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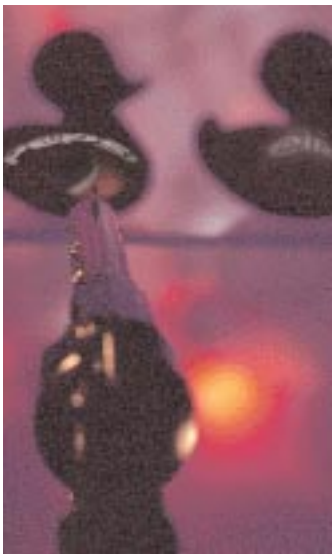

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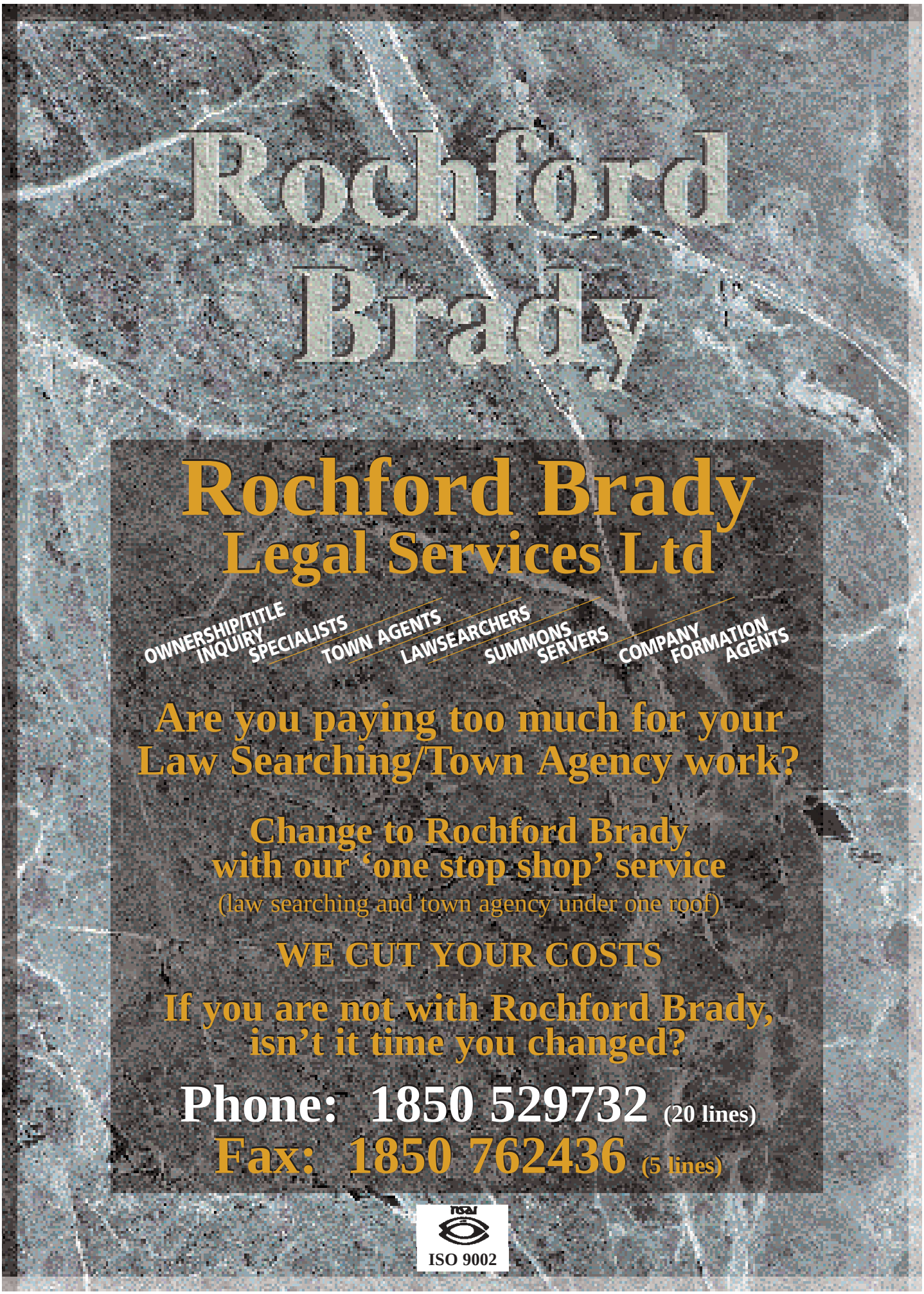

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Irish solicitors can make a difference

I write my penultimate *President's message* while attending the International Bar Association biennial meeting in Vancouver – the last before the new millennium. This morning I attended a session on the IBA's Twinning Programme – a programme designed to promote, encourage and assist developed world bar associations (and individuals) to twin with lawyers and bar associations in underdeveloped countries.

I was particularly struck by the contributions from some of the participants from countries in Africa. One speaker – the President of his association – had been imprisoned and, but for assistance from the international legal community, his health would have suffered irreparable damage from the torturing he received while in prison.

Many African countries (and indeed other countries) do not have effective bar associations to protect and promote the interests of practising lawyers. They lack the most basic facilities, including means of communication. They made strong pleas for help in establishing the structures to create and enhance their associations. Many of those who have bar associations cannot afford to send representatives to international meetings and assistance in air travel and accommodation had to be provided to enable their participation.

Answering the call for assistance

Many bar associations and law societies have answered the call for assistance, and the American Bar Association and Canadian Bar Association in particular have established major initiatives in this area.

I was profoundly embarrassed when, at the end of the session, many leading bar associations/law societies were read out as having twinned or provided assistance to lawyers in underdeveloped countries. Ireland did not feature. The IBA is providing fresh impetus to these and endeavouring to encourage new meaningful arrangements. It is my belief that we should contribute to this programme. We are a privileged and relatively prosperous democratic society. We are the lucky ones, with almost 23 bar associations and a highly organised and equipped national law society. We are not imprisoned for carrying out our daily work. While there are many problems in Ireland, and in other developed countries, they pale into insignificance with the problems of our colleagues in underdeveloped countries. We should – and must – come to their aid.

Originally, I had intended that this message would concentrate on the core values of our profession which we must cherish and uphold. What I learnt this morning makes these core values more important. We are inclined to take them for granted and forget that many of our colleagues in underdeveloped countries struggle sometimes to enshrine in their practice of law any of these core values.

The ABA model code of professional responsibility recognises that the lawyer's role is grounded 'in respect for the dignity of the individual and his capacity through reason for enlightened self-government'. This model states: *'The professional responsibility of a lawyer derives from his membership of a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue or defence'.*

During my presidency, I have on many occasions stressed our core values and principles. I repeat now these core principles and I urge my Irish colleagues to adhere fully to those principles and to promote these principles and core values amongst our colleagues in underdeveloped countries and their governments. The four principles of a good solicitor, in my belief, are:

- That he or she is honest, that is say, trustworthy and reliable
- That he or she appreciates confidentiality
- That he or she avoids a conflict of interest
- That he or she, as a solicitor, understands they are officers of the court.

In the book *Understanding lawyer ethics*, Monroe H Freedman quotes Justice Lewis Powell, a US Supreme Court judge, as follows:

> *'The duty of the lawyer, subject to his role as an "officer of the court", is to further the interests of his clients by all lawful means, even when those interests are in conflict with the interests of the United States or of a State. But this representation involves no conflict of interest in the invidious sense. Rather, it casts the lawyer in his honoured and traditional role as an authorised but independent agent acting to vindicate the legal rights of a client, whoever it may be'.*

It is our collective duty to enhance our professional values, to increase respect for our profession, and to advance the rule of law and justice. Edmund Burke once said: 'The only thing necessary for the triumph of evil is for good men to do nothing'. Let us not fail in our own professionalism and let us be always vigilant in protecting and enhancing our core values and principles and the rule of law – but let us not just be selfish.

Many countries assisted the Irish people in their dark days. It is our duty now to reciprocate to our colleagues in underdeveloped countries and to answer their pleas in a constructive, planned and strategic way. I propose asking our EU and International Affairs Committee to examine and make recommendations in this area. I have no doubt they would welcome your views and assistance.

Laurence K Shields
President

Ireland's quiet catastrophe

When the journalist Veronica Guerin was murdered, we were shocked and outraged enough to do something about it. We demanded that the Gardaí be given the power and the resources to tackle the drugs gangs head on. In 1997, 38 people were murdered here. Dreadful, certainly, and every single one made front page news. Yet at the same time there were 472 road deaths. Most merited no more than brief references. The tragedies impacted only on those individuals whose lives were ruined by the shocking, sudden and unnecessary bereavement.

We cannot really claim to care about this problem until we start doing something about it. It is only when an accident is particularly severe that it comes to public notice, and then only briefly. Road deaths are Ireland's quiet catastrophe.

Every developed nation has had to accept a certain amount of road death. It is a downside to progress that no country has managed to control completely. Because accidents are to some degree inevitable, it is easy to become resigned to them. This is certainly the case in Ireland.

Sloppy drivers

Our road safety record is a national disgrace. There is a standard international comparison which looks at the number of deaths per 100,000 population. On that index Ireland scores 12.1. This is roughly the EU average, but more significantly it is almost double the rate of our neighbours in Britain.

Conor Faughnan: 'our road safety record is a national disgrace'

What excuse can we offer for such a poor performance? There is no reason why we should not manage our roads at least as well as the British. Culturally we are very similar, and our laws mirror theirs very closely. But when it comes to enforcing our laws, we fall drastically behind their standards.

As in Britain, provisionally-licensed drivers must be accompanied by a fully-licensed driver. Like them, we require learner drivers to display L-plates and forbid them to use motorways. Unlike them, we treat those regulations with such undisguised contempt that convictions for such offences are virtually unheard of. I could say the same of seatbelts.

We could analyse this superficially and simply blame the Gardaí. It is easy to say that such flagrant disregard for the law is an enforcement problem. But this is a cop-out. Ireland has an attitude problem when it comes to road use. We are a nation of sloppy drivers. We can see this on a casual level with illegal parking, careless lane discipline, poor vehicle maintenance, casual mobile phone use and so on. When it spreads to speeding, seat belt use and drink-driving, it becomes fatal.

An Irish solution

We have never asked our police force to take road safety seriously. When a driver is stopped, he expects to be ticked off, not prosecuted. 'Have you no drug dealers to catch?' is the response that many people give to a garda when they're stopped for not wearing a seat belt. Should a garda be brave enough to press charges for worn tyres, for example, he will probably be accused of harassment.

There is a traditional Irish way of resolving this problem. We have perfectly good laws on the statute books which everybody ignores and nobody enforces. The solution? Change the law. Politicians can then claim that progress has been made. We are now ignoring something else.

We need to give the Gardaí a solid mandate to pursue road safety with the energy and commitment that it deserves. We need to provide them with the resources to carry this through. We need, as individuals, to accept that we have a moral obligation to obey the laws that we have placed on our statute books.

On the enforcement side, there are some relatively straightforward steps that we can take. First, we should establish and fund a dedicated Garda road traffic corps. This will end the current situation where an individual garda will be on speed checks on Monday, clerical work at the station on Tuesday, crowd control at the match on Wednesday and so on.

Traffic policing is a specialist function performed by a dedicated arm of the police force in almost all of the countries which perform well in road safety terms. The motorway police in the UK are second to none in this regard, and that is a lesson that we can learn from them.

Automated camera technology has advanced to the point where it can be used very cost effectively to control that most serious of killers, speeding. The Gardaí have already obtained a number of camera-equipped vehicles.

We also need to invest in computerisation behind the scenes. It is perfectly feasible to employ optical character recognition (OCR) software which can read a car registration number, cross-reference it with a database and produce a ticket. This was done in the Australian state of Victoria some years ago and they can now report that speeding tickets issued in this way result in almost 100% success in terms of convictions. Although the capital cost can be high, the cost per ticket issued falls to buttons.

Changing our values

But although these measures will help, we must also change the values of Irish society. Imagine the public attitude to a mother who routinely lets her young children play unsupervised in the kitchen while placing pots of boiling chip-fat within their reach. If a social worker called, that mother would be lucky to keep her children. But that same parent can belt along a motorway with a car full of kids loose in the back and no-one will even comment on the danger to which she is exposing them.

When we can honestly say that speeding and road recklessness are as anti-social and as shameful as neglecting children, then we may finally crack the problem. Until then, people will continue to die on the roads in numbers large enough to reflect shame on our country. G

Conor Faughnan is Public Affairs Manager of the Automobile Association.

Decommissioning, demilitarisation, and dissidents

In a motion adopted on 24 September 1997, the parties in the Northern Ireland talks recognised that the resolution of the decommissioning issue was an indispensable part of the peace process. That motion was repeated again in the final version of the Good Friday Agreement. Since then, there have been different meanings attributed by the various parties as to what precisely are Sinn Féin's obligations before the Executive comes into force. The answer is to be found in a close reading of the agreement itself.

It is for the International Commission on Decommissioning and the British and Irish governments to develop workable schemes for achieving the decommissioning of paramilitary weapons. All parties to the talks reaffirmed their commitment to the total disarming of paramilitary organisations. They also confirmed their intention to continue to work constructively and in good faith with the International Commission, and to use any influence they may have to achieve the decommissioning of all paramilitary arms within two years.

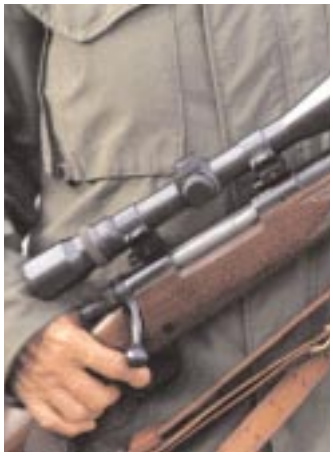
Any party is entitled to seats in the Executive as of right, as long as it has enough members elected to the Assembly. An individual may be removed from office if he loses the confidence of the Assembly (using the cross-community voting procedure) for failure to meet his or her responsibilities. The Pledge of Office, required of all Executive members, includes a commitment to non-violence and exclusively peaceful and democratic means. Those who do not should be excluded or removed from office.

A number of points are clear from this. Since decommissioning is to be achieved in the context of the implementation of the overall settlement, its achievement cannot be a prerequisite to any party taking its seat in the Executive. Sinn Féin is therefore entitled to two seats in the Northern Executive. That is not conditional on any particular degree of decommissioning being achieved prior to taking up those seats. However, Sinn Féin must be committed to political progress by totally peaceful and democratic means.

Total disarmament

The intention is that decommissioning will be achieved by 22 May 2000, well into the first term of the Assembly and Executive. Obviously, it is not the case that decommissioning need be achieved before the Executive first sits.

Sinn Féin has declared, by signing up to the agreement, that it shares a commitment to total disarmament of all paramilitary organisations. Nevertheless, there must now be evidence of that. Appointing Martin McGuinness to liaise with the International Commission is part of this process and is a welcome recognition of the means by which Sinn Féin's influence may be brought to bear to achieve decommissioning.



Separate rules govern decommissioning, security and police reform

Sinn Féin spokesmen sometimes talk of the demilitarisation of the Northern situation, and look to the removal of the British Army and reform of the RUC as integral parts of this process alongside decommissioning. It should be noted, however, that decommissioning, security and police reform are separate issues in the agreement. Progress on each is necessary and desirable, but separate rules govern each.

As to security, the agreement states that the development of a peaceful environment can and should mean a normalisation of security arrangements and practices. This entails the reduction of the numbers and role of the British Army to levels compatible with a normal peaceful society, the removal of security installations, and the removal of emergency powers. The withdrawal of the army from the streets of Belfast is wholly welcome as a reflection of the British Government's commitment to this aspect of the agreement. Similarly, the reform of policing is a separate issue which is currently being considered by the Patten Commission.

What, then, of the threat posed by dissident Republican (and Loyalist) groups. The agreement states that the removal of emergency powers must be consistent with the level of threat. Thus, it is not contrary to the agreement to introduce emergency powers aimed solely at those groups which remain a continuing threat to peaceful society. Nevertheless, the agreement places great emphasis on the protection of human rights. In particular, it guarantees the right of free political thought and the right to pursue democratically national and political aspirations.

Great care must be taken by the responsible authorities to ensure that there is no repetition of the abuses of power that occurred under emergency legislation in the seventies and early eighties. G

Conor Quigley is a barrister specialising in European Union law and practising at Brick Court Chambers, London and Brussels.

'Hideously ugly': defamation or mere ridicule?

Steven Berkoff is an actor, director and writer. Julie Burchill, a journalist and writer in the *Sunday Times*, wrote a review of the film *The age of innocence*. In the course of the review, in a general reference to film directors, Burchill wrote that 'film directors, from Hitchcock to Berkoff, are notoriously hideous-looking people'. Some months later, Burchill returned to the same theme in the same newspaper in a review of the film *Frankenstein*. She described a character in the film with the words: 'It's a lot like Stephen Berkoff, only marginally better-looking'.

Following correspondence, High Court proceedings were issued by Steven Berkoff against Burchill and Times Newspapers Ltd, the publishers of the article. It was alleged that the passages in the two articles were understood to mean that Berkoff was hideously ugly. Did the words mean that and did they constitute defamation or mere words of ridicule or abuse? That issue will be considered briefly here.

The standard test in defamation is whether a publication, without justification or lawful excuse, is calculated to injure the reputation of another, by exposing him or her to hatred, contempt or ridicule. In the case of *Villers v Monsley* ([1769] 2 Wils 403, 95 ER 886), Villers complained of some verses written by Monsley which suggested that Villers smelt of brimstone and which included the line: 'You old stinking, old nasty, old itchy old toad'. Villers was awarded damages.

On appeal, Lord Wilmot CJ said: *'If any man deliberately or maliciously publishes anything in writing concerning another which renders him ridiculous, or tends to hinder mankind from associating or having intercourse with him, an action well lies against such publisher. I see no difference between this and the cases of leprosy and plague; and it is admitted that an action lies in those cases … Nobody will eat, drink or have any intercourse with a person who has the itch and stinks of brimstone; therefore, I think this libel actionable, and that judgment must be for the plaintiff'.*

Rubber stamp

In an Irish case, *Dunlop v Dunlop Rubber Co Ltd* ([1921] 1 IR 173 [1921] 1 AC 367), Mr Dunlop, who lived in Ireland and was the inventor of a pneumatic tyre, assigned his interests in the invention to the Dunlop company. Mr Dunlop presented the comp-any with a portrait bust of himself and his signature to be used as a trade mark. Some years later the company, without his permission, exhibited advertisements containing pictures intended to represent Mr Dunlop but his features, adapted from the portrait bust, were placed upon the body of a very tall man dressed in an exaggeratedly foppish manner, wearing a tall white hat, a white waistcoat and carrying a cane and eyeglass.

Mr Dunlop obtained an injunction against the company in the Chancery Division in Dublin and the injunction was upheld by the Irish Court of Appeal. In the House of Lords, Lord Birkenhead, the Lord Chancellor, noted that the judges who tried this case had reached the conclusion, and he agreed with them, 'that the exhibition of those pictures constituted a circumstance' which was at least capable of a defamatory meaning.

An old boot, but not 'an ugly harridan'

The issue of whether certain words constituted defamation or mere ridicule was also considered in the case of *Winyard v Tatler Publishing Co Ltd* ([1991] *Independent*, 16 August 1991), where a beautician was described as 'the international boot'. One of the meanings of 'boot' is apparently 'an ugly harridan'. In the Court of Appeal, Straughton LJ stated that it may very well be that 'in some cases to say that a woman is old and ugly, or haggard, would do no more than cause injury to her feelings and would not affect her character or reputation'. He added, however, that it was open to the jury to find that this meaning of the word 'boot' lowered Mrs Winyard's character or reputation and thus was defamatory.

The *Berkoff* case

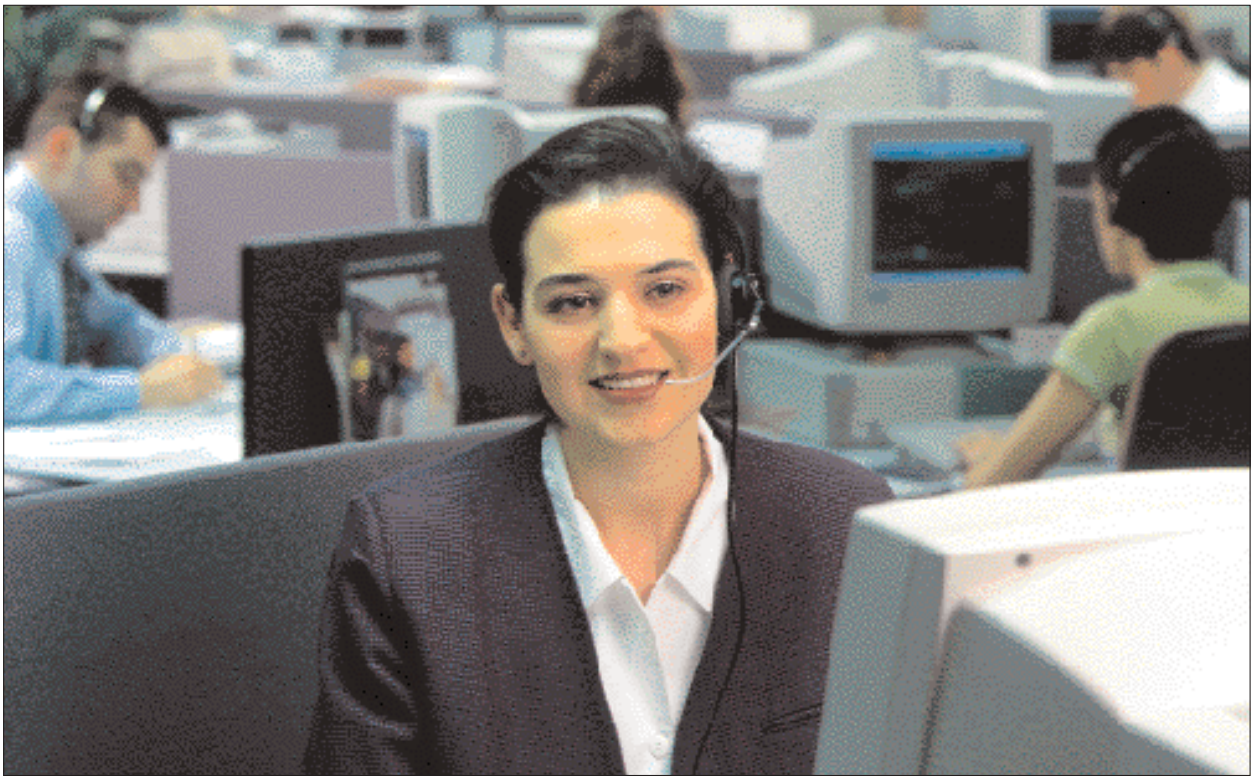
The *Berkoff* case went to the Court of Appeal on the issue of whether, in effect, the words 'hideously ugly' were capable of being defamatory. The Court of Appeal, Neill and Phillips LJJ (Millett LJ dissenting), held that, while insults which did not diminish a person's standing among other people did not form the basis of an action for libel or slander, words were capable of being defamatory of a person if they held him or her up to contempt, scorn or ridicule or tended to exclude him from society, notwithstanding that they neither imputed disgraceful conduct to him or her, nor any lack of skill or efficiency in the conduct of his or her trade, business or professional activity. The court held that it would be inappropriate to withdraw the issue in *Berkoff* from consideration by a jury.

Millett LJ noted that many a true word is spoken in jest. Many a false one too. He noted that chaff and banter are not defamatory. Physical beauty was not a qualification for a director or writer. He noted that the cases in which words have been held to be defamatory because they caused a person to be shunned or avoided had been previously confined to allegations that a person suffers from leprosy or the plague or the itch or is noisome and smelly. He noted that an allegation of ugliness is not of that character.

On a lighter note, the judge noted that it is a common experience that ugly people have satisfactory social lives and it was popular belief – but the judge was unable to vouch the truth of it – that ugly men are particularly attractive to women. The *Berkoff* case is reported at [1996] 4 All ER 1008. G

Dr Eamonn Hall is Chief Legal Officer with Telecom Éireann plc.

Communicating



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That MIBI agreement revisited

From: Professor Bryan McMahon, Houlihan McMahon, Ennis

The main objective of my article *Should pay, won't pay* (*Gazette*, May, page 22) was to bring to the attention of practitioners the fact that the 1998 Motor Insurers' Bureau of Ireland agreement did not properly implement the EC Council Directive of 30 December 1983 (84/5/EEC). This central point has been conceded now by Michael Halligan, Chief Executive of the MIBI (*Gazette*, August/September, page 11).

Mr Halligan, however, states that the relevant clause (clause 7.2 of the agreement), although it has not been amended or changed, has not been enforced by the bureau since April 1996. EU law obliges Member States not only to transpose EU measures properly into their national systems, but it also obliges them to remove, by positive action, incorrect transpositions or erroneous statements of the law once they are known and identified. It is not enough for the MIBI to say that it did not enforce clause 7.2 since April 1996; the agreement should have been publicly amended and the manifest error excised.

Unless the bureau made known its change of policy since April 1996, many practitioners would not be aware of the change and would have continued to advise their clients on the basis of clause 7.2 of the agreement.

Secondly, since the bureau only changed its policy on this matter in April 1996, the question may be posed as to what happened to all those affected cases which occurred during the period 1988 to April 1996. Were the entitlements of these people rejected during that period on the basis of clause 7.2 of the agreement which it is now admitted was an incorrect statement of the true legal position?

Finally, Mr Halligan rightly says that my main point was made in my article by reference to a hypothetical case. I did this for pedagogical purposes. Behind the hypothetical case, however, there was (as some readers may have suspected) a real case. Contrary to what Mr Halligan states, the insurer handling the matter for the MIBI in the real life case stated in November 1997 that because of section 7(2) they could not deal with 'the damage aspect of the claim'.

The solicitor dealing with that case was obliged to settle the personal injuries aspect separately and then pursue the property aspect independently, relying on the EU argument made above. Liability for this aspect was finally conceded and separate legal costs for this aspect were eventually paid only after further dispute.

Mr Halligan's letter is therefore welcome since this exchange has no doubt clarified the situation for practitioners. Also welcome is the news that an expert sub-committee of the bureau is reviewing the entire 1988 agreement.

Dumb and dumber

From: Arnold E Lowe, Connolly Lowe, Legal Cost Accountants, Dublin

Before the age of word-processors, typographic errors were common in bills of costs and the following two, made by a junior typist, as they were then called, always stand out in my memory. Instead of transcribing *Paid counsel's fee on defence*, she typed in her best Dublinese *Paid counsel's fee on the fence*.

The second error almost brought tears to the Taxing Master's eyes when, instead of transcribing *Paid counsel's fee on refresher*, she typed *Paid counsel's fee under pressure*.

From: Conway Kelleher & Tobin, Cork

Recently I was approached by a client who wanted to take a case away from another colleague in Cork City. I asked him what was the problem with my colleague, and he informed me that 'every time I ring my solicitor, he is always in the office and never in court, and he always takes my call. He obviously has no experience!'

Solicitors can't win.

Arnold E Lowe wins the bottle of champagne this month.

BRIEFLY

First Active mortgage packs

Following the conversion of the First National Building Society to plc status last month, the new company, First Active, has requested practitioners not to use the undertaking, certificates of title or mortgage deeds in the FNBS's former mortgage pack for loans where draw-down takes place after 7 September 1998. Instead, it wants practitioners to use the replacement First Active Mortgage Pack for loans after that date.

Irish Medico Legal Society

The Irish Medico Legal Society will hold the first meeting of its 1998/1999 session at the United Services Club in Dublin's St Stephen's Green on 28 October at 6.30pm. The topic under consideration will be *Genetics and genetic engineering* and the guest speaker will be Prof David McConnell, Professor of Genetics at TCD. For further information, contact Emer O'Donoghue on 01 288 4593.

Rush on for pocket diary

The Law Society pocket diary is now available (*see also page 42*). Support the Solicitors' Benevolent Association by ordering your official Law Society diary from Richard McMullan at Kernow Irish Diaries.

Judges testify to value of expert witnesses

Justices Hugh O'Flaherty and Robert Barr will give their testimonies on the value of expert witnesses at a special one-day conference next month. La Touche Bond Solon, which provides training for expert witnesses, is organising the conference at the Museum of Modern Art, Kilmainham, Dublin, on Wednesday 25 November. Speakers will include Garrett Cooney SC and Bond Solon director Mark Solon. State Pathologist Dr John Harbison will launch his new book, *The role of the expert witness*, at the conference. For bookings and registration, contact Frances O'Connor (tel: 01 6623404).

Law Society and Bar agree protocols

The Law Society and the Bar Council have agreed a protocol to assist members of both branches of the legal profession to resolve problems of delays occurring on either side of the professional divide.

The protocol is intended to assist both solicitors who are frustrated by the non-return of papers sent to barristers and also barristers who are frustrated by the non-payment of their fees by solicitors. It is only where either no excuse or no excuse which is reasonable in the circumstances has been offered for the delay that the protocol will come into effect.

Every solicitor or barrister who feels aggrieved by such a delay remains free to make a formal complaint to the relevant professional body as a first step. However, it is clear from past experience that there is an inhibition factor at work which makes both solicitors and barristers reluctant to make such complaints other than as a last resort. The protocol has been introduced to put at the disposal of both solicitors and barristers a mechanism which may provide a resolution of the problem without the necessity to resort to a formal complaint. It has been jokingly described as a facility to employ conventional weapons before going nuclear.

Under this protocol, a solicitor who believes that a barrister has failed to return papers within a reasonable time will use a specific complaint form to bring this to the attention of the Law Society Director General. The Director General will immediately pass the matter to the Director of the Bar Council who will write to the barrister concerned, drawing to his or her attention a relevant extract from the *Code of conduct for the Bar of Ireland* and requesting a return of the papers, together with any advices or draft documents sought, within 21 days. If this does not produce the desired response, a second, more sternly worded, letter will be written by the Director to the barrister. A formal complaint to the Bar Council will be the only remaining remedy if the second letter does not produce satisfaction.

The protocol provides for an identical system to apply where a barrister believes that a solicitor has failed to pay fees due to that barrister for a period exceeding 12 months in respect of which no reasonable explanation has been offered for the non-payment. The Director of the Bar Council will communicate with the Director General of the Law Society and the Director General will write a letter to the solicitor concerned, with a further final letter if necessary, requesting payment to the barrister of the sum due within 21 days.

The text of the complaint forms and letters which have been agreed under the protocol are set out at pages 43 and 44 of this issue.

A high performance organisation

Director General Ken Murphy (right) with the Law Society's management team (from left): Deputy DG Mary Keane, Finance Director Cillian MacDomhnaill, Law School Principal Albert Power, and Deputy DG (Regulation) PJ Connolly

Law Society Director General, Ken Murphy, and his management team have drawn up and commenced the implementation of a two-year business plan for the direction and management of the Society. 'The business plan identifies clear objectives for the Society so that their ultimate achievement can be measured over a two-year period', Murphy explains.

'The mission of the Society is to be a high performance organisation which provides a manifestly ever-improving quality of service to the Society's members and prospective members and to the public', says Murphy, as he describes the overall objective now precisely expressed in the first-ever written plan for the direction and management of the Society.

At the July meeting of the Law Society Council the President, Laurence K Shields, complimented the Director General and his management team on the preparation of the plan and on their enthusiasm for achieving its objectives. He reported that the plan had been critically examined and approved by the Society's Finance and Co-ordination Committees.

The Director General told the Council that the Society's greatest resource was the people who worked for it, with whom he was enormously impressed. The plan would put in place a structure and focus within which their potential could be fully developed to the benefit of the Society and the profession as a whole. The management team had identified two areas of weakness within the Society which required the commitment of additional skills and resources. These were information technology and human resources management. Accordingly, it was proposed to recruit key personnel for both areas.

In addition, he reminded the Council and its committees of the need to prioritise projects and to accept the reality of finite resources. He said that the key strategies which would be employed to achieve the objectives of the plan were 1) stronger quality and customer focus, 2) increased motivation and productivity, 3) greater commitment to leadership and teamwork, and 4) people empowerment.

General meeting approves 'numbers neutral' proposals by 69 votes to 6

Plans to build a £5 million Law School and secure the Law Society's role as the country's sole trainer of solicitors will be put to members in a postal ballot, *writes Barry O'Halloran*. The proposals outlined in the *Report of the Education Policy Review Group* were backed by an overwhelming 69 votes to six at a special general meeting in Blackhall Place last month.

President Laurence K Shields told the meeting that the Society plans to hold the vote following a written request for a postal ballot signed by 100 members. He welcomed the move, saying that any reservations should be presented and debated.

The report recommends that the Society build a new Law School on Hendrick Place, immediately adjoining its Blackhall Place headquarters. Under current proposals, the school will cost £5 million, which will be repaid over ten years. The capital costs will be covered by an annual contribution of £100 from each practising member. Five other options were considered, including refurbishing existing facilities, but this was found to be the most cost effective.

The meeting was told by review group chairman Donald Binchy that the current Law School facilities fall far short of the Society's training requirements. 'The system was designed for 150 apprentices per annum but it has to deal with 300 per annum', he said.

He emphasised that the proposals were 'numbers neutral', that is, whether or not the report was implemented would not have the slightest effect on the numbers entering the profession. The facilities in the Law School had no impact on this. Numbers are governed by different factors.

He warned that if the current situation carried on unchanged, severely adverse consequences would follow, including, in a worst-case scenario, the possibility that the Law School might even collapse. He told the meeting that estimates provided to the review group by consultants Coopers & Lybrand show that the facilities will have to continue coping with 300 students a year for the next decade, even after the existing backlog of 350 has been cleared.

Binchy pointed out that this kind of pressure was already taking its toll on the school. It is now living in a constant state of crisis management: staff are leaving, and new apprentices now have to wait two years to get a place on the professional course.

Others warned that the situation is even more critical. Education Advisory Committee chairman Michael Peart predicted that if the long delays persisted, they would ultimately threaten the Law Society's control over training its own members.

'The time has arrived for us to take our hands out from under our backsides and our little ostrich heads out of the sand', he declared. 'If we do not act now, we are in effect deciding that we, as a Law Society, wish to surrender control of professional legal education to outside bodies'.

Former Law Society President Michael V O'Mahony addressing the general meeting

Recently-qualified solicitors Jeanne Kelly and Dominic Conlon described the inadequacy of the current education facilities in Blackhall Place. Kelly thought that the report represented such common sense that its adoption should be a foregone conclusion. Conlon considered £100 a year for each member to be 'very small sum'.

Law School principal Albert Power confirmed that he has lost eight people in the last three years and warned that the Society cannot continue to deliver quality legal education to the numbers of students pouring through the school. He added that when the professional and advanced courses were combined, the facilities were actually coping with 800 apprentices a year.

Opposing the motion, Council member Orla Coyne said she questioned the Society imposing a £100 annual increase in the practising certificate charge at time when these costs should actually be coming down. She also asked if the crisis could not be tackled by simply clearing the existing backlog.

Pamela Madigan thought that the Education Committee should be asked to look again at other options. She was joined by John Condon, who argued that the £5 million expenditure should be rejected on the grounds that no alternative was being put to members.

But Power rejected these arguments. 'I do not think it's enough to say: "try ending the backlog and see if it works". It is unreasonable to expect people to run in the dark without knowing where they are running to', he said.

A full report of the debates at the special general meeting appears on pages 13 to 19 of this issue.

Bar associations back education report

Separate meetings of the Longford, Mayo and Wexford bar associations have each unanimously approved the *Education Policy Review Group Report*, including its recommendation that a £5 million education centre be built at Blackhall Place.

'It is clearly necessary in everyone's interest that this should happen and the cost should not be a factor', said Martin Lawlor, speaking from the floor at a meeting of the Wexford Bar Association on 28 September.

At the Mayo Solicitors' Bar Association meeting in Castlebar earlier in September, James Cahill remarked from the floor of the meeting that 'this should be warmly welcomed by every solicitor. The entire document is eminently sensible and practical and I only wonder if the funding proposals are too conservative'.

The Council of what is the biggest bar association in the country, the 2,000-member Dublin Solicitors' Bar Association, has also come out in support of the education proposals as was reported at the special general meeting on 23 September by DSBA President, Ruadhan Killeen.

Sheriff's fees reach for the sky

Dublin County Sheriff's fees will reach for the sky next month when a new order increasing the charges comes into force. Under the *Sheriffs' Fees and Expenses Order 1998* practitioners will be hit with heavy increases for some services.

The main increases are:

- Fees paid when lodging an order for the seizure and sale of property will go up from 35p to £12
- Charges for lodging an execution order directing that a person be put into possession of lands or premises will jump from £3.15 to £110
- Fees for search orders and certificates of search will be £13.

A statement from the Sheriff's office warns that these orders will only be processed if they are accompanied by the correct fees.

Special general meeting

23 September 1998

Last month a Special general meeting was held in Blackhall Place to consider the Report of the Education Policy Review Group and a resolution approving its recommendations concerning the building of a new Law School. To give a flavour of the debate for the benefit of those who couldn't attend, the following is an edited transcript of the proceedings, setting out the main points made by each of the individual speakers in their own words

Donald Binchy (Chairman of the Education Policy Review Group): There were 15 members of the Group representing all kinds of legal practice, many of whom had had direct experience or contact in one form or another with the Law School over the years. It would be difficult to imagine a group of people who would be more representative of the profession or who could have brought more relevant experience to the task.

At the outset of its considerations, the Group was given a detailed briefing of the problems currently being experienced by the Law School. While the members of the Group had been aware that the Law School was under pressure for a number of years by reason of the very significant numbers seeking entry to the profession, the Group as a whole was nonetheless generally shocked by the nature and extent of the problem. It was evident that the Law School was engaged in constant crisis management and that this could not be sustained.

Most, if not all, of these problems arise by reason of the fact that the system was originally designed to accommodate 150 solicitors' apprentices, whereas it has for a very considerable period been required to accommodate in excess of 300 apprentices per annum. The report contains Coopers & Lybrand's study, which suggests that the numbers seeking entry to the Law School in the future will remain reasonably constant, at about 300 per annum.

It is to be emphasised that there is nothing whatsoever the Law Society can do to limit numbers entering the Law School and in this context, therefore, the recommendations of the Group should be considered as being numbers neutral; that is, whether this report is implemented or not the numbers seeking entry to the Law School will always amount to the sum total of those who are entitled to take up a place in Law School anyway, regardless of the facilities provided by the Society. It was the view of the Group that the Law School has, since its inception, been run on an unnecessarily tight budget and that it is in the interest of students who pay the running expenses of the Law School that it should be adequately staffed at all times.

All of the Group, bar one, considered that the existing facilities in the Law School are hopelessly inadequate. The Group also recommends the existing facilities used by the Law School should be retained by the Law School for the purpose of providing an information centre and library with extensive computer facilities.

The Group is unanimously of the view that if the Society is to remain involved in the education of solicitors, it should do so on the basis that the education be of the highest possible standard. I think now it behoves us to show the same generosity, foresight and courage as the profession did in the 1970s.

If the recommendations of the Group are not adopted, I consider following consequences possible,

if not likely. Firstly, it is likely that the backlog for entry to the Law School will lengthen and it cannot be ruled out that this will not at some stage or another result in further expensive litigation by the Society. Were this to happen, it is not at all unlikely that the Society might eventually be forced to construct a Law School along the lines now proposed but at a much greater expense. Secondly, students will continue to be educated in very pressurised and cramped circumstances, which necessarily means that it is not as high a standard as is desirable. Thirdly, there will be loss of staff in the Law School. Fourthly, the CLE facilities will remain very limited. Fifthly, in a worst-case scenario, the Law School might even collapse by reason of any one or a combination of the foregoing.

For all of these reasons, I propose the adoption by the members of the Society of the recommendations of the Education Policy Review Group as outlined in its report of July 1998.

Bryan Sheridan (member of the Education Policy Review Group): There comes a time in the life of all organisations when a decision has to be made, and I think in terms of the immediate future of the education system of the Law Society that time is perhaps past but certainly can no longer be postponed and a decision must be made. The report uses the word, and Donald repeated it, 'shocked', and I think that that is no understatement in terms of the view that we formed of the strain under which the existing system was operating. It seems to me that the document speaks for itself in terms of the merits of the arguments and proposals.

Sean Mahon (Architect): The building is designed to have maximum flexibility and adaptability; it is designed to maximise the quality of life within all the existing teaching spaces; it is designed to allow for the easy communication between the existing buildings, both in Wood Lane and in Blackhall Place; and it is designed to rely on ease of circulation generally within the building. The costs associated with the building have been analysed and they have been included in the report submitted to the meeting and they have been verified by the quantity surveyor associated with our works.

In summary, I would like to say that having considered all the options we considered the site at Hendrick Place to be the most suitable site for the development of the school.

Ward McEllin (Chairman of the Finance Committee): We have been very, very careful in how we have drawn the financial model. Donald has mentioned that this is one model which we have; we may change it. Basically, we have taken this and put it together and said it is the worst-case scenario. We can run with this; we may come back and have better ways to do it in the future. But we believe that the manner in which it is laid out before you will be achievable and with no cost overruns.

In relation to the capital cost of the actual building itself, we have predicated this on the basis that we have allowed for an inflation factor of 11% over the course of the project, which, if approval is given, would mean commencing the building in May/June of next year with completion in 12 months. In relation to the finance costings, we have used a base of 6.63% on a ten-year commercial mortgage. With all this talk about the EU at the moment, as of today we can obtain a rate of 5.73% but we are running at 6.63%. So we are building in every safeguard so that our figures will work at the end of the day.

As I have said, and I must stress it time and time again, it is a cost to the profession but it is a cost we can handle. We do not believe there will be an overrun and we believe we can bring it in within the budget.

Orla Coyne: I am a Council member and I am not supporting this motion. First and foremost, the new building is going to cost

Donald Binchy, Chairman of the Education Policy Review Group

approximately £5 million as of today's date. However, I think that this will actually rise and at a time when contributions should be reducing we are being asked now to take £100 from our practising fees to finance this. I believe that there are alternatives which are much more cost efficient. One of them is actually in the appendix to this report and, in fact, is what is presently there. Now, I have not seen any proposals of how this backlog is going to be cleared. If it is that they are going to adopt something similar to this, as being proposed in the appendix, I would think that if the resources are put back into this school as is, I do not think there is a necessity to build this building.

Secondly, if the numbers which Coopers & Lybrand believe are going to rise, up to 300 every year, if they do not attend, are we going to be left with a white elephant on our hands? How are we going to finance this building if the students are not there to participate in the Law School? My other point is the staff of the new school. The details proposed for staffing are not included in the report and cannot be assessed. How many solicitors will be employed?

The other end of this report which I feel has not been dealt with sufficiently is the Curriculum Development Unit. Basically, I do not think enough consultation has been given to this, with regard to CLE, and I think this is another area that will have to be investigated further.

Finally, with regard to the school as is in existence, basically I do not believe it is broken, why fix it? The current courses have been underfunded for a number of years and urgently need attention and resources. These can be implemented at no cost to you. They should be put in hand at once and in the context of the current structure.

John Dillon-Leetch: President, I welcome the opposition of Orla Coyne and I made a note of her points in opposition, but I think most importantly what we have to look at is the future and I think whilst she addresses herself to the present she does not really look to the future. I think the £5 million that is to be spent on this building is a very worthwhile capital expenditure. I think the profession deserves a building that is devoted to education. I think there are certain areas which have to be looked at, for instance, the CLE. I think more CLE has to be brought in.

I do not think that the costings as presented pose any problems, but I think we should indicate to the profession, if we can, as the Council should, that there may be a drop in the practising certificate fees, so that it may not be the huge expense which it is.

Brendan Garvan: I am opposing the motion as well, and I would just like to say that I think that the committee, and previous committees indeed, have been too ambitious with the Law School for far too long. I do not think many of the tutorials are necessary, for example. I actually was an examiner in the old pre-1982 school, which I think dated originally from 1860 or something unbroken. As I say, our system then may be looked upon as having been old fashioned now, but it was a simple system which worked and it generated practitioners which serviced Ireland at that time. Skills were mentioned, ethics and skills, for example. Surely they can be obtained in lectures and they do not have to be obtained in various intensive

tutorials and so on, and special rooms dedicated to tutorials, smaller rooms. What is wrong with the lecture system? I have to say, for example, our accounting brothers seem to be able to run their educational system on a shoestring and produce accountants. Might I say that this is all effected in the charge to us every year. The registration fee went up from £330 to £555 in a short seven-year period. That is a 68% increase.

This is because of our acquiring all these assets. Acquiring assets involves an annual cost. As I say, we have £12 million here at the moment.

For example, someone made a proposal that with this backlog, that maybe lectures could be run in the RDS or somewhere like that, for short periods, and then we are back on an even keel. But it does not involve and could not involve spending £5 million. It is ridiculous. I might say this, Mr President, could we consider releasing some of the £9.5 million that is locked up here in bonds and securities, including the Compensation Fund? Could we consider releasing some of that to pay for an extension to the building here?

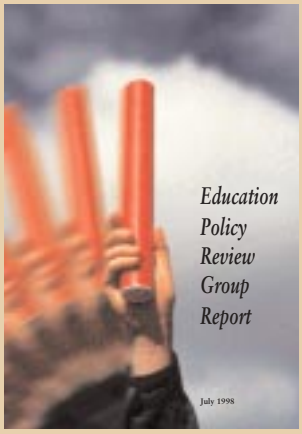
That is all I will say, Mr President, and I am totally opposed to it, especially when I have to pay in order to have the right to work. It is a further imposition on me which I resent intensely. Thank you, Mr President.

Michael Staines: I am strongly recommending this. I have been involved in this for a long time and I can tell you that in my view the facilities in the Law School are totally inadequate. I take objection to members of our Society saying that they object to paying £100 a year for approximately ten years to invest in the future education of solicitors. I think that is very short-sighted and I think it is very wrong. It is a minimum amount of money and I would suggest that the members would live to regret it and that at some future stage the control of the education of apprentices will be taken from this Society and passed on. For those reasons, I strongly recommend this proposal.

Pamela Madigan: I am not supporting the motion, but I would like to give thanks to the people who prepared the report and particularly I am gratified that the course that previously was threatened to be abandoned is now taken for what it is, an excellent course but completely underfunded. The problem I have with the report as furnished is, it seems to me, that the crisis management, as existed, has sent a note of panic in all directions and we are being offered one, and one option only, to extricate ourselves of the decision made in 1989. I am disappointed that the report did not cost other options available to us.

It seems to me that we are being asked to build a Law School to meet numbers, yet the burden of the backlog is still falling on the Law School as it presently stands. I also do not understand why the system that is going to be introduced into this new Law School, which is a cohort system, I believe is the expression, where you will have the number of 150 split, 75 doing lecture and 75 tutorial. Why couldn't that be done here now within the facility we have? I do not believe the report, as supplied, has taken into account the slowing-down effect of the FE-1, the Final Examination First Part, which has been reintroduced and I think that means that there is less than 300 people turning up on our doorstep every year.

I do not believe that this building is going to tackle the problem that exists in this building today, which is the lack of emphasis in the curriculum on what we are teaching our apprentices, who is doing the teaching and how they are being taught. It would be my submission that the Education Committee should be asked to look again at other options that could be considered and I believe the curriculum development should take place immediately. Thanks for your attention.



Members of the Education Policy Review Group

Donald Binchy (Chair)
Raymond Monahan
Judge John F Buckley
John A Campbell
Barbara Cotter
TP Kennedy (Secretary to the Committee)
Raphael King
Prof Bryan McMahon
Andrea Martin
Ken Murphy (Director General)
Michael O'Mahony
Hugh O'Neill
Albert Power (Director of Education)
Bryan Sheridan
William Stokes

Andrea Martin: I am satisfied that a number of the difficulties which I had with the 1995 report have been overcome. Now, while we have had long arguments and debates on the committee, and these continue today, as to whether the figure of 292 is a valid sustainable figure, I am satisfied that we have made at least a scientific stab at taking the relevant factors into account. I was very concerned in 1996 at the apparent exclusion or minimising of role of practitioner teachers and I am satisfied that the significance of the input of practitioners in teaching in Blackhall Place has now been secured in this report.

Which brings me on to something I am very concerned with. I can see the debate at this meeting becoming 'to build or not to build'. I would remind members that the building is referred to in two out of 26 recommendations of the Education Review Group. I recommend the adoption of this report on the explicit understanding that it will not simply be a question of build and forget, that commitment and funds will be put into observing, across the board, the spirit as well as the letter of this report.

Niall Farrell: One issue which seems to be a foregone conclusion is the exterior design of the building. Now, with the greatest respect to the architect, who I am sure followed their brief, the building to me looks like a Sudanese pharmaceutical plant. I sincerely hope that the views of the members of this Society will be sought when the views put forward were being put to them and that they will get a picture of the model or a picture of the building so that they will at least be able to express some opinion as to (1) whether it should be built and (2) whether it should be built in the manner in which it is designed, which in my mind is not sympathetic with the beautiful building which we have here already.

Thomas Menton: Mr President, I am old enough to have contributed to the purchase of Blackhall Place and I certainly have no objection to contributing to the building of a Law School. Can I make a suggestion that, to save the payment of interest, the Society approach the Department of the Finance to see would they approve a scheme similar to the Section 23 flats or the BES scheme whereby the members would put up the £5 million and in return would get tax exemption.

Ronan Moloney: I think in regard to any decision that has to be taken it is always a question of balance and it is a question of looking at the downsides and looking at the upsides and striking a balance. The committee was set up which was representative of the Society and they spent a lot of time and have given a lot of consideration to the various issues and have presented a detailed report and we have heard more

from them here this evening.

I, for one, feel happy to commend all my colleagues on the committee, in the light of the report that I have seen here, to have a confidence that that balance has been struck properly and well on all our behalves. I think in that regard, training our people to the best of our ability and with a view to achieving a very high standard of education is the best long-term defence of our franchise. All of us practice as solicitors. Solicitor means something, and it is important to us all that it continues to mean something. For that reason I would say that I support the resolution and I would like to think that our profession as a whole will do so.

Bernadette Walshe: I think where the objections now appear to arise is that a lot of these recommendations have not actually been tested and what we are being asked to do is to consider quite a considerable expenditure in relation to a building when we do not actually know what the requirements will be until such time as these actual objectives have been experimented with and have been tried and tested.

Also, from wearing my former architectural historian hat, I nearly fainted at the sight of the building and I would support Niall's recommendation that some formal copy of it be placed with the report.

TCG O'Mahoney: First of all, I would like to congratulate those who produced the report and the review. They have done excellent work and had 14 sessions and had several full days extended to them. Obviously, looking at the documentation, they have done a tremendous amount of work, all solicitors, and I am wondering if it would have helped if they had had some property developers amongst them in what they were about. It is a big proposition. Admittedly, those who worked on it have done tremendous work. I only got it on Friday. Incidentally, I have only become a member of the Society since last Thursday.

I am just looking around and I think there might be less than 200 here today out of 5,000. I think the project warrants more input than that. Unfortunately, at the present time there is an international and national economic crisis. Is that the time to go into a big financial commitment on the part of the Society? I can remember back as far as 1987, before I retired, we had a recession. It was calamitous as far as many people were concerned and it struck members of the profession as well. Unfortunately, it hit our Compensation Fund very heavily. I would not like to see something like that occurring again.

The next part that seems to be important is the matter of car parking. I think we all have cars and I have been availing of the car park here quite frequently. Unfortunately, I find it very often full. We have roughly three hundred students, many of them would have cars. I do not know what the solicitors will do with the car parking facilities.

Hence, I am coming to the point that should you be thinking of having regard to the parking point, should you be thinking of a premises away from here, having regard to the clamping and zealousness of the new clampers etc, and possibly should you be thinking of some place like the grounds of the university in Belfield or some place like that.

Keyna McEvoy: I want to speak in favour of the motion. I come from the position, the same as Michael Staines, where I am a contributor to the Law School, and have been for many years, and I would really recommend that those of you who have not visited the Law School should go and take a look around the place and see the facilities under which the staff and the students have to try and get their education. If we expect people to perform well, then we have to provide them with the facilities in which they can perform. I would ask that people would support it.

Dan O'Connor: I, too, would like to thank very much the members of the Group for all their hard work and I unreservedly, both personally and indeed on behalf of the firm of which I am a member, support the motion for the following reasons. First of all, all of the reasons obviously set out in the report itself which, after all, as has been said already, has been carefully considered by both a representative and a highly respected group of our colleagues. Secondly, I believe that it is vital that we as a profession invest in our Law School so as to provide the best possible training in the interests of the future of our profession. We certainly as a firm rely heavily on our apprentices in the growth of our business. Thirdly, as a solicitor and also as a parent of a law student, I am presently embarrassed at the long delays in securing a place on the Law Society's professional course, in particular.

As I understand it, this year's final year law students, who are amongst the last to enjoy exemptions, will not get on a professional course until 2001 or thereabouts. This is a disgrace and it is time we put it right, and I believe the profession should vote in favour of the motion.

Jeanne Kelly: This is my first general meeting and I am thrilled that it is such an important one. Speaking to people who are recently qualified, I qualified in October 1997, I will say that I am not a member of the Younger Members Committee and do not speak for them, but certainly in speaking to some of my friends before coming this evening, they thought the report was such common sense; they could not see how people could speak against it and it would be a foregone conclusion.

Putting 150 people in the lecture hall will not work. We are nearly having tutorials in corridors. It just cannot be done. Secondly, what Mr O'Connor said about being a parent, I am not in that position, but ask anybody in this group who is one to come down to the Law School. They would not allow their child to go to a pre-school that is in such a condition. I would like to wholeheartedly support the motion that the Law Society approve this.

Dominic Conlon: I am young enough to have benefited from the generosity of the people who bought this building and the Law School they put in place. I think that I should do my best as a member of the Society to look to the future for the young people who are coming after me. Not only are the lecturing facilities a joke, the gymnasium and the canteen facilities are inadequate. Everything here at the Law School is just falling apart at the seams. It is £100 a year for each member. That is a very, very small sum. If people are concerned about money, consider this: if we are encouraging people to cram for exams and become solicitors, what is going to happen the Compensation Fund in a couple of years time? We are supposed to be professionals, we should act professionally. It has to change. If we do not change it, it will be changed for us. I think we should all consider that very, very carefully as well.

Michael Peart: I believe we are no longer faced with a decision whether or not to build a new Law School. In my submission, that is no longer an option but an imperative. Time has moved on and the problem has simply got worse. The simple truth of the matter is that if we now decide that a new Law School should not be built, we are in effect deciding that we as a Law Society wish to surrender control of the professional legal education to outside bodies. There is no point deluding ourselves any longer that the present facility and budgets can be tinkered with sufficiently to get that job done. There is no more glaring example, in my view, than trying to make a silk purse out of a sow's ear.

I say all of this while at the same time paying the highest possible tribute to the truly heroic efforts of Albert Power and all the full-time and part-time staff of the Law School in their efforts to keep the ship afloat. During all of that time we have all sat on our

hands and blamed the Review Group for some delay. The time has now arrived, I believe, for us to take our hands out from under our backsides and our little ostrich heads out from under the sand and face the reality. The reality is that things must change, whatever the cost.

What we have at the moment is a Law School which is creaking at every joint. My own guess is that if we fail to act now we will not have a Law School in 12 months' time. I do not believe that is an exaggeration. No viable number of staff will remain and at salaries we are presently offering it will be impossible to engage staff of adequate quality and motivation.

The one thing we cannot do is nothing and by rejecting the Review Group report, in my view, that is exactly what we are choosing to do.

Raphael King: I was a member of the Review Group. Because we have now done our task, we have been disbanded. Like many people in the room, I was a part-time contributor, I was a tutor and consultant. I then worked in the Law Society and I saw at the coalface exactly what was happening. I think Orla questioned that if something isn't broken, why fix it? I am afraid it really is broken and it has been broken for very many years and it needs fixing. Having seen crisis management from inside the Law School, I now see it from outside the Law School. I see the anxiety and depression and disbelief in the faces of apprentices who are saying, 'I cannot believe that you are telling me this could take two years to get on a course'. So, yes, we will lose a lot of people to England and those who we do not lose will be utterly disillusioned by the time they arrive. Pamela, I think you mentioned we could not cope with 150 people in cohorts of 70 and 75. Actually, the figures are 300, rather than 150 per annum, and even if it was possible to cope with 150 in a cohort system it is absolutely and utterly impossible to cope with 300 in the present building.

Some people have asked were all the options considered? I can assure you that they were. So I can assure everybody here that what they see as the proposal is the proposal that the Group is recommending, having considered all other options. It is absolutely and utterly crucial that these recommendations are endorsed by everybody, that this Law School is built and that a new Law School system proceeds.

Ruadhan Killeen: In relation to the views of the Council of the Dublin Solicitors' Bar Association, by a majority view, we support this document. It is, Mr President, an investment in the future of the profession. What we want is a school of excellence with an international reputation. What we have, Mr President, is a school that is crisis managed. There are a few caveats that the bar association would like to bring to the thoughts. First of all, the CLE side of things has not been fleshed out, and we would like that to be fleshed out, and we would not like to be the poor relation of this educational review body. Secondly, technology is running ahead of the profession. Also, library and research facilities should be considered in this document.

John Fish: I am convinced that the young people that we educate are the ones that we need; we must provide them with the best facilities possible. This is our duty, our responsibility. I am satisfied, from reading the report, that this is the right way to go about it and I fully support it.

William Stokes: I am a member of the Review Group and a contributor to the Society's courses. Much of the concern of the Group centred on the bulge which existed two years ago for apprentices in the profession until it was discovered that the bulge was a constant bulge. I took on an apprentice a couple of months ago and she cannot get on a course until February of 2000. We have had actions in the past but we will have actions in the future unless we act now and bring these people on the scene for education, because it is a two-year delay before they can get on the professional course, in the first instance. I, therefore, exhort you all to vote for this motion without hesitation.

Barry Galvin: I am a member of the profession who has funded since the early 1960s successive law schools, including this building, so I think it really ill becomes any person here to think that the profession as a whole would begrudge £100 a year for the education of members. I think it goes without saying that if a profession is satisfied that what we are doing is correct they would do so generously and if necessary with an amount far in excess of £100 a year. I say that having spoken to a large number of people before coming to this meeting.

I have two worries about this. The first worry is that I consistently worry about the number of people who become admitted as solicitors. I am not saying we should become anti-competitive; I am not saying that we should go against the legal finding and have a quota. Is there any study out there that would determine the need for legal resources? How many solicitors can earn a comfortable living in this country now and in five years' or ten years' time? I am exceedingly concerned that that factor has not appeared in this report.

In my time in the Society I was a member of the Compensation Fund, Disciplinary Committee and Professional Purpose Committee. In that time I experienced solicitors on the breadline who either engaged in bad practices or took action which necessitated a drawing on the fund. People came into the area, their standards dropped, they did conveyancing at cut prices, they touted litigation, PI cases from the existing solicitors and did not do them right. I am overwhelmingly of the view that too many solicitors is a disservice to the community at large.

I took the opportunity when I was in here in the Law Society to look at the Law School and I have to say that the word 'shocked' is what I felt at the time. I am still shocked. I understand that has improved somewhat, but I am concerned that what we are looking at here is a short-term answer. I would very much like to have seen an overall solution to the Society's problems. Have we outgrown Blackhall Place? Are we fully utilising Blackhall Place?

I support the idea, Mr President. The people I have spoken to support the idea of spending money on education. I worry about the lack of investigation.

Albert Power: I am the Principal of the Law School and a member of the Review Group. Some of my former students have come here this evening. I think they have spoken most fairly about the courses they went through and the efforts that were made.

I was very much moved by the address by Michael Peart, which I was not expecting to hear, although I know Michael's view and I think it is most warming. I do not think Michael is exaggerating. There is an unremitting and an ever-increasing pressure on those who work here to deliver the product in a quality manner. I pay tribute to the people who work here at the moment and their predecessors, but particularly to those here now because I think notwithstanding appalling conditions and a huge number of students there is a high quality, but high quality that is being maintained at a heavy personal price and it cannot be maintained into the future unless the changes that are desired and spoken of happen.

I have to tell you that the Law School is the same Law School, in terms of its facilities, to a greater extent as was envisaged in 1978; the same lecture hall, the same gymnasium, the same tutorials. Some of the speakers earlier spoke of the courses, and it was said it could cope with 300. It can cope purely with 300, but we are not coping with 300. You have to bear in mind we have advanced courses going through at a vastly accelerated and increased rate as well. Between the courses that have started and the courses that

Listening to the debate at the Special General Meeting

have finished, and courses going through this year, there will have been 800 students in the course of 1998.

We cannot cope with the backlog until we know where we are going. It is unreasonable in any environment to expect people to run in the dark without knowing where they are running to. This matter must be decided once and for all. I commend to the membership the adoption of the plan as being put by the Review Group.

Brian Magee: I come from a background, too, of part-time consultant in the Law School and I must fully echo everything that has been said so far about the conditions in the Law School and the tremendous and Trojan work that has been put in by the people who work there, as well as the members of the profession who voluntarily give their time to it.

There are 26 recommendations in the report: two of them only deal with money and building; 24 of them deal with the construction and building of a Law School. What we are at here is the building of the Law School. We are also talking about the construction of a building within which we want to house that Law School.

If you want the Law School, you must have the facilities. We do not have them at the moment. £100 a year we are being asked to contribute. It is nothing. £5 million? Look back at it in 20 years' time, it will be regarded as nothing.

John Condon: They are all very specific and compelling points made by the speakers against the proposal. The only aspect of 26 clauses that I am against is the £5 million expenditure. I was quite frankly staggered to hear the figures that were put out by Mr Garvan, twice the cost to practise as a solicitor here than in Northern Ireland, £1,000 more than a chartered accountant. We are being asked to spend £5 million without an alternative proposal being put before us. So I think the £5 million expenditure should be rejected on the grounds of no alternative being put to the members.

Owen Binchy: As the current Chairman of the Education Committee, I would like to support the proposal. Fifty places on the course for September 2000 have already been assigned. That is the delay that is there. It is not acceptable and something has to be done. I would ask you to support the motion.

Hugh O'Neill: I am member of the Education Review Group and I just want to reply to some of the specific points raised by people about the alternatives. In relation to rejigging the courses in Blackhall Place, we looked at this time and time again, we looked at timetables, we looked at raising potential staff and we found it to be impossible. The people who have stated that it is possible to do this have put forward no competent proposals as to how this can be done. The Coopers & Lybrand report looked at the question of the FE-1 and it is accepted by the entire membership of the Group that at least 300 people a year will pass the FE-1 in the foreseeable future and will come into Blackhall Place. There is no getting around that figure. Therefore, I can only recommend the only course open to us as a profession is to adopt this report.

Barbara Cotter: I fully support the proposal and just very briefly I want to pick up on one particular problem that was highlighted and that is the backlog in obtaining a place on the course. Just leaving aside possible legal actions or indeed student aspirations, speaking only as a master, I find it very frustrating and virtually impossible to plan for staffing, for allocating resources and plans, the places within the office.

Gabriel Brennan: I am a full-time tutor in the Law School. I would just like to thank all of you who turned up tonight to speak in support of the proposal. We believe that it is the way forward. We are working under immense pressure at the moment and we would urge all the members to give this proposal your wholehearted support. Thank you.

There being no further speakers, the President then put to the vote the resolution which was as follows: *'That this General Meeting approves the Report of the Education Policy Review Group, of authorising Council to take all necessary steps, including borrowing and expenditure, to give effect to the recommendations of the Group'*. The meeting approved the resolution by 69 votes to 6. G

Jumping on the

How far can a business go in taking pot-shots at the opposition's trade marks? Are competitors' marks just sitting ducks? Niall O'Hanlon examines the copyright and trade mark issues surrounding comparative advertising

brands' are big business. A graphic, even if taken out of mediately invoke particular goods or services in the mind of a consumer. Indeed, some trade marks have taken on a life of their own and have been used to add lustre to goods and services, ranging from cosmetics to car hire. Small wonder, then, that trade marks are recognised by the law as intangible assets that can be valued and used to bolster otherwise sagging balance sheets.

The law governing the use of marks and brands was recently amended and updated in the form of the *Trade Marks Act, 1996*. This legislation, which repealed the 1963 Act, extended the ways in which a trade mark can be used by its owner to the exclusion of others. It is now possible, for example, to register a mark under the new Act (and gain the attendant statutory protections) in respect of services and not just in respect of goods, as was previously the case. This change, along with other innovations introduced by the 1996 legislation, will be welcomed by trade mark owners as it will tend (all things being equal) to increase the value of the statutory monopoly that they have been granted.

But in one important area – comparative advertising – the changes introduced by the 1996 Act have the potential to weaken the position of trade mark owners.

Comparative advertising occurs where one company makes reference in its advertising to a competitor's product or service and in doing so reproduces its rival's trade mark. Under the *Trade Marks Act, 1963*, the register of trade marks was divided into two parts: A and B. The details of the earlier legislation need not detain us here, suffice it to say that part A marks enjoyed a greater level of protection against comparative advertising than did part B marks. In light of recent case law, it now seems likely that the 1963 Act represented the high point of protection for trade mark owners against comparative advertising.

The 1996 Act abolished the distinction between part A and B marks and the rule in relation to comparative advertising is now contained in section 14(6) of the Act, which provides that *'the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor or licensee of the registered trade mark, other-*

brand wagon

PIC: ROSLYN BYRNE

wise than in accordance with honest practices in industrial or commercial matters, shall be treated as infringing the registered trade mark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the trade mark'.

What this in effect means (and, more particularly, what constitutes 'honest practices') is not yet entirely clear. While lawyers are waiting for the first Irish decisions on this section, a number of recent English cases have examined the equivalent provisions of the UK *Trade Marks Act 1994*, which may throw some light on how the Irish courts are likely to treat this issue.

Recent case law in the UK

In *Barclays Bank plc v Royal Bank of Scotland Advanta* ([1996] RPC 307), the defendants had launched a new credit card and posted a set of leaflets to existing credit card holders. One leaflet contained a table comparing interest rates and annual fees for a number of cards, including Barclays', which was referred to by name. A second leaflet, not bearing the Barclays' trade mark, listed 15 ways in which the defendant's card was 'a better card all round'. Barclays applied for an injunction on the grounds that the second leaflet was misleading because it incorrectly implied that all the listed benefits were exclusive to the defendant's card and that, by associating Barclays' mark with such a list, this was 'use otherwise than in accordance with honest practices'.

The judge refused to grant the injunction and held in relation to the question of honesty that no reasonable observer would expect a trader to point to all of the advantages of his competitor's business, and that failure to do so did not *per se* take the advertising beyond what reasonable people would regard as honest. He also rejected the contention that industry-agreed codes of conduct should be used to determine the question of honesty. This is an important aspect of his judgment as it forestalls the possibility of industry players colluding to restrict the degree and type of competition in which they engage against one another, to the detriment of the public interest and in defiance of parliamentary will.

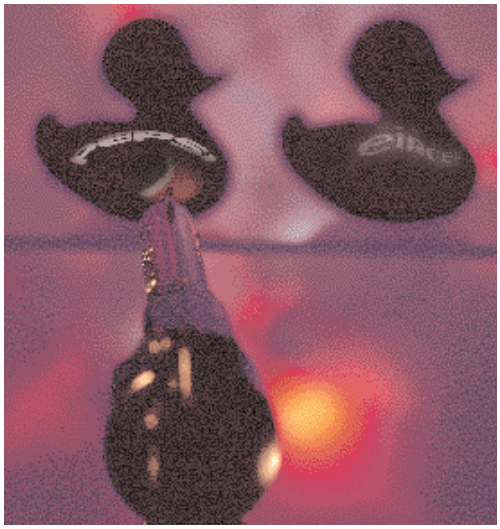
In *Vodafone Group plc and Vodafone Limited v Orange Personal Communications Services Limited* ([1996] 10 EIPR 307), the defendant launched an advertising campaign which included the slogan 'on average, Orange users save £20 every month'. This saving was stated to be in comparison to Vodafone's or Cellnet's equivalent tariffs. Vodafone considered this statement to be false and sued in respect of malicious falsehood and infringement of their registered trade mark *Vodafone*. The claim failed on both counts, the judge holding that the public recognised that the slogan referred to average costs. He also considered that the absence of a complaint from Cellnet, also competitors to Orange, was significant in that they were just as much 'victims' of the slogan as the plaintiffs.

British Telecommunications plc v AT&T Communications (UK) Limited ([1997] 5 EIPR D-134) was a case in which AT&T launched its residential telephone service in the UK with an advertising campaign comparing its prices with those of BT. In doing so, it made use of BT's trade mark. BT instituted proceedings for, *inter alia*, trade mark infringement, complaining about the following statement in one of AT&T's brochures: 'When is it cost-effective to use AT&T Calling Service? For

practically all non-local calls and especially for international calls'.

BT argued that the statements complained of were seriously misleading because, firstly, a call-by-call comparison did not demonstrate that practically all AT&T calls were cheaper and, secondly, a call-by-call comparison was entirely inappropriate because of the companies' different pricing structures. BT contended that practically all calls should be taken as meaning 95% of calls or thereabouts. The defendants countered that, firstly, although not every call using its service was cheaper many calls were and, secondly, that where AT&T calls were cheaper they were significantly cheaper, whereas where BT calls were cheaper they were not significantly cheaper.

The court refused relief, holding that a reasonable reader would not understand the statements as asserting that at least 95% of AT&T calls were cheaper but rather would understand the statements, taken as a whole, as promising substantial savings.



Will Irish courts take the same approach to comparative advertising as their UK counterparts?

Liberal common law approach

These cases show that, in interpreting the UK equivalent of our section 14(6), the English courts have reverted to the liberal common law approach that was evident prior to the enactment of the UK *Trade Marks Act 1938* (equivalent to the Irish *Trade Marks Act, 1963*).

Although we should be cautious in drawing conclusions about the likely approach of the Irish courts, the UK decisions are persuasive precedents and trade mark owners will need to face up to the fact that the level of protection they previously enjoyed against comaparative advertising under the trade mark legislation no longer exists.

Would-be users of competitors' trademarks, however, should bear in mind that their intended targets have two other possible lines of defence.

The *Comparative Advertising Directive*. The *Comparative Advertising Directive* was adopted by the EU on 6 August 1997. The directive, which on the face of it reflects continental Europe's – and particularly Germany's – antipathy towards comparative advertising, imposes a range of restrictive conditions which must be satisfied by such advertising and has the potential to roll back the liberal approach apparent in the cases discussed above. However, according to one commentator (McCormick, *The future of comparative advertising*, [1998] 2EIPR at 41), the current position being adopted by the UK government is that the provisions of their 1994 Act adequately cover the requirements of the directive and that no further implementing legislation is required, which is bad news trade mark owners. While it is questionable whether this position is tenable, should the Irish Government adopt a similar view then it may be some considerable time before trade mark owners come to enjoy the full benefits of the protection which directive intended to provide: in the short term at least, they will have to look elsewhere to protect their marks against the vicissitudes of comparative advertising.

The *Copyright Act, 1963*. Where a mark registered under the *Trade Marks Act, 1996* also constitutes an artistic work (which would include a drawing, engraving or photograph) within the meaning of the *Copyright Act, 1963*, it might be possible to seek to protect the copyright in the trade mark. A practical limitation which will have occurred to some readers is the fact that, although even with the recently enhanced copyright term of protection, the trade mark as an artistic work may have gone out of copyright and consequently entered the public domain. Nevertheless, many commercially important marks should still be in copyright given that the term of protection is the lifetime of the author and a period of 70 years after his or her death.

A further problem is that the *Copyright Act* does not prevent the adaptation of artistic works, thereby leaving open the possibility of rivals producing recognisable versions of a trade mark without actually committing copyright infringement through reproduction of the artistic work. A trade mark owner might overcome this difficulty if he could establish that the mark, taken as a whole, was a compilation (that is to say, a mark consisting of both a drawing and a word or words: certain well-known sporting goods brands might fit the bill, for example) and should therefore be protected as a literary work: protection of the literary work under the *Copyright Act, 1963* is important because adaptation of such a work constitutes an infringement of copyright.

Support for such an approach can be found in the Australian case of *Kalamazoo (Aust) Pty Limited v Compact Business Systems Pty Limited* ([1985]) 5 IPR 213) where the court held that there was no requirement that a compilation be of component works that are exclusively literary. The court went further and stated *obiter* that compilations could consist of purely artistic works.

The difficulty with this approach – insofar as marks consisting of a single word are concerned – is highlighted by the decision in *Exxon Corporation v Exxon Insurance Consultants International Limited* ([1981] 3 All ER 241), where the court held that the word mark *Exxon* did not qualify as a literary work for copyright purposes.

However, the good news for trade mark owners is that the Irish and UK courts have not sought to impose such *de minimis* requirements in respect of artistic works. In *British Northrop Limited v Texteam Blackburn Limited* ([1974] RPC 57), the judge stated that the court should be slow to exclude drawings from copyright merely on the grounds of their simplicity, while in *Solar Thomson Engineering Company Limited v Barton* ([1977] RPC 537), the UK Court of Appeal held that a drawing of two concentric circles constituted an original artistic work.

Grounds for optimism

Is there any reason for a trade mark owner to fear that an Irish court would object to granting copyright protection to a registered trade mark? Although there is as yet no answer to this question, the remarks of Costello J (as he then was) in *House of Spring Gardens v Point Blank* ([1984] IR 611) on the interaction of the *Copyright Act, 1963* and the *Patents Act, 1964* provides some grounds for optimism for trade mark owners. He stated that there was nothing in either code which suggested that the rights conferred by the copyright legislation should be affected by an application for a patent.

Whether an Irish court (if persuaded to treat a registered trade mark consisting of both a drawing and words as a compilation qualifying for copyright protection) would prefer the *Solar Thomson* view over the *Exxon* decision, or would choose a middle route, remains to be seen. Trade mark owners may be compelled to discover the answer to this question if the Irish courts adopt the same approach to trade marks and comparative advertising as their UK counterparts.

In the meantime, business people – and their advertising executives – who want to know how far they can go in using their competitors' marks should be careful about jumping on the brand wagon. G

Niall O'Hanlon BA (Hons) (Acct & Fin), LLM (Comm Law), ACA, AITI is a practising barrister specialising in general commercial and taxation law and is a consultant to the Law Society's Law School. Readers interested in this topic should refer to his article The insomniac's guide to comparative advertising *in the August and October issues of* Irish Business Law *(Inns Quay Publishing).*

Infernal com
A century

The first petrol motor car came to Ireland just 100 years ago. This centenary is probably more important to lawyers than anybody else, except possibly the motor trade, since lawyers have a morbid fascination, and a financial interest, in motor vehicles. Robert Pierse looks back to the early days of Irish motoring – and motoring offences

1898 saw the first Irish car manufacturer open in Belfast; 100 years later, there are none. That this mode of transport is a mixed blessing to the public at large is obvious from current statistics: last year 472 people died on Irish roads; so far this year the figure is approaching 350.

This point about a mixed blessing was made more dramatically in 1996 at British centenary celebrations in Coventry Cathedral on the 17 January 1996. A woman whose mother had died in a car crash threw off her coat and stood naked in front of 1,000 worshippers, saying to the congregation: 'In the spirit of Lady Godiva, I am here to mourn the death of my mother and the 17 million people killed directly by the motor car'.

It was a series of Acts by the British Parliament in the last half of the last century that enabled the first motor car to be brought to Ireland. These ranged from the *Red Flag Act 1865* to the *Locomotives on Highways Act 1898*. The *Red Flag Act* (28 and 29 Victoriae C 82) is probably the most notorious of these Acts. It was 'an Act for further regulating the use of locomotives on turnpikes, and other roads for agricultural and other purposes'.

Red Flag or bull?

It had a number of interesting provisions: firstly, that three people had to be employed on such a locomotive (heavy steam vehicles); secondly, that 'one of such persons, while the locomotive was in motion, shall precede such locomotive on foot by not less than 60 yards and shall carry a red flag and shall signal the driver when it was necessary to stop and shall assist horses and other carriages drawn by horses passing the same'; thirdly, that locomotives had to give such space as possible to other traffic; fourthly, if it had a whistle, it was not to be sounded; also, it had to stop instantly on meeting horses and it had to carry lights. Its speed limit was 4 mph, but in a city, town or village 2 mph. Section 9, applying it to Ireland, said that the county surveyor was to be deemed the conservator of roads in his county, and proceedings for damages done by locomotives would be taken in his name.

It was the speed limit under that Act that stifled the purchase of the new phenomenon in the UK and Ireland, that is, the light locomotive, which was later to become known as the motor car in 1903. Pressure was brought in the early 1890s for changes in legislation to keep up with continental developments. Change was coming fast as the end of the 19th Century approached.

In 1895 or 1896, the Wembley-appointed British agent for Benz cars, Henry Howetson, briefly demonstrated the 'horseless carriage' in Cork, but the car was not brought here. The following year, a Belfast scientist imported a Serpollct Steam Car.

The next major Act was the 1896 Act – the *Locomotives on Highways Act 1896* (59 and 60 Vict). This enacted that light locomotives should then, even though mostly steam, gain certain exemptions from the *Red Flag Act*. A light locomotive had to be so constructed that no smoke or visible vapour emitted therefrom except from a temporary or accidental cause. It also had to carry a bell or other instrument capable of giving audible warning but had a speed limit of 14 mph. Excise duty of £2 2s 0d was introduced.

This Act had taken some time to get through the British Parliament and had delayed the arrival of the first motor car in Ireland. The *Locomotives Act 1898* further freed up the position, particularly in relation to light locomotives.

The first motor car in Ireland

Before the 1898 Act was passed, Dr John Colohan of Blackrock, Dublin, was chaffing at the bit to get the first petrol motor car to Ireland (a car with an internal combustion engine). He had been in Germany and France in the early

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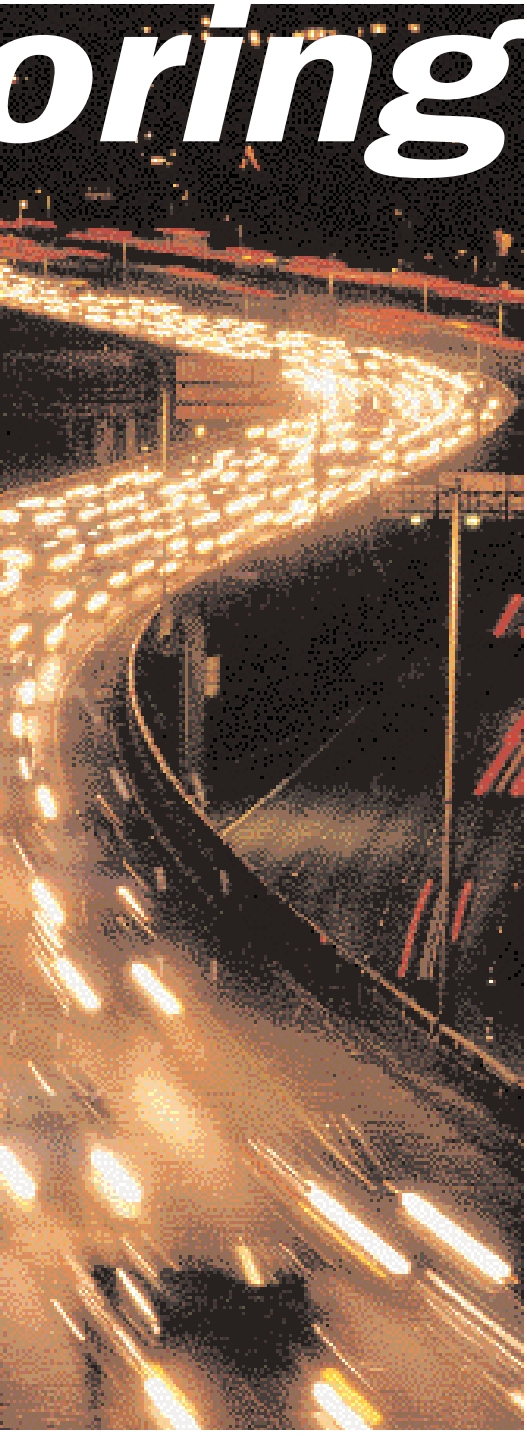


1890s and had seen the new Benz cars and others there. When the 1896 and 1898 Acts were passed, he brought the first car to Ireland. This was in fact the fifth car in these islands.

If you have not already gone to see this car, I recommend that you do so. It is in pristine condition in the Mercedes Benz premises of Motor Distributors Ltd on Dublin's Naas Road.

This car is a three horse power 1898 Benz Velo 'comfortable' (registration no IK 52). It has a single cylinder horizontal engine. It was four stroke and petrol-driven. For the enthusiast, it can be noted that it has an automatic inlet valve, was two speed, two belt-driven, coil ignition with a differential gear and a double chain drive. Its top speed was 16mph approximately and fuel consumption was around 20mpg.

It is an interesting car to sit into because it is so small. It has Tiller steering, that is, a flat steering wheel on a vertical column with a handle rack and pinion. It has solid tyres, even though another Irish man, John Boyd Dunlop, had patented the pneumatic or cushion tyre in Belfast in 1889. However, that tyre was not exploited in Ireland.

Full service history

The Benz Velo cost its owner £189, and was sold on at an auction in 1904 for the disposal of the deceased Dr Colohan's goods. It was bought by David Craig, a property owner and motor enthusiast. Later still it was bought by Rev Reginald Bury of Glenageary, Co Dublin, who sold it to Harold Elliott for ten shillings. It had to be pushed the three miles from the vendor's home to the purchaser's as it was in poor repair. It was later sold to Richard Hughes for £5.

The car was found in a derelict state in 1984, still owned by the Hughes family of Ballyrichard, Mullinahone, Co Tipperary, who were its owners since 1907. It was bought by Denis Dowdall, who restored the car to its present condition and returned it to Dublin. Apart from its home in the Mercedes Benz showroom, the car has also been exhibited in the Irish Museum of Transport in Killarney where a number of its more or less contemporaries can be seen. (This is another place that's well worth a visit.) Dr Colohan's car featured on an Irish stamp in 1989.

Why was the registration number IK 52? The registration of motor cars did not come in until November 1903. The early registrations seemed to relate to motor bikes rather than motor cars. IK 52 was registered on 1 January 1904 before Richard Hughes, its fourth owner, had it transferred to himself in 1907.

Robert Pierse test drives the 1898 Benz Velo

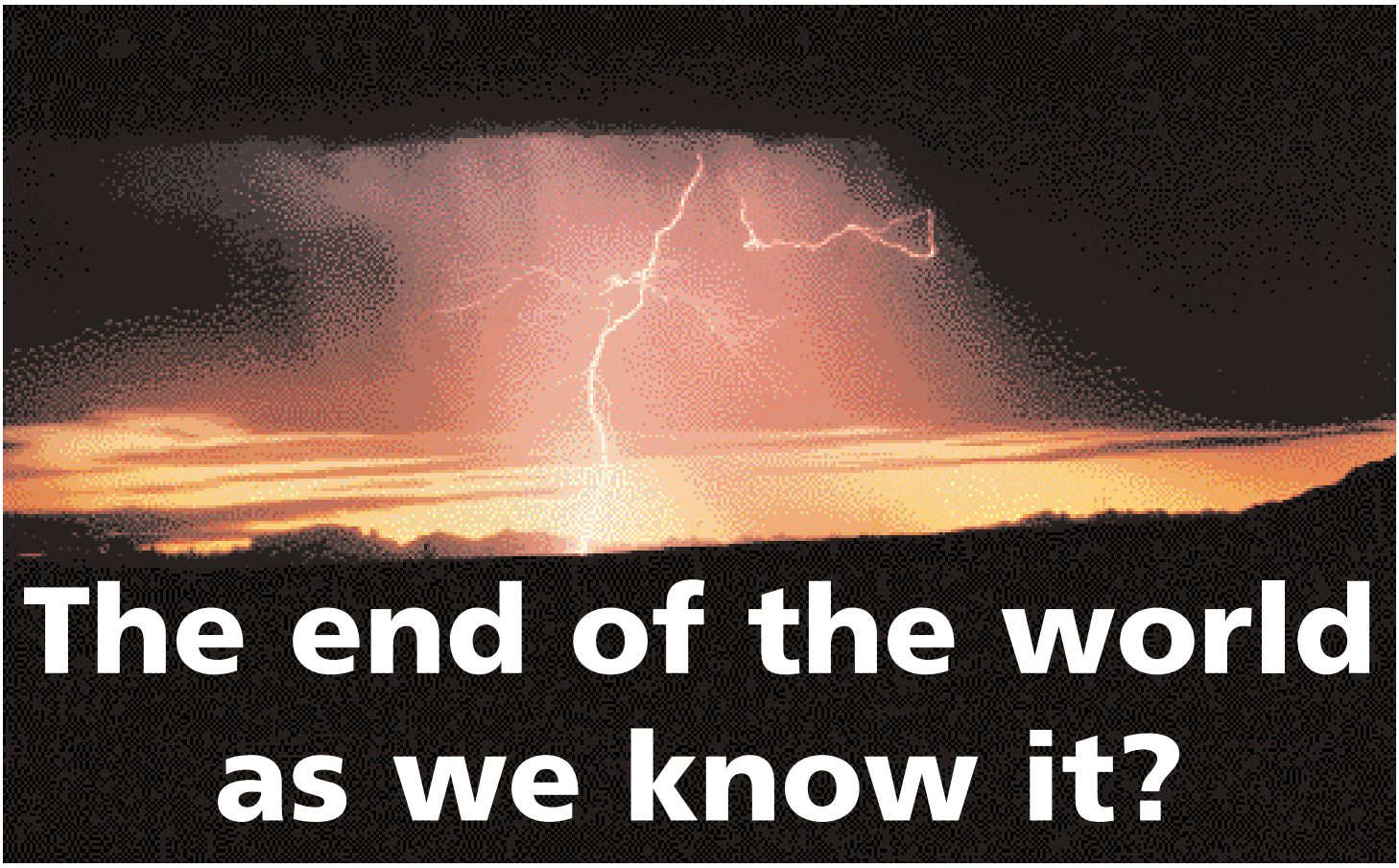
Another interesting centenary in 1998 is that of Chambers Motors Ltd of Cuba St in Belfast. It opened for business in 1898 and was run by a successful partnership of three brothers, Robert Martin, John Henry and Charles Edward. They produced their first car in 1904, described as a sturdy and seven HP model, which made its maiden trip to Bangor, a journey of 20 miles all in.

My granduncle became the registered owner of the eighteenth car in Kerry. It was a Chambers car and was delivered to him by Robert Martin Chambers in March 1907. My granduncle remarked of this car that 'it gave nearly 40 miles to the gallon of petrol. I never had any serious trouble with it, in spite of covering some 200 miles of very poor roads each week'. I know he was right about the roads being bad around Lixnaw, as they are still not great. I remember travelling them in the 1940s with my father, carrying two spare tyres and two spare springs in his car.

We will have to wait until 2002 to celebrate the centenary of the first reported case (I believe) in Irish criminal law on the motor car, *R (Cahill) v Divisional Justice of Dublin* (KB 1904 2 IR 698). It held proof that a motor bicycle driven at 23 mph was sufficient evidence of dangerous driving at St Stephen's Green East.

No doubt criminal law practitioners will celebrate that centenary! G

Robert Pierse is a Kerry-based solicitor and author of Road traffic law in Ireland *(second edition, 1995) and* The quantum of damages for personal injuries in Ireland *(1997).*



The end of the world as we know it?

You are sitting in soft candlelight at the dinner table, sipping champagne, still cold, although the fridge and all your other electrical appliances packed up a few minutes ago when the power went just after midnight. Because of the candlelight, your dinner guests barely notice and are still celebrating the start of the new millennium, although one or two mention that the music has stopped

Outside, the city has been plunged into darkness, except for a glow on the horizon where the first plane has just crashed because aircraft guidance systems are malfunctioning. The noise of distant car horns reaches you, as all traffic lights fail, and the annoying sound of several battery-powered alarm systems blaring adds to the growing din. You grab a candle and slip out to the kitchen. You try the phone – dead. You decide to check the office. On the way, you notice a group of New Year revellers getting stroppy with a non-functioning ATM machine. You reach the office and …

This doomsday scenario sums up the worst predictions of those who believe the so-called Millennium Bug will end the world as we know it. But is there really a major problem or is this just a clever scam by the computer industry to increase turnover? The truth lies somewhere between the two, although it is clear there will be problems. There is absolutely no doubt that some computer systems, micro-processors of all kinds (including those in your washing machines, VCRs and other appliances), and some computer software, will present problems during or after the transition to the new millennium.

Ebery digit counts

The problem began with the imperative of maximum efficiency in computer software, which dominated developments in the 'seventies and early 'eighties. In an environment of very expensive and limited hardware, every digit was significant. Thus, saving two numbers for every date in a system was hugely important. In fact, some of these systems would exceed the size allowed if the century was included in the dates. So, we dropped the century digits and programmed dates in the format '31-12-99' to get our systems to work. This became the standard, and while hardware became cheaper and more powerful, the practice persisted in many areas.

So what does such a system do when it comes to the year 2000? It thinks it is the year 00. This would have an interesting effect if, on 20 December 1999, you scheduled a file for destruction in ten years. On 1 January 2000, it would become 90 years overdue for destruction.

There is another potential problem. Century years are not normally leap years (1900 was not a leap year). But every fourth century is a leap year and, you've guessed it, 2000 will be a leap year. There are already several documented instances of systems passing the century test but failing the leap year test – that is, they do not recognise 29 February 2000 as a valid date.

So how will this affect an Irish law firm? Mainly in the same way that it affects all other small to medium-sized organisations, although there are a few specific dangers lurking in solicitors' offices which I will detail later. In general, computer hardware, networks, back-up systems, accounts software,

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client databases, archive systems, interest calculators, telephone systems, fax machines, alarm systems, central heating timers, lifts, even motor cars, can all be susceptible. There are many respectable surveys and estimates of the potential damage. These vary in their predictions and degree of alarm, but all are agreed that businesses which do not deal with the problem *now* will close as a direct result of the Millennium Bug.

Dealing with the fall-out

For solicitors, there are two other consequences that need attention. First, this problem is bound to lead to a lot of litigation. Specific expertise is required both to advise clients in advance and to deal with the fall-out later.

Second, most solicitors' firms have put considerable effort into standardising their word-processing documents and their precedents. These are likely to contain blank dates with the '19' already filled in for the century, or the date in words ('nineteen hundred and ...'). Also, word-processing macros or glossaries may harbour similar pitfalls.

Attention also needs to be focused externally. We all operate in an inter-dependent business environment. For instance, if your bank or computer supplier had difficulties in the Year 2000, how would that affect your firm? What if one of your major clients had problems severe enough to close them down?

The **panel** below shows a list of things you need to do. It is not definitive and will vary from organisation to organisation but sets out a reliable framework. There follows a sample list of areas that may require checking, again to be amended as appropriate. If in doubt, contact a professional. There are several accountancy firms, computer companies and business consultancy firms offering good advice.

- **Appoint a co-ordinator.** This person should be capable of managing detail and be able to hold their own in discussions with partners and principals. They need to operate as a 'champion' of the cause within the firm
- **Identify possible vulnerable areas.** This involves an audit of all systems, computer and otherwise, within the office
- **Test/replace/upgrade.** Define appropriate tests. You may require assistance with this from your various suppliers, as several tests may be required. Test all systems identified, take a decision on whether it is more appropriate to replace or upgrade the problem systems. Don't forget those precedent documents and macros/glossaries
- **Identify training requirements and train staff.** Some procedures and practices within a firm may need to be 'tightened up'. These might include dates in documents, accounts entries etc
- **Liaise with suppliers and institutions.** Satisfy yourself that your suppliers and the institutions you deal with regularly have a strategy in place for Y2K. Will this require any action or adjustment from your firm? Where appropriate, ask for compliance statements
- **Liaise with clients.** Do your clients have any particular requirements? In some cases, where a firm reports regularly to a client, reporting requirements may change. G

Justin Phelan is managing director of Keyhouse Computing Ltd.

Year 2000: potential problems

This list is not exhaustive but indicates how widespread this problem can be. Some items on the list are version-dependent (that is, newer versions are Year 2000 compliant). They are included because they should still be checked and their compliance verified.

- Personal computers (PCs): any IBM or IBM-compatible PC
- Microsoft DOS
- Microsoft Windows 3.x
- Microsoft Windows 95
- Microsoft Windows NT
- Unix, Xenix, SCO Unix, Ultrix
- Novell Netware
- All word-processing systems and spreadsheets
- All solicitors' accounts, time costing and practice management software
- Desktop database systems, such as Microsoft Access, Visual dBase, Paradox etc
- Diary systems
- Document production/case management systems
- CORT
- Time clock/flexitime systems
- Archive systems
- E-mail/fax systems
- Interest calculators/financial planning/amortisation systems
- Report generators (Crystal, R&R etc)
- Back-up scheduling software
- Data files
- Precedent documents
- Word-processing and spreadsheet macros
- Communications hardware, routers and hubs
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Busting the

Inspired by the *Bacon report*, the Government recently introduced measures to curb rocketing house prices by taking the investor out of the market. Six months after the legislation was published, Michael Gaffney reviews its operation and pinpoints some anomalies

The *Finance Act No 2, 1998* has already been the subject of widespread comment in newspapers since 23 April 1998. The principal objective of the Act was to take the heat out of the residential property market.

The Act discourages investors who are not owner-occupiers by disallowing the interest expense deduction in arriving at tax on profit rents. It also makes certain amendments to the stamp duty legislation which positively discriminates in favour of the owner-occupier to the detriment of investors.

There is a comprehensive Revenue release summarising the Act which can be found on the Revenue Commissioners' web site. This article, therefore, concentrates on examining certain interesting or anomalous features of the new provisions.

Disallowance of interest expense

First, the Act defines a 'rented residential premises'. As you might expect, this is residential property where the owner is entitled to any sort of rent or similar payment.

The interesting feature is the definition of 'residential premises'. This includes all property suitable for use as dwelling houses. This could include a lot more buildings than are actually used as a dwelling house. We will come back to this point.

Second, the Act removes the provisions in legislation on which the deduction of interest expense was based (namely section 97(2)(e) of the *Taxes Consolidation Act, 1997*). These provisions had applied both to Irish property taxed under the rules of case V, and foreign property which is taxed under the rules of case III. They are removed in respect of both but the restriction on the case III deduction was an after-thought. This could be viewed as an unfortunate addendum to the legislation as it may well reduce the effect that it would otherwise have had by providing a foreign escape valve for would-be property investors.

Third, there are some specific exceptions where interest can continue to be deductible. These relate to borrowings for Irish property where the borrowed money was employed before 31 December 1998 in the purchase of property under a contract evidenced in writing entered into before 23 April 1998, the date the new rules were announced.

Transitional matters. The question arises as to whether such a contract is in place where a deposit has been put on a house before 23 April 1998. Normally such a deposit does not amount to a contract for the purchase of the building. This was recently confirmed in a High Court case, *Lake v Durkan Brothers*. Even if it is not refundable, it may be just a booking deposit, and there may not be a legally enforceable contract on either side. Therefore it looks as if making a deposit before 23 April 1998 is not in itself sufficient to allow a taxpayer to avoid the new restrictions. The explanatory leaflet confirms that the Revenue are not taking a lenient view in these circumstances.

The Revenue have also indicated that they will audit transfers of property closely to catch any backdating. Comments made by estate agents following the initial announcement to the effect that the new provisions had not yet dampened the market may have prompted this statement.

The restriction does not apply to premises anywhere in Ireland where certain planning permission was applied for before 23 April 1998. Such planning permission restricts the use of the premises for short-term residential use not exceeding two months at any one time. This allows the continuation of interest deductions to investors in certain schemes for purpose-built holiday cottages or apartments which are zoned accordingly under the planning law.

In the case of foreign properties, the restriction applies from 7 May 1998. The original announcement on 23 April had been focused only on domestic residential property and the question of foreign property became highlighted in the public reaction to the initial announcement. Presumably the authorities decided that it would not be appropriate to treat foreign property more favourably, although as noted earlier their prime objective may have been bolstered by maintaining the *status quo* in relation to this point.

Use of corporate structures. In short, such structures will generally not be effective. In the past, another way of getting relief for interest on money used (indirectly) to buy residential property was to invest the borrowed funds into a com-

housing boom

pany by means of loans or share capital subscriptions. The company would then purchase the property. In this case the interest would in the past have been available for deduction under section 248 of the *Taxes Consolidation Act, 1997*. Similarly, under the same section, there was also a possible deduction for interest on borrowings to invest in a partnership. The use of partnerships has in the past been a common feature for investments in holiday cottages.

With effect from 7 May 1998, the date the Bill was published, interest may not be deducted for investments in companies or partnerships where the money is used directly or indirectly to purchase rented residential property. There are two strange results of the above legislation:

- If the investor simply buys shares in a company or a share in a partnership from somebody else (rather than subscribing into the company or partnership for their share), it seems as if the restriction should not apply. This is because the money is not used (whether directly or indirectly) by the company or partnership to purchase the property. In this case, the property will possibly have been bought at an earlier stage by the company or partnership. It might be argued that the funds are 'indirectly' used to buy the property because the new investor in effect facilitated the financing of that property. However, it is felt that this argument is fairly thin as it does not reflect the wording of the law
- This part of the law does not contain any transitional provisions, so if an individual signed a legally-binding contract to invest in a company or a partnership (for residential property) before 7 May 1998 they are not 'grandfathered' from the effects of the new laws. This is very unusual and indeed unfair on any taxpayer unfortunate enough to be in this position.

Repairs. The legislation is less restrictive in the case of borrowed money employed for the improvement or repair of residential premises. Even if the borrowings are employed after 23 April 1998 for this purpose, they can still qualify where the residential premises was let for the 12 months to 23 April 1998, provided it is owned on 23 April 1998 by the taxpayer (or alternatively where the taxpayer buys it before 31 December 1998 under a contract evidenced in writing entered into before 23 April 1998).

Other anti-avoidance. Where a person turns their existing sole or main residence into rented accommodation, the restriction applies from that date irrespective of when the related borrowings were drawn down.

Anomalies in the system

What is residential property? Arguably there are many premises which are suitable for use as residential property. These might include Georgian houses which are used as offices, or large country houses which are used as hotels. A very optimistic interpretation of the law would be that these are not really suitable for use as dwelling houses unless one changed the layout inside (for example, to remove office equipment). However, in many cases it will not be very clear as to what is, or is not, suitable as a dwelling house.

The problem becomes more acute in the case of guesthouses, self-contained suites or mews houses which are part of a hotel complex. Often these are perfectly suitable for use as a dwelling house even though they actually operate as an integral part of the hotel.

Submissions have already been made requesting clarification on this point. Given the

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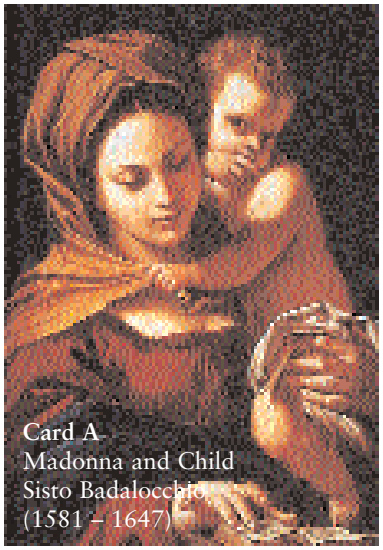

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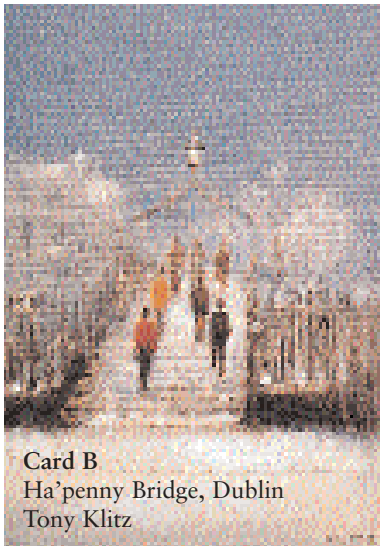
Sisto Badalocchio
(1581 – 1647)



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Government's stated intention when introducing the law, it is assumed that it was not intended to affect investors in commercial hotels and guesthouses. However, anybody buying the building in the situation above with a view to renting it back to the operators is not going to be happy unless they have something in writing.

This might be achieved by a change in law, a public statement of Revenue practice (if the law is to remain but is to interpreted to exclude the above situations), or alternatively a specific written opinion from the Revenue Commissioners on a case-by-case basis. Certainly it would have saved a lot of trouble if the law had been clearly drafted to avoid this sort of confusion.

Banking arrangements. On a more positive side, anybody with existing residential borrowings in place might see if they could get their bank to agree to defer as much as possible the repayment of the related loans. In such a case, the bank might instead be willing to take extra security (such as new properties purchased with minimal bank borrowings, or alternatively simply money left on deposit). This would preserve for the taxpayer the 'good' loans with the cheaper tax allowable funding for as long as possible.

Foreign property. As regards the foreign property restrictions, an idea has occurred to some investors to simply buy the property through a foreign company. The anticipated benefit would be that if the foreign company is only subject to tax in a foreign jurisdiction this might be favourable where that jurisdiction allows the related interest expense.

There are a number of problems with this possibility. First, there are not many Irish individuals who would have the resources to maintain a foreign company genuinely non-resident in Ireland under Irish tax law.

The company would need to be managed and controlled outside of Ireland and this is likely to be very difficult where the owner of the company is resident in Ireland. Additionally, there is wide-ranging and generally unclear anti-avoidance legislation concerning income or capital gains arising in foreign companies controlled by Irish residents. By the time the taxpayer has threaded his way through all of this, he will probably have gone off the idea completely (and the potentially higher returns will have been substantially eroded by professional fees).

Interest deduction still possible for some. Another area where the legislation might cause problems is a situation where a builder develops properties and keeps some for himself. Generally builders are subject to profits on a 'trading' basis and therefore the new rules do not apply because trading interest continues to be allowable.

But where the builder keeps some of the houses or apartments and begins to receive rent, the Revenue have the option to tax that element of the income under case V (rents) rather than case I (trading).

Where the activities are part of an overall trade of construction and sale together with rental activities, I am of the view that, even if the Revenue Commissioners were to opt to tax the rental income under case V, the related interest should still be allowable under case I if this were to create a trading loss (which could be then set off against the case V profits).

If a taxpayer wishes to avoid this level of technicality, he could always try to arrange with the bank to borrow only in respect of costs relating to the units which will be sold off (thereby keeping the 'rental' properties free from debt).

Stamp duties. There are also changes to the stamp duty rates. The reduced new rates apply to investors in residential property regardless of the type or size of the property.

In order for a building to qualify for the low rate for owner-occupiers, the owner must not receive rental income from any part of the building for five years. This seems too strict. If after, say, three years, the owner-occupier had to move house (for example, because of a change in job), they cannot receive any rent from their house without a retrospective imposition of the stamp duty at the above rates. G

Michael Gaffney is a Tax Partner with Arthur Andersen. This article was originally published in the July 1998 issue of the Irish Tax Review.

Switching on to accounts software

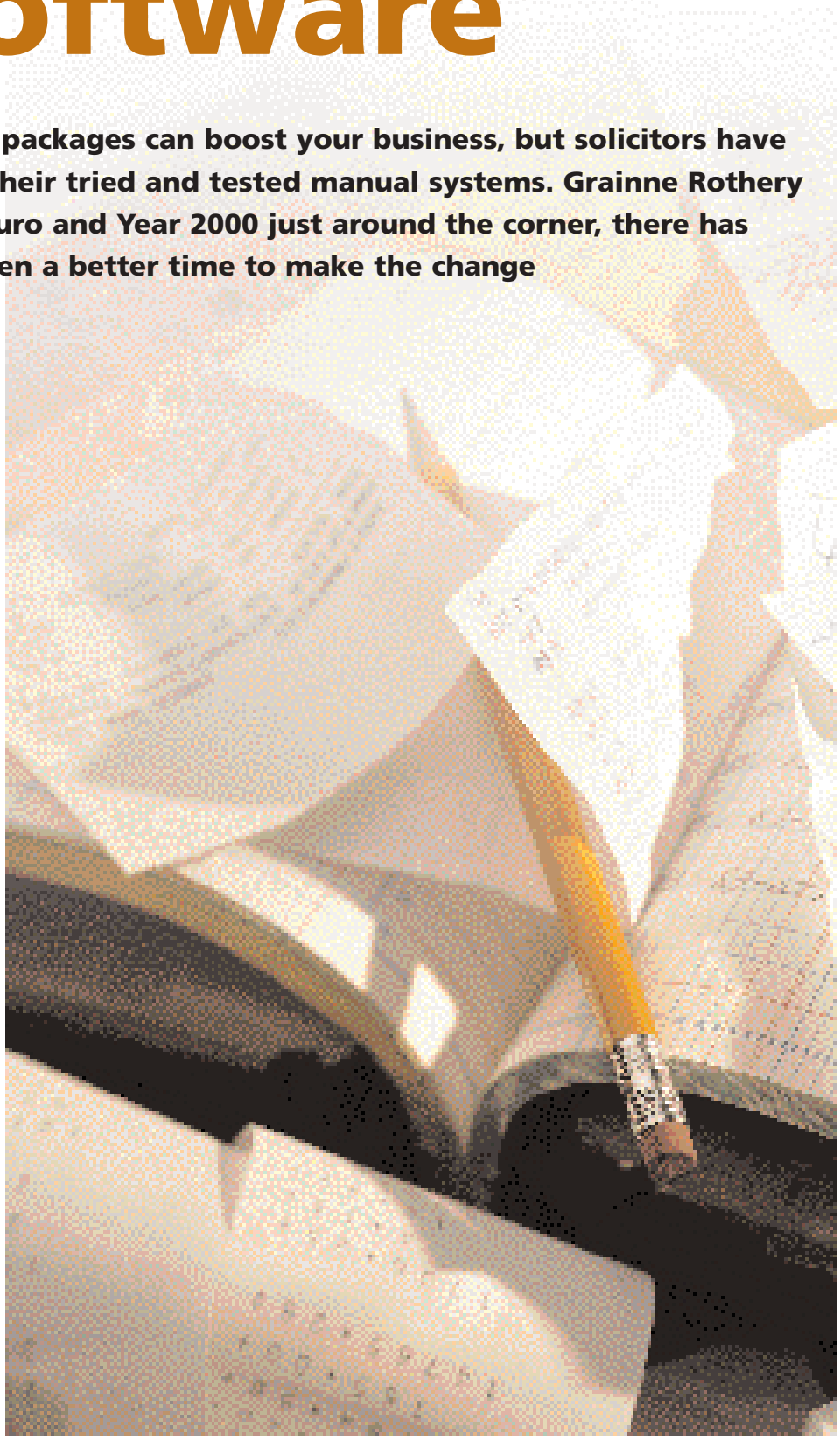
Computerised accounting packages can boost your business, but solicitors have been slow to switch from their tried and tested manual systems. Grainne Rothery argues that, with the Euro and Year 2000 just around the corner, there has never been a better time to make the change

Although accounting software is probably the most widely used computer application in a solicitors' practice after word-processing, the number of firms that have made the technological leap from their manual accounting processes is still quite low. An estimated 800 firms have invested in accounting software while the rest are still relying on their tried and tested – but ultimately slow and limited – manual systems.

While the average limited company will almost certainly invest in a computerised accountancy package and think it money well spent, this course of action is rarely as automatic for the smaller solicitors' firms. Part of the problem appears to be solicitors' lack of awareness of the uses and benefits of PCs in business. Another contributory factor is the cost of accountancy packages designed specifically for the legal profession. While general businesses can buy an off-the-shelf accounting package for as little as £150, solicitors will generally pay a minimum of £1,200 for their software. It may seem unfair, but the limited market for legal accounts packages means that the software developers just don't have the same economies of scale as the manufacturers of *Sage*, *Pegasus* and *Take 5*, for example.

Paying for themselves

But despite their hefty price tags, computerised accounting packages can contribute significantly to productivity and, if they're used correctly, pay for themselves very quickly. For a start, the amount of time saved by using a computerised rather than a manual system can help to cut the cost of wages. 'In cases where a solicitor employs a bookkeeper for a full week using a manual system, this can normally be



cut to two or three days with a computerised package', says Michael Gilmartin of Legal & General Office Supplies.

Apart from direct and tangible savings in terms of time and cost, accounts packages can often help a practice to identify more lucrative areas of business. 'A solicitor may spend a large proportion of time on certain types of work that are not as profitable as others', says Gilmartin. 'By using an accounts package, they should be able to analyse their information a bit better and maybe look at ways of improving profitability'.

A number of accounts packages designed specifically for solicitors are now available on the Irish market. Prospective buyers need to consider a range of different issues before deciding on the right package.

Top of the list is the deciding between a Windows or a DOS-based system. Traditionally, legal accounts systems have tended to operate in a DOS-based environment. However, many software suppliers have now upgraded their packages to the more intuitive Windows-based systems, believing them to be superior for a variety of reasons. Although the DOS packages can be just as powerful as their more graphic and user-friendly counterparts, they do not lend themselves as well to integration with other programs such as databases, word-processing software and case management systems. The fact that most solicitors with computerised accounts will have to upgrade anyway over the coming year to make themselves Euro and Year 2000 compliant makes this an opportune time to make the switch to a Windows environment.

Integration with other systems

Another important reason for choosing a Windows package relates to personnel ability. 'One of the advantages of Windows is the fact that, at this stage, most personnel who are going to be working on an accounts package will probably be more familiar with this platform than with DOS', says Justin Phelan, director of Keyhouse Computing Ltd. 'As regards integration with other systems on the desktop and ease-of-use, Windows also has huge advantages. I'd advise anyone who is thinking of investing in an accounts package to buy a Windows-based system'.

Aidan O'Neill of Ivutech concurs with this view. 'We've now moved *Italax* into the Windows environment to make it easier to network accounts information. Now, if a client phones or calls in, a solicitor can immediately access accounts information from his or her own desktop. This can save a lot of time for the client and the solicitor'.

Year 2000 and Euro compliance are big issues and it's crucial to take them into account when buying any kind of software package over the coming year. Likewise, those already using accounts software need to ensure that it is compliant or else upgrade before the end of 1999. 'The Year 2000 issue is more important than people realise and could start to create problems early next year', says Justin Phelan. 'If your accounting package has a diary forward feature, you could begin to see problems at the beginning of 1999'.

Practices will need to have some kind of procedure in place for dealing with conversions to the Euro from the beginning of 1999, but this need not necessarily be a computer-based solution. 'Although the Euro is not going to be a major problem straight away, it will become more serious over the next three years as the transition to the single market is finalised', says Phelan. 'It's important to have some way of dealing with conversions right from the start as some people will want to test the system out immediately'.

Lack of training

These are unusual and urgent subjects at the moment; several other aspects of choosing a package and a supplier are more consistent. The first of these is training, or the lack of it, as seems to be the case with many solicitors' practices. Most people in the industry feel that instruction is vital in order to get the most out of any computer package. However, solicitors generally seem quite slow to invest in training.

Ivutech's Aidan O'Neill points out that a lack of training can sometimes result in the software just not being used at all, let alone properly. Other suppliers say that while the necessary instruction can cost a couple of hundred pounds, it can ultimately save thousands in audit fees and often help to increase the firm's overall productivity quite significantly. 'Every primary user of an accounts package should have some level of competence, as well as the opportunity to move along and progress', says Aidan O'Neill. 'It's very important for users to be trained if they are to make the most out of the package'.

Another important (and often overlooked) aspect of any accountancy package is the level of support provided by the supplier. An ongoing support and maintenance contract will normally cost a minimum of around £400 a year but should include free upgrades to new versions of the software.

'The single most important issue when selecting an accountancy package is the support', says Justin Phelan. 'If there's ever a problem, it's essential that you're able to lift the phone and find an immediate solution. There's no such thing as bug-free software, for example, and it's important to know that problems of this nature can be solved straight away.

CHECKLIST FOR BUYING AN ACCOUNTS PACKAGE

- Ensure that it meets legal requirements as laid out in the *Solicitors' accounts regulations* No 2 of 1984
- Check that it is Year 2000 compliant
- Make sure that it is Euro ready
- Find out about support – you'll probably have to pay an annual maintenance fee, but this should also entitle you to software upgrades
- Get a list of references from potential suppliers and contact a couple of them to find out about their experiences with the package and the supplier
- Satisfy yourself that the supplier is stable enough to be around to maintain and upgrade your package over the coming years
- Include the cost of training in the overall investment rather than as an optional extra
- Draw up a list of requirements before talking to any of the suppliers. Possible features could include levels of security and access, generation of reports, time recording, batch numbering, ability to integrate with other software applications etc.

If you have a situation you can't deal with and you don't have good support from your dealer, subsequent delays can be long and potentially costly'.

'The installation and maintenance of error-free accurate accounts is of greatest importance', says Frank Lanigan, chairman of Star Computers. 'Back-up knowledge, customer support and maintenance are valued more by the legal profession'.

Accounts packages for the legal profession are currently available from BCL, Brentwick Service, Fulcrum Systems, IT Systems, Keyhouse Computing, Legal & General Office Supplies, Legato, Opsis, Rodine, Safeguard Business Systems, Sanderson and Star.

Ready for the Euro

The BCL *Law accounting* software is a component of the BCL *Lawbase* legal office management suite. *Lawbase* is a client case management system used for customising document flow/case management scheduling and merges with Microsoft products and the legal accounting components. BCL *Law accounting* is an integrated system comprising case accounting, purchase, nominal ledger and time recording, and was designed specifically for the Irish legal profession and forms with Law Society requirements. The system is Year 2000 compliant and ready for the Euro changeover.

The latest accounts package from Keyhouse Computing is *Sol accounts & management* version *SAM 3*, which was develo Windows 3.1 and Windo Designed and produced i specifically for the legal profes the system incorporates automatic posting of matter-related accounts items (outlays and client account) to a fully integrated matter ledger. According to Keyhouse director Justin Phelan, this allows the accounts to be run with the ease of a general fully-featured accounts system without the awkwardness and overhead of trying to use a general system for the specialised requirements of a solicitors' practice. A basic single-user licence for *SAM 3* is £1,250. A multi-user version is available for £2,000 for three users plus £300 for each extra user. It has a range of additional modules, including case manager, client/contact database, fee-earner workbench, file management, wills/deeds register, bank reconciliation and report generator.

Italax from Ivutech is installed in 250 practices throughout Ireland and has 700 users. The junior version of the software costs £950 (excl VAT) and is designed for practices with 350 clients or fewer. The senior version costs £1,500 (excl VAT) and has no volume restrictions. The software is broken into five basic sections: clients, accounts, office account, reports and parameters, and utilities. The system also allows for the recording of time sheets through an optional time recording module.

IT Systems' *SolPro* is an integrated client accounting program written specifically for the legal profession. 'It was written in 1990 in response to inquiries from clients for a simple-to-use but powerful program that they could learn quickly', says David Dalton of Clare-based IT Systems. *SolPro v2* was released in 1996 after extensive modifications and improvements. It is fully multi-user and password protected. A view-only module is integrated into the system to allow fee-earners and typists, for example, to check on the availability of funds very simply. Cheque printing is supported as well as extensive reporting facilities. *SolPro* is DOS-based but will run under Windows 95 or NT, and is fully year 2000

final beta-testing and d shortly. It is 32-bit, uro-compatible, Year liant and is based on . A conversion module ble with this version ill allow client balances y existing software to be rted into a Euro-compati- le system.

Star has been installing and upgrading accounts packages in legal offices since 1984. 'Law firms are now looking for better ways to handle their data, accounts, client information and case-processing', says Frank Lanigan. 'To deal with this, Star is using the latest ows-based tools with an emphasis on the developing Object Relational Technology. At the same time, data and information collected on older computer systems must be carefully brought forward, converted and made useful to the law firm.

'At present, most vendors are looking to Millennium Bug and Euro problems and opportunities. Star, however, is planning further into the next century, when lawyers will want more effective case management and processing. Accounts and data handling will then be only a part of the legal office system. The key to success in overall law office system design will be the chassis upon which the system is driven', claims Lanigan. Star believes that this will be based on Object Relational Technology and will therefore be developing its new office tools using this technology. G

Grainne Rothery is a freelance journalist specialising in technology issues.

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The Russian crisis: what does it mean for pension funds?

The recent economic crisis in Russia played havoc with the world's major stock markets but, writes Neil Bowes, the impact on your pension fund will probably be negligible in the long run

Strong growth in company profits, low inflation and interest rates have all been powerful stimuli to company shares, which have dramatically outperformed other forms of investment in recent years. A quick glance at some major markets (to the start of July) shows just how strong the growth was (see **Figure 1**).

Since then, the financial equivalent of a 'Russian Winter' has claimed back much of the most recent gains. August proved to be a torrid month, with world markets facing substantial losses as the collapse in confidence in the Russian economy, currency and financial system caused widespread selling. As **Figure 2** shows, the situation has changed considerably in the last ten weeks or so.

Long-term prospects

Against this backdrop we may face an uncertain time in markets in the coming weeks, perhaps months. In this context, it is comforting to reflect on similar events in recent history:

- In 1987, following the 'Black Monday' crash, the Irish ISEQ index fell from its high in October to a low in December, down 44%. By April of 1989, it had recovered all the losses
- In 1990, as the Gulf Crisis again began a period of uncertainty, the Irish market fell from its peak in January by 40%, reaching its low 12 months later. By December 1993, all the losses had been recovered.

Stock markets do not produce exceptional returns indefinitely. In the past, as now, stock markets that have been delivering exceptional performance are more vulnerable to 'shocks' to the system, such as the Russian crisis. However, despite sounding a cautionary note about stock markets, we believe that equities will continue to offer the best prospects for long-term investment returns. This is highlighted in **Figure 3**, which illustrates the annual returns achieved by each of the major types of investment.

Long-term horizons for pensions

While the global situation remains uncertain, the evidence is that stock markets have consistently delivered superior returns over the long run. For pension funds, it is the ten, 15 and 20-year performance of stock markets that counts, not the short term. This is reflected by the fact that pension funds invest more in the stock market than in any other type of investment. G

Neil Bowes is Senior Portfolio Manager at Bank of Ireland Asset Management.

FIGURE 1
Stock market growth to 1 July 1998

Market	Five year growth %	% Growth in 1998 so far
Holland	+248.9	+29.2
Germany	+246.1	+39.0
Switzerland	+238.3	+28.3
Ireland	+221.3	+29.1
USA	+155.8	+18.4
France	+117.4	+42.1
UK	+104.9	+15.3

FIGURE 2
Stock market growth to 4 September 1998

Market	Five year growth %	% Growth in 1998 so far
Holland	+181.0%	+11.6%
Germany	+150.0%	+13.2%
Switzerland	+173.7%	+6.5%
Ireland	+126.6%	-2.7%
USA	+112.9%	+1.2%
France	+69.1%	+21.6%
UK	+67.4%	-0.3%

Note: past performance is no indication of future performance, which will depend on future economic conditions. Returns indicated are in local currency.

Source: Moneymate

FIGURE 3
Annual returns from Irish asset classes (before taxes and charges) 1966 to 1997

Term	Cash	Bonds	Property	Equities	Inflation
30 years	10.5%	11.6%	N/A	16.7%	8.2%
25 years	11.1%	13.2%	14.2%	16.4%	8.4%
20 years	11.1%	13.4%	14.2%	18.2%	6.5%
15 years	9.8%	14.6%	10.4%	22.5%	3.8%
10 years	8.4%	12.4%	13.4%	18.3%	2.6%
5 years	6.6%	14.1%	16.3%	29.7%	2.0%

This table describes the returns achieved by various asset classes from 1966 to 1997, as measured in a paper produced for the Society of Actuaries in Ireland in 1996 and updated by BIAM in 1998. Returns do not reflect any charges or taxes, which would reduce the returns. Past performance is no guarantee of future performance, which will depend on future economic conditions.

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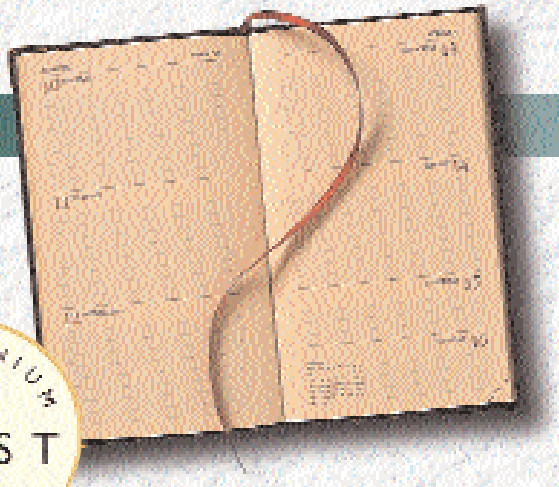

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Texts of letters agreed under protocol between Law Society and Bar Council re: a) non-return of papers to solicitors, and b) non-payment of fees to counsel

Agreed complaint form: solicitors submit to Law Society
PAPERS SOUGHT

Ref: PS 0001/98

Name of solicitor:.....

Title of case: .....

Case reference: .....

Date papers sent: .....

Name and address of barrister: .....

.....

Has any explanation been offered for the delay? Yes/No
(DELETE AS APPROPRIATE)

If an explanation has been offered, please set out same:

.....

.....

Please state why that explanation is unreasonable in the circumstances:

.....

.....

.....

In the event of the papers being received by me in respect of the above matter, and/or in the event of any explanation for the delay, other than any mentioned above, being given to me, I undertake to forthwith inform the Law Society of same. I enclose herewith: a) copy letter requesting return of papers; b) copies of any relevant correspondence.

Signature: .....

Date: .....

Agreed complaint form: barristers submit to Bar Council
FEE FORM

Ref: FF0001/98

Name of counsel: .....

Title of case: .....

Case reference: .....

Amount of fees due: IR£

VAT IR£

Total: IR£

Date payment due: .....

Name and address of client, solicitor or person having direct professional access: .....

Has any explanation been offered for non-payment? Yes/No
(DELETE AS APPROPRIATE)

If an explanation has been offered, please set out same

.....

.....

Please state why that explanation is unreasonable in the circumstances:

.....

.....

In the event of a full or part payment being received by me in respect of the above matter and/or in the event of an explanation for the non-payment, other than any mentioned above, being given to me, I undertake to forthwith inform the Bar Council of same. I enclose herewith: a) copy fee note; b) copies of any relevant correspondence.

In the event of Law Library Services Ltd, on behalf of the Bar Council, securing payment of all or part of the above-mentioned total, I hereby authorise that company to deduct from the sum recovered in respect of fees a handling charge not exceeding 2.5% together with VAT on that handling charge.

Signature: .....

Date: .....

Agreed first letter from Director General of Law Society to solicitor
FIRST LETTER

Ref: FF0001/98

Dear Mr Bloggs,

As you may know, paragraph 2.13 of the *Code of conduct for the Bar of Ireland* requires any member of the Bar to whom fees are due for a period exceeding 12 months, in respect of which no reasonable explanation has been offered for the non-payment, to report such non-payment to the Bar Council.

Such a report has been made by Ms Amy Snooks BL in respect of fees in the case of *Thomas Murphy v Malachy Lacey and MIBI*, in which the sum of IR£xxx.xx, inclusive of VAT, remains due and owing by your firm to Ms Snooks.

The Bar Council and the Law Society have made an agreement whereby the Bar Council may request the Law Society to seek payment of the above-mentioned sum on the barrister's behalf. I am now requesting that you discharge that sum, inclusive of VAT, within 21 days of the date of this letter to Law Library Services Ltd, PO Box 4460, 158/9 Church Street, Dublin 7, who will arrange for a VAT invoice/receipt to be furnished to you.

Your co-operation in the matter is desired in order to preclude any other action being taken.

Yours sincerely,

Ken Murphy
Director General

Agreed final letter from Director General of the Law Society to solicitor
FINAL LETTER

Ref: FF 0001/98

Dear Mr Bloggs,

I have been advised that the *First letter*, dated the .....day of .....19....., has not produced a payment of the sum of IR£xxx.xx, inclusive of VAT, due by your firm to Ms Amy Snooks BL in respect of fees due to her in the case of *Thomas Murphy v Malachy Lacey and MIBI*. Payment of that sum is now required within ten days from the date of this letter.

Failure to make full payment within that period will result in the matter being the subject of a formal complaint to the Law Society

Yours sincerely,

Ken Murphy
Director General

Draft first letter from Director of Bar Council to barrister FIRST LETTER

Ref: PS 0001/98

Dear Ms Snooks,

As you know, the *Code of conduct for the Bar of Ireland* has several provisions concerning the prompt return of papers to instructing solicitors, and I enclose herewith an extract from the code setting out those provisions.

It has been agreed between the Bar Council and the Law Society that, where a barrister has failed to return papers to the instructing solicitor within a reasonable time, the Law Society may request the Bar Council to deal with the matter.

Such a request has been made by Mr Joseph Bloggs, Solicitor, of (address) in respect of papers in the case of *Thomas Murphy v Malachy Lacey and MIBI*, furnished to you on the ..... day of ..... 19..... I am now requesting that you return the papers to Mr Bloggs together with any advices or draft documents sought within 21 days from the date of this letter.

Your co-operation in the matter is desired in order to preclude any other action being taken.

I look forward to hearing from you.

Yours sincerely,

Jerry Carroll
Director

Draft final letter from Director of Bar Council to barrister FINAL LETTER

Ref: PS 0001/98

Dear Ms Snooks,

I have been advised that the *First letter*, dated the ..... day of ..... 19..... has not produced a return of the papers sought by Mr Joseph Bloggs, Solicitor, of (address) in the case of *Thomas Murphy v Malachy Lacey and MIBI*, furnished to you on the ..... day of ..... 19.....

It appears that you have retained these papers an undue length of time. Pursuant to paragraph 4.14 of the *Code of conduct for the Bar of Ireland*, on Mr Bloggs behalf, I now require you to return these papers to him at once whether the work is done or not.

Failure to comply with this requirement will result in a complaint under paragraph 1.4 of the *Code of conduct for the Bar of Ireland* to the Barristers Professional Conduct Tribunal.

Yours sincerely,

Jerry Carroll
Director

Extracts from *Code of conduct for the Bar of Ireland*

1.3 It is the duty of every barrister:
d) To be competent in all his professional activities

1.4 Serious failure to comply with the duties set out in paragraph 1.3 shall be professional misconduct and render the barrister liable to exclusion from membership of the Law Library and/or be reported to the Benchers of the Honourable Society of King's Inns with a view to disbarment.

2.11 It is the duty of a practising barrister to ensure that his practice is efficiently and properly administered. In particular, a barrister shall take all responsible and practicable steps to ensure that his professional engagements are properly fulfilled and that timely notice is given to his instructing solicitor if for any reason it appears that he is unlikely to be in a position to fulfil his engagements.

2.12 a) It is improper for a practising barrister to accept so much work that he cannot reasonably be expected to give adequate attention to all of it within a reasonable time.
b) A practising barrister owes a duty to his instructing solicitor to inform him promptly if it becomes apparent that the barrister is unlikely to be able to attend his instructions or if there is likely to be a delay in attending to them.

4.5 If a barrister receives instructions and it is, or becomes, apparent to him that he cannot do the work within a reasonable time, he should inform the instructing solicitor forthwith.

4.14 Where a barrister has retained papers an undue length of time and is required by his instructing solicitor to return the papers, whether the work is done or not, he must return the papers at once.

7.9 If a barrister receives papers in a matter which he cannot for any reason deal with personally, he should return the papers to the instructing solicitor.

LEGISLATION UPDATE: 13 AUGUST – 10 SEPTEMBER 1998

ACTS PASSED

Offences Against the State (Amendment) Act, 1998

Number: 39/1998

Contents note: Amends the *Offences Against the State Acts, 1939 to 1985* and certain other enactments relating to criminal law. Includes provisions relating to membership of an unlawful organisation, new offences, powers of detention, increased penalties, and forfeiture of property.

Date enacted: 3/9/1998

Commencement date: 3/9/1998

SELECTED STATUTORY INSTRUMENTS

Bail Act, 1997 *(Sections 1 to 4) (Commencement) Order 1998*

Number: SI 315/1998

Contents note: Appoints 4/9/1998 as the commencement date for ss1–4 of the *Bail Act, 1997* in respect of persons who have been or are to be sent, sent forward, transferred or otherwise brought for trial in a Special Criminal Court pending trial by that court, during and after such trial until conviction or acquittal, or pending the outcome of an appeal against a conviction or sentence imposed by that court: s1 (interpretation section), s2 (refusal of bail), s3 (renewal of bail application), s4 (evidence of previous criminal record).

European Communities (Telecommunications) (Amendment) Regulations 1998

Number: SI 286/1998

Contents note: Ensures that legal provisions with regard to the implementation of full competition in the telecommunications sector come into effect on or before 1 December 1998. Also repeals ss43, 53 and 88(2) of the *Postal and Telecommunications Services Act, 1983*, insofar as these provisions apply to Bord Telecom Éireann but not to other operators in the sector.

Intellectual Property (Miscellaneous Provisions) Act, 1998 *(Sections 4 and 5) (Commencement) Order 1998*

Number: SI 285/1998

Contents note: Appoints 17/8/1998 as the commencement date for sections 4 and 5 of the Act.

Rules of the Superior Courts (No 2) (Applications pursuant to article 28.4.3 of the Constitution) 1998

Number: SI 281/1998

Commencement date: 17/8/1998

Contents note: Inserts order 132 into the *Rules of the superior courts* to provide for applications, pursuant to article 28.4.3 of the Constitution, in relation to disclosure of discussions at meetings of the Government. Article 28.4.3 inserted in the Constitution by the *Seventeenth Amendment of the Constitution Act, 1997*.

Sheriffs' Fees and Expenses Order 1998

Number: SI 314/1998

Contents note: Consolidates the provisions contained in the *Sheriffs' Fees Orders 1926-1963* and dispenses with fees which have become obsolete. Provides for an overall increase in fees in relation to orders lodged with the sheriff or county registrar for execution on or after 1 November 1998.

Prepared by the Law Society Library

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

COMMERCIAL

Compensation for investors

A Bill has been presented and passed by Seanad Éireann which aims to:

- Provide for the payment of compensation to clients of investment business firms, stock exchange member firms, credit institutions and insurance intermediaries when one of these bodies ('investment firms') is unable to return money or investment instruments belonging to clients
- Transpose the EU *Investor Compensation Directive* into domestic law
- Appoint the Central Bank as the supervisory authority for investor compensation, and
- Provide for the establishment of a limited company to administer investor compensation arrangements out of a fund to be financed by investment firms.

Investor Compensation Bill, 1998

Ticket touts to be outlawed?

A private member's Bill seeks to make it illegal to sell or offer for sale a ticket for a major musical, sporting or theatrical event at a price higher than that designated on the ticket

Prohibition of Ticket Touts Bill, 1998

CONSTITUTIONAL

Multiple claims dismissed

Among other claims, the plaintiff challenged the constitutionality of the *Fifteenth Amendment to the Constitution Act, 1995*, the validity of the *Family Law (Divorce) Act, 1996*, and the appointment of one judge to a committee on nurses' pay and another as sole member of a tribunal. In dismissing all of the plaintiff's claims, it was held that:

- There was a clear constitutional distinction between the power of the Oireachtas to make laws for the State and the power of the people to amend the Constitution. An amendment to the Constitution could not be declared invalid because it infringed some provision of the original text. The plaintiff was not entitled to make, and the court had no jurisdiction to entertain, a challenge to an Act to amend the Constitution, which had been duly approved by the people in referendum and signed by the President
- If the Fifteenth Amendment could not be impugned, then the 1996 *Divorce Act* was valid
- Concerning the plaintiff's claims as to the appointment of one judge as chair of the commission on nursing and another to membership of a tribunal, the plaintiff had failed to establish the necessary *locus standi* to invoke the court's jurisdiction to make the declarations sought. He had not shown that any right of his had been infringed or threatened by the appointments, and had failed to advance any countervailing considerations which would justify a departure from the normal rule.

Riordan v Ireland (Costello P), 14 November 1997

CONTRACT

Defendants acted as agents in purchase of horse

- There was more than adequate evidence upon which the trial judge was entitled to determine that the defendants had acted as agents.

The plaintiffs, Swedish nationals, wished to purchase a show-jumping horse for their daughter. They wished to buy a horse capable of performing to an international standard. They were advised to buy the animal from the first-named defendant in Ireland by their daughter's coach. The first-named plaintiff was informed that if a horse was found, he would have to pay separate commissions of 10% to both the first-named defendant and the coach. The first-named plaintiff agreed to this. In Ireland, the first-named defendant recommended a particular horse for the plaintiff's daughter. The first-named plaintiff was then informed that the price for the horse was £38,000 to include both commissions. The first-named plaintiff bought the horse from the second-named defendant who in turn had bought it from the original owner. The horse was purchased subject to a veterinary certificate which was obtained. On being shipped to Sweden, the horse was found to be unsuitable for show-jumping. The first-named plaintiff sought to rescind the sale on the ground of the horse's injury. The first-named defendant offered to re-examine the horse and to provide the first-named plaintiff with a suitable alternative. The plaintiffs instituted proceedings which were successful in the High Court. The defendants appealed to the Supreme Court, arguing that there was no evidence that they had acted as agents for the plaintiffs and that the horse was sound. The appeal was dismissed.

Persson v Storme and Pro-Am & Company Limited (Supreme Court), 28 November 1997

CRIMINAL

Child Trafficking and Pornography Bill, 1997

This Bill has been amended in the Select Committee on Justice, Equality and Women's Rights.

Delay insufficient for prohibition

- Delay of itself and by itself and without any proved actual or presumed prejudice may in certain circumstances afford grounds for prohibition
- The serious health condition of the applicant was a worrying factor on the evidence but it has never been the case that ill health of a kind that falls short of an accused being actually unable to appear in court for his trial would be invoked as a ground for prohibiting the trial. Ill health could be relevant where a situation was very finely balanced and the court was genuinely concerned on quite separate grounds that an accused might not have a fair trial by reason of delay.

The applicant was a priest teacher in a secondary school from September 1963 to July 1991. He was charged with a number of sexual offences against four different males, the complainants, all of whom were former pupils of his in the college. The first communication of any complaint was anonymous and came in the summer of 1991. The allegations in respect of the first complaint were put to the applicant who denied them. On 27 April 1995, the applicant was informed in an interview by the Garda Síochána of further allegations. On 26 January 1996, the applicant was interviewed in respect of additional complaints. He sought judicial review proceedings by way of a prohibition of his trial, claiming that as such a period of time has elapsed since even the most recent of the charges alleged against him, a fair trial in respect of the alleged offences was impossible. The relief sought was refused.

DC v Director of Public Prosecutions (Geoghegan J), 31 October 1997

'Right to silence' inference allowed

- Sections 18 and 19 of the *Criminal Justice Act, 1984* were limited in that, firstly, an inference pursuant to these sections could not form the basis for a conviction in the absence of other evidence and, secondly, only such inferences as 'appear proper' could be drawn.

The applicant was charged with the offence of unlawful possession of forged bank notes on 4 May 1994 contrary to s8 of the *Forgery Act 1913*. Sections. 18 and 19 of the *Criminal Justice Act, 1984* permitted the court, in determining whether the accused was guilty of an offence charged, to draw from the failure or refusal of an accused to account, as provided in ss18 and 19, 'such inferences as appear proper' but an accused could not be convicted of an offence solely on an inference drawn from such failure or refusal. The applicant sought a declaration in the High Court that ss18 and 19 of the 1984 Act were unconstitutional and an order restraining the notice party from further prosecuting the proceedings against the applicant. The High Court (Murphy J) found that ss18 and 19 were not invalid having regard to the provisions of the Constitution. The applicant appealed to the Supreme Court and his appeal was dismissed.

Rock v Ireland (Supreme Court), 19 November 1997

DAMAGES

Amount for replacement of chattel

- Where a plaintiff's chattel has been destroyed by the tortious acts of another, the court has to replace the chattel for him by the cost likely to be incurred by the purchase of a similar chattel. This figure will not be the same as the value of the chattel lost as there is always a difference between buying and selling prices.

The defendant appealed a decision of the High Court which awarded damages to the plaintiff. The award of damages had been made on the basis that the claim was one of absolute liability. The defendant submitted that the damages allowed were excessive. The amount of damages was reduced.

Murphy v De Braam (Supreme Court), 12 December 1997

EMPLOYMENT

Employment Equality Bill, 1997

This Bill has been amended in the Select Committee on Justice, Equality and Women's Rights and passed by Dáil Éireann.

Whether a person under a contract of service

- Whether a person was retained under a contract of service or for services depended on the totality of the contractual relationship express or implied, and not on any statement as to the consequence of the bargain between the parties.

M was engaged by the plaintiff as a demonstrator in supermarkets. Written terms and conditions between the parties provided that M was an independent contractor. The High Court upheld the decisions of the social welfare officers that M was employed under a contract of service and so was an insurable person for the purposes of social welfare legislation. The plaintiff appealed, claiming that the appeals officer erred in law in not having sufficient regard to the terms of a written contract between the plaintiff and M, and that the High Court had applied the wrong test in dealing with the appeals officer's findings. The appeal was dismissed.

Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare (Supreme Court), 1 December 1997

EUROPEAN

Amsterdam treaty amendments

A Bill has been presented which seeks to make certain provisions of the *Treaty of Amsterdam*, amending the TEU and the treaties establishing the EU part of domestic law prior to the ratification of the *Amsterdam treaty*.

European Communities (Amendment) Bill, 1998

INSOLVENCY

Examiner's costs do not have priority

The applicant had been the examiner of the Springline Limited and now claimed payment of his costs, remuneration and expenses in the winding-up. The amount of his costs had been assessed by the High Court in 1996. It was argued by the liquidator that while the costs etc of the applicant had priority over secured or unsecured claims of creditors of the company, they did not have priority over the costs etc of the court-appointed liquidator. In refusing the relief sought, it was held that:

- If the liquidator's costs, charges and expenses could be described as representing a debt or claim against the company, then s29(3) of the *Companies (Amendment) Act, 1990* had the effect of giving the costs, remuneration and expenses of an examiner priority over those of the liquidator
- The notion of a future debt or a future claim at the date of a winding-up or at the date of an adjudication of bankruptcy related to the obligations of the company or the bankrupt incurred before the date of the winding-up or adjudication of bankruptcy
- The liquidator's costs, expenses and remuneration were not obligations incurred before the winding-up order was made; they were obligations which occurred after that date and therefore did not fall to be proven as debts in the liquidation or as claims in the liquidation
- Section 29(3) of the 1990 Act did not give the applicant priority over the costs of the liquidator. There was no way, without doing violence to the language of s29(3), whereby that subsection could be construed in such a manner as to allow payment to the applicant of his remuneration ahead of the liquidator
- While it was true that when the applicant was performing the functions and exercising the powers given to him by the 1990 Act the assets of the company were preserved, this was a consequence of the order of the court rather than as a result of anything the applicant did himself. Hence, nothing the applicant had done could be regarded as properly incurred in 'preserving, realising or getting in the assets' of the company and it was therefore not possible to use the wording of o74, r128 to make provision for the applicant's costs.

In re Springline Limited (In Liquidation) (Shanley J), 28 October 1997

INTELLECTUAL PROPERTY

- The defendant did not commit the actionable wrong of passing off as it had not made any representation that its business was part of the business of the plaintiff or that it was in any way associated with the plaintiff.

The plaintiff contracted with the IRTC to broadcast on sound radio in the Limerick area between February 1989 and February 1996, which contract was terminated by the IRTC for serious and persistent breaches of the contract. The plaintiff had also obtained a licence to broadcast on the Astra satellite from the BBC. The plaintiff used three different call signs on its radio broadcast and promotional literature which were 'Limerick 95FM', 'Limerick 95' and 'Radio Limerick'. The defendant obtained a contract from the IRTC to broadcast on the 95FM band in the Limerick area and used the style '95FM Limerick' and '95 Radio Limerick'. The plaintiff obtained an interim injunction against the defendant, prohibiting the defendant from offering advertising services under this style claiming the tort of passing off. The interlocutory relief sought was refused.

Radio Limerick One Ltd v Treaty Radio Ltd (Costello P), 13 November 1997

LANDLORD AND TENANT

Appeal against eviction dismissed

The plaintiff and his wife were evicted pursuant to proceedings brought by the respondent. He claimed that, while his solicitor was instructed to appeal on their behalf, the solicitor lodged an appeal on behalf of his wife only. The plaintiff claimed that this alleged failure constituted a breach of his constitutional rights as a tenant. He also claimed that the solicitor failed to notify his wife of the date for hearing of the appeal. The plaintiff sought an order of *certiorari*. It was held, in dismissing the application, that:

- The court did not require the attendance of the plaintiff, who was in detention
- The circumstances did not merit the granting of the relief sought.

Power v Limerick Corporation, Supreme Court (326/97), 4 December 1997

MONETARY UNION

Basic EMU measures proposed

A Bill has been presented, seeking to:

- Establish the Euro as the currency of the State from 1 January 1999
- Remove incompatibilities between domestic monetary law and the EU legal framework for the use of the Euro
- Facilitate companies wishing to redenominate their capital structure into Euro before the final changeover to the Euro on 1 January 2002, and
- Provide for the design, issue and sale of commemorative legal tender coinage.

Economic and Monetary Union Bill, 1998

PLANNING AND DEVELOPMENT

New framework for urban renewal

A Bill has been presented which, will, *inter alia*, if passed:

- Oblige local authorities to prepare 'integrated area plans' for the socio-economic and physical renewal of urban areas within their functional areas
- Provide for recommendations to be made on the basis of such plans relating to urban renewal reliefs, and
- Clarify certain powers and functions of the Dublin Docklands Development Authority.

Urban Renewal Bill, 1998

PRACTICE AND PROCEDURE

Debt enforcement procedures to change?

A private member's Bill has been introduced which seeks to:

- Empower a court to make an attachment of earnings order against a debtor to who earnings fall to be paid
- Oblige an employer to make specific periodical deductions in line with such an order
- Extend community service orders to fine defaulters and

civil debtors, and
- Permit such an attachment to be made against a debtor's social welfare assistance.

Judicial review refused

- The superior courts should be slow to interfere with a decision of a judge who refuses a consultative case stated and should only do so if there was not merely an arguable case but substantial, weighty and solid grounds calling for a decision by the Supreme Court on the question or questions of law the subject matter of the application.

The applicant owned and operated an amusement arcade in Donegal and acquired an amusement machine licence for, *inter alia*, 1993. While gaming was prohibited in Donegal, the use of amusement machines was not. He was convicted in the District Court on 17 June 1994 on foot of six summonses alleging, *inter alia*, that he provided facilities for unlawful gaming. Evidence at the hearing was to the effect that two customs and excise officials played machines at the applicant's premises, sought to recover and were paid sums in excess of the amount which they had put into the machine during the last game. This order was affirmed by the Circuit Court on appeal on 29 November 1994. On an application for judicial review by the applicant, the High Court made, *inter alia*, an order of *certiorari* quashing the Circuit Court order. The Director of Public Prosecutions, who was a notice party to the proceedings, appealed to the Supreme Court against the High Court order. The order of the High Court was reversed and the application for judicial review was dismissed.

McKenna v Deery (Supreme Court), 11 December 1997

11 year-old writ not renewed

- Where a plaintiff's application was to renew a plenary summons, the issue for the court was whether the interests of justice were served in renewing or refusing to renew the summons
- The question of prejudice to the defendant was equally as important as prejudice to the plaintiff.

By plenary summons issued in 1987, the plaintiff claimed damages for personal injuries due to the defendant's negligence. The plaintiff sought an order renewing the 1987 summons and enlarging the time to apply. The application was refused.

Sullivan v Church of Ireland (Laffoy J), 7 May 1996

TRIBUNALS

Amendment proposed to 1921 Act

A private member's Bill has been introduced which seeks to allow a tribunal to inform the chairmen of both Houses of the Oireachtas that a proposed instrument under s1A of the *Tribunals of Inquiry (Evidence) Act 1921* (to be inserted by the *Tribunals of Inquiry (Evidence) (Amendment) Bill, 1998*) would prejudice the rights of a person who has co-operated with the tribunal.

Tribunals of Inquiry (Evidence) (Amendment) (No 2) Bill, 1998

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News from the EU and International Affairs Committee

Edited by TP Kennedy, Legal Education Co-ordinator, Law Society of Ireland

Assessment of joint ventures under the amended *Merger regulation*

Council Regulation 4064/89 – the *Merger control regulation* – concerns the regulation of concentrations with a Community dimension. It came into force on 21 September 1990. As the Commission gained experience of applying the regulation on a practical day-to-day basis, it found it no longer accurately reflected Commission policy. Accordingly, on 30 June 1997, the Council adopted Regulation 1310/97 which amended the 1989 regulation.

The amendments to the *Merger regulation* have required changes to be made to the Commission's non-legally binding explanatory guidance notices. Some of the most significant modifications have been made to the notice on joint ventures. In this article, I will discuss the amendments brought about by the new *Merger regulation*, as interpreted by Commission Notice 98/C 66-01 on the concept of full-function joint ventures, which replaces Notice 94/C 385-01 on the distinction between concentrative and co-operative joint ventures.

Concentrations with a 'Community dimension' fall within the exclusive jurisdiction of the Merger Task Force, an independent unit in DGIV which was set up specifically to deal with merger control. What this means, in effect, is that very large mergers will have to be notified to the Commission (concentrations that do not have a 'Community dimension' will continue to be regulated by the national regulatory authorities of the Member States concerned – the Merger Task Force is not concerned with such 'small' concentrations). The advantage of having a Community dimension is that the need for multiple notifications to the national regulatory authorities of Member States whom the merger affects is no longer required.

A concentration arises where there is either a fusion of two or more previously independent undertakings in a new economic or legal entity (a simple merger), or where there is the acquisition of direct or indirect control of the whole or parts of one or more undertakings by one or more undertakings or natural persons who already control at least one other undertaking. A joint venture can be a concentration if certain criteria are fulfilled. Under article 3(2) of the *Merger regulation*, as originally adopted, such a joint venture had to satisfy two conditions. First, the joint venture had to perform on a lasting basis all the functions of an autonomous economic entity (known as the 'positive condition'). Second, it could not give rise to co-ordination of the competitive behaviour of the parents among themselves or between them and the joint venture (the 'negative condition'). A joint venture that satisfied these two conditions was deemed to be a form of 'concentration'.

However, joint ventures could, on the other hand, be 'co-operative'. A joint venture which has as its object or effect the co-ordination of the competitive behaviour of undertakings which remain independent constitutes a co-operative joint venture. Article 3(2) of the original regulation made a distinction between concentrative joint ventures and co-operative joint ventures. The latter fell within the provisions of article 85 of the *EC treaty*, while concentrative joint ventures fell within the ambit of the regulation. The practical consequence of the distinction was that only 'concentrative' joint ventures fell within the Merger Task Force's jurisdiction (provided they had a 'Community dimension'), whereas co-operative joint ventures fell within the general DGIV jurisdiction where a different legal regime applies. The Commission's original interpretative notice regarding the distinction between concentrative and co-operative operations under the regulation was less than clear in many respects and, accordingly, in 1994 it was replaced by Commission Notice 94/C 385-01.

The 1994 notice rephrased the 'positive' condition in clearer terms. A joint venture performing on a lasting basis all the functions of an 'autonomous economic entity' was now termed a 'full-function' joint venture. The criteria remained essentially the same but were now phrased in more clear terms. In order to constitute a full-function joint venture, the joint venture had to have sufficient resources at its disposal; it had to operate on a lasting basis; and it had to have access to the market, insofar as it couldn't just be an auxiliary to its parent's activities.

Furthermore, under the 1994 notice, the 'negative' condition was reinterpreted so that co-ordination between the parent company and the joint venture was only of relevance if it produced or reinforced co-ordination between the parent companies. Consequently, the Commission would not regard a joint venture which involved some element of co-ordination between the joint venture and the parents as being detrimental to the joint venture's chances of being regarded as 'concentrative' in nature so long as such co-ordination did not reinforce co-ordination as between the parents. In light of these developments in Commission policy during the application of the regulation, it became clear that amendment of the regulation would be necessary in order to ensure legal certainty.

Many of the changes made in

the amended *Merger control regulation* are a direct consequence of the views expressed by the Commission in its 1994 notice on the distinction between concentrative and co-operative joint ventures. The regulation has been amended to introduce the concept of 'full-function' joint ventures into the regulation. Under article 3(2), a joint venture performing on a lasting basis all the functions of an autonomous economic entity (that is, a full-function joint venture) constitutes a concentration and as such will be subject to review under the provisions of the regulation where it has a Community dimension.

In addition, sub-paragraph 1 of article 3(2) of the original regulation which states that 'an operation, including the creation of a joint venture, which has as its object or effect the co-ordination of the competitive behaviour of undertakings which remain independent, shall not constitute a concentration' has been completely jettisoned and has been replaced by the new article 2(4). In short, the new article 2(4) provides that, to the extent that the co-ordination of the competitive behaviour of undertakings which remain independent is a direct consequence of the creation of the full-function joint venture, it will now be assessed within the same procedure and time limits as the concentrative element of the transaction in accordance with articles 85(1) and (3) of the treaty. The end result is that all full-function joint ventures having Community dimension now fall within the jurisdiction of the Merger Task Force even if they have some co-operative elements. (Of course, non-full function joint ventures, not being concentrations, cannot come within the *Merger regulation* regime and instead are regulated under article 85 and/or national competition law.)

Replacing the earlier notices, the Commission has issued a notice on the concept of full-function joint ventures (Commission Notice 98/C 66/01), which aims to elucidate the above-mentioned amendments to the *Merger regulation*.

The first question to be considered is the notion of a 'lasting basis'. Article 3(2) of the regulation provides that the joint venture must be able to perform on a lasting basis all the functions of an autonomous economic entity. One of the problems with the 1994 notice on the difference between concentrative and co-operative joint ventures was less than clear as to what might constitute a 'lasting basis'. This issue has been clarified in the Commission's new interpretative notice which states that joint ventures which satisfy this requirement will bring about a lasting change in the structure of the undertakings concerned. Following the publication of the 1994 draft notice, one commentator suggested that the Commission could state a period of a fixed duration (for example, 50 years) as fulfilling the 'lasting basis' criterion, and that in the case of shorter periods the Commission could examine the nature and state of the industry concerned. I believe that such an approach is not necessary and that the current, more pragmatic, practice of dealing with each situation on a case-to-case basis ought to be maintained, with special attention being paid to the requirement that there must be a lasting change in the structure of the undertakings concerned.

The 1994 notice gave as an example as one of the signifiers of an undertaking which is operating on a lasting basis the transfer of intellectual property rights. The 1994 notice made explicit reference to the grant of such rights as being evidence that the parent intended to create a full-function joint venture. It stated that the licensing of intellectual property rights to the joint venture for its duration was sufficient evidence that the joint venture was an autonomous economic entity and that it was not necessary that such rights be transferred completely to the joint venture. The new notice makes no similar reference to intellectual property rights. I believe that the absence of any reference to the grant of intellectual property rights is not significant as, pursuant to the decisions of the Merger Task Force, it is assumed to be implicit.

Both the 1994 notice and the new notice state that, in order for a joint venture to constitute an 'autonomous economic entity', it must operate on a market and perform the functions normally carried out by undertakings operating on the same market. In order that it may do this, it must have access to sufficient resources such as finance, staff and assets. The new notice reiterates the importance of the fact that the joint venture must play an active role on the market by requiring that the joint venture must also have a management in place dedicated to its daily operations.

The new notice cites a number of cases which give examples of economically autonomous joint ventures. An interesting case is that of *British Gas Trading Ltd/Group 4 Utility Services Ltd* (Case IV/M791 of 7 October 1996). The companies concerned notified an operation to the Commission whereby they would acquire joint control of AccuRead Ltd (UK) which was to supply meter-reading services to the gas, electricity and water utilities in the United Kingdom. Under the agreement, AccuRead would lease its headquarters from a subsidiary of British Gas on an arm's length basis for 15 years. Furthermore, as well as transferring staff to AccuRead, BGT would transfer the necessary equipment to leasing companies and AccuRead would then in turn lease the equipment from those companies. The presence of an independent middle-man in the form of the trading company gave AccuRead the necessary economic autonomy which, were it simply to make direct and exclusive use of the parent companies resources, it might not have. The presence of the leasing companies meant that the parents could not withdraw their resources from the joint venture at any time but were obliged to adhere to the terms of the leasing agreement. This demonstrated the full-function nature of the joint venture.

The main innovation of the amended regulation is that now all full-function ventures, even those with co-operative elements, which meet the turnover thresholds, fall within the ambit of the regulation. The creation of a full-function joint venture may lead to some co-ordination of competitive behaviour of undertakings which remain independent. As far as such restraints on competition are a direct result of the creation of the joint venture, they are now subject to the application of article 2(4) of the regulation. The practical consequence of this is that all concentrative joint ventures, including those with co-operative elements, will be dealt with within the tight time limits of the *Merger regulation* regime which uses a much more effective and speedy decision-making process.

Article 2(4) allows for the appraisal of the resultant restrictions on competition (that is, co-operative elements) under article 85 within the same procedure as the concentration itself. It is the relationship between the joint ventures' parent companies which will form the focus of the article 85 test.

It appears from the wording of the notice that the article 85-type test will be applied in the same way as article 85 proper. However, the notice does give any real clues as to how the article 85 criteria will be applied in practice, and I believe that the test the Merger Task Force/DGIV will apply may be more lenient that the usual article 85 test. Given the strict time-limit of five months within which the Merger Task Force must either clear or oppose a concentration, any article 85 elements associated with the concentration are unlikely to be subjected to the more detailed, time-consuming process which is usu-

ally associated with the normal DGIV procedure.

On a practical level, it is clear that the amended regulation will require that a number of organisational changes will be made within DGIV. It appears that if there is a clear possibility that article 2(4) will apply to the joint venture, an official from the relevant sectoral unit within DGIV will be called in by the Merger Task Force to assist on the case in respect of any co-operative elements associated with the transaction. Ultimately, however, the notice does not elaborate on the many intricacies inherent in the new system and it remains to be seen how the Merger Task Force will cope with its new heavier caseload in practice.

The new regime, whereby even full-function joint ventures with co-operative elements will now fall within the ambit of the *Merger regulation*, has the major advantage that there is no longer any disparity in the way the different categories of joint venture are treated. This former difference in treatment, most notably in terms of time limits, meant that many companies went to considerable lengths in order that their agreements would fall within the *Merger regulation*. With a standard time limit of five months now applying in concentration cases, a degree of uniformity of the regulatory system has been achieved. Of course, joint ventures that are not full-function in nature, not being concentrations, will fall outside the *Merger regulation* regime. Instead, article 85 and/or national competition laws will be the applicable regulatory regime.

It is clear that the provisions relating to joint ventures are among the most significant amendments to the *Merger regulation*. While the notice attempts to elaborate in more detail on what these changes will mean in practice, ultimately it is not until the new regulation is applied in the years to come that the Commission will be able to fully address the issues at hand G

Joelle O'Loughlin is an LLM graduate of UCD.

Court of Justice protects whisky

In *The Scotch Whisky Association v Compagnie Financière Européenne de Prises de Participation (Cofepp) and Others* (C-136/96), judgment of 16 July, the Court of Justice held that EC law does not allow the use of the term 'whisky' in the name of a spirit drink containing whisky diluted with water, with an alcoholic strength of less than 40%.

Cofepp owns the *Gold River* trademark for alcoholic drinks. It uses this trade mark for a beverage with a minimum alcohol strength of 30%, made by blending Scotch, Canadian and American whiskies with water. The label on the bottles read 'blended whisky spirit' in English and '*spiritueux au whisky*' in French. *Gold River* was sold on the same shelves as whiskies by several retailers in Paris.

The Scotch Whisky Association protects the interests of the Scotch whisky trade. It was concerned about this situation and brought proceedings against several companies before the *Tribunal de Grande Instance* in Paris. The tribunal asked the Court of Justice to give a ruling on the interpretation of the Council regulation laying down the EC rules on the definition, description and presentation of spirit drinks.

The court held that *Gold River* could be described as a spirit drink within the meaning of the regulation. However, it could not be sold under the description 'whisky', which must have a minimum strength of 40%. Under the regulation, such a beverage must be described as a 'spirit' or 'spirit drink' but the term 'whisky' must not appear in the name under which it is sold. The Commission has the power to grant an authorisation to use a term such as 'whisky' under the derogating provisions of the regulation. No such derogation had been granted to Cofepp.

Cofepp had argued that 'whisky spirit' was a descriptive name and did not come within the regulation's scope. The court rejected this argument. It held that the regulation was a mandatory enactment as regards the sales description of a drink such as *Gold River* and the use of a descriptive name for it is thus not possible. The word 'whisky' could appear without qualification in the list of ingredients. However, even there it could not be used in close proximity to the sales description unless it was clearly separated and could not mislead the purchaser as to the product's characteristics. G

RECENT DEVELOPMENTS IN EUROPEAN LAW

LITIGATION

***Locus standi* to seek annulment of a directive**

Union europeene de l'artisanat et des petites et moyennes enterprises (UEAPME) v Council of the European Communities (T-135/96), judgment of 17 June 1998. The applicant is an organisation representing the interests of small and medium-sized companies throughout Europe. It sought to bring an action under article 173 seeking to have Directive 96/34 (bringing an EU agreement on parental leave into effect) annulled. The court of first instance examined whether the directive was a normative act or in reality, a disguised decision. Its purpose was to bring into effect an agreement between the Member States aimed at all workers in the EU. Thus, it was of general applications and was not a disguised decision.

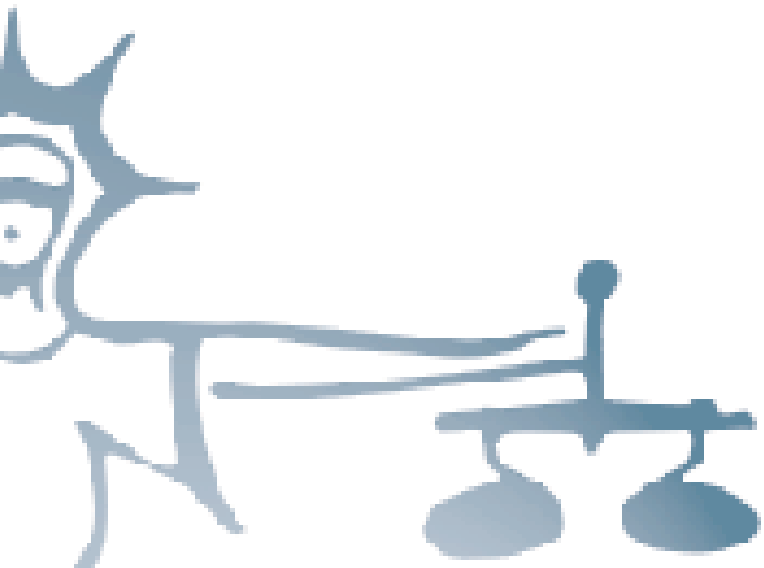
TAXATION

Corporation tax

The Commission has decided to introduce a series of measures, requiring Ireland to amend its corporate tax system. The Commission is looking for reform of the preferential tax regimes in the International Financial Services Centre, the Shannon Customs Free Customs Zone and the wider corporation tax system. The Commission considers that the preferential tax rates are operating aid – in violation of EU state aid rules (set out in articles 92–94 of the treaty). The Commission is proposing transitional arrangements having an effect over a long period of time. The preferential regimes in the IFSC and at Shannon are to end by 2005 for existing projects and by 2002 for a limited number of further projects which will be allowed under transitional arrangements provided that they are approved by the end of 1999. The arrangements for phasing out the preferential rate of corporation tax provide for a longer period of time. Investors approved by the IDA before 31 May 1998, or for a limited number of projects which were at an advanced state of negotiation by 31 May 1997 and were approved by 31 July 1998, may be eligible for a right to the preferential rate until 2010. A limited number of projects may be approved until 2002 but will only be eligible for the preferential rate of tax until 2002. The Irish Government has indicated that it will comply with these measures.

Withholding tax

The Commission has proposed a directive which would introduce a minimum of 20% withholding tax on the income from EU bank accounts and securities held by non-residents. The directive is part of an attempt to approximate taxation legislation in the Member States. It will require unanimity in the Council to be adopted.



Wednesday 25th November 1998

9.30 a.m. to 5.00 p.m.

The Museum of Modern Art

Kilmainham

Dublin.

Reception from

5.00 p.m. to 6.30 p.m.

The Hon. Justice Hugh O Flaherty. The Hon. Justice Robert Barr. Mr. Garrett Cooney, S.C. Mr. Paul Behan, Behan & Company. Mr. Roderick Bourke. McCann Fitzgerald, Solicitors. Dr. John Varian, Orthopaedic Surgeon. Mr. Mark Solon, Director, Bond Solon.

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Tel: (01) 662 3404

New proposals to facilitate free movement of workers

The Commission has put forward three proposals to facilitate EU citizens in moving around the Union in order to take up work. The first two propose amendments for Regulation 1612/68 and Directive 68/360, the main legislation implementing the free movement of worker provisions in the treaty. The proposals reinforce the principle of equal treatment for EU workers. They also clarify and simplify the rules concerning rights of residence, and enhance the rights of members of the EU workers' family, including their right to join the worker in the Member State of employment.

Rights of residence for EU workers. Existing legislation guarantees EU nationals the right to take up work anywhere in the EU. They also have the automatic right to a residence permit on production of documents proving their identity and that they have a job. The proposals seek to cast several significant decisions of the Court of Justice in this area into legislative form. They propose that EU nationals will have the right to travel to another Member State to take up work or vocational training. Such persons will be given a right of residence for six months and can reside for a longer period if they can prove that they are actively seeking employment and have a reasonable chance of securing it.

Equal treatment. Existing legislation sets out to guarantee equal treatment for EU nationals in relation to conditions of work, tax and social advantages. Some of this legislation is quite unclear and the Court of Justice had to clarify and extend these provisions in a series of rulings. The proposed new legislation seeks to reinforce and clarify the principle of equal treatment in line with the court's decisions.

Workers' families. Existing legislation enables EU workers, their spouses and descendants under the age of 21 and dependants to take up residence with workers employed in another Member State. The amendments will remove the age and dependency criteria. The proposals will also guarantee that family members should enjoy the right to equal treatment in relation to all economic, social, cultural and other benefits. This is to put a number of Court of Justice rulings into legislative form. Family members of workers will also be given the right to work in a self-employed capacity. The proposed legislation will give equivalent rights to third-country nationals who were married to an EU worker, resided with their spouse in the EU for three or more years and then divorced. This proposal clarifies an area of great uncertainty in the existing law.

Non-discrimination. The proposal includes a clause outlawing discrimination on the grounds of race, religion, sex, age, disability or sexual orientation when workers exercise their right to free movement. G

Conferences and seminars

Academy of European Law
Contact: (Tel: 0049 651 937370)

Topic: *The Schengen system and co-operation in the field of justice and home affairs generally in the wake of Amsterdam*
Date: 22-23 October
Venue: Trier, Germany

Topic: *Legal aspects of EMU*
Date: 2 November
Venue: London, England

Topic: *Proposal for a directive on the sale of consumer goods and associated guarantees*
Date: 5-6 November
Venue: Trier, Germany

Topic: *Licensing contracts under European cartel law*
Date: 16-17 November
Venue: Trier, Germany

Topic: *Judicial co-operation in the European Union in the field of civil and commercial law: prospects for improvement*
Date: 20-21 November
Venue: Trier, Germany

Topic: *Judicial and extra-judicial proceedings in the field of European competition law*
Date: 25-26 November
Venue: Trier, Germany

Topic: *Current developments in the legal protection of industrial property*
Date: 27 November
Venue: Trier, Germany

Topic: *Community rules on State aid*
Date: 30 November and 1 December
Venue: Trier, Germany

Topic: *Combating corruption in the European Union*
Date: 3-4 December
Venue: Trier, Germany

Topic: *Mutual recognition of educational and professional qualifications in Europe*
Date: 3-4 December
Venue: Brussels

AIJA (International Association of Young Lawyers)
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Human rights: the practical effects of the European convention*
Date: 23-25 October
Venue: Brussels, Belgium

Topic: *Tax and company law: relationship between parent and subsidiary*
Date: 7-8 November
Venue: Milan, Italy

British Institute of International and Comparative Law
Contact: Valerie Echard (tel: 0044 171 323 2016)

Topic: *Pleading and proof of foreign law in UK courts*
Date: 23 October
Venue: London, England

Topic: *The role of the IMF as international lender of last resort*
Date: 5 November
Venue: London, England

Topic: *Parent-subsidiary relations and corporate structure in Europe, North America and beyond*
Date: 6 November
Venue: London, England

Topic: *Drafting and enforcement of transnational contracts: jurisdiction and choice of law clauses*
Date: 10 November
Venue: London, England

Topic: *Monetary compensation for violations of human rights*
Date: 27 November
Venue: London, England

Topic: *Civil redress for human rights violations abroad: the UK dimension*
Date: 4 December
Venue: London, England

Computer and Telecommunications Law Review
Contact: Christian Roth (tel: 0044 171 839 8391)

Topic: *European telecoms regulations and competition law*
Date: 30 November and 1 December
Venue: London, England

European Lawyers' Union (UAE)
Contact: Christian Roth (tel: 0033 145 046 173)

Topic: *The role of the Legal Affairs Commission of the European Parliament*
Date: 27 November
Venue: Strasbourg, France

IBC
Contact: (Tel: 0044 171 453 5492)

Topic: *Advanced analysis of developments in EC competition law*
Date: 10-11 November
Venue: Brussels, Belgium

IIR
Contact: (Tel: 0044 171 915 5055)

Topic: *Food industry post-EMU*
Date: 27 October
Venue: London, England

Law Society of Ireland
Contact: TP Kennedy (tel: 01 671 0200)

Topic: *European law healthcheck*
Date: 17 October
Venue: Blackhall Place, Dublin

Solicitors' European Group
Contact: (Tel: 0044 1905 724 734)

Topic: *State liability:* Factortame *and thereafter*
Date: 10 November
Venue: London, England

Blackhall Ball celebrates 20 years

Among the distinguished guests at the ball were (Left to right): Director General Ken Murphy, Yvonne Chapman, Chairman of the Bar Council John MacMenamin SC, President of the CCBE Michel Gout, Beatrice Gout, Chief Justice Liam Hamilton, Helen Shields, President Laurence K Shields, Maeve Hamilton, Joyce Dry, and President of the Law Society of Scotland Philip Dry

The Law Society of Ireland celebrated 20 years at its Blackhall Place headquarters with a black tie ball in July. The event was held in a magnificent marquee erected in the Blackhall grounds, and over 600 solicitors and their guests enjoyed a banquet meal and dancing to Paddy Cole and the Allstars, followed by a disco till late.

(Left to right) His Honour Judge John F Buckley, Mr Justice Vivian Lavan, Chief Justice Liam Hamilton, and former Law Society President Michael P Houlihan

The class of '78: Junior Vice-President Geraldine Clarke (front row, centre) is joined by colleagues, all of whom qualified in 1978 and therefore had a double reason to celebrate 20 years of the Law Society's occupation of Blackhall Place

(Front row, left to right): Rosemary Nicholl, Arthur Dixon, Gillian Rankin, Chief Executive of the Northern Ireland Law Society John Bailie, Maeve McCullough. (Back row, left to right): Law Society of Northern Ireland Junior Vice-President Catherine Dixon, Law Society of Northern Ireland Senior Vice-President Alistair Rankin, and former President of the Law Society of Scotland Grant McCullough

Visit to Wicklow and Mayo bar associations

Continuing their programme of visits to bar associations around the country, Law Society President Laurence K Shields and Director General Ken Murphy recently visited the Wicklow Bar Association (above left) and the Mayo Solicitors' Bar Association (above right)

Litigation costing Irish firms £30 million a year

Pictured at the recent CPSSA seminar entitled *Cutting the cost of conflict* were John Daly, Chairman of the Centre for Dispute Resolution, Anne Counihan, President of the CPSSA, and Supreme Court judge Mr Justice Hugh O'Flaherty

The Corporate and Public Services Solicitors' Association recently held a seminar in Blackhall Place on how alternative dispute resolution can cut the cost of disputes and litigation for business. According to the chairman of the Centre for Dispute Resolution, John Daly, commercial litigation is costing Irish businesses £30 million each year. Daly estimated that one-third of commercial disputes could be resolved more cheaply through mediation, and he pointed out that in some US states mediation in civil cases was mandatory before going to litigation. Supreme Court Judge Mr Justice Hugh O'Flaherty told the seminar that 'the resolution of commercial disputes through mediation rather than litigation would have the co-operation of the judiciary'.

New home for Osborne Recruitment

Pictured at Osborne Recruitment's new premises at 7 Upper Pembroke St in Dublin are Niamh O'Reilly, Suzanne Johnston, Lesley Osborne and Mel Cathcart

Newly-qualifieds get their papers

Newly-qualified solicitors and their guests at last month's Parchment Ceremony

42 newly-qualified solicitors received their parchments and were admitted to the Roll of Solicitors at a Parchment Ceremony in the Law Society's Blackhall Place headquarters last month. Among the guests in attendance were the President of the District Court Judge Peter Smithwick and Mr Justice Dominic Lynch of the High Court.

Law Society President Laurence K Shields welcomes the newly-qualified solicitors to the profession

Law Society President Laurence K Shields and Carmel Killeen pictured with Sinead Lucey (centre), winner of the Carmel Killeen prize for best result in estate planning and administration practice

Law Society President Laurence K Shields pictured with (from left) John McElroy of Guinness & Mahon, who presented the Guinness & Mahon Prize for the best result in capital taxation on a professional course to Michelle McLoughlin (44th professional course), Jennifer O'Neill (44th professional course), Tanya Colbert (44th professional course), and Florence McCarthy (41st professional course)

AN APPRECIATION

Moya O'Connor, BA, Solicitor (1917-1998)

Moya O'Connor, solicitor, of 'The Cottage', Swinford, Co Mayo, died suddenly in July of this year. She was admitted to the Roll of Solicitors in Hilary term 1941 and then returned to her native Swinford to work with her late father, Pat O'Connor, and brother, TV O'Connor, in the family firm P O'Connor & Son.

A quiet, unassuming and almost shy person, Moya was proud of being a lady solicitor and a member of a profession which never discriminated on the basis of gender. While one of a small number of women admitted to the Roll of Solicitors in the early part of this century, she commented favourably on the fact that over the last five years more than 50% of those qualifying as solicitors are female.

Moya O'Connor was born in 1917 to a family steeped in the legal tradition. She was the second child of Pat O'Connor, known among his colleagues as 'the Father of the Mayo Bar'. He was President of the Mayo Solicitors' Bar Association for the ten years before his own death in 1942.

Her brother, Val O'Connor, was President of the Law Society in 1972/1973, while her brother, John W, was a barrister on the Western Circuit prior to his appointment as a judge of the Circuit and Special Criminal courts.

A gentle lady who valued friendship, family and tradition, she worked until her death with her nephew, Pat O'Connor, the incoming President of the Law Society of Ireland, and their assistants and staff in Swinford and Kiltimagh.

She was very active in the community, particularly in the charitable, philanthropic and Eucharistic areas. She was organiser of the collection for the blind in East Mayo for many years. She played golf until a few years ago, and was Lady Captain in Swinford Golf Club in the past.

The last of the second generation of solicitors in the O'Connor family, she was related to the Callan, Gordon, Dillon-Leetch, McLoughlin and Behan solicitor families; and related through marriage to the Matthew, O'Connors of Wexford, Rochfords, Casey, Browne, Prentice, Crowley, McGarry, Claffey, Hussey, Martin, and other legal families throughout the country.

With considerable satisfaction, she witnessed the qualification of all the next generation of her family, her four nephews, Pat, Tom, John and Tony as solicitors.

Her nephew Pat, in a moving tribute to her at her funeral, suggested that she might be regarded as having been 'one of the most efficient and cost-effective solicitors practising in the country. She did all her own typing, filing, interviewing and legal research'. Integrity, honesty, and straightforward advice and service given to her clients without aggression or dictation were her hallmark.

While difficult to summarise the mission in life of Moya O'Connor, the words of Desire Joseph Cardinal Mercier are close: 'we must not only give what we have, we must also give what we are'.

A gentle lady, a solicitor trained in the old tradition of service and giving, who worked with the technological advances of this millennium, has passed to her reward of eternal peace, leaving four nephews, grandnephews and nieces, sister-in-law Kay, relatives, colleagues and friends to regret her passing but to rejoice in her life. May she rest in eternal peace.

P & G

Solicitors' Hillwalking Group

The Solicitors' Hillwalking Group, which was set up over two years ago, is going from strength to strength. The group has approximately 50 regular members, 20-25 of whom turn out for the monthly walk. The group has a number of 'away games' under its belt at this stage, including the Lake District, Kerry (Carrantuohill), the Comeraghs, the Burren, and Snowden in Wales. The monthly walk, which normally takes place on the second Sunday of the month, is held in Wicklow or within driving distance of Dublin – the Coolies, the Mournes, Mt Leinster and so on.

Newcomers should not be deterred by the experience of the existing members, as the new season normally sees us starting with a few gentle walks. We also intend to run walks for different levels, including those with no experience whatsoever. Before you know it, you will be an old hand! It's not serious stuff – the craic and the pint afterwards are as important as the walking.

For more information on the group's walks, contact Andrew Clarke at 7081056 or by e-mail, Andrew.Clarke@KPMG.it.

Lady Solicitors' Golf Society

The annual outing of the Lady Solicitors' Golf Society was held for the second year running in Rosslare Golf Club on Friday 4 September. Despite miserable conditions, over 40 played a shortened ten-hole competition. Dinner afterwards at Kelly's Resort Hotel was a tremendous success. Rosslare's Lady Captain Margaret Lacey joined us, as did Seán Kavanagh of Company Formations International Ltd, which kindly sponsored the outing.

Results

First and winner of Captain's Prize and Quinlan Trophy:	Mary Fenelon	h/c 36	22 points
Second:	Helen Kilroy	h/c 16	21 points (back 9)
Gross:	Deirdre O'Connor	h/c 12	14 gross points
Third:	Mary Carmel Byrne	h/c 20	20 points
First 9:	Clodagh Liddy	h/c 36	10 points
Second 9:	Elaine Anthony	h/c 13	12 points
Sheila O'Gorman Trophy:	Geraldine Hickey	h/c 45	17 points
Visitor's Prize:	Irene Fenelon	h/c 36	23 points.

Diana Jamieson was elected captain for next year, and Fionnuala McGinley of A&L Goodbody solicitors kindly agreed to be secretary. Helen Murphy will remain on as treasurer.

THE SOCIETY OF YOUNG SOLICITORS IRELAND

Autumn Conference 1998

13-15 November 1998 at Ardilaun Hotel, Galway

Friday 13 November 1998

5pm onwards	Registration of Delegates.

Saturday 14 November 1998

10am to 10.45am	*The Freedom of Information Act, 1997*, Paul Lavery, McCann FitzGerald, Solicitors, Dublin.
10.45am to 11.30pm	*Reducing Stress in Your Working Day,* Dr Abby Lane, Consultant Psychiatrist, Dublin County Stress Clinic.
11.30am to 11.50am	COFFEE BREAK
11.50am to 12.30pm	*The Superior Court Rules - Mutuality of Disclosure* Patrick J P Groarke, Patrick J Groarke & Son, Longford.
12.30pm to 2pm	LUNCH
2pm - 6pm	Activities including Pub Treasure Hunt, Go-Karting (see below), Horse Riding, Golf (pre-book though Hotel), Leisure Centre with steam room, sauna and gymnasium.
7pm to 8pm	Drinks Reception — Ardilaun Hotel
8pm until late	Banquet, followed by band and disco (*Black Tie*).

Sunday 15 May 1998

Up to 10.30am	Breakfast
12 noon	Checkout of Hotel

NOTES:

1. Accommodation at the Ardilaun Hotel will be limited. Some single rooms are available at no extra cost. Overflow accommodation is available at the Galway Bay Hotel, Salthill. Early booking is essential and accommodation will be allotted strictly on a first come first served basis. Once all available accommodation in the Ardilaun Hotel is filled, all subsequent applications will be treated as applications for accommodation in the Galway Bay Hotel.
2. Conference Fee is IR£140 pps, and includes Friday and Saturday Night accommodation, two breakfasts, subsidised activities, Saturday evening banquet and conference materials.
3. Individual applications only are acceptable (i.e. one applicant per registration form). All applications must be made by ordinary prepaid post and only postal applications exhibiting a postal mark dated 16 October 1998 or after will be processed.
4 No booking will be accepted without payment of the Conference Fee (plus £10 extra pp, for Go-Karting, if applicable). Cheques to be made payable to the Society of Young Solicitors. Please write delegate names on the reverse side of all cheques.
6. All cancellations must be notified to Fidelma McManus by Friday, 30 October 1998. Cancellations after that date will not qualify for a refund.

REGISTRATION FORM *Please use block letters* (Individual Postal Applications Only - No Block Bookings)

Name: _____ Firm: _____

Business address _____ Phone no: _____ (Home) _____ (Office)

ACCOMMODATION IN ARDILAUN HOTEL OR GALWAY BAY HOTEL £140 Per Person Sharing

Please tick box ☐ Double ☐ Twin Sharing with: _____ ☐ Single

☐ I wish to avail of the Vegetarian Option at the Banquet ☐ I wish to participate in Go-Karting (£10 extra enclosed)

I enclose cheque/postal order payable to the Society of Young Solicitors for £ in payment of the Conference Fee (includes £10 for Go-Karting, if relevant)

Please post this Registration Form with the Conference Fee to The Treasurer, SYS-Autumn 1998, PO Box 52, Carlow.

Postal Applications exhibiting a postal mark of on or after 16 October 1998 only will be accepted. All enquiries regarding the Conference should be directed to Fidelma McManus at (01) 6199000 after 6pm Monday to Thursday.

LAW SOCIETY OF IRELAND

Younger Members Committee

ANNUAL QUIZ NIGHT

WEDNESDAY 28 OCTOBER 1998, 8pm

STAKIS HOTEL, CHARLEMONT PLACE, DUBLIN 2
(BESIDE THE BARGE PUB)

In aid of SOLICITORS' BENEVOLENT FUND

ENTRY SLIP

Entry fee £45 per table of five

Firm name: _____

Captain: _____

Telephone no: _____ Fax: _____

Return to: Jill Curran, the Law Society, Blackhall Place, Dublin 7. Telephone: 671 0711. Fax: 671 0136. DX No: 79

Cleary Donnelly Ltd

Dennis Cleary reviews After Accident Opponents Legal Costs Insurance which was launched to the Irish market in March of 1997. Currently about 150 legal firms representing several hundred solicitors use the product.

"We find that where the product is understood, both clients and solicitors alike receive it with great enthusiasm."

So what is the product? When a solicitor takes instructions in a personal injury case on a no win no fee basis he is obliged to furnish his client with a Section 68 letter. In this letter the client is advised that when taking an action there is the possibility of being made responsible for their opponent's costs. We insure this risk. The limit of indemnity on our policy is £50,000 with an inner limit of £2,000 for own disbursements such as medical examinations etc. The premium currently is £136.00 inclusive of government levy. This is a one off premium as the cover is incident specific and not for a period of time.

What do we want from solicitors? When appointing a firm of solicitors to our panel *(and we only sell the product to clients of those solicitors who are on our panel)* we ask them to enter into an understanding with us.

- We ask that they should advise all of their clients of the existence of our policy.
  Several solicitors have suggested to us that failure to advise their clients of the existence of this type of insurance could leave them open to a professional negligence claim.
- We ask that the solicitor recommend the product.
  After a year and a half of selling this type of insurance we are more convinced than ever that there are no cases in which this very low cost and reasonable cover is not applicable.
- We expect that a majority of the clients of a given practice will effect insurance.
  In our experience where the solicitor recommends a particular course of action 99% of the time the client will take his solicitor's advice.

Since launching the product one question has come up on several occasions from quite a few solicitors. We have been asked whether or not a solicitor is justified in recommending the product to a client where the solicitor believes liability will not be an issue. In these cases we remind the solicitor that the client has cover whether they lose on quantum or liability. This effectively means that failing to beat a lodgement or for whatever reason when a court orders a client to pay his opponent's costs they have insurance cover.

Let me put this type of cover in perspective; what solicitor when acting for a client in a conveyancing matter would suggest to the client that it was unnecessary to insure the property? We all routinely effect fire insurance on our homes and properties and consider the premiums we pay to be worth the peace of mind the insurance buys. So it is with Opponents Legal Costs Insurance. We believe £136 is a very small price to pay for the peace of mind that that premium purchases. If the client wins it is a small deduction from his settlement. If the client loses it is the best £136 he has ever spent!

As time has gone by it is interesting to see how attitudes have changed to our product. Several solicitors who enthusiastically embraced the idea at the outset for the benefits brought to their clients now report back to us that there have been some unexpected benefits to them also. *'The peace of mind the product has brought to our clients means we receive fewer phone calls and this has increased our productivity'* was the comment of one solicitor who specialises in personal injury work.

In his address to the Law Society of England and Wales the Lord Chancellor suggested that public cynicism towards the profession was at it's height and that a system of no win no fee supported by a reasonably priced opponents legal fees insurance would give lawyers a chance to 'compete in public esteem with teachers, nurses and doctors in terms of what they put into society'.

One solicitor recently suggested to me that sooner or later some plaintiff is going to lose a case, have costs awarded against them and then discover that it would have been possible to have had insurance in place. They are then likely to sit down with some sympathetic journalist who in preparing a story is going to ask questions of the solicitor concerned and indeed the whole profession.

At the moment our product is only available to personal injury clients where the solicitor takes the instruction on a no win no fee basis. However we have agreed with our underwriters, who are currently drafting a policy wording, to provide cover in medical and clinical malpractice cases and for contractual disputes. As part of our policy of developing and improving our product we now have a revised policy wording on our existing product which gives a wider cover for the same cost as before.

Dennis Cleary is the Managing Director of Cleary Donnelly Ltd. Insurance Brokers, a Rathmines based Insurance Brokerage, specialising in legal fees insurance. Tel: 496 68 11 Fax: 497 4180

Hewlett-Packard is ranked the second largest computer company and the fifth largest lessor of Information Technology in the world. It is also one of the 10 "most admired companies" in the U.S.A. It has annual revenues in excess of $40 billion, operates in 120 countries and employs over 120,000 people. HP has had a presence in Ireland since 1976 and presently employs 1,500 people in its manufacturing plant in Leixlip, Co. Kildare and over 100 people in its Sales and Service centre in Blackrock, Co. Dublin. To date both operations have resulted in an investment of £500 million in the Irish economy.

Hewlett-Packard International Bank, located in the I.F.S.C. has received a banking licence from the Central Bank. H.P.I.B. will provide a Lease Finance and Equipment Management Service to customers throughout Europe. Prior to establishing this International Bank, HP has been offering leasing and rentals to customers in over 50 countries, since 1978. We are presently recruiting a

Legal Counsel

who will provide a full range of legal services to the Bank. These services will include legal consultancy and business transactional support primarily in relation to the Bank's European activities, developing new agreements and advising on legal issues relating to new products and services and providing company secretarial services to the Bank and related companies. This is a new, senior and high profile role reporting to HP's European General Counsel.

The successful candidate will be a qualified solicitor or barrister with a minimum of six years post qualification experience gained in the leasing/banking/financial services sector in private practice or industry. The role will require the ability to provide responsive, commercial, balanced advice to the Bank and to communicate successfully at Board and senior management levels across the organisation. There will also be a requirement to work closely with other in-house lawyers in Europe and the US. In addition this lawyer will provide direct support to Business Units in Ireland, the UK and Northern European territories. Whilst based in Dublin, the successful applicant will be required to travel overseas.

The successful candidate can expect a competitive salary with attractive fringe benefits. Please send full career details immediately to **GMB & Associates Ltd.,** quoting position no. 1712 by post, fax: (01) 2861833 or email: gmb@indigo.ie. Alternatively you may telephone Karen O'Neill on (01) 2867692 for an initial discussion. No information will be disclosed to our client without prior permission.

GMB and Associates Limited,
Recruitment and Executive Search Services.
MS House, Strand Road,
Bray, Co. Wicklow.

HEWLETT PACKARD

Hewlett-Packard values the contributions of a diverse workforce. We encourage qualified women and men from all races, religions and levels of physical ability to apply. We provide an extensive benefits package including good annual leave, a top quality pension, profit-sharing, and encourage flexible working, part-time and job-share schemes where practical.

TREAT YOUR STAFF OR CLIENTS TO CHRISTMAS LUNCH AT THE LAW SOCIETY!

Enjoy a mulled wine reception and a five-course lunch in the Law Society at an all-inclusive price of just £17.50 per person.

Christmas lunch available on Monday 21 and Tuesday 22 December 1998

Full wine list and bar facilities
Car parking available

Please book in advance with Liam Delaney or Tina Flanagan on 01 6710711

Christmas Lunch Menu

Smoked Chicken and Wild Mushroom Filo Parcel
Avocado and Pine Kernel Salad with Blue Cheese Vinaigrette
Seafood and Spinach Roulade, Dill Cream

*

Spiced Carrot and Ginger Soup

*

Baked Medallion of Salmon stuffed with Prawn Mousse
Traditional Roast Bronzed Turkey and Ham with Chestnut Stuffing
Roast Sirloin of Beef with Yorkshire Pudding

Selection of Vegetables

*

Lemon and Blackcurrant Cheesecake
Christmas Pudding with Brandy Butter
Chocolate Bavarois

*

Coffee and Mince Pie

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 9 October 1998)

Regd owner: Brendan L Brophy, Fairgreen, Tullow, Co Carlow & Kellistown, Co Carlow; Folio: 9428F; Land: Tullow Phelim; Area: 2.850 acres; **Co Carlow**

Regd owner: Patrick Dunne, Rathnapish, Carlow, Co Carlow, also St Bridget's, Green Lane; Folio: 9357F; Lands: Rathnapish; Area: 0.956 acres; **Co Carlow**

Regd owner: Martin Moroney, Clooneyconnerymore, Kilbane, Broadford, Co Clare; Folio: 7914; Lands: Townland of Cloonyconry More, Barony of Tulla Lower; Area: 63a 1r 20p; **Co Clare**

Regd owner: Mary Devine and Kevin Gallagher, 119 Annadale Drive, Marino, Dublin 3 and 12 Hillside Close, Skerries, Co Dublin, and 28 Blackrock Drive, Ballybofey, Co Donegal; Folio: 37282; Lands: Meenderryowan; Area: 1.050 acres; **Co Donegal**

Regd owner: James Quinn, Cloghanbeg, Cloghan, Co Donegal; Folio: 1727; Lands: Cloghan Beg; Area: 14.969 acres; **Co Donegal**

Regd owner: Owen Slevin, Ardeevin, Barnesmore; Folio: 490; Lands: Ardeevin; Area: 8.844; **Co Donegal**

Regd owner: Francis Benson and Kathryn Benson; Folio: 113980F; Lands: All that and those the dwellinghouse and premises at 1 Elm Grove, Griffeen Valley, Lucan, Co Dublin; **Co Dublin**

Regd owner: Edward O'Connor; Folio: 13642L; Lands: Property known as 69 Benbulbin Road, Parish of St Jude, District of Kilmainham; **Co Dublin**

Regd owner: Laurence Lohan (deceased), Lisavruggy, Newbridge, Ballinasloe, Co Galway; Folio: 586 (revised); Lands: Townland (1) Lissavruggy, (2) St Brendan's or Cregganagrogy; Barony of Killian; Area: (1) 18a 3r 39p, (2) 2a 3r 34p; **Co Galway**

Regd owner: Martin McTigue (deceased), Ballaghbaun, Belclare, County Galway; Folio: 51366; Lands: Townland of Ballaghbaun, Barony of Clare; Area: 0a 2r 15p; **Co Galway**

Regd owner: Dorothy Gaynor, Leenane, Co Galway; Folio: 43671; Lands: Townland of (1) Lissoughter, (2) Lissoughter (one undivided 11th part), Barony of Ballynahinch; Area: (1) 7a 2r 20p, (2) 719a 1r 35p; **Co Galway**

Regd owner: Eugene Tiernan, Keelogues East, Creggs, Co Galway; Folio: 33526; Lands: Townland of (1) Keeloges East, (2) Gortnadeeve West, (3) Funshin, (4) Sonnagh (one undivided eleventh pt), (5) Sonnagh (one undivided eleventh pt), (6) Moat, (7) Gortnadeeve West; Barony of Ballmoe; Area: (1) 16a 3r 16p, (2) 12a 1r 30p, (3) 4a 0r 18p, (4) 52a 2r 36p, (5) 0a 0r 30p, (6) 6a 1r 2p, (7) 4a 0r 5p; **Co Galway**

Regd owner: Patrick Dineen; Folio: 26502F; Lands: Townland of Cleanderry, Barony of Clanmaurice; **Co Kerry**

Regd owner: Eamonn Scully; Folio: 3572F; Lands: Greenfield, Barony of North Salt; **Co Kildare**

Regd owner: Alice Cunningham; Folio: 3264; Lands: Coolnafearagh, Barony of Offaly West; **Co Kildare**

Regd owner: Alan George Clegg; Folio: 8421 & 8422; Lands: Borris Great, Barony of Maryborough East; **Co Laois**

Regd owner: Sean O'Farrell (o/w) Sean Farrell), Drumard, Drumod, Carrick on Shannon; Folio: 8315; Lands: Drumard (Moagerraun); Area: 14a 2r 12p; **Co Leitrim**

Regd owner: Patrick Kerrigan, Drumard, Dromod, Co Leitrim; Folio 2338F; Lands: Drumard (Magerraun); Area: 0.190 acres; **Co Leitrim**

Regd owner: John J Sheehan, Ardfarna, Ballyshannon, Co Donegal; Folio: 12690; Lands: (1) Lareen, (2) Boyannagh; Area: (1) 45a 3r 8p (2) 0a 0r 9p; **Co Leitrim**

Regd owner: Michael Horgan; Folio: 6344F; Lands: Townland of Corrabul, Barony of Pubblebrien; Area: 24a 1r 30p; **Co Limerick**

Regd owner: Thomas and Theresa Cheevers, 72 Glenwood Estate, Dundalk, Folio: 3621L; **Co Louth**

Regd owner: Patrick Kelly of Drumcrew, Castleblayney, Co Monaghan; Folio: 10111; Lands: Drumcrew; **Co Monaghan**

Regd owner: Linda Jane Duffy; Folio: 4119; Lands: Ballynanum, Barony of Coolestown; **Co Offaly**

Regd owner: Ann Dodd and Elizabeth Walsh as tenants in common of an undivided moiety each, Doon, Kilfree, Gurteen, Co Sligo; Folio: 23882; Lands: Townland (1) Tawnymucklagh (2) Tawnymucklagh, Barony of Coolavin; Area: (1) 7a 3r 6p, (2) 1a 0r 0p; **Co Sligo**

Regd owner: Nicholas Quinlan; Folio: 4331; Lands: Knockhouse Upper; Area: 17a 1r 32p; **Co Waterford**

Regd owner: Ralph & Christine Such; Folio: 8407F; Barony of St John's Without Division D; **Co Waterford**

Regd owner: John Dempsey, Newtown Commons, New Ross; Folio: 21281; Lands: Lacken; Area: 1a 1r 0p3; **Co Wexford**

WILLS

Baird, Zena, deceased, late of 6 Ballyronan Court, Templeogue, Dublin 16. Would any person having knowledge of a will executed by the above named deceased, who died on 31 January 1998, please contact John O'Connor, Solicitors, 168 Pembroke Road, Ballsbridge, Dublin 4, tel: 6684366, fax: 6684203

Connell, Michael deceased, late of Castlehackett, Belclare, Tuam, Co Galway, who died on 23 August 1998, please contact Gleeson & Kean, Solicitors, High Street, Tuam, Co Galway, tel: 093 24082, fax: 093 24088

Cullen, Michael (deceased), late of 56 St Patrick's Crescent, Dun Laoghaire, Co Dublin. Would any person having knowledge of a will of the above named deceased, who died on 24 July 1998, please contact O'Callaghan Cowhey, Solicitors, 93 Upper George's Street, Dun Laoghaire, Co Dublin, tel: 2803399, fax: 2809221

Cummings, Vanessa, (formerly Vicars Price), deceased, Kilmaley, Ennis, County Clare. Any solicitor having a will for the late Vanessa Cummings, who died on 26 February 1998, might please notify Houlihan McMahon, Solicitors, 9-11 Bindon Street, Ennis, County Clare, tel: 065 28706, fax: 065 21870. Ref: CK/28518

Hearn, Margaret, deceased, late of Ballyneale, Carrick-on-Suir, Co Tipperary. Will anybody having knowledge of the whereabouts of the will of the above named deceased, who died on 9 May 1996, please contact HD Keane & Co, Solicitors, 21 O'Connell Street, Waterford, tel: 051 874856/7

Lawlor, Simon, deceased, late of Clogga, Mooncoin, Co Kilkenny. Will anybody having knowledge of the whereabouts of the will of the above named deceased, who died on 21 October 1988, please contact HD Keane & Co, Solicitors, 21 O'Connell Street, Waterford, tel: 051 874856/7

O'Regan, Mary Ellen, deceased. Will any person having any knowledge of any will of the late Mary Ellen O'Regan (otherwise Mary O'Regan) of Lissalohorig, Skibbereen, Co Cork with, possibly, an address at Kilnaclasha, Skibbereen, Co Cork, who died on 11 August 1998, furnish the

Land Registry
Clárlann na Talún

FINAL PHASE OF DECENTRALISATION OF CERTAIN SECTIONS OF THE LAND REGISTRY

Counties Kilkenny, Carlow and Wexford

Relocation of the section of the Land Registry dealing with Counties Kilkenny, Carlow and Wexford will take place on Monday 2nd November 1998.

All folios and maps will relocate to Waterford and all documents relating to cases in these counties should be lodged to the Waterford Office on and from the above date. Once again, solicitors are requested to make only urgent searches and applications on the preceding Friday 30th October to facilitate staff preparations for the removal of documents. Notices will be placed in the national newspapers in advance of this move.

Because of the current economic boom, intake of applications to the Land Registry has experienced huge growth in the last few years. The Registrar hopes that customers are appreciative of the efforts she and her staff are making to ensure continued improving output despite the difficulties attendant on increasing levels of work and the upheaval caused by decentralisation. The continued co-operation of the legal profession is appreciated in this regard.

Address: Land Registry Office,
Cork Road,
Waterford.

Tel: (051) 30 30 00
Fax: (051) 30 31 13
LoCall 1890 333 002

Information Note

POSITIONS AS SENIOR DRAFTSMAN IN THE OFFICE OF THE ATTORNEY GENERAL

The Civil Service Commission expects to advertise a competition for positions of Senior Draftsman in the near future.

The positions will be in the Office of the Parliamentary Draftsman which is a constituent part of the Office of the Attorney General. The work involves the preparation of Government legislation (including bills to amend the Constitution), statute law reform and consolidation bills and most statutory instruments.

Application is open to Barristers and Solicitors.

Salary £33,335 - £42,837.

Application forms and details will be available from the Civil Service Commission, 1 Lower Grand Canal Street, Dublin 2. Telephone (01) 661 5611.

WATCH NATIONAL PRESS FOR DETAILS

particulars thereof to Wolfe & Company, Solicitors, Market Street, Skibbereen, Co Cork. Ref: PO'R/1202A

EMPLOYMENT

Solicitor required for practice in country town in Munster. Top salary will be paid, with excellent prospects for person capable of handling heavy workload. All applications will be treated in the strictest confidence to **Box No 80**

Post-professional course apprentice sought by general practice in Bray. Replies to **Box No 81**

Solicitor seeks PQE in Dublin area. Practical experience and involvement considered more important than remuneration. Reply to **Box No 82**

Male solicitor – three years' PQE seeks position in native mid-west. V good general experience, esp litig and convey. Reply **Box No 83**

Solicitor – seven years' PQE in general practice seeks position in Dublin. Preference litigation and matrimonial work. Reply to **Box no 84**

MISCELLANEOUS

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 080 1693 61616, fax: 080 1693 67712

Personal injury claims, family law, criminal law and property law in England and Wales. We have specialist departments in each of these areas, and offices in London (Wood Green and Camden) and Birmingham. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Company, Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England, tel: 0044 181 881 7777, fax: 0044 181 889 6395, and The McLaren Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000, fax: 0044 121 233 1878

London solicitors will advise on UK matters and undertake agency work. All areas. Corporate/private clients. Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 171 589 0141, fax: 0044 171 225 3935

Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, Alderman Downward House, 2/3 The Birtles, Civic Centre, Wythenshawe, Manchester M22 5RF, tel: 0044 161 437 0527, fax: 0044 161 437 3225

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 080 1693 68144, fax: 080 1693 60966

Speciality research and investigative consultancy firm in Dublin 4 seek professional in-house/legal counsel for mutual working and conditional arrangement. Suit newly-qualified member(s) or those interested in moving into own practice. Own office – phone etc (turn-key operation). Reply with offers, ideas or requirements in strictest confidence to **Box No 5768, Dublin 4**. Attn: Managing Director

TITLE DEEDS

In the matter of the *Registration of Titles Act, 1964* and of the application of John E Garry in respect of property in the county of Offaly
County: Offaly (King's)
Lands: Lock House, Sragh
Dealing no: T9253/97

Take notice that John E Garry of Fenter, Killeigh, Co Offaly, has lodged an application for registration on the freehold register free from encumbrances in respect of the above property.The original title documents specified in the schedule hereto are stated to have been lost or mislaid. The application may be inspected at this registry.

The application will be proceeded with unless notice is received in the registry within one calendar month from the date of publication of this notice that the original documents of title are in existence. Any such notice should state the grounds on which the documents are held and quote the dealing reference above.

Sean MacMahon, Examiner of Titles

SCHEDULE
Conveyance dated 11 March 1976, Coras Iompar Eireann to William Smyth and Bridget Smyth.

WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of **X** pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund-raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

IRISH CANCER SOCIETY

5 Northumberland Road, Dublin 4. Tel: (01) 668 1855

IRISH KIDNEY ASSOCIATION

Donor House,
156 Pembroke Road,
Ballsbridge, Dublin 4.
Tel: 01 -668 9788/9
Fax: 01 - 668 3820

The Irish Kidney Association was formed in 1978 to:

1. Promote the general welfare of persons suffering kidney failure - financial and psychological.
2. To give advice and guidance to parents and relatives.
3. To arrange lectures, conferences and meetings pertaining to kidney disease.
4. To support research projects into the causes and effects of inherited disorders and kidney failure.
5. To print and distribute the Multi-Organ Donor Card and actively promote public awareness of organ failure.

REMEMBER US WHEN MAKING A WILL!

Certified by the Revenue Commissioners as a charity: 6327

OUR FINANCIAL ASSISTANCE IS NATIONWIDE

Irish Stenographers Ltd

Director: Sheila Kavanagh

Experts in
Overnight Transcripts

Specialists in
Court Reporting
Medical Cases / Arbitrations
Conferences / Board Meetings

Contact:
Hillcrest House,
Dargle Valley, Bray, Co. Wicklow.
Telephone/Fax: (01) 286 2184
or
4b Arran Square, Dublin 7
Telephone: (01) 873 2378