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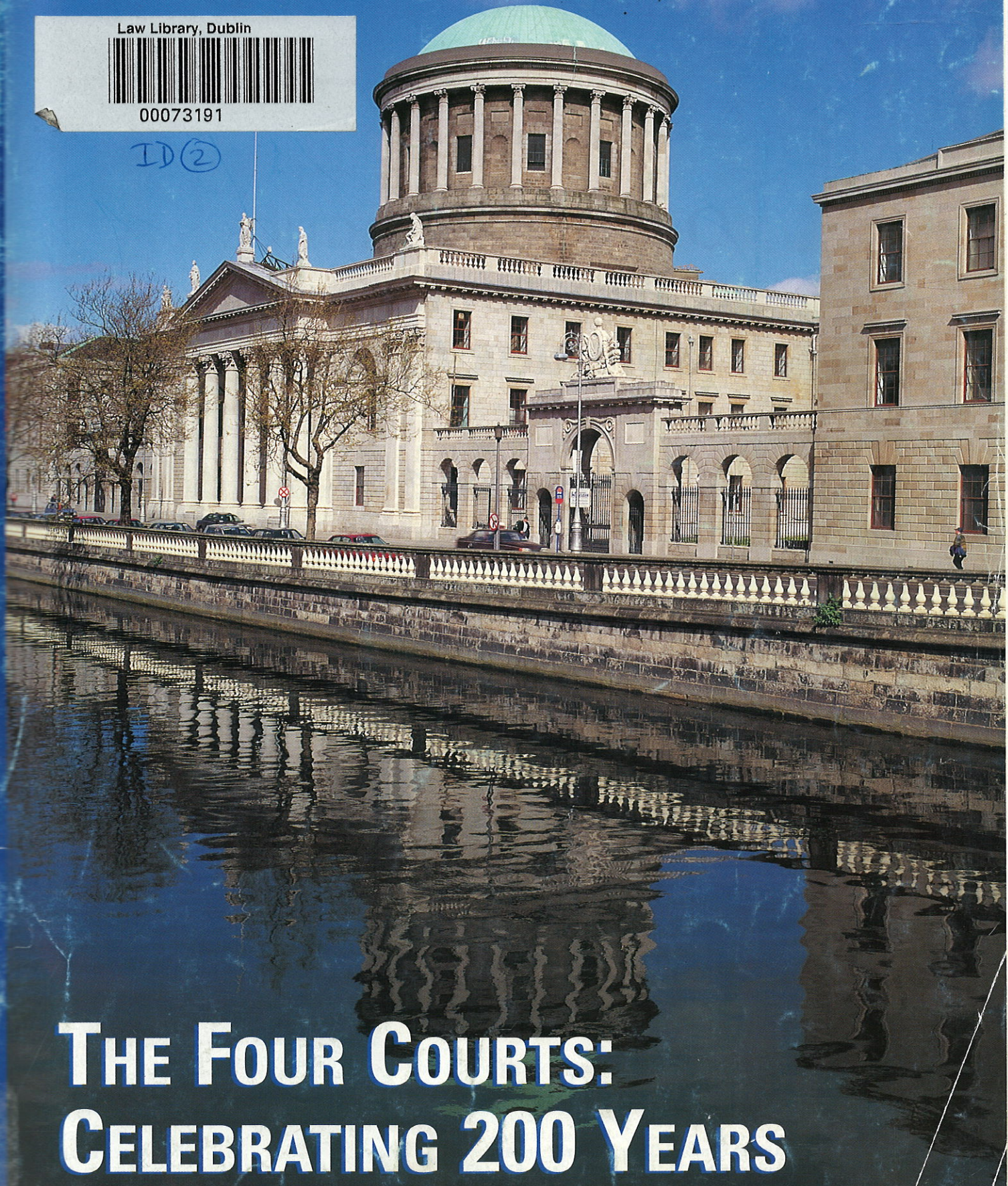
# The Bar Review

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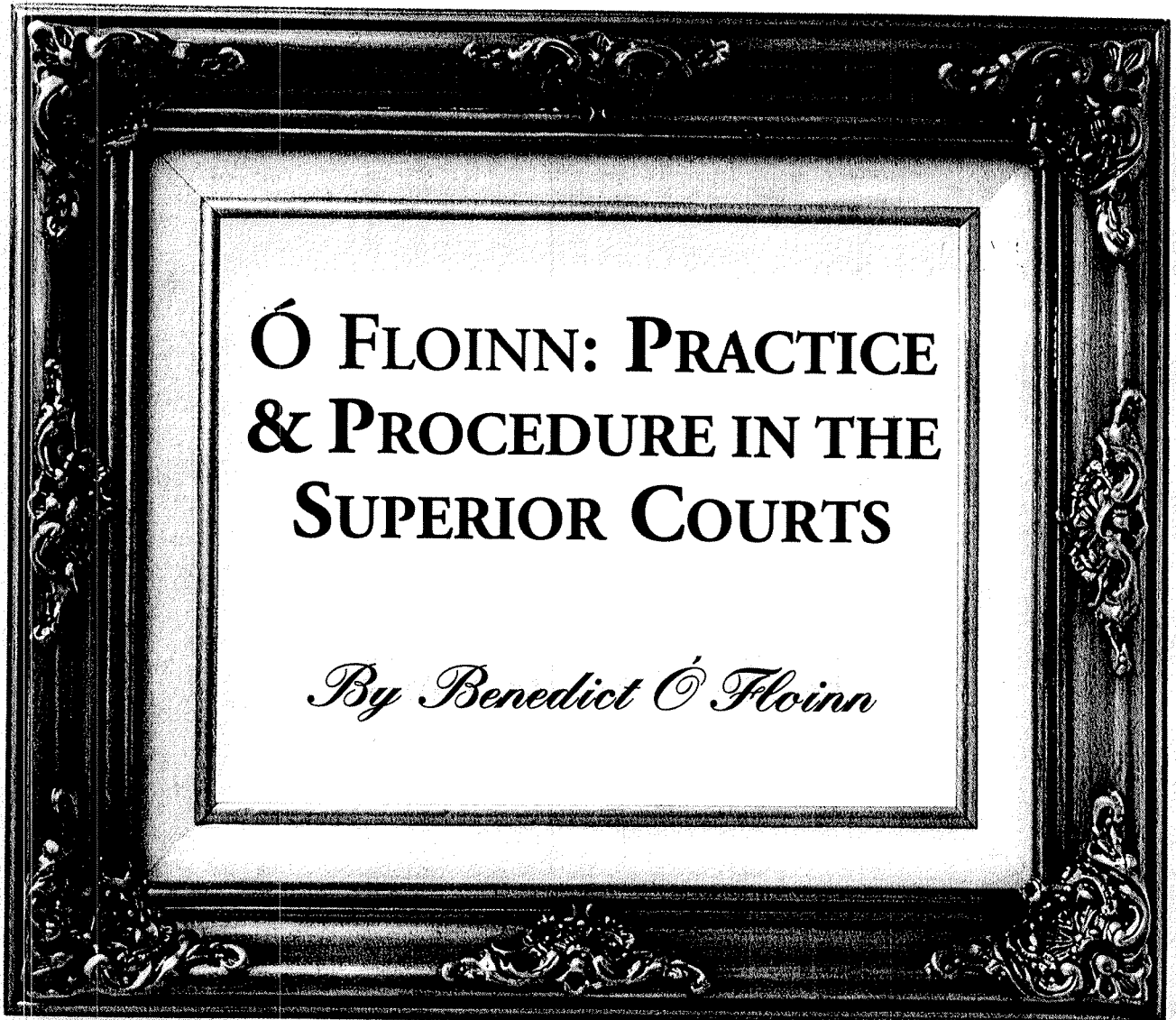
JOURNAL OF THE BAR OF IRELAND

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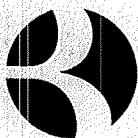


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# Opinion

## THE FOUR COURTS Celebrating Two Hundred Years

On the 8th November, 1796, judges sat to hear cases for the first time on the present site of the Four Courts. The 'Four Courts' themselves are 600 years old having variously been situated on at least four sites within Dublin over that period, including St. Patrick's cathedral, Dublin Castle and most famously in an area known as Hell on the south east corner of Christ Church. It was the notorious conditions in this latter site which lead to the decision to build the present structure in 1796.

With the exception of the period following its destruction in 1922 the present Four Courts building has, since then, been the centre and the symbol of the administration of justice in Ireland and has stood as a worthy symbol of continuity and tradition in the Irish legal system.

However, this legal system, while drawing upon the best traditions of our heritage has never shirked from identifying and addressing the demands for change in order to better serve the general public in the administration of justice. In this century alone, Irish lawyers serving the public within this structure have operated under three fundamentally different sources of law; pre independence British establishment; the Free State constitution and the present 1937 constitution.

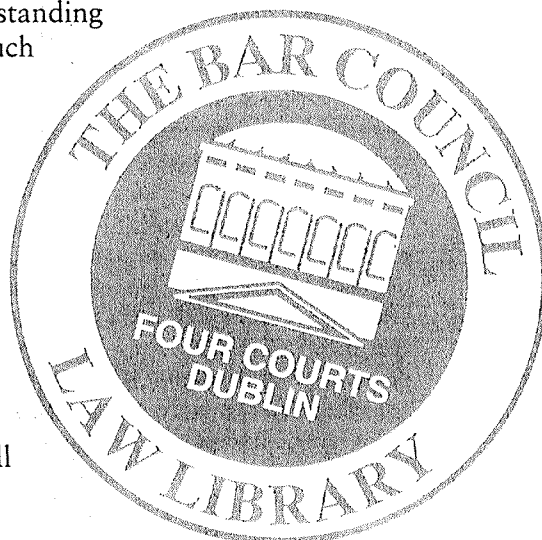
The key defining features of modern Irish society can all be traced to legal decisions made within these Four Courts. These decisions would never have been made without the courage and conviction of the individual plaintiffs, the dedication of the legal profession and a judiciary unstintingly independent in the manner in which it has always carried out its constitutional functions. Today, the legal system as administered in these Four Courts and elsewhere on a daily basis can legitimately claim to represent the best traditions of judicial independence and service of the public by lawyers which is so vital to any democratic state.

The physical location of the Bar in the Law Library at the heart of the administration of justice in the Four Courts is a potent symbol and reflection of the honourable antiquity of the profession's tradition in serving the public in our courts. When the Four Courts was built the quill and ink were the tools of our trade, today these have been replaced by the keyboard and the latest in computer software. We carry out research in legal databases world wide at a touch of a button from our desks. We send and receive correspondences by electronic mail.

The Bar has shown vision and confidence both in its embrace of modern technology and the expansion of its premises at Church Street and at the Distillery Site. These developments are dedicated to improving the profession's ability to serve the consumers of its services to the highest standards possible and are a fitting reflection of the profession's commitment to the best traditions of the past and its confidence in adapting to the conditions of the future.

This year, we celebrate our legal heritage as symbolised in these buildings and we look to the future for the administration of justice in Ireland with confidence. In particular, the recent Government decision to establish the Courts Commission on an independent statutory basis is most welcome and significant. As recommended by the Working Group on a Courts' Commission, this new autonomous management agency should tackle comprehensively and efficiently the long standing problems affecting our court system. Much work and initiative has been shown in tackling these problems and the present Minister for Justice showed remarkable and commendable commitment to the proper administration of justice by the appointment of the working group and by ensuring the acceptance of its proposals at cabinet.

The Bar Council has welcomed the opportunity to help address the current shortcomings in the court system and will continue to do so in the future.



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# *Service out of the Jurisdiction and the Brussels Convention: Short V. Ireland*

**Jonathan Buttimore, Barrister, considers the issues raised in the above case.**

## **INTRODUCTION**

Constance Short and others v. Ireland, the Attorney General and British Nuclear Fuels PLC and the Secretary for State for the Environment<sup>1</sup> is the most recent and well known of the cases concerning the Brussels Convention, with great public and political significance. The third defendant, BNFL, applied to set aside an order granting leave to serve them and the fourth defendant, the U.K. Environment Secretary, out of the jurisdiction, after the Second Defendant entered a qualified appearance contesting jurisdiction. The hearing lasted six days in the High Court and O'Hanlon J. commented that such interlocutory applications should not be allowed to develop into full scale trials, echoing the views of Nourse L.J. in *Trident International v. Manchester Ship Canal*.<sup>2</sup> There were found to be some procedural irregularities, such as the service of the summons itself on the English defendants and not the notice, but they were waived by the court in the circumstances of the case.

## **THE PLAINTIFFS' CLAIMS:**

The plaintiffs sued for declarations and injunctions to restrain threatened negligence and nuisance by BNFL in operating the THORP nuclear fuel reprocessing plant in Sellafield, Cumbria, including alleged breaches of Article 130R of the E.C. Treaty on the precautionary principle to prevent environmental damage, the environmental assessment Directive 85/337 and the Euratom Directives 80/836 and 84/467. They also sought declarations against the

first and second defendants for failing to protect the plaintiffs constitutional rights by not taking action in the E.C.J. or in the UK court challenge or by diplomatic action. The case is significant on its facts, but also for the insight it gives on the relationship between Order 11 and Order 11A, the scope of Article 5(3) and the general scope of the Convention.

## **SERVICE OUT OF THE JURISDICTION UNDER ORDER 11: THE HIGH COURT:**

The plaintiffs relied on the old Order 11 procedure as some of the forms of relief were unavailable under Order 11a and the Brussels Convention, due to the declaratory relief sought. O'Hanlon J. was of the view that they were right to fall back on Order 11, as per *O'Toole and GPA (Ireland) Ltd v. Ireland*<sup>3</sup>, and that to enforce directly the Directives they may be considered to be an administrative matter outside the scope of civil and commercial matters in the Convention.

The ground under Order 11 was that of a tort committed within the jurisdiction, and that the first defendant was a necessary and proper party to the action. O'Hanlon J. stated that; "there was ample authority for the proposition that a tort may be regarded as having been committed within the jurisdiction if any significant element occurs within the jurisdiction."<sup>4</sup>

He relied curiously, by analogy, on *Bier v. Mines de Potasses*<sup>5</sup> and a wide interpretation of the term tort as "a wrong independent of

contract" as in Irish law, *Kalfellis v Banque Schroder*<sup>6</sup>. The Schlosser Report, at p. 134, opines that there is a lot to be said for Article 5(3) being interpreted to include proceedings whose main object is to prevent the imminent commission of a tort, being a significant express recognition of the breadth of Article 5(3)7, albeit obiter in the context of a claim under Order 11.

Further, there was an obvious connection with the action against the first and second defendants, and of the action against the third defendant, unlike *O'Toole and GPA Group PLC v. Ireland*, due to an easily identifiable link between the actions, with the first two actions depending on the result in establishing liability against the third defendant. Thus, they had satisfied the test under Order 11 Rule 1 (h), that in order for a defendant, to be a necessary and proper party there must be; "a real issue which the plaintiff may reasonable ask to try"<sup>7</sup>.

The plausibility of such a claim must be evinced in a prima facie fashion.

Administrative matters were alleged to be excluded by the third defendant, but it was contended in reply that they were only so, if they were the principal subject matter of the proceedings, not as a subsidiary matter in the main or preliminary proceedings, as per the *Jenard Report*, but that was before the express exclusion of administrative matters was included in the Convention. The later *Kerameus Report*,<sup>9</sup> suggested to O'Hanlon J. that it was not a substantive change, but it was merely to clarify the distinction of public and private law in civil law to common lawyers, so he adopted the *Jenard* view that subsidiary administrative matters were within the Convention.

For the purposes of Order 11 Rule 2 the plaintiffs need a good arguable case as to the particulars to justify the court to grant service outside the jurisdiction, which was supported by expert scientific and medical evidence on affidavit with a good arguable

case on the direct effect of the Directives in the context of Article 5 of the EC Treaty and the Marleasing principle.<sup>10</sup>

On forum conveniens, he found that there was little difference between England and Ireland for the parties, so he refused the application to set aside the service.

## THE SUPREME COURT:

On appeal,<sup>11</sup> the Supreme Court found that the standard test to be applied under Order 11 to serve out of the jurisdiction;

"is whether the person out of the jurisdiction would, if he were within the jurisdiction, be a proper person to be joined as a defendant in the action against the other defendants."

This was the case with BNFL if they were resident here, so the order for service out was correct, regarding the claim as a tort or quia timet action.

## SCOPE OF THE BRUSSELS CONVENTION:

On the Brussels Convention, the dispute was not a commercial dispute, but was an alleged tort delict or civil wrong. The issue was as to whether the scope of the Convention is wide enough to include actions or damages for alleged breaches of constitutional rights or directives were left open. It was clear that it is possible to invoke the Convention to institute proceedings in the national jurisdiction where the effect of the alleged wrongful act is felt, under Article in the national jurisdiction where the effect of the alleged wrongful effect is felt, under Article 5(3). The second holding they made, which qualified the scope of the Convention, is that it would not appear possible to invoke the Convention in an administrative law action. According with the view of O'Hanlon J. they did agree that;

"it may be possible to invoke the Convention where the action is essentially based on some civil wrong but also contains some minor elements of administrative law."

This was the reason why the plaintiff relied on Order 11 and not the Convention due to the relief claimed.

## INTERFERENCE WITH THE JURISDICTION OF THE U.K. COURTS:

The primary objection to service outside the jurisdiction, on appeal by BNFL, was that they had complied with the UK regulatory procedures, a public enquiry and High Court case, so that Irish courts would then

be interfering with the decision of a neighbouring sovereign power, to embark on judicial review of decisions made by the competent authority in another state and to fail to respect the decision of the English High Court made within its own jurisdiction.

It was held that the jurisdiction was founded on the allegedly harmful results of BNFL activities, and that Irish courts could give relief without trespassing on the jurisdiction of the UK courts, being simply a matter of national law, with proper jurisdiction in Ireland.

Barrington J. further commented that; "Prima facie it is difficult to see how any provision of English law could make legal in Ireland injury or damage which would otherwise be tortious under Irish law. Certainly it is hard to see how any provision of UK law could deprive the Irish Courts of jurisdiction which they would otherwise have. Prima facie the relevant law would appear to be the *lex loci delicti* rather than the law of the U.K."<sup>12</sup>

## THE EUROPEAN LAW ASPECT;

Barrington J. also considered the possible E.C. law background to the case as to the non-compliance with Directives. He reiterated strongly that the European Community is a Community governed by law, and that Community law is supreme, which is a useful reminder in an Irish context. He pointed out that;

"there is within the European Community no hierarchical structure of Federal Courts to which the citizen can appeal to resolve conflicts between European and National law. Every National Court within the Community is a European Court and must give primacy to European Law over a National Law where there is a clash between the two. The National Court may look to the E.C.J. for guidance, but the ultimate responsibility for enforcing European Law rests with the National Court before which the problem arises."<sup>13</sup>

He considered that the issue as to whether BNFL, whose shares were wholly owned by U.K. government, and is regulated by statute, and was an "emanation of the state" for the purpose of enforcing a directive directly against it, which was a matter best left to the trial, and which will be a highly significant aspect of the case in legal and factual terms for the final trial of the action.

Therefore, the appeal was dismissed, upholding the service out of the jurisdiction on BNFL and the Environment Secretary, to allow the Irish courts to consider if the THORP plant was causing harm and injury in this jurisdiction.

## CONCLUSIONS:

The unique and unusual circumstances of this case, raise several interesting lessons for the future, namely;

1. Care should be taken in choosing between jurisdiction under Order 11 or Order 11A and the Convention, to ensure that the nature and scope of the relief claimed is within the Convention, and not just presume it to be so, to avoid the risk of needing to re-institute the proceedings on the correct basis.
2. Matters of administrative law will be beyond the scope of the Brussels Convention, unless the administrative law element is merely a subsidiary part of the proceedings.
3. Article 5(3) of the Convention can be seen to include a threatened or an imminent tort.
4. The tort jurisdiction outside the Convention under Order 11 seems to mirror the jurisdictional rules applied under Article 5(3) of the Convention, which may prove to be an interesting area of cross fertilisation in the future..

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*Jonathan Buttimore, Barrister.*

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1. Unreported, O'Hanlon J. 30th March 1995.
2. B.C.L.C. 263.
3. I.L.R.M. 218.
4. At p. 12.
5. 1976 E.C.R. 1735.
6. 1988 E.C.R. 5565.
7. See generally on Article 5(3), Byrne, "The European Union and Lugano Conventions on Jurisdiction and the Enforcement of Judgments", 2nd Ed. Baikonus, 1994, p. 71-79.
8. Gannon v. B & I Steam Packet Co. Ltd. 1993 2 I.R. 539.
9. At par. 28.
10. 1990 I. E.C.R. 4135.
11. Supreme Court, Unreported 24th October 1996, Barrington J. nem diss.
12. At p. 25.
13. At p. 27.

# *An Introduction to the Family Law (Divorce) Act, 1996*

**The Family Law (Divorce) Act, 1996 ("the 1996 Act"), was signed into law by the President on the 27th November, 1996. It represents a major development in Irish family law as for the first time jurisdiction has been given to the Irish courts to pronounce a decree of divorce under certain circumstances. Catherine White, Barrister, introduces it's major provisions.**

*The Act is divided into five parts and an understanding of the Act requires some prior knowledge of the terms of both the Judicial Separation and Family Law Reform Act, 1989 and the Family Law Act of 1995.*

## **Part One**

This covers Sections 1 - 4 which deal with the general matters of interpretation and definitions. One of the points of interest is that Section 3 of the 1996 Act repeals Section 14 (2) of the Censorship of Publications Act, 1929, which permitted restricted publication of certain information with regard to matrimonial proceedings.

## **Part Two**

This includes Sections 5 -10 which deals with; the grounds for obtaining a decree of divorce, provisions requiring solicitors for both the Applicant and the Respondent to ensure that the clients are aware of the alternatives to divorce proceedings, the adjournment of proceedings to facilitate reconciliation or agreement and the legal effects of the decree of divorce.

The most important question for the practitioner is whether your client has grounds to apply for a decree of divorce or not. Under Section 5 of the 1996 Act the Court may grant a decree of divorce in circumstances where;

- (a) The parties have lived apart from one another for a period of four years during the previous five years; and
- (b) there is no reasonable prospect of a reconciliation; and
- (c) proper provision exists or will be made for the spouses and the dependent members of the family.

The concept of "living apart from one another" was introduced into our law by Section 2 (1) (d) and (e) of the Judicial Separation and Family Law Reform Act, 1989. It seems that the interpretation given to that Section is that the parties are to be treated as living apart from each other unless they are living together with each other in the same household. It also appears from a reading of Section 5 of the 1996 Act that certain periods of co-habitation can be disregarded for the purposes of Section 5 and it appears that unlike Section 2 (1) (d) and (e) of the 1989 Act, the period does not have to be continuous.

In relation to Section 5 (1) (c) which deals with the welfare of the spouses and any dependent members of the family, a similar provision exists under Section 3 of the 1989 Act. That Section was judicially interpreted in the case of *SV v. SR*, by Mr. Justice Lynch of 10th June, 1991 who was of the view that the power that the court has under the Section to make provision for the welfare of spouses and dependent members of the family as it deems

appropriate would make it unlikely that the Court could or would refuse a decree on the basis that proper provision had not been made since it is clear that such jurisdiction is given to the Court to make the necessary provisions.

In light of the above interpretation it is unlikely that a decree of divorce will be refused in a situation where the Court has the power to make proper provision according to the particular circumstances.

## **Part Three**

This covers Sections 11-30. Sections 11 and 12 deal with preliminary orders which are interim orders sought by a party after divorce proceedings have been issued but before the proceedings have been determined. The main preliminary orders cover applications under the Domestic Violence Act of 1996, i.e., barring, safety and protection orders, orders under Section 11 of the Guardianship of Infants Act, 1964 dealing with custody and access, orders under Sections 5 and 9 of the Family Home Protection Act, 1976, i.e. conduct leading to the loss of the family home and restrictions on the disposal of household chattels. Application can also be made under Section 12 of the 1996 Act for maintenance pending full hearing of the Divorce proceedings and the Section also provides for lump sum orders to be made at this stage.

Sections 13 -30 deal with the ancillary orders that can be dealt with by the courts once a decree of divorce has been granted. These consist mainly of periodical payments, lump sum payments, property adjustment orders and orders for the sale of property, among others.

If the decree of divorce is granted the Court will, under these Sections, be empowered to make orders for long-term maintenance in relation to spouses and dependent members of the family. It may make property adjustment orders which could for example, involve the transfer of property from one spouse to the other. In addition, the Court can give one spouse an



# *Eurowatch*

## **IRISH PROPOSALS TO IMPLEMENT THE WORKING TIME DIRECTIVE**

LAW  
FOUR COUR  
DUBLIN

### **Introduction**

The Working Time Directive (Directive 93/104/EC) concerning certain aspects of the organisation of working time, (OJ 1993 L 307, p. 18) was adopted in 1993 and aims to lay down minimum health and safety requirements for the organisation of working time. It applies to all workers, both public and private, with the exception of transport workers, workers at sea, and doctors in training. The Directive must be implemented in all the Member States by 23 November 1996.

### **Provisions of the Directive**

Under the Directive every worker is entitled to:

- ◆ a minimum daily rest period of 11 consecutive hours per 24 hour period (Article 3)
- ◆ a rest break where the working day is longer than 6 hours (Article 4)
- ◆ a minimum uninterrupted rest period of 24 hours in every 7 day period, plus the 11 hours daily rest, such period in principle to include Sunday (Article 5)
- ◆ an average working week which is no more than 48 hours, including overtime (Article 6)
- ◆ four weeks paid annual leave which may not be replaced by an allowance in lieu unless the employment relationship is terminated (Article 7)

When calculating the weekly rest period, a reference period of 14 days is laid down (Article 16). This means that over a 14 day period, a worker must receive two rest periods of 24 hours but they do not necessarily have to be at 7 day intervals.

When calculating the maximum weekly working time, a reference period of four months is laid down (Article 16). This means that over a four month period, a worker must not work more than 48 hours per week on average but in any given week he or she can work for either more or less than 48 hours.

There are also detailed provisions for the protection of night workers and shift workers.

Member States are free to introduce rules which are more favourable than those set out in the Directive (Article 15).

Numerous derogations from various provisions of the Directive exist which Member States may avail of (Articles 17 and 18). These include:

- ◆ the possibility of a working week in excess of 48 hours where the worker agrees;
- ◆ the right to postpone the granting of four weeks annual leave for a three year transitional period which runs from 23 November 1996, provided that during that transitional period, workers are entitled to three weeks annual leave.

### **Challenge by the UK to the Directive**

Directive 93/104 had been adopted on the basis of Article 118a of the EC Treaty which provides a legal basis for legislation on the health and safety of workers. Legislation under Article 118a may be adopted by qualified majority voting. The UK had voted against the Directive and had indicated their intention of challenging its adoption before the Court of Justice on the ground that the legal basis was incorrect since the Directive was not primarily concerned with the health and safety of workers.

In Case C-84/94, *UK v. Council*, judgment of 12 November 1996, not yet reported, the Court annulled Article 5 of the Directive which provided that the minimum weekly rest period must in principle include Sunday, on the basis that the Council had failed to explain why Sunday, as a weekly rest day, is more closely connected with the health and safety of workers than any other day of the week. However, the Court concluded that the principal objective of the remainder of the Directive was the protection of the health and safety of workers and that it was therefore properly adopted on the basis of Article 118a.

### **Implementation into Irish law**

The Organisation of Working Time Bill 1996 was published on 14th November 1996, which indicates that the implementation deadline of 23rd

November 1996 is unlikely to be met. As well as implementing the Directive, the Bill has introduced a ban on zero hour contracts, and compensation for Sunday working.

Significantly, the Bill provides that the calculation of hours worked for the purpose of calculating a working week will be based on net working hours, i.e. exclusive of lunch breaks, coffee breaks etc. and will only include time actually on the job. The majority of the derogations set out in Articles 17 and 18 have not been taken up. However, the Irish government have decided to avail of the possibility of a transitional period in relation to the 4 week annual leave requirement. As a result, the First Schedule to the Bill provides that workers will be entitled to 16 days holidays in 1997, 18 days holidays in 1998 and 20 days holidays from 1999.

## CONSEQUENCES OF FAILURE TO IMPLEMENT PACKAGE HOLIDAY DIRECTIVE

Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, *Dillenkofer v. Germany*, judgment of 8 October 1996, not yet reported

### Introduction

In this case, the Court of Justice laid down the consequences of a failure by the German government to implement the Package Holiday Directive (Directive 90/314/EEC on package travel, package holidays and package tours, OJ 1990 L 158, p. 59) on time.

The Directive was adopted in 1990 and was to have been implemented in all the Member States by 31 December 1992. It was intended to approximate the rules on package holidays in all the Member States. Article 7 of the Directive provided that: "The organiser and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency".

Germany implemented the Directive by a law which entered into force on 1 July 1994. The plaintiffs had purchased a package holiday but following the insolvency of various tour operators in 1993, either never left for their destination or had to return home at their own expense. They were never reimbursed either for the cost of the holiday or for the expenses they incurred in returning home. They brought actions for compensation against Germany on the basis that if the Directive had been implemented on time,

they would have been protected against their tour operators insolvency.

### Findings of the Court

The Court referred to its case-law on State liability for loss and damage, referring in particular to Joined Cases C-6/90 and C-9/90, *Francovich*, [1991] ECR I-5357, Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame*, not yet reported, Case C-392/93 *British Telecommunications*, not yet reported, and Case 5/94 *Hedley Lomas*, not yet reported. It recalled that individuals who have suffered damage have a right to reparation where three conditions are met:

- ◆ the rule of law must have been intended to confer rights upon individuals;
- ◆ the breach must be sufficiently serious;
- ◆ there must be a direct causal link between the breach of the obligation and the damage sustained.

Where a Member States fails to take any of the measures necessary to achieve the result prescribed by a directive, that Member State manifestly and gravely disregards the limits on its discretion. In these circumstances, provided that the conditions set out above are met, a sufficiently serious breach has taken place and a right to reparation from the State exists.

In deciding whether Article 7 granted sufficiently identifiable rights to individuals, the Court examined the purpose of the directive and concluded that it was intended, *inter alia*, to protect consumers. It concluded that Article 7 gave package travellers a sufficiently identifiable right to the refund of money and repatriation in the event of the organiser's insolvency.

The national court had asked the Court to specify what measures the Member States should have adopted in order to implement the Directive. The Court noted that Article 7 would not have been fully implemented if the national legislature had done no more than adopt the necessary legal framework for requiring organisers to provide sufficient evidence of security. Full implementation of Article 7 would mean that Member States would have to adopt all measures necessary to provide consumers with a guarantee that they would be refunded money and be repatriated in the event of the organiser's insolvency.

The Court also held that a national

rule which allowed organisers to require travellers to pay a deposit was in conformity with Article 7 only if, in the event of the organiser's insolvency, refund of the deposit was guaranteed.

Finally, in response to the national court's question whether the Directive requires Member States to adopt specific measures to protect package travellers against their own negligence, the Court noted first, that there were no specific provisions in the Directive to this effect and second, that in determining loss, the Court will always examine whether avoidance or mitigation has been attempted.

### Applicability of judgment in Ireland

Ireland implemented the Directive by the Package Holidays and Travel Trade Act 1995 which came into force on 1 October 1995. This was over two and a half years past the date on which the Directive ought to have been implemented - 31 December 1992.

However, the protection afforded to holiday makers under Article 7 already existed in Irish law in respect of overseas travel under Section 13 of the Transport (Tour Operators and Travel Agents) Act 1982, which provided that all tour operators or travel agents were required to furnish evidence acceptable to the Minister that they had entered into a bond which would protect persons who had entered into contracts with them relating to overseas travel.

Part III of the 1995 Act deals with the protection of the holidaymaker in the event of insolvency. Therefore, it seems clear that, at least in respect of overseas travel, Ireland had fully complied with Article 7, as it had, as required by the Court, adopted all measures necessary to provide consumers with a guarantee that they would be refunded money and be repatriated in the event of the organiser's insolvency.

Nonetheless, this judgment is of considerable importance both in the context of the Directive on Package Holidays and in general. In relation to the Directive, if an individual has incurred loss between 31 December 1992 and 1 October 1995, and if this loss would have been recoverable had the Directive been implemented, the individual has the option of suing the State for the loss caused. The judgment is also of interest generally since this obligation exists not just in relation to the Package Holiday Directive but in relation to all directives where the above conditions are met.

Niamh Hyland, Barrister.

# Part XI of the Consumer Credit Act 1995

**Michael O'Connor,  
Barrister, welcomes the  
provisions of the recent  
Consumer Credit Act,  
1995.**

## "The Middleman regulated"

Despite the many criticisms levelled at the new Consumer Credit Act effective since the 13th of May last it must be broadly welcomed that an attempt has been made to regulate the activities of credit intermediaries or "Finance Middlemen" who up to now have operated in a lucrative twilight zone affected only to a limited extent by the law of Agency. It is beyond dispute, in my view, that some form of statutory intervention was necessary to protect consumers from largely self appointed self regulated operators who in many instances were ill informed on the detail of the credit arrangements organised by them for their customers with banks or other lending institutions. Preoccupation with the sale of their own goods or services and commission incentives left too much scope for the interests of the consumer with regard to credit arrangement, to be grossly neglected and overlooked.

*Section 144* of the recent Act prohibits one acting as a credit intermediary unless he is the holder of a credit intermediary authorisation granted by

the Director of Consumer Affairs and he either has a letter of recognition from each undertaking for which he is such an intermediary or he holds an authorisation under the corresponding mortgage intermediary section. Such an authorisation is not necessary for a moneylender's intermediary who has authorisation under section 97 of the Act and is not acting as anything other than a moneylender's intermediary. Subsection 3 prohibits an intermediary engaging in that business under any name other than that specified in the holder's licence.

The application to become a credit intermediary must be made to the Director of Consumer Affairs and its form is set out in detail in subsection 4. As well as being made in writing the application must state the applicant's name, the name under which he trades, the names of any undertaking for which the applicant acts or intends to act as an intermediary and the address of any business premise of the applicant. Subsection (e) allows the director to have a free hand in requiring any further information he sees fit. Application fees of £500 for a company and £250 for a sole trader are specified with provision left for future adjustment of these by regulation.

The authorisations issued are valid for twelve months only and so afford a convenient annual screening opportunity. Despite the cost factor which will be unpopular especially among the small firms section, the annual nature of the process will assist in maintaining standards among those who facilitate financial accommodation.

The act envisages the authorisation itself to be informative and it must specify the name of the holder, the name under which it is authorised, the

business address of the holder and the name of each undertaking for whom he acts as a credit intermediary.

Subsection 9 of *Section 144* sets out the grounds upon which the Director may refuse to grant an authorisation. These are:

- (a) that the applicant does not hold a letter of recognition from each undertaking for which he is an intermediary;
- (b) that the applicant or any business to which he was connected was during the previous five years convicted of a criminal offence;
- (c) that the applicant holds a licence for either sale of intoxicating liquor, a gaming licence, a pawnbrokers licence or a moneylenders licence;
- (d) that the applicant has failed to provide a current tax clearance certificate;
- (e) that the applicant is no longer a fit person to be a credit intermediary in the opinion of the director;
- (f) that the applicant has failed to take out a policy of professional indemnity insurance in accordance with any regulations made pursuant to subsection 10.

Subsection 11 gives the director power to revoke an authorisation granted previously in circumstances where the intermediary or any connected business has been convicted of any criminal offence since gaining the authorisation or becomes a holder of a licence prohibited under subsection 9 or falls foul of any professional indemnity insurance requirements pursuant to subsection 10.

Subsections 12-19 cover the making of any decision by the director refusing to grant, suspending or revoking an authorisation. Specific natural justice



requirements are inbuilt requiring the director to notify the applicant of any proposal to make a decision refusing, revoking or suspending authorisation. Furthermore, the director must consider any written representations made to him by the applicant within fourteen days of such notification. The question of considering oral representation is unaddressed. A duty is imposed on the director to notify the applicant or authorisation holder as the case may be of the decision. The applicant or authorised person then has seven days in which to appeal the decision to the Circuit Court in the area where the business is carried on. The time limit runs from the date of receipt of the notification. The notification can be by pre-paid registered post or personal delivery. Any decision of the Circuit Court is final, save by leave of the court a matter of law specified can be the subject of an appeal to the High Court. Subsection 19 precludes the awarding of costs on an appeal.

*Sections 145 and 146* concern themselves with the public awareness and authenticity of authorisations respectively. There is an obligation on authorised credit intermediaries to display in a prominent position in any premises where the business of credit intermediary carried out an authorised copy of the authorisation plus a notice spelling out the names of whatever undertakings the intermediary ask for.

*Section 146* precludes anyone save the Director of Consumer Affairs, from altering or attempting to alter an authorisation or an authorised copy of it. Likewise, any attempt to falsify these documents is prohibited. However, there is a failure to make the alteration or falsification of these documents an offence.

*Section 147* provides that any changes involving the intermediary ceasing to act for an undertaking specified in the authorisation or acting for an undertaking not set out in it must be notified to the director and the authorisation forwarded to him for amendment or replacement.

*Section 148* is most onerous on the middleman importing a whole host of new duties of disclosure heretofore alien to players who up to now may

*some form of statutory  
intervention was  
necessary to protect  
consumers from largely  
self appointed self  
regulated operators*

have been allowed to pass themselves off as obliging facilitators with little knowledge of the arrangements they made for consumers. Before any agreement is entered into the consumer must be told of the nature of the financial accommodation (presumably whether it's a loan or a lease of whatever kind), the amount, number and frequency of payments and the total amount that the consumer would have to pay under the agreement and where applicable, the APR. It must also be disclosed who owns the goods during the agreement and the name of whatever undertaking for which the seller acts as intermediary. The practice has arisen by various undertakings to issue standard quotation type documentation to attempt to satisfy the above requirements, a copy of which should be given to the customer on the initial inquiry about finance arrangements.

Perhaps most controversially of all, credit intermediaries must now disclose whether or not they receive a commission or consideration or any kind from the undertaking for arranging the accommodation. This covers not just cash commissions but also covers scratch cards, chips or tokens having a value which are used as incentive payments. The Act is silent or whether the amount of any such commission must be disclosed. It is submitted that the obligation to disclose the fact of a commission payable is a significant undermining of the principle of privity of contract allowing a third party rights of information on the terms of a contract to which it is not a party. The provision could well lead to the

demise of credit facilities operating effectively on retail premises and create suspicion between the seller and the consumer. I would submit that the cost of the credit to the consumer is the most important matter to be disclosed and if the consumer is then satisfied that he is getting good value, any payment made to the middleman for his services should be none of the consumer's business. It is to be noted that despite an almost identical set of rules for mortgage intermediaries under *Sections 116-170* there is no duty on mortgage middlemen to disclose their commission or consideration for their services.

In conclusion, it is submitted that the proper regulation of the credit middleman is pivotal to the effective working of the Act. As pointed out by Goode "no consumer legislation, however sophisticated, is likely to have more than a marginal impact if not underpinned by effective enforcement machinery". Significant omissions are apparent in the Irish rules namely there is no provision for group licences or exemptions similar to those applying to the Law Society in Great Britain and certain credit agreements involving local authorities. The British system of licencing is far more comprehensive and more developed than its Irish counterpart. However, the Irish provisions are at least a start and should bring welcome regulation and consequent higher standards. As opposed to seeing the provisions as further red tape the business community and retail sector in particular should view the provisions positively and as an opportunity to raise standards, and become more informed about the credit which they sell and which facilitates the sale of their goods and services.

For the consumer it is further welcome protection from some ruthless and careless middlemen. It allows the consumer to see what exactly they are getting into before they sign anything, who the finance company is and, controversially, what is in it for the middleman. Overall, the Act, despite its teething problems, must be welcomed for the long overdue regulation of finance middlemen.

*Michael O'Connor, Barrister*

# New Under-Treasurer at the King's Inns

**Camilla McAleese, took up her new position as Under-Treasurer of the King's Inns on 1st October last. A UCD graduate, she spent part of her childhood at school in Dunquin and also a year at school in Paris. After graduating she spent a few years abroad in Spain, Italy and the US. She previously worked in public relations and in the planning section of IDA. Immediately prior to her new position Camilla managed the Irish Association of Pension Funds.**

**The Bar Review took the opportunity to meet Camilla and welcome her to her new position.**



**Ms. Camilla McAleese,  
Under-Treasurer, King's Inns.**

*You seem to have been working in a very exciting area of the Irish economy in your previous position. What prompted you to come to King's Inns?*

My tenure with IAPF coincided with very strong growth in the Irish pensions industry. This led to a big increase in the membership of the association - over a period of seven years it grew from a base of approximately 180 corporate members to almost four hundred in 1996. One of the sources for new members were the job advertisements in the newspapers - expanding companies are usually very pro-active in the pensions area. So by chance, I spotted the advertisement for the vacancy in King's Inns. The job description detailed three areas of great interest to me; administration, students and landmark buildings.

*Your new job title, that of Under-Treasurer is most unusual, do you have difficulty explaining it to people?*

No, not really, I suppose in modern terms one would be described as chief executive; however, I have no intention of seeking a change of name. There is something unique about it, I think.

*So, as Under-Treasurer, what exactly does your position entail?*

As you are aware King's Inns is the body which governs entry to the profession of barrister-at-law in Ireland. The Society is responsible for the training of barristers and for awarding the degree of barrister-at-law. Therefore the educational activities of the Society are of prime importance. As I have overall responsibility for income and

expenditure, I will be anxious to ensure that the students benefit from the way monies are allocated. Moreover, the council of King's Inns is very anxious to have top class facilities available to students. Other responsibilities of the Under-Treasurer include the registration and control of students, care of the staff and care of the physical assets.

*While it is somewhat early to talk about plans - you have only been in Henrietta Street for two months - how would you like to see things develop?*

I think council and the committees are all agreed that we should have a master plan so that we can truly celebrate the bicentenary of the laying of the first stone in the King's Inns in the year 2000. Such a plan would be to deal with all the elements with which we are involved - education, library facilities, the King's Inns park as a local amenity, the restoration of no 11 Henrietta Street, and so on. The main building at King's Inns and the Library in Henrietta Street are among the finest Irish buildings. They are also very demanding on our purse. However, the benchers are determined to secure this heritage for future Irish generations and where possible to make it more accessible to them.

*Will you be opening up King's Inns to more outside functions?*

Our first duty is to the King's Inns students. We must ensure that they are provided with good physical surroundings and satisfactory courses. Once they have been looked after, and particularly during the Summer months, I would like to see more use being made of the buildings.

*On behalf of the Bar Council, we wish you the best of luck and may you enjoy the challenge ahead.*

Thank you for the good wishes. I really appreciate the support that I have already got from many members of the judiciary and the Law Library. King's Inns is a wonderful national institution that has stood the test of four centuries. I am looking forward to playing my part in making a contribution to its continued success.

# legal update

A directory of legislation, articles and written judgments from 5th November to 4th December 1996.  
Judgment information compiled by the researchers in the Judges Library, Four Courts.  
Edited by Desmond Mulhere, Law Library, Four Courts, Dublin 7.

## subject summaries

### ADMINISTRATIVE LAW

#### *statutory instrument*

Heritage (transfer of functions of commissioners of public works in Ireland) order, 1996  
S.I.332/1996  
Commencement date: 12.3.96

#### *article*

Drugs, local authorities and exclusion orders - a 'township' policy?  
O Dulachain, Cormac  
1996 BR 57

### ADMIRALTY

Junior v. The Owners and all Persons claiming an interest in the RMS "Lusitania" & Ors.  
High Court: Barr J.  
14/05/1996

Title; whether plaintiff sole and exclusive owner of all rights, title and interest in "Lusitania"; deed of title; documentary evidence; no challenge to title by state  
*Held:* Plaintiff entitled to declaration of title

### AGENCY

#### *library acquisition*

The law of agency 7th ed  
Fridman, Gerald Henry Louis  
London Butterworths 1996

### AGRICULTURE LAW

#### *statutory instruments*

Control of bulls for breeding (permits) (amendment) regulations, 1996  
S.I.317/1996  
Date signed: 24.10.96

European Communities (introduction of organisms harmful to plants or plant products)(prohibition)(temporary provisions) regulations, 1996  
S.I.325/1996  
Date signed: 5.11.96

European Communities (pesticide residues) (cereals) (amendment) (no 2) regulations, 1996  
S.I.337/1996  
Commencement date: 20.11.96

European Communities (pesticide residues) (products of plant origin, including fruit and vegetables) (amendment) regulations, 1996  
S.I.316/1996  
Commencement date: 31.10.96

European Communities (seed of fodder plants) (amendment) regulations, 1996  
S.I.326/1996  
Commencement date: 31.10.96

### ANIMALS & BIRDS

#### *statutory instruments*

Control of bulls for breeding (permits) (amendment) regulations, 1996  
S.I.317/1996  
Date signed: 24.10.96

European Communities (conservation of wild birds)(amendment) (no 2) regulations, 1996  
S.I.298/1996  
Commencement date: 15.10.96

European Communities (conservation of wild birds) (amendment) (no 3) regulations, 1996  
S.I.305/1996  
Commencement date: 15.10.96

Greyhound race track (totalisator) (operating) amendment regulations, 1996  
S.I.330/1996  
Commencement date: 2.11.96

### ARBITRATION

#### *article*

Arbitration awards  
Simons, Garrett  
1996 BR 68

### BUILDING & CONSTRUCTION

#### *library acquisitions*

Keating on building contracts 6th ed  
Keating, Donald  
London S & M 1995

Construction contracts : principles and policies in tort and contract Volume 2  
Wallace, I N Duncan  
London S & M 1996

LAW LIBRARY  
FOUR COURTS  
DUBLIN 7



## CHARITIES

### article

The law and taxation of charities  
Hickson, John H  
1996 ITR 377

## CHILDREN

### article

Mandatory reporting of suspected  
child abuse - would the drawbacks  
outweigh the benefits for Irish children?  
McGrath, Kieran  
2 (1996) MLJI 44

## COMMERCIAL LAW

### statutory instrument

Central Bank act, 1971 (approval of scheme  
of National Irish Investment Bank limited and  
National Irish Bank limited) order, 1996  
S.I.320/1996  
Date signed: 31.10.96

### article

The erosion of the bankers' duty of secrecy  
Donnelly, Mary  
1996 CLP 226

## COMMUNICATIONS

### statutory instruments

Foreign parcel post amendment (no 30)  
scheme, 1995  
S.I.101/1995  
Commencement date: 3.4.95

Foreign parcel post amendment (no 31)  
scheme, 1996  
S.I.299/1996  
Commencement date: 1.4.96

Inland post amendment (no 52) scheme, 1995  
S.I.99/1995  
Commencement date: 3.4.95

Inland post amendment (no 55) scheme, 1996  
S.I.300/1996  
Commencement date: 1.4.96

### library acquisitions

Media law  
Carey, Peter  
London S & M 1996

Consultation paper on privacy : surveillance and  
the  
interception of communications  
Law Reform Commission  
Dublin Law Reform Commission 1996

### articles

Telecommunication, Article 90 EC, and special  
and exclusive rights  
Burke, Jarleth  
1996 ICLR 2-26

Televising the courts  
Wood, Kieron  
1996 BR 71

## COMPANY LAW

In the matter of Westport Property Construction  
Co. Ltd. (in receivership)  
High Court: Budd J.  
13/09/1996

Petition to appoint examiner; factors to be taken  
into account; Re Butlers Engineering Ltd (HC  
01/03/1996) test applied

*Held:* Petition granted; viable possibility of  
company surviving

In the matter of H. Williams (Tallaght) Ltd. (in  
receivership and liquidation)  
High Court: Geoghegan J.  
07/10/1996

Receivership; preferential claim advanced by  
Revenue Commissioners; subsequent  
liquidation; whether Revenue Commissioners  
entitled to separate preferential claim in re  
monies outstanding; ss.98(1), 285 Companies  
Act 1963 considered; whether second claim  
statute-barred

*Held:* Revenue Commissioners entitled to  
preferential treatment under both receivership  
and liquidation; ss.98 and 285 not mutually  
exclusive; but on the facts, claim was statute-  
barred

In the matter of Mantruck Services Ltd (in  
liquidation) Mehigan v. Duignan  
High Court: Shanley J.  
08/10/1996

Winding-up; failure to keep proper books of  
account; ss.150, 202, 204 Companies Act 1990;  
whether managing director to be held personally  
liable without limitation for company debt;  
judicial discretion to be exercised in accordance  
with constitutional principles; standard of proof

*Held:* Respondent director made liable for  
additional costs of liquidation occasioned by  
failure to keep proper records; civil standard  
of proof appropriate; mandatory 5 year  
restriction under s.150 imposed

### library acquisitions

The law of private companies  
Courtney, Thomas B  
London Butterworth 1994

Company law 7th ed  
Pennington, Robert R  
London Butterworths 1995

### articles

Personal liability of directors under section  
204 of the Companies act, 1990  
Sanfey, Mark  
1996 BR 50

The 30% rate of tax - section 28A CTA 1976  
O'Rourke, Feargal  
1996 ITR 354

Wear and tear - the provisions of section 241  
and the burden of wear and tear of machinery  
and plant  
Kearns, Sean  
1996 ITR 371

## COMPETITION

### article

The competition (amendment) act 1996 - a  
new dawn for competition law?  
Doran, Michael  
1996 ILT 260

## CONFLICT OF LAWS

### article

The implementation of the Hague Convention  
Buttimore, Jonathan  
1996 (4) P & P 2

## CONSUMER LAW

### article

Eurowatch : European consumer protection  
law in Ireland and where to find it  
Schuster, Alex  
1996 BR 55

## CONTRACT

McGuinness v. Motor Distributors Ltd. & anor.  
High Court: Barron J.  
22/10/1996

Breach of contract; alleged supply of unroadworthy motor bus; plaintiff had previously been sued for negligence; had sought joined defendants as 3rd parties; plaintiff had been held liable; issue between plaintiff and 3rd parties dismissed; whether plaintiff estopped from bringing current proceedings

*Held:* Estoppel allowed; plaintiff was party to earlier proceedings, even if insurance company controlled them

### *library acquisitions*

Cheshire, Fifoot and Furmston's law of contract 13th ed  
Cheshire, Geoffrey C  
London Butterworths 1996

Keating on building contracts 6th ed  
Keating, Donald  
London S & M 1995

Construction contracts : principles and policies in tort and contract Volume 2  
Wallace, I N Duncan  
London S & M 1996

## COPYRIGHT, DESIGNS & PATENTS

### *library acquisition*

Cornish, W R  
Intellectual property patents, copyright, trade marks and allied rights 3rd ed  
London S & M 1996

## CRIMINAL

### *statutory instrument*

Criminal justice act, 1994 (commencement) order, 1996  
S.I.333/1996  
Commencement date: 15.11.96

### *library acquisitions*

The criminal procedure and investigations act 1996  
Card, Richard  
Bristol Jordans 1996

Sexual offences : law policy and punishment  
O'Malley, Thomas  
Dublin Round Hall 1996  
S & M

Butterworths international guide to money laundering law and practice  
Parlour, Richard  
London Butterworths 1995

Criminal law 8th ed  
Smith, John Cyril  
London Butterworths 1996

Report of the Working Party on the Legal and Judicial Process for Victims of Sexual and Other Crimes of Violence Against Women and Children  
National Women's Council of Ireland

### *articles*

Mandatory reporting of suspected child abuse - would the drawbacks outweigh the benefits for Irish children?  
McGrath, Kieran  
2 (1996) MLJI 44

The doctor's duty of confidentiality and the prosecution of criminal offences  
Phelan, Siobhan Cusack, A  
2 (1996) MLJI 52

Drugs, local authorities and exclusion orders - a 'township' policy?  
O Dulachain, Cormac  
1996 BR 57

## DAMAGES

Smith v. Ireland & Attorney General  
High Court: Flood J.  
16/08/1996

Personal injuries; liability admitted; quantum of damages; general and special damages; extent of injuries attributable to accident  
*Held:* £482,525 awarded in damages

### *library acquisition*

Damages for personal injuries and death 10th ed  
Munkman, John  
London Butterworths 1996

## DEFAMATION

Corway v. Independent Newspapers & anor.  
High Court: Geoghegan J.  
23/10/1996

Blasphemous libel; leave to bring criminal prosecution; s.8 Defamation Act 1961 considered; relevant factors; actus reus of blasphemy; whether clear prima facie case made out; whether public interest required prosecution  
*Held:* Leave refused

## EMPLOYMENT

### *library acquisition*

EC labour legislation in Ireland  
Conlan, Patricia  
Dublin Gill & Macmillan 1996

### *articles*

Free movement for lawyers - the provision of cross-border services and the draft directive on lawyer's establishment : part I  
Conlan Smyth, David  
1996 (4) P & P 4

Nathan v Bailey Gibson : curing past injustices?  
Maguire, Cathy  
1996 ILT 232

Why you should consider your pension requirements now  
Dowling, John  
1996 BR 67

## ENERGY

### *statutory instrument*

Energy (miscellaneous provisions) act, 1995 (section 14) (no 2) order, 1996  
S.I.329/1996  
Commencement date: 1.11.96

## ENVIRONMENTAL LAW

### *statutory instrument*

European Communities (mechanically propelled vehicle emission control) regulations, 1996  
S.I.318/1996  
Date signed: 23.10.96

## articles

Environmental impact assessment and motorway development under the Roads act 1993  
Galligan, Eamon M  
1996 IPELJ 119

Environmental law and its implications in property transactions  
Gill, Garrett P  
1996 IPELJ 108

Primary and secondary legislation relevant to planning and environmental law  
Oakes, Ciaran  
1996 IPELJ 114

Gateshead revisited : overlaps in Irish planning and environmental pollution control  
Meehan, David  
1996 ILT 235

## EQUITY & TRUSTS

### library acquisitions

Enduring powers of attorney 4th ed  
Cretney, Stephen M  
Bristol Jordans 1996

Hayton and Marshall commentary and cases on the law of trusts and equitable remedies 10th ed  
Hayton, David J

## EUROPEAN COMMUNITIES

### statutory instruments

European Communities (conservation of wild birds)(amendment) (no 2) regulations, 1996  
S.I.298/1996  
Commencement date: 15.10.96

European Communities (conservation of wild birds) (amendment) (no 3) regulations, 1996  
S.I.305/1996  
Commencement date: 15.10.96

European Communities (introduction of organisms harmful to plants or plant products)(prohibition)(temporary provisions) regulations, 1996  
S.I.325/1996  
Date signed: 5.11.96

European Communities (mechanically propelled vehicle emission control) regulations, 1996

S.I.318/1996  
Date signed: 23.10.96

European Communities (motor vehicles type approval) regulations, 1996  
S.I.314/1996  
Commencement date: 22.10.96

European Communities (pesticide residues) (cereals) (amendment) (no 2) regulations, 1996  
S.I.337/1996  
Commencement date: 20.11.96

European Communities (pesticide residues) (products of plant origin, including fruit and vegetables) (amendment) regulations, 1996  
S.I.316/1996  
Commencement date: 31.10.96

European Communities (seed of fodder plants) (amendment) regulations, 1996  
S.I.326/1996  
Commencement date: 31.10.96

### library acquisitions

The law of public and utilities procurement  
Arrowsmith, Sue  
London S & M 1996

EC labour legislation in Ireland  
Conlan, Patricia  
Dublin Gill & Macmillan 1996

European Monitoring Centre for Drugs and Drug Addiction  
Annual report on the state of the drugs problem in the European Union  
European Centre for Drugs and Drug Addiction Monitoring  
Lisbon 1996

### articles

Eurowatch : European consumer protection law in Ireland and where to find it  
Schuster, Alex  
1996 BR 55

Free movement for lawyers - the provision of cross-border services and the draft directive on lawyer's establishment : part I  
Conlan Smyth, David  
1996 (4) P & P 4

Guidance from Europe  
Corbett, Tom  
1996 ITR 358

Value Added Tax - lets play musical chairs again - more proposals for a new VAT system in Europe - the "common" VAT system  
Somers, Jim  
1996 ITR 365

## FISH & FISHERIES

### statutory instrument

Control of fishing for salmon (amendment) order, 1996  
S.I.327/1996  
Date signed: 31.10.96

## GAMING & LOTTERIES

### statutory instrument

Greyhound race track (totalisator) (operating) amendment regulations, 1996  
S.I.330/1996  
Commencement date: 2.11.96

## HEALTH SERVICES

### statutory instruments

Consultative Council on Hepatitis C (establishment) order, 1996  
S.I.339/1996  
Date signed: 26.11.96

Health (amendment) (no 3) act, 1996 (extension of Bord Altranais) order, 1996  
S.I.331/1996  
Date signed: 12.11.96

### library acquisition

European Monitoring Centre for Drugs and Drug Addiction  
Annual report on the state of the drugs problem in the European Union  
European Centre for Drugs and Drug Addiction Monitoring  
Lisbon 1996

### article

Artificial insemination and competition - lessons to be learned  
Buttimore, Jonathan  
1996 ICLR 2-22

## HOUSING

### library acquisition

Hill and Redman's law of landlord and tenant special bulletin : a guide to the Housing Act 1996  
Driscoll, James  
London Butterworths 1996



## INFORMATION TECHNOLOGY

### article

On-line : electronic mail  
Ferriter, Cian  
1996 BR 74

## INJUNCTIONS

R.Griggs Group Ltd & ors. v. Dunnes Stores  
Ireland Co.  
High Court: McCracken J.  
04/10/1996

Passing off; Dr.Martens' boots; interlocutory  
injunction sought restraining defendants from  
selling boots of similar design; whether design  
recognised by public as unique to plaintiff co.;  
whether misrepresentation by defendant;  
balance of convenience

*Held:* Injunction not granted; balance of  
convenience favoured defendant co.;  
inequitable to grant injunction against retailer  
when no action has been taken against  
manufacturers

Minister for Justice v. The Garda  
Representative Assoc.  
High Court: Geoghegan J.  
13/09/1996

Application for interlocutory injunction; s.13  
Garda Siochana Act 1924; regulations enacted  
altering election arrangements within  
association; whether minister had power to  
make regulations; whether arguable case;  
whether injunction appropriate; balance of  
convenience

*Held:* Injunction granted

## INTELLECTUAL PROPERTY

Anheuser-Busch Inc. v. Controller of Patents,  
Trademarks & Designs & Ors.  
High Court: Costello P.  
23/10/1996

Registration of trade marks; applicant unable  
to obtain registration due to existence of two  
trade marks on register; applied to expunge  
trade marks on basis of non-use; refused;  
decision appealed; whether evidence  
established a prima facie case of non-use;  
evidence solely based on affidavit

*Held:* Appeal allowed; non-use established

## INTERNATIONAL LAW

### article

The international tribunal for the former  
Yugoslavia : a progress report  
Beane, Dorothy A Heffernan, Liz  
1996 ILT 226 (Part I) 1996 ILT 250 (Part II)

## JUDICIAL REVIEW

O'Connor v. Nenagh UDC  
High Court: Geoghegan J.  
16/07/1996

Supermarket premises acquired by Dunnes  
Stores (notice party); written certification by  
Town Clerk that respondent council unaware  
of any breach of original planning permission;  
alleged continuing breach; whether  
reviewable; locus standi; extension of time

*Held:* Certificate was reviewable, but relief  
refused; no evidence of mala fides; no reason  
to extend time for appeal; grant of certiorari  
would unfairly prejudice notice party

Farrelly v. Judge Devally & DPP  
High Court: Morris J.  
19/07/1996

Certiorari sought; applicant convicted under  
Misuse of Drugs Act 1977 & 1984; whether  
trial judge erred in law in interpreting statute;  
whether conviction lawful; whether trial judge  
acted in excess of jurisdiction

*Held:* Relief refused

O'Dwyer v. McDonagh & Ors.  
High Court: Barr J.  
14/10/1996

Employment; internal promotion; selection  
process; s.11(1)(b) Regional Technical  
Colleges Act 1992; applicant unsuccessful;  
whether decision of board ultra vires; alleged  
mal fides on part of members of interview  
board; whether evidence of bias; no reasons  
given; whether applicant should have been  
given an opportunity to answer criticisms  
made of her

*Held:* Application dismissed

Radio Limerick One Ltd. v. Independent  
Radio and Television Commission (IRTC)  
High Court: Smyth J.  
14/10/1996

Certiorari; termination of contract; s.14(4)

Radio and Television Act 1988; whether  
evidence of serious or repeated breach of  
statutory/contractual obligations; bias

*Held:* Certiorari refused

Ryan v. The Compensation Tribunal  
High Court: Costello P.  
15/11/1996

Certiorari sought; challenge to decision of  
tribunal; three compensation awards granted  
by hepatitis C tribunal; whether decision ultra  
vires; whether reasonable exercise of power;  
reasonable test to be applied; whether error  
on the face of the record; whether decision  
irrational

*Held:* Application dismissed

## LAND LAW

### library acquisition

Enduring powers of attorney 4th ed  
Cretney, Stephen M  
Bristol Jordans 1996

### articles

Recent developments in conveyancing practice  
Sweetman, Patrick  
1996 IPELJ 117

Environmental law and its implications  
in property transactions  
Gill, Garrett P  
1996 IPELJ 108

## LANDLORD & TENANT

### library acquisitions

The sale and management of flats  
practice and precedents 2nd ed  
Cawthorn, John Cawthorn and Barraclough  
London Butterworths 1996

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London Butterworths 1996

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## LEGAL PROFESSION

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The Four Courts essays to commemorate the bicentenary of the Four Courts  
Costello, Caroline  
Dublin Incorporated Council of Law Reporting 1996

The French legal system 2nd ed  
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London S & M 1996

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Kenny, Colum  
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### *articles*

Evaluating the quality of justice  
Cousins, Mel  
1996 ILT 257

Televising the courts  
Wood, Kieron  
1996 BR 71

## LICENSING

### *library acquisition*

Cassidy, Constance  
The licensing acts 1833-1995  
Dublin Round Hall S & M 1996

## MEDICINE

### *articles*

Artificial insemination and competition - lessons to be learned  
Buttimore, Jonathan  
1996 ICLR 2-22

BMA guidelines on treatment decisions for patients in persistent vegetative state  
2 (1996) MLJI 58

BMA interim guidelines on confidentiality for police surgeons  
2 (1996) MLJI 54

Consent and involuntary treatment in anorexia nervosa  
Connolly, Louise  
2 (1996) MLJI 55

Commentary on recently issued guidelines on treatment decisions for patients in persistent vegetative state  
Hyslop, Jennifer Cusack, Denis A  
2 (1996) MLJI 47

Withdrawal of futile interventions in intensive care - an everyday ethical/critical care issue  
Phelan, Dermot  
2 (1996) MLJI 49

The doctor's duty of confidentiality and the prosecution of criminal offences  
Phelan, Siobhan Cusack, A  
2 (1996) MLJI 52

Certifying under the Mental treatment act 1945 : pitfalls for general practitioners  
Spellman, Jarlath  
2 (1996) MLJI 60

Involuntary admissions and elderly psychiatric patients  
Freyne, A  
2 (1996) MLJI 47

## MENTAL HEALTH

### *articles*

Certifying under the Mental treatment act 1945 : pitfalls for general practitioners  
Spellman, Jarlath  
2 (1996) MLJI 60

Involuntary admissions and elderly psychiatric patients  
Freyne, A  
2 (1996) MLJI 47

## NEGLIGENCE

McCann & Anor. v. Brinks Allied Ltd. & Ulster Bank Ltd.  
Supreme Court: O'Flaherty J., Blayney J., Murphy J.  
04/11/1996

Duty of care; first defendant found liable in not providing a safe system of work; whether bank liable as concurrent wrongdoer; whether duty of care owed by bank to first defendant's employees; whether employer/employee relationship or contractual relationship existed

*Held:* Appeal dismissed; no duty of care

Murphy v. Cork County Council  
Supreme Court: O'Flaherty J.\*, Barrington J., Keane J. \* ex-tempore  
18/11/1996

Appeal; personal injuries; liability not in issue; assessment of damages; general and special damages; whether trial judge correct in award given

*Held:* Appeal dismissed; award for damages upheld

### *library acquisitions*

Charlesworth & Percy on negligence 9th ed  
Charlesworth, John  
London S & M 1997

Facts & figures : tables for the calculation of damages  
Professional Negligence Bar Association 1996  
London S & M 1996

## OIREACHTAS

### *statutory instrument*

Oireachtas (allowances to members) and ministerial and parliamentary offices (amendment) act, 1992 (allowances) (amendment) regulations, 1996  
S.I.315/1996  
Commencement date: 1.1.96

## PENSIONS

### *article*

Why you should consider your pension requirements now

Dowling, John  
1996 BR 67

## PLANNING LAW

East Wicklow Conservation Community Ltd.  
v. Wicklow County Council & Anor.  
Supreme Court: Hamilton C.J., Blayney J.,  
Murphy J.  
28/11/1996

Proposed site for landfill at Ballynagran;  
County Council resolution rejecting proposal;  
whether binding on County Manager; s.3 City  
and County Management (Amendment) Act  
1955 considered; meaning of "works required  
by or under statute"

*Held:* Appeal dismissed; "works required by  
or under statute" not limited to specific,  
identified works; proposal of Ballynagran site  
fulfilled statutory duty to provide for waste  
disposal

### articles

Primary and secondary legislation relevant to  
planning and environmental law  
Oakes, Ciaran  
1996 IPELJ 114

### Section 5 references

Galligan, Eamon M  
1996 IPELJ 122  
Gateshead revisited : overlaps in Irish  
planning and environmental pollution control  
Meehan, David  
1996 ILT 235

Development plans - the implications of  
Glencar  
Simons, Garrett  
1996 IPELJ 127

## PRACTICE & PROCEDURE

Lopes v. Galvin  
Supreme Court: O'Flaherty J.,\* Barrington J.,  
Murphy J. \* ex-tempore  
25/11/1996

Direction; road accident; personal injuries;  
alleged failure of doctor to make correct  
diagnosis; no second opinion sought at  
relevant time; trial judge granted dismissal for  
failure to make out a case

*Held:* Appeal dismissed

Irish Permanent Building Society v. Utreacht  
Consultants Ltd. & Ors.  
Supreme Court: Hamilton C.J., Keane J.,  
Murphy J.  
31/10/1996

Appeal; application for additional discovery  
refused; negligence claim; breach of contract;  
whether documents sought relevant to  
proceedings; documents in respect of services  
rendered; test of relevance; whether  
documents advance case of one party or lead  
one party on a train of enquiry

*Held:* Appeal dismissed; documents not  
relevant

Walker v. Ireland & Attorney General  
High Court: Geoghegan J.  
07/10/1996

Discovery; order for full and better discovery  
sought; objection to production raised;  
relevance of documents; whether documents  
should not be produced on grounds of public  
policy; whether documents confidential;  
whether absolute privilege in relation to  
documents passing between sovereign states  
exists; whether public interest outweighs need  
for disclosure

*Held:* Order granted

Power City Ltd. v. Monahan Trading as  
Monahan Shipping & Co. & Ors.  
High Court: Kinlen J.  
14/10/1996

Discovery; privilege claimed in respect of  
certain documents; purpose of documents;  
principles applicable; legal professional  
privilege

*Held:* Privilege granted

Carleton v. O'Regan, The M.V. "Una Alan"  
and the M.V. "Janora"  
High Court: Barr J.  
14/10/1996

Preliminary issue; whether time for  
commencement of action should be extended;  
delay in issuing proceedings; s.46(2) Civil  
Liability Act 1961; claim in damages;  
limitation period for maritime actions; two  
years from date of damage or loss; discretion  
of court; whether special circumstances or  
"good reason" for delay; no explanation for  
delay given

*Held:* Extension of time not granted

King v. Owners & ors. of vessel "Santa Maria  
de la Vision".  
High Court: Barr J.  
14/10/1996

Costs; respondents succeeded on one of two  
grounds in admiralty claim; reward given for  
archaeological discovery; raised new issues in  
admiralty law; whether order for costs should  
include all costs of proceedings; issues relating  
to maritime and admiralty law; effect of  
lodgments; whether lodgments exceed claim  
for expenses and reward for an archaeological  
discovery

*Held:* Respondents entitled to costs

DPP v. Fox  
High Court: McGuinness J.  
07/11/1996

Case stated; summonses issued; offences  
committed under Diseases of Animals Act  
1966 and S.I. 308/1989; whether time-limit  
for issuing of summonses had expired; s.1  
Courts (No.3) Act 1986; statutory time-limits;  
whether time-limits in pre-1986 statutes  
stand; whether provision of statutes should be  
recited on face of summons

*Held:* Issuing of summonses were within time-  
limit

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The law and practice of compromise  
with precedents 4th ed  
Foskett, David  
London S & M 1996

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The implementation of the Hague Convention  
Buttimore, Jonathan  
1996 (4) P & P 2

Recent developments on discovery  
Cahill, Eamonn  
1996 (4) P & P 6

Dismissal for want of prosecution  
Delany, Hilary  
1996 ILT 240

Litigation and evidence : the rule in  
Hollington v Hewthorn & Co. Ltd  
Glanville, Stephen  
1996 ILT 263

## REAL PROPERTY

Aer Rianta CPT v. Commissioner of Valuation & Ors.

Supreme Court: Hamilton C.J., Barrington J., Murphy J.  
06/11/1996

Appeal; rateable occupation; s.5 Valuation Act 1988; whether defendant in rateable occupation of hereditament; whether defendant had use and enjoyment of hereditament; whether use and enjoyment can be inferred; s.61 Poor Relief (Ireland) Act 1833; principle of fact of occupation; whether employer/employee relationship existed

*Held:* Appeal allowed; no rateable occupation

National Irish Bank Ltd. v. O'Connor and Arnold

High Court: Costello P.  
08/10/1996

Equitable deposit of title deeds with bank; whether bank's interest in property well charged; whether bank had priority over 2nd defendant's alleged claim to property

*Held:* Bank's interest took precedence; 2nd defendant's claim at best equitable

## ROAD TRAFFIC

DPP v. Doyle

High Court: Geoghegan J.  
09/10/1996

Case stated; charge in summons; Road Traffic (Amendment) Act 1978; non-compliance with s.13(3) of the Act; failure to give blood/urine sample; charge in summons referred to refusal to give sample; whether s.13(3) creates two types of offences by use of words "refusal" and "failure"; statutory interpretation

*Held:* The section does not create more than one offence

### *statutory instruments*

European Communities (mechanically propelled vehicle emission control) regulations, 1996

S.I.318/1996

Date signed: 23.10.96

European Communities (motor vehicles type approval) regulations, 1996  
S.I.314/1996

Commencement date: 22.10.96

Road traffic (licensing of drivers) (amendment) regulations, 1996

S.I.328/1996

Date signed: 5.11.96

Road traffic act, 1961 (section 103) (offences) regulations, 1996

S.I.319/1996

Commencement date: 1.12.96

## SEA & SEASHORE

### *statutory instruments*

Cork Harbour works (no 2) order, 1996

S.I.336/1996

Date signed: 14.11.96

Harbour rates (harbours of Dublin, Skerries and Balbriggan) order, 1996

S.I.313/1996

Commencement date: 29.10.96

## SHIPPING

### *library acquisition*

Scrutton on charterparties and bills of lading 20th ed

Scrutton, Thomas Edward

London S & M 1996

### *article*

Ship arrest in Ireland

Doherty, Alan

1996 CLP 232

## SOCIAL WELFARE

### *statutory instruments*

Social welfare (code of practice on the recovery of overpayments) regulations, 1996

S.I.227/1996

Date signed: 16.7.96

Social welfare (consolidated contributions and insurability) regulations, 1996

S.I.312/1996

Commencement date: 1.11.96

Social welfare (consolidated payments provisions) (amendment) (no 6) regulations, 1996

S.I.297/1996

Commencement date: 2.10.96

Social welfare (social welfare tribunal) regulations, 1996

S.I.262/1996

Date signed: 30.8.96

Social welfare (treatment benefit) (amendment) (no 2) regulations, 1996

S.I.261/1996

Date signed: 30.8.96

Social welfare act, 1996 (part IV) (commencement) order, 1996

S.I.296/1996

Commencement date: 2.10.96

## SPORT

### *library acquisition*

Sport and the law 2nd ed

Grayson, Edward

London Butterworths 1994

## STOCK EXCHANGE

### *article*

CREST in Ireland : the uncertificated securities regulations, 1996

McHugh, Kevin

1996 CLP 219

## TAXATION

### *statutory instrument*

Value-added tax (refund of tax) (no 29) order, 1996

S.I.334/1996

Commencement date: 1.12.96

### *articles*

The 30% rate of tax - section 28A CTA 1976

O'Rourke, Feargal

1996 ITR 354

Guidance from Europe

Corbett, Tom

1996 ITR 358

Inheritance tax planning - the section 60 way "what are the alternatives"

Crowe, John

1996 ITR 385

Passing on the family business : a not uncommon problem

Grogan, Richard

1996 ITR 361



The law and taxation of charities

Hickson, John H

1996 ITR 377

Wear and tear - the provisions of section 241 and the burden of wear and tear of machinery and plant

Kearns, Sean

1996 ITR 371

Value Added Tax - lets play musical chairs again - more proposals for a new VAT system in Europe - the "common" VAT system

Somers, Jim

1996 ITR 365

## TRANSPORT

### *statutory instruments*

Air navigation (personnel licensing) (amendment) (no 2) order, 1996

S.I.321/1996

Commencement date: 1.3.97

Irish Aviation Authority (aerodrome standards) order, 1996

S.I.323/1996

Date signed: 4.11.96

Irish Aviation Authority (air worthiness of aircraft) order, 1996

S.I.324/1996

Commencement date: 1.3.97

Irish Aviation Authority (nationality and registration of aircraft) order, 1996

S.I.322/1996

Commencement date: 1.3.97

### *article*

The Transport (Dublin light rail) act 1996

Flynn, Tom

1996 IPELJ 103

## WILLS

### *article*

Inheritance tax planning - the section 60 way "what are the alternatives"

Crowe, John

1996 ITR 385

*at a glance*

## *European provisions implemented into Irish law up to 4/12/96*

*Information compiled by Mary Smartt, Law Library, Four Courts*

European Communities (conservation of wild birds) (amendment) (no 2) regulations, 1996

S.I.298/1996

(DIR 79/409) Amends SI 291/1985

Commencement date: 15.10.96

regulations, 1996

S.I.318/1996

(DIR 96/1, 92/53, 93/81)

Amends SI 363/1993

Date signed: 23.10.96

(amendment) regulations, 1996

S.I.316/1996

(DIR 95/38, 95/61, 95/38 corrigenda)

Amends SI 190/1994

Commencement date: 31.10.96

European Communities (conservation of wild birds) (amendment) (no 3) regulations, 1996

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(DIR 79/409) Amends SI 291/1985

Commencement date: 15.10.96

European Communities (motor vehicles type approval) regulations, 1996

S.I.314/1996

(DIR - PLEASE SEE SI)

Amends SI 305/1978

Commencement date: 22.10.96

European Communities (seed of fodder plants) (amendment) regulations, 1996

S.I.326/1996

(DIR 66/401)

Commencement date: 31.10.96

European Communities (introduction of organisms harmful to plants or plant products) (prohibition) (temporary provisions) regulations, 1996

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(DIR 77/93)

Date signed: 5.11.96

European Communities (mechanically propelled vehicle emission control)

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S.I.337/1996

(DIR 96/33) Amends SI 216/1988

Commencement date: 20.11.96

European Communities (pesticide residues) (products of plant origin, including fruit and vegetables)

# GOVERNMENT BILLS IN PROGRESS AS AT 04/12/96

Information compiled by Sharon Byrne, Law Library, Four Courts

ADOPTION (NO.2) BILL, 1996 - PASSED IN DAIL	DUBLIN DOCKLANDS DEVELOPMENT AUTHORITY BILL, 1996 - 1ST STAGE - DAIL	MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) BILL, 1996 - REPORT - SEANAD
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## ABBREVIATIONS

BR = Bar Review	GILS = Gazette of the Irish Law Society	ITR = Irish Tax Review
CLP = Commercial Law practitioner	ICLR = Irish Competition Law Reports	JISLL = Journal of Irish Society of Labour Law
CPLJ = Conveyancer & Property Law Journal	IFLR = Irish Family Law Reports	MLJI = Medico Legal Journal of Ireland
DULJ = Dublin University Law Journal	ILT = Irish Law Times	P & P = Practice & Procedure
	IPELJ = Irish Planning and Environmental Law Journal	

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*Information compiled by Sharon Byrne Law Library, Four Courts*

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22/1996 - BORROWING POWERS OF CERTAIN BODIES ACT • SIGNED 10/07/96	9/1996 - FINANCE ACT • COMMENCED ON SIGNING 15/05/1996	12/1996 - POWERS OF ATTORNEY ACT • COMMENCED BY S.I. 195/1996
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19/1996 - COMPETITION (AMENDMENT) ACT * COMMENCED ON SIGNING 03/07/96	32/1996 - HEALTH (AMENDMENT)(NO.3) ACT * TO BE COMMENCED BY STATUTORY INSTRUMENT	7/1996 - SOCIAL WELFARE ACT • SIGNED 03/04/1996 • COMMENCED IN ACT - DIFFERENT DATES
26/1996 - COURTS ACT • COMMENCED ON SIGNING 31/07/96		6/1996 - TRADE MARKS ACT • COMMENCED BY S.I. 198/1996
29/1996 - CRIMINAL JUSTICE (DRUG TRAFFICKING) ACT • COMMENCED BY S.I. 275/1996	8/1996 - IRISH STEEL LIMITED ACT * COMMENCED ON SIGNING 30/04/1996	20/1996 - TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES ACT • SIGNED 10/07/1996 • COMMENCED BY S.I. 276/1996
25/1996 - DISCLOSURE OF CERTAIN INFORMATION FOR TAXATION AND OTHER PURPOSES ACT • COMMENCED ON SIGNING 30/07/1996	2/1996 - JOHNSTOWN CASTLE AGRICULTURAL COLLEGE (AMENDMENT) ACT • COMMENCED ON SIGNING 28/02/1996	24/1996 - TRANSPORT (DUBLIN LIGHT RAIL) ACT • COMMENCED ON SIGNING 15/07/1996
1/1996 - DOMESTIC VIOLENCE ACT • COMMENCED ON SIGNING 27/02/96	27/1996 - METROLOGY ACT • SIGNED 31/07/1996	4/1996 - VOLUNTARY HEALTH INSURANCE (AMENDMENT) ACT • COMMENCED ON SIGNING 06/03/96
	28/1996 - NATIONAL STANDARDS AUTHORITY OF IRELAND ACT • COMMENCEMENT TO BE BY S.I.	10/1996 - WASTE MANAGEMENT ACT • COMMENCED BY S.I. 192/1996



# COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

## NOTES FOR GUIDANCE ON REFERENCES BY NATIONAL COURTS FOR PRELIMINARY RULINGS

The development of the Community legal order is largely the result of cooperation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary ruling procedure under Article 177 of the EC Treaty and the corresponding provisions of the ECSE and Euratom Treaties.<sup>1</sup>

In order to make this cooperation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, the Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for guidance only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience of applying the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.<sup>2</sup>

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice.<sup>3</sup>

Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for

which it considers that the Community act is not valid.<sup>4</sup>

3. Questions referred for a preliminary ruling must be limited to the interpretation of validity of a provision of Community laws, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.

4. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice generally involves a stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

5. The order for reference containing the question or questions referred to the Court will have to be translated by the Courts' translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the reference should be drafted as clearly and precisely as possible.

6. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.<sup>5</sup>

In particular, it should include:

- a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings;
- an exposition of the national law which may be applicable;
- a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice; and
- where appropriate, a summary of the arguments of the parties.

The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the

Community, the national court should ensure that the order for reference itself includes all the relevant information.

7. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of justice is likely to be best served if the reference is not made until both sides have been heard.<sup>6</sup>

8. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post, addressed to:

The Registry  
Court of Justice of the European  
Communities  
L-2925 Luxembourg  
Telephone (352) 43031

The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs.

1. A preliminary ruling procedure is also provided for by protocols to several conventions concluded by the Member States, in particular the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

2. Judgment in Case 283/81 CILFIT v. Ministry of Health [1982] ECR 3415

3. Judgment in Case 314/85 Foto-Frost v. Hauptzollamt Lubeck-Ost [1987] ECR 4199

4. Judgments in Joined Cases C-143/88 and C-92/89 Zuckerfabrik Suderdithmarschen and Zuckerfabrik Soest [1991] ECR I-145 and in Case C-465/93 Atlanta Fruchthandels-gesellschaft [1995] ECR I-3761.

5. Judgment in Joined Cases C-320/90, C-321/90 and C-322/90 Telemarsicabruzzo [1993] ECR I-393

6. Judgment in Case 70/77 Simmenthal v. Amministrazione delle Finanze dello Stato [1978] ECR 1453

# On Line: An Introduction to *the Internet*

**The On Line section continues its look at the impact of technology on legal practice by looking at the Internet and its applications for lawyers.**

## **What is the Internet?**

"The Internet" is a term of popular culture which has emerged to describe both the global collection of computer networks connected together by the international telephone system and the various services including electronic mail which are delivered across these networks.

The Internet itself is the infrastructure which supports a set of electronic services the most popular of which, the World Wide Web, has only been developed in the last five years. Aficionados refer to the Internet as simply "the net" as this covers all the services available, while others prefer to talk of "cyberspace", a term coined by futurist fiction writer William Gibson to describe the imaginary space inhabited when communicating over the Internet.

You will also hear mention of a service being "on-line". This simply means that you connected to that service through the telecommunications system. When you are on the Internet you are "on-line"; you may similarly access a private "on-line" commercial service which is not on the Internet.

The Internet has spawned an entire industry of cultural speculation, apocalyptic prognostication and commercial hype. However ultimately the Internet merely takes advantage of our existing telecommunications structure to do things that people have always done: trade information (business, educational, recreational, legal) and communicate (personally, professionally, anonymously), with the advantages that you can access this information from your desktop and without the conventional confines of geography and time, and the disadvantages that there is little organisation of the system, no certainty that who or what you're looking for is there and a dependence on sometimes moody computer technology.

## **And what are these services which are delivered on the Internet?**

The most popular aspect of the Internet is the "World Wide Web", a system of interlinked graphical information pages (or "sites") which can be navigated using special "browsing" software. Each site on the World Wide Web has an address which is styled in the format "www.domain name.country/organisation type", the "www" standing for World Wide Web, the "domain name" referring to the individual or organisation whose computer is hosting the site and the "country or organisation" being an abbreviated code for the country or organisation-type. Thus you might see the address [www.ibm.com](http://www.ibm.com) which is the World Wide Web address for IBM, the "com" referring to the fact that it is a commercial organisation. Many

businesses now advertise their world wide web sites at the foot of TV and print ads.

An organisation's (or individual's) "Home Page" will be found at their World Wide Web address. A home page is a promotional or information site which can contain many pages of graphics or text, and links to other sites. The Law Library's home page can be found at [www.lawlibrary.ie/barcouncil](http://www.lawlibrary.ie/barcouncil).

These sites are interlinked by a technology known as "hyperlinking" which enables one to jump from a reference in one site to a connecting reference in another and jump back again without the user necessarily knowing (or caring) which machine is hosting the page you are looking at. Thus you can navigate in a freeform but seamless way through many different sites during the one Internet session, giving rise to the expression "surfing the 'net'". One moment you could be looking at a US Supreme Court decision hosted on a computer in Washington; a "click" later and you could be reading a section of the Irish Constitution hosted on a machine in Tallaght, a moment or two later, you could be accessing a screen in Rangoon, and back again to Washington at the touch of a button.

## **What about electronic mail?**

Electronic Mail (e-mail) is another service which can be used across the Internet. If you have an e-mail account and access to the Internet you can send and receive messages to anyone else with an Internet e-mail account. (See volume two issue two of the Bar Review for a more detailed introduction to e-mail).

# et for Lawyers

## And the other uses of the Internet?

A further communication service found on the Internet is the newsgroup. A newsgroup is a form of electronic bulletin board where information can be swapped and enquiries and answers can be posted. Thus a family law newsgroup might be set up between family law practitioners who could use the newsgroup to post news items about a practical development, or seek help on difficult-to-trace precedents etc. In the legal field such newsgroups are more likely to be used by students and academic lawyers as they depend for their effectiveness on the free exchange of information although a number of commercial suppliers in the UK facilitate such newsgroups for groups of law firms and legal associations.

File transfer is the other principal Internet service. This enables you to "download" (ie transfer to your own machine for printing or onward transmission) software, text, graphics, sound etc., from sites on the Internet.

## How do I access the Internet?

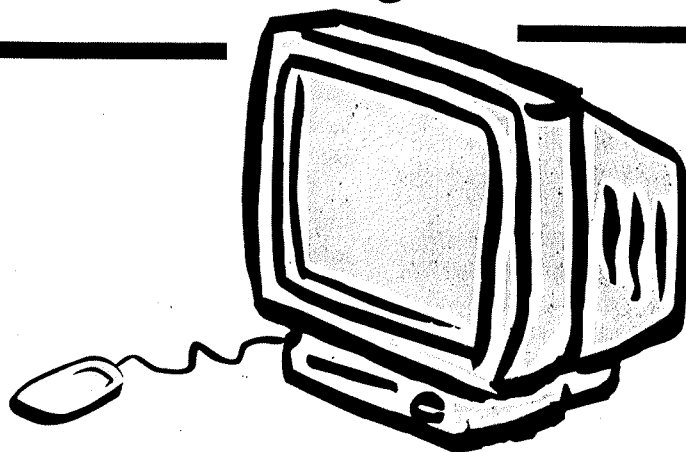
First, you will need a computer (PC or laptop), a modem and a telephone line. A modem is a device that enables text, images or sound to be sent down the telephone line - in effect a telephone set for digital information.

Then you will then need to get an account with an Internet Service Provider (sometimes abbreviated to ISP or "service provider"). An Internet Service Provider is a middleman who hosts a large computer and set of communication equipment which routes your Internet requests out over the national or

international telephone system, stores your e-mail, and maintains the software you need to avail of the various Internet services. The two Internet Service Providers which dominate the market for personal Internet users in Ireland are Ireland On-Line and Indigo.

## How much does it cost to use the Internet?

You may have heard that the you can contact anywhere in the world over the Internet for the price of a local call - this is true in so far as your service provider is located in the same telephone district as you are, as in that case you only have to pay for the cost of dialling in to the service provider's computer - they will then make any international connection on their own leased international lines. However you will also be paying an annual subscription to the service provider to cover the costs of administering your Internet account, so there are costs involved over and above those of the local phone call. Typical subscription charges are £10 a month.



## What legal information can be accessed for free on the Internet?

There is very little Irish or UK legal information free on the Internet. There is an Irish Law Page (maintained by Darius Whelan in Tallaght RTC) which has a copy of the Constitution and some useful links to other sites. House of Lords decisions are now being published on the World Wide Web within a few days of judgment.

The EU has a longer-term strategy to publish official information on the Internet, although the amount of free EU legal information available at present is limited.

There is quite a lot of free US, Australian and Canadian case law and legislation on the Internet, including the full text of the US Supreme Court Decisions and Canadian Supreme Court Decisions. The Australasian Legal Information Institute's site has the full text of all Australian High Court cases from 1947, and state case law and federal legislation. The publication of legal information on the Internet in these

jurisdictions has been led by progressive law schools and enlightened public policies which seek to ensure that such public information to be promulgated in electronic as well as print forms. Other useful sources are the home pages of some foreign Law Reform Commissions which contain the full text of their law reform reports eg the Law Reform Commissions of California, British Columbia and New South Wales all publish their reports in full text on the World Wide Web. Many Law Schools now also have home pages with contact names and useful links to legal sites.

The best way to find free legal information on the World Wide Web is to use one of the legal "search engines" which enable you to search for sites by keyword. One such service is Alta Vista's Lawcrawler which brings together, in easily searchable form, many of the legal materials on the World Wide Web (www.lawcrawler.com).

### **What about legal information on the Internet that you must pay for?**

There are many commercial on-line legal services ie those that you pay to access privately across the telephone system eg the LEXIS legal database service. The advent of the Internet has simply provided another means of accessing the service so that while the service is accessible via the Internet, the same charges/subscription rates etc., still apply.

A big issue now is whether legal publishers will start to provide their texts and reports (for a fee) across the Internet or whether they will choose to deliver their materials electronically by a different mechanism eg CD-ROM. The prediction is that the

## *The prospect of large multinational publishers controlling access to legal information in electronic form should encourage governments to develop a strategy for promulgating legislation and case law on a free access basis across the Internet.*

Internet will become the delivery mechanism so that within a couple of years almost all the legal information you will require for your research will be available somewhere on the Internet - but at a cost.

The prospect of large multinational publishers controlling access to legal information in electronic form should encourage governments to develop a strategy for promulgating legislation and case law on a free access basis across the Internet. It is hoped for example that the Attorney General's Office would consider such an approach for the database of Irish statutes which it is currently developing and that the new Courts' Commission will adopt a similar approach for the text of written judgements.

### **How are the other Internet services likely to be of use to a legal practitioner?**

The Internet will provide an ideal platform for lawyers to exchange information and news through electronic legal bulletins, specialist legal information services and electronic mail. Continuing education materials could be delivered across the Internet and interactive training sessions could be facilitated, leading to possibilities for new models in legal training.

Video-conferencing (not an Internet service in its own right but one provided across the telephone system) which is now available at relatively low cost will eliminate time and travel constraints for parties geographically dispersed; it could prove cheaper to video-conference a consultation between parties in Dublin and Cork than to have one party travel to the other location.

The marketing capability of an Internet presence will

undoubtedly be exploited by many lawyers, as consumers begin to use the Internet as a first-stop in shopping around for legal advice.

The delivery of actual legal services across the Internet is now occurring in the US, where for example arbitrations are conducted across the Internet without the parties or lawyers ever meeting face-to-face. Richard Susskind in his recent book "The Future of Law" (OUP, 1996) predicts that the Internet (and other electronic developments) will precipitate a shift in the model of legal service from that of a primarily advisory one to that of a more information-led one with a resulting change in the structure of the market for legal services; an arguable contention, but one that points to the need for lawyers to think through the impact of the Internet not just on their individual practices but on the shape of their profession as a whole.

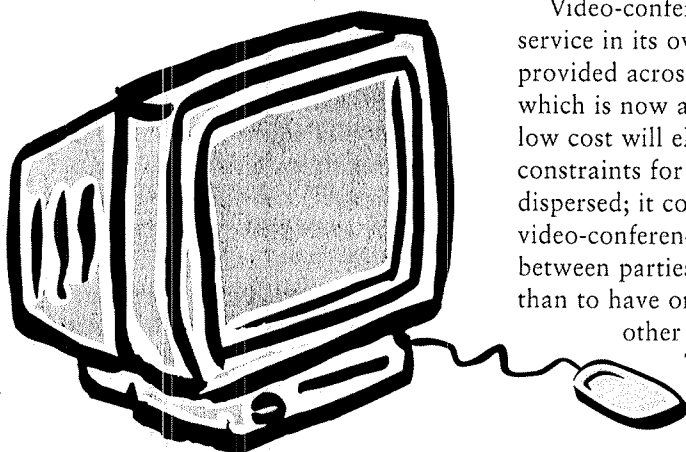
The Internet can be accessed in the Law Library through the Information Desk.

### **Computer Deal for Barristers**

Moss Technology, the maintenance contractor for the Law Library's computers, and Digital, a leading supplier of quality computers, have put together some very attractive "all-in" computer deals for barristers.

For under £2100 (ex-VAT), Moss are offering a Digital desk-top computer, modem, printer, software, installation and maintenance as follows:

A Pentium 133 Mhz Digital PC with 16MB RAM, 1.2 GB Hard Disk, 8 speed CD-ROM drive  
Fax Modem  
Windows 95  
Microsoft Office Professional including MS Word 7.0  
Hewlett Packard Laserjet 5L Printer





Installation and delivery and one year's full maintenance on all the hardware and telephone support for the software

This represents exceptional value.

They are also offering package deals on laptop computers with similarly competitive prices. A Pentium 100Mhz Digital Highnote laptop with 16MB RAM, a 1 Gb hard drive and an 11.3 inch screen (a large screen by laptop standards), with MS Office Professional, can be had for £1800 (ex-VAT).

Digital leasing will provide full financing for all packages on the basis of monthly payments over 36 months. The £2100 package above will have monthly repayments of roughly £65. Leasing is a more attractive method of purchasing for cashflow and tax reasons (there is a full revenue write-off for the monthly leasing payments as they are paid, compared to the more drawn-out capital allowances relief for the up-front purchase of the equipment).

Digital also have leasing options which will allow you to upgrade or replace your computer at different point during the leasing period, at reduced cost.

Prices at discount rates are also available on combinations of equipment if you don't require a full package (eg a computer, modem, MS Office Professional and one year's maintenance can be had for £1,680 or £53 per month over 36 months, ex-VAT).

Details of the specific packages are available from the Information Desk in the Law Library and from Gareth Madden in Moss Technology, telephone 01 - 679 2211.

## LEXIS - NEXIS - A Modern Tool For Legal Research

The LEXIS - NEXIS service is a full-text computer-assisted legal, business and news information retrieval service made available in Ireland by ITELIS Ltd.

If you can imagine a series of vast libraries filled with case law, legislation, legal journals, newspapers, magazines, company and financial information with the ability to find what you are looking for in seconds, then you will have an

immediate understanding of the advantages of research with the LEXIS-NEXIS service.

From the Irish viewpoint, the material offered includes the Irish Reports since 1950, the Irish Law Times Reports, the Irish Law Reports Monthly, Frewens Court of Criminal Appeal decisions and, significantly, unreported decisions from 1986.

LEXIS also hosts legal libraries from a number of other countries. There is extensive American material both at State and Federal level, a range of legal journals as well as substantial tax, financial and accounting information.

The United Kingdom material consists of some 42 series of Law Reports from as early as the 1930's with unreported cases from 1980, English Legal Journals, Tax cases from 1875 and Revenue releases. United Kingdom primary and secondary legislation can also be searched in fully amended and annotated form. There are also separate Scottish and Northern

Ireland libraries with reported and unreported cases.

Access is also available to New Zealand, Australian and French Libraries amongst others. The importance of the European Community is reflected in the comprehensive coverage of European material: the library has European Court Reports, Common Market Law Reports, Commercial Cases, European Human Rights reports and European Commission decisions on Competition law.

The database can be searched with simple keywords or phrases as they would appear in text using your computer with a modem attached to the telephone line. Itelis Ltd. provide specialised user-friendly software to simplify the whole research procedure.

Attractive new terms for access to the LEXIS- NEXIS service are now available from Itelis Ltd.

For further information, contact staff at the Information Desk 01-7024902 or Itelis Ltd. 01-6717035.

## TRAINING COURSES IN BASIC COMPUTERS/WINDOWS 95/ WORD 7

As more and more barristers are using Windows 95/Word 7 and as the Library introduces more Windows based legal databases, special training courses for barristers in Basic Computers, Windows 95 and Word 7 have been arranged for interested members.

The Courses will be held at the premises of Technology Training at 14 Fitzwilliam Place, Dublin 2. A two day beginners course will commence on Saturday, 18th January 1997 and finish on Saturday, 25th January 1997. Based on 6 barristers availing of the course, it will cost £160 per member. For those with some experience of computers and applications, a one day intermediate course will also be held on Saturday, 18th January 1997. Based on 6 barristers availing of this course, the cost per member will be £60.

Further courses, also to be held on Saturdays early next year, will be arranged subject to demand. While requiring the investment of valuable weekend time, the courses are highly recommended as they will facilitate greater and more effective use by members of the information technology services now available to them in conducting research and in managing their administrative matters.

Please leave your name at the Information Desk if you are interested in booking a place on either of these training courses.

For further information contact Jane O'Brien at ext. 4190

## CHRISTMAS VACATION ARRANGMENTS

The Law Library will close at 5.30 on Friday, 20th December, 1996. It will re-open at 9.30 on Thursday, 2nd January, 1997. Book service will be available at the issue desk from 9.30 to 4.30 from the 2nd January until Monday, 13th January when normal service will resume with the commencement of Hilary Term.

*We Wish all Members a Peaceful Christmas and Continued Success in the New Year.*

*Paul Moloney, Services Team Leader*

# Money Laundering and the Criminal Justice Act, 1994

LAW LIBRARY  
FOUR COURTS  
DUBLIN 7

## AN OVERVIEW

By David O'Neill, Barrister

### I. Background.

The global communications and telecommunications revolutions have immeasurably increased the opportunities for organized crime to engage in illegal activities, especially drug trafficking, and to dispose of and conceal the proceeds of those activities. "Money laundering" is the name given to the concealment of the proceeds of crime and their conversion into apparently legitimate funds and assets in order to frustrate detection and enable criminals to have access to the profits of crime without drawing suspicion on themselves. Article 3(1)(b)(i) and (ii), and (c)(i) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December, 1989 ("the Vienna Convention"), obliges United Nations members to create offences of converting or transferring property known to be derived from drugs offences in order to conceal or disguise it, of concealing or disguising the attributes of property known to be derived from such sources, and of acquiring, possessing or using property known to be so derived. Article 6 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 8 November, 1990 ("the Strasbourg Convention") is in similar terms, although it goes further and extends to the proceeds of crime in general. To implement these Conventions<sup>1</sup>, the Council of the European Communities promulgated Directive 91/308/EEC on 10 June, 1991 (OJ L 166/77) ("the Directive"). Article 1 of the Directive defines money laundering in terms similar to those used in the Conventions. Its approach is to require Member States to combat money laundering in respect of drug

trafficking proceeds, as stipulated by the Vienna Convention, while permitting the Member States to extend the scope of their legislation to other proceeds of crime. In addition, Articles 3-12 of the Directive provide measures requiring those institutions through which money is likely to be laundered to co-operate in the prevention and detection of the crime.

### 2. Implementation in the Republic of Ireland.

The Directive was implemented in part by the Criminal Justice Act, 1994, partly by Regulations made under the Act, and partly by administrative measures. The provisions of the Act fall into three categories:

- (a) Those that prohibit money laundering;
- (b) Those that are intended to prevent money laundering; and
- (c) Those that require the reporting of suspicious transactions and assistance in investigations.

#### (a) Prohibition of Money Laundering.

The State has availed in s. 31 of the 1994 Act of the option provided in Article 1 of the Directive to prohibit money laundering not only in respect of transactions involving property derived from drug trafficking, but also those involving property derived from other criminal activity. This Section does not merely apply to transactions concerned with money, but applies to all other forms of property<sup>2</sup>. Drug trafficking is defined as being concerned, whether in the State or elsewhere, in the production, supply, transportation, storage, import or export of controlled drugs, contrary to the Misuse of Drugs Act, 1977, as amended, any

regulations made thereunder, or the corresponding law of another country<sup>3</sup>. It also includes any act that would constitute the offence of money laundering, or would have constituted that offence had it existed when the act was done, or, if the act was done abroad, would have constituted that offence had it been done here. This definition is supplemented by S. 31(11), which mirrors Article 6(2)(a) of the Strasbourg Convention, and provides that the Section applies whether the drug trafficking or other criminal activity took place in the State or elsewhere, and whether it occurred before or after the Section was brought into force, provided that where the trafficking or other activity occurred in another country, it would be an offence both in Ireland and that other country. "Proceeds of drug trafficking" are defined as any payments or other rewards received by a person at any time, whether before S. 4 of the Act<sup>4</sup> was brought into force, or not, in connection with drug trafficking carried on by him or someone else<sup>5</sup>. Offences under S. 31 are described as felonies, presumably to attract the greater powers of arrest at common law applying to felonies. The punishment for a S. 31 offence is a £1,000 fine and/or 12 months' imprisonment, when it is tried summarily, and an indefinite fine and/or 14 years' imprisonment, when tried on indictment.

The Act creates three basic money laundering offences. The first involves concealing, disguising, converting, transferring, or removing from the State, property that, in whole or in part, directly or indirectly, represents the proceeds of one's own drug trafficking or criminal activity, for the purpose of evading

prosecution or the enforcement of an order for the confiscation of the proceeds of that trafficking or activity<sup>6</sup>. The second offence in effect consists of assisting someone else to do the same thing, and involves concealing, disguising, converting, transferring, or removing from the State property, knowing or believing that it represents, in whole or in part, directly or indirectly, the proceeds of another person's drug trafficking or criminal activity, for the purpose of assisting any person to evade prosecution or the enforcement of an confiscation order<sup>7</sup>. "Concealing or disguising" property in both offences is defined to include concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it<sup>8</sup>, while "converting, transferring or removing" are defined to include the provision of advice with respect to such conversion, transfer or removal<sup>9</sup>. The third offence is handling any property knowing or believing that such property, in whole or in part, directly or indirectly represents, another person's proceeds of drug trafficking or other criminal activity<sup>10</sup>. Handling property includes dishonestly receiving it, undertaking or assisting in its retention, removing it, disposing of it or realizing it by or for the benefit of another, or arranging to do any of these things<sup>11</sup>.

The offences of assisting another person to conceal property, knowing or believing them to be his proceeds of crime, and of handling property, knowing or believing it to be another person's proceeds of crime, are subject to two important evidential provisions. The first, S. 31(7) provides that where a person does any of the acts constituting such assistance or handling in circumstances in which it is reasonable to conclude that he knew or believed that they were such proceeds, he is taken to have had such knowledge or belief unless he satisfies the Court or jury that there is a reasonable doubt whether he had that knowledge or belief or not<sup>12</sup>. This accords with the provision in the Directive that knowledge, intent or purpose may be inferred from objective factual circumstances<sup>13</sup>. The other evidential provision defines the standard of belief required to bring a person within the offence to include thinking that the property was, or was probably, such proceeds<sup>14</sup>.

### **(b) Preventing Money Laundering.**

The second set of provisions are intended to frustrate attempts to launder money by placing an onus on those persons and institutions whose services might be availed of to facilitate money laundering to ensure that any transactions they do facilitate are lawful, and that, if the contrary later proves

to be the case, there are records available to the authorities by which they can trace any assets involved. The provisions in question are contained in S. 32 of the 1994 Act, which implements Articles 3 and 4 of the Directive. These have been fleshed out for practical purposes by the industry Guidance Notes issued by the Money Laundering Steering Committee, which was established under the supervision of the Department of Finance<sup>15</sup>.

S. 32 applies to so-called "designated bodies", which include banks, building societies, money brokers, trustee savings banks, life assurance companies, options and futures dealers, An Post, the A.C.C., the I.C.C., credit unions, and persons providing services connected with buying and selling stocks, shares and other securities, or foreign exchange services<sup>16</sup>. Other persons or bodies whose business includes providing services that involve the acceptance or holding of money or other property on behalf of others, or whose business appears to the Minister for Justice to be otherwise liable to be used for the purpose of committing or facilitating an offence created by S. 31 or similar offences under foreign law may be deemed to be "designated bodies" by regulation made under S. 32(10)<sup>17</sup>. The scope of the definition has already been greatly extended by the use of this power<sup>18</sup>. The operations by a designated body to which s. 32 applies are items 2-12 and 14 in the list annexed to Council Directive 89/646/EEC (OJ L 386/1)<sup>19</sup>. It also applies to activities to which Council Directive 79/267/EEC (OJ L 63/1), as amended, applies, namely operations in the nature of life and illness insurance. S. 32 may be extended by regulation made under S. 32(10) to include other activities which, in the opinion of the Minister are liable to be used to commit or facilitate any offence created by S. 31 or similar offences under foreign law, and it has since been extended to apply to the taking of deposits and other repayable funds from the public<sup>20</sup>.

The first obligation of a designated body is, pursuant to S. 32(3) of the 1994 Act, to take reasonable measures to establish the identity of any person for whom it proposes to provide a service in a variety of prescribed situations. What is meant by "reasonable measures" is not defined. The Guidance Notes, however, would suggest that the following general principles should be observed. First, wherever possible, there should be face to face contact with the customer. Secondly, the best identification documents should be sought, such as those issued from reputable sources and difficult to obtain, for example, passports. Thirdly, copies or, if this is impossible, specific details such as reference numbers, should be retained from these documents. Fourthly,

each name on a joint account should be verified. Finally, the address supplied should be separately verified<sup>21</sup>. The highest standards of identification should apply to all customers, subject to limited exceptions<sup>22</sup>.

### **The circumstances where a duty to identify the proposed customer arises are:**

- (a) Where the body proposes to do business with the person on an ongoing basis<sup>23</sup>;
- (b) Where the proposed transaction, or a number of proposed transactions that appear to be linked, exceed in value £10,000, or any other amount fixed by regulation made under S. 32(10)<sup>24</sup>; or
- (c) Where it suspects that the transaction is connected with the commission of any offence created by S. 31<sup>25</sup>.

Transactions separated by more than three months need not, according to the Guidance Notes, be treated as linked unless the body's existing system would treat them as linked<sup>26</sup>. If the value of the proposed transaction is not known at the time, and neither (a) nor (c) apply, the obligation to take reasonable measures to establish the identity of the intending customer arises once it is established that that value exceeds £10,000 or the amount prescribed by regulation<sup>27</sup>. If the designated body believes that the intending customer is acting for a third party, it must take reasonable measures to establish the identity of the third party<sup>28</sup>. This obligation is additional to the obligation to identify the customer, although the Guidance Notes appear to allow more latitude where the customer is from Ireland, the E.U., or one of the countries prescribed in S.I. No. 106 of 1995, in that then, the body may accept identification of the third party from the customer if it has no reason to doubt the latter's bona fides and if the customer undertakes to obtain and retain evidence of the third party's identity and to furnish the body with that information<sup>29</sup>.

### **These provisions do not apply:**

- (a) where one designated body provides a service for another designated body, or an equivalent body in another Member State, or an equivalent body in any other country prescribed by regulation made under S. 32(10)<sup>30</sup>;
- (b) in the case of a life insurance undertaking, where, and so long as, the annual total of periodic premium payments does not exceed £700, or, where a single premium is payable, it does not exceed £1,750, or in either case, any other amount prescribed by regulation under S. 32(10)<sup>31</sup>; or where a life insurance policy is taken out in connection with an occupational pension, unless it contains a surrender clause, or

may be used as collateral for a loan<sup>32</sup>;  
(c) in the case of a life assurance undertaking, where a payment or series of payments is made from an account held by the person in question with another designated body, or a body corresponding with a designated body as in S. 32(6) of the 1994 Act<sup>33</sup>.

The second obligation created by s. 32 is that, where a designated person identifies a proposed customer, it must retain:

- (a) a copy of all materials used to identify the customer for 5 years after the relationship has ended; and
- (b) the original documents or copies admissible in legal proceedings relating to any transactions with the customer for 5 years after the execution of the transaction for use as evidence in any investigation into money laundering<sup>34</sup>. The Guidance Notes suggest that these records ought to be retained whether or not a person actually did become a customer, once he proposed to do so<sup>35</sup>. The records may be kept on microfilm or stored electronically<sup>36</sup>.

A person who contravenes any provision of s. 32 of the 1994 Act, or who provides false or misleading information for the purposes of S. 32(3), (4) or (5), is liable, on summary conviction, to be fined up to £1,000, and/or be imprisoned for up to 12 months, and on conviction on indictment, is liable to an unlimited fine and/or imprisonment for 5 years.

The Act appears to have largely ignored the requirements of Article 7 of the Directive. This obliges the Member States to ensure that the bodies and persons to whom the directive applies refrain from carrying out transactions which they know or suspect relate to money laundering until they have appraised the relevant authorities. The Directive provides that those authorities may be given power to require that the transaction not be proceeded with. It also provides that where it would be impossible to so refrain, or where to do so would frustrate attempts to pursue the beneficiaries of the money laundering, the body or person in question must inform the relevant authorities immediately after it has taken place. It is true that for such a body or person to proceed with a transaction that it suspected was connected with money laundering would probably amount to an offence under S. 31 of the Act. It is also true that the body or person would be obliged to report the transaction under S. 57. However, what seems to have been envisaged by the Directive was that the proposed transaction would be reported once the body or person became aware of it so

that the authorities could decide how best to proceed, and so they could permit it to be carried out under their supervision, or, in the alternative, that the body or person could safely carry out the transaction and report it afterwards<sup>37</sup>.

(c) Reporting Suspicious Transactions and Assistance in Investigations.

Any body or person to whom SS. 32 of the 1994 Act, and any director, employee or officer thereof, must report to the Gardaí any suspicion they have that an offence under SS. 31 or 32 of the Act is being or has been committed in relation to the body or person's business<sup>38</sup>. A similar obligation to report lies on any person charged with supervising such a body or person who suspects that that body or person is committing or has committed an offence under SS. 31 or 32<sup>39</sup>. If there is any doubt, a report should be made<sup>40</sup>. A Money Laundering Investigation Unit has been established to receive the reports<sup>41</sup>. S. 57(3) provides that a report may be made in accordance with an internal reporting procedure established by an employer for the purpose of S. 57 of the 1994 Act<sup>42</sup>, and, in determining whether a person has complied with the provisions of that Section, S. 57(6) permits a Court to take into account any supervisory, regulatory or other guidance provided to that person, or issued by his professional body, trade association, or similar entity. No report made in good faith pursuant to S. 57 may be treated as a breach of any statutory or other duty of non-disclosure, nor may it involve its maker in any liability of any kind<sup>43</sup>. It is a defence to a prosecution for an offence under S. 57 that the accused made a report required by S. 57(1) or (2) in the manner allowed by S. 57(3)<sup>44</sup>. In contrast with S. 63 of the Act, there is no specific exemption for knowledge acquired by a solicitor, part of whose practice is caught by the Act, under circumstances of privilege<sup>45</sup>. The duty to report suspicious transactions is in one sense broader than in the U.K., where it is confined to the money laundering of drugs proceeds<sup>46</sup>. On the other hand, there, the duty applies once the information comes to a person's attention in the course of any trade, profession, business or employment, and not merely to certain designated bodies or persons<sup>47</sup>.

Article 11 of the Directive imposed obligations on Member States to ensure that the employees of bodies and persons to whom it applies are made aware of the existence of money laundering and their obligations to prevent it. This provision is

not implemented by the 1994 Act, but the Guidance Notes that have been issued in conjunction with the Act do set out those bodies' and persons' obligations with respect to training and education. Nevertheless, it is submitted that this is not adequate compliance with the Directive: see Case 102/79 Commission v. Belgium [1980] E.C.R. 1473.

S. 58 contains what is often described as the "tipping-off" offence. This provision makes it a crime for a person who knows or suspects that a report has been made pursuant to S. 57(1) or (2) to make any disclosure likely to prejudice any investigation arising from the report into whether an offence has been committed under SS. 31 or 32 of the 1994 Act<sup>48</sup>. It is a defence for him to show that he neither knew or suspected that the disclosure was likely to prejudice such an investigation, or that he made it with lawful authority or reasonable excuse<sup>49</sup>.

The maximum punishment for an offence under either S. 57 or S. 58 is a £1,000 fine and/or 12 months' imprisonment, and, on conviction on indictment, he is liable to an unlimited fine and/or imprisonment for 5 years<sup>50</sup>.

In addition to the duties of reporting imposed by the Act, S. 63 gives the Gardaí power to apply to the District Court for an order to produce or make available material for the purpose *inter alia* of investigating an offence under s. 31 of the Act. The order may only be made if the Court is satisfied that there are reasonable grounds for suspecting:

- (a) that a specified person has carried on drug trafficking, or committed an offence under S. 31 of the Act, or has benefited from drug trafficking or from an offence in respect of which a confiscation order might be made;
- (b) that the material is likely to be of substantial value, whether alone, or along with other material, in the investigation; and
- (c) does not include items subject to legal professional privilege; and if it is also satisfied that, having regard to the likely benefit of the material to the investigation and the circumstances in which the material is held, there are reasonable grounds for believing that the making of the order is in the public interest<sup>51</sup>.

The Court may order any person appearing to be entitled to grant entry onto premises where the material is to allow a Garda to enter<sup>52</sup>, and any order to produce or make available material in the case of material stored on computer requires the material to be produced or made available in a visible and legible form<sup>53</sup>. Such an order does not require that items attracting legal professional privilege be produced or made



available, but no other obligation of secrecy or non-disclosure may be relied on to resist execution of the order<sup>54</sup>.

### 3. Recommendations and Conclusions.

The Criminal Justice Act, 1994, is one of number of measures that have been introduced in recent years to combat the growth in organized crime in Irish society. By taking away criminals' assets and profits, and their opportunity to use their ill-gotten gains, it may be possible to hurt crime bosses who are otherwise able to put sufficient distance between themselves and crime to

avoid personal imprisonment. These aims are, of course, laudable. With the ease with which they may be transferred around the globe, whether in fact it will be possible to control the movement of funds to the degree necessary to make crime substantially less lucrative is quite another matter. So far as it is possible to achieve those aims by combating money laundering, the present law should be made as effective as possible. Therefore:

(a) The 1994 Act should be clarified by introducing a provision along the lines indicated by Article 7 of the Directive, so that the bodies and persons to whom the Act applies may proceed with a

suspicious transaction either under supervision, or until it is practicable for them to report it;

- (b) The Act should be amended to put the provisions in respect of the education and training of employees regarding money laundering, and their obligations to prevent and report, it on a statutory basis;
- (c) As many of the Guidance Notes as are of general application should be given the authority of statute or, at least, statutory instrument.

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*David O'Neill, Barrister.*

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1 See paragraph 8 of the Preamble to the Directive.  
2 Criminal Justice Act, 1994, s. 3(1).  
3 Ibid.  
4 This Section provides for the confiscation of the proceeds of drug trafficking.  
5 Criminal Justice Act, 1994, s. 5(1).  
6 Criminal Justice Act, 1994, s. 31(1).  
7 Criminal Justice Act, 1994, s. 31(2).  
8 Criminal Justice Act, 1994, s. 31(4).  
9 Criminal Justice Act, 1994, s. 31(5).  
10 Criminal Justice Act, 1994, s. 31(3).  
11 Criminal Justice Act, 1994, s. 31(6).  
12 Criminal Justice Act, 1994, s. 31(8). Cp. Larceny Act, 1916, s. 33(2)(c), as inserted by Larceny Act, 1990, s. 3.  
13 Directive 91/308/EEC, Article 1. Cp. Vienna Convention, Article 3(3), Strasbourg Convention, Article 6(2)(c).  
14 Cp. O'Leary v. Attorney-General [1995] 1 I.R. 254, Supreme Court.  
15 Four sets of such Guidance Notes have been issued, covering Credit Institutions (Banks and Building Societies), Financial Institutions (other entities supervised by the Central Bank), Stockbrokers, and Insurance and Retail Investment Products.  
16 Cp. Directive 91/308/EEC, Article 1.  
17 Cp. Directive 91/308/EEC, Article 12.  
18 The Criminal Justice Act, 1994 (Section 32(10)(a)) Regulations, 1995, S.I. No. 104 of 1995, extends the scope of s. 32 to (i) any person in the State carrying on as a principal activity any of the operations specified in the next footnote other than money broking, (ii) an investment company authorized under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, S.I. No. 78 of 1989, (iii) a management company of a unit trust scheme authorized under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, S.I. No. 78 of 1989, (iv) a management company of a unit trust scheme authorized under the Unit Trusts Act, 1990, (v) an investment company authorized under Part XIII of the Companies Act, 1990, (vi) a general partner of an investment limited partnership company authorized under the Investment Limited Partnership Act, 1994, and (vii) an insurance broker or agent for the purposes of the Insurance Act, 1989.  
19 These are (ii) lending (including consumer credit, mortgage credit, factoring with or without recourse and financing commercial transactions, including forfaiting), (iii) financial leasing, (iv)

money transmission services, (v) issuing and administering means of payment such as credit cards, travellers' cheques and bank drafts, (vi) guarantees and commitments, (vii) trading on own or customer's account in respect of money market instruments (cheques, bills CDs etc.), foreign exchange, financial futures and options, exchange and interest rate instruments and transferable securities, (viii) participation in share issues and services related thereto, (ix) advice regarding capital structure, industrial strategy and related questions, and advice and services regarding mergers and the purchase of undertakings, (x) money broking, (xi) portfolio management and advice, (xii) the safe keeping and administration of securities, and (xiv) safe custody services.  
20 Criminal Justice Act, 1994 (Section 32(10)(b)) Regulations, 1995, S.I. No. 105 of 1995.  
21 Paula Read, Money Laundering - Industry Guidelines for the Financial Sector (1996) 2 Comm. Law Pract. 67 at 68.  
22 Ibid., p. 69.  
23 Cp. Directive 91/308/EEC, Article 3(1).  
24 Cp. Directive 91/308/EEC, Article 3(2).  
25 Criminal Justice Act, 1994, s. 32(3), and cp. Directive 91/308/EEC, Article 3(6).  
26 Read, loc. cit., at 69.  
27 Criminal Justice Act, 1994, s. 32(4), and cp. Directive 91/308/EEC, Article 3(2), which specifies the amount as ECU 15 000.  
28 Criminal Justice Act, 1994, s. 32(5), and cp. Directive 91/308/EEC, Article 3(5).  
29 Read, loc. cit., at p. 69.  
30 Criminal Justice Act, 1994, s. 32(6), and cp. Directive 91/308/EEC, Article 3(7). The following countries have been prescribed for this purpose: Australia, Canada, the Channel Islands, Hong Kong, Iceland, the Isle of Man, Japan, New Zealand, Norway, Singapore, Switzerland, Turkey, and the United States: see Criminal Justice Act, 1994 (Section 32(10)(d)) Regulations, 1995, S.I. No. 106 of 1995.  
31 Criminal Justice Act, 1994, s. 32(7), and cp. Directive 91/308/EEC, Article 3(3). The amounts there specified are an annual total of periodic premiums not exceeding ECU 1 000, or a single premium of ECU 2 500.  
32 Criminal Justice Act, 1994, s. 32(7), and cp. Directive 91/308/EEC, Article 3(4).  
33 Criminal Justice Act, 1994, s. 32(8), and cp. Directive 91/308/EEC, Article 3(8).  
34 Criminal Justice Act, 1994, s. 32(9), and cp. Directive 91/308/EEC, Article 4.  
35 Read, loc. cit., at p. 70.

36 Bankers' Books Evidence Act, 1879, as amended by s. 131 of the Central Bank Act, 1989.

37 Cf. Proceeds of Crime (Northern Ireland) Order, 1996, Articles 45(5) and 46(3). These provide that a person shall not be guilty of acquiring, possessing or using the proceeds of crime, or assisting another to retain those proceeds, if he discloses the act he proposes to do, that would otherwise constitute one of those offences, to the police in advance, and does it with their consent, or if he afterwards discloses his having done the act on his own initiative, and as soon as it is reasonable for him to do so. Furthermore, Article 44(1) only requires a person who becomes aware of the money laundering of the proceeds of drug trafficking to report his suspicion to the police "as soon as reasonably practicable" thereafter, which allows some leeway for a person who does not want to report immediately for fear of prejudicing subsequent attempts to trace the beneficiaries of the money laundering. S. 57(1) of the 1994 Act contains no such phrase.

38 Criminal Justice Act, 1994, s. 57(1), Directive 91/308/EEC, Article 7.

39 Criminal Justice Act, 1994, s. 57(2), Directive 91/308/EEC, Article 10.

40 Read, loc. cit., p. 71.

41 Ibid.

42 Cp. Directive 91/308/EEC, Article 11.

43 Criminal Justice Act, 1994, s. 57(7), and cp. Directive 91/308/EEC, Article 9.

44 Criminal Justice Act, 1994, s. 57(4).

45 Cf. Proceeds of Crime (Northern Ireland) Order, 1996, Article 44(2), (9) and (10).

46 Drug Trafficking Act, 1994, s. 52, Proceeds of Crime (Northern Ireland) Order, 1996, Article 44. The reason why the duty of disclosure has not been extended in the U.K. to other criminal activity is that to do so would require the disclosure of foreign tax evasion and exchange control offences: Gautam Bhattacharyya and Emma Radmore, Fighting Money Laundering - a United Kingdom Perspective, in Money Laundering Control, Barry Rider and Michael Ashe, eds., p. 101, at 114.

47 Ibid.

48 Cp. Directive 91/308/EEC, Article 8.

49 Criminal Justice Act, 1994, s. 58(3).

50 Criminal Justice Act, 1994, ss. 57(5) and 58(4).

51 Criminal Justice Act, 1994, s. 63(4).

52 Criminal Justice Act, 1994, s. 63(5).

53 Criminal Justice Act, 1994, s. 63(7).

54 Criminal Justice Act, 1994, s. 63(8).

## Tax Implications of Renting a Room in the Distillery Site

Married members of the Library who might be interested in taking a room in the Distillery development but would find the rent a strain at this stage of their practice may not be aware that if their spouse has sufficient income in their own right, the barrister spouse may be entitled to claim the benefit of the Double Rent Allowance as a tenant.

If the Double Rent Allowance creates a loss for the individual, this loss can be relieved against the income of the spouse by way of claim under Section 307 of the Income Tax Act 1967.

It is most important to note that you can only set the tax adjusted loss off against the spouse's income where husband and wife are either jointly assessed or have applied for separate assessment. Members are advised to raise these matter with their accountant for further details.

*John Dowling, Director, Bar Council*

Presentation to the Bar Council of the Tricolour which flew over the Four Courts at the time of its bombardment in 1922.



**Mrs Maureen Conway, daughter of Mr. P. O'Reilly, a member of the anti-treaty forces who took possession of the Tricolour after the bombardment of the Four Courts in 1922, presenting the flag to Mr. James Nugent, S.C., Chairman of the Bar Council on the occasion of the bicentenary of the Four Courts.**

## Successful Start to Law Library Soccer Season

After the disappointments of the Portugese tour the Law Library Soccer Club had a more successful end to last season. This year started with the regular international fixture against the Northern Ireland Bar and we were keen to avenge our defeat in Belfast last year.

Although without the service of key players such as Seamus Woulfe and Colman Cody we were confident that the club's youth policy would produce enough talent to plug the gaps.

As this was Derek Kenneally's last match as club coach greater than usual attention was paid to his pre-match team talk and we proceeded to assiduously implement his tactics. This somewhat unusual approach paid off handsomely and we found ourselves up by two goals to one at half-time due to goals from Fergal O Duibhaill and team captain Micheal O'Higgins.

The second half was deteriorating into stalemate when some inspired substitutions produced a flurry of goals. A through ball from club President Killian McMorrow, that many said reminded them of Liam Brady at his best, set John McNally up to score with his first touch of the game.

The Library's fourth goal marked a landmark in Aidan Doyle's eight season career with the club. The

stylish centre-half pounced with twenty minutes remaining to score his first goal in representative football. This helped him to earn the 'man of the match' award.

However the crowd, estimated by some as being perhaps twenty stalwarts, were there to be entertained. A collective decision was therefore taken to fake a collapse and produce a tense nailbiting finish. The Northern comeback began with a headed goal. Some scoundrels were

unkind enough to suggest that Tom Rice had scored his first own-goal of the season. The reality was of course that the North's towering midfielder Liam McCollum was the scorer. A third Northern goal arrived five minutes from time. The Library did enough to stop any further goals and a collective sigh of relief greeted the final whistle.

The season has started successfully.

*Dara Hayes, Barrister.*



**Team: Chris Meehan, Colm O Briain, Dara Hayes, Tom Rice, (sub, Des Mulhere, 65 min), Aidan Doyle, Oisin Quinn, Micheal O'Higgins (Capt.), Ross Maguire, Killian McMorrow (sub. Conor Kearney, 65min), Stephen Byrne, Fergal O'Duibhghaill (sub John McNally, 60min). Coach: Derek Kenneally; Manager: Michael Cush.**

# Book Reviews

## **The Four Courts: 200 years, Edited by Caroline Costelloe, Incorporated Council of Law Reporting For Ireland, £21.00**

This book is a welcome addition to the bookshelves of anyone interested in law or legal history in Ireland. Caroline Costelloe has admirably edited a superb selection of essays which reveal a rich tapestry of legal anecdotes and historical detail in the context of the celebration of the bicentenary of the Four Courts. Although the book is dedicated to the celebration of 200 years of the Four Courts, the chapter by Colum Kenny, and the first of two chapters by Edward McParland, impart a wonderful sense of the realities of legal practice before the grandeur of Gandon's building was made available as a site for the courts. The immediate predecessor to the present site of the Four Courts was, for example, a warren of lanes south of Christ Church Cathedral, interestingly known as Hell. There is some dispute as to the exact nature of Hell, whether it was a laneway or some cellars which opened off the laneway. In any event, there is agreement that it was crowded and unpleasant and made for an uncomfortable existence for their Lordships and those appearing before them. Across the river, the Benchers of the Kings Inns occupied the Blackfriars site vacated by the Dominicans on the dissolution of the monasteries. There they lived in chambers and kept commons, but by the middle of the 18th century they had ceased to use

them and they deteriorated rapidly to being an area of ill repute. The Benchers tried to sell the site to the Government but were ignored. The site was nonetheless taken over and the present Four Courts developed initially by Cooley and completed by Gandon was erected. For years afterwards, the Benchers petitioned for compensation but their calls fell on deaf ears.

Moving to more modern times, can any reader fail to be enthralled by the drama of Gerard Hogan's account of the habeas corpus application on behalf of Erskine Childers who had been arrested on 10 November, 1992, and charged with the unlawful possession of an automatic pistol contrary to military regulations. Childers was sentenced by the court-martial to be shot. The unsuccessful habeas corpus application was made to the Master of the Rolls, Sir Charles O'Connor, who accepted Hugh Kennedy's argument that a state of war existed and the Provisional Government was entitled to take appropriate measures including the application of the full rigours of martial law. While the application stayed the execution until it was completed, Childers was shot the following morning despite the lodgment of an appeal which duly came on for hearing on 5 December to be struck out on application from Timothy Sullivan who was later to succeed Hugh

Kennedy as Chief Justice.

The precise circumstances leading to the emergence of the Law Library are not clear. It existed for some time before the subscribers to the Library established the Library Committee in February 1816. The Bar Council was a later invention, not seeing the light of day until June, 1897. Tomas Clancy reviews the emergence of the Bar's organisation in the nineteenth century. The pre-occupations of the Library Committee with 'lost' books and unpaid subscriptions seem little different than today. In the 1830's, the rebuilding work of the Commissioners of Public Works led to the creation of a new Law Library which existed until 1893 and was described thus "only those who have occasion to wait and visit it can have any idea of the wretched character of the accommodation in which the Bar have hitherto had to study their briefs and make up their case... it was close, dark, depressing, stifling in summer and freezing in winter and it had not even the advantage of giving sufficient seating accommodation to those who wished to read their work"

This brief review in this short space cannot do justice to the scope and scholarship of the fourteen chapters assembled by the editor. Buy it for Christmas! You have a treat in store.

John Dowling, Director, Bar Council

## **Criminal Chaos- Seven Crises in Irish Criminal Justice by Paul O'Mahony Round Hall, Sweet and Maxwell**

This book is well written and easy to read. It contains critical analysis of how criminal activity has adversely affected the criminal justice system in Ireland, over the last thirty years, and the inadequacies of the system in dealing with crime. The author has selected seven areas of crisis

and they include civil liberties, illicit drug trafficking, imprisonment, the Gardaí, violence, sexual crime and accountability.

In the context of civil liberties, the suggestion by the author that sureties or bail persons be made responsible for the good behaviour of the accused while on

bail would no doubt reduce the number of offences committed by persons while on bail. The District Court disposes of over ninety percent of all criminal offences each year and an increase in its criminal jurisdiction, particularly in its sentencing powers, now limited to two years, would obviate the necessity for bail in some cases at least because of special trials.

The author gives a comprehensive account of the drugs crisis in Ireland and the various ways it has affected the lives of many people by death and addiction and increased the level of crime and acts of violence. He suggests that priority be

given to "Harm Reduction Policies" so as to reduce personal and social harm rather than eliminating drug use itself. Any attempt at reducing drug-trafficking must give attention to economic, social and cultural factors as well as the enforcement of the Misuse of Drugs Acts particularly against importers and suppliers of illegal drugs.

In the author's examination of the Irish penal system he refers to the problem of severe overcrowding, shortage of prison places and how the "revolving door syndrome" has made imprisonment virtually meaningless for all involved in the process. The removal of responsibility for prisons from the Department of Justice to a statutory board should improve the management and administrative system for prisons.

Many of the problems facing the Gardai both in the fight against crime and internally as regards complaints and representative association problems are detailed in this book. The task of the Gardai in the 1960's is compared with that of the 1990's. Crime is a complex matter and the Gardai are the major players in its prevention and detection. The upward trend in serious and violent crime in recent years presents them with a major problems. To be successful in the fight against crime

they will have to maintain the co-operation and support of the public. In this context public response to the monthly Crimeline programme appears to be positive. Recently they have had remarkable success in the investigation of a number of serious crimes. As stated by the author, many of the recent organisational reforms including the new command structure and technical advances have not yet translated into obvious practical improvement.

The chapter on sexual crime containing many factual accounts of horrific abuse of women and children makes it clear to the reader that the criminal justice system has, in the past, failed miserably in dealing with this terrible abuse. In particular, the abuse of children within the family where the abuser was protected under the guise of "family matters" or "no complaint made", or the abuse of children in places purporting to be institutions for "child care" reminds the reader in clear and unambiguous terms of the magnitude of this problem. How correct is the author when he states "A superior system of legally improved standards and strict intrusive mechanisms for supervision will have to become the order of the day". The Domestic Violence Act 1996 is one step, at least, in this direction.

The author is very impartial and honest in his criticism of the system. No one group in the administration or operation of the whole system is singled out. He points the finger at the faults and failures in each area and recognises merit where it is deserved.

Finally, the book contains several factual accounts of serious crimes and in particular crimes of violence in Ireland over the last thirty years. It analyses the causes and consequences of crime and any related crime in that period. The author makes many suggestions for improving the system which would appear to be logical and meaningful. The book should prove very useful for sociology and criminal law students and will, no doubt, be of great benefit to a whole range of people such as lawyers, the Gardai, prison officers, social workers, welfare officers, health board employees and many others whose employment is directly or indirectly concerned about criminal justice. It should assist them in examining the system that they themselves work in, for at the end of the day they are the people in prominent positions to bring about change for the better in the Irish criminal justice system.

*Michael Needham, Barrister*

## **CHRISTMAS VACATION ARRANGMENTS**

The Law Library will close at 5.30 on Friday, 20th December, 1996. It will re-open at 9.30 on Thursday, 2nd January, 1997. Book service will be available at the issue desk from 9.30 to 4.30 from the 2nd January until Monday, 13th January when normal service will resume with the commencement of Hilary Term.

We Wish all Members a Peaceful Christmas and Continued Success in the New Year.

## **A TEAM APPROACH TO IMPROVED LIBRARY SERVICES**

In response to the increasing need of the Bar to keep abreast of the most up to date developments in legal research, a strategic change programme has been undertaken by the Library Services Department.

The day to day operating of the Library is now the responsibility of two teams. The Services Team has overall responsibility for information research and book issue services. A Development Team takes responsibility for the processing and acquisitions of books and materials. While this term has been one of

transition, it is hoped that the coming year will bring a more tangible improvement in services to members. It is also envisaged that there will be greater involvement of members in the planning of new services and the fine tuning of existing services. This will be facilitated by forming user groups to provide the necessary feedback on the different areas of Library Services.

Members wishing to be involved in user groups can contact any member of staff in Library Services.

## **VALUATION TRIBUNAL JUDGMENTS**

The commercial CD-ROM services is now available. It provides a digest of all cases decided by the Tribunal from 1988- 1994.

## **NEW ARRIVALS AT THE INFORMATION DESK**

Westlaw, the main rival to LEXIS in America is now available on line at the Information Desk in the Library. It is available on a trial basis until the end of January, 1997, at a nominal cost. The service provides searching of all the Federal Reports and National Reporters together with Law Reviews and other commentary.

While staff at the Information Desk have found the software very user friendly, members are encouraged to avail of the service during this trial period in order to for us to decide whether to retain the service full time.

## **ENGLISH CASES AND EUROPEAN MATERIALS ON-LINE**

The Library currently receives the Law Reports, the Weekly Law Reports and CELEX (EU cases and legislation) on CD-ROM. J UST-IN is a new service which allows searching of material since receipt of the last CD.

## **DOMINION LAW REPORTS**

The CD-ROM services for this series is now available. This service provides searching of headnotes for the 2nd and 3rd series (1956 - 1983) and full text for the 4th series (1983 -) to date.

For the first time, members now have available to them the major commercial series of Canadian Law Reports. The Library already has the hard copy version of the official series for Canada Supreme Court and Canada Federal Reports.

*Paul Moloney, Services Team Leader*

# RETIREMENT TRUST PLAN

## Reminder to Members

The deadline for making contributions to your Plan if you wish to claim tax relief for 1995/96 is the 31st January, 1997.

You may claim full tax relief on contributions of up to 15% (20% for individuals aged 55 years or over ) of your Net Relevant Earnings (i.e. Income from non-pensionable employment plus net profits from profession less business related capital allowances and personal interest payments).

## *Thinking of Joining?*

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- It has been designed for and is exclusive to members of the Law Library.
- The Plan directly invests 97.5% of every contribution you make towards building your Retirement Fund. This is notably higher than some Plans where a small percentage of your first year contributions may well be all that's invested.
- Flexibility to increase, decrease, miss or even temporarily cease contributions without any penalties.
- Members have a choice of four funds, a Managed Fund, a Cash Fund, an International Equity Fund and a Fixed Interest Fund.
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