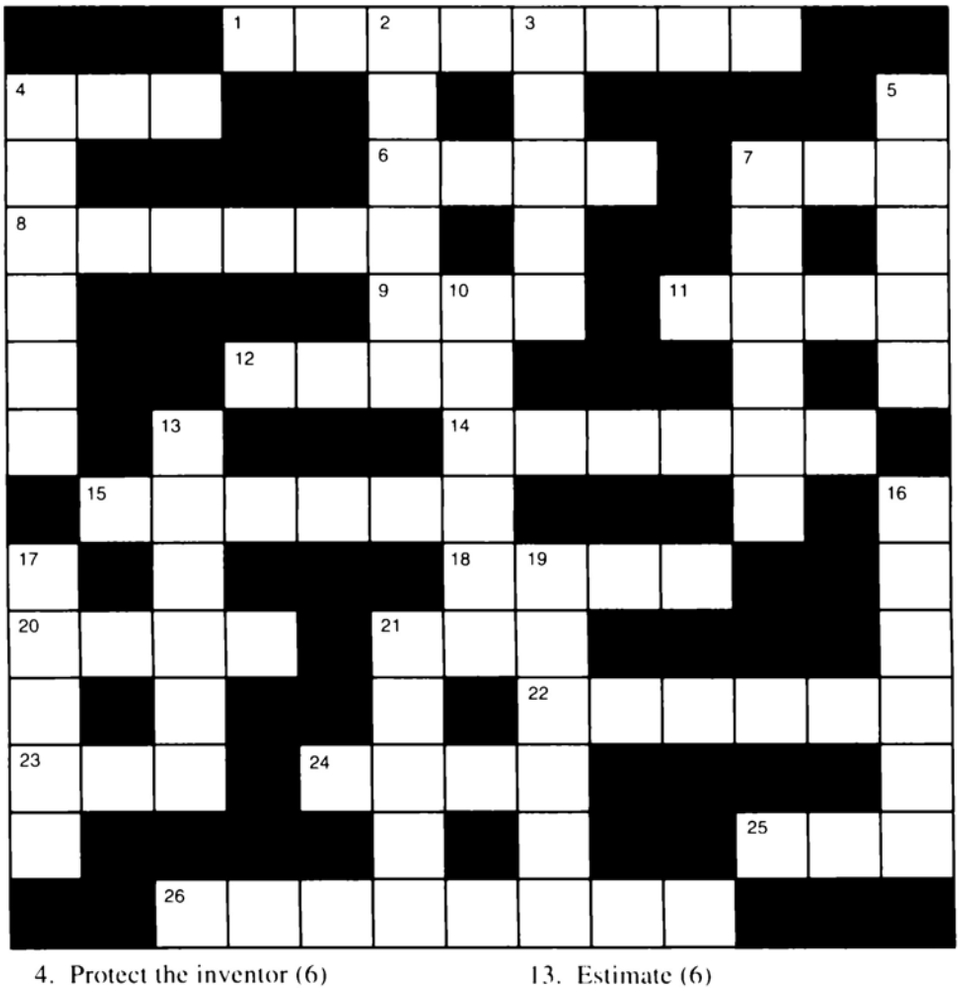
He suggested that there was much to be said in favour of the establishment of a Judicial Studies Board similar to that existing in England and Wales. The Board in England and Wales had been given the task of providing training for the judiciary in civil and family as well as criminal jurisdiction. Induction seminars were run for judges appointed to the Crown Court. Newly-appointed judges also served an attachment with an experienced judge for a week or two before appointment. Refresher courses were provided for experienced circuit judges and recorders at five-yearly intervals. In recent years, refresher seminars had been addressed by Home Office representatives, thus allowing two-way discussion between judges and justice officials. The Board was staffed by officials from the Lord Chancellor's Office but all decisions were made by the judges themselves.

Mr. O'Malley said "a structure like this for Irish judges would have many advantages. It would provide a permanent setting within which they could discuss sentencing policy and other matters. It would be particularly valuable for judges located in circuits and districts outside the Dublin area. Furthermore, as Irish judges are notoriously badly served in research assistance, a properly staffed Board could make up partly, at least, for this deficiency. A Judicial Studies Board would not solve all sentencing problems but it would form an important component of the package that is needed to bring about a fair and effective system."

Barbara Cahalane

Crossword Competiton

The *Gazette* Editorial Board is offering a prize of a book token (£25) to the winner drawn from correct solutions to the crossword received by 8 July 1994. Entries should be sent to: The Editor, Gazette, Law Society, Blackhall Place, Dublin 7.



ACROSS

1. Our system is not; we are common (8)
4. & 11. You too can do it for nothing (3, 4)
6. An invitation to drink for colleagues (4)
7. Disallow (3)
8. An offer of mercies (6)
9. A humble solicitor has none (3)
12. Leap around and strike a bargain (4)
14. Sounds like a fibber (6)
15. The Senior Counsel wore around the deed he gave to the third man (6)
18. Aidan (4)
20. Equal minds after the advertisement (4)
21. A farewell to legislation (3)
22. Pay a bright handshake on leaving (6)
23. Fifty is the one for action (3)
24. We had a high one once, now we have Mary (4)
25. Attempt to find guilty (3)
26. The Law Society is this, but not legally (8)

DOWN

2. Upset the order and recede (6)
3. Number the title (5)
4. Protect the inventor (6)
5. He injuncts what sounds like a column (5)
7. He will arrange to have you covered (6)
10. Gay law gives the county (6)
13. Estimate (6)
16. The outlaw has a bar on his head (6)
17. Act of exchange (5)
19. Assumed the truth of the ? (6)
21. Secret profit (5)

Name: .....

Firm: .....

Address: .....

Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clarlann na Talun), Chancery Street,
Dublin 7.

Published: 20 June 1994.

Michael P. Ward, 65 Ballygall Road East, Finglas, Dublin. Folio: 34154L; Land: 65 Ballygall Road East, Parish of Glasnevin and District of Glasnevin North. **Co. Dublin.**

Patrick J. Reynolds. Folio: 15501; Land: Part of the lands of Tully in the Barony of Carigallen. **Co. Leitrim.**

William Jones. Folio: 10704; Land: (1) Cloonageeher, (2) Cloonageeher, (3) Cloonageeher, (4) Cloonageeher; Area: (1) 20(a) 1(r) 38(p), (2) 2(a) 3(r) 22(p), (3) 0(a) 1(r) 30(p), (4) 7(a) 0(r) 2(p). **Co. Longford.**

Annie Deviney (orse Diviney), Fairhill, Menlo, Ballinasloe, Co. Galway. Folio: 56601; Townland: Fairhill. **Co.Galway.**

John McCauley, Folio: 4052 and 4049; Land: Cashelard. **Co. Donegal.**

William McNamee (deceased), Folio: 12468; Land: Arnaghan; Area: 16(a) 3(r) 20(p). **Co. Cavan.**

Patrick Farrell, Folio: 2394; Land: Part of the lands at Tanderagee; Area: 9(a) 3(r) 10(p) **Co. Cavan.**

Patricia Barrow, Folio: 5265 and 1049; Lands: Listoke and Commons. **Co. Louth.**

Bernard Keenan, Folio: 9856; Land: Drumlongfield; Area: 21(a) 0(r) 13(p). **Co. Monaghan.**

Thomas Pillion, Folio: (1) 10876, (2) 10907, (3) 16266, (4) 942; Land: (1) Turraun, (2) Turraun, (3a) Turraun, (3b) Turraun, (4) Leabeg; Area: (1) 26(a) 1(r) 26(p), (2) 11(a) 1(r) 15(p), (3a) 4(a) 0(r) 21(p), (3b) 32(a) 1(r) 26(p), (4) 42(a) 1(r) 33(p). **Co. Kings.**

Roger Troughton, 4 Kerrymount Close, Foxrock, Co. Dublin. Folio: 7387F; Townland: Cornelscourt in the Barony of Rathdown. **Co. Dublin.**

Catherine (orse Kathleen) O'Brien (orse O'Briain), 159 Crumlin Road, Dublin. Registered owner as a tenant in common of an undivided moiety. Folio: 1107L; Lands: Property known as 159 Crumlin Road, situate on the southside of the said road in the Parish and District of Crumlin. **Co. Dublin.**

Joseph Carroll and Eileen Carroll, Folio: 1739L; Land: Situate to the north of Long Avenue in the Parish of Dundalk; Area: 0(a) 0(r) 5(p). **Co. Louth.**

Kathleen (orse Catherine) Conneelly, Folio: 8559F; Land: Cahernaskilliney, Claregalway, **Co Galway.**

Mary Timothy, Cloonlara North, Clominda, Castlerea, Co. Roscommon. Folio: 46966; Townland: Cloonlara North. **Co. Galway.**

Margaret Walsh, Carracastle, Foxford, Co. Mayo. Folio: 40565; Land: Ougtagh; Area: 34(a) 3(r) 30(p). **Co. Mayo.**

Craig Casey, 8 Bellevue Terrace, Cobh, Co Cork. Folio: 17122F; Land: Townland of Walterstown, Barony of Barrymore. **Co. Cork.**

Peter McDowell, Wheatfield, Malahide, Co. Dublin, and 3 Upper O'Connell Street, Dublin. Folio: 4106; Land: Townland of Saint Helen's in the Barony of Coolock. **Co. Dublin.**

Martin McNulty, Ballybane, Clondalkin, Co. Dublin. Folio: 1818; Land: Townland in Milltown in the Barony of Newcastle. **Co. Dublin.**

James Phelan, Killarainy, Moycullen, Co. Galway. Folio: 6000F; Land: (1) Killarainy, (2) Killarainy; Area: (1) 0(a) 0(r) 14(p), (2) 0(a) 2(r) 24(p). **Co. Galway.**

Mary J. Campbell, Church Street, Strokestown, Co. Roscommon. Folio: 16313; Land: Carrownalassan; Area: 47(a) 0(r) 24(p). **Co. Roscommon.**

Eklad Limited (Limited Liability Company), of 33/35 J.K.L. Street, Edenderry, Co. Offaly. Folio: 19987F; Land: Townland of Newtown in the Barony of Coolock. **Co. Dublin.**

John M. Trant and Mary Trant, Folio: 2004F; Land: Barleymount Middle. **Co. Kerry.**

William Murphy, Folio: 12996F; Land: Banna Mountain; Area: 0.500 acres. **Co. Kerry.**

Lost Title Deeds

In the matter of the Registration of Title Act, 1964 and the Application No. 91DN19493

For first registration of Timothy Joseph Wood in respect of property in Crane Lane (off Dame Street) City of Dublin.

TAKE NOTICE that Timothy Joseph Wood, 35 Sydney Parade Avenue, Ballsbridge in the City of Dublin has lodged an Application for his registration on the Freehold Registration

free from encumbrances in respect of the above mentioned property.

The original documents of title (including the document set out in the schedule hereto) are stated to have been lost or mislaid.

The Application may be inspected at this Registry.

The Application will be proceeded with unless notification is received in the Registry within one calendar month from the date of publication of this Notice that the original documents of title are in existence. Any such notification should state the grounds on which the documents of title are held and quote Reference 91DN19493.

Dated this 7th day of April, 1994.

Pat O'Brien
Chief Examiner of Titles

Schedule
The Indenture of Conveyance dated 15 November, 1939 made between the Very Reverend Maurice Henry Fitzgerald Collis and others and Timothy J. Woods.

Lost Wills

Riordan, Daniel, deceased, late of The Grand Hotel, Main Street, Killarney, Co. Kerry or 22 Countess Grove, Killarney, Co. Kerry. Would any person having any knowledge of the whereabouts of the original will of the above named deceased who died on 26 November 1993, please contact Terence F. Casey & Co., Solicitors, College Street, Killarney, Co. Kerry. Tel: 064 32516 or 32991. Fax: 064 32448.

Hussey, John, deceased, late of 53 Glenina Heights, Renmore, Galway, formerly of Mullaghmore, Moylough, Co. Galway and Galway Ryan Hotel, Galway, who died on 3 March 1994. Would any person having knowledge of a will of the above deceased, please contact Fingleton Moore & Co., Solicitors, Mountbellew, Co. Galway. Tel. and Fax: 0905 79327.

Kiely, John (orse John Joseph Kiely) (orse Jackie Kiely), deceased, late of Main Street, Bruff, Co. Limerick. Would any person having knowledge of the whereabouts of the original will of the above named deceased, who died on 13 January 1994, please contact John J. M. Power & Company, Solicitors, Hospital, Co. Limerick. Tel: 061 83105. Fax: 061 83415.

Casey, Denis (orse Donie), deceased, late of Broomfield East, Midleton, Co. Cork, who died on 30 October 1993. Would any person knowing the whereabouts of the original will of the above named deceased made on 29 July 1993, please contact Messrs Patrick J. O'Shea & Company, Solicitors, Midleton, Co. Cork. Tel: 021 631406.

Durney, John Anthony, deceased, late of 507 Collins Avenue, Whitehall, Dublin 9. Would any person having knowledge of the whereabouts of any will which may have been made by the above named deceased who died on 8 January 1993, please contact Box 50.

Dumoulin, Gertie, deceased, late of 5 Greenville Terrace, South Circular Road, Dublin 8. Would any person having knowledge of the whereabouts of any will which may have been made by the above named deceased who died on 8 May 1994, please contact D. G. Gilroy, 116 Hall Place, London W2. Tel: 0044 71 402 0265.

Kavanagh, Dermot Michael, deceased, late of 93 Coolgreena Road, Beaumont, Dublin 9. Would any person having knowledge of the whereabouts of the will of the above named deceased who died on 7 February 1987, please contact Messrs. Augustus Cullen & Son, Solicitors, 7 Wentworth Place, Wicklow. Tel: 0404 67412.

Early, Elizabeth Frances (orse Florrie), deceased, late of 43 Tyrconnell Park, Inchicore, Dublin 8. Would anybody having knowledge of a will made later than 12 March 1970, by the above named deceased who died on 3 April 1994, please contact Messrs. Bell Branigan O'Donnell & O'Brien, Solicitors, 22 Lower Baggot Street, Dublin 2. Tel: 676 4951.

Dunphy, Catherine, deceased, late of The Holy Ghost, Cork Road, Waterford, c/o The Presbytery, Holy Family Church, Luke Wadding Street, Waterford or of Askanore, Gorey, County Wexford. Would anyone having knowledge of the whereabouts of a will of the above named deceased who died on 5 April 1994, please contact Peter O'Connor & Son, Solicitors, 23 O'Connell Street, Waterford. Tel: 051 79194 Fax: 051 79194.

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Culhane, Cornelius, would any of the relatives of Cornelius Culhane, of Ballydowd, Lucan, in the County of Dublin, contact Messrs. Judge & Company, Solicitors, Castle Court, Main Street, Castleknock, Dublin 15. Tel: 821 7020.

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VOL. 88 NO. 6 JULY, 1994

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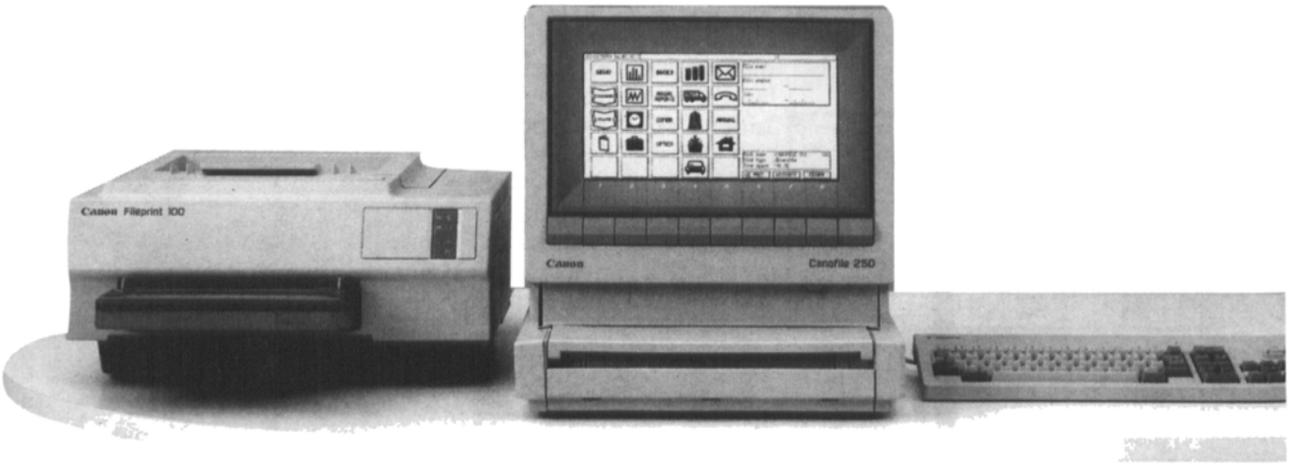

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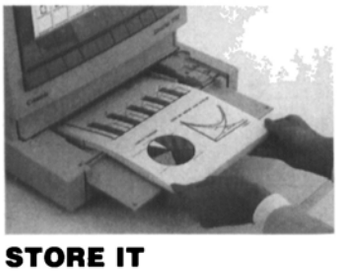
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Front cover: At the Justice Media Awards Ceremony were l-r: *Tish Barry*, Consortium Television; *Michael V. O'Mahony*, President Law Society and *Robert Gahan*, Deputy Director General RTE (see report on page 211).

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VIEWPOINT

When is a Solicitor not a Legal Adviser?

The title to this Viewpoint may seem odd: how, it may be asked, could the question posed in the title be raised. Solicitors are, after all, fully trained lawyers – most of them law graduates – who have rights of audience, as advocates, in all the courts. Indeed, since the late 1970s, solicitors have benefitted from a form of vocational training in the Society's Law School at Blackhall Place that has been much admired (even endorsed by the former Fair Trade Commission) and considered to be on a par with the best vocational education systems internationally. Nowadays, many solicitors have post-graduate degrees in law and specialisation in particular areas of law is common. Many would be well versed in international law, particularly the law of the European Union.

Yet, despite all of this, the Attorney General's office recently advertised, *once again,* for Legal Assistants making it clear in the advertisement that solicitors need not apply. Eligibility was confined exclusively to barristers. As we move closer to the 21st Century, you might very well ask how this could be so.

What is it about the work of the Attorney General's office that makes solicitors unsuitable? The advertisement says that the duties of a Fourth Legal Assistant (which is the basic entry level) involve a

> "very wide range of legal work of a major public importance. They include advisory work and research in the fields of both domestic and international law, including the law of the European Union; and participation in formulating law at domestic and international levels."

The advertisement went on to say that those appointed to the posts would be expected to travel abroad to international meetings and conferences and to represent the State in a legal capacity – nothing, you might think, in any of those duties that a well educated young solicitor could not do. Lawyers in other areas of the public service (for example, the Department of Foreign Affairs) are, after all, doing work of a broadly similar nature and solicitors are eligible for appointment to those posts. Likewise, although the field of endeavour may be somewhat different, solicitors are, and have been since its inception, successfully working in the office of the Director of Public Prosecutions in relation to functions which were once part of the Attorney General's office.

The single requirement for these positions which excludes solicitors is the requirement that candidates must have practised for at least four years as *barristers* within the State. The experience so gained automatically ensures that these persons will be capable of performing the duties set out above and this, and this alone, distinguishes them and sets them apart from solicitors. It is, apparently, irrelevant that experience gained as a barrister in the Law Library or on circuit may have been of the most mundane kind and it matters not, it seems, that a candidate may *never* have advocated before a judge in the superior courts at all – other, perhaps, than to seek an adjournment or bring a minor application. The mere fact of being a member of the Bar Library and of having been *'on the hazard'* is in itself sufficient. As against that, a solicitor candidate (if he/she could be a candidate) might have ten or fifteen years of varied experience working on behalf of demanding, high-powered corporate clients; he might have represented his firm internationally, (he might even have worked in a branch office of his firm abroad). It is not inconceivable that he might be expert in legal drafting, have conducted arbitrations on his own; indeed, he might even have advocated in important cases before the superior courts – as some solicitors undoubtedly have. It matters not, it seems, that such a solicitor might have acted as an inspector under the Companies Acts or conducted legal enquiries on behalf of the Government – so long as he has not been in the Bar Library for at least four years he is, as a consequence, disqualified.

Attorneys General in the past have sought to justify this insidious discrimination against one branch of the legal profession on the grounds that, to understand how law operates in practice, one must have practised at the Bar. Perhaps there are some who will find that excuse convincing. We certainly do not. It is now time that this matter was addressed seriously by the Government. We believe that all restrictive practices that seek to exclude one branch of the profession from eligibility for appointment to legal positions in the State – including appointment as judges – must now be ended. The skies will not fall in if this happens. The two branches of the profession will continue to fulfil their separate roles. Once eligibility is established, those charged with the responsibility of selecting candidates for appointment will, of course, be free to exercise their own discretion in relation to the *experience* of the candidates and decide whether, all things considered, a particular individual is suitable.

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Society Presents Justice Media Awards

The overall winner of the Justice Media Awards Competition, organised by the Law Society, was RTE, the broadcaster of the weekly television series *"Murphys' Law"* which was made by an independent production company, Consortium Television. The awards which are aimed at rewarding journalism and broadcasting which contributes to the public's understanding of the Irish system of law and justice or any specific legal issue, were presented by the President of the Law Society, *Michael V O'Mahony*, at a ceremony in the Law Society on 8 July. In all, eleven awards were made in this year's competition. The prize for the overall winner of a trip for two to New Orleans was kindly sponsored by Aer Lingus.

At the Justice Media Awards Ceremony were l-r: Ken Murphy, Chairman, Justice Media Awards Standing Committee; Richard Balls, Sunday Press*; Feargal Keane,* Sunday Tribune*; Kieron Wood, Legal Affairs Correspondent, RTE; Tish Barry, Consortium TV; Robert Gahan, Deputy Director General, RTE; Jacqueline Mahon, Group Corporate Affairs, Aer Lingus; Michael V. O'Mahony, President, Law Society of Ireland; John Masterson, Series Editor,* Tuesday File *RTE; Kevin Dawson, Reporter,* Tuesday File*, RTE and Frank Connolly,* Sunday Business Post.

Addressing the awards ceremony, the Chairman of the Justice Media Awards Standing Committee, *Ken Murphy*, Law Society Council Member, explained that two types of award were made by the Society under the rules of the competition. Justice Media Awards were presented for outstanding contributions to the public's understanding of the Irish system of law and justice. Certificates of Merit were presented to entries judged to be noteworthy examples of public service in this regard. He pointed out that the presentation of an award by the Law Society did not depend on and did not necessarily represent an endorsement by the Law Society of the winning entrants' views.

Murphys' Law, he said, was the unanimous choice of the Justice Media Awards Standing Committee as the overall winner of the competition. "This series of twenty programmes, produced by Consortium TV and broadcast each week by RTE television from September 1993 to April 1994, was an outstanding example of everything the competition exists to promote." In their citation, the judges of the competition praised the format of the programme. "A single area of the law was chosen, a legal expert was interviewed and encouraged to explain the principles of law at work in simple terms and then a panel of individuals, typically including both lawyers and non-lawyers, who had a direct involvement with the law in question, held a discussion. The two presenters, *Mike Murphy* and *Cynthia Ní Mhurchú*, were excellent as the viewers' representatives asking the simple yet searching questions and maintaining a clear focus on the issues under examination." The award was accepted by *Robert Gahan*, Deputy Director General, RTE and a presentation was also made to Consortium TV which was accepted by *Tish Barry*.

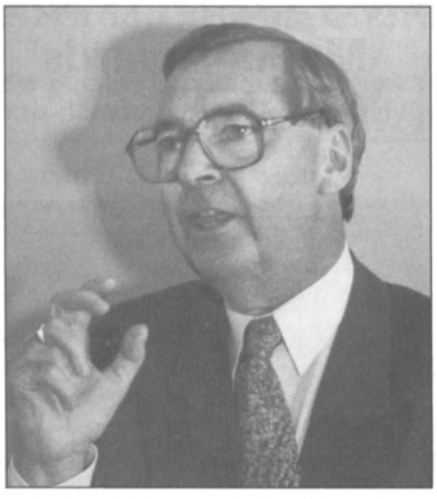
In addition Justice Media Awards were presented to:

RTE for a Tuesday File programme entitled *The Compo*, broadcast on 15 February 1994, which investigated the cultural and legal factors which have produced the Irish system for awarding compensation to personal injury victims. The judges said that "the programme resisted the temptation to veer towards sensationalism. Instead, it asked difficult questions of a series of people involved in different ways in the personal injury compensation system, presenting various arguments why the system should or should not be changed in the public interest. While the Law Society would not necessarily agree with the programme's conclusions, it recognises the excellence of the programme making and applauds the choice of topic." The award was accepted by *John Masterson*, Series Editor of Tuesday File, RTE.

The *Sunday Tribune* for two articles by *Feargal Keane* entitled *The Rocky Road to Divorce* and *Moving Towards Divorce*, published on 30 January and 6 March 1994 respectively. The judges said that "these two articles comprised exceptionally balanced thought-provoking analysis of the legal and human problems faced by Irish policy makers in the area of divorce. They represented a substantial contribution to the public debate on this difficult legal and political issue. The award was accepted by *Peter Murtagh*, Editor of the *Sunday Tribune* and the journalist *Feargal Keane*.

The *Sunday Business Post*, for an article by *Frank Connolly*, entitled *The Trauma of the Tallaght Two* published on 27 June 1993. The judges praised the article for its "detailed examination of the facts and opinions surrounding this complex and disturbing case. The author of the article sifted through a complex set of facts, many of which are still in dispute, and explained the intricacies of the law without losing sight of the personal traumas for all concerned in this sad case." The award was accepted by *Aileen O'Toole*, News Editor, The *Sunday Business Post* and the journalist *Frank Connolly*.

Poolbeg Press for the book entitled *The Kilkenny Incest Case* by *Kieron Wood*. The judges said "this intensely personal history of the victim's sixteen years of systematic rape and brutalisation by her father and the process by which the law, however belatedly and inadequately, came to her aid made a riveting and shocking read. The sensitivity and restraint with which the author presented this nightmarish story was particularly impressive." The award was accepted by the author, *Kieron Wood*, who is the Legal Affairs Correspondent at RTE.



Professor Brian Farrell who addressed the Justice Media Awards Ceremony.

Six Certificates of Merit were awarded to:

The Kerryman for an article by *Catherine Halloran* entitled *Gardai Welcome New Powers under Terms of Public Order Act*, published in *The Kerryman* on 22 April 1994.

The Sunday Press for an article by *Richard Balls* entitled *Taxpayers Pay for Court Circus*, published in *The Sunday Press* on 31 October 1993.

The Irish Times for an article by *Dick Hogan* entitled *The Tomlins Want to Know Why Their Beautiful Children Died*, published on 3 September 1993.

The Irish Independent for an article by *Liz Allen* entitled *I, The Jury*, published on 18 March 1994.

Consumer Choice Magazine for two articles entitled *Anyone Cry Freedom?* by *Colman Higgins* and *Your Rights in the Family* by *Anne O'Carroll* published in *Consumer Choice* in June 1993 and April 1994 respectively.

The awards ceremony was addressed by Professor *Brian Farrell*, author and broadcaster, who said journalists and lawyers had a common concern in dealing with the truth.

The President of the Law Society, *Michael V O'Mahony*, congratulated the winners and commented that the Law Society itself was endeavouring to be more open and transparent in the manner in which it regulated the solicitors' profession and communicated with the press and the public. He said he hoped that the competition would assist in generating public interest in law and would encourage the media to examine legal issues in detail. ❐

To AG or not to AG

Following advertisements in the national newspapers of a vacancy for a fourth legal assistant in the office of the Attorney General which stipulated that applicants must be barristers, the President of the Law Society, wrote to the Minister for Equality and Law Reform, *Mervyn Taylor* TD, saying that he could see no reason why solicitors should not be eligible for the position. The President pointed out that alongside the advertisement for the Attorney General's office was an advertisement for a legal adviser in the Department of Social Welfare for which solicitors were eligible to compete. "Having regard to the description of the duties of the post in the Attorney General's office in the advertisement, I can see no reason why solicitors should not be eligible. Indeed, I know of many excellent young solicitors who would be eminently suitable to do work of this nature," said the President.

The President informed the Minister that the Society had taken up the matter in the past with the Attorney General, when previous competitions had been advertised, but without success. The President said that he was now writing to the Minister since what was at stake was "essentially an issue of equality of opportunity for solicitors".

The President of the Society also wrote in similar terms to *Ruari Quinn*, Minister for Enterprise and Employment, who is responsible for competition policy.

(see also *Viewpoint* on page 209) ❐

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Council Establishes Committee on Indemnity Insurance

Indemnity insurance

At the Council meeting on 24 June the President of the Society reported to Council that because of the importance of section 26 of the Solicitors (Amendment) Bill, 1994, which allowed for the introduction of compulsory professional indemnity insurance, it was proposed to establish a special committee to deal with the matter. The Council approved the appointment of the committee comprising *Frank Daly* (Chairman), *Anthony Collins, Eugene O'Sullivan, Gordon Holmes, Noel Ryan,* Director General of the Society and the President of the Society, *Michael V. O'Mahony.*

The President reported to the Council that the report and final stages of the Solicitors (Amendment) Bill would be completed in Dáil Eireann during the week commencing 27 June. The Bill would then move on to the Seanad although the indications were that all stages in the Seanad would not be completed before the summer recess. The President indicated that he thought it likely that the cap on the Compensation Fund would be maintained but at an increased level of £350,000.

Council Approves Recommendations of Compensation Policy Review Committee

The Council adopted the recommendations of the Compensation Fund Policy Review Committee which had been established by the then President of the Society, *Raymond Monahan,* in December 1992 and had carried out a wide ranging investigation of the Fund to assess measures which might minimise exposure and to examine possible policy options for the future. The Committee had met on nineteen occasions for a total of 72 hours and in its final report to the Council made 81 recommendations concerning the future of the Fund, legislative changes, practical measures to minimise default and aid detection, support measures, and procedural issues.

Proposal to Cap Compensation Awards in Personal Injury Actions

The Director General of the Society reported to Council that he would be having a further meeting with an official from the Department of Enterprise and Employment concerning the proposal to introduce legislation to limit the amount of compensation that could be awarded in personal injury actions. No Bill in relation to the proposal had been drafted or circulated as yet. However, the Society was aware that the Minister intended to bring forward a package of measures and the Taskforce appointed by the Council would continue to monitor the situation.

Presentation of Parchments to Northern Ireland Delegates

At the meeting, the President of the Law Society of Northern Ireland, *Andrew Carnson,* the Senior Vice-President, *Anthony McGettigan* and the Junior Vice President, *Aidan Canavan,* were admitted to the Roll of Irish Solictors by the President of the Society, *Michael V O'Mahony.* Michael O'Mahony said the Society had been honoured by their application for admission to the Roll and that he hoped in future years officers from the Law Society of Ireland would also be admitted to the Roll of Northern Ireland Solicitors to mark the close relationship between both Societies. The President also welcomed *Colin Haddick,* a delegate from the Law Society of Northern Ireland and the Secretary of the Law Society of Northern Ireland, *Michael Davey.* ❐

Society Objects to Tax Clearance Procedures

The Law Society is opposing a direction from the Minister for Finance that contracts under the Criminal Legal Aid Scheme for legal services of a cumulative annual value of £5,000 or more must be subject to tax clearance procedures. In a recent letter to the Department of Justice the Director General of the Society said that the proposal was "objectionable in principle and represented a further unwarranted invasion by the Revenue authorities into the freedom of contract of members of the profession".

The Society has asked the Department by what means it is proposed to effect this requirement and when it is proposed to bring it into operation. The letter pointed out that the Society was not aware that the existing Criminal Legal Aid Act, or the regulations made under it, permitted such a development and therefore the question arose as to whether the changes were to be effected by means of an amendment to the law. In any event, the letter stated, the Society would regard the development as unacceptable.

The Society requested a meeting with officials of the Department of Justice and the Department of Finance to discuss the issue further before any action is taken. ❐

Licensing Difficulties Discussed with Department

Two members of the Law Society met recently with officials at the Department of Justice about the need to ensure the primacy of District Court records concerning seven-day licences and hotel licences. Currently, there is no difference on the face of the two licences which makes it difficult to differentiate them. The Law Society representatives pointed out that inaccuracies on the licensing register were posing problems for members of the profession and exposing them to the risk of negligence claims. They made the point that a person should be entitled to rely on District Court records and to obtain a certificate as to what was shown in the licensing register. It was vitally important that every licensee knew exactly what type of licence he possessed.

The Society's representatives, *Tom Shaw* and *Maeve Hayes*, informed the Department that the Solicitors Mutual Defence Fund had become aware of 250 licences that were not in order for some reason, or were a different type of licence to that shown on the District Court register. This had led to a number of negligence cases arising from circumstances where solicitors had certified title on the basis of an entry on the District Court register and subsequently the entry on the register was found to be incorrect. They argued that it was unfair and unreasonable that solicitors were being exposed to negligence claims in this manner.

They suggested that the solution to the problem would be to enact an "amnesty" provision in legislation to the effect that where a person could show that he had been engaged in trading in accordance with the terms of the licence as shown on the District Court register, he would be deemed to have that particular type of licence.

Department of Justice officials said that it was unlikely that such a provision would be enacted in isolation without a full and detailed examination of the entire licensing law. Reform of the licensing laws was not included in the Programme for Government and, therefore, would not be undertaken in the near future. The officials accepted, however, that the licensing register should be accurate and undertook to discuss with their colleagues in the Department how the position could be improved.

The Law Society representatives suggested that the licensing register should be accorded the same status as a folio in the Land Registry so that it could be regarded by all parties as an absolute document. ❐

Minister Votes No Confidence in the Judicial System – Law Society

In a recent press statement, the Law Society said that the Minister of Commerce and Technology's proposal to limit compensation awards in personal injury cases amounted to "a vote of no confidence in one of the most fundamental aspects of the entire legal system – the adjudication by judges, who are independent under the Constitution, of the amount of compensation a person should get when he/she suffers personal injury through no fault of their own."

The statement, issued on June 9, noted that the Minister was considering establishing on a statutory footing a medical panel to examine injuries and awards on a continuing basis. "Such a proposal could have the most serious and far reaching implications for the administration of justice, as established under the Constitution, and the Minister should now explain in detail precisely what function such a panel of doctors would have. Is the Minister proposing that judges should be replaced by a panel of doctors?," the statement enquired. "Almost certainly, such a proposal would be unconstitutional."

The statement also criticised the Minister for his failure to unveil the detail of his proposals, or even to produce a discussion document, although it was now more than twelve months since he had announced his intention to introduce legislation to cap compensation awards. "He has, therefore, been recycling the basic idea – one that, on the face of it, is bound to be popular with the motoring public – without producing the necessary follow-up." The statement continued: "The Minister is advocating an approach which is radical – even Draconian – and it is incumbent on him to produce coherent developed proposals so that the Irish public can judge for themselves precisely how their rights are going to be curtailed, allegedly in the interest of securing reduced insurance costs." ❐

Law Directory 1994 – Correction

Users of the 1994 Law Directory are requested to note that on page 287 of the directory under the entry for CUSSEN, ROBERT & SON, an incorrect telephone number is published for the branch office of Cussen, Michael & Co, at Rathkeale. The correct number is 069 64003. ❐

Correction

Readers are asked to note a correction to the article *Are Your Books in Order???* published on page 173 of the June edition of the *Gazette* (Vol. 85 no. 5). The penultimate paragraph on page 173 should read:

In addition all office account transactions must be recorded in a cash book and ledger, (Regulation 10(2)(b)).

and not Regulation 10(2)(6) as incorrectly printed. ❐

The 'High Priests' of the Law: The Judges – Their Selection and Criteria for Appointment

by Dr Eamonn Hall, Solicitor

Introduction

The judges in Ireland are the 'high priests' of the law; the 'priests' of the law are the lawyers. The 'high priests' are appointed (almost annointed) from the ranks of the 'priests'. The process of becoming a 'priest' is, at least, documented and transparent; the process of becoming a 'high priest', however, is shrouded in mystery. It should not be so in a democracy.

The Constitution of Ireland is clear on the appointment of judges: Article 35.1 in conjunction with Article 13.9 provides that all judges are appointed by the President on the advice of the Government. Finlay P said in *The State (Walshe) v Murphy* [1981] IR 275 that the appointment of a judge is "the decision and act of the Executive". It is the absolute secrecy of the Executive – the Government of Ireland – about the appointment of judges which is unacceptable in a modern democracy. The Irish Government should state publicly that persons appointed to judicial office will be candidates who appear to be best qualified regardless of gender, marital status, sexual orientation, political affiliation or religion. Advisory procedures should be put in place, so that all lawyers in Ireland know how to apply for judicial office and what specific criteria they must fulfil.

Selection Criteria in the United Kingdom

Our nearest neighbour is the United Kingdom and we are bound together by so many ties. Accordingly, it is appropriate to brief readers (and potential judges) of the process in that jurisdiction of appointing judges and the criteria for their selection. These have been contained in a consultation paper, *Developments in Judicial Appointments Procedures*, issued by the Lord Chancellor, *Lord Mackay* of Clashfern, in May 1994.

The Lord Chancellor has announced a programme in relation to judicial appointments in the UK which consists of

- measures to improve arrangements for *forecasting and planning* the numbers and the expertise of the judges required at different levels;
- the preparation of more specific *descriptions of the work* of the judicial posts to be filled and of the *qualities required*;
- the progressive introduction of *open advertisements* for judicial vacancies below the High Court Bench;
- the progressive introduction of *specific competitions* for judicial vacancies;
- a *review of application forms* and a *more structured basis for consultations* with the judiciary and the profession; and
- the exploration of the scope for *involving suitable lay people* in the selection process.

Advertisements and Competitive Interviews

The Lord Chancellor's overall aim is to make the judicial appointments process as open as possible. He made it clear that he is seeking to build on the strength of the present system. He affirmed his belief in the value of wide consultation with the judiciary and senior members of the Bar and the Council of the Law Society of England and Wales about appointments.

The Lord Chancellor proposed that advertisements for judicial vacancies would be placed in the professional and national press for publication at the beginning of October 1994.

Interviews for competitions are to be conducted by a three-member panel consisting of a member of the judiciary (a serving or a recently retired Circuit or District Judge), a lay person and one of the Lord Chancellor's senior officials. The same panel would consider all the candidates in each competition (i.e. all the candidates for each type of office on each circuit). Steps would be taken to ensure that a judicial member of the panel was *not* someone directly familiar with the work of the applicant.

After the interviews, the comparative assessment of how each candidate met the criteria for each vacancy (with an overall order of merit) are to be forwarded to the Lord Chancellor for his consideration together with a full record of the views about each candidate from the judiciary and others on the annual circuit reviews and any comments from the presiding judges of the relevant circuits. The Lord Chancellor would then personally decide whom he recommends to the Queen for appointment to the Circuit Bench and whom he appointed himself to the District Bench.

Consultations with the Judiciary and the Profession

Under the current judicial appointments system in the United Kingdom, views and opinions about applicants and their work are collected in a systematic and ongoing basis from a wide spread of judges and senior practitioners who are in a position to assess them. These are

recorded and maintained in written form. The Lord Chancellor indicated that these comments would continue to play an important role in informing the Lord Chancellor's decisions.

Jurisdiction of the Circuit Judge

In relation to the Circuit Judge, the Crown Court has exclusive jurisdiction in trials on indictment. In the County Courts the jurisdiction of the Circuit Judge is entirely statutory and covers almost the whole field of civil and family law. The general jurisdiction in civil law is mostly concurrent with that of the High Court. A Circuit Judge may also be invited to sit as a judge of the High Court to provide flexibility and disposal of High Court business. Where a Circuit Judge sits in the High Court he or she possesses all the powers of a High Court judge.

Solicitors and barristers are entitled to be appointed as a Circuit Judge. Normally applicants will be considered for appointment only if aged between 45 and 60. However, in exceptional circumstances those age limits may be relaxed at the Lord Chancellor's discretion, e.g. where an otherwise well-qualified candidate had a career break or started his/her career later than was usual. Applicants should be persons who conducted themselves at all times, both in their professional and personal lives, in a manner which would maintain public confidence in the standards of the judiciary.

Jurisdiction of the District Judge

In the County Courts, District Judges have general power to try any action where the amount claimed does not exceed £5,000.00. When trying such actions, they have all the powers of the Court, including those relating to injunctions and specific performance but have only limited powers to deal with contempt of court. When assessing damages, the jurisdiction of the District Judge is unlimited. About 80% of County Courts have jurisdiction in insolvency matters and the District Judges sitting at these Courts exercise all the powers of the Bankruptcy Registrars of the Supreme Court in dealing with personal insolvency.

All District Judges at County Courts with divorce jurisdiction have jurisdiction in private law family matters. This includes divorce and giving directions for a range of orders concerning the child's upbringing both after divorce and in free-standing applications. District Judges have unlimited jurisdiction to deal with all questions relating to property and spousal maintenance pending and after divorce.

The jurisdiction of the District Judge in High Court Queen's Bench proceedings covers all interlocutory matters including interrogatories, discovery and amendment and particularisation of pleadings. In the context of High Court jurisdiction, they have power to make final assessment of damages without any monetary limit.

Specific Selection Criteria

The Lord Chancellor will recommend for appointment to each judicial office the candidate who appears to him to be qualified, regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion, or (subject to the physical requirements of the office) disability, by reference to the following criteria.

The Lord Chancellor will have regard to the comments (which are given to him in confidence) received from judges and members of the profession who have been consulted about the individual's qualities and suitability for appointment. Applicants will have demonstrated possession of the following skills and attributes in their professional careers and in their service in part-time judicial office.

A. Legal Knowledge and Experience

Successful candidates will have attained:

- a high level of professional achievement in the areas of law in which they have been engaged whilst in professional practice;

- a comprehensive knowledge and understanding of criminal, civil or family law as appropriate for the jurisdiction(s) to be exercised on first appointment;

- a comprehensive knowledge of the rules of evidence and of court practice and procedure.

B. Skills and Abilities

Successful candidates will have:

1. *Intellectual and Analytical Ability*
   - the ability to concentrate for long periods of time, and to understand and assimilate facts and arguments, and the ability to recall such evidence and information speedily and accurately;

   - the ability to elicit from all parties the facts relevant to the issues in question;

   - the ability to apply legal principles to particular facts and to determine from a large body of information those issues and facts which are relevant and important and those which are not; and

   - the ability to weigh relevant issues and matters of law in order to be able to formulate them for reasoned and coherent presentation to a jury, if appropriate.

2. *Sound Judgment*
   - the ability to exercise discretion effectively; to apply their knowledge and common sense to make decisions in compliance with the law and appropriate to the circumstances of the matter in hand; to consider competing arguments and reason logically to a correct and balanced conclusion.

3. *Decisiveness*
   - the ability to reach firm conclusions (often at speed), to think, decide and act independently of others, and to rely on their own judgment.

4. *Communication skills*
   - the ability to communicate effectively with all types of court user including lay people (whether defendants, witnesses, members of a jury, litigants in person or children), giving instructions, explaining complex issues and giving decisions or judgements clearly and concisely, both orally and, where necessary, in writing.

5. *Authority*
   - the ability to command the respect of court users and to maintain fair-minded discipline in the court and chambers without appearing pompous, arrogant or overbearing;
   - the ability to promote expeditious despatch of business preventing unnecessary prolixity, repetition and irrelevance whilst ensuring that all participants are enabled to present their case or their evidence as fully and fairly as possible.

C. *Personal Qualities*

Successful candidates will possess the following personal qualities:

1. *Integrity*
   - they will have a history of honesty, discretion and plain-dealing with professional colleagues, clients and the courts;
   - they will possess independence of mind and moral courage;
   - they will have generated the trust, confidence and respect of others.
2. *Fairness*
   - they will be open-minded and objective, having the ability to recognise any personal prejudices and to set them aside.
   - they will deal impartially with all matters which come before them and will seek to ensure that all who appear before them have an opportunity for their case to be clearly presented and that it is then considered as fully and dispassionately as possible.
3. *Understanding of People and Society*
   - they will have knowledge and understanding of, and respect for, people from all social backgrounds. They will be sensitive to the influence of different ethnic and cultural backgrounds on the attitudes and behaviour of people whom they encounter in the course of their work.
4. *Sound Treatment*
   - they will be firm and decisive while remaining patient, tolerant, good-humoured and even-tempered.
5. *Courtesy and Humanity*
   - they will be courteous and considerate to all court users and court staff;
   - they will have and convey understanding of, and sympathy for, the needs and concerns of court users as appropriate and be sensitive and humane.
6. *Commitment*
   - they will be committed to public service and to the proper and efficient administration of justice, which they will pursue conscientiously, with energy and diligence.

Conclusion

The new procedure for making judicial appointments in the United Kingdom has been criticised on the basis that the procedure still leaves much of the process shrouded in mystery. But let us be honest: the procedure is, to adopt a cliche, "light years" ahead of the procedure in this jurisdiction. Democratic self-government demands that the Executive in Ireland adopts a more open and transparent approach. ❐

A Word in Your Ear – M'Lud

The Editor
Gazette

Dear Editor,

Many thanks for Dr. Hall's entertaining article "The Supreme Court Deflates Legal Egos" which appeared in the April edition of the *Gazette*.

I was somewhat surprised to read that the Justices failure to ask questions ". . should not be interpreted as a sign of disinterest. . .".

Surely it is a *sine qua non* that all judges, arbitrators and referees be disinterested.

Perhaps your readers will be uninterested in the above observation.

Yours etc,

Patrick J. D'Alton, B.C.L.,
Solicitor,
119, O'Connell Street,
Limerick. ❐

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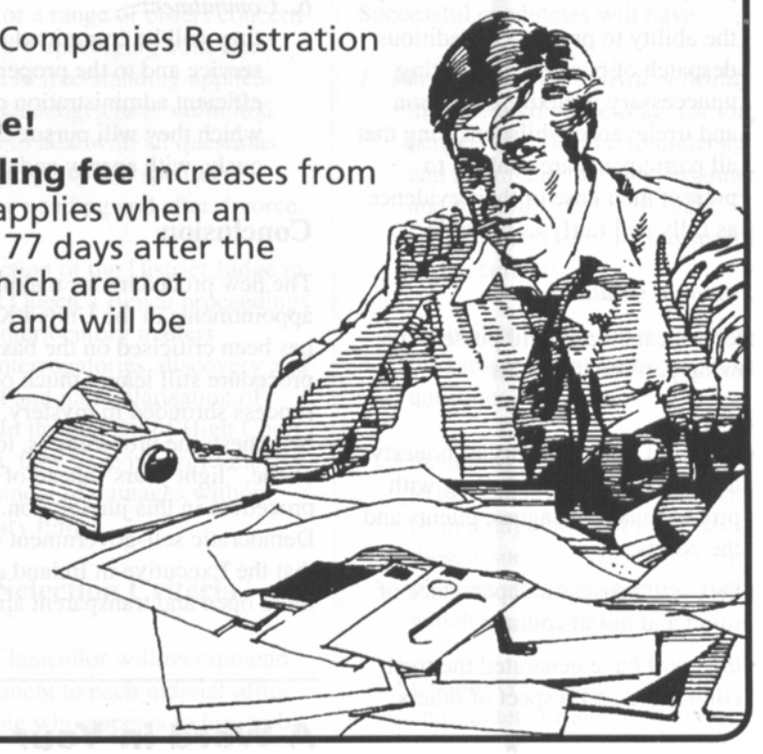

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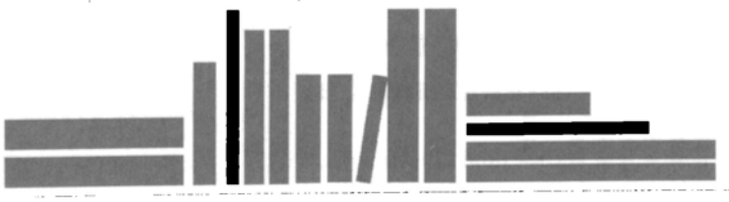
BOOK REVIEWS



Current Legal Problems 1994

Vol. 47, Part 1, Annual Review, Edited by Ben Pettet, Oxford University Press, 1994, xxv + 222pp, paperback £17.95 stg.

> "*Mr. Elphinston* talked of a new book that was much admired, and asked *Doctor Johnson* if he had read it through.
>
> Johnson: 'I have looked into it.' 'What! (said Elphinston) Have you not read it through?' Johnson offended at being thus pressed and so obliged to own his cursory mode of reading, answered tartly, 'No, Sir; do you read books *through*?'"
>
> Doctor Samuel Johnson, Volume 1, Boswell's *Life of Johnson.*

Few lawyers read books "through". After all, who reads the newspapers "through"? Who reads the *Gazette* "through"? The conveyancer is interested in conveyancing matters; the company lawyer is interested in matters pertaining to company law; the book reviews, of course, should be skimmed by all – but the writer of this note must confess a bias in that regard!

Current Legal Problems is a book that will not be read "through" by many lawyers. Why? Principally because it deals with an analysis of fundamental legal developments in six core areas of the law and many lawyers will simply pick and choose sections that interest them most; this is understandable. However, that is not to state that the book is unworthy of being read "through".

This is the third *Annual Review* produced by the Faculty of Laws, University College London and it endeavours to provide an analysis of fundamental legal developments in each of the six core areas, contract, criminal law, European Union law, property law, public law and tort.

In the contract section, the EC Directive on Unfair Contract Terms, Directive 93/13 EEC (OJ 1993 L95/29) is considered as a most significant development in the year under review, particularly since the majority of consumer contracts will fall with its ambit. The cases of *Surrey County Council v Bredero Homes Ltd.* [1993] 3 All ER 705 which has been in the Court of Appeal and *Linden Gardens Ltd. v Lenesta Sludge Disposals Ltd.* [1993] 3 All ER 417 which has been decided in the House of Lords, raise fundamental issues about the limits of the compensation principle in contract damages and are considered by the author of the section.

The author of the European Union law section considers the *Sutherland Report* and examines some case law of the European Court of Justice focussing on *Telemarsicabruzzo* (Joined Cases C3290 – 290 (1993)) and *Marshall No. 2* Case C-271/91.

In the public law section, recent examples of judicial review of ministerial discretion and judicial findings of contempt against a Minister provide a theme in the early part of the section. There is also an analysis of the implications raised by *Pepper v Hart* [1993] 3 WLR 1032 concerning the judicial use of Hansard which is of interest in this jurisdiction.

Current Legal Problems 1994 provides a high quality analysis of fundamental legal developments in each of the six core areas. We have so much in common with our neighbouring island that those readers of the *Gazette* who have the time and intellectual interest to read the book through should feel both enlightened and stimulated on the completion of the intellectual endeavour.

Dr. Eamonn G. Hall ❐

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Compensation Fund Payments – June, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in June 1994.

The name of the solicitor in respect of whom the claim(s) arose is listed in the left hand column.

	IR£
John J. O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	16,876.33
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	15,019.70
James C. Glynn, Dublin Road, Tuam, Co. Galway.	19,124.12
John M. O'Dwyer, 40 North Great Georges St., Dublin 1.	1,213.02
Jonathan P.T. Brooks, 17/18 Nassau Street, Dublin 2.	142,383.73
	194,616.90

❒

New Guide to Investing Launched

Unit fund investments, which account for more than £4 billion of Irish investors' savings, is the subject of a new guide recently launched by The Investment Bank of Ireland Limited (IBI).

The new guide, which is called "A Toe in the Water – Your Guide to International Investment with Unit Funds" is designed to provide information on the range of options available, the costs involved and the various ways investors can access international markets.

Commenting on the new guide, *Harry Cassidy,* Associate Director, IBI Investment Services Limited, said: "While unit funds are the easiest way for the majority of investors to access international markets, they can often seem complex and confusing. We've gone to great lengths, therefore, to make this guide as user-friendly as possible . . . keeping the information simple and to the point and, where possible, taking on board the views of our investors, who have helped us in compiling the guide."

Members of the profession may obtain copies of the guide, free of charge, from IBI's offices in Dublin, Cork and Galway.

For further information contact:
Anne Banks,
Manager,
IBI Investment Services Ltd.
Tel: 01 - 661 6433 ❒

Madeleine Blake – An Appreciation

Madeleine Rose Blake was a person of exceptional courage and tenacity who bore a long and protracted illness with a calm grace unknown to most. Madeleine refused to allow her illness to dampen her enthusiasm for and her love of life.

Madeleine graduated from University College Galway with a B.A. (Hons) in Legal Science and Spanish in 1985 and an LL.B. degree in 1987. Her family had a great association with Galway and with University College Galway. She was very popular with her classmates and kept up her association with UCG as a Committee Member of the UCG Graduates Association.

Madeleine was a diplomat. She knew when to fight and when to negotiate. People were attracted to her by her warm smile and presence and she always chose to compromise rather than to conflict. She had a good grasp of the law and utilised her skills as a litigation practitioner in her family firm. She had little time for hyperbole and spoke her mind plainly, frankly and honestly. Those who were longwinded were politely reduced to brevity with a jovial down-to-earth comment.

It is impossible to remain unaffected by her death. Her loss to her parents, *Bruce* and *Grace* and to her family is immeasurable. Her loss to her friends and to all who knew her is immense. ❒

G.G.

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The Society of St. Vincent de Paul, 8 New Cabra Road, Dublin 7. Tel: 01-8384164/8380527 Fax: 01-8387355

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When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

"I give, devise and bequeath the sum of pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

IRISH CANCER SOCIETY

5 Northumberland Road, Dublin 4. Tel. (01) 668 1855.

The Irish Kidney Association is the only national organisation working solely in the interest of patients with chronic kidney disease.

More and more Irish families are relying on the financial and psychological support they receive from the Irish Kidney Association.

Since 60% of the patients are unemployed the IKA is called on to help with the basic family requirements - rent, electricity, school books and uniforms, drugs and sadly of all burial expenses.

Research, purchases of life saving equipment and printing of the donor cards help improve the quality of life of the patients.

This voluntary organisation is a registered charity and we badly need your help.

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PEOPLE AND PLACES

John Campbell, Younger Members Committee (centre), presenting a trophy to Nuala O'Byrne, Captain of the T.P. Robinson & Co team, winners of the Younger Members Committee Soccer Blitz 1994, with members of the team l-r: Karen Staunton, Ray Murphy, Kathy Shalvey, Derek Murphy, Liam Murphy, Gerard Egan, Terry Staunton, Aine (2 years) and Liz Cooke and Gladys Shaw.

Recently the West Cork Bar Association made a presentation to Liam Collins, Solicitor, to mark his 50 years in practice. L-r: Michael O'Mahony, President of the Law Society (who was apprenticed to Mr. Collins), Liam Collins, Betty Collins and Fergus Appelbe, President, West Cork Bar Association and Law Society Council Member.

Recently the County Cavan Solicitors Association made a presentation to His Honour Judge David B. Sheehy to mark his retirement from the Circuit Court. Standing l-r: Jacqueline Maloney, Committee Member, County Cavan Solicitors Association; Joan M. Smith, Solicitor; George V. Maloney, President, County Cavan Solicitors Association and Helena M. Brady, Honorary Secretary, Cavan Solicitors Association. Seated l-r: Judge David B. Sheehy and Helen Sheehy.

At the first of a series of CLE Seminars on Landlord and Tenant Law, were l-r: Professor J. C. W. Wylie, Head of School, Cardiff Law School; John F. Buckley, Beauchamps, Solicitors and Tom O'Connor, A & L Goodbody, Solicitors.

COMING JULY!

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Recently the President of the Society held a reunion of Past Auditors, to mark the 110th Anniversary of SADSI and also in fond memory of Willie O'Reilly, former Warden of the Solicitors Building in the Four Courts, who together with his wife, Dympna, played a key role in the activities of SADSI particularly in the period from 1947 to 1978. Back row l-r: Ciaran O'Mara (1976/77); Paul White (1988/89); Gavin Buckley (1987/88); Michael Roche (1969/70); Terence McCrann (1984/85); William Holohan (1982/83); Edward O'Connor (1991/92); Richard Grogan (1980/81); Michael D. Murphy (1977/78). Front row l-r: Bryan Sheridan (1972/73); Eileen Roberts (1989/90); Anthony Hussey (1938/39); Dympna O'Reilly; Michael V. O'Mahony, President of the Law Society (1963/64); Philippa Howley, current Auditor of SADSI; Patrick O'Sullivan (1941/42); Laurence Branigan (1957/58) and Brian P. O'Reilly (1974/75).

PARCHMENT CEREMONY 24 JUNE

At the Council meeting on 24 June three officers of the Law Society of Northern Ireland were admitted to the Roll of Solicitors in Ireland. L-r: Aidan Canavan, Junior Vice-President, Law Society of Northern Ireland; Ann Canavan; Andrew Carnson, President, Law Society of Northern Ireland; Angela Carnson; Michael V. O'Mahony, President, Law Society of Ireland; Jacqueline O'Mahony; Anne McGettigan; Anthony McGettigan, Senior Vice-President, Law Society of Northern Ireland.

At the Parchment Ceremony on 24 June were l-r: Claire Cullen (fourth left) who was admitted to the Roll of Solicitors, with l-r, Orna Scanlon; her brother David Cullen, her mother Lillian Cullen and her father Laurence Cullen, Past-President of the Law Society.

At the Parchment Ceremony on 24 June were l-r: Maureen O'Riordan, with her daughter Emer Riordan, and her son-in-law Liam Riordan, who was admitted to the Roll of Solicitors and Councillor Anne Devitt who was also admitted to the Roll.

A number of solicitors from England and Northern Ireland were admitted to the Roll of Solicitors in Ireland at the Parchment Ceremony on 24 June. L-r: Philip Hamer, Humberside; Mary Brehony, London; Michael V. O'Mahony, President, Law Society of Ireland; Rosy Mannion, London and Ann Marie Logue, Northern Ireland.

At the Parchment Ceremony on 24 June were Philip Meagher (third left) who was admitted to the Roll of Solicitors with l-r, his brother Gerald Meagher, Solicitor, Alured Rolleston & Co; his mother Noreen Meagher; his father Philip T. Meagher, Solicitor, Alured Rolleston & Co; Albert Power, Principal, Law School and his sister Mary Delehanty, Solicitor, M. Delehanty & Co.

At the Parchment Ceremony on 24 June were l-r: Maureen Owens, Ursula Owens who was admitted to the Roll of Solicitors and Eva Tobin, Law Society Council Member.

Calculating a Residential Property Tax Liability

by Richard Grogan BCL*

Residential Property Tax ("RPT") was introduced in the Finance Act, 1983. The tax was radically overhauled in the Finance Act, 1993 with the introduction of clearance certificates. The 1994 Finance Act has amended further the scope and basis of this tax. As practitioners, we will be expected to advise many clients who are obliged to submit returns for the first time on 1 October next as a result of the changes in the Finance Act, 1994.

Object of the tax

The intention of the legislation is to tax all owners of relevant residential property where both the income of the owner and the value of the property exceed certain specified limits.

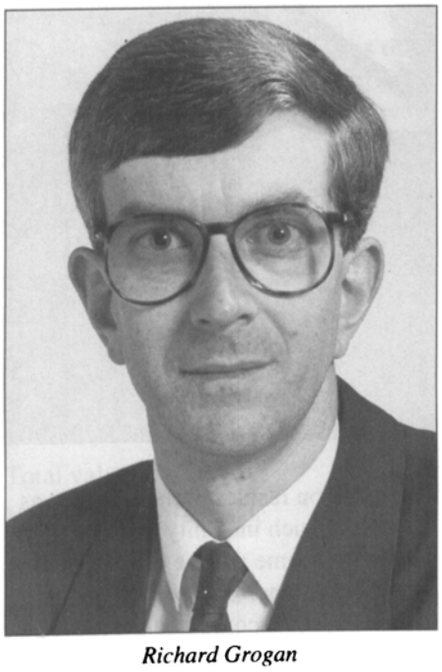
What is a relevant residential property?

A "residential property" is defined as a building or part of a building used or suitable for use as a dwelling. It includes land which the occupier has for his own occupation and enjoyment as its garden or grounds[1]. The area of the garden or grounds is not limited to one acre for residential property tax (unlike Capital Gains Tax where there is the "one acre rule"). There is an exception for specified gardens and approved houses[2].

In addition to being a residential property it must also be a "relevant residential property"[3] which is any "residential property" that is occupied by the owner as a dwelling.

Who is an owner?

An "owner" is a person holding the freehold, or under a lease, agreement or licence the duration of which exceeds 50 years, or is the owner under a mortgage of the equity of redemption of one of the foregoing[4]. Where a lease is held for less than 50



Richard Grogan

years the person will be regarded as the owner if no rent is payable or if the rent paid is less than the open-market rent. A property which is normally let for "a greater part of the year" is deemed not to be occupied by the tax payer as the tax payer does not have the use of the property. There is no definition of "a greater part of the year". In practice, the Revenue appear to accept that a lease for more than six months satisfies the requirement. Specifically excluded from this definition of owner are employees assessed under section 177 Income Tax Act, 1967 on the benefit-in-kind arising from the favourable occupation of the property supplied by the employer. The criterion for a residential property to be a relevant residential property is that it must be occupied. "Occupied" has been defined in the legislation as simply having the use of the property[5]. The test is to look at the position on 5 April. If the property was available for occupation for the greater part of the year ending on the preceding 5 April or on 5 April itself, then it is deemed to be "occupied". There is no requirement for physical occupancy thereby bringing holiday homes into the tax. If a person is domiciled, resident or deemed ordinarily resident in the State then worldwide relevant residential property is taxable. A non-resident is liable on property situate in the State. A non-resident is obliged to take full foreign income into account when calculating income for this tax. This is in contrast to the position for income tax where only foreign income remitted to the State is chargeable to tax. The relief under section 76(3) Income Tax Act, 1976 (remittance basis) does not apply to this tax.

Property normally let will not be deemed "relevant residential property" but will be regarded as "residential property" for clearance purposes[6].

Valuing a relevant residential property

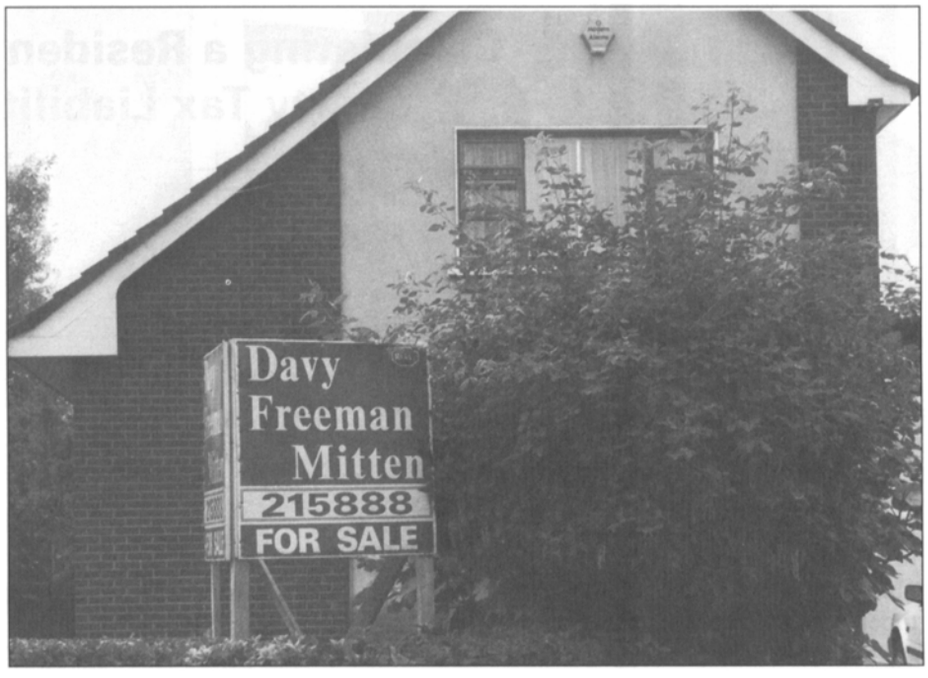
The market value of the property is the test. The market value will be the estimated price which the unencumbered fee simple would fetch if sold for residential use on the valuation date (e.g. no deduction is allowable for mortgages)[7]. The valuation date is 5 April[8]. A person will be assessed on net market value of the relevant property which is the market value less the exemption limit. The limit is £75,000 for 1994/1995[9]. In ascertaining the market value a reduction is made in respect of such value as is attributable to alterations/ improvements for the purposes of accommodating or facilitating a person who is permanently incapacitated by reason of mental/physical infirmity from maintaining themselves. The incapacitated person must normally reside in the property[10]. In the case of *Madigan & Madigan -v- AG and Others* the Supreme Court held it is not a tax on the owner's interest or equity in the property but rather on the occupation and enjoyment thereof. It is the value of the residence that is taken into account. Development potential is ignored for Residential Property Tax purposes. Current use value only is assessable.

Who is liable to pay the tax?

The person assessable to tax is the owner of the property. As set out previously, the term "owner" has a specific and wider definition than strict legal ownership. An assessable person also includes a person entitled to exemptions under the income exemption limits. In addition, a person whom the Revenue Commissioners have reason to believe is an assessable person or the personal representative of an assessable person can be assessed for the tax.

Calculation of income

Income effectively means gross income from all sources. The total income of all "relevant persons" is taken into account in the income calculation. Income exempt from income tax may be treated as income for Residential Property Tax calculations[11]. A relevant person is any person who in the year of assessment normally resided in the residential property and who, or whose spouse, paid no rent or like payment, or who paid a rent under a lease, agreement or licence referred to in s.95(2) (b) (iv) Finance Act, 1983. These are in essence situations where the market rent is not charged or where the difference between the rent charged and an arm's length rent exceeds 20% of the latter amount. The Finance Act, 1994 amends the 1983 position where the assessable person/s are over 65 by disregarding the income of persons (other than the assessable person/s) who reside in the property. In addition, regardless of the age of the assessable person/s, if a person resides in property owing to that person being incapacitated, or who is an employee, or whose employment is mainly connected with the residential property such as a housekeeper, then the income of such a person will be disregarded[12]. This point is brought out by way of example in the section entitled "marginal relief" further on in this article. The income exemption threshold is reduced to £25,000[13]. Where combined assessable income is not in exact multiples of £1,000, the income is rounded down to the nearest full £1,000[14]. In addition, where the owner/occupier or joint owners/occupiers are incapacitated and a person resides in the property as a result of such infirmity that person's income will be disregarded. Where the owner/occupier is widowed, the income of a person who comes to reside there to care for the young child of the surviving parent will be disregarded[15]. This would not cover a situation where a widowed person with a child went to live with a relative for the purpose of having the child cared for. In the case of *Gallagher and Gallagher -v- AG and Others,* the assessable person had an income of £1,400 per annum. She felt the household income exceeded the income exemption but her son refused to disclose his income. The Supreme Court held that the aggregation of income was not the basis on which the tax was charged but was merely a criterion for exemption. It is for the assessable person to show that the income exemption applies.



Rates of Residential Property Tax

The Finance Act, 1994 introduced the following new rates where the market value exceeds the exemption threshold:

Up to £25,000 i.e. £75,000 – £100,000	1%
On next £50,000 i.e. £100,000 – £150,000	1.5%
Balance i.e. excess over £150,000.	2%

Where the value of the property is less than £100,000 a banding system has been introduced.

Value Band	*Tax*
£75,000 – £80,000	£25
£80,000 – £85,000	£75
£85,000 – £90,000	£125
£90,000 – £95,000	£175
£95,000 – £100,000	£225

Dependent child relief

There is an additional relief for an assessable person who has children who reside with that assessable person. The conditions to be met pursuant to section 102 Finance Act, 1983 are that the children must normally reside at the relevant residential property of their parents and the children must not have income in their own right in excess of £720 per child. Where a child is permanently incapacitated from maintaining itself, this income level is increased to £1,320. In addition the child must be maintained by the assessable person or the spouse of that assessable person. The relief includes a child who in a tax year ending on 5 April was in the custody and maintained at the expense of either the assessable person or the spouse of that person. It would appear, accordingly, that a child whose parents were dead or who was cared for by a relative would be a child for whom the assessable person could claim a deduction.

The additional relief provides that tax liability is reduced by 10% in respect of each qualifying child.

Marginal relief

Marginal relief was introduced in the Finance Act, 1983 where household income did not exceed the income exemption limit by specified sums. The Finance Act, 1994 increased the marginal relief thresholds from £5,000 to £10,000 in respect of owner/occupiers under 65 and from £5,000 to £15,000 for the owner/occupiers or joint owner/occupiers who have reached the age of 65 years[16].

The formula for marginal relief is

$$\frac{T \times A - E}{10{,}000 \text{ or } 15{,}000}$$

T = tax payable without marginal relief

A = aggregate relevant income

E = income exemption limit

Example

John and Mary aged 66. Value of house £91,000. John's pension £14,900, Mary's pension £14,900.

John and Mary's income	£29,800
Total assessment income (Note 1)	£29,000
Tax without marginal relief	£125

Tax reduced by marginal relief to 125 x £29,000 - £25,000 ÷ £15,000 = £33.33

(Note 1). The total assessable household income is reduced to the nearest £1,000 rather than reducing each individual's income to the nearest £1,000.

Tax calculations

There are certain anomalies in relation to the operation of the tax. It is often mistakenly thought that a husband and wife would be limited to one exemption limit of £75,000 or that persons with a relevant residential property whose share therein is worth less than £75,000 would not be taxed. Both these views are incorrect. The following examples are shown to set out the tax calculations and to highlight these anomalies.

Example 1

Mr and Mrs Brown have incomes of £30,000 and £20,000 respectively. They have one child in university who is resident in the apartment in Dublin and have the following properties which they hold as joint tenants:-

Home	valued £140,000
Holiday cottage	valued £70,000
Apartment in Dublin	valued £50,000
2 apartments, normally let	valued £100,000
Total value of property:	£360,000
Value for RPT (exclude apartments let)	£260,000
Tax £250,000 + 1.5% x £150,000 - £100,000) + 2% balance	£3,200
Relief for dependent child £3,200 x 1 ÷ 10 (note 1)	£320
Tax payable	£2,880

(Note 1). If Mr and Mrs Brown had two dependent children the relief would be 3,200 x 2 ÷ 10 = £640.

Example 2

Same situation except the house is owned by Mr Brown and the holiday cottage and apartment in Dublin are owned by Mrs Brown.

Formula

$$\frac{A \times G}{B}$$

A = the market value of one unit of residential property (ignoring joint ownership apportionment).

G = the general exemption limits (£75,000 for 5 April 1994).

B = the aggregate of the market values of all residential properties owned by that person (ignoring joint ownership apportionment).

Mr Brown

House
£140,000 x £75,000
———— = £75,000 (exemption limit) £140,000

Mrs Brown

Holiday cottage
£70,000 x £75,000
———— = £43,750
£120,000

Apartment Dublin
£50,000 x £75,000
———— = £31,250
£120,000 ---------
Exemption Limit £75,000

Tax – Mr Brown

£140,000 – £75,000 = taxable property £65,000
Tax £250 + £600 (£140,000 – £100,000 x 1.5%) = £850

Tax – Mrs Brown

£120,000 – £75,000 = taxable property £45,000

Tax £250 + £300 (£120,000 – £100,000 x 1.5%) =	£550
Less child exemption	£55
Tax payable by Mrs Brown	£495
Payable by Mr Brown	£850
	£1,345

Tax saving £1,535.

Note. The saving of tax in example 2 arises because the married couple own the properties separately rather than jointly.

Example 3

If Mrs Brown owned the Dublin property jointly with her son her liability would be as follows:-

Holiday home
£70,000 x £75,000
———— = £43,750
£120,000

Dublin Apartment
£50,000 x £75,000
———— = x1/2 = £15,625
£120,000

Exemption limit £59,375

Total value of property owned by Mrs Brown £105,000. (£80,000 + £25,000 (1/2 share apartment)).

Tax (£100,000 – £59,375) @ 1% = £406.25

Excess 5,000 (over £100,000) @ 1.5% = £75

Tax liability for Mrs Brown would be £481.25

Less child relief	£48.12
Total tax payable by Mrs Brown	£433.13

While Mrs Brown's income is less than £25,000, her husband's income will be aggregated with hers and vice versa on the basis that property owned by them was available for occupation by both.

If Mrs Brown's son was not a student but had an income in excess of £25,000 there would be no liability for him as his exemption limit would exceed the value of his interest in the property which would be £25,000. His property exemption limit would be £37,500 which is calculated as follows:-

$$\frac{£50,000 \times £75,000}{£50,000} \times 1/2 = £37,500.$$

Example 4

This example more clearly demonstrates the anomaly which can reduce the property exemption limit below £75,000.

A, B and C buy a house jointly for £120,000 that they all reside in. Each has an income in excess of the income exemption limit. The calculation of each of their liabilities separately is as follows:-

Share of property £40,000

Property exemption limit

$$\frac{£120,000 \times £75,000}{£120,000} \times 1/3 = £25,000$$

Net market value over individual thresholds £15,000
Liability at 1% = £150.

Payment of the tax

The tax is due and payable on 1 October[17]. The Finance Act, 1994 provides for an option to pay the tax by instalments. If payment is by instalments, an initial payment of 25% must be paid on 1 October. The balance together with a further 5% of the balance is then paid by ten monthly instalments[18]. If an instalment is missed, the outstanding balance, inclusive of the 5%, becomes immediately due and payable[19]. Tax payers wishing to avail of this option should consider payment of the instalments by way of ten post-dated cheques to avoid difficulties. The instalment procedure is not available where the tax is due under an assessment made by Revenue. The Revenue may on application concessionally postpone payment of the tax on terms that they think fit[20]. Where an instalment option is exercised no interest other than the initial 5% of the balance (i.e. tax due after payment of the initial payment) is payable by the tax payer[21].

Making a return

If the value of a relevant residential property exceeds the market value exemption every assessable person is obliged, under penalty, to submit a return before 1 October even if no tax is payable due to the income exemption.

The Revenue Commissioners may assess net market value of property[22]. If the Revenue Commissioners do not accept a tax payer's valuation of the property they will raise assessments based on whatever information is available to them. Where no return is made, an assessment will be made. The Revenue Commissioners will withdraw an assessment if an acceptable return is made within thirty days of the assessment. Where the tax payer disputes the Revenue Commissioner's valuation, an appeal may be lodged[23]. The case is then submitted to the Commissioners of Valuation.

If a tax payer is aggrieved by any other aspect of an assessment other than market value, an appeal within thirty days may be lodged to have the matter heard before the Appeal Commissioners subject to 75% of the assessment being paid. This condition is waived if the person in receipt of the assessment claims that the person is not an assessable person. If the Appeal Commissioners dismiss the appellant's appeal (e.g. if late), that is the end of the matter. If however the Appeal Commissioners confirm the assessment the appellant has a right to have the case re-heard in the Circuit Court and then on appeal to the High Court[24].

Conclusion

Residential Property Tax is a relatively straightforward tax but with some anomalies. The writer hopes this article will assist practitioners in advising clients not only in their compliance obligations but also on their potential liability to the tax when acquiring property and to plan their affairs accordingly. While the Revenue Commissioners will attempt to set aside any scheme devised solely to avoid Residential Property Tax, the legislation allows tax payers to organise their affairs in such a way as to minimise tax exposure especially where spouses are acquiring property.

Appendix

1. S.98(1) Finance Act, ("F.A.") 1983.
2. As defined by s.39(1) F.A. 1978 and s.19 F.A. 1982 as amended by s.19 F.A. 1994.
3. S.95(1) F.A. 1983.
4. S.95(2) (b) F.A. 1983. The list of liable persons is more extensive but for the purposes of this article only the main criteria are set out.
5. S.95(1) F.A. 1983.
6. If the property is being sold the RPT test is not applied. If property is residential in character or any part thereof and the value of the residential part exceeds £75,000 a clearance certificate is required. This anomaly should be borne in mind.
7. S.98(1) F.A. 1983.
8. S.95 F.A. 1983.
9. S.118 F.A. 1994 amending s.110 F.A. 1983.

(Continued on page 30)

Residential Property Tax – Certificate of Clearance

The Revenue Commissioners have confirmed that where a contract for sale is executed prior to the 1994 Finance Act, a certificate of clearance from Residential Property Tax is only required if the old exemption limit of £91,000 is exceeded.

The new exemption limit of £75,000 will only apply to contracts executed on or after the passing of the 1994 Finance Act (i.e. 23 May 1994).

Taxation Committee

Statement of Practice on Revenue Powers

The Revenue Commissioners have issued a Statement of Practice on the exercise of statutory powers by Revenue Officials ranging from normal verification to non-routine powers such as search, detention, seizure, entry to private residence on foot of court order/search warrant and ultimately arrest. Copies are available from the Revenue Press Office, Dublin Castle, Dublin 2.

Taxation Committee

Section 146 Finance Act

When dealing with the estates of deceased persons, practitioners should pay particular attention to ensure that all documents are adequately stamped. This applies in particular where there may be deeds of family arrangement or where a person is purchasing property from the estate.

Practitioners should also note the provisions of section 146 of the Finance Act, 1994 which provides that the Registrar of Titles now requires a certificate of discharge in respect of Capital Acquisitions Tax before application for registration based on possession can be effected.

Taxation Committee

Irish Shipping Limited (Payments to Former Employees) Act, 1994

The Act provides for the payment of a lump sum to persons or their personal representatives who were employed for not less than 104 weeks which was a period of continuous employment (within the meaning of Sch.3 Redundancy Payment Act, 1967) and continued to be so employed until 14 November, 1984. The lump sum is an amount equal to three weeks' pay per year of service subject to a maximum of £50,000 per former employee.

Application for this lump sum must be made within 12 months of the enactment of the Act, which was 3 May, 1994.

Parliamentary Committee

Recent Judgments

***D.P.P. -v- William Logan* (Supreme Court 12 May 1994)**

A prosecution in the District Court for an assault contrary to common law under section 42 of the Offences Against the Person Act, 1861 and section 11 of the Criminal Justice Act, 1951 is not a complaint in respect of an indictable offence and, therefore, it must be initiated within six months from the date of the alleged offence, as required by s.10(4) Petty Sessions (Ireland) Act, 1851.

McGrail -v- Ruane [1989 ILRM 498] *Barron J*; overruled.

(*Blayney J.* with *Finlay C.J.* and *Egan J.* concurring)

Criminal Law Committee

Caution on Database Directories

Members of the profession are advised to exercise caution if approached by firms offering an electronic and multi-media advertising facility whereby a solicitor would be placed on a database that would be accessed by users of legal services.

Following communications with the Law Society by practitioners who were not satisfied with the services provided, the Society recommends that members of the profession should check very carefully the *bona fides* of any firm which approaches them offering such a service.

The typical approach of such a firm is to contact the solicitor, seeking an appointment the following day and stating that the solicitor has been recommended by their bank. The firm assures the solicitor that he or she would obtain a large number of referrals of business by subscribing to the service, particularly from persons wishing to relocate in Ireland. Some firms may request immediate payment of a subscription fee for the first year's membership of the service.

If members have further queries on this matter, please contact: *Cillian MacDomhnaill*, Finance and Administration Executive, at the Law Society.

Information Notice – Breast Implant Class Action

The following information notice has been received from the Legal Division of the Department of Foreign Affairs.

Silicone Gel Breast Implant 'Class Action' Settlement in USA

A court notice of a proposed breast implant 'class action' settlement has been communicated to the Irish Embassy in Washington D.C. by the US District court, Northern District of Alabama.

The settlement could affect Irish women who had a breast implant before 1 June 1993, manufactured or supplied by a US company, or claimants on behalf of such women. The settlement entitles people to make claims for certain defined diseases that they have or may develop for up to 30 years. Implant companies have created a $4 billion (IR£2.7 billion) compensation fund.

Non-US people are automatically included in the action but a) can opt out or b) must register to benefit. Claimants had until 17 June 1994 to opt out.

Those who did not opt out have until 1 December 1994 to register with the Alabama court. Anyone who has not registered by this date and who has not opted out by 17 June 1994 will be barred from pursuing a claim relating to the matter in any court in the USA.

This summary of the notice is a general guide to the nature of the case for information only and is without responsibility.

Further information is available by telephoning the court in the US at 00-1-312-609 8680, or in writing from MDL 926, PO BOX 11683, Birmingham, Alabama, AL 35202 - 1683, USA.

Copies of the information pack received from the Court, which includes photocopies of the settlement, claim and exclusion forms, may be obtained from the Consular Section, Department of Foreign Affairs, 72-76 St Stephens Green, Dublin 2, telephone (01) 478 0822 extension 2306 or 2308. ❐

Calculating a Residential Property Tax Liability

(Continued from page 228)

10. S.117 F.A. 1994.
11. S.95 F.A. 1983 as amended by s.115 F.A. 1994 sets out the income which while exempt from income tax is income for the purposes of calculating RPT liability.
12. S.115 F.A. 1994.
13. S.119 F.A. 1994 amending s.101(2) F.A. 1983.
14. S.120 F.A. 1994 amending s.102 F.A. 1983.
15. S.119 F.A. 1994.
16. S.120 F.A. 1994 amending s.102 F.A. 1983.
17. S.104 F.A. 1983.
18. S.121(1a) (a) F.A. 1994.
19. If an instalment is missed tax is recoverable under s.110 F.A. 1983 as if the instalment option was not exercised. Therefore interest at 1.25% per month will be back dated on the outstanding balance to the preceding 1 October.
20. S.121(1a) (b) F.A. 1994.
21. S.122 F.A. 1994 amending s.105 F.A. 1983.
22. S.104 F.A. 1983.
23. F.A. (1909-10) s.33.
24. S.109 F.A. 1983.

*Richard Grogan practises in the firm of Rowan & Co., Solicitors. ❐

Solicitor Link

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For details contact:
Cillian MacDohmnaill,
Finance and Administration Executive, The Law Society,
Blackhall Place,
Dublin 7.
Tel: 671 0711.

New Document Exchanges in Cork

Document exchange services in County Cork have expanded with the opening of new exchanges in Bantry, Clonakilty, Fermoy, Macroom, Mallow, Mitchelstown and Skibbereen. Together with existing exchanges in Cork City and in Bandon, this now provides a network of nine exchanges in the County, part of a network of 52 exchanges countrywide.

Solicitors throughout Co Cork can now benefit from the document exchange system. Each exchange has early morning delivery times and late evening collection times which means that an overnight service is provided between the 52 Irish document exchanges.

Further information is available from
Cecil Ryan
Irish Document Exchange
37 Fenian Street
Dublin 2
Tel: 01 - 676 4601 ❐

Lady Solicitors' Golf Outing

The annual Lady Solicitors' Golf Outing will take place at Blainroe Golf Club, Co. Wicklow, on Friday 2 September 1994.

All last year's players will receive a circular. If you did not take part last year but would like details, please telephone 01-677 0335, with your name and address. ❐

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AIJA Annual Congress

The Annual Congress of AIJA (The International Association of Young Lawyers) takes place this year in Vichy France from 30 August to 3 September. The working sessions (which will take place in the salons of the Grand Casino) include the following topics:

- Warranties and Disclosures in Corporation Acquisitions
- Know how: Protection and Licensing
- The North American Free Trade Agreement (NAFTA)
- Marketing and Promoting Law Firms

A full social programme is also offered.

For brochures or further information, please contact *Petria McDonnell*, McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1, Tel: 01 - 829 0000, Fax: 01 - 829 0010. ❐

Conference on Religious Morality and Public Policy

On 7-8 September next, a conference on *Religious Morality and Public Policy*, organised jointly by the Law School and the Department of Hebrew and Biblical Studies, TCD, will take place in the Arts Building, Trinity College. The conference will examine the legitimacy of articulating religiously inspired beliefs in the public domain and will explore ground rules for dialogue between secular and religious citizens on matters of public policy generally. Speakers include Professor *Michael Perry* from Northwestern University, Chicago, *Dr. Gabriel Daly*, TCD and Dr. *Gerard Quinn*, UCG.

For further details, contact *Gerry Whyte*, Senior Lecturer, Law School, Trinity College. Tel: 01-702 1125. ❐

Drugs War: Legalise or Lose

What is the answer to the problem of drug abuse?

Should the use of drugs be legalised or prohibited?

These are some of the questions to be addressed during a one day law conference being organised by UCC law graduates as part of Graduate Week '94. The conference will take place on Friday 16 September 1994 in UCC and will be presided over by the Chief Justice *Thomas Finlay*.

Papers will be presented by four distinguished international experts on the subject: *Mr. J.G.D. Grieve; Dr. John Marks*, Consultant Psychiatrist with Halton Health Authority in the UK; *Dr. C. Ruter* of the Criminal Law Institute, Amsterdam; and *Dr. Desmond Corrigan*, School of Pharmacy, Trinity College, Dublin. Following the afternoon papers, there will be a panel discussion and open forum.

Booking forms and further information is available from the Graduates Association, University College, Cork, tel: 021 276871 ext. 2016, fax: 021 274948. ❐

Society Participates In Welfare of Children Group

The Law Society has nominated *Finian Brannigan*, Solicitor, Co. Louth, to be its representative on the newly-formed Campaign for the Care of Deprived Children (CARE). The Campaign is a coalition of professional groups working in areas related to the welfare of children and the juvenile justice system and has been established in the context of a new Juvenile Justice Bill and the implementation of the UN Convention on the Rights of the Child.

CARE says that there is a need for co-ordinated policy and planning from three Government Departments, Justice, Health and Education, with regard to the needs of children. The groups hopes to obtain the views of professionals who work with children about the adequacy of services focusing on juvenile justice and how children's rights and needs can be promoted and protected in the criminal justice system.

Members of the profession who have views on these matters are invited to forward them to the Criminal Law Committee of the Society or to Finian Brannigan at 16 Fair Street, Drogheda, Co. Louth. ❐

Crossword Competition

The winner of the crossword competition in the June edition of the *Gazette* is *Justin Sadleir*, Crow Street, Gort, Co. Galway, who receives a book token for £25.

ACROSS

1. codified
4. & 11. pro bono
6. call
7. ban
8. tender
9. ego
12. plea
14. lawyer
15. escrow
18. abet
20. idem
21. bye
22. golden
23. lis
24. king
25. try
26. friendly

DOWN

2. decree
3. folio
4. patent
5. Anton
7. broker
10. Galway
13. assess
16. bounty
17. bills
19. begged
21. bribe ❐

Debate on 'Capping' Continues

A press statement issued by the Law Society on 9 June, stating that the proposal by the Minister for Commerce and Technology, *Seamus Brennan,* TD, to introduce legislation to place a cap on the amount of compensation the courts could award in personal injury actions, amounted to a vote of no confidence in one of the most fundamental aspects of the legal system – the adjudication by independent judges of the amount of compensation a person should get when they suffered personal injury through no fault of their own – was reported in the *Irish Independent, Cork Examiner* and *Irish Press* of 10 June and in the *Limerick Leader* on 15 June.

An article in the *Sunday Tribune* of 12 June reported that the proposed legislation would include a major overhaul of the law relating to personal liability. The article quoted a spokesperson for the Law Society as saying that the Minister's proposed schedule for compensation awards would curtail judicial discretion in awarding damages for personal injuries and could be unconstitutional. It could mean that judges would be unable to take the personal circumstances of an injured party into account and that would lead to injustice.

A feature article in the *Irish Independent* on 29 June reported that the "Brennan Bill" would include a new definition of the duty of care, would reform the law concerning occupiers' liability, would reform pre-trial procedures, would permit structured awards and would provide for a schedule of payments for a range of different injuries. The article quoted the President of the Law Society, *Michael O'Mahony,* as saying that the proposed schedule would almost certainly be unworkable and he also questioned whether the proposals would lead to a reduction in insurance costs.

An article in the *Sunday Tribune* of 3 July said that the establishment of a personal injuries compensation board and a detailed grading system to assess pain and suffering awards were the main provisions of the forthcoming Bill. The article noted that critics of the legislation had said that the idea was fraught with legal and constitutional difficulties.

The *Irish Independent* of 4 July reported that the Government had ruled out the option of introducing a fuel levy as an alternative to legislation to cap personal injury awards.

Cost of Delay

On 21 July 1994 the *Irish Times* reported comments by Mr. *Justice Costello* in the High Court when he said that he would like the Comptroller and Auditor General to investigate the cost to the tax payer of having to pay for regular High Court motions where the State failed to lodge a defence to an action within the appropriate time.

Greater Transparency on Disciplinary Procedures

An article by *Kieron Conway,* published in the *Irish Times* on 11 June, noted that although there were over 5,000 complaints about solicitors made to the Law Society in the past five years only a handful ended up in court. The journalist commented that there was greater transparency in the regulatory system for the profession as a result of a change in policy eighteen months ago by both the Law Society and the High Court and the article noted that since the beginning of 1993 the Law Society had published in its *Gazette* details of amounts paid out by the Compensation Fund and had also reported on all final determinations of the High Court on disciplinary matters.

Solicitors Bill

The *Sunday Business Post* on 26 June reported that SADSI was calling on President Robinson to test the constitutionality of the Solicitors (Amendment) Bill, 1994 on the grounds that it proposed an unlawful restriction on the constitutional right to earn a livelihood. According to SADSI, section 37 of the Bill would have the effect of precluding a newly-qualified solicitor from setting up in practice for a period of three years after qualification.

Claim on the Compensation Fund

An article by *Veronica Guerin* in the *Sunday Independent* of 29 May, reported that the Irish Permanent Building Society was engaging in an internal investigation to establish how the purchase of 38 properties had been financed at a cost of £1.5m although they were expected to make a maximum of £900,000 at auction. The article noted that the Building Society had reported a number of solicitors involved in some of the transactions to the Law Society. In the ensuing weeks, a number of daily and Sunday newspapers noted that the Irish Permanent Building Society had lodged a claim of £500,000 on the Compensation Fund in relation to the mortgage transactions and had notified the Society of its intention to make a claim for a further £220,000.

Numbers

The evening papers on 23 June, and the *Irish Independent* of 25 June noted that, according to a European survey by the publishers of *Law Firms in Europe Guide,* Ireland had one lawyer for every 920 citizens, ranking sixth in the survey. On 26 June an article in the *Sunday Tribune* noted that a survey undertaken by the Law Society of students on the 30th Advanced Course had shown that 25 of 66 respondents believed that they had no prospect of employment following qualification. ❐

The Local Government (Planning and Development) Regulations, 1994

by Michael O'Donnell BL

The new Consolidated Planning Regulations (S.I. 86 of 1994) incorporate all existing regulations made under the Planning Acts into a single document and came into force on 16 May 1994. Regulations providing for new requirements in respect of developments to be carried out by the State and by local authorities and came into force on 15 June, 1994.

Significant changes have been made to provisions in the previous regulations, in particular those relating to the making of planning applications and in the area of exempted development. However, all areas of planning law have been updated to some extent by the new regulations. The following deals with some of the provisions dealing with exempted developments and with the procedures for the making and processing of applications.

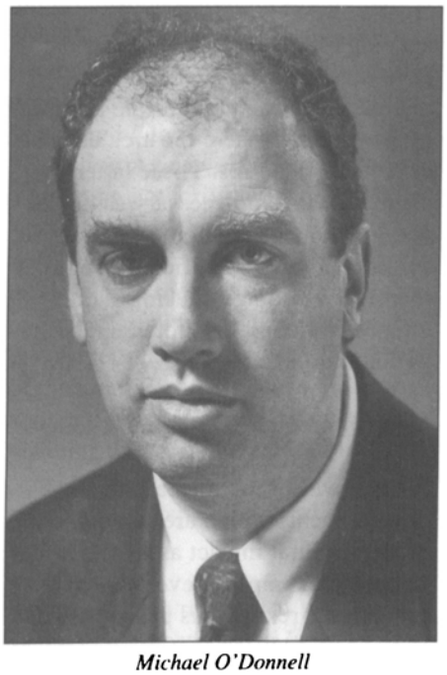
Exempted Development

The Planning Acts and Regulations specify certain types of development which are classified as exempted developments and, as such, not subject to control under the Acts. These exemptions have been modified to a significant degree by the new regulations.

Exempted development within the curtilage of a dwelling house

A dwelling may be extended by an area of 23sq metres to the rear but the regulations now clarify that this relates to the original floor area. Therefore, a dwelling may be extended by this amount on one occasion only and smaller extensions, not exceeding this limit, will be aggregated to determine whether the limit has been exceeded.

Any extension to the side or front of a



Michael O'Donnell

dwelling may not exceed 2sq metres. However it is permissible to construct a garage or other similar structure to the side of a dwelling and thereafter convert it for use as part of the dwelling, thereby circumventing the limitation contained in this provision.

The construction of a conservatory at the rear of the dwelling will now be considered an extension to the original floor area. Extensions will not be exempted where they exceed the height of the eaves or parapet. This replaces the earlier restriction which provided that extensions could not exceed the "height of the house". This new provision is ambiguous. The word "eaves" is not defined in any planning legislation. Conversion of buildings within the curtilage of the dwelling, for use as part of the dwelling, will not be subject to this height restriction. No extension is exempt where the area of the back garden is thereby reduced to less than 25sq metres.

Certain buildings erected within the curtilage of the dwelling which are incidental to the enjoyment of the dwelling retain their exempted status. However, all such buildings must now be constructed in line with or to the rear of the front wall of the dwelling and will not be exempt where they reduce the private open space at the rear of the dwelling to less than 25sq metres, or themselves exceed a floor area of 25sq metres. These restrictions were not previously applied to such buildings. If these buildings are to the rear or to the side of the dwelling, they may be converted for use as part of the dwelling. In all cases of conversions or extensions the original floor area may not be exceeded by an area greater than 23sq metres. The finishes of all such buildings are now required to match those of the house.

It is no longer permissible to use such buildings for the keeping of horses, ponies or pigeons, however, donkeys are not specifically mentioned. Thus pigeon lofts will no longer be exempted from planning control. The provisions relating to television aerials, boundary walls, gateways and landscaping have all been modified to some extent.

The position of dwellings in which a bed and breakfast business is carried out has now been clarified. The use of a dwelling for such an activity will not require planning permission; provided that not more than four bedrooms in the house are devoted to this use, and that the use does not contravene a condition, and is not inconsistent with a use, specified or included in the permission. It would appear then that if, during the course of the application, an undertaking was given not to use the premises for such a purpose, the exemption will not apply.

The foregoing and other exemptions are subjected to the restrictions listed in Article 10 of the Regulations.

Commercial Development

Under the 1977 regulations it was permissible to change a shop for use

as a restaurant without planning permission. The position has now been changed following the alteration of the definition of a shop under Article 8 of the 1994 Regulations. This revised definition specifically excludes the use of a shop as a restaurant or funeral home, or for the sale of hot food for consumption off the premises. The use of such areas for the provision of services to visiting members of the public is also specifically excluded. However, the sale of sandwiches or other cold food for consumption off the premises falls with the revised definition. Whether there is in fact a contravention of the relevant provision is quite literally a matter of degree.

This change is likely to have a major impact on those who acquired property with an established retail use in the expectation that it could automatically be used for some of the uses indicated above. They may now find that planning permission will be required for such a change and there is no guarantee that such permission will be forthcoming.

However, restaurants developed by the State within national parks will be exempted development.

Amenity and Recreational Development

Under the 1977 regulations the laying out and use of land for sport and recreation was generally exempted development. This provision has been amended so that as and from May 16, 1994 the development of golf and pitch and putt courses will now require planning permission.

Similarly, lands to be developed for motor vehicle, aircraft or firearms sports will also be subject to planning control.

The development of lands for use as burial grounds will no longer be exempt from planning control.

Agricultural Buildings

The broad exemptions which were present in the former regulations relating to agricultural buildings continue in force and have remained essentially unchanged in the new regulations. The range of animals to which such buildings apply have been extended to include goats, deer and rabbits.

It is now exempted development to erect a roofed structure for the keeping of horses and ponies, if the floor area does not exceed 100sq metres, and structures for the keeping of greyhounds where the area does not exceed 50sq metres. These latter exemptions were necessary as horses and greyhounds are not usually kept for the purposes of agriculture and therefore buildings housing such animals were not exempted under the agricultural exemptions.

Environmental Protection Agency

It has always been the case that developments which are subject to an environmental impact assessment will not be an exempted development. The regulations restate this principle and provide in addition that developments subject to the Environmental Protection Agency will not be exempted development. This would appear to link inextricably the planning and environmental control procedures, particularly as developments subject to the Environmental Protection Agency will in addition require an environmental impact statement.

Restrictions on Exemptions

Article 10 places restrictions on the exemptions contained in the regulations. This has been modified in a number of areas. The provision dealing with traffic safety has been broadened so that any development which endangers public safety, or obstructs road users, will not be exempted under the regulations. The restriction on exemptions for developments on views or prospects specified in a development plan for preservation has also been extended. Developments which "interfere with" such views will not be exempt whereas under the former provision they had to "restrict" such views.

The restrictions relating to buildings or structures listed for preservation in the development plan or draft development plan have been rationalised and extended.

Any extension, alteration or demolition of a building which conflicts with an objective of the development plan has now lost its status as an exempted development. There are new restrictions on the types of advertisements that may be exhibited on such buildings or structures and the erection of satellite dishes on such structures will not be exempted (however, satellite dishes erected on dwelling houses which are not listed are exempt, provided that the diameter of the dish is less than one metre).

Article 12 is a saver for development commenced before 16 May 1994. If such development was exempted under a provision revoked by the new regulations it will, if commenced before May 16, continue to be exempted development.

Planning Applications

Part IV of the 1994 Regulations contains the procedural requirements for the making and processing of planning applications. These are now significantly different from those which pertained under the previous regulations.

Planning authorities now have a duty to examine whether an application complies with the regulations, and the power to reject applications in which significant non-compliance is evident.

There are now additional requirements as to what a planning application must contain, including the name and address of the applicant's agent, the applicant's address for correspondence, the name of the owner (where the applicant is not the owner) and a location map showing the lands. This information was often submitted with an application in the past, but submission is now mandatory, and if an applicant fails to comply the application will be deemed invalid.

Planning authorities now have a duty to examine whether an application complies with the regulations, and the

power to reject applications in which significant non-compliance is evident. In such a case the entire application, including the fee, would be returned.

The most significant change in the application procedure relates to the giving of public notice. It is now a requirement that such notice be given by publication in a newspaper and by placing a notice on the lands or structure to which the application relates. Formerly an applicant could choose one of these modes of publication (except in the case of developments that required an environmental impact statement). As and from May 16, 1994 both forms of notice will be required for all developments except in the case of transmission lines, where the provisions relating to site notices would be impractical.

The requirements relating to the form and content of newspaper notices has also changed. In the case of site notices the location of the notice on the site must be indicated on a map accompanying the application. The courts tend to construe these regulations very strictly and it is vital that the new requirements be meticulously complied with if a challenge to the validity of an application is to be defeated.

Four copies of all the plans must now be submitted and two copies of the notice.

The public have now been given an explicit right to make submissions on all applications. This right was formerly implicit as a planning authority was bound to have regard to any observations or objections submitted.

Planning authorities have been given a discretionary power to require a further notice where an applicant submits revised plans in response to a request from a planning authority. A revised notice may also be required where there has been a delay of three months, or more, in replying to a request for further information from the relevant local authority.

There is now an express power to withdraw an application. Again, this power was implicit only in the previous regulations and planning authorities were often confused as to how to deal with such withdrawals.

Submissions relating to the risk of environmental pollution cannot be considered by a planning authority where the application relates to a development which is subject to licensing by the Environmental Protection Agency. It is not clear how a planning authority will deal with such objections as in many cases it will be unclear as to whether it deals directly with the risk of environmental pollution or with a matter relating to the proper planning and development of the area. For instance, in the case of a large pig rearing installation will the planning authority be entitled to consider objections/submissions relating to the spreading and disposal of waste?

Documentation relating to the planning application will be available before the application is determined and for a period of five years thereafter.

There are additional provisions relating to environmental impact statements, in particular a right to have an extract of the statement provided for a cost not greater than the reasonable cost of making a copy.

An environmental impact statement must be made available from the time the document is received until the expiry of the period for appealing against the planning authority's decision. In the event of an appeal it must be made available until the appeal is determined, withdrawn or dismissed.

Other Areas

The regulations have also made changes in the area of development plans, appeals, extensions of the life of a planning permission, fees and compensation. The regulations also contain the new procedures regulating local authority developments and State developments which are not subject to ordinary planning control. The procedures relating to licensing under section 89 of the 1963 Act have also been modified.

**Michael O'Donnell is a practising barrister and lectures in planning law at University College Galway.* ❐

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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clárlann na Talún), Chancery Street,
Dublin 7.

Published: 25 July 1994.

The Most Reverend Dr. Patrick Lennon (deceased), Right Reverend Monsignor Laurence Ryan and The Very Reverend Patrick Joseph Brophy, Folio: 16753 and 16487; Land: Crossneen. **Co. Queens (Laois).**

Brian and Patricia McKernan, Folio: 20645; Land: Ballymoney Lr.; Area: 0.562 acres. **Co. Wexford.**

Peter Kinahan, Folio: 16989; Land at Straduff. **Co. Kings (Offaly).**

Daniel O'Connell, Folio: 15807; Land at Ballycullenbig. **Co. Queens (Laois).**

Michael Keogh, Lemonfield House, Oughterard, Co. Galway. Folio: 51408; Townland: Callownamuck; Area: 0(a) 1(r) 37(p). **Co. Galway.**

Peter Flahive, Folio: 25280 and 34580; Land: (1) Bromore West, (2) Doon East, (3) Bromore West; Area: (1) 3(a) 1(r) 0(p), (2) 7(a) 3(r) 17(p), (3) 3(a) 1(r) 1(p). **Co. Kerry.**

Honoria Jean O'Toole, 190 Crumlin Road, Dublin. Folio: 5852; Townland of Crumlin situate on the north side of Crumlin Road in the District of Crumlin. **Co. Dublin.**

Thomas Bohan, Ballybaanmore, Galway. Folio: 2740L; Townland: Ballybaanmore. **Co. Galway.**

Martin Cleary and Sheila Cleary, 17 Hadleigh Park, Castleknock, Co. Dublin. Folio: 22986F; Townland of Castleknock in the Barony of Castleknock. **Co. Dublin.**

Thomas P. McEntee, Folio: 2346; Land: Part of the lands of Cooltrimegish; Area: 2(a) 2(r) 0(p). **Co. Monaghan.**

Denis Spillane, Folio: 10742; Lands of Dromboy North, Barony of Barrymore. **Co. Cork.**

Helen McDermott, Folio: 58536; Townland of Barryshall, Barony of Ibane and Barryroe. **Co. Cork.**

Joseph Fahy (jnr), Bridge House, Duniry, Loughrea, Co. Galway. Folio: 3834; Townland: Garryhubert; Area: 100(a) 11(r) 1(p). **Co. Galway.**

The Industrial Development Authority, Folio: 3235F; Land at Creggan Lower; Area: 5.375 acres. **Co Westmeath.**

Scoltia Bay Development Co. Ltd., Folio: 40283; Land: Killygarvan Lower; Area: 42(a) 2(r) 16(p). **Co. Donegal.**

Michael English and Mary English, Folio: 23532; Land at Fawnagawan; Area: 28.269 acres. **Co. Tipperary.**

Nora Burton, Folio: 4144F; Townland of Ballinaspig Beg and Barony of Cork. **Co. Cork.**

Maureen Byrne, of "Kilshane", 37 Homefarm Road, Dublin, full owner of one undivided 1/3 share. Folio: 141L.S.D. (Now Folio 74301L); Lands: property known as "Kilshane" Home Farm Road, Drumcondra, situate in the parish of Clonturk and district of Drumcondra and formerly called Aberdeen House. **Co. Dublin.**

Peadar and Catherine Halpin, Folio: 3214L; Land: 76 Dunleer Housing Scheme. **Co. Louth.**

Michael McLoughlin, c/o John McLoughlin, Carrowreagh, Aclare, Co. Sligo. Folio: 799; Townland: Carrowreagh; Area: 24(a) 1(r) 1(p). **Co. Sligo.**

Patrick Tierney, John Sheehan, Joseph Mulcahy and Philip McAuliffe, Folio: 22922F and 22923F; Land at Rathcannon. **Co. Limerick.**

Monica Hayes, 169 Broadmeadow, Swords, Co. Dublin. Folio: 543F; Lands: property situate to the West of Scotchstone Bridge and North of the town of Swords in the Townland of Glebe in the Barony of Nethercross. **Co. Dublin.**

Michael Conway, Shanvalleybeg, Drummin, Westport, Co. Mayo. Folio: 10565; Townlands: (1) Shanvalleybeg, (2) Shanvalleybeg (one thirteenth part of the other part), (3) Glenlaur (one undivided nineteenth part of); Area: (1) 55(a) 3(r) 7(p), (2) 755(a) 1(r) 28(p), (3) 1142(a) 1(r) 21(p). **Co. Mayo.**

Rose Fetherston, Coolmine, Saggart. Folio: 7195; Land: Coolmine, Barony of Newcastle; Area: 11.668 hectares. **Co. Dublin.**

John Cullinan and Nora Cullinan, Folio: 2884F; Land: Dromana. **Co. Waterford.**

Mary Bridget McDermott, Folio: 4520R; Townland of Naas West, Barony of Naas North. **Co. Kildare.**

Edward Harkin, Folio: 116; Land: Part of the lands of Legnahoory; Area: 32(a) 3(r) 30(p). **Co. Donegal.**

John Redmond Holohan, Folio: 2388; Land: Barony of Arklow and County of Wicklow. **Co. Wicklow.**

Charles Brady, of 180 Clonmacnoise Road, Crumlin, Dublin. Folio: 5552; Townland of Balrothery in the Barony of Balrothery East. **Co. Dublin.**

John Hanley, Carrickngot, Callooney, Co. Sligo. Folio: 14345; Townland: Carrickngot; Area: 1(a) 2(r) 31 1/2(p). **Co. Sligo.** Solr. Ref: DMcD/GK.

Thomas Mulligan, Ardacarha, Bohola, Claremorris, Co. Mayo. Folio: 42823; Townland: (1) Ardacarha, (2) Barleyhill, (3) Ardacarha, (4) Bohola, (5) Barleyhill, (6) Barleyhill; Area: (1) 8(a) 3(r) 21(p), (2) 4(a) 3(r) 10(p), (3) 9(a) 1(r) 26(p), (4) 0(a) 0(r) 12(p), (5) 5(a) 0(r) 0(p), (6) 4(a) 3(r) 35(p). **Co. Mayo.**

Truck and Machinery Sales Limited, Folio: 15201; Land: at Castletown (part); Area: 9(a) 0(r) 8(p). **Co. Tipperary.**

Mark and Paula Casey, 3 Hilltown Close, River Valley, Swords, Co. Dublin. Folio: 34059L; Townland: Hilltown, Barony of Nethercross; Area: 0.023 hectares. **Co. Dublin.**

Irene Bauer, Folio: 44087; Land: Barony of Imokilly. **Co. Cork.**

Edith Phelan, Carrigmore House, Gracedieu, Waterford. Folio: 8060; Land: Property known as Carrigmore House, Gracedieu, Waterford. **Co. Waterford.**

Lost Wills

McNamara, Patrick, deceased, late of Fahanlunaghta More (Fahamore), Lahinch, Co. Clare. Would any person having any knowledge of a will executed by the above named deceased who died on 7 March 1994, please contact M. Petty & Co., Solicitors, Parliament Street, Ennistymon, Co. Clare. Tel: 065-71445. Fax: 065-71785.

Coen, Margaret Teresa, deceased, late of Kiskeam, Mallow, in the County of Cork, who died on 31 July 1992. Would any person having knowledge of the whereabouts of a will of the above deceased, made on 26 July 1989, please contact Richard Moylan & Co., Solicitors, Shortcastle, Mallow, Co. Cork.

Neary, Kathleen Josephine, deceased, late of 2 Chapel Court, Balbriggan, County Dublin, who died on 6 May 1994. Would any solicitor or person having any knowledge of the whereabouts of a will of the above named deceased, please contact Aidan J McNulty & Co., Solicitors, 19 Duke Street, Dublin 2. Tel: 01-671 4376.

Cunningham, Michael, deceased, late of 17 Elmwood Terrace, Killybegs, Co. Donegal, and also with an address at 8 Windermere Apartments, 32 Gilford Road, Sandymount, Dublin 4 and formerly of 157 Clonkeen Crescent, Dun Laoghaire, Co. Dublin. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died on 24 July 1993, please contact Creavin & Fahy, Solicitors, 6 Lower Kilmacud Road, Stillorgan, Co. Dublin. (Ref: 6608/JF) Tel: 01-283 2922.

Alexander, Adelaide T., deceased, obit. 7 March 1994. Would anyone knowing the whereabouts of a will made by the above named deceased, formerly of Bracklyn, Church Road, Ballybrack, County Dublin and more recently of Donore Nursing Home, Sidmonton Road, Bray, made subsequent to April 1983, please contact S.S. & E. Reeves & Sons, Solicitors, 51 Merrion Square, Dublin 2.

Fitzpatrick, Thomas, deceased, late of Kilglynn, Kilcock, Co. Meath, farmer. Would any solicitor or person having any knowledge of the whereabouts of a will of the above named deceased who died on 14 June 1994, please contact Mary Cowhey & Co., Solicitors, Main Street, Maynooth, Co. Kildare. Tel: 01-628 5711 Fax: 01-628 5613.

Aherne, Matthew Patrick, late of 2 Carrig Lodge, Point Road, Crosshaven, Co. Cork or Park Farm, Passage West, Co. Cork. Would any person having any knowledge of the whereabouts of the original will of the above named deceased who died on 10 May 1994, please contact Barry C. Galvin & Son, Solicitors, 91 South Mall, Cork, Tel: 021 - 271962 Fax: 021-272835.

Meade, John, deceased, late of 23 Upper Oriel Street, Dublin who died on 1 July 1954. Would any person knowing the whereabouts of the original will of the above named deceased, dated 5 June 1954, please contact McDonnell & Co., Solicitors, 5 Inns Court, Winetavern Street, Dublin 8.

Employment

Locum Solicitor available from mid-July. Competent all areas. Enquiries to Deirdre O'Brien, 27 Rowan House, Sussex Road, Dublin 4. Tel: 01-660 6482.

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Miscellaneous

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, Tel: 080693-61616 Fax: 080693-67712.

Wanted – Two Six Day Licences. Contact Bolger White Egan & Flanagan, Solicitors, Portlaoise, Co. Laois. Tel: 0502-21468.

Sole solicitor with established practice with own secretary and book-keeper interested in sharing another solicitor's accommodation and possibly overheads, in Dublin 7 area, please reply to **Box 60.**

English Solicitor (49 with Irish family background), ex-managing partner of major regional firm and now in practice on own account, would like to meet Irish firms interested in practice management advice and/or commercial law assistance on ad hoc or other flexible basis - please reply to Box No 35.

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Lost Title Deeds

IN THE MATTER OF THE REGISTRATION OF TITLE ACT, 1964 AND THE APPLICATION NO. 91DN19493
FOR FIRST REGISTRATION OF TIMOTHY JOSEPH WOOD IN RESPECT OF PROPERTY IN CRANELANE (OFF DAME STREET) CITY OF DUBLIN.

TAKE NOTICE that Timothy Joseph Wood, 35 Sydney Parade Avenue, Ballsbridge in the City of Dublin has lodged an Application for his registration on the Freehold Register free from encumbrances in respect of the above mentioned property.

The original documents of title (including the document set out in the schedule hereto) are stated to have been lost or mislaid.

The Application may be inspected at this Registry.

The Application will be proceeded with unless notification is received in the Registry within one calendar month from the date of publication of this Notice that the original documents of title are in existence. Any such notification should state the grounds on which the documents of title are held and quote Reference 91DN19493.

Dated this 7th day of April, 1994.

Pat O'Brien
Chief Examiner of Titles.

Land Registry
Nassau Buildings
Setanta Centre
Dublin 2

SCHEDULE
The Indenture of Conveyance dated 15th November, 1939 made between the Very Reverend Maurice Henry Fitzgerald Collis and others and Timothy J. Woods.

Property at Sorrento Road, Dalkey, Co. Dublin

Would anybody having knowledge of the persons now entitled to the interest of the reversioner under a Lease dated the 5th December 1898 and made between Henry Joseph Rose, Richard Aubrey De Burgh Rose, James Frederick Rose, Mary Susan Rose, Grace Rose, Eleanor Fanny Sullivan, Ida Rose Hardy and Grace Elizabeth Hardy of the one part and James White Horner of the other part affecting property therein described as "ALL THAT AND THOSE that piece or plot of ground situate in Dalkey as lately in the occupation of Saint Michael's Benefit Building Society measuring on the north one Hundred and twenty one feet eight inches on the east sixty seven feet on the west seventy seven feet nine inches and on the south one hundred and ten feet or thereabouts bounded on the north by the accommodation road on the east by Sorrento Road on the south by St. Heliers and on the west by James Murphy's cottages which premises are situate in the Barony of Rathdown and County of Dublin, please contact W.R. Joyce & Co., Solicitor, 18 Main Street, Arklow, Co. Wicklow (0402) 32062.

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Cliona O'Tuama is admitted as a solicitor in Ireland and also in England and Wales. She has lectured in Irish capital acquisitions tax for the Institute of Taxation in Ireland and has also lectured in UK inheritance tax to members of the Institute. She has written extensively on capital acquisitions tax and UK inheritance tax.

Miss O'Tuama will practise in probate, trusts and taxation and she would welcome probate referral work from Irish solicitors. She would also welcome the opportunity to provide advice on UK inheritance tax to Irish solicitors whose clients have assets in the UK and when their clients intend to make wills dealing with assets in the UK.

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THE IRISH MEDICAL DIRECTORY 1994

was launched last month by the Minister of Health Mr. Brendan Howlin. This is the first such directory in twenty years, and is the most comprehensive single reference source for information about doctors and the health services they provide ever to be published. The Directory, edited by Dr. Maurice Gueret, runs to over 270 pages. It includes information about Irish Hospitals, their medical staff, services provided and specialist clinics, about General Practitioners, surgery addresses, areas covered, contact telephone/fax numbers, about Irish Consultants, contact numbers and addresses, listed by speciality for easy access. There is also information about forensic services as well as a detailed listing of county coroners.

The directory costs £18 which includes delivery from MIS 2000, 170a Whitehall Road West, Dublin 12.

SEE INSERT IN JULY/AUGUST ISSUE

REGISTRATION OF TITLE ACT, 1964

ISSUE OF NEW LAND CERTIFICATE.

An application has been received from the Registered Owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the Lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry **within twenty eight days** from the date of publication of the notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

Dated the 9th June 1994.

Registrar of Titles,
Setanta Centre,
Nassau Buildings,
Nassau Street,
Dublin 2.

SCHEDULE

Registered Owner:
Brian Hennessy and Audrey Bell, both of
38 Edenmore Park,
Raheny, Dublin 5.

Folio: 59314L County: Dublin.

Lands: Property known as 38 Edenmore Park Situated in the Parish of Raheny and district of Raheny North.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

Asio otus (Long-eared owl). Photographed by Richard T. Mills.

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Past performance may not be a guide to future returns which are dependent on future investment conditions. Unit values can go down as well as up.

VOL. 88 NO. 7 AUGUST/SEPTEMBER, 1994

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GAZETTE

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LAW REFORM – A GOVERNMENT PRIORITY?

THE CAREER OF CHIEF JUSTICE THOMAS FINLAY

THE WRITINGS OF TERENCE DE VERE WHITE

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Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
John Costello
Justin McKenna
Noel C. Ryan

Advertising: Seán Ó hOisín. Telephone: 830 5236 Fax: 830 7860.

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Front cover: The Hon Mr Justice *Thomas Finlay* who will retire as Chief Justice on 17 September *(see also page 246)*.

Council of Europe
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An opening for a LAWYER in the European Court of Human Rights

The European Court of Human Rights in Strasbourg has a vacancy for a lawyer in its registry. The successful applicant will join the small team of highly qualified lawyers who assist the Court in a variety of legal and administrative tasks, including the preparation of draft judgments and case summaries ; research in international, domestic and comparative law ; and preparation of the Court's hearings and deliberations. This is a permanent post open to Irish and United Kingdom nationals.

Applicants must normally be aged under 35. They must have a good law degree or a good degree in another discipline with a subsequent professional qualification as a solicitor or a barrister in Ireland or the United Kingdom. The ability to draft legal texts clearly, concisely and elegantly is essential and experience as a legal practitioner will be an advantage. Applicants will also be expected to have a good knowledge of French. The post is one which requires initiative, discretion, a sense of responsibility and the ability to work in a team. Remuneration and conditions of employment are comparable to those offered by other international institutions. Further information and official application forms (to be returned by 27/10/94) may be obtained from the Human Resources Division (Recruitment Section), Council of Europe, 67075 Strasbourg Cedex, France. Please quote ref : 123/94 and enclose a self-addressed, unstamped envelope (23 x 32 cm).

Legal officers M/F

Michaelmas Law Term 1994

ANNUAL SERVICES

All members of the legal profession are invited to attend the **Michaelmas Law Term Annual Services:-**

ON MONDAY, 3 OCTOBER, 1994 at:
St. Michan's Church,
Halston Street, Dublin 7. **at 10.00 a.m.**
(featuring solicitors and barristers choir)

St. Michan's Church,
Church Street, Dublin 7. **at 10.15 a.m.**

ON SATURDAY, 1 OCTOBER, 1994 at:
The Synagogue,
Adelaide Road, Dublin 4. **at 11.00 a.m.**

ON FRIDAY, 30 SEPTEMBER, 1994 at:
The Mosque and Islamic Centre,
163 South Circular Road, Dublin 8. **at 1.00 p.m.**

and are invited by kind invitation of The Benchers of the Honourable Society of King's Inns to coffee at **King's Inns**, Constitution Hill, Dublin 7, at 11.30 a.m. on Monday, 3 October, 1994.

Law Reform – A Government Priority at all Times?

In a modern changing society legislation may quickly become outdated if it does not adequately reflect the present needs of society. A constant review of our legislation through law reform is therefore essential.

To help Government in this task the Law Reform Commission was established in 1975 to "keep the law under review" and "formulate proposals for law reform". Since 1975 the Law Reform Commission has published 46 reports. A number of the reports have resulted in important changes to our legislation. To its credit, the present Government has created a Department of Law Reform, however, there are many reports which have not been acted upon by successive Governments for no apparent reason. We would like to highlight some of these non-controversial reports, the recommendations of which, if enacted into law, would cost the Exchequer very little and in some cases would actually result in extra revenue for the Exchequer. We set out some of these reports below:-

Reports on Land Law and Conveyancing Law *(Nos. 1 to 5, LRC 30-1989; 31-1989; 39-1991; 40-1991; 44-1992).* Some recommendations in these reports have been enacted but the majority has not. A number of the recommendations would result in technical amendments to our conveyancing laws which would simplify and help expedite conveyancing transactions. One of the reports also recommends legislation providing for enduring Powers of Attorney which are urgently required to prevent elderly people from being made Wards of Court as a result of becoming senile. This legislation is promised in the Programme for Government.

Report on the Hague Convention 1989 on the Law of Succession to Estates of Deceased Persons *(LRC 36-1991).* The Law Reform Commission recommends the adoption of the convention. It has also made recommendations elsewhere for amending the Succession Act, 1965 which needs to be updated after nearly 30 years on the statute books.

Report on Oaths and Affirmations *(LRC 34-1990)* recommends replacing the oath with an affirmation in court proceedings and affidavits.

Debt Collection: (i) The Law Relating to Sheriffs *(LRC 27 – 1988)* recommends, *inter alia*, simplifying and updating our legislation to help creditors recover monies from debtors.

The Indexation of Fines *(LRC 27-1988)* recommends, *inter alia*, the indexation of fines which would be an obvious benefit to the Exchequer.

The Law Relating to Dishonesty *(LRC 43-1992)* recommends legislation similar to the English Theft Act 1968, to legislate for, *inter alia*, the dishonest use of a cheque, credit card or computer and to update the law on forgery and counterfeiting.

Other areas, related to law reform, which the Government should examine are:-

- The repeal of ancient and outdated legislation from our statute books.
- The consolidation of statutes dealing with the same subject, such as the licensing laws, which have numerous Acts dating back as far as 1833. (At present, the Law Reform Commission is, in fact, examining the licensing legislation).
- The codification of suitable areas of our law. Codification of laws is already carried out in all EU Member States apart from Ireland and the UK. In addition, the United States, another common law country, has codified its criminal law in its Model Penal Code.

It is undoubtedly the case that in Ireland law reform has not achieved a high level of legislative priority. Despite the work that goes into the publication of a final report of the Law Reform Commission (i.e. analysis of the existing law, extensive comparative research of the position in other jurisdictions, preparation of a consultation paper, discussions with relevant interested parties, preparation of final proposals for reform), a report from the Commission has only the same status as any other proposal for legislation.

The Law Commission in England and Wales reports to the Lord Chancellor who is entitled to introduce legislation in Parliament. In Ireland the Law Reform Commission reports to the Attorney General who is not entitled to introduce legislation. This means that the recommendations of a LRC report have to follow the same procedure as any other proposal for legislation i.e. Heads of a Bill are prepared, submitted to Government for approval in principle, then circulated to various Government departments, before the final Bill is prepared. Speedier implementation of reports might be achieved if relevant Government departments were required to make comments on Law Reform Commission consultation papers *in advance* of the preparation of the final report and if this were to be taken as appropriate consultation with them on proposed legislation. ❐

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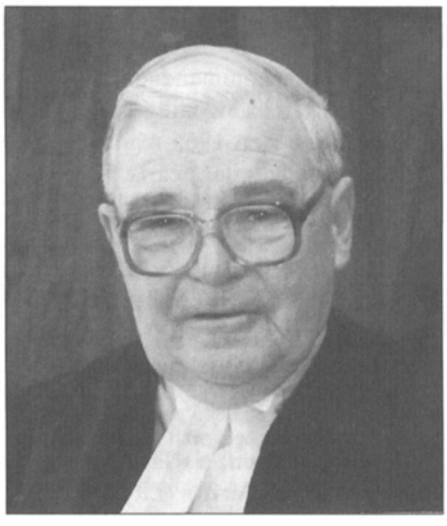
Chief Justice Thomas Finlay – An Appreciation

Chief Justice *Finlay* is the seventh person since the foundation of the State to have occupied that great office. Yet he is also the only one of those seven to have been born since the foundation of the State. Two of his predecessors died in office. Two others resigned to become judges in the Court of Justice of the European Communities. Another resigned on the grounds of ill-health before reaching the compulsory retirement age. Only Chief Justice Finlay and the late Chief Justice *Conor Maguire* remained in office until reaching that age. Happily Chief Justice Maguire lived for many years after his retirement. We all wish the present Chief Justice a long and happy life after his retirement age which he reaches on September 17 this year.



The Hon Mr Thomas Finlay, Chief Justice, who retires on September 17.

In the course of my judicial career I had the privilege of serving with five of the seven Chief Justices, my last five years being spent with Chief Justice Finlay. I also had had the pleasure of being a colleague at the Bar from the time of his call to the Bar until my own departure from it. All my association with him, both at the Bar and on the Bench, has been most happy and richly rewarding in terms of personal relationship as well as in terms of professional relationship. My experience was one which was also true of all those numerous persons who worked with him in the many spheres of activity which engaged his attention and included the cultural and the charitable and others far removed from the practice and development of the law and the administration of justice. His near inexhaustible patience and his unfailing courtesy in all situations are too well known to require any elaboration.

His skill as an advocate was recognised throughout the legal profession and by those members of the public who had the good fortune to have been represented by him as well as by those who had the ill-luck to be opposed by him in litigation especially in jury trials. He had the all too rare gift of being able to reduce the points at issue to the essential few and to refrain from that form of advocacy which allocates equal weight to all points thus causing the good ones to sink to the level of the less than good. Incidentally, it is worth recalling that in his busy "junior" days *Tom Finlay* was elected to the Dáil at his first attempt. This was a remarkable feat in a Dublin city constituency. He served very effectively for three years as a Deputy but did not offer himself for re-election. No doubt if he had devoted himself to a political career he would have risen very high indeed but it is safe to say, without disrespect to the other organs of government, nothing in those spheres would have surpassed his achievements in the judicial organ of government to the well-nigh everlasting benefit of the consumers of justice.

As a judge, and particularly as Chief Justice, he has been the stalwart defender of our liberties and rights. In a remarkable address delivered by him in the Supreme Court in the presence of President Hillery on 29 December 1987, on the operation of the Constitution of Ireland, in speaking of the rapid, ready and unhesitating acceptance by the legal profession of the concept of the primacy of the Constitution he said "even the most cursory examination of the broad outline of the Constitution shows good reason why this acceptance should have been so rapid and so ready. Firstly, in relation to personal liberty it is difficult to conceive a more simple, ready and effective remedy for unlawful detention than the right to apply under Article 40 of the Constitution to any Judge of the High Court for an inquiry as to the legality of your detention. Here you have an express, unequivocal access to the Courts, unhindered by any form of procedural blockage or red tape . . . without any formality at all and it frequently consists only of a terse written communication addressed to the Judge . . . it can be established by a lay person with a *bona fide* interest (where the detained person) cannot himself or herself make the application." He furthermore stressed that the immediate effect of the Constitution is not even confined to the Courts "but is applicable to all forms of subsidiary or administrative tribunals who must, in the course of their activities, act in a Constitutional manner, observing fair procedures." The "Finlay" Court furnished ample proof of the truth of these statements. While lamenting the end of this too brief era let us recall the words of Seneca – *"felix est cui quantulumcunque temporis contigit, bene collocatum est."*

Let us recall that away from the Bench *Tom Finlay* is a Brother of the Angle. For those who love any discourse of rivers and fish and fishing, he is the man. He is doubly worthy of *Izaak Walton's* dish of meat that was "too good for any but anglers, or very honest men."

Brian Walsh ❐

Advertisement Discriminates against Solicitors in Public Service

The Law Society has taken action on a further instance of discrimination that has become apparent in relation to the eligibility of public service solicitors for legal posts in the public service. The Society has been in correspondence with the Civil Service Commission and the Department of Social Welfare concerning an advertisement seeking a Legal Adviser in the Department of Social Welfare which effectively rendered solicitors whose entire careers had been in the Public Service ineligible for the post.

The advertisement which appeared in the national newspapers on 9 and 10 June last, stipulated that applicants must be solicitors or barristers who have practised for at least four years in the State. A note at the end of the advertisement stated that service in a whole-time position as a solicitor or barrister in the public service would reckon for the purpose of the qualifying period, but only to a maximum of two years.

In a letter to the Secretary of the Civil Service Commission, the Director General of the Society, *Noel Ryan*, stated that: "representations have been made to the Society by a number of solicitors employed in a whole-time capacity within the public service in relation to the eligibility conditions for this competition. They have objected to the conditions on the grounds that these conditions discriminate against them." The Society supported the solicitors in their view, he added, and believed that their complaint was well-founded.

Provisions should be withdrawn and post re-advertised

The letter continued: "The Society would be glad to have your views as a matter of urgency as to the justification for this eligibility provision. The Society would take the view that, unless the duties of the post are such as to require experience in a private law firm – and the Society is not aware of any reasonable basis on which such a requirement could be stipulated – the provision should be withdrawn and the competition re-advertised on the basis that equates practice within the public service with private practice for the purpose of the qualifying period."

Response "disappointing"

The initial response from the Civil Service Commission, which stated that regulations governing competition of this nature were drawn up with the relevant employing department/office and that "it is generally accepted that applicants for such competition should have gained experience in outside practice", was described as "disappointing" by the Director General in a further letter to the Commission on 4 July. The Director General posed two further questions in the light of the Commission's response: (a) by whom is it generally accepted that applicants for this competition should have gained experience in outside practice? and (b) why?

The correspondence was also sent to the Minister for Social Welfare.

The Council of the Society considered the matter at its meeting on July 22 and took the view that the attempt by the Civil Service Commission to defend the exclusion of public service solicitors from the competition was unconvincing.

The Council decided to pursue the issue further and also to continue to pursue the issue of ineligibility of solicitors for appointment to posts in the office of the Attorney General.

Following further correspondence, the Civil Service Commission agreed to reconsider the matter in relation to any further competition that may be held on the basis that the selection of a successful candidate could proceed in the Social Welfare competition. ❐

Sedgwick Group to advise on Indemnity Insurance

The Council of the Society has endorsed the appointment of the Sedgwick Group as consultants to advise the Society on the introduction of compulsory professional indemnity insurance. When enacted, section 26 of the Solicitors (Amendment) Bill, 1994, will permit the Society to introduce regulations making it compulsory for solicitors to obtain professional indemnity insurance prior to obtaining a practising certificate. The majority of the profession currently carries indemnity cover. The Solicitors Bill provides that, in drawing up the regulations, the Society may decide to operate a mutual fund, a master policy, or a system of approved insurers.

Under the Solicitors Bill the practice year will change from 5 January to 1 January, with effect from 1 January, 1996 and it is intended that the insurance year would change similarly.

The Council was informed that the Sedgwick Group had been chosen for the work because the company had extensive experience, through the Group internationally, in the introduction of professional indemnity insurance schemes in Scotland and elsewhere. Working under the direction of the Professional Indemnity Insurance Committee, established by the Council in June 1994 to oversee the introduction of compulsory indemnity insurance, the consultants will advise on the best option open to the Society. They will also assist the Society generally in deciding on the terms and conditions upon which cover will be provided and in dealing with insurers in the marketplace and establishing a scheme.

❐

Protocol on Cross-Border Practice Approved

The Council of the Society has approved the adoption of a Protocol on Cross-Border Practice agreed between the Law Societies of Ireland, England and Wales, Scotland and Northern Ireland.

Noting that the requirements imposed on solicitors qualified in one jurisdiction who wish to qualify in another jurisdiction have been greatly simplified in recent years and that the number of solicitors who would be qualified to practise in more than one of the four jurisdictions is growing, the Protocol sets out agreed principles which each of the four Law Societies will follow in regard to certain aspects of practice in relation to solicitors holding practising certificates in more than one jurisdiction.

The Protocol covers co-operation between the four Societies concerning the requirements to obtain professional indemnity cover, compliance with accounts regulations, contributions to the Compensation Funds of the respective jurisdictions, complaints and discipline. The Protocol provides that a solicitor must adhere to the particular requirements of each jurisdiction in which he wishes to hold a practising certificate and allows for an exchange of appropriate information between relevant Law Societies concerning regulation of solicitors who hold a practising certificate in more than one of the four jurisdictions.

Doubts about Compensation Fund Provisions

While the Council approved the Protocol, some doubts were expressed concerning its provisions relating to Guarantee/Compensation Funds. Each of the four Societies operates a Fund. The Protocol, recognising that problems may arise in identifying which Fund would be liable in the case of dishonesty by a solicitor holding a practising in more than one jurisdiction, provides for arbitration in the event that, following investigation, the Societies involved cannot reach agreement on whose Fund should meet the claim.

Some Council members were of the view that the Protocol did not take account of a provision in the Solicitors (Amendment) Bill, 1994 which would permit the Society to provide that no contribution to the Compensation Fund would be payable by a solicitor who resided outside the State and was engaged in the provision of legal services outside the State.

The President of the Society assured the Council that this aspect of the Protocol would be discussed with the other Law Societies in the light of the provision in the Bill. ❐

Society's Solicitors should Advocate

If the Society did not use its own solicitors in actions before the courts, it would be failing in its duty to prove the assertion that solicitors were sufficiently capable and experienced to be appointed as judges in the higher courts, according to Past-President, *Donal Binchy,* who made the remark in the course of a discussion at the Council meeting on 22 July last about the legal costs incurred by the Society. He noted that the President of the High Court was on record as stating that solicitors were equally welcome before the Court as barristers. Many Council members supported Mr Binchy's view, adding that the Society's solicitors were more than capable of prosecuting cases before the High Court and, indeed, had done so in the recent past.

The view was taken by the Council that, from now on, the use of counsel would be assessed on a case by case basis with a view to keeping the Society's legal costs to a minimum. ❐

New Practice Management Guidelines to Assist Firms

Practice Management Guidelines, intended as 'a practical management tool' to benefit solicitors and their clients, have been drafted by the Practice Management Committee of the Society and circulated to Council members of the Society.

The Guidelines provide a basis by which solicitors, irrespective of the size of their practice, may measure the way they currently manage their practices and set out checklists for planning improvements and development of their practices.

The Guidelines cover five broad areas of management:

- services and forward planning
- case management
- office administration and management structure
- financial management
- managing people.

The Practice Management Committee believes that adherence to the Guidelines will assist solicitors in their dealings with clients and in ensuring compliance with the Solicitors Accounts and Advertising Regulations and the Guide to Professional Conduct. The Guidelines will also assist firms which wish to gain 'Q Mark' accreditation.

Council members have been asked to forward their views on the draft Guidelines to the Practice Management Committee and it is intended that the final draft of the Guidelines will be put before the Council for formal approval at its next meeting on 16 September. ❐

Standard Contract on Fees near Finalisation

Work on a two-page standard contract on fees is nearing finalisation, according to the Chairman of the Law Society's Costs Committee, *Gerard Griffin*, and it is hoped to place the proposed contract before the October meeting of the Council for approval.

Gerry Griffin

The standard contract is intended to meet the requirements of section 68 of the Solicitors (Amendment) Bill, 1994, which will come into effect three months after the enactment of the Bill. The section will make it obligatory for solicitors to notify their clients in writing, at the commencement of a transaction, of the *actual* charges for the services to be provided to them, or an *estimate* of those charges, or the *basis* on which charges would be made.

Reporting to the Council on the progress of the draft contract, the Chairman of the Cost Committee said that, in his view, section 68 of the Solicitors Bill would be of benefit to the profession as solicitors and their clients would have to address the issue of fees at the outset. ❐

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Department Completes Review of Circuit Court Jurisdiction

According to a recent communication to the Society, the Department of Justice has completed a review of activity levels in the Circuit Court. The review, which assessed the altered jurisdiction of the Circuit Court under the Courts Act, 1991, "will form the basis of proposals which the Minister for Justice will be bringing to the Government with a view to eliminating arrears in the Circuit Court", according to the Department.

The information emerged in response to representations by the Society concerning the problem of delay generally and, in particular, the backlog of civil cases on the Carlow Circuit.

According to Carlow Bar Association, criminal matters are receiving a disproportionate share of the time in the Circuit Court and the number of criminal trials pending will prevent the Court from dealing with District Court civil appeals, civil and matrimonial cases in forthcoming sessions. The Bar Association estimates that cases that were ready for hearing in June 1993 are unlikely to be reached until February 1995 at the earliest. The Circuit Court sits in Carlow for four weeks each year but only one week is allocated to non-criminal business.

At the request of Carlow Bar Association, the Society made representations to the Department of Justice pointing out that a delay of this magnitude was unacceptable. The Society reiterated the call by Carlow Bar Association for greater time to be allocated to civil business, or for an alternative solution such as the allocation of an additional judge to the Carlow circuit to deal with the backlog of civil work.

While the announcement that the review has been completed is welcome, the Society has again asked the Department to take urgent action to deal with the situation in Carlow. ❐

Proposal to 'Cap' Awards being Monitored

The Law Society continues to monitor developments on the proposal by the Minister for Commerce and Technology, *Seamus Brennan* TD, to place a 'cap' on the amount of damages that could be awarded for pain and suffering in personal injuries actions. The indications are that the Minister is examining the idea of promulgating in legislation a schedule of injuries with a 'points system' and a scale setting out the amounts to be awarded for the points allocated. It is also thought that while the Heads of a Bill have been drafted, they have not yet been submitted to Cabinet and that the Minister is, meanwhile, taking legal advice on the issue. To date, the Minister has not made a definitive public statement about his plans, despite calls by the Law Society and the insurance industry to do so.

The Society has had a number of meetings with officials in the Minister's Department, at which the Society has set out it objections in principle to the Minister's proposal and has pointed out the likely Constitutional difficulties in giving effect to the proposal.

Further meetings with officials are envisaged and, in the meantime, developments continue to be monitored closely by the Task Force, established by the Council of the Society in January 1994. ❐

Solicitors Bill goes to Seanad

The Solicitors (Amendment) Bill, 1994 was passed by Dáil Eireann on 13 June on a vote of 54 in favour to 32 against. The First and Second Stages of the debate on the Bill were taken in the Seanad on 6 July and it is thought likely that the Committee and Report Stages will be dealt with at the end of October and that the Bill will be enacted by the end of the year. ❐

Bar Associations Raise Their Media Consciousness

Recently the *Gazette* joined six members of the Wicklow Bar Association on a half-day media training course in the headquarters of Carr Communications in Dundrum, Co. Dublin.

The course, one of a series being staged for Bar Associations around the country, is aimed at teaching practitioners how to communicate effectively in their local media. The courses were instigated by the Public Relations Committee of the Society which is subsiding the cost by 50%.

Course tutor, *Peter Finnegan*, took his participants on a whirlwind tour of the psychology of communicating, with plenty of practical advice on how to deal with the media, prepare for an interview, identify your target audience, present your message in a way that will make those hearing the interview actually *listen* to and identify with what you haveto say.

An important element of the course was teaching interviewees how to take control of a media opportunity and how to deal with inevitable feelings of nervousness.

In an action-packed afternoon, each solicitor had the opportunity to test and develop his skills by participating in an interview on a topical issue such as defending fees, the crisis in legal aid funding and why *'capping'* compensation awards in personal injury cases will not work. The interviews were then played back so that the participants could evaluate the performances.

Later, the *Gazette* contacted some of the participants for feedback. *Richard Joyce*, Secretary of Wicklow Bar Association said: "the course was an eye-opener. It made me think about the whole manner in which to approach a media interview. I found it very beneficial and would now be more willing and would feel more confident about doing interviews with the local media here."

Members of the Wicklow Bar Association: l-r: Fachtna Whittle, Brian McLoughlin, Richard Cooke, Richard Joyce, Denis Hipwell and Brendan Connolly with Peter Finnegan, Course Tutor, at the media training course.

Bar Association President, *Brendan Connolly*, found the course "very good, very helpful". He added: "I was impressed by how hard the course tutor Peter Finnegan worked. I think the course was of great benefit not just for radio interviews but for any form of communication with the public. The emphasis on making sure that you address your audience in layman's terms was particularly good."

Fachtna Whittle, Haughtons, said the course brought home to him that communicating with public was different, say, to addressing a court. "The audiovisual exercises were very effective. I think if every member of the profession did a course of this kind it would go a long way towards helping the image of the profession."

To date five Bar Associations have engaged in the training courses and it is hoped that all Bar Associations will do so over the coming months.

Further information on the media training courses is available from *Barbara Cahalane*, Public Relations Executive, at the Law Society. Tel: (01) 671 0711 Fax: (01) 671 0136. ❐

Policy Document on Dealing with Offenders

The Probation and Welfare Service Branch of the Public Service Union, IMPACT, has published a policy document entitled *"The Probation and Welfare Service in Ireland: Confronting Crime, Serving the Community, Working with Offenders"*.

The policy document suggests that the criminal justice system is in need of radical modification and change and puts forward what it describes as "realistic and achievable alternatives which will provide more effective means of combating crime and reducing levels of offending and re-offending in our society."

The document argues in favour of greater resources and staffing for the Probation and Welfare Service.

Copies of the Publication are available free of charge from *Patrick O'Dea*, Public Relations Officer, Probation and Welfare Service Branch, IMPACT (Public Service) Union, c/o Smithfield Chambers, Smithfield, Dublin 7. Tel: 873 3722. ❐

Law Firm Celebrates 50 Years and Quality Mark

Left to right: Sean Conlon, Chief Executive Officer of the Irish Quality Association, presenting the Q Mark to Brian MacMahon, Arthur E. MacMahon.

The firm of *Arthur E MacMahon* in Naas recently staged a double celebration to mark the firm's 50 years in practice and the achievement of the Quality Mark. The firm is the first practice in Leinster to obtain the Q Mark.

The firm was founded 50 years ago by Arthur MacMahon and grew steadily over a period of 36 years until his retirement in 1980. During this time the practice developed an extensive business in the areas of personal injury court work, property, wills and administration of estates.

Arthur MacMahon's son, *Brian MacMahon*, assumed the helm of the practice at Naas in the early 1980s and during the next fourteen years the practice continued to widen its client base. The firm now employs nineteen people.

Recently, Brian MacMahon established IDR Ireland, the country's first private commercial mediation firm, to provide people with a choice of mediating or litigating disputes.

Following post-graduate studies for a Masters Degree in management practice from Trinity College in 1990 and recognising the changes taking place in legal practice in Ireland and in clients' requirements, Brian MacMahon decided to focus on the concept of quality as a means of providing for his clients' needs. An eighteen month programme, involving the firm's entire staff in planning and evaluating the quality of its services, practices and procedures, resulted in the firm being awarded the Quality Mark in April 1994.

Brian MacMahon says "the firm owes its gratitude to all its clients and friends and their families for their loyalty and support throughout the last 50 years. With clients' satisfaction now established as the *raison d'être* for every one of the firm's activities, we look forward to meeting the needs of our clients for legal services for at least another 50 years." ❐

LAW SOCIETY EMPLOYMENT REGISTER

If you are a solicitor looking for a job you should place your CV on the Law Society's employment register.

If you wish to recruit a solicitor, on a full-time, part-time or locum basis why not use the register?

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Phone *John Houlihan* at the Law School, (01) 671 0200, ext. 530.

Praise for the Legal Profession

Following a case in which the Franciscan Missionaries of Our Lady won a judgment for over £290,000 in back payments from the VHI, the Regional Superior of the Order, Sister *Gregory O'Reilly*, was interviewed on Morning Ireland on 29 July. In the course of the interview she said that the legal team on the case "have served us extremely well. Our solicitor carried this case for three years without asking for money (because) she knew we didn't have it. Our legal team . . . went into a Supreme Court case, not having been fully paid for the previous case and they served us extremely well. . . I want to personally and publicly thank them for the wonderful help that they have been." ❐

Apprentices Celebrate in Galway

The Great Southern Hotel, Eyre Square, proved to be an excellent venue for the recent SADSI Mid-summer's Ball which took place on 23 July last. Over two hundred and fifty apprentices from around the country gathered in Galway for the event, many arriving on the Friday evening.

The Ball commenced with a sherry reception and the meal was followed by both band and disco. There were gifts of perfume and chocolates for all and the bumper raffle raised four hundred pounds which was donated to the Rwanda appeal.

We were honoured to have as our guests the President of the Law Society *Michael O'Mahony* and his wife, *Jacqueline*.

Many thanks to the Committee for their hard work, the staff of the Great Southern Hotel, our sponsors and, of course, all apprentices and non-apprentices who made the evening a great success.

Philippa Howley
Auditor ❐

Vice-President Obtains Hons LL.B Degree

Patrick O'Connor

Junior Vice-President of the Law Society, *Pat O'Connor,* was recently conferred with an honours LL.B. degree from University College Galway. He obtained his first law degree from University College Dublin in 1973 and was admitted to the Roll of Solicitors in 1974. For the past two years he has been attending the Faculty of Law in University College Galway where he undertook further studies particularly in European law, competition law and company and commercial law.

Pat O'Connor is a notary public and coroner for Mayo East. He has been a member of the Law Society Council since 1978 and has served on a wide range of Law Society committees including terms as chairman of the Education, Registrar's, Professional Purposes, Annual Conference and Parliamentary committees.

Last year his firm, P O'Connor & Son, was the second firm of solicitors in Ireland to obtain the Quality Mark and the first firm in the West of Ireland to do so. ❐

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In the Heat of the Moment . . .

Every letter or telephone call of complaint to the Law Society is treated with the utmost seriousness by the staff in complaints section of the Society's Professional Practice department. Nonetheless, in some cases, in the heat of the moment, complainants and solicitors use the odd phrase which can cause a smile.

"My solicitor didn't turn up to represent me and all I got was a lot of excuses about him having had a heart attack."

"Deformation of character"

"I don't believe making complaints unless they're really unnecessary"

"I'm ringing on behalf of my mother, I'm her daughter"

"Despite being unaware of the planning difficulties X never communicated the information to me."

"Four of us own one third each."

"Unfortunately X (another solicitor in the firm) *had a heart attack. . . and has survived"* (a solicitor's letter).

"I have six children, two living in Ireland and five abroad."

"X gave physio treatment to a man who consequently died."

"I want to complain about my wife's solicitor who sent me a letter about a judicial separation, but my wife and I have a marvellous relationship."

"In relation to this particular complaint we are happy to report that we have eventually received a response from the vendor's solicitors which is totally unhelpful" (a solicitor's letter).

❐

Clarke Continues to Oppose "Capping"

Frank Clarke SC

Following his election as Chairman of the Bar Council for a second year, *Frank Clarke SC* said that he would continue to oppose vigorously the proposed capping of personal injury awards.

Frank Clarke was first elected as Chairman of the Bar Council in July 1993 having previously held positions as Treasurer and Vice-Chairman of the Bar Council. He was called to the Bar in 1973 and took silk in 1985.

Following his election he stated "I am honoured to have been elected for a second term as Chairman of the Bar Council and will continue to press for improvements in the operation of the courts and of the criminal and civil legal aid system". He added: "With my colleagues in the Bar Council I will also continue to oppose vigorously the proposed capping of personal injury awards which in my view would be against the public interest. However, we are conscious of the need to reduce costs in such cases and we have made a number of proposals to the Government with a view to containing them."

James Nugent SC was elected Vice-Chairman of the Bar Council. ❐

EXPERIENCED

Solicitor wishes to acquire general practice either by outright purchase or terms. Location not of prime importance. All replies acknowledged and confidentiality assured.

Replies to: Box No 80

S.I. No. 67 of 1994 Land Act 1965 (Additional Category of Qualified Person) Regulations 1994

For the purpose of the definition of a "qualified person" in section 45 of the Land Act 1965, these Regulations exclude a person acquiring an interest in land situate within the Counties of Dublin South, Finglas and Dun Laoghaire-Rathdown as specified in the Local Government (Dublin) Act, 1993.

Parliamentary Committee

Legal Diary Notices

The following notices which were published recently in the *Legal Diary* may be of interest to practitioners.

Withdrawal of actions which have been set down

The attention of practitioners is drawn to Order 26, rule 2 of the Rules of the Superior Courts which reads:-

> "When a case has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing signed by the parties. The consent shall include the list number and trial venue of the case."

Where a party wishes to withdraw an action under this rule, the solicitor for such party should write to the Chief Registrar of the High Court **quoting both record number and list number, requesting that the action be withdrawn and enclosing a letter of consent to such withdrawal from the solicitor for the other party.**

This rule does not apply to actions involving persons in wardship, minor plaintiffs or fatal injuries.

In actions in which money has been lodged an Order of the Court will be required, except where money lodged is being accepted in satisfaction of a claim in cases where the claimant parties are *sui juris*.

Where, accordingly, actions which have been set down have been settled on terms which require only an order striking out, no application to the Court is necessary.

Actions set down for hearing – acceptance of sum paid into court in satisfaction of a claim

Practitioners are advised that a Court Order for payment out is no longer required where a Notice of Acceptance of money lodged in court is served pursuant to Order 22 rule 4, in an action which has been set down for hearing (but subject to the provisions of Order 22, rule 10 in respect of persons not *sui juris*). Prior to making application to the Accountant, however, practitioners must inform the Chief Registrar in writing that the action has been settled and may be taken out of the relevant list for trial, **quoting both record number and list number.** A copy of such written notification should be lodged with the Accountant when making an application for payment out.

The High Court

The books of the Accountant of this Court will be closed from Monday, 15 August, 1994 to Friday, 23 September, 1994 for the purpose of enabling the Accountant to balance the various accounts of suitors. Lodgments may be made during the period and the Accountant will invest money pursuant to Order of the Court.

The High Court – sittings during the Long Vacation 1994

During the Long Vacation, two Vacation Judges will sit at the Four Courts on . . . Wednesday, 7 September and Wednesday, 21 September.

Interlocutory Applications and matters (including Bankruptcy) will not be listed without certificate from the Duty Registrar that the application is urgent and proper to be dealt with in the Vacation.

The Master or Deputy Master will sit on Tuesday, 6 September and Tuesday, 20 September.

Additional Long Vacation sittings

In addition to the fortnightly Vacation sittings, the Vacation Judge will be available in the Four Courts each day between the hours of 11 o'clock and 1 o'clock, but only if required to sit for a matter in which considerable urgency can be shown.

Bail Applications will be heard on Wednesday 3 August and on Tuesday in each succeeding week during the Long Vacation.

J.C. Delahunty
Chief Registrar ❐

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L A W B R I E F

by Dr Eamonn Hall, Solicitor

Sexual Harrassment

The Employment Equality Agency has prepared a draft Code of Practice on the *Protection of the Dignity of Women and Men at Work.* The draft code had been compiled by the Agency, based on broad consultation and agreement among employer bodies and trades unions. The draft code is being examined by the Department of Equality and Law Reform. (See reply to Parliamentary Question in 444 *Dail Reports* col. 1668, June 30, 1994).

The Minister for Equality and Law Reform, Mr. Taylor, stated that he intended to have the draft code published shortly in line with a commitment given in the *Programme for Competitiveness and Work.* It would then be promoted, monitored and reviewed by the Employment Equality Agency. Implementation of the code will be on a voluntary basis. However, the Minister proposed to give it statutory recognition in the forthcoming employment equality legislation so that cases for decision by the Equality Officer, the Labour Court or civil courts could have due regard to the contents of the code. The Minister also stated that the code would put in place an appropriate Irish measure giving effect to the EU Resolution on the protection of the dignity of men and women at work adopted by the Council of Ministers in May, 1990.

What is sexual harassment? There is probably no satisfactory definition. However, the writer refers to a definition set out in a Report of the New York State Bar Association Committee on Women in the Law dated October, 1992 entitled **"Sexual Harassment – A Report and Model Policy for Law Firms"**. In that Report, sexual harassment was defined as follows:

> "unwelcome or unwanted sexual advances, requests for sexual favours, and other verbal, non-verbal or physical conduct of a sexual nature when: (1) submission to or rejection of this conduct by an individual is used explicitly or implicitly as a factor in decisions affecting hiring, evaluation, promotion or other aspects of employment; or (2) this conduct substantially interferes with an individual's employment or creates an intimidating, hostile or offensive work environment."

Examples of sexual harassment set out in the Report included, but were not limited to, unwanted sexual advances; demands for sexual favours in exchange for favourable treatment or continued employment; repeated sexual jokes, flirtations, advances or propositions; verbal abuse of a sexual nature; verbal commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling, touching, pinching, assault, coerced sexual acts or suggestive, insulting, obscene or demeaning comments or gestures; and display in the workplace of sexually suggestive objects or pictures.

The Report states that the above behaviour, constituting sexual harassment, was unacceptable both *in* the workplace itself and by any person in any setting *outside* the workplace including, but not limited to, other work-related settings such as business trips, court appearances and business-related social events.

The new code is awaited.

Advertising by Solicitors

Criticism has been expressed of the manner in which some solicitors in Ireland are advertising their services. Many lawyers would like the right to advertise restricted or even abolished. Two recent developments are noteworthy: there is the *Solicitors' (Amendment) Bill, 1994* which contains provisions in relation to advertising, and there is the decision of the European Court of Human Rights in *Casado Coca v Spain, (February 1994).*

The *Solicitors' (Amendment) Bill, 1994,* passed by Dáil Éireann on June 30, 1994 (but not yet passed by the Seanad) provides that the Law Society shall not prohibit advertising by solicitors. However, the Law Society is given specific authorisation pursuant to section 69(4) of the Bill to prohibit advertising by solicitors which

- is likely to bring the solicitors' profession into disrepute, or
- is in bad taste, or
- reflects unfavourably on other solicitors, or
- contains an express or implied assertion by a solicitor that he or she has specialist knowledge in any area of law or practice superior to other solicitors or
- is false or misleading in any respect, or
- comprises or includes unsolicited approaches to any person with a view to obtaining instructions in any legal matter, or is contrary to public policy.

However, the Law Society is not entitled to prohibit the advertising of any charge or fee by a solicitor for the provision of any specified legal service. (Section 69(5) of the Bill). Section 69(6) of the Bill empowers the Society to make certain regulations after two years prohibiting the advertising of any charge or fee by a solicitor for any specified legal service subject to the proviso that such regulations may be made only with the consent of the Minister for Justice and where the Minister is satisfied that such regulations are in

the public interest. There is also provision in the legislation that the Society may, by regulations, provide that a solicitor who, in the prescribed manner, has satisfied the Society of specialist knowledge in a prescribed area of law and practice may designate himself or herself as having specialist knowledge in that area of law or practice.

Another recent development in relation to advertising by lawyers is the case of *Casado Coco v Spain*, a decision of the European Court of Human Rights in Strasbourg (February 24, 1994). Citing the unique role played by the legal profession, the European Court of Human Rights (by a majority) rejected a Spanish lawyer's claim that his free speech rights were abridged by Spain's rules *against advertising* by lawyers. The Court stated that local Bar authorities, the Spanish courts and domestic courts were in a better position than an international court to determine how the right balance could be struck between the requirements of the proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and affording members of the Bar the possibility of advertising their practices.

In 1979, Mr. Casado Coco started a legal practice in Barcelona. He regularly placed notices advertising his practice in a number of local newspapers and sent letters to various businesses offering his services. The Barcelona Bar Council took disciplinary proceedings against him ending in 1981 with him being given a number of reprimands and warnings.

After publication in October 1982 in a newsletter of one of his notices giving his name followed by the word "lawyer" and his office address and telephone number, the Bar Council gave him a further warning which was confirmed on June 3, by the National Bar Council.

Mr. Casado Coco applied to the administrative courts alleging a breach of Article 20 of Spain's Constitution (freedom of expression). The local court found against him on September 23, 1988 and the Supreme Court dismissed his appeal. The Constitutional Court held on April 17, 1989 that Article 20 of the Constitution did not apply to advertising.

The European Court of Human Rights in its judgment held, *inter alia*, that Article 10 of the European Convention on Human Rights guaranteeing freedom of expression *did*, contrary to Spain's submission, apply to advertising. The court did not have any reason to doubt that the Bar rules complained of had been designed to protect the interests of the public while ensuring respect for members of the Bar. The special nature of the profession had to be considered. In their capacity as officers of the court, members of the Bar had to be discreet, honest and dignified. Restrictions on advertising were justified by reference to those special features.

The court considered that for the citizen, advertising was a means of discovering the characteristics of services and goods offered to him. Nevertheless it might sometimes be restricted, especially to prevent unfair competition and untruthful and misleading advertising. In some contexts, the court considered that the publication of even objective truthful advertisements might be restricted in order to secure respect for the rights of others or owing to the particular circumstances in particular business activities and professions.

The court pointed out that a member of the Bar in independent practice could not be compared to commercial undertakings such as insurance companies which were not subject to restrictions on advertising their legal consulting services.

The European Court of Human Rights held that the special nature of the legal profession had to be considered in the context of solicitors advertising their services. In their capacity as officers of the court, lawyers had to be discreet, honest and dignified. The restrictions on advertising were justified by reference to those special features.

The central position of the lawyer in the administration of justice as an intermediate between the public and the courts explained the usual restrictions on the conduct of members of the Bar. The court also noted that the rules governing advertising by members of the Bar vary from one country to another according to cultural tradition, and that in most of the states which were parties to the Convention, including Spain, there had been for some time a tendency to relax them. The wide range of regulations and the different rates of change in the Council of Europe's member states indicated the complexity of the issue.

The European Court of Human Rights held that at the material time the relevant authorities' reaction could not be considered disproportionate to the aim pursued and that consequently no breach of Article 10 of the Convention (freedom of expression) had been established.

The Landlord and Tenant (Amendment) Act, 1994

The Landlord and Tenant (Amendment) Act, 1994 became law on 10 August, 1994 one month after its passing by both Houses of the Oireachtas. Mr. *Alan Shatter*, TD, Solicitor, introduced the legislation as a Private Member's Bill and it is understood to be the third Private Member's Bill to become law in 35 years.

The 1994 Act now provides that the right to a new tenancy arises after five years continuous business occupation of a premises. Accordingly, the typical two years and nine months lease may very well become a lease of four years and nine months.

Under the new legislation, the right to a new tenancy for business tenants will be for a period of up to 20 years. There is also an opt-out provision for leasehold business premises used "wholly and exclusively as an office" where the tenant prior to the commencement of the tenancy executes" a valid renunciation of his entitlement to a new tenancy" having received "independent legal advice". ❐

CORRESPONDENCE

Solicitors, doctors, fees and *subpoenas*

The Editor,
Gazette,

Dear Editor,

The Viewpoint article in the April, 1994 issue of the *Gazette* (Vol. 88, No. 3, p 89) raises important issues on these subjects, and suggests that the Law Society and the medical organisations should draw up appropriate guidelines covering the principles of good professional practice in these matters.

The Medical Council does state, and doctors do accept, that there is a moral and professional responsibility (though not a legal obligation) to write medical reports on request from patients' solicitors. A problem arises, however, with regard to the fees for these reports. The Medical Council says that "a practitioner is free to charge a fee for a medico-legal report which is reasonable and not excessive in regard to the services performed". The Viewpoint article says, with a trace of indignation, that a doctor should be prepared to accept an undertaking from the solicitor that the fee will be discharged at the end of the case, suggesting that it is merely a matter of postponing the payment. It is implied, without being actually stated, that the fee will always be paid at the end of the case, *whether it is won or lost.* As many doctors know, this is not so.

It is recognised that solicitors provide a valuable service to the community, amounting to free civil legal aid, with their "no win, no fee" policy in personal injury cases. Naturally, some of these cases will be lost and the solicitor will be out of pocket; it is understandable that the solicitor will try to minimise these losses with the suggestion that payment of fees for reports should be deferred to the end of the case.

In fact, it seems that what is also being suggested is that doctors, too, should be prepared to forego fees in cases which are lost. This is implicit in the suggestion later in the article that, where the patient cannot afford to pay, "the doctor may have to 'take his chances' just as solicitors have to do".

This seems to ignore a fundamental difference between the roles of solicitors and doctors in these cases. The solicitor is an advocate, obviously and openly paid to win the plaintiff's case if at all possible. Surely the doctor, as a witness, is meant to be impartial and disinterested? Even when served with a *subpoena* (and this is a point misunderstood by many doctors) the doctor is, of course, summoned by the Court and not by the solicitor. The suggestion that the fees will be paid only if the case is won, and not otherwise, means that the doctor will now have a financial interest in the outcome of the case. In most cases, this will be substantial. At present rates, in a case in which there were two medical reports and half a day in the High Court, the fees would amount to about £500.

If a witness (for example, a workmate present at the scene of an industrial accident) is told by a solicitor that he will be paid £500 if his evidence helps the plaintiff to win his case, what will the Court's attitude be? Will the Defence be interested in this arrangement? Is it any different when the witness is a doctor?

Furthermore, if doctors giving evidence are to be seen as obviously partisan, it is going to make their time in the witness box even more uncomfortable than it is at present, their reports and evidence more subject to attack and the doctors more reluctant to be involved. Payment for reports two or three years in arrears, and non-payment for some, would mean that doctors, too, would feel inclined to reduce their costs. This would lead to a higher proportion of reports being short and superficial and, probably, to their being much more difficult to elicit.

My committee would be willing to hold discussions with the Law Society on these and related matters. However, it will be difficult to persuade doctors to accept late and uncertain payment of fees in these cases, into which doctors are drawn involuntarily.

Yours etc.,

Michael Pegum, FRCSI,
Chairman,
Medico-Legal Sub-Committee,
Irish Hospital Consultants' Association

DE

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PEOPLE AND PLACES

At the SADSI Mid-summer's Ball were, back row (standing) l-r: Lorcan Tiernan, Cathal De Barra, Michael Lynn, Seamus O'Cronin, Tim Kiely, Robert Boland, Paul Lavery and John Menton. Second row (standing) l-r: Joe Daly, Joan O'Brien, Ethna McDonald, Fidelma McManus, Benedicte Spain and Barbara Loftus. Front row (seated) l-r: Deirdre Daly, Phillipa Howley, Auditor, SADSI; Michael V O'Mahony, President of the Law Society; Jacqueline O'Mahony and Anne Marie Bohan.

At a recent CLE Seminar on The Quest for Quality in a Solicitor's Practice were l-r: Martin Reddington, Irish Quality Association Consultant and Auditor; Paddy Fitzgibbon, Pierse & Fitzgibbon, Solicitors Laurence K. Shields, Chairman, Practice Management Committee and Pat O'Connor Junior Vice-President, Law Society.

At a recent garden party in the Law Society were l-r: Marye Glynn; Richard Ryan, Principal Officer, Department of Justice; Sophie Ryan; Eimear Binchy, Solicitor and Owen Binchy, Member of the Law Society Council.

Recently a group of Albanian prosecutors visited Ireland and, in the course of their visit, participated on the advocacy module on the advanced course in the Law School. The photograph shows (standing) l-r: Raphael King, Tutor, Law School; Oliver Shanley, Solicitor; Gani Dizdari, Niall Lombard, Office of the Director of Public Prosecutions; Zamir Shtylla; and Demush Keqi. Front row (seated) l-r: Arthur Selmani; Iris Kurti and Judge Keenan Johnson.

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Recently the Dublin Solicitors Bar Association presented a cheque for £900, the proceeds of a seminar, to the Solicitors Benevolent Association. The photograph shows Helen Sheehy, Convenor of the DSBA Company/Commercial Law Committee (left), presenting the cheque to Andy Smyth, Chairman of the Solicitors Benevolent Association (right), with Daire Murphy, President, Dublin Solicitors Bar Association (centre).

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Focus on Access to the Profession, Legal Posts and the Courts

While the publication of the report of the Beef Tribunal dominated the period under review, with much coverage and comment about the level of fees paid to counsel appearing for the various parties at the Tribunal, nonetheless, a range of issues affecting access to the legal profession, legal posts and the courts were the subject of articles in the print media.

Exclusion of solicitors from posts in the Attorney General's office

The *Irish Independent, Cork Examiner, Irish Press* and *Evening Press* of 28 July reported on the Viewpoint published in the July edition of the *Gazette*, noting that the Law Society was calling for an end to the restrictive practice which renders solicitors ineligible for appointments in the office of the Attorney General, and that the Society had argued that solicitors were more than qualified to carry out such work.

Does the law have to be so slow?

A feature article by *Kieran Conway* in the *Irish Press* on 29 July focused on the "delays and inefficiencies which are endemic in Ireland's legal system." The article dealt with many issues raised by the Law Society and the Bar Council in their joint submission to the Minister for Justice on the Courts Service, and noted that its key reform proposal was that the management of the Courts should be vested in an executive agency. The article reported a view advanced by the President of the High Court, Mr. Justice *Liam Hamilton*, that an executive agency would amount to an interference with the administration of justice which the Constitution reserved to judges and commented that, notwithstanding the President's views, "the law bodies have held their ground". The article quoted the Department of Justice as saying that the submission from the legal bodies was "under consideration". The journalist commented that "observers are not hopeful of anything radical emerging from this process – least of all do they expect the Department to agree to the proposal for an executive agency." The journalist also commented that "it seems that the only answer the Government has to the country's deeply rooted court problems is to throw a few more judges at them."

Judicial appointments procedure

"Who judges the judges?" was the title of a feature article in the *Irish Press* on 9 August which examined the manner in which judges are selected "without even the veneer of public scrutiny". The article stated "there is no input formal or otherwise from the Law Society or Bar Council and there are no known criteria". In the article *Michael McDowell TD* was quoted as suggesting a commission for appointments and *Gay Mitchell TD* suggested that while the power of appointment should remain with the Government, there should be scrutiny of it by an Oireachtas Committee. The author of the article, *Kieran Conway*, commented that there was little likelihood of reform as the Department of Justice had stated that there were no plans to change the present system.

The Irish Times on 29 July reported that greater transparency in the process of appointing judges had been called for by Dr. Eamonn Hall, Chief Examiner in Constitutional law for the Incorporated Law Society. The article quoted Dr. Hall as saying "at present no one knows how judicial appointments are made here or what criteria are applied". He called for a judicial appointments commission to advise the Government on the appointment of judges and an *ad hoc* Oireachtas Committee to interview candidates for Supreme Court positions, according to the article.

"Cap" is unworkable

The President of the Law Society, *Michael O'Mahony*, was reported in an article in *Business and Finance* on 4 August as saying that the introduction of a "cap" on personal injury awards would be "unworkable and probably unconstitutional". Michael O'Mahony said that "any move to fix damages through the introduction of an arbitrary points system based on a categorisation of injuries could have the result of depriving a claimant of his right of access to the courts. The judge, meanwhile, would be left there as an administrative officer without a judicial role."

The business pages of the national daily newspapers reported on 11 August that 1993 had been a growth year for the Irish insurance industry but that the non-life sector was experiencing a continued rise in claims costs compared to revenue growth according to statistics compiled by the Irish Insurance Federation. The articles quoted the Deputy President of the IIF, *John Gibson*, as saying that consumers could not expect any meaningful reduction in premiums until the causes of high claims were tackled. He said the insurance industry itself was doing all it could to bring costs down but some factors, such as the high cost of each claim in Ireland, were beyond its control. Another factor was the inefficiency and expense of the Irish legal system. The article in *The Irish Times* questioned whether the insurance industry would translate lower personal injury payments into lower premiums and stated that, according to a Government source, a proposal was being seriously considered to set up an independent monitoring committee for the insurance industry. Such a committee would have responsibility for ensuring that lower compensation payments would lead to lower premiums.

Dublin Corporation complains about claims

The *Irish Independent* of 25 July reported that local authorities were

facing "a massive £80m bill in outstanding claims from public liability cases". The article quoted Dublin Corporation spokesman, *Noel Carroll,* as saying that there had been a decline in the number of claims being filed but a huge increase in the amount of money being paid out. "Certain solicitors are advertising their services for compensation cases in an unacceptable way. Many are targeting the poorer areas of the city and their policy of 'no foal-no fee' is encouraging a greater number of claims than is warranted. The legal fees involved in these cases are a lucrative business for a lot of solicitors." The article quoted a Law Society spokeswoman as saying that the Society would defend the right of anyone genuinely injured through someone else's negligence to sue. She said that most cases were genuine but that if any evidence was produced showing that a solicitor *knowingly* pursued a false claim then the Society would regard that as serious misconduct and act accordingly.

The Irish Times of 11 August also reported on the measures being taken by Dublin Corporation to stamp out fraudulent claims and quoted Noel Carroll as saying that the Corporation had discussions with the Law Society about solicitors taking on claims on a 'no foal-no fee' basis as in his view this was encouraging an immoral claims culture.

Controlling entry to the professions

An article in *The Irish Times* of 2 August 1994, by *Kieran Conway,* examined how entry into the professions is controlled. Noting the routes of entry to the Law School, the journalist commented that "the limit is now decided by the available places in the Law School. Those who qualify join a queue. Much more importantly, they must secure an apprenticeship with a practising solicitor. Critics say the queuing system is anti-meritorious. The brightest have to wait their turn, delaying their entry to the labour market, and having to bear the additional cost of that delay. Furthermore, critics say, the securing of apprenticeships has nothing to do with merit but with influence." The article quoted a spokeswoman for the Society as saying that there were two schools of thought about how to deal with the numbers wishing to enter the profession. One, alarmed at the growth in numbers and impact on solicitors' living standards, favoured limiting entry, confining places and apprenticeships to law graduates as happens in other disciplines; the other was prepared to leave it to the market to effect the shake-out.

Paltry criminal injuries compensation

The *Sunday Press* of 7 August reported criticism by the Law Society of the "paltry" scope of the scheme of criminal injuries compensation.

Tributes to the Chief Justice

The national daily papers on 30 July 1994 reported the tributes paid to the Hon Mr *Thomas Finlay,* Chief Justice, on the occasion of his final day presiding in the Supreme Court before his retirement. The papers quoted *Michael O'Mahony,* President of the Law Society, as saying that the Chief Justice would be remembered by solicitors as an extraordinary man who always presented as an ordinary man. ❐

Barbara Cahalane

Expansion of Complaints Section

Patricia Casey

Brid Brady

The Society's Professional Practice Department which deals *inter alia* with complaints, has been expanded with the appointment of an additional solicitor. *Patricia Casey* joined the department in March of this year. She also acts as secretary of the Society's Criminal Law Committee and the Remuneration and Costs Committee. Patricia graduated with a BA from UCD in 1972 and pursued a career in the insurance industry prior to being admitted to the Roll of Solicitors in 1985. Following qualification she worked in private practice, principally dealing with personal injuries and criminal law, before joining the Law School as a tutor in 1992.

Brid Brady, joined the department on 1 August replacing *Catherine Brennan,* Solicitor, who left the Society in June to move to County Louth. Brid Brady graduated from UCD with a BA in 1972 and taught for a number of years before being admitted to the Roll of Solicitors in 1978. Following qualification she worked in private practice, principally dealing with commercial and residential property and probate and administration. She joined the Law School as a full-time tutor in 1992. Brid will also act as secretary of the Society's Conveyancing Committee.

Patricia Casey and Brid Brady, along with their colleague, *Linda Kirwan,* Senior Solicitor, Professional Practice Department, deal with initial phone calls and letters of complaint from members of the public and seek to conciliate matters where possible. The solicitors also provide administrative support to the Registrar's Committee of the Society. ❐

Reflections on the Life and Writings of *Terence de Vere White*

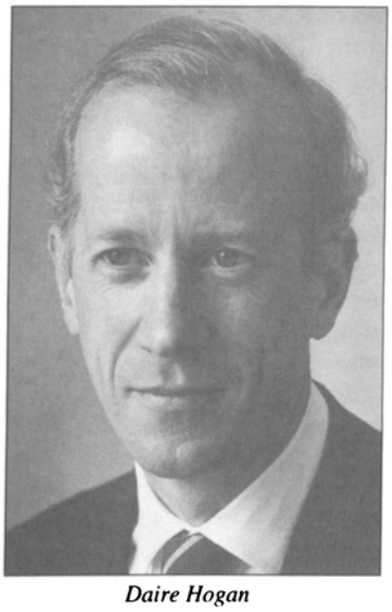
By Daire Hogan*

There cannot be many novels which commence in the manner of Terence de Vere White's *Mr Stephen* (published in 1971) with a dinner given at his home by the President of the Law Society to the members of the Council (or, indeed, conclude with another dinner hosted by the President, in the zoo). One guest, the eponymous "Mr Stephen" Foster reflects that "There was nothing creative about the life [of the average attorney]. All one left after one was the money that showed what you had earned and how you had looked after it, and a name that was forgotten in five years. A hall porter in a large hotel had more fame in life and as long in memory."

The obituaries and appreciations published on the death in June of Mr de Vere White demonstrated the remarkable respect and affection in which he was held by his friends and colleagues, the breadth of his interests and his contribution to many walks of Irish life. He will be remembered for very much longer and for being very much more than the average attorney.

He wrote over 25 books, including a dozen novels. A number of these deal with legal themes or personalities, and an aspect of his work in which lawyers might take a particular interest is the depiction of professional life in Dublin in the mid-century in a number of his earlier novels, published between 1957 and 1971. Much of their physical landscape has disappeared or changed – his characters dine in Jammet's, following which one of them wishes to climb up to the top of the Nelson Pillar, or at the Russell Hotel, or meet for drinks at the Hibernian – but his portrayal of states of minds of lawyers, apprentices, law clerks, secretaries and clients will endure.

These books include some of his best writing and – irrespective of any legal connection – certainly appeal to a



Daire Hogan

wider audience than that contemplated by the curious note on the dust-jacket of *The Remainderman* (1963) advising the prospective reader that it will interest "people bored with vast American novels and with the cult of sexual grossness."

Mr de Vere White, who was the son of a solicitor, was admitted as a solicitor in 1933 and practised for over 30 years, from 1947 in partnership in McCann White and FitzGerald. His offices were initially in Nassau Street and thereafter in St. Stephen's Green. He was elected to membership of the Council of the Law Society between 1954 and 1961. In that year, having for some time, like Trollope, written early in the morning before attending at his office, he left the law to become Literary Editor of *The Irish Times*.

He can be found in the diaries of *Evelyn Waugh*, obtaining "written instructions" in 1946 to bid at an auction of a castle on behalf of Waugh, a sensible precaution since the diarist was "in a sort of stupor" after a long lunch at the Unicorn. Twenty-five years later *Mr Stephen* would contain a description of that lunchtime institution in Merrion Row. At about this time Mr de Vere White also acted for *JP Donleavy* in the purchase for £350, of a rather derelict cottage and four acres at Kilcoole, Co. Wicklow, and was consulted by his friend, *Gainor Stephen Crist*, the original "Ginger Man", about the establishment of a private drinking club. Donleavy writes that "one imagines that Mr de Vere White cautioned upon the licensing difficulties and expense of such a venture for Crist failed to pursue the matter."

In *The Remainderman*, a law clerk writes to an apprentice, dispirited by his initial contact with the law, that he should persist and "later on you may give up this life which I can see does not attract you much". That in due course his literary career developed to the exclusion of law in his life should not obscure the fact that he had a full legal career in itself. The novels with a particular legal interest were informed and animated by a very thorough knowledge of legal practice.

An Affair with the Moon (1959) is narrated by an English solicitor who moves to Ireland, and is advised when purchasing a property to do so not in his own name but through a defunct company (Fit U Limited) supplied by his solicitor, to save an enormous sum in stamp duty. *Mr Stephen* is a splendid account of legal manoeuvres in property development or site assembly in north County Dublin.

His first book, written as the preface indicates with unusual precision in these matters between October 1943 and November 1945, was a life of *Isaac Butt*. Between November 1946 and May 1948 he wrote his biography of *Kevin O'Higgins*. In 1957 he published the strange *A Fretful Midge*, nominally or supposedly the memoirs of one Bernard Vandeleur, but in fact an autobiographical account of Irish life in the 1940s and 1950s.

A sense of fun in small matters is very strong in his books; an old solicitor in

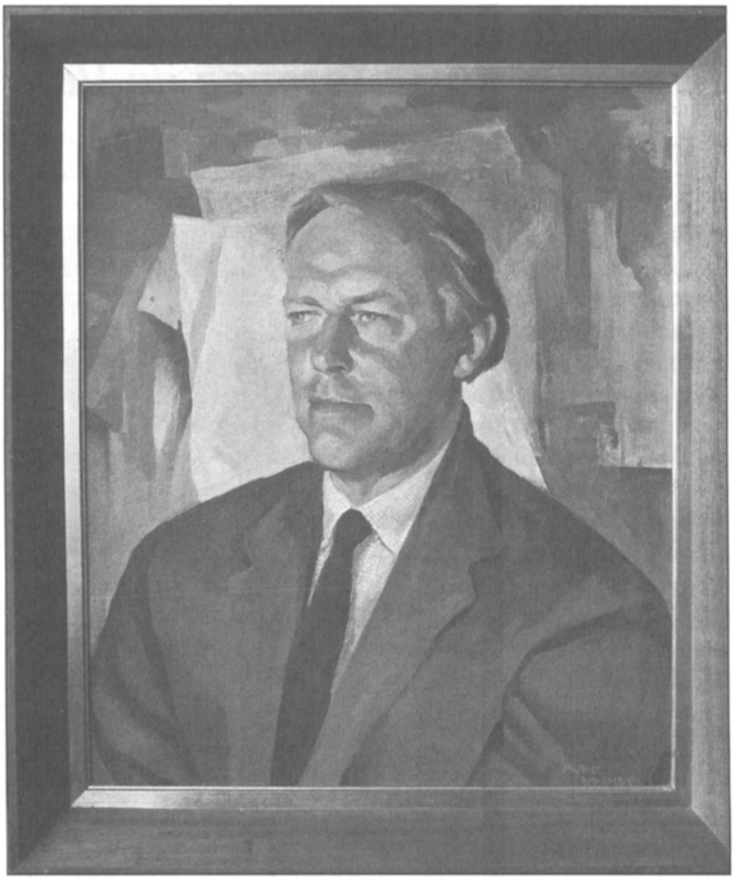
Ely Place has pet mice, known as Sadlier and Keogh, which escape and are found behind "a weighty bundle tied up in green tape . . . labelled "in re Lynch, Haughey v Colley" . . . the papers were rather loose as if they had been put together in a hurry" (*The Lambert Mile*, 1969). "Hanna and Figgis" must have seemed an unlikely firm of booksellers in 1966, but so also would "Swiss & Browners" as a department store in 1959.

His characters and their situations have many comic features, and there are some set pieces, such as a gymkhana in *Mr Stephen* or a hunt in *An Affair with the Moon* of which Waugh would have been proud. However in his writing there is an underlying seriousness of purpose and a number of illustrations of how comic situations may have uncomic consequences. Relations between men and women in his books are rarely straightforward.

The Remainderman is the story, again told in the first person, of Michael Whaley, a young man of 17 who, following the death of his mother, is apprenticed to the family solicitor in Ely Place in 1929. (Mr de Vere White himself was apprenticed when 16.) It is primarily about his sentimental education and encounters with the opposite sex, but contains some unforgettable accounts of the old-fashioned legal office and style of legal practice. His master was a person whose room and appearance conveyed "an impression of inflexible respectability". Running messages was "dignified by the name of court work".

Mr de Vere White had a particular gift for conveying straight-faced and utterly convincing accounts of incompletely understood events seen through the eyes of a young observer. *Prenez Garde* (1961) is narrated by a nine-year old boy. One of his best passages on the subject of first encountering the law is the description (in A *Fretful Midge*) of his introduction to the courts, which deserves to be quoted in full:

> "On my first day in the office I went down with one of the clerks to court. He had to attend a young barrister who was making an application of some kind. It was a formal matter, but I noticed with surprise that before the barrister could answer the questions which the Judge put to him, he had to turn to the clerk who muttered the answers. It surprised me to find that the role of barrister was that of an elaborately decorated conduit pipe. It seemed a clumsy arrangement and, had I been the Judge, I should have been irritated by being addressed by a redundant interpreter. I began to wonder if the life of a barrister was not one of ridiculous ease compared to a solicitor's, in which all this information had to be collected.
>
> Next day I was sent down with a brief to the same barrister. I demurred. What use would I be who knew nothing about the case? The clerk assured me that I had no need to worry, and I could explain that he was too busy to come down himself.
>
> I handed the barrister his brief with respectful deference and apologised for the clerk 'who', I said, 'asked me to explain that he is too busy to come down today to prompt you'.
>
> I thought there was something distant in the barrister's manner at parting, but I attributed it to natural shyness. Years later when I found he regarded me with profound suspicion, I remembered our first conversation."



Portrait of the late Terence de Vere White, by Muriel Brandt, which hangs in the offices of McCann FitzGerald, Dublin.

The young solicitor, when he had qualified, might encounter difficulty too:

> " 'How long would it take to get [a court order]?' "
> Ralph hesitated. He wasn't sure. One was always meeting these elementary questions, and it was humiliating not to have the answer pat . . . . [He] hoped he sounded authoritative; he felt miserable" (*The Lambert Mile*).

Mr Fox, Ralph's employer, "had a dominating personality; speaking he commanded silence; his own silences were daunting. Even after a client had stated his business Mr Fox in measured terms repeated it again as if to demonstrate that until then it was a mystery. . . as he had no temptation to

share anything he was a perfect confidant". His room, he told Ralph, had 223 briefs on the floor; "I tell Mrs Hayes that she must never dare to move one of them – she complains that the room is impossible to clean. But any disorder in a system is fatal. I know where to put my hands on everything."

Mr de Vere White's master died leaving him in charge of the office at the age of 24, with a ready-made clientele mostly of country landowners. "The Horse Show made very little difference in the office. None of the staff was given time off to attend during the week but country clients, up for the show, dropped in to ask questions. It was always interesting to see in person someone who, up to then, had been a name in white paint on a black tin box." (*The Remainderman*).

Most young men in his books are dependant upon older solicitors, frequently shown as pompous and didactic and regarding clients as an interruption in a day's work, hazards in a professional minefield. Two older men who have a wider vision are Stephen Foster and Batley, a law clerk. Mr Stephen is attempting to develop his traditional family firm over the ineffective reservations of his partners by seeking the business of the "new men" coming into prominence in business life. He is keenly aware of the potential damage of a scandal over a will to which he might have subscribed his name as witness the day after the testatrix had signed. His story is tightly plotted and very well integrated, with the widest gallery of human nature, including many varieties of solicitor, in any of his novels.

These include the vaguely disreputable client who recognises the utility of a respectable firm of lawyers and who "glanced at the contract. He never read one. It weakened his hand if, later, he had to take an action for negligence against a solicitor" and the partner's wife who reflected that "the office produced money, and not always as much of that as one had been led to expect. Apart from that it breeded only dullness and routine and the worst kind of worry".

Stephen Foster is a leader in the profession. Mr Batley in *The Remainderman* has given 45 years' service as a law clerk in Ely Place, silently resenting his employer and Michael Whaley's master, Mr Daunt. When Michael is told by Mr Daunt that he would not approve of him going to Trinity to further his education, Mr Batley, up to then a cypher going through the professional motions, reveals an unexpected side to his personality, urging Michael to read books on law and politics which he has collected: "I hoped when you began to read you would come to see what a wonderful thing the law is. I want you to look at it through the eyes of great men. . . I buy one every year. I've read them so often. I know them by heart. Law is a beautiful thing when you read that class of book. We can't live without it. It's when you get it in its raw state that it bores you and sickens you. But these were great men. When I read them I knew a man could be proud of being a lawyer." Later Mr Batley is led away after he has hurled his employer's papers out of the window into the street, but not before he has presented his library to Michael.

Mr de Vere White's experiences in the practice of law would have enriched and given much food for thought to his literary impulse and his interest in human nature and its idiosyncrasies. His work is a legacy by an Irish lawyer of great literary merit. It will give pleasure to many for ages to come.

**Daire Hogan is a partner in the firm McCann FitzGerald* ❐

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- Liberalisation of Economic Activities and Privatisation of Enterprises in relation to Competition Law

National rapporteurs from the Irish Society for European Law will present their reports to the Rome Congress.

Annual General Meeting

The Annual General Meeting of the Society will be held in the Commission Offices of the European Union in Molesworth Street, Dublin 2 on October 20, 1994 at 6.00 p.m. The Chairman, *Vincent Power*, will deliver a lecture reviewing legal developments in the European Union. A wine reception will follow.

Journal

Volume 3, No. 1 1994 of the *Irish Journal of European Law* edited by *James O'Reilly*, SC and *Anthony M. Collins*, BL, will shortly be sent to members.

Persons interested in acquiring further information, including details of the Society, should contact the Secretariat, Office of the Solicitor, Telecom Eireann, 52 Harcourt Street, Dublin 2.
Tel: (01) 671 4444 Ext. 5929.
Fax: (01) 679 3980. ❐

Event Diary – September/October

Seminar on the Criminal Justice Act, 1994 and the Criminal Justice (Public Order) Act, 1994
6 September at 6.30 p.m.
Blackhall Place
Admission free. All welcome.

Conference on Religious Morality & Public Policy
7–8 September, Arts Building, Law School, Trinity College
Contact: Gerry White. Tel: 01–702 1125

Concert & reception in aid of Solicitors' Benevolent Association
15 September at 7.30 p.m.
Presidents' Hall, Law Society
Contact: Mary Kinsella, Law Society

Law Society Council Meeting
16 September, Law Society

Conference: Drugs War: Legalise or Lose
16 September, University College Cork
Contact: Graduates Association, UCC
Tel: 021–276871 Fax: 021–274948

Kerry Law Society Meeting
20 September at 8.00 p.m.
The Courthouse, Tralee
Contact: Louis O'Connell, Secretary, Tel: (066) 21015

Annual Law Services

Muslim Service
30 September at 1.00 p.m.
The Mosque, Sth Circular Road

Jewish Service
1 October at 11.00 a.m.
The Synagogue, Adelaide Road

Roman Catholic Mass
3 October at 10.00 a.m
St. Michan's, Halston Street

Joint Protestant Service
3 October at 10.15 a.m.
St. Michan's, Church Street

(See also advertisement on page 244)

International Bar Association 25th Biennial Conference
9–14 October, Melbourne
Contacts:
Mary Kinsella, Law Society
Tel: (01) 671 0711
Alan Benson, Sadlier Travel
Tel: (01) 677 7300
John Galligan, John Galligan Travel
Tel: (01) 661 9466

CLE Courses

Current Considerations in the Purchase of New Apartments
Friday, 16 September 2.00 – 5.30 p.m.
Blackhall Place

Wards of Court
Thursday, 22 September,
6.00 – 8.00 p.m.
Blackhall Place

Practical Implications of the Commercial Agents Directive
Thursday, 29 September,
6.00 – 8.30 p.m.
Blackhall Place

Practical Medicine for Lawyers
13 October, 2.30 – 5.30 p.m.
Blackhall Place

Advising the Client in Custody
20 October, 6.30 – 8.30 p.m.
Blackhall Place

Administration of Estates
26 October, 2.00 – 6.00 p.m.
Blackhall Place

Residential Advocacy Course
4–6 November
Bellinter House, Navan, Co. Meath

Contact for CLE bookings: Emma Shanley, Law School Tel: (01) 671 0200. ❐

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Forthcoming AIJA Seminars

Current Trends in Cross Border Insolvency – Windsor/Blenheim, England, 30 September – 2 October 1994

This seminar is aimed at giving practitioners the opportunity to consider and discuss different approaches taken to cross border insolvencies. The seminar, which will be conducted through English, includes participation by speakers involved in some of the recent high profile insolvencies, such as BCCI. The seminar takes place at the Coppid Beech Hotel and culminates in a tour and dinner on Saturday 1 October at Blenheim Palace.

Introduction to German Business Law – Dusseldorf, Germany, 26-29 October 1994

This seminar will be held simultaneously in English and French and is aimed at providing as wide an introduction as possible to German business law. The topics include conflict of laws, commercial law, labour law, corporate law and tax law.

For further details on both seminars, fees and booking arrangements contact *Petria McDonnell*, McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1, Tel: (01) 829 0000 Fax: (01) 892 0010. ❐

Society of Young Solicitors Autumn Conference

The next conference of the Society of Young Solicitors Ireland will take place from 4 to 6 November at Ashford Castle, Cong, Co. Mayo.

The principal speaker will be Professor *JCW Wylie*.

See also brochure and booking form for the conference enclosed with this *Gazette*. ❐

Compensation Fund Risk Control – The French CARPA Scheme

by Colm Mannin*

The efforts of the Law Society to deal with the escalation of claims on the compensation fund have focused the attention of all Irish solicitors. The sharp increase in the cost of the practising certificate for the current year will undoubtedly stimulate further reflection on what can be done to bring exposure within acceptable limits.

As the problem is by no means unique to Ireland, in its efforts to deal with it, the Law Society may therefore find guidance from the practice of some of its foreign counterparts. In particular, the CARPA scheme operated by the French avocats provides a very effective means of preventing improper use of client funds. This article will describe the operation of the scheme. In preparing it, the author sought the views of a cross-section of members of the profession as to how they perceived the effect of the operation of the scheme on their respective practices. Overall impressions were very positive despite recognised administrative delays in the processing of transactions.

The CARPA Scheme of Handling Client Funds

The essence of the scheme is that instead of individual avocats or firms of avocats lodging clients monies to client accounts held in the name of the practitioner or his firm, all funds must be lodged to the bank account of the CARPA, a non-profit making association. The accumulated funds can then be placed on short, medium or even long-term investment. The proceeds are used to further the interests of the profession.

The scheme has thus two significant differences compared to that which operates in Ireland. Firstly, the funds are not held in the name of the individual lawyer or firm although the

Colm Mannin

latter has control of the account but only by delegation from his Bar Council so that his authority can be withdrawn at any moment. Secondly, except in the case of proceeds of sale or sums recovered by sequester, interest earned on clients funds does not accrue to the benefit of the client but rather to the profession itself. In a sense, the client forfeits his right to interest in favour of the CARPA so that the latter can finance the various services provided to the profession and the public. From the client's perspective, the most important service he gets is the constant and extremely rigorous surveillance which CARPA maintains over the use of client funds. In reality therefore, the client is buying an insurance policy against misuse of his funds.

It might be asked why the client should have to pay anything to protect himself against the negligence or dishonesty of his lawyer. The pragmatic answer to such an objection must be that the profession has grown such that the numbers of practitioners and the amounts of monies they handle dictate the need for tight control, the cost of which will, in one way or another, be reflected in the fees the client will be asked to pay. The efficiency of the CARPA scheme is such that the overall cost is minimal. For example, while few practitioners would bother to place small amounts in interest-earning accounts, they do earn money under the CARPA scheme because as all client monies are payable to CARPA, the accumulated total of funds, including even the smallest amounts, constitutes a very substantial sum on permanent investment. Hence, in a city having 600 avocats, the local CARPA could have a sum in the region of 250 to 300 million francs on permanent investment.

Other justifications for the fact that the client forfeits his right to interest on monies deposited with his avocat are that firstly, the latter takes no personal benefit from the arrangement and secondly, the interest earned is used to improve the overall quality of service provided to the public.

CARPA Associations

As already stated, CARPA is a non-profit making organisation, constituted as an association and operating very much like any other type of association with a charter, bye-laws, committee, sub-committees and Chairman (or President as he is called in France). By virtue of that status, its revenues are thus exempt from taxation even though it has a defined revenue-earning objective since its charter authorises it to place client monies on investment.

There is not one but several CARPA associations, each within the jurisdiction of a local Bar Council by reason of the decentralised structure of the profession of avocat. In France there is no national Law Society. Instead, each region has its own local Bar Council (Conseil de l'Ordre) headed by a president (Bâtonnier) elected from the avocats attached to the local Bar. Each Bar Council has its own CARPA association. The members of the association are the individual avocats attached to the local Bar. The association is governed by a

Board of Directors which is presided over by the Bâtonnier.

While management decisions will be taken by the Board of Directors, the day-to-day running of the CARPA is undertaken by a permanent staff. The staff processes the lodgements of client funds made to the CARPA account, monitors the state of each client account, undertakes the investments of funds and provides various services to practising avocats such as photo-copying facilities, electronic mail, assistance with accounts etc.

Handling of Client Funds

The handling of client funds is done through a bank account opened in the name of CARPA. Each avocat is authorised to sign cheques on the account. As mentioned earlier, his authority for doing so is by delegation from the Bâtonnier so that in the event of misconduct, the authority can be withdrawn. In practice, each avocat is holder of a sub-account at the bank where the CARPA account is held. In order to ensure accurate monitoring of transactions, an individual code is attributed to each separate matter on behalf of each client.

The bank handling the CARPA account is required to monitor very strictly each client account. All monies lodged and withdrawn on a matter must carry the corresponding code. Hence, if for any reason, an account shows a debit balance, CARPA is immediately informed by the bank and must forthwith require that the avocat rectify the situation. The French Bar is justly proud of the fact that the profession maintains an impeccable reputation for the handling of client funds. Indeed, it is a mark of the effectiveness of the scheme that having been started by a small group of Parisian avocats on a voluntary basis in 1957, it ultimately became mandatory for all members of the profession by a law of 25 July, 1985.

CARPA Services to the Profession and the Public

CARPA offers an extensive range of services to the profession and the public. They are entirely self-financed from the proceeds of invested client funds. Typically, a CARPA will provide grants for students to enable them undertake their law studies, finance continuing education for practising avocats, arrange health insurance and retirement schemes for its members, provide information to the public as to their legal rights and also financially assist legal aid schemes (the CARPA remunerating the young avocats involved). In addition, CARPA meets its overheads from its income and usually pays a proportion of its revenues to the local Bar Council as a contribution to the latter's operating costs. It can be readily seen that CARPA thus relieves the local Bar Council of many of the more costly services which it would otherwise have to provide from its own resources. It is interesting to note that the cost of a practising certificate is relatively low compared with England or Ireland. In Toulouse, France's fourth largest city, the current charge is 4,400 francs. Jean-Henri Farné, the local Bâtonnier, estimates that if CARPA did not exist, the cost of the practising certificate could be as much as five times that amount if the avocats were to provide from their own resources the range of services currently offered through CARPA funding.

The Practitioner's View

French avocats are generally very satisfied with the CARPA system in so far as the benefits to the profession are concerned. However, there are frequent complaints of delays in the processing of lodgements, typically from 8 to 15 days. Big firms like Clifford Chance which handle large sums for corporate clients consider that such delays impact on their own image vis-a-vis the client as well as that of the profession as a whole. *Gérard Honig*, partner in Paris-based Honig Buffat Mettetal, a medium sized business law firm, evokes the same difficulty, mentioning that often, sums have to be paid directly from client to client although he points out that in a debtor-creditor relationship the practice runs the risk of a seizure on the debtor's bank account since a direct payment would provide the creditor with the identity of the account to be garnished.

Bâtonnier Farné considers that the CARPA has been an outstanding success which he attributes to the fact that it is a simple, uncomplicated scheme. He believes that without the CARPA, it is doubtful that the profession would be able to offer the same range of services in a large provincial city like Toulouse. He also points out that some of the CARPA facilities available to the local avocats have proved particularly invaluable such as PAIE AVOCAT, a computerised service for salary administration which relieves avocats of much of the paperwork involved in dealing with staff remuneration. *Jean-Pierre Duffour* of Clifford Chance (Paris) mentions the benefits of AVOCATEL, a minitel online link between law firms enabling avocats to correspond by electronic mail and which also provides link-ups to the courts and to government registries. The value of such a system for the eleven thousand practitioners in Paris is considerable. AVOCATEL also operates in other French cities.

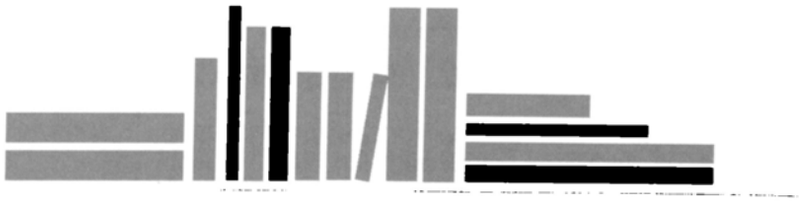
Alain Coroller-Bequet, a sole practitioner in the Breton town of Quimper, points out that the CARPA guarantee against misuse of client funds gives the public a sense of security and enables the profession to maintain an excellent reputation, a factor which benefits all firms, regardless of size. He also considers that the funding which CARPA provides for the local Bar relieves the avocats of a financial burden which would otherwise be particularly onerous for the sole practitioner.

A CARPA Scheme for the Law Society?

As the Law Society continues to examine ways and means of minimising the burden of claims on the Compensation Fund, it may find positive elements in the CARPA scheme of the French avocats. The approach to the handling of client funds is obviously very different from that which prevails in Ireland but the CARPA scheme has proved that it works for both the profession and the

(Continued on page 271)

BOOK REVIEWS



Law Firms in Europe: The Guide to Europe's Commercial Law Firms

Edited by John Pritchard, Legalease, London, 752, pp, paperback, Stg £29 plus £4 postage.

In *Lions of the Eighties: The Inside Story of the Powerhouse Law Firms*, (Doubleday, New York, 1982), Paul Hoffman opened the doors of the powerful world of corporate law firms and introduced us to the powerbrokers who influenced the decisions of top businessmen and politicians in the United States. He wrote of the men "who have worked and wormed and wriggled their way" to the top positions in legal firms. He noted that the top corporate firms were the movers and shakers of the legal establishment, the "lions" of the legal profession. Except for rare public personages, they were anonymous men, unknown to the general public and strangers even to many lawyers.

Hoffman could very well have been writing about the top law firms in Ireland. He noted that the lawyers in the top law firms do not breed Perry Masons who indulge in jury swinging, headline-hunting histrionics. Despite the explosion in litigation, few corporate lawyers see the inside of a courtroom and their knowledge of murder cases and the general criminal law was confined to movies and mystery novels. The average man or woman would never have occasion to consult these legal eagles. The lions of the corporate law firms do not deal with the average legal problem. Hoffman noted that for nearly a century the powerhouse law firms in New York had a virtual monopoly of the legal representation of America's wealth, commercial banks, investment banks and stockbrokers.

More than a century ago Alexis de Tocqueville proclaimed lawyers the American aristocracy. If this is still so, the lawyers featured in *Law Firms in Europe* represent *la crème de la crème* of the legal elite.

Law Firms in Europe is a guide to the legal commercial law firms in Europe. The book is not confined to EU countries and firms throughout Western, Central and Eastern Europe are included. There are two distinct parts in each chapter: the editorial section and the directory section. The editorial section consists of factual information and commentary. The commentary consists of a general review as to which firms do what types of work and which firms are generally considered by their peers to have a "good name" within the national international legal community. The editorial is based principally on the combined opinions of the many lawyers who contributed to the research in each country. The editor states that it is important to appreciate that the editorial lists should not be taken as a definitive statement on European law firms but rather as a starting point for discussion.

Readers will be interested to note that in relation to Ireland, the editorial states that billing rates are agreed in advance by the client in the law firm and these may vary according to the complexity and value of the matter but, as a guide, the typical hourly rate for a partner is around IR£150. Overall, the view is that the legal profession in Ireland is faring well and it would seem that the outlook for 1994 is promising. The property markets are beginning to pick up and the steady stream of blue chip companies into Ireland is considered an important source of new work for many of Ireland's leading commercial law firms. The editorial states, however, that newly-qualified lawyers find it difficult to secure a job with a law firm in Dublin.

Lawyers with overseas business will find *Law Firms in Europe* useful.

Dr. Eamonn G. Hall ❐

The Circuit Court – Draft Order Precedents

by Samuel Gill, Chief Clerk, Cork Circuit Court, 1994, 256pp, hardback, £35.00.

This book is written by the former Chief Clerk of the Cork Circuit Court who has 24 years experience in the administrative side of the Court. It is a straightforward book which is an invaluable tool for the busy Circuit Court practitioner. Its author wrote it "in an attempt to lift the veil of mystique from the drafting of Orders in the Circuit Court". Many practitioners will recognise the feeling of concern on being faced with that very task, which feeling rapidly rises to panic when one's offering is rejected by the Circuit Court Office. The availability of a reliable set of draft precedent Orders available on disc as well was in the book itself is of enormous assistance.

The book is divided into six parts with a comprehensive index. Part II of the book will be of enormous use to family lawyers. In the foreword to the book, Mr Justice *Frank Spain*, President of the Circuit Court, particularly welcomes this section of the book. "This branch of the law has been growing in volume and complexity. Because it involves this delicate area of human relationships it is a demanding and difficult area of law for those who practise in it".

Part I of the book also contains precedents for various forms of injunctions. There appears to be some rule of nature which dictates that emergencies arise on Friday

afternoons, or outside court term. Frequently injunctions must be obtained and served the same day. Unlike barring orders, the service of those civil remedies are the responsibility of the practitioner and not the Court staff. It is most useful to have reliable precedents when faced with such pressures.

If one is to find fault with this book it is probably that it does not contain precedent notes with reference to various parts of the Orders elucidating the law and practice pertaining to each portion.

Many practitioners might argue against the specimen consent for separation agreements which would run outside the terms of many tightly drafted proceedings. It is interesting to note the salutary words of advice/warning in the adjoining jurisdiction of Lord Oliver of Aylmerton in *Dinch v Dinch [1987] 2 FLR 162 AT 164:*

"It is in all cases the imperative professional duty of those invested with the task of advising the parties to these unfortunate disputes to consider with due care the impact which any terms which they agree on behalf of their clients has, and is intended to have, upon any outstanding application for ancillary relief, and to ensure that such appropriate provision is inserted in any Consent Order made as will leave no room for any future doubt or misunderstanding, or saddle the parties with the wasteful burden of wholly unnecessary costs. It is, of course, also the duty of any Court called upon to make such a Consent Order to consider for itself, before the Order is drawn up and entered, the jurisdiction which it is being called upon to exercise and to make clear what claims for ancillary relief are being finally disposed of. I would, however, like to emphasise that the primary duty in this regard must lie upon those concerned with the negotiation and drafting of the terms of the Order and that any failure to fulfil such duty occurring hereafter cannot be excused simply by reference to some inadvertent lack of vigilance on the part of the court or its officers in passing the Order in a form which the parties have approved."

If what one is trying to achieve in a Consent Order is not within the ambit of the pleadings and the jurisdiction of the Court to order, it can always be dealt with by way of an undertaking. Such niceties can be overlooked in the heated atmosphere of a Court session. Practitioners will always have an eye to subsequent enforcement of an Order when drafting it up. Not to do so carefully is a recipe for trouble at some future date. Traditionally however, such Consent Orders are drawn up in a rushed fashion on the day of hearing, not infrequently in handwriting. Useful guidelines on drafting precedent Consent Orders would be enormously useful to the busy family practitioner. In the UK the Solicitors' Family Law Association produced a book of precedents for Consent Orders which is already in its third edition. Perhaps Mr Gill could be encouraged to consider the issue of Consent Orders in their own right in another companion volume.

In view of the demands on every practitioner to combine efficiency with effectiveness, Mr Gill's book is of enormous assistance and is well worth the outlay. The diskette option for those using Word Perfect 5.1 is especially welcome.

Rosemary Horgan

Trademarks from Here to 2000

Published by European Communities Trade Association

This recently published booklet contains an account of a conference organised by ECTA and held in Madrid in June 1993.

The conference was attended by representatives from thirty nine different countries spanning all the continents. There have been twelve such conferences of this association. The inaugural speech was given by the Director General of The Spanish Patent and Trade Mark Office after dinner at the beautiful Retiro Park in Madrid.

Over the following two days the papers were delivered by selected speakers concerning developments in the laws relating to trademarks among the member states of the European Community and what was formerly known as the Eastern Block nations.

Among the speakers was *Martin J. Tierney* of FR Kelly Dublin who spoke on the subject: "The trademark profession – where will it be in the year 2000?"

National trademark systems in the European Community are now governed by the Trademark directive of December 1988. Countries belonging to EFTA and the countries of the Central and Eastern Europe will also have adopted new trademark legislation compatible with the 1980 directive by the year 2000. Uniformity should facilitate the obtaining of trademark protection but having identical substantive rules does not mean that they will lead to identical results. The lack of harmonisation with regard to registration procedures and procedures governing infringement actions means that the outcome will not necessarily be identical.

A mark which is un-registerable for lack of distinctiveness may still be registered if it has acquired the necessary degree of secondary meaning. Acquiring distinctiveness or secondary meaning in one country within a language area will be a much easier achievement than doing so on a Europe-wide scale. This is particularly so with Austria, Norway and Sweden about to add to the language problem. The Babylonian Principle requires that the Community Trademark Office should be able to decide matters in all nine officials languages of the community. But not all agree.

Mr. Tierney tells us in his self-effacing fashion that by the year 2000 he will have reached his "sell-by date" thereby allowing him certain freedom to indulge in pure speculation. In

doing so he displays a certain grasp of the acronyms of the 90s. If we are to believe him, the PDA (Personal Digital Assistant); the PAC (Personal Activity Centre); and the GSM (Global Systems Mobile) will influence the manner in which work is done by us all and will facilitate the registration and protection of Trademarks.

One interesting development in the years ahead may be the establishment of the Diploma in Trademarks in Law and Design as a pre-requisite qualification to anybody embarking on a career as a professional trademark representative. This will inevitably lead to the regularising and formalising of training for these professionals. Since this profession draws substantially from an existing legal pool it may well prove that today's school leavers with a flair for languages and a penchant for the law will see themselves as budding trademark agents forging a living in the 21st Century.

Justin McKenna ❐

Compensation Fund Risk Control – The French CARPA Scheme

(Continued from page 268)

public. In addition, it has created employment, a not insignificant consideration in the current state of the economy. If the Law Society was to consider a similar scheme it would undoubtedly receive assistance from the principal officers of those involved in CARPA associations both in Paris and other cities and thus benefit from the thirty years of experience of the operation of the scheme in France.

The author thanks Bâtonnier Jean-Henri Farné and Maître Jean-Pierre Duffour for their invaluable help in the preparation of this article.

* *Colm Mannin, Senior Counsel, Ainbus Industrie, Toulouse, France, is a member of the Incorporated Law Society of Ireland.* ❐

Profile of the Profession

There is now one practising solicitor per 887 members of the population in Ireland and over half of all solicitors practise on their own, according to the latest data compiled by the Law Society.

Membership Statistics

Number of solicitors on the Roll as at 30 June 1994	5,436
Number of solicitors holding practising certificates	3,969
Number of newly-admitted solicitors (1 July 1993 – 30 June 1994)	304
(Growth as a percentage of solicitors on roll)	7.6%

Size of Practices

The following is the most recent profile of practice units and practising solicitors available (as at 10 March 1994):-

Practice units

1,795 units, of which

1,325 sole principals, of which	(73.8%)
993 sole principals (no assistants)	(55.3%)
332 sole principals (with assistant(s))	(18.5%)
470 partnerships, of which	(26.2%)
307 2 partners	(17.1%)
163 2+ partners	(9.1%)

Practising solicitors

3,877 practising solicitors, of which

1,325 sole principals	(34.2%)
937 in partnership	(24.2%)
1,326 assistants	(34.2%)
289 employed solicitors (financial institutions etc.)	(7.4%)

No recruitment statistics are available in relation to solicitors on the Roll who have not taken out practising certificates.

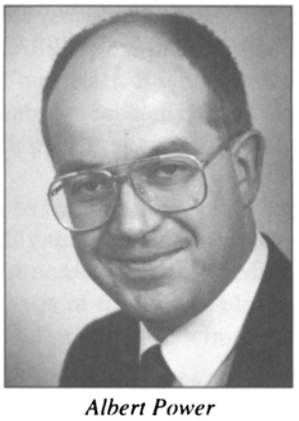
Ratio to Population/Labour Force

Practitioners per head of population (1991 census – 3,523,401)	1 : 887
Practitioners per members of labour force (1992 figures – 1,350,000)	1 : 340
Practitioners per numbers employed (1992 figures – 1,125,000)	1 : 283

Barristers

The total number of barristers currently practising in Ireland is 892. ❐

Staff Changes in the Law School



Albert Power

Law School Principal

Albert Power, former Assistant Director of Education, has been appointed Principal of the Law School following the retirement last June of Professor *Richard Woulfe*.

Albert graduated with a BCL from UCD in 1980 and was admitted to the Roll of Solicitors in 1983. He obtained a first class honours Masters Degree in Equity from UCD in 1984 and served as Education Officer in the Law Society from 1984 to 1986.

Following a period of employment with the Federated Union of Employers (now IBEC) and some time in private practice, he returned to the Society as Assistant Director of Education in 1989 and since then has been active in establishing a new examination system for the Professional and Advanced Courses and revising many of the Law Society's procedures particularly in relation to apprentices.

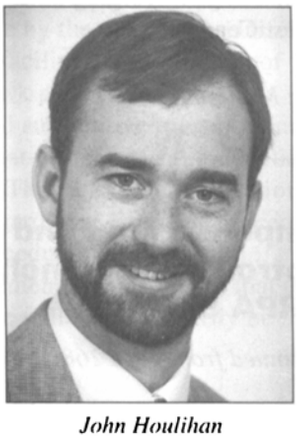
Noting that his appointment as Law School Principal coincides with a time of significant debate about the future of legal education and training, Albert Power says: "I am committed to the highest standards of excellence in our profession in these challenging times and for the future. The Society's own Law School and the training through apprenticeship must be to the forefront in achieving the aspiration of excellence."

Harriet Kinahan

Apprenticeship Officer

Former Education Officer, *Harriet Kinahan*, has been appointed Apprenticeship Officer with effect from 1 August. After graduating in Law from Trinity College Dublin in 1983, Harriet Kinahan spent a number of years involved in community and youth work before being admitted to the Roll of Solicitors in 1991. She achieved a Masters Degree in European Integration at the University of Limerick in 1992 and joined the Law Society as Education Officer.

She regards her new assignment as an essential element of the Law Society's policy of providing better services and support to apprentices and sees an important part of her role as assisting apprentices with any difficulties that may arise during their periods of in-office training. She says: "an important development is the work that is being undertaken on producing a training manual that will provide a framework for masters and apprentices to ensure that apprentices obtain sufficient and worthwhile experience in all the important areas of practice. The manual will also enable them to monitor and evaluate the apprenticeship training."



John Houlihan

Education Officer

John Houlihan replaces Harriet Kinahan as Education Officer. John

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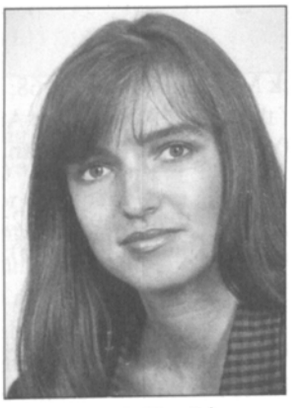
graduated with a BA and H Dip Ed from UCG in 1985 and was a secondary school teacher until 1989 when he embarked on a full-time Masters Degree in Education in St. Patrick's College Maynooth. He then worked in education administration at St. Patrick's College prior to joining the Law Society. In his role as Education Officer he will also act as Secretary of the Education and Education Advisory Committees. He says that he hopes that his background in education administration – and the fact that he is not a solicitor – will offer a useful perspective to the work of the Law School. He would particularly like to foster greater contact with students.

Tutors

Bernadette Walsh

Bernadette Walshe joined the Law School as a tutor in March 1993, replacing *Patricia Casey* who took up an appointment in the Professional Practice department of the Society *(see page 262)*. Bernadette graduated from Trinity College Dublin with a BA and H Dip Ed in 1982 and worked in Aer Lingus and as a secondary school teacher before being admitted to the Roll of Solicitors in 1989. Following qualification she worked in private practice before joining the Law School. She tutors in litigation, landlord and tenant, family, EU and environmental law.

Bronagh Fitzgibbon is a BCL graduate of UCD and was admitted to the Roll of Solicitors in 1993. She worked in private practice prior to joining the Law School as a tutor on 1 August. She will tutor in conveyancing, probate and labour law.



Bronagh Fitzgibbon

Finola O'Hanlon is a BCL graduate of UCC and was admitted to the Roll of Solicitors in 1993 and since then has worked in private practice. She joined the Law School on 1 August and will tutor in tax and commercial law.

Finola O'Hanlon

❐

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TONY O'CONNOR (EDITOR)

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- Procedural guidelines with samples of relevant forms.
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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
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Published: 5 September 1994.

Sean Fleming, Folio: 1589F; Land: Balloughly; Area: 0(a) 1(r) 25(p). **Co. Cavan.**

Thomas Wogan, Folio: 22675; Land: Gernonstown. **Co. Meath.**

John Alexander O'Neill, Folio: 750; Land: Lissataggle; Area: 205(a) 3(r) 11(p). **Co. Kerry.**

Jarlath and Margaret McHugh, Caher, Kiltimagh, Co Mayo. Folio: 22342F; Townland: Caher; Area: 0.908 hectares. **Co. Mayo.**

John A. Stewart, Folio: 3022; Land: Crocknahattin and Drumkeery. **Co. Cavan.**

Paul McMahon and Anne McMahon, Folio: 1916F; Land: Woodhill; Area: 0(a) 1(r) 30(p). **Co. Donegal.**

Daniel Crowley, Folio: 33203; Townland: Ballincurrig, Barony of Cork and County of Cork. **Co. Cork.**

John McCarthy, Folio: 23028; Land: Feavantia; Area: 0(a) 1(r) 17(p). **Co. Kerry.**

Philip and Sarah Gaughan, Balla, Co. Mayo. Folio: 30694; Lands: (1) Tully More, (2) Tully More; Area: (1) 7(a) 0(r) 24(p), (2) 4(a) 0(r) 31(p). **Co. Mayo. Solr. Ref: Co. 6622**

Patrick McKenna, Folio: 1168; Land: Part of the lands of Derrygola; Area: 21(a) 0(r) 24(p). **Co. Monaghan.**

Margaret Lambe, Folio: 29012; Land: Ballygarran; Area: 0(a) 1(r) 6(p). **Co. Kerry.**

Edmund Finucane and Catherine Finucane, Folio: 23081; Land: Crossfarnoge; Area: 0(a) 2(r) 12(p). **Co. Wexford.**

Bridget Cooney, Pollranny (Lynchelaun), Achill Sound, County Mayo. Folio: 35437; Townland: Pollranny; Area: 9.335 acres together with commonage. **Co. Mayo.**

Thomas McKenna and Patricia McKenna, Folio: 19064F; Land: Caherdavin. **Co Limerick.**

Jane Donnelly, Folio: 6362; Land: Mulphedder; Area: 41(a) 1(r) 32(p). **Co. Meath.**

(1) James Brett as tenant-in-common of one undivided fifth share, (2) Patrick Brett as tenant-in-common of two undivided fifth shares, Folio: 1189; Land: Darrigal; Area: 32(a) 2(r) 5(p). **Co. Waterford.**

(1) John Brett as tenant-in-common of one undivided fifth share, (2) James Brett as tenant-in-common of one undivided fifth share, (3) Michael Brett as tenant-in-common of one undivided fifth share, Folio: 5356; Land: Darrigal; Area: 49(a) 1(r) 32(p). **Co. Waterford.**

Thomas Doyle, Folio: 4697F; Land: A plot of ground situated in the townland of Reboge. **Co. Limerick.**

Myer Caplan, c/o Messrs Kennedy and McGonagle, Solicitors, 34 Upper O'Connell Street, Dublin 1. Folio: 4596; Townland of Snug in the Barony of Coolock. **Co. Dublin.**

Terence and Angela O'Sullivan, c/o P. O'Connor & Son, Solicitors, Swinford, Co Mayo. Folio: 22402F; Townland: Carrowmore. **Co. Mayo.**

Anne McNevin and Mervyn McNevin, Folio: 24221; Land: Ballynabarny; Area: 42(a) 2(r) 22(p). **Co. Meath.**

Mary Gallagher, Folio: 10708F; Land: Drumbologe; Area: 15.540 hectares. **Co. Donegal.**

Michael Masterson, c/o Market Square, Castlebar, Co. Mayo. Folio: 9242F; Townlands:Lugaphuill. **Co. Mayo.**

Patrick Dowling and Brigid Dowling, Folio: 193L; Townland: Naas West and County of Kildare. **Co. Kildare.**

James Crowley and Joan Crowley, Folio: 51313F; Townland: MountGabriel, Barony of Carbery West and County of Cork. **Co. Cork.**

Angela Connolly, Folio: 11224; Land: Townland of Athdown, Barony of Talbotstown Lower and County of Wicklow. **Co. Wicklow.**

Anna Doherty, Folio: 370F and 18759; Land: Greenhills; Area: 0(a) 3(r) 26(p). **Co. Kings.**

Mary Reilly (deceased), Folio: 739F; Townland: Gibblockstown. **Co. Meath.**

Simon Kelly and Carmel Kelly, 91 Season Park, Newtownmountkennedy, Co. Wicklow. Folio: 4879F. **Co. Wicklow.**

Wills

Lyng, Fr. Thomas, deceased, late of Raheendonore, Graignamanagh, Co. Kilkenny. Would any person having a knowledge of a will executed by the above named deceased who died on 17 May 1994, please contact: O'Shea Russell, Solicitors, Main Street, Graignamanagh, Co. Kilkenny. Tel: 0503-24106 Fax: 0503-24642.

Cleary, Judith, deceased, late of Killahagan, Templemore, Co. Tipperary. Would any person having knowledge of a will executed by the above named deceased who died on 27 June 1992, please contact Box No. 70.

O'Sullivan, John F. (orse. Sean O'Suilleabhain), deceased, late of 64 Capwell Road, Turners Cross, Cork and formerly of Castleblayney, Co. Monaghan. Would any person having any knowledge of the whereabouts of a will executed by the above named deceased, who died on 14 May 1994, please contact Martin Sheehan & Company, Solicitors, 16 South Mall, Cork. Tel: 021-270986.

Nolan, Anne (orse. Annie), deceased, late of 59 Vernon Park, Clontarf, Dublin 3. Date of death 10 March 1994. Would any person having knowledge of the whereabouts of a will of the above named deceased **executed subsequent to 12 June 1975**, please contact John M. Foley & Company, Solicitors, Bagenalstown, Co. Carlow. Tel: 0503-21219 Fax: 0503-21592.

Sexton, Catherine (orse, Kathleen), deceased, late of Clonskeagh Hospital, Clonskeagh, Dublin 6, 163 Rathgar Road Dublin 6 and 33 Grosvenor Road, Rathgar, Dublin 6. Would anyone person having knowledge of a will made later than 4 May 1966 by the above named deceased who died on 27 December 1993, please contact Arthur O'Hagan, Solicitors, 9 Harcourt Street, Dublin 2. Tel: 01-475 8701.

Lynch, Timothy (Tadhg), deceased, late of 84 Fortfield Road, Dublin 6W. Would anybody knowing the whereabouts of a will of the above named deceased who died on 18 July 1994, please contact Messrs A&L Goodbody, Solicitors, 1 Earlsfort Centre, Hatch Street, Dublin 2 (Ref: SGC). Tel: 01-661 3311 Fax: 01-661 3278.

O'Neill, Jeremiah, deceased, late of Derryvore, Kilcatherine, Eyeries, Castletownbere, Co. Cork. Would any person having any knowledge of the whereabouts of the original will of the above named deceased who died on 27 August 1979, please contact O'Donovan Murphy & Company, Solicitors, Wolfe Tone Square, Bantry, Co. Cork. Tel: 027 -50808 Fax: 027-51554.

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VOL. 88 NO. 8 OCTOBER, 1994

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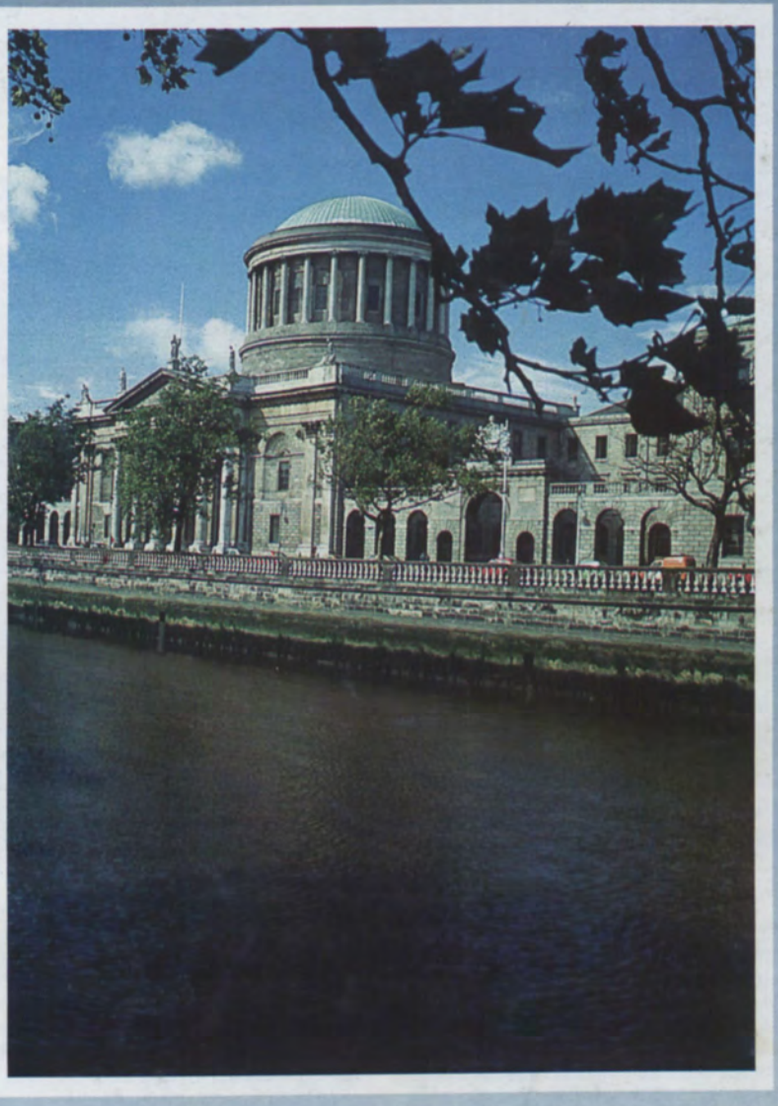

SELECTING THE JUDGES

PROTOCOL ON ACCESS TO LAW

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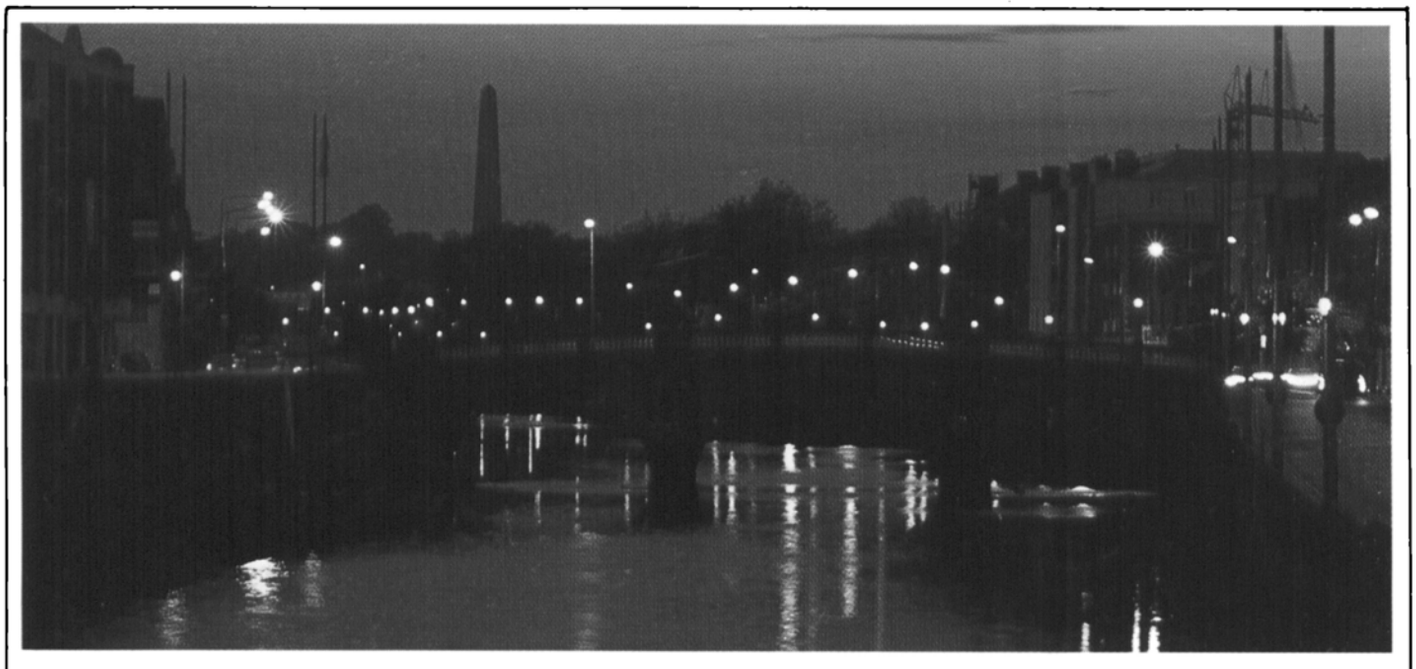

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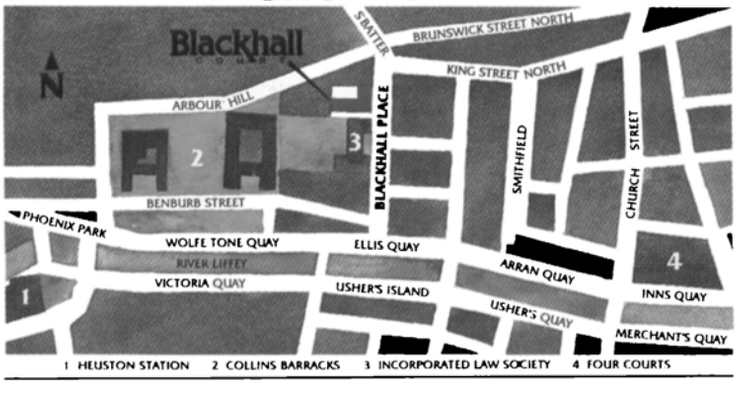

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GAZETTE

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VIEWPOINT

Selecting the Judges

The recent controversy surrounding the appointment of a new President of the High Court to succeed Mr. Justice *Liam Hamilton* underlines the urgency of finding an acceptable method of selecting candidates for appointment to judicial office in this country.

We believe that it is now time to establish a Judicial Appointments Commission which would be given the role of identifying suitable candidates for appointment at all levels of the judiciary and making recommendations on such appointments to the Government. The formal act of appointing judges should remain in the hands of the executive but the task of identifying candidates for appointment should be removed from the executive. We would suggest that, inherent in any such new arrangement, would be the principle that the Government (and all successive Governments) would undertake to abide by the recommendations of the Commission and appoint judges on that basis. In that way, the need for constitutional change would be avoided and the process of selection would be completely depoliticised. It could then become a convention of our constitutional and administrative system that the Government would act only upon the advice of the Commission. There would be no departures allowable under any circumstances.

There seems now to be a consensus emerging that the present system of appointment of judges leaves a lot to be desired. The recent debacle has undoubtedly brought the whole process into disrepute, has politicised the second highest judicial office in the State and has embroiled two very eminent persons in an unseemly political wrangle. That that should have happened is no fault of the individuals concerned. While it may be understandable that political parties in a coalition Government would have disagreements from time to time about appointments of this nature, there is no excuse for the fact that this dispute was brought into the public domain. It should have been resolved quickly and in private.

The membership of a Judicial Appointments Commission would obviously be a matter for careful consideration. Already, suggestions about this have been made publicly by the Chairman of the Bar Council and the former leader of the Progressive Democrats, Mr. *Desmond O'Malley*, TD. We would think that it ought not to be difficult to find agreement on its composition. One thing is certain, both branches of the legal profession – the Bar Council and the Law Society – should be represented. The Government would do well to look at the procedures set out in the Prosecution of Offences Act, 1974, which established a committee for selecting suitable candidates for appointment as Director of Public Prosecutions. A broadly similar approach is what is needed.

In our view, an absolute precondition to the establishment of a Judicial Appointments Commission is the introduction of legislation which would make solicitors eligible for all judicial appointments.

In our view, an absolute precondition to the establishment of a Judicial Appointments Commission is the introduction of legislation which would make solicitors eligible for all judicial appointments. Such a development is long overdue and we would earnestly hope that this matter will be addressed in the forthcoming Courts and Court Officers Bill which we understand is now at an advanced stage of preparation. The Law Society's views on this are very clear. The Society made a detailed submission to the Minister for Justice in September 1992 putting forward the case for removing the ban on the appointment of solicitors in the Circuit Court and higher courts. The argument that only those who had engaged in advocacy in the superior courts should be appointed as judges in those courts has, we would submit, been discredited by the appointment of solicitors in other jurisdictions who have proved to be excellent judges. In our view, this argument is self-serving – put forward mainly by those who have a vested interest in the status quo.

We would urge the Government to act quickly on these matters. The way forward is, we believe, entirely clear and there is no need for further equivocation. Amending legislation removing the ban on the appointment of solicitors in the superior courts should be a first step. That should be followed by the establishment of a Judicial Appointments Commission on an administrative basis (without legislation) but with clear terms of reference. The establishment of such a Commission would, we suggest, be accompanied by a statement from the Government giving a commitment to act on the recommendations of the Commission. All political parties should be asked to endorse that approach and to give a firm commitment to continue the policy if elected to Government in the future. A new convention to our Constitution would thus be brought into existence . Under the new system, the merit of the candidates themselves, rather than any alleged political affiliations, would be the sole determinant for appointment. If this were done, a cornerstone of our democratic system, the separation of powers, would be seen to be more clearly at work and respect for the political impartiality of our judges would be greatly enhanced.

❐

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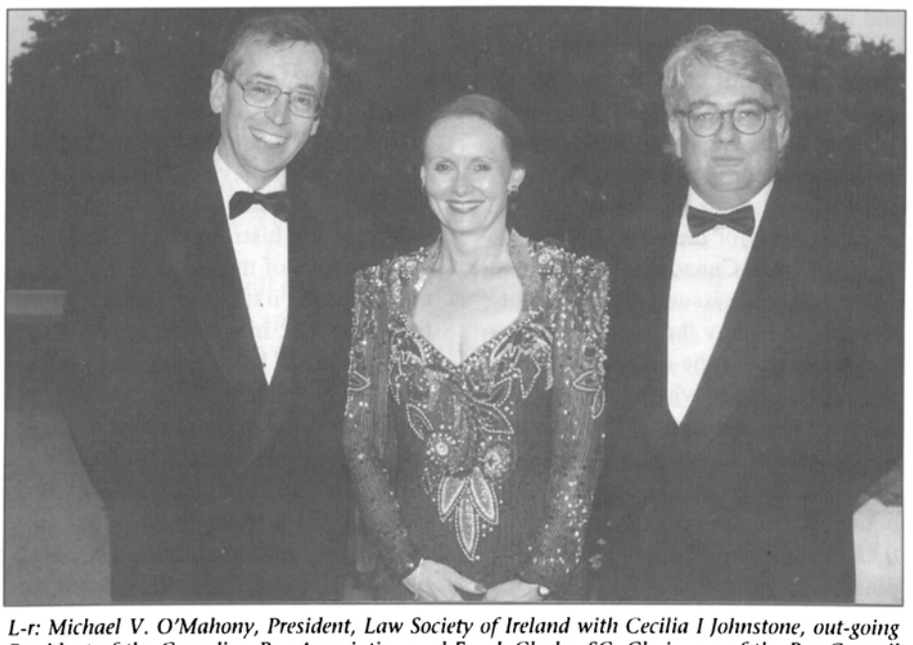
PRESIDENT'S MESSAGE

Access to Law – Concern of Lawyers Worldwide

"No man is an island alone unto himself" is the oft-quoted extract from *John Donne's* famous 17th century poem. This quotation can be appropriately applied to the on-going mutual relationship which the Law Society of Ireland has, not only with our neighbours, the Law Societies of Northern Ireland, England/Wales and Scotland, but also with similar organisations further afield, particularly the American Bar Association (ABA) and the Canadian Bar Association (CBA). Unlike our neighbouring organisations, the ABA and the CBA do not perform regulatory functions (which are carried out at state or provincial level by separate statutory entities), but otherwise the professional support functions performed by all are broadly similar.



L-r: Michael V. O'Mahony, President, Law Society of Ireland with Cecilia I Johnstone, out-going President of the Canadian Bar Association and Frank Clarke, SC, Chairman of the Bar Council of Ireland.

At this year's ABA week-long conference in New Orleans in August (attended by some 12,000 US lawyers) there were more than 2,500 individual events or meetings. The CBA's week-long conference in Toronto, also in August, was somewhat smaller in scale (some 3,000 Canadian lawyers present) but still had a very varied programme.

Despite their differences in scale relative to our own, it may be of interest to record that the major concerns of both the ABA and CBA reflect many of our own current concerns – access to law, court facilities and delay problems, unemployment among new entrants, maintenance of standards and public image of the profession.

Access to Law

During the ABA Conference I signed on behalf of the Society (subject to ratification by the Council which took place at its September meeting) the terms of reference for a protocol of co-operation between its signatories to be known as the International Consortium on Access to Law (ICAL). In addition to ourselves and the Bar Council of Ireland, the initial participants (subject to ratification) will be the national lawyers organisations of Australia, Canada, England/Wales, New Zealand, Northern Ireland, Scotland and the USA.

The full text of the terms of reference for the ICAL are set out overleaf. As recorded therein, the ICAL "is founded on the common interest of its members to ensure that their legal and judicial systems are efficient, accessible and cost-effective". These objectives will be advanced by a sharing of "knowledge about improvements to the judicial system and the delivery of legal services". The text states that "lawyers and the legal profession have a key role in achieving these objectives" and that the protocol "provides the framework for future co-operation on these vital issues".

Understandably for an international protocol intended to be applicable to so many diverse jurisdictions, the heads of its mandate are framed in general terms. Notwithstanding this, I believe the spirit and intent of the protocol is clear and it to be hoped that the mutual sharing of knowledge about improvements to the judicial system and the delivery of legal services as they occur in each jurisdiction will benefit the efforts of the Society and all those concerned with the Irish judicial system to bring about much needed improvements here.

The primary force behind the ICAL protocol was the out-going President of the CBA, *Cecilia I Johnstone QC*, who was also a prime mover in bringing about changes in attitude and practice on the gender quality issue within the Canadian legal profession. The achievements of Cecilia during her year of office were appropriately recognised by the presence at the CBA Conference of our own President *Mary Robinson* (as part of her State visit to Canada) who delivered the opening keynote speech – a *tour de force* address on the effects of the expansion of Europe, post-Berlin Wall.

Court Facilities and Delay Problems

In this context, we know that we have major problems, as identified in the

September 1993 joint Law Society/Bar Council submission to Government on the Courts Service. We are not, however, alone. Although the UK, USA and Canada clearly spend, in relative terms, far more than we do on court facilities, personnel and management, it is some consolation to learn that those jurisdictions still have, in varying ways, major delay problems to contend with. Personally, what was most encouraging and thought-provoking was the very open and frank way senior members of the American and Canadian judiciaries addressed these issues. They did not appear to feel any threat to their independence in the exercise of their judicial functions when debating publicly case management and delay issues with lay court administrators, litigation lawyers and fellow judges. I believe a similar public debate on these issues could beneficially take place here.

Unemployment Among New Entrants

This problem appears to be even more acute in the USA and Canada than in Ireland, but it is nonetheless of growing concern here. The most realistic panacea being currently considered in North America is what we have also being considering here – how best should the breadth of knowledge and skills of the young lawyer be extended to make him or her more attractive in the wider employment market as well as more attractive in competing and equipped for the diminishing number of openings in the private practice area. What about lawyers as business executives and managers, as civil servants, as computer specialists, as educators, as people whose knowledge and training can beneficially be applied anywhere. My message of optimism to young solicitors is – keep expanding your range of knowledge and skills, do not close your mind to career opportunities outside private practice or outside law entirely, and be justifiably confident in the value of your training as a solicitor, wherever you are and whatever you might choose to do.

Maintenance of Standards and Image of the Profession

Despite our many concerns in this context, we are better off than our USA counterparts. In discussing the issue with US judges I get the sense that what they like about the Anglo-Irish justice system is (topically) that *OJ Simpson* would have been seen to get a fair trial here whereas, irrespective of its outcome, he will not be perceived to have got a fair trial in California. The OJ Simpson pre-trial publicity and histrionics may be the consequence of the essentially unrestricted First Amendment right to free press but, in a more general way, there seems to be a serious concern within the leadership of the ABA about the increasing 'win-at-all-costs' approach of US lawyers, both criminal and civil. The vast majority of Irish lawyers still see very clearly the inherent value of their responsibility not to mislead deliberately a court, a jury, or a colleague, even if a perceived advantage might be gained by doing so. I believe it would be a loss of inestimable value if the economic pressures brought about by the growth of our profession ever gave rise to a decrease in our high standards in that regard.

Equally in terms of the public image, we may be better off than our US colleagues, but is that any comfort if *Sean Citizen* still feels negatively towards us? I reiterate the perhaps self-serving observation that Irish clients do get a good service from their own solicitor. The recently published poll conducted by the Small Firms Association showed 90% of those polled as being either "satisfied" or "very satisfied" with the service they received from their own solicitor. What members of the public tend to be negative about are lawyers in general, for a variety of reasons, some objectively valid and some based on perceptions not objectively valid.

Clearly all incidents of bad publicity involving an individual solicitor can become generalised in the public perception. Our only constant response must be that the vast majority of solicitors are satisfying the vast majority of clients, day-in-day-out. The fact that good news does not tend to make headlines does not lessen that reality.

Michael V. O'Mahony

International Consortium on Access to Law

Terms of Reference for a Protocol of Co-operation ("Protocol")

The International Consortium on Access to Law, hereinafter (ICAL), is founded on the common interest of its members to ensure that their legal and judicial systems are efficient, accessible and cost-effective. The ICAL will advance these objectives by sharing knowledge about improvements to the judicial system and the delivery of legal services. The ICAL recognises that lawyers and the legal profession have a key role in achieving these objectives. This Protocol provides the framework for future cooperation on these vital issues.

1. Mandate:

A. The signatories will identify issues, coordinate efforts and exchange information on ideas, initiatives, programmes, and proposals with the view to achieving the following goals:

   i. accessible, comprehensible and efficient systems of justice;

   ii. efficient and cost effective modes of provision of legal services, including the international standardisation of legal rules and procedures for commonplace legal transactions.

The types of issues and mechanisms which will be addressed include:

(a) Improving accessibility and efficiency of the justice system:

- developing and promoting cost-effective delivery of legal services

- expanding where appropriate the provision of *pro bono* legal services
- expanding publicly funded legal aid services as appropriate
- developing and promoting appropriate technologies
- developing and promoting appropriate dispute resolution mechanisms
- developing "user-friendly" justice systems
- developing a comprehensible system of justice by simplifying procedures, through plain language initiatives and public legal education
- advancing effective communication among all stake holders in the administration of justice
- community-based initiatives

(b) Improving the quality of service to the public:

- developing educational programmes for lawyers and judges
- enhancing the focus on client needs in the provision of legal services
- appropriate use of technology to benefit clients
- simplification of common legal transactions

(c) Ensuring equal access to the justice system:

- eradicating barriers to equal access by minority and disadvantaged groups
- making it easier for persons with disabilities, the elderly, or care givers to use the courts and other legal services
- working towards a judiciary, legal profession and administration of the justice system which fairly and properly reflects the demographics of our countries.

(d) Ensuring that an accessible and efficient justice system is a priority of the governments and ensuring that adequate funding is available to meet this objective.

B. The signatories will consider the establishment of a specialised programme in each of the signatory countries which focuses on an agreed aspect of the judicial system or legal practice, differing in each jurisdiction.

2. Initial Participants:
The initial participants to this Protocol are the professional bodies of Australia, Canada, The Republic of Ireland, the three jurisdictions of the United Kingdom, and the United States of America whose respective signatories appear hereafter.

3. Additional Participants:
Additional participants can join the Protocol from time to time, subject to approval of the signatories.

4. Strategies for Implementation:
In order to accomplish the foregoing the signatories agree to:

(a) nominate a representative within their respective organisations responsible for developing and maintaining this Protocol;

(b) provide regular communication amongst such contact persons;

(c) endeavour to establish a legal international communication highway for future communications. ❐

SADSI Debates

In keeping with SADSI's true origins and tradition, the Society will host two debates in the coming months. We look forward to the participation of apprentices, maiden speakers and experienced debaters, in both events.

The Halpin Prize Debate

The first debate will take place on Thursday 3 November and the best speaker on the evening will be awarded a cash prize. The prize was donated to the Society by the late *John Ralph Halpin* who requested that the income from his investment be paid as a prize for debate. This is the Society's first year to host the debate.

Gold Medal Debate

The Gold Medal debate will be held on 8 December the same evening as SADSI's AGM.

Further details, including the motions for debate will be posted to all apprentices. Those interested in taking part in either debate should contact *Robert Boland* (tel. 671 5522).

SADSI Election

The election of Auditor for the 111th session of SADSI will take place on Thursday 8 December. Under the Constitution of the Society all candidates must be bound by Indentures until 30 September 1995, and must be proposed and seconded by two apprentices. All nominations should reach *Philippa Howley* c/o The Law School, Blackhall Place, no later than 5p.m. on Thursday 10 November. The candidates may send out their manifestos with the ballot papers which will be posted to each apprentice in mid-November.

SADSI AGM

The AGM will be held on 8 December, followed by the results of the auditorial election. A drinks reception will bring the evening to a close.

Philippa Howley,
Auditor.

The Toblerone Title

by Justin McKenna, Solicitor

When the deed is done
And faces glow with the first flush of agreement
The client hands the fragile legal documents over
And the lawyer then proceeds to bend them!

Why?

Because that's the way it's done. They are stored that way. The envelope is designed to take them that way. Quite simply, that's the way God intended it.

The quaint traditions of the law exist to confuse, bemuse and amuse. Is there a modern analogy for this strange custom? For instance would my pharmacist hand me over my photographs newly processed and developed, carefully folded in the middle and bound together with an elastic band?

I have seen two centuries of transactions condensed into a stiff booklet of title and by a feat of unnatural secretarial strength it has been bent down the middle. To read the document it must now be re-bent. This requires a similar show of strength not always present among emaciated lawyers.

The photocopying of such a document can lead to unusual results. The script in the middle fades into the distance leaving the words adjoining the two margins as visible evidence of this peculiar folly.

Since the introduction of the laser printer the printing of legal documents is frequently found on one side only. The deeds are consequently doubly thicker. Indeed if the deed is not at least four pages long then in order to protect the paper against the vicissitudes of time acetates are used to sandwich those expensive words.

When bent, of course, the acetate breaks and pierces the tender skin of the re-bending lawyer whose blood gives the agreement a colourful hue.

Reading a triangular testament can be fun. When first it is flattened it flattens only to deceive. By the second paragraph when eyes intently travel across the page from left to right it suddenly jumps from the desk sometimes striking the short sighted reader on the nose. This phenomenon often explains the unusual presence of copious quantities of ash in the margins as smokers suffer the shock of the snapping sentence. It has even been known to induce hiccups among drinkers. But it keeps the narcoleptic awake.

The old paper press that once supported the cabinet in the back office, long since disposed of, was never appreciated and its loss is now sadly lamented.

Among the most perplexing of experiences is the three way closing where the careful solicitor who has been trained to think flat takes each deed and document, then carefully unfolds, re-bends, rolls (and sometimes leaps upon) the stubborn sheets before cautiously placing the uncoiled clauses one on the other until the corrugated heap is firmly assembled and bound together with a tough elastic band.

The mortgagee's solicitor in a businesslike flurry and with practised speed demolishes the architectural pile from top to bottom while ticking items from the schedule. It matters little to this practitioner that the schedule itself is attached to a certificate signed and checked by another equally as busy. The borrower's solicitor must hold back the tears of frustration as each delicate document is brutally bent back into its antediluvian disorder to form another *Toblerone Title*. ❐

THE LAW SOCIETY
YOUNGER MEMBERS COMMITTEE
in association with
THE DUBLIN SOLICITORS BAR ASSOCIATION

ANNUAL QUIZ NIGHT

in aid of
SOLICITORS BENEVOLENT FUND

Wednesday 2 November 1994

8.00 p.m.

ROYAL MARINE HOTEL, DUN LAOGHAIRE

Entry forms: Joan Doran, Law Society, Blackhall Place

Lunatic Lawyers Raise £11,000

A group of self-styled "lunatic lawyers" cycled from the Northmost Lifeboat Station in Buncrana to Baltimore Lifeboat Station in West Cork – a distance of 345 miles – in aid of the Lifeboat Service in Ireland, the Solicitors Benevolent Association and the Bar Benevolent Association.

The three-day cycle which took place from 25 – 27 August, (average daily mileage: 115 miles, average speed: 14.9 mph) raised over £11,000 which will be split between the three charities. Donations from members of the profession are still welcome and every donor of £50 or more will participate in a draw for a number of valuable prizes, including a £300 cash prize, weekends for two, or £250 worth of books.

This was not the first outing of the Lunatic Lawyers Cycling Club. In 1989 the "lunatics" cycled from Malin to Mizen head in aid of the Hospice Foundation and in 1990 a three-day cycle was undertaken for the Haemophilia Society.

This year's lunatics were: Solicitors *Brendan Walsh, Vivian Matthews* and *Frank Lanigan; Ercus Stewart SC* and *Cormac O'Dualachain BL*; Accountant *James Barry* and *Walter Coleman* of Coleman Cycles Carlow who was *Chef d'Equipe*.

All donations would be gratefully accepted and may be sent to: *Frank Lanigan*, Court Place, Carlow. ❐

Council Elections 1994/5

The closing date for nominations for election as a member of the Law Society Council is Friday October 28. A candidate must be nominated by two members of the Society and the nomination form must be returned to the Director General of the Society, *Noel Ryan*, by that date.

Ballot papers for the 1994/5 election will be distributed to members of the Society by 7 November and must be returned to the Society by Thursday 17 November 1994.

Counting of the ballot papers will take place on 18 November.

At the Half-yearly General Meeting of the Society on 12 May 1994, *Walter Beatty, Laurence Branigan, Terence Dixon, Andrew Donnelly, Eamonn Hall, John Maher, Adrian O'Gorman, Donal O'Hagan, Hugh O'Neill, Peter Prentice, Michael A Staines, John Reidy, Colm Price, William Young* and *Noel Ryan*, Director General, were appointed scrutineers for the Council ballot. ❐

Annual General Meeting

The Annual General Meeting of the Society will take place on 24 November at 6.30 p.m. in the Presidents' Hall at Blackhall Place.

Prior to the AGM all members of the Society will receive a notice of the meeting, agenda, and detailed minutes of the Half-yearly General Meeting of the Society held on 12 May last, along with a copy of the Annual Report 1993/94 and the financial statements of the Society to 31 December 1993. ❐

Annual Conference 1995

The dates of Thursday 11 May to Sunday 14 May have been set for the 1995 Annual Conference of the Society which will take place in the five star Hotel Europe, Killarney, set in the spectacular surroundings of the Killarney lakes.

Full details of the conference and the various accommodation packages available to delegates will be published in a brochure which will be distributed to all members of the Society next January. ❐

Concern about draft PD forms

At the meeting of the Council of the Society on 16 September concern was expressed about the content and format of a new draft particulars delivered forms which the Revenue Commissioners intend to promulgate.

The Revenue Commissioners have sought the views of the Society concerning the proposed new PD form which would contain the following features:

- extend the PD requirement to include voluntary dispositions
- require a tax reference number for each of the parties to the instrument
- require a broad description of the property to be transferred.

Council members objected in principle to a solicitor having to sign the forms when the matters concerned had nothing to do with his or her own client. Council members said that the Revenue, in effect, were imposing additional costs on clients solely for the purposes of gathering information.

It was also noted that the forms were not suitable for photocopying and were not computer-friendly.

The Chairman of the Taxation Committee, *John Fish*, informed the Council that the Committee would be making representations to the Revenue Commissioners on these matters and would also propose that a solicitor for a vendor should only be responsible for returning the vendor's details and likewise a solicitor acting for a purchaser would be responsible only for details relating to the purchaser. ❐

Practice Management Guidelines Approved

The Council of the Society has approved the text of Practice Management Guidelines, intended as a practical management tool for solicitors. (See *Gazette* p. 248 June 1994.)

The Guidelines have been developed by the Practice Management Committee and will be distributed to each firm of solicitors in mid-October.

The Guidelines will be presented in a ring binder and, over the coming months, the Practice Management Committee will be publishing a series of Practice Management Notes which will be distributed to members of the profession via the *Gazette* in a format suitable for storing in the Guidelines binder. ❐

Law Directory 1995

Work has commenced on the compilation of the 1995 edition of the Law Directory which will reflect the status of members of the Society as on 1 November 1994.

All members of the Society are asked to ensure that they have checked the Law Directory forms sent to them last September showing the details that will be published about them and/or their firm.

Any member of the Society who has not returned the form should do so *immediately* if any changes are required. **If there are no changes there is no need to return the form.**

The 1995 edition of the Directory will be dispatched to members of the Society in early January. ❐

Small Firms give Solicitors 90%

A survey conducted by the Small Firms Association of the relationship between small firms and their solicitors found that over 90% of respondents were either satisfied or *very* satisfied with the services provided by their solicitors and 72% felt they had got good value for money for the fees paid for legal services. According to the survey, 79% of respondents said they were not kept informed by their solicitors about changes in legislation.

The details of the survey in which 436 small firms participated and which was conducted by the SFA in association with Partners-at Law, Solicitors, were released on 26 September.

Only 15% of those respondents who said they were dissatisfied felt that their solicitors were too expensive. The most common complaints were about delay and lack of communication.

The survey found that fees were agreed in advance with 25% of respondents.

In a statement to the press, the Law Society welcomed the 90% satisfaction finding. On the question of delay the Society pointed out that frequently delays were not the fault of solicitors but arose from understaffing in public departments and a poorly-resourced courts system.

The Law Society statement pointed out that the Solicitors (Amendment) Bill would oblige solicitors to agree in advance with a client the fee for the legal services being provided, or supply an estimate, or information about the basis on which the client would be charged – a measure which, in the Society's view, would benefit consumers and the solicitors' profession. ❐

English Agents: Agency work undertaken for Irish solicitors in both litigation and non-contentious matters – including legal aid. Fearon & Co., Solicitors, Westminster House, 12 The Broadway, Woking, Surrey GU21 5AU.
Tel: 0044-483-726272.
Fax: 0044-483-725807.

Compensation Fund Payments – September, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in September 1994.

	IR£
Michael Collier, 2 Ross Terrace, Malahide, Co. Dublin.	11,418.12
John J O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	5,337.54
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	405.00
Diarmuid Corrigan, 6 St. Agnes Road, Crumlin, Dublin 12.	2,967.50
James C Glynn, Dublin Road, Tuam, Co. Galway.	4,410.00
Peter M Fortune, 38 Molesworth Street, Dublin 2.	11,776.60
Jonathan P T Brooks, 17/18 Nassau Street, Dublin 2.	1,000,000.00
	1,036,314.76

❐

ARAB LAWS:
Established London Barrister with Contacts. Available for advice on Construction / Commercial Agreements / Disputes Negotiations / Marriage & Probate.
International Law Chambers:
Tel: (0044-71 221 5684)
Fax: (0044-71 221 5 685)

Judicial Appointments Procedure under Scrutiny

Judicial Appointments

The main legal story in the period under review concerned the filling of the vacancy of President of the High Court arising from the appointment of the Hon Mr Justice *Liam Hamilton* as Chief Justice. While the majority of the coverage focused on the political dimensions of the wrangle, the affair prompted scrutiny of the method of selecting and appointing judges. The front page of the *Evening Press* on 20 September under a banner headline "Lawyers See Red Over Judges Row", reported on a statement issued by the Bar Council which criticised the Government for doing a grave disservice to the judiciary. The Chairman of the Bar Council, *Frank Clarke* SC, said it was now time for a more open and transparent system of judicial appointments. His remarks were also reported in the national daily newspapers on 21 September.

A feature article in the *Irish Press* on 20 September noted that the Progressive Democrats had suggested that the job of selecting members of the judiciary should be performed by the commission which currently appoints the Director of Public Prosecutions. "This commission is close to a three wise men system, involving as it does the Chief Justice, representatives from the Bar Council, Law Society and Attorney General's Office, as well as the Secretary of the Government," the article stated.

In an article in the *Sunday Tribune* on 25 October, *Dr. Eamonn Hall,* Solicitor, argued that a modern democracy required a system of selection of judges that was transparent. He also made the point that solicitors were not eligible for appointment as judges in the higher courts. Dr. Hall was also interviewed on *Prime Time* on RTE 1 on Thursday 22 September.

(See also *Viewpoint* on page 281)

Does the law have to be so slow?

The *Irish Times* and *Cork Examiner* of 25 August 1994 reported on comments by a solicitor in Cork, *Colm Burke,* who said that the Circuit Court in Cork would face a waiting list of 6,500 cases when sittings resume in October and that the list could react 7,500 by mid-March 1995. This would mean a four year wait for all civil actions including family law cases. "The demands on the Circuit Court staff and judges have greatly increased since the jurisdiction was raised. What the Government did effectively was to increase the workload of the Court without appointing any extra judges or staff," said Mr. Burke. *Colm Burke* was also interview on *Morning Ireland* on RTE Radio 1 on 26 August.

An article by *Diarmuid Doyle* entitled "Courts System is Grinding to a Standstill" published in the Sunday Tribune on 18 September, commented that "the justice system that will be headed from next week by Liam Hamilton is underfunded, understaffed and riven with delay and inefficiency". The article noted that a joint submission to the Minister for Justice last year by the Law Society and the Bar Council had called for the appointment of more judges and the creation of a separate agency to run the courts system, but had been substantially ignored by the Government. The article quoted a spokesperson for the Law Society as saying "delays are now chronic and they will get worse unless there is proper funding of the courts system by the Government."

Meanwhile, the *Sunday Press* on 18 September reported that proposals to eliminate the massive backlog of Circuit Court cases around the county were to be brought before the Government by the Minister for Justice, *Maire Geoghegan-Quinn* TD. The article highlighted in particular the delays on the Cork circuit and the Carlow circuit. The article quoted a spokesperson for the Law Society as saying "at the time of the 1991 decision (to increase the Circuit Court jurisdiction) we argued that you could not increase the workload of the court without increasing resources. There is now a very large backlog of civil cases". The spokesperson added "having to wait so long becomes an injustice in itself. This is an issue of access to justice."

"Capping" of Personal Injury Claims"

An article in the *Evening Press* on 26 August said that "a chorus of opposition to moves to cut compensation for accident victims . . erupted today." According to the article, the Irish Wheelchair Association had said that bringing in a fixed schedule of payments, or abolishing compensation for pain and suffering, would make a "sick joke" of the ideas of fair play and justice. A spokesperson for the Irish Wheelchair Association, *John Dolan,* pointed out that while everyone would like lower insurance premiums, "the amount of extra costs that people confined to wheelchairs encounter is just astronomical." *Gertie Shields,* President of Mothers Against Drunk Driving, was quoted in the article as saying "we should be looking at all the things that are needed to make the roads safer instead of hammering the victims."

Disciplinary

The *Irish Times* and *Irish Independent* on 15 September 1994, reported on an application for restoration to the Roll

of Solicitors by a former solicitor, *Brendan Gunn*, who had been struck off the Roll in 1988. The reports noted that under cross examination by counsel for the Law Society, *Patrick McEntee SC*, *Brendan Gunn* conceded that he had misappropriated clients' monies in excess of £100,000 and that he still owed the Law Society's Compensation Fund more than £68,000. The report in the *Irish Times* noted that Mr McEntee had told the court he had been specifically instructed by the Law Society to state categorically that it did not accept the proposition that there could be a breed of legal aid solicitors who had fewer demands on their integrity or competence than the general run of solicitor. On 17 September, the *Irish Times* and *Irish Independent* reported that the President of the High Court, the Hon Mr Justice *Liam Hamilton*, had refused the application, ruling that he could not, at this stage, in the interests of the public and the profession, restore Mr Gunn as a solicitor.

Farmers Early Retirement Scheme

The President of the IFA, *John Donnelly*, was reported in the *Irish Independent* of 2 September as criticising auctioneers and solicitors for charging fees of up to 5% on lease agreements which would allow elderly farmers to qualify for EU pensions. His remarks were also reported in the *Limerick Observer* of 7 September and the *Tullamore Tribune* of 10 September. On 13 September the *Independent* reported that following a meeting between the IFA and the Conveyancing Committee of the Law Society farmers involved in land transfers and the retirement scheme had been advised to negotiate and agree all legal fees in advance with their solicitors. In a further report in the *Irish Independent* on 17 September, it was noted that the IFA and the Law Society had agreed to recommend to solicitors that legal fees associated with farm transfers and the farm retirement scheme should be negotiated with the client prior to the work being carried out. The report noted that the negotiations with the Law Society had been very productive and had ironed out a lot of the difficulties which had arisen. Similar reports appeared in most of the provincial papers.

Small Firms Survey

A survey by the Small Firms Association conducted in association with Partners-at-Law, Solicitors, which found 9 out of 10 solicitors did not contact their clients except for work in progress, was reported on the 6.00 p.m. TV News on RTE 1 on 26 September. The findings of the survey were also reported in the *Irish Press*, *Irish Independent* and *Cork Examiner* on 27 September. The other area of dissatisfaction expressed by respondents related to delay. The article in the *Cork Examiner* noted that the Law Society had welcomed the principal finding of the survey that 90% of respondents were either satisfied or very satisfied with the services of their solicitor. The *Independent* reported that the Law Society had pointed out that frequently delays were not the fault of a solicitor.

(See also page 288)

Barbara Cahalane ❐

Lost Property – Law Society Office Four Courts

Please note that any property (including files) which have been left in the Society's offices in the Four Courts will be destroyed unless claimed or on before Friday, 4 November 1994. Members seeking to re-claim property which they have lost may contact *Paddy Caulfield* at the Law Society office in the Four Courts.
Tel: 668 1806.
Fax: 873 5615.

Rugby News

John Matson of McCann FitzGerald has been appointed Team Captain of the Solicitor Apprentices Rugby Club for the 1994/1995 season. He succeeds *James O'Donnell* who ensured that 1993/1994 was a most successful season and the Club is grateful to James for all his hard work.

The following fixtures are already planned:

1. Weekend away in Tralee on 29 October to play a Tralee selection in honour of the late *Donal E. Browne*.

2. Annual match against the Bar for the *Joseph McGowan* Cup in early December with a post match reception and disco.

3. Tour of Edinburgh in the new year for the Ireland -v- Scotland International with our own international against the Scottish Law Society rugby team.

It is also hoped to have the funds to purchase a new set of jerseys as the present set of 13 (presented to the Club by the captain of The French Law Society Team on their 1959 Tour of Ireland and Wales) is now showing its age.

As you can see, it promises to be a challenging, exciting and expensive season. As the Club is totally dependent on the sponsorship and generosity of the legal profession in general, contributions are greatly appreciated. Cheques should be sent to *John Matson* and made payable to the Club.

As our first game is coming up, all interested players and sponsors should, as soon as possible, contact *John Matson*, McCann FitzGerald. Tel: 829 0000, Fax 829 0010. ❐

John Matson

by Dr Eamonn Hall

Court Dress for Solicitors

Rights of Audience

Solicitors have rights of audience in all courts in Ireland since 1971. Some have exercised their rights pleading their cases in the Circuit, High and Supreme Courts without a barrister. Most solicitors have chosen not to exercise such rights at least in the High and Supreme courts. But if they exercise such rights of audience, should they be dressed any differently from other professional advocates – the barristers?

Solicitors' Robes

The office of attorney in these islands originated in the thirteenth century, and in mediaeval times attorneys wore long gowns like other members of the Inns of Court and Chancery. In Tudor times they adopted the open black gown. Some attorneys, by virtue of rank within the Inns of Chancery, wore black laced gowns, at least within their inns. But the gown which became established for court wear was of plain black stuff, with a flat collar like that of King's Counsel. By Victorian times, the gown had become disused, although there was a partial revival in the 1840s, firstly to facilitate access to busy law courts, and secondly to reflect the status of attorneys as advocates, especially in the new County Courts.

Since c. 1875, when attorneys were abolished, solicitors have been the sole representatives of this branch of the profession. Solicitors wore the same gowns as attorneys but by the end of Victorian times they wore them only when appearing as advocates, and still not universally. In 1902 a stir was caused when a County Court judge at Brentford in England required solicitor advocates there to wear robes. The Law Society sounded professional opinion and then, rejecting minority representations from Liverpool and Sussex, ruled that it was "desirable" for solicitor advocates to robe in court.

Court dress for solicitors

Wigs

Until the seventeenth century lawyers wore natural hair, and professional discipline required that hair and beards be moderately short. Indeed, in 1632 the Court of Star Chamber announced that "if a barrister came with long hair he should not be heard." Nevertheless, the introduction of wigs into polite society in the reign of Charles II was an innovation which could not be resisted.

Wigs and Solicitors

Attorneys and solicitors stopped wearing wigs when they went out of fashion in the eighteenth century. (At the lowest end of the profession some may never have worn them.) Since 1846, when they were given rights of audience in the newly established County Courts of the United Kingdom, there have been recurring public debates as to whether wigs should be worn by all advocates in those courts. However, no agreement on the subject was reached, and therefore solicitor advocates do not wear wigs.

The Lord Chancellor, *Lord Mackay* of Clashfern, has invited comments on whether solicitors in England and Wales should be allowed to wear wigs in court. This follows a Practice Direction which was handed down on July 19, 1994 by the Lord Chief Justice, *Lord Taylor* of Gosforth, on behalf of the Lord Chancellor. The Direction stated that, despite recent extensions to solicitors' rights of audience, there was no change to the rule on the dress to be worn in court. In particular, this means that while Queen's Counsel and junior counsel wear a short wig in court, solicitors do not. The current dress requirements for solicitor advocates in England and Wales is a black stuffed gown with bands but no wig.

The Direction was issued because of the need for consistency in court dress worn by solicitors. However, the Lord Chancellor made it clear that he would consult further before arriving at a long-term decision. He has written to a number of interested parties to seek their views.

Have solicitors in Ireland any views about court dress for solicitor advocates?

Salaries of the Judiciary and Senior Law Officers

The Government announced on August 30, 1994 that it decided to implement the decisions of *Report No. 35 of the Review Body on Higher Remuneration in the Public Sector*, chaired by Mr *Dermot Gleeson*, SC, which was

published in July 1992. At that time, the Government accepted in principle the recommendations in the Report but deferred implementation in the light of the then Government pay policy. In view of the *Programme for Competitiveness and Work* and the fact that various "past the post" cases had been settled, the Government decided to implement the Report with one half of the increases being paid from April 1, 1994 and the balance being paid from May 1, 1995. The increases are set out in the table below.

Judiciary

	01/06/94 *Pre-Gleeson Report*	Recd Rate	% Increase
Chief Justice	£82,025	£95,920	16.9
President of High Court	£73,604	£86,110	17.0
Judge of Supreme Court	£70,595	£82,840	17.3
Judge of High Court	£65,180	£76,300	17.1
President of Circuit Court	£65,180	£76,300	17.1
Judge of Circuit Court	£51,948	£56,680	9.1
President of District Court	£51,948	£56,680	9.1
District Judge	£43,528	£46,870	7.7

Law Officers

	01/06/94 *Pre-Gleeson Report*	Recd Rate	% Increase
Attorney General	£65,179	£76,300	17.1
Director of Public Prosecutions	£62,773	£73,575	17.2
Senior Legal Assistant, Office of Attorney General	£62,773	£73,575	17.2
Chief State Solicitor	£62,773	£73,575	17.2
Commissioner Garda Siochana	£59,766	£65,400	9.4

In its 1992 Report, the Gleeson Review Body noted that while some concerns remained about continuing difficulties in relation to judicial appointments, the situation appeared to have improved in recent years. It seemed that difficulties in finding sufficient candidates of the customary quality was not as severe in 1992 as has been the case in 1987. However, the Review Body noted that earnings of members of the legal profession must continue to be an important factor in determining the pay of members of the judiciary.

A substantial reduction in remuneration was accepted by many practitioners in moving from the Bar to the Bench according to the Review Body. This occurred at the time in the individuals' lives when their counterparts in other professions would generally expect their earnings to be increasing. The Review Body was conscious of the fact that factors other than pay influence individual decisions whether to accept offers of judicial appointment. However, too great a discrepancy between judicial remuneration and the earnings of members of the legal profession could have serious consequences for recruitment in the longer term.

Actuaries had determined in 1992 that in order to achieve net pay and pension equality with a judge of the High Court, a self-employed barrister would need to earn 37 per cent more than the judge's gross salary.

The standard approach to internal differentials, according to the Review Body, could not be applied simpliciter in considering the relative salaries of judges of the different courts. While there was a clear hierarchy of courts in the judicial system, individual judges were very rarely promoted from the District Court to the Circuit Court or from the Circuit Court to the High Court in the same way as civil servants, for example, progress on promotion to a series of grades during the course of their careers. In reaching its conclusions, the Review Body took due account of the respective levels of responsibility of judges of the different courts. The revised salaries which the Review Body was recommending involved some widening of the existing salary differentials between judges of the Superior Courts on the one hand, and judges of the Circuit and District courts on the other. The importance which the Review Body attached to the recruitment criterion and, hence, to the earning of legal practitioners in determining judicial salary rates meant that the maintenance of existing differentials between the judges of the various court levels could only be of secondary significance.

In dealing with the remuneration of judges of the Superior Courts, the Review Body had particular regard to the need to take some steps to reverse the decline that had taken place in the relative salaries of posts at the pinnacle of the public sector. The Review Body considered that both courts have special constitutional roles and responsibilities: the Supreme Court, as the court of final appeal, occupied a pre-eminent position in the judicial system and a High Court judge, sitting alone, dealt with cases of unlimited size in every area and branch of the law. In addition, Bar earnings had a particular influence on recruitment to these courts. Accordingly, the Review Body concluded that a greater increase was appropriate at this time for judges of the Superior Courts than for judges of the other two courts. ❐

Directors Responsibilities in Financial Statements of Companies

Increased Risks for Company Directors

A recent change in accounting standards introduced by the accountancy profession means that directors of companies are being asked by their auditors to assume greater responsibility for the accounts of their companies than they are required to do by law. In particular some statements being proposed by auditors, for insertion in the financial statements of companies, exceed what is reasonable. In some cases auditors have even sought to transfer responsibility for the audit opinion itself onto the directors.

Directors of companies should obtain legal advice before accepting the wording of statements of directors' responsibility as, otherwise, they may be assuming additional responsibility beyond their legal obligations. While the consequences remain to be tested before the courts, these statements will become publicly available through the Companies Registration Office and could, in some circumstances, constitute an admission of liability to shareholders or other persons dealing with the company, especially in an insolvency.

The following note sets out the background to this in greater detail and also includes a suggested alternative wording (with explanatory notes). The suggested wording will not be appropriate in all circumstances and care should be taken to consider what is suitable in each case.

Background – Cadbury Report on Corporate Governance

In the United Kingdom the Cadbury Committee on the Financial Aspects of Corporate Governance published a Code of Best Practice in December 1992 ("the Cadbury Code").

Practitioners will be aware that the Cadbury Code sets forth a wide range of standards for corporate governance and disclosure which are being followed in Ireland, particularly by quoted companies. One of these requirements is that a statement should appear in accounts explaining the responsibilities of directors in relation to financial statements.

New Auditing Standard for all Companies

The Auditing Practices Board (the body which regulates audit standards for the accountancy bodies) has issued Statements of Auditing Standards No. 600 ("SAS 600") dealing with auditors' reports on financial statements. Auditors are encouraged to distinguish between their own responsibilities and those of the directors of the company by including in their report a statement that the financial statements are the responsibility of the reporting entity directors, reference to a description of those responsibilities and clarification that the auditor's duties rest only on his obligation to express an opinion on the financial statements. Where the financial statements of the company do not include an adequate description of the directors' responsibilities SAS 600 requires that the auditor's report should include a description of those responsibilities.

Response of the Audit Practitioners

Auditors are including as a statement in the draft financial statements of companies (usually in the directors' report) a proposed statement of directors' responsibilities drafted by themselves and in some cases imposing greater responsibility on the directors than are required by SAS 600, which, itself, exceeds the requirements of Irish company law.

The Company and Commercial Law Committee of the Society is concerned that many directors of companies are signing financial statements that include these statements without obtaining appropriate legal advice. In so doing directors may be assuming greater responsibility and hence greater risks than they are required to do by law.

The following is a specimen statement for inclusion in the financial statements of companies setting out directors' responsibilities in relation to the financial statements. It should be noted that this statement may not be appropriate to all circumstances and should be used as a guideline only.

Draft

Statement of Directors' Responsibilities in Relation to Financial Statements

The following statement which should be read in conjunction with the auditors' statement of auditors' responsibilities set out below is made with a view to distinguish for shareholders the respective responsibilities of the directors and of the auditors in relation to the financial statements.

The directors are required by the Companies Acts, 1963 to 1990, to have prepared financial statements for each financial year which gives true and fair view of the state of affairs of the company and the group as at the end of the financial year and of the profit or loss for the financial year.

Following discussions with the auditors, the directors consider that in preparing the financial statements on [pages [ ] to [ ]] the company has used appropriate accounting policies, consistently applied and supported by reasonable and prudent judgements and estimates and that all accounting standards which they consider to be applicable have been followed

[subject to any explanations and any material departures disclosed in the notes to the financial statements].

The directors have responsibility for ensuring that the company keeps proper books of account that correctly record and explain the transactions of the company so as to enable the financial position of the company to be determined with reasonable accuracy and which enable them to ensure that the financial statements comply with the Companies Acts and will enable the accounts of the company to be readily and properly audited.

The directors, having arranged the preparation of the financial statements, have requested the auditors to take whatever steps and undertake whatever inspections they consider to be appropriate for the purpose of enabling them to give their audit report.

Notes

1. The first paragraph of the above draft has been included to state the purpose of the responsibility statement and for whose benefit it is made. It may also limit the use to which the statement can be put. It also includes a reference to the auditors' report, which addresses the same points from the auditor's point of view, and which sets the context in which it is to be read.

2. The second paragraph reflects section 149, Companies Act, 1963 and section 3, Companies (Amendment) Act, 1983 but there is reference to financial statements rather than balance sheets and profit and loss accounts or individual accounts or group accounts. See also section 3 (2) Companies (Amendment) Act, 1983 and the European Communities (Companies : Group Accounts) Regulations, 1992 in relation to group accounts.

3. The second sentence of the second paragraph follows the Cadbury Report wording rather than SAS 600 but describes the accounting policies as appropriate rather than suitable. However, the confirmation required is expressed as an opinion. The opinion as to accounting policies reflects SSAP 2 and also the Sixth Schedule to the Companies Act, 1963 and the First Schedule to the Companies (Amendment) Act, 1986 (as amended by section 231 (2) and section 232 (2) and (3) of the Companies Act, 1990.)

4. The third paragraph reflects section 202 Companies Act, 1990. There is therefore no reference to "adequate accounting records" nor to the SAS 600 reference to "proper" accounting records both of which exceed the statutory requirements.

5. The fourth paragraph compliments the statements relating to the auditors' responsibilities which will be included in the auditors' report if SAS 600 is followed.

Company and Commercial Law Committee ❐

Irish Solicitors Golfing Society

The results of Michael O'Mahony's President's Prize, held at Mount Juliet on 18 July 1994, are as follows:

Winner: *Brian Whitaker*
38 Points [Handicap 4]
Runner Up: *Mark Connellan*
36 Points [Handicap 16]

Handicap 12 and Under

Winner: *Bobby Cussen*
34 Points [Handicap 6]
Runner Up: *Owen O'Brien*
34 Points [Handicap 6]

The Ryan Cup

Winner: *Robert Cussen*
33 Points [Handicap 14]
Runner Up: *Denis Jacobson*
33 Points [Handicap 14]

The Veterans' Cup

Winner: *Judge Frank Johnston*
31 Points [Handicap 15]

Front Nine

Winner: *John Bourke*
18 Points [Handicap 11]

Back Nine

Winner: *Oliver Shanley*
22 Points [Handicap 14]

Over 30 miles from Mount Juliet

Winner: *Harry Fehily*
33 Points [Handicap 9]

William Jolley,
Hon Secretary. ❐

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PEOPLE AND PLACES

At a dinner for the Hon Justice Geoffrey Walsh of the Family Court of Australia were l–r: Frank Clarke, SC, Chairman of the Bar Council; The Hon Geoffrey Walsh; Nancye Walsh; Jacqueline O'Mahony; The Hon Ms Justice Susan Denham; Michael V O'Mahony, President of the Law Society. Second row l–r: Brian Sheridan, Law Society Council Member; Mary Lloyd, Mediator; The Hon Mr Justice Frederick Morris. Third row l–r: T Michael Williams, Family Mediator; Meliosa Dooge BL; His Honour Judge Esmond Smyth. Fourth row l–r: John Buckley, Beauchamps, Solicitors; Noel Ryan, Director General, Law Society; P Frank O'Donnell, Past-President, Law Society; Joan O'Mahony, Solicitor and Elizabeth Dunne BL.

At a function in Sligo to mark the retirement of District Judge James P Gilvarry were back row l–r: Michael Monahan, John Kelly, John Carlos, Keenan Johnson and Michael P Keane. Front row l–r: Bernadette Greene, Judge James P Gilvarry and Phyllis McGarry.

The County Clare Law Association Society recently hosted a dinner to mark the appointment of The Hon Mr Justice Dermot P Kinlen as a Judge of the High Court. The photograph shows front row (5th left) Mr Justice Dermot Kinlen beside John Halpin (6th left) President of the County Clare Law Association, with the officers, members and guests of the Association.

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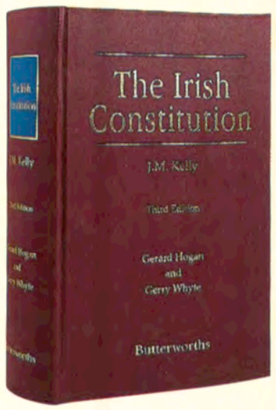

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At a recent dinner hosted for the President-Elect of the New South Wales Law Society, were front row l–r: Maurice Curran, Past-President, Law Society; Jacqueline O'Mahony; Maurie Stack, President-Elect, Law Society of New South Wales, Michael V O'Mahony, President, Law Society; Deidre Stack and P Frank O'Donnell, Past-President, Law Society. Back row l–r: Una Ryan; Noelle Anne Curran; Maeve O'Donnell; Claire Buckley; Laurence Cullen, Past-President, Law Society; Moya Quinlan, Past-President, Law Society; John Buckley, Beauchamps, Solicitors; Lilian Cullen and Noel Ryan, Director General, Law Society.

At the recent launch of the third edition of Kelly's The Irish Constitution *were l–r: Gerard Coakley, General Manager of the publishers, Butterworths; RVF Heuston, former Regius Professor of Law at Trinity College, Dublin; Delphine Kelly, widow of the text's original author, the late John M Kelly and the co-authors of the new edition, Gerard Hogan and Gerry Whyte.*

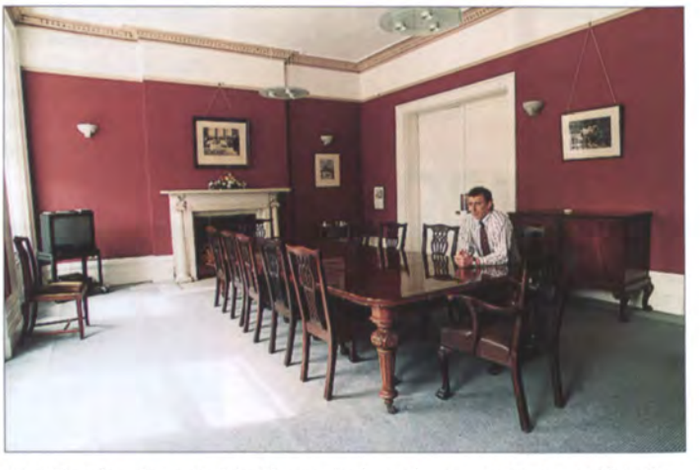
Law Firms in Limerick

The library at Leahy & O'Sullivan, Solicitors.

A view of the upper level in O'Donnell Dalton Hogan, Solicitors.

The exterior of Holmes O'Malley Sexton, Solicitors, in Pery Square.

A view of the consultation rooms in O'Donnell Dalton Hogan, Solicitors.



Pat Barriscale seated in the main boardroom at Holmes O'Malley Sexton, Solicitors.

Siobhan Fahy on the upper level of her offices at John Street, Limerick.

Law Firms in Limerick

Forget the image of dusty, musty solicitors' offices with files on the floor, quill pens and ink. On a recent trip to Limerick, the *Gazette* visited a number of Limerick law firms and found elegant, spacious and airy offices, a client-friendly culture, and practitioners with a positive outlook about the business of being a solicitor and the prospects for the future.
(See photographs on facing page)

Fahy & Co.

First stop was at the firm of Fahy & Co., in St. John's Square. The firm is run by *Siobhain Fahy,* a sole practitioner, who following a period of two years employment in Limerick Corporation, set up her own practice in 1984.

In 1990 she acquired the site of the former Father Brendan Walsh School, built in 1988, which provided primary education for local children in the area. The school closed in 1964 and for ten years after that was a local community youth centre.

Siobhan Fahy had the building completely renovated, giving her architect a specific brief that she wanted the offices to appear accessible and welcoming but not with an overtly legal aura. The result is a bright, airy office, decorated in soft mauves and pinks, with an attractive array of prints and paintings on the wall. The interior of the one-up, one-down schoolhouse was restructured to create a large and welcoming reception area complete with comfortable sofas, current magazines, and, in winter time, an open fire burning in the fireplace. On the upper level there are five offices, a boardroom that seats eight persons and an open plan secretarial work area.

Siobhan Fahy feels that the acquisition of the premises was a good business move. She particularly likes being in the heart of a community and finds it endearing when clients remark that they went to school there or that they remember the premises when it was a youth club.

The ambience of her office reflects her attitude towards clients. She believes that it is important to demystify the law for clients. "Following through with information to a client is vital and I believe that it is important to answer telephone calls promptly and to be as accessible as possible."

Asked if she thinks it is a good time to be in practice, she says that she is fortunate to have been established in practice for ten years and believes that the climate for young solicitors starting out now is much more difficult. In her experience practice has changed dramatically in the past ten years; clients expect a faster and more efficient service and demand results. The growth in numbers entering the profession has led to a healthy degree of competition which she believes is good for the profession and the public. She believes that the Law Society cannot stop the tide of entrants but feels that the Society could do more to generate a positive perception of the profession.

In her opinion, the Society should be more pro-active in defending the profession and explaining the realities of the practice of law to the public. For example, she feels that the Society should do more to explain the problem of delay and to highlight that frequently delays are not the fault of a solicitor but are instanced by the lack of resources made available by the Government.

Another problem which she feels the Society should tackle is the growth in the amount of unnecessary bureaucracy imposed on solicitors by banks and other financial institutions. "The Society should liaise with the banks in an effort to eliminate paperwork and bureaucracy where it is unnecessary because it is time-consuming and costly and, in many cases, the cost cannot be passed on to the client."

Asked about the advantages versus disadvantages of practising as a sole practitioner, Siobhan Fahy identified an advantage as being that a sole practitioner is in control of the way his or her firm develops and the type of work that the firm does. The most difficult aspect of being a sole practitioner, she feels, is bearing all the responsibility for running a practice alone. It requires a huge effort to maintain a "hands on approach" to the running of the office and maintaining contacts with clients. "Sometimes it cannot all be achieved within normal office hours," she says.

Holmes O'Malley Sexton

There is a welcome on the mat – literally – at the entrance to *Holmes O'Malley Sexton* at 5 Pery Square. The practice moved into the imposing Georgian house, the original home of the Holmes family, in 1980. Following progressive expansion throughout the 80s, the practice now occupies three floors in the neighbouring house at number 4.

In the spacious reception area, tastefully decorated in green and blue, a plan on the wall gives an indication of the scope of the practice. 14 solicitors practise in the firm and the total number of staff is 50, including six apprentices.

Pat Barriscale, who practises in his firm and is also Secretary of the Limerick Bar Association, sums up the firm's approach to client care in one word: "service". He says the firm does very little advertising because it is very difficult to determine the results of advertising, if any. The best advertising is by word of mouth from satisfied clients.

The firm constantly monitors its own performance and discusses the future of the business, conducting regular six-monthly reviews which include an analysis of where new files have come from and comparisons with the previous six month period. Part of the review process includes auditing client satisfaction with the firm.

While the firm does not advertise, it communicates regularly with clients by keeping them up-to-date with information that is relevant to them such as briefing memoranda on new legislation. The firm occasionally engages in some corporate entertainment but on a modest scale.

Pat Barriscale feels that the outlook for practice generally is very uncertain. In particular, he feels that degree of competition and price undercutting in conveyancing is making it very difficult now to pursue conveyancing on a profitable basis. However, he believes that a large firm such as Holmes O'Malley Sexton must continue to offer the full range of legal services to clients.

Despite the competitive pressures, Pat Barriscale feels optimistic about the future. While he considers that the image of the profession as a whole is a rather poor one, he is in favour of the policy being pursued by the Law Society of being transparent about its disciplinary procedures. Although in his opinion the publication of prosecutions against solicitors can lead to poor publicity, he believes that it is beneficial that the public sees that the profession is serious about policing itself.

Pat Barriscale believes there are no easy solutions to some of the difficulties that are facing the profession: many of them require a long-term strategy. However, he thinks that in recent years the Law Society has become more professional and forward-thinking in its approach and has begun to get to grips with the problems facing the profession.

O'Donnell Dalton Hogan

The firm of O'Donnell Dalton Hogan occupies premises which were formerly a Presbyterian Church erected at the turn of the century. The interior has been reconstructed in a striking manner, creating a modern office environment without doing violence to the architectural features of the former church. The main aisle of the church is now a spacious corridor and grafted on to the pillars of the side aisles are a number of consultation rooms. An open plan staircase leads to a newly-created upper balcony, where the fee-earners have individual work areas built in to the arches of the church. The effect is open-plan, but each arch creates a "private space" with natural sound proofing for its occupant.

The manner of dealing with clients has been determined by the architectural structure. All clients are seen in a consultation room and the solicitor meets them there rather than in his office area, bringing the relevant files down to the consultation room. *Jim O'Donnell,* a partner in the firm, confirmed that clients are impressed by the premises. He says that the concept of seeing clients in consultation rooms works well as it allows the practitioner to concentrate for that time solely on the client and his file only, while the semi open-plan work area allows the fee earners to keep in touch with one another.

The firm engages in advertising, mostly in local newspapers, believing that it is necessary in the current climate. In addition, the firm engages in some sponsorship, mostly of sporting events, usually in response to requests from clients and geared towards maintaining existing client contacts.

Concerning the outlook for practice, *Jim O'Donnell* says in his opinion the profession has been growing too fast, resulting in gross undercutting in many areas of practice. "This leads me to believe that some practitioners are taking the short term view of trying to attract clients in the door as opposed to the longer term view of concentrating on giving a good service to clients."

Jim O'Donnell maintains that the only way for a firm to cope with increased competition is to keep the standard of service to clients high. "Practices that concentrate on service to clients will, like the cream, always stay on top," he says.

Jim O'Donnell is a supporter of the Law Society. "I am one of, probably, the few people who thinks the Law Society has the interests of the profession at heart but, nonetheless, I think it has made mistakes along the way."

He feels that one of the mistakes has been the opening of the "sluice gates" and believes that the Law Society should do all in its power to limit the intake of new recruits to the profession to a level that the market can sustain.

Concerning the public image of the profession, he feels that the profession is weathering criticism quite well but that more should be done to make the public aware that the practise of law is an essential profession which serves the public interest. He believes that members of the profession have worked quite hard to throw off the "fat cat" image but that this momentum needs to be sustained.

He is positive about the outlook for the profession, and says that for him personally the satisfaction of practising law comes from grappling with the difficult case and seeing it come right in the end.

Leahy and O'Sullivan

Leahy and O'Sullivan is one of Limerick's longest standing firms, its origins dating back as far as 1830. The firm in its present composition was founded in 1958 and occupied a number of premises in Limerick before it moved to Mount Kennett House in 1992.

A quiet hum of wordprocessors and photocopiers greets the visitor to the spacious reception area with its polished wooden floor, leather sofas and cartoon prints of maxims for the Bar on the walls. (Example "always laugh at his Lordship's jokes. It is not upon such an occasion that

his Lordship observes that he will not have his court turned into a theatre!"). An extensive library and state of the art filing system are also features which strike a newcomer to the premises.

According to a senior partner of the firm, *Patrick Glynn* (currently Senior Vice-President of the Law Society) the move to Mount Kennett house was prompted by two factors. "In our former premises we were on five floors and the ground floor of a neighbouring office, now we are on two. It was also fortuitous that the new premises was just within the boundary of the designated tax incentive area of Limerick Docks."

The firm engages in very little advertising, usually only as a means of providing support in a programme for a local venture. Corporate entertainment is also on a modest scale in the form of an annual reception for clients.

Paddy Glynn feels that the main problems concerning public perception of the profession is that "while very few clients have anything bad to say about their own solicitor the profession as a whole has a negative image. The controversy about fees paid at the Beef Tribunal does not help, because the public does not differentiate between the two branches of the legal profession on an issue like that." Paddy Glynn says he would like to see the image of the profession improve as a boost to the self-esteem of individual solicitors.

He has a clear view about what the Law Society should be doing. "We must continue to work to bring the profession into the 20th – or at this stage I should say the 21st century – by constantly encouraging solicitors to be more efficient at running their practices and to become better communicators with their clients. Through the work of the Practice Management Committee the Law Society has begun to give more practical support to solicitors, but we must continue on this path. In my opinion there must also be increased emphasis on these issues at the professional stage of a solicitor's training."

He believes that solicitors tend to take an over-optimistic view of the length of time work will take. The client then does not understand when delay occurs. Again he feels that this is a communications problem. "A solicitor should endeavour to give a client a realistic estimate of the time a transaction is going to take and also to explain the factors outside the control of the solicitor which might contribute to delay."

Overall, says Paddy Glynn, the outlook for the profession is "promising". "Solicitors are affected by periods of recession and boom just like everyone else. Thankfully, there are encouraging signs that the economy is picking up with the property market becoming more buoyant and a small, but welcome, downward trend in unemployment." ❐

Barbara Cahalane

Conference on Legal Issues and Electronic Data

The increasing dependence of almost all business activities on computers is self-evident. Businesses which fail to exploit the advantages which developments in technology offer will soon find themselves seriously disadvantaged *vis-a-vis* their competitors. While the use of computers in business activity is well established, there is a degree of uncertainty concerning the legal status of documents generated by computers or stored on computers.

The Law Reform Commission in its working paper on the Rule Against Hearsay stated that "Legal rules must be framed to take account of . . . technological developments".

To date, the circumstances in which computer printouts are admissible in evidence have not been clearly defined by the Irish courts. The evidential value of original documents which have not been generated by computers but have been imaged and are now stored in electronic form is also somewhat uncertain. The Technology Committee of the Incorporated Law Society of Ireland has organised a conference to examine the issues which surround electronic documents, which will take place on Friday, 18 November 1994, in the Presidents' Hall at the Law Society, Blackhall Place, Dublin 7. The Committee has gathered together some of the leading experts in this field, both in relation to the evidential issues which electronic documentation raises and the practical aspects of electronic storage.

The conference will be chaired by the Hon Mr Justice *Declan Costello*. It will be addressed by *Dermot Gleeson* SC who will speak of his experiences of the use of electronic document management systems. Professor *Richard Susskind*, consultant to Masons Solicitors in London, will address the practical issues surrounding document management, both in a legal and non-legal environment. Professor *Colin Tapper*, editor of *Cross on Evidence* and a noted computer law commentator, will discuss the evidential problems which surround documents generated by computer and documents stored electronically. *Don McAleese* of Matheson Ormsby Prentice, Solicitors, will discuss the data protection issues which surround the electronic storage of documents and the Data Protection Act, 1988.

There will also be opportunities for questions and answers during the seminar. The conference should be of interest to all solicitors whose clients' businesses have been touched by the digital age.

In conjunction with the conference, an exhibition of computer systems will be held by leading suppliers to the legal profession.

Further details may be obtained from *Veronica Donnelly* at the Law Society or in the current CLE brochure circulated with this edition of the *Gazette*.

❐

LRC Consultation Paper on Family Courts – A Practitioner Responds

by Brian Gallagher*

The Law Reform Commission's Consultation Paper on Family Courts was published in March 1994 and is concerned with the judicial process and procedures through which the remedies in family law are pursued and delivered.

It considers the following areas:-

1. The organisation of family law business, court accommodation and accessibility.
2. Alternative means of dispute resolution.
3. Pre-trial procedures and documentation.
4. The conduct of family proceedings.
5. Support services.
6. Judges and lawyers.

Organisation of Family Law Business

Under the first heading, the fragmentation of jurisdiction in family law matters in Ireland is detailed, and problems of fragmented jurisdiction in Australia, Canada, England, and New Zealand are considered. The paper concludes that fragmentation of jurisdiction gives rise to a measure of confusion and presents difficult tactical choices to practitioners. Clients can become confused. The different forms of pleading add to the complexities of the system. A unified jurisdiction is recommended. Reference is made to court accommodation and the paper concludes that the physical conditions of many courts are not appropriate for family cases.

Mediation

Chapter 2 refers to mediation and gives consideration to matters which are not often discussed, such as power imbalance in mediation and the scope

Brian Gallagher

of mediation. Often legal practitioners feel that either everything should be mediated or nothing should be mediated. The paper points out that some mediation schemes deal only with custody and access issues, and others include financial and property issues. Appendix 1 provides a very interesting commentary on mediation services in other jurisdictions. Arbitration is also referred to.

Pre-trial Procedures

On pre-trial procedures and documentation the paper contrasts the views of Mr. Justice O'Hanlon in *H -v- H* that "the summons should not contain unnecessary detail and should not be of unnecessary length . . ." with the fact that in practice the new rules with regard to the form of affidavits have resulted in affidavits becoming very long. Interestingly, no specific criticism is made of the Circuit Court forms of application although they have been the subject of much criticism from practitioners. Personally I felt that more attention could have been give to the whole issue of court documentation.

Conduct of Family Proceedings

Chapter 4 refers to the conduct of family proceedings and to the contrast between adversarial and inquisitorial procedures. The views relating to these in other jurisdictions are referred to. An interesting section refers to the question of representation of children in family litigation and to guardians *ad litem*. The privacy of family proceedings is considered and it is interesting to know that other countries examining this issue have agreed that a balance must be struck between openness and privacy. While litigants in family cases are entitled to a degree of privacy, the public is also entitled to know the way justice is being administered in the courts. I believe this is a subject which will receive more and more consideration in this country. One Australian textbook records that "the family court was acquiring the image of a star chamber, or secret court, that its procedures were often unjust and that because of its secret nature it was impossible for the man in the street to know what it was doing". Is this the case here also? The Law Reform Commission of Canada has recommended that representatives of the media should be allowed to attend and report family law proceedings. There has been little public debate on this issue in Ireland. Are we afraid of it?

Support Services

Chapter 5 refers to support services, chiefly to persons who participate in counselling or mediation. Reference is made to the Probation and Welfare Service in family cases and to support services available in other jurisdictions. It is clear that we fall down very badly in this jurisdiction in providing sufficient resources for support services.

Judges and Lawyers

Chapter 6 refers to judges and lawyers and makes the point that judges are

traditionally perceived to have little knowledge of the areas of individual psychology or family behaviour. There is, of course, no official form of specialised training for judges in the area of family law. I felt the paper was perhaps unduly uncritical in dealing with this area and did not refer to the many complaints (justified or unjustified) about, for example, the lack of consistency by the judiciary in the application of family law, and the equal lack of consistency by lawyers representing family law clients, some of whom adopt a conciliatory approach while others adopt a very adversarial approach.

Recommendations

Chapter 7 deals with conclusions and provisional recommendations, and is very hard-hitting. It is, I think, worthwhile to quote substantially from this Chapter.

> "We must begin this chapter by expressing concern about a range of serious problems and defects in the manner in which family cases are handled within our existing court system . . . Many of the problems are derived from under-resourcing, both physical and human. The picture which emerges is one of a system struggling and barely managing to cope with the very great increase in family litigation in recent years. *The result is a sad parody of that which might be expected in a State whose Constitution rightly places such emphasis on the protection of family life.*" (Paragraph 7.01)

> "Of major concern are the impossibly crowded lists in many Circuit and District Courts, leading to a wholly unsatisfactory situation in which judges are being forced to make the impossible choice between brief and hurried hearings or intolerable delays. The situation is particularly acute in the Circuit Court outside Dublin wherein some venues a judge may face a list of as many as 70 cases in one day . . . the quality of justice is affected . . . the physical conditions of many courts outside Dublin are not appropriate for family cases . . . the absence of proper waiting room facilities sometimes leaves opposing spouses to confront one another seated on benches in cold and draughty corridors. *Adequate facilities for consultations between lawyers and their clients are rare and some of the court rooms display a Dickensian squalor.* By contrast the modern facilities in Dublin offer a model of what a family court can be". (Paragraph 7.02)

While I certainly agree with the criticism of the courts outside Dublin, I think perhaps that undue credit is given to the Dublin facilities which are still inadequate for consultations, as a visit to Dolphin House will prove. All too frequently the family High Court is not used and the High Court judge hearing family law cases sits in one of the civil courts in the Four Courts building.

Regional Family Courts

Chapter 8 provides a summary of provisional recommendations, the main one being the establishment of a system of regional family courts, functioning as a division of the Circuit Court, having a unified family law jurisdiction, and being located in 8 to 10 regional centres, presided over by specially nominated Circuit Court judges, and operating in the context of a range of support and family services. It is welcome to know that it is recommended that proceedings under the Child Care Act, 1991 be taken under the wing of the regional family court. I wonder, however, if the Commission should not have gone further and recommended that criminal proceedings against children should also be dealt with in the family courts. It is common case that many children get into trouble with the law because of family breakdown and it may be very useful indeed for judges who have expertise in the family law area, to deal also with children who infringe the criminal law.

Personally I feel that there should be further discussion as to whether the regional family court should have the status of the Circuit Court rather than the High Court. I often wonder why family law always has to be relegated to second place behind, for example, company law. Why should family law cases, where sometimes millions of pounds worth of property is involved, be forced down to the Circuit Court while all company law petitions go to the High Court and are welcomed there. Once more it would appear that property is valued more than children. A further consideration is that if the regional family court, on the level of the Circuit Court, is not given full resources, then there will be no written judgements and therefore no uniform jurisprudence. It is noteworthy that although it is nearly five years since the 1989 Act came into operation, very few written judgements have been delivered under the Act, presumably because most of the litigation under this Act takes place in the Circuit Court, where judges are overburdened and are under-resourced.

A welcome recommendation is that attached to every regional family court there should be a family court advice centre, providing an information and referral service, offering information to clients about counselling and mediation services, social welfare entitlements and services, legal aid and advice services as well as basic information about the operation of the family court and remedies available there. It is recommended that the advice centre have available various information packs, carefully designed and consumer friendly.

Independent Monitoring

Although the Consultation Paper states that the family proceedings should continue to be heard *in camera*, there is an interesting recommendation that provision should be made for access to family proceedings by an approved independent person or persons whose function it would be to monitor family proceedings, gather statistics and report publicly from time to time on the functioning of family courts. *Bona fide* researchers and students of family law should, at the discretion of the judge, be permitted to attend family proceedings. I wonder if the Paper should not have gone further to emphasis the importance of monitoring, statistics gathering, and the production of judgements. Personally I would suggest the establishment of a person or body charged with reporting fully on the operation of the family

court system, each year, to parliament. There is probably also a need from some media access to the courts to allow the reporting of cases without revealing the identities of the litigants, their children or their assets.

The Paper recommends that provision should be made for the appointment by the judge of an independent representative for a child who is the subject of guardianship, custody or access proceedings where in the opinion of the judge this appears to be necessary in the interests of the child. Obviously the question of legal aid will be crucial here.

Judicial Training

Under the heading of judicial studies and legal training it is recommended that measures be taken as a matter of urgency to enable the judiciary to organise judicial studies on a systematic basis. Obviously resources would be critical here. The suggestion is made that judicial studies should be managed by a board chaired by the Chief Justice and comprising a majority of judges, with adequate funding and proper administrative and logicistical support. It is recommended that courses of professional legal education should address the special features of family law practice so that future practitioners should, at a minimum, become aware of the need for special skills and expertise.

My overall feeling about the paper is that it provides a great deal of very useful information both about the Irish system of family courts, and how family proceedings are dealt with in various foreign jurisdictions. I feel it should be compulsory reading for all family law students, family lawyers and judges. I do feel that the recommendations could have been more radical, but this is obviously a personal view.

Brian Gallagher, Solicitor, is a Partner in the firm Gallagher Shatter.

Copies of Consultation Paper on Family Courts, LRC (46-1994), are available from the Law Reform Commission, Ardilaun House, 111 St. Stephen's Green, Dublin 2. Price £10. ❐

Pictured at a garden party organised by Concerned Lawyers against the Alleviation of Social Poverty (CLASP) in the Law Society, Blackhall Place, were l–r: Rita Walsh, BL, Treasurer of CLASP; Terry Phelan, BL; Seamus Sorohan, SC and Margaret Barry, Solicitor.

CLASP has organised a number of social events since its foundation over six years ago. Among the charities which have benefited are the Salvation Army's Granby Centre, Focus Point, St. Vincent's Trust and Merchant's Quay Project.

The patrons of CLASP are the Hon Mr Justice Hugh O'Flaherty, His Honour Judge Liam Devally, His Honour Judge Patrick Smith and Michael V. O'Mahony, President, Law Society.

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In his foreword the Hon. Mr Justice Blayney observes that, *The author of his work. . . deserves our thanks for the invaluable service he is providing and it is my hope that we may look forward to further editions of his work to keep us up to date in what has become a very important area of the law.*

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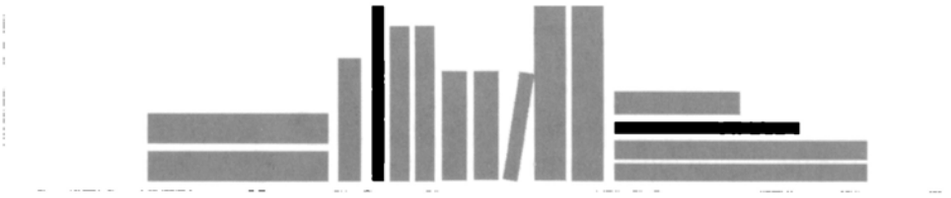

Working Within the Law

A Practical Guide for Employers and Employees by Frances Meenan, Oak Tree Press, Dublin, 1994, 430 pp, paperback, £24.95, hardback £45.00.

The subtitle of this book gives an accurate description of the type of book it is. By aiming at employers and employees, Ms Meenan has produced a very readable book which is an admirably comprehensive account of practical employment law issues contained in 398 pages of text.

The author's approach is typified by the first chapter which is entitled "Recruitment and the Contract of Employment" which gives a step-by-step guide to the consummation of a contract of employment including references to the main categories of terms and conditions that might be specifically included in a written document. The author has, however, a dilemma in aiming at the audience she has chosen. Should she be comprehensive or merely offer guidance? This dilemma is shown to some effect in the commentary on notice clauses in this chapter. Employers are not told about the common law remedy of wrongful dismissal and how vital notice clauses are in that regard, nor are employees told how exposed they may be in law during the early stages of an employment relationship terminable on notice. Even in the full chapter dealing with the subject of notice, which is of itself well written and comprehensive, the exposure to a wrongful dismissal claim and the limitations of making such a claim are not sufficiently highlighted. There is reference made in the chapter on unfair dismissal but again not enough to sufficiently enlighten an employer or an employee. Also the reference to non-competition clauses is both useful in referring to the Competition Authority but lacking in not dealing fully with the common law position.

Given the author's choice of audience, is this book going to be of use to lawyers? I believe it will. Ms. Meenan has used her practical experience in the field of employment law well and addresses many day to day issues that solicitors are asked to advise on which are either ignored by other authors or buried too deep in the treatment of wider and more complex issues. The first step in any problem solving exercise is to know where to look for the answers. As a first step to finding answers this book will be useful. In the chapter on temporary employment, reference is made to "casuals". Clients often come to a solicitor with pre-conceived ideas about their employees and their status, or employees arrive believing they are somehow disadvantaged by the use of labels such as "casual" and here the author usefully focuses on the term and explains it in its legal context. However, in explaining that a so-called "casual" employee may have legal rights, no mention is made as to what rights the "casual" employee may have.

In 25 chapters, the author covers all aspects of practical employment law practice with particularly helpful treatment of the topics of redundancy, taxation of termination payments, employer insolvency, the work of the Labour Relations Commission and, as would be expected from the co-author of a recent authoritative book on Irish Equality Law, equal pay, equal treatment and the work of the Employment Equality Agency.

The law relating to unfair dismissal is given broad treatment, a book of this sort cannot be expected to offer a sufficiently comprehensive treatment. It is, nonetheless, useful and contains references to many Employment Appeals Tribunal cases that might be otherwise difficult to unearth. The author gives a particularly good account of how the Tribunal views the operation of fixed term contracts which State and semi-State organisations in particular would be well advised to study. She, however, incorrectly states that the Unfair Dismissals (Amendment) Act, 1993 incorporates the principles laid down by the Tribunal. The Act certainly supplements the Tribunal's treatment of fixed term contracts, but the *Fitzgerald* case, which is well referred to in the book, still constitutes the state of the art, as far as the Tribunal is concerned, regarding the operation of fixed term contracts within the law of unfair dismissal.

The book contains an excellent dissertation on holidays, maternity leave and payment of wages legislation, collective bargaining and trade disputes. Throughout all of the chapters, most the day to day employment problems to be encountered in each area are identified and guidance is offered. The flavour of the month in employment law, for a long time now, has been the transfer of undertakings or acquired rights regulations. Hardly a month goes by without some new interpretation of the European Directive issuing from the European Court of Justice and it is a brave person indeed who seeks to give a definitive dissertation of the current law. When the volume of case law eases and the situation becomes clearer, we can then expect a whole new Directive. Ms. Meenan in her treatment of the regulations, gives only a short and very general treatment, probably sufficient for her target audience but too basic for lawyers.

A particularly helpful feature of this book is the inclusion of appendices to the chapters consisting of the necessary forms for completion in respect of matters dealt with in the text.

The chapter on the Employment Appeals Tribunal is useful and practical, dealing as it does with the manner in which claims should be made with excellent guidance on the completion of forms and the mechanics of Tribunal procedures.

Working Within the Law is a commendably practical and concise book that will provide many lawyers with a useful starting point from which to address problems confronting them.

Gary Byrne ❐

Labour Law In Ireland

by Caroline Fennell and Irene Lynch, Dublin, Gill & Macmillan, 1993, 295pp, softback, £24.99.

Employment law textbooks, like studio recordings of rare orchestral repertoire, emerge, if at all, in spate. This book is a worthy addition: though-provoking, informative and analytical. The authors split their text into two sections, reflecting the division of labour between them – collective employment law and individual employment law.

An introductory chapter probes the socio-political derivations and underlying focuses of employment law and points up the difficulties disclosed by a self-contained system of industrial relations tribunals which yet provides for appeal to the ordinary courts. In the authors' view this judicial penumbra straitjackets the development of the law into a context of conventional grievance redress focused on the individual.

The tortuous law governing trade unions is presented in a cohesive and systematic fashion. Such controversial chestnuts as trade union recognition and rights of association are well covered, and there is a useful discussion of the issue, and its implications, of whether strike action suspends or breaches the employment contract. The several torts under which liability for industrial action can arise, together with the regime of immunity culminating the Industrial Relations Act, 1990, are capably analysed. The authors do not spare criticism of *lacunae* in the statute and demonstrate how a judicial tendency to follow persuasive British precedents in the emergence of new torts, unmatched in each case by statutory curtailments corresponding to those enacted in Britain, can have disquieting implications for trade disputes immunity in Ireland.

The individual employment contract is scrutinised against the increasingly versatile marketplace in which the law operates. Analysis of the traditional distinction between 'contract of service' and 'contract for services' draws in a review of the alternative work force (part-time workers and independent contractors), showing how the protective legislation only partially brings in these categories from the cold.

Detailed consideration is given to equal pay, employment equality and statutory unfair dismissal, though the coverage is selective in parts, with perhaps less attention than practitioners might like to time limits, especially under the equality legislation. The book concludes with a chapter on health and safety concentrating on the Safety, Health and Welfare At Work Act, 1989 with a note also of relevant European Directives. The terse treatment in a rather short chapter on "Statutorily Implied Terms" of statutory minimum notice, holidays, maternity leave and redundancy might not appeal to all.

Occasionally, the authors indulge a tendency towards the subjective in their elaboration, with court decisions often described as 'positive' or 'optimistic' according as they shore up the immunities of the trade union movement, for example, or enhance the status of women in the workplace. This is quite understandable; but, given that emotion is the antithesis of logic, such coloured epithets need to be sifted carefully when assimilating the authors' otherwise commendable presentation of the law. Frequently, the recording of the names of judges could have benefited from more vigilant editing. At one point (page 120) the same judge in the same case is alternatively styled as "Ms Justice Carroll", "Carroll J." and "Justice Carroll". Elsewhere the redoubtable Lord Denning appears just as "Denning".

This is a stimulating textbook of wide ambit in a technical and developing area of law. It will appeal particularly to the thinking practitioner and to students equally concerned with the social implications of the law, its derivations and ultimate direction, as much as with the actual law itself.

Readers should be aware of the enactment since publication of this book of the Unfair Dismissals (Amendment) Act, 1993 and the Terms of Employment (Information) Act, 1994. This is no criticism of the two authors whose fine work can stand proudly despite these subsequent legislative accretions.

Albert Power ❐

Ireland and the Law of the Sea

by Clive R Symmons, Dublin 1994, Round Hall Press, 240pp, £39.50, ISBN 1 85800-022-X.

Clive Symmons has written an important, innovative and interesting book on Ireland and the law of the sea.

This book is important because it brings together in one place Ireland's diplomatic and legal practice in regard to its internal waters, territorial seas, contiguous zone, the fishery zones, the Exclusive Economic Zone, the continental shelf, the high seas, the deep sea bed as well as the issue of maritime delimitation generally.

The work is innovative because this is the first time that there has been such a comprehensive survey of Irish legal and diplomatic practice.

This is an interesting work because the author has peppered his work with

intriguing examples and insights.

There are many books which are of only limited use to an immense number of solicitors. This is the opposite. It will be of immense benefit but only to a limited number of solicitors. It relates to the public international law aspect of Ireland's law of the sea. It does not deal with Irish shipping law and therefore would not be of any huge assistance in such matters such as the arrest of vessels or whatever except in regard to such matters as the extent of the territorial sea and such matters.

The book is well-indexed. The three photographs and seventeen maps are legible.

There is a tendency in Irish law of the sea circles to concentrate on Rockall just as in the Argentinean jurists concentrate on the Falkland Island/Molvinas dispute. While this preoccupation is understandable, it can be over done. This book tries to broaden the picture.

Any solicitor who has to advise on oil and gas exploration will find the chapter on the continental shelf (chapter 5) useful.

The chapter on fishery zones again deals with the public international law aspects of fisheries rather than the EU, criminal or conservation aspects of fisheries.

The chapter on environmental matters deals with the Irish diplomatic practice but does not deal, at any great length, with the EU practice nor does it explore the whole issue of Sellafield.

In summary, this is a well-written and thoroughly researched book which puts Irish diplomatic and legal practice on the law of the sea into context. It will interest maritime and public international lawyers as well as those interested in Irish diplomatic practice and history.

Vincent Power ❐

Human Rights – A European Perspective

by Liz Heffernan ed., Dublin, 1994, Round Hall Press, 437pp, hardback £47.50, softback £19.50.

In her foreword to "Human Rights, a European Perspective", the President, Mrs. Robinson, states that the book, "fills a need, amounting to a hunger for information about human rights". The book does indeed address that hunger but does so not in the form of a substantial meal but rather as an array of *hors d'oeuvres* which both satisfy in themselves and which stimulate the appetite for more. Given the range of subjects and variety of styles in the book, there is material to suit the palates of legal practitioners, academics, politicians and social scientists.

The book has its origins in a lecture series convened during 1992 by the Irish Centre for European Law in association with the Irish Centre for the Study of Human Rights and comprises 26 papers organised into a substantial Introduction and 8 chapters: The European Convention on Human Rights; The European Community; Security of the Person; Privacy; Freedom of Expression; Economic and Social Rights; Children, and Refugees. The text also includes useful introductions to each chapter, extensive bibliographies, notes and an index.

The practitioner will find of immediate use the chapter on the European Convention on Human Rights, and particularly the paper of *P. Dillon-Malone*, "Individual Remedies and the Strasbourg System in an Irish Context". He or she will also find much useful guidance in such papers as *V. Power's*, "Human Rights and the EEC" and *G. Quinn's*, "Extending the Coverage of Freedom of Expression to Commercial Speech: A Comparative Perspective". Notably helpful to the practitioner interested in human rights practice are the papers and introductory comments by the editor, *L. Heffernan*, which deal with practice and procedure under such instruments as the European Social Charter and the European Convention for the Prevention of Torture.

The book deals extensively with the development of human rights law and thought and possible future trends domestically and internationally. This reader particularly enjoyed the papers by *T. O'Malley*, "The Development of International Human Rights Law: A Look to the Future" and *K. Boyle*, "Freedom of Expression and Democracy", two contributions which elegantly compliment each other. Mention might also be made of a paper noteworthy for its original research on aspects of Irish law and practice, "Sex and Sexuality under the European Convention on Human Rights", by *J. Kingston*.

The volume is not without its flaws; these include a disconcerting range of writing styles and formats and the inclusion of a small number of papers which have little to say which is useful or new. It is also unfortunate that at least one contribution has not been updated since its original delivery in 1992. Weaknesses such as these are however probably unavoidable in a volume with origins and as wide a scope as this one. Indeed, the editor is to be congratulated for the extent to which she has imposed order and coherence on the material.

"Human Rights, A European Perspective" receives this reader's warm recommendation as an addition to the library of any solicitors.

Michael O'Flaherty ❐

The Irish Constitution

by J.M. Kelly, Gerard Hogan and Gerry Whyte. Third Edition 1 + 1222 pp, Butterworths, 1994, hardback IR£65.00.

"One is almost ashamed to praise a dead master for what he did in a field where he was acknowledged to be supreme. When his work is

finished it is too late for praise to give encouragement which all need, and of which the successful get too little. Still, there is a pleasure in bearing one's testimony even at that late time, and thus in justifying the imagination of posthumous power on which all idealists and men not seeking the immediate rewards of success must live."

Justice Oliver Wendell Holmes on F.W. Maitland.

Professor *John Kelly* died on January 24, 1991. It is unusual to commence a book notice with such a lengthy epigraph – but the above sentiments are apt and reflect the writer's views on the influence of Professor Kelly on the legal life of Ireland. His posthumous power, allied to the present intellectual power of *Gerard Hogan* and *Gerry Whyte*, are reflected in *The Irish Constitution* and will influence generations of Irish lawyers.

Professor *RFV Heuston* writes fondly of Professor Kelly in a foreword to the book. *Gerard Hogan* and *Gerry Whyte*, the authors, in their preface write of the explosion of constitutional litigation in the last 13 years since the main part of the preface to the first edition was published in February 1990. The authors write that respect for precedent and earlier authority had been weakened in the intervening 13 years. They state that not only has the overruling of settled doctrine become more frequent but there is an increasing inconsistency of approach and results as between major constitutional decisions. I remind the authors, however, of the words of Justice Cardozo in *The Growth of The Law* (1924).

"In our worship of certainty, we must distinguish between the sound certainty and the sham, between what is gold and what is tinsel; and then when certainty is attained, we must remember that it is not the only good; that we can buy it at too high a price; that there is danger in perpetual quiescence as well as in perpetual motion, and that a compromise must be found in a principle of growth".

The authors will agree with the writer that over emphasis on certainty "may carry us to the worship of an intolerable rigidity". Our judges produce an immense amount of written judgments: *The Irish Reports* for a single year are now divided into two volumes. The fecundity of our judges in the context of case law brings its own problems.

The authors have endeavoured to remain faithful to the format and layout used by Professor Kelly in the earlier editions and supplements with two exceptions. They now treat of constitutional interpretation as a separate and distinct topic in an introductory chapter other than as an aspect of Article 34.3.2. which is indeed appropriate. Secondly, considerations of expense have compelled the authors to replace the distinctive marginal notes of previous editions with sub-headings in the body of the page.

I am conscious of Euripides, (Iphigenia at Aulis).

"How can I praise thee, and not overpraise,
And yet not mar the grace by stint thereof?"

The Irish Constitution, is an encyclopaedic compendium, an indispensable source of reference and opens gateways to interpretations of the Irish Constitution. A simple recommendation – if you are interested in the law, buy it.

Dr. Eamonn G. Hall ❐

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Event Diary – October/November

Law Society Council Meeting
28 October, Law Society

Parchment Ceremony
28 October, Law Society

Family Law Seminar
16 November, 2.00 – 4.00 p.m.
Blackhall Place
Contact: Erin Barry at the Law Society
Tel: 01 671 0711

Technology Committee Seminar
18 November
Presidents' Hall, Blackhall Place
(See page 301 for details)

Meeting of Presidents & Secretaries of Bar Associations
24 November, 11.30 a.m.
Presidents' Hall, Law Society

Annual General Meeting of the Society
24 November, 6.30 p.m.
Presidents' Hall, Law Society.

CLE Courses

Practical Medicine for Lawyers
13 October, 2.30 – 5.30 p.m.
Blackhall Place

Advising the Client in Custody
20 October, 6.30 – 8.30 p.m.
Blackhall Place

Administration of Estates
26 October, 2.00 – 6.00 p.m.
Blackhall Place

Residential Advocacy Course
4–6 November
Bellinter House, Navan, Co. Meath
Contact for CLE bookings: Emma Shanley, Law Society
Tel: 01 671 0200.

Planning Law – A Review of Recent Developments
(Local Government (Planning & Development) Regulations 1994)
11 November, 6.30 – 8.30 p.m.
Blackhall Place

Building Contracts & Disputes
23 November, 2.00 – 6.00 p.m.
Blackhall Place

❐

Stamp Duty – Deeds of Assent and Deeds of Family Arrangement

by Raphael King

The Stamp Act, 1891 imposed no direct obligation to pay stamp duty on chargeable instruments. The Act did create certain indirect obligations which ensured that most chargeable instruments were in fact stamped. The main incentive to stamp was that the consequence of not stamping an instrument meant that it could not be used in evidence in civil proceedings (unless and until the stamp duty including all penalties and interest had been paid in full). The Act also imposed obligations on the people charged with the responsibility of registering title to property to ensure that instruments were properly taxed.

However, the fact that the parties to an instrument were free to decide not to stamp it, meant that there was an element of choice. Part (IV) of the Finance Act, 1991 abandoned the voluntary nature of stamp duty and it is now compulsory. Section 94 of the Finance Act, 1991 provides that the payment of stamp duty is mandatory i.e. once an instrument which is liable to stamp duty is executed, the duty must be paid not later than 30 days after execution (unless lodged for adjudication within that period). Where any instrument chargeable with stamp duty is not stamped or is insufficiently stamped, then the accountable person becomes liable to pay the duty and penalties.

Section 96 of the Finance Act, 1991 sets out who are to be the accountable persons. In the case of conveyances on sale, this is the purchaser or transferee; in the case of mortgages the mortgagee and in the case of voluntary dispositions both parties to the deed.

The Finance Act, 1991 introduced new interest rates and penalties. The interest rate on outstanding duty was increased from 5% per annum to 1.25% per month. In addition, the penalties for late stamping were substantially increased.

Raphael King

The 1991 Act also introduced a surcharge for undervaluation of property for stamp duty purposes.

(i) Where the submitted value is less than the ascertained value by greater than 10% (15% under Finance Act, 1994) but under 30% (subject to a minimum difference in value of £5,000) a surcharge of 50% (25% under Finance Act, 1994) of the duty is payable.

(ii) Where the submitted value is less than the ascertained value by greater than 30% but less than 50%, the surcharge is equal to the total amount of the duty (50% of total under Finance Act, 1994).

(iii) Where the submitted value is less than the ascertained value by an amount greater than 50%, the surcharge is double the amount of the duty (the total duty under Finance Act, 1994).

Section 97 of the Finance Act, 1991 has imposed a duty of care between the Revenue Commissioners and the professional adviser. Section 97 imposes a duty to set out all the facts and circumstances affecting the liability of any instrument to duty in the instrument or in a statement attached to the instrument.

Section 97 sets out the penalties incurred by anyone who fraudulently or negligently executes any instrument not containing all such facts and circumstances and it provides that anyone employed in or concerned about the preparation of any such instrument who fraudulently or negligently prepares it shall also incur the same penalties.

Such a professional adviser will be *deemed* to be negligent if he fails to take reasonable care.

Voluntary dispositions *inter vivos* are dealt with in sub-section (v) of section 97 which provides that a voluntary disposition or a deemed voluntary disposition (example – a sale at an under value or a lease at an under-value) must be brought to the notice of the Revenue Commissioners.

When sub-sections (iii), (v) and (vi) of section 97 of the Finance Act, 1991 are read together, it becomes apparent that a duty of disclosure has been imposed. Under sub-section (iii) a person will be liable if he/she:

(a) fraudulently or negligently executes any instrument

or

(b) being employed or concerned in or about the preparation of any instrument, fraudulently or negligently prepares any such instrument

in which all the facts and circumstances affecting the liability of such instrument to duty, or the amount of the duty with which such instrument is chargeable, are not fully and truly set forth in the instrument or in any statement to which sub-section (2) relates.

Sub-section (v) provides:
that where an instrument operates, or is deemed to operate, as a voluntary disposition inter vivos under the provisions of section 74 of the Finance (1909-10) Act, 1910, or section 24 of the Finance Act, 1949, such fact shall be brought to the attention of the Commissioners in the statement delivered under the provisions of sub-section (2) and such statement shall contain a statement of the value of the property, or in the case of a lease the minimum amount or value referred to in the said section 24, and where the requirements of this sub-section are not complied with any person who executes such instrument shall for the purposes of sub-section (3) be presumed, until the contrary is proven, to have acted negligently.

In a nutshell, this duty of disclosure means that if a solicitor is aware that his client is in any way fraudulent or negligent (example – receiving payments under the counter) he has a duty to disclose the relevant facts to the Revenue Commissioners. Likewise, if a solicitor has a strong suspicion that there is something about the transaction which is not correct, he appears to have a duty also to enquire further. When presenting a deed a solicitor has a responsibility to ensure that the deed recites the relevant facts.

Having dealt broadly with the general provisions contained in Part (iv) of the Finance Act, 1991 we now come to consider what impact this has on the area of deeds of assent and deeds of family arrangement:

Under the Stamp Act, 1891 no stamp duty is payable on any deed of assent where property is vested in the persons entitled under the deceased's will or on intestacy, unless such assent is executed under seal in which case it will be liable to stamp duty of £10.

Where there is a deed of family arrangement however, or where there is a variation of either the terms of the will or the shares on intestacy, a stamp duty liability can arise on any deed executed for the purposes of the passing of any interest in land.

Previously, some practitioners used to take the view that it was not obligatory to stamp such deeds of family arrangement, where a form of assent in favour of the nominated party (parties) was lodged in the Land Registry, on the basis that the personal representatives could be confident that the settlement would never need to be relied upon, or if relied upon that it could be stamped at a late penalty. This viewpoint was always questionable. The reason that this viewpoint was taken in Land Registry cases was that where a deed of family arrangement is completed, the Land Registry do not actually register the deed of arrangement but are only concerned with the form of assent duly executed by the person named in the Grant of Representation, i.e. The Land Registry do not look behind the deed of assent and accept the deed of assent on face value and register the new owner in accordance with the terms of the assent. The fact that the deed does not have to be submitted to the Land Registry does not remove the obligation on practitioners to stamp it.

Any deed of assent or deed of family arrangement which confers a benefit on someone other than those provided for under the will or intestacy of the deceased will incur stamp duty liability on the consideration passing, or if there is none such or less than full consideration passing, on the value of the property passing as a voluntary disposition.

Failure to disclose the full facts and circumstances (for example – by executing a simple Land Registry form of assent and making no reference in the deed to the "true circumstances") will invoke the penalty provisions of section 97 of the Finance Act, 1991.

As stated previously, the duty of disclosure imposed on the professional adviser – i.e. for our purposes the solicitors for the personal representative – means that it is absolutely essential that solicitors acting in the administration of an estate ensure that the appropriate stamp duty is paid on all deeds of assent and deeds of family arrangement and that there is no collusion with the beneficiaries or successors for the non-payment of same.

On a practical point when a deed of family arrangement has been executed and duly stamped, a declaration of solvency by the persons releasing their interest should also be prepared and kept with the deed along with a certificate of discharge from CAT and a declaration for the purposes of The Family Home Protection Act, 1976.

Another point which should be kept in mind where a deed of family arrangement is involved concerns Capital Gains Tax. The question is sometimes asked whether the dispositions by the various parties give rise to CGT. Section 14(6) of the Capital Gains Tax Act, 1975 applies where a deed of family arrangement is made within two years of the date of death. Section 14(6) provides as follows:

> *"If not more than two years, or such longer period as the Revenue Commissioners may by notice in writing allow, after a death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will, or under the law relating to intestacies, or otherwise, are varied by a deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were affected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of this Act."*

Deeds of Assent/Deeds of Family Arrangement – An Alternative Approach?

Disclaimers

Some of you may already be aware of the ongoing controversy *re* a possible alternative to deeds of family arrangement. I am considering under this heading the situation *re* disclaimers.

Taking the scenario of an intestacy where, for example, children may wish their mother to have the entire of their father's estate, if under a strict deed of family arrangement the children convey their one-third share to their mother, the deed is stampable at the *ad-valorem* rate (at the concessionary rate of half the *ad-valorem* rate for voluntary deeds between relatives). There will also be the question of a potential CAT liability both on the inheritance by the children and the subsequent gift to their mother.

An alternative method could be for the children to disclaim their intestate share i.e. for them to sign a disclaimer whereby they renounce all of their share and interest in the intestate's estate.

Such a disclaimer would not be "in favour" of their mother (as such it would attract a double CAT liability – in relation to the acquisition by them and subsequent disposal in favour of their mother and then the acquisition by her from them). It would rather be a disclaimer simpliciter.

There are two schools of thought in relation to such disclaimers:

The first is that they are effective to pass an interest in the property to the persons next entitled (or if the persons disclaiming are in the same "class" of next-of-kin to the remainder of that class).

The second school of thought is that a disclaimer of an intestate share is not so effective. Section 67(2) of the Act states that on intestacy, certain proportions of the intestate's property *shall* vest in the spouse and children. Disciples of this second school hold that those sections of the Succession Act which provide for who is entitled to an intestate's estate use mandatory language and accordingly, there is no possibility of effectively disclaiming an intestate share. A substantial number of practitioners believe that an intestate's property automatically vests in the persons specified in the Succession Act and that it is impossible for a beneficiary to decline to accept it. They would say that on a disclaimer by such persons the interest does not revert back to the estate since, never having accepted their interests in the first place, they cannot vest them back, so to speak.

Section 73 of the Succession Act provides *"in default of any person taking the estate of an intestate, whether under this Part or otherwise, the State shall take the estate as ultimate intestate successor"*. Subscribers to this second school of thought thus hold that it is impossible to disclaim on intestacy since the effect could be to bring about a forfeiture to the State.

Subscribers to the first school of thought would say however, that section 73 can never have any application where an intestate is survived by any of the persons mentioned in section 67–71 of the Succession Act because there would not be any "default of any person taking the estate" under Part (vi). This would require that no one could take the estate. The would hold the view that the provisions of Part (vi) of the Act merely provide for the order in which the surviving next-of-kin of an intestate are entitled and that the word "shall" is used in such a sense and not in a mandatory sense.

(At this point it is worth mentioning that there is no controversy in relation to disclaimers in a testate estate – the disclaimer of a prior interest under a will will accelerate subsequent interests [subject to any contrary intention appearing in a will]).

Putting aside for the moment the question of whether a deed of disclaimer in an intestate estate is effective to pass title we will now consider the Stamp Duty and CAT implications of such deeds.

Stamp Duty

As outlined previously deeds of family arrangement are liable to stamp duty. A simple disclaimer however, does not attract stamp duty unless under seal in which case it is liable to a fixed charge of £10.

Capital Acquisitions Tax

Section 13 of the CAT Act, 1976 provides . . . *"if a benefit under a will or an intestacy is waived any liability to tax in respect of such benefit, entitlement, claim or right shall cease as if such benefit, entitlement, claim or right as the case may be had not existed. . ."*. In practice the Revenue Commissioners accept disclaimers for CAT purposes but in relation to disclaimers of an intestate share they do so with a warning that it might not be good law in Ireland.

The fact that a disclaimer simpliciter will not attract stamp duty or CAT liability will satisfy practitioners who subscribe to the first school of thought. This will not, however, be relevant for those who hold the alternative view since, in their opinion, the deed is ineffective. They argue that from a conveyancing point of view no proper title passes and a purchaser of unregistered land will not be able to accept an assent at face value since, in their opinion, an assent must be to the person entitled. (A purchaser of registered land would be able to rely on the conclusiveness of the register).

Others would say and, personally I think with good grounds, that a purchaser is entitled to rely on section 53(3) of the Succession Act. This provides *"An assent or conveyance of unregistered land by a personal representative shall, in favour of a purchaser, be conclusive evidence that the person in whose favour the assent or conveyance is given or made is the person who is entitled to have the estate or interest vested in him. . ."* i.e. a purchaser as defined in the Act can accept an assent at face value and does not need to look behind the assent in order to satisfy himself/herself with the manner in which the beneficiary named in the assent obtained the beneficial interest in the property concerned.

A conveyancer might query whether the assent has been properly stamped. The Conveyancing Committee is considering whether it may then be sufficient from a title viewpoint to have the assent adjudicated. If the Committee finds favourably further

discussions will ensue with the Revenue Commissioners.

However, the fact that it is a *purchaser* who is protected under section 53(3) means that this would not protect an individual who accepts a gift of property from a person in whom the property has been vested by way of assent as the nominated beneficiary of a family in the sort of scenario outlined above.

You can see from the above that the situation *re* disclaimers on intestacy is indeed complex and controversial.

The Law Society Taxation and Conveyancing Committees have considered the question in depth as both Committees are aware of the problems posed for practitioners.

These Committees endeavoured to obtain Revenue approval for a deed which perhaps could best be termed a "quasi estoppel" deed under which the persons entitled would acquiesce in the personal representatives transferring the property to one of the beneficiaries and would agree not to make any future claim against the estate. The deed would operate as an estoppel enabling the legal personal representative to execute an assent.

It was hoped that such a deed would have no tax consequences (neither stamp duty nor CAT).

Initially, it appeared that this move was going to be successful. It has however transpired that the Revenue are not now amenable to the type of deed which would be necessary in order to satisfy the Conveyancing Committee; such a deed would probably have to release an interest which would be conveyed to someone to hold.

Let us assume that you are faced with the following typical situation: all of the children of a deceased person are equally entitled on intestacy to the only or main asset which is the family home. Assuming that the spouse predeceased it may be that all of the children will want the child who looked after the parent and resided with him/her to get the house absolutely.

The only *absolutely* safe way to proceed (i.e. to protect your client the personal representative and to satisfy the requirements of all future conveyancing colleagues in a subsequent sale/voluntary disposition by the nominated beneficiary) is to execute a deed of assent/family arrangement with the consequent stamp duty and gift tax implications.

If you decide to proceed with a disclaimer you run the risk of not satisfying certain future conveyancing colleagues (i.e. those subscribing to the second school of thought referred to previously) and clearly if you yourself subscribe to this second school of thought, you will not rest easy in the knowledge that the State might possibly succeed to the interest being disclaimed.

We are now back to the drawing board, so to speak, and unfortunately both the Conveyancing Committee and the Taxation Committee find themselves to-date unable to issue a definitive statement of practice on the validity of the use of disclaimers in such situations. However, both Committees are liaising with each other and hope to soon be in a position to issue a practice note to the profession.

In the meantime, practitioners who consult the Taxation Committee on this point are being advised that the negotiations with the Revenue Commissioners are as yet inconclusive and that they should therefore obtain counsel's opinion if proceeding on the basis of a disclaimer.

The Law Society has recently made recommendations to the Minister for Finance that a provision be inserted into the Finance Bill which would have an effect similar to that already in existence for Capital Gains Tax purposes and contained in section 14 (6) of the Capital Gains Tax Act, 1975. Such provision would provide that where within a two year period after death, any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will, or under the law relating to intestacies, or otherwise, are varied by a deed of family arrangement of similar instrument, then such variations made by the deed or other instrument shall be treated for the purposes of capital acquisitions tax and stamp duty as if they were effected by the deceased and as if no disposition had been made by the deed or other instrument for the purposes of the Capital Acquisitions Tax Act, 1976 and the Stamp Act, 1891. The Society further recommended that where the children are minor children, the two year period should begin on a child's eighteenth birthday.

It is to be hoped that the Minister will respond favourably.

* *Raphael King, Solicitor, is a consultant on the administration of estates for the Law Society's Continuing Legal Education Programme.* ❐

Results of Lady Solicitors Golf Outing 1994

Captain's Prize and Quinlan Trophy:

1st: *Gillian Gleeson* 39 points
2nd: *Marian Petty* 38 points
3rd: *Muriel Walls* 36 points
Gross: *Barbara Ceillier* 34 points

Visitors:

1st: *Catherine Black* 45 points
2nd: *Fiona Bennett* 37 points

The Sheila O'Gorman Trophy:

1st: *Jeanne Cullen*
2nd: *Clodagh Liddy*

First Nine:
Elaine Anthony 19 points

Second Nine:
Betty Connolly 21 points

Putting Competition:

1st: *Catherine Bradley*
2nd: *Virginia Rochford*

❐

Anne Crawford,
Hon Secretary.

Class of '64

The following is the text of the address delivered by *Desmond A Collins* at the parchment ceremony on 7 May, 1964.

"Since my election as President of the Incorporated Law Society of Ireland last December, I have attended a large number of functions and presided at many meetings and before my year ends in December I will I hope attend many more.

I can honestly say that the occasion which gives me the most pleasure is todays ceremony, short though it will be. You have completed a lengthy and difficult course and you have joined a profession which welcomes you. Wherever you decide to practise whether in Dublin or some other city or in the country your clients will rely on you for advice and guidance and the intensive training which you have completed will enable you to give that advice and guidance with confidence. Some of you may decide to go abroad and in this connection I have noticed advertisements in newspapers recently which appear to offer very attractive terms. The younger you are the greener seem the "far off hills" but you must realise that the colour does not always persist when you arrive at the end of your journey. I believe that it will be possible for you to make for yourselves a satisfactory career in this country if you stay here and you can also be reasonably sure that in few other countries will you find the way of life more rewarding and satisfactory. I would like you to remember that if you ever need advice or assistance at any time in the future the Council of the Incorporated Law Society of Ireland will always be ready and willing to help you. That is one of its chief functions.

In conclusion on behalf of the Council and on my own behalf I congratulate you most heartily and wish everyone of you happiness and success in the future."

Plus ça change – plus c'est la même chose!

❐

"The Class of 64"

The photograph shows the solicitors who were admitted to the profession in Easter 1964. Back row l–r: John FB Glynn, (Dublin); William F O'Driscoll, (Cork); James J Nestor, (Galway); Peter B Fagan, (Dublin); Anthony E Collins, (Dublin); Brendan AJ Murrin, (Donegal); Daniel Kelliher, (Kerry); Denis Murnaghan, (Dublin); Henry CP Barry, (Tipperary); Giles Montgomery, (Dublin); Bryan ME McMahon. (Kerry); Brendan Byrne, (Dublin).

Front row l–r: Edmund M Veale, (Dublin); Patrick Liston, (Limerick); Michael V O'Mahony, (Dublin); Desmond J Collins, President of the Law Society 1963/64; Niall P O'Neill, (Kildare); Stuart L Cosgrave, (Dublin) and David W Prentice, (Dublin). Absent from photograph: Michael A Buckley, (Cork); G Basil Holland, (Dublin) and Patrick McGrath, (Tipperary). Note: looking out the window is Laurence A Farrell, (Dublin) who was admitted in Michaelmas 1964.

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Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clárlann na Talún), Chancery Street,
Dublin 7.

Published: 14 October 1994.

John Coffey, Jnr., Folio: 2229; Land: Biddyford; Area: 41(a) 2(r) 25(p). **Co. Limerick.**

Michael Trearty, Folio:14547; Land: Ranny (part); Area: 10(a) 0(r) 27(p). **Co. Donegal.**

Derry Murray, Folio: 22797; Townland: Shanballyreagh (part), Barony of Barrymore and County of Cork. **Co. Cork.**

Francis Joseph McManus, Folio: 5559; Land: Cornashamsoge; Area: 11(a) 1(r) 25(p). **Co. Leitrim.**

Victor Craigie, Kilcoskan House, Kilsallaghan, Co. Dublin. Folio: 17443F; Townland: Kilcoskan in the Barony of Nethercross. **Co. Dublin.**

McInerney Contractors Limited, Old Naas Road, Bluebell, Dublin. Folio: 16102F; Townland: Huntstown in the Barony of Castleknock. **Co. Dublin.**

Paul G Moss, Ballinagheragh, Ogoonelloe, Clare. Folio: 2194F; Townland: Ballynagheragh; Area: 0(a) 1(r) 10(p). **Co. Clare.**

Neil McBride, Folio: 32700; Land: Annagary; Area: 0(a) 1(r) 11(p). **Co. Donegal.**

Edward Brennan, Folio: 5985; Townland: Fennor, Barony of Offaly West. **Co. Kildare.**

John TJ Kilcoyne, 132 Dun-Na-Mara, Renmore, Galway. Folio: 218L; Townland: Renmore; Area: 0(a) 0(r) 11(p). **Co. Galway.**

Gerard Michael Mulhall, Folio: 1046F; Land: Ballylynan; Area: 0(a) 1(r) 18(p). **Co. Queens.**

Richard T Gannon, late of 132 Ardbeg Road, Artane, Dublin and 47 Middle Third, Killester, Dublin. Folio: 18412; Land: A plot of ground situate on the north side of Howth Road in the parish and district of Killester. **Co. Dublin.**

Industrial Development Authority, Folio: 6459F; Townland: Ardrew, Barony of Narragh and Reban West and County of Kildare. **Co. Kildare.**

John D Halligan & Kathleen Halligan, 1 Strand Road, Portmarnock, Co. Dublin. Folio: 42057F; Land: Property known as 1 Strand Road, Portmarnock in the Townland of Burrow in the Barony of Coolock. **Co Dublin.**

Francis R O'Connor, 10 Westmoreland Street, Dublin 2. Folio: 14484; Townland: Carrowneden, Carrownacreevy. **Co. Sligo.**

James Jones of Ballymorefinn, Tallaght, Co. Dublin. Folio: 10479F; Land: Townland of Ballymorefinn in the Barony of Uppercross. **Co. Dublin.**

William O'Keeffe, Folio: 12289; Land: (1) Glenasaggart (2) Camphire. **Co. Waterford.**

Georgina Clarissa Williams, Carrownrell, Dromard, Co. Sligo. Folio: 495; Townland: (1) Carrownrell (2) Ardabrone (3) Gerrit Big; Area: (1) 39(a) 1(r) 0(p) (2) 0(a) 2(r) 22(p) (3) 8(a) 1(r) 26(p). **Co. Sligo.**

Jeremy & Jacqueline Dawes, Ballybane, Headford, Co. Galway. Folio: 37638F; Townland: Ballybaun; Area: 0.295 Hectares. **Co. Galway.**

James Ryan and Dolores Ryan, Folio: 3719F; Land: Brenar; Area: 0.550 acres. **Co. Kilkenny.**

Niall O'Dowd, Folio: 35126; Land: Murreagh. **Co. Kerry.**

John Dunne, Folio: 15740; Land: Shanavally; Area: 98(a) 2(r) 29(p). **Co. Kerry.**

Patrick Hughes, Folio: 15902; Land: Drumhillagh; Area: 19(a) 0(r) 35(p). **Co. Monaghan.**

Elizabeth O'Sullivan, Folio: 6539; Land: Slaght; Area: 5(a) 3(r) 20(p). **Co. Kerry.**

Patrick Burke, Folio: 1423; Land: Graigueavurra; Area: 26(a) 3(r) 2(p). **Co. Waterford.**

Anthony Oliver Cloonan, Folio: 14420; Land: Longhanaskin, Area: 0(a) 0(r) 6(p). **Co. Westmeath.**

McMullan Brothers Ltd., Folio: 24870; Land: Knock; Area: 1(a) 1(r) 5(p). **Co. Limerick.**

Michael Ryan, Folio:12370; Land: Grange Irish; Area: 1(r) 10(p). **Co. Louth.**

Edward Tinney, Folio: 128R; Land: Roughan; Area: 24(a) 3(r) 10(p). **Co. Donegal.**

John Nicholson, Doonfore, Ballinfull, Co. Sligo. Folio: 2757; Townland: Doonfore; Area: 22(a) 0(r) 32(p). **Co. Sligo.**

Charles Boyle, Folio: 6259; Land: Ardfarn; Area: 28(a) 3(r) 31(p). **Co. Donegal.**

John Kelly, Fairfield Lower, Crossmolina, Co. Mayo. Folio: 488; Townland: Fairfield Lower; Area: 16(a) 0(r) 8(p). **Co. Mayo.**

Wills

McNicholas, Lena, deceased, late of 5 Brighton Terrace, Cobh in the County of Cork. Would any person having knowledge of a will executed on 20 August 1976 by the above named who died on 27 March 1993, please contact the undernamed. The said will was in the possession of the undernamed solicitors after the date of death, but has since been mislaid. Please contact Coakley Moloney, Solicitors, 49 South Mall, Cork. Tel: 021 273133 Fax: 021 276948.

Lyons, Thomas, deceased, late of Tullinadaly Road, who died on 10 August 1994. Would any person knowing the whereabouts of any will which may have been made by the above named deceased or the whereabouts of documents of title relating to Tullindaly Road, Tuam, Co. Galway, please contact Vivian C. Matthews & Co., Solicitors, Dundrum, Co. Dublin. Tel: 01 295 1187 Fax: 01 298 0280.

O'Hare, Phyllis, deceased, late of Mount St. Oliver, Drogheda, Co. Louth. Would any person having any knowledge of the whereabouts of a will executed by the above named deceased, who died on 1 April 1992, please contact Smyth & Son, Solicitors, Drogheda, Co. Louth. Tel: 041 38616 Fax: 041 35194.

Williams, Bridie, would any person knowing the whereabouts of a will made by the above named deceased, formerly of Congreve Estate, Youghal Road, Waterford and more recently of The Rock, Ballyroan, Co. Laois, who died on 15 August 1994, please contact Messrs. Duncan White & Breen, Solicitors, 6, Kellyville, Portlaoise, Co. Laois. Tel: 0502 21066 Fax: 0502 22038.

Miscellaneous

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Front cover: The Hon. Mr. Justice Liam Hamilton, who was appointed Chief Justice of the Supreme Court on 19 September, 1994.

Director General

The Law Society of Ireland

The Society is the professional body for solicitors in Ireland, responsible for the training and education of solicitors, the maintenance of professional standards and the provision of services for its members. The present Director General is leaving to take up a new appointment and a successor is now being sought.

The Director General is required to work closely with the President and Council of the Society. The person selected will be responsible for ensuring that appropriate strategies and policies are developed and efficiently implemented. The role will also require considerable managerial talent in directing and motivating senior executives and staff.

The position involves a working relationship at the highest level with members of the legal profession, business and other professional organisations and government.

The challenges posed by the position require that the person appointed should have the intellectual ability and communication skills and the requisite maturity and stature to present complex issues clearly. Organisational flair combined with commercial and financial skills are also necessary attributes. A legal qualification is desirable but not essential.

The salary and other benefits will reflect fully the importance and seniority of the position.

If you would like to be considered for this appointment please send a detailed curriculum vitae, not later than 1 December 1994, marked 'Personal & Confidential (DG)', to

The President,
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VIEWPOINT

Court Reform – One Step Forward, Two Steps Backward

While the Law Society, quite rightly, welcomed many of the reforms proposed in the Courts and Court Officers Bill recently published there was, at the end of the day, not much joy in the Bill for practising solicitors.

The good news is that solicitors will now be eligible for appointment to the Circuit Court bench – though, sadly, not to the higher courts – and the President of the Law Society will in future have a role in the nomination of candidates for appointment to judicial office in all the courts. The establishment of the new Court of Appeal, which will have a civil as well as a criminal jurisdiction, is also to be welcomed and, when account is taken of the recent announcement by the Taoiseach of the proposed appointment of additional judges to the District, Circuit and High Courts, it is to be expected that there will, in due course, be a considerable speeding-up in the civil work of the courts. The Law Society has also given a cautious welcome to the proposal to establish a Courts Commission provided that the Commission is comprised, in addition to judges, of lay persons with proven administrative ability and managerial skills and that it is given the necessary administrative support at senior management level to enable it to carry out its functions effectively. Whether or not this will be the case remains to be seen as the Bill provides only an enabling power for the Minister to appoint the Commission.

The provision that has caused the most serious disquiet in the legal profession is that contained in the very final section of the Bill – Section 43 – under which the Minister has taken unto herself a power to prescribe appropriate scales of solicitors' costs and counsels' fees in the District Court, Circuit Court and in the higher courts. This power will operate in circumstances where the relevant rule-making authority is requested by the Minister to submit for the Minister's concurrence rules governing costs and either fails to do so within three months or submits rules containing scales that are, in the Minister's opinion, excessive. In our view, this is a most retrograde step. Given the developments in relation to legal remuneration over the years and especially the provisions contained in the Solicitors (Amendment) Act, 1994, this can only be described as an extraordinary provision. The Minister is sending a clear signal to the rule-making committees of the courts and to the legal profession as a whole that she intends, once again, to introduce scale fees with rigid controls on party and party costs in litigation.

It is now over twenty years since party and party costs were last prescribed by statutory instrument. Many people, even then, considered that such legal controls were inappropriate but, of course, great changes have occurred throughout our economy since the early 70's and the Minister's current proposals run totally counter to the prevailing ethos of freedom of contract – which surely applies to solicitors as well as to others – under which appropriate fees can be negotiated on a case-by-case basis having regard to the work done. The move is also, of course, totally at variance with the rules of modern competition policy. Moreover, in a situation in which the reasonableness of solicitors' charges can be assessed by an independent taxing master in the courts and in which, consequent on provisions in the Solicitors (Amendment) Act, 1994, solicitors must notify their clients in advance about the level or basis of their charges and the Law Society is required to deal with complaints about excessive costs, this latest provision will be seen as an attempt by the Minister to 'bully' the rule-making committees into submission. How, may we ask, is the Minister in a position to substitute her views for those of the court experts on what are appropriate levels of solicitors' fees? We would challenge the right of any Minister or ministerial advisor to say what is or is not an appropriate level of remuneration for a solicitor in litigation in our courts. It should be pointed out that, in drawing a formal bill of costs in the Circuit and higher courts, the main item of remuneration for a solicitor is the *'instructions fee'* which is a discretionary fee that depends on matters concerned with the complexity of the case and the importance of the case to the client. It is in fact the fee that rewards a solicitor for his work. Is the Minister going to attempt to control a fee that is discretionary and must, of necessity, vary from case to case?

In this and other respects, this Bill bears striking evidence of having been put together in a very rushed fashion without having been properly thought out. This is no way to deal with reform of our courts and the administration of our legal system.

Undoubtedly, more will be heard of this. ❐

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PRESIDENT'S MESSAGE

What the Society does – a retrospection

As I approach the end of my term as President, may I be permitted to engage in some retrospection. As with most other years during my years on the Council, this year has been an active one for the Council, its Committees, the Director General and the staff of the Society. The Solicitors (Amendment) Bill 1994 was finally passed by the Seanad on 27th October 1994 and signed into law by President Robinson on 4th November 1994. You will already have received a summary of the main changes brought about by the new Act. The Society will now be giving consideration to arranging information sessions on the new Act in a number of locations in conjunction with local bar associations, so that all will be given the opportunity of considering and debating its effects.

The new Act will also require or enable the Society to make regulations implementing a number of its provisions. The Council will have to consider and approve each proposed new set of regulations and, in some instances, the concurrence of the Minister for Justice or the President of the High Court will also be required.

During every Presidency some issues become of particular relevance to the profession. This year, apart from the Solicitors (Amendment) Bill, the major issues of concern have been the proposal to 'cap' the levels of general damages in personal injury cases and the state of the Courts' Service. However, in a more general context an often-asked question to Presidents and Council members is: "What does the Society and the Council do for the profession?" Such a question is understandable for those who perceive the Society as primarily a regulatory body, but in fairness to the members of the Council and its many committees, as well as to the Director General and the staff of the Society, I think the question should be answered comprehensively. To that end, I set out below an outline of the issues addressed and principal items of work undertaken by the Society during the 12 month period from November 1993. I would invite you to peruse this outline to see the range of work that is carried out by the Society's Council, its Committees and its staff and also to enable you to identify areas where the Society might be able to assist you in the future.

At the conclusion of my term as President, I wish to thank each member of the Council and its committees, the officers and members of bar associations around the country and the Director General and the staff of the Society for all of the help given to me during the year. It has been a great honour to serve what I believe remains a noble profession.

Outline of issues addressed and principal items of work undertaken by the Law Society during the 12 month period from November 1993

A. POLICY ISSUES

Proposal to 'cap' compensation awards in personal injury actions

1. Leaflet to all firms outlining the main points of opposition to the proposal, for issue to clients.
2. Meetings with the ICTU, TDs, Government Programme Managers, the Department of Industry and Commerce (Insurance Division), Minister *Seamus Brennan*, the Irish Insurance Federation, representatives from the main insurance companies and Presidents and Secretaries of Bar Associations.
3. Position paper setting out the Society's views on employers' liability and public liability insurance (issued to all Ministers and Ministers of State and the main Trade Unions).
4. Press Release outlining the Society's stance in opposition to the proposal.

Solicitors (Amendment) Bill, 1994

1. On-going discussions with the Department of Justice on all aspects of the Bill, resulting in a number of significant amendments favourable to the profession.
2. Meetings and discussions with all Opposition spokespersons on Justice to secure the tabling of amendments to the Bill.
3. Letter and Memorandum to all members of the profession outlining the principal features of the Bill and the amendments secured by the Society.
4. Notifying the profession of the Bill's enactment on 4th November 1994.

Education

On-going review of the Society's Education and Admissions Policy.

Courts and Court Officers Bill, 1994

1. Letter to all Cabinet members outlining the Society's stance on the eligibility of solicitors for appointment to the Circuit and higher courts and recommending the establishment of a Judicial Appointments Commission.
2. Press Release in response to the Government announcement of the principal features of the Courts and Court Officers Bill 1994.

Civil Legal Aid

On-going negotiations with the Department of Equality and Law Reform with a view to securing a comprehensive civil legal aid scheme.

Compensation Fund

Detailed review of the operation of the Compensation Fund and options for the future. A special committee was established and met on nineteen occasions, for a total of seventy-two hours. A lengthy report, putting forward eighty recommendations, was approved by the Council in June 1994.

Probate Tax

Participation in the Alliance Against Probate Tax and correspondence with the Minister for Finance in opposition to the tax.

Appointments in the Attorney General's Office/Department of Social Welfare

Correspondence with Government Ministers, Department officials and the Civil Service Commission objecting to

(a) the non-eligibility of solicitors for appointment to advertised legal positions in the Attorney General's Office, and

(b) the restricted eligibility of State-employed solicitors for advertised legal positions in the Department of Social Welfare,

resulting, in respect of (b) in a commitment from the Civil Service Commission to consider the issues raised by the Society in the context of future appointments.

Professional Indemnity Insurance

Establishment of a special committee to investigate and advise on the introduction of compulsory professional indemnity insurance.

Cross-border practice

1. A protocol on cross-border practice between the Law Societies of Northern Ireland, England and Wales, Scotland and Ireland was developed over the period under review and was approved by the Council in July 1994.
2. Discussions in relation to a draft protocol on cross-border practice between the Northern Ireland Law Society and the Incorporated Law Society of Ireland are on-going.

Proposed Legislation

1. Submission to the Minister for Finance in relation to the Finance Bill, 1994 and the 1995 Budget.
2. Submission to the Department of Enterprise and Employment on the Consumer Credit Bill, 1994, resulting in amendments to the Bill and a saving of £500,000 per annum to the profession.
3. Correspondence with the Department of Equality and Law Reform regarding proposed equal status legislation in non-employment areas.
4. Correspondence with the Department of Justice regarding the EU Data Protection Draft Directive.
5. Observations on the Criminal Procedure Bill 1993.
6. Observations on the Criminal Justice (No. 3) Bill 1993.
7. Participation in the production of a report presented to the Minister for Finance in relation to the regulation of investment intermediaries.
8. Submission to the Minister for Equality and Law Reform on the proposals contained in the White Paper on Marital Breakdown.
9. Discussions and submissions to the Department of Agriculture in relation to legal aspects of the Early Retirement Scheme for farmers.
10. Discussions with the Department of Equality and Law Reform in relation to the conveyancing aspects of the Family Law Bill, 1994.
11. Discussions with the Department of the Environment in relation to the introduction of the amnesty contained in recent planning legislation.
12. Representations to the Department of Agriculture with regard to dispensing with the need for section 12 consents on the establishment of the new local authority areas in Dublin.
13. Discussions and submission on the Arbitration (Amendment) Bill, 1994.
14. Submission to the European Commission in relation to the draft Establishment Directive.
15. Consideration of a draft of a General Scheme of Arbitration Bill prepared by the Advisory Group on Civil Law Reform.
16. Detailed consideration of the provisions of the Matrimonial Home Bill 1993.
17. Submission to the Minister for Enterprise and Employment on the Competition (Amendment) Bill, 1994.

Practice Notes

The following Practice Notes were circulated to the profession during the period under review:-

(a) Revenue Undertakings – Publicans' Licences
(b) Residential Property Tax/Probate Tax – Requisitions on Title
(c) Local Authority – Shared Ownership Scheme

(d) Exempted "Towns" under section 45; Land Act, 1965
(e) Return of Allotment of Shares
(f) Stock Transfer Forms
(g) Insurance Premium Refunds arising on Mortgage Redemptions
(h) Possession Prior to Closing
(i) New Licence Duty for Pubs: Should it be Apportioned?
(j) Section 59 Notices
(k) Applications for Notaries Public – amendments to Superior Court Rules
(l) Leases Carved out of Folios
(m) Probate Tax – Testamentary Expenses
(n) Residential Property Tax – Certificate of Clearance
(o) Section 146, Finance Act 1994
(p) Irish Shipping Limited (Payments to Former Employees) Act 1994
(q) Directors Responsibilities in Financial Statements of Companies
(r) S.I. No. 67 of 1994, Land Act 1965 (Additional Category of Qualified Person) Regulations 1994
(s) Possessory Title Applications – Section 146, Finance Act 1994

B. COMMITTEES

Education

1. Participation in the Advisory Committee on Legal Education and Training.
2. Discussions with the Heads and Deans of the Law Faculties in the five Universities.
3. Provision of two Diploma Courses in Property Tax in Cork and Limerick.
4. Participation in the Joint Legal Education Forum with representatives from the Law Societies of England and Wales, Scotland and Northern Ireland.
5. Representations to officials of the Higher Education Authority concerning eligibility of Law School students for higher education grants.
6. Careers workshops on developing a CV.
7. Discussions with representatives of the Bar on the possibility of joint legal education and training.
8. Development of a training manual for apprentices and masters.
9. In-depth review of the course content and teaching methodology in the Law School.

Public Relations

1. Eleven issues of the Gazette published.
2. Annual report 1992/93 and 1993/94 published.
3. Law Directory 1994 published; 1995 Directory in preparation.
4. Second Justice Media Awards ceremony.
5. Exhibition Stand at the National Ploughing Championships.
6. Half-day Seminar on legal needs of mentally incapacitated persons held in April 1994.
7. Media training course for Bar Associations underway – seven Bar Associations have participated to date.
8. Information leaflet for clients on EU Early Retirement Scheme for farmers was printed and is available to solicitors.
9. The Public Relations Executive dealt with 314 enquiries for information and comment from the media.
10. The President of the Society and the Director General participated in twenty-six interviews on RTE (radio and t.v. bulletins, Morning Ireland, Pat Kenny Show, Tuesday File, etc.).
11. The Public Relations Executive gave thirty interviews to local radio stations on matters of concern to the profession.
12. The Society issued thirty-seven press releases.
13. Leaflets on the Society's complaints-handling procedures are in the course of preparation.
14. The Public Relations Executive frequently gives advice and assistance to individual members of the profession when they are approached by the media for comment about matters relating to themselves or their clients.

Registrar's

1. In 1993/94, the Complaints Department received 7,070 letters, 1,501 of which related to new matters. A total of 1,200 complaints were dealt with.
2. Meeting with representatives from the Solicitors Complaints Bureau in the UK.

Company and Commercial Law

1. On-going monitoring of domestic and EU legislation.
2. Meetings and discussions with the Companies Office to resolve difficulties encountered by practitioners.
3. Participation in the working party of the Irish Stock Exchange.
4. On-going monitoring of decisions of the Competition Authority.
5. Practice Note issued to every firm regarding the Competition Act and category licences for exclusive distribution agreements.
6. Participation in and submissions to the Company Law Review Group established by the Minister for Enterprise and Employment in April 1994.

Conveyancing

1. Re-draft of the standard form of Certificates of Compliance to take into account the enactment of the Building Control Act and the resulting building regulations.
2. Approval of the form of certificates issued by the RIAI.
3. Review of the General Conditions of Sale and the Requisitions on Title.

4. On-going discussions with the Registrar of Titles on areas of concern to the profession.
5. Meeting with building society solicitors to discuss standardisation of certificates of title and guidelines issued with loan offers.

Criminal Law

1. Discussions with the Department of Justice regarding fees payable under the Attorney General's Scheme and fees payable for visits to police stations.
2. Production of guidelines for solicitors who engage in criminal defence work.
3. Discussions with the Department of Justice regarding access to production prisoners in the Bridewell.
4. Joint seminar with criminal law practitioners from Northern Ireland on criminal law matters.
5. Submission to the Advisory Committee on Fraud.
6. On-going negotiations with the Department of Justice regarding fees payable under the Criminal Legal Aid Scheme.
7. Preparation of draft guidelines on professional conduct for criminal law practitioners.

EU and International Affairs

1. Eleven issues of Eurlegal News.
2. On-going monitoring of draft EU Secondary Legislation.
3. Participation in the CCBE.
4. Commentary on the European Commission Consultation Paper on Joint Cross-Border Practice of Regulated Professions.
5. Representation at meetings of the UINL.
6. Monitoring of EU draft directives on Comparative Advertising, Distance Selling, Liability for Services etc.
7. Comparative study on the implementation of the aptitude test under the Diplomas Directive in EU Member States.

Continuing Legal Education

In the period November 1993 to-date, forty Continuing Legal Education seminars were held on a wide variety of subjects.

Litigation

1. On-going negotiations with the Irish Hospital Consultants Association and the Irish Medical Organisation regarding the scale of charges in medico-legal matters.
2. Revision of the recommendations on medico-legal matters.
3. Successful negotiation with the Fitness to Practise Committee of the Medical Council to obtain an amendment to the Ethical Guide relating to doctors' obligations to furnish medical reports.
4. Regular meetings and discussions with the judiciary and court officials with a view to eliminating difficulties encountered by practitioners in litigation matters.
5. Letter to all members of the profession concerning the scale of fees agreed between the Irish Insurance Federation and the Irish Hospital Consultants Association.

Parliamentary

In addition to the submissions on proposed legislation listed above, the Parliamentary Committee examined the content of a variety of Bills, including:-

(a) the Road Traffic Bill, 1993
(b) the Terms of Employment (Information) Bill, 1993
(c) the Casual Trading Bill, 1994
(d) the Referendum Bill, 1994
(e) the Local Government Bill, 1994
(f) the Ethics in Public Office Bill, 1994
(g) the Landlord and Tenant (Amendment) Bill, 1993.

Practice Management

1. A 'Setting up in Practice' package was developed to advise solicitors wishing to set up in practice about the regulatory requirements, sources of advice and assistance and various means to enable them to adopt a business orientation in regard to their practice.
2. Practice Management Guidelines were drawn up, approved by Council and issued to all practices.
3. Setting Up in Practice and Obtaining the 'Q-mark' seminars were held.
4. An office manual is being developed.
5. Practice Management Notes are being issued on a monthly basis to all members.
6. A working paper on practice management education at apprenticeship level was produced and is being reviewed by the Law School.

Professional Purposes

1. Review of the guidelines on undertakings contained in the Guide to Professional Conduct – a draft Practice Note is in preparation.
2. Detailed review of the professional conduct issues arising in the context of a change of solicitor by a client and preparation of a draft Practice Note.
3. Consideration of a draft Statutory Instrument governing solicitors' headed notepaper and name plates.

Remuneration/Costs Committee

1. Regional seminars were conducted in virtually all parts of the country on the results of the costs survey, practical aspects of running a business and methods of charging for legal services.

2. A standard form contract in relation to fees, in light of the provisions of section 68 of the Solicitors (Amendment) Act 1994, is being developed for issue to all members of the profession.

Taxation

1. Submissions to the Revenue Commissioners on section 59 of the Finance Act 1974 and Residential Property Tax Clearance Certificates.
2. With the sponsorship of Oak Tree Press, Tax Practice Notes are issued to all practices regularly.
3. Correspondence with the Department of Finance on the proposed new 'Particulars Delivered' form.
4. Discussions with the Revenue on a variety of matters, including Deeds of Family Arrangements, Returns and Awards in Personal Injury Cases and Land Registry Possessory Title applications.
5. A commentary on VAT for solicitors has been prepared.
6. Reminder to all practitioners of the mandatory Income Tax Returns for Directors to be filed on or before 28th February 1994.

Technology

1. The Society's Annual Technology Exhibition has been organised for 18th November 1994.
2. Correspondence and discussions with the Revenue Commissioners and TALC on the implications for practitioners of the new procedures adopted by the Revenue for verification of CAT returns.
3. Support for the Lawlink project.
4. A Seminar on Introduction to Computers for Solicitors was held in July 1994.
5. A Seminar on the legal issues surrounding electronic data and documents is being organised for November 1994.
6. Survey of the profession on computer accounting packages being used by practitioners (to be published in the December Gazette).

Joint Labour Committee for Law Clerks

Successful defence of a claim for a 3% wage increase under Clause 3 of the PESP.

Representatives on External Organisations

Joint Consultative Committee with the Bar Council
Advisory Committee on Legal Education and Training
Medical Bureau of Road Safety
Registration of Title Rules Committee
Irish Legal Terms Advisory Committee
District, Circuit and Superior Court Rules Committees
Dublin Road Safety Committee
Boardroom Centre
Law Clerks JLC
Council of Law Reporting
Rule-Making Committee Land Act, 1933 (Section 3)
International Bar Association
International Chamber of Commerce
Published Accounts Awards Committee
Conseil Des Barreaux De La Communaute Europeenne
Union Internationale Du Notariat Latin

C. SERVICES

1. Library – The Law Society Library processes approximately 235 requests per month for photocopies of documents. By and large, requests are processed on the same day. In addition, an average of 100 text books are requisitioned per week.
2. Employment and Locum Register.
3. Solicitor Link – An introductory service to facilitate purchase, merger or overhead-sharing arrangements between solicitors – over 80 registrations to date.
4. Solicitors Financial Services.
5. Company Formation Service.
6. Publications – Conditions of Sale, Requisitions on Title, Building Agreements, Garda Guide 6th ed, McGuire Succession Act, 1965 2nd ed, Brady and Kerr Limitation of Actions 2nd ed, Acts of the Oireachtas, etc.
7. Consultation Rooms at the Four Courts and Blackhall Place.
8. Bar/Catering facilities, through Law Club of Ireland.
9. Group Schemes – VHI, Group Life Assurance, Car Insurance, Income Protection Plans etc.
10. Representations to An Post about difficulties with the postal system. A free post box service for solicitors was secured.
11. Funding of a telephone 'Helpline' for solicitors, established by members of the profession.

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Completely confidential register to assist solicitors wishing to buy or sell a practice or merge with another firm.

For details contact:
Cillian MacDomhnaill, Finance & Administration Executive,
The Law Society, Blackhall Place,
Dublin 7.
Phone: (01) 6710711.
Fax: (01) 6710704

Farm Retirement Scheme

In order to streamline the system for the Farm Retirement Scheme, the Conveyancing Committee has agreed a basic checklist with the Department of Agriculture of the legal documentation which must be filed with any application for the pension. Where particular situations are not covered by the checklist then practitioners should contact the Department for clarification of the requirements.

In relation to the Scheme itself where practitioners are unsure as to whether a particular farmer is eligible to join the Scheme the Department will accept submissions in advance and will advise as to whether or not on the facts a person is eligible.

When the Scheme was launched in January the Department issued the "Scheme of Early Retirement from Farming" which includes definitions and guidelines and the application form for the pension. They also issued a basic guideline booklet. Since these were issued the Department has been looking at the Scheme on an ongoing basis. This has resulted in certain changes to the Scheme itself and to requirements under the Scheme. Practitioners dealing with the Scheme, therefore, need to be in regular contact with their Farm Development Office in order to obtain current Department Practice in relation to the Scheme.

The Conveyancing Committee has had meetings both with the Department of Agriculture and the IFA in relation to the Scheme. One of the concerns of the IFA was the question of the knowledge which solicitors had of the Scheme and the fees which were being charged.

In relation to fees it was pointed out to the IFA that in order to qualify for the pension, legal work, other than applying for the pension itself, had to be done in order to meet the requirements. The legal fee would depend on what work had to be done. For example, there may be two farm transfers involved; a transfer and lease; two leases; title perfection where titles have not been kept up to date; and in certain instances Administrations and Probates. Deed of Family Settlement, Deed of Appropriation and possibly Deed of Disclaimer. In cases where the transferee already has a holding there may be one lease or one less conveyance to be done. The work done may also require the updating of wills. In that regard it was pointed out that solicitors would be happy to detail their charges and other expenses to their client before commencing any work on the Scheme.

The Committee's advice to practitioners is that they should not undertake to do a Farm Retirement Scheme case unless they are prepared to fully familiarise themselves with the system. In certain instances any delay may result in a permanent loss to an applicant and solicitors should be aware of this before undertaking the work.

Where co-ownership (either joint tenancies or tenancies in common), intestacies, and testacies are involved practitioners should check in advance with the Department of Agriculture as to how the Scheme will apply. In certain circumstances different options are available.

The Scheme entitles persons who are in joint management of the holding to apply for the pension. The Department will advise as to whether a person is in joint management.

While leases at full market value are stamped at 1% of the annual market rent, this is not so in the case of a nominal rent. Under Section 102 (ii) of the Finance Act 1992 stamp duty is payable on the premium value of the lease where the rent is less than the market value. In such cases there is no reduction in the stamp duty rate where the parties are related.

There are also Capital Acquisitions Tax implications where the rent reserved under the lease is less than the market rent. The lessee is deemed to get a gift each year. This gift is the difference between the market rent and the rent reserved.

The AIB in conjunction with the IFA and with the co-operation of the Conveyancing Committee have brought out a revised version of the Farming Master Lease. This is a lease drawn up to cover almost all situations pertaining to agricultural property and practitioners should, if they are using it, select the clauses appropriate to the particular case.

Guideline Conveyancing Checklist

1. REGISTERED LAND

(i) *Where the transfer of title to Transferee has not yet been registered*

- Certified copy of Original Transfer (with Map) duly stamped by Revenue, together with a copy of relevant Folio/s (and File Plan if available) or Land Registry Search and a map of the holding.

- Dealing Number.

- Undertaking of Transferee to furnish certified copy of Folio/s as soon as registration is complete. (If same is not submitted within one year , Department will review the matter).

- Confirmation of the areas transferred (as per title).

(ii) *Where the transfer of title to Transferee has been registered*

- Certified copy of the relevant folio/s (and file plan if available) or Land Registry search and a map of the holding.

2. UNREGISTERED LAND

- Certified copy Deed/s of Assignment/Conveyance (and a map of the holding) duly stamped by the Revenue and registered in the Registry of Deeds.

- Confirmation of the areas transferred as per title.

3. LEASES

(i) *For leased land to be reckoned as eligible under the Scheme, leases must:–*

- have a residue of at least FIVE YEARS remaining at the date of the transferor's retirement or at the date of the enlargement, whichever is the later. Where necessary such residue should be extended to cover the period of the pension,

- be duly executed and stamped by Revenue. (There is no registration requirement). The lease should accompany the application,

- have Land Commission consent (Section 12) (Leasing Application Form),

- stipulate the Annual Rent and operative date,

- state the area, have map attached and give Folio Numbers where applicable.

- Every lease submitted under the Scheme, whether it is from the Transferor or by way of enlargement must be "backed up" with copies of the relevant Folio/s (and file plan if available) or Land Registry Search and Map,

- indicate any restrictions as to land use.

(ii) Lessors of **ANY AND ALL** Leases entered into under the Scheme must be the registered owners of the lands in question or the legal personal representative of the said owner.

4. LAND COMMISSION LAND

Certificate from the Land Commission confirming the status of the land in question. This will set out the full detail of the said lands.

5. GENERAL

It should be noted that the various Undertakings or Certificates may be embodied in the deeds or given separately given the particular circumstances . . . i.e. Family Home, Section 12, compliance with the Scheme.

Conveyancing Committee

Cross Examination of Witnesses

Following a recent decision of the High Court, the Litigation Committee wishes to bring to the notice of solicitors that they should advise their clients, and their witnesses, that a solicitor may not discuss the case with them prior to their cross examination being concluded. The Bar Council have an absolute rule which precludes barristers from speaking to their clients, or their witnesses, in such circumstances. The Litigation Committee however considers that this rule for solicitors is not absolute, as it may be necessary for solicitors to speak to their clients, or their witnesses, prior to cross examination being concluded, for purely administrative purposes. This may be quite simply to inform them of the time it might be necessary for them to attend Court on the following day or confirm their actual attendance. However, under no circumstances should a solicitor discuss with his client, or his witnesses, matters arising, or which may be about to arise, out of their cross examination.

Litigation Committee ❐

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In his Foreword, the Hon. Mr Justice Blayney observes that, *The author of this work...deserves our thanks for the invaluable service he is providing and it is my hope that we may look forward to further editions of his work to keep us up to date in what has become a very important area of the law.*

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CORRESPONDENCE

Deaf Clients and difficulties of Communication

The Editor,
Gazette,

Dear Editor,

We who become deaf in adult life are at a greater disadvantage than those who are born deaf. We still retain the ability to speak, spell and the abilities we had previous to this tragedy.

Due to the difficulty of communication such people find it a double stress when seeking legal advice as few members of the legal profession can lip read or use sign language (Irish, English or American). This prevents justice being achieved in many cases.

Can this be remedied for the benefit of both clients and lawyer.

Gestures are not enough in legal matters.

Trusting you will give some thought to the suggestion "Charter for hearing impaired clients".

Yours sincerely

M.M. BassettMcGrainn

12 Temple Mills
Celbridge
Kildare

Re: Closing of Sales without Guarantee Certificates

The Editor,
Gazette,

Dear Editor,

We would like to draw your readers' attention to a concern which has been growing regarding the number of residential property sales that are closed prior to the issue of the N.H.B.G.S. Six Year Guarantee Certificate.

The practice of closing a sale without evidence of our Guarantee Certificate having been issued leaves house purchasers in a position that they may be purchasing an uncertified dwelling either because of the fact that the final inspection has not taken place or that the Certificate has not been issued for reasons of certain additional works that have been specified as a pre-condition for its release.

N.H.B.G.S. procedures are designed to ensure that subject to a final main structure inspection which takes place well before completion, that the Guarantee Certificate is in the hands of the builder for passing on to the purchaser. We would therefore ask practitioners to encourage good practice and ensure that the Certificate is available to purchasers at the closing of sales.

Under normal circumstances there should be no reason whatsoever for the non-observance of the foregoing procedures thereby affording the purchasers the protection intended to be conferred on certification.

Yours sincerely,

Michael Greene
Managing Director
National House Building Guarantee Scheme ❐

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PEOPLE AND PLACES

At the Fair and Murtagh, Solicitors, Stand at the Ideal Homes Exhibition were l–r: PJ Munnelly, Solicitor, Thelma Mansfield, Honorary Guest, and Martin Egan, Solicitor.

Diploma in Property Tax for Solicitors Awards Ceremony: Back Row l–r: Gerard Corcoran, Tony Joyce, Mel Ferguson, Paul Little, Michael Moore, Roger Morley, Declan Barry, Eamonn Muldoon. Middle Row l–r: Owen O'Mahony, Mary McDermott, Michael Kelly, Kathleen Leader, Lucia Fielding, Mary Ronayne, Mortimer Kelliher, Robert Marshall, Annette McCarthy, Regina Sweeney, John Burke-O'Leary, Sean Conway, Albert Power, (Law School Principal). Front Row l–r: Brian Bohan, Course Moderator, Felicity Foley, Mary Singleton, Pat O'Connor (Solicitor), Marie Moran, Nuala Teehan, Siobhan Daly, Clare O'Sullivan, Harriet Kinahan (Law School – Apprenticeship Officer).

Law Society of Ireland -v- Law Society of England and Wales Tennis Match on 10 September 1994, l–r: Frank Egan, John Mark Downey, John Paul McDowell, Walter Beatty Jnr., Henry Lappin, Brian Crowe.

Inaugural Solicitors/Judges Golf Tournament/Dinner at Blackhall Place on 14 October 1994, l–r: Henry Lappin, Paddy Glynn, Senior Vice President, Law Society and The Hon. Mr. Justice Seamus Egan, Supreme Court.

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At the recent Concert by Our Lady's Choral Society in aid of the Solicitors Benevolent Association, l-r: Joan Merrigan, Soloist, Andrew F. Smyth, Chairman, Solicitors Benevolent Association, Pronsias O'Duinn, Conductor, and Mrs Jacqueline O'Mahony.

LAWBRIEF

by Dr Eamonn G Hall, Solicitor

Judge Brian Walsh – The Re-dedication of the School of Law of St. John's University, New York.

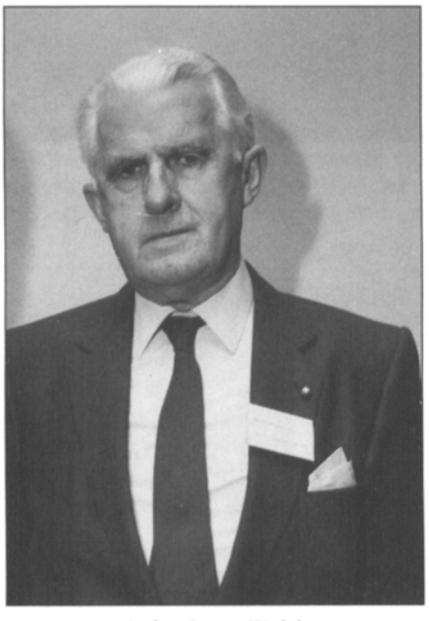
The Hon Mr Justice *Brian Walsh,* judge of the European Court of Human Rights and former judge of the Supreme Court received the degree of LL.D (h.c.) from St. John's University, New York on October 2, 1994 on the occasion of the re-dedication of the School of Law. Judge Walsh also delivered the re-dedication speech. In his re-dedication address Judge Walsh dealt with many significant issues concerning the law and lawyers. The full text of the address will be published by St. John's University.

In his address Judge Walsh stated that if one asks what is the justification in having law at all, the answer must be that the good of law is the common good. If the end of the law ceases the law itself must cease. Thus, stated Judge Walsh, if a law is not directed to a good end it will have no true justification and therefore cannot be deemed to be a law. If a law is not directed to some good it cannot be the norm of good conduct and no good will come of observing it. It might indeed be harmful. The common good is the very object of society. The Judge noted that the common good was also the basis of all the authority of the State.

In the field of human virtue, the Judge stated that justice is the highest. The object of justice is the right of another, that is something that a person has a right to. Judge Walsh quoted St. Thomas Aquinas speaking of justice as "a habit according to which, with a constant and unchanging will one gives to another what is his due".

The Judge noted that the law cannot be regarded as "ethically neutral anymore than one can regard economics or history or international relations as ethically neutral". He continued:

> "Unfortunately, in many law schools students seldom have that necessary preliminary training in the analysis of ethical concepts which is essential if the facts of government organisation are to be effectively correlated. The relation between actual law and the theory of justice is one that has to be critically examined. No student should be left under the impression that talk of justice is mere rationalisation."



Judge Brian Walsh

The Judge was happy to record that the fundamental rights section of the Constitution of Ireland anticipated both the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms by more than a decade.

Judge Walsh noted that the main function of lawyers is to serve the cause of justice and the main function of the law is to uphold the cause of justice. "This is equally applicable to lawyers who enter the public service as well as those who can enjoy a private practice. But whether in the public service or in private practice the obligation remains the same." Recalling his visits to law schools in the United States he observed that while some graduates of the law schools quenched their passions in municipal bonds others passionately committed themselves to the defence of the right. "But in whatever field a law graduate finds himself, the doing of justice remains the prime purpose of his professional existence."

In words that have the quality of immortality, Judge Walsh reminded his audience that

> "all lawyers have a prior and perpetual retainer on behalf of truth and justice. This applies not only to the professional advocate and to the Judges but equally to members of the administration. A professional advocate was not simply the mouthpiece of his client or, to put it more vulgarly, a 'hired gun'. His role is to give to the client the benefit of his learning, his talent and his judgment but all through he must never forget what he owes to himself and to others."

In a magnificent finale, the Judge concluded that "all persons participating in the administration of justice must be regarded equally to be ministers in the temple of justice".

The address is that of a philosopher judge and should be recorded for posterity.

Taoiseach Opens New Law Library Building

Several hundred barristers, members of the judiciary and invited overseas Bar representatives attended the official opening of the new Law Library Building at Church Street, Dublin, by An Taoiseach, Mr. *Albert Reynolds*, T.D., on the evening of October 7, 1994.

The 36,000 sq. ft three-storey building has rooms and secretarial support facilities for 90 barristers and will also accommodate the offices of the Bar Council. There are four meeting rooms, including two large conference rooms, a restaurant, bar and parking for 36 cars.

Adjacent to the Four Courts, this is the first building that the Bar Council actually owns. It will help alleviate overcrowding in the Law Library, which currently has over 900 members. From the end of the 1960s the membership of the Law Library doubled in 10 years, tripled in 15 years and is likely to have quadrupled by 1998, if not before.

The £5.5 million reconstituted stone building has been fitted with state-of-the-art computer and security systems with internal mail and telephone systems that enable close contact with the Law Library.

In keeping with its neighbour, St. Michan's Church, it was designed by architects Legge and Associates and built by Michael MacNamara & Co. Features include a polished granite entrance and a copper and glass roof which maximises the natural light.

In his speech, the Taoiseach, Mr. Reynolds stated that the idea of moving even a part of the Law Library from the Four Courts must have been "terrifying". He said: "It was easier to put up with over-crowding, and doing some work from home, than to contemplate such a major break with tradition."

He noted that the new building was, in a sense, a symbol of change. It was a symbol of the great changes in our society over the past thirty years, and nowhere was this change more evident than in the legal and the courts systems. The Taoiseach continued that one change, most obvious to barristers, had been the enormous increase in the number of barristers using the Library in recent years. Some might interpret this as an indication of the rewarding nature of a future in the legal profession, but for many, the reality was that supply far outstrips demand.

The Taoiseach was delighted to add that the new building had benefited from the Government's Urban Renewal Programme.

NEW BUILDING FOR LAWYERS

The official opening of the new Law Library Building, Church Street was performed by An Taoiseach Albert Reynolds TD, (centre). Pictured right and left are the Minister for Finance, Bertie Ahern TD and the chairman of the Bar Council, Frank Clarke SC.

Additional Judges and Resources

The Taoiseach, Mr. *Albert Reynolds,* T.D., in a speech at the opening of the new Law Library Buildings on October 7, 1994 stated that plans to rectify problems in the courts service had been finalised by the Department of Justice. Mrs *Maire Geoghegan-Quinn* had undertaken a major review of activity levels in the courts and she would shortly bring proposals to Government, to solve the problems identified by the review.

The main elements of the proposals announced were:

- The appointment of 1 additional High Court Judge;
- The appointment of 6 additional Circuit Court Judges;
- The appointment of 4 additional District Court Judges.

By any standards, this was a major injection of badly-needed resources into the judicial system, according to the Taoiseach. It would address the delays in disposing of criminal cases, and it would deal with the substantial increase in the number of civil and family law cases being heard in both the Circuit and District Courts.

In bringing forward these measures, the Taoiseach stated that the Government was conscious of the existing shortcomings in the resources area of the judicial system. The Government was stated to be committed however to improving the Courts service, and the Taoiseach was confident that this substantial package of measures would greatly assist in eliminating the delays that users of the Courts system currently faced.

In addition, the Taoiseach stated that a committee has been set up under the chairmanship of the President of the Circuit Court, Mr. Justice *Francis Spain,* to examine and report on the numbers and boundaries of existing circuits, with a view to preventing arrears arising in the Circuit Court in the future.

The Taoiseach looked forward to receiving final recommendations from the Law Reform Commission in the area of family courts and family law cases. On the subject of Courts reform, the Taoiseach referred to a Bill to amend the Courts Acts which was then currently being prepared in the Department of Justice. This would include proposals to establish a new Court of Appeal with civil and criminal jurisdiction, comprised of full-time judges. The new Court of Appeal would

be empowered to hear civil appeals from the High Court, and should reduce the volume of appeals, and the number of delays. The Government expected this legislation to be passed by the Dail in the coming session.

Court buildings were to be modernised too. For far too long, the provision of modern accommodation for the courts has been either on the back burner, or moving at a snail's pace, according to the Taoiseach. By the year 2000 however, all of our major court venues would have modern well-equipped facilities to meet the new demands being placed on them. Major building and refurbishment works were already underway on courthouses in Carlow, Carrick-on-Shannon, Clonmel, Cork, Donegal and Galway.

All of these measures should make it easier for the courts and the judiciary to discharge their "great obligations". According to the Taoiseach, the new Chief Justice remarked to him in another venue that, had he chosen politics as a profession, he (Mr. Justice Hamilton) might today be Taoiseach. Perhaps, the Taoiseach stated, he was fortunate that Chief Justice *Liam Hamilton* opted for a legal profession instead, and he knew that as Chief Justice, Mr. Justice Hamilton would play an important part in ensuring that the Government was always aware of the needs of the courts. Among his most immediate duties as Chief Justice stated Mr. Reynolds, would be the preparations for the Bicentenary Celebrations of the Four Courts in 1996.

As part of the preparations for the bicentenary, a major refurbishment of the Four Courts went ahead during the summer. When the bicentenary was being celebrated, the Taoiseach was confident that we would also be able to celebrate great improvements in all aspects of our justice systems. ❐

THE INCORPORATED LAW SOCIETY OF IRELAND

PROFESSIONAL COURSE EXAMINERS

The Education Committee has recently concluded a review of Professional Course subject content and training methods. From January 1995, the following composite subjects only will be presented:

Capital Tax and Administration Practice
Litigation
Applied Land Law

Capital Tax and Administration Practice will include the current Capital Tax, Wills, Trusts, Probate and Administration of Estates Modules. Litigation will encompass the existing Litigation Module and also Social Welfare Law, European Union Law, Human Rights, Labour Law and Family Law. Applied Land Law will be made up of Landlord and Tenant Law and Conveyancing.

The Education Committee has also decided to revise the current Final Examination – Second Part. In future papers will be presented in the above composite subjects only. Each paper will be in two parts. Applications are invited from practitioners to draft and to correct examination papers in these subjects. Applications must be accompanied by full CV which should be forwarded to:

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Teaching Applied Languages in a Legal-Commercial Environment: the Law/French Experience

by Sofie M. Cacciaguidi MA*

"In a world which is becoming increasingly internationalised, the lawyer who is incapable of speaking a foreign language, often appears today as a specialist struck down by some handicap. The illiterate of the twenty first century will be the one who only speaks one language." (Patrick Maistre du Chambon)

Introduction

In 1994, the Law Faculty at University College Galway launched an undergraduate degree in Corporate Law (B. Corp Law). The three-year degree programme is designed to provide a foundation course in law with particular emphasis on business and commercial law. The degree is interdisciplinary in nature involving business and language options. The programme is intended to provide students with an academic foundation for entry to the legal profession as corporate lawyers with particular emphasis on international mobility. The courses included on the programme include, among others, contract, European Community law, commercial and company law, legal and business ethics, international trade law, banking law, etc... In addition students are required to take a substantial number of courses in the business area including finance, economics, accounting, marketing etc. A substantial part of the syllabus is also devoted to a modern language area with the emphasis on preparing students for work in an increasingly pan-European and global business environment.

For the first year of this programme our students were offered the opportunity of pursuing an advanced course in legal and commercial French and so far, over 60% of the students embarked on the three year legal French stream. As with many binary programmes involving applied languages, the Bachelor of Corporate Law, with its emphasis on legal French presented to a linguist the challenge to balance the time constraint on teaching applied languages as part of a binary programme with the demands of traditional language teaching. It also offered the challenge to develop work methods to teach exclusively a language for special purpose, bearing in mind that two different systems of laws in this case are applied: common law in Ireland and civil law in France: here lay the traps and ambiguities of operating not only in two different languages but also from a legal system to another.

Sofie M. Cacciaguidi MA

The Role of Modern Language Teaching

In recent years, there has been an increased realisation of the importance of applied languages in maintaining our competitiveness. In the past, language teaching has played only a minor role in professional and vocationally-oriented third level programmes. Languages have remained the domain of the humanities with the emphasis on the study of literature, culture and the arts.[1] The growing recognition of the importance of languages in the curriculum has led to a dramatic growth in new binary programmes combining business/legal degrees with modern languages. Many of these programmes have been developed in response to the demands, opportunities and challenges of the single European market and the increased globalisation of markets.

The role of modern language teaching came under scrutiny in a report submitted to the Minister for Education in June 1993.[2] In their report the authors highlight the aim of the Green Paper on Education to "set a target of placing Ireland on a par with its EC partners in terms of its ability to communicate in other languages in the Community." They also found that the "levels of foreign language proficiency in Ireland are very low by European standards" and they go on to question the quality of the language learnt by two-thirds of students sitting the Leaving Certificate. Furthermore they point out the Irish complacency, particularly in the area of business, regarding the use of the English language:

"less than 10% of the world's population speaks English as a native language, and less than 20% of EC citizens do so. [...]. While English is the main language of International commerce, the significance of this can be easily exaggerated, especially below the level of the top world business elite. Consequently, rather than resting on our linguistic laurels we must built on them."[2]

Today, it is increasingly apparent that a lack of at least a second language will narrow the choice of destination of Irish graduates looking to broaden their experience to English-speaking countries and will render them unable to take advantage of market opportunities now existing in the European Union. The low level of our

modern language skills limits our graduates ability to tap into European techniques and practices, by restricting their horizons to those of the UK and North American culture and thinking. On a wider level it is generally accepted that the study of a foreign language is of considerable positive value to students in developing a knowledge of and sensitiveness to countries and cultures other than their own.[3]

The Law French Experience

In applied languages the student must be exposed to the various dimensions of the language s/he is studying. In general we can say that the objectives of an applied languages course e.g. Legal French are to provide the student with:

a) practical skills in speaking, listening and writing French at an advanced level so it can be used in a business-legal environment

b) an introduction to French culture and an insight into French Business/Commercial and legal affairs

c) improvement of the students' grammatical skills in the French language.

The legal French programme addresses, therefore, the learning of French in an applied context, from three directions or dimensions (see figure 1).

The External Environment
The first element is based or centred on the external environment, in this case, France. It provides an introduction and analysis of the country itself and an appreciation of the perceptions and motivations which drive French social, commercial and political life. The material used during the classes is designed to give a complete background of the macro environment which influences French law and commerce.

The Internal Organisational Environment
The second dimension of the framework is concerned with the internal organisational environment. It reflects the salient issues involved in the day to day operation of business entities and the roles and functions typically carried out. In this regard, it addresses a variety of topics including management, accounting and finance, marketing, manufacturing etc.

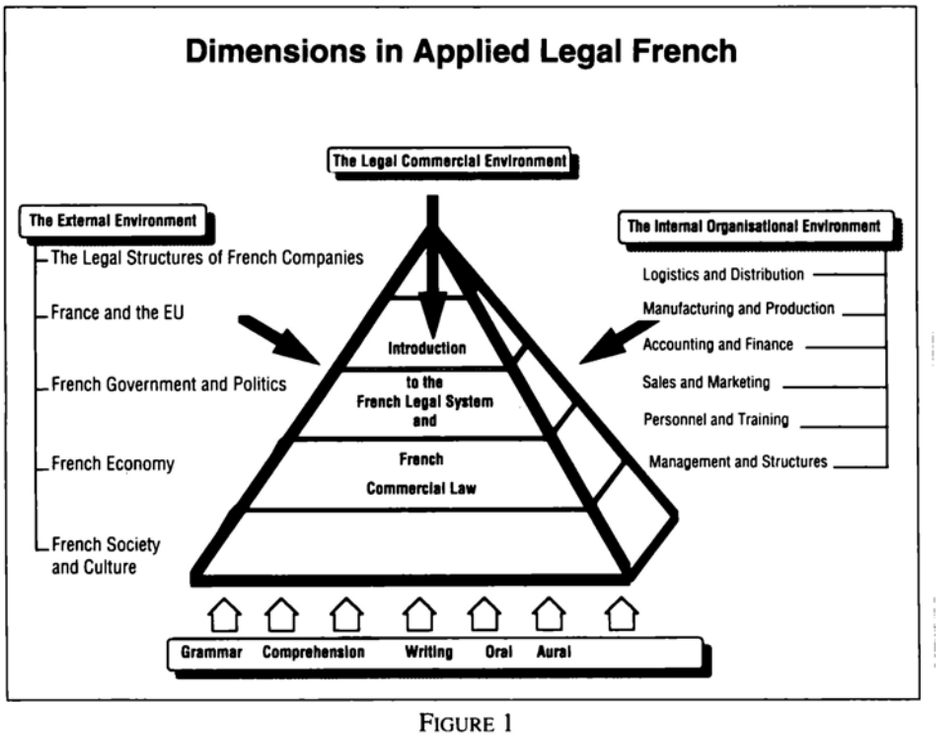

FIGURE 1

The Legal/Commercial Dimension
The third and final dimension reflects the legal and commercial law aspects of business transactions. Topics addressed include the French legal system, including the judiciary, law enforcement, commercial law, the legal profession, court structures and procedures etc. Because of the specialist nature of these topics the lecturer is normally supported by external lecturers from academic, professional and other institutions. In the case of this year, lectures were supplemented by French visiting lecturers, corporate lawyers, and other bodies.

Developing Core language Skills

Underpinning each of these dimensions is the language core consisting of grammar, comprehension, writing, oral, etc. To accentuate the more practical and vocational aspects of the applied language, an emphasis on spoken and written French is stressed. The student needs to be stimulated and challenged by oral practices on negotiation, presentations and debating (communicative approach). And naturally s/he has to work on the traditional theme/version to further his/her business-legal lexique as it is only by total exposure that learners can learn the appropriate grammatical and lexical dependencies of the language itself.

While the course has a strong applied focus with the emphasis on language skills it is important to recognise the need for students to understand French culture and civilisation. In this regard students are exposed to French culture through a variety of media including literature and film. In the latter case the students meet on a weekly basis (outside the normal class times) to view and discuss French films.

In addition to the existing language teaching facilities at UCG, the Law Faculty is also expanding its resource base using the Eutelsat satellite, to access seminars, conferences and debates broadcast by the Law Faculty of Poitiers' University in France.

Meeting the Demands of the Market Place

The UCG Law Faculty introduced this new degree programme to prepare students for the more business driven

and transnational careers they are likely to pursue as a result of the ever increasing European integration. The programme also intends to lead law students away from traditional overcrowded legal careers and encourage them to seek a broader range of employment opportunities. Since the removal of cross border barriers to the provision of legal services, legal consultants with language skills are ideally placed to carry out contractual transactions outside Ireland and represent client companies in foreign courts. This however is only possible if the corporate lawyer can function effectively in three areas: law, business and languages.

While the B. Corp. Law is a relatively recent initiative, continental universities are already catering for graduates from such programmes. The University of Grenoble in France, for example, offers an LL.M. with an option in English Law or German Law or even Dutch Law, and a Masters in Business Law which nevertheless includes a trinlingual option. It does so to allow its students to integrate themselves more quickly on other Europeans markets and to respond faster to foreign solicitations. As part of the B. Corp. Law, it is envisaged that students will either take some of their courses abroad or be placed on a stage which will expose them to other cultures and languages. This approach helps increase inter-institutional contact and also allows the student to accede rapidly to an international work market.

A Bachelor in Corporate Law with a language option gives any student access to a rigorous intellectual formation in law while conserving his/her sense of professional openings in Ireland and also within the E.U. Given the current surplus of Law graduates in this country, a combination of law and languages provides a potential mechanism for alternative careers for graduating students and thus relieving the current overcrowding in the profession.

References

1. Dugan J.S. "A Rationale for Broadening the Perspective of Business French Programmes." *French Review*, 57 (1984) : 356-365.
2. Fitzpatrick Associates "Being economical with Languages: the case for increased modern language teaching in Ireland, A Response to the Green Paper on Education, June 1993.
3. Omaggio A.C., Teaching Language in Context, Boston: Heinle and Heinle, 1986.

**Sofie Cacciaguidi is a lecturer of French in the Faculty of Law at University College, Galway.*

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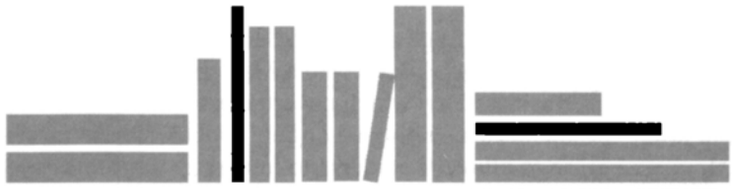

Entertainment Industry Contracts: Negotiating and Drafting Guide

By Donald C. Farber, General Editor, Matthew Bender, New York, Freephone Service from Ireland 1-800-55-8830, 5 volumes, filed with all previous releases and current through to release number 19, May 1994, hardback, US$820.

Laughter is good medicine. Laughter, on a regular basis, lowers blood pressure and produces enzymes that reduce the risk of heart disease. At least so it is said: but the writer is not a medical doctor. The US poet Ella Wheeler Wilcox (1850 – 1919) penned the immortal lines:

> "Laugh, and the world laughs with you;
> Weep and you weep alone,
> For the sad old earth must borrow its mirth,
> But has trouble enough of its own."

Whatever about the foregoing, one matter is certain: the entertainment business has made many laugh and, to use a terrible cliche, has facilitated many, including entertainment lawyers, in laughing all the way to the bank.

The electronic age is bringing us increased leisure time. The entertainment industry – whether it makes us laugh or cry – has a magnificent potential for growth: new technologies are being announced constantly. The rhetoric is sometimes utopian and almost breathless. To paraphrase another writer, the rhetoric of the entertainment industry is deeply ingrained in the militaristic and sexual metaphors of strategic advances and big bangs. Certainly, the entertainment business has potential for lawyers.

The five major entertainment industries are covered in these volumes. In relation to book publishing, contracts are included relating to standard author – publisher contracts, collaborative arrangements, permissions and licences, publishing rights, and more.

In the volume on film, there is a broad discussion on film contracts together with forms of agreements and commentaries concerning the acquisition and sale of rights, production and financing, licensing and distribution, profit participation terms, legal fees and other related matters.

The volume on music includes contracts involving name selection of recording artists, personal and business managers, agents' agreements, live performances and tours, artists and record companies, music publishers, and more.

The television volume examines television contracts and contains commentaries and contracts covering acquisition of rights, co-production activities, financing, employment, production, home video and more.

The volume on theatre explores the theatre business and provides contracts covering start-up activities, obtaining a property, organising and funding the producing company, theatre unions, licences and theatre organisations.

The volumes contain hundreds of contract forms and also provide practical step-by-step guidance for each major entertainment field. There is also a special background section which sets out information about how deals are made and negotiated, how the industry is structured and how to avoid costly pitfalls.

Each of the five major volumes in the set is written by an expert in the particular entertainment field. For example, Donald C. Farber serves as both author of the theatre section and the general editor of the entire set of volumes. He is a partner in the law firm of Tanner Propp Fersko & Sterner in New York city and is a leading entertainment law specialist.

Entertainment Industry Contracts: Negotiating and Drafting Guide is a monumental work and could be described as the entertainment lawyer's bible. It is an indispensable guide through the international entertainment jungle and can be adapted to suit the needs of lawyers in different jurisdictions.

Dr. Eamonn G. Hall ❐

Criminal Law: Cases and Materials

by Peter Charleton, Butterworth Ireland Ltd, Dublin 1992, 636pp, softback, £39.50.

In his preface, the author says the purpose of this book is to provide an introduction to the principles of criminal law as they apply in Ireland. This modest enough aim has certainly been achieved, but the book goes much further. This is for two reasons. First and foremost, the author's own text unusually for a volume of cases and materials, is very extensive. When one considers the quality of that text it is no exaggeration to say that it constitutes the rudiments of a first-class text book on Irish criminal law. Certainly if one were to follow the author's own suggestion of reading the work from beginning to end (rather than dipping into it) a good grasp of the principles of criminal law would be achieved.

Secondly, the author has approached the examination of what the law is in an enquiring and, at times, critical light. He laments the paucity of Irish decisions on many subjects, which he

has had to supplement with cases from other common law jurisdictions. He is also critical of the legislature: "All the trouble involved in the reproduction of works of law, and criminal law in particular, would be greatly eased if the Oireachtas were to take seriously its function of law making and reform. As a practitioner I can say this derogation from duty of our politicians has lead to chaos in the criminal courts." As a suggested antidote to this chaos the author has included throughout relevant extracts from the Model Penal Code of the American Law Institute. This is for the stated purpose of showing how "chaos could be replaced by order by the simple exercise of causing the law to be written down." The author also commends the code as a contrast between the confusion of judge made law and the simplicity, certainty and ease of reference of a written text.

As one can see the author is not reluctant to use blunt language where he deems it necessary. For example, section 4 of the Criminal Law Amendment Act 1935, the defects of which are described as "many and obvious", is reproduced "as an example of a useless law." It has to be said in defence of the legislature, however, that in recent years it has begun to undertake the task of reform of the criminal law in a serious fashion. Last year saw the introduction of five separate pieces of legislation devoted exclusively to criminal law and procedure. This year has seen the passage of the Criminal Justice (Public Order) Act, the Road Traffic Act and the Criminal Justice Act (dealing, *inter alia*, with confiscation of assets, money laundering and international cooperation). A comprehensive Fraud Bill has been promised for later in the year. Indeed, the very section of the Criminal Law Amendment Act which the author has so roundly traduced has been repealed and replaced since the publication of the present volume.

I expect that the book was principally aimed at, and will be of most assistance to, the law student. He/she will benefit from the clear prose style, the simple and effective examples cited throughout and the good choice of materials. A student will also obtain useful guidance from the bibliography which is attached to each chapter.

The practitioner, on the other hand, may find that the bias towards principles and concepts takes from the usefulness of the book. The entire first half of the book is taken up with consideration of the basic principles of criminal law, inchoate offences, the parties to offences and the various defences before the substantive offences of homicide, assault and property offences are reached. Nonetheless, these areas of substantive law are adequately dealt with, although the treatment of property offences was, in my view, somewhat superficial. However, the aspect of the book that will appeal most to the practitioner is the final chapter which contains over 180 draft charges, ranging from murder to assault to minor road traffic offences. Each draft charge is cross referenced to the section of the book where the offence is discussed in the text. In addition, many are very well annotated. I have no doubt that the busy practitioner will find these draft charges to be a most useful "ready reckoner."

Barry Donoghue ❐

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John J. O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	988.00
St. John M. Donovan, "Lawcus", Stoneyford, Co. Kilkenny.	1,150.00
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Jonathan P.T. Brooks, 17/18 Nassau Street, Dublin 2.	57,913.70
	147,672.97

❐

New Residence Provisions – Finance Act, 1994

by Rory O'Riordan*

The Finance Act 1994 has significantly reformed legislation on fiscal residence. The changes have brought in new rules determining residence for individual tax payers. The new rules do not affect corporate residence which continues to be based on the location of "central management and control."

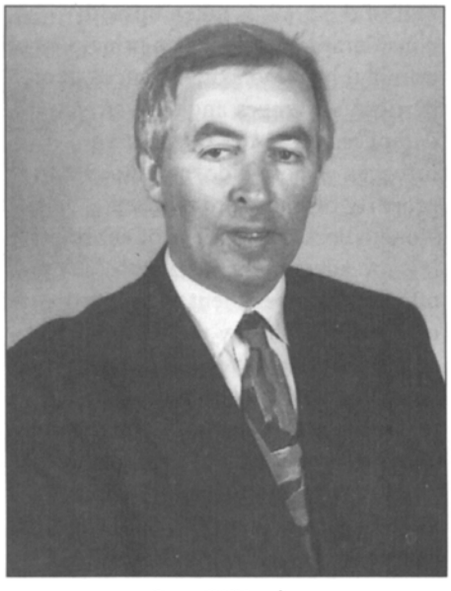
Individual liability to taxation in the Republic is determined by RESIDENCE, ORDINARY RESIDENCE and DOMICILE.

RESIDENCE

The law regarding Residence has now been codified in Sections 149 to 158 of the Finance Act 1994 in regard to Tax on Income and Capital and for Gift and Inheritance Tax. The Act introduces a definition of residence based exclusively on physical presence. The new rules have done away with the old "place of abode" rules which resulted in many non-nationals inadvertently becoming resident in Ireland as a result of acquiring a holiday home. Under the new rules Irish RESIDENCE will now only be acquired as follows

(A) Presence in the State for a period of 183 days or more in any tax year.

An individual will be regarded as resident for a year of assessment if he spends a total of 183 days or more in the State in that year. This will include all visits, including holidays, weekends, etc and will be aggregated in applying the test. The Act also goes on to state that the count for the purposes of the physical presence test on the number of days for



Rory O'Riordan

which an individual is in Ireland is the END of the day. It will thus be possible to make numerous trips from outside Ireland to Ireland on a daily basis without becoming resident for tax purposes.

Example 1 – *Arrival in Ireland on the 1st of July 1994 and departure on the 31st of December 1994. (184 days). Resident for tax year 1994 – 1995.*

Example 2 – *Arrival in Ireland on the 1st of July 1994 and departure 21st October 1994 (123 days) not resident for 1994 – 1995. (does not reach the 184 days rule).*

(B) Presence in the State for a period of 280 days or more in the current and preceding tax year.

The Finance Act 1994 provides that an individual will be regarded as resident in Ireland for a year of assessment if he is present here for 280 days or more in the current year and previous years of assessment. The Act goes on to provide that where an individual is present here for 30 days or less that person will not be regarded as resident in Ireland for that year, and such days will not be included as part of the aggregate for this test.

Therefore, in an on-going situation an individual can spend up to 139 days in Ireland in a tax year without becoming an Irish resident, the previous limit was 90 days.

Example – *Arrival in Ireland on the 1st June 1994, departure 20th November 1994 (173 days) – not resident for tax year 1994/1995;*

Arrival in Ireland on the 1st June 1995, departure 15th November 1995 (168 days) – resident for 1995/1996 – as the aggregate number of days for tax year 1994/1995 and tax year 1995/1996 is 341 days which exceeds the 280 day rule.

Split Year

Many countries including Ireland have operated a "split year system" for immigrants whereby taxable income on determined not for the tax year as a whole but for the period between the commencement of residence and the end of the tax year concerned. This system has now been codified on a statutory basis for individuals taking up residence in Ireland. In other words income will be assessed for the actual period of physical presence in the country rather than the entire tax year.

Example – *A non-national who takes up residence in Ireland on the 1st August and who by virtue of (A) or (B) above becomes resident for tax purposes will be taxed on the basis of income only from the 1st August to the 5th April in the tax year concerned.*

Consequences

The Finance Act 1994 has disposed of the "place of abode" and "habitual visits tests." The "place of abode" and "habitual visits test" was unsatisfactory. An individual was regarded as resident if he had a place of abode available for his use and visited here for any period of time. It was not necessary for the individual to actually stay in this accommodation, it was sufficient that the "place of abode" was available for his use and ownership was not required. In addition, "place of abode" included shooting lodges and other types of holiday accommodation. The 1994 Finance Act therefore will encourage the acquisition of house property in Ireland by foreign nationals as the ownership of such types of accommodation will not automatically involve Irish residence.

ORDINARY RESIDENCE

An individual will be regarded as ordinarily resident in Ireland for a tax year if he has been an Irish resident for each of the three proceeding tax years. (Finance Act 1994 Section 151-152).

Prior to the 1994 Finance Act, Ordinary Residence was regarded as equivalent to habitual residence or permanent residence although not necessarily a physical presence. This concept has again been codified in the 1994 Finance Act and an individual will be ordinarily resident in Ireland as soon as three years of residence have been completed. An individual acquiring Irish residence in Year 1 (i.e., the 183 days rule) and remaining resident for years two and three will be ordinarily resident in year 4, even though that individual may not actually be resident in year 4 because of physical presence. The opposite is also the case, in that loss of ordinary residence will take place after three sequential years without residence. This can be of particular significance to Irish nationals emigrating to other countries where it will take three years of physical residence outside

Continued on page 344

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The Asthma Society is pleased to acknowledge the financial support of Allen & Hanburys Ltd in funding the cost of this advertisement.

FINEX – CENTRE FOR FUTURE OPTIONS AND TRADING

Law Society members are invited to attend a presentation on the operation of the Futures Exchange at the Financial Services Centre, on 15 December 1994 at 2.00 pm.

Contact: Mary Kinsella, Law Society. Tel: 671 0711

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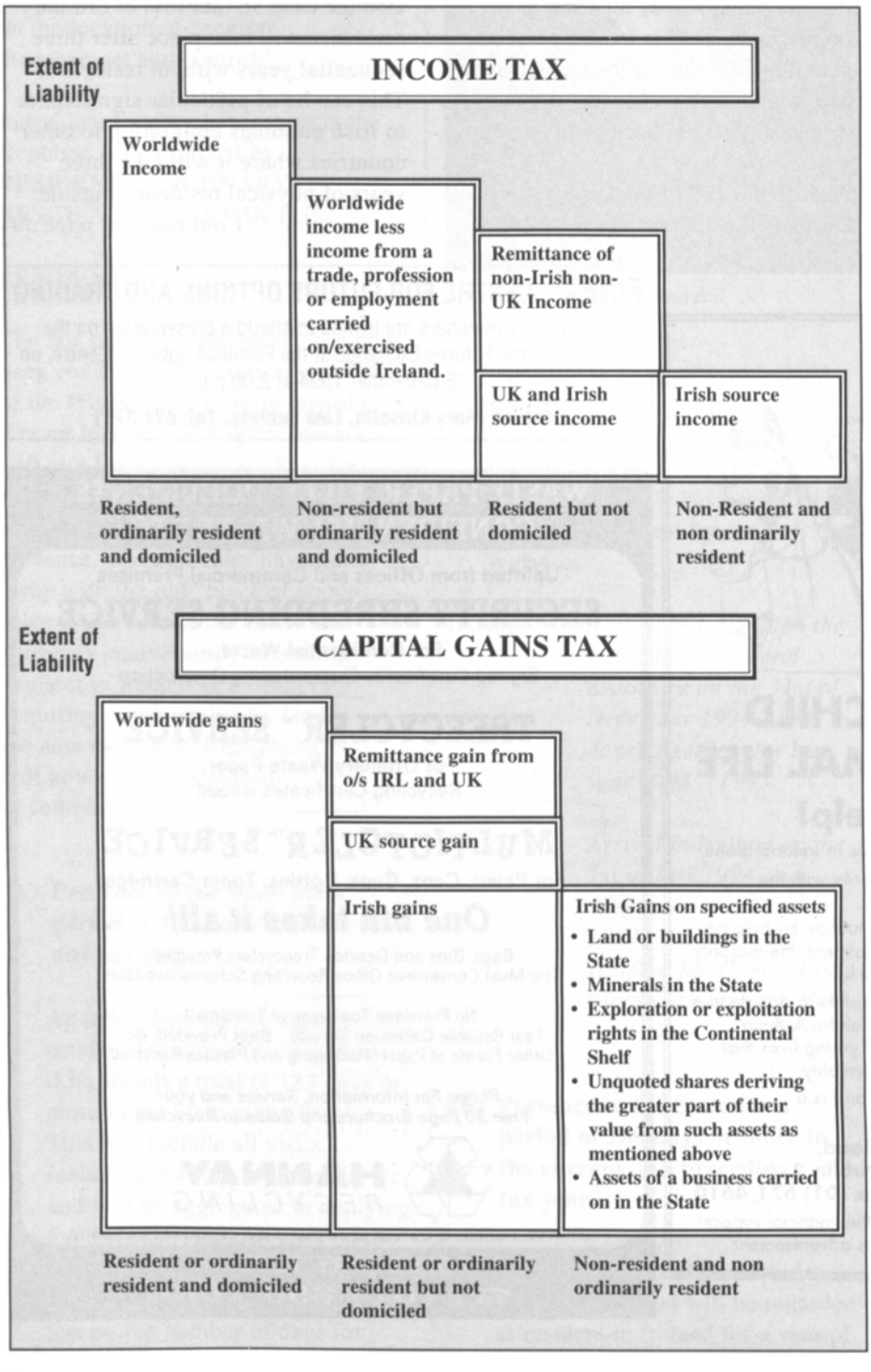
Ireland before they lose the ordinary residence status. Former residents of Ireland will continue to be subject to Irish Capital Gains Tax for three tax years after their departure.

DOMICILE

Domicile is relevant in determining an individual's liability to taxation. The Finance Act 1994 contains no changes in regard to Irish domicile. Domicile is a legal concept, and is substantially independent of either residence or ordinary residence. Domicile of origin is acquired at birth from the country where an individual's father is or was in turn domiciled. This domicile of origin can only be replaced by a new domicile of choice in the event of a permanent and intentionally irrecoverable severance of ties with the domicile of origin in favour of a new domicile. In general for most individuals, domicile and nationality are the same. Domicile is important in determining the base for gift and inheritance taxes in Ireland. Irish domiciled individuals are subject to gift and inheritance tax regardless of either their residence or situation of property.



Non-Irish domicile is important in establishing the favourable "remittance" basis of taxation. A person who is Irish resident but not domiciled in Ireland, has their tax base determined as respects non-Irish – non-UK income by reference to remittances of income to Ireland rather than income actually arising.

Example – *A US National working in Ireland who is paid by a US Company will be subject to tax in respect of the employment income only to the extent of the amount of income actually remitted or consumed in Ireland. This in effect is a tax deduction for savings and has made Ireland an attractive location for ex-patriot employees and for ex-patriots with significant overseas investments, since the extent of liability to Irish Tax is in respect of remittances only rather than the total income.*

The charts on the left contain brief details of the tax liability created by the new residence rules.

**Rory O'Riordan is a partner in the firm Partners at Law, Solicitors.* ❐

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The Society wishes to enhance its pool of contributors for the Law School training courses, both at consultant and tutor level. Practitioners interested in contributing to the training programme should specify their area or areas of speciality and forward a full CV to:

Albert Power,
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Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clárlann na Talún), Chancery Street,
Dublin 7.

Published: 22 November 1994.

Edward Hester, Carrowreagh, Frenchpark, Co. Roscommon. Folio: 10236; Townland: Carrowreagh; Area: 19(a) 2(r) 13(p). **Co. Roscommon.**

Francis Kelly, 79 Glencarrig, Sutton, Dublin 13, being registered as full owner of 1 undivided 1/2 share. Folio: 18453; Land: The property situate on the north side of Boithrim Mobhi in the parish and district of Glasnevin. **Co. Dublin.**

Paul G. Hoss, Ballinagheragh, Ogoonelloe, Clare. Folio: 2194F; Townland: Ballynagehragh; Area: 0(a) 1(r) 10(p). **Co. Clare.**

Thomas J. Foley and Mary Foley, Folio: 566L; Land: Barony of Cork. **Co. Cork.**

Maura Huban, Derry Donnell, Oranmore, Co. Galway. Folio: 38408F; Townland: Derrydonnell Beg; Area: 0.217 Hectares. **Co. Galway.**

Olive Gilsenan, Folio: 871F; Land: Lakill and Mooretown; Area: 30 Perches. **Co. Westmeath.**

Thomas Mallooly, Toberdan, Lecarrow, Co. Roscommon. Folio: 8814; Townland: Kellybrook; Area: 6(a) 1(r) 2(p). **Co. Roscommon.**

Patrick Lynch, Taughmaconnell, Ballinasloe, Co. Roscommon. Folio: 15310; Townland: Carrownadurly; Area: 6(a) 3(r) 32(p). **Co. Roscommon.**

Michael J. Cronin, Folio: 1249R; Land: Iveragh; Area: 1(a) 2(r) 10(p). **Co. Kerry.**

Patrick and Evelyn Carmody, Folio: 6123F; Land: Marshes Upper. **Co. Louth.**

Michael Harford, Baldongan, Lusk, Co. Dublin. Folio: 1924F; Townland: Baldongan in the Barony of Balrothery East. **Co. Dublin.**

John Dolan (1968) Limited of 117 Barton Road East, Terenure, Dublin. Folio: 17866; Townland: Palmerstown Upper. **Co. Dublin.**

John Power, Folio: 10874F; Land: Carrig; Area: 1 Acre. **Co Wexford.**

John and Winifred McGloin, Cloonaghboy, Swinford, Co. Mayo. Folio: 24569F; Townland: Cloonlara; Area: 5.50 Hectares. **Co. Mayo.**

John Dwyer and Margaret Dwyer, Folio: 19643; Land: (1) Lisheenataggart, (2) Dovea Lower; Area: (1) 8(a) 1(r) 0(p), (2) 18(a) 0(r) 35(p). **Co. Tipperary.**

Martin and Marie McMahon, Folio: 3410L; Land: North of Long Avenue in the Parish of Dundalk. **Co. Louth.**

Joseph Barrett, Ballduffmore, Kilnamona, Co. Clare. Folio: 19041; Townland: Ballyduff More; Area: 5.382 Hectares. **Co. Clare.**

Helen Curristine and Noel T. O'Hara, Folio: 2787; Land: Ballyhaw; Area: 1(a) 2(r) 20(p). **Co. Westmeath.**

James Patrick Brett and Kathleen Brett, Folio: 2027L; Land: North of Skibbereen Road; Area: 10 Perches. **Co. Waterford.**

Sean Donnelly, Mulhuddart, Co. Dublin and of Copper Beach, Porterstown, Co. Dublin. Folio: 3769; Land: Licenced Premises in the village of Mulhuddart, Townland of Coolmine, Barony of Castleknock. **Co. Dublin.**

Walter Cunningham, Slievefin, Currandulla, Co. Galway. Folio: 1401; Townland: Slievefin; Area: 131(a) 2(r) 26(p). **Co. Galway.**

Daniel Joseph Madden and Mary Madden, Folio: 1251F; Land: Magheracar; Area: 32 Perches. **Co. Donegal.**

Michael McCoy, Folio: 4397F; Land: Gornagross; Area: 18 Perches. **Co. Limerick.**

John Webber Higgins, Leekfield, Skreen, Co. Sligo. Folio: 1036; Townland: Leekfield; Area: 85(a) 2(r) 0(p). **Co. Sligo.**

Patrick McNamara, Folio: 3167; Land: Islandea, Area: 35(a) 1(r) 14(p). **Co. Limerick.**

Mary Gillespie, Folio: 22194; Land: Corgarry; Area: 9.745 Hectares. **Co. Donegal.**

Peter McGinn, Folio:15680; Land: Coolskeagh; Area: 6(a) 3(r) 10(p). **Co. Monaghan.**

Mary Boland, Bushy Park, Ennis, Co. Clare. Folio: 17801 and 17815; Townland: Drumcaran Beg (2) Drumcaran Beg; Area: (1) 6(a) 1(r) 11(p), (2) 23(a) 0(r) 12(p). **Co. Clare.**

Seamus Hennessy, Folio: 16883; Land: Knockgraffon; Area: 62(a) 0(r) 5(p). **Co. Tipperary.**

Patrick McCarthy, Folio: 9562F; Townland: (1) Crookstown Upper,

Barony of Kilkea and Moone (2) Moyle Abbey, Barony of Narragh and Reban East (3) Inchaquire, Barony of Narragh and Reban East and County of Kildare. **Co. Kildare.**

Rebecca Canavan and Kathleen Canavan, Folio: 26648. **Co. Galway.**

Michael Kennedy, Folio: 3322F; Land: Killinure North; Area: 2.793. **Co. Westmeath.**

John P. Ryan, 1 Euroville, Ballyclough, Limerick. Folio: 6494F; Townland: Doon; Area: 8.250 Acres. **Co. Clare.**

Emily McLoughlin and Stephen Clancy, Folio: 12499F; Land: Cooga Upper; Area: 0.506 Acres. **Co. Limerick.**

Thomas Shanahan, Folio: 13034 and 13010; Land: Corcamore and Cragbeg. **Co. Limerick.**

Anthony Joseph Kelly, Folio: 14124; Land: Largy; Area: 1(a) 2(r) 13(p). **Co. Monaghan.**

Michael Hogan, Folio: 10481; Land: Ballynacourty. **Co. Waterford.**

John Ryan, Folio: 19463; Land: Pollanorman; Area: 20(a) 2(r) 20(p). **Co. Tipperary.**

Catherine M. Touhy and Michael Thomas Touhy, Castlelambert, Co. Galway. Folio: 57159; Townland: Moyveela; Area: 2(a) 0(r) 2(p). **Co. Galway.**

Sarah McGillycuddy, Folio: 4027; Townland: Sraghmore (part), Barony of Ballinacor North and County of Wicklow. **Co. Wicklow.**

Mary Josephine Bernard, Folio: 41967; Townland: Ballylangley, Barony of East Carbery (East Division) and County of Cork. **Co. Cork.**

Wills

Walsh, David, deceased, late of Knockatooan, Rockchapel, Co. Cork. Would anybody having knowledge of a will made by the above deceased who died on 20 November 1993, at Mercy Hospital, Cork, please contact Messrs. Woulfe & Son, Solicitors, Abbeyfeale, Limerick. Tel: 068 31106.

Rogers Robena, Patricia, deceased, late of Tullyvealnaslee House, Oughterard, in the County of Galway. Would any person knowing the whereabouts of any will made by the above named deceased, who died on 15 March 1994, please contact Kieran Murphy & Co., Solicitors, 9 The Crescent, Galway. Tel: 091 587171, Fax: 091 584660.

Kearns, Margaret (Peggy), late of 3 Dodder View Cottages, Ballsbridge, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 16 September 1994 please contact Thomas O'Reilly, Solicitors, Castleview House, Sandymount Green, Dublin 4. Tel: 668 7855 Fax: 668 7081.

O'Brien, Bridget, deceased (2 March 1992) **O'Brien, Patrick,** deceased (6 July 1994) late of 5 Maddenstown, The Curragh, Co. Kildare. Would any person having knowledge of a will executed by either of the above named deceased, please contact Stephen Maher, Solicitors, Drewsboro Building, Newbridge, Co. Kildare. Tel: 045 33425 Fax: 045 34203.

Miscellaneous

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Lost Title Deeds

Dermot Brady and Mary Brady of 2 Rose Hill Cottage, Killiney Hill Road, Killiney, County Dublin. Would any person having knowledge of the whereabouts of the original title documentation relating to 2 Rose Hill Cottage, Killiney Hill Road, Killiney, County Dublin, please contact Messrs. Collins Crowley & Co., Solicitors, 30 Kildare Street, Dublin 2, Tel: 01 – 676 7192 Fax: 661 6027.

Henry Lougheed, deceased late of 22 St. Declan's Road, Marino, Dublin 3, if anybody knows of the whereabouts of the Title Documents to the premises 22 St. Declan's Road, please contact: Devaney & Ryan, 53 North Strand Road, Dublin 3, Tel: 836 3369.

Land Registry
Irish Life Centre (Block 1), Dublin 1.

In the matter of the Registration of Title Act, 1964, and of an Application for First Registration of land, and of LOST TITLE DEEDS

Dealing Number: D94KW07033M
Applicant: Bridget Lowe
Lands of: 17 Dargan Street, Bray
County: Wicklow.

To All Whom It May Concern:

TAKE NOTICE THAT the above Applicant has applied for registration as owner in fee simple of the above lands. The original documents of title are stated to have been lost or destroyed, including the following:

- Conveyance and Mortgage dated 3/11/1925, Bri Cualann U.D.C. to James Lowe
- Original Will of James Lowe, who died on 14/8/1968;

AND TAKE FURTHER NOTICE that, after the expiration of one calendar month from the date of publication of this notice, the registration will be proceeded with, unless in the meantime cause is shown to the contrary.
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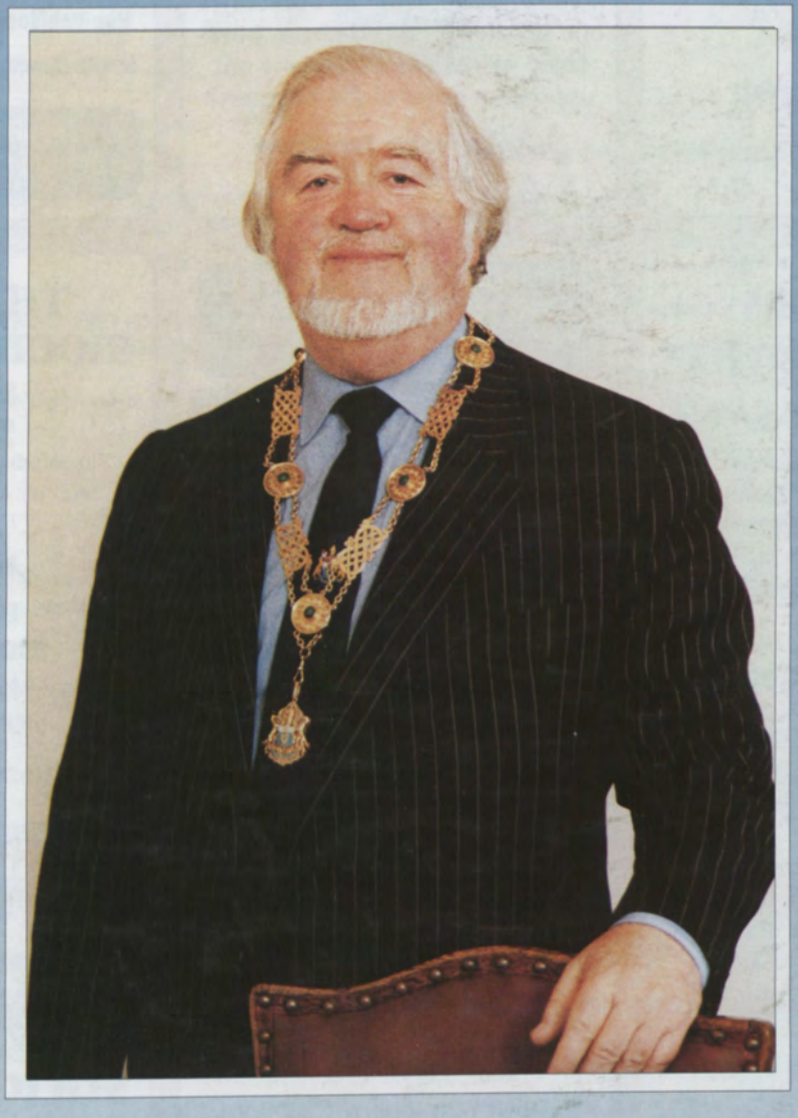

LAY OBSERVERS REPORT

BLASPHEMY

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SOLICITORS (AMENDMENT) ACT 1994

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Front cover: The new President of the Law Society, Patrick A. Glynn.

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VIEWPOINT

Change from Within

The beginning of November saw the publication of the first report of the Lay Observers on the Registrar's Committee. In keeping with the Law Society's policy to be open and transparent, the decision to appoint Lay Observers was taken by the Council of the Law Society to address the perception that, as complaints from members of the public regarding solicitors were dealt with by a Committee comprised solely of solicitors, the process could not be objective. The Law Society welcomed the publication of the report and sought to put it in perspective – particularly the Lay Observers' comment that the incidence of complaints was "disturbing". Nevertheless, it was disappointing to see that the media (particularly in their headlines) picked up on the negative aspects of the report, choosing in the main to ignore the positive side.

In their remarks, the Lay Observers complimented the manner and spirit in which their appointment was received by all concerned. They said: "from the beginning, a willingness to give information on all aspects of the workings of the Committee was extended to us and we were encouraged to participate fully in case discussions." They were afforded the opportunity to ask questions, challenge views and express views on the course of action to be taken, notwithstanding voting restrictions. But surely the most positive aspect was, perhaps, the fact that the Society had thrown open 'the books' to two non-solicitors who had been independently nominated to sit on the Registrar's Committee and who, after a full year, had found nothing untoward in the Society's handling of complaints.

In some cases, the media coverage actually misrepresented the facts. The report states that 1,200 complaints were received by the Law Society in the period covered. However, of these 1,200 complaints, only 190 were referred to the Registrar's Committee and, of these, only 30 (involving 9 solicitors) disclosed a *prima facie* case of misconduct and were referred to the Disciplinary Committee of the High Court. So, of the 1,200 complaints, approximately 1,000 were determined by the Law Society staff – a matter also commented on favourably by the Observers. This figure is made up of three broad categories: complaints that on investigation showed no valid case against the solicitor; complaints which did reveal some basis for complaint but were of a minor nature and complaints which had reasonable grounds but were resolved by the Law Society staff to the satisfaction of both parties.

Not unreasonably, the Observers had some critical things to say. They pointed out that "the biggest single contributor to complaints against solicitors is lack of, or inadequate, communication." This is, of course, nothing new. The Law Society has been aware for many years that communication with clients was not always what it should be. It is clear, therefore, that the profession needs to address this issue urgently.

Concern has been expressed in recent years over the public perception of the legal profession and the public relations of the Law Society has been criticised at Annual General Meetings. New Council members identify public relations policy as one of the matters to be addressed during their time on the Council and individual members feel it is a serious issue. Public relations is a broad term. It covers more than being accessible to the press and issuing press releases on behalf of the profession. The best public relations stems from an acknowledgement of the need for change from within and the resolution to do something about it. To improve the public relations of the profession, we must look at the problems at source, while not minimising the importance of improving external relations.

The importance of communicating with clients cannot be overstated. Individual solicitors must learn to communicate better. They cannot presume that clients know what the solicitor is doing on their behalf. Taking time to explain matters to a client at the outset is important. Better communication with clients would go a long way towards reducing the number of complaints. The new President of the Society believes that communication techniques should feature as part of the professional stage of a solicitor's training and we believe that this is vital.

According to the Lay Observers, the other major source of complaint is delay by a solicitor in progressing a case. It is accepted that some cases can, by their nature, take considerable time to complete. The solicitor is often at the mercy of delay in the systems within which he or she operates. However, there is no excuse for not keeping clients informed about such delays and their source. The Lay Observers say "whether delay is unavoidable or not, if it occurs, the need for improved communication is vital." Again, better communication is the key. A client cannot genuinely have a complaint against a solicitor for delay if the delay is through no fault of the solicitor.

As well as improved communication, one way of reducing the number of complaints would be for practices to have their own complaints-handling procedure. The Law Society of England and Wales has had, since May 1991, a statutory 'client care' regulation otherwise known as Rule 15. The English regulation provides that every principal in private practice must operate a complaints-handling procedure which, *inter alia*, ensures that clients are informed whom to approach in the event of any problem with the service provided. The adoption here of a similar regulation should significantly reduce the number of client complaints made to the Society. It would also mean that problems could be dealt with quickly and thereby prevent the problem at issue from festering and resulting in an irretrievable breakdown in the client/solicitor relationship.

If the issues outlined above are addressed in the coming year, the result should be a decrease in the number of complaints and more favourable comments in the next Lay Observer's Report.

❐

The Solicitors (Amendment) Act 1994

The Solicitors (Amendment) Act 1994 was passed on 4 November 1994. Its provisions are profoundly important for the future of the profession. The Act is now in force except for Section 68 which shall come into operation three months after the date of its passing and sections 16, 17, 18, 22, 23, 25 and 58(3) which shall come into operation by commencement order/s. A comprehensive guide to the changes made by this new Act is being prepared by the Law Society. The following are some of the important changes brought about by the Act.

Complaints

The Act gives the Law Society stronger powers to investigate and deal with complaints from the public against solicitors. It also empowers the Society to require a solicitor to take certain steps where the Society finds that the solicitor has provided inadequate services or has charged excessive fees. The Act provides for a Disciplinary Tribunal to replace the Disciplinary Committee.

Compensation Fund

The Act provides for a 'cap' of £350,000 on grants made to any client of a solicitor from the Fund in respect of matters arising from the relationship between the client and the solicitor. This is an important change in the law relating to the Compensation Fund which will now limit claims to clients of solicitors.

Costs

Section 68 of the Act deals with charges to clients. It comes into operation on 4 February 1995. As and from that date, a solicitor must provide each client with written particulars of the charges to be made for the legal services to be provided. These particulars must be given on the taking of instructions or as soon as possible thereafter. The particulars must state either

(a) the actual charges which will be made, or

(b) an estimate of those charges, or

(c) the basis on which the charges will be made.

"Charges" includes fees, outlays, disbursements and expenses.

In addition, in litigation or arbitration matters, the particulars must state –

(a) the circumstances in which the client may be required to pay costs to any other party, and

(b) the circumstances, if any, in which the party and party costs will not cover the charges to be made.

The Society's Remuneration/Costs Committee is drawing up forms of agreement intended to meet the requirements of the section, which will be circulated shortly.

Education

The period of apprenticeship will be reduced from three years to two years, as and from 4 May 1995 (six months after enactment) or on the earlier making of regulations to that effect by the Society. This change will apply both to new apprenticeships and to existing apprenticeships. In addition, the Act allows solicitors to take two apprentices at the same time and, with the written consent of the Society, allows the taking of one apprentice for every two assistant solicitors in a firm.

Commissioners for Oaths

All practising solicitors are now conferred with the powers of a Commissioner for Oaths in relation to the administration of oaths and the taking of affidavits. This does not mean that a practising solicitor who is not already a Commissioner for Oaths can call himself a "Commissioner for Oaths", as that separate and distinct category of person is retained. The only restrictions are that a practising solicitor cannot exercise these powers in any proceedings in which he is the solicitor to any of the parties or in which he has an interest, or in contravention of any conditions attaching to his practising certificate. An appropriate new form of jurat will be published in the *Gazette* shortly.

Statutory Offences

Section 76 of the Act creates a number of statutory offences relating to client accounts/client monies/accounting records, the maximum penalty for which is a fine of £1,500 on summary conviction and a fine of £10,000 on conviction on indictment.

Enabling Provisions

There are a number of significant new enabling provisions in the Act, under which the Society may make regulations providing for the following:

(a) Compulsory professional indemnity insurance

(b) Restrictions on practice after qualifications

(c) Mandatory continuing legal education

Any such regulations would require to be first approved by the Council and promulgated to the profession. ❑

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PRESIDENT'S MESSAGE

The Need for Reform of the Courts Service

At a time of political change, it is appropriate to consider on-going issues of concern to the profession and the public which might usefully be addressed in any agreed Programme for Government. One such issue is the administration of the courts service.

Over many years, the Society has consistently voiced its concern about the serious problems that exist in the administration of the courts service throughout the country. It has highlighted these issues publicly in the hope that the Government of the day would take the necessary action to have the shortcomings redressed.

In September 1993, the Society joined forces with the Bar Council and a joint submission was made to the Minister for Justice identifying the shortcomings in the existing service in terms of delay, accommodation and facilities, family law cases, information technology, the pleadings system, pre-trial procedures and the listing system. The submission outlined the need for additional resources and argued strongly for the establishment of an Executive Agency, under the control of a Chief Executive, to manage the courts service.

Recently, the Government announced its intention to bring forward legislation to deal primarily with criticisms about the method of appointment of judges. This took the form of the Courts and Court Officers Bill, 1994, which was produced with considerable haste. The Society has serious concerns about some provisions of the Bill and a submission has been forwarded to the Minister for Justice. On the particular issue of the administration of the courts, Section 29 of the Bill states that the Minister **may** establish a Courts Commission to advise the Government and the Minister for Justice on "the organisation and management of the courts and courts service and on such matters as in the opinion of the Minister or the Commission has a bearing on the capacity of the courts to discharge their functions".

Speaking in the Dail on 2 November, the Minister for Justice, Maire Geoghegan-Quinn, indicated that the question of establishing a permanent independent courts service (i.e. an Executive Agency) operating outside the aegis of the Department of Justice would be one issue which the Commission (if established) should address but that, in so doing, the Commission would have to have regard to whether such a change would best serve all users of the courts "effectively, efficiently and inexpensively".

While Section 29 is a welcome response by the Government to the concerns expressed by the Society and the Bar Council in their joint submission of September 1993, the Society believes that the establishment of the proposed Courts Commission should be mandatory. Furthermore, while it is clearly in everyone's interests that the services provided by the courts should be as inexpensive as possible, any meaningful Executive Agency would have to have the authority to identify capital projects requiring the immediate allocation of substantial resources, with a commitment from the Government to provide same.

Recent political developments may impact on the progress and content of the Courts and Court Officers Bill, 1994, and it is hoped that the preliminary welcome steps taken by the previous administration will not be lost. It is heartening that the leader of the Labour Party, Dick Spring, has identified the establishment of a permanent and independent commission to manage the courts as an element of his "Strategy for Renewal".

The Law Society will continue to campaign for a unified courts service, with an integrated and coherent management structure in the form of an Executive Agency.

Patrick A. Glynn

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NEWS

A Series of Seminars on Landlord and Tenant Law

The holding of a series of six seminars on this subject represented a serious endeavour to analyse Landlord and Tenant Law in a comprehensive manner. The Law Society was indeed fortunate to be in a position to provide such a distinguished panel of speakers which included Professor J.C.W. Wylie of the University of Wales.

It was, without doubt, one of the most successful series of seminars in the 1994 C.L.E. programme and attracted an average attendance of eighty-five practitioners at each seminar. Due to demand the course will be repeated in early 1995.

The participants were enthusiastic in their praise of the content and standard of presentation, paying tribute to the "clarity of the presentations and the speakers' obvious expertise". They found the presentations were "polished, comprehensive and concise" and "approached in a very pragmatic way". They were "impressed by the speakers' ability to marshal their thoughts in a clear and lucid manner which rendered a complex subject intelligible". There was also a clear consensus among the participants that the seminars afforded them an opportunity of "refreshing their knowledge", "updating them on the law" and "alerting them to possible pitfalls and problems".

There was an overwhelming consensus on the part of the participants that the entire course was "of a very high standard" and that "there was a consistently high level of speakers and content".

The following quotations illustrate the reaction of those attending to the various lectures:

- "It was, without doubt, the most rewarding series of C.L.E. seminars which I have attended since qualifying as a solicitor."
- "An excellent overview of the law in this area";
- "I was impressed by the combination of technical detail and the practical focus of the seminar";
- "The seminar was of immediate practical relevance in an every day practice context";
- "The seminar heightened my awareness of the practical considerations to watch out for in advising clients".

At the opening Continuing Legal Education Seminar held on the 19th May last in the series of Seminars on Landlord and Tenant Law were (from left to right): Professor J.C.W. Wylie, Head of School, Cardiff Law School, John F. Buckley, Beauchamps, Solicitors and Tom O'Connor, A&L Goodbodys, Solicitors.

The Law Society would like to take this opportunity of complementing all the speakers involved in this series of seminars for their considerable contribution to the Continuing Legal Education programme. The Law Society would also like to record its gratitude to both John F. Buckly and Tom O'Connor for their assistance in planning the seminars.

Barbara Joyce, Solicitor,
CLE Co-Ordinator.

Lecture 1: 21st January 1995
Chairman: **Rory O'Donnell**
The Legal Background to a Commercial Lease – **Professor J.C.W. Wylie**
Drafting and Negotiating an F.R.I. Lease – **Tom O'Connor**.

Lecture 2: 4th February 1995
Chairman: **John F. Buckley**
Recovery of Possession and Arrears of Rent – **Frank Nowlan**
The Practicalities of Shopping Centre Lease Management – **Aidan O'Hogan, F.R.I.C.S.**

Lecture 3: 18th February 1995
Chairman: **Tom O'Connor**
Law Society/IAVI Standard Rent Review Clauses – **John Farrell SC**
Resolving Rent Review Disputes – **Ray Ward F.S.C.S, F.R.I.C.S.**

Lecture 4: 4th March 1995
Chairman: **John F. Buckley**
Repairing Covenants – **Professor J.C.W. Wylie**
Insurance Provisions in F.R.I. Leases – **Colin Keane**.

Lecture 5: 25 March 1995
Chairman: **Tom O'Connor**
Renewal Rights and Rights to Compensation – **Seamus Noonan BL**
Alienation and User Provisions in Leases – **Paddy Fagan**.

Lecture 6: 8th April 1995
Chairman: **Rory O'Donnell**
The Advantages, Disadvantages and Problems in the Acquisition of Superior Interests – **Mary Laffoy SC**
Purchasing Investment Units in Shopping Centres – **John Walsh**
Service Charge Provisions in F.R.I. Leases – **Ernest Farrell**. ❑

PARLIAMENTARY COMMITTEE

1994 LEGISLATION UPDATE – *as at 25 November, 1994*

The Commencement Date of an Act is given where the whole Act comes into force on the date of its passing or on a date provided for in the Act or in a Commencement Order.

Where it is provided that various sections of an Act shall be brought into force by a number of Commencement Orders, the Commencement Orders made to date have been listed and the Act and the Statutory Instruments should be referred to for the specific details.

No.	Title of Act and Date Passed	Commencement Date/s
1.	Stillbirths Registration Act, 1994 (23 February, 1994)	1 January, 1995 (S.I. No. 97 of 1994)
2.	Criminal Justice (Public Order) Act, 1994 (3 March, 1994)	3 April, 1994 (Section 1(3))
3.	Industrial Training (Apprenticeship Levy) Act, 1994 (24 March, 1994)	25 March, 1994 (S.I. No. 61 of 1994)
4.	Social Welfare Act, 1994 (31 March, 1994)	28 October, 1994, for Part IV (S.I. No. 321 of 1994) 31 March, 1994, for all other sections
5.	Terms of Employment (Information) Act, 1994 (5 April, 1994)	16 May, 1994 (S.I. No. 96 of 1994)
6.	Extradition (Amendment) Act, 1994 (5 April, 1994)	22 August, 1994 (S.I. No. 220 of 1994)
7.	Road Traffic Act, 1994 (20 April, 1994)	Various Commencement Orders made to date: S.I. No. 222 of 1994; S.I. No. 350 of 1994
8.	Local Government Act, 1994 (29 April, 1994)	Various Commencement Orders made to date: S.I. No.113 of 1994; S.I. No. 171 of 1994; S.I. No. 315 of 1994
9.	Irish Nationality and Citizenship Act, 1994 (1 May, 1994)	1 May, 1994
10.	Irish Shipping Limited (Payments to Former Employees) Act, 1994 (3 May, 1994)	Commencement Order to be made (but note that section 4 provides that an application for the payment of a lump sum shall be made within twelve months of the date of passing of the Act)
11.	Health (Amendment) Act, 1994 (16 May, 1994)	16 May, 1994
12.	Referendum Act, 1994 (22 May, 1994)	28 June, 1994 (S.I. No. 183 of 1994)
13.	Finance Act, 1994 (23 May, 1994)	See commencement sections of the Act for various commencement dates. Also various Commencement Orders to be made. S.I. No. 227 of 1994
14.	Trade and Marketing Promotion (Amendment) Act, 1994 (8 June, 1994)	8 June, 1994
15.	Criminal Justice Act, 1994 (30 June, 1994)	Various Commencement Orders to be made. S.I. No. 324 of 1994 – certain sections
16.	Health Insurance Act, 1994 (30 June, 1994)	Various Commencement Orders to be made. S.I. No. 191 of 1994 – certain sections
17.	National Monuments (Amendment) Act, 1994 (6 July, 1994)	1 March, 1995, for section 17 (S.I. No. 338 of 1994); 22 November 1994, for all other sections (S.I. No. 337 of 1994)
18.	Irish Horseracing Industry Act, 1994 (10 July, 1994)	Establishment Order and Commencement Order for Part IX to be made
19.	Dun Laoghaire Harbour Act, 1994 (10 July, 1994)	10 July, 1994
20.	Landlord and Tenant (Amendment) Act, 1994 (10 July, 1994)	10 August, 1994 (Section 1(3))
21.	Oireachtas (Allowances to Members) (Amendment) Act, 1994 (10 July, 1994)	10 July, 1994
22.	An Bord Bia Act, 1994 (12 July, 1994)	Establishment Order to be made
23.	Fisheries (Amendment) Act, 1994 (12 July, 1994)	1 August, 1994 (S.I. No. 243 of 1994)
24.	Investment Limited Partnerships Act, 1994 (12 July, 1994)	25 July, 1994 (S.I. No. 213 of 1994)
25.	Milk (Regulation of Supply) Act, 1994 (26 October, 1994)	26 October, 1994

No.	Title of Act and Date Passed	Commencement Date/s
26.	ACC Bank Act, 1994 (2 November, 1994)	2 November, 1994
27.	Solicitors (Amendment) Act, 1994 (4 November, 1994)	4 November, 1994, except for section 68 which shall come into operation 3 months after the date of its passing, i.e. 4 February, 1995, and sections 16, 17, 18, 22, 23, 25 and 58(3) which shall come into operation by Commencement Order/s.
28.	Maintenance Act, 1994 (23 November, 1994)	Commencement Order/s to be made.

Compiled by Margaret Byrne, Librarian

Practice Note

Caution on Database Directories

Members are advised to exercise caution if approached by firms seeking subscriptions to electronic business and legal directories. The Society recommends that members of the profession should check very carefully the bona fides of any firm offering such a service.

In 1992 the Gazette of the Law Society of England and Wales reported that there was dissatisfaction among a number of solicitors in England and Wales with the service offered by an enterprise variously called Channel 7/Eurovision/European Business Bureau. A number of practitioners advise that Channel 7 is currently looking for subscriptions in Ireland.

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The Irish Kidney Association is the only national organisation working solely in the interest of patients with chronic kidney disease.

More and more Irish families are relying on the financial and psychological support they receive from the Irish Kidney Association.

Since 60% of the patients are unemployed the IKA is called on to help with the basic family requirements - rent, electricity, school books and uniforms, drugs and sadly of all burial expenses.

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This voluntary organisation is a registered charity and we badly need your help.

Donations and bequests to:-

Irish Kidney Association
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156 Pembroke Road, Ballsbridge, Dublin 4.
Phone: 01 - 6689788/9 Fax: 01 - 6683820

Complaints, Capping and the Courts

Publication of the Lay Observers Report and Complaints against Solicitors

The first report by the Lay Observers on the Registrar's Committee was published on 3 November 1994. It covers the period October 1993 to September 1994. The publication attracted a lot of media coverage. In a press release issued with the report, the Law Society emphasised the positive aspects of the report. The press release also pointed out that during the twelve month period under review the profession as a whole dealt with literally tens of thousands of clients and a huge volume of transactions. The press release welcomed the positive recommendations put forward by the Law Observers.

The *Evening Herald* published an article on the report on 3 November 1994 headed "Solicitors hit by complaints". The report stated that "Justice Minister Marie Geoghegan-Quinn was told today that the number of complaints made against solicitors was 'disturbing"'. The report stated that the Law Society was considering introducing new measures including a binding code of conduct and that the observers would be appointed as full-time members of the complaints board.

The *Cork Examiner's* coverage on 3 November 1994 was inaccurate. The headline read "Over 1,400 solicitors complained by public". The facts are that 1,200 (not 1,400) complaints were received, and it was 1,200 complaints received and not solicitors complained about. The article went on to say that one third of all Irish solicitors had complaints registered against them with the Law Society. This again is incorrect. On a more positive note, the article stated that the Law Society supported the recommendations made by the Lay Observers report and will be taking steps to ensure that they are implemented. The article also referred to the fact that the number of complaints should be seen in the context of the tens of thousands of legal transactions undertaken by solicitors. The report concluded that the Law Society would be addressing the issue of complaints in the coming months.

The *Irish Press* in an article headed "1,200 complaints against solicitors" stated that the number of complaints was a cause of alarm for the public. It also referred to the fact that the Lay Observers found the number of complaints to be 'disturbing'.

An article appeared in the *Irish Times* on 4 November 1994 headed "Level of public complaints about solicitors 'disturbing"'. This article gave a balanced account of the facts and it stated that "one thousand of those complaints were considered to be comparatively minor and were dealt with by the Law Society's own staff." The report emphasised that the Law Society lacked powers but that this problem would be addressed by the Solicitors (Amendment) Act 1994.

The *Irish Independent* reported the issue with a headline "Lawyers face pressure to improve code of conduct" on 4 November 1994. The report stated "the Society endorses these recommendations [of the report] and will be taking appropriate action to ensure that they are implemented".

Michael V. O'Mahony was featured on RTE radio *News at 1* where he dealt with the report and the background to the appointment of the observers. He made it clear that in terms of the number of practising solicitors and the volume of transactions, the level of complaints was not that high.

The *Southern Star* reported the issue of complaints in an article headed "Solicitors image" on 12 November 1994. It referred to 1,400 complaints when the correct figure is 1,200 and it also reported that the complaints referred to one-third of the country's solicitors and this is also incorrect. The *Sunday World* reported the issue under the heading "Never Ending Complaint".

Compensation and the proposed capping of awards.

On 3 November 1994 the *Irish Press* printed an article with the headline "'Quick-fix' capping of claims attacked." It reported that the white collar union MSF had made a submission to the Minister for Enterprise and Employment, Ruairi Quinn arguing against 'capping'. In their submission they stated that "the capping of claims would be no more effective than the abolition of juries in the fight against rising insurance costs." *John Tierney* of MSF was quoted as saying "The capped level will simply become the standard level that most claims are pitched at. Those below the average at present would be brought up, balancing the saving from the 'cap' – and perhaps leading to higher costs. He said capping of claims as a 'quick-fix solution' would not work. He referred to the "clear injustice to some claimants." The article reported that the MSF submission laid the blame of spiralling insurance costs at the door of the legal profession, both solicitors and barristers.

The *Irish Press* featured an article with the headline "'Compo Culture': lawyers to blame?" on 4 November 1994. Although the headline might have suggested the opposite, the article did support the argument of the Law Society that 'capping' would penalise the victim. The article stated, "Caps will lead inevitably to injustice in particular cases for how, it is argued, can a price be put on the loss of an arm or a leg that will apply fairly across the board? They may also prove unconstitutional." There was criticism in the article of the 'no foal no fee' type of advertising carried out by solicitors and reference was made to the long-running battle between the Law Society and Noel Carroll of Dublin Corporation who is alleging that solicitors are

advertising in an unacceptable manner. However, the article does point out that "in the absence of a civil legal aid scheme (save for the most urgent family law matters) it has allowed people without funds to receive justice they could never have received without lawyers who were prepared to bear the risk. Reference was made to the *Kenneth Best* case which would not have got to court "without the willingness of Cork Solicitor, *Ernest Cantillon*, to bear the costs, and of the barristers who appeared for him being prepared to risk not being paid."

In an article in the *Sunday Press* on 6 November 1994 headed "Huge insurance hikes threaten future of community centres" high legal fees were blamed. However, the article did feature a statement from the Law Society which said "Their claim has been rejected by the Incorporated Law Society, which says that fees charged by solicitors are fair. It also supports the level of awards given out by judges in compensation cases.

An article in the *Evening Press* on 7 November 1994, called for new penalties against solicitors who encouraged people to make 'frivolous' compensation claims. The article stated that "the insurance industry is concerned that more aggressive advertising by solicitors will lead to an increase in the number of these cases coming before the courts."

The *Irish Independent* on 14 November 1994 featured an article with the headline: "FG doubtful over award cap plan". The article stated that Fine Gael would not support Government plans to cap compensation awards – unless they are accompanied by a firm contractual undertaking by the insurance industry that it will result in insurance costs being cut. The article reported that Fine Gael published a discussion document that day (14.11.94). Fine Gael argued that a series of measures, including reducing senior counsel on cases has had no effect on the rising insurance costs. Fine Gael made other recommendations as a means of reducing the cost of insurance.

Gay Mitchell stated on the 1.00 p.m. news of 98FM (14.11.94) that "we shouldn't go along with capping *per se* unless we get a firm and binding agreement from the insurance industry that insurance costs will come down."

In a letter to the editor of the *Irish Times* on 17 November 1994, *Sylvester Cronin*, Safety Officer of SIPTU stated: "SIPTU is vigorously working at resisting this capping, as it flies in the face of encouraging employers to reduce occupational accidents as the prime means of reducing insurance premiums."

In the *Irish Times* on 4 November 1994 *Fintan O'Toole* wrote a piece attacking the proposed 'capping' of compensation awards. The headline read: "Plan to cap awards a ruthless attack on our rights". He says "the idea of putting a price on bits of your body, on the ability to see, or to walk or to think straight, is deeply offensive." The article is an excellent account of arguments against capping. He says "it is, it seems to me an extremely important proposal, not just because of its immediate concerns with the cost of insurance, but because of what it says about the way we as a society propose to value the worth of individual lives." He gives examples of Irish cases where the amounts of damages are not excessive and in fact could be argued were not enough. He also refers to the report of the British Law Reform Commission which has found that awards in Britain are too low. These findings were published the same week that *Ruairi Quinn* was arguing that Irish personal injury awards should be brought down to British levels. *Fintan O'Toole* stated that *Ruairi Quinn's* proposed Bill is a classic case of blaming the victim. He is of the opinion that "capping damages does nothing to root out the chancers of the compo culture, most of whom rely, not on the liberality of the courts, but on the willingness of the insurance companies to settle small claims without proper investigation."

Ruairi Quinn answered *Fintan O'Toole's* column in a letter to the editor on Friday 18 November 1994. He stated "Mr. O'Toole is right to point out that this is not just an economic issue; that there is a moral dimension. Ultimately, society will have to judge, in the light of the economic consequences and having regard to the moral aspect, whether it wishes the current level of awards – and premiums – to continue, or whether, in return for lower premiums, it will accept the capping of compensation awards."

The Courts and Court Officers Bill 1994.

The *Sunday Press* published an article on 6 November 1994 concerning the Courts and Court Officers Bill 1994. The article bore the headline "Why the new Courts Bill won't be rocking the boat". The article stated "this week's Dail debate saw the new Courts Bill coming under sustained opposition attack for failing to go far as even the mildest of reformers were urging. Perhaps it's symptomatic of the Bill's rushed nature that real reform is avoided by simply replicating existing practice in Britain". The article mentioned the proposals to allow solicitors to be appointed to the Circuit Court as well as, at present to the District Court. The article stated: "For, if solicitors are good enough to serve as Circuit Court judges then what's wrong with the High Court or even the Supreme Court? Here, the reform again lags behind even England where solicitors are at least eligible for the High Court – though only one has been appointed so far."

An article was published in the *Sunday Press*, 13 November 1994 with the headline "Courts Bill feared to be unconstitutional". The article states "The Courts and Court Officers Bill, which was hurriedly drafted to solve the row between *Albert Reynolds* and *Dick Spring* over the appointment of *Harry Whelehan* is currently before the Dail. However, there are doubts about the constitutionality of the Bill on a number of fronts". The article states that the new method of appointing judges through a Judicial Appointments Commission may be contrary to Article 35 of the Constitution which says that all judges shall be appointed by the President. The article said "legal sources also say that the section of the Bill which deals with the establishment of a new Court of Appeal is also unconstitutional."

Catherine Dolan ❐

LAWBRIEF

By Dr. Eamonn G. Hall

Blasphemy

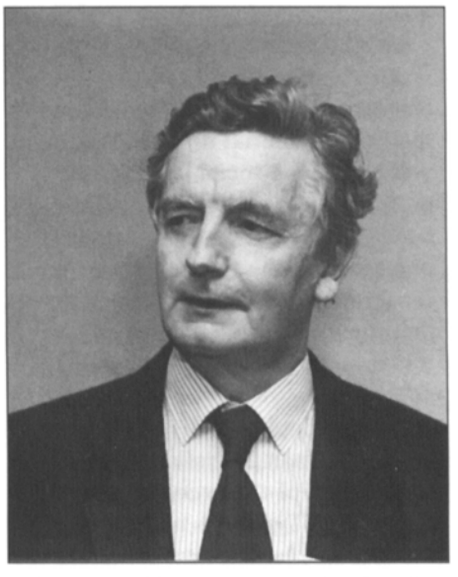
O'Mahony v Levine .

The issue of blasphemy arose in recent High Court proceedings in the case of *T.C.G. O'Mahony -v- Levine and Others* (Costello J, October 17, 1994). A series of posters (reproduction paintings), contained the words "Kill God" "Starve God" and "Execute God" and were displayed on billboards on several locations in the city of Dublin. It was argued by Mr. O'Mahony that the display of the posters constituted the offence of blasphemy which was prohibited under Article 40.6.1.i. of the Constitution as well as blasphemous libel under section 13 of the Defamation Act, 1961. It was also argued that the posters constituted blasphemous, obscene and indecent matter. The defendants informed *Costello J* that the posters had been taken down and in the circumstances the judge refused the injunctive relief sought.

Article 40.6.1.i. of the Constitution of Ireland provides the State guarantees liberty for the exercise, subject to public order and morality, of the right of citizens to express freely their convictions and opinions. However, the Article specifically provides that the publication or utterance of blasphemous, seditious or indecent matter is an offence which will be punishable in accordance with the law.

Otto-Preminger Institut v Austria

Blasphemy, as an issue, was also considered by the European Court of Human Rights in the recent case of *Otto-Preminger Institut v Austria* (Judgment, September 20, 1994). The court held that a film contained



The Honourable Mr. Justice Declan Costello

blasphemous matter and that the seizure and forfeiture of the film by the Austrian authorities did not infringe Article 10 of the European Convention of Human Rights (freedom of expression).

The applicant, Otto Preminger Institut (OPI), a private non-profit making association under Austrian law, sought to promote creativity, communication and entertainment through the audio-visual media and its activities included operating a cinema in Innsbruck. OPI announced a series of six showings of the film "Das Liebeskonzil" (Council in Heaven) to those of the public over 17 years of age.

The film was based on a play written by *Oskar Panizza* and published in 1894. In 1895 Panizza was found guilty by the Munich Assize Court of "crimes against religion" and sentenced to a term of imprisonment. The play was banned in Germany although it continued in print elsewhere.

The play portrays God the Father as old, infirm and ineffective, Jesus Christ as a "mummy's boy", a low grade mental defective and the Virgin Mary, who was obviously in charge, as an unprincipled wanton. Together they decide that mankind must be punished for its immorality. They reject the possibility of outright destruction in favour of a form of punishment which will leave mankind both "in need of salvation" and "capable of redemption". Being unable to think of such a punishment by themselves, they decide to call on the devil for help.

The devil suggests the idea of a sexually transmitted affliction, so that men and women will infect one another without realising it; he procreates with Salome to produce a daughter who will spread the affliction among mankind. The symptoms described by the devil are those of syphilis.

The devil then dispatches his daughter to do her work, first among those who represent worldly power, then to the court of the Pope, to the bishops, to the convents and monasteries and finally to the common people.

In the film, the God of the Jewish, Christian and Islamic religions was portrayed as prostrating himself before the devil with whom he exchanges a deep kiss and calling the devil his friend. He is also portrayed as swearing by the devil. Other scenes show the Virgin Mary permitting an obscene story to be read to her and the manifestation of a degree of erotic tension between the Virgin Mary and the devil. The adult Jesus Christ is portrayed in one scene as lasciviously attempting to fondle and kiss his mother's breasts, which she is shown as permitting.

As the request of the Innsbruck diocese of the Roman Catholic Church, the Public Prosecutor instituted criminal proceedings against OPI's manager, Mr. *Dietmar Zingl*, on the basis of "disparaging religious doctrines", an act prohibited by the

Austrian Penal Code. After the film had been shown at a private session in the presence of a duty judge, the public prosecutor made an application for its seizure under the relevant law. This application was granted. As a result, the public showings announced by OPI, the first of which had been scheduled for the next day, could not take place. An appeal against the seizure order was dismissed in July 1985 by the Innsbruck Court of Appeal. The criminal prosecution against Mr. Zingl was discontinued. In a subsequent action, the Regional Court ordered the forfeiture of the film.

Freedom of Expression

OPI applied to the European Commission of Human Rights and alleged a violation of Article 10 of the European Convention on Human Rights. Article 10 of the Convention guarantees freedom of expression subject to certain exceptions including the protection of health or morals and protection of the reputation and the rights of others. The Commission declared the application admissible in 1991 and in its report adopted in January 1993 the Commission expressed the opinion that there had been a violation of Article 10.

(a) as regards the seizure of the film (nine votes to five);

(b) as regards the forfeiture of the film (thirteen votes to one).

The European Court of Human Rights

The European Court of Human Rights held that the seizure and forfeiture constituted an interference with the applicant's freedom of expression. On the issue of whether the interference had a "legitimate aim", the court stated that the concept of freedom of thought, conscience and religion, which is safeguarded under Article 9 of the Convention is one of the foundations of a democratic society within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their concept of life.

The Government of Austria had stressed the role of religion in the everyday life of the people of the area. The proportion of Roman Catholic believers among the Austrian population as a whole was already considerable – 78 per cent – but among the people of the area of Tyrol – where the film was to be shown – was as high as 87 per cent. Consequently, the court considered that at the material time at least, there was a pressing social need for the preservation of religious peace; it had been necessary to protect public order against the film and the Innsbruck courts had not overstepped their margin of appreciation in this regard.

The Court could not disregard the fact that the Roman Catholic religion is the religion of the overwhelming majority of Tyroleans and in seizing the film the Austrian authorities acted to ensure religious peace in that region and to prevent attacks on religious beliefs in an unwarranted and offensive manner. The Court considered that in the first place it was for the national authorities who were better placed than the international judge to assess the need for such a measure in the light of the situation obtaining locally at a given time.

In all the circumstances of the case, the Court did not consider the Austrian authorities could be regarded as having over-stepped their margin of appreciation. Accordingly, the court held that there was no violation of Article 10 (freedom of expression) in relation to the seizure or the forfeiture of the film.

In a joint dissenting opinion, Judges *Palm, Pekkanen* and *Makapczyk* considered that they were not able to agree with the majority that there had not been a violation of Article 10 of the Convention. The dissenting judges considered that although they did not deny that the showing of the film might have offended the religious feelings of certain segments of the population of Tyrol, however, taking into account the measures actually taken by the applicant association to protect those who might be offended and the protection offered by Austrian legislation to those under 17 years of age, they were, on balance, of the opinion that the seizure and forfeiture of the film in question was not proportionate to the legitimate aim pursued.

In 1991, the Law Reform Commission considered the impact of the Constitution on the law of blasphemy (Consultation Paper on the Crime of Libel 1991, pp. 80-84). The Commission concluded that the law protected religious beliefs in the Judaeo-Christian tradition only and recommended that the reference to blasphemy in Article 40.6.1(i) of the Constitution be deleted. ❐

Amnesty Lawyers Group

The Irish Amnesty Lawyers Group, which operates within the structures of Amnesty International Ireland, was reformed last summer at a meeting in Trinity College, Dublin. The aims of the Group include letter-writing and campaigning on issues with a legal angle. Cases where the death penalty has been imposed, cases involving refugee or asylum law or cases involving lawyers around the world who have been imprisoned or are otherwise targeted as a result of their efforts to protect the human rights of others are all examples of issues which the Group may deal with. The Group also intends to organise Information Seminars for members on various human rights related issues.

The next meeting of the Group will be a Seminar on the procedures involved in taking a case to the European Court of Human rights in Strasbourg and the Human Rights Committee in Geneva, and comparative analysis of the merits of these systems. This Seminar is scheduled for **Saturday, 4th February 1995**. For further information, contact *Sarah Farrell,* c/o Lawyers Group, Amnesty International, 8 Shaw St., Dublin 2 or at 01 – 671 5699 (work).

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NEWS

News from the Criminal Law Committee

The Committee announces that the Council of the Law Society passed two resolutions which affect all criminal law practitioners, at its meeting on Friday 28 October 1994.

Firstly, the Guidelines on Professional Conduct for Criminal Practitioners were approved by Council and have immediate effect. The full text of the Guidelines is printed below.

Secondly, the Council approved an agreement with the Minister for Justice in relation to fees for exceptional cases in the District Court and on appeal to the Circuit Court under the Criminal Legal Aid Scheme. The agreement has not yet been signed but the full text of it is printed below.

Guidelines on Professional Conduct for Criminal Practitioners

1. A solicitor should not, either by him/herself or by anyone on his/her behalf, approach a person who might become a client with a view to representing that person.

1.1 Before taking instructions from any person in any criminal case, a solicitor should satisfy him/herself that that person has not already engaged the services of another solicitor in that particular case or in related proceedings.

1.2 In the event of disagreement between solicitors relating to the transfer of a solicitor's case from one solicitor to another in a criminal matter, the matter should be referred to the Professional Purposes Committee of the Law Society for resolution.

2. Where a solicitor requires, for consultation purposes, to visit a prisoner in custody in cells within a courthouse or in the immediate vicinity of a court, the solicitor should so inform the court and seek to have the accused's case put back in order to enable a consultation to take place.

3. Where an accused is brought before a court on charges which may in normal circumstances be described as "new charges" but such person has already retained a solicitor in related proceedings, no solicitor shall accept instructions from such person on those new charges unless he/she receives instructions in respect of all charges before the court and complies with the provision of paragraph 6 below in discharging the retainer of the previously instructed solicitor.

4. A solicitor may accept an instruction to act for a client in an appeal even if that solicitor did not act for the client in the original proceedings except where another solicitor has previously been retained and is on record in respect of the appeal.

5. A solicitor should not actively encourage or offer inducements to any person with a view to obtaining instructions from such person.

6. A solicitor shall not accept instructions to act for a client in a case where another solicitor has already been retained in that matter without ensuring that the first solicitor's retainer is discharged. This provision will not be applicable where a solicitor is assigned by a court to act for the accused on legal aid.

7. A solicitor who is in breach of any of the provisions of this code of conduct will be liable to disciplinary proceedings for unprofessional conduct.

Agreement between the Minister for Justice and the Law Society in relation to the payment of enhanced fees to solicitors assigned to exceptional cases in the District Court and appeals to the Circuit Court in pursuance of certificates for free legal aid under the Criminal Legal Aid Scheme.

Preamble

The standard fee payable to solicitors under the Criminal Legal Aid scheme has been set at a level to cover cases ranging from those which are straightforward to those which are relatively complex. It is however, acknowledged that a small minority of cases are of an entirely exceptional nature and warrant the payment of an enhanced fee. Because the enhanced fee is only payable in respect of entirely exceptional cases, it is expected that claims for enhanced fees will be rare.

Terms of Agreement

1. There shall be an enhanced fee payable by the Department of Justice to solicitors under the Criminal Legal Aid Scheme for exceptional cases coming before the District Court and appeals to the Circuit Court.

2. The enhanced fee payable for exceptional cases shall be £350 for first day of hearing in cases involving one defendant and the first defendant in cases involving multiple defendants. Such fee shall be payable with effect from 1 June, 1993.

3. The Department of Justice having consulted with the Chief State Solicitors Office shall decide on whether a particular case is exceptional.

4. The following factors shall be regarded as having relevance to

the question of whether a particular case should attract an enhanced fee:-

(i) Complexity of legal argument.
(ii) Complexity of scientific and other technical evidence.
(iii) Complexity of facts.
(iv) Projected length of trial.
(v) Number of charges preferred.
(vi) Number of separately represented accused.
(vii) Extent of time spent in the District Court in respect of cases where the Director of Public Prosecutions calls depositions.
(viii) Other special factors.

5. The factors specified in paragraph 4 are to be used as guidelines only and the presence of one or more of the factors will not automatically entitle a solicitor to an enhanced fee.

6.1 In the event of a solicitor disagreeing with the decision of the Department in relation to whether an enhanced fee should be paid, the solicitor shall ask to have the matter referred to arbitration by notice in writing to the Department of Justice. In determining whether an enhanced fee should be paid, the following factors shall be regarded by the arbitrator as having relevance to the question of whether a particular case should attract an enhanced fee, viz

(a) the number and weight of the factors as set out in paragraph 4 which are present in the case under consideration,

(b) the standard case fee, and

(c) the degree, if any, by which the particular case varies from a standard case.

6.2 The arbitrator's fee shall be borne by such party or parties as the arbitrator shall determine. Costs shall not be awarded to any party.

6.3 Every effort shall be made by the Department of Justice and the Law Society to agree on the nomination of a person to arbitrate on all such references. If agreement on the nomination of an arbitrator is not reached within 28 days of the request for arbitration, an arbitrator shall be nominated by the President of the Chartered Institute of Arbitrators.

6.4 Pending such negotiations or arbitration, the solicitor nominated shall conduct the defence.

Signed:
(On behalf of the Minister for Justice)

Signed:
(On behalf of the Law Society)

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The Disciplinary Committee Annual Report for 1993/1994

Committee: *Walter Beatty, Chairman*
W.B. Allen
Terence Dixon
Michael Hogan
Donal Kelliher
Elma Lynch
William A. Osborne
Moya Quinlan
Grattan d'Esterre Roberts
Andrew F. Smyth

Between 1 September 1993 and 31 August 1994 the Disciplinary Committee met on 14 occasions.

The following applications were considered by the Committee during this period:-

NEW APPLICATIONS: 53

Law Society

Prima facie cases found	13
Prima facie decision adjourned	1

At Hearing

Misconduct	2
Adjourned	4
Awaiting inquiry	7

Private

Prima facie cases found	10
Prima facie cases not found	19
Awaiting prima facie decision	10

At Hearing

No misconduct	6
Adjourned	1
Leave to withdraw after inquiry directed	2
Awaiting inquiry	1

APPLICATIONS FROM PREVIOUS YEAR: 8

Law Society

At Hearing

Misconduct	2
Leave to withdraw after inquiry directed	1

Private

At Hearing

No misconduct	1
Inquiry adjourned	4

SUBJECT MATTERS OF COMPLAINTS

Civil Claims
Conveyancing
Probate

MAIN GROUNDS ON WHICH THE COMMITTEE FOUND MISCONDUCT

Failing to disclose to his clients (two years after the purchase had closed) that he had closed the purchase of their property notwithstanding the deletion by the vendor's solicitor of a clause regarded as fundamental to the contract by his clients;

Failing to furnish a copy of the contract to his clients despite repeated requests by them to do so.

Failing to immediately advise his clients to seek separate legal advice when there was a clear conflict in his continuing to represent them in the matter;

Deliberately altered an opinion he had obtained from counsel on behalf of his clients to protect his own interests;

Prejudiced his clients' interest by the alteration of an opinion by the deletion and concealment of legal advice material to their interests;

Falsely representing to a solicitor colleague that he was acting for a client in relation to a civil claim when he was not.

Concealing from a solicitor colleague the true identity of his client.

Falsely representing to a colleague that a matter had been settled when it had not:

Failing to extract a Grant of Probate to an Estate as instructed.

Failing to administer an Estate as instructed.

Failing to make full and frank disclosure of the loss of an original will.

Leading complainants to believe he was administering an Estate when he was not.

Failing to reply to a complainant's correspondence or to provide any explanation to the complainant for his failure to comply with his undertaking.

Failing to reply to the Society's correspondence and to furnish the Society any explanation in relation to his non compliance with his undertaking.

Failing when requested to do so to attend before the Registrar's Committee of the Society on two occasions.

Failing to comply with undertakings given to the Registrar's Committee.

Failing to reply to correspondence from the Society.

THE HIGH COURT

Cases presented to the High Court between 1 September 1993 and 31 August 1994 4

Censured, fined and costs 1
Fined and costs 3

Awaiting presentation to the High Court 2

Cases adjourned by the President of the High Court last year 1

Respondent ordered not to practise as a solicitor save as an assistant solicitor in the employment of a solicitor of not less than 10 years standing to be approved by the Law Society. Also fined and ordered to pay to the Law Society its costs. 1

Fines ranging from £1,000 to £5,000 were imposed in the appropriate cases.

During the year under review 53 new applications were received alleging misconduct on the part of solicitors in respect of their handling of their clients legal affairs. As can be seen from the above table the majority of the new applications were initiated by members of the public. These figures may not in fact be indicative of any growth in public dissatisfaction with solicitors but rather emanate from the public's awareness of the Committee, partly as a result of the Law Society's practice of advising complainants who appear to be dissatisfied with the Society's treatment of their complaint, of their right to make a direct application to the Committee.

Upon receipt of an application for an inquiry the first step is to decide whether or not there is a prima facie case for inquiry. It is at this stage of the proceedings that the majority of applications from the public fail. They do so because the grounding affidavits are inadequately drafted, do not disclose acceptable grounds of misconduct or relate to the area of negligence. There is a tendency to confuse negligence with misconduct. The Committee has no power to award compensation or redress to clients who have suffered as a result of a mistake made by their legal advisor. Clients who feel their solicitors may have been guilty of negligence should seek the advice of an independent legal advisor who will advise them of their remedies. Notwithstanding this, it should be said that gross negligence can amount to misconduct, and it is a matter for the Committee to make this decision based on the evidence proffered.

In a number of private applications where the Committee directed that an inquiry should be held, it subsequently transpired that while the circumstances outlined in the grounding affidavit were not intended to be misleading, all relevant facts were not disclosed. Consequently the Committee found the solicitor concerned was not guilty of misconduct. I would like to emphasise that there is an onus on every deponent bringing an application before this Committee to include all pertinent facts and not just those which would tend to substantiate their perception of the situation.

Misconduct is defined under Section 3 of the Solicitors Act 1960 and includes

(a) The commission of treason or a felony or a misdemeanour.

(b) The commission outside the State of a crime or an offence which would be a felony or a misdemeanour if committed in the State.

(c) The contravention of a provision of the Solicitors Acts 1954/1960 or any Order or Regulation made thereunder.

(d) Conduct tending to bring the profession into disrepute.

The Committee is concerned with the nature of complaints now coming before it e.g. failing to make full and frank disclosures to clients. According to the Guide to Professional Conduct of Solicitors in Ireland ". . . a solicitor should at all times uphold the dignity of the profession and avoid any conduct or activities inconsistent with that dignity." Consequently it is incumbent on every solicitor to be open, frank and honest with his clients at all times. To be otherwise will reflect badly on the profession and bring it into disrepute.

The most common ground for complaint continues to be failure to communicate with clients, colleagues and the Law Society. Every solicitor has a duty to reply quickly, fully and accurately to these parties.

With the recent enactment of the Solicitors (Amendment) Act 1994 the Disciplinary Committee, as it is presently constituted, will in the near future be replaced by the Disciplinary Tribunal with new powers and duties. However until the coming into force of the relevant provisions of the Act of 1994 in respect of the Tribunal the Disciplinary Committee will continue to function pursuant to the Solicitors Acts 1954/1960.

I would like to record my thanks to the members of the Committee for their hard work and support during the past year.

Walter Beatty
Chairman

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PRACTICE NOTES

Practice of not providing a Full Contract

Many solicitors have adopted the practice of furnishing Conditions of Sale which refer to, and incorporate, the General Conditions, without actually including a print of the General Conditions with the Contract for Sale.

For a number of reasons the Conveyancing Committee disapproves of this practice:-

1. If everyone adopts this practice, practitioners will become less familiar with the contents of the General Conditions;
2. Clients may not be fully advised as to the implications of the General Conditions;
3. If the clause incorporating the General Conditions is incorrectly drafted it may well create uncertainty as to which edition of the General Conditions applies to the transaction;
4. In the event of litigation, special proof would be required to identify the General Conditions which were intended to apply to the particular sale.

Conveyancing Committee

Sale by a Receiver

As the Receiver's authority to sell depends on the continuing existence of the charge under which he was appointed, it is important to ensure that any discharge of a charge in favour of the appointor of the Receiver is dated subsequent to any assurance under which the Receiver purports to sell the property.

This note is an addendum to the Practice Note titled "Purchasing From Liquidator or Receiver" published in the Law Society's Newsletter dated September 1986.

Conveyancing Committee

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PEOPLE AND PLACES

At the recent presentation of a cheque by Bank of Ireland, sponsors of the Law Society Annual Conference were l-r: Eamonn Condon, District Manager, Bank of Ireland; Patrick Glynn, then Senior Vice-President, Law Society; Michael V. O'Mahony, then President, Law Society; Pat Dunleavy, Business Manager, Bank of Ireland; Don Binchy, Past-President, Law Society; Laurence Shields, Chairman, Finance Committee, Law Society; Brian Goggin, General Manager, Area East, Bank of Ireland; Brendan King, Commercial and Personal Lending Manager, Bank of Ireland and Noel Ryan, Director General, Law Society.

At the recent lecture on Modern Art in aid of Alzheimers Society and Motor Neurone Disease Association l-r: Dr. Christine Casey, Lecturer, History of Art Department, UCD; Dr. Paula Murphy, Lecturer, History of Art Department, UCD; Jacqueline O'Mahony; Michael V. O'Mahony, President, Law Society and Elizabeth Harty.

At the presentation of cheques by Lunatic Lawyers Cycling Club to RNLI Ireland, Solicitors Benevolent Association and Bar Benevolent Association: l-r: Barbara Mills, Irish Document Exchange; Andy Smyth, Chairman, Solicitors Benevolent Association; Charles Meenan, Treasurer, Bar Benevolent Association; Mary Newman, Area Organiser, RNLI; Ken Mills, Irish Document Exchange, sponsor; Frank Lanigan, organiser, Lunatic Lawyers; Walter Beatty, Chairman, Jurys Hotel plc, sponsor.

The winners of the table quiz sponsored by Irish Permanent Building Society were Dublin Corporation Law Department: l-r: Michael Bourke, Michael O'Grady, Michael Kinsella (captain), Colm Jackson and Bob Campbell.

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ANNOUNCING

Part One of a new series on Environmental Law in Ireland

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"100 metres from the Four Courts"

Ann O'Neill who was admitted to the Roll of Solicitors on 28 October, 1994 pictured with her son, Lucas (16 months) and Michael V. O'Mahony, then President of the Law Society.

THE ROUND HALL PRESS

New and Forthcoming Publications

Extradition Law In Ireland

(2ND EDITION)

MICHAEL FORDE

Since publication of the first edition in 1988 there have been two major legislative changes in the extradition regime and the subject has engendered considerable litigation in the High and Supreme courts. Major developments have also occurred in the U.K. courts and in the Human Rights Court in Strasbourg which are directly relevant to the law in Ireland. This second edition has been completely revised and incorporates all statutory and case law developments. ISBN 1-85800-041-6. £42.50.
Publication date: November 1994.

Land Registry Practice

(2ND EDITION)

BRENDAN FITZGERALD

First published in 1989, this second edition has been extensively revised to include all the statutory and case law developments affecting land registration in the intervening period. "This book is undoubtedly the definitive work on the whole of land registry practice" *Irish Law Times*. ISBN 1-85800-046-7, £55.00.
Publication date: November 1994.

The Irish Jurist

FINBARR MCAULEY (EDITOR)

Previously published by Jurist Publications, The Irish Jurist will now be published by The Round Hall Press. Volume XXIV (1989) was the last volume to be published. The current issue, which is a bridging volume - XXV-XXVII (1990-1992) - is a Festschrift in honour of the late John M. Kelly and is available in paperback at £35.00 and in a special casebound, jacketed edition at £47.50. ISBN 1-85800-043-2. *Publication date: November 1994.*

Leave to Appeal

JAMES COMYN

In this new collection of stories from his life, Sir James regales us with further ""goodies". anecdotes, jokes, ideas on law reform, reminiscences - all these and more give him ""leave to appeal" to lawyer and layman alike. If you enjoyed reading *Summing it Up* or *Watching Brief* then you'll definitely enjoy this book. ISBN 1-85800-049-1, £14.95. *Publication date: November 1994.*

Irish Social Welfare System: Aspects of Law and Social Policy

MEL COUSINS

The current social welfare system currently accounts for one-third of current government spending. In 1994 c.£4,0000 million will be spent on social welfare. This book argues that the social welfare system is a reflection of the economic, political, ideological and cultural structures and conflicts in Irish society. ISBN 1-85800-039-4. £30.00 (approx.).
Publication date: December 1994.

Environmental and Planning Law

YVONNE SCANNELL

Discusses Irish environmental and planning law and practice with full reference to the all-pervasive influence of EC legislation on the environment. Legislation and case law relevant to land-use, planning, air and water pollution, waste disposal, noise, chemical substances and the Environmental Protection Agency are systematically described and analysed and reference is made to important International Conventions which have been ratified by the State. ISBN 1-85800-002-5. £65.00 (approx.). *Publication date: November 1994.*

Irish Medical Law

DAVID TOMKIN AND PATRICK HANAFIN

This is the first comprehensive account of medical law in Ireland. Chapters include: a review of the health care system; the legal standing of doctors and allied health professionals; the legal basis of the doctor-patient relationship; liability of doctors in both civil and criminal law; treatment of the mentally ill, etc. An invaluable reference book for both the legal and medical professional. ISBN 1-85800-051-3. £37.50.
Publication date: December 1994.

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BOOK REVIEWS

District Court Practice and Procedure in Criminal Cases

By James V. Woods, BL. Publisher: James V. Woods, 1994, 790pp, hardback, £69.

This book is undoubtedly a valuable reference work for the legal profession in the practice of criminal law before the courts. It provides the reader with an abundance of Statute and case law as of the 1st June 1994 and had been carefully researched by the author who has deservedly acquired an admirable reputation in this area.

The book is divided into five parts and concludes with a most useful Appendix which includes the Criminal Justice Act, 1984 (Treatment of Prisoners in Custody in Garda Siochana Stations) Regulations 1987 and other useful Statutory Instruments.

Part I – "Commencement of Proceedings"

It begins with the origins of the District Court and its officers including the role of Peace Commissioners and scrutiny of the latter's powers by the Superior Courts. The Jurisdiction of the District Court is comprehensively covered both with regard to the trial of summary and indictable offences and also with regard to the territorial constraints applicable to its jurisdiction. One cannot but comment upon the apparent trend on the part of our legislators to deny an accused the option to avail of a trial by Judge and Jury in respect of certain offences. This trend has become obvious in that certain recent Statute law creates a number of offences which, under repealed legislation, would have been triable before a jury at the option of the accused. The author, in the Preface, makes the significant comment "This makes the role of the District Court Judge vital as he or she may be the only person in a position to safeguard this ancient right of an accused by declining jurisdiction if satisfied that the alleged offence is not a minor offence fit to be tried summarily." Perhaps it is time to consider in appropriate cases, an application on the part of an accused to the District Court Judge to refuse jurisdiction if circumstances suggest that the particular accused should be allowed to be tried by twelve of his peers. A positive response to such an application would help redress the balance which currently rests in favour of the Director of Public Prosecutions with regard to access to a judge and jury trial. The District Court Rules, 1948 currently govern practice and procedure. The author endeavours to include in this book, where possible a number of the proposed new rules. There have been four drafts of these rules prepared and submitted for approval since 1973.

Chapter 3 of Part I deals with the various powers of the Gardaí to gather evidence including fingerprinting, photographing and measurement of prisoners. There have been a number of Superior Court decisions on the important subject of the admissibility of evidence obtained illegally or in breach of one's constitutional rights. This subject is addressed in this part of the book including the Supreme Court decision of Denham J in *DPP -v- Gary Doyle* delivered in March 1994 which relates to the entitlement of an accused to copies of statements of evidence before trial.

Chapter 5 contains the law relating to arrest and access rights to a solicitor and/or a medical practitioner. Sections 4 to 10 of the Criminal Justice Act, 1984 are also referred to in detail.

As practitioners will be aware the case of the *State (Clarke) -v- Roche and Senezio* struck down a long established summons procedure resulting in the enactment of the Courts (No. 3) Act, 1986.

Chapter 6 contains a full statement of the position with regard to the issue of summonses as a result of this judgment.

Part II – "Hearing of Proceedings"

This deals with the conduct of proceedings generally, including fairness of procedures and such issues as fitness to plead.

The order of "adjourn generally with liberty to re-enter" is given official recognition by proposed new rule (0.2).

The right to bail is incorporated in this section and *O'Callaghan's* case is extensively covered.

The amendment of summonses and charge sheets is elucidated in the 1977 Supreme Court Decision of *Duggan -v- Evans* and the author addresses the issues involved in some detail.

The competence and compellability of witnesses is also addressed including many references to the Criminal Evidence Act, 1992. There is a section on the right of certain witnesses to claim privilege and the case of *Re: Kevin O'Kelly* (1974) 108 ILTR 97 is referred to.

This part of the book also contains a chapter on evidence and its admissibility, the burden of proof and defences generally. Under the heading "The Decision" of the court there is an interesting proposed new District Court Rule which will allow a District Court Judge to award the costs and witnesses expenses of an adjournment to an aggrieved party. The interesting aspect of this rule is that neither the Director of Public Prosecutions nor a garda acting in his or her official capacity will be immune from such an

award (rule 0.36) – a healthy development.

The Criminal Justice Act, 1993 is also referred to with regard to the provisions which entitle the District Court Judge to award compensation in a criminal case up to a maximum of £5,000.

Part III

This addresses the jurisdiction of the District Court to deal with various types of indictable offences and the procedures involved where appropriate.

At Pages 267, 649, 650 and earlier in the book the author deals with the time limit for the commencement of proceedings applicable to indictable offences and, in particular, to Section 7 of the Criminal Justice Act, 1951. The High Court decision in *McGrail -v- Ruane* [1990] IR 555 – Barron J. placed a construction on Section 7 which basically stated that the general time limit (six months) prescribed by Section 10 (4) of the Petty Sessions Act 1851 does not apply to an indictable offence when such offence is tried summarily. This construction was subsequently overruled in the case of *DPP -v- William Logan* which was decided in the High Court in February 1993 and subsequently in the Supreme Court in a judgment delivered on the 12th of May 1994.

This judgement is authority for the proposition that a prosecution in the District Court for an assault contrary to common law under Section 42 of the Offences against the Person Act 1861 and Section 11 of the Criminal Justice Act 1951 is not a complaint in respect of an indictable offence and therefore must be initiated within 6 months from the date of the alleged offence.

Chapter 3 is most helpful in that it makes readily available many of the complex procedures applicable to and the detention centres available for the sentencing/correction of children and young persons. This area of the law continues to cause intolerable difficulties for District Court Judges on a daily basis. Notwithstanding the fact that these continuing problems have been clearly and frequently articulated it is regrettable to find that the appropriate authorities have failed to provide a workable and effective solution. The real victims continue to be the general public and the effective administration of justice.

The remaining chapters in this part cover Customs Excise and Revenue offences, proceedings under the Fisheries Act, 1959 to 1991, Probation and Community Service Orders and Extradition Proceedings – a complicated area which receives comprehensive coverage.

Part IV – "Appeals and Review of Proceedings"

Subjects covered here include Appeals to the Circuit Court, Cases Stated and Judicial Review.

The proposed new rules will permit a cash lodgement in lieu of a Surety in respect of an Appeal to the Circuit Court – an area where, currently, there are differing views.

Judicial Review remedies are extensively explained by reference to many examples. There is also a step by step guide to the procedures involved.

Part V – "Miscellaneous Jurisdictions"

This part incorporates the relevant provisions of over 17 Acts of the Oireachtas together with informative comment, all of which are extremely relevant to daily District Court Practice.

The issue of Search Warrants under the Misuse of Drugs Acts is an area of the law which has benefited from a number of judicial pronouncements the most recent of which is a decision of Carney J. delivered in the High Court on the 14th October 1994 in the case of *DPP -v- Henry Dunne*. This case, for obvious reasons, is not referred to in Mr Woods' book.

As regards to the issue of "Fitness to Plead" it is interesting to note that the author includes reference to a procedure under Section 207 of the Mental Treatment Act, 1945 – a most unusual piece of legislation. It was intended to repeal it under the Health (Mental Services) Act 1981. However the 1981 Act has never been brought into operation. The topic itself and the procedure laid down by this section are interesting, to say the least, and may well merit further comment on another occasion.

Finally, it may fairly be said that the content of this book is ample testimony to the enormous and vital contribution which the District Court provides to the daily administration of justice in this country.

Ronald J Lynam ❐

Annual Review of Irish Law 1992

By Raymond Byrne and William Binchy, Dublin, The Round hall Press, liv + 662pp 1994, £85 Hardback.

"Some litigants find that on leaving the Courts
They have found themselves fame in the Legal Reports.
For reasons they never will quite understand,
They have added a bit to the law of the land.
Their case has decided some interesting law,
Which maybe their barristers never foresaw –
Thus litigant laymen acquire legal fame,
Whose lawyers may never accomplish the same."

J.P.C. *Poetic Justice* 4 (1947)

The Annual Review of Irish Law 1992, published in November 1994, is the sixth volume in the annual series. Containing some 716 pages, the *Review* represents a monumental achievement providing practitioners, academics and students with an analytical and perceptive account of legal developments, judicial and statutory, together with references to works of scholars and practitioners during 1992.

In *Poetic Justice* above, the poet refers to litigants who found that on leaving the courts, their stories were preserved for posterity in the law reports. The litigants may never have understood fully the reasons why, (the barristers and solicitors may not have foreseen the consequences) but they all did add to the law of the land. It would be a trite cliché to say that 1992 was an exceptional year for law cases; every year presents its own surprises. Yet few will forget the *X Case – Attorney General v. X* [1992] ILRM 401; [1992] 1 IR 1 [1992]; 2 CMLR 277. Miss X, a 14 year-old girl, a victim of sexual abuse, decided with her parents she would go to England for an abortion. The Attorney General sought an injunction restraining her from leaving the jurisdiction and having an abortion. The Supreme Court held by a majority of four (Finlay CJ, McCarthy, O'Flaherty and Egan JJ) to one (Hederman J) that Article 40.3.3 permitted abortion where there was a real and substantial risk to the life, as distinct from the health, of the mother which could only be avoided by an abortion. The authors note that the analysis and holding of Finlay CJ, McCarthy, O'Flaherty and Egan JJ "provoked an outpouring of public controversy and legal and political assessment".

The authors, Raymond Byrne, barrister, lecturer in law at Dublin City University and editor of *The Irish Law Times* and Professor William Binchy, Regius Professor of Laws at Trinity College, Dublin, are part of a body of critics ever on the watch. The authors criticise the opinions of the Supreme Court in the *X Case* and of judges in other cases.

A celebrated judge noted that he remembered with a sense of great relief, "of an incubus cast aside", when he passed his final examination in law school. That was a chapter closed. He might make mistakes in the future but he would no longer make them under the eyes of examiners charged with the special duty of exposing his failings and giving them a quantitative value in comparison with his virtues. Exposure, he said, would be a matter of chance. "A class of professional detectives would no longer be on his tracks". The judge continued by stating that once on the Bench you may think you are safe. Alas, it is not so! The examiners still crowd about; the writers and commentators in the law schools and in the universities are waiting at the door:

> "Let there be a joint in your armour, a flaw in your opinion, it will not be long before probe and scalpel will expose a gaping wound. The examiner is near at hand".

The writer of this notice has sympathy and understanding for the judges who must decide cases quickly without the benefit of the leisure of some scholars in their study. Nevertheless, we should welcome the increasing influence of the extra-judicial agencies – the scholars and commentators in the universities and other institutes of learning. Vinogradoff in *Common Sense in Law* tells us that in former times the practice was followed by German Courts "of sending up the documents of a case to the law faculty of a university of some standing" – in order to obtain a consultation "as to the proper decision". It is by analysis and criticism together with intellectual honesty that the law will grow in respectability. We owe a debt of gratitude to Raymond Byrne and Professor Binchy.

The *Annual Review* is a treasury of scholarship and practical guidance. The authors are masters of juristic thought. But let no one consider that this is an esoteric publication. Issues from employer's liability, schools' negligence, liability for dogs – matters of everyday significance for lawyers – to pre-incorporation contracts and liquidator's powers to ratify them are all considered by influential commentators in a lucid and impressive manner.

Dr. Eamonn G. Hall

New Public Relations Executive appointed

Catherine Dolan has been appointed by the Society as Public Relations Executive and Editor of the *Gazette*. She took up her position Monday, 14 November 1994. She is formerly of Park Public Relations, Merrion Square. Catherine came first in the DIT Graduate Diploma in Public Relations in the College of Commerce, Rathmines. She obtained a Distinction and won the Public Relations Institute Award for the best PR student and the Marketing Opinion magazine award for best overall student. She has worked both in the public and the private sector. She has an Honours Law Degree from Trinity College Dublin which she obtained while working in Dublin Corporation, Planning Department. She also spent some time working with McCann FitzGerald, Solicitors.

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TECHNOLOGY NOTES

Software in the Solicitors Practice in Ireland

Introduction

In May 1993 a letter went to the managing partner in every solicitors office in Ireland. The purpose of the survey was to establish the level of automation in solicitors offices in particular in relation to wordprocessing and accounts packages. The survey also sought to assess the nature of other software packages being used by solicitors in their offices.

The survey sought to establish the satisfaction level of the users of both computerised and manual systems with such systems and their suppliers.

It was hoped that the survey would identify what solicitors themselves required by the provision of a wish list in the survey. The Technology Committee also hoped that the survey would identify particular areas of interest to the profession in order to give its activities greater focus.

The response to the survey is set out below on a county by county basis. It indicates the county concerned, the number of respondents to the survey and the total number of practices in that county.

County	Response	Practices
Carlow	5	11
Cavan	5	22
Clare	3	26
Cork	30	170
Dublin	121	715
Galway	24	86
Kerry	8	43
Kildare	7	45
Kilkenny	2	16
Laois	1	15
Limerick	13	58
Leitrim	3	10
Longford	4	14
Louth	9	38
Mayo	9	41
Meath	5	28
Monaghan	2	16
Offaly	3	22
Roscommon	6	22
Sligo	9	22
Tipperary	15	57
Waterford	12	26
Westmeath	8	22
Wexford	17	32
Wicklow	9	40
Total	**330**	**1611**

There was no response from County Donegal.

Survey Response

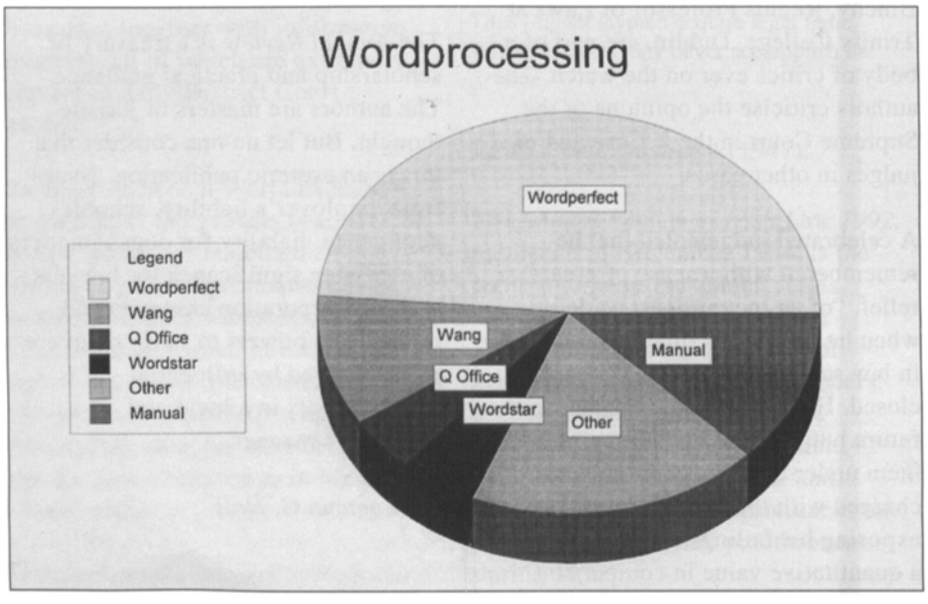
The survey response reflects the state of computerisation in approximately 20.5% of all practices in the country. It therefore gives a fairly accurate picture of the use of technology by the profession. It is likely that the non-use of computers in solicitors offices is somewhat higher than the survey indicates as it would be expected that the non computer users would be less likely to respond than those practices who are computerised.

There were a number of discernable trends to emerge from the survey. In some counties there was a noticeable difference in the use of computers both in accounts and the use of other packages within the practice than in others. This would appear to be because the use of a computer system is perceived to give a sufficient advantage to that practice to compel other practices to follow suit. There appears to be a good degree of co-operation amongst colleagues in the selection of the appropriate software packages for a practice in these counties.

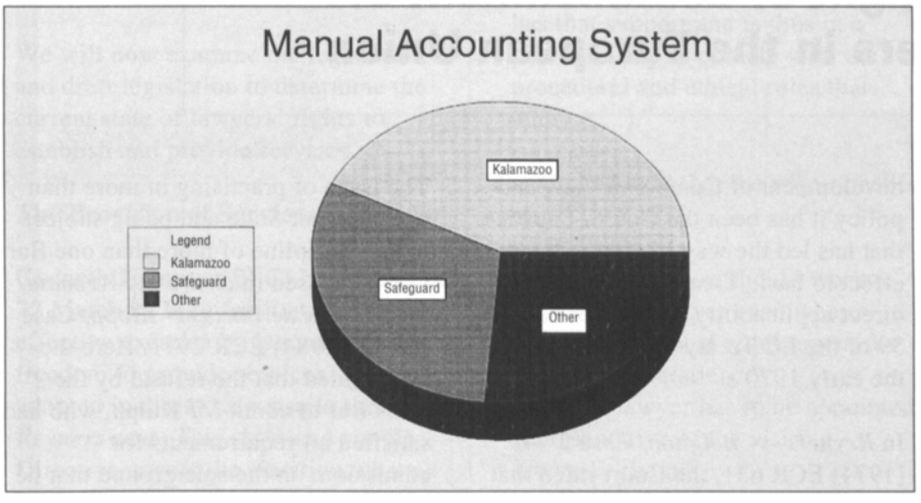
The awareness of software available to solicitors is limited in almost all counties. Document management systems are widely available and indeed the requirements for many practices in relation to precedents could be more than satisfied by the appropriate use of any wordprocessing packages. The CORT software

Irish Packages Statistics

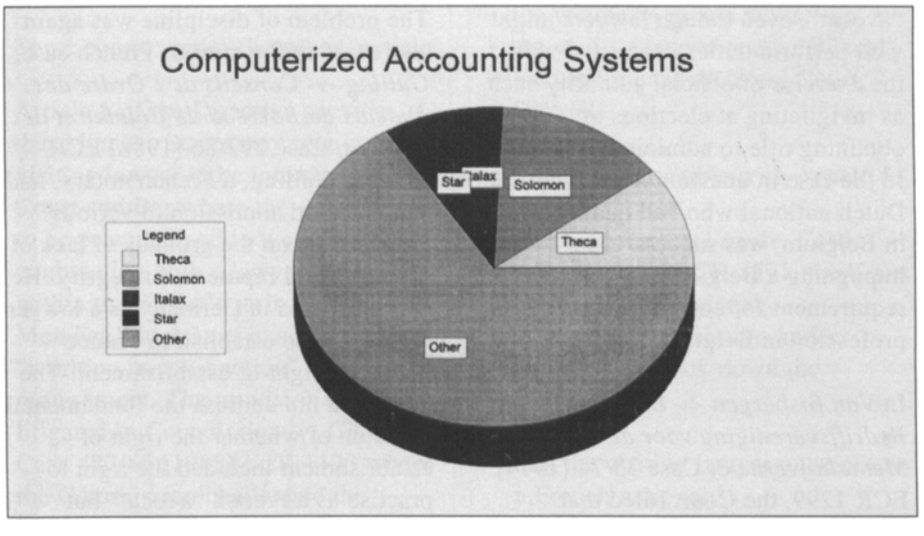
Wordprocessing



Manual Accounting Systems



Computerised Accounting Systems



package, which has been approved by the Conveyancing Committee, has been available for a number of years. Reasonably priced off the shelf database software is widely available. Almost all of the other items which appeared on the wish list have been widely available for a number of years at a fairly reasonable cost.

Many practitioners appear unable to chose an accounts package which they believe will be appropriate to the needs of their practice. The survey shows that there is an overwhelming demand that the Law Society do this for them. This is of course a wholly inappropriate function for the Law Society to assume, as the survey clearly demonstrated that while one package may fulfill all the needs of one practice, it may be a disaster in another.

Many packages in use in solicitors offices are completely out of date. There appeared to be an illusion that once the practice "computerised" that the task was then complete. Because of this many practices have lost out on the very significant advantages which are offered by current software. Many of the "computerised" practices should urgently look at the state of their systems and try to implement an upgrade program which takes account of the current needs of the practice.

Some of the respondents expressed doubts as to the benefits of computerisation in respect of their particular practice. If this is a rationally held view based on a realistic assessment of the practice and its needs, then so be it. However, where it is an excuse to do nothing either because of laziness or self imposed ignorance the practice will find itself at an ever increasing disadvantage against its competitors. It is beyond dispute that the use of a computer in a solicitors office offers some advantage to practices which range from the sole practitioner to the largest commercial firms. The extent to which the firm exploits computerisation is largely up to the practice itself.

The suppliers of equipment to the profession have done little to educate their clients about the benefits which use of software will bring to the practice. The majority of practices are very happy with the level of service which they receive from their suppliers. However, there are incidents of computerisation usually involving accounts in almost every county where the supplier effectively abandoned the solicitor once the software was installed. This led to complete breakdown in relations between the parties. This colours the attitude of the user of the software, with the result that the software is rarely used to its full potential. If possible, this situation should be avoided. Where a recommended supplier of the Law Society is involved the Technology Committee will appoint an independent arbitrator to resolve the matter. The costs of this arbitration will usually be borne by the party at fault.

It was hoped that the survey would produce data concerning the recommendation of particular packages and suppliers. Unfortunately, the data the survey produced was incomplete in this regard and therefore the data could not be analysed. However the satisfaction ratings which were given to suppliers were more than sufficient to assess the position on a county by county basis.

(Continued on page 378)

Freedom to Provide Legal Services and the Right of Establishment of Lawyers in the European Union

By Bernard O'Connor*

In this article on the free movement of lawyers, the Treaty provisions, the case law, the Services Directive, the right of establishment and the Diplomas Directive will be examined in turn.

The Treaty Provisions

The provisions of the EC Treaty which are relevant to cross-border legal practice are set out in Chapter 2 (Articles 52-58) on Establishment, and Chapter 3 (Articles 59-66) on Services.

The fundamental right of establishment is provided by Article 52 EC as follows:

> "(. . .) restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches, or subsidiaries by nationals of any Member State established in the territory of any Member State (. . .)."

The freedom to provide services is provided for in Article 59 EC as follows:

> "(. . .) restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended (. . .)."

The Case Law of the Court of Justice

As often has been the case in the development of Community law and policy it has been the Court of Justice that has led the way in giving dynamic effect to basic Treaty provisions. The direct applicability of Articles 52 and 59 of the EC Treaty was established in the early 1970's.

In *Reyners -v- Belgium,* Case 2/74 [1974] ECR 631, the Court ruled that Article 52, on the Right of Establishment, was directly applicable and that the Public Service Exemption did not apply to the profession of "avocat", even though lawyers might well perform duties connected with the exercise of official authority such as invigilating at elections or obtaining title to administer estates. In the case in question Mr Reyners, a Dutch national who had qualified in Belgium, was successful in impugning a Belgian nationality requirement for entry into the profession in Belgium.

In *Van Bisbergen -v- Bestuur van de Bedriffsvereniging voor de Metaalnijverheid,* Case 33/74 [1974] ECR 1299, the Court ruled that Article 59 EC was directly applicable. The refusal therefore to allow Mr Van Bisbergen, a Dutch lawyer, to appear before a Dutch tribunal because he did not fulfil a Dutch residency requirement was a breach of the freedom to provide services.

The problem of the equivalence of diplomas for the purposes of establishment was addressed in *Thieffry -v- Conseil de l'Ordre des Avocats à la Cour de Paris,* Case 71/76 [1977] ECR 765, where the Court ruled that the refusal by the Paris Bar to admit a trainee because he had a Belgian diploma, even though the degree was recognised in France to be equivalent, was discriminatory. As will be seen below, this case spurred the Council to adopt the Directive on mutual recognition of diplomas.

The issue of practising in more than one Member State and being subject to the discipline of more than one Bar was addressed in *Ordre des Avocats au Barreau de Paris -v- Klopp,* Case 107/83 [1984] ECR 2971. Here the Court ruled that the refusal by the Paris Bar to admit Mr Klopp, who had satisfied all requirements for admission, on the sole ground that he intended to retain his German qualification and continue practising in Germany, was unlawful.

The problem of discipline was again addressed in the curious French case, *Gulling -v- Conseils de l'Ordre des Avocats du Barreau de Colmar et de Saverns,* Case 292/86 [1988] ECR 111. Mr Gulling, a French notary, had been refused admission to various French Bars on the grounds of lack of dignity, good repute and integrity. He then qualified in Germany as a lawyer and sought to establish in France under the right of establishment. The Court did not address the fundamental question of whether the right of establishment included the right to practise as a French "avocat" but addressed a secondary question that qualification in another Member State did not bypass the local refusal to permit practice for reasons of dignity, good repute and integrity.

Finally, the Court addressed the issue of exclusivity of service in the relatively recent case, *Sager -v- Société Dennemever & Co Ltd,* Case C-76/90 [1991] 1 ECR 4221.
German legislation reserved certain patent services in Germany exclusively to German patent professionals. Sager took action to prevent a UK based company from providing patent searching and renewal services in Germany. The Court struck down the law as being incompatible with Article 59 EC and declared that, as no legal advice was provided in this service, the reservation of the service to local patent attorneys was disproportionate

to the legitimate aim of protection of the consumer.

We will now examine the legislation and draft legislation to determine the current state of lawyers' rights to establish and provide services.

The Provision of Services

Council Directive (EEC) No 77/249 of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services was adopted in direct response to the *Reyners* case. This short and simple Directive covers the situation where a lawyer established in one Member State, the home state, provides services in another Member State, the "host" Member State.

Some controversies, however, remain.

Article 5 of the Directive provides that Member States may require the visiting lawyer to be introduced to the Court and Bar where the services are to be provided and to work in conjunction with a lawyer practising within that Court's jurisdiction. All Member States have exercised the "working in conjunction" requirement. The provision was litigated in *Commission -v- Germany*, Case 427/85 [1988] ECR 1123 where the Commission challenged the legality of the German implementing legislation as being too restrictive on the visiting lawyer and too generous to the local lawyer.

The Court held that:

> "(. . .) whilst the Directive allows national legislation to require a lawyer providing services to work in conjunction with a local lawyer, it is intended to make it possible for the former to carry out the tasks entrusted to him by his client, whilst at the same time having due regard for the proper administration of justice. Seen from that point of view, the obligation imposed upon him to act in conjunction with a local lawyer is intended to provide him with the support necessary to enable him to act within a judicial system different from that to which he is accustomed and to assure the judicial authority concerned that the lawyer providing services actually has that support and is thus in a position fully to comply with the procedural and ethical rules that apply (. . .)."

The Court found that the requirements that:

- the visiting lawyer should work with a local lawyer even where there was no local requirement for legal representation;
- the local lawyer has to be appointed representative of the visiting lawyer's client;
- the visiting lawyer could not present oral argument unless the local lawyer was present;
- the local lawyer had to accompany the visitor on prison visits; and
- the visiting lawyer needed a local lawyer for each different Court District

were all incompatible with Article 5.

In *Commission -v- France*, Case 294/89 [1991] 1 ECR 3591, the Court again examined national implementing legislation under Article 5 and struck down the requirements:

- that the visiting lawyer must not be a French national;
- that the visiting lawyer must act in conjunction with a local lawyer even where the authority or agency in question did not exercise judicial functions; and
- that the visitor must always act with a local lawyer of the Bar of the particular Court District.

This last finding of the Court puts the visiting lawyer in a much better position than the local lawyer in that he can move freely within France, Germany, Italy, Spain and other jurisdictions which restrict lawyers to practice in a particular region. This form of reverse discrimination is well known in the law on the free movement of goods.

Visiting lawyers must use the title of the home Member State, so once a solicitor always a solicitor. However, the visitor must observe the rules of professional conduct of the host state without prejudice to his obligations in the home state.

What then of home rules which allow the visitor to advertise and host rules which prohibit it. If the Court of Justice were asked to review this conflict, it is likely to examine whether or not the host prohibition is proportionate and would, I suggest follow the line of reasoning adopted in the Irish abortion information case (Case C-159/90, *The Society for the Protection of the Unborn Child -v- Grogan* [1991] ECR 4685).

There are no provisions on the quantity of services to be provided. However, in one case, the Commission objected to a provision in the Spanish implementing legislation which sought to restrict to five the number of times each year services could be provided and the provision was removed from the Spanish law.

At the same time, it is clear that the Directive was not intended to provide for establishment in the host Member State. It remains a fine line of law to distinguish between an office in the host state used to facilitate the provision of services and an establishment in the host state.

The Right of Establishment

The first issue to be addressed under the right to establishment topic is what services the lawyer establishing himself in the host state intends to provide and secondly, is there a provision in the host state law reserving the right to give legal advice to local lawyers.

Monopolies on legal advice exist in Spain, France, Luxembourg, Greece and Portugal and until 1990 existed in Germany. No monopolies on legal advice exist, as far as I am aware, in Ireland, the UK, Belgium, the Netherlands and Italy.

All Member States, on the other hand, reserve to nationally established lawyers the right to appear before the Courts, to draw up certain types of

documents, and undertake certain types of estate administration functions.

In those Member States where there is no monopoly on legal advice there can be no prohibition, under general Treaty provisions on establishment, on giving legal advice on home State law, Community law, International law, and even, the law of the host State.

In those Member States where there is a monopoly, it is strongly arguable that it would be disproportionate to use the monopoly restriction to deny establishment for the purposes of giving home legal advice and advice on Community and International law. It is no less arguable to assert that the monopoly for advice on host state law is an even more egregious breach of general Community principles. I understand that action in France can be expected to clarify this issue in the near future.

The right of establishment to practise as a fully fledged local lawyer in the host state is more controversial. There is as yet no legislation on the matter, although there is a draft Directive which has been drawn up by the Council of the Bars and Law Societies of the European Community (CCBE) and submitted to the Commission for its consideration. The draft provides for the registration of lawyers who are established in the home state, in the host state; conflicts between home and host states in disciplinary issues; professional title; and the reservation of certain activities to host state lawyers.

It is clear that one of the issues of concern on establishment is the question of discipline. To meet the problem of conflicting rules and regulatory authorities the CCBE has drawn up a Code of Conduct known as the "Common Code." The Code does not resolve issues such as advertising or confidentiality for example. It provides, rather, for different categories of rules and, where there is no compatibility as between them, it attempts to set out procedures for the reduction of conflict.

The Diplomas Directive

The right to be registered as a lawyer in the host State is covered by the 1988 Diplomas Directive.

Council Directive (EEC) No 89/48 of 21 December 1988, on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration, is the key legislative provision for establishment of home state lawyers as local lawyers in host states. The Directive covers any national of a home state wishing to pursue a regulated profession in a host state in a self-employed capacity or as an employed person. It was adopted as a legislative response to the Thieffry case discussed above.

Members States may require that the migrating professional "adapt" to the host state to compensate for objective differences between his home training and the host responsibilities. This adaptation mechanism can either be an aptitude test or an adaptation period. For lawyers, the choice between the two methods is determined by the host state and is not at the choice of the migrant.

Adaptation mechanisms have been adopted by all Member States (Belgian legislation is in the pipeline) as well as in most of the EFTA countries under the European Economic Area agreement.

Irish lawyers will be most familiar with the adaptation mechanisms for the UK. Irish solicitors are exempted from any test. Barristers need only pass a test in property law. I am informed by the Law Society that, as of December 1993, 308 Irish Solicitors had become members of the Law Society of England and Wales.

The aptitude tests in other jurisdictions are more onerous for the Irish lawyer. In Germany, for example, the migrating lawyer must take three written examinations of five hours each on civil law, public or criminal law, and one other paper from a choice provided. In addition the migrant must take on oral exam consisting of a fifty minute presentation and a forty minute discussion on professional conduct and the optional written subject.

*This article has been prepared by Bernard O'Connor, Partner in Stanbrook and Hooper (Brussels). It is an extract from a paper on Free Movement of Lawyers presented at the ICEL conference of 28 May, 1994 entitled "New Opportunities for Lawyers".

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Technology Notes

(Continued from page 375)

It is likely that the majority of solicitors are not aware of the existence of the Technology Committee. Similarly there appears to be little awareness of the existence of the recommended supplier system which has been put in place by the Committee.

Conclusion

The effects of computers and software are only beginning to be felt within the profession. Solicitors who do not take the opportunities now being offered will shortly be at a major disadvantage against their competitors.

The assessment of the computer needs of a practice is a matter for each individual practice. The Law Society cannot prescribe an answer which fulfills the needs of every practice and it is naïve to think otherwise. The amount of time and effort which a solicitor expends in trying to assess the needs of his practice will normally be reflected in the success or otherwise of the system.

Whether the profession likes it or not the 1's and 0's are here to stay. The benefits of the digital age are here to stay and will transform the way we practice and ultimately the way we live. ❐

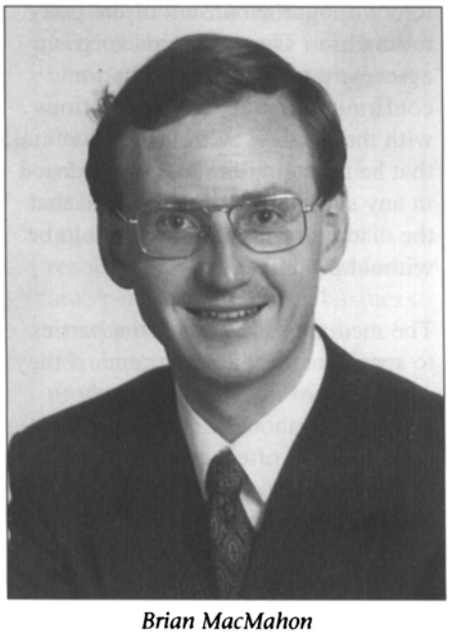
Mediation – Could it make your practice more profitable?

By Brian MacMahon*

The search today for better ways to meet our clients' needs requires that we explore new avenues for resolving their disputes. While litigation, negotiation and arbitration are the primary tools of dispute resolution, they are by no means the only ones. Backlogs in our courts may result in litigants having to wait for years for an outcome, at which point the financial and human cost of litigating may have exceeded the value of the dispute, the relief sought may no longer be needed, or it may have lost a great deal of its worth.

In other jurisdictions, public recognition is growing that litigation is not a panacea for all disputes. The result is an increasing use of Alternative Dispute Resolution (ADR) methods – most commonly mediation or arbitration, to resolve disputes.

The ADR movement has evolved with the aims of addressing the cost, delays, adverse publicity and damage to relationships of litigation, of simplifying law suits, and of substituting creative, negotiated agreements for imposed judgments. The use of alternative methods has already received support from the highest level of our judiciary.Speaking at a Seminar on ADR for the Construction Industry Judge *Hugh O'Flaherty* said: "It is no part of the court's function to adopt any sort of elitist disposition in relation to other dispute resolving bodies. On the contrary, as judges we recognise that the duty of such bodies, be they arbitrators, administrative tribunals or (providers of alternative dispute resolution services) . . . is the same as ours: to seek to do justice between the parties". Some support has also come from our legislature in the Judicial Separation and Family Law Reform Act 1989, sections 5 and 6.



Brian MacMahon

Why Consider ADR?

When our clients approach us with a problem, seeking our advice on how to get relief, our training and experience in litigation tend to condition us to suggest litigation early on, as the remedy of first resort. In litigation our clients relinquish control of the outcome of their dispute by transferring decision-making authority to a judge or arbitrator. To date disputants have had no forum in which they *themselves*, helped and advised by their lawyers, could devise *their own* solution to their dispute, knowing fully the true interests underlying their case.

Arbitration and Mediation Distinguished

Arbitration is a familiar, usually binding process which in many respects simulates a court hearing. Arbitration may be more speedy, private, flexible, less expensive and less formal than litigation. The cost of the arbitrator's time and of the arbitration venue are, however, usually a cost to the parties and not, as in litigation, to the State.

Mediation by contrast is a *voluntary, non-binding, without prejudice, confidential* process. Unlike an arbitrator (or judge) the mediator has *no* authority to impose a binding decision, though he or she may suggest ways of resolving the dispute. The mediator's role is to bring the parties together, to facilitate analysis of the dispute and to foster an atmosphere that allows the parties *themselves* to reach a settlement.

How Mediation works

Mediation allows the parties to retain control of, and participate more actively in, the outcome/settlement. The mediation process restores communication and builds trust. It breaks impasses by dispelling unverified assumptions and unrealistic expectations. The mediator who is a facilitator, not a decision maker, helps to eliminate problems of ego and personality. Mediated solutions tend to be "win-win" and not "win-lose". Mediation is private, quick, cost effective, flexible and informal. It helps to preserve the relationship between the parties, where relevant. Most importantly, mediation works. National statistics of United States Arbitration and Mediation Inc. indicate a settlement rate of 80% – 85% of cases using mediation.

We already know that the vast majority of all cases commenced in the court system settle before hearing. Settlement is often clearly in the best interest of all concerned. Mediation fosters early, cost-effective settlement by introducing a new element into the traditional negotiation procedure, the mediator. The mediator is an advocate for settlement and is not an advocate for either side. ADR techniques are used to condense the evidence and to foster constructive negotiations, assisted by the mediator.

Mediation may take place:

(a) following agreement by the parties to submit an existing dispute to mediation or

(b) pursuant to a mediation clause, in addition to, or instead of, an arbitration clause in a written agreement or contract by which the parties agree in advance to firstly refer disputes to mediation (see Appendix for sample clause).

Mediation is similar to a settlement meeting between the parties and their lawyers, but with the added presence of a trained third party, the mediator.

The Mediation Process

Following agreement to mediate, the mediation itself is then scheduled for a time and place convenient to all the parties and their advisers. The parties initially meet for a joint session at which each side summarises its case. The mediator may then define and clarify the differences and issues between them. Thereafter the mediator may meet each party with their advisers, in confidential private meetings or "caucuses", at which movement towards settlement begins. Some mediators, especially in the area of family law, employ a model of mediation which does not include private meetings or caucuses.

At these private meetings the mediator further clarifies the issues and begins analysing and questioning (without giving his/her opinion on) the positions, claims and assumptions of each party. The object of this analysis is to lower resistance to settlement by engaging in reality testing. He/she may ask the parties to put themselves into their opponent's position and analyse the case from their stand-point. The mediator gauges the differences that lie between the parties in a way that negotiators, who only know their own side, cannot.

Mediation succeeds by combining two integral factors in any negotiation: communication and trust. The parties must trust the skill and integrity of the mediator sufficiently to communicate their real interests and positions to him or her, rather than engage in the normal posturing of traditional negotiation. Communications with the mediator in private meetings are strictly confidential. The mediator agrees not to disclose what he/she is told without the consent of the party telling him. The parties also sign an agreement prior to the mediation confirming that all communications with the mediator will be confidential, that he or she will not be subpoenaed in any subsequent litigation and that the discussions will be deemed to be without prejudice.

The mediator encourages the parties to speak freely to him/her and, if they wish, to vent their feelings and frustrations about the dispute, thus meeting their often strongly-felt need to "tell their story" to an outsider who will listen, and to confront their adversary, as a prerequisite to settlement.

As private meetings continue with each party, the mediator may engage in a form of "shuttle diplomacy", developing the basic elements of a settlement in the process. Often, significant movement towards settlement occurs during the time that the mediator is in "caucus" with the other party, when the participants and their advisers carry out their own risk analysis. By focusing hard on the reality of the case, resistance to settlement may diminish and real movement occur.

One of the advantages of using a mediator is that parties can confidentially explore and test settlement options without making an offer and appearing to give in. Because of the mediator's unique position as a confidant of both sides, they may entrust him with best settlement offers. The mediator agrees in writing beforehand that if the case does not settle, these figures will never be disclosed.

Why Use Mediation?

(a) Client involvement and control: if any party is not satisfied with the procedure, he or she is free to terminate it *at any time* and to pursue or continue arbitration or litigation.

(b) Increased client satisfaction and client referrals: by using mediation a solicitor can be seen by his/her client to have vigorously taken all reasonable steps to bring the case to a speedy conclusion, thus reducing uncertainty, stress and delay for the client. The mediation process itself offers an excellent opportunity for solicitors to impress their clients with their advocacy skills in the opening session, and with the quality of their advice throughout the process.

(c) Increased profitability: clearly the quicker a case settles, the sooner the fee for processing it is earned by the solicitor – an important consideration in these days of cash-flow pressures and escalating overheads. Early settlement of cases is very often more profitable than fighting them in court or settling on the court door-step.

(d) ADR – a new service to our clients: in jurisdictions such as the U.S., Australia and the U.K., ADR techniques are emerging as areas of progressive legal specialisation for solicitors for the 1990s. Many solicitors there have undertaken training in the techniques of representing their clients at mediation. In the U.S. over 500 blue chip U.S. corporations have subscribed to a policy statement pledging themselves to use ADR techniques before resorting to litigation. Many U.S. insurance companies have established ADR departments and guidelines, and require their claims handlers to submit a minimum percentage of their claims to mediation, prior to litigation. Examples include: The Travellers, The Hartford, CIGNA, Nationwide, Maryland Casualty, Chubb Insurance Group and others.

(e) Avoidance of negligence claims: because the client *participates* actively in the settlement, engages

in detailed risk analysis, and ultimately makes the decision himself, mediated settlements tend to endure, and there is less scope for post-settlement dissatisfaction and negligence claims.

When to Mediate?

Mediation can be effective at both pre-litigation and litigation stages. At the outset of a dispute, face-to-face negotiations between the parties may fail because the parties are entrenched in their respective positions and will not listen to each other. The early introduction of a trained mediator can help to diffuse antagonism, and to create an atmosphere in which settlement is more likely to occur.

Mediation can also be used after litigation has commenced, at any time up to the trial date, or even after a Notice of Appeal against the trial verdict has been served. The litigant may need to go through the processes of issuing proceedings or trial before resistance to settlement is softened.

Advantages of Mediation

(a) Speed: once all the parties have agreed to try mediation, the mediation itself may be set up within days or weeks. Mediation may be considered as soon as all the information necessary to formulate a settlement position is available.

(b) Cost: mediation may help the parties to settle their case before legal, managerial or "opportunity" costs become excessive or disproportionate to the amount in dispute, and without the expenses of witnesses attending for lengthy, costly questioning and cross-examination.

(c) Privacy: unlike litigation, the process, details and outcome of the dispute remain private, sealed off from the attention of the parties' customers or competitors, and from local spectators and the media.

(d) Flexibility and responsiveness: a mediation can be held quickly and at a convenient location and time. It may yield creative, tailor-made settlement terms other than, or in addition to, the payment of money which may have been outside the competence of a court or arbitrator to order. Or a settlement for the present, with negotiations to be re-opened on the occurrence of a contingency, may be agreed.

(e) Preservation of valuable relationships: often the parties must have further dealings together after the dispute is resolved. Examples include family law, partnership, family business or succession disputes, commercial leases, construction projects and disputes with business suppliers.

(f) Multiple parties or issues: traditional negotiations may not allow the time necessary to accommodate all parties on all issues in complex disputes. A mediator will bring all parties involved to the table, will co-ordinate the discussions so that the issues can be approached, clarified or simplified in an orderly way.

(g) "Outbreaks of common sense": it is much more difficult to sustain an unreasonable position during a detailed face-to-face analysis of the case at mediation than it is in correspondence.

(h) Improved communication between parties, solicitors, or solicitor and client: the mediator helps each side to put their case directly to their opponent and helps to keep the discussions at a civil and reasonable level.

The Mediator's Role

The mediator is trained to facilitate a resolution between the parties not to adjudicate. He or she has a fresh perspective and an impartial view of the dispute with which to help the parties to analyse their respective positions. The mediator's role may include:-

- providing a safe, structured environment for the venting of frustrations, the trying out ideas in private meetings or the "floating" of settlement offers;
- pointing out the strengths and weaknesses of each position as devil's advocate, focusing on reality and helping to change expectations;
- discovering and addressing assumptions, needs, interests and priorities that have not been articulated or recognised;
- exploring novel options such as non-monetary relief or structured settlements.

"Hoary Old Chestnuts"

How many solicitors have cases in their filing cabinets which they would rather see resolved than face the time input, the cost to their clients or their practice, or the risk of losing or of not being paid adequately (or at all!) of a court hearing? The prospect of handling an awkward case or a "good" client with unreasonable expectations repeatedly during the years of litigation ahead can be a petrifying one! Mediation can provide an opportunity to deal with such cases and to place the responsibility for a dispute firmly where it belongs – on the shoulders of the client.

How Can I Refer a Case to Mediation?

A solicitor, in consultation with the client, should ask his/her opposing colleague(s) if they and their client would be prepared to try mediation for a particular case. The solicitor for each party should then contact a reputable company or individual providing mediation services, for information on their mediation procedures and codes of practice, to discuss with their client. Once all parties agree to mediation the mediation company will make the detailed arrangements for the mediation, including the selection of a venue and of a trained, suitably skilled, agreed person to act as mediator.

Mediation – Already in Place in Ireland

Mediation has already earned a respected place for itself in the areas

The Irish Society for European Law

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Membership of the Society is open to lawyers and to others interested in European Law. The current annual subscription is £30.00 (£15 for students and those qualified for less than three years). The annual subscription includes entitlement to a copy of the *Irish Journal of European Law* for the year of membership.

Applications for membership (which should be accompanied by payment of the annual subscription) should include name, address and, where relevant, year of qualification and should be sent to the Hon. Treasurer Ms. Anne Nagle, Solicitor, Solicitor's Office, Telecom Eireann, Harcourt Centre, 52 Harcourt Street, Dublin 2. Tel: (01) 671 4444 ext. 5053. Other correspondence should be addressed to the Hon. Secretary, Mr. Noel Travers, Barrister, Faculty of Law, University College Dublin, Roebuck Castle, Dublin 4. ❐

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of family law and industrial relations in Ireland. However, despite increasing pressure on our courts system, our legislature has not as yet adopted ADR methods in a more widespread way as a means to address that pressure. While The Queens Bench Commercial Court in England has now done so in a Practice Direction in 1994, as follows:

". . . . the judges of the court wish to encourage parties to consider the use of Alternative Dispute Resolution (ADR), such as mediation and conciliation, as a possible additional means of resolving particular issues or disputes. The judges will in appropriate cases invite parties to consider whether their case, or certain issues in their case, could be resolved by means of ADR. . . . The clerk of the Commercial Court will keep a list of individuals and bodies that offer mediation, conciliation and other ADR services. . . . This p ractice statement will be drawn to the attention of all persons commencing proceedings in the Commercial List."

In this jurisdiction we are a long way away from developments in one State in the U.S., where failure to advise a client in a commercial dispute of the existence of ADR techniques was held to amount to professional negligence!

Conclusion

Solicitors have a number of valuable and potentially profitable roles in the mediation process. They can act as advocates for their client at the initial joint meeting. Throughout the process, they act as advisers to their clients, consulting throughout the risk-analysis process and providing advice on legal issues. They will also normally draft the settlement document and be involved in its implementation.

ADR abroad is helping to improve the profitability of processing lawyers' case loads, in particular of risky or "no foal no fee" cases, and is helping to boost lawyers' incomes. It is also creating greater client satisfaction with lawyers' services, and improving client loyalty. There is no reason why it should not have the same effect in this jurisdiction.

Apart from our duty to our clients and to our overburdened judicial system of which we are officers, solicitors also have a duty to themselves and their families to consider new methods and techniques which may enhance the profitability, "user-friendliness" and indeed continued survival of their practices. Mediation may well be one such technique.

Appendix

Sample Mediation Clause

In the event that a dispute shall arise between the parties, the parties hereby agree to participate in _____ hours (four or six hours is recommended) of mediation in accordance with the procedures of (name of mediation company). The parties agree to equally share the costs of such mediation.

**Brian H. MacMahon B.C.L. MSc. (Mgmt), Solicitor is principal of Arthur E. MacMahon, Solicitors, Naas, Co. Kildare.*

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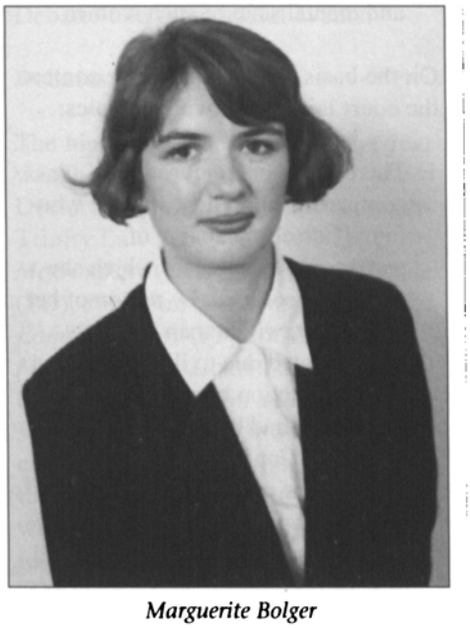
Discrimination on Grounds of Pregnancy as Sex Discrimination

By Marguerite Bolger LL.B, M. Litt., BL.

In spite of a legislative framework designed to ensure equality for women in the workplace[1], working women are undoubtedly still subject to discrimination. One of the most prevalent grounds of such discrimination is pregnancy, the excuse being that it is not because the victim of discrimination is a woman that she is being treated differently, rather it is because she is pregnant. Clearly, this is blatant sex discrimination as only women can become pregnant. Over the last number of years the law has gradually come to terms with this reality and has encouraged the development of discrimination against a woman on grounds of pregnancy as direct, and thereby unjustifiable, discrimination on grounds of her sex.

This development suffered a setback in the House of Lords judgment of *Webb -v- EMO Air Cargo (UK) Ltd*[2] where it was held that a pregnant woman who had been dismissed for nonavailability during her maternity leave was not discriminated against on grounds of her sex, as a man in comparable circumstances would have been similarly treated. However the European Court of Justice in its recent judgment[3] unambiguously rejected the reasoning of the House of Lords and any possible comparison between pregnant women and sick men in giving a strong endorsement to the categorisation of pregnancy discrimination as *directly* unlawful under the Equal Treatment Directive[4].

As recently as the early 80s there was no question of discrimination on grounds of pregnancy being unlawful sex discrimination. A typical case was *Turley -v- Adlers Department Store*[5] where the English Employment Appeals Tribunal stated:



Marguerite Bolger

> "It is not on the ground of her sex that you are treating her less favourably than you would treat a man, but on the ground that she is no longer simply a woman but she is a woman carrying a child."

This harsh approach was somewhat alleviated by *Hayes -v- Malleable Mens Working Club*[6] where the tribunal did allow comparison with a sick man. That same approach found favour with the Irish Equality Officer in *Long -v- Quinnsworth*[7] where an employer who had dismissed a man with a broken leg as well as a pregnant woman was held not to be guilty of direct sex discrimination.

Some relief was to be found in categorising pregnancy discrimination as indirect discrimination as in *Williams -v- An Foras Forbatha*[8] as the proportion of men able to comply with a requirement not to be pregnant is significantly higher than the proportion of women. However this approach is not satisfactory as indirect discrimination can be clearly seen in the judgment of Lord Keith in *Webb -v- EMO Air Cargo (UK) Ltd* in the House of Lords where he had no difficulty in finding Ms Webb's discriminatory treatment to be justified, even if it was indirectly discriminatory.

The real breakthrough for the protection of pregnant women at work came with two judgments delivered by the European Court of Justice on the same day, *Dekker*[10] and *Hertz*[11]. In a clear, but unfortunately brief, judgment the Court held in *Dekker* that:

> ". . only women can be refused employment on grounds of pregnancy and such a refusal therefore constitutes direct discrimination on grounds of sex."

This reasoning was followed in *Hertz*, but the protection against discrimination on grounds of pregnancy was limited to the period of the woman's maternity leave, after which time an illness on grounds of pregnancy could be treated the same as any other illness.

Even in spite of this limitation, the legal protection now available to pregnant women against discrimination for the entire duration of their pregnancy and maternity leave was highly significant.[12] As the court had expressly held such discrimination to be direct, it was providing the highest level of protection possible, which could not be justified by any of the employer's needs.[13] The clarity of the principles espoused by the court seemed to leave little leeway to the national courts. In spite of this, an attempt was made by the UK House of Lords in *Webb* to avoid the logical implications of *Dekker* and *Hertz*.

Ms Webb was employed by the defendants to replace another employee during maternity leave and was to be kept on thereafter as a permanent employee. She was to undergo a six month training period before the three month maternity leave began. Two weeks after starting work, Ms Webb announced that she, too, was pregnant, and was immediately dismissed. The

Industrial Tribunal held that the real reason for her dismissal was her non-availability during the crucial time for which she had been hired, and that a man with a similar non-availability would have been similarly treated. The Court of Appeal upheld this decision and Ms Webb appealed to the House of Lords, who dismissed the appeal holding that her treatment was not on grounds of her sex as it was the same treatment as would have been accorded to a man who was similarly unavailable at the material time. The fact that the reason was only capable of affecting the female sex was irrelevant and the court did not consider that the decisions of the European Court of Justice in *Dekker* and *Hertz* were concerned with this issue of non-availability at the material time.

The decision of the House of Lords could have been interpreted as an attempt, similar to that of the Court of Justice in *Hertz*, to place some limitation on the reasons for dismissal which can be linked with a person's sex rather than a simple espousal of the comparison between a pregnant woman and a sick man, reminiscent of the approach taken in, *inter alia, Hayes* and *Long*. However in a later decision of the British Employment Appeal Tribunal[14] the decision in *Webb* was clearly interpreted as approving strongly of the comparison of a pregnant woman with a sick man. This resulted in the dismissal of two women on grounds of their pregnancies being upheld as sick male employees would have been similarly treated.

That approach was unequivocally disapproved of by the Court of Justice in their overruling of the House of Lords in *Webb*. In a judgment strongly supportive of protection for pregnant workers the court set out the "general context" of such protection:

1. The Equal Treatment Directive: Article 2(3) recognised the legitimacy, in terms of the principle of equal treatment, first, of protecting a woman's biological condition during and after pregnancy, and, second, of protecting the special relationship between a woman and her child over the period which followed pregnancy and childbirth.
2. The Pregnancy Directive[15] Article 10 prohibited dismissal of a pregnant worker from the beginning of her pregnancy to the end of her maternity leave, in view of the harmful effects which the risk of dismissal might have on the physical and mental state of such women.

On the basis of that legislative context, the court laid down two principles:

1. There could be no question of comparing a pregnant woman who found herself incapable of performing the task for which she had been recruited, by reason of her pregnancy, with a man similarly incapacitated due to illness. That clear distinction between pregnancy and illness had been drawn in *Hertz* where the Court had ruled that the dismissal of a female worker on account of pregnancy constituted *direct* discrimination on the ground of sex.

2. The protection afforded by Community law to a woman during pregnancy and after childbirth could not be dependent on whether her presence at work during maternity was essential to the proper functioning of the undertaking in which she was employed. Any contrary interpretation would render ineffective the provisions of the directive. Thus, the fact that Ms. Webb was initially recruited to cover during the maternity leave of another employee could not affect these principles of Community law.

The court's judgment clearly puts an end to any possibility of justifying discrimination on grounds of pregnancy either on the basis of comparing a pregnant woman with a sick man or by basing her different treatment on grounds other than her pregnancy but a result of it, such as non-availability during maternity leave etc. In the light of sizeable awards made recently in the UK to women dismissed from the armed forces because of pregnancy, the financial implications of the judgment is also considerable.[16]

Along with the impending legislation implementing the Pregnancy Directive, whereby pregnant women who are unable to perform their duties due to their condition will have to be given extended maternity leave (whereas in the past they could have been fairly dismissed[17]), the judgment is to be welcomed as affirmation of the high level of protection to be given to pregnant women in the workplace. Both developments represent significant progress in enabling women to participate fully in the workplace *as women* who are fundamentally different to men in certain respects, rather than as women trying to minimise those differences in an effort to conform to the prevalent male norm of the working world.

References

1. 1974 Equal Pay Act, implementing Equal Pay Directive 75/117/EEC; 1977 Employment Equality Act, implementing Equal Treatment Directive 76/207/EEC.
2. [1992] 2 All E.R. 929.
3. Judgment delivered July 14 1994.
4. Directive 76/207/EEC.
5. [1980] ICR 66.
6. [1985] ICR 703.
7. EE5/88. The case was later successfully argued on the grounds of indirect discrimination. EE15/91.
8. DEE4/82. See also *North Western Health Board -v- Brady* EE8/85; DEE9/85.
9. Section 2(c) Employment Equality Act 1977.
10. *Dekker -v- Stichting Vorminnscentrum* Case 177/88 [1990] ECR 1-3941.
11. *Handels-og Kontorfunktionoerenes Forbund i Danmark (Hertz) -v- Dansk Arbejdsquiverfin* Case 179/88 [1990] ECR 1-3979.
12. The Court of Justice's decision has been expressly followed by Irish Equality Officers in a number of determinations; see *Department of Defence -v- An Employee* EE 3/92, DEE 14/92; *Department of Defence -v- An Employee* EE4/92; *Department of Agriculture -v- Kennedy-Barry* EE7/92.
13. Since then the Court held in *Birds Eye Walls Ltd -v- Roberts* Case C-132/92 [1994] IRLR 29 that direct discrimination can be lawful where the difference is based on an "objective premise." However it is likely that this development will be limited to the very specific facts of that case where a holding of unlawful direct discrimination would have led to unequal treatment.
14. *Dixon -v- Rees, Hopkins -v- Shepherd & Partners* [1993] IRLR 468.
15. Directive 92/85/EEC of 19 October 1992.
16. See for example the case of Ms Nicola Cannock who claimed that her pregnancy resulted in an end to her career with the RAF and was awarded £172,912; Irish Times 26 November 1993.
17. Section 6(2)(f) Unfair Dismissals Act 1977. ❐

SADSI News

Compiled by Paul Lavery and Barbara Loftus

As the 110th session of SADSI draws to a close, *Philippa Howley* and the committee would like to thank you all for your support during the year.

As the representative body of over 800 apprentices nationwide, during the last year SADSI has represented the views of apprentices on various important issues ranging from the Higher Education Grants scheme to the Solicitors Bill and apprentice salaries. *John Menton* represented SADSI on the Law Society Education Advisory Committee. John reports as follows:

The main proposals put forward by SADSI to this committee included:

1. Setting up a precedent bank in the Law Society that would contain precedent files on each area of practice set out in the apprentice handbook in order to allow apprentices and practitioners alike to have access to areas of practice that they may not cover in their particular office;

2. Heightening awareness of a Master's responsibility to pay his apprentice in accordance with Law Society recommendations given that the Master has signed the undertaking to do so (this undertaking is sent with your indentures);

3. Lobbying for a more equitable system of grants.

The proposal for a precedent bank is currently being considered by various committees in the Law Society. The Law Society has conducted a survey of apprentice remuneration and is highlighting the responsibility of Masters who have signed the undertaking to pay apprentices in accordance with the Law Society's recommendations. Unfortunately, whilst the Department of Education has regularly promised changes in the grant system, no changes have yet been forthcoming.

In addition to addressing educational issues SADSI also arranged a series of Debates and other social events:

Debates:

The highest profile debate of the year was the debate on the Joint Declaration held in conjunction with Trinity Law Society. *Dr Chris McGimpsey* (UUP), *Stephen O'Byrnes* (PD), *Jonathan Stephenson* (SDLP), *Eamon O'Cuiv* (FF) and *Maurice Manning* (FG) debated the merits of the Joint Declaration and Chairman *Michael O'Kennedy* brought the evening to a close with his views on the issue. The debate attracted widespread media coverage and featured on BBC's "Spotlight" and "On the Record" programmes.

At the other end of the spectrum was the recent student debate "Isn't it nice to have a female President". The same levels of intellect or debating skills were not exhibited that evening, the adjudicators deciding to give the prize to the worst haircut rather than the best speech! Many thanks to *Brian Spierin* BL who was our chairman for the evening.

Social:

Throughout the year apprentices were given the opportunity to show previously hidden talents. Events included the "Poxy dress" disco in Monkstown RFC, the Pub Quiz and Pound a Pint Disco in the Bankers' Club and, of course, the Karaoke night. In more recent months, Blackhall Place played host to SADSI's traffic light disco and a recent post debate disco. Meanwhile, Limerick apprentices gathered to show their various skills. Both the Pool Night and Pub Quiz organised by *Lorcan Tiernan* were a great success.

Undoubtedly, the highlight of the year was the gathering of over two hundred and fifty apprentices in the Great Southern Hotel, Galway for SADSI's Midsummer's Ball. A great evening was had by all apprentices who travelled from the four corners of the country. We had a lengthy list of sponsors and a lot of work went into making the evening a success.

The events of the past year could not have taken place without the efforts and dedication of the committee. We would also like to thank the President of the Law Society, *Michael V. O'Mahony*, for his constant support and encouragement during the year. Thanks also to the staff of the Law Society for all their help, in particular Alan and the bar staff for their patience. Roll on next year!

❐

Compensation Fund Payments – November, 1994

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meeting in November 1994.

	IR£
John J. O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	27,660.05
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	400.00
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	1,186.00
John K. Brennan, Mayfield, Enniscorthy, Co. Wexford.	1,900.90
	31,146.95

❐

Lost Land Certificates

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the Schedule hereto for the issue of a Land Certificate as stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the Certificate is being held.

(Registrar of Titles)
Central Office, Land Registry, (Clárlann na Talún), Chancery Street,
Dublin 7.

Published: 16 December 1994.

Aine South, Folio: 15903F; Land: Derry Demesne; Area: 20.950 acres. **Co. Tipperary.**

Thomas Michael O'Reilly, 4 Stillorgan Wood, Kilmacud, Co. Dublin. Folio: 2930F; Land: Townland of Kilmacud East in the Barony of Rathdown (called Priory Cottages). **Co. Dublin.**

Therese Noone, Carrowbehy, Castlerea, Co. Roscommon. Folio: 13798R; Townland: Pollnacroaghy; Area: 2(a) 0(r) 26(p). **Co. Mayo**

William O'Shea, Folio: 29SD (Revised); Lands: Barony of Muskerry West and County of Cork. **Co. Cork.**

Laurence McLoughlin, formerly of 75 Amiens Street, Dublin and now of, 44 Belgrave Square, Monkstown, Co. Dublin. Folio: 18386; Lands: Townland of Shankill in the Barony of Rathdown. **Co. Dublin.**

Paul Conaty, Folio: 7642F; Land: Cargagh; Area: 0.180 hectares. **Co. Cavan.**

Joseph Keogh, Folio: 11441; Lands: Kilcullenbridge, Barony of Naas South and County of Kildare. **Co. Kildare.**

Paul Roche, Folio: 6461; Lands: Cloonlough, Barony of Condons and Clangibbon and County of Cork. **Co. Cork.**

Robert William Berney, Folio: 24280; Land: Betaghstown; Area: 2(r) 7(p). **Co. Meath.**

David Noonan, Folio: 26363; Land: Ballintubbrid; Area: 2(r) 5(p). **Co. Limerick.**

Neville Hall, Folio: 3938; Land: Drumad; Area: 19(a) 12(p). **Co. Cavan.**

Seamus Duke, Kilmacumskey, Elphin, Co. Roscommon. Folio: 6744; Townland: (1) Lismacool, (2) Gortnacloy; Area: (1) 25(a) 0(r) 12(p), (2) 1(a) 2(r) 20(p). **Co. Roscommon.**

Dan Tynan, Folio: 4136F; Land: Maryborough; Area: 0.868 acres. **Co Queens.**

Margaret Ann Harron, Folio: 25517; Land: Ballybulgan; Area: 11(a) 1(r) 26(p). **Co. Donegal.**

Bernadette Devine, Folio: 4445; Land: Bellurgan; Area: 2(a) 3(r) 26(p). **Co. Louth.**

Anne Teresa Maher, Folio: 9088; Land: Coolgower; Area: 12 perches. **Co. Waterford.**

Joseph Neylon and Lucy Neylon, 47 Cahercalla Estate, Ennis, Co. Clare. Folio: 1713L; Townland: Clonroad Beg. **Co. Clare.**

Anna Morgan, Folio: 7567; Land: Ardaghy and Bavan. **Co. Louth.**

Michael Fleming, Folio: 4911; Land: Townland of Ballycooleen, Barony of Arklow and County of Wicklow. **Co. Wicklow.**

Nicholas Purcell, Folio: 7713F; Land: Oakpark; Area: 61(a) 1(r) 21(p). **Co. Carlow.**

Christopher Clinton and Philomena Gossan, Folio: 2642L; Land: Marshes Lower; Area: 12 perches. **Co. Louth.**

Kevin C. Beatty, late of 59 Rathoath Estate (orse Rathbrook Estate) Cabra, Dublin. Folio: 4767L; Land: Townland of Rush in the Barony of Balrothery East, **Co. Dublin.**

Mary Morton, of 18 Howth Road, Sutton Cross, Dublin 13. Folio: 4958L; Land: Property situate on the North of Howth Road in the parish of Kilbarrack and District of Howth. **Co. Dublin.**

The Waterford Board of Public Assistance, Folio: 2638; Land: Coolbra; Area: 11(a) 2(r) 11(p). **Co. Waterford.**

Hannah Lanigan, (deceased) and Mary Lanigan (deceased), both of 490 Bluebell, Inchicore, Dublin. Folio: 12632; Land: A plot of ground situate on the South side of the Grand Canal in the Parish and district of Drimnagh, City of Dublin. **Co. Dublin.**

Patrick McKeown, 112 Lower Kilmacud Road, Stillorgan, Co. Dublin. Folio: 22742F; Townland: Gandenfield; Area: 0.785 acres. **Co. Galway.**

Wills

Cummins, William, deceased, late of 4 Joy Street, Ringsend, Dublin. Would any person having knowledge of a will executed by the above named deceased who died on the 6th of April 1975, please contact Sean Allen & Company, 67 Pembroke Road, Ballsbridge, Dublin 4. Tel: 660 4790. Fax: 660 7948.

Gavigan, John, (otherwise known as Gargan) deceased, late of 21 Moy Road, Castlelawns, Summerhill, Co. Meath. Would any person knowing the whereabouts of any will or information regarding his estate, bank accounts, etc. made by the above named deceased, who died on 28 March 1994, please reply to Box No: 100.

Shiel, Maria, deceased late of Moneen, Fortfield, Castlebar, Co. Mayo. Would any person having knowledge of a will executed by the above named deceased who died on 28 October 1994 please contact Colman Sherry, Solicitor, The Square, Gort, Co. Galway. Tel: 091 31383 Fax: 091 31993.

Mulligan, Patrick, deceased, late of Lisconny, Riverstown, Ballymote, Co. Sligo or Lisonney, Drumfin, via Boyle, Co. Sligo. Would any person having any knowledge of a will made by the above named deceased, who died on 6 October 1994 please contact Messrs. Hooper & Co., Solicitors, 97 Upper George's Street, Dun Laoghaire, Co. Dublin. Tel: 01 280 6971 Fax: 01 280 1558.

Gilleran, John Joseph, deceased late of 35 Main Street, Howth, County Dublin, who died on the 16th September 1994. Would any person knowing the whereabouts of any will executed by the above named deceased please contact Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2. Tel: 01 661 0317, Fax: 01 661 1685.

Miscellaneous

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required, reasonable rates. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, Tel: 080 693 61616 Fax: 080 693 67712.

London West End Solicitors will advise and undertake UK related matters. All areas – corporate/private client. Resident Irish solicitor. Reciprocal arrangement and fee sharing envisaged. Agency work also. Contact: Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL. Tel: 0044 71 589 0141

Personal Injury Claims in England and Wales. Specialist P I solicitors can assist in all types of injury claims. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Co., Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England. Telephone: 0044 81 881 7777 Fax: 0044 81 889 6395 and Bank House, Cherry Street, Bermingham, B2 5AL Tel: 0044 21 633 3200 and Fax: 0044 21 633 4344.

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Employment

Locum Solicitor required to cover maternity leave. 01.03.95 to 31.08.95. Principally Debt Collection. Computer experience desirable. Replies to writing to Brian Lynch & Associates, 4 The Courthouse Square, Galway.

Solicitor with extensive company and commercial experience (6 years) seeks position with view to partnership in niche of progressive firm. Box No: 101.

Required Mature Barrister. Complex Litigation – Eager for the Fray – Good Results – Good Rewards – All applications treated with utmost confidentiality – May suit retired/semi retired S.C. or other – Dublin Area. Reply Box No: 102.

Experienced legal book-keeper seeks full/part-time employment. Please reply to Box No: 103.

Lost Title Deeds

In the matter of the Landlord and Tenant (Ground Rents) Act, 1967 and the Landlord and Tenant (Ground Rents) (no. 2) Act, 1978 and the application thereunder of Mr Walter Brian Kehoe of Pembroke, Carlow.

To the Estate of James Pattison of John Street Carlow, County Carlow.

TAKE NOTICE THAT the above named Walter Brian Kehoe has served notice of intention to acquire Fee Simple on the Carlow County Registrar.

The lands to which the notice refers are ALL THAT AND THOSE that piece or plot of ground at 1, College Street, Carlow in the Town Parish Barony and County of Carlow and held under lease dated the 21st April 1870 between the said James Pattison of the first Part and Edward Croghan of the Second Part.

Would any Person having knowledge of the whereabouts of the Successors in title of the above mentioned Lessors please contact Messrs. Frank Lanigan Malcomson & Law, Solicitors, Court Place, Carlow – telephone (0503) 31749.

Law Clerks JLC Employment Regulation Order

At a meeting of the Law Clerks Joint Labour Committee held on 25 October 1994 the application of the first phase under the Programme for Competitiveness and Work (an increase of 2%) to the rates of pay of employees covered by the Law Clerks JLC was approved. The Employment Regulation Order covering this increase took effect from 7 November 1994. Members are advised that, as the Employment Regulation Order which covered the last increase took effect from 22 August 1993, employees who are covered by the JLC rates of pay have had to wait over a year before receiving an increase in pay. Members may, therefore, wish to consider backdating the implementation of the latest increase to 22 August 1994.

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Asio otus (Long-eared owl). Photographed by Richard T. Mills.

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Past performance may not be a guide to future returns which are dependent on future investment conditions. Unit values can go down as well as up.

Recent Irish Cases

Edited by Raymond Byrne, BCL, LLM, BL, Lecturer in Law, Dublin City University

The following case summaries have been reprinted from the *Irish Law Times and Solicitors Journal* with the kind permission of the publishers.

The Garda Representative Association, v Ireland: Supreme Court (Finlay CJ, Egan and Denham JJ) 26 May 1993

Judicial Review – Garda Síochána – Conciliation and Arbitration Scheme – Intention of Garda Commissioner to incorporate parading time in ordinary hours of work and re-roster 'special services' – Whether certain proposals within scope of conciliation council – Whether decision made without or in excess of jurisdiction – Whether wrongful refusal to exercise functions – Purpose of judicial review proceedings

Facts The chairman of a conciliation council established with regard to staff relations in the Garda Síochána ruled on 29 October 1987 that certain proposals contained in two circular letters of that year issued by and relating to the intention of the Commissioner of the Garda Síochána (to incorporate parading time in the ordinary hours of work and to re-roster the 'special services', were not appropriate for consideration by the said conciliation council.

The plaintiffs sought relief by way of judicial review and sought a declaration that the proposals contained in the two circulars fell within the scope of the scheme to provide for a conciliation and arbitration machinery for members of the Garda Síochána. The plaintiffs also sought an order that the chairman of the council should decide that the proposals contained in the circulars were appropriate for discussion by the council. In a judgment delivered on 19 April 1988 ([1989] ILRM 1) Murphy J refused to grant the relief sought. The plaintiffs appealed.

Held by the Supreme Court (Finlay CJ; Egan and Denham JJ concurring) in upholding the decision of Murphy J and refusing the relief sought by the plaintiffs: (1) Judicial review is a review and not an appeal and for the court to give a declaration that the chairman of the Garda Conciliation Council had been incorrect in his interpretation as to whether proposals contained in certain circulars were matters within the scope of the conciliation council, as distinct from declaring that the interpretation was void or invalid, would be to conduct such an appeal. *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155 approved. (2) This well-established principle of judicial review regarding the decisions of individuals or tribunals of an administrative nature carrying out a decision making process, which they were bound to do in a judicial manner, was not merely an artificial restriction imposed by procedural rules of the court, but went to the root of the administrative nature of such tribunals. (3) The scheme of conciliation and arbitration between the staff and officials of the gardaí provided that certain decisions should be determined by the chairman of the conciliation council and the parties were deemed to have agreed to or accepted that provision. (4) It would not be appropriate for the court to interfere with a decision merely on the basis that the court would have raised different inferences and conclusions or that the court was satisfied that the case made against a decision was stronger than the case made for it. It was sufficient to state that it could not be said that the chairman's decision was an irrational decision in the teeth of common sense or flying in the face of reason. *O'Keeffe v An Bord Pleanála* [1992] ILRM 237 approved.

Reported at [1994] 1 ILRM 81

Damien Duff v District Judge Mangan: Supreme Court (Finlay CJ, Blayney and Denham JJ) 1 April 1993

Judicial Review – Criminal Law – Certiorari – *Challenge to jurisdiction of District Court to try case – Refusal by justice to hold enquiry as to complaint – Conviction made without jurisdiction – Appeal to Circuit Court as alternative remedy – Appeal struck out – Right to be tried by due process of law – Whether* certiorari *lies when adequate alternative remedy inadequately prosecuted – Exercise of discretion in granting remedy – Courts (No. 3) Act 1986*

Facts The appellant appeared in the District Court on 22 January 1986 to answer a number of summonses under the Road Traffic Act 1961. At the hearing the defendant's solicitor submitted that the summonses grounding the complaints, having been signed by a District Court clerk, were invalid and the court had no jurisdiction to hear the complaints. The district justice refused to accede to the submission and proceeded to convict the appellant. After a number of adjournments, pending a decision in the case of *State (Clarke) v Roche* the appeal was listed for 7 June 1988. However, as the appellant was only advised four days prior to the appeal he sought an adjournment which the State resisted and the appeal was struck out.

On 28 November 1988 Johnson J granted the appellant leave to apply for *certiorari* on the grounds that: (i) at the date of the hearings the constitutionality of the powers of a District Court clerk to receive a complaint and issue a summons were queried and following the decision of the Supreme Court in *State (Clarke) v Roche* the procedure for commencing summonses in the District Court was altered by the Courts (No. 3) Act 1986 and it was submitted that the respondents had exceeded their jurisdiction in convicting on foot of the summonses before them and (ii) four days' notice of the date of the appeal was inadequate and unconstitutional.

On 13 March 1989 Lardner J refused the application for *certiorari* referring to the fact that the appellant did not attend the Circuit Court appeal and to the submission by the State that the validity of summonses was a matter of defence. The appellant appealed to the Supreme Court.

Held by the Supreme Court (Denham J; Finlay CJ and Blayney J concurring) in allowing the appeal: (1) The district judge erred in law, within jurisdiction in determining that he could hear the case without an inquiry as to the complaints and summonses, but he exceeded his jurisdiction in then proceeding to hear the case. (2) *Certiorari* is a discretionary remedy which will be cautiously granted where there is an adequate alternative remedy which has been inadequately prosecuted. (3) In all the circumstances of this case which arose in the midst of developing law on the making of a complaint and the issuing of a summons it is appropriate to grant the order of *certiorari* and quash the orders against the appellant.

Reported at [1994] 1 ILRM 91

McC. v McC.: High Court (Costello J) 22 June 1993

Conflict of Laws – Enforceability of foreign maintenance order in Ireland – Maintenance order capable of being varied under Hong Kong law in changed circumstances – Whether judgment of Hong Kong court 'final and conclusive'

Facts The plaintiff and defendant, having been married in England in 1961, were divorced in 1986 in the District Court of Hong Kong on the application of the plaintiff wife. By ancillary order, a maintenance order was made for certain lump sums and periodical payments to be paid by the defendant to the plaintiff. The lump sums were paid as ordered, as were the periodical payments until 15 June 1989, when they ceased. The defendant, an Irish citizen, returned to Ireland and the plaintiff instituted proceedings in the Eastern Circuit claiming arrears of maintenance. The maintenance order could, under Hong Kong law, be varied retrospectively and the defendant raised its enforceability as a defence. By consent, this question was tried as a preliminary issue. It was decided in the Circuit Court that the Hong Kong order was enforceable in Ireland and the defendant appealed to the High Court against this decision.

Held by Costello J in affirming the decision of the Circuit Court and returning the matter for hearing in the Eastern Circuit:

(1) When a dispute arises between experts as to how a foreign statute or ordinance should be construed then the court in this country may resolve the dispute by itself construing the instrument. *McNamara v Owners of SS Hatteras* [1933] IR 675 followed. (2) The finality and conclusiveness of an order is to be determined by the nature of the proceedings before the foreign court and the effect of the court's order. If there is an adjudication on all the issues between the parties and an order is made so that *res judicata* applies, then it is clear that the court's order is 'final and conclusive' and this is so even though the order may later be varied or set aside on appeal. *Harrop v Harrop* [1920] 3 KB 386 and *In re Macartney* [1921] 1 Ch 522 not followed. *Nouvion v Freeman* (1890) 15 App Cas 1 followed and *Nunn v Nunn* (1881-2), 8 LR Ir 298 approved; *Keys v Keys* [1919] 2 IR 160; *McDonnell v McDonnell* [1921] 2 IR 148 distinguished. (3) The fact that a foreign law may permit a foreign court to vary its orders may be evidence that the order is not a final and conclusive one; but it is not conclusive on the point. (4) If it can be shown that the principle of *res judicata* applies to the order then even though it may be subect to appeal by a higher court or be varied if circumstances change by the same court then it is a 'final and conclusive' order which will be enforced by the Irish courts.
Reported at [1994] 1 ILRM 101

Bula Ltd and Others v Tara Mines Ltd and Others: Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) 15 June 1993

Procedure – Discovery – Documents in the possession of a professional adviser – Whether such documents are within the power of the client – Whether discoverable in a party/party discovery – Whether non-party discovery procedure is appropriate – Rules of the Superior Courts 1986 O. 31, rr. 12, 29

Facts O. 31, r. 12(1) of the Rules of the Superior Courts 1986 provides that 'Any party may . . . apply . . . for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein.' The plaintiffs issued a motion seeking discovery of certain documents in the possession of advisers retained in the past by the Minister for Energy. The motion sought that the minister should request from those professional advisers (Arthur Cox, solicitors, Coopers & Lybrand, accountants and ICC Bank) all documents in the possession or procurement of the professional advisers which related to the issues in the proceedings (other than internal memos or drafts prepared by the said professional advisers for their own purposes as distinct from final drafts/advice prepared for the minister) and that the minister should then discover such documents. The High Court (Murphy J) refused the order, on the basis that the matter should be more appropriately dealt with under RSC O. 31, r. 29, which permits discovery to be obtained from third parties. The plaintiffs appealed to the Supreme Court.

Held by the Supreme Court (O'Flaherty J; Finlay CJ and Egan J concurring) in allowing the plaintiff's appeal in part: (1) Final documents, approved by the professional adviser for sight by the minister, are documents within the 'power' of the minister and as such are discoverable in a party/party discovery under O. 31, r. 12. (2) A document is within the power of a party if he has an enforceable legal right to obtain from whoever actually holds the document inspection of it without the need to obtain the consent of anyone else. (3) All other documents held by the adviser are preparatory and personal to the professional adviser and as such are not discoverable under O. 31, r. 12. (4) In relation to 'power' over preparatory documents there is a distinction between the professional adviser and client relationship and that of principal and agent. Approach of the English Court of Appeal in *Leicestershire County Council v Michael Faraday and Partners Ltd* [1941] 2 KB 205 approved.
Reported at [1994] 1 ILRM 111

Patricia Boylan v Motor Distributors Ltd and Daimler Benz AG: High Court (Lynch J) 9 June 1993

Practice – Statute of Limitations – Plaintiff's hand injured by van door – Proceedings issued against owner of van – Manufacturers and distributors of van not joined as co-defendants before expiry of limitation period – New proceedings issued five years and eight months after date of plaintiff's accident – Whether new proceedings statute barred – Statute of Limitations 1957, section 11(2)(b) – Statute of Limitations (Amendment) Act 1991, sections 2, 3

Facts The plaintiff worked with her husband in a family firm called Radiant Plating Ltd in Great Strand Street, Dublin 1. On 7 May 1986 a Mercedes 307-D type van, the property of Sanbra Fyffe Ltd, arrived at the firm's address to deliver goods for plating by Radiant Plating Ltd. The plaintiff assisted the driver in unloading the goods. Subsequently, in attempting to close the van door she caught her right ring finger so that a piece was amputated from its top joint. The plaintiff's right little finger was also injured.

The plaintiff did not notice anything wrong with the door before the accident and was in no state to observe or examine the door immediately following it. She consulted her solicitor on 26 May 1986 and a High Court action against Sanbra Fyffe was commenced by plenary summons on 22 January 1987 following which a statement of claim setting out various particulars of negligence was delivered on 27 February 1987. A defence was filed on behalf of Sanbra Fyffe on 28 October 1987, which did not suggest any design or other fault in the van or its doors for which they might claim to have no responsibility or in respect of which they might claim an indemnity against the manufacturers or distributors of the van.

The plaintiff's solicitor had not been provided with any financial retainer by the plaintiff and as there now appeared to be no prospect of a settlement, as hoped, senior counsel was consulted in December 1987 and it was advised that an engineer's report be obtained. On 21 December 1987 the plaintiff's solicitor sought to have the van inspected by an engineer. The identity of the van had to be ascertained and other problems ironed out and after a series of delays and reminders an inspection was held on 24 August 1988. Thereafter, despite reminders from the plaintiff's solicitor to the engineer, there was a delay in receiving the report from the engineer who was keeping a lookout for other similar type vans and who about December 1988 noticed a newer van of a similar type to that involved in the accident which had a variation in the door hinge mechanism.

The desirability of joining Motor Distributors and Daimler Benz as co-defendants in the action was overlooked until after 7 May 1989 by which time any cause of action against those parties was statute-barred by section 11(2)(b) of the Statute of Limitations 1957 as it then stood. The Statute of Limitations (Amendment) Act 1991 became law on 10 July 1991 but consideration of the effect of this statute on the possibility of maintaining a claim against Motor Distributors and Daimler Benz was not undertaken until in or about the end of 1991 and it was considered unlikely that any application to join them as co-defendants would be heard before 18 January 1989, the third anniversary of the date and delivery of the engineer's report. Consequently, reliance was placed upon the 1991 Act to issue new proceedings by plenary summons on 14 January 1992.

A preliminary issue as to whether the plaintiff was statute-barred in pursuing her claim against Motor Distributors and Daimler Benz came on for hearing before the High Court on 25 March 1993.

Held by Lynch J in finding that the plaintiff's action was not barred: (1) The plaintiff did not know and could not reasonably be expected to know that her injury might have been caused by a design defect in the hinge mechanism of the van door and that therefore Motor Distributors and/or Daimler Benz might be blamed for the accident and ought to be the defendants. (2) While the plaintiff must be fixed with knowledge which her solicitor had or ought to have had at the time when the solicitor had or ought to have had such knowledge, the plaintiff's solicitor did not in fact have knowledge that the plaintiff's injury might have been caused by a design defect in the hinge mechanism of the door from the description of the accident as given to him by the plaintiff, nor could he

reasonably be expected to have gleaned such knowledge from the plaintiff's instructions. (3) The plaintiff's solicitor acquired such knowledge that the plaintiff's injury might have been caused by a design defect in the hinge mechanism of the van door not earlier than 18 January 1989 when the engineer's report was delivered to him. (4) As to whether the plaintiff's solicitor ought to have acquired such knowledge earlier than 18 January 1989, a general rule that an engineer's report should be obtained before the delivery of the statement of claim in every case would add quite unnecessarily to the costs in very many cases if not the majority of cases because the majority of cases are settled at a relatively early stage of the proceedings. (5) It was reasonable for the plaintiff's solicitor not to request an inspection of the van and a report thereon by an engineer until requested to do so by senior counsel. Thereafter, the plaintiff's solicitor took all reasonable steps to arrange an inspection of the van by a competent engineer and to obtain a report from such engineer. Nor was there any fault on the solicitor's part in that the report did not come to hand before 18 January 1989 or on the engineer's part since after his inspection he kept a lookout for similar type vans as a result of which he found a later model with a variation in hinge mechanism which he photographed.

Reported at [1994] 1 ILRM 115

Aine Clancy Wadda and Nadia Clancy Wadda (suing by her Mother and Next Friend Aine Clancy Wadda) v Ireland and the Attorney General and Mohamed Wadda (Notice Party): High Court (Keane J) 6 July 1993

Constitution – Infant – Child abduction – Constitutionality of child abduction legislation – Wrongful removal from jurisdiction of child – Whether personal rights of parent and child vindicated – Whether access to the jurisdiction of the Irish courts ousted – Child Abduction and Enforcement of Custody Orders Act 1991, sections 6(1), 7 – Guardianship of Infants Act 1964, section 3 – Convention on the Civil Aspects of International Child Abduction 1980, articles 1, 3, 4, 12, 13, 20 – European Convention on Human Rights and Fundamental Freedoms 1951 – Constitution of Ireland 1937, Articles 29.3, 34.1, 40.3, 40.3.1°, 41.1., 42.1, 44

Facts The first named plaintiff, an Irish citizen, married the notice party, a Moroccan citizen, in February 1989. They had one child, the second named plaintiff. The three parties were at all material times habitually resident in the United Kingdom. The wife removed the child to Ireland as a result of marital difficulties and instituted proceedings to be appointed sole guardian of the child and for custody of the child under the Guardianship of Infants Act 1964. The husband brought an application for an order returning the child to the United Kingdom under the Child Abduction and Enforcement of Custody Orders Act 1991. The proceedings under the Act of 1964 were stayed pending the outcome of the claim under the Act of 1991. Morris J found that the husband had established that he was entitled to an order under the provisions of the Act of 1991 returning the child to the United Kingdom. However, he granted a stay on the order to allow the wife institute proceedings seeking a declaration that the relevant provisions of the Act of 1991 (which gives effect to the Convention on the Civil Aspects of International Child Abduction 1980) were inconsistent with the Constitution. The wife instituted such proceedings. The plaintiffs submitted that the provisions of the Act of 1991 are invalid in that it fails to protect the rights of the child in depriving her of an adjudication by the Irish court under the Act of 1964 as regards custody and welfare. It was also contended that the Act of 1991 deprives the plaintiffs of their right of access to the Irish courts and fails to protect the rights of the family as the primary and natural unit of society.

Held by Keane J in dismissing the plaintiffs' claim: (1) The personal rights of children under Article 40.3.1° of the Constitution are fully protected and vindicated by the provisions of the Convention on the Civil Aspects of International Child Abduction as implemented by the Act of 1991. (2) Article 20 of the convention, if invoked by a party to proceedings under the convention, gives protection to the constitutional rights of the children concerned. (3) The Oireachtas was entitled to give effect in domestic law to a convention which conferred jurisdiction in cases with an international dimension to foreign courts with the object of protecting the interests of children in this and other countries and it is in accordance with the aims of the Constitution as stated in the Preamble. (4) The convention does not violate Articles 41.1 and 42.1 in denying the first named plaintiff her right as a parent to invoke the protection of the Irish courts in respect of the welfare of her child. The provisions of articles 13 and 20 of the convention ensure that were the constitutional rights of parents and children endangered the rights would be protected by a refusal to return the children.

Reported at [1994] 1 ILRM 126

Mary O'Keeffe v Brian Russell and Others: Supreme Court (Finlay CJ, Blayney and Denham JJ) 29 July 1993

Real Property – Equitable charge – Deposit of land certificate – Sale of co-owned property and purchase of other land in joint names – Undertaking by solicitor on behalf of purchasers to hold land certificate on trust for bank and deposit it with bank when issued – Purchasers proceeding on understanding that joint loan would be made by bank – Loan made to only one purchaser – Interest of other purchaser unaffected by equitable charge
Practice – Pleadings – Argument that lender entitled to equitable charge through subrogation to a vendor's lien not raised in pleadings or grounds of appeal – Requirement that claim to a lien should be specifically and specially pleaded
Practice – Costs – Plaintiff succeeding against one defendant and having claim against other defendant dismissed – Order of costs against plaintiff in favour of successful defendant – Alternative claim and alternative potential liability – Recoupment of costs from defendant against whom plaintiff succeeded – Courts of Justice Act 1936, section 78

Facts The plaintiff and her husband had been joint tenants of a farm in Cork. In 1978 they decided to sell this property and acquire a larger farm which would also be in their joint names. They entered into a contract of sale in respect of a farm in Limerick for £700,000 after the second defendant (the bank) agreed to lend Mr O'Keeffe the requisite deposit. On 29 November 1978 the first named defendants, who were the couple's solicitors, wrote to the bank and informed it that the plaintiff and her husband were purchasing the Limerick farm in their joint names and that on completion the solicitors would hold the land certificate pertaining to that property in trust for the bank. They also undertook to lodge the net proceeds realised from the sale of the Cork farm to the credit of an account in the couple's joint names which would be opened by the bank. In a letter to the bank dated 4 April 1979 the solicitors indicated that the plaintiff and her husband were completing the purchase of the Limerick farm and issuing a cheque for the balance of the purchase price. They also confirmed that they would hold the title deeds on trust for the bank and lodge them as soon as completion occurred.

The proceeds of sale of the Cork farm were not paid into a joint account but into one in Mr O'Keeffe's sole name. No joint loan account was ever opened and, instead of lending the couple the balance of the moneys necessary to finance the purchase, the bank made the loan to Mr O'Keeffe alone and opened a loan account in his sole name. The balance of the purchase price was paid to the vendor by bank draft and not by means of a cheque issued by the plaintiff and her husband as contemplated in the letter of 4 April. Mr O'Keeffe subsequently failed to make repayments in accordance with the loan contract and the debt owed to the bank grew considerably. The bank attempted to get the plaintiff to accept joint responsibility for the debt owed by her husband but she refused to do so. The plaintiff left her husband in April 1980 and instructed the solicitors not to lodge the land certificate with the bank. However, they maintained that they were bound by the undertaking of 29 November 1978 and accordingly lodged the certificate with the bank on 8

July 1980. The Limerick farm was sold in April 1982 and the bank applied most of the proceeds towards satisfaction of the debt owed by the plaintiff's husband.

The plaintiff sued the solicitors for negligence and breach of contract and sought a declaration that the bank did not have an equitable charge over her share in the Limerick farm. In a judgment delivered on 31 July 1992, Costello J held that the bank had not obtained a mortgage or charge over the plaintiff's share and ordered that it should pay to her the sum of £282,530.52 together with interest and costs. Costello J also held that the solicitors had not been negligent because they had instructed the bank to lodge the proceeds of sale in a joint account and informed it that the purchase was to be a joint one. Accordingly the plaintiff's claim against them was dismissed and it was ordered that she should pay their costs. The bank appealed and the plaintiff lodged a cross-appeal on the basis that Costello J should have exercised his discretion under section 78 of the Courts of Justice Act 1936 and ordered that, in addition to the plaintiff's costs, the bank should pay by way of recoupment the costs which she was obliged to pay to the solicitors.

Held by the Supreme Court (Finlay CJ; Blayney and Denham JJ concurring) in dismissing the second named defendant's appeal and allowing the plaintiff's cross-appeal: (1) The plaintiff had not been a party to any loan contract with the bank regarding the purchase of the Limerick farm. Accordingly no equitable charge operated in respect of the plaintiff's half-interest. The letter of 29 November, even as confirmed by the letter of 4 April 1979, did not constitute an agreement by the plaintiff to create an equitable charge over her share as security for a loan advanced solely to her husband. Her proposal to charge the lands was clearly confined to a transaction in which a joint loan was granted and joint accounts were created in order to implement it. (2) It was not appropriate for the Supreme Court to consider an argument to the effect that the bank had a charge over the plaintiff's share through subrogation to a vendor's lien because it had not been raised in the pleadings or in the grounds of appeal. As a matter of general principle a claim to a lien must be specifically and specially pleaded. (3) Given the findings of fact made in the High Court, if the bank had succeeded in its claim that the letter of 29 November 1978 did not impose a term requiring the creation of a joint account as a condition of the creation of a charge over the plaintiff's share, *prima facie* the plaintiff would have been entitled to succeed against the solicitors. As there had been a genuine alternative claim and alternative potential liability between the first named and second named defendants an order under section 78 should have been made. Accordingly, when the plaintiff paid the solicitors' costs she would be entitled to recoup this amount from the bank.

Reported at [1994] 1 ILRM 137

Truloc Ltd v District Judge Liam McMenamin and Donegal County Council: High Court (O'Hanlon J) 17 June 1993

Judicial Review – Certiorari – *Air Pollution – Prosecution in respect of emissions from manufacturing plant – Sufficiency of evidence – Statutory offence akin to common law misdemeanour of public nuisance – Some special defences dependent upon the making of regulations and orders under the Act which had not been done yet – Certainty as to elements of offence – Criminal charge against a body corporate – Interpretation Act 1889, section 2(1) – Air Pollution Act 1987, sections 4, 5, 10, 11, 12, 13, 24*

Facts Under section 24(2) of the Air Pollution Act 1987, it is an offence for the occupier of any premises to cause or permit an emission from such premises in such a quantity or in such a manner as to be a nuisance. Section 24(3) sets out various factors which, if established, will constitute a good defence to a charge under section 24(2). Section 24(3)(a) identifies as one of these factors the use of the best practicable means to prevent or limit the emission concerned. Other defences listed by section 24(3) relate to emissions being in accordance with licences granted under the Act, or an emission limit value, or a special control area order, or regulations made under section 25. The applicant company carried on an adhesive manufacturing plant. It was prosecuted by Donegal County Council in respect of emissions from the plant. On 29 July 1991 it was convicted in the District Court on seven charges under section 24(2) and a fine of £300 was imposed in respect of each charge. The applicant sought an order of *certiorari* to quash the convictions.

Held by O'Hanlon J in refusing the relief sought: (1) It was not the function of the High Court in the context of an application for judicial review to examine in detail the evidence tendered in support of a prosecution in the District Court with a view to determining whether that evidence was sufficient to support the conviction. (2) In any event there was nothing to suggest that the evidence tendered in this case was insufficient to sustain the convictions. The applicant's factory and the pollutants emitted from it had been inspected and tests had been performed. Local residents had given evidence as to the offensive smell emanating from the factory and the respiratory problems from which they had suffered as a result of the emissions. If accepted by the district judge this evidence of nuisance would have fallen within the definition of 'air pollution' contained in section 4. (3) Section 24(3) set out grounds which, if established, would constitute a good defence. No evidence had been tendered on behalf of the applicant in order to establish that it had used the best practicable means to prevent or limit the emissions and it was not incumbent upon the prosecution to prove that it had not. (4) The making of regulations dealing with the adhesive manufacturing industry by the Minister for the Environment under section 10 was not a prerequisite to the bringing of a prosecution under section 24. (5) The minister was entitled to issue directions under section 5(3) specifying the best practicable means for preventing or limiting emissions. If such directions were made they could be relied upon by a defendant with a view to establishing that he had a good defence under section 24(3)(a). However, no directions pertaining to the type of emissions complained of in this case had been made and the making of such directions was not a prerequisite to the bringing of a prosecution under section 24(2). (6) Given section 2(1) of the Interpretation Act 1889, the word 'person' as used in section 11 and section 12 included a corporate body. Section 11(2) expressly recognised that an offence under the 1987 Act could be committed by a body corporate. There was nothing in section 11 or section 12 to suggest that it was necessary to join an officer of the company in any prosecution or for the purpose of imposing a penalty by way of fine under section 12. (7) If a local authority elect to exercise their right under section 13 to bring a summary prosecution, the accused does not have an election to choose between summary trial and trial on indictment before a jury. (8) Section 24(2) created a statutory offence akin to the common law misdemeanour of public nuisance which carried the special penalties provided for in section 12 and was subject to the special defences referred to in section 24(3). Some of these special defences could only arise in the event of certain measures being taken under other provisions of the 1987 Act. The fact that some ground of defence might not exist yet because such measures have not been taken was not a sufficient basis for challenging a prosecution brought in the meantime under section 24(2). (9) The absence of regulations and orders which could be made under the 1987 Act did not prevent the applicant from knowing the nature and extent of the offences it had allegedly committed. There was no greater element of uncertainty involved in identifying the commission of an offence contrary to section 24(2) than there was in bringing and defending a charge pertaining to the common law misdemeanour of public nuisance.

Reported at [1994] 1 ILRM 151

Meagher v Minister for Agriculture and Food, Ireland and the Attorney General: High Court (Johnson J) 1 April 1993; Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 18 November 1993

European Communities – Whether statute could be amended by ministerial regulation introduced for the purpose of implementing directives – Constitutionality of European Communities Act 1972, s. 3 – Supremacy of community law over national law – European Communities (Control of Oestrogenic, Androgenic, Gestagenic and Thyrostatic Substances) Regulations 1988 (SI No. 218 of 1988) – European Communities (Control of Veterinary Medicinal Products and their Residues) Regulations 1990 (SI No. 171 of 1990) – EEC Treaty, Articles 5, 189

Facts S. 2 of the European Communities Act 1972 provides that from 1 January 1973 the Treaties of the European Communities and the acts adopted by the institutions of those communities shall be binding on the State and constitute part of its domestic law. S. 3(1) empowers a minister of state to make regulations so as to give full effect to s. 2, and s. 3(2) provides that these regulations may contain such incidental, supplementary and consequential provisions as appear necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law exclusive of the 1972 Act). In order to implement various EEC directives pertaining to the use of hormones in livestock, the Minister for Agriculture and Food made the European Communities (Control of Oestrogenic, Androgenic, Gestagenic and Thyrostatic Substances) Regulations 1988 and the European Communities (Control of Veterinary Medicinal Products and their Residues) Regulations 1990 pursuant to s. 3(2) of the 1972 Act. Both the 1988 and the 1990 Regulations provided that notwithstanding s. 10(4) of the Petty Sessions (Ireland) Act 1851, proceedings in respect of an offence under the regulations could be instituted at any time within two years of the commission of that offence. In March 1991 a search warrant was issued by the District Court under the 1988 regulations which empowered the officers of the minister and the gardaí to enter the applicant's farm. A search was carried out on 27 March 1991 and on 24 August 1992 the applicant was served with 20 District Court summonses pertaining to offences under the 1988 and 1990 Regulations. The applicant brought judicial review proceedings in which he sought a declaration that the 1988 and 1990 Regulations were *ultra vires* and void, a declaration that the provisions of s. 3(1) and (2) of the 1972 Act were contrary to the Constitution and void, an order of *certiorari* quashing the search warrant granted by the District Court and an order of prohibition precluding the first named respondent from prosecuting the applicant in respect of the offences under the regulations which were alleged in the summonses.

In the High Court Johnson J held that that portion of s. 3(2) of the 1972 Act which entitled a minister to make a regulation repealing, amending or applying, with or without modification, other law exclusive of the 1972 Act was unconstitutional. The respondents appealed.

Held by the Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) in allowing the appeal: (1) By providing that community law is binding on the State and part of its domestic law subject to the conditions laid down in the treaties, which included the primacy of community law over domestic law, s. 2 of the 1972 Act secured compliance with the major or fundamental obligation necessitated by membership of the community. The only purpose which could be served by the making of regulations under s. 3 was to enable s. 2 to have full effect. (2) Given the number of community laws, acts done or measures adopted which would have to be either facilitated in their direct application to the law of the State or implemented by appropriate action into the law of the State, the obligation of membership would necessitate the attainment of these objectives in some instances by the making of ministerial regulations rather than the enactment of legislation by the Oireachtas. Accordingly the power to make regulations contained in s. 3(2) was necessitated by the obligations of membership by the State of the European Communities and the European Union and was thus, by virtue of Article 29.4.3°, 4° and 5°, immune from constitutional challenge. (3) It was unnecessary to decide whether there were situations in which laws, measures or acts of the European Communities or European Union should be applied or implemented by means of legislation enacted by the Oireachtas instead of a ministerial regulation. In any event the Oireachtas is regarded as having intended that the making of regulations by a minister should be conducted in accordance with the principles of constitutional justice. Thus it was to be implied that in exercising the power of making regulations under s. 3(2) the minister would not contravene any provisions of the Constitution. Hence any challenge to the validity of a ministerial regulation on the ground that there was no necessity for the obligation to be complied with by regulation instead of legislation would have to proceed on the basis that the regulation was *ultra vires* as an unconstitutional exercise by the minister of a power which had been constitutionally conferred on him by s. 3. (4) In making the regulations the minister had been entitled to empower the District Court to grant search warrants. The EEC directive required that provision should be made for the taking of samples at the farm from which animals suspected of containing prohibited substances had originated. It could not be implemented without creating a power to make compulsory searches of farms where animals are kept. (5) The implementation of the directives also required the creation of offences which should be prosecuted effectively. The unavoidable delays involved in analysing samples and the possibility that investigations might have to be conducted in more than one member state meant that the six-month period provided for in s. 10(4) of the Petty Sessions (Ireland) Act 1851 was too short. Thus the minister had been entitled to include a right to institute a prosecution in respect of an offence under the regulations within a period of two years. It was not a prerequisite to the making of such an extension that the directive should itself specify a particular period. (6) The regulations could not be impugned on the ground that s. 10 of the 1851 Act had to be amended by another statute. The directives required the creation of effective sanctions. It was well-established that community law took precedence over national law. Directives were binding on the State as to the result to be achieved and if compliance necessitated adopting a measure which impliedly amended an existing statute that measure would prevail over the statute because it was in substance a measure of community law. The measure creating the two-year period derived its force from the directive and constituted domestic law only as a matter of form.

Reported at [1994] 1 ILRM 1

Belville Holdings Ltd v Revenue Commissioners Supreme Court 1993 No. 139 (Finlay CJ, Blayney and Denham JJ) 8 February 1993

Revenue – Case stated by Appeal Commissioner – Manner in which allowable losses should be computed – Whether notional fees attributable to services afforded by appellant company to subsidiary companies should be taken into account – Manner in which discretion of High Court judge in relation to remitting matter should be exercised – Income Tax Act 1967, s. 428

Facts On 24 April 1984 the Appeal Commissioner, at the request of the appellant company, stated a case for the opinion of the High Court pursuant to s. 428 of the Income Tax Act 1967 following the determination of appeals brought by the appellant company against two assessments to corporation tax made in respect of it by the inspector of taxes. The question for decision on that case stated was whether for the two relevant accounting periods the losses shown in the company accounts should be allowed for the purpose of the claim to payment of tax credits under s. 16(2) and s. 25 of the Corporation Tax Act 1976 in respect of dividends received from subsidiary companies.

The Appeal Commissioner determined that in computing the taxable profits or losses of the parent company for the period in question, provision should be made for notional management fees equivalent to the market value of the services provided to subsidiaries, which he estimated at 10% of the income of the paying companies.

The question of law stated for the opinion of the High Court in the case stated concerned whether the Appeal Commissioner was correct in holding that the notional fees attributable to the services afforded by the appellant company to its subsidiary companies should be taken into account.

In a judgment delivered on 14 May 1985, Carroll J held that while it was correct that notional fees should be taken into account, the actual notional fees fixed by the Appeal Commissioner were not justified and she answered the question posed in the case stated in the negative (See [1985] IR 465).

In August 1986, the joint receivers of the appellant company wrote to the Revenue Solicitor making a demand totalling £122,979.69 for refunds of corporation tax based on an assertion that the finding of the High Court to the effect that the Appeal Commissioner was wrong in his determination entitled the company to these refunds with interest thereon. In reply it was stated that it was the intention of the Revenue Commissioners to apply by notice of motion to Carroll J for an order under s. 428(6) of the Income Tax Act 1967 remitting the appeals to the Appeal Commissioner. When no such motion was brought, proceedings by summary summons were initiated on behalf of the company and a motion for judgment was brought. On 25 February 1988, Carroll J made an order in the context of the summary proceedings directing that her earlier order of 14 May 1985 should be amended by the addition of a direction that the appeal should be re-entered before the Appeal Commissioner so that it could be determined having regard to the previous finding of the court.

The appellant company appealed to the Supreme Court against that order.

Held by the Supreme Court (Finlay CJ; Blayney and Denham JJ concurring) in allowing the appeal and in directing that the proceedings by way of summary summons be continued in the High Court pursuant to the court's decision on the appeal: (1) There is a wide and fundamental jurisdiction in a court to amend an order which it has previously made even though that order is in the form of a final order and has been perfected. *Dicta* of Romer J in *Ainsworth v Wilding* [1896] 1 Ch 673 applying *In re Swire* (1885) 30 ChD 239, approved. (2) Where an order of a final nature has been passed and perfected, an amendment should be made by the court only in special or unusual circumstances. (3) A judge who, upon the hearing of a case stated pursuant to s. 428 of the Income Tax Act 1967, determines that the adjudication of the Appeal Commissioner on a point of law was incorrect has a distinct discretion which must then be exercised as to whether or not it is appropriate for the case to be remitted. (4) S. 428 of the Income Tax Act 1967 was not mentioned in the judgment of the learned trial judge of 14 May 1985 and there was no reference in the judgment as to the exercise by the learned trial judge of a discretion on the issue pertaining to whether or not it was an appropriate case in which to make an order remitting it for further hearing by the Appeal Commissioner. (5) It was not inclusive, in the sense of meaning necessarily and inevitably implied, in the judgment of the learned trial judge of 14 May 1985 that the case stated should have been referred back to the Appeal Commissioner for hearing. (6) The granting of such an order would have been an additional remedy not directed by the terms of the judgment of 14 May 1985. In these circumstances and having regard to the principles regarding the amendment or alteration of a final order made otherwise than through accidental error, the company's appeal on the first issue should be allowed and the order of 28 February 1988, having been made in error, should be set aside.

Reported at [1994] 1 ILRM 29

Hanbridge Services Ltd v Aerospace Communications Ltd: Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 10 March 1993.

Practice – Jurisdiction of courts – Conflict of laws – Claim for damages for breach of contract – Defendant company registered and domiciled outside jurisdiction – Motion to strike out plaintiff's claim for want of jurisdiction – Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988.

Facts The plaintiff company was registered and domiciled in Ireland and the defendant company was registered and domiciled in the United Kingdom. The plaintiff claimed damages for breach of contract and in so claiming asserted that the High Court had jurisdiction to hear and determine its claim under Article 5.1 of the Brussels Convention 1968 as implemented in Ireland by the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988. This was on the basis that the place of performance of the obligation arising under the alleged contract was Ireland. The plaintiff contended that under a contract made between it and the defendant, it was agreed that the plaintiff would manufacture and sell 8,000 computers to the defendant over the period of three years 1991 to 1993 inclusive. It was accepted by the parties that between August and November 1990, six sample computer systems were ordered by the defendant from the plaintiff and the latter received payment. Subsequently, on receiving an inquiry from the plaintiff, the defendant asserted that no agreement existed; what had been merely a possible project was now abandoned for various reasons and that it had no further obligations to the plaintiff. Lardner J dismissed the application to have the proceedings struck out. The defendant appealed to the Supreme Court.

Held by the Supreme Court (Finlay CJ; O'Flaherty, Egan, Blayney and Denham JJ) in allowing the appeal: (1) The onus is on the plaintiff seeking to have a claim tried in the jurisdiction of a contracting state other than the contracting state in which the defendant was domiciled to establish that such claim unequivocally came within the exception provided for in Article 5.1 of the Brussels Convention. (2) In the case of a claim for breach of contract, therefore, the plaintiff must prove that the obligation in question in that claim was, by virtue of the terms of the

contract or by some generally applicable principle of Irish law, an obligation which *must* be performed in Ireland. (3) It followed that where the evidence adduced by a plaintiff seeking to have a claim for breach of contract tried within the jurisdiction of a contracting state, other than the state of domicile of the defendant, amounted to no greater standard of proof that establishing that the obligation which it was claimed was breached *could* have been performed in that state, the plaintiff would have failed to establish his entitlement to sue pursuant to Article 5.1 of the Brussels Convention. *Unidare plc v James Scott Ltd* [1991] 2 IR 88 and *Athanasios Kalfelis v Bankhaus Schröder Munchmeyer Hengst and Co.* (Case 189/87) [1988] ECR 5565 applied. (4) The learned trial judge was correct in concluding that the particular obligation which it was claimed was breached by the defendant, and which gave rise to these proceedings, was the obligation to place orders for specific quantities, at specific times, of the 8,000 computers. (5) Nothing in the terms and conditions relied upon by the plaintiff provided for the method of placing an order or where it had to occur. The contract did not contain a requirement that an order should be in writing. In any event, the conclusion that performance of the obligation was to be effected by the defendant communicating an order to the plaintiff did not resolve the question as to whether the obligation to place orders was an obligation to be performed in Ireland. The legal issues presented by a document executed in the United Kingdom which is then posted or faxed to the plaintiff's premises had not been addressed in the High Court. (6) Given the onus on the plaintiff to establish its entitlement to sue, there was no evidence before the learned trial judge which justified the finding that the obligation of the defendant to place these orders was an obligation to be performed in Ireland.

Reported at [1994] 1 ILRM 39

In re Hibernian Transport Companies Ltd: Supreme Court 1990 No. 296 (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 13 May 1993.

Company – Winding-up – Surplus remaining – Whether unsecured creditors entitled to interest on debts – Whether shareholders entitled to surplus subject to creditors' contractual right to interest – Whether liquidation was of a solvent or insolvent company – Companies Act 1963, ss. 242 and 284 – Bankruptcy Act 1988, s. 86

Facts S. 284 of the Companies Act 1963 provides that in the context of the winding-up of an insolvent company, the same rules shall apply relating to the respective rights of secured and unsecured creditors as are in force under the law of bankruptcy. Under s. 86(1) of the Bankruptcy Act 1988, if the estate of a bankrupt is sufficient to pay his debts in full along with interest at the rate currently payable on judgment debts, the court shall order that any surplus should be paid to the bankrupt, his personal representatives or assigns.

In 1970 the court ordered that Hibernian Transport Companies Ltd ('the company') should be wound-up on the ground that it could not pay its debts as they fell due. The winding-up took a considerable period of time and a large amount of interest was earned on the proceeds from the sale of the company's assets and those of a subsidiary. As a consequence, there was a surplus left over after paying all the company's preferential, secured and unsecured creditors in full. The liquidator brought a motion to have certain questions determined regarding the manner in which the surplus should be distributed. The unsecured creditors contended that any surplus should be used to pay interest on their debts. In the High Court Carroll J held that under s. 86 of the 1988 Act, both contractual and ordinary unsecured creditors were entitled to interest at the rate currently payable on judgment debts (see [1991] 1 IR 263). Furthermore, the contractual creditors were entitled to be paid the difference between the statutory rate and the rate they had contracted for so that they would recover their contractual interest in full. The shareholders appealed against this order.

Held by the Supreme Court (Blayney J; Finlay CJ, O'Flaherty, Egan and Denham JJ concurring) in allowing the appeal: (1) It is only after all debts have been proved and all assets realised that it is possible for a liquidator to determine whether he is dealing with the liquidation of a solvent or an insolvent company. (2) In determining whether a company is solvent the only relevant criterion is whether the liquidation has produced a surplus. It is immaterial whether that surplus arises from a realisation of its assets or from interest earned on the sums produced by the realisation or in any other way. (3) As the assets of the company were sufficient to discharge its liabilities in full the liquidation in the instant case had to be regarded as that of a solvent company. Accordingly s. 284 of the 1963 Act did not apply and creditors who had no contractual right to interest were not entitled to interest at the rate pertaining to judgment debts under s. 86(1) of the 1988 Act. (4) S. 86(1) of the 1988 Act can never apply in the winding-up of a company because it deals with the distribution of a surplus. If a company is insolvent there is no surplus and if it is solvent the bankruptcy rules cannot apply because s. 284 is restricted to the winding-up of insolvent companies. (5) Creditors who had a contractual right to interest were entitled to interest at the agreed rate up to the date on which their debts were discharged. Dividends already paid to such creditors were to be treated as having first been applied towards the interest then due and then towards the principal. (6) Under s. 242 of the 1963 Act the shareholders of the company were entitled to any balance remaining after the payment of contractual interest, all outstanding debts and liabilities, and all fees, costs and expenses due to the liquidator.

Reported at [1994] 1 ILRM 48

Christos Georgopoulos v Beaumont Hospital Board: High Court 1991 No. 13252P (Murphy J) 9 July 1993

Employment – Dismissal – Validity – Inquiry by hospital board – Claim that purported dismissal was ultra vires *– Requirements of natural and constitutional justice – Receipt of legal advice by tribunal – Alleged failure to perform duties under contract of employment – Standard of proof – Plea in mitigation*

Facts The plaintiff was appointed to the post of registrar in neurosurgery at Beaumont Hospital for a period of 8 months from 1 October 1989. The appointment was renewed and extended for a period of 12 months with effect from 1 July 1990. The plaintiff made written complaints to the hospital's medical administrator alleging the existence of certain practices in the hospital which compromised the treatment of patients. Subsequently complaints were made about the plaintiff's conduct and he was dismissed from his post without being heard by the defendants in relation to the complaints. The plaintiff challenged the validity of his dismissal, but these proceedings were compromised on the basis that the defendants would consider afresh the complaints regarding the plaintiff's conduct and, immediately prior to such hearing, vacate their decision dismissing the plaintiff. Both the hospital and the plaintiff were legally represented at these hearings, and the board retained the services of a legal assessor. Following the inquiry the chairman of the board informed the plaintiff by letter that his failure to perform his contractual duties had been established and that this warranted his dismissal with effect from 28 June 1991. The plaintiff challenged this decision and claimed a declaration that the board had acted *ultra vires* and breached the requirements of natural and constitutional justice.

Held by Murphy J in dismissing the plaintiff's claim: (1) Where a tribunal is engaged in determining only a question of fact, it is not in itself a breach of natural or constitutional justice which would invalidate its decision for it to receive advice on a matter of law without informing the parties as to the fact or nature of that advice. (2) The defendants' function was to determine, as a matter of fact, whether the allegations made against the plaintiff were well founded. Legal guidance was sought solely for the purpose of ensuring that they were acquainted with the requirements of natural and constitutional justice. Thus they were not required to disclose it to the parties. (3) The defendants were not in the position of a disciplinary tribunal but instead were acting as an employer reviewing the conduct of an employee. As such it was not incumbent upon them to enquire as to whether any further submissions were to be made in mitigation of the penalty. In any event, the plaintiff had been given ample opportunity to deal fully with the allegations made against him and the consequences which an adverse finding might have for him. (4) The criminal standard of proof was not applicable as the matter arose out of a civil claim between an employer and an employee. As in every civil action the matter fell to be determined on the balance of probabilities.

Reported at [1994] 1 ILRM 58

The People (Director of Public Prosecutions) v Rock: Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 18 March 1993

Criminal Law – Larceny – Whether open to a court to convict on a charge of simple larceny where the evidence discloses an offence of larceny from the person or robbery – Whether simple larceny is an offence at common law – Larceny Act 1916, ss. 2, 14, 23 – Criminal Law (Jurisdiction) Act 1976, s. 5

Facts The accused had been charged with simple larceny contrary to s. 2 of the Larceny Act 1916. At the trial of the action, evidence was given which tended to disclose an offence of larceny from the person contrary to s. 14 of the Larceny Act 1916, or an offence of robbery contrary to s. 23 of the Larceny Act 1916 as inserted by s. 5 of the Criminal Law (Jurisdiction) Act 1976. Counsel for the accused, submitted that it was not open to the court to find the accused guilty of simple larceny contrary to s. 2 of the Larceny Act 1916 where the evidence disclosed an offence provided for by the other provisions of the said Act. The trial judge accepted this submission and directed the jury to enter a verdict in favour of the accused. The Director of Public Prosecutions, in the exercise of the powers vested in him by the Criminal Procedure Act 1967 and the Prosecution of Offences Act 1974, then requested the Supreme Court to determine the following questions of law without prejudice to the verdict in favour of the accused: (1) Whether the trial judge was bound to follow the decision of the Court of Criminal Appeal on the basis that it was a binding precedent upon him; and (2) Whether it is open to a court to enter a conviction against an accused on a charge of simple larceny where the evidence discloses that the larceny was larceny from the person or robbery.

Held by the Supreme Court (O'Flaherty J; Finlay CJ, Egan, Blayney and Denham JJ concurring) in answering the questions posed in the affirmative, that: (1) S. 2 of the Larceny Act 1916 is a reference to what was the common law offence of simple larceny. Simple larceny, therefore, is not an offence created by statute. (2) Thus, even if circumstances of aggravated larceny or robbery are forthcoming the prosecution is not precluded from laying the count in the indictment as contrary to s. 2 of the Larceny Act 1916. (*The People (Attorney General) v Mills* (1955) 1 Frewen 153 overruled). (3) Therefore, it is open to a court to enter a conviction against an accused on a charge of simple larceny contrary to s. 2 of the Larceny Act 1916 even where the evidence discloses that the larceny was larceny from the person or robbery, being offences punishable by the provisions of ss. 14 and 23 of the Larceny Act 1916 respectively. (4) The trial judge was bound to follow the decision of the Court of Criminal Appeal if he considered that there was a conflict between it and a decision of the High Court since it was at the date of the trial a decision of a court of final jurisdiction, although it should now be overruled.

Reported at [1994] 1 ILRM 66

Oblique Financial Services Ltd v The Promise Production Co. Ltd, Dennis Hall, Penfield Enterprises Ltd and John Mulcahy: High Court (Keane J) 24 February 1993

Injunction – Interlocutory – Contract – Express term – Confidentiality – Plaintiff seeking to restrain publication pending hearing – Whether serious question to be tried – Whether obligation to respect confidentiality confined to parties to the contract – Whether right to publish protected by Constitution – Balance of convenience – Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988, s. 11 – Constitution of Ireland 1937, Articles 40.6.1°, 40.3.1°.

Facts The plaintiff was a company incorporated in the United Kingdom engaged in organising financial support for film production. It entered into a contract with the first named defendant to finance a particular film, under the terms of which absolute confidentiality would be maintained in relation to any information obtained by virtue of that agreement. The plaintiff complained that, in breach of the agreement, the first and second named defendants revealed the name of an investor and the third and fourth named defendants intended to publish these disclosures in Ireland. An interim injunction was granted restraining the third and fourth named defendants from publishing confidential information prior to the initiation of legal proceedings in the United Kingdom. The instant application for an interlocutory injunction was made by the plaintiff pursuant to s. 11 of the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988. The third and fourth named defendants claimed that they did not owe the plaintiff an obligation of confidence and that the grant of an interlocutory injunction would interfere with their constitutional right to freedom of expression under Article 40.6.1°.

Held by Keane J in granting the interlocutory relief sought: (1) The intended use of confidential information by the third and fourth named defendants without the consent, express or implied, of the plaintiff was sufficient to establish that there was a serious question to be tried. *House of Spring Gardens Ltd v Point Blank Ltd* [1984] IR 611 applied. (2) An obligation to respect confidentiality which arises under a contract is not limited to those who are parties to the contract, but extends to any third party to whom the information is communicated. (3) Freedom to convey information is not protected under Article 40.6.1° of the Constitution which deals with the formulation or publication of convictions or opinions, but rather by Article 40.3.1°. *Attorney General v Paperlink Ltd* [1984] ILRM 373 applied. Furthermore, such a right is not absolute but can be qualified by other legal constraints such as the right to confidentiality. (4) Whilst the damage, if any, suffered by the third and fourth named defendants through their inability to publish the information was necessarily hard to quantify, this was insufficient to prevent the imposition of an interlocutory injunction, since the balance of convenience clearly lay with the plaintiff.

Reported at [1994] 1 ILRM 74

Recent Irish Cases

Edited by Raymond Byrne, BCL, LLM, BL, Lecturer in Law, Dublin City University

The following case summaries have been reprinted from the *Irish Law Times and Solicitors Journal* with the kind permission of the publishers.

In the Matter of the Trust of the Worth Library: The Provost, Fellows and Scholars of the College of the Holy and Undivided Trinity near Dublin and Patricia Donlon v. Attorney General and the Eastern Health Board: High Court (Keane J) 18 June 1993

Trust – Charity – Cy-près scheme – Bequest of books for benefit of certain office holders for time being in hospital – Closure of hospital and sale of building – Appointment of first named plaintiffs as trustees and removal of books to their premises – Purchaser of hospital building seeking return of library – Application for order framing cy-près scheme – Whether bequest charitable – Nature of charity testator intended to benefit – Whether conditions had arisen for exercise by court of cy-près jurisdiction– Charities Act 1961, section 47

Facts By his will dated 11 November 1723, Dr Edward Worth left a large collection of books on a variety of topics to trustees to be kept in a room at Dr Steevens' Hospital for the 'use, benefit and behoof' of the physician, chaplain and surgeon for the time being for the hospital. Following his death in 1732, and in accordance with the bequest, the books were kept in a room which became known as 'the Worth Library.' On the closure of the hospital in 1988 its governors, as the trustees of the books, decided to transfer the library to Trinity College and accordingly appointed the college as trustees in their place. They also sought the advice of the Commissioners of Charitable Donations and Bequests for Ireland as to the establishment of a cy-près scheme allowing for the removal of the library to Trinity College. In the meantime the commissioners approved its transfer to Trinity College on a temporary basis for safekeeping. Later in 1988 the Eastern Health Board purchased the hospital for use as their headquarters and sought the return of the library. On 5 February 1991 the commissioners appointed Trinity College and the director for the time being of the National Library as trustees and vested the trust property in them. On 31 May 1991, in accordance with section 51(1) of the Charities Act 1961, the Attorney General gave his consent to the application of the trustees to the High Court for an order framing a cy-près scheme. On 20 January 1992 Costello J ordered that the director of the National Library should be joined as a plaintiff and that the Eastern Health Board should be joined as a defendant.

Held by Keane J in adjourning the further hearing of the case in order to enable a new draft cy-près scheme to be prepared: (1) Although all the parties had agreed that the bequest of the books was charitable in nature, the court could require argument on the point as this was not a case in which it was solely concerned with the resolution of issues between private parties. The cy-près jurisdiction could only be exercised in respect of charitable donations and bequests. (2) Given that only a small proportion of the library was devoted to medicine and surgery, it was difficult to regard the bequest as being for educational purposes. Even if it was for such purposes, it did not constitute a charitable gift for the advancement of education as it was not intended to be for the benefit of the public. Because of the terms of the bequest, any educational function served by the library would benefit only the office holders specifically mentioned by the testator. (3) A gift of a library is not charitable *per se*. However, such a gift can have charitable status if it established that it is for the public benefit through being open to the public or conducive to the attainment of other charitable objects. (4) The testator had not intended that the library should be used by any persons other than the three named office holders. Access to the books was limited and they could not be removed from the library. Accordingly the bequest did not constitute a charitable gift for the advancement of learning falling within the fourth category of charitable trusts. This category covers trusts for purposes beneficial to the community which do not fall within any of the other three categories relating to trusts for the relief of poverty, the advancement of education and the advancement of religion. (5) It was well established that a gift for the benefit of a hospital was charitable. The particular books were of limited practical value to the surgeon, physician and chaplain. Nevertheless, the library provided a place of intellectual relaxation for these office holders where they could escape from the stressful environment of the hospital. Thus despite being for their benefit, the bequest could be regarded as a gift for the advancement of Dr Steevens' Hospital and thus charitable within the fourth category. (6) The testator had intended to benefit Dr Steevens' Hospital and no other institution. Thus it was impossible to infer a general charitable intention. But as the hospital no longer existed the original purposes of this absolute and perpetual charitable bequest could not be carried out according to the directions and spirit of the gift. Therefore it was appropriate to alter the original purposes so as to allow the property to be applied cy-près. (7) In considering how the property should be applied cy-près and whether a scheme should be framed in the manner proposed by the plaintiffs, it was desirable that the original intentions of the testator should be adhered to as far as possible. However, the court should not attempt to envisage how the particular donor would now dispose of his property. Instead the court had to consider how a hypothetical benefactor of the present day with the same background and interests as the donor and a charitable disposition would act. It would also be reasonable to credit him with a desire to associate his charitable work with the building in which Dr Steevens' Hospital was located, as his eighteenth century equivalent had wished the hospital to be the object of his benevolence in perpetuity. (8) Notwithstanding the presence of conservation facilities in Trinity College, there was no evidence that the physical condition of the books would be better preserved by being kept in the college rather than in the hospital building. Although the books could be compared with others of the same era if they were held at Trinity College, removing them from the surroundings of the library in the hospital would make it impossible for scholars to appreciate their overall significance as a private library built up in the eighteenth century. Accordingly any cy-près scheme framed by the court had to provide for the retention of the books in their original setting in the hospital. The matter should be adjourned so that concrete proposals for a scheme to facilitate this could be drafted. (9) The Eastern Health Board would not be acting outside their powers under the Health Acts 1947-1991 if they undertook the custody and management of the books. Section 78 of the 1947 Act and section 60(3) of the Health Act 1970 empowered them to acquire any estate or interest in land for their statutory purposes, and they had the implied power to do any acts

incidental to or consequential upon their express objects. If acquiring premises suitable for their statutory purposes entailed undertaking to act as custodians of chattels contained therein this could reasonably be regarded as falling within their incidental or consequential powers.

Reported at [1994] 1 ILRM 161

Sean McAnarney and Deirdre McAnarney v. John Hanrahan and T.E. Potterton Ltd: High Court (Costello J) 16 July 1993

Negligence – Negligent misstatement – Representations made by auctioneer acting on behalf of vendor to prospective purchasers – Whether auctioneer owed duty of care to purchasers – Price at which freehold reversion pertaining to leasehold licensed premises could be purchased – Assessment of damages in cases of negligent misstatement – Mental distress caused by misrepresentation

Facts The defendants were auctioneers who had been engaged to sell licensed premises which were held under a lease for 31 years which commenced on 13 November 1958. The plaintiffs arrived late for the auction and were told by the first named defendant that a bid of £54,000 had been made but the property had then been withdrawn. He informed them that there had been negotiations with the landlords and that the freehold interest could be purchased for £3,000 or less. In fact no bid of £54,000 had been made and no negotiations with the landlords concerning the purchase of the freehold had taken place. On the basis of these representations the plaintiffs eventually agreed in December 1984 to purchase the premises for £45,000. When the plaintiffs decided to sell the premises in 1986 they were advised that they should purchase the freehold. However, the landlords demanded £40,000. The plaintiffs could not raise this amount and initiated proceedings against the defendants for negligence. The plaintiffs remained in possession of the premises after the expiration of the lease without paying rent. In 1991 they purchased the freehold for £30,000 and later that year sold the premises for £80,000.

Held by Costello J in finding the defendants negligent and awarding damages to the plaintiffs: (1) The first named defendant took it upon himself to give an opinion regarding the purchase of the freehold. He should have known that the plaintiffs would place reliance on what he told them, particularly as he had expressly stated that negotiations had already taken place with the landlords. This gave rise to a special relationship between the plaintiffs and the first named defendant which imposed a duty of care on the latter in respect of the giving of the information. By failing to find out what price the landlords would require for their interest the first named defendant breached this duty of care. *Hedley Byrne & Co. Ltd v. Heller & Partners Ltd* [1964] AC 465 applied and *Bank of Ireland v. Smith* [1966] IR 646 distinguished. (2) The method for assessing damages in cases of negligent misstatement is analogous to that used in respect of the tort of deceit. The damages are calculated so as to put the plaintiff in the position he would have been in if the representation had not been made to him. Thus where a plaintiff has been induced to enter into a contract for the purchase of land by a negligent misstatement, the normal measure of damages is the price paid for the land less its actual value at the time of purchase. (3) Accordingly the plaintiffs were not entitled to damages of £27,000 in respect of the supposed loss of bargain caused by the difference between what had been represented as the price of the freehold interest and what it had actually cost to purchase. Instead the plaintiffs were entitled to £5,000 as the premises were worth approximately £40,000 at the time when they paid £45,000 for them. (4) The cost of refurbishing the premises was not recoverable by way of special damages because it would have been incurrred any way and was not a consequence of the defendants' negligence. (5) In suitable cases damages for negligent misstatement could take into account mental distress caused to the plaintiff. However, any distress caused by the defendants here could not be measured in any meaningful way and the justice of the case did not require that the damages should be increased.

Reported at [1994] 1 ILRM 210

C.R. v. An Bord Uchtála: High Court (Morris J) 28 June 1993

Family Law – Adoption – Judicial Review – Application for particulars to make traceable the connection between entry in Adopted Children's Register and corresponding entry in Registry of Births – Refusal by board to furnish information – Particulars not to be given except by order of court or board – Whether board has obligation to determine such application – Whether blanket policy of refusal – Whether board considered relevant information to enable it exercise its discretion – Whether function of board may be delegated to adoption society – Adoption Act 1952, section 22 – Adoption Act 1976, section 8

Facts The applicant was adopted some years prior to his signing of the Adopted Children's Register which had the effect of regularising his adoption. He wished to find out more about his natural parents and applied to the respondents for information to make traceable the connection between the entry relating to him in the Adopted Children's Register and the corresponding entry in the Registry of Births pursuant to section 22 of the Adoption Act 1952. He sought to obtain his original birth certificate. The board refused his application for reasons of confidentiality and stated that it would not depart from its practice of not providing for any right of access to birth records by adopted persons. The board made no enquiry as to the merits of the application but advised the applicant to contact the adoption society. The applicant sought an order of *certiorari* quashing the purported decision by the respondents and an order of *mandamus* requiring them to carry out their obligation to determine the issue of the applicant's entitlement to the particulars sought. It was submitted that upon an application being made pursuant to section 22 of the Adoption Act 1952 for information contained in the index, the board has an obligation to determine that application in a proper manner and not upon the basis of a blanket policy of refusal, nor could they delegate to an adoption society the function vested in them.

Held by Morris J in granting the reliefs sought: (1) As no effort had been made by the respondents to decide the application on its individual merits such determination, as there was, fell short of the obligation imposed by section 22 of the Adoption Act 1952. (2) The matter should be sent back to the adoption board to determine the applicant's application. The result of this determination was a matter exclusively for the board. (3) In order for the respondents to be satisfied that in any particular case it is proper to release such information it would be necessary to screen any applicant and the parent he is attempting to trace. (4) The board, while retaining full seisin of the matter, ought to seek the assistance and advice of the adoption society in the matter prior to making a decision. (5) The decision to furnish or withhold any information must be that of the board.

Reported at [1994] 1 ILRM 217

In the Matter of Ashmark Ltd: Ashmark Ltd v. Allied Irish Banks plc: High Court (Lardner J) 29 July 1993

Company – Winding-up – Relationship of debtor and creditor between banker and customer – Liability of company in respect of accrual of interest and bank fees on its current account – Whether debiting of account after commencement of winding-up constituted a disposition of company property – Companies Act 1963 (No. 33), section 218

Facts Ashmark Ltd ('the company') was the main distributor in Ireland for Zanussi electrical appliances. Following a dispute Zanussi terminated the distribution agreement and served notice under section 214(a) of the Companies Act 1963 demanding payment of a large debt. The company obtained an interim injunction restraining Zanussi from prosecuting winding- up proceedings. A compromise was reached whereby the company ceased trading on 4 July 1988 and Zanussi presented its petition to wind up the company on 8 July. This petition was not advertised until October 1988. The company was wound up on 27 October 1988 and a liquidator appointed. The winding-up was deemed to commence on 8 July 1988. The company's current account with the respondent bank included an overdraft facility. On 8 July 1988 the account had a credit balance but interest had accrued from day to day on the overdraft for a period of time after 16 March 1988. These sums were debited to the account after 8 July 1988. The liquidator claimed that these payments were made after the commencement of the winding-up and were thus void under section 218 of the Companies Act 1963.

Held by Lardner J in refusing the orders sought in the application: (1) Over a period of time the company had incurred a liability to pay interest to the respondent on its overdraft. This liability accrued from day to day and constituted a debt due by the company to the respondent over and above the amount of the overdraft. (2) When the company paid money into the account the overdraft was discharged and the account went into credit. However, the amount of the credit balance was not the property of the company. The money was the property of the respondent which then became a debtor of the company in respect of this amount. (3) The amount of each party's liability to the other could only be ascertained by discovering the ultimate balance of their mutual dealings. In circumstances where the interest which had accrued was a liability of the company to the respondent and at the same time the respondent owed a debt to the company in respect of the credit balance in the current account, it was not correct to treat the ascertainment of the ultimate balance on a date after the commencement of the winding-up as a disposition of property by the company within the meaning of section 218 of the Companies Act 1963.

Reported at [1994] 1 ILRM 223

Lascomme Ltd t/a Ballyglass House Hotel v. United Dominions Trust (Ireland) Ltd and James Gilligan (Notice Party): High Court (Keane J) 22 October 1993

Company – Initiation of legal proceedings by company against debenture holder – Appointment of receiver by debenture holder – Motion to stay proceedings on grounds that receiver had not authorised them – Powers of directors to initiate legal proceedings following appointment of receiver – Insolvency – Whether proceedings jeopardised debenture holder's security – Companies Act 1963, section 316(1) – Companies (Amendment) Act 1990, section 171

Facts In December 1989 the plaintiff ('the company') borrowed £170,000 from the defendant ('the bank') in order to purchase a hotel costing £237,500. In February 1990 the company sought a further loan from the bank with a view to improving facilities at the hotel. No loan was made and the company's financial position deteriorated. On 10 July 1991 the company commenced proceedings against the bank for breach of contract and negligence in which it was claimed that the bank had agreed to lend money to the company or, in the alternative, that it had made representations which induced the company to believe that a loan would be made. The bank denied that any such agreement or representations had been made. On 2 September 1992 the bank appointed the notice party as receiver in respect of the assets and undertaking of the company pursuant to a debenture dated 21 December 1989. At this stage there was a deficiency of £122,763 between the assets and liabilities of the company. The hotel was the company's only asset and it appeared that its sale would not realise enough to discharge the debt owed to the bank. On 13 October 1992 notice of trial was served on behalf of the company and on 10 November 1992 a notice of motion seeking an order of discovery was served on its behalf. The bank brought a motion to have the notice of trial and the notice of motion seeking discovery set aside and to have the proceedings brought by the company stayed on the grounds that the receiver had not authorised them. The company brought a motion under section 316(1) of the Companies Act 1963, as substituted by section 171 of the Companies (Amendment) Act 1990, seeking an order to the effect that its directors were entitled to maintain the proceedings.

Held by Keane J in dismissing the bank's application and ordering that the company was entitled to maintain the proceedings against the bank: (1) The powers of directors are not terminated on the appointment of a receiver by a debenture holder and include the power to maintain and institute proceedings in the name of the company where to do so would be in the interests of the company or its creditors. However, the directors' powers cannot be used in a manner which interferes with the receiver's ability to deal with or dispose of the assets charged by the debenture, or in a way which would adversely affect the debenture holder by threatening or imperilling the assets which are subject to the charge. (2) If a debenture holder's security would be imperilled by a hostile order for costs that could be a ground for staying the proceedings at the instance of the debenture holder. However, here it was likely that the hotel would be sold and the proceeds paid to the bank well before the company's action against the bank could be finally decided by the High Court. (3) If the bank was successful in the action it would be unable to recover its costs from the company. However, this was not a ground for staying the proceedings because to do so would mean that the directors of an insolvent company would be unable to maintain a claim against the very persons who were alleged to have brought about the insolvency. (4) The fact that the bank was the debenture holder did not render the action against it by the company an academic exercise. If the company's action was successful the bank would be able to satisfy the balance of its debt out of the proceeds of the action and the surplus, if any, would be available to the other creditors and the company.

Reported at [1994] 1 ILRM 227

Rajah v. Royal College of Surgeons in Ireland and Others: High Court (Keane J) 25 May 1993

Judicial Review – Fair procedures – Scope of judicial review as form of remedy – College derived existence from charter – Student sought to challenge decision of college to refuse her permission to re-sit examination – Whether decision of appeals

committee of college amenable to judicial review – Whether jurisdiction derived from public law or contract – Whether fair procedures adopted by college – Whether obligation to give reasons for decision

Facts The applicant, who was a medical student at the Royal College of Surgeons in Ireland, had failed her premedical course in the summer of 1992, and again at repeat exams in the autumn of 1992. Under the rules of the college, a student who had failed at the repeat examination was considered discontinued. Such a student was obliged to appeal to the student progress committee who, in the case of mitigating circumstances, could grant permission to repeat the year. If unsuccessful before that body, provision was made for a further appeal to an academic appeals board. The applicant, who claimed that her studies had been affected by her suffering from an illness and personal problems, appealed unsuccessfully to the student progress committee. She then appealed, again unsuccessfully, to the academic appeals board. The applicant sought judicial review to quash the decision of the academic appeals board contending that the board had misconstrued the scope of its own appellate jurisdiction, that one of the members of the appeals board had been over-dismissive of her personal problems and had denied her a proper hearing, and in addition, that the decision of the board was invalidated by the failure of the board to state reasons for its decision. It was contended on behalf of the respondents, *inter alia*, that the Royal College of Surgeons was not amenable to judicial review.

Held by Keane J in refusing the application for judicial review: (1) The appeals committee of the college derived its jurisdiction solely from the private contract of membership between the applicant and the college, and as such was not subject to judicial review. *Murphy v. Turf Club* [1989] IR 172 and *Beirne v. Commissioner of An Garda Síochána* [1993] ILRM 1 applied. (2) The fact that the college, like other third level institutions derives its existence from a charter or act of parliament, is not a sufficient ground for bringing matters relating to the conduct and academic standing of its students within the ambit of judicial review. (3) In any event, the appeals committee had heard the appeal in a fair and reasonable manner, and without breaching fair procedures. (4) The appeals committee had not misinterpreted the scope of its appellate jurisdiction. (5) There is an obligation on bodies which exercise functions of a judicial or quasi-judicial nature determining legal rights and obligations to give reasons for their decisions and this requirement may even extend to bodies exercising purely administrative functions. However the decision made by the respondents was not of such a nature as to necessitate the giving of reasons.

Reported at [1994] 1 ILRM 233

The Attorney General at the Relation of the Society for the Protection of Unborn Children (Ireland) Ltd v. Open Door Counselling Ltd and Dublin Well Woman Centre Ltd: Supreme Court (Finlay CJ, Hederman, Egan, Blayney and Denham JJ) 20 July 1993

Constitution – Order of Supreme Court – Amendments to Constitution – Application to discharge order based on constitutional amendments – Whether jurisdiction to discharge or vary final order previously made – Whether different considerations apply to constitutional amendments – Whether court could adjudicate upon the interpretation of the amendments – Constitution of Ireland 1937, Articles 34 and 40.3.3°

Facts The second named defendant applied by notice of motion grounded on the affidavit of its chief executive and director to discharge, or alternatively amend as appropriate, an order of the Supreme Court dated 16 March 1988 restraining that defendant from assisting (in any way) pregnant women within the jurisdiction to travel abroad to obtain abortions. The application arose out of the 13th and 14th Amendments to the Constitution which provided for the freedom to make available information within the jurisdiction concerning services lawfully available in another jurisdiction. The second named defendant claimed that the restraints contained in the Supreme Court order were not now maintainable following the constitutional amendments. The plaintiff contended that the Supreme Court order should remain in force until legislation was introduced to deal with the implementation of the 14th Amendment to the Constitution. The Attorney General's position was that the Supreme Court order was correct when made but, because of the constitutional amendments, was now inconsistent with the Constitution.

Held by the Supreme Court (Finlay CJ; Hederman, Egan, Blayney JJ concurring, Denham J dissenting) in refusing the motion. (1) Under the terms of Article 34 of the Constitution, the Supreme Court is a court of appeal only and does not have any originating jurisdiction of any kind other than that expressly provided for in Article 12.3 and Article 26 of the Constitution. (2) Notwithstanding the constitutional amendments, the Supreme Court does not have jurisdiction to discharge an order which did not give the parties liberty to apply and which was made in accordance with the law as it then was and which was perfectly correct and which carried out the full meaning and intent of the Supreme Court. *Belville Holdings Ltd v. Revenue Commissioners* [1994] ILRM 29. (3) The issues raised by the application, even if a special jurisdiction were assumed by the Supreme Court in the case of constitutional issues which it would otherwise not have, would involve the court in adjudicating upon the interpretation of each of the two amendments to Article 40.3.3° of the Constitution. The Supreme Court cannot, otherwise than in the most exceptional circumstances dictated by the necessity of justice, consider an issue of constitutional law which, though arising in a case not yet determined by it, has not been fully argued and decided in the High Court. (4) It would be wholly inconsistent with the constitutional obligations and jurisprudence of the Supreme Court for it to consider a question concerning the interpretation of the Constitution by way of motion to vary an order previously made in an appeal finally determined by it. *Per* Denham J (dissenting): (1) The Supreme Court is not exclusively an appellate court. It has an original non-appellate jurisdiction which is explicit under Articles 12.3 and 26 of the Constitution and an implicit jurisdiction in certain rare instances to determine an issue not decided by the High Court. *State (Browne) v. Feran* [1967] IR 147; *Murphy v. Attorney General* [1982] IR 241; *K.D. (otherwise C.) v. M.C.* [1985] IR 697; *B. v. B.* [1975] IR 54 approved. (2) The Supreme Court has an inherent jurisdiction to ensure that justice is done and in particular to ensure that the Constitution and constitutional rights are not circumvented. *State (Quinn) v. Ryan* [1965] IR 70; *Meskell v. CIE* [1973] IR 121; *McGee v. Attorney General* [1974] IR 285 approved. (3) This jurisdiction must be exercised sparingly in a non-appellate way as the fabric of the administration of justice and the system of courts is best served by a clear hierarchical structure concluding in the Supreme Court. In particular, for this exceptional jurisdiction to be exercised there must be an element of transiency in the time in which the constitutional right can be protected. (4) The absence of legislation giving effect to the constitutional right of freedom of information and travel does not nullify or postpone the constitutional right. Consequently, the constitutional amendments have the force of constitutional law irrespective of legislation.

Reported at [1994] 1 ILRM 256

Recent Irish Cases

Edited by Raymond Byrne, BCL, LLM, BL, Lecturer in Law, Dublin City University

The following case summaries have been reprinted from the *Irish Law Times and Solicitors Journal* with the kind permission of the publishers.

In the Matter of the Matrimonial Home Bill 1993: Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 24 January 1994

Constitution – Family – Vesting of equitable interest in matrimonial home in both spouses as joint tenants – Automatic alteration of joint decisions which might have been made by married couples in relation to the ownership of matrimonial homes – Possible need for fresh agreements or court action to reinstate the effect of joint decisions – Failure by the State to protect the authority of the family – Presumption of constitutionality in respect of Bill referred to Supreme Court pursuant to Article 26 – Stare decisis *– Function of the court when considering Article 26 reference – Constitution of Ireland 1937, Articles 26, 41*

Facts It was proposed by s. 4 of the Matrimonial Home Bill 1993 that, where a dwelling had at any time since 25 June 1993 been occupied by a married couple and either or both of the spouses had an interest in the dwelling, the equitable interest in that dwelling was to vest in both spouses as joint tenants. S. 5 provided that s. 4 did not apply to an interest in a matrimonial home which was vested in spouses as joint tenants or tenants in common in equal shares. S. 6 empowered the court, on an application by the spouse who was not the spouse in whose favour s. 4 operated, to declare that the provisions of s. 4 should not apply to the matrimonial home as and from a specified date. By virtue of s. 7, a spouse who would otherwise benefit from the operation of s. 4 could, after obtaining independent legal advice, make a declaration in writing to the effect that s. 4 should not apply to the matrimonial home. In the absence of an agreement to the contrary, s. 14 provided that household chattels owned by either or both of the spouses would belong to both spouses as joint owners. The President of Ireland referred the 1993 Bill to the Supreme Court pursuant to Article 26 of the Constitution.

Held by the Supreme Court in finding that the Bill was repugnant to Article 41 of the Constitution: (1) There were no compelling reasons which would permit the court to depart from previous decisions which established that in relation to the presumption of constitutionality a distinction should not be drawn between an Act of the Oireachtas and a Bill referred by the President under Article 26. *In re the Criminal Law (Jurisdiction) Bill 1975* [1977] IR 129 applied; *State (Quinn) v. Ryan* [1965] IR 70 and *Attorney General v. Ryan's Car Hire Ltd* [1965] IR 642 considered. (2) The encouragement by appropriate means of joint ownership in family homes was conducive to the stability of marriage and the general protection of the institution of the family. *L. v. L.* [1992] 2 IR 77 considered. (3) The right of a married couple to make a joint decision as to the ownership of a matrimonial home was one of the rights of the family recognised in Article 41.1.1° as being inalienable and imprescriptible, and antecedent and superior to all positive law. The exercise of this right was an important part of the authority of the family which the State guaranteed to protect in Article 41.1.2°. (4) The Bill's application of automatic ownership as joint tenants to every instance of a dwelling occupied by a married couple on or after 25 June 1993 interfered with decisions which may have been jointly made in relation to the ownership of the matrimonial home. The application was universal and was not dependent on the decision being injurious or oppressive in respect of a spouse or members of the family, or a spouse having failed to discharge his or her family obligations. (5) The mandatory creation of joint equal interests also applied to every family home irrespective of when it was first acquired by the married couple and irrespective of the time at which a freely reached decision between the spouses may have been made as to the nature of the ownership and in whom it should vest. (6) If a joint decision that ownership should vest in only one of the spouses had been made, after the coming into force of the Bill this could only continue if the non-owning spouse made a declaration in accordance with s. 7. The non-owning spouse, on grounds which could be reasonable or unreasonable, might refuse to make such a declaration and this could lead a couple who may have been content but not enthusiastic about the arrangements which they had made and by which a substantial part of their married life had been governed to become involved in the litigation contemplated in s. 6. (7) The Bill could result in the automatic cancellation of a joint decision freely made by both spouses and its substitution with a wholly different decision unless the spouses could agree to a new joint decision confirming the earlier agreement or the owning spouse could obtain an order under s. 6. This did not constitute reasonably proportionate intervention by the State with the rights of the family and amounted to a failure by the State to protect the authority of the family which was guaranteed by Article 41. The fact that joint ownership of the matrimonial home can be conducive to the stability of marriage could not justify such potentially indiscriminate alteration of joint decisions validly made within the authority of the family. (8) The Supreme Court had no advisory role in respect of proposed legislation. It was not part of its function under Article 26 to impress any part of a referred Bill with a stamp of constitutionality and to do so would be to disregard the constitutional doctrine of the separation of powers. *In re the Housing (Private Rented Dwellings) Bill 1981* [1983] IR 181 considered.

Reported at [1994] 1 ILRM 241

Simon Fraser and Another v. Denis Buckle and Others: High Court (Costello J) 30 September 1993

Contract – Enforceability – Whether heir-locator contract enforceable – Maintenance of an action – Champerty – Whether law of champerty applies to heir-locator contract – Whether heir-locator contract relating to interest outside Ireland contrary to public policy

Facts The plaintiffs were partners in a firm which carried on a business in London described as 'genealogists and international probate researchers'. In October 1987 the plaintiffs were informed that the estate of an intestate named Evelyn Herbert, who had died on 17 January 1986 was then being administered in the courts of New Jersey. The plaintiffs then set about searching for any heirs to that estate. Four persons were traced who appeared to be the only next-of-kin of Evelyn Herbert, namely Mrs Patricia M. Byrne, Mrs Veronica M. Doherty, Mr Denis Buckle and Mr Mervyn Buckle. The first three were the defendants in this action, separate proceedings having been taken against Mr Mervyn Buckle in Scotland, where he resided. The plaintiffs informed the defendants that they could

be the heirs to an estate but they did not at this stage disclose the identity of the deceased. On 17 and 18 February 1988 the plaintiffs entered into agreements with the defendants whereby the defendants agreed to give the plaintiffs a one-third share of any sums they might subsequently inherit from the estate in return for which the plaintiffs would disclose the identity of the deceased and assist in the presentation of the defendants' claim. It was a term of these agreements that the proper law of the contract was to be the law of England and Wales. The plaintiffs then informed the defendants of the identity of the deceased and gave considerable co-operation and assistance in the preparation and the presentation of the defendants' claims. On 1 December 1989 the New Jersey court decided that the defendants and Mr Mervyn Buckle were the heirs entitled to the estate. The gross funds available for distribution amounted to $930,674.98 which, after proper deductions, left a sum of $763,758.87 available for distribution amongst the four next-of-kin. This sum was distributed to the defendants but no money was paid over to the plaintiffs as the defendants denied the plaintiffs' entitlement to a fee based on their shares in the estate on the grounds that the agreements were unenforceable because they were champertous. However, they accepted the plaintiffs' entitlement to fees on a *quantum meruit* basis. The plaintiffs claimed that the law of champerty no longer applied to these types of contracts, that in any event the contracts were not champertous, that since the agreements related to proceedings outside Ireland they could not be said to be contrary to Irish public policy and that the courts should apply the proper law of the contract which was that of England and Wales. The defendants claimed that the court should first consider whether the agreements were contrary to Irish public policy and if they were should refuse to enforce them irrespective of what the proper law says.

Held by Costello J in dismissing the plaintiffs' claim: (1) The agreements which the law of champerty condemns are agreements by which one party agrees to maintain litigation in which he has no genuine interest in consideration of a promise to receive a share of the proceeds of the litigation. (2) The law condemns champertous agreements because of the dangers associated with such agreements, namely the temptation that the maintainer might inflame the damages, suppress evidence or suborn witnesses. (3) These agreements were contrary to public policy because, if these associated dangers were realised, they could compromise the proper administration of justice by means of unjust adjudications. (4) There was no reason for restricting the application of these principles to heir-locator agreements concerning estates situated in Ireland since the dangers with which such agreements are associated still exist and can equally arise in respect of estates located abroad as litigation in relation to them may still come before Irish courts. It followed that Irish public policy should condemn heirlocator agreements whether they related to estates located in Ireland or abroad. (5) Therefore the agreements under which the plaintiffs claimed were unenforceable under Irish law because they were champertous. Furthermore, such agreements were contrary to Irish public policy and therefore Irish law should be applied to these contracts whether or not they were enforceable under their proper law. *Per curiam*: The proper law of these agreements was the law of England and Wales which regarded such agreements as being contrary to public policy. Hence they were unenforceable under their proper law. *Per curiam*: Even if the *lex loci solutionis* of these contracts was New Jersey law, as these agreements were only unenforceable and contrary to public policy in New Jersey and not illegal this would not in itself constitute a sufficient reason for refusing to enforce the contracts in Ireland.

Reported at [1994] 1 ILRM 276

Patrick Murphy v. Anthony M.D. Kirwan: Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) 29 July 1993

Practice – Discovery – Privilege – Claim for specific performance – Counterclaim – Allegation of malicious prosecution and abuse of court process – Plaintiff's action dismissed – Discovery sought of documents relating to legal advice obtained by plaintiff – Whether professional privilege applied – Professional privilege not to be applied where this would be injurious to interests of justice

Facts The plaintiff sought an order for specific performance against the defendant in respect of an alleged agreement for the sale of shares in a company. The defendant brought a motion to dismiss the action on the grounds that it disclosed no cause of action or, alternatively, was vexatious and an abuse of the process of the court. This motion was dismissed. The defendant then entered a defence and counterclaim. Upon the conclusion of the plaintiff's evidence at the hearing of the case, the trial judge acceded to the defendant's application to dismiss the action and directed that the counterclaim should be adjourned *sine die* with liberty to re-enter. The defendant sought further and better discovery in relation to the counterclaim, including all documents relating to legal advice sought or obtained or given to the plaintiff prior to and during the proceedings. The plaintiff objected to the production of the relevant documents on the basis of legal privilege. Costello J ordered that the documents should be produced for inspection on the grounds that the exception to the principle of professional privilege applied in the case of a claim for malicious prosecution or an abuse of the process of the court. The plaintiff appealed.

Held by the Supreme Court (Finlay CJ and O'Flaherty J; Egan J dissenting) in dismissing the plaintiff's appeal: (1) Professional privilege must not be applied so as to be injurious to the interests of justice and to those in the administration of justice where persons have been guilty of conduct of moral turpitude or of dishonest conduct even though it may not be fraud. (2) It is injurious to the interests and administration of justice that a person would falsely and maliciously bring an action and abuse for an ulterior or improper purpose the processes of the court. (3) In a claim for malicious prosecution or abuse of the processes of the court, the first requirement, though not necessarily a proof in itself, is to establish that the claim as brought failed in its entirety or that it was bound to do so. (4) The second requirement which likewise does not necessarily constitute proof of malicious prosecution or an abuse of the processes of the court, is to establish that the claim's failure was not derived from the resolution by the court of a conflict of evidence regarding primary facts or arose from a special legal defence. (5) Where a person makes a claim of malicious prosecution or abuse of the processes of the court and seeks discovery notwithstanding a claim for professional privilege in respect of a legal adviser's communications, he does not have to prove the allegations which he is making as a matter of probability or in accordance with the onus of proof appropriate to the total hearing of the action. Instead it is sufficient that the allegations are supported to an extent that they are, in the view of the court, viable and plausible. (6) In the present case there was sufficient evidence of a plausible or viable case to support the defendant's claim to warrant the making of the order sought.

Reported at [1994] 1 ILRM 293

Dermot Doran v. Commissioner of An Garda Síochána: High Court (O'Hanlon J) 4 October 1993

Judicial Review – Natural and constitutional justice – Obligation to give reasons – Decision of garda commissioner transferring officer – Knowledge of officer as to circumstances viewed by superiors as necessitating his transfer – Demand that reasons should be given within specified time following the decision – Reasonableness of decision to transfer

Facts The applicant was a detective garda officer who had been stationed in a particular town for approximately 14 years. His wife was employed in a clerical position in the same garda station. The marriage broke down and the applicant formed a relationship with a local married woman who was the only chemist in the town. The applicant's superior officers were concerned by the operational difficulties caused by his estranged wife continuing to work in the same station and his association with someone who was subject to supervision by the gardaí under statutory provisions pertaining to drugs and poisons. He was interviewed by his superintendent and later the chief superintendent in relation to both matters. It was suggested that the applicant should end his relationship with the chemist but he refused to do so. Soon after these discussions the garda commissioner required that the applicant should be transferred to a station in another county. On 24 February 1992 the Garda Review Board rejected the applicant's appeal against this decision. Following receipt of the board's decision the applicant's solicitor sent a letter dated Friday 27 March 1992 indicating that no reason for the proposed transfer had been given and demanding that a statement of the reasons should be supplied by 5 p.m. on the following Monday. No reply was received within this time and an application for leave to apply for judicial review was made on 31 March with a view to seeking an order of *certiorari* quashing the decision. A letter of reply sent by the respondent on the same day referred to the reasons in general terms.

Held by O'Hanlon J in refusing the relief sought: (1) Given the discussions which took place prior to the making of the decision, the applicant had been aware in general terms of the matters which were causing concern to his superior officers. Likewise, when the transfer decision was appealed to the Garda Review Board, only the breakdown of the applicant's marriage was discussed and in his submissions he had addressed this issue and his alleged association with a local person. Thus the applicant had known about the case which he had to meet and had an opportunity to make submissions to the effect that it was not a sufficient basis for a decision to transfer him. (2) The affidavit of the assistant garda commissioner contained a full statement as to the reasons for the decision to transfer the applicant and the decision of the Garda Review Board which affirmed it. Although the fact that a chemist was subject to special garda supervision was not specifically identified as the basis for the concern regarding the applicant's relationship prior to the filing and service of the affidavit, this was known to the applicant and it had been open to him to argue in court that no reasonable tribunal could have reached a decision to transfer him based on the grounds referred to in the affidavit. (3) The course of procedure adopted by the applicant in the light of the failure of the Garda Review Board to state its reasons before the expiration of the deadline specified by his solicitors had been excessively precipitate. Even though the letter of reply sent on 31 March 1992 did not state the reasons in detail, the respondent had complied with whatever obligation to give reasons had been imposed on him by law. (4) The decision to transfer the applicant was not so unreasonable that no reasonable authority could have come to it nor was it fundamentally at variance with reason and common sense. *State (Keegan) v. Stardust Victims' Compensation Tribunal* [1986] IR 642 and *O'Keeffe v. An Bord Pleanála* [1993] 1 IR 39 applied.

Reported at [1994] 1 ILRM 303

Director of Public Prosecutions (Garda Ciaran Coughlan) v. Anthony Swan: Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 11 May 1993

Criminal Law – Case stated – Road traffic – Blood or urine specimen – Defendant opted to give sample of urine – Failure to provide specimen – Charge of failure to comply with requirement of designated registered medical practitioner – Whether defendant should be acquitted – Road Traffic Act 1961 (No. 24), s. 49 – Road Traffic (Amendment) Act 1978 (No. 19), s. 13

Facts The defendant was charged with failing to comply with the requirements of a designated registered medical practitioner in relation to the taking of a specimen of urine contrary to s. 13(3)(b) of the Road Traffic (Amendment) Act 1978 ('the 1978 Act'), following a requirement under s. 13(1)(b) of the 1978 Act. After the defendant was arrested and brought to the garda station, the registered medical practitioner ('the doctor') made the requirement specified in s. 13 of the 1978 Act in relation to the taking of a specimen of blood or, at the option of the defendant, the provision of a specimen of urine at 5.38 a.m. The defendant opted to give a specimen of urine but failed to do so after two attempts. A Garda Coughlan told the defendant of the consequences of refusal or failure to provide a specimen and he told the defendant that he could change his mind and permit the doctor to take a specimen of blood. The defendant again opted to provide a specimen of his urine at 5.55 a.m. but failed to so provide and indicated that he was unable to do so, a failure that Garda Coughlan could not say was a deliberate one. The opinion of the Supreme Court was requested as to whether on those facts and in the absence of a requirement made by a designated medical practitioner other than in the terms referred to, the defendant should be acquitted.

Held by the Supreme Court (Blayney and Egan JJ; Finlay CJ, O'Flaherty and Denham JJ concurring) in finding that the defendant should be acquitted: (1) The obligation under s. 13 of the 1978 Act is to permit a designated medical practitioner to take from the person a specimen of his blood. The person is given an *option* of providing a specimen of urine. If the option is availed of, it relieves the person from the obligation to permit a specimen of his blood to be taken from him. If the person finds that he cannot provide a specimen of urine, the obligation to permit the taking of a specimen of blood revives and in such circumstances, a refusal by him to permit the taking of blood is the offence with which he should be charged. (2) As the defendant was charged and convicted of failing to comply with the requirement of a designated medical practitioner in relation to the taking of urine and was not charged with any other offence, he should be acquitted. *Per* Blayney J: Before the defendant could be convicted of the offence with which he had been charged, the prosecution had to prove that the doctor made a requirement of him in relation to the provision of a specimen of urine and that the defendant failed to comply. The facts set out in the case stated did not establish this. As the doctor did not make any requirement under s. 13(3)(b) of the 1978 Act of the defendant in relation to the provision of his specimen of urine, the defendant could not be guilty of failing to comply with any such requirement.

Reported at [1994] 1 ILRM 314

Recent Irish Cases

Edited by Raymond Byrne, BCL, LLM, BL, Lecturer in Law, Dublin City University

The following case summaries have been reprinted from the *Irish Law Times and Solicitors Journal* with the kind permission of the publishers.

People (Director of Public Prosecutions) v. W.C.: Central Criminal Court (Flood J) 14 July 1993

Criminal Law – Sentencing – Rape – Constitutional duty to take all relevant circumstances into account and impose sentence appropriate to degree of guilt – Principle of proportionality – Purpose of passing sentence includes affording opportunity for reform where appropriate – Formulaic approach to sentencing not adopted by our courts – Offences Against the Person Act 1861, s. 48

Facts On 15 July 1992, the accused pleaded guilty to a charge of raping his girlfriend on 31 December 1991. While it appeared that in the immediate aftermath of the event the accused was neither fully aware, nor appreciated, the wrong he had done, he had admitted his guilt promptly thereafter and had pleaded guilty to the charge as aforesaid at his arraignment.

Held by Flood J in imposing a suspended sentence of nine years penal servitude on the accused: (1) While the maximum sentence that a court may impose for the crime of rape is a term of penal servitude for life as provided by s. 48 of the Offences Against the Persons Act 1861, the sentence to be imposed on an accused person in a particular case is solely a matter for a trial judge in the independent and impartial exercise of judicial discretion. *Costello v. Director of Public Prosecutions* [1984] IR 436 considered. (2) As well as a constitutionally protected independence in the selection of a particular sentence, a constitutional duty is imposed upon a judge to fix a sentence appropriate to the degree of guilt taking into account all relevant circumstances which may arise in that case. *Deaton v. Attorney General* [1963] IR 170, *State (O.) v. O'Brien* [1973] IR 50, *State (Healy) v. Donoghue* [1976] IR 325 and *Cox v. Ireland* [1992] 2 IR 503 applied. (3) Where a person is convicted of a criminal offence or pleads guilty to such offence, that person does not thereby forfeit every legal and constitutional right he has previously enjoyed. *Murray v. Ireland* [1985] IR 532 applied. (4) The sentence imposed by a trial judge should be appropriate not only to the offence committed but also to the particular offender having regard to the fact that affording a compelling inducement and an opportunity to the offender to reform serves the public interest which is the primary object in determining sentence. *People v. O'Driscoll* (1972) 1 Frewen 351, *People v. Poyning* [1972] IR 402, *State (Stanbridge) v. McMahon* [1979] IR 214 and *State (Healy) v. Donoghue* [1976] IR 325 considered. (5) The exercise of judicial discretion in sentencing a convicted person should never be formulaic in approach, nor subordinated to fixed policy criteria. (6) The crime of rape is a serious offence which *prima facie* requires a custodial sentence but the courts will not adopt a formulaic or tariff approach to sentencing a convicted person. *R. v. McDonald* [1989] NI 37 and *People v. Tiernan* [1988] IR 250 considered. The category of case where a judge may consider imposing a non-custodial sentence where an accused has pleaded guilty to rape is very rare.

Reported at [1994] 1 ILRM 321

Vincent Hoey and Neil Matthews v. Minister for Justice: High Court (Lynch J) 3 September 1993

Courts and Courthouses – Mandamus – *Provision and maintenance of courthouses by local authority – Whether statutory obligation upon local authority to repair and maintain courthouse and upon the minister to enforce compliance with this obligation – Whether attempt to circumvent instant proceedings – Financial and budgetary considerations – Civil Bill Courts (Ireland) Act 1851, s. 31 – Courthouses (Provision and Maintenance) Act 1935, ss. 3, 6, 10 – Adaptation of Enactments Act 1922, s. 12 – Courts (Supplemental Provisions) Act 1961 – Civil Bill Courts (Ireland) Act 1851 (Adaptation) Order 1992 (SI No. 193 of 1992) – Civil Bill Courts (Ireland) Act 1851 (Adaptation) (No. 2) Order 1992 (SI No. 174 of 1992)*

Facts Sittings of the Circuit Court at the courthouse in Drogheda ceased in 1964 due to its state of disrepair. In 1972 the High Court ordered the Minister for Justice to perform the duties imposed on him by the Courthouses (Provision and Maintenance) Act 1935. Repairs were carried out in compliance with this order and sittings recommenced in 1974. The Circuit Court sittings at Drogheda continued until July 1991 when Drogheda Corporation served a dangerous buildings notice on Louth County Council and the sittings were transferred to Dundalk. On 11 July 1991 the President of the Circuit Court made an order pursuant to s. 10 of Courts of Justice Act 1947 specifying the venues at which the court should sit in the Eastern Circuit. This order omitted Drogheda. The applicants, who were solicitors practising in the town of Drogheda, wrote to Louth County Council and the minister calling upon them to perform their duties under the 1935 Act. In a letter dated 19 June 1992 the minister indicated that pursuant to s. 3 of the 1935 Act, the county council was not required by the minister to provide courthouse accommodation in Drogheda for sittings of the Circuit Court and that the sittings would be fully accommodated by the courthouse in Dundalk. Accordingly the county council was not required to repair the courthouse or provide a replacement building. The applicants were unaware that the minister had written to the county council on 8 January 1992 stating that he did not require the provision of courthouse accommodation in Drogheda for the Circuit Court sittings and that sittings would be accommodated by the continued provision and maintenance of the courthouse in Dundalk. On 23 June 1992 the government and the Minister to make orders pursuant to s. 31 of the Civil Bill Courts (Ireland) Act 1851 which provided that the courthouse in Drogheda should be discontinued as a Circuit Court venue with effect from that date. The applicants sought an order of *mandamus* compelling the respondent to perform the duties imposed by s. 6 of the 1935 Act.

Held by Lynch J in making an order of *mandamus* requiring the minister to direct the county council to provide accommodation for the Circuit Court in Drogheda but subject to a stay until 1 December 1993 and with liberty to both parties to apply for further relief: (1) The obligation of providing, maintaining and financing suitable courthouse accommodation rested on the local authority and it was not open to the executive to make arrangements with the local authority or, by promises made to the local authority, to attempt to relieve such local authority from the obligations expressly imposed upon

them by the 1935 Act. (2) The executive could agree to indemnify the local authority against the cost of observing the requirements of the 1935 Act, but such an agreement could not in any way limit or reduce the statutory obligations of local authorities or the minister. Thus budgetary and financial constraints could not afford an answer to those proceedings. If the executive wished to limit or reduce such obligations it would have to seek the enactment of appropriate legislation by the Oireachtas. (3) S. 31 of the Civil Bill Courts (Ireland) Act 1851 as adapted did not apply to the present Circuit Court. It had been impliedly repealed, first of all by the creation of the Circuit Court under the Courts of Justice Act 1924, and subsequently by the Courts (Establishment and Constitution) Act 1961. Thus the orders purporting to adapt s. 31 and the order of 23 June 1992 purporting to delete Drogheda as a Circuit Court venue were of no effect. In any event these orders had not been made to regulate the sittings of the Circuit Court but to provide a defence to the present proceedings and for that reason they were void. (4) The events preceding the order of the President of the Circuit Court suggested that the only reason for the omission of Drogheda from the list of towns where the Circuit Court was to sit was the service of the dangerous buildings notice in respect of the Drogheda courthouse. (5) The county council were obliged under s. 3 of the 1935 Act to provide suitable accommodation as directed by the minister. They were not bound to maintain the same courthouse building and were entitled to abandon an old or dilapidated building provided that they made available suitable alternative accommodation for the sittings of the Circuit Court.

Reported at [1994] 1 ILRM 334

David Manning v. John R. Shackleton and Cork County Council (notice party): High Court (Barron J) 1 April 1993

Judicial Review – Reasons for decision – Fair procedures – Arbitration – Compulsory purchase order made in respect of applicant's lands – Question of assessing appropriate compensation – Property arbitrator appointed – Whether obligation on arbitrator to provide a breakdown of the reasons for his award – Whether question of costs should be remitted to arbitrator – Acquisition of Land (Assessment of Compensation) Act 1919, ss. 3(3), 5(1) and 6(1) – Arbitration Act 1954, s. 36

Facts The applicant owned lands at Barryscourt, Co. Cork, a portion of which became the subject matter of a compulsory purchase order made by Cork County Council in 1986. The respondent was appointed to arbitrate the measure of compensation to which the applicant was to be entitled. Cork County Council then made an unconditional offer of £175,000, exclusive of costs, in full and final settlement of the applicant's claim. The offer also included an undertaking to carry out certain accommodation works and further such undertakings were given by Cork County Council during the course of the arbitration hearing. On 12 December 1991 the respondent made an award of £156,280. As the award did not exceed the offer which had already been made, the applicant was ordered to pay the costs from the date of the offer. The applicant's solicitors subsequently wrote to the respondent requesting that he furnish the applicant with a written judgment setting out his findings of fact and of law as well as a breakdown of the content of the award. The respondent replied by letter that he was not required to give a written considered judgment. By order dated 27 July 1992, the applicant was given leave to seek judicial review of the respondent's award.

Held by Barron J in refusing the relief sought in respect of the giving of reasons and remitting the matter to the respondent for the determination of issues pertaining to the award of costs: (1) The giving of reasons by a person or body required to act judicially may be compelled by the High Court when such reasons are necessary to determine whether such a power has been validly exercised. It is not an essential obligation and arises only when required to prevent an injustice or to ensure that not only has justice been done but is seen to have been done. However, the applicant had not indicated how he was likely to suffer prejudice or injustice as a result of the failure to state reasons. (2) If the applicant had wished to ensure that, contrary to the normal practice, the respondent should give reasons for his award, he should have made a submission to that effect at the outset of the hearing. By allowing the hearing to continue and by failing to seek reasons from the respondent to be inserted in the award, he accepted the normal practice. (3) The applicant had to be taken to know how the award was broken up between the heads of claim. So far as these amounts were dependent upon fact, the award was final and binding upon him. So far as there may have been legal issues which the respondent had determined, the applicant could have brought these before the High Court by asking the respondent to make his report in the form of a special case under s. 6(1) of the Acquisition of Land (Assessment of Compensation) Act 1919, but he had not done so. The applicant had likewise waived his right under s. 3(3) of the 1919 Act to require the respondent to specify the amount awarded in respect of any particular matter. (4) In relation to the issue of costs it appeared that the amount of compensation which was awarded might have been affected by the nature of the undertakings given by the notice party. It would not be possible to say whether the award was more or less than the unconditional offer until there was a determination as to the amount, if any, which the respondent deducted from the compensation by reason of the undertakings which were given in the unconditional offer and were added at the hearing. Accordingly the matter should be remitted to the respondent for a determination of these issues. In any event this was a ground for remitting a matter to an arbitrator under s. 36 of the Arbitration Act 1954.

Reported at [1994] 1 ILRM 346

Garden Village Construction Co. Ltd v. Wicklow County Council: High Court (Geoghegan J) 1 October 1993

Local Government – Planning and Development – Works carried out outside boundary line on map attached to permission – Application for extension to planning permission refused – Whether refusal based on misinterpretation of statute – Whether unauthorised development – Local Government (Planning and Development) Act 1963, s. 26(10) – Local Government (Planning and Development) Act 1982, s. 4

Facts The applicant, a property development company, was granted outline planning permission for a large housing development of more than 500 houses at Newtownmountkennedy in Co. Wicklow and subsequently was granted three planning permissions in relation thereto. The applicant having built a small number of the houses carried out substantial works 'pursuant to such permission' involving, *inter alia*, the installation of a sewage treatment plant and sludge drying beds, and the securing of water and electricity supplies. Although it was common knowledge that substantial works had been carried out, these works were performed outside the red line boundary

on the map attached to one of the permissions. The applicant applied to the respondent planning authority for an extension of time pursuant to s. 4 of the 1982 Act. An extension was granted in the case of two of the permissions but refused in the case of the third on the ground that the works did not comply with s. 4(1)(c)(ii) which required that 'substantial works' had been carried out pursuant to the original grant of planning permission. In the case of this third grant of permission, it was accepted that no substantial works had been carried out within the red boundary line on the map attached to the permission during its currrency. The applicant contended that the respondent ought to have taken into account works outside this red line but nevertheless referable, whether exclusively or otherwise, to that particular development. The respondent further argued that even if substantial works had been carried out, such works would have been unauthorised development by reason of s. 26(10) of the Local Government (Planning and Development) Act 1963. The applicant sought by way of judicial review an order of *certiorari* quashing the decision of the respondent to refuse an extension of time and an order of *mandamus* directing the respondent to issue a notice to extend the operative period of the planning permission.

Held by Geoghegan J in making an order of *certiorari* and in granting liberty to the applicant to file an amended statement of claim, thereby enabling an order of *mandamus* to be granted directing the respondent to reconsider the application to extend the appropriate time but refusing to award damages: (1) The court would give a wide interpretation to the provisions of s. 4(1)(c)(ii) of the 1982 Act. In deciding whether substantial works had been carried out 'pursuant to such permission' within the meaning of the subsection, consideration can be given to common works which might have been, strictly speaking, carried out 'under' another grant of permission, where these are relevant to the overall development. (2) The respondent had not considered whether any works which had been carried out outside the boundary line could constitute 'substantial works' carried out pursuant to the planning permission within the meaning of s. 4(1)(c)(ii). Consequently the applicant was *prima facie* entitled to an order of *certiorari*. (3) If works which have been performed were designed to benefit the development under a particular planning permission they can be taken into account if they were carried out after the granting and before the expiration of that permission, even though they may also benefit other parts of the overall development and even though the authorisation to carry out such works may have been granted by a different permission. (4) By reason of the fact that s. 26(10) of the Local Government (Planning and Development) Act 1963 did not render a permission a complete nullity in the sense that it must be assumed never to have existed, it was not necessary to consider whether the said works were an 'unauthorised development'.

Reported at [1994] 1 ILRM 354

Duffy v. News Group Newspapers Ltd, Wendy Henry and Mike Beaumont: Supreme Court (Finlay CJ, O'Flaherty, Egan, Blayney and Denham JJ) 25 November 1993

Defamation – Libel – Newspaper article – Plaintiff not named in article – Whether article capable of referring to the plaintiff – Whether article capable of bearing any meaning defamatory of the plaintiff – Whether these issues appropriate for determination as a preliminary point of law – Rules of the Superior Courts 1986, O. 25, r. 1, O. 36, r. 7

Facts O. 25, r. 1 of the Rules of the Superior Courts 1986, provides that a point of law raised in the pleadings, 'shall be disposed of by the judge who tries the cause at or after the trial ... [or] same may be set down for hearing and disposed of at any time before the trial'. O. 37, r. 7 provides that 'the court may ... direct a trial without a jury of any question or issue of fact or partly of fact and partly of law, arising in any cause or matter which, without any consent of parties, can be tried without a jury, and such trial may, if so ordered by the court, take place at the same time as the trial by a jury of any issue of fact in the same cause or matter'. The defendants published an article in the magazine section of the 'News of the World' under the heading, 'British marine breaks silence to reveal full horror of Northern Ireland'. The article recounted a surveillance operation where two soldiers were said to have spent a week hidden in the attic of a GAA club in Crossmaglen and 'recorded details of terrorist plots as they were being planned just feet away'. The plaintiff was the chairman of the club and he commenced an action for defamation. He was not mentioned by name in the article. The defendants brought an application pursuant to O. 25, r. 1 of the Rules of the Superior Courts 1986, for a ruling as to (i) whether the article was capable of referring to the plaintiff and (ii) whether the article was capable of bearing any meaning defamatory of the plaintiff. Morris J directed that an issue be set down for hearing to be disposed of as a preliminary point of law as to whether the words complained of were capable of bearing any meaning defamatory of the plaintiff.

Held by the Supreme Court (O'Flaherty J; Finlay CJ, Egan, Blayney and Denham JJ concurring) in reversing the order of the High Court and remitting the action for a full plenary hearing: (1) If it can be decided as a matter of law that the impugned words are incapable of bearing a defamatory meaning, a defendant may apply to court for an order pursuant to O. 25, as a decision in the defendants' favour would result in the action being dismissed and a saving in costs. *Keays v. Murdoch Magazines (UK) Ltd* [1991] 1 WLR 1184 applied. (2) This procedure was only appropriate where the words could be placed before a judge without the necessity of calling evidence, and his duty would be to rule whether the words are capable or incapable of bearing a defamatory meaning. (3) If the trial judge finds that the words are capable of defamatory meaning his ruling should be confined to that finding. It is then for the trial judge, after perusing the pleadings and the evidence and submissions, to decide whether the words are capable of bearing only one or more than one of several defamatory meanings put forward by the plaintiff. (4) Where the plaintiff is not named in an article the test which decides whether the words used refer to him is whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe he was the person referred to. *Knupffer v. London Express Newspaper Ltd* [1944] AC 116 discussed. (5) In the present case the issue of whether the words used were capable of bearing any meaning defamatory of the plaintiff was capable of being supported by oral testimony and therefore it was impossible to dispose of it as a preliminary point of law. (6) It was difficult to envisage situations arising in a defamation case where a preliminary point might be set down pursuant to O. 36, r. 7 as the whole point of establishing defamatory meaning is based on how the words would strike the ordinary person.

Reported at [1994] 1 ILRM 364

National Irish Bank Ltd v. Robert Graham, Sarah Graham, Eric Samuel Graham, Charis Graham and Robert George Graham: High Court (Costello J) 8 November 1993

Real Property – Purchase of land – Execution of deed of mortgage by purchasers prior to taking possession – Whether interest in family home conveyed by means of deed of mortgage – Need for residence by spouses before dwelling can constitute family home – Family Home Protection Act 1976, ss. 2, 3

Facts On 29 August 1989, the first, third and fifth named defendants purchased a large estate of approximately 3,000 acres with the aid of a loan granted by the plaintiff. The loan was secured by a deed of mortgage dated 9 August 1989 which had been executed by the first, second, third and fifth named defendants and their solicitor who had purchased the property in trust for them. At this time the first and second named defendants were married to each other, the third and fourth named defendants were married to each other and the fifth named defendant was unmarried. However, the latter got married on 17 November 1990. None of the mortgagors obtained possession of the land until after completion of the purchase and execution of the mortgage. On 21 February 1991 the mortgagors, with the consent of the plaintiff, transferred some of the land between themselves and executed three further mortgages in favour of the plaintiff. The mortgagors defaulted in repayment of the loan and the plaintiff sought an order of possession so that it could exercise its power of sale under the first mortgage. The defendants claimed that the four mortgages were void under s. 3 of the Family Home Protection Act 1976.

Held by Costello J in making an order for possession but excluding certain parts of the land which were subject to contracts of sale entered into with the plaintiff's consent: (1) A house becomes a family home within the meaning of s. 2 of the 1976 Act only when a married couple take up residence. There was no basis for interpreting the definition as including a dwelling in which a married woman intended to reside at the date of its purchase. (2) At the time when the first mortgage was executed four of the mortgagors were spouses within the meaning of s. 3. However, as none of the mortgagors were in possession of the land when they executed this mortgage none of them could be regarded as having conveyed an interest in a family home by means of this deed. Thus there was no need for the prior consent in writing of any of their spouses and the mortgage was not void under s. 3. (3) The equitable interest of a purchaser which arises prior to completion by virtue of a contract for the sale of land could not be regarded as having transformed any dwelling on the land into the family home of either the third or fifth named defendant so as to confer rights on their wives before the taking of possession. (4) The existence of unresolved disputes in respect of the second, third and fourth mortgages did not affect the validity of the first mortgage or the plaintiff's right to exercise the power of sale arising thereunder and seek an order of possession so as to enforce that right.

Reported at [1994] 1 ILRM 372

Anthony Lowth and Others v. Minister for Social Welfare and the Attorney General: High Court 1989 No 9622P (Costello J) 16 December 1993

Constitution – Equality – Social welfare – Deserted wife's benefit – Whether deserted husbands were entitled to same benefits and allowances as deserted wives – Social Welfare (Consolidation) Act 1981 – Constitution of Ireland 1937, Articles 40.1, 41.2 – Council Directive 79/7/EEC

Facts After being deserted by his wife the plaintiff had to give up his employment so that he could look after their two young children. His entitlement to unemployment benefit lasted for a period of 390 days. Thereafter he was paid unemployment assistance and on 20 November 1991 he qualified for lone parent's allowance. Unlike the deserted wife's benefit payable under the Social Welfare (Consolidation) Act 1981, the allowances to which the plaintiff became entitled were means tested. Furthermore, the payments made in favour of the plaintiff were at rates lower than the rate which would have been payable to a deserted wife in circumstances similar to those of the plaintiff. The plaintiff claimed that as he and his children had received less income than would have been received by a deserted wife and her children, he had been discriminated against by reason of his sex contrary to Council Directive 79/7/EEC and that insofar as the 1981 Act made provision for deserted wives but not for deserted husbands in similar situations it was unconstitutional.

Held by Costello J in dismissing the plaintiff's claim: (1) A benefit or allowance only came within the scope of Council Directive 79/7/EEC if it constituted the whole or part of a statutory scheme which protected against the risk of sickness, invalidity, old age, accidents at work, unemployment or was a form of social assistance having the same objective. As the deserted wife's benefit did not constitute a form of social assistance falling within the scope of the directive, it did not apply to the impugned provisions of the 1981 Act. (2) Article 40.1 of the Constitution does not guarantee that all citizens will be treated equally in all circumstances. Inequalities in the law may be permissible provided that the inequality flows from or is related to a difference of capacity, physical or moral, or to a difference of social function. *Quinn's Supermarket Ltd. v. Attorney General* [1972] IR 1 considered. (3) A legislative inequality will not be set aside as being repugnant to the Constitution unless the court considers that the law is based on a distinction between men and women which cannot be justified by the factual circumstances. *Murphy v. Attorney General* [1982] IR 241 and *O'G. v. Attorney General* [1985] ILRM 61 considered. (4) The Oireachtas was entitled to conclude on the facts as established that married women fulfilled a social function different to that of married men and further that married women who were deserted by their husbands required greater income support than married men who were deserted by their wives. The distinction made in the impugned legislation was not based on any assumption that deserted husbands were to be treated as in some way inferior to deserted wives, but was founded on a factual assessment by the Oireachtas of the greater needs of deserted wives. The Oireachtas, in the light of Article 41.2 of the Constitution, which recognised the special role of wives and mothers in Irish society, was not acting unreasonably when it sought to give special financial support to deserted wives who were also mothers. *Dennehy v. Minister for Social Welfare*, High Court (Barron J) 26 July 1984 applied.

Reported at [1994] 1 ILRM 378