VOL. 87 NO. 1 JANUARY/FEBRUARY 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND LIBRARY

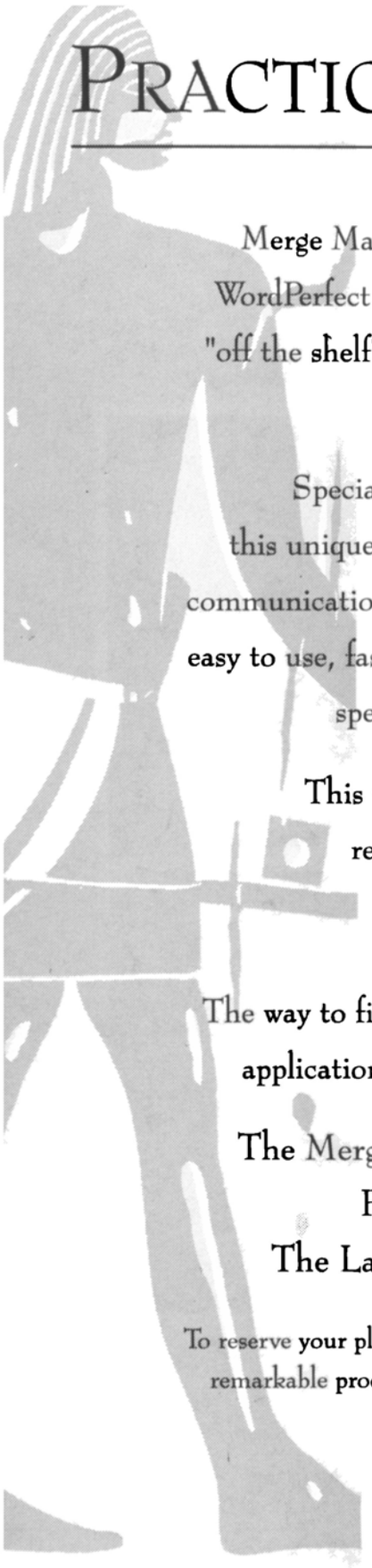
DEFENDING THE RIGHT TO PURSUE VALID CLAIMS

INFORMATION ON TERMS OF EMPLOYMENT

TITLE INSURANCE -v- TITLE REGISTRATION

LAW SOCIETY CONFERENCE – BROCHURE ENCLOSED

PRACTICE MADE PERFECT



Merge Management in association with Digital and WordPerfect are about to announce the launch of a new "off the shelf" software product specifically tailored to the needs of the Legal Profession.

Specially developed by Merge Management, this unique product has the potential to revolutionize communication in the Legal Profession. It is easy to install, easy to use, fast, powerful and can be customised to suit the specific requirements of any practice.

This versatile product improves efficiency, reduces workload and saves money.

What's it called?

The way to find out, and judge for yourself the remarkable applications of this product, is to it see in action at:

The Merge Management WordPerfect Seminar,
Friday 19th February 1993 at
The Law Society, Blackhall Place, Dublin.

To reserve your place (free of charge) or for further information about this remarkable product contact Merge Management at the address below.

WordPerfect™

M·E·R·G·E
MANAGEMENT

digital

33 FITZWILLIAM SQUARE SOUTH, DUBLIN 2, IRELAND. TEL: (01) 767077; FAX: (01) 767160
75-77 MAY STREET, BELFAST, NORTHERN IRELAND, BT1 3JL, TEL: (0232) 236471 FAX: 236760

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

INDEX TO VOLUME 87 – 1993

1) SUBJECT INDEX: Page 3-19

A comprehensive index to all subjects covered in the *Gazette*, January to December, 1993.

2) CASE INDEX: Page 20-21

(i) Cases reported in the *Recent Irish Cases* supplements.

(ii) Cases examined and/or specially mentioned in articles, editorials etc.

3) LEGISLATION INDEX: Page 22-23

LIST OF ISSUE NUMBERS AND DATES:

1. – January/February
2. – March
3. – April
4. – May
5. – June
6. – July/August
7. – September
8. – October
9. – November
10. – December

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

This is a comprehensive index to subjects covered in the Gazette, some of the major headings being – Articles, Associations and societies, Book reviews, Disciplinary cases, Editorials, European Community, Law Society, Lawbrief, Lost wills, Mediawatch, People, Practice notes, Solicitors, Sports activities, Taxation.

Names of local and international bar associations are listed under Associations and societies.

Note: References are to issue number followed by page number (**10**: 388 refers to issue 10 (December), page 388).

Abbreviations: (A) – Article; *(edl.)* – Editorial; *(ltr.)* – Letter; *(pr.)* – Practice note; *(Pres.)* – President's message; *(pict.)* – photograph.

ACCIDENTS AT WORK *see* Employer's liability; Occupational safety and health

ACCOUNTANT'S CERTIFICATES REPORT, **1**: 8

ACTS OF THE OIREACHTAS *see Legislation Index*

ADMINISTRATION OF JUSTICE
courts service *see* Courts service

ADMISSIONS POLICY *see under* Law Society

ADOPTION LAW
Adoption Law and Practice (K. O'Halloran), rev., **10**: 402-3
right to birth certificates – Barnardo's seek review of law, **2**: 69

ADVERTISING BY SOLICITORS
personal injury claims, bringing of *(edl.)*, **1**: 5
review of regulations sought, **10**: 406

AGRICULTURE
Agricultural Appeals Tribunal called for, **8**: 302

ALLIANCE AGAINST PROBATE TAX, **6**: 209, **7**: 249

AMERICAN BAR ASSOCIATION *see under* Associations and societies

AMNESTY INTERNATIONAL
Yugoslavia initiative by Irish section, **7**: 267

ANGEL DUST
regulations declared *ultra vires*, **5**: 188

APPEALS
Rating Valuation in Ireland – The Appeal System (T. O'Connor), **8**: 317-19

APPOINTMENTS *see under* People

APPRENTICESHIP, **5**: 190 *see* also Legal education; Younger members' news
duties of solicitor to apprentice – guidelines in preparation, **2**: 72
Education Chairman rejects criticisms, **4**: 135-36
Focus on Apprenticeships (R. Woulfe, Director of Education), **10**: 404
Law Society Apprentices/YMC GAA team, **5**: 181 *(pict.)*
pay – new salary scale approved, **10**: 374
reminder to practitioners, **5**: 173, **9**: 362
SADSI *see* SADSI News

ARBITRATION COMMITTEE
list of members 1993-94, **10**: 377

ARTICLES
Acquisition of the German Title "Rechtsanwalt" by Irish Lawyers (A. von Furstenberg and A. Grannemann), **3**: 113-14
Advising Clients on Russian and East European Business Ventures (Julie Sadlier), **4**: 149-51
Compensation under the Planning Acts: *85 Developments Ltd* (Garret Simons), **3**: 103-4
The Competition Act and EEC Block Exemptions (Denis Cagney), **7**: 273-76; corr. **8**: 296
Copyright – New Licensing Agency and Other Developments (Anthony P. Quinn), **3**: 95-97
Document Exchanges and the EC Green Paper on Postal Services (Paul Puxon), **2**: 73-74
Freedom of Access to Information on the Environment – Council Directive 90/313/EC (Donal O'Leary), **1**: 23-24
Ground Rents – The Shape of Things to Come (J.M.G. Sweeney), **6**: 227-30
Information on Terms of Employment (Ciaran O'Mara), **1**: 13-15
Is the Profession *Really* under Siege? (Noel Ryan), **4**: 131-33
Judgment Mortgages – A False Dawn (C. Doyle), **8**: 297-99
Liability for Accidents at Work: The New Regime (Ciaran O'Mara), **10**: 387-89
Liability of Personal Representatives under the Social Welfare Code (Gerry Whyte), **5**: 175-77
Managing Your Practice (Justin McKenna), **4**: 153
Necessity and Chaos: How Constitutionally to Implement an EC Directive into Irish Law (Noel Travers), **7**: 258-60
The Numbers Game (Barbara Cahalane), **4**: 135-36
Probate Tax – The Implications for Practitioners (R. Grogan), **9**: 355-56
Quality Management in the Office – Ten Tips for Immediate Results (Brian O'Reilly), **5**: 172-173
Rating Valuation in Ireland – The Appeal System (Tom O'Connor), **8**: 317-19
The Right Type of Mortgage (Fergus Goodbody), **2**: 55-57
The Solicitor, the Barrister, the Politician and the Judge (Lord Williams of Mostyn), **3**: 88

Title Insurance v Title Registration in the United States (John G. Olden), **1**: 25-29
Wards of Court – A General Guideline of the Procedures Involved (John Costello), **4**: 143-46
Whiplash and its Effects on the Temporo Mandibular Joint (Dr. Meurig Devonald), **6**: 233-35
Winners and Losers? Legal Aid in Custody Proceedings (Mel Cousins), **5**: 195-97; update **6**: 236

ASSOCIATIONS AND SOCIETIES
ABA
– conference – "Justice for All – All for Justice," **7**: 265-66
– Gavel Media Awards, **7**: 266
AIJA
– Annual Congress (Brazil), **4**: 138
– regional weekend – Leeds, **3**: 97
– seminars, **7**: 276
Association of European Document Exchanges, **2**: 73
DSBA
– draft deed of separation launched, **4**: 139
– future of sole practitioner, meeting on, **4**: 121 *(pict.)*; 127, 131
– President (Daire Murphy), **9**: 347 *(pict.)*
– trip to Florence, **10**: 392 *(pict.)*
ELSA Leinster lecture – EC Directives in Irish Law, **7**: 262 *(pict.)*
European Young Bar Association founded, **6**: 223
IBA (International Bar Association)
– Annual report 1992, **3**: 111-12
– Biennial Conference, Melbourne 1994, **9**: 363
International Association of Defence Counsel, **8**: 313-14
International Society for Sports Law, **2**: 76
Irish Society for European Law
– Officers and Council for 1993-1994, **6**: 226
Kildare Bar Association
– plaque to honour Myles C. Murphy, **6**: 222
– presentation to Patrick V. Boland, **4**: 140 *(pict.)*
Laois Bar Association – presentation to Paul Ryan, **10**: 393 *(pict.)*
Medico-Legal Society, **2**: 72, **7**: 262 *(pict.)*
– Winter Programme 1993/94, **9**: 361
North and East Cork Bar Association – annual dinner, **1**: 21 *(pict.)*
Roscommon Bar Association – AGM, **7**: 263 *(pict.)*
SADSI *see* SADSI News
Samaritans, **9**: 363
sporting societies *see under* Sports activities
State Solicitors' Association – annual dinner, **6**: 226 *(pict.)*
SYS *see under* Younger members' news
Tipperary Bar Association, **8**: 302
– presentation to Francis Murphy, **1**: 21 *(pict.)*
– presentation to Judge William O'Connell, **3**: 101 *(pict.)*
YMC *see under* Younger members' news

AWARDS *see under* People

BAR COUNCIL
1993/94 Council, **7**: 279
courts service
joint Law Society/Bar Council submission *see* Courts service
BARFLY (Cartoon strip by John Collins), **4**: 136, **8**: 312, **9**: 358, **10**: 374

BARRISTERS
"An endangered species" (*lawbrief*), **3**: 105

BARRISTERS (ENGLAND AND WALES)
The Bar Directory (1993 edition) rev., **1**: 19
direct professional access, **8**: 310
Havers' Companion to the Bar 1993/1994, rev., **8**: 310

BLACKHALL PLACE DEVELOPMENT PLAN COMMITTEE, **10**: 377; 407

BOOK REVIEWS
Adoption Law and Practice (K. O'Halloran) Butterworths 1992, rev. by R. Horgan, **10**: 402-3
Annual Review of Irish Law, 1991 (R. Byrne and W. Binchy), Round Hall Press 1993, rev. by E.G.Hall, **4**: 137
The Bar Directory (1993 edition) rev. by BC, **1**: 19
Blacksone's Statutes on Evidence 2nd ed. (P. Huxley and M. O'Connell, eds.) Blackstone Press 1993, rev. by E.G.Hall, **8**: 311
The British Year Book of International Law 1991 (I. Brownlie; D.O. Bowett) OUP 1991, rev. by E.G.Hall, **1**: 18
Business Law Guide (A. J. King and J.S.Barlow) Blackstone Press 1993, rev. by E. G. Hall, **10**: 401-2
Deadly Wages – Irish Work Hazards (E. McGarr) Paradox Press 1992, rev. by B. St. John Blake, **8**: 309-10
Dictionary of Law 4th ed. (L. B. Curzon) Pitman Publishing 1993, rev. by E .G. Hall, **8**: 311
Divorce in Ireland – Who Should Bear the Cost? (P. Ward) Cork University Press 1993, rev. by M. Walls, **10**: 401
Employment Law (M. Forde) Round Hall Press 1992, rev. by G. Byrne, **7**: 269-70
Gender and the Law in Ireland (A. Connelly, ed.) Oak Tree Press 1993, rev. by E. Lynch, **10**: 403
Guide to the 1992 Group Account Regulations (K G. Rue) Fodhla Books 1992, rev. by D. Beattie, **2**: 63
Havers' Companion to the Bar 1993/1994 (P. Havers, Ed.) Havers' Directories Ltd, rev. by E.G.Hall, **8**: 310
Hotel, Restaurant and Public House Law (M. McDonald) Butterworths 1992, rev. by J. McKenna, **6**: 215
Index to Irish Law Reports Monthly 1976-1990 (J. Clancy) Round Hall Press 1992, rev. by BC, **1**: 19
Irish Conveyancing Precedents (M. Laffoy) Butterworths 1992, rev. by E. Lynch, **6**: 217
Irish Criminal Law Journal (S. Murphy, ed.) Round Hall Press, rev. by B. Donoghue, **7**: 271-72

Irish Cycling Guide (B. Walsh) Gill and MacMillan 1992, rev. by F. O'Donnell, **2**: 67
Irish Social Services (J. Curry) IPA, rev. by M. Cousins, **5**: 185
The Irish Student Law Review Vol. 3 (1993), rev. by E. G.Hall, **5**: 186-87
The Kilkenny Incest Case (K. Wood) Poolbeg Press 1993, rev. by N. Blackwell, **7**: 271
Law and Liberty in Ireland (A. Whelan, ed.) Oak Tree Press/TCD 1993, rev. by E.G.Hall, **6**: 215-16
The Law of Company Insolvency (M. Forde) Round Hall Press 1993, rev. by B. O'Neill, **9**: 354
The Law of Information Technology in Europe 1992: A Comparison with the USA (A. P. Meijboom and C. Prins, eds.) Kluwer, rev. by A. Burke, **4**: 137-38
Law of Stamp Duty, 2nd ed. (M. O'Connor and P. Cahill) Institute of Taxation, rev. by J. McKenna, **3**: 98
Legal Aspects of Commercial Sea-Fishing in the EEC: ICEL 1992, rev. by F. O'Donnell, **2**: 64-65
LRC Consultation Paper on Occupiers' Liability LRC 1993, rev. by B.M.E.McMahon, **9**: 352-53
LRC Consultation Paper on Sentencing LRC 1993, rev. by P. Charleton, **5**: 185-86
LRC Report on Land Law and Conveyancing Law: (5) Further General Proposals LRC 1992, rev. by E. Brunker, **9**: 351-52
LRC Report on the Law relating to Dishonesty LRC 1992, rev. by M. Staines, **2**: 63-64
Public Procurement (P. Lee) Butterworths 1992, rev. by E. G. Hall, **6**: 216
Talking to Your Solicitor (M. Kotsonouris) Gill and MacMillan 1992, rev. by E. Lynch, **1**: 18-19
Tax Acts 1992-1993 (A. Moore, ed.) Butterworths 1993, rev. by C. Keys, **7**: 270
Tax Guide 1992-1993 (S. Keegan, ed.) Butterworths 1993, rev. by C. Keys, **7**: 270
Textbook on Jurisprudence (H. McCoubrey and N. White) Blackstone Press 1993, rev. by E.G.Hall, **9**: 353-54

BUDGET 1994
Taxation Committee submission, **10**: 413

BUILDING SITES *see* Construction sites

BUSINESS LAW
Business Law Guide (A.J.King and J.S.Barlow), rev., **10**: 401-2

BUSINESS TENANCIES
Bill in preparation, **5**: 170

BUSINESS VENTURES
advising clients on Russian and Eastern European ventures (Julie Sadlier), **4**: 149-51

CAPITAL ACQUISITIONS TAX
certificates of discharge from CAT *(pr.)*, **7**: 253
computer-assisted learning programme, **9**: 348

CATERING LAW
Hotel, Restaurant and Public House Law (M. McDonald), rev., **6**: 215

CATHOLIC YOUTH COUNCIL, **8**: 307

CENTRE OF ECONOMICS AND LAW (UCG), **6**: 213

CHARITABLE BEQUESTS
Probate Office practice *(pr.)*, **5**: 178

CHARITABLE FUNCTIONS
CYS 60s night (Blackhall Place), **8**: 307

CHILDREN *see* also Adoption law
detention facilities
former judge pleads for adequate facilities, **2**: 58
forensic child psychiatric service, need for, **9**: 361
rights of
ABA conference discussion, **7**: 265

CIRCUIT COURT
review of activity levels in, **5**: 170

CIVIL LEGAL AID
family law cases, **9**: 359
Legal Aid in Custody Proceedings – recent cases (Mel Cousins), **5**: 195-97; *update* **6**: 236
fees – fair level called for *(edl.)*, **7**: 245
FLAC pre-Budget submission, **2**: 67
information day (Alliance for Civil Legal Aid), **7**: 254
Law Society President criticises system, **9**: 349
private practitioner scheme – pilot project, **7**: 245 *(edl.)*; 250, **8**: 293; 321 *(ltr.)*, **9**: 333
inadequacy of fees – Society's stance, **8**: 301
pro-bono proposal, **5**: 193

CLIENT CONFIDENTIALITY
Finance Act 1992, Part VII – reporting provisions, **6**: 207, 208

CODE OF ETHICS
criminal law, **3**: 93

COMPANIES REGISTRATION OFFICE
automation, **3**: 109-10
fees payable, **10**: 396 *(pr.)*
LAWLINK, **8**: 315

COMPANY AND COMMERCIAL LAW COMMITTEE
list of members 1993-94, **10**: 378
practice notes *see under* Practice notes

COMPANY LAW
group accounts
Guide to the 1992 Group Account Regulations (K. G. Rue), rev., **2**: 63
insolvency
The Law of Company Insolvency (M. Forde), rev., **9**: 354
practice notes *see under* Practice notes

COMPENSATION
personal injuries *see* Personal injuries
Planning Acts, *see under* Planning law

COMPENSATION FUND, **4**: 126; 131, **5**: 167, **8**: 293, **9**: 333, **10**: 374; 406
discretion to refuse grant, **7**: 249
IPAV Voluntary Compensation Fund, **7**: 254
limit on claims proposed, **3**: 90
media reports, **6**: 209
payments approved – 1993, **4**: 134, **5**: 184, **6**: 223, **7**: 257, **9**: 330
policy review committee, **1**: 19

COMPENSATION FUND COMMITTEE, **2**: 54, **3**: 90
list of members 1993-94, **10**: 377
Policy Review Committee – list of members 1993-94, **10**: 378

COMPETITION LAW
The Competition Act and EEC Block Exemptions (D. Cagney), **7**: 273-76; *corr.* **8**: 296
publications on *(Lawbrief)*, **3**: 106

COMPLAINTS AGAINST SOLICITORS *see* Disciplinary cases; Registrar's Committee

COMPUTER TECHNOLOGY *see* also Technology notes
The Law of Information Technology in Europe 1992: A Comparison with the USA (A. P. Meijboom and C. Prins, eds.), rev., **4**: 137-38

COMPUTERISATION
Companies Registration Office, **3**: 109-10
courts, in, **5**: 169

CONDUCT *see* Professional conduct

CONFIDENTIALITY *see* Client confidentiality

CONSTITUTION OF IRELAND
"distinctive qualities" of, (Mr. Justice Hederman), **7**: 248
EC directives – implementation of (Noel Travers), **7**: 258-60

CONSTRUCTION SITES
safety and health requirements
temporary or mobile sites, **10**: 388-89

CONTRACT
sale of land *see* Sale of land

CONTRACT FOR SALE
clause 36
private residential property and *(pr.)*, **1**: 17

CONTRIBUTORS *see under* Articles

CONVEYANCING
"cut-price" conveyancing in UK, **6**: 213
expert witnesses *(pr.)*, **8**: 295
Irish Conveyancing Precedents (M. Laffoy), rev., **6**: 217
"lock-out agreement" – *Pitt v PHH Asset Management Ltd*, **7**: 256
LRC Report on Land Law and Conveyancing Law: (5) Further General Proposals, rev., **9**: 351-52
Title Insurance v Title Registration in the United States (John G. Olden), **1**: 25-29

CONVEYANCING COMMITTEE
list of members 1993-94, **10**: 378
practice notes *see under* Practice Notes

COPYRIGHT LAW
Computer Programmes – The New Regulations (J. Furlong), **6**: 231-32
Copyright – New Licensing Agency and Other Developments (Anthony P. Quinn), **3**: 95-97

CORRESPONDENCE
civil legal aid – pilot project (P. Armstrong), **8**: 321
compulsory Irish requirement
(Antoin Delap), **6**: 218
(Patrick O'Connor), **7**: 266
the Dean's Deed (R. Ashe), **1**: 11
life policy proceeds not paid to solicitors (D. Teevan), **8**: 321
quizzical time warp (B. Riordan), **3**: 107
solicitors in the DPP's office (M. Liddy), **3**: 107

COURT DRESS, **5**: 170, **7**: 256-57

COURTHOUSE ACCOMMODATION, **5**: 169, **7**: 251
Drogheda courthouse case, **7**: 251
Law Society/Bar Council submission on the courts, **9**: 337

COURTS SERVICE
computerisation, **5**: 169, **9**: 337; 357
Judicial Commission, **5**: 170, **7**: 251, **9**: 338
lack of resources, **6**: 210, **7**: 251
Government must act *(Pres.)*, **8**: 291
Law Society/Bar Council submission, **8**: 285 *(pict.)*; 291 *(pict.)*; 293; 301, **9**: 329 *(edl.)*
details, **9**: 337-38
Executive Agency, concept of, **9**: 329 *(edl.)*; 338
President of High Court's criticism, **9**: 329 *(edl.)*; 339

CRIMINAL INVESTIGATION
DNA testing, **5**: 169
video surveillance in Dublin area, **5**: 169

CRIMINAL LAW
dishonesty, law relating to
LRC Report reviewed, **2**: 63-64
Irish Criminal Law Journal (S. Murphy, ed.), rev., **7**: 271-72

legal aid *see* Criminal legal aid
sentencing
Criminal Justice Act 1993 – main provisions, **4**: 147-48
LRC consultation paper, 1993, rev., **5**: 185-86

CRIMINAL LAW COMMITTEE, **10**: 406
code of ethics, **3**: 93
list of members 1993-94, **10**: 378
practice notes *see under* Practice notes

CRIMINAL LEGAL AID
fees, **7**: 250
Council concerned at delay, **2**: 54
delay in payment *(pr.)*, **3**: 93, **10**: 404
increases *(pr.)*, **3**: 93

DAIL EIREANN
guillotines on debates, **6**: 205 *(edl.)*
Question Time on justice issues (30 March), **5**: 169

DAMAGES
personal injuries
capping of awards *see under* Personal injuries

DEATH
occurrence of natural death
comatosed patient – disconnecting the feeding tubes *(Lawbrief)*, **1**: 9-10

DETENTION
children – former judge pleads for adequate facilities, **2**: 58
suspension of rights
whether justified – *Brannigan and McBride v United Kingdom* (ECHR), **6**: 211-12

DIRECTOR GENERAL (NOEL RYAN)
current problems facing the profession – "Is the profession *really* under siege?," **4**: 131-33

DIRECTOR OF PUBLIC PROSECUTIONS
solicitors in office of, **2**: 45 *(edl.)*; **3**: 107 *(ltr.)*

DISCIPLINARY CASES, **2**: 54
Collier, Michael, **5**: 183
Doherty, John B., **2**: 75
Kilrane, Kevin P., **5**: 183
apology, **6**: 223
Lysaght, Liam, **3**: 107
McGarry, Peter, **2**: 75
Mooney, Michael, **2**: 76
O'Neill, Greg, **2**: 75
St. John Walshe, Roderick, **2**: 75

DISCIPLINARY COMMITTEE
annual report 1992-93, **10**: 409-11
list of members 1993-94, **10**: 377

DISCOVERY
Rules of the Superior Courts – amendments, **9**: 341

DISHONESTY
LRC Report on law relating to, **2**: 63-64

DIVORCE
Divorce in Ireland – Who Should Bear the Cost? (P. Ward), rev., **10**: 401

DOCUMENT EXCHANGES
Document Exchanges and the EC Green Paper on Postal Services (Paul Puxon), **2**: 73-74

EASTERN EUROPEAN BUSINESS VENTURES
advising clients on (Julie Sadlier), **4**: 149-51

EC AND INTERNATIONAL AFFAIRS COMMITTEE, **1**: 8
list of members 1993-94, **10**: 378

EDITORIALS (VIEWPOINT)
civil legal aid – one step forward, one step back, **7**: 245
courts service – need for executive agency, **9**: 329
Dail Eireann – guillotines on debates, **6**: 205
Lay Observers on Registrar's Committee, **3**: 85
legal and judicial appointments – solicitors' eligibility **2**: 45
personal injuries
capping of awards, **5**: 165, **8**: 289
defending the right to pursue valid claims, **1**: 5
undermining the right to bring claims, **10**: 373
small v large firms – "A united profession," **4**: 125

EDUCATION *see* Legal education

EDUCATION ADVISORY COMMITTEE – LIST OF MEMBERS 1993-94, **10**: 378

EDUCATION COMMITTEE
apprenticeship – reminder to practitioners, **5**: 173
duties of solicitor to apprentice – guidelines in preparation, **2**: 72
list of members 1993-94, **10**: 377

EDUCATION REVIEW GROUP, **4**: 126

ELECTRONIC MAIL TRAIL *(Lawbrief)*, **5**: 170

EMPLOYER'S LIABILITY
accidents at work *see* also Occupational safety and health
Deadly Wages – Irish Work Hazards (E. McGarr), rev., **8**: 309-10
Liability for Accidents at Work: The New Regime (C. O'Mara), **10**: 387-89
personal injury claims – IBEC report, **9**: 362 *(edl.)*, **10**: 385

EMPLOYMENT LAW *see* Labour law

ENVIRONMENTAL LAW
Freedom of Access to Information on the Environment - Council Directive 90/313/EC (Donal O'Leary), **1**: 23-24

ESTATE PLANNING
probate tax – implications for practitioners (R. Grogan), **9**: 355-56

EUROPEAN COMMUNITY/UNION
competition law
The Competition Act and EEC Block Exemptions (D. Cagney), **7**: 273-76; corr. **8**: 296
copyright law, **3**: 96-97
computer programmes, **6**: 231
employment law
information on terms of employment – Directive 91/533/EEC (Ciaran O'Mara), **1**: 13-15
environmental law
Freedom of Access to Information on the Environment - Council Directive 90/313/EC (Donal O'Leary), **1**: 23-24
fisheries law
Legal Aspects of Commercial Sea-Fishing in the EEC rev., **2**: 64-65
ICEL Spring/Summer Programme, **2**: 48
implementation of directives
Necessity and Chaos: How Constitutionally to Implement an EC Directive into Irish Law (Noel Travers), **7**: 258-60
information technology
The Law of Information Technology in Europe 1992: A Comparison with the USA (Meijboom and Prins, *eds.*), rev., **4**: 137-38
Irish Society for European Law – Officers and Council for 1993-1994, **6**: 226
Jurist Europe conference, **2**: 72
liberal professions, **10**: 390
postal services
Document Exchanges and the EC Green Paper on Postal Services (Paul Puxon), **2**: 73-74
Public Procurement (P. Lee), rev., **6**: 216
safety, health and welfare at work
display screens directive 1990, **10**: 388
Framework Directive 1989, **10**: 387-88
temporary or mobile construction sites, **10**: 388-89

EUROPEAN COURT OF HUMAN RIGHTS
suspension of detainee's rights – *Brannigan and McBride v United Kingdom*, **6**: 211-12

EUROPEAN COURT OF JUSTICE
references to
facts and law to be set out in detail – *Circostel* judgment, **2**: 50

EUROPEAN YOUNG BAR ASSOCIATION
launch, **6**: 223

EVIDENCE
Blacksone's Statutes on Evidence 2nd ed., rev., **8**: 311
practice direction
medical reports and reports of other expert witnesses, **9**: 342

EXPERT WITNESSES
conveyancing cases *(pr.)*, **8**: 295
High Court practice direction, **9**: 342

FAMILY HOME DECLARATIONS
averment no. 2 of Form 3
correction, **6**: 210

FAMILY LAW *see* also Adoption; Children; Marriage
code of conduct, **5**: 188
legal aid, **9**: 359
custody proceedings – recent cases (Mel Cousins), **5**: 195-97; *update* **6**: 236
shortcomings in pilot project *(edl.)*, **7**: 245
TCD seminar on recent developments, **5**: 194

FAMILY LAW AND CIVIL LEGAL AID COMMITTEE
list of members 1993-94, **10**: 378

FAX *see also under* Technology notes
transmission of documents by *(Lawbrief)*, **1**: 10-11

FINANCE COMMITTEE, **10**: 405
list of members 1993-94, **10**: 377

FINANCIAL PRESSURES, **2**: 54, **4**: 126, **6**: 210

FISHERIES LAW
Legal Aspects of Commercial Sea-Fishing in the EEC rev., **2**: 64-65

FLAC (FREE LEGAL ADVICE CENTRES)
equality – social welfare arrears, **7**: 254
legal aid – pre-Budget submission, **2**: 67
presentation of solicitors' voluntary contributions, **6**: 220 *(pict.)*
tennis tournament – winning team, **10**: 392 *(pict.)*
Unfair Dismissals Bill 1993 – call for extension, **4**: 156
welfare rights guides, **9**: 358

FRAUD BY SOLICITORS
spot checks being considered, **5**: 190

FREEDOM OF EXPRESSION
parade as a form of speech – US Court ruling, *(Lawbrief)*, **4**: 148

GARNISHEE
remedies of employer
monies owed by employee to employer – *Shalvey v Telecom Eireann*, *(Lawbrief)*, **2**: 49-50

GAZETTE EDITORIAL BOARD (1993-94), **10**: 378

GERMANY
licensing of lawyers
Acquisition of the German Title "Rechtsanwalt" by Irish Lawyers (A. von Furstenberg and A. Grannemann), **3**: 113-14
GROUND RENTS
The Shape of Things to Come (J. M. G. Sweeney), **6**: 227-30

HEALTH AND SAFETY *see* also Mental illness
accidents at work *see* Employer's liability; Occupational safety and health
permanent health insurance, **4**: 138
whiplash (Meurig Devonald), **6**: 233-35

HIGH COURT
practice direction
medical reports and reports of other expert witnesses, **9**: 342
review of activity levels in, **5**: 170

HOLLAND
coffee shops selling "soft" drugs *(Lawbrief)*, **10**: 384

HOTELS
Hotel, Restaurant and Public House Law (M. McDonald), rev., **6**: 215

HOUSING
Local Authority Shared Ownership Scheme *(pr.)*, **9**: 343

HUMAN RIGHTS CONVENTION
suspension of detainee's rights – *Brannigan and McBride v United Kingdom* (ECHR), **6**: 211-12

INDUSTRIAL ACCIDENTS *see* Occupational safety and health

INFORMATION
access to
LAWLINK, **8**: 315-16
environment, relating to
EC directive on freedom of access, **1**: 23-24
terms of employment – EC Directive 91/553/EEC (C. O'Mara), **1**: 13-15

INFORMATION RETRIEVAL SYSTEMS (John Furlong), **1**: 31-32

INFORMATION TECHNOLOGY
The Law of Information Technology in Europe 1992: A Comparison with the USA (A. P. Meijboom and C. Prins, eds.), rev., **4**: 137-38
Law Society/ICL Niall McCarthy Essay Prize, **9**: 357

INSANITY *see* Mental illness

INSURANCE
capping awards in personal injuries cases *see under* Personal injuries
life policy proceeds not paid to solicitors, **5**: 178 *(pr.)*; **8**: 321 *(ltr.)*

INTELLECTUAL PROPERTY RIGHTS *see* Copyright law

INTER-PROFESSIONAL GROUP, **10**: 390

INTERNATIONAL BAR ASSOCIATIONS *see* Associations and societies

INTERNATIONAL LAW
The British Year Book of International Law 1991 (I. Brownlie; D.O. Bowett) rev., **1**: 18

IRISH BUSINESS AND EMPLOYERS' CONFEDERATION (IBEC)
personal injury claims – report, **9**: 362, **10**: 385

IRISH CENTRE FOR EUROPEAN LAW
Spring/Summer Programme, **2**: 48

IRISH COPYRIGHT LICENSING AGENCY, **3**: 95-97

IRISH DOCUMENT EXCHANGE, **2**: 73

IRISH FARM FAMILY THERAPY GROUP, **9**: 339

IRISH LANGUAGE
compulsory Irish requirement *(ltr.)*, **6**: 218; **7**: 266

JUDGES' CLERKS
role and duties of *(Lawbrief)*, **6**: 211

JUDGMENT MORTGAGES
Judgment Mortgage Act 1950, s. 6 – recent judgments (C. Doyle), **8**: 297-99

JUDICIAL APPOINTMENTS *see* also *under* People *for individual appointments*
solicitors as judges, **2**: 45 *(edl.)*
England and Wales, system in, **3**: 88
Minster for Justice on *(Lawbrief)*, **5**: 169
solicitor appointed to UK High Court *(Lawbrief)*, **6**: 211

JUDICIAL COMMISSION, **5**: 170, **7**: 251, **9**: 338

JUDICIAL RETIREMENTS *see under* People

JUDICIAL REVIEW
procedure – warning to lawyers (*R. v Horsham D.C.*), *(Lawbrief)*, **9**: 342
sympathy and natural justice, issue of *(Lawbrief)*, **10**: 383

JURIS EUROPE CONVENTION, **2**: 72

JURISPRUDENCE
Textbook on Jurisprudence (H. McCoubrey and N. White), rev., **9**: 353-54

JUSTICE MEDIA AWARDS, **2**: 54, **6**: 219, **7**: 251; 263 *(pict.)*

LABOUR LAW
employer's remedies
monies owed by employee to employer – *Shalvey v Telecom Eireann, (Lawbrief)*, **2**: 49-50
Employment Law (M. Forde), rev., **7**: 269-70
terms of employment
Information on Terms of Employment – EC Directive (Ciaran O'Mara), **1**: 13-15
unfair dismissals
FLAC/CLCC call for extension of new Bill, **4**: 156

LAND ACT 1965
s. 45 consent – exempted "towns" *(pr.)*, **10**: 395

LAND LAW
LRC Report on Land Law and Conveyancing Law: (5) Further General Proposals, rev., **9**: 351-52
title insurance in the United States (John G. Olden), **1**: 25-29

LAND REGISTRY
decentralisation, **5**: 170
LAWLINK, **8**: 315

LANDLORD AND TENANT LAW
business tenancies – Bill in preparation, **5**: 170
Ground Rents – The Shape of Things to Come (J. M. G. Sweeney), **6**: 227-30
notices to quit
Housing (Miscellaneous Provisions) Act 1992, s. 10, **1**: 17 *(pr.)*

LARCENY
Law Reform Commission Report on the Law relating to Dishonesty, rev., **2**: 63-64

LAW CLERKS
Joint Labour Committee – ERO on PESP, **7**: 254

LAW DICTIONARIES
Dictionary of Law, 4th ed. (L. B. Curzon), rev., **8**: 311

LAW FIRMS *see* also Sole practitioners
Law Firms in Europe (J. Pritchard), **6**: 212
small v large firms, **4**: 125 *(edl.)*

LAW JOURNALS
Irish Criminal Law Journal (S. Murphy, ed.), rev., **7**: 271-72

LAW REFORM COMMISSION
Annual Report, 1992, **9**: 344
Consultation Paper on Occupiers' Liability (1993) rev., **9**: 352-53
Consultation Paper on Sentencing (1993), rev., **5**: 185-86
Report on Land Law and Conveyancing Law: (5), rev., **9**: 351-52
Report on the Law relating to Dishonesty (1992), rev., **2**: 63-64

LAW REPORTS
Index to Irish Law Reports Monthly 1976-1990 (J. Clancy), rev., **1**: 19

LAW REVIEWS
Annual Review of Irish Law, 1991 (R. Byrne and W. Binchy), rev., **4**: 137
The Irish Student Law Review Vol. 3 (1993), rev., **5**: 186-87

LAW SCHOOL
careers adviser appointed, **8**: 294
employer campaign launched, **10**: 399
Entrance Examination (P. O'Connor), **4**: 135
Professional Courses
dates and availability, **4**: 151, **6**: 224; **8**: 296; **10**: 411
timetable: 1994 courses and examinations, **9**: 362

LAW SOCIETY
administration expenses, **10**: 405
admissions policy, **7**: 249, **9**: 333, **10**: 375
special Council meeting, **8**: 294
Advertising Regulations – review sought, **10**: 406
Advisory Committee on Legal Education, **2**: 61 *(pict.)*
annual conference 1993 – Furbo, Co. Galway, **1**: 32, **3**: 112, **5**: 179 *(pict.)*
BOI sponsorship, **2**: 61 *(pict.)*
keynote speakers, **2**: 49
report, **5**: 191-93
Annual General Meeting 1993, **10**: 405-7
Blackhall Place
new reception area, **5**: 188
byelaws amended, **5**: 190
civil legal aid – pilot project *see* Civil legal aid
Committees, **5**: 167; 189 *see* also *individual committees* and Practice notes
membership lists 1993-94, **10**: 374; 377-82
reports missing, **10**: 406
Compensation Fund *see* Compensation Fund
complaints against solicitors *see* Registrar's Committee
Council 1992-93, **2**: 59 *(pict.)*
Annual Dinner, **3**: 81; 99, 101 *(pict.)*
meetings, **1**: 8, **2**: 54, **3**: 89, **4**: 126, **5**: 188, **7**: 249, **8**: 293; 294, **9**: 333
Council 1993-94
elections, **9**: 335
meetings, **10**: 374

courses and seminars, **5**: 167
courts service, submission on *see under* Courts service
disciplinary cases, reports of, *see* Disciplinary cases
education policy, **2**: 54 *see* also Law School; Legal education
Education Review Group, **4**: 126
exhibit at National Ploughing Championships, **8**: 302
Finance Act 1992 (Part VII)
negotiations with Revenue Commissioners *see under* Taxation
financial report 1993, **10**: 405
Guide to Professional Conduct – review, **1**: 8; 11, **9**: 333
half-yearly meeting
President addresses current issues, **5**: 189-90
Justice Media Awards, **2**: 54; **6**: 219
Law School *see* Law School
library, **5**: 167
media awards *see* Justice Media Awards
media reporting *see* Mediawatch
new telephone and fax numbers, **4**: 133
Northern Ireland nominees, **7**: 250
parchment ceremonies *see under* People
Past Presidents' Wives – lunch, **9**: 346 *(pict.)*
personal injuries – opposition to capping awards proposal *see under* Personal injuries
practice notes *see* Practice notes
practising certificate fee, **1**: 8
premises, **10**: 407
President *see* President of Law Society
probate tax opposition *see* Probate tax
public relations policy, **10**: 406
Director-General on, **4**: 131, 132
DSBA meeting criticisms, **4**: 128-29
regulatory role, **6**: 209
representatives on other bodies (1993-94), **10**: 380-81
revised standard rent review clauses – launch, **2**: 60 *(pict.)*
roles of *(Pres.)*, **5**: 167
Seanad Eireann nomination – Denis O'Donovan, **1**: 8
seminars and courses
collateral warranties seminar, **5**: 181 *(pict.)*
services provided *(Pres.)*, **5**: 167
sole practitioners and small firms policy *see* Sole practitioners
Solicitor Link service, **8**: 316
Special General Meeting
Finance Act 1992, Part VII, **6**: 207-8
Staff Retirement Fund Committee, **10**: 406
Vice-Presidents 1993-94, **9**: 335 *(pict.)*
visits to Blackhall Place
Minister of State for Commerce and Technology (Seamus Brennan), **10**: 369 *(pict.)*
UK court reporters and journalists, **8**: 305 *(pict.)*
Younger Members' Committee *see under* Younger members' news

LAWBRIEF (E. G. Hall)
barristers – an endangered species, **3**: 105
business tenancies – Bill in preparation, **5**: 170
Circuit and High Courts – review of activity levels, **5**: 170
comatosed patient: disconnecting the feeding tubes, **1**: 9-10
competition law, publications on, **3**: 106
computerisation in courts, **5**: 169
conveyancing – "lock-out agreement" *(Pitt v PHH Asset Management Ltd)*, **7**: 256
court dress, **5**: 170, **7**: 256
courthouse accommodation, **5**: 169
Criminal Justice Act 1993, **4**: 147-48
Dail Question Time (30 March) – justice issues, **5**: 169
DNA testing, **5**: 169
electronic mail trail, **5**: 170
freedom of expression – parade as a form of speech (US court ruling), **4**: 148
Holland – coffee shops, **10**: 384
International Association of Defence Counsel – tenets of professionalism, **8**: 313-14
Judicial Commission, **5**: 170
judicial review
lack of sympathy in decision-making body *(R. v Tower Hamlets L.B.C.)*, **10**: 383
sympathy and natural justice *(Garvan v Criminal Injuries Tribunal)*, **10**: 383
warning to lawyers *(R. v Horsham D.C.)*, **9**: 342
Land Registry decentralisation, **5**: 170
limitation of actions – *Boylan v Motor Distributors Ltd*, **8**: 314
professional negligence – *McMullen's* case, **8**: 313
references to European Court
judges must set out facts and law in detail – judgment in *Circostel*, **2**: 50
remedies of employer
monies owed by employee to employer – *Shalvey v Telecom Eireann*, **2**: 49-50
rituals of the law: the judges' tipstaff, **6**: 211
Rules of the Superior Courts – amendments, **9**: 341
secrets of success, **7**: 256
solicitor appointed to UK High Court, **6**: 211
solicitor judges of Circuit and High Courts, **5**: 169
subject to contract – *Boyle v Lee*, **3**: 105
suspension of detainee's rights justified – *Brannigan and McBride v United Kingdom* (ECHR), **6**: 211-12
telephone privacy
Interception of Postal Packets and Telecommunications Messages Act 1993, **7**: 255
transmission of documents by fax
ICDS Recruitment Consultants v Gillespie, **1**: 10-11
video surveillance in Dublin area, **5**: 169
Why Smart People do Dumb Things, **4**: 147
witholding tax credits – constitutional challenge, **9**: 341-42

LAWLINK, **8**: 315-16

LAWTECH '93, **8**: 316

LEGAL AID
adequacy of system questioned *(Pres.)*, **3**: 87
civil scheme *see* Civil legal aid
criminal scheme *see* Criminal legal aid
Legal Aid Board – meeting with President of Law Society, **1**: 20 *(pict.)*

LEGAL EDUCATION *see* also Apprentices; Law School
Advisory Committee – inaugural meeting, **2**: 61 *(pict.)*
compulsory Irish requirement *(ltr.)*, **6**: 218; **7**: 266
Continuing Legal Education courses, **5**: 167
Diploma in Property Tax – first conferring, **9**: 348 *(pict.)*
education policy of Law Society
review of, **2**: 54, **4**: 126, **5**: 189
YMC seeks views, **1**: 32
scholarships
Holmes O'Malley Sexton Scholarship, **5**: 194
J. P. O'Reilly Memorial Scholarship, **6**: 221 (pict.), **7**: 272
Overend Scholarship, **6**: 220 *(pict.)*

LEGAL OMBUDSMAN, **9**: 339

LEGAL POSITIONS, ACCESS TO
solicitors' ineligibility *(edl.)*, **2**: 45

LEGAL REVIEWS *see* Law reviews

LEGAL SYSTEM
underfunding criticised *(Pres.)*, **3**: 87

LIBERAL PROFESSIONS IN EC, **10**: 390

LIFE POLICY PROCEEDS, **5**: 178 *(pr.)*; **8**: 321 *(ltr.)*

LIMITATION OF ACTIONS
personal injury actions – "date of knowledge" *Boylan v Motor Distributors Ltd*, **8**: 314

LITIGATION COMMITTEE
list of members 1993-94, **10**: 378
practice notes *see under* Practice notes

LOCAL AND INTERNATIONAL ASSOCIATIONS *see* Associations and societies

LOCAL GOVERNMENT
housing *see* Housing
planning and development law *see* Planning law

LOST WILLS
Bannerton, Michael (Ballinasloe, Co. Galway), **10**: 414
Bannon, Thomas (Two-Mile-Borris, Thurles, Co. Tipperary), **8**: 282
Bosanquet, Marie (Leinster Rd, Rathmines, Dublin 6), **10**: 414
Breen, Maureen (Ballinclea Rd, Killiney, Co. Dublin), **9**: 366
Breen, Ursula (Ballinclea Rd, Killiney, Co. Dublin), **9**: 366
Brennan, James (Knockcrooghery, Co. Roscommon), **9**: 366
Browne, Mary (Crawford St, Westminster, London, and Coolnahane, Kanturk, Co. Cork), **8**: 322
Burke, Padraig (Mayfield Heights, Montenotte, Cork), **9**: 365
Byrne, Seamus (Howth, Dublin), **1**: 36
Canton, Marie Josephine (Maureen) (Delgany, Co. Wicklow),**10**: 414
Carolan, Elizabeth (Kingscourt, Co. Cavan), **3**: 115
Casey, Patrick (Drumraney, Athlone and Walshestown, Mullingar, Co. Westmeath), **5**: 198
Coleman, James (Mt Merrion, Dublin), **8**: 282
Colligan, Patrick (Kilglass, Co. Roscommon), **9**: 366
Connor, Michael (Lisduff, Longford), **1**: 36
Cox, David (Ballinluska, Myrtleville, Co. Cork), **8**: 282
Creedon, Frances (Whitehall Rd, Terenure, Dublin), **4**: 158
Dillon, Eva (Ballycarney, Ferns, Co. Wexford), **4**: 158
Donaghy, Thomas (Fortfield Park, Terenure, Dublin), **4**: 158
Dowling, Ann (Naas, Co. Kildare, formerly of Graiguenamanagh, Co. Kilkenny), **9**: 366
Dunne, Elizabeth (Manor Place, Dublin 7), **6**: 238
Egan, Kieran (Cedarwood Ave, Glasnevin, Dublin 11), **10**: 414
Ellis, Noreen (Glasheen Rd, Cork), **3**: 117
Fallon, Maura (Maureen) (Kilrooskey, Co. Roscommon), **9**: 366
Fitzgerald, Bridie (Loughrea, Co. Galway), **9**: 366
Gleeson, Jack (Mountcashel, Sixmilebridge, Co. Clare), **4**: 158
Gorman, Marcella (Galtymore Rd, Drimnagh, Dublin 12), **5**: 199
Graves, Edward (Offaly Rd, Cabra, Dublin 7), **1**: 36
Harrington, Doreen (Ballygall Road East, Finglas, Dublin 11), **6**: 238
Hennessy, Patrick (Courtnacuddy, Enniscorthy, Co. Wexford), **4**: 158
Holbrook, Laura (Hollybrook Grove, Clontarf, Dublin 3), **6**: 238
Homan, Eleanor Cherry (Lansdowne Rd, Belfast), **4**: 158
Horan, John (Gillingham, Kent), **9**: 366
Hurley, Breda (Friars Rd, Turners Cross, Cork), **3**: 117
Jacob, Mary T. (Clara, Co. Offaly), **3**: 117
Johnston, Mary (Albert Rd, Cork), **3**: 115
Jones, Michael W. (Leitrim Place, Wicklow), **8**: 282
Joseph, Ellen (Mountrath, Co. Laois), **2**: 78, **3**: 117
Kelly, John (Jack) (Ballyhea, Charleville, Co. Cork), **8**: 282
Kenna, Joseph (St. Alban's Park, Dublin 4), **8**: 322
Kirwan, Ellen (Coolevin Rd, Dublin 8), **8**: 282
Larkin, Edward (Ballygall Parade, Finglas, Dublin), **4**: 158
Longworth, Rosaleen Galvin (Wellmount Court, Finglas, Dublin 11), **8**: 322

McCarthy, Patrick (Lixnaw, Co. Kerry), **10**: 414
McCluskey, Michael (St. Brendan's Tce, Coolock, Dublin 5), **5**: 198
McCormack, John (Dowras, Birr, Co. Offaly), **4**: 158
McDonagh, Walter (Rahoon, Galway and Boston, Mass.), **2**: 78
McEvoy, Margaret (Mairead) (Carrickbrennan Rd, Monkstown, Co. Dublin), **8**: 282
McGovern, Tommy (Oakley Rd, Ranelagh, Dublin 6), **8**: 282
McKeon, Michael (Bonmahon, Co. Waterford), **1**: 36
Mackey, Margaret Monica (Tara Nursing Home, Bray, Co. Wicklow), **8**: 322
Mangle, William (Churchtown Rd Lr., Dublin 14), **9**: 365
Molloy, Joan (Eden Court, Mahon, Blackrock, Cork), **8**: 282
Molloy, Matthew (Oxford Rd, Dublin 6), **5**: 199
Moore, Henry James (Carbury, Co. Kildare), **5**: 198
Murphy, Austin (Clonbrock, Rathangan, Co. Kildare), **8**: 322
Murphy, William Barry (Primrose Ave, Dublin), **4**: 158
Murray, Helena Mary (Miltown Malbay, Co. Clare), **9**: 366
Nicholson, Ann (Emmet Rd, Inchicore, Dublin 8), **2**: 78, **3**: 117
Nolan, Peter (Woodside Rd, Sandyford, Dublin), **1**: 36
Nutty, Robert Aloysius (Furry Park Rd, Killester, Dublin 5), **5**: 198
O'Connor, Andrew (Cross, Claremorris, Co. Mayo), **2**: 78
O'Connor, Lena (The Batteries, Athlone, Co. Westmeath), **9**: 365
O'Connor, Michael J. (The Batteries, Athlone, Co. Westmeath), **9**: 365
O'Connor, Michael (Lisduff, Longford), **1**: 36
O'Donohue, Michael (Drumeevin, Kilfenora, Co. Clare), **4**: 158
O'Donovan, Nellie (Bandon, Co. Cork), **1**: 36
O'Dowd, Marguerite (Donore Ave, Dublin), **1**: 36
O'Reilly, Alphonsus (Bartra Heights, Killala, Co. Mayo), **4**: 158
O'Sullivan, James (Derrynane Rd, Turner's Cross, Cork), **9**: 366
Pearce, Victor Frederick (Mount Garrett, New Ross), **8**: 282
Power, Rosaleen (Eglinton Tce, Dundrum, Dublin 14), **5**: 199
Rice, Mary Anne (Ladycroft, Wellington, Shropshire), **10**: 414
Richardson, Mary Margaret (Dartry, Cootehill, Co. Cavan), **8**: 282
Ryan, James (Russell Hill, Inishannon, Co. Cork), **6**: 238
Sarembre, Eric (Oberstown, Tara, Co. Meath), **1**: 36
Scanlon, Patrick (Ballynahina, Whitecross, Co. Cork), **6**: 238
Sheehy, James (Kingscourt, Co. Meath), **2**: 78
Smith, Leo M. (Goatstown, Co. Dublin), **9**: 366
Smith, Philip (Listowel, Co. Kerry), **10**: 414
Smyth, Owen (Aughnamullen, Castleblayney, Co. Monaghan), **3**: 115
Turley, James (Mt Pleasant Parade, Rathmines, Dublin 6), **3**: 117
Walsh, Eamonn (Claremount Rd, Sandymount, Dublin 4), **2**: 78
Walsh, John (Skerries, Co. Dublin), **8**: 282
Weldon, Patrick Gerard (Drogheda, Co. Louth), **2**: 78

MARINE LAW *see* Fisheries law

MARRIAGE *see* also Family law
Divorce in Ireland – Who Should Bear the Cost? (P. Ward), rev., **10**: 401
marital breakdown seminar, **9**: 359-60
mediation process, **9**: 360
separation
DSBA launches draft deed of separation, **4**: 139

MEDIA AWARDS *see* Justice Media Awards

MEDIAWATCH
Agricultural Appeals Tribunal called for, **8**: 302
civil legal aid – pilot project, **8**: 301
courthouse accommodation, **7**: 251
courts service, **6**: 210, **7**: 251
Law Society/Bar Council submission, **8**: 301, **9**: 339
financial pressures, **6**: 210
Irish Farm Family Therapy Group, **9**: 339
Justice Media awards, **7**: 251
legal ombudsman, **9**: 339
personal injuries
capping of awards, **5**: 171, **7**: 251, **8**: 301, **10**: 385
legal costs, **6**: 209
probate tax campaign, **5**: 171; **6**: 209, **7**: 251
regulatory role of Law Society, **6**: 209
tax amnesty legislation, **6**: 210

MEDICAL CARE
comatosed patient: disconnecting the feeding tubes *(Lawbrief)*, **1**: 9-10

MEDICAL CONDITIONS *see* Health and safety

MEDICAL REPORTS
Medical Council ethical guide, **7**: 250
personal injury cases (practice direction), **9**: 342

MEDICAL WITNESSES
personal injury cases (practice direction), **9**: 342

MEDICO-LEGAL REPORTS
guidelines – Medical Council/Law Society agreement *(pr.)*, **8**: 295

MEDICO-LEGAL SOCIETY *see under* Associations and societies

MENTAL HANDICAP
solicitors group on mental handicap legal issues, **9**: 362

MENTAL ILLNESS
wardship procedures (J. Costello), **4**: 143-46

MINISTER FOR JUSTICE
Dail Question Time (30 March), **5**: 169

MISCONDUCT *see* Disciplinary cases; Professional conduct

MORTGAGES
The Right Type of Mortgage (Fergus Goodbody), **2**: 55-57

MOTOR INSURANCE
capping awards in personal injuries cases *see under* Personal injuries

NATURAL JUSTICE
compensation tribunal – *Garvan v Criminal Injuries Tribunal*, **10**: 383

NEGLIGENCE
employer *see* Employer's liability
occupier *see* Occupier's liability
personal injury claims *see* Personal injuries
solicitors *see* Professional negligence

NORTHERN IRELAND
courts service, **9**: 329
Law Society, **7**: 250, **8**: 293

NOTICES TO QUIT
Housing (Miscellaneous Provisions) Act 1992, s. 10 *(pr.)*, **1**: 17

OBITUARIES *see under* People

OCCUPATIONAL SAFETY AND HEALTH *see* also Employer's liability, Accidents at work
Liability for Accidents at Work: The New Regime (C. O'Mara), **10**: 387-89
principles of prevention, **10**: 388
Deadly Wages – Irish Work Hazards (E. McGarr), rev., **8**: 309-10
Framework Directive 1989, **10**: 387-88
General Application Regulations 1993, **10**: 387; 388
Safety, Health and Welfare at Work (General Application) Regulations 1993, **6**: 213
temporary or mobile construction sites directive (1992), **10**: 388-89

OCCUPIERS' LIABILITY
LRC Consultation Paper on Occupiers' Liability (1993) rev., **9**: 352-53

OFFICE MANAGEMENT *see* also Practice management; Technology notes
Law Society conference – "Quality – the Competitive Edge," **2**: 49

PEOPLE
appointments
District Court – recent appointments, **1**: 1 *(pict.)*
High Court – Mr. Justice Hugh Geoghegan, **1**: 15
Law School careers adviser – Hazel Boylan, **8**: 294
Minister for Justice – Maire Geoghegan-Quin, **2**: 41 *(pict.)*
Registrar's Committee – lay observers, **10**: 408 *(pict.)*
Supreme Court – Ms. Justice Susan Denham, **1**: 15
award winners
AIB Conveyancing Prize – Mary Hall, **4**: 140 *(pict.)*
Holmes O'Malley Sexton Scholarship award – Elaine Morgan, **5**: 194
J. P. O'Reilly Memorial Scholarships 1992 and 1993; **6**: 221 *(pict.)*
Law Society/ICL Niall McCarthy Essay Prize, **9**: 357 *(pict.)*
Law Society's Justice Media Awards, **2**: 54, **6**: 219, **7**: 251; 263 *(pict.)*
Overend Scholarship - Collette Duffy, **6**: 220 *(pict.)*
TCD Doctorate – Eamonn G. Hall, **1**: 20 *(pict.)*
UCC Honorary Degree of LL.D. – Gerald Goldberg, **5**: 180 *(pict.)*
Young Business Woman Award – Mairead Bourke, **7**: 250
charitable functions
CYC 60s night – E. Monahan and Rev. Martin Clarke, **8**: 307
deaths *see* also obituaries *(below)*
Browne, Donal E., **8**: 293
elections
Bar Council – chairman and members, **7**: 279
Council of Law Society 1993-94, **9**: 335
DSBA President – Daire Murphy, **9**: 347 *(pict.)*
President of Law Society 1993-94 – Michael V. O'Mahony, **9**: 335 *(pict.)*
Vice-Presidents of Law Society – Patrick Glynn, Patrick O'Connor, **9**: 335 *(pict.)*
honorary tributes
Kildare Bar Association – plaque to honour Myles C. Murphy, **6**: 222
nominations to Seanad
O'Donovan, Denis, **1**: 8
obituaries
Fahy, Fergus L., **4**: 139
Hallinan, Vincent (J.G.Olden), **1**: 33
O'Reilly, William (Solicitors' Buildings), **10**: 386 *(pict.)*
overseas offices opened
business centre in Madrid – Niall O'Connor, **5**: 194 *(pict.)*
parchment ceremonies, **3**: 100, **4**: 140, **6**: 220, **9**: 346 (pict.), 141
admission of first German lawyer – Dr. Walter Eberl, **7**: 279 *(pict.)*
presentations
first conferring of diplomas in property tax, **9**: 348 *(pict.)*
Kildare Bar Association – presentation to Patrick V. Boland, **4**: 140 *(pict.)*

Laois Bar Association – presentation to Paul Ryan, **10**: 393 *(pict.)*
O'Connor & Dudley (Mallow) – presentation to Andrew Comyn, **8**: 305 *(pict.)*
Solicitors Financial Services – presentation to Walter Beatty, **9**: 346 *(pict.)*
solicitors' voluntary contributions to FLAC, **6**: 220 *(pict.)*
Tipperary Bar Assoc. – presentation to Francis Murphy, **1**: 21 *(pict.)*
Tipperary Bar Assoc. – presentation to Judge William O'Connell, **3**: 101 *(pict.)*
YMC presentations to charities etc, **1**: 20 (pict.), **5**: 180 (pict.), **10**: 392 *(pict.)*
Presidents of the Law Society *see* President of Law Society
Promotions
Senior Solicitor Complaints – Linda Kirwan, **10**: 408 *(pict.)*
retirements
District Court – Judge Bernard G. Carroll, **7**: 262 *(pict.)*
Supreme Court – Hon. Mr. Justice Hederman, **7**: 241 *(pict.)*; 248

PERSONAL INJURIES
capping awards proposal, **5**: 165, **8**: 289 *(edl.)*, **10**: 407
Council campaign, **9**: 333, **10**: 374
IBEC survey, **9**: 362, **10**: 385
Law Society submission, **8**: 293, **10**: 397-98
media reports, **5**: 171, **7**: 251, **8**: 301, **10**: 385
President of Law Society on, **5**: 189-90
"unjust, unworkable and unconstitutional" *(edl.)*, **8**: 289
claims
right to pursue valid claims *(edl.)*, **1**: 5, **10**: 373
increase in claims, **6**: 209 legal costs, **6**: 209
limitation of actions – *Boylan v Motor Distributors Ltd*, **8**: 314
practice direction
medical reports and reports of other expert witnesses, **9**: 342
whiplash – effects on the temporo mandibular joint (Dr. Meurig Devonald), **6**: 233-35

PERSONAL REPRESENTATIVES
liability under the social welfare code (G. Whyte), **5**: 175-77

PLAIN LANGUAGE
LRC to examine language of the law, **9**: 344

PLANNING LAW
compensation
exclusion – *85 Developments Ltd* (Garret Simons), **3**: 103-4

POLICY COMMITTEE
list of members 1993-94, **10**: 377

POSTAL PACKETS, INTERCEPTION OF
Interception of Postal Packets and Telecommunications Messages Act 1993 *(Lawbrief)*, **7**: 255

POSTAL SERVICES
Document Exchanges and the EC Green Paper on Postal Services (Paul Puxon), **2**: 73-74

PRACTICE
licensing of lawyers in Germany, **3**: 113-14
Rules of the Superior Courts – 1993 amendments, **9**: 341

PRACTICE DIRECTIONS
personal injury and other actions
medical reports and reports of other expert witnesses, use of, **9**: 342

PRACTICE MANAGEMENT, **5**: 188
courses and seminars, **5**: 167
A Letter to my Solicitor ("A client"), **6**: 225-26
Managing Your Practice (Justin McKenna), **4**: 153
quality management
"Quality – the Competitive Edge" (Law Society conference), **2**: 49, **5**: 191-93, **7**: 247 *(Pres.)*
Ten Tips for Immediate Results (B. O'Reilly), **5**: 172-73
Solicitor Link service, **8**: 316

PRACTICE MANAGEMENT COMMITTEE, **2**: 54
list of members 1993-94, **10**: 379

PRACTICE NOTES
advance fee fraud – warning, **7**: 253
Company and Commercial Law Committee
Business Names Regulations 1993 – fee increases, **6**: 206
compulsory winding up, **10**: 396
return of allotment of shares, **10**: 395-96
Conveyancing Committee
Building Control Act 1990 amnesty, **7**: 253
Certificate as to no Deaths or Voluntary Dispositions, **6**: 206
Certificates of discharge from CAT, **7**: 253
Certificates of no Dealings Pending, **6**: 206
expert witness in conveyancing cases, **8**: 295
Family Home Declarations – correction to averment no. 2 of Form 3, **6**: 210
General Conditions of Sale – non-conforming matter, **7**: 253
Local Authority Shared Ownership Scheme, **9**: 343
new house grants for first-time purchasers, **3**: 92, **4**: 139
notices to quit – Housing (Miscellaneous Provisions) Act 1992, s. 10, **1**: 17
private residential property and Clause 36 of the Contract for Sale, **1**: 17
residential property tax – certificate of clearance, **6**: 239
residential property tax/probate tax – requisitions on title, **9**: 343
revenue undertakings – publican's licences, **9**: 343

Undertaking to Discharge Land Registry Queries, **6**: 206
Criminal Law Committee
legal aid fees, **10**: 404
District Court sittings in Swords and Balbriggan
corrections to Law Directory, **6**: 206; **7**: 253
equality – social welfare arrears (FLAC), **7**: 254
Land Commission
exempted "towns" under s. 45 Land Act 1965, **10**: 395
Law Clerks Joint Labour Committee – ERO (3rd phase of PESP), **7**: 254
Law Library fax number, **6**: 210
Litigation Committee
High Court personal injury list – removal of settled cases, **3**: 93
medico-legal reports, **8**: 295
Road Traffic Act fees, **3**: 93
Lloyd's Underwriters
service in Ireland, **3**: 93
Professional Purposes Committee
conveyancing contracts – amendments by purchaser before execution, **8**: 295
life policy proceeds not paid to solicitors, **5**: 178; **8**: 321 *(ltr.)*
Probate Office practice – charitable bequests, **5**: 178
Taxation Committee
general tax amnesty, **8**: 295; *corr.* **10**: 396
incentive amnesty, **10**: 396
Law Society Tax Guide, 1993 – correction, **5**: 178
penalties for late payment of stamp duties (notice from Revenue Commissioners), **3**: 91-92

PRACTISING CERTIFICATES
level of applications for 1993/94, **2**: 54

PREMISES COMMITTEE
list of members 1993-94, **10**: 379
new reception area at Blackhall Place, **5**: 188

PRESIDENT OF LAW SOCIETY
1992-93 (Raymond Monahan)
address to half-yearly meeting, **5**: 189-90
address to parchment ceremony (October, 1993), **9**: 349
complaints handling, **1**: 7-8
contribution of solicitors to economy, **9**: 349
family photograph, **5**: 161
Government must act on Courts Service, **8**: 291
Irish lawyers admitted to U.S. Supreme Court, **2**: 47
"The Law Society is here to help you...," **5**: 167
lawyers' role in society undervalued, **3**: 87
legal system suffers from acute underfunding, **3**: 87
"paltry" legal aid criticised, **9**: 349
"Quality – our competitive edge," **7**: 247
tribute to, **10**: 407
1993-94 (Michael V. O'Mahony), **9**: 325; 335 (pict.), **10**: 375
Anticipating the New Solicitors Bill, **9**: 330

PRIVACY
Interception of Postal Packets and Telecommunications Messages Act 1993 *(Lawbrief)*, **7**: 255

PROBATE OFFICE
charitable bequests – revised practice *(pr.)*, **5**: 178

PROBATE TAX, **3**: 87, **5**: 167; 189
Alliance Against Probate Tax, **5**: 171, **6**: 209, **7**: 249; 251
implications for practitioners (R. Grogan), **9**: 355-56
Taxation Committee pre-Budget submission, **10**: 413

PROFESSION IN THE MEDIA *see* Mediawatch

PROFESSIONAL CONDUCT *see* also Disciplinary cases
annual report of Disciplinary Committee 1992-93, **10**: 409
complaints procedure, **1**: 7-8 *(Pres.)*; *see also* Registrar's Committee
Guide to Professional Conduct – review underway, **1**: 8; 11, **9**: 333

PROFESSIONAL NEGLIGENCE
Managing Your Practice (Justin McKenna), **4**: 153
professional skill and knowledge – *McMullen's* case, **8**: 313
risk of claim – ground rents (J. M. G.Sweeney), **6**: 227-30

PROFESSIONAL PURPOSES COMMITTEE, **1**: 8
list of members 1993-94, **10**: 379
practice notes *see under* Practice notes

PROFESSIONALISM
International Association of Defence Counsel – tenets of professionalism, **8**: 313-14

PUBLIC HOUSES
Hotel, Restaurant and Public House Law (M. McDonald), rev., **6**: 215

PUBLIC PROCUREMENT LAW
Public Procurement (P. Lee), rev., **6**: 216

PUBLIC RELATIONS COMMITTEE
list of members 1993-94, **10**: 377

PUBLICAN'S LICENCES
revenue undertakings *(pr.)*, **9**: 343

PUBLICATIONS/LIBRARY COMMITTEE
list of members 1993-94, **10**: 379

QUALITY MANAGEMENT *see under* Practice management

RATING AND VALUATION
Rating Valuation in Ireland – The Appeal System (T. O'Connor), **8**: 317-19

REGISTRAR'S COMMITTEE
handling of complaints *(Pres.)*, **1**: 7-8
lay observers, **3**: 85 *(edl.)*; 89, **7**: 249, **10**: 408 *(pict.)*
list of members 1993-94, **10**: 377

REMUNERATION/COSTS COMMITTEE, **3**: 90, **7**: 250, **8**: 293
list of members 1993-94, **10**: 379
plan of action outlined, **5**: 188
survey results, **4**: 126; **5**: 189

RETIREMENTS *see under* People

REVENUE *see* Taxation

REVENUE UNDERTAKINGS
publican's licences *(pr.)*, **9**: 343

RULES OF THE SUPERIOR COURTS
1993 amendments, **9**: 341

RUSSIAN BUSINESS VENTURES
advising clients on (Julie Sadlier), **4**: 149-51

SADSI NEWS, **2**: 58
Committee 1992/93, **2**: 60 *(pict.)*
Constitution, **7**: 278
Cork news, **7**: 278
elections for Auditor, **7**: 278, **9**: 362
International Moot Court Competition 1993 – SADSI team, **3**: 100 *(pict.)*
programme of events (October-December), **7**: 278
recent and prospective activities (Paula Murphy), **4**: 155
Southern Hospitality Weekend (Cork), **8**: 319

SAFETY AND HEALTH *see* Health and safety

SALE OF LAND
formation of contract
"subject to contract" – whether sufficient note or memorandum (Boyle v Lee), **3**: 105

SAMARITANS, **9**: 363

SCHOLARSHIPS *see* Legal education

SENTENCING
Criminal Justice Act 1993, **4**: 147-48
LRC consultation paper, 1993, rev., **5**: 185-86

SEPLIS, **10**: 390

SEXUAL ABUSE
The Kilkenny Incest Case (K. Wood) Poolbeg Press 1993, rev. by N. Blackwell, **7**: 271

SOCIAL SERVICES
Irish Social Services (J. Curry), rev., **5**: 185

SOCIAL WELFARE
liability of personal representatives
recent amendments in the Social Welfare Act 1993 (G. Whyte), **5**: 175-77

SOCIETIES *see* Associations and societies

SOLE PRACTITIONERS
debate about future of
Director General on, **4**: 131, 133
DSBA meeting critical of Law Society, **4**: 127
reaction to newspaper article, **4**: 126
training for, **4**: 127

SOLICITOR LINK
launch, **8**: 304 (pict.); 316

SOLICITORS *see* also Sole practitioners
alternative job opportunities, **5**: 174
Law School launches employer campaign, **10**: 399
Compensation Fund *see* Compensation Fund
complaints against *see* Registrar's Committee
contribution of solicitors to economy *(Pres.)*, **9**: 349
entry to profession
admissions policy, **7**: 249, **8**: 294, **10**: 375
compulsory Irish requirement *(ltr.)*, **6**: 218; **7**: 266
entrance examination (P. O'Connor), **4**: 135-36
judicial appointment, eligibility for *see under* Judicial appointments
management of practice *see* Practice management
misconduct *see* Disciplinary cases; Professional conduct
small v large firms, **4**: 125 *(edl.)*

SOLICITORS ACTS COMMITTEE, **10**: 406
list of members 1993-94, **10**: 379-80

SOLICITORS' ADVERTISING REGULATIONS 1988
review sought, **10**: 406

SOLICITORS (AMENDMENT) BILL 1991, **4**: 126

SOLICITORS (AMENDMENT) BILL 1993, **4**: 132, **5**: 167; 189, **9**: 331 *(Pres.)*
Law Society Committee, **3**: 90

SOLICITORS' BENEVOLENT FUND, **5**: 174; 190
"Trial by Jury" production, **5**: 180, **6**: 220 *(pict.)*
YMC presentations, **1**: 20, **10**: 392 *(pict.)*

SOLICITORS' RETIREMENT FUND, **5**: 190
list of members 1993-94, **10**: 380

SOMALIA FUND, **4**: 156

SPORTS ACTIVITIES
Apprentices Athletic Club, **6**: 232 *(pict.)*
FLAC tennis tournament – winning team, **10**: 392 *(pict.)*
Irish Cycling Guide (B. Walsh) rev., **2**: 67
Irish Lawyers Fishing Club, **6**: 222 *(pict.)*
Irish Solicitors Golfing Society
President's Prize, **7**: 279
results of Captain's prize, **6**: 217
Irish University Athletics Championships, **6**: 232
Lady Solicitors Golf Outing, **6**: 217
Law Society Apprentices/YMC GAA team, **5**: 181 *(pict.)*
Law Society tennis team – match against Law Society of England and Wales, **9**: 347 *(pict.)*
Lawyers' Flying Club dinner, **8**: 304 *(pict.)*
mara-cycle in aid of Benevolent Fund, **5**: 174
Midland Circuit Golf Alliance, **4**: 133
Solicitors Golfing Society
President's Prize, **9**: 363
Western Lawyers Golf Society, **7**: 276, **10**: 393 *(pict.)*
YMC Soccer Blitz 1993, **8**: 304 (pict.); 319

SPORTS LAW
international society to be formed, **2**: 76

STAMP DUTY
Cork Stamp Duty Office – expanded facilities, **10**: 412
Law of Stamp Duty, 2nd ed. (M. O'Connor and P. Cahill) rev., **3**: 98
Law Society Tax Guide, 1993 – correction, **5**: 178
penalties for late payment *(pr.)*, **3**: 91
Taxation Committee pre-Budget submission, **10**: 413

SYS *see under* Younger members' news

TAXATION *see* also Taxation Committee
amnesties
general tax amnesty *(pr.)*, **8**: 295; *corr.* **10**: 396
incentive amnesty *(pr.)*, **10**: 396
Law Society criticises legislation, **6**: 210
CAT *see* Capital acquisitions tax
Diploma in Property Tax – first conferring, **9**: 348 *(pict.)*
Finance Act 1974 – section 59 notices, **7**: 249
Finance Act 1992 (Part VII) – reporting provisions
client confidentiality issue, **6**: 207, 208
concessions obtained, **4**: 126; **6**: 207
negotiations with Revenue Commissioners, **5**: 190, **6**: 207, **7**: 249
Special General Meeting, **4**: 126; **6**: 207, 221 *(pict.)*
income levy – abolition sought, **10**: 413
income tax – pre-Budget submission, **10**: 413
probate tax *see* Probate tax
residential property tax, **10**: 413
certificate of clearance, **6**: 239 *(pr.)*
revenue undertakings – publican's licences, **9**: 343 *(pr.)*
stamp duty *see* Stamp duty
Tax Acts 1992-1993 (A. Moore, ed.), 1993, rev., **7**: 270
Tax Guide 1992-1993 (S. Keegan, ed.), rev., **7**: 270
value added tax, **10**: 413
witholding tax credits – constitutional challenge, **9**: 341-42

TAXATION COMMITTEE, **3**: 90, **7**: 249
Budget 1994 submission, **10**: 413
Finance Act 1992 negotiations *see under* Taxation
list of members 1993-94, **10**: 380
practice notes *see under* Practice notes

TAXATION OF COSTS
standby fees – Law Society appeal, **5**: 188

TECHNOLOGY *see* also Information technology; Technology notes
LAWTECH '93, **8**: 316
Technology Committee
Law Society/ICL Niall McCarthy Essay Prize, **9**: 357
list of members 1993-94, **10**: 380

TECHNOLOGY NOTES (J. FURLONG)
automation in the Companies Registration Office, **3**: 109-10
Computer Programmes: The New Regulations, **6**: 231-32
Document Management: Some Practical Considerations, **7**: 277
fax machines, **2**: 71-72
information retrieval systems, **1**: 31-32
LAWLINK, **8**: 315-16

TELEPHONE PRIVACY
Interception of Postal Packets and Telecommunications Messages Act 1993 *(Lawbrief)*, **7**: 255

TITLE INSURANCE
Title Insurance v Title Registration in the United States (John G. Olden), **1**: 25-29

TRIBUNAL
natural justice – *Garvan v Criminal Injuries Tribunal, (Lawbrief)*, **10**: 383

UNFAIR DISMISSALS BILL 1993
FLAC/CLCC call for extension of, **4**: 156

UNITED KINGDOM
solicitor appointed to High Court *(Lawbrief)*, **6**: 211
solicitors and "cut-price" conveyancing, **6**: 213

UNITED STATES
ABA conference – "Justice for All – All for Justice," **7**: 265-766
ABA Gavel Media Awards, **7**: 266
children's rights, **7**: 265
freedom of expression – parade as form of speech, **4**: 148

information technology
The Law of Information Technology in Europe 1992: A Comparison with the USA (A.P. Meijboom and C. Prins, eds.), rev., **4**: 137-38
obituary – Vincent Hallinan, **1**: 33
Supreme Court – admission of Irish lawyers, **2**: 47 *(Pres.)*; 60 *(pict.)*
Title Insurance v Title Registration in the United States (John G. Olden), **1**: 25-29

UNIVERSITY OF LIMERICK
Holmes O'Malley Sexton Scholarship award – Elaine Morgan, **5**: 194

UNSOUND MIND, PERSONS OF *see* Mental illness

VALUATION *see* Rating and valuation

VALUE ADDED TAX, **10**: 413

VDUS
display screens directive 1990, **10**: 388

WARDS OF COURT
wardship procedures – general guidelines (J. Costello), **4**: 143-46

WHIPLASH
effects on the temporo mandibular joint (Dr. Meurig Devonald), **6**: 233-35

WILLS *see* also Lost wills; Probate tax
Probate Office practice – charitable bequests *(pr.)*, **5**: 178
wards of court, **4**: 145, 146

WITNESSES *see* Expert witnesses

WOMEN
Gender and the Law in Ireland (A. Connelly, ed.), rev., **10**: 403

YMC *see under* Younger members' news

YOUNGER MEMBERS' NEWS *see* also SADSI News
European Young Bar Association founded, **6**: 223
Society of Young Solicitors (SYS)
Spring conference (March 1993), **1**: 24, **3**: 102
Younger Members' Committee (YMC)
Annual Quiz Night, **4**: 141, **5**: 180 *(pict.)*
Law Society Apprentices/YMC GAA team, **5**: 181 *(pict.)*
Younger Members Committee (YMC)
education policy – views sought, **1**: 32
list of members 1993-94, **10**: 380
presentation to Solicitors' Benevolent Fund, **1**: 20, **10**: 392 *(pict.)*
seminar – "Alternative job opportunities for solicitors," **5**: 174
Soccer Blitz, **8**: 304 (pict.); 319
Southern Hospitality Weekend (Cork), **8**: 319

YUGOSLAVIA
Amnesty Irish section initiative, **7**: 267

ALPHABETICAL CASE INDEX

1. Cases Reported in the Recent Irish Cases Supplements (compiled by *Raymond Byrne*)

Alied Irish Banks plc v Ernst & Whinney (Minister for Industry and Commerce, Notice Party), HC 22 Jan. 1992; SC 17 July 1992, **4** (May): 4

Attorney General v Hamilton, HC 10 July 1992; SC 21 Aug. 1992, **5** (June): 1

Bates v Model Makery Ltd, SC 15 July 1992, **3** (April): 4

Beirne v Garda Commissioner, SC 30 Oct. 1992, **5** (June): 3

Best v Wellcome Foundation Ltd, SC 3 June 1992, **3** (April): 4

Chestvale Properties Ltd v Glackin, HC 7 Feb. 1992 and 10 March 1992, **4** (May): 2

Connolly v Dundalk UDC, SC 18 Nov. 1992, **5** (June): 4

Cork County Council v Whillock, SC 3 Nov. 1992, **5** (June): 4

Coyle v An Post, SC 17 Dec. 1992, **7** (September): 4

Crown Chemical Co. (Irl) Ltd v Cork County Council, SC 4 June 1992, **3** (April): 2

Curust Financial Services Ltd v Loewe-Lack-Werk Otto Loewe GmbH & Co. KG, HC 3 July 1992; SC 2 Nov. 1992, **5** (June): 3

Deane v Voluntary Health Insurance Board, SC 29 July 1992, **4** (May): 1

Desmond and Dedeir v Glackin (No. 1), HC 9 Jan. 1992, **4** (May): 3

Desmond and Dedeir v Glackin (No. 2), HC 25 Feb. 1992; SC 30 July 1992, **4** (May): 1

Director of Public Prosecutions (Cloughley) v Mooney, HC 24 June 1992, **6** (July/Aug.): 2

Director of Public Prosecutions v Rooney, HC 25 May 1992, **6** (July/Aug.): 2

Doolan v DPP, HC 15 Sept. 1992, **6** (July/Aug.): 2

Dublin County Council v Eighty Five Developments Ltd, SC 9 April 1992, **3** (April): 2

Duffy v Newsgroup Newspapers Ltd, SC 26 June 1992, **3** (April): 5

Duggan v Armstrong, SC 26 June 1992, **3** (April): 5

Emerald Meats Ltd v Minister for Agriculture (No. 2), SC 16 July 1992, **4** (May): 4

Flynn v Denieffe, SC 15 Dec. 1992, **5** (June): 3

Gannon v B & I Steampacket Co. Ltd, HC 3 July 1992; SC 5 Nov. 1992, **5** (June): 4

Glackin v Trustee Savings Bank, HC 10 April 1992, **4** (May): 2

Glynn (M.) (decd), In bonis, SC 1 April 1992, **1** (Jan/Feb): 2

Gutrani v Governor of Training Unit, Mountjoy Prison, SC 2 July 1992, **3** (April): 3

Hay v O'Grady, SC 4 Feb. 1992, **1** (Jan/Feb): 1

Hibernian Transport Cos. Ltd, In re, SC 21 Jan. 1992, **1** (Jan/Feb): 1

Hong Kong and Shanghai Banking Corp v Icarom plc (Meadows Indemnity Co. Ltd, Third Party), SC 31 July 1992, **5** (June): 2

Hutch v Governor of Wheatfield Prison, HC 28 Feb. 1992; SC 17 Nov. 1992, **5** (June): 2

Irish Bank of Commerce v O'Hara, SC 7 April 1992, **3** (April): 2

Lindsay v Mid-Western Health Board, SC 18 Dec. 1992, **7** (September): 4

Lyons v Curran, HC 27 May 1992, **4** (May): 2

McEleney v McCarron, SC 21 Dec. 1992, **7** (September): 4

McHugh v A.B. (Deciding Officer), SC 11 March 1992, **1** (Jan/Feb): 2

McKenna v An Taoiseach, HC 8 June 1992, **3** (April): 1

McKinley v Minister for Defence, SC 27 July 1992, **4** (May): 3

Megaleasing UK Ltd v Barrett and Ors. (No. 2), SC 20 July 1992, **4** (May): 4

Minister for Agriculture and Food v Cahill, HC 12 Nov. 1992, **7** (September): 3

Minister for Justice v Siuicre Eireann CPT, HC 1 May 1992, **4** (May): 3

Murphy, In re, Courts-Martial Appeal Court, 17 Nov. 1992, **7** (September): 3

Murphy v Donohoe (J.) Ltd, SC 11 March 1992, **1** (Jan/Feb): 1

O'Brien v Patwell, HC 9 Sept. 1992, **6** (July/Aug.): 3

O'Callaghan v Attorney General, HC 22 May 1992; SC 25 Feb. 1993, **6** (July/Aug.): 1

Oshawa Ltd, In re Application of, SC 8 July 1992, **3** (April): 4

O'Toole v Heavey, SC 17 Dec. 1992, **7** (September): 3

People (DPP) v Barr (No. 2), CCA 21 July 1992, **7** (September): 1

People (DPP) v Davis, SC 9 Dec. 1992, **5** (June): 2

People (DPP) v Diemling, CCA 4 May 1992, **7** (September): 1

People (DPP) v G., CCA 13 Nov. 1992, **7** (September): 2

People (DPP) v McCarthy, CCA 31 July 1992, **7** (September): 2

People (DPP) v McKeever, CCA 16 July 1992, **7** (September): 2

People (DPP) v Quilligan and O'Reilly (No. 3), SC 14 July 1992, **3** (April): 3

People (DPP) v Ryan, CCA 30 Nov. 1992, **7** (September): 1

Phonographic Performance (Irl) Ltd v Chariot Inns Ltd, HC 7 Oct. 1992, **6** (July/Aug.): 1

Phonographic Performance (Irl) Ltd v Controller of Industrial and Commercial Property, HC 19 Oct. 1992, **6** (July/Aug.): 1

Probets and Freezone Investments Ltd v Glackin, HC 26 Feb. 1992; SC 30 July 1992, **4** (May): 2

Rogers v Director of Public Prosecutions, HC 2 March 1992, **6** (July/Aug.): 3

Sheehan v O'Reilly, SC 8 Dec. 1992, **5** (June): 1
Slattery v An Taoiseach, HC 8 June 1992, SC 18 June 1992, **3** (April): 1
Smyth v Tunney (No. 3), SC 26 June 1992, **3** (April): 5
Sweeney v Brophy, SC 8 Dec. 1992, **5** (June): 2
Texaco (Irl) Ltd v Murphy (Inspector of Taxes) (No. 2), SC 1 April 1992, **1** (Jan/Feb): 2
TV 3 Television Co. Ltd v Independent Radio and Television Commission, HC 4 May 1992, **7** (September): 3
W. v W., SC 16 Dec. 1992, **6** (July/Aug.): 3
Walsh v Family Planning Services Ltd, SC 9 April 1992, **3** (April): 5
Wiley v Revenue Commissioners, SC 9 April 1992, **3** (April): 2
Wogan's (Drogheda) Ltd, In re; Jenkins v Hill Samuel Bank Ltd, SC 10 April 1992, **3** (April): 1

[ALPHABETICAL CASE INDEX]

2. Case Comment – cases examined and/or specially mentioned in articles, editorials, book reviews etc.

Airedale National Health Service Trust v Bland, The Times Law Report, 10 Dec. 1992, **1**: 9
Allied Irish Banks plc v Griffin [1992] 2 IR 70; [1992] ILRM 590, **8**: 297; 299
Barber v Supreme Court of Los Angeles County, 147 Cal. App. 3d. 1006, 47 ALR 4th 1, **1**: 9
Boyle v Lee [1992] 1 I.R. 555, **3**: 105
Bradley v CIE [1976] IR 217, **10**: 387
Brannigan and McBride v United Kingdom, ECHR May 26, 1993, **6**: 211
C. (M.) v Legal Aid Board [1991] 2 IR 43, **5**: 195
Casey v Irish Intercontinental Bank [1979] IR 366, **3**: 106
City View Press v AnCo [1980] IR 381, **7**: 259
Credit Finance Ltd v Grace, SC (unreported), 9 June 1972, **8**: 298
Crosbie v Murphy (1858) 8 ICLR 301, **8**: 297; 299
Cruzan v Director, Missouri Department of Health, 110 S.Ct. 2841 (1990), **1**: 9
Dublin County Council v Eighty Five Developments Ltd, SC 9 April 1992, **3**: 103-4
E. v E. [1982] ILRM 497, **5**: 195
F. (M.) v Legal Aid Board, HC (unreported), 4 Dec. 1992, SC (unreported), 30 March 1993, **5**: 196, 197; **6**: 236
Fitzgerald v Corcoran [1991] ILRM 545, **9**: 351
Fitzgerald, In re (1861) 11 Ir. Ch. Rep. 365, **8**: 298
Flannery, In re [1971] IR 10, **8**: 299
Garvan v Criminal Injuries Tribunal, SC (unreported), *ex tempore*, July 20, 1993, **10**: 383
Greene v Minister for Agriculture [1990] ILRM 364, **7**: 259
Hall v Pritchett (1878) 3 QBD, **2**: 49
Harris v O'Loghlen (1888) LR (Ir.) Vol. XXXIII 61, **8**: 298; 299
Hassett v O'Loughlin, 78 ILTR 47, **3**: 104
Hastie and Jenkerson v McMahon [1991] 1 All E.R. 255, **1**: 11
Herrea v Collins (US Sup. Ct.), **2**: 47
ICDS Recruitment Consultants Ltd. v Gillespie, DC 10 Nov. 1992, **1**: 10
Irish Bank of Commerce v O'Hara, High Court (Unreported), 10 May 1989; SC (unreported) 7 April 1992, **8**: 297; 298; 299
Kelly v Park Hall School [1979] IR 340, **3**: 106
Lawlor v Minister for Agriculture [1988] ILRM 400, **7**: 259
McDaid v Sheehy [1991] IR 1, **7**: 259
McMullen v Farrell [1993] 1 IR 123, **8**: 313
McNamara v ESB [1972] IR 1, **9**: 352-53
Meagher v Minister for Agriculture and Food, HC (unreported), 1 April 1993, **7**: 258-60
Mogul Steamship Co. v McGregor Gow & Co. (1988) LR 21 QBD 557, **6**: 216
Murphy and McCormack, In re [1930] IR 322, **8**: 299
Murphy v Attorney General [1982] IR 241, **7**: 259
Murphy v Lacey (1896) 31 ILTR 42, **8**: 297; 299
Picton v Cullen [1900] 2 IR 615, **2**: 49
Pitt v PHH Asset Management Ltd, The Times Law Report, July 30, 1993, **7**: 256
Quinlan (Karen) Case, NJ 355 A 2d 647; 97 ALR 3d 205 (1976), **1**: 9
R. v Horsham District Council, ex parte Wenman, The Times, Oct. 21, 1993, **9**: 342
R. v Tower Hamlets L.B.C., ex parte Khatum, QBD (unreported), Sept. 30, 1993, **10**: 383
S. (R.) v Landy and Ors., HC (unreported), 10 Feb. 1993, 5:196, 197; **6**: 236
Sexton v Valente (1950) 84 ILTR 160, **8**: 299
Sharpe v Dublin County Manager, HC 8 June 1988, **3**: 104
Smith and Ross, In re (1860) 11 Ir. Ch. Rep. 397, **8**: 297; 298
State (Healy) v Donoghue [1976] IR 325, **5**: 197
Swanton's Estate, In re (1897) 31 ILTR 166, **8**: 297; 298; 299
System Floors (UK) Ltd v Daniel [1981] IRLR 475, **1**: 14
Telemarsicabruzzo SpA v Circostel, Joined Cases C-320-C-322/90 (26 Jan. 1993), **2**: 50
Thorp v Browne (1867) LR 2 HL 220, **8**: 297; 298; 299
Walford v Miles [1992] 2 AC 128, **7**: 256
XJS Investments v Dun Laoghaire Corporation [1987] ILRM 659, **3**: 103

3. LEGISLATION INDEX

(i) CONSTITUTION OF IRELAND 1937

Art. 15.2.1, **7**: 258; 259
Art. 29.4.3, **7**: 258; 259
Art. 40.3, **7**: 259
Art. 43, **7**: 259

(ii) ACTS OF THE OIREACHTAS

1992 list of Acts, **3**: 92
Building Control Act 1990, s. 22(7), **7**: 253 *(pr.)*
Capital Acquisitions Tax Act 1976
s. 47, **7**: 253 *(pr.)*
s. 68 (2), **6**: 206 (pr.)
Competition Act 1991, **6**: 216
Courthouses (Provision and Maintenance) Act 1935, **7**: 251
Courts Act 1991, **5**: 170
Criminal Justice Act 1993, **4**: 147-48, **5**: 185
Criminal Justice (Forensic Evidence) Act 1990, **5**: 169
European Communities Act 1972,
s. 3, **7**: 258; 259; 260
s. 4, **7**: 259
European Communities (Amendment) Act 1973, **7**: 258
European Communities (Amendment) Act 1993,
s. 5, **7**: 259; 260
Finance Act 1974, s. 59, **7**: 249
Finance Act 1976, s. 46, **7**: 259
Finance Act 1987, Chap. III, **9**: 341; 342
Finance Act 1990, s. 26, **9**: 341
Finance Act 1992, Part VII, **3**: 90, **4**: 126, **5**: 188; 190, **6**: 207-8; **7**: 249
Finance Act 1993, **9**: 355-56
Housing (Miscellaneous Provisions) Act 1992, **9**: 343 *(pr.)* s. 10, **1**: 17 *(pr.)*
Interception of Postal Packets and Telecommunications Messages Regulation Act 1993, **7**: 255-56
Judgment Mortgages Act 1950, s. 6, **8**: 297-99 (A)
Land Act 1965, s. 45, **10**: 395 *(pr.)*
Landlord and Tenant Act 1931, **8**: 313 s. 46(1), **6**: 228
Landlord and Tenant (Amendment) Act 1980, **8**: 313, **9**: 352
s. 5(1)(a)(ii), **6**: 228
s. 5(3), **9**: 352
s. 13(1)(a), **9**: 352
s. 17(2), **9**: 352
s. 62(2)(a), **8**: 313
s. 67(2)(a), **8**: 313
Landlord and Tenant (Ground Rents) Act 1967, **6**: 229; **9**: 352
s. 8, **6**: 230
Landlord and Tenant (Ground Rents) (No. 2) Act 1978, **6**: 227
s. 9(1), **6**: 228
s. 10, **6**: 228, 229
s. 15, **6**: 229
s. 22(1), **6**: 230
s. 28, **9**: 351; 352
Landlord and Tenant (Ground Rents) (Amendment) Act 1984, s. 9, **6**: 229
Local Government (Planning and Development) Act 1992, s. 19, **7**: 253
Payment of Wages Act 1991, s. 5, **2**: 49
Postal and Telecommunications Services Act 1983,
s. 4(2), **7**: 255
s. 98, **7**: 255
s. 98(2B), **7**: 255
Registration of Business Names Act 1963, **6**: 206 *(pr.)*
Registration of Title Act 1964,
s. 72, **6**: 206 *(pr.)*, **10**: 413
s. 90, **9**: 351
s. 123, **9**: 351
Safety, Health and Welfare at Work Act 1989, **8**: 309
s. 5, **10**: 387
Social Welfare (Consolidation) Act 1981,
Part III, **5**: 175
Part IVA, **5**: 175
s. 2, **5**: 175
s. 169(11), **5**: 177
s. 169(3), **5**: 176
s. 172, **5**: 176
s. 174, **5**: 175
s. 174(3), **5**: 175, 176, 177
s. 300-300H, **5**: 176
s. 300F, **5**: 177
Social Welfare Act 1991,
s. 33, **5**: 175, 177
s. 34, **5**: 177
Social Welfare Act 1993, **5**: 175-77
s. 27, **5**: 175
s. 28, **5**: 175
s. 31, **5**: 176
s. 34, **5**: 175, 176
s. 41, **5**: 175
Solicitors Act 1954,
s. 29, **10**: 404
Solicitors Act 1960, s. 21(5)(a), **7**: 249
Statute of Limitations Act 1957, **8**: 314
Statute of Limitations (Amendment) Act 1991, **8**: 314
s. 3(1), **8**: 314

(iii) SECONDARY LEGISLATION

Business Names Regulations 1993, **6**: 206
Companies (Fees) (No. 2) Order 1993, **10**: 396
European Communities (Legal Protection of Computer Programs) Regulations 1993, **6**: 231
Rules of the Superior Courts 1986 (S.I. No. 15)
O. 67, **4**: 143
Rules of the Superior Courts 1993 (S.I. No. 205), **9**: 341
O. 22, r. 1, **9**: 341
O. 31, r. 12, **9**: 341
O. 127, **9**: 341
Safety, Health and Welfare at Work (General Application) Regulations 1993, **6**: 213, **10**: 387; 388

(iv) EUROPEAN COMMUNITY LAW

Council Directives
89/391/EEC, **6**: 213, **10**: 387-88
90/270/EEC, **10**: 388
90/313/EEC, **1**: 23-24 (A)
91/383/EEC, **6**: 213
91/553/EEC, **1**: 13-15 (A)
92/57/EEC, **10**: 388

Treaty of Rome
Art. 85-94, **6**: 216
Art. 85.3, **7**: 273-74
Art. 118A, **10**: 387
Art. 177, **7**: 274

(v) EUROPEAN CONVENTIONS

European Convention of Human Rights
Art. 5.3, **6**: 212
Art. 13, **6**: 212

VOL. 87 NO. 1 JAN/FEB 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 5
While the Law Society does not condone the bringing of spurious claims, it defends the right of anyone who has been injured to bring a valid claim for compensation.

President's Message 7
It is in the interest of individual solicitors to co-operate fully with the Society's complaints-handling procedure, writes Law Society President, *Raymond Monahan.*

Lawbrief 9
When does natural death occur – does the law have a role in deciding? transmission of documents by fax was deemed good service in a recent written District Court judgment.

Information on Terms of Employment 13
An EC Directive will impose increased obligations on employers to inform employees of the conditions applicable to their employment, writes *Ciaran O'Mara.*

Practice Notes
Notices to Quit; Private Residential Property and Clause 36 of the Contract for Sale.

Book Reviews 18
This month we review The British Yearbook of International Law 1991; Talking to your Solicitor; The Bar Directory (1993 edition); and Index to Irish Law Reports Monthly 1976-1990.

People and Places 20

Freedom of Access to Information on the Environment 23
Donal O'Leary, BL, explains the rights to access to information about the environment under the terms of an EC Directive which has been implemented by the Environmental Protection Agency Act, 1992.

Title Insurance -v- Title Registration in the United States 25
Title Registration has been vigorously resisted in the United States where the preferred custom is to insure the accuracy of title, writes *John G. Olden.*

Technology News 31
This month, *John Furlong* explains the benefits of establishing an automated information retrieval system in your office.

Obituary 33
Vincent Hallinan, an Irish American who was conferred with the title Trial Lawyer of the Century, died last Autumn after an eventful legal career that spanned over seventy years.

Professional Information 35
Notices concerning lost land certificates, lost wills, employment and miscellaneous advertisements.

Editor: Barbara Cahalane

Committee:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7. Telephone 710711 Telex: 31219 Fax: 710704.

Front Cover: Four recently-appointed judges of the District Court, (clockwise): Judge Clare Leonard, Judge Murrough Connellan, Judge Mary O'Halloran, and Judge Timothy Crowley.

ARE YOU A WORDPERFECT USER?

* SUPERFORM turns WORDPERFECT 5.1 documents into easily completed forms
* Rapid document production - improves productivity by up to 70%
* First ever software to be approved by Law Society Technology Committee
* Designed and produced in Ireland. An ideal companion to WordPerfect 5.1
* Ideal for the busy legal office, large or small.
* For further details, and 300 legal precedents absolutely free, contact:
* Q2 Relational Software, Court Place, Carlow. TEL: 0503-31745, or FAX: 0503-43695.

SUPERFORM for WORDPERFECT 5.1

Please send me, absolutely free and without obligation, 300 legal precedents for WordPerfect 5.1 together with further details of SuperForm, the ideal software for WordPerfect 5.1.

Name:

Firm:

Address:

Tel: Fax:

SuperForm
automated document production
for WordPerfect Users

SPECIAL FELLOWSHIP COURSES

For the first time the Special Fellowship Course is now open to Practising Arbitrators.

Courses are scheduled to run throughout the UK and Internationally and one will be held on:

17/19 September 1993 in Ireland.

An additional course may be held in Northern Ireland if there is sufficient support.

Further details are available from:

Mrs. Susan Cooper, ACIArb, MACE
Professional Development Secretary,
Chartered Institute of Arbitrators
24 Angel Gate, City Road,
London, ECIV 2RS

Tel: 0044 71 837 4483
Fax: 0044 71 837 4185

Defending The Right to Pursue Valid Claims for Personal Injuries

Concern has been expressed in recent times by a number of public bodies – Dublin Corporation and Coras Iompair Eireann in particular – about the high level of claims for personal injuries being brought against them and about the role being played by solicitors in the bringing of such claims.

Dublin Corporation, in particular, has been most vociferous in this regard and statements attributed to the Corporation's Public Relations Officer have been critical of solicitors for allegedly inciting the bringing of spurious claims. The Corporation has also been critical of particular forms of advertising engaged in by some solicitors. The Law Society has been forced to respond publicly to the Corporation's unfortunate style of megaphone diplomacy in order to defend the good name of the profession. The Society has made it clear that it is willing to investigate thoroughly any complaints made about identifiable solicitors in this regard, where evidence is available. We are happy to say that a meeting took place recently between Corporation and Law Society representatives to discuss this matter.

First of all, the Law Society, and the solicitors' profession as a whole, believe that those against whom claims are brought are perfectly entitled to express concern – and to do so publicly if they so wish – about the level of claims for personal injuries. Moreover, they are also perfectly entitled to do everything in their power to defend such claims, especially where they believe that the claims are not justifiable. The bringing of unnecessary and, especially, spurious claims or the exaggeration of injuries in genuine cases, is legally and morally indefensible and amounts to nothing short of fraud. The Law Society will not condone any action on the part of solicitors which incites or encourages people to engage in such activity. It is in nobody's interest that personal injury actions should be brought where they are not justified. This simply adds to the burden the community as a whole has to bear in the form of increased insurance costs.

That said, however, it is completely unacceptable that the finger should be pointed at solicitors in a manner which implies in a sweeping way that they are parties to the bringing of fraudulent claims. While the Law Society has never contended that no solicitor has ever acted improperly in this respect, it is wrong that the profession as a whole should be indicted and the impression created that there is wholesale collusion by solicitors, unless there is evidence to substantiate this.

Concern has also been expressed about the type of advertising engaged in by some solicitors which, it is alleged, encourages a compensation mentality and triggers the bringing of claims that might not otherwise be brought. Some examples of this type of advertising have been brought to the attention of the Law Society. This is a difficult issue for the profession to come to grips with because of the different views that exist. During the 80s, as many people will recall, it became apparent that the Law Society's restrictions on advertising would be removed by Government if the Society itself did not liberalise its own rules. When the issue of permitting solicitors to advertise was debated in general meeting in 1988, the profession was divided on the issue. The position now is that advertising is allowed within the limits of the Society's advertising regulations. These regulations are, however, difficult to enforce mainly because the question of what is or is not 'in bad taste' or 'brings the profession into disrepute' is highly subjective. Advertising which amounts to touting and that of the 'ambulance-chasing' variety is perhaps, easier to identify. Such advertising is, of course, clearly unacceptable. However, advertising by a solicitor which does no more than draw the attention of the public to the fact that they might have a claim in particular circumstances and where the solicitor offers to take cases on a 'no foal no fee' basis is not uncommon. Is this to be stopped by the Society? And if so, upon what basis? The public have a right to bring claims where injuries have been caused by the alleged negligence of others and they have a right to be fairly and adequately compensated if negligence is proved. If advertising enhances people's awareness of their rights in this respect, can it be said, on any reasonable interpretation, to be encouraging the bringing of claims? In any event, even if it does so encourage, there is nothing inherently wrong with that if the claims are proved to be valid and justifiable on their merits. As the Fair Trade Commission's Report (1990) recognised, advertising can have an important role to play in disseminating information to the public about their rights and enhancing public awareness about the availability of legal services and it is, presumably, for this reason – as well as for others – that the Solicitors Bill proposes to prevent the Law Society in the future from outlawing advertising ever again.

In summary, the Law Society's position on the current controversy is that (1) it does not and will not condone the bringing of spurious claims and will deal severely with any solicitor who can be shown to have knowingly lent himself to such activity, and (2) it will continue to

(Continued on page 8)

THE ROUND HALL PRESS

Recent Publications

Employment Law
MICHAEL FORDE

A comprehensive account of the legal regime governing the relations between employers and employees. Topics include: employee-self-employed distinction, terms and conditions of employment, protection of confidential information, health and safety, freedom of movement for workers within the EC, sex discrimination and equal pay, paid maternity leave, wrongful dismissal, compensation for redundancy etc. There are separate chapters on the transfer of employers' businesses, employers' insolvency, occupational pension schemes, transnational employment; special rules governing employment in the public sector - the civil service, local government and teaching. ISBN 0-947686-86-X £49.50

Insider Dealing
MICHAEL ASHE and
YVONNE MURPHY

Part V of the Companies Act 1990 enacts a comprehensive code making unlawful for the first time in Ireland, insider dealing in securities. This book explores these provisions while setting them in the context of a subject which has been a prominent feature of many financial scandals in different parts of the world. ISBN 0-947686-79-7 pbk £24.50; 1-85800-009-9 hbk £37.50

Offences Against the Person
PETER CHARLETON

Concentrates specifically on that area of criminal law relating to offences which affect the bodily integrity of citizens. Comprehensive coverage is given to the substantive law of murder, manslaughter, infanticide, abortion, false imprisonment, cruelty to children, indecency with children, sexual offences against the mentally handicapped etc. ISBN 0-947686-89-4 pbk £25.00; 85-1 hbk £47.50

Index to Irish Law Reports Monthly 1976-1990
Compiled by JULITTA CLANCY

This index, which covers the first 14 volumes of ILRM, is divided into five parts:

(i) Table of cases reported (c.2300 entries)

An alphabetical list of all cases reported in ILRM with full reversals and cross-references.

(ii) Table of cases judicially considered (c.2800 cases)

An alphabetical list of all cases judicially considered

i.e. applied, distinguished, followed etc.

(iii) Table of Statutes etc., judicially considered

An alphabetical list of all statutes, statutory instruments, Articles of the Constitution, Rules of the Superior Courts, European Community Enactments and International Conventions.

(iv) Subject index (over 5000 entries)

A comprehensive subject index to all cases reported, containing over 5000 entries and cross references. A full list of subject matter titles accompanies the index.

(v) Table of words and phrases judicially considered.

ISBN 0-947686-82-7 £120.00.

NEW JOURNALS

Irish Journal of European Law
JAMES O'REILLY and
ANTHONY COLLINS (editors)

ISSN 0791-539X
Subscription 1993: £45.00

Irish Criminal Law Journal
SHANE MURPHY (editor)

ISSN 0791-5403
Subscription 1993: £35.00

Human Rights and Constitutional Law
JAMES O'REILLY (editor)

This is a collection of twenty-four essays written by distinguished international jurists in honour of Brian Walsh, a judge of the European Court of Human Rights and a former judge of the Irish Supreme Court. ISBN 0-947686-80-0 £47.50.

Case Law of the European Court of Human Rights
Volume II: 1988-1990
VINCENT BERGER

This volume deals with the seventy-two decisions handed down by the Court in the period 1988-1990. For each of the cases Dr Berger provides a full summary of the facts and of the law involved, together with a summary bibliography for each decision and a note of the changes effected in national law and procedure resulting from the decisions. ISBN 0-947686-66-5 £37.50.

THE ROUND HALL PRESS

Kill Lane, Blackrock, Co. Dublin, Ireland

Tel: (01) 2892922;

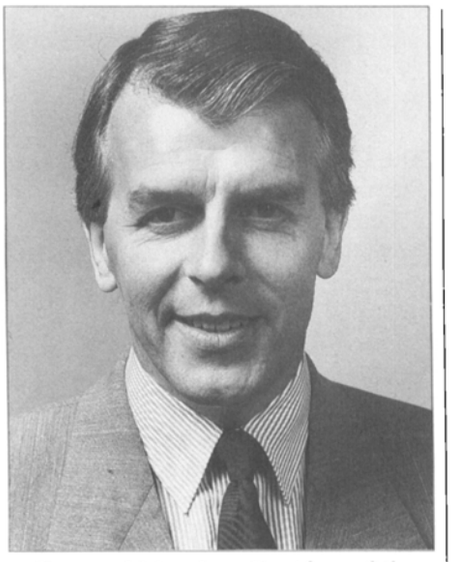
Fax: (01) 2893071

PRESIDENT'S MESSAGE

Dealing effectively with complaints benefits clients *and* solicitors

Arising from the privilege of being a self-regulating profession we have a duty to discharge this function scrupulously and with the utmost fairness and to be seen to do so. The Registrar's Committee carries out the statutory duty of the Society to consider and deal with complaints of professional misconduct against solicitors. This is an onerous task for the Committee as it involves in assessing the merit of any complaint and making a judgment on the reasonableness or otherwise of the solicitor's performance. Many solicitors may view correspondence from the Society as an unwarranted intrusion into a busy practice and may resent the role of the Society in this respect, seeing the Society mainly as a representative body whose primary role is the protection of their interests.

Clients now have very high expectations of their solicitors. With the hectic pace of present-day commercial life, the greater financial risk now involved in many legal matters and the substantial attendant cost insofar as the client is concerned, clients rightly demand the most competent, efficient and stream-lined service possible from their solicitor and a constant flow of information confirming the progress of their affairs at all stages. Consequently, solicitors are under pressure to produce work of higher quality in an environment of increasing complexity. Moreover, the forces of competition require such service be produced more quickly and cost effectively. Against this background it is a regrettable fact that the development of certain State institutions involved in the legal process has not kept pace with modern requirements, with the result that delay in the client's affairs is frequently beyond the control of the solicitor, though, understandably, the client may have difficulty understanding this.



Raymond Monahan, President of the Law Society.

Failure by a solicitor to provide the service expected invariably results in a complaint by the client. The experience of the Society in recent years shows that, of the large number of complaints received, approximately 90% can be dealt with at the preliminary stage by the Society's secretariat. These are mostly straightforward complaints of delay or failure to communicate and the position can usually be regularised by means of an explanatory letter from the solicitor. This fact alone quite clearly shows the merit of solicitors answering correspondence from the Society as thoroughly and as promptly as possible. The remaining 10% of complaints will be more serious and will require investigation by the Registrar's Committee.

It is the Committee's experience that many cases of delay arise from the fact that a solicitor, perhaps unsure as to the correct action he should take in a particular case, simply puts the matter on the long finger. The Committee is already on record as stating that, in such circumstances, a solicitor should seek the help or assistance of a colleague or, alternatively, the Professional Purposes Committee of the Society to ensure that the matter is dealt with rather than delayed. It has become apparent to the Society that many complaints would be eliminated if solicitors were to keep their clients fully informed of progress being made by them and when necessary, to copy their clients with relevant correspondence.

When investigating a complaint, the Society operates on the basis that, while the complainant is, of course, seeking justice he is also, invariably, seeking a practical resolution of the difficulty he perceives he has experienced in dealing with his solicitor. Accordingly, in such cases the Society, acting through the Registrar's Committee, will propose immediate solutions and will recommend that the solicitor take certain steps to resolve the particular problem speedily and efficiently. Following upon this, the Committee will closely monitor the solicitor's performance. Where the Committee finds serious misconduct, or a solicitor who is the subject of the complaint fails to comply with the recommendations of the Registrar's Committee, then the matter will be referred to the Disciplinary Committee. This occurs in less than 10% of the complaints investigated by the Registrar's Committee (i.e. less than 1% of the total number of complaints lodged with the Society).

The fact that only 1% of complaints received by the Society are ultimately referred to the Disciplinary Committee is not, as is sometimes thought, due to the laxity of the Registrar's Committee but due instead to the fact that, firstly, the vast bulk of complaints are readily solvable by instant action on the part of the solicitor and, secondly, that the process of investigation and interview followed by close monitoring invariably results in the

(Continued on page 8)

Council Nominates O'Donovan to Seanad Panel

At its meeting on 4 December 1992, the Council of the Law Society decided to nominate Senator *Denis O'Donovan* to the Cultural and Educational Panel for re-election to Seanad Eireann. In all, four persons had applied for the Law Society nomination. Senator O'Donovan was chosen by the Council in line with the policy of supporting a candidate who was a solicitor, because he had been very active in the West Cork Bar Association before entering politics, and because he was committed to the interests of the profession and had supported the Society's stance on the Solicitors (Amendment) Bill, 1991.

At the December meeting, the Chairman of the Finance Committee proposed that there would be no increase in the practising certificate fee for 1993 other than an increase for inflation. The total fee of £995 including the contribution to the Compensation Fund and the life assurance premium – an increase of £9 on last year's fee – was approved by the Council.

The Chairman of the EC and International Affairs Committee reported to the Council that the Committee had considered in detail the contents of the EC Commission Consultation Paper on Joint Cross Border Practice of Regulated Professions. A submission had been made to the Department of Industry and Commerce querying the need for the proposed regulations given the existing regulations governing cross border practices. The EC and International Affairs Committee will consider in detail the provisions of any new EC regulations, when published.

The Chairman of Professional Purposes Committee reported to the Council that, at the request of the President of the Society, the Committee would be undertaking a review of the Guide to Professional Conduct published by the Society. The Committee intended to commence its review by examining chapter 7 dealing with a solicitor's relationship with other solicitors.

The Council was informed that the provisions of Part VII of the Finance Act, 1992 had been referred to a number of senior counsel for their opinion and their replies were awaited. The Chairman of the Taxation Committee said that he hoped to present a report to the January meeting of the Council.

The Council noted the contents of the Accountant's Certificates Report which showed that accountant's certificates had been submitted by 89.69% of practitioners. It was expected that this figure would rise to over 96% by mid-December, 1992. □

Viewpoint

(Cont'd from page 5)

uphold proper standards in relation to advertising by solicitors while recognising that, because some of the issues involved are highly subjective, differing views are bound to prevail in relation to what ought or ought not to be allowed, in particular instances.

In the final analysis, the courts are there to determine the validity of claims for personal injuries. There has been a tendency in the past, at least in some quarters, to make the legal profession the scapegoat for the spiralling cost of personal injury claims. That is unfair. Much more can and should be done to reduce the potential for accidents and to ensure better safety standards in the workplace, on the roads and in public places generally. Negligence is, unfortunately, a regular feature of human behaviour and the Society will continue to defend the right of people to instruct solicitors to pursue claims for compensation when this is right and proper. □

President's Message

(Cont'd from page 7)

complaint being dealt with satisfactorily. The Society has in recent years improved the speed and efficiency of the system of complaints-handling and has adopted a very strict approach with those solicitors coming before the Committee for interview. It is intended that the Committee's powers will be significantly strengthened under the provisions of the proposed Solicitors Bill.

The Society fully supports the right of clients to make complaints against solicitors where they are dissatisfied with the quality of service received. Moreover, the profession should be aware that the Society must investigate such complaints with total impartiality and must ensure fairness and justice to both client and solicitor alike. In addition, the system must be seen to operate with maximum efficiency so that the resolution of any complaint is achieved as quickly as possible. In order to meet these objectives the Committee depends on a satisfactory and quick reply from the individual solicitor. Every solicitor contacted by the Committee must appreciate the importance of the situation insofar as the profession is concerned and each solicitor is earnestly requested to co-operate fully so as to protect the good name of all. Efficient, fair and speedy complaints handling is vital to the well-being of both solicitor and client alike, and is fundamental to the good name and the integrity of the profession and the impartiality of the Society.

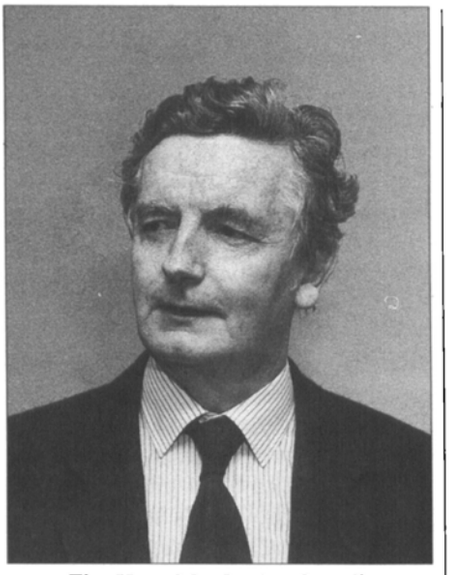
Raymond Monahan □

by Dr. Eamonn G. Hall

The Comatosed Patient: Disconnecting The Feeding Tubes.

When does natural death occur? This issue has troubled doctors and lawyers. To a certain extent in relation to the terminally ill, medical technology blurs the distinction between life and death. Is consciousness the basic criterion of human life? What if a person is rendered insensate by a stroke? Justice Brennan of the US Supreme Court in *Cruzan -v- Director Missouri Department of Health,* 110 S.Ct. 2841, (1990) used a phrase describing persons the subject of this note as "passive prisoners of medical technology."

Mr Justice Declan Costello, judge of the High Court, considered this issue in "The Terminally Ill – The Law's Concerns," 21 *Ir Jur.* (1986) 35. He considered the issue with particular reference to the decision of the Supreme Court of New Jersey in the *Karen Quinlan* case (NJ 355 A 2d 647; 97 ALR 3d 205, (1976)) where it was held that the constitutionally protected right to privacy was broad enough to encompass a patient's decision to decline medical treatment under certain circumstances. Judge Costello also considered the decision of the Supreme Court of California in *Barber -v- Supreme Court of Los Angeles County,* (147 Cal. App. 3d. 1006; 47 ALR 4th 1), where two surgeons had been charged with murder and conspiracy to murder after life-support measures had been terminated with respect to a deeply comatosed patient in accordance with the wishes of the patient's immediate family. The evidence in *Barber* established that the patient had suffered brain damage, leaving him in a vegatative state which was



The Hon. Mr. Justice Costello

likely to be permanent, that there had been a written request by his family that they "wanted all machines taken off that are sustaining life," that the respirator and other life-sustaining equipment were removed and that after consultation with the family, intravenous tubes which provided hydration and nourishment were then removed. The court halted the prosecution and concluded that no breach of the criminal law had occurred.

Judge Costello posed the question whether the physician who turns off life-supporting measures would be guilty of murder under Irish law. He aruged that there were persuasive arguments to support the view that even if the patient's resulting death would be "homicide", the homicide would not be unlawful and that Irish courts would adopt the views of both the New Jersey court in *Quinlan* and the Californian court in *Barber.* The judge reasoned that in the case of the competent patient, discontinuance would be in response to a request which the patient would be constitutionally entitled to make, and no unlawful "act" would occur. In the case of the incompetent patient, Judge Costello argued that the discontinuance in the proper discharge of a duty of care would likewise involve no legal fault and the patient's death could not be "unlawful" homicide.

"Judge Costello posed the question whether the physician who turns off life-supporting measures would be guilty of murder under Irish law."

The issues considered above arose in the recent case of *Airedale National Health Service Trust -v- Bland, The Times,* Law Report, December 10, 1992. The case was heard in the Court of Appeal before Sir Thomas Bingham, Master of the Rolls, Butler-Sloss and Hoffmann, LJJ. The Court of Appeal held that the withdrawal of medical care, including the removal of artificial feeding procedures, was not unlawful where the patient suffered from a persistent vegetative state from which he would not recover and where it was known that after such withdrawal the patient would die. However, the court held that in such a case application should be made to the court to obtain its sanction for the course proposed. Leave to appeal to the House of Lords was granted.

The case involved Anthony Bland who, in 1989, then aged 17, had been injured in the Hillsborough Stadium disaster and suffered irreversible brain damage and had since then been in a persistent vegetative state. In that condition he had no cognitive function, no sight, hearing, capacity to feel pain or move his limbs or communicate in any way. Unable to swallow, he was fed by naso-gastric tube. His bowels were evacuated by enema, his bladder drained by catheter. Repeated chest and urinary tract infections were treated by antibiotics.

The consensus of medical opinion was that there was no hope of improvement or recovery.

In his judgment, the Master of the Rolls said that the case was not about euthanasia, if by that was meant the taking of positive action to cause death. It was not about putting down the old and infirm, the mentally defective or the physically imperfect. It had nothing to do with the eugenic practices associated with fascist Germany. The issue before the court was whether artificial feeding and antibiotic drugs might lawfully be held from an insensate patient with no hope of recovery when it was known that if that were done the patient would shortly die.

The Master of the Rolls referred to the following principles which were accepted by both parties:

1. A profound respect for the sanctity of human life was embedded in our law and moral philosophy.

2. It was a civil wrong, and might be a crime, to impose medical treatment on a conscious adult of sound mind without his or her consent.

3. A doctor had to comply with a patient's instructions as to treatment to be given or withheld in certain circumstances, whether such instructions were rational or not. That principle applied even if by the time the circumstances obtained the patient was unconscious or of unsound mind.

4. Where an adult patient was mentally incapable of giving his consent, no one including the court could consent on his behalf. Treatment could lawfully be provided by a doctor where it was in the patient's best interests.

5. Where the patient was a child and a ward of court, the court would itself decide, with appropriate regard to medical opinion, whether treatment was in the patient's best interests. (Citations in respect of the above principles are set out in the judgment.)

Sir Thomas Bingham, Master of the Rolls, considered that if Mr. Bland had given instructions that he should not be artificially fed or treated with antibiotics if he should develop into a persistent vegetative state, his doctors would not act unlawfully in complying with those instructions but would act unlawfully if they did not comply, even though the patient's death would inevitably follow.

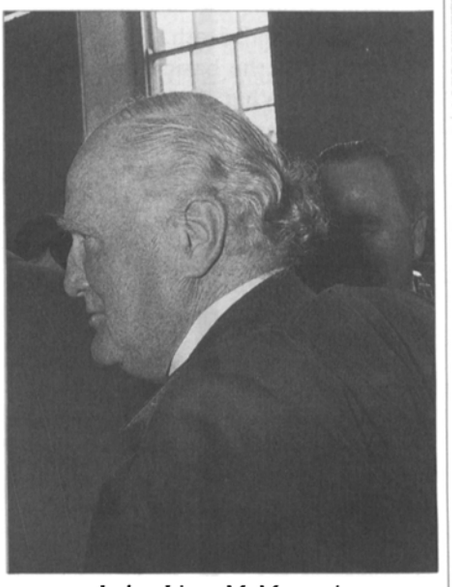
If Mr. Bland were a child and a ward of court, the Master of the Rolls stated that the court would decide what were his best interests, having regard to the views of his parents but without treating them as conclusive. The court might conclude the issue in the child's best interest that life-saving measures be withheld if of opinion that the life thereby prolonged would be one of intolerable pain and deprivation.

The Court of Appeal agreed with the ruling of the President of the Family Division that in cases of the present kind, application should be made to the court to obtain its sanction for the course proposed. The Court considered it a wise ruling directed to the protection of patients and doctors and to the reassurance of patients' families and the public. The court held that practice should be followed.

The writer submits that each case is unique; each case must be considered on its merits. There is merit in seeking the approval of the court in these cases before taking appropriate action. This would act as a safeguard and for the reassurance of the public. Some may aregue that it is not for the courts to license homicide. Some may argue that if the person is already dead, the court has no jurisdiction. The writer recalls the words of Sir Stephen Brown, President of the Family Division (England and Wales) in the *Bland* case, "His spirit has left him and all that remains is the shell of his body." Doctors and members of the family may have a difficult task in certain circumstances in determining when the spirit leaves the body. In practical terms, in this imperfect situation, someone must decide. Let it be the judge.

The Transmission of Documents by Fax

In *ICDS Recruitment Consultants Ltd -v- Liam Gillespie* (written judgment of November 10, 1992) Judge McMenamin of the District Court considered, inter alia, the significance of the transmission of documents by fax.



Judge Liam McMenamin

The construction of certain documents which were allegedly sent by fax were at issue in the case. The documents included certain contractual terms and conditions. The plaintiff produced in court the fax transmission report showing the transmission of five pages with the notation "OK" thereon which indicates to the sender that the documents had been transmitted. The defendant denied that he had received the contractual terms and conditions involved.

Judge McMenamin stated that the transmission of documents by fax was one of the great technological advantages of this age, but as usual the law was slow to catch up. He continued:

(Continued overleaf)

> "In the law of contract, the posting of a letter was deemed to be an acceptance of an offer even where in one celebrated case the letter never arrived. In my opinion, such a rule must be applied to the transmission by fax, given a much greater certainty of receipt, when so much of the human element has been eliminated. In any event, a fax is now such an accepted means of communication that the courts should be very slow to cast doubts on the efficacy of the invention, when especially, acknowledgement of receipt by electronic means would be tantamount to a recorded delivery in the overground postal service."

In his judgment, in effect, Judge McMenamin held that the defendant had received the terms and conditions of business which had been sent by fax.

Judge McMenamin in his judgment referred to the case of *Hastie and Jenkerson -v- McMahon* [1991] 1 All E.R. 255. In *McMahon,* the Court of Appeal held that the transmission of a document (other than documents required to be served personally or writs and other documents which initiated proceedings) by fax constituted a good service, provided that it could be proved that the document had in fact been received in a complete and legible state by the person on whom service was effected.

In *McMahon* the Court of Appeal considered that since the purpose of serving a document was to ensure that its contents were available to the recipient, and whether it was served in the conventional way or by fax, the result was exactly the same because although what was transmitted was an electronic message, what was produced, using the recipient's machine and paper was a document which the other party intended should be served. The Court of Appeal concluded that service by fax could be good service subject to any requirement of the order requiring service of the particular document and the rules of the Supreme Court.

The written judgment of Judge McMenamin is available in the library of the Law Society. □

Correspondence

Editor,
Gazette,

Re: The Dean's Deed.

Dear Madam,

The article in the November *Gazette* on the centenary of the Registration of Deeds system caught my eye, but for none of the right reasons. It was the photograph of a memorial executed by The Dean himself, Jonathan Swift, which interested me.

The other parties to the deed can be seen, without much difficulty, to be ones Thomas Ash and St. George Ash of Co. Meath and Dublin respectively. St. George Ash (or properly Ashe) was a very notable figure, Provost of Trinity College, co-founder of the Dublin Society, later the RDS, and – JV Luce's recent history of TCD tells us – inventor of the coal briquette! He also preached, on 9 January, 1693, at the service for the first centenary of Trinity College, which oddly enough fell in 1693/94. Were last years celebrations premature? The writer proposes that we start all over again!

He and his brother Thomas were apparently close friends of Swift. The Dean, in one of his works, gives as a footnote the following legalistic tale, which he tells of Thomas:

Thomas Ashe was riding one day from his home to Mullingar when it came on to rain very heavily. He came to an inn where he decided to get shelter, refreshment and a rest for his horse. Dismounting, he called the ostler to take his coat which was soaked through. "I will not sir," replied the man.

"Dammit, I'm drenched to the skin, take my coat you . . . . " yelled Tom.

"I will not, to my dying day" the abused wretch replied "You know as well as myself, sir, 'tis a felony to strip an ash!"

Yours sincerely,

Robert Ashe,
Solicitor,
Griesemount,
Ballitore,
Co. Kildare. □

Review of Guide to Professional Conduct

The President of the Law Society, Raymond Monahan, has requested the Professional Purposes Committee to carry out a review of the *Guide to Professional Conduct of Solicitors in Ireland.* The Guide, which was published in 1988, has eight chapters dealing with various topics. The Committee intends in the first instance to deal with topics that affect a solicitor's relationship with other solicitors (i.e. chapter 7 of the current Guide).

The Committee invites submissions on this issue from individual members or Bar Associations. The revised Guide will become the authoritative reference to professional conduct.

All submissions should be forwarded to *Therese Clarke,* Solicitor, Secretary, Professional Purposes Committee, Law Society, Blackhall Place, Dublin 7.

The closing date for receipt of submissions is 31 March, 1993. □

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

Concern is a non denominational voluntary organisiation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world.

If your client wishes to make a will in favour of Concern, further information on our work is available from Concern Development Department.

CONCERN

1 Upper Camden St. Dublin 2. Tel. 681237

GIVE THEM A WILL TO LIVE

Concern is a Company limited by guarantee without a share capital. Registered in Dublin, Number 39647.

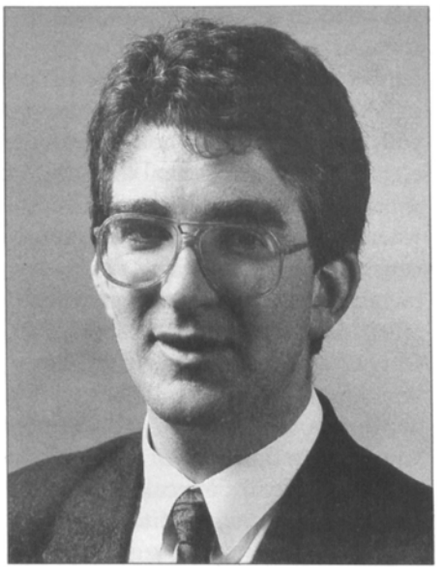
SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

Information on Terms of Employment



by Ciaran O'Mara

The EC Council of Ministers adopted the first significant directive affecting labour law apart from health and safety issues on the 14 October, 1991 under the Community Charter of Fundamental Social Rights for Workers agreed at Strasbourg in 1989. The title of the directive is "Council Directive of 14 October, 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship" 91/533/EEC. The directive must be implemented not later than 30 June, 1993.

As is well known, British antipathy to any developments in employment legislation at European level since the election of the Thatcher Government in 1979 led to a freeze on practically every Community proposal in this area. The tide, however, has begun to turn and the other eleven member-states adopted the Social Charter in 1989 and also adopted an agreement on social affairs in the Treaty on European Union signed at Maastricht.

Cleverly, the European Commission proposed the new directive on information and terms of employment and based it at least in part on the rules existing in the United Kingdom (and indeed in Ireland). This may explain why the UK relented and merely abstained on the voting (while still challenging the legal basis of the adoption of the directive). It would be foolhardy however to underestimate the importance of the new directive and it seems the directive will have a certain impact on industrial relations. Before turning to the directive it is proposed to look at the existing Irish law.

The Existing Irish Law

The Minimum Notice and Terms of Employment Act, 1973 introduced the concept of a written statement of certain terms of employment into Irish law. This was a straight forward copy of the then existing UK Contracts of Employment Act, 1963. The 1973 Act did not apply to certain employees namely:

(a) employment of an employee who was normally expected to work for the same employer for less than eighteen hours in a week;

(b) an employment by a close relative of an employee in the employer's household and whose place of employment was a private dwellinghouse or farm in which both resided;

(c) employment in the Civil Service;

(d) employment in the Defence Forces;

(e) membership of the Garda Siochana;

(f) sea crew, under the Merchant Shipping Acts.

As we shall see later the directive will involve a major change in the scope of existing Irish law.

The substantive requirement of the Act of 1973 is that an employee may require his employer to furnish him with a written statement containing all or any of the following particulars:

(a) date of commencement of his employment;

(b) details of his pay, including overtime, commission and bonus and the method of calculating same;

(c) whether pay is to be weekly, monthly or otherwise;

(d) conditions about hours of work and overtime;

(e) terms and conditions relating to holidays and holiday pay;

(f) conditions relating to incapacity to work due to sickness or injury and sick pay;

(g) the period of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, or if the contract of employment is for a fixed term, the date when the contract expires.

If the employee requests these particulars from the employer s/he must be furnished within one month with the written statement containing particulars. The Act of 1973 provides an alternative method of information, contained in Section 9 (4) of the Act, which allows an employer to refer the employee to a document containing the particulars requested by the employee under section 9. The employee must have reasonable opportunities granted to him during the course of his employment to consult the document, or it must be reasonably

accessible to him in some other way. Finally an employer must notify an employee of the particulars of section 9 within one month after the employee commences work with the employer.

The only means of enforcement of the Act of 1973 was contained in section 10 which provided for prosecution by the Minister leading to a summary conviction to a fine not exceeding IR£25.00. It is doubtful if a prosecution has ever been brought under this Act and is must be concluded that the requirement to give particulars has largely proved ineffective. In contrast, in England the system of prosecution was changed to a right to bring the failure of employer to furnish the statement to an Industrial Tribunal.

What is the effect of conflict between the written statement and terms of employment? The written statement is supposed to reflect the terms of the contract of employment at the date it is given. From the employer's point of view this brings home to the employee his obligations and from the employee's view point it provides him with detailed information about his rights. The statement is useful evidence in legal proceedings between the parties but it cannot be regarded as conclusive. Under UK case law, the written statement of particulars provides "very strong prima facie evidence" of the terms of the contract, but, "does not constitute the written contract between the parties" (Browne-Wilkinson LJ in *System Floors (UK) Ltd., -v- Daniel* [1981] IRLR 475). The recognition that the written particulars are essentially the employer's version of the terms of the employment contract provides an important safeguard for the employee against the assumption that the employer's unilateral statement is a legally binding record of the contractual position.

The existing law may leave either party at a serious disadvantage in subsequent legal proceedings. Although the written statement does not constitute the contract, reliance on the terms contained in a statement may give rise to an estoppel which prevents the employer from denying that they are the terms under which the employee was engaged.

There are other provisions in Irish law which give employees information about their contractual rights. In particular section 14 of the *Unfair Dismissals Act, 1977* provides that an employer must, not later than twenty eight days after he enters into a contract of employment with an employee, give the employee a notice in writing setting out the procedure which the employer will observe for the purpose of dismissing the employee. Any alterations to the procedure must similarly be notified to the employee within twenty eight days. *The European Communities (Safeguarding of Employees Rights and Transfer of Undertaking) Regulations, 1980* provide for certain consultation and information procedures between employees and the transferor and transferee of a business. Employees have to be informed, in good time, before a transfer of a business takes place as to the implications for them, the reason for the transfer, and measures envisaged in relation to the employees. Finally, the *Payment of Wages Act, 1991* provides for a statement in writing setting out the employee's pay and deductions from pay i.e. a pay slip.

The EC Directive

The preamble to the directive justifies the adoption of the directive by identifying certain developments: new forms of work, the increasing diversity of types of employment, and the considerable disparities between members-states' current rules on the provision of information to employees about the main terms of their employment. The preamble states that the directive is designed to provide employees with "improved protection against possible infringement of their rights" and to create "greater transparency" in the labour market.

The scope of the directive is very wide. It applies to "every paid employee having a contract or employment relationship defined by . . . and/or governed by the law in force in a member-state." On temporary employment relationships of one month or less, employees with a working week not exceeding eight hours, and "casual and/or specific" employment relationships where this is "justified by objective considerations" (Article 1) are excluded. This will have a major effect on Irish law in that it will straight away reduce the exemption limit from eighteen hours per week to eight hours per week. This creates another new category of employee in Irish law. It will be recalled that in 1991 the Oireachtas defined a new creature, namely, the "regular part-time" employee who was employed with thirteen weeks continuous service and who would be normally expected to work for not less than eight hours per week. The new EC Directive will not be sufficiently implemented by utilising the concept of the regular part-time employee. This will lead to an unnecessarily confusing and complicated situation whereby certain protective legislation will apply to differing groups of part-time workers in different ways.

Substantive Information Requirements

Employers will be obliged under the directive to provide employees with documents notifying them of the "essential aspects" of their contract or employment relationship. The information required includes: date of commencment, identities of parties, place of work; job title or category, or a brief description of the work; amount of paid leave entitlement; relevant notice period; rate and frequency of renumeration; working hours; and, where appropriate, the collective agreements governing the employee's conditions of work (Article 2). This information

is not greatly different from the existing information required to be given by Irish law. The difference is that the employer now has no discretion about giving the information but must give it even without a request from the employee. The information may be given to the employee not later than two months after the commencement of employment in the form of (a) a written contract of employment; and/or (b) a letter of engagement; and/or a copy of a collective agreement governing the employment (Article 3). Where none of the above documents are handed over to the employee within the prescribed period the employer is obliged to give the employee not later than two months after the commencement of employment, a written declaration signed by the employer and containing at least the substantive information requirements.

In the case of temporary employment contracts the worker must be given information regarding the expected duration of the work and where the contract comes to an end before the expiry of two months from the start of the work, the substantive information must be made available to the employee by the end of the two months.

Any changes or modifications of aspects of the contract of employment, which change the details referred to in the substantive information requirements of the directive, must be given to the employee by the employer in writing at the earliest opportunity and not later than one month after date of entry into effect of the change in question.

The substantive information requirements of the directive are not necessarily to be taken as the actual terms of the contract of employment but, as we have seen with the existing requirements in the 1973 Act, the courts and the Employment Appeals Tribunal are likely to regard the information given by the employer as strong prima facie evidence of the terms of the contract.

Vindication of Rights

The Act of 1973 has been extremely weak regarding enforcement due to the reliance on criminal sanction only. The EC directive requires the member-states to introduce a system of judicial process to enable all employees to obtain compliance with the applications under the directive. This will require Ireland to introduce a system allowing reference of disputes regarding information to, most likely, a Rights Commissioner and on appeal to the Employment Appeals Tribunal.

Conclusions

The EC Directive greatly widens the scope of the existing rights of Irish employees to information about the terms of their employment. A huge number of part-time workers (in practice mostly female workers) will gain additional rights. Employers are now faced with a mandatory requirement to give information irrespective of a failure by the employee to request information. For the first time real machinery will be in place to enforce the law. For solicitors there will be undoubtedly an increased demand for advice and other services in connection with the drafting of employment contracts and written offers of employment. Hopefully, the directive will be implemented properly by way of substantive legislation and not by way of regulation. At a time when there is a lot of discussion regarding "charters" for tax payers and consumers it must be hoped that considerable publicity will be given to the new provisions on employees' rights to information. □

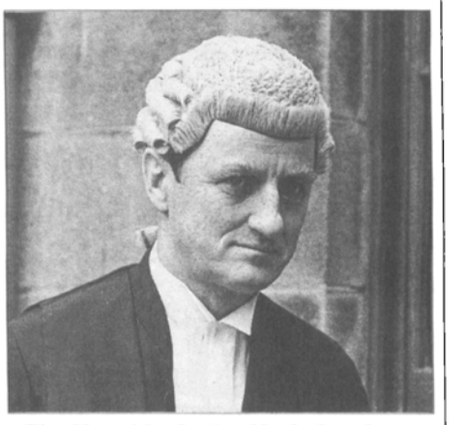
English Agents: Agency work undertaken for Irish solicitors in both litigation and non-contentious matters – including legal aid. Fearon & Co., Solicitors, 12 The Broadway, Woking, Surrey GU21 5AU.
Tel: 0044-483-726272.
Fax: 0044-483-725807.

Judicial Appointments

The Hon. Ms. Justice Susan Denham

On 10 December last, the President of Ireland, Mrs. Mary Robinson, appointed the Honourable Ms. Justice *Susan Denham* as a judge of the Supreme Court. Ms. Denham is the first woman to be appointed to the Supreme Court.

Hugh Geoghegan SC was appointed by the President as a judge of the High Court. He fills the vacancy which arose from Ms. Justice Denham's elevation to the Supreme Court.



The Hon. Mr. Justice Hugh Geoghegan

Ms. Denham was born in Dublin and educated at Alexandra College and Trinity College Dublin as well as Columbia University, New York. She was called to the Bar in 1971 and became a Senior Counsel in 1987. She was appointed to the High Court in 1991.

Hugh Geoghegan was called to the Irish Bar in 1962 and became a Senior Counsel in 1977. He has served three terms as Public Service Arbitrator. □

MAKING A WILL?

PLEASE REMEMBER THE

SOLICITORS BENEVOLENT ASSOCIATION

The following is the text of a suitable bequest:

I GIVE DEVISE AND BEQUEATH THE SUM OF

£_____

To the trustees for the time being of the Solicitors Benevolent Association, c/o The Law Society, Blackhall Place, Dublin 7 for the charitable purposes of the Association in Ireland and I direct that the receipt of the Secretary for the time being of the Association shall be sufficient discharge for my executors.

PRACTICE NOTES

Notices to Quit

There has never been a statutory period of time for a notice to quit tenancy of urban lands in Ireland. The Landlord and Tenant Act, 1870 and The Notice to Quit Act, 1876 only applied to agricultural property.

This has now been amended by Section 10 of the Housing (Miscellaneous Provisions) Act, 1992 Section 16 which reads:-

"(1)Subject to sub-section (2) and (3), a notice by a landlord or a tenant to the other of termination of the tenancy of a house let for rent or other valuable consideration shall not be valid unless it is in writing and is served not less than 4 weeks before the date on which it is to take effect.

(2) This section shall not apply —

(a) to the tenancy of a house let to a person in connection with his continuance in any office, appointment or employment.

(b) to the tenancy of a house let bona fide for the temporary convenience of or to meet a temporary necessity of the landlord of the tenant,

(c) to a tenancy conferring on the tenant the right to occupy a house for a holiday, or

(d) to such other class or classes of tenancies as may be prescribed for the purposes of this section by the Minister.

(3) Nothing in this section shall prejudice any provision of a contract or rule of law whereby a notice by a landlord or a tenant to the other of termination of the tenancy of a house is to be served more than four weeks before the date on which it is to take effect."

The effect of it is to make 4 weeks notice mandatory unless a greater period is provided for in the contract or by "Rule of Law", the most obvious example of this category being the 6 month period required for yearly tenancies.

"House" is defined in the Act as including "any building or part of a building used or *suitable for use* as a dwelling and out office, yard, garden or other land appurtenant thereto or usually enjoyed therewith".

It should be noted that the provision applies to a tenant giving notice of termination as well as to a landlord giving such notice.

Conveyancing Committee

Private Residential Property and Clause 36 of The Contract for Sale

When preparing the 1988 Edition of the Contract for Sale, the Conveyancing Committee decided to change clause 36 by providing that where planning permission had been granted since 1 January, 1970 a certificate of compliance with planning permission was to be handed over on closing. When drafting this clause it had been intended to apply only to private residential property. In all other transactions special conditions should have been inserted in the contract but in practice this was rarely done.

When re-examining the contract the Conveyancing Committee decided that it would be preferable for the general conditions to provide that 1 October, 1964 would be the operative date in relation to all planning matters.

When the 1991 Edition of the standard Contract for Sale was produced a practice note was issued (June, 1991 *Gazette*) which recommended that special conditions should be utilised to implement the recommendations of the Conveyancing Committee or of other Law Society Committees.

The recommendation of the Conveyancing Committee is that where private residential property is a subject matter of a contract for sale it is reasonable for a vendor's solicitor to insert a special condition in the contract providing that no certificate of compliance with planning permission will be handed over in respect of the erection of, or alteration to, a private residential property where the work was completed prior to 31 December, 1975 (the appropriate planning permission must still be furnished).

Conveyancing Committee

DE

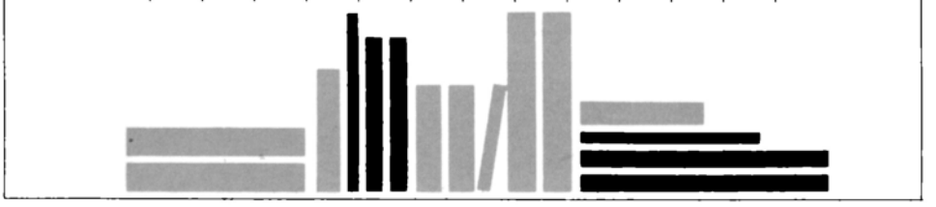
Irish Document Exchange

37 Fenian Street, Dublin 2.
Phone: 01-764601.
Fax: 01-767093. DX 1 DUBLIN.

OVERNIGHT, EVERY NIGHT, EVERYWHERE

Now a network of 36 interlinked exchanges throughout the country.

BOOK REVIEWS



The British Year Book of International Law 1991

By Ian Brownlie and D. O. Bowett, (editors), Oxford, Oxford University Press, 1991, ix + 744pp, £90 sterling, hardback.

We belong to a family of nations whose relations are governed by international law. We should be grateful to those who have worked in the international legal landscape. Much has been done, particularly since the end of the second world war, to establish a new international order. Those lawyers who have contributed to, for example, the Legal Committee of the United Nations General Assembly, the Geneva Law of the Sea Conferences, the International Court of Justice, the European Commission and Court of Human Rights and, of course, the institutions of the European Communities deserve our thanks.

Professor *Ian Brownlie* is one of the editors of this Year Book, now in its 62nd year of issue. It has been stated that the outstretched hand, searching for guidance on any matter of public international law, usually first reaches for Brownlie's *Principles of Public International Law,* now in its fourth edition.

The jurisdiction of the International Court of Justice in the case brought by Nicaragua against the United States in respect of military and paramilitary activities on Nicaraguan territory *(ICJ Reports,* 1984 and 1986) is considered in considerable detail by Professor D.W. Greig, Professor of Law at the Australian National University, Canberra. The theme of human rights features prominently in the Year Book. The experience of the United Kingdom between 1975 and 1987 in relation to compliance with judgments of the European Court of Human Rights and the decisions of the Committee of Ministers is reviewed in some detail. Articles also consider and review the decisions on the European Convention on Human Rights and the Court of Justice of the European Communities during 1991 together with United Kingdom material on international law.

This is an expensive book. It is a book for the specialist in international law, who will derive much benefit from its publication.

Dr. Eamonn G. Hall

Talking To Your Solicitor

by Mary Kotsonouris, Gill & McMillan, 1992, 98pp, £4.99, paperback.

Mary Kotsonouris as a former practising solicitor and former judge of the District Court is eminently qualified to write a book such as this.

The book comprising fifteen chapters deals with various topics of the law such as: making a will, bereavement, marriage, living together, trouble with the neighbours and, indeed, how to make a complaint against your solicitor. There are other practical topics and the last chapter of the book contains addresses and telephone numbers of useful services and also contains a glossary giving simple explanations of the meaning of legal words.

In the chapter on 'The Arm of the Law,' she gives some examples about the way in which a normally law abiding person can get involved with the Gardaí. She gives good practical advice about, say, being a witness in court or, more importantly, going bail for a person. She says in relation to going bail, if in doubt – don't. I am sure that her approach to this has been influenced by her time on the bench when she probably came across persons who were surprised when they lost money as a result of going bail.

The chapter on marriage gives details of the status of people who are married and the various rights which follow, but in her good advice on the transfer of the family home into joint names there are errors in relation to stamp duty and inheritance tax and spouses in so far as she has overlooked the exemptions in the Family Home Protection Act, 1976 and the Finance Act, 1990, which, no doubt, will be corrected in later editions. This chapter which also deals with the legal position of the marriage of divorced persons is very appropriate in this day and age. She also makes the point that marriage invalidates a will (unless made in contemplation thereof) which is often something the lay person is not aware of and thus it is no harm to bring it to the attention of the reader.

In her chapter on living together, she points out that the law really says very little about this and strongly advises that people entering into this type of relationship should have a simple agreement to provide for their split up, which is, of course, very sound advice. In situations such as this, she strongly recommends that the persons involved should make a will, and points out the pitfalls of entering into such a relationship, in particular, that the benefits of the family law legislation in relation to barring and maintenance does not protect the unmarried person.

I found her style of writing most readable and humorous and indeed, the style reminded me of a well known Irish novelist and journalist,

but the reader may not necessarily agree with me. The book is also interspersed with some very good stories. I liked the story about the Limerick labourer who had a serious accident involving a ladder. His solicitor made a successful claim, and explained at great length and circumlocution the costs and outlays that had to be deducted. He handed the man the cheque and asked him if he had any questions, "just the one, sir," said the client, "was it you or me fell off the ladder?"

Her book contains frequent referenes to literary works of a greater or lesser weight including Oliver Twist, Shakespeare and Agatha Christie. She makes the suggestion however, that Dickens' Bleak House should be required reading for all lawyers every three years – maybe she is right!

Elma Lynch

Index to Irish Law Reports Monthly 1976 - 1990

Compiled by Julitta Clancy. The Round Hall Press, 1992, 581 pp, hardback £120,000).

This comprehensive index to all cases reported in the Irish Law Reports Monthly 1976 to 1990, will undoubtedly be welcomed by practitioners. The index is divided into five parts: the first part is a table listing alphabetically all cases reported in the Irish Law Reports Monthly comprising some 2,300 entries. The next section is a table of cases judically considered, i.e. applied, distinguished, followed etc., including all cases referred to in the judgments. This is followed by a table of statutes etc. and a subject index comprising over 5,000 entries. The final part comprises a table of words and phrases judicially considered with a statutory reference where applicable.

The index was published on 10 December last and up to 31 March, 1993 is available at a special price of £85.00 to those who subscribe to the Irish Law Reports Monthly.

BC

The Bar Directory (1993 Edition)

The General Council of the Bar of England and Wales, 696 pp, hardback £25.00 (stg).

The Bar Directory, recently published by the General Council of the Bar of England and Wales is a comprehensive guide to barristers practising in England and Wales. Unlike other commercial directories, this is the official handbook of the profession and is compiled from the Bar Council's own records. It contains full details of all chambers and all individual barristers including: types of work, index of work categories, employed barristers in commerce and industry, and barristers practising overseas. Interestingly, the latter listing contains a few barristers who now practise in the Republic of Ireland.

The introduction to the Directory by the General Council of the Bar notes that between 1901 and 1960 the Bar in England and Wales increased in size by 67% from 1,147 to 1,919. However, after 1970 the numbers in practice increased to the current figure of 7,192, a growth of 178% over 22 years. Clearly, the phenomenon of a burgeoning legal profession is not exclusive to Ireland. The introduction also notes that "the next few years will see competition from solicitors in advocacy as they obtain rights of audience in the higher courts. The Bar Council is undertaking a review of its work practices to ensure it maintains its competitive edge in all areas."

BC □

Compensation Fund Policy Review Committee

The Council of the Law Society has established a Committee to review the operation of the Compensation Fund, to examine possible alternatives to the existing arrangements and to make recommendations on policy for the future.

The Committee invites submissions from all members of the profession, which should be forwarded to:-

Mary Keane,
Administrative Assistant (Legal),
The Law Society,
Blackhall Place,
Dublin 7.

□

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting
Specialists in Overnight Transcription

2, Arran Quay, Dublin 7.
Tel: 722833 or 2862097 (After Hours)
Fax:724486

Excellence in Reporting since 1954

Congratulations to our reporter, Tina Kenny, who has qualified as a Registered Professional Reporter with the National Court Reporters Association, U. S. A.
To qualify Tina had to write at 225 words per minute and transcribe accurately.
She is also the second person in Ireland to achieve this distinction, the first being her colleague, Mary O'Sullivan.

Tina Kenny

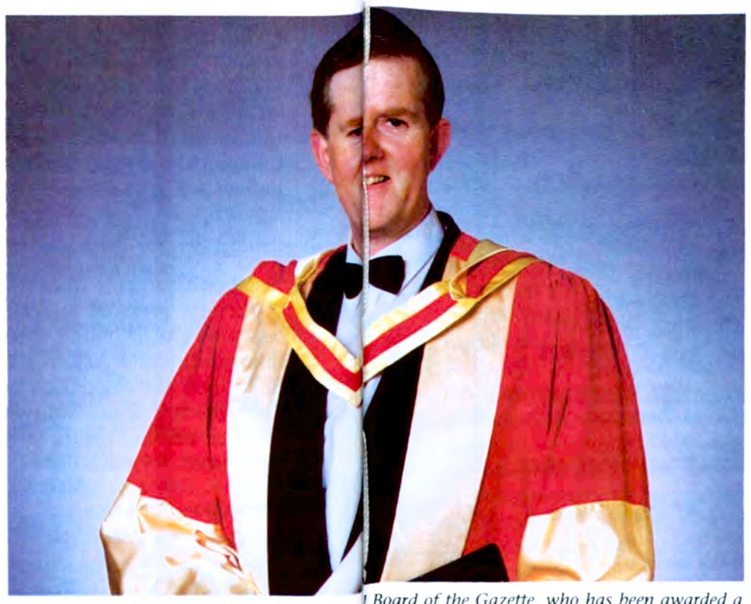
Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

Solicitors, Board Members and Staff of the Legal Aid Board recently met the President of the Law Society, Ray Monahan. Back row (l-r): Dave Riordan, Frank Brady, Cormac Flaherty, Kevin Liston, James Ivers, Richard O'Driscoll, Frank Murphy, Sean Cregan. Middle row (l-r): Aiffric Egan, Terry Quinn, Barbara Neary, Colm Roberts, Deirdre McMichael, Ray Finucane, Deirdre O'Connell, Fergal Rooney, Phil Armstrong, Fiona Maguire, Phil O'Laoide, Pearse Rayel, Chief Executive, Legal Aid Board; Miriam MacGillicuddy. Front row (l-r): Alan Grant, Anne Marie Lynch, Miriam Walsh, Ray Monahan, President of the Law Society; Brian Sheridan, member of the Law Society Council; Vincent Landy SC, Chairman, Legal Aid Board; Dermot Condon, Kevin Clarke.

Recently the Younger Members Committee of the Society presented a cheque for £2,000 to the Solicitors Benevolent Fund. The money was the proceeds of the Annual Soccer Blitz organised by the Committee. L-r: Graham Hanlon, Eddie O'Connor, Orla Coyne, John Shaw, Chairman, Younger Members Committee; Andy Smyth, Chairman of the Solicitors Benevolent Fund; John Campbell and Michael Nugent.



Dr. Eamonn G. Hall, Chairman of the Edito Board of the Gazette, who has been awarded a Doctorate (Law) from Trinity College, Dublin

LEGAL &
OFFICE S
PRICE
LIMITE
IBM
80 mgb – 2 mgb
FAX/ANS Machi
£590.
OKI Mobile Pho
We Also Supply
with Lega
Enqu
Dublin 01-725522
GENERAL
SUPPLIES
BLITZ
OFFER
PTOP
m £925.00 + VAT
with Guillotine
+ VAT
£630.00 + VAT
mputer Systems
Software
y No.
Cork 021-271865

At the Annual Dinner of the North and East Cork Bar Association were l-r: Mary Singleton, Deirdre Lucey, Timothy Lucey, Law Society Council Member; Patricia Harney, President, North and East Cork Bar Association; Michael Howell and Eimear Binchy.

Recently a former President of the Tipperary Bar Association, Francis Murphy, celebrated his 90th birthday. At a presentation to Mr. Murphy were: Back row l-r: Philip Morris, Secretary, Tipperary Bar Association; Joan Binchy, Philip Joyce, Law Society Council Member; Margaret Maguire and Brian Maguire. Front row l-r: Frances Murphy, Francis Murphy and Donal Binchy, a Past President of the Law Society.

DENIS C. GUERIN

New York Attorney at Law
Native of Killarney, Co. Kerry
Member of the Law Society of Ireland

Willing to act as your agent in the United States of America

- PERSONAL INJURY
  Auto accidents
  Medical malpractice
  Defective products
  e.g. Silicone breast implants,
  Copper 7 I.U.D. etc.
- CORPORATE LAW
- PROPERTY TRANSACTIONS
- DIVORCES
- WILLS
- IMMIGRATION etc.

We can represent you anywhere in the United States

Address: *25, West 39th Street,*
New York,
New York 10018, U.S.A.

Tel: 001-212-398-9238.
Fax: 001-212-391-6917.

LAWYERS !
Are you aware ?

We have a range of services to the legal profession:

★ **OCCUPATIONAL THERAPY ASSESSMENTS**
★ **TRANSPORT SUITABILITY ASSESSMENTS, ADVICE ON CONVERSIONS AND SUPPLY OF HAND CONTROLS**
★ **DRIVING TUITION FOR DISABLED PEOPLE**
★ **REPORT WRITING AND COURT APPEARANCE**

All of these services are available nationally through our Regional offices
Enquiries to: Chief Executive Officer
Irish Wheelchair Association,
Blackheath Drive, Clontarf, Dublin 3.
Tel: 01-338241/335366 Fax: 01-333873

★ Statistics say that **ONE PERSON IN EVERY TEN** becomes disabled at some stage in his/her lifetime - staggering !
★ We **WORK FOR PEOPLE WITH PHYSICAL DISABILITIES**
★ We **URGENTLY NEED FUNDS** to research and develop new services
★ Please **REMEMBER US** when **ADVISING CLIENTS** on **WILLS** etc...

- WE FOCUS ON ABILITY -

MKM

MacGreevy Keane Mediation

Contract Dispute Resolution

- MKM offers a voluntary, informal, efficient and economical mediation service for the resolution of commercial disputes.
- The MKM system means that unnecessary adversarial arguments are avoided.
- MKM helps both parties to focus on the problem and to look properly at both sides of the case.
- The mediator seeks the middle ground and then facilitates a settlement which is acceptable to both parties.

MKM

MacGreevy Keane Mediation
Contract Dispute Resolution
Kingram House, Kingram Place, Dublin 2.
Telephone: 01-766811/766815.
Fax: 01-766853

DOCUMENT EVIDENCE LTD.

Independent Forensic Document Examiners

We now employ five qualified and experienced scientists

*** all evidence types**
*** competitive rates**
*** quick response**

BROADWALK BUSINESS CENTRE
230 BROAD STREET,
BIRMINGHAM B15 1AY

Tel: 0044 21 643 0990

Fax: 0044 21 633 0288

Freedom of Access to Information on the Environment

Council Directive 90/313/EC

by Donal O'Leary BL

On 7 June, 1990, *Padraig Flynn,* in his capacity as President of the EC Council of Environment Ministers, signed a council directive on freedom of access to information on the environment, (90/313/EEC). Article 9 directed that the member states "shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 31 December, 1992, at the latest." An examination of the directive is useful to indicate what the national legislation must encompass in order to comply with the directive. The following are the main provisions of the directive.

Who May Request Information?

Article 3(1) states that information relating to the environment shall be made available to any person natural or legal and without having to prove an interest.

Who Must Make the Information Available?

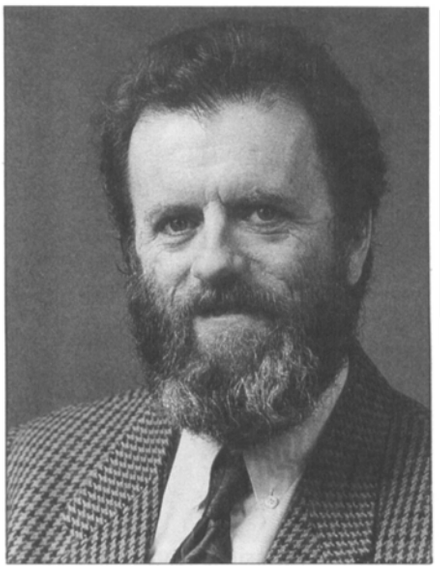
Public authorities (Art. 3) and bodies with public responsibilities for the environment and under the control of public authorities (Art. 6).

How Is the Information To Be Made Available?

The directive states that the member states shall define the practical arrangements under which information is effectively made available. The same terms and conditions governing how the public authorities make the information available applies also to bodies with public responsibility for the environment and under the control of the public authorities (Art. 6).

What Information May Be Requested?

Information relating to the environment. This is very broadly



Donal O'Leary

defined in the directive at Art. 2 (a) as "any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely to so affect, these and on activities or measures designed to protect these, including administrative measures and environmental management programmes."

Comment: This definition is very broad and must be welcome to all those interested in the environment. However, the exceptions need to be examined closely to see how effective this definition will be in practice.

What Information May Be Refused?

Article 3 (2) allows member states to provide for a refusal where the information requested affects:

- the confidentiality of the proceedings of public authorities, international relations and national defence,
- public security,
- matters which are, or have been, sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings,
- commercial and industrial confidentiality, including intellectual property,
- the confidentiality of personal data and/or files,
- material supplied by a third party without that party being under a legal obligation to do so,
- material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

Note, however, that information shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above. Art. 3 (2).

Finally, a request may be refused, Art. 3 (3), if it involves:

- unfinished documents or data,
- internal communications, or is
- manifestly unreasonable,
- too general.

Must Reasons for A Refusal Be Given?

Yes. The reasons for a refusal to provide the information requested must be given, Art. 3 (4).

How Soon Must a Request Be Answered?

As soon as possible and at the latest within two months, Art. 3 (4).

Can a Refusal or an Inadequate Answer Be Appealed?

Yes. A person who considers that his

request for information has been unreasonably refused or ignored, or has been inadequately answered may seek a judicial or administrative review of the decision in accordance with the national legal system, Art. 4.

Is there a Fee for Information?

Yes. But such charge may not exceed a reasonable cost, Art. 5.

Must General Information Be Available to the Public?

Yes. Member states are obliged to provide general information to the public on the state of the environment by such means as the periodic publication of descriptive reports, Art. 7.

Comment: This obligation would seem to be well met by the quarterly environmental bulletin published by the Department of the Environment and available on request. Also The Environmental Information Service, ENFO, at 17 St. Andrews Street, Dublin 2, Ph. 01-6793144, has a vast amount of information on the environment and on related topics, and is open to the public.

To date, Ireland has implemented this directive to the extent that an enabling act, the Environmental Protection Agency (EPA) Act, 1992, was enacted in April, 1992. Section 110 (1) of this Act states that the Minister of the Environment, following consultation with any other Minister of the Government whom he considers is concerned, "shall make regulations for the making available by such public authorities as may be specified of specified information relating to the environment to any person upon request and, in particular, for the purpose of giving full effect to Council Directive 90/313/EEC." Section 110 (2) outlines what these regulations may provide for. In essence this includes the different provisions of the directive. Finally s110(3), repeats almost verbatim the definition in the directive of "information relating to the environment." Section 110 came into force on 23 April, 1992 and the necessary regulations are currently being drafted by the Department.

What remains to be done by the Minister of the Environment is to bring into force the regulations and administrative provisions necessary to make the provisions of the directive and of the enabling section of the EPA Act, 1992 effective.

What remains to be seen is whether or not the exceptions will be interpreted in so restrictive a manner as to effectively limit the broad scope of the directive indicated by the definition and by the general access to environmental information clearly envisaged by the directive as stated in Art. 1: "The objective of this Directive is to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available."

Much depends on what use is made in practice of such exceptions as;

- the confidentiality of the proceedings of public authorities,
- commercial and industrial confidentiality,
- internal communications.

The then Minister of State at the Department of the Environment, *Mary Harney,* speaking of the EPA Act, 1992 and the Agency's future performance certainly indicated that we can hope for legislation that will be effective when she said "if this legislation should prove inadequate or ineffective, I will not shirk from bringing forward amending legislation" (IT 16.4.92).

**Donal O'Leary BL., is a practising barrister specialising in Environmental Law and is a founding member of IELA, the Irish Environmental Law Association.*

Donal O'Leary BL

SYS Spring Conference

Jump into Spring at Adare Manor, the venue for the next SYS Conference which will be held on the weekend of 5-7 March, 1993. Application forms are enclosed with this *Gazette* and as the number of delegates is limited it is advisable to book early.

Copies of the papers delivered at the SYS Autumn 1992 Conference, held in Galway, are now available on request from *Delphine Kelly,* c/o A & L Goodbody. The papers are as follows:-

Arbitration and Alternative Dispute Resolution
by Tim Bouchier-Hayes, Partner, McCann FitzGerald. The paper outlines the pros and cons of arbitration and other options to resolve disputes.

Building Regulations – Who Should Certify Compliance?
by Rory O'Donnell, Senior Partner, Rory O'Donnell & Co. The paper highlights the importance of obtaining certificates of compliance from adequately qualified professionals and sets out which qualifications are acceptable.

Current Developments in Environmental Law
by Garret Gill, Partner, Matheson Ormsby Prentice. The paper highlights the ever increasing complexity of environmental law and its importance to practitioners. It deals with the recent Irish legislation, the implementation of various EC directives and regulations and various international conventions and protocols.

Gavin Buckley
SYS Public Relations Officer

□

Title Insurance -v- Title Registration in the United States

by John G. Olden, BCL, Solr. Member, California Bar.

Introduction

Difficult questions relating to the certainty of title and the priority of competing ineresting in real property confront conveyancers in the United States as in Ireland and elsewhere. The title concerns of purchasers, mortgagees and others are alleviated to a greater or lesser extent by various statutory schemes and conveyancing practices which have evolved in each jurisdiction over time. One legislative system designed to offer more than a modicum of title protection – the registration of title – has been widely regarded as a superior means to eliminate uncertainty in land titles, to simplify the conveyancing process and to cheapen the cost. However, title registration has been vigorously resisted in the United States since its inception. The preferred and prevailing custom in most areas of the country is to insure the accuracy of title through a policy of title insurance underwritten by a title insurance company. This article looks at the historical development and operation of these two mutually exclusive concepts Stateside, explores the nature of title insurance and examines the reasons for title registration's general lack of success. Firstly, it is helpful to briefly discuss the *recording system*[1] which affects unregistered land in the United States.

I. The Recording System

The earliest known evidence of a conveyance in North America is that of a deed written into a record book of the Plymouth Colony in 1627, a practice which appears to have had Dutch origin.[2] The new settlers, who believed land was essentially an economic commodity, made it a priority to devise methods to protect good faith purchasers and quickly

John G. Olden

enacted recording statutes of limited scope and purpose, the non-English colonists basing theirs on continental European title systems and the English colonists on the Statute of Enrollment.[3] One feature of the early statutes, found in present day recording statutes in the United States, provided for the copying of conveyancing instruments in their entirety into a public record. An important evidentiary effect has resulted from this in that prima facie proof of title may generally be established solely from the public records. As a practical matter, this has removed the need for American land owners to maintain historical documents of title so copiously accumulated by those holding interests in Irish property.

A fundamental element, but certainly not unique, of the recording system is that a purchaser is bound by constructive notice of existing recorded rights and takes title subject to them. While an unrecorded conveyance is enforceable as between its parties, it is generally unenforceable as against a third party who acquires an interest in the subject property without notice.[4] Accordingly, it is essential to search the public records to determine whether or not a vendor of unregistered land has (a) the right to convey and (b) possesses clear and marketable title.

There are three types of recording statutes affecting unregistered land found in the United States today. Firstly, the so called *race type statute,* where priority is given to the first conveyance recorded of two successive purchasers from a common grantor regardless of notice ("first in time, first in right"). Secondly, the *notice type statute* where priority is given to a bona fide purchaser who takes without notice of an earlier conveyance of the same interest. Thus the earlier conveyance would prevail if it is recorded prior to the delivery of the subsequent conveyance (constructive notice) but not if it is recorded after the delivery of the subsequent conveyance whether or not the subsequent conveyance is recorded. Thirdly, the *race-notice type statute,* where a subsequent grantee of an interest which has previously been conveyed obtains priority only if he is a bona fide purchaser without notice and his instrument gets recorded first. Most states have statutes of the third type, some have notice type statutes, and a few have the first type.

II. Registration of Title

Land title registration in the United States, known as the *"Torrens system,"* [5] was originally introduced as a voluntary alternative to the recording system in twenty one states beginning at the end of the last century. However, for reasons discussed below, the Torrens system, in all but a few parts of the country, never generated enough lasting excitement to be a viable competitor to the methods of title protection which have arisen for unregistered land under the recording system.

It is not surprising to discover that there are parallels in the general operation of the Torrens system with that of the Land Registry in Ireland. Title is registered in an official book which is "conceived as being a permanent and complete record of the exact status of the title and the sole and conclusive legal evidence of title[6]," an owner's certificate of title with an identifying number is issued by the registrar, a duplicate of which is delivered to the holder of the registered estate; subsequent interests in the registered estate are valid only if filed and noted on the face of the original certificate; transfers are effected by presenting to the registrar a fully executed instrument in a form prescribed by statute; transferees are not bound to inquire behind the official certificate and, in the absence of fraud, take title without being charged with notice of unregistered interests; and assurance funds have been established to compensate those demonstrating a loss caused by the registration process.

To initiate registration a property owner must petition a court by means of an *in rem* action against the property. Notice must be published and an order made for an examiner of titles to examine the records and investigate the claims and allegations made in the petition. If title is found in the petitioner, the court issues a decree which enables the property to be registered. The high cost and expense of this judicial proceeding (perceived as essential to satisfy constitutional due process requirements) has been called the greatest theoretical and practical barrier to the establishment of the Torrens system in the United States not counting the opposition of various vested interest groups.[7] A major player among those groups is considered next.

III. The Title Insurance Industry

a) History. The preparation of abstracts of title by professional abstractors or examining lawyers together with, in many instances, a lawyer's opinion as to the state of title, eventually became a standard conveyancing practice for unregistered land in most areas of the country. In 1868 the Supreme Court of Pennsylvania held that a title abstractor could be found negligent in performing a title search,[8] a decision which is generally credited with influencing the establishment of the title insurance industry.[9] Title insurance companies were soon after incorporated in the major East Coast cities and, beginning in the early part of this century, competed with the new land title registration systems.[10]

In the 1920s institutional lenders began making record numbers of mortgage loans as a result of the nationwide residential building boom. They soon realised that a more standardised form of title protection could be obtained for their mortgages by using title insurance instead of lawyers' title opinions. The advantages of title insurance also became clear to the lenders in marketing the bulk sale of discounted mortgages in the newly developed secondary mortgage market.[11] While most institutional lenders traditionally made loans to their business base, life insurance companies began to lend nationally and buy discounted mortages in bulk from other lenders. Life insurance companies were instrumental in influencing the title insurance industry to standardise the policies issued by its constituent members so that the type of coverage available was similar nationwide. This enabled the life insurance company's home office, from a title perspective, to quickly and accurately decide whether a second hand mortgage would be acceptable wherever the property was located.

One result of the lenders' actions was a tremendous increase in title insurance business and a recognised presence for the industry. Today, title insurance companies are permitted to sell title insurance in all states except Iowa and in 1989 alone their combined yearly operating revenues were $4.1 billion.[12] While the lawyer's title opinion is still used in some, particularly rural, areas of the country, in some states, such as California (which no longer has a system of title registration), real property transactions are rarely conducted without title insurance.

b) How does title insurance work? In essence, a title insurance policy is an indemnity to make good a loss up to a stated maximum if it is determined that the actual title of the interest insured is not as described in the policy. Title insurance differs from almost all other types of insurance in that the risks insured against are not based on the occurrence of a future event. As one commentator put it: "with other forms of casualty insurance, the effective date from which coverage commences means that the insurance policy will reimburse the insured for loss caused and suffered after the effective date shown on the policy. However, title insurance is entirely different in this regard. The title insurer will reimburse the insured, subject to the policy terms, for loss caused before but suffered after the effective date of the policy."[13]

"Title insurance differs from almost all other types of insurance in that the risks insured against are not based on the occurrence of a future event."

Typically, after the opening of an order with a title insurance company a title search is usually conducted. Title insurance companies or their agents, usually abstract companies, own and operate "title plants" which literally contain, by arrangement with the Recorder's office in each county, complete copies of all documents and instruments affecting real property recorded in that county. Title plants are, however, organised differently than most Recorders' offices and use a "tract" index which identifies all recorded interests pertaining to a particular parcel of property (similar

to the method used in title registration). Most Recorders' offices, on the other hand, use alphabetical name indices which require an examination of a grantor-grantee index, among others, to determine what instruments affect the title to a given piece of property. The trace index affords a more convenient and rapid examination of title documents and this method is generally regarded as being far superior to that of the Recorders' offices.[14] On completion of the title search a non-binding "preliminary report" is delivered to the proposed insured prior to the conclusion of the real property transaction.

The preliminary report includes a list of matters purporting to affect title which the title insurer declines to provide coverage against loss if and when a policy is issued. Matters listed are said to be "excepted" from coverage. The preliminary report differs from an abstract of title because it does not presume to list every matter of record relating to the subject property. A title insurer is potentially liable under a title insurance policy for losses suffered by reason of any matter affecting title not specifically excepted from coverage (or otherwise excluded pursuant to standard exclusionary provisions). An abstract preparer, on the other hand, is potentially liable for losses suffered by reason of any matter affecting title not specifically included in the abstract.

Title insurance policies are issued upon payment of a one-time premium and are effective for as long as the insured has an interest in the subject property. The premium for an owner's policy is normally based on the value of the property (i.e., the purchase price in the case of a sale), or the loan amount where the policy insures the priority of the lender's mortgage, and is calculated at a fixed amount for each $1,000 insured. Most states regulate to a greater or lesser extent the rates that title insurance companies can charge.

Title insurance is available to freehold owners as well as to those holding other interests, such as lessees, optionees and mortgagees. A standard owner's policy insures against: a) title to the estate or interest described being vested other than as stated; b) any defect in or lien or incumbrance on the title not otherwise excepted from coverage; c) lack of legal access to and from the property; and d) legal (as opposed to economic) unmarketability of the title. A lender's (or so-called "loan") policy additionally insures the validity, enforceability and priority of the lender's mortgage. The title insurance policy obligates the title insurer, subject to the policy terms, to pay for the defence of all claims, with or without merit, which purport to defeat the insured interest. Title insurers also offer so called "extended coverage" policies for a higher premium which can provide wider protection against loss should the circumstances so require.

c) Title insurers' assumption of risk. If, as might appear at first glance, a title company can effectively reduce its exposure to claims by carefully and competently examining the relevant title records and refusing to cover any adverse matter which is discovered, what is the benefit of a title insurance policy to a property owner or a mortgagee?[15] The answer partly lies in the fact that a title insurer will assume some risk. The title policy insures against loss arising from certain kinds of "off-record" risks or "hidden defects" which cannot be discovered by a thorough and accurate search of the title records such as, for example, the forgery of a document in the chain of title, the non-delivery of a conveyance or the misfiling or incorrect indexing by the Recorder. A title insurance company may also be willing to "insure around" (i.e. delete as an exception to coverage) a known title defect under certain conditions. This might occur if, for example, the risk of a claim is deemed to be extremely remote or a satisfactory indemnity is obtained from an appropriate party indemnifying the title insurer for any losses it may suffer for insuring around the known defect.

As a practical matter, the preliminary report serves to identify problem areas and risks which can often be eliminated prior to the completion of a transaction and, thus, not assumed by the proposed insured. What can be deleted as an exception to coverage is subject to negotiation with the title company. Coverage issues are handled by underwriters, sometimes aided by in-house lawyers, who make the final decisions affecting risk and potential liability. Of course, the title company may be unwilling to assume the risk of deleting an exception to coverage which appears in the preliminary report and, if the proposed insured cannot independently resolve the matter with the seller or holder of the adverse interest, the transaction may fail (and no title insurance is purchased). Title insurance companies in the United States are very much involved in assisting purchasers and lenders in dealing with title matters and routinely suggest ways of deleting exceptions to coverage. In this regard title companies have been called the "sole arbitrators of title questions"[16] and the "supreme court on titles to real property."[17]

d) Limitations of title insurance. It is important to remember that title insurance does not guarantee the title of a particular piece of real property and likewise cannot be equated with evidence of title. For instance, a title insurer could choose not to conduct a search of the public records prior to issuing an owner's title policy to a purchaser (in most states there is no legal requirement that a title insurer must do so) and thereby, in effect, assume the risk of failure of title. Should that risk materialise, and litigation to establish good title is ruled out or is unsuccessful, the purchaser would be indemnified for the monetary loss incurred (up to the stated maximum in the policy) but lose the interest mistakenly believed to be his. However, title insurers usually do not take this high-risk approach to their business as undertaking this practice would "remove the basis for curative action, and as titles become more uncertain, losses would increase and insurance rates would go up."[18]

"It is important to remember that title insurance does not guarantee the title of a particular piece of real property and likewise cannot be equated with evidence of title."

Title insurance companies generally do not assume known risks. Risks are eliminated by diligently searching the title which is in the interests of both the insurer as well as the insured. One observer notes that it is difficult, particularly in some urban areas, to obtain an abstract of title or to conduct a reasonably reliable and up to date search of the public records, and, while it is understood that a title policy cannot be deemed to be evidence of title, it might sometimes be the "best evidence" that can be obtained.[19]

e) The unauthorised practice of law controversy. There is an ongoing legal debate as to whether a title insurer, in conducting a title search, examining title documents or even issuing a title policy, engages in the unauthorised practice of law. Title insurance companies insist that, as insurers, they are entitled to examine the risk which they are assuming. Even if this results in the exercise of legal judgement, title insurers contend that they are merely representing themselves and self-representation ought to be permitted. Many courts have decided in favour of title insurers when this issue has been brought to their attention by concluding that the activities in question are allowed if they are incidental to the business of title insurance companies. However, courts in some states have more routinely restricted the conduct of title insurers often by finding that the suspect activities are tantamount to the giving of legal advice.

There has also been judicial scrutiny of the ancillary services offered by title insurance companies. Many title insurers offer escrow and closing services and will often prepare closing documents, activities which are not related to a customer's decision to obtain title insurance. Most lawyers would have little difficulty concluding that the drafting of conveyancing documents constitutes the practice of law. However, some courts, while making a distinction between simple and complex documents, have permitted title insurance companies to engage in this practice as incidental to the business of the companies. Courts in other states have decried this practice and so the debate continues.

One commentator sees the attempt to restrict such services "to be nothing more than efforts to preserve a field of law practice for the benefit of the bar."[20] But the bar has not made a sufficiently valiant effort to preserve the traditional position of lawyers as conveyancers. According to another commentator, for the bar to succeed in this regard there must be an overhaul of the present system: "The whole case for a lawyer monopoly of conveyancing must be built on radical reform of the land law and the methods by which titles are proved. Juxtaposed to this is the fact that the title companies have a vested interest in the deficiencies of the existing system."[21]

IV. Cracks in the System

The recording system for unregistered land in the United States, like its near equivalent, the Registry of Deeds, is by no means perfect. For instance, many interests affect title to land without being recorded in the public records. Prescriptive easements and adverse possession, for example, can gain priority without recording by operation of law. Moreover, forgery, fraud or lack of capacity are not reflected in the public records. In addition, it can be difficult or impossible to discover instruments which may affect a particular piece of property even after a careful and meticulous search in all relevant locations. The problems inherent in the recording system are actually compounded, it is argued, by the title insurance industry which exploits the weaknesses in the system and encourages a "continued lack of title security, inefficiency, and unnecessary consumer costs."[22] Proponents of title insurance, on the other hand, argue that the risk coverage features are superior in quality and quantity to Torrens certificates protecting registered land and that even title registration does not eliminate the need for a title search.[23]

Meanwhile, where available, the Torrens system of land title registration has been severely undermined in several ways. The conclusiveness of registration certificates has been limited by statute as well as by court decision. Appeals challenging registration decrees may be made within statutory periods after initial registration and many judicial and statutory exceptions (including claims and interests based on federal law, short term leases, public easements and real property tax liens and assessments) have been carved out which affect registered title without registration.[24] Further, the expense, time and effort of initial registration coupled with the fact that there is no immediate benefit or financial motivation for an owner to voluntarily register property, has resulted in widespread public disinterest.

The efforts of those vehemently opposed to title registration, including the bar and not least the title insurance industry, has significantly contributed to the decline in land registration in the United States. Extensive political and public lobbying by title insurance companies in support of the recording system and against reform or expansion of title registration systems has had a dramatic adverse impact on the latter. While the title insurers have been very adept at self-promotion, attaining high public visibility and confidence as a result, there has been very little governmental promotion, even at the local Registrar level, of title registration as a viable alternative. In states with Torrens legislation, it has not been uncommon for purchasers to be unaware of the availability and operation of title registration. Where purchasers are aware, their choice is often nullified by their lender's

insistence on title insurance. At present, there are only four states with any noteworthy title registration activity – Hawaii, Illinois (Cook county only), Massachusetts and Minnesota – and half of those states which originally had Torrens statutes have actually repealed their legislation.[25]

Conclusion

The title insurance industry has established a firm and consolidated foothold in the United States and title insurers have sought to offer their services in Canada, Europe and elsewhere. It is clear that the insistence on title insurance by institutional lenders has fostered the growth and success of the industry. Lawyers, who have by no means been entirely excluded from the conveyancing process where title insurance is prevalent (instead of title searching they negotiate title insurance coverage on behalf of their clients), generally, with some exceptions, have not opposed the industry's progress and development. But there are others who forcefully argue that title insurance just masks the problems of the recording system and that title registration is ultimately in the best interests of the public. However, there is also general recognition among this group and some observers that radical modification of the existing statutory framework of the Torrens system would be an essential first step in establishing wider acceptance. This is seen to include: the use of administrative as opposed to judicial hearings at the time of initial registration; reduction in the cost of initial registration by modest increases in registration charges for subsequent transfers; limiting the types of exceptions and incumbrances exempted from registration; embracing the concept of possessory title so that after a statutory period uncontested titles become indefeasible and absolute; and compulsory registration upon voluntary transfer.[26]

Statutory reform notwithstanding, additional issues would also need to be addressed if title registration is to have any hope of future success. Whether the focus is initially statewide, regional or across the country, proponents of Torrens would not only need an effective strategy to create greater public awareness of the perceived benefits of title registration, they would also need to convince the lenders that a system of title registration is better for them than title insurance and at the same time persuade the politicos that change is desirable. To find allies among the legal community and, perhaps, those powerful corporations which acquire and dispose of real property on a regular basis would be a beneficial ingredient in any crusade for title registration. However, there is currently no reason to believe that title insurance will not be the first choice of the American public for the foreseeable future and with that, according to the critics of the recording system, the potential risks of title impairment associated with unregistered land will remain.

Endnotes

1. Each state in the United States has established its own statutory scheme of maintaining the records to land in its jurisdiction, usually at the county level. The method of organising the records of unregistered land is generally known as the *recording system,* where recorded instruments provide evidence of title (not unlike the Registry of Deeds) as opposed to title registration, where ownership of the title itself is registered.
2. *1 Patton on Land Titles,* p.10, West Publishing Co. (2nd ed., 1957).
3. Ibid at pp. 9-11; *6A Powell on Real Property,* para. 904[1], Mattew Bender (Rev. 1992). On the Statute of Enrollment (1535), see Megarry & Wade, *The Law of Real Property,* p.1170 (4th ed., 1984).
4. See Powell, *supra* note 3, at para. 904[3].
5. Named after Irish-born Sir Robert Richard Torrens, premier of South Australia, who introduced the system to Australia patterned on the title certification of ships. He was also the author of the Record of Title (Ireland) Act, 1865, Ireland's first title registration statute. See Wylie, *Irish Land Law,* ch. 21.
6. Powell, *supra* note 3, at para. 909[7].
7. Goldner, *The Torrens System of Title Registration: A New Proposal for Effective Implementation,* 29 UCLA L. Rev., 661, 689 (1982).
8. *Watson -v- Muirhead,* 57 Pa. 161 (1868).
9. Burke, *Law of Title Insurance,* p.3, Little, Brown & Co. (1986). While there is evidence that the first title company was formed in 1853, the first title company to be chartered was in Philadelphia in 1876. See Johnstone, *Title Insurance,* 66 Yale L. J., 492, note 1 (1957).
10. Burke, *supra* note 9, at p. 3.
11. Ibid at p. 4. Title insurance was also preferred because the title insurance companies assumed the responsibility for negotiating and litigating claims and had the financial wherewithal to pay them. Johnstone, *supra* note 9, at pp.502-3.
12. *1990 Fact Book,* American Land Title Association, p. 10. In 1989 the title insurance industry actually posted a pre-tax operating loss prior to investment income of $154 million. Ibid.
13. Rooney, *Attorneys Guide to Title Insurance,* ch.2, p.7, Illinois Institute for Continuing Legal Education, (1984).
14. See Johnstone, *supra* note 9, at p.507. The largest title insurer in the United States today, Chicago Title, was formed as the successor to an abstract company which possessed copies of the land records of Cook county, Illinois, the originals of which were destroyed, along with the county courthouse holding them, in the Chicago fire of 1871. Burke, *supra* note 9 at p.8.
15. A title insurance company is "in the unique position of being able, through its own work, to eliminate many claims." Burke, *supra* note 9, at p.22.
16. Ibid at p.29.
17. Miller & Starr, *3 California Real Estate,* p.6, Bancroft-Whitney (2nd ed. 1989).
18. Johnstone, *supra* note 9, at p. 516. It also diffuses the title insurance industry's emphasis on the security offered by title policies. Rooney, *supra* note 13, at ch.2, p. 23.
19. Rooney, *supra* note 13 at ch. 2, p. 10.
20. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors – Or Even Good Sense?,* 1980 Am. Bar. Fdn, R. J., 207.
21. Payne, *Title Insurance and the Unauthorized Practice Of Law Controversy,* 53 Minn. L. Rev., 423, 473 (1969).
22. Goldner, *supra* note 7, at p. 661.
23. Shick & Plotkin, *Torrens in the United States: A Legal and Economic History and Analysis of American Land-Registration Systems,* pp.8-9, D.C. Health and Company (1978).
24. Ibid at p.58. See also Powell, *supra* note 3, para. 908[3].
25. Shick & Plotkin, *supra* note 23, at p. 58.
26. See Johnstone, *supra* note 9, at pp.514-5. See also Goldner, *supra* note 7, at pp.690-709. □

THE LAW SOCIETY
BLACKHALL PLACE DUBLIN 7

COMPANY SERVICE

The Law Society provides a prompt and efficient company formation service based on a standard form of Memorandum & Articles of Association.

We can incorporate your Company in 10 working days.

Where necessary, the standard form can be amended, to suit the special requirements of any individual case.

SHELF COMPANIES
are readily available

WE ALSO SUPPLY:
Company Seals (Desk & Plier Type)
Share Registers • Share Certificate Books
Company Kits
at Competitive Rates

PHONE CARMEL OR RITA FOR DETAILS
TELEPHONE: 710711. EXT 224. FAX: 710704

TECHNOLOGY NOTES

A Fount of In-House Knowledge? Information Retrieval Systems

by John Furlong, Solicitor

One of the primary functions in any legal office is the management of information. This fundamentally requires a system to allow for the collection, interpretation and dissemination of relevant materials. The successful management of information is crucial to the effectiveness of any practice.

Certain materials are organised in a structured fashion which facilitates this management. For example, word processing documents and precedents can be collated within libraries and word searching facilities within the systems can be used to retrieve particular documents. Equally, published materials in text books or in volumes of precedents can usually be easily located using either a table of contents; a volume index or other bibliographic reference.

Difficulties arise in all practices with the retention and subsequent use of other non-published materials which are considered worthy of retention for further use. These include office memos, letters to clients, counsel's opinions, lecture notes etc. The random and unstructured nature of these materials makes it difficult to organise them in such a way as to make them available for easy reference or retrieval.

Building an Information System
There are clear advantages to a coordinated and structured system for the collection and subsequent retrieval of such materials.[1]

- Valuable materials specifically relevant to the work of the practice are archived and available for future use.
- Repetition and duplication of research is avoided.
- Access to information sources is made more efficient with a consequent rise in client service standards.
- Intangible cost savings are made in terms of fee earner time.

Clearly such systems require resources for their establishment and operation. In addition, and of their nature, such systems need elements of automation to make them operate effectively.[2]

Automation
Automated information retrieval systems allow for the storage and retrieval of text in a random fashion. They provide the means to structure, collate and store details of published and unpublished items relevant to the work of a practice. Effective use of these systems requires adequate identification of a firm's information needs and the resources to structure and input the appropriate materials. They allow for random access to a varied range of materials and the compilation of different outputs and reports suited to particular enquiries. In addition, searching capabilities of specialised systems can be constructed so as to replicate the human thinking process.[3]

Specialised information retrieval systems can be operated on anything from a stand-alone PC to networks or central processors.

Information retrieval systems consist of three basic functional elements.

- Database design.
- Search facilities.
- Report and output generation.

Database Design
By far the most important aspect is database design which will either be preset by the supplier or can be customised or fully built to the user's specification. It is important that the database design feature should include the following:

- Allowance for modifications to include future requirements of the user.
- Capability to include both indexed and non-indexed text.
- Capability for future modification and amendment.

The database design should be structured to provide for access and searching by reference to a range of detail such as topic, classification, author, title, publisher, date etc.

The vital strategic decision to be made with regard to database design is whether text is to be incorporated in full (i.e. the full text of each item being input either manually or through OCR) or whether there is to be a linkage between the system and imaging or micro-filming systems. Another option is to provide for bibliographic reference only; storing the materials either on their existing files or in a central source such as an in-office library.

Search and Retrieval
Searching facilities are usually pre-ordained by the system itself although user screens should be capable of modification to ensure that they are as simple to use as possible. It is vital to the successful acceptance of a searching facility that users understand how to construct searches and avoid results which are imprecise or too broad.

Report generation and output design in most systems can be adapted and modified by the user to provide for screen displays, print-out of search results and regular current awareness bulletins for distribution to users.

Most specialised systems operate on the basis of Boolean and positional

searching[4] which allows for the combination of words and phrases and the construction of a search either directly to the information database or through a sophisticated thesaurus.

Overheads and Costs

Clearly an information retrieval system requires significant capital expenditure which would place it beyond the range of sole practitioners. However both hardware and software costs make it a realistic option for medium to large firms. Costs of lower end systems range from £4,000 to £10,000+. Added to this must be the costs of overheads in terms of system development, data capture and on-going administrative and management costs.

References

1. A good general overview is provided in a series of articles by Stephen Mayson in the *Law Society Gazette (UK)* "Creating In House Information Systems in Solicitors Firms" (Part I): 18 March 1987; (Part II), 15 April 1987; and (Part III), 20 May 1987.
2. The pros and cons of specialised systems are discussed in "Know How for Smaller Firms" and "Know How for Larger Firms" both by Neil Cameron in the *Solicitors Journal* 25 September and 6 November, 1992.
3. The most notable advance in recent years being the development of Hypertext which attempts to mirror the human thinking process. See "Hypertext for Lawyers – An Introduction" Mark L. Macaulay *Computers and Law* November, 1992.
4. A detailed critique of Boolean searching in the legal environment is contained in "Beyond Boolean Logic" Stephen J. Lathan *The Law Librarian* December, 1991. □

Law Society Conference Goes West!

Discover the beauty of the Connemara countryside and the Aran Islands, enjoy the luxurious facilities of the refurbished Connemara Coast Hotel and find out why, as a far-seeing practitioner, you can no longer afford to ignore the issue of quality in your practice, at the Law Society's Annual Conference which takes place this year from 20-23 May at the Connemara Coast Hotel, at Furbo, Co. Galway – just six miles west of Galway City.

The conference package of *£195.00* per person sharing is exceptionally good value. The package includes three nights bed and breakfast, two lunches and two dinners (including the Conference Banquet). Also included in the package are an afternoon coach tour of the Connemara countryside and a day-long trip to Inis Mór on the Aran Islands. A £60.00 registration fee will apply also to each delegate.

A special package price is being offered to members of the profession who have qualified within the last five years of *£125.00* per person sharing (+ registration fee £25.00).

Guest speakers at the conference will be: *Patrick Hayes,* Managing Director, Corporate Image; *Robert Pierse,* Senior Partner, Pierse & Fitzgibbon, *Andrew Lockley,* Director, Legal Practice, Law Society of England and Wales, and *Philip Hamer,* Managing Partner, Philip Hamer & Co. The speakers will examine the issue of how applying quality standards can give your practice the competitive edge. An invitation has been extended to Dr. AJF O'Reilly, Solicitor, Chairman, Matheson Ormsby Prentice, to act as chairman of the conference seminar.

Full details of the conference are set out in the brochure and booking form **enclosed with this issue of the *Gazette.*** Early booking is advisable. Please return the booking form and address any queries to *Mary Kinsella* at the Law Society, Blackhall Place, Dublin 7. Telephone: 710711.

The closing date for bookings is 31 March, 1993. □

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1992 Catalogue
Pegasus (01)2843819

YMC seeks views on Education Policy

The Education Committee of the Law Society is currently reviewing the education policy of the Law Society, particularly in relation to admission to the profession. The Younger Members Committee, being composed of members of the profession and apprentices who have gone through the Law School, feels that it has a particular interest in this area and may be in a position to contribute considerably to the review.

The YMC would like to be in a position to formulate the views of the younger members of the profession and with this in mind, seeks submissions or comments from all interested parties. Please write to us care of the Law Society, Blackhall Place, Dublin 7, or contact any of the following:

John Shaw, JA Shaw & Co., Mullingar. *Orla Coyne,* Gerard O'Keefe & Co., Dublin 7. *James MacGuill,* MacGuill & Co., Dundalk. *Eva Tobin,* McDermott & Allen, Galway. *Patrick Casey,* M J Horgan & Co., Cork. *Stephanie Coggans. Robert Hennessy,* Murray Sweeney & Co., Limerick. *Rosemarie Loftus,* Bourke Carrig & Loftus, Ballina. *John Campbell. Michael Nugent,* Michael Nugent & Co., Dublin. *Graham Hanlon,* Eugene F Collins & Co. *Pat Crowley. Eddie O'Connor.* □

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 1 Castle Street, 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
G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

Obituary – Vincent Hallinan

Irish-American "Trial Lawyer of the Century" Dies at 95

San Francisco, California – October 1 marked the death at age 95 of the celebrated Irish-American lawyer, *Vincent Hallinan.* Champion of the under-dog and called a lion in the courtroom for his ferocity, Hallinan leaves a legacy as one of the last great independent lawyers in America, a spokesman for social change; afraid of no one.

During a legal career that spanned over seventy years, Vincent Hallinan earned a national reputation for his impressive legal skills and willingness to go to extremes in the furtherance of his clients' interests. He crusaded against court corruption, mounted brilliant defences in high profile murder cases and won record awards against corporations and insurance companies. His combative and often irreverent style was matched by his sharp wit. When a federal judge asked him whether by his actions he was trying to show contempt for the court, he replied "No, Your Honour, I'm trying to hide it."

Born in San Francisco in 1896 of Irish immigrant parents, his father from Ballingarry, Co. Limerick, his mother a Sheehan from West Cork, Hallinan once entered the political arena as an independent presidential candidate. He also sparred with J. Edgar Hoover, spent time in federal prison and went all the way to the US Supreme Court with a suit, ultimately unsuccessful, alleging fraud on the part of the Catholic Church for expounding on the existence of heaven and hell.

Hallinan possessed the toughness, cunning and determination required of a member of a poor minority to get ahead. While he played rugby well into his seventies, his real sporting love was boxing. A former boxing coach, he relished a good fight both in and out of the courtroom and was often inclined to use his fists to pummel his legal opponents in what he termed "out-of-court settlements." By one account he is reputed to have struck "at least 23 officers of the court" in his career.

But Hallinan the brawler was also Hallinan the benefactor. In 1963, he persuaded the Supreme Court to quash the murder conviction of an innocent man who became the first person ever to be freed from California's death row. Two years earlier Hallinan had responded to an ad placed by an impoverished woman in a local newspaper who offered to work for any attorney without pay for life in return for saving her husband from the gas chamber. No fee was ever exacted.

Hallinan took on his most controversial case in 1949 against a backdrop of nationwide communist hysteria. "It was the perfect case," recalled his son Terence at a testemonial tribute to his father earlier this year, "where the client went free and the lawyer went to jail." *Harry Bridges,* the Australian-born founder of the International Longshoremen's and Warehousemen's Union and organiser of the infamous San Francisco waterfront strike of 1934, was accused of lying about his communist affiliations on taking his citizenship oath. His deportation trial was bound to be a political hot potato with repercussions for those publicly siding with Bridges. Hallinan's involvement incited scorn from the right and later drew the attention of the FBI. Despite an intense and vigorous defence in heated proceedings, the government's charges were affirmed in the red-baiting climate of the day, only to be dismissed on appeal to the Supreme Court. In the meantime, Hallinan lost his own appeal of a finding of contempt stemming from the trial. He was sentenced to six months in prison.

Another set-back followed when Hallinan was successfully prosecuted by the government for tax evasion in 1953, a charge some saw connected to his defence of Bridges. For this he served eighteen months in a federal penitentiary. To add insult to injury, the State Bar of California suspended him from practice for three years on foot of the tax conviction.

Hallinan preferred not to talk about this period of his life. He soon battled his way back from adversity to continue, up until the time of his death, the campaign against injustice he had begun so many years before. He was bestowed with a suitable honour this year when the Northern California Trial Lawyers' Association named him Trial Lawyer of the Century. The memorial service for Vincent Hallinan, lawyer and pugilist, was attended by a huge gathering on October 17, 1992. It was fittingly held at the International Longshoremen's and Warehousemen's Union Hall in San Francisco.

May he rest in peace.

John G. Olden

NOTICE

The High Court

In the matter of Christopher Forde, Solicitor and in the matter of the Solicitors Acts 1954 and 1960

TAKE NOTICE THAT by Order of the High Court made on Thursday 14 January 1993, it was ordered that no banking company shall without leave of the High Court make any payment out of any banking account in the name of Christopher Forde or his Firm Christopher G. Forde & Co. carried on at 79 O'Connell Street, Ennis, Co. Clare or his sub office at Kildysart, Co. Clare.

It was further ordered that the practising certificate of Christopher Forde be suspended.

Patrick Joseph Connolly,
Registrar of Solicitors

NEW

from
Butterworths

Irish Conveyancing Precedents *by Mary Laffoy with Deborah Wheeler*	Looseleaf (in one binder) £110.00
Adoption Law and Practice *by Kerry O'Halloran*	Hard cover £40.00
Hotel, Restaurant & Public House Law *by Marc McDonald*	Soft Cover £40.00

- Bookshop open at Ormond Quay, Dublin *(100 metres from the Four Courts)* Come in and browse. Open 9am-5.30pm
- Orders welcome by telephone and fax
- Talk to our sales representatives about these and other Butterworth titles
  Dublin area: Madeleine Roche 01-324289 or 088-597659
  Outside Dublin: Max Harvey at 021-371399 or 088-566793

Please note: There is an additional postage & packing charge of £2.00 on orders below the value of £50.00.

Butterworth Ireland Ltd., 26 Upper Ormond Quay, Dublin 7.
Tel: 01-731555. Fax: 01-731876

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.

IRISH CANCER SOCIETY

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Ireland. Tel: 681855

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION

4 Clyde Road, Dublin 4.
Telephone: 01-685001.

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 in substitution from the original 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: 29 January, 1993

Lost Land Certificates

Edmond Phelan, Caher, Fenor, Tramore, Co. Waterford. Folio: 1351; Land: Kilure; Area: 52.304 acres. **Co. Waterford.**

Denis Long, (deceased). Folio: 42934; Land: Glasheen, **Co. Cork.**

Frank O'Gorman, 124 Cooley Road, Drimnagh, Dublin 12. Folio: 36292L; Land: Property situate to the north of Cooley Road in the parish and district of Crumlin. **Co. Dublin.**

Christopher O'Sullivan, Folio: 18548; Land: Kilnap. **Co. Cork.**

John and **Mary Francis Sweeney,** Folio: 9271; Land: Ticroghan; Area: 0a 2r 32p. **Co. Meath.**

William James Watson, Folio: 2458L; Land: 2B The Rise, Glasnevin, District of Clonturk and Parish of Glasnevin. **Co. Dublin.**

Jeremiah Donoghue and **Mary Donoghue,** Folio: 9775 closed to 3088F; Land: Part of the lands of Brackhill; Area: 24a 1r 26p. **Co. Kerry.**

Bridget O'Sullivan, Folio: 32086; Land: Ballyveelick and Ballygown. **Co. Cork.**

Gary Redmond, Folio: 5740F; Land: Lahard. **Co. Kerry.**

Oliver Faul, Clonloghan, Clenagh, Newmarket-on-Fergus, Co. Clare. Folio: 25136; Townland: Clonloghan. **Co. Clare.**

Mary B. Collins, Carrowmore North, Mullagh, Co. Clare. Folio: 19980; Townland: (1) Carrowmore North, (2) Sragh; Area: (1) 4a 1r 34p, (2) 2a 0r 16p. **Co. Clare.**

Senan Daly, Folio: 2907F; Land: Ticknevin; Area: 1 acre. **Co. Kildare.**

Mark A. & Lavonne D. Andrews, c/o Brendan McCormack, Solicitor, 56 Lower O'Connell Street, Dublin 2. Folio: 28464; Townland: Knopoge; Area: 5a 3r 10p. **Co. Clare.**

Henry Connolly, Folio: 8099F; Land: Pottlebane; Area: 22.100 acres. **Co. Cavan.**

Sean F. Kelly, Main Street, Newport, Co. Mayo. Folio: 14665; Townland: Knocknageeha; Area: 14a 2r 30p. **Co. Mayo.** Solr. ref: UF/SF EX TN15.

John and **Katherine O'Mahony,** Bouroe, Feakle, Co. Clare. Folio: 22559; Townland: Gortmagg; Area: 1a 0r 5p. **Co. Clare.**

Desmond A. Gilligan, "Rose Cottage", Island Road, Limerick. Folio: 10986; Townland: Parkroe; Area: 8a 0r 38p. **Co. Clare.**

James Macken, Folio: 9448; Land: Rathcronan; Area: 19a 2r 7p. **Co. Longford.**

Rev. John Waldron, Killenalla, Westport, Co. Mayo. Folio: 9106; Townland: Attavally; Area: 0a 0r 38p. **Co. Mayo.** Solr. ref. VP 31/B/KK/HW.

Myles Byrne, (deceased), Folio: 2676; Land: Ballymanus. **Co. Wicklow.**

Richard Daly, Folio: 14410; Land: Part of the lands of Clonhasten; Area: 0a 1r 24p. **Co. Wexford.**

Aidan O'Neill and **Joan O'Neill,** Folio: 7393F; Land: Kilbride (Urban District of Bray); **Co. Wicklow.**

Rose Martin, Margaret Seymour and **Breeda Treacy,** c/o Milford House, Castletroy, Limerick. Folio: 30083F; Land: Part of the lands of Cappagh, Barony of Upper Cross. **Co. Dublin.**

Robert Jones, Folio: 2878; Land: Holdenstown Upper. **Co. Wicklow.**

Maura Kearney, Folio: 1487F; Land: Grangebellow; Area: 0.975 acres. **Co. Louth.**

Patrick Donohoe and **Bridget Donohoe,** Folio: 5701F; Land: Part of the townland of Talbotsinch, **Co. Kilkenny.**

John Joseph Tierney, Folio: 2907F; Land: Abbeylands, **Co. Cork.**

John O'Connor, Folio: 708L; Land: Property situated in south side of the road from Waterford to Kill in parish of Kilbatty; Area: 0a 0r 9r. **Co. Waterford.**

William Fallon, Folio: 17692; Land: (1) Cloniffeen, (2) Cloniffeen, (3) Cloniffeen; Area: (1) 19a 1r 20p, (2) 1a 2r 21p, (3) 1a 1r 30p. **Co. Kings.**

Robert Blackmore, Folio: 5141F; Land: Rathdown Lower, **Co. Wicklow.**

Garry Campton, Folio: 4230F; Land: Ballynamought, **Co. Cork.**

Harriet Cooper (deceased), Folio: 43 SD; Land: Church Street, Millstreet, **Co. Cork.**

Patrick J. McAdam, Folio: 293F; Land: (1) Drumakeenan, (2) Drumakeenan; Area: (1) 2a 0r 36p, (2) 6a 3r 26p. **Co. Cavan.**

James Hagan, Clonard, Balbriggan, Co. Dublin. Folio: 74168L; Townland: Clonard or Folkstown Great; Barony: Balrothery East; Area: 21.747 (Hectares); **Co. Dublin.**

William James Lowey, Folio: 15156; Land: Avalreagh; Area: 23a 0r 15p, **Co. Monaghan.**

Bartholomew Hanly, Folio: 2594; Land: Part of the lands of Kishyquirk; Area: 71a 2r 20p, **Co. Limerick.**

Eugene Kierans, Folio: 9308; Land: Part of Lands of Edengora; Area: 15.706 acres. **Co. Meath.**

Enniscorthy UDC Folio: 13703; Land: Enniscorthy; Area: 7a 3r 38p. **Co. Wexford.**

Thomas Crosse, Folio: 23519; Land: Breansha More; Area: 18a 3r 0p. **Co. Tipperary.**

Daniel O'Connor, Folio: 4126; Land: Tieraclea Lower; Area: 30a 3r 24p. **Co. Kerry.**

Brendan O'Brien and **Margaret O'Brien,** Folio: 19538; Land: Part of Land of Clounalour, **Co. Kerry.**

Bridget Sugrue, Folio: 457; Land: Part of the land of Corlea; Area: 27a 3r 13p. **Co. Monaghan.**

Mary Sexton, Belmont, Wood Road, Cratloe, Co. Clare. As a tenant in common of an undivided moiety of the property. Folio: 12260; Land: Newtown; Area: 10a 0r 0p. **Co. Wexford.**

Patrick Francis Carty, 152 Wheatfield, Collinstown, Clondalkin, Co. Dublin. (1) Folio: 19085; Townland: Aghalustia, Aghalustia; Area: 9a 1r 26p, 1a 1r 21p. (2) Folio: 19086; Land: Aghalustia, Aghalustia, Aghalustia; Area: 0a 3r 13p, 9a 0r 27p, 1a 1r 25p. (3) Folio: 22108; Land: Aghalustia, Aghalustia, Aghalustia; Area: 0a 3r 29p, 10a 1r, 1p, 1a 0r 22p. (4) Folio: 22189; Land: Roosky; Area: 7a 1r 20p. **Co. Roscommon.**

Michael and **Christina Carey,** Moyasta, Co. Clare. (1) Folio: 16501; Townland: Moyasta, Moanmore Lower, Moanmore South, Carrowmore South; Area: 33a 1r 1p, 1a 2r 13p, 0a 2r 33p, 2a 0r 10p. (2) Folio: 2266; Townland: Lisgreen; Area: 9a 0r 19p; (3) Folio: 6629; Townland: Garraun, Moanmore South; Area: 9a 0r 32p, 1a 2r 4p. Solr. ref. GW: JO'C:P670. **Co. Clare.**

Columban Pius Treacy and **Maura Elizabeth Treacy,** 5 Hainault Drive, Foxrock, Co. Dublin. Folio: 16058L; Land: Townland: Cornelscourt, Barony: Rathdown; Area: 0.043 Hectares. **Co. Dublin.**

Charles O'Rourke, Ballymacrossan, Geashill, Co. Offaly; Folio: 2449; Land: Afoley; Area: 16(a) 3(r) 27(p). **Co. Queens.**

Lost Wills

O'Dowd, Marguerite, late of 13 Ebenezer Terrace, Donore Avenue in the City of Dublin. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 15 September, 1983, please contact Alphonsus Grogan & Co., Solicitors of 33 Lower Ormond Quay, Dublin 1. Ref/MD. Telephone No. (01) 726066.

Byrne, Seamus, (deceased), late of 5 St. Anne's, The Haggard, Howth, Co. Dublin, and formerly of Demesne Lodge, Howth, County Dublin, who died at Beaumont Hospital, Dublin 9, on 24 September, 1992. Will anybody who knows the whereabouts of a will made by the above named deceased, please contact Messrs. Roche & McGuinn, Solicitors, The Square, Tullow, Co. Carlow, telephone (0503) 51823/51713.

Graves, Edward (deceased), late of 16 Offaly Road, Cabra, Dublin 7. Would any person having knowledge of the will executed by the above named deceased who died on 13 July, 1992 please contact Gerald J. Crehan, Solicitor, 27 Lower Ormond Quay, Dublin 1. Telephone No. (01) 732611.

Nolan, Peter (deceased), late of The Nook, Woodside Road, Sandyford, Co. Dublin. Would any person having knowledge of a will of the above named deceased who died November, 1992 please contact Box No: 10.

O'Donovan, Nellie, late of 6 St. Patrick's Hill, Bandon, Co. Cork and formerly of Castlelands, Skibbereen, Co. Cork. Would any person having knowledge of the whereabouts of a will of the above named deceased, who died on 16 April, 1974 please contact P.J. O'Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co. Cork. (Reference 39/MB/M.9036) Telephone (023) 41322.

Connor, (otherwise O'Connor) **Michael,** late of Trillickatemple and Lisduff, Longford, ob. 29 November, 1992. Would any person having knowledge of the whereabouts of a will of the above named deceased please contact Patrick J. Groarke & Son, Solicitors, Longford. (Ref. MA/1928).

McKeon, Michael, (deceased), late of Seafield, Bonmahon, Co. Waterford. Will anybody having knowledge of the whereabouts of the will of the above named deceased, who died on 6 March, 1922, please contact Henry D. Keane & Co., Solicitors, 21 O'Connell Street, Waterford. Telephone 051-74856.

Sarembre, Eric, (deceased), late of Oberstown, Tara, Co. Meath. Would any person having knowledge of the whereabouts of a will of the above named deceased who died 16 March, 1992, contact Paul Brady & Co., Solicitors, 22 Ludlow Street, Navan, Co. Meath. Telephone No: (046) 28011; Fax: (046) 23983.

Employment

Representation Solicitor and Counsel, required in personal injuries litigation *"Denis Linehan -v- Harvard University and University College, Cork"*. Please contact D. Linehan, solicitor, at 22 Summerstown Grove, Wilton, Cork, phone (021) 341837.

Harold Waterman, M.A. LL.B., Solicitor seeks a change. Highly qualified and highly experienced in all areas, including conveyancing, probate, civil and criminal proceedings. Please call or fax to 01-604713. Dublin City or County preferred.

Solicitor having extensive experience in conveyancing, probate and taxation seeks part-time position in Dublin area. Box No. 11.

Experienced Solicitor 15 years general experience (litigation, conveyancing, probate) with emphasis on personal injury litigation seeks full time/part time locum work in Dublin area and/or environs. Available immediately. Box No. 12.

Highly Experienced Litigation/General Practice Solicitor seeks position in Dublin/Greater Dublin area. Box No. 13.

Solicitor, fully qualified, available from 6 February, 1993. Reply in confidence to Box No. 14.

Experienced Legal Executive, speciality conveyancing and probate, recently made redundant due to amalgamation, seeks position. Excellent references. Replies to Box No. 15.

Mature Solicitor specialising in probate and conveyancing for many years, seeks new position in Cork City. Tel: 021-361251.

Solicitor, 8 years qualified seeks part-time position. Please reply to Box No. 16.

Miscellaneous

For Sale: Seven day publicans licence free of endorsements. Contact: Considine Auctioneers (065) 84125.

Full Set of Forms and Precedents for Sale. We have a full set of the Encyclopedia of Forms and Precedents by Butterworths (4th Edition). Anyone interested in purchasing the entire set should contact: David Moloney, G.J. Moloney & Co., Solicitors, 27/29 Washington Street, Cork. Ph: 021-275261; Fax: 021-271586.

Has your Client been Involved in an Accident? e.g. Road, during employment or otherwise requiring a professional report, plan, photographs, court appearance or general advice. If so, why not contact an experienced Professional Engineer. Ken Gregory, M.A., B.A.I. (T.C.D.), Gregory Kaye and Associates, Foxrock Village, Dublin 18. Tel: 2894386.

Rochford Brady, Legal Services, 14 Wellington Quay, Dublin 2. Tel: 777250 are pleased to announce the appointment of **Paula McHugh,** Solicitor, to act as Law Agent.

Notice Vincent and Tim Shannon of Shannons, Solicitors, Swords have acquired the practice of Una O'Mahony & Co., Phibsboro.

Commercial Conveyancing Solicitor
Are you:-

- An exceptionally talented and motivated conveyancing solicitor (mainly commercial).
- Highly experienced in a work environment where the provision of a quality, competitive service to your clients is given top priority.
- Adaptable and flexible in your approach to all matters and first-class communicator at all levels.
- Unquestionably able to take *full responsibility* for all your work, client billing and fee collection.
- Ambitious to achieve significant earnings and, hopefully, partnership status by your efforts and the development of the above skills.

If you *fully* satisfy the above criteria, you may be the person we wish to recruit to lead and develop our conveyancing department. We are a young and successful City Centre commercial firm with an enviable client base which we have developed over the past few years on the basis of quality of specialist service and competitiveness.

Our conveyancing department requires a leader who has the necessary professional and personal skills to exploit and develop the substantial potential of our existing client base, to properly train junior staff and generally to promote the firm.

The qualities and efforts required of the suitable candidate will be exceptional and the remuneration package and prospects will reflect this.

Apply with CV in strictest confidence to:-
39 Fitzwilliam Place,
Dublin 2.
REF: Solicitor/JO'R.

Special Savings Accounts

Investment update from Solicitors Financial Services

Now that the Ministerial Order has been signed Special Savings Accounts have come into force.

We feel that with interest rates at such a high level at the moment, clients should endeavour to place their money in a Special Savings Account fixed for two years. The likelihood is that as soon as the currency crisis has been resolved interest rates will decrease which will obviously affect longterm rates for the Special Savings Accounts. At present the indication rate available for two years fixed in a Special Savings Account is around 10½% per annum, larger sums of money will attract a higher rate.

It is important to note that in a volatile money market, rates will be quoted on a daily basis and will tend to fluctuate.

Conditions relating to Special Savings Accounts:

- DIRT (Deposit Interest Retention Tax) at 10% will be charged on interest earned on these accounts. At present, DIRT at 27% is charged on interest earned on money on deposit, so this will result in a substantial increase in your net return.
- On these Special Savings Accounts, no further tax need be paid on interest earned as the 10% tax deducted at source satisfies the individual's full liability to tax. A special declaration, in the form prescribed by the Revenue Commissioners, must be completed by the account holder and must be held by the deposit taker.
- Account holder must be of full age, i.e. over 18 years.
- An individual can only hold one Special Savings Account at any one time and only with one financial institution. The maximum amount that each person can hold in this type of account is £50,000 (including interest) for a single person or £100,000 (including interest) for a married couple.
- The account must be opened by and held in the name of the owner beneficially entitled to the interest.
- No withdrawals may be made from the account within the first three months of it being opened and thereafter, withdrawals must be subject to thirty days notice.

As only one Special Savings Account can be held by each person, it is important that the client obtains the best returns consistent with security offered by each bank/building society. Only when the client is satisfied that high returns have been achieved on these accounts should any forms be signed. These Special Savings Accounts must be opened by completing a specific declaration which is available from any bank or building society. It is important to understand that any client's existing deposit accounts do not qualify.

Please note that if your client signs up with one bank/building society now, he/she will be prevented from opening up another Special Savings Account with any other bank/building society even if the upper limit of £50,000 has not been reached.

Other Deposit Accounts

From 6 April, 1993 the DIRT tax of 27% deducted at source from interest on ordinary deposit accounts will be the *only* tax on the interest for individuals. In other words the 27% rate will satisfy the total income tax payable on ordinary non Special Savings Accounts. There is of course no limit on the amount of the deposit held in the account.

The Investment Division in Sedgwick Dineen will be monitoring the range of Special Savings Accounts on behalf of Solicitors Financial Services and will be in a position to offer your clients extremely competitive rates. □

Professional Information

(Cont'd from page 37)

Dublin 2 Firm has c.480 sq ft on ground floor and 2 car parking spaces to let on 2 years and 9 months basis to small firm; facilities sharing considered. Enquiries to Box No. 105.

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

Family Law/Legal Aid Committee Formed

The President of the Society, *Raymond Monahan,* has established a Family Law and Legal Aid Committee. The Committee, which is chaired by *Moya Quinlan,* will consider the various developments taking place in the area of family law reform. One of its first tasks will be to consider the White Paper on Marital Breakdown published by the former Government. Practitioners who work in, or have an interest in, this area are invited to submit topical items, queries etc. to the Committee. Correspondence should be addressed to:

Linda Kirwan, Solicitor,
Committee Secretary,
Blackhall Place,
Dublin 7.

ITALAX

Ring For Your Free Fact Sheet

Legal Accounts Software & Full Client Database at an unbelievable £1,500 (+VAT)

Orchard Centres *Nationwide*

Dublin:-
Orchard Software Ltd
01- 2807588

Midlands:-
Aptech Ltd 042- 31742

South:-
P.F.H. Computer Systems
(021) 271152

North:-
Canavan Computer
Systems 0504 -26-7776

Orchard Software Ltd.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 16.9% for the 10 years to 1st January 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 616433.

in association with

THE INCORPORATED LAW SOCIETY
OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 616433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

VOL. 87 NO. 2 MARCH, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

NO SOLICITORS NEED APPLY!

THE RIGHT TYPE OF MORTGAGE

DOCUMENT EXCHANGES UNDER THREAT?

HIGH COURT DISCIPLINARY CASES

PROFESSIONAL
INDEMNITY
PROTECTION

from

The Solicitors' Mutual Defence Fund Limited

A FUND OPERATED **BY** SOLICITORS **FOR** SOLICITORS:

- Proven track record.
- Growing membership.
- Competitive contribution levels.
- Cover to IR£250,000 each and every claim.
- Commitment to the market.
- Top-up cover arranged at competitive rates.
- Surplus reinvested for the benefit of members.
- A commitment to giving the best terms and service to legal practitioners.

The Solicitors' Mutual Defence Fund has grown substantially in the six years since it was formed and now provides professional indemnity cover for the majority of Irish solicitors.

Unlike commercial insurers, who base premiums on the general claims experience across the professional indemnity spectrum, the Fund bases contributions on the claims experience of solicitor members only.

THIS IS YOUR FUND FOR YOUR PROFESSIONAL INDEMNITY NEEDS

All enquiries to: **Margaret Moran**
Solicitors' Mutual Defence Fund Limited
25 Lower Leeson Street,
Dublin 2.

Telephone: (01) 763118/762597
Fax: (01) 612402

VOL. 87 NO. 2 MARCH 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 45
Solicitors are ineligible for recently advertised posts as parliamentary draftsmen in the Attorney General's office. It is time the Government ended this form of discrimination against solicitors.

President's Message 47
Reflections by the President, *Raymond Monahan,* on an historic day when 44 Irish/American lawyers were admitted to the U.S. Supreme Court.

Lawbrief 49
The remedies available to an employer who is owed money by an employee; ECJ ruling that judges referring cases should set out facts and law in detail, *Eamonn Hall* reports.

Quality – the Competitive Edge 51
Find out why you cannot afford to miss the Law Society's annual conference in May; the speakers give a taste of what they will be saying on the topical issue of quality management.

Council Endorses Review of Education 54
The January and February meetings of the Law Society Council focused on the need for a review of education policy, pressure on solicitors incomes due to the recession, and other issues.

The Right Type of Mortgage 57
"There are few of us," writes *Fergus Goodbody,* "who have not by now been thoroughly confused by conflicting claims of mortgage providers." He provides a guide to the advantages and disadvantages of endowment loans.

People and Places 60

Book Reviews 63
This month we review Guide to the 1992 Group Accounts Regulations; the Law Reform Commission Report on the Law relating to Dishonesty; Legal Aspects of Commercial Sea Fishing in the EEC; and the Irish Cycling Guide.

Technology News 71
"The law is slowly coming to recognise the fax as an acceptable format," writes *John Furlong,* "and today's specifications have improved as dramatically as the price per unit has fallen."

Document Exchanges under Threat? 74
A broadly worded proviso in the European Commission's Green Paper on the development of postal services in the single market could pose a threat to the functioning of document exchanges, writes *Paul Puxon,* Chairman of the Association of European Document Exchanges.

Disciplinary Cases 75
Reports of disciplinary cases heard in the High Court since 1 January, 1993.

Professional Information 77
Notices concerning lost land certificates, lost wills, employment and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

Citation: (1993) 87 Gaz ILSI

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7. Telephone 710711 Telex: 31219 Fax: 710704.

Front Cover: The front cover shows *Ms Maire Geoghegan-Quinn* who was appointed Minister for Justice on 12 January, 1993.

Pfizer

Pfizer International Bank Europe

Your fixed deposit account with us, over £1,000, will earn a premium rate of interest.

Pfizer International Bank Europe is wholly owned by the Pfizer group of world-wide healthcare companies. With our headquarters in Dublin, the capital base of our bank is the third highest among Irish banks and places us amongst the top 200 banks in the world.

For interest rate quotations and information on Special Savings Accounts contact Brian Farrelly or Aengus Quinn at 615450 or 612268.

Pfizer International Bank Europe,
Alexandra House, Earlsfort Terrace,
Dublin 2, Ireland.
Tel 01 612268. Fax 01 612267.

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.

IRISH CANCER SOCIETY

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Ireland. Tel: 681855

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION

4 Clyde Road, Dublin 4.
Telephone: 01-685001.

No Solicitors Need Apply!

It is now almost three years since the report of the Fair Trade Commission into restrictive practices in the legal profession was published and, while the results of implementation of the Commission's deliberations may not be obvious to everyone, many of the issues identified for action in the report have been addressed by the legal profession itself and also, of course, by the Government through the Competition Act and, more recently, the Solicitors (Amendment) Bill.

There are, however, one or two items of unfinished business. Solicitors are still ineligible for appointment as judges in the Circuit Court or in the higher courts such appointment being open only to barristers. We have commented on this matter before in these pages. Suffice it to say now that, in response to action by the Law Society, we hope that the forthcoming Court and Court Officers Bill will contain the necessary amending provision which will put that matter right.

But the higher echelons of the judiciary are not the only remaining bastions where the writ of the Bar, and only the Bar, still runs. Recently, the Attorney General's office advertised publicly for positions as parliamentary draftsmen in that office. Applications were confined to barristers with at least four years practice at the Bar. The President of the Law Society immediately wrote to the Attorney General about this, expressing surprise and seeking an explanation as to why solicitors were excluded. It transpired, from the Attorney General's response, that the traditional view in that office is that experience as an *advocate* in court is deemed to be an essential requirement for a parliamentary draftsman. In fairness to the Attorney General, he did not expressly claim that advocacy experience was essential for these posts but that was the clear import of what he said.

We think that the solicitors' profession has the right to know why the legal adviser to the Government still apparently takes the view that experience as an *advocate* in the superior courts is essential in the formation of persons whose task it is to translate instructions from Government departments into appropriate legislative format. We can clearly see that experience in the courts is not an unreasonable requirement for positions of this kind as it would be necessary to have an understanding of how legislation is judicially applied and how changes in the law would be likely to operate in practice. However, it is, in our view, untenable to suggest that solicitors, experienced in litigation, would not be likely to have such experience.

This is the second occasion in recent times that access to legal positions in Government service has been denied to solicitors. In 1991, a competition for posts as *legal advisers* in the office of the Attorney General was also confined to barristers and, at that time, the Society also made representations in the matter.

So far as we are aware, the Attorney General's office is now the only area in the State legal service where solicitors – who account for about 4/5th of the total number of lawyers in the State – are deemed ineligible to serve. In recent times, the office of the Director of Public Prosecutions has been opened up to solicitors and there are now a number of solicitors serving there as legal assistants. It will be recalled that the prosecution of offenders used to be handled by the Attorney General before the office of DPP was established. So far as we can ascertain, the recruitment of solicitors to the DPP's office has been entirely successful.

The eligibility of solicitors for posts in the legal service of the State is an important matter that goes to the very heart of the debate about the relative roles of solicitors and barristers in the legal system. Solicitors have, since 1971, full rights of audience in all the courts of this country and, so far as the practice of law is concerned, are on an entirely equal footing with their colleagues at the Bar. The fact that many of them choose not to exercise their rights of audience in other than the District Court has nothing to do with competence; it has, in fact, more to do with the daily pressures of running busy practices, their perception that both the Bar and the Bench do not really encourage it and a consequent unwillingness on their part to risk damaging the interests of their clients by running cases themselves. Those solicitors who do advocate in the higher courts – and there are some – do so with competence. Even they, however, would be ineligible to compete for posts in the office of the Attorney General, given the present policy of that office.

It is time that the Government ended this form of discrimination against solicitors. The current programme for government contains commitments in relation to equality and this has been followed up by the appointment of a Minister with specific responsibility for equality. As it happens, that particular Minister is also a solicitor and it is to be hoped, therefore, that he will take an interest in this matter and include it in the many issues that will, presumably, be targeted for action during his period of office. □

NORTHERN IRELAND AGENT

- Legal work undertaken on an agency basis
- All communications to clients through instructing Solicitors
- Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 725622
Fax: (01) 725404

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

AMERICAN BAR ASSOCIATION

Annual Meeting and Conference

4-11 August 1993

New York

The Law Society is organising a delegation to attend the Annual Meeting of the American Bar Association in New York from 4-11 August, 1993. The Meeting will be attended by over 15,000 lawyers in the United States. With seminars on every aspect of law and practice management, the ABA conference will provide you with an opportunity to learn about important trends and developments and to make fruitful contacts.

The Law Society will be staging a number of events at the Conference, including a reception and a joint showcase luncheon with the International Law and Practice Section of the ABA, in order to promote legal services available from Irish solicitors.

All-in packages comprising flights, 7 nights accommodation, ABA associate membership and conference registration fee are available from £975. (Tax deductible)

Members of the profession interested in joining the delegation should contact Barbara Cahalane, Public Relations Executive, at the Law Society, Blackhall Place, Dublin 7, Tel: 710711 **before 26 March, 1993.**

Irish Lawyers Admitted to U.S. Supreme Court

Some reflections on a day when Irish lawyers were admitted to practise in the U.S. Supreme Court

Monday, 25 Janauary, 1993 was quite a day in the U.S. Supreme Court in Washington. The most important event, from an Irish perspective, was the ceremony in which 44 Irish and Irish/American lawyers, most of them members of the Irish Lawyers' Association of New York, were formally admitted to practise in the U.S. Supreme Court. The group included two practising Irish solicitors, *James O'Dwyer,* who is Chairman of Arthur Cox, and *Marian Petty* of the firm Monahan & Company of Ennis, Co. Clare. It was a great privilege to have been present on this occasion which was, of course, important for those admitted to practise but which was also important – and, indeed, historic – for other reasons.

Thurgood Marshall Tribute

The proceedings of the court opened with a tribute from Chief Justice *William Rhenquist* to the memory of the late Mr. Justice *Thurgood Marshall* who had died the previous day. Thurgood Marshall was the first black American to have been appointed to the U.S. Supreme Court. In his heyday as a lawyer, he had been a great champion of civil rights for the black community in the United States and had been involved in such celebrated cases as *Brown -v- Board of Education of Topeka (1954),* a landmark decision which ended discrimination against blacks in the educational system in America. The Chief Justice paid a warm, elegantly phrased tribute to the late Justice Thurgood Marshall who had served on the bench of the United States Supreme Court for 24 years.

At the admission ceremony of 44 Irish/American lawyers to the U.S. Supreme Court were l-r: The Hon. Mr. Justice Anthony Hederman (Supreme Court of Ireland); Chief Justice William H. Renquist, United States Supreme Court; and Brian P. Farren, President, Irish Lawyers Association of New York. (Photo: James Higgins)

Death Penalty Judgement

The Marshall tribute was followed by the handing down by the Court of judgments in a number of cases. For the most part, the judges simply gave their decision, stating that the rationale would be found in the written judgment which had been deposited with the clerk in the court. However, in one case (*Herrera -v- Collins*) which concerned an appeal by way of *habeas corpus* by the applicant who had been sentenced to death for murder in the State of Texas, a very strong minority dissenting opinion was expressed by Mr. Justice *Harry Blackmun* in which he accused his colleagues in the majority, including the Chief Justice, of permitting judicial murder. The case, not unnaturally, made headline news across the United States of America.

So far as I could gather from the recital of the facts, the applicant had been sentenced to death for the murder of two police officers in Texas. He had exhausted all his rights of appeal in the State courts and was now making a last ditch effort by appealing to the federal courts by way of *habeas corpus* on the grounds that new evidence had come to light which proved his innocence. It seems that the new evidence consisted of affidavits from members of the condemned man's family to the effect that it was not he, but his brother, who had committed the murders. As it happened, his brother was, conveniently for him, now deceased! The majority of the court dismissed the application on procedural grounds of a technical nature saying that the State courts had ample jurisdiction to deal with questions of new evidence and power to order a retrial if they deemed it appropriate and that it was not open to the Supreme Court to grant such an application on *habeas corpus* proceedings. In his dissenting opinion, Justice Blackmun delivered a scathing attack on the majority, arguing that in capital cases the court must respond to any new evidence that tended to support the innocence of the accused. While agreeing with the substance of Mr. Justice Blackmun's decision, the other two dissenting judges disassociated themselves from the remarks which accused the majority of judicial murder!

Meeting with Chief Justice and tour of Supreme Court

The admission ceremony itself was followed by a reception during which there was an opportunity to meet some of the Supreme Court judges, including Mrs. Justice *Sandra Day O'Connor,* whose husband, as you could expect, is Irish, Mr. Justice *Antonin Scalia,* Mr. Justice *Kennedy* and Mr. *Justice Warren Berger,* a former Chief Justice. This was followed by a very interesting lecture on the history of the U.S. Supreme Court, after which the immediate past President of the Society, *Adrian Bourke,* the Director General, *Noel Ryan,* and I had an opportunity of paying a short courtesy call on Chief Justice Rhenquist. Chief Justice Rhenquist recalled with fondness his visit last year to Ireland during which the Law Society had hosted a lunch in his honour in Blackhall Place. He was not at all put out, he said, by the ferocity of the attack launched on him earlier that morning by his colleague Mr. Justice Blackmun. He seemed to treat it very much as if it were in the nature of the job to be subjected to that kind of criticism from time to time by a colleague. He told us a little about the history of the court, mentioning, in particular, his predecessor Mr. Justice *William Howard Taft* who had previously been President of the United States (and is the only person in the history of the U.S. to have been both President (1909-1913) and Chief Justice (1921-1930)), and who was responsible for the building of the Supreme Court edifice. Before that, the Supreme Court was, in fact, housed in the Capitol but Taft had felt that, in order to underline the separation of powers and the importance of the independence of the judiciary, it should be moved to a separate building and this was done in the 1930s.

Lunch and Reception at Irish Embassy

The events of the day were rounded off by a lunch hosted by The Irish Lawyers Association of New York in the Hyatt Regency Hotel at which we were entertained by three very interesting and amusing speeches – one from U.S. Supreme Court Justice Antonin Scalia, the second from our own Mr. Justice *Anthony Hederman,* who was the principal guest of the Irish Lawyers Association at the admission ceremony, and the third from former congressman, *Brian Donnelly* (of Donnelly visa fame) who, as readers will be aware, now appears to be the front-runner for the position of American Ambassador to Ireland. In the evening, the entire group were guests at a reception given by the Charge D'Affaires, *Joseph Lynch,* at the Irish Embassy.

Conclusion

The events of our visit brought home to us, if indeed such were necessary, the success and the very high profile now achieved by Irish trained lawyers in the United States, particularly in New York. They are now an important force in the city and many are in positions of prominence with leading U.S. law firms. Quite a few are Irish-trained solicitors, members of the Incorporated Law Society of Ireland. As you would expect, they are very keen to maintain their links with the Law Society and, to this end – if for no other reason – the visit to Washington for the admission ceremony was a very worthwhile one. The events in the court itself on that day also underlined the very political nature of the U.S. Supreme Court and caused reflection, in the light of the reintroduction of capital punishment in many of the States, on the life and death nature of some of the decisions the court is called upon to make.

Finally, a special word of praise to *Brian Farren* of the New York firm LeBoeuf, Lamb, Leiby & MacRae (United Kingdom), who is the current Chairman of The Irish Lawyers Association of New York, for his excellent work in organising the admission ceremony and for the invitation to the Law Society to participate. □

Raymond T. Monahan

ICEL Programme

The Spring/Summer Programme of conferences being staged by the Irish Centre for European Law (ICEL) has as its theme: 'Doing Business in the Single European Market'. The remaining conferences in the programme are:

Saturday 3 April, 1993. Jury's Hotel, Cork.
Refresher Course in EC Law for Munster based Practitioners/Businesses

Friday 23 April, 1993. 2.00 pm, Shelbourne Hotel, Dublin.
Company Law

Saturday 15 May, 1993. 9.15 am, Arts Building, Trinity College Dublin.
The Legal Control of Public Undertakings

Friday 28 May, 1993. 9.30 am, (venue in Galway to be announced).
Refresher Course in EC Law for Connaught based Practitioners/Businesses

Friday 11 June, 1993. 2.30 pm, Shelbourne Hotel, Dublin.
A European Perspective on Trusts or *Health and Safety at Work.*

Attendance at any of these conferences costs £45.00 per conference to ICEL members and £85 to non-members.

Applications for details of membership, or reservations for any of the conferences listed above, may be made by contacting the Irish Centre for European Law, Trinity College Dublin 2. Tel: 7021081. Fax: 6794080. □

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
G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

Monies owed by an Employee to his Employer: Remedies of Employer

The issue of the remedies of an employer, where money is owed by an employee to such an employer, arose in the case of *Shalvey -v- Telecom Eireann* (High Court, unreported, Keane J. July 28, 1992).

The background to the case may be stated. The High Court, Lardner J, (unreported judgment July 3, 1989), had refused Mr Shalvey's application for judicial review and awarded costs to the respondent, Telecom Eireann. The issue then arose as to how, apart from the Enforcement of Court Orders Acts, an employer could obtain such costs from an employee.

Section 5 of the *Payment of Wages Act, 1991* contains a general prohibition restraining unauthorised deductions from an employee's wages. The prohibition is not to apply, inter alia, in the following circumstances set out in section 5(5) (f) and 5(5) (g) of the 1991 Act:

"(f) a deduction made by an employer from the wages of an employee with his prior consent in writing, or any payment received from an employee by an employer, where the purpose of the deduction or payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by an employee to an employer, or

(g) a deduction made by an employer from the wages of an employee where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the employer to the court or tribunal or a third party out of the wages of the employee."

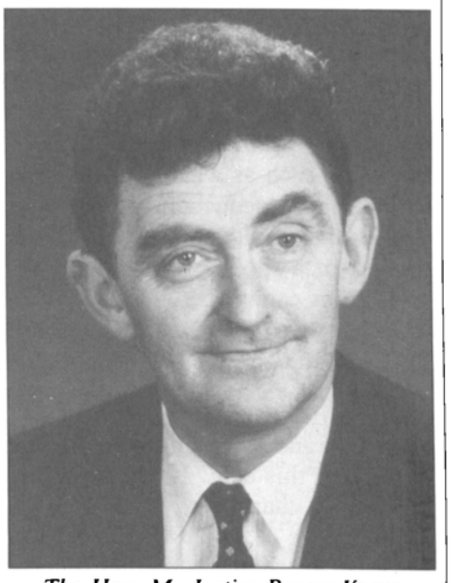
Although it might appear that section 5(5) (f) of the 1991 Act covers the matter at issue, on closer examination the sub-section only applies where the employee has given his prior consent in writing. Section 5(5) (g) only caters for payments to third parties pursuant to a court order.

Telecom Eireann sought to attach the relevant sum owing from the annual earnings of the employee. The High Court, Lavin J, granted a conditional order of garnishee and the matter became before Keane J, of the High Court for an absolute order. Mr Gerard Hogan, BL, instructed by the Solicitor, Telecom Eireann, appeared for the Company. Ms Caroline Costello, BL, instructed by M.A. Regan McEntee & Co. solicitors, (Trim), appeared for Mr Shalvey. Mr Gerard Hogan, BL, prepared a note of the ex tempore judgment delivered by Keane J, on July 28, 1992 and for the record, the full judgment is set out herein.

Judgment of Keane J

"The only reason for reserving judgment in this case would be in deference to the excellent and well-researched legal argument presented by Mr Hogan and Ms Costello on behalf of their respective clients, but since the matter appears to me to be quite clear, I feel that I can deliver judgment immediately.

"The applicant is an employee of Bord Telecom Eireann and he owes them the sum of just over £4,000 in respect of the costs of an unsuccessful judicial review application. He is paid in arrears on a weekly basis. Now it is clear that if for some reason Mr Shalvey were to absent himself from his employment – I exclude from consideration justifiable absences caused by sickness etc – that BTE would not be required to pay him.



The Hon. Mr Justice Ronan Keane

"This seems to me to be the nub of the issue. There is clear authority for the proposition that future earnings cannot be attached. This appears from a consideration of counsel's argument in *Hall -v- Pritchett* (1878-8) 3 QBD where this argument was accepted by a strong Divisional Court (Lord Cockburn CJ and Mellor J). This is what BTE are attempting to do here. But attachment whether by way of garnishee proceedings or receiver by way of equitable execution – can only apply to present debts due to a judgment debtor and cannot apply to future earnings. This proposition seems to me to arise by implication from the decision of the old Irish Court of Appeal in *Picton -v- Cullen* [1900] 2 IR 615, where the appointment of a receiver in respect of the debt of a schoolmaster was upheld. There the salary had already become due and Holmes LJ was careful to distinguish between that situation and the situation in the

present case where, in effect, an attachment of future earnings has been sought.

"The provisions of the *Payment of Wages Act, 1991* also are relevant. This Act imposes specific restrictions on deductions from wages. These in general are prohibited by law, but section 5 allows an employer to deduct in certain circumstances. But section 5(5) (f) only allows a deduction in the present type of case where the employee consents and no consent is forthcoming in the present case. The process of involuntary attachment referred to in section 5(5) (g) applies where the garnishee is a third party and is designed to cater for cases such as where the employer compulsorily deducts monies to satisfy the maintenance awards in respect of a spouse. These two exceptions cannot be circumvented by recourse to Ord. 45, r.1 of the Rules of the Superior Courts 1986.

"Of course, BTE is a public company and it is obliged to attempt to recover this debt. It cannot act for merely charitable purposes and simply write off the debt. BTE have also the remedy of commital for refusal to comply with the terms of the instalment order. It seems to me that it may very well be in Mr. Shalvey's best interests to come to an arrangement with his employer under section 5(5) (f) with regard to the discharge of the debt, but this is obviously a matter for the parties. Since I hold that BTE cannot avail of Ord. 45, r.1 to attach future debts, it follows that I must dismiss the application.

"As far as costs are concerned, in many ways the merits of the case are with BTE, since they continue to be out of pocket. In my view, the justice of the case would not be met by the making of an award of costs. No order as to costs."

The debt was subsequently discharged.

Judges Must Set Out Facts and Law in Detail

It has been said that prolixity or long windedness is virtually the handmaiden of the lawyer. Many lawyers would dispute this assertion. An individual solicitor or barrister would claim that it is always the other solicitor or barrister who is prolix and longwinded. Each of us would like to think that we express ourselves succinctly and to the point. Many of us value brevity. However, the Court of Justice of the European Communities in *Joined Cases C-320 to C.322/90, Telemarsicabruzzo SpA and Others -v- Circostel and Others,* (judgment delivered on January 26, 1993) in effect, considered that there are dangers lurking when one is too brief and when one does not set out the law and facts in appropriate detail.

In *Circostel,* the Court of Justice considered that it was necessary for national judges to describe the factual and legislative background in sufficient detail to enable the Court of Justice to provide an interpretation of Community law.

The European Court of Justice so held in refusing to answer questions submitted to it by the Rome District Magistrates' Court for a preliminary ruling pursuant to Article 117 of the EC Treaty. Questions had been submitted in the context of proceedings between the applicant companies who were owners of television transmitters on the one hand, and the Department for the Construction of Telegraph and Telephone Networks of Rome, the Ministry of Posts and Telecommunications and the Ministry for Defence on the other.

The dispute related to the interpretation of the Treaty's rules on competition with a view to establishing the compatibility with Community law of certain aspects of the national system of distributing frequencies for television broadcasters.

In its judgment, the Court of Justice of the European Communities ruled as follows:

1. The Commission has pointed out in its observations that the references for a preliminary ruling were particularly laconic and lacking in detail with regard to the elements of fact and of law which would make it possible to establish the purpose of the questions submitted and thereby to understand their meaning and scope.

2. The need to arrive at an interpretation of Community Law which would be useful for a national court required that the latter should define the factual and legislative background to the questions which it submitted or at least that it would explain the premises on which those questions were based.

3. Those requirements were particularly necessary in the field of competition law when complex factors and legal situations were involved.

4. Although the file submitted by the national court as well as written and oral observations submitted by the parties had provided certain information for the Court, nonetheless that information was fragmentary and did not enable the Court, in the absence of sufficient knowledge of the facts upon which the national proceedings were based, to interpret the Community competition rules in the light of the situation which had given rise to those proceedings as the national court invited it to do.

5. On those grounds, the European Court held that it was not necessary to rule on the questions submitted. □

In Ireland **COT DEATH** is the largest killer of children under the age of two. The Irish Sudden Infant Death Association supports bereaved families and funds cot death research. If your client wishes to make a will in favour of Cot Death Research further information is available from
ISIDA
Carmichael House,
4 North Brunswick Street, Dublin 7.
Telephone: 747007 / 732711

Quality – the Competitive Edge

"It'll be concentrating on two angles of quality," says *Paddy Hayes,* Managing Director Corporate Image, "the first is the whole perception of the profession has of itself as a profession competing against people who can provide some of the services it can provide. The second is competition within the profession: can I, by putting concrete quality measures in place, differentiate myself from the practice down the road?" Patrick Hayes is just one of four keynote speakers at the Law Society's Annual Conference Seminar on 'Quality – the Competitive Edge' on 21 May next in the Connemara Coast Hotel, Furbo, Co. Galway. Also on the panel will be *Andrew Lockley,* Director, Legal Practice, Law Society of England & Wales; *Philip Hamer,* Managing Partner, Philip Hamer & Co., Solicitors, Hull; and *Robert Pierse,* Managing Partner, Pierse & Fitzgibbon, Solicitors, Listowel; all offering an insight to managing quality and what it can do to enhance your practice in the 90s.

The two speakers from the UK, *Andrew Lockley* and *Philip Hamer* will report on the extent to which quality management has become a very live issue in the legal profession there. "Essentially the impetus had been client-driven," says Andrew Lockley. "It focuses on ever better standards of client care, such as how you handle complaints, the level of communication with clients, providing information about cost etc," he says. "The large consumers of legal services in the UK such as the Legal Aid Board, local authorities, large limited liability companies have led the way by insisting on this level of quality service." In his paper to the conference, he will report on what the Law Society in England & Wales has done to promote the concept of client care and quality standards among the solicitors' profession there.

Philip Hamer agrees with the view that the move towards quality management in the UK is client driven. His firm, which has 24 solicitors and over 100 staff, has been working towards the British Quality Standard BS5750 Registration for two years now and is currently undergoing final assessment. "Becoming concerned with quality is inevitable if you want to attract publicly-funded legal work in the UK," he says. The big building societies and the banks are also in the vanguard of the demand for legal services which have an assured level of quality, he maintains. Of his own experience of preparing for the BS5750 he says: "by far the most frightening part is

The Speakers

Patrick Hayes is Managing Director of Corporate Image Management Limited, a multi-disciplined marketing communications consultancy and the first such firm in Ireland to be awarded the Quality Mark. He started a career in publishing in 1972, publishing CIS Report, and later, IRN Report. In the early 80s he founded Corporate Image and today the firm has annual sales of some £4 million and employs a full-time staff of 20. He is married to Deputy *Helen Keogh,* Chief Whip of the Progressive Democrats and the couple have two children.

Andrew Lockley was appointed Director, Legal Practice Division of the Law Society of England & Wales in 1987 having worked with the Society since 1982. He qualified as a solicitor in 1979 and worked in private practice before joining the Law Society. He serves as the Law Society's representative on the Commission on Efficiency in the Criminal Courts. He graduated from Oriel College in Oxford in 1972 and obtained an MA there in 1982. He contributes to a number of legal periodicals. He is married and has three children.

Robert Pierse qualified as a solicitor in 1960 and in 1962 founded the practice Pierse & Fitzgibbon in Listowel which now employs five solicitors as well as support staff. He is also a partner in Pierse and Associates which is based in Tralee. His firm was awarded the Quality Mark in October, 1992 and was the first firm of solicitors in Ireland to achieve the standard.

Philip Hamer was a sole practitioner for five years and is now the Managing Partner of a firm of solicitors with offices in Doncaster, Hull and Leeds, with 24 solicitors and over 100 staff. The firm has been working towards BS 5750 registration for two years and is undergoing final assessment in March, 1993. A past President of The Hull Incorporated Law Society, he has served as director of a number of companies including a USM Engineering Company. Married with a four year old son, he is a keen private pilot. □

MERGE MANAGEMENT IRELAND LTD

Making Technology Work For YOU !

WE ARE A LOCAL COMPANY: Established by Practising Solicitors to provide the legal Profession with quality computer systems:

★ WORDPERFECT TRAINING ★
★ QUALITY HARDWARE SUPPLIERS ★
★ EFFICIENT & EFFECTIVE SUPPORT ★
★ PROVEN PRACTICE MANAGEMENT SYSTEMS ★

Without any obligation on your part, we invite you to come and see how Merge Management have adapted computers to help YOU respond to the needs of todays competitive arena.

M·E·R·G·E
MANAGEMENT
CONSULTANCY
SOFTWARE
DESIGN &
TRAINING

WordPerfect
AUTHORISED TRAINING CENTRE

33 Fitzwillam Square
South.
Dublin 2,

Tel:(01) 767077
Fax:(01) 767160

The Irish Institute of

Legal Executives

TAX SEMINAR

The Irish Institute of Legal Executives are running a Tax Seminar on

Thursday 29th April, 1993

Time: 7 P. M. Location: Sachs Hotel, 21 Morehampton Road, Dublin 4.
Fee: £15 for members
£25 for non-members

Applications to: **The Secretary, The Irish Institute of Legal Executives, Bewley's Chambers, Fleet Street, Dublin 2. (DX No. 1036 Four Courts)**

There Is An Alternative.

Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now,

Siobhán Walsh
CONCERN
1 Upper Camden Street Dublin 2. Tel. 681237

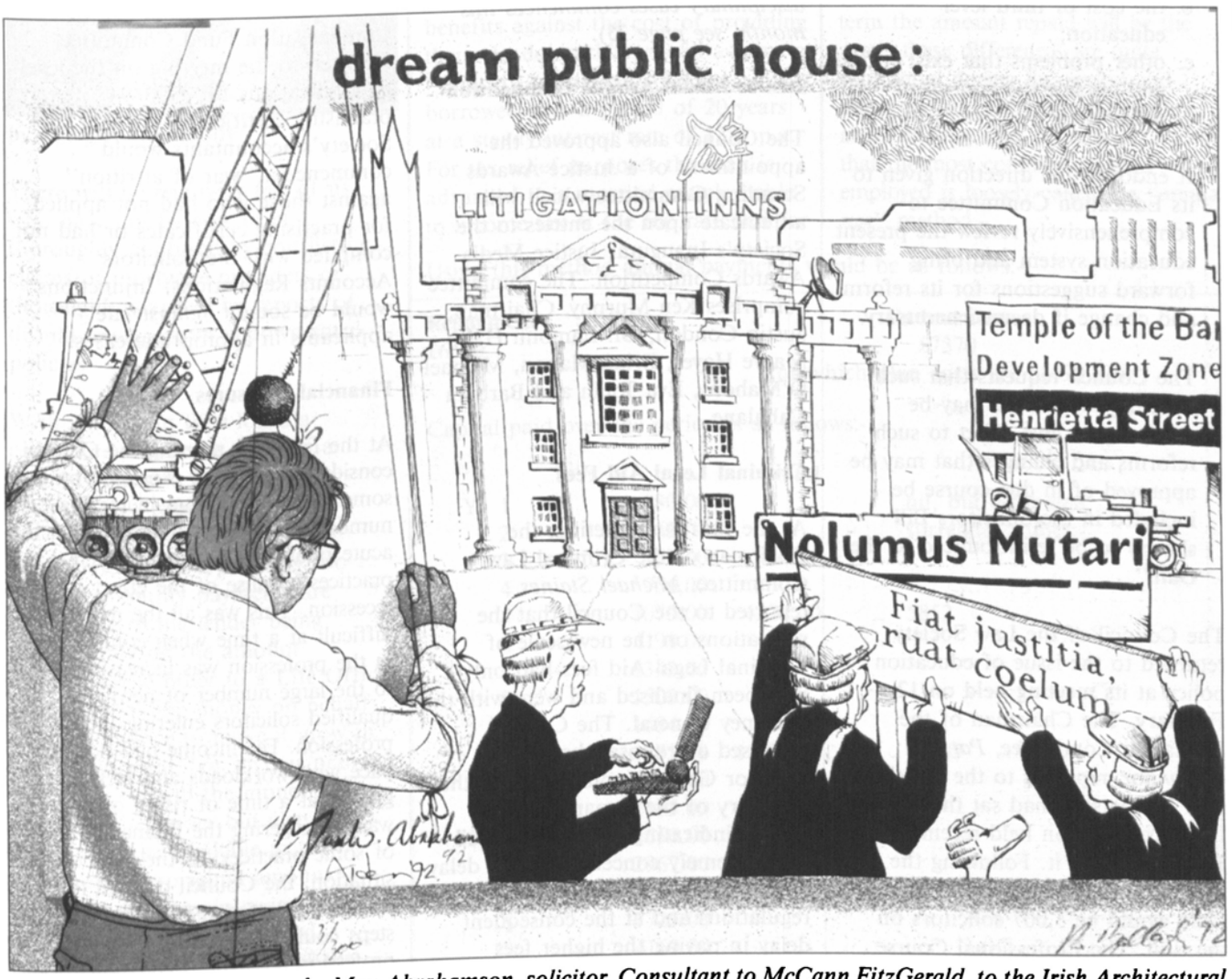
working out what on earth all the quality jargon means!" And what of the paper work and bureaucracy in documenting quality procedures? "Not as bad as preparing the documentation for litigation on a six week long case!", he retorts.

Like Patrick Hayes, *Robert Pierse,* Managing Partner of Pierse and Fitzgibbon, Solicitors, also scored a first being the first firm of solicitors in Ireland to obtain the quality mark. Was it worth the effort? He is unequivocal: "there has been an extremely favourable reaction," he says. "Having a quality management system in place has greatly improved communications between ourselves and our clients." Robert Pierse has seen many changes in legal profession since he founded the practice in Listowel in 1962 and believes in the need to keep responding to the constantly changing demands of law practice particularly the need to keep abreast of changes in the law and to speed up and improve the service to clients.

A question and answer session will follow their presentations to the conference allowing plenty of time for a full discussion of any points raised by conference delegates.

The conference, which starts with the Half-Yearly General Meeting of the Society on the afternoon of Thursday 20 May, runs until Sunday 23 May. The conference package which includes three nights bed and breakfast, two lunches, two dinners (including the conference gala banquet) and an attractive leisure programme, is only £195 per person sharing and is tax deductible. Special rates are available to solicitors who have qualified in the past five years. Further information is available on request to *Mary Kinsella* at the Law Society, Blackhall Place, Dublin 7. **Please note that the closing date for bookings is 31 March, 1993.**

□



The cartoon is a recent entry by Max Abrahamson, solicitor, Consultant to McCann FitzGerald, to the Irish Architectural Archive's dreamhouse exhibition. The translation of the signboard being covered is "we shall not change", and of the replacement signboard is "let justice be done though the heavens fall"! The drawing anticipates publication in the near future of Max Abrahamson's construction contract system which uses graphics and software to supplement its 5,000 words.

Council Endorses Review of Education and considers other current issues

At the January meeting of the Law Society Council, the members passed a resolution endorsing a review of the system of professional education and training of solicitors. The resolution was as follows:-

> "This Council recognises that difficulties presently exist for students seeking to be admitted to the Roll of Solicitors in Ireland due largely to:
>
> a. the economic difficulties in this country;
> b. the cost of third level education;
> c. other problems that exist within and outside the control of solicitors.
>
> It endorses the direction given to its Education Committee to comprehensively review the present education system and bring forward suggestions for its reform and change if deemed necessary.
>
> The Council requests that such enabling sections as may be necessary to give effect to such reforms and changes that may be approved of in due course be included in the Solicitors Bill shortly to be re-introduced to the Dáil."

The Council of the Law Society returned to the issue of education policy at its meeting held on 12 February. The Chairman of the Education Committee, *Pat O'Connor,* reported to the meeting that 380 persons had sat the First Irish Examination held recently and 372 had passed it. Following the Parchment Ceremony later that day, there would be 5,007 solicitors on the Roll. The Professional Course due to commence in November, 1993 was already full. These facts further highlighted the need for an entire review of the admission procedure, education and training of solicitors. All members of the Council were asked to obtain the views of members of the profession as soon as possible with a view to having an interim report drafted promptly.

Disciplinary Cases

At the January meeting, the members of the Council approved the format and style of reports of disciplinary cases heard in the High Court after 1 January, 1993 that would be published in the Gazette from now on. (*The reporting of disciplinary cases commences this month, see page 75*).

Justice Media Awards Competition

The Council also approved the appointment of a Justice Awards Standing Committee which will adjudicate upon the entries to the Society's Inaugural Justice Media Awards Competition. The committee comprises Ken Murphy, Chairman; Justin Condon, Dr. Eamonn Hall, Maeve Hayes, Brian Mahon, Michael O'Mahony, Eva Tobin and Barbara Cahalane.

Criminal Legal Aid Fees

At the February meeting, the Chairman of the Criminal Law Committee, *Michael Staines,* reported to the Council that the regulations on the new scale of Criminal Legal Aid fees had only now been finalised and were with the Attorney General. The Council endorsed a proposal that the Director General would write to the Secretary of the Department of Justice indicating that the Council was extremely concerned at the delay in drawing up and promulgating the regulations and at the consequent delay in paying the higher fees agreed some five months previously.

Quality and Practice Management

The Chairman of the newly-formed Practice Management Committee, *Justin McKenna,* reported that in addition to quality forming the theme of the Law Society's Annual Conference next May, the committee hoped to stage a large scale seminar on the topic later in the year and there would be a series of follow-up courses. A series of articles on various aspects of good practice management would be published in future issues of the *Gazette.*

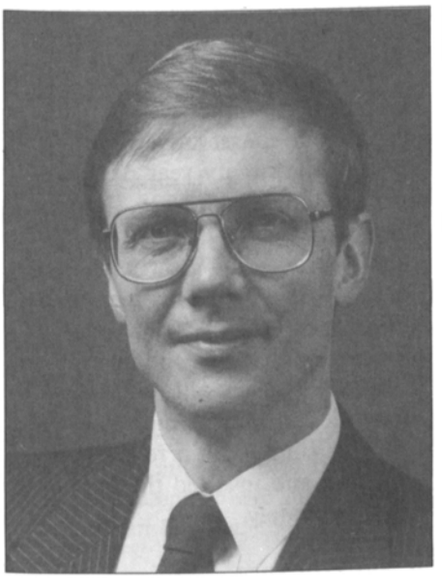
Practising Certificates

Ward McEllin, Chairman of the Compensation Fund Committee, reported to the meeting on the level of applications for 1993/94 practising certificates. He said the Society's accountants would commence a "war of attrition" against those who had not applied for practising certificates or had not complied with the Solicitors Accounts Regulations. Injunctions would be sought against late applicants in appropriate cases.

Financial Pressures

At the February meeting the Council considered the views expressed by some members that an increasing number of solicitors were experiencing acute financial pressures in their practices because of the effect of the recession. This was all the more difficult at a time when competition in the profession was increasing due to the large number of newly qualified solicitors entering the profession. Fee income had not kept pace with workloads and lack of growth at a time of rising overheads was endangering the financial viability of some practices. In the light of this situation, the Council decided to consider at a future meeting what steps could be taken to assist the profession at this difficult time. Some members favoured allocating a special, day-long meeting of the Council to the issue and this will be considered again at the March meeting of the Council. □

The Right Type of Mortgage



by *Fergus Goodbody

There will be relatively few of us who have not by now been thoroughly confused by conflicting claims of mortgage providers or thoroughly alarmed by reports of dismal returns from endowment policies.

With repayment type loans a composite amount is paid on a monthly basis to the lender consisting of capital and interest.

With endowment type loans two separate monthly payments are made; one to the lender being interest only on the amount borrowed, the other to a Life Office which invests the money on behalf of the borrower to make it grow in an "endowment" or savings plan so that not only will the money be repaid to the lender but also a surplus will be available to the borrower. The original amount borrowed will remain owing in full to the lender until the agreed repayment date at the end of the agreed term. The sum total of "capital" paid to the insurance company in monthly instalments will normally be less than the amount of the loan and some element of growth will be required if the loan is to be met at redemption date.

The idea that one can repay the loan at a discount is the great attraction for endowment borrowers. The cost of this attractive feature is the additional interest paid over the period of the loan on a non reducing balance.

The pros and cons of each method

Let us examine the benefits of endowments and then measure those benefits against the cost of providing them. In doing this we will assume a "typical" mortgage £49,000 borrowed over a period of 20 years at a steady interest rate of 12% p.a. For tax relief purposes the loan is advanced to a married couple liable to income tax at the top rate and for life rates they are aged between 30 and 40. We quote average premiums on a guaranteed endowment contract although the guarantees fall short of the full amount borrowed by about one half.

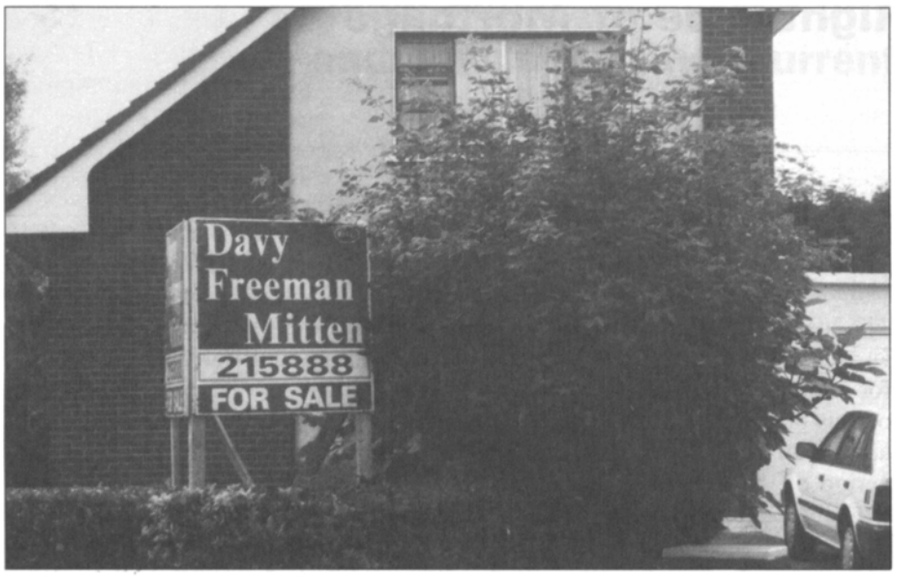
A. Net cost

One of the difficulties in making valid comparisons is that there is more than one method of calculating the amount repaid by a borrower in a repayment mortgage in any particular year. Although at the end of the repayment term the amount repaid will be the same, these differences are quite substantial during the period and markedly affect the figures. Having made enquiry into the subject it seems that the most common method employed is loosely called the "annual rest" method.

Using this method annual payments would be as follows:-

Repayment		**Endowment**	
£6560		£7370 (of which plan costs are £1490 pa)	
Capital paid over the period is as follows:-			
		total	
Yr. 1	680.00		nil, but estimated
2	762.00		surrender values:-
3	853.00		
4	956.00		
5	1070.00	4322.00	5852
6	1198.00		
7	1343.00		
8	1503.00		
9	1684.00		
10	1885.00	11934.00	15947
11	2113.00		
12	2365.00		
13	2650.00		
14	2967.00		
15	3323.00	25348.00	31481
16	3723.00		
17	4169.00		
18	4670.00		
19	5229.00		
20	5857.00	49000.00	55847 (plus terminal bonus)

(Continued overleaf)



Endowment contracts have a flexibility that makes it easy to adjust the premium on moving house.

Interest is paid over the period thus:-

	Gross	Net	Gross	Net
Yr. 1	5880.00	4344.00	5880	4216
2	5798.00	4262.00	do	do
3	5707.00	4171.00	etc.	etc.
4	5605.00	4069.00		
5	5490.00	3954.00		
6	5361.00	3825.00		
7	5217.00	3681.00		
8	5057.00	3521.00		
9	4876.00	3340.00		
10	4674.00	3138.00		
11	4448.00	2912.00		
12	4194.00	2658.00		
13	3910.00	2408.00		
14	3592.00	2213.00		
15	3237.00	1993.00		
16	2838.00	1748.00		
17	2391.00	1473.00		
18	1891.00	1165.00		
19	1330.00	819.00		
20	703.00	433.00		
	82199.00	56127.00	117600.00	84320.00

Costs for such mortgages may be summarised thus:-

Total net interest	56127.00	total net interest	84320.00
plus repaid borrowings	49000.00	endowment costs	29810.00
plus cost of life cover	3000.00		
Total net cost	108127.00		114130.00

It can be seen that the endowment is dearer by £6,003. The fact that it is dearer does not however render it bad value; to justify the additional expense it must yield a surplus greater than the lost opportunity costs of the extra investment. The additional cost amounts to £300 net per year. If this were invested in a separate savings plan not attached to the mortgage and if this plan were to achieve a conservative return of 8% over the twenty year period it would amount to £13,728. To achieve a similar surplus an endowment plan must return 7.25% growth on premiums invested. This means that if similar returns are made on invested monies then the investor in the example given will be better off doing an endowment mortgage than if he/she simply did a repayment mortgage and invested the amount saved separately.

B. Tax efficiency

Undoubtedly, the endowment method is more tax efficient in that relief usually begins to taper off in the repayment method around year 13. This will vary depending on the amount borrowed. For smaller sums relief will taper even sooner. However, the fact remains that in all cases the net costs are higher despite this efficiency.

C. Tax free lump sum

Yes, there should be such a sum to enjoy at the end of the mortgage provided the growth is there. There is no guarantee of this, however, and in certain circumstances there may even be a shortfall.

D. Flexibility

This is certainly a feature of unit linked endowment contracts and on moving house makes it very easy to adjust the premium and the period and perhaps the investment fund. A less welcome feature is the premium review clause which means that if the fund performs badly the borrower may be informed in any year after year 10 that their payments will have to be increased so as to meet their loan target.

Dangerous endowments

If there is a shortfall in the endowment policy at maturity, then the balance will be due from the borrower to be met from other resources. This is the risk element in all save the most costly endowment type loans. However, the risk does not fall evenly upon all endowment policy holders. It depends upon two main factors:-

1. The amount of the total endowment premiums invested (ie. the level of expected investment growth).

2. The type of policy in question.

Clearly, the "cheaper" the endowment the higher growth it will have to achieve to meet the loan. Lenders are aware of this and for some time have refused to accept growth projections of more than 7% p.a.

What may not have been as clear to the lenders and seldom to the borrowers was that the type of policy could be relevant. Some policies offer guarantees (the "with profit" types) and some do not (the "unit linked" managed fund types). Of those commonly used neither guarantee to pay the loan off at maturity.

The reader will recall the days when it seemed that on the whole the markets of the world seemed to be in perpetual boom; in particular the equity markets showed continuous growth for not just years but decades. How things have changed! Until confidence returns the markets may not show the kind of growth we once took for granted. The impact of this observation on those managed fund endowment policies which do not carry guarantees is immediate. Many people have this type and some of them will have experienced *negative* growth on their savings to date, perhaps for as long as five or six years. For them the important questions are:-

1. How much growth is now required to achieve the amount borrowed?

2. What are the chances of the markets achieving this new level of growth within the time left?

A calculation reveals that if ten years into the life of a mortgage the value of the endowment equals the sum total of the premiums then paid in, that plan requires a return of 11.14% compound on premiums invested in order to reach the targeted sum, let alone a surplus. For every year growth is delayed this figure rises substantially. Bear in mind that the 11.14% does not make allowances for expenses and charges and when these are taken into account the growth in units required will be higher.

Endowments that contain guarantees do not face the same problems. Their structure ensures that there will be growth provided the savings contract is allowed to run its course. This growth has its origins in annual accretions and does not rely upon a last minute spurt to record a decent return (but may rely upon a Terminal Bonus to boost its value to the aspired levels).

Personal views on this matter are not really within the remit of the mortgage advisor. The prudent will not count on an improvement in the equity markets for some considerable time and the holder of a managed fund endowment plan will not seek the kind of returns they had hoped perhaps for another fifteen or twenty years from now.

Is an endowment ever justified?

Yes. I believe there are good reasons for having an endowment:-

1. Moving house. Estate agents will tell you that people move house on average every seven years in Britain. In Ireland this figure may be more like 10 years or so. Despite the higher cost of the initial endowment mortgage it will almost certainly be cheaper for a borrower to bring the original endowment with him to the new house (or houses) and enter into fresh borrowing arrangements for any top up loans required than to pay off a repayment loan and have to reborrow for a new amount over a new period of time. This is because the total net cost of borrowing money is greater the longer the period of time over which that money is borrowed. A maturing endowment policy ensures that capital is available to repay a loan within the intended term of the original loan. This is why endowment policies should never be cashed and new ones entered into when moving house.

2. Cash lump sum. On average a return of around 5% p.a. on invested premiums will secure the sum borrowed. Provided returns are reasonable and in excess of this there will be a cash surplus. We have seen that if an investor is prepared to pay extra during the course of his mortgage he will often be better off than if he had saved the money separately, provided we assume that the return on the invested money is equal in each case. However, this person would also find it more convenient if he maintained personal control over his savings plan by keeping it separate from his mortgage.

3. You already have a good savings plan. For those who are already good savers before they buy their house there is some really good news. If you have started your endowment early you may be able to reduce the cost of buying a house very substantially. We have seen that the expense lies in interest payments and if you can reduce the period of time over which the money is borrowed by a policy payout within the 20 year period this means big savings.

4. If you already have reputable endowment arrangements for some years and wish to change now, savings in outlays may not be feasible. Although there are savings in outlays to be made in switching from an endowment to a repayment, unless this is done in the early years it may not be possible if the original mortgage term is to be preserved.

Summary

As with most things there is a time and place for endowment type arrangements but they should not be applied across the board. The endowment is a sophisticated financial instrument and must be respected for what it is. As far as consumers are concerned utmost caution should be employed as they will be offered, from some quarters, endowments which are unsuitable for house purchase because they are in essence largely speculative investments. □

Former Judge Pleads for Adequate Child Detention Facilities

Delivering the annual keynote lecture at Our Lady's Hospital for Sick Children in Crumlin, recently, former Judge of Dun Laoghaire District Court, *Hubert Wine,* made an impassioned plea for the immediate provision of adequate, safe centres of detention for disturbed young people.

Referring back to a case of a 15 year old girl which had come before him in September, 1989 when he had refused to remand her to Mountjoy, thus highlighting the lack of detention facilities for emotionally disturbed young girls, he recalled that various Ministers had promised that steps would be taken immediately to provide adequate detention facilities so that such a situation would never recur. Judge Wine asked what had been the outcome of all the promises and undertakings that had been made on that occasion and since then.

He said previous Governments had been well aware of shortfalls and had been negligent to the extreme in their duty by their omission to introduce and fully implement new child care and related legislation. He called on the new Government to take action immediately and not to wait for a tragedy or to act only when it would be too late. He made the following suggestions to the Ministers for Justice, Education and Health.

1. The building of an immediate, safe and therapeutic centre of detention for emotionally disturbed young girls, with expert psychiatrists, psychologists, social workers and officers looking after, not only the safety of the young girls, but also the safety of the staff.

2. The actual implementation – not just enactment – without delay of the proposed Juvenile Bill.

3. The immediate implementation of the vital sections of the Child Care Act, 1991.

4. The appointment of more Gardaí, vital in order to obtain the maximum cooperation with members of the public.

5. The appointment of an expert who would discuss the scale of the problem with each of the 48 Judges of the District Court throughout the country. A thorough investigation is required in order to assess the numbers of young people that have to be dealt with.

Judge Wine called on the Government to act on these suggestions immediately. □

SADSI 1993

Paula Murphy, who has been elected Auditor of the Solicitors Apprentices Debating Society of Ireland for 1992/93, reports on plans for the year ahead.

"Central to SADSI's agenda this year is the promotion of activities which involve the greatest number of apprentices throughout the country. With this objective in mind I have coopted a number of regional representatives on to the Committee including *John Gaffney* in Cork and *Riobaird Pearse* in Limerick.

"An extensive programme of events has been arranged for the year ranging from monthly debates, moot courts, jobs forum, sports days and our midsummer ball, together with a weekend away in Cork or Galway. Our first event was a SADSI 60s Night which was held in Blackhall Place on 19 February, the proceeds of which will be given to the SADSI Team who are taking part in the finals of the International Jessop Moot Court Competition in Washington this March.

"We look forward to enjoying the support of all apprentices throughout the country during the year." □

Retired Garda with experience of Investigation and Summons Serving seeks work
Tel / Fax 900204

PRACTICE REQUIRED
by existing firm currently practising 500 years from the Four Courts.
Please send details to Seán Whelan & Company Chartered Accountants, 33 Westland Square, Dublin 2.

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.

Registrar of Titles,
Setanta Centre,
Nassau Buildings,
Nassau Street, Dublin 2.

SCHEDULE

Read. Owner:
The Right Honourable the Lord Mayor Aldermen and Burgesses of Dublin.
Folio: 6480 County: Dublin.
Lands: Townland: Ballycoolen
Barony: Castleknock

Council of the Law Society 1992-1993

The Council of the Incorporated Law Society of Ireland 1992/93 *back row l-r: Michael Staines, John Harte, Philip Joyce, Brian Mahon, Justin Condon, Peter D. R. Murphy, Justin McKenna, Owen Binchy, Fergus Appelbe, Walter Beatty, John Fish, Timothy Lucey. Second row from back l-r: Michael Irvine, William Osborne, Cormac O'Hanlon, Maeve Hayes, Bruce St. John Blake, Anthony Ensor, James MacGuill, John Shaw, Adrian Bourke, Donal Binchy, David Walley, Gerard Doherty, Edward McEllin. Third row from back, (seated) l-r: Patrick Glynn, Francis Daly, Geraldine Clarke, Ken Murphy, Angela Condon, Andrew Smyth, Stephen Maher, Niall Casey, Eva Tobin, Anthony Collins, Stephanie Coggans, P. Frank O'Donnell. Front row, (seated) l-r Gerard Griffin, Gerald Hickey, Maurice Curran, Elma Lynch, Michael O'Mahony, Senior Vice President; Raymond Monahan, President; Laurence Shields, Junior Vice President; Noel C. Ryan, Director General; Moya Quinlan, Barry St. John Galvin, Brian Sheridan and Patrick O'Connor. Absent from the photograph were Ernest Cantillon and Past Presidents: Brendan Allen, John Carrigan, Laurence Cullen, Joseph Dundon, Michael Houlihan, John Maher, Ernest Margetson, David Pigot, Peter Prentice and Thomas Shaw.*

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At the admission ceremony of 44 Irish/American lawyers to the U.S. Supreme Court were l-r: Noel C. Ryan, Director General, Law Society of Ireland; Brian P. Farren, President of the Irish Lawyers Association of New York; James O'Dwyer, Managing Partner, Arthur Cox; The Hon. Antonin Scalia, Associate Justice, U.S. Supreme Court; Joseph Lynch, Charge d'Affaires, Irish Embassy, Washington; Raymond T. Monahan, President, Law Society of Ireland; Irene Lynch, The Hon. Mr. Justice Anthony Hoderman, Supreme Court of Ireland; Adrian P. Bourke, Past President, Law Society of Ireland, and Marion Petty, President, Clare Law Association.

The President of the Irish Auctioneers an[d Valuers Institute, Pat Stephenson, with the President of the Law Society, Raymond T.]monahan, at the launch of the Society's revised standard rent review clauses at a joint recep[tion held at the IAVI premises.

At a presentation of a Bank of Ireland sponsorship cheque for £25,000 towards the cost of the Society's Annual Conference in 1992, were l-r: Pat Dunleavy, Manager, Bank of Ireland, College Green; Eamonn Condon, Assistant General Manager, Bank of Ireland; Adrian P. Bourke, immediate Past President, Law Society and Raymond T. Monahan, President, Law Society.

Committee of the Solicitors Apprentices Debating Society 1992/93. Back row l-r: Garrett Breen, Paddy O'Sullivan, Graham Hanlon, Sean Barton and Cathal De Barra. Front row l-r: Cora Fitzsimons, Gillian Ridgeway, Paula Muphy, Auditor; Orla Higgins and Ann Kelly. Missing from the photograph are Jacqui Cross, Phillipa Howley and Michael Lynn.

LEGAL & GENERAL OFFICE SUPPLIES
15 ORMOND QUAY, DUBLIN 7.
ANNOUNCE
30% OFF
TOSHIBA PHOTOCOPIERS
The Leading Business Copier
FREE SERVICE & PARTS FOR 12 MONTHS

EXAMPLE PRICES	NORMAL	SPECIAL
Toshiba BD1710	3382.00	2365.00
Toshiba BD1210	1325.00	995.00
Toshiba BD2500	3985.00	2800.00

OFFER ENDS APRIL 30TH • RING NOW FOR DETAILS AND DEMONSTRATION
LEASING ARRANGED IF REQUIRED
TELEPHONE 01-725522.

At the inaugural meeting of the Advisory Committee on Legal Education held on 29 January, 1993 were, back row lr: Justin McKenna, Chairman Education Advisory Committee, Law Society; Professor Richard Woulfe, Director of Training, Law Society; Patrick O'Connor, Chairman Education Committee, Law Society; Raymond Byrne, Dublin City University; Marie McGonagle, University College Galway; Val O'Donnell, Assistant Secretary, Department of Justice; Noreen Mackey, Kings Inns; John Hayden, Higher Education Authority; Professor Henry Ellis, University of Limerick; Harriet Kinahan, Education Officer, Law Society. Front row l-r: Barry MacAuley, University College Dublin; Maxine Brady, President, Union of Students in Ireland; Professor David Gwynn Morgan, University College Cork; The Hon. Mr. Justice Ronan Keane (Chairman); Professor William Binchy, Trinity College, Dublin; Jennifer Hayes, IBEC; Kevin Waldron, Director of Education, Kings Inns.

NEW

from

Butterworths

Irish Conveyancing Precedents *by Mary Laffoy with Deborah Wheeler*	Looseleaf (in one binder) £110.00
Taxation of Estates: The Law in Ireland (due March 1993) *by J.M. O'Callaghan*	Soft cover £39.50
Taxation of Trusts: The Law in Ireland (due March 1993) *by J.M. O'Callaghan*	Soft cover £39.50

- Bookshop open at Ormond Quay, Dublin *(100 metres from the Four Courts)* Come in and browse. Open 9am-5.30pm
- Orders welcome by telephone and fax
- Talk to our sales representatives about these and other Butterworth titles
  Dublin area: Madeleine Roche 01-324289 or 088-597659
  Outside Dublin: Max Harvey at 021-371399 or 088-566793

Please note: There is an additional postage & packing charge of £2.00 on orders below the value of £50.00.

Butterworth Ireland Ltd., 26 Upper Ormond Quay, Dublin 7.
Tel: 01-731555. Fax: 01-731876

NEW COMPANY REGISTER
NOW AVAILABLE FROM

- KINGS -

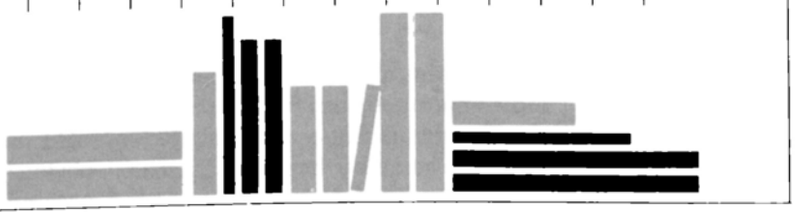
NEW AND UPDATED TO FILL THE REQUIREMENTS OF THE COMPANY ACTS 1963 - 1990
INCLUDING REGISTER OF MEMBERS,
REGISTER OF DIRECTORS,
REGISTER OF DIRECTORS EMPLOYMENT CONTRACTS,
SEAL REGISTER, MINUTE BOOK ETC.
ALSO IN STOCK:
- REGISTER OF MEMBERS - TO ACCOMMODATE 400 NAMES

W. King Ltd.

54, Bolton Street, Dublin 1.

Telephone: 731463

BOOK REVIEWS



Guide to the 1992 Group Account Regulations

By Kenneth G. Rue, Fodhla Books, Dublin 1992. 167pp. IR£19.95 Softback.

This book is welcome in several respects. It represents the entry into textbook publishing of a company more usually associated by practitioners with the secure printing of documents for quoted companies. An addition to the, regrettably, short list of Irish publishers of professional texts is pleasing. The book itself is a comprehensive guide to the changes to group accounting arising as a result of the implementation of the Seventh Company Law Directive and new accounting standards.

While the book will primarily be of assistance to practising accountants it deals with a number of issues of interest to lawyers generally. For example, it covers the new concepts of 'parent undertaking' and 'subsidiary undertaking' introduced in order to include undertakings other than bodies corporate in the requirement to prepare group accounts. It also deals with the broader concept of 'actual exercise of control' over undertakings instead of 'power to exercise control' which is now used to determine when consolidation is to occur.

The book also reviews developments in accounting for acquisitions and mergers. This is an area which has for years given rise to legal difficulties and will, notwithstanding the new regulations, continue to do so.

The book takes a narrative approach, leading the reader from the underlying definitions through chapters dealing with the obligation to prepare group accounts, the form, format and content of group accounts, acquisitions and mergers, joint ventures, treatment of associates etc. It also contains conveniently arranged appendices including the text of the Seventh Directive, the Group Accounts Regulations and formats and a comparative table of British and Northern Irish legislation.

However the book does not attempt an analysis of the legislation or any criticism. It does not, for example, analyse the extent to which the Minister in making the Order introducing the Group Accounts Regulations may have exceeded his authority under the European Communities Act, 1972 by including various amendments to the 1986 Companies Act which, arguably, were not strictly necessary for the implementation of the Directive.

This book will be a useful addition to the library of any company lawyer. As legislation takes ever tighter control over the preparation and format of the financial statements of companies, accountants will have to seek legal advice more frequently on these matters.

David Beattie

Report on the Law Relating to Dishonesty

Law Reform Commission, LRC 43 - 1992. 377pp, £20.00, paperback.

The Law dealing with dishonesty in Common Law jurisdictions dates back at least to the Assize of Clarendon 1166. Since then there have been different statutes updating the legislation and, of equal importance, many judicial decisions creating and changing the law as different types of dishonesty came into vogue. The judges, coming as they did from the property owning class, went out of their way to ensure that actions adverse to property rights were criminalised whether or not they were caught by existing statute law. The need for codification of this law arose regularly and the last great codification affecting this jurisdiction occurred with the Larceny Act, 1916. This Act, containing fifty sections, dealt not only with stealing and other forms of larceny but also with related offences of embezzlement, burglary, false pretences and others. This Act itself, even though it set out to simplify the law, has been the subject of much judicial interpretation. Furthermore, because of huge advances in technology and economic activity many acts that might be regarded as dishonest may not be caught by its scope – computer fraud and fraudulent use of credit and automatic teller cards being just two examples. This is, therefore, an urgent need for reforming and updating the law relating to dishonesty.

The members of the Law Reform Commission have spent the last five years examining the whole position. Initially, they published a consultation document and have now followed this up with a full report. This report runs to over three hundred and fifty pages. As usual the Commission has thoroughly researched the law both here and in other Common Law jurisdictions such as the United Kingdom, New Zealand and Australia. In one way our own legal inertia has benefited us to the extent that the United Kingdom authorities, beset by the same kind of legal problems as ourselves, enacted the Theft Act as far back as 1968. Despite the fact that there was much discussion and debate, prior to the passing of this Act, as to the best method of proceeding, this Act itself has been analysed and interpreted by numerous judicial decisions since then. It seems to be impossible to get the mixture right, but at least

we have the benefit of the United Kingdom experiences over the past twenty-five years.

Undoubtedly, one of the reasons for all this difficulty is that, historically, larceny was seen as a crime against possession rather than ownership. This particular perspective then led to the creation of such special offences as larceny by a bailee and fraudulent conversion – simple larceny could not cover such activities as the dishonest person was actually in possession of the goods. Furthermore, it led to the distinction between such crimes as larceny by a trick and obtaining by false pretences. The intricate differences between these various crimes, though beloved by legal examiners, caused great difficulties in practice and many dishonest persons walked free because they were charged under an inappropriate section.

What plainly is needed is a simple piece of legislation to make dishonesty illegal but, proclaiming what is needed is simpler than drafting such a statute. Our Law Reform Commissioners make numerous recommendations and it is refreshing to note that they do not slavishly follow the United Kingdom model but rather attempt to learn by its mistakes. All in all they make seventy recommendations. The main recommendations involve the creation of an offence of "dishonest appropriation" with the word dishonest being defined in terms of the absence of a claim of right. The United Kingdom Theft Act does not define dishonesty but rather lists out instances of what it considers "honest appropriation". Secondly, it will no longer be necessary for an accused person to have an intention to permanently deprive an owner of the property. Thirdly, it advocates a catch-all offence of dishonesty to cover cases not caught by other crimes. This new offence would have a maximum sentence of five years, and is defined as dishonestly causing another to suffer financial prejudice or dishonestly making a gain for oneself.

This last recommendation, though controversial, may turn out to be the most important one. To date the law seems to be unable or unwilling to deal with some of the most serious of all forms of dishonesty – insider trading, use of insider information and dishonest personal profit-making by persons who manage State or private companies. The law must be seen to be impartial and it is difficult to explain to a jailed shop-lifter why certain well publicised cases of what appear to be blatant fraud are not prosecuted. On the other hand I often wonder if the will is there to prosecute this type of white collar crime. We are told, for instance, that a solicitor or auctioneer who converts money from his client account to his office account cannot be charged as it is impossible to say which of his particular clients he has stolen from. This Report points out that the English authorities had no difficulty in succeeding in such prosecutions under the Larceny Act, 1916. The proposed new crime of dishonesty will, however, obviate procedural difficulties, but I wonder how we are going to deal, for example, with the currency speculators who recently made huge profits at the expense of this country as a whole. Did this speculation amount to dishonesty?

At the end of their report the Commission make several recommendations connected with court procedure and Garda powers of search and arrest. These recommendations may be more than just an afterthought attached onto a well researched report, but I feel that the whole question of increasing Garda powers and delimiting the right to silence is sufficiently important in itself to be dealt with in a specific report. A further consideration of these recommendations is necessary.

Finally, I must criticise the recommendations of the Committee that the choice of venue of trial be given only to the Director of Public Prosecutions (subject to the overriding jurisdiction of the District Judge) and taken away from the accused person. This recommendation has to be seen in the context of a definite policy decision to delimit the accused's right to trial by jury. The most obvious example of this policy occurs in relation to alleged assault and obstruction of Gardaí and resisting arrest. The prosecution authorities, presumably worried by the large number of acquittals before juries in this type of case, instructed the Gardaí not to proceed by way of Section 38 of the Offences Against the Person Action, 1861 (giving the accused a right to elect for indictment) but to charge such persons with different summary offences. Recent legislation such as the Drugs Act and Criminal Damage Act continues this trend. Experience shows that a judge may be more likely to accept Garda evidence of identification or of a surveillance exercise than would a jury. There is no doubt that very serious cases of unlawful taking of motorcars and supply of heroin are dealt with in the District Court even when accused persons would have been anxious to have gone before a jury. I would urge the reversal of this trend and the maintenance of the accused's right of jury trial in dishonesty cases.

Apart from these criticisms, the Law Reform Commission has again done an admirable job in producing this Report. The matter is now in the hands of the politicians and we can only hope that we will have a new statute on the books before the 80th anniversary of the Larceny Act!

Michael Staines

Legal Aspects of Commercial Sea-Fishing in the EEC

ICEL, 1992, 84pp. £12.50 (members) £14.50 (non-members) paperback.

This is a publication of some of the papers delivered at a seminar, organised jointly by the Irish Fish Producers Organisation (the IFPO) and the Irish Centre for European Law, Trinity College, Dublin.

The joint promotion, was the brain child of *Mark Lochrin,* Chief Executive of the IFPO.

In the foreword Mr. Lochrin states:-

"The seminar was intended to mark a turning point by bringing together a broad spectrum of people in an interchange of views from different perspectives that would in turn, hopefully, stimulate a sustained interest in the sector."

The seminar was one of a number of promotions designed to highlight the plight of the Irish fishing industry in the lead-up to the "Review of the Common Fisheries Policy" (CFP) then due in 1992.

On Ireland's entry to the EEC, Ireland's fishing industry was in its infancy, it was operating on limited catching capacity, with haphazard stastics, and was over-shadowed by its better organised big brother – agriculture. There is no doubt that the Irish sea-fishing industry was sacrificed at that time. Since then the industry has grown, not only in catching capacity operating within very restrictive limitations, but in efficiency, and in on-shore production, into a multi-million pound industry, giving employment in peripheral areas, to those who would otherwise have to emigrate.

It was against this background that the seminar had been organised, and the publication ensued.

Robin Churchill, Senior Lecturer, in the Law Centre for Marine Law and Policy, University of Wales, Cardiff, author of "EEC Fisheries Law" and acknowledged authority on the Common Fisheries Policy, was the anchor around which the seminar was moored. His paper outlined the evolution of Community fisheries law. He dealt with the vexed question of access by fishermen, from one Member State to the waters of other Member States ("international access") and access to the fishing industry within individual States ("national access").

TACS and quotas are the common coinage of community jargon. Total allowable catches (TACS) and quotas which form the cornerstone of the Community system of fisheries management were addressed by him. He considered technical conservation measures, the enforcement by member States of Community law, and dealt with the supervision of the catching capacity of fishing fleets.

Rory Conway, a well known solicitor from Cork, dealt authoritatively with "Prosecutions for breaches of Fisheries Law". Mr. Conway has represented the defence in many prosecutions over the last number of years, and has acquired a considerable volume of expertise. He outlines the procedures involved, including the escorting of the suspected vessel to the nearest and most convenient port, the powers of detention of the Sea Fisheries Officer, and the bringing of the defendant before the District Court as soon as may be. He highlights the penalty for indictable offences of illegal fishing, and attempting to fish illegally, as being a maximum of £100,000, plus the mandatory confiscation of all catch and gear found on board.

Commenting on the penalty structure for Fisheries Officers, he says:- "It is the most elastic logic to provide that the maximum penalties for having a full hold of small fish are the same as for not having the ship's numbers painted in black and white on the hull."

Denis Yule, a veteran advocate for the defence in Scottish Courts, brought his considerable expertise to bear in delivering a most interesting paper, highlighting some substantial differences between fisheries prosecutions in Scotland and Ireland. In Scotland, policing of fishery offences is conducted on a two tier basis. Producers organisations, such as the IFPO here in Ireland, have statutory power to levy civil fines against their members for exceeding quotas allocated. Fishermen, who are not members of an organisation, get their licence directly from the State, and are subjected to Criminal Prosecution by the State.

Patrick McCarthy, Solicitor, Skibbereen, Co. Cork, who acts on behalf of many commercial sea fishing interests, and on behalf of the owners of French fishing vessels arrested by the Irish authorities, dealt with "Sea Fishing Boat Licences". He distinguished between the issuing of a licence by the Department of Marine under the Fisheries Acts, and the registration of the vessel under the Merchant Shipping Act, 1894, and the Mercantile Marine Act, 1955. He dealt with the new fishing register for fishing boats, set up under "The Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1989" and with the difficulties facing the Irish industry in relation to reduction in total tonnage, and the transfer of tonnage. He distinguished between the almost arbitary powers of the Minister for the Marine in granting fishing licences with the controls on the issuing of liquor licences by the Court.

Malachy Boohig, State Solicitor for West Cork, highlighted the difficulty for the Navy on the prosecution side, having regard to the magnitude of the law applicable to technical offences emanating from the Community.

Frank O'Donnell, your reviewer, who chaired the seminar, dealt with the legal aspect of purchasing a fishing vessel.

The publication contains a synopsis of the relevant EEC Fisheries Regulations, the main Irish statutory instruments, and a synopsis of the Fisheries Act, 1959 to 1983.

For anyone involved in the sea-fishing industry, this is a very useful reference book, available from the Irish Centre for European Law Limited, Trinity College, Dublin 1.

Frank O'Donnell

MAKING A WILL?

PLEASE REMEMBER THE

SOLICITORS BENEVOLENT ASSOCIATION

The following is the text of a suitable bequest:

I GIVE DEVISE AND BEQUEATH THE SUM OF

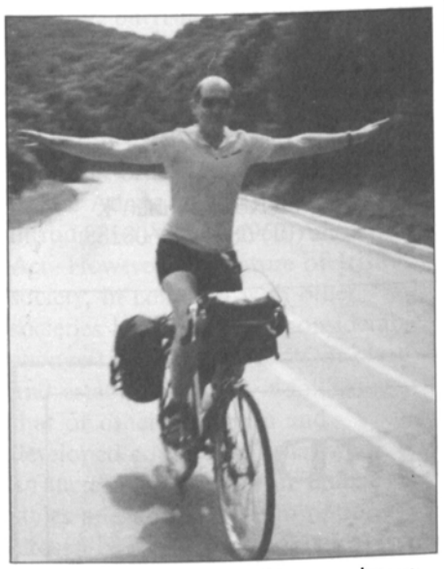
£_____

To the trustees for the time being of the Solicitors Benevolent Association, c/o The Law Society, Blackhall Place, Dublin 7 for the charitable purposes of the Association in Ireland and I direct that the receipt of the Secretary for the time being of the Association shall be sufficient discharge for my executors.

Irish Cycling Guide

by Brendan Walsh. Gill and Macmillan, 1992, 135pp £5.99 paperback.

To those unfamiliar with reading maps, Brendan Walsh, solicitor, mountain climber, cyclist and raconteur, brings years of practical experience to bear on the topic. His book makes reading a map such as a Michelin 1:400,000, (approximately 1 inch to 6.3 miles), covering the entire country and an Ordnance Survey Map, scale 1:50,000 and 1:25,000, like reading an adventure novel, because it has certain alluring information with an underlying suggestiveness.



The author Brendan Walsh, experiences the highs . . .

Brendan's knowledge of the countryside, his attention to detail, e.g. page 91 "after Belturbet take the T52 (signposted Clones) on a road of potholes 4.1 miles east etc." illuminates some trips which might otherwise be drudgery.

He grades the different trips, one to four star, much like the Michelin Restaurants that he frequents, on his not infrequent trips to France. There is a very accurate description of the Clifden/Westport via Doolough trip, graded four star as follows:-

"The more adventurous should go back along the Northshore of Killary Harbour past the beautiful Aasleagh Falls, on the R335/L100, for three miles, to where the road goes north between the Mweelrea Mountains and Ben Gorm/Sheeffry Hills. After 1.5 miles Delphi is passed and then Doolough, after which the road rises over a low pass to reveal, on a fine day, stunning views of the Atlantic with Inishturk, Clare Island and Achill to the north west."

This publication, while directed primarily at cyclists coming from abroad is very useful reading for anyone thinking of taking a short cycle trip of say thirty to forty miles. It is almost essential reading for those embarking on a leg of the Grand Tour, i.e. 35 day coastal trip around Ireland, doing approximately forty miles per day.

. . . . and the lows of cycling!

The book provides very useful material on accommodation, youth hostels, camping, B & Bs, etc. in addition to suggestions about getting there by train, bus, package tours, and rules and road markings.

Tourism is such an important part of our economy and this publication is a small but important contribution towards our tourism. His choice of title "Irish Cycling Guide", rather than "Cycling Guide to Ireland", I have no doubt, was motivated by the fact that Brendan felt some potential readers would be left under the impression that it might be a humorous book, cycling Irish style. It is not.

I get great pleasure, both at home and abroad, enquiring from travel agents, bookstalls and tourist centres, as to the availability of this publication and recommending it. I don't get any commission but I hope to get a free copy of his next publication entitled "Cycling Irish Style Around Scotland".

At £5.99 it is good value. You can keep it for years and unless we have another ice age, it will be as relevant in fifty years as today; it does not have any inbuilt obsolescence.

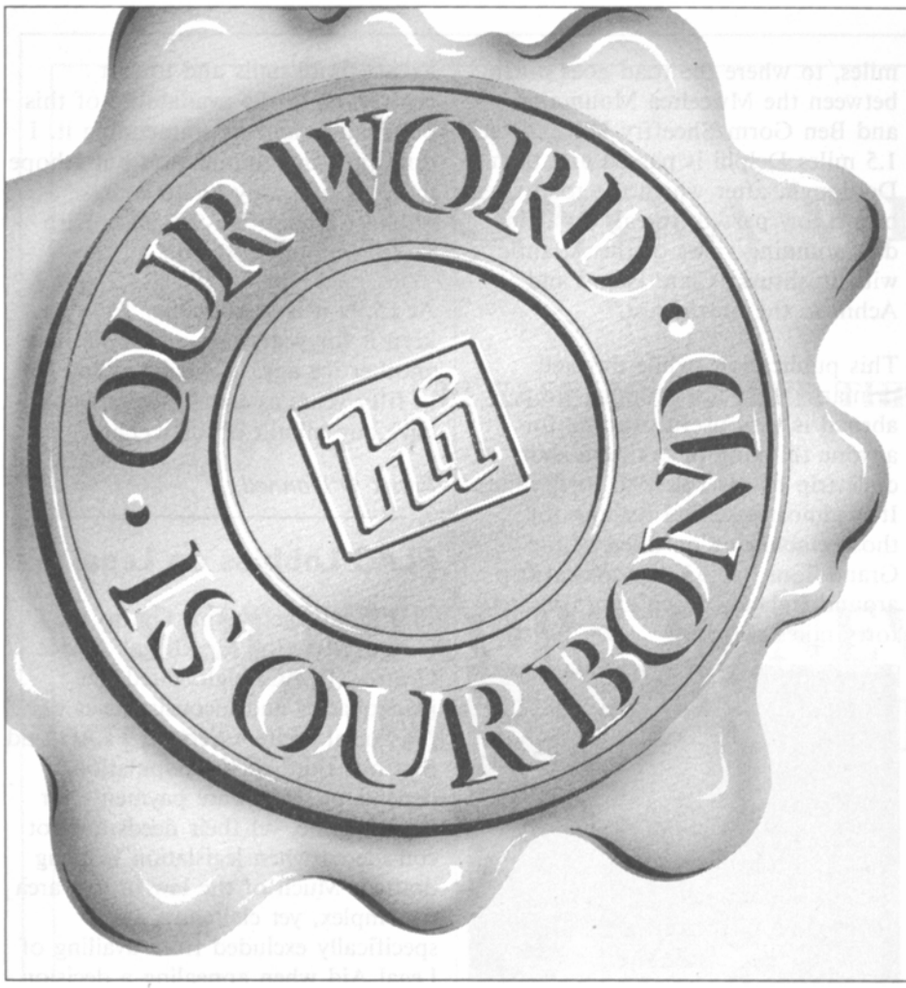
Frank O'Donnell. □

FLAC Lobbies on Legal Aid

In a pre-budget submission to the Government, the Free Legal Advice Centres (FLAC) highlighted the inadequacies and inconsistencies of the Social Welfare Service. FLAC said that one third of the population is dependant on welfare payments for their income, yet their needs are not considered when legislation is being drafted. Much of the law in this area is complex, yet claimants are specifically excluded from availing of Legal Aid when appealing a decision of the Department of Social Welfare. FLAC said the Legal Aid Scheme must be expanded to cover Social Welfare and the Employment Appeals Tribunal.

In its submission FLAC noted with interest the commitment in the Programme for Government in respect of equal access to the law and that this is now to be the respoonsibility of the new Minister for Equality *Mervyn Taylor.* "The recognition of the need to guarantee equal access to the law irrespective of income is long overdue and we hope that this will lead to real progress in the development of a comprehensive scheme of Civil Legal Aid and advice."

While welcoming the proposal to, place, at last, the Scheme of Civil Legal Aid on a statutory footing, FLAC pointed out that it is now five years since the then Minister for Justice, *Gerard Collins,* first made this promise. "Since then there has been history of subsequent Ministers making the same promise without action. We hope that this time the promise will not be broken." □



Trust Hibernian to arrange the sealing of Administration Bonds on a 24 hour turn-around basis.

Highly competitive terms.

HIBERNIAN
INSURANCE
Head Office,
Haddington Road, Dublin 4.
Telephone (01) 689244/608288.

GETTING MARRIED?

Why not hold your wedding reception in the elegant surroundings of Blackhall Place?

- **Parties up to 200 catered for.**
- **"Afters" catered for.**
- **Available to solicitors and their sons, daughters, brothers, sisters, nephews and nieces.**
- **Attractive location for photographs.**

Contact:
Peter Redmond (Ph. 710711, Ext. 266) For a competitive quote.

Barnardo's Seek Change in Adoption Law:

Barnardo's Adoption Advice Service has called for a review of adoption law in Ireland in order to give adult adoptees a legal right to their original birth certificate. The organisation says it is receiving an increased number of enquiries – now running at 60 or 70 each month – from people who want to trace each other. *Nora Gibbons,* team leader of the Adoption Advice Service, says: "It is very difficult to explain to an adult in Ireland that although they could be entrusted with many important jobs within our State, for example, they could be anything from the President to a member of the Dáil, head of school, solicitor, barrister, social worker, that the one thing that they do not have a right to know is actually who they are or where they came from." Barnardo's say that over 38,000 adoption orders have been granted by the Adoption Board since the introduction of the 1952 Adoption Act. However, the nature of Irish society, in common with other societies has undergone considerable change since the 1950s. "Our clear and established trend is following that of other European and developed countries in that we have an increasing diversity of family styles and adoption is an option chosen by far fewer single mothers," says Nora Gibbons.

Increasingly, according to Barnardo's, it is accepted that adult adoptees in many instances have a need to know of their origins. Different countries have taken different paths to meet that need. In Scotland since 1930, in England since 1975 and in Northern Ireland since 1989, adult adoptees have a legal right to their original birth certificate. Ireland has not yet seriously considered producing similar legislation, although a committee which reported in 1984 to the then Minister for Health, *Barry Desmond,* formed a majority view in favour of informing birth parents that from that point onwards their child would have access to his original birth certificate. The Committee also recommended counselling and that the wishes of the birth mother concerning future access to the birth records be made known. The majority view of the Committee accepted an absolute right by an adopted person to have his original birth certificate. However, only a minority of the Committee was in favour of any such right of access being made retrospective on the grounds that it would be a breach of faith of those parents who had placed children for adoption on the assumption that there would be no change in laws governing these placements.

Barnardo's believe a committee would come to a different view on the matter today because there has been a significant shift in attitude in the intervening years. Both adopted people and adoptive parents are finding their voice in Ireland in the media and in other outlets. Society here is becoming more open about many issues which were previously kept secret.

Nora Gibbons says the issue is one of human rights and she feels it is an issue to which the legal profession in Ireland should give some thought and that the profession should encourage a change in legislation. Adoption practices in the past, although very successful, were shrouded in secrecy. Nora Gibbons believes that the way forward is by keeping confidentiality but letting go of secrecy. She also asked solicitors to consider Barnardo's when giving advice to clients about bequests. □

pcs MARINE
PETROCARGO MARINE SURVEYORS LTD.
Capt. Thomas C. Nash
M. INST. PET.
Marine Consultancy;
Independent Marine Surveyors;
Marine Expert Witness;
Ship to Ship Transfer;
Vessel & Terminal Safety Inspection;
Recruitment; Procedures Manuals.
Cooleen House, Rushbrooke, Cobh, Co. Cork.
Tel: 021-811677 Fax: 021-813009

Doyle Court Reporters
Principal: **Áine O'Farrell**
Court and Conference Verbatim Reporting Specialists in Overnight Transcription
Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready
Consultation Room Available
2, Arran Quay, Dublin 7. Tel: 722833 or 2862097 (After Hours) Fax: 724486
Excellence in Reporting since 1954

SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

When making a will or if a client is directed by the courts to make a payment to a charity please think of the

County Tipperary Association for Mentally Handicapped Children

Registered Charity No. 7436
C/O W. P. Ryan FCA
Hon. Treas.,
The Green, Cashel.

Publication date: 8 March 1993

Annual Review of Irish Law 1991

RAYMOND BYRNE & WILLIAM BINCHY

This yearly review provides an account of the progress of Irish law which cannot be found elsewhere. The present volume includes:

- Discussion on every decision of importance by the High Court, Court of Criminal Appeal and Supreme Court in the year.
- Every Act of the Oireachtas for the year is outlined. Where relevant, detailed discussion is provided to explain the background to and purpose of the Act.
- Proposals for change in the law from the Law Reform Commission are discussed.
- Statutory instruments are listed under the relevant subject headings.

ISBN 1-85800-001-7; ISSN 0791-1084 £85.00
Back volumes in print (one volume per year): 1987 through 1990 each £65.00

THE ROUND HALL PRESS

Kill Lane, Blackrock, Co. Dublin.
Tel: (01) 2892922; Fax: (01) 2893072

Bridging the Communications Gap: Use the Fax!

by John Furlong, Solicitor

Historically, the modern computer age may be viewed as having four phases:- data processing; text processing; access systems and communications. The former two dealt with making information more usable, the latter two with making it more available. It is quite easy to take for granted the means by which large volumes of information are readily available to us. Legal offices may share their own store of information across systems and networks; centralised sources are accessible by subscribers through the telephone and packet switching networks and vast amounts of daily traffic are carried via fax machines across the globe. The "communications revolution" has raised expectations and pressed suppliers of both software and hardware to come up with cheaper and more effective means of linking remote users and systems to each other.

Fax and Figures

Today, the fax, telefax or facsimile machine is a standard item of office equipment with over 30 million units in use worldwide. The original idea of sending a facsimile of a document across telephone or telegraph systems originated in the last century. Over the past ten years fax has become an accepted (and often preferred means of communication).[1] The law is slowly coming to recognise the fax as an acceptable format.[2] Today's specifications have improved as dramatically as the price per unit has fallen. The following points are worth noting:

- Most mid range fax machines will now print to A4 sheets using laser quality printing. There is no longer any need to opt for thermal printing on continuous roll stationery[3] which resulted in degraded image quality, additional costs in photocopying (since thermal paper fades over time) and additional time cost in sorting or cutting the continuous paper to suitable lengths.

- Most fax machines cannot receive and transmit at the same time. One method of solving this problem is to use timer transmission delays so that outgoing faxes can be programmed to transmit at off peak rates or after office hours. In addition, memory facilities on many machines will store incoming faxes for bulk printing after office hours.

- Newer generation machines have an error correction facility which will automatically retransmit an outgoing document if there has been a fault in the original transmission.

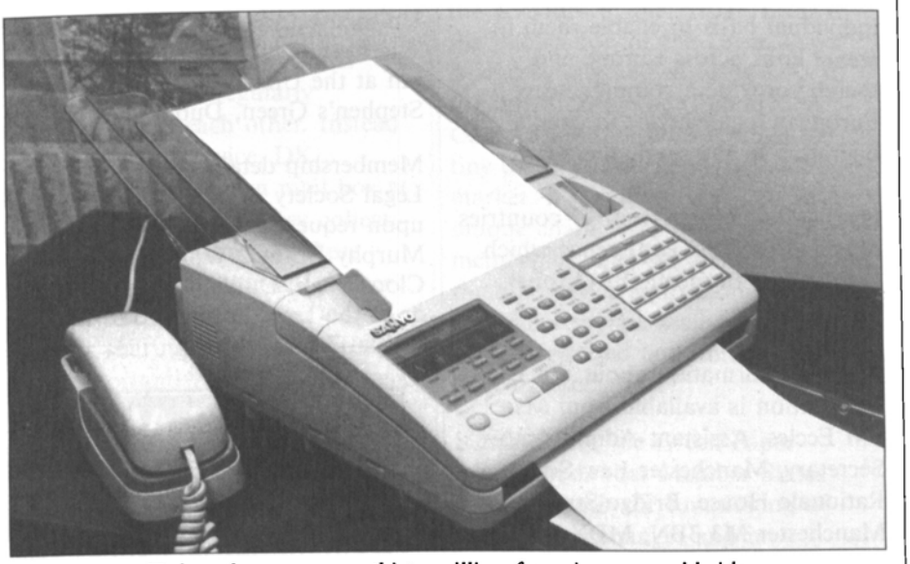
- Some fax machines can also be used as photocopiers and printers which, in a small firm, can provide an all in one solution to several office needs.

- Fax machines may include levels of security to encode transmissions which can be used to ensure that confidential faxes are read only by those to whom they are addressed.

PCs and Faxes

One of the biggest problems which remains and which fax machines do not address on their own is the transmission of computer generated traffic. Thus a forty page contract document may be produced on a word processing system, printed to hard copy and then faxed to another office where the document will be keyed on another system to be redrafted or amended. The subsequent draft is returned via the fax to the originating office. This regular occurrence in many offices is costly in time and resources and is highly inefficient.

In certain circumstances, the problem can be overcome by using a PC fax board (which is installed inside an existing PC) and a modem which allows the transmission of a document directly from one word processing system to another compatible system at a remote location. In theory, this should allow the paperless processing of a document until its final engrossment



Today, there are over thirty million faxes in use worldwide.

by simply moving it from one system to another. PC fax boards are not expensive and the cost of modems has reduced considerably over the past number of years. High specification modems now allow for the transmission of an A4 page in 3 seconds. A modem is necessary because the digital output from the computer system must be converted into analog for transmission across certain parts of the telephone network. There are a number of points to be borne in mind with the use of PC fax boards:

- There will be an overhead of anything between 80kb and 100kb for monitoring and transmission of facsimile documents. An A4 page in word processing format occupies about 2kb; an A4 fax page occupies about 100kb. Consequently the facility will require high specification PCs with sufficient power resources.
- Transmission speeds will be dictated in part by the toleration of the packet switching network.
- The PC fax facility should be capable of operating in background mode so that the PC can be used for other tasks while a transmission is taking place.
- Paper copies of both incoming and outgoing computerised documents may still be required for filing and other purposes.

One of the most important elements in developing computer to computer communications is having a sufficient number of initial users to communicate with each other. This is one of the difficulties which has faced LIX (Legal Information Exchange) an electronic document transfer system which was established with the support of the Law Society and the Bar Council in the United Kingdom. The system not only provides for the transfer of documents but also for translation between differing systems and the checking of documents automatically once they are received by one system from another.[4] The intention is to reduce costs, substantially reduce the time factor involved in processing of documents and provide a superior service to clients. Here, the Incorporated Law Society has been active through the Lawlink project over a number of years in researching the possibility of a similar project which would provide a range of services and communications facilities between practitioners throughout the country.

References

1. See "Comment is free but fax is Sacred" Charles Christian *New Law Journal* 13 September, 1991.
2. See, for example, S.30 Criminal Evidence Act, 1992; and the Stock Transfer Forms Regulations, 1991 (SI 77/91). *Hastie -v- Jenkerson and McMahon* 1990 1 WLR 1575. "The Transmission of Documents by fax" Dr. E.G. Hall *Gazette* (ILSI) January/February, 1993; "Got the Message?" Anthony Hofler *Law Society Gazette* (London) 8 July, 1992; "Exchanging Contracts by Fax" Philip H. Kenney *Law Society Gazette* (London) 21 September, 1988.
3. See Practice Notes *Gazette* (ILSI) March 1988.
4. See "EDI – is there life after fax?" Michael O'Sullivan *Gazette* (ILSI) July/August, 1992. □

Second Jurist Europe Convention

The second Jurist Europe conference will be held in Manchester at the Royal Northern College of Music from 1-4 September, 1993. Jurist Europe is a conference of business lawyers and its principal aim is to allow lawyers to meet on an individual basis to enable them to create links across Europe and thereby provide a comprehensive European legal service to clients operating in the single market.

Over 400 delegates from 27 countries attended the first conference which was held in Bordeaux in October, 1992.

Further information about the 1993 Convention is available from Ms. FM Eccles, Assistant Administrative Secretary, Manchester Law Society, Rationale House, Bridge Street, Manchester M3 3BN, MDX 14378, England.

Medico-Legal Society:

On Thursday 25 March, 1993, the Medico-Legal Society of Ireland will be holding the final lecture in its current session which will deal with the topic. "Involuntary Admissions to Psychiatric Hospital." The speakers are *Tom Cooney,* Civil Liberties Association and Professor *Tom Fahy,* Department of Psychiatry, University College Hospital, Galway. The lecture will take place at 8.30 pm at the United Services Club, St. Stephen's Green, Dublin 2.

Membership details of the Medico-Legal Society of Ireland are available upon request to Mary MacMurrough Murphy BL at 2 Whitebeam Road, Clonskeagh, Dublin 14 (tel. 2694280) or at the Law Library, Four Courts, Dublin 7 (tel. 720622). □

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

Duties of a Solicitor to Apprentice

The Education Committee has decided to draw up a set of guidelines to cover the duties and obligations of a solicitor to his/her apprentice. It is hoped that these guidelines will be contained in a new edition of the "Guide to Professional Conduct of Solicitors in Ireland", which is currently being reviewed.

The Committee invites submissions on the topic from individual practitioners, apprentices or bar associations and such contributions should be directed to: *Brian J. Mahon, Vice-chairman, The Education Committee, Blackhall Place, Dublin 7.* □

English Agents: Agency work undertaken for Irish solicitors in both litigation and non-contentious matters – including legal aid. Fearon & Co., Solicitors, 12 The Broadway, Woking, Surrey GU21 5AU. Tel: 0044-483-726272. Fax: 0044-483-725807.

Document Exchanges and the EC Green Paper on Postal Services

by *Paul Puxon

In June, 1992 the European Commission published the long-awaited Green Paper on the development of postal services in the single market and embarked on a consultation process with Member States and all interested parties. On 28 September, 1992 the Department then responsible for postal matters, the Department of Tourism Transport and Communications, hosted a conference at Dublin Castle at which interested parties were able to express their views.

So what is the Green Paper all about? Essentially, its principal objective is to define the scope of the EC postal monopolies (reserved services) needed to enable post offices (PTTs) to provide a universal service at prices affordable to all and with a satisfactory quality of service. The Green Paper also sets out which services will be subject to open competition between the national postal administration and private operators (non-reserved services).

Will the EC permit Document Exchanges (DXs) to carry on operating as they do today? The answer is keenly awaited by the Irish Document Exchange and the Association of European Document Exchanges (AEDE), whose members also include DX operators from the UK, France and Belgium. Formed in 1990, the AEDE is lobbying vigorously to ensure that the DX service for time-sensitive commercial documentation is allowed to continue in its present unique form.

At the moment the 1,500 users of the Irish Document Exchange, the majority being lawyers, can send mail to other DX members without any minimum weight restrictions for two thirds of the national postal rate. Ninety nine and a half per cent of this DX mail arrives by the start

Paul Puxon

of business the next working day. Understandably, the DX is popular with its members; there are over 26,000 users in the EC.

Before the publication of the Green Paper, the AEDE was anxious to ensure that the DXs could be regarded by the European Commission as non-reserved services. Although, like PTTs, DXs do deliver time-sensitive mail, their modus operandi is very different to traditional postal services.

Fundamentally, DXs are members-only clubs, used by professional business users who regularly correspond with each other. Instead of door-to-door service, DX members have their own mail box at a local exchange where they collect mail delivered to them. At these exchanges they can also self-deliver mail into the boxes of other members sharing the same exchange. Most importantly, members can send mail to other DX members at other exchanges. This is called 'interlinking'.

But the AEDE recognises that having a different modus operandi is not automatically sufficient to ensure the survival of DXs as non-reserved services. The AEDE is aware that the scope of reserved services within the monopoly is likely to be defined by reference to certain weight and price limits. This could be immensely serious for DXs.

Suppose, for example, that non-reserved services could only carry items weighing more than 500 grammes. Since around 90% of DX mail are letters weighing under 60 grammes, this would eliminate over 90% of all mail sent through the DX system. Any price restrictions would have an equivalent effect. This would force DXs out of business and compel former members to pay significantly higher charges for less efficient services.

The other major worry is over the freedom of DX operators to interlink between exchanges. The majority of DX subscribers joining the DX network do so to gain access to a national mail system. Without interlinking there would be a substantial loss of custom, which would in turn force DX operators out of business.

The evident concern of members and the activities of the AEDE prior to the publication of the Green Paper have certainly helped bring DXs to the attention of the Commission. Considering that DXs represent a tiny 0.9% of the whole postal market, it is noteworthy that the unique characteristics of efficiency, membership and self-delivery that set the DX service apart from the public and other private mail services have been recognised and noted in the Green Paper.

Significantly, the Green Paper recommends that Member States should permit the functioning of document exchanges and in particular should allow document

exchanges to transfer mail between each other as an added flexibility for customers. But there is a proviso which would, if adopted, give EC Member States the right to refuse DXs the freedom to interlink if they are 'convinced' that the presence of DXs would 'harm' their ability to provide a universal service.

The AEDE is seriously concerned that this broadly worded proviso may be open to a range of entirely subjective interpretations. How is one to gauge the extent to which DXs could 'harm' the ability of PTTs to provide a universal service? A PTT might feel DXs per se are harmful because they deprive PTTs of revenue no matter how small the proportion. One thing is for sure. If DXs cannot interlink, members will not use them and DXs will close.

This would be a great loss since the AEDE believes DXs are relatively harmless to PTTs and even beneficial. With their minuscule market, the DXs scarcely pose a threat. Moreover, as DXs are limited in the type of subscribers they can serve, their potential for growth in those markets is strictly limited. In addition, DXs simply *cannot compete* in the PTTs key market sectors such as mail order, direct mail advertising and mailings of magazines and newspapers.

Understandably, PTTs fear certain private operators will enter the market, cream off the profit-making routes and leave the loss-makers for the PTTs, thus threatening the viability of the universal service. The AEDE is keen to point out that DXs serve an extremely heterogenous type of business subscriber from the large banks and financial institutions in London and Brussels to the sole legal practitioner in Galway. The DXs are committed to operating a full overnight service to *all members* on all routes regardless of profitability.

Interestingly, the AEDE believes that the DXs can actually assist in the running of the universal mail service. With their 99.5% rate of delivery overnight for acutely time-sensitive mail such as legal documents, DXs actually remove the onus from the PTTs, who frequently find providing such services unprofitable and fraught with hassle.

But perhaps the most compelling argument for allowing the DXs to continue is the fact that for the last 15 years in Ireland and for the last 17 years in the UK, the DXs and PTTs have operated side by side without any problem whatsoever. It would be tragic – and costly for DXs and their members – if the DXs were not allowed to function in the future as they have so successfully in the past.

As debate over the Green Paper continues, the AEDE is taking every opportunity to present its case and sincerely hopes that the Commission will remove the proviso and guarantee DXs the unconditional right to operate and interlink with each other nationally and internationally in any forthcoming legislation.

DXs are, of course, accustomed to 99.5% success overnight. This particular battle will take rather more than a night, but the AEDE looks forward to achieving a similar success rate! □

* *Paul Puxon is chairman of the Association of European Document Exchanges.*

The Younger Members Committee

in association with Dublin Solicitors Bar Association

ANNUAL QUIZ NIGHT

31 October, 1992

Royal Marine Hotel, Dunlaoghaire, Co. Dublin.

SPONSORED BY THE IRISH PERMANENT BUILDING SOCIETY

all proceeds to

SOLICITORS BENEVOLENT FUND

Fee £25.00 per team (five people per team)
Entry forms may be collected from the Law Society's premises at *Solicitors Buildings, Four Courts, or by contacting* ***Joan Doran,*** *Secretary YMC, Blackhall Place, Dublin 7.*

Numbers are limited so please book early to avoid disappointment.

Disciplinary Cases

Re: Roderick St. John Walshe
185 Fortfield Road,
Terenure, Dublin 6.

31 SA/1990

Application for restoration to the Roll – opposed by the Law Society – granted subject to conditions

On 13 January, 1993, the acting President of the High Court, granted an application by Roderick St. John Walshe to be restored to the Roll of Solicitors, subject to the condition that he would be entitled to apply for a practising certificate only as an assistant solicitor to a solicitor of not less than ten years standing, and subject also to an arrangement with the Compensation Fund Committee to repay any debts due to the Fund, or former clients, out of his salary in such amounts as deemed fit by the Committee. Counsel on behalf of the solicitor agreed to the imposition of conditions.

Re: Greg O'Neill
21 Clare Street, Dublin 2.

15 SA/1992

Petition to strike off – missappropriation of clients monies – breaches of Solicitors Accounts Regulations – censure and restrictions on practising certificate imposed.

On 12 January, 1992, the acting President of the High Court refused the petition of the Society to strike Greg O'Neill off the Roll of Solicitors.

The Court had before it the report of the Disciplinary Committee of its hearing on 25 February, 1992, in which the committee made a finding that the solicitor had been guilty of misconduct tending to bring the profession into disrepute in that the solicitor had, inter alia, misappropriated clients' funds and committed breaches of the Solicitors Accounts Regulations.

The High Court ordered that the solicitor be censured. An ancilliary order was made that as and from 30 April, 1993, he cease to practise other than as an assistant solicitor to a solicitor of not less than ten years' standing.

Re: Peter McGarry
Cregg Road, Glenamaddy,
Co. Galway.

14/SA 1992

Petition to strike-off – misappropriation of clients' funds – falsifying ledger accounts – false statements to the Compensation Fund Committee.

On 12 January, 1993, the President of the High Court made an Order striking the name of Peter McGarry off the Roll of Solicitors. The Court had before it the report of the Disciplinary Committee of an enquiry held on 8 August, 1991, 3 December, 1991 and 21 January, 1992. The Committee found that the solicitor was guilty of conduct tending to bring the profession into dispute, in that he, inter alia,

- misappropriated a client's monies in the sum of £9,000 and applied same for his personal use,
- falsified the ledger account of the said client,
- made a false statement concerning the misappropriation to the Compensation Fund Committee of the Society,
- improperly lodged client's monies, received to cover outlay, to the office account of the practice,

Costs were awarded to the Society.

Re: John B. Doherty
8 Lower Main Street, Letterkenny,
Co. Donegal.

35 SA/1992

Petition to strike-off – delay in administration of an estate – restrictions on practising certificate imposed.

36 SA/1992

Fine – delay in completion of title – failure to reply to Society's correspondence and enquiry.

The two matters were heard together on 19 January, 1993.

The Court had before it the report of an enquiry held by the Disciplinary Committee on 7 July, 1992 and 4 August, 1992. The Disciplinary Committee found that the solicitor was guilty of misconduct in that, inter alia:

- he delayed in the completion of the administration of an estate,
- he failed to keep his client adequately advised as to the progress of the administration,
- he failed to attend meetings of the Registrar's Committee of the Society in relation to a complaint.

The Court accepted and incorporated into its order an undertaking by the solicitor, inter alia, not to practise save as an assistant solicitor in the employment of a solicitor of not less than ten years standing approved by the Society.

The Court also had before it the report of the Disciplinary Committee of an enquiry held on 7 July, 1992 and 4 August, 1992, in which the Disciplinary Committee found that the solicitor was guilty of conduct tending to bring the profession into disrepute in that, inter alia,

- he delayed in the completion of a client's title to property, failed to take adequate steps to progress the matter, and failed to respond to the repeated queries of his client regarding the matter.
- he failed to reply to the Society's correspondence.
- he failed to comply with the undertaking to the Registrar's Committee that he would resolve the matter.
- he failed to attend a meeting of the Registrar's Committee on 16 January, 1993.
- he misled a complainant by stating untruthfully that a deed had been registered when it had not.

The Court further ordered that the solicitor pay a fine of £1,500 to the Society.

Costs were awarded to the Society.

Re: Michael Mooney
Main Street, Milford, Co. Donegal.

30SA/1992

Fine – failure to reply to Society's correspondence – failure to furnish explanation re a complaint.

On Wednesday, 13 January, 1993, the acting President of the High Court, ordered that Michael Mooney, solicitor, pay a fine to the Law Society in the sum of £200. The Court had before it the report of the Disciplinary Committee of its enquiry held on 28 July, 1992 at which it found that the solicitor was guilty of conduct tending to bring the profession into disrepute in that he failed to reply to the correspondence of the Society in regard to a complaint by a client or to furnish any explanation in relation to same.

It was also ordered that the solicitor pay the Society's costs.

Re: Michael Mooney,
Main Street, Milford, Co. Donegal

31 SA/1992

Censure – failure to reply to correspondence of Society, failure to furnish explanation re a complaint.

On 13 January, 1993, the acting President of the High Court, ordered that Michael Mooney, solicitor, stand censured regarding his conduct as a solicitor. The Court had before it the report of the enquiry of the Disciplinary Committee held on 28 July, 1992 in which it was found that the solicitor was guilty of conduct tending to bring the profession into disrepute in that

- he failed to reply to correspondence of the Society in regard to a complaint,
- he failed to furnish any explanation to the Society in relation to the complaint.

It was further ordered that the solicitor pay the Society's costs. □

International Society for Sports Law

Efforts are underway to establish an International Society for Sports Law (ISSL). The ISSL aims to encourage the establishment of national associations to organise worldwide and regional meetings and to promote research and publications. The ISSL also intends to provide a bulletin for members, an international journal for sports law and, eventually, an international encyclopaedia of sports law.

Daniel Spring of Spring Murray, Solicitors, 4 Pembroke Road, Dublin 4, has agreed to join in the effort to launch the ISSL. Any member of the profession interested in becoming involved in a national association for sports law should contact him.

□

Compensation Fund – Payments Approved, January 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 on 22 January, 1993.

	IR£
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	300.00
Michael Collier, 2, Ross Terrace, Malahide, Co. Dublin.	10,108.93
Diarmuid Corrigan, 6, St. Agnes Road, Crumlin, Dublin 12.	6,398.85
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	25,000.00
Thomas J. Furlong, Lower Main Street, Letterkenny, Co. Donegal.	3,462.00
Conor Killeen & Elio Malocco, Chatham House, Chatham Street, Dublin 2.	2,960.00
Donough O'Connor, 22, Lower Leeson Street, Dublin 2.	1,536.00
Anthony O'Malley, James Street, Westport, Co. Mayo.	150.75
John J. O'Reilly, 7, Farnham Street, Cavan.	1,284.20
Total	£51,200.73

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 in substitution from the original 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: 12 March, 1993.

Lost Land Certificates

Joseph Delaney, Folio: 4627R; Land: Dooary; Area: 17a 0r 0p. **Co. Queens.**

Thomas Murray, Folio: 2553; Land: Part of the lands of Coolaha; Area: 7a 1r 28p. **Co. Monaghan.**

Michael and **Mary O'Callaghan,** Folio: 40563F; Land: Ballincrokig, **Co. Cork.**

John Power, Derrvunlan, Ballyshrule, Co. Galway. Folio: 53212; Townland: 1. Derryvunlan, 2. Derryvunlan (an undivided moiety), 3. Derryvunlan, 4. Derryvunlan (an undivided moiety). Area: 1. 7.213 hectares, 2. 1a 3r 8p, 3. 14a 3r 28p, 4. 1a 3r 8p. **Co. Galway.**

Gerard Curran, Folio: 22042F; Land: Commons; Area: 15.769 acres. **Co. Meath.**

John Barrett, 2 Jail Road, Galway. Folio: 31540; Townland: Castlegar; Area: 2a 1r 16p. **Co. Galway.**

Helen Aideen Cunniffe, Folio: 2094F. **Co. Kerry.**

Gerald Ruane and **Margaret Ruane,** Folio: 1665L; Land: In the parish of Ballynaneasagh. **Co. Waterford.**

Michael J. Conway, Owenbeg, Co. Sligo. Folio: 20591; Townland: 1. Owenbeg, 2. Cooga, 3. Cooga, 4. Owenbeg, 5. Owenbeg; Area: 1. 15a 0r 6p, 2. 7a 2r 0p, 3. 7a 1r 25p, 4. 10a 3r 26p, 5. 57a 0r 26p. **Co. Sligo.**

Bridget Feeney, Pollymount, Scramogue, Co. Roscommon. Folio: 3064F; Land: Killinordon, Killinordon; Area: 26.000 acres, 13.494 acres. **Co. Roscommon.**

Patrick J. and **Eileen McGarrigle,** Bunduff, Cliffoney P.O., Co. Sligo. Folio: 2256F; Land: Bunduff; Area: 0.525 acres. Solr. Ref: MP/CP/1078. **Co. Sligo.**

James P. Sharkey and **Anne Sharkey,** Folio: 2741F; Land: Brookfield; Area: 0.431 acres. **Co. Donegal.**

Eoin Sugrue and **June Leahy,** Colombo, Rossmanaghan, Sixmilebridge, Co. Clare. Folio: 5565F; Land: Lakyle. **Co. Cavan.**

John Joseph Clarke, Folio: 4001; Land: Part of the lands of Clonmore; Area: 35a 0r 10p. **Co. Westmeath.**

Garrett Joseph Cotter, Folio: 11305L; Land: Ballyvoddey, **Co. Cork.**

Shannon Free Airport Development, Company Limited. Folio: 13630F; Land: 1. Tomdeely North, 2. Tomdeely North, 3. Tomdeely North, 4. Tomdeely North, 5. Coolrahnee; Area: 1. 19.638 acres, 2. 33.444 acres, 3. 47.75 acres, 4. 106.90 acres, 5. 22.363 acres. **Co. Limerick.**

Thomas McDermott, Cloonakilly More, Strokestown, Co. Roscommon. Folio: 2724; Townland: Cloonakilly More; Area: 11a 0r 30p. **Co. Roscommon.**

David McDonald, Senior (decd), Folio: 10817F; Land: Powerstown; Area: 21.000 Hectares. **Co. Carlow.**

Michael Joseph Hanlon, Folio: 907; Land: Part of the lands of Ashill; Area: 24a 1r 26p. **Co. Kerry.**

Thomas O'Connor, Folio: 7026; Land: Cushinstown; Area: 2a 0r 12p. **Co. Meath.**

Patrick McGowan, Westport, Co. Mayo. Folio: 1134F; Land: Carrowbeg (situate to the North of the Castlebar Road, Parish Ougharal, U.D. Westport). Area: 0a 0r 34p. Solr. ref: PJMD.W.863.M.M. **Co. Mayo.**

Michael and **Ann M. O'Halloran,** 14 Boyne Park, Shannon, Co. Clare. Folio: 15876F; Townland: Tullyglass, **Co. Clare.**

The Industrial Development Authority, Folio: 498R; Land: Kilcolgan Lower; Area: 58a 3r 4p. **Co. Kerry.**

Philip Anthony Fox, Folio: 18513; Land: Part of the lands of Cuilcagh; Area: 1a 0r 0p, **Co. Cavan.**

Joseph Keating, Caheroyan, Athenry, Co. Galway. Folio: 23844; Land: Athenry; Area: 0a 0r 5p. **Co. Galway.**

Maurice Fry (Company Director), 40 Upper Baggot Street, Dublin is full owner of 1 undivided moiety. Folio: 1850; Land: Premises on the south side of Sandymount Avenue in the Parish of Donnybrook and District of Pembroke. **Co. Dublin.**

Inischerry Limited, Folio: 15196; Land: Clonbrock; Area: 1a 1r 0p. **Co. Queens.**

Liffey Sand Pit Company Limited, Folio: 3721; Land: Townland of Astagob, Barony of Castleknock, Strawberry Beds, Chapelizod, Co. Dublin. **Co. Dublin.**

Thomas Finnegan (deceased) Folio: 4412, 4416, 4682; Land: Carrickadooey; Area: 11a 1r 10p. **Co. Monaghan.**

James Reilly, Folio: 3707; Land: Enaghan; Area: 60a 1r 18p. **Co. Longford.**

Michael and **Mary O'Mahony,** Folio: 6265F; Land: Merginstown, **Co. Wicklow.**

Thomas B. Murtagh, Tullanaglug, Tubbercurry, Co. Sligo. Folio: (1) 16351 and (2) 16354; Land: 1. Tullanaglug, 2. Tullanaglug; Area: 1. 14a 3r 31p, 2. 7a 1r 16p. Solr. ref: T.173068IT. **Co. Sligo.**

Lost Wills

Sheehy, James, late of Cortubber, Kingscourt, Co. Meath. Will any person having knowledge of the whereabouts of a will of the deceased please communicate with F.N. Murtagh & Co., Solicitors of Kingscourt, Co. Cavan.

Nicholson, Ann, late of 52 Emmet Road, Inchicore, Dublin 8. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 5 November, 1992, please contact Tom O'Grady, BCL, Solicitor, Ballyfin Road, Mountrath, Co. Laois. Telephone: 0502-32214.

O'Connor, Andrew, deceased late of the Derries, Cross, Claremorris, Co. Mayo, ob. 2 December, 1992. Would any person having knowledge of a will of the above named deceased contact Messrs. Higgins, Chambers & Co., Solicitors, Headford, Co. Galway.

Walsh, Eamonn, late of 21 Claremont Road, Sandymount, Dublin 4. Would anyone knowing the whereabouts of a will of the above named deceased, who died on 18 December, 1992, please contact Messrs. A & L Goodbody, Solicitors, 1 Earlsfort Centre, Hatch Street, Dublin 2. (Ref. SGC).

Weldon, Patrick Gerard, late of Fair Street, Drogheda, Co. Louth. Will any person having knowledge of the whereabouts of a will of the above named deceased, who died on 17 December, 1992, please contact Messrs. Smyth & Son, Solicitors, 30 Magdalene Street, Drogheda, Co. Louth. Telephone: 041-38616.

McDonagh, Walter, (deceased), late of 12 Friars Hill, Rahoon, Galway and 188 Longwood Avenue, Boston, Mass. Would any person having knowledge of a will of the above named deceased who died on 17 January, 1993, please contact F.M. Fitzgerald & Co., Solicitors, Kiltartan House, Forster Street, Galway. (Reference NF/2597).

Joseph, Ellen, (deceased) late of Factory Street, Mountrath, Co. Laois, widow. Will any person having knowledge of the whereabouts of a will of the above named deceased who died on 5 November, 1992, please contact Tom O'Grady BCL, Solicitor, Ballyfin Road, Mountrath, Co. Laois. Tel. 0502 32214.

Employment

Experienced Litigation Solicitor seeks conveyancing/probate/taxation position to broaden experience. P/t locum work considered. Phone: 2826893 or Box No: 20.

Solicitor Apprenticeship Wanted by a graduate who has experience in an office and has passed the Entrance Examination to the Incorporated Law Society. Please phone 01-967671.

Representation Solicitor and Counsel, required in personal injuries litigation *"Denis Linehan -v- Harvard University and University College Cork"* please contact D. Linehan, Solicitor, at 22 Summerstown Grove, Wilton, Cork, phone (021) 341837.

Early Retired Legal Executive 30 years experience of trust and probate work, seeks employment on a full time, part time or consultancy basis. Please phone: 01-2831948.

Highly Experienced and Respected Solicitor with extensive experience in conveyancing and probate available on part-time locum or advisory basis. Box No. 21.

Legal Assistant seeks solicitor's apprenticeship, preferably in the Dublin area. Please phone 01-967671.

Miscellaneous

Dublin Practitioner requires second hand wills safe. Replies to Box: 22.

Solicitors Practice Required. Owner contemplating retirement may suit. Confidentiality assured. Box No: 23.

Intoxicating Liquor Licence for Sale in Longford Town. Contact Fair & Murtagh, Solicitors, Northgate Street, Athlone, Co. Westmeath in writing quoting reference "PJM/6.

Fishing: Enjoy a relaxing Spring angling break on Loughs Conn, Cullen and Beltra or on local rivers in north Mayo with Barry Segrave at Cloonamoyne Fishery, Crossmolina, Co. Mayo. Stay at Enniscoe House and enjoy the good food, peace and tranquility of the "Hidden Ireland". Special rates for early season bookings. Telephone: 096-31112 or Fax: 096-31773.

DE

Irish Document Exchange

37 Fenian Street, Dublin 2.
Phone: 01-764601.
Fax: 01-767093. DX 1 DUBLIN.

OVERNIGHT, EVERY NIGHT, EVERYWHERE

Now a network of 36 interlinked exchanges throughout the country.

ITALAX

Ring For
Your Free
Fact Sheet

Legal Accounts Software
& Full Client Database
at an unbelievable
£1,500 (+VAT)

Orchard Centres
Nationwide

Dublin:-
Orchard Software Ltd
01- 2807588

Midlands:-
Aptech Ltd 042- 31742

South:-
P.F.H. Computer System
(021) 271152

North:-
Canavan Computer
Systems 0504 -26-7776

Orchard Software Ltd.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 16.9% for the 10 years to 1st January 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 616433.

in association with

THE INCORPORATED LAW SOCIETY
OF IRELAND

IBI

The Investment Bank of Ireland Limited

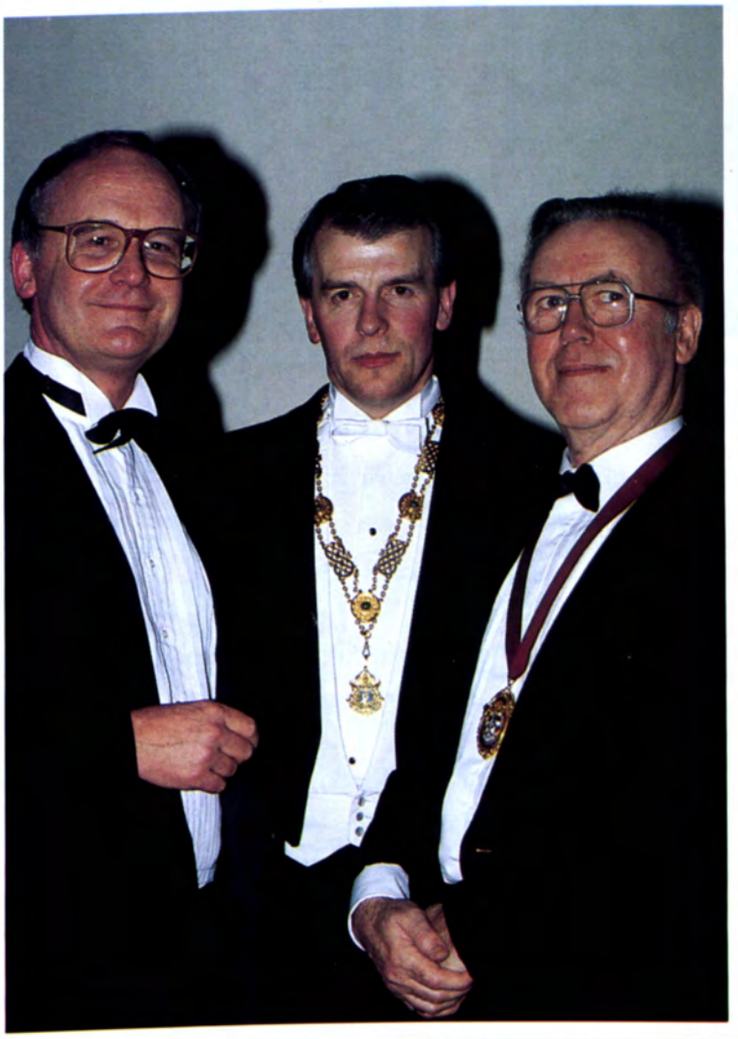
Dublin: 26 Fitzwilliam Place (01) 616433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 3 APRIL, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE



COMPLAINTS – COUNCIL APPROVES LAY OBSERVERS

STAMP DUTY – MITIGATION OF PENALTIES

COMPENSATION UNDER THE PLANNING ACTS

THE NEW COPYRIGHT AGENCY

THE LAW SOCIETY
BLACKHALL PLACE DUBLIN 7

COMPANY SERVICE

The Law Society provides a prompt and efficient company formation service based on a standard form of Memorandum & Articles of Association.

We can incorporate your Company in 10 working days.

Where necessary, the standard form can be amended, to suit the special requirements of any individual case.

SHELF COMPANIES
are readily available

WE ALSO SUPPLY:
Company Seals (Desk & Plier Type)
Share Registers • Share Certificate Books
Company Kits
at Competitive Rates

PHONE CARMEL OR RITA FOR DETAILS
TELEPHONE: 710711. EXT 224. FAX: 710704

VOL. 87 NO. 3 APRIL 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 85
The Society's decision to appoint Lay Observers to the Registrar's Committee is a step in the right direction.

President's Message 87
The acute underfunding of the administration of justice in this country is bringing the legal system into disrepute, says *Raymond Monahan.*

The Solicitor – the Barrister – the Politician and the Judge 88
". . . solicitors have been eligible in England and Wales for appointment to the Circuit Bench. . . . [C]ivilisation as we know it has not come to an end," writes Lord *Williams of Mostyn QC.*

Council Decides to Appoint Lay Observers 89
This and other issues considered by the Council of the Law Society at its March meeting.

Practice Notes 91
Mitigation of penalties for late payment of stamp duty; new house grants for first-time purchasers; Acts of the Oireachtas enacted in 1992; High Court personal injury list; road traffic case fees; service of Lloyd's underwriters.

Copyright – New Licensing Agency and Other Developments 95
Copyright exercised the minds of our earliest forbears, now a new licensing agency attempts to balance the rights of authors and publishers with society's demand for access to printed information.

People and Places 99

Compensation under the Planning Acts 103
Garret Simons reports on the recent case of *85 Developments Ltd* in which the Supreme Court held that a planning authority did not have to use the exact words of a statutory provision in order to exclude compensation.

Lawbrief 105
Barristers: an endangered species – *The Independent* (London) thinks so; important Supreme Court judgment on 'subject to contract'; recent publications on competition law.

Technology Notes 109
Information in the Companies Registration Office is becoming more and more accessible as the CRO is well on its way to implementing 21st Century technology.

International Bar Association 111
With a membership of 142 bar associations and law societies worldwide, the IBA is by far the largest international organisation of lawyers; a report on its activities in 1992.

Acquisition of the German Title "Rechtsanwalt" 113
Irish lawyers may now qualify as a Rechtsanwalt in Germany by undergoing one oral and two written examinations.

Professional Information 115
Notices concerning lost land certificates and wills; employment and miscellanous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7. Telephone 710711 Telex: 31219 Fax: 710704.

Front Cover: At the Annual Dinner of the Council of the Law Society on 11 March were l-r *Lord Williams of Mostyn* QC (guest speaker); *Raymond Monahan,* President, Incorporated Law Society of Ireland and *Anthony McGettigan,* President, Law Society of Northern Ireland.

The Law Society
Younger Members Committee

in association with

THE BANK OF IRELAND

SEMINAR

"Solicitors – Alternative Job Opportunities"

at 34, Eyre Square, Galway.

Friday, 7th May, 1993
at 7.00p.m.

This seminar will highlight job openings for solicitors outside private practice. Speakers will identify ways of making the best use of your solicitor's qualification to secure the job opportunities available.

Wine reception kindly sponsored by the Bank of Ireland.

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

INDEX

to **IRISH LAW REPORTS MONTHLY**

1976-1990

compiled by JULITTA CLANCY

This is a comprehensive index to all cases reported in *Irish Law Reports Monthly* 1976-1990. It is divided into five parts:

TABLE OF CASES REPORTED
with full reversals and cross-references.

TABLE OF CASES JUDICIALLY CONSIDERED
includes all cases referred to in the judgment but not mentioned in the headnotes.

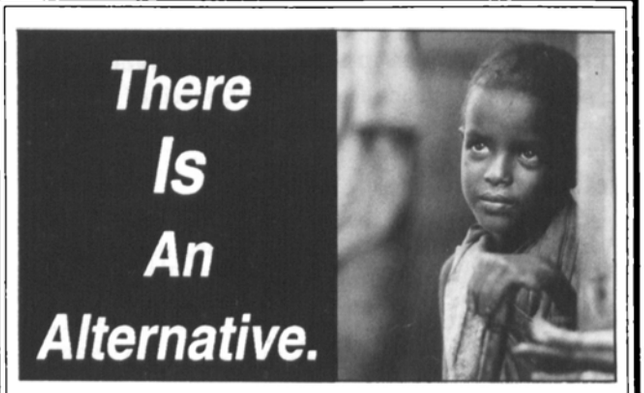
TABLE OF STATUTES ETC.
includes all statutes, statutory instruments, Articles of the Constitution, Rules of the Superior Courts, European Community Enactments, etc.

SUBJECT INDEX
A comprehensive cross-referenced index.

TABLE OF WORDS AND PHRASES
judicially considered with Statutory references where applicable.

ISBN 0-947686-82-7 £120.00/US$220.00
Special price to ILRM subscribers: £85.00/US$150.00

THE ROUND HALL PRESS
Kill Lane, Blackrock, Co. Dublin, Ireland
Tel: Int. + 353-1-2892922; Fax: Int. + 353-1-2893072



Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now.

Siobhán Walsh
CONCERN
1 Upper Camden Street Dublin 2. Tel. 681237

VIEWPOINT

Someone To Watch Over Us

Quis custodiet ipsos custodes is an ancient Latin maxim that neatly encapsulates one of the dilemmas that faces any body charged with acting as guardians of the public in relation to any specific office or function; if the so-called guardians are there to exercise a public duty, who will see to it that they carry out this task properly?

Confirming and developing the original charter-based authority of the Law Society, the Oireachtas has seen fit to entrust to the Society the duty and responsibility of dealing with complaints from members of the public against solicitors. Exercising a disciplinary function is, of course, one of the key aspects of being a self-regulatory profession and it is perfectly proper that, when complaints are made against solicitors, issues of professional practice and competence should be adjudicated upon by fellow practitioners. However, in an age of increasing militancy on the part of consumers, including the users of legal services, the fairness and objectivity of complaints-handling machinery, which lacks an independent element, has in other contexts been called into question. The solicitors' profession and the Law Society have not escaped public attention in this regard.

Who, then, should guard the guardians?

The Law Society has now decided that the time is right to appoint Lay Observers to the Registrar's Committee of the Society to participate in the decision-making process in relation to complaints against solicitors. The Registrar's Committee, as many readers will be aware, is the internal committee of the Society to which functions of the Council in relation to complaints against solicitors have been delegated. The Committee oversees the handling of complaints by the executive staff of the Society and sits in adjudication on complaints from the public about issues of professional competence. We endorse the decision of the Council of the Society, taken at its March meeting, to appoint Lay Observers and believe that this move will do much to enhance public confidence in the complaints-handling machinery of the Society and, at the same time, help to improve the image of Society and the profession both of which have had to endure a good deal of unfavourable publicity in recent times. The Society has made it clear that, in moving to open its complaints machinery to public scrutiny, it does not accept that the procedures it has followed are not objectively fair to complainants; it has now endorsed its own judgement in this matter and demonstrated that it has nothing to fear from having its procedures subjected to independent assessment.

There is no doubt, in our view, that the fact that complaints against solicitors are dealt with by a committee in the Society and ultimately adjudicated upon by a tribunal of the High Court, both of which are comprised entirely of practising solicitors, causes the public to question the objectivity of the system. Public confidence in the complaints-handling machinery of the Society is an important matter that affects the public's perception of the profession as a whole and also the credibility of the Law Society as a self-regulatory professional body.

The Law Society's proposal is that there would be two lay persons nominated by the Minister for Justice to sit on the Registrar's Committee. These lay persons would not be *members* of the Committee (until the Solicitors Acts are amended it is not possible to appoint lay persons to be *members* of the Registrar's Committee) but they would be entitled to receive all the documentation of the Committee, to attend its meetings and to participate fully in its deliberations. Moreover, it is proposed that the Lay Observers would have the right to make recommendations to the Society from time to time on the fairness and adequacy of the Law Society's procedures and also, at least once a year, to make a report in a form suitable for publication on the manner in which the Society has carried out its functions in relation to complaints. (See also page 89.) In essence, therefore, the Lay Observers will fulfil many of the functions that would fall to a legal ombudsman but without the formal trappings of such an office and at a much lower level of cost.

We think this is a step in the right direction. There is a need for some public reassurance in this area and the Law Society's initiative achieves the correct balance. The fact that the Lay Observers will be nominated by the Minister for Justice will be a guarantee of their independence from the profession and the proposal that they should have the right to make recommendations and to report on an annual basis will also do much to enhance credibility in the system. Lay Observers on complaints committees have performed well in other jurisdictions and ordinary practitioners have no reason to fear this development. Their affairs will continue to be handled with discretion and in total confidence. The Lay Observers will be under a duty, as committee members are, to respect confidentiality in relation to information they obtain in the course of their work. The proposal is a very positive development which it is to be hoped will evoke a sympathetic response from the public and the profession alike. □

TRIAL BY JURY

By Gilbert & Sullivan

Performance by the Ladies and Gentlemen of the Legal Profession in aid of

The Solicitors Benevolent Fund and The Bar Benevolent Fund

Conductor: Proinsias O'Duinn

Producer: Joan Merrigan

Friday, 7 and Saturday 8 May, 1993 in Green Street Courthouse, Dublin at 8.00 p.m.

Followed by Champagne Supper in Blackhall Place.

Tickets £50 each from
Mary Kinsella, Law Society. Tel: 710711, Fax: 710136

Preview/under 5 years qualified – Thursday 6 May.
Tickets (performance only) £10 each.

Legal System Suffers from Acute Underfunding

In my address to the Annual Dinner of the Council of the Law Society, which took place on 11 March last, I dealt with a wide range of issues of concern to solicitors and, in particular, the acute underfunding of the administration of justice in this country which I believe is bringing the legal system into disrepute. As a result of such under resourcing the basic rights of many citizens are not being provided for as they should.

Too few judges, unsuitable courthouses, the lack of any real facilities in them, unreasonable delays in the courts, insufficient investment in technology and, I am sad to say, inadequate management, insufficient custodial facilities, the failure to update the law in many areas and, finally, the abysmal system of legal aid are now giving rise to serious concern. I hope that by highlighting these difficulties, appropriate remedies can be sought for them. While I am delighted that the Judicial Commission, provided for in the Programme for Government, is now being established, I would urge that representatives of *both* branches of the legal profession should be appointed to the Commission.

Forthcoming legislative changes in regard to family law will again seriously call into question the adequacy of our present system of legal aid. To give a comparison, the current budget for legal aid both criminal and civil in this country is about £6 million per year, in England and Wales alone the corresponding figure is £1,200 million. On a proportionate per capita basis they are spending 14 times as much as we are.

The State's obligation to provide a comprehensive system of legal aid has been established by the European Court of Human Rights in the Irish case of *Airey* where it was clearly stated that the European Convention on Human Rights generally is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the importance in a democratic society of the right to a fair trial. The response by this country falls far short of what is required. The Law Society has made a full submission to the Government in regard to the introduction of a comprehensive scheme of civil legal aid.

Lawyers' Role in Society Undervalued

Lawyers have an important role in society, in that clients rely on lawyers for the protection and vindication of human and constitutional rights. Clients rightly request solicitors to defend them in cases taken against them by the State under the criminal code and rightly require solicitors to institute or defend proceedings for compensation and other civil claims. Because of the serious lack of a proper civil legal aid system in this country, there is a strong pro bono tradition amongst lawyers under which they frequently take cases, without charging a fee, for clients who could not otherwise afford to vindicate their rights and pursue justice.

Solicitors, in common both with other business people, have over the years been required to become part of the system of tax collection, particularly in cases of stamp duty, registration fees and capital taxes. Solicitors are also professionals in the business world, running businesses that give employment and generate a high level of economic activity. *It seems to me that the successive Governments have consistently undervalued the importance of solicitors' involvement in the economy.* The most outstanding example of this is the attack by Government on the traditional cornerstones of solicitors' work – probate and conveyancing – by permitting banks and other financial institutions to engage in these activities.

Government also "rewards" the profession by annually bringing in layer upon layer of bureaucratic procedures of very dubious value, such as further certificates and declarations for particular transactions, which not only complicate matters and delay overburdened practitioners, but also expose them to greater liability. Government also burdens solicitors by increasing the amount of tax to be collected by them. Registration fees, courts fees and other form of hidden taxes are regularly increased without notice, and without debate.

For example, this year's budget introduced a new probate tax under which those inheriting under a will or an intestacy will have to find substantial funds in advance in order to obtain a Grant of Representation which would allow them the legal right to gain access to the assets of the deceased's estate. While I admire the imagination of the Department of Finance and its ability to squeeze further taxes from unlikely sources it is nevertheless unfortunate that survivors and dependants should be treated in this way.

These are just some of the issues I dealt with in my address to the dinner which was attended by a number of judges, members of the Oireachtas, and representatives from other professional and business organisations.

We were particularly fortunate to have Lord Williams of Mostyn QC, a former chairman of the Bar Council of England and Wales, as our guest speaker (see page 88), and I would like to put on record my personal thanks to him.

Raymond T. Monahan,
President. □

The Solicitor – the Barrister – the Politician and the Judge

Addressing the Annual Dinner of the Council of the Law Society, former Chairman of the Bar Council of England and Wales, Lord Williams of Mostyn QC said:

"There is a feeling of malaise and unease among large sections of the public in both our countries about the mechanisms and workings of the law and the legal system generally. In the United Kingdom there has been recent well publicised miscarriages of justice in the criminal sphere. Civil litigation is too slow, too burdensome and too expensive. There is little purpose or point in providing a Rolls Royce service which delivers the litigant, bankrupt, to his destination after five years, when most litigants would be happy arriving home at the end of the day by bus.

As lawyers we spend our entire lives cross-examining and questioning other people about their practises. We need to turn the beam of the search light inwards upon ourselves.

This is a watershed for the law. The undercurrent for change and reform is overwhelming. We can swim with it.

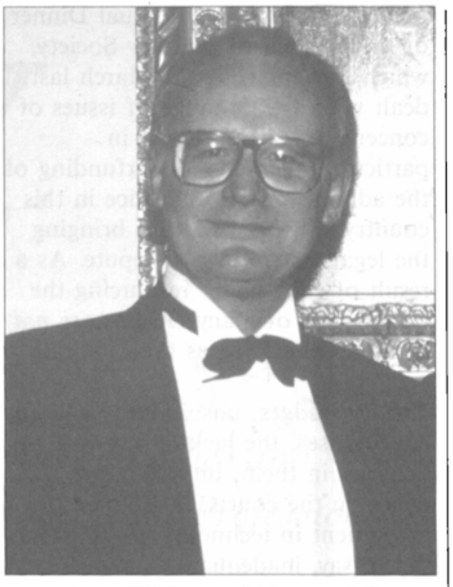
One of the historic mistakes made by lawyers is to allow themselves to be seduced from their independence. The relationship between practitioners and the bench is too incestuous. The true relationship between lawyers and judges should be one of sceptical independence, and between lawyers and government one of armed neutrality. The legal profession in both our countries is so small that too cosy a relationship with the judiciary and government has grown up and been tolerated for so long. There are dangers there.

Since the passing of the Courts Legal Services Act in 1972 solicitors have been eligible in England and Wales for appointment to the Circuit Bench. Many have been appointed. Civilisation as we know it has not come to an end. The solicitor appointee has done just as well or just as badly as appointees from the Bar to the Circuit Bench. If a man or woman (nearly always a man) has the experience, expertise and qualities of character and temperament to carry out judicial work then in my opinion the mere fact that he or she is a solicitor rather than a barrister should be no bar. Indeed there is a sensible and respectable case, certainly in appellate tribunals, for the appointment of academic rather than practising lawyers. The above will demonstrate amply that I have no personal interest in judicial preferment.

"We need to turn the beam of the search light inwards upon ourselves."

No solicitor judge has been appointed to the High Court in England and Wales. It is necessary for a solicitor to become a Circuit Judge as a pre-condition to appointment to the High Court Bench. I have no doubt that the first such appointment will be made within the next twelve months.

The quality of the High Court Bench in England and Wales is very high. The High Court Judiciary is noted for intellectual rigour and distinction, political independence, and in particular financial incorruptibility. There has been no example in the last 20 years of appointment to the bench being seen as a political donation. There is very substantial consultation between the Lord Chancellor's department and the Bar about the appointment of judges. The leaders of all six Circuits are consulted about Assistant Recorderships, Recorderships and Circuit Judgeships. When it comes to the more limited number of possible High Court appointees the Bar is fully consulted and I am able to say, with confidence, that there has been no recent appointment to the High Court Bench to which the Bar could reasonably reject in terms of merit.



Lord Williams of Mostyn QC

In 1992 the present Lord Chancellor went a good deal further than his predecessors in agreeing that there should be reasonable consultation between his department and the incumbent Chairman and Vice Chairman of the Bar Council about appointments to the Court of Appeal and judicial appointments to the House of Lords. This means that all such appointments will be the subject of consultation in future including the appointments of Lord Chief Justice, Master of the Rolls, and Vice Chancellor. The Bar Council never looked for nor did the Lord Chancellor offer any sort of veto about individual appointments. What we have been asked for, and provided, is a sort of short list for the appointments that might become vacant in the next three years or so. This preserves the arm's length distance between the Judiciary and the Bar but does allow decent considered input from the Bar about these important appointments. I personally would like to see the process go further – the expansion

(Cont'd on page 90)

Council Decides to Appoint Lay Observers

The Council of the Law Society has approved the appointment of two Lay Observers to the Registrar's Committee – the statutory committee of the Society which carries out the initial investigation of complaints against solicitors made by members of the public.

The proposal for Lay Observers, which was made by the President of the Society, *Raymond Monahan,* was approved by the Council at its meeting on 12 March last. The Council agreed that the two Lay Observers should be independently nominated and the President decided to ask the Minister for Justice to nominate the two observers.

In presenting the proposal to the Council, the President of the Society argued the need for a more transparent system of complaints-handling so that there could be full public validation and acceptance of the manner in which the profession dealt with complaints by members of the public. The President said that the perception existed that, because complaints were dealt with behind closed doors by practising solicitors who were members of the Council, complainants did not get fair treatment. The profession would never be able to counter this criticism successfully, he said, until it was in a position to demonstrate publicly that its complaints-handling procedures were fair and above board. He pointed out that the Law Society had already accepted the principle of lay scrutiny when it had agreed, in principle, with the appointment of a legal adjudicator as provided for by the Solicitors Bill.

Raymond Monahan suggested that, while the two lay members could not, strictly speaking, be members of the Registrar's Committee, because it was a committee of the Society to which functions of the Council had been delegated under Section 73 of the Solicitors Act, 1954, they could be given the right to receive the agenda and to participate in the deliberations of the committee. They could also be given the right to make recommendations to the Society from time to time and could also make reports to the Society and to the Minister for Justice.

The Council fully endorsed the President's suggestion and it was agreed to proceed with the proposal, subject only to drawing up appropriate terms of appointment for the observers containing safeguards concerning confidentiality.

Terms of Appointment

As we go to press, work on drawing up the terms has been completed and the nominations of the Minister for Justice are awaited. Each Lay Observer will be appointed for a period of one year and the appointment may be renewed for further periods. Each Lay Observer will have the right to attend all meetings of the Registrar's Committee, to receive the agenda and all relevant documentation in advance of the meeting, and to participate fully in the deliberations of the Committee. In the event of a vote being taken on any issue, however, neither Lay Observer will have the right to vote.

The Lay Observers will have the right to furnish a report to the Society.

The Lay Observers will also have the right to make recommendations from time to time to the Society about the manner in which the Registrar's Committee has dealt with complaints, or the general adequacy and fairness of the complaints-handling machinery of the Society.

At least once in every year the two Lay Observers, acting jointly, will have the right to furnish a report to the Society giving their assessment of the manner in which the Society has in the past twelve months exercised its functions in relation to complaints against solicitors. The report would have to be in a format suitable for publication by the Society but it cannot identify any individual complainant or solicitor.

The Lay Observers will be obliged to treat as strictly confidential any information obtained by them in the course of exercising their functions and will not be permitted to divulge information concerning the affairs of any complainant or solicitor without the prior written consent of the Law Society.

Other issues raised at March Meeting

The March Council meeting also considered a survey recently despatched by the Costs Committee, the Finance Act, 1992, the reintroduction of the Solicitors (Amendment) Bill, 1991, and a recent article in a Sunday newspaper.

Article in Sunday Business Post

The Council, discussed an article entitled 'A Profession under Siege' which was published in the Sunday Business Post of 7 March. A number of Council members were highly critical of the article and the comments attributed to *James Osborne.* Some members defended the right of practitioners to comment publicly on matters of concern to the profession. At the end of its discussion, the Council agreed that the President should write to Mr. Osborne conveying the views expressed.

Remuneration/Costs Survey

The Chairman of the Remuneration/Costs Committee reported to the Council that a survey document had been posted to each practice the previous Friday and already 202 replies had been received. It was clear from a cursory look at the replies that the vast majority of respondents had no indication of how much it cost to run their offices. Clearly there would be a need, after all the responses to the survey had been properly evaluated, to issue a follow-up document to the profession giving appropriate guidance to the profession on time-costing and fee-charging which were important aspects of the business management of a practice.

The view was also expressed that members of the profession did not receive sufficient training in how to be business managers during the course of their professional education.

Budget 1993

The Chairman of the Taxation Committee explained to the Council that the committee had decided not to issue a budget summary immediately after this year's budget but rather to wait until the Finance Bill was published and then offer a more considered analysis of the aspects of the budget particularly affecting solicitors. In particular, this review would deal with the residential property tax and the new probate tax. Meanwhile, the Taxation Committee was working on a submission to the Department of Finance on these topics in advance of the publication of the Finance Bill.

Part VII Finance Act, 1992

The Chairman of the Taxation Committee reported to the Council that there had been a recent meeting with the Revenue Commissioners at which substantial progress had been made in resolving the difficulties posed to the profession by Part VII of the Finance Act, 1992. Following the meeting, the committee had written to the Revenue Commissioners setting out in detail the items in the legislation that required change. After some discussion, it was decided that the Council would consider this matter again at its April meeting after which the matter would be put, with an appropriate recommendation, to the half-yearly meeting of the Society in May.

Solicitors Bill

The Chairman of the Solicitors Bill Committee reported to Council that present indications were that it would be decided to reintroduce the Solicitors Bill in the near future. The Chairman also reported on a recent meeting with the Minister for State at the Department of Justice, *Willie O'Dea,* and senior officials of the Department. He said it had been a very productive meeting, at which representatives of the Society had reiterated their total opposition to certain aspects of the Bill including the provisions concerning fee advertising and probate and conveyancing. There had also been a useful discussion about introducing a limit on the level of any one claim that could be made on the Compensation Fund and the Society had proposed a limit of £250,000. The response of the Minister to these proposals was awaited.

Compliance

The Chairman of the Compensation Fund Committee reported that the Society was preparing to commence injunctive proceedings against three categories of solicitors: first, those solicitors who were three or more months in arrears in filing their accountant's report, secondly, those solicitors who, following a communication from the Society, had undertaken to send in their accountant's certificates but had failed to do so and, thirdly, those solicitors who had failed to apply for practising certificates in due time. □

The Solicitor – the Barrister – the Politician and the Judge

(Continued from page 88)

of The Judicial Studies Board to become a Judicial Commission which would have a much greater role in the selection of judges and in particular the training of judges and the monitoring of performance after appointment. These waters become deeper. I can see no legitimate case against helping judges, once appointed, to discharge their difficult and sometimes lonely functions with the best help possible.

In England and Wales solicitor advocates will have extended rights of audience in due time. The Bar's position is quite plain – that advocacy in the higher courts is a privilege which carries with it certain duties – in particular and centrally the duty to act for any client who requires our services, and the duty to act for legally aided clients. If our colleagues at the Law Society are willing to accept those duties together with a proper regime of training, experience and practise, then they would be welcome in the higher courts.

Apart from those general thoughts about the organisation of lawyers internally and their relationship to the judiciary and to government there is one overwhelming duty. We should all recognise that we are foot soldiers in any army that serves a greater cause, namely decent access by all citizens to the courts of law, which alone protect the weak and vulnerable in an age of over mighty governments and state power."

Lord Williams of Mostyn QC. □

PRACTICE REQUIRED
by existing firm currently practising
500 yards from the Four Courts.
Please send details to Seán Whelan
& Company Chartered Accountants,
33 Westland Square, Dublin 2.

Penalties for Late Payment of Stamp Duties

Notice from Revenue Commissioners

The purpose of the penalties relating to late payment of stamp duties is to compensate the Exchequer for the late receipt of duty and to encourage early, voluntary compliance with the obligations under the Stamp Act. A particular aim of the surcharges for understatement of value is to encourage taxpayers and their agents, to provide reasonable valuations on submitting documents for stamping. This would obviate the need for formal valuations and appeals which can be costly and time consuming for both the taxpayer and the commissioners. Provisions which are aimed at improving compliance have a direct impact on both solicitors and their clients.

In the case of solicitors, delays in paying duty can arise due to oversights in a busy office, although the solicitor has been put in funds by the client taxpayer. In order to meet this particular situation, the staff in Stamp Duty will deal with these delays and subsequent requests for mitigation according to the following guidelines:

1. Mitigation will depend upon the amount of the duty, the length of the delay and the record of the solicitor.

2. Where the duty does not exceed £5,000 and the delay in payment is no longer than six months, full interest will be charged. If, however, this is the first occasion in a calendar year in which such a delay occurred, the further penalties of 10% and 20% of duty will be mitigated in full.

3. If the delay is the second default by the solicitor in that calendar year, then the further penalties will be mitigated to 5% of the duty.

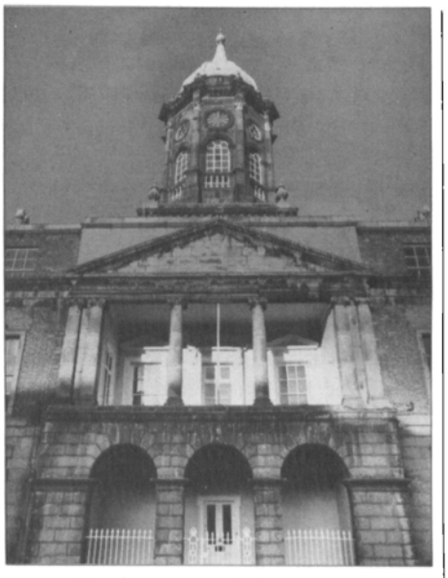
4. If the delay is more than six months but not more than twelve months, full interest will be charged but the further penalty of 20% of the duty will be mitigated to 5% in the case of a first late payment and 10% in the case of a second.

5. Any requests for mitigation which do not come within these guidelines will be dealt with under the general principles governing mitigation.

It must be emphasised that these guidelines are not legal provisions. They have been introduced only for the guidance of Stamp Duty staff and they may be departed from in any individual case depending on its unique circumstances. The operation of the guidelines will be reviewed after one year.

In addition to these guidelines, the Revenue Commissioners will continue to exercise their general discretion to mitigate interest and penalties including surcharges for undervaluation. In exercising this discretion, the Commissioners are obliged, under their care and management functions, to mitigate penalties only in cases where the delay in stamping the documents is due to circumstances beyond the control of the taxpayer and his or her advisers and solicitors, or to cases where the circumstances are such that the imposition of a penalty would be clearly unreasonable.

The decision to mitigate interest or penalties and the extent of mitigation depends upon individual circumstances. It is neither desirable nor practical to give a list of such circumstances, but the length of the delay in paying duty is a factor of considerable relevance as is, in the case of surcharges, the extent of the undervaluation. The Commissioners will also consider such factors as the past record of taxpayers or their agents, the views of the Valuation Office, where relevant, and any evidence in support of the explanation for the delay.



Headquarters of the Revenue Commissioners at Dublin Castle

If a taxpayer or solicitor feels dissatisfied with the decision of a marking officer on the mitigation of a penalty, he or she may ask that the matter be discussed by a Penalties Review Committee, which has been set up in Stamp Duty. This committee is formed by all the marking officers and a supervising officer. It has been set up to ensure consistency of application of the penalty provisions and to allow for a more detailed reconsideration of contentious mitigation decisions. Any person who wishes to bring a case to the committee should set it out in writing, detailing the grounds for mitigation. If after this review, a solicitor is still dissatisfied, he or she may bring the matter to the attention of the Taxation Committee of the Law Society. The members of the committee may, depending on

their view of it, discuss the case with Stamp Duty management.

Solicitors have also expressed concern about the implications for them of the negligence provisions in the Finance Act, 1991, where undervaluations of property are established. The Commissioners accept that solicitors have no special expertise in the area of property valuation. In their view, the obligation of solicitors under these provisions is to ensure that their clients are aware of the requirement to submit realistic valuations and that where a formal valuation is carried out, that it is done by a person who is competent and qualified to do so. A solicitor, unless he or she has knowledge to the contrary, is entitled to assume that any such person will carry out the valuation according to best professional practice.

Stamps Branch,
Revenue Commissioners

New House Grants for First-Time Purchasers

The following communication has been forwarded to the Conveyancing Committee from the Department of the Environment.

"One of the statutory conditions of the New House Grant Scheme is that either a C2 No. or a Tax Clearance Certificate Expiry Date is provided in respect of the builder. The absence of this documentation renders first-time purchasers of a new house ineligible for the £2,000 grant.

"The Department has insofar as possible taken steps to ensure that applicants are aware of the conditions of the scheme. However, it is our experience that some applicants complete the purchase of their houses before applying for a grant.

"It would be appreciated if in the course of advising clients, your members would ensure that they are aware of this condition, so that they are not deprived of a grant if they are otherwise eligible."

Conveyancing Committee

Acts of the Oireachtas, 1992

The following is an alphabetical list of measures enacted by the Oireachtas during the year 1992.

Title of Act	Number
ACC Bank Act, 1992	6 of '92
Appropriation Act, 1992	26 of '92
Censorship of Films (Amendment) Act, 1992	29 of '92
Control of Dogs (Amendment) Act, 1992	13 of '92
Criminal Evidence Act, 1992	12 of '92
Dublin Institute of Technology Act, 1992	15 of '92
Electoral Act, 1992	23 of '92
Eleventh Amendment of the Constitution Act, 1992	——
Environmental Protection Agency Act, 1992	7 of '92
European Communities (Amendment) Act, 1992	24 of '92
Finance Act, 1992	9 of '92
Finance (No. 2) Act, 1992	28 of '92
Financial Transactions of Certain Companies and Other Bodies Act, 1992	11 of '92
Financial Transfers Act, 1992	27 of '92
Fishery Harbour Centres (Amendment) Act, 1992	10 of '92
Foreshore (Amendment) Act, 1992	17 of '92
Fourteenth Amendment of the Constitution Act, 1992	——
Health (Family Planning) (Amendment) Act, 1992	20 of '92
Housing (Miscellaneous Provisions) Act, 1992	18 of '92
ICC Bank Act, 1992	21 of '92
Irish Land Commission (Dissolution) Act, 1992	25 of '92
Land Bond Act, 1992	4 of '92
Limerick Markets Act, 1992	1 *(Private)* of '92
Local Authorities (Higher Education Grants) Act, 1992	19 of '92
Local Government (Planning and Development) Act, 1992	14 of '92
Merchant Shipping Act, 1992	2 of '92
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992	3 of '92
Patents Act, 1992	1 of '92
Referendum (Amendment) Act, 1992	8 of '92
Referendum (Amendment) (No. 2) Act, 1992	22 of '92
Regional Technical Colleges Act, 1992	16 of '92
Social Welfare Act, 1992	5 of '92
Thirteenth Amendment of the Constitution Act, 1991	——

High Court Personal Injury List

A serious problem has arisen as a consequence of settled cases not being promptly removed from the list.

Practitioners are earnestly requested, when all matters relating to cases in the High Court Personal Injury List have been resolved, to:-

(a) obtain from the defendant's solicitor a letter addressed to The Chief Registrar, Central Office, which identifies the case, record number and list number, confirming that all matters relating to this case have been settled and consenting to the case being taken out of the list,

(b) arrange for the plaintiff's solicitor to lodge the letter of the defendant's solicitor, together with a similar letter of his own, in the Central Office.

It should be noted that the obligation to ensure that the case is taken out of the list is the responsibility of the plaintiff's solicitor.

Litigation Committee

Road Traffic Act Fees

Practitioners might note that agreement has not been reached with the insurance companies in relation to fees to be paid to practitioners for attendances at the District Court for the purpose of defending their insured in connection with offences arising out of a road traffic accident. Similarly fees have not been agreed in relation to the reports which insurance companies might request arising out of such prosecution. Accordingly, it is a matter for the practitioner in each individual case to agree a fee with the insurance company prior to attending.

Litigation Committee

Lloyd's of London – Service

Practitioners are reminded that they need not enquire about the identity or the address of Lloyd's Underwriters or whether or at what address proceedings will be accepted.

Raymond P. McGovern is obliged to accept service in Ireland under Clause 11 (g) of S.I. No. 115 of 1976, if proceedings are served at his address below.

He may also be named personally as a defendant.

The endorsement should state:-

> "the Defendant is sued in his capacity as Lloyd's Underwriter's Sole General Representative in Ireland and on behalf of certain Underwriters at Lloyd's subscribing to policy number _____"

Raymond P. McGovern,
Lloyd's Underwriters'
Sole General Representative Ireland,
W.G. Bradley and Sons,
52 Fitzwilliam Square, Dublin 2. □

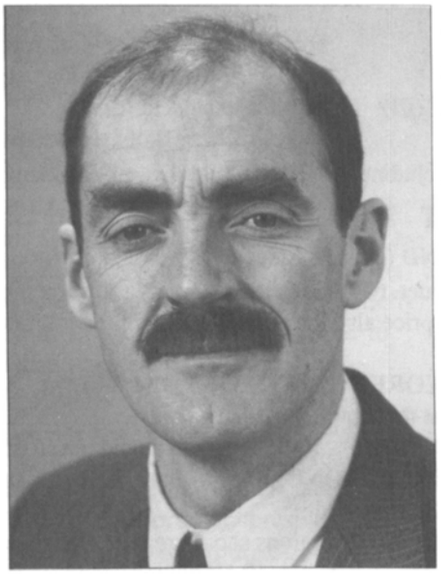
Criminal Law Committee News

Increases in Legal Aid Fees

The regulations implementing the agreement increasing Legal Aid fees have at last come into operation and we understand that the payment of the increases will commence towards the end of March, 1993. These increases are, of course, backdated to 1 June, 1992 and there is a smaller increase backdated to 1 January, 1992. Details can be found in Statutory Instruments numbers 56 and 57 – 1993. Discussions are continuing with the Department of Justice in relation to setting up a scheme to deal with fees for cases of special difficulty.

Delays in Payments of Fees

This matter has been discussed with the Department and we are informed that there will be no unreasonable delays in future. If any of our members experience delays in payment from, say, 1 May, 1993 they should contact the Committee.



Michael Staines

Code of Ethics

The Committee is renewing the whole question of introducing a code of ethics with specific reference to the practise of Criminal Law. Any members with suggestions should contact the Committee.

Finally, members of the Committee would like to put on record their dismay at various remarks attributed to certain members of the profession in a recent *Sunday Business Post* article. These remarks were a slight both on rural practitioners and smaller firms nationwide. We reject them as being untrue and unfair.

Michael Staines,
Chairman,
Criminal Law Committee

□

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.

IRISH CANCER SOCIETY

5 Northumberland Road, Dublin 4, Ireland. Tel: 681855

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION

4 Clyde Road, Dublin 4.
Telephone: 01-685001.

NORTHERN IRELAND YOUNG SOLICITORS ASSOCIATION ANNUAL CONFERENCE

HYLAND CENTRAL HOTEL, DONEGAL, COUNTY DONEGAL

FRIDAY 30 APRIL TO SUNDAY 2 MAY 1993

WORKING SESSIONS:

(I) Nicolas Hanna QC - Practising Senior Counsel Northern Ireland
Topic: "Some Special Features of Environmental Litigation"

(II) Robert Lee, Director of Research and Development-
Wilde Sapte, Solicitors, London, and Editor of " Environmental Law Monthly".
Topic: "A review of European Community Policy on Civil Liability for Environmental Damage."

(III) Speaker to be announced.
Topic: "Aspect of Law and Medical Ethics"

LEISURE ACTIVITIES (including golf, pony-trekking, wind-surfing, surfing)

CONFERENCE BANQUET - Dancing to 'City Life'

Cost:

(a) **FULL WEEKEND** (£95) includes registration, all Working Sessions, Conference Materials, Conference Banquet, two nights bed & breakfast accommodation at the Hotel on double/twin/triple room basis. The price also includes free access to most activities in the Hotel's luxurious fitness and leisure suite.

(b) **BANQUET & WORKING SESSIONS ONLY** (£45) - As for Option A above but excluding accommodation at the Hotel.

(c) **BANQUET ONLY** (£23) - Entitles you to attend the Conference Banquet.

(d) **WORKING SESSIONS ONLY** (£30) - Entitles you to attend one or more of the three Working Sessions during the weekend.

Solicitors wishing to attend any of the above options should register their name and forward the relevant cheque to Paul Marren of Martin E Marren & Co., Solicitors, 10 Northumberland Road, Dublin 4.

Copyright – New Licensing Agency and Other Developments

by Anthony P. Quinn,*

Do existing laws and procedures adequately protect copyright owners in this technological era? Mass use of copiers in offices and libraries facilitates the abuse of reprographic rights, i.e. facsimile reproduction in paper form. This article outlines how the new *Irish Copyright Licensing Agency,* a joint initiative by authors and publishers, has devised collective licensing and royalty collection procedures to protect the interests of authors/publishers and facilitate educational institutions and other users of copyright printed material.[1]

Background

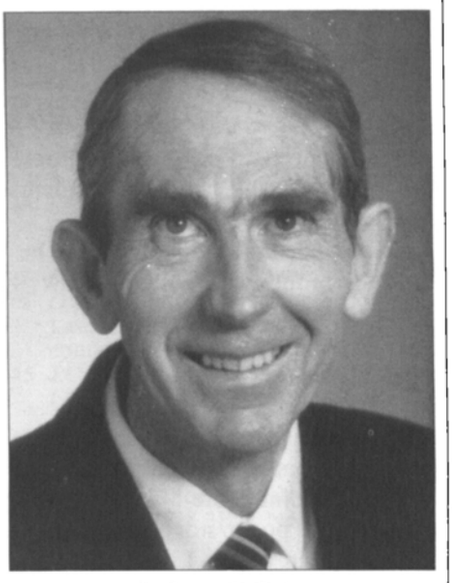
"To every cow her calf and to every book its copy."

"Le gach bó a buinín, agus le gach leabhar a chóip."

So held Diarmaid MacCearrbheoil, High King, finding in favour of the plaintiff in the historic case of *St. Finnian of Maigh Bhile -v- St. Columcille,* 560 AD. The plaintiff demanded return of a Gospel book and its copy secretly made by the defendant without consent. In his judgment, Diarmuid rejected the plaintiff's arguments that the copy was his property. Copyright was an exception to the general principle of the Brehon laws that property such as land belonged to the clan.[2] Thus, even in ancient times, a right to the fruits of literary efforts was recognised.

The principle in *Finnian -v- Columcille* was enshrined widely in jurisprudence (not necessarily on the basis of that Celtic precedent) to protect intellectual property rights by copyright. The law tries to achieve a balance between two public interests: reward for the personal ingenuity of owners of rights and organised society's demands for access to printed information. In *Sayre -v- Moore,* a case of 1785 re the copying of maps, Lord Mansfield referred to the need to reconcile the rights of creators and users.[3]

"The law tries to achieve a balance between two public interests: reward for the personal ingenuity of owners of rights and organised society's demands for access to printed information."



Anthony P Quinn

Copyright and Creativity

The relationship between copyright and creativity was explored by US Judge Richard A. Posner.[4] There is an analogy with primitive agriculture in a society without property rights where anyone could reap the benefit of others' efforts. Work shifted to more rewarding activities. The position of authors' creativity is more complex. As Judge Posner explains, authors write for reasons other than money. Inner satisfaction, hope of immortality, prestige or fame may be the spur. Copyright law was not so necessary in the past when printing was licensed. It was so time-consuming and expensive to copy a book that it would be more economical to buy an original copy and directly reward the author.

Legislation

The first English Copyright Act was passed in Queen Anne's reign, 1709 (8 Anne c.19). That legislation was narrower than modern Acts and it did not protect translations from foreign languages. Protection was mainly for booksellers who then were also publishers. Much classical literature from the nodder Homer to the plagiarist Shakespeare was created prior to copyright Acts.

The Irish Copyright Act, 1963 (the 1963 Act), provides in s.7 (1) that copyright in a work is the exclusive right to do, and to authorise other persons to do, certain acts in relation to that work which in the relevant provisions are designated acts restricted by the copyright in a work of that description.[5]

Restricted acts include not only the obvious e.g. publication and public performance or broadcast as appropriate, but also reproducing the work in any material form. To put readers on notice, most modern publications refer to rights reserved and also prohibit photocopying and recording without copyright holders' permission. Ss.12 and 14 for fair dealing exceptions e.g. research, private study, criticism or review, lack the detailed provisions of s. 29, UK 1988 Act. In Ireland, students may copy within limits (10% of a work) for strictly personal research or study but multiple copying without permission is illegal. Widespread copying by individuals on the instructions of educational institutions is arguably stretching fair dealing to the point of illegality.

Infringement and Remedies

S. 7 (3), 1963 Act provides that

copyright is infringed by any person who, not being the owner of the copyright, and without licence of the owner, does or authorises another person to do any restricted acts. Infringement of copyright is actionable at the suit of the copyright owner. Part IV, ss. 22-28 1963 Act, provides for remedies. Different remedies may be appropriate: injunction, an order for account, damages, action for conversion; criminal sanction under the Copyright (Amendment) Act 1987; an *Anton Pilar* order for search and seizure of documents.[6]

Controlling Copying under Copyright Law

Existing copyright law may seem too restrictive or too expansive depending on the interests involved. Even allowing for fair dealing exceptions, existing law is being widely abused by offices, educational users and libraries. Warnings at the start of books clearly assert legal rights and try to prohibit unauthorised photocopying. (Even without such warnings, rights exist.) Unauthorised copying is illegal and enforcement actions are a threat to individuals and bodies flouting the law. In a recent landmark decision, *Texaco,* a New York Federal District Court held that copying journal materials for employees' use was not fair use, and that permission and compensation were required.[7] It may be difficult to produce evidence of infringement by copying.[8]

"a New York Federal District Court held that copying journal materials for employees' use was not fair use, and that permission and compensation were required."

The Irish Copyright Licensing Agency (ICLA)

As photocopiers are commonplace, it is difficult for individual copyright holders to prevent abuse of their rights. Control by a special agency is the effective solution matching concepts of copyright as a multiple bundle of rights which can be assigned or licensed together or separately. The ICLA is an non-profit making company limited by guarantee, recently incorporated, with equal representation on its board and in its membership by authors and publishers. The articles of association provide that the board be chaired in alternate years by a publisher and author nominee. Publisher *Michael Gill* is chairman and author *Eilís Dillon* is secretary.

The board fortunately obtained the legal services of *Muireann O Briain* on a part-time basis. The ICLA will operate through mandates from writers and publishers. Authors' unions support the initiative. ICLA will exercise sensible control over photocopying and provide users with an easy means of obtaining permission to copy.[9] ICLA will act as a clearing centre for dealings between owners and users of copyright material. Users such as schools, universities, tutorial centres, commercial firms, State Departments and agencies, public bodies, professionals and individuals will be able to comply with copyright law through the ICLA.

New Licensing System

ICLA will licence the photocopying of brief extracts from published works. The limits are 5% of a book or an entire poem/story not exceeding ten pages. Libraries and other heavy users will have to keep records or agree to a survey system. ICLA will collect appropriate fees from users and income will be passed on to publishers and authors. Carte blanche unrestricted copying will not be allowed. Limitations and conditions of copying will be clearly stated to all licensees. Publishers will be relieved of unproductive work such as individual correspondence.

International Dimension

The ICLA system mirrors collection agencies abroad. A reciprocal arrangement has been signed with the UK agency. ICLA hopes to negotiate with other members of the International Federation of Reproduction Rights Organisations (IFRRO) so that payment for Irish published works can be collected abroad. The Australian Copyright Agency Ltd., having negotiated royalties from the Federal Government for press cuttings circulated in the civil service, is now focusing attention on abuses in the educational sector.[10]

The Declaration of Human Rights, article 27, 1947, asserts both sides of the copyright coin: individuals' cultural rights and authors' rights to protect their moral and material interests.[11] Many countries, including Ireland, are members of the Berne Copyright Union and/or the Universal Copyright Convention.[12] In countries other than that of origin, authors are given not only rights of domestic laws of those countries but also rights granted by the Union. Works published in any country of the Berne Union or Universal Copyright Convention (UCC) are protected in the Irish jurisdiction as if the works were first published in the State.[13] UCC formalities require the use of the symbol © on all published copies of works, plus the copyright owner's name and year of first publication.

EC Aspects and Law Reform

EC harmonisation initiatives in the intellectual property field, aimed at removing impediments to the free movement within the Internal Market, are a spur to reform of national copyright law. Differences between such laws impede progress.[14] The common law copyright concept as known in Ireland and the UK, contrasts with civil law continental concepts, especially *droit d'auteur.* The latter, which evolved from the Enlightenment and the French Revolution, related to authors' absolute control over creations of the mind. Copyright law, based on economic arguments, is more suited than the abstract *droit d'auteur* to protecting computer software.

There are also neighbouring rights e.g. of performers and moral rights to the creative integrity of literary works. A proposed EC Council

Directive aims at harmonising the protection of authors, performing artists, broadcasters and film producers, regarding rental and lending rights and certain other rights.[15] Member States may derogate from the exclusive lending rights for cultural reasons but not affecting the obligation to remunerate authors equitably. General EC competition policy may be relevant. The Department of Enterprise and Employment, via the Controller of Patents who has responsibilities under the 1963 Act, would deal with reform of Irish copyright law taking EC studies and measures into account. The Copyright Acts 1963-87 should be replaced by a modern Act with detailed provisions on fair dealing e.g. by libraries, as in s.29, UK 1988 Act.

Conclusion

It is a long time-span from the cogger Columcille to modern copiers. The universal need to protect individuals' rights to literary efforts have spurred modern initiatives at global and national level. The Irish Copyright Licensing Agency provides a practical solution to the problem of widespread abuse of authors' and publishers' rights by unauthorised copying. Users of copyright material in libraries, education, administration and the professions should be aware of developments and in their own interest co-operate with the ICLA licensing system.

"The Irish Copyright Licensing Agency provides a practical solution to the problem of widespread abuse of authors' and publishers' rights by unauthorised copying."

References

1. *The Irish Copyright Licensing Agency. What it is and What it Does:* Information Leaflet, Irish Writers Centre, 19 Parnell Square, Dublin 1, phone (01) 729090.
2. Murdoch H, *A Dictionary of Irish Law* Topaz, Dun Laoghaire.
3. *Sayre -v- Moore,* 1785, quoted in Clarke, Hadley & Copyright Licensing Agency Ltd. UK (CLA), pamphlet, *Collective Administration of Literary Works, Principles and Practice: The British Experience* 1991, London.
4. Posner, *Law and Literature A Misunderstood Relation* Harvard Univ. Press, 1988.
5. *Phonographic Performance Ltd -v- Somers* [1992] ILRM 657.
6. *Anton Pilar KG -v- Manufacturing Process Ltd.* [1976] 1 All ER 779 @ 784.
7. *American Geophysical Union et al. -v- Texaco* quoted in *The Bookseller* 31/7/1992 & *Publishers Weekly* New York 3/8/1992.
8. *Antocks Lairn -v- Bloohn* [1971] FSR 490; *Sifam Elec. -v- Sangamo Weston* [1971] FSR 337; [1971] 2 All ER 1074.
9. *ICLA* Information Leaflet, 1 supra.
10. *European Intellectual Property Review National Reports* vol. 14.11.92, Sweet & Maxwell, ESC.
11. *Universal Declaration of Human Rights* Art. 27, 1947, referred to in Clark. *Photocopying from Books & Journals,* pamphlet, British Copyright Council, 1990.
12. *Berne Copyright Union Universal Copyright Convention.*
13. *Copyright (Foreign Countries) Order 1978 (SI 132/3 of 1978).*
14. Prof. John N. Adams (Director, Common Law Institute of Intellectual Property), *Harmonisation of EC Intellectual Property Law: An Overview* Irish Centre for European Law, Trinity College, Dublin, conference November 1992.
15. *EC Commission Document* COM (90) 586 final – Syn 319 (*OJ* No. C 53, 28.2.1991, page 35) and *EC Bulletin 12. 1990* referred to in *EC Brief* 3, 58 & 115, 1992 update, Gregg Myles, solicitor, Locksley Press, Lisburn, BT28 3BG, Northern Ireland.

Textbooks.
Coppinger & Skone James, *Copyright,* Sweet & Maxwell, 1991.
Laddie, *Modern Law of Copyright,* 2nd ed. Butterworths, 1987.
Stewart *International Copyright & Neighbouring Rights,* Butterworths, London, 1983. *European Initiatives in Intellectual Property* ed Paul Coughlan, ICEL Publication 19, 1993 ICEL TCD.

Thanks to my Bar colleagues, *James Bridgeman* and *Muireann O'Briain,* for their help during research for this article.

**Anthony P. Quinn *Barrister; MA; B. Comm; FCIArb; Dip.Arb.Law; Dip.Intrnl.Arb.Law; P.A.A.A; Dip. Publ. Adm; FIIS. is a nominee of Irish Writers Union on the non-executive board of the Irish Copyright Licensing Agency Ltd but this article was written in his personal capacity.*

AIJA – (International Association of Young Lawyers)

Regional Weekend – Leeds – 21-23 May, 1993 "The environment – burdens on industry"

AIJA is an international organisation of over 2,000 young lawyers in over 50 countries, aimed at promoting the interest of an encouraging co-operation and mutual respect between young lawyers from all countries.

Every year regional weekends are organised to gather together lawyers from neighbouring countries to meet, socialise and study a particular topic. This year's UK regional weekend is being held in Leeds on the weekend of 21-23 May, 1993.

The meeting has taken environmental law as the theme for the seminar in recognition of its impact and cost on business and an international panel of speakers has been selected to provide a broad approach to this comprehensive subject.

The conference schedule also includes an equally important social element and represents an ideal opportunity to meet lawyers from England, Wales and Scotland.

The registration fee (for the seminar and all meals) for AIJA members is £140.00 Sterling and £155.00 Sterling for non-members. Extremely reasonable accommodation costs (per night - £40 single and £60 double) have been negotiated and there are direct Aer Lingus flights to Leeds/Bradford airport.

Further information and booking forms can be obtained from AIJA Regional Vice President, *Petria McDonnell,* who also has details on AIJA membership and the forthcoming annual conference in Rio de Janeiro (Aug 23-27). Petria can be contacted at *McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1. (Tel 01 8290000).*

□

BOOK REVIEWS

Law of Stamp Duty

(Second edition), By Michael O'Connor and Patrick S Cahill, Published by the Institute of Taxation.

The first edition of this book was written in 1984. At that time revenue returns from stamp duty came to about £19,000,000. In 1992 that figure had risen to £250,000,000. This tax has clearly become an important source of revenue for the Government. To give it the profile commensurate with its status the tax became mandatory on the 1 November, 1991. Since that date it could be said that UK text books are now of limited value.

This edition includes a table of statutes not provided previously. This comprehensive list is a useful compilation for reference purposes. There has also been an increase in the number of cases cited and, while few Irish cases appear, it may well be a consequence of the new statutory provisions that the courts will have to settle hard cases in the future.

As before, the book is extremely well laid out and easy to read. If there is one criticism to be made it would be that the printing of the earlier edition by Folens was superior.

The two chapters most affected by changes in the law are chapter 3 on "Administration" and chapter 7 on "Imposed Duties." References throughout to the principal two Acts constantly cause the reader to look twice, as there is exactly one hundred years between them and thus only one digit differentiating them.

The most noticeable changes are illustrated in the introduction of new terms eg "assessment" and "accountable persons"; "amnesty" and "anti avoidance". Further new features include fines and penalties, imposed duties, the consequence of undervalue.

If the 1984 edition was an important book, this one will become an essential reference book for all conveyancers and, while it is not evident from reading as to the retail price of the book, it must be assumed that it exceeds somewhat the fifteen percent increase in volume contained over the first edition and well worth every penny. □

Justin McKenna

NEW

from
Butterworths

Adoption Law and Practice *by Kerry O'Halloran*	Hard cover £40.00
Taxation of Estates: The Law in Ireland *by J.M. O'Callaghan*	Soft cover £39.50
Butterworth Ireland VAT Acts 1992-93 Editor: *Alan Moore.* Consultant Editor: *James D.Somers* *A complete handbook of Irish VAT legislation and EC directives.* *Extensive annotations include both Irish and European case law.*	Soft cover £40.00

- Bookshop open at Ormond Quay, Dublin *(100 metres from the Four Courts)* Come in and browse. Open 9am-5.30pm through lunch
- Orders welcome by telephone and fax
- Talk to our sales representatives about these and other Butterworth titles
  Dublin area: Madeleine Roche at (01) 324289 or 088-597659
  Outside Dublin: Max Harvey at (021) 371399 or 088-566793

Please note: For orders under £50, please allow £2 postage and packing.

Butterworth Ireland Ltd., 26 Upper Ormond Quay, Dublin 7. Tel: (01) 8731555. Fax: (01) 8731876

Annual Dinner of the Council of the Law Society

L-R: Judge Peter Smithwick, President of the District Court; The Hon. Mr. Justice Liam Hamilton, President of the High Court, and Mary Harney, TD, Deputy Leader of the Progressive Democrats.

L-R: His Excellency David Blatherwick, British Ambassador; Raymond Monahan, President of the Law Society and the Hon. Mr. Justice Francis Spain, President of the Circuit Court.

L-R: Professor Patrick Masterson, President, University College Dublin and Michael O'Mahony, Senior Vice President, Law Society.

L-R: Donal Binchy, Past President, Law Society; Cathal MacDomhnaill, Chairman, Revenue Commissioners and Gerald Hickey, Past President, Law Society.

L-R: The Reverend Patrick Hannon, Professor of Moral Theology, St. Patrick's College, Maynooth; Michael Mills, Ombudsman and Dr. Maurice Hayes, Chairman, The Ireland Funds.

L-R: Liam Jones, President, Irish Stock Exchange; Michael Fingleton, Chairman, Irish Building Society Association and Pat McDowell, Chief Executive, Retail, Bank of Ireland.

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At the parchment ceremony on 12 February, 1993 were, l-r: Barbara Dundon, Joseph Dundon, James St. John Dundon who was admitted to the Roll of Solicitors, Eileen Dundon and George Dundon. James St. John Dundon is the fourth generation of the Dundon family to be admitted to the Roll of Solicitors. His great grandfather, John J. Dundon, was admitted to the Roll in 1868. His grandfather, John R. Dundon, was Vice President of the Law Society circa 1910, his father, Joseph Dundon, is a Past President of the Society (1977/78) and was admitted to the profession in 1962.

The SADSI Team to the Philip C. Jessup International Law Moot Court Competition 1993 which took place in Washington DC in early March, l-r: Garvan Corkery, McCann FitzGerald; T. P. Kennedy, McCann FitzGerald (academic coach to the team); Conor Maguire, Kennedy McGonagle Ballagh; Alan Doyle, TTL Overend McCarron & Gibbons; Susan O'Halloran, McCann FitzGerald and Siamh Ryan, Blackwell & Co.

Recently the solicitors of the Tipperary and Offaly Bar Association made a presentation to Judge William O'Connell of the District Court and to members with over 50 years service to the profession. Back row, l-r: John O'Connor, Roscrea; Matthew Hassett, Nenagh; Joseph Kelly, Templemore; Maura Derivan, Secretary, Tipperary and Offaly Bar Association; Judge Michael O'Reilly of the District Court; Mrs. O'Connell and Peter Reilly, Clonmel. Front row, l-r: Peggy Morris and Frank Murphy, who both have over 50 years service to the profession; Paul Morris, President of the Tipperary and Offaly Bar Association; Judge William O'Connell of the District Court, and John Carrigan who has over 50 years service. (Mr. Henry F. Hayes who sadly had died on 3 January was also honoured for having achieved 50 years service to the profession).

LEGAL & GENERAL OFFICE SUPPLIES
15 ORMOND QUAY, DUBLIN 7.
ANNOUNCE
30% OFF
TOSHIBA PHOTOCOPIERS
The Leading Business Copier
FREE SERVICE & PARTS FOR 12 MONTHS

EXAMPLE PRICES	NORMAL	SPECIAL
Toshiba BD1710	3382.00	2365.00
Toshiba BD1210	1325.00	995.00
Toshiba BD2500	3985.00	2800.00

OFFER ENDS APRIL 30TH • RING NOW FOR DETAILS AND DEMONSTRATION
LEASING ARRANGED IF REQUIRED
TELEPHONE 01-725522.

Enjoying the archery at the Society of Young Solicitors Conference in Adare Manor during the weekend of 5-7 March were (left) Paul White, Vice Chairman, SYS, and (right) Brian McDermott, who both practise in A & L Goodbody.

At the Annual Dinner of the Council of the Law Society on 11 March last were the President of the Law Society, Raymond Monahan and his wife, Eileen, Solicitor, and Director, Doyle Hotel Group.

SYS Spring Conference

The Spring Conference of the Society of Young Solicitors was held in the magnificent Adare Manor on the weekend of 5 - 7 March, 1993. Delegates from all over the country gathered in the hotel's Tack Room on Friday evening for drinks and a disco which went on until the early hours.

The Conference began with a panel discussion on "The increasing importance of the Compensation and Registrar's Committees of the Law Society", which was chaired by *Noel Ryan,* Director General of the Law Society.

Ward McEllin, Chairman of the Law Society's Compensation Fund Committee, advised the conference delegates of the current pressures on the Fund is as a result of the increasing number of claims. He said he was hopeful that the ongoing negotiations on the Solicitors Bill would firstly, redress the balance in favour of the profession following the Supreme Court decision in the TSB case; secondly, impose a criminal sanction subjecting improper conduct on the part of solicitors to the criminal code; and thirdly, place a limit on the level of any one claim that could be made on the Compensation Fund.

He also stressed the need for quicker reporting by the profession to the Law Society of improper conduct by a practitioner so that a substantial claim on the fund could be reduced or avoided altogether. The conference was told that the Law Society intended to be ruthless in its pursuit of improper conduct and in ensuring compliance with the solicitors account regulations. He advised practitioners who found themselves in difficulty to use the Practice Advisory Service which was established to assist practitioners with their affairs.

Gerard Griffin, former Chairman of the Registrar's Committee, stated the Committee could make two findings, either no complaint or that the complaint required to be referred to the Disciplinary Committee of the High Court. The Conference was told that during the period August 1991 to August 1992 over 1,500 complaints were received by the Registrar's Committee, 33 of which were subsequently dealt with by the Disciplinary Committee. The vast majority of complaints were cleared by the Law Society's secretariat. It was found that an early response by a solicitor to a dissatisfied client usually resolved the matter. He urged members to respond instantly to the Law Society when notified of a complaint so that the matter did not escalate.

Medical Negligence

The second topic, "Recent Trends in Medical Negligence", was a lively and interesting debate on this increasingly important area. *John Dillon-Leetch,* Dillon-Leetch & Sons, gave a comprehensive view of the obstacles to be met by practitioners dealing in this area and stressed the need to obtain expert medical evidence before issuing proceedings on behalf of a client. He called on the medical profession to be more forthcoming with information and documentation and not to proffer explanations from the witness box.

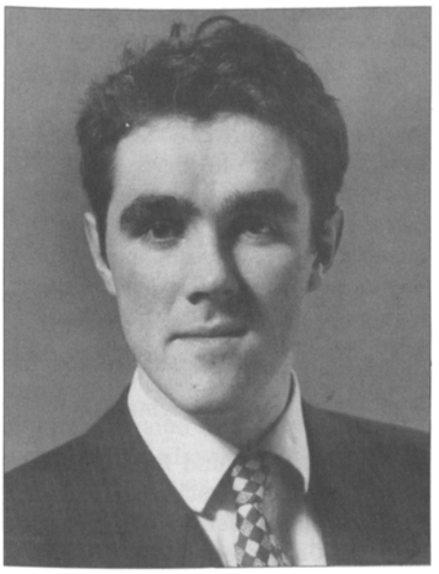
Dr. *John Murphy,* paediatrician in Holles Street Hospital and Editor of the Irish Medical Journal, gave an entertaining and informative response. He stressed the need to avoid unsubstantiated claims against the medical professional as they have the effect of jeopardising proper medical care. He referred to a recent US case, where a doctor was successfully sued for not describing the benefits of a particular form of treatment! Dr. Murphy criticised the delays inherent in the legal system and the adverse effect of a claim hanging over a member of the medical profession for a protracted period. However, he agreed that medical records should be made more easily available and legible at that. Finally, he referred to the "standard of care" issue and suggested that the Irish courts should be aware of the differing standards of health care available in the different jurisdictions and that foreign experts' evidence should be viewed accordingly.

Finally, *Nicholas Kearns* SC presented a comprehensive and valuable paper to the conference (a copy of which is available from Delphine Kelly, c/o A & L Goodbody). He referred to key recent cases and their impact on the law of medical negligence with particular emphasis on the doctrine of *res ipsa loquitor* and its interpretation. He said that great caution should be exercised before deciding to institute a medical negligence suit as the costs are substantial if the case is withdrawn at a late stage. Given the development of the law in this area he suggested that in many instances a medical negligence suit has to be regarded as something of a poisoned chalice.

The social activities were, as ever, highly enjoyable. The SYS would like to thank all the speakers and our sponsors – Investment Bank of Ireland, Solicitors' Financial Services, Norwell, Butterworths (Ireland) Limited, Sweet & Maxwell, Dooley & Co., Baileys, Oaktree Press, The Lawyer, Doyle Court Reporters, The Round Hall Press and Rochford Brady – who made the weekend possible. Thanks are also due to the sub-committee *(Gavin Buckley, Walter Beatty and Paul White)* who organised the event. □

Gavin Buckley,
Public Relations Officer,
Society of Young Solicitors

Compensation under the Planning Acts: *85 Developments Ltd.*



Garret Simons

Under the planning acts a person has a right to compensation if the value of their land is reduced as the result of an unfavourable planning decision. *Garret Simons* reports on a recent case on S.56 of the 1963 Act, which operates to exclude compensation in certain cases. The case hinged on whether a planning authority must quote the exact words of the statutory provision in order to exclude compensation. The Supreme held that words approximating to the section would suffice.

The facts of *Dublin CC -v- Eighty five Developments Ltd.*[0] were as follows: An Bord Pleanála refused to grant permission, on appeal, to the defendants, citing a number of reasons for their decision. Under the Planning Acts[1] there is a *prima facie* right to compensation for any person, the value of whose interest in land is reduced as a result of an unfavourable planning decision.[2] The issue to be determined was, therefore, whether or not one of these reasons for refusal came within the ambit of Section 56 of the 1963 Act which operated to exclude compensation in certain cases. Section 56 (1) (e) provides that compensation shall not be payable

> ". . . in respect of the refusal of permission if the reason or one of the reasons for the refusal is that the proposed development would endanger public safety by reason of traffic hazard or obstruction or otherwise."

The reason stated that:

> "The proposed development, located on the main Donabate road which is substandard in width and alignment, would give rise to traffic hazard by reason of the additional turning movements which it would generate."

The decision hinged on the interpretation of *XJS Investments -v- Dun Laoghaire Corporation.*[3] It was urged on behalf of the respondents that that decision required a planning authority to actually quote and set out the words of Section 56 in order to exclude compensation. The Supreme Court rejected this interpretation of *XJS*. The requirement was less stringent – the reasons need only be expressed in words *approximating* to the words of the section.

Legal Certainty

The Supreme Court recognised the desirability of using the statutory formula yet nevertheless held that a failure to do so is not fatal, without offering a satisfactory explanation as to why this should be. Finlay CJ claims to find support for this approach in the use of the phrase "approximating to the words of the section" in the *XJS* decision and in the fact that McCarthy J indicated *obiter* that a reason for refusal given by the planning authority (but varied by An Bord Pleanála) would have effectively excluded compensation despite the fact that it did not mirror the precise statutory formula. It is legitimate to consider imprecise wording as falling within the ambit of Section 56 provided that it does not require the doing of violence to the language used in the reason. But this fails to address the pertinent question posed in *XJS* – why did An Bord Pleanála deviate from the statutory formula, particularly when this involved a marked departure from the words used by the planning authority?[4] This is not a question of mere semantics. As stated in *XJS* an unsuccessful applicant has a *prima facie* entitlement to compensation and

> ". . . if the planning authority seeks to defeat that claim it must do so . . . within the confines of S.56 and the exclusion must be clearly established."[5]

The onus is on the planning authority to use the required formula. McCarthy J in *85 Developments* goes so far as to suggest that

> ". . . the Board is reluctant to use the precise wording of the relevant portion of the section for the very reason that it might be thought that the reason was being advanced in order to defeat a claim for compensation . . ."[6]

This statement illustrates the crux of the issue. The planning authorities are not entitled to have regard to a desire to avoid liability for compensation in reaching a planning decision.[7] Yet it is essential that the exclusion of compensation be communicated to the planning applicant through the medium of the planning decision and be indicated clearly by the use of the statutory formula. Although the planning authority's decision must not be influenced by considerations of compensation, it is hopelessly unrealistic to expect it to be

ignorant of the legal consequences of its stated reasons. It is unfair to leave planning applicants in any doubt as to their entitlement, if any, to compensation. It should require more compelling reasons than those advanced by the Supreme Court to undermine legal certainty by displacing the burden placed on planning authorities, by the decision in *XJS*, to clearly establish the exclusion of compensation.

Constitutional Issues

The Supreme Court in *85 Developments* treats the issue of whether or not a stated reason for refusal comes within the scope of Section 56 as a question of fact. It merely requires the court to make a common-sense appraisal of what the real reason is. It is submitted that this approach is incorrect. The Planning Acts involve a restriction on the use of land and hence an interference with the landowner's constitutional property rights. The failure to provide compensation for such restriction will be unconstitutional if it represents an unjust attack on these property rights.[8] Each of the statutory non compensatable reasons thus comprehends a specific situation where the permission sought is objectionable to the exigencies of the common good. A subtle dichotomy exists between those reasons for planning decisions which are objectively reasonable and hence valid to deny permission and those reasons which, as a matter of constitutional law are sufficient to exclude compensation. The Supreme Court examines the scope of the phrase *traffic hazard* as a question of fact and finds that the juxtaposition of that phrase with a description of the location of the proposed development on a road which is substandard in width and alignment is sufficient to trigger Section 56. It is submitted that this factual approach is incorrect. The stated reason may be valid to deny permission but the question of compensation requires the determination of a constitutional issue.

"A subtle dichotomy exists between those reasons for planning decisions which are objectively reasonable and hence valid to deny permission and those reasons which, as a matter of constitutional law are sufficient to exclude compensation."

The key term to be interpreted is *traffic hazard.* This term has a very board literal meaning – every single additional car which is introduced into the traffic stream makes its own tiny contribution to the traffic problem. However this in itself is not sufficient to justify the exclusion of compensation. The meaning can be interpreted in the light of the word *obstruction* which implies a serious and unreasonable disruption to the highway. This sense of unreasonableness is imported into the phase *traffic hazard* by its juxtaposition with *obstruction.* The use of the phrase *endanger public safety* supports the need for a grave and unacceptable risk.

The judicial definition of traffic hazard was hinted at in the High Court in the decision in *Sharpe -v- Dublin County Manager*[9] as requiring the:

> ". . . the creation of a traffic hazard of a character different from the hazard created whenever any new road links up with another one and amounting in fact to a public nuisance".

This decision intimates that the *traffic hazard* must be so serious as to create a situation in the order of a public nuisance. The case of *Hassett -v- O'Loughlin*[10] is illuminating in this context; it was held there that:

> "A nuisance is not confined to an obstruction on the highway; it may consist of anything which makes the use of the highway *unsafe* or *dangerous* to the public"

It is clear that the legal definition of *traffic hazard* is a narrow one. Yet the majority in the Supreme Court applied an over-generous test. Finlay CJ mistakenly equates protection with danger stating that the refusal is intended

> ". . . to *protect* the safety of the public using the road. To put the matter another way, the hazard referred to in the reason can only, having regard to the other factors stated in the reason, be a *hazard* or *danger* to public safety."[11]

With respect, it does not automatically follow that the protection afforded will be commensurate with the potential danger. As stated before, every single additional car which is introduced into the traffic stream creates a risk to road safety – so to prevent this addition, by denying planning permission, does to a certain extent enhance road safety. But the potential danger must cross a certain threshold before the exigencies of the common good can justify the imposing of an uncompensated restriction on a landowner's property rights.

The reasoning behind Egan J's dissent is more attractive, although he too fails to refer to the constitutional issues. He states that the use of the term *traffic hazard* on its own

> ". . . is not synonymous with public safety even with the additional of words "substandard in width and alignment" and reference to "additional turning movements which it would generate".

He emphasizes the absence of the word "speed"[12] because

> " . . . speed is a word which would normally be understood by most people as being associated with public safety"[13]

Egan J's distinction between traffic hazard simpliciter and a traffic hazard amounting to a danger to public safety is to be welcomed. However, the determination of the meaning of the planning decision as a question of fact with the subsequent concentration on public perception of the reason for refusal is unfortunate. The meaning of the words as understood by the public should not go to the legal issue of whether or not the reason for refusal is capable of operating to exclude compensation but rather to the separate question of whether or not this legal effect is adequately communicated to the planning applicant by the planning decision – the result needs to be set out in the

(Cont'd on page 106)

LAWBRIEF

by Dr. Eamonn G. Hall

Barristers: An Endangered Species

Readers must immediately be informed that the phrase "endangered species" did not originate from Lawbrief, the Editorial Board of the *Gazette* or the Council of The Law Society. The phrase appeared in a heading in *The Independent,* (London) on Friday February 26, 1993. UK management consultants, Hodgart Temporal, were quoted as stating that by the end of the decade there may be only enough work to sustain half of the 7,300 barristers now in private practice in the UK.

Legal writer, Neasa MacErlean, wrote in *The Independent* that as in other business sectors, the recession could exert its wasting effect on the Bar. "Nobody knows what is going to happen – certainly not the Government," stated Martin Bowley QC, treasurer of the UK Bar Council. "This affects everything the Bar is doing. It raises the whole question of accommodation . . . and whether the Bar in the future is going to remain as attractive to law graduates."

Some barristers in England considered that the Bar can guarantee its survival only by keeping up with the increasingly popular alternatives to litigation, such as arbitration and alternative dispute resolution. Some sets of barristers have switched from the traditional emphasis on the individual to a team view. Some describe their head of chambers as chairman and have appointed barristers to head their civil and criminal departments.

David Temporal of Hodgart Temporal, Management Consultants, who has advised clients both in industry and the professions, was quoted as saying that the most unusual organisation he had ever seen was the barristers' set or chambers. He considered that some barristers would be hampered as managers by the same qualities that brought them professional success. "Traditional barristers' skills tend to lead to confrontation and position-taking." Mr. Temporal also said, "Barristers can also be emotionally childlike." He maintained they manifest extremes often being egotistic and also highly insecure. "They tend not to trust anybody and to think that others are earning more money." These comments, of course, apply not only to barristers; many members of other professions would fit the same picture.

The word from London is gloomy. The word is that the Bar may have to react dramatically if it is to avoid a thin line between prosperity and extinction.

Lawbrief would add that in Ireland there is little fear of the Irish Bar becoming extinct. Nevertheless, when England sneezes, Ireland catches a cold. It may be a cliché, but change is in the air and it will affect all of us.

Subject to Contract

One of the most important judgments of recent times in relation to the sale of land and the law of contract must be the judgment of the Supreme Court in *Boyle -v- Lee* which has just been reported at [1992] *1 Irish Reports,* 555. The case involved an interpretation of section 2 of the *Statute of Frauds, 1695* which provides, inter alia, that no action shall be brought whereby to charge any person, upon any contract of sale of lands unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised. Effectively, the Supreme Court held that a note or memorandum which contained the expression "subject to contract" was not sufficient for the purpose of section 2 of the *Statute of Frauds, 1695.*

"One of the most important judgments of recent times in relation to the sale of land and the law of contract must be the judgment of the Supreme Court in *Boyle -v- Lee.*"

The Chief Justice, with whom Hederman J and O' Flaherty J agreed in a concurring judgment, and McCarthy J agreed in part, set out the law which was agreed by the majority of the court. The Chief Justice stated that the requirements of justice were that the law applicable to the formation of contracts for the purchase of land should be as certain as it is possible to make it. He noted that in modern times, probably the most important legal transaction a great number of people make in their lifetimes is the purchase or sale of their home. The avoidance of doubt and, accordingly, the avoidance of litigation concerning such a transaction must be a well worthwhile social objective as far as the law is concerned. The Chief Justice continued:

> "[T]he very definite statement that a note or memorandum of a contract made orally is not sufficient to satisfy the Statue of Frauds unless it directly or by very necessary implication recognises, not only the terms to be enforced, but also the existence of a

concluded contract between the parties, and the corresponding principle that no such note or memorandum which contains any term or expression such as "subject to contract" can be sufficient, even if it can be established by oral evidence that such a term or expression did not form part of the originally orally concluded agreement, achieves that certainty."

Earlier decisions of the Supreme Court in *Kelly -v- Park Hall School,* [1979] IR 340 and *Casey -v- Irish Intercontintental Bank* [1979] IR 366 were not followed or their dicta were doubted. A considerable measure of certainty has been restored to this area of the law in so far as the use of the words 'subject to contract' is concerned. However, the difficult question of what the "essential" terms are which must be recited in the note or memorandum still survives.

Publications on Competition Law

Competition is the life-blood of business; it is the oil which facilitates the wheels of enterprise. Competition entails a struggle, rivalry or contention for custom and business. It is one of the catchwords of our time. Competition law is a relatively new but important branch of the law in Ireland.

"Competition is the life-blood of business; it is the oil which facilitates the wheels of enterprise. Competition entails a struggle, rivalry or contention for custom and business."

A publication entitled *Competition Authority: A Guide to Irish Legislation on Competition* has recently been published by the Stationery Office. The purpose of the Guide is to describe competition law in Ireland and the manner in which it is implemented. The rules for competition are described in chapter 2 which cover sections 4 and 5 of the *Competition Act, 1991.* There is a comparison of the similarities and differences between Irish and EC competition law. Mention is also made of the Competition Authority which is an important body involved in the implementation of competition policy. Chapter 3 deals with notification and the procedures of the Competition Authority, and describes how an individual agreement may be notified and how the Authority examines a notified agreement and reaches its decision. Other chapters deal with the abuse of dominant position, mergers and takeovers. This Guide can be recommended to practitioners.

A companion volume, *EC Policy and Competition, a Guide for Irish Business,* (1991), published by the Stationery Office, is also available. The Guide is intended to give a broad conspectus of competition policy in relation to undertakings in the EC. It is intended to serve as a guide for firms and trade associations in assessing their obligations and rights under the Treaty of Rome. Again, this is a booklet which can be recommended.

These publications may be purchased directly from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2. Details are as follows:

Competition Authority: A Guide to Irish Legislation (P1 9199) Price: £4, postage: 72p extra.

EC Policy on Competition: A Guide for Irish Business, 4th Edition, 1991, Stationery Office: (P1 8783) price £2.00, postage: 72p extra. □

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7. Tel:(01) 725622 Fax: (01) 725404

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

Compensation Under the Planning Acts

(Continued from page 104)

statutory formula before it can be assumed, as a question of fact, that it satisfies the requirement of being understood by members of the public.

Conclusion

The Supreme Court in *85 Developments* failed to attempt any working definition of traffic hazard or to determine the general principles to be applied in construing non-compensatable reasons. Indeed the judgment only served to exacerbate the situation by relieving the planning authorities from the strict duty to follow the statutory formula. A court must prescribe the legal definition of a non compensatable reason before attempting to resolve whether a particular reason stated is within that definition. The present formulation of the law muddies the waters by concentrating on the factual interpretation of the planning decision, to the detriment of the fundamental legal and constitutional issues involved. A more incisive approach is called for.

References

Unreported judgment of the Supreme Court; 9 April, 1992; Finlay CJ, Hederman, McCarthy, O'Flaherty, Egan JJ.

1. Local Government (Planning & Development) Acts, 1963-1992.
2. Section 55 of LG (P&D) Act, 1963, since amended by the LG (P&D) Act, 1990.
3. [1987] ILRM 659.
4. [1987] ILRM 659 at 664.
5. Ibid
6. At page 5 of the transcript.
7. Per McCarthy J in *In re Grange Developments* [1987] ILRM 245 at 253 and restated in *85 Developments* itself by Finlay CJ at page 12 of the transcript.
8. *Central Dublin Properties -v- AG* 109 ILTR 69 at 86.
9. Unreported, O'Hanlon J, 8 June, 1988.
10. 78 ILTR 47 at 48.
11. At page 9 of the transcript.
12. Present in the planning authorities decision.
13. At page 6 of the transcript. □

Disciplinary Cases

Re: Liam Lysaght
New Road,
Clondalkin,
Dublin 22.

2SA/1993

Censure and fine – inaccurate and untrue communication to another firm of solicitors

On 8 March, 1993, the acting President of the High Court ordered that Liam Lysaght, solicitor, stand censured regarding his conduct as a solicitor and that he pay a fine to the Law Society in the sum of £500.

The court had before it the report of an enquiry by the Disciplinary Committee of the High Court held on 23 June, 1992. The finding of the committee was that a letter dated 16 September, 1987 from the solicitor's firm to another firm of solicitors was inaccurate and untrue in that it represented that the solicitor had never acted for certain parties when in fact he had. On these facts the committee found the solicitor guilty of professional misconduct.

The Acting President of the High Court found that the Disciplinary Committee was fully justified in its finding. He further stated that a solicitor's duty to his client could not be clearer. He was not entitled to be inaccurate. More importantly, solicitors must tell the truth, not just to clients but to everyone.

Costs were awarded to the Society. □

English Agents: Agency work undertaken for Irish solicitors in both litigation and non-contentious matters – including legal aid. Fearon & Co., Solicitors, 12 The Broadway, Woking, Surrey GU21 5AU.
Tel: 0044-483-726272.
Fax: 0044-483-725807.

Correspondence

Quizzical Time Warp

The Editor,
Gazette,
Blackhall Place,
Dublin 7.

Sir,

How relieved one is to learn that the Society can now provide a time-warp service to members.

If ever a practitioner feels threatened by "effluxion of time" – if the word "lapse" acquires a sinister significance as one timorously thumbs through the Statue of Limitations or the Rules of the Superior Courts in dread of finding that the sands of time have run through one's trembling fingers, how nice to know that the alchemists of Dublin 7 can not only stop the clock – like Brussels signatories – but actually wind it back like the used car people!

For one dreadful moment I thought that I had missed the Annual Quiz night at the Royal Marine on the 31st October, 1992. Picture if you will my sense of relief, nay rapture, to read a little further down on page 75 of the March, 1993 issue that I could yet avoid this disappointment by booking early.

Words like "urgency" and expressions like "time of the essence" can now be stricken from the lexicon!

Yours,

Bill Riordan,
Wilton Park House,
Wilton Place.

Please note that the date on the notice for the Younger Members Annual Quiz Night should have stated 31 March, 1993. Nonetheless, the quiz was a sell-out and raised £2,500 for charity! – Ed.

Solicitors in the DPP's Office

The Editor,
Gazette,

Dear Madam,

I refer to the Viewpoint article in the March edition and in particular to the words "In recent times, the Office of the Director of Public Prosecutions has been opened up to solicitors." In the interest of historical accuracy and from a sense of duty to the first Senior Legal Assistant in that Office, the late *Walter Carroll,* a well regarded and very popular solicitor, I should state that solicitors and barristers have always been equally eligible for appointment as legal assistants in that Office since its inception and have been so appointed in approximately equal proportions.

Yours sincerely,

Michael Liddy,
Senior Legal Assistant,
Office of the Director of Public Prosecutions,
14-16 Merrion Street,
Dublin 2. □

Law Society Gazette Binders
(suitable for 10 issues)

Price: £8.80 each (including VAT) + £1.20 postage & packing.

To order: please write enclosing a cheque payable to the Incorporated Law Society of Ireland to:

Linda Dolan,
Law Society,
Blackhall Place,
Dublin 7.

THE GARDA SÍOCHÁNA GUIDE

Sixth Edition

This new edition of the *Garda Síochána Guide,* running to 1627 pages, updates the previous Fifth Edition published in 1981, and incorporates all the relevant legislation and caselaw of the last ten years.

The Sixth Edition has been compiled by the staff of the Training and Research Branch at the Garda College, Templemore, under the direction of a Garda Editorial Board.

The *Guide* is arranged alphabetically by subject, following the format of the previous editions.

While essential to the everyday work of the members of An Garda Síochána, the *Guide* is an invaluable work of reference for the legal profession, particularly for the District Court practitioner.

Price: IR£70.00 per copy plus IR£3.25 packing and postage.

Published by the Incorporated Law Society of Ireland
April 1991

Available from Blackhall Place, Dublin 7. Tel: 710711.

TECHNOLOGY NOTES

Automation in the Companies Registration Office

by John Furlong, Solicitor

The Companies Registration Office (CRO) in Dublin Castle undertakes a range of statutory functions relating to the registration and recording of company information. These include incorporation of companies, registration of business names, registration of post incorporation documents and the enforcement of statutory filing requirements. In addition the office makes a range of documents and returns available for public inspection. With approximately 130,000 live companies on the register, company registration is a document based activity where quality service is demanded. In 1988 approximately 600 new documents (3,500 pages) were received at the CRO each day. In 1992 the number of documents had risen to 1,000 per day.

The need for access to these documents both by the CRO itself for the processing of further registrations and by members of the public for inspection posed particular difficulties in the location and availability of documentation. Further difficulties arose in storage of the vast amount of files on live and dissolved companies. In 1985 the CRO introduced a hierarchical computer database – PROMIS – with all records grouped by company and accessed by company number. Company data is indexed by a variety of fields such as company name, director, liquidator, receiver, date of incorporation etc. From 1986, a separate record was created within PROMIS for each document received where data fields include a document sequence number, document class, date of receipt etc.

The PROMIS database is accessible by members of the public requesting a company printout through a computer terminal in the public office of the CRO. In addition external users can access the information via an automatic EIRPAC/Telex inquiry service.

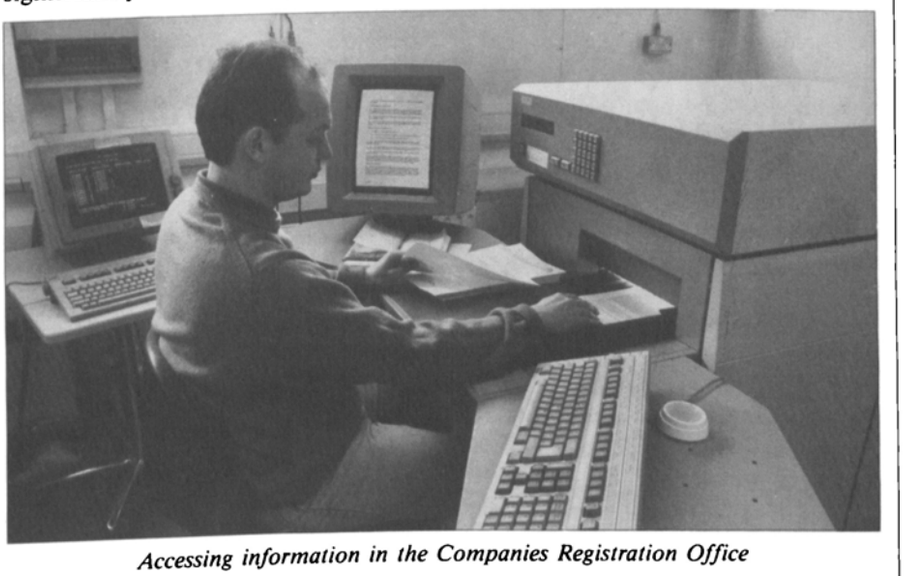
The Introduction of Document Imaging

In the late 1980s, the office recognised specific requirements if it was to meet the increasing demands on its resources. These included:

- immediate access to original format copies of documents filed,
- concurrent multi-user access,
- remote access requirements,
- streamlining of the document processing system.

A pilot study in 1988 concluded that the office was suited to the introduction of imaging technology for its documentation. This technology would allow for the display of the original format of file documentation including graphical detail, signatures, revenue stamp etc.; multi user access and the use of the image itself as the working document within the registration process. Imaging would also significantly reduce storage overheads and solve problems of location and accessibility. The system now in place includes a WANG VS 7310 mini computer and the office has over 30 imaging work stations which can be used for viewing two full page pages side by side and a fax gateway for transmission of images to remote users. All work stations are located within the CRO office and connected to the VS 7310 in a star network. A range of software includes WANG integrated image system (WIIS); WANG OFFICE and the WANG VS PACE system. WIIS performs most of the functions required by an image system include capture, storage, retrieval, administration, control of database, access privileges etc. WANG OFFICE software controls the transmission of images within the network. A modified PROMIS database has been retained. A register of directors as provided for in the Companies Act, 1990 is being built up by adding the names to the PROMIS database. With this it is possible to identify an individual and all the directorships held by that person. At present, the details of directors for approximately 70% of all companies have been added.

There is no intention by the CRO to



Accessing information in the Companies Registration Office

scan in all its archive of paper documents since it is estimated it would require 23 man years and involve storage capacity of about 572 Gb. In the event, the following documents have been scanned and are now held in image format.

- All documents relating to new companies registered since May, 1990.
- All documents received in the CRO since April, 1991.

There are currently over 400,000 documents (over 2 million pages) on the system which represents an archive of 140 Gb. There are 41,000 companies with no paper files at all (i.e. about 30% of all companies on the live register).

By accessing the PROMIS database it is possible to identify a company by its number, its name or by other data fields. Once identified it is possible to display all the data fields relating to that company. Certain documents can then be accessed in imaged format by pressing a function key to retrieve the image from the juke box of optical disks.

Public Access

The CRO provides a range of access facilities for members of the public including:

- *Telex/fax* which allows access to the PROMIS database only and retrieval of a printout of company details including a list of documents held.
- *Terminal fax* where a remote terminal can be logged into the system via a modem and any document retrieved via fax. The fax gateway operates through the WANG office software and can transmit retrieved images to any remote Group 3 fax machine.
- *Tape transfer* of all images where all images loaded onto the system are copied to a tape.
- *Remote image access.* The office recently launched a Windows based PC application with Voyager Image Retrieval software. Images will be requested directly to the remote users PC for display, storage or printing.

By August, 1992 the imaging system had been operational for 27 months. The rate of filing has reached 20,000 documents per month. The rising trend of document submission indicates that the rate is likely to reach 30,000 documents per month by 1997. Images are requested at the rate of 18,000 per month at present and this rate is rising steeply as a greater proportion of the CROs active documentation becomes available in image form. Already approximately 75% of document requests result in image retrieval with a shrinking balance requiring the physical retrieval of the older paper files. It is clear that the CRO is well on its way to the implementation of 21st Century technology in providing a more accessible and speedier service to its demanding public.

Further details on the CRO system may be obtained from *Paul Farrell, Manager, Companies Registration Office, Dublin Castle, Dublin 2.* □

Getting Married?

Why not hold your wedding reception in the elegant surroundings of Blackhall Place?

- **Parties up to 200 catered for.**
- **"Afters" catered for.**
- **Available to solicitors and their sons, daughters, brothers, sisters, nephews and nieces.**
- **Attractive location for photographs.**

Contact:
Peter Redmond (Phone 710711, Ext. 266) for a competitive quote.

International Bar Association – Annual Report 1992

Membership

Membership of the IBA now numbers 142 Bar Associations and Law Societies worldwide and 15,100 individual lawyers from 163 countries. The IBA is more than four times larger than any other international organisation of lawyers.

The IBA's Three Sections

Section on Business Law (SBL)

The membership of the SBL stands at over 11,500 lawyers from 140 countries and it has 28 committees and 71 subcommittees. The majority of committees publish regular newsletters. Many committees also have active links with other international bodies such as the UN and the EC and a number have formed regional groups holding local meetings and preparing analyses and reports on local developments of international interest.

Sectionon General Practice (SGP)

This section largely deals with areas of law and practice in the non-business area and has a membership of 2,800. There are 23 committees which include committees on Human Rights, Professional Ethics, Legal Aid and Legal Education and these are closely involved in the IBA's programme to assist lawyers in the developing world. Most committees publish newsletters.

Section on Energy & Natural Resources Law (SERL)

SERL has six specialised committees and a number of active regional groups, particularly in the UK and Germany. Through its Academic Advisory Group, SERL maintains close link with institutes all over the world. Attendance at SERL's advanced biennial seminars, which have been held every two years since 1975, is considered a 'must' for those working in the energy field.

The three Sections publish regular journals sent free to members and 17 books written by their members were published by the IBA in 1992, available at a discount to all members.

Conferences

There was a record attendance of over 2,800 lawyers from 103 countries including more than 800 speakers and over 950 guests at the Association's 24th Biennial Conference in Cannes in September, 1992.

Palais des Festivals et des Congrès, Cannes – venue of the 24th Biennial Conference

All 57 specialist committees of the Association's three Sections held one or two-day meetings of topical relevance to most areas of legal practice. Numerous social events offered opportunities to create and strengthen friendships and make personal contracts with lawyers from all over the world.

The 1993 Conferences of the Sections on Business Law and General Practice will be held on 10-15 October, 1993 in New Orleans.

SERL held its Tenth Advanced Seminar in April in Washington DC. 235 delegates from 44 countries – the greatest number ever represented at a SERL Seminar – attended.

In addition, 18 other specialist seminars were organised by the Sections worldwide on topics such as Banking, Telecommunications, the Environment and Franchising. 19 are planned for 1993.

Details of 1993 Conferences and Seminars are available from the IBA.

Human Rights

The IBA Action Plan for Human Rights was adopted by the Council in Lisbon in May where President Mario Soares of Portugal gave the Second George Seward Lecture on the theme of human rights. The plan provides for a Trial Observers Corps (observers were sent to trials in Indonesia and Kenya during the year), a register of members willing to go on human rights inspection missions and the appointment of Human Rights Liaison Officers to work with the IBA Human Rights Committee by the 142 Bar Associations and Law Societies belonging to the IBA.

During 1992 protests were made to Heads of State in 23 countries at the murder of, death threats to, or the detention of lawyers. In June the IBA gave £3,000 to six lawyers defending eight Kenyan opposition politicians who face the death penalty. None is able to pay Court fees or any fee to their lawyers. IBA members also made individual contributions.

Work for lawyers in developing countries and new democracies

The IBA's fifth seminar for officials of bar associations in Third World countries was held in Cannes in September immediately prior to the biennial conference. The unanimous reaction of delegates, as they went on from the seminar to the conference, was that many useful contacts had been forged and valuable practical tips learnt to help them make their own associations more efficient and provide better services to their members and the public.

A seminar for officials and members of the three Baltic States - Latvia, Lithuania and Estonia - was held in Riga, Latvia in November. Over 100 lawyers attended.

SERL conducted a series of 'Roadshows' in February and March in, Budapest, Leipzig, Prague and Warsaw.

The IBA's Southern Africa Continuing Legal Education (CLE) Network, set up following the IBA's conference for officials of African bars in Harare in 1991, organised a series of travelling seminars in July in Malawi and Zimbabwe.

56 Bar Associations are now taking part in the IBA's Twinning Programme under which a developed Bar is linked with a developing Bar to give advice, training and assistance.

Section on Business Law Scholarship Programme

Since the Section started this programme in 1988 more than 200 young business lawyers have benefitted from their attendance at IBA and Section conferences. A scholarship covers the cost of return travel, hotel accommodation, a per diem allowance, waiver of registration fee and three years' free membership of the IBA/SBL.

In 1992, 26 young lawyers from Eastern Europe were awarded scholarships to attend the Eastern European Forum's Conference in Budapest in June and 27 young lawyers, mainly from Eastern Europe and the French-speaking African countries, to attend the Cannes Conference.

The SBL has a continuing commitment to this programme for which £60,000 has been budgeted for 1993.

Activities in Eastern Europe

Reduced or waived IBA dues are offered to Bar Associations and lawyers in the region and 10 Bars and 327 individual lawyers now belong.

Activities in the Asia-Pacific Region

A new forum for lawyers practising in, or with interests in, the Asia Pacific region was launched in 1992. The IBA already has over 3,000 members in the region and 1993 activities include a seminar on International Construction Projects in Tokyo in February and a conference in Hangzhou, China from 17-19 November jointly with the All China Lawyers Association.

The forum also plans a newsletter and a directory of members.

Special Interest Groups

The IBA has groups for judges, academics and ombudsmen which meet at the annual conference and publish newsletters.

The SBL has also formed a Capital Markets Forum where both lawyer and non-lawyer experts get together and discuss matters related to the regulation of capital markets. Its European, Japanese and North American Advisory Groups all met during the year to discuss two papers published by the Forum on "What is an Exchange" and "The Efficient Market Hypothesis: An Incomplete Theory". The SBL also continues to play an active role in the International Capital Markets Group, which is a joint venture with the Fédération Internationale des Bourses de Valeurs and the International Federation of Accountants.

The IBA's 1993 programme of activities, conference and seminar programmes, catalogue of publications and membership information are available from:

Lorna Macleod,
International Bar Association,
2 Harewood Place,
Hanover Square,
London W1R 9HB,
England.

Tel: 0044 71 629 1206
Fax: 0044 71 409 0456 □

Annual Conference Booked Out

The Annual Conference of the Law Society, which is taking place from 20 - 23 May, 1993 in the Connemara Coast Hotel in Furbo, Co. Galway is now fully booked out. There are no places remaining for the conference package.

However, any member of the profession who would like to attend the conference seminar or to participate in some of the social events taking place at the conference, may do so as a non resident. To obtain details of the fees payable in this instance, or to make a booking, please contact *Mary Kinsella* at the Law Society, Blackhall Place, Dublin 7. Telephone: 710711. □

GALWAY
Modern bungalow in Ballyconneely to let from May onwards. Adjacent to beach and Connemara Golf Club. All mod cons.
Tel. 979144.

Acquisition of the German Title *"Rechtsanwalt"* by Irish Lawyers

by Alexander Frhr. von Fürstenberg/Dr. Axel Grannemann Lawyers in Freiburg im Breisgau (Federal Republic of Germany)

The completion of the single European market on January 1, 1993, has opened up new vocational prospects to the professions of legal advice, tax advice, and auditing in the Member States of the European Community (EC). The following article describes how to acquire the title "Rechtsanwalt" in the Federal Republic of Germany, and it gives a general account of the professional prospects resulting from the double qualification "Lawyer[1] and Rechtsanwalt."

I. Legal foundations

The first aptitude tests for the licensing of lawyers in Germany took place in 1991 and 1992. The Federal Republic of Germany established the legal foundations by implementing the EC Council Directive on general regulations to acknowledge university degrees concluding an education of at least three years.[2] Lawyers find them in the *Eignungsprüfungsgesetz* (statute of aptitude tests) of July 6, 1990.[3] The aptitude test consists of a written part and an oral part. It has to be taken in German. The written part consists of two test papers written under supervision, at least one of which has to be passed for admission to the oral examination.[4]

II. Aptitude test for lawyers

The aptitude test serves the purpose of judging whether the applicant is qualified to practise the lawyer's profession in the Federal Republic of Germany. Whoever passes the test may apply for admission to practise as a lawyer. He may then use the title "Rechtsanwalt" besides the title "lawyer" in both Germany and Ireland,[5] thus attaining all of the rights and obligations of German lawyers.[6] On the applicant's request, he may be discharged from the obligation to take up residence in Germany and hold a lawyer's office there, thus pursuing his profession under his double qualification in Ireland only.[7]

1. Written Examination

The compulsory subjects are: *Zivilrecht* (civil law) – general part of the *BGB* (German Civil Code), *Schuldrecht* (law of obligations), *Sachenrecht* (law of property) – *Verfahrensrecht* (law of procedure, belonging to the above-stated) and *Berufsrecht der Rechtsanwälte* (law of profession as related to lawyers).[8]

The elective subjects consist of two groups: group 1 includes *Öffentliches Recht* (public law) and *Strafrecht* (criminal law), group 2 includes *Familien- und Erbrecht* (family law and law of succession), *Handelsrecht* (commercial law), *Arbeitsrecht* (labour law), *Öffentliches Recht* and *Strafrecht*.[9] The applicant names one subject out of group 1 and another subject out of group 2. He shall not be allowed to choose the same subject from both groups (such as *Öffentliches Recht*). The applicant decides on one of the two chosen subjects, which will then be the subject of the second test paper.

2. Oral examination, examination results

Having passed at least one of the test papers, the applicant is admitted to the oral examination.[10] At the beginning of this examination the candidate gives a fifteen minute lecture, which is followed by an examining discussion lasting 45 minutes at the longest.[11] Following the oral examination, the board of examiners decides on whether or not the applicant has passed the examination on the basis of the general impression left by the applicant's achievements in both the written and the oral examination.[12]

3. Level of the examination

The EC Council Directive proceeds on the assumption that university degrees in the Member States as well as diplomas from non-member countries acknowledged by the Member States are, in principle, of the same standard. The aptitude test is meant to facilitate the admission in another Member State instead of impeding it. It has to take into account that the applicant is already qualified to practise as a lawyer in his home country.[13]

The board of examiners is made up so as to ensure a clear majority of lawyers among its members.

The subject of the examination must relate to the occupational practice of a lawyer. Drafts of judgments or of bills of indictment may not be demanded. As a rule, a lawyer's pleading in judicial proceedings or an administrative procedure or an expert opinion from the advisory practice or a draft contract tend to be subjects of the examination.[14]

4. Applying for admission to the examination

The application for admission to the examination has to be directed to the examination office for the second legal state examination (*Prüfungsamt, zuständig für die zweite juristische Staatsprüfung*).[15] The *DAV (Deutscher Anwaltsverein)* (German Law Society) will be glad to supply applicants with further information on competent offices in Germany. At present, the dates for the examinations are still at the applicants' disposal. The examination may be repeated.

5. Occupational prospects

To an increasing extent, lawyers and legal experts in enterprises are not only expected to have knowledge of European Community Law but to have a distinct comprehension of the "other" legal systems. Acquiring the double qualification "Lawyer and Rechtsanwalt" can satisfy the increasing demand for comprehensive legal advice and counselling across national borders. At the same time, a lawyer thus specialized gains considerable competitive advantages.

Among the fields of activity that can be opened up by acquiring the double qualification are: management consultancy to German enterprises in Ireland and of Irish enterprises either with residence in Germany or with the intention to gain a foothold there, co-operation with German lawyers, establishing places of business in Germany, employment in internationally-oriented lawyers' offices based in either Germany or Ireland, as well as practising one's profession in industry and commerce, financial corporations, and associations.

6. Preparatory seminar for the aptitude test

Under the auspices of its president, Dr. Günter Schardey, the *Deutscher Anwaltverein* – representing the interests of more than 37,000 lawyers in the Federal Republic of Germany – in collaboration with the *Fachinstitut für Betriebswirtschaft und Steuerrecht* (Institute for Business Economics and Tax Law), will give a preparatory course for the aptitude test. It will take place in the summer of 1993, covering a period of five weeks.

Information

Detailed information and a prospectus on the seminar can be obtained either from the *Deutscher Anwaltverein* (Adenaueralle 106, D-5300 Bonn 1, Fax: 00-49-228-260746) or from the *Fachinstitut für Betriebswirtschaft und Steuerrecht,* which is run by the authors of this article, Marienstraße 8, D-7800 Freiburg, telephone: 00-49-761-39090 and 39036, Fax: 30625).

References

1. The German system does not distinguish between "barrister" and "solicitor".
2. EC Council Directive 89/48 from Dec. 21, 1988 (Directive), *Amtsblatt der Europäischen Gemeinschaften* Nr. L 19, 0. 16.
3. *Bundesgesetzblatt* (Federal Law Gazette) BGBI I, 1349, cf. also regulations on the aptitude test (Verordnung über die Eignungsprüfung für die Zulassung zur Rechtsanwaltschaft) of Dec. 18, 1990. BGBI I, p. 2881.
4. Cf. § 6 *Eignungsprüfungsgesetz (EignungspG).*
5. Cf. Art. 7, para. 1 and para. 2 of the Directive.
6. Cf. Feuerich, *Neue Juristische Wochenzeitschrift (NJW)* 1991, P. 1144.
7. Cf. § 29 a of *Bundesrechtsanwaltsordnung (BRAO).*
8. Cf. § 5 EignungspG. and § 6 of the Verordnung über die Eignungsprüfung (regulations on the aptitude test).
9. Ibid.
10. Cf. § 6 *EignungspG.*
11. Cf. §§ 6 para. 4 *EignungspG,* 7 para. 2 of the *Verordnung des Bundesministers der Justiz* of Dec. 18, 1990 on the aptitude test for *Zulassung zur Rechtsanwaltschaft* (admission to practice as a lawyer) *VO.*
12. Cf. § 11 para. 1 of *VO.*
13. Cf. § 2 s.2 *EignungspG.*
14. Cf. *amtliche Begründung* (official statement of reasons) *der VO zu § 7, Bundesrat Brucksache (BRDrucks.)* 712/90, p. 18.
15. Cf. §§ 3 EignungspG, 3 para. 1 of the VO.

DE
Irish Document Exchange
37 Fenian Street, Dublin 2.
Phone: 01-764601.
Fax: 01-767093. DX 1 DUBLIN.
OVERNIGHT, EVERY NIGHT, EVERYWHERE
Now a network of 36 interlinked exchanges throughout the country.

Doyle Court Reporters
Principal: Áine O'Farrell
Court and Conference Verbatim Reporting Specialists in Overnight Transcription
Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready
Consultation Room Available
2, Arran Quay, Dublin 7. Tel: 722833 or 2862097 (After Hours) Fax: 724486
Excellence in Reporting since 1954

Land Registry – issue of New Land Certificate

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 in substitution for the original 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: 19 April, 1993

Lost Land Certificates

Leo John Vaughan, 56 Carrickhill Estate, Portmarnock, Co. Dublin. Folio: 17871L; Townland: Carrickhill, Barony: Coolock. **Co. Dublin.**

Garrett Joseph Cotter, Folio: 11305L; Land: Ballyvoddy, Kildorrery, **Co. Cork.**

Sek Kiu Hung, Folio: 3032F; Land: Rearour and Barrettshill; Area: 0(a) 1(r) 15(p). **Co. Cork.**

Thompson Bacon French Thompson, Robert James Gillanders, Kenneth Henderson Cheevers, John Brown, Edward Fullerton McBriar, Ronald McIntyre, Andrew Bell McGowan, Michael Ryan. Folio: 8101; Land: Carrownamaddy; Area: 67(a) 2(r) 35(p). **Co. Donegal.**

Susan Doherty, Folio: 23625; Land: 1. Binnion, 2. Binnion; Area: 1. 7(a) 2(r) 0(p), 2. 100(a) 0(r) 24(p). **Co. Donegal.**

Gaeltarra Eireann, Na Forbacha, Gaillimh, Folio: 53801; Townland: Knock South; Area: 1(a) 2(r) 0(p). **Co. Galway.**

James Kearney, Folio: 9649; Land: Lisnagrish; Area: 0(a) 1(r) 13(p). **Co. Longford.**

Patrick Hoare, Folio: 1033F; Land: Newcastle; Area: 20(a) 1(r) 6(p). **Co. Limerick.**

Johanna Greensmith, Boherlode, Ballyneety, Co. Limerick. Folio: 17039F; Land: Boherlode. **Co. Limerick.**

Edward Dore, Aughrim, Arklow, Co. Wicklow. Folio: 1059; Townland: Boleynagoorgh South; Area: 4.060 hectares. **Co. Clare.**

Eamonn Donnelly, Folio: 13863; Land: Monage; Area: 0.430 hectares. **Co. Monaghan.**

Anna Conlon, Folio: 12823; Land: Killynebber; Area: 9(a) 2(r) 10(p). **Co. Cavan.**

Martin Costello, Barnacurragh, Tuam, Co. Galway. Folio: 14675; Townland: Barnacurragh; Area: 53(a) 3(r) 0(p). **Co. Galway.**

Michael Conlon, Sheeaun, Westport, Co. Mayo. Folio: 6539F; Townland: 1. Sheean, 2. Sheean; Area: 1. 0.937 acres, 2. 0.013 acres. **Co. Mayo.** Solr. Ref: JH/LC/C198.

Annie Johnston, Folio: 8883; Land: Rathcor; Area: 6(a) 1(r) 20(p). **Co. Louth.**

Edward Shine (Peter), Cappaghmore, Clonown, Athlone, Folio: 2754F; Townland: 1. Cloonown, 2. Cloonown, 3. Cloonown. Area: 1. 6.563 acres, 2. 12.106 acres, 3. 4.500 acres. **Co. Roscommon.**

Owen McAloon, Folio: 725F; Land: 1. Kilmore East, 2. Mullatishaughlin, 3. Annahagh, 4. Mullatishaughlin. Area: 1. 16(a) 1(r) 35(p), 2. 8(a) 3(r) 10(p), 3. 0(a) 1(r) 30(p), 4. 6.812 acres. **Co. Monaghan.**

Catherine Scanlon and **Ellen Scanlon,** Folio: 830; Land: Part of the lands of Kilmeany; Area: 57 acres. **Co. Kerry.**

Julia (otherwise Sheila) Mooney, Folio: 6828; Land: Kinsellastown, **Co. Wicklow.**

Denis Power (deceased) Folio: (1) 9014 (2) 9083; Land: Moanmore Commons; Area: (1) 58(a) 3(r) 22(p), (2) 35(a) 2(r) 22(p), **Co. Kilkenny.**

James Murphy and **Ruth Little,** Folio: 12809F; Land: Dillonsland, **Co. Meath.**

Eoin Sugrue & June Leahy, Colombo, Rossmanaghan, Sixmilebridge, Co. Clare. Folio: 5565F; Land: Lakyle. **Co. Clare.**

Lost Wills

Smyth, Owen, late of Anny, Aughnamullen, Castleblayney, Co. Monaghan, died 19 June, 1992. Would any person having knowledge of the whereabouts of any will of the above named deceased, please contact A.B. O'Reilly, Dolan & Co., Solicitors, Market Street, Cootehill, Co. Cavan. Tel: (049) 52110/52689, Fax: (049) 52742.

Johnston, Mary, deceased, late of 46 Hibernian Buildings, Albert Road, Cork and formerly of 5, Florence Street, South Circular Road, Dublin. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 27 December, 1992, please contact Messrs. J W O'Donovan & Co., Solicitors, 53 South Mall, Cork. Telephone: 021-275352.

Carolan, Elizabeth, deceased, late of Peppard's Hill, Kingscourt, Co. Cavan. Will any person who holds the original last will of the above deceased dated 14 July, 1978 or copy thereof, please contact the undersigned solicitors for the executor. Carolan Sheridan & Co., Solicitors, Kingscourt, Co. Cavan.

SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

IRISH LAWYERS FISHING CLUB

Annual Fishing Trip to Lough Conn

Fishing, Friday 11 and Saturday 12 June.

Enquiries to:-
Michael O'Byrne,
Keaveny Walsh & Co.,
Kells, County Meath.

Telephone 046-40004.

PLACES MUST BE BOOKED BEFORE 30 APRIL, 1993.

GERMAN-IRISH LAWYERS ASSOCIATION AND ELSA IRELAND

European Law Students' Association

FORTHCOMING JOINT CONFERENCE

"So you want to be a Euro-Lawyer? Practical aspects of requalification in other EC Member States."

On Monday, 26 April, 1993 at 4.00 pm

in the European Commission Offices, Molesworth Street.

Followed by wine reception.

Further queries, please contact Patricia Gannon at 780699 for details.

elsa Ireland

MKM

MacGreevy Keane Mediation

Contract Dispute Resolution

- MKM offers a voluntary, informal, efficient and economical mediation service for the resolution of commercial disputes.
- The MKM system means that unnecessary adversarial arguments are avoided.
- MKM helps both parties to focus on the problem and to look properly at both sides of the case.
- The mediator seeks the middle ground and then facilitates a settlement which is acceptable to both parties.

MKM

MacGreevy Keane Mediation
Contract Dispute Resolution
Kingram House, Kingram Place, Dublin 2.
Telephone: 01-766811/766815.
Fax: 01-766853

Ellis, Noreen, deceased, late of 34 Liam Lynch Park, Glasheen Road, Cork. Date of death: 8 February, 1991. Would any person having knowledge of the whereabouts of the will of the above named deceased, please contact Messrs. Eamon Murray & Co., Solicitors, 6 Sheares Street, Cork. Tel: 021-276163.

Turley, James, deceased, late of 9 Mount Pleasant Parade, Rathmines, Dublin 6. Date of death: 20 December, 1992. Will any person having knowledge of the whereabouts of the will of the above named deceased, please contact Messrs. Timothy J.C. O'Keeffe & Co., Solicitors, Abbey Stret, Roscommon, telephone (0903) 26239.

Hurley, Breda, late of 60 Friars Road, Turners Cross, Cork. Would any person having knowledge of the whereabouts of the will of the above named deceased, who died on 22 December, 1992, please contact Patrick Hurley & Co., Solicitors, 15a Adelaide Street, Cork. Ref: PH/JMG, Telephone: 021-276225.

Jacob, Mary T., deceased, late of Kilcoursey, Clara, Co. Offaly. Would any person having knowledge of the whereabouts of the will of the above named deceased, please contact Donal O'Kelly & Co., Solicitors, 23 Dartmouth Square, Dublin 6. DDE 194.

Nicholson, Ann, late of 52 Emmet Road, Inchicore, Dublin 8. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 16 September, 1992, please contact Bourke & Co., Solicitors, 169 Drimnagh Road, Walkinstown, Dublin 12, (reference: COR). Telephone: 01-561163.

Joseph, Ellen, deceased, late of Factory Street, Mountrath, Co. Laois, (widow). Will any person having knowledge of the whereabouts of a will of the above named deceased who died on 5 November, 1992, please contact Tom O'Grady, BCL, Solicitor, Ballyfin Road, Mountrath, Co. Laois. Telephone: 0502-32214.

Employment

Solicitor (Michaelmas 1978) will be available end July/August preferably for part-time or locum work. Wide experience in litigation, conveyancing, local government law and general practice. Box No. 30.

Experienced Solicitor 15 years conveyancing, probate, taxation and general experience seeks full-time/part-time work in South East. Available immediately. Box No. 31.

Solicitor with 15 years general experience, mainly conveyancing, probate and related areas, seeks new position. Cork City or County preferred. Please reply to Box No. 32.

Sole Practitioner Dublin city wishes to join established progressive firm as junior partner/assistant solicitor. Own established client base with substantial work in progress. Replies in strict confidence to Box No. 33.

Capable and Enthusiastic solicitor (3 years post qualification experience) seeks part-time position in Dublin office. Conveyancing, litigation, family law and probate experience. Reply to tel no: 01-540716.

Early Retired Legal Executive, 30 years experience of trust and probate work, seeks employment on a full-time, part-time or consultancy basis. Please phone: 01-2831948.

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 *Ms. Erin Barry,* at the Law Society, 710711, Ext. 227.

Graduate, seeks apprenticeship. Has 2.1 BA (Hons) degree and has passed Law Society Entrance Examination 1992. Ph: 971482.

Miscellaneous

Northern Ireland Agents: For all contentious and non contentious matters. Consultation in Dublin, if required. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, telephone (080693) 61616, Fax (080693) 67712.

European Law Firm (ELF) is a Europe wide Lawyers network registered as an EEIG in Eindhoven, The Netherlands. The group also has associate members in non EC States. ELF seeks a member in the Republic of Ireland. The ideal candidate would be a medium sized firm with a strong commercial base. Would any practice interested, please contact Lawrence Tucketts, Shannon Court, Corn Street, Bristol, England BS99 7JZ for the attention of Judith Brown, telephone 0044272 294861 or fax 0044272 298313.

Dublin Solicitors Practice for Sale Established in 1987. Current work valued £70K. Asking price £35K. All enquiries in strict confidence to Sean Cleary & Co., Auditors and Accountants, 52 Pinevalley Avenue, Rathfarnham, Dublin 14. Tel: (01) 945581 or Fax (01) 943121.

Needed Irish Statutes for the years 1925, 1936, 1953, 1957, 1964, 1971, 1973 and 1977 – 1991 inclusive. **For Sale** Irish Statutes 1944-1949 inclusive. Box No. 34.

Modern Attractive ground floor office circa. 600 sq. ft. with computer flooring to let on short term lease in Dublin 2 close to St. Stephen's Green. Telephone: 754866. Reference PD.

Solicitors Practice required. Owner contemplating retirement may suit. Confidentiality assured. Box No. 23.

Law Directory, 1993

Members of the profession are asked to note the following entry to the International Section of the Directory which was received too late for inclusion in the 1993 edition.

SIORIS and MOLUMBY, Attorneys at Law, 25 West 43rd Street, Suite 1517, New York 10036-7406. Telephone 001-212-840-2644. Partners: Ronan J. Molumby BCL, Irish Solicitor and New York Attorney-at-Law, Gregory A. Sioris, Attorney-at-Law. Probate and International Estates, Personal Injury litigation, Commercial and corporate practice. References: Irish Consulate General, 515 Madison Avenue, NYC; Irish Export Board (CTT), 880 Third Avenue, NYC; Irish Chamber of Commerce USA, 551 Madison Avenue, NYC; Bar Association of the City of New York, 23 West 43rd Street, NYC; Solicitors all over Ireland; specializing in Wills and Estates, Personal Injuries, and Commercial Practice. Dublin affiliate is Gerrard A. Walshe, Harte & Co., 10 Pembroke Road, Ballsbridge, Dublin 4. Telephone 01-600922. □

In Ireland **COT DEATH** is the largest killer of children under the age of two. The Irish Sudden Infant Death Association supports bereaved families and funds cot death research. If your client wishes to make a will in favour of Cot Death Research further information is available from

ISIDA
Carmichael House,
4 North Brunswick Street, Dublin 7.
Telephone: 747007 / 732711

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819

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

Vacancies for Examiners – Law School

Final Examination – First Part

Internal Examiners for
1. European Community Law.
2. Equity.

From 1994, the Final Examination – First Part, (the entrance examination for non-law degree holders) will consist of two additional subjects, EC Law and Equity. The Law School invites solicitors having experience in either of these subjects to apply for the posts of Internal Examiner in each subject.

Applications, with CV to be received by Professor *Richard Woulfe,* Director of Education, not later than 7 May, 1993.

Mayo Bar Association Annual Dinner

At the annual dinner of the Mayo Solicitors Bar Association held in the Downhill Hotel, Ballina, last December, were back row (l-r) Robert Potter-Cogan, Peter Loftus, Maureen Leonard, Ian Dodd, Sean Campion. Front row (l-r) Jill Potter-Cogan, Joan Loftus and Pauline Campion.

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

Law Clerk seeks position in Dublin or any part of Ireland.
Contact Geraldine Bury, 679550.

Law Society – new phone/fax numbers

Please note that from Saturday, 24 April, 1993 the telephone number of the Society will change to (01) 6710711 and the fax number will be (01) 6710714.

ITALAX

Ring For Your Free Fact Sheet

Legal Accounts Software & Full Client Database at an unbelievable £1,500 (+VAT)

Orchard Centres *Nationwide*

Dublin:-
Orchard Software Ltd
01- 2807588

Midlands:-
Aptech Ltd 042- 31742

South:-
P.F.H. Computer Systems
(021) 271152

North:-
Canavan Computer
Systems 0504 -26-7776

Orchard Software Ltd.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 4 MAY, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

A UNITED PROFESSION

IS THE PROFESSION *REALLY* UNDER SIEGE?

THE FUTURE OF THE SOLE PRACTITIONER

WARDS OF COURT – PROCEDURES

ITALAX

Ring For Your Free Fact Sheet

Legal Accounts Software & Full Client Database at an unbelievable £1,500 (+VAT)

Orchard Software Ltd.

Orchard Centre
Nationwide

Dublin:-
Orchard Software Ltd
01- 2807588

Midlands:-
Aptech Ltd 042- 3174

South:-
P.F.H. Computer Systen
(021) 271152

North:-
Canavan Computer
Systems 0504 -26-777

VOL. 87 NO. 4 MAY 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 125
The little -v- large issue like most issues, has some right on both sides. Internal dissension will only play into the hands of those who would wish to see a less independent profession.

News 126
At its April meeting, the Council of the Law Society considered the Society's policy concerning sole practitioners, financial pressure in the profession, progress on the Solicitors (Amendment) Bill, and decided to hold a General Meeting on the Finance Act.

The Future of the Sole Practitioner 127
At a recent DSBA meeting, many speakers were critical of the Law Society, claiming that it should adopt a stronger trade union role and engage in more positive public relations.

Is The Profession *Really* Under Siege? 131
Law Society Director General, *Noel Ryan*, asks whether a defensive attitude on the part of some practitioners might lead to a siege mentality developing within the profession.

Compensation Fund – Payments Approved 134
Details of payments out of the Compensation Fund, approved by the Council of the Law Society in February, March and April, 1993.

The Numbers Game 135
Education Committee Chairman, *Pat O'Connor,* gives his personal views on a wide range of issues affecting education policy.

Book Reviews 138
Annual Review of Irish Law, 1991; the Law of Information Technology in Europe, 1992.

People and Places 140

Wards of Courts – a General Guideline to the Procedures Involved 143
John Costello, Solicitor, explains the legislation and procedures involved in wardship proceedings.

Lawbrief 147
Why smart people do dumb things; Criminal Justice Act, 1993: Freedom of expression: US Court rules that a parade is a form of speech.

Advising Clients on Russian and East European Business Ventures 149
The former Eastern Bloc does not have a strong private legal consultancy tradition writes *Julie Sadlier,* who offers advice for clients engaged in Russian and East European Business Ventures.

Managing Your Practice 153
Only an estimated 10% of negligence claims against solicitors arise from lack of knowledge of the law, writes *Justin McKenna,* introducing a new series of articles on good practice management.

Professional Information 157
Notices concerning lost land certificates, lost wills, employment and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7. Telephone 710711 Telex: 31219 Fax: 710704.

Front Cover: The front cover shows: l-r: *Noel C. Ryan,* Director General, Law Society; *Anthony F. Sheil,* President, Dublin Solicitors Bar Association; and *Michael V. O'Mahony,* Senior Vice President, Law Society, before the meeting of the Dublin Solicitors Bar Association held on 28 April.

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.

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

There Is An Alternative.

Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now,

Siobhán Walsh
CONCERN
1 Upper Camden Street Dublin 2. Tel. 681237

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

VIEWPOINT

A United Profession

The recent controversy, springing from reported comments in the media by members of leading firms about the role of the single or small practitioner, has highlighted the enormous changes which have taken place in the structure of the solicitors profession within the last 25 years. In the late 1960s there was no firm in the country that had more than ten partners and probably no more than an equal number of assistants and law clerks. Now there are firms in Dublin with more than 30 partners and, when associates and assistants are taken into account, some may well have upwards of 100 professional staff.

Meanwhile, there are still very significant numbers of single practitioner firms also practising in the Dublin area as well as around the country. Indeed, their numbers have increased in recent years due to the recession. 57% of the profession now comprises sole practitioners, 80% of members of the profession practise in firms with two or less solicitors.

The increase in the size of larger practices has been as a result of the demand for an increasingly wide range of legal services, particularly by major trading corporations and financial institutions. In addition, the scale of commercial litigation has increased out of all recognition and can only be carried on by firms which have extensive resources and facilities available to them. The phenomenon of a relatively small number of large firms in the solicitors profession has perhaps come late to this jurisdiction. The situation has existed in other larger common law jurisdictions for many years.

The little -v- large issue, like most issues, has some right on both sides. The vast majority of solicitors, whether they practise in small or large units, are completely honest and provide their clients with an efficient legal service. Nonetheless, it is a regrettable, though undeniable, fact that most of the claims upon the Society's Compensation Fund in recent years have been in respect of smaller firms. In other jurisdictions, notably England and Wales and Australia, large firms have been responsible for substantial losses on client protection funds. Our larger firms may consider themselves fortunate that, up to now, their clients have not had to have recourse to the Law Society's Compensation Fund. The vast sums of monies involved in the type of transactions in which some of these firms are engaged creates an opportunity for a single major act of dishonesty such as is alleged to have taken place in a major Australian law firm recently. The concept of levying greater contributions to the Compensation Fund on small firms is manifestly not the answer to recent difficulties. The Society's request that Compensation Fund protection should be available only to pure "clients" and that there should be a reasonable "cap" on the level of individual claims would go a long way to defusing this issue.

Solicitors practising in smaller firms should recognise that there is a demand for a certain kind of legal service which can only be met by a larger practice unit. Such a demand does exist and, if it is not met by firms of solicitors, it will go elsewhere. The recent apparent takeover of the significant Paris firm of S.G. Archibald by the accountancy firm of Arthur Andersen provides a warning that should not be ignored. Equally, only small firms can realistically provide a service in many areas of the law, principally domestic conveyancing and personal litigation, which the large firm cannot provide at reasonable cost to the client. The community, be they major corporations or private individuals, are entitled to a service from our profession. Each segment of the profession should recognise that other elements in it have an essential role to play in providing such services. Internal dissension will only play into the hands of those who would wish to see a less independent profession.

One misconception which has arisen in the debate is that the Council of the Law Society is dominated by the large Dublin firms. However, examination of the current membership of the Council reveals that only, at most, eight of the thirty nine members of the Council represent larger firms. Small firms, both rural and urban, are well represented on the Council which of course, has a duty to strive to have equal regard for the interests of all the profession which elects it. We believe that, overall, the Council in fact does so.

A critical and constructive debate within the profession on an issue of importance, represents a healthy reminder to the Council of its democratic genesis and purpose. □

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7. Tel:(01) 8725622 Fax: (01) 8725404

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

Council Decides to hold General Meeting on Finance Act

At its meeting on Friday, 16 April, the Council of the Law Society decided to hold a Special General Meeting of members of the profession on Thursday, 17 June, 1993 to consider the progress that had been made in overcoming the difficulties posed by the provisions of Part VII of the Finance Act, 1992 in relation to confidentiality and the administrative burden that the provisions would impose upon solicitors. The Chairman of the Taxation Committee reported to the Council that an assurance had been obtained from the Revenue Commissioners on the issue of confidentiality and in no instance would a solicitor have to name a client on whose behalf a payment had been made. There had also been considerable progress on resolving some of the other difficulties arising from the legislation.

Council members were unanimous in their congratulations to the Taxation Committee on the progress that had been achieved through negotiations with the Commissioners. The Council decided that, in the light of the motion passed at the Special General Meeting held in July, 1992, members of the profession must be given an opportunity to consider the matter. It was decided, therefore, that while the issue would be discussed at the Half Yearly Meeting at the Annual Conference in Connemara, a Special General Meeting should be held in June at which a specific motion would be put to the members of the profession.

Society Policy – Sole Practitioners

The Council discussed the widespread reaction in the profession the article in the Sunday Business Post which was critical of single practitioners and small firms. The Council agreed that the reaction had exposed a deeper issue, namely, that there was a perception by sole practitioners and smaller firms that the Society was not fully taking their views and interests into account. While this was emphatically not the case, nonetheless the perception needed to be dealt with and it was recognised that there was a need to communicate better to the profession the activities undertaken by the Council and the Society on behalf of all members of the profession. For example, the efforts and intensive lobbying that had been undertaken to try to ensure that Section 29 (2) of the Solicitors' Bill (which would permit the Society to specify different rates of contribution to the Compensation Fund) was removed from the legislation had not be sufficiently emphasised to the profession at large and particularly to sole practitioners and small firms. It was suggested that there was a need to strengthen contact with small firms and sole practitioners.

Financial Pressure in the Profession

The Chairman of the Remuneration and Costs Committee gave the Council a preliminary overview of the results of the survey that had been sent to every practice on remuneration and costs. He said there had been a very high rate of response to the survey. 64% of replies had been received from sole practitioners. Many respondents had indicated that areas of practice such as family law, landlord and tenant, social welfare and employment law were quite unprofitable forms of work. A majority of respondents also felt that conveyancing was unprofitable and that undercutting was becoming a problem. It appeared that many practices relied on litigation and probate to sustain viability. The survey indicated that as many as 20% of respondents did not have a clear picture of how much it cost to run their offices and had not calculated what the profit element of their turnover was. The Council decided that the information provided by the survey was a further indication that the issue of remuneration in the profession would have to be addressed. It was proposed that a high-level sub-committee would sit to consider the issue further, comprising the Chairman of the Education, Compensation Fund, Registrar's and Remuneration/Costs Committees respectively.

It was also suggested that the Society should try to assess the number of solicitors required to meet the demand for legal services in this country and that perhaps this work would need to be done by an independent expert.

Solicitors (Amendment) Bill

The Council was informed that the 1991 Solicitors (Amendment) Bill had been withdrawn and would be replaced by a new Bill. The Society had been successful in having over 100 amendments accepted by the Department of Justice. Negotiations were continuing on some crucial issues including a cap on the Compenation Fund and the Society felt hopeful of making progress on this issue. It was hoped to have a meeting with the Minister for Justice in the very near future. It was unlikely that in the event of a new Bill being introduced, it would be circulated in the Dail before the Autumn session.

Education Review

The Chairman of Education Committee reported that the Education Review Group had prepared its report. A special meeting of the Education Committee had been held and it had made recommendations on foot of the report and both were now being put before the President of the Society for consideration. □

The Future of the Sole Practitioner

DSBA Meeting Critical of Law Society

Angry criticism was vented at the Law Society at a recent DSBA meeting, when speakers from the floor claimed that the Society should adopt a stronger trade union role and that it was not providing enough support to, or looking after the interest of, sole practitioners who were the majority of the profession. The meeting was also higly critical of the Society's PR policies and speakers claimed that not enough was being done to counteract a poor public image of the profession and to defend the profession from unjustified criticism by the media and politicians.

The meeting, attended by approximately 250 solicitors, including guests from Bar Associations around the country, met to consider the future of the sole practitioner. The meeting heard the views of a panel of speakers on the issue. Introducing the panel, DSBA President, *Tony Sheil,* said there was a perception amongst sole practitioners and small firms that their days were numbered, and that a sole practitioner in difficulty had nowhere to turn since the role of the Law Society was increasingly becoming a policing one.

Michael O'Mahony, Senior Vice President of the Society, stated that of course there was most certainly a future for the sole practitioner who comprised 57% of the profession. There had been considerable and justifiable concern about the impression conveyed by a recent article in the Sunday Business Post that something awful could happen to a client who went to a sole practitioner. Ninety-nine percent of the solicitors profession was honest, and to argue that, because a large proportion of the 1% who were not were sole practitioners, merited their being singled out in some way, was a false syllogism. While there had been a great deal of emotion

A cross section of the attendance at the DSBA Meeting

and ire generated by the newspaper article, the underlying issue had to do with Secion 29 (2) of the Solicitors Bill. This was an enabling power which would have permitted the Society to prescribe different rates of contribution to the Compensation Fund. The position of the Law Society on this provision had been unequivocal; in January, 1992, the Council of the Society had decided to oppose it and the Society had asked the Government to remove it. *Michael O'Mahony* said, in his view, it was not worth risking the unity of the profession over any provision in the Bill.

Training for Sole Practitioners

Council Member and immediate Past President of the DSBA, *David Walley,* suggested that the time had come to debate issues such as the introduction of compulsory training courses for sole practitioners in the commercial principles of running a practice and that practising certificates might be withheld from a practitioner if the training were not completed. In addition, bookkeepers in legal practices might be required to pursue a diploma course and only persons so qualified could act as bookkeeper to a sole-practitioner.

"Solicitors who are in difficulty are usually not operating on a commercially viable basis", said David Walley, "and if so, should they be allowed to be custodians of the public's money, and should they be able to benefit from the indemnity provided by their colleagues?" he asked.

The Chairman of the Society's Compensation Fund Review Committee, *Laurence Shields,* said his committee was making substantial progress on examining the future policy of the Fund in all its aspects and they were hopeful that it would be possible to obtain a cap on any claim that could be made on the Fund.

Society Out of Touch

Council Member, *Barry St. J. Galvin,* expressed concern that the Law Society had lost touch with the profession. "We are an honourable profession," he declared "we are independent, we stand for our clients without fear or favour. These are

core principles and core values and we should not cow-tow to public perception."

Barry Galvin said that he was appalled that some members of the profession felt that they could not approach the Law Society when they were in difficulty. "To my certain knowledge that perception is wrong," he stated, "help is available and many in the past who were in difficulty have been helped and have gone on to become good solicitors."

Michael Staines, Law Society Council Member, said the profession was an honourable one and that its members should not be fighting amongst themselves. "As a profession, big and small firms, Cork or Dublin, we should fight for what is ours, fight to maintain our work and then do that work as well as possible." He said it amazed him that, despite overcrowding in the profession, solicitors continued to give away work to accountants, tax consultants and to brief barristers on District Court work.

The final panellist, *Hugh O'Neill,* of the DSBA, proposed the establishment of an agency independent of the Law Society. Its functions would be to provide a confidential advisory service to practitioners. It should also provide a 'matchmaking' service to link compatible practices which wanted to merge or to share facilities and it could provide a locum service for sickness and holidays.

Concern about PR

Speakers from the floor expressed the view that the Council of the Society was losing touch with the profession. One speaker said the question was not whether the sole practitioner had a future but rather, did the Society have a future without the sole practitioner?

Why should sole practitioners marginalise themselves, asked another speaker. Unlike the UK, where only a small segment of the profession comprised sole practitioners, 57% of the members of the profession in Ireland were sole practitioners, and, therefore, it was the large firms which should form a separate association.

A number of contributors made the point that sole practitioners were trying to provide low cost, accessible, quality legal advice. One area that required positive action was the whole matter of public relations.

There was also a need for much more information about the work of the Council and the Society in the form of regular bulletins about the activities going on in the Law Society.

Another speaker urged the Society to engage in more positive public relations such as the 'Make A Will Week'. The Society should emphasise the appalling, archiac courts system that solicitors have to work in, and the Society should be in the vanguard of seeking law reform and of explaining the implications of new legislation to the public.

The view of another contributor was that the Society was not getting its PR right. Instead of negative or defensive PR, it should engage in positive public relations. The Society was also not doing enough to increase the amount of work available to solicitors. For example, he had heard very little demand from the Law Society for the introduction of widespread civil legal aid.

The Director General of the Law Society, *Noel Ryan,* said he felt that there was a great deal of misunderstanding of the Society's PR policy. Merely standing up and shouting loud and long was not the way of getting one's point across. The Society, and solicitors themselves, were in a position of trust vis-a-vis the public and it was important to show that such trust was regarded as sacred. The Society was making a conscious effort to be more transparent in its dealings with the public and the press. *(See also page 131.)*

Other speakers drew attention to the amount of time which Council Members devote to working for the interests of the profession through their involvement in the Society and to the need for the involvement of both large firms and smaller firms.

One speaker was critical of the banks who advanced substantial sums to sole practitioners to enable them to start up in practice but then exerted pressure when income dropped during time of recession.

Presidents and Secretaries of the Bar Associations should work out a co-ordinated plan of action with the Law Society in order to lobby TDs on the problems causing concern to the profession, suggested another practitioner. He also contrasted the proposed restriction in the Solicitors Bill on solicitors setting up on their own for three years after admission with the provision in the same legislation which would give unqualified people power to do probate and conveyancing.

Concern was also expressed about the lengthy waiting list for the Society's Advisory Service and there was support for the idea of a training course for prospective sole practitioners.

No Hidden Agenda - President

The President of the Society, *Raymond Monahan,* assured the meeting that the Society was not trying to undermine sole practitioners; there was no "hidden agenda". He said that he and the Council were resolutely tackling the problems facing the profession, particularly through two special committees he had set up on the Compensation Fund and Education Policy respectively.

Overcrowding was the main problem facing the profession and it was one that would have to be dealt with, he stated, but the Society was totally circumscribed by legislation. The Society was seeking change via the Solicitors Bill, while at the same time opposing sections in the Bill that would be detrimental for the profession. Raymond Monahan said

that the Society was active now in a way that it had never been in the past on the PR front. Statements were regularly issued to the media and relations with the press had improved considerably. Public Relations was extremely important, he said, but much of the improvement required was in the hands of practitioners themselves. The Society received quite a large number of complaints every year and most of them related to matters such as delay and poor communication; matters which could easily be remedied.

For its part, the Society was pursuing the interests of the profession. He would be making it quite clear to the profession that the Society was seeking the deletion of Section 29 (2) of the Solicitors (Amendment) Bill. A wide range of issues were being worked on such as a campaign about inadequate facilities in the courts, work on the introduction of a comprehensive scheme of civil legal aid, the appointment of solicitors as judges in the Superior Courts and resistance to the new probate tax announced in the budget, just to cite some examples.

Motions Passed

The following motions were passed at the conclusion of the meeting:

This Association urgently calls on the Law Society and its Council to examine sympathetically the problems of practitioners irrespective of size, in the light of present economic climate.

This Association calls on the Law Society and its Council to take immediate steps to limit the numbers entering the profession by means of an independent competitive Annual Entrance Examination.

This Association calls on the Law Society and its Council to immediately undertake and obtain continuous positive media coverage and further to publicly endorse the role of the sole or small practitioner. □

The Irish Student Law Review

The 1993 Volume 3 *Irish Student Law Review* is now available, containing articles on the following topics. Order your copy now on the order form provided.

- **Subject to Contract**
- **Marital Rape**
- **Indirect Discrimination**
- **Remedies at E C Law**
- **The Law of Evidence and *McGrail***
- **The Right to Associate**
- **Indirect Contributions and Trusts**
- **Limited Industrial Action and the Law**
- **Multinational Forces and the UN**
- **The Bar Council and Butterworth Ireland Irish Moot Court Competition Bench Memorial, and Winning Memorials (UCD).**

I wish to subscribe to the *Irish Student Law Review* and I enclose £11.00 [£ 6.00 for students](incl p&p).

Name _____

Address _____

_____

_____

Please make cheques payable to: *Irish Student Law Review*, and return to The *Irish Student Law Review*, The Honorable Society of Kings Inns, Henrietta Street, Dublin 1.

Butterworth Ireland Ltd.
Legal & Tax Publishers

24 - 26 Upper Ormond Quay,
Dublin 7.
Telephone: 01-731555
Facsimile: 01-731876

Cork

FTC
HOLY TRINITY COLLEGE

Law School

Preparatory Course for the Part 1 Final Examination of the Incorporated Law Society

The College offers a one year full time day course consisting of lectures and tutorials, suitable to graduates taking the part 1 Final Examination in October 1994.

The course covers the areas of law laid down by the Law Society.

There are 25 places on the course to be filled on a first come first -served basis.

For further details contact-
The Director, Holy Trinity College
Tel: 021-276267 Fax: 021-275632

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

Is The Profession *Really* Under Siege?

Law Society Director General, *Noel Ryan,* gives his views on current problems facing the profession.

Everyone is, presumably, aware by now of the Sunday Business Post article on current problems facing the profession which contained the banner headline *'A profession under siege.'* That article has generated debate within the profession, including criticism of the Society itself, which seems to me to merit some response.

I believe that we are not a profession under siege, as the article appeared to suggest, but we might be in danger – if we do not stand back from some of the issues – of becoming a profession with a siege mentality. Some of the contributors at the meeting of the Dublin Solicitors Bar Association on 28th April – all well-intentioned people who, quite clearly, have the concerns of the profession at heart – reacted defensively and took issue with the Society's handling of current difficulties. Our public relations policy, in particular, came in for strong criticism. There is, I believe, a reasonable answer to the points.

The profession has, undoubtedly, cause for concern at present about some of the problems besetting it. The President of the Society, in his recent letter to the profession, has touched on a number of these. The recession is hitting the profession hard and there are too many solicitors chasing a static or dwindling volume of legal work. The profession is concerned also about some recent serious cases of default which have created problems in relation to the Compensation Fund. And, above all, there is a perception that the general drift of Government policy at the present time appears to be working against the interests of the profession. It is understandable that, against this background, there should be questions about the direction of Society leadership.

I believe that those who observe closely the work of the Society will be aware of the enormous efforts that have been made in recent times on behalf of the profession. It is a mistake, in my view, to believe that the enemies of the profession are all around us and that, unless the Society is seen to be 'slaying dragons' left right and centre, it is not doing its job. The recent debate about the role of the single

Noel Ryan

practitioner has illustrated that there is, undoubtedly, a problem about the Society getting its message across to the general membership. It seems that some members have become apprehensive that the Society is formulating policies that are directed against the interests of such an important segment of the profession as single practitioners. Nothing of the kind is, of course, in contemplation. The only item of policy that has arisen, and then solely in the context of the Solicitors Bill – where an opportunity arises once in a generation to get provisions in the law that might be needed in the future – was a view that it might be wise for the Society to have a power to vary the contribution to the Fund for different categories of solicitor. For example, the point is sometimes made that those who do not handle clients funds, should not be asked to pay as much as those who do. The use of any such power would, of course, be at the discretion of the Council. However, another view prevailed and the Government has been asked to remove the provision from the Solicitors Bill.

That issue, as well as other events of more recent times, has sparked off a debate within the profession about the role of the single practitioner and whether it is in the long-term interest of the profession that such a high proportion of solicitors should be single practitioners. There is nothing inherently wrong with that so long as it is seen for what it is, *a discussion*, where no fixed positions have been taken and nobody is under threat. It is right and proper that the Society should debate issues openly, as policy questions arise. And, it is surely also legitimate for members who have genuine and well-based concern about the fact that most of the cases of default have concerned single practitioners to say so without giving offence or being taken as casting aspersions on the integrity of the great majority of those who, as single practitioners, have in the past and will continue to serve the profession well.

There has been some adverse comment on the direction and effectiveness of the Society's public relations policy. The Law Society has always defended the interests of all the profession and will continue to do so. It cannot, however, move mountains nor can it disperse the critics of the profession simply by telling them to 'go away'. Nor, of course, will members of the Oireachtas or Government Ministers

do the bidding of the profession simply at the asking. It is to be expected – and, I hope, accepted in the profession – that the interests of the profession will not always coincide with what is perceived as being in the public interest and, as a profession, we must try to come to grips with this.

There is little doubt that much needs to be done to enhance the public image of the profession and also the credibility of the Society in the eyes of the public. However, the profession must realise that the Society cannot be unmindful of the fact that there is evidence to suggest that not all solicitors give an adequate service to their clients (1,500 complaints a year is *not* a negligible total) and there is some public dissatisfaction with the remedies that, up to now, have been available to people who have been dissatisfied. Sections 8 and 9 of the Solicitors Bill, giving the Law Society new powers to deal with shoddy work and overcharging, would hardly have been necessary if everybody had been satisfied with the way in which complaints had been handled up to now. Nor is the appointment of a Legal Ombudsman the product of the mind of some unreasonable Minister who sees it as his task to put down the profession.

We can, as a profession, do more to bring home to the public that we are an honourable profession. However, shouting this from the rooftops will not, in itself, be enough; the profession needs to *demonstrate* clearly to the public that it **does** care about the quality of the service that it is offering and that it **is** concerned with complaints about the service. (Should the Society be considering, in this context, introducing a rule similar to rule 15 in England under which it would be mandatory for every law firm to have formal complaints procedures?) Concerns of this kind have already motivated the Council recently to move to announce the appointment of Lay Observers to its Registrar's Committee. The introduction of transparency and accountability in the complaints procedures of the Society will do much, in my view, to enhance public confidence in the Society and also in the profession.

"The Society rarely . . . lets anything pass"

We **are**, of course, an honourable profession. The vast majority of our members are public-spirited persons who give a good service to their clients and give good value for money. However, as in every profession, a minority fail to live up to the standards expected of them. The problem with the profession is, however, that at the moment, rightly or wrongly, there is a public perception that we are self-interested and do not care sufficiently about our clients. The public relations policy of the Society is directed at demonstrating that this perception is unfounded. The Society is working actively to improve management in legal firms, to promote quality in the delivery of legal services and to bring home to the public that the profession offers protection to its clients through the Compensation Fund and redress, by having an effective an efficient complaints procedure when things go wrong. However, we must strive harder to get this message across to the public. Until we do, it is unlikely, in my view, that the public's view of the profession will improve or that the image of the Society itself will alter greatly. That is why many of the provisions of the Solicitors Bill will be a help. It was to this end that the Council of the Society, in the recent past, decided that, from now on, all those who default in a serious way will be subject to the full glare of publicity. This is, undoubtedly, a painful experience for the profession. We do not necessarily want to see cases of this kind in the newspapers but we must get the message across that those who betray the trust reposed in them will be dealt with severely. We must also convince the public that we are not a little club protecting our own. The thrust and direction of our public relations policy is to get this message across but, of course, the message sometimes falls on a sceptical public. I believe we are succeeding and I believe that, in due course, and especially when we get the new powers we so badly need in the Solicitors Bill to deal more effectively with complaints, there will be a substantial improvement.

The profession itself must be patient and give the new policies a chance to work. We should not see enemies laying siege from every corner. The profession has its critics, amongst politicians and in the media, and sometimes criticism is unfair and unbalanced. Recently, a former Government Minister spoke disparagingly of the profession on a major television programme in a way which was quite unbalanced. That criticism was responded to by the Society but, alas, the media in general did not pick up the response.

One of our difficulties is that members of the profession frequently see the critical remarks in the media but often not the Society's response. The Society rarely, except for good reason, lets anything pass and, in the future, we intend to publish on a monthly basis in the *Gazette* a summary of the main events of the previous month concerning the Society in the media. That will help to keep members aware of what we are doing.

The meeting of the Dublin Solicitors Bar Association attempted to address the question of whether there was a future for the single practitioner. My answer is that, of course, there is. The single practitioner has been, and will continue to be, the mainstay of the profession in the small towns and villages of Ireland. We have, however, a very high level of single practitioners and there is nothing wrong with suggesting that it might not be a bad thing if, over time, there were fewer new single practitioners coming into the market or suggesting more amalgamations. The crucial issue for the future, in my view, is the **quality** of the legal service that practitioners of all sizes will provide. The consumers of legal services are more discerning than ever and are looking increasingly to the profession for quality at a competitive price. More and more of our larger corporations, both public and private, will be asking legal firms to tender for business and there is little doubt that practices will not survive unless they can remain competitive. The future lies with those who recognise this *now* and prepare. Better practice management and a sharpened awareness of the financial aspects of managing expensive resources will be needed as never before. There certainly is a very doubtful future in the profession for those who, to borrow a metaphor, sit around cursing the darkness rather than lighting a candle.

Noel C. Ryan
Director General

□

The Midland Circuit Golf Alliance

President
Judge Matthew Deery

Captain
Alan Mitchell

Fixture Calendar 1993

County Roscommon:	Roscommon Golf Club – Wednesday, 26 May, 1993
Organiser:	*Terence O'Keeffe* (0903) 26239.
County Longford:	The Captain's Prize (Alan Mitchell) County Longford Golf Club – Thursday, 17 June, 1993
Organiser:	*Alan Mitchell* (043) 41541.
County Sligo:	The President's Prize (Judge Deery) County Sligo Golf Club – Thursday, 1 July, 1993
Organiser:	*Sean Mc Ternan* (071) 42626
County Westmeath:	Mullingar Golf Club – Tuesday, 13 July, 1993.
Organiser:	*Paddy Caulfield* (044) 48412
	The July Cup Athlone Golf Club – Wednesday, 21 July, 1993
Organiser:	*Paul Connellan (0902) 72010.*

Details and times of each outing may be obtained from the organiser of that outing.

The Registrar's Cup
Holder: Raymond Groarke

The Registrar's Cup will be presented to the individual with the highest aggregate stableford points from three outings including "The July Cup".

□

New Law Society Telephone and Fax Numbers

Readers are requested to note that with effect from 24 April last, the telephone and fax numbers of the Law Society acquired an extra digit. The new numbers are as follows:-

Law Society, Telephone 6710711
Law Society, Fax 6710704
President/Director General's Office, Fax: 6710136
Library, Fax 6770511
Education/Law School, Fax 6710064
Law Society, Manor St., Telephone 8681220
Law Society Four Courts Office, Telephone 6681806
Law Society Four Courts Office, Fax 8735615

Add the prefix 01 if dialling from outside the Dublin area.

Please note that the fax number quoted on page 118 of the April, 1993 issue of the *Gazette* is incorrect.

□

Compensation Fund – Payments Approved

Compensation Fund – February, 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 on 12 February, 1993. The name of the solicitor in respect of whose defalcation the claim arose is listed in the left hand column.

	IR£
Michael Collier, 2, Ross Terrace, Malahide, Co. Dublin.	7,252,58
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	51,574.00
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	6,065.00
John J. O'Reilly, 7, Farnham Street, Cavan.	310.70
Diarmuid Corrigan, 6, St. Agnes Road, Crumlin, Dublin 12.	3,121.50
	68,393.78

Compensation Fund – March, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting on 12 March, 1993:-

	IR£
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	25,000.00
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	1,440.50
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	17,016.75
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	25,537.66
Michael Collier, 2, Ross Terrace, Malahide, Co. Dublin.	418.00
Conor Killeen & Elio Malocco, Chatham House, Chatham Street, Dublin 2.	545,776.21
James C. Glynn, Dublin Road, Tuam, Co. Galway.	105,679.92
Anthony O'Malley James Street, Westport, Co. Mayo.	63.00
	720,932.04

Compensation Fund – April, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting on 16 April, 1993:-

	IR£
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	245,362.52
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	29,371.23
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	14,350.00
Thomas J. Furlong, Lower Main Street, Letterkenny, Co. Donegal.	5,271.36
Conor Killeen & Elio Malocco, Chatham House, Chatham Street, Dublin 2.	49,586.02
James C. Glynn Dublin Road, Tuam, Co. Galway.	10,328.95
Anthony O'Malley, James Street, Westport, Co. Mayo.	850.00
Donough O'Connor, 22, Lr. Leeson St., Dublin 2.	6,000.00
	361,120.08

PRACTICE FOR SALE
Gross Fee Income 50K-70K
Per Annum
Excellent Position - Dublin Area
All Enquiries to
Seán Whelan
Chartered Accountant
33 Westland Square, Dublin 2.
Phone 8771411

PETROCARGO MARINE SURVEYORS LTD.
Capt. Thomas C. Nash
M. INST. PET.
Marine Consultancy;
Independent Marine Surveyors;
Marine Expert Witness;
Ship to Ship Transfer;
Vessel & Terminal Safety Inspection;
Recruitment; Procedures Manuals.
Cooleen House, Rushbrooke, Cobh, Co. Cork.
Tel: 021-811677 Fax: 021-813009

The Numbers Game

Entrance examination is not the correct mechanism for control says Education Chairman, *Pat O'Connor*

While it is essential for the public's sake that the numbers entering the profession are limited, the entrance examination is not an appropriate mechanism for doing so, according to the Chairman of the Education Committee, *Patrick O'Connor.* In an interview with the *Gazette,* Mr. O'Connor confirmed that the Education Review Committee had reported to the President of the Society and the President would be advising the Council of its recommendations in May. It was his personal view, he said, that the Society's approach must be to determine its policy after admission to the Roll, i.e. what criteria would be applied to a person who had qualified before he would be permitted to practise on his own. For example, a certain amount of post qualification experience might be a requirement, he suggested.

Pat O'Connor stated that the profession must expand its view beyond the traditional areas of solicitors' work and start to think of other areas where solicitors could use their skills and qualifications to gain employment, not only by seeking State posts and judicial appointments, but also through supplying wider business services, becoming company secretaries and managers, providing counselling services and so on. "When I qualified in 1974 there were 1,400 solicitors on the Roll, now there are over 5,000. The profession has just about coped with the bulge but with difficulty. We've been lucky, we have benefitted from the EC and the expansion of the economy in the past twenty years has been reflected in the profession, but the time has come now for the profession to look outwards beyond its traditional base into new areas."

"The profession must look outwards beyond its traditional base."

Entrance Examination

Pat O'Connor is a believer in the entrance examination for everyone who wants to enter the Law School at Blackhall Place. "The change in 1989 was well-meant but unfortunate in the extreme. It has been fatal for the profession and fatal for the public; it must be changed and sooner rather than later." He believes that everyone should have to sit FE-1. "It is a much higher standard than the university examinations. The statistics are clear. In the last FE 1 only 135 out of 311 candidates were successful, that's a much higher casualty rate than in university examinations. It is a very stiff examination, candidates need to have a real depth of knowledge." He rejects criticism that sitting the FE–1 examination can be a back door route for candidates who would not have the ability to obtain a law degree. He is totally opposed to restricting entry to the profession to law graduates only. "Some of the most eminent members of the profession served their time as law clerks. There has always been an alternative route of entry into the profession." He believes the profession benefits from attracting people who have had experience in other jobs, from different backgrounds and at different levels of maturity. "We must have broadly and generally educated people, not just all from the same narrow academic base," says Pat O'Connor.

He moves on to an allied theme, namely an almost passionate belief that a university education should be broadly based, ideally giving undergraduates a chance to

Pat O'Connor

'generally roam' through a variety of disciplines. A compulsory entrance examination for everyone, would, he argues, free up the choices for law undergraduates. "It would remove the awful snobbery that seems to be developing between the so-called 'pure' law degrees and the hybrids. It is arguable that the hybrids are better in the sense that they achieve the true ideal of a university education in giving exposure to a broad range of ideas and disciplines." The idea would be that after obtaining his degree the graduate would prepare for the entrance examination to the Law School where the emphasis is on the detailed specialist training required for practising in a profession.

Apprenticeship

Pat O'Connor believes that the current system of apprenticeship has served the profession well. "Of course there has been some fine tuning and modifications over the past 10 – 15 years. Nowadays the vast majority of masters take their responsibilities seriously. The education department has developed closer liaison with masters and apprentices and engages in much closer monitoring." He admits,

though, that "there may now be some slippage, a side effect of the pressure on numbers."

He concedes, too, that the quality of apprenticeship can vary from one master to another, and thinks that apprentices should seek to change masters if they feel that they are not getting sufficient attention and experience, though he recognises that it is not an easy thing to do in a climate where apprenticeships are not that easy to come by. He rejects criticism that the system is too lengthy. "We are not particularly out of line here with the length it takes in other countries to become a qualified professional. In the EFTA States, for example, the average is 11 years, in Finland and Iceland it is eight."

One aspect which he thinks is extremely difficult for apprentices is the lack of state assistance for third and fourth level students. "At least at third level the cost is less because the State intervenes and subsidises the fees charged by third-level colleges" but he is "acutely conscious" of the lack of grant funding for students in the Law School and says that the Society is lobbying for a change in criteria for grants.

Pat O'Connor says he is aware of a view that the Law School is not doing enough to train young professionals in how to manage the business sides of their practices, and accepts that, perhaps, more needs to be done in this area – but it would inevitably mean an increase in expense to students, as more teaching hours and more course materials would have to be paid for. There is another remedy he thinks: "Masters must allow apprentices more exposure to the management side of the practice, masters traditionally have not (maybe for good reason!) let apprentices see this aspect of the practice." Continuing Legal Education also has a role to play and he welcomes the plans to place increased emphasis on providing management courses for practitioners.

Pat O'Connor is unenthusiastic about alternative models to the current apprenticeship system. The suggestion, for example, of an intensive one year long course in the Law School, would, he believes, merely defer the essential gaining of practical experience until after admission "You cannot just bring someone in and grill them in an intensive but purely theoretical way. Practical experience is essential during the training period; otherwise, you would have to allow for a period after being admitted to the Roll."

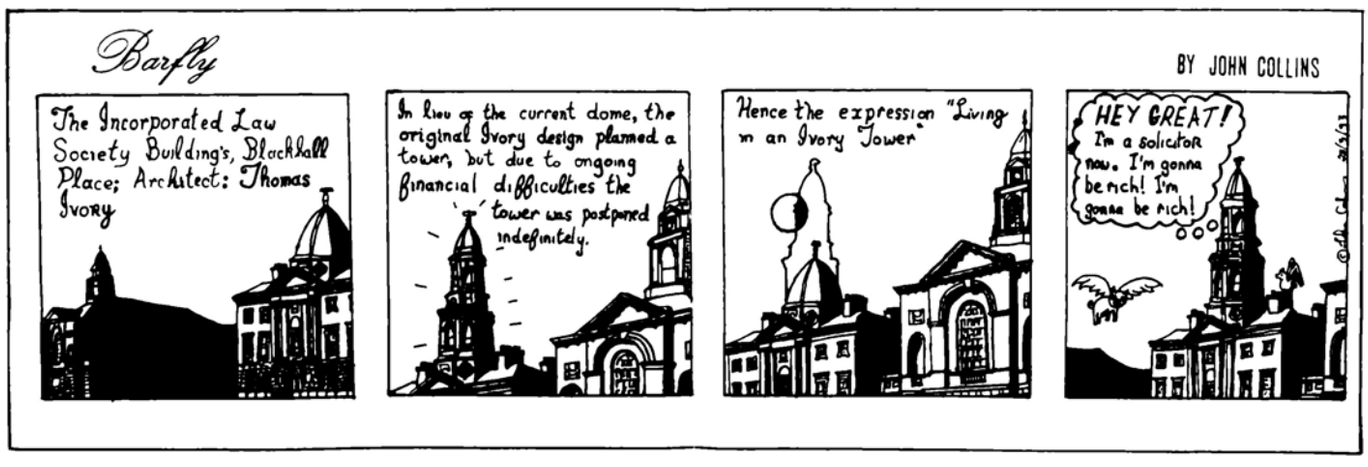
"You cannot just bring someone in and grill them in an intensive but purely theoretical way. Practical experience is essential."

In the current climate he is aware that commenting on the right of newly qualified solicitors to set up in sole practice is a sensitive matter, and prefaces his comments by saying that the sole practitioner is the 'heart and soul' of the profession. But, given the enormous increase in numbers in the profession and the need to maintain standards, "the Society must be vigilant about whom it licenses to practise, and must, subsequent to admission to the Roll, enquire whether someone wishing to set up on their own has sufficient skills to run the business side of a practice. This might be by requiring a mandatory amount of CLE on these matters, or, perhaps, requiring that someone would have acquired a certain amount of experience in a firm after admission before they could practise on their own. However, I would be totally opposed to a general prohibition, because that would militate against many good, newly qualified solicitors who would be perfectly well able to manage on their own from day one."

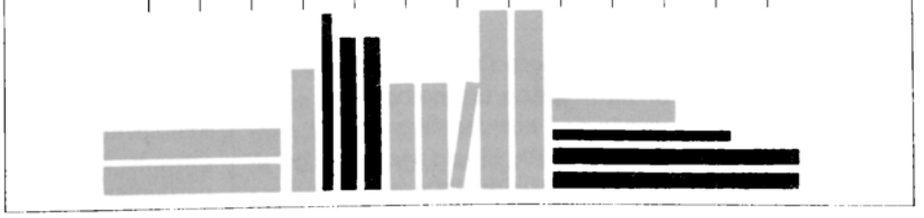
Irish

He pleads, as a lover of the Irish language, to be given space to air his deep conviction that it is wrong in principle for the Government to insist that solicitors should be competent and proficient in the Irish language. Under S 40 of the 1954 (Solicitors) Act, students are obliged to sit two Irish examinations yet the numbers who fail them are neglible. It is, he believes, a symptom of the "horrendous hypocrisy" about the

(Continued on p. 139)



BOOK REVIEWS



Annual Review of Irish Law, 1991

R. Byrne and W. Binchy, [Dublin, The Round Hall Press, 1993, 1 + 494 pp, IR£85.00, hardback.]

Lewis F. Powell, Jr, Associate Justice, Supreme Court of the United States, (retired), writing on the late Professor Paul Freund of Harvard University stated that when Paul and he were at Harvard, the university there could fairly boast that its law faculty included the lions of the legal academy: Felix Frankfurter was teaching Administrative Law, Thomas Reed Powell instructing Constitutional Law, and Roscoe Pound teaching Jurisprudence. [106 *Harvard Law Review,* 3 (1992)].

The time will come when lawyers will look at our time and note that Raymond Byrne and William Binchy were among the great lions of the Irish legal academy. Apart from their other achievements and works, their *Annual Review of Irish Law,* will have secured their reputation for posterity. To some, this may appear grandiose, but not to readers of the *Annual Review,* now in its fifth volume.

For those who may not yet be familiar with the *Annual Review,* the present volume provides a review of legal developments, judicial and statutory, that occurred in 1991. The law is considered under thirty-three main headings with several sub-headings. The main headings include Administrative Law, Agriculture, Commercial Law, Company Law, Constitutional Law, Contract Law, Company Law, European Communities, Family Law, Labour Law, Practice and Procedure, Safety and Health and Torts.

Previous reviews have stated that the *Annual Review* is "a very thorough guide" and "an invaluable aid" to have all the relevant case law and legislative developments for one year so readily available in one volume. As early as the first volume, this writer described the achievement as heralding the inauguration of a new Irish institution. We have not been disappointed. An investment in the *Annual Review* should be repaid handsomely.

Dr. Eamonn G. Hall

The Law of Information Technology in Europe 1992: A comparison with the USA

Edited by A.P. Meijboom and C. Prins. Published by Kluwer as part of its Computer Law Series.

This book consists of a series of chapters by expert EC authors on the interaction between EC law (competition, intellecutal property, products liability, and telecommunications) and Information Technology (IT) in the context of the completion of the Single Market. The US authors provide an overview of the corresponding legal situation in the USA.

The law of IT covers computer hardware and software and telecommunications.

The book is divided into five parts, Part I provides an introduction to EC law for those who are not familiar with the way the EC operates.

Part II highlights the effect of EC competition law on distribution agreements, transfers of technology, and joint ventures in the computer industry. The European experience is not unsimilar to the effect of the Sherman and Clayton Acts on the American IT sector.

The most extensive coverage is given to intellectual property protection in Part III. Developments such as the European Patent Convention and the Community Patent Convention. The effective protection of the look and feel and sequence of software and databases continues to cause difficulties in Europe and America. In particular the limits of copyright protection in relation to the interoperability of user interfaces.

Dr. Thomas Hoeran explains how computer chip protection in Europe was a response to the US Semiconductor Chip Protection Act 1984 (SCPA) which introduced sui generis protection for American chips, and denied it to EC chip makers in the absence of reciprocity. Like the SCPA EC Directive 87/54/EEC incorporated elements of patent, copyright and competitive law.

In Chapter 10, *Erik C. Nootenboom* discusses the current and future EC initiatives in the field of Trade Mark law which has limited importance for the protection of IT products and services. The following chapter compares US Trademark law and practice.

Part IV of the makes a novel application of the EC Directive on Products Liability to injuries caused to consumers by IT products. This includes a discussion on who should bear the risk for software failures. *David Bender* explains how US products liability differs from the European model.

Finally the development of a European telecommunications network infrastructure which includes the development of a pan-

European electronic highways, such as ISDN, a pan-European mobile telecommunications system and the Green Paper on satellite communications as discussed. The EC chapter goes on to explore the liberalisation of the terminal equipment market. *Neil Ende* provides a historical perspective on competition in the US telecommunications industry.

This book is geared towards giving an overview to the reader of the law of information technology as it stands and how it will probably develop in the Single Market. The comparison with the position in the United States is perhaps obvious given the developments in that jurisdiction. However, it is helpful.

The chapters on EC competition law and perhaps to a lesser extent the Products Liability Directive would be of interest generally to Irish solicitors though to purchase the publication for that reason may not be money well spent. This book is intended for those legal practitioners with a particular interest in information technology as such. To that extent, it is a worthwhile addition to the library.

Anthony Burke
Mason Hayes & Curran

□

Permanent Health Insurance

About 1 in 4 men between the ages of 45 and 65 will be unable to work for six months or more owing to ill-health. Women are even more likely to suffer ill-health than men. With statistics like these the effects of loss of income because of ill-health should be taken seriously.

Permanent Health Insurance (PHI) is vital security against prolonged illness or complete disability – conditions that destroy a person's earning power. In the event of a claim, PHI provides an income until the individual recovers, dies or reaches retirement age.

Cover will cease on the selected expiry date, normally when the insured person attains either his 55th, 60th or 65th birthday. It will also cease if the assured party stops paying the premiums or changes occupation to one excluded by the terms of the policy. In the event of a claim, payment will commence after the expiry of a deferred period of either 13, 26 or 52 weeks.

The cost of the cover depends on a combination of factors including benefit required, age, sex, occupation, deferred period and ceasing age. Full tax relief is available on the premiums payable up to 10% of total income for the year. The relief is obtained by applying to your local Inspector of Taxes.

Cover is often surprisingly inexpensive. As an example, an income benefit of £10,000 per annum (£200 per week) payable after a deferred period of 26 weeks to the maximum age of 65 would cost a thirty year old professional man, for example, a doctor or solicitor, £14.27 per month. Tax relief of 48% would effectively reduce this cost of £7.42 per month – a small price to pay for peace of mind.

You may think that it will never happen but of course anyone can be struck down by ill-health or accident at any time. So do consider your client's income protection needs and make certain that their income does not fail when their health does.

For further details contact *Tom Kennedy* of Solicitors Financial Services at (01) 4781599 or write to Solicitors Division, Sedgwick Dineen Consulting Group, 18/19 Harcourt Street, Dublin 2. □

In Ireland **COT DEATH** is the largest killer of children under the age of two. The Irish Sudden Infant Death Association supports bereaved families and funds cot death research. If your client wishes to make a will in favour of Cot Death Research further information is available from
ISIDA
Carmichael House,
4 North Brunswick Street, Dublin 7.
Telephone: 8747007 / 8732711

AIJA Congress

Rio de Janeiro, Brazil, 23-27 August, 1993

AIJA, the International Association of Young Lawyers, has picked Rio de Janeiro as the venue for its 31st Annual Congress. The Congress takes place from 23-27 August and apart from a special seminar on anti-dumping (comparing the South American with the EC experience), the working sessions deal with a wide variety of issues such as:

- Intellectual Property – protection against counterfeiting
- Tax Law – international partnership
- EC Law – European merger control
- International Arbitration – forms of evidence admissible
- Family Law – international child adoption.

There is an equally wide ranging social programme, which includes dinner on a private tropical island. Pre and post Congress tours have been arranged by the organisers for those who wish to combine a holiday with the Congress.

Further details on the Congress and information on AIJA can be obtained from the National Vice President, *Petria McDonnell,* at McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1. (Tel 01 8290000, Fax 01 8290010).

□

The Numbers Game

(Continued from p. 136)

Irish language that exists at political level in this country and he is disappointed that the Government appears to have turned down an offer from the Law Society to run Irish courses in the Law School and to maintain a panel of solicitors competent to conduct transactions in Irish in return for the removal of the compulsory requirement. "I am – or used to be – a good Irish speaker, but even in my part of the country, where it would be more likely to happen, I have never in nearly 20 years of practise had a client who wanted to conduct his business in Irish." He suggests that if the Society wanted to call the Government's bluff, "it could in quite a Machiavellian way start to use the first Irish examination as a method of controlling entry."

"I have never in twenty years of practise had a client who wanted to conduct his business in Irish."

Pat O'Connor likes being a solicitor, his grandfather was admitted in 1900, his father in 1937, and in 1974, exactly 37 years later, his own name was entered on the Roll.

He praises the job satisfaction. "It is so much more than being a lawyer. In the country anyway, it is a much wider role of being a social adviser, helping people with their problems, in many cases being the family confidante." He is bullish, too, about the future of the profession. "This profession is bigger and better than to lie down under any threat, whether it be banks and building societies doing conveyancing, or whatever."

Barbara Cahalane

□

DSBA launches draft deed of Separation

At a recent seminar for its members at Blackhall Place in Dublin, the DSBA launched a precedent draft deed of separation. The precedent is the result of many months work by the Family Law Committee of the DSBA. The speakers at the seminar included *David Bergin, Muriel Walls, Brian Gallagher, Tim O'Sullivan* and *Mary Griffin.*

The draft has been welcomed by family law practitioners in Dublin and has also been warmly welcomed by the members of the Family Law and Civil Legal Aid Committee of the Law Society, who have commended the DSBA on its timely initiative.

A limited number of copies of the draft deed are available, on a first come-first served basis, at a cost of £20.00 each, from the Honorary Treasurer of the Dublin Solicitors' Bar Association: *Michael D. Murphy,* 34 Upper Baggot Street, Dublin 4.

□

Practice Note

New House Grants

The Department of the Environment has notified the Conveyancing Committee that, as announced in the recent budget statement, the New House Grant has been increased from £2,000 to £3,000. The Department says that the increased rate will apply to all applicants where:-

- a contract to purchase is made on or after 25 February, 1993; or
- where a contract to build is made on or after 25 February, 1993; or
- in any other case where the required contract or contracts for building services to the value of at least £15,000 is/are made after 25 February, 1993 or the poured concrete and concrete blocks used in the reconstruction of the house are liable to VAT at 21%.

Documentary evidence will be sought so that entitlement to the higher rate of grant can be established. The existing £2,000 grant will continue to be payable in other cases.

Conveyancing Committee

□

Obituary

Fergus L. Fahy
ob. 23 January, 1993

Just at the beginning of Spring with the days getting longer Fergus made his last journey down the road to Foxford and those who knew him said goodbye to a good colleague and a dear friend.

Fergus should not have approved of any obituary that sounded panegyric so I will honour his memory by saying the simple facts.

He was a fine practitioner especially in that cockpit of jurisprudence known as the Bridewell Courts. His style was dignified: a nice mixture of experience, thorough knowledge of the law and firm, but well balanced, diplomacy. He had the respect of both the bench and the dock to an extent that few of us can achieve.

The private Fergus was a wonderful friend to have. He was generous with his time, wisdom and hospitality. All who shared in this private Fergus were enriched by the experience. He will not be forgotten.

May he rest in peace.

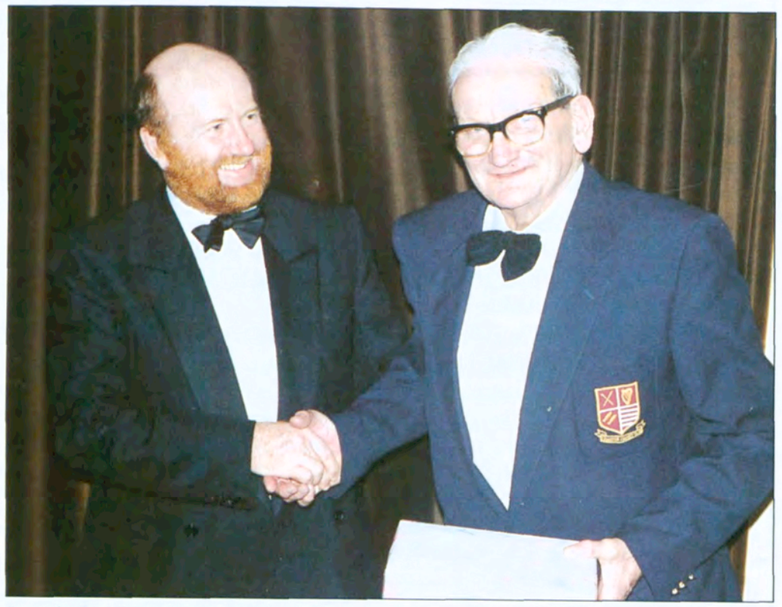
J.O.

□

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies



Recently the Kildare Bar Association made a presentation to Patrick V. Boland, Solicitor, to mark his 50 years in practice. The photograph shows l-r: Harold A. Whelehan, Attorney General, making the presentation to Patrick V. Boland, who is his father-in-law.

Ms. Mary Hall, winner of the 1992 AIB Conveyancing Prize with Mr. Ivan Carter, Branch Manager, Allied Irish Banks, who presented the prize to her on 16 April.

At the Parchment Ceremony on 16 April, 1993 were l-r: Audrey O'Reilly and Charles Farrell O'Reilly with their daughter Caroline O'Reilly, who was admitted to the Roll of Solicitors, and Geraldine Clarke, Council Member, Law Society.

At the parchment ceremony on 12 February, 1993, were l-r: William Joseph Leahy, David Leahy who was admitted to the Roll of Solicitors and is the eighth generation of the Leahy family to become a solicitor; Catherine Leahy, William E. Leahy, Solicitor, Leahy & O'Sullivan, Limerick; and Patrick Glynn, Council Member, Law Society.

LEGAL & GENERAL
OFFICE SUPPLIES

OFFER

SOLICITORS ACCOUNTS
SOFTWARE: ITALAX

Proven Accounts Package for the Solicitor's Office incorporating Facilities for End of Year Returns to Revenue Commissioners e.g. Individual Returns paid in excess of £3,000

SPECIAL PRICES NOW AVAILABLE • FURTHER DETAILS:
RING MICHAEL GILMARTIN, GERRY HOGAN OR CHRIS MAHON AT

☎ 8725522

15 UPPER ORMOND QUAY, DUBLIN 7

FOUR COURTS DUBLIN 7

The winning team at the Younger Members Annual Quiz Night were l-r: Eoin O'Mordha, Robert Burke, Pat Crowley, Solicitor, O'Donovans; Sandra McTurk and Briain O'Mordha.

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

- **Fast** • **Members of Express Service**
- **Efficient** • **Competitive Prices** • **Friendly**

Private Limited Company	–	**10 days, £255***
Guarantee Company	–	**10 days, £285**
Shelf Company	–	**10 mins., £255***

- **FREE Company Register for Private and Shelf Companies lodged in May and June.**

* Special prices valid for June and July only.

Phone: CARMEL or RITA
at 671 0711, Ext. 224 Fax: 671 0704

Wards of Court – A general guideline of the procedures involved

by John Costello*

Introduction

The Wards of Court Office has approximately 2,000 cases involving wards. 50% of these cases are as a result of road traffic accidents of industrial accidents where wards have received substantial damages. Other cases involve elderly people who have been made wards by Local Authorities. However, about 30% of all cases involve people suffering from senile dementia or other illnesses which affect their mental capacity to look after their affairs. This article highlights some of the procedures involved in wardship proceedings with particular emphasis on elderly people being made wards of court.

The Legislation covering wardship is the Lunacy Regulation (Ireland) Act 1871 ("The Act") and the Rules of the Superior Courts ("RSC") Appendix "K" of the Rules sets out precedent forms to be used in wardship matters.

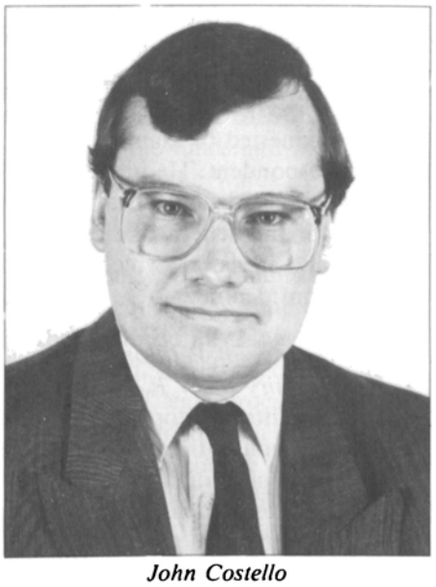
Order (67) deals with the wardship procedure and Order (67) Rule (1) sets out some definitions:

(a) A **ward** is a person who has been declared to be of unsound mind and incapable of managing his person or property.

(b) A **respondent** is a person alleged to be of unsound mind and incapable of managing his person or property in respect of whom wardship proceedings have been instituted.

(c) The **Registrar** means the Registrar of the Wards of Court Office.

(d) **Next of kin** shall mean and include the person or persons, who, if the respondent or ward died intestate, would be entitled



John Costello

to a share of his estate under the Succession Act, 1965.

. . .30% of all (wardship) cases involve people suffering from senile dementia or other illnesses which affect their mental capacity to look after their affairs.

Order (67) also deals with the appointment of a committee who is the person who manages the ward's affairs and has responsibility for the care of the Ward.

(e) The **Judge** means the President of the High Court.

Originating Procedure

(A) For urgent cases or where for some reason a petition cannot be presented, or to minimise costs, section 12 of the 1871 Act will apply (known as a S.12 inquiry):

(i) The Judge directs his medical visitor to examine any "alleged lunatic" following a report by a solicitor who had reason for concern about a particular person.

(ii) The report of the Judge's medical visitor can be deemed to be a petition and can be proceeded on as if it were a petition. It is usually followed by the Judge's order in open court taking the proposed ward into wardship.

(B) A situation where the proposed ward's estate is not over £5,000 in value or his income does not exceed £300 per annum is:

(i) governed by S.68 1871 Act, and

(ii) Order 67 Rules 21–30 apply.

(C) A situation where a person is of weak mind and temporarily incapable of managing his affairs is:

(i) governed by S.103 of 1871 Act, and
(ii) Order 67 Rules 31–37 apply.

(D) In the majority of cases the following procedure applies:-

(i) *Medical Reports:* Generally, a solicitor is contacted either by a social worker or member of the proposed ward's family, with a view to discussing wardship. The first step is to obtain two medical reports from two medical practitioners, usually on oath. Reporting on the health of the proposed ward. The reports should specify the particular medical condition from which the person is suffering e.g. – brain haemorrhage, Alzheimer's disease, senile dementia etc. and whether

this is likely to be long term. The reports should also state that the respondent is incapable of managing his affairs. These medical reports are required to support a petition for an inquiry as to the soundness or unsoundness of the mind of any person (O.67 – R.4(3))

(ii) *Application for Wardship (O.67 R.4)*
The application for wardship must be made by a petition, praying for an inquiry as to the soundness or unsoundness of mind of any person. The petitioner will normally be next of kin, but could be a stranger. It is known as a section 15 petition as the procedure in S.15 of the 1871 Act is followed in these applications by the Judge. The petition must state the following (O.67 R.4(1) – Appendix K – Form 2):

(a) the name, address, religion, age, description and marital status of the respondent,

(b) the names, descriptions, religion and addresses of the next of kin,

(c) the names, descriptions, religion and addresses of persons residing with the ward,

(d) the nature and amount of the respondent's property and his debts,

(e) the name, address, religion and description of the petitioner. The petitioner must also swear that the contents of the petition are true (O.67 Rule 4(3) – Appendix K Form 3).

(iii) *Obtaining Inquiry Order;*
The petition is lodged with the two medical reports in the Wards of Court Office and the registrar submits the petition to the judge.

The Judge then makes an inquiry order (if he thinks fit) in chambers on receipt of the petition and two medical reports (O.67 R6). The Registrar's doctor ("medical visitor") is then requested to examine the respondent. He prepares an independent medical report for the benefit of the Judge and Registrar, which is confidential.

(iv) *Service of Petition for Inquiry (O.67 R.8)*
An attested copy of the petition is then served by the petitioner or his solicitor, on the respondent, with a notice endorsed on the petition (Appendix K – Form 4). This notice notifies the respondent, that an inquiry has been provisionally ordered as to whether he is of unsound mind and incapable of managing his person and property and that if he wishes to object to the inquiry or demand that such inquiry be had before a jury, he must do so within seven days of receiving the attested copy petition.

The petitioner or solicitor who serves the attested copy petition on the respondent should then complete an affidavit of service. The copy petition with the notice endorsed thereon and the affidavit of service is then lodged in the Wards of Court Office.

Wardship Order

(After the originating procedure at A,B,C, or D above have been complied with)

If the respondent has not objected to the proposed enquiry (O.67 – R.18) or demanded a jury hearing, then the Judge will normally declare the respondent to be made a ward of Court. (O.67 Rules 10–16 deal with the procedure where the inquiry is before a jury). With a section 15 petition, the Judge usually makes the Wardship Order under S.15 1871 Act. This Order (referred to as "a Declaration Order") will normally contain a direction that the ward be detained in a hospital/institution.

The Order will also direct that the petitioner or other suitable person is to file a statement of facts.

Statement of Facts (O.67 – R.40):

The statement of facts must be filed in the Wards of Court Office within three weeks of the Declaration Order. When filed, a date is given for the solicitors acting for the petitioner to attend before the Registrar to discuss the statement of facts and any matters arising.

The statement of facts has to set forth the following particulars:

(a) the ward's situation,

(b) the nature of his mental illness,

(c) who should be appointed committee of his person and of his estate,

(d) the value of his property,

(e) the amount of his gross and net income,

(f) the present and future cost of his maintenance,

(g) what debts are due by the ward,

(h) the location of the ward's will, if any.

Appointment of Committee (O.67 – Rules 41–47):

When the solicitor for the petitioner attends before the Registrar to discuss the statement of facts the terms of the wardship order are discussed and agreed. The order is then submitted to the judge for approval and

signature. Based on the order submitted to him, the Judge will normally make a order, *inter alia:*

(a) appointing a committee of the person and of the estate of the ward,

(b) directing the committee to lodge the proceeds of all bank accounts, building society accounts etc. to the Accountant's Office in the Four Courts,

(c) directing the committee to open a separate bank account in the committee's name and to lodge all income of the ward, or any sums received on behalf of the ward, to that account. However, a bank account is not required where the ward has no income or, where, for example, the ward's only income is a State pension paid directly to a nursing home where the ward resides,

(d) directing the original will, if any, of the ward is to be lodged for safekeeping in the Wards of Court Office,

(e) that the costs of the petitioner and of the committee in the proceedings are to be paid as measured by the Registrar or the Taxing Master,

(f) that appropriate funds be made available for the ward's maintenance and benefit.

(g) that the committee enter into a bond with an insurance company as surety for twice the annual income of the ward, to cover the event of the committee failing to account to the registrar for all monies received on behalf of the ward. No bond is required where the committee is not in receipt of any income.

After Committee is Appointed

Forms of privity i.e. transfer forms to arrange the transfer of the funds in the ward's bank accounts or building society accounts to the Accountant's Office must be collected from the Accountant's Office. A privity is then sent to each financial institution with a copy of the Order appointing the committee. The financial institution then transfers the balance of the ward's account to the Chancery Department of the Bank of Ireland in 2, College Green, Dublin 2. The Accountant's Office will then get control of the funds and invest them as directed by the Wards of Court Office.

Subsequently, the committee must apply to court from time to time for authority to do all things on behalf of the ward, including the taking or defending of legal proceedings, leaving the jurisdiction or having a general anaesthetic. It is not possible to purchase property for a ward other than for providing accommodation for the ward and his family. The committee is not entitled to any remuneration as of right, but is usually allowed an annual fee. Some wards receive payments in respect of personal injuries which are exempt from income tax (S5 Finance Act, 1990). The committee must lodge all receipts from these payments or any retention tax recovered in court or apply them as directed by the Registrar.

Lodging of Will

O.67 – R.87 provides that a person holding a ward's will may be directed by the Registrar to lodge it in the Wards of Court Office. The judge may order the will to be lodged in the court if the Registrar's direction is not complied with.

If the original will is to be lodged in the Wards of Court Office, then the committee must swear an affidavit, attaching the original will in a sealed envelope, confirming that the will is in the same plight and condition as when it was handed to the committee by the ward's solicitor.

Costs of Petitioner/Committee

The solicitor acting for the committee normally submits a bill of costs to the Registrar for all work done on behalf of the committee and petitioner. The Registrar will try to agree the costs with the solicitor, based on the facts of the case and the work involved. The legal costs allowed may be £750 or more, depending on the particular case. In default of agreement on costs, the Taxing Master will determine the amount of the costs.

Management of Ward's Property

When the Accountant's Office has received in all the assets of the ward, the Registrar will invest these assets in Trustee Authorised Investments. Existing stocks and shares of the ward may be kept but, normally they will be reinvested as directed by the Registrar.

The committee of the estate, at least once a year, must account for all assets received on behalf of the committee. For example, he may be authorised to receive income or rent on behalf of the ward. At the time of such accounting, the committee lodges the bank pass book or a copy of the bank statements with the Registrar.

In relation to income tax, the wards of Court Office employ an accountant who can in certain circumstances, handle the Ward's tax affairs if needed. A full time official in the Wards of Court Office monitors the tax position of each ward and arranges for tax returns and payments to be made to the Revenue Commissioners when required.

Any income tax liability required to be discharged by the ward will be paid by the Registrar or the Registrar may direct the committee to pay the tax due.

Sales of Property by the Committee

Sales of property by the committee are only authorised by the court where the circumstances are covered by S.63 of 1871 Act. A dwelling-

house is usually sold because of the difficulty in insuring unoccupied property and the likelihood of a depreciation in its value. Agricultural land or premises already rented are usually retained and let by the committee subject to the court's approval. If there is a sale the Registrar will instruct his own valuer to prepare an independent valuation of the property. The property will then normally be advertised and sold by public auction but can be sold privately. The Registrar will indicate a reserve price, below which, the property cannot be sold. This reserve price will be placed in a sealed envelope and only opened by the auctioneer at the time of the auction. If the reserve is not reached the highest bid is submitted to the court for approval. There are a number of special conditions which must be inserted in the contract for sale – Appendix K – Form 17. Under section 89 of the Act, any documents executed by the committee are as valid as if the ward had been of sound mind and executed such documents himself.

Dismissal Proceedings in Wardship Matters

The Wards of Court Office should be notified promptly of the death of the ward. Where the will is in court, it is immediately transferred to the Probate Office. The Accountant of the Courts of Justice is directed to suspend all periodic payments from the funds in court. The committee's authority to act on behalf of the ward is terminated by the ward's death. The committee lodges with the Registrar, a statement of facts to lead to the dismissal of the wardship (Order 67 Rule 89). The names and addresses of the next of kin of the ward should be given in the statement of facts. The statement of facts should also contain particulars of the funds held by the Wards of Court Office, together with all outstanding liabilities.

In cases in which a Grant of Representation has to be obtained, there is ordinarily no need for the committee to wait until it is obtained before lodging a statement of facts. On the other hand, there is no reason why the person entitled to a Grant of Representation should wait until the wardship matter is dismissed, before taking steps to obtain a grant. The personal representative of a ward should not intermeddle with the estate without the leave of the court, until the wardship matter is dismissed. Funds can be released by the Wards of Court Office without a Grant of Representation where the ward's total assets do not exceed £5,000 (Since 1989) – O.67 – R.92. The Committee's authority to act on behalf of the ward is terminated by the ward's death.

The executor or other person entitled to prove the ward's will, can bespeak a copy of the original will in the Probate Office, which can be referred to as an exhibit in the Oath of Executor or Oath of Administrator.

On receipt of the statement of facts, the Registrar will meet with the solicitor acting for the committee and make arrangements to discharge the outstanding liabilities of the estate. The liabilities will either be discharged by the Registrar, or by the ward's personal representative, where the personal representative gives an undertaking to discharge such liabilities and to furnish an account at the end of the administration.

The Registrar will then direct that the remaining funds held by the Wards of Court Office will be released to the ward's estate in the normal way.

Conclusion

Each case involving wardship is dealt with by the Wards of Court Office on an individual basis and the above procedures may vary from case to case.

The officials in the Ward of Court Office are extremely helpful in discussing any practical problems which may arise. Wardship proceedings can be stressful for both the next of kin and their solicitor and the Wards of Court Office is particularly sensitive in handling wardship matters.

A practical alternative to wardship would be an enduring power of attorney which is a power of attorney that, subject to conditions and safeguards, continues in force after the donor of the power becomes mentally incapable of handling his/her affairs. In 1989, The Law Reform Commission recommended that a system of enduring power of attorney should be introduced in Ireland and hopefully, the new Government will act on this recommendation shortly.

**John Costello, Solicitor, practises in the firm of Eugene F. Collins, in Dublin.* □

· DE ·
IRISH DOCUMENT EXCHANGE
37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin
OVERNIGHT ~ EVERY NIGHT EVERYWHERE
Now over 420 firms of Solicitors in 37 exchanges

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

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
G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

by Dr. Eamonn G. Hall, Solicitor

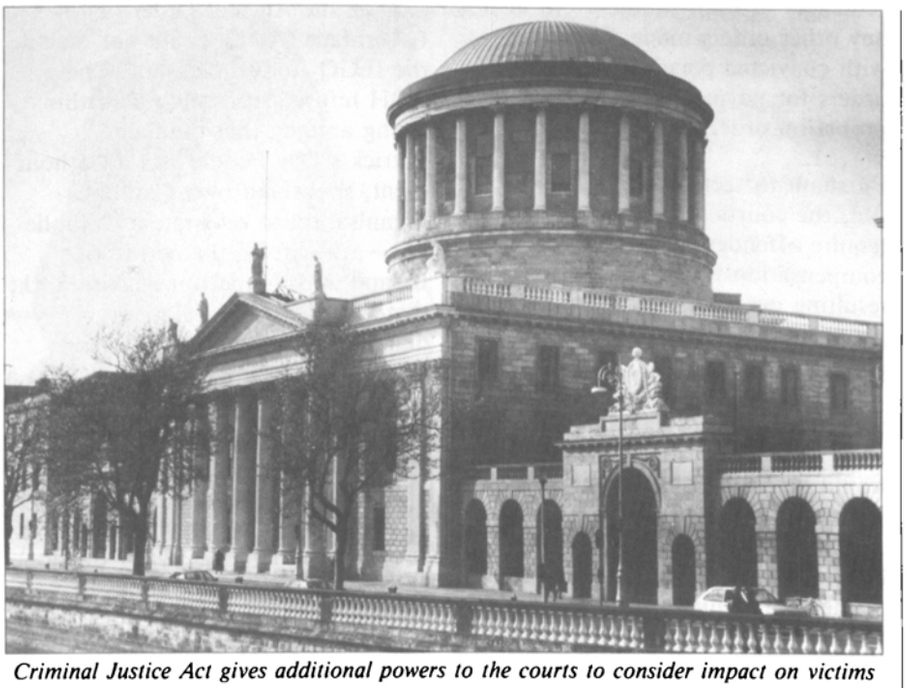
Why Smart People do Dumb Things

Intelligence is a precious commodity. We all like to think we are intelligent and gifted. However, we all know some barristers and solicitors, and some of our clients, when on occasions one may express the anguished cry: "How could he have been so stupid?" "How could he have said such a thing?" Why do smart people do dumb things?

Mortimer R. Feinberg, chairman of a Manhattan consulting group in *The Wall Street Journal Europe,* December, 22, 1992, expressed some opinions in relation to this matter. This piece could very well be entitled "In Praise of the Average Lawyer and the Average Client."

Mr. Feinberg gives an example of the manner in which the brilliant mind can subvert itself. This would never apply to a lawyer! A high-flying executive president of a television station in the United States arranged for a male stripper to perform at a high level conference. Among those not amused were US Defence Secretary, Dick Chaney and Rupert Murdoch, the executive's boss. Soon after the stripper departed, the executive was fired.

Apparently, there are some well known signs when the brilliant are in the process of bypassing logic. Three of the most prevalent self-subverting mechanisms have been described as recklessness, isolation and feed-back deafness. Brendan Sexton, vice-president of the Rockefeller Group noted: "Smart guys get used to knowing more than anybody else. It's all too short a step from knowing more than anybody else to thinking that you know everything."



Criminal Justice Act gives additional powers to the courts to consider impact on victims

So, there is the temptation to act in a manner in which others would call reckless.

"When smart solicitors are surrounded by a sound structure and are capable of listening intelligently to candid comment, they are in effect, even smarter."

The value of experience cannot be over stressed. One commentator has stated that smart people tend to surround themselves with other smart people i.e. isolate themselves. That may be fine, but when the group starts relying on brilliance, to the exclusion of experience, difficulties may occur.

Mr. Feinberg has also noted that some bright people are so impatient with their slower associates that they find it impossible to listen to them. We all know that feed-back is essential. He or she who does not listen on a constant basis and heed the client suffers from feed-back deafness. We must all be prepared to listen.

We should realise that very smart people generate some great ideas but also some silly ideas. Just because something comes from a smart person, doesn't mean it is smart.

In conclusion, to paraphrase Mr. Feinberg, when smart solicitors and clients are surrounded by a sound structure and are capable of listening intelligently to candid comment, they are, in effect, even smarter. Is there a moral here for all of us?

Criminal Justice Act, 1993

The Criminal Justice Act, 1993, (No. 6 of 1993) came into force on May 3, 1993. The Act has three objectives:

- to provide a procedure for the review of unduly lenient sentences;
- to require courts, when determining the sentence to be imposed for a sexual offence or an offence involving violence or a threat of violence, to take into account any effect (including any long term effect) of the offence on the victim;

- to give courts a general power to require offenders to pay compensation for any resulting personal injury or loss.

The sentences that can be reviewed under the Act include not only sentences of imprisonment but also any other orders made in dealing with convicted persons, such as orders for payment of fines and probation orders.

Pursuant to section 6 of the 1993 Act, the courts are empowered to require offenders to pay compensation to the victim for any resulting personal injury or loss. The power is to be exercised unless the court sees reason to the contrary. The compensation must not exceed the amount of the damages that the court thinks that the injured party would be entitled to recover in a civil action for the injury or loss in question (subject in the case of the District Court to the monetary limit of the court's jurisdiction in tort) but the Court must have regard to the convicted person's means or to those of the parent or guardian, where a parent or guardian is made liable to pay the compensation.

Section 6 (4) of the 1993 Act provides that compensation will not be payable for injury or loss resulting from the use of a motor vehicle in a public place except in two instances. One is where the convicted person was not insured. The other is where the vehicle was taken by the convicted person out of the owner's possession and damaged before being recovered. The amount of the compensation may include an amount representing the whole or part of any consequential loss of or reduction in preferential rates of insurance.

Freedom of Expression: US Court rules that a parade is a form of speech

Many eyebrows were raised in Ireland at the furore generated over whether or not the Irish Lesbian and Gay Organisation (ILGO) could participate in the Saint Patrick's Day Parade in New York this year.

The legal issues raised in relation to the event related primarily to the constitutional right of free speech.

The New York City Human Rights Commission ruled on human rights grounds that the sponsors of the parade, the Ancient Order of Hibernians (AOH) could not exclude the ILGO from the parade. The AOH refused to comply with this ruling arguing that the Saint Patrick's Day Parade was a Catholic event, sponsored by a Catholic organisation to celebrate a Catholic life – the life of the patron of Ireland and the patron of New York; that homosexual activity was diametrically opposed to Roman Catholic Church teaching; and that a group that proclaimed its homosexuality should have no place in it.

The issue came ultimately before Judge Kevin Thomas Duffy of the US Federal District Court as to whether the City of New York could compel the AOH to alter the message that it wished to convey in the parade by requiring the AOH to include in the parade, and under its own banner, the ILGO. The issue arose as to whether the parade and its message constituted "speech" protected by the First Amendment guarantee of freedom of speech of the US Constitution. There is a similar guarantee, but subject to considerable qualification, in Article 40.6.1 (i) of the Irish Constitution.

Judge Duffy considered in his judgment of February 26, 1993 that a parade was, by its very nature, a pristine form of speech. In parades, people gather together for the purpose of expressing their message. The public thoroughfares of the United States, he considered, are the public fora in which the issues of the day can be debated and where individuals seek to engage in basic expressive activity, such as parading. He considered that every parade was designed to convey a message. As such, a parade organised by a private sponsor was the quintessential exercise of the First Amendment right of freedom of expression.

The judge considered that the First Amendment guarantees an individual the right to free speech, "a term necessarily comprising the decision of both what to say and what not to say." In exercising this right, the message intended to be conveyed by a parade sponsored by a private organisation was to be determined by the parade sponsor and not by the state or the city. The manner and means by which the message was conveyed was also a matter of constitutionally protected free speech. The New York City Human Rights Commission had ordered the AOH to include the ILGO in the parade and in so doing, had violated the parade sponsor's right to free speech. In effect, the commission had ordered the AOH to associate with speech with which they disagreed. Accordingly, the judge ordered that the City of New York was not to interfere with the conduct of the AOH's 1993 New York parade by requiring the inclusion of any contingent which had not been approved by the AOH and the parade committee. □

Pauline Whyte

Would any solicitor who around 1972 contacted Pauline Whyte, born in Cairo in 1914, subsequently adopted, lived in Rutland Street, Limerick until 1948, then moved to Liverpool, England, and died there in February, 1992, please contact her family who wishes to trace her natural relatives. Box No: 46.

Irish Solicitors Golfing Soceity

The Captain's Prize will take place at the Curragh Golf Club on Friday 28 May, 1993. A Time Sheet will be in operation and bookings for same may be made by telephoning *Carol Mahon* at 8728233, 8744147, 8728581.

William Jolley,
Hon. Secretary.

Advising Clients on Russian & East European Business Ventures

by Julie Sadlier*

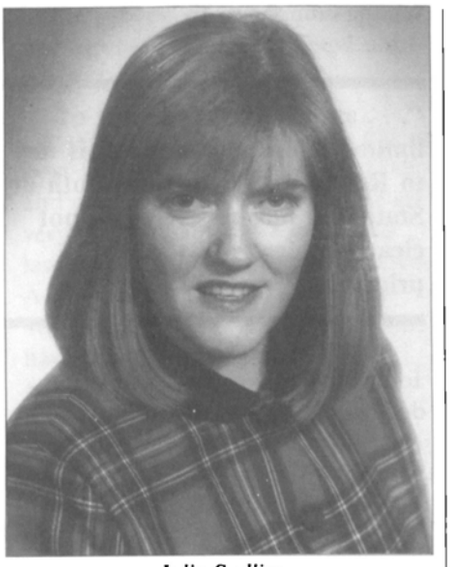
Unlike most other countries where clients are likely to be doing business the former Eastern Bloc does not have a strong local private legal consultancy tradition.

The legal systems of these countries differ considerably from the legal systems of any western European state. Their legal systems are extremely limited and restricted in their essence and development, and they lack the sophistication in some spheres of the law, which would be considered extremely important in the legal structure of most western countries.

Historical Review

A historical review of the development of the pre-Communist legal systems of the Eastern Bloc shows that though they certainly had their peculiarities, they nevertheless were developing along lines characteristic of most European Countries at the time. (A short but efficient review of the historical development of the Russian legal system is presented in the book "Soviet Law" by W. E. Butler, London, 1988).

Looking mainly at the former USSR (now the Russian Federation), which was most affected by communism, we know that after the Great October Revolution the situation changed: the new society was to be built on the basis of Marxism-Leninism, one of the main dogmas of which was the fading away of the law in a Communist society, which would ultimately not need any law. The building of the new regime did not exactly proceed as the classic theory of Marxism had envisaged. Nevertheless, there was never a real need for a developed legal system in the state.



Julie Sadlier

Some development in the legal sphere took place in 1960s, after a new Programme of the Communist Party proclaimed that developed Socialism had been built, that the state from then on was the "state of all the people", and that the Soviet people should start creating the communist society. Some new agencies were established in the legal system: Peoples' Courts and Peoples Guards, for example. It was proclaimed, that the people themselves would carry out legislative functions, and some steps were made towards achieving this aim.

The last thirty years was to be the period of the development of the legal system, which we see now in Russia. A lot has changed since 1985 – the beginning of Perestroika – in both the legal structure and the legislature.

The body of the Russian Federation system of legislative documents consists not only of laws, but of many other kinds of legal acts. The power and sphere of influence of such acts varies depending on the agency which drafted and adopted them.

"The body of the Russian Federation system of legislative documents consists not only of laws, but of many other kinds of legal acts."

The hierarchy of the legislative documents is as follows (the power decreasing from the top to the bottom):

Constitution

Laws, adopted by the Congress of Peoples' Deputies of the RF, (formerly USSR)
(these laws and other acts are adopted collectively and can be changed only by the Congress itself)

Laws and documents adopted by the Supreme Soviet of the RF, (formerly USSR)

Laws adopted by the Supreme Soviets of autonomous republics and regions

Decrees of the President

Resolutions and decisions of the Government

Orders and instruction, adopted by Ministries, Departments, Central Bank, other agencies

Recently a special Constitutional Court was established, whose task is to ensure that the recently adopted laws and regulations do not contradict the existing Constitution. Any natural or legal person has the right to appeal to this Court.

Developments towards business law

For anybody intending to carry out business activities in Russia company law, foreign relations law and property law are of most interest. As mentioned above, the Russian economic system did not need company or business law, and until 1967, economic law was not even admitted as a branch of legal science, and problems connected with regulation of economic relations, when not dealt with by plans and planning bodies, were dealt with by the civil law.

In 1987, the USSR Joint Venture Decree No. 49 permitted the formation of the first Soviet legal person for commercial purposes. This decree permitted foreign participation in Soviet Joint Venture companies provided that at all times the foreign partner had a minority shareholding and the chairman of the board was always a Soviet citizen. These restrictions were removed in 1989.

Joint Venture law is very basic and was following the demise of the USSR replaced by a Joint Stock Company Law NO. 509 dated July, 1990 which envisaged more sophisticated company structures including private and public companies.

This Joint Stock Company legislation is however, also very sketchy and lacking in detail and definition. Furthermore, as the whole concept of limited liability companies is new to Russia many Russians both at State and business level do not clearly understand the principles. It is, therefore, advisable when drafting Joint Stock Company documents for Russia and other Eastern European ventures generally to include much detail in the foundation documents. The constitution and operation of the various elements of the corporation structure such as shares, meetings or voting are not dealt with in any detail in the general legislation and so it is advisable to use the foundation documents to legislate for the company.

". . . as the whole concept of limited liability companies is new to Russia many Russians both at State and business level do not clearly understand the principles."

Joint Stock Company foundation documents consist of a Charter and Agreement. The Charter is registered with the Ministry of Finance of Russia and so must contain all provisions regarding the operation of the company's affairs and its objectives, and the agreement is used to set out any additional matters agreed between the parties. The greatest care must be devoted to drafting these documents and to legislate for the company. It is also recommended that any disputes arising under these documents should be determined by arbitration which should take place outside Russia as the Russian Courts have great difficulty understanding and interpreting the new economic laws and have very few precedents. The International Chamber of Commerce in Stockholm is considered to be an acceptable venue for such arbitration as there is a long history of Soviet use of Stockholm Arbitration in state international contracts under the old regime.

Property law in its infancy

The newly emerging political economic and legal structure in Russia causes confusion to reign everywhere. For this reason patience is required at every level of dealing there from negotiations with potential partners to registration of documents at state agencies.

The 'cannot do' approach is still very prevalent, but take heart, it can usually be overcome.

"patience is required at every level of dealing there from negotiations with potential partners to registration of documents at state agencies. The "cannot do" approach is still very prevalent, but take heart, it can usually be overcome."

Property law is also very much in its infancy and in a constant state of change. The State owns all of the freehold in all of the land. Up to 2 years ago the concept of leasehold did not exist and the only form of ownership permitted to citizens and enterprises alike was the right to use buildings.

Leases of buildings and land are now permitted by law but are more difficult in practice. Leases of buildings up to 100 years are easier to obtain as many citizens and enterprises have been granted "ownership" of the buildings they occupy under recent privatisation legislation. The situation regarding land is far less clear as over the years the State's interest in the land vested in different State bodies such as local authorities, government departments, regional authorities and collective farms. Now there is much conflict among these entities as to who owns what and in many instances it is likely that more than one State organisation claims the right to the land.

A long lease of a building at market rent without title to the land is a comon title now on offer in Moscow, for example, but such a deal should be approached carefully to ensure that no further significant change will be made for the ground rent when the land is finally carved up because at present the State envisages levying high ground rents on users and lessees of buildings.

Changing nature of regulations

Anybody carrying on business in Russia or throughout the old Eastern

Bloc should not be surprised by the changing nature of the regulations governing commerce, the different and, at times, unorthodox methods of implementing same. Such matters as import and export taxes and licences come and go and change as the government adjusts to a market economy. Implementation of regulations can also be carried out in a draconian and unfair way. In many cases the authorities such as Revenue and Customs have the powers to freeze bank accounts and order deduction of taxes before the company can exercise any right of appeal. To overcome these problems it is necessary to be very vigilant of the companys' affairs and have local advisors to keep you closely aware of the trends of local authorities.

Taxation law in Russia is being developed very quickly and corporation, income and value added taxes are in force and at high rates. It is necessary for foreign investors to look closely at international company structures to minimise their tax implications. Unfortunately Ireland does not have a Double Taxation Treaty with Russia. One is in the process of being drafted but is not expected to be completed until the end of 1993.

Local legal consultancy firms did not exist in Moscow before Perestroika and so many of those that exist are very inexperienced in commercial law, uninsured and badly organised. A number of UK, US and other Western accountancy and law firms have established Moscow offices employing largely Russian accountants and lawyers.

Persistence & patience

Any Irish lawyer advising clients doing business in Moscow would be well advised to take local advice but also to insist on grafting as much Western commercial documentation and practice as possible into the Russian system. It is imperative to insist on directing the Russian partners' advisors and bureaucrats in a commercial direction and refusing to take no for an answer.

In this article I have confined most of my comments to Russia which is the most complex of all the post Communist countries, the same applies to advising clients doing business in other Eastern Bloc countries though to a lesser degree.

**Julie Sadlier, Solicitor; provides a legal consultancy service on doing business in Eastern Europe.*

□

Law School Professional Courses

Solicitors and apprentices are requested and urged to note that the Education Committee of the Society has decided the dates for the remaining Professional Courses in 1993 and in 1994. These are:

33rd Professional Course
8 June – 8 October, 1993

34th Professional Course
1 November, 1993 – 28 February, 1994

35th Professional Course
21 March – 13 July, 1994

36th Professional Course
22 August – 14 December, 1994

The timetable for the 33rd Professional Course includes a two week break during August, 1993. The terminal date in each case is the last date of class contact, and the conveyancing examination for each course will occur approximately ten days after that date. This should be borne in mind both by apprentices and offices in arranging their respective commitments.

There may be some minor modification of the commencement or termination dates. These would be liable to variation if there were to be an increase in the time allocation for existing subjects or an introduction of any new subjects or due to the vagaries of examination timetabling.

There are currently *91* students on each Professional Course. At the time of going to print the 33rd and 34th and 35th Professional Courses are completely full. **The earliest that any law graduate qualifying from his or her university in 1993 will be able to attend on the Professional Course is in August, 1994.**

Places on Professional Courses are allocated on a *'first come first served basis'*, provided that the applicant is exempt, or is entitled to apply to be exempt, the Final Examination – First Part, or has in fact passed that examination, **and** further subject to the applicant's actually *having secured an apprenticeship* **and** having submitted to the Society the completed application for consent to become apprenticed together with the necessary accompanying documentation. In the absence of any one condition of eligibility, an allocation *will not be made.*

It should be *noted* that failure to take up a place on a particular Professional Course by an apprentice does not automatically ensure postponement to the next available Professional Course, and that in such circumstance it will be the responsibility of the apprentice to *re-apply* for a place.

Applications to attend a Professional Course, should be submitted in writing to the undersigned.

Albert Power,
Assistant Director of Education,
Incorporated Law Society of Ireland,
Blackhall Place,
Dublin 7.
Tel: 01 6710711 Ext. 326.

THE ROUND HALL PRESS

New Titles

INSANITY, PSYCHIATRY AND CRIMINAL RESPONSIBILITY

FINBARR McAULEY

This book is about the way in which mental disorder affects criminal responsibility. Unlike the standard treatments of this subject, which tend to concentrate on the jurisprudence of the insanity defence, the approach set out here also draws heavily on the scientific literature on mental illness. The result is a unique attempt to integrate the psychiatric understanding of mental illness into a conventional analysis of the knot of legal problems surrounding the insanity plea.

There are chapters on all aspects of the insanity defence, including the M'Naghten Rules, the notion of volitional insanity as articulated by the Irish Supreme Court; the form of the insanity verdict, the proper limits of psychiatric evidence, the disposition of persons acquitted on the grounds of insanity; the problem of psychopathy, the question of fitness for trial and the need for a complementary defence of diminished responsibility.

Irish law and practice provide the core of the book, although there is a wealth of comparative material drawn from a wide range of common-law jurisdictions.

Essential reading for judges, lawyers, psychiatrists and students of forensic psychiatry, criminology and criminal law and all who have to grapple with the problem posed by the mentally disordered defendant.

Publication date: 20 May 1993

ISBN 1-85800-011-4 £37.50.

THE LAW OF COMPANY INSOLVENCY

MICHAEL FORDE

A definitive treatise on company receiverships, examinations and winding up/liquidations, together with various security and equivalent interests arising in insolvencies.

The book, which is divided into twenty-six chapters, commences with a description of the various remedies for securing payment available to creditors outside of insolvency proceedings. The position of receivers appointed by a debenture-holder is then discussed, followed by a thorough analysis of the court protection and examination mechanism under the 1990 "Goodman" Act. There then is a very extensive treatment of the law and practice regarding winding up/liquidations, voluntary and official - comprising about half of the entire book. The concluding part treats a variety of priority and related positions that are common to all types of insolvency proceedings, for instance, factoring debts, retention of title, funds held in trust, set-offs, fixed and floating charges and preferential creditors. There are also short chapters on the administration of insolvent insurance companies and on the position of employees in company insolvencies.

An essential work of reference for accountants, bankers and lawyers.

Publication date: 20 June 1993

ISBN 1-85800-013-0, £55.00.

THE ROUND HALL PRESS
Kill Lane, Blackrock, Co. Dublin
Tel: Int. + 353-1-2892922; Fax: 2893072

INCORPORATED LAW SOCIETY OF IRELAND • LIBRARY

Managing Your Practice

Only an estimated 10% of negligence claims against solicitors arise from lack of knowledge of the law, writes *Justin McKenna*, introducing a new series of articles on good practice management.

A colleague recently said to me that the worst day of his week was Sunday. This was the day in the week he did not visit his office, it being the day before Monday. It would be the night he would not sleep; the night before the start of another week. There are many solicitors like my colleague who dread going to bed on Sunday night.

Typically, (I will call the solicitor a "he") he is a solicitor running his own business with a small staff. He spends long hours involved in dealing with the never ending problems of anxious clients. In a single day he will deal with such diverse matters as:-

- the purchase or sale of a house;
- an attendance in the District Court to deal with a road traffic offence or enforcement of a judgement to collect a client's debt;
- a family problem involving long tales of alcohol abuse and physical brutality;
- the tragic case of a father permanently injured because of an accident at work;
- a local businessman trying to deal wth a reluctant tenant;
- the interesting case of a small company squeezed by a conglomerate and now seeking protection of the competition legislation;
- a bedside Will in the middle of the night.

The observer will see that business is good. How could a solicitor so able, so popular, so highly respected, loose sleep?

Apart from the problems of his clients already outlined, the same solicitor sees another picture when he enters his office:-

- the post has to be opened; but last week's is mostly unanswered,
- the staff are late; well it is Monday morning after all,
- there are telephone calls to be returned; but the phone has already started ringing,

There are cheques to be lodged; but before that they have to be entered into the ledger (the ledger can wait).

There are clients to see; one chap in particular is a new client and might be a useful contact (must quote him rock bottom for the sale of his house, that way there is a better chance of getting the purchase of the new one).

Justin McKenna

You can see it is a busy office because the carpet is heavily disguised by copious piles of elastic band bound skyscrapers of paper.

From surveys carried out it is estimated that only ten per cent of negligence claims against solicitors arise from lack of knowledge of the law.

Almost all cases coming to the attention of the Law Society involve breaches of the regulations, discipline, ethics or simple common client courtesy and the practices involved suffer from lack of proper management.

The Monday morning scene I have described is not the way it was intended. A young solicitor setting up a practice for the first time does not envisage such a scene, such a Sunday evening nightmare.

The problem with the new age solicitor setting up in practice on his own is that he or she is doing so, not because he wants to, but because he has to. Lack of employment prospects as an assistant solicitor, coupled with an eager heart and a willing bank provide the ingredients of the first flush of self-employment.

Knowledge of the law on its own will not see the overdraft come down. A fancy computer system will not on its own pay those university bills. Neither will all the years of experience be of any use in the twilight of the solicitor's career if he has not succeeded in basing his business on proper system of practice management. Practice Management is as relevant to the newly qualified solicitor contemplating business alone as it is to the sole practitioner seeking retirement.

In a competitive business environment with increasing numbers in the profession and a seemingly dwindling market place the answer to success lies in setting and maintaining standards based on quality of service, systems of work and planning for the future.

During the months ahead we shall publish in the *Gazette* a series of

(Continued on page 159)

Younger Members Committee

Annual Soccer Blitz

Sponsors – Educational Building Society

in aid of
The Solicitors Benevolent Association

Saturday, 29 May, 1993

Activities include: Football – Tennis – Live Music – Refreshments

For entry forms contact:
Joan Doran,
The Law Society,
Blackhall Place,
Dublin 7.

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

SADSI News

SADSI Auditor, Paula Murphy, reports on recent and prospective activities

Accommodation Register

Apprentices working outside Dublin are finding it increasingly difficult to find accommodation for the duration of the professional and, especially, the advanced course, which lasts only six weeks. To try to alleviate the problem, we are carrying out a survey of those currently attending Blackhall Place to establish where they are staying and how they came to find accommodation. We will contact those responsible for providing the accommodation with a view to compiling a register of locations available for apprentices for short terms. We are also exploring the possibility of having some type of arrangement with some of the letting agencies in town. It would be of great assistance to hear from anyone who can offer any form of accommodation. Please contact *Philippa Howley* (Vincent & Beatty), with any queries concerning the above.

Social

With the Jessup Moot team sent well on their way to Washington thanks to the proceeds of the very successful Sixties Night last February, the Oliver St. John Gogarty depleted of Budweiser thanks to the March pub quiz, and three lucky couples planning romantic sojourns to exotic locations thanks to April's Blind Date; 1993 has set off to a good start!

SADSI will host its Midsummer's Night Ball in Blackhall Place on Saturday, 3 July. There will be a drinks reception beforehand complete with string quartet. Tickets go on sale early in June and be warned of limited availability!

Regional Events

Representatives in Cork, Limerick and Kilkenny *(John Gaffney, Isabel Donnellan and Breda Fleming)* have been put in funds to organise events for apprentices working in these areas. The Limerick table quiz in Costelloe's Tavern on 22 April last was apparently a great success. John and Breda will be in contact with details of forthcoming events in their areas.

There will be a weekend of events in Cork on the 24/25 July. Central to the weekend agenda will be a debate on the Saturday night followed by a disco. We will have sports competitions throughout and an organised excursion on the Sunday. Anyone with ideas should contact *John Gaffney* (O'Flynn Exhams).

Sporting Events

Brian Roe, (Hugh & Liddy Solrs.), our sports representative, is organising a soccer league for the summer months. The social representative from each course should contact him with a list of team members so that preliminary rounds can get underway.

Debating

The first SADSI debate of the year was hosted in the Law Society on Wednesday, 28 April. The motion was "That The Legal System is a Disgrace to the Name of Justice". Speakers included the Attorney General, Harry Whelehan; Captain James Kelly; Gerry Danaher; Ivan Yeats; David Norris and Twink.

A further dimension to the debate was a Maiden Speaker competition. Three maiden SADSI speakers were selected from this debate to go through to the final in October. Three further speakers will be selected from the Cork debate on the 24 July. This year we hope to put SADSI back on the map where debating is concerned and to put forward a high class team for the Irish Times debate.

Education

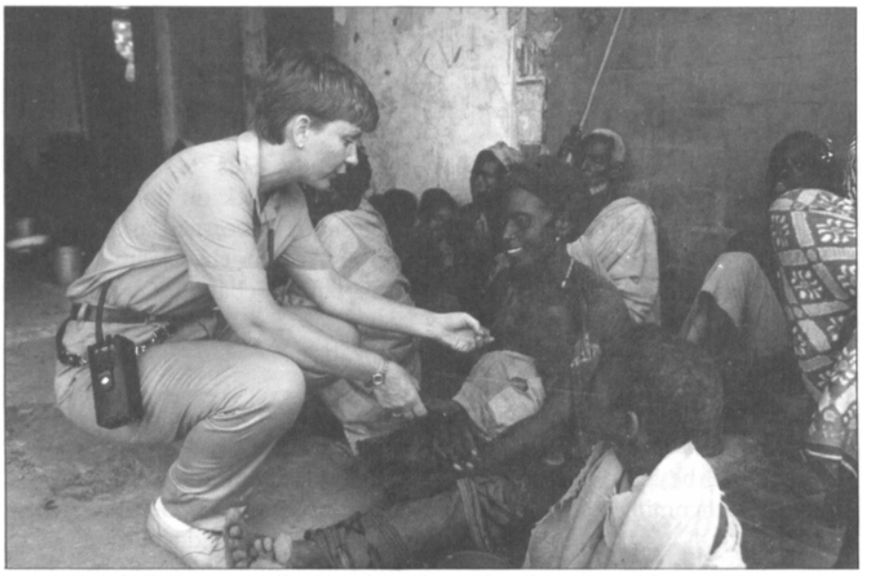
A major step forward on the education front has been the successful appointment of our educational officer, *Garett Breen,* to the Law Society Educational Advisory Committee. This will provide SADSI with a suitable forum within which to properly voice the various issues facing apprentices. One such issue concerns the difficulties experienced by apprentices in obtaining local authority grants and, in this regard, of considerable assistance will be Garett's appointment to the Law Society sub-committee set up to examine this problem.

The sub-committee, consisting of *Justin McKenna, John Shaw, Patricia Casey* and *Garett Breen,* met on 30 March with two officials from the Department of Education and assurances were obtained that the following matters would be examined:

1. The non-eligibility of apprentices with post-graduate qualifications, including the Galway and Cork LLBs.
2. The position of 7 year law clerks without a primary degree.
3. The failure of the Department of Education to treat the full 3 year apprenticeship period as the basis of assessment.
4. The position of those students who did their professional course prior to the introduction of the scheme, and also those who turned 23 years (the eligible age) between the professional and advanced courses.

Paula Murphy
Auditor □

Solicitors Give £84,000 to Somalia



Solicitors contributions have been distributed to aid agencies

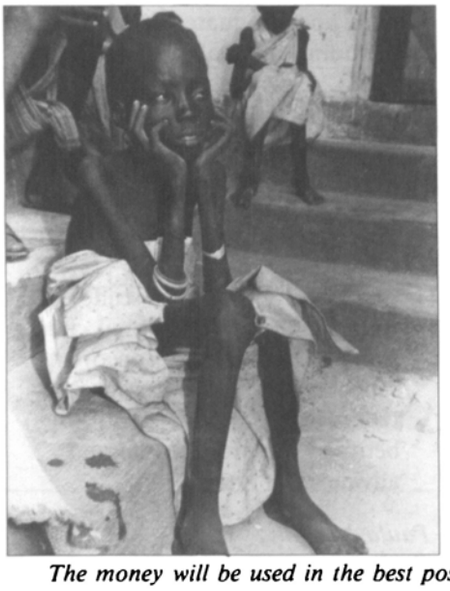
Over £84,000 has been contributed to the Solicitors Somalia Fund since it was launched last Autumn. All of the money, comprising contributions from individual solicitors around the country, has been forwarded to the President of Ireland, Mrs. *Mary Robinson*, for distribution to various aid agencies working in Somalia.

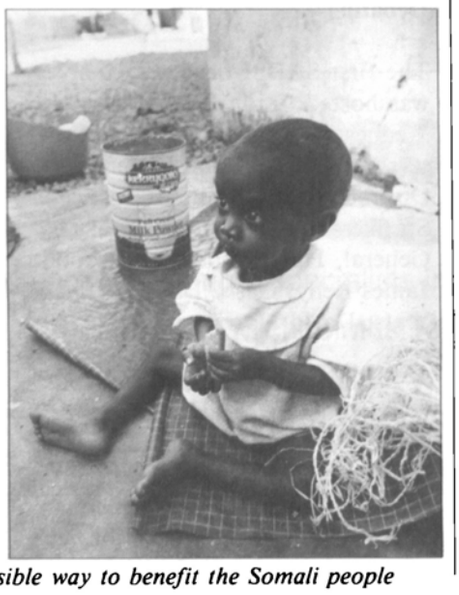
In a recent letter to the Director General of the Law Society, President Robinson said:

> "I have today received a cheque for £17,080.02 from the Incorporated Law Society as the final receipt from the collection on behalf of the people of Somalia. The total contribution in excess of £84,000 is a magnificent sum and a marvellous reflection on the Society. The earlier monies received were distributed via four of the Irish aid agencies working on the ground; I propose to disperse this latest figure over the next week or ten days and will advise you of how it has been distributed."

The President concluded by saying:

> "I would appreciate it if you could ensure that all those involved realise how much I appreciate their generosity and that the money will be used in the best possible way to benefit the Somali People." □





The money will be used in the best possible way to benefit the Somali people

Call to Government to Extend New Unfair Dismissals Bill

The Free Legal Advice Centres (FLAC) and the Coolock Community Law Centre (CCLC) have called upon the Government to extend the recently published Unfair Dismissals Bill, 1993 so that claimants before the Employment Appeal Tribunal could qualify for assistance under the scheme of civil legal aid and advice The two groups say that claims before the Employment Appeals Tribunal can often include technical points of law making legal representation essential for a claimant. In the last eighteen months both CCLC and FLAC took on over 150 employment law cases, demonstrating a clear need for representation especially for non unionised employees on low incomes for whom there is no other legal resource.

According to FLAC, there are currently more than ten statutes which deal with labour law. As many of the Acts provide for different procedures and provisions anomalies can result. Thus, it can be difficult for claimants to be aware of their rights let alone how to enforce them. The two law centres say that it is disappointing that no attempt has been made in the Bill to consolidate the existing law.

Both FLAC and CCLC say that in the course of their work they have frequently encountered the difficulty of enforcing determinations of the Employments Appeals Tribunal where companies have ceased to trade but have not been formally wound up. Again, this problem has been ignored in the new legislation, they say.

Under maternity protection legislation, a pregnant employee is required to serve on her employer formal technical notices of intention to return to work. FLAC and CCLC are urging the Government to relax the mandatory nature of these provisions. □

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 in substitution from the original 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: 21 May, 1993.

Lost Land Certificates

Denis P. Leary, Folio: 4144; Land: Kilnakappoge, Bantry; Area: 54(a) 1(r) 4(p). **Co. Cork.**

Cornelius J. Lucey, Folio: 2373; Land: Part of the lands Cummeenavrick; Area: 27(a) 2(r) 36(p). **Co. Kerry.**

Michael Cannon, Carrowniskey, Westport, Co. Mayo. Folio: 45504; Lands: (1) Carrowninsky (townland), (2) Carrownisky, (3) Carrownisky; Area: (1) 17.334 acres, (2) 1(a) 1(r) 0(p). **Co. Mayo.** Solr. Ref: 1358.

David and **Olive McSweeney,** 94 Seacrest, Knocknacarra, Galway. Folio: 37790F; Townland: Murroogh, **Co. Galway.**

John Gleeson, Folio: 21426. Land: 1. Glengoole South, 2. Lickfinn, 3. Clonowra; Area: 1. 14(a) 1(r) 24(p), 2. 39(a) 3(r) 0(p), 3. 1(a) 0(r) 0(p). **Co. Tipperary.**

Sean Weir, Folio: 1012; Land: Multyfarnham; Area: 7(a) 1(r) 32(p). **Co. Westmeath.**

Margaret Whelan, Folio: 790; Land: Raheengraney, **Co. Wicklow.**

Ciaran O'Halloran and **Anne Marie O'Halloran,** Folio: 10717; Lands: Kildare. **Co. Kildare.**

Andrew Leonard, Folio: 4936F closed to Folio 10270F; Land: 1. Castletowndelvin, 2. Balrath South, 3. Bolandstown, 4. Clonleame, 5. Ballinlough (Wadding, 6. Ballinlough (Wadding). **Co. Westmeath.**

Bridie Shields, Folio: 4355; Land: Grange Irish; Area: 10(a) 3(r) 19(p), **Co. Louth.**

John Joseph Nunan, Folio: 15913; Lands: Ballinluig West, **Co. Cork.**

Margaret Maher, Folio: 11555; Land: Part of the lands of Freshford; Area: 0(a) 1(r) 29(p). **Co. Kilkenny.**

John and **Agnes Allister,** Folio: 7367; Land: Part of the lands of Milltown; Area: 50(a) 0(r) 31(p). **Co. Monaghan.**

Gerard McNally, Folio: 4364R; Lands: Ballintine and Rathernan, **Co. Kildare.**

Yvonne Dunne, Folio: 491F; Land: Stamullen; Area: 0(a) p(r) 11(p). **Co. Meath.**

June Cotter, Folio: 31208F; Lands: Fountainstown, **Co. Cork.**

Laurence Sweeney, Folio: 12224; Lands: Barretstown; Blacktrench; Clongorey; Lattenbog. **Co. Kildare.**

Patrick Fitzgerald, Folio: 1. 16925, 2. 2327, 3. 2238F; Land: 1. Ballysheedy East, 2. Rossbrien, 3. (i) Rossbrien, (ii) Rossbrien. **Co. Limerick.**

Charles P. Scott, Folio: 1311F; Land: Killusty South; Area: 0(a) 2(r) 4(p). **Co. Tipperary.**

Thomas O'Brien, Folio: 7843; Land: Part of the lands of Knockanavar; Area: 28(a) 1(r) 11(p). **Co. Tipperary.**

G.L. Dexter Limited, Folio: 3367L; Land: Situate on the north side of Howth Road in the Parish and District of Raheny, **Co. Dublin.**

Anthony Radley, Folio: 3243F; Land: South side of Commons Road in the Parish of St. Annes Shandon. **Co. Cork.**

Patrick Sharkey, Folio: 26650; Land: Drumalee; Area: 0(a) 1(r) 29(p), **Co. Cavan.**

Minister for Lands, Folio: 2467; Land: Ballygobban; Area: 493(a) 2(r) 13(p). **Co. Wicklow.**

Breda Hennebry, Folio: 30991F; Land: Crosshaven Hil, **Co. Cork.**

James Quigley, Newtown, Killaloe, Co. Kildare. Folio: 1670F; Land: Knockyclovaun; Area: 10.300 acres, **Co. Clare.**

Sean Duffy, Folio: 11909; Land: Newtownbalregan; Area: 0(a) 0(r) 39(p). **Co. Louth.**

Michael Farrelly, Folio: 19648; Land: Corragloon; Area: 1(a) 0(r) 0(p), **Co. Cavan.**

Irish Horse Abbattoir Investment Company Ltd. Folio: 16186; Land: Turnings Upper, **Co. Kildare.**

Michael McNamara, Kilmihill, Co. Clare. Folio: 3L; Land: Townland: Kilmihil; Area: 116 ft by 40ft thereabouts. **Co. Clare.**

Jacob Brownrigg, Folio: 7865; Land: Tombreen, **Co. Wicklow.**

James McCann, Kilbride, Swinford, Co. Mayo. Folio: 47638; Land: 1. Kilbride, 2. Kilbride (one undivided 10th part), 3. Kilbride (one

undivided 22nd part), 4. Kilbride (one undivided 15th part), 5. Kilbride. Area: 1. 7(a) 3(r) 10(p), 2. 20(a) 2(r) 10(p), 3. 8(a) 3(r) 10(p), 4. 12(a) 1(r) 32(p), 5. 2(a) 3(r) 18(p). **Co. Mayo.** Solr. Ref: M/M/MP 196/6.

Cornelius M. Wall, Folio: 13940F; Land: Townland of Greatcommon Barony of Balrothery East, **Co. Dublin.**

Brian Carney and **Siobhan Carney,** Folio: 7295; Land: Valleymount or Cross, **Co. Wicklow.**

Peter Donnelly (deceased), Folio: 12451; Land: Newtownbalregan; Area: 0(a) 1(r) 2(p), **Co. Louth.**

Michael Minihan, Tiermaclane, Ennis, Co. Clare. Folio: 4480; Land: Ballyveskel (townland); Area: 11(a) 0(r) 38(p), **Co. Clare.**

Lost Wills

Murphy, William Barry, deceased late of 30 Primrose Avenue, Dublin, date of death 23 November, 1992. Would any person having knowledge of the whereabouts of the will of the above named deceased, please contact James D. Aitken & Co., Solicitors, 37 Molesworth Street, Dublin 2. Telephone: 6765239.

Larkin, Edward, late of 61 Ballygall Parade, Finglas, Dublin. Would anyone knowing the whereabouts of a will of the bove named deceased who died on 14 March, 1993, please contact Patrick J. Durcan & Co., Solicitors, Castlebar, Co. Mayo. (Reference C/TD).

Donaghy, Thomas, late of 36 Fortfield Park, Terenure in the City of Dublin. Would any person having knowledge of the whereabouts of the original will of the above named deceased who died on 28 August, 1992, please contact Patrick Donaghy & Co., Solicitors, 13/16 Dame Street, Dublin 2. Tel No. 01- 6974165.

Creedon, Mrs. Frances, late of 59 Whitehall Road, Terenure, Dublin. Would any person having knowledge of the existence or whereabouts of the original will (dated 15 May, 1970) of the above named who died on 20 October, 1980, please contact Arthur Cox, Solicitors, 41/45 St. Stephen's Green, Dublin 2. Ref: WW, Telephone No. 01- 6764661.

Dillon, Eva, late of Ballyduff, Ballycarney, Ferns, Co. Wexford. Would any person having knowledge of the whereabouts of the will of the deceased who died on 18 December, 1992, contact Butler Walsh & Co., Solicitors, Enniscorthy, Co. Wexford.

Hennessy, Patrick, late of Courtnacuddy, Enniscorthy, Co. Wexford. Would any person having knowledge of the whereabouts of a will of the deceased who died on 11 March, 1993, contact Butler Walsh & Co., Solicitors, Enniscorthy, Co. Wexford.

Homan, Eleanor, Cherry, Elizabeth, (spinster), late of 15 Lansdowne Road, Belfast. Would any person having knowledge of the whereabouts of a will of the above named deceased dated 3 December, 1962 who died on 24 February, 1993, please contact O'Flynn Exhams & Partners, Solicitors, 58 South Mall, Cork – Telephone No. (021) 277788.

O'Donohue, Michael, late of Drumeevin, Kilfenora, Co. Clare. Will any person having knowledge of the whereabouts of a will of the deceased communicate with Paul Lynch & Co., Solicitors, 3 Bank Place, Ennis, Co. Clare.

O'Reilly, Alphonsus, deceased, late of Bartra Heights, Killala, Co. Mayo who died on 7 November, 1985. Any person having knowledge of the whereabouts of a will made by the above named deceased, please contact Bourke, Carrigg & Loftus, Solicitors, Ballina, Co. Mayo. Tel: (096) 21455.

Gleeson, Jack (otherwise John), deceased, late of Mountcashel, Sixmilebridge, Co. Clare. Would any person having knowledge of the whereabouts of any will of the above named deceased who died on 21 February, 1993, please contact Rory O'Donnell & Co., Solicitors, 15/16 Fitzwilliam Place, Dublin 2 (Ref: AC) Telephone: (01) 6687622.

McCormack, John, late of Clooneen, Dowras, Birr, Co. Offaly. Would any person having knowledge of the whereabouts of a will of the above named deceased, who died on 25 February, 1993, please contact Thomas K. Madden & Co., Solicitors, 4 Dublin Street, Longford. (Ref: ECH). Telephone: (043) 41561.

Employment

Capable and Enthusiastic solicitor (3 years post qualification experience) seeks part-time position in Dublin office. Conveyancing, litigation, family law and probate experience. Reply to tel no; 01-540716.

Experienced Solicitor, 8 years qualified in general practice, predominantly in litigation, (all courts), conveyancing and probate, seeks new challenging position with genuine prospects. Excellent references, C.V. available on request. Box No. 40.

Apprenticeship Sought, by mature hard-working person with prior legal experience and office background in the West. Box No. 41.

Legal Secretary, currently in full time employment now seeks part time position. 4 years experience in all areas. Replies to Box No. 42.

Solicitor's Apprenticeship required by LL.B (2.1) Graduate. Six months office experience. Commencing Professional course on June 8. Box No. 43.

Experienced Law Searcher Required. Part time – 1/2 days per week. Flexible hours. May suit retired person. Dublin South City. Reply to Box No. 44.

Solicitor with over twenty years experience in general practice, having disposed of his private practice, is available for full, part-time work or sub-contracting work. Leinster area preferred. Contact P.J. Cusack, Monread, Naas, Co. Kildare. Tel: 045-97634.

Apprenticeship Sought by male graduate (BA Dip Leg Studies). Hardworking and enthusiastic. Phone Desmond: (0902) 94051.

Miscellaneous

Northern Ireland Agents: For all contentious and non contentious matters. Consultation in Dublin, if required. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, telephone (080693) 61616, Fax: (080693) 67712.

Solicitors Practice in Dublin for sale. Reply to Box No. 45.

Office for Sale or to Rent. Prestige building at Fitzwilliam Square comprising 2,800 square feet of office space, and income of £16,800 from basement and 3rd and 4th floors (with vacant possession of same if required). Price Region: £375,000.00. Ph. 612823.

Wanted to Buy – Acts of the Oireachtas Wish to buy statutes as promulgated for the years 1922-1973 & 1975 & 1976 Vol. 1. Offers of sets beginning later (not later than 1937) also welcome. Would consider buying a complete set (1922-present) if necessary. Swiss Institute of Comparative Law, Dorigny, CH-1015 Lausanne, Fax (1641) (21) 692 4343: Telex 454 711 droc ch; Tel: 692 4311 ask for *Fred Chapman* or *Martin Sychold.*

Seven Day Publican's Licence for Sale Contact Henry Shannon & Co., Solicitors, 2 Brighton Place, Clonmel, Co. Tipperary. Telephone No. (052) 21700; Fax No. 25267.

Would any person having knowledge of relations of John M. O'Farrell, Solicitor, who qualified in 1944, please contact *Sandra Fisher,* Personnel Officer, The Law Society, Blackhall Place, Dublin 7.

English Agents: Agency work undertaken for Irish solicitors in both litigation and non-contentious matters — including legal aid. Fearon & Co., Solicitors, 12 The Broadway, Woking, Surrey GU21 5AU. Tel: 0044-483-726272. Fax: 0044-483-725807.

Managing Your Practice – *(Continued from page 156)*

articles designed to help and assist solicitors to manage their practices. These articles will help to assist the practitioner in understanding some of the simple ground rules. Hopefully, they will help the practitioner to undertand the importance of a business plan, personal time management, keeping books of accounts, operating a computer system, recording time, keeping a data base, understanding client needs, communicating with the client, conducting reviews, proper and adequate billing, maintaining a client audit, effective recruitment, work appraisal, keeping staff and the importance of continuing education.

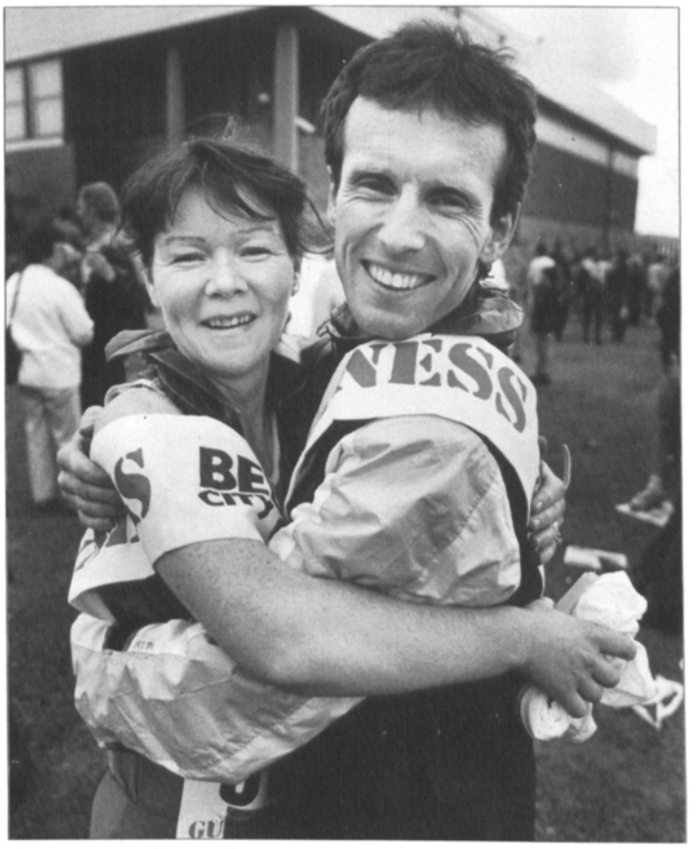
If I may borrow a quotation that may help to readjust the focus of success based on legal skills and ability:

> *Your clients don't care how much you know until they know how much you care''*

The Practice Management Committee of the Law Society wishes all its colleagues a happy Monday morning and a bright and carefree Sunday afternoon.

Justin McKenna,
Chairman,
Practice Management Committee.

Solicitor Wins Belfast Marathon



Gerry McGrath, a solicitor from Dublin who practises in the firm of John P. Redmond & Co., was the winner of the recent Belfast City Marathon, in a highly respectable time of two hours eighteen minutes. He is shown here celebrating his victory with Catherine Smith (also from Dublin) who was the first woman past the finishing line in the same race.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 5 JUNE, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

CAPPING AWARDS IS NOT THE ANSWER

THE LAW SOCIETY IS HERE TO HELP YOU . . .

LEGAL AID IN CUSTODY PROCEEDINGS

QUALITY MANAGEMENT – 10 TIPS

Ring For Your Free Fact Sheet

Now includes 3rd Party Returns

Orchard Software Ltd.

Orchard Centr
Nationwid

Dublin:-
Orchard Software L
01- 2807588

Legal & General
01-8725522

Midlands:-
Aptech Ltd 042- 317

South:-
P.F.H. Computer Syst
(021) 271152

North:-
Canavan Compute
Systems 0504 -26-77

VOL. 87 NO. 2 JUNE 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 165
Capping the level of personal injuries awards is the wrong approach toattempting to reduce the cost of insurance premiums and would interfere with the basic right of people to be properly compensated when they are wrongly injured.

President's Message 167
The Law Society is here to help you, writes Law Society President, *Raymond Monahan*, who gives examples of some of the Society's current work.

Lawbrief 169
Question Time in the Dail recently dealt with justice matters; keeping wigs and gowns; uncensored electronic mail; Dr. *Eamonn Hall* reports.

The Profession in the Media 171
A new monthly column which examines issues relating to the profession as reported in the news media.

Practice Management 172
Brian O'Reilly, Solicitor, writes about managing quality in the office and offers ten tips for immediate results.

Solicitors – Alternative Job Opportunities 174
Michael Nugent of the Younger Members Committee reports on a highly successful seminar on alternative job opportunities for solicitors.

Liability of of Personal Representatives 175
New changes in the social welfare code extend the liability of personal representatives where the deceased has been in receipt of *any* form of social assistance, writes *Gerry Whyte*.

Practice Notes 178
Probate office practice re charitable bequests; life policy proceeds not paid to solicitors; correction to pocket tax guide published by Taxation Committee.

People and Places 180

Disciplinary Cases 183
Reports of recent petitions by the Law Society to the High Court and payments approved from the Compensation Fund.

Book Reviews 185
Irish Social Services; Law Reform Commission Consultation Paper on Sentencing, and the Irish Student Law Review, are reviewed this month.

Council Meeting – May 188
A summary of the issues discussed by the Council of the Law Society at its meeting in May.

Annual Conference 189
The President of the Society briefed the Half Yearly Meeting on a range of current issues; while speakers at the business section of the Conference advised on the importance of managing quality in a solicitor's practice.

Legal Aid in Custody Proceedings 195
The effect of recent Supreme Court decisions appears to be that the Legal Aid Board will be required to grant legal aid more frequently in cases involving custody disputes, writes *Mel Cousins*.

Professional Information 198
Notices concerning lost land certificates, wills and leases; employment and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7.
Telephone 6710711 Telex: 31219 Fax: 6710704.

Front Cover: The front cover shows the President of the Law Society, Raymond T. Monahan, Eileen Monahan, and four of their children, l-r: John, Neil, Yvette and (front) Elisa, at the Annual Conference of the Society held in Furbo, Connemara, at the end of May.

Cork

Law School

Preparatory Course for the Part 1 Final Examination of the Incorporated Law Society

The College offers a one year full time day course consisting of lectures and tutorials, suitable to graduates taking the part 1 Final Examination in October 1994.

The course covers the areas of law laid down by the Law Society.

There are 25 places on the course to be filled on a first come first -served basis.

For further details contact-
The Director, Holy Trinity College
Tel: 021-276267 Fax: 021-275632

PROBLEM

HAS YOUR CLIENT APPROACHED YOU WITH A PROBLEM WITH HIS BANK OR FINANCE COMPANY OVER LEASED EQUIPMENT?

SOLUTION

THE SOLUTION IS NOT IN THE SMALL PRINT OR THE TERMS AND CONDITIONS!

CONTACT

KIERAN LOUGHRAN
Liability Advisory Services
Park House
North Circular Road
Dublin 7

Tel: 381055 Fax: 8680505

Erne Travel

Ireland/Thailand – International Law Conference in Thailand – *The Land of Smiles* 20 February 1994 – 6 March 1994

Ensure that you avail of this unique opportunity to visit the Far East and add to your professional knowledge.

The Conference, in conjunction with the Thai Law Society, will take place during the first three days in Bangkok.

The group will then move to Chiang Mai in the Northern Highlands for two days before flying down to beautiful Phuket for seven nights. All transport will be by air and first class hotels will be used throughout.

Full details, as well as booking forms, will be contained in the next issue.

In the meantime for information contact:–

Ciaran O'Hare,
Erne Travel, Paget Square, Enniskillen,
Co. Fermanagh.
Tel: 08 0365 324477 or 08 0365 322444
Fax: 08 0365 324432

Ireland/Thailand International Conference February/March 1994

Exploratory talks are underway regarding the possibility of an international Law Conference early next year.

Ciaran O'Hare whose firm *Erne Travel*, specialises in international travel groups and conferences, has already done preliminary work and has produced a broad outline for the possible itinerary.

The Thai Law Society has made it clear that they would be very happy to welcome a party from the Irish Law Society providing lecturers, a visit to Law Society Headquarters and, of course, attendance certificates.

A highlight of the activities would be a key note address by *Thongvai Thongpad*, one of South East Asia's most eminent lawyers.

The conference would be costed so that the solicitor taking part would be able to bring spouse or partner along at a very attractive price and, of course, the participant may wish to claim expenditure involved against tax as a practice expense.

The outline itinerary would be broadly as follows:–

Sunday, 20 Feb.	Depart Dublin for London – Aer Lingus and onward to Bangkok – Direct flight.
Monday, 21 Feb.	Arrive Bangkok for 3 nights, Meridien President Hotel where Conference would take place.
Thursday, 24 Feb.	Depart Bangkok by air for Chiang Mai for 2 nights.
Saturday, 26 Feb.	Depart Chiang Mai for Bangkok and then onward to Phuket for 7 nights at the Meridien Hotel.
Saturday, 5 March	Depart Phuket for Bangkok, London and Dublin.

Capping awards is not the answer

However well-intentioned, the proposal by the Minister for Commerce & Technology, Seamus Brennan, TD, to reduce the cost of insurance premiums by placing a cap on the amount that judges could award in personal injuries cases, is misguided. Apparently, the Minister would seek to bar judges from awarding damages higher than the European average. Aside from the very dubious constitutionality of the proposal (which the Minister appears tacitly to accept), any attempt to interfere with the basic rights of ordinary people to be properly compensated when they suffer personal injury through no fault of their own must be viewed with serious concern.

Reducing the cost of insurance cover is, undoubtedly, a socially desirable objective but the Minister appears, in responding to direct pressure from insurance and business interests, to be attacking the rights of the most vulnerable sector – ordinary people who are injured. That is not the way forward. The reasons for the relatively high cost of insurance in this country cannot be reduced to any one factor and any changes that might be brought about must be carefully balanced having regard to the rights of all the parties involved. It is facile and unfair to seize solely upon the compensation element in the total costs of the insurance industry and argue that it alone should be reduced. A much broader approach is required under which every aspect of the cost of insurance would be subjected to rigorous examination, including the procedures and administrative practices of insurance companies themselves.

It would appear from the public pronouncements of leading members of the insurance industry, business organisations and certain public bodies, notably Dublin Corporation, that a climate of opinion is being inculcated where the entitlement of a person to seek fair and legitimate compensation is being undermined. It is important that both branches of the legal profession, on behalf of the public, would seek to assert the entitlement of ordinary people to vindicate their rights and to be fully and properly compensated when they have been wrongly injured. This is, after all, the essence of our system of justice.

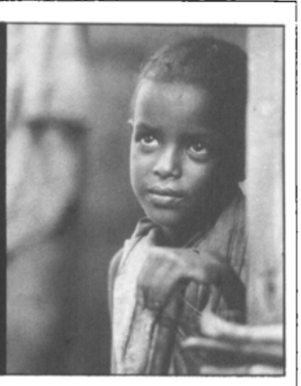
Much has been made of comparative statistics on the level of awards in Ireland and those pertaining in other European countries. There are dangers inherent in selectively adopting legal provisions or rules from other jurisdictions without looking more generally, and in a broader way, at other aspects of the legal systems in those countries and especially at the employment and social welfare codes that apply to people who suffer injuries. There is a risk that, because European legal systems are very different from that in Ireland, we would not be comparing like with like. And, in any event, who is to say that the European average in relation to compensation and personal injury cases is *just and equitable* in all the circumstances and who is to say that those levels of compensation would be appropriate for the circumstances that apply in Ireland?

It is noteworthy that a report issued last year by Coopers and Lybrand, which examined the cost of motor insurance in this country as compared with the UK, indicated that the level of accidents in this country involving claims for personal injuries was much higher than in the UK. As well as that, motoring costs generally are much higher in this country and our roads are in a much poorer condition. These factors have to be taken into account in looking at insurance costs.

Some years ago, the Government concluded that juries were the cause of the problem and they proceeded to abolish the jury system in personal injuries cases. That did not, apparently, succeed in reducing the level of awards. And there are good reasons for this. One reason is that Irish judges have their own sense of what is fair and equitable having heard all the evidence. It would be highly dangerous, to interfere with the discretion of a judge to award what he regards as proper and just in a particular case. The judge evaluates all the evidence and, in particular, the medical evidence relating to the injuries suffered and is, therefore, best placed to make the decision. And if it is felt by the other side that the trial judge was too generous in damages, there is the right to appeal.

Undoubtedly much can be done to reduce insurance costs. It is interesting, in this context, to look now at the MacLiam Report of 1982 on this issue. There we find a host of recommendations, but no action appears to have been taken on many of the recommendations that lie exclusively within the control of Government. We believe that the Government should act now to reform our civil litigation procedures and provide a speedier and more efficient service in the courts. Last year, at the express invitation of the Attorney General, the Law Society agreed to participate in a working party to examine certain issues relating to personal injury actions in the High Court. That working party also includes representatives from the Irish Insurance Federation and the Bar Council. It has already made two reports containing many useful recommendations about how such procedures could be improved, thus leading to reduction in costs. As yet, there has been no response from Government to the reports.

If we are going to have European norms in relation to damages for personal injuries it is fair to ask the Government to apply European norms in other areas. In particular, let us have a system of civil legal aid in this country that equates with the European norm. The Government should address the real issues underlying the high cost of insurance and provide better and speedier access to justice rather than sending signals to the community that they propose to reduce the compensation levels payable to ordinary people when they suffer serious injuries. ❑



There Is An Alternative.

Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now.

Siobhán Walsh

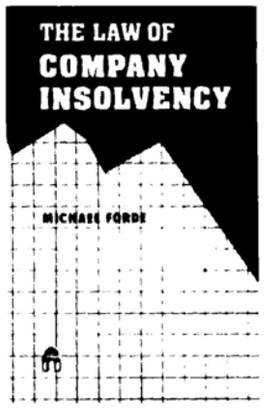
CONCERN

1 Upper Camden Street, Dublin 2. Tel. 6681237

Publication date: 30 June 1993

The Law of COMPANY INSOLVENCY

MICHAEL FORDE



A definitive treatise on company receiverships, examinations and winding up/liquidations, together with various security and equivalent interests arising in insolvencies.

Among the topics covered in this comprehensive work are: the various remedies for securing payment available to creditors outside of insolvency proceedings; the position of receivers appointed by a debenture-holder; analysis of the court protection and examination mechanism under the 1990 "Goodman" Act. There is a very extensive treatment of the law and practice regarding winding up/liquidations, voluntary and official. The concluding part treats a variety of priority and related positions that are common to all types of insolvency proceedings.

An essential work of reference for accountants, bankers and lawyers.

ISBN 1-85800-013-0, £55.00.

THE ROUND HALL PRESS
Kill Lane, Blackrock, Co. Dublin, Ireland
Tel: Int. + 353-1-2892922; Fax: 2893072

MANAGEMENT CONSULTANCY
for
SOLICITORS BY SOLICITORS

For Independent and Confidential Advice on

- Financial Management.
- Systems and Organisation.
- Business Development and Marketing.
- Time Management.

Contact:

Esmond Reilly,
Estuary House, New Street,
Malahide, Co. Dublin.

Telephone: 8452577 Fax: 8453005

SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

PRESIDENT'S MESSAGE

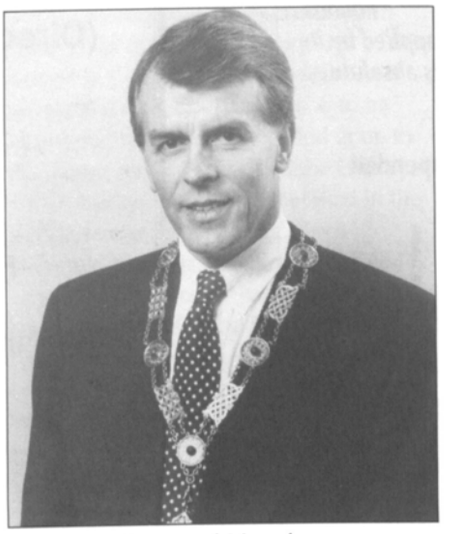
The Law Society is here to help you . . .

I have recently heard it jokingly said that the three greatest current lies are, (1) the cheque is in the post, (2) I will feel the same about you in the morning and (3) the Law Society is there to help you.

The reason why some may enjoy this story is that, while the Law Society is, of course, there to be of assistance to members of the profession, sadly, some members believe otherwise. I am most anxious to correct this inaccurate perception and to ensure that members fully realise the work carried out by the Law Society in furthering the well-being of the profession and are supportive of the Society in its endeavours.

The Society has two areas of duty. The first is to comply fully with its statutory obligations to regulate the profession and to safeguard the public interest. The second is to promote the interests of the profession and to help practitioners deal with the difficulties and problems experienced by them in everyday practice. The Society seeks to perform both roles and to provide an extensive service in a number of ways.

- A number of Committees, drawn from the Council, but in some cases containing non-Council members, deal monthly with problems referred to them by the profession and issue appropriate advice and guidance to individual members and to the profession as a whole.
- The Library provides an excellent research and support service to members.
- Continuing Legal Education courses continue to be up-graded and expanded with a view to assisting members improve their competence and expertise, particularly in niche areas.
- Practice Management courses and seminars will begin in the Autumn to assist members in the running of their practices.
- Remuneration and Costs seminars are being planned to assist members assess the cost of running their practices, and to ensure that their approach to fee charging is realistic having regard to overhead costs and the need to provide themselves with a reasonable return on their work.



Raymond Monahan

- The Society has worked with great commitment and determination to secure over 100 amendments to the proposed Solicitors Bill to safeguard the interests of the profession and continues to campaign against the proposal to allow conveyancing and probate work to be performed by others not qualified to do it.
- The Society is reviewing its overall policies in regard to education and its obligations under the Compensation Fund.
- The Society is seeking improvements in, and proper resources for, the whole system of the administration of justice (this will be the subject matter of a forthcoming submission to Government).
- The Society is lobbying for the introduction of a comprehensive system of civil legal aid.
- Recently, the Society has supported and subvented court proceedings by or on behalf of members of the profession seeking to establish fundamental rights and important principles pertaining to the profession.
- Most recently, the Society, in attempting to defend the public against unacceptable legislative developments, has lead a campaign against the imposition of a probate tax in the 1993 Finance Bill.
- The Society is currently campaigning against the proposal by the Minister of State for Commerce and Technology, Seamus Brennan TD, to cap the level of personal injuries compensation.

From the foregoing it will, I hope, be accepted that the Council, its Committees and the staff of the Society seek diligently to comply with their various obligations, well appreciate the problems facing the profession, are attempting to further its interests, and endeavour to be of assistance to individual members. Although the Society communicates regularly with members through the *Gazette* and by means of individual letters as the occasion demands, not all members seem to be aware of the work being done on their behalf. I am working to increase this awareness and thereby improve the relationship between the Society and the ordinary member so that such member can, as a first step towards the solution of a particular difficulty, seek help and assistance from the Society. Based on its experience and network system, involving a wide cross-section of the profession, the Society will be in a position to respond in accordance with its commitment that the Law Society **is** there to help you. ❐

Raymond T. Monahan,
President.

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

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.

IRISH CANCER SOCIETY

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

MKM

MacGreevy Keane Mediation

Contract Dispute Resolution

- MKM offers a voluntary, informal, efficient and economical mediation service for the resolution of commercial disputes.
- The MKM system means that unnecessary adversarial arguments are avoided.
- MKM helps both parties to focus on the problem and to look properly at both sides of the case.
- The mediator seeks the middle ground and then facilitates a settlement which is acceptable to both parties.

MKM

MacGreevy Keane Mediation
Contract Dispute Resolution
Kingram House, Kingram Place, Dublin 2.
Telephone: 01-6766811/6766815.
Fax: 01-6766853

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

By Dr. Eamonn G. Hall, Solicitor

Question Time on Justice

During Question Time in the Dáil on 30 March last, the Minister for Justice *Ms. Maire Geoghegan-Quinn*, and the Minister of State at the Department of Justice *Mr. William O'Dea*, answered questions on a number of matters of interest to members of the profession, which are reported below.

Solicitor Judges of Circuit and High Courts

The Minister for Justice, Ms. Geoghegan-Quinn, stated that she was sympathetic to the appointment of solicitors as judges of the Circuit Court and the High Court. She noted that the Law Society had recently sent a submission to her Department in relation to the appointment of solicitors to the courts and that she had taken that into consideration.

The Minister also stated that relevant legislation does not provide for any outside agency to assess candidates for appointment to the Bench, and she had no proposals at present for the introduction of amending legislation which would provide for such assessment. The system of recruitment to the Judiciary was based on the idea of bringing in people who were experienced and trained practitioners. Although the emphasis was on the need to select people who have the necessary legal qualifications, the Minister stated that the Government naturally took account of the suitability generally of the individuals recommended for appointment.

No Government would advise the President to appoint somebody who was manifestly unsuitable for judicial office. Some who are recommended for appointment subsequently make controversial decisions, but the Minister stated there was no guarantee that this would be avoided, simply by changing the selection method.

In the context of the Minister's reply above, readers may be interested in noting that the position of a judge of the Supreme Court of Gibraltar was advertised recently. The person to be appointed would also be called upon to discharge such functions of the Office of Chief Justice, as may be specified in the instrument of appointment. Both solicitors and barristers were eligible for appointment. Persons had to be legally qualified solicitors and barristers, with extensive experience of civil and criminal law. Will the day ever come when vacancies for judges in the High and Supreme Court will be advertised in Ireland in the national media, with a stipulation to the effect that both solicitors and barristers are eligible to apply?

Disgraceful Condition of Courthouses

Much of the courthouse accommodation badly needs to be upgraded, according to the Minister of State at the Department of Justice, Mr. O'Dea.

Mary Harney, TD, had asked whether the Minister for Justice would agree that the facilities in courthouses were an absolute disgrace, unlike the facilities in most Garda stations, which were among the best in Europe. She noted that the vociferous campaign pursued by the Gardaí ten to fifteen years ago had borne fruit. The Minister for State replied that £1.25 million in 1993 would be sufficient to allow the State to proceed with the equipping of a new court building in Cork and the execution of certain works in Galway, together with rectifying certain problems in relation to courthouses in Carrick-on-Shannon, Clonmel and Drogheda.

The Minister stated that a total of six civil actions had been initiated to date against the Minister for Justice arising from the failure of local authorities to maintain courthouses in proper repair and conditions. These are in respect of the courthouses at Carrick-on-Shannon, Clonmel and Drogheda. Three previous cases which were successfully taken by local practitioners related to Drogheda in 1972, Waterford 1981–1983 and Cavan 1987–1989.

Effective Video Surveillance

Video surveillance in operation in the greater Dublin area has certainly proved very effective according to the Minister for Justice. Camera equipment is specifically in operation in certain parts of Dublin for the identification of prospective criminals. The operation of video surveillance has been very helpful to the Garda Síochána from time to time.

DNA Testing

The Criminal Justice (Forensic Evidence) Act, 1990, which came into operation on 5 June, 1992 has enabled the Garda Síochána, subject to certain conditions, to obtain bodily samples from persons suspected of certain types of serious offences for the purpose of forensic testing, including DNA profiling, according to the Minister for Justice. Two molecular biologists have been recruited and trained in the specific techniques of DNA profiling for criminal work, as well as having been trained as forensic scientists. A certain amount of preparatory work must be completed before the techniques are put into operation.

Computerisation in Courts

A major computer training programme for courts personnel is just concluding, according to the Minister for State at the Department of Justice, Mr. O'Dea. He stated that considerable progress has been made in the computerisation of the work of the District, Circuit and High Courts.

A case tracking system has been introduced for the Circuit Court Office, and has been installed in three offices to date, and is under evaluation in others. A family law accounts package has been made available to the Dublin Metropolitan District Court Family Law Office, and an automatic office system to provide post-court documents, such as fines, notices and warrants, is being introduced in Dundalk, Galway,

Killarney, Kilkenny, Listowel, Monaghan, Naas, Portlaoise, Trim, Tralee, Tullamore and Waterford District Court Offices. The networking of all local probate offices to the Central Office in the Four Courts is almost complete. Work on replacing the computer system in the Metropolitan District Court and Limerick District Court is also underway.

The Minister also stated that research assistance was being made available to judges. Computer facilities have also been provided in the judges' library.

Review of Activity Levels in Circuit and High Courts

A review of activity levels in the High and Circuit Courts to assess the impact on these courts of the alteration in the court jurisdiction levels introduced by the *Courts Act, 1991,* is almost completed, according to the Minister for Justice, Ms. Geoghegan-Quinn. She stated that when the full findings of the review became available, she would be in a position to recommend to the Government any reallocation of resources which may be warranted to expedite the hearing of cases in the courts.

The Minister noted that over 50% of all civil bills or summonses issued were subsequently not pursued through the court system. The Minister was very concerned about delays in the hearing of civil cases and some Circuit Court venues and in the High Court.

Land Registry Decentralisation

The implications of the decentralisation of a part of the Land Registry to Waterford was being considered in consultation with the interim board, which had been appointed to assist with the reconstruction of the Land Registry and the Registry of Deeds as a semi-State Body. The Minister for Justice stated that it was not possible at this stage to be specific about job numbers or the time scale involved.

Judicial Commission

The Programme for Partnership Government contained a commitment to establish a Judicial Commission which would examine, among other matters, the overall management of the courts and make appropriate recommendations to the Government. The Minister for Justice stated that necessary consultations in relation to the establishment of the Commission were underway. The Minister also stated that it would be open to the Judicial Commission to formulate proposals, if it considered appropriate, for a unified courts service.

Business Tenancies

The Programme for a Partnership Government 1993–1997 provides, inter alia, that a Bill will be introduced to amend the law on business tenancies. The Minister for Justice stated that the Bill was being prepared in her Department.

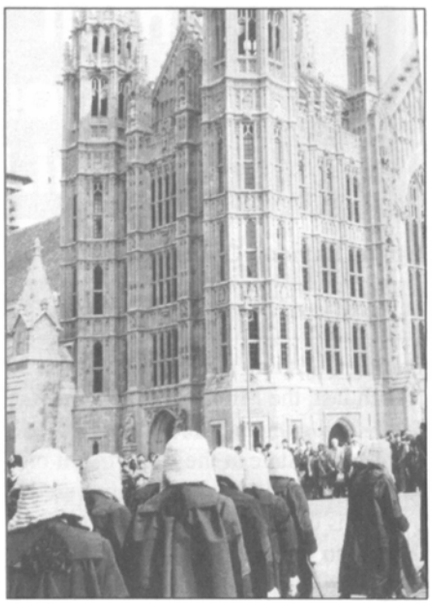
Keep the Wigs On

A report of the Committee on Court Dress, established by the Bar Council, is at present under consideration by the Bar Council of Ireland. One muses whether the Irish Bar Council will adopt the attitude of their counterparts in Britain.

In Britain it appears that the eighteenth century hallmarks of British justice are not to be discarded. The overwhelming verdict of more than 500 people and organisations who have put their views to the Lord Chancellor and the Lord Chief Justice is that judges should keep their wigs on. Some felt that the wigs made barristers and judges look ridiculous. Some feared that the legacy from the eighteenth century might lead people to assume that the person wearing a wig was likely to be thinking in an eighteenth century way.

The overwhelming view of the criminal bar in England and Wales was that wigs should be kept; 72% of the 580 members favoured retaining their head gear. Half of the rest wanted to discard wigs, but keep gowns. Only one in eight wanted ordinary clothes to be worn. Barristers, both male and female, agreed that wigs and gowns ensured respect, and that clients responded positively.

Apparently, members of the public in Britain liked wigs and wanted the barristers to hang on to them. Even a poll among defendants showed a majority in favour of retaining the wigs. The message was that defendants wanted to be represented by a proper barrister with a wig.



The eighteenth century hallmarks of British Justice are not be be discarded.

Uncensored Electronic Mail

Many businesses in the United States use electronic mail. However, it is also becoming a means for a new and rich source of evidence for lawyers suing companies. Apparently, lawyers are joining forces with computer programmers to dig up old, lost and even "deleted" electronic missives, which often turn out to be more damaging than any paper memo could be. One programmer said that persons will state something in electronic mail, which they would never do in a letter. Apparently, in electronic mail, persons are inclined to record their thoughts in an uncensored way.

Lawyers, particularly in the California Silicon Valley, where electronic mail has been used for decades, are now requesting a search of electronic mail and any computer back-up systems. Apparently, in some of these firms, it was noted that where there was a paper trail, there usually was a more extensive electronic trail first.

Lawyers seeking discovery in Ireland should not forget about the electronic mail trail. ❐

The Profession in the Media

The first in a new series of monthly columns examining issues relating to the profession as reported in the media.

The new probate tax and a proposal to cap personal injuries awards were the main issues which engaged the participation of the profession in the media during the month of May.

Personal Injuries

The first indication of a proposal by the Minister of State for Commerce and Technology, *Seamus Brennan*, to introduce legislation to place a cap on the amount that could be awarded in personal injuries claims, was in an article in the *Sunday Tribune* of 9 May, 1993. The article referred to a study by the Department of Enterprise and Employment which claimed that Irish awards exceeded the EC average by 70%. The Minister was quoted as saying he would not introduce the cap unless insurance companies gave a guarantee that they would in return reduce insurance premiums. The Minister outlined his proposals again in a speech to the Irish Insurance Federation on 18 May. The Law Society responded to his proposals in an interview on the RTE News at One programme in which the Director General of the Society, *Noel Ryan*, questioned the dubious constitutionality of the Minister's proposal and criticised his approach as being too narrow in that he sought to concentrate solely on one aspect of insurance costs i.e. personal injury awards. Noel Ryan suggested that if the Government was concerned about achieving European norms they should think about introducing a European standard of civil legal aid here. Minister Brennan's proposals and Noel Ryan's criticisms were reported in the *Evening Press* of that day and the *Irish Independent* of the following day.

The President of the Law Society, *Raymond Monahan*, also addressed the issue in his speech to the Annual Conference of the Society and his remarks were reported in *The Irish Times* of 21 May, 1993, and he was interviewed on the RTE "Morning Ireland" programme of that day. Raymond Monahan said that Minister Brennan was responding to direct pressure from insurance interests to the detriment of the ordinary citizen. He said it would be dangerous and wrong to interfere with a judge's discretion about the amount of compensation that could be awarded and he questioned the validity of the Minister's comparisons with other EC countries.

The President of the Southern Law Association, Justin Condon, was quoted in the *Irish Independent* of 23 May, 1993, as saying that the increased costs of litigation were due not to the growth in personal injuries claims but rather to delays and inadequate resources in the courts system which added to expense.

Probate Tax

In his address to the Annual Conference of the Society, the President of the Law Society, *Raymond Monahan*, criticised the new probate tax introduced in the Finance Bill, 1993, as being unfair and indiscriminate. He added that it would cause huge legal difficulties for the public while providing little financial advantage to the Government. His comments were reported in *The Irish Times* of 22 May, 1993.

A joint initiative by the Law Society and the Irish Farmers' Association to form an alliance against the probate tax, comprising ten representative organisations, was reported in the *Farmers' Journal* of 29 May, 1993 and the *Irish Independent* and *Daily Star* of 31 May, 1993. A joint press conference was held on 31 May, 1993 and throughout that day the President of the Society, Raymond Monahan, was interviewed on RTE News Radio and TV news bulletins in which he pointed out the implications of the tax for people of relatively modest means and called on the Minister for Finance to abandon the tax. *Des Rooney* of the Law Society's Taxation Committee was interviewed on the RTE News at One programme. The RTE Today at Five current affairs programme recorded the opposition of many of the participating organisations as well as briefly interviewing the President of the Law Society, Raymond Monahan, and the President of the IFA, Alan Gillis. The press conference and a joint statement issued by the Alliance against Probate Tax were extensively reported in all of the national daily papers on Tuesday, 1 June, 1993.

A number of feature articles published during the month dealt with issues of concern to the profession. Following the settlement of the Kenneth Best case, Gene Kerrigan wrote an opinion column in the *Sunday Independent*, in which he praised the solicitors and barristers on Mr. Best's legal team, who had been prepared to take on the case without any prospect of remuneration if it failed, but went on to criticise the lack of legal aid, the lack of access to basic information, the lack of medical assessments paid for by the State, lawyers who charged £2,000-£3,000 a day and courts choked with cases. "Should anybody's rights depend on the personal strength and staying power of litigants and the kindness of lawyers?" he asked. In a one-page feature article entitled "Injury claims: why the jury is still out," in the *Irish Independent* of 26 May, 1993, a spokesperson for the Society pointed out that if it were not for no foal – no fee arrangements, cases such as the Best case would never have a chance of proceeding.

A number of news items throughout the month and a one-page feature article in the *Irish Independent* on 2 June, 1993, focused on the delays caused by a

(Continued on page 173)

Quality Management in the Office – Ten Tips for Immediate Results

by Brian O'Reilly*

The management of a law practice is unique. It demands special considerations not found in any other profession or business. There is, however, one significant area in which we share common problems with other professions, business and industry and that is in dealing with people and in particular with clients.

Over the past ten years the quality service revolution has completely changed business. Large multinational companies have become more user-friendly and have been running their businesses like small organisations focused firmly on their customers. Equally, small businesses have grown by adopting the philosophy of a customer centred approach as the driving force behind them and they have prospered.

The modern service culture was born in 1982 when Tom Peters wrote *"In Search of Excellence"*. This publication, in true MBA fashion, concentrated on a number of large organisations and how they worked. The service culture, however, really took off in 1984 when the same Tom Peters co-wrote *"Passion for Excellence"* when he undertook the study of how businesses of any size could give a greater level of service and grow whilst at the same time maintaining the approach of a smaller organisation.

Jan Carlsen of SAS Airlines made the definitive quotation on improving quality service when he said, "We do not seek to improve one or two things by 1000% – we seek to improve 1,000 by 1 or 2%," and it is on this basis that all organisations which have prospered in the past ten years have achieved their aims through simply being better at what they do. There are significant lessons to be learned in this area by the legal profession, and in particular by small practices. What is important is that perception of quality should be

Brian O'Reilly

satisfied equally with actual quality.

Most practitioners believe they give good service – where the problem lies probably is in poor perception of service and a poor perception can be equally as destructive as poor delivery.

The problem is that, in truth, clients cannot really know whether or not they have, in technical terms, engaged a good solicitor. All they have is the belief that if you are answering their phone calls, replying to correspondence and are visibly pursuing their affairs on their behalf, then you must be a good practitioner.

There are hundreds of ways in which a practitioner can improve the quality and the perceived quality of client service. I am listing my ten favourites which can be implemented immediately by any practitioner and which can achieve a real and measurable improvement in quality which will be perceived by the client.

1. *Telephone.* Never let the phone ring into your office more than three times. Clients are becoming more sophisticated and are likely to be aware of a wide choice of solicitors or indeed other professionals such as accountants who can deal with their business. They will want the business done quickly and efficiently and the first point of contact is the telephone. Statistics show that if the phone rings more than three times a client will begin to become irritable and wonder is there anyone there to answer. A client who knows that their call will be answered quickly is unlikely to form this impression and is more likely to place the call to that office rather than another firm.

2. *See clients immediately when they call in.* We have a competition in our office with a prize for fee-earners who attend to their appointments the quickest. This avoids clients (particularly new clients) thinking that they are likely to be waiting for hours before they see their solicitor.

3. *Returning phone calls.* Statistics show that clients expect calls to be returned within three hours and not the next day. If you are detained in court and cannot return calls ask your secretary to phone to say that you were detained and you will call them at a specific time on the following day.

4. *Copy correspondence.* In theory we should always send copy correspondence between ourselves and another solicitor on to our client but this sometimes brings an unnecessary query from the client on receipt of the letter. Stamp the copy to the client "for your file only – no action by you necessary".

5. *Error-free correspondence.* Jan Carlsen, quoted earlier, believed that it was essential to have his aeroplanes spotlessly clean because if his customers found coffee stains on the carpets, they would make the unfair assumption that the airline

did not get its jet engine maintenance right. Equally it is my firm belief that one of the true marks of quality in the larger practices is that they will never allow a client to find a Tippex mark or a misspelling on correspondence or on documentation and therefore make the unfair assumption that they are, for example, bad conveyancers.

6. *Visit your commercial clients.* If a client has a problem about a right of way at his premises or a faulty machine, visit the scene and see for yourself. You do not need to profess any technical expertise but at least the client will be happy that you are taking a real interest and not just dealing with the matter on paper. It is equally surprising how much new business you will get if you are on the spot and can be consulted on other matters.

7. *Quality statement.* Every firm should have a quality statement and this should be published prominently in the reception area for clients to read.

8. *Consultation facilities.* In consultation on a one-to-one basis with clients, do not use your office desk as a barrier – have two or three comfortable consultation chairs in front of the desk and sit in one of them facing the client directly.

9. *Encourage clients to complain!* Now there's a novelty. Another mark of quality driven organisations is that they actively encourage their clients to talk about their perception of service and whether or not it was delivered in accordance with their expectations. This is based on the simple premise: how can you as a practitioner know that there is something wrong with the delivery of your service if you do not ask? Many clients who perceive poor service may simply drift away from your firm without saying anything. Encouraging clients to discuss their perceptions on conclusion of a case will help you to learn your strengths and weaknesses and do something about them.

10. *Advertising.* Do not spend one penny on advertising (if you are so inclined) without being satisfied with your quality system. Using client satisfaction to drive referral business is far cheaper than advertising for new business. Statistics show that if a client perceives good service he will speak highly of it to 8 or 10 people, but if he perceives poor service he will criticise it to 10 to 12 people.

Lawyers as a group world-wide endure a poor public image and it will always be so. "The Law is an Ass" and we are the messengers of that animal and it is the messenger that clients tend to shoot. This public misconception can be used to great effect by being different and establishing your practice as a quality organisation will allow your clients say with pride to others that "my solicitor is different".

Brian O'Reilly is Senior Partner with B.P. O'Reilly & Company, Solicitors, Tallaght, County Dublin, a practising Notary Public, a member of the Institute of Chartered Arbitrators, and is joint consultant to the Law School on office management. ❐

Apprenticeship

There is now a considerable time-lag between the date a student becomes eligible to enter the Law School and entry on the Professional Course. (See note on page 151 of May, 1993 *Gazette*).

It is timely to remind practitioners entitled to take apprentices that the 1954 Solicitors Act requires an apprentice to serve a bona fide apprenticeship during the whole term of indentures.

The period of training in a solicitor's office and apprenticeship should reap benefits for both apprentice and master. This is possible only if the apprentice is engaged full-time in meaningful legal work in the master's office. This is, indeed, the requirement not merely of the Solicitors Acts but also of the contract of "Indentures of Apprenticeship".

If a practitioner completes a document which avers that an apprentice has attended at the office or has gained experience in certain areas of practice where this is subsequently found not to be the case such conduct may be viewed as a disciplinary matter and that solicitor may be referred to the Registrar's Committee.

In the same way, a student who improperly or inaccurately represents that s/he will complete or has completed a full-time apprenticeship may be brought before the Education Committee. It may then report to the President of the High Court that the apprentice is not, in its opinion, a fit and proper person to be admitted as a solicitor. ❐

Education Committee.

The Profession in the Media

(Continued from page 171)

shortage of High Court judges. In the article in the *Independent*, a spokesperson for the Society said that a lack of judges was just one aspect of the problem and that a general lack of resources and funding of the courts system also contributed to the delays.

Finally, the President of the Law Society, was interviewed on the RTE TV 6 pm news and 6.30 pm radio news on 3 June, 1993, in response to a motion by the DSBA about overcrowding in the profession. Raymond Monahan said that the profession was now at saturation point and the question had to be asked whether it was fair to allow people to engage in expensive and lengthy professional training when there was scant likelihood of a job at the end of the process. ❐

Barbara Cahalane

Alternative Job Opportunities for Solicitors

The Younger Members Committee organised a seminar in association with the Bank of Ireland on the subject of "Solicitors – Alternative Job Opportunities" on 7 May, last. The Seminar was hosted in the Bank of Ireland premises at 43 Eyre Square, Galway (Ireland's culture capital) on a weekend of stone splitting sunshine, writes *Michael Nugent.*

The purpose of the seminar was to explore alternative job opportunities for solicitors outside of traditional private practice. In order to get practical advice on this topic we set out to find solicitors with really unexpected careers who could swear that they got the job by reason of their qualification. Initially we had hoped to find a solicitor working in an entirely bizarre area (a mercenary soldier or market gardener would have been nice), but in the end of the day we had to settle for *Willie Scraggs, Pat Flynn* and *Miriam Doyle.*

Willie Scraggs is the Bank of Ireland legal advisor for "Area West", which I gather covers most places in the Galway side of the Shannon. He spoke passionately of his life and times working for the bank and explained the spread of experience which would be required for those who might contemplate a job in banking. Willie (whose real name happens to be Maurice) gave us a flavour of what it might be like to work in this, a more traditional career, outside of private practice.

Next on the list was Patrick Flynn, a solicitor currently working with A & L Goodbody in Dublin. Pat's claim to fame is not so much that he is working with A & L Goodbody, but that he previously worked with Ulster Investment Bank as a Corporate Finance Executive and subsequently spent four years as a marketing executive for the Dublin Docks Financial Services Centre. Pat explained what was involved in working in the world of finance and was able to give an important insight into the employer's side of viewing CVs from aspiring finance solicitors. (Pat has rejected more CVs than most). He finished his talk by telling us all why, after all the glories and benefits of working in the world of finance, he chose to return to A & L Goodbody.

At the seminar were l-r: Pat Flynn, Solicitor, A & L Goodbody; Michael Nugent, Solicitor, Younger Members Committee; Dermot Gaynor, Branch Manager, Bank of Ireland; Antoinette Conole, Bank Officer, Bank of Ieland and John Shaw, Chairman, Younger Members Committee.

Miriam Doyle mixed entertainment with information. She, who is Director of Legal and External Affairs, with Coca Cola Atlantic in Drogheda, had some cautionary tales to tell. She told us what to expect in a no-nonsense business world. Her early days working for Abbey Life were fraught with misunderstandings. (She had to share a common office and she even had to clock in!) Now things are changed and Miriam has the position and respect she deserves. The keynote of her address was that if you get your foot in the door of a commercial or financial company you can almost make your own job. Miriam was supportive, enthusiastic, informative and witty. I still wonder what is an "External Affair".

A shy audience asked few questions during the lecture but afterwards had no difficulty in coming to grips with the extravagant hospitality of the Bank of Ireland. A buffet meal of several courses and ample wine were laid on. When the manager, *Jim Sweeney*, told me that he was going to get the Harp I asked for a pint also, but he returned with a large musical instrument instead, and an accomplished harpist to set the mood. (Sorry Jim.) Jim Sweeney was the manager responsible for this largesse and to him we owe our thanks. We also owe a debt to *Maura Harrison* and *Marion Fallon* (who gave over two of her annual leave days to organise this event) of the Bank of Ireland for their hard work and support. Without them it would not have been possible.

Also on the thank you list must be *Joan Doran* of the Law Society for her patience, Willie, Pat and Miriam for their time, effort and bravery, and of course all of those from Galway and its environs who gave up Coronation Street and the Late Late Show to come to the seminar and listen to us.

Michael Nugent,
Younger Members Committee.

P.S. See the notice on page 187 about a similar seminar being held in Cork on 23 July. ❐

Mara-Cycle in Aid of Benevolent Fund

Harriet Kinahan, Solicitor and Education Officer in the Law Society and *Alison Moore,* Solicitor, Sheedy Hickey & Co., are taking part in the Co-Operation North Mara-Cycle on June 26/27 and will be raising money for the Solicitors' Benevolent Fund.

The mara-cycle involves cycling from Dublin to Belfast on Thursday, 27 June, 1993 and then cycling from Belfast back to Dublin on the following day. Both the cyclists would greatly appreciate support from members of the profession. Please send your contribution to *Harriet Kinahan*, c/o The Law School, Blackhall Place, Dublin 7. ❐

Liability of Personal Representatives under the Social Welfare Code

Recent amendments in the Social Welfare Act, 1993

by Gerry Whyte*

Introduction

For the second time in two years, the Department of Social Welfare has made changes in the provisions of the social welfare code dealing with the obligations placed on personal representatives administering estates. The major change here is to extend these provisions to apply to estates where the deceased had been in receipt of *any* form of social assistance, not merely the old age pension, as is the current position. By virtue of s.41 of the Social Welfare Act, 1993, however, a ministerial order is required before these changes take effect.

Obligation to provide information

By virtue of the proposed s.294F (2), inserted by s.27 of the Social Welfare Act, 1993, a social welfare inspector may, *inter alia*, require the personal representative of a person who was at any time in receipt of any welfare payment to furnish the inspector with such information and to produce to him/her such documents, within such period as may be prescribed, as the inspector may reasonably require. This would apply in respect of any estate where the deceased had been in receipt of any form of social welfare - either social insurance, social assistance, family income supplement or child benefit - and contrasts with the existing provision, s.174 of the Social Welfare (Consolidation) Act, 1981, as amended by s.33 of the Social Welfare Act, 1991, which only applies to an estate where the deceased had been in receipt of the non-contributory old age pension. Failure to comply with such request shall be an offence, punishable on summary conviction by a fine not exceeding £1,000 and/or imprisonment not exceeding 12 months and on conviction on indictment, by a fine not exceeding £10,000 and/or imprisonment not exceeding 3 years - ss.294F (6) and 294L (the latter inserted by s.28 of the 1993 Act). The offence may arguably be made out even where the failure to comply with the request is not wilful.

Distribution of assets

Section 34 of the 1993 Act proposes that, where a deceased person had been, at any time, in receipt of social assistance, certain conditions, currently set out in s.174(3) of the 1981 Act and re-enacted *mutatis mutandis* with slight amendments by

Gerry Whyte

s.34 of the 1993 Act, must be satisfied before the estate may be distributed. "Assistance" is defined by s.2 of the 1981 Act as "assistance under Part III [of the 1981 Act]". At present this consists of unemployment assistance, old age (non-contributory) pension, blind pension, widow's (non-contributory) pension, orphan's (non-contributory) pension, deserted wife's allowance, prisoner's wife's allowance supplementary welfare allowance, pre-retirement allowance, lone parent's allowance and carer's allowance. A further means-tested payment, family income supplement, is not assistance for this purpose as it is provided for by Part IVA of the 1981 Act, though one might query the logic of excluding this scheme from the scope of s.34. A number of other schemes, since repealed, were formerly regarded as assistance under Part III - these include unmarried mother's allowance, single woman's allowance, deserted husband's allowance and widower's (non-contributory) pension. Logically these should also fall within the ambit of s.34, though it is a nice question as to whether the present draft could be construed as having this effect. In any event, it would now appear that, when these provisions of the 1993 Act are activated, personal representatives (or their legal advisors) will, in future, have to ascertain whether the deceased was, at any time, in receipt of social assistance. The simplest way of doing this would be to have the Department check their records, using the deceased's PRSI number where appropriate. However, the fact that the Department's records might not disclose whether the deceased was ever in receipt of assistance is no defence to any claim which may be taken under this part.

Where it transpires that s.34 does apply, the personal representative must, not less than three months before commencing to distribute the assets: i) inform the Minister, by notice in writing, of the intention to distribute the assets and ii) provide the Minister with a schedule of the assets. The purpose of this provision is to afford the Department the opportunity to see whether any overpayment of assistance to the claimant took place. Where the personal representative receives a written request from the Minister within the following three months (the current position is eight

weeks), s/he must retain sufficient assets to repay such sum as may be due to the Minister or State in respect of any such overpaid assistance. Section 34(2) re-enacts, *mutatis mutandis*, the rebuttable presumption, currently contained in s.174 (3A) of the 1981 Act, inserted by s.33 of the Social Welfare Act 1991, that all of the deceased's assets at the time of death belonged to him/her for the entire of the period during which s/he was in receipt of assistance.

"The purpose of this provision is to afford the Department the opportunity to see whether any overpayment of assistance to the claimant took place."

Contravention of these provisions leaves the personal representative *personally liable* to repay to the Minister an amount equal to the amount, if any, due to the Minister from the estate in respect of overpaid assistance - s.34(3) of the 1993 Act, re-enacting, *mutatis mutandis*, s.174(3) of the1981 Act. Given that, in most cases, the personal representative would have relied on the advice of a solicitor, contravention of these provisions would presumably leave the solicitor exposed to an action for professional negligence. Bearing in mind that overpayment may have continued for a number of years, liability can quite easily run into thousands of pounds.

Obligation to repay welfare

The 1993 Act also proposes to extend the obligation of a claimant, or personal representative, as the case may be, to repay overpaid welfare. The current situation is quite complicated. For all social insurance payments and for some social assistance payments, it is necessary for the Department to establish that the overpayment was due to fraud on the part of the claimant before an obligation to repay can arise. However special rules apply in relation to unemployment assistance, the old age (non-contributory) pension and the widow's (non-contributory) pension which permit the Department to recover overpaid welfare even in the absence of fraud. The position with regard to the old age (non-contributory) pension is especially complex. Section 169(3) of the 1981 Act obliges a personal representative to repay, from the estate, any monies paid to the claimant while the statutory conditions for eligibility were not fulfilled or while s/he was disqualified for receipt of the pension. Section 172 of the 1981 Act provides, *inter alia*, that where a claimant fails to notify the Department of any increase in his/her means, s/he (or, where appropriate, the personal representative) is liable to repay to the Minister any pension received to which the claimant can show that s/he was unaware of the increase in means - s.172(2) - or if s/he can show that there was no fraudulent intent and that there are no significant resources available to the claimant - s.172(4).

"The 1993 Act also proposes to extend the obligation of a claimant, or personal representative, as the case may be, to repay overpaid welfare."

All of these diverse provisions will be superseded by s.300-300H of the 1981 Act, inserted by s.31 of the 1993 Act which consolidates, and in some cases, extends the powers of the authorities,[1] inter alia, to revise decisions and to recover overpaid welfare. The power to revise earlier decisions of a deciding officer may now be exercised by another deciding officer where it appears that the original decision was erroneous in the light of new evidence or new facts which have subsequently come to notice of the authorities; where there was some mistake in relation to the law or facts of the case; or where there has been a relevant change of circumstances since the original decision was given - s.300(1). (S.300A makes similar provision for Supplementary Welfare Allowance, a scheme administered by the Health Boards, except that it does not make provision for revision of an earlier decision where there was a mistake in relation to the law or facts.) Such an officer may repeal the decision of an appeals officer where there has been a relevant change of circumstances since the original decision was made - s.300(1) (b) - while an appeals officer may revise the decision of another appeals officer if the earlier decision was erroneous in the light of new evidence or new facts, or if there has been a relevant change of circumstances - s.300(3). Finally, the Chief Appeals Officer may also revise decisions of an appeals officer where it appears to him that the earlier decision was erroneous by reason of some mistake having been in relation to the law or the facts - s.300(4).

In deciding when the revised decision takes effect, one has to distinguish between three different types of case. First, where the original decision was made or continued in effect because of deliberate fraud on the part of the claimant or any other person, a revised decision which disallows or reduces the payment of welfare shall take effect as from the date on which the original decision took effect, subject to the discretion of the authorities to continue to apply the original decision to any period to which the fraud did not relate - s.300B(a). Second, where a revised decision to disallow or reduce welfare is given in the light of new evidence or new facts which have been brought to the attention of the authorities, it shall take effect from such date as the authorities shall determine, having regard to the new facts or new evidence - s.300B(b). Finally, in all residual cases, a revised decision shall take effect as from the date considered appropriate by the authorities, having regard to the circumstances of the case - s.300B(c).

Liability to repay overpaid welfare to the authorities is provided for by ss.300D and E of the 1981 Act. Section 300D (2) re-enacts the current power of the Minister to suspend the payment of welfare where some

question has arisen as to whether the conditions of eligibility are fulfilled or whether the original decision should be revised.[2] Section 300D(4) provides that where a decision has been revised in order to disallow or reduce a welfare payment made to a person, any welfare paid to that person in accordance with the original decision shall be repayable to the Social Insurance Fund, the Minister or the health board, as the case may be, to the extent to which such payment would not have been made if the revised decision had been made first. Liability to repay is imposed on the claimant, on any person to whom the welfare was paid on behalf of the claimant, or on the personal representative of the claimant. Section 300E is a new provision, dealing with cases of overpayment made by way of clerical error. In such a case, the claimant or his personal representative, or any person to whom the welfare was paid on behalf of the claimant, is liable to repay the sum in question on demand to the Social Insurance Fund, the Minister or the health board, as the case may be.

Under the present legislation, the Minister has a discretion to mitigate amounts of overpaid old age pension due to him from an estate where it appears equitable to him to do so - s.174(3B) of the 1981 Act, inserted by s.33 of the Social Welfare Act, 1991. Section 300G(1) of the 1993 Act now provides that, in relation to all cases where there is a liability to repay welfare to the authorities, that repayment may be deferred, suspended, reduced or cancelled in accordance with a code of practice which the Minister intends to introduce by way of statutory instrument. This reliance on a code of practice is a new feature in the Social Welfare Acts and nothing is said in the Act about the legal status of the code. However one would not be entirely surprised if it amounted to nothing more than a statement of good administrative practice on this point, rather than operating as a binding legal code.

"This reliance on a code of practice is a new feature in the Social Welfare Acts and nothing is said in the Act about the legal status of the code."

Means of recovery

The 1993 Act provides for a number of different ways in which overpaid welfare may be recovered by the authorities. Sums arising through a clerical error are liable to be repaid on demand - s.300E. Sums arising as a result of a revised decision made pursuant to ss.300 and 300A are, without prejudice to any other remedy, recoverable as debts due to the State and may be recovered as a debt under statute or simple contract debt in any court of competent jurisdiction - s.300F (1), (3) and (5). Overpaid welfare howsoever arising may, as an alternative and without prejudice to any other method of recovery, be recovered by deduction from any welfare payment, (other than supplementary welfare allowance) to which they claimant is or becomes entitled, subject to the proviso that, where this method of recovery is used, overpaid child benefit or family income supplement may be recovered only from payments of child benefit or family income supplement respectively - s.300F (6) and (7). In this context, one might query the constitutionality of s.300F (8) of the 1993 Act which purports to allow the Minister to exercise the power of deduction, notwithstanding that, *inter alia*, proceedings have been instituted in a court for the recovery of the sum due. This does seem, *prima facie*, to be an infringement of the independence of the judiciary.

Time limits for initiating proceedings

Finally, s.34 (4) of the Act re-enacts, *mutatis mutandis*, s.169 (11) of the 1981 Act, inserted by s.34 of the 1991 Act, dealing with time limits. Proceedings for the recovery of social assistance due from the estate shall be maintainable against the estate if brought at any time within two years commencing on 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.

Concluding comments

The changes to be wrought by 1993 Act in the area of recovery of overpaid welfare have the merit of securing some degree of rationalisation of the current complicated position. However, that rationalisation will be brought at the price of extending the liability of welfare claimants, personal representatives and, by extension, their legal advisers. This demonstrates, once more, that solicitors who ignore the operation of the social welfare code do so at their peril.

**Gerry Whyte, a fellow of Trinity College Dublin, is senior lecturer in Law at TCD.* ❐

References

1. The authorities referred to here are community welfare officers and superintendent community welfare officers in relation to Supplementary Welfare Allowance, a scheme administered by the Health Boards; and deciding officers, appeals officers and the Chief Appeals Officer in relation to schemes administered by the Department of Social Welfare.
2. S.300D (3) contains a similar provision, mutatis mutandis, dealing with Supplementary Welfare Allowance.

In Ireland **COT DEATH** is the largest killer of children under the age of two. The Irish Sudden Infant Death Association supports bereaved families and funds cot death research. If your client wishes to make a will in favour of Cot Death Research further information is available from
ISIDA
Carmichael House,
4 North Brunswick Street, Dublin 7.
Telephone: 8747007 / 8732711

PRACTICE NOTES

Probate Office Practice – Charitable Bequests

Practitioners will be aware that, when lodging applications for Grants of Probate of any will containing a charitable legacy, they are required to lodge an additional copy of any such will for transmission by the Probate Office to the Office of the Commissioners for Charitable Donations & Bequests for Ireland in compliance with the statutory obligations of the Probate Office under the Charities Acts.

Unfortunately the sheer volume of such wills has presented a serious problem for both the Probate Office and the Office of the Charitable Commissioners. In order to resolve this difficulty, the Probate Office proposes introducing a slightly revised practice whereby solicitors applying for Grants of Probate of any will containing a charitable legacy would lodge a simple summary form supplying details of all such charitable bequests.

It is intended that this revised practice shall come into operation with effect from July, 1993. Practitioners are requested to co-operate with the Probate Office in implementing this new practice to ensure the continued smooth running of the Probate Registries which has been a great advantage and of considerable benefit in recent years to probate practitioners.

Specimens of the new summary forms will be available from the various Probate Registries.

Professional Purposes Committee.

Life Policy Proceeds not paid to Solicitors

It has come to the attention of the Society that in certain instances cheques from life assurance companies for the proceeds of life policies are paid directly to the insurance broker concerned. This can result in a solicitor who has given an undertaking in contemplation of receiving such proceeds being placed in an invidious position if the insurance broker accounts directly to the personal representative.

A solicitor should, therefore, take care when completing a claim form on behalf of personal representatives of a deceased that it is clearly stated on both the face of the claim form and in the accompanying letter that any life assurance proceeds cheque drawn in favour of the personal representative or beneficiary (as the case may be) should be sent directly to the solicitor.

A solicitor should not give an undertaking unless he has sight of the claim form and he is certain that the cheque for the life assurance proceeds will be sent to him.

Professional Purposes Committee.

Law Society Tax Guide, 1993 – Correction

The Taxation Committee of the Law Society regrets that there was an error in the information published in its Pocket Tax Guide, 1993 which was circulated with the May, 1993 issue of the *Gazette*. The correct schedule of Stamp Duties payable is as follows:

Under £5,000	Nil
£5,001-£10,000	1%
£10,001-£15,000	2%
£15,001-£25,000	3%
£25,001-£50,000	4%
£50,001-£60,000	5%
Exceeding £60,000	6%

The Taxation Committee regrets any inconvenience caused to members of the profession by its error.

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

Law Society Annual Conference

At the reception before the banquet at the Annual Conference of the Law Society were l-r: John Duggan, C.E. Callan & Co.; Dolores Keane, and Gerry Griffin, Law Society Council Member.

The President of the Law Society, Raymond T. Monahan and Eileen Monahan, with Hanne Gronborg and Jorgen Gronborg, Koch-Nielson & Gronborg, Copenhagen, Denmark.

L-R: Anne Irvine; Michael Irvine, Law Society Council Member, and Maeve O'Donnell.

L-r: Henry Wynne, Henry Wynne & Co.; Marie Wynne; Myrhad Lanigan; Frank Lanigan, Frank Lanigan, Malcomson & Law; Michael Buggy, Michael Buggy & Co.

L-r: Maurice Simms, Wilson & Simms; Akke Simms; Brendan Twomey, James P. Sweeney & Co.; Shereen Leahy, and Maurice Leahy, Maurice Leahy & Co.

Brendan O'Leary, ICC Bank plc; Rosaline O'Leary; Cillian MacDomhnaill, Finance and Administration Executive, Law Society; Ruth Lockley; Andrew Lockley, Director, Legal Practice Directorate, Law Society of England and Wales.

L-r: Jacqueline O'Mahony; Helen Keogh, TD; and Justin McKenna, Law Society Council Member.

L-r: Una Ryan; John Hayes, Secretary General, Law Society of England and Wales; Jenny Hayes; Noel Ryan, Director General, Incorporated Law Society of Ireland; Monica Davey; Michael Davey, Secretary, Law Society of Northern Ireland; Gretta Pritchard; Ken Pritchard, Secretary, Law Society of Scotland.

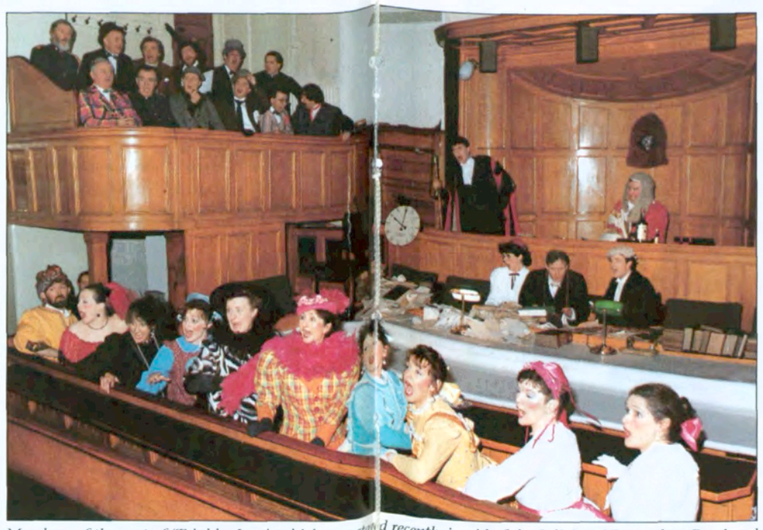
Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At a recent presentation of the proceeds of the Younger Members Committee Quiz Night to CARI (Children at Risk in Ireland), were left to right, Orla Bushnell, Marketing Co-ordinator, Irish Permanent Building Society; Christine Donaghy, Chief Executive, CARI; Raymond Monahan, President of the Law Society; Orla Coyne and Paula Murphy, members of the Younger Members Committee.

Recently, Gerald Goldberg, Solicitor, Cork, was conferred with an honorary degree of LL.D from University College Cork. The photograph shows left to right, Fr. Leonard Boyle, O.P., who was conferred with the honorary degree of D.Litt, Dr. Daphne Pouchin Mould, who was conferred with the honorary degree of LL.D, with Gerald Goldberg, following the conferring ceremony.



Members of the cast of 'Trial by Jury', which was staged recently in aid of the Solicitors' Benevolent Fund and the Bar Benevolent Fund. Jury row l-r: Vivian Matthews, John Gallagher, Anthony Collins, Joe May, Gerard Walsh, Jim Kelly, front row, l-r: Kevin Barry, Andy Smyth, Kevin McErlean, Justin McKenna, James Conlon, Jack Fitzgerald. 'On the bench': Tom Rice and Harry Lappin. 'Below the bench': Andrea Martin, Fred Jackson, Gordon Duffy. Front row l-r: Killian McMorrow, Helen Taaffe, Mary Collins, Lorraine Morris, Frances Egan, Geraldine Clarke, Sandra Harty, Nora Rice, Rosario Boyle, Patricia Casey. Absent from photo – Peter Kelly, Ben O Floinn, Martin Clarke, Michael Deaney, David Byrne, Basil Holland, Estella Rogan, Orla Coyne, Elma Lynch, Yvonne O'Hanlon, Angela O'Reilly, Caroline O'Reilly, Nicola Weir.

Legal & General
Office Supplies

We are now Main Agents for

C.O.R.T.
Computerised Objections
& Requisitions on Title

15 Upr Ormond Quay, Dublin 7

Four Courts, Dublin 7

Approved by the Conveyancing Committee of The Incorporated Law Society

ADVANTAGES
Saves Secretaries' Time
Simplifies Conveyancing Procedures
Reduces Cost of Conveyancing

YOUR COMPUTER IS NOT WORKING FOR YOU IF YOU ARE NOT USING C.O.R.T.

Ring Now for Details

TEL: 01-8725522 FAX: 01-8725079.

At a Seminar on Collateral Warranties, jointly staged by the Law Society and the Royal Institute of Chartered Surveyors, on 6 May last, were l-r: Derry Scully, Bruce Shaw Partnership; David Keane, Keane Murphy Duff, Architects; Barbara Joyce, CLE Co-ordinator, Law Society; Tom O'Connor, A & L Goodbody, and Tim Bouchier-Hayes, McCann FitzGerald.

The Law Society Apprentices/Younger Members' Committee GAA team, which recently won a tournament against the King's Inns. Back row, l-r: Kieran O'Connor, David Colbert, Simon Kelliher, Declan Brooks, Jim Hanglow, Jim Eustace, James O'Donnell, Patrick Power (Capt.), Daragh Bohan. Front row, l-r: John Greene, Pat O'Brien, Fionan Breathnach, Gary Lee, Nevan O'Shaughnessy, Brian Roe, Pat Boyce and Ciaran Roe.

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service
• Efficient • Competitive Prices • Friendly

Private Limited Company	**–**	**10 days, £255***
Guarantee Company	**–**	**10 days, £285**
Shelf Company	**–**	**10 mins., £255***

*** Special prices valid for June and July only.**

Phone: CARMEL or RITA
at 671 0711, Ext. 224 Fax: 671 0704

Disciplinary Cases

Re: Kevin P. Kilrane
Mohill, Co. Leitrim
8SA/1993

On 20 May, 1993, the Acting President of the High Court ordered that Kevin P. Kilrane, Solicitor, stand censured regarding his conduct as a solicitor.

The Court had before it the report of the Disciplinary Committee of its hearing on 15 December, 1992, in which the Committee made a finding that the solicitor was guilty of conduct tending to bring the profession into disrepute in that he:

(a) failed to discharge the costs of his agent (a UK firm of solicitors),

(b) failed to provide his agent with instructions in relation to Court proceedings despite numerous requests from his agent,

(c) failed to reply to the corespondence of his agent (the complainant),

(d) failed to reply to the Society's correspondence and to furnish any adequate explanation of the matter complained of to the Society.

Costs of the petition were awarded to the Law Society.

Re: Michael Collier
2 Ross Terrace, New Street,
Malahide, Co. Dublin

4SA/1993
SSA/1993
6SA/1993

On 26 April, 1993, the acting President of the High Court ordered that the name of Michael Collier, Solicitor, be struck off the Roll of Solicitors and that he stand severely censured regarding his conduct as a solicitor.

The Court heard three separate petitions from the Law Society concerning in total eleven reports of inquiries by the Disciplinary Committee into the conduct of the solicitor.

4SA/1993

The Court had before it the report of the Disciplinary Committee in relation to two separate inquiries, 2617/DC.1204 and 2617/DC.1272.

In relation to 2617/DC.1204 the Committee found that the solicitor was guilty of conduct tending to bring the profession into disrepute in that:

(a) he delayed in processing the claim of his client and allowed the same to become statute barred,

(b) he failed to respond to the correspondence of the solicitor who subsequently acted for his client in the matter,

(c) he delayed in handing over the file of his client to his client's new solicitor or to furnish any explanation to his client or his client's solicitor as to the delay in handing over the file,

(d) he failed to reply to the Society's correspondence or to furnish any explanation in relation to the matter to the Society,

(e) he failed to attend the meeting of the Registrar's Committee about the matter when so required to attend.

In relation to 2617/DC.1272 the Committee found that there had been misconduct on the part of the solicitor in that:

(a) he failed to comply with an undertaking furnished by him on behalf of his clients to his clients' bank to forward to the bank his clients' title deeds,

(b) he failed to furnish any adequate explanation to his clients regarding his failure to furnish their deeds to their bank,

(c) he failed to reply to the Society's correspondence in regard to the complaint of his clients,

(d) he failed to furnish any adequate explanation to the Society regarding his failure to comply with the said undertaking,

The High Court ordered that the solicitor's name be struck off the Roll of Solicitors, that the solicitor stand severely censured regarding his conduct as a solicitor and that he pay to the Society the costs of the proceedings both before the Disciplinary Committee and the High Court.

There were two further petitions before the High Court, 5SA/1993 and 6SA/1993 which are summarised below.

5SA/1993

In relation to this petition the Court had before it the report of the Disciplinary Committee in respect of three separate inquiries namely 2617/DC.1273, 2617/DC.1280 and 2617/DC.1282. In relation to the first matter, 2617/DC.1273, the Committee found misconduct in that, *inter alia*, the solicitor delayed in the registration of the title of his client in relation to certain property, failed to reply to requests from his client's bank for the deeds of the property on foot of an undertaking given to the bank on behalf of his client. In relation to 2617/DC.1280 the Committee made a finding of misconduct in that the solicitor failed to comply with an undertaking given by him to another firm of solicitors and further failed to reply to the correspondence of that firm in regard to the undertaking. In relation to 2617/DC.1282 the Committee made a finding of misconduct against the solicitor in that, *inter alia*, he failed to perfect the title to certain property of a former client of his, failed to furnish any adequate explanation to the client's new solicitors, failed to furnish any adequate explanation in relation to the situation to his former client's bank to whom he had given an undertaking in relation to the matter; misled the Society in stating that he had forwarded an amended conveyance to the solicitor for the vendor when in fact he had not done so.

The High Court made an order that the name of Michael Collier be struck off the Roll of Solicitors and that he pay to

the Society the costs of the hearing both before the Disciplinary Committee and the High Court.

6SA/1993

The High Court had before it the reports of five separate inquiries of the Disciplinary Committee held on 17 November, 1992. In all five cases the Disciplinary Committee made findings of misconduct against the solicitor in that, *inter alia*, he failed to comply with certain undertakings, misled the Society by informing the Society that certain documents had been furnished to a lending institution in compliance with one of the undertakings when they had not been.

The High Court ordered that the name of Michael Collier be struck off the Roll of Solicitors and that he pay the costs both of the Disciplinary proceedings and the proceedings before the High Court.

Compensation Fund Payments – May 1993

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

The name of the solicitor in respect of whose defalcation the claim arose is listed in the left hand column.

	IR£
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	91,858.41
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	33,992.12
James C. Glynn, Dublin Road, Tuam, Co. Galway.	82,040.84
Michael Collier, 2 Ross Terrace, Malahide, Co. Dublin.	240.87
John J. O'Reilly, 7 Farnham Street, Cavan.	760.00
Roderick St. John Walshe, 185 Fortfield Road, Terenure, Dublin 6.	750.00
Malocco & Killeen, Chatham House, Chatham Street, Dublin 2.	9,966.03
	£219,538.27

NEW

from
Butterworths

COMING JULY 1993!

Butterworth Ireland Companies Acts 1963-1990
The first company legislation handbook with complete annotations.
Editor: Lyndon MacCann, BL

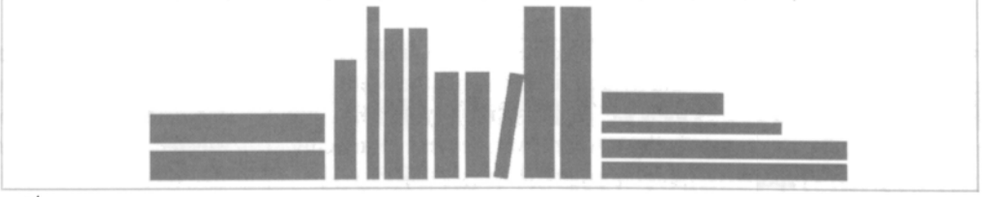
Soft cover. £55.00

- Bookshop open at Ormond Quay, Dublin *(100 metres from the Four Courts)* Open 9am-5.30pm through lunch
- Orders welcome by telephone and fax
- Or talk to our sales representatives about these and other Butterworth titles
  Dublin area: Madeleine Roche at (01) 324289 or 088-597659
  Outside Dublin: Max Harvey at (021) 371399 or 088-566793

Please note: For orders under £50.00, please allow £2.00 postage and packing.

Butterworth Ireland Ltd., 26 Upper Ormond Quay, Dublin 7. Tel: (01) 8731555. Fax: (01) 8731876

BOOK REVIEWS



Irish Social Services

By John Curry, Institute of Public Administration, 199pp, paperback, £7.95.

This is the second edition of Mr. Curry's guide to Irish social services which originally appeared in 1980. The author provides an outline of some of the main social services in Ireland, in particular in the areas of income maintenance, housing, education, health and welfare services. This publication provides an excellent and concise guide to the development and scope of these services. It will be of value not only to students of public and social administration but also to all those who require a broad overview of our social services. This is all the more welcome given the comparative dearth of publications on this area in Ireland.

There have been considerable developments in most areas of social services since the first edition of this book and Mr. Curry has taken the opportunity to provide a comprehensive account of the main developments including such matters as the reports of the Commission on Social Welfare and the Commission on Health Funding and the recent Green Paper on Education.

Some criticisms may be made of the scope of the book. As the author points out in his preface 'some omissions are unavoidable because of the sheer scope of the areas covered'. However, unusually for a second edition, this book is considerably shorter than the first edition. Indeed one entire chapter on EC comparisons has been dropped. Thus, despite the lack of published information on social services and social policy, the opportunity has not been taken to provide a more comprehensive overview of the situation but rather a *less* expansive approach has been adopted. Given the importance of EC policies and comparisons in the area of social services, it is particularly unfortunate that this area has been dropped.

The publication is firmly in the tradition of social administration and, as such, tends to take an atheoretical approach to its topics. Thus, while the factual development of the social services is explained, there is little attempt to outline theories as to the underlying economic or other forces which affect the development (or lack of development) of such services. It is perhaps unfair to criticise the author for his approach given the introductory nature of this work. Nonetheless, students of social policy and social services will need to be aware that such underlying issues are fundamental to the development of services if they are to obtain more than a misleadingly limited view of Irish social services.

Mel Cousins

Consultation Paper on Sentencing

Law Reform Commission, 1993, 400pp, paperback, £20.00.

It was *Carl Gustav* Jung who formulated the principle of psychic inertia. The response of a personality towards situations and events will continue to be similar with those in the past unless some event occurs, or some eruption from the sub-conscience intervenes, which brings about a fundamental change in reaction or attitude. In one respect that eruption has occurred within Irish society. Whatever else politicians now fear, they certainly fear the influence of women. Since 1922 an accused person has enjoyed the widest possible access to appellate courts to review both sentence and conviction, whereas the prosecution have enjoyed no rights at all. Scandals and complaints were ignored by the legislature until, in quick succession, the Lavinia Kerwick rape case and the Kilkenny incest case herded the politicians into minimal action on sentencing. With the passing of the Criminal Justice Act, 1993, the prosecution will enjoy the right to appeal lenient sentences in respect of offences involving violence or sexual misconduct. A recommendation, therefore, made by the Law Reform Commission in its Consultation Paper on Sentencing has already, in effect, been implemented. This constitutes a record in reverse, the normal situation being the complete disregard of Law Reform Commission recommendations, the watering down or the dusting-off of reports after many years of neglect.

Judges can often be heard to say that "all cases are different". This is not so. A person found guilty of rape is different from a person found guilty of a serious fraud offence. Within each of these offences there is room for variation as to age, background, motivation for the offence, psychological make up, regret over the harm done to the victim of the offence, attitude to the charge and prospects for rehabilitation. There is, however, "a bottom line" whereby a rapist would need the most extraordinary circumstances to justify the non-imposition of a custodial sentence whereas a fraudster might not.

Those sentences which attract attention by newspapers are unusual. They are used, however, to promote a particular media view which often lacks the mechanism of self-scrutiny. Be that as it may, the list of sentences published in respect of serious sexual offences last summer in the *Sunday Tribune,* in the wake of the Lavinia Kerwick rape case, indicated a lack of uniformity of approach. It is obvious that were one judge to be given the task of sentencing every offender, broadly similar approaches would become discernible. Where sentencing is split between

various judges over a wide geographical area and between three different courts, the variations of approach can often take on alarming dimensions. Newspapers, in city areas, never report sufficient of the facts of the case to enable the public to make an informed decision as to whether a sentence was right or wrong. Even taking the isolated factors which are reported it is clear that there is room for disquiet on sentencing. There appears to be a lack of uniformity in approach and factors which would appear to weigh heavily with one judge are of minimal relevance to others. The approach of the common law has always been geared towards individual judicial discretion but it is now obvious that it no longer suffices where the victim and the accused have already access to media reports which can in some cases show a legitimate cause for grievance on the tariff imposed in their particular cases. In England and in New Zealand it has long been the case that appellate courts, considering as they do both prosecution and defence appeals, will lay down tariffs for various forms of offence. In *Tiernan* the Court of Criminal Appeal expressly refused to adopt such a policy in respect of sexual offences.

As the Commission indicates, it is clear that what is missing is a network of fundamental principles underlying the exercise of judicial discretion which will tend to direct the judge's mind, in any particular case, towards those factors which society considers of importance and which, therefore, reduces to a minimum any element of judicial discretion. In the scrupulously researched review of the approach in other jurisdictions, universal criteria, enshrined in legislation, are quoted and examined. Thus factors relevant to sentencing may include the degree of intention, premeditation or planning; the level of participation in the offence; whether a weapon was used; whether the offence was systematically committed for profit; the extent and nature of harm to victims; whether the offender was resourceful or unrepentant; whether there was provocation or duress falling short of a complete defence; the effect on the victim and any jury recommendation for mercy. Factors can also be listed as being irrelevant, such as the prevalence of the offence, the defendant's choice not to give evidence and his requirement that the State prove their case against him (by pleading not guilty). Apart from general sentencing guidelines particular sentencing guidelines can be applied in respect of individual offences. Examples would include the degree of intoxication in drunk driving or the sexual experience of a victim of a sexual offence. Rejecting the idea of a mandatory sentence, or minimum sentence, the Commission instead recommends a sentencing policy based on a "just deserts" approach and highlighting the matters to which the court must have regard, and must disregard, in sentencing an offender. Legislation would set out those matters which might aggravate or mitigate a sentence.

With the abolition of jurors in most personal injury cases in 1981 practitioners felt that the Incorporated Council for Law Reporting ought to produce a book of quantum in respect of various injuries. This would require research and the compilation of statistics and accurate case notes over a vast range of decided cases. At least, at that point, access would be possible to the information that practitioners need. The Commission are clearly disquieted by the inability of interested parties to have access to both relevant sentencing precedents and, more importantly, information on the follow through process with the offender, or a choice of a range of suitable options, based on statistical experience, for sentencing. Thus they recommend an organised judicial study on sentencing by a body charged with the development and supervision of judicial education and the compilation and publication of sentencing statistics and other information and material.

In a list of recommendations, summarised over eight pages, the Commission's overall aim to replace the inarticulate aims of society with clear legislative guidelines, and to put in the place of judicial discretion a guided policy laid down democratically, is set out. The Commission seeks further views on five matters, including whether judges should participate in plea negotiations to the extent of indicating, in advance, the sentence they intend to impose.

With a report of this complexity, the recommendations as wide-ranging and requiring so much work from our elected representatives, it may well be that the attractiveness of their reasoning will lead to no result. Meanwhile the rest of us will fail if we do not, at least, push the politicians' noses to the grindstone.

Peter Charleton

The Irish Student Law Review Vol. 3 (1993)

Dublin, The Law Students' Debating Society of Ireland, 1993, 195pp, IR£10.00.

Morton J. Horowitz, an American educator, has noted that the law is an odd profession that presents its greatest scholarship in student-run publications. [*Newsweek*, September 15, 1975.] Not only is *The Irish Student Law Review* a student-run publication, but the contributions are written by students. Some contributors are undergraduate students; others are pursuing postgraduate studies.

Eoin O'Dell, now a lecturer in law in Trinity College, Dublin, is this year's editor. The assistant editors are *Cliona Kimber* who has contributed an article entitled "Enforcing the Peace: Multinational Forces in the UN", and *Jim O'Callaghan*. The editorial team also consists of two previous editors, *Oisín Quinn*, the editor of volume 1 (1991) and *Anthony Whelan*, last year's editor, a lecturer in law in Trinity College, Dublin, and the editor of *Law and Liberty in Ireland* (Dublin, 1993), an imposing collection of papers published to celebrate the 400th anniversary of the founding of Trinity College, Dublin. The composition of the collective editorial board brings the words of the anonymous commentator to mind: "Even as there are laws of poetry, so there is poetry in the law." Equally appropriate is the voice of Oliver Wendell Holmes that "law is the calling of thinkers." ["The Profession of the Law," *Speeches*, 1934.]

Among the articles that will appeal to

(Continued overleaf)

readers of the *Gazette* are a commentary by *Mark J. Dwyer* on the "subject to contract" issue including a consideration of the recent case of *Boyle -v- Lee* [1992] 1 IR 555, an analysis of EC remedies by *Cathrina Keville*, a review of indirect contributions, the law of trusts and matrimonial property by *Caoimhe Leahy* and the right to associate by *Eugene Smartt*.

Last year, the writer of this short notice suggested that the description "student" should be deleted from the title of the Review. A change of title would make it easier for lawyers to cite the reasoned arguments of the contributors in courts with due acknowledgement. Some lawyers may feel diffident about citing an article in court from a Student Review! Why not call the publication *The Irish Law Review?* Of course, this would not prevent the *Review* being published by The Law Students' Debating Society of Ireland.

The present *Review* maintains the high level of competence of earlier issues and is well worth reading. The editorial board must be congratulated for selecting a group of essays which ought to be of value to the entire community of lawyers, including the legal academy. The *Review* will be a port of call for many.

The *Review* is available from the editor, King's Inn, Henrietta Street, Dublin 2, at £10.00 plus £1.00 for postage and packing. The subscription for students is £5.00.

Dr. Eamonn G. Hall.

"Southern Hospitality Weekend"

SADSI/Law Society Younger Members Committee
23-25 July 1993

Events include:

Friday, 23 July	–	**Seminar – "Alternative Job Opportunities for Solicitors"**
Venue		Beamish & Crawford Hospitality Suite 7.00 pm to 10.00 pm. Unfortunately numbers are limited for this event so early booking is advised! Disco
Saturday, 24 July	–	**Fun Hockey (Mixed)** All welcome
Venue		U.C.C. (Mardyke) 2.00 pm to 5 00 pm.
Saturday, 24 July	–	**Debate – "The Road to Cork – the best thing to come out of Dublin"**
Venue	–	U.C.G. (G.2) 7 00 pm. All welcome
Sunday, 25 July	–	**Jazz Brunch** All welcome
Venue	–	Western Star 12.30 pm to 2.30 pm.

For further information on the above and other events planned for the weekend, as well as details of accommodation and transportation available, please contact:

Pat Casey (021) 273074
John Gaffney (021) 342584

Protect your security documents with a range of security features including the hologram

harvey printers
SPECIALISTS IN COMPUTER STATIONERY AND SECURITY PRINT

Harvey Printers Limited
Industrial Estate,
Waterford.
Telephone (051) 72106

Dublin.
Telephone (01) 541277

Cork.
Telephone (021) 504942

Council Meeting, May 1993

Kenneth Best Case

At their meeting on 14 May, 1993, members of the Council of the Society congratulated *Ernest Cantillon*, a member of the Council, who was the solicitor who acted in the Kenneth Best case, and expressed regret that the news media had largely ignored the compliments paid to him by the judge in the case. The Council agreed that the case should be used by the Society to obtain the maximum public relations benefit particularly when making the case for the introduction of a comprehensive scheme of civil legal aid.

Angel Dust Regulations *Ultra-Vires*

The Council considered a recent High Court decision in which the Angel Dust regulations had been declared *ultra-vires* and void and the implications of the judgment for EC secondary legislation. Given that the implications of this decision for lawyers were significant, it was suggested that the President should write to the Minister for Justice and/or the Attorney General enquiring as to the action being taken by the State and whether the State had a fall-back position.

Family Law

The Chairman of the Family Law and Civil Legal Aid Committee reported to Council that the Committee had fully supported the contents of a code of conduct prepared by the Family Lawyers Association.

Taxation of Stand-by Fees

The Chairman of the Litigation Committee reported on an appeal taken by *John Reidy*, Solicitor, who is a member of the Society's Litigation Committee, against the Taxing Master's decision to refuse to tax stand-by fees for doctors in personal injuries cases. The appeal had been financially supported by the Society and it has been successful. He said he believed the judgment would be of significant benefit to the profession.

Practice Management

The Council was informed that the possibility of establishing a Mergers Register and a Sale of Practices Register was being examined by the Practice Management Committee.

New Reception Area at Blackhall Place

The Council debated a decision by the Premises Committee to provide a new reception area at Blackhall Place. It was pointed out that the proposal would free-up the existing reception area so that a Members' Reading Room could be made available within the building. There was some discussion about the wisdom of committing expenditure on such a proposal at the present time given the other demands on Society resources and the prevailing economic climate. The Chairman of the Premises Committee assured the Council that the expenditure was within the parameters of this year's budget allocation to the Committee and that he believed that the reception area at Blackhall Place required urgent upgrading. The proposal was the most cost-effective solution, was consistent with the proper development of the building and would provide improved facilities for members. The proposal was approved.

Remuneration/Costs

The Council discussed the results of the recent survey of members of the profession concerning remuneration and costs. The Chairman of the Costs Committee outlined a proposed plan of action to address the difficulties currently being experienced by solicitors and in particular the general lack of awareness of the essentials of time-costing and the proper financial management of a practice. It was intended to publish articles in the *Gazette* and to conduct regional seminars. The Costs Committee was also seeking the agreement of the Education Committee to the allocation of one hour on each Advanced Course to a member of the Remuneration/ Costs Committee who would address students on the topic of running a business and methods of charging.

Part VII – Finance Act, 1992

The Chairman of the Taxation Committee reported that following further negotiations a number of additional concessions had been obtained from the Revenue Commissioners in regard to the application of provisions of Part VII of the Finance Act, 1992. He would be reporting in full to the half-yearly meeting in Connemara and to the Special General Meeting on 17 June.

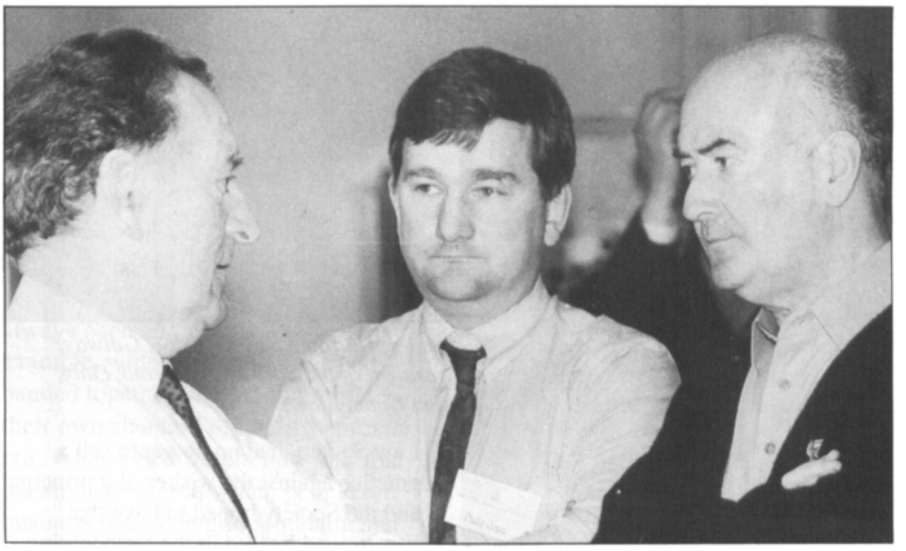
With regard to Section 59 notices, the Chairman reported that the Committee had not succeeded in obtaining concessions from the Revenue Commissioners on this matter. In the light of counsels' opinions on the principle of solicitor/client confidentiality, the Committee was of the view that there was no sustainable basis upon which these notices could be resisted.

Some Council members took the view that the notices should be resisted as the issue at stake went to the very root of the profession and compliance could mean losing work to foreign lawyers.

After some discussion, the Council decided that the matter of Section 59

(Continued on page 193)

President briefs half-yearly meeting of the Society on current issues



At the Annual Conference of the Law Society were l-r: Andrew Smyth, Council Member and Chairman of the Solicitors' Benevolent Association, Philip Joyce, Council Member, and Laurence Cullen, Past President of the Society.

In his address to the half yearly meeting of the Society held on Thursday, 20 May, 1993 in Furbo, Connemara, at the commencement of the Law Society's Annual Conference, the President of the Society, *Raymond Monahan*, dealt with a wide range of issues of current concern to the profession. The President of the Society said the work of the Society had expanded to the point where there was now in excess of 30 committees. The Council and its committees were broad ranging and were reasonably representative of the profession as a whole in terms of age profile, geographical location, firm size and the type of work carried on by them.While a great effort was made to communicate with the profession, there was a perception amongst ordinary members that the Law Society did not represent them in terms of their views or their interests, therefore, he intended to make greater efforts to promote the message that the Council and the Society are available at all times to be of service and assistance to individual members of the profession.

The President of the Society updated members on the progress on the Solicitors (Amendment) Bill and said that the opportunity presented to the Society to the lobby further on the Bill had been fully optimised.

He expressed concern about the continuing increase in the numbers who wished to enter the profession and the fact that the Law School's resources could not continue to deal with such a huge throughput. It was for these reasons that he had initiated a special review of admissions and education policy and he was now examining the report of the review committee.

Solicitors remuneration was also an area of concern, he said, and a recent survey of the profession conducted by the Costs Committee indicated that many solicitors were not charging sufficient fees to pay their overheads and provide themselves with a basic standard of living. "We have now reached the stage where, if the public wishes to have an accessible and conveniently based profession, it will have to become more conscious of the cost of time and overheads so as to enable the traditional ethos of the profession serving everyone to continue," he said.

In his address to the half yearly meeting, the President of the Society also criticised the fact that, every year, further layers of bureaucracy, regulation, procedures and tax collection duties were imposed upon solicitors, while the institutions solicitors had to work with were being denied the necessary resources to allow them progress and develop as they should in line with modern needs, Resources needed to be poured into the civil legal aid system and into the proper funding and organisation of the justice system, he said, and he suggested that the judicial commission proposed in the Partnership Programme for Government should be a wide-ranging and broadly based committee comprising not only judges but also barristers and solicitors, as well as registrars, court clerks and concerned outsiders.

He was also very critical of the new probate tax proposed in the Finance Bill, 1993 saying the tax was unfair, indiscriminate and would cause huge legal difficulties for the public while yielding very little financial advantage to the Government.

He read to the meeting a press statement issued by the Society that day criticising the proposals by the Minister for Commerce & Technology, *Seamus Brennan TD,* to place a cap on the level of personal injuries awards. He said the Minister's approach was too narrow; it was wrong to seize solely upon the compensation element in the total costs of the insurance industry and to argue that it alone should be reduced. A much broader examination was required. There were dangers inherent in selectively adopting legal provisions or rules from other jurisdictions without looking more generally at other aspects of the legal system in those countries and especially at the employment and social welfare codes that apply to people who suffer injuries. He said the Law Society and the legal profession would be seriously concerned about any move that would interfere with the basic

rights of ordinary people to be properly compensated when they suffer personal injury through no fault of their own.

Amendment of Society's byelaws

The meeting approved amendments to byelaw 6 of the Byelaws of the Society in order to enable the scrutineers of the annual election of members of the Council of the Law Society to perform their functions more effectively.

Part VII Finance Act, 1992

The chairman of the Taxation Committee, *Frank Daly,* briefed those attending the meeting on the progress of negotiations with the Revenue Commissioners concerning the provisions of Part VII of the Finance Act, 1992 . He outlined the progress that had been made in discussions over a wide range of matters which had caused concern to members of the profession. He informed the meeting that the Council of the Society had decided to hold a Special General Meeting of the profession on 17 June, 1993 to consider the issue more fully.

Solicitors Retirement Fund

The chairman of the Solicitors Retirement Fund, *Gerald Hickey* reported to the meeting that 1992 had been a difficult year for investment. Overall during that year pension funds increased by a mere 1%. However, he was pleased to report that there had been a 6.1% increase in the Solicitors Retirement Fund. This was very favourable, especially when it was reviewed against a Consumer Price Index increase for the year of 2.4%. The current value of the fund was approximately £21m. There were 462 members of the fund of which 362 were under 50 years of age.

Solicitors Benevolent Association

Andy Smyth, chairman of the Solicitors' Benevolent Association, thanked the Law Society and members of the profession for their continuing support for the Association's work. Unfortunately, demands on the association were continuing to rise and had increased by £50,000 per annum over the past seven years, he said. He noted that during the year the former secretary of the Association, *Clare Leonard,* had been appointed a Judge of the District Court and said that he wished to place on record the enormous amount of work that she had done for the Association. He thanked all those in the profession who had got involved in golf competitions around the country to generate funds for the Association, and he complimented all those who had been involved in the fundraising production of "Trial by Jury" by Gilbert and Sullivan in Green Street Courthouse which had been a great success. He said it was particularly pleasing to see the involvement of both branches of the legal profession.

At the Half Yearly Meeting of the Society were l-r: Ciaran Keys, Solicitor, Galway; Moya Quinlan, Council member and Past President of the Society and Frank Daly, Council member and Chairman of the Taxation Committee.

Any other business

Under any other business, *Damien Tansey,* Solicitor, asked why the Society did not respond publicly in the *Sunday Business Post* to comments attributed in that paper to *James Osborne*. The President of the Society pointed out that, since, at the time, a complaint had been lodged with the Registrar's Committee, that aspect of the matter could not be dealt with publicly. The Council had also decided that there should be no public statement but that the President should deal with the matter by letter.

Mr. Tansey asked whether, in combatting fraud, the Society would consider surprise spot checks on practices. The assets of practices of deviant solicitors should be sold and the proceeds transmitted to the Compensation Fund. The President said that the question of spot checks was currently being considered by the Compensation Fund Review Committee. The Director General of the Society, *Noel Ryan*, pointed out that as the law stands, the Law Society had no power to sell a practice against the wishes of a principal and the Society hoped to have that situation addressed in the forthcoming Solicitors Bill. The President of the Society denied the implication by Mr. Tansey that any deals were done with solicitors who had acted fraudulently and said that the Society had a very stern attitude to such solicitors.

Mr. Tansey also asked whether, given the increase in numbers in the profession, there was sufficient scrutiny to ensure that masters were educating and training their apprentices properly. The chairman of the Education Committee, *Pat O'Connor*, assured Mr. Tansey that there were frequent checks on masters. He shared Mr. Tansey's view that it was getting more difficult to obtain an apprenticeship and stated that the Education Review Committee had made proposals on this issue which were currently being considered by the Council of the Society. ❐

Barbara Cahalane.

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 8725622
Fax: (01) 8725404

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

Quality – the Competitive Edge

Delegates at the Law Society's Annual Conference, held at the end of May in Connemara, heard presentations from four speakers on the importance of quality management in solicitors' practices. *Patrick Hayes,* Managing Director of Corporate Image Management Limited, said in his address to the conference, that quality was not a new-fangled fad but had always been an important issue. For example, wine makers in Paris had banded together in 1835 to promote their own standard of quality - premier cru. What was different now was that the environment in which people did business had undergone fundamental change on an enormous scale and people supplying a service ignored that fact at their peril. He said he was very conscious as a business man in a new industry - public relations - that he was speaking to members of a very long-established profession which was rooted in tradition and driven by precedent. However, the challenges facing us all were the same. We were living in an era of competition the like of which the world had never seen before. There were too many PR consultants, too many banks, too many car dealers, too many solicitors. Even corporate giants like IBM, Digital etc. were being humbled by the market. Consumers were saying "I want value, quality, service and if I don't get it I'll be as mad as hell and I'll take my business down the road. I want service and in a market of over supply, I can get it."

In his view it would be difficult for the solicitors' profession to resist the tide of increasing competition. The profession had the option of saying "we'll dig in, we'll row back" but, in his opinion, it would be a very high risk strategy. Current thinking was not in favour of monopolies. The public was against them and the media was behind the public. Therefore, he believed that the solicitors' profession had to go out and meet the competitive situation head on. Paddy Hayes said that surveys had consistently shown that purchasers of services were influenced in their choice by five factors: quality, reliability, speed of delivery, courtesy and price.

The speakers at the Annual Conference with the President of the Law Society, l-r: Robert Pierse, Patrick Hayes, Raymond Monahan, President of the Law Society; Andrew Lockley and Philip Hamer.

The customer for life

Paddy Hayes spoke about the importance of the concept of the customer for life. He said practices should consider the capital worth of keeping a customer for life, since it was five times more profitable to do business with an existing customer than to cultivate a new one.

As a public relations practitioner, he believed that public relations was not a solution to problems except to communications problems. Underlying problems which often gave rise to poor PR could in many cases be dealt with by addressing the quality issue. He said that people in the service industries should embrace what he described as the "slogan for the decade": *I believe what you say, because I see what you do.*

A deliberate searching experience

"Most solicitors have never sat down and considered how their clients judge the service being provided by their office", said *Robert Pierse,* whose firm, Pierse & Fitzgibbon, was the first firm of solicitors in Ireland to obtain the Quality Mark. In his address, Robert Pierse described the assessment procedures for the Quality Mark as being put through a "deliberate searching experience". His firm had had to look at its process of service, evaluate it and re-establish it on a quality basis. This process got written down and was presented as a sort of 'bible'. "I see, therefore, this quality approach as a new look at how we do things and how we are seen to do them. Outside objective criteria for a service profession are applied to our office. International standards are refined into our client care."

He posed a series of questions which, he said, firms would have to consider if they wanted to achieve a quality service:

- Do you consider your professional work a service?

- What are the characteristics of this service from the client's viewpoint?

- What personnel, facilities, capacity, time, reliability, responsiveness, comfort, systems, environment, accuracy, cost effectiveness do you provide to deliver that service?

- What does the client expect? What should the client get?

- Is the client nervous, uncertain or worried about what he wants? Does he want reassurance, consistent satisfaction, improvement, efficiency, courtesy, definitive action, cost optimisation?

- Is there a complaints procedure?

- Is there in essence a quality response? Is there a consistent quality response from all personnel and are your facilities geared to it?"

Robert Pierse said that in order to provide quality service, the service given to clients must be a total service which, by its features and characteristics, was able to satisfy fully the stated and implied needs of clients. The system by which this was achieved must combine an input from personnel with structures, responsibilities, procedures, processes and resources.

Customer-driven quality

Andrew Lockley, Director of the Legal Practice Directorate of the Law Society of England and Wales, said the move towards quality in the solicitors' profession in England and Wales had been customer-driven. The large buyers of legal services such as the Legal Aid Board, insurance companies and local authorities were exercising their buying muscle and were insisting on quality standards. Furthermore, over 20,000 firms in the UK had acquired the British quality standard BS5750 and they in turn wanted to do business with others who had acquired the standard, including solicitors. There was also an element of self interest in that some solicitors' firms viewed it as a hedge against client disloyalty, since there was an over supply of solicitors and therefore a great deal of competition within the profession for available business. Another factor contributing to the drive towards quality, he said, was the cost of quality failure, be it through increased professional indemnity premiums, higher contributions to the Compensation Fund or time that had to be spent rectifying mistakes or failure to deal properly with clients.

Rule 15 on client care

Andrew Lockley described a number of initiatives which the Law Society of England and Wales had taken, including the introduction of rule 15 on client care which obliged each firm to have an in-house procedure for dealing with complaints. He told delegates that compliance with rule 15 was not, as yet, universal. While most firms said they had an internal complaints procedure they did not tell their clients about it. On the other hand, some firms had gone further than rule 15 and had established their own quality standards such as returning calls within one day. The Law Society actively encouraged the client care approach.

Andrew Lockley said that seven solicitors firms in England and Wales had now obtained the British quality standard BS7570. In his view, BS5750 was essentially "common sense written down". However, it tended to be process-orientated rather than people-orientated and it had required adjustments for its application to legal services which the Law Society of England and Wales had agreed with the British Standards Institute. The debate was now moving on into the area of total quality management (TQM) which was a philosophy of continuous improvement and was more orientated towards people. Andrew Lockley said the approach of TQM was to assess the quality of work consistently while it was being done rather than applying quality control after the event which was far less satisfactory.

Practice Management Standards

Andrew Lockley explained how the Law Society of England and Wales had responded to the desire of the bulk of the profession to be given guidance standards on practice management. The Society had also been stirred into this by the Legal Aid Board because the Board was insisting on certain quality standards being met before it would franchise legal aid work to a firm. It was an important principle for the Law Society of England and Wales

In a relaxed mood at the Annual Conference were l-r: Glenys Richardson and Norman Richardson, Lees Lloyd Whitley, Liverpool, England; David Thomas, Lees, Lloyd Whitley; Jane Bibby; and David Keating, Smith & Graham, Hartlepool, England.

that the Society would be the body who would set the standards of practice management. There had been surprisingly wide support within the profession for the idea, although he reported that one firm had responded: "we don't believe in practice management - our staff don't stay very long"! Andrew Lockley explained that the practice standards were not compulsory and there was no formal enforcement by the Law Society of England and Wales. However, the Society devoted resources to promulgating the standards and providing seminars etc. The Law Society itself, he said, was adopting the practice management standards in its own operations.

Lawyers are terrible - but mine is OK

Philip Hamer, Managing Director of Philip Hamer & Company, which has four branches around the Leeds area, and has just obtained the BS5750, queried why people always expressed the view that "lawyers are terrible - but I'm lucky, mine is OK". He described certain decisions which had been taken by his firm when it decided to seek the BS5750 standard. When the firm first started, he said, they had operated the cab rank rule which he defined as: "everybody operating at the same level of incompetence." Three years ago, he and his partners decided to focus the firm and to take on work only in areas in which they were expert and trained.

Philip Hamer described some of the innovations that had been made by his firm on the way to obtaining the quality standard. His firm introduced computerised time-recording which threw up the interesting statistic that 25% of files had not been worked on at all in the previous 90 days. Another innovation was the introduction of a review system of every file every six months by somebody who was not responsible for the file. While the introduction of that system had been an enormous task it now provided an important warning system and quality mechanism.

The firm also introduced a contract with each client which was signed at the commencement of work. The contract clearly stated how much the firm would charge per hour. In the initial stages, Philip Hamer said, they were worried that clients would "run". However, the system worked and the only clients who left were the ones who were not likely to pay anyway. Philip Hamer also advised that it was important to get payment from clients at regular intervals during the work rather than presenting the client with the total bill at the end of the proceedings.

The firm also introduced a procedure for taking statements. Following a consultation with the client, the solicitor dictated the statement in the client's presence. The typed statement was then sent to the client for signing.

Philip Hamer said that devising the procedures had been relatively easy, the problem, of course, had been getting people to follow them. However, when the procedures had been established, problems and complaints became much easier to handle. He did not deny that there had been a certain pain element and a great deal of work in developing and implementing the procedures. "We are talking about improving the worst person in your office (not just the best), the one most likely to let you down," he said.

His final advice to conference delegates was to send jobs that they did not feel competent to do outside the firm rather than leave them unattended to or letting them become the cause of potential difficulties. He also cautioned delegates not to let their clients lead them down the wrong road. If quality standards and procedures were in place and the solicitor knew that somebody else in the office would be reviewing his handling of the case, it was much easier for him to say no to a client at the outset.

Barbara Cahalane ❐

Council Meeting, May 1993

(Continued from page 188)

notices should also be discussed at the Special General Meeting on 17 June.

Pro-Bono Legal Aid

The Council approved in principle a proposal from the Minister for Equality and Law Reform, Mervyn Taylor, that solicitors engaged in family law work might take one legal aid case awaiting attention on a *pro-bono* basis before the end of 1993. In return, the Minister had indicated that substantial additional funding would be sought for the Legal Aid Scheme in 1994 and that the expansion of the Scheme would include provision for the participation of private practitioners. The Council approved the proposal on the basis that firm commitments would be sought from the Minister and that, ultimately, it would be a matter for each individual solicitor to decide whether to participate. ❐

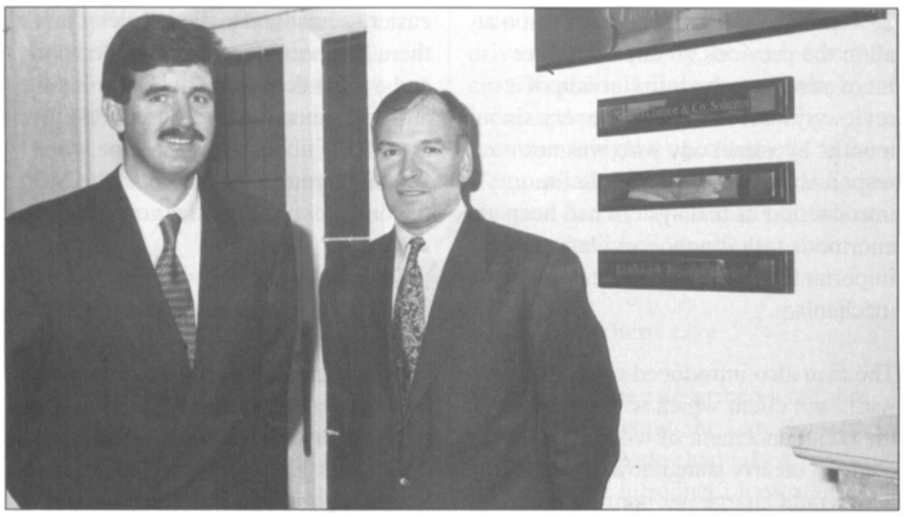
New Law School telephone number and fax

Members of the profession, apprentices and students, are requested to note that on 1 June, 1993 the Law School acquired its own switchboard and its main number is 6710200. The Law School's fax number is 6710064.

It is hoped that the new switchboard will enable callers to have easier access to the Law School while easing the pressure generally on the Society's main switchboard. ❐

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: 0444-483-726272.
Fax: 0044-483-725807.

Dublin Solicitor Opens Business Centre in Madrid



L-r: Niall O'Connor, Solicitor and Tom Hayes, Director of the Irish Trade Board for Spain and Portugal, at the opening of the Grupo Irlandes Business Centre in Madrid.

On the 26 March last *Tom Hayes*, Director of the Irish Trade Board for Spain and Portugal, officially opened Grupo Irlandes Business Centre in Madrid, headed by Dublin solicitor *Niall O'Connor* of Niall O'Connor & Co. of Fairview and Phibsborough. The firm has been providing legal services to Spanish clients for a number of years and sought to strengthen their Spanish links by opening an office in Madrid.

Independent of their own offices they have set up a business centre whose facilities and services can be availed of by any Irish company of professional exporting or otherwise doing business in Spain. The Centre has attached to it a network of Spanish advisers and professionals to provide practical assistance to Irish companies. In addition to interpreters and translators, these include English speaking lawyers and tax consultants. ❐

Holmes O'Malley Sexton Scholarship awarded

The Holmes O'Malley Sexton Scholarship worth £2,000 was recently presented to Elaine Morgan, a fourth year European Studies student specialising in law at the University of Limerick. This scholarship is presented annually to the undergraduate at the University of Limerick with the best academic performance in Law during second and third years.

The photograph shows Judge Ronan Keane of the High Court presenting the Holmes O'Malley Sexton Scholarship to Elaine Morgan, with (left): Professor Noel Whelan, Vice President and Dean, College of Business, University of Limerick and (right): Gordon Holmes, Senior Partner, Holmes O'Malley Sexton, Solicitors. ❐

Family Law: Implications for Solicitors' Practice

On Saturday 10 July 1993, the Trinity College Law School is organising a conference on "Recent Developments in Family Law: The Implications for Solicitors' Practice" from 9.15 am to 1 pm in Ussher Theatre (Room 2037), Arts Building.

The subjects to be considered include:

- Revision of separation agreements in the light of the Supreme Court decision in W v. W.
- Litigating cases under the Child Abduction and Enforcement of Custody Orders Act, 1991.
- Negotiating rights of spouses in relation to pensions.
- The solicitor's obligations under Section 5 of the Judicial Separation and Family Law Reform Act, 1989.
- Assessing custody applications in the light of the Supreme Court decision in S. v. S.
- Pitfalls in relation to the Family Home Protection Act, 1976.

The cost of the Conference is £80. For further details contact:
Grainne McDermott, School of Law, House 39, New Square, Trinity College, Dublin 2.

Telephone 01 702 2297
Fax 01 677 0449. ❐

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

Winners and Losers? Legal Aid in Custody Proceedings

by Mel Cousins*

Despite the trenchant criticism which has been levelled at the limitations of the Scheme of Civil Legal Aid and Advice[1], there have been relatively few legal challenges to the operation of the Scheme. This article outlines two recent successful challenges in the High Court and Supreme Court. However, we first look at two earlier cases in which the status of the Scheme was considered.

E. v. E.[2]

In this early case, the respondent husband argued that he was entitled to legal aid in accordance with the decision of the European Court of Human Rights in the *Airey* case. However, O'Hanlon J did not accept that this contention was correct. He said that any dispute as to whether or not the State had met its obligations under the Convention of Human Rights by establishing the Scheme of Civil Legal Aid and Advice should be determined by the procedure provided for in the European Convention. Thus he held that the Convention was not directly applicable in Irish law.

M.C. v. Legal Aid Board

There was a considerable gap until the next reported challenge to the Scheme in *M.C. v. Legal Aid Board* in 1990[3]. In this case the Board had refused to adjudicate on Mrs C's application for legal aid. Due to the pressure of applications and the inadequate funding received by the Board, only the most urgent applications were considered. The applicant's husband had petitioned for a nullity but as the proceedings were not yet listed for hearing the Board considered that there was insufficient urgency about the application to warrant considering it at that stage.

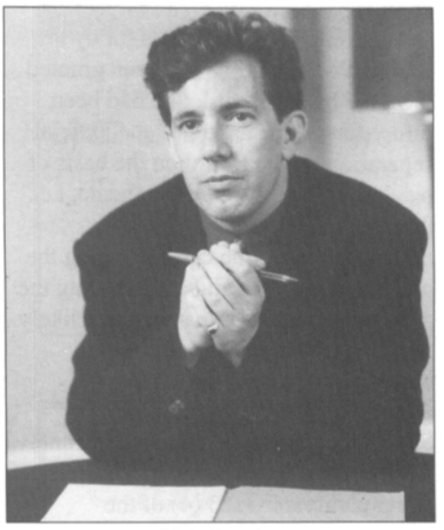
The applicant argued that she was entitled to have her application considered under the terms of the Scheme itself and that her constitutional right of access to the courts had been infringed. Gannon, J was of the opinion that while Mrs C. was apprehensive that she might not have legal aid when the petition for nullity came for hearing, she had not established this as a probability and had not suffered any wrong attributable to the Board. As there was no probability of an imminent risk of harm she was not entitled to an order of mandamus requiring the Board to adjudicate on her application. He held that the fact that she was a respondent to a nullity petition did not create any duty owed to her by any of the respondents. The validity or otherwise of her marriage did not involve the State which simply provided a forum for the resolution of such disputes. It did not oblige her or the petitioner to have recourse to the courts. In contrast, criminal matters could only be resolved in the courts as the investigation of crime was 'a matter of public duty.' Thus there was no 'obligation on the State to intervene in any private civil litigation so as to ensure that one party is as well equipped for the dispute as is the other.' Gannon J was of the opinion that the adoption of the Scheme of Civil Legal Aid and Advice

> 'does not impose any duty on the State or on the Legal Aid Board to any litigant involved in civil litigation other than to ensure that the scheme is implemented fairly to all persons and in a manner which fulfils its declared purpose.'

However, Gannon J did grant a declaration that the Board was obliged to consider her application within a reasonable time, that it had failed to do so and that the Board had unlawfully fettered its discretion by failing to consider the application. He held that

> 'The duty which the Legal Aid Board has under the Scheme is a public duty the performance of which can be enforced if necessary and if appropriate at the instance of a person such as this applicant . . . .'

Thus the court strongly rejected the



Mel Cousins

argument that there was a constitutional right to financial support for civil litigation involving another citizen. Gannon J's decision on the constitutional point was probably unnecessary since he had already found that the applicant had not established an imminent risk of harm and thus, even if a constitutional right to legal aid existed, it is unlikely that State could have been considered to be in breach of any duty to the applicant. However, the distinction drawn between the State's involvement in criminal and civil litigation can be criticised. The courts are the only forum in which the validity of the applicant's marriage could be decided on and once the validity of the marriage was called into question she was obliged to go to court. If the State provides that issues can *only* be adjudicated on in court (as it does in relation to nullity), it is somewhat unreal to say that the State has no involvement in subsequent litigation.

The question as to whether there was a right to legal aid under the Scheme was somewhat unclear from the judgment. The Board had argued that the scheme was discretionary. While Gannon J held that the duty of the Board to operate the Scheme correctly was a public duty enforceable where necessary by

mandamus, this does not necessarily imply any right to legal aid under the Scheme but simply a right to have the Scheme implemented correctly.

The Recent Cases

In *M.F. v. Legal Aid Board*[4], the applicant wished to defend judicial separation proceedings brought by her husband who had himself been granted legal aid by the Board. She had been refused legal aid to defend the judicial separation by the Board on the basis of paragraph 3.2.3 (6) of the Scheme, i.e., that 'having regard to all the circumstances of the case including the probable cost of taking or defending the proceedings measured against the likely benefit to the applicant, it is not unreasonable to grant it.'

She applied again for legal aid in June, 1992 but was again refused this time under paragraph 3.2.3 (4) of the Scheme, namely, that she had not made a case for being granted legal aid such as to warrant the conclusion that she was likely to be successful in the proceedings. The applicant challenged this decision by way of judicial review and, although only on appeal to the Supreme Court, was granted leave to apply.

O'Hanlon J referred to the purpose of the Scheme, set out in paragraph 1.2.1, which was:

> to enable any person whose means are within the limits specified in the Scheme to obtain legal services in the situation where –
> (1) a reasonably prudent person whose means were outside those limits would be likely to seek such services at his own expense, if his means were such that the cost involved while representing a financial obstacle to him, would not be such as to impose undue financial hardship, and
> (2) a competent lawyer would be likely to advise him to obtain such services.

O'Hanlon J stated that:

> 'In my opinion it was inappropriate for the Board to base their deduction on those provisions of the Scheme [i.e., paragraph 3.2.3 (4)], having regard to the nature of the proceedings in which the applicant is involved and the matters which may be dealt with by the Court on the hearing of those proceedings.'

This was compounded by the fact that the applicant's husband had successfully applied for legal aid which entitled him to be represented. O'Hanlon J referred to the very extensive range of ancillary orders which could be made by the court on an application for judicial separation. These included orders concerning barring or protection, custody or access, maintenance and the family home. In custody and access proceedings the Court must have regard to the welfare of the child as the first and paramount consideration.

Having regard to this, O'Hanlon J was of the opinion that proceedings under the Judicial Separation and Family Law Reform Act, 1989 and other proceedings having to do with the welfare of children of a marriage were in a completely different category from 'conventional' disputes between litigating parties. He went on:

> 'In a sense it may be said that in matrimonial proceedings there are no winners and no losers. The husband and wife have reached the painful stage in their marital relationship where one or other or both of them have reached the stage where they can no longer tolerate the continuance of the relationship, and the court is called upon to decide whether the legal bond should be severed and if so, what consequences must follow for the partners to the marriage and for any dependant children of the union who are still under age.'

Accordingly he did not think that one could speak of either party being 'reasonably likely to be successful in the proceedings' particularly in relation to the best interests of the children. Therefore he held that

> 'In relation to these matters and particularly in relation to questions as to custody, access to and maintenance of infant children, once it is established that one or other or both spouses have not the means to be legally represented before the court, I think it would only be in wholly exceptional circumstances which I cannot now envisage, and which do not, in my opinion, exist in the present case, that legal aid could be denied in reliance on the matters referred to in paragraph 3.2.3 (2), 3.2.3 (4) or 3.2.3 (6) of the Scheme.'[5]

Accordingly he quashed the decision of the Board and referred the matter back to it to be dealt with in the light of the judgment.

This case was followed shortly afterwards by the broadly similar case of *R.S. v. Landy and Ors.*[6] In these proceedings the applicant challenged the refusal by the Board of her application for legal aid to defend wardship proceedings brought by the Eastern Health Board in respect of her son. This application had been refused on the basis of paragraph 3.2.3 (4) (i.e., not reasonably likely to be successful). The applicant, relying on *M.F. v. Legal Aid Board,* argued that as the wardship proceedings involved the custody of her child the Board were obliged to grant her legal aid. Lardner J was unable to accept that there was an automatic right to legal aid.

However, he accepted that the requirement of a reasonable likelihood of success was not particularly aptly expressed to apply to wardship proceedings. Counsel for the Legal Aid Board informed that Court that the Board in cases of this kind have interpreted paragraph 3.2.3 (4) as requiring that the applicant must make a case that a benefit of reasonable substance is likely to accrue to him or her. Lardner J considered that this was a proper interpretation in so far as it went. He went on to say that

> 'in cases where the applicant is a partner and the issues are concerned with the future custody or the general welfare of the child and a case is made which warrants the conclusion that such case is likely to be of assistance to the court in determining such issues, in my opinion . . . legal aid should be granted.'

He did not think that it was acceptable that legal aid should be refused in cases such as the instant case having regard to the family status, the relationship of mother and child and the importance to them of decisions which profoundly

affect their future. He referred to the statement of O'Higgins C.J. in *State (Healy) v. Donoghue*[7] in which the Chief Justice had held that, where a man's liberty is at stake or where he faces a severe penalty which may affect his livelihood, justice may require that he should have legal assistance. O'Higgins CJ asked himself

> 'In such circumstances, if he cannot provide such assistance by reason of lack of means, does justice under the Constitution also require that he be aided in his defence? In my view it does.'

Lardner J. was of the view that these dicta were applicable *mutatis mutandis* to the wardship proceedings. He went on

> 'Paragraph 3.2.3 (4) must be interpreted in relation to the particular issues arising in each case. Where, in cases concerning the welfare of children, a court is concerned to hear evidence and submissions and then determine what particular orders would be best for the welfare of the child, an applicant parent who wishes to make a case which it appears likely will be of assistance to the court in reaching its decision, may properly be regarded as being successful within paragraph 3.2.3 (4). He has a worthwhile contribution to make to the hearing of the case. It seems to me that this approach is more in accordance with the requirements of the Constitution in regard to the administration of justice.'

He respectfully agreed with the conclusions of O'Hanlon J in *M.F. v. Legal Aid Board* in respect to proceedings concerning the welfare of children.

The Supreme Court has since heard an appeal in the *M.F.* case.[8] The Court upheld the decision of the High Court. Finlay CJ stated that the rule concerning the reasonable likelihood of success should be interpreted and implemented on the basis that

> 'it is only necessary that the Board should conclude there is a reasonable likelihood the point of view and submissions of the person concerned, with regard to the welfare, custody and upbringing of the child concerned, should be among the material which would be relied on by the judge in determining the issues concerning the child.'

As concerns the rule that legal aid should only be granted where it is reasonable to do so having regard to all the circumstances of the case, including the cost of the proceedings measured against the likely benefit to the applicant, Finlay CJ held that, in cases brought under the Judicial Separation and Family Law Reform Act, 1988, the Board should interpret the benefit to the applicant to be equivalent to the interests of the applicant in the welfare of the child.

The effect of the decisions

The effect of the Supreme Court decision would appear to broaden the interpretation of the Scheme of Civil Legal Aid and Advice so that the Legal Aid Board will now be required to grant legal aid in more cases involving custody disputes. However, while the High Court, at least in *S. v. Landy*, appeared to suggest a constitutional right to legal aid, it appears that the decision of the Supreme Court is confined to an interpretation of the Scheme itself. Thus clarification as to whether any legal or constitutional right to legal aid exists must await further decision of the courts or the long promised Legal Aid Bill.

1. See, for example, the editorial in this journal of October, 1992.
2. [1982] ILRM 497.
3. [1991] 2 IR 43. This decision was given on 1 October, 1990. It was appealed by both the Legal Aid Board and the applicant but at the time of writing the appeal has yet to be heard by the Supreme Court.
4. Unreported, High Court 4, December, 1992.
5. Paragraph 3.2.3 (2), which had not previously been mentioned in the judgment, provides that the applicant must, as a matter of law, have reasonable grounds for taking, defending or being a party to proceedings.
6. Unreported, High Court, 10 February, 1993. Landy and others are the Chairman and 12 (male) members of the Legal Aid Board.
7. [1976] IR 325 at 350.
8. 31 March, 1993, see *Irish Times* 1 April, 1993.

**Mel Cousins is a barrister.*

· DE ·
IRISH DOCUMENT EXCHANGE
37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin
OVERNIGHT - EVERY NIGHT EVERYWHERE
Mail from any of 37 exchanges arrive in the Law Library by 9.00am next working day

NORTHERN IRELAND AGENT
• Initial Consultation Free
• All forms of work undertaken
• Competitive Rates
• Consultation in Dublin if requested
• Legal Aid Available
Contact: Kevin J. Neary BCL
Donnelly Neary & Donnelly
Solicitors
1 Downshire Road, Newry,
County Down
Tel: (080693) 64611
Fax: (080693) 67000

TO LET - OFFICES
Excellent first floor offices over EBS Building Society at
345 Ballyfermot Rd., D. 10, c, 508 sq.ft.
2, St. Agnes Rd., c, Crumlin c, 606 sq.ft.
111 Cabra Rd., D. 9, c, 519 sq.ft.
Brendan J. Walsh & Associates
Tel: 6607733

EXPERT WITNESS
Specialising in all types of
Road Traffic Accidents
including
• Consultations
• Reports
• Court Appearances
30 Years Experience
Contact: John Walsh
Irish School of Motoring Ltd.
Tel: 334262

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 in substitution from the original 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: 22 June, 1993.

Lost Land Certificates

Francis Barry, Folio: 15725; Land: Cornashamsogue and Barnameenagh West; Area: 127(a) 0(r) 12(p). **Co. Leitrim.**

Valerie Kilcoyne, Ashfield House, Rathfarnham, Co. Dublin, full owner of 1 undivided 1/2 share. Folio: 10405F; Townland: Carrickmines Great; Barony: Rathdown. **Co. Dublin.**

Patrick Macken, (deceased), Folio: 13082; Lands: Clonee – Village of Clonee South; Area: 0(a) 0(r) 24 1/2(p). **Co. Meath.**

Michael Kevin Flynn, Folio: 13766; Land: Carrigeencor; Area: 7(a) 3(r) 0(p). **Co. Leitrim.**

Roy K. Black (Company Director), 118 Merrion Road, Ballsbridge, Dublin 4, full owner of 1 undivided moiety. Folio: 1850; Land: Premises on the south side of Sandymount Avenue in Parish of Donnybrook and District of Pembroke. **Co. Dublin.**

John Connolly, Folio: 16627; Land: Clonnagore. **Co. Monaghan.**

Timothy O'Dwyer (deceased), Folio: 28876 and 28756; Land: Cappagh and Kilbeg. **Co. Tipperary.**

Engineering and Contracting Services Limited, Folio: 71376L; Lands: Property to the south of Grange Road in the Parish of Kilbarrack, District of Baldoyle and County Borough of Dublin. **Co. Dublin.**

Mary Patricia Bugler, Folio: 25405; Land: Newcastle; Area: 1(a) 1(r) 3(p). **Co. Limerick.**

Enniscorthy Co-Operative Agricultural Society Limited, Folio: 23184; Land: Kilcannon; Area: 4(a) 3(r) 23(p). **Co. Wexford.** Solr ref.: John A. Sinnot & Co., First National House, Enniscorthy, Co. Wexford.

Victor Brodie Nicholson and Alice Nicholson, Folio: 1143L; Lands: Kilcoolishal, Barony of Barrymore; Area: 0(a) 1(r) 28(p). **Co. Cork.**

Elizabeth Sheridan, Folio: 41093L; Lands: Townland of Kilbagget in the Barony of Rathdown. **Co. Dublin.**

Most Reverend Dr. Thomas Kehoe, Very Reverend James J. Conway, Very Reverend Dr. Patrick Lennon, Very Reverend Patrick Hayden, Folio: 2327; Land: Part of the lands of Graiguenamanagh; Area: 15(a) 3(r) 3(p). **Co. Kilkenny.**

Bridget Doyle, Folio: 8112; Lands: Templetown; Area: 26(a) 16(r) 21(p). **Co. Wexford.**

Thomas Maunsell, Folio: 21348; Land: Part of the lands of Ballyduff. **Co. Kerry.**

Michael Loughran, Folio: 12942; Land: Mountbagnall. **Co. Louth.**

John Kelly, Carraghs East, Ballinlough, Co. Roscommon. Folio: 18556; Townland: Carraghs East (PT); Area: 13(a) 1(r) 2(p). **Co. Roscommon.**

Jeremiah O'Donovan, Folios: 15283, 15284; Land: Mellifontstown. **Co. Cork.**

Leo and Elizabeth Frost, Roscliffe, Knocksaggart, Ballynacally, Ennis, Co. Clare. Folio: 29847; Townland: Knocksaggart; Area: 0(a) 1(r) 16(p). **Co. Clare.**

Patrick McHugh, Folio: 302; Land: Ballydoogan; Area: 13 acres and 28 perches. **Co. Westmeath.**

Lost Wills

McCluskey, Michael, deceased, late of 8, St. Brendan's Terrace, Coolock, Dublin 5. Would anybody having knowledge of the whereabouts of a will of the above-named deceased who died on 25 April, 1993, please contact Messrs. Oliver P. Morahan & Son, Solicitors, James Street, Westport, Co. Mayo. Tel: (098) 25075 / Fax: (098) 26084.

Moore, Henry James, deceased, late of 302, Ard Kill, Carbury, Co. Kildare. Would anyone knowing the whereabouts of a will of the above-named deceased who died at St. Vincent's Hospital, Athy, on 30 November, 1992, please contact Hanahoe and Hanahoe, Solicitors, 16 North Main Street, Naas, Co. Kildare. Tel: (045) 97784. Fax: (045) 76272.

Casey, Patrick, deceased, late of Drumraney, Athlone and Walshestown, Mullingar, Co. Westmeath. Would any person having knowledge of the whereabouts of a will of the above-named deceased who died on 30 March, 1993, contact N. J. Downes & Co., Solicitors, Mullingar, Co. Westmeath. Tel: (044) 48646.

Nutty, Robert Aloysius, late of 107 Furry Park Road, Killester, Dublin 5, died on 10 February, 1985. Would any person who holds, or has knowledge of, the whereabouts of the last will of the above-named deceased, believed to have been made on 17 September, 1979,

please contact Rory O'Donnell & Co., Solicitors, 16 Fitzwilliam Place, Dublin 2. Tel: 6687622. Fax: 6619671 Ref: FB.

Molloy, Matthew, retired cab driver, late of 30 Oxford Road, Dublin 6. Date of birth: 15 January, 1902, Ballydaly, Kilbride Parish, Tullamore, Co. Offaly. Date of death: 2 February, 1992. Would any person having knowledge of the whereabouts of a will of the above named deceased please contact Nora Gallagher & Co., Solicitors, 4 Ranelagh, Dublin 6. Tel: 976884. Fax: 976872.

Gorman, Marcella, late of 49 Galtymore Road, Drimnagh, Dublin 12. Will any person having knowledge of the whereabouts of a will of the deceased who died on 21 January, 1992, please communicate with Daly, Lynch & Crowe, Solicitors, of 13 Westmoreland Street, Dublin 2. Tel: 6715618.

Power, Rosaleen, deceased, late of Eglinton Lodge, Eglinton Terrace, Dundrum, Dublin 14, died on 16 May, 1993. Would any person having any knowledge of the existence or whereabouts of a will which may have been made by Ms. Power, please contact Mannion, Solicitors, Usher House, Main Street, Dundrum, Dublin 14. Tel: 2989344.

Lost Lease – Assignment

Kathleen Cody, deceased, late of Queen Street, Tramore, Co. Waterford. Premises at Queen Street, Tramore, Co. Waterford.
Would any party having knowledge of the whereabouts of:

1. A lease of the property at Queen Street of 20 January, 1964, Anna Cleary with Rita Kavanagh.
2. An assignment of the property at Queen Street of 28 October, 1965, Rita Kavanagh with Kathleen Cody.

Please contact Messrs. Dobbyn & McCoy, Solicitors, 5 Cobeck Street, Waterford. Tel: (051) 74087.

Employment

Solicitor with over 12 years experience mainly High/Circuit Court litigation together with conveyancing experience plus experience in specialised areas, seeks change of position. Box No. 30.

Capable and Enthusiastic Solicitor (3 years post qualification experience) seeks part-time position in Dublin office. Conveyancing, litigation, family law and probate experience. Reply to tel: (01) 540716.

Locum Solicitor, with wide experience, including litigation and conveyancing available for full-time/part-time work. Excellent references. Tel: (01) 531747 9am to 6pm.

Young Solicitor with very good experience in commercial law desires change with good prospects. Box No. 51.

"Give us a Job" – you will be glad you did. Newly-qualified, enthusiastic, hardworking solicitor, extensive general practice experience. Tel: (091) 62060.

Apprenticeship sought by graduate who has passed the Final Examination 1992. Box No. 52.

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 Ms. Erin Barry, at the Law Society, 6710711, Ext. 227.

Miscellaneous

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

Spirit Retailer's Off-Licence for Sale. Contact C. S. Kelly & Co., Solicitors, Buncrana, Co. Donegal. Telephone: (077) 61332 or (077) 61567 or Fax: (077) 61844.

Wanted Copy Bernard Shillman's *Licensing Laws of Ireland.* Please contact A. Martin at 8741512.

Setting up Practice: Sharon McArdle, Solicitors, is pleased to announce that she has commenced practice under the style of McArdle & Company, Solicitors, 12 Francis Street, Dundalk, Co. Louth. Tel: (042) 31491/31499.

Setting up Practice: Harold Waterman, MA, LLB, Solicitor, wishes to announce that he is now in practice at 19 Clare Street, Dublin 2, under the name and style of Harold Waterman & Company and that Mr. Greg O'Neill, BCL, Solicitor, has joined the practice. Tel: (01) 6621543/6621544. Fax: (01) 6621542.

Notice to advertisers

Members of the profession wishing to advertise in the Professional Information section of the *Gazette* are kindly requested to note the following information. The cost of a lost land certificate notice is £18.00 plus VAT @ 21% (total @21.78). The cost of a notice for a lost will is £15.00 plus VAT @ 21% (total £18.15). 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 of the magazine, 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. ❐

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 6 JULY/AUGUST 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

AGAINST THE GUILLOTINE

GROUND RENTS: THE SHAPE OF THINGS TO COME

A LETTER TO MY SOLICITOR . . .

WHIPLASH AND ITS EFFECTS ON THE TM JOINT

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service
• Efficient • Competitive Prices • Friendly

Private Limited Company	–	10 days, £255*
Guarantee Company	–	10 days, £285
Shelf Company	–	10 mins., £255*

* Special prices valid until end of August.

Phone: CARMEL or RITA
at 671 0711, Ext. 224 Fax: 671 0704

VOL. 87 NO. 2 JULY/AUGUST 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 205
The imposition of guillotines on legislation which is not urgent is an abuse of our parliamentary procedure.

Practice Notes 206
Certificates as to no debts or voluntary dispositions; Certificates of no dealings pending; Undertaking to discharge Land Registry queries; Registration of Business Names Act, 1963; District Court sittings; Law Library fax numbers; Correction to Family Home Declarations; Residential Property Tax (page 239).

Special General Meeting 207
At a Special General Meeting, members of the profession adopted a resolution to discontinue opposition to Part VII of the Finance Act in the light of assurances on solicitor/client confidentiality and other concessions received from the Revenue.

Mediawatch 209
The Society's opposition to the probate tax continued to receive media coverage throughout the month as did other issues of concern to the profession.

Lawbrief 211
Solicitor appointed to the High Court in the United Kingdom; rituals of the law: the judges' tipstaff; Court of Human Rights holds suspension of detainee's rights justified; the largest firms; solicitors and "cut price" conveyancing.

Book Reviews 215
This month we review: Hotel, Restaurant and Public House Law; Law and Liberty in Ireland; Public Procurement, and Irish Conveyancing Precedents.

Justice Media Awards Presented 219
The winners of the Law Society's Inaugural Justice Media Awards Competition, sponsored by Aer Lingus, received their awards at a ceremony recently.

People and Places 220

Disciplinary Cases 223

Practice Management 225
'A Client' writes a letter outlining the level of communication he would like, and expects, from his solicitor.

Ground Rent, The Shape of Things to Come 227
Failure to recognise an opportunity compulsorily to acquire the fee simple may expose a tenant's legal advisors to an action for professional negligence, writes Professor JMG Sweeney, who suggests some reforms of the law in this area.

Technology Notes 231
The scope of the European Communities (Legal Protection of Computer Programmes) Regulations, 1993 provides copyright protection for computer software programmes.

Whiplash and its Effects on The Temporo Mandibular Joint 233
Whiplash can often give rise to long-term damage to the jaw joints which, if unrecognised and untreated, can become a dominant medical problem, writes Dr. Meurig Devonald.

Legal Aid in Custody Proceedings – Update 236

Professional Information 237
Notices concerning lost land certificates, wills and leases; employment and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

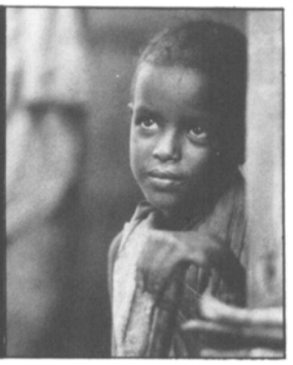
Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7.
Telephone 6710711 Telex: 31219 Fax: 6710704.

Front Cover Photograph: Four Judges of the District Court, clockwise: Judge Bernard J. O'Carroll, Judge James J. O'Sullivan, Judge James P. Gilvarry, and Judge John J. Delap.

There Is An Alternative.



Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now.

Siobhán Walsh

CONCERN

1 Upper Camden Street, Dublin 2. Tel. 6681237

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION

4 Clyde Road, Dublin 4
Telephone: 01-6685001

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

SUCCESS

Your successes in life could mean much more if you also supported life.

The Irish Kidney Association devotes all monies to saving and supporting life. Organ failure strikes unexpectedly and finally.

Be a friend for life by sending a donation or making a bequest to the **Irish Kidney Association, Donor House, Ballsbridge, Dublin 4.**

Against the Guillotine

Recent newspaper comment indicated that the managers of the Government's legislative programme were pleased at the volume of legislation which had been processed in the weeks leading up to the adjournment of the Dail for the summer recess.

Professional lawyers are as familiar as any other group with working to tight deadlines and thus appreciate that work done in such circumstances is not always impeccable. The imposition of guillotines on debates on proposed legislation, which is not of its nature urgent, is an abuse of our parliamentary procedure. Under that procedure the Committee Stage is devoted to a line-by-line examination of the detailed provisions of Bills with a view to ensuring that they will be effective in carrying out the intended policies behind them. The fact that ministerial amendments are often put down at Committee Stage shows the importance of that particular process.

Montesquieu, the great advocate of the constitutional separation of powers, argued that when the executive and legislative functions were in the same hands then liberty was lost. It may be an exaggeration to say that our liberty is being lost through the imposition of guillotines on debates on Bills, but it is hard to construe it as other than the executive imposing its will on the legislature.

The process by which legislation is prepared in this country does not lend itself to participation by those outside Government administration. It frequently happens that the first indication that persons who will be affected by proposed legislation have of the precise proposals is on the publication of the Bill. In all, a total of sixteen Bills were introduced during the six week period commencing at the beginning of June, including the controversial tax amnesty legislation, and the Matrimonial Home Bill. Instant legislation is no panacea for the problems of our society. Flawed legislation benefits nobody except those whose activities it is intended to curb. The failure of an Act of the Oireachtas to effect its intended policy because it contains ill-considered provisions, which are later proved to be flawed, may only exacerbate the original problem it was intended to solve.

Individual parliamentarians, conscious of their duties to legislate effectively should desist from rushing through legislation. Good legislators do not simply count the number of Bills which have been passed. They should be satisfied only with legislation which has been passed after thorough parliamentary scrutiny. Experience has shown that rushed legislation invariably makes bad law. ❐

Incorporated Law Society

VHI Group Scheme 47/2763

By joining the Incorporated Law Society Group Scheme you and your family can avail of the **group discount** of approximately 10%.

Join now and enjoy the peace of mind that comes with:

- *Relief from financial worry of serious illness*
- *Hospital admission to fit in with family or business commitments*
- *Choice of hospitals*
- *Full Income Tax relief on subscriptions*
- *Worldwide emergency medical assistance services, including benefit of up to IR£1 million for medical evacuation or repatriation.*

Premiums can be paid monthly through your Bank Account (current) at no extra cost.
For more information on joining VHI please complete the coupon below.

✂ ----------

Without cost or obligation please send me more information about VHI

Name: _____

Address: _____ **Tel No.** _____

VHI

Working for you

DM51

Return to: Freepost VHI, VHI House, Lower Abbey Street, Dublin 1. Tel No: 872 4499.

Certificate as to no Deaths or Voluntary Dispositions
Certificates of no Dealings Pending
Undertaking to Discharge Land Registry Queries

A practice has grown up whereby solicitors give all of the above mentioned certificates on closing regardless of whether they are requisitioned or not. The Conveyancing Committee has considered this practice and disapproves of it.

It means that a vendor's solicitor actually guarantees the title of the property he is selling. If the Conveyancing Committee recommended that these certificates be given, then it would not be possible for a vendor to sell his property without a solicitor.

Certificates as to no Deaths or Voluntary Dispositions of Title

When a vendor gives a Section 72 Declaration he is covering the position, *inter alia*, as to any acts on the title which might give rise to Capital Acquisitions Tax. (Pursuant to Section 68 (2) of the Capital Acquisitions Tax Act, 1976, inheritance tax is a burden in respect of which said Section 72 of the Registration of Title Act, 1964 applies).

However, the Conveyancing Committee is of the opinion that an additional paragraph should be inserted in the Section 72 Declaration so that the vendor declares that there have been no deaths or voluntary dispositions on the title within the previous 12 years.

In the case of unregistered titles, the title documents will show whether there were any deaths or voluntary dispositions on the title.

Undertakings to Deal with Land Registry Queries

The Conveyancing Committee is of the opinion that this is a very broad undertaking and should not be given by a vendor's solicitor. It is up to a purchaser's solicitor to obtain sufficient documentation on closing so as to enable him to complete the registration of his client's title.

Requisition Number 19.8 which deals with Transfers of Part asks for an undertaking *on behalf of the vendor* to discharge Land Registry mapping queries. This is the vendor's undertaking and not his solicitor's undertaking and, if given by the solicitor, it should be worded as such and the necessary authority obtained from the vendor.

Certificates as to no Dealings Pending

A certificate of no dealings pending can only relate to dealings in the Land Registry and accordingly is not appropriate on the disposal of unregistered property. Similarly it is inappropriate on the transfer of all the property comprised in a folio as any dealing pending must of its very nature affect the property being acquired by the purchaser. A purchaser can in this event be protected by the making of a priority search.

The need for a certificate of no dealings pending arises only where there is a purchase, lease or charge of part of registered land where other portions may have already been sold, leased or charged *and these dealings are pending* in the Land Registry. In these circumstances the making of a priority search would be difficult. In such a case a purchaser needs a certificate from the vendor's solicitors to the effect that those transfers or other transactions which are pending in the Land Registry do not affect the portion of the property being acquired, leased or charged by his client.

Conveyancing Committee

Registration of Business Names Act, 1963

Under the Business Names Regulations 1993 (S.I. 138/1993) the fees payable to the Registrar have been increased as follows:

(a) on furnishing statement of particulars IR£6.
(b) on furnishing statement of change in particulars IR£6.
(c) inspection of documents IR£2.
(d) certified copy extract IR£2.

Company Law Committee

District Court Sittings in Swords and Balbriggan

Practitioners are requested to note that there is an error in the current Law Directory on page 452 concerning District Court sittings in Swords and Balbriggan, Co. Dublin. The correct sittings are:

Swords
The Court sits each Tuesday between 10.30 and 1.00 pm and 2.00 pm and 4.00 pm for the hearing of juvenile business, custody business and summary business (excluding malicious injuries). Civil proceedings are heard *only* on the third Tuesday of each month at 10.30 am to 1.00 pm and enforcement proceedings are heard *only* on the third Tuesday of every month at 2.00 pm to 4.00 pm.

Balbriggan
Balbriggan sits each Thursday between 10.30 am and 1.00 pm and 2.00 pm and 4.00 pm for juvenile business, custody business and summary business (excluding malicious injuries) but only on the third Tuesday at 10.30 am for civil business and on the third Tuesday at 2.00 pm for enforcements.

(Continued on page 210)

Special General Meeting Votes to Discontinue Opposition to Part VII, Finance Act

A Special General Meeting, attended by 100 members of the profession on 17 June, 1993, adopted a resolution stating that in the light of assurances received about solicitor/client confidentiality from the Revenue Commissioners and other concessions, there was no basis for continuing to oppose the reporting requirements of Part VII of the Finance Act, 1992.

At the Special General Meeting to consider Part VII of the Finance Act, 1992 were l-r: William Devine, Solicitor, Hanby Wallace; Gerard Doherty, Law Society Council; Elma Lynch, Law Society Council, and Michael D. Murphy, Solicitor.

Discussions with Revenue

The meeting heard a detailed presentation from the Chairman of the Taxation Committee, Frank Daly, on lengthy discussions with the Revenue Commissioners which had commenced following the Special General Meeting in June, 1992 when the profession had resolved to oppose the reporting provisions of the legislation. A very firm stand had been taken against encroachment by the Revenue Commissioners on solicitor/client confidentiality and the Society had stated its opposition to this aspect of the legislation very publicly, he said. Following meetings with the Revenue Commissioners, categoric assurances about confidentiality had been received, followed by the publication of a statement of practice which stated "the Revenue Commissioners accept within the bounds of professional relationships the principle of client confidentiality." Frank Daly also pointed out that the statement of practice had provided that one would not have to give information about on whose behalf a payment had been made, *but only to whom* it had been made. Furthermore, in the statement of practice the Revenue raised the reporting threshold to £3,000. Frank Daly said he thought these developments represented substantial concessions to the profession.

Having obtained these assurances, the Taxation Committee of the Society then engaged in a series of meetings and extensive correspondence with the Revenue Commissioners aimed at alleviating the administrative burden involved in complying with the legislation. He outlined a series of additional concessions which had been obtained during these negotiations, among them: a minimum level of £100 below which payments would not have to be recorded, waiver of reporting requirements in respect of apportionment of rents, a waiver in connection with certain sensitive "matrimonial-type" type payments, a later starting date in respect of keeping records by solicitors, a threshold of £500 for the reporting of ground rent collections, and tax allowances in respect of expenditure on software packages installed for the purposes of complying with the legislation.

Frank Daly then went on to outline the advice that had been sought from Senior Counsel concerning confidentiality of solicitor/client communications. The view of Counsel had been unanimous that the disclosure obligations imposed by the legislation were not incompatible with any provisions of the Constitution; solicitor/client confidentiality was based on contract and must yield to statute.

Concluding his address, Frank Daly said that he felt that the battle on Part VII of the Finance Act was over and that the profession had made substantial progress through its negotiations with the Revenue Commissioners. In his view, the climate of opinion had changed in this country; there was no public sympathy anymore for tax evaders or for people who failed to comply with their tax duties. Any further refusal by the profession to comply with the Act would be pilloried in the press, radio and TV, the profession would be attacked in the Dail, and ultimately, members of the profession might be prosecuted for non compliance.

Seconding the motion, Ernest Margetson, said the Taxation Committee, had put a tremendous effort into negotiations on the legislation and had obtained many very valuable concessions. He queried what the alternative to compliance would be. Would it be wise to expend the resources of the Society and the profession on a legal challenge to the legislation, or in supporting individual solicitors prosecuted for non-compliance if, in the light of opinion received from Counsel, the chances of success would be slim?

The meeting was then opened to the floor. A representative on behalf of the Midland Bar Association expressed satisfaction with the efforts of the Law Society but dissatisfaction with the increasingly bureaucratic workload which the solicitors' profession had to undertake on behalf of the Revenue Commissioners. Speakers from the

Southern Law Association, West Cork Bar Association and from Louth, Tipperary and Dublin, spoke in favour of the motion and praised the work of the Taxation Committee. One of these speakers said that solicitors knew when to fight and when to settle and, having put up a good fight on this issue, it was now time to settle. A speaker from Dublin supported "the realistic, practical approach" taken by the Taxation Committee. The speaker asked whether there had been any concessions sought by the Society which were not obtained. The Chairman of the Taxation Committee confirmed that nearly all concessions sought had been obtained except on some minor points.

Status of Assurances on Confidentiality

A member of the profession expressed doubt about the status of "assurances" from the Revenue Commissioners about confidentiality and their assurances than an inadvertent error would not trigger an audit. He asked if the Society was sufficiently confident in the assurances of the Revenue Commissioners that, in the event the assurances did not stand up, it would be prepared to back any solicitor who was prosecuted for refusing to divulge confidential client information. Another solicitor expressed concern that the assurances about confidentiality had not been written into the Act and felt that the profession should not cease to oppose the legislation until such time as the Finance Act, 1992 was amended to include a provision which explicitly secured confidentiality. The President of the Society stated his view that the assurances from the Revenue Commissioners could be relied upon and, if the Revenue Commissioners looked for more information than had been agreed, then the Society would support any solicitor who resisted such a move.

Reservations

A number of speakers were critical of the motion and argued that the profession should continue to oppose the legislation. One practitioner from Dublin said that he felt betrayed. The legislation breached the fundamental principle which distinguished solicitors from other professions which was solicitor/client confidentiality. Solicitors had always stood alone and had always upheld total confidentiality. He said support for the motion would be tantamount to voting to hand over confidential information about clients to the Revenue Commissioners. The President of the DSBA said he had very strong reservations about complying with the legislation.

A past President of the Society said it was unfair to talk of betrayal. He said he believed the reporting requirements would not impinge on the solicitor/client relationship, provided that the client was made aware of the situation. He had never known the Revenue Commissioners to renege or back track on an assurance given in negotiations.

Participants at the meeting also raised a number of practical queries about how the concessions would be applied and expressed the desire to receive detailed information on the legislation from the Law Society. A solicitor from Sligo stated that such guidance was essential because complying with the legislation would bring about a unilateral change in the contractual nature of the solicitor/client relationship and clients should be notified about this. He, and a number of other speakers, expressed the view that more information about discussions with the Revenue Commissioners should have been circulated to the profession before the meeting. The Chairman of the Taxation Committee, Frank Daly, assured those present that the Society would supply a briefing document.

Motion passed

Following the discussion, a substantial majority of those present voted in favour of the motion:-

> "that having regard to the legal advice obtained by the Society in relation to the provisions of Part VII of the Finance Act, 1992, and to the outcome of discussions with the Revenue Commissioners on this matter and in particular to the undertakings and assurances given by the Revenue on the question of solicitor/client confidentiality and the practice concessions obtained by the Society for the benefit of the profession, this Special General Meeting sees no sustainable basis upon which the Society can continue to oppose the reporting requirements in Part VII of the Act."

Barbara Cahalane ❐

Mary McKeon

Mark McArtain

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription - Personal Injury Judgements Trinity and Michaelmas Terms 1992 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7.

Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

Congratulatsions to our reporters, Mary McKeon and Mark Mac Artain who have recently passed the Registered Professional Reporter exam. Together with their colleagues, Mary O'Sullivan and Tina Kenny, they are the only people in Ireland who have achieved this standard which involves writing at a speed of 225 words per minute.

Campaign Against Probate Tax Continues

A regular column which examines issues reported in the media concerning the Law Society and the solicitors' profession.

Alliance Against Probate Tax

The continuing campaign by the Alliance Against Probate Tax, which comprises ten organisations including the Law Society, received substantial coverage particularly in the regional newspapers. Most of the provincial newspapers published during the week of 7-14 June, 1993, reported that Law Society President, *Raymond Monahan*, foresaw serious financial and legal difficulties arising out of the tax, and the view of the IFA President, *Alan Gillis*, that opposition to the new probate tax was clearly intense and was continuing to grow. Most of the papers also reprinted in full the joint declaration by the Alliance which called on the Minister for Finance to abolish the tax.

On the RTE Radio *This Week* programme on Sunday, 13 June, 1993, *Ciaran Keys* of the Law Society's Taxation Committee, warned about the impact of the tax on clients, and that it would make people less likely to have estates administered. On the same programme the Minister for Finance, *Bertie Ahern*, said that the probate tax would not result in the double taxation of estates and that it was a step forward in terms of tax reform because it widened the tax base. A statement by the Alliance Against Probate Tax refuting the Minister's arguments as being "totally disingenuous" and "misleading" was reported in the media on 15 June, 1993.

Criticisms of the tax by Law Society President, *Raymond Monahan*, as "a quick fix measure" were reported in the *Sunday Business Post* of 20 June, 1993. The *Irish Press* of 22 June reported that the fight to force a Government climb-down on the controversial new tax was being stepped up. The article quoted Raymond Monahan as saying "there will be a strong build up of resistance to the new tax from ordinary people as, increasingly, they become aware of its full legal and financial implications".

Bertie Ahern TD, Minister for Finance. His defence of probate tax was rejected as "disingenuous and misleading".

Personal Injuries

"Injury Claims: Fees Top £178m" was the heading on an article by *Colm Murphy* in the *Sunday Tribune* of 13 June, 1993, which reported that lawyers and other professionals shared an estimated £178m last year in legal costs arising from personal injuries actions. The article said this represented an 11% increase on the amount paid two years ago.

The *Daily Star* and *Irish Independent* of 19 June, 1993, both reported on the address by the President of the Law Society, Raymond Monahan, at a Parchment Ceremony, in which he said that it was entirely misleading to point the finger at solicitors for the growth in personal injuries claims. The reasons for the increase in claims were that members of the public were now more mobile than ever, they engaged in a wider range of commercial transactions, leisure pursuits, and, in general, carried on life at a greater pace and lived longer.

The *Sunday Independent* of 20 June, 1993 reported on comments made by the President of the High Court, *Mr. Justice Liam Hamilton*, at the Parchment Ceremony in the Law Society on 18 June, when he criticised proposals to put a limit on the amount of compensation that could be paid to personal injury victims. He was reported as saying that no two injuries were the same, and that victims of accidents did not benefit from the sort of lobbying efforts available to employers or to the insurance companies.

Regulatory Role of the Law Society

The cover story of the issue of *Business and Finance* published on 24 June, 1993, was entitled "Rogue Lawyers - Solicitors who Go Bad." The article examined the current state of the Society's Compensation Fund including the level of contributions made by solicitors and the level of payouts. The article also described the regulatory functions of the Law Society and commented on the fact that the Society was taking a tougher line with errant lawyers. Commenting on the Compensation Fund, the author of the article, *Gerald Flynn*, said: "It is indeed rare for other professionals to rally round to compensate customers or clients of colleagues who defraud them." The article also focused on recent disciplinary cases in the High Court against solicitors.

The *Irish Independent* of 30 June, 1993, published a similar, though less detailed, article and commented that "the Law Society, which is self-regulatory, is working hard to reform the damaging image. It has taken a tougher line on errant solicitors." The article also reported that there was an element of poverty creeping into the profession and that solicitors working on social welfare, family, criminal and employment law were "unlikely to make a killing."

The Lean Arm of the Law

In the *Irish Independent* of 22 June, 1993 in an article entitled "The Lean Arm of the Law", *Liz Allen* reported on the findings of an "unpublished Law Society survey" which showed that many lawyers were struggling financially. She commented that the fact that 82% of the respondents wanted new guidelines on fees was testimony to a large degree of dissatisfaction among practitioners throughout the country about their earnings capacity.

Crisis in the Administration of Justice

An address by the Chairman of the Bar Council, *Peter Shanley* SC, in which he criticised the lack of resources in the courts was reported in the print and broadcast media on 16 June, 1993. The *Irish Independent* and *Daily Star* of 19 June, 1993, reported on the call to judges by the President of the Law Society, *Raymond Monahan*, to speak out about the country's inadequate courts system. There were huge delays in all the courts, facilities across the board were completely inadequate and there had been a complete failure to address the reform of our law seriously, said Raymond Monahan.

Law Society Criticises Tax Amnesty Legislation

A submission by the Law Society to the Minister for Finance criticising the proposed tax amnesty legislation as being draconian and rushed and pointing out that the amnesty was mandatory, was reported in the *Irish Independent* and *Irish Times* of 2 July, 1993. The Senior Vice President of the Society, *Michael O'Mahony*, was interviewed on the RTE radio *News at One* programme, the RTE radio *Today at Five* programme and the evening TV and radio news bulletins of that day. Michael O'Mahony pointed out that the Bill had been rushed through the Dail with insufficient time for debate or to consider amendments. He drew attention to the mandatory nature of prison sentences provided for in the Bill which, he said, interfered with the discretion of the courts as to how such offences should be punished.

Michael O'Mahony, Senior Vice President Law Society, criticised tax amnesty legislation as "draconian and rushed"

On the RTE Radio current affairs programme, *This Week* on Sunday, 4 July, 1993, the Minister for Finance, *Bertie Ahern*, said he would reconsider this aspect of the legislation. An amendment was subsequently adopted which provided for mandatory prison sentences only where the offences committed concerned sums of £100,000 or more.

Barbara Cahalane ❐

NORTHERN IRELAND AGENT
• Initial Consultation Free
• All forms of work undertaken
• Competitive Rates
• Consultation in Dublin if requested
• Legal Aid Available
Contact: Kevin J. Neary BCL
Donnelly Neary & Donnelly
Solicitors
1 Downshire Road, Newry,
County Down
Tel: (080693) 64611
Fax: (080693) 67000

In Ireland **COT DEATH** is the largest killer of children under the age of two. The Irish Sudden Infant Death Association supports bereaved families and funds cot death research. If your client wishes to make a will in favour of Cot Death Research further information is available from
ISIDA
Carmichael House,
4 North Brunswick Street, Dublin 7.
Telephone: 8747007 / 8732711

Practice Notes

(Continued from page 206)

Confusion re Law Library Fax Number

There is an increasing incidence of faxes intended for barristers in the Law Library at the Four Courts being sent to the Law Society's library. These faxes can contain highly confidential and sensitive material. While the staff in the library of the Law Society make every effort to notify solicitors of their error and to destroy the information, nonetheless, solicitors and their staff are requested to exercise care that the correct fax number is used when material is being faxed to the Law Library in the Four Courts.

The fax number for the Law Library in the Four Courts is 8720455. The fax number for the *Law Society's Library* is 6770511. Please note these two fax numbers carefully.

Family Home Declarations – Correction

Practitioners are requested to note that averment No. 2 of Form 3 of the Family Home Declarations, circulated with the June, 1993 issue of the *Gazette* should read as follows:

"The property is not our family home within the meaning of that term in the Family Home Protection Act, 1976 nor is it the family home of any other person. Neither we, nor any other married couple, have ordinarily resided therein since we became the owners thereof. Our family home is at ..... in the County of ..... The property does not include any garden or portion of ground attached to or usually occupied with our family home or otherwise required for the amenity or convenience of our family home."

❐

By Dr. Eamonn G. Hall, Solicitor

Solicitor Appointed to the High Court

A solicitor, *Michael Sachs*, 61, has made history in the United Kingdom by becoming the first solicitor to become a High Court judge appointed from outside the ranks of the Bar. He was made a High Court judge on June 18, 1993. Solicitors had been dismayed that no member of their profession had been promoted to the High Court Bench despite legislation two years ago to end the Bar's monopoly of senior judicial appointments.

Mr. Justice Sachs had been a circuit judge since 1984. Former solicitors make up only a tenth of the five hundred circuit judges although solicitors have long been deemed eligible for the Circuit Bench. Solicitors were deemed eligible when circuit judges were created under the UK *Courts Act, 1971*. They had to have five years experience as a recorder so that the first solicitors were not appointed until 1976.

Recorders are appointed on the recommendation of the Lord Chancellor to try criminal cases in the Crown Court. The Crown Court was created by the UK *Courts Act, 1971* as part of the Supreme Court and a superior court of record. The Crown Court's jurisdiction in relation to criminal charges on indictment is exercised by any High Court judge, circuit judge or recorder. It may hear appeals from magistrates' courts and may sentence persons committed for sentencing by those courts. Appeal lies to the Court of Appeal.

The Law Society in London stated that it hopes that the appointment will be the first of many. The Society stated that it was a historic event and richly deserved. The monopoly of the Bar in

Michael Sachs, the first solicitor in the United Kingdom to be appointed a High Court Judge.

relation to advocacy rights in the higher courts and in relation to senior judicial appointments was ended on the initiative of Lord Mackay, the Lord Chancellor, in his legal reforms in the UK *Courts and Legal Services Act, 1990*. The full impact of these changes has yet to be felt.

Rituals of the Law: The Judges' Tipstaff

Many are fascinated by the rituals of the law. One ritual which catches the attention of many is the judge of the High Court and his or her crier or tipstaff (all gowned with the tipstaff in possession of his staff) proceeding in procession from his or her chambers to the court. For those readers unfamiliar with this ritual, the staff is a rod used as a sign of office or authority. The staff is banged off the ground by the tipstaff, for example, when the judge leaves court so that the way can be prepared for the judge's exit to his or her chambers. The procession of judge and tipstaff precipitates an epidemic of bowing among the barristers and solicitors in the judge's path. Litigants simply stare in awe.

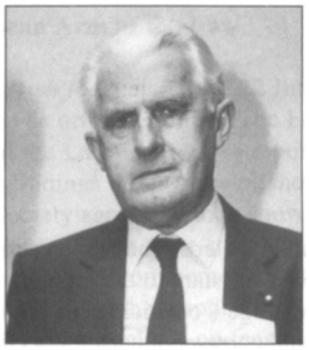
Recently the Lord Chancellor's Department in London advertised vacancies for clerks to judges in England and Wales. Readers may be interested in ascertaining the duties of the equivalent of our criers or tipstaffs, the judge's clerk. The person acts as a personal assistant to the judge, typing all the judge's official papers and personal correspondence; collecting and carrying the judge's books and papers to and from the Court; helping the judge to robe, ensuring that the robes are kept in good order; and to do other work as the judge may direct.

When on circuit, the judge stays in judges' lodgings. The clerk will liaise with the court administration and the police in order to ensure that the court in which the clerk will have formal duties is run as the judge directs. The clerk is responsible for transport of the judge's baggage and for the judge's needs in the lodgings including the maintenance of household accounts and liaison with the housekeeper. The clerk stays in the lodgings free of charge returning home at weekends.

The most important qualities for a judge's clerk are loyalty, discretion, reliability and adaptability. Experience of court procedure is an asset although formal training will be given. Judges' clerks have opportunities for promotion to higher executive officer and above and the salary upper limit is almost £17,000 sterling.

Suspension of Detainee's Rights Justified

In *Brannigan and McBride -v- United Kingdom*, the European Court of Human Rights in its judgment of May 26, 1993 held that the United Kingdom's withdrawal from observance of certain of its obligations under the European Convention of Human Rights satisfied the requirements of article 15 thereof and, therefore, applicants complaining of detention without being brought before a court could not validly complain of a violation of article 5.3 of the Convention. Judge *Brian Walsh* and three other judges dissented.



Judge Brian Walsh. Prolonged and sustained interrogation . . .could well fall into the category of inhuman or degrading treatment . . .

Article 5.3 of the European Convention of Human Rights relates to the bringing of an arrested or detained person promptly before a judge or other officer authorised by law to exercise judicial power. Article 15 relates to a derogation from obligations of the Convention in time of war or other public emergency threatening the life of the nation.

The Court considered that the national authorities were, in principle, in a better position than the international judge to decide on the presence of an emergency and on the nature and scope of derogations necessary to avert it. Accordingly, in that matter, a wide margin of appreciation should be left to the national authorities. The Court (by a majority) considered that there could be no doubt that such an emergency existed at the relevant time.

Mr. McBride had been arrested in January, 1989 under the *Prevention of Terrorism (Temporary Provisions) Act, 1984* and removed to Castlereagh Interrogation Centre. He had been detained for a total period of 4 days, 6 hours and 25 minutes[1]. Mr. Brannigan had been brought to the Interrogation Centre at Gough Barracks, Armagh, and was detained for a total period of 6 days, 14 hours and 30 minutes.

Judge Walsh, in his dissenting judgement, stated that article 5.3 of the Convention was an essential safeguard against arbitrary executive arrest or detention, which the failure to observe could easily give rise to complaints under article 3 of the Convention, which cannot be the subject of derogation. Prolonged and sustained interrogation over periods of days, particularly without a judicial intervention, could well fall into the category of inhuman or degrading treatment in particular cases.

Judge Walsh noted that the Government's plea that it was motivated by a wish to preserve public confidence in the independence of the judiciary was, in effect, to say that such confidence was to be maintained or achieved by not permitting them to have a role in the protection of the personal liberty of the arrested persons. The Judge noted that one would think that such a role was one which the public would expect the judges to have. He also noted that neither the UK Parliament nor the UK Government appears to have made any serious effort to rearrange the judicial procedure or jurisdiction, in spite of being advised to do so by the persons appointed to review the system to cater for the requirement of article 5.3 in cases of the type now under review.

Judge Walsh considered that the UK Government had not convincingly shown, in a situation where the courts operate normally, why an arrested person could not be treated in accordance with article 5.3. He noted that the fact that out of 1,549 persons arrested in 1990, only 30 were subsequently charged. This indicated a paucity of proof rather than any deficiency in the operation of the judicial function. He stated it should not be beyond the ability of Parliament to legislate for a situation where the arrested person could be brought before a judge with liberty to grant an adjournment for up to a period of 5 or 7 days before the expiration of which the arrested person must be released or charged, where the arresting officer was prepared to swear that he had reasonable grounds for suspecting that the arrested person had been involved in or engaged in "acts of terrorism" within the meaning of the relevant legislation.

Judge Walsh considered there had been a breach of article 5.3 of the Convention in respect of the detention of each of the applicants, and that there had been a breach of article 13 of the Convention, which requires that an effective remedy must be available before a national authority for everyone whose rights and freedoms as set forth in the Convention are violated.

[1] *Mr. McBride was later shot dead on February 4, 1992 by a policeman who ran amok and attacked Sinn Fein headquarters in Belfast.*

The Solicitors' League Table

John Pritchard, a solicitor, and author of many books on the law including *The Legal 500* has produced the 1993 edition of *Law Firms in Europe*. This book is full of information including editorial comment based on the combined opinions of many lawyers interviewed in each jurisdiction. John Pritchard admits that the editorial is therefore a subjective view based on systematic research.

In relation to Ireland, the book states that the average hourly rate for a partner is around £150. The big five firms dominate with expected gains for the middle tier firms not materialising.

The league table in terms of numbers of lawyers employed in firms in Ireland is set out in Mr. Pritchard's book as follows:

The Largest Firms

Firms	Number of Lawyers*
1. A & L Goodbody	94
2. Arthur Cox	84
3. McCann FitzGerald	81
4. Matheson Ormsby Prentice	41
5. William Fry	37
6. Mason Hayes & Curran	22
7. Gerrard, Scallan & O'Brien	20
8. O'Flynn Exhams & Partners	20
9. Whitney, Moore & Keller	19
10. Eugene F. Collins	18
11. Murray Sweeney	16
12. Rory O'Donnell & Co	16
13. Dillon Eustace	14
14. Holmes O'Malley Sexton	14
15. JG O'Connor & Co	14
16. Ronan Daly Jermyn	13
17. Binchys	12
18. GJ Moloney & Co	12
19. Kenny Stephenson & Chapman	12
20. Reddy Charlton & McKnight	12

Law Firms in Europe is published by Legalease, 28/30 Cato Street, London, WIH 5HS, UK.

*These numbers are as of date of publication of the book. It must be stressed that many of these figures will have changed and that they are only a rough guide and should be treated by readers as such.

Solicitors and "Cut-Price" Conveyancing

Solicitors in Ireland are concerned about "cut-price' conveyancing but they are not alone. Solicitors in the UK are alarmed at the growing incidence of "cut-price" conveyancing by colleagues desperate to secure work. They are calling on the UK Law Society to stamp out the practice.

Some solicitors in England were so concerned about the practice of "cut-price" conveyancing that they released details to the media. (*The Times*, June 26, 1993). Mr. *Tony Holland*, a former President of the UK Law Society, said that the results of price competition in recent years among solicitors had been disastrous for standards of work. He noted that the quality of work had dropped dramatically and carelessness was rife. Some solicitors were charging a fee of £125 sterling for a conveyancing transfer. He stated that it was just not possible to transfer property and advise clients for such a sum.

The Law Society Council in the UK had rejected the idea of scale fees or regulation. However, the Law Society had asked all local law societies in England and Wales to investigate conveyancing charges in their areas and to report back with names of firms whose fees appeared to be dangerously low and a potential danger to clients. A trawl of press advertisements for "cut-price" conveyancing was also being made. The Society would then examine them to see if there was any link between those firms whose charges were unrealistic (not just low) and claims on the indemnity fund for negligence.

Centre in Economics and Law

The Centre of Economics and Law (CIEL) at UCG publishes the successful half-yearly *CIEL Newsletter* which has subscribers at home and abroad. CIEL is affiliated with the European Association of Law and Economics, an international network of law and economics scholars and practitioners.

CIEL has recently introduced an *Information Sheet* to its range of publications. The Information Sheet provides a detailed commentary on a competition policy issues in either Ireland or abroad. It looks at the international dimension to EC competition policy and the implications for Irish businesses.

A new book, *The Efficiency of Law* is due for publication later this year. General details are available from Dr. *Patrick McNutt* at CIEL, University College Galway, telephone, 091 24411 or 091 26786 or fax: 091 24130.

Regulations for all Employers

The Safety, Health And Welfare At Work (General Application) Regulations, 1993. (S.I. No. 44 of 1993) affect all employers and cast onerous duties on them. These regulations extend the requirements of the *Safety, Health and Welfare at Work Act, 1989*, and implement Council Directive 89/391/EEC of 12 June, 1989 on the introduction of measures to encourage improvements in the health and safety of workers at the work place.

The regulations also implement five related directives which set down minimum requirements for health and safety in specific areas of working activities. Also implemented by these regulations is *Council Directive 91/383/EEC* of 25 June, 1991 on measures to improve safety and health at work of workers with a fixed duration or temporary employment relationship.

These regulations also revise and update existing legal requirements concerning the safe use of electricity in the workplace, the provision of first-aid facilities and the procedures governing the notification to the National Authority for Occupational Safety and Health of accidents and dangerous occurrences.

The regulations impose general and specific obligations on employers with regard to the evaluation and reduction of the exposure of employees to occupational risk and hazards, the development of risk prevention policies, consultation, training and information of workers and health surveillance. Employees are also obliged by these regulations to cooperate with employers in matters relating to the protection of their own safety and health at work.

The regulations cost £6.45 and may be obtained from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2. Postage is £1.20 extra.

Safety requirements in the workplace are extended by new Regulations.

from Butterworths

Butterworth Ireland Ltd.,
26 Upper Ormond Quay,
Dublin 7.
Tel (01) 8731555
Fax (01) 8731876

SOON TO BE PUBLISHED...

Important new legislation handbooks

Butterworth Ireland Companies Acts 1963-1990

The essential company legislation handbook. Fully annotated, with detailed cross-references and extensive case law notes. Editor: Lyndon MacCann, BL

Tax Acts 1993-94 (income tax, corporation tax & capital gains tax)

VAT Acts 1993-94 (value added tax)

Capital Tax Acts 1993-94 (stamp duties, capital acquisitions tax, probate tax & residential property tax)

New editions of the highly successful Butterworth Ireland collection of tax legislation annuals - each updated to FA 1993.

AND ANNOUNCING...

Tax Guide 1993-94 (covering all the above taxes and PAYE/PRSI)

Fully updated to FA 1993, the new edition of the practitioner's definitive Irish tax guide.

- Bookshop open at Ormond Quay, Dublin (100 metres from the Four Courts) Open 9am -5.30pm through lunch
- Orders welcome by telephone and fax
- Or talk to our area managers about these and other Butterworths titles

Dublin area:
Madeleine Roche
(01) 324289
or
088-597659

Outside Dublin:
Max Harvey
(021) 371399
or
088-566793

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.

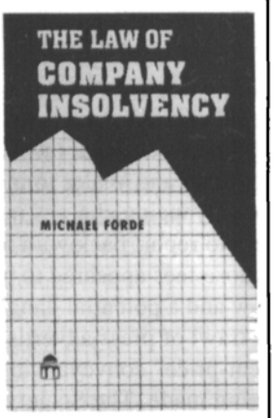
IRISH CANCER SOCIETY

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

Publication date: 30 June 1993

The Law of COMPANY INSOLVENCY

MICHAEL FORDE



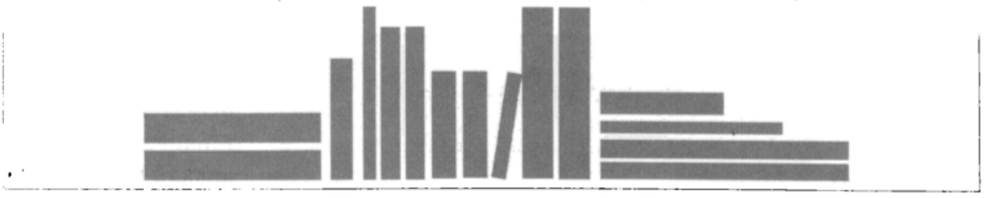
A definitive treatise on company receiverships, examinations and winding up/liquidations, together with various security and equivalent interests arising in insolvencies.

Among the topics covered in this comprehensive work are: the various remedies for securing payment available to creditors outside of insolvency proceedings; the position of receivers appointed by a debenture-holder; analysis of the court protection and examination mechanism under the 1990 "Goodman" Act. There is a very extensive treatment of the law and practice regarding winding up/liquidations, voluntary and official. The concluding part treats a variety of priority and related positions that are common to all types of insolvency proceedings.

An essential work of reference for accountants, bankers and lawyers.

ISBN 1-85800-013-0, £55.00.

THE ROUND HALL PRESS
Kill Lane, Blackrock, Co. Dublin, Ireland
Tel: Int. + 353-1-2892922; Fax: 2893072



Hotel, Restaurant & Public House Law

By Marc McDonald, Butterworths, 1992, paperback, £40.00.

Marc McDonald BCL BL M Litt, is a lecturer in law in the School of Hotel, Tourism and Catering Management at the Dublin Institute of Technology, Cathal Brugha Street. He has limited his area of enquiry into the laws and authorisations relevant to establishing a hospitality business. In so doing the text does not deal with many areas of applied law, as the writer is happy that they are better dealt with elsewhere, for instance planning, clubs (although there is reference to night clubs) and conveyancing aspects. Indeed the licensing practitioner will usually reach for Woods in order to assemble the nuts and bolts of licensing procedures.

This book is not so much nuts and bolts as flesh and blood to the enquiring mind on the law of hospitality in Ireland.

The author charts a course that will lead us into the realms of registration of hotels, food premises and liquor licenses. He leads us through the labyrinth of the granting of new publican's licenses. On our route we take a look at renewals and transfers. Public dancing, public music and singing, and music and film copyright licenses are all mapped and magnified.

Mr. McDonald brings us further and examines passing off and hospitality identity indicators. While the case law in this area appears to be almost exclusively foreign, one wonders whether the recent indigenous case involving the "Muckross" Hotels would have had an influence, had the timing of the publication been a little different.

We are offered a generous menu of statutes and cases, although the index would hardly whet the appetite. The meat is spiced with some European flavour as we ponder on the author's reflection that most EC States do not appear to operate compulsory hotel registration schemes. This approach would appear to assume that variations in hotel standards can satisfactorily be dealt with by a sufficiently broadly based information system rather than compulsory registration involving a minimum statutory definition of what a hotel is or should be. One could even wash this down with the intoxicating speculation that the present Irish approach might endanger the proper functioning of the common market in hotel services in the European Community since it could deny to, say, a French or Spanish chain of hotels the freedom to operate a hotel in Ireland, because it might not satisfy the statutory definition here of a hotel.

There is plenty here to digest, but not too much to bewilder the guest or confuse the consumer.

To be recommended.

Justin McKenna

Law and Liberty in Ireland

By Anthony Whelan, (editor), Oak Tree Press, Dublin, in association with Trinity College Law School, 1993, 202 pp, hardback £19.95, paperback £12.95.

A profound transformation has occurred in the law schools of Irish universities during the last two decades. Full-time lawyers have facilitated unparalleled opportunities for research and inquiry, making possible a service to the legal community and society at large which would have been inconceivable only three decades ago. The evidence of curriculum reform, multiplication of courses and improved libraries, is impressive. The results of this expansion of effort are already showing in the lawyers who have gained from the new opportunities.

One of the university's major purposes is to advance knowledge. Accordingly, the university is often responsible for the creation of "new languages" as much as it is for instruction in the ancient tongues. [The writer uses languages and tongues here in the metaphorical sense]. To a certain extent, the university, as an engine of change in modern society, has a responsibility to take part in the solution of problems that touch upon the general welfare of our society. In his perceptive introduction to *Law and Liberty in Ireland,* Anthony Whelan, the editor, emphasises this point by noting that the Law School and the College must be open to the views and assessment of the community which they ultimately serve. Accordingly, this book specifically addresses some of the problems that now touch upon the welfare of Irish society.

Law and Liberty in Ireland is a book of essays which grew out of a series of public lectures given by members of the Trinity College Law School in Michaelmas Term of 1992. The lecture series and the book were conceived of as the Law School's contribution to the quartercentenary of Trinity College's foundation in 1592.

It is appropriate in this short notice to state that law has been the subject of study in Trinity College virtually since the College's foundation. By the middle of the 19th century there were three professors of law. But such teaching was part-time and non-specialist and essentially an adjunct to

the needs of the professional bodies. The first full-time academic teacher, Dr. Phillips, was appointed in 1934 and the developments since 1962 when Dr. V.T.H. Delany took up his appointment as the Regius Professor of Laws followed by Dr. RFV Heuston have been very significant. Important improvements have also taken place during recent tenures.

It is not possible in this short book notice to do justice to the contributions in this book. However, the contributions may be mentioned. Ms. Niamh Hyland considers the pregnant woman in the workplace; Professor WN Osborough writes on sport, freedom and the criminal law; Mr. Brian Murray deals with the right to silence and corporate crime; and Mr. Anthony Whelan's topic relates to the principle of self-determination of peoples. The abortion controversy, divorce and the right to life are considered by Professor William Binchy, Professor William Duncan and Mr. Gerard Hogan. Access to the courts is the topic considered by Mr. Gerry Whyte and the human rights approach to refugees is considered by Ms. Liz Hefferan.

The Trinity members of the legal academy display exhilarating erudition in *Law and Liberty in Ireland* but they also illuminate the topical issues under consideration for the general reader. This book has been printed in a handsome manner. Oak Tree Press (Gerard O'Connor and David Givens) the publishers (in association with Trinity Law School) are developing a reputation for uncompromising quality.

There is much to admire in *Law and Liberty in Ireland.* It is rich in perceptive observations. The analysis is balanced and never hackneyed. The book will be a souvenir for law graduates of Trinity College but other readers will find this tapestry of thought and analysis enormously informative, provocative and eminently readable.

Dr. Eamonn G. Hall

Public Procurement

By Philip Lee, Butterworths, 1992, 194 +ccxlvi pp, IR£85.00.

Lord Coleridge, CJ, once observed that it must be remembered that all trade is and must be, in a sense, selfish; the trade of a particular place or district being possibly very limited, "what one man gains, another loses." [*Mogul Steamship Co. -v- McGregor Gow & Co.* (1988) LR 21 QBD 557.] Lord Coleridge continued by noting that "in the hand-to-hand war of commerce," whether at the bar, in Parliament, in medicine or engineering, men fight on without much thought of others, "except a desire to excel or defeat them." Those who wish to excel in commerce must be admired. Different sentiments apply to those who wish to defeat others, particularly in the context of the description of business as hand-to-hand warfare.

One may compete (and do so vigorously), but the public expression of an intention to defeat one's competitors is another matter. No judge or lawyer today would subscribe in public in the manner in which Lord Coleridge expressed his sentiments – particularly in terms of defeating one's competitors. In particular, no one in the public service could do so. Consider the *Competition Act, 1991* and Articles 85 to 94 of the *Treaty of Rome.* Specifically, persons involved in public procurement, for whom Philip Lee's book is intended, could not speak in public of desiring to defeat the competition.

Mr. Peter D. Sutherland, in his preface to the book, observes that the subject of public procurement is peculiarly important as a barometer of the success or failure of the economic integration that is fundamental to the development of the union of Member States of the Community. Mr. Sutherland notes that there is a little confidence among economic operators that *true competition* will develop in this area in the foreseeable future. It is in this context that Philip Lee's book assumes importance. The words of *Jeremiah* (13.22) in the Old Testament may be appropriate here: "Can an Ethiopian change his skin, or a leopard his spots?" But let us not forget the inscription carved over the entrance to the Yale Law School, 1929-1931: "The law is a living growth, not a changeless code." Law is a potent agent for change; the legal academy and practitioners have a great potential to bring about change in practices by advising of the new law, initiating legal actions, and thus rooting out any unlawful practices through the legal process. As we write, we may not be able to see the end of the road – but this should not prevent us from setting out on the necessary journey.

Philip Lee in his introduction notes that "public procurement law" probably means little to most lawyers educated in the common law system. The public procurement of goods, supplies and services by central government, local government and bodies governed by public law like the "semi-state" bodies is extensive. The author argues that public procurement is about fairness: the money spent on public procurement belongs to the citizens of the European Communities.

The book considers the relevant supplies directive, the public works directives, public procurement in the excluded sectors – the so-called utilities directive, public services directive, regional aspects of public procurement and legal remedies for breaches of Community law. The appendices set out relevant value thresholds and directives.

Philip Lee has provided an extensive guide to the intricacies of the law of public procurement. He has presented us with a thorough and perceptive treatment of a subject that has assumed considerable importance in the law of Ireland. The book is recommended for those lawyers who advise companies, firms and individuals who work for central government, local government and the public utilities, as well as those who manage the public utilities.

Dr. Eamonn G. Hall

Irish Conveyancing Precedents

by Mary Laffoy SC, with Deborah Wheeler, Butterworths 1992, approx. 620 pages, issue with binder £110.

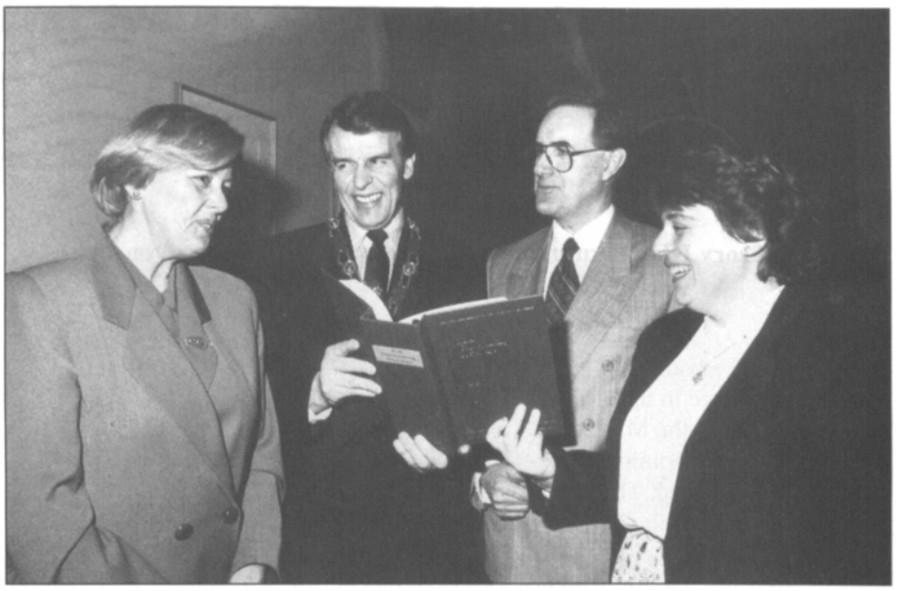
I have been asked by the Editorial Board of the *Gazette* to review the Irish Conveyancing Precedents recently published under the Irish Property Series by Butterworths.

It has been edited by my good friend *Mary Laffoy* SC and each precedent has been annotated by *Deborah Wheeler* BL.

I am sure neither Mary nor Debbie require any introduction to the solicitors' profession, and I know it would be accepted that they are both leading experts in their field. The preparation of the book must have been a huge demand on their time and efforts in their busy practices.

It seems to me that by being asked to review this book, all my Christmasses and birthdays have come together.

It is a book which will grow in its contents, but the precedents which are already available include charities, conveyances, settled property, receivers and liquidators, sub-sales, deeds of exchange and deeds of family arrangement. While other issues will be awaited with baited breath by the profession, in its current form it is already an invaluable aid to any conveyancing solicitor.The clarity of the drafting of the precedents is, of course, what most of us who know Mary have come to know and expect and the clear way in which the book is set out make it a pleasure to use.



Pictured at the launch of Irish Conveyancing Precedents by Mary Laffoy were l-r: Mary Laffoy; the President of the Law Society, Raymond Monahan who launched the book; Professor John Wylie, a Director of the Publishers, Butterworths (Ireland), and Deborah Wheeler BL.

It was a tremendous task for Mary Laffoy and Debbie Wheeler to undertake this important venture and the legal profession owes a huge debt of gratitude to them.

The days of discomfort and uncertainty of using an English precedent book and adapting it to an Irish legal situation are now over which will be a matter of great relief to many a conveyancer.

There are many other worthy contributors to the book mentioned therein and the profession's debt to those busy people, must be recorded.

I don't wish to sound like a book salesman, but I really feel every solicitor should have this on their desk.

All in all, I feel it is an invaluable book and is probably the most important and useful book published in many years for a conveyancing solicitor.

Elma Lynch ❐

Irish Solicitors Golfing Society

Results of Captain's Prize

Winner:
Eamon Kelly – 44 points.
Runners Up:
Alan Mitchell – 40 points.
Kevin O'Donnell – 40 points.

St. Patrick's Plate

Winner:
Jimmy Walsh – 40 points.
Second:
Pat Reidy – 37 points.

Handicaps 13-28

Winner:
Barry Doyle – 38 points.
Runner-up:
John Foley – 38 points.

Director General's Cup

Winner:
Mark Connellan – 35 points.

Front Nine

Winner:
Dermot Neilan – 23 points.

Back Nine

Winner:
Noel McDonald – 20 points.

William Jolley
Hon. Secretary. ❐

Lady Solicitors Golf Outing

The Annual "Lady Solicitors" Golf Outing will take place at Blainroe Golf Club, Co. Wicklow on Friday, 3 September, 1993.

All last year's players will receive a circular shortly. If you did not take part last year but would like details, please telephone 6770335 with your name and address.

Anne Crawford ❐

CORRESPONDENCE

Re: Compulsory Irish Requirement

Dear Editor,

The arguments advanced in relation to the Irish Language in the article *The Numbers Game* in the May issue of the *Gazette* are, in my opinion, fundamentally flawed. The selection of the words in bold capitals "I have never in twenty years of practice had a client who wanted to conduct his business in Irish" is regrettable. It not only misrepresents the facts viewed from a country-wide perspective, but it also appears designed to undermine the daily effectiveness and usage of the language in the legal system.

Thankfully, my experience contrasts greatly with that attributed to Mr. O'Connor, as I find by a conservative estimate that 50% of my clients conduct their business through the medium of Irish.

It is the wish of many to conduct their dealings with all wings of the State apparatus and with the judicial system exclusively through Irish. It is important that no impediments, be they direct or through inference, are placed in their way in their lawful pursuance of that objective.

Furthermore, the personal nature of many legal documents e.g. wills, certificates of incorporation, deeds, summonses, etc., dictate that they should be made available in the preferred language of the citizen, be that in Irish as is often the case.

Whilst not in any way doubting the sincerity of the motives of the proponents of the alternative to the statutory protection enshrined in the Solicitors' Act, the latter is nevertheless justified as an absolute safeguard against abuses by a future Law Society Council.

Much criticism is levelled at the Government in the article but they are to be commended in not shirking from their responsibilities in insisting on the retention of the Irish examination in their proposed Solicitors' Bill.

The subtle "Machiavellian" threat issued to the Government is also in poor taste. A simpler and much more constructive approach would be for the Law Society to introduce a more meaningful Irish examination, by tailoring and adapting same to the current and practical needs of the profession.

Is mise,
Antoin Delap ❐

Publication date: 20 May 1993

INSANITY, PSYCHIATRY AND CRIMINAL RESPONSIBILITY

FINBARR McAULEY

This book is about the way in which mental disorder affects criminal responsibility. Unlike the standard treatments of this subject, which tend to concentrate on the jurisprudence of the insanity defence, the approach set out here also draws heavily on the scientific literature on mental illness.

There are chapters on all aspects of the insanity defence, including the M'Naghten Rules, the notion of volitional insanity as articulated by the Irish Supreme Court, the form of the insanity verdict, the proper limits of psychiatric evidence, the disposition of persons acquitted on the grounds of insanity etc. Irish law and practice provide the core of the book, although there is a wealth of comparative material drawn from a wide range of common-law jurisdictions. ISBN 1-85800-011-4 £37.50.

THE ROUND HALL PRESS

Kill Lane, Blackrock, Co. Dublin, Ireland
Tel: (01) 2892922; Fax: (01) 2893072

Irish
Health
Screening

YOUR HEALTH IS
YOUR WEALTH

2880111

2831950

N E W S

Inaugural Justice Media Awards Presented

At a ceremony on 9 July, awards were presented to the winners of the inaugural (1992/93) Justice Media Awards Competition organised by the Law Society and sponsored by Aer Lingus.

The President of the Law Society, *Raymond Monahan*, announced that the overall winner of the Justice Media Awards Competition was *Anne O'Carroll* for a series of articles designed to demystify the legal system which were published in *Consumer Choice* magazine. Anne O'Carroll is a freelance journalist based in Eyeries, Beara, Co. Cork. She writes frequently for the *Cork Examiner* and the *Sunday Business Post*. Ms. O'Carroll and her publisher receive an expenses paid trip to New York to attend the Gavel Awards Ceremony at the Annual Conference of the American Bar Association, which takes place on 10 August next.

Anne O'Carroll, a freelance journalist from Cork who was the overall winner of the Inaugural Justice Media Awards Competition, with the President of the Law Society, Raymond Monahan.

In addition, three Justice Media Awards were presented, to:-

- *Mark Smith*, a journalist with the *Sunday Independent*, for an article entitled "When Speaking Out Means Courting Danger" in which the excesses and inadequacies of the current law of libel were analysed.
- *Fintan O'Toole*, a journalist with the *Irish Times*, for his coverage of the highly complex legal issues raised by the Beef Tribunal and his ability to explain these points of law to the general public.
- *Gene Kerrigan* of the *Sunday Independent* for articles he published over the past year concerning the case of *Nicky Kelly* which exposed some uncomfortable inconsistencies about the case.

Certificates of Merit were presented to:

- *Breda Joy*, a journalist with *The Kerryman* for an article entitled "Kerry Juries and Their Willingness to Convict".
- *Vincent Gribbin*, a journalist with *The Western People* for his articles: "Glenamaddo Commonage, An Issue That Refuses to Die".
- *Irish Press* journalist, *Kate Shanahan*, for her book "Crimes Worse than Death".

In his address to the awards ceremony, the President of the Society, *Raymond Monahan*, said: "The Law Society's purpose in establishing the Justice Media Awards Competition was to encourage excellence in the media in its performance of the vitally important function of informing the public about the law and reporting and analysing legal affairs generally." The Society's President said that the media played an important role in helping to expose both the failures of the legal system and the laws and legal practices which required reform in the public interest. There was also a huge agenda of reform required in the legal system and it was essential that the media described and articulated that reform agenda.

He continued: "I think I speak for the vast majority of solicitors when I say that as lawyers we realise that we too have duties in this regard. Aside from the day-to-day pressures of running our practices and dealing with our clients' problems, we must concern ourselves with wider issues of justice. Therefore, from time to time, we speak out on issues that we believe affect the rights and entitlements of citizens. We are grateful to the media when they give us an outlet to do so."

The awards ceremony was attended by the Minister for State at the Department of Justice, *William O'Dea*, who announced that a new Solicitors Bill would be introduced in the Dail in the Autumn.

Raymond Monahan announced that the 1993/1994 Justice Media Awards Competition was being widened to include the broadcast media as well as the print media and additional classifications of news photographs and cartoons were also being included. The President said that the Society and the members of the Justice Media Awards Standing Committee had been delighted by the response from the media to the competition and the high calibre of entries received and would be continuing the competition for the foreseeable future.

Barbara Cahalane ❐

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At the presentation of the proceeds of solicitors' voluntary contributions to FLAC were l–r: Raymond Monahan, President of the Law Society; Sabha Greene, Information Officer, FLAC, and Iseult O'Malley, Chairperson of FLAC.

David Byrne, SC, and Geraldine Clarke, Solicitor, presenting the proceeds of the recent production of "Trial by Jury" to the chairman of the Solicitors Benevolent Fund, Andy Smyth, and the chairman of the Bar Benevolent Fund, Robert Humphries.

At the Special General Meeting held on Part VII of the Finance Act were l–r: Frank Gleeson, Solicitor, Thurles; Peter Kirwan, Solicitor, Wexford and Brendan Hyland, Solicitor, Roscrea.

At the Parchment Ceremony on 18 June last were l–r: Collette Duffy, winner of the Overend Scholarship 1992 and The Hon. Mr. Justice Liam Hamilton, President of the High Court.

Legal & General
SPECIAL OFFERS - AUGUST ONLY
SOLICITORS ACCOUNTS
386SX Olivetti Computer 85mgb • Colour Monitor
Dot Matrix Printer • Italax Solicitors Accounts Software
£3300.00 + VAT
WORDPROCESSING
386SX Olivetti Computer 85mgb • Kyocera Laser Printer 8 p.p.m.
Wordperfect V. 5.1 • Legal Precedent Software
£2450.00 + VAT
WORDPROCESSING
Same as Option 2 with Hewlett Packard Inkjet Printer
£1750.00 + VAT
TEL: 01-8725522. FAX: 01-8725079.

At the presentation of the J.P. O'Reilly Memorial Scholarships for 1992 and 1993 were l–r: Maurice Curran, Past President of the Law Society; Julie Sadlier, winner of the 1992 scholarship, Dr. A.J.F. O'Reilly, Solicitor, Chairman/Chief Executive, Heinz Corporation, and Denis Hogan, winner of the 1993 scholarship.

Plaque to Honour Myles C. Murphy

The Kildare Bar Association in association with barristers practising in County Kildare and other colleagues and friends of the late *Myles C. Murphy*, commissioned a plaque to be erected in his honour at Naas Court House. Myles Murphy practised as a solicitor for over 30 years in County Kildare and for the 13 years preceeding his death he was State Solicitor.

The plaque was unveiled by his Honour Judge Patrick Smith, Judge of the Circuit Court for the Eastern Circuit, who spoke of his many fond memories of Myles Murphy. Mr. Tadgh Brennan, former State Solicitor and County Registrar, spoke of his great friendship with Myles Murphy and the many good days they had together. He further added that Myles Murphy is and will be sadly missed by his many friends in the legal profession.

Among the large attendance at the unveiling were Myles Murphy's widow, Bobby, his daughter, Sharon, and other members of the Murphy family including his brother Colm Murphy, Solicitor, of Abbeyleix..

The photograph shows, back row, l-r: Andrew Cody, Secretary, the Kildare Bar Association; His Honour Judge Patrick Smith, Judge of the Circuit Court; Frank Roe SC, former President of the Circuit Court; Michael O'Neill, Solicitor, President, Kildare Bar Association. Front row, l-r: Sharon Murphy, Solicitor, daughter of the late Myles C. Murphy; Bobby Murphy, widow of the late Myles C. Murphy; Tadgh Brennan, Solicitor, former State Solicitor and County Registrar for Kildare.

Andrew Cody,
Secretary, Kildare Bar Association. ❐

Irish Lawyers Fishing Club – Annual Trip

On the evening of Thursday 10 June, the hardy annuals of the Lawyers Fishing Club gathered in Hineys Pub, Crossmolina, County Mayo, in final preparation for the Club's annual assault on the trout population of Lough Conn. The party included anglers from every province, as well as a group of five members of the UK Lawyers Angling Club.

The morning of 11 June dawned, and with it the realisation that incessant rain had swollen the lake to such a degree that successful fishing would be difficult if not impossible. At the end of the first day's fishing only *Ernest Williams* (Cork) and *Robert Ramsay* (UK) had landed trout. Undaunted, the members retired to Enniscoe House for an evening of jollification which did much to revive drooping spirits. Local angler, *Adrian Bourke*, and his charming wife *Ruth*, joined the members, as did *Barry Segrave*, who supplied the Club with boats and gillies for the weekend. Conditions improved only marginally on the following day with *Paddy Daly* (Galway) landing three fish and *John Jermyn* (Cork) two, while *Paddy Molloy* (Dublin) was unlucky to lose another. Further jollification ensued.

Enjoying the Annual Lawyers Fishing Club trip were l–r: John Murphy, Denis Sheeran, John Jermyn, James St. John Dundon, Paddy Daly, Paddy Molloy, Michael O'Byrne, John Purcell and Matt Cahill.

Scarcity of fish notwithstanding, such an enjoyable weekend was had by all that it was resolved to reconvene the Club for a similar weekend next year and the outgoing Committee was re-elected in its entirety for this purpose. Also, the members have been invited to join the UK Lawyers Fishing Club for a weekend away early in 1994. This trip will probably be to Wales (further details from Michael O'Byrne, 046–40004).

Michael O'Byrne ❐

Disciplinary Cases

Apology

Kevin P. Kilrane,
Mohill,
Co. Leitrim.

We refer to a report concerning Kevin P. Kilrane, Mohill, Co. Leitrim published on this page in the June 1993 Gazette. The report erroneously stated that the Disciplinary Committee had made findings against Mr. Kilrane under four separate headings (a) (b) (c) and (d). In fact the findings against Mr. Kilrane were only under headings (a) and (d) and **not** (b) and (c).

We wish to apologise to Mr. Kilrane for this error.

Compensation Fund – Payments Out, June, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in June, 1993. The name of the solicitor in respect of whose defalcation the claim arose is listed in the left hand column.

	IR£
Christopher Forde 52 O'Connell Street, Ennis, Co. Clare.	39,041.81
Malocco & Kileen Chatham House, Chatham Street, Dublin 2.	923.13
James C. Glynn Dublin Road, Tuam, Co. Galway.	62,674.41
Diarmuid Corrigan 6 St. Agnes Road, Crumlin, Dublin 12.	1,390.00
John Kieran Brennan Mayfield, Enniscorthy, Co. Wexford.	2,500.00
Michael Collier 2 Ross Terrace, Malahide, Co. Dublin.	1,760.00
Jonathan P. T. Brooks 17/18 Nassau Street, Dublin 2.	31,413.80
Anthony O'Malley James Street, Westport, Co. Mayo.	340.00
	£140,043.15

❐

European Young Bar Association Founded

The European Young Bar Association (EYBA), a new organisation representing the interests of young lawyers across Europe, was formally launched in Prague on 22 May, 1993. The founding conference which I attended as the SYS representative, was energetically and enthusiastically supported by 40 young lawyers representing 18 young lawyers associations from all over Europe including Ireland, England, The Netherlands, Belgium, Hungary, Italy, Denmark, Germany, Sweden, Russia, Switzerland, Italy, France, Spain and the Czech Republics. Representatives from Luxembourg and Romania have since applied for membership.

EYBA's objectives are to promote the interests and welfare of young lawyers and to encourage links between such lawyers throughout the continent of Europe. The founding conference properly took place in Prague as an indication of one of the aims of the EYBA which is to develop relations with Eastern European countries. The potential for such development was evidenced by the active participation at the conference by lawyers from Moscow, Hungary and the Czech Republics.

Andrew Greenfield, a partner specialising in EC Law at the London firm, Slingsby Farmiloe and Greenfield and a member of the London Young Solicitors Group, was elected as the first chairman of the organisation and a constitution was vigorously debated before ratification by the Conference. The SYS was elected to the Association's Sub-Committee for European Affairs.

The aspirations of the EYBA have been well received by its members and the organisation's potential as a body representing the real interests of young lawyers in an increasingly accessible Europe is very promising indeed. The EYBA intends to be a city/region based organisation and Young Bar Associations around the country are encouraged to participate in its future.

For further information please contact me at Matheson Ormsby Prentice, 3 Burlington Road, Dublin 4, telephone: 6760981, Fax 6760501.

Keelin Kirrane
Society of Young Solicitors ❐

Law School Professional Courses – Dates and Availability

Solicitors and apprentices are requested and urged to note that the Education Committee of the Society has decided the dates for the remaining Professional Courses in 1993 and in 1994. These are:

33rd Professional Course
8 June – 8 October, 1993.

34th Professional Course
23 October, 1993 – 28 February, 1994.

35th Professional Course
21 March – 31 July, 1994.

36th Professional Course
22 August – 14 December, 1994.

The timetable for the 33rd Professional Course includes a two week break during August, 1993. The terminal date in each case is the last date of class contact, and the conveyancing examination for each course will occur approximately ten days after that date. This should be borne in mind both by apprentices and offices in arranging their respective commitments.

There may be some minor modification of the commencement or termination dates. These would be liable to variation if there were to be an increase in the time allocation for existing subjects or an introduction of any new subjects or due to the vagaries of examination timetabling.

There are currently *91* students on each Professional Course. At the time of going to print the 33rd and 34th and 35th Professional Courses are completely full. **The earliest that any law graduate qualifying from his or her university in 1993 will be able to attend on the Professional Course is in August, 1994.** Already, as at 12 July, 1993, eighteen places have been assigned on this course.

Places on Professional Courses are allocated on a *first come first served basis*, provided that the applicant is exempt, or is entitled to apply to be exempt, the Final Examination – First Part, or has in fact passed that examination, **and** further subject to the applicant's actually *having secured an apprenticeship* **and** having submitted to the Society the completed application for consent to become apprenticed together with the necessary accompanying documentation. In the absence of any one condition of eligibility, an allocation *will not be made.*

It should be *noted* that failure to take up a place on a particular Professional Course by an apprentice does not automatically ensure postponement to the next available Professional Course, and that in such circumstances it will be the responsibility of the apprentice to *re-apply* for a place.

Applications to attend a Professional Course, should be submitted in writing to the undersigned.

Albert Power.
Assistant Director of Education,
Incorporated Law Society of Ireland,
Blackhall Place,
Dublin 7.
Tel: 01 671 0200, Ext. 510.

Law School

Examiners for Final Examination – First Part

Internal Examiners for:

- European Community Law
- Equity
- Tort

Applications are invited for the post of Internal Examiners for the above subjects from 1994. Applicants should be qualified solicitors with significant experience in the subjects for which they would act as Examiner.

External Examiners

The Law Society also wishes to recruit External Examiners for the Final Examination – First Part from 1994 for European Community Law and Equity. Such applicants should be suitably qualified in the relevant subject and be of senior academic standing.

Applications with full Curriculum Vitae to be forwarded not later than 20 August, 1993 to:-

Professor *Richard Woulfe,*
Director of Education,
Blackhall Place,
Dublin 7.

IN

A letter to my Solicitor

OUT

This month 'a client' outlines the level of communication he would like – and expects – from his solicitor.

Dear Solicitor,

I am no fool . . . I am your client and your livelihood.

As a solicitor the first step I would like you to take towards communicating well with me is to realise that I am not a "file" but a person . . . with anxieties and a certain trepidation of things legal. The second important point to note is that as the client I am gaining the upper hand. This is the age of consumerism; if I can force the mighty banks and insurance companies to become consumer friendly, I can also do it to the providers of legal services. I no longer doff the cap or defer to my local doctor or solicitor; I treat them as business people and expect to be treated as a paying customer.

So, I want you to give me a better service . . . to communicate with me effectively and regularly. Poor communication on simple matters can have repercussions out of all proportion to the matter at hand and waste time and energy for both of us. If I do not know what is going on I will become mistrustful and might even assume bad practice. I will certainly complain about you to my friends (potential clients) and might even complain to the Law Society. You could avoid all of this by a friendly and thorough initial consultation or a simple letter or telephone call which explains to me what is happening and makes me feel free to ask you questions.

I know legal matters are becoming much more complex and thus more difficult to explain to me. However, I am also becoming much more demanding and I want to be given a full picture and to have a complete understanding of the service you are giving to me.

I know that every solicitor's nightmare is the "time consuming" (and normally, slow paying) client that expects him to be a social worker as well as everything else. But there are a number of reasons why communicating with me should be regarded as a good investment rather than a necessary evil:-

(a) It might save you wasting time later on my continuous telephone calls because of your lack of understanding of my anxieties.

(b) My story may reveal that there are other areas where you might be able to offer me legal services in addition to the matter at hand. This is particularly important for you, given the increased competition within the profession and the prospect that people who are not solicitors will be able to offer some legal services in the future.

(c) I am more likely to bring similar issues and other legal business to you in the future. It costs five times as much in promotion to generate new clients than it does to retain old ones. I am more likely to choose you as my solicitor on the basis of a recommendation from one of your satisfied clients rather than by reading or hearing any promotion. Remember, no matter how small my transaction is, I am a possible passport to many more clients.

So what would I like you to do?

(a) *Initial Consultation*

If you communicate properly during the initial consultation most of the communication gaps and errors can be bridged. If you *listen* effectively you will build up my confidence thereby saving time later by not having to answer phone calls from me or having to make demands of me for more detailed information. I would like to suggest the following listening/ questioning/ advising formula.

Listening

(1) Greet, seat and introduce yourself to me.

(2) Elicit my story with opening questions etc.

(3) Listen carefully to my basic outline of personalities and case from my own unhindered words.

Questioning

(4) Question me on facts for gaps, depth, background, ambiguities and relevance.

(5) Sum up and recount your view of facts, and check for my agreement or amendments. Minimise jargon.

Advising

(6) State advice and inform me of the plan of action and deal with question of likely outcome, timescale and cost.

(7) Repeat advice/plan of action and check for my agreement or amend.

(8) Recount follow-up work to be done by me.

(9) Recount follow-up work to be done by you.

(10) State next contact between us.

(11) Ask if there is "any other business" and deal with it.

(12) Terminate and good-bye.

If you follow this procedure it will minimise my demands, letters or phone calls to you. I will feel confident that you really understand my circumstances, that you are capable of dealing with my problem and that you care about doing so and that makes for a much easier life and less costly communications for you. Just think how you would feel if *you* were availing of a professional service, wouldn't you like to know:-

- What is wrong or needs to be done?
- Can the problem be remedied?
- How long will it take?
- How much will it cost?

(b) *Afterwards*

A good initial consultation will minimise my communication demands. However, if you want to keep me happy, keep in touch. Establish good communication standards in your office so that my phone calls or letters are replied to promptly, that I am copied with all correspondence and that I am contacted regularly . . . whether there is something to report or not. There is nothing more reassuring for me than to get an unsolicited update on my case. I would particularly like to know if there is any change in the likely outcome, timescale or cost. If you are up to date you can easily update me.

If my transaction or case involves an area of law which you are unfamiliar or uncomfortable with – do yourself, and me, a favour by passing it on to a colleague – surveys show that I will come back to you for other matters.

Once somebody becomes an expert it is difficult to remember what it was like to be a layman. Please try to imagine what it is like to be a client, and do not unwittingly exclude me from the conduct of my own affairs.

Let me know what I need to know, at the time I need to know it.

Yours sincerely,
A Client. ❐

Irish Society for European Law

Officers and Council for 1993-1994

President:
The Hon. Mr. Justice Brian Walsh.

Vice-Presidents:
The Hon. Mr. Justice T. F. O'Higgins
The Hon. Mr. Justice A. O'Keeffe
The Hon. Mr. Justice D. Barrington
Vincent Landy, Senior Counsel
Finbarr Murphy, Barrister
Dr. Eamonn G. Hall, Solicitor.

Chairman!
Vincent Power

Vice-Chairman:
Arthur F. Plunkett, Barrister

Hon. Secretary:
Anne Walsh, Solicitor

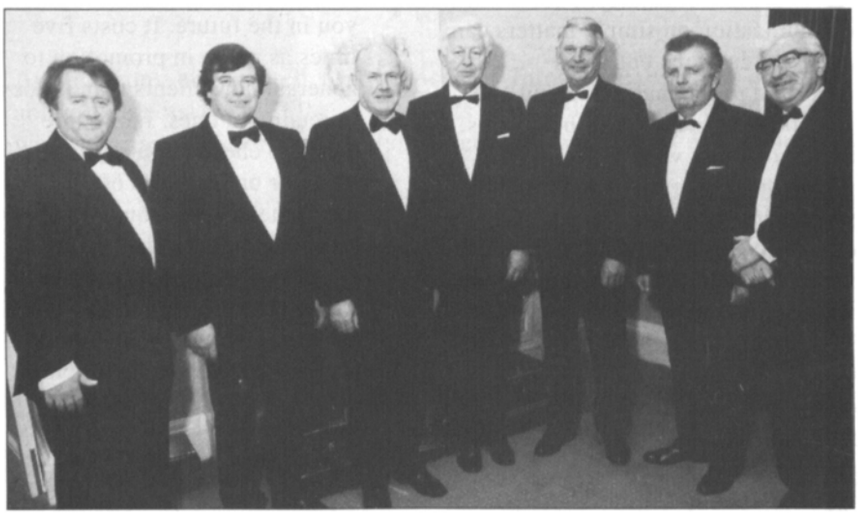
Hon. Treasurer:
Anne Nagle, Solicitor

Committee Members:
Nuala Butler, Barrister
Edwina Dunne, Solicitor
Anthony Collins, Barrister, (Co-editor of the Society's Journal)
Edward Donnellan, Barrister
Gerard FitzGerald, Solicitor
Fionnuala Kilcullen, Barrister
Monika Leech, Barrister
Patrick McGovern, Solicitor
John Meade, Solicitor
Kieran Mooney, Barrister
Andrias O Caoimh, Barrister
James O'Reilly, Barrister, (Co-editor of the Society's Journal)
Bryan Sheridan, Solicitor
Noel Travers, Barrister

Membership of the Society is open to lawyers and others interested in European Law. The current annual subscription is £30 (£10 for students, and for professional persons of less than three years standing). The subscription includes the price of the Society's Journal which is available to non-members for £45.

Membership forms and further details may be obtained from The Registrar, Jean Fitzpatrick, Solicitor's Office, Telecom Eireann, Harcourt Centre, 52 Harcourt Street, Dublin 2. (Tel. 01-671 4444. Ext. 5929, Fax: 01 679 3980, Electronic Mail (Eirmail) (Dialcom) 74: EIM076). ❐

State Solicitors' Annual Dinner



In attendance at the State Solicitors Association Annual Dinner held in Blackhall Place on 1 May, 1993 were l-r: Tim Dalton, Secretary, Department of Justice; Barry Galvin, Secretary of the State Solicitors Association and Law Society Council Member; Michael Buckley, Chief State Solicitor; Liam MacHale, President, State Solicitors Association; P. J. Culligan, Garda Commissioner; Louis Dockery, Chief State Solicitor (retiring), and Eamonn Barnes, Director of Public Prosecutions.

At the dinner the State Solicitors Association made a presentation to Louis Dockery to mark his retirement as Chief State Solicitor.

Ground Rents: The Shape of Things To Come

By: J.M.G. Sweeney*

Failure to recognise an opportunity compulsorily to acquire the fee simple may expose a tenant's legal advisers to an action for professional negligence. Should the previous government's commitment to abolish domestic ground rents by January 1, 1997 be persevered with, this will not reduce the practical importance of even ground rents on dwellings as it will remain always necessary to be able to identify what has been extinguished. This article examines some threshold requirements the presence of which should indicate to the practitioner the existence of the kind of ground rent which may entitle the tenant to acquire a reversionary lease or the freehold reversion. It also suggests some reforms.

The Professional Negligence Risk

As a lease approaches its expiry date, the leaseholder will often be under considerable pressure to have him apply for a new lease for a term of, at most, 35 years and at virtually a market rent. If the rent of the lease which is about to expire is low, or if the length of the term suggests a building lease[1], it will probably occur to the tenant's solicitor that the rent may in fact be a ground rent entitling his client to apply for a 99 year reversionary lease at a fraction of the "new tenancy" rent or, better still, to acquire compulsorily the fee simple. However, it is by no means easy to determine whether such a right exists and the legal adviser may, quite wrongly, be persuaded that the tenant is not entitled to anything more favourable than a 35 year tenancy at what may prove to be a crushing rent. Such a decision on this question could be a serious mistake on the lawyer's

Professor JMG Sweeney.

part resulting in grievous loss to his client for the recovery of which he might sue the practitioner.[2]

But are not grounds rents to be done away with? On 19 November, 1991[3] in a reply to a parliamentary question, the then Minister for Justice, Mr. Ray Burke TD, stated that a very rough estimate made some years previously of the number of domestic ground rents which still existed was about 200,000 and quoted from the Programme for Government[4] which had then been recently published, as follows:-

> *The Government is committed to introducing legislation which will abolish all remaining domestic ground rents as and from January 1, 1997. Under these proposals, all remaining such rents will be deemed no longer to exist, and the fee simple of the property will become the exclusive ownership of the householder. The legislation will shift the onus of completing the purchase of outstanding ground rents from the householder to the ground rent landlord. Payment of compensation to the ground rent landlord would continue to apply on a similar basis as at present*

If there is to be leglislation, what shape will it take? There are rumours of doubts concerning the constitutionality of these proposals (and, perhaps, even their compatibility with the European Convention of Human Rights) which may inhibit our legislators. Furthermore, the omission of the topic from the agreed Programme for a Partnership Government can hardly be regarded as accidental[5]. Subject to this, the writer ventures to believe that any future Act will follow closely the wording of the 1978 Act[6] which prevents the creation of new leases reserving ground rents on dwellings. It may be expected to vest in the tenant the fee simple (together with all intermediate interests) in a dwelling the subject of every lease[7] made before the 16th day of May, 1978[8] if the tenant would, apart from this future Act, have the right, under the 1978 (No. 2) Act (including, of course, any future amendments), to enlarge his interest into a fee simple.

Whatever form any future Act may take, it should, I think, be clear that the practical importance of ground rents will continue if the following is considered:

1. It was not proposed to abolish ground rents on business premises.

2. In deciding whether a rent has been extinguished or not, i.e., whether it has vested automatically in the tenant or not, it will still be as necessary as ever to refer to the complicated statutory provisions and case law which today determine whether a tenant is entitled to acquire the fee simple or a reversionary lease.

The Threshold Requirements

Accordingly, one of the aims of this article is to extract from this entangled subject some of the threshold or preliminary elements which should warn the practitioner of the presence of the kind of ground rent which entitles a tenant to acquire the freehold reversion or a reversionary lease. Even then, it will not be possible to scrutinize in a short article

all such elements, only those quintessential parts peculiar to ground rents. Nevertheless, the legislation will be more easily assimilated if the evolution of the present system is reviewed, however briefly and incompletely.

What therefore are the ground rent's more characteristic rules, compliance with which is required by this involved legislation which, the writer feels, is certain to remain relevant? To enable a leaseholder to claim the fee simple, or a reversionary lease, the three conditions, for example, at s. 9(1)(a), (b) and (c) of the 1978 (No. 2) Act must be complied with. These three conditions are entitled, as are others, to be called "threshold" conditions but including, for example, as they do, the requirement that the portion of the land not covered by the permanent buildings be subsidiary and ancillary to such buildings, a requirement for new tenancies echoed by s. 5(1)(a)(ii) of the 1980 Act, the writer feels that they are less representative of the ground rent legislation than the seven alternative conditions in s. 10 and their counterpart in s. 15 (as amended), both of the 1978 (No. 2) Act, with one of which "equities" the applicant must comply. It is with these alone (and then only with three of them) that this short article will deal.

1. The Typical Building Lease

When it was at length decided to provide a remedy for the fundamental grievance of the ground lessee who on the expiry of his lease was obliged to surrender building as well as site to a landlord whose predecessor had provided only the site, the Oireachtas did not think, at first, in terms of giving certain tenants the statutory right to purchase the fee simple (enfranchisement). Instead the first effective attempt[9] to respond to this anomaly was the creation by the 1931 Act of the statutory reversionary lease. This enabled any person holding land under a building lease to obtain from the landlord a 99 year lease at a low rent.

For the purposes of Part V of the 1931 Act which dealt with reversionary leases s.46(1)(d) defined "building lease" to mean a lease of land, *inter alia* on which the permanent buildings were erected by the person who, at the time of such erection, was entitled to the lessee's interest under such lease. In *Finn .v. Barry*[10] it was, however, held by the Supreme Court that the interest of a lessee did not commence until the date of execution of the lease and that, therefore, at the time the houses were erected, the applicant was not "entitled to the lessee's interest under such lease." Accordingly, s.46(1)(d) was amended so as to include a lease of land, *inter alia*, on which:

> *(d)* such permanent buildings were erected by the person who, at the time of such erection, was entitled to the lessee's interest under such lease; *or were erected in pursuance of an agreement for the grant of such lease upon the erection of such permanent buildings.*

The paragraph so amended is now represented by the almost identical alternative condition 1 in s. 10 of the 1978 (No. 2) Act, with reference of course not only to obtaining a reversionary lease but also to the acquisition of the fee simple.

2. Long Lease at a Low Rent

By 1954, when the Rents and Leaseholds Commission issued its report[12] the difficulties encountered in proving who had erected the buildings, had made themselves felt. By the time an application for a reversionary lease was made, those who had negotiated the lease or erected the buildings were, in most cases, dead. No information as to whether the buildings existed at the time of the lease could usually be gleaned from the recitals or the parcels in the lease. Where the buildings were erected in pursuance of an agreement for a lease, it was rare for the lease to recite the previous agreement.

The Commission recommended[13] that, where a lease was for a term of not less than 50 years, and the rent was less than the earliest available rateable valuation of the plot together with the buildings on it, it should be presumed until the contrary was proved, that the buildings were erected by the person entitled to the lessee's interest under the lease. In general, this was adopted by the 1958 Act except in the case of a lease granted before 1 January, 1914, when the rent had to be less than three-fourths of the relevant RV.

Today, alternative condition 2 requires a lease for a term of not less than 50 years where

> the yearly rent . . .is less than the amount of the rateable valuation, and . . . the permanent buildings on the land demised by the lease were not erected by the lessor or any superior lessor or any of their predecessors in title:

provided that it shall be presumed, until the contrary is proved, that they were not so erected.

Furthermore, the RV referred to in condition 2 is not the earliest available valuation but virtually the current RV and this, if indeed it signifies nothing else, is at least a convenience for the practitioner.

3. The Yearly Tenant

The solicitor who is alert to avoid steering his client towards a new tenancy in case he may prove entitled to acquire the fee will not be free to relax if his client is not a leaseholder. The 1964 Report of the Ground Rents Commission spoke about the representations that had been made to them on behalf of certain houses in provincial towns, adding:-

> In many towns these houses were built by persons who held the land on oral yearly tenancies. In other towns the houses were built on what may have been short term leases originating upwards of 150 years ago. If there were such leases the terms have long since expired and no evidence appears to have been available as to the existence of the leases. In both types of cases the present occupiers pay a rent which approximates to a ground rent. Under the present law their interest in the premises appears to be no more than that of a person holding under a yearly oral tenancy[14].

This brief reference is intriguing and it

would be highly interesting to learn more of the circumstances which enabled such tenants to erect, and retain possession of, their houses on the basis of such a precarious interest in the site!

Accordingly, the 1967 Act gave a right to acquire the fee simple to a person who, by himself or his predecessors in title, had been in continuous occupation as yearly tenants for all of the preceding 25 years at a rent less than the RV, if, *inter alia*, the buildings had been erected by the tenant whilst in occupation (there was a presumption in the tenant's favour to this effect). This provision comprised only those properties which were at all material times yearly tenancies. After the Landlord and Tenant Commission had made its recommendations[15], s. 15 of the 1978 (No. 2) Act, 1978 made it no longer necessary for the applicant to have held under a yearly tenancy for all of the 25 years. Provided the land has been held continuously for at least 25 years, it can have been held under any one or more of the following:-

(a) a yearly tenancy arising by express agreement;

(b) a yearly tenancy arising by operation of law or by inference on the expiration of a lease; or

(c) a statutory tenancy by virtue of the Rent Restrictions Acts implied by holding over property on the expiration of a lease reserving a yearly rent.

One unobstrusive but important change is that a purchasing tenant is no longer required to be in occupation. The rent must be less than the rateable valuation at the time the acquisition is begun but, by s.9 of the 1984 Act, the rent/RV test need not be satisfied if there is proof that the buildings were erected by the tenant or a predecessor in title. These provisions enable a yearly tenant to acquire the fee simple, but not a reversionary lease.

Some Suggested Reforms

Whilst the Constitution, and the European Convention of Human Rights, may prevent the proposed abolition of domestic ground rents, it would seem unquestionable that, politically, the momentum for further reform of the system, in the tenant's favour, will continue. The writer feels that, even if the radical reforms proposed are abandoned, there are still ample opportunities for reform within the system.

... it would seem ... that politically, the momentum for further reform of the system in the tenant's favour will continue.

One might perhaps commence with the rent/RV test. If the rent is less than the RV, this will in most cases indicate a low rent and, therefore, very likely a ground rent. But is it not unnecessarily restrictive to be confining holders of long leases and yearly tenants to situations where such low rents apply? Would it not be a welcome extension of the compulsory acquisition system to give the tenant a choice so that, if he could not meet the rent/RV test, there would be some other more generous test which might accommodate him? It does not seem likely that a test as severe as the rent/RV test could absorb that many ground rents so what other test could be available as an option to the tenant?

Generally, the rent fixed by the Circuit Court for a reversionary lease is one eighth of the "gross rent", reduced, where appropriate, by a special allowance for works carried out by the lessee or his predecessors in title. For such purposes, the "gross rent" is, in general terms, the Court's estimate of the rack rent for the property. The writer suggests that if the tenant could, as an alternative to the rent/RV test, qualify under ss.10(2) or 15 (as amended) of the 1978 (No. 2) Act if his rent were less than one eighth of the "gross rent", this would enable many more tenants to enlarge their estate into fees simple than are at present eligible[16].

If the writer were to go on to suggest that, where the rent/RV or alternative test available is complied with, and the other statutory requirements are met, the tenant should be *conclusively* entitled to enfranchise, such a suggestion might appear to reflect a bias in the tenant's favour. However, the European Court of Human Rights, citing the US Supreme Court's support for state legislation for the compulsory transfer of title from lessors to lessees in the interests of reducing the concentration of land ownership, has already indicated[17] that taking the leaseholder's side in this issue is not necessarily a breach of the European Convention of Human Rights.

Our Irish system appears to differ greatly from that of our English neighbours in the importance the former attaches to proof of who erected the buildings, tempered though this may be by presumptions in the tenant's favour. When, for example, the Landlord and Tenant Commission recommended[18] that a leaseholder under a long lease at a low rent (from which it could be inferred that the lessor did not erect the buildings) should be entitled to claim a reversionary lease, it did not, expressly at least, include in its recommendations the requirement, now found in condition 2, that the buildings were not erected by the lessor. It is as a result of such arguably excessive requirements that Irish applicants have to agonize over who erected buildings dating, for example, from 1750[19] – and beyond – whereas if a test such as the rent/RV test were conclusive, they would be spared such interesting but arduous and expensive enquiries. It is also suggested that, instead of requiring a term of not less than 50 years, condition 2 should follow the English example and require only a lease granted for a fixed-term exceeding 21 years[20].

Critics of enfranchisement sometimes forget that the ground rent system often inflicts severe hardship on the tenant without conferring any benefit on the landlord. Too often they seem to presuppose a landlord and a tenant, each fully conversant with his rights and their value, who need be left only to market forces for justice to prevail. However, experience shows that the freehold reversion is often of no value to the owners, whose whereabouts may be unknown and who may not even know of its existence. This results in the property being afflicted by a bad title which is like a sentence of death since properties must be marketable if they are not to fall into decay. To the conveyancer not the least attractive

. . . the ground rent system often inflicts severe hardship on the tenant without conferring any benefit on the landlord.

feature of the ground rent legislation is the mechanism it provides for solving certain conveyancing problems which would otherwise be insoluble. Thus, Professor Wylie says of the vesting certificate which by virtue of s. 22(1) of the 1978 (No. 2) Act operates to convey to the applicant free from incumbrances the fee simple and any intermediate interests in the dwellinghouse:-

> "The vesting certificate has sweeping effect. It conveys all relevant interests to the applicant free from all incumbrances. It affects interests of all persons, even those who are unknown, under disability or simply not joined[21]."

Similarly, s. 8 of the 1967 Act confers on the County Registrar, when hearing applications to acquire the freehold reversion both in the case of dwellinghouses and businesses, like powers of overcoming conveyancing difficulties. By means of the overreaching device the Registrar of Titles, or the County Registrar, as the case may be, becomes an alchemist, by statute enabled to solve the problems of pyramid titles by almost literally turning them into gold. For an equivalent of the extraordinary power to vest an indefeasible title in the purchaser, possessed by each of these officers, one has to recall the Landed Estates Court conveyance the effect of which was so eloquently brought to life by Christian LJ in *Re Tottenham's Estate*[22] when he described how

> ". . . by a sort of conveyancing magnetism, it would draw . . . from the absent, the helpless, the infant, the married woman, the mentally imbecile, nay, even the unborn, every particle of estate and interest, legal or equitable, present and future, known or unknown, patent or latent, in the land expressed to be conveyed, and would concentrate the whole in the purchaser, freed from everything the conveyance itself did not save."

Footnotes.

1. Although even a yearly tenancy could be subject to a ground rent, and the practice varied so much as to provide little guidance, in *Finn v. Barry* [1941] IR, 450, 465, Johnston J. stated that 99 years had been regarded for 150 years as the customary period of a "building lease". There was a higher rate of stamp duty on leases for a term exceeding 100 years: Stamp Act,1870, Sched., Stamp Act,1891, 1st Sched.; and, although a term of 100 years was not subject to the higher duty, 99 years was adopted for safety. In *McKenna v. Stack*, 74 ILTR 91, 177, the applicant for a reversionary lease claimed that it was the invariable custom of the Listowel Estate office to grant leases for 100 years only.
2. It would be no less dangerous prematurely to describe a yearly tenancy as "as good as freehold" as occurred in Kehoe v. *C.J. Louth & Son* [1992] ILRM 282.
3. The Minister replied similarly to another Parliamentary Question on 30 January, 1992 and confirmed that the Government had no plans for a referendum on the abolition of ground rents.
4. "Review of the Fianna Fail-Progressive Democrats Programme for Government 1989-1993", pp. 8-9. The text of the Programme, first agreed in July, 1989, was released on 19 October, 1991.
5. Thus, the current Minister for Justice, Ms. Maire Geoghegan Quinn, replying to a Parliamentary Question on 10 February, 1993, not only omitted all reference to the proposals of the previous Government but pointed out that the existing law "provides a ready means by which any person can abolish the ground rent payable on a dwellinghouse". She told how, already, about 60,000 householders had availed themselves of that opportunity and, significantly, reminded the Deputy with whom the P.Q. had originated, that "any proposal to abolish ground rents without compensation would not be in keeping with Constitutional requirements."
6. The ground rent legislation referred to in this article as "the 1931 Act", "the 1943 Act", "the 1958 Act", "the 1967 Act", "the 1978 Act", "the 1978 (No. 2) Act", "the 1980 Act" and "the 1984 Act", are the Landlord and Tenant Act,1931, the Landlord and Tenant (Amendment) Act, 1943, the Landlord and Tenant (Reversionary Leases) Act, 1958, the Landlord and Tenant (Ground Rents) Act, 1967, the Landlord and Tenant (Ground Rents) Act,1978,the Landlord and Tenant (Ground Rents) (No.2) Act,1978, the Landlord and Tenant (Amendment) Act,1980 and the Landlord and Tenant (Ground Rents) (Amendment) Act,1984.
7. On the assumption that the definition in the 1978 (No.2) Act would apply, this would include a fee farm grant: Wylie, Irish Landlord and Tenant Law, 35.9n., 36.16n.
8. By s. 2(1) of the 1978 Act, a lease (other than a reversionary lease) of a dwelling made after the passing of that Act, shall be void if the lessee would, apart from s. 2, have the right to enfranchise. The Act came into force on 16 May,1978.
9. The 1931 Act was the first attempt to deal with this problem which succeeded in getting on the statute book, but it was not, of course, the first attempt. A series of bills similar in conception to the 1967 Act and commencing with the Leaseholders (Facilities for the Purchase of the Fee Simple) Bill,1883 were introduced in the House of Commons and the Dail before the 1931 Act became law.
10. Supra; n.1.
11. The words emphasised were deemed to be inserted by s2(i) of the 1943 Act.
12. Report on Reversionary Leases under the Landlord & TenantActs (Pr.2532,1954) para. 73.
13. Ib.,para.77.
14. Report on Ground Rents (Pr 7783, 1964), para. 61, p.20.
15. Report on Certain Questions arising under the Landlord and Tenant Acts, 1958 and 1967 (Prl. 59, 1968), para.131.
16. In England, the "low rent" needed to qualify a "long tenancy" for enlargement was, in the case of certain tenancies, defined by s. 4(1) of the Leasehold Reform Act 1967, not only by reference to a rent/RV test but to the letting value as well of the property. However, the difficulty of comparing the English with the Irish code, at least as the latter applies in provincial towns, is highlighted as one read in *Manson v. Duke of Westminster* [1981] QB 323 at 326 that the London house in question which the tenant held subject to a controlled rent of £100 per year and had acquired in 1973 for a premium of £18,500, had a rateable valuation of £1,076.
17. Case of James (Case No. 3/1984/75/119, European Court of Human Rights, 21 February 1986) citing *Hawaii Housing Authority v. Midkiff*, 467 US 229 at 241 ff,81 L Ed 2d 186 at 198 ff (1984).
18. Report on Certain Questions arising under the Landlord and Tenant Acts,1958 and 1967 (Prl. 59,1968), para. 68.
19. As in *Barry v. Registrar of Titles* [1992] ILRM 62.
20. Leasehold Reform Act,1967, s. 3(1).
21. Op.cit, 36.213n.
22. (1869) IR 3 Eq. 528.

**J.M.G. Sweeney is Professor Emeritus of Common Law, University College Galway and Consultant Solicitor, Murray Sweeney, Solicitors, Limerick.*

Computer Programmes: The New Regulations

By John Furlong

In a 1988 Green Paper, the European Commission considered the problems which would arise in relation to copyright within the Single Market[1]. The Commission subsequently published a Directive on the legal protection of computer programs in May, 1991[2]. The Directive seeks to protect the rights of originators of computer software by the application of copyright and provides for the specific scope of this protection. It also sets out non application of and exemption from copyright for particular activities concerning computer programs.

In framing the scope of the Directive, the Commission had to be mindful of the ease with which copies can be made of computer software and the consequent impact on investment by software developers. A 1989 estimate indicated that piracy of computer programs in seven of the Member States cost $4.5bn. On the other hand, system development (even within small systems) often requires the copying and amendment of market software. In addition, the Commission sought to introduce certain minimum standards of approach across the Community to ensure that any protection did not give rise to barriers in intra-Community trade.

The Regulations

The *European Communities (Legal Protection of Computer Programs) Regulations 1993*[3] give domestic effect to the Directive and are deemed to have come into operation on 31 December, 1992. The effect of the Regulations is to apply, within this jurisdiction, provisions for computer programs similar to those accorded by the Berne Convention and the **Copyright Acts 1963 and 1987** to literary works. Periods of protection will generally be the same as those applying to literary works.[4] The protection afforded extends to the expression, in any form,

New regulations seek to protect the rights of originators of computer software.

of a computer program. Neither the Directive nor the Regulations define "computer program". The advance of technology and the expanding capabilities of programs might make any precise definition obsolete. In general terms, a computer program is a series of encoded messages or instructions which define and operate a computer application. The Regulations state that a computer program is protected if it is original (i.e. being the author's own intellectual creation).

The Regulations specifically *include* any design materials used for the preparation of computer programs. As with general copyright law, it is the expression of the idea itself which is protected. Ideas and principles which underline any element of a computer program including those which underline interfaces are not protected under the Regulations.

Exclusive Rights

The Regulations set out exclusive rights which may be exercised by a right holder (i.e. one who owns a computer program which is protected). These include the right to authorise a range of activities including:-

- the permanent or temporary reproduction of a computer program by any means.
- the translation, adaptation arrangement and any other alteration of a computer program.
- any form of distribution to the public (including rentals). In this regard, the first sale in the European Community of a copy of a program by the right holder or with his consent exhausts the distribution right within the Community of that copy.

Unless there are specific contractual provisions to the contrary, these actions will not require authorisation by the rightholder where they are necessary for use by the lawful acquirer for the intended purpose (including error correction).

Licensees

Licensees of computer programs are given a range of specific rights. Attempts to preclude these rights under licenses for computer programs are deemed to be null and void.[5] These rights include:

- the right to make a back-up copy (so far as it is necessary for that use),
- the right to observe, study or test the functioning of a program in order to determine the ideas and principles which underline any element of the program. This must be done while performing any of the acts of loading, displaying, running, transmitting or storing the program which the licence holder is entitled to do,
- the right to reproduce the code and translation of its form for the purpose of constructing a link or interface with another program. The reproduction or translation must be "indispensable to obtain information necessary to achieve inter-operability of an independently created computer program". This is subject to a number of conditions specifically related to

the necessity to undertake such a task. In addition, reproduction and translation must not then be used for any other purpose other than the specific necessary function for which it is required.

Infringements

The Regulations also empower the owner of a copyright to bring actions for infringements of copyright in a computer program. These actions are intended to prevent circulation or possession of the program for commercial purposes or any acts relating thereto.

It should be noted that the provisions of the Regulations are without prejudice to other legal provisions including those arising under patent trademarks, unfair competition, trade secrets and protection of semi-conductor products or the law of contract.

Further Reading

(1) "Copyright and the Challenge of Technology: Copyright Issues requiring immediate action" **Comm (88)172.**

(2) **EC Directive 91/250** on the Legal Protection of Computer Programs 14 May, 1991, **1991 OJL 122/42.** See "Proposed EC Directive on the Protection of Databases" Peter J. Grows **Business Law Review** October 1992.

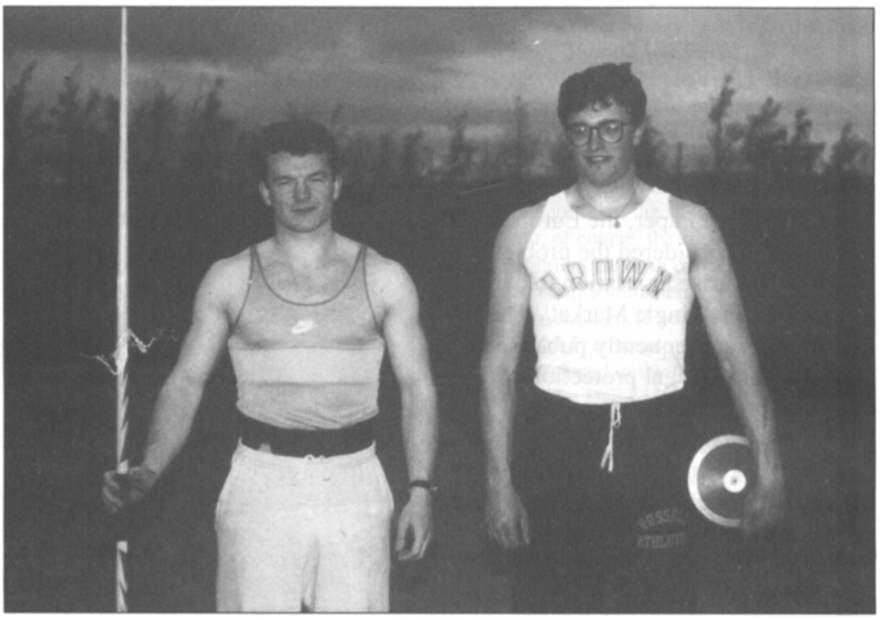
(3) SI 26/93 made by the Minister for Enterprise and Employment under S.3 of the European Communities Act, 1972.

(4) The Directive was required to be implemented in Member States before 1 January, 1993. The Regulations are deemed to have come into operation on 31 December, 1992 and apply to computer programs created before 1 January, 1993 without prejudice to any acts concluded or rights acquired before that date.

(5) For further reading see: "Computer Software: How does that look and feel?" Peter Grows **Business Law Review,** April, 1993 and "Protection of Computer Programs" Maria Dawson **Practical Law for Companies** March, 1993.

❐

Apprentices Win Third Place In Athletics Event



Representing the Apprentices Athletic Club in the Irish University Athletic Championships were l-r: Jamie O'Donnell, Matheson Ormsby Prentice, and John Menton, Arthur Cox.

The Law Society Apprentices Athletics Club was represented most successfully at the recent Intervarsity Track and Field Championships held in Cork. The team, consisting of Eric O'Donnell (McCann FitzGerald), Jamie O'Donnell (Matheson Ormsby & Prentice), John Menton (Arthur Cox) and John O'Connor (J. G. O'Connor & Co.) outscored many of the larger universities to finish third overall – its highest ever placing.

The Society dominated the throwing events, with John Menton winning both the discus and the 35lb; Jamie O'Donnell successful in the javelin and John O'Connor best in the hammer. Only the efforts of Olympian Victor Costelloe (UCD) denied them in the shot. Third place was secured with a stirring performance led by Eric O'Donnell in the sprint relay.

A further link with the Law Society was provided by Ray Shanahan, a partner in J. W. O'Donovan & Company, coach to UCC Athletic Club which captured the ladies championship.

Results:

Discus:	1, J. Menton; 6, J. O'Connor
35lb wt.:	1, J. Menton 10.89M (Record); 2, J. O'Donnell
Javelin:	1, J. O'Donnell
Hammer:	1, J. O'Connor; 3, J. Menton
Shot:	3, J. O'Connor; 4, J. Menton
10,000M:	3, E. O'Donnell
High Jump:	6, J. O'Donnell
Long Jump:	6, J. O'Donnell
Relay:	5, Law Society

Overall:

1 University of Limerick
2 UCD.
3 The Law Society

Raymond Shanahan. ❐

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: 0444-483-726272.
Fax: 0044-483-725807.

Whiplash and its Effects on the Temporo Mandibular Joint

Whiplash can often cause damage to the jaw joints and muscles, which if unrecognised and untreated, can later become a dominant medical problem, writes Dr. Meurig Devonald*

"Whiplash" is the common term for neck injury which often occurs when riding in a car which is involved in a road accident. Typically, the passenger's head forcibly snaps backward as the body is thrown forward. The head may then snap forward in a recoil motion. This severe backward and forward motion damages the neck muscles and especially the soft tissues (muscles and ligaments) supporting the neck, head, and jaw.

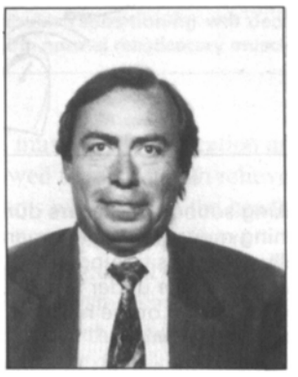
It is easy to see why this damage happens, when you consider that the head itself weighs up to 15 pounds (the weight of an average bowling ball). When this "bowling ball" snaps backward, it creates 500 to 600 lbs. of force on the neck! Women are even more vulnerable to whiplash injuries than men because their neck muscles are smaller in relation to head weight.

Persistent Symptoms of Whiplash

Since injuries to soft tissues do not show up on x-rays, it is difficult to see immediately whether or not these injuries have occurred as symptoms may not be felt until hours or days after the accident. Once symptoms do appear, however, they can be very painful and quite persistent.

Whiplash symptoms include:

- neck pain, stiffness, and decreased range of motion,
- headaches,
- numbness of the head and face,
- blurring of vision and pain behind the eyes,
- problems with balance,
- difficulty swallowing,
- ringing in the ears,
- jaw pain.



Dr. Meurig Devonald.

One reason why symptoms may persist is because in many cases of whiplash, the jaw joint and the muscles which support the jaw are damaged as well. The accident may trigger a condition in which these muscles go into spasm and become very painful. Specific clues as to whether this damage occurred include:

- pain in or around the jaw joints,
- clicking or popping of the jaw joints,
- locking or limited opening the mouth,
- difficulty with bringing your teeth together.

Because both patients and health care providers often do not suspect that the jaw joints and muscles may have been damaged, this aspect often goes unrecognised. When not recognised and untreated it can become the dominant medical problem.

Two recent studies using magnetic resonance imaging have shown that between 87% and 94 % of people who had suffered a whiplash injury without direct trauma showed damage and dislocation of jaw tissue associated with the headaches, spasms and general pain experienced with having their heads whipped backwards and then forwards suddenly.

The Preventive Dental Research Group studied 500 people injured in motor vehicle accidents whose cases had been settled, but were still suffering from injuries traced back to the accident itself.

This study revealed that the residual symptoms were:

- headaches,
- neckaches,
- backaches,
- earaches,
- ringing in the ear,
- clicking noise when opening and closing the mouth,
- difficulty when swallowing,
- hearing loss,
- pain in chewing,
- pain in the face and jaws,
- dizziness.

These are all typical symptoms of a temporo mandibular joint (TMJ) injury but were undiagnosed at the time.

In motor vehicle accidents, particularly in rear end collisions, the suddenness

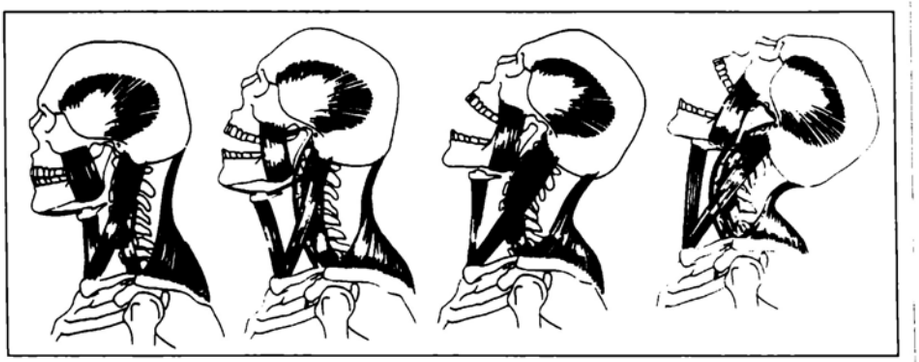


Figure 1 – Anterior Neck Muscles Anchor the Mandible Resulting in a Dislocation.

of the impact snapping the head backward, happens so quickly that the anterior neck muscles do not have a chance to relax. As a result they act as an anchor on the mandible holding it still and forcing the mouth open excessively, as the head continues to move backwards.

This action, the whipping excessively open of the mouth and its subsequent closure into normal position, results in a self-reducing dislocation of the TMJ. The masticatory and cervical musculature, ligaments and the synovial tissues of the temporo-mandibular joint are simultaneously injured. A frequent result of this type of injury is the anterior displacement of the TMJ disc and posteriorization of the mandible as seen in figure 2.

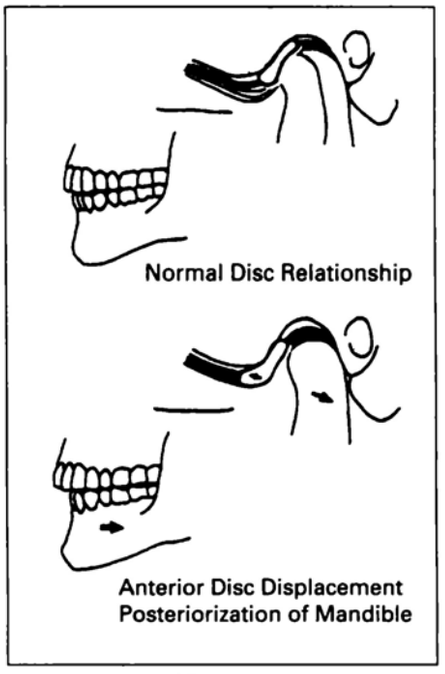


Figure 2

The anterior displacement of the TMJ disc has been demonstrated to be the primary aetiology of progressive disease which results in degenerative arthritis. When the ligaments holding the disc in place become stretched or torn due to the displacement, this can result in permanent damage.

This injury is particularly important because it is well documented that 60% of the people involved in motor accidents do not fully recover.

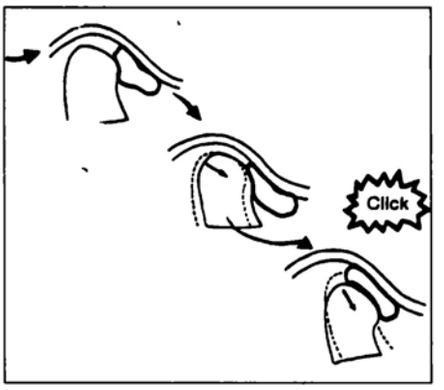


Figure 3.

The clicking sound that occurs during the opening movement of the mandible, is actually the repositioning of the mandibular condyle under the TMJ disc and the restoration of the normal functional relationship.

In a whiplash injury, particularly a rear end collision, the whipping of the head backward results in spasm of the anterior cervical musculature. One of the most common pathological changes in the musculoskeletal system is the creation of the dysfunctional relationship between the cranium, mandible and cervical vertebrae demonstrated by the loss of the neck's lordotic curve. This loss results in the straightening of the cervical vertebrae which pulls the cranium forward into the pathological head forward position.

The cranium compensates for the forward head position by rotating the head posteriorly and assuming an extended head posture so that normal line sight is restored. This situation frequently creates and maintains entrapment of the occipital nerves referring pain to the head and face.

TMJ dysfunction will place excessive demands on the musculature producing myofascial pain and dysfunction. Trigger points in the muscles are created as a focus of hyper-irritability giving referred pain to the head and neck.

TMJ dysfunction may be divided into two categories: trauma and chronic. The causative factors of each category and their subsequent treatments are vastly different and treatment applied to the wrong category can cause incorrectable harm to those who come for treatment. Insurance companies are besieged with claims for injuries which appear to be trauma induced when, in fact, they are pre-existing conditions that are non-accident related or exacerbations of pre-existing conditions. Therefore, proper and complete differential diagnosis and the correct treatment planning is essential at this point.

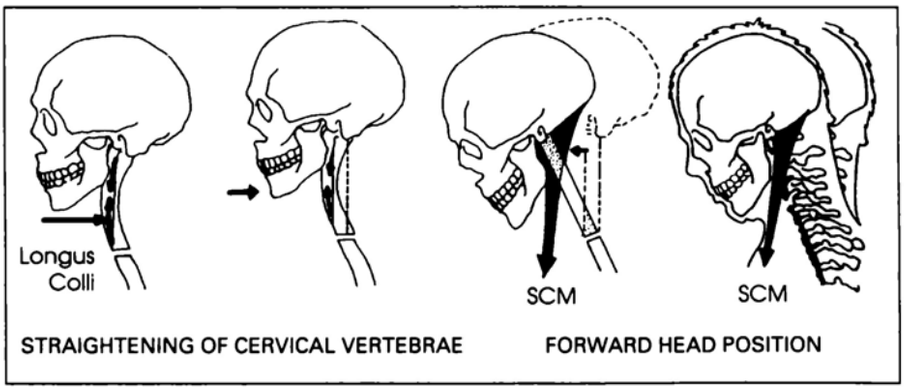


Figure 4

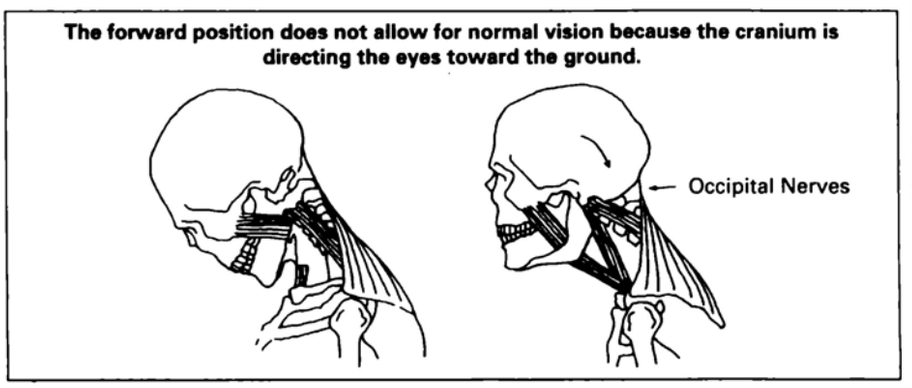


Figure 5

Evaluation of the Patient

This should include patient history and presenting symptoms.

Objective findings

1. Radiology – a. Loss of lordotic curve
   – b. Cranial extension
   – c. Posture displacement of mandible
   MRI scan – Displacement of the disc.

Medical History

Interdisciplinary Evaluation

Neurology – Negative
Orthopaedics – Negative
ENT – Negative

Observe for:

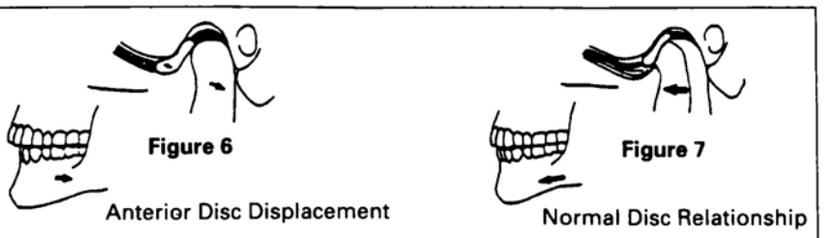
- tenderness to palpation,
- masticatory musculature,
- cervical musculature,
- TMJ joints – pain with or without clicking,
- sub occipital musculature,
- head forward position,
- range of motion studies,

Interdisciplinary evaluation must be utilised to rule out any organic causes of pain related to other medical specialities. Then a proper referral should be made to a specialist in head, facial and neck pain and TMJ orthopaedics.

Treatment must be based upon a specific diagnosis for a specific problem otherwise it will only result in symptomatic relief which will be temporary in nature.

Of the many treatment techniques available one of the most successful is the repositioning of the mandible and utilising an intraoral mandibular orthopaedic repositioning appliance (splint). The purpose of the appliance is to bring the mandible downwards and forwards.

The effect of this would be as follows:



Mandibular repositioning will decrease the hyperstimulation of the trigeminal nerve by restoring normal masticatory muscle function and a normal cranial cervical relationship

Figures 6 and 7

1. The muscles of mastication are allowed to relax which relieves the spasms which cause the headaches and facial pain. One has to remember that 80% of headaches are muscle spasm related and the major muscles in the head are related to the function of the mandible.

2. Forward mandibular repositioning creates anterior forces on the cervical vertebrae and helps in reforming a normal lordotic curve and also increases the distance between the cervical vertebrae thus reducing neck pain. Failure to appreciate the significance of this characteristic explains why many chronic neck problems fail to resolve as the cause of the problem is distant from the point of pain and thus undiagnosed.

3. Use of the appliance may also recapture the disc as shown in figure 6 and 7. Restorative procedures may have to be done on the teeth to stabilise the jaw in its new position after treatment is completed.

Other treatments would include – Manipulative medicine, physiotherapy, trigger point injection, transcutaneous, electrical nerve stimulation (TENS), ultrasound, head and coolant therapy, spray stretch exercises and biofeedback. Surgery may be required in extreme cases.
Experience in dealing with trauma induced TMJ patients where the immediacy of the trauma gives the observer the total picture of the causes and effects of the dysfunction, points to aetiology as the key factor in determining treatment.

Interdisciplinary evaluation and treatment is essential and leads to a high success rate in the treatment of this painful condition. A correct diagnosis will thus establish a direct causal relationship or not to the accident which is obviously essential in assessing damages for what in many cases is a permanent injury.

TMJ problems are often overlooked when medical or legal professionals are evaluating whiplash cases. It is therefore important if a client presents with any of the symptoms previously described, that the question of a TMJ involvement should be looked at.

**Dr Meurig Devonald, Dental Surgeon, works at the Haddington Clinic, Ballsbridge, Dublin 4.*
He limits his practice to the treatment of TMJ disorders and cranio-facial pain.

Ground Floor Position of Two-Story Building
TO LET
6,500 sq. ft Dublin 1 area - Shop Front
Main Thoroughfare - Excellent Condition
Carpets C.H. Rear Entrance - Parking Long or Short Lease - Telephone line - Fax line £750 per month
Tel: 01 - 8730652 Office Hours

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

Legal Aid in Custody Proceedings – Update

In last month's Gazette (Vol. 87 No. 5 p.195) we published an article by Mel Cousins entitled "Legal Aid in Custody Proceedings". Inadvertently we published a penultimate draft of this article which omitted the author's consideration of the judgement of the Supreme Court on an appeal of the decision of the High Court in the case of MF -v- Legal Aid Board. The correct version of the final section of the article dealing with the decision of the Supreme Court is published below:

The Supreme Court has since heard an appeal in the *M.F.* case.[8] The Legal Aid Board had granted legal aid to the applicant in the instant case but appealed against the High Court's interpretation of the Scheme which it considered would have important implications for other applications for legal aid. The Board argued that the decision of the High Court had gone too far and had, for practical purposes, excused an applicant for legal aid in custody proceedings from having to satisfy the conditions as to the merits of the case laid down in the Scheme. The Board argued that the correct approach was that, in custody cases (which it conceded must be considered separately in the implementation of the Scheme), the requirement that there be a reasonable likelihood that the point of view of the parent concerned would be a factor that the Court would be likely to consider, and that it could not effectively be put forward by any other method which would be satisfactory, other than by legal representation.

Finlay CJ, speaking for the five judge Court, described the High Court judgement as 'couched, to some extent, in black and white terms'. He stated that, in proceedings under the Judicial Separation and Family Law Reform Act, 1989 which involve questions of the custody, guardianship and welfare of an infant, the rule concerning the reasonable likelihood of success should be interpreted and implemented on the basis that

> 'it is only necessary that the Board should conclude that there is a reasonable likelihood the point of view and submissions of the person concerned, with regard to the welfare, custody and upbringing of the child concerned, should be among the material which would be relied on by the judge in determining the issues concerning the child.'

As concerns the rule that legal aid should only be granted where it is reasonable to do so having regard to all the circumstances of the case, including the cost of the proceedings measured against the likely benefit to the applicant, Finlay CJ held that, in cases brought under the 1989 Act, the Board should interpret the benefit to the applicant to be equivalent to the interests of the applicant in the welfare of the child. He also held, *obiter*, that these same principles would apply in the case of an application to vary or an appeal from an originating hearing.

The effect of the decision

The effect of the Supreme Court decision would appear to broaden the interpretation of the Scheme of Civil Legal Aid and Advice so that the Legal Aid Board will now be required to grant legal aid in more cases involving custody disputes as it is to be expected that the point of view and submissions of one of the parents will almost always be amongst the material which would be relied upon by a judge in determining issues concerning the child. However, a more expansive interpretation of the Scheme as a result of this decision in custody cases may simply lead to even longer waiting lists unless additional funding is provided in order to allow the Legal Aid Board to meet the additional demand.

While the High Court, at least in *S. -v- Landy*, appeared to suggest a constitutional right to legal aid, the decision of the Supreme Court is confined to an interpretation of the Scheme itself.[9] Clarification as to whether any legal or constitutional right to legal aid exists must await further decision of the courts or the long promised Legal Aid Bill.

8. Unreported, Supreme Court, 30 March, 1993.
9. Unfortunately, the decision of the Supreme Court, in this the first civil legal aid case to be considered by the Court, is notable for the absence of any detailed reasons for its decision on the interpretation of the Scheme. ❐

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

· DE ·
IRISH DOCUMENT EXCHANGE
37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin
OVERNIGHT ~ EVERY NIGHT
EVERYWHERE
1,500
Document Exchange
users in 37 exchanges
countrywide

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 in substitution from the original 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: 27 July, 1993.

Lost Land Certificates

Leonard Dowling and Kathrina Hogan, Folio: 16956F; Land: Naas East and Monread South. **Co. Kildare.**

William Joseph Moore and Julia Moore, Folio:21358; Land: Brooklodge. **Co. Cork.**

James Lynam, Folio: 6252; Land: Townland of Astagob, Barony of Castleknock. **Co. Dublin.**

Hugh Barr, Folio: 22937; Land: Culireen; Area: 10(a) 2(r) 3(p). **Co. Donegal.**

John M. Bennett and Jean S. Bennett, Folio: 1394L; Land: Strawhall. **Co. Carlow.**

Alexander Quigley, Folio: 43165 and 11543; Land: Ardmore and Ardmore; Area: 0(a) 2(r) 30 (p) and 47(a) 0(r) 38(p). **Co. Donegal.**

Bessie Fortune, Folio: 37R; Land: Carrigunane; Area: 36.25 acres. **Co. Wexford.**

Mary Angela Ronayne, Folio: 13226; Land: Part of the lands of Ninch. **Co. Meath.**

Stephen Donohue Junior, Killateeaun, Tourmakeady, Co. Mayo, Folio: 5886F; Townland: Gortmore. **Co. Mayo.** Solr. ref.: Co. 2197.

Patrick A. Sorohan, Folio: 1270F; Lands: Knockaghy. **Co. Cavan.**

Brasidas Estates Limited, Folio: 55497F; Land: Drummans in the Barony of Balrothery East. **Co. Dublin.**

Sean Byrne and Hugh Byrne, Folio: 7741 and 4988. **Co. Louth.**

James Carlos, Cappagh, Strokestown, Co. Roscommon, Folio: 961; Lands: Townland of Cappagh; Area: 32(a) 2(r) 0(p). **Co Roscommon.**

Rosemary Young, Folio: 12469F; Land: Killough; Area: 0,500 hectares. **Co. Tipperary.**

Glenberg (formerly Glenberg Limited and formerly Peter Mark Limited) Folio: 51484L; Townland: Rochestown Domain, Barony of Rathdown. **Co. Dublin.**

William Coen, Mental Hospital Staff, Ballinasloe, Co. Clare, Folio: 9119; Townland: Urraghry; Area: 26(a) 3(r) 1(p). **Co. Galway.**

Michael Reilly (deceased), Folio: 959 closed to 1629F; Land: Part of the lands of Farmullagh; Area: 21(a) 1(r) 38(p) **Co. Longford.**

Elizabeth Kelly (deceased), Folio: 29094; Land: Spital; **Co. Cork.**

Patrick Fitzmaurice and Ann Carmel Fitzmaurice, Folio: 2988F; Land: Crobally Upper; Area: 2.000 acres; **Co. Waterford.**

RSE Holdings Limited, Folio: 32735; Land: Collegrean; Area: 0(a) 3(r) 10(p). **Co. Kerry.**
Edward Reilly (deceased), Folio: 12662; Land: Legnagrow; Area: 25(a) 3(r) 5(p). **Co. Cavan.**

Daniel M. Burke, Folio: 11435F; Land: Cappanclare. **Co. Cork.**

Mary Ellen Kent, Folio: 3405F; Land: Situate to West Side of Barrack Street Town of Kinsale. **Co. Cork.**

Mary Bridget Shanley, Folio: 11121 and 11087; Land: Keshcarrigan; Area: 2(a) 3(r) 25(p) of 11121 and 19(a) o (r) 38(p) of 11087. **Co. Leitrim.**

Jeremiah Merrick, Folio: 3222 closed to folio 30768; Land: Kilsheenane and Garrane; Area: 7(a) 0(r) 36(p) and 18(a) 0(r) 25(p). **Co. Tipperary.**

John McEniry, Folio: 20523F; Land: Ballynoe (E.D. Bruree). **Co. Limerick.**

John T. Kilcooley, Corrabaun, Gort, Co. Galway, Folio: 1887; Townland: Baunrogh; Area: 24(a) 2(r) 34(p). **Co. Galway.**

Patrick Noel McCormack, Folio: 5754; Land: Sunglen; Area: 48(a) 0(r) 36(p). **Co. Limerick.**

Jeremiah O'Donovan, Folio: 15283 and 15284; Land: Mellifontstown. **Co. Cork.**

Eamonn and Marguerite Enright, Folio: 1711F; Land: Pallas; Area: 32.142 acres. **Co Limerick.**

Patrick Bissett, 14 Balbriggan Road, Skerries, Co. Dublin, Folio: 12853; Land: Townland of Townparks, Barony of Balrothery East. **Co. Dublin.**

Bartholomew (Orse Barry) Foley, Cairns, Moneygold, Co. Sligo, Folio: 8148F; Townland: Mount Temple; Area: 0.107 hectares. **Co. Sligo.** Solr. ref.:L.McM/PD/927.

Elizabeth Ann O'Sullivan, Folio: 60405; Land: Skevanish. **Co. Cork.**

Sean S. O'Donnchadha, (The Official Assignee in Bankruptcy) Folio: 6733R; Lands: Gearagh; Area; 163(a) 1(r) 4(p). **Co. Cork.**

Daniel Pilkington, Folio: 592; Land: Part of the lands of Breaghmore; Area: 0(a) 3(r) 24(p). **Co. Kings.**

Industrial Development Authority, Folio: 21112, Land: Carrickboy; Area: 16(a) 3(r) 20(p). **Co. Donegal.**

Iris Pearson, Folio: 1467; Land: Part of the lands of Kilnaseer; Area: 73(a) 3(r) 24(p). **Co. Queens.**

Lost Wills

Harrington, Doreen, deceased, late of 71 Ballygall Road East, Finglas, Dublin 11. Would anybody having knowledge of the whereabouts of the original will dated 10 January, 1990 of the above deceased please contact Messrs. F.H. O'Reilly & Co., Solicitors, 334 North Circular Road, Phibsborough, Dublin 7. Tel: 303122.

Ryan, James, late of Russell Hill, Innishannon, Co. Cork. Would any person having knowledge of the whereabouts of a will of the above named deceased dated 2 June, 1983 who died on 17 October, 1984, please contact M/s Collins Brooks & Associates, Solicitors, 7 Rossa Street, Clonakilty, Co. Cork. (Ref: AO'D/MS).

Dunne, Elizabeth (Lily), late of 16 Sigurd Road, off Manor Place,Dublin 7, Spinster. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 15 March, 1993, please contact Hehir Mulryan & Co., Solicitors of 17 Forster Street, Galway. Tel: (091) 61646/67301.

Holbrook, Laura, late of 43 Hollybrook Grove, Clontarf, Dublin 3. Date of death: 1 June, 1992. Would anyone knowing the whereabouts of a will of the above named deceased, please contact Joynt and Crawford, Solicitors, 8 Anglesea Street, Dublin 2. Ref: GHC.

Scanlon, Patrick, late of Ballynahina, Whitescross, Co. Cork died on 9 June, 1993. Would any person having knowledge of the whereabouts of any will of the above named deceased, please contact David J. O'Meara & Sons, Solicitors, Bank Place, Mallow, Co. Cork. Tel: (022) 21539, Fax: (022) 42164.

Employment

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 Ms. Erin Barry, at the Law Society, 6710711, Ext. 401.

Freelance Solicitor Available 1 – 3 days a week, temporary or longterm. Experienced in all aspects of general practice. Can assist in dealing with general work or specific cases. Job sharing considered. Please reply to box no: 60.

Capable and Enthusiastic newly qualified solicitor required initially on part-time basis, to specialise in wills and probate. Good working knowledge of trusts law, family law, CAT etc., CV and references to box no: 61.

Solicitor with over twelve years experience in banking, conveyancing, litigation, landlord and tenant, plus local government law, seeks new position within private practice or institution. CV and references on request. Box: 62

Experienced Solicitor in private practice, litigation and conveyancing, seeks locum or contract work. Part-time might suit. Full CV on request. Box: 63.

Capable and Enthusiastic Solicitor (just 3 years post qualification experience) seeks part time position in Dublin office. Conveyancing, litigation, family law and probate experience. Reply to tel no: 01-540716.

Experienced Solicitor available immediately for part-time or locum work. Phone Dublin (318519).

Reliable and Dependable Solicitor with seven years post qualification experience covering in particular litigation, conveyancing and probate work, seeks responsible position. Excellent references. Immediate availability. Please reply to Box No: 66.

Miscellaneous

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

Solicitors Practice: – Co. Tipperary – For Sale. Sole Practitioner. All replies in confidence to box: 64.

Wanted: European Court Report 1980 to-date. Bound volumes or loose parts. Contact: 8722399.

Seven Day Publican's Licence for Sale contact Egan Daughter & Co., Solicitors, Castlebar, Co. Mayo.

For Sale: 7 Day Ordinary Publicans Licence. Offers in writing to Kelly & Ryan, Solicitors, Manorhamilton, Co. Leitrim.

Lost Title Deeds

In the matter of the Registration of Title Act, 1964 and of the application of Colemans Printers Limited in respect of the property known as Nos 2 and 3 Travers Street in the City of Cork.

Take notice that Coleman Printers Limited having its registered office at Clarke's Bridge in the City of Cork have lodged an application for their registration on the Freehold Register free from encumbrances in respect of the above mentioned property. The original documents of title 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 ref. S13117/92.

The missing documents are detailed in the Schedule hereto.

Dated the 21st day of June 1993.

Schedule

1. Deed of Conveyance dated 15th August 1962 Susan Mary Locke and Theodore Guillaume of the First Part, Mabel L. Swete of the Second Part and J.P.W. Limited of the Third Part.
2. Deed of Conveyance and Confirmation dated the 12th February 1964 John E. Wallis and J.P.W. Limited.
3. Deed of Conveyance dated 21st May 1964 J.P.W. Limited to David Coleman.
4. Deed of Conveyance and Assignment dated the 25th May 1970 David A. Coleman to Colemans Printers Limited.

John Deeney,
Examiner of Title.

Law Directory 1994 – Reminder

Members of the profession are reminded that forms have now been circulated containing the information that will be published about them in the 1994 edition of the Law Directory. **It is extremely important that practitioners check the information on these forms carefully and notify the Society of any corrections in order to ensure an accurate entry in the 1994 Directory.** Practitioners in Dublin are asked to exercise special care when checking their telephone and fax numbers, as many numbers in Dublin have changed from six to seven digits in the past year.

Commissioner for Oaths

Practitioners will also have received a form requesting information about whether they are a Commissioner for Oaths, Notary Public, and/or Summons Server and are, likewise, requested to note any corrections in this regard. It is extremely difficult to maintain the accuracy of the listing of Commissioners for Oaths. Therefore, practitioners are requested to look through the section of the Directory which lists all the Commissioners for Oaths in their locality and to notify the Society of any changes of which they are aware that should be made to the listing.

Please note that all forms should be returned to the Society by 30 July, 1993. If you have not already returned your form, **please do so immediately.**

However, if there are no corrections there is no need to return the forms. ❐

Practice Note

Residential Property Tax – Certificate of Clearance

In respect of contracts for sale dated on or after 1 August, 1993, a solicitor acting for a purchaser of residential property, for a consideration in excess of the statutory threshold (currently £91,000), is obliged to deduct a specified amount from the consideration on closing to cover any residential property tax due by the vendor unless the vendor produces a certificate of clearance from the Revenue Commissioners.

Reference should be made to the booklet issued by the Revenue Commissioners setting out full details of the clearance certificate procedure.

The Conveyancing Committee will draft additional Requisitions on Title to cover both the residential property tax and the probate tax (which applies to deaths after 17 June, 1993) for use by the profession. ❐

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 8725622
Fax: (01) 8725404

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

PETROCARGO MARINE SURVEYORS LTD.

Capt. Thomas C. Nash
M. INST. PET.

Marine Consultancy;
Independent Marine Surveyors;
Marine Expert Witness;
Ship to Ship Transfer;
Vessel & Terminal Safety Inspection;
Recruitment; Procedures Manuals.
Cooleen House, Rushbrooke, Cobh, Co. Cork.
Tel: 021-811677 Fax: 021-813009

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

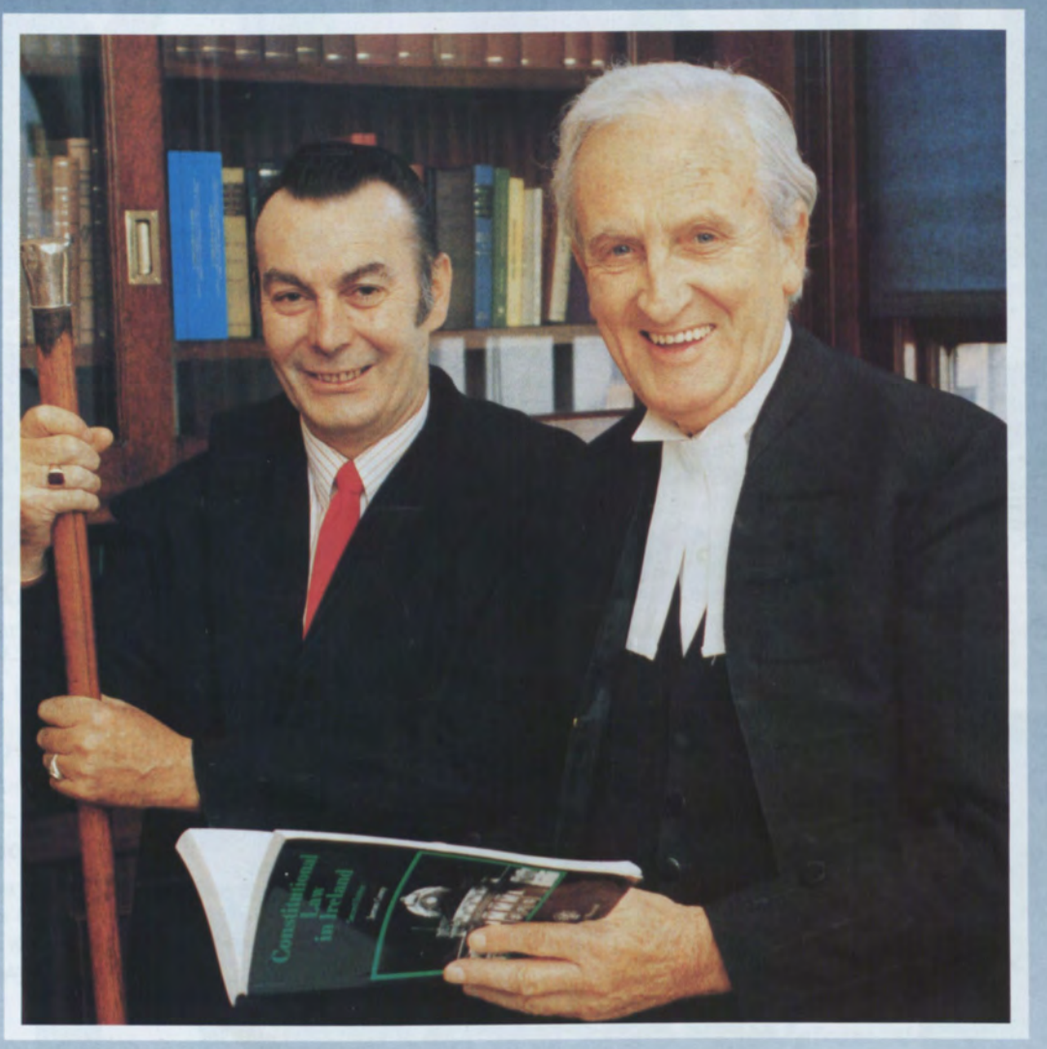
Past performance may not be a guide to future returns which are dependent on future investment conditions. Unit values can go down as well as up.

VOL. 87 NO. 7 SEPTEMBER, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND LIBRARY



CIVIL LEGAL AID – FEES REJECTED

ABA CONFERENCE – JUSTICE FOR ALL

IMPLEMENTING EC DIRECTIVES INTO IRISH LAW

COMPETITION ACT AND EEC BLOCK EXEMPTIONS

ITALAX

Ring For Your Free Fact Sheet

Now includes 3rd Party Returns

Orchard Centre
Nationwide

Dublin:-
Orchard Software Ltd
01- 2807588

Legal & General
01-8725522

Midlands:-
Aptech Ltd 042- 3174

South:-
P.F.H. Computer Systen
(021) 271152

North:-
Canavan Computer
Systems 0504 -26-777

Orchard Software Ltd.

VOL. 87 NO. 3 SEPTEMBER 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 245

The Government must properly fund a comprehensive Scheme of Civil Legal Aid and offer fair fees to solicitors if they wish to have the involvement of private practitioners in the Scheme.

President's Message 247

Law Society President, *Raymond Monahan*, urges every practitioner to think about the quality of service being offered to clients.

News 248 et seq.

Judge reflects on distinctive qualities of Irish constitution page 248; Solicitor wins Young Businesswoman Award page 250; Compensation Fund payments during July page 257; Solicitor witness for Yugoslavia page 267; The J.P. O'Reilly Memorial Scholarship 1993/94 page 272; SADSI News page 278; Clarke chairs Bar Council page 279.

Council to Consider Admission Policy 249

At its meeting in July the Council of the Law Society decided to devote a one day special meeting to give in-depth consideration to admissions policy and related matters.

Practice Notes 253

The Law Society's standard conditions of sale; certificates of discharge from CAT; warning on advance fee fraud and other notices for the attention of practitioners.

Lawbrief 255

Telephone Privacy – a Guide to the Interception Act, 1993; Conveyancing; the Lockout Agreement; Wigs Again, and the Secrets of Success; *Dr. Eamonn Hall* reports.

Necessity and Chaos: How constitutionally to implement an EC Directive into Irish Law 258

Noel Travers examines the implications of the recent Meagher judgment and reviews the options for implementing EC measures into Irish law in the light of the judgment.

People and Places 262

ABA Annual Conference 265

Lack of resources for the justice system, and unease about increasing gun-related violence were some of the concerns voiced at the American Bar Association annual conference, which was attended by a delegation of Irish solicitors intent on promoting Irish legal services.

Book Reviews 269

Reviews of the following recent publications; Employment Law; Tax Guides 1992/1993 and Tax Acts 1992/1993; The Kilkenny Incest Case, and The Irish Criminal Law Journal.

The Competition Act and EC Block Exemptions 273

Denis Cagney examines the relationship between EC Block Exemption Regulations and domestic competition legislation.

Technology Notes 277

This month, *John Furlong* outlines the practical considerations in establishing an effective document management system.

Professional Information 281

Notices concerning lost land certificates; lost title deeds; lost wills; and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

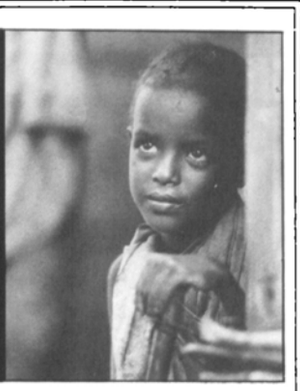
Advertising: Seán Ó hOisín. Telephone: 305236 Fax: 307860.

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7.
Telephone 6710711 Telex: 31219 Fax: 6710704.

Front Cover Photograph: The front cover shows the Hon. Mr. Justice Anthony Hederman (right), on the occasion of his retirement from the Supreme Court on 30 July last, with his tipstaff, Mr. Tommie Barnes.



There Is An Alternative.

Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now,

Siobhán Walsh

CONCERN

1 Upper Camden Street, Dublin 2. Tel. 6681237

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

THE BAR COUNCIL OF IRELAND
ANNUAL CONFERENCE 1993

"Taking Liberties: The Media and the Law"

Guest speakers include:

PETER SUTHERLAND
Director General, GATT

LORD WILLIAMS OF MOSTYN QC

and

AENGUS FANNING
Editor, Sunday Independent

Venue: PILLAR ROOM, PARNELL SQUARE

Date: SATURDAY 27TH NOVEMBER

The Conference is open to members of the Law Library, Solicitors and other interested parties.

For further details contact:
NUALA JACKSON BL
at 702 4891
or CLAIRE BYRNE
at 702 4900 / 702 4901

Creative

Inheritance Tax

&

Probate Tax Planning

Acknowledged by leading Solicitors & Tax Consultants as innovative and effective ..... **a new dimension.**

Of particular interest to Solicitors active in the estate planning process of high-net-worth clients.

contact Owen Morton FCII

MONEYWISE
Financial Planning Ltd.
23 Fitzwilliam Sq. Dublin 2.
Tel (01) 6 762 205 Fax (01) 6 619 575

VIEWPOINT

Civil Legal Aid – One Step Forward, One Step Back

In November, 1991, the Society made a detailed submission to the Government making recommendations on necessary and desirable improvements in the Scheme of Civil Legal Aid and Advice. It was pointed out in that submission that the Scheme had been seriously under-funded since its inception and it was recommended that it should be broadened in its scope and that private practitioners should be brought within its ambit so that a proper service could be provided to those in need.

From research conducted by the Society, it is clear that the Scheme of Civil Legal Aid that operates in Ireland is one of the worst – if not the worst – in Western Europe. On a *per capita* basis, Ireland spends about 8% of that spent on civil legal aid in the United Kingdom. (FLAC estimates that there is one legal aid solicitor serving the needs of 21,102 Social Welfare recipients compared to a ratio of one solicitor per 705 of the rest of the population.) A reasonably comprehensive and effective Scheme of Civil Legal Aid and Advice could be introduced in this country for about £8m. Having regard to the importance of providing assistance to people to defend and vindicate their legal rights, that would be a small price to pay for such a service.

While the Law Society has no doubt that the Minister for Equality & Law Reform, *Mervyn Taylor*, TD, is sincere in his commitment to improving Civil Legal Aid, the recent pilot scheme introduced by the Minister, which envisages the involvement of private practitioners in the Civil Legal Aid Scheme, has serious shortcomings.

Under the pilot project the Minister has made a sum of £100,000 available to the Legal Aid Board to enable them to hire solicitors in private practice to handle certain family law cases in the District Court. However, the level of fee offered to private practitioners of £75 per case (reducing to £65 per case after the first four cases) is so inadequate that it left the Council of the Society no choice but to recommend to members not to participate in the Scheme. But, equally important, is the fact that the pilot project is so limited in scope that civil legal aid clients would not receive a proper service under its terms.

The pilot project only covers barring orders, maintenance and custody matters in the District Court. Parties to a family law case will not, therefore, be able to use the Scheme to obtain legal aid to conclude a separation agreement because the Scheme does not cover the negotiation of a Deed of Separation. Thus, it will force parties to litigate, possibly introducing unnecessary acrimony in what are already sensitive matters. If a legal aid client in a family law case wants to commence judicial separation proceedings then he or she will have to use a legal aid solicitor from a Law Centre. Likewise, if the applicant wishes to appeal from the District Court, a Law Centre solicitor must be used. It will be impossible, therefore, for the private practitioner to form an ongoing relationship with the legal aid client.

The pilot scheme only applies to *court cases* and appears to assume that solicitors could take more than five such cases a day. Obviously, it is envisaged that solicitors would not see legal aid clients in their offices but only in court on the day of the hearing. With respect to the Minister, this is conveyor belt legal aid. Family law cases involve sensitive and complex issues. No solicitor could properly understand the facts of a broken marriage, including the needs of the children, the needs of the spouses, and advise on the best long-term options for his client, from a short interview a few minutes prior to a court hearing, with five or more other clients also waiting for consultations.

The Government must face up to its responsibility to provide a comprehensive scheme of Civil Legal Aid and Advice. If the Government wishes private practitioners to participate in the Scheme – and, in principle, this is the right approach – it must be on the basis of a Scheme that is properly thought out and one that offers fair fees to solicitors for the work involved.

People who have to avail of civil legal aid are entitled to the same standard and quality of service and expertise as a private client; indeed, no solicitor would consider giving a less than first class service to a legal aid client. However, solicitors cannot be expected to subsidise the Civil Legal Aid Scheme and thus a fair level of fees must be agreed. In addition, it is clear that the scope of the pilot scheme, and indeed, any longer-term involvement by private practitioners in the Scheme of Civil Legal Aid, needs further consideration. ❐

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 8725622
Fax: (01) 8725404

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

Getting Married?

Why not hold your wedding reception in the elegant surroundings of Blackhall Place?

- **Parties of up to 200 catered for.**
- **"Afters" catered for.**
- **Available to solicitors and their sons, daughters, brothers, sisters, nephews and nieces.**
- **Attractive location for photographs.**

Contact:
Peter Redmond (Phone 6710711, Ext. 472)
for a competitive quote.

HOUSING (RENT BOOKS) REGULATIONS 1993

in operation from 1st September 1993

TENANT RENT BOOKS

TO COMPLY WITH THE ABOVE REGULATIONS
ARE NOW AVAILABLE FROM

KINGS
LAW STATIONERS

54 Bolton Street, Dublin 1.
Telephone: (01) 873 1455 Fax: (01) 872 3052

.....

Also Letting Agreements for business premises or private dwellings together with a full range of legal requisites

PRESIDENT'S MESSAGE

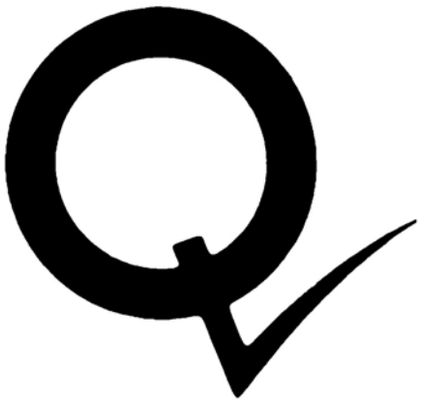
Quality – Our Competitive Edge

A frequent theme of conversation with lawyers from various countries over my term as President has been the increased difficulty being experienced by law firms in maintaining levels of profitability. In addition, lawyers generally find that they must strive harder to provide the service demanded of them by their clients. Competition for areas of work has increased from both within and without the profession and, as the recession persists world-wide, areas of work continue to shrink, while clients are becoming more sophisticated, demanding and discerning. This increased competition means that we now need to concentrate more than ever on the quality of the service that we, as lawyers, provide. In Ireland, the solicitors' profession is giving serious attention to the whole question of quality and quality standards, following the example of our commercial clients who already well appreciate the importance of achieving the highest standards of quality and client care as part of their public relations and marketing strategy.

"Quality – the Competitive Edge" – was the theme of this year's Annual Conference of the Society which took place in Connemara last May. The guest speakers had already become involved in applying quality standards and were unanimous in their view that the exercise had improved the service they provided to clients. I believe that it is now time for all firms in Ireland to seriously consider the quality of the service they offer, to realistically evaluate this service and to take steps to improve it.

Quality, insofar as the service being offered by any firm of solicitors is concerned, would seem to me to involve the following components:

1. **Quality of service** – each contact with our clients must involve the highest standard of efficiency and courtesy possible, coupled with a thorough understanding of the client's needs.



The Irish quality standard – the Q Mark.

2. **Quality of management** – In our practices we must develop systems and procedures to facilitate time management, finance management and case management so that efficiency and communication with clients on an ongoing basis can be achieved and maintained.

3. **Qualify of premises and facilities** – our offices, technology systems, filing systems, accounting systems and libraries must be the very best that we can afford.

Unfortunately, a quality service cannot be achieved effortlessly. Detailed procedures and systems must be put in place. This involves individual solicitors devoting a specific period of time to concentrate on the establishment or improvement of such procedures and systems. In many cases this may mean the practitioner adopting a completely new frame of mind in relation to the running of his practice. However, the adoption of quality standards can bring a good return on the time invested and lead to more profitable practices.

In addition to examining the concept of quality at the Annual Conference, the Law Society has also been involved throughout this year in considering how best to promote the quality concept and whether or not the Society itself should promulgate Practice Management Standards (PMS). Already some practices are looking at the possibility of acquiring the Irish standard – the Q mark; the English standard – BS5750, or the European standard IS09000. These formal standards cannot be achieved without a comprehensive effort on behalf of all members of any particular firm over a considerable period of time but, as we were reliably informed at the Annual Conference, the effort is well worthwhile. PMS on the other hand, could provide firms with the opportunity to set their own standards of client care and quality in the first instance, after which they could then go on to consider applying for the formal standards if they wished. PMS would not consist of procedures and systems being prescribed but rather would identify the key disciplines in which firms should establish standards to suit their needs and those of their clients. The Society would assist firms interested in this approach by providing documentation, seminars etc.

The concept of quality is one that will be promoted by the Society at every opportunity from here on. The Practice Management Committee hopes to stage a series of lectures and workshops around the country over the coming months.

I urge every practitioner to think about the quality of service he or she is offering to clients and how it might be improved. Improving individual standards will, in turn, improve the general standard of the profession and result in an improvement in our reputation and standing. Ensuring that clients receive a good service is the best kind of public relations that we can engage in as a profession. ❐

Raymond Monahan
President

Judge reflects on "Distinctive Qualities" of Irish Constitution

On the occasion of his retirement as a judge of the Supreme Court on 30 July last, the Hon Mr Justice Anthony Hederman, reflected on the role of the judiciary in modern society, the distinctive qualities of the Irish Constitution and paid warm tribute to his judicial colleagues and staff in the Courts.

Acknowledging the kind remarks of the Chief Justice, the Attorney General and Michael O'Mahony, Senior Vice-President of the Incorporated Law Society, Mr Justice Hederman said: "My thoughts to-day are a curious mixture of pride and humility, and I am proud to have had the opportunity to participate in the judicial process as a member of this court. No greater honour could be bestowed on any practising layer. I am, however, humbled by the awesome responsibilities which attach to judicial office.

"To be a judge requires full independence in the exercise of one's office. Independence not merely from external pressure by the Executive or by the Oireachtas or even by organs of public opinion but also from the pressures that may come from within; examples such as bias, arrogance or timorousness. Human frailty does not evaporate when one is appointed to high judicial office. In discharging the judicial function, the judge has not merely the privilege of judicial independence but also has to do his or her best to rise above the limits of personality and character which can sap that freedom and tarnish the delivery of justice. This is no mean task and one that I am conscious that I may not always have attained. To-day, however, my sentiment is one of pride in having served on this court."

The judge warmly praised the work of the current Registrar and former Registrars of the Supreme Court and the Court of Criminal Appeal, the secretarial and library staff. He acknowledged the members of the Garda Siochana who he said provided a "discrete and fully effective presence in Court when needed," and the press corps which report proceedings faithfully which was not always an easy task. He thanked his "alter ego" *Mr Tommie Barnes* "a truly loyal person and a committed and accomplished helper."

He continued: "as I leave the court to-day I have, of course, to reflect on the role of the judiciary in modern society. It is sometimes suggested that to be a judge is to be remote from the real world and cut off from the complexities and subtleties of personal relationships. No doubt this can be so in some relatively rare incidents but I believe it to be very much the exception in Ireland because of the manner of judicial appointments. Normally a person appointed to the bench has had many years experience in the courts already as an advocate. In fact one has to have practised for at least twelve years before one is eligible to be considered for judicial office in the Superior Courts. If one is then to be a successful advocate, able to engage in effective examination and cross-examination of witnesses and with the power to address a judge or a jury convincingly, it is essential to to immerse oneself in the totality of the facts of the case. To empathise with one's client and also with the other parties and the witnesses in the case, even those dramatically opposed to one's client. It is out of this capacity to understand the truth and integrity of other people's experiences that a genuine worldly wisdom can develop. An advocate who is removed from reality, who stands aloof from the dynamics of the relationships of a case with which he or she has to deal with will be a poor advocate and one who is not likely to be a fully effective judge.

"It has been a very happy duty to discharge my obligations as a judge under Bunreacht na hEireann. Our Constitution is based on the philosophical proposition that certain rights inhere in human beings by virtue of their humanity. The Irish Constitution is rooted in an understanding of the human person as necessarily involving human rights which are not and cannot be the gift of the State either to bestow or to withdraw. Since insight into the nature of human rights infuses every constitutional principle, as judges we are obliged to respect and protect human rights even when it may be unpopular for one so to do. Our task is to ensure that the human rights of all beings are protected and that no invidious discrimination will be permitted.

"From my frequent discourses with young lawyers, those who have been recently called to the Bar or who indeed are still studying at the University, I sense a growing appreciation of the distinctive qualities of our Constitution as an instrument for protecting fundamental human rights."

Mr Justice Hederman said that: "The torrent of court decisions with a constitutional dimension have inspired a considerable body of stalwart analysis both at home and abroad. Far from been a backwater of ex-colonial provincialism, Irish constitutional law is now the object of very great interest and respect at a universal level.

"There are, of course, still the voices of provincialism to be heard from time to time. There is still the suggestion in some quarters that because our protection of fundamental rights is not always echoed in other jurisdictions, we must have got it wrong. This lack of confidence in the ability of Irish judges and in the depth of philosophical insight underlining the fundamental rights provision of our Constitution is in my view very misplaced. As I leave the bench to-day I know that my colleagues will continue to strive to give full effect to the truly human principles which ground our Constitution and which guarantee that every member of our community will be given true justice," he concluded. ❐

Council to Consider Admissions Policy

Report of the Meeting of the Law Society Council in July

The Council of the Law Society is to hold a one-day special meeting on 23 September next to give in-depth consideration to admissions policy and related education matters.

The Council decided on this step at its meeting on 23 July last in order to give sufficient time for consideration of a motion proposed by Council Member, *Frank O'Donnell*, calling on the Society to take all possible steps necessary to ensure that the numbers admitted to the Roll of Solicitors annually were commensurate with the needs of the community. The Council will also consider a proposed amendment to that motion from *Pat O'Connor*, Council Member, which calls on the Society to put in place, as expeditiously as possible, an assessment system which would allocate places in the Society's Law School on the basis of merit.

At the July meeting the Council approved a proposed increase in apprentices' fees of approximately 7%. The Council also approved the introduction of a fee of £50 on each application for consent of the Society to entry into indentures.

Lay Observers to the Registrar's Committee

The Council of the Society approved the nomination by IBEC (The Business and Employers' Confederation) of *Mr. Frank Bracken* and the nomination by the Irish Congress of Trade Unions of *Ms. Leonora Mrkwicka* as lay observers to the Registrar's Committee.

Compensation Fund

The Council approved a schedule of payments out of the Compensation Fund amounting to £249,972 in total (see report on page 257). The Council also considered policy issues concerning the exercise of a discretion given to the Society under Section 21(5)(a) of the Solicitors Act, 1960, under which the Society may make, or refuse to make, a grant from the Compensation Fund in a case in which a solicitor did not have a practising certificate in force at the time when, in the opinion of the Society, the loss arose. The President of the Society, the Director General and the Chairman of the Compensation Fund, agreed to prepare a detailed memorandum of all the relevant facts and arguments concerning the exercise of the discretion, for further consideration by the Council.

Council to consider motion ". . . to take all steps necessary to ensure numbers admitted ... are commensurate with the needs of the community".

The Council noted the contents of the Accountants' Certificate Report which indicated that over 97% of the profession had complied with the obligation to return accountants' certificates.

Taxation

The Chairman of the Taxation Committee reported to Council on further meetings that had been held with the Revenue Commissioners in order to clarify a number of points outstanding in relation to the implementation of Part VII of the Finance Act, 1992. He reported that it had been agreed that debt collection on behalf of local authorities and other public bodies would be exempt from the requirements of the legislation. (This had been requested by members of the profession at the Special General Meeting held on 17 June last.)

With regard to section 59 notices (Finance Act, 1974), the Taxation Committee Chairman said that the Revenue Commissioners had indicated that they would be prepared to introduce an experimental procedure for a trial period of six months under which, if a solicitor considered that a full return would require disclosure of highly sensitive and exceptional personal information in relation to a client, then the solicitor could make representations to the relevant unit of the Revenue. Representations could also be made by the Society, following approaches by an individual solicitor, on matters where, in the Society's opinion, a full return could have consequences contrary to the general public interest. The Chairman reported that, having exhausted the issue with the Revenue Commissioners, the Taxation Committee was reluctantly of the view that there was no alternative to complying with the requirements of section 59. Non-compliance would inevitably result in prosecution of solicitors and would gain no sympathy in the public forum. A number of Council members expressed concern about solicitor-client confidentiality and suggested that similar guarantees regarding confidentiality to those obtained from the Revenue Commissioners in relation to Part VII of the Finance Act, 1992, should be sought in relation to section 59. Following further discussion the Council approved the recommendation of the Chairman with regard to section 59 Notices.

The President of the Society noted that the Society's submission to the Minister for Finance on the Tax Amnesty Bill had been very successful. He also reported on a meeting between the Alliance Against Probate Tax and the Minister for Finance and, although the Minister had not guaranteed to reconsider the tax, the

Alliance was still hopeful that it might achieve its withdrawal. The Society would continue to campaign against the tax as part of the Alliance.

Pilot Civil Legal Aid Scheme

The Council considered a proposal by the Minister for Equality & Law Reform for a pilot project which would involve private practitioners in the Scheme of Civil Legal Aid at District Court level. The Minister was making a sum of £100,000 available for the project and he was proposing that solicitors would act in judicial separation cases for a fee of £65 (exclusive of VAT) less withholding tax.

The President of the Society said that while the Minister was clearly enthusiastic about resolving the deficiencies in the Civil Legal Aid system he proposed to respond to the Minister on the basis that the Council felt that the terms on offer left them no option but to reject the proposal. The Council agreed that the fee being offered was derisory and inadequate and endorsed the President's approach.

Criminal Legal Aid

As part of the agreement concluded in late 1992 with the Department of Justice on criminal legal aid fees, it had been agreed that special fees would be negotiated in exceptional, complex cases. The Criminal Law Committee reported to Council that despite this agreement the Department had not yet put in place arrangements for determining the higher level of fees. The Council gave the Committee approval to take all necessary steps, including withdrawal from the scheme, to ensure that the Department met its commitment. The Council also approved a proposal to provide an indemnity to a colleague to take an action challenging the linking of solicitors' fees with counsels' fees.

Doctors' Ethical Guide

The Chairman of the Litigation Committee reported to Council that the Medical Council had approved an amendment to its Ethical Guide and doctors were now under a strict obligation to provide medical reports when requested to do so by parties to litigation.

Seminars on Remuneration/Costs

The Chairman of the Remuneration/Costs Committee reported that a seminar on costs would take place in Dublin on 22 September in conjunction with the DSBA. All other bar associations had been asked to suggest dates and venues for holding of regional seminars on the issue. In the meantime, each practice would be issued with a "ready reckoner" form to assist them in calculating the cost per hour of running their offices.

Northern Ireland Nominees

As is the tradition, the nominees of the Law Society of Northern Ireland attended the July meeting of the Council and at the meeting *Anthony McGettigan*, President of the Law Society of Northern Ireland, thanked the President and the Council for the welcome and hospitality extended to the nominees during their visit. While there was no corresponding right for Law Society Council members to attend meetings of the Council of the Northern Ireland Law Society, Mr. McGettigan invited the President, Senior Vice-President and Director General of the Law Society of Ireland to attend his Society's Council meeting in August. ❐

Solicitor Wins Young Business Woman Award

Mairead Bourke, admitted Trinity 1992, who set up practice in Westport in September, 1992, won first prize in the Young Business Woman Award, Galway and District regional final. Her "user friendly legal practice" won out against some very tough competition. As Chairman of the Practice Management Committee, I asked Mairead what she did differently. She replied:

"My interest in good practice management stems from my work experience as a Socio Economic Advisor with Teagasc and the jaundiced view many of my farm family clients held regarding the legal profession. When I set up in practice myself, I resolved to create a pleasant and stress free atmosphere in the office, as I was surprised that some clients find it traumatic to have to

Mairead Bourke

breach the bastions of a lawyer's office. My reception office is bright, dust free and stocked with in date magazines, the *Irish Times* daily, plants and fresh flowers and a small toy box (suggested by a male colleague). I practice as a matter of course eight out of ten management tips suggested by *Brian O'Reilly* in his recent article and have taken note of the other two!"

"In addition, I see busy clients outside of office hours. I note name of clients' spouses and children, wherever possible. I send out personalised Christmas cards, which have a very favourable response. I would always try to keep the client informed of progress on a file, and pre-empt the situation where he/she contacts me to find out what is happening. It's a difficult one to achieve with a heavy work load. Finally, I make a point of always being here to keep appointments and telephone clients if there will be a delay."

Congratulations Mairead, I'm sure your initiative will pay dividends.

Justin McKenna
Chairman, Practice Management Committee ❐

"Capping" Proposal Criticised

The period from mid-July to early September was relatively quiet in the media concerning coverage of legal affairs, with the legal professions, for once, largely escaping "silly season "treatment.

Justice Media Awards

The awards ceremony of the Law Society's inaugural Justice Media Awards competition received favourable coverage, including photographs, in all the national daily papers on Saturday 10 July, the *Sunday Independent* of 11 July, and in the *Western People, Corkman* and *Kerryman* the following week. Inevitably, the newspapers focused in particular on the members of their staff who had won awards or received certificates of merit.

Probate Tax Campaign continues

The meeting of the Alliance Against Probate Tax with the Minister for Finance in mid-July received considerable coverage in the provincial media in the subsequent fortnight. All the papers quoted *Raymond Monahan*, President of the Law Society, saying that the Minister had accepted that the Alliance represented a huge cross section of interests which were totally opposed to the introduction of the tax and reported that the Minister had agreed to conduct a review of the effects and the operation of the tax.

Proposal to cap personal injuries awards.

A front page story in the *Irish Independent* on 19 August, 1993, reported that a radical plan to cut insurance costs by limiting court awards in personal injuries cases was to be brought before the Cabinet by Commerce & Technology Minister, *Seamus Brennan*, and that the proposals could become law within the year. The article noted that Mr. Brennan had come in for strong criticism from the Incorporated Law Society when he had first announced the plans and quoted Mr. Brennan saying that he totally disagreed with the views expressed by the Law Society in a submission to him. A news analysis feature article in the *Independent* on the same day repeated much of the front page story and included the Minister's claims that research showed that awards here were up to 78% higher than the EC average.

The following day, the *Independent* reported that Minister Brennan's plan might not have an easy passage through the Cabinet as it was understood that some Labour Ministers, in particular, had reservations about his proposals. The article also noted that the Law Society had reacted strongly to the latest report of the Minister's plans and had stated that his proposals would be unjust and would penalise ordinary people who suffered injury through no fault of their own. The article noted that the Society was calling on Mr. Brennan to abandon any move to interfere with the discretion of the courts to fully compensate people and that the Society had called for greater attention to safety, particularly in the workplace, more rigorous enforcement of the road traffic laws, an improvement in the condition of roads, greater resourcing of the courts system in order to reduce delays, and an examination by insurance companies of their administrative costs and practices, as ways of attempting to reduce the cost of insurance. An article in the *Cork Examiner* on 20 August, 1993 entitled "Law Society raps injury award plan", reported in detail on the statement issued by the Law Society on 19 August.

In the *Sunday Independent* on 22 August, 1993 columnist *Sam Smyth* noted that the latest proposal would be the fourth "favourable" reform successive Governments had put in place at the behest of the insurance industry, but that insurance premiums had continued to spiral after the first three reforms. Reporting in the *Irish Independent* of 31 August, 1993 on the Annual Report of the Motor Insurance Advisory Board, which noted that motor insurance premiums in Ireland were 98% higher than the EC average while the claims payout was 160% higher here, journalist *Gene McKenna* said that Minister Brennan's proposals had had a mixed response and he repeated the assertion that some Labour Ministers were known to have strong reservations about the plan to take the pain and suffering element out of court awards. He noted that the Incorporated Law Society "had led the criticism" of Mr. Brennan's plans.

Resourcing of the Courts

A number of news items over the six week period reported on the apalling condition of various courthouses around the country. The Chairman-elect of the Bar Council, *Frank Clarke* SC, spoke out about the need to appoint another six judges in the High Court and said that the Law Society and the Bar Council were preparing a major submission to the Minister for Justice on the need for adequate resourcing of the courts system. The Bar Council also called on the Government to ensure that representatives from the practising professions would be included on the Judicial Commission being set up to examine the administration and functioning of the courts, echoing a demand made publicly by the Law Society earlier this year.

All the daily newspapers of 4 September reported the judgment of the Hon Mr Justice Lynch in which he made an order to the Minister for Justice to direct Louth County Council forthwith to provide courthouse accommodation suitable for the sittings and business of the Circuit Court in Drogheda, following a case taken by members of the Drogheda Bar Association seeking to compel the Minister to perform her duties under the Courthouses (Provision and Maintenance) Act, 1935.

Barbara Cahalane ❑

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.

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

MKM

MacGreevy Keane Mediation

Contract Dispute Resolution

- MKM offers a voluntary, informal, efficient and economical mediation service for the resolution of commercial disputes.
- The MKM system means that unnecessary adversarial arguments are avoided.
- MKM helps both parties to focus on the problem and to look properly at both sides of the case.
- The mediator seeks the middle ground and then facilitates a settlement which is acceptable to both parties.

MKM
MacGreevy Keane Mediation
Contract Dispute Resolution
Kingram House, Kingram Place, Dublin 2.
Telephone: 01-6766811/6766815.
Fax: 01-6766853

Irish Stenographers Limited

(Director: Sheila Kavanagh)

Qualified
Experienced
Stenographers.

Fast, Efficient Service.

Overnight Transcripts by arrangement

Contact: Secretary,
Hillcrest House, Dargle Valley,
Bray, Co. Wicklow.

Telephone: (01) 2862184
Fax: (01) 2862184

The Law Society's Standard General Conditions of Sale

Section 22 (7) of the Building Control Act, 1990, contains a most helpful amnesty with regard to works executed prior to 13 December, 1989 in contravention of bye-laws.

Section 19 of the Local Government (Planning and Development) Act, 1992, introduced important alleviations in relation to enforcement procedures under the planning legislation. These are dealt with comprehensively in an article by *John Gore-Grimes* published at page 383 et seq of the *Gazette* for December, 1992. (Vol. 86 No. 10).

A vendor, anxious to avail of the foregoing amnesty and/or alleviations or any extension thereof and to rely on same, should disclose the non-conforming matter in his Special Conditions (possibly detailing appropriate dates and other relevant data by way of Statutory Declaration), and provide (likewise by Special Condition) for any required consequential relaxation in, or departure from, the application of General Condition 36.

Failure to cover a non-conforming issue as suggested or in some other appropriate manner will mean that the full vigour of General Condition 36 will continue to operate with resultant exposure on foot of the warranties therein specified.

It should be mentioned that the latest (1991) edition of the Society's General Conditions of Sale was published prior to the coming into operation of the Building Control Act, 1990, and its attendant regulations, and same are, therefore, not referred to therein. Accordingly, any party desiring to provide for evidence of compliance with such regulations should cater for same by way of Special Condition.

Conveyancing Committee

Certificates of Discharge from CAT

A number of queries have been received by the Conveyancing Committee with regard to the acceptability of conditional Certificates of Discharge from Capital Acquisitions Tax (CAT) where the time limit has expired.

A conditional certificate provides that, in the event of any variation from the market value accepted for tax on any portion of the property covered by it, occurring as a result of a sale or compulsory acquisition within a period of (in the case of agricultural property) six years, and, (in the case of other property) three years, the taxable value of the gift/inheritance may be subject to adjustment.

The argument has been made that, where a vendor is disposing of property and holds a certificate of conditional discharge, there is no necessity for an absolute certificate if the disposition occurs outside the time limit specified in the conditional certificate on the basis that the condition has withered. The difficulty with this argument is that is does not take account of the possibility of a prior transfer of *part* of the property which may have taken place within the limitation period. If this occurs then, although the subsequent disposition may have taken place outside the limitation period, a liability for tax may attach to it as a result of the earlier disposition.

It is the view of the Conveyancing Committee that a purchaser should not be obliged to enquire into the existence of earlier dispositions and is entitled in all cases to an absolute Certificate of Discharge from CAT. The vendor's solicitor should experience no difficulty or delay in obtaining such a certificate provided, of course, that no tax is payable.

Purchasers' solicitors will keep in mind, however, that property comprised in a taxable gift or taxable inheritance shall not remain charged as against a bona fide purchaser or mortgagee for full consideration after the expiration of twelve years from the date of the gift or inheritance (section 47 Capital Acquisitions Tax Act, 1976).

Conveyancing Committee

Warning on Advance Fee Fraud

It has come to the attention of the Law Society that a company purporting to provide financial services (including the purported arrangement of loans) has sought to enter into a business association with a number of firms of practising solicitors both in Dublin and in other parts of the country.

The *modus operandi* of this company is to request in advance a loan negotiating fee. The loan as proposed does not then materialise and the would-be borrower finds himself at the loss of the advance fee so paid. Solicitors and their clients should be wary of situations where such a negotiating or other fee is sought in advance of the drawdown of a loan and should take all steps necessary to verify the *bona fides* and authenticity of persons proposing such transactions. ❐

District Court Sittings Balbriggan – correction

Readers are asked to note a further correction to the information published about District Court sittings in Balbriggan in the July/August 1993 issue of the *Gazette* (Vol. 87 No. 6, page 206). Please note that the Court sits each **Thursday** between 10.30 a.m. and 1.00 p.m. and 2.00 p.m. and 4.00

p.m. for juvenile business, custody business and summary business (excluding malicious injuries) but only on the third **Thursday** of each month at 10.30 a.m. for civil business and on the third **Thursday** at 2.00 p.m. for enforcements.

Law Clerks Joint Labour Committee – Employment Regulations Order

At a meeting of the Law Clerks Joint Labour Committee held on 15 July, 1993 the application of the third phase of the PESP (an increase of 3.75%) 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 23 August, 1993. Members are advised that, as the Employment Regulation Order which covered the last increase took effect from 6 July, 1992, and the effective date implementation of the latest increase is 23 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 6 July, 1993.

Equality – Social Welfare Arrears

To avoid any confusion or duplication, FLAC would be obliged if you would note that *Mary Johnson*, Solicitor, is acting on behalf of a large number of clients throughout the country in relation to equality arrears. If you are taking instructions in the matter, it may be advisable to enquire whether the client has already instructed FLAC's solicitor.

Sabha Green, Information Officer, FLAC

IPAV Voluntary Compensation Fund

Solicitors might wish to note the existence of the Voluntary Compensation Fund established in 1986 by the Institute of Professional Auctioneers & Valuers (IPAV) and now standing at in excess of £1,000,000. The purpose of the Fund is to protect members of the public against direct pecuniary loss of money or property arising from the fraud or dishonesty or misappropriation by any principal or employee of any member of the IPAV. Claims are limited to £200,000 in any one claim. This Fund compliments the Statutory Bond of £10,000 required by every licensed auctioneer and no claim against the Fund will be considered until a claim has first been made against the Statutory Bond. Before any claim is considered full particulars in writing must be submitted to the IPAV, 44 Lower Leeson Street, Dublin 2..

Civil Legal Aid Campaign – Information Day

The Alliance for Civil Legal Aid, comprising a group of organisations campaigning for the introduction of a comprehensive statutory scheme of civil legal aid, is holding an information day on civil legal aid services in the ATGWU Hall, Middle Abbey Street, on Saturday 25 September, 1993. The intention is to convey information to the general public in relation to the current crisis affecting civil legal aid services and also to encourage public debate on the issue.

Further information is available from *Grainne O'Hara*, Secretary, Alliance for Civil Legal Aid, 32 Fitzwilliam Street, Dublin 2. Telephone: 6794329. ❐

ACCOUNTING & BOOKKEEPING

SERVICE
For
SOLICITORS

Computerised and Manual Accounts

Small & Medium Sized Pactices

PHONE 2802271

THE BAR COUNCIL
FOUR COURTS DUBLIN
LAW LIBRARY

LAW LIBRARY PHONES

Solicitors phoning barristers at the Law Library are requested to use the Direct Dial Numbers which were distributed with the June issue of the Gazette. Further copies are available from the Law Library – **phone 8720622.**

Where a barrister is not at his/her desk your call will be answered either by the switchboard or the member's voicemail. The only circumstances in which the Direct Dial number is not answered is where the barrister has forwarded calls to another extension but is not at that extension when you phone.

John Dowling
Director

Telephone Privacy

Privacy is a matter for concern for all of us. We may ask "what is privacy"? The most useful dictionary definition is that given by the current edition of the *Concise Oxford Dictionary* which defines privacy as

> "the state of being private and undisturbed, a person's right to this freedom from intrusion or public attention . . . avoidance of publicity."

Another description that many lawyers are familiar with was that used by Thomas Cooley, in *Torts*, (second edition, 1888) and described as "the right to be left alone". These definitions are probably inadequate for legal or statutory purposes, but they express sentiments that most people would regard as a basic human need and right.

Edward J. Bloustein, in "Privacy as an Aspect of Human Dignity", (1964) 39 *New York ULR.* 962 at 971, noted that privacy is an interest of the human personality. It protects the inviolate personality, the individual's independence, dignity and integrity. Ruth Gavison in "Privacy and the Limits of Law", (1980) 89 *Yale LJ* 421, at 428 has noted that privacy

> "is a limitation of others' access to an individual . . . in perfect privacy, no one has any information about X, no one pays any attention to X and no one has physical access to X."

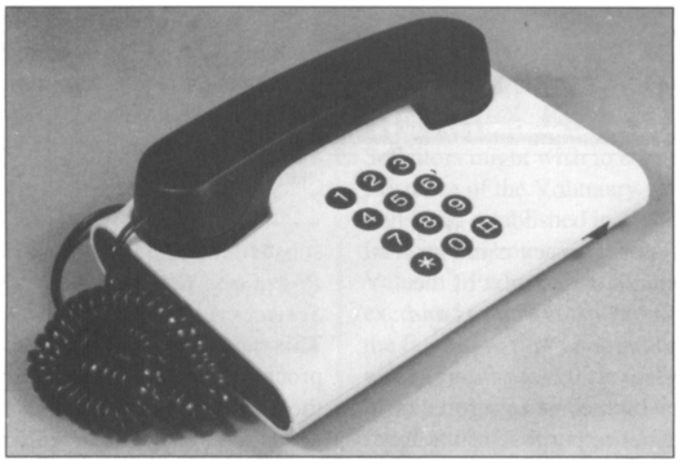
In this conceptual framework, there are three elements of privacy: secrecy, anonymity and solitude. We all agree that privacy is important. One aspect of privacy is freedom from unwarranted interference by the State. We all know that privacy is one of the first victims of a totalitarian state.

Many aspects of privacy came up for consideration in the context of the *Interception of Postal Packets and Telecommunications Messages Regulation Act, 1993* (*the Interception Act, 1993*) which came into force on June 6, 1993. The purpose of the Act was to place on a statutory basis the conditions under which the existing power of the Minister for Justice to issue warrants authorising the interception of postal packets (primarily letters) and telecommunications messages (primarily telephone calls) is to be exercised and to regulate the procedure for the issue of authorisations. The Act provided that the only purposes for which interceptions may be authorised may be those of criminal investigation or the security of the State.

The Act sets out in detail the procedure for applications for, and the issue of, warrants authorising interceptions. The procedure is similar to that followed at present. The Act introduced two new provisions for controlling the exercise of the powers of the Minister for Justice in respect of interceptions. The first was for a designated judge of the High Court to keep the operation of the Act under review, to ascertain whether its provisions are being complied with and to report to the Taoiseach. The other new provision is that a person who believes that his communications have been improperly intercepted will be able to have his/her complaint investigated by a "Complaints Referee" who will be a serving judge of the Circuit Court or District Court, or a barrister or solicitor of ten years standing appointed for the purpose and who will have power in an appropriate case, if he/she upholds the complaint, to quash the authorisation and make a binding recommendation for the payment of compensation to the complainant.

The opportunity was also taken in the *Interception Act, 1993* to insert a new subsection (2A) in section 98 of the *Postal and Telecommunications Services Act, 1983* (*the 1983 Act*). This new subsection relates to a process whereby Telecom Eireann in the normal course of its business keeps records of the date, time and duration of telephone calls. The new section 98 (2A) makes it an offence for a person employed by Telecom Eireann to disclose to any person the use made of telecommunications services provided for any other person unless the disclosure is made in the circumstances specified in the subsection: at the request or with the consent of the subscriber; for the prevention, detection of crime or for the purpose of criminal proceedings; in the interests of the security of the State; in pursuance of an order of a court; for the purpose of civil proceedings in any court; or in the course of the employee's duty as such employee. The maximum penalties for the offence are, under section 4(2) of the 1983 Act, the same as those for other offences under section 98 in relation to intercepting telephone calls by persons other than the State, i.e. a fine of £800 or twelve months' imprisonment or both, on summary conviction, and a fine of £50,000 or five years' imprisonment, or both, on conviction on indictment.

A new section (2B) in section 98 of *the 1983 Act* provides that a request by members of the Garda Síochána to a person employed in Telecom Eireann to make a disclosure of the date, time and duration of a telephone call in relation to the prevention or detection of crime or for the purpose of criminal proceedings, must be in writing and signed by a member of the Garda Síochána not below the rank of Chief Superintendent. There is also provision that a request by an officer of the Defence Forces to a person employed in Telecom Eireann to make a similar disclosure, for example, in the interests of the security of the



The Interception Act, 1993 will regulate interception of postal packets and telecommunications messages.

State, must be in writing and signed by an officer of the Permanent Defence Force who holds an army rank not below that of Colonel.

The opportunity has also been taken in the *Interception Act, 1993* to amend the definition of "intercept" in section 98 of the *Postal and Telecommunications Services Act, 1983*. Prior to the enactment of the 1993 Act it was a criminal offence for any person, *inter alia*, to record a telephone message without the agreement of both the person on whose behalf the message was transmitted *and* of the person intended to receive the message. The new definition of "intercept" is as follows

> "listen to or record by any means in the course of its transmission a telecommunications message but does not include such listening or recording where either the person on whose behalf the message is transmitted or the person intended to receive the message has consented to the listening or recording."

This means that it will be lawful, at least in terms of the 1983 Act, for one person, a party to a telephone conversation, to record the conversation without the consent of the other party to the telephone conversation. However, other considerations and other aspects of the law, including any constitutional right to telephonic privacy, may apply.

Conveyancing: The Lock–Out Agreement

A new phrase may soon enter the lexicon of Irish conveyancers; it will be termed "the lock-out agreement." The issue came up for consideration in the Court of Appeal in the case of *Pitt v PHH Asset Management Ltd.* [*The Times Law Report* July 30, 1993]. The Court consisted of the Master of the Rolls, Sir Thomas Bingham, Mann, and Gibson LJJ. The Court of Appeal held that an agreement reached between a vendor of property and a prospective purchaser that the vendor would not negotiate with other prospective purchasers for a short stipulated period was a lock-out agreement enforceable in law.

Gibson, LJ, in his judgment, with which Mann, LJ, agreed and with the Master of the Rolls delivering a concurring judgement, stated that when the defendant put the property on the market, two buyers made offers of whom the plaintiff was one. His offer was initially accepted subject to contract, but rejected on the other offeror making a higher offer. After further communications, the plaintiff had written to the estate agent acting for the defendant stating:

> "Your client has decided it is in his best interest to stay with my offer subject to contract.
>
> The vendor will not consider any further offers for the property on the basis that I will exchange contracts within a period of two weeks of receipt of that contract."

The defendant agreed to those terms but after sending the contract to the plaintiff, sold at a higher price to the other offeror before the two-week period for exchange had elapsed. The question according to Gibson, LJ, was whether that was what was often called a lock-out agreement. One had to look at what had been agreed to see whether there was something capable of subsisting as a binding contract independent of the continuing negotiations for the sale of land. Paragraph two of the plaintiff's letter had been clearly agreed by the defendant and there was no reason why that agreement should be considered subject to contract.

The judge rejected the submission that there was no consideration moving from the plaintiff: there was value to the defendant both in the removal of the plaintiff's threat to make difficulties with the other offeror and in promising to get on with the sale by limiting himself to two weeks for exchange.

Rejecting the submission that the agreement was unenforcable on what may be termed "Statute of Frauds" grounds, the judge said it was plain that the defendant was not committing himself to a sale to the plaintiff at the preliminary stage. Obviously there was no contract for the sale of land nor any option for the sale of land. What was agreed was a lock-out agreement, the negative element characteristic of which was identified by Lord Ackner in *Walford v Miles*, [1992] 2 AC 128, 139. The defendant was bound by the agreement for 14 days and the judge was right to hold that the contract was enforceable. Damages for breach of contract were to be assessed if not agreed.

Wigs Again

Readers may remember that in the June *Gazette* (Vol 87 No 5 page 170) *Lawbrief* informed readers that a report of the Committee on Court Dress (established by the Bar Council) was still under consideration by the Bar Council of Ireland. Readers may

wish to know that in our neighbouring island, senior judges are to experiment with bare-headed justice for a short period, probably in the autumn.

Surprisingly, there was an overwhelming verdict from the majority of the legal profession and the public in England and Wales that wigs should stay, but some senior judges in England, particularly the Lord Chief Justice and the Lord Chancellor, considered that the shedding of wigs would remove much of the public misunderstanding about the judiciary. Lord Taylor, the Lord Chief Justice, was quoted as saying that the wigs made judges took slightly ridiculous.

Some lawyers and judges, however, are in the vanguard of the movement for reform, particularly those in the commercial court who are working in a more international atmosphere and where clients are accustomed to wigless lawyers and judges; accordingly, the Court of Appeal and commercial judges are expected to appear bare-headed sometime in the autumn.

The Secrets of Success

What distinguishes the most successful legal firms from ordinary firms in the same market? David H. Maister, a consultant for professional services firms at Maister Associates in Boston, USA, writing in *The American Lawyer* and *Legal Business*, May 1993, noted that his experience suggested that it had little to do with creative strategies or unique management systems, or IQ or professional talent. He noted that the partners he met in the most successful firms were not consistently smarter or even more talented that their counterparts at other firms. What was noticeably different at the best firms was a characteristic he variously described as "energy, drive, enthusiasm, motivation, morale, determination, dedication and commitment."

Maister was of the view that two factors played a particular role in creating this dynamism: the skills and behaviour of the managing partners. He noted in firms all over the world that marked changes occurred in performance from the same group of lawyers where the only thing that changed was a new individual appointed to the leadership of a practice. The writer compared a professional practice to a sports team, filled with talented athletes who will only win if they fulfil their potential. When left to their own devices, professionals like athletes, do not accomplish as much as they do when they are supported by a good coach.

The writer noted that some lawyers may say that their partners are self-motivated and do not need attention; but good coaching and supervision were required at all firms. Readers may be interested in noting that the best motivators in firms did not "turn on" or motivate others by speeches, vision statements or inspirational group meetings. It was considered that the only truly effective way to influence people was one-on-one, that is, individualised closed-door attention – where possible. By paying attention to the individual, the partner responsible was able to monitor the person and offer substantive suggestions. ❐

Compensation Fund – Payments Out – July, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in July 1993:- The name of the solicitor in respect of whose defalcation the claim arose is listed in the left hand column.

	IR£
John Kiernan Brennan, Mayfield, Enniscorthy, Co. Wexford.	90,718.45
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare	12,174.24
James C. Glynn, Dublin Road, Tuam, Co. Galway	1,313.00
John J. O'Reilly, 7 Farnham Street, Cavan.	470.00
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	4,560.00
Conor Killeen & Elio Malocco Chatham House, Chatham Street, Dublin 2.	1,956.85
Jonathan P. T. Brooks, 17/18 Nassau Street, Dublin 2.	9,448.20
	120,640.74

❐

In 1992 Cot Death Killed 59 Irish Babies.

If your client wishes to make a will in favour of **Cot Death Research:**

Telephone 01 - 8747007

(24 Hour Helpline)

SOLICITORS

BOOK-KEEPING BUREAU

A COMPLETE BOOKING-KEEPING AND PAYROLL SERVICE

Manual/Computerised

Debtors/Creditors/VAT

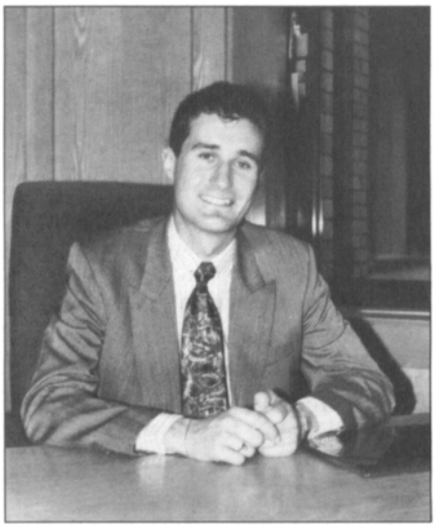
Cash flows

Payroll/PAYE/PRSI

Contact: **Patricia Brennan**

Tel: (01) 8411179

Necessity and Chaos: How Constitutionally to Implement an EC Directive into Irish Law



Noel Travers

by Noel Travers*

Introduction

The recent judgment of Johnson J. in *Meagher v Minister for Agriculture & Food, Ireland and the AG* has highlighted a potentially enormous problem in the relationship between Irish and EC law.[1] It concerns the appropriate mechanism for implementing EC directives into Irish law. For a number of years some prominent academic commentators have maintained that it is unconstitutional to transpose such directives into Irish law through statutory instruments.[2] It appears that the essence of their argument has now been endorsed by the *Meagher* ruling but this may not withstand the Government's current appeal to the Supreme Court. Should the appeal fail hundreds of confirmation bills, at the least, may be required and the legal status of all the acts done under the invalidated statutory instruments up until the date of the Supreme Court's judgment will have to be resolved.

The founding EC Treaties differ from the traditional international law prototype because they confer extensive law-making powers on the Community institutions within their relevant sphere of competence. When Mr Lynch's Government was considering the constitutional changes necessary to facilitate Ireland's accession to the European Communities, it was clear that a constitutional licence merely to incorporate the relevant treaties into domestic law would not suffice to overcome the dictate of Art. 15.2.1 of the Constitution, that the sole and exclusive power of making laws for the State is vested in the Oireachtas. Therefore the Third Amendment of the Constitution Act, 1972, having authorised the State to join the three constituent European Communities, also provided that,

> '... No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities, or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State...'.[3]

This first part of this sentence was designed principally to ensure that domestic legislation designed to transpose non-directly applicable EC laws into Irish law would be withdrawn from judicial control by Irish courts, on grounds that it violates the Constitution, once those courts are satisfied of the requisite necessity.[4]

The High Court Judgment

The *Meagher* case concerned two statutory instruments adopted pursuant to s.3 of the European Communities Act, 1972: the European Communities (Control of Oestrogenic, Androgenic, Gestagenic and Thorstatic Substances) Regulations, 1988 and the European Communities (Control of Veterinary Medicinal Products and their Residues) Regulations, 1990.[5] It was argued essentially that the Regulations were *ultra vires* and void because pursuant to s.3 of the 1972 Act which gives the relevant minister the power to adopt orders which can repeal or amend other laws, exclusive of the 1972 Act itself, they purported to amend, *inter alia*, the Petty Sessions (Ireland) Act, 1851.[6] Under s.4 of the aforesaid Act, as amended by the European Communities (Amendment) Act, 1973, such orders have 'statutory effect' unless the Joint Committee on the Secondary Legislation of the European Communities recommends their annulment to the Houses of the Oireachtas and a resolution to that effect is passed by both of them within one year of the making of the relevant order.[7] The original text of s.4 had provided that such orders would have statutory effect only for a six-month period, unless, during that period, they were confirmed by an Act of the Oireachtas. Whereas, it was contended that the previous text was constitutionally sound, it was argued on behalf of Mr Meagher that the new s.4 constituted an impermissible delegation of legislative power which was not shielded by Art. 29.4.3 of the Constitution, (inserted by the Third Amendment of the Constitution Act, 1972) from constitutional challenge.[8]

Community directives are binding as to the result to be achieved but allow Member States a choice as to how best to give effect to them in national law. Thus, whilst the principles contained in the directive must be transposed into national law, Ireland retains a discretion as to the appropriate law-making mechanism for achieving this result. It has therefore been argued that the distinction between the legal compulsion to transpose a directive into Irish law in a timely fashion and the Irish authorities' discretion concerning methodology, precludes the latter from relying on Art. 29.4.3 to justify departing from Art. 15.2 of the Constitution.[9] Whilst Johnson J. does not refer specifically to this reasoning in his judgment, it clearly underlies his rejection of counsel for

the State's attempt to equate a s.3 order with an act done or measure adopted by the State 'necessitated' by its obligations of membership.

Stripped of their constitutional sunshield, the impugned statutory instruments burnt freely in the constitutional glare of the separation of powers doctrine radiating particularly from the Supreme Court's judgment in *City View Press v AnCo.*[10] A parallel was drawn with *McDaid v Sheehy*, where an excise duty order of a legislative nature made pursuant to the Imposition of Duties Act, 1957 was challenged.[11] However, that order was subsequently confirmed, thus respecting Art. 15.2, by s.46 of the Finance Act, 1976. In contrast in *Meagher*, the amendment of the original s.4 control system precluded the possibility for such positive legislative confirmation. Johnson J ruled that the Constitution required the relevant minister to determine the appropriate approach to the transposition of each directive into Irish law. This determination would depend on the nature of the legal effects of transposition. Thus, if the amendment of existing laws is involved, s/he may proceed only by way of Oireachtas legislation.[12]

Commentary

The cogency of this approach has been questioned on the basis of EC law and practicality.[13] The EC Court of Justice has stressed that directives do not have to be transposed by way of domestic legislation but that transposition can also be effected through other binding legal instruments.[14] Given the number of directives involved and accounting for those of an administrative nature not requiring legislative amendments (which can thus be implemented by ministerial order under the *Meagher* rationale), it may not be possible for the Oireachtas, even sitting for longer each year than at present, to fulfil our Community obligation of timely transposition. It has been suggested that an omnibus statute could be used to transpose simultaneously in one instrument those directives involving legislative amendments[15] but this ignores the fiasco of the single confirmation measure enacted under s.4 of the original European Communities Act, 1972.[16]

Perhaps the most surprising aspect of the *Meagher* judgment is its failure to address earlier High Court authorities in which, although s.3 was interpreted, its constitutionality was not questioned. In *Lawlor v Minister for Agriculture* [1988] ILRM 400, Murphy J., having already decided that the regulations at issue did not infringe Art. 40.3 and Art. 43 of the Constitution, opined that they were also protected by Art. 29.4.3.[17] Despite unfortunately describing the scope of the word 'necessitated' as covering 'acts or measures *consequent* upon membership' (emphasis added), thus confusing the actual with the original constitutional wording, it is arguable that he intended to include all measures the adoption of which is, in one form or another, incumbent on the State.[18] This view finds support in his later judgment in *Greene v Minister for Agriculture [1990] ILRM 364*, where he found that a condition, imposed by the defendant in implementing a directive concerning farming in disadvantaged areas, was so far-reaching and detached from the results to be achieved thereby that it could not be said to be 'necessitated' by our obligations of membership.

It is submitted that this judgment is authority for the view that EC directives by their nature leave Member States with some degree of flexibility at the implementation stage and that, as this flexibility is an inherent part of the Community law imperative thereunder, Irish implementing measures should normally be protected by Art. 29.4.3. In other words the constitutional provision should be interpreted in the light of the nature of EC directives whose incorporation into Irish law it was designed to facilitate. In order to give effect to the legislative intention underlying the use of 'necessitated', should the particular directive confer a wide-ranging choice or should ministers attempt, in the relevant implementing measure, to misuse their powers by including matters extraneous to or linked only indirectly with its subject-matter, the screen of Art. 29.4.3 ought to be inoperative.[19] No such examination took place with regard to the directives behind the statutory instruments that were challenged in the *Meagher* case.

Should the Supreme Court reject the more accommodating approach of Murphy J., the State is likely to engage in a damage limitation exercise as hundreds of statutory instruments adopted over many years would be at stake. The Supreme Court may be pressed to invoke words, such as those of Henchy J. in *Murphy v Attorney-General* that,

> '...considerations of economic necessity, practical convenience, public policy, the equity of the case, and suchlike matters, may require that force and effect be given in certain cases to transactions carried out under the void statute.'[20]

In the circumstance raised by the *Meagher* case, one might add to this list the need to comply with our Community obligations. The application of the maxim *communis error facit jus* may be more warranted here than ever before.

Postscript

Since this article was written the Oireachtas has enacted the European Communities (Amendment) Act, 1993.[21] From the point of view of the scope of ministerial power under s.3 of the European Communities Act, 1972, s.5 of the 1993 Act is designed to dispel the confusion concerning the validity of existing regulations created by the High Court decision in *Meagher*. Pending the outcome of the Supreme Court appeal and without accepting the veracity of the High Court decision,[22] s.5(1)-(2) operate to confirm, in so far as is constitutionally possible, all such regulations made prior to the passing of the 1993 Act.[23] The specific issue of the time limit governing, pursuant to s.10(4) of the Petty Sessions (Ireland) Act, 1851, the institution of summary criminal proceedings is addressed by s.5(4). In respect of offences committed after the passing of the 1993 Act and created by s.3 regulations made prior to its enactment, a two year period for the commencement of proceedings is furnished thus removing any

implication of the retroactive application of criminal responsibility.

Should the Supreme Court endorse the view that s.3 of the 1972 Act is unconstitutional but limit prospectively the effects of it ruling, s.5 of the 1993 Act will preserve for the future all the numerous regulations concerned thus ensuring compliance with our Community law obligations. Should no limitation be placed on the scope of its ruling a legal vacuum may again arise as the 1993 Act will have purported to confirm existing statutory orders declared invalid *ab initio* by the Supreme Court. In either case, new legislative procedures along the lines suggested by Hogan and Whelan will have to be found for the implementation of new EC directives. Clearly the optimal solution for the State would be for the Court to accept the more liberal concept of 'necessity' espoused by Murphy J. The omnibus confirmation of existing regulations would cover the few which might be unable even to pass this more flexible test and ministers could, with the benefit of informed legal advice, eschew the future adoption of implementing measures such as those involved in *Green v Minister for Agriculture.*

**Noel Travers BCL, LLM (NUI), Dip AELS (Bruges), BL is a lecturer in law and Assistant Dean, Faculty of Law, at University College Dublin.*

References

1. High Court, unreported, 1 April 1993.
2. See Hogan & Morgan, Administrative Law in Ireland (2nd ed. 1991) @ pp 17-1 and A. Whelan, 'Art 29.3.4 and the Meaning of "Necessity" ' (1992) ISLRev 60. Other eminent commentators, such as Collins & O'Reilly, disagree. The latter argue that, as Art. 29.4.3 was enacted precisely to derogate from, inter alia, Art 15.2, a flexible approach ought to be adopted towards its interpretation. See "The Application of Community Law in Ireland" 1973-1989 (1990) 27 CMLRev 315, (1992) Irish Journal of European Law 38.
3. This sentence has been incorporated into a new subsection 4 to Art. 29.4 following the Eleventh Amendment of the Constitution Act, 1992. The new formula also refers to acts, etc., '...necessitated by the obligations of membership of the European Union...' created by the Treaty on European Union. The problems that this may create in practice for Ireland are discussed by A. Collins in, 'The Eleventh Amendment – Problems and Perspectives' (1992) 9 ILT 209.
4. The original draft of the amendment would have authorised measures adopted by the Irish authorities 'consequent on' membership of the Communities. This was attacked by opposition parties as being too imprecise. It was perceived as capable of protecting measures adopted by the Irish authorities on their own initiative dealing with economic or social matters affected by Community membership. John Temple Lang has stated that this revised wording was designed only to protect from constitutional challenge those national measures required to transpose EC directives into domestic law.
5. S.I. Nos. 218/88 & 171/90.
6. S.3(3) does not permit the adoption of orders creating indictable offences. This restriction was introduced during the debate in the Senate where it was argued that the ministerial power would otherwise be so extensive that it would be almost impossible to find, in judicial review proceedings, that a minister had acted *ultra vires*. See M. Robinson, 'The Irish European Communities Act 1972' (1973) 10 CMLRev 352.
7. See the amended s.4(1)(a) & (b) of the 1972 Act.
8. Art 15.2.1 provides that, '[t]he sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State'. It could not be argued, given the nature of the Community itself and our accession thereto, that the exception to this principle contained in Art. 15.2.2 might be relevant.
9. See Hogan, loc. cit.
10. See [1980] IR 381 where, according to O'Higgins CJ, delegated legislation may amount to no more than 'a mere giving effect to principles and policies contained in the [parent] statute' @ p. 399.
11. [1991] IR 1 and discussed by D. Walsh in 'Legal and Constitutional Implications of Dail Financial Resolutions' (1991) 2 ILT 41.
12. It is not altogether clear where the logic of the *Meagher* case would stop. Suppose in future the EC institutions, in order to avoid enforcement difficulties such as those created by the *Meagher* case, adopt anti-angel dust measures by way of a regulation, which is automatically and immediately applicable in the national legal systems by virtue of Art 189(2) EEC, could defending counsel argue before the High Court that it has the power to investigate the propriety of such a regulatory approach? If the High Court took the view, say on the basis of the principle of subsidiarity due to be incorporated into the renamed EC Treaty by Art. G(2) of the Treaty on European Union, that the Community legislature should have proceeded by way of a directive but the Court of Justice, on a reference to it pursuant to Art. 177 EEC, disagreed, how would the former approach determine, for the purposes of applying the Constitution, whether the regulation was 'necessitated' by our obligations of membership?
13. See the forceful arguments of D. Curtin in 'Some Reflections on European Community Law in Ireland' (1989) 11 DULJ 207 and, more generally, the views of Professor Casey in *Constitutional Law in Ireland* (2nd ed 1992) @ pp. 170- 171.
14. See, inter alia, *Case 29/84 Commission v Germany* [1985] ECR 1661, 1663. The transposition of directives by administrative action, such as ministerial circular, is, therefore, not acceptable. Thus in *Browne v An Board Pleanala [1989]* ILRM 865, Barron J. ruled that an environmental directive had not been properly implemented by a circular addressed to the planning authorities by the Dept, of the Environment.
15. See Hogan & Morgan and Whelan, loc. cit. Whilst the theoretical rationale behind the suggestion of enabling deputies and senators a more realistic opportunity of questioning ministers (some parliamentary time would have to be assigned to debating the statute whereas no such time is automatically allotted to debating statutory instruments), the extent of the take-up thereon in relation to more technical and complex directives is questionable. The usefulness of the exercise would also depend on the amount of time that could be allowed for debating what would undoubtedly be a lengthy list of measures.
16. M. Robinson, writing in 1973, pointed out that the text of the twenty-two ministerial regulations confirmed by the European Communities (Confirmation of Regulations) Act, 1973 had not even been circulated to deputies and senators at the time of its passage through the Oireachtas. This generated considerable criticism, particularly in the Senate, and the current procedure was introduced to allow the National Parliament *a more effective role* in supervising such regulations (emphasis added). See (1973) 10 CMLRev 467.
17. European Communities (Milk Levy) Regulations 1985, S.I. 416 of 1985.
18. See Reid, *The Impact of Community Law on the Irish Constitution.* (ICEL Pub. No. 17) @ p.13.
19. For a similar analysis, see Casey loc. cit. However, G Hogan has expressed the view that Murphy J.'s 'broad interpretation' of the word necessitated flies in the face of the parliamentary history of Art. 29.4.3. See, 'The Supreme Court and the Single European Act' (1987) XXII Ir. Jur.(n.s.) 55, 59-62.
20. [1982] IR 241, 322.
21. No. 30b of 1993 signed into law by the President on 20 July, 1993.
22. S. 5(3) expressly declares that the section is not to be construed as an acknowledgement that such regulations are constitutionally invalid.
23. Under s.5(5) the scope of the s.5(1) is extended to any adaptations, amendments and revocations to such regulations effected by subsequent s.3 orders, legislation or ministerial instruments made under such legislation. ❐

The Irish Centre for the Study of Human Rights

at

The Faculty of Law, University College, Galway.

Presents

In Association with the Council of Europe

A One Day Seminar on the European Convention on Human Rights

Saturday, 30 October, 1993.

The Council of Europe sponsored Seminar is aimed at legal professionals and students of law and related disciplines. It will deal with substantive Convention law, practice and procedure for practitioners and there will also be talks on the Irish cases (both Northern and Southern) that have reached Strasbourg. Most of the talks will be given by leading experts from the Council of Europe itself. There will be a nominal participation fee of £8 (which includes documentation, morning and afternoon coffee). A special seminar luncheon will also be available for £15.00. The seminar will take place in the Aula Maxima, UCG.

If interested in obtaining further information please complete the following and post to
Dr. Gerard Quinn, Faculty of Law,
University College, Galway.

Yes, I am interested in attending the Human Rights Seminar

Name:

Business Address:

Commercial property values are about as consistent as Irish weather.

The value of property fluctuates according to supply and demand and is constantly changing. Sherry Fitzgerald have a wealth of experience and detailed knowledge of the techniques of valuation plus up to date information on market conditions to carry out.

ASSET VALUATIONS

RENT REVIEWS FOR LANDLORD OR TENANT

RATING APPEALS

LEASE RENEWALS

CAPITAL TAXATION

ARBITRATION/EXPERT WITNESS

A call to Gordon Gill or Sean McCormack will give you an accurate forecast.

Sherry FitzGerald

Sherry FitzGerald · Commercial
17 Upper Ely Place · Dublin 2
Tel 661 9900 · Fax 661 9909

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At the presentation to mark the retirement of Judge Bernard J. Carroll of the District Court were back row l-r: Raymond Glynn, Donal Crowley, Eamonn O'Brien, Charles O'Connor, James Lucey, Brian O'Callaghan, David O'Meara and John Fintan Daly. Middle row l-r: Timothy Lucey, Law Society Council member; Rita Fitzgerald, Mary Cronin, Aileen Walshe, John Waters, Brian Carroll, Matthew Nagle, Neil Corbett, Kenneth Molan, Michael Shinnick. Front row l-r: Andrew Comyn, Robert Baylor, Patricia Harney, President North East & Cork Bar Association; Judge Bernard J. Carroll, John Molan and Dermot O'Meara.

At the ELSA Leinster lecture on "EC Directives in Irish Law – the Current Position" were members of the ELSA Leinster Committee back row l-r: Denis Broderick, Academic Activities Officer; Jim Hanglow, Treasurer; Grainne Ni Dhubhghaill, President; David Conlon-Smith, Seminars & Conferences Officer. Front row l-r: Eric O'Donnell, Marketing Officer; Grainne Leonard, Student Trainee Exchange Programme Officer; Angela Dempsey, Secretary; and Kieran Walker, speaker, A & L Goodbody, Solicitors. (Missing from the photograph is committee member, Jessica Classon).

Attending a recent meeting of the Medico-Legal Society held in the Royal St. George Yacht Club, Dun Laoghaire were l-r: Emer O'Donoghue, Solicitor; Niall Browne, Solicitor; Dr. E. Dooley, Dr. Bob Towers, Raymond Downey, Solicitor; Prof. Jack Harbison; Professor P. N. Meenan; Brendan Garvan, Solicitor; Dr. Eamonn Hall, Solicitor; Dr. Declan Gilsenan; Dr. Sheila Willis; Professor Max Ryan. Seated l-r: Dr. Anne Clancy, Carmel Killeen, Solicitor; Nora Gallagher, Solicitor, President; Judge D. Cassidy; Mary McMurrough Murphy, BL.

Legal & General
SPECIAL OFFERS - AUGUST ONLY
SOLICITORS ACCOUNTS
386SX Olivetti Computer 85mgb • Colour Monitor
Dot Matrix Printer • Italax Solicitors Accounts Software
£330.00 + VAT
WORDPROCESSING
386SX Olivetti Computer 85mgb • Kyocera Laser Printer 8 p.p.m.
Wordperfect V. 5.1 • Legal Precedent Software
£2450.00 + VAT
WORDPROCESSING
Same as Option 2 with Hewlett Packard Inkjet Printer
£1750.00 + VAT
TEL: 01-8725522. FAX: 01-8725079.

At the Annual General Meeting of the Roscommon Bar Association were back row l-r: John Murphy, Con Harlow, Brian Leahy, Dermot McDermott, Michael O'Dowd, Vincent Harrington, Padraig Kelly, John Sweeney. Middle row l-r: Alan Gannon, Sinead McCormack, Elizabeth Walsh, Marie McManus, Rebecca Finnerty, Eithne Sheridan, John Duggan and Kevin Knightly. Front row l-r: Gerard Gannon, Brian O'Connor, Hon. Secretary, Roscommon Bar Association; Raymond Monahan, President, Law Society; John Kelly, President, Roscommon Bar Association; Noel Ryan, Director General, Law Society; Marie Connellan, Treasurer, Roscommon Bar Association and Tom Callan.

At the presentation of the Law Society's inaugural Justice Media Awards were l-r: Gene Kerrigan, Sunday Independent; Kate Shanahan, Irish Press; Willie O'Dea TD, Minister for State at the Department of Justice; Raymond Monahan, President, Law Society; Breda Joy, Kerryman; Ken Murphy, Law Society Council member and Chairman of the Justice Media Awards Standing Committee; Fintan O'Toole, Irish Times and Mark Smith, Sunday Independent.

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service
• Efficient • Competitive Prices • Friendly

Private Limited Company	–	10 days, £265*
Guarantee Company	–	10 days, £285
Shelf Company	–	10 mins., £265*

* Prices valid until end of October.

Phone: CARMEL or RITA
at 671 0711, Ext. 224 Fax: 671 0704

ABA Conference: Justice For All – All For Justice

"America's justice system continues to deteriorate and in many parts of the United States is on the verge of collapse due to inadequate funding" said ABA President, *Michael McWilliams*, at the start of the American Bar Association Annual Conference which had as its theme "Justice for All –All for Justice". The Annual Conference attended by over 13,000 American lawyers and lawyers from all common law jurisdictions throughout the world including delegations from Ireland, Northern Ireland, Scotland, England and Wales, also focused on the inadequacy of the legal system in serving the needs of America's children. A leitmotif running through many presidential speeches, press briefings and showcase programmes at the ABA was a deepening unease about the level of gun-related violence throughout the United States.

Pointing out that nearly one-quarter of all children under the age of six in America live in poverty, Michael McWilliams told a press conference that guns kill or injure forty children every day in the United States and gunshot wounds were the leading cause of death among both white and African/ American teenage boys. Lawyers, he said, must lead the way in calling for reform of the legal system's handling of childrens' cases. "We must give children the same level of zealous advocacy now given to adult and corporate clients. Because if we don't, our children won't reach adulthood with the strength and self-sufficiency necessary to fully participate in, and contribute to, both our economy and our democracy – and that puts both in great jeopardy." Michael McWilliams said that teenagers could easily obtain guns through "straw purchasers" because the simple step of performing a criminal background check prior to selling an individual handguns and other firearms was not compulsory. He called for the enactment of the Brady Bill which would provide for a waiting period to ensure that handguns were not purchased over the counter without

J. Michael McWilliams, President outgoing of the ABA.

background checks being done on the criminal record of the purchaser.

Rights of Children

In her address to the Opening Assembly of the ABA Conference, US Attorney General, *Janet Reno*, said that America's children had suffered indifference and neglect for far too long. Lawyers must rise to the challenge of solving the problems faced by children because without them it would not be possible to maintain America. "We must give our children a chance to grow to be strong, constructive human beings," she said. "If we can send a man to the moon we can do something about teenage pregnancy. There is something wrong with a nation which says, sorry, we have no preventative medical care. Lawyers must join with doctors, teachers and police in working together to make sure that children can have an opportunity to secure their nation and to build their communities."

She said lawyers had a duty not to wait until a crisis occurred. "Solve it before it gets to court" she told delegates. She suggested that lawyers must become active in campaigning for a change in welfare law. Advocates should maintain contact with first-time offenders that they represented to make sure that they did not offend again. Lawyers could take community initiatives such as "adopting a block" i.e. ensuring that landlords treated tenants in an apartment block according to the terms of the lease. "Lawyers must reach out to help the children of America", she concluded, "they need hugs and encouragement, they need to be treated with respect." ●

Justice for all for Justice

Ide to Tackle Communication

The President-elect of the ABA, R. William Ide, III, said during his year as President the ABA would concentrate on helping sole practitioners, communicating with the public, improving the justice system, and elevating the standing of lawyers.

He said he believed that poor client relations were hurting the image of lawyers. Many lawyers did not return client phone calls quickly enough and needed to brush up in general on their client relations skills. Clients were frustrated in their dealings with lawyers and that contributed to a poor image for lawyers. He said he was unhappy with some of the quality of advertising by lawyers and that the ABA would have to set a norm to eliminate offensive ads.

The new ABA President is currently developing a communications plan designed to help the ABA respond more quickly to issues as they arise. In addition to the President and President elect, eighteen members of the ABA will act as spokespersons for the Association throughout the United States. ●

Irish Events

Law Society President, *Raymond Monahan*; Senior Vice-President, *Michael O'Mahony*; and immediate Past-President, *Adrian Bourke*, led the Society's campaign at the ABA conference to promote the services available from Irish lawyers to American firms which have business to do in Europe. The Irish Consul General in New York, *Donal Hamill*, and his wife, *Bernadette*, hosted a reception for the Irish delegation which was attended by prominent ABA members and Irish-American legal contacts.

The Law Society, in conjunction with the International Law & Practice Section of the ABA, hosted a showcase luncheon on Monday 9 August. The President of the High Court, the Hon. Mr. Justice *Liam Hamilton*, (kindly filling in at short notice for *Dr. Garret FitzGerald* who was indisposed), addressed the luncheon on the theme "The Influence of the American Constitution and the European Court of Justice on Irish Law". The influence of American constitutional jurisprudence had been benign and persuasive, said the Judge, who traced its influence particularly with regard to recognition and development of unenumerated personal rights in the Irish Constitution. However, the influence of the European Court of Justice could not be regarded as benign as to a certain extent the Irish courts had had to cede jurisdiction to the ECJ, he said.

Members of the Law Society delegation were guests of honour at the ABA Gavel Media Awards luncheon where ABA President, *Michael McWilliams*, especially recognised the winner of the Society's inaugural Justice Media Awards competition, freelance journalist, *Anne O'Carroll*. When asking her to stand to accept a round of applause, the ABA President quipped that the first prize in the Society's Justice Media Awards competition had been a week at the ABA, while the second prize had been two weeks! ●

Weird, Wacky and Wonderful

Delegates attending the ABA Annual Conference had a choice of 2,619 seminars dealing with every imaginable law-related topic. Seminars such as "Are My Genes Off Limits", "Till Death Do Us Part: Spousal Elective Share Reforms", "Why is my Client Nuts? – an Enquiry into the Psycho-dynamics of Divorce", "Beer Regulation – Current Issues", competed for delegates' attention alongside more conventional programmes such as "Legal Trends and Issues in the 90s and Beyond", "Service Quality as the Ultimate Marketing Strategy", and "Advancing Justice: is there Justice for All?"

But many delegates attending agreed that the real value of the conference was the chance to network with professional colleagues. As one delegate from New Orleans put it "as lawyers we face the same problems wherever we are." ABA President, J. Michael McWilliams, told delegates at the Opening Assembly "this experience is your chance to exchange views with lawyers from around the world or around the corner." ●

What's in a Name?

Seymour Chase, a lawyer from Hackensack, New Jersey, believes that the American Bar Association should change its name because the general public does not associate the word "bar" with lawyer. "An informal survey of six people on a street corner would show that five out of the six don't know that "bar" means lawyers," he said. "We should change the name of the association to the American Lawyers Association because the public doesn't associate us with what we do." ❐

Barbara Cahalane

Correspondence

The Editor,
Gazette,

Re: Compulsory Irish requirement

Dear Editor

I was interested to read the response of Anton Delap Uas. to some of the comments attributed to me in the May issue of the *Gazette* on the compulsory Irish requirement for solicitors. He referred to one aspect of the overall matter which I discussed.

It was not nor is it my intention to "undermine the daily effectiveness and usage" of the Irish language "in the legal system". I simply stated what I understand is the factual position. If Mr Delap is in a position to furnish me and the Education Committee with substantial corroborative evidence that there is a consistent and growing demand by solicitors' clients to conduct their business through the medium of Irish then we will be happy to take that into account in the Education of solicitors' apprentices.

I also invite Mr Delap and those who have a genuine interest in the Irish language to suggest in specific rather than in general terms the "constructive approach" that the Law Society should adopt in future examinations in the Irish language. He might also spell out what he thinks are the "practical needs of the profession".

Regretfully, when specialist courses were suggested in the past to those whom we thought were concerned with fostering the language they were rejected, while CLE courses in the Irish language specifically tailored towards improving the practical knowledge of the profession had to be abandoned due to lack of interest.

Yours etc.,

Patrick O'Connor
Chairman
Education Committee ❐

Solicitor Witness for Yugoslavia

***Noeline Blackwell*, Solicitor, reports on an initiative by the Irish section of Amnesty International to prove that the conflict in Yugoslavia is literally only a bus ride away from us.**

Amnesty International, the UN, and the newspapers have all given graphic, eloquent reports of rape of women and children, of torture of people by their neighbours, of the wiping out of towns and villages in a country known to many in Ireland. There are now thousands, perhaps tens of thousands, of acts which have happened over the last two years, each one of which is a gross violation of the basic human rights codes to which almost every country has subscribed and which all of those countries have solemnly undertaken to uphold. Yet when it comes down to it, the human rights abuses continue unabated in Yugoslavia and governments, the UN and the EC, seem powerless to act to stop or even effectively to condemn them.

For this reason 86 Irish people set off from Dublin on a wet and windy Sunday in mid-May and travelled from there to the sunny borders of former Yugoslavia and back to the same wind and rain nine days later. That group did not act alone. It carried with it 180,000 signed postcards calling on the faction leaders in the region to halt the abuses. The group also represented thousands of Irish people because so many of the participants were sponsored by a larger body. Sponsorship for participants came from church and missionary societies, artistic groups, trade union groups, community groups, women's groups, civil service and bank unions and, I am very pleased to say, from the Law Society and some Bar Associations. The Law Society sponsored the fare of the writer and the donations received by her from the North Cork, East Galway and Louth Bar Associations and some individual lawyers were used to cover the costs of the entire campaign, including the costs incurred by the very new Amnesty group in Hungary and those who travelled from Russia to join us. We were also joined by members of Amnesty from Germany, Austria and the USA.

The participation of the Law Society and the Bar Associations was a symbol of commitment on the part of Irish solicitors to the support of human rights and was very gratefully received for that reason. The participation of solicitors was also evident on the buses where *Helen McGovern*, Solicitor, representing Amnesty's Navan group and *John O'Connell*, Solicitor, representing the Carlow group also travelled.

Noeline Blackwell receiving a wreath from the people of Bangor, North Wales, prior to her visit to the former Yugoslavia.

The message of the campaign was "Stop the torture, stop the rape, bring those who are responsible to justice". In support of this last part of our message, Amnesty's report asking for the institution of a fair, effective international war tribunal was used. On the journey, various events were staged. In Brussels, we met with various Belgian Ministers, the EC, Commissioner for Foreign Policy and the UN Representative. In Munich, we met with the Serbian Counsellor and tried but failed to meet the Croatian and Bosnian Counsellors. In Vienna, we performed street theatre and demonstrated in an square where part of the WW2 memorial is a statue of a Jew on his knees. On each occasion Amnesty's concerns were reiterated.

In Hungary we held two demonstrations. The first was in Szeged, a town opposite the Serbian border where the river Tiza flows through and on in through the former Yugoslavia. At those events, messages of support from Presidents Goncz of Hungary and Havel of the Czech Republic were read and wreaths bearing the names of devastated towns were placed into the river. It was there that a spectator at our demonstration broke down and cried. She was a refugee from Sarajevo. Her 12 year old son was killed in the war. She had not heard from her partner for two years and did not know where he was. Her story in that town was yet again one of hundreds, but for all that it was unique. Our second Hungarian event took place on the banks of the river Drava which divides Hungary and Croatia, where we could see the beautiful peaceful looking countryside on the far side of the river and wonder at the forces that drives people to abuse each other and at the land that has given us the new phrase "ethnic cleansing". Again our wreaths were laid, on behalf of ourselves, and all those who had supported us to go.

Why did we bother to go? Because it was necessary, for ourselves and many others who could not travel, to demonstrate our continuing outrage at the horrific human rights abuses; because we wanted to make it clear to our Government and those across Europe that we still require them to work for an end to those abuses and for fair trials to investigate them; and not least to demonstrate our support for all those within the region who continue to raise voices in defence of human rights. Even if it was only a candle in the dark, well that's the symbol of Amnesty's and it has been found to work before.

Noeline Blackwell is a solicitor practising in Drumcondra, Dublin. She is a Vice-Chairperson of Amnesty International, Irish Section. Amnesty International may be contacted at 8 Shaw St., Dublin 2. Ph. 01–6776361. Fax: 01–6776392. ❐

CONSULTANCY SERVICES FOR SOLICITORS

THE LAW SOCIETY'S
PRACTICE MANAGEMENT COMMITTEE

Is compiling a listing of all persons/firms (legal and non-legal)

who offer **Advice/Consultancy Services to Solicitors**
on issues relating to the running of a practice
including general, financial, marketing, office, case management etc.

Code of standards & person/company profile form available from:

The Practice Management Committee,
The Law Society,
Blackhall Place,
Dublin 7.
Phone: 01-6710711 Fax: 01-6710704

from Butterworths

Butterworth Ireland Ltd.,
26 Upper Ormond Quay,
Dublin 7.
Tel (01) 8731555
Fax (01) 8731876

Butterworth Ireland Companies Acts 1963-1990

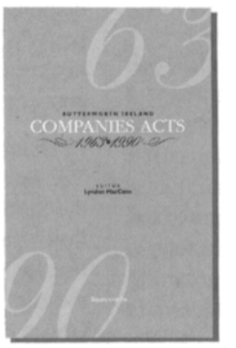
Editor: Lyndon MacCann, BL

A complete consolidation of Irish company legislation and the major statutory instruments since 1963 - all in a single, convenient volume. The legislative history of each section is traced in detail, definitions are provided, and particular statutory constructions are noted and explained. Each section contains extensive case law notes and is fully cross-referenced to statutes, statutory instruments and statements of practice.

Also features!

- *Thorough, easy-to-use index*
- *Numerous cross-references to UK companies legislation*
- *Comprehensive table of statutes*
- *An introductory how-to-use section*

Order your copy now!
PUBLICATION DATE OCTOBER 1993

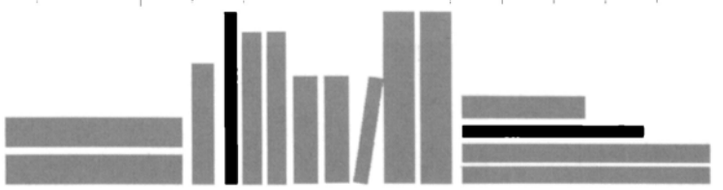


Soft cover c.1,000 pages
ISBN 1 85475 148 4
£55.00

- Bookshop open at Ormond Quay, Dublin (100 metres from the Four Courts) Open 9am -5.30pm through lunch
- Orders welcome by telephone and fax
- Or talk to our area managers about these and other Butterworths titles

Dublin area:
Madeleine Roche
(01) 324289
or
088-597659

Outside Dublin:
Max Harvey
(021) 371399
or
088-566793



Employment Law

By Michael Forde, The Round Hall Press, 1992, 498pp, hardback £49.50.

Dr. Forde has been prolific in producing legal publications in recent years and in his latest work he tackles the wide ranging area of employment law. His manner of treatment is well ordered and, at a glance, the text appears detailed and substantial but on close examination the book is in many ways disappointing. Dr. Forde has available to him a wide range of information regarding employment law and the reader will find much commentary and source material not available elsewhere. For that reason, the book is a valuable addition to one's library but not as complete as it might have been.

Dr. Forde opens with an introductory chapter dealing with contract, tort, statutory duties, Constitution and then moves to the institutions of employment law, domestic, European and international. Understanding the inter relationship, particularly of the domestic institutions, is vital to a proper understanding of employment law in this jurisdiction. The treatment of the Constitution is unsatisfactory and is a good example of the main shortcoming of the book. The author states "the extent to which the Constitution affects relations between employers and workers . . . is largely unexplored territory". Unfortunately, as far as this book is concerned it remains so. One does not expect a treatise on the Constitution in a book of this sort, but certainly one does expect authoritative commentary on how the Constitution affects relations between employers and employees. When Dr. Forde does choose to deal with substantive points he does so in selective fashion which again is unsatisfactory. In this section of the book he takes up two points "for brief consideration" being the right to work, which is obviously worthy of consideration and what he calls "non-Governmental action" which is considerably less so. No mention is made of the right to join a trade union or the lack of a co-relative right to have the union recognised – *Abbott and Whelan v Southern Health Board* is not mentioned.

In dealing in a later chapter with the law relevant to the transfer of an employer's business, which has assumed major importance in recent times, Dr. Forde has my sympathy. Barely a month goes by without some new decision from Europe or domestically relevant to this topic. Dr. Forde however does not refer to sufficient authorities for the views expressed and in dealing with the Irish regulations makes no reference whatever to Regulation 7 which is of considerable interest to practitioners, although he touches on that regulation under the heading "Informing and Consulting Employees Representatives". It is this thread running through the book that practitioners will find frustrating. The substance and layout gives the impression that most, if not all, practical employment issues are dealt with, at the very least pointing the reader in the direction of resolving their problem. While assistance is given, not nearly enough is given.

The chapter dealing with the incidents of the employment relationship examines the right to lay off staff, entitlement to holidays and sick pay, confidentiality, protection of intellectual property, calculation of remuneration and related topics which a practitioner will find very useful providing information that is neither readily available elsewhere nor as well collated. In the second chapter "Personal Scope" Dr. Forde deals with a number of useful topics including employees excluded from legislation. He also makes reference to the public service which is also dealt with at length in a separate chapter which is most welcome. This has been an area of law in which there has been a lot of activity in recent years and particular attention should be paid to its contents. The author deals with teachers which will be very useful material but unfortunately when it come to secondary teachers devotes a mere two lines which is clearly inadequate.

Further chapters deal with the terms of an employment contract, health and safety at work, discrimination, termination of employment, statutory rights on dismissal, employers insolvency and employees and company law. In addition, there is a very useful chapter on occupational pensions which will give those who are unfamiliar with pensions a useful background to their operation. I was also pleased to find a chapter devoted entirely to income taxation. Much of employment law practice involves the negotiation of severance arrangements which, if they are of any substance, are tax-driven. An understanding of the tax situation is vital to proper advice in any case involving termination of employment. While the subject matter is welcome the treatment is less than ideal. In referring to tax exemption on severance payments Dr. Forde states "the first £6,000 (sometimes less or more) is tax free". As £6,000 is the basic exemption on a severance payment, then is less tax free? When is more tax free? He refers to "top slicing" relief but makes no reference to standard capital superannuation benefit. This will be frustrating for practitioners. They may wonder why they cannot fully understand termination payments having read Dr. Forde's treatment. The reason is that he does not give enough information or guidance. A simple list by way of illustration of the application of tax to a severance or termination payment would have been most useful. Readers will want to know how the tax authorities treat the settlement of an unfair dismissal claim or a wrongful

dismissal claim, payment over of monies awarded by the Employment Appeals Tribunal or by a Court or an ex gratia redundancy payment. No such guidance is available here.

The Unfair Dismissals Act has exercised practitioners more than any other aspect of employment law. Dr. Forde's treatment of the Act is disappointing, consisting of a mere ten pages although the topic is touched on throughout the book. His specific treatment is untidy and lacks proper construction as does his treatment of redundancy in relation to which the publishers might like to correct an unfortunate mistake in the formula given for calculation of statutory redundancy entitlement.

In addition to the chapters mentioned, there is a chapter on Transnational Employment and an Appendix containing a precedent for standard terms and conditions of employment and an executive employment agreement. Unfortunately neither is fully explained in which event I fear adoption of them as precedents may lead to all sorts of difficulty. Finally, there is an Appendix consisting of Statutes and Regulations and extracts therefrom which will be very useful.

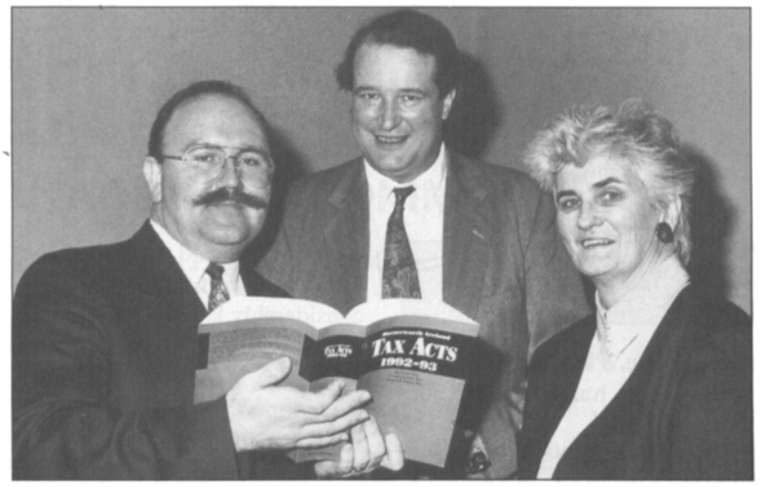
This book is a curate's egg. It is worth having for the topics that are well treated and unavailable elsewhere but overall it is disappointing.

Gary Byrne

Tax Guide 1992-1993 and Tax Acts 1992-1993

Butterworths (Ireland) 1993. Tax Guide edited by *Susan Keegan*, 953 pp softback £43.00. Tax Acts edited by *Alan Moore*, 2154 pp, softback, £53.00.

Until the introduction of capital taxation in the early 1970s the prevailing view within the legal profession was that if any business client wished to seek advice in relation to tax law then that client was best served by getting in touch with one of the major firms in Dublin. However, with the introduction of capital taxation in the mid 1970s the necessity for every practitioner to acquaint himself with the implications of the new Capital Acquisitions Tax legislation became an integral part of legal studies and ongoing legal education. Today there are very few legal transactions that do not incur a possible tax liability of one kind or another, consequently the need for solicitors to keep themselves abreast with developments in tax law such as legislation repeals as enacted by every Finance Act is an integral part of legal practice today. For that reason, two books published in this field will be of assistance and they are the Butterworths Tax Acts 1992–1993 and Tax Guide 1992–1993.



At the launch of Butterworth (Ireland) Tax Acts, 1992/93 and Butterworth (Ireland) Tax Guide 1992/93 were l-r: Gerard Coakley, General Manager and Paul Brown, Managing Director of Butterworth (Ireland) with Dr. Miriam Herderman O'Brien, Chairperson of the Foundation for Fiscal Studies at Trinity College Dublin, who launched the books.

The Tax Acts 1992–1993 is without doubt a very welcome publication and it quite clearly sets out all the relevant taxation legislation commencing with the Provisional Collection of Taxes Act, 1927, the Finance Act, 1928 and then proceeding to the Income Tax Act, 1967 and each succeeding piece of legislation that affects taxation. The inclusion of the Interpretation Act, 1937 is of great assistance.

For the first time a practitioner can now have readily available all the relevant taxation legislation that affects every aspect of his practice from day to day. This is particularly relevant to the rural practitioner who will no longer find it necessary to have to get in touch with his own accountant in order to properly advise his client.

It is also necessary for the practitioner to have to hand the Tax Guide 1922–1993. This publication deals with Income Tax, Corporation Tax, Capital Gains Tax, Capital Acquisitions Tax, Value Added Tax, Stamp Duties, Residential Property Tax, and Employers' PAYE/PRSI. Any information that the practitioner needs to know about tax is contained in this Guide. The setting out of rates and allowances at the beginning of the Tax Guide is welcome, though it is a pity that these are not listed in the contents. Nonetheless, for the first time, the practitioner has easy access to all the relevant tables in relation to rates, allowances etc., not only in respect of Income Tax but also PRSI rates, Corporation Tax rates, Capital Tax rates, Capital Gains Tax indexation factor from 1982 to 1993, Capital Acquisitions Tax rates, and in particular the rates in relation to taxable gifts and taxable inheritances.

The examples given in the computation section of the Income Tax chapter are very easy to follow and it will most certainly help the practitioner to advise his clients in relation to straightforward income tax queries. It will also enable the practitioner to obtain the necessary information if further research is needed in order to properly advise the client as to his potential tax liabilities.

Aside from the few typographical errors which are contained in both books, Butterworths are most certainly to be congratulated on their initiative in publishing both these publications as they are, I believe, essential to every practice and a most worthwhile addition to the library.

Ciaran Keys

The Kilkenny Incest Case

By Kieron Wood, **Poolbeg Press, Dublin, 1993, 165pp. paperback £4.99**

Everyone has read or heard the reports of the Kilkenny incest case. They will also have read or heard the unreserved and universal condemnation from all quarters of our society at the failure to take notice. In the course of their work, many lawyers will have heard and dealt with cases of beating, sexual abuse and terror in family homes.

But even knowing the story of this case, and even being hardened by hearing stories of horror before, this book, which tells just the girl victim's story, has the power to shock, to sicken and to anger; more for the unremitting nature of the brutal assaults and for the senseless cruelties inflicted by her father than for the spectacular incidents which hit the headlines.

The child was ten when her father first raped her. That incident is recounted on page 21 of this book and the remaining 144 pages tell in plain and simple language the brutality and cruelty that this girl endured, the fear and the influences that kept her from complaining and the determined closing of eyes and ears in the community to her screams and battered, broken body. She also explains her continuing fears today, giving her a patrimony of a life sentence of fear.

The book is the girl's story as told to *Kieron Wood*, the legal affairs correspondent at RTE. The style is reminiscent of a detailed statement taken by a solicitor which has been edited for the purposes of a brief to counsel. Mr. Wood offers no comment other than in a prologue. None is necessary. The story stands on its own as an indictment and incentive to change and to care, by all of us in this, our modern Ireland.

Noeline Blackwell

Irish Criminal Law Journal

Edited by Shane Murphy, Round Hall Press, subscription £35.00 p.a. 2 issues per year, (approx. 250pp).

The Irish Criminal Law Journal was launched in June, 1991. In his Foreword to the first issue Mr. Justice *Hugh O'Flaherty* referred to the mixture of the theoretical and the practical aspects of the criminal law which was to be found in that issue. He commended the fact that a number of the contributors were no"effete academics but hardened gladiators of the forensic arena". It is clear that this vital mixture of the practical and theoretical has continued in the three issues of the Journal published since then. The range of topics covered in the four issues has also been impressive. The first issue alone includes articles on the adequacy of the remedy of Presidential Pardon in miscarriage of justice cases, the new offences created by the Larceny Act, 1990, the distinction between criminal and civil libel, causation in the law of homicide, intoxication and criminal responsibility, the effect of ESDA evidence and issues raised by the introduction of DNA profiling.

This latter article on DNA profiling is wide ranging and informative. However, some of the language used may be off-putting to criminal law practitioners. For example, there are references to "the investigative and adjudicative paradigm" and "the verity of the objective/forensic equation". Such expressions may be too rich for the more prosaic palate of the practitioner. This illustrates the difficulty of combining in one journal the practical and academic approaches to the study of criminal law. It is unfortunate that this difficulty should arise because if a practitioner were to overcome his prejudice against the use of what he might consider to be opaque language, he would find in the article on DNA profiling much that is helpful and stimulating. However, I suspect that he is more likely to turn to an article such as that on the custodial treatment for young offenders, contained in the same issue, which offers a very useful guide through the labyrinthine provisions of the Children Act, 1908.

The December 1992 edition covers issues ranging from the plea of self defence in homicide cases to the privilege against self-incrimination and from the Military Courts-Martial to reflections on the role of the Attorney General in the Patrick Ryan affair. It also contains some 50 pages of case notes, which are reproduced by permission of the *Irish Times*. This Digest facility, introduced in the December 1991 issue, is of inestimable value to the busy practitioner, summarising, as it does, the leading criminal cases of the year.

An article on Goodman -v- The Beef Tribunal might at first glance seem out of place in a criminal law journal. However, the article reviews the decisions of the High Court and Supreme Court on the challenge to The Beef Tribunal, on the grounds, *inter alia*, that the enquiry constituted a criminal trial in all but name. The author concludes on a note of caution that public enquiries may displace the courts from their position of centrality and thereby undermine their value.

The article on self-defence in homicide cases I have mentioned illustrates the value of a publication such as the Journal. The author examines the plea of self-defence since the landmark decision of the Supreme Court in *Dwyer*. The central question addressed in that case was whether the plea of self-defence to a murder charge would lie where an unreasonable amount of force was used, which the accused nonetheless honestly believed was reasonable. In *Dwyer* the Supreme Court adopted a "half-way house" by stating that in such a circumstance the appropriate verdict was manslaughter. The author criticises the decision on a number of grounds; that the test that must be applied as to the reasonableness of the force used and the honesty of the accused's belief is too complex and requires the jury to apply an unreal and artificial reasoning process to questions of fact, that it fails to take account of developments in the doctrine of *mens rea* since the English decision

Continued on page 272

The J.P. O'Reilly Memorial Scholarship

Founded by Dr. *A.J. F. O'Reilly* to honour the memory of his late father, the Fund provides a **SCHOLARSHIP of up to £10,000** to contribute towards the cost of attendance at a full-time or part-time MBA course.

The Fund seeks to promote knowledge of commercial law and corporate finance among young Irish solicitors.

The award – which may be apportioned among candidates – is by competition, open to all apprentices and solicitors qualified within the last ten years who satisfy entry requirements (see below) for an approved MBA course, whether at home or abroad.

The competition will have two tiers:

(1) An essay of between 3,000 and 5,000 words in a commercial law subject chosen by the candidate;

(2) A panel interview which will assess the background interests, motivation and potential of selected essayists.

Applications and essays should be submitted not later than **7 January, 1994.** The successful candidate will be expected to commence the study programme in Autumn 1994.

Application forms are available from the Law School. For further information please contact *Harriet Kinahan*, Education Officer, Law Society, Blackhall Place, Dublin 7. (6710200)

A.J.F. O'Reilly sponsors scholarship in memory of his father.

MBA Requirements

These are threefold:-

- Normally a primary degree, commonly with first or second class honours, or an approved professional qualification.
- Work experience at an acceptable level of responsibility over a period of three, four or five years depending on the institute and the candidate's other qualifications.
- A passing grade in the Graduate Management Admission Test (GMAT). The GMAT is internationally recognised and can be taken in centres in all countries. Information is available from: Graduate Management Admission Educational Testing Service. CN6103, Princeton NJ 08541 – 6103, USA. ❐

Book Reviews

(Continued from page 271)

of *Morgan* and that the rules of evidence governing the plea are unclear. The author points out that the *Dwyer* approach was adopted, and later rejected as unworkable, by the English and Australian courts. The article therefore combines a comprehensive statement of the present law with a well argued appeal for reform.

The Journal has already established an impressive record, much of which can no doubt be attributed to the industry of its editor. Irish criminal law is undergoing important changes at present. A new reforming zeal has gripped those entrusted with the task of revising and updating legislation in this field. There are no signs that the ever increasing volume of judgments handed down by our superior courts on criminal law and practice is abating. Accordingly, there is much work to be done by the Journal in meeting the demands of this change. Its future looks secure.

Barry Donoghue ❐

SOLICITORS FINANCIAL SERVICES – PERMANENT HEALTH SCHEME

✶ SPECIAL NON-MEDICAL OFFER ✶

Solicitors Financial Services is pleased to announce an exclusive Permanent Health/Income Protection Scheme for solicitors.

This scheme will provide cover up to £15,000 per annum for members under the age of 55 who are in a position to sign a simple declaration of health.

The deferred period is 13 weeks, with cover continuing to age 65.

There is also provision for the benefit to escalate by 5% annually for the duration of a claim.

Normally, medical underwriting for Permanent Health Insurance is very strict and, therefore, this offer will provide members with a unique opportunity to either top up their existing level of cover or initiate some form of protection.

Any member of the profession who is interested should contact:

Tom Kennedy, Solicitors Division
SEDGWICK DINEEN CONSULTING GROUP
18/19 Harcourt Street, Dublin 2. Tel. No. 01–4781599

This offer which is FOR A LIMITED PERIOD ONLY, has been arranged by Sedgwick Dineen.

The Competition Act and EEC Block Exemptions

Denis Cagney

by Denis Cagney, Solicitor*

If your client has a restrictive agreement that comes within the terms of an EEC Block Exemption Regulation, is he protected from our own Competition Act? Should he notify the Competition Authority?

The relationship between EEC and national legislation where these apply concurrently to a given field of activity may at first appear a rather academic concern to the practising solicitor or his client. Where that field is competition policy and the activity comes within a Block Exemption Regulation (individual exemptions are a rare enough animal – particularly in Ireland) the relationship can become a very practical concern. In this article I propose to outline the key elements in this relationship and suggest how EEC block exemption may, in certain circumstances, be a useful guide to practical compliance with our Competition Act and may even – dare I say it – reduce the workload of businesses and their legal advisers. But beware, not all the greyness which enshrouds this area will be dispersed.

Essential Structure of Competition Rules

The essential structure of the competition rules is the same in the Treaty of Rome as in the Act and need not detain us long:

(i) Anti-competitive agreements or concerted practices between firms are prohibited.

(ii) This prohibition can be suspended where the 'four conditions" are met:
- resulting economic or technical benefits
- consumers get a fair share of these benefits
- restrictions are indispensable
- competition is not eliminated.

(iii) Only the Competition Authority or, under the Treaty, the Commission can decide if the conditions for suspension are met. If they are met, then the prohibition will be suspended either by way of individual decision on the case or by a block/category decision. An individual decision to suspend the prohibition will only be given if the arrangement is notified in the first place.

(iv) Restrictive arrangements can qualify automatically (i.e. no need for prior notification) under Article 85.3 of the Treaty for a suspension of the prohibition in Article 85.1 by complying with the terms of one of the 12 Block Exemption Regulations issued to date by the Commission. These covered a range of well recognised categories of commercial behaviour whose restrictive effects are deemed to be more than offset by the economic efficiencies they give rise to. Examples are exclusive distribution, exclusive purchasing, franchising, motor vehicle distribution and servicing, know-how licensing etc. Under the Competition Act, the Competition Authority is empowered to issue category licences, the domestic equivalent of EEC block exemptions. To date, the Authority has issued one category licence on motor fuel supply arrangements and recently circulated a draft one covering exclusive distribution agreements.

(v) The Competition Act covers arrangements whose objects or effect arise within the State, whereas Article 85 of the Treaty is confined to arrangements to the extent that they affect trade between Member States.

Before focusing on EEC block exemptions, it is worthwhile reiterating that the Irish and EEC rules represent two separate laws, despite the near identity in their substantive wordings and the "analogy with Articles 85 and 86 of the Treaty" cited in the long title to the Competition Act. The Act, is the exclusive creation of the Oireachtas which was under no Community obligation to enact it. The Oireachtas chose to follow the Treaty model for our domestic competition rules. Precedents under EEC competition law will obviously be of persuasive value in interpreting the Act but they will not in any way fuse the two codes into one legal order.

Article 85.3 Exemptions and National Competition Rules – Views of Commentators

It is interesting to note the hesitancy among some of the main commentators in drawing conclusions on this question. The following excerpts give the flavour:

> "In conclusion, it would appear that the position as regards the status and effects of Community exemptions is undecided as to whether all, some or none need necessarily be respected by national law."

Verse: EEC Antitrust Procedure 1987

Bellamy and Child acknowledge two schools of thought:

> "How far national authorities may strike down under national law agreements which benefit from individual or block exemption under Article 85(3) remains open to question. The Commission apparently takes the view that an agreement covered by an exemption under Community law cannot be struck down under national law; such an exemption is a "positive" act of the Community in futherance of the objective of the Treaty. The contrary view is that an exemption under Article 85(3) is essentially permissive in character and should not prohibit a more strict regime at national level. This may well be the better view, at least as regards block exemption regulations, which are becoming increasingly common."

Common Market Law of Competition (1987)

More recent commentators seem to swing towards the view that the scope for independent action by national authorities is very limited.

> "The concurrent application of national law is permissible only to the extent that it does not prejudice the full and uniform application of the Community competition rules, including such enforcement and other measures as may be undertaken to effectively administer those rules. A conflict may arise where the Commission has authority to take certain "positive, though indirect, action," e.g. granting an exemption, in order to promote the harmonious development of economic activities within the Community in accordance with Article 2 of the Treaty. Such conflicts are to be resolved according to the principle of the supremacy of Community law, as the Court of Justice ruled in the *Walt Wilhelm* judgement ... It is an open question as to whether an individual exemption or a block exemption constitutes a "positive, though indirect, action" within the meaning of the Walt Wilhelm judgement."

Ritter, Braun and Rawlinson: EEC Competition Policy: A Practitioners Guide (1991).

"Action at the national level which would condemn an agreement authorised by the Commission under Article 85(3) is seen to be inconsistent with the uniform application of the Treaty rules."

Van Gerven and de Ghelcke: Competition Law of the European Economic Community (1992 ed). Note: The authors acknowledge that not all commentators agree with this view.

At home, the Competition Authority itself has been understandably cautious in warning against assuming that because a particular practice or situation has been cleared or approved by Brussels "nothing more needs to be done under our law".

The Nature of an Article 85(3) Exemption under EEC Law

A decision by the Commission to grant a *negative clearance* (i.e. analogous to a certificate from the Competition Authority) is *not* binding on national courts or competition authorities: it is only persuasive in the application of Community law by a national court and offers no protection against stricter national competition law[1]. It is declaratory in nature[2]. It declares that the Commission sees no ground for objections under Article 85 to a notified arrangement, on the basis of the known facts. In simple terms, the Commission sees no evidence that competition is materially restricted.

An *exemption*, by contrast, has a more authoritative status: it is a formal decision of the Commission to the effect that a notified arrangement *does* restrict competition contrary to Article 85.1 but meets the four conditions for exemption in Article 85.3. It may not be overruled by national courts applying EEC law. Neither may national courts take it upon themselves to decide if the four conditions are met and grant an exemption. This is the exclusive reserve of the Commission. The jurisdiction of national courts over Block Exemption Regulations is less foreclosed: a court has the power and indeed the obligation to consider whether an arrangement actually comes within the terms of one of the EEC block exemptions in the first place. If in doubt the court may seek a preliminary ruling from the Court of Justice under Article 177 of the Treaty[3]. If the court finds that the arrangement does come within the terms of the block exemption then "the court must regard the agreement as valid, just as if the Commission had granted an individual exemption."[4]

This latter position was emphasised recently by the Commission in its Notice on Co-operation between national courts and the Commission in applying Articles 85 and 86 of the Treaty[5]. The Commission states:

> "The national court is required to respect the exemption decisions taken by the Commission. Consequently, it must treat the agreement, decision or concerted practice at issue as compatible with Community law and fully recognise its civil law effects."

Underlying this more authoritative status of a Commission exemption that a negative clearance is the perception – at least as far as the Commission itself is concerned – that an exemption is more than just a permissive suspension of the prohibition in Article 85.1; it is a positive act by a Community authority in furtherance of essentially *Community* objectives insofar as these are embodied in the four conditions set out in Article 85.3 of the Treaty. These conditions may also embody the objectives of national or regional authorities, but when they are invoked in a formal exemption by the Commission – individual or block – they are invoked as *Community* objectives and assessed in a *Community* context.

An analogy can be drawn here to some

extent with the Commission's views on the rules on State aids in Article 92 of the Treaty. As with Article 85, the point of departure is a blanket prohibition, followed by the criteria for suspending this prohibition. The grounds on which the Commission may consider State aid compatible with the Treaty set out in Article 92.3 must always be assessed on the basis of Community, not national or purely regional objectives and from a Community rather than a national standpoint[6]. If, for example, reduction in overcapacity is claimed as the justification for exempting a restrictive agreement or allowing State aid, the anticipated resulting benefits will be considered from a Community, rather than a national or regional, sectoral perspective.

Exemptions and national competition law

The Court of Justice accepts the principle of the concurrent jurisdiction of Community and national competition law codes in recognition of the fact that they are designed to protect different interests, i.e. the preservation of effective competition in *intra-Community trade* and *within national territories* respectively. In examining the precise question of the extent to which an Article 85.3 exemption, given its nature as described above, can in some sense predetermine or limit the application of national law, two general and well established principles of EEC law should be of help to us:

- the supremacy of Community law over national law where their provisions or application are in conflict,
- the need for uniform application of Community law.

One of the main Court judgments on this question of the relationship between Community and national competition was in the *Walt Wilhelm* case (1969)[7]. This was an Article 177 referral. Walt Wilhelm argued at the German Court hearing that proceedings against them under German anti-trust law should not be maintained because they were at the same time the subject of parallel proceedings by the EEC Commission under Article 85. The Court of Justice said:

> "Conflicts between the rules of the Community and national rules in the matter of the law on cartels must be resolved by applying the principle that Community law takes precedence.
>
> It follows from the foregoing that should it prove that a decision of a national authority regarding an agreement would be incompatible with a decision adopted by the Commission at the culmination of the procedure initiated by it, the national authority is required to take proper account of the effects of the latter decision.
>
> Where, during national proceedings, it appears possible that the decision to be taken by the Commission at the culmination of a procedure still in progress concerning the same agreement may conflict with the effects of the decision of the national authorities, it is for the latter to take the appropriate measures."

A more recent relevant Commission decision was the *Synthetic Fibres* case of 1984 where the Commission authorised a limited cartel arrangement between producers designed to achieve a reduction in Community over-capacity which met all the standard conditions for exemption. The cartel arrangement could have fallen foul of competition law in some individual Member States but the Commission decision which drew exclusively on Community criteria prevailed[8].

In practical terms it would seem that a national court or authority is prohibited from taking a decision which would take from or frustrate the effectiveness of an exemption granted to the parties to an agreement under Article 85.3. To quote the Court in *Walt Wilhelm* again:

> "The imperative force of the Treaty and of acts issued in implementation of it could not vary from State to State by the effect of internal acts, without the functioning of the Community system being obstructed and the attainment of the aims of the Treaty being placed in peril".

In theory a national authority could find that on examining the facts of a particular case that the provisions governing its purely "domestic" content could somehow be isolated from its "intra-Community trade" content and a more strict national competition law could be applied to the latter without frustrating the protection of the Community exemption afforded to the former. But if this latter protection is put at risk by a national authority, then there would appear to be no longer uniform or effective application of Community law and the parties would suffer as a consequence. The more an agreement is designed to apply uniformly throughout a Member State (e.g. appointing a single exclusive distributor for a product imported into the Republic) the more theoretical this isolation of the "domestic" and "intra-Community trade" elements becomes.

The scope for conflict between an *individual* exemption decision and national competition law may initially appear less than in the case of a *block* exemption because the facts underlying the former will have been scrutinised by both authorities under the elaborate consultation process between the Commission and Member States in Article 85/86 cases. A block exemption does not consider the facts of an individual case.

Against this, however, there are strong arguments against attaching any lower status to the protection afforded by a block exemption than that afforded by an individual exemption:

- The drafting of the Block Exemption Regulation is itself the subject of elaborate consultations with the Member States. The Commission can only adopt it if and when it has built up a sufficient individual case experience
- A block exemption sometimes has a "safety valve" clause whereby the Commission can withdraw the protection afforded by it in a

particular case if, after examination it is found to be incompatible with Article 85.3. The existence of this "safety value" clause would imply that until it is invoked a block exemption affords the full protection of an individual exemption.

- Above all, the whole purpose of the block exemption system is to ensure that agreements falling within the system enjoy the same legal status and advantages as if they had been granted an individual exemption.

Conclusions:

The lines of demarcation between the jurisdiction of Community and national competition law are generally well established. One area that remains uncertain, however, is the scope for conflict between an exemption under article 85.3 of the Treaty and stricter national laws.

There is one school of thought which would never exclude the scope for some independent action by national authorities. Another school, to which I would be more drawn, would emphasise how limited this scope is and would suggest the following as a practical guideline: If you are satisfied that a commercial arrangement being proposed or followed by a client:

- falls within the subject matter of an EEC Block Exemption Regulation (e.g. exclusive distribution) and meets all the conditions of that regulation

- falls within the geographic jurisdiction of that regulation, – i.e. affects trade between Member States

- the arrangement applies uniformly throughout the national territory and does not lend itself to any different treatment of its domestic from its "intra-Community trade" provisions without frustrating the legal protection afforded to the latter by virtue of complying with the terms of the Block Exemption Regulation

then the arrangement is effectively protected from the Competition Act and there is little case for notifying it to the Competition Authority. A key condition, of course, is that you have correctly interpreted the regulation in the first place.

**Denis Cagney is a solicitor practising in the firm Matheson Ormsby Prentice* ❐

References

1. See O.J. C. 85/6 1982: Commission answer to Parliamentary Question 1508/81.
2. See Kapteyn and Van Themaat; Introduction to the Law of the European Communities (1989) P.198.
3. See, for example, preliminary ruling *Pronuptia* case, 1986 ECR 374.
4. See Ritter and others op cit (P.715).
5. See O.J. C39 of 13.2.1993.
6. See *Phillip Morris Holland BV v Commission* (1980) ECR 2687.
7. See *Walt Wilhelm v Bundeskartellamt*, ECJ February 13, 1969.
8. See 1984 OJ L 207/17.

Western Lawyers Golf Outing

The next outing of the Western Lawyers Golf Society will take place on Saturday 9 October, 1993, at Galway Bay Golf Club. All those interested in participating should contact:

Michael Keane, Solicitor,
Claremorris, Co. Mayo.

Telephone: (094) 71601.
Fax: (094) 71977. ❐

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819

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

Forthcoming AIJA Seminars

AIJA, the International Association of Young Lawyers, is staging the following seminars on topics which will be of interest to Irish lawyers.

Transnational Insolvency Procedures – Montpellier, France 1/2 October, 1993

This seminar is of particular interest to insolvency practitioners and will be addressed by lawyers who have been involved in a number of transnational insolvencies, including the *BCCI* and *Robert Maxwell cases.*

The registration fee is FF2,800 for AIJA members and FF3,200 for non-members.

Recognition and Enforcement of foreign judgements – A practical Guide to the Brussels and Lugano Conventions – Elsinore, Denmark 5–7 November, 1993.

All Irish practitioners will have encountered the Brussels Convention, 1968 and be aware of its practical importance for lawyers concerned with civil and commercial litigation. The single European area for jurisdictional purposes created by the Brussels Convention will soon be enlarged through the Lugano Convention to include the EFTA countries, Austria, Sweden, Norway, Iceland, Finland, and Switzerland. This seminar is designed to suit the needs and interests of lawyers who need to become familiar with the Brussels and Lugano Conventions.

The registration fee is DKK3,400 for AIJA members and DKK4,500 for non-members.

For further details of both seminars, contact *Petria McDonnell*, McCann FitzGerald, 2 Harbourmaster Place, Custom House Dock, Dublin 1,
Tel: (01) 8290000,
Fax: (01) 8920010.

❐

Document Management: Some Practical Considerations

An earlier Technology Notes reviewed basic considerations with regard to the management of documents[1]. This month, I return to the subject with a more practical review of the main considerations when constructing a document management system on an existing word processing package. A document management system is a means by which disciplined control can be exercised over those documents relevant on an on-going basis to the business of a firm and provides for retrieval, consistency and updating of content.

A legal practice is a vast production line of documents. The majority of these will be replications of documents used in earlier transactions. Word processing systems have enabled practitioners to maximise the benefits of replication and to incorporate document editing and construction, typographical amendments and presentation or layout.

This use of a word processing system for text manipulation will invariably lead to the ongoing storage and re-use of standard phrases, clauses, forms and documents. Systems become, in effect, large libraries of precedents and information resources which can become inaccessible or unuseable without proper management.

The following list, which is not comprehensive, suggests some of the principal points to be considered when introducing or developing a document management system within a word processing environment.

1. *Know Your Business: Know Your Documents*

Do not overload a supposed document management system or precedents system with irrelevant documentation. It is not an archive, but a working dispensary of relevant material.

2. *Classify and Order*

Organise you documentation within departments, specialist areas etc. This disciplines your approach and makes access to a large amount of documentation much easier. Make allowance for the addition of new categories or of new model documents or clauses. Documents should be coded or numbered and listed in a register which is available to all potential users.

3. *Centralise Your Sources and Inputs*

One person should have a central role as administrator in determining which documents are to be included in the system and be responsible for updating them. Standard styles, layouts and typography of documents should be decided at the start. It is important to use the security features of your word processing system to ensure that documents once entered may only be amended or deleted by the administrator.

4. *Use the Features*

Use all the relevant features of the word processing system and build them in at the start. These include such features as table of contents generators; automatic paragraph numbering; automatic page numbering; draft numbers and date; deletion of notations on engrossment etc.

5. *Use Automatic Features*[2]

Use the features of the system to automate the internal structures of documents (These include Macro features in Word Perfect or Glossary and Merge in Wang WP)[3] These features can standardise and automate the inclusion of such items as fee earner signatures, formats, tabs and margins, paper sizes, execution clauses, dates, front covers etc.

6. *Notate the Documents*

Documents should include headers and footnotes which make clear their purpose and use and draw attention to specific features. In addition, it should be indicated on documents as to when they were last revised and by whom.

7. *Name your Documents*

In addition to numbering, documents should be given clear names which readily identify them. There is no point in having document titles such as [*Standard Agreement 1, Standard Agreement 2 or Standard Agreement 3*] which are meaningless to those who may not use them regularly.

8. *Print Out and Retain Hard Copies*

These allow for far easier access to copies of current documents by those who may not have keyboard skills. It is far quicker to browse through a hard copy document than to browse through screen pages. It is also easier to photo-copy and use a paper document as a draft.

Reference

1. "Document Case and Client Management Systems"; **Law Society Gazette**; (Vol. 86 No. 3 April, 1992).
2. "In the Beginning was the Word Processor" Nick Holmes, **Solicitor Journal**, (23 October, 1992) provides a useful overview of the main facilities available within and for the principal word processing systems.
3. The **Law Society Gazette** (London) carried a short article on the use of Word Perfect for document management with some useful contact names and telephone numbers. "Making Use of Macros" (4 November, 1992). See also *Word Perfect for the Legal Profession* James Behrens (London, 1992).

The Technology Advisory Group is a group of solicitors who, with the approval of the Technology Committee of The Law Society, seek to promote awareness of and the use of technology within the profession. Further details are available from the Honorary Secretary: John Furlong, c/o William Fry, Solicitors, Fitzwilton House, Wilton Place, Dublin 2. ❐

SADSI News

Following the success of the Mid-Summer's Ball and the Cork Hospitality Weekend to which we owe a huge thanks to all our sponsors and supporters, we now enter the last lap of the 109th session of SADSI, writes Cora Fitzsimons. The following events are lined up for the coming months:

Careers Seminar & Halloween Disco. Thursday 28 October, 1993:

SADSI will be hosting a Careers Seminar in the Law Society in Blackhall Place. We are inviting speakers from a diverse legal spectrum, who are in a position to advise on possible career paths based on their own experiences. The seminar will concentrate primarily on opportunities *within* law. For example, we will hear from practitioners who have set up their own firms, people who have worked abroad (within the EC) and those who have undertaken post-graduate course upon qualification. The forum will be followed by a Halloween disco – and guess what? Pints are only £1!

Gold Medal Debate, Thursday 18 November, 1993:

The SADSI Gold Medal will be awarded to the best debater on the night. Depending on the number of entries, there may be preliminary selection rounds prior to this date. Anyone interested in entering the competition should contact: *Graham Hanlon, Sean Barton* or any other committee member before Friday 5 November. The wine reception beforehand is open to all.

Accommodation Register

Many of you may be aware that SADSI have compiled a Register of Accommodation to help apprentices travelling to Dublin for the various Professional and Advanced courses to find accommodation. Should anyone have accommodation to offer could they please contact us as soon as possible and those seeking a roof over their heads should get in touch with *Jacqui Cross* in MOPs.

Nominations for Incoming Auditor (IX)

Friday 5 November, 1993 is the closing date for nominations for candidates in next year's election for Auditor. Nominations should be forwarded to *Paula Murphy* c/o A&L Goodbody.

SADSI Election

The election for Auditor of the 110th session of SADSI will take place on Thursday 2 December. All candidates must be proposed and seconded by two apprentices and all nominations must reach *Paula Murphy* at A&L Goodbody by 6pm on 5 November. Nominations after this date will not be accepted. Candidates may send out their manifestos with the ballot papers which will be sent to each apprentice during mid-November.

SADSI AGM and Election Night, Thursday 2 December, 1993:

The AGM, and the results of the SADSI elections, will be followed by a drinks reception and disco to ring in the new Auditor (ix).

SADSI Constitution

The SADSI Constitution and Sessional Standing Orders as originally drafted, and last revised in 1964, is scarcely functional at this stage of SADSI's existence. Its objects, as currently perceived, are too narrowly defined and do not take into account the fact the SADSI has developed from a specialised debating society to one whose role is much wider. Today, SADSI is also concerned with practical problems encountered by apprentices and is the only representative body to pursue their causes. And in addition to debating, SADSI is active in other social spheres. We have therefore set up a Drafting Committee comprising the following: *Paula Murphy*, A&L Goodbody, *Sean Barton*, McCann FitzGerald, *Cora Fitzsimons*, Lennon Heather & Co. and *Anne Kelly*, A&L Goodbody. Anyone who is interested in making any kind of input should feel free to contact us at the above offices.

It is envisaged that the new constitution will be available for viewing within the coming months in a number of counties and the details will be advertised in the *Gazette*. The finished product will be presented for implementation at the AGM in December.

Cork News

Many thanks to *Annette O'Sullivan, Kieran McCarthy, Yvonne Buckley* and *Noel O'Herlihy* for the barbecue they organised recently at the Anglers Rest Bar at which there was a display of Olympic Volleyball the likes of which has never been witnessed there before. The winners of the "tournament" are still awaiting their drinks from the losers (ahem). Keep a close eye on Sky Sports for further coverage.

Many thanks to all those who came along to the very successful Southern Hospitality Weekend we hosted in Cork recently.

Every monday night Cork apprentices *et al* continue to meet up to play indoor soccer (which sometimes resembles Rollerball) at the ESB Sports Centre. *Pat "Scilacchi" Gannon* has been a revolution with his no nonsense tacking and deadly aim (at both the goal and opponents' shins!). ❐

Clarke Chairs Bar Council

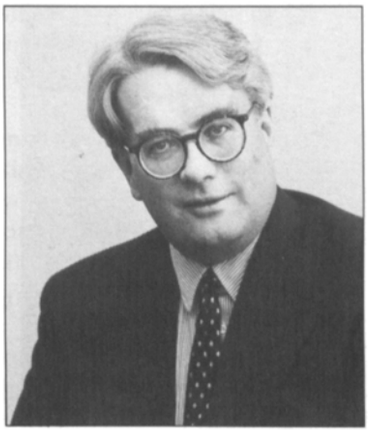
Frank Clarke SC has been elected Chairman of the Bar Council to succeed *Peter Shanley SC*. He took office on 1 September and has previously held the positions of Treasurer and Vice-Chairman of the Bar.

A specialist in commercial and constitutional law, Mr. Clarke was called to the Bar in 1973 and took Silk in 1985. He has acted for clients such as Open Door Counselling in the SPUC case, the NUJ in the European Court versus Section 31, for James Pius Clarke in an extradition case and for PDFORRA in action to establish the Army Association.

He was educated at Drimnagh Castle CBS and at University College, Dublin where he graduated with a Maths and Economics Degree before going to the Kings Inns.

"During my term of office I very much hope to see improvements come about, for the public and for barristers, in the operation of both the Civil and Criminal Legal Aid Schemes," he said.

"Courts structures and procedures need immediate attention and I will be urging most strongly for radical change which can deliver a system capable of dealing with future requirements," he added.



Frank Clarke SC

The 1993/94 Bar Council

Chairman : Frank Clarke SC

Senior Counsel

The Attorney General

Anne Dunne	John Gordon
Paul Gallagher	Liam McKechnie
Catherine McGuinness*	
John MacMenamin	James O'Driscoll
Sean Ryan	Peter Shanley

Junior Counsel

Michael Counihan	Michael Durack
Fergal Foley	Mary Irvine
Harvey Kenny	Dymphna Cusack
Eamon Marray	Eanna Mulloy
Peter Somers	David Sutton*

**Incoming as from 1 September, 1993* ❐

Irish Solicitors Golfing Society

President's Prize

The President's Prize of the Solicitors Golfing Society will be held at Rosses Point Golf Club, County Sligo on Friday 24 September, 1993 when the following competitions [18 Holes Stableford] will be played;

1. **The President's Prize** [*Raymond Monahan*] and the Incorporated Law Society Challenge Cup – [Holder; *Andrew Curneen*].
2. The Ryan Challenge Cup [Handicaps 13 to 18].
3. The Veterans' Cup.

Runner up prizes in all categories will be presented together with prizes for first and second nine.

The Tee is reserved from 12 noon until 3.00 p.m.

Dinner and the AGM will be held afterwards at the Golf Club.

A Time Sheet will operate. Please contact *Carol Mahon* at 8744147/8728233 to reserve a time.

William Jolley,
Hon Secretary. ❐

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

First German Lawyer on the Roll

Dr. Walter Eberl, pictured on the occasion of his admission to the Roll last February, with the President of the Law Society, Raymond Monahan.

At a recent seminar in Dublin on cross-qualifying in other EC jurisdictions called "How to become a Euro-lawyer: The Practical Aspects of Requalifying in other EC Member States" I had the honour to deliver a paper. The description "Euro-lawyer" seems to be a relatively new invention. Unfortunately, European integration has not yet arrived at a stage where a qualification in any one Member State would entitle a lawyer to establish himself or herself in any other Member State. Therefore, at present a "Euro-lawyer" can best be described as somebody who is qualified as a lawyer in more than one EC country. The seed for this new species of lawyers has been created by the EC Directive 89/48 of December 21, 1988 on the Mutual Recognition of Qualifications and Diplomas. This directive was implemented by Germany and Ireland on July 16, 1990 and 1991 (Statutory Instrument No. 1) respectively. Both countries now offer transfer tests to qualify lawyers from other EC States. Today the "Euro-lawyers"still form a rather small club. As you may already have guessed, the author of this report is a member of it.

Due to lucky circumstances I happened to be the first German lawyer and indeed the first person ever to sit the transfer test in Ireland. After qualifying and practising as a "Rechtsanwalt" in Munich for some years I decided to move to "Dublin's fair city" to gain further experience in international law and further practical knowledge of the Common Law System. I therefore joined Whitney, Moore & Keller, one of Dublin's leading commercial law firms for a period of six months. During this challenging time many new ideas were born, among them the idea of availing of the new liberalisation and qualifying as an Irish solicitor. Some might say that the application to qualify in Ireland was just an excuse to return more often to this lovely country. They might be right but there was also the motivation to better understand the common law system as distinct from the civil law system. After a productive experience in the Dublin law firm and a period of hard study at home in Munich I came back to Dublin in early October 1992 to sit the transfer test which I passed successfully. When I returned to Dublin in February this year to attend an impressive Parchment Ceremony at the Law Society all the hard work was forgotten.

If one can draw a conclusion from the full attendance at the above mentioned seminar in Dublin, there will be a growing number of young lawyers in the future who are interested in cross-qualifying as a Rechtsanwalt, avocat, solicitor, barrister, advokat etc. in other EC countries. I think this has to be a good development. Good luck to all fellow-pioneers!

Dr. Walter Eberl
Schwarz Schniewind Kelwing, Munich. ❐

Reprinted courtesy of *AIJA Gazette*.

Date for your Diary:

60s Night

Friday, 12 November, 1993

Presidents Hall, Blackhall Place

Proceeds to CYC community youth projects in Dublin.

*** disco * buffet supper**
*** draw for weekend in London**

60s dress essential.

See October *Gazette* for further details.

Law Society

Public Seminar

Staged by the Public Relations Committee

Marital Breakdown – The Legal & Social Responses

Saturday, 9 October, 1993, 10.00 am - 4.00 pm.

Presidents Hall, Blackhall Place

Fee £20 including lunch (proceeds donated to FLAC)

Speakers: Mervyn Taylor, TD, *Minister for Equality & Law Reform;* Brian Sheridan, *Solicitor, Law Society Council;* Mary O'Toole, *BL;* Mary Lloyd, *Solicitor/Mediator;* Dr. Gerry Byrne, *Psychiatrist;* Kieran McGrath, *Social Worker.*

Please contact *Mary Kinsella* at the Law Society, 6710711 to reserve your place

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 in substitution for the original 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 September, 1993.

Lost Land Certificates

Ellen Quinn, Folio: 5568; Townland: Tullysleva; Area: 15(a) 2(r) 2(p). **Co. Mayo.**

John Cussen, (deceased), Folio: 9029; Townland: Bray in the Barony of Rathdown situated on the South side of Herbert Road in the Town of Bray. **Co Wicklow.**

J. Harris (Assemblers) Limited [J. Harris (Assemblers)] of Cloghran, Dublin 9. Folio: 24078F; Townland: Bustyhill, Barony of Newcastle; Areas: 8.911 hectares, 0.932 hectares, 16.360 hectares. **Co. Dublin.**

Noel Higgins, Mitchelstown Cottages, Kilshane, Finglas, Dublin. Folio: 8375; Townland: Mitchelstown, Barony of Castleknock. **Co. Dublin.**

Edwin Gardner Bothwell, Folio: 78L; Land: Marshes Green. **Co. Louth.**

Ellen Doyle, Folio: 4811 closed to Folio 6466 closed to Folio 2359F; Land: Ballynasilloge and Currane. **Co. Carlow.**

Daniel Joseph Harnett, Folio: 274; Land: Knocknasnaa. **Co. Limerick.**

Wolfgang Wiesmann, Folio: 52075; Townland: Stoney Island; Area: 0(a) 1(r) 17(p). **Co. Galway.**

John Eakins (orse John Burns Eakins), Cloonshinnagh, Killala, Co. Mayo. Folio: 9924; Townland: Cloonshinnagh and Ballinteean; Area: 15(a) 0(r) 11(p), 18(a) 2(r) 38(p). **Co. Mayo.** Solr. Ref: JMG. AW.

Davoc and Anne Rynne, Redcliffe Lodge, Spanish Point, Miltown Malbay, Co. Clare. Folio: 7958F; Townland: Cloonlaheen East; Area: 31.438 acres. **Co. Clare.**

The County Council of the County of Mayo, Folio: 6550; Townland: Lavy Beg; Area: 5(a) 23(p) 0(r). **Co. Mayo.** Solr. Ref: PJMD. W. JT.

Sean McCaughey, Folios: 7427 and 7433; **Co. Louth.**

Patrick Clarke, Folio: 1633; Land: Rosslough; Area: 38(a) 0(r) 28(p). **Co. Louth.**

Mary McLoughlin, Folio: 19533F; Townland: Carthage; Area: 0.121 hectares. **Co. Donegal.**

John Kelleher, Folios: 17403, 25081, 25078; Lands: Lloydsborough, Manna South and Manna South, respectively. **Co. Tipperary.**

Joseph Stanley, Folio: 3931F; Land: Bearlough. **Co. Wexford.**

Eugene McCabe, Folio: 26289L; Land: property known as 21 Seskin View Park situated in the Parish and Town of Tallaght. **Co. Dublin.**

Thomas McFadden, 62 Ross Park Kill Avenue, Dun Laoghaire, Co. Dublin. Folio: 56823; Townland: Inveran; Area: 1(a) 0(r) 3(p); **Co. Galway.**

Enda Hardiman, Folio: 26060; Land: Ferganstown and Ballymacan; Area: 0(a) 1(r) 19 1/2(p). **Co. Meath.**

John O'Riordan, Folio: 25833; Land: Garranmacgarrett. **Co. Cork.**

Michael Hayes, Folio: 17762 closed to 14657F; Land: Foilmahonmore; Area: 25(a) 2(r) 20(p). **Co. Tipperary.**

Eugene and Kathleen Hand, Folio: 15029; Land: Part of the lands of Tromra. **Co. Westmeath.**

Albert Stanley, as tenant-in-common of an undivided moiety. Folio: 1211F; Land: Urard; Area: 6(a) 0(r) 25(p). **Co Tipperary.**

Daniel and Kathleen Moynihan, Folio: 8842F; Land: Coolacoosane. **Co. Cork.**

Alexander Quigley, Folios: 43165, 11534; Lands: Ardmore and Ardmore. Area: 0(a) 2(r) 30(p), 47(a) 0(r) 38(p). **Co. Donegal.**

Patrick Joseph Fay, Folio: 18216; Land: Coolkill; Area: 1.246 acres. **Co. Cavan.**

Michael and Margaret Ryan, Folio: 5924F; Land: part of the lands of Cloghadoolarty North. **Co. Limerick.**

Joseph and Jane Bracken, of Skerries, Co. Dublin. Folio: 9784F; Townland: Townparks, Barony of Balrothery East. **Co. Dublin.**

Elizabeth Byrne, Folio 14473; Land; Ballowen; Area: 27(a) 1(r) 25(p). **Co. Wexford.**

Dympna and Kevin Mayne, Folio: 8074; Land: Curraghfarm. **Co. Kildare.**

Brian and Siobhan Carney, Folio: 8990; Land: Monamuck. **Co. Wicklow.**

James Palmer, 21 West Essex Street, Dublin and of John J Kennedy Park, Bluebell, Dublin. Folio: 52229L; Townland: Bluebell, Barony of Uppercross. **Co Dublin.**

Deirdre Hallahan, Folio: 4977; Land: Littlebridge Inches; Area: 14(a) 0(r) 10(p). **Co. Waterford.**

Michael Bergin, Folio: 8094 and 20417; Land: Gortnacally. **Co. Tipperary.**

Alice O'Connell (nee Ward), Folio: 138L. **Co. Limerick.**

Bernard O'Hara, Folio: 7668; Land: Kiltycreevagh. **Co. Longford.**

Carmel Nolan, Folio: 9024 closed to 9260F; Land: situated on the north side of Granby Row; Area: 0.125 acres. **Co. Carlow.**

Felix and Veronica Byrne, Folio: 781F; Land: Tinnock Upper; Area: 0(a) 2(r) 9(p). **Co. Wexford.**

Malcolm and Bridget Ainsley, 4 Chapel Street, Elphin, Co. Roscommon. Folio: 33597; Townland: Elphin. **Co. Roscommon.**

Lost Title Deeds

In the matter of the Registration of Title Act, 1964 and of the application of James Carroll, 68 St. Josephs Road, Walkinstown, Dublin 12.

Take notice that the above named has lodged an application for the registration on the leasehold register with absolute title free from incumbrances of ALL THAT AND THOSE the property now known as 68 St. Josephs Road, Greenhills, Walkinstown, Dublin 12.

The original document of title specified in the Schedule hereto is stated to have been lost or mislaid.

The Application may be inspected in 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 document of title is in existence.

Any such notification should state the grounds on which the document of title is held and quote Reference No. 93DN00919.

Pat O'Brien,
Chief Examiner of Titles.

Schedule
Lease dated 30/12/1962 between Peter Byrne of the first part, Greenhills Estates Limited of the second part and James Carroll of the third part.

Lost Wills

Kelly, John (Jack), late of Sorrell, Ballyhea, Charleville, Co. Cork; previous addresses: Carrignagarry, Ballincollig, Co. Cork and c/o Transport Office, Ballybeg Quarry, Buttevant, Co. Cork. Would any person having knowledge of a will of the above named deceased who died on 30 March, 1993, please contact James Binchy & Son, Solicitors, Charleville, Co. Cork.

McEvoy, Margaret (orse Mairead), deceased, late of Carrickbrennan Road, Monkstown, Co. Dublin. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 22 March, 1993, please contact O'Connor & Bergin, Solicitors, 30 Bachelors Walk, Dublin 1. Telephone: 01–8732411. Fax: 01–8732517.

Richardson, Mary Margaret, deceased, late of Druminton, Dartry, Cootehill, Co. Cavan. Would anyone knowing the whereabouts of a will of the above named deceased who died at the County Hospital, Monaghan on 2 July, 1993, please contact William Fitzgibbon, Solicitor, 24 Upper Cork Street, Mitchelstown, Co. Cork. Tel: 025–84255. Fax: 025–84329.

Cox, David, deceased, late of Ballinluska, Myrtleville, Co. Cork and also of 9 Willow Court, Cross Douglas Road, Cork. Will any person having knowledge of the whereabouts of a will of the above named deceased who died on 3 June, 1993, please contact Ahern Roberts O'Driscoll, Solicitors, Mill House, Carrigaline, Co. Cork. Telephone 021–372034.

Pearce, Victor Frederick, deceased, late of Mount Garrett, New Ross, in the County of Wexford. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 27 September, 1992, please contact M/s Kelly, Colfer, Son & Poyntz, Solicitors, Delare House, South Street, New Ross, County Wexford. Telephone (051) 21212. Fax (051) 22028.

Molloy, Joan, deceased, formerly of 19 Eden Court, Mahon, Blackrock, Cork. Would any person having knowledge of a will made by the above named deceased who died on 4 June, 1993, kindly contact Noonan & Linehan, Solicitors, 54 North Main Street, Cork.

Walsh, John, deceased, late of 10 Rush Road, Skerries, Co. Dublin. Would any person having knowledge of the whereabouts of a will dated in or about 21 August, 1974, of the above named deceased, who died on 17 May, 1978, please contact O'Leary Arnold & Co., Solicitors, 5 The Square, Skerries, Co. Dublin. Tel: 8491 085.

McGovern, Tommy, late of 44 Oakley Road, Ranelagh, Dublin 6, widower. Would any person having knowledge of the whereabouts of a will of the above named deceased, who died on 5 July, 1993 please contact James Hanley and Company, Solicitors, The Mall, Westport, County Mayo. Telephone 098–26076.

Coleman, James, deceased, late of 2 St. Thomas Meade, Mount Merrion, County Dublin. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 21 July, 1993 please contact Dominic Dowling, Solicitor, Dowling Butler, Solicitors, 28 Lr. Baggot Street, Dublin 2, telephone 6763095, fax 6760219.

Bannon, Thomas, late of Two-Mile-Borris, Thurles, Co. Tipperary who died on 1 June, 1993. Would any person having knowledge of the whereabouts of any will of the above named deceased please contact the offices of John P. Carrigan & Son, Solicitors, Thurles, Co. Tipperary. Telephone 0504 22033.

Kirwan, Ellen, deceased, late of 15 Coolevin Road, Dublin 8. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 3 March, 1986 please contact W.G. Bradley & Sons, Solicitors, 52 Fitzwilliam Square, Dublin 2, telephone 6762078.

Jones, Michael W., deceased, late of 10 Leitrim Place, Wicklow. Would anyone having any knowledge of a will of the above named deceased who died on 10 August, 1993, please contact Haughtons, Solicitors, Summerhill, Wicklow. Tel: 0404–68344, Fax: 0404–68131.

Miscellaneous

Northern Ireland Agents: For all contentious and non contentious matters. Consultation in Dublin, if required. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, telephone (080693) 61616, fax 67712.

Solicitor's Practice wanted in West/North West Donegal, all replies treated in confidence. (Advertiser not presently based in Donegal). Please reply to box 70.

World Jurist Ass. conference Manila Oct 24–29. Dub-Manila, Bangkok H. Kong £620 rtn. Tel any time Consul 8215424.

Translations J.D. Bryan B.A. (Hons) Diplomated Legal Translator French, Spanish, Portuguese. Reasonable rates, no VAT. Tel 0044–624–813991.

Environmental Protection, UCD evening course. Phone for brochure at 2695542.

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.

Revision of Keane, The Law of Local Government in the Republic of Ireland

The Law Society is seeking an author, suitably experienced in local government law, to prepare a second edition of this work which was published by the Society in 1982.

It is the leading Irish textbook on local government law and requires considerable updating.

Applications should be addressed to *Margaret Byrne,* Secretary, Publications/Library Committee, Law Society, Blackhall Place, Dublin 7.

Applications will be dealt with by the Committee in strict confidence.

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 Ms. Erin Barry, at the Law Society, 6710711, Ext. 401.

· DE ·
IRISH DOCUMENT EXCHANGE
37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin
OVERNIGHT ~ EVERY NIGHT EVERYWHERE
Conveyancing Practices
overnight service for all relevant documents

Royal College of Surgeons in Ireland
A LEGACY OR DONATION
in favour of
The Royal College of Surgeons in Ireland
contributes to medical education and training and important research.
Please think of us!
For further details contact:
The Registrar,
Royal College of Surgeons in Ireland,
123 St. Stephen's Green,
Dublin 2.
Tel: (01) 4780200
Charity No. CHY 1277

DOCUMENT EVIDENCE
Established scientists, experienced in all areas of forensic document examination
Quick response
•
Competitive rates
Contact : Mike Hall
DOCUMENT EVIDENCE
Gatsby Court
172 Holliday St.
Birmingham
B1 1TJ
Tel 021 643 0990
Fax 021 633 0288

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY
OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 8 OCTOBER, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND • LIBRARY

CAPPING AWARDS – UNJUST, UNWORKABLE

GOVERNMENT MUST ACT ON THE COURTS

JUDGMENT MORTGAGES – A FALSE DAWN?

RATING VALUATION – THE APPEAL SYSTEM

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service
• Efficient • Competitive Prices • Friendly

Private Limited Company	**–**	**10 days, £265***
Guarantee Company	**–**	**10 days, £285**
Shelf Company	**–**	**10 mins., £265***

*** Prices valid until end of October.**

Phone: CARMEL or RITA
at 671 0711, Ext. 450 Fax: 671 0704

VOL. 87 NO. 8 OCTOBER 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 289

The Minister of State for Commerce & Technology, *Seamus Brennan*, must answer the points put to him in a submission by the Law Society concerning his proposal to place a cap on personal injuries awards.

President's Message 291

The Society's submission on the future management of the courts service now rests with the Minister for Justice and her response is awaited with interest, writes Law Society President, *Raymond Monahan.*

News 293 et seq.

Council approves submissions, p 293; Council considers admissions policy, p 294; Careers Adviser appointed, p 294; Professional courses – dates and availability, p 296; Society exhibits at Ploughing Championships, p 302; 60s night to benefit 90s youth, p 307; Solicitor Link service launched, p 316; Lawtech '93, p 316; Annual Soccer Blitz, p 319, SADSI Southern Weekend, p 319.

Practice Notes 295

General Tax Amnesty; Amendments to Conveyancing Contracts before Execution by a Purchaser; Expert Witnesses in Conveyancing Cases; Medico-Legal Reports.

Judgment Mortgages – a False Dawn? 297

The baffling language of section 6 of the Judgment Mortgage Act, 1950, has caused much confusion over the years, writes *Christopher Doyle*, and clearly the battle over S6 has plenty of life in it.

Mediawatch 301

The Law Society was the instigator of a number of news stories in the media during the month of September.

People and Places 304

Book Reviews 309

Deadly Wages – Irish Work Hazards; Havers' Companion to the Bar 1993/1994; Dictionary of Law; Blackstone's Statutes on Evidence.

Lawbrief 313

Professional negligence – recent judgment; Tenets of professionalism adopted by the International Association of Defence Counsel; Statute of Limitations, 1957 – recent judgment on "the date of knowledge".

Technology Notes 315

Lawlink, the project initated by the Technology Committee of the Law Society is to begin pilot testing at a number of sites, reports *John Furlong*.

Rating Valuation in Ireland – the Appeal System 317

Tom O'Connor, former Commissioner of Valuation, explains rating and property valuation and describes the operation of the Valuation Tribunal.

Correspondence 321

Letters from readers concerning: pilot Civil Legal Aid Scheme; life proceeds not paid to solicitors

Professional Information 322

Notices concerning lost land certificates; lost title deeds; lost wills; and miscellaneous advertisements.

Editor: Barbara Cahalane

Editorial Board:
Dr. Eamonn G. Hall, (Chairman)
Elma Lynch, (Vice Chairman)
John F. Buckley
Justin McKenna
Michael V. O'Mahony
Noel C. Ryan

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

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7.
Telephone 6710711 Telex: 31219 Fax: 6710704.

Front Cover Photograph: The front cover shows l-r: *Frank Clarke*, SC, Chairman of the Bar Council and *Raymond Monahan*, President of the Law Society, posing for photographs at the joint Law Society/Bar Council press conference on 22 September.

Senior Consultant

Secretarial and Registration Services

Price Waterhouse is one of the leading firms of business advisers in Ireland. The firm acts as auditors, business consultants and tax advisers to a significant number of the leading Irish and international companies. We act as registrar for a number of public companies and provide a full range of company secretarial services for all types of organisations. A Senior Consultant is now being recruited to join the in-house secretarial and registration team based in Dublin.

The person appointed will be part of a highly skilled team and will have responsibility for providing secretarial and registration services to our clients. This will involve dealing with share and bond registration work including maintenance procedures for Stock Exchange dealings, placings and rights issues, large scale flotations, dual listings and information technology developments. The person appointed will also provide consulting services on high level company secretarial issues and on corporate restructuring schemes and will be able to work as part of a multi-disciplinary team with taxation and corporate finance specialists.

The individual we are seeking will be an experienced Chartered Secretary or Solicitor, probably aged between 30 and 40, with a wide range of good contacts in legal, financial and stockbroking circles. Strong technical ability, ideally gained in a practice with a corporate clientele, and sound business acumen are essential. Candidates must possess excellent marketing and presentation skills and have the stature and commercial skills necessary to deal at top level with colleagues, clients and regulators. The position offers an extremely competitive remuneration package.

If you have the skills, personality and experience we are seeking, please send a detailed curriculum vitae, in strictest confidence, to Tom O'Higgins at

Price Waterhouse,
Gardner House,
Wilton Place, Dublin 2.

Price Waterhouse

An AMCO Member

Unjust, Unworkable and Unconstitutional

What is the proper level of compensation to be paid to an accident victim who suffers serious personal injuries?

That is an issue that may well arise for debate in this country in the near future. The Minister of State with responsibility for Commerce and Technology, *Seamus Brennan* TD, thinks that Irish courts pay too much – especially for non-pecuniary loss, usually referred to as 'pain and suffering'. Minister Brennan's concern is with the high cost of insurance, particularly motor insurance, in this country. He has come to the conclusion that the level of damages paid in accident cases is the principal 'bugbear' and, if we could reduce the payouts of insurance companies, by reducing compensation levels, all would be well and insurance levels would come down.

The Law Society recently responded to Mr. Brennan's proposals with a detailed, well-argued paper which suggested that he was wrong on all counts. The paper suggested that the *Davies Arnold Cooper Report*, upon which Mr. Brennan appears to be basing his policy, was an unreliable study; that Irish levels of damages were fair and that, even if compensation levels were reduced, Minister Brennan could not guarantee any corresponding reduction in insurance premiums. The paper fired a strong warning shot at the Minister that a proposal to determine levels of compensation by statute could be unconstitutional.

In our view, Minister Brennan owes the Irish public some explanations. He must, at a minimum, justify his contention that Irish levels of compensation are too high and he must also, in our view, show clearly how, if they are reduced, he proposes to guarantee a reduction in insurance levels.

A cause and effect link between levels of compensation and the high levels of insurance in this country has been presumed by Minister Brennan. According to the Davies Arnold Cooper Report, however, countries such as France, Germany and the Netherlands have higher general levels of compensation for the most serious categories of injury yet, in those countries, motor insurance levels are much lower than in Ireland. How does the Minister explain this? Moreover, it is clear from a comparison between the levels of compensation in England and here that one of the main reasons for the difference – which is not all that significant – is that Irish courts use actuaries for calculating future losses (in relation to life expectancy) whereas, in England, this function is performed by the judges themselves. A close reading of the Davies Arnold Cooper Report will show that the multiplier used for future life expectancy is significantly higher in Ireland than in England – for example, in the case of serious brain damage to a woman aged 20, the multiplier used in England was 15 years whereas, for the corresponding injury in Ireland, the multiplier was 23 years. This is a very significant factor which accounts for a large part of the disparity between English and Irish levels of damages. It seems hardly necessary for us to ask which of the two approaches is the fairer.

The Law Society paper made some good suggestions as to how the high level of insurance should be tackled in this country. There is a clear need to establish why fatalities and serious injuries are higher here than in the UK despite the lower accident rate. The level of uninsured driving needs also to be tackled. The Society also made some strong points about the American experience in this general area. In many of the States across the US, attempts to introduce caps on levels of damages were held to be unconstitutional and, even in those States where such 'reforms' were implemented, there is no evidence that there has been any reduction in insurance costs.

If this debate is to continue – we would hope that in the general public interest the Minister will now drop his proposals – Minister Brennan must do more than simply advert to what he believes to be 'EC norms'. He must answer the paper put to him by the Law Society.

We await his response ❐

A copy of the press statement and summary of the Society's submission to government, *or* a copy of the full text of the submission, is available to practitioners on request to *Mary Kinsella* at the Law Society. Tel. 01-6710711.

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7. Tel:(01) 8725622 Fax: (01) 8725404

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

DOCUMENT EVIDENCE

Established scientists, experienced in all areas of forensic document examination

Quick response • Competitive rates

Contact : Mike Hall

DOCUMENT EVIDENCE

Gatsby Court
172 Holliday St.
Birmingham
B1 1TJ

Tel: 0044 21 643 0990
Fax: 0044 21 633 0288

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

Creative

Inheritance Tax

&

Probate Tax Planning

Acknowledged by leading Solicitors & Tax Consultants as innovative and effective ..... **a new dimension.**

Of particular interest to Solicitors active in the estate planning process of high-net-worth clients.

contact Owen Morton FCII

MONEYWISE
Financial Planning Ltd.
23 Fitzwilliam Sq. Dublin 2.
Tel (01) 6 762 205 Fax (01) 6 619 575

COURTHOUSE CHAMBERS
27/29 WASHINGTON STREET, CORK

- **Courthouse Chambers** situated on Washington Street, directly opposite Cork's Courthouse provides a unique office environment with over 30,000 sq. ft. of office space in units of varying sizes.
- The Property is located in Cork's 'Designated Area' which offers a package of Capital Allowances, Double Rent Allowances and Rates Relief, constituting a very attractive incentive for businesses which are considering locating or relocating in Corks City Centre.
- Existing occupiers in the building include Barristers, Solicitors, Accountants, Computer Firms and Architects.
- Last remaining units from 300 sq. ft. available for rent.

CONTACT Margaret Kelleher / Billy O'Mahoney
TEL. 021 275044 FAX. 021 271951

LAWTECH '93

The Solicitors and Legal Office Exhibition

Blackhall Place
Dublin 7

4th - 5th
November '93

Thursday 12.00 - 7.00 • Friday 11.00 - 6.00

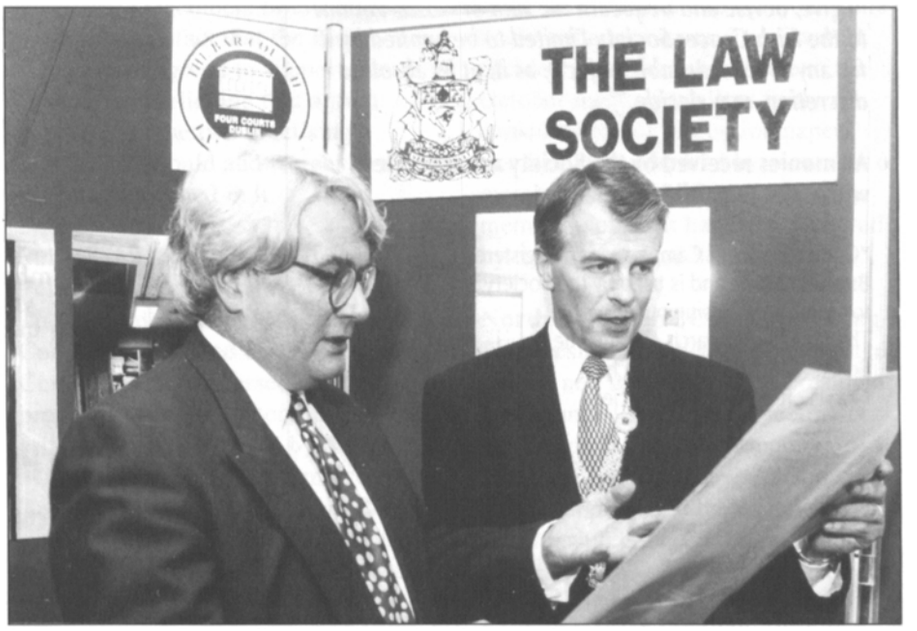
For tickets contact:
Tel. 01-900600 / Fax. 01-908934

Organised on behalf of The Incorporated Law Society by

SDL Exhibitions Ltd

The Government Must Act on the Courts Service

At every available opportunity throughout my year as President I have highlighted my own concern and the concern of members of the profession throughout the country about the current state of our courts service. The culmination of our efforts in this regard was a very detailed submission which the Society, supported by the Bar Council, forwarded to the Minister for Justice on 21 September last, setting out our views about the future management of the courts service and what needs to be done to ensure that Ireland has a modern, efficient service which ensures that people have proper access to justice and can vindicate their rights and pursue their just entitlements. A day later, the Law Society and the Bar Council held a joint press conference to publicise the contents of the submission.



At the joint Law Society/Bar Council press conference to publicise details of the submission were l-R: Frank Clarke, SC, Chairman of the Bar Council and Raymond Monahan, President of the Law Society.

I was particularly pleased at the joint approach by ourselves and the Bar Council. As practising lawyers we often have the unhappy task of trying to explain the shortcomings of the current system to clients who are justifiably bewildered by the delay and antiquated procedures they encounter, and indeed, who are not above laying the blame for these matters at the door of their solicitor or counsel. It was a valuable opportunity to express concern for our clients' interests and also our own desire to see a better service in place. I hope it will be the first of many joint initiatives by the two practising professions on issues of mutual concern, whereby by co-operating we can add weight to our efforts

At our press conference I said that acute underfunding of the service for many years and poor management of the courts at central level in Government had led to a situation which had now reached crisis point. There is little doubt that the inefficiency of the service is contributing greatly to the high cost of litigation in this country and is, therefore, imposing a substantial burden on the commercial life of the country. The present state of affairs is completely unsatisfactory and requires urgent action.

Citizens are entitled to look to the courts for the vindication of their rights and they must have access to a system of justice that is efficient, speedy and cost-effective. Delay in hearing a civil case is now of the order of two and a half to three years in the High Court and in the principal Circuit Court areas. This is proof that the courts system is not serving the needs of the public.

Our joint submission described the principal shortcomings of the existing service, examined delays in the courts and documented the appalling conditions and lack of facilities in many courthouses around the country especially facilities for the hearing of family law cases. It urged examination of the setting up of a special family law court, the need for reform of the pleadings system and pre-trial procedures and a more efficient listing system, the need for more resources for the courts, including an end to embargos on the filling of staff vacancies, the appointment of extra judges, spending on information technology, and recommended a new management structure - an executive agency – first suggested in the Devlin Report almost 25 years ago.

The submission now rests with the Minister of Justice and we await her response with interest. So far the only indication of a response from Government was a media report which indicated that the Minister of State at the Department of Justice, *William O'Dea TD*, had "dismissed" the idea of an executive agency because he felt it would interfere with the independence of the judiciary and could also be unconstitutional. This is a disappointing response, and we hope that the Minister of State will examine the idea in greater depth. In

(Continued on page 293)

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.

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

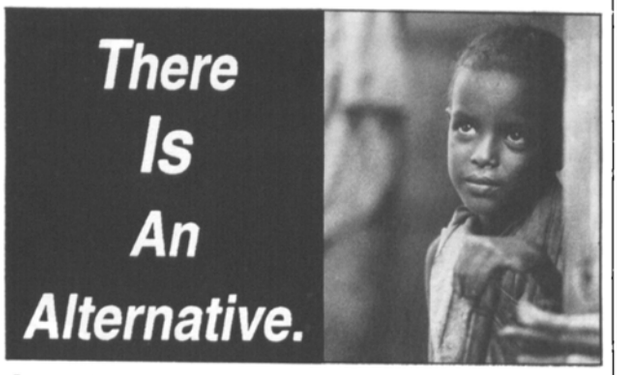
HEALTH RESEARCH BOARD

The Health Research Board (formerly the Medical Research Council of Ireland) funds research into the major health problems affecting Irish society. Its current programme includes research which aims at developing improved treatments for **Alzheimer's Disease, Leukaemia, Asthma, Arthritis, Schizophrenia, Stroke and AIDS.**

All research grants are awarded strictly on merit and the Board has a well deserved record of scientific achievement.

When making your will you can assist the vital work of the Board by making a donation or bequest to:

The Health Research Board,
73 Lower Baggot Street,
Dublin 2.
Tel: (01) 6761176 Fax: 6611856



Concern is a non denominational voluntary organisation devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering. Throughout the Third World there are many children like this child, Fatima, who deserve a future free from want and suffering. Please spare a thought for these children.

If your client wishes to leave money to charity, please remember the work of Concern. If you require any information on suggested wording etc., please contact me now,

Siobhán Walsh
CONCERN
1 Upper Camden Street, Dublin 2. Tel. 6681237

Council Approves Submissions

Pilot Civil Legal Aid Project
At the meeting of the Council on 17 September last, the Council was updated on developments at a meeting with the officials of the Department of Equality and Law Reform on the pilot project on Civil Legal Aid. The President reported that, following unsatisfactory discussions on the level of fees being offered, the Department had written to practitioners inviting them to participate in the pilot scheme on the basis of a fee of £75.00 per case for the first four cases, reducing to £65.00 for each case thereafter. The Law Society had responded immediately advising solicitors not to participate in the Scheme on the basis of the inadequate fees offered. The Council fully endorsed this approach and observed that the project itself was inadequate and had not been properly thought out. The Council was informed that there were indications that some members of the profession had agreed to participate in the Scheme but that it was likely that some of them may have responded before they had received the President's letter. Many Council members believed that, in time, those practitioners would become aware of the impracticality of the pilot scheme and that it would be uneconomic to do the work. Council members accepted that the Law Society could not prevent members of the profession from participating in the Scheme; it was a matter for each individual solicitor to decide.

Submission on Courts Service
The Council approved the text of a joint submission with the Bar Council to the Minister for Justice concerning the future of the courts service which had been prepared on the initiative of the Society. The Council was informed that the Bar Council was in agreement with the submission except for the recommendation concerning the appointment of part-time judges. It was agreed that the different views of the two bodies would be set out in the submission. Members of the Council welcomed the fact that the Bar Council had agreed to support the submission, believing that a joint approach by the two practising professions would add weight to the proposals outlined in it.

Submission on Proposal to cap Personal Injuries Awards
The Chairman of the Litigation Committee reported that the Committee had endorsed a submission prepared by the Director General criticising the proposals by the Minister of State for Commerce and Technology, *Seamus Brennan* TD, to limit compensation awards for pain and suffering in personal injuries cases. The Council agreed that the submission should be despatched to Government as soon as possible and that the details of the submission should be released to the press.

Costs
The Chairman of the Costs Committee reported that the Ready Reckoner that had been sent out to each practice to assist practitioners in establishing how much it cost per hour to run their offices had been very well received by the profession and there had been much positive feedback. In turn it had led to increased interest in the regional seminars on costs being organised around the country and the Chairman reported that nearly every Bar Association had organised a seminar on the topic.

Compensation Fund
The Council approved a schedule of payments of claims on the Compensation Fund. The Council debated further the policy aspects concerning the exercise of the Society's discretion under section 21 (5) (a) of the Solicitors Act,1960 under which the Society may decide to make or refuse to make a grant in a case in which the solicitor did not have a Practising Certificate in force at the time when in the opinion of the Society the loss arose. The Council decided to adjourn the debate to the October meeting to allow further consideration of discussion papers that had been prepared by a number of members of the Council and a memorandum that had been prepared by the Registrar of Solicitors.

Northern Ireland Council Meeting
The President of the Society reported that he and the Junior Vice-President had attended the August meeting of the Council of the Law Society of Northern Ireland. The President said that he appreciated the excellent relationship between the two Law Societies and was confident that it would continue.

Donal E. Browne R.I.P.
The Council observed a minute's silence in memory of the late *Donal Browne*, President of the Kerry Law Society and State Solicitor for Kerry and the sympathy of the members of the Council was conveyed to his family and colleagues. ❐

President's Message

(Continued from page 291)

our submission we pointed out that Lord Chancellor Mackay, announcing that the courts in England and Wales would be established as an executive agency from 1995 had remarked that ". . . an agency will not affect the judiciary, either in its independent role and functions or in its relations with the administration". Our proposal, similarly, would not in any way interfere with the judicial independence of judges, or how they deal with cases, but rather would relieve the judiciary of unnecessary, administrative burdens.

Raymond Monahan
President

Council Considers Admissions Policy

At a special one-day meeting on 23 September last, members of the Council of the Law Society held an in-depth discussion on current policy concerning admission to the vocational stage of training for admission to the profession, including the structure and content of the course and related education matters.

The meeting had two motions before it for consideration. The first proposed by former President, *Frank O'Donnell*, and seconded by former President, *Donal Binchy*, stated that "the Law Society, conscious of its obligations to the community in relation to ensuring the highest possible standards and quality of service by the solicitors' profession, and the necessity to provide competition within the solicitors' profession, and of its duties to its own members, take all possible steps necessary, as expeditiously as possible, to ensure that the members admitted to the Roll of Solicitors annually are commensurate with the needs of the community." An amended motion was also before the council proposed by *Pat O'Connor*, Chairman of the Education Committee and seconded by *Brian Mahon*, Chairman of the Education Advisory Committee, which would have committed the Council to endorsing the work done by the Education Committee and accepting a number of recommendations on the Society's education and admissions policy which were set out in a statement of recommendations.

A wide-ranging debate ensued in which the difficulties arising from the current admissions policy were identified. Concern was expressed that the profession was growing at an unsustainable rate and, if allowed to continue, the over-supply of solicitors could lead to a lowering of standards, a development which would not be in the public interest. There was discussion of whether an admissions policy could be effected which would control numbers or, alternatively whether market forces should be left to determine the issue. It was noted that there were currently 1,948 students in university law faculties of which approximately 65% could be expected to seek admission to the Society's Law School. In addition, the number sitting the FE-1 examination (the avenue of entry for non-law graduates) was also growing.

The Council considered whether the Society could, or should, unilaterally seek to limit numbers, some Council members believing that it was essential to do so in order to guarantee standards. Others expressed the view that it would be difficult to convince the Government and the public that a numerical limitation was objectively justified and in the public interest although some members believed that such a case could be formulated. The Council was agreed that the Society should retain its statutory control over the education and training of solicitors and of setting standards as this was a hallmark of an independent profession.

At the day-long meeting there were many different views put forward concerning future policy options and following the lengthy debate it was decided that the issues required further consideration. The President of the Society said that there was a need for further reflection; a paper would be prepared setting our clearly all the options identified and assessing the merits and demerits of each. He asked the proponents of the different views and options to submit papers for consideration at the October meeting of the Council when the Council would focus on the alternative options. ❐

Careers Adviser Appointed

Hazel Boylan

Ms. Hazel Boylan has been appointed Careers Adviser in the Society's Law School. Ms. Boylan, a psychologist with experience in career guidance and recruitment consultancy, will have a range of functions aimed at widening the employment opportunities for newly-qualified solicitors. She will also advise students at second level who are considering their career options of the difficulties in securing an apprenticeship and the limited employment opportunities available in private practice for newly-qualified solicitors. Ms. Boylan will be liaising with employers to encourage them to consider newly-qualified solicitors for graduate recruitment posts, as well as legal vacancies. She will promote the employment of solicitors at European Community level and assist solicitors and apprentices with applications for Stages in European Community Institutions. She will also manage the Society's pre-apprenticeship register and employment register.

One of Hazel Boylan's first initiatives was to organise a Law School stand at the three-day Higher Options Conference staged in the RDS recently by the *Irish Times* and the Institute of Guidance Counsellors. Assisted by the Assistant Director of Education, *Albert Power*, Tutors *Raphael King* and *Patricia Casey*, on each of the three days respectively, she dealt with queries from many of the ten thousand second level students who attended. The Law School personnel explained the requirements to gain entry to the Society's Law School whether as an exempted law graduate, or via the Final Examination – First Part, and pointed out the difficulties in securing apprenticeships, the current waiting period for places in the Society's Law School and the limited opportunities for newly-qualified solicitors in private practice. ❐

General Tax Amnesty

Practitioners should note that the Tax Amnesty includes a general relief on interest and penalties on all taxes including Stamp Duty, CAT and CGT for years up to 5 April, 1991. This amnesty expires on 30 November, 1993.

Taxation Committee.

Amendments to Conveyancing Contracts Before Execution By a Purchaser

The view of the Professional Purposes Committee is that when a vendor's solicitor furnishes a contract to a purchaser's solicitor, he must expect that no amendments will have been made to the contract, or to any map attached to the contract, unless this fact is clearly stated in the purchaser's solicitor's covering letter returning the contracts.

Accordingly, it is a recommendation of the Professional Purposes Committee that a vendor's solicitor must be clearly alerted by the covering letter that a contract or map has been amended. Failure to so alert could be regarded by the Committee as a breach of the professional etiquette which should exist between colleagues.

Professional Purposes Committee

Expert Witnesses in Conveyancing Cases

The Conveyancing Committee frequently receives requests from solicitors acting in professional negligence cases asking the Committee to assist in finding an expert witness to appear to give evidence as to what might constitute good conveyancing practice in the circumstances of particular cases.

The Committee has received a number of complaints from the practitioners whom it has asked to appear as expert witnesses in these cases, that their advice has been sought at too late a stage in the proceedings. A general experience is that expert witnesses' advice is not sought until the cases are in the list for hearing. Sometimes they are sought within a few weeks of the likely hearing although this may not be the fault of the solicitor acting.

The Conveyancing Committee does not consider it satisfactory that expert witnesses should be sought at such a late stage in the proceedings. The Committee takes the view that the advice of an expert on good conveyancing practice in a case involving an allegation of professional negligence in the conveyancing area should be sought at the same stage of proceedings as medical reports would be sought in a personal injury claim.

Conveyancing Committee

Medico-Legal Reports

Following discussions between the Litigation Committee of the Law Society and the Medical Council, the following guidelines on medico-legal reports were agreed and subsequently approved by the Medical Council. The guidelines were issued to lawfully registered medical practitioners in a newsletter last June. The relevant extract of the newsletter is published below:

Agreement with the Incorporated Law Society
The Council and the Incorporated Law Society have agreed guidelines on medico-legal reports, as follows:

Request for Medico-Legal Reports:
A patient's doctor has a moral and professional responsibility to supply a medico-legal report on request from the patient's solicitors as failure to comply may lead to a patient being deprived of benefits to which he/she may be entitled. Failure to discharge this responsibility in the interest of a patient will result in the Council taking a grave view of substantiated complaints of this nature. In this respect, the over-riding concern must be at all times the interests of the patient involved and in no circumstances should the delivery of a report be unduly delayed. Attention is drawn to the paragraph in Section D entitled "Information" (ref. pages 28/29 of A Guide to Ethical Conduct and Behaviour and to Fitness to Practise, Third Edition 1989 approved and published by the Medical Council, Dublin, March 1989) wherein it is stated "Doctors may be requested by the legal profession to provide medical reports on patients whom they have treated. There may be no legal obligation on them to furnish such reports but, if they are unwilling to do so, they are required, in the interests of their patients, to provide the necessary information to a colleague who is willing to provide a report". The Council wishes to state that this advice is forthwith withdrawn because of the rule against hearsay. Hearsay evidence is in general inadmissible because the truth of the words cannot be tested by cross examination and also because of their nature the words themselves do not have the sanctity of the oath.

Reasonable time to issue a Medico-Legal Report:
Under ordinary circumstances, it is reasonable to expect that a medico-legal report normally will be provided within two months after the examination or the receipt of the request, whichever occurred last. The solicitor requesting the report should be notified of any unavoidable delay beyond this two month period.

Nature/Type of Report:
A medico-legal report should be objective, the content should be confined to relevant professional matters and supply the information required to facilitate the patient in seeking his/her entitlements. In this context, the doctor should not assume the role of advocate either for or against any person's position, regardless of his/her inclinations. Subjective and extraneous remarks are therefore inappropriate in a medico-legal report.

A doctor who has previously examined or treated a patient is obliged to provide a medico-legal report in respect of the examination or treatment or both when requested to do so by the patient's solicitor. However, a doctor is free to decline to make a medico-legal assessment of a condition for which that doctor has not previously examined or treated the patient.

Amount of Fee:
A practitioner is free to charge a fee for a medico-legal report which is reasonable and not excessive in relation to the services performed. ❐

Correction

In the September 1993 (Vol. 87. No. 7) issue of the Gazette an article was published at page 273 entitled *The Competition Act and EEC Block Exemptions* in which the author, Denis Cagney, was incorrectly described as a solicitor. Mr. Cagney is in fact a solicitor's apprentice with the firm of Matheson Ormsby Prentice. The error was an editorial one and we apologise to all concerned.

Barbara Cahalane
Editor, Gazette

In 1992 Cot Death
Killed 59 Irish Babies.

If your client wishes to make a will in favour of
Cot Death Research:

Telephone 01 - 8747007
(24 Hour Helpline)

Law School Professional Courses – Dates and Availability

Solicitors intending to take an apprentice are urged to note that the earliest Professional Course now available in Blackhall Place is that commencing in January, 1995. In consequence, the duration of in-office attendance by any apprentice prior to embarking on that Professional Course will be considerable, and this should be borne in mind when planning an apprenticeship recruitment programme.

The dates for the remaining Professional Courses in 1993 and in 1994 are:

34th Professional Course
26 October, 1993 – 24 February, 1994

35th Professional Course
21 March – 29 July, 1994

36th Professional Course
22 August – 14 December, 1994

There may be some minor modification of the commencement or termination dates. These would be liable to variation if there were to be any increase in the time allocation for existing subjects or an introduction of any new subjects or due to the vagaries of examination timetabling.

There are *91* students on each Professional Course. At the time of going to print all of the above Professional Courses are completely full. **The earliest that any eligible applicant will be able to attend on the Professional Course is in January, 1995.** Already as at 1 October, 1993, twenty five places have been assigned on this course.

Places on Professional Courses are allocated on a *'first come first served basis'*, provided that the applicant is exempt, or is entitled to apply to be exempt, the Final Examination – First Part, or has in fact passed that examination, **and** further subject to the applicants actually *having secured an apprenticeship* **and** having submitted to the Society the completed application for consent to become apprenticed together with the necessary accompanying documentation. In the absence of any one condition of eligibility, an allocation *will not be made.*

It should be *noted* that failure to take up a place on a particular Professional Course by an apprentice does not automatically ensure postponement to the next available Professional Course, and that in such circumstances it will be the responsibility of the apprentice to *re-apply* for a place.

Following the successful completion of an interview here in Blackhall Place, the applicant to enter into Indentures of Apprenticeship is given consent under section 27 of the Solicitors Act, 1954. Indentures must be executed by both parties by not later than six months after the date of consent. Once Indentures have been executed the apprentice **must** have started work in the office, in compliance with section 37 of the Solicitors Act, 1954.

Applications to attend a Professional Course, should be submitted in writing to the undersigned:

Albert Power,
Assistant Director of Education,
Incorporated Law Society of Ireland,
Blackhall Place, DUBLIN 7

Tel. (01) 6710711 Ext. 510 ❐

· IDE ·
IRISH DOCUMENT EXCHANGE
37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin
OVERNIGHT ~ EVERY NIGHT
EVERYWHERE
Now over
420 firms of
Solicitors
in 37 exchanges

Judgment Mortgages – A False Dawn

by Christopher Doyle*

The baffling language of section 6 of the Judgment Mortgage Act, 1950 has caused much confusion over the years, writes Christopher Doyle, and clearly the battle over s.6 has plenty of life in it.

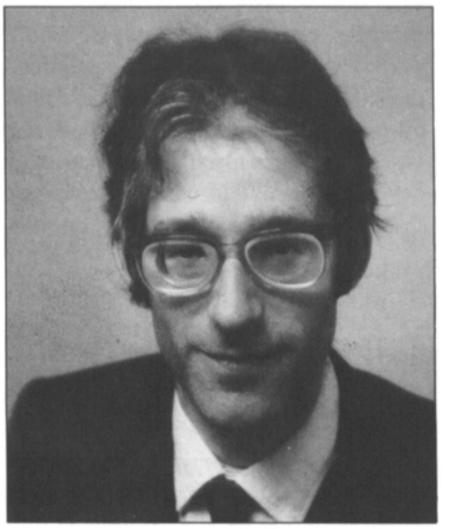
David Lynch, Judge of the Irish Bankruptcy Court 1859/1867 and of the Landed Estates Court 1867/1872, is still remembered for his refusal to hear technical objections in Judgment Mortgage suits. His leading decision, *Re Smith and Ross*[1] was given when the Judgment Mortgage (Ireland) Act 1850 was a bare decade old; yet already the baffling language of section 6 of the Act had caused such confusion that as Lynch J noted, almost every Judgment Mortgage that came before him was attacked for a technical flaw. The Judge made it clear that no technical objections would succeed in his Court; for as he said:-

> "Admit once this class of criticism, and where can you stop?"[2]

Lynch J's robust approach was not universally admired by his colleagues: opinions ranged from "the embodiment of common sense"[3] to "the champion of doubtful registration"[4]. These conflicting views on Lynch J reflect a deeper conflict on the effect of non-compliance with section 6 which has lasted down to the present day.

Conventional wisdom is that any non compliance with section 6 automatically makes the Judgment Mortgage void; but quite an impressive list of Judges have echoed Lynch J's vigorous disagreement.[5]

Finally Costello J in *Irish Bank of Commerce v O'Hara* reduced the law to a single rational principle, affirmed on appeal by the Supreme Court[6]: since the 1850 Act nowhere states that non-compliance with section [6] will make the



Christopher Doyle

mortgage void, it should do so only if non-compliance defeats the purpose of the Act i.e. if it makes it impossible to identify the lands or parties affected.

For a too brief interval, it seemed that the law of Judgment Mortgages had been put on a workable basis. Alas, *O'Hara* was a false dawn. Four months before the Supreme Court delivered judgment, the High Court had struck down another Judgment Mortgage affidavit on a technical point.[7] This decision is not under appeal, so it is unlikely that the Supreme Court will deal with the particular point for some time. Clearly the battle over section 6 still has plenty of life in it.

For a too brief interval, it seemed that the law of Judgment Mortgages had been put on a workable basis.

Allied Irish Banks plc v Griffin

The plaintiff in *Allied Irish Bank plc v Griffin*[8] sought a Well Charging Order over the Defendant's lands. The only point at issue was the description in the Judgment Mortgage affidavit of the "title, trade or profession" of the defendant, who was a farmer, as a "widow". Plaintiff's counsel urged the Court to take the purposive view of section 6, citing *Thorp v Browne*[9] and the High Court judgment in *Irish Bank of Commerce v O'Hara*. He pointed out that none of the authorities which has held Judgment Mortgages void for misdescription had examined the purpose of section 6. *Thorp v Browne* held that any description of the debtor's place of abode which identified the debtor beyond doubt, was sufficient. Why should a stricter test be applied to the "title, trade or profession"? Denham J in finding for the defendant did not answer this question. *Irish Bank of Commerce v O'Hara* was distinguished on the grounds that it dealt with a description of the land; *Thorp v Browne* was not considered.

The Judge relied on *Crosbie v Murphy*[10], *Murphy v Lacey*[11] and *Re: Swanton's Estate*[12]. In *Crosbie v Murphy*, the description of the defendant, who was a hotelier, as a widow, was found to be a fatal defect. Only one passage (from the Judgment of Compton J) is worth quoting:-

> "It is most material that the designation of the party against whom the Judgment Mortgage is to be obtained should be stated with precision and accuracy."[13]

Undoubtedly *Crosbie v Murphy* is authority for the defendant in *Griffin*. The only question is whether Denham J should have followed it.

The point at issue in *Murphy v Lacey* was whether the description of the defendants as "farmers" invalidated the Mortgage; they had been farmers but at the material time were farm labourers. Porter MR said:-

> "It was clear from the affidavits that the plaintiffs were farm labourers . . . and could not be correctly described as farmers, and consequently that the affidavit registering the Judgment as a Mortgage was defective . . . he felt

quite sure that the description deceived or misled no one; but that was not the question. The Statute was not complied with and he must so decide."[14]

Rarely can so much nonsense have been crammed into such a short judgment, although admittedly it has been much followed. As to *Re Swanton's Estate*, it is true that Ross J stated that:

> "When a man has any definite trade or profession it is very easy to tell, and to describe such a man as a "gentleman" would be incorrect."[15]

Yet in the result he overruled the objection.

On the face of it, *Allied Irish Banks plc v Griffin* is an unexceptional decision. The authorities relied on by the plaintiff were distinguishable, while those relied on by the defendant were directly in point. Nonetheless, Denham J was wrong.

Irish Bank of Commerce v O'Hara

The plaintiff in *O'Hara* sought a Well Charging Order over lands of the first named defendant described in the affidavit as "Ashurst, Military Road, Killiney, Borough of Dunlaoghaire, Barony of Rathdown and County of Dublin." The only defence of substance was non-compliance with section 6 of the 1850 Act. So far as relevant, section 6 required that the affidavit state:-

> "The County and Barony, or the Town or County of a City, and Parish, of the Town and Parish, in which the lands to which the Affidavit relates are situate".

In far too many cases the Court has simply decided whether section 6 requires something to be done and whether it has been done, and struck down or upheld the affidavit accordingly.

There is authority that omission or misdescription of the relevant parish will invalidate the Judgment Mortgage, but only if the lands are in a town.[16] The plaintiff contended that Dunlaoghaire was not a town within the meaning of the 1850 Act.

In far too many cases the court has simply decided whether section 6 requires something to be done and whether it has been done, and struck down or upheld the affidavit accordingly. From time to time however, courts have considered the purpose of section 6 and indicated that the substantial compliance with that purpose is enough. Costello J chose the latter course. He also (it seems) went beyond any previous court in holding:-

(i) That the Act nowhere states that non compliance with section 6 by itself makes the affidavit invalid;

(ii) That only a non-compliance which defeats the purpose of the Act will have this effect.

Costello J relied on *Thorp v Browne* where the debtor's abode was stated in the Judgment Mortgage affidavit as "formerly of Ballina Park in the County of Wexford and now of the City of Dublin".

The House of Lords held that this was sufficient. Lord Chelmsford LC said:-

> "We have to look to what the object and intention of the legislature were in requiring that there should be these particulars describing the Judgment debtor . . . it was clearly for the purpose of distinguishing him from all other persons."[17]

Thorp v Browne was a decision on the debtor's place of abode; but Costello J saw no reason not to apply the same rule to the description of the land. He said:-

> "If the Judgment Mortgage affidavit actually filed achieved the purpose the legislature sought to achieve then there is no reason why the Court should construe the section as requiring such compliance with its provisions . . . if non-compliance arises from a mere omission of a statutory requirement this will not automatically invalidate the Judgment Mortgage."[18]

Finding that the omission, if any, could not mislead anyone Costello J found the Judgment Mortgage valid.

There were two issues on appeal:-

(i) Should the affidavit have stated the parish?;

(ii) Assuming it should have, did the omission invalidate the affidavit?

The Supreme Court found for the plaintiff on both issues. On the first, it approved those authorities which state that the Judgment Mortgage affidavit is only required to state the relevant parish if the lands are in a town. Since there was no evidence that Dunlaoghaire was a town in 1850, there was no non-compliance with section 6.

On the second issue, the Supreme Court identified two lines of authority: one which Denham J had relied on in *Griffin* holding that strict compliance was necessary, the other holding that a commonsense approach should be taken. The court agreed with Costello J that the principles laid down in *Thorp v Browne* were applicable. The Court found the same principle in *Re Smith and Ross* and *Re Fitzgerald*[19], both of which were approved by the Court of Appeal in *Harris v O'Loghlen*[20], where Naish LJ said that the Court "should not look upon these technical objections with any favour."[21]

Most crucially, the Supreme Court in *O'Hara* noted that it had quite recently approved this line of authority. In *Credit Finance Ltd. v Grace*[22] the defendant objected that the description of the lands in the Judgment Mortgage affidavit was ambiguous. Kenny J in the High Court overruled this objection, stating:-

> "A Judgment Mortgage affidavit is not defective because of errors in the description of the lands unless these are likely to mislead."[23]

The Supreme Court agreed. O'Dalaigh CJ said:-

> "Turning to the present case the specification in the Affidavit of the County and Barony, Town or County of City or Parish or of Town and Parish, serves primarily to identify the lands with greater certainty and secondarily to

> facilitate indexing in the Registry of Deeds . . . the present case does not differ in principle from *Thorp v Browne* and *Hárris v O'Loghlen*. The reasoning in those cases commends itself to commonsense and it should in my opinion be followed."[24]

The Index of Lands in the Registry of Deeds was not kept up to date for many years[25]; therefore the only purpose of describing the lands now is to identify them. Any description which identifies the lands with reasonable certainty is sufficient even if it is not wholly accurate.

In *O'Hara* the defendant before the Supreme Court relied on *Re Flannery*[26] and *Murphy and McCormack*[27]. In *Re Flannery* Kenny J found a Judgment Mortgage affidavit to be invalid because a non-existent parish was given. He said:-

> "The provision in section 6 of the Act of 1850 that the Parish should be stated is to enable the Affidavit to be registered correctly in the Index of the Lands and in the Abstract Book so that those searching will not be misled. But if a Parish which does not exist is referred to in the Affidavit, it cannot be correctly registered and in my opinion is defective."[28]

There are several problems here. Firstly as we have seen the Index of Lands was not kept up to date for many years; is section 6 therefore obsolete? Secondly the Supreme Court in *Grace* identifies the primary purpose of section 6 as being to identify the lands. Finally as we have seen Kenny J himself in *Grace* recognised that a misdescription of the lands is not always fatal. One must conclude that *Flannery* was wrongly decided.

In *Re Murphy and McCormack* the Judgment Mortgage affidavit omitted the relevant Barony. The Supreme Court held this to be a fatal error, refusing to apply *Thorp v Browne*.

In *O'Hara* the Supreme Court, recognising that this decision cannot be reconciled with *Grace*, preferred *Grace*. It was satisfied that in case either of the description of the lands, or of the debtor's identity or place of abode, a misdescription or omission would not be fatal unless it was likely to mislead.

Conclusion

Where does this leave *Allied Irish Banks plc v Griffin*? In *O'Hara* the Supreme Court approved those authorities which state that "a commonsense" approach has to be taken to:

(i) The description of the lands;

(ii) The identity of the debtor;

(iii) The debtor's place of abode;-

and (by implication) disapproved the numerous authorities which hold that strict compliance is necessary in these matters.

Either *Griffin* is wrong, or the debtor's "title, trade or profession" is in a separate position from the rest of section 6. In this folley ridden field, the absurdity of the second solution does not prove that it is wrong. But is there any evidence that the courts have ever treated the "title, trade or profession" clause separately? In *Crosbie v Murphy*, Lefroy CJ said:-

> "Everything upon the face of the Judgment must of necessity be inserted in the Affidavit."[29]

In *Murphy v Lacey*, Porter MR stated:-

> "The Statute was not complied with."[30]

In *Sexton v Valente*[31] Judge Connolly said:-

> "While the Court has jurisdiction to relieve in case of non-compliance with a Rule, it has no jurisdiction in the case of a Statutory requirement."[32]

There is nothing in these judgments to show that the "title, trade or profession" clause is in a special position. Nor do we lack decision (notably *Re Swanton's Estate*) while the Court overruled objections to the description of the "title, trade or profession"; and even in *Crosbie v Murphy* as we have seen, Compton J admitted that a purposive approach to this clause is possible.

One must conclude that the "title, trade or profession" is in the same position as the rest of section 6: i.e. while many cases on the point insist on strict compliance with this section, these must yield to that line of authority, approved in *O'Hara*, which holds that no error which does not deceive is fatal.

It was open to Denham J to follow the authorities cited. Nor could she fairly be expected to predict the outcome of the appeal in *O'Hara*. However one must regret this return to strict compliance. Since the "title, trade or profession" clause was not at issue in *O'Hara* and was not referred to there, it is just possible to argue that this clause is not covered by that judgment. It is safe to predict that such arguments will be made, until the Supreme Court, which has tried so hard to restore commonsense to this topic, puts the matter to rest.

References

1. (1860) 11 Ir. Ch. Rep. 397
2. (1860) 11 Ir. Ch. Rep. 397 at 402.
3. See *Harris v O'Loghlen* (1888) LR (Ir.) Vol. XX111 61 at 81 per Lord Ashbourne L.C.
4. See *Spaddacini v Treacy* (1888) LR (Ir.) Vol XX1 553 at 559 per Porter M.R.
5. See in particular *Thorp v Browne* (1867) LR 2HL 220; *Harris v O'Loghlen* (1888) LR (Ir.) Vol XX111 61; *Credit Finance Ltd. v Grace* Supreme Court 9 June, 1972 Unreported.
6. High Court 10 May, 1989 Unreported; Supreme Court 7 April, 1992 Unreported.
7. *Allied Irish Banks plc v Griffin* (1992) 2 IR 70; (1992) ILRM. 590.
8. (1992) 2 IR 70; (1992) ILRM 590.
9. (1867) LR 2 HL 220.
10. (1858) 8 ICLR 301.
11. (1896) 31 ILTR 42.
12. (1897) 31 ILTR 166.
13. (1858) 8 ICLR 301 at 311.

(Continued on page 302)

NOTICE

ANNOUNCING A NEW LAW PUBLISHING COMPANY

Brehon

Bart D. Daly, BL (formerly a founding director of the Round Hall Press and the creator of *Irish Law Reports Monthly*) has recently formed Brehon Publishing Ltd. — A new, Irish owned and controlled, company which will publish law books and journals.

MANUSCRIPTS INVITED

Bart invites the submission of manuscripts and publishing proposals to him at:

Brehon

Brehon Publishing
Brunswick House,
Brunswick Place,
Dublin 2.
Tel. No. 6775111,
Fax. 6775155.

Society Publicises Submissions

The Law Society was the instigator of two major news stories during the month of September, the first one at a press conference at which the Society and the Bar Council launched their joint submission to the Minister for Justice, *Maire Geoghegan Quinn*, on the future of the courts service in Ireland. The second was when the Society released details of its submission to the Government criticising the proposals by *Seamus Brennan*, TD, to place a limit on the amount that could be awarded for pain and suffering in personal injuries claims.

Executive Agency to manage the courts

The joint Law Society/Bar Council press conference to highlight recommendations on the future of the management and structure of the Courts service was widely reported in the national media. The President of the Law Society, *Raymond Monahan*, and the Chairman of the Bar Council, *Frank Clarke*, SC, were interviewed on RTE TV bulletins on the evening of 22 September. *Raymond Monahan* said that underfunding and poor management of the Courts over the years had meant that condition of the courts service now amounted to a national disgrace while *Frank Clarke* pointed out that the degree of delay was such that, of itself, it could lead to injustice. The following morning the Director General of the Law Society, *Noel Ryan*, was interviewed on *Morning Ireland*, RTE Radio 1, in which he outlined the proposals in the submission concerning placing the management of the courts service under the control of an executive agency headed by a director.

The submission received extensive coverage in the *The Irish Times, Irish Independent, Irish Press, Cork Examiner* and *Daily Star* and *Evening Press* of 23 September. A supportive editorial in the *Cork Examiner* said "the views of two such influential bodies must be taken on board by the Government and a national appraisal of the whole Courts system instigated as a matter of urgency." Writing in the *Irish Times* of 24 September, 1993, *Adrian Hardiman*, SC, praised the joint submission and said "with a little money and far more imagination than has ever previously been invested, a fully effective courts system could so easily be provided." Over the following week a number of members of the Council of the Law Society gave interviews on the submission to their local radio stations relating the points in the submission to the problems in their own areas.

In the *Sunday Independent* of 26 September, 1993, it was reported that the President of the High Court, *Mr. Justice Liam Hamilton*, was opposed to the idea of an executive agency to to manage the courts service and that a number of judges shared his view, because they believed such an agency would undermine their independence as guaranteed by the Constitution. The article also reported that the Government was on the point of setting up a Commission to examine the courts service which would have representatives from the practising professions, consumer groups, trade unions, employers as well as the Presidents of each of the Courts and the Attorney General. *The Irish Independent* of 4 October, 1993, reported that extra judges were to be appointed by the Government in an effort to clear the backlog of court cases but that the Minister of State at the Department of Justice, *William O'Dea*, was not in favour of the proposal of an executive agency. Instead, the Government would press ahead with a Commission.

Minister's proposal criticised

On Sunday 26 September last, the Law Society released details of its submission to the Government criticising the proposal by the Minister of State for Commerce & Technology, *Seamus Brennan*, TD, to place a limit on the amount that could be awarded for pain and suffering in personal injuries claims. (See also Viewpoint on page 289). The submission received extensive coverage in the national newspapers on the morning of Monday 27 September with headlines such as "Law Society Against Compensation Limits" (*Irish Times*) "Lawyers Say Plan to Cut Claims Cash Unworkable" (*Irish Independent*). The Director General of the Law Society, *Noel Ryan*, was interviewed on the 1.00 pm, 6.00 pm and 9.00 pm RTE TV bulletins on that day. He reiterated the arguments in the submission that the Minister's proposal would be unjust, unworkable and could well be unconstitutional. The Director General of the Society and the Minister of State subsequently debated the issue on the *Pat Kenny Show*, RTE Radio 1, on 6 October, the Minister maintaining that the Irish public no longer wanted to pay itself so much in compensation, while *Noel Ryan* argued that the focus should be on reducing the number of claims which arise and questioned the validity of the Minister's assumption that reducing compensation for pain and suffering would lead to a reduction in insurance costs.

Civil Legal Aid fees rejected

Earlier in the month the Society's recommendation to members of the profession not to participate in the pilot scheme of Civil Legal Aid put forward by the Minister for Equality & Law Reform, *Mervyn Taylor*, TD, because of the inadequacy of the fees being offered, was reported in the *Irish Times, Irish Press, Irish Independent* and *Cork Examiner* of 10 September, 1993. Most of the

(Continued overleaf)

newspapers reported the Law Society's view that Ireland had one of the most inadequate Civil Legal Aid schemes in western Europe. The *Irish Independent* of 29 September, 1993, reported on the Viewpoint column of the September issue of the *Gazette* which had criticised the inadequate scope of the pilot scheme.

Call for Farmers' Tribunal

The Society's call for the establishment of an Agricultural Appeals Tribunal to hear appeals from administrative decisions taken affecting farmers by the Minister of Agriculture and officials of the Department of Agriculture was reported in the *Irish Press* and *Cork Examiner* of 17 September, 1993, and in the following week in the *Kerryman, Kerry's Eye, Anglo Celt* and *Dundalk Democrat.* ❐

Barbara Cahalane

Society Exhibits at 61st Ploughing Championships

Thirty members of the Tipperary Bar Association volunteered to staff the Law Society stand at the National Ploughing Championships in Ballyclerihan, Clonmel, over the three days of the event from 28-30 September last. The newly-designed Law Society stand with attractive colour photographs and graphics bearing the slogan "See your solicitor first for independent, expert advice", attracted a large number of visitors.

The most frequent queries concerned wills, the rules governing intestacy, inheritance tax, transfer of land ownership, leases, as well as a host of other topics. The newly introduced probate tax was the subject of many queries and many examples of its harsh effects emerged, such as the case of a widow of a young farmer who died leaving four children. The farm is valued at £200,000 but there are no liquid assets in the estate leaving the widow to find £4,000 to pay the tax. ❐

Judgment Mortgages – A False Dawn

(Continued from page 300)

14.(1896) 31 ILTR 42.
15.(1897) 31 ILTR 166.
16.*Re Flannery* (1971) IR 10; *Dardis and Dunnes Seeds v Hickey* Kenny J., 11 July, 1974, Unreported.
17.(1867) LR 2 HL 220 at 232/3.
18.At pages 4/5 of his unreported judgment.
19.(1861) 11 Ir. Ch. Rep. 365.
20.(1888) LR (Ir.) Vol XX111 61.
21.(1888) LR (Ir.) Vol XX111 61 at 85.
22.Supreme Court, 9 June, 1972 unreported.
23.Unreported judgment of 29 May, 1972 at p. 5.
24.At page 6 of the Court's unanimous judgment.
25.See Wylie's *Irish Land Law* (2nd Edition) paragraph 13/175, 22/11.
26.(1971) IR 10.
27.(1930) IR 332.
28.(1971) IR 10 at 14.
29.(1858) 8 ICLR 301 at 308.
30.(1896) 31 ILTR 42.
31.(1950) 84 ILTR 160.
32.Ibid.

•*Christopher Doyle BL is a practising barrister.* ❐

Retiring?

The Law Society is a corporate member of the **Retirement Planning Council of Ireland,** which offers:

- retirement planning courses
- free counselling service
- retirement advice
- publications.

Contact:
Retirement Planning Council of Ireland,
27–29 Lower Pembroke Street,
Dublin 2.

Tel: 01–6613139
Fax: 01–6611368 ❐

LAW LIBRARY PHONES

Solicitors phoning barristers at the Law Library are requested to use the Direct Dial Numbers which were distributed with the June issue of the Gazette. Further copies are available from the Law Library – **phone 8720622.**

Where a barrister is not at his/her desk your call will be answered either by the switchboard or the member's voicemail. The only circumstances in which the Direct Dial number is not answered is where the barrister has forwarded calls to another extension but is not at that extension when you phone.

John Dowling
Director

THE IRISH FARMER'S HANDBOOK 1994

THE ESSENTIAL REFERENCE GUIDE FOR THOSE IN THE LEGAL PROFESSION DEALING WITH FARMERS

Particularly useful in Agricultural Litigation and Loss Adjusting, covering areas such as :

- Gross Margin Analysis of the Main Farming Enterprises
- Farm Business and Family Matters
- Borrowing and Investing
- Alternative Enterprises
- Social Welfare Entitlements
- Insurance
- Farm Taxation
- Complete Range of Grants & Subsidies

IR£7.95 at Bookshops

ORDERS TO: O'Sullivan & Co.
Agricultural Consultants, Clonmel Rd.,
Carrick-on-Suir, Co. Tipperary.
Phone 051-40397 Fax: 051-40932
PRICE: IR£7.95 + £2 P.P.

THE BAR COUNCIL OF IRELAND
ANNUAL CONFERENCE 1993

"Taking Liberties: The Media and the Law"

Guest speakers include:

PETER SUTHERLAND
Director General, GATT

LORD WILLIAMS OF MOSTYN QC

and

AENGUS FANNING
Editor, Sunday Independent

Venue: PILLAR ROOM, PARNELL SQUARE

Date: SATURDAY 27TH NOVEMBER

The Conference is open to members of the Law Library, Solicitors and other interested parties.

For further details contact:
NUALA JACKSON BL
at 702 4891
or CLAIRE BYRNE
at 702 4900 / 702 4901

Commercial property values are about as consistent as Irish weather.

The value of property fluctuates according to supply and demand and is constantly changing. Sherry Fitzgerald have a wealth of experience and detailed knowledge of the techniques of valuation plus up to date information on market conditions to carry out.

ASSET VALUATIONS
RENT REVIEWS FOR LANDLORD OR TENANT
RATING APPEALS
LEASE RENEWALS
CAPITAL TAXATION
ARBITRATION/EXPERT WITNESS

A call to Gordon Gill or Sean McCormack will give you an accurate forecast.

Sherry FitzGerald

Sherry FitzGerald · Commercial
17 Upper Ely Place · Dublin 2
Tel 661 9900 · Fax 661 9909

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

At the launch of Solicitor Link (see report on page 316) were L-r: Cillian MacDomhnaill, Finance & Administration Executive, Law Society; Dominic Dowling, Solicitor, member of the Society's Practice Management Committee and Raymond Monahan, President, Law Society.

At the Lawyers' Flying Club dinner held recently in Blackhall Place were l-r: Tim Scorer, Solicitor, London, President of the Lawyers' Flying Association; Julie Scorer; Sean Gallagher, Solicitor; Noelle Gallagher; Keith Hudson, Solicitor, London; Caroline Ritchie and George Ritchie, Solicitor, London.

Recently a delegation of court reporters and journalists from the UK visited the Law Society, l-r: Bernard Agyeman, Weekly Law Reports; *Iain Sutherland,* The Times; *Maria Fleischmann, Incorporated Council of Law Reporting; Raymond Monahan, President, Law Society and Paul McGrath,* The Independent.

At the presentation of prizes at the Younger Members Committee Annual Soccer Blitz were l-r: Vincent Duffy, Manager, EBS, Stoneybatter Branch; John Campbell, Younger Members Committee and Frank Brady, captain of the winning team from Dublin Corporation.

Legal & General
SPECIAL OFFERS
SOLICITORS ACCOUNTS
386SX Olivetti Computer 85mgb • Colour Monitor
Dot Matrix Printer • Italax Solicitors Accounts Software
£3300.00 + VAT
WORDPROCESSING
386SX Olivetti Computer 85mgb • Kyocera Laser Printer 8 p.p.m.
Wordperfect V. 5.1 • Legal Precedent Software
£2450.00 + VAT
WORDPROCESSING
Same as Option 2 with Hewlett Packard Inkjet Printer
£1750.00 + VAT
TEL: 01-8725522. FAX: 01-8725079.

At a surprise party and presentation to Andrew Comyn to mark his 80th birthday, which took place in the offices of O'Connor & Dudley, West End, Mallow, were l-r: Margaret Sugrue, Secretary; Miriam O'Keeffe, Solicitor; Andrew F. Comyn; Cheri Comyn; Patricia Harney, Solicitor, Mallow; John Waters, Solicitor, Mallow; Arthur Comyn, Solicitor and Philip Comyn, Solicitor.

Get out those blue suede shoes for a

60s Night

on

Friday, 12 November, 1993

Presidents Hall, Blackhall Place, Dublin 7.

• Buffet Supper •

• Dancing to **Paddy Cole and his band** •

• 60s dress essential •

• Draw for weekend for two at the Clifton Ford Hotel, London •

Tickets £25 per person.

Contact Mary Kinsella at the Law Society, Blackhall Place, Dublin 7.

Phone: 6710711, Fax: 6710136

Proceeds to CYC Community Youth Projects in Dublin. (See facing page)

REPLY FORM

I would like to book ..... ticket(s) for the 60s night at £25 each. I enclose cheque for £..... made payable to the Incorporated Law Society of Ireland.

I cannot attend the 60s night but would like to be included in the draw. I enclose a donation:

£5 ❒ £10 ❒ £15 ❒ £.....❒ *(Please tick as appropriate)*

Name(s)

Address

Tel. Fax

60s Night to Benefit 90s Youth

On Friday 12 November next, *Eileen Monahan*, Solicitor and Director of the Doyle Hotel Group, is staging a 60s Night at Blackhall Place to benefit youth projects in Dublin run by the Catholic Youth Council whose director, Rev *Martin Clarke*, is a solicitor.

Since 1944, the Catholic Youth Council has been caring for young people in the greater Dublin area, especially those who are disadvantaged. Every year, over 180,000 young people benefit from its services, which are available to all young people, irrespective of their background or religious beliefs.

Rev *Martin Clarke*, Solicitor, Director of the Catholic Youth Council says: "We very much appreciate the support of the Law Society and the solicitors' profession in offering us the proceeds of the '60s Night' ".

Every year over 180,000 young people benefit from CYC services.

Father Clarke described the projects which will benefit from the proceeds: **"Ronanstown Youth Service** provides a wide range of services for young people in Neilstown, Clondalkin. This is a community where there is high unemployment (over 60%) and very little opportunity for the huge youth population (6,500 under the age of fourteen). Unfortunately, most media coverage of this area concentrates on the bad news – crime, "joyriding", drug abuse, etc. However, the full picture is much more hopeful and positive. In particular, there are many voluntary youth groups and clubs which provide a variety of activities with the support of Ronanstown Youth Service. The Service also co-ordinates a very successful Youth Theatre Group, sporting activities (from swimming to volleyball), a printing service for community groups and a job finding service for the young unemployed. Ronanstown Youth Service also welcomes young people who are unemployed to its Drop-In Centre three afternoons each week.

"Coolure House near Castlepollard, Co. Westmeath was founded in 1973 when the Honourable Thomas Pakenham made the Dower House to Tullynally Castle available to CYC for a nominal rent. This beautiful house on the shores of Lough Derravaragh is now a holiday and recreation centre for young people, with accommodation for 80 visitors, most of whom come from Dublin City. This year, about 4,000 young people will enjoy a holiday in Coolure House."

"Young Travellers are in special need of youth services, particularly those living on official halting sites provided by the Local Authorities on the outskirts of Dublin. Since 1985, CYC has been working with young travellers in the Tallaght area, and over the past few years has also provided services for young travellers in the Blanchardstown area. While awaiting conventional buildings at these halting sites, we have even operated out of converted railway carriages! These services have developed very satisfactorily, and we now employ 10 young travellers (under a FÁS scheme) to assist us in our work."

"These are but three examples of the work of CYC, not to mention our 350 Youth Clubs, our Summer Projects for 30,000 people, and our 3 Youth Information Centres!

"I look forward to seeing you on Friday 12 November."

Eileen Monahan reports that Doyle Hotel Group will be sponsoring a raffle for a weekend for two in the Group's Clifton Ford Hotel, London, and says "the evening will be great fun, with lots of features including Paddy Cole and his band, a buffet supper, and plenty of flower power. *Ray* and I know we can rely on the support and generosity of members of the profession and we are looking forward to seeing you there – in your resurrected 60s gear!" ❐

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

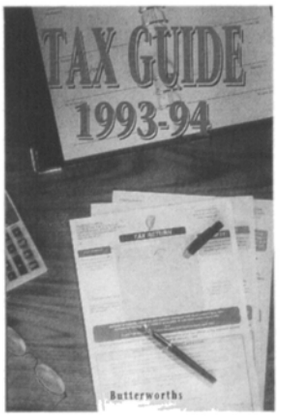
from Butterworths

Butterworth Ireland Ltd.,
26 Upper Ormond Quay,
Dublin 7.
Tel (01) 8731555
Fax (01) 8731876

THE NEW-LOOK
Tax Guide

THE ONLY FULLY COMPREHENSIVE ANNUAL GUIDE TO TAXATION IN IRELAND.

- Written in non-technical language. Fully updated to Finance Act 1993.
- New section on probate tax.
- Full implications of 1993 Tax Amnesty incorporated throughout.
- Includes full-colour reproductions of all the relevant Revenue forms, with a guide to their completion.



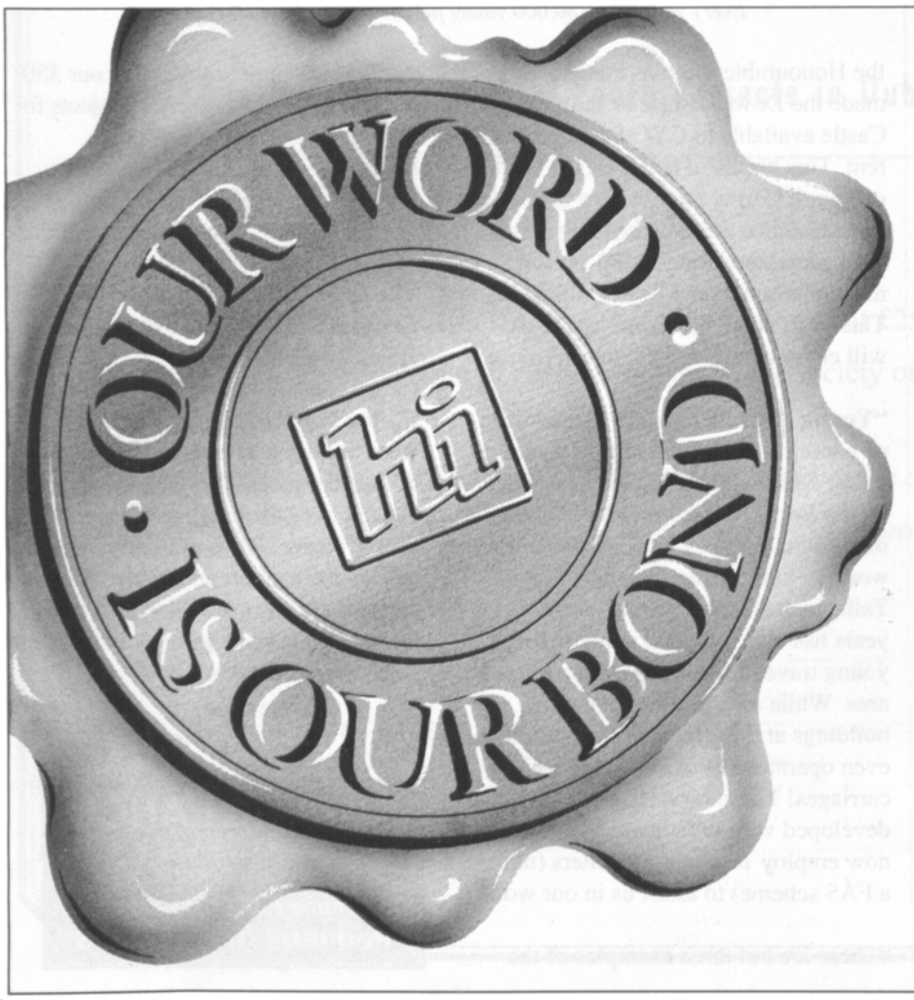
Income tax
Corporation tax
Capital gains tax
Capital acquisitions tax
Probate tax
Value added tax
Stamp duties
Residential property tax
Employers' PAYE/PRSI

ISBN 1 85475 626 5 pbk. xxxii, 1312 pp Annual £45.00

- Bookshop open at Ormond Quay, Dublin (100 metres from the Four Courts) Open 9am -5.30pm through lunch
- Orders welcome by telephone and fax
- Or talk to our area managers about these and other Butterworths titles

Dublin area:
Madeleine Roche
(01) 324289
or
088-597659

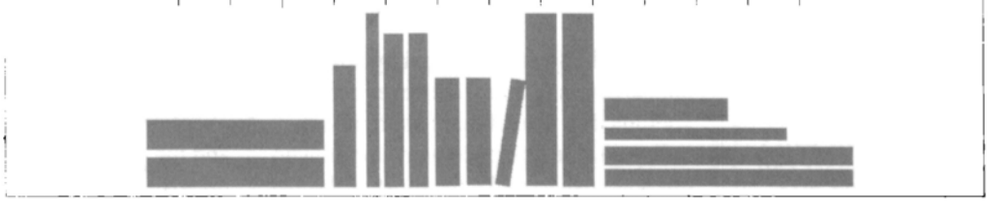
Outside Dublin:
Max Harvey
(021) 371399
or
088-566793



Administration Bonds
signed, sealed and delivered.. on a daily basis

Highly competitive terms

HIBERNIAN INSURANCE
Head Office,
Haddington Road, Dublin 4.
Telephone (01) 6670288.



Deadly Wages – Irish Work Hazards

By Edward McGarr BCL, Solicitor, Paradox Press, 1992, 285pp, £14.99, softback.

As is stated in the introduction there are few statements of fact in this book which are not already in the public demesne but they are not to be found in one place and in many cases are in obscure publications as far as the general public is concerned. As is also stated in the introduction, a general, affordable, book on occupational safety and health is now an essential purchase by every employer. This book is intended to fill that need which has arisen in the aftermath of the passing of the Safety, Health and Welfare at Work Act, 1989. This book certainly fills an unmet need in the area of the law of employers' liability and safety, health and welfare at work which were the subjects addressed by the Barrington Commission established by the then Government in 1980. Entitled The Commission of Inquiry on Safety and Health and Welfare at Work, its terms of reference included inter alia –

> "Whether changes were needed in laws, or in voluntary activities, relating to safety, health and welfare at work and the transport of dangerous substances".

The principal and fundamental legislative consequence of the Barrington Commission has been the Safety, Health and Welfare at Work Act, 1989. Mr McGarr describes the Act as the basis of an attempt to introduce a positive or active system of health and safety at work in every workplace which is intended to be achieved by the setting of standards, both generally and in individual places by the Health and Safety Authority and its inspectors. The Health and Safety Authority which was established under this Act as a direct consequence of one of the recommendations of the Barrington Commission has now come into existence and in addition to providing an advisory service to employers and employees also has the function of policing the duties of employers as laid down by the Act.

It is particularly gratifying for this reviewer as a member of the Barrington Commission to have an opportunity of congratulating a member of his own profession for having the foresight, commitment and industry to write this book which is at once informative, interesting and highly readable. The book is also extremely well laid out which has the additional benefit of making it a most useful reference book.

The book brings together in one publication a great deal of information on the statutory legal safeguards provided against the hazards of the workplace and highlights the increasing and very serious hazards now posed by potentially harmful chemical compounds and toxic materials which are in every day industrial use and which can be swallowed or inhaled or absorbed through the skin. The book further indicates the precautions that should be taken against such dangers at work and the legal obligations of employers to safeguard their employees against them and the consequence of exposure to them. Some of these environmental type hazards which this book identifies have been there for a very long time as for example lung diseases in the form of asthma, pneumoconiosis, skin diseases such as dermatitis produced by such agents as cement, rubber, paint, tars, dies, detergents, oil, etc., and cancer produced by the handling of some relatively common substances which are carcinogenic, such as benzene, benzidine, zinc chromates, vinyl chloride, and in particular, asbestos. They are now almost all subject to statutory regulations.

This publication deals comprehensively but in a very useful manner with the full spectrum of hazards in the workplace in Irish industry and includes helpful references to such problems as the lifting of loads, repetitive strain injury, injuries resulting from the use of machinery, which must always be regarded as being potentially dangerous in the work place, falls, falling objects and the increasing importance of stress in the workplace.

Highlighted in this book also is some very useful and revealing statistical information such as the fact that Irish workers work the second longest number of hours per week of OECD member countries and are outdone only by the Japanese.

Each chapter is preceded immediately underneath its title heading with a number of succinct, statistical and factual pieces of information relevant to the subject matter of the chapter, for example:

- A new potentially harmful chemical compound enters industrial use every 20 minutes.
- Hepatitis "B" is a more serious threat than AIDS.
- More than 50% of accidents at work involve handling objects.
- There is no safe limit for exposure to asbestos fibres.
- Many ear protectors are not fit for their purpose and unprotected exposure to noise at legal limits may cause deafness.
- Skin disease is the commonest occupational disease.
- Employers are directly responsible for most building site accidents.
- 35% of hospitalisations from farm accidents involve children.
- 3,500 Irish hospital employees are injured at work annually.

In the chapter on insurance some of the statistical information produced is quite startling such as

- Of £100 premium paid almost £50 is spent on administration by the insurance company.
- Motor insurance in Ireland produced profit every year but one from '79 to '89.
- Overwhelmingly, the average cost of insurance settled claims in Ireland is less than £2,500.

In summary this book is and should become an indispensable handbook for employers, employees, trade union officials, insurance claims handlers, safety officers, personnel officers, solicitors, barristers and both professors and students of the law of employers' liability and safety in industry, to all of whom it is strongly recommended. All of these people and in particular the legal profession owe a very considerable debt of gratitude to Mr McGarr for having produced what this reviewer considers to be an indispensable publication in this area of human activity and law and in particular for the benefit of the workforce in all types of employment in this country.

Bruce St. John Blake

Havers' Companion to The Bar 1993/1994

(Third Edition), Edited by Patti Havers, Havers' Directories Limited, Distributed World-Wide by Sweet & Maxwell, £85 Sterling, hardback, 1993.

Lord Havers, the former Lord High Chancellor of Great Britain, notes in the foreword that the independent practising Bar, in addition to providing a corps of skilled and experienced advocates, offers a quite remarkable pool of specialist legal advice and expertise on virtually any aspect of the law which is available to any firm of solicitors and to many other professionals who now have approved direct access to the Bar. He notes that the well-researched and compiled *Companion to the Bar* provides invaluable information about the UK Bar and the services offered by individual barristers to an extent never before attempted or available. In short, it is the indispensable reference work for all who use and wish to make the most of the expertise available of those who practise at the Bar of England and Wales.

The writer of this short notice appreciates that the Irish Bar is much more limited in scope than the Bar of England and Wales. But there is merit in compiling a similar companion although some may argue that the Directory of the *Law Society* provides general information on Irish barristers.

It is trite to say that lawyers like members of other professions are under difficult pressures for ever greater quality of service. In the introduction to the book, the writer notes that the breakdown of domestic restrictive practices will accentuate these pressures. In the United Kingdom, the Bar has relaxed its rules restricting advertising and has permitted barristers to supply information about themselves, their experience and practices. Many would disagree with that philosophy in this jurisdiction but the Bar in England and Wales has adopted a cautious reaction to these changes because it is a profession that has a strong tradition against "touting" for work. *Havers' Companion to the Bar* provides extensive individual biographical profiles; apparently it is the key ingredient of the most successful legal directories in the United States and will be increasingly seen by the Bar, who supply the information, and solicitors and others, as essential to a successful and dynamic referral system in a changing competitive environment.

Every barrister practising in chambers in England and Wales is invited annually to provide as much information about himself or herself as he or she wants. The individual biographies are entered completely free of charge. Of course, the individual biographies are not objective but they do provide a wealth of information.

Readers may be interested in what is called the "Cab-Rank Rule" which is referred to in the *Companion.* The rule is that every barrister is under an important professional obligation to accept any brief to appear for any lay client provided he or she is available and the case is within his or her field of practice.

Until recently, barristers in England and Wales were permitted to accept instructions to represent clients only from solicitors. Solicitors continue to be the main source of a barrister's work and indeed only a solicitor can brief a barrister to appear in court. But barristers who so choose, however, are now permitted to accept instructions directly from members of a large number of other professions for advisory, tribunal and arbitration work, subject to certain conditions and restrictions. This is known as "Direct Professional Access". The organisations include:

- The Chartered Association of Certified Accountants;
- The Incorporated Society of Valuers and Auctioneers;
- The Institute of Chartered Accountants;
- The Institute of Taxation;
- The Institute of Mechanical Engineers;
- The Faculty of Actuaries;
- The Institute of Electrical Engineers and a host of others.

Previous reviews have stated that not only is this a great Directory but a good read. Others have noted that for solicitors and other professional litigators, it will probably become the standard directory: the detail and clarity will be hard to equal. There is no doubt that this is an impressive work; it is also fascinating for those who have any dealings with English lawyers. Five thousand English biographies of barristers in practice in England and Wales are included. It deals with barristers who work in over 200 fields of practice.

To sum up, *Havers' Companion to the Bar,* is a compendium of information invaluable for those who deal with English clients who seek advice in England and Wales in relation to litigation and other aspects of specialist legal advice.

Dr. Eamonn G. Hall

Dictionary of Law

Fourth Edition by L. B. Curzon, Pitman Publishing, 1993, xiii + 417pp, IR£13.99, paperback.

Judge Learned Hand, (1872-1961) earned acclaim as one of the giants of the American judiciary. During his more than half a century on the bench, he wrote more than than three thousand judgments: these judgments contained careful reasoning and were marked by beautiful prose. Perplexed as we occasionally all are by words, he wrote in "Thou Shalt Not Ration Justice", *Brief Case,* (November 4, 1951) words that perplex the writer of this short notice:

"Law has always been unintelligible, and I might say that perhaps it ought to be . . . It ought to be unintelligible because it ought to be in words – and words are utterly inadequate to deal with the fantastically multi-form occasions which come up in human life . . ."

We all agree with the judge that words are often inadequate to express many conditions. But law ought to be as intelligible as possible and here is where a dictionary of law helps.

First of all, Curzon's *Dictionary of Law* is presented as a guide to the specialised vocabulary of English law. The words, the subject of the dictionary, are taken from the word stock of the core legal subjects, contract, torts, criminal law, constitutional law, land law, trusts and equity. Other areas are covered such as statutory definitions, judicial exegesis and the occasional apophthegm.

In Ireland, the first point-of-reference for many interested in the definition of a word will be Henry Murdoch's *A Dictionary of Irish Law* (Dublin, 1988). However, Curzon's earlier editions will be found in many offices. Lawyers who boast of a decent legal library might also possess Mozley and Whitely, *Law Dictionary*, 11th edition, (Butterworths, 1993), and indeed *Stroud's Judicial Dictionary*, fifth edition, five volumes, (Sweet and Maxwell). Curzon's *Dictionary of Law* can be recommended, subject to the usual caveat that readers should be conscious of the differences between Irish and English law.

EGH

Blackstone's Statutes on Evidence

Second Edition, Edited by Phil Huxley and Michael O'Connell, Blackstone Press, 1993, vi + 260pp £8.95 sterling, paperback.

The editors in their preface quote Charles Dickens in Great Expectations, Chapter XV:

> "Take nothing on its looks: take everything on evidence, There's no better rule."

Virtually every lawyer depends on the laws of evidence for his or her existence. In criminal law and civil litigation, the use of the laws of evidence is obvious to all. In conveyancing, the deeds and declarations represent the evidence of property transactions and associated matters. In probate, the grant of probate of letters of administration are accepted as evidence of certain "happenings": accordingly, lawyers do not need to witness physically the exit of persons from this world! In commercial and advisory law, the laws of evidence often play a prominent role.

Blackstone's Statutes on Evidence have been designed specifically to provide United Kingdom students with a collection of UK statutes for use throughout their courses; they are not annotated. Prominence has been given to statutes on criminal evidence. This book will be of relevance in Ireland only to those who are interested in comparative law.

EGH

NORTHERN IRELAND AGENT
* Initial Consultation Free
* All forms of work undertaken
* Competitive Rates
* Consultation in Dublin if requested
* Legal Aid Available
Contact: Kevin J. Neary BCL
Donnelly Neary & Donnelly
Solicitors
1 Downshire Road, Newry,
County Down
Tel: (080693) 64611
Fax: (080693) 67000

ELSA IRELAND
LAW AND LANGUAGE CLASSES
The European Law Students' Association presents
Classes in
LEGAL FRENCH
LEGAL GERMAN
at the
Polish Social & Cultural Institute
Fitzwilliam Place, Dublin 2
Commencing 18 October, 1993
Open to all ELSA members
Price £4
Legal French 6.00-7.30 pm
Legal German 7.30-9.00 pm
For more information contact Margaret Austin. Phone 6688399 or your L.G. AA Officer.

Royal College of Surgeons in Ireland
A LEGACY OR DONATION
in favour of
The Royal College of Surgeons in Ireland
contributes to medical education and training and important research.
Please think of us!
For further details contact:
The Registrar,
Royal College of Surgeons in Ireland,
123 St. Stephen's Green,
Dublin 2.
Tel: (01) 4780200
Charity No. CHY 1277

Fast & Efficient
Taxation of Costs
BILLS OF COST DRAWN AND LODGED FOR TAXATION WITHIN TWO WEEKS.
SEND YOUR FILE TO.-
LORD & CO.
Legal Cost Accountants
61 Merrion Square,
Dublin 2.
Phone 616729 / 616996

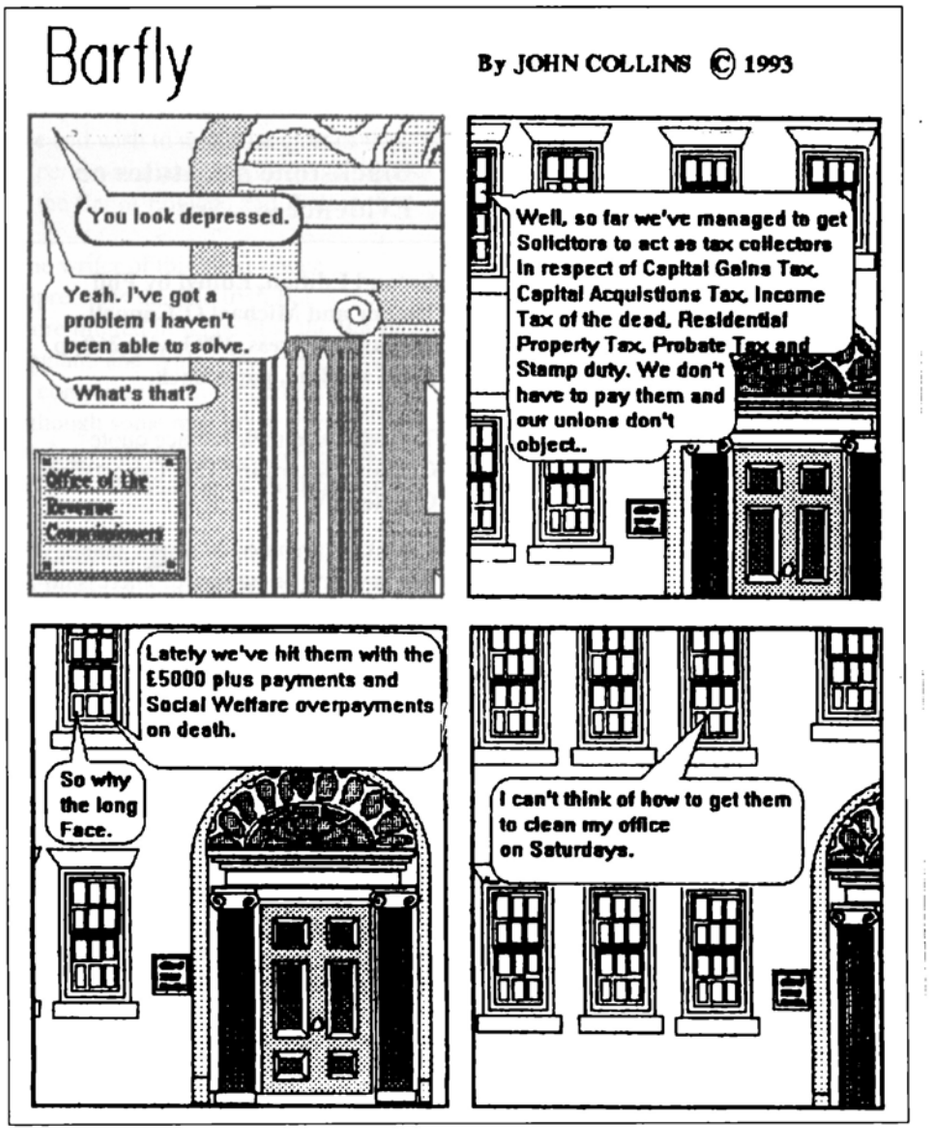
Legal Pocket Diaries 1994 – Final Reminder

Practitioners are requested to note that there is an order form enclosed in this *Gazette* for the highly popular Legal Pocket Diary. The closing date for orders has been extended to 31 October, 1993.

The diary makes an attractive presentation gift to clients and can be purchased in a standard format or a corporate format bearing the name of your firm in gold letters on the cover.

Orders received with payment before 31 October next, will be guaranteed delivery in early December in good time for Christmas. The cost of the standard pocket diary is £6.95 each including VAT. The cost of the corporate pocket diary is £8.50 each including VAT. There is a postage and packing fee of £2.00 per order.

Please note that payment should be made to the Legal Pocket Diary and orders should be returned to Idé Marketing, Fáilte House, Cardiff Lane, Dublin 2, which is handling the production and despatch of the diaries on behalf of the Society. ❐



NEW SERVICE

Completely confidential register to assist solicitors wishing to buy or sell a practice or merge with another firm.

Law Society

SOLICITOR LINK

For details contact:

Cillian MacDomhnaill, Finance & Administration Executive,
The Law Society, Blackhall Place, Dublin 7.
Phone: (01) 6710711. Fax: (01) 6710704

By Dr. Eamonn G. Hall, Solicitor

Professional Negligence

The importance of solicitors keeping abreast of legislative developments and of answering queries put to them by clients, or indicating reasons why queries cannot be answered, has been illustrated in the judgment of Barron J in *McMullen's* case [1993] 1 IR 123.

The plaintiff held lands under a lease executed in 1972 which contained restrictive covenants in relation to any proposed sale or change of user and alienation. Differences between the plaintiff and his landlord emerged and in 1978 the plaintiff wanted to sell his interest in the lands. The landlord, however, indicated that he would withhold his consent to any proposed sale or change to user. The defendant solicitors were retained to advise the plaintiff in relation to these and other matters from 1977 until the property was finally sold in 1987.

The plaintiff claimed damages for breach of duty against the defendant solicitors on the grounds that he had sought advice from the defendants as to how he could be released from certain restrictive covenants, but on each occasion that the advice was sought, both before and after the passing into law of the *Landlord and Tenant (Amendment) Act, 1980*, the defendants failed to advise him of the effects of that Act upon those covenants. Apparently the *Landlord and Tenant Act, 1931* did not apply to the lands in question, but the lands held by the plaintiff fell within the provisions of the *Landlord and Tenant (Amendment) Act, 1980*, which came into force on the September 9, 1980. Accordingly, under section 62, sub-section 2(a) and section 67, sub-section 2(a) of the Act of 1980, the restrictive covenants contained in the lease were deemed to be subject to the proviso that the consent of the landlord to a change of user or to alienation could not unreasonably be withheld.

In addition, it was claimed by the plaintiff in *McMullen* that one of the defendants had left unanswered certain specific questions put to him by the plaintiff. The defendants had argued that a solicitor was not obliged to consider every aspect of his client's affairs but simply to act upon his instructions. The action against the defendants had lasted ten days in the High Court. At the conclusion of the plaintiff's case his claim against the first, second, third and fourth defendants was dismissed. There were 14 defendants in the case.

Barron J in giving judgment for the plaintiff held that the everyday practice of solicitors is something of which a court is not necessarily aware and that accordingly evidence of such practice was admissible.

The Judge considered that professional skill and knowledge was of the essence of any contract for professional services. A solicitor was not under a duty to consider every aspect of his client's affairs, but he was obliged to exercise his professional skill and judgment in the interests of his clients. The extent of this obligation was determined by the contract between the parties. Nevertheless, a solicitor does not discharge his duty by following instructions blindly. He must consider not only his instructions, but also the legal implications of the facts presented to him by his client, and advise the client accordingly.

In *McMullen's* case, the client was a tenant having problems with his landlord. The nature of his rights was dependent upon the terms of his lease. Barron J considered that it was essential for his solicitor to explain these rights to him and then to advise him how to deal with his problems against the background of those rights. The *Landlord and Tenant (Amendment) Act, 1980* had been in the course of being enacted by the Oireachtas when one of the solicitors was advising on the matter. Barron J considered that a duty to advise on pending legislation must depend upon many factors such as how soon it may be passed and how it will affect the subject matter upon which advice was being sought. However, in a matter which was current, once the existence of legislation could affect advice already given, the Judge stated that it seemed to him that there was a duty to qualify or correct relevant advice (which may have been given to the contrary) as soon as possible.

The fact that a solicitor had ceased to act for the plaintiff did not entitle him to leave unanswered certain questions put to him by his client; the legal adviser ought either to have answered relevant questions or indicated to the client his reason for not so doing.

Finally, the Judge concluded that insofar as certain defendants had failed to answer certain questions put to them by the plaintiff and failed to advise him on the implications of the *Landlord and Tenant (Amendment) Act, 1980*, they were in breach of their duty to the plaintiff. Appropriate damages were assessed by the Judge. The case is under appeal to the Supreme Court.

Our Professionalism

The International Association of Defence Counsel, aspiring to the highest ideals of professionalism, have adopted the tenets set out below and agree to abide by them in the performance of their professional services for clients. These tenets should apply to all lawyers involved in litigation and deserve to be respected.

1. We will conduct ourselves before the court in a manner which demonstrates respect for the law and preserves the decorum and integrity of the judicial process.
2. We recognise that professional courtesy is consistent with zealous advocacy. We will be civil and

courteous to all with whom we come in contact and will endeavour to maintain a collegial relationship with our adversaries.

3. We will cooperate with opposing lawyers when scheduling conflicts arise and calendar changes become necessary. We will also agree to opposing lawyers' requests for reasonable extensions of time when the legitimate interests of our clients will not be adversely affected.
4. We will keep our clients well-informed and involved in making the decisions that affect their interests, while, at the same time, avoiding emotional attachment to our clients and their activities which might impair our ability to render objective and independent advice.
5. We will counsel our clients, in appropriate cases, that initiating or engaging in settlement discussions is consistent with zealous and effective representation.
6. We will attempt to resolve matters as expeditiously and economically as possible.
7. We will honour all promises or commitments, whether oral or in writing, and strive to build a reputation for dignity, honesty and integrity.
8. We will not make groundless accusations of impropriety or attribute bad motives to other lawyers without good cause.
9. We will not engage in discovery practices or any other course of conduct designed to harass the opposing party or cause needless delay.
10. We will seek sanction against other lawyers only when fully justified by the circumstances and necessary to protect a client's lawful interests, and never for mere tactical advantage.
11. We will not permit business concerns to undermine or corrupt our professional obligations.
12. We will strive to expand our knowledge of the law and to achieve and maintain proficiency in our areas of practice.
13. We are aware of the need to preserve the image of the legal profession in the eyes of the public and will support programs and activities that educate the public about the law and the legal system.

The Statute of Limitations

The *Statute of Limitations, 1957* is often a matter of great concern to litigation lawyers. In *Boylan v Motor Distributors Ltd and Daimler Benz A.G.*, unreported, High Court, June 9, 1993, per Lynch J, the issue of "the date of knowledge" in relation to the limitation period within which an action in respect of personal injury must be brought arose for consideration.

The plaintiff had been injured on May 7, 1986, when a Mercedes 307–D type van, the property of Sanbra Fyffe Ltd, arrived to deliver goods at the family firm of the plaintiff. The plaintiff assisted the driver in unloading the goods and in closing the door, the plaintiff's right ring finger got caught in some way and a piece was amputated from the top joint of the ring finger and her little finger was also injured. A High Court action was initiated against Sanbra Fyffe Ltd on January 27, 1987 and shortly thereafter a statement of claim was delivered.

Subsequently, in December 1987 a consultation was held with Senior Counsel who advised that the van should be inspected by an engineer from whom a report should be obtained. The plaintiff's solicitor wrote to Sanbra Fyffes Ltd's solicitor for permission to have the van inspected by an engineer. Many telephone calls followed regarding the proposed inspection because the identity of the actual van had to be ascertained and other problems sorted out. It took some time for the engineer's report to be compiled because of the difficulty in locating a van of the same type. The engineer's report, dated January 18, 1989, disclosed that the plaintiff had a possible cause of action against the defendants, Motor Distributors Ltd and Daimler Benz, the manufacturers and distributors of the van. No further proceedings were issued at that time.

Time passed and the *Statute of Limitations (Amendment) Act, 1991* was enacted by the Oireachtas. The 1991 Act applied to all causes of action whether accruing before or after its passing. Section 3(1) of the 1991 Act provides that an action claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty shall not be brought after the expiration of three years from the date on which the cause of action accrued *or the date of knowledge (if later) of the person injured* (emphasis added). More than three years had passed since the date of the accident and the plaintiff relied on "the date of knowledge" arguing that she had no knowledge that her injury was attributable to the defendants, Motor Distributors and Daimler Benz, nor even of their identity until the engineer's report was received by her solicitor around January 18, 1989.

It was argued in court that the solicitor for the plaintiff ought to have arranged an inspection of the van by an engineer and obtained a report from the engineer before delivering the statement of claim in the action against Sanbra Fyffe, especially as the plaintiff's instructions as to the precise cause of the accident were vague. Lynch J considered that each case in relation to an engineer's report must be decided on its own facts but 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 many cases. Indeed, the Judge argued that this was so probably in the majority of cases because most cases were settled at a relatively early stage of the proceedings.

The Judge was satisfied from the evidence of the plaintiff's solicitor and on the evidence of an experienced solicitor in litigation that it was reasonable for the plaintiff's solicitor not to request an inspection of the van and a report thereon by an engineer until directed to do so by Senior Counsel. He was satisfied 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. The Judge held based on the date of relevant knowledge, around January 18, 1989, that the issue of the plenary summons on January 14, 1992 against Motor Distributors and Daimler Benz was not barred by the *Statute of Limitations Act, 1957* as amended by *the Statute of Limitations (Amendment) Act, 1991.* ❐

Lawlink is Up and Running

by John Furlong, Solicitor

LAWLINK, the ambitious communications project initiated by the Technology Committee of the Law Society in 1989 is to begin pilot testing at a number of sites from this October.

LAWLINK will allow for direct access to a range of databases and to an electronic mail system especially designed for the legal profession. Practitioners will be able to make inquiries across a communications gateway to a range of databases including the Land Registry and Companies Registration Office (CRO) directly from their own PC. Initially, access will be available to the Dublin region of the Land Registry allowing users to make direct inquiries of the names index and to print inspection copies of folios in their own offices. With over 190,000 folios available in the Dublin region alone, the service is sure to enhance the efficiency of practices particularly those involved in conveyancing, debt collection and credit monitoring etc.

Access will also be available through LAWLINK to the CRO on a gateway similar to the existing CROLINE service. This also allows direct access for inquiry purposes; printouts of company details and the automatic ordering of company documentation from the CRO image database.

Later in the project, it is envisaged that access will also be provided to other public databases. It is hoped that this will include the Registry of Deeds and the Probate Office at an early stage.

LAWLINK Limited

LAWLINK Limited, the company operating the service, was established by the Technology Committee of the Law Society in 1989 and has been in negotiation with various bodies since then. Earlier this year, the company received funding from the Telematique Project of the European Communities and this funding has enabled the initial phase of the project to proceed. Chairman *Frank Lanigan* says "Lawlink represents a major breakthrough for the legal profession. This new service will mean that access to information held on certain public databases will be facilitated and will also provide a more efficient method for solicitors to submit their search requests. The whole process can be operated from the office with a minimum of fuss and time delays."

L-r: Frank Lanigan, Chairman, Lawlink Limited and Joe Thompson, General Manager, Eirtrade, signing the contract for the X400 link.

Communications

The system will operate across an X400 link provided under contract by Eirtrade, the data communications arm of Telecom Eireann. Eirtrade is a network service which acts as a data clearing house. Instead of having to establish many connections between different subscribers, only one link to Eirtrade is needed for each. The network also overcomes the inherent problems of different computer types communicating with each other as a single protocol (X400) is used throughout and it caters for all popular makes. Since the network is nationwide it does not matter where a subscriber is located. Eirtrade are constructing the communications, billing and auditing elements of the LAWLINK system in both the Companies Office and the Land Registry Office.

To avail of the service, is envisaged that users will register with LAWLINK and on payment of a small registration fee will be provided with the necessary access codes and passwords. Hardware required at the user site will include a modem, a suitable PC and a printer. The appropriate communications software will also be installed. LAWLINK will provide the necessary communications software. Users will then have direct access to the database as they come on-line. The fee to be charged for each search made promises to be extremely attractive given the speed and currency of the information which will be obtained.

While the system is being developed by LAWLINK Limited and targeted specifically at members of the Incorporated Law Society, it will be available to other users such as banks, building societies, law searchers etc.

Electronic Mail

LAWLINK subscribers will automatically have access to EIRMAIL

400, Eirtrade's X400 electronic messaging system. This will allow subscribers to send different message types such as text, graphics, facsimile and data files to each other over a secure data network. Access to international electronic mail systems is also provided.

Investment

As with all major projects, a considerable amount of investment is required and LAWLINK will provide an indispensable service to practitioners. It appears probable that the Dublin locations of a number of Government offices will be changed in the coming years with part of the Land Registry likely to move to Waterford and the Companies Office set to move to Kilkenny.

Further information on LAWLINK can be obtained from *Gerry Godsell*, Chief Executive, LAWLINK Limited, Blackhall Place, Dublin 7.

* *John Furlong is Information Officer with William Fry, Solicitors.* ❐

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819
I.O.M.Office:-
Tel: 0624 822210 Telex : 628285 Samdan G
Fax: 0624 823799

Solicitor Link Service Launched

The Law Society has launched a new service to assist solicitors who wish to merge or form an alliance with another practitioner/firm, who wish to buy or sell a practice, or who wish to enter into an overheads sharing arrangement.

The service, which is called "Solicitor Link", is run under the auspices of the Practice Management Committee and will be administered by *Cillian MacDomhnaill,* Finance and Administration Executive of the Society. The service is confidential and will be run as an introductory service through which practitioners and firms who are registered with Solicitor Link will be matched with other solicitors who have compatible requirements. No details are disclosed to either party without the real possibility of a link being established and the permission of the practitioners/firms involved being given. Once common ground has been confirmed, the identities of the practices are revealed to the parties and thereafter all negotiations are between the parties. The Finance and Administration Executive of the Society will be the only person with access to the Solicitor Link file and will be responsible for ensuring the confidentiality of the service. There is a modest once-off registration fee of £25.00 plus VAT (total £30.25). There are no further charges for the service.

Further Information

If you would like further information about Solicitor Link, please write to *Cillian MacDomhnaill*, Solicitor Link, The Law Society, Blackhall Place, Dublin 7. You will be sent a brochure outlining the details of the service and a form to be completed if you are interested in registering with Solicitor Link. (See also advertisement on page 312.)

Launching the service, the President of the Law Society, *Raymond Monahan*, said: "I believe this new service will be of great assistance to solicitors, for example, a sole practitioner who wishes to retire or merge with another practitioner, or to firms which would like to expand their businesses by widening the range of expertise they can offer, thus broadening their client base". He added: "I am confident that solicitors will make good use of Solicitor Link, which is just the first of many new support services being developed by the Practice Management Committee of the Society to assist solicitors to run more efficient and viable practices." ❐

Don't miss LAWTECH '93

4 & 5 November, 1993
Blackhall Place, Dublin 7

The growth in the use of computers in solicitors' practices has been matched by an increasing awareness that information technology offers more than just a substitute for the electric typewriter. Last year's seminar on Imaging attracted a huge attendance and it is expected that this year's seminar

Computers in the Legal Office – Get Organised

will be especially well attended. The seminar will be held on Friday 5 November, 1993 from 9.30am to 1.00pm. Further details of the seminar will be sent to all members shortly.

LAWTECH '93 will provide a unique opportunity to view the latest technology available for use in a legal practice. It will also give you the opportunity of meeting with your colleagues and discussing the use of technology in your office.

A help desk will be in operation during the exhibition to deal with any queries you may have in relation to technology.

This year the Technology Committee has organised an essay competition in honour of the late *Niall McCarthy* Judge of The Supreme Court. Thanks to generous sponsorship from ICL, the prize is the largest of its kind in Ireland and the United Kingdom. The "Niall McCarthy Essay" prize will be inaugurated and awarded on Thursday 4 November at 6.30pm.

The Technology Committee look forward to seeing you at LAWTECH '93. ❐

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.

Rating Valuation in Ireland – The Appeal System

by Tom O'Connor*

Tom O'Connor, former Commissioner of Valuation, explains rating and property valuation, and describes the operation of the Valuation Tribunal now in its fifth year of operation.

Rating and Property Valuation

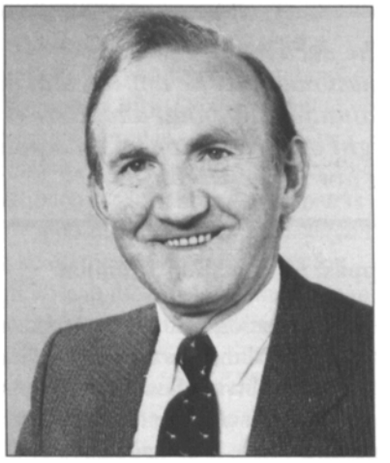
In Ireland the valuation of property for rating purposes dates from the mid-nineteenth century – the first countrywide tenement valuation was completed in the period 1853 to 1865. This task is the responsibility of the Valuation Office (VO) under the direction of the Commissioner of Valuation who is appointed by the Minister for Finance but has independent status in the discharge of his duties. The Commissioner (James Rogers) combines the functions of chief executive and the quasi-judicial function of adjudicating on appeals. The VO also advises the Revenue Commissioners on property values for capital taxation purposes and provides a property consultancy service for other public bodies.

Valuation base: Historically all land, buildings and other fixed property were rateable with exemption for property used for charitable, cultural or public purposes. However no rates have been charged on houses for domestic use since 1977 – the Local Government (Financial Provisions) Act, 1978 effectively terminated domestic rates. Rates on agricultural land ceased in 1984 following the Supreme Court judgment that the continued use of the 1852 valuations as a basis for agricultural rates violated property rights enshrined in the Constitution and that the basis for collecting such rates was therefore invalid *(Brennan v Attorney General and Wexford County Council,* 1984 ILRM 355). The net effect is that rates are now payable on commercial property only but, with a revenue yield of £275 million in 1992, such rates are a critical element in the financing of local authorities.

Legislation: The legislation governing valuation work consists mainly of:

- the core legislation passed around the middle of the nineteenth century (the Poor Relief (Ireland) Act, 1838 and the Valuation Acts of 1852, 1854 and 1860.
- adaptions under local government law to reflect the establishment of county councils and other institutional changes, and
- two modern statutes of 1986 and 1988.

Computing valuation: The basis of valuation is the net annual value (NAV) – the 1852 formula which was reaffirmed in the Valuation Act, 1986. The NAV is derived mainly from the annual rent but other methods are sometimes used either as a cross-check on rental figures or as a substitute when rental information is not readily available. Examples are (a) the *contactors' basis* which estimates the capital cost of providing a premises allowing for depreciation and obsolescence and (b) the *profits method* which assesses its profit earning capacity. The theory is that those figures determine the rent which a hypothetical tenant would offer for the premises in its present state. In the absence of a revaluation the NAV is then reduced by a specified factor to maintain relativities with the rateable values (RVs) of similar properties. The factor in use in the Greater Dublin area is 0.63% which is based on pilot studies of relationships between current rents and RVs in selection areas in Dublin as at November, 1988. For example if the NAV calculated on a current rent is £50,000, the RV is £50,000 x 0.63/100 - £315.



Tom O'Connor

Appeals

The valuation cycle begins with listing a property for revision. An owner or occupier of any property, the local authority or an officer of the Commissioner may at any time apply for a revision of the valuation of a property whether the property is new or already valued. All valuations are computed by professional valuers in the VO which compiles and issues the findings on a quarterly basis. If dissatisfied with a revision, the owner or occupier of the property concerned or the rating authority may appeal to the Commissioner specifying the grounds of appeal. The decision of the Commissioner may be appealed to the Valuation Tribunal and there is a right of further appeal on a point of law to the High Court.

Appeals to Commissioner

At this first appeal stage there is no formal hearing. The Commissioner appoints a valuer other than the person who made the original valuation to inspect and report on the property. In arriving at his decision the Commissioner considers submissions from the appellant, the report of the 'appeal valuer', other studies on economic trends, market conditions or regional development

and the relevant case law. About 90% of appeals are finalised at this stage and at minimal expense to the appellant apart from an appeal fee of £25.00 to £75.00. Most appeals should be decided within six to nine months of the date of lodgement of the appeal.

The decision of the Commissioner may be appealed to the Valuation Tribunal and there is a right of further appeal on a point of law to the High Court.

Appeal to Valuation Tribunal

As the Valuation Tribunal is of recent origin we will discuss it in more detail. If dissatisfied with the decision of the Commissioner one can appeal to the Tribunal. There is an appeal fee of £50, £100 or £150 depending on the amount of the valuation. Prior to July, 1988 such appeals went to the Circuit Court where they took their place in the queue with the usual range of civil and criminal cases. As this gave rise to long delays awaiting hearings and to inconsistency in judgments as between one Circuit and another it was decided to change to a specialised tribunal which was established under section 2 of the Valuation Act, 1988.

Constitution and procedure
The Tribunal consists of a chairman (Mr. *Henry J. Abbott*, SC), four deputy chairmen and three ordinary members, each appointed by the Minister for Finance on a part-time basis for a period of five years. The Act does not prescribe qualifications for membership but, of the eight members, six are lawyers and two are professional valuers. The Minister should perhaps appoint additional valuers to provide the necessary expertise in valuation theory and practice. The Tribunal operates in divisions of three members including the chairman (or a deputy chairman), sittings are held in private and cases may be presented in person or through a representative. A notice of appeal must indicate the grounds of appeal and the parties concerned must submit a summary of evidence to the Tribunal and exchange summaries in advance of the hearing. The Tribunal may at their discretion determine whether evidence should be given on oath.

They are obliged to issue a written judgment giving the reasons for their determination and the judgment is delivered at a sitting of the Tribunal. The Act provides that, in general, costs should be awarded to the successful party but normally the Tribunal do not award costs in cases which relate only to quantum (the valuation assessment).

More detailed rules of procedure are set out in the Valuation Act 1988 (Appeal) Rules, 1988. In a separate set of guidelines the Tribunal suggest that proceedings should be as informal as possible and state that "hearings will, in general, proceed as enquiries rather than by an adversarial system". Parties are encouraged to agree facts in advance of the hearing and to submit lists of judgments which they intend to invoke.

Progress

The Tribunal have a very satisfatory record to date. In their first year they delivered judgments on 90% of the appeals lodged and they have maintained that tempo. At present cases are heard within six months of lodging an appeal and adjournments are rarely given. In the main, cases are presented by the professional valuers in the VO on behalf of the respondent (the Commissioner) and by valuation consultants on behalf of appellants but, if the valuation quantum is very large and/or legal issues are in dispute, the parties have legal representation.

Appeal to High Court

Any party to an appeal who is dissatisfied with a determination of the Tribunal "as being erroneous in point of law" may appeal to the High Court by way of case stated. Less than 2% of Tribunal decisions are appealed to the High Court.

Selected Cases

We may now refer to some judgments of the Tribunal in order to get a flavour of issues which come before them. Initially many cases related to the rateability of industrial installations. Under traditional valuation law

At present cases are heard within six months of lodging an appeal and adjournments are rarely given.

buildings are rateable but machinery is not. However, with advancing technology, the functional difference between the two has become blurred and this has given rise to interpretation difficulties. For example, installations used for bulk storage may incorporate processing mechanisms or they may be so closely linked with other plant as to form an integrated process. The Valuation Act of 1986 (section 8) attempted to resolve this particular problem by providing that constructions "designed or used primarily for storage or containment" are rateable while exempting those which are "designed or used primarily to induce a process of change in the substance contained".

In applying these provisions the Tribunal have decided that grain bins are rateable but milk tanks and whey tanks are not (Mitchelstown Creameries, 6 December 1988); that sugar silos are rateable (Siuicre Eireann, 15 October 1990) but that lagoons forming part of an effluent treatment plant are exempt (Golden Vale Food Products, 12 June 1989). In the case of Caribmolasses Company, tanks used in the blending of molasses were deemed exempt by the Tribunal and by the High Court but the Supreme Court reversed the decision on the grounds that "no process of change is induced. The molasses remain molasses" (judgment of 25 May, 1993).

In other cases of interest it was held that the exemption in the 1986 Act for lands developed for sport applied to a golf course but not to the clubhouse (Greystones Golf Club, 11 November 1988) and that a marina was exempt as it was not a "fixed mooring" (Kinsale Yacht Club, 31 May, 1991). The High Court affirmed the exemption but for a different reason i.e. that the marina comprised a development of land for sport. "The floating dock is secured by means of piles driven into the sea-bed which is

In its short period of four years the Tribunal has proved to be a vast improvement on the previous regime of appeals to the Circuit Court.

part of the solid portion of the earth's surface and, therefore, within the definition of land" (judgment of 12 October, 1992). Finally we may refer to the Telecom Eireann case where the Company's right to instal and operate payphones in St. Stephen's Shopping Centre, Dublin was deemed rateable, a Tribunal decision which was affirmed by the High Court (judgment of 5 October, 1992).

Conclusion

The system of first appeals to the Commissioner, which has operated for almost 150 years, is widely accepted as an effective and inexpensive means of adjudication. As explained above, there is a right of appeal from the decision of the Commissioner to the Valuation Tribunal. In its short period of four years the Tribunal has proved to be a vast improvement on the previous regime of appeals to the Circuit Court. Cases are heard with minimal delay, the costs incurred are moderate and hearings are less formal than in a court room situation. There is general satisfaction with Tribunal decisions with few decisions being the subject of appeal to a higher authority. The requirement for a written judgement *with reasons* is of particular benefit in creating a body of case law and stimulating discussion and reflection on valuation law as a whole. ❐

**Tom O'Connor is a former Commissioner of Valuation and lectures at the Institute of Public Administration.*

Third Time Lucky

It was a case of third time lucky for this year's Soccer Blitz, an annual event organised by the Younger Members Committee.

Due to the inclement nature of the Summer weather, an outing usually scheduled for the month of May did not take place until 4 September and then only after it had been postponed on two separate occasions!

Undaunted by these difficulties, twenty four teams entered the mixed football competition which this year, in an inspired departure from tradition, was run in the form of a round-Robin league ensuring that every team played a least two matches.

For the record, the winners were Dublin Corporation Law Department who were given a good run for their money by the loosing finalists, Dublin Legal Agency, but not before all the participants and the many supporters and spectators had enjoyed a marvellous day in the sun.

The mixed doubles tennis tournament proved to be as popular as ever, and for those less energetic, Benny and the Jets provided the musical entertainment.

The day's events rounded off at a disco in the Presidents Hall which continued into the wee small hours.

Full credit to *Orla Coyne* for organising everything so well and grateful thanks to the Educational Building Society for their continued, very generous, sponsorship.

The Solicitors Benevolent Association is among the charities which receive the proceeds.

J.C. ❐

Southern Hospitality Weekend

The Solicitors Apprentices Debating Society of Ireland (SADSI) and The Law Society Younger Members Committee (YMC) jointly held a Southern Hospitality Weekend in Cork at the end of July. On the Friday evening a seminar was held at The Beamish & Crawford Hospitality Suite on the topic "Solicitors – Alternative Job Opportunities". *Michael Lanigan* - spoke on the possible openings for solicitors in the music business. *John Campbell* gave an insight into life as an in-house solicitor in an insurance company. *Michael Moran* outlined the opportunities for solicitors working with accountancy firms. The conclusion from the seminar was that there are opportunities available outside mainstream practice for solicitors.

The seminar was followed by a disco at Hourigans Bar which attracted a large attendance.

On Saturday afternoon a mixed hockey tournament was held at UCC Sportsground in the Mardyke. A sunny afternoon contributed to the enjoyment of all.

Barry Galvin, Cork State Solicitor, chaired a debate on Saturday evening at UCC entitled: "The best thing to come out of Dublin is the road to Cork". The speakers for the motion were: *Eamon Harrington, Don Ryan* and *Kevin Conway*; speaking against the motion were: *Sean Barton, Julie Rea* and *Graham O'Hanlon*. A reception was held in the Staff Restaurant at UCC.

A further get together for lunch on Sunday was held at the Western Star Pub.

Our thanks go to our various sponsors namely: Beamish & Crawford plc; Southern Law Association; Collins Brooks & Associates, Solicitors; Solicitors Financial Services, and Irish Permanent Building Society.

Pat Casey ❐

THE ROUND HALL PRESS

New and Forthcoming Publications

The Law of Company Insolvency
MICHAEL FORDE

'This book should not be on the shelves of every practitioner but on their desks as it is an extremely worthwhile and practical guide to the complex law of insolvency. Dr Forde has produced a most readable text and his knowledge of his subject is well displayed in the level and research of cases decided in the U.K. and elsewhere, including the USA. For many years practitioners have had to soldier on without the benefit of such a text. I believe that practitioners and their advisers will be all the better for the availability of this book. None of them should be without it' John Donnelly, *Deloitte & Touche*.
'The book is a vital and welcome addition to the library of any insolvency practitioner or lawyer, or indeed to any accountant who requires to advise his clients on any aspect of corporate insolvency' Austin Power, *Accountancy Ireland*.
ISBN 1-85800-013-0 £55.00

Ireland and the Law of the Sea
CLIVE SYMMONS

This book examines the law relating to the extent of internal coastal waters; fishery jurisdiction; the definition and extent of the continental shelf; activities of foreign warships — particularly submerged submarines — in the Irish Sea; coastal State control over migratory fish such as salmon; marine pollution; and the whole question of maritime boundaries around Ireland, both in respect of the continental shelf and 200-mile fishery zones. This latter problem now extends beyond the Anglo-Irish context, and embraces more distant neighbours than the UK — Iceland, Denmark and even potentially France.
ISBN 1-85800-022-X £45.00.
Publication date: October 1993.

The Round Hall Guide to the Sources of Law:
AN INTRODUCTION TO LEGAL RESEARCH AND WRITING
THOMAS O'MALLEY

Everyone beginning the study or practice of law must quickly become familiar with a wide range of legislation and case law. The aim of this book is to provide a straightforward account of the main primary and secondary materials encountered in legal study and practice. It describes the basic written sources of Irish, British, European, American, Commonwealth and public international law, and also covers international human rights. The final chapter is devoted to legal writing, with particular emphasis on the citation of cases and secondary materials. Also included is a list of Irish law books published since 1950, a list of abbreviations of law reports and journals and an explanation of the Latin and Law French terms most commonly found in legal writing.
ISBN 1-85800-003-3 £14.95.

Crime and Punishment in Ireland
PAUL O'MAHONY

This book contains a comprehensive study and interpretation of statistical data concerning crime and the penal system in Ireland. It includes chapters on trends in crime, trends in punishment, prisoners' family and social background, prisoners' criminal and penal history and an overview of crime and punishment in Ireland.
The text is accompanied throughout by clear, informative tables and graphs to provide a readable and accurate account of the state of crime and punishment in this country today.
ISBN 1-85800-024-6 £27.50. *Publication date: October 1993.*

Insanity, Psychiatry and Criminal Responsibility
FINBARR McAULEY

This book is about the way in which mental disorder affects criminal responsibility. Unlike the standard treatments of this subject, which tend to concentrate on the jurisprudence of the insanity defence, the approach here also draws heavily on the scientific literature on mental illness.

'The entire book is thoughtful and interesting ... a serious effort to grapple with the boundaries of the concept of criminal responsibility' Dr Malcolm Weller, *New Law Journal*.
ISBN 1-85800-011-4 hbk £37.50;
019-X pbk £14.95.

ANNOTATED STATUTES
General Editor: Anthony Kerr

The Courts Acts 1924-1991 (Annotated)
HILARY DELANY

This book provides a comprehensive guide to the Courts Acts 1924-1991. The full text of the legislation as it is currently in force is set out and case law relevant to the interpretation of the legislation is examined with an authoritative section by section commentary provided.
ISBN 1-85800-006-8 £47.50. *Publication date: October 1993.*

The Civil Liability Act 1961 and 1964
ANTHONY KERR

Also part of the Irish Statutes Annoted Series, this book examines the Civil Liability Acts in detail, providing the full text and examining relevant case law, with commentaries. ISBN 0-947686-03-7 £39.00. *Publication date: October 1993.*

THE ROUND HALL PRESS

KILL LANE, BLACKROCK, CO. DUBLIN TEL: INT. + 353-1-2892922; FAX: 2893072

Pilot Project – Civil Legal Aid

Dear Editor,
The Society's response to the Minister's proposals in relation to private practitioner Civil Legal Aid has prompted me to offer some comments which arise out of my experience as a family lawyer.

Apart from the Law Society report on Civil Legal Aid in November 1991, the formation of the Family Law Committee and a recent address from the President, I would not have been aware of any great interest by the Society or the profession as a whole in the absence of a proper Civil Legal Aid structure. Organisations such as FLAC and AIM Group were more vocal in highlighting the inadequacies and suggesting reforms in the provision of Legal Aid and the whole area of family law. The resignation of *Niall Fennelly* and other members of the Legal Aid Board in January, 1990 failed to evoke any notable response from the Society. The obvious injustices suffered by citizens unable to gain access to Civil Legal Aid has produced only a handful of practitioners interested enough and willing to take the risks inherent in running test cases (with some recent notable successes).

We now have, for the first time since the recommendations in the Pringle report of 1977, concrete proposals for private practitioner legal aid. The fee per case is glaringly inadequate. There are other defects in the proposals which should be thought through such as the fact that payment of a fee for court work may create an over-emphasis on this remedy. It is difficult to understand why there is no provision for a fee for advice, negotiation and agreement between the spouses which is without a doubt the best way to deal with family disputes.

Despite the inadequacies it is my view that the proposals should be accepted for the limited period and as a pilot project. Those who decide to go on the panel will be unlikely to do so for financial reasons but hopefully they will have an interest and an expertise in family law work and in improving the level of service to the public in these cases. I believe that there is a need in the profession to re-focus on an non-adversarial approach, to improve our knowledge of recent legislation and case law, to encourage better use of mediation services and to acquaint ourselves with the excellent Family Lawyers Code of Conduct. If private practitioners can demonstrate the value and efficiency of the service which they offer and its cost effectiveness, they will be in a stronger position to make a case at the end of the pilot project for adequate remuneration and an expansion of the Civil Legal Aid private practitioner scheme.

Yours etc
Phil Armstrong
Solicitor.

Editor's Note:
The then President of the Law Society, Ernest Margetson, was one of the members of the Legal Aid Board who resigned in January, 1990 in protest at the inadequacy of the Scheme of Civil Legal Aid and Advice. Since then, the Society has made repeated public calls for the introduction of a comprehensive scheme.
BC

Life Proceeds not paid to Solicitor

Dear Editor,
May I refer to the Practice Notes in the June, 1993 edition? There is a section headed Life Policy Proceeds not paid to Solicitors.

Understandably the directive specified that a solicitor should ensure that life assurance proceeds cheques drawn in favour of the personal representative or beneficiary (as the case may be) should be sent directly to him. That he should not give an undertaking unless he has had sight of the claim form and is certain that the cheque for the life assurance proceeds will be "sent to him."

May I suggest the following, if possible, and appropriate, that the solicitor should endeavour to copperfasten the situation by requesting the executor/beneficiary to authorise the company to make the cheque directly payable to her/his firm so the he/she has total control of the situation?

Yours etc.,

Diarmuid Teevan, Solicitor.

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Trinity and Michaelmas Terms 1992 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

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 in substitution for the original 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: 26 October, 1993.

Lost Land Certificates

T & J Farrington (Naas) Limited, Folios: 4s and 7361; Lands: Naas West; Area: 3(r) ½(p); 2(r) 18(p). **Co. Kildare.**

John Bergin, Folio: 5224F; Lands: Tanderagee. **Co. Kildare.**

Thomas Davern, Folio: 10605; Lands: Ballylanders (Part); Area: 1(a) 1(r) 5 (p). **Co. Limerick.**

Mary Francis Moran, Folio: 2791F; Lands: Part of townland of Balloy. **Co. Meath.**

Edward Harris and Elizabeth Harris, Folio: 26494; Land: Rivers; Area: 0(a) 1(r) 22(p). **Co. Limerick.**

Brian Charles P. Warren, Folio: 18928F; Land: Castleoliver; Area: 0.494 acres. **Co. Limerick.**

William McNamara and Katherine McNamara, Folio: 10686F; Land: Ballytruckle. **Co. Waterford.**

Michael McHugh, Cartron, Carrick-on-Shannon, Co. Leitrim; Folio: 25358; Townland of Cartron (Ed Danesfort); Area: 45(a) 1(r) 35(p). **Co. Roscommon.**

James W.N. Brookes and Mary Brookes, Folio: 16735; Lands: Murragh; Dromavane. **Co. Cork.**

Margaret O'Connor, Folio: 8020; Land: Moyvane South; Area 26(a) 1(r) 24(p). **Co. Kerry.**

Anglo-Soviet Shipping Company Limited, 3 Chestnut Grove, Elm Park, Ballinteer, Co. Dublin, Folio: 49542F; Townland: Ballinteer in the Barony of Rathdown known as 3 Chestnut Grove, Elm Park. **Co. Dublin.**

John Connor, Folio: 15919; Land: Laragh, **Co. Westmeath.**

Thomas Flynn, Folio: 6406; Land: Ballinvreena; Area: 3(a) 2(r) 25(p). **Co. Limerick.**

James Hegarty, Folio: 50678; Lands: The Pike. **Co. Cork.**

John McGuinness, Folio: 3602; Townland: Loughshinny in the Barony of Balrothery East. **Co. Dublin.**

Bernard Bohan and Nora Bohan, Folio: 1305; Land: Aghadrumcarn; Area: 25(a) 1(r) 9(p). **Co. Leitrim.**

Thomas Bohan, 30 St. Patrick's Park, Carrick-on-Shannon, Co. Leitrim; Folio: 728L; Townland: property situate to the South East side of Renmore Road: Area: 0(a) 0(r) 9(p). **Co. Galway.**

William Kennedy, Folio: 19515; Land: Cullahill; Area: 60(a) 0(r) 30(p). **Co. Tipperary.**

Deel Vale Milk Products Limited, Folio: 26209; Land: Ballylahiff; Area: 76.414 acres. **Co. Limerick.**

Matthew Masterson, Folio: 11490; Land: Ballycanew; **Co. Wexford.**

Michael Fallon, Bridge Street, Gort, Co. Galway; Folio: 25659F; Townland: Cloonnalaha; Area: 6.596 hectares; **Co. Galway.**

John O'Brien (deceased), Folio: 1243; Townland: Boyanagh; Area: 18(a) 2(r). **Co. Roscommon.**

Patrick Canavan, Folio: 50418; Land: Ballyvolane. **Co. Cork.**

Wills

Kenna, Joseph, deceased, late of 25 St. Albans Park, Dublin 4. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died on 14 September, 1993, please contact Harold Waterman & Company Solicitors, 19 Clare Street, Dublin 2. Tel 6621543. Fax 6621542.

Longworth, Rosaleen Galvin, deceased, late of 8 Wellmount Court, Finglas, Dublin 11. Would anyone knowing the whereabouts of a will of the above named deceased who died on 12 August, 1993 please contact: McCann FitzGerald, Solicitors, 2 Harbourmaster Place, Custom House Dock, Dublin 1. Tel. 01–8290000. Fax 8290010. Ref PTRC/MC.

Murphy, Austin, deceased, late of Clonbrock, Rathangan, Co. Kildare. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 6 September, 1993, please contact Matthew F.J. Moore, Solicitor, Edenderry, Co. Offaly. Tel. 0405–31367. Fax. 0405–31367.

Browne, Mary, deceased, late of Flat 4, 56A Crawford Street, Westminister, London W1 1HB and Coolnahane, Kanturk, Co. Cork. Would any person having knowledge of the whereabouts of the original will of the above named deceased who died on 31 July, 1987, please contact Messrs. David J. O'Meara & Son, Solicitors, Mallow, Co. Cork. Tel. 022–21539. Fax. 022–42164.

Mackey, Margaret Monica, deceased, late of Tara Nursing Home, Putland Road, Bray, Co. Wicklow. Would anybody having knowledge of the whereabouts of the original will dated 3 April, 1985, of the above deceased please contact Mr. Daragh Byrne, Byrne, Carolan & Co., Solicitors, Oak House, 39 Mardyke Street, Athlone, Telephone (0902) 78433/78455. Fax (0902) 78455.

Miscellaneous

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.

Ordinary Seven Day Publicans Licence for Sale. Contact James P. Sweeney & Company, Solicitors, Falcarragh, Co. Donegal. Tel (074) 35121, Ref: Mc. 26/CM.

Calling all Solicitors/Barristers; Do you need help with your busy work load; if so, I can help. Holder of a diploma in legal studies and the Incorporated Law Society's Law Clerk's Certificate, good humoured, diligent worker, with an eye for detail, don't delay, reply today:- to Box 80.

Caricatures by Dee Crowe. Orders now being taken for Christmas. Tel. 8475992.

Will Safe for sale, 39 x 35 x 26 inches, solid steel, very heavy, fire protected, safe, partitioned for use as alphabetical wills safe. Holds up to 6000 wills. Delivered to your door anywhere in Ireland – price £500.00. Apply to Frank Lanigan Malcomson & Law, Court Place, Carlow.

Established Dublin 8 Practice has a serviced **office space to let** with shared reception and typing facilities available. Would suit sole practitioner with own client base. Reply to Box No. 81.

Northern Ireland Agents: For all contentious matters. Consultation in Dublin, if required. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, telephone (080693) 61616. Fax 67712.

Fax for Sale Panafax UF 600 AD. Perfect working order. All offers considered. Please ring 972532 after 5:00 pm.

Offices to let in Merchants Quay very convenient to Four Courts. For further information ring Thilde 4751166 between 8:30 am and 4:30 pm.

pcs
PETROCARGO MARINE SURVEYORS LTD.
Capt. Thomas C. Nash
M. INST. PET.
Marine Consultancy;
Independent Marine Surveyors;
Marine Expert Witness;
Ship to Ship Transfer;
Vessel & Terminal Safety Inspection;
Recruitment; Procedures Manuals.
Cooleen House, Rushbrooke, Cobh, Co. Cork.
Tel: 021-811677 Fax: 021-813009

The new face of Irish Stenographers

The I.S.L. team, with Managing Director, Sheila Kavanagh, wearing their new green uniforms at the opening of the city I.S.L. office at Arran Quay, Dublin 7.

★ **Experts in**
Overnight Transcripts

★ **Specialists in**
Court reporting
Medical cases
Arbitrations
Conferences,
Board meetings

Contact
Hillcrest House,
Dargle Valley, Bray,
Co Wicklow
or
4A Arran Quay,
Dublin

Tel: (01) 286 2184
Fax: (01) 286 2184

★ CONFIDENTIALITY GUARANTEED ★ PERSONAL DELIVERY SERVICE ★ QUALITY ASSURED

ISL - THE COMPANY YOU CAN TRUST

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 9 NOVEMBER, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

WHY THE COURTS NEED AN EXECUTIVE AGENCY

ANTICIPATING THE SOLICITORS BILL

LIABILITY AT WORK – THE NEW REGIME

PROBATE TAX – IMPLICATIONS FOR PRACTITIONERS

Plaintiff **Defendant**

Allied Irish Leasing
Bank of Ireland Finance
Cambridge
Capital Leasing **V** **Your Client**
Irish Life Finance
Lombard & Ulster
Woodchester
A.N. Other

Have you been instructed to defend a case on a Disputed Finance Agreement?

- **Liquidated Supplier, Unfulfilled Service Contract**
- **False, Misleading Information**
- **Incomplete or Misleading Documentation**

There are many angles that may not be obvious, external factors that have compromised your client!

We provide a low cost expert service which will improve your presentation and your clients chances of success!

Contact : **Kieran Loughran**
Liability Advisory Services
Park House
North Circular Road
Dublin 7
Tel : 381055
Fax : 8680505

VOL. 87 NO. 9 NOVEMBER 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 329

The Law Society and the Bar Council have made the case for an executive agency for the courts. There is an onus on those with a different point of view to set out clearly why they see it differently.

President's Message 331

The year ahead will be one during which solicitors will again come under the legislative spotlight, with the reintroduction of the Solicitors (Amendment) Bill, writes newly-elected President, *Michael V. O'Mahony.*

News 330 et seq.

Compensation Fund payments, page 330; Council resolves to campaign further against capping, page 333; Results of elections to Council 1993/94, page 335; LRC examines plain language, page 344; First conferring of Diplomas in Property Tax, page 348; Law Society President criticises paltry legal aid, page 349; Law Society/ICL Niall McCarthy Essay Prizes awarded, page 357; FLAC Welfare Guides, page 358; Medico/Legal Society Winter Programme, page 361; IBA Biennial Conference, page 363; Samaritans – someone to listen, page 363.

Law Society/Bar Council submission on Courts 337

A summary of the joint submission made by the Law Society and the Bar Council on the courts service, presented to the Minister for Justice last September.

Mediawatch 339

Media coverage of the criticisms of the Society's submission on the courts by the President of the High Court and other news stories bearing on the solicitors' profession during October.

Lawbrief 341

Rules of the Superior Courts amended; Constitutional challenge to withholding tax credits; Lawyers warned in judicial review cases; Practice direction on the use of medical reports and reports of expert witnesses, *Dr. Eamonn Hall* reports.

Practice Notes 343

Revenue undertakings – Publican's licences; Residential Property Tax/Probate Tax – Requisitions on Title; Local Authority – Shared Ownership Schene.

People and Places 346

Book Reviews 351

LRC Report on Land Law and Conveyancing Law; LRC Report on Occupiers' Liability; Textbook on Jurisprudence; The Law of Company Insolvency.

Probate Tax – The Implications for Practitioners 355

One of the features of the newly-introduced probate tax is that practitioners will become the collectors of the tax on behalf of the Revenue, writes *Richard Grogan.*

Seminar on Marital Breakdown 359

Reform of family law must be accompanied by greater resources and improvement in facilities in the courts and related social services, according to speakers at the seminar "Marital Breakdown – the legal and social responses" staged recently by the Public Relations Committee of the Law Society.

Law School Notices 362

Law School timetable 1994; Apprenticeship – duties of master and apprentice.

Professional Information 365

Notices concerning lost land certificates; lost wills, employment and miscellaneous advertisements.

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: 305236 Fax: 307860.

Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7.
Telephone 6710711 Telex: 31219 Fax: 6710704.

Front Cover Photograph: *Michael V. O'Mahony*, President of the Law Society, 1993/94

Company Formation

Leave it to the EXPERTS!

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service

• Efficient • Competitive Prices • Friendly

Private Limited Company	**–**	**10 days, £265**
Guarantee Company	**–**	**10 days, £285**
Shelf Company	**–**	**10 mins., £265**

Phone: CARMEL or RITA
at 671 0711, Ext. 450 Fax: 671 0704

Why the Courts Service Needs an Executive Agency

We have referred before in these pages to the neglect that has occurred over the years in the courts service and the urgent need, as we see it, for the Government to take action to improve the situation. Recently, at the initiative of the then President of the Society, *Raymond Monahan*, the Society and the Bar Council co-operated in the preparation and submission of a joint report on the courts service setting out a clear analysis of present shortcomings and making suggestions as to how these should be addressed.

One suggestion made – and, in our view, it is a key recommendation of the submission – is that there is a need to establish a unified courts service in this country and set it up as an Executive Agency of the Department of Justice under a Director who would be given responsibility for administration and given the resources to bring about improvements.

The concept of an Executive Agency for the courts is not new. It was first mooted almost 25 years ago in the Devlin report but, like so much else in that report, the idea was shelved, not because of any inherent weakness in the suggestion itself but, rather, because of a general lack of political commitment to Civil Service reform. Meanwhile, our friends in Northern Ireland and in England and Wales have been busy reforming their court structures. In Northern Ireland, the courts service has become a unified service and is established under a Director who, *working very closely with senior members of the judiciary*, has improved the efficiency of the courts service to a very considerable extent. In the recent past, the Lord Chancellor of England has announced that the English courts service – which has been a unified service since 1972 – will be established as an Executive Agency under a Director. In making his announcement, the Lord Chancellor had this to say.

> "The conversion of the courts service into an Agency, will not affect the judiciary, either in its independent role and functions or in its relations with the administration".

The Lord Chancellor said, of course, that consultations with the judiciary on the establishment of the Agency would be carried out.

At a recent conference entitled "Justice for All" staged by the Law Society of Scotland, the Past-President of the Society, *Brian Adair*, advocated the creation of a judicial appointments board one of the functions of which would be to review the judges' role with the objective of reducing their administrative burdens so that they would have more time to spend on their judicial functions. One contributor remarked that judges should do what they do well – judging – and leave administration to the administrators and managers under their direct supervision and guidance.

Since the publication of the Society/Bar Council submission, the President of the High Court has make it clear that he would be personally opposed to the establishment of the courts in this country as an Executive Agency on the grounds that it would undermine the constitutional independence of the judiciary.

In our view, it is, indeed, surprising – not to mention disappointing – that anybody should see a proposal to improve the management of the courts as undermining the constitutional independence of the judiciary. It is possible, of course, that there may be some misunderstanding about what is being suggested.

Responsibility for the administration of the courts in this country lies with the Minister for Justice and the day-to-day management is carried out by civil servants in the Department of Justice. Each of the four court levels – District, Circuit, High and Supreme – is, in reality, a separate and distinct entity; the clerical and administrative staff – the court officials and registrars – work with the judges providing administrative backup and support; there is no real mobility of staff between any of the court levels. Moreover, no one officer in any of the courts has responsibility for the overall efficiency of the service. A unified courts service and the Executive Agency concept would address these shortcomings. In our view, there is no reason why the quest for improved administrative efficiency should undermine, in any way, the independence of the judiciary. There is no conflict between them. The management functions we are taking about do not involve interfering with the freedom of the President of the High Court to allocate judges to cases or to administer the lists as he sees fit. We would have thought that the judges themselves would see advantage in having on their side a senior official who would have a direct link with the Minister and whose task it would be, working in co-operation with the judges, to put forward proposals for change and to seek to secure the best possible deal, in terms of finance and other resources, from the Minister and the Department of Finance. That person would also be responsible for the development of a programme of modernisation and refurbishment of our courthouses and for speeding up the computerisation of the courts.

We would support the view of the Law Society and the Bar Council that there is a fundamental distinction between the respective roles of officials, who are civil servants, in the administration of the courts service and that of the judiciary whose task it

Continued overleaf

Viewpoint (Contd.)

is to administer justice in the individual cases that come before them. While the judiciary, of course, have to involve themselves in administering the lists and ensuring that judges are available to deal with the work as it arises, it is the responsibility of the Minister to ensure that, in overall terms, the courts are working efficiently and that the public are getting a proper service and that the service represents good value for the taxpayers' money. That is not a judicial function and those carrying it out would not, in our view, be encroaching in any way on the proper role and responsibilities of the judges. What the Law Society and the Bar Council are seeking is that, first of all, the courts are established as a proper service; second, that there is somebody in overall charge with responsibility for promoting efficiency, examining the cost-effectiveness of different expenditure programmes, suggesting ways of delivering the service better and ensuring value for money.

The establishment of the courts as an Executive Agency need not necessarily take it outside the mainstream of the Civil Service. The Executive Agency concept is simply a mechanism for freeing up day-to-day decision-making from central bureaucratic control – in other words, delegating authority to a senior official at court level. It is axiomatic that that person would have to work closely with the judges; that he would have to consult widely before taking action to address difficulties and that he would have to be a person who would be sensitive to the respective roles of administrators and judges and stay scrupulously within his own domain.

The case has been made and requires urgent consideration. There is an onus on those who have a different point of view to set out clearly why they see it differently. ❐

See summary of the joint Law Society/ Bar Council Submission on page 337.

Compensation Fund – Payments

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council of the Law Society at its meetings in September and October, 1993. The name of the solicitor in respect of whose defalcation the claim arose is listed in the left hand column.

September	**IR£**
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	5,963.64
John J O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	580.00
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	5,619.75
James C. Glynn, Dublin Road, Tuam, Co. Galway.	14,766.70
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	2,990.75
Conor Killeen & Elio Malocco, Chatham House, Chatham Street, Dublin 2.	9,736.57
Anthony J O'Malley, James Street, Westport, Co. Mayo.	4,987.80
Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2.	267,575.30
	312,220.51

October	**IR£**
John J O'Reilly, 7 Farnham Street, Cavan, Co. Cavan.	50.00
Conor Kileen & Elio Malocco, Chatham House, Chatham Street, Dublin 2.	26,956.00
Christopher Forde, 52 O'Connell Street, Ennis, Co. Clare.	38,112.33
James C Glynn, Dublin Road, Tuam, Co. Galway.	130,462.26
Michael Dunne, 63/65 Main Street, Blackrock, Co. Dublin.	41,500.00
John Kieran Brennan, Mayfield, Enniscorthy, Co. Wexford.	900.00
Diarmuid Corrigan, 6 St. Agnes Road, Crumlin, Dublin 12.	2,187.92
	240,168.51

❐

DOCUMENT EVIDENCE

Established scientists, experienced in all areas of forensic document examination

Quick response
•
Competitive rates

Contact : Mike Hall

DOCUMENT EVIDENCE
Gatsby Court
172 Holliday St.
Birmingham
B1 1TJ

Tel: 0044 21 643 0990
Fax: 0044 21 633 0288

Anticipating The New Solicitors Bill

I have been entrusted with the Presidency of the Law Society for the next twelve months, which I regard as a great honour. I can only express the intention and resolve that during my term I will work to represent the whole profession to the best of my ability.

The year ahead will certainly be a year during which solicitors will again come under the legislative spotlight, with the re-introduction of the Solicitors (Amendment) Bill. The Minster for Justice has recently indicated her intention to circulate the Bill before Christmas. If that happens we can anticipate the commencement of the Second Stage debate in Dáil Éireann early in 1994.

We can also anticipate from what occurred during the Second Stage debate on the 1991 Bill, that some backbench Deputies will avail of the opportunity on this occasion to seek headlines at our expense. It is a fact of life that the ordinary and commonplace rarely makes headlines, so the headline–seeking parliamentarian must highlight the extraordinary and exceptional. The ordinary and commonplace is that the overwhelming majority of solicitors provide a good and efficient service to their clients, which the clients appreciate. The extraordinary and exceptional is that a very small number of solicitors do not provide a good and efficient service and cause upset and hardship to their clients in various unacceptable ways and thereby provide the headline-making 'fodder', which, in turn, unfairly taints the profession as a whole.

In the face of the implicit generalisations brought about by specific incidents of misconduct of negligence, the Society will continue as best it can to balance any public misconception by repeating as often as necessary the 'good news' that

Michael V. O'Mahony

most clients are happy with their own solicitor, and that where problems outside the norm do arise, the Society, assisted by the additional powers to be provided for in the amendment Bill, will intervene.

As you will be aware, most of the provisions of the 1991 Bill were recognised as welcome improvements to the Solicitors Acts 1954/60. However, some provisions of that 1991 Bill were emphatically opposed by the Society, particularly the provisions which would enable banks to provide conveyancing and probate services. At that time (following the debate at the November, 1991 AGM) the Society presented to the then Minister for Justice strong public interest arguments why the existing statutory restrictions (contained in the 1954 Act) that such services be provided only by solicitors should remain. Arguments which were subsequently presented and supported by some Deputies during the course of the Second Stage debate.

It is to be hoped that the Society's strongly argued opposition at the time will have caused the present Minister for Justice to give some reconsideration to the desirability in the public interest of those particular provisions. Irrespective of how any government might from time to time view the legal profession, I believe it should recognise that any perceived public interest in increased competition is far outweighed by the clear public interest in not putting in jeopardy the future of the smaller practice unit, urban as well as rural, in this country. By any objective standard there is enough internal competition within the profession to serve the public interest, without passing legislative provisions facilitating the Jonah-like subsuming of conveyancing and probate services into the 'innards' of the banks, there to risk an anti-public interest 'indigestion' when combined with the 'juices' already present.

Whatever perceived objectives all or any of the Irish banks have in seeking such provisions, I question whether they are served by putting in jeopardy the future of single practitioners or smaller firms. May I suggest that when next talking to your friendly bank manager, in order to focus his mind on your concerns about those provisions, you might consider presenting him with the following 'boot-on-the-other-foot' question, so oft used by advocates – 'How would your bank respond if the Law Society, with equal lack of detailed consideration of the potential consequences, sought Government sanction to setting up its own bank for solicitors?'

Michael V O'Mahony
President ❐

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 8725622
Fax: (01) 8725404

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

Creative

Inheritance Tax

&

Probate Tax Planning

Acknowledged by leading Solicitors & Tax Consultants as innovative and effective ..... **a new dimension.**

Of particular interest to Solicitors active in the estate planning process of high-net-worth clients.

contact Owen Morton FCII

MONEYWISE
Financial Planning Ltd.
23 Fitzwilliam Sq. Dublin 2.
Tel (01) 6 762 205 Fax (01) 6 619 575

HEALTH RESEARCH BOARD

The Health Research Board (formerly the Medical Research Council of Ireland) funds research into the major health problems affecting Irish society. Its current programme includes research which aims at developing improved treatments for **Alzheimer's Disease, Leukaemia, Asthma, Arthritis, Schizophrenia, Stroke and AIDS.**

All research grants are awarded strictly on merit and the Board has a well deserved record of scientific achievement.

When making your will you can assist the vital work of the Board by making a donation or bequest to:

The Health Research Board,
73 Lower Baggot Street,
Dublin 2.
Tel: (01) 6761176 Fax: 6611856

The Institute of Legal Accountants of Ireland

Are you ready for a Revenue Audit, V.A.T. Inspection, P. A.Y. E Inspection?
Are you familiar with the 1992 Finance Act (Third Party Reporting)?
Are you familiar with the Solicitor's Accounts Regulations?

If you are confronted with any of the above we can help you. Membership is open to Bookkeepers, Accountants and Solicitors. The Institute is recognised and encouraged by the Law Society.

If interested in membership or obtaining further information please complete the following and post to:-

T. Meehan, Chairman, The Institute of Legal Accountants of Ireland,
Nolan Farrell & Goff, Solicitors, Newtown, Waterford.

Name: .....

Address: .....

.....

Council to Campaign Further against Capping Awards

At its meeting on 22 October last, the Council of the Law Society resolved to campaign further against 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 claims.

The Council decided that its future campaign should focus on the fact that innocent victims of accidents would suffer if the proposals were implemented. The Council endosed the views expressed by then Junior Vice-President, *Frank Daly,* that the theme or slogan for the campaign should be "why should the victims pay?". The Society would emphasise the fact that the Government had done little to minimise the number of claims which arose, such as the introduction of motor vehicle testing, improving the the condition of roads, etc. The Council decided to seek support from organisations which represented individuals likely to be affected by the proposal such as trade unions. Among the suggestions proposed by the Council were a standard letter or leaflet, which would be issued to solicitors' practices and which they could send to their clients, that would outline the Society's primary objections to the proposal. This could be displayed by solicitors in their offices. The Litigation Committee of the Society undertook to consider these proposals.

The Chairman of the Litigation Committee reported that the Committee was recommending that an opinion should be obtained from senior counsel on the constitutionality of the Minister's proposal. It was noted that a good reaction had been received from TDs and Senators who had been lobbied on the proposal. It appeared also that support for the proposal among members of the Cabinet might not be unanimous. The Council noted that the Minister of State for Commerce and Technology was linking his proposal to cap damages to the creation of employment in the Irish market-place, a link which, in the view of the Council, was unsustainable.

Pilot Civil Legal Aid Scheme

Members of the Council expressed disappointment that some members of the profession - a small minority - had indicated their intention to participate in the Pilot Project of Civil Legal Aid being conducted by the Department of Equality and Law Reform in respect of civil legal aid cases in the District Court and that it was regrettable that the Society's stance had not been supported by all members of the profession.

Admissions Policy

The Council gave further consideration to the Society's current admissions policy to the profession. In particular, the Council considered a memorandum setting out five possible options, based on the debate to date on the issue, which had been prepared for the Council by the Director General of the Society. The Council adjourned the debate on the issue pending the receipt of further views from the Southern Law Association, the Advisory Committee on Legal Education, and the views of the Education Committee of the Society, among others.

Guide to Professional Conduct – Undertakings

The Chairman of the Professional Purposes Committee reported that a new draft had been prepared of the portion of Chapter 7 of "A Guide to Professional Conduct of Solicitors in Ireland", dealing with undertakings. The Committee had received correspondence from a number of Council members in respect of the amendments circulated and intended to reconsider the draft in the light of this correspondence. A revised draft would be presented to the Council at the November meeting when the Council would be asked to take a view on the draft.

Compensation Fund

The Council was notified of a decision by the Compensation Fund to refer a number of solicitors to the Disciplinary Committee and was informed of the Society's decision to re-enter a petition to strike-off a particular solicitor and to oppose a petition by another solicitor to be restored to the Roll of Solicitors. The Council also approved a schedule of payments from the Compensation Fund (see page 330). The Council noted the contents of the Accountants' Certificates Report which indicated that accountants' certificates had been submitted in 95.5% of cases. ❐

Royal College of Surgeons in Ireland

A LEGACY OR DONATION

in favour of

The Royal College of Surgeons in Ireland

contributes to medical education and training and important research.

Please think of us!

For further details contact:

The Registrar,
Royal College of Surgeons in Ireland,
123 St. Stephen's Green,
Dublin 2.

Tel: (01) 4780200
Charity No. CHY 1277

SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

MKM

MacGreevy Keane Mediation

Contract Dispute Resolution

- MKM offers a voluntary, informal, efficient and economical mediation service for the resolution of commercial disputes.
- The MKM system means that unnecessary adversarial arguments are avoided.
- MKM helps both parties to focus on the problem and to look properly at both sides of the case.
- The mediator seeks the middle ground and then facilitates a settlement which is acceptable to both parties.

MKM
MacGreevy Keane Mediation
Contract Dispute Resolution
Kingram House, Kingram Place, Dublin 2.
Telephone: 01-6766811/6766815.
Fax: 01-6766853

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.

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

CONSULTANCY SERVICES FOR SOLICITORS

The Law Society

Is compiling a listing of all persons/firms (legal and non-legal) who offer advice/consultancy services to solicitors on issues relating to the running of a practice including general, financial, marketing, office, case management etc.

Code of standards & person/company profile form available from:

The Practice Management Committee,
The Law Society,
Blackhall Place, Dublin 7.
Phone: 01-6710711 Fax: 01-6710704

Council Elections 1993/94

The list of members elected to the Council of the Law Society for 1993/94 is published below. The total number of valid voting papers received was 2501.

Michael V. O'Mahony *President* deemed elected.

Patrick Glynn, *Senior Vice-President*, 877.
Patrick O'Connor, *Junior Vice-President*, 1120.

Barry St. John Galvin	1326
Raymond T. Monahan	1266
John D. Shaw	1232
Anthony H. Ensor	1219
Ward McEllin	1207
Moya Quinlan	1203
Donal G. Binchy	1153
Eva Tobin	1142
Michael Staines	1118
Niall G. Casey	1081
James MacGuill	1055
Michael G. Irvine	1055
Elma Lynch	1038
Geraldine M. Clarke	1027
Richard Bennett	1018
Owen M. Binchy	1004
Ken Murphy	1002
Francis D. Daly	1001
Brian J. Sheridan	992
Gerard F. Griffin	984
John Costello	970
Laurence K. Shields	968
John G. Fish	953
Stephanie M. Coggans	915
Gerard J. Doherty	906
Philip M. Joyce	903
Michael Carroll	895
Andrew F. Smyth	881

As there was only one candidate nominated for each of the four seats for provincial delegates there was no election and the four candidates for these seats were returned unopposed as follows:-

Connaught	John Dillon Leetch
Leinster	John B. Harte
Munster	Angela Eileen Condon
Ulster	Peter F. R. Murphy

L-r: Pat O'Connor, Junior Vice-President; Michael V. O'Mahony, President, and Paddy Glynn, Senior Vice-President.

Michael V O'Mahony
Newly-elected President

Michael V O'Mahony, a partner in McCann FitzGerald, Solicitors, Dublin, was elected President of the Society at the first meeting of the newly-elected Council for 1993/1994 on 12 November. Michael O'Mahony was educated at Belvedere College, Dublin, UCD (BCL, 1962 and LL.B, 1963) and University of California, Berkeley (LL.M, 1966). He qualified as a solicitor in 1964 and was awarded both the Overend and Findlater scholarships. First elected to the Council in 1975, he has served on the Public Relations, Parliamentary, EEC & International Affairs, and Publications Committees, amongst others, and as a long standing member of the Gazette Editorial Board. He served as Junior Vice-President of the Society in 1988/89 and Senior Vice-President last year.

Patrick Glynn
Senior Vice-President

Patrick Glynn, a partner in Leahy & O'Sullivan, Solicitors, Limerick, has been elected Senior Vice-President of the Society for 1993/94. Paddy Glynn was educated at Crescent College, Limerick, and qualified as a solicitor in 1956. He served as President of the County and City of Limerick Bar Association from 1978 to 1980 and has been a member of the Law Society Council since 1977. He has served as chairman of the Professional Purposes Committee of the Society, the Compensation Fund Committee and the Parliamentary Committee. He has also served on a range of Law Society committees including Registrar's, and Finance. He was Junior Vice-President of the Society from 1989 to 1990.

Patrick O'Connor
Junior Vice-President

Pat O'Connor, newly-elected Junior Vice-President for 1993/94, is principal of the firm of P. O'Connor & Son, Swinford, Co. Mayo. He was educated at Glenstal Abbey School, Limerick, and at University College, Dublin and was admitted to the Roll of Solicitors in 1974. He was first elected to the Council of the Law Society in 1978 and since then has served as chairman of the Education, Registrar's, Professional Purposes, Joint Law Clerks Labour Committee, and has been vice-chairman of many of the statutory and ad hoc committees of the Council. He is currently one of the Law Society's representatives on the Advisory Committee on Legal Education. His firm, P. O'Connor & Son, Solicitors, has recently been awarded the Quality Mark, being the second firm of solicitors in Ireland to achieve the standard and the first in the West of Ireland.

Subscribe to *Irish Tax Review*

Keep up to date with Taxation developments

Please send me details of how I can become a Subscriber to the Institute of Taxation, which entitles me to the following:

- ❍ **Receipt of Irish Tax Review, a bi-monthly journal of approximately 60 pages, including commentaries on all High Court and Supreme Court judgements in previous two months.**
- ❍ **Notification of all Institute of Taxation seminars.**
- ❍ **Admission to Institute of Taxation seminars at members' rates.**
- ❍ **Institute of Taxation publications at members' rates.**
- ❍ **A free copy of the Institute's annual publication "Taxation Summary".**

PERSONAL DETAILS (Please write clearly in BLOCK CAPITALS)

Name

Address

.....

Please copy and return to: **The Institute of Taxation in Ireland**
19 Sandymount Avenue
DUBLIN 4

Telephone: **(01) 6688222**
Fax: **(01) 6688088**

LS1

A national network of exchanges linked overnight, everynight throughout Ireland

Membership provides overnight service to:

Law Library • State Offices

• Insurance Companies • Banks

• Town Agents • Over 400 firms of Solicitors

• and Many Others

For more details, or how to arrange membership phone 01 676 4601

· DE ·

IRISH DOCUMENT EXCHANGE

37 Fenian Street, Dublin 2.

DX 1 Dublin. Tel 01 676 4601 Fax 01 676 7093

Law Society/Bar Council Submission on the Courts

On 22 September last, the Law Society and the Bar Council made a joint submission to the Minister for Justice on the future funding, structure and management of the courts service. A summary of the submission is published below.

Purpose

– The purpose of the submission is to draw attention to the serious problems that exist in the courts service in this country, to heighten public awareness and to put forward recommendations for the improvement and reorganisation of the management of the courts. *(Section 1)*

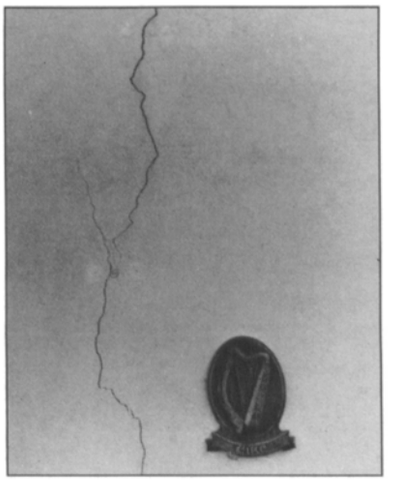
Vindicating Citizens' Rights

- Clearly, the effectiveness of the courts in providing redress to citizens and in vindicating their rights is affected and undermined by the current inadequate resources of the courts system. It is clear that delay and inefficiency in the service is contributing greatly to the cost of litigation and also imposing a substantial burden on the commercial life of the country. *(Section 2)*

The Current Shortcomings

- **Delays**, in the order of two and a half to three years before a case comes to trial, are becoming so acute that it is not an exaggeration to say that the system is grinding to a halt. (Section 4)

- **Courthouse accommodation** has been seriously neglected. In almost all the courthouses throughout the country there is serious over-crowding, inadequate facilities for the public, judges, barristers and solicitors, no family law facilities, no public telephones or any kind or refreshment facilities and a complete lack of upkeep and maintenance. In many of these courthouses sanitary facilities are primitive and unhygienic. Over recent years



Drogheda Courthouse, Co. Louth – a close-up of the cracks in the wall at the courtroom.

spending on courthouse accommodation has been seriously curtailed with the result that buildings of historical and architectural importance are threatened. Solicitors have had to take mandamus proceedings against the Minister to have essential work carried out. The submission suggests that a minimum of £5m must be made available for courthouse accommodation in the Courts' Vote for 1994 and a programme of refurbishment implemented over a 5 year period. *(Section 5)*

- It is widely accepted that **family law cases** require special facilities in order to respect the dignity and privacy of the individuals involved. However, such facilities are virtually non-existent. Delay is also a problem. The submission recommends examination of the establishment of a special family law court to deal with family cases. Urgent consideration should be given to appointing family law practitioners as judges at both District Court and Circuit Court level. All appointees as judges should receive initial induction training in family law work and there should be regular conferences and seminars for members of the judiciary to keep them up to date with modern developments. *(Section 6)*

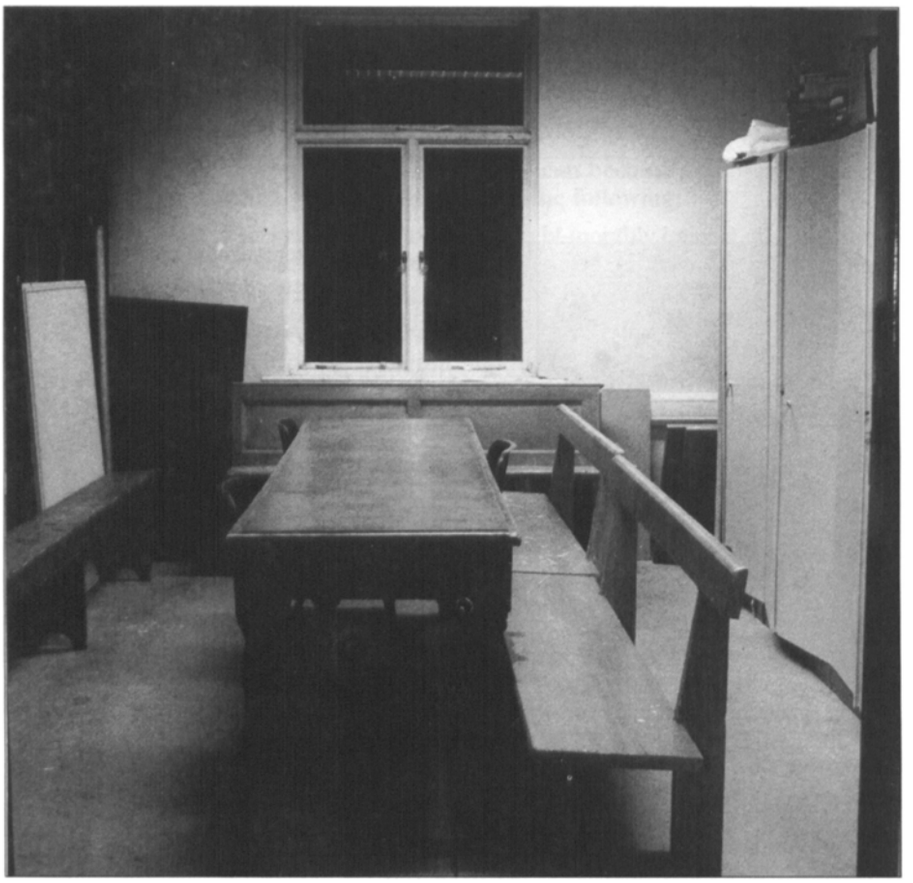
- The Government has spent less that £1m (in total) over the past five years on **information technology** in the courts service. Modern information technology systems are vital to improve efficiency in administration and to speed up the handling of the vast amount of documentation that goes into court work. Sadly, manual systems are still in widespread use throughout the courts service. The Government must provide the funding for a modern and efficient information technology system. *(Section 8)*

- **Pleading systems** and pre-trial procedures need to be simplified and a greater emphasis should be placed on the submission of written statements of evidence by the parties to the case so as to reduce to a minimum those areas of dispute which need to be tried on sworn testimony. *(Section 9)*

- One of the worst features of the present system of litigation is the **inefficiency of the listing system** under which there is no guarantee that a case will be heard on the day that it is listed. This results in substantial additional costs being incurred by the parties. Part of the problem is the inadequate number of judges available to hear cases. More judges need to be appointed and a proper appointments system should be introduced. *(Section 10)*

Additional Resources are Essential

- The delays currently being experienced in the Circuit Court and the High Court cannot be addressed simply by a "reallocation of resources" (as stated by the Minister in reply to a recent Dail question). Substantial additional resources - principally the appointment of



Wexford Circuit Court – the solicitors' and barristers' room.

additional judges - are needed if a reasonable service is to be provided to the public. The Law Society suggests the appointment of temporary part-time judges to the Circuit Court to clear the backlog of cases. (There is already power in law to do this.) An additional benefit would be that this could serve as a way of giving candidates for judicial appointment some experience of judicial office and enable an assessment to be made of their suitability for permanent appointment. The Bar Council has reservations about this and believes that the independence of judges could be undermined by such a development.

There must be an immediate end to any embargo in relation to the recruitment of additional staff in the Circuit and High Courts and staff who retire or leave must be replaced. *(Section 11)*

A New Management Structure

- A lack of political commitment and political decision-making has meant that the management of the courts service to date has been poor. There has been a serious failure at political level to recognise that the courts are providing a much needed service to the public. That service requires expert management. The submission suggests that the courts are capable of being run in a businesslike manner and shows that the civil side of court work could be made self-financing.

- The courts service should be established as an **Executive Agency** under the control of a director. This approach (first outlined in the Devlin Report in 1969) involves the separation of the execution of settled policy and the management of executive functions on the one hand, from the determination and review of policy on the other. The Minister would, of course, remain in overall control, would continue to be answerable to the Dail and to have responsibility for laying down policy but the Executive Agency, under the control of a Director, would be allowed to get on with the business of providing an efficient service in the courts, free from the day-to-day constraints of the Civil Service. *(Section 12)*

Judicial Commission

- The submission questions the Government's decision to establish a Judicial Commission to examine the administration of the courts service and whether there is any need at this stage to inquire further into what needs to be done. Is this another stalling tactic or "escape hatch" for inactivity? If there is to be a Commission, it must be broadly representative, including the practising legal professions, and must be established immediately and be required to report within six months.

Note:

The full text of the submission is available to practitioners on request to *Mary Kinsella* at the Law Society. Copies of the Society's submission to Government on the proposal to cap awards for pain and suffering in personal injury cases are also available. A summary of this submission will be published in the December, 1993 issue of the *Gazette*.

❐

Incorporated Law Society of Ireland – Vacancy

Solicitor

The Professional Practice Directorate of the Law Society has a vacancy for a solicitor whose principal duties will include investigating complaints made by members of the public and, where appropriate, resolving disputes between clients and solicitors.

It is anticipated that the solicitor appointed will also act as committee secretary to a number of the Society's standing committees.

Reporting to the Senior Solicitor (professional Practice), the ideal candidate will have up to three years experience of general practice and possess excellent written and verbal communication skills.

Written applications marked *personal* should be sent to the Senior Solicitor (Professional Practice), Law Society, Blackhall Place, Dublin 7 by December 3, 1993.

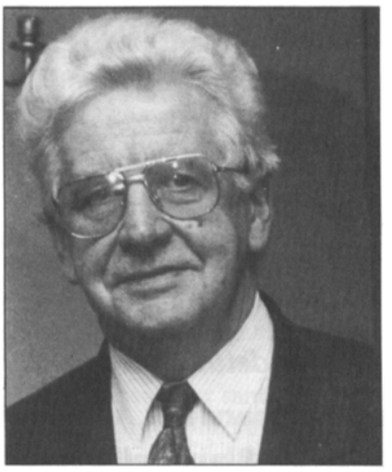
Society's Courts Submission Criticised

By Dr. Eamonn Hall

The main news story impacting on the solicitors' profession during the month of October, was the criticisms by the President of the High Court, (during an address to a Parchment Ceremony in the Society) about the joint Law Society/Bar Council submission to the Minister for Justice on the courts service.

In a front-page article in the *Irish Independent* of 23 October, 1993, entitled "Guilty: top Judge gets tough with greedy lawyers", the newspaper reported that the President of the High Court had made a hard-hitting attack on the joint submission and that he had accused the two bodies of presenting an unfair and distorted picture in relation to the hearing of cases in the High Court. The article also reported that the Judge had stated that the proposal for an executive agency under a director to manage the courts service would be an interference with judicial independence. The article said that Mr. Justice Liam Hamilton had claimed that lawyers had opted to bring actions in the High Court – where legal fees were greater – when they could have been settled at less cost by the Circuit Court and that he blamed his legal colleagues for creating a logjam by flooding the High Court with cases in advance of new legislation that would have increased the jurisdiction of the Circuit Court. The editorial in the *Irish Independent* of the same day reported on Mr. Justice Hamilton's comments in a supportive way.

The *Irish Times* on 23 October, 1993, also reported on the criticisms by the President of the High Court. The report quoted the Director General of the Law Society, Noel Ryan, saying that the judge appeared to have misunderstood what the Society was saying about the proposed executive



The then Mr. Justice Liam Hamilton, President of the High Court.

agency and that such an agency would not interfere with the role of judges but would concentrate on improving facilities for the public. The *Irish Times* article also quoted from the address given by the President of the Society, Raymond Monahan, in which he had said that the proposed agency would have no implications for judicial independence. The article also quoted Raymond Monahan criticising the absence of a properly funded civil legal aid scheme.

The *Evening Press* of 23 October, 1993, reported that a "war of words" had broken out between lawyers and one of the country's top judges. The Chairman of the Bar Council, Frank Clarke, SC, was quoted saying that, by concentrating on the part of the submission that dealt with personal injury cases only, Judge Hamilton had ignored the overall problem and he pointed out that in the previous week the Judge had been faced with a case which had been postponed for the third time because there had been no judge available to hear it. A Law Society spokesperson was quoted as saying that Judge Hamilton had isolated one aspect of the submission which needed to be examined in its entirety.

Legal Ombudsman

News items in the *Irish Independent* of 15 October and the *Evening Herald* of the following day, reported that "a row was looming" between solicitors' representatives and the Department of Justice over who would fund the solicitors' "watchdog" to be appointed under the new Solicitors Bill. The reports claimed that the Minster of State at the Department of Justice, Willie O'Dea, had written to the Law Society stating that the Society would be responsible for bearing the cost of the office.

Irish Farm Family Therapy Group

A one-page article in the *Irish Independent* of 19 October, entitled "Bad Lawyers – the people are fighting back" focused on the activities of the Irish Farm Family Therapy Group. The article reported that the IFFTG claimed that it represented some 3,000 people and that it had received in excess of 800 complaints about solicitors since January, 1993, and 560 of these were to be presented in a block complaint to the Law Society in the near future. The article reported allegations by Ted Cunningham, PRO of the IFFTG, that at meetings in the Law Society offices, solicitors had admitted to wrongdoings and that the Director General of the Law Society had stated that mistakes were made. The article reported a Law Society spokesperson rejecting the accusations by the IFFTG and specifically denying that the Director General of the Law Society had ever made such a statement. The spokesperson claimed that the IFFTG had deliberately misquoted to the media comments made at meetings with the Society.

❐

Barbara Cahalane

NEW SERVICE

Completely confidential register to assist solicitors wishing to buy or sell a practice or merge with another firm.

Law Society

SOLICITOR LINK

For details contact:

Cillian MacDomhnaill, Finance & Administration Executive,
The Law Society, Blackhall Place, Dublin 7.
Phone: (01) 6710711. Fax: (01) 6710704

Lawyers Desk Diary 1994

Now Available

TWO FORMATS

A4 Page -a -day @ £20 each

&

A4 Week-to-view @ £12 each

See Order Form enclosed or send cheque to *Oisín Publications, 4 Iona Drive, Dublin 9.* with your requirements

An Ideal Christmas Gift!

By Dr. Eamonn Hall

Rules of The Superior Courts Amended

The Rules of the Superior Courts have recently been amended. These amendments have important ramifications for legal practitioners. *The Rules of the Superior Courts* (S.I. No. 265 of 1993), [(Pn0227) price £1.60 with postage 48p, Government Publications, Sales Office, Molesworth Street, Dublin 2] came into effect on September 9, 1993 and amended some of the existing provisions regarding payment into court, discovery, applications for payment out of infants' funds, voluntary winding-up of companies, time for certain steps in the Court of Criminal Appeal and taxation of costs and insert a new Order 127 relating to the applications for appointment as a Notary Public.

Order 22, rule 1, now has additional sub-rules 9 and 10 to the effect that where the plaintiff has served a notice of replies to particulars or additional particulars (without a request therefor), after the expiry of the time within which the defendant could make a payment into court without leave, the defendant may, thereupon, without leave, make a payment or increase any payment into Court within 21 days from the date thereof upon notice to the plaintiff.

"The Rules of the Superior Courts have recently been amended. These amendments have important ramifications for practitioners."

Sub-rule 10 provides that in any case in which a period in excess of 18 months has elapsed since the date of the notice for trial, a defendant may, without leave, make a payment into Court within 21 days, upon notice to the plaintiff, provided that the said payment, if not accepted by the plaintiff, shall not take effect until the expiry of two months from the date upon which it was made or increased, as the case may be.

In relation to discovery, Order 31, rule 12, there is a new sub-rule 4 to the effect that an order under sub-rule 1 directing any party to make discovery shall not be made unless

(a) the applicant for same shall have previously applied by letter in writing requesting that discovery be made voluntarily; and

(b) a reasonable period of time for such discovery has been allowed; and

(c) the party or person requested has failed, refused or neglected to make such discovery or has ignored such request.

However, there is a proviso that in any case where by reason of the urgency of the matter or the consent of the parties, the nature of the case or any other circumstances which to the Court may seem appropriate, the Court may make such order as appears proper, without the necessity for such prior application in writing.

There are also other provisions relating to discovery. Sub-rule 4(4) of Order 31, rule 12, provides that an application for discovery whether under rule 12(1) or (4) shall be made not later than 28 days after the action has been set down or in matters which are not set down 28 days after it has been listed for trial, provided that the Court or the party requested may order or agree, as the case may be, to extend the time for the application for discovery in any case in which it appears just and reasonable to do so. Sub-rule 5 provides that the costs of an application to court for discovery in any case in which prior written application has not been made or in which application has not been made within the time provided, shall be in the discretion of the Court.

Constitutional Challenge to Withholding Tax Credits

A case is pending in the High Court in which the plaintiff, a barrister, has sued the Revenue Commissioners, the Minister for Justice, Ireland and the Attorney General, challenging the constitutionality of the *Finance Acts* regarding the application of withholding tax credits in the year in which they are deducted.

The plaintiff barrister is a person in receipt of a professional fee income from the second-named defendant and other accountable persons and argues that he is entitled to set-off the appropriate tax suffered against his established tax liabilities in the relevant years of assessment.

The plaintiff contends that the basic period of assessment for the tax year would be the accounting period ended in the preceding tax year but for the amending legislation contained in the *Finance Act, 1990*, which results in the preceding year being the credit period for the tax year.

The professional fees received by the plaintiff are received on a cash receipts basis.

The plaintiff contends that the statutory effect of the provisions at chapter III of the *Finance Act, 1987*, as amended by section 26 of the *Finance Act, 1990*, results in the plaintiff being deprived of the benefit and unable to obtain a set-off of the appropriate tax suffered against his established Income Tax liabilities for the relevant year of assessment. The plaintiff is accountable for payment of his total Income Tax liability on

professional fee income already taxed at source in a relevant year of assessment without the benefit of a tax credit for the tax already suffered at source.

The plaintiff contends that section 18 of the said chapter III of the *Finance Act, 1987*, as amended by section 26(1)(a) and (b) of the *Finance Act, 1990*, is invalid having regard to the Constitution and Article 40 thereof in that, *inter alia*, the plaintiff is deprived of the benefit of and unable to obtain a set-off for the appropriate tax suffered against his total taxable income for the relevant year of assessment to Income Tax until the following Income Tax year and penalties and interest for late payment of Income Tax liabilities are applicable in a relevant year of assessment in disregard of Withholding Tax already suffered at source and available for credit in another tax year.

The plaintiff claims damages and a declaration that the relevant provisions are invalid having regard to the Constitution and Article 40 thereof.

Lawbrief hopes to keep readers informed of the progress of the case as it may have important ramifications for barristers and solicitors.

Lawyers Warned in Judicial Review Cases

The case of *R. -v- Horsham District Council and Another, ex parte Wenman, The Times*, October 21, 1993, provided a warning for solicitors and barristers in England and Wales which may not go unheeded in this jurisdiction. However, it is appreciated that English law is more stringent than Irish law in relation to costs.

Brooke J in a reserved judgment in the Queen's Bench Division stated that the Bar Council could do well to arrange the preparation and publication of a statement of professional standards to be expected of counsel having the conduct of judicial review proceedings if barristers were to be helped to avoid *heavy financial penalties* in orders for wasted costs made under section 51(6) of the *Supreme Court Act, 1981*, as substituted by section 4 of the *Courts and Legal Services Act, 1990.*

The Judge stated that if the new statutory régime were to lead to those who held themselves out as competent to practice in as complex a field of litigation as judicial review to decide that they did not in fact have the competence to enable them to avoid the risk of wasted costs orders against them, or to take more active steps to pursue continuing education than was now the norm in order to ensure that they continued to possess the standards of the reasonably competent practitioner in the field, then it must be assumed that those welcome developments were the intention and hope of Parliament when it passed the 1990 Act.

The history of the proceedings revealed areas of sloppiness of thought and departure from proper practice which had become all too commonplace in the conduct of judicial review proceedings before single judges, according to Brooke J. He stated that lawyers, for example, should not regard it as unnecessary to write a letter before taking action mainly because they believed it to be inevitable that the response would deny their plaintiff's claim. A *fortiori*, judicial review proceedings, in which the High Court was invited to supervise the way in which inferior bodies performed duties imposed on them by statute, should not ordinarily be embarked upon before the inferior body had received a complaint and had been given an opportunity to say whether or not it accepted it and, if not, to give its reasons.

"The history of the proceedings revealed areas of sloppiness of thought and departure from proper practice which had become all too commonplace..."

Judicial review proceedings, furthermore, were wholly inappropriate as the forum for the resolution of issues of disputed fact and all material matters, including that of the existence of an alternative statutory remedy, had to be considered before the judge was invited to grant leave.

The Judge stated that the case disclosed many departures from good practice. However, certain elementary errors had been made prior to October 1, 1991 and accordingly, the Judge considered that a wasted costs order should not be made.

Practice Direction

The Hon. Mr. Justice Declan Costello, Acting President of the High Court, made the following *Practice Direction* on September 8, 1993.

The Use of Medical Reports and the Reports of other Expert Witnesses in Personal Injury and other Actions.

1. In actions in which damages for personal injuries are claimed, counsel should consider whether the attendance at the trial of medical witnesses who have provided medical reports is necessary to explain or supplement such reports. If it is considered that attendance is not necessary a request should be made to the opposing side to admit in evidence the contents of such reports without the necessity of adducing oral testimony. Should the request be acceded to then copies of all admitted reports should be made available for the Court.

2. When a medical witness is called to give evidence, counsel in his/her absolute discretion should decide whether or not to make available for the use of the Court copies of any medical reports furnished by the witness. Counsel should not be required to give reasons should the reports not be made available. Should counsel decide to make them available they should first be shown to the opposing party. If no objection is taken, then counsel should indicate

(Continued on page 344)

Revenue Undertakings – Publican's Licences

In the last two weeks of September the Society was contacted by a number of practitioners acting for publicans who had tax arrears, in connection with a standard form of undertaking furnished to them by the Revenue Commissioners. The conveyancing Committee recommended that solicitors should decline to complete the undertaking as drafted and this view was immediately communicated to the Revenue Commissioners. The Committee took the view that a solicitor could not guarantee compliance with the undertaking and drafted a form of conditional undertaking which could safely be given by solicitors, but which was not acceptable to the Revenue.

The Committee is concerned that solicitors should be asked by the Revenue to complete these type of undertakings as, undoubtedly, there is immense pressure applied on the solicitor to facilitate a client who is in danger of losing his publican's licence. Although the immediate urgency of the situation has passed with the expiration of the deadline for giving these undertakings, the Committee wishes to emphasise the dangers inherent in giving undertakings of this nature and to stress that solicitors should at all times be satisfied when giving undertakings that they can secure compliance with them.

Conveyancing Committee

Residential Property Tax/Probate Tax- Requisitions on Title

The Conveyancing Committee recommends that the following additional requisitions be raised:

(a) *Residential Property Tax*

Where the property in the sale consists in whole or in part of residential property as defined in Section 95 of the Finance Act, 1983 and the consideration exceeds the residential property tax threshold furnish:-

(i) Certificate of Clearance from residential property tax (form RP50A);

(ii) Certificate of Discharge from residential property tax where there has been a transfer between spouses after 17 June, 1993.

(b) *Probate Tax*

Where the property in the sale has passed under a will or intestacy after 17 June, 1993, furnish Certificate of Discharge from Probate Tax in respect of the property.

Conveyancing Committee

Local Authority – Shared Ownership Scheme

Some practitioners have expressed concern about the Local Authority Shared Ownership Scheme recently introduced under the provisions of the Housing (Miscellaneous Provisions) Act, 1992. The Scheme provides that in respect of a purchaser who has been approved for eligibility under the Scheme,

(a) the Local Authority purchases the property,

(b) the purchaser pays £1,000 to the Local Authority by way of deposit,

(c) the Local Authority then grants a lease to the purchaser for 99 years with provision for payment of a rent calculated by reference to the Corporation's "equity" of the house (at present 5% of the value of the Corporation's share) which rent is index linked,

(d) At the same time the purchaser borrows the remainder of the value of the house from the Local Authority and enters into a mortgage for that amount, charging his interest as lessee for 99 years.

Practitioners will be aware that the solicitors for the Local Authority act in the purchase of the property, and the lease and mortgage submitted to the Purchaser for execution cannot be altered, and accordingly the purchaser's solicitor is not aware of the title acquired, nor can they seek to amend the documentation.

In the circumstances practitioners are left with no alternative save to advise clients on the nature of the Scheme and leave it to the client to decide whether or not they will proceed with the purchase. It will be appreciated that a purchaser in this situation has virtually no choice in the matter. If they want the house then they must buy it on the Local Authority's terms. Furthermore, the Local Authority charges a fee for its own legal services. At the point of completion, however, if the Law Agent deems it necessary, the matter may be referred again for independent legal advice, for instance, to advise on the Family Home Protection Act.

Conveyancing Committee ❐

LRC Examines Plain Language

According to its Annual Report for 1992, the Law Reform Commission is examining the language of the law to see whether a policy of plain language should be adopted in Ireland. The Commission notes that many common law jurisdictions, in particular Australia, the United States and the United Kingdom, have done extensive work in the area of plain language and the law. Some of these jurisdictions have enacted statutes requiring the use of plain language in a variety of situations. The report says that the Commission hopes to publish its consultation paper on the area in 1993 and has decided to focus on plain language in legislation. The consultation paper will examine Irish legislation to see whether there is room for improvement and then look at other jurisdictions to assess developments there.

Among the work accomplished by the Law Reform Commission in 1992, was a report submitted to the Attorney General on the United Nations (Vienna) Convention on the International Sale of Goods, which confirmed the provisional recommendations of the Commission in an earlier discussion paper. The working group on Land Law and Conveyancing Law presented a further report, containing general proposals, which was submitted to the Attorney General in September, 1992. The report identified anomalies in the law, the origins of which vary from the continuing existence of obsolete provisions to unforeseen difficulties which have been created by more modern legislation, (see review of the report in this issue of the *Gazette* on page 351). The Commission also presented its report on the law of dishonesty to the Attorney General.

Work continues on a final report containing recommendations on contempt of court, a discussion paper on the law of privacy, research into the area of structured settlements and a report on the law of occupiers' liability. A discussion paper on family courts is also in preparation.

In the annual report of the Commission, it notes that the Criminal Evidence Act, 1992, substantially adopted the Commission's recommendations on the taking of evidence from children made in its report on child sexual abuse (LRC 32-1990), the Commission's recommendations relating to proof of business records in its report on receiving of stolen property (LRC 23-1987) and proposals relating to the evidence of spouses in the Commission's report on the competence and compellability of spouses as witnesses (LRC 13-1985).

Copies of the 14th Report (1992) of the Law Reform Commission are available from the Commission at Ardilaun Centre, 111 St. Stephen's Green, Dublin 2, price £2.00. ❐

Lawbrief

(Continued from page 342)

to the Court whether (a) the report is to be treated as part of the testimony of the witness (in which event the witness should be asked to explain or supplement the report) or (b) whether it is offered merely for the convenience of the court and as an *aide-memoire.*

3. The above procedures should apply *mutatis mutandis* in the case of reports obtained from other expert witnesses, for example engineers, architects, actuaries, accountants, welfare consultants (and to photographs and maps annexed to such reports) in personal injury actions and other types of actions.

4. The parties may, by agreement, exchange before the trial, their reports on a reciprocal basis. But the absence of agreement to do so should not in itself be a ground for refusing to cooperate at the trial in the procedures outlined above.

5. This direction replaces the practice direction published in the Legal Diary on 11 January, 1993. ❐

THE BAR COUNCIL
FOUR COURTS DUBLIN
LAW LIBRARY

LAW LIBRARY PHONES

Solicitors phoning barristers at the Law Library are requested to use the Direct Dial Numbers which were distributed with the June issue of the Gazette. Further copies are available from the Law Library – **phone 8720622.**

Where a barrister is not at his/her desk your call will be answered either by the switchboard or the member's voicemail. The only circumstances in which the Direct Dial number is not answered is where the barrister has forwarded calls to another extension but is not at that extension when you phone.

John Dowling
Director

RO_LAW Legal Accounts

includes

- Full Client Ledger
- Full Nominal Ledger
- Time Recording
- Third Party Returns
- Bank Reconciliation
- User Defined Reporting

For further information contact :-
Rodine Software Systems
29 The Mall
Waterford
Phone: 051-54394 Fax: 051-77210

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

Commercial property values are about as consistent as Irish weather.

The value of property fluctuates according to supply and demand and is constantly changing. Sherry Fitzgerald have a wealth of experience and detailed knowledge of the techniques of valuation plus up to date information on market conditions to carry out.

ASSET VALUATIONS
RENT REVIEWS FOR LANDLORD OR TENANT
RATING APPEALS
LEASE RENEWALS
CAPITAL TAXATION
ARBITRATION/EXPERT WITNESS

A call to Gordon Gill or Sean McCormack will give you an accurate forecast.

Sherry FitzGerald

Sherry FitzGerald · Commercial
17 Upper Ely Place · Dublin 2
Tel 661 9900 · Fax 661 9909

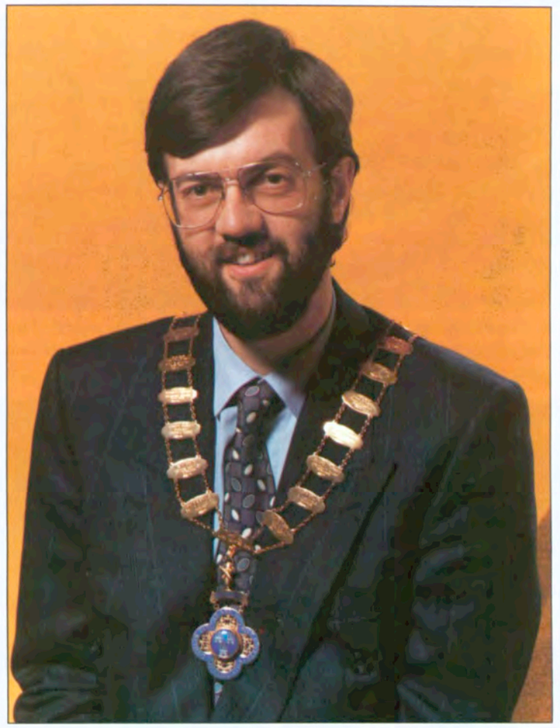
Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

L-r: The then President of the Law Society, Raymond Monahan; Miriam Delaney, Vincent & Beatty; Walter Beatty Jnr., Vincent & Beatty, who was the member of the Solicitors Financial Services who generated the highest level of business last year and Peter Prost, Managing Director, Sedgwick Dineen Financial Services Limited.

At a lunch hosted by Eileen Monahan for Past Presidents' wives recently were standing l-r: Joan Binchy; Helen Shields; Sheila Prentice; Dorinda Hickey; Carmel Killeen; Detta Pigot; Shirley Carrigan; Yvonne Shaw and Jacqueline O'Mahony. Seated l-r: Noelle-Anne Curran; Muriel Overend; Joan Osborne; Eileen Monahan; Therese Nash and Lilian Cullen.



Daire Murphy, newly-elected President of the Dublin Solicitors Bar Association.

At the Parchment Ceremony on 22 October last were l-r: Elaine Woulfe and Professor Richard Woulfe, Director of Education, Law Society, with their son-in-law, Greg Edwards, grand-daughter Lauren, and their daughter, Carol Ann Edwards, who received her parchment.

Legal & General
Office Supplies
BUY THE LEADING
PLAIN PAPER FAX MACHINE
THE OKI 1000
REDUCED TO £1175 + VAT
(FOR ONE MONTH ONLY)
FEATURES
FEATURES
☞ Lower Running Costs
☞ Memory - 16 Pages (upgradeable to 64)
☞ Plain Paper ☞ 30 Page Sheetfeed ☞ Copying Facility
TEL: 01-8725522. FAX: 01-8725079.
15 Upper Ormond Quay, Dublin 7 • Four Courts, Dublin 7.

The Incorporated Law Society of Ireland Tennis Team played a match against the Law Society of England & Wales on 18 September last, kindly sponsored by Solicitors Financial Services Limited. The Law Society of Ireland won 5-1. Back row l-r: Andrew Ballheimer, Phil Ellis, Nick Barlow, Frank Ryan, John Mark Downey. Front row l-r: Peter Droop, Russel Lee, Jonathon Stevens, Brian Smyth, Rod Ensor, Walter Beatty Jnr. and Jerry Sheehan.

First Conferring of Diplomas in Property Tax

Brian Bohan, Solicitor, Ernst & Young (left), presenting the Ernst & Young Property Tax prize to Stephen Maher, Solicitor (right) who was awarded first place on the course. Also pictured is Pat O'Connor, then Chairman of the Education Committee.

L-r: Harriet Kinahan, Education Officer, Law Society; Kirby Tarrant and Janet Tarrant, who was awarded third place on the course, with their daughter, Rebecca.

L-r: Pat O'Connor, then Chairman of the Education Committee, presenting a diploma to his brother, John O'Connor, Solicitor.

At a ceremony recently in the Law Society, 24 solicitors who successfully completed the first diploma in property tax course staged by the Law Society were awarded with their diplomas.

The diplomas were presented by the then Chairman of the Education Committee, *Pat O'Connor*, who expressed great satisfaction with the success of the first course and the commitment and hard work undergone by the successful participants. The course which was staged from February to June 1993, involved attendance at 60 hours of lectures on topics such as Capital Gains Tax, Corporation Tax and Income Tax.

Brian Bohan, Solicitor, Ernst & Young, presented a prize of £500 to *Stephen Maher*, Solicitor, who achieved first place on the course. This prize will be awarded annually and will be entitled "The Ernst & Young Property Tax Prize". Second and third place on the course were awarded to *Alison Crawford* and *Janet Tarrant* respectively.

It is proposed to run the Diploma course again in Dublin in the Autumn of 1994. In the meantime, plans are at an advanced stage to stage the course in Cork in the Spring of 1994 and details of the course will be published in the December issue of the *Gazette.*

The Diploma in Property Tax is not the only initiative in the teaching of taxation that has been taken by the Society recently. A computer assisted learning programme, *the Basic Principles of Capital Acquisition Tax,* has been developed and is now being used by apprentice solicitors attending the Law School's Professional Courses.

The programme, written by solicitors *Brenda Agnew* and *Cathy O'Brien,* while they were employed by the Society, is a clear, comprehensive guide to CAT and deals with the basic legal principles, computing the tax, agricultural and other reliefs. It was written specifically for students, but it would provide a very useful introduction to CAT for any practitioner.

It is hoped that similar programmes dealing with other areas of taxation will be developed in the future. ❐

"Paltry" Legal Aid Criticised

Addressing a parchment ceremony on (Friday) 22 October at which 58 newly-qualified solicitors were admitted to the profession, the then President of the Society, *Raymond Monahan*, criticised the Government for a system of Civil Legal Aid, administered through Law Centres, which had now been proved to be completely inadequate having regard to the present demand for legal redress in our community. "Those in need of vital legal services and who cannot afford them must now wait for extraordinary lengths of time, in some cases between six and nine months, to have even their urgent legal problems addressed in the Law Centres. Many more who find that they are ineligible under the paltry limits for legal aid are being forced to endure injustice if they cannot afford the services of a lawyer. How can the Government possibly state that there is equal access to justice in this country? Surely it is now time to recognise the right of access to justice as a fundamental human right on a par with the right to education, the right to health services and so on?" he asked.

"Today I want, once again, to call on our Government to recognise the urgent need to improve and develop our system of civil legal aid so that equality of access to justice can be properly recognised and become a reality. I know from discussions with him that the Minister for Equality and Law Reform, Mr. *Mervyn Taylor TD*, formerly a solicitor, very much wants to achieve this end and I want to make it quite clear that this Society and this profession will support the Minister in any effort he makes to introduce a comprehensive legal aid scheme. Unfortunately, the pilot scheme recently introduced by the Minister completely fails to recognise the value of the services provided by solicitors in family law cases and I would therefore urge the Minister to commence discussions and negotiations immediately with the Law Society so that we can both agree on the optimum scheme. We are well aware of the financial constraints under which Government operates but at the same time we believe that, with proper organisation, a comprehensive scheme can be introduced at reasonable cost," said Raymond Monahan.

"The Minister should also take into consideration that at the moment the unmet legal needs of the community are being dealt with by the solicitors' profession on a *pro bono* or voluntary basis. It is a tradition of our profession that nobody seeking legal redress will be refused such because of their inability to pay and I would urge all of your qualifying today to continue with this tradition and to continue to assist those who do not have the means to help themselves and who are frequently unable, through no fault of their own, even to begin to address their legal problems. It is wrong however, that through the failure of the State to provide a proper legal aid service solicitors should be expected *ad infinitum* to take on cases without payment so that people can have their rights vindicated. If the concept of access to justice means what the Constitution of this country proclaims then this regrettable state of affairs must be ended and ended quickly. It is essential that the legal profession draws attention to these matters on behalf of the public because it seems to us that nobody else will."

Solicitors are giving employment to thousands of people

Raymond Monahan told the newly-qualified solicitors that the contribution solicitors make to the economy needed recognition. "At a time when the media seem frequently to focus on the very high earnings that some very few members of the profession can command for their highly skilled services, it is sometimes forgotten that the vast majority of solicitors work hard, in the face of intense competition, to make ends meet and to give employment to others. Maintaining this employment is increasingly difficult for many at this time of acute economic recession. *Law firms in this country are creating worthwhile employment for thousands of people* and this is something that I feel ought to be given much greater recognition. As lawyers, we would, of course, – in common with everybody else – like to see the economic environment more conducive than it is to the creation of employment. It is now high time that the Government began to dismantle the many economic barriers there are to the creation of additional employment. I am referring, primarily, of course, to the very hostile tax environment that we have in this country where income tax and pay related social insurance can now consume up to 56% of an employee's wages – above very low thresholds – and where employers face what is, in reality, a crippling taxation burden on employment.

"I am also thinking, in this context, about other matters which make it difficult for lawyers to provide legal services at *moderate* cost. Value Added Tax, stamp duty *and* court fees all add substantially to the cost of providing legal services but, of course, clients frequently forget that these are charges solicitors have to pay *on their behalf*. In recent years, we have seen further impositions, such as residential property tax, and, in the present year, the new probate tax, which I have, with others, criticised. The effect of recent changes in relation to residential property tax is that solicitors will not be able to complete conveyances of houses without clearance certificates from the Revenue Commissioners and this will only add further burden to the complications of these transactions and cause additional delays." ❐

from Butterworths

Butterworth Ireland Ltd.,
26 Upper Ormond Quay,
Dublin 7.
Tel (01) 8731555
Fax (01) 8731876

OUT NOW!

Butterworth Ireland Companies Acts 1963-1990

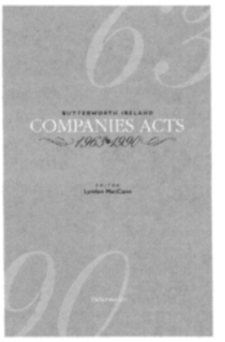
Editor: Lyndon MacCann, BL

A complete consolidation of Irish company legislation and the major statutory instruments since 1963 - all in a single, convenient volume. The legislative history of each section is traced in detail, definitions are provided, and particular statutory constructions are noted and explained. Each section contains extensive case law notes and is fully cross-referenced to statutes, statutory instruments and statements of practice.

Also features!

- *Thorough, easy-to-use index*
- *Numerous cross-references to UK companies legislation*
- *Comprehensive table of statutes*
- *An introductory how-to-use section*

Order your copy now!
PUBLICATION DATE NOVEMBER 1993



Soft cover c.1,450 pages
ISBN 1 85475 148 4
Publication price: **£60.00**

- Bookshop open at Ormond Quay, Dublin (100 metres from the Four Courts) Open 9am -5.30pm through lunch
- Orders welcome by telephone and fax
- Or talk to our area managers about these and other Butterworths titles

Dublin area:
Madeleine Roche
(01) 324289
or
088-597659

Outside Dublin:
Max Harvey
(021) 371399
or
088-566793

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

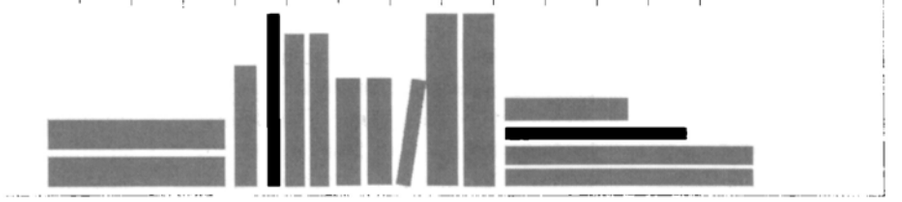
IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

Irish Stenographers Ltd

Experts in Overnight Translations

Specialists in
Court Reporting
Medical Cases / Arbitrations
Conferences / Board Meetings

Contact:
Hillcrest House,
Dargle Valley, Bray,
Co. Wicklow.
or
4a Arran Quay, Dublin 7.
Telephone: (01) 286 2184
Fax: (01) 286 2184



Report on Land Law and Conveyancing Law: (5) Further General Proposals

Law Reform Commission, 1992, 23pp, paperback, £6.00.

As the title indicates this is the fifth in a series of reports issued since 1989 by the Commission on the subject of reform of our land law and conveyancing system. In preparing these reports the Commission has had the guidance of a Working Group of experts, including several very experienced practitioners. The result has been a wide range of recommendations which are eminently sensible and which, if implemented, would remove the flaws in our current system which cause most problems.

The Report under review is no exception. Its recommendations are grouped into three categories. The first contains those relating to simplification of conveyancing generally. One addresses the problems created by the Land Registry requirement that a company document lodged for registration should have been executed under the seal of that company. Generally this does not cause a problem where the company in question is an Irish or UK company, because a company seal is usually used in such cases, but problems do arise where the company is based in a jurisdiction where it is not usual to have a corporate seal, such as the Netherlands. The Commission recommends that the registering authorities should be able to accept that a document has been validly executed if that execution complies with the legal requirements of the jurisdiction in which the executing body is incorporated.

Another recommendation is the amendment of sections 10 and 12 of the Trustee Act, 1893, to enable new trustees of an unincorporated association like a club or community organisation to be validly appointed by a majority of members present at a general meeting (without the need for appointment by the last surviving trustee or that trustee's personal representative, as required by section 10) and a copy of the resolution, certified by the chairman of that meeting, to operate as a vesting deed relating to the association's land (for the purposes of section 12).

The third recommendation in this category is one long overdue, namely, abolition of the need for words of limitation in conveyances of *unregistered* land. This change was made in England in 1925 and for *registered* land in Ireland by section 123 of the Registration of Title Act, 1964. The Commission decided not to take up one further suggestion made by Mr *Mervyn Taylor* TD, that one joint tenant should be able unilaterally by notice to sever the joint tenancy and thereby convert it into a tenancy in common. The TD had in mind the situation of the family home of a husband and wife who have separated, but the Commission concluded that the solution suggested might cause more problems than would solve and anticipated, rightly, that the matter would be overtaken by proposed legislation. The Matrimonial Home Act recently passed by the Oireachtas changes the position of spouses dramatically in relation to the family home by giving each spouse equal rights of ownership to the home and household effects, unless they agree otherwise.

The second category of recommendations involves rectification of anomalies arising from modern legislation. One is to amend the Planning Acts to give Planning Authorities jurisdiction to grant planning permission in respect of development of land below the high water mark (within a three mile zone), eg, for a jetty; another is to amend the Companies Acts to provide that all charges created by an overseas company owning land in Ireland (but *not* having a place of business here) should be registered on the charges register in the Companies Office (this would now catch, for example, equitable mortgages by deposit not registerable in the Registry of Deeds). A third recommendation involves amendment of section 90 of the Registration of Title Act, 1964, which is the section enabling a transferee of registered land to deal with it before the formalities of registration of the transfer are completed. The amendment recommended is twofold: first, to extend such dealings to the granting of leases (thereby facilitating sale and leaseback arrangements) and, secondly, to clarify that such dealings may involve part only of the and transferred.

The third category of recommendations relates to landlord and tenant law and deals with various aspects of the Landlord and Tenant Acts, legislation which continues to cause a multitude of problems. One recommendation is designed to reverse the effect of the Supreme Court's ruling in *Fitzgerald v Corcoran* [1991] LLRM 545 that a sporting or recreational club may have the right to acquire the fee simple in its clubhouse and ancillary areas. The Commission takes the view that such an organisation's statutory rights should be confined to obtaining a sporting lease under the Landlord and Tenant Act, 1971, or, if there is to be the right to acquire the fee simple in some of its land, it should remain subject to the covenants restricting user to sporting etc, activities, in accordance with section 28 of the 1978 (No 2) Act. Section 28 is, of course, a particularly troublesome provision and, indeed, the Commission had earlier drawn attention to its apparent effect on collateral covenants (see also *Whelan v Cork Corporation* [1991] LLRM 19, affd Supreme Court, 15th November 1990) see *Report on Land Law and Conveyancing Law: (1) General Proposals*, LRC 30 – 1989,

p32). It was pointed out in Wylie's *Irish Landlord and Tenant Law* (see p1031) that the section's wording does not appear to be confined to cases of acquisition of the fee simple, including intervening interests, under the 1967 or 1978 (No 2) Acts, thus enabling a wide category of persons to use section 28 as a means of securing a release from covenants. The Commission recommend that section 28 should operate only where the person acquiring the fee simple is also acquiring every intermediate interest in the land.

Other recommendations relate to provisions in the 1980 Act: amending section 5(3) to provide that where an individual lessee runs his business through a company without the lessor's consent, the right to a new tenancy remains vested in the individual and, plugging a gap in the existing provision (see Wylie, op cit, p1082), where a company holds the lease but the business is carried on by an individual who is the company's principal, this is also covered; amending section 13(1)(a) to make it clear that the premises in question must have been a "tenement" (as defined in section 5) for the whole of the three year qualification period required for a "business equity" new tenancy; amending section 17(2) to extend the occasions when a new tenant not entitled to a new tenancy is entitled to compensation for disturbance to cover cases where the landlord requires the premises for himself or for persons normally residing with him or as a residence for his employee (thereby adopting provisions in the equivalent section in the Housing (Private Rented dwellings) Act, 1982).

Finally, the Commission recommends amendments to the provisions of section 15 of the Landlord and Tenant Act, 1984, dealing with rent reviews, designed to make them accord more with typical commercial lease rent review provisions. Two changes are proposed: (1) that the reviewed rent should operate from the date of the fifth anniversary of the date of commencement of the lease and each subsequent such anniversary and not by reference to the date of fixing of the rent and (2) the reviewed rent should be fixed by reference to each such fifth anniversary. These various suggested amendments serve to illustrate how pressing is the need for a thorough review and consolidation of the Landlord and Tenant Acts. Such an exercise would, of course, be a major one and, no doubt, is beyond the capacity of the Commission, but it should be undertaken by the appropriate body as a matter of urgency in the interests of all concerned with rented property.

Meanwhile, the Commission is to be commended for its prompt recognition of practical problems which have given rise to considerable concern to conveyancers and landlord and tenant specialists. It is a great shame that one has less confidence in any such recognition by the Oireachtas. As was stated at the beginning of this review, this is the fifth report on land law and conveyancing reform to be issued since 1989, but not one of them has been acted upon. This must be disheartening to the Commission and its supporting Working Group; it is certainly frustrating to practitioners who are left to cope with the numerous problems which have been so clearly identified and to which the solution has been so conveniently set out.

Eric Brunker

Consultation Paper on Occupiers Liability

Law Reform Commission, 1993, 145pp Softback, £10.00

The subject of this consultation paper has been referred to the Commission by the Attorney General and it is clear that the matter is being placed high on the political agenda because of pressure in recent years from the farming lobby and especially from the IFA.

The consultation paper reviews the present law in Ireland (chapter 2) as well as the law in other jurisdictions (chapter 3) before it makes provisional recommendations for reform in chapter 4.

The present law categorises persons coming onto another person's lands, and depending on the category into which such entrants fall, the occupiers duty to take care varies. Contractual invitees, invitees, licensees and trespassers all find their places in this stratification. Persons in the first categories are owned a higher standard of care than persons in the latter categories. At least that was the theory until 1972.

In *McNamara v The ESB (1972 IR 1)*, the Supreme Court held that the duty of care to known or reasonably foreseeable trespassers was a duty to take reasonable care. Prior to this, the only obligation on the occupier towards trespassers was not to intentionally injure them or not to be reckless in their regard.

Although *McNamara* was concerned only with trespassers, the question of its impact on invitees and licensees was never satisfactorily addressed by the courts subsequently and accordingly a certain amount of confusion still prevails in this regard even to this day.

In recent times farmers became apprehensive, because they feared that the law as stated in *McNamara* now encourages all entrants to sue landowners whenever they suffer injuries on another person's land. It is claimed that this results in higher insurance premiums for the occupiers and the adoption by occupiers of what effectively may be called "defensive ownership". Farmers say they do not like having to assume this inhospitable attitude but the current state of the law forces them to adopt this stance.

This attitude in turn threatens the innocent activities of hill climbers, ramblers, tourists, huntsmen, fishermen and others.

Farmers fears in this regard, although no doubt real, are the result of a misperception. After all, the law only requires them to take reasonable care. It requires no more of them as occupiers, than it demands of them as drivers or employers. Moreover, the law of occupiers is not confined to farmers only; it extends to all occupiers of premises, including ordinary householders and landlords. Finally, that trespassers would not inevitably recover under the *McNamara* rule can clearly be seen from such cases as

O'Keeffe v Irish Motor Inns Ltd ([1978] IR 85) and *Keane v The ESB ([1981] IR 44).*.

The Law Reform Commission in this consultation paper now suggests the way forward is to reduce the entrants coming on to a person's property into two categories: visitors and trespassers.

To visitors, the duty which the occupiers owes should be a common duty of care, that is the duty to take reasonable care. To trespassers, however, the Commission proposes more or less to restore the law as it existed prior to *McNamara*. The duty of the occupier to trespassers should, according to this proposal, be merely a duty not to intentionally injure them and not to act with gross negligence towards them. *McNamara*, it will be recalled required reasonable care. The Commission's proposal does, however, modify this harsh approach by suggesting that where the occupier knows of the presence of child trespassers and furthermore is aware that a condition or an activity on the premises creates a danger of death or serious bodily harm, then the duty of the occupier should be to take reasonable care.

The abolition of the distinction between invitees and licensees was recommended by this reviewer as far back as 1970 and this will be supported by most persons familiar with the topic. See also report of Advisory Committee on Law Reform [Prl. 4403, 1974].

It is this reviewer's view, however, that the proposal for reform in relation to trespassers is misconceived and is a lobby driven response to a misperception of the law as it affects farmers. Having had the courage to advance the law in *McNamara* in 1972, the Supreme Court failed in its obligations to clarify any uncertainties which *McNamara* left at its wake and this uncertainty may have encouraged farmers' fears in the matter.

The extension of farmers' exposure since *McNamara* however, is marginal and surely is a matter which can be handled by liability insurance. Insurance companies have shown no reluctance to extend cover in such cases and, from what we know, at modest premiums.

The Law Reform Commission's arguments against the reasonable care standard for trespassers as formulated in *McNamara*, is a general argument which highlights the weaknesses of the reasonable care standard as such. It is an argument that might easily be made also against reasonable care as a standard for road traffic accidents, employer liability claims and the law of negligence in general. Moreover, it seems strange and inconsistent that the Law Reform Commission, having on a general level refused to recommend it in the case of trespassers, should now have no hesitation in recommending the very same standard with all its weaknesses, for lawful visitors.

Furthermore the proposals go against the modern trend in tort liability (the most recent examples of which are to be found in the Animals Act, 1985 which in removing the rule in *Searle v Wallbank* also adopts reasonable care as a standard where cattle escape on to the highway. In the Control of Dogs Act, 1986, strict liability also features strongly and in the case of dogs injuring trespassers, reasonable care is the standard preferred by the Oireachtas in that instance (section 21.(3)). It would appear that the Oireachtas in recent years has lost faith in negligence calculus. Furthermore, in the liability for Defective Products Act, 1991, the law furthers the policy which imposes strict liability whenever loss distribution can be achieved through price or insurance mechanisms.

Finally, this reviewer found it strange that no specific reference whatsoever is made in the consultation paper to the Report of the Law Reform Advisory Committee (November, 1974) (Prl 4403) and its recommendation for reform in this area of law at page (vii). This Committee, having considered a long report of this reviewer, recommended that the occupier should owe a duty of reasonable care to all entrants with certain defences available in the case of trespassers. One might have expected that the recommendation of this Committee, which was chaired by Mr. Justice *Aindrias O'Caoimh*, as he then was, and which had a wide representation from both professional and academic life, including such eminent scholars as Professor R.F.V. Heuston, Professor Rory O'Hanlon and Mr N Osborough should have merited some consideration in this connection. It was, after all, the only previous recommendation by a serious body in this jurisdiction on the topic. It is hoped that the Law Reform Commission will remedy this omission and reconsider its proposals before issuing its final word on the matter.

Bryan M.E. McMahon

Textbook on Jurisprudence

By Hilary McCoubrey and Nigel D. White (London, Blackstone Press Limited, 1993, ix + 250pp, paperback, £15.95 Sterling)

"I wish unto him the gladsome light of Jurisprudence."

Coke on Littleton, Third Edition, 1633, Epilogue, p.359a.

It is only as some of us grow older that we can appreciate "the gladsome light of jurisprudence". Wurzel wrote in "Methods of Juridical Thinking" in *Science of Legal Method: Selected Essays* that "jurisprudence was the first of the social sciences to be born". The words *juris prudentia* mean either "knowledge of law" or "skill in law". In Justinian's *Institutes*, there is a phrase that "jurisprudence is the concept of things divine and human, the science of the just and unjust". But a writer has characterised this as no more than a piece of rhetoric. Professor Stone summed up jurisprudence as

> "The lawyer's extraversion. It is the lawyer's examination of the precepts, ideals and techniques of the law in the light derived from present knowledge and disciplines other than the law."

The disciplines in question are most often philosophy, sociology and ethics.

In the context of jurisprudence, there is logic, although logic means more than the use normally ascribed to the term in everyday life. In terms of sociology, there is the administration of law and the fact that laws can only function in a social environment and are influenced by the prevailing climate of opinion. Associated with sociology are aspects of history, anthropology and economics. In the context of ethics, there is the study of what is implied by prescription of what ought to be or not to be.

Lawyers should be interested in the science of the law since as Lord Macmillan said in *Law and Other Things:*

> "The lawyer's business is with words. They are the raw material of his craft."

Textbook on Jurisprudence attempts to provide a clear account and analysis of the major theories and controversies which are of importance to the student of jurisprudence. The principal theories and controversies are explained and analysed. The authors endeavour to approach questions on jurisprudence without any particular bias and the theories are analysed in their context.

In a short notice it is sometimes useful to give details of some of the chapter headings. Chapter 1 is entitled "What is Jurisprudence?" This is followed by "Classical Positivism" with a consideration of the theories of Bentham and Austin. There is also a chapter on Hart's theories. This is followed by a discussion on classical naturalism and the naturalist revival. The issue of Marxism and post-Marxism is the subject-matter of chapter 6. Dworkin and the rights thesis is considered in chapter 8. Critical legal studies forms a separate chapter in itself. There is also a discussion on "American Realism" and other chapters are devoted to "Scandinavian Realism" and the justice theory. For many, these headings suggest subject-matter of unspeakable complexity. However, in reality, the book is user-friendly and provides a guide to the content, implications and problems of the major theories. The authors hope that the study may not only be useful and informative, but also enjoyable.

It was Coke who said that every gentleman ought to know a little of law. But a wise person said that perhaps the less every gentleman knows about law the better – at least from the lawyer's perspective. Servius Sulpicius, a patrician, is said to have called on Mutius Scaevola for a legal opinion. When Mutius Scaevola thoroughly flabbergasted Servius Sulpicius with a flood of technicalities which the latter could not understand, the story is told that Mutius Scaevola so bullied his client for his ignorance that Suplicius in a fit of pique went home and studied the law with such effect that he wrote 104 score volumes of law books before he died. The task was supposed to have been the death of him. This anecdote should not put anybody off writing on and studying jurisprudence!

Finally, *Textbook on Jurisprudence* should add a useful perspective to those studying the subject and, for others interested in the law, it may prove generally informative and, perhaps, in an intellectual sense, enjoyable.

Dr. Eamonn G. Hall

The Law of Company Insolvency

By Dr. Michael Forde, Round Hall Press, Dublin, 1993, 518pp, Hardback, £55.00.

On the very day I received a copy of Dr. Forde's book for review, I encountered three problems involving the law of company insolvency all of which needed some research. These problems provided an ideal test. They ranged in degree of complexity – one was reasonably straightforward, the second unusual, and the final one was extremely complex.

The book took the first problem in its stride. Similarly, the second: cases and comment, well laid out, clear and very helpful.

The final problem was so complex that I did not expect it to be mentioned. It wasn't – but there were extremely useful pointers to other more specialised publications which, in turn, led me to a solution. Full marks to the author.

Dr. Forde refers generously to other works, including many texts from other jurisdictions – these are also very helpful. He also makes frequent suggestions for reform and airs ideas rather than simply recite the rules and regulations – this makes interesting reading.

Not only are the obvious topics of receiverships and liquidations given extensive coverage, but also examinations, priorities of creditors, employees' rights and the administration of insurance companies. There is a lengthy and comprehensive Appendix which includes extracts from the Companies Acts, 1963, 1990, the amending Act of 1990, and the Winding Up and Examination Rules. The book may eliminate much heated debate from creditors' meetings.

A small point: the index at the end of the publication could be more extensive – maybe this can be addressed in a future edition.

This book will be a source of help and guidance to all lawyers irrespective of the level of their day-to-day involvement with insolvency law. We must thank Dr. Forde again for yet another textbook on Irish Law – to describe his productivity as frenetic is a grave injustice.

Finally, a light note – one of those tricky grammatical teasers slipped through the net (at page 48): " . . . where, as usually is the case, the receiver is designated the company's agent, in *principal* his duties are owed primarily to the Company". (Nice one!)

Barry O'Neill ❐

TO LET

City Centre Office(s)
Dublin 2 area
No problems with parking
Short/Long Term Lease
ON SITE SERVICES
(IF REQUIRED)
24 Hour Access - Secure
Rent Reasonable
For Further Information
Tel: 677 5212 Fax: 677 5470

Probate Tax – The Implications for Practitioners

by Richard Grogan*

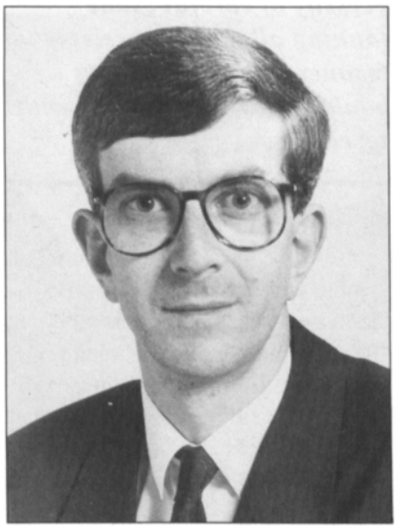
The Finance Act, 1993 introduced a new probate tax which in line with recent legislation is a self-assessment tax. The person primarily liable for the payment of the tax is the personal representative of the deceased [1]. The effect is that we as practitioners shall become the collectors of the tax on behalf of the Revenue.

The tax is charged at the rate of 2% on the estate of a deceased dying after June 17, 1993 if the estate exceeds £10,000.00. The Revenue estimate 75% of all estates will pay some probate tax with 25% of all estates paying in excess of £1,000 [2].

The tax becomes due and payable from the valuation date, which will normally be the date of death [3]. The personal representative must pay the probate tax within nine months of the valuation date. If the tax is not paid within that period interest is chargeable at the rate of 1.25% per month from the expiration of the period of nine months [4]. In addition, the tax must be paid at the time of delivering the Inland Revenue Affidavit. [5]

A person applying for Letters of Administration or Probate to an estate must discharge the probate tax before the Revenue will process the Inland Revenue Affidavit unless there are insufficient liquid assets to meet any tax. [6] Where a taxpayer wishes to pay the tax by surrendering government stock under the provisions of section 45 of the Capital Acquisitions Tax Act, same will be accepted by the Revenue to discharge the probate tax.[7]

The new probate tax applies "to the estate of the deceased". [8] The estates of the deceased is defined by reference to the Succession Act, 1965. The Succession Act excludes property to which the interest of the deceased ceased on his death. Accordingly, all



Richard Grogan.

joint property, whether real of personal is exempt from probate tax. [9] Therefore, all joint bank accounts or shares in companies held jointly with another and life insurance policies with nominated beneficiaries would all be exempt from the new tax.

The residence of a deceased is totally excluded from probate tax if the deceased dies leaving a spouse or a dependant child or dependant relative[10]. There is no requirement for a spouse to take any share in the dwelling house. The exemption applies only to one residence with up to one acre of land which was for the use and enjoyment of the deceased with the dwelling house [11]. There are two further major exemptions: the first is that it is the market value of the dwelling house which is excluded from the probate tax [12]. Accordingly, if the exemption is allowable and there is a mortgage or other debt it is an allowable deduction in ascertaining the value of the estate liable to probate tax [13].

The Finance Act, 1993 [14] excludes furniture and household effects being the normal contents of the dwelling house. The Revenue in recent statements have indicated they take this to mean the normal contents of *a* normal house to exclude the possibility of relief being claimed in respect of any item of unusually large value. The writer disagrees with this contention. If the Act had used the word "A" instead of "the ", their view would be correct. The Act as passed leads the writer to believe that whatever the normal contents of a dwelling house are, an exemption should be granted; as in some circumstances the exemption could be extremely large, this may ultimately be a matter for the courts to adjudicate on.

Any property left to a trust, whether a discretionary trust or otherwise is liable to probate tax [15]. However, property given by will for public or charitable purposes is exempt [16].

In arriving at the taxable value of an estate for probate tax purposes, all debts of the estate are deductible as is any consideration for a benefit paid prior to the death of the deceased together with reasonable funeral expenses, though administration expenses or expenses incurred after the death of a deceased are not [17]. There are a number of exemptions from tax, principally any sponsored superannuation scheme under section 235 [9] Income Tax Act, 1967, a Trust Scheme under section 235 or section 235A Income Tax, 1967, under a scheme for the provision of superannuation or retirement benefit all of which are not included in valuing an estate for probate tax purposes [18].

As is evident from the attached example, considerable savings can be arranged where a disponer prior to his death organised his estate so as to minimise the assets which would come within the meaning of assets over which a power of appointment was exercisable after death.

A. Dies testate on August 20, 1993 leaving a spouse and two children. The deceased leaves the home to his children and the residue to his wife.

Assets

X • House (sole name):	£100,000
X • Contents (sole name):	15,000
• Bank account (sole name):	30,000
X • Shares in PLCs joint names with spouse:	100,000
X • Bank account joint name with spouse:	50,000
X • Life policy - children nominated beneficiaries:	20,000
X • Bank account joint names with children:	20,000
Gross Estate	£315,000

Debts

• General:	5,000
• Mortgage:	20,000
• Funeral Expenses:	2,000
• Administration Expenses (estimated):	5,000

The assets exempt from probate tax are marked X

Net Value of assets over which power of disposition:	£145,000
Deduct House and Contents:	115,000
	35,000
Deduct Debts, Mortgage and Funeral Expense:	27,000
Taxable Value:	8,000

As value is less than £10,000 no tax is payable.

If "A" died with all the above assets in sole name the following is the tax calculation.

• Value of Estate	£315,000
• Deduct House and Contents	115,000
• Deduct Debts, Funeral and Mortgage:	27,000
Taxable Value:	173,000

Tax at 2% = £3,460

The tax where payable is borne proportionally by each beneficiary, to the extent of the amount of the value of their inheritance, unless their particular inheritance is exempt from probate tax [19]. The Revenue have given relief in respect of quick succession in the case where a spouse dies leaving a spouse and a dependant child, if the surviving spouse dies within one year, or within five years if the surviving spouse was to die leaving a dependant child the tax shall not be charged on any property on which tax was already paid [20].

The new probate tax makes the necessity of careful estate planning all the more relevant to disponers. As practitioners we should review all our wills with our clients.

The new probate tax makes the necessity of careful estate planning all the more relevant to disponers. As practitioners we should review all our wills with our clients, as while they may have made provision to minimise Capital Acquisitions Tax on their death, their estate might still be liable to probate tax which in the case of farms or business assets could place a considerable additional financial strain on a beneficiary. As joint property is currently totally excluded from the scope of the tax, it is one route a disponer could consider, especially where a spouse is to be the principal beneficiary. As practitioners we have an opportunity to impress upon our clients the necessity for estate planning, especially as if past experience is any guide, we can expect the Revenue to attempt to increase the tax take from this tax by increasing the percentage charge in years to come. It must always be remembered that unlike Capital Acquisitions Tax, whereby a spouse takes from another totally free of tax, same is not the position with probate tax.

Appendix

1. Section III (c) Finance Act, 1993. In addition each person entitled to an interest in possession to a share of the estate of the deceased or for whose benefit any of the property subject to a relevant trust is applied or appointed shall also be responsible. Section III (d) Finance Act, 1993. This charge applies as if each of those persons were a person referred to in section 35 S.S.2 Capital Acquisitions Tax Act, 1976.
2. Section 113 Finance Act, 1993.
3. Section 117 Finance Act, 1993.
4. Section 117 (b) Finance Act, 1993. The interest is charged at simple interest rates. If the tax is paid within nine months the amount of the tax should be reduced by multiplying the amount of the tax by 1.25%, and multiplying that figure by the number of complete months outstanding to the ninth month from the valuation date. If tax is overpaid by the taxpayer it will be funded with interest of 0.06% per month. The amount of interest cannot exceed the amount of the tax – section 117 (d), 1993.
5. Section 116 Finance Act, 1993.
6. Section 118 Finance Act, 1993. The Revenue have indicated that only in exceptional circumstances will a postponement of tax be granted.
7. The Revenue have indicated that if the securities are lodged with them with a consent to have a stop placed on the securities, and an undertaking to execute a formal transfer when the personal representative is legally empowered to execute a transfer, they will accept same as complying with section III (h) Finance Act, 1993.
8. Section 109 Finance Act, 1993.
9. Section 10, sub-section 4, Succession Act, 1965. "The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate or interest not ceasing on his death, and include property over which he exercised by will a general power of appointment."
10. Section 112 (c) and (d). A dependant relative has the meaning assigned to it by sub-section (9A) (a), (as inserted by the Finance Act, 1979) of section 25 Capital Gains Tax Act, 1975. A dependant child has the meaning assigned to it by section 109 Finance Act, 1993. For the exemption to apply to a dependant child or dependant relative, they must ordinarily reside in the premises.
11. Section 109 Finance Act, 1993 as enacted, gives the taxpayer the option of nominating which residence the exemption applies to where more than one residence is used equally.
12. Section 109 Finance Act, 1993 - see definition of "the net market value of the dwelling house".

(Continued on page 358)

Law Society/ICL Niall McCarthy Essay Prize

The Minister for Justice, *Maire Geoghegan Quinn*, TD, recently presented prizes in the inaugural Law Society/ICL Niall McCarthy Essay Prize Competition at a reception in the Law Society. The purpose of the Essay Prize which was named in honour of the memory of the late Hon. Mr Justice Niall McCarthy, Judge of the Supreme Court, is to raise awareness amongst lawyers of the impact which information technology will have on their practices in the future.

All law students in Ireland, North and South, were eligible to enter the competition. The winners of the inaugural competition were: *Maureen Kelly*, Co. Down, for her essay on hypertext, *Kevin Greer*, a graduate of Queens University, Belfast, for an essay on computerised litigation support systems, and *Evelyn McAdams*, a Dublin student, who wrote a paper on database protection. A special award was made to Colin Kelly, Dublin, for his essay on computer crime in Ireland. The winners received prizes of cheques and ICL computers.

At the awards ceremony, *Peter Maguire*, SC, spoke movingly in memory of the late Niall McCarthy. He said two aspects of the competition would have particularly delighted Niall McCarthy. Firstly, Niall McCarthy had a passion for words and a meticulous regard for structure and brevity which was particularly to be seen in his dissenting judgments. Secondly, Niall McCarthy would have been very pleased that the competition, dedicated to his memory, was open to all law students on the island of Ireland. "Niall McCarthy was dedicated to bringing the Bar and the Bench in the Republic of Ireland together with the Bar and the Bench in Northern Ireland", he said, "as indeed are both professions." Peter Maguire said that Niall McCarthy was a man of unique sincerity, brilliance, courage and intellect which was tempered with the utmost modesty and coupled with an impish sense of humour.

At the presentation of prizes at the Law Society/ICL Niall McCarthy Essay Prize Competition were l-r: Michael O'Mahony, President, Law Society; Maureen Kelly, Co. Down, winner of first prize; Richard Christou, Director of Legal Affairs, ICL Europe; Maire Geoghegan-Quinn TD, Minister for Justice and David MacDonald, Managing Director, ICL (Ireland) Ltd.

David MacDonald, Managing Director of ICL Computers (Ireland), the sponsor of the essay prize, told those attending that information technology in the future would be measured on how it was used not what it could do. Its effective application was the key to its success. He said that ICL, which was one of the leading suppliers of information technology to the legal profession, was delighted to be associated with the essay competition.

Minister for Justice, Mrs. *Maire Geoghegan-Quinn*, TD, said in her address to the gathering, that an increase of almost 50% on the 1992 figure would be allocated to computerisation in the courts this year; over £300,000 would be spent. The money would be used to buy equipment and software for the courts but, in particular, would be used for the case tracking system in the Central Office of the High Court, which would become operational within a few weeks. She said that technology in the courts was an issue that had not moved as quickly as she would have liked, but much progress had been made in 1993 and, with the increased funding, substantial progress would be made in the future.

Michael O'Mahony, then Senior Vice President of the Law Society, thanked the judges and all those who had worked on the competition. He said the objective of the Technology Committee of the Society in organising the competition was to promote the use of information technology by solicitors in their practices and to heighten awareness amongst the legal profession of the importance of technology for the efficient running and management of legal practices. He expressed particular appreciation to Mr. David MacDonald, Managing Director, ICL Computers (Ireland) Ltd., for their generous sponsorship which included bearing the cost of the competition and awarding computer equipment and cash prizes to the four best entrants.

❐

Probate Tax – The Implications for Practitioners

(Continued from page 356)

13. Section III (g) (III).

14. Section 109 Finance Act, 1993. This portion of the section was inserted at the committee stage of the Bill.

15. Section 110 Finance Act, 1993.

16. Section 112 (B) Finance Act, 1993.

17. Section 111 Finance Act, 1993.

18. Section III (g) (III) Finance Act, 1993.

19. Section 115 Finance Act, 1993.

20. Section 114 Finance Act, 1993.

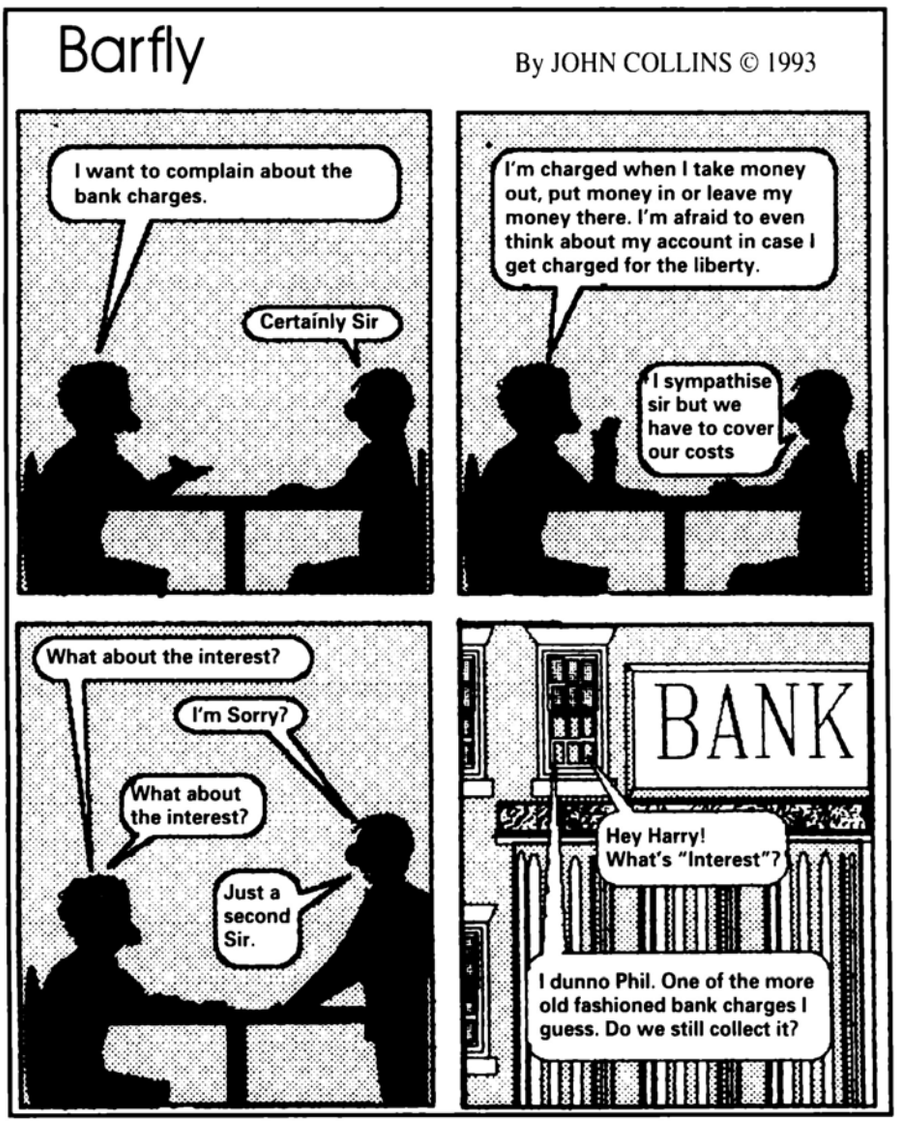
* *Richard Grogan is a solicitor practising in the firm of Rowan & Co.* ❐

SOLICITORS
BOOK-KEEPING BUREAU
A COMPLETE BOOKING-KEEPING AND PAYROLL SERVICE
Manual/Computerised
Debtors/Creditors/VAT
Cash Flow
Payroll/PAYE/PRSI
Contact: **Patricia Brennan**
Tel: (01) 8411179

SEMINAR ON RACISM

The Free Legal Advice Centres is holding a One-Day Seminar on the Legal Remedies to Combat Racial Attack and Racism at the European Commissions Office, Molesworth Street, Dublin 2. The Seminar will include an outline of both the International and National obligations in respect of racism, presented by a panel of EC and Irish experts.

November 26th
Sabha Greene of **FLAC** at **679-4239**



FLAC Welfare Rights Guides

FLAC (Free Legal Advice Centres Limited) has published a series of welfare rights guides. The four titles in the current series, all written by *Gerry Whyte* and *Mel Cousins*, are as follows:

A Guide to Welfare Payments for Families, which deals general family support, children with a disability, maternity payments, lone parent families, and miscellaneous payments.

A Guide to Social Welfare Claims and Appeals, which deals with making a claim, and decisions and appeals.

A Guide to Supplementary Welfare Allowance, which explains who is entitled to supplementary welfare allowance, the conditions for a grant, the types of payment and other issues.

A Guide to Unemployment Payments and Employment Schemes, which explains the various forms of unemployment payments available and the various employment schemes currently in operation.

In the preface to each guide, FLAC makes the point that legislation intended to benefit the general public cannot be fully effective unless people are aware of its existence and are reasonably familiar with its provisions. FLAC has produced the series of guides in order to provide information to the public in this area.

The guides can be ordered from FLAC, 49 South William Street, Dublin 2, telephone: 01-679 4239. ❐

NEWS

Marital Breakdown Seminar focuses on lack of resources

Reform of family law, of itself, would not be effective unless accompanied by a greater allocation of resources and a radical improvement in facilities in the family law area, according to a number of speakers at a recent seminar on "Marital Breakdown – the legal and social responses" staged by the Public Relations Committee of the Law Society.

In a keynote address to the seminar, on 9 October, the Minister for Equality & Law Reform, *Mervyn Taylor, TD,* noted that the recent census results showed that the number of persons in the separated category had increased from 37,245 in 1980 to 55,143 in 1991 – a rise of over 50%. A principal objective of his programme of family law reform would be to meet the challenge of making family law more relevant and accessible to the needs of the people, said the Minister. "Reform must necessarily reflect the many changes which have and are taking place in families and address the need to protect, as far as possible, the institution of marriage, support families in distress and provide and strengthen avenues of redress, particularly where a spouse fails to support and other spouse and the children of a marriage." The Minister stated that the Government was committed to holding a referendum on divorce in 1994.

The Minister went on to outline his legislative programme including the Matrimonial Home Bill, and details of a Family Law Bill which he hopes to introduce in this Dail session. The Bill would enable the courts to order financial relief for a dependant party and to redistribute property following the grant of a decree of nullity of marriage. The Bill would also enable the courts in all proceedings concerning maintenance of spouses and children, to order, subject to certain conditions, attachments of earnings on an automatic basis. The age of marriage would be raised in the Bill from 16 to 18 years and it would include a requirement to give three months notice of marriage, he said.

The Minister reported that proposals to amend the law on barring protection orders were currently under consideration with a view to extending the scope of the legislation and to enhance the rights of parties in non-marital unions.

Turning to the Scheme of Civil Legal Aid and Advice, the Minister said that the grant to the Legal Aid Board for 1993 had almost been 20% higher than that for 1992 and he was confident that it would be higher again in 1994. He said that a Bill to put the Scheme of Civil Legal Aid on a statutory footing was in the process of being drafted.

Reform must be accompanied by funding and restructuring

In his address to the seminar, *Brian Sheridan*, Solicitor and member of the Law Society Council, pointed to the dramatic social change that took place in October 1989 when the Judicial Separation and Family Law Reform Act came into force. Of greatest significance was the introduction of a no fault concept of 'marital breakdown' as a grounds for a decree of judicial separation.

The introduction of the obligation upon the solicitor to advise on the availability of marriage counselling and mediation services was also a significant development in the recognition of the complex process that is a marital breakdown. Another significant provision was the introduction in Section 15 of the Act of property transfer orders.

He said that the marked social change in relation to marital breakdown was confirmed dramatically in the statistics of the Dublin Circuit Family Court. In the court year August 1987 to July 1988, 36 decrees of divorce a mensa et thoro were granted, in the outgoing court year (July 1993) a total of 324 decrees of judicial separation were granted.

Referring to the nationwide demand for legal aid, he stated that approximately 200 legal aid certificates were granted in the calendar year 1989 for judicial separation proceedings. In the current year (1993) the number exceeded 600 and was rising. Brian Sheridan said "a three hundred percent increase in demand for legal aid in these cases has not been met by a 300% increase in Legal Aid Board funding and resources.

"On present figures it is safe to estimate that there will be approximately 500 applications for judicial separation issued in the Dublin Circuit Court in the current court year 1993/94. There are only approximately 150 hearing dates. There is currently one Circuit Court judge assigned to the Circuit Family Court in Dublin and support staff has not increased for some time. The demands on the country-wide Circuit Family Court network are even more acute.

"In short, the dramatic social change has not been matched as yet by appropriate funding and has not been mirrored in the structure of our legal system. Decisions affecting the lives of many are made within a framework of ridiculously crowded court lists, total understaffing and a virtual complete lack of support services. Does society have the will to give financial priority to the funding of a proper family court system? The answer at present is 'no'. Society must face up to the change and 'fund' accordingly," stated Brian Sheridan.

Addressing the seminar, *Mary O'Toole*, BL, said the whole question of facilities for family law cases was a burning issue. She mentioned for

example that in a recent Dundalk Circuit Court hearing there had been 70 cases on the family law list. Despite the very hard work of the presiding judge only a tiny portion of the cases were heard. She mentioned the absence of facilities in the court, that people spent whole days in freezing corridors, with more people herded outside, waiting for their case to come on. Mary O'Toole said that this was simply not good enough particularly for parties to family law cases who were frequently suffering distress and who were, after all, tax paying citizens. The establishment of proper family law courts was essential. In recent years there had been a 300% increase in the number of people looking for judicial separations, and if and when divorce became permissible, this number would double instantly. The Minister's promise of 52 legal aid solicitors was a drop in the ocean – it would only be two per county, she said. In a criminal aid case a person could get a solicitor in 24 hours, and this was as it should be, since people's constitutional rights were at issue. However, family law litigants, whose lives were often falling apart, also had to face a whole range of constitutional issues, for example, their entitlement to the family home, their entitlement to access to their children, succession and pension rights, how their income was going to be dispersed.

Mary O'Toole said that legal aid solicitors were a credit to their profession but the current scheme of Civil Legal Aid and the pilot scheme recently introduced by the Minister for Equality & Law Reform were hopelessly inadequate.

Interplay with social services

The afternoon session of the seminar, chaired by the Hon. Ms. Justice *Susan Denham*, Judge of the Supreme Court, focused on the interplay between the legal profession and the various support services available in the area of marital breakdown. *Kieran McGrath*, Senior Social Worker at the Children's Hospital in Temple Street, told the seminar that much of social workers' time in marital breakdown cases was taken up trying to keep clients out of the adversarial court system. A marked trend had been noted recently, especially by probation officers, of more and more family law cases going forward for trial rather than being resolved voluntarily either through the mediation service of informally. This had placed a great deal of pressure on service generally and especially on the probation officers.

At the seminar were l-r: Kieran McGrath, Social Worker; Mary O'Toole, BL; Brian Sheridan, Law Society Council; Mervyn Taylor, TD, Minister for Equality & Law Reform; Michael V. O'Mahony, then Senior Vice President, Law Society; Mary Lloyd, Mediator, and Dr. Gerry Byrne, Child Psychiatrist.

Kieran McGrath said that there was a need to introduce a system for supervising parental access to children in custody and access disputes, where there are grounds to suspect that there is a risk of physical/sexual/emotional abuse to the children involved. Its absence constituted a major gap in support services to the courts. The ultimate losers were of course children, for even when a parent posed a risk of some sort, children still needed to be able to have regular, predictable and safe contact with that parent.

Kieran McGrath called for greater reporting of family law cases. "Members of the public are generally not aware of the complexity and degree of conflict between spouses all too often found in custody/access disputes. This lack of public awareness is due both to a lack of a proper court reporting system and the *in camera* rule restricting media reports. There is an argument, therefore, both for better law reporting structure and more information for the media about family cases that would still protect the anonymity of those involved," he argued.

Mediation

Mary Lloyd, a former solicitor, who now works as a mediator, addressed the seminar on the importance of mediation for couples undergoing separation. Mary Lloyd said that throughout the life cycle there were expected crisis points such as death, but marriage breakdown was an unexpected crisis. People going through a separation experienced the same feelings of grief and loss as they did on a death, and the children of the marriage were similarly affected.

Mary Lloyd explained the mediation process. One spouse approached the mediation service and then the other spouse was asked to confirm that he or she would participate. This was usually the first agreement between the couple following the decision to separate. The mediation process involved introductory sessions, then exploring the issues between the couple, developing options, a process of bargaining and negotiation, followed by decision making. Then the agreement was put in writing and often after that there was a session with the children. Part of the process was to help the couple accept the finality of their former relationship and the need to restructure their future relationship, particularly with regard to their children. A key question that was put to the couple was "what kind of relationship do you think you will have with the children? What

(Continued overleaf)

Seminar on Marital Breakdown – *continued*

structures are going to be put in place to achieve it?"

She spoke about the interface between the legal profession and mediators and said that some couples came to mediation without having obtained legal advice. However, it was rule of mediation that if it became apparent that there was a need for legal advice then the couple should obtain it and bring it back to the mediation. Usually a solicitor was involved at the final stage of the process to draw up the agreement between the couple. Mary Lloyd said it was important that solicitors should be aware of the benefits of mediation and point them out to their clients.

Need for a forensic child psychiatry service

The seminar was also addressed by Dr. *Gerry Byrne*, a child psychiatrist at the St. John of God Child & Family Centre, who told the seminar that there was a need for a forensic child psychiatry service which could deal with all aspects of children's involvement with the courts ranging from custody and access assessments through to assessments on guardianship, adoption and juvenile delinquency. He said there had been a marked increase in the number of referrals to child psychiatry centres for assessments for legal cases. Unfortunately, the centres were unable to cope with the number of referrals that were being made. The waiting list for routine referrals for child psychiatric disorders varied between six months and two years in some clinics. Referrals could be dealt with privately but in reality this was not an option for those on low incomes, while the reimbursement that was available from the Legal Aid Board was grossly inadequate.

Participants at the seminar were charged a modest fee and the proceeds, £500, are being donated to FLAC. ❐

Barbara Cahalane

Medico-Legal Society Winter Programme 1993/94

Council 1993/94

Patron:	Professor P. D. J. Holland
President:	Nora Gallagher, Solicitor
Immediate Past President:	Dr. Anne Clancy
Vice-President:	Professor P. N. Meenan
Honorary Secretary:	Brendan Garvan, Solicitor
Honorary Treasurer:	Dr. Donal MacSorley
Honorary Auditor:	Dr. Sheila Willis, Ph. D.

Legal:
Judge Cassidy
Judge Hussey
Judge King
Raymond Downey, Solicitor
Dr. E.G. Hall, Solicitor
Carmel Killeen, Solicitor
Mary MacMurrough Murphy, B.L.
Emer O'Donoghue, Solicitor
Tom Kennedy, Solicitor
Niall Browne, Solicitor

Medical:
Dr. Declan Gilsenan
Dr. Robert Towers
Dr. Desmond McGrath
Professor John Harbison
Professor Max Ryan
Dr. Sarah Rogers
Dr. Charles Smith
Dr. Seamus Ryan
Dr. Enda Dooley

Lectures:
Thursday 25 November, 1993:
Monica McWilliams, Senior Course Tutor, Faculty of Social and Health Sciences, University of Ulster.
– **"Violence Against Women"**

Thursday 27 January, 1994:
Nora Gallagher, Solicitor.
– **"Presidential Address"**

Thursday 24 February, 1994:
The Hon. Mr. Justice *Feargus Flood*, Judge of the High Court.
– **"The Role of The Judge"**

Thursday 24 March, 1994:
Judge *Sean Delap*, Judge of the District Court.
– **"Community Service"**

Lectures take place at **6.30 pm sharp** at The United Service Club, St. Stephen's Green, Dublin 2, by kind permission.

Members and their guests are invited to joint the Council and guest speakers for dinner at the Club at **8.30 pm after each lecture**. Members intending to dine must communicate, not later than the previous day, with *Mary MacMurrough Murphy*, BL at 2 Whitebeam Road, Clonskeagh, Dublin 14. (Telephone 269 4280) or at the Law Library, Four Courts, Dublin 7. (Direct Dial Telephone No. 702 4828).

Membership of the Society is open to members of the medical and legal professions and to others especially interested in medico-legal matters. The current annual subscription is £10.00. Membership proposal forms and full details may be obtained from *Mary MacMurrough Murphy*, BL at the above address. ❐

In 1992 Cot Death Killed 59 Irish Babies. If your client wishes to make a will in favour of

Cot Death Research:

Telephone 01 - 8747007

(24 Hour Helpline)

Christmas Cards Now Available

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819

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

Apprenticeship

There is now a considerable time-lag between the date a student becomes eligible to enter the Law School and entry on the Professional Course. (See notice on page 296 of October, 1993 *Gazette*)

It is timely to remind practitioners entitled to take apprentices that the 1954 Solicitors Act requires an apprentice to serve a bona fide apprenticeship during the whole term of indentures.

The period of training in a solicitor's office and apprenticeship should reap benefits for both apprentice and master. This is possible only if the apprentice is engaged full-time in meaningful legal work in the master's office. This is, indeed, the requirement not merely of the Solicitors Acts but also of the contract of "Indentures of Apprenticeship".

If a practitioner completes a document which avers that an apprentice has attended at the office or has gained experience in certain areas of practice where this is subsequently found not to be the case such conduct may be viewed as a disciplinary matter and that solicitor may be referred to the Registrar's Committee.

In the same way, a student who improperly or inaccurately represents that s/he will complete or has completed a full-time apprenticeship may be brought before the Education Committee. It may then report to the President of the High Court that the apprentice is not, in its opinion, a fit and proper person to be admitted as a solicitor. *Education Committee.* ❐

Law School Timetable

1994 Courses

Professional Course 34 (had started on 26/10/93)
January 4 – February 24

Professional Course 35
March 21 – July 15

Professional Course 36
August 22 – December 14

Advanced Course 30
February 21 – April 25

Advanced Course 31
June 6 – July 29

1994 Examinations

1st Irish – January 11/12 & July 19

2nd Irish – January 13 & July 20

Preliminary – March 29/30

F.E.-1 – September 2 - September 9 (section 1)
September 23 - September 30 (Section 2)

Dates and duration of courses are liable to change

Professor Richard Woulfe
Director of Education ❐

Solicitors Group on mental handicap legal issues

Some members of the Society have expressed an interest in establishing a group of solicitors with a special interest/expertise in the area of mental handicap legal issues. The group, if established, would liaise with a similar group in the Law Society of Northern Ireland.

Among the issues that crop up are matters such as drawing up a will for the parents of a mentally handicapped child, in which provision would be made for the special needs of the handicapped child after the testator's death.

Any practitioner interested in participating in such a group is asked to contact *Linda Kirwan*, Solicitor, at the Law Society, 6710711 Ext. 331, by 10 December, 1993. ❐

SADSI Elections

Pursuant to a resolution passed by the Committee of SADSI, all apprentices who wish to run for the office of Auditor in the forthcoming elections may do so, regardless of the date of expiration of their indentures. This is departing from a practice which has developed in the Society over a number of years, which has no basis in the constitution. Provision for such a rule has been made in the draft constitution which will be presented at the forthcoming AGM to be held on 2 December next.

Paula E Murphy, Auditor. ❐

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Hilary and Easter Terms 1993 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

IBA Biennial Conference,

Melbourne 1994.

The 25th Biennial conference of the International Bar Association will be held from 9 – 14 October next year in Melbourne. The links between lawyers in this country and in Australia, particularly the state of Victoria, are well known and for that reason it is likely that many people will wish to attend the Conference.

Already there have been many enquiries and if the numbers are sufficient, attractive rates of travel and hotel accommodation should be available.

Any person interested at this stage should contact either of the undersigned as soon as possible so that further investigation into the possibilities of group travel may be undertaken.

Mr Frank O'Donnell,
Bell Brannigan O'Donnell,
Solicitors,
22 Lower Baggot Street,
DUBLIN 2.

Telephone: 676 4951/676 9524
Fax: 676 7236

Mrs Moya Quinlan,
Dixon Smyth,
Solicitors,
8 Parnell Square,
DUBLIN 1.

Telephone:878 8600/874 3527/878 8088. Fax: 878 7626 ❐

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.

The Samaritans . . . Someone to Listen

In the course of our work as solicitors we have occasion to meet clients who present problems or difficulties that may not be of a legal nature. Together with their legal problems, they may present others, e.g. bereavement, financial worries, loneliness, broken relationships, inability to cope with stress.

While we do address the legal issues presented by a client, we may not always have the time or ability simply to listen to a client who wishes to talk about other problems.

The Samaritans exist to befriend the lonely, the depressed and the suicidal. They are a non-denominational organisation, available 24 hours a day to offer time and a listening ear to those in need. If it is felt appropriate or necessary, a solicitor can, with sensitivity, point a client in the direction of the Samaritans. A list of Samaritan branches and telephone numbers is set out below.

Solicitors might also note that the Samaritans are a voluntary organisation supported, mainly, by donations. Bequests and donations are always welcome and solicitors might bear this in mind if requested by a client to suggest a suitable charity. (Bequests should be made out to a specific branch.)

Samaritan Branches

Athlone	0902–73133
Cork	021–271323
Dublin	01–872 7700
Ennis	065–29777
Galway	091–61222
Limerick	061–412111
Newbridge	045–35299
Sligo	071–42011
Tralee	066–22566
Waterford	051–72114

A Samaritan Solicitor ❐

Solicitors Golfing Society

President's Prize

The results of the President's Prize held at Rosses Point on 24 September, 1993, were as follows:

Winner:
Sean McTernan – 36 points [H/C 19].
Runner up:
Dermot Fullam – 35 points [H/C 13].

The Ryan Cup:
Winner:
Con O'Leary – 35 points [H/C 24].
Runner up:
Joe Keys – 35 points [H/C 13].

Handicap 12 and Under:
Winner:
Tom Shaw – 34 points [H/C 6].
Runner up:
Rory Deane – 33 points [H/C 6].

The Veterans' Cup:
Winner:
Judge James Gilvarry – 33 points [H/C 19].

Front Nine:
Winner:
Gerard McCanny – 20 points [H/C 19].

Back Nine:
Winner:
Judge Frank Johnston – 21 points [H/C 15].

William Jolley
Hon. Secretary ❐

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.

Getting Married?

Why not hold your wedding reception in the elegant surroundings of Blackhall Place?

- **Parties of up to 200 catered for.**
- **"Afters" catered for.**
- **Available to solicitors and their sons, daughters, brothers, sisters, nephews and nieces.**
- **Attractive location for photographs.**

Contact:
Peter Redmond (Phone 6710711, Ext. 472)
for a competitive quote.

There *is* an alternative

This Somali child and thousands like him are alive today thanks to the overwhelming generosity of the Irish people. A small legacy or bequest to Concern can make a huge difference to the life-saving and development work of Concern volunteers like Michelle Mackin — not just today but for many years into the future. Concern is devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering.

If your client wishes to leave money to charity, ***please remember the work of Concern.*** If you require any information on suggested wording etc., please contact me now:

Siobhán Walsh

CONCERN

1 Upper Camden Street Dublin 2. Tel. 6681237

AN ASTHMATIC CHILD CAN LEAD A NORMAL LIFE

...and you can help!

Asthma affects a quarter of a million people in Ireland alone.

Many children and adults suffer unnecessarily with the condition because of lack of understanding.

The Asthma Society is trying to ease this situation by helping sufferers to understand that, with the correct treatment, the majority of children and adults can lead a normal active life.

If you have a client who wishes to donate to a worthy cause please think of the Asthma Society and the amount of young lives that can be brought back to normality.

The Asthma Society of Ireland is a registered charity.

ASTHMA SOCIETY OF IRELAND

Asthma Society of Ireland,
24 Anglesea Street, Dublin 2.
Tel (01) 671 6551 Fax (01) 671 4610

The Asthma Society is pleased to acknowledge the financial support of Allen & Hanburys Ltd in funding the cost of this advertisement.

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 in substitution for the original 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: 22 November, 1993.

Lost Land Certificates

John Ruigrok, late of Lower Main Street, Rush, Co. Dublin, Folio: 6359; Lands: Townland of Rush, Barony of Balrothery East. **Co. Dublin.**

Cathal Mulholland and Angela Mulholland, Folio: 3674L; Land: situate on the south side of Point Road in the District of Dundalk. **Co. Louth.**

William Halpenny, Folio: 1682 and 3366; Land: part of the lands of Hocothstown (3366), Batestown (1682); Area: 88a 2r 38p (3366) and 88a 2r 38p (1682). **Co. Meath.**

John McLoughney and Evelyn McLoughney, Folio: 1876L; Land: situate to the north of Thomond Place. **Co. Tipperary.**

Edward Hoey, Folio: 15514; Area: 7a 0r 38p; Land: Stradeen. **Co. Monaghan.**

Margaret J. Clynch, Folio: 5829F; Area: 0.850 acres; Land: Ballycrane. **Co. Wexford.**

Patrick G. & Anne Ruane, Corrore, Ballyvary, Castlebar, Co. Mayo; Folio: 5898F; Townland: Ballylahan; Area: 0.600 acres. **Co. Mayo.** Solr. Ref: BD/ED.

Pierce Lett (Deceased), Folio: 1526; Land: Part of the lands of Tomsallagh; Area: 45a 0r 2p. **Co. Wexford.**

John Anderson of Glassamucky Brakes, Tallaght, Co. Dublin; Folio: 7085; Lands: Townland of Glassamucky and Glassamucky Brakes in the Barony of Uppercross. **Co. Dublin.**

Thomas Young, Folio: 8995; Lands: Ballyoulster. **Co. Kildare.**

Padraic Thornton, River Road, Spiddal, Co. Galway; Folio: 26528; Townland: Spiddal West; Spiddal West (one undivided thirty-fourth part); Area: 21a 0r 6p; 256a 1r 32p. **Co. Galway.**

Maura Storrs, Folio: 1453F; Land: Drumlougher; Area: 1.269 acres. **Co. Cavan.**

Michael Keenan (Deceased) late of 46 Watergate Estate, Tallaght, Co. Dublin. Folio: 48182F; Lands: property known as 64 Watergate Estate, Tallaght, Co. Dublin. **Co. Dublin.**

Patrick J Cahill, Peter Hegarty, Aloysius F O'Flaherty & James F Beegan all of 15 Main Street, Tallaght, Co. Dublin. Folio: 8238; Lands: Townland of Commons in the Barony of Uppercross. **Co. Dublin.**

Joseph Byrne, Folio: 17041; Land: Crowlar; Area: 0.353 hectares. **Co. Donegal.**

Richard Delaney and Una Delaney, Folio: 114F; Land: Haggardstown; Area: 0a 0r 17p. **Co. Louth.**

Edward John Cowan, Folio: 17575; Land: Aghacocara; Area: 0a 1r 9p. **Co. Westmeath.**

Charles Lennon, Folio: 4390L; Lands: property situate on the south side of Bunting Road in the Townland of Wilkinstown, Barony of Uppercross. **Co. Dublin.**

The Council of the Administrative County of Tipperary (South Riding), Folio: 23583; Land; Lisloran; Area: 1a 0r 16p. **Co. Tipperary.**

James Smith, Folio: 8233; Land: Moneymore; Area; 6.876 acres. **Co. Louth.**

David Maslin and Eilish Maslin, Folio: 12294; Land: Bankstown; Area: 0a 3r 0p. **Co. Louth.**

Frances Kerr, Folio: 4038; Land: Bellurgan; Area: 17a 1r 32p. **Co. Louth.**

John Stanley, Folio: 3930F; Land: Bearlough; **Co. Wexford.**

Patrick Monaghan, Folio: 26850; Land: Corlea (E.D. Pettigoe); **Co. Donegal.**

Lost Wills

Burke, Padraig, late of "Sherkin", 10 Murmount Crescent, Mayfield Heights, Montenotte, Cork. Will anybody having knowledge of the whereabouts of a will of the above named deceased who died on 19 November, 1990, please contact Michael Powell & Co., Solicitors, 48 Grand Parade, Cork. Telephone: (021) 270451. Fax (021) 270454.

Mangle, William, late of 62 Lower Churchtown Road, Dublin 14. Please contact us if you are aware of the existence of a will made by the above person who died on 4 January, 1974. Tom Collins & Company, Solicitors, 4 Charlemont Street, Dublin 2.

O'Connor, Michael J and O'Connor, Lena, deceased, both late of Carrick View, The Batteries, Athlone, Co. Westmeath. Would any person having knowledge of the whereabouts of any will of the above named deceased persons who died on 3 April, 1993 and 12 September, 1993 respectively, please

contact Fair & Murtagh, Solicitors, Northgate Street, Athlone, Co. Westmeath. Telephone (0902) 72010. Fax (0902) 75779.

Horan, John, late of 50 Locarno Avenue, Gillingham, Kent, England who died at Kilfree, Gurteen, Co. Sligo on 18 February, 1993. Would any person having knowledge of the whereabouts of a will of the above named deceased please communicate with P. Desmond O'Connor, Solicitor, Main Street, Ballaghaderreen, Co. Roscommon.

Breen, Ursula, deceased, date of death 10 June, 1988. **Breen, Maureen,** deceased, date of death 2 May, 1993, both of Talbot House, Ballinclea Road, Killiney, Co. Dublin. Would any person having knowledge of the whereabouts of a will of either of the above named deceased persons please contact John Hooper and Company, Solicitors, 97 Upper George Street, Dun Laoghaire, Co. Dublin, telephone (01) 280 6971 fax (01) 280 1558.

Fitzgerald, Bridie, deceased, late of Lake Road, Loughrea, Co. Galway. Would any person having knowledge of the whereabouts of the original will dated 8 May, 1991, of the above named deceased who died on 16 February, 1993, please contact Messrs. Fair & Murtagh, Solicitors, Northgate Street, Athlone, Co. Westmeath. Telephone (0902) 72010 Fax (0902) 75779.

Brennan, James, deceased, late of Barnacullen, Knockcrooghery, Co. Roscommon, formerly Barnacullen, Rahara, Co. Roscommon, Farmer. Would any person having a knowledge of the whereabouts of the will of the above named deceased who died on 27 June, 1993, please contact Patrick J Neilan & Sons, Solicitors, Roscommon, Telephone (0903) 26115.

Colligan, Patrick, deceased, late of Legan, Kilglass, Co. Roscommon. Would anybody having knowledge of the whereabouts of a will of the above named deceased who died on 23 September, 1993, please contact M/S John J. Carlos & Co., Solicitors, Strokestown, Co. Roscommon. Tel: (078) 33154.

O'Sullivan, James, late of Castlefreke, Derrynane Road, Turner's Cross, Cork, who died on 9 October, 1988, at Charing Cross Hospital, Fulham, Hammersmith, London, England. Would any person having knowledge of the whereabouts of the will of the above named deceased please contact Anne L. Horan & Co., Solicitors, 3 Convent Road, Blackrock, Cork. Tel: (021) 357729 Fax: (021) 357070.

Smith, Leo M., late of Printania, Goatstown, Co. Dublin and 12 Grosnover Road, Rathmines, Dublin 6. Would any person having knowledge of a will of the above named deceased who died on 23 September, 1993, please contact Cogan-Daly & Co., Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6. Tel: 903304 Fax: 903190.

Murry, Helena Mary, late of Poulawilliam, Miltown Malbay, Co. Clare. Born India 1911. Would any person having knowledge of a will of the above named deceased who died on 8 October, 1993, kindly contact M. Petty & Co., Solicitors, Parliament Street, Ennistymon, Co. Clare. Tel: 065 71445. Fax: 065 71785.

Dowling, Ann, deceased, late of 114 Monread Heights, Naas, Co. Kildare and formerly of Graigeunamanagh, Co. Kilkenny. Would any person having knowledge of the whereabouts of any will of the above named deceased please contact the offices of Hanahoe & Hanahoe, Solicitors, 16 North Main Street, Naas, Co. Kildare, telephone 045–97784.

Fallon, Maura (otherwise Maureen), deceased, late Carrowmooneen, Kilrooskey, Co. Roscommon. Would any person having knowledge of any will or testamentary document of the above named deceased who died on 27 August, 1993, please contact C.E. Callan & Company, Solicitors, Boyle, Co. Roscommon.

Employment

Solicitor required for busy general practice. Minimum 3 years post-qualification experience and ability to work on own initiative essential. Previous litigation experience would be a distinct advantage. Excellent working conditions. Salary fully negotiable – commensurate with experience and ability. Apply with CV to Messrs. George V. Maloney & Co., Solicitors, 6 Farnham Street, Cavan.

Experienced Solicitor available immediately for part-time or locum work. Any area considered. Phone Dublin 318519 or reply to Box 90.

Experienced solicitor required. Experienced in conveyancing, probate, capital taxes, Land Registry practice and family law essential. Please reply in writing with CV to Paul G. Horan, Horan & Son, Solicitors, 23 Eyre Square, Galway.

Apprenticeship sought by successful candidate of 1992 Final Examination in Dublin or Leinster area. Telephone 01–591867 after 3.30 p.m.

Miscellaneous

Self contained offices. Walking distance of Four Courts. Long Lease, Rent £4200 p.a. Tel: 8215170.

Seales & Fagan, Solicitors, 72 Merrion Square, Dublin 2, are pleased to announce that *Michelle Linnane* has joined the firm as a consultant.

Wanted: Acts of the Oireachtas – Bound volumes from 1922 to 1992. Please reply to Box 91.

Solicitors practice wanted in West/North West Donegal, all replies treated in confidence. (Advertiser not presently based in Donegal). Please reply Box 70.

Missing secretary – Teresa Gavin who worked as a secretary in Chatham House in 1990 is asked to please contact Sean Smyth, solicitor, 36 Elton Park, Sandycove, Co. Dublin. Tel & fax 280 2160 in order to swear the Memorial as the common witness.

Young solicitor (five years qualified) with an interest in tax law wishes to correspond with similar solicitor re tax matter generally and, on anonymous basis, re clients' capital taxes affairs and returns. Reply Box 92.

Solicitors practice for sale in Co. Galway town. Apply in writting to John O'Dwyer, Solicitor, Ballyhaunis, Co. Mayo. Tel 0907 - 30011, Fax 0907 - 30575.

Northern Ireland Agents: For all contentious matters. Consultation in Dublin, if required. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, telephone (080693) 61616. Fax 67712.

Competition Law and Policy

The IBEC Competition Council has organised a conference in the Conrad Hotel from 9.00 am to 1.00 pm on Wednesday, 8th December, 1993.

The subjects include the Authority's work to date, the Act and the Courts Distribution Agreements, the economic impact of the Act and the importance for Ireland of competition policy and the internal market.

The speakers are Messrs:–

- S. Brennan, TD, Minister for Commerce & Technology,
- C. D. Ehlermann, Director General of Competition of the European Commission,
- Patrick Lyons, John Cooke SC, Bill Prasifka, Dr. John Fingleton and A. G. Grogan.

The Chairman is Mr. Pierce Butler.

Further information and brochure from Ms Deirdre Prendergast, IBEC, Kildare Street, Dublin 2. Phone: 6779801. Fax: 6777823.

THE GARDA SÍOCHÁNA GUIDE

Sixth Edition

Arranged alphabetically by subject, containing all relevant legislation and case law.

An invaluable work of reference for the legal profession, particularly for the District Court practitioner.

Available from Ms Linda Dolan, The Law Society, Blackhall Place, Dublin 7.

Tel: 6710711, (extn. 413)

Price £70.00 plus £3.00 p&p.

Published by the Incorporated Law Society of Ireland, 1991

L-r: Nora White, Paula Whelan, Joan Fagan and Louise Carey, who have recently been appointed associates at William Fry, Solicitors.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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. 87 NO. 10 DECEMBER, 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

UNDERMINING THE RIGHT TO BRING CLAIMS

LAW SOCIETY COMMITTEES 1993/94

LIABILITY FOR ACCIDENTS AT WORK

ALTERNATIVE CAREERS FOR SOLICITORS

If *your* pension outperforms all others in its first 4 years...

...shouldn't you recommend it to your clients?

Eagle Star Unit-Linked Pension Investment Performance

	4 Years	
	% Return	Rank
ADVENTUROUS Launched 01/11/1989	+ 27.48	**1** (68)
PERFORMANCE Launched 01/11/1989	+ 22.69	**2** (68)
BALANCED Launched 01/11/1989	+ 22.69	**2** (68)
NEXT BEST	+ 14.87	**4** (68)

Source: Micropal. All figures shown are on an offer/offer basis to 01/11/1993 and do not represent the returns achieved by individual policies linked to the funds. As unit prices directly reflect the value of underlying investments they may be expected to fall, from time to time, as well as rise. Past performance is not always an indication of future returns. ( ) = Number of funds in sector.

An Eagle Star Pension offers 3 managed funds each with a separate risk/return profile. This unique system aims to make the most of investment gains over a working life. Early on, a pension plan is invested in the Adventurous Fund where a higher risk profile yields higher returns. As time goes on pension investment is switched to the Performance Fund which has a medium risk /return profile. Closer to retirement, investment is switched to the Balanced Fund where returns are more stable and risk is lower.

EAGLE STAR

EAGLE STAR HOUSE FRASCATI ROAD BLACKROCK CO DUBLIN FAX 01 283 1578 TELEPHONE 01 283 1301

VOL. 87 NO. 10 DECEMBER 1993

INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

Viewpoint 373

Once again, the rights of people to take claims in the courts for personal injuries has been called into question. If the legal profession does not stand against this on behalf of victims of accidents, there is little chance that others will.

News 377 et seq.

New Council takes office, page 375; Law Society Committees 93/94 and newly elected members of the Council, page 377; Compensation Fund Payments, page 389; Liberal Professions of Europe must define their role, page 390; Society's Submission rejects proposal to cap injuries awards, page 397; alternative careers for solicitors, page 399; focus at AGM on Society's finances, page 405; Society appoints lay observers, page 408; Law School Professional courses, page 411; Revenue Commissioners expand Cork Stamp Duty Office, page 412; Budget submission calls for abolition of 1% levy, page 413.

Lawbrief 383

Recent judgments highlight the importance of a sympathetic approach when dealing with applicants claiming an entitlement to Social Welfare; Coffee shops – Dutch Justice Minister clamps down on the sale of "soft" drugs.

Mediawatch 385

Law Society issues a detailed statement rebutting the IBEC case that claims against employers are endangering jobs.

Liability for Accidents at Work: The New Regime 387

Any solicitor who does not plead the new European legislation in litigation concerning an accident at work is not only living in a time warp but is also at risk of being sued for negligence, writes *Ciaran O'Mara*.

People and Places 392

Practice Notes 395

Exempted towns under Section 45 of the Land Act; Return of Allotment of Shares; Fees payable to Companies Registration Office; Compulsory winding up; Tax Amnesty – Closing Dates; Criminal Legal Aid Fees.

Book Reviews 401

Divorce in Ireland – Who should Bear the Cost?; Business Law; Adoption Law and Practice; Gender and the Law in Ireland.

Annual Report of The Disciplinary Committee 1992/93 409

Details of the applications made to the Disciplinary Committee of the High Court between 1 September, 1992 and 31 August, 1993 and petitions presented to the High Court during that period.

Professional Information 414

Notices concerning lost land certificates, lost wills, employment and miscellaneous advertisements.

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: 305236 Fax: 307860.

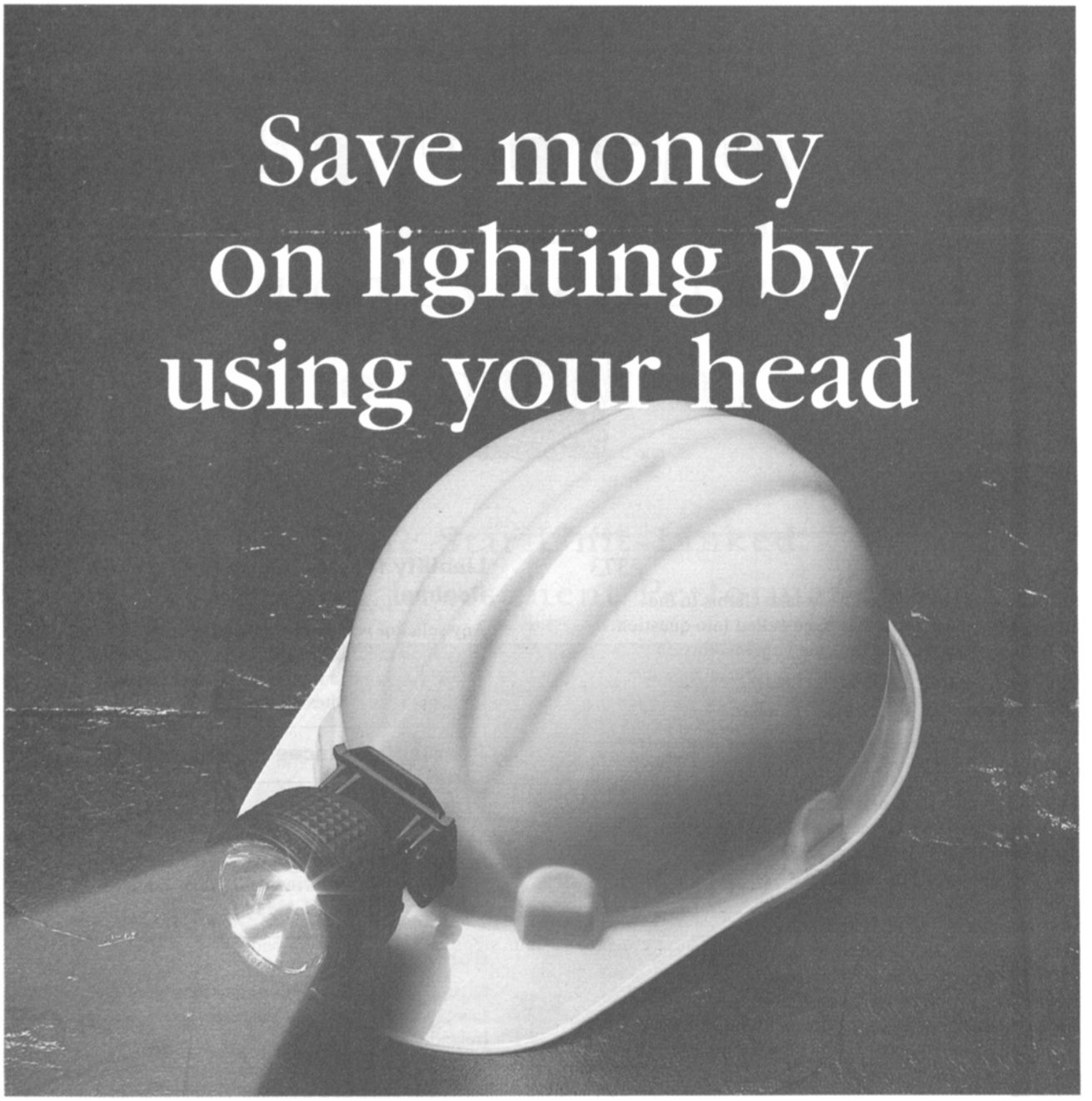
Printing: Turners Printing Company Limited, Longford.

The views expressed in this publication, save where otherwise indicated, are the views of contributors and not necessarily the views of the Council of the Law Society. The appearance of an advertisement in this publication does not necessarily indicate approval by the Law Society for the product or service advertised.

Published at Blackhall Place, Dublin 7. Telephone 6710711 Telex: 31219 Fax: 6710704.

The front cover shows l-r: The President of the Law Society, *Michael O'Mahony*, with the Minister of State for Commerce and Technology, *Seamus Brennan*, TD, on the occasion of a recent visit by the Minister to the Law Society.

Save money on lighting by using your head



Isn't it time you thought about energy efficient lighting? It is a shining example of how you can significantly reduce your electricity costs.

More and more businesses are now making the switch to compact fluorescent lamps (CFLs) and to energy efficient Sign Lighting. And it's easy to see why.

A CFL gives you £1's worth of light for just 20p and lasts 8 times as long as an ordinary bulb. So even though they cost more to buy, you can save more than £40 over the life of the new CFL for each ordinary 100W bulb replaced. And because CFLs last longer it takes less time and labour to replace them, saving you more money.

Low wattage energy efficient Sign Lighting can save you up to £100 per year for each light fitting and will also reduce your maintenance costs.

The larger picture is that by making your business and indeed your home more energy efficient, you're not just saving money, you're helping ESB make better use of its resources. And you're also helping the environment.

We'd like to throw more light on these and other ways to reduce your running costs. Simply send us the Freepost coupon and we'll contact you.

GET THE MOST FROM ELECTRICITY ESB

FREEPOST

NAME: .....

TITLE: .....

COMPANY NAME: .....

.....

ADDRESS: .....

.....

TELEPHONE NUMBER: .....

TYPE OF BUSINESS: .....

Please contact me about: CFLs ☐

Sign Lighting ☐ Lighting Control ☐

and other ways to save energy/money on:

Waterheating ☐ Refrigeration ☐

Storage Heating ☐

Return to: Business Energy Services, ESB Marketing Dept., Lr. Fitzwilliam St., FREEPOST, Dublin 2, or Telephone ESB Business Energy Services 01-7027237 or Fax (01) 6766787.

AC009

VIEWPOINT

Undermining the right to bring claims

Once again, the right of people to take claims in the courts for personal injuries has been called into question. In the recent past, a report published by the Irish Business & Employers' Confederation (IBEC) has sought, by implication, to put blame on workers for making claims against their employers when they suffer injuries. The Law Society has expressed concern about this report and has issued a statement rebutting some of the conclusions drawn from its findings.

On top of the IBEC report, the Irish Insurance Federation has published another Coopers & Lybrand study on the cost of motor insurance in this country which raises questions about the level and cost of claims for personal injuries suffered in motor accidents. Coming on the heels of a suggestion made by the Minister of State for Commerce & Technology, *Seamus Brennan*, TD, that compensation awards should be capped and in the wake of criticisms from Dublin Corporation and others about the role of lawyers in the bringing of personal injury claims, there appears to be a concerted attack on the right of people to pursue claims and on the role of solicitors in representing them.

The Law Society and the Bar Council have spoken out. They have defended the right of people to take claims for compensation when they suffer injuries through no fault of their own and to have their claims litigated in courts of law where the compensation levels are determined by judges. Cynics might well suggest that lawyers would be bound to take this line; they would be motivated by self interest. We would retort that it is no use engaging in those kind of self-interest tactics, suggesting ulterior motives; far better to deal, by reasoned argument, with the very important issues that are involved in this debate.

Access to the courts and the right to pursue claims – especially claims for personal injuries suffered as a result of the negligence of others – are fundamental principles of our legal system. The right to have that compensation determined in open court following argument and to have the determination made by an independent judge is also, we would have though, vital. Yet, surprisingly few people seem to have grasped, as yet, that both of these rights appear to be under threat at present. We do not dispute that litigation is pushing up costs and it is understandable that business interests, and especially small companies, should be concerned about the cost of insurance. However, the answer to rising insurance costs is not to start tinkering with the fundamental rights of people to bring claims or to attempt, by statute, to limit the levels of compensation that should be paid in individual cases. These are very serious steps to take and, in our view, should only be contemplated for very grave reasons and where substantial public benefit can be shown to follow.

The answer is not to attack the rights of people to be compensated but, rather, to address the issue of why there are so many accidents that lead to personal injury claims.

It is no good complaining about the fact that people take actions when they suffer personal injuries. There is an absolute right to do this, and while industry has a legitimate point in seeking ways of reducing the cost burden, if the outcome is that industry incurs heavy costs as a consequence, the answer is not to attack the rights of people to be compensated but, rather, to address the issue of why there are so many accidents that lead to personal injury claims.

The statistics in relation to accidents in the workplace in Ireland paint a bleak picture – a picture of carelessness and indifference. Recently, a representative from the Health & Safety Authority pointed out that there are about 13,000 accidents in the workplace in Ireland each year plus an additional 5,000 in agriculture. The figure for industry is derived from the number of persons who claim occupational injury benefit from the Department of Social Welfare each year. The statistics show that the average absence from work by an injured worker is about 35 days which results in the loss of 500,000 man-days per annum to Irish industry. Between 8,000 and 9,000 workers have already been permanently disabled. The total cost of accidents is put at £330m of which £120m is accounted for by employer/public liability insurance. An EU survey has pointed out that Irish industry has the lowest perception of the serious risks to the health and safety of workers of any country in the EU. In the two-year period 1991/92, 120 people were fatally injured through accidents in the workplace; the figure for the first eleven months of this year is 62. Against the background of statistics of this kind, is it any wonder that there are a large number of personal injury claims in the courts? The wonder really is that so few people who do suffer injury make claims. According to the IBEC survey, in 1992 only one in ten accidents at work led to a claim.

It is facile to speak, as IBEC did recently, of "opportunistic" claims. If a person suffers hand-blistering in the workplace through no fault of his own and pursues a claim that results in an award of £1,200, what is wrong with this? Is it being suggested that that person should accept an injury of this kind as an occupational hazard and simply put up with it? It is unfortunate, in our view, that the IBEC report attempted to point the finger at workers, suggesting that the bringing of claims was threatening the

(Continued overleaf)

Undermining the right to bring claims – *Continued*

competitiveness of firms and putting jobs at risk. This is tantamount to saying that it is an act of disloyalty on the part of a worker to bring a claim. We would totally reject such an approach or any such suggestion.

The system under which some solicitors take personal injury cases on a 'no foal, no fee' basis has been called into question. The Law Society has defended the right of solicitors to take cases on this basis because people – most of them ordinary workers – cannot afford the outlay involved in bringing actions and there is a hopelessly inadequate system of Civil Legal Aid in this country. In England, the Law Society has now secured the approval of the Lord Chancellor for the introduction of conditional fees which will allow solicitors to take cases on a speculative 'no win – no fee' basis under which the solicitor will be allowed a 'mark-up' of 100% on his hourly rate where the action is successful. Moreover, the Law Society of England and Wales has recently announced the introduction of a system of insurance under which a solicitor can insure the risk that his client runs that, if he loses the case, he will have to pay the costs of the other side. For a premium of £100, insurance can be taken out against this risk. In England, the Law Society sees it as its function to assist people who, because of their ineligibility for legal aid, might not otherwise take civil actions in appropriate cases because of fear of incurring heavy legal expenses.

Like it or not, we believe that personal injury litigation is a fact of life and is here to stay. People are much more 'street-wise' than they were 20 or 30 years ago and are prepared to take action, even in cases of minor injuries, where in the past they did not, unless it was a serious matter. This is especially so in industry where employers frequently do not insist on adequate safety standards and procedures. The IBEC survey also showed that there was a much lower frequency of claims in firms which paid their workers during absence. As the Law Society has suggested, the best response that industry can make is to put its own house in order. Experience has shown that attention to safety in the workplace produces results and lessens claims. It is wrong to attack the right of people to litigate and we think that, if the legal profession does not stand against this on their behalf, there is very little chance that others will.

❐

NORTHERN IRELAND AGENT

* Legal work undertaken on an agency basis
* All communications to clients through instructing Solicitors
* Consultants in Dublin if required

Contact: **Seamus Connolly, Moran and Ryan,** *Solicitors*

Arran House, 35 Arran Quay, Dublin 7.
Tel:(01) 8725622
Fax: (01) 8725404

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

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

G.T Office:-
Tel: 809 946 2818 Fax: 809 946 2819

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

New Council takes office for 1993/94

The first meeting of the Council of the Society 1993/94 , continued the debate on and consideration of admissions policy.

The outgoing President, *Raymond Monahan,* congratulated and welcomed the newly-elected members of the Council and the nominees of the Dublin Solicitors Bar Association, Southern Law Association, and provincial delegates. The President paid tribute to the work of outgoing Council members, *Maeve Hayes* and *Stephen Maher*, both of whom, he said, had given generously of their time and commitment to the Society and its committees.

Raymond Monahan expressed his gratitude and appreciation to his colleagues on the Council for 1992/93 and said it had been an honour to lead the Council and the profession and he noted the tremendous support he had received from the Council. He also thanked the Director General and the staff of the Society for their hard work, dedication and loyalty throughout the year. He expressed appreciation to his Senior Vice-President, *Michael O'Mahony,* and his Junior Vice-President, *Laurence Shields.*

On assuming office as President, *Michael O'Mahony* paid tribute to Raymond Monahan for an outstanding presidency. He said Raymond Monahan had been a good-humoured, dedicated and popular President. Ray had initiated the Compensation Fund Policy Review Committee and a comprehensive review of the Society's education and admissions policy and he, as President, was committed to continuing the important work on both these issues. He said his agenda for the coming year would be to build on the initiatives of his predecessor, continue to lobby on the Solicitors Bill which was expected to be introduced before Christmas and to deal with any other issues which arose from time to time. The President also praised the staff of the Society.

Admissions Policy

The outgoing chairman of the Education Committee, *Pat O'Connor,* reported that the Education Committee had put forward, on a tentative basis and with a view to stimulating debate, a number of proposals on the current and future policy of the Law Society on education and admissions. Mr. O'Connor outlined the content of the proposals and following discussion the Council agreed to consider the proposals in more detail at its next meeting alongside other views which had been expressed.

Compensation Fund

The Council approved a schedule of payments from the Compensation Fund *(see page 389).* The Chairman of the Compensation Fund reported to the Council that the Committee had decided to refer one solicitor to the Disciplinary Committee.

New Salary Scale for Apprentices

The Council approved a new recommended scale of salaries for apprentices to apply from January 1, 1994. The recommendation represents an increase of £10 per week over the former recommended scale, which had been in operation for almost four years, as follows:

• before commencement of the professional course	£95 p.w.
• first six months in office after professional course	£115 p.w.
• next six months	£125 p.w.
• final period before apprentice returns to Law School for advanced course	£135 p.w.

Proposal to Cap Compensation Awards

The Council noted remarks made by the Minister for State for Commerce & Technology, *Seamus Brennan*, TD, at the Fianna Fáil Ard Fheis and observed that the Minister appeared intent on proceeding with his proposal. It was agreed that it was vital to reiterate the Society's view that capping compensation awards would not reduce insurance premiums and that at every available opportunity the Society should seek to rebut the nexus which Mr. Brennan had made between premium rates and the level of damages awarded in personal injury actions. Some members of the Council thought that there might be merit in discussing with a firm of economic consultants whether it would be worthwhile to undertake a statistical study of the figures upon which Minister Brennan appeared to be basing his proposal. It was also felt that it would be useful to approach the Irish Congress of Trade Unions to discuss the implications of the Minister's proposal. It was noted that the exact terms of the Minister's proposals were far from certain. It was not known how the proposed cap would operate, for example, was the Minister proposing a threshold (say of £100,000 of £150,000) below which damages for pain and suffering would not be awarded.

Committees 1993/94

The Council approved the membership of the standing and ad hoc committees of the Society for 1993/94 *(see lists commencing on page 377).* ❐

PCS MARINE
PETROCARGO MARINE SURVEYORS LTD.
Capt. Thomas C. Nash
M. INST. PET.
Marine Consultancy;
Independent Marine Surveyors;
Marine Expert Witness;
Ship to Ship Transfer;
Vessel & Terminal Safety Inspection;
Recruitment; Procedures Manuals.
Cooleen House, Rushbrooke, Cobh, Co. Cork.
Tel: 021-811677 Fax: 021-813009

★ Keeps abreast of legislation

★ Helps you interpret statute law

Irish Current Law Statutes Annotated

General Editor: Professor Kevin Boyle, LL.B., Dip. Crim
Editor: Dr. Robert Clark, B.A., LL.M., Ph.D.
Assistant Editor: Gerald Hogan, B.C.L., LL.M., (N.V.I.), M.A.

- ★ This five volume loose-leaf service provides an essential source of information for anyone who needs to keep up to date with current Irish legislation
- ★ Purchase **Irish Current Law Statutes Annotated** and you will receive five loose-leaf binders that contain all the primary legislation passed by the Oireachtas from 1984 to date, updated by release where appropriate, and a wealth of complementary material relating to both primary and secondary legislation
- ★ More than just a publication of the current year's statutes – each act is fully explained by experts in that field of law – either by section by section annotation or by a General Note on the effect of the Act

Sweet & Maxwell

VASTLY IMPROVED SERVICE

We aim to provide you with quality, up to date and comprehensive information – in a way that suits your needs. To this end we have vastly improved the service.

If you would like to receive more information about **Irish Current Law Statutes Annotated**, or if you would like to order a copy please call Brendan Quinn on 298 3411.

FOR AN INITIAL PURCHASE PRICE OF JUST £460.00 YOU WILL RECEIVE THE FIVE VOLUME LOOSE-LEAF – AND THE 1994 UPDATING SERVICE.

NEW SERVICE

Law Society

SOLICITOR LINK

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.

Law Society Committees 1993/94

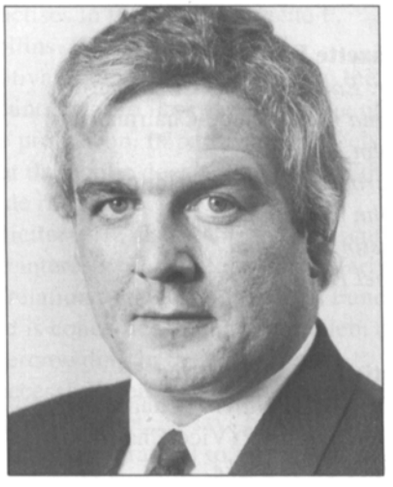
Disciplinary (Appointed by the President of the High Court)

Walter Beatty (Chairman),
Moya Quinlan (Vice-Chairman),
W. Brendan Allen,
Terence Dixon,
Michael Hogan,
Donal Kelliher,
Elma Lynch,
William A. Osborne,
Grattan d'Esterre Roberts,
Andrew Smyth.

Finance Committee
Don Binchy (Chairman),
Laurence Shields (Vice-Chairman),
Geraldine Clarke,
Francis Daly,
Edward McEllin,
Raymond Monahan,
Moya Quinlan,
Andrew Smyth.

(Observers: all former Presidents)

Ward McEllin



Although elected to Council for the first time this year, *Ward McEllin* has considerable experience as a Council member having served as provincial delegate for Connaught since 1984. He was Chairman of Registrar's Committee from 1987 to 1989 and since then has served as Chairman of the Compensation Fund Committee. Among his objectives this year is to promote the Practice Advisory Service to the profession and to further policies which will secure greater compliance with the Solicitors Accounts Regulations.

Compensation Fund Committee
Ward McEllin (Chairman)
Barry St. J. Galvin (Vice-Chairman),
Ernest Cantillon,
Michael Carroll,
Stephanie Coggans,
John Dillon-Leetch,
Gerard Doherty,
Gerard Griffin,
John Harte,
James McCourt,
Cormac O'Hanlon,
John Shaw,
Michael Staines.

Education Committee
Ken Murphy (Chairman),
James MacGuill (Vice-Chairman),
John Costello,
John Harte,
Raymond Monahan,
Cormac O'Hanlon,
John Shaw.

Public Relations Committee
Francis Daly (Chairman),
Stephanie Coggans (Vice-Chairman),
Fergus Appelbe,
Richard Bennett,
Niall Casey,
Justin Condon,
Gerard Griffin,
Philip Joyce,
James McCourt,
Peter Murphy,
Brian Sheridan,
Michael Staines,
Eva Tobin.

Registrar's Committee
Geraldine Clarke (Chairman),
John Fish (Vice-Chairman),
Richard Bennett,
Owen Binchy,
Niall Casey,
Angela Condon,
Justin Condon,
Michael Irvine,
Tim Lucey,
Michael D. Murphy,
Peter Murphy.

Policy Committee
Michael V. O'Mahony (President),
Patrick Glynn (Senior Vice-President),
Patrick O'Connor (Junior Vice-President),
Donal Binchy,
Geraldine Clarke,
Francis Daly,
Edward McEllin,
Raymond Monahan,
Moya Quinlan.

Non-Standing Committees

Arbitration Committee
Andrew Smyth (Chairman),
Frank O'Donnell (Vice-Chairman),
Timothy Bouchier-Hayes,
John Buckley,
Michael Carrigan,
Bernard Gogarty,
David Pigot,
Brendan Walsh.

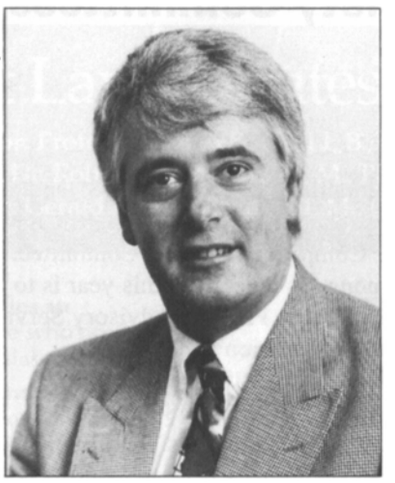
Blackhall Place Development Plan: Fund-Raising Committee
Adrian Bourke (Chairman),
Gerald Hickey (Vice-Chairman),
Richard Bennett,
Donal Binchy,
Anthony Collins,
Anthony Ensor,
Ernest Margetson,
Raymond Monahan,
Moya Quinlan,
Laurence Shields,
Andrew Smyth.

Company and Commercial Law Committee
Cormac O'Hanlon (Chairman),
Gerald Fitzgerald (Vice-Chairman),
David Beattie,
Neil Breheny,
Gerard Coll,
Paul Dobbyn,
Paul Egan,
Robert Hennessy,
Michael Irvine,
William Johnston,
John King,
Laura McDermott,
Patricia McGovern,
Brian O'Connor,
Alvin Price,
Mark Ryan.

Compensation Fund Policy Review Committee
Laurence Shields (Chairman)
John Fish,
Barry St. J. Galvin,
Gerard Griffin,
Philip Joyce,
James MacGuill,
Ward McEllin,
Raymond Monahan,
Ken Murphy,
Michael O'Mahony,
Noel Ryan,
David Walley.

Conveyancing Committee
Owen Binchy (Chairman),
Colm Price (Vice-Chairman),
Fergus Appelbe,
Vivienne Bradley,
Brid Brady,
Eric Brunker,
John Buckley,
Eugene Cush,
William Devine,
Paddy Fagan,
Brian Gallagher,
Maeve Hayes,
Richard Joyce,
Brendan McDonnell,
Michael Mullaney,
Kieran Murphy,
Rory O'Donnell,
Robert Potter-Cogan.

John Dillon Leetch



John Dillon Leetch, the provincial delegate for Connaught, practises in a two-solicitor firm, T. Dillon Leetch & Sons. He is currently Vice-President of the Mayo Bar Association. He says he has a particular interest in issues affecting rural practitioners. He is concerned that many areas of work undertaken by solicitors are becoming unprofitable and he says that the Society must resist, as forcefully as possible, threats to traditional areas of solicitors' work such as conveyancing and probate posed by the forthcoming Solicitors Bill. He says he would also be opposed to any provision in the Bill which would permit fees advertising by solicitors.

Criminal Law Committee
Michael Staines (Chairman),
Ernest Cantillon (Vice-Chairman),
Patricia Casey,
Barry Donoghue,
Bobby Eagar,
Benen Fahy,
Ernest Hanahoe,
Gerry Lambe,
Frank McDonnell,
James MacGuill,
Kieran O'Gorman,
Garrett Sheehan,
Anthony Sheil,
Niall Sheridan.

EC & International Affairs Committee
Michael Irvine (Chairman),
Petria McDonnell (Vice-Chairman),
John Buckley,
Anthony Burke,
Anthony Collins,
Angela Condon,
Michael Dickson,
John Fish,
John Larkin,
Philip Lee,
Tim Lucey,
Arthur Moran,
Julie Sadlier.

Education Advisory Committee
James MacGuill (Chairman),
John Costello (Vice-Chairman),
Brian Mahon,
Eddie O'Connor,
Dudley Potter,
Brian Sheridan,
Liam Young.

Family Law & Civil Legal Aid Committee
Moya Quinlan (Chairman),
Brian Sheridan (Vice-Chairman),
Stephanie Coggans,
Gus Cullen,
Eugene Davy,
Joseph Dundon,
Rosemary Horgan,
Mary Lloyd,
Pauline O'Reilly,
Joan O'Mahony,
Des Rooney,
Conor Sparks,
Muriel Walls.

Gazette Editorial Board
Dr. Eamonn Hall (Chairman),
Elma Lynch (Vice-Chairman),
John Buckley,
Barbara Cahalane (Editor),
John Costello,
Justin McKenna,
Noel Ryan.

Litigation Committee
Barry St. J. Galvin (Chairman),
Anthony Ensor (Vice-Chairman),
Bruce St. J. Blake,
James Cahill,
Ernest Cantillon,
John Campbell,
Michael Carroll,
Orla Coyne,
Joseph Deane,

Gerard Doherty,
Ivan Durcan,
Patrick Groarke,
Vincent Harrington,
Gordon Holmes,
Joseph Kelly,
Rosemarie Loftus,
Ernest Margetson,
Noel McDonald,
Petria McDonnell,
Eugene O'Sullivan,
David Pigot,
John Reidy,
Gary Rice,
Michael Tyrrell,
David Walley.

John Costello

John Costello was admitted to the Roll of Solicitors in 1977 and practises in the firm of Eugene F. Collins. He says his primary motivation in seeking election to the Council was to improve the image of the profession. In particular, he feels that the public does not appreciate the wide range of services offered by solicitors. He also wants to represent the interests of solicitors, particularly in relation to the Compensation Fund and is concerned about the problem of overcrowding in the profession. Successfully elected to Council on his second attempt, he says he is particularly grateful to all those who supported him in the ballot.

Parliamentary Committee
Elma Lynch (Chairman),
Fergus Appelbe (Vice-Chairman),
Bruce St. J. Blake,
Angela Condon,
John Harte,
James MacGuill,
Michael D. Murphy.

Practice Management Committee
Laurence Shields (Chairman),
Philip Joyce (Vice-Chairman),
Fred Binchy,
Michael Carroll,
Dominic Dowling,
John Glynn,
Barbara Joyce,
Frank Lanigan,
Justin McKenna,
Ken Murphy,
Peter Murphy,
Brian O'Reilly,
Robert Pierse,
Anthony Sheil,
Eva Tobin.

Premises Committee
Andrew Smyth (Chairman),
William Jolley Vice-Chairman),
Adrian Bourke,
Carmel Killeen,
Elma Lynch,
Stephen Maher,
Ken Murphy.

Professional Purposes Committee
Anthony Ensor (Chairman),
Gerard Doherty (Vice-Chairman),
Owen Binchy,
Michael Carroll,
Niall Casey,
Justin Condon,
Maeve Hayes,
Carmel Killeen,
Tim Lucey,
Stephen Maher,
Brian Mahon,
James McCourt,
Anthony Sheil,
Eva Tobin,
Frances Twomey.

Publications/Library Committee
John Buckley (Chairman),
Garrett Gill (Vice-Chairman),
Walter Beatty,
Michael Carrigan,
Elma Lynch,
William McGuire.

Michael Carroll

While employed by the Civil Service in the Estate Duty Office, *Michael Carroll* studied for a BL and was called to the Bar in 1973. However, he then decided to embark on a career as a solicitor and was admitted to the Roll in 1978. Since 1984 he has worked in the Solicitors' Office in CIE and is now Group Solicitor heading a team of nine solicitors and a support staff of twenty seven. He says he is interested in promoting high professional standards, thereby increasing public confidence in the profession. He is also in favour of the creation of an orderly procedure for the qualification of solicitors. He hopes that, as a solicitor working for a large corporation, he can offer a useful perspective during debates on policy at Council meetings.

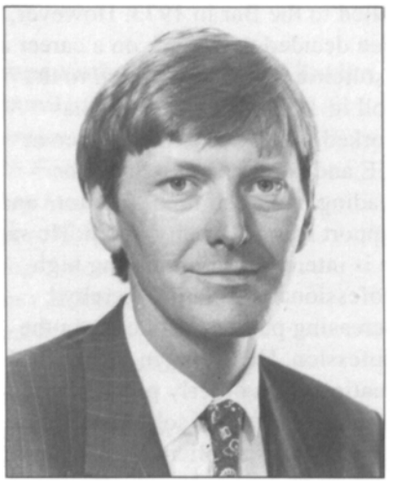
Remuneration/Costs Committee
Gerard Griffin (Chairman),
Philip Joyce (Vice-Chairman),
Richard Bennett,
Laurence Cullen,
John Dillon-Leetch,
Frank Lanigan,
Frank Murphy,
Michael D. Murphy,
Susan Stapleton.

Solicitors Acts
Maurice Curran (Chairman),
Donal Binchy (Vice-Chairman),
Adrian Bourke,
Anthony Collins,
Joseph Dundon,
Gerard Griffin,

Philip Joyce,
Ernest Margetson,
Edward McEllin,
Laurence Shields,
John Shaw,
Andrew Smyth.

Solicitors Retirement Fund
Gerald Hickey (Chairman),
Anthony Collins (Vice-Chairman),
Walter Beatty,
Donal Binchy,
Geraldine Clarke,
Maurice Curran,
Gordon Holmes,
Ernest Margetson,
Patrick Treacy.

James McCourt



James McCourt, who is a former chairman of the Society of Young Solicitors, practises in the firm of George D. Fottrell & Sons and is one of the DSBA nominees to Council for the year 1993/94. As a member of the PR Committee for the coming year he is anxious to address the public relations image of the profession. He is very concerned about the proposal to cap personal injuries awards and will be encouraging the Society to resist it by every means. He is also interested in the area of legal education and believes that the Society must arrive at a definitive policy on admissions which will deal with the issue of numbers wishing to enter the profession. James McCourt says the policing role of the Society is also important and that more must be done to identify solicitors who are in difficulty before default occurs.

Taxation Committee
John Fish (Chairman),
Desmond Rooney (Vice-Chairman),
Walter Beatty,
Brian Bohan,
John Costello,
Frank Daly,
Caroline Devlin,
David Donegan,
David Glynn,
Ciaran Keys,
Peter Maher,
Tom Martyn,
Paul McNally,
Eugene O'Connor,
John O'Connor,
Michael O'Connor,
Patricia Rickard-Clarke,
Paul Smyth.

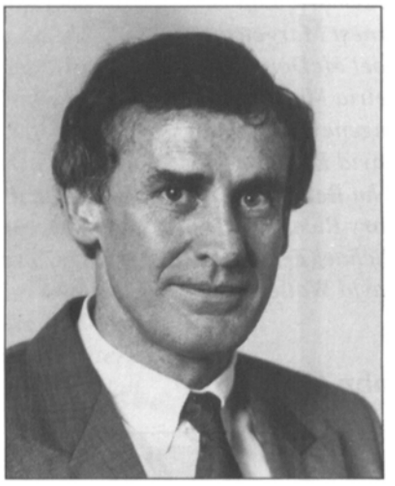
Technology Committee
Raymond Monahan (Chairman),
Frank Nowlan (Vice-Chairman),
Michael Browne,
Harry Barry,
James Heney,
John O'Donnell,
Michael O'Sullivan,
Seamus Toomey.

Younger Members Committee
John Shaw (Chairman),
Orla Coyne (Vice-Chairman),
John Campbell,
Pat Casey,
Stephanie Coggans,
Pat Crowley,
Graham Hanlon,
Robert Hennessy,
Rosemarie Loftus,
Paula Murphy,
Michael Nugent,
Eddie O'Connor,
Orla O'Neill.

Representatives of The Society on Other Bodies

Joint Consultative Committee with Bar Council
Michael V. O'Mahony (Chairman),
Raymond T. Monahan (Vice-Chairman),
Geraldine Clarke,
Gerard Doherty,
Barry St. J. Galvin,
Moya Quinlan,
Ken Murphy,
Pat O'Connor,
Paddy Glynn.

Gerard Doherty



Gerard Doherty, prior to his election to Council this year, had already clocked up four years' experience on the Council as a DSBA nominee and served as Chairman of the Litigation Committee from 1990 to 1993. He says he is disturbed by current trends in personal injuries litigation and is committed to ensuring that the Society opposes any proposal to cap personal injuries awards. This year he will serve as chairman of the Law Clerks Joint Labour Committee and as Vice-Chairman of the Professional Purposes Committee. He is joint principal of the firm O'Reilly Doherty which also employs two solicitors.

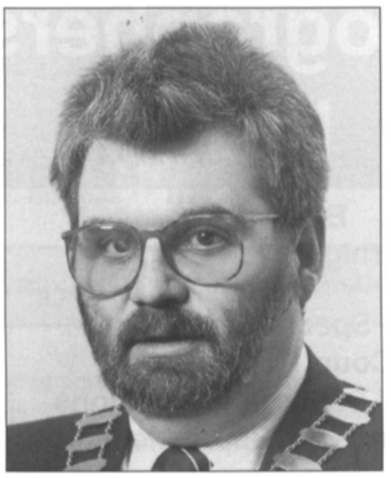
Advisory Committee on Legal Education & Training
Patrick O'Connor,
Ken Murphy,
Richard Woulfe.

Medical Bureau of Road Safety
Gerard Griffin

Registration of Title Rules
Rory McEntee

Irish Legal Terms Advisory
Michael J. O'Kane

Anthony Sheil



Tony Sheil, immediate Past President of the DSBA, previously served on the Council as a DSBA nominee for the year 1991/92. As a DSBA nominee this year, he would like to work towards achieving a better image for the profession amongst the public and believes that there should be more accountability from the Society to the members of the profession. He suggests that there should be a sharper distinction between the Society's representative and regulatory roles and suggests that the Society's representative functions should be operated from the premises at Blackhall Place and the regulatory functions from a separate premises.

Court Rules Committee
Superior Courts:
Ernest Margetson,
Gordon Holmes.

Circuit Court:
Joseph Deane,
Gerard Doherty.

District Court:
Gerard Griffin,
Sean McMullin.

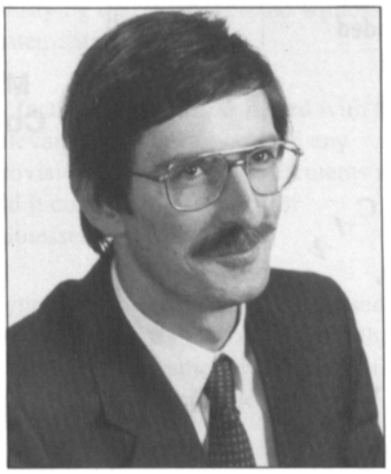
Dublin Road Safety
H. O'Donnell

Law Clerks JLC
Gerard Doherty (Chairman),
Frank Lanigan (Vice-Chairman),
Elma Lynch,
Justin Condon,
Dominic Dowling,
Richard Liddy,
Stephen Maher,
Fachtna O'Driscoll,
Donal O'Hagan,
Robert Potter-Cogan.

Council of Law Reporting
Eamonn Hall,
Michael Irvine,
Noel C. Ryan,
Barry Donoghue.

Rule Making Committee Land Act, 1933 (Section 3)
The President Ex-Officio

Michael D. Murphy



Michael D. Murphy, one of the DSBA nominees to Council for the year 1993/94, was admitted to the Roll of Solicitors in 1979 and is a sole practitioner. Since qualifying he has been an active member of the DSBA and a member of its Council since 1985. He is particularly interested in addressing the numbers issue in the profession and policy concerning the education of future solicitors. He also says that the sense of alienation from the Society felt by small practices is a matter which must be addressed.

IBA Representative
Maurice Curran

Boardroom Centre
Anthony Collins

International Chamber of Commerce
Walter Beatty,
Maurice Curran.

Published Accounts Awards Committee
Michael Irvine

Conseil Des Barreaux de la Communaute Europeenne
John Fish

Union Internationale du Notariat Latin
Arthur Moran

Past Presidents (entitled to sit on council pursuant to the Society's bye laws:)
W. Brendan Allen,
Walter Beatty,
Bruce St. J. Blake,
Adrian Bourke,
John Carrigan,
Anthony Collins,
Laurence Cullen,
Maurice Curran,
Joseph Dundon,
Gerald Hickey,
Michael Houlihan,
John Maher,
Ernest Margetson,
P Frank O'Donnell,
W. Osborne,
David Pigot,
Peter Prentice,
Thomas Shaw.

Richard Bennett

While newly elected to the Council, *Richard Bennett* has had previous experience on the Council as a nominee of the DSBA for the year 1991/92. He was admitted to the Roll of Solicitors in 1978 and is a sole practitioner. One of the areas he would like to concentrate on is ensuring that the Society does all it can to improve the viability of solicitors' practices, through developing its practice management advisory services. He is also concerned about the image of the profession and the need to arrive at an admissions policy which meets the current needs of the profession. ❐

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.

IRISH CANCER SOCIETY
5 Northumberland Road, Dublin 4, Tel: 6681855

Irish Stenographers Ltd

Experts in Overnight Translations

Specialists in Court Reporting Medical Cases / Arbitrations Conferences / Board Meetings

Contact:
Hillcrest House, Dargle Valley, Bray, Co. Wicklow.
or
4a Arran Quay, Dublin 7.
Telephone: (01) 286 2184
Fax: (01) 286 2184

There *is* an alternative

This Somali child and thousands like him are alive today thanks to the overwhelming generosity of the Irish people. A small legacy or bequest to Concern can make a huge difference to the life-saving and development work of Concern volunteers like Michelle Mackin — not just today but for many years into the future. Concern is devoted to the relief, assistance and advancement of peoples in need in less developed areas of the world. Through our projects in Africa and Asia, the poor, oppressed and underprivileged are slowly being brought to a position of self-sufficiency. Our projects include agriculture, forestry, horticulture, health and nutrition, education, women's training and engineering.

If your client wishes to leave money to charity, ***please remember the work of Concern.*** If you require any information on suggested wording etc., please contact me now:

Siobhán Walsh
CONCERN
1 Upper Camden Street Dublin 2. Tel. 6681237

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

Dr. Eamonn G. Hall, Solicitor

Sympathy and Natural Justice

The importance of a sympathetic approach when dealing with applicants claiming an entitlement to social welfare benefit together with the vital importance of natural justice during the decision-making process of a tribunal have been recently considered in two separate judgments, one by the Supreme Court and the other by the Queen's Bench Division of England and Wales.

In the case of *Garvan -v- Criminal Injuries Tribunal*, Supreme Court, unreported, *ex tempore* judgments, July 20, 1993, the Supreme Court considered an application for *certiorari* and for other judicial review remedies in relation to a decision reached by a single member of the Criminal Injuries Compensation Tribunal. The applicant, *Robert Garvan*, had been assaulted whilst on a public street, suffered from concussion and received damage to his teeth which caused him some distress and, in particular, a considerable amount of expense.

The relevant claim form for the Criminal Injuries Tribunal was filled in with the assistance of the applicant's solicitor and it was sent off to the tribunal. After a substantial period of time, a communication was received and a stereotyped letter stated: "Do you wish to make any further submissions?" The solicitor in question stated that certain travel expenses had been left out and these were included.

One year and nine months after the application had been lodged, the solicitor acting on behalf of the applicant received a notice of a decision by a single member of the tribunal. The decision was to the effect that the single member was not satisfied with the application and was dismissing it. This decision was subsequently justified in an affidavit by saying that there were no witnesses' statements submitted.

In fact, the instructions issued with the relevant form did not contain any provision for witnesses' statements nor did it contain any request for witnesses' statements.

Lynch J in the High Court dismissed an application for *certiorari* and other judicial review remedies. The plaintiff appealed to the Supreme Court.

Finlay C J in his judgment in *Garvan* stated that the fact that witnesses' statements had not been asked for constituted in the particular circumstances a "want and a serious want, of natural justice".

The Chief Justice did say that there should be very few circumstances under which the court should intervene by way of judicial review except to correct a final decision from the tribunal such as occurred in the *Creedon* case. However, the Chief Justice stated that in the particular circumstances of this case, he was satisfied that exceptionally the court should intervene in a particular way. The Chief Justice noted that, in the relevant circumstances, merely to refuse to grant judicial review on the basis that a right of appeal exists would be to do a lot less in his view than render justice to the applicant having regard to the fundamental nature of the want of justice. He, therefore, in the exercise of his discretion, granted an order of *mandamus* to the applicant directed to the tribunal that it should as a tribunal of three persons without delay provide a hearing to the applicant in accordance with the scheme of his application for compensation.

O'Flaherty J, in a separate judgment, agreed with the judgment of the Chief Justice. O'Flaherty J mentioned that if a single member of the Criminal Injuries Compensation Tribunal fell into some kind of a routine error, even if it carried major consequences, the correct approach would be that the matter should be appealed to a sitting of the tribunal *en banc*. A court should not for one moment entertain an application in relation to a mishap that might befall any decision~maker in the course of reaching a conclusion. However, O'Flaherty J believed that the applicant in this case was denied justice, and was denied it in a very fundamental way and that it was a case that did call for the intervention of the court by way of judicial review.

Lack of Sympathy Resulting in Judicial Review.

The issue of lack of sympathy of a decision-maker arose in the case of *R -v- Tower Hamlets London Borough Council, ex parte Khatum*, Queen's Bench Division, unreported, September 30, 1993, *The Independent* (London), October 1, 1993. Sir Louis Blom-Cooper QC acted as deputy High Court judge. The applicant was a homeless person applying to the local authority for accommodation. The judge held that when being interviewed, an applicant should be treated sympathetically and be given ample opportunity to have present at any interview some person who was able to assist and advise him or her. Sir Louis Blom-Cooper stated that the conduct of relevant interviews was so unsatisfactory and led to so much unfairness in the decision-making process that the decision should be quashed. The court was barely restrained from concluding that the flavour of the process did not reflect a case of an applicant claiming an entitlement to a social benefit but rather a person being interrogated about some misdeed warranting a probing inquiry.

The Judge noted that the key to the proper approach to the manner in which interviews of applicants for social welfare benefits should be conducted was encapsulated in the single word "sympathetically". That word denoted a sense of fellow-feeling.

The judge noted that the key to the proper approach to the manner in which interviews of applicants for permanent accommodation as homeless persons should be conducted was encapsulated in the single word "sympathetically". That word denoted a sense of fellow-feeling. Cross-examination, hostile questioning, adverse comment or indication of a likely adverse decision were all inappropriate postures.

The local authority should give the applicant ample opportunity to have present someone able to assist or advise him or her, according to the judge. Finally, he noted that in the instant case the alchemy of a particular interviewer, a particular interpreter and a mode of questioning that did little, if anything, to favour the applicant had supplied the recipe of unfairness.

These two decisions in the two jurisdictions are to be welcomed. It was open to the judges in both cases to decide each case in another manner. The judges in the *Garvan* case and the judge in the *Tower Hamlets London Borough Council* case were both motivated by a sense of justice and both avoided an ultra-legalistic approach to the matter at issue.

Coffee Shops

This piece is thinly disguised as a brief to readers who are interested in developments in other States of the European Union. The Dutch Justice Minister, *Ernst Hirsch Ballin*, has recently stated that he wishes to clamp down on the sale of "soft" drugs to foreigners in coffee shops. During the debate on his 1994 budget, the Minister told the Lower House of Parliament that more and more coffee enterprises have been set up in a number of cities which have shown no social responsibility whatever in dealing with their customers. He noted that this applied in particular to the large influx of foreign customers. He agreed with the Christian Democratic Party that this trend has to be stopped.

A lawyer on business to a city in Holland recently went into a coffee shop to ask for coffee. He noted that somehow or other the coffee shop did not resemble a coffee shop in Ireland in terms of the clientele. The Dutch Justice Minister has confirmed the laywer's worst suspicions.

The Minister continued by stating that if the number of coffee shops were reduced and the managers of the remaining sections were asked at least to refrain from selling "soft" drugs to a wider clientele than their regular, manageable group of customers, who should moreover be of age, a stop would be put to the current trend, whereby the original objectives were being increasingly departed from. He noted that drugs tourism would also be checked as a result.

A lawyer on business to a city in Holland recently went in to a coffee shop to ask for coffee. He noted that somehow or other the coffee shop did not resemble a coffee shop in Ireland in terms of the clientele. The Dutch Justice Minister has confirmed the lawyer's worst suspicions.

❐

Getting Married?

Why not hold your wedding reception in the elegant surroundings of Blackhall Place?

- **Parties of up to 200 catered for.**
- **"Afters" catered for.**
- **Available to solicitors and their sons, daughters, brothers, sisters, nephews and nieces.**
- **Attractive location for photographs.**

Contact:
Peter Redmond (Phone 6710711, Ext. 472)
for a competitive quote.

Society Rebuts IBEC Survey

The proposal to cap awards for pain and suffering in personal injuries cases, proposed by the Minister of States for Commerce & Technology, *Seamus Brennan*, TD, received further media coverage during November with IBEC, the business and employers' confederation, supporting the Minister's proposals. The Law Society issued a detailed statement rebutting the IBEC case that claims against employers were endangering jobs and reiterated its opposition to a cap which would unfairly penalise victims of accidents who suffered injury through no fault of their own.

Proposal to cap personal injuries awards

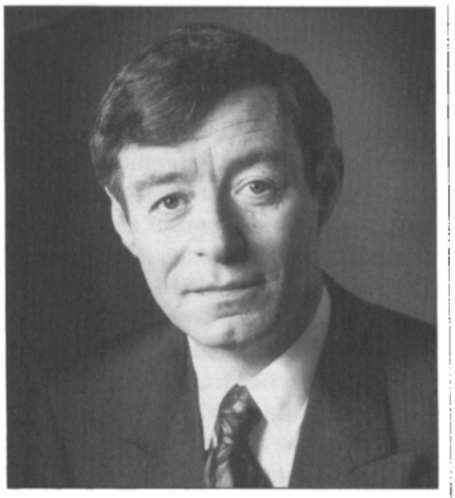
News items in the *Irish Press* and *Irish Independent* of Monday 8 November, 1993, reported on comments by the Minister of state for Commerce & Technology, Seamus Brennan, TD, at the Fianna Fail Ard Fheis when he vowed not to yield to "vested interests" opposing his plans to cap compensation awards. The Minister said the current level of insurance premiums operated as a tax on employment.

A report issued by IBEC, the business and employers' confederation, of a survey of the experiences of 300 of their member companies concerning employers' liability claims received coverage in all the daily papers of Monday 15 November, 1993. The survey showed that on average one in every eight accidents at work resulted in a personal injury claim. The average cost of settling a claim in court was £21,000 and an out of court settlement was £13,800. IBEC expressed support for Minister Brennan's proposals and claimed that people were almost being encouraged to make claims. *Declan Madden*, Director of Specialist Services at IBEC, was interviewed on "Morning Ireland" on RTE Radio 1 on 15 November. He said that Irish industry was no less safe and had no more accidents then anywhere else, but Ireland had a much higher level of claim per accident occurring and that suggested that there was a lot more at play than just a lack of safety in the workplace. He said the legal process encouraged people to make a claim and, because there was a nuisance value in many claims, insurance companies were encouraged to settle them.

On RTE radio "News at One" programme on 15 November, *Tony Briscoe*, Head of Health & Safety Division of IBEC said that IBEC supported the proposal by Seamus Brennan to cap injuries awards. IBEC was not concerned, he said, with claims where there was genuine injury and liability, but was concerned about the extent to which opportunistic claims were arising which were in nobody's interest. On the same programme, *John Maguire* of the Construction Industry Federation suggested that good safety auditing, reducing the severity and frequency of claims, would, of itself, automatically bring down the cost of insurance.

The President of the Society, *Michael O'Mahony*, responded on behalf of the Law Society. He said that the implication of the IBEC statement was that only victims of serious injuries should be permitted to claim. It was unfair that a vulnerable, injured person, should be asked to carry a subsidy for the high cost of insurance and employers' liability premiums. He said it was a simplistic approach to assume that if awards were reduced the cost of insurance premiums would come down and he noted that the insurance industry had not confirmed a correlation between the two.

The Minister of State for Commerce & Technology, *Seamus Brennan*, was also interviewed. He said the cost of



Seamus Brennan, TD, Minister of State for Commerce & Technology, argues that the cost of insurance is affecting job creation.

insurance was directly affecting job creation because many companies could not get employers' liability cover and he knew of one instance where 40% of the wages bill was being spent on employers' liability premiums. He said that, as yet, the Government had taken no decision on the matter but he was committed to introducing a cap on the level of awards. He said he took on board the Society's point that there was no simplistic solution but, nonetheless, if the levels of awards paid out in Ireland were at the same level to those in the European countries with which we compete, over £100m less per annum would be paid out. The Minister said that he was willing and intended to discuss the matter with the Law Society. He was asking for a trade-off i.e. asking the public to limit their right to high levels of awards and to set that against the common good and the common benefit to industry and motorists of having reduced insurance costs.

The *Evening Herald* of 15 November, 1993, also reported on the IBEC survey. An article in the *Irish Press* of 16 November, 1993, entitled "Lawyers Angry at Plan to Cap Injury

Awards" reported a warning from the Law Society that limiting the level of claims compensation would be unjust, unworkable and unconstitutional. The article quoted a Law Society spokeswoman as saying that the Minister was trying to tackle the problem from the wrong end and arguing that the onus was on the Minister to show that capping awards would lead to a cut in insurance premiums. *Mike Kemp* of the Insurance Industry Federation was quoted as saying that the likely impact on insurance premiums of a cap on awards was difficult to quantify. In the Evening Herald of 16 November, 1993, *Kerry McCarthy* wrote a feature article entitled "Staking Claims in the Great Compo Goldrush" which reported on the IBEC survey and the increase in the cost of medical insurance cover for hospital consultants. "There is no doubt that Ireland is in the grip of compo fever," he said. The article reported that Seamus Brennan's proposal was being "fiercely resisted" by the Incorporated Law Society. Kerry McCarthy commented that it might also be necessary to consider curbing solicitors' advertising and their practice of free consultations which were seen as fostering the 'compo' culture.

The Law Society issued a detailed statement on 18 November rebutting the IBEC case. The Dublin city edition of the *Irish Independent* of 19 November, 1993, reported this, saying that the Law Society had accused IBEC of using scare tactics to deter employees injured at work from taking civil legal action. The Law Society's statement pointed out that the IBEC study showed in fact that the frequency of claims was decreasing, not increasing, and said that it was outrageous of IBEC to suggest that people who suffered injuries in the workplace through no fault of their own should not make a claim.

The Society's statement was also covered in the *Irish Times* of Monday 22 November under the heading "Workers' injury claims defended by Law Society."

Barbara Cahalane ❐

William O'Reilly

Dymphna and the late William O'Reilly, who were guests at the Society's Annual Conference in May, 1993.

Willie passed away on 20 November 1993 in his 90th year. To a great many solicitors, particularly those who qualified between 1946 and 1978 Willie and his wife *Dymphna* (to everyone "Mrs. O.") were an integral part of their student lives and their memories of Solicitors' Buildings in the Four Courts.

Sergeant William O'Reilly, a Wexfordman, commenced his long association with the Law Society in 1946 after retiring from the Irish Army in which he had served since May 1922. During the War of Independence, Willie had played his part as a boy messenger for General *Sean MacEoin*.

As part of his army service Willie acted for many years as personal bodyguard to General *Richard Mulcahy*, then a TD and up to 1932 a Government Minister. When Willie applied for the position of resident warden of Solicitors' Buildings he received a rare written testimonial from General Mulcahy who referred to his "intimate and close relationship" with Willie, which led to wry queries from the interview board!

For 32 years Willie and Mrs. O'Reilly were an essential part of the Society's activities at Solicitors' Buildings. If you wanted a consultation room Willie was the man. But it was the O'Reillys' association with the Solicitors Apprentices' Debating Society that endeared them to generations of neophyte solicitors. The tea and sandwiches downstairs in the O'Reilly drawing room were as important as the debates upstairs in the library.

Willie's formal retirement in 1978 coincided with the Society's move to Blackhall Place. But the O'Reilly association with the Society continued, and still continues, through Mrs. O'Reilly, particularly in her attentive care of the overnight guests who stay at the Blackhall Place premises.

On his retirement, as a small mark of the Society's appreciation, Willie was conferred by the then President, *Gerry Hickey*, with honorary life membership of The Law Club of Ireland.

Willie's death, despite its sadness, brings with it for those of us older in vintage, the joy of recall of light-hearted student days long past. To a smaller, more privileged coterie there is the added bonus of recollection of late nights and early mornings (whether in the Four Courts or at SYS Seminar weekends) around the poker table. If degrees were conferred for that particular nefarious activity Willie would have been a PhD. If Willie has the 'deck' up there St. Peter had better watch his 'pence'.

To Mrs. O'Reilly, son *Brian*, Solicitor, daughter-in-law, *Jacinta*, grandchildren, brother and other relatives, we offer our sincere sympathy on the death of a man who was, most of all, a friend to us all. ❐

M V O'M

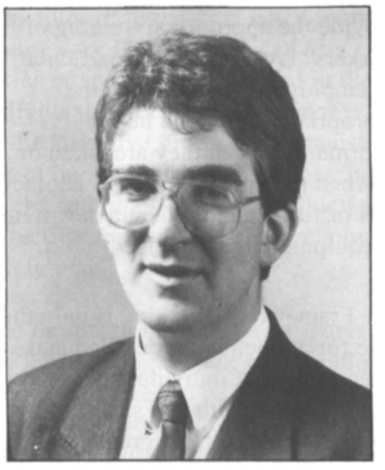
Liability for Accidents at Work: The New Regime

By Ciaran O'Mara*

One of the "old reliables" in most solicitors' practices is the action for damages arising out of an injury sustained in the work place. It is fair to say that such litigation has been one of the staples for our profession for a century or more. It has been well known that an employer has a duty towards an employee to take reasonable care for the employee's safety. Although the courts in Ireland have generally looked with favour on employee plaintiffs, the employer's duty is not an unlimited one and there is plenty of judicial dicta to state that an employer is not an insurer. In *Bradley -v- CIE* [1976] IR 217 Henchy J stated that "the law does not require an employer to ensure in all circumstances the safety of his workmen. He will have discharged his duty of care if he does what a reasonable and prudent employer would have done in the circumstances".

In a similar vein, the Safety, Health and Welfare at Work Act, 1989 provides in section 5 that "it shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees". As a result of both case law and statute Irish lawyers have been accustomed to pleading employers' liability cases in the context of a duty of care and of the need to prove some form of negligence against the employer. Suddenly and with little fanfare European developments have completely changed the basis of liability in such cases. Any solicitor who does not plead the new European legislation in litigation concerning an accident at work is not only living in a time warp but is also at risk of being sued for negligence.

The Single European Act revised the original Treaty of Rome of 1957 with



Ciaran O'Mara

a view to completing the Single European Market by 1992. It is often forgotten that many other changes to the original Treaty were included. One of these was a new article 118A which allowed for the implementation of a safety and health programme to be adopted by qualified majority voting. As will be seen, in the space of a few years the European Union has effectively taken over the development of the law in this area from the Member States.

The first major step forward in the EU Programme was in 1989 with the adoption of the so-called "Framework Directive" (89/39/EEC) "on the introduction of measures to encourage improvements in the safety and health of workers at work". This directive forms the basis for a series of more specific directives to cover particular sectors of employment such as construction work or particular subject areas of importance such as visual display units. A copy of this directive is just as essential to a solicitor as, say, a copy of the Civil Liability Act, 1961.

The Framework Directive covers all sectors of activity, both public and private. The only workers excluded are the self-employed and domestic servants (it should be noted in Ireland that the Safety, Health and Welfare at Work Act, 1989, applies to all employees). The key provision in the directive, relating to employers' obligations, is to be found in Article (5) which states "the employer shall have a duty to ensure the safety and health of workers in every aspect related to the work". Note the absolute duty on the employer which is thus created. This is in contrast to the existing Irish law to simply ensure safety "as far as reasonably practicable". Article (5) (3) goes on to state that "the workers' obligations in the field of safety and health at work shall not affect the principle of responsibility of the employer". In other words, contributory negligence by a worker would no longer appear to be a valid consideration for a court deciding a claim for workplace injuries .

Article 5.4 of the Directive gave Member States an option to provide for the exclusion or the limitation of employers' responsibility where "occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events". It is vital to remember that Ireland has not exercised this option in the implementing regulations, the Safety, Health and Welfare at Work (General Application) Regulations, 1993 (hereinafter referred to as "the Irish Regulations") and that, therefore, there can be no question of a re-entry of the concept of reasonable foreseeability by the back door.

The wording of the Directive takes precedence over the wording of the Irish Regulations as Community law is always supreme : see the *Von Colson* and *Morleasing* cases. The Regulations should always be read in conjunction with the Directive. Likewise, pleadings should cite the relevant Articles of the Directive as well as the Regulations.

The general obligations on employers are elaborated in Article 6 of the Framework Directive (also to be found in Article 5 and the First Schedule of the Irish Regulations). Certain general principles of prevention are listed in a systematic manner for employers to implement:

(a) avoiding risks;
(b) evaluating the risks which cannot be avoided;
(c) combating the risks at source;
(d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
(e) adapting to technical progress;
(f) replacing the dangerous by the non-dangerous or the less dangerous;
(g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors related to the working environment;
(h) giving collective protective measures priority over individual protective measures;
(i) giving appropriate instructions to the workers.

The employer is required to take the necessary measures to ensure the safety and health protection of workers on the basis of these principles. These are onerous responsibilities on all employers, large and small and require careful consideration. Paragraph (d) is quite innovative and it will be interesting to see how employers adjust to alleviating "monotonous work" and "repetitive work".

Information and Consultation

While the extensive development of the information and consultation rights given to employees in the new legislation is not directly of interest to the solicitor engaged in accident litigation, much useful information can now be obtained to assist in proceedings. Has the plaintiff got a safety statement giving him an assessment of the risks to safety and health at the workplace? (Article 10 of the Regulations). Did the employer provide the appropriate training of workers? (Article 12). In particular, all employees must receive the appropriate safety and health information when they are taken on, or when they are assigned to another post or function, or when a new item of equipment is introduced.

The Framework Directive is only the base for a much more detailed and extensive set of individual directives dealing with health and safety in the workplace which have gradually been adopted in Brussels. The Irish Regulations of February 1993 implemented the following in addition to the Framework Directive:

- Council Directive 89/654/EEC of 30 November, 1989 on minimum standards for workplaces.
- Council Directive 89/655/EEC of 30 November, 1989 on minimum standards for the use of work equipment by workers at work.
- Council Directive 89/656/EEC of 30 November, 1989 on minimum standards for the use by workers of personal protective equipment at the workplace.
- Council Directive 90/269/EEC of 29 May, 1990 on minimum health and safety requirements for the manual handling of loads where there is a risk, particularly of back injury, to workers.
- Council Directive 90/270/EEC of 29 May, 1990 on work with display screen equipment.
- Council Directive 91/383/EEC of 25 June, 1991 on measures to improve the safety and health at work of workers with a fixed term or temporary contract.

"Employer solicitors now have to analyse their VDU workstations to evaluate their conditions as regards possible eyesight and physical problems and problems of mental stress; and then must remedy the risk found."

Space does not allow for examination of these Directives in detail. However, the Display Screen Equipment Directive is worthy of attention as it affects practically every solicitor's office in Ireland. Employer solicitors now have to analyse their VDU workstations to evaluate their conditions as regards possible eyesight and physical problems and problems of mental stress; and then must remedy the risk found. The employer must plan the workers' activities in such a way that daily work on a display screen is periodically interrupted by breaks or changes of activity reducing the workload at the display screen. There are detailed rules regarding the flexibility of the work chair, the suitability of the work desk, etc.

Importantly, staff are now entitled to eye tests before starting on a VDU and at regular intervals thereafter or if they encounter difficulties. Further referral to ophthalmological examination is required, if necessary. All these tests cannot be charged financially to the worker.

The future

Many more individual directives are due to be implemented by Ireland in the near future in this area. Perhaps the most interesting one is the eighth individual directive – Council Directive 92/57/EEC of 24 June, 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites. This should come into force in Ireland no later than 31 December, 1993 and it has major implications for professionals working in the construction industry, such as architects or engineers, as well as clients in construction contracts. The preamble to the Directive states:

> "Whereas unsatisfactory architectural and/or organisational options or poor planning of the works at the project preparation stage have played a role in more than half of the occupational accidents occurring on construction sites in the community; . . .".

This statement has caused a good deal of controversy among consulting engineers and architects, as well as contractors, who do not accept the accuracy of the statistics used by the EC Commission. In any event, the Directive has been adopted and will have serious implications when implemented.

Article 3 of this Directive requires the client or the project supervisor (defined as "any natural or legal person responsible for the design and/or execution and/or supervision of the execution of a project, acting on behalf of the client") of a construction site to appoint one or more co-ordinators for safety and health measures for any site where there is more than one contractor present. The co-ordinator has to draw up a safety plan, particularly where work is "high risk". The Directive details the duties of the co-ordinator at project preparation stage and execution stage. Article 7 provides that the client and the project supervisor remain liable for the the matters dealt with by the project co-ordinator. When the work is being carried out, the general principles of prevention listed in the Framework Directive as well as a series of specific duties listed in the individual Directive apply. Annexes to the Directive give a non-exhaustive list of building and civil engineering works and types of work to which the Directive applies and which require a safety plan.

The implications of these measures are far-reaching. House redecoration could be deemed to be "works" under one Annex and having "particular risk" (e.g. falling from a height) under Annex II. The householder or the "project supervisor" would be required to draw up a safety plan prior to commencement of work and prepare a file containing relevant safety and health information related to the works. The possibilities for discovery in litigation are endless! Who is the client? Is it the developer, the bank putting up the money, or the architect employed by the developer? Plaintiffs may have a much wider range of defendants than previously thought. However, thresholds may be set which would relieve smaller jobs of these provisions when it comes to implementation.

Conclusions

Common law rules, and even Irish statutes, on employers' liability have effectively been superseded by the new legislation. The position of the employee appears to have been greatly strengthened. There is uncertainty as to what will actually emerge in practice; however, we can be sure that there is no longer an indigenous system. The Irish Supreme Court no longer has the last word and we must look to the Court of Justice in Luxembourg for guidance. Plaintiffs' solicitors will be checking their pleadings and exploring all the new options for liability. Defendants' solicitors and employers will have a lot of headaches. The days of "factory legislation" being an obscure corner of the law are well and truly gone as health and safety legislation comes to touch on the entire workplace.

**Ciaran O'Mara is a solicitor.* ❐

Compensation Fund Payments November, 1993

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in November, 1993. The name of the Solicitor in respect of whose defalcation the claims arose is listed in the left hand column.

	IR£
Elio Malocco & Conor Killeen Chatham House, Chatham Street, Dublin 2.	9,417.63
James C. Glynn, Dublin Road, Tuam, Co. Galway.	131,662.00
Christopher Forde, 52, O'Connell Street, Ennis, Co. Clare.	6,018.00
Diarmuid Corrigan, 6 St Agnes Road, Crumlin, Dublin 12.	200.00
John Kiernan Brennan, Mayfield, Enniscorthy, Co. Wexford.	31,897.00
Thomas B. Murphy, Castle House, Castle Street, Mullingar, Co. Westmeath.	50,000.00
Jonathan P. T. Brooks, 17/18 Nassau Street, Dublin 2.	73,228.00
	302,422.63

❐

In 1992 Cot Death Killed 59 Irish Babies. If your client wishes to make a will in favour of

Cot Death Research:

Telephone 01 - 8747007

(24 Hour Helpline)

Christmas Cards Now Available

NURSING CONSULTANT
Noreen Roche, RGN

- Costings in Personal Injury Cases
- Pre-Court Guidance
- Expert on Nursing Procedures/Techniques
- Health & Safety Advice in the Health Sector

Countywide Service

Lindenlea, Silversprings
Clonmel, Co. Tipperary
Tel: (052) 25980 Fax: (052) 23285

Liberal profession of Europe must define their role

Addressing a meeting of the Inter-Professional Group, held in the Law Society, on 28 October, 1993, Dr *Susanne Tiemann*, Chairman of the EU Economic and Social Committee and President of SEPLIS, said that it was up to the liberal professions of Europe to define their role, otherwise the EU Commission might do so without their participation. Dr Tiemann said the EU may soon move to codify a definition of the liberal professions, and there should be strong input from within the professions, in order to protect their codes of ethics.

Dr Tiemann was speaking as President of SEPLIS (The European Secretariat of the Liberal Intellectual and Social Professions), on which the Irish professions are represented by the Inter-Professional Group. "Recent polls revealed that SEPLIS represents some 4 million liberal professionals in the EC, who generate 10% of its GNP and employ 10 million people," she said, "and yet there are proposals to the Commission which make no distinction between liberal professionals and service industries as regards consumer protection and competition".

Dr Tiemann argued that it was an essential if there was to be a free Europe that there was respect for the liberal professions and that their unique characteristics were recognised and valued. The role played by liberal professions was essential in guaranteeing the freedom of Europe's citizens and protecting the freedom of individual determination.

She described the essential characteristics of liberal professions. First of all, they were highly individualistic and thus hard to govern, but this was a good thing since too many people were too easy to govern. Professionals were highly qualified and responsible for their acts. They were independent and had professional autonomy. They were bound only by the welfare of their patient or client; orders from the State or third parties were not material. They followed codes of professional ethics. They were an integral part of a liberal social order, for example, in the Eastern European States there had been no democracy and thus no professions because there was no place for professions. She said Europe was not only about achieving a single market; if Europe was to be a real community and one with which people could identify, it would have to be a European society with more freedom, democracy and transparency. The liberal professions were essential in guaranteeing these qualities and therefore the liberal professions had an important role to play in developing Europe.

L-r: Michael V. O'Mahony, then Senior Vice-President of the Law Society; Dr. Susanne Tiemann, Chairman of the EC Economic Committee and President of SEPLIS; John Fish, then Chairman of EC & International Affairs Committee, Law Society, and Noel Ryan, Director General, Law Society.

Dr Tiemann warned that the main threat at European Union Commission level concerned the possible resurrection of a proposed EU directive on liability for providers of services, as a counterpart to the existing directive on product liability. These moves would ignore the protection and quality assurance offered to consumers through systems of professional qualification, specialisation and continuing in-service education, which are now as much a part of the ethos of the liberal professions as are the traditional codes of ethics which define the duties of professionals to their clients. She said that, as yet, European policy makers were not convinced of the distinction between liberal professions and commercial enterprises. It was the main goal of SEPLIS to bring to the fore the importance of the independence of liberal professions and much work needed to be done to make policy makers in the EU Commission aware of these important distinctions.

Instead of merely reacting to this threat, said Dr Tiemann, the professions should take a positive attitude to their role in the future Europe. They play a substantial role in the Economic and Social Committee, which is the consultative assembly of the EU, representing various categories of citizens in their professional and social capacities and advising the EU Council of Ministers on Commission proposals. The Committee is described by Commission President *Jacques Delors* as "guarantor both of economic and social democracy and of transparency in the construction of Europe," Dr Tiemann stated. ❐

Barbara Cahalane

WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 50% of all deaths in Ireland.

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Service and Research.

IF YOU WILL

Remember the IHF when you are making your will – you can contribute to our work without losing capital or income during your lifetime.

IRISH HEART FOUNDATION
4 Clyde Road, Dublin 4
Telephone: 01-6685001

IHRB

HEALTH RESEARCH BOARD

The Health Research Board (formerly the Medical Research Council of Ireland) funds research into the major health problems affecting Irish society. Its current programme includes research which aims at developing improved treatments for **Alzheimer's Disease, Leukaemia, Asthma, Arthritis, Schizophrenia, Stroke and AIDS.**

All research grants are awarded strictly on merit and the Board has a well deserved record of scientific achievement.

When making your will you can assist the vital work of the Board by making a donation or bequest to:

The Health Research Board,
73 Lower Baggot Street,
Dublin 2.
Tel: (01) 6761176 Fax: 6611856

Commercial property values are about as consistent as Irish weather.

The value of property fluctuates according to supply and demand and is constantly changing. Sherry Fitzgerald have a wealth of experience and detailed knowledge of the techniques of valuation plus up to date information on market conditions to carry out.

ASSET VALUATIONS
RENT REVIEWS FOR LANDLORD OR TENANT
RATING APPEALS
LEASE RENEWALS
CAPITAL TAXATION
ARBITRATION/EXPERT WITNESS

A call to Gordon Gill or Sean McCormack will give you an accurate forecast.

Sherry FitzGerald

Sherry FitzGerald · Commercial
17 Upper Ely Place · Dublin 2
Tel 661 9900 · Fax 661 9909

Legal & General
Office Supplies

PEOPLE AND PLACES

Legal & General
Office Supplies

Members of the Dublin Solicitors Bar Association on their recent trip to Florence, Italy.

At the presentation to the Solicitors Benevolent Fund of the proceeds of the Soccer Blitz 1993, organised by the Younger Members' Committee were l-r: Michael Doyle, Branch Manager (Liffey Street), EBS; Orla Come, Vice-Chairman, Younger Members' Committee; Raymond Monahan, then President of the Law Society and Andrew Smyth, Chairman, Solicitors Benevolent Fund.

At the prize-giving after the recent Western Lawyers Golf Society outing were Joe Daly, Investment Bank of Ireland (left), congratulating the winner, Kevin Geraghty, Solicitor, Galway (right). Also pictured (centre) is Rory O'Connor, Solicitor, Castlebar.

The winning team from McCann FitzGerald in the recent FLAC tennis tournament. Back row l-r: Padraig Cronin, Aine Connolly, David Glynn. Front row l-r: Francis Hackett, Fiona O'Beirne, Susan O'Halloran, Michael O'Reilly. (Missing from photo: Siona McCinna).

LEGAL & GENERAL
OFFICE SUPPLIES
YOUR CHANCE TO PURCHASE THE
486SLC NOTEBOOK
£1250 + VAT
80mgb ▲ 2mgb Ram ▲ 33mhz
Carrying Case ▲ DOS 6 ▲ Windows 3.1
OFFER ENDS DECEMBER 22ND
CALL NOW ON 01-872 5522
OR VISIT OUR SHOP IN THE FOUR COURTS

Recently, Laois Bar Association held a dinner and presentation to honour Paul Ryan, Solicitor, who has been in practice for 50 years. The photograph shows l-r: Charles Flanagan, TD; James E. Cahill, County Registrar, Laois; Paul Ryan, P.P. Ryan & Co.; W. R. White, President, Laois Bar Association, and David Bell, a life-long friend of Paul Ryan.

COMPANY SERVICE OF THE LAW SOCIETY,
BLACKHALL PLACE, DUBLIN 7

• Fast • Members of Express Service
• Efficient • Competitive Prices • Friendly

Private Limited Company	–	10 days, £265
Guarantee Company	–	10 days, £285
Shelf Company	–	10 mins., £265

Phone: CARMEL or RITA
at 671 0711, Ext. 450 Fax: 671 0704

Exempted "Towns" Under section 45 Land Act, 1965

The requirement to obtain consent under section 45 of the Land Act, 1965 to the vesting of an interest in land does not apply to land situate in a County Borough, Borough, Urban District or Town. A difficulty can sometimes arise in identifying whether a particular conurbation is in fact a "Town" within the meaning of the Section.

The list below has been kindly provided to the Society by *John Geraghty*, Solicitor in the Land Commission, to whom our thanks are due.

N.B.

(a) While the Towns listed comprise Scheduled Towns. Non-Municipal Towns and Towns within the meaning of the Towns Improvement (Ireland) Act, 1854, for the purpose of the Certificate one need only use the word "Town".

(b) As the Certificate is analogous to an averment in an affidavit it is a matter for the purchasers and/or their solicitors to satisfy themselves that the property is situate within the relevant boundaries of exempted areas.

Please note that all applications for section 45 and section 12 Land Act, 1965 consents should be addressed to:
Irish Land Commission,
Government Buildings,
Farnham Street,
Cavan.

Section 45, Land Act 1965
County Index to Exemption

Counties	County Boroughs	Boroughs	U.D.Cs	Towns
Carlow	–	–	Carlow	Muine Beag, Tullow
Cavan	–	–	Cavan	Bailieboro', Belturbet, Cootehill
Clare	–	–	Ennis Kilrush	Ennistymon, Kilkee, Shannon
Cork	Cork	–	Clonakilty Cobh, Fermoy, Kinsale, Macroom, Mallow, Midleton, Skibbereen, Youghal.	Bandon, Bantry, Blarney, Dunmanway, Kanturk, Millstreet, Mitchelstown, Passage West, Rathluirc (Charleville).
Donegal	–	–	Buncrana Bundoran Letterkenny	Ballybofey, Ballyshannon, Carndonagh, Donegal, Killybegs, Moville.
Dublin	Dublin	Dun Laoghaire	–	Balbriggan, Blanchardstown, Clondalkin, Lucan-Doddsboro', Malahide, Rush, Skerries, Swords, Tallaght
Galway	Galway	–	Ballinasloe	Athenry, Clifden, Gort, Loughrea, Tuam

(Continued overleaf)

Return of Allotment of Shares

The Companies Office have introduced a new form B5 which is a combination of the old form 45 and the Revenue Commissioners form 26. The new form eliminates the need to lodge two separate forms when an allotment of shares is made.

The new form was introduced with effect from the beginning of November, 1993. The Companies Office will, however, continue to accept returns of the old form 45 for a limited period after that date.

The new form B5 ought to be lodged with the Revenue Commissioners, Companies Capital Duty Section, Dublin Castle, who will assess the capital duty payable and collect both the duty payable and the Companies Office IR£5 fee. The Revenue Commissioners will forward the form to the Companies Office for registration.

The Company and Commercial Law Committee has made representations to the Companies Office concerning the new form B5.

Counties	County Boroughs	Boroughs	U.D.Cs	Towns
Kildare	–	–	Athy, Naas	Celbridge, Kildare, Leixlip, Maynooth, Monasterevin, Newbridge
Kilkenny	–	Kilkenny	–	Callan, Castlecomer/ Donaguile, Graigenamanagh/ Tinnahinch, Thomastown
Kerry	–	–	Killarney, Listowel, Tralee	Ballybunion, Cahirciveen, Castleisland, Dingle, Kenmare, Killorglin
Laois	–	–	–	Abbeyleix, Mountmellick, Mountrath, Portarlington, Portlaoise
Leitrim	–	–	–	Carrick-on-Shannon
Limerick	Limerick	–	–	Abbeyfeale, Killmallock, Newcastle West, Rathkeale
Longford	–	–	Longford	Granard
Louth	–	Drogheda	Dundalk	Ardee
Mayo	–	–	Ballina, Castlebar, Westport	Ballinrobe, Ballyhaunis, Claremorris, Swinford
Meath	–	–	Kells, Navan, Trim	–
Monaghan	–	–	Carrickmacross, Castleblaney, Clones, Monaghan	Ballybay
Offaly	–	–	Birr, Tullamore,	Banagher, Clara, Edenderry
Roscommon	–			Ballaghaderreen, Boyle, Castlerea, Roscommon
Sligo	–	Sligo	–	–
Tipperary	–	Clonmel	Carrick-on Suir, Cashel, Nenagh, Templemore, Thurles, Tipperary	Cahir, Fethard, Roscrea
Waterford	Waterford	–	Dungarvan,	Lismore, Portlaw, Tramore
Westmeath	–	–	Athlone,	Moate, Mullingar
Wexford	–	Wexford	Enniscorthy, New Ross	Gorey
Wicklow	–	–	Arklow, Bray, Wicklow	Greystones/Delgany, Rathdrum

Fees Payable to Companies Registration Office

Attention is drawn to Companies (Fees) (No. 2) Order, 1993 (SI 241/1993) which increased the fees payable to the Companies Office with effect from 26 October, 1993. The fees payable in respect of annual returns are unchanged where the annual return is filed up to 77 days after the date the return is made up to. Thereafter the fee is increased to IR£50 (up to 31 October, 1994); IR£100 (up to 30 October, 1995); and to IR£150 thereafter. The increase is, in effect, a penalty on late filing of annual returns.

Compulsory Winding Up

Mr. Justice Murphy has recently held that a solicitor acting for a petitioner ought not to act for the Official Liquidator without first obtaining Court approval.

Company and Commercial Law Committee

Correction – Tax Amnesties

Readers are requested to note that the practice note published by the Taxation Committee at page 295 of the October, 1993 issue of the *Gazette* is inaccurate as regards expiration dates for the amnesty.

The deadlines for declarations for the *incentive amnesty* has been extended to 21 December, 1993; the deadline for payment is 14 January, 1994. The incentive amnesty covers personal income tax, surtax, capital gains tax, income levy, health contributions, and employment and training levies, up to 5 April, 1991. The incentive amnesty enables individuals to dispose of their liabilities by paying 15%.

The *general tax amnesty*, which extends to companies and other taxable entities, provides a waiver of interest and penalties on all taxes up to 5 April, 1991 provided returns are made and amounts outstanding paid by 14 January, 1994 (and not on 30 November, 1993 as incorrectly stated).

Both amnesties contain detailed pre-conditions and an outline may be obtained from the Revenue

(Continued on page 404)

Society's Submission rejects proposal to cap injuries awards

On 24 September, 1993, the Law Society made a submission to Government arguing against the proposal by the Minister of State for Commerce and Technology to limit the amount that could be paid in compensation for personal injuries. The submission is summarised below:

Part I – Society's recommendations to reduced insurance costs

- The Society's submission makes it clear that the solicitors' profession supports the view that there is a need to address the high cost of insurance, and especially motor insurance, in this country. The only argument is with the Minister's approach which is incorrectly focused on awards for pain and suffering rather than examining the reason for the high level of **claims** and taking action to reduce accident levels. Thus, the Society's submission makes a number of suggestions and endorses proposals which have been made in the past that are aimed at reducing the cost of insurance but upon which the Government has failed to act *(Section 1)*

- A Coopers & Lybrand report points out that, although accident levels here are lower than the UK, there are two and a half times the number of fatalities in Ireland and 1.25 times the number of serious injuries on the roads in Ireland compared to the UK. The principal reason for this is, in the Society's view, the poor condition of Irish roads and inadequate enforcement of road traffic regulations. *(Section 5)*

- The MacLiam Report of 1982 showed that there was evidence to suggest there was a higher level of **uninsured driving** in this country than other European countries. As far as the Society is aware, the incidence of uninsured driving in this country has not abated. This problem cannot be tackled seriously unless additional resources are devoted to enforcement and the penalties for uninsured driving are substantially increased. *(Section 6)*

- A number of the recommendations of the MacLiam Report remain to be implemented including measures to improve the efficiency of the motor insurance industry itself. A recent publication suggested that for every £100 paid in premiums almost £50 is spent by insurance companies on administration. That publication also suggested that motor insurance in Ireland has produced a profit every year except one from 1979 to 1989 and that the average cost of insurance-settled claims in Ireland was less than £2,500 per claim. *(Section 6)*

- Much greater attention should be paid to road safety, particularly through the elimination of accident blackspots (for example, the bridge at Ballymascanlon, Co. Louth which tragically has claimed eight lives in recent years) and that specific measures should be taken to improve the standard of driving and the repair and maintenance of vehicles. The MacLiam Report (eleven years ago) recommended the annual testing of private cars which are more than three years old. *(Section 6)*

- The Society also supports a recommendation in the MacLiam Report that the possibility of introducing a form of structured settlements, under which compensation could, in certain circumstances, be paid by means of an annual annuity instead of being paid in one large lump sum, should be considered. This has now been recommended by the Law Reform Commission. *(Section 7)*

- The Society also urges that greater attention should be paid to safety in the workplace so as to reduce the high incidence of injuries caused to people at their place of employment. Responsibility for this lies principally on employers. *(Section 8)*

- The administration of the courts also needs to be improved so as to reduce delays in the hearing of cases and to reduce costs. **The Society has recently made a major submission to the Minister for Justice on this matter.** *(Section 6)*

Part II – Summary of the Society's criticism of the Minister's proposal

- The Minister appears to believe that awards for pain and suffering in Ireland are substantially out of line with the EC average based on the findings of a report by Davies Arnold Cooper. But the Society's submission shows that the report is unreliable, being a subjective assessment of the compensation levels that would be payable in two atypical hypothetical situations; it does not purport to be an examination of actual awards made in real cases in the EC countries surveyed; and, indeed, the report itself makes it clear that the figures are more in the nature of guesswork than scientific data. Furthermore, a close examination of the survey shows that it is not certain that like is being compared with like in the European countries surveyed since they have different legal systems, different methods of assessing loss and defining pain and suffering and, in some cases, different regimes for treating injuries caused by car accidents. *(Section 2)*

- The Society questions the Minister's view that Irish levels of damages

are excessive. According to the Davies Arnold Cooper Report, an Irish court would be likely to award £83,000 in compensation for pain and suffering to a 20 year old woman who had suffered loss of eyesight in one eye with resultant cosmetic disfigurement. The Minister's proposal would mean that such a person would receive approximately £25,000 – the so-called EC average. Would this be generally regarded as adequate or fair? In the Society's view, £25,000 for pain and suffering for the loss of an eye with permanent disfigurement for a 20 years old woman would be totally inadequate and unfair. The Society believes that Irish levels of damages for pain and suffering come closer to providing realistic compensation for the trauma and distress that is endured by persons who suffer such serious injuries. *(Section 3)*

- There is a substantial risk that any attempt by the legislature to set limits on compensation awards would be held to be unconstitutional. It could be contended that such legislation would interfere with the rights of people to have full access to the courts to vindicate their legal rights and would discriminate unfairly between different classes of litigant. Under the Constitution, the administration of justice is vested in the judiciary and not in the legislature or executive. *(Section 4)*

- The experience in America is relevant to Ireland since there are marked similarities between American constitutional law and Irish constitutional law. The courts in a number of the American States have held that statutes which purported to place caps on awards were unconstitutional on various grounds. The submission sets out details of a number of American cases. *(Section 4)*

- There is no evidence from those American States where a cap has been imposed that it has led to any reduction in the cost of insurance.

- The Society acknowledges that there is a link between the amounts that insurance companies pay out by way of compensation and the cost of insurance. It says, however, that pain and suffering awards account for **less than half** of the total paid out and, therefore, placing a cap on awards for pain and suffering would reduce the payouts by insurance companies by very little. If the Government were to cap pain and suffering awards at, say, £100,000 (and it would surely by unconscion–able to contemplate a cap below that) it would make very little difference to the costs of insurance companies and, consequently, to a lowering of insurance rates because the vast majority of personal injury actions are settled without recourse to trial and most case come within the jurisdiction of the Circuit Court which now stands at £30,000. Available evidence suggest that awards for pain and suffering exceed £100,000 in only a very small proportion of cases. *(Section 5)* A recent publication suggests that the average cost of insurance-settled claims in Ireland in the period 1979-1989 was less than £2,500 per claim. *(Section 6)*

Society argues more needs to be done to prevent accidents on the roads.

- It is unfair of the Minister to seize upon one factor in the overall cost of insurance, namely, damages awarded for pain and suffering in personal injury cases, and single that out as the sole way of reducing insurance costs. If the proposal is carried through, all it will do is shift the burden from the insurers, who represent those who are usually at fault, onto those who are insured who are usually not at fault. *(Section 5)*

- Statutes which would freeze levels of compensation at a particular point in time would quickly become outdated and unworkable and, unless there were continuously updated, would be bound to create injustice. *(Section 8)*

- In the not too distant past, the task of assessing damages was left to juries. Then the view was taken that juries were getting it wrong and the task was taken from them and given to judges alone. Now there is a view that judges are getting it wrong and that they must be told how it should be done. It is time to stand back and ask where is all this leading to? The onus is on the Minister to show that his proposal would, in fact, lead to a reduction in insurance costs. He has not discharged that onus. The proposal is without merit. *(Section 8)*

Note

A copy of the full text of the submission is available to members of the Society on request to Mary Kinsella at the Law Society. ❐

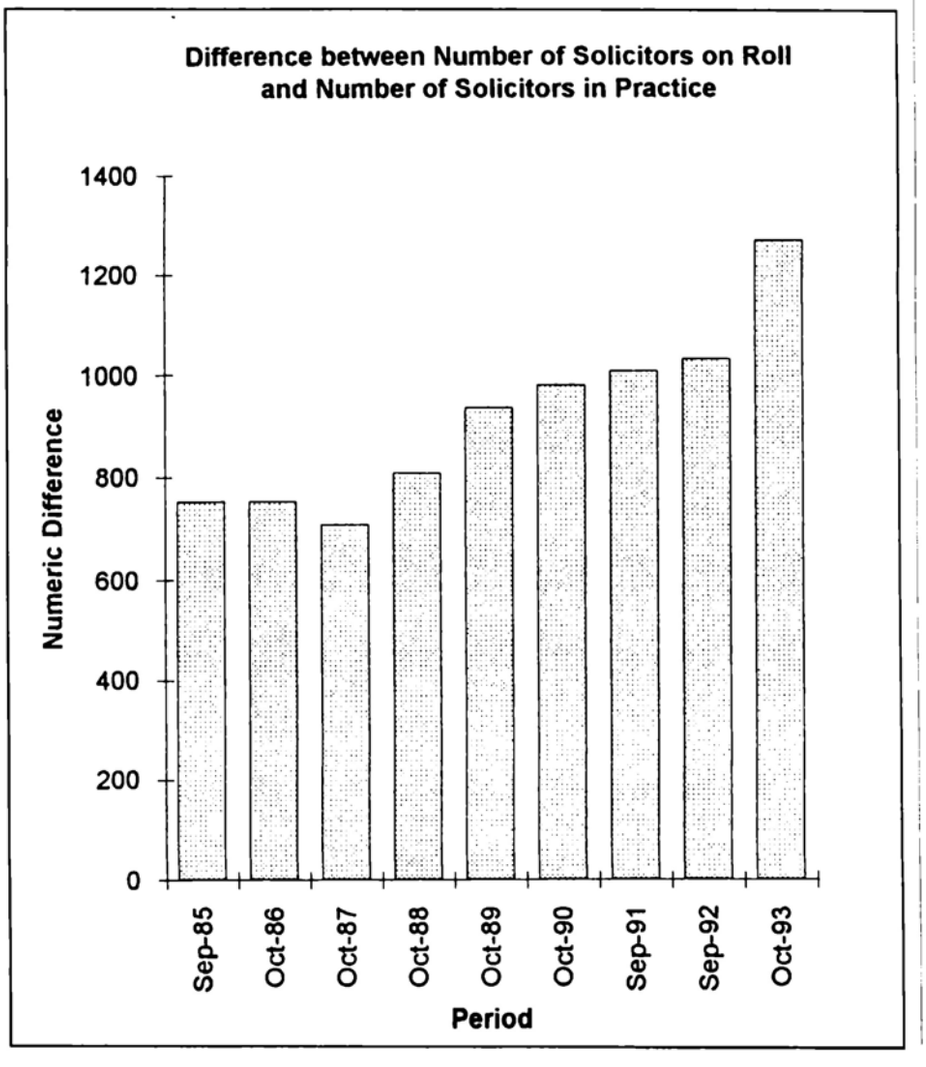
SURVEILLANCE
Discreet Listening and Recording Equipment
Telephone For 1993 Catalogue
Pegasus (01)2843819

Alternative Careers for Solicitors

Law School launches employer campaign

Word on the street is that choosing a career as a solicitor these days is something of a hazard. Indeed, one wag recently suggested renaming 'How to Become a Solicitor' – the Society's Law School booklet – 'Why Become a Solicitor?' In spite of the humour, the remark nevertheless carries a real sting in its tail and sums up the present-day reality being experienced by many would-be practitioners in the profession.

The graph below illustrates the numeric difference between the number of solicitors holding practising certificates and those on the Roll for the period September 1985 - October 1993. Although the last period spans thirteen months and shows a striking rise in solicitors not in practice, an equivalent earlier thirteen month period ending in October 1986 indicates no such rise. How this difference is made up we are currently unable to say: generally numbers include solicitors on career breaks, on maternity leave, in retirement or unemployed, those engaged in alternative careers and, perhaps, some newly-qualified solicitors who have not yet taken out practising certificates. It is in the area of alternative careers for solicitors where the Society's Law School sees the greatest scope for alleviating the pressure currently being experienced by the profession. In conjunction with the Employment Register a campaign is being launched over the coming weeks to persuade employers of graduates to consider recruiting solicitors to non-legal positions. 'It will be a vigorous campaign to which we anticipate a good response. The service being offered to potential employers will be free of charge and many benefits they may expect as a result of recruiting solicitors - contrary to both the zeitgeist and general recruiting practice - should more than breed its own success," said *Hazel Boylan*, Careers Adviser. "More than 95% of people on the Register have indicated they would like to be considered for alternative careers. Indeed, part of the drive is to alter people's thinking – both solicitors and potential employers – to recognise that solicitors are highly educated and professionally trained individuals with a great deal to offer in spheres other than private practice."



The focus will be to market solicitors as individuals who, for example

- can meet the challenges of a wider range of career opportunities,
- have the ability to think or conceptualise critically
- have the ability to identify pitfalls before they occur such as in negligence, nuisance or libel, in breach of contract or statutory duty
- understand the domestic and EC legal environments and legal obligations, such as employers' liability.

To back this up and to respond to requests for CVs by users of the Employment Register, there is an *urgent* need for solicitors seeking jobs to reshape their résumé to address the

(Continued on page 407)

from Butterworths

Butterworth Ireland Ltd.,
26 Upper Ormond Quay,
Dublin 7.
Tel (01) 8731555
Fax (01) 8731876

NOW IN ITS THIRD EDITION!

KELLY'S THE IRISH CONSTITUTION

Publishes December 21st

Now fully revised and updated
by
GERARD HOGAN
and
GERRY WHYTE

£65.00
ISBN 1 85475 150 6
Hard cover c.1300 pages

The standard commentary on Ireland's basic law.

- Bookshop open at Ormond Quay, Dublin. (100 metres from the Four Courts) Open 9am -5.30pm through lunch.
- Orders welcome by telephone and fax. Access and Visa accepted.
- Or talk to your local area manager who will advise you on this, and other, Butterworth titles.

Dublin area:
Madeleine Roche
(01) 324289
or
088 597659

Lawyers Desk Diary 1994

Now Available

TWO FORMATS

A4 Page -a -day @ £20 each

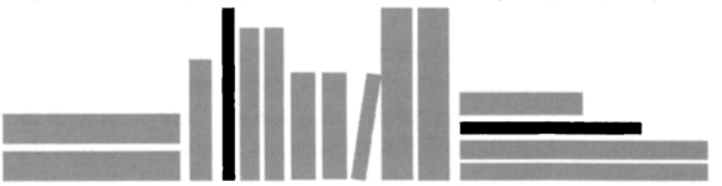
&

A4 Week-to-view @ £12 each

See Order Form enclosed or send cheque to *Oisín Publications, 4 Iona Drive, Dublin 9.* with your requirements

An Ideal Christmas Gift!

BOOK REVIEWS



Divorce in Ireland Who Should Bear the Cost?

By Peter Ward, Cork University Press, 1993, 72pp. IR£3.95, softback

"Divorce impoverishes women and children - Vote No". The first line of *Peter Ward's* pamphlet on *Divorce in Ireland – Who should bear the Cost?* brings back vivid memories of the 1986 referendum campaign when argument and counter argument were proffered by the pro and anti-divorce lobbies.

The Programme for Government contains a commitment to hold another referendum and it is commonly believed that this will take place in the Spring or Autumn of 1994. The debate is therefore starting again. Although Peter Ward makes no secret of his view that the introduction of divorce is long overdue, this does not detract from his courageous attempt to look at this subject as objectively as possible and to provide us with information on the extent of marriage breakdown in this country and empirical evidence on how our statutory remedies work in practice. He also examines the international trends in child support.

The theme of Peter Ward's booklet is that it is marriage breakdown and separation that causes poverty for women and children post separation, and not divorce itself. Marriage breakdown is alive and well and thriving in Ireland and it defies logic to believe that the retention of the constitutional ban can somehow render us immune from the deleterious financial consequences of this situation. In our peculiar way, we hide behind the ban on divorce and fail to address the problem of financial hardship as a result of marital breakdown. We believe that, somehow, no divorce protects us.

Peter Ward tries to establish the extent of marriage breakdown in Ireland. This is not an easy task. The sources for the statistical information are scattered and even the Government White Paper on Marital Breakdown concedes that the figures may be understated. He also examines the research from the UK and US on the level of support awarded to dependent spouses and also refers to his previous study on the financial consequences of marital breakdown. It is clear from an examination of the evidence that the consequences of divorce are the same as the consequences of marriage breakdown. All the studies show the low amounts of maintenance awarded by the Courts and the high rate of default whether in the context of divorce or separation.

A useful examination is also made of the legal obligation to support. It should be noted that the obligation is spousal and not just that of a husband. Sadly, this has not always been accepted by women whose financial circumstances are superior to those of their husbands. The 1976 maintenance legislation and the 1989 Judicial Separation Act focus on the discretionary nature of the relief, which has led to wide variations in awards and makes it difficult for practitioners to advise their clients in advance with any certainty on what level of maintenance they may be required to pay. Such opportunities as have been presented to the higher courts to establish firm principles have not been used to do so.

Perhaps the most interesting chapter is the one on Social Welfare. With the established difficulties in obtaining and enforcing realistic maintenance awards, social welfare payments constitute the main source of income for women and children. Some progress was made in 1990 in eradicating the complex categories of reliefs available with the introduction of the Lone Parent Allowance which provides a single payment to all lone parents who qualify irrespective of the sex of the parent or the cause of the lone parenthood. Furthermore, the 1989 Social Welfare Act introduced a new concept of a 'liable relative' who may be pursued by the Department to refund or make a contribution to the overall cost to the exchequer of these payments. There continue to be anomalies in the system. Many of these were highlighted by the Commission on Social Welfare which reported in 1896. The report was published in advance of the referendum campaign but it stated that, if divorce were introduced, a more thorough review of income support for lone parents would be required. Sadly, the White Paper on Marital Breakdown says nothing on this point save that it will have to be reviewed but with no indication of the Government's thinking on this critical issue.

Ireland, like the rest of the Western world, shares the phenomenon of changing family structures, marriage breakdown and the consequent poverty of lone parents. Although recent reforms in the law and social welfare code have assisted there has been no comprehensive review. Perhaps the debate on the introduction of divorce will provide the opportunity to fundamentally reassess the situation. Peter Ward's book aims at a better informed debate for the next divorce referendum. His publication certainly assists this end and succinctly identifies the issues that must be addressed.

Muriel Walls

Business Law

By A.J. King and J.S. Barlow, London, Blackstone Press Ltd., 1993, XI + 297pp, paperback, large format, £14.95 sterling.

It has been said that the experienced businessman knows that if he is going

to accomplish big things he must do so, per force, with the assistance of mediocre men, prima donnas, self-seekers and, unless he is unusually lucky, a smattering of idiots. It may be argued that the measure of the success of a businessman is based on his ability to blend this uncompromising amalgam into a working team which will get the job done with a minimum of mayhem. Whatever about the inevitability of mediocre men, prima donnas, and self-seekers, few businessmen can survive without reference to lawyers. The businessman is not expected to have a knowledge of business law, but he or she must know when to consult a lawyer and to abide by rules of law.

Blackstone's *Business Law Guide* is based on the long established *Solicitors and their Business Clients* book which was aimed at the "Business Organisations and Insolvency" syllabus of the UK Law Society's Final Examination. That book has now been revised and rewritten to meet the demands of the UK Legal Practice course.

The first part of the Guide deals with partnership law and practice. The second part deals with company law and practice. In each of these parts, the authors have concentrated on the essential background law which all trainees must study for the UK Law Society's Legal Practice course. The third part of the Guide deals with taxation. Taxation is examined both from the point of view of the business itself and from the point of view of the proprietors and investors in the business. There is also a short section in the Guide on EU law. Insolvency (both in relation to individuals and companies) is dealt with in a separate part of the Guide. The last part of the Guide considers, *inter alia*, shareholders' agreements, debentures, making and interpreting a company search, accounts, sale of a business to a company, public companies and distributorship or marketing agreements.

Having read the *Business Law Guide*, one comes to an inevitable conclusion: practitioners in Ireland would benefit enormously from the publication of the law and materials which are available to Apprentices on the Professional Course and Advanced Courses of the Law School of the Irish Law Society. As the law changes, a new edition could be brought out. With desk top publishing, it has never been easier to publish material from an in-house base. One appreciates that there are economies of scope and scale which make it easier for institutions to publish such guides for the United Kingdom market. However, consideration should be given to a similar series in Ireland. Other titles in Blackstone's *Legal Practice Course Guides* relate to civil litigation, conveyancing, criminal litigation, lawyers' skills, wills, probate and administration.

Dr Eamonn G Hall

Adoption Law and Practice

By Kerry O'Halloran BL, LLM, Msc, (COSW), Butterworths Ireland Limited, Dublin 1992, £40.00 Hardback.

The preface to this bound book announces that the prevalence of adoption in Ireland and its importance to so many is not reflected in the published material available. To those practitioners who deal with this area of law on a regular basis and indeed to all practitioners, these words will ring very true. Practitioners are well served by Alan Shatter's *Family Law in the Republic of Ireland* and Paul O'Connor's *Key Issues in Irish Family Law*, however these excellent works do not focus exclusively on adoption law and practice although they are in themselves invaluable finger posts for the searching practitioner.

This is the first Irish book exclusively devoted to the area of adoption and on that basis alone this reviewer purchased the book as soon as it became available. The cover of the book is remarkably similar to that of *Marriage Breakdown in Ireland* by Duncan Scully, well known to practitioners as one of the most readable and practical of text books.

Adoption Law and Practice is divided in to three main parts. Part one dealing with the adoption process, part two with the procedures and forms, and part three with the legislation in force.

Part one of the book deals with the adoption process and is a very challenging read for the legal practitioner. The author comes from a background in social work and law. The book endeavours to satisfy the requirements of both disciplines. Legal practitioners may well find this part of the book somewhat esoteric in that the sociological and conceptional analysis at times obscures the description of the process being outlined. Significantly, despite this academic slant, the work does not contain a detailed analysis of the case law although it does very usefully cite many unreported judgments. Unfortunately, the text offers limited guidance to the practitioner dealing with the practical problem of advising an unmarried father who wishes to obtain guardianship rights under the 1987 Act or, indeed, a single mother who wishes to resist such rights being conferred by virtue of her desire to marry and adopt her child into the new family unit.

Issue could also be taken with the author's reference to the legal position in England which at times can be confusing if not followed through by the reader.

Part two of the book deals with the procedures and forms most frequently dealt with by practitioners and drawn from the Adoption Rules, Rules of the Superior Courts, Adoption Board circulars and inter-agency practice guidelines. There is cross referencing between parts two and three making these sections of the book extremely useful. This part will be an invaluable reference for the practitioner in advising prospective adoptive parents as to what the procedure to be followed will be like and the current practice requirements. These may be more stringent than those set out in the legislation. It is very useful to be aware of the practice and current procedures in this area. The book acknowledges that the procedures set out in this part may well change. However, by bringing together an outline of current practice requirements and the sources

from which they are derived future adjustments may be more readily grasped.

There are currently six Adoption Acts in force, the 1952 Act remaining the principal one. Practitioners will find part three of this book very useful as it contains annotated Acts and Statutory Instruments in force at 31 July, 1992. This part of the book draws together "live" statutory provisions and the most important related Statutory Instruments. It does this by consolidating the entire body of adoption legislation in to a working version of the "Principal Act" while appending both the Adoption Rules 1991 (SI 247/1991) and the Rules of the Superior Courts (No. 1), 1991.

In summary this book is a useful addition to the practitioner's library. It is written by an author who has a background of legal training with social work experience. Part one of this book whets but does not entirely satisfy the appetite of the legal practitioner while parts two and three perform an invaluable service and are certainly of considerable benefit. As acknowledged in the foreword, the book draws together and sets out in a clear form the Acts as amended.

Rosemary Horgan

Gender and the Law in Ireland

Edited by Alpha Connelly, Oak Tree Press, Dublin, 1993, £14.95 Softback.

During August the Leaving Certificate results were published and in September, places in various third level colleges were allocated to our bright young students. I watched this with great interest as I knew of four young people who had sat the exam, two girls and two boys. The girls got very good results with very high points and the boys also did well, but their points were not quite as good. They have all been allocated places in third level education. However, it did give me pause for thought as to where these bright young teenagers will be in 25 years time.

The boys may very well be at the top of their careers and fulfilled, but what about the girls? They may be fulfilled, but, if they are to pursue their careers, with the same success as the boys, will it be in spite of the system rather than because of it?

Oak Tree Press, Dublin, recently published *Gender and The Law in Ireland* which is edited by *Alpha Connelly* and does to some extent deal with the many reasons why these two girls will not find their career path easy.

The book contains a series of articles on various aspects of the law and how it affects women. There are eleven articles, in all, and a foreword by The Hon Ms Justice *Mella Carroll*. These articles which are written by various different women with an interest in womens' affairs, include articles on the Constitution by the editor *Alpha Connelly*, the Legislative process by *Yvonne Galligan*, Labour Law by *Irene Lynch*, Social Welfare Law by *Aileen Donnelly*, Family Law by *Nuala Jackson*, Criminal Law by *Caroline Fennell*, Censorship and the Media by *Mary Kelly* and Women in the Legal Profession by the editor and *Betty Hilliard*.

The article on the Constitution by Alpha Connelly illustrates that the Constitution has not kept pace with social change, but then how could it; it has not been revised except for certain specific amendments in 56 years. The issues dealt with in that article are: voting and elections, citizenship, jury service, contraception, termination of pregnancy, parenthood, responsibility in criminal matters, employment, property, taxation and social welfare.

The article opines that one of the values to which Irish society subscribes is that of equality of the sexes but states that an examination of "the Irish Constitution and of its interpretation by the Irish Courts shows that there is a mismash between some of the provisions of the Constitution and the attainment of that goal". Reading the part of the article which deals with the development of the right to privacy in the Constitution which in fact derives from the right to contraception, it now seems hard to imagine that a woman had to bring an action as far as the Supreme Court to have such a right vindicated. A famous Irish solution to an Irish problem.

Another section of this chapter deals with termination of pregnancy and deals with the relatively topical cases of *"X" -v- the Attorney General* and the *Attorney General -v- Open Door Counselling* and *Others*. I suppose one sees another Irish solution to an Irish problem in that the law has dealt with the issue on the basis of "shall not limit freedom to travel between this State and another State". Part of this article deals with jury service and it is now hard to believe that even as late as the mid 1970s, a woman was not automatically called for jury service, but had to apply to have her name inserted on the jury list. Maybe we have progressed.

Another interesting section on the Constitution and Parenthood deals with the evolution of cases in relation to guardianship and the rights of unmarried fathers. The conclusions of this article point out the anomalies which have arisen over the years in that while womens' political rights to vote and to stand for election are guaranteed, the reality of the treatment of women in relation to parenthood and employment does make these rights somewhat superfluous. The article argues that the Constitution needs amending and revamping.

In the chapter on Labour Law, Irene Lynch deals with the drawbacks which women have suffered in the world of work and she blames particularly the marriage bar in the Civil Service and various attitudes of people towards working women. She deals with the history of employment legislation, brought in in the 1970s to improve the lot of workers and in particular women, and deals in a very interesting way with many of the cases that were brought before the Employment Appeals Tribunal and to Court in the intervening years. However, her conclusions are somewhat pessimistic in that she feels that this legislation is

(Continued on page 407)

Focus on Apprenticeships

One of the hallmarks of a profession is that it voluntarily undertakes the training of its future members. The approach of the Solicitors profession to this training – apprenticeship – needs to be more focused than it has been in the past. Before taking an apprentice, a practitioner eligible to do so under Section 29 of the Solicitors Act, 1954 should ask himself:-

1. Do I need help in my practice? If so, should I take on and train an apprentice or should I employ a newly qualified solicitor?

2. Do I have the time, the ability and the commitment to train someone who will be my future colleague?

3. If I decide that taking an apprentice is the better option, do I have the physical space, the secretarial assistance, and the back-up service for an apprentice?

4. Am I prepared to pay the apprentice a salary, knowing that the Council of the Incorporated Law Society has recommended an incremental scale, subject to review, for apprentices starting with £95 a week for the period before the apprentice embarks on the Professional Course in the Society's Law School and going up £115 a week in the period immediately after completion of the Professional Course?

5. Do I have a job – or the reasonable prospect of a job – for the apprentice when s/he qualifies as a solicitor?

The last question is probably the most important of all. Given the number of people who have qualified and are unable to find work as solicitors, no service is done to the student by giving that student a 'go nowhere' apprenticeship. Placement in apprenticeship must be related to anticipated placement in future employment.

The practice of some major firms, which offer excellent training, but who subsequently retain a mere fraction of their apprentices as qualified solicitors is one, I suggest, which should be reviewed.

A practitioner recently complained about the delay – currently until January 1995 – in securing a place in the Society's Law School for his recently indentured apprentice; in the same breath, he complained that "you up there in Blackhall Place are qualifying too many solicitors". A solicitor contemplating taking on an apprentice should be aware that the profession has expanded from 3,251 solicitors in 1983 to 5,220 in 1993.

Practitioners should take on an apprentice only for good reason; it is not a good reason if the practitioner is cajoled or arm-twisted by a valuable client into taking that client's son or daughter as an apprentice. A letter received in the Society's Law School from a young qualified solicitor bears repeating:-

"Too many recently qualified solicitors are:

1. unemployed and desperate, or
2. working for half nothing, or
3. hanging on after their apprenticeship, without a practising certificate and on apprentice salaries.

I feel that direction from the Law Society is needed."

The recruitment of an apprentice should be well thought out, and the recruitment process itself thorough. And of course, there must be some reasonable prospect of a job at the end of the line.

Professor Richard Woulfe,
Director of Education

Practice Notes – *Continued from page 396*

Commissioners. Incentive amnesty: Chief Special Collector, 26, Harcourt Street, Dublin 2. 01–4783777. General amnesty: Collector General, 2nd Floor, St. Martin's House, Waterloo Road, Dublin 4. 01–6688666.

The Taxation Committee regrets the inconvenience caused to members of the profession by its error.

Taxation Committee

Legal Aid Fees

The Criminal Law Committee would like to remind all solicitors of the Legal Aid Scheme who have completed cases in which Counsel were involved, to submit claim forms to the Department as quickly as possible. The Committee understands that in a number of cases, Counsel on making inquiries with the Department about delays in payment, have been advised that claim forms for the particular case were still awaited.

Criminal Law Committee ❐

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

C.C.R.
Legal Agents

Provide Professional and Comprehensive Service in Castle, Four Courts, Land Registry and all other associated offices
Fully Indemnified

23/24 Wellington Quay, Dublin 2.
Telephone: 679 4926/7
Fax: 679 4928.

Wishing all our clients a very Happy Christmas and a Prosperous New Year

Focus at AGM on Society's Finances

At the Annual General Meeting of the Law Society held on Thursday 11 November, 1993, questions were raised by some members of the Society about the increase in the Society's expenditure and particularly the level of the Society's current overdraft.

Geraldine Clarke, Chairman of the Finance Committee, summarised the Society's Statement of Income and Expenditure (as circulated to all members in the Annual Report). She said the Society's income had increased by 13% in 1992 while expenditure had increased by only 9%. The main area of increased expenditure was legal fees which was due to an increased number of cases presented to the Disciplinary Committee. However, there had been notable savings on controllable activities. She said the Society was very conscious of the fact that at the year end it had a high overdraft. However, for the greater part of the year the cash position was positive. The adverse cash position has arisen mainly from the capital expenditure programme in the past six years, in particular, expenditure of £1.7m on the maintenance and essential repair work on the building at Blackhall Place, refurbishment of facilities in the Four Courts, extension of the students' teaching centre, the computer system and photo copiers. The Council was examining measures to reduce the overdraft, including the possibility of a leasing arrangement or term loan. However, at the moment an overdraft was the most cost-effective form of finance. This was under constant review. Ms. Clarke said that in the current year (1993) the Society was on target to achieve a surplus of income over expenditure.

Jerry McCarthy made a number of suggestions about the Annual Report which, he said, was too long and did not present the information in a format which could be easily assimilated. He

suggested that pie charts should be prepared reflecting the sources of income and expenditure and bar charts which would show the variations in income and expenditure over a three to five year period. He noted that while income was up 13%, further analysis showed that income from practising certificates had increased by 18% while income from membership subscriptions had increased by only 2% and admission fees had declined by 15%. On the expenditure side, while the overall increase was 9%, establishment costs had increased by 14% and administration costs by 11%. He noted that in 1988 the proportion of total income received from practising certificates was 55%; by 1992 this had increased to 72%. He noted that the expenditure on pensions in 1992 had increased by 48%. Arguing that it was essential to control expenditure tightly, he said adequate budgetary control procedures should be introduced and supervised by the Council. A strategy group should be formed to look at financing the Society's long-term debt and, finally, a report should be prepared for Council setting out rolling financial plans on a three to five year basis which could then be reviewed on an annual basis.

Replying, Ms. Clarke said the reason for the increase in pensions was that the Society had received professional advice that, in common with many other employers, its senior staff pension scheme was under-funded. At this stage remedial action had been taken to provide the proper level of funding in order to comply with the Pensions Act and there was no question of expenditure on pensions increasing further. She explained that the main reason for the Society's overdraft was because of expenditure on premises. Over the past five years, £500,000 had to be spent on repairing the stonework. The advice received from the Society's financial advisers was that, at the moment, an overdraft was the most cost-effective strategy but other options were being assessed.

Michael Nugent expressed concern about the progression in administration expenses. He noted that payroll costs had increased by £50,000 but expenditure on postage and telephone was down and he queried whether this meant that less work was being done. He noted that while in the past the Law Society had no vehicles there was now a figure of £79,000 in the accounts for motor vehicles and he questioned how this had arisen.

He further noted that the building at

Blackhall Place was currently valued at £17m but that the Society had, over the years, spent several million on its renovation. He questioned whether the Society should move to a building that would require less maintenance.

Responding, the President of the Society, *Raymond Monahan*, said that the profession was very proud of the building and the purchase of a new building would cost at least as much. The Chairman of Finance said that the staffing of the Society had been adjusted in line with a report prepared, at the behest of the Society, by Price Waterhouse Consultants in 1991. The Society had purchased motor vehicles because this was more cost-effective than paying travelling allowances or expenses.

The timing of presentation of the accounts was raised by *Leo Mangan* who said that the accounts were now out of date since they dealt only with the year ending at 31 December, 1992 and thus, were presented too late to the profession to recommend remedial action. He said that the Society owed too much. FIve years ago the level of the Society's debt was £136 per solicitor. As the end of 1992 it was £681 per solicitor. He believed that costs on premises, computers and staff were spiralling out of control.

Mr. Mangan noted that under bye-law 3(2) of the Society's bye-laws the accounts for the preceding year had to be prepared no later than 31 March. He put a proposal to the meeting, seconded by Michael Nugent, that the accounts for the year ending 31 December, 1993, would be circulated to each member of the profession by mid-April 1994 and that a budget for 1994 should be prepared by the Finance Committee. The motion was defeated by 34 notes to 24 votes but the President of the Society stated that he would take into account the point being made by Mr. Mangan and the Society would consider the possibility of having the accounts for 1993 prepared in time for presentation to the half-yearly meeting of the Society.

Noting that the Society's payroll had increased by 60%, that Council and committee expenses had increased by 87% and conference and reception expenses by 61% since 1987, *Terence Liston* said he was disturbed by these trends and that he did not consider that expenditure was being well managed.

The Chairman of the Finance Committee assured those present that the finances of the Society were constantly under review, that budgets were prepared and monitored on a monthly basis and supervised carefully by the Council. The President assured members present that their concerns would be taken on board.

Public Relations

John Coffey said that public relations remained a very sensitive issue for the Society. He was sad to see such a poor turnout to an Annual General Meeting and he noted that only 2,501 of a potential 4,130 members had voted in the recent Council elections; this was an illustration of a degree of apathy which had to be addressed. He said more needed to be done in public relations terms to present the solicitors' profession as accessible, approachable and reasonable and as defenders of people's rights. He said that this image had not been sufficiently strongly portrayed in recent months. Many vested interest groups had attacked the legal profession and he was not satisfied that the Society had reacted strongly enough on behalf of the profession.

Pat Igoe commended the Society on its recent media coverage and he noted that many detractors of the profession had been less vociferous in recent months. *Michael Nugent* agreed and said that the Society's public relations had improved by 100%. Many good steps had been taken. He suggested that the Society should seek to obtain allies on important issues when appropriate and that the Society's submissions would be better received and would get better publicity as a result. Pat Igoe suggested that the Society should give further consideration to getting the message to second level students about the difficulty in qualifying as a solicitor at the present time and the poor prospects for newly-qualified solicitors.

Advertising

Desmond Moran said that it was time for a review of the Advertising Regulations. If trends in advertising, such as were to be seen in the Golden Pages, on the back of buses and to be heard on some radio stations, were permitted to continue then the profession would cease to be a profession and would become merely a trade. *Philip Joyce*, Chairman of the Registrar's Committee, agreed that the regulations needed tightening up and that this would be top of the Committee's agenda for the coming year.

Compensation Fund

Frank MacGabhann enquired whether it was known what the contribution to the Compensation Fund would be for the practice year 1994/95. The President replied that this was currently being assessed but had not, as yet, been finalised.

Criminal Law Committee

Mr. MacGabhan said that he would also like to compliment the Criminal Law Committee on an excellent year's work. However, he suggested a Civil Liberties Committee which would have a narrower focus. He believed that this could have a very good PR benefit for the profession.

Committee reports missing

Jerry McCarthy questioned why there was no report of the Staff Retirement Fund Committee, while *Patricia McNamara* enquired why a report of the Standing Committee on Policy and report of the Solicitors Acts Committee had not appeared in the Annual Report. The President pointed out that the Staff Retirement Fund Committee was a committee that dealt with pensions for staff employed by the Society and this point had already been dealt with. There was no report of the Standing Committee on Policy because he had not convened a policy committee meeting during his year of office. Instead, he had established a Compensation Fund Policy Review Committee and had initiated a review of admissions and education policy.

There had been no formal meeting of the Solicitors Acts Committee but the Society had been very active in discussing with officials of the department of Justice amendments to certain provisions that had been published in the Solicitors (Amendment) Bill, 1991 and the inclusion of further provisions considered necessary by the Society.

Premises

Given that there had been unexpected expenditure of £500,000 on the building and that this was a major contributor to the Society's current overdraft, and noting that the Society now appeared to require the purchase of an additional two buildings, *Jerry Sheehan* enquired whether there was a policy on premises. Replying, the chairman of the Blackhall Place Development Plan Committee, *Adrian Bourke*, assured Mr. Sheehan that there was a policy. The Society, as yet, had not acquired any new premises but the purchase of premises at Wood Lane would take place early in 1994. The Society had an option on a premises at Hendrick Place. Both buildings were directly adjoining Blackhall Place. He informed the meeting that sources of funding were being examined, including applications to the National Heritage Council and to the European Community. He said the Society, as a temporary custodian of one of the finest buildings to be seen anywhere in Europe, had a duty to maintain it. The policy in relation to the building at Blackhall Place was over time to try to enhance the facilities available for use by members.

"Capping" proposal

Bruce St. John Blake raised the issue of the proposal to 'cap' personal injury awards currently being promoted by the Minister of State for Commerce & Technology, Seamus Brennan, TD. He said it was essential that the Society should campaign strenuously against this proposal as he believed it would be difficult to deter the Minister. The Society must harness public support against the proposal and emphasise that a cap would not reduce insurance premiums. He said he believed it would be difficult to get the Minister to listen to this point as he seemed to attack anyone who criticised his proposals and simply stated that he would not yield to "vested interests". He asked that incoming President of the Society to pursue this matter as vigorously as possible.

Tribute to President

Desmond Moran proposed a vote of thanks to the outgoing President, Raymond Monahan, for all his hard work during his term of office. Mr. Moran said it was an onerous job that took enormous stamina. He said he would also like to propose a vote of thanks to *Eileen Monahan*. Seconding the motion of thanks, *William Devine*, said that he had never heard a critical word about Raymond Monahan. He had been an excellent representative of the profession in the media. He appreciated the great efforts that the President had made to attend Bar Association meetings around the country. He had been particularly impressed by the Annual Conference of the Society in Connemara and the manner in which Raymond Monahan had taken a personal interest in everybody attending. He praised the letter to members of the profession written by the President of the Society last April. Concluding, he thanked Raymond Monahan for raising the profile of the office of President. ❐

Barbara Cahalane

Book Reviews

(Continued from page 403)

somewhat of a fiction and that the anti-discrimination laws hide a bleak reality which leaves women isolated and frustrated.

As a solicitor myself, I was interested in the chapter on the legal profession. This article was based on statistical analysis and on interviews with many women in the profession. Having been in the profession myself for twenty three years, I would not necessarily agree with all of its conclusions but, like every other woman, I have experience the petty prejudices that have existed for many years in the profession and still exist.

One might feel that this book is of interest to women only. I don't believe so. I think it behoves anyone who is interested in the position of their wives and daughters before the law to read it. While one might not agree with everything that is stated in each chapter and the conclusions drawn, I feel that in a State, where overnight, condoms were miraculously no longer contraceptives (because mens' health was now affected) and, therefore, no longer prohibited; and in a State where equality has meant that women have the right to pay their costs but often little else; and in a State where successive Governments have failed to appoint qualified women to high office, we need more and more studies such as this not just to make progress – but to achieve equity.

Elma Lynch ❐

NORTHERN IRELAND AGENT
* Initial Consultation Free
* All forms of work undertaken
* Competitive Rates
* Consultation in Dublin if requested
* Legal Aid Available
Contact: Kevin J. Neary BCL
Donnelly Neary & Donnelly
Solicitors
1 Downshire Road, Newry,
County Down
Tel: (080693) 64611
Fax: (080693) 67000

Alternative careers for Solicitors

(Continued from page 399)

demands of the marketplace. What does this mean? It means focusing on the competencies individuals can offer to an employer, such as those listed above. New thinking by solicitors in the way information is presented in their CVs will greatly increase their chances of being called for interview both in private practice and in the wider careers market. As a pilot project, two CV development workshops have been organised to facilitate individuals in this undertaking.

Queries relating to any aspect of the Employment Register or alternative careers should be addressed to *Hazel Boylan*, Careers Adviser, at the Law School, Blackhall Place. ❐

Society Appoints Lay Observers

The Society has appointed *Lenore Mrkwicka* (on the nomination of ICTU) and *Frank Bracken* (nominated by IBEC) as lay observers to the Registrar's Committee. Ms. Mrkwicka and Mr. Bracken commenced attending meeting of the Registrar's Committee in October, 1993.

Lenore Mrkwicka

Lenore Mrkwicka originally qualified as a nurse and in 1985 joined the Irish Nurses Organisation as a full-time official and is currently a regional organiser with the organisation. She holds an MA in Industrial Relations and has been a member of the Executive Council of ICTU since 1981. She is currently chairperson of the Women's Committee (Republic of Ireland) of Congress. Ms. Mrkwicka has also been a member of the Employment Appeals Tribunal since 1981.

Frank Bracken

Frank Bracken is a Chartered Secretary and is a Fellow of the Institute of Chartered Secretaries. He spent most of his career with Cadbury (Ireland) in administrative and senior management posts and finally as Personnel Director. Since retirement he has done project work for IBEC, the business and employers' confederation, which nominated him as a lay observer.

Senior Solicitor (Professional Practice) Appointed

Linda Kirwan has been appointed by the Society as Senior Solicitor (professional Practice) with effect from 22 November, 1993. She was admitted to the Roll of Solicitors in 1979 and worked in private practice and as Education Officer in the Law School prior to joining the Society in 1989 as a solicitor in the Complaints Department. In her new position Linda Kirwan will have overall charge of the Complaints Department. Her duties will include reviewing the complaints caseload and acting as adviser to the Registrar's Committee on complaints-handling, including reviewing, from time to time, the Society's complaints procedures. She will also have special responsibility for liaising with the newly-appointed lay observers to the Registrar's Committee.

Doyle Court Reporters

Principal: **Áine O'Farrell**

Court and Conference Verbatim Reporting Specialists in Overnight Transcription

Personal Injury Judgements -Hilary and Easter Terms 1993 - Now Ready

Consultation Room Available

2, Arran Quay, Dublin 7. Tel: 8722833 or 2862097 (After Hours) Fax: 8724486

Excellence in Reporting since 1954

Annual Report of the Disciplinary Committee 1992/1993

New Applications to Disciplinary Committee			**26**
Law Society			
Prima facie cases found		5	
At Hearing			
Misconduct	1		
No misconduct	2		
Adjourned	2		
Private			
Prima facie case found		9	
Prima facie case not found		12	
At Hearing			
Misconduct	1		
No misconduct	5		
Adjourned	2		
Date for inquiry to be arranged	1		

Applications From Previous Year			**22**
Law Society			
At Hearing			
Misconduct	15		
Leave to withdraw after inquiry directed	1		
Adjourned generally	1		
Adjourned	1		
Private			
At Hearing			
Misconduct	1		
No misconduct	1		
Adjourned	2		

The Disciplinary Committee met on 17 occasions between 1 September, 1992 and 31 August, 1993.

The applications shown above were considered by the Committee during this period:-

Subject Matters of Complaints

- Civil Claims
- Conveyancing
- Probate
- Solicitors' Accounts Regulations

Main Grounds on which the Committee Found Misconduct

Each complaint contained a number of these grounds:

- Allowing a deficit to arise on a client account.
- Misappropriating clients' monies and utilising the monies for personal benefit.
- Making false and inaccurate entries in the books of account in order to conceal the deficit arising from the misappropriation of clients' funds.
- Allowing debit balances to arise on a client account.
- Making a false statement to a bank manager.
- Deliberately misleading and making false representations to the Society's Investigating Accountant in order to conceal misappropriation of funds.
- Not maintaining proper books of account.
- Delaying in processing a personal injury claim and allowing the claim to become statute barred.
- Failing to take proper action on behalf of clients in relation to their civil claims.
- Failing to adequately supervise his office and the attention to work by his unqualified staff.
- Delaying in handing over a file to a complainant.
- Failing to carry out the instructions of the complainants to complete the registration of the complainants' title.
- Delaying in the registration of his client's title.
- Misleading clients and the Society.
- Causing serious material loss and inconvenience to the complainants by failing to complete their instructions.
- Delaying in the extraction of a Grant of Probate.
- Failing to respond to enquiries raised by the executor.
- Failing to furnish any report to the complainant or to give any reason for the delay in the extraction of a grant of Probate.

- Failing to respond to enquiries raised by an executor.
- Failing to comply with undertakings.
- Failing to discharge the costs of his agent.
- Delaying in replying to the correspondence of the Law Society.
- Failing to furnish any adequate explanation to the complainants or to reply to correspondence.
- Failing to reply to the Law Society's correspondence or to furnish any explanation to the Society.
- Failing to attend meetings of the Registrar's Committee of the Law Society.

The High Court

For the first time the number of applications from members of the public to the Disciplinary Committee has surpassed those from the Law Society. As can be seen from the table (on page 409) 21 applications were made by members of the public compared with five new applications from the Law Society. The increase in the number of applications from the public would appear to indicate that it perceives and appreciates that the Committee is wholly independent of the Law Society and is anxious to promote and expects the highest degree of honesty and integrity from members of the profession.

The Committee which is constituted under the Solicitors Acts, 1954 and 1960, is composed of ten practising solicitors. The Committee's function is to hold an inquiry into the conduct of a solicitor alleged to have committed misconduct.

Misconduct is defined under Section 3 of the Solicitors Act, 1960 and includes:

(a) The commission of treason or a felony or a misdemeanour.

Petitions presented to the High Court between the 1 September, 1992 and the 31 August 1993		**9**
Names of solicitors struck off the Roll of Solicitors	2	
Censured, fined and costs	1	
Censured and costs	2	
Fined and costs	1	
Adjourned	1	
Awaiting presentation to the High Court		**3**

During the year under review eleven complaints against an individual solicitor were referred to the President of the High Court by the Disciplinary Committee and were presented by way of three Petitions to the High Court. The President made Orders (3) in respect of ten of the said complaints striking the name of the solicitor off the Roll of Solicitors. He also censured the solicitor in relation to the remaining complaint.

Petitions adjourned by the President of the High Court last year		**10**
Names of solicitors struck off Roll of Solicitors. Costs awarded	2	
Remitted to the Disciplinary Committee	1	
Severely censured, fine and costs	1	
Censured	1	
Censured and costs	2	
Respondent restrained from practising as a solicitor other than in the whole time employment and under the supervision of a solicitor who has been in practice for at least ten years, – the respondent undertook not to practise as a solicitor without further leave of the High Court. Costs awarded.	1	
Censured regarding his conduct as a solicitor and ordered to cease to practice other than as an assistant solicitor in the employment and under the supervision of a solicitor of not less than ten years in practice. Costs awarded.	1	

Fines ranging from £500 to £3,000 were imposed in the appropriate cases.

(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.

While the Disciplinary Committee has no power to impose any penalty or sanction, the Committee may in its report to the High Court include its recommendation as to the fitness or otherwise of the solicitor to be a

member of the profession. The President of the High Court after consideration of the Committee's report may order

(i) That the name of the solicitor be struck off the Roll of Solicitors.

(ii) Suspend the solicitor from practice for such period as he may think fit.

(iii) Censure, and/or impose a fine.

Forms leading to the institution of an inquiry into the conduct of a solicitor may be obtained from the Clerk to the Committee, Blackhall Place, Dublin 7.

The most frequent grounds of complaint continue to fall under the headings of delay/failure to carry out the instructions of clients and to reply to correspondence. Solicitors are urged to ensure they attend to their clients' business as expeditiously as possible and to keep them informed of progress in respect of their cases.

Another aspect of major concern to the Committee has been the increase in incidents where solicitors have misled the Law Society and their clients. Members of the profession are expected to be honest in their dealings with their clients and with the Society and to have regard to their responsibilities towards their clients. The Committee made a finding of professional misconduct in relation to a solicitor, who, inter alia, misled the Society by informing it that title documents had been furnished to a bank when they had not been so furnished.

The number of allegations of serious misconduct arising from breaches of the Solicitors' Accounts Regulations has declined. The Committee has in the past regarded such breaches in the most serious terms and in almost every case recommended to the President of the High Court that the ultimate penalty be imposed.

The Committee regards the issuing and honouring of undertakings by solicitors as important. A great amount of business is conducted on the basis of such undertakings and they are relied upon to a large extent by the profession, clients and banking/financial institutions.

Members of the profession when giving undertakings should give careful and serious consideration to the wording of undertakings. Unfortunately, matters occur which people do not envisage at the time and a solicitor may be obliged to comply with an undertaking irrespective of difficulties which have subsequently developed.

In one particular case, a plea of bad management rather than dishonesty was raised in mitigation. The Committee feels however that it is a matter of personal responsibility for a solicitor to ensure he has sufficient resources and is able to cope with the pressures and responsibilities of private practice.

I would like to record my thanks to the members of the Committee for their hard work and support during the past year and to *Mary Lynch*. As Clerk to the Committee Ms. Lynch's attention to its affairs and constant vigilance has made an enormous contribution to the work of the Committee during the past year.

18 November, 1993.

Walter Beatty,
Chairman

(Note: a list of the members of the Disciplinary Committee is published on page 377.)

❐

Law School Professional Courses – Dates and Availability

The dates for Professional Courses in 1994 are:

35th Professional Course
21 March – 29 July, 1994

36th Professional Course
22 August – 14 December, 1994

There may be some minor modification of the commencement or termination dates.

There are *91* students on each Professional Course. At the time of going to print all of the above Professional Courses are completely full. **The earliest that any eligible applicant will be able to attend on the Professional Course is in January, 1995.** Already, as at 1 December, 1993, sixty three places have been assigned on this course.

Places on Professional Courses are allocated on a *'first come first served basis,'* provided that the applicant is exempt, or is entitled to apply to be exempt, the Final Examination – First Part, or has in fact passed that examination, **and** further subject to the applicants actually *having secured an apprenticeship* **and** having submitted to the Society a completed application form stating the intended commencement date of the apprenticeship and countersigned by the proposed master. In the absence of any one condition of eligibility, an allocation *will not be made.*

It should be *noted* that failure to take up a place on a particular Professional Course by an apprentice does not automatically ensure postponement to the next available Professional Course, and that in such circumstances it will be the responsibility of the apprentice to *re-apply* for a place.

Applications to attend a Professional Course should be submitted in writing to the undersigned:

Albert Power,
Assistant Director of Education,
Incorporated Law Society of Ireland,
Blackhall Place, Dublin 7

Tel. (01) 6710200 Ext. 510 ❐

NEWS

Revenue Commissioners Expand Cork Stamp Duty Office

The Revenue Commissioners have introduced a new expanded stamp duty service in their Cork office, which is located in Government Buildings, Sullivan's Quay. A stamping service has in fact been provided by the Customs and Excise Office in Cork since the end of the last century, but until recently the service was of a very limited nature. Over the past two years, however, the facilities have gradually been upgraded with the provision of extra stamping equipment, staff, accommodation and technical training. The Cork Stamp Duty Office now takes in duty of £13 million per annum and is able to offer the full range of services, including adjudication. Callers to the public office can normally have their deeds stamped on an "over the counter" basis and postal cases are turned around within a couple of days.

At the launch were l-r: Tom Lennon, Collector, Customs & Excise, Cork; Michael O'Grady, Assistant Secretary, Capital Taxes, Revenue Commissioners, and Frank Daly, Council Member of the Law Society.

The expanded service was formally launched by the Revenue Commissioners (in association with the Southern Law Association) at a reception and seminar held in Cork on 18 November. Speaking at the launch, *Michael O'Grady*, Assistant Secretary in the Capital Taxes Division, said that the Revenue Commissioners had an ongoing commitment to improving the level of service to the taxpaying public and their agents. He said the new facility will be of particular benefit to solicitors in the Cork area who can avail of the counter service. He also encouraged solicitors - particularly those in the Munster region - to use the Cork Office for postal cases. He paid tribute to the Cork Office staff for their professionalism and commitment and said that, following on the success of this venture, the Commissioners were considering the possibility of further regional Stamp Duty offices. ❐

Royal College of Surgeons in Ireland

A LEGACY OR DONATION

in favour of

The Royal College of Surgeons in Ireland

contributes to medical education and training and important research.

Please think of us!

For further details contact:

The Registrar,
Royal College of Surgeons in Ireland,
123 St. Stephen's Green,
Dublin 2.

Tel: (01) 4780200
Charity No. CHY 1277

· DE ·

IRISH DOCUMENT EXCHANGE

37 Fenian Street, Dublin 2
Tel: 01 676 4601. Fax: 01 676 7093.
DX 1 Dublin

OVERNIGHT ~ EVERY NIGHT
EVERYWHERE

1,500
Document Exchange
users in 37 exchanges
countrywide

CORK STAMP DUTY OFFICE

EXPANDED FACILITIES

The Cork Stamp Duty Office is now in a position to offer the full range of stamping facilities, including adjudication.

- callers to the Public Office can normally have their deeds stamped "over the counter"
- postal cases will in general be dealt with within a couple of days

Stamp Duty Office,
Government Buildings,
Sullivan's Quay, Cork.

Tel. 021-968783 Ex. 103/104/105
Fax. 021-968010

Public Office Hours:
9 a.m. to 12.45 p.m.
2 p.m. to 4 p.m.

THE REVENUE COMMISSIONERS

Budget Submission Calls for Abolition of 1% Levy

In a submission to the Minister for Finance on the forthcoming budget (1994) the Taxation Committee of the Law Society has called for the abolition of the 1% Income Tax levy, has suggested an appeals system for Stamp Duty and has argued that sufficient time must be allowed for the debate and examination on Finance Bills before they are passed into law.

The submission notes that over the last three or four years, Finance Bills have become more technical and are placing an increasing burden on the taxpayer. The fact that such technical legislation is presented to the public approximately four or five weeks before it becomes law, does not give sufficient time to consider the complexities of the legislation. Frequently, Finance Bills are passed under a motion of guillotine. The Society's submission suggests that two Finance Bills should be published: the first would deal with budgetary matters and could be passed within four months of budget day; the second would deal with technical matters and anti-avoidance legislation, and would not be passed earlier than four months after its publication in order to give time to the various professional bodies to consider its provisions and make recommendations.

Employment

Following on its submission on the 1993 Budget, the Taxation Committee is recommending again that employment creation be treated in the same way as a "designated area". This would mean that a double allowance would be given for the expenditure relating to every new unit of employment created. Such a measure would help indigenous industry in the State as it is very difficult for such industry to avail of any of the tax concessions which are available to foreign industries setting up here.

Capital Acquisitions Tax

The submission argues that section 121 and section 123 of the Finance Act, 1993 are damaging, superfluous, and should be repealed, since they create a totally artificial situation in relation to shares in private companies. The Taxation Committee further recommends that aggregation should be restricted to twelve years maximum; the introduction of a small inheritance tax exemption; that the limit for the small gifts exemption should be increased to £2,000; that a form of business relief similar to agricultural relief should be introduced for self-employed business, trading companies and holding companies of trading companies; and that additional agricultural relief granted by the Finance Act, 1993, should not be lost by reason of the death of the disponer within two weeks of the gift.

Stamp Duty

The submission notes that although a Stamp Duty appeals structure has been promised in the past, an appeals system has not been established as yet, and thus, an appeal in relation to any matter concerning Stamp Duty must be made to the High Court. The submission also recommends that assignments of debts should not be liable for Stamp Duty; that the contents of a dwelling house, if not stated in a deed, should not be aggregated for Stamp Duty threshold purposes where they do not exceed 5% of the total price of the dwelling house; that first-time buyers of second-hand dwelling houses (subject to a limit of £100,000 purchase price) should pay only 1% Stamp Duty; that the Stamp Duty exemption should be restored for exchanges where there is no premises or dwelling house. It is also recommended that in order to facilitate the early retirement of farmers and the transfer of land to the next generation, a transfer of agricultural land between parent and child should be at a 1% rate.

Probate Tax

The submission reiterates the Society's total opposition to the Probate Tax. However, the Taxation Committee argues that if the tax is not going to be abolished, a complete exemption should, at least, be granted for widows and minor children, otherwise severe hardship will occur.

Income Tax

The submission argues that the 1% income levy operates as a tax on employment and should, therefore, be abolished and it suggests that the limit for tax relief of 15% of income for contributions to pensions should be increased for people on low to medium incomes. This would facilitate those who make a late start in contributing to a pension fund.

Value Added Tax

It is argued that Value Added Tax should be at the lowest rate for the following legal services: family law; criminal litigation; civil litigation in the District and Circuit Court; purchase of residential property for less than £100,000 and voluntary transfer of agricultural land or business premises from parent to child, and agricultural property.

Residential Property Tax

It is submitted that it should be defined clearly that the tax is not a charge under any circumstances (except where there is a voluntary conveyance between husband and wife) under section 72 of the Registration of Title Act, 1964. Where a life tenant is liable for Residential Property Tax, the owner of the remainder interest should not be liable for the tax also.

The submission was sent to the Minister for Finance, *Bertie Ahern, TD*, in early November, 1993. ❐

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 in substitution for the original 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: 15 December, 1993.

Lost Land Certificates

Michael J. Conway, 78 Annamoe Road, Grangegorman, Dublin, Folio: 3079L; Lands: property known as 78 Annamoe Road, on the north side thereof in the parish of Grangegorman and North Central District. **Co. Dublin.**

Denis Davoren, Caherconnell, Carron, Co. Clare, Folio: 1438; Townland: Caherconnell; Area: 53(a) 1(r) 12(p). **Co. Clare.**

Bridget Josephine Quill, deceased. Folio: 28040F; Lands: part of the townland of Farrandahadore Beg known as 32 Riverview Estate in the City of Cork. **Co. Cork.**

Hugh & Margaret Ryan, both of 73 Holmpatrick, Skerries, Co. Dublin, Folio: 15026L; Lands: Townland of Holmpatrick, Barony of Balrothery East. **Co. Dublin.**

Kathleen Donohoe, 19 Belgrove Lawn, Chapelizod, Co. Dublin. Folio: 22659; Townland: Cam; Area: 0.167 hectares. **Co. Roscommon.**

John Healy, Glencalry, Belderrig, Belderrig, Ballina, Co. Mayo. Folio: 6599; Townland: Glencalry; Area: 6(a) 1(r) 10(p). **Co. Mayo.** Solr. Ref: M/M/H 311/C.

Thomas O'Gara, 13 Dufrin Avenue and 60 Granville Road, Dun Laoghaire, Dublin. Folio: 4898L; Lands: Townland of Kilbogget, Barony of Rathdown. **Co. Dublin.**

Edward Butler, Folio: 13712; Land: Derrinsallagh. **Queens County.**

Anthony R. Weever, Sandyhill, Charlestown, Co. Mayo, Folio: 23191; Townland: Sandyhill; Area: 13(a) 0(r) 12(p); **Co. Sligo.** Solr. Ref: M/M W 207/P.

Margaret Kennedy, Folio: 4835F; Land: Crossfarnogue; Area: 0.225 acres. **Co. Wexford.**

Richard & Nora Reidy, Glanamucklagh West, Newmarket, Co. Cork, Folio: 16506; Lands: Part of the lands of Glenamucklagh West, barony of Duhallow, **Co. Cork.**

Lost Wills

Egan, Kieran, deceased, late of 14 Cedarwood Avenue, Glasnevin North, Dublin 11, formerly of 130 Annally Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of the original will of the above named deceased who died on 15 September, 1993, please contact O'Reilly Doherty & Co., Solicitors, 6 Main Street, Finglas, Dublin 11. Tel. 344255.

McCarthy, Patrick, deceased, late of The Railway Bar, Lixnaw, Co. Kerry and Doon East, Ballybunion, Co. Kerry. Would anyone knowing the whereabouts of a will of the above named deceased who died on 19 October, 1993, please contact Butler, Cunningham & Moloney, Solicitors, Templemore, Co. Tipperary. Tel 0504–31122/31569. Fax 0504–31635.

Rice, Mary Anne, deceased, formerly of 18 Oliver Court, Ladycroft, Wellington, Shropshire, TF1 3AU, England and lately of Carrickaderry, Clontibret, Co. Monaghan. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died in 1990 please contact A.B. O'Reilly, Dolan & Co., Solicitors, Market Street, Cootehill, Co. Cavan. Telephone No. (049) 52110.

Canton, Marie Josephine, otherwise Maureen Josephine, deceased, formerly of "White Lodge", Delgany, Co. Wicklow and late of Apt. No. 11, St. Anne's, Ailesbury Road, Donnybrook, Dublin 4. Would any solicitor or person having knowledge of the whereabouts of a will of the above named deceased who died on 24 September, 1993, please contact Cullen & O'Beirne, Solicitors, 2 Inns Quay, Dublin 7. Telephone: 677 3058, Fax: 677 7352.

Smith, Philip, deceased, late of Cahirdown, Listowel, Co. Kerry. Would any person having knowledge of the whereabouts of a will of the above named deceased dated 14 August, 1958, please contact Michael J. O'Connor & Co., Solicitors, 57 High Street, Killarney, Co. Kerry. Telephone: (064) 33278, Fax: (064) 34286.

Bosanquet, Marie, deceased, late of 36 Leinster Road, Rathmines, Dublin 6 and previously of Portlaw, Co. Waterford. Would any person having knowledge of any will of the above named deceased who died on 12 November, 1993, please contact Henry D. Keane & Co., Solicitors, 21 O'Connell Street, Waterford.

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 Florence G. MacCarthy & Associates, Solicitors, Loughrea, Co. Galway, ref 8578.

Miscellaneous

Personal Injury Claim 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.

Limerick – Solicitor's practice required. May suit retiring principal to remain as consultant. Confidentiality expected and assured. Box No. 101.

Needed Irish Statutes for the years 1925; 1971 and 1973.
For Sale Irish Statutes for the years 1945-1949 inclusive. Box No. 102.

Wanted – Solicitor's practice in Dublin City/County, general or specialised, capable of sustaining three solicitors – Contact Box No. 103.

Belfast Solicitors will advise and undertake commercial or private matters throughout Northern Ireland. Regular consultations in Dublin or Mayo. 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, Fax: 080 232 601784.

Employment

Locum solicitor required March/April 1994; litigation, conveyancing, probate and related court work. Replies to JJ Kennedy & Co. at Roscrea , Co. Tipperary. Telephone 0505-21744.

Law Clerk familiar with Dublin Castle and courts seeks position with firm of solicitors. Dublin area. Please phone Anthony at 825 9879.

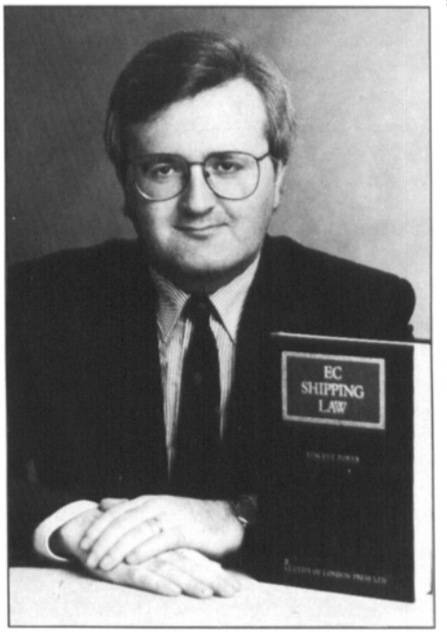
Bookkeeper Available, part-time assignments. Fully experienced in all aspects of solicitors' accounting including client account, office account, control accounts, bank and reconciliation and investment banking, wages and VAT. Phone 676 5291.

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.

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 Civil Centre, Manchester, M22 5RF. Telephone: 0044-61-437-0527 – Facsimile: 0044-61-437-3225.

Irish Lawyer wins International Award



Vincent Power, a lawyer with A & L Goodbody, Solicitors, has won the prestigious "Albert Lilar Prize" for his book on "EC Shipping Law", which was published last year by Lloyds of London Press. This is the premier prize worldwide in regard to shipping law books. The prize is awarded by the Albert Lilar Foundation of the Comité Maritime International ("CMI"). A jury of ten shipping lawyers from around the world judged books from the four corners of the globe. The prize which has just been announced will be presented at a ceremony in Antwerp in January.

DOCUMENT • EVIDENCE •

Established scientists, experienced in all areas of forensic document examination

Quick response
•
Competitive rates

Contact : Mike Hall
DOCUMENT EVIDENCE
Gatsby Court
172 Holliday St.
Birmingham
B1 1TJ
Tel: 0044 21 643 0990
Fax: 0044 21 633 0288

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.

Joint Criminal Law Conference

Inaugural Joint Conference of the Law Society Criminal Law Committee and the Northern Ireland Solicitors Criminal Bar Association.

Date: Friday, 11 February to Sunday, 13 Feburary, 1994.

Venue: Donegal – details will be announced.

Guest speakers will include:

Alistair Duff, Solicitor, Scotland (Lockerbie Pan-Am case)

Neil Spence – Forensic Scientist.

Representatives of the Criminal Law Committee of the Law Society and the N.I.S.C.B.A.

Topics covered will include safeguards for the client in custody and forensic preparation of defence in a criminal trial. There will also be a demonstration of the latest computer technology.

A lively social aspect to the conference is anticipated.

Further enquiries to **Linda Kirwan,** Law Society, Blackhall Place, Dublin 7.

AN EXPERT'S ADVICE ON GROWING OLD WISELY.

"Asio Otus" (Long-eared owl). Photographed by Richard T. Mills.

Ensuring a well-feathered nest for the future is always a wise move. For self-employed professionals, however, it's a priority that's often swamped by the pressures of day-to-day business.

To make things easier for you, The Law Society, in conjunction with The Investment Bank of Ireland Limited (IBI), has created **The Law Society Retirement Annuity Plan** - a pension scheme exclusive to members of the Society.

Tailor made to meet the needs of the practising solicitor, the Plan is the most cost effective of its kind, on the market. Add to this its exceptional track record - an annualised return of 13.6% for the 8 years to 31st December 1992 - and you simply can't do better.

So, take the first step towards a financially secure future and call Harry Cassidy at IBI, Dublin (01) 661 6433.

in association with

THE INCORPORATED LAW SOCIETY OF IRELAND

IBI

The Investment Bank of Ireland Limited

Dublin: 26 Fitzwilliam Place (01) 661 6433
Cork: 28 South Mall (021) 275711
Galway: Park House, Forster Street (091) 63167/8
Limerick: 125 O'Connell Street (061) 412477

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

Compiled 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.

Hay v O'Grady Supreme Court 4 February 1992

PRACTICE - SUPREME COURT - APPEAL - REVIEW OF FINDINGS OF FACT BY TRIAL COURT LIMIT TO SUPREME COURT'S FUNCTION - WHETHER FINDING THAT DEFENDANTS NOT NEGLIGENT SUPPORTED BY EVIDENCE - Constitution, Article 34.4.3 - Courts Act 1988 - Rules of the Superior Courts 1986, O.58

The plaintiff, a nurse, was employed as a community facilitator by a hospital, represented in the proceedings by the defendant. The plaintiff's work involved bringing patients with severe mental disability into the ordinary life of the community; in effect acting as house parent for the patient to ensure that the patient could fend for themselves. Patients were selected on the basis of a review of patients by a management group of the hospital. One patient for which the plaintiff was community facilitator was prone to moods in which she would catch a person's hair or bite somebody. On one outing to a hotel from the home in which she had been placed, the patient had snatched some food and was restrained; she also took a chair from under a hotel guest when he had stood up to lift something off the table. The plaintiff was with the plaintiff at the time. After this incident, it was decided to allow the patient remain in the home under the care of the plaintiff rather than recall her to hospital. Shortly after this incident, the patient assaulted the plaintiff. The plaintiff instituted proceedings for damages claiming that the hospital had been negligent in allowing the patient to continue under the plaintiff's sole control and that the hospital should have recalled the patient to the hospital in the light of the patient's behaviour. In the High Court, Lynch J held that the hospital had acted in a reasonable manner and that it was entitled, even in light of the incident in the hotel, to allow the patient continue in the home under the sole control of the plaintiff. On appeal by the plaintiff **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) dismissing the appeal: (1) although O.58 of the 1986 Rules provides that appeals to the Supreme Court shall be by way of rehearing, this was to be interpreted as involving a re-hearing of the legal issues arising in the court of trial and did not extend to a re-hearing of the oral evidence given at the trial court, and the Court had, in effect, limited its jurisdiction under Article 34.4.3 of the Constitution in the case law on this topic; (2) since the Supreme Court does not have the benefit of seeing and hearing the witnesses as a trial judge does, the Court must accept the findings of fact made by the trial judge where these are supported by credible evidence, even if there is evidence to support the contrary view; (3) the Supreme Court would not interfere with conclusions of law made by a trial judge based on findings of primary fact where it was clear that the trial judge finds that all relevant considerations were taken into account by the defendants; and the court should refrain from attempting to substitute its own view for that of those charged with making the decision in question unless the decision-maker failed to inform themselves or to apply appropriate standards. Per curiam: the Court should apply the same approach to appeals from a trial judge as it had applied to appeals from juries prior to the enactment of the Courts Act 1988. *Northern Bank Finance Corp Ltd v Charlton* [1979] IR 149 and *Dunne v National Maternity Hospital* [1989] ILRM 735; [1989] IR 91 applied.

Murphy v J. Donohoe Ltd and Ors Supreme Court 11 March 1992

PRACTICE - ACTION - SATISFACTION OF CLAIM - PAYMENT INTO COURT ON FOOT OF AGREEMENT BETWEEN PLAINTIFFS AND ONE DEFENDANT PRIOR TO INSTITUTION OF PROCEEDINGS - WHETHER AMOUNTING TO SATISFACTION OF CLAIM - WHETHER CLAIM AGAINST OTHER DEFENDANTS SUSTAINABLE - Civil Liability Act 1961, ss.16, 17

The infant plaintiffs were seriously injured from burns sustained when the car they were in went on fire. The car was owned by their father, the fourth-named defendant. The plaintiffs' solicitors notified a number of parties, including the father (who had carried out some work on the car), of their intention to institute proceedings for damages arising from their injuries. The first-named defendant had sold the car to the plaintiff, the second-named defendant was the importer of the car and the third-named defendant had provided parts for the car which might have been involved in the fire. Prior to the initiation of the proceedings against any of the defendants, the father's insurance company agreed to pay the sum of £815,000 into court to the credit of the plaintiffs in full discharge of the father's liability to the plaintiffs. This payment was approved by Hamilton P in February 1990, and was made a rule of court. The plaintiffs were also made wards of court. Hamilton P was informed at this hearing that proceedings would be started against all four defendants, including the father. None of the other three defendants were represented at this hearing, nor were they informed about the hearing. After the institution of proceedings, the second-named defendant pleaded in its defence that the payment made in February 1990 constituted satisfaction of the plaintiffs' claim against the defendants and that the proceedings should be discontinued on this ground under ss.16 and 17 of the 1961 Act. At a hearing of this point as a preliminary issue, Hamilton P rejected this argument. On appeal by the first and second defendants **HELD** by the Supreme Court (McCarthy, O'Flaherty and Egan JJ; Finlay CJ and Hederman J dissenting): (1) the order of February 1990 did not constitute the 'satisfaction' of the plaintiffs' claim against the first and second defendants within the meaning of ss.16 and 17 of the 1961 Act, since it was not made after any judgment of the Court on the issues between the parties and the payment was made on the basis of an express reservation that the plaintiffs would subsequently institute proceedings against the alleged joint tortfeasors involved in the matter; (2) the terms of the February 1990 order should be honoured in that the sum referred to should be incorporated in any order made in the proceedings; but the proceedings should continue, without any limitation as to damages, against all four defendants.

In re Hibernian Transport Cos Ltd Supreme Court 21 January 1992

PRACTICE - COSTS - APPEAL TO SUPREME COURT - LIQUIDATION OF COMPANY - ISSUE ARISING - WHETHER CREDITORS ENTITLED TO INTEREST - WHETHER SHAREHOLDERS ENITLED TO INDEMNITY AGAINST COSTS OF APPEAL TO SUPREME COURT

The named company and a subsidiary, Palgrave Murphy Ltd, were put into liquidation in 1970. At the time both companies were insolvent. However, as a result of complex legal issues which arose for determination in the course of the liquidation, it was not possible to pay the creditors until 1983, by which time a substantial sum stood in the company's bank account. The result was that after each of the creditors was paid in full, a surplus still remained and the question thus arose as to whether the creditors were entitled to interest on the sums owing. Parties were nominated to represent the respective interests of the com-

pany's creditors and of the company's shareholders. The President of the High Court indicated that, although he would not make an order indemnifying these parties in relation to their legal costs, he would be prepared to make an order discharging their costs after the application was heard. In the application, Carroll J held that interest was payable on certain sums owing to the creditors: [1990] ILRM 42. The representatives of the company's shareholders appealed this decision to the Supreme Court. On an application for an order indemnifying them in respect of the legal costs of the appeal **HELD** by the Supreme Court (Finlay CJ, Hederman and McCarthy JJ) granting a declaration but not an order: (1) there was a general presumption against the making of orders for costs in advance of a hearing, whether by a court of first instance or a court of appeal, since an order for costs was largely a matter of discretion after the determination of the issue arising in the case; (2) however, in the exceptional circumstances which arose in the instant case, where a difficult question of law arose which had not been addressed by Irish courts prior to the instant case, it was appropriate that the court indicate its intention to order the liquidator to discharge the parties' legal costs irrespective of the outcome of the appeal; (3) no order would be made in relation to the priority of payment of costs because, having regard to the large surplus standing to the company, it was unlikely that any difficulty would arise as to payment of such costs.

Texaco (Irl) Ltd v Murphy (Inspector of Taxes) (No.2) Supreme Court 1 April 1992

REVENUE - CORPORATION TAX - CAPITAL EXPENDITURE - RELIEF - SCIENTIFIC RESEARCH PETROLEUM EXPLORATION - Income Tax Act 1967, s.244 - Corporation Tax Act 1976, s.21

In *Texaco (Irl) Ltd v Murphy* (Inspector of Taxes) [1991] 2 IR 449, the Supreme Court held, reversing the High Court ([1989] IR 496), that the company's oil exploration activity came within the capital relief provisions of s.244 of the 1967 Act, as applied to corporation tax by s.21 of the 1976 Act. The Inspector of Taxes sought a direction from the Court as to whether all drilling activities carried out by the company came within the decision made by the Court. **HELD** by the Supreme Court (Finlay CJ, Hederman and McCarthy JJ): although the High Court judge had drawn a distinction in her judgment between two types of exploration activities in which the company was engaged, that decision had been reversed by the Supreme Court; and in the absence of any ground for excluding the expenditure in question from claiming the benefit of s.244 of the 1967 Act, the company was entitled to claim all capital expenditure for the purposes of s.244.

McHugh v A.B.(Deciding Officer) and Ors Supreme Court 11 March 1992

SOCIAL WELFARE - OVERLAPPING BENEFITS - DISALLOWANCE OF BENEFIT OR ALLOWANCE WHERE CLAIMANT OTHERWISE ENTITLED TO TWO BENEFITS - WHETHER REGULATIONS MAY PROVIDE FOR DISALLOWANCE OF BENEFIT - WHETHER PARTICULAR DISALLOWANCE ULTRA VIRES FOR UNREASONABLENESS - Social Welfare (Consolidation) Act 1981, ss.18, 130 - Social Welfare (Overlapping Benefits) Regulations 1974, Article 4 - Social Welfare (Overlapping Benefits) (Amendment) Regulations 1987, Article 5

The applicant gave birth in December 1987 and she applied for and received an unmarried mother's allowance for her child. In September 1988, she ceased working and she obtained unemployment benefit but, under the 1974 Regulations, as amended, the benefit was paid at half-rate only as she was already receiving the unmarried mother's allowance. The applicant suffered from epilepsy and from September 1989 she suffered an increase in attacks to such an extent that she was advised not to go out. She then ceased signing on for unemployment benefit as she was unavailable for work. She applied for disability benefit, for which she had sufficient social insurance contributions, but was refused under Article 4 of the 1974 Regulations, as amended by Article 5 of the 1987 Regulations, which provided that a recipient of an unmarried mother's allowance was disentitled to any disability benefit. Arising from changes to the 1974 Regulations which came into effect in April 1990, the applicant became entitled to the disability benefit and the unmarried mother's allowance. She applied, however, for judicial review on the ground that the 1987 Regulations had been *ultra vires* the 1981 Act and that she had been entitled to both benefits prior to the changes effected in 1990. In the High Court, Lavan J granted the relief sought. On appeal by the respondents **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy and O'Flaherty JJ; Egan J dissenting) dismissing the appeal on different grounds to those used in the High Court: (1) the Minister was empowered, under s.130 of the 1981 Act, to disallow in whole or in part the payment of any social welfare allowance or benefit to any person who would otherwise be entitled to claim two or more benefits or allowances; and s.18 of the 1981 Act had provided that entitlement to the disability benefit was subject to the provisions of the Act itself, which must be taken to include s.130. Dicta in *Harvey v Minister for Social Welfare* [1990] ILRM 185; [1990] 2 IR 232 doubted; (2) however, the prohibition in the 1987 Regulations on payment of a disability benefit to a person already in receipt of unmarried mother's allowance was *ultra vires* the 1981 Act for unreasonableness, since it lacked any logical basis bearing in mind that the same Regulations provided for the payment of unemployment benefit - albeit at half rate - to a person (such as the applicant had been between September 1988 and September 1989) who was in receipt of an unmarried mother's allowance. *Cassidy v Minister for Industry and Commerce* [1978] IR 297 applied.

In re Bonis Glynn (M.), decd. Supreme Court 1 April 1992

SUCCESSION - EXECUTOR - NAMED EXECUTOR HAVING BEEN CONVICTED OF MURDER OF TESTATOR'S SISTER - OTHER PERSONS APPLYING TO BE GRANTED LETTERS OF ADMINISTRATION - WHETHER CHIEF STATE SOLICITOR SHOULD BE GRANTED ADMINISTRATION - Succession Act 1965, s.27

The deceased's will provided that a named person be executor of his estate. The named person had been convicted of murdering the testator's sister, and the result of her death was that the convicted person might be entitled to a residual legacy from the testator's estate. Another relative of the deceased applied to be appointed administrator of the estate under s.27 of the 1965 Act, and this application was supported by a creditor of the estate who had renounced his right to a grant of administration, and another pecuniary legatee had not opposed the application. The issue was whether the Court should appoint the Chief State Solicitor as administrator in exceptional circumstances within the meaning of s.27 of the 1965 Act. The High Court appointed the Chief State Solicitor. On appeal **HELD** by the Supreme Court (Finlay CJ, McCarthy and Egan JJ) allowing the appeal: while no one could doubt the impropriety of the convicted person being appointed as administrator of the estate, the Court should allow the applicant to be appointed under s.27 of the 1965 Act, which should be given a liberal construction; and in the circumstances a grant of administration in the ordinary form should be granted to the applicant rather than the Chief State Solicitor. In re *Estate of Crippen* [1911] P 108 discussed.

Recent Irish Cases

Compiled 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.

McKenna v An Taoiseach and Ors High Court, 8 June 1992

CONSTITUTION – JUSTICIABLE CONTROVERSY – REFERENDUM – TREATY ON EUROPEAN UNION WHETHER GOVERNMENT ENGAGED IN PARTISAN CAMPAIGN – WHETHER ISSUE JUSTICIABLE WHETHER OBLIGATION ON GOVERNMENT TO FUND CAMPAIGN AGAINST GOVERNMENT VIEW ON REFERENDUM – WHETHER GOVERNMENT CAMPAIGN IN BREACH OF ANY CONSTITUTIONAL RIGHTS – Constitution, Article 40.3, 40.6.1.i – Treaty on European Union

The plaintiff, a citizen and member of a political party, sought injunctive relief concerning the manner in which the government was conducting its referendum campaign seeking to amend Article 29.4.3 to enable it to ratify the Treaty on European Union, which had been signed by the governments of the member States of the European Communities at Maastricht in February 1992. The plaintiff argued that the government was acting in breach of the Constitution by conducting a partisan campaign in favour of the Treaty; that it was obliged in such circumstances to provide funding for a 'no' campaign; that it was misleading the public on the contents and effects of the Treaty; and that the government had infringed the plaintiff's constitutional rights, inter alia, to express freely her convictions and opinions. Since the referendum was due to be **HELD** on 18 June 1992, the plaintiff's application for interlocutory relief was treated as if it was the trial of the action. **HELD** by Costello J dismissing the claim for relief: (1) although the plaintiff had a grievance that, as a person involved in a small political party opposed to the government's campaign, her campaign would be deprived of the benefits which the government had conferred on itself from public funds, such grievance was in the political and non-justiciable sphere and the judiciary was not empowered by the Constitution to remedy such a grievance since to do so would weaken the judicial role; and since the plaintiff's complaint was one of political misconduct (on which the Court would express no view) she had failed to establish any constitutional impropriety; (2) it was also inappropriate for the Court to express any view on the plaintiff's specific complaint that the government's 'Short Guide to the Maastricht Treaty' was misleading, since this complaint was the staple of political debate and not a matter on which the courts should adjudicate; (3) the plaintiff had not established that she had a constitutional right to oblige the government to act in accordance with the Constitution; (4) even if the plaintiff could establish that the government's campaign had rendered less effective the communications she wished to make to fellow citizens, this did not involve any infringement of her constitutionally protected right to communicate, nor did it deprive her of her right to have equality of voting in the referendum vote. Per Costello J: although the motion for interlocutory relief was determined as if it had been the trial of the action, interlocutory relief would have been refused on the same basis.

Slattery and Ors v An Taoiseach and Ors High Court, 8 June 1992; Supreme Court, 18 June 1992

CONSTITUTION – REFERENDUM – INJUNCTION TO RESTRAIN HOLDING OF REFERENDUM – SEPARATION OF POWERS – WHETHER COURTS HAVING ANY ROLE IN LEGISLATIVE PROCESS – Constitution, Article 6 – Eleventh Amendment of the Constitution Bill 1992 – Treaty on European Union

The plaintiff instituted proceedings for an injunction to prevent the holding of a referendum seeking to amend Article 29.4.3 in order to allow the State to ratify the Treaty on European Union, signed by the governments of the member States of the European Communities at Maastricht in February 1992. The plaintiffs argued that the government had failed to provide the citizens of the State with sufficient information on the Treaty which would enable them to cast their votes in the referendum in an informed manner. The Bill containing the text of the proposed amendments to Article 29.4.3, the Eleventh Amendment Bill, had been published in April 1992. The plaintiff instituted proceedings on 5 June 1992, three days after a referendum on the Treaty in Denmark had been defeated. The date fixed for the referendum in Ireland was 18 June. The plaintiffs sought leave to serve notice of application for interlocutory relief during the Trinity Vacation, which commenced on 5 June and was to end on 17 June. **HELD** by Costello J: (1) the plaintiffs had not made out a case for obtaining leave to serve notice of application during the Vacation, there being no valid reason why they had not instituted proceedings prior to 5 June; (2) in any event, leave would be refused on the ground that the plaintiffs were unlikely to succeed in obtaining any relief at the interlocutory stage. *McKenna v An Taoiseach and Ors* (High Court, 8 June 1992)(supra) applied. On appeal by the plaintiffs **HELD** by the Supreme Court (Hederman, McCarthy and Egan JJ) dismissing the appeal: to grant the plaintiffs interlocutory relief on the ground that the government had failed to provide information on the effects of the Treaty on European Union would be a wholly unwarranted intrusion by the courts into the legislative domain provided for under the Constitution, by which the Oireachtas has the sole power to set in train the procedure for amending the Constitution; and the plaintiffs had not made out any case that the government had acted in breach of the Constitution in carrying through the decision of the Oireachtas to propose an amendment to the Constitution contained in the Eleventh Amendment Bill. *Wireless Dealers Association v Minister for Industry and Commerce* (Supreme Court, 14 March 1956) and *Finn v Attorney General* [1983] IR 154 applied. *Per* McCarthy J (concurring): the plaintiffs had been able fully to avail of their right of access to the courts since the High Court and the Supreme Court had not confined themselves to the question of whether leave to serve notice of application during the Vacation should be granted. [Note: the proposal to amend the Constitution, contained in the Eleventh Amendment Bill, was approved by referendum held on 18 June 1992, and accordingly the Bill was signed by the President as the Eleventh Amendment of the Constititon Act 1992.

In re Wogan's (Drogheda) Ltd; Jenkins v Hill Samuel Bank Ltd Supreme Court 10 April 1992

CONTRACT – INTERPRETATION – WHETHER CONDUCT AFTER MAKING OF CONTRACT MAY BE USED TO INDICATE INTENTION OF PARTIES – COMPANY – CHARGE – WHETHER FIXED OR FLOATING – CHARGE OVER BOOK DEBTS – CREATION OF SPECIAL BANK ACCOUNT FOR RECEIPTS FROM BOOK DEBTS ENVISAGED IN DEBENTURE CREATING CHARGE – SPECIAL BANK ACCOUNT NOT CREATED IMMEDIATELY – WHETHER FAILURE TO CREATE MAY BE INTERPRETED AS INTENTION NOT TO CREATE FIXED CHARGE

The bank held a debenture from the company which created a charge over the book debts of the company. The debenture included a clause which provided that the bank, as lender, might designate a bank account into which receipts from book debts would be deposited by the company and over which the bank would have specified rights of control. In the High Court, the applicant examiner of the company sought a declaration that the debenture had not created a fixed charge over the company's assets. Denham J heard evidence to indicate that the special account referred to in the debenture had not been established at the time that the company was placed into examinership. She therefore concluded that the debenture had created a floating charge only. On appeal by the bank **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ allowing the appeal: (1) it was an important principle for the interpretation of all contracts that it was not legitimate to use as an aid in the construction of a contract anything said or done by the parties after the contract was made, and to depart from this principle would be likely to cause considerable mischief; and accordingly the trial judge had erred in admitting evidence as to whether a special account had been created after the debenture had been given by the company

to the bank. Dicta in *Whitworth Street Estates Ltd v Miller* [1970] AC 583 approved; (2) the terms of the debenture were such that the bank was creating a level of control over book debts which indicated an intention to create a fixed charge over the book debts of the company. *In re Keenan Bros Ltd* [1985] IR 401 applied.

Wiley v Revenue Commissioners Supreme Court 9 April 1992

JUDICIAL REVIEW - LEGITIMATE EXPECTATION - EXCISE DUTY REFUND SCHEME FOR CERTAIN DRIVERS OF MOTOR VEHICLES - APPLICANT NOT COMING WITHIN SCHEME - APPLICANT PREVIOUSLY RECEIVING REFUND - SUBSEQUENT REFUSAL - WHETHER APPLICANT HAVING LEGITIMATE EXPECTATION TO REFUND - Imposition of Duties (No.236) (Excise Duties on Motor Vehicles, Televisions and Gramophone Records) Order 1979

The applicant had certain physical disabilities which prevented him from driving an ordinary motor vehicle. He had no use in one leg for driving purposes and his left ankle was damaged as a result of extra stress placed on it. In 1983 and 1985, he purchased new motor vehicles for which he obtained from his local authority certificates of exemption from road tax under s.43(1) of the 1968 Act, which applies only where the driver 'is wholly, or almost wholly, without the use of each of his legs.' Under the 1979 Order, the Revenue Commissioners operated a refund scheme on the excise payable on motor vehicles. This scheme was based on the same criteria as for the road tax refund, and until 1986 the Revenue accepted a certificate of exemption from road tax as proof of entitlment to the excise duty refund. Thus, in 1983 and 1985, the applicant obtained the excise duty refund on presentation of the road tax exemption certificates. In 1986, the Revenue altered their policy and required a copy of the medical certificate on which the road tax exemption was granted. In 1987, when the applicant applied for a refund under the 1979 Order, he was refused on the ground that the medical certificate did not indicate that he was without the use of each of his legs. The applicant sought judicial review of the refusal on the ground that, as he had received the refunds in 1983 and 1985, he had a legitimate expectation that he would receive the refund in 1987, and that the Revenue Commissioners had not been entitled to change its policy without notice to him. In the High Court, Blayney J dismissed the claim: [1989] IR 350. On appeal **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) dismissing the appeal: (1) since the applicant knew or ought to have known that his physical condition did not entitle him to any refund under the 1979 Order, he could argue only that he had an expectation to a refund based on the fact that he had been given such a refund in the past, but this could not be described as a legitimate expectation; (2) to accede to the applicant's arguments would involve the Court ordering a statutory body to act ultra vires the powers conferred on it by statute, and the Court would not extend the boundaries of legitimate expectation in this way. *Per* O'Flaherty J: the boundaries of legitimate expectation in Irish case law were similar to those established in the jurisprudence of other courts. *Commission v Council* [1973] ECR 575 and *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629.

Irish Bank of Commerce v O'Hara Supreme Court 7 April 1992

LAND LAW - CONVEYANCING - JUDGMENT MORTGAGE - APPLICATION FOR WELL-CHARGING ORDER - WHETHER AFFIDAVIT GROUNDING APPLICATION MUST SPECIFY PARISH IN WHICH PREMISES TO BE CHARGED IS SITUATED - TRUE MEANING OF LEGISLATION - Judgments (Ireland) Act 1850, s.6

The plaintiff bank sought a well-charging order on property in which the defendant had an interest. The defendant did not deny that the sum on which the well-charging order was sought was due and owing to the bank. However, he argued that the judgment debt was not well charged on the ground that the affidavit grounding the application did not comply with the requirements of s.6 of the 1850 Act in that it did not specify the parish in which the property in question was situated, such being required for property situated in a town. The affidavit averred that the property was situated in the Borough of Dun Laoghaire. In the High Court, Costello J held that, since there was no evidence that Dun Laoghaire was a 'town' for the purposes of the 1850 Act, the affidavit need not specify the parish. He also held that, in any event, the terms of s.6 of the 1850 Act were not mandatory in nature. On appeal by the defendant **HELD** by the Supreme Court (Finlay CJ, McCarthy and O'Flaherty JJ) dismissing the appeal: (1) the case law on s.6 of the 1850 Act appeared to indicate a requirement that property situated in a town must be identified by the parish in which it was. *Credit Finance Co Ltd v Grace* (Supreme Court, 9 June 1972) applied; (2) however, as there was no evidence that the Borough of Dun Laoghaire was a 'town' for the purposes of the 1850 Act, the Court should proceed on the basis that the affidavit grounding the application was not required to specify the parish in which the property was situated. *Dardis & Dunn Seeds Ltd v Hickey* (High Court, 11 July 1974) referred to; (3) the true interpretation of s.6 of the 1850 Act required the Court to have regard to the clear objects it was intended to achieve; and since it was intended to achieve the clear identification of the person and property to be charged, the mere omission of a requirement of s.6 which did not affect the question of the identity of the property or the debtor could not in itself invalidate the charge on the property. *Thorp v Brown* (1867) LR 2 HL 220 and *Credit Finance Co Ltd v Grace* (Supreme Court, 9 June 1972) applied. *In re Murphy and McCormack* [1930] IR 322 not followed. Per curiam: greater care would need to be taken to ensure no mistake occurred concerning the correct identification of the property involved than with the identification of the judgment debtor.

Dublin County Council v Eighty Five Developments Ltd Supreme Court 9 April 1992

LOCAL GOVERNMENT - PLANNING - REFUSAL - GROUNDS - WHETHER APPLICANT ENTITLED TO COMPENSATION FOR REFUSAL - WHETHER GROUNDS FOR REFUSAL CLEARLY WITHIN CLASS OF EXEMPTIONS TO COMPENSATION - Local Government (Planning and Development) Act 1963, ss.55, 56

The company had applied for planning permission for the erection of houses, a school and a shopping centre. The Council had refused permission on the ground, inter alia, that the development would not be desirable having regard to traffic density and the speed of vehicles which would be generated. On appeal, An Bord Pleanala also refused permission on the ground, inter alia, that the road on which it was proposed to site the buildings were 'substandard in width and... would give rise to traffic hazard by reason of the additional traffic turning movements it would generate.' The Council sought a declaration that this ground for refusal came within the exemption to compensation contained in s.56 of the 1963 Act. S.56 provides, inter alia, that no compensation for refusal shall be given where the ground for refusal was that the development would endanger public safety by reason of a traffic hazard. In the High Court, Gannon J **HELD** the ground given in the instant case did not come within s.56 and that compensation was therefore payable. On appeal by the Council **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy and O'Flaherty JJ; Egan J dissenting) allowing the appeal: a planning authority was not required to follow the precise words of s.56 of the 1963 Act in order to bring the ground of refusal within the section; and while great care should be taken to indicate with clarity the precise basis on which permission is refused, the ground given would be interpreted in an ordinary and common sense manner to ascertain whether it fell within s.56 of the 1963 Act; and in the instant case the true interpretation was that the ground for refusal fell within s.56 and that no compensation was payable under s.55 of the Act. Dicta in *In re XJS Investments Ltd* [1986] IR 750 applied.

Crown Chemical Co(Irl) Ltd v Cork County Council Supreme Court 4 June 1992

MALICIOUS INJURIES - WHETHER DECREE FOR COMPENSATION UNDER MALICIOUS INJURIES CODE AMOUNTING TO JUDGMENT DEBT - WHETHER INTEREST PAYABLE ON DECREE - Debtors (Ireland) Act 1840, s.26 - Local Government (Ireland) Act 1898

The company claimed that it was entitled to claim interest on a decree made in its favour under, inter alia, the 1898 Act, arising from malicious injury to its property. The defendant Council argued that interest was not payable since the decree did not amount to a judgment debt. On case stated **HELD** by the Supreme Court (Hederman, O'Flaherty and Egan JJ): the decree for compensation under the malicious injuries code cast an immediate duty on the responsible local authority to raise, levy and pay the sum, a duty enforceable by judicial review; but the decree did not constitute a judgment debt within s.26 of the 1840 Act, and therefore interest was not payable on the decree. *R.(Bennett) v King's County County Council* [1908] 2 IR 178 applied. [Note: the decree in the instant case arose out of events which preceded the entry into force of the Malicious Injuries Act 1981.]

Gutrani v Governor of Training Unit Mountjoy Prison Supreme Court 2 July 1992

ALIENS - JUDICIAL REVIEW - WHETHER FAIR PROCEDURES APPLIED - ILLEGAL ALIEN SEEKING REFUGEE STATUS - WHETHER COURTS MAY ALLOW ADDITIONAL EVIDENCE ON JUDICIAL REVIEW

The applicant, a Libyan national, came to Ireland on a student visa in 1983. The visa expired in 1984, but the applicant did not leave the State and went into hiding. He was found in September 1989 working in a restaurant without a work permit. The Minister for Justice subsequently ordered the applicant to leave the State, in default of which he was liable to deportation. The applicant did not leave the State but applied for permission to remain as a refugee, within the meaning of the 1951 UN Convention on Refugees and the 1967 Protocol, of which Ireland was a signatory. Neither the Convention or the Protocol had been incorporated into domestic law, but by a letter of 15 December 1985, the Minister for Justice had undertaken to the UN High Commissioner for Refugees (UNHCR) to apply the principles of the Convention and Protocol in deciding applications for refugee status. The letter also stated that the application of the Convention principles would not preclude consideration of humanitarian grounds for leave to remain in the State. The Minister refused the applicant's case for refugee status after a hearing at which the applicant's legal advisers were present and after the papers in the matter had been transmitted to the UNHCR whose representative did not consider that the applicant had made out a case. The applicant sought judicial review of the Minister's refusal, in the course of which he sought to introduce additional evidence. In the High Court, O'Hanlon J refused to admit the additional evidence and dismissed each of the grounds on which relief was sought. On appeal **HELD** by the Supreme Court (Hederman, McCarthy and O'Flaherty JJ) dismissing the appeal: (1) the Minister had not contested that he was required to deal with the application under the 1951 UN Convention in accordance with the letter to the UNHCR of 15 December 1985; and, having established such a scheme the Minister was bound to apply it, not as a matter of legitimate expectation but simply because it was the procedure which the Minister had undertaken to enforce; and the Minister's decision was subject to judicial review; (2) the High Court had correctly refused to admit additional evidence on judicial review since to do so would be to challenge the findings of fact made by the Minister; nor could judicial review be a vehicle for reopening the question of the applicant's status, which had been determined in the procedures adopted by the Minister; (3) there was no basis for the assertion that the Minister had failed to take account of any relevant factor, including any humanitarian factor in the applicant's case. *Per curiam:* it was doubtful if any humanitarian factor was relevant in the instant case, since such would concern matters such as illness, family commitment or personal considerations not related to political relationships.

The People v Quilligan and O'Reilly (No.3) Supreme Court 14 July 1992

CRIMINAL LAW - EVIDENCE - INCRIMINATING STATEMENT - WHETHER WARNING REQUIRED ON DANGER OF CONVICTING WITHOUT CORROBORATIVE EVIDENCE - VOLUNTARINESS - FUNCTION OF TRIAL JUDGE AND JURY - PROCEDURE - SEPARATION OF CHARGES - WHETHER JUSTIFIED - CONSTITUTION - PERSONAL RIGHTS - EQUALITY - CRIMINAL LAW - DETENTION IN GARDA CUSTODY UNDER STATUTE FOR EXTENDED PERIOD - WHETHER PERSONAL RIGHTS INFRINGED - WHETHER CONSTITUTING INVIDIOUS DISCRIMINATION - TRIAL - DELAY - WHETHER PREJUDICIAL - DEATH OF WITNESS - Constitution, Article 40.1, 40.3 - Offences against the State Act 1939, s.30

The appellants had been arrested and detained in Garda custody under s.30 of the 1939 Act on suspicion of involvement in a burglary. In the course of the burglary in question, the occupier of the property had been killed. The appellants were questioned by the Garda in relation to the burglary and killing, as a result of which the appellants made incriminating statements. The appellants were charged with burglary and murder. At their trial in the Central Criminal Court in 1985, the DPP applied to have the burglary charged postponed and the appellants were tried on the murder charge only. The trial judge (Barr J) held that, since the offences in question were non-subversive, the detentions under s.30 of the 1939 Act were invalid. He held that the appellants' statements were thus inadmissible and he directed an acquittal. On appeal by the DPP, the Supreme Court held that this finding was not correct: *The People v Quilligan and O'Reilly* [1987] ILRM 606; [1986] IR 495. However, the Supreme Court declined to order a retrial on the murder charge: *The People v Quilligan and O'Reilly* (No.2) [1989] ILRM 245. The appellants were then tried on the burglary charge in the Central Criminal Court in 1989. The trial judge (Costello J) held that the trials should be allowed to proceed, and on the voir dire he held, having heard the evidence of the appellants and the Gardai involved in their questioning, that the incriminating statements had been voluntary. The defendants gave evidence in the substantive trial denying participation in the burglary and stated that the incriminating statements were the result of intimidation and threats. In his charge to the jury, the trial judge dealt with the appellants' allegations and told the jury of their function in relation to the veracity of the incriminating statements. However, he declined to give a warning that it would be dangerous to convict on the statements without corroborative evidence. On appeal to the Supreme Court, the appellants argued that s.30 of the 1939 Act was unconstitutional and also appealed on the other grounds which had been rejected by the trial judge. **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) dismissing the constitutional claim: (1) s.30 of the 1939 Act did not infringe Article 40.1 because, although it resulted in a discrimination as between one citizen and another by delaying the time when an arrested person is brought before a court, this did not constitute invidious discrimination bearing in mind that a person detained under s.30 enjoyed a range of protections also enjoyed by a person detained at common law (see heading 3, below); (2) the Court would not draw any inference as to the possible invalidity of s.30 of the 1939 Act from the mere fact that a statutory provision allowing for up to seven days detention had been enacted in the 1976 Act under the emergency provisions of Article 28.3.3 of the Constitution. *In re the Emergency Powers Bill 1976* [1977] IR 159 referred to; (3) s.30 of the 1939 Act did not constitute a failure by the State to protect the personal rights of the citizen under Article 40.3 having regard to the protections enjoyed by a person detained under s.30, which included: that an arrest and detention (or extension of the detention period) be based on a bona fide suspicion; that the person be informed of the offence under which he is arrested or detained; that his rights to legal and medical assistance and access to the courts are respected; that he is informed of his right to silence; that he will not be subjected to oppressive questioning; and that he will have the benefit of the Judges' Rules. Dicta in *The People v Quilligan and O'Reilly* [1987] ILRM 606; [1986] IR 495 approved; (4) having regard to the protections enjoyed by a person detained under s.30 of the 1939 Act, it had not been established that the section constituted a failure to protect the right to silence, assuming that this right was one protected under Article 40.3. **HELD** further by the Supreme Court: (5) the first appellant had not been prejudiced by the delay between 1985 and 1989 in having the burglary charge dealt with, and it was therefore not unfair to try him; (6) there were good grounds for having the burglary and murder charges separated in the 1985 trial and this was in no way unfair to the appellants; (7) the appellants could not plead autrefois acquit or res judicata in relation to the 1985 trial or the findings of law made by the trial judge in 1985, since the 1985 verdict had been set aside by the Supreme Court; (8) the trial judge's determination that the appellants' statements were voluntary could not be challenged since it was based on his assessment of the veracity of the Gardai who had questioned the appellants; (9) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) there was no rule of law requiring a judge to instruct a jury that, where the only evidence consists of an incriminat-

ing statement made by the accused, there was a danger of convicting without corroborative evidence, any such warning could involve the implication that the Gardai involved in obtaining such a statement were to be treated in the same way as accomplices; and consideration of the introduction of such a warning was a matter for the Oireachtas. *The People v Casey* (No.2) [1963] IR 33 distinguished. Per McCarthy and Egan JJ (dissenting): experience with miscarriages of justice in recent years justified a change in the common law so that juries should be warned of the dangers of convicting on an uncorroborated confession; (10) (*per* Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ expressing no view) while in the individual circumstances of a particular case, such as where a verbal statement only was in evidence, the trial judge might consider warning the jury of the dangers of convicting without corroborative evidence, this did not arise in the instant case, and the trial judge's charge had adequately protected the appellant's right to a fair trial; (11) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) the trial judge had adequately addressed the jury on all the allegations of ill-treatment raised by the appellants in their evidence, and it was not the jury's function to assess the voluntariness of the statements (this being for the trial judge on the voir dire), but rather to assess whether the evidence given was truthful, and in the instant case the jury had been adequately addressed on the issue. *The People v Conroy* [1988] ILRM 4; [1986] IR 460 applied; (12) having regard to the death of a witness before the 1989 trial, who had testified in the 1985 trial that the second appellant had been at another location which would have made it impossible to be at the scene of the burglary, the second appellant's trial in 1989 should not have proceeded having regard to the prejudice which arose from the absence of this witness, and his appeal would be allowed on this ground. *The State (O'Connell) v Fawsitt* [1986] ILRM 639; [1986] IR 362 applied.

Bates and Ors v Model Bakery Ltd Supreme Court 15 July 1992

EMPLOYMENT - REDUNDANCY - SERVICE OF STRIKE NOTICE - WHETHER STRIKE FRUSTRATED CONTRACT OF EMPLOYMENT - WHETHER SUBSEQUENT CLOSURE OF PREMISES EFFECTED REDUNDANCIES - PRACTICE - APPEAL FROM EMPLOYMENT APPEALS TRIBUNAL - LIMITS TO SUCH APPEAL - Redundancy Payments Act 1967, ss.7, 39 - Rules of the Superior Courts 1986, O.105

The plaintiffs had been employed by the defendant company. In April 1987, the Labour Court recommended a 5% pay increase for bakery workers, including the plaintiffs, to take effect from 1 April 1987. The defendant did not pay the increase immediately, but after a threat of industrial action the increase was implemented from September 1987. The increase was not retrospective, and in November 1987 the plaintiffs' union served strike notice in relation to the retrospection element. In September 1987, a completely separate unofficial dispute had occurred in the bakery, arising from which a grievance procedure was agreed 'for the processing of any dispute which may arise". This agreement stipulated that no industrial action would be taken until after a Labour Court recommendation on any such dispute. After the strike notice was served in November 1987 on the retrospection claim, the company issued a letter in January 1988 to all employees stating that it was of the view that this was in breach of the September 1987 grievance procedure and that therefore the employees had frustrated their contract of employment. The bakery was subsequently closed, and the employees sought redundancy pursuant to the 1967 Act. The Employment Appeals Tribunal held that no redundancy was payable since the closure resulted form frustration of the contract. On case stated, the High Court reversed this decision. On further appeal **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) affirming the High Court: (1) the September 1987 grievance procedure was not relevant ot the instant case, since its terms related to any dispute 'which may arise", and this related to future disputes, whereas the dispute in the instant case went back to the Labour Court determination in April 1987; (2) the service of strike notice by the employees could not constitute frustration of the contract of employment with the company, and it was an implied term of every contract of employment that the service of strike notice did not constitute notice of intention to terminate the contract. Becton Dickinson Ltd v Lee [1973] IR 1 applied; (2) the January 1988 letter to the employees constituted a dismissal within s.7 of the 1967 Act, and the employees were accordingly entitled to redundancy payments under the Act. Per curiam: on an appeal on a point of law from the Tribunal under the 1967 Act, the parties were confined to the findings of fact made by the Tribunal and could only raise issues of law.

Application of Oshawa Ltd Supreme Court 8 July 1992

LICENSING - INTOXICATING LIQUOR - ADJOINING PREMISES - BOTH PREMISES LICENSED FOR SALE OF INTOXICATING LIQUOR - AMALGAMATION OF PREMISES - WHETHER LICENCE MAY BE GRANTED FOR AMALGAMATED PREMISES - LICENCE IN ONE LOCATION EXTINGUISHED ON DATE ON WHICH LICENCE ACTUALLY GRANTED FOR AMALGAMATED PREMISES - Licensing (Ireland) Act 1902, s.6 - Intoxicating Liquor Act 1960, s.24

The applicant had purchased two adjoining premises, both of which held licences for the sale of intoxicating liquor. The two premises were amalgamated into one premises, and the applicant sought a licence for the amalgamated premises under s.6 of the 1902 Act, as amended by s.24 of the 1960 Act. In the Circuit Court on 1 December 1987, the application was granted (over objections from local vintners) and the Circuit Court judge made an order providing for the extinguishment of one of the two licences attaching to the formerly separated premises, such extinguishment taking effect if the Revenue Commissioners granted the licence on application by the applicant. At the same time the Circuit Court judge also made an order granting another applicant (Tennis Village Cork Ltd) a licence; that order being possible on the basis that the licence attaching to the second premises owned by the applicant which had been amalgamated into the new premises would also be extinguished if Tennis Village Cork Ltd sought a licence from the Revenue Commissioners. Tennis Village Cork Ltd sought such a licence and this was granted by the Revenue Commissioners in December 1987. The Revenue Commissioners granted the applicant its licence for the amalgamated premises on 16 February 1988. The objectors argued that a licence could only be granted under s.6 of the 1902 Act, as amended by s.24 of the 1960 Act, in respect of amalgamated premises where one of the premises had been unlicenced, but not in the case of two adjoining licenced premises. On case stated **HELD** by the Supreme Court (McCarthy, O'Flaherty and Egan JJ) affirming the Circuit Court order: the application in the Circuit Court under s.6 of the 1902 Act, as amended, did not have the effect of creating or of extinguishing any licence, since this was a matter for the Revenue Commissioners; in the instant case, since the Revenue Commissioners had granted a licence to Tennis Village Cork Ltd in December 1987, the licence in the former adjoining premises had been extinguished by the time the applicant sought the licence from the Revenue Commissioners for the amalagamated premises, and therefore the former adjoining premises was unlicensed within s.6 of the 1902 Act at that stage; and it was not therefore necessary for the Court to determine the case on the argument put forward by the objectors.

Best v Wellcome Foundation Ltd and Ors Supreme Court 3 June 1992

NEGLIGENCE - MANUFACTURER - VACCINE FOR HUMAN USE - WHOOPING COUGH VACCINE - WHETHER MANUFACTURER NEGLIGENT IN ALLOWING BATCH OF VACCINE ONTO MARKET - CAUSATION - WHETHER LINK ESTABLISHED BETWEEN NEGLIGENCE AND INJURY TO PLAINTIFF

In 1969, when the plaintiff was 5 months old, he was vaccinated with a whooping cough vaccine manufactured by the first defendant. Subsequently, he developed violent fits and suffered serious brain damage. Proceedings were issued on his behalf claiming that the brain damage was caused by the negligence of the defendant company. In the hearing of the action in the High Court, the plaintiff's mother gave evidence that the fits had occurred in the immediate aftermath of the administration of the vaccine. No suggestion was made that the plaintiff's mother in any way attempted to mislead the court, but the doctor who had administered the vaccine did not recollect that any complaints had been made to him concerning the plaintiff in the immediate aftermath of the administration of the vaccine. Detailed scientific evidence was also given in the High Court that the batch of vaccine out of which the plaintiff had received his individual injection had not passed certain laboratory tests on mice, but that the company had placed the vaccine on the market on the basis that this test failure did not necessarily indicate a defect in the vaccine batch. Hamilton P held (High Court, 11 January 1991) that the company acted in breach of its duty of care to the plaintiff in allowing the vaccine batch to be placed on the market. However, he dismissed the plaintiff's claim on the ground that the doctor's evidence was to be preferred to that of the plaintiff's mother; and that it had not, therefore, been established that the plaintiff's fits and brain damage had been caused by the administration of the vaccine. On appeal **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) allowing the plaintiff's appeal and finding the defendant com-

pany solely liable: (1) the balance of the scientific evidence adduced indicated that, in 1969, the defendant company was aware that the vaccine carried a possibility, however rare, of serious reaction to it in small children; and accordingly, it owed a high degree of care in regard to its testing before placing it on the market; and merely to comply with minimum requirements imposed by national health authorities would not meet such a high standard; and in that light, the trial judge had correctly concluded that the company had been negligent to allow the vaccine batch in the instant case to go on the market when it had failed the laboratory test which had been administered; (2) the trial judge had erred in concluding that the recollection of the plaintiff's doctor, based on the doctor's notes, indicated that the plaintiff's mother's evidence as to the occurrence of the plaintiff's fits must have been mistaken; and while direct recollection of events was not always to be preferred over evidence based, in part, on reliance on notes or other documentary evidence, the indications from other elements of the doctor's evidence suggested that, in the instant case, the mother's evidence was to be preferred, namely that the first fits had occurred in the immediate aftermath of the administration of the vaccine. *Hay v O'Grady* [1992] ILRM 689 applied; (3) accordingly, the plaintiff had established in evidence that there was a causative link between the injuries suffered by him and the administration of the vaccine, and since there was a failure by the company in its duty of care to him, the company was solely liable and there should be a retrial on the question of damages only, with the company being the sole defendant. *McGhee v National Coal Board* [1972] 3 All ER 1008 and *Wilsher v Essex Area Health Authority* [1988] 1 AC 1074 referred to.

Walsh v Family Planning Services Ltd, Orr and Kelly Supreme Court 9 April 1992

NEGLIGENCE - MEDICAL - SURGERY - VASECTOMY - WHETHER PATIENT INFORMED OF POSSIBLE PAINFUL CONSEQUENCES IN ADVANCE OF SURGERY - WHETHER WANT OF DUE CARE STANDARD OF CARE IN ELECTIVE SURGERY - WHETHER PATIENT CONSENTING TO SURGERY BY PARTICULAR SURGEON ONLY - ASSAULT - EXTENT OF TORT OF ASSAULT IN CASES OF SURGERY

The second and third defendants, surgeons, were servants or agents of the first defendant, and carried out a vesectomy on the plaintiff. Prior to the surgery, the defendants stated that they explained to the plaintiff that, while the operation was routine, there was a small risk that he would suffer some pain arising from the operation. After the operation, the plaintiff suffered severe pain. Attempts to relieve the pain (including further surgery to remove a testicle) were not successful, and the continuing pain was such, the plaintiff stated, that he was unable to have any sexual relations with his wife. The plaintiff claimed damages in negligence arising from the vasectomy operation. A further claim was made for assault arising from the plaintiff's claim that he had consented to the second defendant carrying out the operation, but not the third defendant. MacKenzie J dismissed the claim in negligence but found there had been a technical assault on the plaintiff and awarded damages of 42,500. On appeal **HELD** by the Supreme Court (Finlay CJ, Hederman McCarthy, O'Flaherty and Egan JJ) dismissing the plaintiff's claim: (1) in the circumstances of elective surgery, such as the present, the medical practitioner was under a greater duty of care to explain the consequences of surgery than would be the case in non-elective surgery so that the patient can give an informed consent to the medical procedure; and therefore the mere following of an accepted practice could not be regarded as meeting the standard of care required. *Dunne v National Maternity Hospital* [1989] ILRM 735; [1989] IR 91 discussed; (2) a warning was required in the instant case, albeit that the dangers associated with the surgery were remote in medical experience; the Supreme Court could not interfere with the finding of the trial judge that a warning had been given; and the warning thus given had been sufficient to alert the plaintiff to the dangers arising from the surgery, so that no want of due care had been established; and the further complications which arose from the additional surgery after the vasectomy were too remote as to be consequences in relation to which the defendants were required to warn the plaintiff; (3) (Finlay CJ, Hederman and O'Flaherty; McCarthy and Egan JJ dissenting) the plaintiff had in effect consented to a vasectomy being performed by a competent surgeon, and since he was unaware of the range of expertise of the second defendant, it could not be said that he had only consented to her performing the operation to the exclusion of all other surgeons; and having regard in particular to the fact that the operation was carried out with the plaintiff conscious by means of local anaesthetic, the finding by the trial judge of a technical assault should be set aside. Semble: a claim of assault should be confined to cases where there is no consent to a particular procedure or where apparent consent has been vitiated by fraud or deception. *Reibl v Hughes* [1980] 2 SCR 880 approved.

Duggan v Armstrong and Anor Supreme Court 26 June 1992

NEGLIGENCE - OWNER OF DOG - SCIENTER - WHETHER PROPENSITY TO ATTACK ESTABLISHED - HOTEL PROPRIETOR - COMMON LAW DUTY OF CARE - WHETHER DIFFERENT IN KIND FROM STATUTORY DUTY OF HOTEL PROPRIETOR - Hotel Proprietors Act 1963, s.4

The plaintiff, then 7 years of age, was a lawful visitor to a hotel owned by the first defendant and managed by the second defendant. She was attacked by a dog described as a mongrel Alsation. In evidence, her cousin stated that, on previous occasions, the dog had growled at him and there was also evidence that the dog had a propensity to attempt to mount young girls. The plaintiff's claim was based in scienter, breach of common law duty and breach of statutory duty. In the High Court, Egan J dimsissed the claim. On appeal **HELD** by the Supreme Court (Hederman, McCarthy and Costello JJ) allowing the appeal: (1) the evidence indicated a propensity that the dog might attack, and it was not required for the purposes of the scienter doctrine that it would certainly do so. *Bennett v Walsh* (1936) 70 ILTR 252 applied; (2) the first defendant, as owner, was in breach of his common law duty of care to the plaintiff as lawful visitor to the hotel; (3) it was difficult to discern any additional duty which s.4 of the 1963 Act had added to the common law duty of care.

Smyth and Anor v Tunney and Ors (No.3) Supreme Court 26 June 1992

PRACTICE AND PROCEDURE - ACTION - APPEAL - ADDITIONAL EVIDENCE - WITNESS VARYING EVIDENCE - EVIDENCE OF SIMILAR FACTS - WHETHER RELEVANT - Rules of the Superior Courts 1986, O.58, r.8

The plaintiff had brought proceedings against the defendant, which involved, inter alia, allegations of fraudulent conduct by the defendants. Murphy J dismissed the claim (High Court, 6 October 1989). In the course of his judgment, Murphy J had suggested that one of the defendants had lied and that the plaintiff was the victim of self-delusion. In the course of his appeal to the Supreme Court, the plaintiff brought an application under O.58, r.8 of the 1986 Rules seeking to introduce additional evidence in the case. The first matter related to the fact that one of the plaintiff's witnesses had lied under oath but that this had not been challenged by the defendant at the time. In addition, the plaintiff sought to introduce evidence as to similar alleged fraudulent conduct by the defendants in other commercial transactions. **HELD** by the Supreme Court (Hederman, Costello and McCarthy JJ) dismissing the application: (1) there was no authority for the proposition that a witness may ordinarily be permitted to give evidence on the hearing of an appeal from a decision on fact so that he may recant earlier evidence and support a different case. *Attorney General v Hitchcock* (1847) 1 Exch 91 referred to; (2) in any event, it was doubtful if the amended evidence was material to the real issue as ultimately decided in the High Court. *Murphy v Minister for Defence* [1991] 2 IR 161 referred to; (3) nor was there any reason to believe that the trial judge' conclusions would have been different if there had been additional evidence concerning similar alleged fraudulent activities by the defendants in other commercial transactions; and although such evidence concerning the defendants' character might be credible, it was relevant only to cases where mistake was to be negatived or to prove intent, and it not relevant to the issues in the instant case. *R v Boardman* [1975] AC 442 referred to.

Duffy v Newsgroup Newspapers Ltd and Ors Supreme Court 26 June 1992

PRACTICE AND PROCEDURE - CONSOLIDATION OF ACTION - DEFAMATION ACTION - MULTIPLE PLAINTIFFS - WHETHER COMMON QUESTIONS OF FACT OR LAW INVOLVED - WHETHER SUBSTANTIAL SAVINGS WOULD RESULT FROM CONSOLIDATION - WHETHER CONFUSION OR INJUSTICE WOULD RESULT - Rules of the Superior Courts 1986, O.49, r.6

The plaintiff instituted proceedings for defamation against the defendants arising from an article published by the defendants in a newspaper, 'The News of the World'. The article included descriptions of certain activities of paramilitary organisations, some of which were alleged to have occurred in the ground of Crossmaglen Gaelic Football Club. The plaintiff was, at the time, Chairman of Crossmaglen Gaelic Football Club and his statement of claim alleged that the article referred to him. A substantial number of other persons also instituted proceedings against the defendants arising from the article. The defendants' defence did not plead justification but stated that the article did not refer to the plaintiffs. The defendants sought to have the actions consolidated under O.49, r.6 of the 1986 Rules. In the High Court,

O'Hanlon J granted the application. On appeal by the plaintiff **HELD** by the Supreme Court (Hederman, McCarthy and Costello JJ) allowing the appeal: (1) in the absence of a plea of justification, the only issue for the court trying the action would be whether the article referred to the plaintiffs; (2) although the actions arose out of the same article, they did not involve common issues of law or of fact, since the question of whether the article referred to the different plaintiffs would be a separate issue for each person involved, and this would be a separate issue of law for the trial judge to determine and then to leave to the jury to decide as a matter of fact. *Horwood v Statesman Publishing Co Ltd* (1929) 98 LJKB 450 discussed; (2) there would be no substantial saving involved in a consolidation, and it was likely that some confusion and injustice would arise in relation to witnesses called for the different plaintiffs, and thus the risk that all plaintiffs might stand or fall together; (3) although the wording of O.49, r.6 of the 1986 Rules was very wide, the question of consolidation was a matter for the court's discretion; but although consolidation was not appropriate in the instant case, the court would order that the actions be tried in succession and be presided over by the same judge.

Kennedy v Galway Vocational Education Committee Supreme Court 1 July 1992

PRACTICE AND PROCEDURE - APPEAL - SUPREME COURT - FINDINGS OF FACT BY TRIAL JUDGE - CONFLICT BETWEEN PLAINTIFF AND WITNESSES FOR DEFENDANT - TRIAL JUDGE ACCEPTING PLAINTIFF'S ACCOUNT - WHETHER SUPREME COURT MAY OVERTURN FINDING OF FACT

The plaintiff instituted proceedings claiming damages in respect of injuries alleged to have been sustained while she was a pupil in a vocational school under the control of the defendant VEC, at a time when she was 17 years. In evidence, the plaintiff stated that she fell in a pool of water in a kitchen in the school. She stated that she had been sent to the kitchen by a teacher, that she fell in the presence of another pupil, that she reported the accident immediately to a cleaner and that she attended a doctor concerning the accident. In evidence on the VEC's behalf, the plaintiff's teacher stated that pupils were not sent to the kitchen in the manner alleged by the plaintiff. The pupil stated by the plaintiff to have been in the kitchen denied being there and the cleaner to whom the plaintiff stated she reported the accident could not recollect the event. In the High Court, Egan J held that, although the plaintiff's evidence had been unsatisfactory in some respects, it could not be said that she had lied. He concluded that, as the plaintiff's evidence indicated that the pool of water had been in position for some time, the defendant was in breach of its duty of care to her and he awarded the plaintiff 20,762. On appeal by the defendant **HELD** by the Supreme Court (Finlay CJ, Hederman and O'Flaherty JJ) allowing the appeal: (1) while the Court would not normally interfere with findings of primary fact by a trial judge there were exceptional cases where the evidence is so clearly one way as to require the intervention of the Supreme Court to say that the verdict entered by the trial judge cannot stand; (2) the Court would not interfere with the findings in the instant case if the plaintiff's evidence had been contradicted on one item, albeit the plaintiff's account would then be rendered unsatisfactory; however, the cumulative effect of the evidence on the defendant's behalf (which had not been challenged as unreliable) was such that it was impossible to say that the plaintiff had made out her case, and on the contrary her case had been comprehensively disproved; and in the circumstances the verdict in her favour would be set aside.

Siuicre Eireann CPT v Commissioner of Valuation Supreme Court 7 April 1992

RATING - VALUATION - EXEMPTION FROM VALUATION - MACHINERY - OIL TANKS - WHETHER COURT MAY AMEND ERROR IN VALUATION LIST - Valuation (Ireland) Act 1852, ss.12, 23 - Valuation (Ireland) Act 1860, ss.7, 11

S.7 of the 1860 Act provides that 'machinery' in a mill or manufactory is exempt from rating, unless the 'machinery' is used for production of motive power. The appellant company was the occupier of a factory premises on which some oil tanks were situated. One of these, a diesel oil tank, was a holding tank for diesel oil to supply mobile equipment. The other tanks were heavy fuel oil tanks, which contained pumping and heating equipment. The diesel oil tank was erroneously entered into the Buildings column of the Valuation List by the Commissioner for Valuation. It was agreed that all the tanks would be rateable if entered into the Miscellaneous column of the List. The company argued that they were exempt from rates on the grounds that the courts could not alter the List on appeal from the Commissioner. On case stated **HELD** by the Supreme Court (Finlay CJ, Hederman and McCarthy JJ): (1) the heavy fuel oil tanks were not involved in the manufacturing process of the company, and since they were essentially holding tanks and receptacles for oil they were thus not exempt 'machinery' within s.7 of the 1860 Act. Dicta in *Beamish & Crawford Ltd v Commissioner of Valuation* [1980] ILRM 149 applied. (2) it was also clear that none of the tanks were buildings within s.12 of the 1852 Act, but they would be rateable under the Miscellaneous Column of the Annual List; (3) since an appeal against valuation under s.23 of the 1852 Act could involve correction of an error by the Commissioner, and since s.11 of the 1860 Act allowed a Superior Court to make such order as it may seem fit, the court was empowered not simply to correct errors by the Commissioner in favour of the appellant but to make good any other error in the compilation of the List; and thus the court was empowered to alter the annual List and to transfer a rateable hereditament from one Column in the List to another Column; and accordingly the tanks would be entered in the Miscellaneous Column. *Dicta* of Costello J in *Pfizer Chemical Corp v Commissioner of Valuation* (High Court, 9 May 1989) (1990) 8 ILT Digest 84 approved.

Pfizer Chemical Corp v Commissioner of Valuation Supreme Court 7 April 1992

RATING - VALUATION - EXEMPTION FROM VALUATION - MACHINERY - OIL TANKS - WHETHER COURT MAY AMEND ERROR IN VALUATION LIST - Valuation (Ireland) Act 1860, s.11

The appellant company was the owner and occupier of a large factory premises in which they manufactured food chemicals and bulk pharmaceuticals. The company appealed against the Commissioner's valuation for rating purposes of certain installations on the factory site. These included tanks for the reception of crude beet molasses, tanks for the reception of sulphuric acid, a number of other tanks as well as pipelines (which were over 40 miles long) used to transmit the molasses and acid to the factory. In addition to claiming that the Commissioner should not have rated the installations, the company argued that the Commissioner had wrongly categorised them in the Annual Valuation List and that the Court had no power on appeal to amend the Annual List. Costello J held (High Court, 9 May 1989) (1990) 8 ILT Digest 84 that the Commissioner had erred in holding the installations were rateable as machinery, but concluded that, since they were not buildings, they could be rated under the Miscellaneous Column of the Annual List; and that the court had power to amend the Annual List, and would do so in the instant case. On appeal by the company **HELD** by the Supreme Court (Finlay CJ, Hederman and McCarthy JJ) dismissing the appeal: the Court had the power to amend the Annual List under s.11 of the 1860 Act; and the High Court had drawn the correct conclusions from the circumstances in the case. *Siuicre Eireann CPT v Commissioner of Valuation* (Supreme Court, 7 April 1992) (supra) applied.

Texaco (Irl) Ltd v Murphy (Inspector of Taxes)(No.2) Supreme Court 15 May 1992

REVENUE - OVERPAYMENT OF TAX DETERMINED AFTER COURT APPEAL - INTEREST ON OVERPAYMENT - METHOD OF CALCULATION - RATE BASED ON THAT UNDER COURTS ACTS - Income Tax Act 1967, ss.428, 550 - Finance Act 1976, s.30 - Courts Act 1981, s.22

The appellant company had successfully appealed, on case stated to the Supreme Court, against an assessment to tax levied by the respondent Inspector of Taxes: [1992] ILRM 304; [1991] 2 IR 449. It was agreed that the company's overpayment of tax was to be repaid together with interest, but the question arose as to the rate of interest payable. S.428 of the 1967 Act provided that interest shall be payable 'with such interest, if any, as the Court may allow.' **HELD** by the Supreme Court (Finlay CJ, Hederman and McCarthy JJ): since s.428 of the 1967 Act left the calculation of the interest payable in the discretion of the Court, it would not be appropriate to refer to provisions of the tax code, such as s.550 of the 1967 Act or s.30 of the 1976 Act, which themselves set particular rates of interest in respect of certain events occurring, not including the instant case; nor was reference to certain bank rates appropriate since this would preclude investigation as to whether the overpayment, if invested, might have achieved a negative return; and accordingly, the court would, in its discretion, order that interest was payable at the rates set under s.22 of the 1981 Act throughout the relevant period. *McGrath v McDermott* [1988] ILRM 647; [1988] IR 258 applied. *Per curiam:* no view would be expressed as to whether the interest payable was itself liable to tax.

Recent Irish Cases

Compiled 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.

Deane and Ors v Voluntary Health Insurance Board Supreme Court 29 July 1992

COMMERCIAL LAW - COMPETITION - 'UNDERTAKING' - VOLUNTARY HEALTH INSURANCE BOARD - WHETHER ENGAGED FOR GAIN IN PROVISION OF A SERVICE - WHETHER 'GAIN' SHOULD BE EQUATED WITH 'PROFIT' - STATUTE - INTERPRETATION - Voluntary Health Insurance Act 1957, s.4 - Competition Act 1991, s.3(1)

The plaintiffs instituted proceedings claiming that the defendant Board had acted in breach of its duties to the plaintiffs under s.5 of the 1991 Act. The 1991 Act prohibits the restriction of competition and the abuse of dominant positions by analogy with Articles 85 and 86 of the Treaty of the European Economic Community. The Act applies to 'undertakings', defined in s.3 as, inter alia, any person 'engaged for gain' in the production of goods or the provision of a service. The defendant argued, inter alia, that it was not an undertaking within s.3 of the 1991 Act since under s.4 of the 1957 Act it was required to fix subscriptions for health insurance cover so that its revenue for any year is sufficient, but only sufficient, to meet the charges properly chargeable to revenue. This issue was tried as a preliminary point of law. In the High Court, Costello J held that the defendant was not an undertaking within s.3 of the 1991 Act. On appeal **HELD** by the Supreme Court (Finlay CJ, Hederman and Egan JJ) allowing the appeal: (1) the word 'gain' in s.3 of the 1991 Act connoted something obtained or acquired, and was not limited to pecuniary gain; still less could it be equated with the word 'profit', and if the Oireachtas had intended to refer only to undertakings engaged in making profits it would unambiguously have so stated. *Re Arthur Average Association* (1875) LR 10 Ch App 542 approved; (2) the true meaning of s.3 of the 1991 Act was that it related to activities carried on or a service supplied in return for a charge or payment, which would exclude a charitable association which spent money without any charge or payment; and that, accordingly, the defendant came within the 1991 Act. *Per curiam*: even if the word 'gain' was ambiguous, the court would be entitled to have had regard to the Long Title of the 1991 Act; and having regard to the object of adopting by analogy Articles 85 and 86 of the Treaty of the European Economic Community, the argument by the defendant would severely restrict the application and extent of the 1991 Act in a manner unintended by the Oireachtas.

Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors (No.2) High Court 25 February 1992; Supreme Court 30 July 1992

COMPANY LAW - INSPECTOR - EXTENT OF POWERS WHETHER ENTITLED TO INVESTIGATE ACTIVITIES OF COMPANY INCORPORATED OUTSIDE STATE - EXCHANGE CONTROL - WHETHER MINISTER FOR FINANCE ENTITLED TO TRANSMIT EXCHANGE CONTROL INFORMATION FROM CENTRAL BANK TO OTHER GOVERNMENT MINISTER - CONSTITUTION - TRIAL OF OFFENCES - FAILURE TO ANSWER QUESTIONS PUT BY INSPECTOR - HIGH COURT ENTITLED TO PROCEED AS IF CONTEMPT OF COURT - WHETHER VALID - SEVERABILITY - Exchange Control Act 1954, s.28 - Official Secrets Act 1963, s.4 - Central Bank Act 1989, s.16 - Companies Act 1990, ss.9, 10(5), 10 (6), 14 - Constitution, Article 38.1

The first respondent (the inspector) had been appointed by the second respondent as an inspector pursuant to s.14 of the 1990 Act to investigate the purchase of a site in Dublin for over 4m and its sale less than one year later to Bord Telecom Eireann for over 9m. The site had been bought by a company, United Property Holdings Ltd (UPH), in which the first applicant (Mr Desmond) had a beneficial interest. The site then became vested in Chestvale Properties Ltd, a subsidiary of UPH. Chestvale was then sold to Delion Investment Dealings Ltd, a Cypriot company, which in turn was sold to Hoddle Investments Ltd. The main shareholder in Chestvale and Delion appeared to be one Pat Doherty. Finance for this aspect of the transaction was provided by Freezone Investments Ltd, a company registered in the Isle of Man and controlled by one Colin Probets, a resident of Jersey. Finally, Hoddle sold the site to Telecom. The purpose of the inspector's investigation was to examine in particular the beneficial ownership of Chestvale and Hoddle. In the course of his inquiries, the inspector questioned Mr Desmond extensively. He put to Mr Desmond certain exchange control information which had been given to the Central Bank concerning the Telecom transaction. The inspector had sought this information from the second respondent, who in turn had requested the Minister for Finance to seek it from the Central Bank. The applicants instituted judicial review proceedings challenging the validity of the inspector's appointment and also various aspects of the investigation. A contempt of court motion arose from the interim application for leave to seek judicial review: see *Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors* (High Court, 9 January 1992) (below). **HELD** by O'Hanlon J declining the relief sought, except in relation to the constitutional validity of s.10(5) of the 1990 Act: (1) in view of the widespread knowledge of the matters of public concern which led to the appointment of the inspector under s.14 of the 1990 Act, the Minister was not required to specify in the warrant of appointment the nature of the public interest which led to the appointment; (2) although the inspector had questioned the first applicant on his connection with certain companies which were incorporated outside the State and thus were not 'related' to Chestvale or Hoddle within s.9 of the 1990 Act, and although the inspector was entitled to seek approval from the Minister under s.9 of the 1990 Act to inquire into companies which were not 'related' but had not done so in the instant case, the inspector had not acted ultra vires in pursuing this aspect of the transaction because the first applicant accepted that he had been involved in the transactions involving these companies, though not financially involved in them; (3) the Minister for Finance had been entitled to seek the exchange control information from the Central Bank under s.19 of the 1989 Act, since the Central Bank acted as agent for the Minister in the collection of exchange control information under s.28 of the 1954 Act; and the Minister was, in turn, entitled to pass on such information to another Minister and did not act in breach of s.4 of the 1963 Act in so doing; (4) the applicants' common law right to privacy, which in the instant case was probably co-extensive with the constitutional right to privacy, was not breached in the instant case through the communication of the exchange control information from the Central Bank to the inspector since such communication related entirely to the better performance of public functions by public bodies and the protection of a free society would not be better served by the operation of affairs of State in water-tight compartments. *Marcel v Commissioner of Metropolitan Police* [1991] 1 All ER 845; [1992] 1 All ER 72 discussed; (5) in relation to s.10(5) of the 1990 Act, which authorised the High Court to try a person for refusal to answer questions put by an inspector as if the person was in contempt of court, Mr Desmond had locus standi to challenge the constitutional validity of s.10(5) since the inspector had already invoked s.10 against Mr Desmond and there was also the likelihood that, having regard to the number of questions addressed to him by the inspector, the powers in s.10 might be used in the future against him; (6) s.10(5) of the 1990 Act was repugnant to Article 38.1 of the Constitution in that it permitted the High Court to try summarily an offence which was not minor in character, but this part of s.10 could be severed from the remainder thus leaving intact the provisions in s.10(6) of the 1990 Act which provided an alternative mechanism for a person who refused to answer questions. In *re Haughey* [1971] IR 217 applied. On appeal, the issues raised were more confined than those in the High Court. **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) confirming the challenged findings of the High Court: (1) the High Court had been correct in finding that the first applicant had locus standi to challenge the constitutional validity of s.10(5) of the 1990 Act; (2) s.10(5) of the 1990 Act was repugnant to Article 38.1 of the Constitution for the reasons given by the High Court, and that this part of s.10 could be severed from the remainder

thus leaving intact the provisions in s.10(6) of the 1990 Act, with a further minor deletion from s.10(6). In *re Haughey* [1971] IR 217 and *Maher v Attorney General* [1973] IR 140 applied; (3) the inspector was entitled to question Mr Desmond concerning companies which were incorporated outside the State and thus were not 'related' to Chestvale and Hoddle within s.9 of the 1990 Act, since otherwise the powers of investigation under s.14 of the 1990 Act would be largely inoperable, and thus s.9 of the Act was irrelevant to the instant case. *Lyons and Ors v Curran* (High Court, 27 May 1992) (below) approved; (4) the High Court had correctly interpreted s.14 of the Central Bank Act 1989 in relation to the use by the inspector of the exchange control information obtained from the Central Bank.

Probets and Freezone Investments Ltd v Glackin, Minister for Industry and Commerce and Ors High Court 26 February 1992; Supreme Court 30 July 1992

COMPANY LAW - INSPECTOR - EXTENT OF POWERS - WHETHER ENTITLED TO INVESTIGATE ACTIVITIES OF COMPANY INCORPORATED OUTSIDE STATE - STATUTORY DECLARATION - WHETHER INSPECTOR ENTITLED TO SEEK TO EXAMINE DEPONENT UNDER OATH AND TO SEEK CORROBORATIVE EVIDENCE - Companies Act 1990, s.14

The first respondent (the inspector) had been appointed by the second respondent as an inspector pursuant to s.14 of the 1990 Act to investigate the purchase of a site in Dublin for over 4m and its sale less than one year later to Bord Telecom Eireann for over 9m. The precise circumstances are described in *Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors (No.2)* (High Court, 25 February 1992; Supreme Court, 30 July 1992) (supra). The applicants provided the finance for aspects of the Telecom transaction. The first applicant was a resident of Jersey. The applicants instituted judicial review proceedings challenging the validity of the inspector's appointment and also various aspects of the investigation. Many of the grounds were identical to those in the *Desmond (No.2)* case, *supra*, and were dismissed for the same reasons. The applicants also argued that the inspector had acted ultra vires in seeking to examine the first applicant under oath after he had sworn a statutory declaration denying that, apart from providing certain finance, he or any company of which he had control had a financial interest in the Telecom transaction. **HELD** by O'Hanlon J and affirmed by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) in dismissing the application for judicial review: the statutory declaration was proof that the first applicant was a resident of Jersey, that the second-named company was registered in the Isle of Man and that the first applicant had volunteered certain information to the inspector; but it was not proof of all the averments in the declaration, and the inspector was not required to accept the averments as prima facie evidence of their truth for the purposes of his investigation under s.14 of the 1990 Act; and in light of the information available to the inspector he was entitled to investigate whether the profits made on the financing of the transaction had passed from the applicants in the instant case to any other party, including the applicants in the Desmond (No.2) case (supra).

Chestvale Properties Ltd and Hoddle Investments Ltd v Glackin High Court 7 February 1992 and 10 March 1992

COMPANY LAW - INSPECTOR - EXTENT OF POWERS - WHETHER ENTITLED TO INVESTIGATE ACTIVITIES OF COMPANY INCORPORATED OUTSIDE STATE - CONSTITUTION - PROHIBITION AGAINST RETROSPECTIVE CRIMINAL LAW - INVESTIGATION OF CONTRACT ARRANGEMENTS MADE BEFORE COMMENCEMENT OF LEGISLATION - WHETHER UNJUST ATTACK ON PROPERTY RIGHTS - Companies Act 1990, s.14 - Constitution, Articles 15.5, 40.3, 43

The respondent (the inspector), a solicitor, had been appointed by the Minister for Industry and Commerce as an inspector pursuant to s.14 of the 1990 Act to investigate the purchase of a site in Dublin for over 4m and its sale less than one year later to Bord Telecom Eireann for over 9m. The precise circumstances are described in *Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors (No.2)* (High Court, 25 February 1992; Supreme Court, 30 July 1992) (supra). The applicants sought judicial review of the investigation and the appointment of the respondent on a number of grounds. These related to the investigation into bank accounts held or controlled by the applicants and also into the activities of foreign companies involved in the Telecom transaction. **HELD** by Murphy J dismissing the claim for judicial review: (1) having regard to the fact that the 1990 Act substantially expanded on inspection powers contained in previous legislation and that these powers had been repealed by the 1990 Act, the correct inference was that the 1990 Act was retrospective in effect in that pre-1990 transactions are exposed to the investigative powers contained in the 1990 Act; (2) the 1990 Act did not infringe Article 15.5 of the Constitution, since it did not declare any act to be an infringement of the law which was not so at the date of its commission; (3) the 1990 Act did not constitute an unjust attack on the applicants' property rights under Articles 40.3 or 43 of the Constitution since the extension of previous powers of inspectors by the 1990 Act was a marginal intrusion on their property rights in relation to any bank transactions effected before the 1990 Act came into effect, and although in that sense the 1990 Act was retrospective its operation was fully justifiable under Article 43; (4) since the director of one of the applicants, Mr Doherty, had received and continued to receive legal advice from the firm of solicitors of which the inspector was a partner, there might be the appearance of bias if the inspector was acting in a quasi-judicial capacity under the 1990 Act; however, in the instant case it did not appear, on the evidence to date, that the inspector would be required to make any findings of a judicial nature, so that any claim relating to bias was premature, and this brought into doubt the locus standi of the applicants to raise bias. *O'Neill v Beaumont Hospital Board* [1990] ILRM 419 and *In re Pergamon Press Ltd* [1971] Ch 388 discussed; (5) whatever problems might arise in the future because of the connection between Mr Doherty and the inspector's firm could not call into question the validity of the inspector's appointment under the 1990 Act; (6) the request by the inspector to the applicants' banks to provide information concerning Delion Investments Ltd as a 'related' company within s.9 of the 1990 Act was not authorised, since the inspector had not made the necessary request to the Minister for Industry and Commerce to inquire into Delion; but this did not affect the entitlement of the inspector to investigate Delion under s.14 of the 1990 Act since although it was a foreign registered company it was connected with the Telecom transaction, and accordingly the banks were required to comply with the request for information.

Glackin v Trustee Savings Bank and Anor High Court 10 April 1992

COMPANY LAW - INSPECTOR - EXTENT OF POWERS - WHETHER FINANCIAL INSTITUTION EMPOWERED TO CONSULT CLIENT BEFORE COMPLYING WITH REQUEST FOR INFORMATION FROM STATUTORY INSPECTOR - Companies Act 1990, ss.10, 14

The plaintiff (the inspector) had been appointed by the Minister for Industry and Commerce as an inspector pursuant to s.14 of the 1990 Act to investigate the purchase of a site in Dublin for over 4m and its sale less than one year later to Bord Telecom Eireann for over 9m. The precise circumstances are described in *Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors (No.2)* (High Court, 25 February 1992; Supreme Court, 30 July 1992) (supra). The plaintiff sought information from the defendant bank in relation to money which had been placed with the bank by or under the control of a company concerned in the Telecom transaction. Although the bank was willing to co-operate with the inspector, it declined to reply to all queries from the inspector on the ground that it should consult its client prior to providing confidential information to him. On the plaintiff's application to the Court under s.10 of the Act requiring the Court to inquire into the bank's failure to comply with his request **HELD** by Costello J: the bank was required to comply fully with the request of the inspector in the instant case, and it must be taken that the 1990 Act overrode any questions of confidentiality or any requirement to consult with a client prior to complying with the request of an inspector appointed under statute. *Per* Costello J: the Court was entitled to exercise its powers under s.10(6) of the 1990 Act, taking into account the constitutional infirmity in s.10(5) found in *Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors (No.2)* (High Court, 25 February 1992) supra.

Lyons and Ors v Curran High Court 27 May 1992

COMPANY LAW - INSPECTOR - EXTENT OF POWERS - WHETHER ENTITLED TO INVESTIGATE ACTIVITIES OF COMPANY INCORPORATED OUTSIDE STATE - Companies Act 1990, ss.9, 14

The respondent (the inspector) had been appointed by the Minister for Industry and Commerce as an inspector pursuant to s.14 of the 1990 Act to investigate the purchase in December 1988 of 49% of the shares in Sugar Distributors Ltd, through a company called Gladebrook Co Ltd, and their resale to Siuicre Eireann CPT in February 1990 at a very substantial profit. 22% of the proceeds of the sale went to a company called Talmino Ltd, a Jersey registered company.

The inspector's report concluded that the then managing director of Siuicre Eireann CPT, a Mr Comerford, was the beneficial owner of Talmino Ltd and that the applicants in the instant case had no beneficial interest in Talmino. The applicants had issued proceedings against Mr Comerford claiming to be the beneficial owners of Talmino. By virtue of s.22 of the 1990 Act, the inspector's report and any opinion expressed in it are admissible in any proceedings as evidence of the facts contained therein, unless the contrary is proved, and of the opinion of the inspector. The applicants applied to quash the inspector's report on the ground that the inspector had no power to investigate Talmino as it was a foreign registered company. **HELD** by Blayney J dismissing the claim: the inspector was entitled to investigate Talmino since it was accepted that Talmino was entitled to 22% of the proceeds of the sale of the shares in Sugar Distributors Ltd; the requirement under s.9 of the 1990 Act that the inspector seek the permission of the Minister for Industry and Commerce to investigate a 'related' company would seem to relate to situations in which the inspector considered that another company might be involved in the transaction under investigation, but in the instant case, it was clear that Talmino was certainly involved in the transaction and thus s.9 was not relevant.

Minister for Justice v Siuicre Eireann CPT and Ors High Court 1 May 1992

COMPANY LAW - INSPECTOR - WHETHER STATE ENTITLED TO RECOVER COSTS OF INVESTIGATION BY INSPECTOR - INVESTIGATION INTO STATE COMPANY - WHETHER PRIVATE PERSONS SHOULD BEAR COST OF INVESTIGATION - WHETHER FOREIGN COMPANY MAY BE REQUIRED TO PAY COSTS OF INVESTIGATION - Companies Act 1990, ss. 8, 13

The Minister for Industry and Commerce had successfully applied to the High Court pursuant to s.8 of the 1990 Act for the appointment of two persons to act as inspectors under the 1990 Act to further investigate the purchase in December 1988 of 49% of the shares in Sugar Distributors Ltd, through a company called Gladebrook Co Ltd, and their resale to Siuicre Eireann CPT in February 1990 at a very substantial profit. An inspector had previously been appointed by the Minister under s.14 of the 1990 Act in relation to this transaction: see *Lyons and Ors v Curran* (High Court, 27 May 1992) (supra). The costs of the inspection under s.8 of the 1990 Act were approximately 1.15m. The Minister for Justice applied under s.13 of the 1990 Act to recover these costs (less VAT) from the defendants, primarily the companies whose connection with the transaction had been investigated. In addition, the Minister also sought to recover against Talmino Ltd, a Jersey company which was entitled to 22% of the proceeds of the sale of the Sugar Distributors shares. **HELD** by Lynch J dismissing the application: (1) prima facie the Minister should be entitled to recover the costs of an investigation under the 1990 Act; (2) however, in the instant case, at the time of the events which led to the investigation under the 1990 Act, the State was the sole shareholder in Siuicre Eireann CPT, and the State had subsequently sold 70% of its shareholding; and in those circumstances in would not be just and equitable to order that private persons should bear the cost of an investigation into what was a company owned at the time in question by the State; (3) Talmino did not come within the terms of s.13 of the 1990 Act since it was not one of the companies under investigation; and in addition it was not carrying on a business in the State, but had merely purchased shares in Sugar Distributors through Gladebrook.

McKinley v Minister for Defence and Ors Supreme Court 27 July 1992

CONSTITUTION - EQUALITY - LOSS OF CONSORTIUM - CLAIM BY WIFE FOR LOSS OF HUSBAND'S SERVICES - WHETHER COMMON LAW ACTION CONFINED TO CLAIM BY HUSBAND FOR LOSS OF WIFE'S SERVICES - WHETHER CARRIED FORWARD BY CONSTITUTION - WHETHER COURTS SHOULD REMOVE DISCRIMINATION BY ALLOWING WIFE TO CLAIM - Constitution, Articles 40.1, 41, 50 - Civil Liability Act 1961, s.35(2)(b)

The plaintiff's husband was severely injured in the scrotal region while serving as a member of the Defence Forces. She claimed damages for loss of consortium arising from these injuries. The defendants claimed that the plaintiff's statement of claim disclosed no cause of action on two grounds. First, that the common law action for loss of consortium was confined to a claim by a husband for loss of his wife's services; second that the claim for loss of consortium had not survived the enactment of the Constitution since it resulted in a discriminatory treatment of women contrary to Article 40.1. In the High Court, Johnson J declined to strike out the action: Irish Times LR, 14 May 1990. On appeal by the defendants **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) dismissing the appeal and remitting the action to the High Court: (1) the action for loss of consortium was well-established in common law, but was confined to a claim by the husband for loss of the services of his wife. *Spaight v Dundon* [1961] IR 201 applied; (2) (Hederman, McCarthy and O'Flaherty JJ; Finlay CJ and Egan J dissenting) the common law limitation was inconsistent with the plaintiff's rights under Articles 40.1 and 41 of the Constitution; but, in examining an existing common law heading of claim, the courts were not confined to declaring the existing rule invalid for inconsistency with the Constitution; and having identified the inequality, the courts had jurisdiction to declare that the plaintiff had an equal right to claim for loss of consortium. *Semble*: the argument by the Attorney General that s.35(2)(b) of the 1961 Act was invalid in view of its recognition of the common law claim for consortium was difficult to reconcile with the Attorney's obligation to uphold the constitutional validity of legislation. *Per* O'Flaherty J: the level of damages in a claim for loss of consortium might be assessed in the same way as a fatal injuries claim by a spouse under the 1961 Act.

Desmond and Dedeir v Glackin, Minister for Industry and Commerce and Ors High Court 9 January 1992

CONTEMPT OF COURT - SUB JUDICE - SCANDALISING OF COURT - COMMENTS MADE ON ORDER OF COURT GRANTING INJUNCTION - WHETHER IN CONTEMPT - MATTERS INVOLVED SUBJECT TO PUBLIC COMMENT - CONSTITUTION - FREEDOM OF EXPRESSION - European Convention on Human Rights and Fundamental Freedoms, Article 10 - Constitution, Article 40.3

The applicants had instituted judicial review proceedings challenging the validity of the appointment of the first respondent as an inspector pursuant to the Companies Act 1990. The appointment had been made by the second respondent to investigate the purchase of a site in Dublin for over 4m and its sale one year later to Bord Telecom Eireann for over 9m. This transaction had become the subject of a large amount of public comment prior to the appointment of the inspector, and the first applicant had a beneficial interest in some of the companies involved in the sale. On an ex parte application to the High Court (Flood J), the applicants obtained leave to seek judicial review of the inspector's appointment and also mandatory interim relief prohibiting the inspector from seeking to question the first applicant further on his involvement in the transactions leading to the sale of the site to Telecom Eireann. The affidavit grounding the application alleged that the respondents had obtained certain information from the Central Bank in breach of the Central Bank Acts and the interim relief included an injunction prohibiting the use of any such information. The first respondent responded to a request for comment from the media and expressed surprise that the applicants had sought such relief. The second respondent, the Minister for Industry and Commerce, gave an extensive live radio interview to Radio Telefis Eireann stating, inter alia, that he was amazed by the application for interim relief, agreed that the effect of the injunction was that the High Court had facilitated the blocking of the inspector's investigation under the 1990 Act, and that he hoped that the Supreme Court would provide the same facility to him (the Minister) if an appeal were brought. He also criticised the High Court for accepting the averment in the applicants' grounding affidavit that he (the Minister) had acted in breach of the Central Bank Acts. The applicants sought to have the respondents attached for contempt of court. The gravamen of the application concerned the Minister's radio interview. **HELD** by O'Hanlon J declining to attach the respondents: (1) the offence of scandalising the courts had not been established since, although made about pending proceedings, they were made about an actual decision made at an early stage of the judicial review proceedings in question; and while the Minister's language was unfortunate, he should be allowed a degree of latitude and had not exceeded the bounds of fair and permissible criticism. Dicta in *The State(DPP) v Walsh* [1981] IR 412 applied; (2) as to whether the sub judice rule had been breached, it was unlikely that the comments in the instant case were intended to make it more difficult for the judge hearing the judicial review to made a fair decision, and thus a risk to the administration of justice had not been established. Dicta in *Attorney General for New South Wales v J. Fairfax & Sons Ltd* [1980] 1 NSWLR 362 applied; (3) as to whether contempt had been committed in the sense of prejudging an issue in pending proceedings or by pillorying one of the parties to those proceedings, the affidavit grounding the application

for judicial review clearly made trenchant criticism of the Minister to which he was entitled to reply in careful and moderate terms; and while the Minister was ill-advised to give a response on a live radio broadcast, the matter was of ongoing public interest and in these exceptional circumstances having regard to the provisions protecting freedom of expression in Article 40.3 of the Constitution, contempt had not been made out under this heading. *Attorney General v Times Newspapers Ltd* [1974] AC 273 and *Times Newspapers Ltd v United Kingdom* (1979) 2 EHRR 245 discussed. *Per* O'Hanlon J: the court should assume that Irish law on contempt was consistent with Article 10 of the European Convention on Human Rights and Fundamental Freedoms. Dicta in *The State(DPP) v Walsh* [1981] IR 412 applied.

Emerald Meats Ltd v Minister for Agriculture and Ors (No.2) Supreme Court 16 July 1992

PRACTICE - APPEAL - STAY ON AWARD OF DAMAGES PENDING APPEAL - APPEAL LIKELY TO INVOLVE DELAY OF OVER TWO YEARS - WHETHER STAY SHOULD BE LIFTED - LIKELIHOOD OF SUCCESS OF APPEAL

The plaintiff was a company engaged in the meat trade. The plaintiff claimed declaratory relief and damages in relation to the failure by the defendants to grant the plaintiff an import quota for 1990 under the terms of EC Council Regulation 4024/89, which concerns imports of meat from non-EC States coming within the terms of the GATT. In the High Court, Costello J granted the relief sought: *Emerald Meats Ltd v Minister for Agriculture and Ors* (High Court, 9 July 1991). The decree for damages was for 385,922 with interest. Without objection from the plaintiff, the defendants were granted in July 1991 a stay on the damages award pending appeal. In July 1992, the plaintiff sought to have the stay removed. **HELD** by the Supreme Court (Hederman, McCarthy and Egan JJ) removing the stay: although the plaintiff had not objected to the stay in 1991, circumstances had changed considerably since then, and it appeared that the plaintiff was in immediate danger of going out of business; having regard to the issues raised in the appeal, it was possible that a reference to the Court of Justice under Article 177 of the Treaty of the European Economic Community might result, thus postponing final judgment for a further two years; and in the light of the trial judge's findings, the prospects of success for the defendants seemed slight; and in those circumstances, although the damages might become dissipated in the company's debts, the justice of the case lay in removing the stay on the award. *Redmond v Ireland* [1992] ILRM 291 applied.

Megaleasing UK Ltd and Ors v Barrett and Ors (No.2) Supreme Court 20 July 1992

PRACTICE - DISCOVERY - DISCOVERY AS SUBSTANTIVE RELIEF - HIGH COURT GRANTING SUCH ORDER FOR DISCOVERY - WHETHER JUSTIFIED IN CIRCUMSTANCES

The plaintiffs (the companies) instituted plenary proceedings against the defendants in which the substantive relief was for orders of discovery concerning certain invoices which had been paid by the companies. Payment of the invoices had been authorised by certain of the defendants, who were employees of the companies, but the companies alleged that they had received no consideration or value for the payments made. The purpose of the discovery orders was stated by the companies to be to facilitate them in bringing proceedings against other parties whose tortious acts the companies claimed had caused them to suffer loss. In the High Court, Costello J granted the plaintiffs the relief sought, and refused to grant a stay of execution upon the order. On appeal by the defendants against the refusal of the stay, the Supreme Court granted the stay: *Megaleasing UK Ltd and Ors v Barrett and Ors* [1992] 1 IR 219. On the substantive appeal **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) allowing the appeal: (1) it was well established that the courts had jurisdiction to order discovery as a substantive remedy, in circumstances where a person who inadvertently became involved in tortious activity was in possession of information which would assist the victim to obtain justice. *Orr v Diaper* (1876) 4 Ch D 92; (2) the jurisdiction of the court in such cases should be exercised sparingly and should be confined to cases where very clear proof of wrongdoing has been established, and to seeking the names and identities of wrongdoers rather than factual information concerning the commission of the wrong. *Norwich Pharmacal Co and Ors v Customs and Excise Commissioners* [1974] AC 133 referred to; (3) in the instant case, the companies had already established the names of the officers in their companies who were responsible for the issuing of the invoices in question and, through the settlement of a number of claims with them, had obtained statements from them that they were unaware of the eventual beneficiaries; and in the circumstances, the further claim by the companies that they required discovery for the purposes of obtaining a satisfactory explanation for the payments fell far short of establishing a wrongdoing which would justify making an order for discovery as a substantive remedy.

Allied Irish Banks plc and Anor v Ernst & Whinney (Minister for Industry and Commerce, Notice Party) High Court 22 January 1992; Supreme Court 17 July 1992

PRACTICE - DISCOVERY - THIRD PARTY DISCOVERY - COMPLEX ACTION - SUPERVISION OF INSURANCE INDUSTRY - VIRTUAL COLLAPSE OF MAJOR INSURANCE COMPANY - NEGLIGENCE ACTION - WHETHER SUPERVISING GOVERNMENT DEPARTMENT REQUIRED TO MAKE DISCOVERY Rules of the Superior Courts 1986, O.31, rr.12, 21

The plaintiffs had instituted proceedings in negligence against the defendant, a firm of accountants. The defendant had acted as statutory auditors for an insurance company, the Insurance Corporation of Ireland plc. The second plaintiff, a subsidiary of Allied Irish Banks plc, had purchased the entire equity in the Insurance Corporation. Subsequently, the Insurance Corporation suffered virtual financial collapse, and an administrator was appointed to the company under the Insurance (No.2) Act 1983. The second plaintiff claimed that it invested in the Insurance Corporation in reliance on information provided by the defendant firm, that the defendant had been negligent in the putting up of that information, that it acted in breach of its duty of care to the plaintiffs, and that consequently the plaintiff suffered financial loss. The defendant firm denied all these claims. In the course of the proceedings, the defendant firm sought discovery of certain documents from the Department of Industry and Commerce (the government department responsible for the overseeing of insurance companies) in particular documentation concerning the acquisition by the second plaintiff of its equity in the Insurance Corporation and of the events leading up to the appointment of the administrator to the Insurance Corporation. **HELD** by Costello J refusing the order for discovery: the defendant had established that the documents sought existed but had not established that they must all be relevant to the proceedings between the parties, and the Court had no jurisdiction to make an order which might uncover certain documents of relevance to proceedings. On appeal by the defendant to the Supreme Court, a list was prepared of the issues in the case and of categories of documents relevant to those issues. **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) allowing the appeal and ordering discovery: (1) the jurisdiction of the Court to order discovery in respect of persons who were not party to proceedings under O.31, r.21 of the 1986 Rules differed in certain respects from that where discovery was directed at a party to proceedings under O.31, r.12, but the essential purpose was the same, namely that justice be done on the basis of a full consideration of the evidence; (2) the differences in an application under O.31, r.21 is that the Court must be satisfied from evidence adduced by the application: (i) that the notice party is likely to have documents in its possession and that these documents are relevant to the issues in the case; (ii) that discovery will not be unduly oppressive to the notice party, although the applicant need not establish that specific documents are in the hands of the notice party; and (iii) that any order for discovery to the notice party should indicate in simple form the relevance to the case of the documents being sought by the applicant; (3) the High Court had taken the correct general approach except in relation to the onus on the defendant to establish the relevant of documents to the instant case, though the Supreme Court had been in a better position to assess the relevance of the documents sought to the issues in the proceedings having regard to the list prepared by the defendant for the appeal hearing. *Per curiam:* a similar list or schedule linking the issues in proceedings to the documents sought would appear an essential proof in an action involving multiple issues; (4) although compliance with an order for discovery would involve the expenditure of considerable time by officials of the Department of Industry and Commerce, this could not be regarded as being oppressive having regard to the contribution towards the administration of justice which discovery of documents made.

Recent Irish Cases

Compiled 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.

Attorney General v Mr Justice Hamilton, Sole Member of Tribunal of Inquiry Into Beef Processing Industry High Court 10 July 1992; Supreme Court 21 August 1992

CONSTITUTION - EXECUTIVE - GOVERNMENT MEETINGS - WHETHER ABSOLUTE BAN ON DISCLOSURE OF CONTENT OF DISCUSSIONS AT GOVERNMENT - TRIBUNAL OF INQUIRY APPOINTED BY OIREACHTAS SEEKING INFORMATION ON GOVERNMENT DISCUSSIONS - LOCUS STANDI - WHETHER ATTORNEY GENERAL HAVING STANDING TO RAISE ISSUE OF GOVERNMENT CONFIDENTIALITY - Constitution, Articles 6, 28.4

The respondent had been appointed the sole member of a tribunal of inquiry into the beef processing industry, pursuant to resolutions passed by both Houses of the Oireachtas on 24 May 1991. The background to the resolutions and their effect is discussed in Goodman International v Mr Justice Hamilton [1992] ILRM 145. In the course of the tribunal's hearings, a former Minister for Justice was examined by counsel for the tribunal concerning the details of discussions which took place at meetings of the government, that is the executive branch of government, on 8 June 1988. Counsel for the Attorney General objected to these questions on the ground that discussions af government were absolutely confidential pursuant to Article 28.4 of the Constitution. The respondent indicated that he intended to pursue the questioning of the former Minister, and the Attorney General was then given an opportunity to apply for judicial review of this ruling. In the High Court **HELD** by O'Hanlon J upholding the respondent's ruling: the decisions of Irish courts concerning claims for government privilege in applications for discovery of documents, which militated against an absolute claim for confidentiality in government deliberations, were relevant to the instant case since it also concerned the balance to be struck between an individual's legal rights and the claims of the executive; and the claim to an absolute blanket of confidentiality claimed in the instant case would not have due regard to the rights of the individual guaranteed by the Constitution, and if such a ban had been intended it would have been spelt out in clear terms in the Constitution, as it was in relation to Oireachtas members in Article 15.13. *Murphy v Dublin Corporation* [1972] IR 215 and *Ambiorix Ltd v Minister for the Environment* [1992] ILRM 209; [1992] 1 IR 277 applied. On appeal by the Attorney **HELD** by the Supreme Court (Finlay CJ, Hederman, McCarthy, O'Flaherty and Egan JJ) allowing the appeal: (1) the Attorney General had locus standi to maintain the judicial review proceedings since it related to an issue which he claimed was fundamental to the whole operation of government and, if his contention was correct, he had the clearest duty to intervene; and it was irrelevant if his contention concerned an implication from an express constituional provision as opposed to a fully expressed constitutional provision. *Attorney General (SPUC Ltd) v Open Door Counselling Ltd* [1987] ILRM 477; [1988] IR 593 and *Attorney General v X* [1992] ILRM 401; [1992] 1 IR 1 referred to; (2) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) Article 28.4 of the Constitution, in requiring government members to meet and act as a collective authority, involved the consequential duties of full, free and frank discussion between them, the making of a single decision on any issue and to accept collective responsibility for decisions; these involved, as a necessity, the non-disclosure of different or dissenting views held by government members prior to making any decisions; (3) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) this conclusion was supported by the obligation to interpret the Constitution in its entirety in a manner most likely to make it an effective instrument for the ordering of society and the governing of the Nation, as well as by the implications of the doctrine of the separation of powers which derived from Article 6 of the Constitution; nor was there any inconsistency between this conclusion and the fact that Articles 26.2.2 and 34.4.5 had expressly inserted provisions prohibiting the expression of dissenting opinions in certain Supreme Court decisions, since these provisions were properly interpreted by reference to the historical context in which they had been inserted after the decision in *In re the Offences against the State (Amendment) Bill 1940* [1940] IR 470; (4) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) no previous cases concerning discovery of documents had directly raised the issue of government or cabinet discussions; and, in any event, since they concerned the exercise of the judicial power, the principles involved in those cases could not automatically be applied to the question of evidence adduced before a tribunal of inquiry appointed on foot of resolutions passed by the Houses of the Oireachtas. *Murphy v Dublin Corporation* [1972] IR 215 and *Ambiorix Ltd v Minister for the Environment* [1992] ILRM 209; [1992] 1 IR 277 distinguished; (5) (Finlay CJ, Hederman and O'Flaherty JJ; McCarthy and Egan JJ dissenting) having regard to the fact that it had been the invariable practice of the Houses of the Oireachtas not to seek information from government Ministers on cabinat discussions, this supported the claim to confidentiality in the instant case; and since the claim went to the fundamental machinery of government it could not be waived by any individual member of government; but while the confidentiality extended to details of discussions at meetings of the Government, it did not extend to the decisions actually made or the documentary evidence of them. *Per* McCarthy and Egan JJ (dissenting): the text of the Constitution did not support the claim for an absolute blanket on confidentiality, and against that background it was a matter for the respondent to determine what areas of inquiry were relevant to the terms of reference set out by the Houses of the Oireachtas.

Sheehan v O'Reilly and Ors Supreme Court 8 December 1992

CONSTITUTION - INQUIRY INTO LEGALITY OF DETENTION - CRIMINAL LAW - DISTRICT COURT ORDER IN EXCESS OF JURISDICTION - WHETHER INQUIRY INTO DETENTION SHOULD BE ORDERED IMMEDIATELY - CONVERSION INTO CERTIORARI APPLICATION - WHETHER APPROPRIATE - WHETHER CASE TO BE REMITTED TO DISTRICT COURT - Rules of the Superior Courts 1986, O.84, r.26(4) - Constitution, Article 40.4.2

The applicant had been convicted in November 1990 of certain offences and sentenced to a total of 16 months' imprisonment. Having withdrawn an appeal against these convictions, he began serving the sentence in January 1991. On 2 January 1992, the applicant was convicted by the first respondent of an offence under the Larceny Act 1916, and was sentenced to 10 months' imprisonment, to date from the termination of the sentences imposed in November 1990. On 22 January 1992, the applicant applied in person to the High Court for 'a conditional order of habeas corpus... and for an inquiry in accordance with the Constitution of Ireland, Article 40.4.2.' The ground for the application was that the first respondent's order of 2 January 1992 was in excess of jurisdiction in that its effect was to impose consecutive sentences totalling 26 months. On 5 February 1992, Carney J ordered that, in lieu of granting an order for habeas corpus, the applicant be permitted to apply for judicial review of the order made on 2 January 1992. The ruling made by Carney J appeared to indicate that he was under the mistaken impression that the applicant's November 1990 conviction had occured in November 1991. On 25 March 1992, Denham J made an order on judicial review quashing the conviction and sentence of 2 January 1992, but remitted the case to the District Court pursuant to O.84, r.26(4) of the 1986 Rules. By spoken order, Denham J also discharged the applicant from custody. The applicant appealed in person to the Supreme Court, and the Court issued a recommendation that the applicant was entitled to the benefit of the Attorney General's scheme: see *Application of Woods* [1970] IR 154. **HELD** by the Supreme Court (Finlay CJ, Hederman, O'Flaherty, Egan and Blayney JJ): (1) the application of 22 January 1992, as it clearly raised an issue concerning the legality of the applicant's detention, should have been regarded as one for an inquiry pursuant to Article 40.4.2 of the Constitution, no matter how it was described by the applicant; (2) an

application under Article 40.4.2 must necessarily transcend any procedural form for judicial review or otherwise, and the High Court judge has a jurisdiction to make speedy and, if necessary, informal inquiries of the jailor or detainer to ascertain the facts, even before reaching a conclusion that a sufficient doubt exists as to the legality of the detention; in the instant case, because of the absence of any inquiries and the unfortunate error made by the High Court judge on 5 February 1992 that the November 1990 sentence had been imposed in November 1991, the application was converted into one for judicial review with its consequent procedural delays; (3) where, as in the instant case, the application clearly raised the question of the validity of the detention the conversion into judicial review proceedings was inappropriate. Dicta in *The State(McDonagh) v Frawley* [1978] IR 131 explained; (4) while there was no bar to the High Court remitting the applicant's case to the District Court under O.84, r.26(4) of the 1986 Rules, it would not fair or just, in the particular circumstances of the instant case where the applicant was deprived by the converting order of 5 February 1992 of what appeared to be his immediate right to challenge his detention, that he be charged again in respect of the offence in question, and the Court would refuse to remit the case to the District Court. *The State(Tynan) v Keane* [1968] IR 348 referred to.

Hong Kong and Shanghai Banking Corp v Icarom plc (Meadows Indemnity Co Ltd, Third Party) Supreme Court 31 July 1992

CONTRACT - CONDITION PRECEDENT - AGREEMENT TO PROVIDE INDEMNITY OR INSURANCE IN RESPECT OF A SECURED LOAN - SECURITY EFFECTED PROVING INEFFECTIVE - WHETHER AGREEMENT TO INDEMNIFY OPERATIVE - WHETHER CONTRACT OF GUARANTEE OR OF INSURANCE

A Greek businessman, operating through a Swiss company Amaxa SA, wished to finance the purchase of an interest in a hotel in Corfu involving a sum in the region of IR6 million. Amaxa had been refused a loan by a number of banks on the basis that inadequate security was available. Amaxa was told that a Credit Guarantee Insurance Agreement (CGI Agreement) might be regarded as sufficient security for the loan. The defendant company's general manager in London (the defendant, then being titled the Insurance Corporation of Ireland plc) was approached with a view to entering into such a CGI Agreement. He brought the proposal to the third party, Meadows, to which he acted as consultant, with a view to re-insuring the CGI Agreement. Meadows agreed to this, on condition that the loan to Amaxa itself be properly secured. The plaintiff bank (the bank) was then approached to effect the loan to Amaxa, the bank requiring the defendant to 'front' the CGI Agreement, that is act as principal since it was not satisfied that Meadows had sufficient capital to take on the Agreement. The loan agreement and the CGI Agreement were effected. Shares in the Greek hotel were purportedly transferred to the defendant to secure the loan to Amaxa. The defendant later discovered that it was not lawful under Greek law to transfer shares in the hotel to a non-Greek national. Amaxa defaulted on the loan agreement, and the bank sought payment from the defendant under the CGI Agreement. The defendant repudiated liability on the basis that the CGI Agreement was a contract of insurance and that there had been non-disclosure of material information by the bank, namely that the bank had been aware that the transfer of shares in the hotel to a non-Greek national was not lawful under Greek law. The defendant also argued that it was entitled to an indemnity from Meadows, but Meadows submitted that since the defendant had not effected security for the loan to Amaxa, no indemnity arose. In the High Court, Blayney J found for the plaintiff and that the defendant was not entitled to claim an indemnity against Meadows: *International Commercial Bank plc v Insurance Corporation of Ireland plc* (High Court, 19 October 1990). On appeal by the defendant on the question of indemnity from Meadows **HELD** by the Supreme Court (Finlay CJ, McCarthy and O'Flaherty JJ) dismissing the appeal: (1) it was probably accurate to describe the agreement between the defendant and Meadows as one in which Meadows agreed to insure the defendant in respect of a loss that might be sustained under the CGI Agreement, which was in essence a contract of guarantee; (2) however, whether the contract between the defendant and Meadows was one of guarantee or of insurance, the reality of it was that the agreement to indemnify arose if, and only if, the loan to Amaxa was secured in the manner intended by the parties; and since the loan had not been secured, there was nothing on which the contract to insure could operate, and thus the trial judge had been correct in holding that the Meadows agreement to insure was inoperative.

The People(D.P.P.) v Davis Supreme Court 9 December 1992

CRIMINAL LAW - TRIAL - JURY VERDICT - ACCUSED PLEADING NOT GUILTY OF MURDER BUT GUILTY OF MANSLAUGHTER - PLEA NOT ACCEPTED - TRIAL JUDGE DIRECTING JURY TO ARRIVE AT VERDICT OF GUILTY - CONSTITUTION - WHETHER DIRECTION CONSISTENT WITH FUNCTION OF JURY TO GIVE VERDICT - Constitution, Article 38.5

The accused was tried on a charge of murder in the Central Criminal Court. He pleaded not guilty to murder but guilty to manslaughter. This plea was not acceptable to the prosecution, and a plea of not guilty was entered. The evidence indicated that the accused had consumed a large quantity of alcohol on the day in question. He and a friend, Brady, had become involved in a fight and were being taken away from the fight, against their will, by some companions. The defendant got free and procured a knife intending to attack the person who he believed had started the fight. He in fact stabbed his friend Brady a number of times and Brady died as a result. The trial judge directed the jury that, as a matter of law, they could only bring in a verdict of murder in the instant case since the consumption of alcohol would not in any way be regarded as a defence to the murder charge such as would overturn the presumption of an intention to kill or cause serious injury as required by s.4 of the Criminal Justice Act 1964. The trial judge expressly directed the jury to arrive at a verdict of guilty of murder, which the jury did. On appeal by the accused **HELD** by the Supreme Court (Finlay CJ, Hederman, O'Flaherty, Egan and Blayney JJ) allowing the appeal and directing a retrial: (1) the right to a jury trial in Article 38.5 of the Constitution has as a fundamental and absolutely essential characteristic the right of the jury to deliver a verdict; (2) in the interets of justice, however, the trial judge has a right and duty to withdraw a case from the jury and direct them to enter a not guilty verdict where the judge is satisfied that a verdict of guilty could not be supported; however, there is no corresponding right or duty to direct a jury to enter a verdict of guilty, even in limited or exceptional circumstances to prevent what might appear to be a preverse verdict; (3) while such a situation might appear anomolous, the mischief which would flow from any invasion of the right of a jury to consider and arrive at its verdict, and even to arrive at what might seem to be a perverse verdict, would be much greater than any conceivable harm that could arise from the inability of the judge to direct a guilty verdict. Dicta in *deBurca v Attorney General* [1976] IR 38 and *The People v O'Shea* [1983] ILRM 549; [1982] IR 384 applied.

Sweeney v Brophy and DPP Supreme Court 8 December 1992

CRIMINAL LAW - TRIAL - IMPROPRIETIES OF TRIAL JUDGE DURING TRIAL - CONVICTION QUASHED ON JUDICIAL REVIEW - WHETHER TRIAL IN DUE COURSE OF LAW - WHETHER RETRIAL COULD BE ORDERED - WHETHER DEFENDANT ENTITLED TO PLEAD AUTREFOIS ACQUIT - Rules of the Superior Courts 1986, O.84, r.26(4) - Constitution, Article 38.1

The applicant had been convicted of assault before the respondent Judge of the District Court. The applicant sought certiorari to quash the verdict on the ground that a number of improprieties had occurred during the hearing of the case. The respondents did not oppose the application for certiorari but sought to have the matter remitted to the District Court under O.84, r.26(4) of thwe 1986 Rules. In the High Court ([1992] ILRM 479) Barron J declined to remit the case. On appeal by the DPP **HELD** by the Supreme Court (Finlay CJ, Hederman, O'Flaherty, Egan and Blayney JJ) dismising the appeal: (1) certiorari is an appropriate remedy to quash not only a conviction bad on its face or where a court or tribunal acts in excess of jurisdiction but also where it acts apparently within jurisdiction but where the proceedings are so flawed as to deprive an accused of a trial in due course of law; (2) where, as in the instant case, there was a breach of the fundamental tenets of constitutional justice in the hearing or a failure to hear the evidence in the case, the trial can properly be categorised as one that has not been held in due course of law and any resulting conviction should be quashed so as to entitle the defendant to plead autrefois acquit. Dicta in *The State(Tynan) v Keane* [1968] IR 348 applied. Dicta in *The State (Holland) v Kennedy* [1977] IR 193 discussed.

Hutch v Governor of Wheatfield Prison and Ors High Court, 28 February 1992; Supreme Court, 17 November 1992

CRIMINAL LAW - YOUNG PERSON - SUMMARY TRIAL OF INDICTABLE OFFENCE - SENTENCE - WHETHER COURT CONFINED TO IMPOSING SENTENCE OF THREE MONTHS - STATUTORY INTERPRETATION - GENERALIA SPECIALIBUS NON DEROGANT - WHETHER LATER GENERAL ACT REPEALED BY IMPLICATION EARLIER SPECIFIC ACT - Summary Jurisdiction Over Children (Ireland) Act 1884, ss.5, 9 - Children Act

1941, s.28 - Criminal Justice Act 1951, s.2

The applicant had been charged with a number of indictable offences, involving stealing and malicious damage to property. With his consent, he was tried summarily in the District Court. He was convicted and sentenced to three terms of one year's imprisonment in respect of three of the charges, two of the terms to run consecutively. The trial judge imposed these sentences in purported exercise of powers in s.2 of the 1951 Act, which empowers the District Court to try summarily certain indictable offences, including the offences with which the applicant was charged. However, the applicant sought judicial review on the ground that s.5 of the 1884 Act limited the District Court to imposing a sentence of three months on a young person tried summarily for an indictable offence. 'Young person' was defined by s.9 of the 1884 Act, as amended by s.28 of the 1941 Act, as a person between the age of 15 and 17. The applicant fell into this age category. In the High Court O'Hanlon J granted the judicial review and quashed the sentences, holding that they were ultra vires s.5 of the 1884 Act. On appeal **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) affirming the High Court: s.5 of the 1884 Act constituted a specific enactment establishing a very definite and important right for young persons, and since s.2 of the 1951 Act conferred a general jurisdiction on the District Court without reference to the 1884 Act, the maxim *generalia specialibus non derogant* applied; and it followed that the special provision in s.5 of the 1884 Act, whose continued validity had been recognised by the amendment effected by s.28 of the 1941 Act, had not been impliedly repealed by the general provision in s.2 of the 1951 Act; and s.2 of the 1951 Act could not therefore be regarded as an optional jurisdiction which could be exercised by a court of summary jurisdiction over young persons who came within the terms of the 1884 Act and accordingly the sentences imposed in the instant case were ultra vires. Dicta in *Seward v 'Vera Cruz'* (1884) 10 App Cas 59 approved.

Flynn v Denieffe, Independent Newspapers plc and Eason & Son Ltd Supreme Court 15 December 1992

GAMING AND LOTTERIES - PRIZE GAME - 'SCOOP' - BOARD GAME DISTRUBUTED TO ALL HOUSEHOLDS IN STATE ON BEHALF OF NEWSPAPER PROPRIETOR - UNNECESSARY TO PURCHASE NEWSPAPER TO OBTAIN PRIZE - WHETHER CONSTITUTING LOTTERY - Gaming and Lotteries Act 1956, ss. 2, 21

The second defendant, Independent Newspapers, was the proprietor of a number of newspapers distributed in the State. In 1989, game cards bearing the name 'Scoop' were distributed to all households in the State, accompanied with publicity material announcing that this was 'the world's first newspaper board game', that 'Scoop' amounted to a series of games and that the chances of winning prizes in the game were increased if persons played the game in all three newspaper titles under the control of Independent Newspapers. In order to win a prize, participants were required to move a number of places on the game board indicated by the board itself, then answer a general knowledge question and return the card to Independent Newspapers together with a claim form contained in one of the relevant newspapers. The three defendants were prosecuted for variously promoting, distributing and selling material relating to a lottery, contrary to s.21 of the 1956 Act. On case stated to the High Court Murphy J held ([1989] IR 722) that 'Scoop' did not constitute a game of skill and was a lottery within the meaning of s.2 of the 1956 Act. On appeal to the Supreme Court, the defendants did not assert that the game was one of skill, but asserted that it was not a lottery since it was not a requirement that participants purchase a newspaper in order to compete in the game. **HELD** by the Supreme Court (O'Flaherty, Egan and Blayney JJ) dismissing the appeal: (1) the essential attributes of a lottery were: (a) the distribution of prizes; (b) that this was to be done by means of chance; and (c) there there must be some actual contribution made by the participants, or by a substantial number of the participants. Dicta in *Reader's Digest Association v Williams* [1976] 3 All ER 737 and *Imperial Tobacco Co Ltd v Attorney General* [1981] AC approved; (2) (Egan and Blayney JJ; O'Flaherty J dissenting) it was not sufficient for the defendants to argue that for some participants the game did not constitute a lottery; and although not every participant was required to purchase a newspaper in order to take part in the game, it was sufficient that a substantial number did actually purchase a newspaper in order for the game to be classed as a lottery for the purpsoes of s.2 of the 1956 Act.

Beirne v Garda Commissioner Supreme Court 30 October 1992

GARDA SIOCHANA - TRAINEE - TERMINATION OF TRAINING ASSIGNMENT - WHETHER FAIR PROCEDURES ADOPTED - WHETHER AMENABLE TO JUDICIAL REVIEW - WHETHER DECISION BASED ON CONTRACT OR STATUTORY POWERS - Police Forces Amalgamation Act 1925, s.14 - Garda Siochana (Admissions and Appointments) Regulations 1988

The applicant sought judicial review of the termination of his traineeship in the Garda College by the respondent. The termination arose out of a series of incidents on a football outing from the Garda College. An investigation of the incidents was made, and other students alleged in statements that the applicant had assaulted one student, threatened to assault another and had to be restrained. None of these statements were made available to the applicant, but he accepted during the investigation that he had consumed about seven pints of Guinness and that arising from this there had been some incidents with other students and a misunderstanding, but that a full investigation would indicate that these had been exaggerated out of all proportion. The applicant was informed that a report would be made to the respondent Commissioner but was not told that a recommendation was made that his traineeship be terminated. In the High Court, Flood J granted the relief sought: [1992] ILRM 699. On appeal **HELD** by the Supreme Court (Finlay CJ and Egan J; O'Flaherty J dissenting) affirming the High Court: (1) judicial review lay to quash the Commissioner's termination of the applicant's traineeship, since such power to terminate arose from the statutory powers contained in the 1988 Regulations, which were made under s.14 of the 1925 Act; and while the 1988 Regulations empowered the Commissioner to lay down conditions of contract for trainees, including the power to terminmate for misconduct, this power could not be separated from the statutory basis on which it rested; (2) in the circumstances, the termination of the applicant's traineeship had not been in accordance with fair procedures, as he was not given an opportunity to deal with the statements from the other students nor was he aware that he was liable to have his trainesship terminated arising from the investigation of the incidents. Per O'Flaherty J (dissenting): judicial review did not lie because the termination arose from a breach of the contract terms between the respondent and the applicant, and no question of discretion arose.

Curust Financial Services Ltd and Anor v Loewe-Lack-Werk Otto Loewe GmbH & Co, KG and Anor High Court, 3 July 1992; Supreme Court 2 November 1992

INJUNCTION - INTERLOCUTORY - EXCLUSIVE MANUFACTURING AND DISTRIBUTION AGREEMENT - WHETHER IN BREACH OF EUROPEAN COMMUNITY LAW - WHETHER DAMAGES ADEQUATE REMEDY - Treaty of Rome, Article 85

Since the 1960s, the plaintiffs (Curust) had an exclusive manufacturing and distribution agreement for the State with the first defendant (Loewe), a German company, in relation to Loewe Rust Primer. Loewe supplied certain raw materials wich were then mixed by Curust and put in tins. In 1986, because of changes in the manufacturing process, a new agreement provided that Loewe would supply the finished product in its entirety, that this would then be tinned and distribued by Curust. It was envisaged that Curust would recommence manufacturing at some stage when it complied with the new process requirements. In July 1990, a price agreement was entered into by the parties, but in October 1990 disputes arose and Loewe purported to terminate all agreements between the parties. However, Loewe continued to supply raw materials to the plaintiffs until December 1991, the date on which the price agreement was to have terminated. In early 1992, the plaintiffs recommenced manufacture of Loewe Rust Primer through another company, without permission from Loewe, in breach of the 1986 agreement. In June 1992, the plaintiffs discovered that the second defendant had begun selling the Loewe Rust Primer under the label Durabond. It commenced proceedings seeking to restrain the defendants from acting in breach of the 1986 agreement, and applied for interlocutory injunctions. In the High Court **HELD** by Barron J granting the relief sought: (1) since the defendants had raised the issue of the validity of the 1986 agreement having regard to Article 85 of the Treaty of Rome, the plaintiffs were required to establish a fair question on this, and they had done so, albeit on the basis of a bare averment that the trade in rust primer was slight in intra-Community terms; (2) damages would not be an adequate remedy for the plaintiffs and they were thus entitled to an interlocutory injunction to preserve the status quo ante. On appeal **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) allowing the appeal: (1) the trial

judge had been correct to conclude that Curust had established a triable issue that the 1986 agreement was valid under Article 85 of the Treaty of Rome; (2) although Curust had acted in breach of contract by recommencing manufacture of the primer without Loewe's consent, this did not disentitle them to interlocutory relief since something in the nature of turpitude would have to be involved to disentitle them to equitable relief; (3) although the evidence indicated that there would be a difficulty in ascertaining any damages which might be payable to Curust in the event of their succeeding, this would not be impossible, and having regard to the fact that the damages would be a quantifiable commercial loss and that Loewe would be able to meet any such sum, the plaintiffs had not established that damages would not be an adequate remedy, and so had not made out a case for an interlocutory injunction. Per curiam: a factor in the refusal of interlocutory relief was an estimate that the substantive action could be heard in the High Court in Spring 1993 and the parties should expedite the pleadings on this basis.

Gannon v B & I Steampacket Co Ltd, Landliner Travel Ltd and Edenderry Transport Ltd High Court, 3 July 1992; Supreme Court, 5 November 1992

JURISDICTION OF COURTS - WHETHER PARTY PROPERLY JOINED - BOAT AND COACH TRIP FROM IRELAND TO ENGLAND - TRIP BOOKED WITH IRISH SHIPPING COMPANY - COACH PROVIDED BY ENGLISH COMPANY - TRAFFIC ACCIDENT INVOLVING COACH AND LORRY - WHETHER SHIPPING COMPANY MAY BE SUED FOR BREACH OF IMPLED TERM OF CONTRACT - WHETHER ENGLISH COMPANIES MAY BE JOINED - ABUSE OF PROCESS OF COURTS - Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988 - Rules of the Superior Courts 1986, O.26, r.2

The plaintiff booked a boat and coach trip from Ireland to England through the first defendant, B & I, an Irish company. The coach was provided by the second defendant, Landliner, an English company. During the journey, the coach was in collision in England with a lorry owned by the third defendant, Edenderry. The plaintiff sustained personal injuries and instituted proceedings against the defendants. As against B & I, the plaintiff claimed that it was in breach of contract in connection with the choice, operation and driving of the coach involved in the case. The claim against Landliner and Edenderry was in tort, and the plaintiff joined them as defendants in reliance on the 1968 Brussels Convention, enacted into Irish law by the 1988 Act. Landliner and Edenderry applied under O.26, r.2 of the 1986 Rules to have service of notice of the proceedings set aside. In the High Court **HELD** by Denham J refusing to set aside service: there was a reasonable case for the plaintiff to sue B & I in contract, and although the other defendants were being sued in tort there was a connection between all defendants and so Landliner and Edenderry were properly joined. On appeal **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) allowing the appeal and setting aside the service of notice: (1) although there were grounds for the plaintiff to sue B & I, the Court was required under the 1968 Convention to inquire further whether a party was joined in proceedings for the purpose of ousting the jurisdiction of the courts of the State of other parties being joined; and since, from the evidence adduced, it appeared that the collision between the coach and the lorry was not due to any defect in the coach or the competence of the driver of the coach and therefore any claim against B & I would be very difficult to sustain, the Court was driven to the conclusion that the reason for suing B & I appeared to be to oust the jurisdiction of the English courts, and on that basis the court should refuse to allow the plaintiff to join Landliner and Edenderry, under Article 6 of the Convention. *Kalfelis v Bankhaus Schroder* (Case 189/87) [1988] ECR 5583 applied; (2) since the removal of Landliner and Edenderry from the proceedings would involve a prejudice to B & I, as B & I would be unable to join them as third parties, an application by B & I to have the plaintiff's proceedings dismissed for being an abuse of the processes of the courts would be successful.

Cork County Council v Whillock Supreme Court 3 November 1992

MALICIOUS INJURIES - TIME LIMIT - WHETHER EXTENSION PERMISSIBLE - STATUTORY INTERPRETATION - Malicious Injuries Act 1981, ss.14, 23

The respondent claimed that a fire which occurred at his premises on 13 November 1983 was caused maliciously. On 14 November 1982, he served on the applicant Council a preliminary notice of intention to apply for compensation for malicious injuries under the 1981 Act. S.23 of the 1981 Act sets out a three year limitation period from the date on which the cause of action accrues, which is the date of the service of the preliminary notice. No proceedings were instituted by the end of the limitation period, but the respondent applied to the Circuit Court for an order extending the time for making a claim under the 1981 Act. This was granted by the Circuit Court judge on the ground that s.14 of the 1981 Act permitted such extension. The applicant applied on judicial review for an order quashing the Circuit Court decision. In the High Court, Carroll J granted the order sought. On appeal **HELD** by the Supreme Court (O'Flaherty, Egan and Blayney JJ) allowing the appeal: there was no inconsistency between s.23 of the 1981 Act, which provided for a three year time limit, and s.14 of the 1981 Act, which permitted the Circuit Court to extend the time for any act or proceedings under the Act itself; and having regard to the obligation on a court to give effect to the literal meaning of the words of legislation and that it should avoid an interpretation which would render a provision inoperative, the Circuit Court judge had the jurisdiction to make the order in the instant case. *Dublin Corporation v Carroll* [1987] IR 410 overruled.

Connolly v Dundalk UDC and Mahon & McPhillips Ltd Supreme Court 18 November 1992

TORT - EMPLOYER'S LIABILITY - MAINTENANCE OF EQUIPMENT BY INDEPENDENT CONTRACTOR - CONTRIBUTORY NEGLIGENCE - DEGREE OF FAULT - Civil Liability Act 1961, s.21(2)

The plaintiff and one other person were employed by the UDC to operate its waterworks. As part of the water purification process, chlorine gas mixed with water was pumped from a chlorine room through a rigid plastic pipe into a control building to an upstand pipe into which the mixture was discharged. A length of flexible plastic pipe joined the rigid pipe and the upstand pipe in the control room. The control building and chlorine purification plant had been built by Mahon & McPhillips in 1968; in 1972, they entered into a contract to service and maintain the system three times a year; and in 1981, they had replaced the pipe between the chlorine room and the control building. In January 1986, on the arrival of the plaintiff in the control building, he was hit with a dense cloud of chlorine gas, some of which he inhaled. He suffered some physical injuries as a result but was also severely affected mentally by the incident. In the High Court ([1990] 2 IR 1), O'Hanlon J held that the accident was caused by a failure of the joint between the rigid and flexible pipes, resulting in the release of the chlorine gas. He held that both defendants had been negligent and he apportioned liability equally between them. Damages of 280,727 were awarded. On appeal by the UDC on the issue of apportionment only **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Blayney JJ) allowing the appeal: (1) although the UDC were negligent in failing to notice that the joint in question was unsuitable and in failing to acquaint themselves in time with the development of safety procedures which had come to be regarded as standard, they were also entitled to rely on the greater expertise of Mahon & McPhillips in connection with the construction and maintenance of waterworks; and having designed and erected the waterworks, and contracted for the periodical service and maintenance of the equipment, Mahon & McPhillips owed an obligation to the UDC to keep it informed of changes in standards, and although a recommendation had been made in this regard in August 1985 (which had not been acted on by January 1986), the trial judge had found that Mahon & McPhillips should have reacted sooner in this regard; (2) the trial judge's equal division of liability between the parties failed to have sufficient regard to the greater degree of contribution by Mahon & McPhillips to the injuries sustained by the plaintiff, within the meaning of s.21(2) of the 1961 Act; and bearing in mind Mahon & McPhillips' greater expertise, very much less blame attached to the UDC's engineers for failing to discover the inadequacy of the joint in question; and accordingly the Court would apportion 80% liability to Mahon & McPhillips and 20% to the UDC. *Per* O'Flaherty (Finlay CJ concurring): an employer remains primarily liable in law for, and cannot fully delegate to an indepenedent contractor liability for, the employer's duty to provide a reasonably safe place of work for its employees; but where an independent contractor is solely responsible for causing injury, the employer is entitled to claim a contribution from the contractor which would amount to an indemnity.

Recent Irish Cases

Compiled 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.

O'Callaghan v Attorney General High Court, 22 May 1992; Supreme Court, 25 February 1993

CONSTITUTION - TRIAL OF OFFENCES - MAJORITY JURY VERDICT - WHETHER CONSISTENT WITH TRIAL IN DUE COURSE OF LAW - WHETHER TIME LIMIT ON MAJORITY VERDICT CONSTITUTING INTERFERENCE WITH DECISION-MAKING PROCESS OF JURY - WHETHER JURY DECISIONS ENJOY ABSOLUTE CONFIDENTIALITY - Criminal Justice Act 1984, s.25 - Constitution, Article 38.5

The plaintiff had been tried in the Circuit Criminal Court on charges of larceny and robbery and was convicted by a 10 to 2 majority of the jury. His appeal to the Court of Criminal Appeal was unsuccessful: *The People v O'Callaghan* (Court of Criminal Appeal, 30 July 1990). He then instituted the present proceedings claiming that s.25 of the 1984 Act, which permits majority jury verdicts provided that at least 10 members of the jury are agreed on the verdict, was repugnant to Article 38.5 of the Constitution. In the High Court **HELD** by Blayney J dismissing the claim: (1) as s.25 of the 1984 Act had been enacted since the adoption of the Constitution, the plaintiff undertook a heavy burden of establishing that it was clearly repugnant to the Constitution. Dicta in *Pigs Marketing Board v Donnelly Ltd* [1939] IR 413 and In re the Offences against the State (Amendment) Bill 1940 [1940] IR 470 applied; (2) the essence of trial by jury was that a decision as to the guilt or innocence of the accused is made by a group of fellow citizens and not by a judge or judges; but unanimity was not an essential feature of trial by jury under Article 38.5 and a verdict was no less one of the jury where arrived at by a substantial majority of the jurors; however, the extent of the majority was important and if it was substantially lowered it might lose the character of being a decision of the jury, but s.25 of the 1984 Act, which required a decision by at least 10 jurors maintained the substantial majority required by the Constitution. Dicta in *de Burca v Attorney General* [1976] IR 38 and *Apodaca v Oregon*, 506 US 404 (1972) applied; (3) the requirement in s.25 of the 1984 Act that the jury must have deliberated for 2 hours before reaching a majority verdict did not constitute an interference with jury deliberations, the basis for its decision continuing to be the evidence given at the trial. On appeal **HELD** by the Supreme Court (Finlay CJ, Hederman, O'Flaherty, Egan and Costello JJ) dismissing the appeal and the plaintiff's claim: (1) the essential feature of a jury trial was to interpose between the accused and the prosecution a reasonable cross-section of people acting under the guidance of a judge, who would bring their experience and common sense to bear on resolving the issue of the guilt or innocence of the accused, and a requirement of unanimity was not essential to this purpose. Dicta in *de Burca v Attorney General* [1976] IR 38 and *The People v O'Shea* [1983] ILRM 549; [1982] IR 384 applied; (2) the provision of majority verdicts had the advantage for both the accused and the prosecution of reducing the chances of disagreement; and sufficient time was provided in the 1984 Act for a minority to win others over to their point of view, and indeed this constituted a protection and could not be regarded as an interference with the decision-making process of the jury; (3) the trial judge had also been correct in stating that a decision might lose its character of being a decision of the jury if the majority required was substantially reduced, but s.25 of the 1984 Act could not be impugned on this ground; (4) jury deliberations should always be regarded as completely confidential and should not be published after the trial, but s.25 did not breach this requirement since it was concerned only with the verdict and not with the deliberations of the jury. Dicta in The People v Longe [1967] IR 369 approved. *Attorney General v Mr Justice Hamilton* [1993] ILRM 81 referred to.

Phonographic Performance (Irl) Ltd v Chariot Inns Ltd High Court 7 October 1992

COPYRIGHT - LICENCE SCHEME - DISPUTE BETWEEN PARTIES TO LICENCE SCHEME - REFERENCE TO CONTROLLER OF INDUSTRIAL AND COMMERCIAL PROPERTY - WHETHER LICENSOR ENTITLED TO REMUNERATION PENDING RESOLUTION OF DISPUTE - INJUNCTION - INTERLOCUTORY - WHETHER STATEABLE CASE MADE OUT - WHETHER MORE DAMAGE LIKELY BY REFUSAL THAN BY GRANTING RELIEF - BALANCE OF CONVENIENCE - Copyright Act 1963, ss.17, 31, 32

The plaintiff company, PPI, was incorporated by Irish recording companies in order to protect the copyright in connection with the public performance and broadcasting of the recording companies' records, tapes and CDs. S.17 of the 1963 Act provides that the playing in public of any recording constitutes a copyright infringement where this is done without the payment of 'equitable remuneration' to the copyright owner. In accordance with s.29 of the 1963 Act, PPI had published a 'licence scheme' setting down a schedule of payments for various types of public broadcast of Irish recordings. The defendant company operated a large licensed premises which included a disco, and agreed that some payment was due to PPI under s.17 of the 1963 Act. It was in dispute, however, as to the amount involved and referred the dispute to the Controller of Industrial and Commercial Property pursuant to s.31 of the 1963 Act. Where a dispute is thus referred under s.31, persons broadcasting or otherwise using the copyright material will not be deemed to infringe the copyright provided they give an undertaking to pay the amount determined by the Controller. Such an undertaking had been given by the defendant. PPI argued that only a reference under s.32 of the 1963 Act could be made, since s.31 was limited to disputes concerning 'published' material, whereas the defendant company also wished to dispute the rate of equitable remuneration on future recordings. PPI instituted proceedings seeking to prevent the defendant from broadcasting material in breach of copyright, and then applied for interlocutory relief. The defendants pointed out that similar disputes on remuneration had also been referred to the Controller by other parties and the Controller had decided that he had jurisdiction to hear the references under s.31 of the 1963 Act. PPI had sought judicial review of this decision (see *Phonographic Performance (Irl) Ltd v Controller of Industrial and Commercial Property*, High Court, 19 October 1992, below) but, at the time of the instant application, judgment in the judicial review proceedings had not been delivered. **HELD** by Keane J granting the interlocutory relief sought: (1) it would not be appropriate to adjourn the instant application until judgment had been delivered in the judicial review proceedings; (2) it was clear that the issues at stake between the parties involved difficult questions of law; (3) the balance of hardship between granting or refusing the relief sought lay in favour of the plaintiff, since it was likely that if the relief sought was refused other disco operators would be advised to take the same course as the defendant in the instant case, and the plaintiff would therefore be unable to recover all sums due to it having regard to the changing nature of the disco business; whereas if the defendant was ultimately successful it would be able to enforce the plaintiff's undertaking to pay damages; and while the defendant would be almost wholly inhibited from operating its disco, it would still be able to operate its licensed premises. *Per* Keane J: if the question of the balance of convenience had arisen for decision, it would lay in favour of granting the interlocutory relief also.

Phonographic Performance (Irl) Ltd v Controller of Industrial and Commercial Property and Ors High Court 19 October 1992

COPYRIGHT - LICENCE SCHEME - DISPUTE BETWEEN PARTIES TO LICENCE SCHEME - REFERENCE TO CONTROLLER OF INDUSTRIAL AND COMMERCIAL PROPERTY - WHETHER LICENSOR ENTITLED TO REMUNERATION PENDING RESOLUTION OF DISPUTE - Copyright Act 1963, ss.17, 29, 31, 32

The applicant company, PPI, was incorporated by Irish recording companies in order to protect the copyright in connection with the public performance and broadcasting of the recording companies' records, tapes and CDs. S.17 of the 1963 Act provides that the playing in public of any recording constitutes a copyright infringement where this is done without the payment of 'equitable remuneration' to the copyright owner. In accordance with s.29 of the 1963 Act, PPI had published a 'licence scheme' setting down a schedule of payments for various

types of public broadcast of Irish recordings. A number of parties, including Radio Telefis Eireann (RTE) and various disco operators, respondents in the instant proceedings, were in dispute with PPI as to the rate of 'equitable remuneration' properly payable under s.17 of the 1963 Act and they referred the dispute to the Controller of Industrial and Commercial Property pursuant to s.31 of the 1963 Act. The Controller had decided that he had jurisdiction to hear the references under s.31 of the 1963 Act, and PPI then sought judicial review of this decision. PPI argued that only a reference under s.32 of the 1963 Act could be made, since s.31 was limited to disputes concerning 'published' material, whereas RTE and the disco operators also sought to dispute the rate of equitable remuneration on future recordings. Where a dispute is referred to the Controller under s.31, persons broadcasting or otherwise using the copyright material will not be deemed to infringe the copyright provided they give an undertaking to pay the amount determined by the Controller. Such an undertaking had been given by the respondents. **HELD** by Barr J granting the applicant the relief sought: (1) having regard to the wording of ss. 17 and 31 of the 1963 Act, it was evident that a dispute referred to the Controller under s.31 could not include the broadcasting or public user of a published recording in the future; and therefore the right to continue to broadcast material which is in dispute subject to an undertaking does not include future use or broadcasting; (2) although RTE had argued that, since it was a statutory broadcasting body, it was not required to seek a licence from PPI in the way that the disco operators were, this was irrelevant since the crucial queston was whether a licence scheme existed; and s.32 of the 1963 Act envisaged that a licence scheme was in the nature of a standing invitation to treat and that a reference under s.32 was not dependent on the existence of a licensor-licensee relationship. *Performing Rights Society Ltd v Workingmen's Club and Institute Union Ltd* [1988] FSR 586 approved; (3) the tenor of the 1963 Act was that, where a licensing scheme was in existence, the matter should be referred to the Controller under s.32 whose decision would be binding on all members of the class of persons affected by the decision but that, pending the decision of the Controller, the requirement to pay the amount set in the scheme continued to apply to all persons covered by the scheme; and accordingly in the instant case the Controller only had jurisdiction to hear a dispute under s.32 of the 1963 Act.

D.P.P. (Cloughley) v Mooney High Court 24 June 1992

CRIMINAL LAW - ARREST - WHETHER PERSON INFORMED OF BASIS FOR ARREST - WHETHER TECHNICAL LANGUAGE REQUIRED - ROAD TRAFFIC - DRIVING WITH EXCESS OF ALCOHOL - GARDA INFORMING SUSPECT HE WAS BEING ARRESTED FOR 'DRUNK DRIVING' - Road Traffic Act 1961, s.49

The defendant had been stopped by a Garda while driving his car. The Garda got a smell of intoxicating liquor from the defendant and his speech was slurred. A breathalyser test proved positive. The Garda formed the opinion that the defendant was committing an offence under s.49(2) or (3) of the 1961 Act. He arrested the defendant under s.49(6) of the 1961 Act and informed the defendant that he was being arrested pursuant to s.49(6) of the 1961 Act for the offence of drunk driving. The defendant was charged under s.49(3) with the offence of attempting to drive when he was in excess of the permitted level of alcohol. At his trial in the District Court, it was argued that the defendant had not been validly arrested since the offence of 'drunk driving' was, if anything, an offence under s.49(1) of the 1961 Act and not the offence under s.49(3) with which the defendant had been charged, and that, accordingly, the defendant had not been propely informed of the basis on which he was being arrested. This point was accepted by the District Court judge. On case stated to the High Court **HELD** by Blayney J finding the District Court judge had erred in law: the description 'drunk driving' applied equally to s.49(1), (2) and (3) since clearly the reason why driving under the three different circumstances was prohibited was because the concentration of alcohol in their systems would be likely to impair the ability to have proper control of a motor vehicle, and thus in substance there was very little difference between the three subsections; and since the purpose of the rule requiring that the Garda inform the person of the reason for an arrest is based on ensuring that the arrested person knows in substance why he is being arrested, rather than is given a technical explanation, the use of the phrase 'drunk driving' in the instant case was a sufficient communication of the reason for the arrest. *Christie v Leachinsky* [1947] AC 573 applied. *Per* Blayney J: in light of the positive result from the breathalyser test, the defendant must have been well aware of the basis for his arrest, and so it must be doubtful whether the Garda was required to explain the basis on which he was being arrested.

Director of Public Prosecutions v Rooney High Court 25 May 1992

CRIMINAL LAW - GARDA POWER TO STOP AND SEARCH - WHETHER GARDA SHOULD FIRST INFORM PERSON OF BASIS ON WHICH SEARCH POWER BEING EXERCISED - WHETHER NECESSARY TO ARREST PERSON BEFORE EXERCISING SEARCH POWER - Dublin Police Act 1842, s.29 - Constitution, Article 40.4

The defendant, while walking on a street in Dublin, had been approached by a member of the Garda Siochana and was asked what money he had in his hand. On showing a 10 and 5 note, he was asked if he had any other money and he said 'No'. The Garda then put his hand in the defendant's pocket, the defendant lifting his hands out of the way to allow the Garda reach towards the pocket. The Garda found a 20 note which he believed was a forgery. The defendant was charged with possession of forged bank notes, contrary to s.8 of the Forgery Act 1913. At his trial in the District Court, objection was taken to the admission of the Garda's evidence on the ground that the Garda had failed to inform the defendant of the legal basis on which he was searching the defendant. The prosecution relied on s.29 of the 1842 Act, which provides that a member of the Garda Siochana may stop and search any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained. On case stated to the High Court **HELD** by O'Hanlon J: (1) although the power to stop and search contained in s.29 of the 1842 Act was less drastic in its effect than a power of arrest, it nonetheless amounted to a substantial and significant interference with the liberty of the subject; and if the constitutional guarantees of liberty of the person were to be adequately defended and vindicated, it required that before the power of search in s.29 could be lawfully exercised, the person stopped was entitled to be informed of the nature and description of the statutory power being invoked, namely that he was suspected of having or conveying something stolen or unlawfully obtained, and inform the person of the search power contained in s.29 of the 1842 Act. *Christie v Leachinsky* [1947] AC 573 and *The People v White* [1947] IR 247 referred to; (2) it was not required to arrest the person prior to exercising the power to search, unless this was necesary for some other reason.

Doolan v Director of Public Prosecutions High Court 15 September 1992

CRIMINAL LAW - OFFENCE - 'INDECENT ASSAULT' - WHETHER OFFENCE KNOWN TO THE LAW WHETHER CONSTITUTING ASSAULT WITH AGGRAVATING FEATURES - STATUTE PROVIDING PENALTIES FOR INDECENT ASSAULT BUT NOT EXPRESSLY CREATING OFFENCE - FORM OF INDICTMENT - COMMON ASSAULT INCLUDED AS ALTERNATIVE TO INDECENT ASSAULT CHARGE WHETHER BAD FOR DUPLICITY - Offences against the Person Act 1861, s.52 - Criminal Law Amendment Act 1935, s.6 - Interpretation Act 1937, s.14 - Criminal Law (Rape) Act 1981, s.10 - Criminal Law (Rape) (Amendment) Act 1990, s.2

The applicant was indicted in the Circuit Criminal Court, the indictment containing two counts. The first count was indecent assault on a named female, the particulars being 'contrary to common law as provided for in section 10 Criminal Law (Rape) Act 1981. Contrary form of the statute in such case made and provided.' The second count was assault, the particulars being 'contrary to common law and contrary to form of the statute in such case made and provided.' The applicant's counsel argued that there was no offence known to the law as indecent assault. This argument was rejected by the Circuit Court judge (Judge Moriarty). The applicant entered a plea of guilty to the second count. The applicant then applied on judicial review for an order of prohibition, on the grounds that the offence of indecent assault was unknown to the law and, in the alternative, that having accepted the guilty plea to the second count on the indictment, the trial court was precluded from proceeding with Count No.1, the indecent assault charge, since it amounted to a charge of simple assault, albeit of a higher category to that in Count No.2. **HELD** by O'Hanlon J dismissing the application for judicial review: (1) assault was a misdemeanour at common law, which was indictable at common law according to the aggravating features associated with particular forms; (2) having regard to the wide meaning given to assault, which could incorporate what was strictly speaking a battery, it was thought right to regulate by statute the penalties that could be imposed for different circumstances of assault, and this involved a statutory regulation of the penalty to be imposed for the old common law misdemeanour of assault; and accordingly, statutes which provided for a penalty for inde-

cent assault without creating new offences by express terms, such as s.52 of the 1861 Act or s.6 of the 1935 Act, both of which had been replaced by s.10 of the 1981 Act (and which in turn was repealed by s.2 of the 1990 Act) were not in any respect defective, but were merely setting penalties for different forms of common law assaults; and therefore the indictment in the instant case disclosed an offence known to the law. *The State (Foley) v Carroll* [1980] IR 150 followed; (3) while it was unnecessary in the instant case to include assault in Count No.2 on the indictment, since if a person is found not guilty of indecent assault a conviction for assault may be made, it was permissible to include alternative charges in an indictment, provided that convictions were not entered on both counts in breach of the prohibition in s.14 of the 1937 Act if the charges arose out of the same episode. *R. v Bostock* (1893) 17 Cox CC 700 approved; (4) the prosecution could also seek to have Count No.2 removed from the indictment, notwithstanding the guilty plea entered by the applicant, since in any event the applicant was entitled to change his plea. [Note: s.2 of the 1990 Act, which replaces 'indecent assault' with 'sexual assault', came into effect after the event concerned in the instant case. S.2 expressly provides that sexual assault is a felony.]

Rogers v Director of Public Prosections High Court 2 March 1992

CRIMINAL LAW - PROCEDURE - EVIDENCE - UNLAWFUL TAKING OF CAR - PROSECUTION RETURNING CAR TO OWNER AFTER FORENSIC EXAMINATION - DEFENCE SEEKING TO HAVE CAR FORENSICALLY EXAMINED - DELAY OF OVER TWO MONTHS - WHETHER TRIAL OF ACCUSED SHOULD PROCEED - WHETHER FAIR PROCEDURES OBSERVED - Constitution, Article 38.5

During a pursuit of a stolen car in August 1991, Gardai in the chasing patrol car stated that they recognised the driver of the car as the applicant. After the patrol car had been rammed and the stolen car abandoned, the applicant was arrested in the subsequent chase and was charged on the same date with the unlawful taking of a motor vehicle. The book of evidence was served on the applicant in October 1991, the District Court having declined jurisdiction in September 1991. In late October 1991, the solicitor for the applicant enquired if the car involved in the chase was available for forensic examination. The Gardai replied that the car had been returned to its owner shortly after the August incident. The applicant applied on judicial review for an order of prohibition in respect of his trial on the ground that, as he was deprived of the opportunity to have the car forensically examined, his trial would not be in due course of law and that fair procedures would not be observed. It emerged in the judicial review proceedings that the car had been forensically examined by the Gardai prior to its return to the owner and that no fingerprints had been found in the car. **HELD** by O'Hanlon J dismissing the application for an order of prohibition: where stolen property becomes the subject matter of criminal proceedings, any forensic examination (whether by the prosecution or defence) should take place within a reasonable time, having regard to all the circumstances, so that the property can then be returned as expeditiously as possible to its true owner; where, as in the instant case, a forensic examination is carried out promptly by the Gardai and no mention is made of a forensic examination by the defence until over 2 months after charges had been brought, there was no breach of fair procedures such as would justify the court in halting the prosecution pending against the applicant. *Murphy v Director of Public Prosections* [1989] ILRM 71 distinguished.

O'Brien v Patwell and D.P.P. High Court 9 September 1992

CRIMINAL LAW - PROCEDURE - INDICTMENT - WHETHER BAD - CHARGES OF UNLAWFUL CARNAL KNOWLEDGE OF A GIRL UNDER 15 YEARS AND OF UNLAWFUL CARNAL KNOWLEDGE OF A FEMALE AGAINST HER WILL INCLUDED - WHETHER PROSECUTION TO BE PUT TO ITS ELECTION - DISTRICT COURT JUDGE ADDING COUNT TO INDICTMENT - WHETHER ONLY HAVING JURISDICTION TO SUBSTITUTE COUNT - Interpretation Act 1937, s.14 - Criminal Procedure Act 1967, s.8

The applicant was sent forward for trial in the Central Criminal Court on four counts: indecent assault contrary to common law and s.10 of the Criminal Law (Rape) Act 1981; unlawful carnal knowledge of a girl under 15 years of age, contrary to s.1 of the Criminal Law Amendment Act 1935; unlawful carnal knowledge of a named female forcibly and against her will contrary to common law; and buggery contrary to s.61 of the Offences against the Person Act 1861. The fourth count was added by the respondent District Court Judge under s.8 of the 1967 Act at the conclusion of the preliminary examination. The applicant sought judicial review of the order sending him forward for trial on the grounds that: (i) it was not permissible to send him forward on the second and third counts since they constituted the same offences and thus breached s.14 of the 1937 Act, and that the prosecution should be put to its election; and (ii) the respondent Judge had no jurisdiction under s.8 of the 1967 Act to add a charge unless this was in substitution for an existing charge. **HELD** by O'Hanlon J dismissing the application: (1) the second and third counts on the indictment did not constitute 'the same offence' within s.14 of the 1937 Act, since consent was not a defence to the charge under s.1 of the 1935 Act, whereas it was a defence to the third count, and thus the indictment was not bad for including both counts; and in any event the prohibition in s.14 of the 1937 Act was directed at punishment twice-over for a single incident. Dicta in *The People v Dermody* [1956] IR 307 and *The People v Coughlan* (1968) 1 Frewen 325 explained; (2) the power conferred by s.8 of the 1967 Act was not confined by its terms to the substitution of one count for another, and the respondent Judge was thus entitled to add a new count to the indictment if satisfied that evidential material put before him justified him in doing so; and a similar power vested in the Director of Public Prosecutions by the 1967 Act had been held not to be repugnant to the Constitution. *O'Shea v Director of Public Prosecutions* [1989] ILRM 309; [1988] IR 655 discussed.

W. v W. Supreme Court 16 December 1992

FAMILY LAW - RECOGNITION OF FOREIGN DIVORCES - DOMICILE - WHETHER DEPENDENT DOMICILE RULE SURVIVED ENACTMENT OF CONSTITUTION - WHETHER COMMON LAW RULE OF RECOGNITION OF FOREIGN DIVORCES REQUIRES MODIFICATION - Domicile and Recognition of Foreign Divorces Act, 1986, s.5 - Judicial Separation and Family Law Reform Act 1989 - Constitution, Articles 40.1, 50

The plaintiff, the wife, and the defendant, the husband, were married in Ireland in 1973. The parties separated and the plaintiff instituted proceedings in the Circuit Court under the 1989 Act. The defendant argued that the parties were not, in fact, validly married on the ground that the plaintiff's previous marriage was still subsisting. The plaintiff had lived in England in the 1960s, and in 1966 had married an Englishman domiciled in England. The plaintiff separated from this man in 1969 and returned to Ireland in 1971. She met the defendant at the end of 1971, and when they decided to marry, the plaintiff instituted divorce proceedings in England against her then husband. These proceedings were not defended and a decree absolute was granted in October 1972. The defendant in the instant case argued that since in 1972 the plaintiff was domiciled in Ireland, the common law rules for recognition of foreign divorces (which were predicated on recognition of divorces obtained only in countries in which both spouses were domiciled) precluded the Irish courts from recognising the 1972 divorce. On case stated **HELD** by the Supreme Court (Finlay CJ, Hederman, O'Flaherty, Egan and Blayney JJ): (1) the dependent domicile rule, by which a wife took the domicile of her husband on marriage, was inconsistent with Article 40.1 of the Constitution since it resulted in an unjustified discrimination against married women as against her husband and as against single women; and the rule had not been carried over into Irish law in 1937 under Article 50. Dicta in *Quinn's Supermarket Ltd v Attorney General* [1972] IR 1 applied. *C.M. v T.M.* [1991] ILRM 268 approved; (2) (*per* Finlay CJ, O'Flaherty, Egan and Blayney JJ; Hederman J dissenting) the common law rule for the recognition of foreign divorces, which was limited to recognising divorces obtained in States where both spouses were domiciled, had been developed at a time when the dependent domicile rule was accepted as correct, and thus was in fact a rule in which the courts recognised divorces obtained where the husband was domiciled; and since the recognition rules had for many years been entirely judge-made, the courts were entitled to modify those rules; and having regard to the demise of the dependent domicile rule, the court was entitled to modify the recognition rule to one in which the court would recognise a divorce obtained in a jurisdiction in which either of the spouses was domiciled; and this modification was consistent with the similar modification effected by s.5 of the 1986 Act in respect of foreign divorces obtained after the 1986 Act came into effect in October 1986. *Per* Hederman J (dissenting): since the Oireachtas had expressly provided that the changes to the recognition rules contained in the 1986 Act applied prospectively only, the court would be legislating by altering the existing common law rules of recognition. *Le Mesurier v Le Mesurier* [1895] AC 517 and *Indyka v Indyka* [1969] AC 33 discussed.

Recent Irish Cases

Compiled 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 People(D.P.P.) v Diemling Court of Criminal Appeal 4 May 1992

CRIMINAL LAW - EVIDENCE - ACCOMPLICE - ACCESSORY AFTER FACT - WARNING TO JURY WHETHER REQUIRED - SUGGESTION AS TO DEFENDANT'S MILITARY BACKGROUND - WHETHER JURY SHOULD BE DISCHARGED

The defendant was charged with the false imprisonment and murder of one Evans. Evidence was given for the prosecution by the defendant's daughter that she was in Ireland on holiday in 1988, that she met the defendant and that he brought her to the place where he was then holding Evans. She stated that she treated Evans for the effects of beatings inflicted on him. After a number of days, she became aware that Evans was dead and stated that his body was burned beside the place where he had been held. She did not report the matter to the Gardai at first, but later came forward. The defendant denied that these events had taken place or that Evans was dead. In the course of evidence, the suggestion was made that the defendant had been a member of the SAS or similar military unit, but this was withdrawn by the prosecution and the trial judge directed the jury to disregard this suggestion. The defendant was found guilty on both counts. He was sentenced to life imprisonment for the murder and to 7 years imprisonment for the false imprisonment. On appeal **HELD** by the Court of Criminal Appeal (Hederman, Carroll and Flood JJ) allowing the appeal on the murder verdict and directing a re - trial: (1) since by her own account, the defendant's daughter was fixed with knowledge of Evans' death, and was aware that he had been beaten, she was therefore aware that the death amounted to homicide; and her subsequent activities in assisting concealment of evidence constituted her an accessory after the fact; and since an accessory can have a sufficient degree of complicity to be an accomplice, this was a matter which the trial judge should have left to the jury to determine, and he should have also warned them on the dangers of convicting on the evidence of an accomplice; and thus, the trial judge had erred in withdrawing this matter from the jury, and a re - trial would be ordered on this ground. Dicta in *The People v Carney* [1955] IR 324 followed; (2) there was no evidence to support the submission that the defendant's daughter was an accomplice in the unlawful detention of Evans; (3) since the suggestion that the defendant had been in the SAS had been immediately withdrawn by the prosecution, the trial judge had not erred in refusing to discharge the jury and his warning to them was sufficient to prevent any lack of fair procedures, and accordingly the appeal against the conviction for false imprisonment would be dismissed. [Note: an appeal against severity of sentence on the false imprisonment conviction was withdrawn.]

The People(D.P.P.) v Ryan Court of Criminal Appeal 30 November 1992

CRIMINAL LAW - EVIDENCE - DISCRETION TO ADMIT - FINGERPRINTS - WHETHER IN BREACH OF STATUTORY REGULATIONS - NO OBJECTION TAKEN AT TRIAL - WHETHER 'TRAWLING' OF TRANSCRIPT PERMISSIBLE - POINTS OF COMPARISON BETWEEN PRINTS AT SCENE AND WITNESS'S PRINTS - WHETHER PARTICULAR NUMBER OF COMPARISON POINTS REQUIRED - PROCEDURE - WHETHER CROSS - EXAMINATION OF DEFENCE WITNESS IN ACCORDANCE WITH FAIR PROCEDURES - Regulations as to the Measuring and Photography of Prisoners 1955, Art.4

The defendant had been charged with attempting to cause grevious bodily harm to a neighbour of his. It was alleged during the trial by the neighbour and other prosecution witnesses that the defendant attacked the neighbour with a sword. The defendant's son, aged 15 years, appearing as a defence witness, gave evidence that he had never seen the sword in question in the family home. On cross - examination by the prosecution, he denied ever touching the sword, and that he could not explain how his fingerprints had been found on it. The prosecution introduced a fingerprint expert who testified that he found 8 points of comparison between the son's fingerprints and the prints found on the sword. Defence counsel objected to the admission of this evidence on the ground that the practice was that there be 12 points of comparison. The trial judge admitted the fingerprint evidence. On appeal, in addition to challenging the admissibility of the fingerprint evidence concerning his son, the defendant argued that the evidence concerning his own fingerprints had been inadmissible as it was obtained in breach of the 1955 Regulations, in that there was no evidence adduced that the prison officer who had taken the prints had been authorised to do so by a Garda Superintendent. **HELD** by the Court of Criminal Appeal (Blayney, Lynch and Lavan JJ) dismissing the appeal: (1) while the practice of requiring 12 points of comparison was a good one where it concerned an accused, in this instance it was a witness and not the accused who was involved, and the fact that there were only 8 points of comparison was a matter going to the weight of the cross - examination rather than the admissibility of the evidence; (2) the fact that the prosecution put a line of cross - examination to the defendant's son without forewarning the defence of this line of questioning did not create unfairness to the defendant; and while each case must be judged on its own facts, the instant case was quite different from a situation where the prosecution cross - examines the accused in a manner not indicated in the book of evidence. *The People v Coll* (1980) 2 Frewen 36 distinguished; (3) in relation to the defendant's fingerprints, the trial judge had a discretion as to whether to introduce the evidence even where there was a breach of the 1955 Regulations, particularly having regard to the fact that no objection was taken at the trial to the admission of this evidence. *The People v McGrath* (1965) 99 ILTR 59 applied. *Per curiam:* the Court disapproved of trawling through a trial transcript for errors not thought worthy of mention during the trial itself. *The People v Coughlan* (1968) 1 Frewen 325 referred to.

The People(D.P.P.) v Barr (No.2) Court of Criminal Appeal 21 July 1992

CRIMINAL LAW - EVIDENCE - SEXUAL ASSAULTS - FORM OF INDICTMENT - MULTIPLE ACTS - WHETHER EACH TO BE INDIVIDUALLY SPECIFIED - DNA PROFILING (GENETIC FINGERPRINTING) - WHETHER TRIAL SHOULD BE USED AS TESTING GROUND FOR SUCH EVIDENCE - PROSECUTION NOT SEEKING TO RELY ON DNA EVIDENCE - PREJUDICE TO JURY - WHETHER SUFFICIENT WARNING GIVEN - CORROBORATION - WARNING - NOT MANDATORY - Criminal Justice (Administration) Act 1924 - Criminal Law (Rape) Act 1981, s.10 - Criminal Law (Rape) (Amendment) Act 1990, s.7

The defendant was charged with indecent assault and buggery, the indictment stating that this was contrary to common law as provided for in s.10 of the 1981 Act, the particulars alleging that on a specified date he indecently assaulted a named female. It was accepted that the form of the indictment conformed as nearly as possible to the requirements of the 1924 Act, but the defence argued that the prosecution was required to specify the particular acts alleged to constitute the indecent assault. In the course of her evidence in the defendant's trial, the complainant stated that the defendant had, inter alia, touched her breasts and inserted a stick into her anus and vagina. The prosecution introduced genetic fingerprinting, also called DNA profiling, which had been conducted on swabs taken from the complainant. After two witnesses had been examined concerning the techniques involved, it emerged that the person who had performed the actual DNA profile was not available to give evidence. Defence counsel then applied to have the jury discharged on the ground of possible prejudice. Prosecution counsel stated he would no longer be relying on the DNA evidence, and that it had been introduced primarily as a test case for DNA profiling. The trial judge declined to discharge the jury, but he ruled that the evidence was not admissible and warned the jury to ignore the DNA evidence. Headlines in the following day's newspapers stated, inter alia, 'Genetic printing barred in rape trial'. Defence counsel applied again to have the jury discharged for possible prejudice. The trial judge declined the application but warned the jury to ignore the newspaper coverage and reminded them that the trial was not one for rape. It later emerged that the trial judge had, on an approach from a newspaper reporter, approved the contents of the newspaper reports, but not the headlines. In his final charge to the jury, the judge had given a warning to the jury that it was unsafe to convict the defendant if they

could not find corroboration in the evidence adduced. The defendant was convicted on both counts. On appeal **HELD** by the Court of Criminal Appeal (McCarthy, Keane and Denham JJ) dismissing the appeal: (1) the form of the indictment in the instant case conformed as nearly as may be to the forms in the appendix to the 1924 Act, and since the actions alleged against the defendant could be described as components of a single activity or a chain of similar events, it was not necessary for the indictment to specify separately each act of alleged assault. *Jemmison v Priddle* [1972] 1 QB 489 applied. *Per curiam:* it might be that, as a matter of fairness, the prosecution would be bound, if requested to do so, to specify the relevant acts alleged to constitute the indecent assaults; (2) as the trial judge had warned the jury to disregard the incomplete DNA evidence once the prosecution indicated that it did not seek to rely on it, the Court would not presume that the jury would reject that direction and convict an accused person on the speculation that some forensic evidence would have proved some unspecified fact, and that ground of appeal would be rejected; (3) it was improper for the trial judge to discuss in any way the trial with representatives of the media; in particular he should not have vetted in any way the newspaper reports of the trial, albeit influenced by the desire to ensure there should be no report which would influence the outcome of the trial; but, again, in light of his warning to the jury concerning the DNA evidence, the Court would not presume that this affected the jury's verdict. *Per curiam:* the Court would unreservedly condemn any suggestion that a court of trial could be used as a testing area for the admissibility of evidence, forensic or otherwise, and would emphasise the desirability of careful assessment in advance of trial of the need to call particular evidence; (4) since the trial had taken place after s.7 of the 1990 Act came into effect, the trial judge was not required to warn the jury of the danger of convicting on uncorroborated evidence, and this was a matter for the trial judge's discretion; but having given the particular warning in the instant case, he had dealt correctly and adequately with the question of what evidence might constitute corroboration.

The People(D.P.P.) v G. Court of Criminal Appeal 13 November 1992

CRIMINAL LAW - EVIDENCE - SEXUAL OFFENCE - INDECENT ASSAULT - EVIDENCE OF COMPLAINANT TO PSYCHOLOGIST - WHETHER ADMISSIBLE - APPEAL - FUNCTION OF COURT OF CRIMINAL APPEAL - CONFLICT OF EVIDENCE

The defendant had been charged on four counts of the indecent assault of his daughter. The assaults were alleged to have taken place between 1986 and 1988. During the daughter's cross - examination in the trial court, she accepted that the defendant had sent her to a child psychologist during the time it was alleged she was being sexually assaulted but that, at that meeting, she had not made any complaint of sexual assault to the psychologist. In her re - examination by the prosecution, the daughter stated that since that initial meeting with the psychologist, she had re-attended and that the psychologist had recommended that she go to the police. Counsel for the defendant applied to have the jury discharged on the ground that the daughter's evidence on re - examination amounted to evidence of a complaint of sexual assault, that it was inadmissible since it was not sufficiently close in time to the events complained of, and that the jury would be highly prejudiced by its admission since they might consider that the psychologist had accepted the complaint and had advised the daughter to go to the Gardai. The trial judge declined to discharge the jury but warned them that the evidence had been inadmissible and to discount it. The defendant went into evidence and denied the allegations made by his daughter. The defendant was convicted on all counts. On his application for leave to appeal **HELD** by the Court of Criminal Appeal (Finlay CJ, Keane and Carney JJ) granting the application and allowing the appeal: (1) the Court would not interfere with a jury verdict in a case, such as the instant, merely on the ground that the defendant had vehemently denied the accusation, since there was credible evidence to support the verdict and it could not otherwise be said to be perverse. *The People v Egan* (L.) [1990] ILRM 780 applied; (2) having regard to the fact that the instant case was extraordinarily finely balanced between the strength of the evidence for the prosecution and defence, the inclusion of what was undoubtedly the inadmissible evidence of complaint to the psychologist created a risk of prejudice in the jury's mind which was too great to make it safe to leave the jury's verdict undisturbed; and the Court was also influenced in this regard by the fact that the daughter's evidence on this point had been specifically referred to in the prosecution's closing speech to the jury. [Note: as prosecution counsel indicated that it was unlikely that the defendant would be charged again, the Court did not make an order for his re - trial but admitted him to bail pending the entering of a nolle prosequi in the Circuit Criminal Court.]

The People(D.P.P.) v McCarthy and Ors Court of Criminal Appeal 31 July 1992

CRIMINAL LAW - EVIDENCE - VISUAL IDENTIFICATION - SEXUAL ASSAULT - COMPLAINANT IDENTIFYING DEFENDANT IN COURT - WHETHER CASEY WARNING REQUIRED - JUDGE'S DIRECTION - ATTENTION DRAWN TO POSSIBLE DEFECT IN DEFENCE SUBMISSION WHETHER APPROPRIATE

The defendants were charged with rape and actual bodily harm arising out of one incident. The complainant gave evidence in which she identified the defendants as having raped her in sequence. The first defendant admitted that he had been at the scene involved, but denied that he had had sexual intercourse with the complainant. In statements to the Gardai and at the trial, the second and third defendants, brothers, admitted that they had had sexual intercourse with the complainant but alleged that it had been with her consent. The complainant was extensively cross - examined on her account. In his closing address, counsel for the defendant noted that the second and third defendants had given a similar explanation of their involvement in the event and had had no opportunity to concoct a story before giving their statements to the Gardai. The trial judge, in his summing up, pointed out that a number of hours elapsed before the second and third defendants had given their statements to the Gardai. The defendants were convicted on the counts of rape and actual bodily harm. On appeal **HELD** by the Court of Criminal Appeal (McCarthy, Keane and Budd JJ) dismissing the appeal: (1) in relation to the first defendant, this was not a case in which visual identification was challenged for accuracy in the ordinary sense, since the first defendant admitted he had been at the scene in question; and accordingly a specific warning to the jury on the dangers of convicting on visual identification was not required. *The People v Casey (No.2)* [1963] IR 33 distinguished; (2) the case against the first defendant turned on the issue whether the complainant's evidence that he had raped her was believed by the jury; and having regard to the fact that, overall, the trial judge had fairly put the defendant's case in his direction to the jury, the Court would not interfere with what essentially was a matter for the jury, who had an opportunity to see the complainant's evidence at first hand; (3) while counsel for the second and third defendants was entitled to put every legitimate case to the jury in closing submissions, it was equally the duty of the trial judge to draw the jury's attention to whether any such defence case was based on a statement of fact that was not true or not wholly true; and the trial judge's direction as to the time lapse before the second and third defendants made their statements to the Gardai came within the scope of this duty, and he had acted correctly in so doing.

The People(D.P.P.) v McKeever Court of Criminal Appeal 16 July 1992

CRIMINAL LAW - TRIAL - PROCEDURE - MAJORITY VERDICT - FUNCTION OF TRIAL JUDGE - WHETHER JUDGE REQUIRED TO WARN JURY NOT TO DISCUSS CASE WITH OTHER PERSONS - APPEAL - TRANSCRIPT - WHETHER ACCURATE - SENTENCE - Courts of Justice Act 1924, s.97 - Criminal Justice Act 1984, s.25

The defendant was charged in the Circuit Criminal Court on three counts arising from the same incident: robbery of £35; possession of a firearm with intent to commit an indictable offence, namely robbery; and possession of a firearm with intent to endanger life. At his trial, the defendant was acquitted on the charge of possession of a firearm with intent to endanger life, but was convicted by a majority of 10 - 2 on the other two charges. He was sentenced to two concurrent terms of 6 years imprisonment. On appeal **HELD** by the Court of Criminal Appeal (O'Flaherty, Lynch and Denham JJ) dismissing the appeal against conviction but allowing the appeal against severity of sentence: (1) the transcript certified for the purposes of an appeal under s.97 of the 1924 Act should as far as possible be accurate, but inevitably there may be some inaccuracies; however, there was nothing in the instant transcript to support the defendant's claim that an entire question and answer recorded in the transcript was not, in fact, put in the trial. Dicta in *Attorney General v Joyce and Walsh* [1929] IR 526 referred to; (2) the Court would emphasise the need for all juries to be warned not to discuss the case with any person other than another member of the jury; but while no such warning was given in the instant case, there was nothing

to indicate that any irregularity had occurred in this respect. *R. v Prime* (1973) 57 Cr App Rep 632 referred to; (3) the trial judge had not acted in breach of s.25 of the 1984 Act in informing the jury that, sufficient time having elapsed, he could accept a majority verdict, and upon being then informed by the jury that they had reached a 10 - 2 majority verdict, accepting that verdict. *Per curiam:* it might be better, however, where the trial judge applies s.25 of the 1984 Act and where the judge is thereupon informed that a majority verdict has been reached, for the jury to be asked to retire for a further short time to consider the matter in private; (4) the sentence of 6 years may not have reflected the acquittal of the defendant on the most serious charge, and in the circumstances it would be reduced to 4 years, to run from the date of the offences and his arrest.

Minister for Agriculture and Food v Cahill High Court 12 November 1992

CRIMINAL LAW - TRIAL - PROCEDURE - CONTROL OF PESTICIDES - DEFECT IN PROOF CONCERNING PRODUCT SAMPLES ALLEGED TO CONTAIN PROHIBITED PESTICIDE - SEPARATE EVIDENCE THAT DEFENDANT ADMITTED USING PROHIBITED PESTICIDE - European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1981 - European Communities (Classification, Packaging and Labelling of Pesticides) (Amendment) Regulations 1985, Reg.13 - European Communities (Classification, Packaging and Labelling of Pesticides) (Amendment) Regulations 1987

The defendant was charged by the prosecuting Minister in the District Court with offences alleging that he used on a product a pesticide containing a prohibited substance, contrary to the 1981 Regulations, as amended. The prosecution sought to introduce in evidence results from samples which had been taken from products under the control of the defendant. The statutory requirements concerning the taking of such samples, laid down in Reg.13 of the 1985 Regulations as amended by the 1987 Regulations, had not been complied with and the results were therefore deemed inadmissible by the District Judge. Other evidence given for the prosecution was to the effect that the defendant had admitted that he had used a pesticide containing a prohibited substance. The District Judge concluded that, as the product sample had been taken in breach of the 1985 Regulations, the case should be dismissed. On case stated **HELD** by O'Hanlon J: (1) the 1981 Regulations, as amended, did not lay down as a condition precedent to a conviction that any samples taken must be proved in the manner prescribed by the Regulations, and there was the possibility that even where the sample evidence is rejected the defendant may be convicted on other evidence; (2) in the instant case, the District Judge had been correct to rule out evidence of the samples, but he should have proceeded to consider whether on the remaining evidence it was open to convict the defendant on the charges brought, and accordingly the case would be remitted to the District Court to deal further with the charges.

In re Murphy Courts - Martial Appeal Court 17 November 1992

DEFENCE FORCES - MILITARY LAW - COURT - MARTIAL - OFFICER OF CHOICE TO DEFENCE - WHETHER GRANTED - Rules of Procedure (Defence Forces) 1954, Art.20(3)

The accused, a Private in the Irish Army, had been charged with desertion. Prior to his Court - Martial, he had requested that he be defended by one Captain Milner, but he was unavailable. The accused was informed by the Convening Authority that another officer, Captain White, was available. The accused asked the Convening Authority to ask Captain White if he was willing to act for him. Captain White agreed to act for the accused. The Convening Authority subsequently served on the accused a copy of the charge sheet, and under Art.20(3) of the 1954 Rules asked the accused if he wished to be represented by a particular officer or if he wished the Convening Authority to assign an officer. In reply, the accused gave Captain White's name. Art.20(3) requires the Convening Authority to assign a suitable officer if requested to do so by an accused. At his Court - Martial, the accused pleaded guilty to being absent without leave, and this plea was accepted. He was ordered to be discharged from the Defence Forces. On appeal **HELD** by the Courts - Martial Appeal Court (Blayney, Lynch and Lavan JJ) dismissing the appeal: (1) the Convening Authority had not acted in breach of Art.20(4) of the 1954 Rules since although the accused's original choice of officer was unavailable, the Convening Authority had not been requested to assign an officer to the accused, but rather the accused had requested that Captain White act for him. *The State(Freeman) v Connellan* [1987] ILRM 470 distinguished; (2) the Court had, pursuant to s.17 of the 1983 Act, taken into account additional evidence by the accused that he had been subjected to violence by his wife, and that he had feared that she might become violent to their children and that this had led him to stay in England with his children, but even if the Court - Martial had had this evidence available to it, it was unlikely that it would have affected its decision.

TV 3 Television Co Ltd and Ors v Independent Radio and Television Commission High Court 4 May 1992

JUDICIAL REVIEW - FAIR PROCEDURES - AWARD OF TELEVISION FRANCHISE BY STATUTORY BODY TO CONSORTIUM - WHETHER CONDITIONAL ON PROVISION OF DETAILED FINANCIAL INFORMATION BY CONSORTIUM - WITHDRAWAL OF FRANCHISE - WHETHER STATUTORY BODY REQUIRED TO ACT JUDICIALLY - Radio and Television Act 1988, ss.4, 6, 14

The respondent, the Independent Radio and Television Commission, was established by the 1988 Act with a view, inter alia, to entering into a contract with some person or persons for the provision of a television programme service. Having examined a number of proposals, the Commission decided in April 1989 to award the franchise to operate an independent national TV channel to what was known as the Windwill consortium, represented by the applicants. This decision was stated in the Commission's minutes to be 'subject to suitable contracts being negotiated.' After this decision, the consortium found that technical transmisison problems and the extent of the revenue earning capacity of Radio Telefis Eireann (RTE) placed serious impediments in establishing an effective national TV channel. These were addressed by the Broadcasting Act 1990, which permitted the operators of the independent TV channel to use independent transmission equipment and also placed new advertising limits on RTE. In consequence, the consortium submitted a revised business plan to the Commission in April 1991. In June 1991, at a meeting with the Commission, it was agreed that the consortium provide the Commission by the end of August 1991 with precise information on the identity and extent of the investors in the consortium, whose membership had altered since 1989. After this meeting the consortium became aware that the Department of Communications was undertaking a review of the 1990 Act, and that the advertising limits on RTE might be removed. The consortium was unable to obtain precise information from the Department, and informed the Commission that arising from this it was unable to provide the financial information requested in the June meeting. The Commission deferred any decision on the effect of this, but in October 1991, the Commission communicated to the consortium its decision to withdraw, with immediate effect, what it described as the conditional offer of the TV franchise. The applicants sought judicial review of this decision. **HELD** by Blayney J granting certiorari of the decision: (1) s.6 of the 1988 Act required the Commission to award the contract for a television programme service to the most suitable applicant, having regard to the criteria set out in s.6; and once it had done so, all that remained was for the actual terms of the contract to be negotiated with the applicant and to enter into that contract forthwith under s.4 of the 1988 Act; there was no obligation on the Commission to make any further investigations into the applicant since in the event that misleading information was provided to it, it could withdraw a contract under s.14 of the Act; (2) while it was difficult to categorise the relationship between the Commission and the consortium in the period April 1989 to October 1991, it probably fell short of a contractual relationship; when viewed against the background of the 1988 Act, the decision in April 1989 undoubtedly constituted a promise by the Commission to enter into a contract with the consortium, and the decision in October 1991 amounted to a unilateral cancellation of the April 1989 promise; (3) in making these decisions, the Commission was exercising an administrative function created by statute and was obliged to act in accordance with the principles of constitutional justice; and since the Commission did not give notice of its intention to cancel its April 1989 decision, or give any prior notice of its reasons or give the applicants an opportunity to be heard, the decision should be quashed. Dicta in *East Donegal Co - Op Ltd v Attorney General* [1970] IR 317 and *O'Brien v Bord na Mona* [1983] ILRM 314; [1983] IR 255 applied.

O'Toole v Heavey Supreme Court 17 December 1992

PRACTICE - ACTION - APPLICATION FOR NON - SUIT AT END OF PLAINTIFF'S EVIDENCE - TRIAL JUDGE GRANTING APPLICATION - WHETHER CORRECT TEST APPLIED

The plaintiff instituted proceedings in negligence against the defendant, a dental sur-

geon, alleging that the defendant had failed to exercise reasonable care in extracting a tooth from the plaintiff, as a result of which the plaintiff's mandible had been fractured. It was agreed that the fracture had occurred in the course of the extraction. In evidence in the High Court, the plaintiff stated that the defendant had attempted to extract the tooth unsuccessfully, that part of the tooth came away, that the root had remained in her jaw and that the defendant had stated "I knew this would happen." A consultant dental surgeon called by the plaintiff stated in evidence that a fractured mandible could result from lack of due care but that it could also arise from a situation in which all proper procedures were followed. At the conclusion of this evidence for the plaintiff, the defendant applied for a non - suit. The trial judge granted the application on the ground that the plaintiff had not established negligence. On appeal **HELD** by the Supreme Court (Finlay CJ, Egan and Blayney JJ) allowing the appeal and ordering a new trial: in the instant case, where the defendant had indicated that, if the application for a non - suit was refused, he would be going into evidence, the trial judge should have merely decided whether negligence could be inferred from the evidence, that is whether a prima facie case had been made out, rather than whether negligence had been established on the balance of probabilities; and since negligence could be inferred from the evidence given by the plaintiff, a new trial should be ordered. *Per curiam:* where, on an application for a non - suit, a defendant indicates that no evidence will be given on the question of liability, the trial judge is entitled to determine the question of liability on the balance of probabilities, provided that such a decision at that stage would not prejudice any other party where there is more than one defendant. *Hetherington v Ultra Tyre Service Ltd and Ors* [1993] ILRM 353 applied.

Coyle v An Post Supreme Court 17 December 1992

TORT - NEGLIGENCE - EMPLOYER'S LIABILITY - OFFICE HOLDER - WHETHER DIRECTED TO TRAVEL IN DANGEROUS ROAD CONDITIONS - WHETHER BREACH OF DUTY OF CARE

The plaintiff was engaged by An Post under the Postal and Telecommunications Services Act 1983 as a sub - postmaster in Raphoe, Co. Donegal, and as such he was an office holder with an Post. Part of his duties involved payment of social welfare benefits to recipients. The money for payments was generally delivered to Raphoe from Lifford Post Office under escort. On 9 December 1985, the plaintiff became aware that the amount of money on hands in the sub-post office was not sufficient to meet the expected number of claimants. The plaintiff rang the official in Lifford Post Office who was responsible for supply of cash to sub - post offices, and was informed that, if he wished to obtain the money he would have to travel to Lifford. The plaintiff was already aware that the road conditions to Lifford were particularly difficult that day and inquired whether he could obtain cash from the local bank, but the practice of obtaining money in this way had been discontinued. The plaintiff decided to set out for Lifford, but on the way his car skidded on the icy road and crashed and the plaintiff suffered severe personal injuries. He instituted proceedings against An Post claiming damages in negligence. In the High Court, Johnson J held that the defendant had been negligent in effectively ordering the plaintiff to travel to Lifford in dangerous conditions but that the plaintiff had been contributorily negligent. He assessed liability on the defendant at 66% and awarded the plaintiff £81,200. On appeal by the defendant **HELD** by the Supreme Court (Finlay CJ, Hederman, Egan and Blayney JJ; O'Flaherty J dissenting) allowing the appeal and dismissing the plaintiff's claim: (1) the evidence did not go so far as to indicate that the plaintiff had been ordered to go to Lifford to collect the money, but rather that the plaintiff had chosen to do so, and to restrict a person's choice with respect to how they may act if they chose to do so could not be construed as an order to them so to act; (2) the court would not be imposing a test based on a duty of care if it were to find that the defendant was required to prevent the plaintiff from travelling to Lifford and should have instead indicated that established practice be dispensed with and allowed him to obtain the money from the Raphoe bank; and in all the circumstances there had been no breach of duty by the defendant. Dicta in *Stapley v Gypsum Mines Ltd* [1953] AC 663 referred to.

Lindsay v Mid Western Health Board and Ors Supreme Court 18 December 1992

TORT - NEGLIGENCE - MEDICAL NEGLIGENCE - RES IPSA LOQUITOR - ONUS ON DEFENDANTS TO REBUT PRESUMPTION OF NEGLIGENCE - WHETHER DEFENDANTS DISCHARGING ONUS

The plaintiff, then aged 8, was admitted to Limerick Regional Hospital with suspected appendicitis or inflammation of lymph glands. Her appendix was removed, but it emerged that the problem was the inflammation. A second operation was then performed on the glands. After the second operation, the plaintiff failed to regain consciousness and remained in a coma from which she was unlikely to emerge. The plaintiff instituted proceedings through her next friend alleging that in the course of the operation the anaesthetist must have failed to notice a drop in the level of oxygen to the plaintiff and that this caused the plaintiff to go into a coma. The plaintiff also relied on the doctrine of *res ipsa loquitor*. The defendants denied any negligence in the performance of the operation and specifically denied there had been any drop in the oxygen level to the plaintiff. In the High Court, Morris J applied the *res ipsa loquitor* test and held that since the defendants had failed to establish that the coma had not been caused by negligence the plaintiff was entitled to succeed and awarded £319,392 to the plaintiff. On appeal by the defendants **HELD** by the Supreme Court (Finlay CJ, O'Flaherty and Egan JJ) allowing the appeal and dismissing the plaintiff's claim: (1) *res ipsa loquitor* applied in the instant case since, although no precise circumstance of negligence could be pointed to, the failure of the plaintiff to return to consciousness after a routine operation called for an explanation from the defendants; (2) the defendants were required to show that they had exercised all reasonable care but they were not required to prove, on the balance of probabilities, what did cause the plaintiff's brain damage, and the distinction between a negligent act and causation as well as the uncertain nature of medical science in cases such as the present should be emphasised in this context; (3) the trial judge had rejected the plaintiff's suggestion that the brain damage arose from a lack of oxygen during the operation, and thus the anaesthetists could not be said to have been negligent; (4) while the plaintiff had established a prima facie case concerning lack of oxygen and while the unusual nature of the case required an explanation from the defendants, and although the defendants had not been able to establish the cause of the plaintiff's brain damage, they had established that they had not been negligent, and this was sufficient to discharge the onus on them under the *res ipsa loquitor* rule; and accordingly the plaintiff's claim should be dismissed. *Dicta* in *Dowd v Kerry Council Council* [1970] IR 27 and *Girard v Royal Columbian Hospital* (1976) 66 DLR(3d) 676 approved.

McEleney v McCarron and Anor Supreme Court 21 December 1992

TORT - NEGLIGENCE - ROAD TRAFFIC - WHETHER FAILURE TO KEEP PROPER LOOKOUT

The plaintiff had consumed a large quantity of alcohol at a disco and was being escorted home by foot with the assistance of two women who had also been at the disco. The plaintiff fell off the footpath on which they were walking onto the roadway. The two women attempted to move him off the roadway but were not fully able to do so. The second defendant was driving a car owned by the first defendant and as he approached the point where the plaintiff lay on the road, the second defendant saw the two women who he thought were seeking a lift. He stated that he saw a shadowy image beside them but that the car had gone over the plaintiff almost before he had seen him. As a result of the collision, the plaintiff suffered irreversible brain injuries. The plaintiff instituted proceedings in negligence claiming that the second defendant failed to keep a proper look out. In the High Court, the second defendant was found negligent and fault was apportioned at 70% against him. On appeal by the defendants **HELD** by the Supreme Court (Finlay CJ, Hederman and O'Flaherty JJ) allowing the appeal and dismissing the plaintiff's claim: it would be imposing an absolute duty of care on the second defendant to require him to observe the presence of the plaintiff on the roadway in circumstances in which the women on the footpath were clearly visible; and in the instant case, therefore, by driving in a manner in which he took care to avoid injury to the two women, the second defendant had not failed to keep an adequate lookout.