

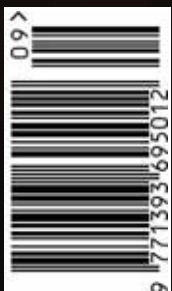
LAW SOCIETY Gazette

€3.75 Aug/Sept 2008



SWIFT JUSTICE?

The exoneration of an innocent man by an Irish lawyer



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On the cover
Miscarriages of justice are often more common than we would care to believe. Here's the story of one that turned out all right – eventually – thanks to Irish input

PIC: DENIS MINIHAHE, COURTESY IRISH EXAMINER



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LAW SOCIETY Gazette

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Walter Swift spent 26 years in prison for a crime he didn't commit until he was exonerated with the help of an Irish lawyer. For the *Gazette*, Colin Murphy met both parties in this extraordinary story

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The *Finance Act 2007* severely curtailed the benefits of dwellinghouse relief from CAT for unmarried couples. Niamh Keogh gives an overview of some key principles of the relief and discusses the changes that were introduced

31 Civil defence

The *Civil Law (Miscellaneous Provisions) Act 2008* makes some significant, and sometimes subtle, changes to the way litigation in Ireland proceeds. Solicitors would be well advised to read it, say Roddy Bourke and Brian Conroy

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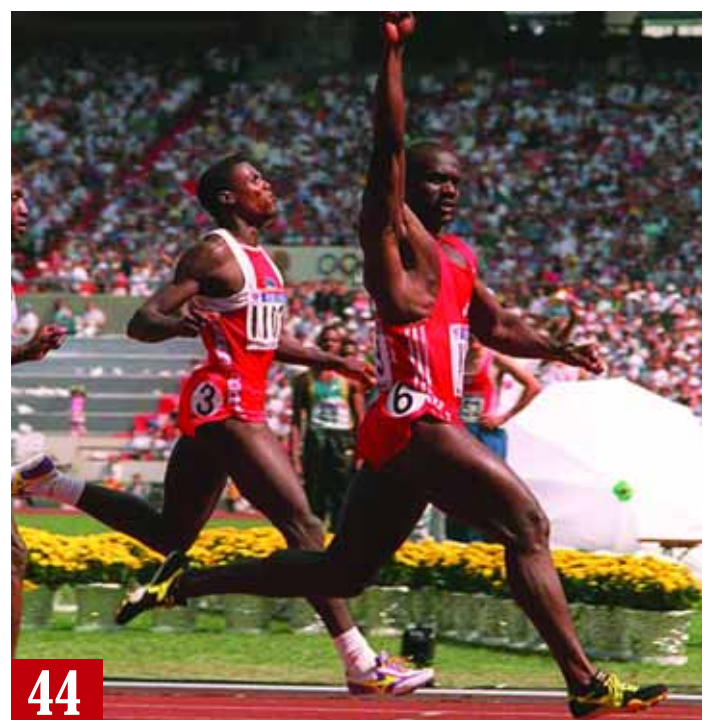
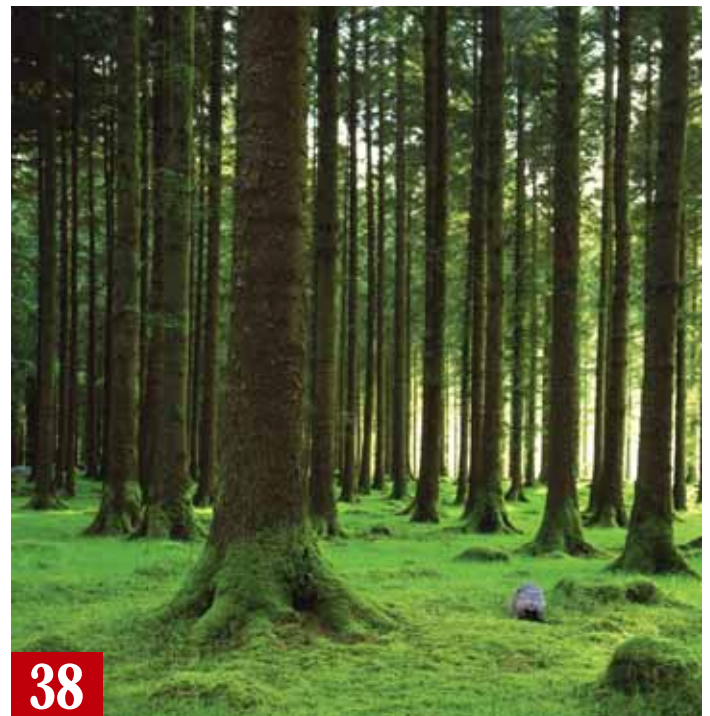
To avoid potential negligence claims, legal advisers need to be aware of the relevant tax implications of any compensation settlement their client enters into. Alan Connell and Barry McGettrick go minesweeping

38 Seeing the wood for the trees

Do you really know what the Law Society library can offer you in terms of resources? There's more to it than you think, especially in terms of precedent documents, as any busy beaver knows. Margaret Byrne lights the way

44 Rule breakers – rule shakers

Damages are rarely awarded for breaches of either EC or Irish competition law in Irish courts. Now the commission has proposed mechanisms for victims of breaches of EC competition law. Alan McCarthy goes for gold



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Feiceann beirt rud nach bhfeiceann duine amhain

Tanned, rested, ready? After the appalling summer we have had, I didn't imagine so! Nonetheless, with the opening of the new academic and legal year, there could be no better opportunity for us all to collectively take stock and identify practice priorities for 2008/09.

The Society has been conscious of the changing legal economy for some time now and has been actively working to provide best-practice management guidance. Universal historical experience has been that firms that continue to invest in training (and trainees) and to improve their skills pool are those that will not only survive through any downturn, but achieve growth during it. Now is the time, then, to reacquaint yourselves with the training and research facilities that the Society can make available to its members.


Our training as solicitors equips us to carry out the core legal skills of researching, drafting, negotiating and advocating. These skills are transferable across all legal disciplines. What is, of course, required is that colleagues who wish to transfer their skills to developing areas of practice, in place of areas experiencing a slowdown, acquire the necessary skills.

It goes without saying that our excellent CPD programme meets precisely this need. Colleagues can also get support from the Society through our excellent library service. Librarian Margaret Byrne has written an article in this issue of the *Gazette* outlining some of the more recent additions to the library service. I would encourage every colleague to read it and take time to drop into the library to see the full range of services available. It is a great testimony to the library staff that, in the last two years alone, over 50% of Irish solicitors' firms have obtained assistance there. There could be no better opportunity for other firms to re-examine what the library has to offer them – and, of course, to bear in mind that the service is a national rather than purely Dublin one. The library aims to collect and provide accurate, current resources and information to every colleague to deal with the challenges of the future.

This theme of solicitors looking to the future was very



well expressed at the recent highly-successful launch of the eConveyancing Task Force report. The Society was requested by the Law Reform Commission to produce a report for them in relation to how electronic conveyancing might be provided in Ireland. To their credit, rather than slavishly following models from other jurisdictions, where outdated practices were simply made electronic, our task force carried out a root-and-branch examination of what best conveyancing practice should be. The full report can be accessed on the Law Society's website. I would commend it to everyone's reading. (Also see the report on p14 of this *Gazette*.)

Another positive contribution by the Society to the general good is the publication of the task force report on the availability of legal aid. It is a sad truism that a series of *ad hoc* schemes introduced in an uncoordinated fashion means that even experienced practitioners find it difficult to access information as to the schemes of state-funded legal aid that may exist for the benefit of their clients. By making this information available to every practice in the country and to many voluntary associations, the Society hopes to play its part in ensuring access to justice by a greater number of citizens. It goes without saying that identifying all the schemes available serves to highlight the continuing absence of a comprehensive civil legal-aid scheme and to remind all of us – particularly government – of the vast, unmet legal need in our society. 

James MacGuill
President

"By making this information available to every practice in the country and to many voluntary associations, the Society hopes to play its part in ensuring access to justice by a greater number of citizens"



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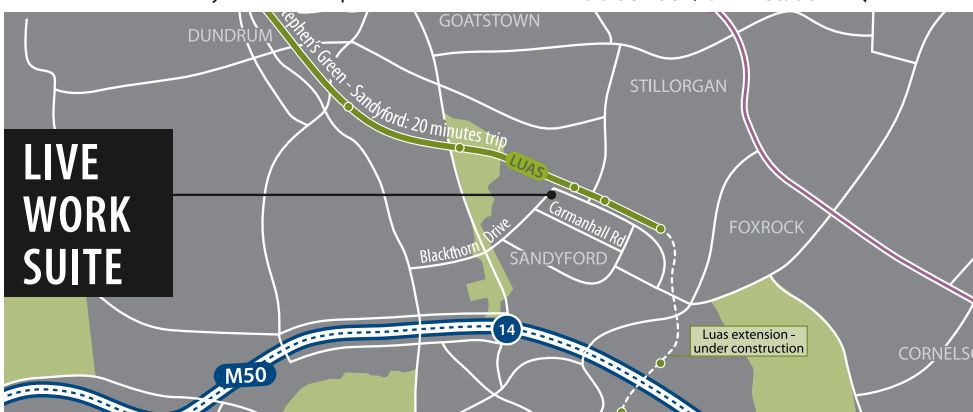
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■ DONEGAL

Colleagues throughout the county continue to be exercised about the appalling court waiting lists and backlog of cases in both the District and Circuit courts. The president of the Donegal Bar Association, Brendan Twomey, and members Paddy McMullin and Michael Cunningham took the initiative of meeting the presidents of the Circuit and District Courts, Judges Deery and Malone, and were well received. The bar association contingent suggested that the county be divided into two District Court areas, with the appointment of a second district judge to the new area.

The bar association also met with Minister for Justice Dermot Ahern. Brendan tells me that the minister cited the present state of the government's finances as the reason why no further judges could be appointed and, accordingly, he could not accede to the association's request. The minister did say, however, that he would urge consistency by the Courts Service in the delivery of services in Co Donegal.

"It is clear," says Brendan, "that Donegal has the longest waiting lists in the country and remains a black spot for the delivery of courts services. It is disappointing that the association's proposal cannot be accepted and that no radical action will be taken to deal with the problem."

■ MAYO

As I holidayed during the month in beautiful (and relatively dry!) Mayo, it was pleasing to read from the local



How to find the perfect job

At the seminar 'How to find the perfect job', held at Blackhall Place on 17 June, were (l to r): Hannah Carney (Hannah Carney & Associates), Darragh Byrne (Head of Legal, Tesco Ireland), June Reardon (Attorney General's office), Barbara Joyce (Law Society), Martin Sills (Permanent TSB), John Savage (Axa), Claire Loftus (Office of the DPP) and Michael Benson (Benson and Associates)

press the front-page headline about the new courthouse for Claremorris and, furthermore, the confirmation from the Courts Service that it has "no plans at this time to relocate to Ballina District Court Office". The local press rightly heaped praise upon the efforts of Pat O'Connor and the MBA. Vice-president of the association, Dermot Hewson, is quoted as saying that members and staff in the courts office were delighted with the news, and he paid tribute to those involved in the campaign. The Courts Service also says that it is looking at a future upgrade of Ballina's courthouse, and the provision of a new courthouse in Claremorris where, currently, the monthly court sittings are held in the town hall.

The bar association continues to be very concerned about the proposals to close the courthouses in Ballyhaunis, Ballinrobe, Charlestown, Ballycastle and Ballycroy. They describe the decision to

centralise the venues for District Court sittings as "unfair, unjust and irrational". They flagged the fact that Claremorris does not currently have adequate facilities to host a centralised court sitting and have highlighted the inconvenience and expense that would be incurred by the general public in having to travel long distances to centralised court venues.

It was also pleasing to note that the editorial in the *Western People* headlined the court closure as "a backward step" and acknowledged the practical problems highlighted by the MBA, saying that the bar association "is to be complimented on the vigorous campaign it is fighting for the retention of these services". It says: "Politicians in the country need to throw their full weight behind the solicitors who cannot Effect change on their own. It is only with pressure from all sides that this decision will be reversed".

Meanwhile, the annual

barbecue, organised by Caroline Barry and held in Tourmakeady on the shores of Lough Mask, was well attended by solicitors and barristers.

■ MEATH

Local colleagues were delighted at the nomination for appointment to the District Court bench of Athboy solicitor Dermot Dempsey. We wish him the very best in his future judicial career.

■ DUBLIN

Yvonne Allen advises of new requirements in relation to premises with dance licenses attached, as per the 2008 act. The annual licensing session takes place in District Court No 52, Richmond Courts, on 25, 26, and 29 September. Club applications should have been lodged by 3 September, with all other applications lodged by 12 September. A practice note exists setting out the requirements for the sessions (see DSBA website). Judge Collins has advised that, once the relevant documents relating to fire safety, CCTV and security are filed for annual licensing, it will not be necessary to produce same again during the year in respect of special exemption applications, unless alterations have been carried out to the premises.

In what promises to be a wonderful annual conference, Michael Quinlan heads off in a week's time to the twin cities of Beijing and Shanghai, together with 100 or so colleagues. **G**

'Nationwide' is compiled by Kevin O'Higgins, principal of the Dublin law firm Kevin O'Higgins.

Securing client information is key for every law firm

In a recent presentation to the Technology Committee, David Lawson, head of IT at Matheson Ormsby Prentice, outlined the security measures that IT professionals consider necessary for law firms, writes *Raymond Smith, solicitor (Smith Foy & Partners) and a Technology Committee member.*

Law firms are entrusted with client information and so confidentiality is one of the highest priorities for any firm. Consideration should be given to the following when reviewing IT security in your law firm:

- Are your systems kept up to date with security fixes continually installed on servers and PCs? For most firms, this means making sure that your server is configured to automatically download to a central server. Your IT supplier should confirm to you that the downloading of the software has been set up to automatically download and is being checked regularly. Best practice would involve IT support subsequently deploying these upgrades manually.
- Is there a secure firewall in place configured to suit your needs and also configured to keep its software up to date? A contract with the firewall vendor for the supply of patches and upgrades should also be in place.
- Are servers kept under control? Firstly, you need to know that there are no unnecessary programs ('services') running on your server(s). Secondly, servers should only be accessed for specific reasons by specific people.
- Is anti-virus software set up correctly on all machines and kept up to date? Once anti-



virus software is installed and configured correctly, it should update itself automatically without the need for any action by you.

- Having a content filtering application to prevent viruses and spam entering through email and web. Emails should be scanned by more than one email virus/spam detection program. Subscribing to an email hosting service where all your emails come through a third party who scans them for spam and viruses using a number of different types of software is advisable. However, if you want to scan your email for viruses and spam in your own office, then you could purchase an 'email gateway'.
- Web browsing traffic can be controlled using a proxy web server. This allows you to stop viruses in two ways:
 - 1) By restricting the pages that can be accessed using black lists (pages banned at all times) and white lists (pages allowed at all times).
 - 2) By scanning incoming web content for viruses. The only interaction you should have with your proxy web server is to renew the

licence agreement and to add work-related websites to your white list.

- Ensure that user rights are controlled centrally. Most server software allows you to manage user privileges from the server so that those privileges apply no matter what computer the user logs on to. This has numerous advantages, such as regulating what devices users can use (for example, CD drives and USB ports), stopping users opening certain types of documents, and making users change their passwords regularly.
- Ensure old hardware, including old hard drives, USB sticks, back-up tapes and so forth, are properly

destroyed. Options include using a reputable disposal firm that will certify destruction, or personally witnessing the physical destruction of equipment. If you wish to donate used equipment, then there are firms who will make it difficult for the new owners to recover old deleted data.

Computer security is important for small, medium and large-sized practices, as the profession does significant business over the internet. Solicitors must learn about the concepts in computer security in the same way they would learn about a client's business to obtain a satisfactory outcome. Solicitors should use their ability to ask the right questions to put the responsibility for implementing solutions on IT professionals.

Research has shown that people generally risk larger losses (for example, IT disasters) rather than accepting smaller losses – such as paying for solutions. As law firms are entrusted with securing client information, they should not make that mistake with their IT security.

More resources can be found on the Technology Committee's webpage at www.lawsociety.ie (in the members' section).

Merger for MH+C and Arthur O'Hagan

Mason Hayes & Curran and Arthur O'Hagan Solicitors have announced that they are to merge, effective from 1 October 2008. Both firms will operate under the existing brand and name of Mason Hayes & Curran.

The latter currently employs 230 people. Earlier this year it announced a 14% increase in turnover to just over €32 million from €28 million. Arthur O'Hagan specialises in the healthcare, education, charities, commercial and private-client sectors. Founded more than 150 years ago, it currently employs 40 people.

After the merger, Mason Hayes & Curran will employ 270 people, with Arthur O'Hagan's staff transferring to its headquarters in Dublin.

LRC: new publications and consultation

Practitioners who ever felt frustration in ascertaining the current state of the law will be interested in two recent publications by the Law Reform Commission. These are the commission's *Report on Statute Law Restatement* and its *Consultation Paper on the Legislation Directory: Towards a Best Practice Model*.

A statute law restatement is an administrative consolidation of an act, with its subsequent amendments, to allow both to be read seamlessly in one document. Once a restatement is certified by the Attorney General, it can be relied upon in court as evidence of the law, although the original legislation takes precedence if there is a conflict. Restatements can save practitioners a considerable amount of time, which would otherwise be spent in researching the up-to-date position of the law.

The commission's report proposes a First Programme of Restatement from July 2008 to December 2009, which will include:

- *Freedom of Information Act 1997* (close to 100 amendments), *Data Protection Acts 1988 and 2003* (over 70 amendments), *Prevention of Corruption Acts 1889 to 2005*



- and *Criminal Procedure Act 1967*,
- Six suites of related legislation: ethics in public office legislation (three acts), firearms legislation (eight acts), civil liability and statute of limitations legislation (13 acts), employment leave legislation (seven acts), proceeds of crime legislation (three acts) and equality legislation (three acts),
- Updates to four existing restatements carried out by the Office of the Attorney General: *Sale of Goods Act 1893* and part II of the *Sale of Goods and Supply of Services Act 1980*, *Defence Acts 1954 to*

1998 and Court Martial Appeals, Tourist Traffic Acts 1939 to 2003, and the *Succession Act 1965*.

The commission's consultation paper examines the *Legislation Directory* (formerly known as the *Chronological Tables of the Statutes*). This is a publicly available database hosted on the electronic *Irish Statute Book* website at www.irishstatutebook.ie. Its main purpose is to document modifications made to primary legislation by subsequent legislation since 1922. It also contains some information in relation to secondary legislation.

The commission proposes to improve the database to include more timely updates, comprehensive commencement information for acts and their individual provisions, and the association of secondary legislation with parent acts.

The commission also considers the future of the *Legislation Directory* in the wider context of e-legislation and considers the benefits to be gained from the implementation of a comprehensive e-legislation strategy in Ireland. E-legislation involves the production of legislation by electronic means from drafting to publication. Ultimately, the successful implementation of e-legislation would enable practitioners to access up to date authenticated versions of consolidated legislation online.

The consultation paper contains the commission's provisional recommendations on the *Legislation Directory*. Submissions on these provisional recommendations are welcome. Those who wish make submissions are requested to do so in writing by post to the commission or by email to info@lawreform.ie by 23 October 2008.

Both publications are available on the commission's website at www.lawreform.ie.

Don't delay – dip into a diploma now!

Now is the time to apply to do a diploma course with the diploma programme at the Law Society. Courses start in September and there is a wide range that will suit members of the profession who are keen to increase their knowledge in a particular area.

Courses include diplomas in employment law, finance law, family law, corporate law and governance, commercial

litigation and commercial property. In addition, this year we are pleased to announce the launch of the Foundation Diploma in Legal Practice. This is a new departure for the diploma programme, as the course is designed specifically with legal executives and legal secretaries in mind. The emphasis is on a practical, 'know how' approach.

The course comprises

instruction in many of the topics that provide a sound foundation for the legal support profession in this jurisdiction, including practical lectures on core areas of law such as conveyancing, debt collection and probate. The course adopts an emphasis on a holistic approach to working in a legal practice, including soft-skills training on client care, managing files and work and

time management. Intensive IT training on *Word, Excel, Sage line 50, PowerPoint* and *Access* is also provided.

For further information on all of our courses, please contact a member of the diploma team or access the diploma section on the homepage of the Law Society's website, www.lawsociety.ie; email: diplomateam@lawsociety.ie; tel: 01 672 4802; fax: 01 672 4992.

■ REGISTRATION OF DEEDS

From 4 August 2008, an additional fee of €20 will be payable on the resubmission of a deed and application for comparison where the documents had previously been submitted. (See the Property Registration Authority website, www.landregistry.ie, for a list of queries that are subject to the resubmission fee. Refer to item 5 in the fees order and item 2(b) in the schedule to that order.)

■ DSBA/SYS TABLE QUIZ

The DSBA/SYS winter table quiz will take place on Thursday 20 November 2008 at the Alexander Hotel in Dublin 2. The quiz is in aid of the Emer Casey Foundation. The entrance fee is €60 per table, with a maximum of four members to a team. Entry forms can be downloaded from www.dsba.ie. All entry forms and fees should be returned no later than 12 November. All monies raised, including entry fees, will go to the Emer Casey Foundation.

■ UIA CONGRESS

The annual Congress of the Union Internationale des Avocats (UIA) takes place from 29 October to 2 November 2008 in Bucharest, Romania. Details on the congress are available at: <http://congres.uianet.org>. More than 1,000 lawyers and legal professionals from around the world will debate on four main themes:

- Information society: questions and challenges,
- Water and the law,
- The legal profession: just another business?
- Competition law: competing models of market regulation.

■ RETIREMENT TRUST SCHEME

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ADR conference promises lively October debate

Practitioners in the area of family law will be aware of the increased focus nowadays on trying to resolve family disputes outside of the adversarial court process. Paul McCartney's solicitor Fiona Shackleton's statement that "a courtroom is a barbaric venue in which to pick over the carcass of a failed marriage" gets the full support of many practitioners, and those who have had the misfortune to go through the court process in order to address issues arising from marriage breakdown.

The benefits of trying to resolve matters without recourse to the adversarial system have long been recognised. In addition to the more traditional approaches of mediation and negotiation, we now also have the collaborative model and the first signs of a structured negotiation process. Different



Note to self: this is not ADR

aspects of some of these models are being used to achieve better outcomes for the parties concerned.

Both the Law Society of Ireland and the Legal Aid Board recognise the value from a societal point of view of achieving better outcomes in family breakdown situations and in trying to minimise the antagonism and bitterness that

can arise. They also recognise the wide range of dispute resolution models that can be promoted within the legal profession for the benefit of the community.

With this in mind, both bodies are jointly hosting a conference on Alternative Dispute Resolution in Family Law Matters, to take place at the Law Society's premises on Thursday 9 October 2008. The conference will be a forum for presentations, a lively debate on the various negotiations-based dispute resolution options, and on how those options can be promoted.

Full details of the conference, including a booking form, can be found in the current *CPD Focus* brochure (included with this month's *Gazette*), or at: www.lawsociety.ie/cpdfocus or on the Legal Aid Board's website: www.legalaidboard.ie.

New courthouse for Blanchardstown

Blanchardstown's new courthouse was officially opened on 25 July 2008 by the Minister for Finance, Brian Lenihan. The courthouse and full-time court office will serve West Dublin, allowing court users to lodge small claims applications, pay fines and have family-law matters heard in their local area. The District Court will deal with cases arising in the Dublin West area, including Blanchardstown, Clonsilla, Mullhuddart, Carpenterstown and Castleknock.

Facilities

Court facilities includes two courtrooms where the District

Court, the Children's Court, family law hearings and Circuit Court jury trials will be heard. A District Court office forms an integral part of the facility, and an interview room allows members of the public to conduct sensitive business in private with court staff.

- The facilities also include:
- A legal practitioners' room,
 - Consultation rooms,
 - Public waiting areas,
 - An information desk,
 - Victim support room,
 - A jury room,
 - Judges' chambers,
 - A media room,
 - State prosecutor's room,
 - Holding cells, a probation office and a garda room.

The facilities are wired for the latest in video conferencing technology, video-link and a room for remote testimony from children when they are required by the court.

The Courts Service has said that it plans to use Blanchardstown as a model for new courthouses and offices in Swords and Tallaght. Local offices and courts are already in operation in Dún Laoghaire and Bray.

Elsewhere, plans are in motion to provide a new courthouse for North Kildare, to service the populations of Maynooth, Leixlip, Kilcock and Celbridge. A suitable site is currently being sought.

HEALTH ADVICE AND SUPPORT FOR LAWYERS

ACTION OR REGRET?

LawCare provides a range of health services to lawyers, their staff and families in Ireland

LawCare is not afraid to say to lawyers who are beating themselves up over their inability to solve their problems that it's okay to be a human being – and to ask for help – because everyone needs help sometimes.

However, it can be hard to reach through the barriers that can be created by those we believe to be in need. Because of all the pressures we each face in just getting through our own professional and personal lives every day, good intentions can be forgotten. Sometimes they are only remembered when it's too late and then all that is left is a sense of regret.

A case in point was Canadian lawyer, Dr Adrian Hill, who worked in the same building as a colleague lawyer. Adrian had met this man, in passing, in the lift or the corridor on many occasions. He had noticed that sometimes he seemed vague, and his breath smelt of alcohol, even first thing in the morning.

Attempts to strike up conversation were rebuffed



and an invitation to attend a local AA meeting was met with a harsh response. Adrian

concluded that this lawyer was not yet ready to ask for help and admitted: "Most days I

was far too busy to give him any further thought."

Then, something happened that made Adrian think about what might have been. The man threw himself off of their skyscraper building. After his death, it came to light that he had had a chronic bone disease, had been in pain most of the time, and had been regarded by his family, friends and colleagues as a kindly and giving man. They obviously regretted his death, and Adrian was left with an enormous sense of guilt that he had not done more to try and help. He worked in a lawyer assistance programme in Ontario and, as he said: "If I don't reach out to another lawyer who is suffering, who will?"

So the message is this: despite the busy life you lead, keep your senses attuned to others, and if you see someone who is in need, don't feel embarrassed about making a discreet offer of help. If it is rejected, do not give up. Try again – give the person LawCare's contact details. **G**

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Launch of eConveyancing:

The Law Society's eConveyancing Task Force has launched *eVision* – its idea for a modern electronic system of conveyancing in Ireland. The Society's e-conveyancing project manager, Gabriel Brennan, takes us through its main themes

On 22 July, the Law Society's eConveyancing Task Force launched its vision of a modern electronic system of conveyancing for Ireland. *eConveyancing: Back to Basic Principles* ('*eVision*') was launched by President of the Law Society James MacGuill and was formally presented to the Law Reform Commission by the director general, Ken Murphy. The document was accepted on behalf of the Law Reform Commission by its president, Mrs Justice Catherine McGuinness, who stated that the publication was "a major step on the path of cooperation between the leading stakeholders in the conveyancing system in this country".

The report examines the current conveyancing process and finds that it has failed to keep pace with technological developments, increased volume of work, diversity of transactions and market expectations for speed and transparency. It is hampered by



At the Law Society for the launch were (l to r): James MacGuill (President, Law Society of Ireland) and Catherine Treacy (chief executive, Property Registration Authority)

a complex, cumbersome legislative framework that leads to inherent delay. The process has been used by the state as a tool for implementing social policy, for the collection of tax, for statutory enforcement and various other aims – for which the process was not designed. As a result, even the most basic residential conveyance requires multiple enquiries that have little to do with ownership, transfer and security of title. All

these enquiries add to the complexity of the conveyancing process and, ultimately, to the cost to the consumer.

Far-reaching reform recommended

The document recommends comprehensive and far-reaching reform of the current conveyancing process in order to benefit consumers and other stakeholders. It endorses the development of conveyancing

by electronic means, known as 'e-conveyancing', to enable solicitors to carry out the business of land-transfer, quickly and efficiently. e-conveyancing offers the opportunity for a secure, paperless, electronic, end-to-end, pre-sale to post-completion conveyancing process. It provides a means for all those involved in the property market to create a new system to reflect the needs and meet the demands of modern society.

eConveyancing: Back to Basic Principles strongly recommends that the conveyancing process be pared back to its basic principles, as many elements of the existing process have little, if anything, to do with the strict transfer of title to land. These basic principles include:

- A focus on the transfer of title. Each element of the process should be examined and only those elements in the current process that impact on the transfer of title should be retained.
- Title to all land and any interest in land to be registered in the Land Registry with a definitive, conclusive, all encompassing register. No interest should affect title unless it is registered. The onus must be on a party to assert their rights by registration.
- Entire process to be re-engineered to suit the electronic and online environment. Many other jurisdictions have 'electronified' their existing paper systems. The Law Society eConveyancing Task Force believes this is the



Members of the eConveyancing Task Force at the launch included (l to r): Neil Butler, Deirdre Fox, Majella Egan, Tom O'Malley, Dan O'Connor, Eamonn Keenan and Gabriel Brennan

Back to Basic Principles

wrong approach.

eConveyancing as an end-to-end process is recommended – not ‘e-registration’.

- Move from *caveat emptor* to vendor disclosure, but the purchaser would still be required to carry out his own survey.
- Complete electronic planning and environmental register containing all permissions, notices and certificates.
- Planning amnesty.
- All taxes to be personal taxes payable on a self-assessment basis.
- No mortgage deed. Registration of the new loan to be virtually instantaneous with the release of the monies, so no requirement for a certificate of title.
- All steps to be completed electronically and all stakeholders to communicate through an electronic workspace or ‘hub’.
- Common identifiers required for the searching of data.
- All monies to pass by electronic funds transfer, in real time, with same-day value.
- A comprehensive ‘e-contract’. No deed required unless new covenants, conditions or easements are being created.
- Electronic signatures.
- Total transaction time for a residential conveyance could be five working days.

Additional detail is contained in *eVision*, a copy of which is included in this *Gazette*.

At a 2007 seminar for the main stakeholders in the conveyancing system, the Law Reform Commission had asked stakeholders to draft their own e-conveyancing plan. In accepting the *eVision* document,



Speakers at the launch of *eVision* included (l to r): Gabriel Brennan (e-conveyancing project manager), Dan O’Connor (chairman, eConveyancing Task Force), James MacGuill (president), Mrs Justice Catherine McGuinness (president, Law Reform Commission), Patricia Rickard-Clarke (commissioner, Law Reform Commission), Eamonn Keenan (e-conveyancing Task Force), and Ken Murphy (director general)

Mrs Justice Catherine McGuinness said:

“The Law Society has provided an innovative and visionary response. As is pointed out in the Law Society’s own document, the existing conveyancing system may not be broken, but it is creaking at the seams. It does not fit well with the modern, electronically-based methods that are used by most firms of solicitors. It is not

adapted to deal with modern society, either in large commercial transactions or in the ordinary purchase of homes by private citizens.”

She continued: “In congratulating the Law Society on the launch of *eVision*, I would like to pay particular tribute to the Law Society and its members for their cooperation with the Law Reform Commission over the

years, and to thank them for their continuing assistance to the commission. This has been especially evident in the field of land law and conveyancing ... The Society states that *eVision* is intended to provide a framework for discussion and to stimulate other stakeholders to examine their procedures with a view to initiating the necessary changes to facilitate e-conveyancing. The Society can be assured that the Law Reform Commission will continue to work in this area and, in cooperation with the Law Society and other stakeholders, to seek real progress towards a full and effective e-conveyancing system in Ireland in the coming years.”

We now have the opportunity, to reform the current outdated, ‘creaking-at-the-seams’ conveyancing process, to re-engineer it to suit a modern electronic, online environment, thus embracing the business of land transfer in a visionary new way. Let us seize the day. **G**



At the launch of *eVision* were (l to r): Attracta O’Regan (head of CPD), Mary Keane (deputy director general) and Catherine Dolan (commercial manager, Thomson Round Hall)

Legal practitioners Irish

The *Legal Practitioners (Irish Language) Act 2008* came into operation on 9 July 2008. Seán Ó Conaill argues that this new piece of legislation is the best solution to a long-standing problem

The old Irish proverb ‘*Is fearr sócrú dá dbonacht ná dlí dá fheabhas*’ suggested that it is better to solve a problem rather than improve the law – however, in the case of the Irish-language requirement for lawyers, an improvement in the law is the best solution to a long-standing problem.

Previously, those wishing to become barristers or solicitors were required by the *Legal Practitioners Act 1929*, later amended for solicitors by the *Solicitors Act 1954*, to obtain a level of competency in Irish “sufficient to enable a solicitor efficiently to receive instructions, to advise clients, to examine witnesses and to follow proceedings in the Irish language”.

While the intentions of the legislature and the professional bodies in implementing such a requirement were noble, the effort was somewhat misplaced. As has been previously noted in these pages by Niamh Nic Shuibhne (*Gazette*, March 1999, pp16), the legislation ignored the fact that most solicitors will never actually use Irish while carrying out their professional duties.

Furthermore, the effectiveness of the exam itself was called into question. The exam process consisted of an initial Irish exam before the commencement of a traineeship, and a further exam a number of years later, usually sat by trainee solicitors during their professional training course. The format included a brief oral conversation and the translation of turn-of-the-century Irish literature extracts, which were written in non-standardised localised dialects of Irish – many of which no

longer form the vernacular in modern Irish-speaking communities. Such exams were simply inadequate to prepare lawyers to carry out their professional duties before courts where standardised Irish and specialist legal terminology are in use.

Tokenistic exam process

In reality, only those who possess a high level of Irish and who take it upon themselves to familiarise themselves with the correct legal terminology are capable of practising through Irish. The vast majority of practising lawyers in the state, despite having completed the Irish exams, are not capable of carrying out their professional duties as *Gaeilge*..

The arrangements as they stood attracted criticism on a number of fronts. Irish language interest groups such as Fásach (an organisation of Irish-speaking lawyers) felt the tokenistic exam process offered little support or satisfaction to those who sought to engage the services of a solicitor through the medium of Irish. The Competition Authority’s wide-ranging review of the legal profession in Ireland suggested

that the language requirement was an “unnecessary obstacle” and that the requirement “does not achieve [its] aim”.

The authority stressed that it fully recognised the rights of Irish speakers to be represented in court by lawyers capable of carrying out their duties through the medium of Irish.

They suggested this could be best achieved in a different manner to the compulsory Irish exams. The authority, in consultation with both of the professional law schools, suggested a voluntary system, whereby those lawyers who were interested in representing their clients in Irish could undertake specific and relevant training in the area. Once verified by appropriate examination, these lawyers could advertise themselves as being qualified to carry out their duties through the medium of Irish.

to its enactment. Their concern related not so much to the proposed Irish-language training for practising lawyers, but rather to the use of Irish in courts in the Gaeltacht.

Not only does the act address the concerns of the Competition Authority, but it also provides a welcome vehicle to expand the use of Irish within the legal profession. The act has removed the previous requirements and has replaced them with a sensible and workable process, whereby all trainees will undertake training in legal terminology and the understanding of legal texts in Irish. Such training will enable would-be solicitors to identify the legal service that is required and refer the client to another practitioner who is competent to deal with the matter, should the solicitor be unable to deal with it.

In addition, the act provides for the creation of an advanced course, which would be an optional subject on the Professional Practice Course, for those who wish to further their studies. The act also provides that enrolment on the advanced course shall not be limited exclusively to trainees – a move that is to be welcomed. The wider scope for enrolment will enable practising solicitors who possess knowledge of the Irish language – but who lack the precise register in the Irish language for legal terminology – to develop their language skills. Those who complete the advanced course are entitled to sit an Irish exam that will be used as an assessment for solicitors who

“The act is a well thought-out and balanced approach to the issue ... and it provides a welcome vehicle to expand the use of Irish within the legal profession”

Irish language register

The act is a well thought-out and balanced approach to the issue and drew almost unanimous support, both within the Dáil and outside it. Indeed Conradh na Gaeilge welcomed the provisions of the bill prior

– worth the wait



Basket case – the home of Peig Sayers. Is maith liom an teanga

wish to be added to a newly established list of suitably qualified solicitors, known as the 'Irish Language Register (Law Society)'.

This register is to be made available for public inspection. The act suggests the website of the Law Society as the appropriate forum. Such a development will allow members of the public who seek to engage an Irish-speaking solicitor to select their representatives in a direct and clear manner. At present, a word of mouth *dúirt bean liom* arrangement is the primary manner, whereby a potential client can seek to engage the services of solicitors who are competent to carry out their duties through the medium of Irish. A duty imposed upon the Law Society by the act to prepare an annual progress report of the new

arrangements for the Minister for Justice, Equality and Law Reform offers some insurance against the danger of new arrangements deteriorating in a similar manner to the previous compulsory system. Broadly similar requirements now also operate for barristers and the King's Inns.

Tús maith, leath na hoibre

The new arrangements are to be welcomed and are a good start for all those concerned with the use of the Irish language by legal professionals. One can only imagine that, when the previous requirements were framed in 1929, they were intended to have a lasting and positive effect. The key challenge for the new arrangements is to keep up the good start that has been

made. In this regard, it is very encouraging to see the innovative and thorough approach being taken by the Law Society and its law school.

A modern, interactive course compiled with the assistance of experience personnel and authoritative bodies such as Rannóg An Aistriúcháin has already been launched by President of the Society James MacGuill. The recent arrival of the CPD scheme to the profession presents a glorious opportunity for solicitors to continue to stay abreast of developments in what is an ever-evolving language, and in such a light, the CPD Certificate in Legal Irish, which has been prepared in recent times by the Law Society, will play a key role.

The Irish language is experiencing somewhat of a revival when it comes to its

relationship with the law, what with the passing of this most recent act, the *Official Languages Act 2003*, the appointment of an Official Language Commissioner and the granting of official EU status. Courses such as the BCL (Law and Irish) at UCC and the MA in Bilingualism at DCU have provided graduates with a firm grasp of a bilingual legal system. This development has been supported by a growing corpus of textbooks on the subject matter. It is entirely appropriate that practising lawyers should also play a significant role in such a revival. **G**

Seán M Ó Conaill is a PhD candidate at the Language, Policy and Planning Research Unit at Cardiff University, funded by a Department of Community, Rural and Gaeltacht Affair Scholarship.

Adoption and unmar

A recent decision on a Northern Irish adoption case calls into question whether current Irish legislation is in the best interests of the child, writes Elaine Dewhurst

In Ireland, unmarried couples, even if their relationship is “loving, stable and harmonious”, are not considered eligible to adopt children. This is also the case in Northern Ireland by virtue of the *Adoption (Northern Ireland) Order 1987*, despite the introduction of legislation in England, Wales (*Adoption and Children Act 2002*) and Scotland (*Adoption and Children (Scotland) Act 2007*) in recent years to remove this exception from the statute books and to allow couples of every description to be eligible for adoption.

The House of Lords was recently faced with the question of whether this prohibition on unmarried couples in Northern Ireland from adopting was compatible with the *European Convention on Human Rights*.

The majority of the Law Lords agreed that this prohibition was in fact discriminatory and was incompatible with both article 8 and 14 of the convention.

In Re P and Others (AP) Appellants (Northern Ireland) [2008] UKHL 38, the couple in the case involved a natural mother of a child who was cohabiting with a man to whom she was not married. They had been living together for ten years. They were excluded from consideration as adoptive parents on the grounds only that they were not married.

Articles 8 and 14

Article 14 will apply where the parties can show that they have been discriminated on one of the grounds set out in article 14 in relation to another provision

of the convention – in this case the right to family and private life (article 8). The applicants relied on the ground of “other status”. The question arose as to whether marriage (or its absence) is a status under article 14 of the convention. While Gillen J in the Family Division considered being unmarried a status, the Court of Appeal held that being unmarried was not a status because “unmarried people were a formless group which might vary widely in their characteristics”. However, the House of Lords held very firmly that being married is a status and that it must follow that not being married is also a status within the meaning of article 14 of the convention. Therefore, article 14 is engaged.

Is there discrimination?

The applicants have been excluded from consideration for adoption on the basis only that they are unmarried, and this amounts to unequal treatment. The unmarried couple are unable to gain legal recognition for the family life that they both enjoy with this child.

Justified discrimination?

The House of Lords held that no couple, whether married or not, has a right to adopt a child. There are two tests. The first is an eligibility test, which an unmarried couple will automatically fail. The second is a test of suitability. The legislation in Northern Ireland prescribes very detailed considerations that

ONE TO WATCH: NEW LEGISLATION

SI no 132 of 2008, *Industrial Relations Act 1990 (Code of Practice on Information and Consultation) (Declaration) Order 2008*

The *Industrial Relations Act 1990* provides for the Labour Relations Commission to draft codes of practice for submission to the minister. The most recent code of practice approved and declared by the minister assists employers and employees in implementing the provisions of the *Employees (Provision of Information and Consultation) Act 2006*. The code provides that organisations should look at effective communications and consultation as intrinsic elements to good employee/ employer industrial relations,

“having positive implications for performance and the workplace generally”.

APPLICATION

The code applies to any business/organisation in the public or private sector employing at least 50 employees.

Under the act, the employer can establish an information and consultation arrangement by a negotiated agreement, pre-existing agreement or the standard rules.

NEGOTIATED AGREEMENTS

These agreements are drawn up between the employer and the employees/representatives. At least 10% of the employees in an organisation may make a request

either directly to the employer or to the Labour Court for an information and consultation arrangement to be put in place. Where a request is made to the Labour Court, it will then notify the employer, seek certain information and issue a notification confirming whether the request meets the employee threshold. Where the request does meet the threshold, the employer is obliged to begin negotiations with the employees/representatives with a view to establishing arrangements. The employer must then negotiate an agreement or agree the standard rules (section 3(3) of the act) within six months. Where employees make a written request for an arrangement but do not meet the required threshold, a

further request cannot be made for two years.

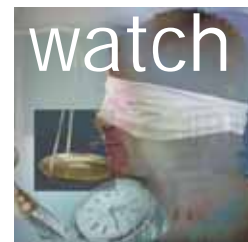
Subject matter

The parties are free to negotiate and decide on the subject matter of the negotiated agreement, along with the methods and structures for delivery. The negotiated agreement must:

- Identify the issues on which the organisation will inform and consult,
- Relate to all employees,
- Set out the method and timeframe by which information and consultation is to be provided,
- Set out the duration of the agreement and any renegotiation procedure,

human rights watch

ried couples



the court or adoption agency must take into account in determining whether it is in the best interests of the child to proceed with the adoption. Eligibility to adopt is only the first step on a long road to securing an adoption. The House of Lords held that the effect of the legislation is that, even if the court considers that an applicant couple pass all these tests, the court is bound to refuse the order and take a course which “ex hypothesi, is *not* in the best interests of the child” on the sole ground that the applicants are not married.

There are two potential justifications for this. Firstly, the protection of the traditional family based on marriage is an obvious justification. Secondly, the protection of the best interests of the child must



PIC: GETTY IMAGES

The House of Lords firmly held that being married is a status ... and not being married is also a status

also be considered. Statistical evidence was adduced on behalf of the Crown demonstrating that married couples tend to have more stable arrangements than unmarried couples. Gillen J in the Family Division held that the difference in treatment had a legitimate aim, namely the best interests of the child.

The Lord Chief Justice held that the legislation had the obvious purpose of securing the stability that an adoptive child needs. However, the House of Lords held that drawing a line excluding unmarried couples from adoption on this basis was irrational and contradicts the notion that the court should consider on a subjective basis whether adoption by a particular person is in the best interests of the child. The House of

- Be in writing and dated,
- Be signed by the employer,
- Be available for inspection as agreed between the parties,
- Set out the procedure for dealing with confidential information.

Approval

The majority of employees/representatives must approve the agreement in a manner that is confidential, transparent and capable of independent verification.

Request for information or consultation

Employers can provide information and consultation direct to the employees or through employees' representatives and this should be explicitly stated in the agreement.

PRE-EXISTING AGREEMENTS

Some organisations will already have information and consultation arrangements in place that all the parties may be satisfied with, and which are in compliance with, the legislation. However, unless such arrangements are in force before 23 March 2008, they will not be acceptable under the legislation.

Subject matter

The parties are free to decide the subject matter and the manner of enforcement of the arrangements.

Approval

The majority of employees must approve the agreement. This can be done by a ballot of the workers or by another form agreed between

the parties, as long as the process is confidential, transparent and capable of independent verification. Employee representatives may not approve a pre-existing agreement on behalf of the employees.

Request for information or consultation

The employees can carry this out directly or through their representatives and this must be stated explicitly in the agreement.

STANDARD RULES

The standard rules provisions operate as a fallback for employees and employers where all parties agree to adopt them, where the employer fails to initiate

negotiations within three months of a valid employee request, or where negotiations have failed to lead to agreement within six months from the start of negotiations.

Subject matter

This is set out in the legislation. The rules include the establishment of an 'information and consultation forum' made up of between three to 30 employee representatives elected in accordance with the provisions of the act.

EMPLOYEE REPRESENTATIVES

The code sets out detailed information on the election, protection, and responsibilities of the employee representatives.



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The list is being compiled in respect of the following areas determined by the Minister:

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Limerick and Longford/Westmeath.

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Department of Defence,
Infirmary Road,
Dublin 7.

Phone: 01-804 2162

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Lords also rejected the notion that the best interests of the child should be balanced against the interests of the community as a whole.

Lord Hoffmann held that while “it is one thing to say, in general terms, married couples are more likely to be suitable adoptive parents than unmarried ones ... It is altogether another to say that one may rationally assume that no unmarried couple can be suitable adoptive parents”. Therefore, the discrimination cannot be justified and is contrary to article 14.

The Irish context

Article 41.3 of the Constitution provides that the family based on marriage is afforded special constitutional protection and should be protected against attack. This has been at the fore of the debate surrounding adoption law in Ireland and, in particular, the issue of allowing unmarried couples to adopt children.

The *Adoption Act 1952*, as amended, expressly provides that unmarried couples are

not eligible to adopt. In 2004, Ireland expressed the view that it would be considering the concept of allowing unmarried couples to adopt children in Ireland at the European Committee on Legal Cooperation: Working Party on Adoption. While this was mooted in the most recent review of adoption legislation in Ireland, it was considered that the distinction be maintained. In the most recent *Civil Partnership Bill*, there is no mention of the issue of adoption.

There are three cogent reasons why the current position in Ireland is becoming untenable. Firstly, the best interests of the child may not be fully realised under the current legislation. The legislation provides for an anomalous situation in which an *individual* in a stable non-marital relationship is eligible to adopt a child but a *couple* in a stable non-marital relationship are not considered so eligible. Baroness Hale in the House of Lords held that the choice is between giving a

child one new legal parent or giving them two – and the best interests of the child are surely better protected by granting the child the right to two legal parents.

Secondly, family life has altered dramatically in Ireland and, as noted by the 1996 All-Party Oireachtas Committee on the Constitution, there is little evidence to support the continuous discrimination against unmarried couples in the adoption context. The Law Reform Committee of the Law Society recommended in a report entitled *Adoption Law: the Case for Reform* that the exclusion of unmarried couples from adopting be removed. Indeed, the most recent draft of the *European Adoption Convention* in May 2008 intends to allow states to extend the scope of the convention to heterosexual unmarried couples who have entered into registered partnership, to same-sex couples who are married or in a registered partnership, and to different or same-sex

couples who are in a stable relationship. The 1998 Commission of the Status of the Family has noted that the pledge by the state to protect the institution of marriage should not prevent the Oireachtas from legislating for the benefit of family units not based on marriage.

Indeed, there is an argument to be made that the decision in Northern Ireland may precipitate a change in the law here in Ireland by virtue of the *Good Friday Agreement*. The agreement provides that Ireland must ensure at least that “an equivalent level of protection of human rights as will pertain in Northern Ireland” be maintained on this island. If an unmarried couple in Northern Ireland are allowed to adopt, then surely an unmarried couple in Ireland should be afforded the same basic human right to non-discrimination on the basis of marital status. **G**

Elaine Dewhurst is the Law Society's parliamentary and law reform executive.

Election

Employers are responsible for any arrangements relating to the election and appointment of employee representatives. In employments where collective bargaining takes place, the act states that where the union or excepted body represents at least 10% of the workforce, the union will be entitled to appoint or elect representatives. Where the union represents the entire workforce, the union is entitled to elect or appoint all of the information and consultation representatives. In multi-union workplaces, it is open to the unions to agree arrangements between themselves with regard to the appointment of employees' representatives. In all

other workplaces the number of representatives should reflect the make-up of the workforce.

Facilities

Representatives should be reasonably facilitated in carrying out their roles including the provision of:

- Paid time off to prepare for and attend information and consultation meetings,
- Telephone, photocopying and email facilities,
- Reasonable facilities to attend training courses appropriate to functioning effectively as a representative.

Protection

Representatives should not be

penalised for performing their functions under the act. Any grievance arising can be referred to a rights commissioner and an appeal is available to the Labour Court.

Responsibilities

Representatives must work cooperatively and take into account the best interests of both the employer and the employees in negotiating, putting in place and participating in arrangements for information and consultation.

CONFIDENTIALITY

Anyone who receives confidential information is bound by a duty of confidentiality not to disclose that information. Such a person

may disclose such information in confidence to employees and third parties who are also subject to a duty of confidentiality. An employer may refuse to communicate information or undertake consultation with its employees, provided it can show objectively that the information or consultation would seriously harm the functioning of the enterprise or be prejudicial to the enterprise.

*For more information, please consult the website of the Labour Relations Commission, www.lrc.ie. **G***

Elaine Dewhurst is the Law Society's parliamentary and law reform executive.



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MED-LAW 2008



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- Medical Practitioners Act 2007
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The Opening address will be delivered by **Dr. Tracey Cooper**, Chief Executive, Health Information and Quality Authority.

This meeting is approved for 6 CME credits by the Royal College of Physicians of Ireland. An Application for credits has been submitted to ICGP and RCSI.

Venue: Conrad Hotel, Dublin 2
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Speaking out for Nguyen Van Dai

From: Pierce O'Sullivan, Pierce O'Sullivan & Associates, Carrickmacross, Co Monaghan

In 2002, I was in the privileged position of travelling (with my wife and young son) to Vietnam to complete the process of adoption of a little three-month-old girl. Her name is Yasmin and she is now nearly six and, like her brother, she has brought untold happiness into our lives.

While in Vietnam (and for some months before we travelled), we were ably assisted by a young Vietnamese lawyer by the name of Nguyen Van Dai. At all times we found him to be most courteous, efficient and scrupulous. While in Vietnam, I remember him

telling me that he was a practising Christian and that he belonged to an evangelical Protestant church. He told me that there were about one million Christians in Vietnam, which, I think, has a population close to, or in excess of, one hundred million.

About seven or eight months ago, I was extremely perturbed to hear that Nguyen Van Dai had been arrested, on trumped-up charges, and imprisoned for somewhere in the region of four years. His supposed 'crime' was for "engaging in activities contrary to the interests of the Socialist People's Republic of Vietnam". In reality, of course, why he was really imprisoned was because, I have now established, he has



Nguyen Van Dai

been very active on the human-rights front, and if you google his name, you will find a large amount of information regarding his activities, all of which have been directed

towards trying to highlight the very serious human rights situation in Vietnam. When I asked him in 2002 if the human-rights situation was "as bad as China", his reply was "oh, it's far worse." His own personal experience now seems to bear testimony to this...

Perhaps this letter will serve to highlight the plight of Nguyen Van Dai, and I would ask any of my colleagues in this country who are interested in this subject to examine some of his work on the internet and perhaps then to make representations on his behalf. The Vietnamese Embassy in London (there is no Vietnamese Embassy in this country) would be a good place to start.

Lawyers' Cricket World Cup 2009

From: Terence J O'Sullivan, Terence J O'Sullivan Solicitors, Washington Street, Cork

In the July 2008 *Gazette*, there was an article on the Lawyers' Cricket World Cup, and I have agreed to coordinate interest on behalf of Irish solicitors for the event, which will take place in Cambridge in July and August 2009. It will be an all-Ireland team consisting of practising solicitors and barristers. In the first instance, I would be obliged if you would confirm your interest by emailing me at: cricketlawyers@gmail.com.

When writing, I would ask you for brief detail as to your cricket experience, and please also add a contact mobile



phone number. You might also add your current age, as there is a limit on the number of players that can play under the age of 32. It is my hope to

arrange try-outs in September, so I would like to hear from you as soon as possible.

I should also be clear that I am a recent convert to the game and I play bad 'social cricket' with my local bar association, the Southern Law Association. When emailing, you might also indicate whether you are in a position to field a team against the SLA, and whether you could play us at home or away.

I am reliably assured that, while the World Cup will be somewhat competitive, there will be a huge emphasis on the social aspect of this great game too!

I look forward to hearing from you.

Merciful justice!

From: Robert M Lee, Lees Solicitors, Kilmallock, Co Limerick

Having requested a colleague to hold a watching brief for me in a District Court in his area, the accused was charged under section 2 of the *Non-Fatal Offences Against the Person Act 1997*. The letter reporting on the outcome concluded as follows:

"...the district judge convicted him under section 2 and it was indicated that he was in-castrated for the last three months in a mental hospital. She said that she would not in-castrate him any longer and fined him..."

Merciful justice!

Forensic science – an argu

The only way the unequal and arbitrary nature of forensic evidence in Irish trials can be addressed is to establish a forensic science agency – for the defence alone – argues Bobby Eagar

The *Irish Constitution* states that Irish citizens are equal before the law. Furthermore, in article 40.3, the state guarantees “in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen”. Every person is entitled, therefore, to a trial in due course of law.

Yet, in Irish courts, and particularly criminal courts, defence lawyers and defendants are faced with a very different picture. Instead of equality before the law, we are faced with the situation whereby forensic science analysis – so essential to so many modern trials – is, to all intents and purposes, the preserve of the prosecution only. This, in my view, is anything but equality before the law and leaves the Irish courts open to the risk of miscarriages of justice.

The Forensic Science Laboratory was established in 1975 to provide impartial scientific evidence following the examination of items from crime scenes. While it is described as an independent service, the laboratory in effect works for the gardaí, the Director of Public Prosecutions and other state agencies. The laboratory is not available to carry out examinations for private citizens. Therefore, defence lawyers in Ireland seeking to use forensic evidence, or seeking independent testing of prosecution evidence, must go to other jurisdictions for any

comprehensive service of forensic evidence. Surely it is not too much to ask, in the name of justice, that accused persons facing the huge resources of the Irish state are also entitled to a forensic service established by the state?

I am calling upon the Minister for Justice, Equality and Law Reform, therefore, to establish an independent forensic science agency for the defence alone. Not to do so means that defendants will continue to be at a serious disadvantage before the law, and defence lawyers will continue to have their jobs hampered.

A defence lawyer faced with a book of evidence, containing forensic evidence seeking to implicate the accused person with a crime, is obliged to ensure that the science is independently verified. Even if the Irish-based Forensic Science Laboratory were available to individual citizens, it would

not make any sense for the defence to look for verification from the same source that analyses the material for a prosecution with very different objectives. Conflict of interest would be a mild way to

describe such an arrangement.

Only a separate and equally-resourced independent, forensic scientist can view the scientific methods and review the results purporting to strengthen the prosecution case.

In addition, a lawyer may wish to use forensic evidence to explore issues that arise and which have not been the subject matter of forensic analysis by the Forensic Science Laboratory. Again, it would make no sense to show one's hand to the laboratory working for the prosecution.

A case, which admittedly took place ten years ago, still demonstrates the risks of miscarriages of justice if material is not independently analysed. An 82-year-old

woman was raped and a man who was vulnerable and suffered serious psychiatric problems was arrested. He made several statements of admission to the offence. A trace of semen found on the dress of the woman was sent to a Northern Ireland laboratory for analysis. The laboratory could not obtain a trace. The accused had provided a blood sample and the defence solicitor sent it to another laboratory in London. On the third day of the trial, the London-based scientist confirmed that the semen was not that of the accused. The charges were subsequently withdrawn. Without this independent analysis, and having regard to the substantial admissions made by the man, there was a definite likelihood that a jury would have found him guilty. He would have served a very long sentence for a very brutal crime that he did not commit.

What he would not have been served with, however, was equality before the law – this was left to his solicitor, who had taken the then exceptional route of looking for independent analysis of evidence. My argument is that independent forensic analysis for the defence should be the norm and not the exception.

Even if my call for an independent Irish-based forensic service for the defence goes unanswered, defence teams still face huge barriers in accessing qualified,

“Defence lawyers in Ireland seeking to use forensic evidence, or seeking independent testing of prosecution evidence, must go to other jurisdictions for any comprehensive service of forensic evidence”

viewpoint



ment for the defence



PIC: GETTY IMAGES

upshot of this is that forensic consultants can be left for up to a year or more awaiting payment. Not surprisingly, some independent forensic scientists have had to refuse further legal-aid work from Ireland, with critical consequences for Irish defence solicitors.

Perhaps the most frustrating situation of all is when a request for the independent analysis of evidence is met instead with a cost/benefit analysis. Recently, I sought approval for a particular fingerprint expert from the United States. It was met with the response, however, that we could get a fingerprint expert from Britain, which would be cheaper.

Equality before the law cannot be a commodity that depends upon price and value for money. It cannot be arbitrary or selective – as it is, most definitely, today with regard to the examination of forensic evidence for the defence.

The risk of a miscarriage of justice in the absence of a properly-resourced, Irish-based forensic agency for the defence alone could have much costlier consequences for the credibility of the Irish legal system. To paraphrase a famous but true maxim: “It is better that ten guilty people escape than one innocent person suffers.” **G**

experienced, forensic scientists from other jurisdictions. In most criminal cases, the costs of defence are met from legal

aid administered by the Department of Justice, Equality and Law Reform. Approval has to be sought for

every item of work required, which in turn leads to inevitable bureaucratic backlogs with payment. The

Bobby Eager is a partner at Garrett Sheehan & Partners. He presented at a seminar on forensic science in Irish trials held at the Law Society on 5 June 2008.

SWIFT J

Walter Swift spent 26 years in prison for a crime he didn't commit until he was exonerated with the help of an Irish lawyer. For the *Gazette*, Colin Murphy met both parties in this extraordinary story

The Brooklyn to Queens subway: 11pm. A young Irish woman is heading home. She is in her first few weeks in New York. She doesn't normally take this subway route, opting for the longer – but safer – alternative of a train into Manhattan and another one out. There are some 'dangerous' looking men in her carriage. One of the cases she is working on involves a girl who was raped on the subway. She gets nervous. The train pulls in at a station, and a cop gets on. When he leaves, a few stops later, she follows him out. "I'm coming with you," she says. She gets home fine. But the nervousness remains.

Another of her cases involves a rape where the attacker got into his victim's house by simply cutting through a screen on the back door. The Irish lawyer's house in New York has the same kind of screen, and the windows don't lock.

These first few weeks are difficult. The nature of her work is grim: she studies photos of bed-sheets after a rape, to see if the semen stains accord with testimony of the attack. She learns about procuring DNA evidence from bodily fluids. She learns about how the victims of such horrendous attacks can accuse the wrong person, because of tricks of memory and the overpowering emotions that accompany their fear and desire for justice.

And yet there is comedy too. In one of her first cases, before she knows the ropes, her boss brings her along to a crucial meeting with a district attorney, where they are trying to persuade the DA to recognise a wrongful conviction. The DA is Irish-American, with parents from Cork and Kerry. The lawyers are talking strategy beforehand, over her head. She turns to her boss: "What do I have to do?"

"You gotta schmooze relations," he says. They make their way into the DA's office. It is decorated with Cork and Kerry flags,

PICTURE: DENIS MINIHANE, IRISH EXAMINER

MAIN POINTS

- The Innocence Project
- Exoneration of Walter Swift
- Value of independent legal profession

USTICE...





Walter on a visit to Cork Gaol

PIC: DENIS MINIHANE / IRISH EXAMINER

“They didn’t convict this guy, did they?” she asked. “Yeah, he’s done 21 years”

giant Celtic crosses, and enlarged photos of foetuses.

“I was practically Irish dancing,” she remembers now.

Credible inconsistencies

Niamh Gunn was in New York as an intern with the Innocence Project, a legal charity dedicated to exonerating wrongfully-convicted people, set up by Barry Scheck (famous as OJ Simpson’s defence lawyer). Shortly into her three-month stay there, she was handed the file of Walter Swift.

Swift had been convicted in 1982 for the rape of a schoolteacher in Detroit. The teacher had picked out his photo and later identified him in a line-up. He was sentenced to 55 years. Walter Swift had consistently maintained his innocence and had forsaken the chance of parole, because that would have required him to admit guilt. Gunn read his file and thought “This guy must be lying.”

“There was so much tragedy in his file, in his life. I thought, ‘There’s no way this much tragedy could happen to somebody’.”

Still, there were credible inconsistencies in the prosecution case, and Niamh Gunn persisted with it. A succession of interns before her had been handed Swift’s file to see if they could make any progress with it. Nobody had, and it was due to be closed. She decided to make some calls.

In the file was a statement from the lab technician who had analysed the samples collected at the scene of the crime. The statement said that Swift’s blood grouping and cytology didn’t match the semen stains on the victim’s bed-sheets. But the lab technician hadn’t been called to testify by the defence lawyer, and the inconsistency had been overlooked in the conviction.

Gunn phoned the lab technician, as had numerous interns before her. But they had all asked the most basic question: did the lab have the original samples, for fresh testing? The samples had long since been lost, or discarded, and none of the previous callers had persisted. Gunn went about it differently. She had worked in sales, and learned not to go directly to what she wanted from someone. She played gormless, and cultivated the lab technician over a number of calls, asking for her help in understanding other cases. Eventually, she brought up Walter Swift’s case and asked the technician to talk her through the original report. The technician hadn’t followed Swift’s case subsequent to completing the report, and it slowly dawned on her what had happened.

“They didn’t convict this guy, did they?” she asked. “Yeah, he’s done 21 years,” said Niamh Gunn.

The technician agreed to back the Project’s exoneration bid with an affidavit. But there was a bigger coup to come. Walter Swift maintained that the police officer who arrested him had admitted to him that the photo identification and line-up procedures were flawed and that she knew they had the wrong man. But the officer hadn’t spoken out at the trial. Niamh Gunn got hold of a phone number for the officer, who was by then retired and living in Las Vegas. The officer was sitting by her pool, watching her grandchildren swimming, when Gunn called and introduced herself.

“I know why you’re calling,” the officer said. “We railroaded him. We sent an innocent man to prison. There’s not a day in my life that I haven’t thought about Walter.”

Travesty of justice

Walter Swift’s case had been a travesty of justice. His defence lawyer was incompetent, a real estate lawyer who has since been disbarred. The police manipulated the photo identification and the line-up to induce the victim to pick him out. Yet it took another five years after Niamh Gunn secured the cooperation of the police officer to bring the case to an exoneration hearing.

And Walter Swift nearly didn't make it. In advance of that hearing, he was moved to the county jail local to the courthouse. The day before his hearing, he was at the jail phone, trying to contact the Innocence Project with the help of a prison officer. It was lock-up time, and another officer, with a reputation for brutality, approached and told Walter Swift to get back to his cell. Swift protested, briefly. And then:

"This fellow grabbed me, threw me against a wall, grabbed me around the corner, bent me over a table and held me by the neck, choking me. 'When I tell you to do something, you do it, motherf***er,' he said. When he finally let me go, I was terrified, scared to death. I hadn't faced that kind of terror in the 26 years I'd been in prison."

Walter Swift spent the next 24 hours petrified that the officer would realise that he was about to be released and that he would kill him to prevent him telling the story or would do something to prevent the exoneration going ahead. "The day that I was to be exonerated and receive my freedom, I was terrified that I was going to be killed, that I would never get out."

But he did get out. On 21 May, this year, Walter Swift walked free after almost 26 years in prison for a crime he didn't commit. He had no money, no job, no home, and few friends beyond his lawyers. He has no automatic entitlement to compensation and faces another lengthy legal battle to secure some. But he was reunited with his daughter, who accompanied him on a trip to Ireland in June. And he has the continuing support of the Innocence Project and Niamh Gunn, whose employer, Tax Back International, has given Swift some support and funded a website to tell his story and facilitate donations (www.walterswift.com).

The War Zone

Walter Swift is a gentle bear of a man: soft spoken, apparently relaxed and yet very watchful – a trait he honed in his 26 years in prison. He says he bears no malice and appears untroubled by anger or recriminations. For 26 years, he says, any aggression has been focused defensively: that was how he protected himself and stayed out of trouble.

Yet, by the standards of prison discipline, he was a troublesome prisoner: he estimates he spent a total of three years "in the hole", in solitary confinement. "I would break a rule on a whim," he says. Confronting guards bought him the respect of his fellow prisoners, and also bought him cherished quiet time in solitary: he read, wrote and studied, gaining an Associate of Arts and Sciences Degree. And, crucially, it was safe.

Swift was imprisoned in Jackson, Michigan, then the largest walled prison in the world, known as 'The War Zone' and home to 5,000 inmates, virtually none of whom had any prospect of getting out. Because they weren't going anywhere, there was little the system could do to them, so they had "basically a licence to kill". He describes a regime of horrific violence – and, yet, he had friends there.



Niamh Gunn, Walter Swift and Barry Scheck celebrate Walter's release from prison

"I was surprised how close I could be. That blew me away ... If you have a friend, he's going to be a murderer or a rapist or something. That's all that's there. It's not like he's gonna be a preacher or something."

After a quarter of a century in such an environment, he is deeply aware of the cultural aspects that separate him from the society around him, and has tried to explain this to his family. "You live so well," he told them, "by standards and customs that are typical in everyday society. I have no idea of them. I come from a totally different culture. Prison is a culture – it's a society, a community – and prisoners have their own social rules and conventions, just like any other society. I spent 26 years in that culture. I see things differently."

And yet he is engaging and articulate company, and appears to have cultivated a detachment that allows him to observe his own situation with a wry humour. He has had poetry published while in prison; it seems that writing his own story should be an obvious next step. But then, he may simply want to move on.

Finest tradition

For Niamh Gunn, meanwhile, there are other challenges to be faced: those of the corporate world, where she is interested in exploring the potential of corporate philanthropy to advance charitable causes.

Speaking at Walter's visit to the Law Society in July, President James MacGuill said Niamh Gunn had "acted in the finest tradition of the solicitors' profession".

"She is an inspiration to all practising solicitors and a reminder that an independent legal profession is vital for the preservation of fundamental freedoms," he said.

Barry Scheck said it more simply: "Thank you for Niamh." **G**

"We railroaded him. We sent an innocent man to prison. There's not a day in my life that I haven't thought about Walter"

CAT in the

The *Finance Act 2007* severely curtailed the benefits of dwellinghouse relief from CAT for unmarried couples. Niamh Keogh gives an overview of some of the key principles of the relief and discusses the changes that were introduced

Most solicitors in general practice will have come across section 86 of the *Capital Acquisitions Tax (Consolidation) Act 2003*, the section that deals with dwellinghouse relief from CAT. This provision grants a relief from CAT for certain gifts and inheritances of a dwellinghouse in which the donee already resides, subject to satisfying a number of conditions (see panel, p30).

The relief allows a person to obtain ownership, by way of a gift or inheritance, of the house in which they have been living, without the CAT cost that could otherwise arise. It is therefore a valuable relief. Consider, for example, parents wishing to help their child to become a homeowner. With a current CAT rate of 20%, the relief, where it applies, can bring savings of up to €200,000 on the transfer of a home worth €1 million (on the assumption that the relevant threshold is fully used up).

However, the *Finance Act 2007* introduced a number of changes to the relief, the consequences of which should be fully understood by the practitioner.

Dwellinghouse relief has been widely used to pass assets to children and other family members. However, the fact that the relief has no relationship requirement has made it particularly beneficial in the context of the unmarried family.

While transfers of property between spouses are generally completely exempt from CAT, a couple living together – but unmarried – are treated as ‘strangers’ for CAT purposes. This means that a lifetime threshold of only €26,060 applies before CAT becomes payable between the parties in such a relationship. This threshold applies regardless of other factors, such as the length of time they have been cohabiting. The threshold is also depleted by gifts or inheritances from other parties within the same group threshold.

Dwellinghouse relief has therefore been invaluable for unmarried couples, by allowing the homeowner to pass an interest in the property to his or her partner without incurring a large tax bill. Consider the case of the cohabiting couple whose main asset is the home in which they both reside. This home is worth €500,000 and the legal title is held in the sole name of one of the partners. Without the relief, if the owner left the family home to their partner on their death, that partner could face a CAT bill of up to €100,000 – possibly with limited resources from which to fund the bill. The relief allows the property to pass free from CAT where the conditions are satisfied.

Likewise, where a couple were living together but the home was in the name of only one, the relief *previously* allowed the owner to put the property into the joint names of the couple during both partners’ lifetimes without a gift-tax charge arising. However, the benefits of the relief for unmarried couples have been severely curtailed by the recent changes.

The changes

The *Finance Act 2007* brought three main changes to the relief by introducing a new section 86(3A) into the main legislation.

It is important to emphasise that this new section applies to *inter vivos* (between living persons) gifts but does not apply to inheritances. The following are the changes:

- Firstly, any period of occupancy by the recipient of a gift of a dwellinghouse where the recipient resided in the house with the disponent (that is, the two parties lived together) will be disregarded for the purpose of the relief unless the person making the gift was compelled, by reason of old age or infirmity, to depend on the services of the recipient for that period. This is the section that

MAIN POINTS

- Obtaining ownership without the CAT cost
- The conditions to be met
- *Finance Act 2007* introduces some significant changes

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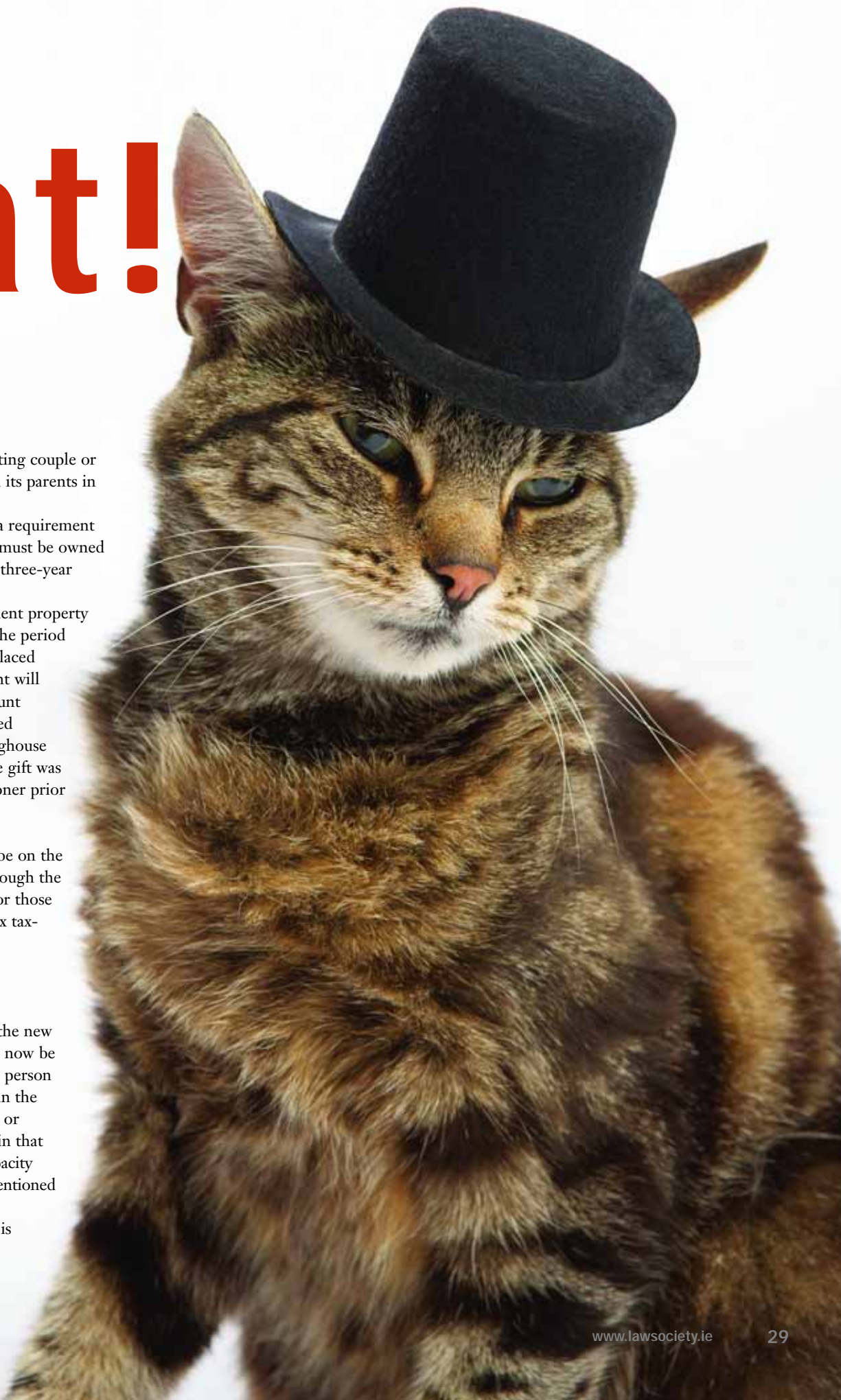
would affect the cohabiting couple or the child who lives with its parents in the family home.

- Secondly, there is now a requirement that the dwellinghouse must be owned by the disponer for the three-year period prior to a gift.
- Finally, where replacement property is the subject of a gift, the period of occupancy of the replaced property by the recipient will only be taken into account where either the replaced property or the dwellinghouse that is the subject of the gift was also owned by the disponer prior to the date of the gift.

The main focus here will be on the first of these changes, although the other two are important for those dealing with more complex tax-planning scenarios.

What do the rules mean for your client?

Put simply, the impact of the new provision is that there will now be CAT implications where a person wishes to pass an interest in the 'family home' to a relative or partner who is also living in that home (subject to the incapacity exception). However, as mentioned previously, the relief is not affected where the interest is passed on the death of the homeowner.



THE RELIEF

In order to qualify for the exemption from CAT, certain conditions must be met. For example:

- The recipient must have been residing in the gifted/inherited property for the three years prior to the gift or inheritance. However, in the scenario where the dwellinghouse replaced another qualifying property, the residence condition will be complied with where the current dwellinghouse and that previous property were occupied as the beneficiary's only or main residence for three out of the four years immediately preceding the gift/inheritance. (This effectively gives a beneficiary a 12-month period in which to replace the previous dwellinghouse.)
- The recipient cannot have an interest in any other dwellinghouse at the date of the gift/inheritance.
- The recipient must continue to occupy the dwellinghouse as his/her only or main residence for a period of six years, commencing on the date of the gift or inheritance.

The changes would aim to prevent planning like the following:

Mr and Mrs Smith have an estate worth €30 million and are considering tax-efficient ways to transfer wealth to their children over a phased period. The family residence in Blackrock is worth €5 million and their son Simon still lives at home. The Smiths gift the property to Simon. Simon has in effect inherited assets worth €5 million free from CAT, a saving of up to €1 million.

The disposal of their principal private residence by the parents would be free from capital gains tax, and so the only liabilities would be a possible stamp-duty charge. However, with the new change, the gift of the house would not be CAT-free unless and until Simon's parents move out and Simon has lived in the property for at least three years after his parents' departure.

However, the provision as it is framed also catches those with more modest means:

John Jones lives at home with his mother, Mary. Mary would like to gift the family home (worth €500,000) to John now. Before the 2007 act, the gift would be exempt from CAT. Now, John would be subject to CAT, which, were his threshold already used up, would amount to almost €100,000. In many cases, this would render it financially impossible for the gift to be made. This would seem very harsh on a family of modest means such as the Jones's.

Consider also the position of the cohabiting couple.

Before the change, a house worth, say €500,000, and owned by one party of the couple could be put into the joint names of the couple without CAT (provided all the conditions were satisfied). Now, the same transaction would give rise to gift tax of up to €50,000 (20% of €250,000). This introduces a further disadvantage for couples who do not marry and would seem to be somewhat at odds with the apparent societal shift towards affording greater rights for couples who remain outside the institution of marriage. The civil partnership legislation could, of course, be used to facilitate an amendment to this unfair situation that has arisen.

The focus thus far has been on the principal change that affects everyday transactions. However, brief consideration of the other changes may also be of use. As referred to above, the changes include a provision that requires that the dwellinghouse is owned by the disponent during the three-year period before the gift. The new measure prevents some of the more sophisticated planning involving trust structures, but may also be designed to prevent the following more commonplace situation:

A child has been renting a property while doing a college course. Where he satisfied the three-year residency requirement, a parent could purchase the property from the landlord and gift it to the child without any CAT. This is no longer possible, since the property would not have been owned by the disponent (that is, the parent) for the relevant period.

Prior to the *Finance Act 2007*, the CAT exemption would have applied to the gift of the residence from the parent to the child, as the child had lived in the residence as his or her only or main residence for more than three years and did not have an interest in any other dwelling at the date of the gift.

What to do?

In any case involving a proposed transfer of a family home, the new rules must be considered. A failure to recognise the impact of the changes could result in an unexpected tax bill. This will be of particular concern in cases where the transfer would not have been made if the parties were aware that such a tax liability would arise. When providing succession planning advice, it should also be borne in mind that it now can make more financial sense to leave a dwellinghouse to the beneficiary on the client's death rather than through a lifetime gift.

Incidentally, it is worth noting that appendix 4 of the IT39 guide – the official Revenue guide to completing the IT38 CAT return form – was last updated in 2003 and, therefore, contains no reference to the changes since this time. As the present case shows, such guides should not be taken as the definitive authority on current tax situations. **G**

Niamh Keogh is a trainee solicitor who hopes to qualify in January 2009. She works with the legal and tax consultancy company Astons.

“The Finance Act 2007 brought three main changes to the relief by introducing a new section 86(3A) into the main legislation ... this new section applies to inter vivos gifts but does not apply to inheritances”

LOOK IT UP

Legislation:

- *Capital Acquisitions Tax (Consolidation) Act 2003*, section 86
- *Finance Act 2007*

Literature:

- Bohan, Brian, and McCarthy, Fergus (2nd edition), *Capital Acquisitions Tax* (Butterworths, 2004)
- www.revenue.ie/leaflets/it39.pdf

CIVIL DEFENCE

Some sections of the recently commenced *Civil Law (Miscellaneous Provisions) Act 2008* make significant, and sometimes subtle, changes to the way litigation in Ireland proceeds. Solicitors would be well advised to read it, say Roddy Bourke and Brian Conroy

Many of the 83 sections of the *Civil Law (Miscellaneous Provisions) Act 2008*, which was commenced in July, have little practical application in day-to-day practice. A number of sections, however, make significant, and sometimes subtle, changes to the way in which litigation in Ireland is conducted. The act also makes changes in some areas of substantive law, such as landlord and tenant law, and permits solicitors to limit by contract civil liability arising from the provision of legal services to their clients. Some significant changes are considered here.

Declarant's identity

Section 49 of the act provides that a practising solicitor, or other person entitled to take and receive a statutory declaration from another person, may do so where, before taking or receiving the declaration, that person establishes the identity of the declarant by reference to a relevant document (which is defined to include, among other things, passports and national identity cards) containing a photograph of the declarant. The person must attest that the identity of the person has been so established and give particulars of the relevant document concerned.

The Law Society understands that equivalent changes are being considered by the Superior Courts Rules Committee in respect of swearing affidavits.

Section 50 of the act regulates the making of statutory regulations outside of the state.

Circuit and District Court documents

Section 7 of the *Courts Act 1964* had provided for service of documents "in any area whenever and so long as no summons server stands assigned to that area". Arguably, this meant that the subsequent provisions of section 7 of the 1964 act (as to service of documents by post) did not apply where a summons server stood so appointed. This position is regularised by the revised section 7(2), as substituted by section 16 of the act, which alters the language such that such section 7 applies "*notwithstanding* the fact that a summons server may stand appointed" [our emphasis].

Section 7(3) (as substituted by section 16) extends the methods by which Circuit and District Courts documents may be served. Previously, the general rule as to service in both jurisdictions provided that service had to be effected by way of registered post. Under the substituted section 7(3), it is permissible to serve Circuit Court and District Court documents

MAIN POINTS

- Changes to conduct of civil litigation
- Limitation of solicitors' liability by contract
- Provisions on solicitors' conduct

(as defined in section 7(1)) by way of personal service on the person to be served “in such manner as may be prescribed by rules of court”. Service may also be effected on a person on behalf of the person to be served in certain circumstances.

Powers of the County Registrar

Section 30 of the act provides that wherever a county registrar is required (under subsection (1)(b)) to perform any of the duties of any *other* county registrar, he or she shall have all the powers of the holder of that office in respect of the duties concerned, as fully as if he or she held that office.

Further, section 9(3)(b)(ii) states that such a county registrar may exercise those powers concurrently with their being exercised by the other county registrar.

District Court clerks

Section 23 of the act empowers District Court clerks to sign orders recording decisions of judges of the District Court, save for orders sending an accused person forward for trial. District Court clerks are similarly authorised to sign warrants, other than search warrants and warrants sending an accused person forward for trial.

Anonymity in relation to medical condition

Section 27 of the act provides that an application may be made to the court in any civil proceedings for an order prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would be likely, to identify the relevant person as having a medical condition.

No specific ‘conditions’ are identified, but it is stated that the order shall only be granted where (a) the relevant person concerned has a medical condition, (b) his or her identification as a person with that condition would be likely to cause undue distress to him or her, and (c) the order would not be prejudicial to the interest of justice.

Section 27(6)(b) provides that an appeal against a refusal to grant such an anonymity order may be appealed “to the judge concerned *in chambers*”.

Solicitors’ liability

Section 44 of the act provides that, subject to certain limitations, a contract entered into between a solicitor and his or her client, in respect of the provision of legal services, which limits the solicitor’s civil liability arising from the provision of legal services to the client, shall be binding on the solicitor and the client.

The main restriction on contracting a reduced level of liability in this way (contained in section 26A(3)) is that such limitation cannot be less than the minimum level of cover, as specified from time to time in regulations under section 26(4)(b) of the *Solicitors (Amendment) Act 1994* (minimum levels of cover for indemnity against losses arising from claims or different classes of claims).

Solicitors’ conduct

Only some of these provisions are mentioned here. Section 34 requires that where functions of the Law Society to impose sanctions for inadequate services or overcharging are delegated to a committee, the majority of members of that committee shall be lay members, but the chairperson shall be a solicitor.

Section 36 provides: “For the avoidance of doubt, it is hereby declared that the Society have, and always have had, a power to investigate alleged misconduct by a solicitor”.

A new section 8(1A) of the *Solicitors (Amendment) Act 1960* enables the Law Society to make submissions to the High Court in relation to the opinion of the Solicitors’ Disciplinary Tribunal on the conduct of a solicitor.

Section 40 of the act provides that Law Society has the power to investigate alleged misconduct by a solicitor, whether or not it receives a complaint in relation to the solicitor, and further inserts section 14B, which states that the issue by a solicitor of a bill of costs that is excessive may constitute misconduct.

Landlord and tenant

Sections 47 and 48 of the act amend section 17(1)(a)(iii) of the *Landlord and Tenant (Amendment) Act 1980*. Previously, only office tenants had the ability to opt out of their entitlement to a new tenancy under section 13(1)(a) of the *Landlord and Tenant Act 1980*. The substituted subsection (iii) extends this entitlement to all commercial tenants, and not just office tenants, as was previously the case.

Another change effected by the substitution of section 17(1)(a)(iii) is that the renunciation of rights no longer has to occur “prior to the commencement of the tenancy”. This provision would appear to apply to leases in existence as of 20 July 2008, as well as to new leases.

These changes only apply in respect of the entitlement to contract out of the right to a new tenancy under the so called ‘business equity’ ground of section 13(1)(a), and do not affect the position *vis-à-vis* the ‘long possession’ or ‘improvement’ equities under section 13(1)(b) or 13(1)(c) of the *Landlord and Tenant (Amendment) Act 1980*.

Bankruptcy

Section 85(3)(a)(ii) of the *Bankruptcy Act 1988* is replaced, and the existing subsection significantly expanded upon in relation to the requirements that must be satisfied before a bankrupt is entitled to be

“The act also makes changes in some areas of substantive law, such as landlord and tenant law, and permits solicitors to limit by contract civil liability arising from the provision of legal services to their clients”

COMMENCEMENT

Commencement of the act is prescribed in SI 274/2008. The majority of the act came into force on 20 July 2008. Part 2 (except sections 18-22) of the act came into force on 1 August 2008, while sections 3(1), part 1 of the schedule, and sections 18-22 of the act come into force on 1 October 2008. Finally, sections 34, 39 and part 6 (Juries) of the act come into force on 1 January 2009.



discharged from bankruptcy.

Previously, subsection (a)(ii) provided that the bankrupt had to “obtain the consent of all his creditors” (in addition to further requirements set out in the remainder of section 85). The substituted section provides far more detail as to what specific consent must be obtained and what will be sufficient to satisfy this requirement.

Section 91 of the *Bankruptcy Act 1988* is amended by substituting “no later than seven days after the conclusion of the preliminary meeting” for “at least two days before the private sitting”.

Succession law

Section 67 of the act removes the words “in good faith” from the definition of “purchaser” in the *Succession Act 1965*.

Section 68 changes the position in relation to section 5 of the *Succession Act 1965* (presumption of simultaneous death). The act inserts new sections 5(2) and 5(3), the effect of which is to provide that, where two people hold property as joint tenants and die (or are deemed to have died under section 5(1)) simultaneously, then those deceased persons are

deemed to have held the property concerned immediately prior to their deaths as tenants in common in equal shares. As such, the property so held forms part of their respective estates.

Family law

Part 13 of the act makes amendments to the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996*. The thrust of these amendments is to provide for circumstances in which a property adjustment order is registered under the *Registration of Title Act 1964* or in the Registry of Deeds, and that order is subsequently complied with.

Previously, the Property Registration Authority (PRA) had no authority to cancel the entry or take other such action when an order was complied with. The new provisions (sections 9(4A) and 18(8) in the *Family Law Act 1995* and sections 14(4A) and 22(8) in the *Family Law (Divorce Act) 1996*), introduced by the act, enable the PRA to amend or cancel the entry in the register or, in the case of the Registry of Deeds, note compliance or the amended position.

A further change is the insertion of section 35(6) into the *Family Law Act 1995*, and section 37(5) into the *Family Law Divorce Act 1996*. These provisions (in both acts) govern “powers of court in relation to transactions intended to prevent or reduce relief”. The inserted sections provide for a limitation period in respect of which an application can be made for an order to set aside a disposition (on certain grounds). This period is now six years from the date of disposition.

For details on the act’s commencement, see ‘Legislation Update’, p64 this issue. **G**

Roddy Bourke and Brian Conroy practise in McCann FitzGerald, Dublin.

LOOK IT UP

Legislation:

- *Civil Law (Miscellaneous Provisions) Act 2008*
- *Civil Liability and Courts Act 2004*
- *Court Officers Act 1945*
- *Courts Acts 1964, 1971*
- *European Enforcement Regulations, regulation 805/2004*
- *Solicitors (Amendment) Acts 1960, 1994, 2002*
- *Statutory Declarations Act 1938*

COMPO MINE

To avoid potential negligence claims, legal advisers need to be aware of the relevant tax implications of any compensation settlement their clients enter into. Alan Connell and Barry McGettrick go minesweeping

The tax treatment of compensation payments, whether paid under court awards or by negotiated settlement, can be complex. The reason for this is primarily because there are numerous circumstances that can give rise to the payment of compensation. The relevant rules have developed through legislation, decisions of the courts and from the published guidance of the Revenue Commissioners. Taxpayers themselves must work out whether they are liable for tax on receiving a compensation award. Accordingly, it is important for legal advisers to be aware of the relevant tax implications of any settlement their clients enter into in order to avoid any potential negligence claims.

In practice, it is necessary to closely analyse the facts behind each payment in order to classify the settlement properly and thereby determine its tax status. However, the same general principles apply whether the compensation payment results from an action claiming, for example, breach of contract, negligence, personal injury or other loss or injury.

Nature of the matter

Often, the tax treatment of compensation payments depends on the nature of the matter that is the subject of the dispute. Accordingly, it is necessary at the outset to establish whether the relevant matter is revenue or capital in nature.

In general, compensation is treated for tax purposes in the same way as the payment or payments that would have been received but for the event giving rise to the compensation.

Accordingly, if the character of the payment is such that it compensates a revenue loss, then the compensation is treated as a receipt that may be

chargeable to income tax (or corporation tax where received by a company). Examples of compensation payments on revenue account are payments in respect of loss of earnings, income or profits and in respect of revenue expenditure incurred.

On the other hand, if the character of the payment is such that it compensates a capital loss, the compensation is treated as a capital item that may be chargeable to capital gains tax (CGT). Examples of compensation payments on capital account are payments for the loss, destruction or permanent deprivation of, or damage to, a capital asset.

Revenue

Compensation that is revenue in nature is chargeable to income tax or corporation tax, unless otherwise specifically exempted.

A common theme that has emerged from case law is 'the replacement principle'. The replacement principle deems compensation received in respect of a legal right, to replace that right, to be taxed in the same manner as the sum of money would have been taxed if it had been received instead of the compensation.

Lord Diplock stated the principle in *London & Thames Haven Oil Wharves Ltd v Attwooll* as follows: "Where, pursuant to a legal right, a trader receives from another person compensation for the trader's failure to receive a sum of money which, if it had been received, would have been credited to the account as profits (if any) arising in any year from the trade carried on by him at the time when the compensation was so received, the compensation is to be treated for income tax purposes in the same way as that sum of money would have been treated if it had been received instead of the compensation."



FIELD

MAIN POINTS

- Compensation payments and tax
- Revenue or capital in nature?
- Tax exemptions

The principle has been followed in a number of British cases and appears to have been applied by the Irish courts (for example, in *Hickey v Roches Stores*), though no specific reference to the term has been made.

Capital

Compensation that is capital in nature is generally, unless specifically otherwise exempted, chargeable to CGT.

For a charge to CGT to arise, there must be a disposal of an asset. Where compensation is received in respect of, for example, the loss, destruction or permanent deprivation of a capital asset, in the absence of specific

legislation, it could be the case that there would be no disposal for CGT purposes. The tax code recognises this in section 535 of the *Taxes Consolidation Act 1997* (TCA) by deeming a disposal of an asset to have taken place where any capital sum is derived from the asset, even if no asset is acquired by the person paying the capital sum. Receipt of the following capital sums is, in particular, treated as being a disposal:

- Compensation for damage to, or for the loss or destruction or depreciation of, assets,
- Insurance payments on account of the damage to or loss or depreciation of an asset,

TAX EXEMPTIONS

In principle, compensation payments – whether capital or revenue in nature – are subject to tax, unless there is a specific exemption. The main circumstances in which compensation payments are exempt from tax are:

NATURE OF EXEMPTION	TAX EXEMPTED	LEGISLATIVE REFERENCE
Payments for any wrong/injury suffered by an individual in his person or profession (for example, victim of a road accident or a libel/slander)	CGT	Section 613 TCA
Damage to or destruction of assets, or of sums for the forfeiture, or surrender of rights, or for the use or exploitation of assets, if the sum received is used in restoring or replacing the asset	CGT	Section 536 TCA
Income and gains arising to permanently incapacitated individuals from the investment of personal injury compensation	CGT/income tax ('IT')	Section 189 TCA
Payments made by the trustees of the Haemophilia HIV Trust to beneficiaries	IT	Section 190 TCA
Payments made to individuals who contracted hepatitis C/HIV from certain blood products	IT	Section 191 TCA
Payments made to an employee/former employee in connection with breaches or infringements of the employee's employment rights (for example, discrimination, harassment, employer's non-compliance with statutory requirements)	IT	Section 192A TCA
Certain <i>ex gratia</i> (non-statutory) termination payments made by employers	IT	Section 201/ schedule 3 TCA
Statutory redundancy payments	IT	<i>Redundancy Payments Acts 1967-2007</i>

“There are a myriad of circumstances that can give rise to the payment of compensation. In order to determine the correct tax treatment, each settlement must be analysed on its own facts”

- Monies received for the forfeiture or surrender of rights, and
- Consideration for the use or exploitation of assets.

The deeming provision contained in section 535 TCA only applies where a capital sum is ‘derived from’ an asset. The area of which asset a capital sum is ‘derived from’ can be complex.

The British case of *Zim Properties v Procter* held that where there was a right to bring an action to seek to enforce a claim, which might not succeed but which was neither frivolous nor vexatious, and that right could be turned to account by negotiating a compromise yielding a capital sum, the right constituted an asset for CGT purposes.

The British revenue’s published practice in relation to a sum received by the owner of an asset who has entered into a contract in relation to the asset is as follows: “If the contract involved an identifiable asset, then we do not regard such a capital sum as derived from a right to performance in any case where that right is modified etc and the capital sum is received by the owner of that asset. Instead, we regard it as derived from the asset itself. An example is a sum received by the frustrated seller of an asset.”

Accordingly, compensation for breach of contract in

relation to the sale of an asset, or compensation paid to secure the modification of a contract, are deemed to be derived from the subject matter of the contract (the underlying asset) and not from the contractual rights themselves, which are treated as a separate asset. The British revenue’s published practice states further that, where a capital sum is derived from a breach, or a modification, of a right under a contract, where the contract does not relate to an identifiable asset, then it is to be regarded as derived from the contract (in line with *Zim*).

There is no Irish case law or Revenue published policy in this area. However, the Irish Revenue appear in practice to agree with the rationale of the British revenue, in that where there is an identifiable asset, the capital sum is regarded as deriving from that asset rather than from the contractual rights in respect of which the payment was made. This view is also supported in *O’Brien v Bensons Hosiery (Holdings) Limited*, which refers to “the reality of the matter” – that is, in looking for the asset you have, look for the real (rather than the immediate) source of the sum.

Tax adjustments

Where an award of compensation is based on loss of future earnings, income or profits, and the

compensation itself is not taxable in the hands of the individual, the courts take account of the tax that would have been deducted from the earnings, income or profits that the compensation replaces. The underlying premise is that a person must not be placed in a better or worse position as a result of the action giving rise to the compensation than if the action had not occurred.

This principle was established in *British Transport Commission v Gourley*, a personal injuries case, where the House of Lords held that, to find otherwise, would result in the plaintiff receiving a windfall. The 'Gourley principle' was endorsed by the Irish courts in *Glover v BLN Ltd and Others*. The *Gourley* principle does not apply where the damages are themselves taxable. This was established in *Parsons v BNM Laboratories* and followed in the Irish case of *Hickey & Co Ltd v Roches Stores*.

VAT considerations

Many compensation payments are outside the scope of VAT. Where an award is compensatory and does not represent consideration for underlying supplies of goods or services, it will be outside the scope of VAT. For example, the payment of compensation under a policy of insurance for the destruction of an asset would be outside the scope of VAT. The reason for this is that the compensation in such a case is 'pure' compensation, rather than being in return for the recipient forsaking a right or agreeing not to do something.

However, where compensation can be classified as 'a toleration of a situation', there is a supply for VAT purposes and the compensation is subject to VAT. Compensation may be classified as a toleration of a situation if the agreement between the parties provides that the recipient of the compensation agrees – in consideration for receiving the compensation – to forsake a right or not to do something (for example, an agreement to drop an adverse possession claim). Agreements need to be carefully drafted to ensure that VAT does not arise on compensation payments.

Key to determination

There are a myriad of circumstances that can give rise to the payment of compensation. In order to determine the correct tax treatment, each settlement must be analysed on its own facts. The key to this determination is based on two elements:

LOOK IT UP

Cases:

- *Able (UK) Ltd v Revenue and Customs Commissioners* [2008] STC 136
- *British Transport Commission v Gourley* [1956] AC 185
- *Crabb v Blue Star Line* (39 TC 402)
- *Glenboig Union Fireclay Company Ltd v IRC* (12 TC 427)
- *Glover v BLN Ltd and Others* [1973] IR 432
- *Hickey & Co v Roches Stores* [1980] ILRM 107
- *London & Thames Haven Oil Wharves Ltd v Attwooll* (43 TC 491)
- *Murray v ICI Ltd* (44 TC 175)
- *O'Brien v Bensons Hosiery (Holdings) Limited* [1979] STC 735
- *Parsons v BNM Laboratories* [1964] 1 QB 95
- *Zim Properties v Procter* [1985] STC 90

Legislation:

- *Redundancy Payments Acts 1967-2007*
- *Taxes Consolidation Act 1997*
- *VAT Acts 1972-2008*

Literature:

- www.revenue.ie

- The classification of the nature of the compensation payment, and
- The application of the general principles established by legislation, case law and revenue guidance.

Accordingly, it is important that legal practitioners clearly understand the nature of the relevant compensation payment so that they can correctly classify such payment and thereby fully and properly advise their clients on the appropriate tax treatment based on established general principles. **G**

Alan Connell is a senior associate in the tax department of Matheson Ormsby Prentice and has written on Irish tax issues for the International Tax Review and for the International Comparative Legal Guide. Barry McGettrick is a solicitor in the tax department of Matheson Ormsby Prentice and an associate of the Institute of Taxation in Ireland.

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Seeing the WOOD for the trees

Precedent forms are indispensable tools for the legal practitioner. It's no surprise, then, that they come top of the league in terms of 'most frequent requests' in the Law Society's library. Margaret Byrne helps you see the wood for the trees

Precedent forms come in all shapes and sizes and are available from a variety of sources, including precedent books, textbooks and electronic services. They are among the most frequently requested items in the Law Society's library. Practitioners will be familiar with the most popular precedent forms – but may be surprised by the wide gamut available, relatively easily, and at reasonable cost.

The following are some examples of forms that are regularly requested and that can be sourced in the Law Society's library:

- Employment contract – for senior management or junior staff; consultancy agreement; confidentiality agreement,
- Sponsorship, event management agreements,
- Agency, distribution, franchise, joint venture agreements,
- Partnership agreement; agreement for the sale of a professional practice,
- Shareholders' agreement; sale of a business; asset sale agreement,
- Leases; lease of a shop unit; sublease; rent review clauses,
- Co-ownership agreement; separation agreement,
- Deed of partition, deed of rectification,
- Concession agreement in a store; licence for a car parking space; licence to quarry.

When the library receives a request for a particular kind of form, the staff will check the indices to the various sources and let you know what is available, sometimes as a first step, sending extracts from the contents list in a particular volume. Where the original work is only available in hard copy, the precedent can be photocopied and sent out by post or DX or left for collection, or it can be scanned and emailed in PDF format; price: €10 per item, or faxed at €15 per item, in accordance with a new pricing structure operative from 1 October 2008.

By agreement with two publishers, LexisNexis Butterworths (LNB) and Thomson Sweet & Maxwell, the library has permission to email forms from certain electronic products – from LNB's electronic version of *Irish Conveyancing Precedents* and *Encyclopaedia of Forms and Precedents* and from Thomson Sweet & Maxwell's *Practical Commercial Precedents* (the last two services being English-law based). These electronic precedents are Microsoft *Word* documents that you may use as templates for drafting your own customised forms. There are restrictions in relation to printing more than a single copy or electronically storing the original forms. Price: €25 per form.

If you are drafting a complicated form, it may be more satisfactory for you to come into the library in person, see what is available and perhaps copy



MAIN POINTS

- Precedent forms
- The Law Society's library – a useful resource
- Irish, English and US precedent forms
- Other useful forms/forms for sale



extracts from a number of forms, or email forms to your office from the above electronic sources.

The following is an outline of the principal sources. Unless otherwise indicated, all the sources referred to in this article are available in the library. For those interested in purchasing any of the products, publication, contact details and prices are also set out.

Irish precedent forms

Gallagher Shatter Family Law Precedents are due for publication by Thomson Round Hall before the end of 2008.

Irish Commercial Precedents, edited by BCM Hanby Wallace, a two-volume work (loose-leaf, updated annually), has a range of forms for commercial and

business transactions, covering the organisation and sale of a business, private company finance, general finance, company secretarial documents, trading agreements, employment, and technology documents.

Irish Conveyancing Precedents (general editor, Deborah Wheeler, and also commonly referred to as *Laffoy's Irish Conveyancing Precedents* after its founding general editor, Mary Laffoy) is a two-volume, loose-leaf work, updated approximately three times a year, with each updating release now accompanied by the entire revised work on a CD. It contains precedents and commentary ranging from simple transactions to complex commercial leases. Recent additions have included building schemes – agreements between developers and management companies and apartment



OTHER USEFUL FORMS

Other useful sources for forms are the Law School manuals, based on the PPCI and PPCII course materials. *Conveyancing 4th* (2008), in the chapter on drafting, includes sample deeds and memorials. It also has examples of use of Land Registry forms and includes Law Society and other forms in appendices to chapters. In *Complex Conveyancing* (2007), the chapters on apartments and mixed developments include useful forms and draft clauses. *Wills, Probate and Estates* (2006) has precedent clauses in many of the chapters, including a form of mutual will, a precedent discretionary will trust and a deed of family arrangement. *Business Law* (2006) has a chapter on commercial drafting and, while not including precedents, has chapters on shareholders' agreements, share purchase agreements, franchising and agency and distribution agreements. *Landlord and Tenant Law* (fourth edition, 2007) includes an agreement for a lease, a long and a short-term lease and sample licence agreements. There are a number of precedent court applications set out in the appendices to *Criminal Litigation* (2006). Sample precedent letters and forms are included as appendices to many of the chapters in *Civil Litigation* (2004). A full list of manuals is included opposite.

developments and a revised section on family arrangements. The library can email forms in *Word* format from the LNB online electronic version of this service.

Jordan's Irish company secretarial precedents (third edition), edited by Paul Egan, Liam Brazil and Paula Phelan (2004), provides precedent forms in relation to the management of a limited company under the *Companies Acts*.

Wills: Irish Precedents and Drafting by Brian Spierin (1999) contains precedent and commentary on drafting wills in a wide variety of situations.

There are precedent forms included in some textbooks – for example, in *Cassidy on the Licensing Acts* (loose-leaf, updated to 2004); in Woods, *Liquor Licensing Laws of Ireland* (third edition, 2001); and in

Peelo, *Valuations, Mergers and Sales of Professional Practices* (including specimen partnership agreements). There are deeds of partition in Conway, *Co-ownership of Land: Partition Actions and Remedies* (2000). Forms such as grazing, agistment and conacre agreements that are occasionally asked for can be found in *Irish Forms and Precedents: Being a Supplementary Volume to the Encyclopaedia of Forms and Precedents* (1910) and in Edge, *Forms of Leases and Other Forms Relating to Land in Ireland* (1875). There is a short sample agreement for a lottery syndicate in Brennan, *Laying Down the Law: A Practical Guide* (1991).

There are freely available Law Society precedents on the 'Precedents for practice' pages on the Law Society website (members' area). Recent additions to this list include the new *VAT Special Condition 3 (revised)* of the Law Society's *Conditions of Sale*, approved by the Conveyancing and Taxation Committees, and *Solicitor/Client Letters of Engagement*, published by the Guidance and Ethics Committee. There are some other precedent forms on individual Law Society committee web pages – *Employment Contracts for Support/Secretarial Staff and Middle Management* on the Employment and Equality Law Committee's pages and guidelines on the *Enduring Power of Attorney Forms* on the Probate, Administration and Trusts Committee pages. There are forms in the appendices to the Law Society *Conveyancing Handbook* (third edition, 2006), which is published on CD and is also on the website (members' area). Older hard-copy Law Society forms are held in the library, such as previous editions of the *Conditions of Sale* and *Requisitions on Title*, the *Master Lease of Agricultural Land* that was produced in conjunction with AIB and the IFA (first edition published 1983; current edition on IFA website, www.ifa.ie) and a form of *Disclaimer on Intestacy*, which was published in the December 2003 *Gazette*.

PUBLISHERS' DETAILS

Jordan Publishing Ltd, www.jordanpublishing.co.uk

21 St Thomas Street, Bristol, BS1 6JS, England;
tel: 0044 117 918 1492, fax: 0044 117 925 0486.

Irish Company Secretarial Precedents, stg£110
Egan and ors, (3rd ed, 2004)

Law Society Publishing (England and Wales), www.lawsocietyshop.org.uk

Orders to: Prolog, distributors; tel: 0044 870 850 1422,
fax: 0044 178 731 3995, email: lawsociety@prolog.uk.com.

Precedent Library for the General Practitioner, stg£99.95
Smith (2007) (incl CD)

Law Society of Ireland/Oxford University Press Manuals and Tottel Manual

Prices include p&p. Send order with cheque payable to 'Law Society of Ireland' to: Julianne Ward, Law School, Law Society of Ireland, Blackhall Place, Dublin 7.

Business Law, Collins (ed) (3rd ed, 2006, OUP)	€60
Civil Litigation, Reid (2004, OUP)	€60
Complex Conveyancing, Brennan & Casey (gen eds) (2007, Tottel)	€60
Conveyancing, Brennan & Casey (eds) (4th ed, 2008, OUP)	€80
Criminal Litigation, Butler (ed) (2006, OUP)	€60
Employment Law, Moffatt (gen ed) (2nd ed, 2006)	€60
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Family Law, Shannon (ed) (3rd ed, 2007, OUP)	€60
Human Rights Law, Moriarty (ed) (2nd ed, 2007, OUP)	€60
Landlord and Tenant Law, Brennan (gen ed) (4th ed, 2007, OUP)	€60
Wills, Probate and Estates, Courtney (ed) (2006, OUP)	€60

LexisNexis Butterworths, www.lexisnexis.co.uk

Contact: Gary Harkin; tel and fax: 04891 859 095,
mob: 0044 791 904 8038, email: gary.harkin@lexisnexis.co.uk.

Commercial Leases, Ross	Loose-leaf: stg£318
	Loose-leaf and CD: stg £482
Encyclopaedia of Forms and Precedents	Hardcopy: price on applic (POA)
	Online:
Irish Conveyancing Precedents, Wheeler (gen ed)	Online: POA
Kelly's Draftsman, Ramage (19th ed, 2006 + 2007 suppl, incl CD)	stg£274

LexisNexis Matthew Bender, www.bender.com

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Freefone from Ireland: 001 800 68 4005,
email: international@bender.com.

Entertainment Industry Contracts	Loose-leaf: \$1,485
	CD: \$1,547
Warren's Forms of Agreements	Loose-leaf: \$1,447
	CD: \$1,474

Thomson Round Hall, www.roundhall.thomson.com

43 Fitzwilliam Place, Dublin 2. Contact: Pauline Ward,
tel: 01 662 5301, mob: 087 230 4596, fax: 01 662 5302,
email: Pauline.ward@thomson.com.

Family Law Precedents, Gallagher Shatter	Loose-leaf: €745
(due end '08)	CD: €745+VAT
	Loose-leaf and CD: €1,120+VAT
Irish Commercial Precedents, BCM Hanby Wallace	Loose-leaf: €945
	CD: €945+VAT
	Loose-leaf and CD: €1,395+VAT

Thomson Sweet & Maxwell, www.sweetandmaxwell.thomson.com

Orders to Thomson Round Hall – details as above

Boilerplate Practical Clauses, Christou (5th ed due Dec '08) (incl CD)	stg£155 +VAT
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	CD when bought with loose-leaf: stg£446 + VAT
	CD bought separately: stg£796 + VAT
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Drafting Commercial Agreements, Christou (3rd ed, 2004) + CD	stg£207 + VAT
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Practical Commercial Precedents, Rosenberg (ed)	Loose-leaf: stg£969
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Precedents for the Conveyancer, Hewitson	Loose-leaf: stg£586

Tottel Publishing, www.tottelpublishing.com

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email: jennifer.lynch@tottelpublishing.com.

Irish Conveyancing Precedents	Loose-leaf incl CD: €695 + VAT
Trust Drafting and Precedents, STEP	Loose-leaf: stg£268
Wills: Irish Precedents and Drafting, Spierin (1999)	€160

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All Law Society forms, both electronic and hard copy, are catalogued on the online library catalogue with a link to the form or an indication of where to source it. For a full list of the forms, choose 'precedent' from the menu of the cell labelled 'type' and click on the search button without filling in the search boxes above.

English precedent forms

The most comprehensive work is LexisNexis Butterworths' *Encyclopaedia of Forms and Precedents*, running to 100 volumes and covering all subject areas. The library can email forms from the online electronic version in *Word* document format. LNB also publish a one-volume book of forms, *Kelly's Draftsman*, now in its 19th edition (2006), and Ross, *Commercial Leases* (loose-leaf, updated).

Thomson Sweet & Maxwell publish a series of precedents books (loose-leaf, updated): *Practical Commercial Precedents*, a comprehensive range of commercial precedents and commentary in four volumes. The library can email forms in *Word* format from the electronic version of this service:

- *Practical Conveyancing Precedents*,
- *Practical Lease Precedents*,
- *Practical Lending and Security Precedents*,
- *Practical Trust Precedents*,
- *Practical Will Precedents*,
- *Precedents for the Conveyancer*,
- *Commercial Property Development Precedents*,
- *Construction and Engineering Precedents*,
- *International Computer and Internet Contracts and Law*,
- *Forms and Agreements on Intellectual Property and International Licensing*.

Other sources are STEP's *Trust Drafting and Precedents*; Smith, *Precedent Library for the General Practitioner*, including CD (2007), published by the Law Society of England and Wales; and textbooks on wills and will-drafting, entertainment law, franchising, joint ventures, shareholders' agreements, trust-drafting, publishing



agreements, and software contracts.

Practical Law Company (PLC) is a major online provider of professional services, including documents with detailed drafting notes. Selected services can be subscribed to, such as competition, corporate, employment, finance and financial services. For further details, see www.practicallaw.com. The library does not subscribe to this service.

Useful books on drafting include Christou, *Boilerplate Practical Clauses* (fourth edition, 2005); Christou, *Drafting Commercial Agreements* (third edition, 2004); and Fosbrook and Laing, *The A-Z of Contract Clauses* (fourth edition, 2008).

US precedent forms

Two American law-based products published in the US by LexisNexis Matthew Bender are *Warren's Forms of Agreement*, an eight-volume set of commercial precedents, including internet, computer contract and intellectual property agreements, and *Entertainment Industry Contracts*.

A search on the online library catalogue for 'precedents' as a word or phrase and limiting the search to the choice 'book' in the menu of the cell labelled 'type' will find details of books in the library that contain precedent forms. (This search will also find books that may not have the word 'precedents' in the title). Precedent books on a particular subject can be found by searching for 'precedents and employment' or 'precedents and conveyancing', and so on, in the 'word or phrase' box. Similarly, searching the catalogue for 'drafting' in the 'word or phrase' box or in the 'title' box with the term 'book' chosen from the menu of the cell labelled 'type', or with the choice 'books & reports' in the 'material' box for a broader search, will find all relevant books and seminar papers held in the library.

All books may be borrowed from the library, with the exception of the volumes of LNB's *Encyclopaedia of Forms and Precedents*. **G**

Margaret Byrne is the Law Society's librarian.

FORMS FOR SALE

See the 'Publications' pages on the Law Society website for details of the Law Society standard forms for sale (in packs of 50) – *Conditions of Sale*, *Requisitions on Title*, *Building Agreements* and *Precontract Checklists*, and (on disc) *Enduring Power of Attorney Prescribed Forms*, *Precedent Family Law Declarations* and *Precedent Section 68 Letters*. The *Requisitions on Title* are also available on disc from CORT Ltd, 51 Amiens Street, Dublin 1; www.cortsite.com. There are also other forms and sample letters available from CORT.

The Dublin Solicitors' Bar Association has the following forms available for sale to its members on CD: *Specimen Residential Tenancy Agreement* and *Specimen Notices of Termination* and *Draft Deed of Separation/Court Settlement*. Details on www.dsba.ie. The DSBA is currently revising its *Share Purchase Agreement* and *Partnership Agreement*.

Irish Legal Publications, Cork, sells a set of *Will Precedents* and a *Prenuptial Agreement* and a *Cohabitation Agreement* on CD, with hard copy in booklet form. Details on www.irishlegalpublications.com.

RULE BREAKERS RULE SHAKERS

Damages are rarely awarded for breaches of either EC or Irish competition law in Irish courts. Now the commission has proposed effective redress mechanisms for victims of breaches of EC competition law. Alan McCarthy races for the finish line

On 3 April 2008, the EC Commission published a White Paper for consultation on actions for damages for breach of the EC competition law rules. Normally, competition law is enforced by competition agencies such as the commission and, in Ireland, the Competition Authority (CA). These decisions are subject to review by the EU and national courts, but awards for damages by national courts at the initiative of private parties are much less common. Facilitating claims for damages for breach of the EC competition rules makes it easier for consumers and companies who have suffered damage from a breach of the EC competition rules to recover losses from those responsible.

Anyone suffering harm as a result of a breach of articles 81 and 82 of the *EC Treaty* can claim damages from the responsible party. Article 81 prohibits anticompetitive agreements that have an appreciable effect on EU trade, while article 82 prohibits an abuse of a dominant position in the EU or in a substantial part of the EU.

This right to compensation is guaranteed under EC law. Currently, in practice, victims of EC competition law breaches rarely obtain damages. The *White Paper on Damages Actions for Breach of the EC Antitrust Rules* puts forward proposals for policy choices and specific measures to ensure that all victims of breaches of EC competition law have access to effective redress mechanisms so that they can be fully compensated.

Irish characteristics

Damages are very rarely awarded for breach of either EC or Irish competition law in the Irish courts. There are very few decisions concerning actions for damages as a result of a breach of either EC or Irish

competition law brought before the Irish courts. In *Donovan v Electricity Supply Board*, damages were awarded for a breach of Irish competition law.

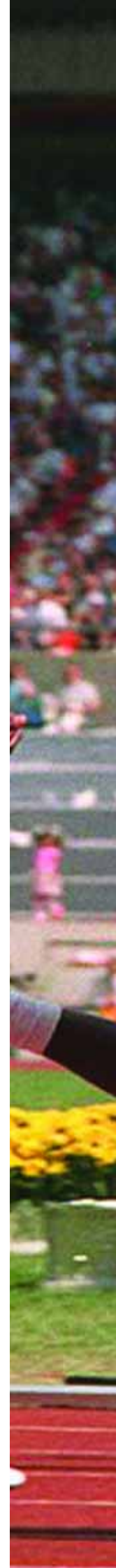
The legal basis for bringing an action for damages in Ireland is contained in section 14(1) of the 2002 and 2006 *Competition Acts*, which provides that any person who is aggrieved as a result of an anticompetitive arrangement or an abuse of a dominant position prohibited by section 4 or section 5 of the *Competition Act*, respectively, has a right of action for relief. Section 4 prohibits anticompetitive agreements in Ireland or in any part of Ireland, while section 5 prohibits an abuse of a dominant position in Ireland or in any part of Ireland.

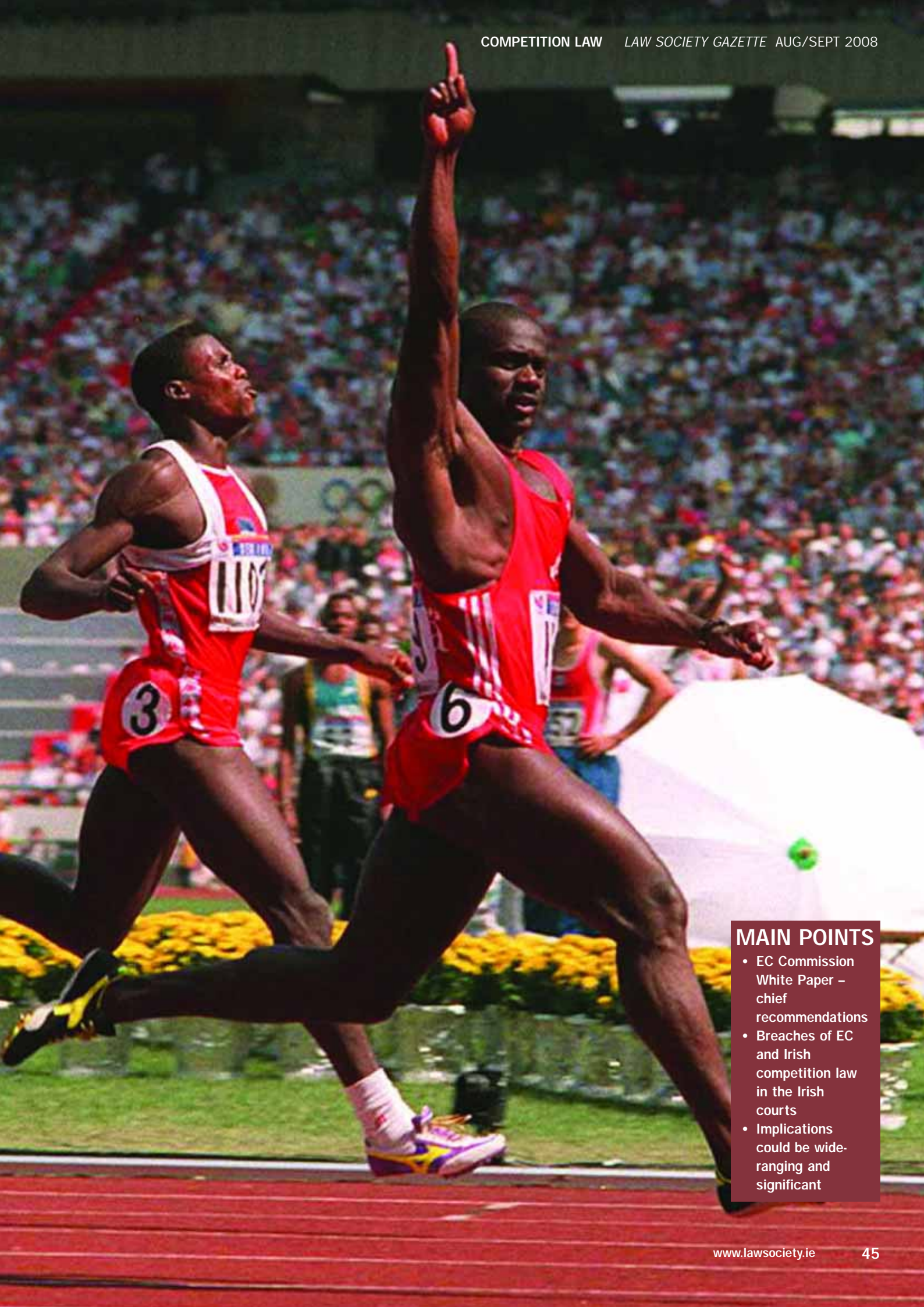
While there is no specific right of action for damages for a breach of articles 81 or 82, these provisions are directly effective in Ireland. As a result, an action regarding a breach of articles 81 or 82 may be brought by those parties affected before the Irish courts.

Key recommendations

Standing to bring an action. Claimants can be deterred from bringing an individual action for damages by the costs, delays, uncertainties, risks and burdens involved. The commission proposes:

- That there should be representative actions that are brought by qualified entities – such as consumer associations, state bodies or trade associations – on behalf of individual victims. These entities would be officially designated in advance or certified on an *ad hoc* basis by a member state for a particular competition law infringement to bring an action on behalf of their members.
- The introduction of opt-in collective actions in





MAIN POINTS

- EC Commission White Paper – chief recommendations
- Breaches of EC and Irish competition law in the Irish courts
- Implications could be wide-ranging and significant



Some men will use any trick to get a hole in one

which the victims expressly decide to combine their individual claims for harm suffered in one single action.

Access to evidence – disclosure inter partes. The commission proposes that:

- National courts should have the power to order parties to proceedings, or third parties, to disclose precise categories of relevant evidence,
- Conditions for a disclosure order should include that the claimant has (a) presented all the facts and means of evidence that are reasonably available to him, provided that these show plausible grounds to suspect that he suffered harm as a result of an infringement of EC competition rules by the defendant; (b) shown to the satisfaction of the court that he is unable otherwise to produce the requested evidence; (c) specified sufficiently precise categories of evidence to be disclosed; and (d) satisfied the court that the envisaged disclosure measures are relevant, necessary and proportionate,
- Adequate protection should be given to corporate statements by leniency (or in Ireland ‘immunity’)

MANY A SLIP...

A number of obstacles to bringing damages actions before the Irish courts in relation to either Irish or EC competition law include:

- No class actions – while actions may be brought by representative bodies on behalf of its members, damages may not be awarded to any representative body on behalf of its members,
- The burden of proof in relation to damages actions rests with the plaintiff, who must prove his case on the balance of probabilities,
- While discovery is available in respect of third parties within the court’s jurisdiction, discovery is not available for such parties outside the jurisdiction of the court,
- Costs in bringing an action are significant, and
- The requirements that a plaintiff has to fulfil to obtain discovery of key information to prove a breach of EC or Irish competition law are significant.

applicants and to the investigations of competition authorities, and

- To prevent the destruction of relevant evidence or refusal to comply with a disclosure order, courts should have the power to impose sufficiently deterrent sanctions, including the option to draw adverse inferences in the proceedings for damages.

Binding effect of national competition authority decisions. Whenever the commission finds a breach of articles 81 or 82, victims of the infringement can rely on this decision as binding proof of civil proceedings for damages. The commission proposes that, in respect of equivalent decisions by national competition authorities (NCAs), national courts that have to rule in actions for damages on practices under articles 81 or 82 on which an NCA in the European competition network has already given a final decision finding an infringement of those articles, or on which a review court has given a final judgment upholding the NCA decision (or itself finding an infringement), cannot take decisions running counter to any such decision or ruling.

In Ireland, the Competition Authority is unable to make any legally-binding decisions concerning articles 81 or 82 under the act. Therefore, the value of this proposal by the commission is lessened in the Irish context.

Damages. The European Court of Justice has emphasised that victims must receive full compensation for the real value of the loss suffered. To facilitate the calculation of damages, the commission intends to draw up a framework with guidance on the quantification of damages in competition law cases (for example, by means of approximate methods of calculation or simplified rules on estimating the loss).

Passing on overcharges. To avoid both unjust enrichment of purchasers who passed on the overcharge as a result of the breach of articles 81 or 82 and undue multiple compensation for the illegal overcharge by the defendant, the commission proposes that defendants should be entitled to invoke the passing-on defence against a claim for compensation of the overcharge.

Limitation periods. The commission proposes that the limitation period should *not* start to run:

- In the case of a continuous or repeated infringement, before the day on which the infringement ceases,
- Before the victim of the infringement can reasonably be expected to have knowledge of the infringement and of the harm it caused him.

To keep open the possibility of follow-on actions, the commission has suggested measures to avoid limitation periods expiring while public enforcement of the competition rules by competition authorities (such as the Irish courts) is still ongoing. The commission proposes that a new limitation period of at least two years should start once the infringement

LOOK IT UP

Cases:

- Case C-234/89, *Delimitis v Henninger Bräu*, [1991] ECR I-935
- Case C-453/99, *Courage & Crehan* [2001] ECR I-6297
- *Donovan v Electricity Supply Board* (1994) [2 IR 305]
- Joint cases C-295-298/04, *Manfredi v Lloyd Adriatico Assicurazioni*, [2006] ECR I-6619
- *MasterFoods v HB Ice Cream Limited* [1993] ILRM 145

Legislation:

- *Competition Acts 2002, 2006*
- *EC Treaty* (articles 81 and 82)

Literature:

- *White Paper on Damages Actions for Breach of the EC Antitrust Rules* COM(2008) 165, 2.4.2008. The commission staff working paper can be downloaded at <http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html>

- Design procedural rules to foster settlements, as a way to reduce costs,
- Set court fees so that they do not become a disproportionate disincentive to damages claims, and
- Give national courts the possibility of issuing cost orders derogating, in certain justified cases, from the normal costs rules, preferably up front in the proceedings.

Implications

The White Paper is a draft policy document before draft legislation is produced. The implications for bringing private damages claims for breach of EC competition law before the Irish courts could be wide ranging and significant. Irrespective of any concerns with the plausibility of some of the suggestions by the commission, it is clear that there will be some form of legislation applicable across the EU that will require implementation in Ireland – and that will likely make such private damages a more common feature of the Irish competition law landscape.

Another consequence of such measures might be an equivalent improvement in the conditions for bringing damages actions in the Irish courts for a breach of purely domestic Irish competition law rules (that is, sections 4 and 5 of the act). **G**

Alan McCarthy is a partner in A&L Goodbody's EU and Competition Law Group.

decision on which a follow-on claimant relies is final.

Costs of damages actions. The commission proposes that member states:

European Convention on Human Rights FIVE YEARS ON

Date:	Saturday 8 November 2008
Time:	9.15am to 3.30pm
Venue:	Law Society, Blackhall Place, Dublin 7
Fee:	None
CPD Hours:	5

The aim of the conference is to give an overview of the impact of the *European Convention on Human Rights Act* since 2003; to examine the practical implications of the *European Convention on Human Rights Act* in different areas of law; and to demonstrate the impact of human rights standards on shaping legislative developments in Ireland.

TOPICS AND ISSUES COVERED

- Overview of the *European Convention on Human Rights* and its impact since 2003,
- Five parallel sessions on article 6 and 13 of the *European Convention on Human Rights*, criminal law, family law and privacy, immigration law and *amicus curiae*,
- Practical impact of the *European Convention on Human Rights* in Ireland.

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PICTURE: LENS MEN

Dinner guests at Blackhall Place on 24 July 2008 included (back, l to r): Colin Daly, Sinead Kearney, Ken Murphy, Dara Robinson and Mary Keane. (Front, l to r): Mr Justice Richard Johnson (president of the High Court), Judge Michael C Reilly and James MacGuill (president, Law Society)



PICTURE: LENS MEN

Dinner guests at Blackhall Place on 23 July 2008 included (back, l to r): Eamonn Shannon, Helena Hickey, Caroline Lynch, Niamh Counihan, Marsha Coghlan, James Kinch, Simon Hannigan and Colm Fahy. (Front, l to r): Louise Rouse, John D Shaw, Corrina Harlow, James MacGuill (president), Ken Murphy, Julia Emikh and Alina Jokinen



PICTURE: MACGINNES PHOTOGRAPHY

The Law Society held an information session with the presidents and PROs of the country's bar associations on 22 July 2008 at Blackhall Place, in order to bring them up to date on continuing developments of interest to members of the profession. The meeting also followed up on matters raised at last December's gathering and was addressed by President of the Law Society James MacGuill and Director General Ken Murphy

Monaghan marks judicial

The Monaghan Bar Association recently hosted a dinner to mark the permanent appointment of Judge John O'Hagan to the Northern Circuit, the departure of Judge Flann Brennan from the Monaghan District Court, and the retirement of Mr Enda O'Carroll as state solicitor for Co Monaghan.

The dinner was a great success and was attended by approximately 70 local solicitors and barristers. The solicitors' association made presentations to Judge John O'Hagan and his wife Sheila, to Judge Flann Brennan and his wife

Catherine, and to Enda O'Carroll and his wife Pauline. There were glowing tributes from the association's secretary, Adrian O'Doherty.

Also present were President of the Circuit Court Mr Justice Matthew Deery and his wife Pat, President of the Law Society James McGill and his wife Lisa, Law Society Director General Ken Murphy and his wife Yvonne, Monaghan County Registrar Josie Duffy and Monaghan District Court Clerk Bernie Smith. The dinner was followed by traditional Irish music and a sing-song!



ALL PICS: PAT BYRNE, 087 266 0377

(From l to r): Adrian O'Doherty, James MacGuill (president of the Law Society) and Paul Callaghan



(From l to r): Matt Deery (president of the Circuit Court), Pauline O'Carroll, Josie Duffy (county registrar), Bernadette Smith and Patricia Deery



(From l to r): Adrian O'Doherty, Barry Healy, Kevin Hickey, Michael Gil Barry and Paul Boyce



(From l to r): Enda O'Carroll, Judge Flann Brennan, Catherine Brennan and Martin Crilly



(From l to r): Miriam Reilly, Laura O'Reilly, Donna Reilly and John Whitfield

appointment



Dan Gormley (*left*) makes a presentation on behalf of the Monaghan Bar Association to Judge John O'Hagan to mark his assignment to the Northern Circuit, at the function in the Nuremore Hotel, Carrickmacross with Sarah O'Hagan (*centre*)



Sean Kennedy (*left*) makes a presentation on behalf of the MBA to retiring Monaghan State Solicitor Enda O'Carroll at the MBA function, with Pauline O'Carroll (*centre*)



(*From l to r*): Catherine O'Reilly, Fiona Cassidy, Brona O'Hanlon and Paul McMorrow



(*From l to r*): Emma and Pat Hanratty and Niamh O'Carroll Kelly



(*From l to r*): Ken Connolly, Tom Fitzpatrick, Donna Reilly, Paraic McNamee, Elizabeth Gormley and Vincent P Martin



(*From l to r*): Jackie Doherty, Gerry Jones, Catherine Lynch and Aoife Rafferty

There's nothing quite

Following on from the success of last year's wonderful day at the Galway Races, the Galway Bar Association attended the Monday evening meeting at Ballybrit Racecourse on 28 July 2008.

The evening began at Galway courthouse, where 125 members and guests had gathered to be conveyed by coach to the race course. The premium level of the Millennium Stand had been reserved for the association and many a fortune was made and

lost. Indeed the air was thick with 'sure bets', and this writer fell victim to backing a couple of nags that were still running long after the party had moved on to the post-racing supper at the Clayton Hotel.

The evening passed in a flutter of style, which ended with an excellent buffet and evening of dancing till late. A drizzle of rain did nothing to dampen spirits on what will seemingly be an annual event. Finally, a word of thanks to AIB who kindly sponsored the event.



ALL PICS: DEIRDRE LANGAN PHOTOGRAPHY

Gerry Burke, Eavanne Joyce and Caitriona Savage



Geraldine Dooley, Olivia Traynor, Maeve Joyce, Yvonne Francis and Susan McLoughlin



Kayanne Prendergast, Dermott Murphy, Ciara O'Callaghan, Bernie Murphy and Cairbre O'Donnell



Conor Fahy, Breege McCaffrey, Emma Brogan, Michelle Henry and Louise Howard



Paudie Grace (First Active), Mary Nolan, Bernard Nolan, Orla Tucker, Kevin Tucker (First Active) and Anne Grace

like a day at the races



Nuala Dockry, Emer Meenaghan, Ailbhe Burke and Robert Meehan



Louis Bourke, Catherine Bourke, James Seymour and Elaine McCormack



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Younger members have a ball!

The DSBA Younger Members' Committee Ball was held at the Mansion House recently. DSBA president Michael Quinlan shared some words of encouragement with the young members, and was followed by John Maclin of Brightwater Recruitment. Younger Members' Committee President, Eamonn Shannon, thanked all for attending and introduced the entertainment for the night, the ubiquitous Springbreak. Here's to the next DSBA social gathering – and, more particularly, the ball next spring!



Lynn Cramer, Alison Mitchell, Laura Butler and Gina Conheady caught up at the DSBA Spring Ball



At the DSBA Younger Members' Spring Ball were (l to r): Carolann Minnock, Joanne Carson and Ciara Gaffney



Nessa Gardner, Deirdre Thompson and Brid O'Dwyer savouring the atmosphere at the Mansion House

Throw another shrimp on the barbie

The DSBA Younger Members' Committee held its annual summer BBQ on 18 July at Kobra Bar on Leeson Street.

With the aid of some greatly-appreciated sponsorship from the Irish legal recruitment specialists, Benson & Associates, the night went off without a glitch.

The BBQ was a great success. Formalities were kept to a minimum and the *craic* continued well into the wee hours of the morning. Thanks to all who came along. We look forward to seeing you all again soon at the upcoming Winter Table Quiz.



Here comes ... and there goes ... the summer! Pretending it was summer at the DSBA Younger Members' barbecue on 18 July were (l to r): Michael Lane, Liam Fitzgerald and Paul Ryan



A not-so-younger member of the DSBA, Kevin O'Higgins, met Lesley Deane (left) and Ruth Higgins (both of John O'Connor, Solicitors) at the summer barbecue

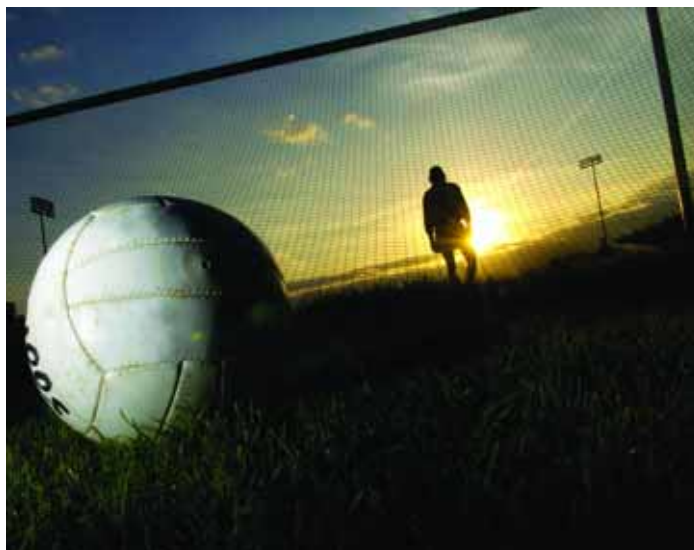
Society digs deep to take Connolly Cup

The inaugural Connolly Cup Gaelic football match between the Law Society and the Bar was played in Clontarf in 1995. Ever since then, teams from the Law Society and the Bar have been battling it out to retain or reclaim this prestigious trophy.

Originally sponsored by Paddy Connolly SC, this event never fails to attract the crowds and this year's instalment was no different. On a balmy summer evening in the Phoenix Park recently, plenty of support came out for both sides.

Having lost last year's match by a single point, the Bar was keen to exact revenge but the Law Society, under the watchful eyes of Messrs Kenny, Ó Buachalla and Healy, were equally keen to retain the cup.

The Law Society burst into an early lead and was ahead 1-2 to 0-0 after seven minutes. Mícheál Mulvey and Gerry Gallen lorded it at midfield, while Ruairí MacCumhail caused havoc at centre forward. Paul Bohan added the finishing touches inside.



Terence experienced mild disquiet at the size of the massive balls

However, the Bar struck back with a well-taken goal by Eoin Foley that left Greg Rogers with no chance. The score took the wind out of the Law Society's sails and, were it not for wayward shooting on the Bar's part and some heroic defending by Airy Cleere, Ian Knight and Paddy Delaney, the margin would have narrowed further.

But it was not to be for the Bar. Paudie Barry proved lethal from both placed balls and play,

and with Paul Dillon battering at the heart of the Bar defence at every opportunity, the Law Society went into the half-time break, 1-6 to 1-1 in front.

Following half-time refreshments and a number of tactical substitutions, the Law Society opened the second half with a flurry of unanswered points from Colm Ó Méalóid, Ciarán Leavey and Leo Moore.

The Bar dug deep, however, and replied with a scrappy goal

from Cian Carroll. After 37 minutes, the Law Society team was only four points in front on a score line of 1-8 to 2-1.

The next 20 minutes were telling, however, with the Society kicking a total of 1-9. With captain Pdraig Mullins driving them on from centre-back, the side conceded only a single point to end the match as victors on a scoreline of 2-17 to 2-2.

Special thanks goes to Eamon Marray, Conor Dignam, Liam Dockery and Darach McNamara, who organised the Bar team; to the army for use of their facilities; to the staff at the Sky Bar; to Craig Kenny, Marcus Ó Buachalla and Aidan Healy for all their work on behalf of the Law Society team; and to both sets of supporters for their welcome encouragement. The Law Society also thanks Gerry Collins and Kilmacud Crokes for supplying a set of jerseys for the evening.

Talk of next year and the three-in-a-row is already doing the rounds, *ach sin scéal eile...*



LRC Report on Multi-Unit Developments

At the launch of the Law Reform Commission's report on multi-unit developments on 24 June were (l to r): Gavan Ralston, John O'Connor and Rory O'Donnell



Capital move!

At the official opening of Finnan Financial Ltd's Dublin office at Merchants Quay were (l to r): Charlie Russell, Kieran Finnan (Finnan Financial), Ken Murphy (director general, Law Society) and Niall Duggan (Duggan Asset Management)



student spotlight

Cork duo take bronze in London!

Cork duo, Val Moran and Anthony Murphy from the law school in Cork, have taken the bronze at the International Negotiations Competition 2008, held in London from 7-11 July 2008. Sixteen teams from around the world took part in the competition for trainee solicitors, barristers and law students.

The Cork team achieved joint third, sharing their place on the winners' podium with a team of trainee barristers from the Institute of Professional Legal Studies in Belfast.

Val and Anthony represented Ireland, having first negotiated their way through some tough competition at national level,



Val Moran and Anthony Murphy tied for third place at the International Negotiations Competition 2008 in London, seen here outside the law school in Cork

where they were pitted against teams from the Law School in Dublin and the King's Inns.

All teams at the international

competition participated in three rounds of negotiations. In the first round, the Cork students took on – and beat –

US national champions, from the University of Louisville.

In the second round, Val and Anthony faced the Pontifical Catholic University of Puerto Rico, followed in the third round by Doshisha University in Japan.

The team was coached by Alison Gallagher from the law school in Dublin and Lynn Sheehan from the law school in Cork. A number of external consultants from the legal profession in Cork also assisted with their preparations.

They were sponsored at the international event by the Law Society and by their training firms, McCarthy & McCarthy in Cork and Holmes O'Malley Sexton, Limerick.

Can they build it? Ah, you know the story...

Nothing could have prepared us for the two weeks we spent in Zambia, house-building for Habitat for Humanity, writes *Neasa Seoighe*. Some were thoroughly prepared with state-of-the-art military gear, mosquito nets and 13-tool Swiss army knives! The motley crew of 14 were enthusiastic, if nothing else.

We received a warm, if humbling, welcome from the people of Tiyende Pamodzi, a side-of-the-road township village. Unloading our belongings into a small, three-roomed, concrete-block house hammered home the point that these people have very little. The 14 of us shared the house – there was just about enough space for our sleeping mats.

Our building work started with an early start the day after



arrival. The team was split into two to build separate houses. This encouraged some healthy competition. Luckily, some local contractors paid by Habitat provided guidance.

The programme we participated in was for orphans and vulnerable children – the beneficiaries of our houses were

women looking after children orphaned by AIDS.

Apart from our working days on the site, we visited a school and held half-hour classes with the teenagers there. It was an amazing trip and one most of us hope to repeat next year.

This year's crew consisted of: Aisling (F Hutchinson & Co),

Claire (Michael O'Byrne), Eoghan (Arthur Cox), Johnny (Gartlan Fury), Kevin (Arthur Cox), Laura (Noel Smyth & Partners), Liz (McEvoy Partners), Mick (Matheson Ormsby Prentice), Neasa (Hayes), Niamh (Thomas Coughlan & Co), Shane (Michael J Kennedy & Co), Tauna (Dublin City Council), Caitriona and Jane (team leaders).

A big thanks goes to all our firms who gave us the time off to go, and who donated so generously to the cause. Thanks, too, to family, friends and colleagues who contributed their hard-earned cash, time and energy. The people of the township of Tiyende Pamodzi have benefited from your generosity. Last but not least, a huge thanks to Jane Moffatt for organising the expedition.

books

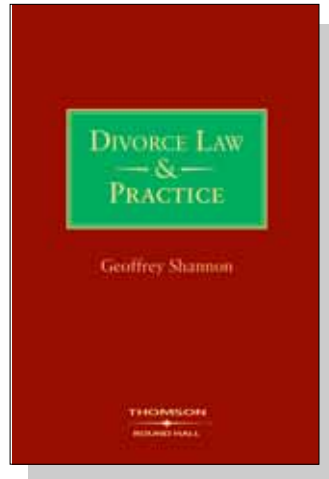


Divorce Law and Practice

Geoffrey Shannon. Thomson Round Hall (2007), 43 Fitzwilliam Place, Dublin 2. ISBN: 978-1-85800-482-2. Price: €185 (hardback).

It is now 12 years since the introduction of divorce in Ireland and, in that time, the family law landscape has seen very significant changes. The unprecedented economic growth of recent years has led to ever increasing personal wealth, and greater complexity in family law cases where the courts now deal with complicated trust, tax and business structures on a regular basis. Our lives have also become more complex with the emergence of second families following remarriage and new or alternative 'family' units. In 2002, Ireland had the lowest divorce rate in Europe. By the 2006 census, however, the number of divorced persons in Ireland had increased by 70 per cent.

As a result, a comprehensive book on the operation of divorce in Ireland was eagerly anticipated and Geoffrey Shannon's book fulfils all its expectations. Mr Shannon needs no introduction to anyone practising in the area of family and child law as he is regarded as a leading expert in this field. In addition to being a prolific writer on these subjects, he also enjoys an exceptionally high profile as independent special rapporteur for child protection, the Irish expert member of the Commission on European Family Law, and



chairman of the Adoption Board.

His book is written in a clear, concise and thorough manner, incorporating legislative and case law references throughout, while also drawing on case law and experiences of other jurisdictions where appropriate.

In his introduction, Mr Shannon reminds us of the very great changes that Ireland has witnessed in recent years, and the background to the introduction of divorce in Ireland. The book also contains a most useful chapter on pre nuptial agreements, their current framework in Ireland and a review of relevant English case law. It also deals comprehensively with the actual process of divorce, including the grounds for divorce and its consequences.

The book devotes an entire chapter to the uniquely Irish situation that precludes a 'clean break' on divorce. There is a further chapter on full and final settlement clauses and 'second-bite-of-the-cherry' applications, which will make essential reading for all family law practitioners. The following chapters survey in detail the extensive ancillary reliefs that are available on divorce, to include: maintenance, the family home, property, pensions and succession. Another chapter is devoted to the factors considered by the courts in determining ancillary relief applications on divorce.

Of great assistance to family law practitioners, Mr Shannon has also included two chapters on the taxation implications both of marriage and of marital breakdown, together with a most useful chapter in relation to children in the context of divorce. The book also deals in detail with practice and procedure, setting out the rules and practice directions of both the High and Circuit Courts. Furthermore, those practising in the area will find the chapter on the recognition of foreign divorces and the *Brussels II* regulations of invaluable practical assistance.

Mr Shannon concludes the book with an interesting and

challenging chapter of conclusions and recommendations, to include suggested reforms with regard to children in divorce proceedings and further impending developments at a European level. He also points to the need for reform in the actual operation of the family courts system, a view which is shared by many practitioners and clients alike.

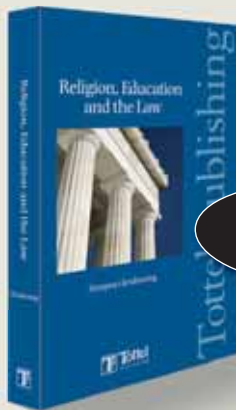
In her foreword to the book, Mrs Justice Catherine McGuinness states that this book "in common with Geoffrey Shannon's other texts, will be an indispensable resource for all those who practise in this area" and this is a view I share. Mr Shannon is to be congratulated on this excellent publication, which I would wholeheartedly recommend to both specialist and non-specialist family lawyers as an essential resource and a 'one-stop shop' on all aspects of divorce law and practice.

Finally, a little known fact is that Mr Shannon has also donated all royalties from the sale of this book to the Jesuit Centre for Faith and Justice, which is a most admirable gesture for a worthy charity. **G**

Hilary Coveney is a partner in Matheson Ormsby Prentice Solicitors.

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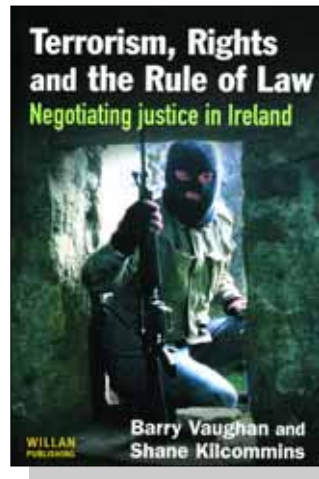
Terrorism, Rights and the Rule of Law: Negotiating Justice in Ireland

Barry Vaughan and Shane Kilcommins. Willan Publishing (2008), Culmcott House, Mill St, Uffculme, Cullompton, Devon, England. ISBN: 978-1-84392-264-3. Price: stg£18.99.

Book reviews have a purpose. At a minimum, they should tell the reader what's in a book – what it says, what it does, is it good or useful, and should you buy it? To get to the point, then, this book is very good and very interesting, but I would question its usefulness – in a professional capacity – to practising lawyers. It is unlikely to directly help you manage a case or make compelling arguments in a trial.

However, it will certainly be of interest to legal theorists, historians and scholars, and also to academics of the criminological, philosophical and political scientific persuasion. But probably not so much to the practising solicitor in his/her professional capacity.

Writing as someone broadly familiar with the field of what is now called 'terrorism studies', it might be hard for someone who isn't a specialist in the aforementioned academic disciplines to get a proper handle on this book. The authors – academics in the fields of criminology and law – say that the theme of the book is "the essential ambiguity between rule by law and the rule of law": what I take,



essentially, to be an exploration of liberal democratic responses to sub-state political violence (also explored in the excellent and possibly more accessible second edition of *Terrorism versus Democracy* by Paul Wilkinson).

At the outset, the authors discuss the problem of law enforcement and counter-terrorism strategies that might threaten to compromise individual liberties, arguing that "due process has suffered as counter-terrorism strategies have permeated the 'ordinary' criminal justice system".

They proceed through an examination of three criminological perspectives on

criminal justice systems, ultimately reducing them to a dichotomy between neo-conservative and neo-liberal perspectives. Following that, there is a historical discussion of the development of the rule of law towards the acceptance of an inculpatory justice system (crudely, the assumption of innocence until proven guilty and involving procedural protections for suspects), as well as an instructive comparison between Britain and Ireland that focuses on this state's attachment to the use of emergency law after independence.

In the next chapter, this attachment – and what is called "the continuous use of emergency measures that departed from the rule of law" – is linked to both the perception and reality of the continued threat of sub-state political violence. The interesting point that is argued is that there has been a 'cross-over effect' whereby anti-terrorism measures have become 'normalised' and have been extended into everyday policing against 'ordinary crime'.

Succeeding chapters deal, among many other things, with (a) the idea that the use of

emergency law did not necessarily lead to a lack of respect for suspects' rights and that independent Ireland did, indeed, develop its own version of inculpatory (as opposed to exculpatory) justice, especially via incremental case law; (b) the augmentation of state power in the 'fight against crime' and the concomitant diminution of the defences available to purely criminal (rather than political) suspects, as well as the extension of detention periods and the dilution of the right to silence, both of which crossed over from anti-subversive measures; and (c) the "Europeanisation of human rights" and the "excessive securitisation" of the Irish state.

In their conclusion, the authors state that "recurrent forces push the state towards authoritarian rule, but competing influences hamper this trend". It is important for all citizens, including lawyers, in a free, democratic republic to be able to identify which forces and whose influences these are. All in all, a fascinating book. **G**

Dr Garrett O'Boyle is a political theorist teaching at TCD who specialises in the analysis of politically-violent groups.

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council report

Law Society Council meeting, 30 May 2008

Solicitors giving undertakings on their own behalf

The Council discussed a proposal that the Society should consider introducing a prohibition on solicitors giving undertakings on their own behalf. The general approach was in favour of a simple restriction confined to solicitors who gave undertakings in relation to transactions in which that solicitor was acting for himself, or had a beneficial or controlling interest. There was some discussion as to whether the restriction should extend to partners in a firm, what would amount to a 'beneficial interest', and how such a prohibition might be enforced. It was agreed that the matter should be discussed at the forthcoming meeting of presidents and secretaries of bar associations, and that the views of the profession should be sought through the bar association network.

CCBE

The Society's representative on the CCBE, Michael Irvine, and the Society's information officer on the CCBE, Eva Massa, addressed the meeting and outlined the work of the CCBE, its committees and working groups. As the representative organisation for

more than 700,000 European lawyers, the CCBE provided its members with a unique access to representation, education and information on legal issues throughout Europe as a whole. The Law Society currently provided the head of delegation and wished to maximise the benefit of membership for the Society and profession as a whole. The Irish delegation could nominate two individuals from Ireland to any of the CCBE committees, and Council members were encouraged to identify practitioners who would be willing to serve on a CCBE committee on behalf of the Society.

Civil Law (Miscellaneous Provisions) Bill 2006

The Council noted that the *Civil Law (Miscellaneous Provisions) Bill 2006* had completed all stages in the Dáil and had also completed committee stage in the Seanad earlier in May. A number of the amendments contained in the bill clarified the Society's powers in relation to the investigation of misconduct and the conduct of disciplinary proceedings before the High Court. An additional matter addressed in the legislation was the power of solicitors to

limit their liability by contract. This had been prohibited by a provision contained in 1870 legislation. A similar provision had long-since been repealed in England and Wales, and the Society had sought, and secured, a new section 26A of the *Solicitors (Amendment) Act 1994*, which repealed the 1870 legislation and, subject to certain requirements, permitted a solicitor to limit his liability by contract.

Legal Services Ombudsman Bill 2008

The Council noted that the second stage of the *Legal Services Ombudsman Bill* had been taken in the Dáil on the previous evening. The minister had made a short speech introducing the bill, to which several opposition speakers had responded. Each had emphasised the point that the Legal Services Ombudsman should not be a practising lawyer. The Council indicated its support for a provision that would exclude any person who had ever practised as a solicitor or barrister from eligibility for appointment.

Human rights

The Council complimented the Human Rights Committee on a very successful annual

Human Rights Lecture, addressed by the Chief Justice of Canada, which had been held recently.

Criminal Justice (Money-Laundering) Bill 2008

The Council considered, with approval, a submission made by the Society's Money-Laundering Task Force to the Department of Justice, Equality and Law Reform on the *Criminal Justice (Money-Laundering) Bill 2008 - General Scheme*.

Innocence Project

The president noted that, as the result of excellent work by a newly-qualified solicitor, Niamh Gunn, a person named Walter Swift had been released from prison in the US, having served 26 years of a 55-year sentence for rape. Through painstaking work, the Innocence Project had established that the evidence relied upon was flawed, that vital evidence was withheld from the trial, and that his defence was conducted in an incompetent fashion. Walter Swift, Barry Scheck and Niamh Gunn would all address a public lecture, to be chaired by the Chief Justice and to be hosted at the Law Society during July. **G**

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BUILDING ENERGY RATING (BER) CERTIFICATES

SI no 666 of 2006 provides for the transposition into Irish law of articles 5 and 7 of the EU *Energy Performance of Buildings Directive* (2002/91/EC, 16 December 2002). The regulations require that every new dwelling and non-domestic building offered for sale or rent to any prospective purchaser or tenant (where appropriate, any reference hereafter to 'purchaser' includes 'tenant', and any reference to 'vendor' includes 'landlord') must have an energy rating certificate provided by a certified BER assessor.

What buildings do the regulations apply to?

- New dwellings for which planning permission was applied for on or after 1 January 2007. A transitional BER exemption applies to a new building for which planning permission was applied for on or before 31 December 2006, provided that substantial work has been completed by 30 June 2008.
- New non-domestic buildings for which planning permission was applied for on or after 1 July 2008. A transitional BER exemption applies to new non-domestic buildings for which planning permission was applied for on or before 30 June 2008, provided that substantial work has been completed by 30 June 2010, except when such building is offered for a second or subsequent sale or letting.
- Existing buildings of any class when offered for sale or letting on or after 1 January 2009.

Other exemptions are set out in the regulations.

It should be noted, however, that buildings availing of the transitional exemptions could be caught by the requirement to produce a BER certificate on a subsequent sale.

A provisional BER certificate is required if the vendor is selling from plans: this lapses on the sooner of completion of the building or the expiry of 24 months, and, in respect of completion of construction, a full BER certificate and advisory report is then required for any sale or letting.

Under the regulations, "substantial work has been completed" means the structure of the external walls of the buildings has been completed.

What is a BER certificate?

SI 666 of 2006 is concerned with providing prospective purchasers with standardised information concerning the energy rating of a building. A BER certificate simply provides in a prescribed form a rating of the energy consumption of the building. The BER certificate must be accompanied by an advisory report produced by the BER assessor, which may recommend improvements to the energy performance of the building. However, there is no obligation on either a vendor or prospective purchaser to make the recommended improvements and there is no requirement that a building should achieve any particular level of energy rating.

Is a solicitor an 'agent' for the purposes of the regulations?

Regulation 7(2) imposes the obligation on a "person who offers

for sale or letting ... a building" to produce the BER certificate and advisory report. This obligation extends to "any agent acting on behalf of such person". However, the term 'agent' is not in fact defined for the purposes of the regulations. It is the view of the committee, however, that a solicitor acting in a conveyance/letting on behalf of a vendor is an agent of the vendor and is *prima facie* caught by the obligations of article 7(2).

At what stage should a BER certificate be produced?

In the ordinary course of property transactions, including auctions, the owner or the estate agent or auctioneer will have advertised, promoted or otherwise transmitted information to potential purchasers before a solicitor is instructed to produce contracts or a letting agreement. It could thus be expected that the obligations of article 7(2) will already have been fulfilled by the time a solicitor is appointed. In cases where the vendor or his selling/letting agent have not already sought or obtained a BER certificate, it is the view of the committee that a solicitor acting in the sale/letting as agent of the vendor would be duty-bound to draw to the attention of the client or the client's agent the necessity of producing a BER certificate and advisory report to every potential purchaser. If the client has not obtained a BER certificate by the time the solicitor is instructed in the sale, it is the view of the committee that the client will have to be told by his solicitor that a contract/letting agree-

ment cannot be sent out until such time as a BER certificate has been obtained.

Can one contract out of these obligations?

It should be noted that there is no provision enabling a prospective purchaser to waive the obligation to be provided with a copy of a BER certificate and, similarly, the committee is of the view that no acknowledgement by a purchaser that a copy of a BER certificate has been received would overcome any failure to provide one.

Can there be retrospective compliance with the regulations?

It is the view of the committee that failure to provide a BER certificate before a contract/letting agreement is signed cannot be remedied by a subsequent provision of such certificate unless the purchaser is simultaneously given the opportunity to back out of the contract. The clear import of the regulations is to ensure that prospective purchasers have the relevant information concerning the energy usage of a building they are contemplating buying or leasing. That objective cannot be fulfilled if the purchaser is bound to a contract in advance of knowing the information.

What is the position of the purchaser?

There is no apparent obligation on a purchaser to have regard to the content of a BER certificate in making a purchase/letting. Nor is there any requirement that such a purchaser seek or obtain a certificate from the ven-

dor. The obligation is solely on the vendor to provide one. In those circumstances, the committee does not believe that it is necessary for a purchaser's solicitor to raise a requisition on title in relation to a provision of the BER certificate.

However, it would probably be beneficial to the purchaser for the solicitor acting to discuss the subject of BER certificates, particularly if the purchaser was likely to be reselling the property in the near future. Obviously, if the purchaser is buying a property to refurbish it or extend it, the BER certificate obtained from the vendor will be worthless as soon as that work is done, and a new BER certificate will be required before the purchaser sells or lets the property. If the purchaser has no intention of selling in the immediate future or of altering the house, it might be useful to keep a copy with the deeds. For that reason, the committee has decided to add a request for a copy of the BER certificate to the non-title information sheet forming part of the standard contract for sale when a new edition of the contract document is being printed. The request will be along the lines of: *"Furnish BER certificate or confirm that it has been furnished to the proposed purchaser"*.

Are obligations under the regulations cumulative?

The committee's view is that it is probably not the intention of the regulations that the obligation to

produce a BER certificate is cumulative. If the vendor produces a BER certificate to a prospective purchaser, it is felt that it is not necessary for the estate agent or the solicitor to do so as well. It would nevertheless be prudent for a solicitor to ensure that the appropriate certificate was produced by either of the other parties. However, the fact that other persons simultaneously have the obligation to produce a BER certificate does nothing, in the view of the committee, to alleviate the obligation of a solicitor acting as agent to produce such a certificate.

Is there a continuing duty?

The requirements of the regulations do not impose an obligation for a building to have a current or existing BER certificate. It may be prudent to keep such a certificate as evidence that the regulations were complied with at a relevant time. However, there does not seem to be any penalty for being the owner of a building that does not have a BER certificate. The only other apparent benefit in retaining the certificate for as long as it is valid is in case the purchaser subsequently wishes to dispose of the property.

It is not considered by the committee that a solicitor who has acted in a sale has any ongoing obligation to maintain a BER certificate. However, as mentioned already, it is a useful document that could with advantage be kept with the title deeds.

However, if not so kept, it is replaceable in the sense that a new assessment can be obtained, although this would be a matter of some expense for the client.

What if a BER certificate is rendered invalid?

In the normal course of things, a BER certificate remains valid for ten years, after which a further assessment is required in the event of a sale or letting. Article 16(5) creates a particular difficulty, insofar as a perfectly valid BER certificate may be rendered invalid in circumstances where there is:

- a) A significant deterioration of the fabric (of the building),
- b) An extension, or
- c) A change in the heating system or type of fuel used.

It seems logical, therefore, that if an invalid certificate is offered to a prospective purchaser/lessee, there would be a failure to comply with article 7(2), because the certificate is invalid and hence no certificate is produced. It is not clear how or in what circumstances an assessment will be made as to whether any of the changes of the type referred to above have occurred. However, if, on a spot check, it is found that an invalid certificate is proffered, any of the owners or agents involved may inadvertently cause a breach of article 7(2). The only protection that a solicitor might obtain, in the circumstances where a BER certificate is not a

recently issued one, is to obtain a written declaration from the client that the circumstances set out in article 16(5) have not occurred. Regrettably, the term 'significant deterioration in the fabric' is not defined in the regulations, and, thus, little guidance can be gleaned. An extension to the building or change in the heating system or type of fuel may be more obvious. It is possible that multiple BER certificates may be needed in the event of substantial renovations and/or extensions.

Penalties for breach of the regulations

While it would appear that failure to produce a BER certificate does not have any consequences in conveyancing terms for the title or for the validity of the transaction, failure to comply with the regulations renders the person concerned liable to prosecution. Article 10 provides that a person who contravenes any requirement of the regulations commits an offence. Such an offence is punishable by fine on summary conviction not exceeding €5,000 and, in the case of a breach of article 23(3), which essentially refers to the obstruction of an authorised officer, may also include a term of imprisonment.

Useful websites:

- www.environ.ie
- www.oireachtas.ie
- www.sei.ie

Conveyancing Committee

NEW CIRCUIT COURT RULES FOR FAMILY LAW MATTERS

Practitioners should be aware that new Circuit Court rules dealing with family law matters are due to be published shortly. It is understood that these rules will have effect from October 2008 for proceedings instituted after that date, although some transitional provisions will con-

tinue to apply for Circuit Family Court proceedings instituted prior to that date.

At time of writing, the Family Law Committee has not seen a copy of these rules, but our understanding is that they will introduce fundamental changes to Circuit Court practice through-

out the country, to include a requirement to serve all relevant vouching documentation, together with affidavits of means and the introduction of case-management conferences. The objective is also to harmonise Circuit Family Court practice throughout the country.

When the rules have been made available, a detailed practice note will be provided in the *Gazette*. The Law Society Family Law Conference on 5 December 2008 will also include the new rules in its list of topics.

Family Law Committee

GARDA STATION (LEGAL ADVICE) SCHEME – FEES INCREASE

Practitioners may wish to note that the fees payable under the Garda Station (Legal Advice) Scheme have been increased and are now as follows:

- Visit between 9am-7pm (Monday to Friday): €130.81, with effect from 1 September 2008,
 - Visit between 7pm-9am (Monday to Friday) and on weekends and bank holidays: €177.87, with effect from 1 September 2008,
 - Telephone consultations: €53.27, with effect from 1 September 2008,
 - Extension hearings: €271.13, with effect from 1 September 2008.
- Criminal Law Committee*

NOTICE OF A POSITIVE CALL-OVER OF THE DUBLIN PERSONAL INJURY LIST

By direction of Mr Justice Quirke, there will be a positive call-over during the first week of the Michaelmas term.

It is proposed to positively call 800 cases on 7, 9 and 10 October 2008. These cases will

be taken from the top of the master list for the Trinity Term, which was published on 22 May 2008.

The three lists have been published in the *Legal Diary*, which is available at www.courts.ie. Where there is no

appearance, the action will be struck out and the case removed from the list. Where for other reasons the notice of trial is set aside, the case will similarly be removed from the list.

In either case, the parties may not serve a new notice of

trial and set the case down again without application to the court, on notice. They may not re-enter the original notice of trial.

Practitioners should notify the registrar of any actions that are settled.

Litigation Committee

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NOTES

1. Persons wishing to attend must apply through SYS.
2. Accommodation is limited and will be allocated on first-come, first-served basis, in accordance with the procedure set out below.
3. Conference fee is €295 p.p.s. for two nights' accommodation (with breakfast), pre-dinner drinks reception, gala dinner and conference materials.
4. One application must be submitted per room per envelope together with cheque(s) for the Conference Fee and a stamped self-addressed envelope. All applications must be sent by ordinary prepaid post and only applications exhibiting a postmark dated FRIDAY 26 September 2008 or after will be considered. Rejected applications will be returned. Successful applications will be confirmed by email.
5. Names of delegates to whom the cheque(s) apply must be written on the back of the cheque(s).
6. Cancellations must be notified to Simon.Hannigan@arthurcox.com on or before on Friday 17 October 2008. Cancellations after that date will not qualify for a refund.
7. There are a limited number of twin rooms and/or double rooms. Please tick one of the following options for your preferred accommodation (the SYS cannot guarantee that delegates will be allocated their preferred choice). If nothing below is indicated, rooms will be allocated at the committee's discretion.

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legislation update

14 June – 20 August 2008

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act.

ACTS PASSED

Chemicals Act 2008

Number: 13/2008

Contents note: Regulates and controls the manufacture, use, placing on the market, export, import, transport, testing, storage, classification, labelling and packaging of chemicals. Makes provision in relation to major accident hazards and the prevention of accidents involving chemicals. Makes further provision in relation to the operation of regulation (EC) 304/2003 concerning the export and import of dangerous chemicals, regulation (EC) 648/2004 on detergents and regulation (EC) 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals and establishing a European Chemicals Agency, and provides for related matters.

Date enacted: 9/7/2008

Commencement date: 15/7/2008 for all sections of the act (per SI 273/2008).

Civil Law (Miscellaneous Provisions) Act 2008

Number: 14/2008

Contents note: Makes a number of amendments to the *Solicitors Acts 1954-2002*. Effects changes to the composition of committees appointed by the Council of the Law Society, including a majority of

lay membership of regulatory committees. Provides that the Law Society can direct a solicitor to pay compensation to a client for loss suffered as a result of providing inadequate legal services. Provides that the charging of excessive fees may constitute misconduct by a solicitor. Makes provision for the enforcement of orders of the Solicitors Disciplinary Tribunal. Declares, for the avoidance of doubt, that the Law Society has, and always has had, the power to investigate complaints of misconduct against solicitors. Also declares, for the avoidance of doubt, that the Society has the power to investigate alleged misconduct by an apprentice. Provides for a limit on civil liability in a contract agreed between a solicitor and client and the consequent repeal of section 7 of the *Attorneys and Solicitors Act 1870*. Reduces from five to four the number of years a solicitor must have been at some time in continuous practice before he or she can take an apprentice without the written consent of the Law Society. Makes further amendments to the *Solicitors Acts*. Makes various amendments to the *Courts and Court Officers Acts*, including provisions relating to videoconferencing in civil proceedings and certain anonymity in certain civil proceedings. Amends the *Landlord and Tenant (Amendment) Act 1980* to enable parties to a business tenancy to contract out of the provisions of part II of the act, conferring the right to a new tenancy, provided that the tenant has received independent legal advice. Makes amendments to the *Statutory*

Declarations Act 1938, the *Standards in Public Office Act 2001*, the *Juries Act 1976*, the *Bankruptcy Act 1988*, the *Succession Act 1965*, the *Video Recordings Act 1989*, the *Censorship of Films Act 1923*, the *Parental Leave Act 1998*, the *Civil Service Regulation Act 1956*, the *Family Law Act 1995*, the *Family Law (Divorce) Act 1996*, the *Equal Status Act 2000* (for the purposes of giving effect to directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services), the *Civil Legal Aid Act 1995* and the *Employment Equality Act 1998*, and provides for related matters.

Date enacted: 14/7/2008

Commencement date: 20/7/2008 for all provisions of the act other than the following provisions, which have different commencement dates: 1/8/2008 for part 2 (ss5-32, 'Courts and court officers'), other than ss18, 20, 21 and 22, which come into operation on 1/10/2008; 1/10/2008 also for s3(1) and part 1 of the schedule, insofar as they relate to the repeal, to the extent specified in column 3 of the schedule, of the provisions of the *Courts of Justice Act 1947*, the *Courts of Justice Act 1953*, the *Courts (Supplemental Provisions) Act 1961*, the *Courts Service Act 1998* and the *Courts and Court Officers Act 2002*; 1/1/2009 for ss34 and 39 and for part 6 (ss54-64, 'Juries') (per SI 274/2008)

Dublin Transport Authority Act 2008

Number: 15/2008

Contents note: Provides for

the establishment of the Dublin Transport Authority, which will have overall responsibility for surface transport in the greater Dublin area, including the procurement of public transport infrastructure and services. Sets out the authority's structure, functions and powers and its relationship with other statutory bodies and transport providers in the greater Dublin area. Amends the *Planning and Development Act 2000*, the *Transport (Railway Infrastructure) Act 2001*, the *Dublin Docklands Development Authority Act 1997*, the *Grangegorman Development Agency Act 2005*, the *Road Transport Act 1986* and the *Transport (Reorganisation of Córás Iompair Éireann) Act 1986*. Provides for the dissolution of the Dublin Transportation Office and provides for related matters.

Date enacted: 15/7/2008

Commencement date: Commencement order(s) to be made for all sections other than part 2 (ss8-43, 'Dublin Transport Authority') and part 6 (ss102-110, 'Dissolution of DTO and transfer of employees of DTO and RPA') (per s4 of the act). Establishment-day order to be made (per s8) to establish the Dublin Transport Authority and a dissolution-day order to be made (per s102) to dissolve the Dublin Transportation Office; 1/8/2008 for part 1 (ss1-7, 'Preliminary and general) and part 7 (ss111-115, 'Matters relating to CIE and RPA') other than ss114 and 115(2), and for part 8 (s116, 'Railway works etc on St Stephen's Green') and part 9 (s117, 'Transport officers') (per SI 291/2008)

Electricity Regulation (Amendment) (EirGrid) Act 2008**Number:** 11/2008

Contents note: Expands the functions of EirGrid, the electricity transmission system operator, to include the construction, ownership and operation of an interconnector, subject to the grant of relevant licences and authorisations by the Commission for Energy Regulation. Provides in primary legislation for subsidiaries of EirGrid, for an increase in the amount of money that EirGrid may borrow and for its total capital expenditure. Amends the *Electricity Regulation Act 1999* in relation to interconnectors.

Date enacted: 8/7/2008**Commencement date:** 8/7/2008**Intoxicating Liquor Act 2008****Number:** 17/2008

Contents note: Amends the *Licensing Acts 1833-2004* and the *Criminal Justice (Public Order) Act 2004* in order to introduce reforms relating to the sale and consumption of alcohol, including measures to improve compliance with, and enforcement of, licensing law.

Date enacted: 21/7/2008

Commencement date: Commencement order(s) to be made (per s1(5) of the act): 30/7/2008 for all sections of the act other than s9 (location of sale in supermarkets, and so on) and s14, insofar as it relates to the insertion of s37C (test purchasing) into the *Intoxicating Liquor Act 1988* (per SI 286/2008)

Legal Practitioners (Irish Language) Act 2008**Number:** 12/2008

Contents note: Provides that the King's Inns and the Law Society shall have regard to the status of the Irish language as the first official language and, in particular, shall, insofar as it is reasonable for both organisa-

tions to do so, seek to ensure that an adequate number of practitioners are able to practise law through the Irish language. Provides that both organisations shall establish courses of study in the Irish language and provide registers, which will be made available to the public, showing details of those practitioners who are able to provide legal services through the Irish language, and provides for related matters. Repeals the *Legal Practitioners (Qualification) Act 1929*, which provided for the passing of a compulsory Irish examination for persons wishing to become barristers or solicitors. Amends the *Solicitors Act 1954*.

Date enacted: 9/7/2008**Commencement date:** 9/7/2008**Nuclear Test Ban Act 2008****Number:** 16/2008**Contents note:** Gives effect to

the United Nations *Nuclear-Test-Ban Treaty* adopted by the UN General Assembly on 10/9/1996.

Date enacted: 16/7/2008

Commencement date: Commencement order(s) to be made (per s17(2) of the act)

Prison Development (Confirmation of Resolutions) Act 2008**Number:** 10/2008

Contents note: Confirms the resolutions approving the development of a prison in the district electoral division of Fingal, as passed by Dáil Éireann on 17/6/2008 and Seanad Éireann on 18/6/2008.

Date enacted: 2/7/2008**Commencement date:** 2/7/2008**SELECTED STATUTORY INSTRUMENTS****Agriculture Appeals Act 2001 (Amendment of**

1348/2000 (on service of judicial and extrajudicial documents in civil and commercial matters – the *Service Regulation*) and regulation (EC) 44/2001 (on jurisdiction, recognition and enforcement of judgments in civil and commercial matters – *Brussels I Regulation*).

Commencement date: 9/7/2008**Circuit Court Rules (Trial) 2008****Number:** SI 189/2008

Contents note: Substitute a new rule 3 in order 33 and a new rule 4(13) in order 59 of the *Circuit Court Rules 2001* (SI 510/2001) to provide that a notice of trial for the Dublin circuit shall be completed first in the Circuit Court Office before being served and to require that at least 21 days notice of the date fixed for trial be given to the parties.

Commencement date: 9/7/2008**Circuit Court Rules (County Registrar) 2008****Number:** SI 191/2008

Contents note: Insert a new sub-rule 1(4) in order 18 of the *Circuit Court Rules 2001* (SI 510/2001) to empower a county registrar to make an order for the delivery of a further and better statement of the nature of the claim or defence or counterclaim, or further and better particulars.

Commencement date: 9/7/2008**Circuit Court Rules (Jurisdiction, Recognition, Enforcement and Service of Proceedings) 2008****Number:** SI 188/2008

Contents note: Amend orders 14, 14B and the interpretation of terms provisions of the *Circuit Court Rules 2001* (SI 510/2001) to provide for the extension to the Kingdom of Denmark of regulation (EC)

Schedule) Regulations 2008**Number:** SI 169/2008

Contents note: Amend the schedule to the *Agricultural Appeals Act 2001*. The schedule specifies the schemes that are covered by the act. The schedule, as amended, is set out in the regulations.

Commencement date: 29/5/2008**Building Regulations (Part L Amendment) Regulations 2008****Number:** SI 259/2008

Contents note: Amend part L of the *Building Regulations 1997* (SI 497/1997). Introduce a non-domestic energy assessment procedure (NEAP), a new methodology for measuring the energy demand and CO₂ emissions of new non-domestic buildings. Revoke and consolidate previous amendments to part L of the *Building Regulations*.

Commencement date: 10/7/2008, subject to article 4 of the regulations**Child Abduction and Enforcement of Custody Orders Act 1991 (Section 4) (Hague Convention) Order 2008****Number:** SI 220/2008

Contents note: Specifies the states that are contracting states to the *Hague Convention on the Civil Aspects of International Child Abduction*, 25/10/1980, for the purposes of part II of the *Child Abduction and Enforcement of Custody Orders Act 1991*, and sets out the texts of the declarations and reservations that have been received by the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Commencement date: 25/6/2008**Copyright and Related Rights (Register of Licensing Bodies for Performers' Property Rights) Regulations 2008****Number:** SI 306/2008

Contents note: Establish the register of licensing bodies for performers' property rights and prescribe certain matters concerning the form of the register.
Commencement date: 22/7/2008

Court-Martial Rules 2008

Number: SI 205/2008

Contents note: Regulate the pleading, practice and procedure generally in all proceedings before courts-martial under part V of the *Defence Act 1954*.

Commencement date: 1/9/2008

Courts-Martial (Legal Aid) Regulations 2008

Number: SI 206/2008

Contents note: Revoke the previous *Courts-Martial (Legal Aid) Regulations*. Prescribe the procedure for the grant in certain cases of free legal aid to persons charged with, or convicted of, offences against military law. Prescribe the scale of fees and expenses payable in such cases.

Commencement date: 2/7/2008

Defence (Amendment) Act 2007 (Commencement) Order 2008

Number: SI 254/2008

Contents note: Appoints 1/9/2008 as the commencement date for the provisions of the act not already in operation.

European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) (Amendment) Regulations 2008

Number: SI 316/2008

Contents note: Amend the *European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006* (SI 290/2006) in order to designate competent authori-

ties for two directives that were not provided for in the original regulations. Designate the National Consumer Agency for the purposes of directive 2005/29/EC concerning unfair business-to-consumer commercial practices and the Irish Medicines Board for the purposes of directive 2001/83/EC on the community code relating to medicinal products for human use: articles 86 to 100, as last amended by directive 2004/27/EC.

Leg-implemented: Reg (EC) 2006/2004, as amended by dir 2005/29/EC

Commencement date: 1/8/2008

European Communities (Energy Performance of Buildings) (Amendment) Regulations 2008

Number: SI 229/2008

Contents note: Amend the *European Communities (Energy Performance of Buildings) Regulations 2006* (SI 666/2006) to provide for a building energy rating (BER) certificate for buildings other than dwellings.

Leg-implemented: Dir 2002/91

Commencement date: 1/7/2008

European Communities (Free Movement of Persons) (Amendment) Regulations 2008

Number: SI 310/2008

Contents note: Amend the *European Communities (Free Movement of Persons) (No 2) Regulations 2006* (SI 656/2006) to provide that qualifying family members and permitted family members of EU citizens who are not themselves EU citizens may enter the state in the company of, or seek to join, these EU citizens without having previously been lawfully resident in another EU member state. These amending regulations reflect the ECJ decision of 25/7/2008 in Case C-127/08, *Metock and others*.

Leg-implemented: Dir 2004/38/EC

Commencement date: 31/7/2008

European Communities (Milk Quota) Regulations 2008

Number: SI 227/2008

Contents note: Make provision in relation to the milk quota regime. Give effect to a number of European regulations. Revoke with saver the *European Communities (Milk Quota) Regulations 2000* (SI 94/2000) and subsequent amending regulations.

Commencement date: 24/6/2003 for regulation 43 ('Offences, etc'); all other provisions deemed to have come into effect on 1/4/2008

European Communities (Motor Insurance) Regulations 2008

Number: SI 248/2008

Contents note: Give effect to directive 2005/14/EC relating to insurance against civil liability in respect of the use of motor vehicles. Amend, in relation to compulsory motor insurance, sections 56 and 62 of the *Road Traffic Act 1961* and the *Road Traffic (Compulsory Insurance) Regulations 1962* (SI 14/1962) and, in relation to the functions of the MIBI, the *European Communities (Fourth Motor Insurance Directive) Regulations 2003* (SI 651/2003).

Commencement date: 4/7/2008

Finance Act 2003 (Commencement of Section 164) Order 2008

Number: SI 308/2008

Contents note: Appoints 28/7/2008 as the commencement date for section 164 of the act. Section 164 allows the Revenue Commissioners to make regulations obliging certain categories of taxpayers, to be specified in the regulations, to file tax returns and pay tax liabilities electronically.

Irish Financial Services Appeals Tribunal Rules 2008

Number: SI 224/2008

Contents note: Regulate the procedure for appeals from appealable decisions of the Irish Financial Services Regulatory Authority to the Irish Financial Services Appeals Tribunal in accordance with part VIIA ('Irish Financial Services Appeal Tribunal') of the *Central Bank Act 1942*, as inserted by s28 of the *Central Bank and Financial Services Authority of Ireland Act 2003*.

Commencement date: 1/8/2008

Medical Practitioners Act 2007 (Commencement) (No 2) Order 2008

Number: SI 231/2008

Contents note: Appoints 3/7/2008 as the commencement date for a number of sections of the act, as amended by the *Health (Miscellaneous Provisions) Act 2007*, in relation to the first meeting of the Medical Council under the act, governance matters, and the processing of complaints concerning registered medical practitioners by the Medical Council. See SI for list of commenced sections.

Planning and Development Regulations 2008

Number: SI 235/2008

Contents note: Amend schedule 2 of the *Planning and Development Regulations 2001* (SI 600/2001) to provide for exemptions in respect of renewable technologies for industrial buildings, business premises and agricultural holdings, and in respect of schools, demolition and private roads.
Commencement date: 2/7/2008

Planning and Development (Amendment) Regulations 2008

Number: SI 256/2008

Contents note: Amend article 9 ('Restrictions on exemption')

of the *Planning and Development Regulations 2001* (SI 600/2001).
Commencement date: 10/7/2008

Recognition of the Professional Qualifications of Dentists (Directive 2005/36/EC) Regulations 2008

Number: SI 263/2008

Contents note: Implement directive 2005/36/EC on the recognition of professional qualifications (as amended by directive 2006/100/EC), insofar as that directive concerns the professions of dental practitioner and specialised dental practitioner.

Leg-implemented: Dir 2005/36; dir 2006/100; dir 2004/38, art 24; dir 2004/83, art 27

Commencement date: 14/7/2008

Rules of Procedure (Defence Forces) 2008

Number: SI 204/2008

Contents note: Revoke all previous *Rules of Procedure (Defence Forces)*. Set out the rules of procedure prescribed by s240 of the *Defence Act 1954*.

Commencement date: 1/9/2008

Social Welfare and Pensions Act 2008 (Section 27) (Commencement) Order 2008

Number: SI 277/2008

Contents note: Appoints 1/11/2008 as the commence-

ment date for section 27 of the act. Section 27 inserts a new part VIA into the *Pensions Act 1990*, containing a range of provisions relating to a regis-

tered administrator of a pension scheme.

Value-Added Tax (Amendment) Regulations 2008

Rules of the Superior Courts (Health (Repayment Scheme) Act 2006) 2008

Number: 190/2008

Contents note: Insert a new order 105B ('*Health (Repayment Scheme) Act 2006*') in the *Rules of the Superior Courts*

1986 (SI 15/1986) to prescribe the procedure applicable in the case of an appeal to the High Court on a point of law under s16(6) of the *Health (Repayment Scheme) Act 2006*.
Commencement date: 9/7/2008

Circuit Court (Fees) Order 2008

Number: SI 201/2008

Contents note: Revokes the *Circuit Court (Fees) Order 2004* (SI 445/2004). Provides for the fees to be charged in Circuit Court offices. Provides for the exemption from fees of certain proceedings, including family law proceedings.

Commencement date: 7/7/2008

Commencement date: 7/7/2008

Supreme Court and High Court (Fees) Order 2008

Number: SI 200/2008

Contents note: Revokes the *Supreme Court and High Court (Fees) Order 2005* (SI 70/2005). Provides for the fees to be charged in the Office of the Registrar of the Supreme Court, the Central Office, the Examiner's Office, the Office of the Official Assignee in Bankruptcy, the Taxing Master's Office, the Accountant's Office, the Office of Wards of Court, the Probate Office and the District Probate Registries. Provides for the exemption from fees of certain proceedings, including family law proceedings.

Commencement date: 7/7/2008

District Court (Fees) Order 2008

Number: SI 202/2008

Contents note: Revokes the *District Court (Fees) Order 2004* (SI 446/2004). Provides for the fees to be charged in District Court offices. Provides for the exemption from fees of certain proceedings, including family law proceedings.

Number: SI 238/2008

Contents note: Amend the *Value-Added Tax Regulations 2006* (SI 548/2006).

Commencement date: 2/7/2008

Voluntary Health Insurance (Amendment) Act 2008 (Commencement) Order 2008

Number: SI 171/2008

Contents note: Appoints 5/6/2008 as the commencement date for all sections of the act other than ss3, 4, 5, and s21 of, and the schedule to, the act, insofar as they relate to the repeal of the provision of the *Health Insurance Act 1994* specified at reference number 2 in the schedule.

Waste Management (Batteries and Accumulators) Regulations 2008

Number: SI 268/2008

Contents note: Promote the recycling of waste batteries. Facilitate the achievement of the targets for collection, treatment, recycling and disposal of waste batteries in an environmentally sound manner.

Leg-implemented: Dir 2006/66/EC, repealing dir 91/157/EEC

Commencement date: 16/7/2008 **G**

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NOTICES: THE HIGH COURT

RECORD NO: 2008 no 30 SA
In the matter of John J Kilraine, solicitor, of Kilraine & Co, Nile Lodge Corner, Galway, and in the matter of the Solicitors Acts 1954-2002

Take notice that, by order of the High Court made on Friday 23 May 2008, it was ordered that John J Kilraine, solicitor, of Kilraine & Co, Nile Lodge Corner, Galway, be suspended from practice as a solicitor until further order of the court. These proceedings were subject to an *in*

camera order which was vacated by the High Court on 23 June 2008.

John Elliot,
 Registrar of Solicitors

RECORD NO: 2008 no 383 SP
In the matter of David G O'Shea, solicitor, formerly practising in the firm of O'Donovan at 73 Capel Street, Dublin 1, and in the matter of the Solicitors Acts 1954-2002

Take notice that, on Friday 23 May 2008, the President of the

High Court made an order that David G O'Shea be suspended from practising as a solicitor until further order and that he not hold himself out as a solicitor until further order. These proceedings were subject to an *in camera* order which was vacated by the High Court on 7 July 2008.

John Elliot,
 Registrar of Solicitors

RECORD NO: 2008 no 385 SP
In the matter of Greg (otherwise

John G) Casey, solicitor, practising in the firm of Casey & Co, North Main Street, Bandon, Co Cork, and in the matter of the Solicitors Acts 1954-2002

Take notice that, on 29 July 2008, the President of the High Court made an order suspending Greg (otherwise John G) Casey from practising as a solicitor or holding himself out as a solicitor until further order.

John Elliot,
 Registrar of Solicitors

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Margaret AM Casey, solicitor, practising as Casey & Company Solicitors at North Main Street, Bandon, Co Cork, and in the matter of the Solicitors Acts 1954-2002 [8372/DT60/07]

Law Society of Ireland (applicant)

Margaret AM Casey (respondent solicitor)

On 17 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- Breached regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report covering her financial year ended 31 December 2005 within six months thereafter, that is, by 30 June 2006,
- Through her conduct, showed a disregard for her own statutory obligations and the Society's statutory

obligations to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients, the solicitors' profession and the public.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €5,000 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of Ambrose Steen, a locum solicitor previously practising at Tara House, Trimgate Street, Navan, Co Meath, and in the matter of the Solicitors Acts 1954-2002 [2851/DT74/07]

Law Society of Ireland (applicant)

Ambrose Steen (respondent solicitor)

On 17 April 2008, the Solicitors Disciplinary Tribunal found that the respondent

solicitor was guilty of misconduct in his practice as a solicitor in that he:

- Failed to issue proceedings on behalf of a named client following a road traffic accident on 3 December 2001, despite being instructed to do so in a timely manner or at all,
- Failed to reply to the Society's correspondence in relation to the complaint, and in particular to the Society's letters of 13 September 2006, 25 September 2006, 4 October 2006, 4 January 2007 and 2 April 2007,
- Failed to comply with a notice served under section 10 of the *Solicitors (Amendment) Act 1994*, and dated 2 April 2007, in a timely manner,
- Failed to comply with an undertaking given to the Society on 12 October 2006 and confirmed by him in a letter dated 31 October 2006,
- Informed the Law Society he was pursuing the claim by letter dated 14 February 2007 when this was not the case.

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €500 to the compensation fund.

In the matter of Daire M Murphy, solicitor, of Lyons Kenny Solicitors, 57 Fitzwilliam Square, Dublin 2, and in the matter of the Solicitors Acts 1954-2002 [3874/DT42/07]

Law Society of Ireland (applicant)

Daire M Murphy (respondent solicitor)

On 8 May 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- Up to the date of the swearing of the grounding affidavit of the Law Society of Ireland on 25 May 2007, failed to comply in full with the undertaking given by him to the complainant's firm and failed to so do despite requests for compliance by the complainant, and

- b) Failed, in particular, up to the date of the swearing of the Society's grounding affidavit, to furnish deeds of release of mortgage in respect of the mortgages in favour of ICC Bank (now Bank of Scotland), as required by the terms of the said undertaking.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €7,500 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, and witnesses' expenses, as taxed by a taxing master of the High Court, in default of agreement.

In the matter of Ian Quentin Crivon and David Frawley, solicitors practising under the style and title of O'Hagan Ward & Company, Solicitors, 31/33 The Triangle, Ranelagh, Dublin 6, and in the matter of the *Solicitors Acts 1954-2002* [8308-2196/DT73/07] *Law Society of Ireland (applicant)*

Ian Quentin Crivon (first-named respondent solicitor)
David Frawley (second-named respondent solicitor)

On 15 May 2008, the Solicitors Disciplinary Tribunal found the first-named respondent solicitor and the second-named respondent solicitor guilty of misconduct in their practice as solicitors in that they failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 October 2006 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001) in a timely manner or at all.

The tribunal ordered that:

- a) The first-named respondent solicitor do stand censured,

- b) The second-named respondent solicitor do stand advised and admonished,
- c) The first-named respondent solicitor pay a sum of €1,500 to the compensation fund,
- d) The second-named respondent solicitor pay a sum of €1,000 to the compensation fund,
- e) The first-named respondent solicitor and the second-named respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Matthew Breslin, solicitor, practising under the style and title of Donal J O'Neill & Co, Solicitors, at 3 Denny Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002* [7159/DT35/07] *Law Society of Ireland (applicant)*
Matthew Breslin (respondent solicitor)

On 20 May 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to complete a conveyance of property as instructed, in that he did not register in the Registry of Deeds the deed of conveyance of the transferor to the transferee,
- b) Misrepresented to the Society, in a letter dated 26 October 2005, that he had taken all steps required of him in relation to the transferee,
- c) Provided the complainant with false and/or misleading information, as evidenced in her letter to the Society dated 5 October 2005, by representing to her that the transfer had gone through when it had not,
- d) Sought to prevent the

Society investigating the matter by falsely stating in the same letter that the complainant's suggestion that he may not have completed the transfer properly in her email letter dated 5 October 2005 initiating the complaint was grossly and factually inaccurate, when he knew that in fact he had not completed the transfer,

- e) Sought to further prevent the Society investigating the matter by falsely stating in a letter to the Society, dated 27 January 2006, that any allegations made had been falsely and unduly made against him,
- f) Failed to provide any or any adequate response to the Society's enquiries during its investigation as to whether he had accepted and/or completed instructions to transfer the property the subject matter of the complaint, and in particular failed to respond properly or at all to the Society's letters of 6 October 2005, 20 October 2005, 9 November 2005, 23 November 2005 and 8 December 2005,
- g) Misrepresented in a letter to the Society, dated 31 January 2006, that he did not hold title deeds for the property the subject matter of the complaint when in fact he had received the title documents from the complainant's son,
- h) Provided false and misleading information to the Society by indicating in his letter to the Society, dated 31 January 2006, that he did not have instructions in relation to the property the subject matter of the complaint in circumstances where he subsequently stated that he had accepted and acted upon instructions to transfer the said property,
- i) Caused a colleague to misrepresent to the Complaints and Client Relations

Committee on 1 February 2006 that he had not transferred the property to the complainant when he had in fact obtained the execution of the transfer document, which he had subsequently lost,

- j) By his conduct, caused considerable distress to the complainant, as evidenced by her email letter to the Society dated 28 February 2006,
- k) Falsely alleged in a letter to the Society, dated 6 March 2006, that the emails from the complainant to the Society, and which had been copied to him, were offensive and disturbing and that the complainant was engaging in a witch hunt,
- l) Swore an affidavit on 7 March 2006, and furnished to the Society, falsely stating that he had never dealt with the property the subject matter of the complaint when he had a deed of transfer of the property executed and in respect of which he admitted to the Complaints and Client Relations Committee on 8 March 2006 that he did not know where the deed was,
- m) Falsely stated in a letter to the Society, dated 6 March 2006, that he was furnishing the entire file to the Society but admitted to the Complaints and Client Relations Committee on 8 March 2006 that the correspondence was no longer on the file,
- n) Falsely stated in his affidavit sworn on 7 March 2006 that he held no monies belonging to the complainant and her son when he knew he held €600 received from the complainant's son and which he reimbursed via the Society under cover of letter dated 18 April 2006,
- o) Furnished the committee with false and/or misleading and contradictory information by stating at the committee meeting on 8 March 2006 that he could not have

transferred the property the subject matter of the complaint as he did not have the title deeds to same, in circumstances where he later admitted that he had acted upon instructions but had lost the deed of transfer.

The tribunal made an order that the respondent solicitor:

- a) Do stand censured,
- b) Pay €8,700 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Gerard Burns, a solicitor practising as Burns Nowlan Solicitors at 31 Main Street, Newbridge, Co Kildare, and in the matter of the *Solicitors Acts 1954-2002* [4600/DT22/07]

***Law Society of Ireland* (applicant)
Gerard Burns
(respondent solicitor)**

On 20 May 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with the provisions of section 68(6) of the *Solicitors (Amendment) Act 1994* in relation to a named complainant's personal injury action.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €5,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement.

In the matter of Michael J Butler, a solicitor practising as Michael J Butler Solicitors, 42/43 Main Street, Tipperary, and in the matter of the *Solicitors Acts*

**1954-2002 [2150/DT71/07]
Law Society of Ireland (applicant)
Michael J Butler
(respondent solicitor)**

On 20 May 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 31 December 2006 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (statutory instrument no 421 of 2001).

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €750 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

In the matter of Michael Lynn, a solicitor formerly practising under the style and title of Capel Law, Unit 5, The Capel Buildings, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2002* [7153/DT/15/08 and High Court record no 2008 no 32SA]

***Law Society of Ireland* (applicant)
Michael Lynn
(respondent solicitor)**

On 22 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to comply with an undertaking given to ICS Building Society, dated 6 April 2004, in respect of 8 Cluainbui, Liscarra, Carrick-on-Shannon, to stamp and register mortgage and lodge title documents with the

financial institution in consideration of the lender agreeing to the drawdown of a loan facility in respect of the property,

- b) Failed to comply with an undertaking given to ICS Building Society, dated 6 April 2004, in respect of 9 Cluainbui, Liscarra, Carrick-on-Shannon, to stamp and register mortgage and lodge title documents with the financial institution in consideration of the lender agreeing to the drawdown of a loan facility in respect of the property,
- c) Failed to comply with an undertaking given to ICS Building Society, dated 6 April 2004, in respect of 18 Cluainbui, Liscarra, Carrick-on-Shannon, to stamp and register mortgage and lodge title documents with the financial institution in consideration of the lender agreeing to the drawdown of a loan facility in respect of the property,
- d) Failed to comply with an undertaking given to ICS Building Society, dated 6 April 2004, in respect of 23 Cluainbui, Liscarra, Carrick-on-Shannon, to stamp and register mortgage and lodge title documents with the financial institution in consideration of the lender agreeing to the drawdown of a loan facility in respect of the property,
- e) Failed to comply with an undertaking given to ICS Building Society, dated 6 April 2004, in respect of 26 Cluainbui, Liscarra, Carrick-on-Shannon, to stamp and register mortgage and lodge title documents with the financial institution in consideration of the lender agreeing to the drawdown of a loan facility in respect of the property,
- f) Notwithstanding the earlier undertakings, on 8 December 2004 furnished an undertaking to ACC Bank Limited in respect of a named borrower in respect of the property at 8 Cluainbui, Liscarra, Carrick-on-Shannon,
- g) Notwithstanding the earlier undertakings to ICS, on 28 March 2006 furnished an undertaking to Bank of Ireland in respect of the same property, 8 Cluainbui, Liscarra, Carrick-on-Shannon, in respect of named clients,
- h) Notwithstanding his earlier undertaking to ICS Building Society in respect of 9 Cluainbui, Liscarra, Carrick-on-Shannon, in respect of borrowings on his own behalf or on behalf of a named client, he furnished to ICS Building Society a further undertaking, dated 18 December 2006, in respect of a named client, to be secured on the same title,
- i) Notwithstanding his earlier undertaking to ICS Building Society, he furnished to Ulster Bank Limited an undertaking on 17 December 2004 in respect of the properties 23 and 26 Cluainbui, Liscarra, Carrick-on-Shannon, in respect of further borrowings, to stamp and register the charge in favour of the Ulster Bank Limited,
- j) Misled the Law Society and the complainants in correspondence by failing to indicate that he had signed further undertakings in respect of the same properties and had failed to stamp and register charges or furnish title documents to the complainants in accordance with his undertakings dated 6 April 2004,
- k) Failed to respond to the Law Society's correspondence.

The tribunal ordered the Law Society to bring the report of the tribunal in respect of the respondent solicitor before the

High Court, with recommendations that the respondent solicitor be struck off the Roll of Solicitors, pay a monetary penalty of €1,000,000, and pay the whole of the costs of the Law Society and witness expenses, to be taxed in default of agreement.

On 23 May 2008, the President of the High Court ordered:

- i) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- ii) That the respondent solicitor pay a monetary penalty of €1,000,000 to the Law Society,
- iii) That the Law Society recover from the respondent solicitor the costs of the proceedings before the Solicitors Disciplinary Tribunal and the cost of the application to the High Court when taxed in default of agreement,
- iv) That the files in the matter and the report of the tribunal to the High Court be referred to the Director of Public Prosecutions and to the Fraud Squad to investigate the matters therein.

In the matter of Michael Lynn, a solicitor formerly practising under the style and title of Capel Law, Unit 5, The Capel Buildings, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2002* [7153/DT16/08 and High Court record no 2007 no 50SA] *Law Society of Ireland (applicant)* *Michael Lynn (respondent solicitor)*

On 22 April 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Engaged in conduct tending to bring the solicitors' profession into disrepute by

absenting himself from the jurisdiction and ceasing all cooperation with the Law Society's investigations, notwithstanding assurances by his legal representatives to the President of the High Court that he would fully cooperate with the investigation being conducted by the Law Society,

- 2) Engaged in conduct tending to bring the solicitors' profession into disrepute by fraudulently giving multiple undertakings to financial institutions in respect of the same property,
- 3) Engaged in conduct tending to bring the solicitors' profession into disrepute by, in particular, the manner in which he dealt with lands at Derrockstown, Dunshaughlin, Co Meath, comprised in folio 20883F Co Meath and folio 33630F Co Meath (the Derrockstown property),
- 4) Dishonestly caused or permitted undertakings to be furnished by his practice to three financial institutions, namely First Active, AIB Bank plc and IIB Homeloans Limited, in respect of borrowings advanced by those financial institutions to him/to him and a third party secured on the Derrockstown property,
- 5) Failed to comply with an undertaking given by his practice to solicitors acting for the purchasers of the Derrockstown property by letter dated 1 August 2006 to redeem a mortgage in favour of First Active plc insofar as it affected the Derrockstown property, and to furnish those solicitors with evidence of same,
- 6) Failed to comply with an undertaking given by his practice to the solicitors acting for the purchasers of the Derrockstown property by letter dated 2 August 2006 to remove AIB Bank plc

charges appearing on the Land Registry folio 20883F,

- 7) Failed to lodge the original land certificate MH20883F with the Land Registry so as to enable the purchasers of the Derrockstown property to register their interest in the property, in breach of an undertaking given by his firm by letter dated 1 August 2006 to "deal with any Land Registry queries which may arise on the registration of your client's title",
- 8) Dishonestly failed to make the purchasers of the Derrockstown property aware of all borrowings against the property,
- 9) Deliberately misled the purchasers of the Derrockstown property by permitting a letter dated 1 August 2006 to be sent to the purchasers' solicitors, which stated that there were no dealings pending that affected the Derrockstown property other than those already disclosed, in circumstances where there were other borrowings against the property, which had not been disclosed to the purchasers and in respect of which undertakings had been given by the respondent solicitor's practice to register charges against the said property,
- 10) Failed to comply with an undertaking dated 10 June 2004, signed by an authorised solicitor in the respondent solicitor's firm, to IIB Homeloans Limited, by which the respondent solicitor's firm undertook to ensure the execution of a first legal mortgage/charge on the Derrockstown property in favour of IIB Homeloans Limited and the registration of same so as to ensure that IIB Homeloans Limited obtained a first legal mortgage/charge on the property,

- 11) Failed to comply with an undertaking given by the respondent solicitor to AIB Bank plc, dated 13 July 2001, by which the respondent solicitor undertook to ensure that he had title to the Derrockstown property free from encumbrances save for AIB Bank plc's mortgage/charge and to ensure the execution and registration of a mortgage by him in favour of the bank over the property,
- 12) Dishonestly failed to use the monies received from proceeds of sale of the Derrockstown property to discharge outstanding charges on the property and caused and/or knowingly allowed the monies to be transferred from the client account to companies controlled by him,
- 13) Caused or permitted a deficit to arise on the client account on 21 April 2004 in the sum of, in or around, €279,313, and further sought to remedy the deficit in a manner not permitted by the *Solicitors' Accounts Regulations* (the regulations) by transfers from other clients' accounts,
- 14) Acted dishonestly by failing to disclose to financial institutions to which he had applied for a loan, secured/secured in part on the Derrockstown property, the existence of other borrowings secured/secured in part on the same property,
- 15) Engaged in conduct tending to bring the solicitors' profession into disrepute by, in particular, the manner in which he dealt with Glenlion House, Howth, Co Dublin,
- 16) Dishonestly obtained loans totalling in or around €11,755,000 from three financial institutions, ACC Bank plc, Bank of Scotland (Ireland) Limited and Irish Nationwide Building

- Society, in connection with the purchase of a personal residence, Glenlion House, for the sum of €5,500,000,
- 17) Dishonestly applied funds of €4,125,000, advanced by Irish Nationwide Building Society to the respondent solicitor and his wife for the purchase of Glenlion House, for a purpose other than the purchase of the said property,
 - 18) Dishonestly misrepresented to Irish Nationwide Building Society the purpose for which the loan of €4,125,000 was required,
 - 19) Dishonestly applied funds advanced by Bank of Scotland (Ireland) Limited for the purchase of Glenlion for purposes other than the purchase of the said property,
 - 20) Failed to comply with an undertaking signed by a partner in his firm to Bank of Scotland (Ireland) Limited on 17 April 2007, which undertook to secure for the bank and register a first legal mortgage/charge on the Glenlion property,
 - 21) Failed to comply with an undertaking signed by a partner in his firm on 20 March 2007 to ACC Bank plc to execute and register a charge in favour of ACC Bank plc on the Glenlion property and furnish evidence of same within seven days of completion,
 - 22) Failed to comply with an undertaking signed by a partner in his firm on 16 January 2007 to Irish Nationwide Building Society, which undertook to ensure the execution of a first legal mortgage/charge on the Glenlion property and registration of same in favour of Irish Nationwide Building Society,
 - 23) Falsified or knowingly permitted the falsification of client ledger cards,
 - 24) In particular, falsified or knowingly permitted the falsification of certain client ledger records,
 - 25) Further falsified or knowingly permitted the falsification of a particular client's ledger card,
 - 26) Dishonestly transferred monies from client accounts to fund a personal transaction, that is, the purchase of Glenlion House, without client authority and/or failed to maintain any documentation on the client file recording authorisation of relevant transfers,
 - 27) Permitted falsified documentation to be maintained on a practice file, namely a false document purporting to be a genuine fax dated 14 March 2007 from solicitors for Irish Nationwide Building Society and a false document purporting to be a genuine mortgage offer from Irish Nationwide Building Society dated 5 January 2007,
 - 28) Deliberately attempted to mislead the Law Society's investigating accountant by furnishing her/permitting her to be furnished with the said falsified documentation,
 - 29) Failed to maintain proper practice files in respect of transactions, and in particular failed to maintain correspondence on client files and further failed to maintain vouching documentation on practice files in relation to borrowings from financial institutions,
 - 30) Failed to maintain proper books of account and such relevant supporting documents as would enable clients' monies handled and dealt with by him to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched, in breach of regulation 12(1) of the regulations,
 - 31) Breached regulation 3(4)(i) of the *Solicitors (Practice, Conduct and Discipline) Regulations 1996* (SI no 178/1996) by wrongfully referring to 'Overseas Property Law' on the headed notepaper of the respondent solicitor's practice, notwithstanding the Law Society's refusal to consent to the use of the name 'Overseas Property Law' by the respondent solicitor,
 - 32) Caused a minimum deficit on the client account as of 31 August 2007 in the amount of €702,823,
 - 33) Misappropriated further client monies in the amount of €42,000 by debiting a client account,
 - 34) Wrongfully utilised the sum of €42,000 to purchase, on 20 December 2006, two bank drafts for €21,000 each, which he used in the purchase of property for himself at Bessborough Avenue, Dublin 1,
 - 35) Transferred further client monies in the amount of €100,000 from the client account to the office account, debiting the client ledger of a client in circumstances where there was no bill of costs and outlay or any other verifying documentation on the file of that client,
 - 36) Wrongfully debited the client ledger account of the same client with €7,500, which he used to purchase a bank draft in favour of another unrelated client,
 - 37) Withdrew the sums of €64,862.57 and €56,519.57 in July 2007 from the client account to the office account but did not record these transactions in the books of account, in breach of regulation 7 of the regulations,
 - 38) Breached regulation 12(2) of the regulations by failing to maintain books of account that showed the true financial position in relation to the respondent solicitor's transactions with clients' monies,
 - 39) Breached regulation 12(1) of the regulations by failing to maintain proper books of account and such relevant supporting documents as would enable clients' monies handled and dealt with by the respondent solicitor to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched,
 - 40) Breached regulation 8(3)(b) of the regulations by failing to have the necessary supporting documents in respect of bank drafts purchased with clients' monies,
 - 41) Breached regulation 7(1)(a) of the regulations by withdrawing monies from clients' accounts other than as permitted by regulation 7(1)(a)(i) to (iv) inclusive, and where the Society had not given any directions as provided for in regulation 8(4) of the regulations,
 - 42) Breached regulation 8(4) of the regulations by withdrawing clients' monies from the client account other than as permitted by the said regulation,
 - 43) Conducted personal transactions through the client account in breach of the regulations and in particular in breach of regulation 5 of the regulations,
 - 44) Breached regulation 5(4) of the regulations by paying into or holding in a client account monies other than clients' monies,
 - 45) Breached regulation 28(2) of the regulations by failing to provide the information sought by an authorised person conducting an investigation pursuant to the regulations,
 - 46) Breached regulation 7(2) of the regulations by discharging personal expenditure from the client account.

The tribunal ordered the Law Society to bring the report of the tribunal in respect of the respondent solicitor before the High Court, with recommendations that the respondent solicitor be struck off the Roll of Solicitors, pay a monetary penalty of €1,000,000, and pay the whole of the costs of the Law Society and witness expenses, to be taxed in default of agreement.

On 23 May 2008, the President of the High Court ordered:

- i) That the name of the respondent solicitor be struck off the Roll of Solicitors,
- ii) That the respondent solicitor pay a monetary penalty of €1,000,000 to the Law Society,
- iii) That the Law Society recover from the respondent solicitor the costs of the proceedings before the Solicitors Disciplinary Tribunal and the costs of the application to the High Court when taxed in default of agreement, and
- iv) That the files in the matter and the report of the tribunal to the High Court be referred to the Director of Public Prosecutions and to the Fraud Squad to investigate the matters therein.

In the matter of John D Devane, solicitor, practising as John Devane, Solicitor, 7 Quinlan Street, The Crescent, Limerick, and in the matter of the *Solicitors Acts 1954-2002* [7909/DT 79/07]

Law Society of Ireland

(applicant)

John D Devane

(respondent solicitor)

On 12 June 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

- a) Misrepresented the position

of the complainant's action during the course of a meeting with the complainant on 11 May 2005, thus causing the complainant to inadvertently misrepresent the position to the Society in a letter dated 21 June 2005.

- b) Misrepresented to the Society, in a letter dated 24 August 2005, that matters concerning the complainant had now been satisfactorily resolved.
- c) Misrepresented to the Society, in a letter dated 5 October 2005, that he was endeavouring to secure a conclusion to the matter and hoped to do so prior to Christmas 2005, where in fact he was not. Furthermore, he misrepresented that, if the matter did not settle within that period of time, the latest time for settlement would be in the following term.
- d) Provided the complainant with false and/or misleading information, as evidenced in her letter to the Society dated 21 June 2005, by representing to her that the action was being progressed and would either be settled within eight weeks of that date or, failing this, would be heard in court by October 2005 or as soon as possible thereafter.
- e) Failed to provide any adequate response to the Society's inquiries during this investigation and, in particular, failed to respond properly or at all to the Society's letters of 13 March 2006, 27 April 2006, 25 May 2006 and 17 July 2006.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,
- b) Pay a sum of €15,000 to the compensation fund,
- c) Pay the whole of the costs of the Law Society of Ireland, including witness expenses, as taxed by a taxing master of

the High Court, in default of agreement.

In the matter of Thomas Byrne, a solicitor formerly practising under the style and title of Thomas Byrne & Co at 78 Walkinstown Road, Dublin 12, and in the matter of the *Solicitors Acts 1954-2002* [6095/DT60/06, 6095/DT36/08 and High Court record no 2008 no 52SA]
Law Society of Ireland
(applicant)
Thomas Byrne
(respondent solicitor)

On 20 February 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply in a timely manner or at all with undertakings given to Allied Irish Banks plc, and failed to do so despite repeated requests for compliance by the bank,
- 2) Failed in particular to perfect the bank's security for the borrowings of his clients, in breach of the said undertakings,
- 3) Failed to furnish the bank with title documentation and/or mortgage deeds, in breach of the said undertakings,
- 4) Failed to furnish the bank with information regarding the perfection of the bank's security, and in particular information relating to the execution and registration of mortgage charges under the terms of the said undertakings, and failed to provide such information despite repeated requests from the bank,
- 5) Furnished the bank with misleading and/or erroneous information relating to the said undertakings, and in particular in relation to the registration of mortgage charges,

- 6) Failed to comply with the direction of the Complaints and Client Relations Committee, as communicated to the respondent solicitor by letter of 28 July 2005, that he comply with the undertakings given to the bank,
- 7) Failed to comply with the direction of the Complaints and Client Relations Committee, as communicated to the respondent solicitor by letter of 28 July 2005, that he provide information relating to the undertakings given to the bank, as requested by the Law Society in its letter of 18 May 2005, by way of, in particular, a comprehensive response to the bank's letter of 1 March 2005.

The tribunal ordered the Law Society to bring the report of the tribunal in respect of the respondent solicitor before the High Court, with recommendations that the respondent solicitor be struck off the Roll of Solicitors and pay the whole of the costs of the Law Society, to be taxed in default of agreement.

On 22 May 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Fraudulently caused or permitted the signature of an assistant solicitor in his practice to be forged on an undertaking furnished to Irish Nationwide Building Society by his practice, dated 29 March 2007,
- 2) Fraudulently furnished/ permitted to be furnished the said undertaking to Irish Nationwide Building Society, dated 29 March 2007, knowing that the signature thereon, which purported to be the signature of an assistant solicitor in his practice, had been forged,

- 3) Dishonestly obtained a loan for his own personal use and benefit from Irish Nationwide Building Society of in or about €4,545,000 on 30 March 2007 on foot of the said fraudulent undertaking furnished by him/his practice to the said building society, dated 29 March 2007, on his behalf as borrower, in circumstances where he caused or permitted the name of the signatory of the said undertaking to be forged,
- 4) Dishonestly represented to Irish Nationwide Building Society the authenticity of the said undertaking by furnishing the undertaking to them under cover of a letter dated 29 March 2007, signed by him, confirming that an assistant solicitor in his practice is an authorised signatory, in circumstances where he knew that the name of the purported authorised signatory of the said undertaking had been forged,
- 5) Failed to comply with the said undertaking given by his practice to Irish Nationwide Building Society, dated 29 March 2007, in respect of a loan to him in the amount of in or about €4,545,000, and in particular breached the terms of the undertaking by failing to ensure that he had good marketable title to the properties listed in the said undertaking as security for the loan, and further failed to execute, stamp and register charges against the properties in favour of Irish Nationwide Building Society,
- 6) Forged the signature of a solicitor in his practice, on an undertaking furnished to EBS Building Society in respect of a loan to him of, in or about, €1 million secured/secured in part on 103 Clonard Road, Crumlin, Dublin 12,
- 7) Dishonestly caused or permitted undertakings to be given to two financial institutions, namely EBS Building Society and IIB Bank, secured in part on the same property, 103 Clonard Road, Crumlin, Dublin 12,
- 8) Dishonestly repeatedly caused or permitted undertakings to be furnished by his practice to multiple financial institutions in respect of borrowings advanced by financial institutions to him/to him and a third party, secured on the same property/properties,
- 9) Abandoned his practice on or about 19 October 2007 in breach of his duty to his clients and without notification to his clients and/or the Law Society,
- 10) Dishonestly abandoned his practice on or about 19 October 2007 in circumstances where undertakings given by his practice to financial institutions in respect of loans advanced personally to him, and in respect of which loan monies had been drawn down, had not been complied with,
- 11) Prior to abandoning his practice, dishonestly removed files from the practice and, in particular, removed file BYT2010001 (described as relating to lands at Clonee, Co Meath),
- 12) Dishonestly obtained personal loans totalling in or around €21 million by causing or permitting undertakings to be furnished by his practice on his behalf to four financial institutions, namely Irish Nationwide Building Society, Anglo Irish Bank, IIB Bank and EBS Building Society, in respect of personal borrowings secured/secured in part on the same six properties, namely: 165 Cherrywood Drive, Clondalkin; 112 Grangeview Road, Clondalkin; 12 Grangeview Grove, Clondalkin; 15 Grangeview Lawn, Clondalkin; 32 Westbourne Avenue, Clondalkin; and 27 Westbourne Park, Clondalkin ('the six properties'),
- 13) Fraudulently failed to disclose to some/all of the aforesaid four financial institutions that undertakings had already been furnished to other financial institution(s) secured on the six properties,
- 14) Failed to comply in full with some/all of the said undertakings furnished to INBS, Anglo Irish Bank, IIB Bank and EBS Building Society in respect of the six properties,
- 15) Failed to comply with an undertaking given by his practice to INBS on or about 12 October 2006 in respect of monies advanced to him personally and secured in part on the six properties,
- 16) Failed to return title documentation in respect of the said six properties furnished to him by Anglo Irish Bank on trust on 5 September 2007, despite demand pursuant to the terms of accountable trust receipts given by/on behalf of his practice to the said bank,
- 17) Failed to comply with undertakings given by his practice to IIB, dated 6 September 2007, in respect of monies advanced to him in the amount of €9,000,000 and secured in part on the six properties, and in particular failed to submit title documentation to IIB in accordance with the terms of the said undertakings,
- 18) Failed to comply with an undertaking given by/on behalf of his practice, dated 25 June 2007, to EBS Building Society in respect of monies advanced to him in the amount of €3,000,000 and secured in part on the six properties,
- 19) Failed to comply with an undertaking given by/on behalf of his practice, dated 8 August 2007, to EBS Building Society in respect of monies advanced to him in the amount of €1,000,000 and secured in part on the six properties,
- 20) Failed to maintain adequate client and accounting records in respect of transactions involving 102 Boot Road, Clondalkin, Dublin 22 (102 Boot Road),
- 21) Dishonestly caused or permitted multiple undertakings to be given by his practice to numerous financial institutions secured/secured in part on 102 Boot Road,
- 22) Failed to comply with multiple undertakings given by his practice to financial institutions in respect of the borrowings of the respondent solicitor and/or third parties secured/secured in part on 102 Boot Road and failed in particular to register charges in favour of financial institutions against the said property,
- 23) Dishonestly gave an undertaking to ACC Bank on or about 22 April 2004 in respect of a loan to a client in the amount of in or around €1,000,000, secured in part on 102 Boot Road, in circumstances where the said client was not the owner of the said property and further failed to comply with the said undertaking by, in particular, failing to ensure the bank obtained a valid first legal mortgage on the property,
- 24) Dishonestly caused or permitted an undertaking to be given by his practice to EBS Building Society on or about 31 May 2004 in respect of a loan advanced to him in the amount of €945,000, secured in part on 102 Boot Road, in circumstances where he was

- not the owner of the said property and further in circumstances where he had given a prior and conflicting undertaking dated 22 April 2004 to ACC Bank in respect of a loan to a client and, further, failed to comply with the said undertaking to EBS Building Society and in particular failed to register a first legal mortgage against the property in favour of EBS Building Society,
- 25) Dishonestly caused or permitted an undertaking to be given on behalf of his practice to Irish Nationwide Building Society on 29 March 2007 in respect of a loan to him in the amount of in or about €4,545,000 and secured in part on 102 Boot Road in circumstances where prior undertakings given by his practice in respect of the property remained outstanding and further failed to comply with the terms of the said undertaking by failing to execute and register a first legal mortgage against the said property in favour of Irish Nationwide Building Society,
- 26) Dishonestly sought to mislead Irish Nationwide Building Society by writing to Irish Nationwide Building Society by letter dated 18 October 2007 undertaking to complete the certificate of title and to comply with the undertaking given to Irish Nationwide Building Society dated 29 March 2007, which referred to Irish Nationwide Building Society obtaining a first legal mortgage in respect of 102 Boot Road, knowing that similar undertakings had been given by his practice to ACC Bank and EBS Building Society and further in circumstances where he had personally secured a loan of €9 million secured in part on 102 Boot Road from IIB Bank on 7 September 2007 on foot of a further undertaking furnished by his practice,
- 27) Dishonestly offered 102 Boot Road as security for his personal borrowings, knowing that the property was the subject of multiple prior undertakings to other financial institutions, which remained outstanding,
- 28) Dishonestly obtained a loan from IIB Bank in the amount of €9,000,000 on or about 7 September 2007, secured in part on 102 Boot Road, on foot of an undertaking given by his practice to the said bank dated 6 September 2007 in circumstances where the property had previously been offered as security for loans from other financial institutions and in respect of which undertakings given by his practice to register charges against the property in favour of those financial institutions remained outstanding,
- 29) Dishonestly obtained a loan from Irish Nationwide Building Society in the amount of €4,545,000 on or about 30 March 2007, secured in part on 102 Boot Road, on foot of an undertaking given by his practice to the said bank dated 29 March 2007 in circumstances where the property had previously been offered as security for loans from other financial institutions and in respect of which undertakings given by his practice to register charges against the property in favour of those financial institutions remained outstanding,
- 30) Dishonestly obtained loans from Bank of Scotland in the amounts of €3,550,000 and €450,000, secured in part on 102 Boot Road, on or about 1 December 2004 on foot of an undertaking given by his practice to the said bank on 29 November 2004 in circumstances where the property had previously been offered as security for loans from other financial institutions and in respect of which undertakings given by his practice to register charges against the property in favour of those financial institutions remained outstanding,
- 31) Dishonestly obtained a loan from EBS Building Society in the amount of €945,000, secured in part on 102 Boot Road, on foot of an undertaking given by his practice dated 3 June 2004 in circumstances where the property had previously been offered as security for a loan to a third party from another financial institution and in respect of which an undertaking to register a charge given by his practice against the property in favour of that financial institution remained outstanding,
- 32) Failed to ensure the payment of stamp duty in respect of the sale of 102 Boot Road on or about 10 October 2002,
- 33) Failed to ensure the payment of stamp duty on time and within 30 days of the completion of the purchase of 102 Boot Road by a client on or about 4 August 2000,
- 34) Failed to maintain any or any proper records in relation to the payment of stamp duty on transactions involving 102 Boot Road,
- 35) Failed to maintain adequate client and accounting records in respect of transactions involving the property known as Otterbrook, Kilquade, Co Wicklow (Otterbrook),
- 36) Failed to ensure the payment of stamp duty on time and within 30 days of the completion of the purchase of Otterbrook by a client in or about November 2002,
- 37) Failed to maintain any or any adequate vouching documentation in respect of the payment of stamp duty in respect of the said purchase of Otterbrook by the same client,
- 38) Dishonestly caused or permitted multiple undertakings to be given by his practice to multiple financial institutions in respect of borrowings of the same client secured/secured in part on Otterbrook, in circumstances where prior and conflicting undertakings were outstanding and charges in favour of financial institutions were not registered against the said property,
- 39) Failed to comply with undertakings given by him in respect of loans advanced to the same client by ACC Bank (dated 12 August 2003 and 20 June 2007 – loans of €746,218.37 and €1 million), EBS Building Society (dated 28 May 2003 and 31 January 2005 – loans of €1 million and €3 million) and Irish Nationwide Building Society (dated 20 December 2006 – loan of €1,500,000) by failing to register first legal mortgages/charges in favour of the said financial institutions against Otterbrook in accordance with the terms of the said undertakings,
- 40) Dishonestly gave an undertaking to EBS Building Society, dated 26 June 2007, in respect of a loan to the same client in the amount of €1,500,000, secured in part on Otterbrook, in which he undertook to hold all documents of title on accountable trust receipt from EBS

- Building Society and to return all title documents to EBS Building Society as soon as possible or on demand, in circumstances where the said undertaking was in direct conflict with an undertaking he had given to ACC Bank six days earlier, dated 20 June 2007, by which he undertook to secure a first legal mortgage for ACC Bank against Otterbrook and hold all title documents in trust for ACC Bank,
- 41) Dishonestly gave undertakings to Ulster Bank Ireland Limited, dated 10 March 2004 and 1 April 2004, in respect of a loan advanced to the same client in the amount of in or about €1,400,000, secured in part on Otterbrook, by which his practice confirmed to the bank that the title to the said property was unencumbered and undertook if required to attend to the registration of a first legal charge of Ulster Bank Ireland Limited on the property, in circumstances where he/his practice had given prior undertakings to other financial institutions to register first legal mortgages against the said property, which remained outstanding,
- 42) Failed to maintain adequate client and accounting records in respect of transactions involving The Lodge (St Mary's), Blackberry Lane, Delgany, Co Wicklow (The Lodge),
- 43) Dishonestly caused or permitted multiple undertakings to be given by his practice to multiple financial institutions in respect of borrowings of a client secured/secured in part on The Lodge, in circumstances where prior undertakings remained outstanding and charges in favour of financial institutions were not registered against the said property,
- 44) Failed to comply with an undertaking given to EBS Building Society dated 31 January 2005 in respect of a loan advanced to the same client, secured in part on The Lodge, in the amount of €3 million and in particular failed to register a first legal mortgage/charge in favour of EBS Building Society against the said property in accordance with the terms of the said undertaking,
- 45) Dishonestly gave an undertaking to Ulster Bank Ireland Limited, dated 27 July 2007, in respect of loans advanced to the same client in the amounts of €1,400,000 and €1,300,000 and secured in part on The Lodge, in which he undertook to hold all documents of title for The Lodge to the order of Ulster Bank Ireland Limited pending completion of the sale of the property, in circumstances where the said undertaking was in direct conflict with an undertaking given by him to EBS Building Society, dated 26 June 2007, in respect of a loan advanced to the same client in the amount of €1,500,000, secured in part on The Lodge, by which his practice undertook to hold the documents of title for The Lodge on accountable trust receipt to EBS Building Society,
- 46) Failed to maintain adequate client and accounting records in respect of transactions involving 14 Liberty View, Pim Street, Dublin 8 (14 Liberty View),
- 47) Dishonestly caused or permitted multiple undertakings to be given by his practice to multiple financial institutions in respect of borrowings of a client secured/secured in part on 14 Liberty View, in circumstances where prior undertakings remained outstanding and charges in favour of financial institutions were not registered against the said property,
- 48) Failed to comply with an undertaking given by him, dated 22 September 2005, to National Irish Bank in respect of a loan advanced to the same client in the amount of €2 million and an overdraft facility in the amount of €2 million secured in part on 14 Liberty View, and in particular failed to register a first legal mortgage/charge against the said property in favour of National Irish Bank in accordance with the terms of the said undertaking,
- 49) Failed to comply with an undertaking given by him, dated 22 November 2005, to EBS Building Society in respect of a loan advanced to him personally in the amount of €1,607,000, secured in part on 14 Liberty View, and in particular failed to register a first legal mortgage/charge against the said property in favour of EBS Building Society in accordance with the terms of the said undertaking,
- 50) Dishonestly caused or permitted the undertaking dated 22 November 2005 to be given to EBS Building Society, which said undertaking required him to secure a first legal mortgage/charge on 14 Liberty View for EBS Building Society in circumstances where, eight days previously, his practice had given an undertaking to Bank of Scotland, dated 14 November 2005, in relation to a loan also secured in part on 14 Liberty View, by which his practice undertook not to do any act that would enable the property to be mortgaged or assigned without the consent of Bank of Scotland,
- 51) Dishonestly obtained a loan from EBS Building Society on or about 25 November 2005 in the amount of €1,607,000, secured in part on 14 Liberty View, in circumstances where he was not at that time the owner of the said property or, in the alternative, failed to maintain any client or accounting records in relation to the transfer of the property to him,
- 52) Dishonestly caused or permitted multiple undertakings (dated 22 November 2005, 31 January 2007, 25 June 2007 and 8 August 2007) to be given by his practice to EBS Building Society in relation to loans advanced to him personally and secured in part on 14 Liberty View, by which he undertook that a first legal mortgage would be registered in favour of EBS Building Society against the said property and further undertook that his practice would hold the documents of title on accountable trust receipt from EBS Building Society in circumstances where he knew/ought to have known that prior undertakings had been given by his practice in relation to the borrowings of a client also secured in part on 14 Liberty View,
- 53) Allowed continuing deficits on the client account of in or around €5,793,948 at 30 April 2006, in or around €6,867,015 at 31 July 2006 and in or around €7,085,276 at 31 August 2006,
- 54) Caused or permitted deficits to arise on the client account at 30 April 2006 through the use of client monies in a manner not permitted by the *Solicitors' Accounts Regulations* (the regulations),
- 55) Allowed a deficit on the

- client account of in or around €185,000 as of 31 May 2007,
- 56) Dishonestly sought to conceal/permit the concealment of the fact that a deficit had arisen on the client account as of 31 May 2007 and did so by causing or permitting the transfer of funds into the client account on or about 31 May 2007, which represented a date in respect of which an accounting report was required to be drawn up and filed with the Law Society,
- 57) Failed to ensure payment of stamp duty on transactions in respect of which his practice acted and/or failed to maintain proper client and accounting records of payment of stamp duty,
- 58) Caused or permitted flagrant and widespread breaches of the regulations in the keeping of the accounts of his practice,
- 59) Allowed debit balances to arise on the client account in the amount of approximately €185,000 at 31 May 2007, in breach of regulation 7(2)(a) of the regulations,
- 60) Used client monies in a manner not permitted by regulation 7 of the regulations,
- 61) Used client monies for his own personal use in breach of regulation 7(2)(b) of the regulations and/or used client monies for other clients and failed to properly account for such use, in breach of regulation 7(1)(a)(i) and 7(1)(a)(ii) of the regulations,
- 62) Failed to maintain adequate client and accounting records, in breach of regulation 12, and in particular in breach of regulation 12(1), 12(2), 12(3)(a) and 12(3)(b) of the regulations,
- 63) Used suspense accounts in breach of regulation 12(1) and 12(2) of the regulations,
- 64) Failed to maintain accounting records of each client matter and all documents generated in the course of each client matter, in breach of regulation 20(1)(h) of the regulations.
- The tribunal ordered the Law Society to bring the report of the respondent solicitor before the High Court, with recommendations that the respondent solicitor be struck off the Roll of Solicitors, pay a monetary penalty of €1,000,000, and pay the whole of the costs of the Law Society to be taxed in default of agreement.
- On 16 June 2008, the President of the High Court ordered:
- That the name of the respondent solicitor be struck off the Roll of Solicitors,
 - That the respondent solicitor pay a monetary penalty of €1,000,000 to the Law Society, and
 - That the Law Society recover from the respondent solicitor the costs of the proceedings before the Solicitors Disciplinary Tribunal and the costs of the application to the High Court when taxed in default of agreement. **G**

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CONSTITUTIONAL LAW

Statutory interpretation

Insurance law – appeal – risk equalisation – property rights – community rating – Third Non-life Insurance Directive – Health Insurance Act 1994 – SI no 261 of 2003 – SI no 710 of 2003.

On appeal from the High Court, the applicant/appellants challenged the validity of section 12 of the *Health Insurance Act 1994*, which the minister had used to introduce a system of risk equalisation to the health insurance market in the form of community rating in 2003. The appellant alleged that the scheme was unfair insofar as it entailed that it had to pay a large subsidy to its rival on account of their elderly client base. The issue arose as to whether the scheme was *ultra vires* the powers of the minister pursuant to the act.

The Supreme Court held that the minister had misconstrued the power and had acted *ultra vires*. The High Court had erred in law. The intention of the Oireachtas was to be found within an act only. The plain intent of the act was that community rating applied across the market. The best overall interest of all consumers applied across the market. The appeal would be allowed and the scheme of 2003 would be held to be *ultra vires* the minister.

Bupa Ireland Ltd (applicant/appellant) v Health Insurance Authority and Other (respondents), Supreme Court, 16/7/2008, 2007/17 [FL15400]

CRIMINAL LAW

Drink driving

Judicial review – summons – Irish

translation – explanation for delay – whether applicant could obtain leave for review.

The applicant sought leave in judicial review proceedings to restrain his prosecution on a charge for refusing to give a breath sample. The applicant sought to excuse his delay in bringing his proceedings on the grounds that he had to change solicitors so as to assert his rights to Irish translations of certain legal documents. The applicant had sent in a sick certificate on the first day of his trial and then had instigated judicial review proceedings.

Charleton J held that the applicant had not acted promptly and his delay had not been explained. The application would be dismissed.

MacCarthaigh (applicant) v Eire (respondent), High Court, Mr Justice Charleton, 30/5/2008, 2007 no 611 JR [FL15386]

FAMILY LAW

Maintenance

Judicial review – debtor – attachment of earnings order – validity – dependency age – District Court order – Family Law (Maintenance of Spouses and Children) Act 1976.

The applicant sought to review a District Court order for maintenance relating to sums that he was ordered to pay to his former wife and children until the children reached the age of 18. An attachment of earnings order was made consequent upon his failure to pay. The applicant had been living abroad and alleged that he was unaware of the order. The applicant contended that the children reached the age of

majority shortly after the making of the order and that his earnings were being attached relating to an order with which he no longer had to comply, given that his children were not dependent.

Pearl J held that, upon the children reaching the age of majority, the applicant was no longer obliged to pay the maintenance ordered. His former wife had no claim in law to the sums received and the orders sought would be granted in this regard.

McGrath (applicant) v District Court Clerk (respondent), High Court, Mr Justice Peart, 8/4/2008, 2005 no 225 JR [FL15266]

HUMAN RIGHTS

Discrimination

Equality law – human rights law – practice and procedure – delay – discrimination – European Convention on Human Rights – ECHR Act 2003 – Equal Status Act 2000.

The plaintiff teacher contended that the Equality Tribunal was in breach of section 3 of the *European Convention on Human Rights Act 2003* by reason of a delay in determining his discrimination under the *Equal Status Act 2000* within a reasonable time. The plaintiff had applied for masters' programmes in UCD and TCD and was unsuccessful in his application on one course and complained of his treatment to the defendant. He brought allegations of victimisation to the defendant and now alleged that the delay in determining his challenge was in breach of his rights.

Gilligan J held that, in tak-

ing into account all of the circumstances of the case, the delay was not unreasonable and, given the importance of what was at stake, the claim could not succeed. The complaints predated the entry into force of the act and the claim for damages had not been made out. The plaintiff's claim would be dismissed.

Kelly (plaintiff) v Director of Equality Tribunal (defendant), High Court, Mr Justice Gilligan, 11/4/2008, 2005 no 1219P [FL15405]

IMMIGRATION

Irish-born child

Asylum – deportation – judicial review – administrative scheme – right to remain – constitutional and convention rights – Immigration Act 1999 – whether the minister erred in refusing the first-named applicant's application for leave to remain and in making a deportation order.

The first-named applicant was the father of an Irish-born citizen and the husband of the second-named applicant, who had been granted permission to remain in the state. The respondent appealed from the determination of the High Court quashing the minister's decision to refuse the first-named applicant permission to remain in the state under the Irish Born Child Scheme 2005 (IBC 05 Scheme). The appellant also appealed from the judgment of the High Court quashing the minister's decision to make a deportation order under section 3 of the *Immigration Act 1999*, as amended, in relation to the applicant. The applicant's application for permission to

remain was refused on the ground that he failed to meet the requirement of continuous residency in the state since the birth of his child. The applicant had challenged the decision to deport him on the grounds that the minister failed to consider the constitutional rights of the citizen child and failed to identify a grave and substantial reason favouring deportation.

The Supreme Court allowed the appeal in relation to the issue of the scheme and dismissed the appeal relating to the deportation issue, holding that:

- 1) The general facts and law in relation to the scheme were set out in the *Bode* decision. The terms of the IBC 05 Scheme were established clearly by the minister, and the scheme included a requirement of continuous residency in the state with the child. The applicant did not meet that requirement, and therefore the minister acted within the terms of the scheme in refusing his application.
- 1) When deciding to make a deportation order, the minister was required to consider the constitutional and convention rights of the applicants. That included express consideration of, and a reasoned decision on, the rights of the Irish citizen child. The minister failed to do so in this case.

Oguekwe & Others (applicants/respondents) v The Minister for Justice, Equality

and Law Reform & Others (respondents/appellants), Supreme Court, 1/5/2008, SC no 489/2006 [FL15271]

TORT

Personal injuries

Motorcycle accident – negligence – causation – unnecessary risk – evidence – whether failure to protect area of kerb negligent – damages.

The plaintiff, who had been a self-employed plasterer, suffered injuries in a motorcycle race when his bike lost control and mounted a kerb. The plaintiff alleged, among other things, that the organisers of the course had, in breach of their own rules, permitted a support rider confined to riding a 750cc motorcycle to compete on a 1000cc motorcycle, and that they had negligently failed to protect the kerb and thus decrease the risk of injury to him. No issue of *volenti* arose.

Clark J found for the plaintiff, holding that an effort could have been made to minimise the risk of serious injury by conducting a proper risk assessment. The plaintiff would never be able to return to plastering or sport. An award would be made for pain and suffering and loss of job opportunity in excess of €160,000, with costs.

Gordon (plaintiff) v Louth Motorcycle Racing Club (defendant), High Court, Ms Justice Clark, 13/6/2008, 2001 no 15543P [FL15406]

Liability

Negligence – duty of care – liability of local authority for flooding to premises due to drainage works – whether extent of duty of care extending to duty to carry out investigative works to ascertain possibility of existence of substance likely to cause flooding if damaged – nuisance – rule in Rylands v Fletcher – whether defendant ought to have known of facts constituting nuisance.


The plaintiffs sought damages from the defendant for damage to their property caused by flooding. That damage occurred contemporaneously with the carrying out of drainage works by the defendant on adjoining land. It was accepted by the court that the flooding was probably due to the fact that the works had caused an old, obsolete culvert to back up. It was also accepted that the defendant had been unaware of the existence of the culvert. The issue for resolution was whether the defendant ought to have carried out such exploratory works before undertaking the substantive works so as to ensure that such culverts were neither present nor would be affected and likely to cause the damage complained of. The Circuit Court found for the plaintiffs in damages, and the defendant appealed to the High Court on Circuit.

Mr Justice Peart vacated the order of the Circuit Court and dismissed the plaintiffs' claim, holding that:

- 1) Given that it was a safe and reasonable inference that the

only way in which the culvert could have been discovered was if the adjoining land had been dug up in its entirety prior to the completion of the substantive works, it was not reasonable to extend the duty of care owed by the defendant to persons such as the plaintiffs to considering whether there could be pipes or drains on the adjoining land of which it was unaware and which might require to be connected into the new system or otherwise dealt with and, if necessary, carrying out such investigative works to establish that there were none. Accordingly, there was no breach of a duty of care.

- 2) Since speculative excavation of an entire street to ascertain the existence of possible obsolete culverts was an unreasonable burden to impose on a local authority, the defendant was not liable in nuisance, as it was a defence to prove ignorance of the facts constituting the nuisance, unless that ignorance was due to the omission to use reasonable care to discover the facts.

Dempsey (plaintiff/respondent) v Waterford Corporation (defendant/appellant), High Court, Mr Justice Peart, 29/2/2008, 998/03 [FL15278] 

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

Directive on Mediation in Civil and Commercial Matters

According to an EU-wide survey, four out of ten Irish people feel that they would be at a disadvantage in legal proceedings in another EU country. Lack of knowledge of rules of procedure in the other country, language barriers and the cost of legal proceedings factored most in the minds of those surveyed.

The EU recognises that increased access to civil justice abroad is a further key element of European integration and trade. The purpose of the EU *Directive on Mediation in Civil and Commercial Matters* (2008/52/EC) is primarily to promote mediation on a European-wide basis and particularly in cross-border disputes.

The council was acutely aware that the costs of international disputes are largely unsustainable for entities below a certain size and that access to courts in international proceedings is more academic than a practical reality for smaller businesses within the European business community. Clearly, the EU council and parliament accept the long-held view that mediation provides a more cost-effective and quicker resolution of disputes in civil matters than court litigation and that mediation is more likely to preserve the relationship between the disputing parties.

While the directive was drafted solely with cross-border



disputes in mind, there is nothing to prevent a member state adopting the terms of the directive for disputes within that state when adopting the directive into national law.

In force

The directive has been nine years in the making, since the European Council meeting in October 1999. However, on 23 April 2008, the European Parliament formally approved the council's common position on the new *Mediation Directive*. On 21 May 2008, the directive was adopted, published in the *Official Journal* on 24 May, and came into force 20 days later. Ireland has until 21 May 2011 to transpose the directive into national law.

When member states transpose the directive, they will have to decide whether they want to limit their implementing legislation to cross-border cases or whether they also want to apply the provisions of the directive to internal cases. There ought not to be any opposition to adapting the directive for domestic mediation. If anything, the directive will give mediation much greater credence and it will gain much wider acceptance within a still largely sceptical business and legal community in this country.

Key components

The directive is very short. It contains 14 articles, but its brevity will not deter its far-reaching effects.

It has been drafted to cover all civil and commercial disputes. The only civil disputes expressly excluded are revenue, customs or administrative matters or issues involving the liability of the state.

The directive has direct effect where two or more parties in a cross-border context attempt to mediate a dispute through a third-party mediator or where a court directs the parties to mediation.

Member states are encouraged to undertake the training of mediators and the development of, and adherence to, voluntary codes of conduct and other effective quality-control mechanisms concerning the provision of mediation services. Specific reference is made to the *European Code of Conduct for Mediators*. Member states are also encouraged to provide publicly accessible lists of mediators from organisations.

Judges in the EU are now empowered with the right to suggest that the parties attend an information meeting on mediation and, if the judge deems it appropriate, to invite the parties to have recourse to mediation.

Parties are now enabled to give a post-mediation settlement agreement a similar status to a court judgment by rendering it enforceable by way of judicial approval, unless contrary to public policy or national law or it is unenforceable. The preamble to the directive provides for

cross-border enforceability along the same lines as the provisions under Council Regulation 44/2001 (jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) and Council Regulation 2201/2003 (jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility).

The directive also ensures that mediation takes place in an atmosphere of confidentiality and that mediators cannot be compelled to give evidence in subsequent judicial or arbitration proceedings if the mediation fails. This provision is essential to give parties confidence in, and to encourage them to make use of, mediation.

The directive contains a rule

on limitation periods, which ensures that, when the parties engage in mediation, any such period will be suspended or interrupted in order to guarantee that they will not be prevented from going to court as a result of the time spent on mediation. The directive thus preserves the parties' access to justice should mediation not succeed.

The EU intends to review

the application of the directive in 2016 to assess if it needs any further amendment.

The full text of the directive is accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:003:0008:EN:PDF>. **G**

Larry Fenelon is a partner in Leman Solicitors and is a member of the Law Society's Arbitration and Mediation Committee.

Recent developments in European law

CONSUMER LAW

Case C-404/06, *Quelle AG v Bundesverband der Verbraucherzentralen und Verbraucherverbände*, 17 April 2008. In August 2002, Quelle, a mail-order company, delivered a stove set to a German consumer. In early 2004, she noticed that the appliance was defective. A layer of enamel had come away from the interior of the oven. As it was not possible to repair this, she returned it to Quelle, who replaced it with a new appliance. However, Quelle required her to pay €69.97 by way of compensation for the benefit that she had obtained from use of the appliance initially delivered. The Bundesverband, an authorised consumers' association acting as her representative, demanded reimbursement of that amount. It also applied for an order directing Quelle to desist, where goods that are not in conformity with the contract of sale are replaced, from invoicing consumers from the use of those goods. German law allows for those payments. The German court made a reference to the ECJ on the question of whether the provisions of the *Consumer Directive* (1999/44) preclude an obligation on the consumer to compensate the seller of goods that are not in conformity. The court noted that, under the directive, the seller is to be liable to the consumer for any lack of con-

formity in the goods at the time when they are delivered. Where goods are not in conformity, the consumer is entitled to require the seller to repair the goods or replace them (free of charge) unless that is impossible or disproportionate. The 'free of charge' requirement is intended to protect consumers from the risk of financial burdens that might dissuade them from asserting their rights. It is also consistent with the purpose of the directive, which is to ensure a high level of consumer protection. The court held that, if a seller delivers goods that are not in conformity with the contract, it fails to correctly perform the obligation it accepted in the contract of sale. This contrasts with the consumer, who has already paid the purchase price. The seller must bear the consequences of his failure. The seller's financial interests are protected by a two-year time limit and the fact that it may refuse to replace the goods where that remedy would be disproportionate, in that it would impose unreasonable costs on the seller.

ESTABLISHMENT

Case C-210/06, *Cartesio Oktató és Szolgáltató Bt*, opinion of Advocate General Poiares Maduro, 22 May 2008. For a company to be incorporated under Hungarian law, its opera-

tional headquarters must be in Hungary. Cartesio is a limited partnership registered in Hungary. In November 2005, it asked the commercial court to record in the commercial register the transfer of its operational headquarters from Hungary to Italy, but it wished, nonetheless, to remain incorporated in Hungary and thus subject to Hungarian company law. The commercial court rejected this application on the basis that Hungarian law did not permit Hungarian companies to transfer their operational headquarters to another member state. The court held that, in order to change its operational headquarters, Cartesio would first have to be dissolved in Hungary and then reconstituted under Italian law. This decision was appealed to a court of appeal, which made a reference to the ECJ. It asked whether Hungarian legislation preventing a Hungarian company from transferring its operational headquarters to another member state is compatible with EC law. The advocate general stated that the treaty rules on the freedom of establishment clearly apply to this case. The Hungarian rules favourably than purely national situations, as they allow a company to transfer its operational headquarters only within Hungary. Cartesio intended to pursue an economic activity in

another member state. The advocate general indicated that member states do not enjoy an absolute freedom to determine rules relating to companies constituted under their domestic law, irrespective of the consequences for the freedom of establishment. For small and medium-sized companies, a transfer of operational headquarters to another member state may be a simple and effective way of taking up genuine economic activities there without having to face the costs and administrative burden of having to wind up the company in its state of origin and then having to rebuild it completely in the new member state. The process of winding up a company in one member state and then reconstituting it under the law of another member state can take considerable time, during which the company could be prevented from operating altogether. The advocate general considered that preventing a company from transferring its operational headquarters from one member state to another is a restriction on the right of establishment. Such a restriction can be justified on grounds of public interest, such as the prevention of abuse or fraudulent conduct or the protection of creditors, minority shareholders, employees or the tax authorities. In this case, Hungarian law completely precluded a transfer and no justification was stated.

FREE MOVEMENT OF PERSONS

Case C-353/06, *Stefan Grunkin and Dorothee Regina Paul v Leonhard Matthias Grunkin-Paul and Standesamt Stadt Niebüll*, opinion of Advocate General Sharpston, 24 April 2008. A child was born in Denmark to German parents. Following Danish law, the child was registered with the compound surname 'Grunkin-Paul', combining the surnames of his mother and father. When the family moved back to Germany, the authorities refused to recognise the surname of the child. German private international law provides that the name of a person is subject to the law of his/her nationality. According to German law, parents who do not share a married name are to choose either the father's or the mother's surname to be the child's name. A German court made a reference to the ECJ asking whether the relevant provision of German law was compatible with article 12 and 18 of the *EC Treaty*. Advocate General Sharpston held that, in her opinion, a choice of law rule under which a person's name is to be determined in accordance with the law of his nationality is not in itself incompatible with articles 12, 17 or 18 of the *EC Treaty*. However, any such rule must be applied in such a way as to respect the right of each citizen of the EU to move and reside freely in the territory of

the member states. That right is not respected if such a citizen has been registered under one name in accordance with the applicable law of the place of birth, before it becomes necessary to register his name elsewhere and is subsequently required to register a different name in another member state. Thus, the authorities of a member state may not, when registering the name of a citizen of the EU, automatically refuse to recognise a name under which he has already been lawfully registered in accordance with the rules of another member state, unless recognition would conflict with overriding reasons of public interest that admit of no exception.

LITIGATION

Deutsche Bank AG, DB International (Asia) Ltd, Merrill Lynch Labuan Holdings Ltd, Jin Sheng Asset Management Company Ltd v Asia Pacific Broadband Wireless Communications Inc and Asia Pacific Broadband Telecom Co Ltd [2008] EWHC 918 (Comm). By a credit agreement in March 2006, the claimants made available a credit facility of \$210 million to the first defendant, a Taiwanese company that operated a mobile telephone network. The loan was to finance the purchase of equipment from another Taiwanese company, Huawei. The loan was guaranteed by the second defen-

dant, which is the parent company of APBW. Clause 34 provided that the agreement was governed by English law, and clause 35 was an exclusive jurisdiction clause giving exclusive jurisdiction to the courts of England. Withdrawals were made on foot of the credit facility and interest paid on it until December 2006. The chairman of APBW and other members of his family, who controlled both companies, were indicted before the criminal courts of Taiwan for fraud. These allegations gave rise to default under the agreement. In February 2007, new management took over the defendant companies. In March 2007, the claimants made a formal demand for sums outstanding against both defendants. The defendants did not pay and proceedings commenced in the English courts. The defendants argued that the credit agreement was void, as the individuals who entered into it did so as part of a large-scale fraud – the agreement was intended to conceal the removal of \$800 million from the second defendant. In addition, they were not given the proper authorisation by the board of directors. The claimant argued that, even if the agreement was void, it was entitled to the return of its funds on the basis of restitution and that the defendant was liable for misrepresentations about the ability of its agents to enter into agreements on its behalf. However, in terms of this line of argument,

the court had first to determine whether the jurisdiction clause gave the English courts jurisdiction by virtue of article 23, even though the agreement is found to be void. It also had to determine whether these alternative claims fell within the scope of the clause even if it was valid. Faux J held that the interpretation of article 23 is a matter of autonomous EU law. Previous ECJ cases have indicated that the party relying on the jurisdiction clause must demonstrate clearly and precisely that the clause was the subject of consensus between the parties. The court must be satisfied that a good, arguable case has been demonstrated to that effect by the claimant. Faux J held that consensus was not established by external indicia such as the signed agreement, board minutes and representations as to the authority of the agents of the defendants. The mere fact that the relevant jurisdiction clause is in writing forming part of an agreement ostensibly signed by both parties is insufficient in this case, where the alternative claims are predicated upon the agreement containing the jurisdiction clause being unauthorised and void. The ECJ has used concepts such as 'real consent' and 'the independent will of the parties'. This suggests very strongly that the ECJ would not consider that consensus was established simply by showing an agreement signed by an agent who authority to do so was denied. **G**

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Property Registration Authority, Chancery Street, Dublin 7 (published 5 September 2008)

Regd owner: Joseph Carpenter; folio: 2540F; lands: Ridge and barony of Idrone West; **Co Carlow**

Regd owner: Michael Leonard (otherwise Michael Arundel Leonard or Michael A Leonard) and Dorothy Leonard; folio: 5566F; lands: Kilmagarvoe and barony of Rathvilly; **Co Carlow**

Regd owner: Mary O'Leary (deceased); folio: 4780F; lands: Kildavin and barony of St Mullins Upper; **Co Carlow**

Regd owner: James Nolan; folio: 5174F and 168 revised; lands: Knockboy and barony of Rathvilly; **Co Carlow**

Regd owner: Mary McCabe, Ladonigan, Tunnyduff, Bailieboro, Co Cavan; folio: 2719F; lands: Seefin; **Co Cavan**

Regd owner: Thomas L McDermott, Killydream, Loughduff PO, Co Cavan; folio: 11764; lands: Killydream, Callanagh, Clanmahon; **Co Cavan**

Regd owner: John P Carolan, Blackstep, Beglieve PO, Bailieboro, Co Cavan; folio: 160F; lands: Blackstep; area: 14.4278 hectares and 6.3182 hectares; **Co Cavan**

Regd owner: Sean Clarke and Mary Clarke, Church Street, Shercock, Co Cavan; folio: 17612F; lands: Croley; **Co Cavan**

Regd owner: Geraldine Collier; folio: 37584F; lands: townland of Castlepark and barony of Clonderalaw; area: 0.2020 hectares; **Co Clare**

Regd owner: Shaun McNamara; folio: 15418; lands: townland of Gortaficka and Cappaneasta and barony of Bunratty Upper; **Co Clare**

Regd owner: Michael Dwyer; folio: 18113F; lands: townland of

LAW SOCIETY Gazette PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €138.50 (incl VAT at 21%)
- **Wills** – €138.50 (incl VAT at 21%)
- **Title deeds** – €138.50 per deed (incl VAT at 21%)
- **Employment/miscellaneous** – €138.50 (incl VAT at 21%)

These rates will apply from Jan/Feb 2008 to Dec 2008

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for October *Gazette*: 17 September 2008. For further information, contact Valerie Farrell or Laura Wipfler on tel: 01 672 4828 (fax: 01 672 4877)

Cloverhill and barony of Bunratty Lower; area: 6.933 hectares; **Co Clare**

Regd owner: John Howard O'Brien and Claire O'Brien; folio: 29506; lands: townland of Mounthannon and barony of Leitrim; **Co Clare**

Regd owner: Patrick Griffey; folio: 17381 and 14532F; lands: townland of Skehanagh and barony of Islands; area: 11.6554 and 0.213 hectares respectively; **Co Clare**

Regd owner: Maeve Murphy (deceased); folio: 25912; lands: plot of ground situate in the townland of Killumney and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: John Barry and Ann Barry; folio: 10984F; lands: plot of ground situate in the townland of Terry's Land and barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Ellen Cronin; folio: 12532; lands: plot of ground situate in the townland of Curraglass and barony of Orrery and Kilmore in the county of Cork; **Co Cork**

Regd owner: Patrick Curtin; folio: 12138F; lands: plot of ground situate in the townland of Beennaskehy and barony of Fermoy in the county of Cork; **Co Cork**

Regd owner: John Twomey and Johanna Twomey; folio: 55915F; lands: plot of ground situate in the townland of Garranedarragh and barony of Cork in the county of Cork; **Co Cork**

Regd owner: Michael Noel O'Sullivan; folio: 638L; lands: plot of ground situate in the townland of Glashaboy East and barony of Duhallow in the county of Cork; **Co Cork**

Regd owner: Martin Kennedy and Eileen Kennedy; folio 30684; lands: plot of ground situate in the townland of Mountuniacke (ED Killeagh) in the barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: Dermot Coffey and Tom O'Regan; folio: 73610F; lands: plot of ground situate to the north side of Commons Road in the townland of Kilnap and barony of Cork in the county of Cork; **Co Cork**

Regd owner: Noreen O'Mahony and James O'Mahony (deceased); folio: 55110; lands: plot of ground situate in the townland of Slip, known as 1 Slip Park, Slip, Bantry, in the barony of Bantry in the county of Cork; **Co Cork**

Regd owner: Cornelius O'Sullivan, Donal O'Niellan, Prionnsias O'Murchú, Kate O'Brien and Michael Angland; folio: 17053; lands: plot of ground situate in the townland of Garraunawarrig Upper and barony of Dunhallow in the county of Cork; **Co Cork**

Regd owner: Liam Sheehan; folio: 26631; lands: plot of ground situate in the townland of Glentrasna in the barony of Kinnataloon in the county of Cork; **Co Cork**

Regd owner: John McCarthy; folio: 92786F; lands: plot of ground situate in the townland of Kilelooney and in the barony of Condons and Clangibbon in the county of Cork; **Co Cork**

Regd owner: Christopher Murphy and Helen Murphy; folio: 5697F; lands: plot of ground situate in the townland of Coronea, known as Crestview, Coronea, Skibbereen, and barony of Carbery West (East Division) in the county of Cork; **Co Cork**

Regd owner: David Black, Ardahee, Newmills, Letterkenny, Co Donegal; folio: 37768; lands: Ardahee; **Co Donegal**

Regd owner: Solomon Jervis, Mountcharles, Co Donegal; folio: 12110; lands: Mountcharles; **Co Donegal**

Regd owner: Peter J Kennedy, Dunkineely, Co Donegal; folio: 8695; lands: Dunkineely; **Co Donegal**

Regd owner: Mary McGlinchey, Inver Village, Inver, Co Donegal; folio: 38318F; lands: Cranny Lower; area: 0.2700 hectares; **Co Donegal**

Regd owner: Peter Shanahan, Carricknaquigley, Redcastle, Co Donegal; folio: 7154F; lands: Carricknaquigley; **Co Donegal**

Regd owner: Antoin MacGabhann, Letterkenny, Co Donegal; folio: 39338; lands: Ballaghderg; **Co Donegal**

Regd owner: Michael McLaughlin, Carrownaff, Merville, Co Donegal; folio: 6171; lands: Carrownaff; **Co Donegal**

Regd owner: Hugh Breslin and Elizabeth Veronica Breslin, Letterkenny Road, Lifford, Co Donegal; folio: 27153F; lands: Lifford Common; **Co Donegal**

Regd owner: John Clifford; folio: DN74529L; lands: property being flat no 9 on the ground floor of block 2, 'Parklands', situate at Rathfarnham Castle, on the south side of Castleside Drive, in the parish and district of Rathfarnham, city of Dublin; **Co Dublin**

Regd owner: Muriel Janet Heather; folio: DN4902; lands: property situate in the townland of Rush and barony of Balrothery East; **Co Dublin**

Regd owner: Stephen Carrick, Thomas Andrews, John Leonard and Bartholomew Butterly; folio: DN19422; lands: property situate in the townland of Rush and barony of Balrothery East, situate to the north west of Channel Road in the non-municipal town of Rush; **Co Dublin**

Regd owner: Rita Pauline Jameson; folio: DN3939; lands: property situate in the townland of Kiltalown and barony of Uppercross; **Co Dublin**

Regd owner: Catherine O'Shea; folio: DN120574F; lands: property known as 55 The Chantries, Balrothery, in the townland of Hampton Demesne and barony of Balrothery; **Co Dublin**

Regd owner: William Reddington; folio: DN99322F; lands: property known as site no 58 St Andrews Park, situate to the north side of Rathbeale Road in the town and parish of Swords; **Co Dublin**

Regd owner: Seamus McGrath; folio: DN82816F; lands: property situate in the townland of Garristown and barony of Balrothery; **Co Dublin**

Regd owner: Gareth O'Callaghan and Teresa McEvoy; folio: DN154198F; lands: property known as 11 Hunter's Way (formerly site no 24 Hunterswood), Ballycullen Road, and situate in the townland of Oldcourt and barony of Uppercross; **Co Dublin**

Regd owner: Brendan Levelle; folio: DN6797L; lands: property situate in the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: John Mahon; folio: DN13767; lands: property situate on the north side of Marian Park, in the region of Blackrock in the townland of Newtown Castlebyrn and barony of Rathdown; **Co Dublin**

Regd owner: Gerald McDonald; folio: DN16283F; lands: a plot of ground known as 32 Glaslawn Road, situate to the west side of Ballygall Road in the parish and district of Glasnevin; **Co Dublin**

Regd owner: Michael Murray; folio: DN8918; lands: property no 1 and 4 situate in the townland of Commons Lower and barony of Balrothery, property no 2 and 6 situate in the townland of Tobeen and barony of Balrothery West, property no 3 and 5 situate in the townland of Baldwinstown and barony of Balrothery; **Co Dublin**

Regd owner: Vincent Hannigan and Clare Mangan; folio: DN52493F; lands: property known as 45 Shelmalier Road, situate in the parish of St Thomas and district of North Central; **Co Dublin**

Regd owner: Liam Tedford; folio: DN16439; lands: property situate in the townland of Ballymount Great and barony of Uppercross;

Co Dublin

Regd owner: Patrick Fleming and Mary Fleming; folio: 56013; lands: townland of Tawnaghmore (Clareby), Anbally and Caheravoley, and barony of Clare; **Co Galway**

Regd owner: John Joe Folliard; folio: 32659; lands: townland of Farm and barony of Ballymoe; **Co Galway**

Regd owner: Anthony J O'Connor; folio: 52563; lands: townland of Townparks (5th division) and barony of Dunmore; area: 2 acres; **Co Galway**

Regd owner: Martin Enda Thornton; folio: 19371; lands: townland of Spiddle West and barony of Moycullen; area: 7.7649 hectares; **Co Galway**

Regd owner: Helena Keaveney and Sean Lyons (as tenants-in-common); folio: 38275F; lands: townland of Clonbern and barony of Ballymoe; area: 0.3050 hectares; **Co Galway**

Regd owner: Jonathan Naughton and Martina Naughton; folio: 72664F; lands: townland of Cloonagh and barony of Clare; area: 0.2020 hectares; **Co Galway**

Regd owner: Patrick O'Neill and Norrie O'Neill; folio: 2667F; lands: townland of Ballahacommene and barony of Magunihy; **Co Kerry**

Regd owner: Corrina Higgins (formerly O'Brien); folio: 1079F; lands: townland of Dromavally and barony of Trughanacmy; **Co Kerry**

Regd owner: Timothy and Eileen O'Sullivan; folio: 14266F; lands: townland of Gortalinny South and barony of Glanarought; **Co Kerry**

Regd owner: Cornelius J O'Connor; folio: 3199F; lands: townland of Coolick and barony of Magunihy; **Co Kerry**

Regd owner: John P O'Connor and Ellen Monica O'Connor; folio: 27937F; lands: townland of Mullen and barony of Trughanacmy; **Co Kerry**

Regd owner: Terry Boylan Limited of 38 Lower Ormond Quay, Dublin 1; folio: 11661F; lands: townland of Donaghcumper in the barony of Salt South in the electoral division of Donaghcumper; **Co Kildare**

Regd owner: John Donohue (surveyor) of Clane Road, Sallins, Co Kildare; folio: 17256; lands: townland of Firmount Demesne and barony of Clane; **Co Kildare**

Regd owner: Patrick Lennon of Braganza House, Carlow, Co Carlow, William Miller of Presbytery, Newbridge, Co Kildare and Eugene Shine of the Presbytery, Carbury, Co Kildare; folio: 7852; lands: townland of Dreenan in the barony of Carbury in the electoral division of Windmill Cross; **Co Kildare**

Regd owner: Paul McPartlan and

Patricia McPartlan of 20 Royal Meadows, Kilcock, Co Kildare; folio: 30194F; lands: townland of Kilcock and barony of Ikeathy and Oughterany; **Co Kildare**

Regd owner: Kevin Doyle and Michelle Fox of 84 Aylmer Park, Monread Road, Naas, Co Kildare; folio: 27496F; lands: site 84, Aylmer Park, in the urban district of Naas, being part of the townland of Monread South and barony of Naas North; **Co Kildare**

Regd owner: Andrew Gannon of Gurteen, Enfield, Co Kildare; folio: 1699F; lands: townland of Gorteen (Carbury By), known as Gurteen, Enfield, Navan, in the barony of Carbury in the electoral division of Dunferth; **Co Kildare**

Regd owner: Richard John Cross (merchant) of Derrinturn, Carbury, Co Kildare; folio: 11682; lands: townland of Derrinturn in the barony of Carbury in the electoral division of Carbury; **Co Kildare**

Regd owner: Martin Butler; folio: 10891; lands: Tullowbrin and barony of Gowran; **Co Kilkenny**

Regd owner: Thomas Holmes (deceased); folio: 4931 and 5325; lands: Dunningstown and Keatingstown and barony of Crannagh; **Co Kilkenny**

Regd owner: Michael Noel Foskin (deceased); folio: 5384; lands: Deepark and barony of Knocktopher; **Co Kilkenny**

Regd owner: Patrick Walsh; folio: 7818; lands: Knockadrina and barony of Shillelogher; **Co Kilkenny**

Regd owner: Colm Delaney; folio: 12971; lands: Caher and The Derries, barony of Upperwoods; **Co Laois**

Regd owner: John O'Shea; folio: 8128; lands: Grenan and barony of Clarmallagh; **Co Laois**

Regd owner: John Joseph Martin; folio: 16201; lands: townparks known as 8 Emmett St, Mountlelick, Portlaoise and barony of Tinnahinch; **Co Laois**

Regd owner: Bernard Conway, Correnearry, Aughavaus, Co Leitrim; folio: 2651; lands: Killyfea; **Co Leitrim**

Regd owner: Michael Kilkenny and Teresa Kilkenny, Lisdarush, Rossinver, Co Leitrim; folio: 9149F; lands: Lisdarush; **Co Leitrim**

Regd owner: Patrick McCarthy; folio: 21795; lands: townland of Tooreen and barony of Clanwilliam; **Co Limerick**

Regd owner: Jimmy O'Callaghan; folio: 51560F; lands: townland of Abbeyfeale West and barony of Glenquin; **Co Limerick**

Regd owner: Ray Ryan and Joan Ryan; folio: 18965F; lands: townland of Spital-land and barony of

Clanwilliam; Co Limerick

Regd owner: Joseph Conway; folio: 25443; lands: townland of Ballinard and barony of Smallcounty; **Co Limerick**

Regd owner: Brian Frawley; folio: 6438 Co Limerick; lands: townland of Ballylin and barony of Connello Lower; **Co Limerick**

Regd owner: Ann O'Reilly; folio: 27269F; townland of Grange and barony of Smallcounty; **Co Limerick**

Regd owner: Joseph Laffan; folio: 4951 Co Limerick; lands: townland of Woodfarm and barony of Clanwilliam; **Co Limerick**

Regd owner: Alex Stafford and Ruth Stafford; folio: 17755F; lands: townland of Rockstown and barony of Clanwilliam; **Co Limerick**

Regd owner: Harry A Blackwell; folio: 6020F; lands: townland of Tomdeely North and barony of Connello Lower; **Co Limerick**

Regd owner: PJ McCann and Pauline McCann, Barleyfield, Kilcurry, Dundalk, Co Louth; folio: 15080F; lands: Falmore; **Co Louth**

Regd owner: Rosin Lowry, 57 Anadale Crescent, Marino, Dublin 9; folio: 3556F; lands: Lagavoren; **Co Louth**

Regd owner: Raymond O'Brien and Jane Woods, 305 Beechmount Drive, Dundalk, Co Louth; folio: 3572F; lands: Demense; **Co Louth**

Regd owner: Enda Fahy and Gerard Fahy, Monasterboice, Co Louth; folio: 2156; **Co Louth**

Regd owner: Thomas Clarke; folio: 8527; lands: townland of Claggarnagh West and Claggarnagh East and barony of Burrishoole; **Co Mayo**

Regd owner: Michael Kelly (deceased); folio: 36477; lands: townland of Newport and barony of Burrishoole; **Co Mayo**

Regd owner: Sean Gavaghan; folio: 36751F; lands: townland of Lavy Beg and barony of Costello; **Co Mayo**

Regd owner: Sean Cannon; folio: 21608; lands: townland of Lugaphuill and Tully Beg and the barony of Carra; **Co Mayo**

Regd owner: William McSorley and Bridget McSorley; folio: 51263; lands: townland of Kiltimagh and barony of Gallen; **Co Mayo**

Regd owner: Thomas E Regan, Walterstown, Dunsany, Co Meath; folio: 24898; lands: Walterstown; **Co Meath**

Regd owner: Dermot Foyle, Academy Street, Navan, Co Meath; folio: 6260F; lands: Boynehill or Ballagh; **Co Meath**

Regd owner: William Moss and Dolores Moss, 6 New Houses, Ardcaith, Co Meath; folio: 9811F; lands: Bellewstown; **Co Meath**

Regd owner: Edward Maguire and Aileen Maguire, Gainstown, Navan, Co Meath; folio: 11412F; lands: Gainstown; **Co Meath**

Regd owner: Seamus Kindlon, Mullaghshinsha, Inniskeen, Co Monaghan; folio: 9642; lands: Mullaghshinagh; **Co Monaghan**

Regd owner: Patrick and Bernadette O'Reilly; folio: 13344F; lands: Spollanstown and barony of Ballycowan; **Co Offaly**

Regd owner: Mary Ann Broderick; folio: 16652; lands: Moneygall and barony of Clonlisk; **Co Offaly**

Regd owner: Michael Hanley; folio: 11125F; lands: townland of Kilnalosset, Bogwood or Carrowntogher, Killattimoriarty, Aghawerriny, Aghaclogher and barony of Ballintober South; **Co Roscommon**

Regd owner: Michael Staunton; folio: 27832; lands: townland of Attirory and barony of Athlone South; **Co Roscommon**

Regd owner: Paul Tully; folio: 15333F; lands: townland of Castlereagh and barony of Castlereagh; **Co Roscommon**

Regd owner: Gene Cranny; folio: 7703; lands: townland of Fennor and barony of Slievardagh; **Co Tipperary**

Regd owner: William Crowley; folio: 25682F; lands: townland of Clongower and barony of Eliogarty; **Co Tipperary**

Regd owner: Kevin Browne; folio: 35798; lands: townland of Ballybeg and barony of Eliogarty; **Co Tipperary**

Regd owner: Michael Ryan; folio: 21050; lands: townland of Barnagore and Mountisland and barony of Upper Ormond; **Co Tipperary**

Regd owner: Austin White; folio: 669 Co Tipperary; townland of Bishopswood and barony of Kilnmanagh Lower; **Co Tipperary**

Regd owner: Thomas Ryan; folio: 35418 Co Tipperary; lands: townland of Monaquill and barony of Ormond Upper; **Co Tipperary**

Regd owner: Alan O'Neill and Karen Dukelow; folio: 43602F; lands: townland of Barnora and barony of Iffa and Offa West; **Co Tipperary**

Regd owner: Michael McManus; folio: 15772F; lands: townland of Bohercrow and barony of Clanwilliam; **Co Tipperary**

Regd owner: Donal McKenna; folio: 7144F Co Tipperary; townland of Knockalton Upper and barony of Ormond Upper; **Co Tipperary**

Regd owner: Gerry and Martina Coffey; folio: 19662F; lands: townland of Nenagh North and barony of Ormond Lower; **Co Tipperary**

Regd owner: William Horan; folio: 7213; lands: townland of Longstone

and barony of Clanwilliam; **Co Tipperary**

Regd owner: Cait Kiely; folio: 5293F; lands: plot of ground situate in the townland of Islandtarsney South and barony of Middlethird in the county of Waterford; **Co Waterford**

Regd owner: Sterling Winthrop; folio: 9470F; lands: plot of ground situate in the townland of Knockbrack and barony of Decies-without-Drum; **Co Waterford**

Regd owner: Sterling Winthrop; folio: 6235F; lands: plot of ground situate in the townland of (1) Knockbrack, (2) Lackenfune and barony of Decies-without-Drum; **Co Waterford**

Regd owner: Edward Quinlan; folio: 2828; lands: plot of ground situate in the townland of Bawnard and barony of Upperthird in the county of Waterford; **Co Waterford**

Regd owner: Donal O'Connor; folio: 5739; lands: plot of ground situate in the townland of Tinnascart and barony of Decies-within-Drum; **Co Waterford**

Regd owner: Patrick Leacy (deceased); folio: 22641; lands: Ennisecorhy and barony of Scarawalsh; **Co Wexford**

Regd owner: Alex Scallan; folio: 14816; lands: Inish and Ballytiege Slob and barony of Bargo; **Co Wexford**

Regd owner: Peter E Byrne and Martha B Byrne; folio: 22679; lands: Clonatin Lower and barony of Gorey; **Co Wexford**

Regd owner: Richard Bierney of 25 Burnaby Lawns, Greystones, Co Wicklow; folio: 3338L; lands: the south side of Market Square in the town of Bray, being part of the townland of Bray and barony of Rathdown; **Co Wicklow**

Regd owner: Andrew Keating; folio: 1434F; lands: townland of Bamamire and barony of Rathdown; **Co Wicklow**

Regd owner: Mary Lennon, 74 Balally Avenue, Dundrum, Co Dublin; folio: 11768F; lands: townland of Sruhaun in the barony of Talbotstown Upper in the electoral division of Baltinglass; **Co Wicklow**

Regd owner: Joesph McGrath and Elaine Dromey, 7 Broomhall Court, Rathnew, Co Wicklow; folio: 3280F; lands: townland of Merrymeeting and barony of Newcastle; **Co Wicklow**

Regd owner: Edward O'Neill (farmer) of Killinane, Dunlavin; folio: 1166F; lands: townland of Sandyhills and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Thomas Roche, 'The Hollies', Dunlavin, Co Wicklow; folio: 545; lands: townland of Usk and barony of Narragh and Reban East; **Co Wicklow**

Regd owner: William Shannon of Killballyowen, Aughrim, Arklow, Co

Wicklow; folio: 3161; lands: property no 1 – townland of Moneyteige Middle in the barony of Arklow in the electoral division of Arklow rural; property no 2 – townland of Moneyteige South in the barony of Arklow in the electoral division of Arklow rural; **Co Wicklow**

Regd owner: Damien Whelan and Jackie Whelan, 95 Gitspur Wood, Bray, Co Wicklow; folio: 23994F; lands: property no 1 – a plot of ground situate to the east of Oldcourt Park in the parish and urban district of Bray, being part of the townland of Oldcourt and barony of Rathdown; property no 2 – a plot of ground situate to the east of Oldcourt Park in the parish and urban district of Bray, being part of the townland of Oldcourt and barony of Rathdown; property no 3 – a plot of ground situate to the east of Oldcourt Park in the parish and urban district of Bray, being part of the townland of Oldcourt and barony of Rathdown; **Co Wicklow**

Regd owner: Brian Graham (deceased) and Valerie H Graham of Hadleigh, 15 Lindenvale, Blackrock, Co Dublin; folio: 3956F; lands: townland of Killacloran in the barony of Ballinacor South; **Co Wicklow**

Regd owner: Neville Keegan (guest-house proprietor) of 47 Kilgobin Heights, Stepside, Co Dublin; folio: 670L; lands: townland of Cornagower East and barony of Arklow; **Co Wicklow**

Regd owner: Pauline Keogh, Kilmacanogue House, Kilmacanogue, Co Wicklow; folio: 9455F; lands: townland of Kilmacanogue South in the barony of Rathdown in the electoral division of Kilmacanogue; **Co Wicklow**

Cullen, William (Billy) (deceased), late of St Dymphna's Hospital and Marshallstown, Castledermot, Co Kildare, who died 17 March 2008 at St Dymphna's Hospital, Carlow, Co Carlow. Would any person having any knowledge of a will made by the above-named deceased please contact Charles BW Boyle & Son, Solicitors, 70 Middle Abbey Street, Dublin 1; tel: 01 872 1588, fax: 01 873 0706, email: office@boylesolicitors.ie

Curry, Kevin (deceased), late of Cooleroe, Arklow Rock, Arklow, Co Wicklow, formerly of 57 Cedarmoun Road, Mount Merrion, Co Dublin, who died on 29 May 2008 at Dargle Valley Nursing Home, Enniskerry, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased please contact Messrs Neville Murphy & Co, Solicitors, 9 Prince of Wales Terrace, Bray, Co Wicklow; tel: 01 286 0639/286 2491, fax: 01 286 0 72, email: cmurphy@nevillemurphysolicitors.ie

Cussen, Kathleen (deceased), late of Boherdeel, Birr, Co Offaly (retired hairdresser), who died on 9 July 2008. Would any person having knowledge of a will made by the above-named deceased please contact Richard Kennedy & Co, Solicitors, Emmet Street, Birr, Co Offaly; tel: 057 912 1770, fax: 057 912 2055, email: info@richardkennedy.ie

Dooley, John (deceased), late of 37 St Conleth's Road, Greenhills, Dublin 12, who died on 20 February 2008. Would any person having knowledge of a will made by the above-named deceased please contact Richard McGuinness & Co, Solicitors, 24 Sundrive Road, Dublin 12; tel: 01 492 1544, email: info@richardmcguinness.ie

Downes, Noel Jude (deceased), late of 28 Nutgrove Avenue, Rathfarnham, Dublin 14, who died on 10 January 2008. Would any person having any knowledge of a will made by the above-named deceased please contact Nora Gallagher and Company, Solicitors, 5 Ranelagh, Dublin 6; tel: 01 497 6884/497 7606, fax: 014 976 872, email: alison@noragallagher.ie

Gallagher, Patrick Joseph (deceased), late of Mullinalack House, Mullinalack, Kinlough in the county of Leitrim, who died on 18 April 2008 at North West Hospice, Sligo. Would any person having knowledge of a will being made by the above-named deceased please contact Messrs F Hutchinson & Co, Solicitors, The Mall, Ballyshannon, Co Donegal; tel: 071 985 2422, fax: 071 985 2849, email: info@hutchinsonsolsr.com

WILLS

Aherne, John (deceased), late of 5 Lakeview Crescent, Wicklow Town, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased, who died on 16 March 2008, please contact Gleeson McGrath Baldwin, Solicitors, 29 Anglesea Street, Dublin 2; tel: 01 474 4300, fax: 01 474 4343, email: solicitors@gmgb.ie

Cosby, Enid (deceased), late of Stradbally Hall, Stradbally, Co Laois, who died on 11 May 2008. Would any person having knowledge of a will made by the above-named deceased please contact Rolleston Solicitors, Church Street, Portlaoise, Co Laois; tel: 057 862 1329, fax: 057 862 0737, email: info@rollestons.ie; ref: COS0026/124005

Galway (Gallagher), Johanna (Josie) (deceased), late of Breezemount, Adamstown, Co Wexford, and formerly of Misterin, Adamstown, Co Wexford, who died on 23 December 2006. Would any person having knowledge of a will executed by the above-named deceased please contact Coghlan Kelly, Solicitors, Trinity Chambers, New Ross, Co Wexford; tel: 051 421 301, fax: 051 422 793

Gorman, James (deceased), late of Tamlaght, Pettigo, Co Donegal, who died on 4 August 2006. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact VP McMullin, Solicitors, Tirconnell Street, Ballyshannon, Co Donegal; tel: 071 985 1187, fax: 071 985 2057, email: mkennedy@vppmcmullin.com

Gaedke, Widukind (deceased), late of Coolnagree, Adamstown, Co Wexford. Would any person having knowledge of a will made by the above-named deceased please contact Thornton Solicitors, 88 O'Connell Street, Limerick; tel: 061 315 543; fax: 061 315 503

Ingram, Edith (Edie) (deceased), late of 25 St Kevin's Gardens, Dartry, Dublin 6 (formerly 28 St Kevin's Park, Dartry, Dublin 6), who died on 5 July 2008. Would any person having knowledge of a will made by the above-named deceased since the year 1994 please contact Sheehan & Company, Solicitors, 1 Clare Street, Dublin 2; tel: 01 661 6922, fax: 01 661 0013, email: mail@sheehanandco.ie

Kehoe, Dr John E (deceased), late of 1 Holyrood Apartments, Holyrood Park, Sandymount, Dublin 4, who died on 17 May 2008 at the Beacon Clinic, Sandford, Dublin 18. Would any person having knowledge of a will made by the above-named deceased please contact Kate M McMahon, Coffey McMahon Solicitors, 223 The Capel Building, Mary's Abbey, Dublin; tel: 01 872 6945, fax: 01 872 6947, email: kate_mcmahon@cmsolicitors.ie

Lavin, Margaret Patricia (or Patricia) (deceased), late of 530 Collins Avenue, Whitehall, Dublin 9, retired civil servant, unmarried, who died on 5 April 2008 at Beaumont Hospital, Dublin 9. Would any person having knowledge of a will made by the above-named deceased please contact Thomas K Madden & Co, Solicitors, 1 Camlin View, Longford; tel: 043 41192, fax: 043 41561

O'Dowd, Dermot (deceased), late of Loughlinstown, Dun Laoghaire, Co Dublin, who died on 18 April 2008. Would any person having knowledge of a will made by the above-named deceased please contact Mark O'Dowd; tel 086 855 1647, email: markodowd@eircom.net

Smith, Oliver (deceased), late of Breandrum, Farnham, Cavan, Co Cavan. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 27 March 2008, please contact O'Donnell McKenna, Solicitors, Waterloo Place, Donegal Town, Co Donegal; tel: 074 974 0444, fax: 074 974 0455, email: ian@odmk.ie

Smith, Mary (deceased), late of Breandrum, Farnham, Co Cavan. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 11 October 1994, please contact O'Donnell McKenna, Solicitors, Waterloo Place, Donegal Town, Co Donegal; tel: 074 974 0444, fax: 074 970 40455, email: ian@odmk.ie

Walsh, Michael (deceased), late of Caherbroder, otherwise Ballyboy, Gort, Co Galway, who died on 3 May 2008 at Ballyboy, Gort, Co Galway. Would any person having knowledge of a will executed by the above-named deceased on 8 June 2004 please contact Sadleir Lynch Piers Solicitors, Crow Street, Co Galway; tel: 091 631 614, fax: 091 631 909

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Ordinary seven-day publican's (hotel) licence for sale. Contact: Denis O'Mahony of VP McMullin, Solicitors, Port Road, Letterkenny, Co Donegal; tel: 074 912 3033, fax: 074 912 4607

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TITLE DEEDS

McMahon, John Francis (deceased), late of River Street, Cloyne, Co Cork. Would any person having knowledge of the title documentation to River Street, Cloyne, Co Cork, please contact JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, fax: 021 427 3704; ref: 1183/2

Would any person having knowledge of the whereabouts of any title

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documents for **2 Antonia Villas, Southern Road, Cork**, please contact Leo Keaveney at 3 Sullivan's Quay, Cork; email: oeloeloe@gmail.com, tel: 087 229 7992

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Thomas Myles and Jane Myles and in the matter of the property known as The Round House, Church Square, Monaghan, Co Monaghan

Take notice any person having an interest in the freehold estate or any intermediate interests of the property known as The Round House, Church Square, Monaghan, Co Monaghan, held under indenture of lease dated 21 October 1903 between Mary McLoughlin and Katherine McLoughlin of the one part and Bernard McKenna of the other part (hereinafter referred to as 'the lease'), held for a term of 200 years from 29 September 1903 at the annual rent of £35 and subject to the covenants and conditions therein contained.

Take notice that Thomas Myles and Jane Myles intend to submit an application to the county registrar for the county of Monaghan for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and that any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Thomas Myles and Jane Myles intend to proceed with the application to the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to the intermediate interests, including the fee simple in the aforesaid property, are unknown or unascertained.

Date: 5 September 2008

Signed: Myles & Co (solicitors for the applicant), 21 Hillside, Monaghan, Co Monaghan

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by John Francis (otherwise Frank) Murray and John Flynn

Any person having a freehold estate or any intermediate interest in all that and those piece or parcel of ground with the house and premises thereon, formerly known as no 14 St Michael's

Terrace, but now known as no 14 Fairview Strand in the city of Dublin (hereinafter referred to as 'the property'), being part of the lands comprised in a certain indenture of lease dated 1 April 1920 between John Ward of the one part and John Crilly of the other part for a term of 150 years from 25 February 1920, subject to a yearly rent of £13.

Take notice that John Francis (otherwise Frank) Murray and John Flynn, being the persons currently entitled to the lessees' interests in the property, intend to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the property, and any party asserting that they hold a superior interest in the property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the said John Francis (otherwise Frank) Murray and John Flynn intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 September 2008

Signed: Rollestons Solicitors (solicitors for the applicants), Church Street, Co Laois, Portlaoise

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by John Francis (otherwise Frank) Murray and John Flynn

Any person having a freehold estate or any intermediate interest in all that and those piece or parcel of ground with the house and premises thereon, formerly known as no 16 St Michael's Terrace, but now known as no 16 Fairview Strand in the city of Dublin (hereinafter referred to as 'the property'), being part of the lands comprised in a certain indenture of lease dated 1 April 1920 between John Ward of the one part and John Crilly of the other part for a term of 150 years from 25 February 1920, subject to a yearly rent of £13.

Take notice that John Francis (otherwise Frank) Murray and John Flynn, being the persons currently entitled to the lessees' interests in the property, intend to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the property, and any party asserting that they hold a

superior interest in the property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the said John Francis (otherwise Frank) Murray and John Flynn intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 September 2008

Signed: Rollestons Solicitors (solicitors for the applicants), Church Street, Portlaoise, Co Laois

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application under section 17 of the Landlord and Tenant (Ground Rents) Act 1967 by Brian Moore and Fred Moore

Any person having a freehold estate or any intermediate interest in the property known as 2 and 3c St Gerard Street, formerly Charles Street, in the parish of St Michael, which property is bounded on the north by the public footpath on Gerard Street; on the east by the gable wall of no 1 Gerard Street, which said property is currently owned by a Mr Michael Mullen of 1 Gerard Street, Limerick; on the south by the back garden of no 5 Munster Terrace, O'Connell Avenue, owned by Mr Hugh Elliott of 5 Munster Terrace, O'Connell Avenue; and on the west by a public unsurfaced cul de sac, formerly a stable lane leading from Gerard Street, which property is the subject of two indentures of lease, being an indenture of lease dated 13 October 1909 and made between Christina Carrick of the one part and Michael Ryan of the other part for a term of 99 years at a yearly rent of £15 (IR) and an indenture of lease dated 15 July 1914 and made between Christina Carrick of the one part and Michael Ryan of the other part for a term of 99 years at a yearly rent of £10 (IR).

Take notice that Brian Moore and Fred Moore, being the persons currently entitled to the lessees' interest under the said leases, intend to apply to the county registrar of the county of Limerick for the acquisition of the freehold interest and all immediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Brian Moore and Fred Moore intend to proceed with the application before the Limerick county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid premises are unknown and unascertained.

Date: 5 September 2008

Signed: McInerney, Solicitors (solicitors for the applicants), Cleggan House, 46 Eyre Square, Galway

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the lands and premises in the townland of Burnfoot Lower, parish of Burt and barony of Innishowen west and county of Donegal: an application by Irish Drugs Limited

Take notice that any person having any interest in the freehold estate or superior interest in the following premises: all that and those that plot or piece of ground abutting on the County Road leading from Londonderry to Buncrana, having a frontage to said County Road of 73 feet and in the rear 69 feet, 6 inches and extending back from front to rear on the one side or south-east 108 feet and on the other side or north-west 104 feet, 6 inches, be all said several admeasurements a little more or less bounded on the front by the County Road aforesaid, on the south-east by the railway road, and on the south-west and north-west by property of the lessor, which said premises are situate in the townland of Burnfoot Lower in the parish of Burt in the barony of Innishowen West and county of Donegal, as same is more particularly delineated and described on the map endorsed hereon and coloured red, together with the rights, members, easements and appurtenances thereunto belonging to or in anywise appertaining.

Take notice that the applicant, Irish Drugs Limited, being the body entitled under sections 8, 9 and 10 of the Landlord and Tenant (Ground Rents) (No 2) Act 1978, intends to submit an application to the county registrar for the county of Donegal for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property or any of them are called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the said Irish Drugs Limited

intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Donegal for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or are unascertained.

Date: 5 September 2008

Signed: CS Kelly & Co (solicitors for the applicant), Market House, Buncrana, Co Donegal

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application under section 17 of the Landlord and Tenant (Ground Rents) Acts 1967

Description of the property: all that and those that house, garden and out offices, formerly the residence of the late Patrick Larkin, situate at Lower Rath in the barony of Dundalk and county of Louth, held as a tenancy from year to year on the McDonnell Estate, subject to an annual rent of £2.60.

Take notice that the applicant, Sean O'Connor, being the person entitled under section 15 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intends to submit an application to the county registrar for the county of Louth for the acquisition of the freehold interest and the intermediate interest in the aforesaid property.

Take notice that any party asserting to hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Woods Abern Mullen (solicitors for the applicant), Third Floor, Elgee, Building, Market Square, Dundalk, Co Louth

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Pelko Limited

Take notice that any person having an interest in the freehold estate of the

following property: all that the store or warehouse known as number 8 Castleforbes Road, North Wall, in the city of Dublin, held under a lease dated 1 May 1947 made between Brooks Thomas & Company Limited of the one part and The Educational Company Limited of the other part for the term of 99 years from 29 September 1946, subject to the yearly rent of £30.0s.0d thereby reserved and the covenants and conditions therein contained, should give notice of their interest to the undersigned solicitors.

Take notice that Pelko Limited intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest therein is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from this notice.

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

Date: 5 September 2008

Signed: Kelly & Griffin (solicitors for the applicant), 77 Terenure Road North, Terenure, Dublin 6

In the matter of the Landlord and Tenant Acts 1967-1987 and in the matter of an application by St Felim's Diocesan Trust: notice of intention to acquire the fee simple

Take notice that the applicants, being the persons entitled under the above mentioned acts, propose to apply to the county registrar in the county of Cavan on 3 September 2008 to purchase the fee simple in the lands described in paragraph no 1. Any party asserting that they hold a superior interest in the said property are called upon to furnish evidence of title to the below-named within 21 day from the date of this notice.

1. Description of land to which this notice refers: all that and those the parcel of land and premises on which the presbytery or parochial house stands in the town of Virginia, parish of Lurgan, barony of Castlerahan and county of Cavan. Held under indenture of fee farm grant dated 19 June 1862 from the most noble Thomas Marquis of Headfort to the Right Reverend James Browne DD, Catholic bishop of the Diocese of Kilmore, and Reverend John O'Reilly PP, and therein described as the plot or parcel of

ground situate in Bective Place in the town of Virginia in the county of Cavan, the dwelling house, out houses and buildings thereon, containing in front to the street aforesaid 47 feet, in the rear 101 feet, and from front to rear 250 feet, be the same more or less, as more particularly described on the map attached to the said fee farm grant at the annual rent of £5.

2. Particulars of applicants' fee farm grant: the applicants hold the fee farm grant interest in the said lands under the said fee farm grant dated 19 June 1862 and made between the most noble Thomas Marquis of Headfort to the right reverend James Browne DD, Catholic bishop of the Diocese of Kilmore, and Reverend John O'Reilly PP, whereby the lands and hereditaments as therein described.

Date: 5 September 2008

Signed: Aileen Dolan, John V Kelly & Co, Solicitors (solicitors for the applicants), 27 Church Street, Cavan

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by David Morgan, Freda Morgan, and Brian Morgan

Take notice that any person having interest in the freehold estate of the following property: 3 Annesley Place, North Strand, Dublin 3, more particularly described in an indenture of lease dated 13 September 1963 between Elizabeth Russell of the one part and Eamon P Holland and Desmond McKibbin, trading as 'Holland & McKibbin', of the other part, for the term of 99 years from 25 March 1963, subject to the covenants on the lessee's part and conditions therein contained.

Take notice that David Morgan, Freda Morgan and Brian Morgan intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days of the date of this notice.

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

Date: 5 September 2008

Signed: Partners at Law (solicitors for the

applicant), 8 Adelaide Street, Dun Laoghaire, Co Dublin

In the matter of the Landlord and Tenants Act 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by T Stafford & Sons Limited

Take notice that any person having an interest in the freehold estate in the property known as "all that and those that plot or piece of the lands of Burrow situate on the south east side of the road leading from Portmarnock to St Marnock's, situate in the barony of Coolock and county of Dublin, as more particularly delineated on the map annexed to indenture of lease dated 18 July 1974 and made between Ignatius Byrne of the one part and Thomas Purcell of the other part for a term of 200 years subject to the yearly rent of £2.00 and thereon edged red".

Take notice that the applicant, T Stafford & Sons Limited, intends to submit an application to the county registrar in the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below-named within 21 days within the date of this notice.

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

Date: 5 September 2008

Signed: Ryan & Associates (solicitors for the applicant), 53 North Strand Road, Dublin 3

In the matter of the Landlord and Tenant Acts 1967-1987 and in the matter of an application by John Dowling and Thomas Dowling: a notice of intention to acquire the fee simple

Take notice that the applicants, being the persons entitled under the above mentioned acts, propose to purchase the fee simple in the lands described in paragraph no 1.

1. Description of land to which this notice refers: all that and those that piece of land with the hereditaments and premises thereon known as number 10 Langrishe Place, Summerhill, in the parish of St George and city of Dublin, as more particularly described in an indenture of lease dated 27

November 1972 and made between Deeside Limited of the first part and James Francis Walsh of the other part and as more particularly delineated and described on a map attached thereto and thereon edged with a red verge line.

2. Particulars of applicants' lease: the applicants hold the lessee's interest in the said lands under the said lease dated 27 November 1972 and made between Deeside Limited of the one part and James Francis Walsh of the other part, whereby the lands and hereditaments as therein described were demised to the lessee therein for a term of 150 years from 25 March 1972 (subject to a yearly rent of £10).

Date: 5 September 2008

Signed: Paul W Tracey (solicitors for the applicant), 24 Marlborough Street, Dublin 1

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Eileen Feeney (née O'Keeffe) of 2 Fernwood, Douglas Road, Cork

Take notice that any person having interest in the freehold estate of the following property: 2 Fernwood, Douglas Road, in the city of Cork. Take notice that Eileen Feeney, née O'Keeffe, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and all intermediate interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below-named.

In particular, such person or persons entitled to the interest of Michael B Hegarty, deceased, pursuant to an indenture of lease of 9 February 1965 between Michael B Hegarty and Mary Hegarty of the one part and Elizabeth Gregory and Maura Gregory of the other part for a term of 99 years from 1 March 1964 in property known as 2 Fernwood, Douglas Road, Cork, should provide evidence of their title to the below-named.

In default of any such names being received, the applicant, Eileen Feeney, née O'Keeffe, intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold interest in the said property are unknown and unascertained.

Date: 5 September 2008

Signed: Healy Crowley & Co (solicitors for the applicant), 9 O'Rabilly Row, Fermoy, Co Cork

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Dublin Institute of Technology

Take notice that any person having any interest in the freehold interest of the following property: all that the house and premises known as 3 Great Denmark Street, situate in the parish of Saint George and city of Dublin, the subject of a lease dated 21 November 1944 and made between Charles King Colhoun of the one part and the city of Dublin's Vocational Education Committee of the other part, for a term of 99 years from 1 November 1947, subject to the yearly rent of £50.

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

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the county/city of Dublin for directions as may be appropriate on the basis of the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.

Date: 5 September 2008

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

Notice of intention to acquire the fee simple (section 4) in the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of an arbitration: Campbell Bewley Group Limited (first-named applicant) and Dorothy Mary Bewley (second-named applicant) (together 'the applicants')

To the personal representatives, trustees and persons beneficially entitled in the estate of Joseph Dowdall, which estate formerly held lands and premises known as Shingle House, Leixlip, in the county of Kildare, forming part of lands contained and granted to the said estate of Joseph Dowdall under an indenture of fee farm grant dated 31 December 1929:

This notice refers to all that and those the premises known as Shingle House and comprising the dwelling-house, yard, garden and paddock adjoining the same, containing 3 roods and 11 perches or thereabouts, situated in the Main Street of the town of Leixlip, in the barony of North Salt

and county of Kildare, more particularly described in an indenture of lease made 9 June 1932 between Joseph Dowdall of the one part and Archibald JP Mateer of the other part.

The applicants are the joint tenants of the aforesaid premises, pursuant to a deed of assignment dated 27 October 1969 made between Alfred Charles Richard Bewley of the one part and Alfred Charles Richard Bewley and Dorothy Mary Bewley and Bewleys Cafes Limited (now the Campbell Bewley Group Limited) of the other part, in which the aforementioned lease of 9 June 1932 made between Joseph Dowdall of the one part and Archibald JP Mateer of the other part was ultimately assigned to the said applicants subject to the yearly rent and the covenants on the tenant's part and conditions contained as joint tenants.

Take notice that the applicants, Campbell Bewley Group Limited and Dorothy Mary Bewley, being the persons entitled to acquire the fee simple in the land described above pursuant to section 8(3) and section 17 of the *Landlord and Tenant (Ground Rents) Act 1967* (as amended) propose to purchase the fee simple in land described above.

And further take note that, on 10 October 2008 at 2.30pm in the afternoon or the first available opportunity thereafter, this application to purchase the fee simple in the lands described above shall be determined before the county registrar sitting at the courthouse, Naas, in the county of Kildare.

Date: 5 September 2008

Signed: LK Shields (solicitors for the first-named applicant), 39/40 Upper Mount Street, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the property known as 13 Main Street, Portlaoise, Co Laois: an application by Patrick and Joan Hennessy

Take notice that any person having an interest in the freehold estate or any superior interest in the following property: all that and those the premises known as no 13 Lower Main Street in the town of Portlaoise, parish of Borris, barony of Maryborough East and county of Laois, and as more particularly described in an indenture of lease dated 16 March 1967 and made between Enda Phelan of the one part and Enda Boylan of the second part for the term of 99 years from 1 July 1966, subject to a yearly rent of £50.

Take notice that Patrick Hennessy and Joan Hennessy, being the persons currently entitled to the lessee's interest in the premises, intend to apply to the county registrar for the county of Laois for the acquisition of the freehold interest and all intermediate interests

in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Patrick Hennessy and Joan Hennessy intend to proceed with this application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Laois for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold aversion in the aforementioned premises are unknown or unascertained.

Date: 5 September 2008

Signed: Alan Donnelly & Co (solicitors for the applicant), Chancery House, Railway Street, Navan, Co Meath

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of an application by Anne Fitzpatrick: notice of intention to acquire the fee simple

Take notice any person having an interest in the freehold estate of the property situate at 43 Grattan Street, Maryborough, in the Queen's County, which premises are presently known as 43 Grattan Street, Portlaoise, in the county of Laois, held under indenture of lease dated 24 July 1914 made between Rebecca Douglas and Jane Ruth Douglas of the one part and Michael Fitzpatrick of the other part for the term of 31 years from 1 July 1914 at the annual rent of £25, which said lease was extended on 15 September 1925 for a further period of 68 years, to commence at the expiration of the lease dated 24 July 1914.

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

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

Date: 5 September 2008

Signed: O Scanail & Company (solicitors for the applicant), Columba House, Airdside, Swords, Co Dublin

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the lands situate to the north side of Wellesley Place in the parish of Saint George and city of Dublin, being all of the property comprised within folio 28078L of the register of leaseholders, county of Dublin, and held under an indenture of lease dated 13 June 1877 between Anna Alexander of the one part and Robert Whyte of the other part for a term of 1,928 years from 25 March 1877, subject to an annual rent of £27.13s.10d.

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the lands situate on the north side of Wellesley Place in the parish of Saint George and city of Dublin, being all of the property comprised within folio 28079L of the register of leaseholders, county of Dublin, held under an indenture of lease dated 19 April 1899 between John Kennedy of the one part and Matthew Adam of the other part to hold for a term of 420 years from 1 April 1899, subject to an annual rent of £34.00

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the lands comprised situate on the north side of Wellesley Place in the parish of Saint George and city of Dublin, being all of the property comprised within

folio 28080L of the register of leaseholders, county of Dublin, and held under an indenture of lease dated 12 September 1912 made between Bernard Burke Kennedy of the one part and Matthew Adam of the other part, being a lease for a term of 407 years from 1 April 1912, subject to an annual rent of £36.

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the lands to the east side of Russell Street in the parish of Saint George and city of Dublin, and being all of the property comprised within folio 28081L of the register of leaseholders, county of Dublin, and held under an indenture of lease dated 20 October 1948, Coras Iompair Éireann of the one part and Thomas Pearson & Company of the

other part, for a term of 99 years from 1 January 1948, subject to an annual rent of £35 but indemnified against payment of £10 thereof.

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the following property: all that and those the hereditaments and premises demised by an indenture of lease dated 14 December 1883 between Peter Leech and Thomas McAuley of the first part, Samuel Sherlock of the second part and John Moore Flood of the third part, and therein described as "all that and those the piece or plot of ground situate on the west side of Jones Road containing in front to said road 58 feet in breadth, in rear 62 feet, 6 inches and in depth from front to rear on the north side thereof 75 feet, 6 inches and on the

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south side thereof 73 feet, 3 inches, be all the said several admeasurements more or less, bounded on the north by Russell Avenue, on the south by the Mill premises of Andrew Todd and Company, on the east by Jones Road, and on the west by a back lane or passage, and are situate in the parish of Saint George Barony of Coolock and county of Dublin", held for a term of 220 years from 1 September 1882, yielding and paying the yearly rent of £13.

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Páirc An Chrócaigh Teoranta

Take notice that any person having an interest in the freehold estate in the following property: all that and those the property comprised in and demised by an indenture of lease dated 17 October 1882 and made between Charles Corbett of the one part and Patrick Finn of the other part for a term of 490 years from 1 May 1879, subject to an annual rent of £5.50 per annum and therein described as "all that and those the piece of plot of ground particularly shown on the map thereof in the margin of these presents, which said plot of ground contains from the front thereof to Drumcondra Road 20 feet in depth, from front to rear 60 feet, and in the rear 20 feet, 10 inches, bounded on the north by the property of C Meldon Esquire and on the south by a plot demised by John Clarke, on the east by the grounds in the property of the lessor and on the west by Lower Dorset Street".

Take notice that Páirc an Chrócaigh Teoranta intends to submit an application to the county registrar for the

county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below-named within 21 days from the date of this notice.

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

Date: 5 September 2008

Signed: Reddy, Charlton & McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

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Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of post-qualification experience (PQE).**

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