The Bar Review

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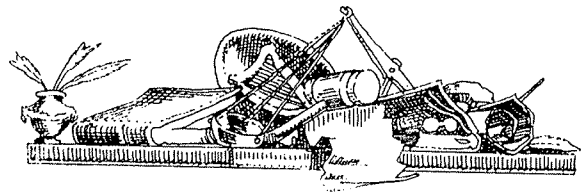
Developing The Law Library



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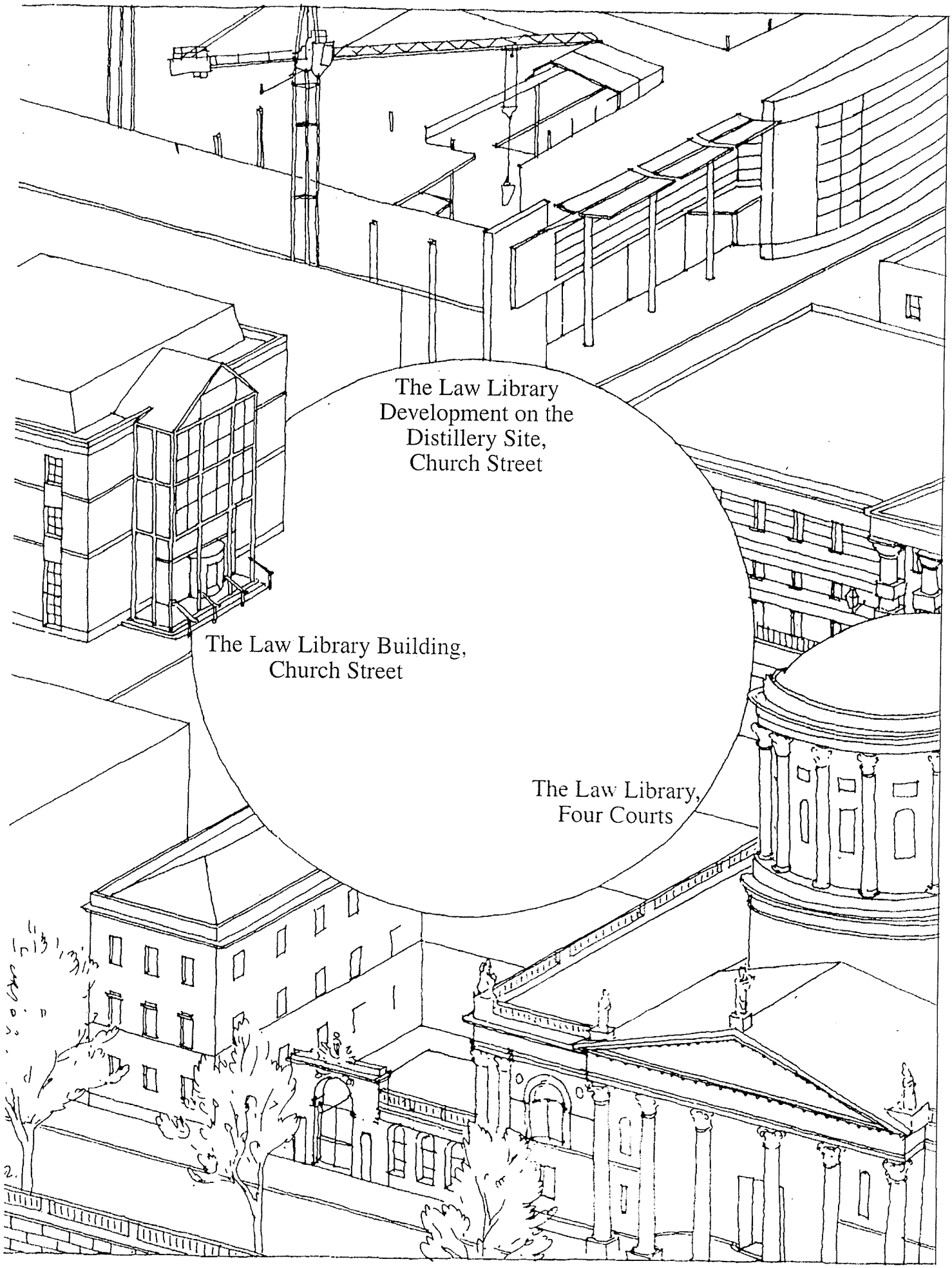
The Law Library
Development on the
Distillery Site,
Church Street
The Law Library Building,
Church Street
The Law Library,
Four Courts

Developing the Law Library

The completion of the Law Library's development on the Distillery Site on Church Street at the end of this year will mark a watershed in the development of the Bar. It will create a legal precinct for an area embracing the Four Courts, Chancery Street, Arran Square, the existing Church Street Law Library Building and the new development itself and it will herald a new era for the Bar in its provision of first class services to its members and their clients.

The new development will have three essential sections. The back section of the old warehouse looking over Bow Street and Smithfield will rise to 4 floors and contain the bulk of the 175 barristers rooms. This section will be ready for occupancy by October of this year. The front section looking out over Church Street will rise to two floors and contain the Arbitration Centre and consultation space. The remaining section is a new two-storey construction bordering May Lane and Church Street and will contain the entrance lobby, a restaurant, retail space and a Library and Legal Research Centre. The latter two sections of the development will be ready for occupancy by January, 1998.

The Barristers' profession has always been synonymous with the Law Library in the heart of the Four Courts. The original rationale of the Law Library was to avail of economies of scale by pooling the cost of commonly required professional services and to benefit from the well of professional support that collegiate organisation provides. This rationale will still hold true with the new development which provides a unique opportunity and challenge for the Bar. It presents the opportunity to adapt these traditional concepts of pooled resources and collegiality, which are unique to this unified, autonomous profession of sole practitioners, while continuing to provide the best possible service to clients in light of technological developments and market changes.

The Bar Council is confident that the new development bears testimony to the commitment and ability of the Bar to grasp that opportunity and meet those challenges in addressing its client's needs for the future.

The new development will mean that for the first time since the founding of the Law Library there will be a general seating and library space for members at a remove from the Four Courts; for the first time all the membership of the Bar will, regardless of physical location, be able to access the same suite of electronic services through the "virtual law library"; also for the first time the Bar will own its own customised Arbitration Centre and state of the art facilities for conferences, seminars and continuing education programmes.

Each of these events on their own would constitute a significant development for the Bar. In their totality they represent a revolution in the concept of the Law Library and in the role of the Bar Council in the delivery of managed services to members.

The new Centre is planned to provide long term strategic benefits for members to ensure that they continue to deliver first class legal services to their clients. As well as leading to a reform of the methods of service delivery to members the new development also provides a timely opportunity to revisit the 1995 Proposals for Reform to assess developments to date and address initiatives which are outstanding. The Bar Council Review Group, under the chairmanship of Frank Clarke, Senior Counsel, has undertaken to carry out such a review of Bar Council structure, operation and policy. This Review invites submissions from interested members and will report to the Bar Council in June.

The new development on the Distillery Site is both a result of, and a catalyst for, informed and focused strategic planning by the Bar Council in its service of members needs and clients requirements. The benefits of such planning are concretely reflected in the new development. Other benefits of such long term strategic planning are less immediately tangible but none the less valuable for that.

An effective Bar Council structure which anticipates opportunities, identifies goals, invests resources and monitors performance will ensure that the Bar will be appropriately positioned in order to continue to provide its clients with a first class service into the 21st century.

The Future of Irish Legal History

The Irish Legal History Society celebrates its 10th anniversary this year. It is seen by the Society as a fitting time to review its achievements to date and plan for the future. A key aspect of such planning is a drive to increase membership to facilitate the Society in publishing its annual scholarly publications and to undertake other initiatives. One such planned initiative is the Oral History Project which will seek to enable more senior members of the legal profession to record recollections of their careers on tape. In addition, the Society will publish "The Bulkies: Police and Crime in Belfast, 1800-1865" by Dr. Brian Griffin later this summer. At the Society's AGM to be held in Belfast on 7th October, 1997, the Society's President, Mr. Daire Hogan, will deliver an address on Richard Robert Cherry, Lord Chief Justice of Ireland, 1913 -1916.

Annual membership is £35.00. For queries, contact: Prof. W.N. Osborough, Law Faculty, UCD.

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Society for the Reform of Criminal Law – 10th Anniversary Conference

27th July-1st August, 1997
Covent Garden Conference Centre,
London

A series of lectures and workshops will consider the following issues:

Organised Crime
Drug Trafficking
Terrorism
Money Laundering

Conference Fee: £350 to include opening reception, all business sessions, lunches, farewell dinner, social events, conference literature and pack. Contact: Jeanette Crosby 00 44 171 722 9731

Nominations for Bar Council Elections to be received by 2 pm on Friday 27th June.

In accordance with Article 23 of the Constitution for the Bar of Ireland, there will be an election in July to fill five vacancies on the Senior Panel and five vacancies on the Junior Panel of the Bar Council. Nominations are invited for each panel. Each nomination should have the name of a proposer and a seconder and the written consent of the nominee.

All nominations should reach the Bar Council office by 2 pm on Friday, 27th June. Polling shall commence on Friday, 4th July at 10 am and conclude at 3 pm on Friday, 11th July. Polling shall take place in the Library from 10 am to 4.30 each court day between those dates.

Members not on the Register of Postal Voters and who wish to case their votes by post may apply to John Dowling, Returning Officer, Bar Council office, in order to be placed on the Register at any time up to commencement of polling on 4th July.

The following elected and co-opted members, having completed their terms of office, are eligible for re-election.

SENIOR PANEL
Gerard Durcan SC
Patrick Hanratty SC
Patrick McCarthy* SC
Conor Maguire SC
James Nugent SC
James O'Driscoll SC

JUNIOR PANEL
Kevin Cross*
Patricia Dillon*
Isobel Kennedy
Eamon Leahy
Cathy Maguire*
Sara Moorhead
Pater Somers
David Sutton

co-opted under Rule 28, Constitution for the Bar of Ireland.

Conference on the Evidence of Children

Date: Sat. 14th June 1997

Time: 10.00am

Venue: Kings' Inns

Keynote speaker: John Spencer, University of Cambridge.

Contact: Nuala Jackson

Cont'd on page 310

Compensation for Catastrophic Injuries

Anthony Kidney, SC

There can be no doubt that advances in modern medicine have led to an ever increasing number of injured persons surviving even the most horrendous accidents. Emergency health care is keeping injured persons alive in the immediate aftermath of an accident as well as prolonging the life expectancy of those who survive the first few years post-accident. These increases in life expectancy allied to the cost of providing specialist care have led to a rapid increase in the value of certain cases.

The History of Catastrophic Injuries Compensation

The Hughes case was the first case of paraplegia heard in the Irish Courts in 1946. The jury awarded the plaintiff a sum of £20,570 damages in what was apparently the highest sum ever awarded in a personal injury action here, or in the United Kingdom, at that time. The case was appealed and settled for a lesser sum.

Until the abolition of juries in personal injuries actions in 1988 many claims of this kind were appealed to the Supreme Court, where, if the appeal was allowed, the Court would invariably direct a retrial of the appropriate issues before another jury. It is therefore difficult to accurately analyse what occurred in many of these cases during that period.

Murray -v- John Sisk & Son (Dublin) Limited[1], involved a case of paraplegia where the jury award was £41,630. Of that sum £25,000 was in respect of pecuniary loss leaving a sum of approximately £17,000 attributed to general damages. The Supreme Court refused to interfere with the award, notwithstanding the view that the level of general damages was higher than what would have been awarded if the Court itself had been called upon to assess the damages.

In a subsequent Supreme Court decision of *Doherty -v- Bowaters Irish Wallboard Mills Limited,*[2] the Court ordered a retrial on the issue of damages where the jury had assessed overall damages at £72,500 of which general damages were thought to have been £34,500. The plaintiff at the date of the accident was an unmarried 33 year old with a spinal injury at the level of C5. His mental functions had not been impaired but he was in every sense a complete quadriplegic. His life expectancy would then have been about 38 years and had been reduced by a quarter due to his injuries.

The 1970s ushered in a period of very high inflation, and significantly higher awards. In *Synnott -v- Quinnsworth Limited And Others*,[3] the Supreme Court overturned a jury award of £1,484,591. Included in that figure was a sum of £800,000 for general damages.

In *Cooke -v- Walsh*,[4] the Supreme Court held that an award by a judge sitting without a jury of £757,538, was excessive and ordered a new trial on damages under the headings of loss of wages and cost of future care and general damages. In his judgment Mr Justice Griffin noted that the plaintiff had a mental age of a one year old child and described him as having only a mild awareness or appreciation of his condition due to the severe brain damage sustained in the accident. The judge expressed the view that the general damages figure of £125,000 was excessive in that the plaintiff's condition could not be compared with that of a quadriplegic.

In another Supreme Court case, *Reddy -v- Bates,*[5] the Court imposed a so called limit on general damages in catastrophic injury cases. The jury had awarded general damages to date of £100,000 and future general damages of £150,000. The Supreme Court had, by consent of the parties, agreed to assess the damages and the jury award of £551,354 was reduced to £400,354. Of that item the Court reduced the general damages to £50,000 to date and £70,000 for future general damages, giving a total of £120,000.

Recent Awards In General Damages

I have already referred to the three landmark cases in the early 1980s, where the Supreme Court established many of the guidelines used in assessing damages for catastrophic injury.

In referring to the sum of £150,000 for general damages, Chief Justice O'Higgins in *Synnott -v- Quinnsworth Limited* stated:

> "General damages in a case of this nature should not exceed a sum in the region of £150,000. I express that view having regard to the contemporary standards and money values, and I am conscious that there may be changes and alterations in the future as there have been in the past."

Thus, in relation to general damages, one can see how the trends have been such that by 1988, in *Conley -v- Strain* Mr Justice Lynch awarded £170,000 to cover both past and future pain and suffering. There was a further increase following the decision of Mrs Justice Denham in *Crilly -v- T & J Farrington Limited & Another*[6] when she gave an award of general damages to date of £60,000 and future general damages of £150,000, making in all a sum of £210,000.

Last year there were three High Court decisions where there were awards in the region of £200,000 for general damages. See *Thomas Hughes -v- Colm O'Flaherty & Another*[7] where Mr Justice Carney awarded a sum of £75,000 to date and £150,000 into the future making a total of £225,000 for overall general damages.

A sum of £200,000 in respect of overall general damages was awarded in *Connolly -v- Bus Eireann & Others*[8] and *Coppinger -v- The County Council Of the County Of Waterford And Others.*[9]

The Supreme Court has recently approved of this new maximum for general damages in the case of *Niamh Allen -v- Domhnaill O'Suilleabhain and the Mid Western Health Board.*[10] In that case, the Plaintiff was awarded a sum of £468,363 in the High Court which was set aside and reduced to £375,000 in the Supreme Court. The learned trial judge had awarded general damages to date of £80,000 and future general damages of £125,000 making a total of £205,000. In the Supreme Court Mr Justice Blayney referred to both the Connolly case and also the Coppinger case and stated:

> "The plaintiff's injury cannot be compared with the injuries in either of these cases. She is fully capable of living an independent life apart from not being able to bend down to tie her shoelaces. None of her faculties is impaired. This is not to minimise the fact that the plaintiff is suffering chronic back pain and is prevented by her condition from obtaining normal work. But the view of the Court is that when her situation is looked at in the light of the type of injuries which attract the maximum award of general damages, a fair and reasonable figure for her general damages is the sum of £125,000. "

The Courts do not appear to reduce the level of general damages in cases of this kind when dealing with older claimants. Rather the emphasis seems to be on the question of appreciation. That issue was dealt with by the Supreme Court in *Dunne -v- National Maternity Hospital.*[11] In that case the severe nature of the plaintiff's brain injury was such that he was thought to have had little or no appreciation or insight into his condition. The Supreme Court directed that in those circumstances it would be appropriate to reduce the level of general damages to a figure in the range of £50,000 to £100,000.

This was applied in *Lindsay -v- South Western Health Board, 1992*[12] when Mr Justice Morris awarded a sum of £325,000 to a lady who was in a vegetative state following a complication which developed during the course of a minor operation. The trial judge chose a middle figure in the range previously set by the Supreme Court in the Dunne case, and an award for overall general damages was made in the sum of £75,000.

Multipliers

Many practitioners will be very familiar with the application of multipliers in respect of claims for loss of earnings, and other headings of ongoing future losses. There are four main ingredients in the mathematical calculation of a multiplier, as follows:

1. the real rate of return on which the entire formula is calculated.
2. the period of years for which the income stream is to be provided from both interest earned and capital distributed.
3. whether tax should be taken into account in calculating a multiplier to be used. Thus, one regularly sees figures where there is no deduction for tax, a deduction for tax at 27%, and then a deduction at 48% being the current top band.
4. the age of the Claimant is relevant to a small extent usually because different age groups face different mortality risks over a given period.

The real rate of return on which actuarial calculations have been based in Ireland has been at 4% for many years now. With falling interest rates and relatively modest inflation, there may be an argument for reducing the yield somewhat.

This matter was considered in the case of *Damien Ward -v- Thomas Walsh.*[13] He declined to accept the Plaintiff's arguments in respect of the real rate of return, and on appeal to the Supreme Court the 4% rate was affirmed as the appropriate basis for Irish multipliers at that time.

However, one would have to be cautious with regard to future trends in this area. Certainly if the real rate of return on a variety of investments remained low for another year or two, one could envisage an attempt to re-open the argument.

I have had the assistance of Brendan Lynch, Actuary with Messrs. Seagrave-Daly & Lynch, in preparing a schedule of actuarial figures, and which are set out below. They have been calculated on the basis of a yield of 4% for a 20 year old male. There are figures starting at five years and going up in five year increments up to thirty years, and thereafter every ten years. Thus, the sixty year figure would be projecting an 80 year life span for the 20 year old male, the subject of this exercise.

The three figures given for each period cover in ascending order the appropriate multiplier where there is zero tax, tax at 27%, and tax at 48%.

I understand that if the yield were in the future to be reduced from 4% to 3%, this would have the effect of increasing the multiplier by approximately one category, i. e. the present multiplier given for the 27% tax band would then approximate the new 3% rate for zero tax. One can see how this would have quite a significant impact for actuarial calculations spread over the longer periods referred to in the schedule.

For the reasons stated, this schedule is not intended to be of general application,

and in particular the age of the Claimant is relevant to a certain extent. The older the Claimant the more likely that for a given life span an event will occur which will affect mortality. Thus, for comparison sake, an actuarial figure for ten years for a 60 year old male would be about 8% to 10% less than for a 20 year old male. The specific figures for the 60 year old are as follows: zero tax – 391, 27% – 410, 48% – 425.

Sample Actuarial Multipliers

(Examples below are for a 20 year old male)

	5 yrs	10 yrs	15 yrs
Zero Tax (a)	236	429	587
Tax @ 27% (b)	242	451	631
Tax @ 48% (c)	247	469	668

	20 yrs	25 yrs	30 yrs
Zero Tax (a)	716	821	906
Tax @ 27% (b)	786	918	1032
Tax @ 48% (c)	846	1006	1148

	40 yrs	50 yrs	60 yrs
Zero Tax (a)	1029	1100	1131
Tax @ 27% (b)	1207	1320	1375
Tax @ 48% (c)	1382	1544	1630

Section 5 of the Finance Act, 1990

It often takes a landmark case to bring about legislative change, and also perhaps more importantly a change in public and judicial attitudes. One such case was that of *Dunne -v- National Maternity Hospital,*[14] to which I have already referred.

In this case, the facts and case history of which are well known, the infant Plaintiff's parents became concerned after settlement as to the real nett benefit after tax of such income as would accrue in favour of the infant Dunne. A campaign was mounted in the media that to tax the earnings of someone in those circumstances was wrong, and that the law needed to be changed. The efforts of the Dunnes proved successful and led to the introduction of Section 5 of the Finance Act 1990.

Essentially this treats income from the investment of an award as being free of tax where the Claimant is unable to maintain himself by virtue of the injuries sustained in the action to which the award relates. It is obvious from the schedule of multipliers that in catastrophic injury cases, this legislation results in a significant benefit to both Plaintiffs and Defendants.

There may, however, be marginal cases where someone is capable of some light work such as part time work or work at home with a computer etc. This poses a dilemma for both the plaintiff's and the defendant's legal advisors. The Defendants will be hoping to get the benefit of the lower multipliers, unless of course the value of the alternative work may exceed the benefit of the reduced multiplier. On the Plaintiff's side there is the prospect of losing tax free status on the income from the general damages element of the claim.

The position of the Revenue Commissioners is, as always, uncertain until the conclusion of a case. At that stage it may in fact be too late for a Plaintiff, particularly if there has been a settlement as opposed to a Court finding. Usually where a Judge has heard the entire case and applies a Section 5 multiplier, it is generally considered unlikely that the Revenue Commissioners would have any real basis for challenging that view. Nevertheless they would be perfectly entitled to seek to do so since they are not a party to the main action.

One of the Judges usually hearing personal injury actions dealt with this dilemma and gave a decision setting out figures, first on the basis that the Revenue Commissioners would agree that it was a Section 5 case, and secondly different figures if they did not do so. Having given his Judgment he adjourned the making of a formal Order for a period of weeks to allow an application to be made to the Revenue Commissioners.

Life Expectancy

I have already referred to the advances in modern medicine such as to yield greater life expectancy for the unfortunate victims who suffer catastrophic injuries and the resulting higher damages in such cases. However, in the case of disability caused by brain injury, the position seems to be entirely different. In those cases, usually patients are far more mobile and do not tend to suffer respiratory difficulties. They may not necessarily suffer from incontinence, and the risk of urinary tract infection and kidney failure will not automatically be factors as they would be, for instance, in the case of paraplegia and quadriplegia. These factors affecting quality of life expectancy influence also the level of damages awarded.

The history of medical complications from the date of the accident up to the date of trial is another important element in considering life expectancy, and it is important that a careful record of these events is kept by doctors examining on behalf of Defendants.

A case entitled *Stokes -v- Printech 1993,* settled for £1.3million. The Plaintiff was a complete quadriplegic who, unusually, suffered dreadful pains at the extremities of her limbs. Nearly a quarter of a million pounds had been spent on adapting the family mansion to care for her needs. She was forty-one years of age and her legal advisors were arguing for a life expectancy of over twenty years. She died eight months after her claim was settled.

On the other side of the coin, there must be many litigants who settled their claims ten, twenty and thirty years ago for money which has long since run out. Economic factors and the advances in medicine were not anticipated by the courts, and these plaintiffs suffered accordingly.

In my experience, arguments as to life expectancy are vigorously contested in court on behalf of plaintiffs. The consequences of getting it wrong are self-evident and appalling. Not unreasonably, Judges tend to give the claimant the benefit of the doubt, within the limits of the evidence that is adduced before them.

Loss Of Earnings

Due to economic factors, there seems to be a consistent pattern of real increases in take home wages over the past few

years. One now comes across young people in their late 20s or early 30s who are earning very significant sums and who would have potential loss of earnings claims beyond that which we have seen to date. Certainly figures in the £500,000 to £1million bracket ought to be anticipated, although I imagine they will be fairly rare indeed.

Much has been said in the past with regard to *Reddy -v- Bates* deductions. No hard and fast rule applies, although it is probably fair to say that deductions generally fall in the category of between 5% and 15%.

Older Claimants who have an established earnings track record and a fairly certain future, may face little or no deduction. That was the position in *Hughes -v- O'Flaherty* where by virtue of the Plaintiff's occupation as an Agricultural Officer, and his age at 63, the trial Judge rightly concluded that there was little or no risk that he would not have continued up to retirement age.

The position with regard to younger claimants is sometimes less clear. Certainly one sees a trend emerging whereby Judges tend to balance out any deduction that might be given for contingencies as against the fact that there might have been promotion, change of occupation, or other reasons why a young claimant's salary might have increased beyond the norm. Thus, care should be taken not to automatically assume that a deduction will be achieved under this heading.

Housing

Traditionally a claimant who had restricted mobility such as a paraplegic or quadriplegic, would be allowed a sum in respect of the cost of putting an extension to an existing dwelling house. Historically, figures in the bracket of £20/£30,000 were allowed.

More recently, figures in respect of this heading of claim have increased substantially. The position where the claimant is young and is still living with the parents or other members of the family poses a dilemma for the courts. On the one hand, there is the definite need to have accommodation provided which will be suitable for the claimant and the carers, staff, etc. Usually a bungalow is required, and often the claim is presented on the basis of the cost of obtaining a suitable level site and building a new bungalow.

Even in rural areas this can cost a six figure sum. In this country little deduction seems to be made for the fact that a claimant would in any event have had to provide his or her own housing, or that at the end of the life of the claimant there would remain an asset. Usually there is the input of the parents family home in cases involving young plaintiffs.

Transportation

In some instances this can amount to a hefty claim. Much will depend on whether the claimant already had a car and would in any event have had to sustain the ordinary running costs of such a vehicle. In those circumstances, the court will normally allow only the additional costs of an estate car or a vanette, together with any additional ongoing running costs attributable to the disability.

In circumstances where there is one family car, and a spouse by virtue of his or her disability requires a second car, then virtually all of that additional cost may have to be borne by the Defendant.

Medical Expenses

The dispute with regard to hospital charges in road traffic cases continues. In virtually all cases where this is in issue, Judges who regularly try personal injury matters make Orders limiting payment of hospital charges to £100 per day. Those Judges who are not so inclined, take the view that their Order cannot bind a Hospital who is not a party to the action, and would usually make no Order.

The original case where this was argued was in the case of *Crilly -v- Farrington* to which I have already referred. Evidence was called during the course of the trial of witnesses from the hospitals who were seeking recovery of their account. However, they were not legally represented. At the conclusion of the action, Counsel for two of the hospitals appeared in Court, and following legal argument they were given liberty to have the matter tried as a separate issue within the main action.

Now the hospitals are attempting to resurrect this case, because it is seen as creating a legal precedent by a Judge who is now sitting in the Supreme Court. Many readers will be familiar with the ongoing wrangle in relation to this area of litigation, and I do not propose to refer to it further, other than to say that in cases of catastrophic injuries there would be very significant consequences if the hospitals were to succeed in maintaining their right to charge what they refer to as the economic rate.

It does not take a mathematical genius to calculate that hospital charges of £350 per day over a full year costed on a lifetime multiplier for a young claimant could give a capital value in the range of £2/£2. 5 million.

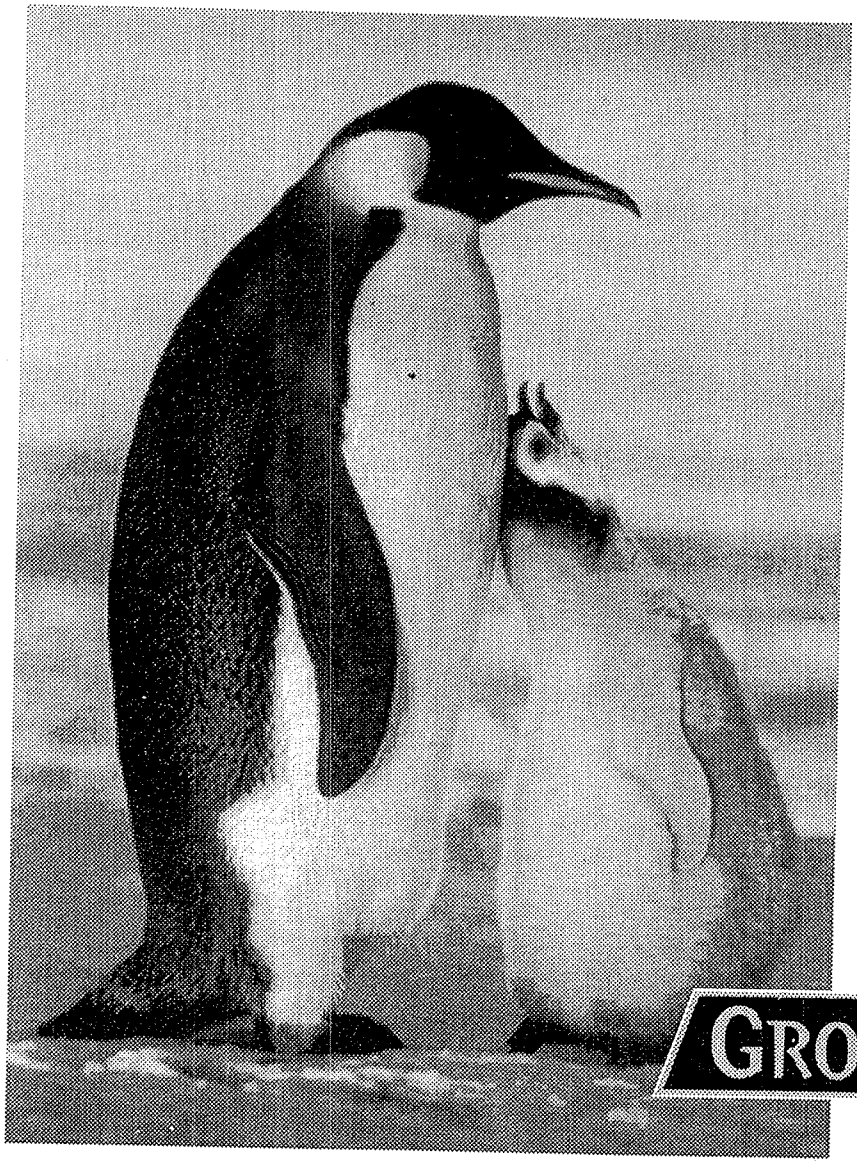
Whilst it is unlikely that such a large claim would materialise in the way that claims are currently presented to the Courts, there is nevertheless potential for fairly significant claims in respect of hospitalisation costs to date of trial, and then perhaps on a recurring basis for a few weeks every year, increasing as a claimant gets older.

Other medical expenses are generally not a major feature in the make up of catastrophic injury claims. Many of the necessary medications are provided free of charge by Local Authority Health Boards, or else subsidised to the extent that there is a limit on the amount that a claimant might have to pay on a monthly basis.

Aids and Equipment

Claims in this area vary from under six figures to over £300,000. It is usually in relation to these items that Defendants can have a realistic hope of achieving a significant discount at trial.

Persons such as those with a moderate degree of brain damage, but full mobility should not require any of this equipment. Ironically, an incomplete paraplegic may require more equipment than one might



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think, simply because they need it in order to achieve and maintain the moderate amount of mobility which they usually have.

Care

This is undoubtedly the most contentious area of modern compensation claims for catastrophic injury. Historically, little was awarded to even the most seriously injured, and the burden was left to be honourably taken up by ageing parents, a family member, or perhaps even a charity. It is perhaps a reflection of many of the changes in society that this is no longer regarded as an acceptable burden.

It is almost impossible to give guidelines as to the level of care which will be allowed in any particular case. At the lower level in, say, cases involving modest brain injury, the claimant may simply require a minder.

At the other end of the scale, severe brain damage often carries with it the disturbing side effect of severe aggression or other anti-social behaviour. The claimant may be fully mobile, but nevertheless requires round the clock care and attention by one or more burly carers.

It is in relation to the most seriously injured claimants that the amount and quantum of care becomes enormous. Currently the highest level of care which one sees in the worst possible cases runs into an annual sum in excess of £100,000. For a young claimant with a long life expectancy this can give a capital value in excess of £2million. In the U.K., Ms. Christine Leung was awarded £3.4million compensation in March 1994. She was then 37 years of age, and the cost of home care was calculated at £120,000 per annum.

The entitlement of a plaintiff to recover damages in respect of the cost of care is not confined to the actual incurred or anticipated cost of remuneration for professional carers or nurses. In *Doherty -v- Bowaters Irish Wallboard Mills Limited*[15], Mr Justice Walsh in a dissenting judgment on the issue of damages set out a view on the question of care which has been followed in most subsequent cases, At page 286 he states.

> "It is certain that the plaintiff will require attention. If he continues to live with his parents, the fact that his parents, even if able to provide the attention by their own efforts, might be willing to do so is entirely a chance, though it may well be a happy chance for the plaintiff; but, even if such a contingency is in the realms of probability for the limited period of the lifetimes of the parents, it does not follow that the plaintiff ought not to, or might not, reimburse them or remunerate them to the same extent as he would in the case of other attendants."

However in practice the remuneration allowed for family care may work out at a lower level than if an outside attendant is retained. In some instances the trial judge will apply the going rate for a care attendant, but allow a lower number of hours than might be required if the help was being provided by someone outside the family. In *Conley -v- Strain*[16] Mr. Justice Lynch stated:

> "For the 15 years commencing now the plaintiff's family will probably provide, over and above domestic help, paramedical attendance on the two days per week that the professional attendant is off duty. If provided on a professional basis that would cost £100 per week, as calculated in the immediately preceding paragraph, but I think that the plaintiff's family would provide it for £50 per week. "

A further example from the same judgment appears from the trial judge's reference to the costing of professional domestic live in help which he found would then have cost £226.70, but which he thought the plaintiff's family would provide for £100 per week.

Substantial Awards and Settlements

Following the abolition of juries, Ireland had its first £1million plus award in *Connolly -v- Strain 1988,* although after deduction for a seat belt issue, the nett figure came out at £916,000. From recollection, this case was regarded as setting a whole new pattern and thereafter many cases settled close to the £1million mark.

In 1992 *Crilly -v- Farrington* was fully contested and led to an award of £1.68 million. It subsequently settled outside the Supreme Court for £1.5million.

In *Best -v- Wellcome Foundation,* 1993, a settlement of £2.75 million was achieved on the retrial on the issue of damages. There were perhaps a number of significant features which were generally believed to have played a part in arriving at that settlement figure. Firstly, it had taken approximately twenty years to get the case into Court, and there was an enormous claim for care to date on behalf of Kenneth Best's parents. My recollection is that Mrs. Best was paid out a sum of nearly £500,000 for the services which she had provided over that period. Secondly, I believe there was a claim for exemplary damages.

In November 1994, in the case of *Harding -v- Murtagh,* a settlement was reached during the trial at £1.68million. There was an element of contributory negligence such that the full value of the claim would probably have been represented by a figure of approximately £2million.

In January 1995, a badly injured Italian lady settled her claim for £2.72million in an action entitled *Frigerio -v- Budget Rent-A-Car.* An unusual aspect of that case was that the cost of providing care in Italy was thought to be significantly higher than in this country.

In November 1995, a settlement of £2million was achieved in the case of *Torans -v- Conway.* There the Plaintiff was a quadriplegic in her 20s, but who had suffered a marriage breakdown post-accident leaving her with a child for whom additional care was required.

In January 1996, there was the decision to which I have already referred of Mr. Justice Carney in *Hughes -v- O'Flaherty And Anor.*, where a 63 year

Mr. Justice Carney in *Hughes -v- O'Flaherty And Anor.*, where a 63 year old former Agricultural Officer got a Decree of £1.6million. Subsequently the matter was appealed to the Supreme Court and settled for £1.35million.

In March 1996, in *Connolly v Bus Eireann And Another,* Mr. Justice Barr awarded an incomplete quadriplegic who was 20 years of age as of the date of hearing, a sum of £1.2million gross. There was a large deduction for contributory negligence, and I think that the net award was approximately half of that figure.

This article has attempted to set out the major developments which have occurred in recent years in Irish catastrophic injury awards or settlements. These claimants undoubtedly come within the most deserving category of people seeking compensation for personal injuries. It is perhaps ironic that they are (apart from fatal cases) the only category of Irish Personal Injury Litigation whose claim for general damages has effectively been capped. ●

1. 1965 Ir. Jur. Rep. 41
2. 1968 IR. p277
3. 1984 ILRM p523
4. 1984 ILRM p209
5. 1984 ILRM at p197
6. 1992, High Court (unreported)
7. Jan 1996 High Court (unreported)
8. unreported decision of Barr J on 29 January 1996
9. unreported decision of Geoghegan J delivered on 22 March 1996
10. Supreme Court 11 March 1997
11. IR 1989
12. Morris J. High Court unreported 1992
13. Unreported), a decision of Mr. Justice Lardner given on the 23rd June 1989
14. IR 1989 p 41
15. 1968 IR p277
16. 1988 IR p649

which to which he was a party, merely because his adversary was not. It is right enough that a verdict obtained by A against B should not bar the claim of a third party C: but that it should not be evidence in favour of C against B, seems the very height of absurdity"[10].

He went on to refer to the fact that

"a similar view has led the courts of the United States to take what might be described as a more robust view of issue estoppel, as a result of which a litigant will be estopped from litigating an issue which has already been decided against him"[11].

Keane J drew attention to the passages in the judgments in *Reamsbottom v Raftery* and *Lawless v Bus Eireann* which emphasised that the parties against whom the courts were in those cases refusing to make findings of issue estoppel had not been parties to the proceedings in which the decisions alleged to have been binding were made. He referred to the fact that if the finding in the Circuit Court had been 100% against the car owner in the instant case the plea of issue estoppel could not have been successfully raised against the car driver, who had his own proceedings pending in the High Court

He nonetheless held that the order of the High Court should be reversed and that the order giving liberty to serve the third party notice should be set aside. He summarised his overall approach to the case in the following passage:

"In cases of this nature the courts are concerned with achieving a balance between two principles. A party should not be deprived of his constitutional right of access to the courts by the doctrine of res judicata where injustice might result, as by treating a party as bound by a determination against his or her interests in proceedings over which he or she had no control. Res judicata must be applied in all its severity, however, where to do otherwise would be to permit a party bound by an earlier judgment to seek to escape from it, in defiance of the principle that there ultimately should be an end to all litigation and that the citizen must not be troubled again by a law suit which has already been decided.

The inherent jurisdiction to strike our proceedings as being an abuse of process should, as already noted be exercised only with great caution. In the present case, however, the only reason for instituting the present proceedings is to circumvent the final and conclusive judgment of the Circuit Court so as to put the tractor owner or his insurers in a more advantageous position, in both these proceedings and the High Court proceedings brought by the motorist. It would be difficult to imagine a clearer case of an abuse of process which calls for intervention by the court."[12]

It would seem, therefore, Keane J. decided both that the issue as between the tractor owner and the car driver was res judicata and that the attempt by the tractor owner to reopen the issue should be struck out as an abuse of process. In doing so he acknowledged that the element of mutuality traditionally required for the application of the doctrine of issue estoppel was absent. He also acknowledged that in this regard he was not following the decision in *Shaw v Sloan* where the strict application of the traditional doctrine of issue estoppel had resulted in a refusal by the Northern Ireland Court of Appeal to hold that an estoppel arose on a set of facts which could not be distinguished from those in the case he was deciding. Keane J. similarity declined to follow his own reasoning as a High Court Judge in an unreported decision in the case of *McGinn & Anor. V McShane & Anor*[13] which he delicately referred to as having been delivered *procul ab urbe.*[14]

The willingness of Keane J. to consider the question under the heading of abuse of process also marked something of a departure. That argument was firmly rejected by the Northern Ireland Court of Appeal in *Shaw v Sloan* and by Murphy J. in his ex tempore judgment in the High Court. His willingness to do so was however consistent with his approach to issue estoppel and his general willingness to consider substance rather than form.

If it is assumed[15] that the reasoning of the decision in *McCauley v McDermott* will be followed in subsequent Supreme Court judgments it may clearly have significant implications for the development of the law of issue estoppel and abuse of process in civil cases generally. In the specific context of road traffic cases the following propositions would seem to emerge clearly from it:

1. There is no privity between the driver and owner of a motor vehicle in the context of issue estoppel.

2. The driver or owner of a vehicle who has not been a party to proceedings in which there has been a determination of liability will not be precluded from pursuing the issue of liability afresh if he wishes to do so.

3. A party against whom there has been a clear determination of liability will not be permitted to Mitigate same issue of liability in subsequent proceedings even if the parties to the respective proceedings are not the same.

At least two issues still remain to be decided.

What is to happen if the finding in the first set of proceedings is an apportionment of liability? On the facts of this case what would be the position in the proceedings in which the car driver is Plaintiff if the decision on liability had remained 50/50 in the action between the owners of the respective vehicles? The logic of the Supreme Court decision would seem to suggest that the car driver could, at his election, either insist on having the issue of liability determined afresh or that the tractor owner should accept the apportionment in the first proceedings. This is something which may require to be clarified in an appropriate case.

Is a person bound by a determination of liability made against him in proceedings where he is the named party but the conduct and control of the proceedings

conduct and control of the proceedings are in the hands of his insurance company? In the case of *McGuinness v Motor Distributors & Anor;*[16] Barron J., as a Judge of the High Court, allowed a plea of issue estoppel in such circumstances on the basis that although the conduct of the proceedings may have been controlled by the insurance company it was nevertheless the individual who was a party to them. That decision would not seem entirely consistent with the reasoning of the Supreme Court in *Lawless v Bus Eireann*, and *Belton v Carlow County Council* and *McCauley v McDermott.* If the appeal goes to a hearing it may result in a further development and refinement of the law in this area. ●

1. Unreported Judgment 24th April 1997
2. The judgment was not noted by a stenographer and the only record of it is a note agreed between the parties
3. Hamilton C. J., Barrington J. and Keane J.
4. (1967) 1 A C 853 at p. 935
5. (1988) IR 44 referred to by Keane J at p. 8 of his judgment
6. (1982) N I 393
7. (1991) 1 IR 531
8. (1994) 1 IR 474
9. Unreported 25th February 1997
10. Jeremy Bentham Rationale of Judicial Evidence cited at page 18 of the judgement
11. page 18
12. pages 23 and 24
13. Unreported 18th
14. i. e. at Dundalk
15. A very considerable assumption to make about the likely fate of a decision of only three judges of the expanded Supreme Court
16. Unreported, 22nd October, 1996

Eurowatch

In the recent case of Buckley V. United Kingdom[1], the European Court of Human Rights considered the right of an individual to respect for his or her home under Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

Sarah Farrell, Barrister,

examines the case and considers its significance for members of the Irish travelling community in particular.

Article 8 of the European Convention on Human Rights and Fundamental Freedoms provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The right of an individual to respect for his or her home has not received a great deal of jurisprudential attention from the Convention organs in Strasbourg. In many applications brought in respect of alleged breaches of Article 8, complaints are directed at such aspects of the Article as the right to privacy and rights relating to family life, with the parameters of the right to respect for one's home remaining relatively undeveloped.

Judicial consideration of the right to respect for one's home

To date, the judgments of the European Court of Human Rights relating to respect for the home have established that the concept of "home" includes not only a person's private residence but also his or her professional premises: in the case of *Niemetz V. Germany*[2], the Court found that the search of a lawyer's office pursuant to a court warrant was carried out in accordance with law and, in the circumstances, was in the pursuit of a legitimate aim[3]. However, it was nevertheless held to constitute a breach of Article 8 on the grounds that the interference was disproportionate to the aim pursued and was unnecessary in a democratic society – the search impinged on professional secrecy and there were no domestic laws or safeguards governing the search of lawyers' offices.

In the leading case of *Gillow v. United Kingdom*[4], the applicants, a married couple living in Guernsey, challenged the restrictive licensing regime regulating the occupation of houses on the island. While working on the island, they had acquired a house but, subsequently, when they went to work elsewhere, the house was leased. When they returned to occupy it, they applied for the required licence, which was refused, and they were prosecuted in accordance with Guernsey law and convicted for unlawful occupation.

The Court accepted that there was an interference with the applicants' rights under Article 8, but found that the interference was in accordance with law and also that the legislation restricting residency on the island had a legitimate aim. However, the Court ruled that the manner in which the law had been applied to the Gillows violated Article 8: the measures taken (refusal of temporary and permanent licences to occupy their home, their conviction and the imposition of a fine) were disproportionate to the legitimate aim of the legislation.

Further, in the *Lopez Ostra*[5] case, the Court found that Article 8 was applicable to a complaint concerning "gas fumes, pestilential smells and contamination" emanating from a waste management plant operated by tanneries situated close to the applicant's home. While the Court recognised the need to balance the rights of the individual and the community, it held that the levels of nuisance experienced by the applicant were unreasonable and her right to respect for her home outweighed other competing interests.

In all of these cases, the Court recognised the relatively wide margin of appreciation which State authorities enjoy; nevertheless, the judges required that in pursuing their legitimate aims, States must act in accordance with law and, perhaps more importantly, may only interfere with the rights protected by Article 8 to the extent that such interference is "necessary in a democratic society" in pursuance of the objectives stipulated in paragraph 2 of the Article[6].

Recent case-law: Buckley v. United Kingdom

This aspect of Article 8 was further considered relatively recently by the Court in the case of *Buckley v. United Kingdom*[7] Mrs. Buckley is a gypsy, and the Court accepted that "[a]s far back as could be traced, the applicant's family have been gypsies based in South Cambridgeshire. She has lived in caravans all her life and as a child travelled with her parents in the area."[8] She was at

the time of the application living in a caravan with her three children in Willingham, South Cambridgeshire on a plot of land which she owns, having discontinued her nomadic lifestyle shortly before the birth of her youngest child.

The applicant's sister and brother-in-law purchased a single acre site in 1988 and were granted personal temporary planning permission for one living unit comprising two caravans. Later the same year, Mrs. Buckley was expecting her third child and was finding travelling with young children difficult; her sister invited her to stay on the site. Soon afterwards, the applicant acquired and moved her three caravans onto a small part of her sister's site. The applicant stated to the Court that she intended to resume her travelling lifestyle in the future and pass on the tradition to her children; nevertheless in the interim "settled" period, the two older children were attending a local school "where they integrated well"[9].

In December 1989, the applicant applied for retrospective planning permission for the three caravans on her site. She was refused in March of the following year on the grounds that:

1. adequate provision had already been provided for caravans in other parts of the South Cambridgeshire area and the Council was of the opinion that the area had reached "saturation point" for gypsy accommodation;
2. the planned use of the land contravened one of the aims of the local development plan, viz. to protect the rural countryside from all but essential development, given that the said use would "detract from the rural and open quality of the landscape"[10]
3. the road adjacent to the site was an agricultural drove road and, as such, was too narrow to allow two vehicles to safely pass.

In April 1990, the Council issued an enforcement notice requiring the removal of the caravans within one month and the applicant appealed against the notice to the Secretary of State for the Environment, which appeal was refused. Mrs. Buckley subsequently applied to the Strasbourg Court claiming a breach of Article 8 in that she was prevented from living with her family in caravans on land which she owned, and from following her traditional lifestyle as a gypsy.

Whether the applicant's caravans constituted a "home"

The respondent Government contested that none of the applicant's rights under Article 8 was in issue as "only a "home" legally established could attract the protection of that provision."[11] In considering this submission, the Court referred to the submissions of the applicant and the Commission to the effect that "there was nothing in the wording of Article 8 or in the case law of the Court or Commission to suggest that the concept of 'home' was limited to residences which had been lawfully established."[12] The Court also looked to its own judgment in the Gillow case[13] in which the applicants had:

> "...established the property in question as their home, had retained ownership of it intending to return there, had lived in it with a view to taking up permanent residence, had relinquished their other home and had not established any other in the united Kingdom. That property was therefore considered to be their "home" for the purposes of Article 8."[14]

On the facts of the present case, the Court found that Mrs. Buckley had bought the land with the intention of establishing her residence there and had lived on the site for almost eight years. Further, there had been no suggestion that she established or intended to establish another home at another location. Therefore, the Court held that the applicant had established to its satisfaction that the case involved her right to respect for her home.

The Court then examined whether there had been an "interference by a public authority" and found that the refusal of planning permission, which prevented her from living in her home, the serving of an enforcement notice requiring her to move her home and her subsequent prosecution for failing to do so, all amounted to such an interference.

This interference was further found to have been in accordance with law, and the applicant did not contest that the authorities had acted in pursuance of a legitimate aim. It therefore fell to the Court to determine whether the interference was "necessary in a democratic society".

Whether the interference was "necessary in a democratic society"

The applicant accepted that gypsies "should not be immune from planning controls but argued that the burden placed on her was disproportionate ...[stating that], seeking to act within the law, she had purchased the site to provide a safe and stable environment for her children and to be near the school they were attending."[15] She also submitted that, at the relevant time, the official site for gypsies situated not far from her land was not open and, since it opened, it proved unsuitable as there had been reports of crime and violence. It was not, therefore, an acceptable alternative, particularly for a single woman with children.

The respondent argued that planning laws were "necessary in a modern society for the preservation of urban and rural landscape", that they "reflected the needs of the entire population" and, accordingly, that a wide margin of appreciation was required. The Government submitted that it provided a quasi-judicial procedure enabling individuals to challenge planning decisions[16] and, further:

> "In so far as it was necessary to afford gypsies special protection, this need had been taken into account. The Government had provided legislation and guidelines requiring authorities involved in the planning process to have particular regard to the specific constraints imposed by gypsy life. Moreover, gypsies' accommodation needs were met by local authorities through the provision of authorised caravan sites and by advising gypsies on the prospects of planning permission for private sites."[17]

Further, the Government argued that the applicant had "sufficient alternative options open to her": she had been given a number of opportunities to apply for a pitch on the official site near her land, and the respondent denied the allegations of crime and violence made in respect of that site. In addition, the Government argued that there was a sufficient number of private sites available locally, many of which were owned by gypsies. According to the respondent, "[t]he true position was that the applicant had consistently refused to countenance living anywhere else than on her own land."[18]

The Judgment

The Court ruled that, as is well established in the Court's jurisprudence:

> "it is for the national authorities to make the initial assessment of the "necessity" for an interference, as regards both the legislative framework and the particular measure of implementation... Although the margin of appreciation is thereby left to the national authorities, their decision remains subject to review by the Court for conformity with the requirements of the Convention."

The Court noted that in respect of planning matters, it was not its function "to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases"[19] and the national authorities thereby enjoy a wide margin of appreciation. However, in deciding upon the sufficiency of the reasons relied upon by the respondent to justify the interference, the Court would take account of the importance of the right to respect for one's home to the applicant and her family.

The Court examined the domestic planning legislation and procedures, and considered the reports of two planning inspectors and the alternatives available to the applicant. In all the circumstances the Court held that the national authorities had not exceeded their margin of appreciation and, accordingly, there had been no violation of Article 8:

> "...the Court considers that proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under Article 8, and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The latter authorities arrived at the contested decision after weighing in balance the various competing interests at issue. ...Although facts were adduced arguing in favour of another outcome at national level, the Court is satisfied that the reasons relied on by the responsible planning authorities were relevant and sufficient, for the purposes of Article 8, to justify the resultant interference with the exercise by the applicant of her right to respect for her home. In particular, the means employed to achieve the legitimate aims pursued cannot be regarded as disproportionate."[20]

Comment

One of the questions raised by the Court's judgment in the Buckley case is the extent to which Irish law and policy is in compliance with the standards required under the Convention in respect of gypsies and other travelling people and their right to respect for their homes.

In theory at least, the provisions of the Housing Act, 1988, considered in conjunction with the procedural safeguards provided for in the Irish planning process, would appear to satisfy a Buckley-type situation.

Section 13 of that Act provides that a housing authority may provide, improve, manage and control sites for caravans used by persons "belonging to a class of persons who traditionally pursue or have pursued a nomadic way of life." This provision obliges housing authorities "to have regard to the needs of ...those in the travelling community who are living in unacceptable conditions but who do not wish to abandon their traditional way of life."[21] Further, the fact that housing authorities have been empowered "to meet the accommodation needs of those unable to provide for themselves imposes a corresponding duty on the authorities to make use of those powers where appropriate."[22]

The issue of the provision of suitable accommodation for travelling people is still a challenge to settled communities, despite this statutory recognition of their accommodation needs and the imposition of a duty on housing authorities to proactively and constructively deal with these needs. In general, proposals to establish halting sites have evoked strong opposition from local settled-residents groups and the question remains as to the paradigmatic structures within which these conflicts are resolved. It is imperative that the standards used to evaluate "proper planning" considerations and the reasonableness of decisions in this context are scrutinised to ensure that they are not exclusively "settled community standards", and it is regrettable that the Strasbourg Court failed to address this issue in any detail. Travellers have long experienced institutional as well as personal prejudices; the issue of structural bias must be addressed by the Court if the discrimination prohibited by Article 14 of the Convention[23] is to be effectively combatted. ●

1. Judgment of 25 September, 1996 (23/ 1995/ 529/ 615).
2. Judgment of 16 December 1992, Series A, No. 251-B; (1993) EHRR 97.
3. Viz. the prevention of crime and the protection of the rights of others.
4. Judgment of 24 November 1986, Series A, No. 109; (1989) EHRR 335.
5. Lopez Ostra v. Spain, Judgment of 9 December, 1994, Series A, No. 303-C.
6. This approach is consistent with the Court's interpretation of other Articles of the Convention containing the same phraseology.
7. Judgment of 25 September, 1996 (23/ 1995/ 529/ 615).
8. Ibid., at para. 8.
9. Ibid., at para. 10.
10. Ibid., at para. 14.
11. Ibid., at para. 52.
12. Ibid., at para. 53.

cont'd

13. Op. cit., f.n. 3.
14. Buckley case, at para. 54.
15. Ibid., at para. 64.
16. Which procedure had been found by the Court to satisfy the requirements of Article 6 of the Convention in respect of the protection of private property rights: Bryan v. United Kingdom, Judgment of 22 November, 1995, Series A, No. 335-A.
17. Buckley case, at para. 69.
18. Ibid., at para. 70.
19. Ibid., at para. 75. See also Bryan v. United Kingdom, op. cit., and mutatis mutandis, Klass and Others v. Germany, Judgment of 6 September, 1978, Series A, No. 28 at p. 23.
20. Ibid., at para. 84.
21. O'Reilly and others v. O'Sullivan and others, Supreme Court, 26th February, 1997, per Keane J. at p 24.
22. Ibid., at pp. 19/20.
23. Article 14 provides that "The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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Legal Update

A directory of legislation, articles and written judgments received from 6th April to Monday 19th May 1997.
Judgment information compiled by the researchers in the Judges Library, Four Courts
Edited by Desmond Mulhere, Law Library, Four Courts, Dublin 7

Admiralty

In the matter of the yacht "Striopach": Mooney v. Irish Geotechnical Services Ltd.
High Court: Barr J
24/02/1997

Collision in harbour; negligence; assessment of damages; decision of plaintiff to repair boat rather than seek replacement; whether cost of repairs recoverable
Held: Recovery for amount of repairs allowed

In the matter of the M.V. "Blue Ice": Agra Trading Ltd v. Owners and all persons claiming an interest in the vessel M.V. "Blue Ice"
High Court: Barr J
21/03/1997

Failure to honour contract of carriage; claim for loss; whether performance guarantee had been lawfully withdrawn; discharge of arrest warrant; s.47 Admiralty Court (Ireland) Act 1867 considered
Held: Sufficient grounds for arrest of vessel pending full determination of issues between parties

Statutory Instrument

Merchant shipping (light dues) order, 1997
S.I.138/1997
Commencement date: 1.4.97

Agriculture

Statutory Instruments

Genetically modified organisms (amendment) regulations, 1996
S.I.348/1996
Commencement date: 2.12.96

Veterinary surgeons (annual fees) order, 1997
S.I.131/1997
Commencement date: 1.4.97

Animals

Statutory Instrument

Control of horses regulations, 1997
S.I.171/1997

Greyhound race track totalisator Super (Dual) Trio Jackpot regulations, 1997
S.I.139/1997
Commencement date: 27.3.97

Arbitration

Article

Simons, Garrett
The review of arbitration awards by the courts
1997 ILTR 74

Building & Construction

Library Acquisition

Holtham, Diana
Berrymans' building claims cases
London Butterworths
1994
N83.8

Children

Statutory Instrument

Child abduction and enforcement of custody orders act (contracting States) (Luxembourg Convention) order, 1997
S.I.124/1997
Commencement date: 13.3.97

Commercial law

Statutory Instrument

Central Bank act, 1997 (commencement) order, 1997
S.I.150/1997
Commencement date: 9.4.97

Library Acquisition

Goldrein, Iain S
Commercial litigation: pre-emptive remedies
3rd ed
London S & M
1997
N250.Z8

Articles

Donnelly, Mary
Credit cards:
The law relating to 'your flexible friend'
1997 CLP 75

Holohan, Bill
Franchising: Easy as ABC?
1997(May) GILSI 10

Goldberg, David Abrahamson, Maurice
Discretionary mandates and the duty of care
1997 CLP 88

Communications

Statutory Instrument

Telecommunications (amendment) (no 2) scheme, 1997
S.I.130/1997
Commencement date: 21.3.97

Article

Rothery, Grainne
Upwardly mobile
1997(April) GILSI 18

Company Law

Jones and Tarleton v. Gunn & ors.
High Court: McGuinness J
14/02/1997

Plaintiffs not paid by defendants for work done; judgment obtained in default against third defendant; third defendant insolvent; all assets paid to second defendant in discharge of a debt; events occurred prior to commencement of Companies Act 1990; retrospective application of ss.297A, 298 of 1963 Act as amended, s.251 of 1990 Act considered; whether directors owed fiduciary duty to creditors not to dissipate assets once insolvency arose

Held: Claim under ss.297A, 298 dismissed; fiduciary duty could exist; court to proceed to hear evidence

Ulster Factors Ltd v. Entonglen Ltd (in liquidation) & anor.
High Court: Laffoy J
21/02/1997

Plaintiff agreed to provide factoring facilities for defendant co.; defendant co. went into liquidation; monies owed to plaintiff; sum paid by plaintiff to 3rd party on instructions of defendant co.'s managing director; whether payment ultra vires the defendant co.; whether managing director had ostensible authority to bind co.
Held: Payment to 3rd party not ultra vires; in any event, no obligation on plaintiff to enquire into purpose of payment; managing director had ostensible authority in circumstances

In the matter of Chipboard Products Ltd (in liquidation) and in the matter of the Companies Acts 1963-1983
High Court: Laffoy J
27/02/1997

Winding-up; monies transferred from Receiver to Official Liquidator; whether court fees payable in relation to same; Supreme and High Court (Fees) Order, 1989, Schedule I pt III para. 22; meaning of "realisation of assets" of company
Held: Fees were payable

Articles

O'Donnell, John L
Appointing an examiner: learning to live with the culture of corporate rescue
2(6)(1997) BR 246

Mooney, Kilda
Restoring companies to the register
2(6)(1997) BR 226

Constitutional Law

Molyneux v. Ireland
High Court: Costello P
25/02/1997

Dublin Police Act 1842, s.28; arrest without warrant of person suspected (but not witnessed by Garda) of committing aggravated assault; power restricted to Dublin area; whether in breach of Art.40(1)
Held: S.28 not unconstitutional; discrimination not founded on any basic human attribute, but on reasonable public policy grounds

Sherwin v Minister of the Environment, Ireland & anor.
High Court; Costello P.
11/03/97

Divorce Referendum; appointment of personation agents at polling stations and agents at vote counts; agents nominated by members of the Oireachtas; plaintiff, opposing Referendum, not in a position to have agents appointed; whether Minister should have used his powers to make appropriate arrangements; whether Divorce Act became unconstitutional in the circumstances; whether breach of Article 40(1).
Held: action dismissed; the difference of treatment not arising from personal characteristics of individuals in the group.

Statutory Instrument

Referendum (special difficulty) order, 1996
S.I.345/1996

Consumer

Library Acquisition

Dobson, Paul
Sale of goods and consumer credit
5th ed
London S & M
1996
N280

Article

Quinn, Anthony P
The Credit Union Bill, 1996
2(5)(1997) BR 195

Contract Law

Goodman & ors. v. Kenny
High Court: Kinlen J
30/07/1996

Loan advanced on security of promissory note; promissory note never issued; loan not repaid; whether failure of consideration; whether inordinate delay in prosecuting proceedings; whether existence of similar proceedings in Cyprus a bar to present action; whether plaintiffs engaged in moneylending practice contrary to Moneylender's Act.
Held: Judgment entered in favour of plaintiffs for amount owed

Smith v. Custom House Docks Development Authority
High Court: McGuinness J
20/03/1997

5-year building project; plaintiff employed to do surveying work "as required"; subsequent renegotiation of fees; plaintiff accepted lower rate on basis of length/continuity of work; contract terminated prior to end of 5-year period; whether express/implied term that plaintiff would be retained for entirety of building project; whether such period included subsequent extensions of time
Held: Contract was to employ plaintiff to do work as required for initial 5-year period; damages awarded for loss of earnings, damage to professional reputation

Smith and Genport Ltd v Tunney, Crofter Properties Ltd & ors.
Supreme Court; O'Flaherty, Barrington, Keane JJ.
08/04/97

Application to adduce additional evidence; long running legal battle concerning lease of Dublin Hotel; attempted settlement; dispute as to terms had been subject of case before High Court; whether certain findings made in earlier ejectment proceedings and finding made by Beef Tribunal should be admitted; admissibility of similar fact evidence in civil trials.
Held: application dismissed; matters would not have affected decision of trial judge in basic matter nor should appeal court consider matter further.

Kramer v. Arnold
Supreme Court:
O'Flaherty, Keane, Murphy JJ
24/04/1997

Option agreement to purchase fee simple property; exercised by plaintiff; deposit to be paid "immediately" on fixing of price; meaning of "immediately"; entitlement of defendant to terminate option agreement in event of failure to do so; specific performance
Held: Appeal allowed; deposit not paid as soon as was practicable; plaintiff's claim dismissed

Smith and Genport Ltd v Tunney, Crofter Properties Ltd & ors.
Supreme Court; O'Flaherty, Barrington, Keane JJ.
28/04/97

Appeal from High Court; long running legal battle concerning lease of Dublin hotel; ejectment proceedings; series of meetings to discuss possible settlement; dispute as to terms ultimately agreed; whether conspiracy among defendants; whether High Court erred in awarding defendants two-thirds of their costs; whether High Court findings as to credibility of witness supported in evidence; whether trial judge failed to draw appropriate

inferences; whether appellate court has power to assess correctness of inferences drawn by trial judge and substitute its own inferences.
Held: appeal dismissed; appeal court cannot interfere with conclusion of High Court on a finding of fact supported by credible evidence.

Copyright, Designs & Patents

Library Acquisition

Marett, Paul
Intellectual property law
London S & M
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Article

Newman, Jonathan
Patentability of computer-related inventions in Europe
1997 CLP 81

Criminal

DPP v. Brennan
High Court: McCracken J
16/01/1997

Assault on a peace officer acting in course of duty; accused charged with common assault, rather than under s.19 Criminal Justice (Public Order) Act 1994; whether right to opt for jury trial in s.19 extended to this situation
Held: DPP was acting within his powers in charging accused with common assault; no right to jury trial in the circumstances

Articles

Moran, Carroll
Counselling victims – is it always a good idea?
2(5)(1997) BR 176

Bolger, Marguerite
Judicial discretion to sentence rapists to life
2(6)(1997) BR 249

Damages

McCarthy v Dunne
High Court; Barr J.
05/12/96

Assessment of damages following an assault; appeal from Circuit Court; physical and psychological attack; assessment of damages.
Held: awarded damages of £35,336 and injunction against defendants from intimidating, assaulting or threatening the plaintiff.

McDermott v. Gargan
High Court: Flood J
24/01/1997

Personal injury (back); quantum of damages; likelihood of future rehabilitation
Held: £83,564.97 awarded in total

Kenny v. Ryan
Supreme Court:
O'Flaherty, Murphy, Lynch JJ
11/03/1997

Personal injury; road traffic accident; apportionment of liability; whether award so excessive as to be unreasonable
Held: Overall level of damages reduced

Education

Statutory Instrument

National Council for Educational Awards Act, 1979 (designation of institutions) order, 1997
S.I.159/1997

Regional technical colleges act, 1992 (amendment) order, 1997
S.I.149/1997
Commencement date: 1.4.97

Articles

Hogan, Gerard W
Constitutional issues raised in the Educational bill, 1997
2(6)(1997) BR 215

Ring, Mary Ellen
A right to an education
2(6)(1997) BR 219

Bradley, Conleth
Judicial review and school management boards
2(6)(1997) BR 222

Glendenning, Dympna
Schools and the law of negligence
2(6)(1997) BR 241

Employment Law

O'Leary v. Minister for Transport
High Court: Barron J
14/02/1997

Judicial review; Discrimination on grounds of sex; whether material differences in work involved
Held: Application dismissed; no new point of law raised; no reason not to accept trial judge's findings of fact

Matthews v Irish Society for Autism and anor.
High Court; Laffoy J.
18/04/97

Work related injury; plaintiff employee of defendant involved in a collision with unidentified pedestrian while transporting material from headquarters on foot; whether failure to provide a safe and proper system of work in failing to provide appropriate equipment for the task and failing to provide safety statement; whether this failure caused the accident and injuries suffered by the plaintiff.
Held: Claim dismissed; hazard could not reasonably be anticipated.

Parsons v. Iarnród Eireann
Supreme Court: Hamilton CJ, Barrington, Lynch JJ.
24/04/1997

Unfair Dismissals Act, 1977; S.15(2) bars right to damages at common law; plaintiff claimed S.15(2) silent as to other claims at common law or in equity; consequences of loss of right to sue for damages at common law.
Held: Suing for damages at common law and claiming relief under Unfair Dismissals Act 1977 are mutually exclusive; Act doesn't oust jurisdiction of High Court.

Statutory Instrument

Enterprise and employment (delegation of ministerial functions) order, 1997
S.I.165/1997

European Community Law

Murphy v. Minister for the Marine
High Court: Shanley J
11/04/1997

Challenge to Minister's decision not to grant sea fishing licence; relationship between Community and national law; Common Fisheries Policy; circumstances in which

court will set aside exercise of a discretionary power; legitimate expectation, estoppel
Held: Claim dismissed; Minister's decision upheld

Statutory Instruments

European Communities (additives in feedingstuffs) (amendment) regulations 1997
S.I.127/1997
Commencement date: 31.3.97

European Communities (detailed provisions on the control of additives, other than colours and sweeteners, for use in foodstuffs) regulations, 1997
S.I.128/1997
Commencement date: 25.3.97

European Communities (fruit and vegetables) regulations, 1997
S.I.122/1997
Commencement date: 19.3.97

European Communities (labelling, presentation and advertising of foodstuffs) (amendment) regulations, 1997
S.I.151/1997
Commencement date: 1.7.97

European Communities (meat products and other products of animal origin) amendment regulations, 1997
S.I.175/1997
Commencement date: 8.5.97

European Communities (motor vehicles type approval) regulations, 1997
S.I.147/1997
Commencement date: 4.4.97

European Communities (wildlife act, 1976) (amendment) regulations, 1997
S.I.152/1997
Commencement date: 26.4.97

European Parliament elections act, 1997 (commencement) order, 1997
S.I.163/1997
Commencement date: 21.4.97

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Yearbook of European law. 1995
Oxford Clarendon Press
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Conlan Smyth, David
State liability for a breach of Community law
1997(1) P & P 8 (Part II)

Extradition

Casey v Assistant Commr. of Garda Síochána
High Court; Morris J.
19/04/97

Special summons; application for Order for release pursuant to s.50 Extradition Acts 1965 to 1994; applicant arrested on foot of request for his extradition; whether offence in extradition proceedings corresponds with any offence in this jurisdiction; test whether alleged offence if committed in this jurisdiction would constitute a criminal offence; ingredients of the offence alleged.
Held: Relief refused; Order for release refused.

Family

L.M. v. Judge Devally
High Court: Carroll J
13/03/1997

Judicial reviews; maintenance for non-marital child; voluntary agreement between parties for lump-sum settlement; whether agreement precluded court from making a maintenance award under s.5A of the Family Law (Maintenance of Spouses and Children) Act 1976; retrospective effect of s.27 of the 1976 Act; D. v. D. (unrep. SC 8/5/78) followed
Held: Certiorari granted; court did have jurisdiction to make a maintenance order

Library Acquisitions

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Emergency remedies in the family courts: Preparing, making and enforcing emergency family and child law applications
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Bristol Family Law
1997
N170.Z8

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Bristol Jordon & Sons Ltd
1997
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Clohessy, Grainne
The taxation provisions of the Family law (divorce) act, 1996
2(5)(1997) BR 171

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The family law (divorce) act 1996: some observations
1997 ILTR 78

Horgan, Rosemary
Till debt do we part: Family law (divorce) act, 1996
1997(May) GILSI 22

Jackson, Nuala E
Circuit court procedures for divorce
2(5)(1997) BR 167

Walls, Muriel
No place like home
1997(April) GILSI 24

O'Riordan, Raghnal
Pre-nuptial contracts
2(5)(1997) BR 193

Fish &Fisheries

Statutory Instrument

Common sole (restriction on fishing in the Irish Sea) order, 1997
S.I.153/1997
Commencement date: 13.4.97

Garda Síochána

Church and Murray v. Commissioner of An Garda Síochána
High Court: Costello J.
18/03/1997

Commissioner's power to order disclosure of informants; "Crime Investigation Techniques" manual; privilege; delay; danger to informant and plaintiff's families.
Held: Commissioner's order for disclosure valid; plaintiffs required to disclose name(s) of informant(s)

Information Technology

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Kelleher, Denis
Information technology law in Ireland
Dublin Butterworths (Ireland)
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London Hodder & Stoughton
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Susskind, Richard E
The future of law: Facing the challenges of information technology
Oxford Clarendon Press
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Parry, Rex
Defective software: who should pay?
1997(April) GILSI 16

Rothery, Grainne
Byting the bullet
1997(May) GILSI 14

Injunction

MMDS Television Ltd and Suir Nore Relays Ltd v SE Community Deflector Assoc. Ltd and anor
High Court; Carroll J
08/04/97

Injunction; plaintiffs holders of licences under Broadcasting & Wireless Telegraphy Acts; exclusive rights to provide TV relay services; defendants operated business of retransmission of TV signals; no planning permission for receiver/transmitter; whether interference with constitutional rights to property and to earn a living; whether damages adequate remedy; whether plaintiffs have locus standi to bring common law action in respect of breach of statutory duty to which criminal sanctions apply; where balance of convenience lies.
Held: Injunction granted.

McCauley v Commr of Garda Síochána
High Court; Kelly J
24/04/97

Injunction; whether breach of injunction; garda training course; applicant due to progress to next stage of training course but informed that would not advance until internal investigation concluded; earlier High Court Order not to take any further steps against him in relation to the incident under investigation; whether refusal to permit applicant to proceed to next stage amounted to "a step"; whether refusal in conflict with terms of earlier Order of High Court
Held: Case dismissed. No breach of Order, refusal not a further step.

Library Acquisition

Bean, David
Injunctions
7th ed
London FT Law & Tax
1996
N232

Insurance

Scanlon v. McCabe and P.M.P.A. Insurance plc
Supreme Court: O'Flaherty J., Keane, Murphy JJ.
24/04/1997

Passenger injured on truck; whether contradiction between insurance policy and particulars of policy as stated in certificate.
Held: "Limitations as to Use" on insurance certificate purely permissive; doesn't provide indemnity for liability to compensate passengers; no contradiction.

Curran v. Gallagher, Gallagher and Motor Insurers Bureau of Ireland.
Supreme Court: Keane J, Murphy J (dissenting), Lynch J
07/05/1997

Agreement between 3rd defendants and Minister for Environment – 3rd defendants not liable where person injured ought reasonably to have known use of vehicle not insured; onus of proof on defendants; blameworthy conduct; plaintiff lying.
Held: 3rd defendants failed to discharge burden of proof; therefore liable.

International

Library Acquisition

Lawson, Edward H
Encyclopedia of human rights
2nd ed
Washington Taylor & Francis
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Judicial Review

Connolly v. DPP
High Court: Barr J
17/01/1997

Prohibition; charges of assault and larceny; whether undue delay in prosecution
Held: Application refused; insufficient evidence of excessive delay

Sexton & ors. v. Minister for Justice
High Court: Morris J
26/02/1997

Whether office of District Court Clerk an independent statutory office; s.60 Courts Officers Act 1926 considered
Held: Application refused; Clerks appointed as general Civil Servants

Duff & ors. v. Minister for Agriculture & ors.
Supreme Court: Hamilton CJ, O'Flaherty, Blayney, Barrington, Keane JJ
04/03/1997

Appeal; EC (Milk Levy) Regulations 1985 (s.i. no. 416 of 1985); Minister approved plaintiffs' farm development plans; developments led to increased milk output; no corresponding increase in superlevy quotas granted; Minister had already allocated entire national quota; plan to compensate development farmers from "flexi-milk" held contrary to EC law by Commission; whether Minister's decisions arbitrary or unreasonable; whether plaintiffs could rely on legitimate expectation
Held: Appeal allowed 3-2 (Hamilton CJ, Keane J dissenting); Minister, by deciding to provide for development farmers had created a legitimate expectation that he would implement this decision in a lawful manner; no declarations made, but damages awarded (to be assessed by High Court)

Mooney v. An Post
Supreme Court: Hamilton CJ, O'Flaherty, Barrington JJ
20/03/1997

Appeal; postman dismissed for allegedly tampering with post; acquitted of criminal charge; whether acquittal served to defeat civil complaint; demands of natural/constitutional justice: whether entitled to an oral hearing before an independent chairperson
Held: Appeal dismissed: principles of natural justice had been sufficiently observed

McCormack v. DPP
High Court: Budd J
20/03/1997

Prohibition; applicant arrested on suspicion of handling stolen property; inculpatory statement made in custody; released without charge; charged 11 months later; whether breach of s.4(5) Criminal Justice Act 1984 (duty on garda to charge accused without delay once he has enough evidence); whether breach of constitutional right to trial with due expedition
Held: Application refused; a suspect has no legal right to be charged; s.4 to be read in context of overall right to liberty; no proof of prejudice caused by delay

Shannon v. DJ McGuinness and DPP
High Court: Kelly J
20/03/1997

Assault; DPP decided not to continue with prosecution; proceedings dismissed by DJ; whether in excess of jurisdiction; locus standi.
Held: Application dismissed; lack of locus standi; DJ acted within jurisdiction; DPP decision unreviewable in absence of improper motive/policy

McSorley and Mulholland v. Governor of Mountjoy
Supreme Court: O'Flaherty J., Keane J., Barron J.

District judge imposing custodial sentence; unrepresented accused not advised to right to legal aid; High Court redress pursuant to article 40.4.2 of Constitution; whether correct redress under article 40.4.2 or by judicial review.
Held: Appeal allowed; redress should be by judicial review.

Fagan v. Wong
Fagan v. Leahy
Supreme Court: O'Flaherty J., Lynch J., Barron J.
07/05/1997

Whether interruptions, interjections and comments of trial judge led to unfair and unsatisfactory trial; whether even balance maintained; whether personal injuries damages adequate; refusal to admit hospital records.
Held: Appeal dismissed; wide discretion of judges in conduct of trials; costs in discretion of trial judge.

Article

Bradley, Conleth
Judicial review and school management boards
2(6)(1997) BR 222

Land

Library Acquisition

Megarry, Robert E
A manual of the law of real property
7th ed
London S & M
1993
N60

Article

FitzGerald, Kyran
House of cards
1997(April) GILSI 12

Landlord and Tenant

Kerry County Council v McCarthy
Supreme Court; O'Flaherty J, Barrington, Murphy JJ.
28/04/97

Case stated; Circuit Court action for recovery of possession of a local authority dwelling house; tenancy had been determined by Notice to Quit and demand for possession had been made and refused; summary procedure by which local authority can apply to District Court for a warrant entitling it to issue summons; whether issue of summons exclusively a function of District Court judge.
Held: Action dismissed: District Court clerk entitled to issue summons.

Legal Profession

Articles

Ferriter, Cian
The future of law
2(5)(1997) BR 201

FitzGerald, Kyran
London calling
1997(May) GILSI 18

Medicine

Articles

Jenkins, David
Consent: A matter of trust not tort
2 (1996) MLJI 83
Kelleher, Michael J
Euthanasia and physical assisted suicide
2 (1996) MLJI 77

Doran, Kieran
The doctrine of confidentiality: the legal protection of medical records
2 (1996) MLJI 86

Spellman, Jarlath
Safeguards in the mental treatment legislation under scrutiny
2 (1996) MLJI 80

Negligence

Dunne v. Clarke Oil Products Ltd
Supreme Court: O'Flaherty, Blayney, Keane JJ
07/06/1996

Road traffic accident; personal injuries; whether caused by dangerously worn tyres

Held: Appeal dismissed; worn tyres not responsible for accident

Phelan Holdings (Kilkenny) Ltd v. Hogan
High Court: Barron J
15/10/1996

Professional negligence; solicitor; property transaction; failure to inform plaintiff of conflict of interest; whether damage resulted; mental distress

Held: Defendant held liable; damages awarded for financial loss

McKenna v. Best Travel Ltd & anor.
High Court: Lavan J
17/12/1996

Package holiday; optional tour; plaintiff injured by stone throwing; duty of care; breach of contract; period of unusual civil disturbance; failure to warn plaintiff and to take all reasonable precautions; contributory negligence; quantum; whether compensation already received under Israeli government scheme should be deducted; S.2 Civil Liability (Amendment) Act 1964 considered

Held: Defendants held 75% negligent; Israeli government compensation not deductible from damages award

O'Brien v. Parker
High Court: Lavan J
25/02/1997

Car accident; defendant suffered from temporal lobe epilepsy; no previous awareness of the illness; automatism

Held: Defendant held liable; loss of voluntary control was not total

O'Brien v. Armstrong
Supreme Court: O'Flaherty, Murphy, Lynch JJ
19/03/1997

Road traffic accident; plaintiff overtook defendant on a blind bend at an accident black spot

Held: Appeal dismissed; plaintiff was author of own misfortune

O'Flynn v. Balkan Tours Ltd
Supreme Court: O'Flaherty, Keane, Barron JJ
07/04/1997

Package skiing holiday; failure to give adequate notice of orientation meeting; plaintiff subsequently injured on slopes; contributory negligence

Held: Appeal dismissed; findings of High Court judge as to fault upheld

Planning Law

Drogheda Port Co. v. Louth County Council
High Court: Morris J
11/04/1997

Application for leave to seek judicial review of grant of planning permission; whether "substantial grounds"; permission purports to impose functions of a road authority on the harbour authority

Held: Leave granted on the latter ground

Dublin Corporation v O'Dwyer Bros Ltd.
High Court; Kelly J.
05/12/97

Application to restrain respondent from carrying out unauthorised developments and making unauthorised use of licensed premises; whether planning permission for signs; whether change of use from restaurant to night-club; whether trial judge should accede to application for retention permission; approach of respondent to proceedings.

Held: Injunction granted.

Library Acquisition

Heap, Desmond
An outline of planning law
11th ed
London S & M
1996
N96

Practice & Procedure

Private Motorists' Protection Association Ltd (in liquidation) v. Private Motorists' Provident Society Ltd
High Court: Costello P
20/02/1997

Delay; claims in relation to a motor insurance loan scheme; alleged ultra vires; dismissal for want of prosecution
Held: Claims dismissed; length of delay precluded possibility of fair trial

Uwaydah v. Nolan & ors.
High Court: Barron J
21/02/1997

Service on wife of defendant; whether defendant within the jurisdiction at the relevant time
Held: Service deemed good

Quinlivan & ors. v. Governor of Portlaoise Prison
Supreme Court: Hamilton CJ, O'Flaherty, Barrington, Keane, Lynch JJ
05/03/1997

Discovery; legal professional privilege; letter from Attorney General to Minister for Justice; whether portions of letter not relating to purely legal advice could be discovered
Held: Appeal dismissed; discovery not ordered

Bank of Ireland v EBS Building Society
High Court; Morris J.
19/04/97

Motion for liberty to enter final judgment; customer of banks involved in fraudulent procedure whereby customer operates a series of accounts in different banks and takes advantage of clearing cycle to set up transactions unsupported by funds; whether defendant had no defence; whether Motion should be granted where defendant gives reasonable grounds for his defence.
Held: Defendant had shown cause against plaintiffs motion; matter sent for plenary hearing.

Irish Press plc v. E.M. Warburg Pincus & Co., IPL Ltd & ors.
High Court: McGuinness J
12/03/1997

S.390 Companies Act 1963; security for costs; whether funds available to meet costs if payable
Held: Application refused.

O'R. v. DPP
Supreme Court: O'Flaherty, Murphy, Lynch JJ
18/03/1997

Appeal; delay; sexual assault; whether delay warranted order of prohibition; likelihood of accused being hindered in presentation of defence; B. v. DPP (unrep. SC 19/2/97) considered
Held: Appeal allowed; order of prohibition reversed

O'Brien v. Fahy
Supreme Court: Barrington, Lynch, Barron JJ
21/03/1997

Horse riding accident; service of plenary summons; extension of time; defendant not notified of intention to bring proceedings until 4.5 years after accident occurred; claim would be statute-barred if extension of time for service refused
Held: Appeal allowed; extension of time refused

McCauley v McDermott and McCauley
Supreme Court; Hamilton CJ, Barrington and Keane JJ
24/04/97

Third Party Notice; Appeal; Order of High Court granting liberty to issue and serve third party notice; multiple party collision; in earlier proceedings Circuit Court found no liability on part of car owner; further proceedings against tractor owner and application by tractor owner to issue third party notice on motorist; res judicata; whether identity of interest between car owner and motorist; whether proceedings should be struck out as abuse of process.
Held: appeal allowed; Order granted setting aside Order of High Court giving liberty to issue third party notice.

Schmidt v. Home Secretary of United Kingdom & ors.
Supreme Court: Hamilton CJ, O'Flaherty, Barrington, Keane, Lynch JJ
24/04/1997

Application for service outside jurisdiction set aside on grounds of sovereign immunity from suit; whether police constable acting in course of duty
Held: Appeal dismissed; service not permitted

Statutory Instruments

District court areas (alteration of place) (no 13) order, 1997
S.I.167/1997
Commencement date: 23.4.97

District court districts and areas (amendment) order, 1997
S.I.160/1997
Commencement date: 1.9.97 16.4.97 24.4.97

Rules of the Superior Courts (no 2), 1997
S.I.166/1997
Commencement date: 28.4.97

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N363.2.C5

O'Connor, Patrick
Handbook for coroners in the Republic of Ireland
Swinford Old House Press
1997
L254.C5

Articles

O'Connor, Michael
Denial of access to systematic and repeated frivolous claimants
1997 ILTR 82

Dignam, Conor
Rules of the Superior Courts: a commentary
1997(1) P & P 2

Probate

In the Estate of Nevin
High Court: Shanley J
13/03/1997

Wife of murdered deceased seeking grant of letters of administration; caveat entered by mother of deceased, alleging wife to be suspected by gardaí of deceased's murder; application by wife for order setting aside caveat; whether caveat vexatiously lodged
Held: Application refused, but grant of letters of administration could proceed notwithstanding caveat

Records & Statistics

Statutory Instrument

Registration of births and deaths (Ireland) act, 1863 (section 18)
(Laois) order, 1997
S.I.134/1997
Commencement date: 1.4.97

Revenue

Inspector of Taxes v McSweeney
High Court: Morris J.
06/04/97

Case stated; company liquidation; whether loan respondent paid was a "debt on security" as debt on security an allowable loss; characteristics which identify a loan on security and differentiates it from a mere loan.
Held: loan was a debt on a security; allowable loss for CGT

Statutory Instruments

Capital gains tax (multipliers) (1997-1998) regulations, 1997
S.I.157/1997

Finance act, 1994 (section 32) (exemption of certain non-commercial State-sponsored bodies from certain tax provisions) order, 1997
S.I.148/1997
Commencement date: 31.12.94 and 1.1.96

Torts

O'Faoláin v. Dublin Corporation
High Court: Lavan J
10/12/1996

Malicious Injuries Act 1981, s.5(1)(c); application for compensation; damage to property; whether done by persons riotously assembled together
Held: Compensation ordered.

Library Acquisitions

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1996
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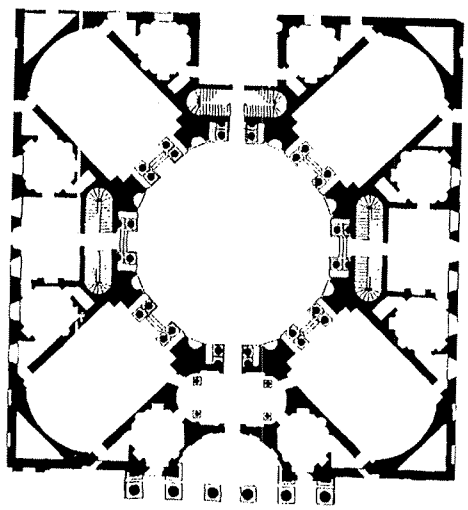
Dublin Transportation Office (establishment) order (amendment) order, 1997
S.I.170/1997

Iarnród Eireann (Athlone-Roscommon) (Glanduff level crossing) order, 1997
S.I.146/1997
Commencement date: 25.3.97

Wills

In the matter of the Estates of Thomas and Kathleen Cummins: O'Dwyer and Charleton v. Keegan
Supreme Court: Murphy, Lynch, Barron JJ.
08/05/1997

Succession Act, 1965; wife survived husband by less than one day; whether S.111 creates an interest in the legal share property or a personal right to elect to take such interest.
Held: Under S.111 a legal interest vests on death of testator.



At a Glance

European provisions implemented into Irish law up to 19/05/97

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S.I.127/1997
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European Communities (detailed provisions on the control of additives, other than colours and sweeteners, for use in foodstuffs) regulations, 1997
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SI 337/1981, SI 263/1989, SI 66/1992, SI 340/1972, SI 70/1992
SI 344/1995 SI 331/1991
Commencement date: 25.3.97

European Communities (labelling, presentation and advertising of foodstuffs) (amendment) regulations, 1997
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Amends SI 205/1982
Commencement date: 1.7.97

European Communities (meat products and other products of animal origin) amendment regulations, 1997
S.I.175/1997
(DIR 95/68) Amends SI 126/1995
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Amends SI 305/1978 as amended
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Information compiled by Sharon Byrne, Law Library, Four Courts

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Signed 12/02/1997
Commencement on signing

2/1997 – European Parliament Elections Act, 1997
Signed 24/02/1997
Commencement to be by Statutory Instrument

3/1997 – Decommissioning Act, 1997
Signed 26/02/1997

4/1997 – Criminal Justice (Miscellaneous Provisions) Act,
1997
Signed 04.03.1997

5/1997 – Irish Takeover Panel Act, 1997
Signed 12.03.1997

6/1997 – Courts Act, 1997
Signed 20.03.1997

7/1997 – Dublin Docklands Development Authority Act,
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8/1997 – Central Bank Act, 1997
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9/1997 – Health (Provision of Information) Act, 1997
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10/1997 – Social Welfare Act, 1997
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11/1997 – National Cultural Institutions Act, 1997
Signed 02.4.1997

12/1997 – Litter Pollution Act, 1997
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13/1997 – Freedom of Information Act, 1997
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14/1997 – Criminal Law Act, 1997
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Information compiled by Sharon Byrne, Law Library, Four Courts

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Children Bill, 1996 – committee – Dáil

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Education Bill, 1997 – committee

Employment Equality Bill, 1996 – referred to Supreme Court

Equal Status Bill, 1997 – A.P.B.H.

Garda Síochána Bill, 1996 – committee – Dáil

Geneva Convention (Amendment) Bill, 1997 – 1st stage – Dáil

Hepatitis C Compensation Tribunal Bill, 1997 – passed in Dáil

ICC Bank (Amendment) Bill, 1997 – passed in Dáil

Landlord and Tenant (Ground Rent Abolition) Bill, 1997 committee – Dáil

Licensing (Combatting Drug Abuse) Bill, 1997 – committee

Local Government (Financial Provisions) Bill, 1997 – A.P.B.H.

Local Government (Planning and Development) (Amendment) Bill, 1997 – 1st stage

Malicious Injuries (Repeal of Enactment) Bill, 1996 – 1st stage

Merchant Shipping (Commissioners of Irish Lights) Bill, 1997 – passed in Dáil

Prompt Payment of Accounts Bill, 1997 – passed in Dáil

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Shannon River Council Bill, 1997 – 2nd stage – Seanad

Youth Work Bill, 1997 – A.P.B.H.

Private Members Bills In Progress – 22/05/1997

Information compiled by Sharon Byrne, Law Library, Four Courts

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Cabinet Confidentiality Bill, 1996 – 1st stage – Dáil

Child Pornography Bill, 1996 – committee – Dáil

Control and Regulation of Horse Bill, 1996 – 1st stage – Dáil

Criminal Justice (Bail) Bill, 1997 – 2nd stage – Dáil

Criminal Justice (Mental Disorder) Bill, 1996 – 2nd stage – Dáil

Criminal Law (Sexual Offences) (No. 2) Bill, 1995 – 2nd stage – Dáil

Family Law (Amendment) Bill, 1996 – 1st stage – Dáil

Freedom of Environmental Information Bill, 1997 – 2nd stage – Dáil

Freedom of Information Bill, 1995 – committee – Seanad

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Independent Referendum Commission Bill, 1996 – 2nd stage – Dáil

Local Government (Mandatory Listing of Historic Buildings and Protection of Historic Interiors) Bill, 1997 – 1st stage – Dáil

Marriages Bill, 1996 – 2nd stage – Dáil

Misuse of Drugs Bill, 1996 – committee – Dáil

Proceeds of Crime Bill, 1995 – passed in Dáil

Protection of Workers (Shops) Bill, 1996 – 1st – Dáil

Social Welfare (Charter of Rights) Bill, 1995 – 2nd stage – Dáil

Social Welfare (Means Testing) Bill, 1996 – 2nd stage – Dáil

Social Welfare (Supplementary Welfare Allowance Appeals) Bill, 1995 – 2nd stage – Dáil

Wildlife Bill, 1997 – 1st stage – Dáil

Abbreviations

BR - Bar Review

CPLJ - Conveyancer & Property Law Journal

DULJ - Dublin University Law Journal

GILSI - Gazette Incorporated Law Society of Ireland

ICLR - Irish Competition Law Reports

ICLJ - Irish Criminal Law Journal

IFLR - Irish Family Law Reports

ILT - Irish Law Times

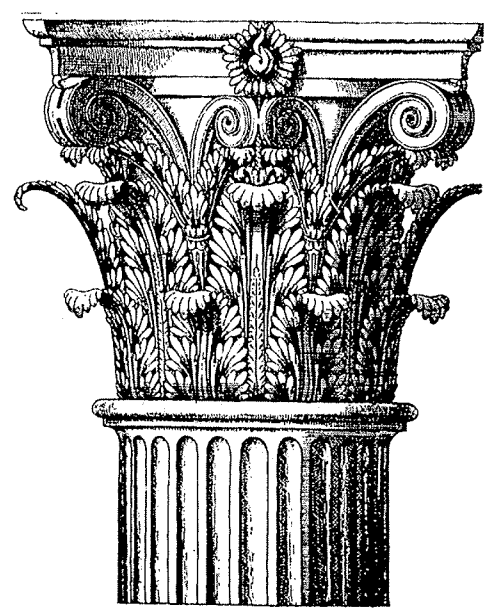
IPELJ - Irish Planning & Environmental Law Journal

ITR - Irish Tax Review

JISLL - Journal Irish Society Labour Law

MLJI - Medico Legal Journal of Ireland

P & P - Practice & Procedure



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Information Technology and Access to the Law

The Attorney General, Mr. Dermot Gleeson, SC

"The notoriety of every law ought to be as extensive as its binding force. It ought indeed to be much more extensive... No axiom could be more self evident; none more important; none more universally disregarded."
– *Jeremy Bentham (Of Laws in General)*

The obligation on all citizens, as well as on public administrators and corporations of all kinds, to obey the law, presumes a capacity on the part of everyone to have access to the law. The publication of statutory materials follows a well worn path, but active promulgation has been confined to the selective promotion of occasional, particular Acts.

Information technology developed in this decade has radically altered the promulgation options available to states which form part of the information society.

The Irish Statute Book from 1922-1997 takes up approximately 15 feet of shelf space and is 'portable' only in the technical sense of the word. Sometime during next year (1998), I expect the statute book 1922-1996 to be available on CD-ROM, identical in appearance to the better known music CD, an item weighing less than an ounce, capable of being carried in an inside pocket, with a raw material cost of less than £1.

The novelty of the boast that one is carrying the whole of the Irish statute book around in one's pocket, may not prove durable; what will endure however is the capacity to search the statute book electronically and this, above all else, justifies the expenditure which the State is now undertaking to produce the Statutes on CD-ROM.

IT and the Attorney General's Office

The principal focus of information technology in the Attorney General's Office is the internal management of work. E-mail is the standard mode of communication within the Office.

In addition to the development of IT systems in-house, the Office has been concerned with making the law more accessible to the public, the legal profession and Government Departments through a number of initiatives.

These initiatives include the publication of indexes to the Acts of the Oireachtas and the Statutory Instruments and the commencement of a competitive tendering exercise to engage a publisher to electronically publish the Irish statutes.

Publication of Indexes

The Attorney General's Office published two indexes to legislation in 1996 which were designed to make finding the law easier: the Chronological Tables of the Statutes 1922-1995 and the Index to the Statutory Instruments 1987-1995.

The Chronological Tables of the Statutes replaced the Index to the Statutes which was published approximately every ten years in the past. It is envisaged that the Chronological Tables will be updated annually from now on.

When considering the most appropriate information technology to use to assist the publication of the Indexes, the Office sought applications which would provide the Office with "camera-ready" copy and simultaneously a searchable electronic database of the material. Accordingly, a database was designed for use by contract indexers, engaged specifically for the task, to update the database, which is now used in the Office and in other Government Departments for research purposes. In addition, specialist macros were designed for the Office to take exported files from the database and convert this material to a form immediately ready for print. The production of the Indexes in this way provided considerable time-savings and will be used for future publications.

A Working Group has been established in the Attorney General's Office to examine the most appropriate method of producing a consolidated index to the statutory instruments. It is envisaged that this consolidated index would indicate in respect of each statutory instrument whether or not it is in force and, where appropriate, the statutory instrument or statutory provision responsible for its demise. The recommendations of this Working Group are currently being considered.

Subject Index

One of the most glaring gaps on the Irish lawyer's bookshelf is caused by the absence of an up to date subject index to the statutes.

The last subject matter index is over ten years old and follows the basic format pioneered by Mr. Vincent Grogan, S. C., former Director of the Statute Law Reform and Consolidation Office. To update the index however, and to renovate its language and structure, represents a huge challenge. The Attorney General's Office is currently investigating the

options for providing an appropriate subject index.

Statutes on CD-ROM

The Minister for Finance, Ruairi Quinn, T.D., allocated resources towards the electronic publication of statutes in the January 1997 Budget. In his Budget speech, the Minister stated that the project represented a recognition by the State of its obligation to make the laws as accessible as possible not just to the legal professions but to the public as well.

A Working Group was established within the Attorney General's Office to prepare a tender document to engage a third party to electronically publish the Irish statutes on the Offices' behalf. It was a requirement of the project that the Irish Government would retain all rights to the content, design and implementation of any proposed solution.

The Group engaged a consultant with significant electronic publishing expertise to assist with the project.

Briefing sessions were held with focus groups made up of representatives of Government Departments, the legal professions and information management professions to obtain the views of these key users. The experiences of other common law jurisdictions in the development of statute law databases were investigated.

The views of the focus groups and experiences in other jurisdictions were taken into account during the preparation of the tender document. However given the complex nature of the project and the demand from the marketplace to have a statute database available within a short timescale it was not possible to incorporate all of the requirements, for example revision, into the initial product.

It is hoped that the first phase of the project will result in a CD-ROM version of the full text of the Acts of Oireachtas and Statutory Instruments (whether in force or not) from 1922 to 1996 together with the relevant Chronological Tables of the Statutes and appropriate retrieval software. Hypertext links will be available between one section of an Act to another section in the same Act, from one section of an Act to a section of another Act, from the Chronological Tables of the Statutes to referenced sections of Acts and from an Act to its entry in the Chronological Tables of the Statutes.

The tender document was issued by the Working Group in February 1997. There was considerable interest in the tender document and a briefing session for interested parties to clarify issues was well attended. The evaluation of tenders commenced at the end of April and it is hoped to announce the outcome of the tendering exercise shortly.

This however will not represent the end of the project and in later phases it is planned that a fully revised electronic Statute Book and a subject index which has significant editorial input will be made available.

Attorney General's Office on the Internet

The Government's Internet site was launched in 1996 and each Government Department is working towards having a presence on this site. The Attorney General's Office will soon play its role in this process and its home page, which should be available in mid-June, will include the full text of the Acts of the Oireachtas of 1995 and 1996. The information is already available electronically in the Attorney General's Office and Government Departments.

Copyright decision

The Government, in a decision of 14 March 1997, consented to the reproduction in any medium (including electronic and microfilm formats) of Acts of the Oireachtas and Statutory Instruments without payment of copyright royalty. This further step should serve to increase the availability of statutory materials.

The Future

The Government has recently received a report of the Steering Committee on Ireland's current and future position in the information society and has established an Information Society Commission to oversee the national strategy for the information society. Part of the project will be to increase Internet access in schools and rural areas.

The tender shortly to be placed for the production of a first phase electronic statute book will lay the ground within the next year or so for a fully revised electronic version of the statutes showing precisely the statutory law in force at any one time

If reasonable progress is maintained, there is no technical reason why this should not be available before the millennium. Questions for policy makers which will arise at that stage are whether or not such a revised statute book would be available online and whether it would be available on the Internet. It is highly likely that a significant number of other common law countries will, by the year 2000, have electronic statute books on the Internet available for free public consultation.

The cost of providing such a service may well be offset by the perceived advantages in having those laws readily available, not just to private citizens, but to the whole of the public service, the legal professions and perhaps most importantly to investors from abroad, whose decisions on location of major industries may depend upon their appraisal of the quality of national infrastructure. Infrastructure will include not just the quality of our roads and telephone system, but the extent to which we are truly part of the information society. International corporations will be accustomed at that stage to instant access to, and searching of, the regulatory regime applying to particular industries (whether it be the environmental regulations governing chemical factories, the statutory controls involved for the licensing of medicines or the regime of copyright protection available for computer software) before deciding on the location of new investments.

It may well be that a fully revised electronic statute book available on the Net will become not just some lawyer's luxury but a standard piece of public infrastructure taken for granted in any modern state claiming its place in the information society. ●

The Interpretation of a Revenue Offence in Extradition Law

The recent case of John Oliver Byrne v. Noel Conroy,[1] was concerned with whether an offence of conspiring to defraud the Intervention Board for Agricultural Produce in the UK of Monetary Compensatory Amounts (MCAs) constituted a revenue offence such that the High Court would be obliged to direct the release of the Applicant under s. 50 of the Extradition Act, 1965.

Aindrias O Caoimh, SC

The case raised questions of the manner of statutory interpretation to be adopted in light of European obligations. The Applicant contended that the charge was one of conspiracy to avoid paying sums of money to the UK government on the export of grain from Northern Ireland. He further contended that as the monies were payable to the UK on behalf of the European Union that the offence was a revenue offence under the Extradition Act, 1965 as amended by the Extradition Act, 1994 which defines a revenue offence as including an offence 'in connection with taxes, duties or exchange control'.

Mr. Justice Kelly pointed out that although the sums were payable pursuant to UK law, the matter of whether the offence charged was a revenue offence was a matter to be decided in accordance with Irish law.

Mr. Justice Kelly accepted that in the first instance the court must adopt a strict approach to the interpretation of the Extradition Acts. Accordingly the following rules of statutory interpretation fell to be applied:

- A strict or literal construction must be applied
- the words must be given their ordinary or literal meaning.
- no gloss may be placed on the wording
- any reasonable doubt or ambiguity must be resolved in favour of the applicant.

Kelly J. was however further of the view that where the offence charged concerned an obligation imposed under European law, the principles of statutory interpretation must have regard to such European obligations.

The Court examined the relevant provisions of the United Kingdom's Agricultural Levies (Export Control) Regulations 1983 under which the payment of 'agricultural levies' (including MCAs) became payable to the Intervention Board for Agricultural Produce and concluded on an examination of same that the definition of 'agricultural levy' under the regulation was that it must be a 'tax or charge, not being a customs duty, chargeable under Community arrangements or agricultural products and are the subject of arrangements under Article 235 of the EEC Treaty'. The Court accordingly concluded that it was clear that the whole notion of an agricultural levy has its roots in arrangements brought about by European Community obligations.

The Court then examined Regulation 792/70 as the most relevant of the E.c. instruments. This regulation on the financing of the Common Agricultural Policy established the European Agricultural Guidance and Guarantee Fund (EAGGF or FEOGA). Member States are required to 'satisfy themselves that transactions financed by the Fund are actually carried out and executed correctly, prevent and deal with irregularities or negligence'.

Section 6 (5) of the European Communities Act, 1972 provides that agricultural levies of the EEC so far as they are charged on imports into the UK are to be levied, collected and paid, and proceeds dealt with, as if they were Communities Customs duties and in relation to those levies certain enactments, including the Customs and Excise Act, 1952 were to apply.

Alan Matthews, head of the Department of Economics at T.C.D., gave evidence on affidavit, on behalf of the Applicant that 'the MCA acted as a tax on imports to or a subsidy on exports from a revaluing country whose Green rate remained unchanged'. He expressed the opinion that the MCA acted as a tax or duty or form of exchange control. Furthermore, Kevin J. Finnegan, Q.C. of the bar of Northern Ireland also gave evidence on affidavit on behalf of the Applicant in which he expressed the opinion that the charge against the Applicant was one in connection with taxes, duties or exchange control under s. 3 (1) of the Extradition Act, 1965 and was therefore a revenue offence falling within the scope of s. 50 of the Extradition Act, 1965.

Notwithstanding these opinions, Kelly J. stated that the issue which he had to determine was on of Irish law. He preferred to have regard to the decisions of the European Court of Justice in *Roquette Freres v. French State*[2] and *Nordgetreide v. Haupzollamt Hamburg-Jonas.*[3] These decisions emphasised the role of the MCAs as a mechanism intended to maintain the uniform price system in the common organisation of the markets. MCAs are not intended to provide additional protection for markets.

The High Court held that the UK regulations did not have as their object the raising of revenue but the facilitation of the free movement of goods in accordance with the Common Agricultural Policy which is binding upon each Member State of the European Community.

Kelly J. having summarised the principles arising from his analysis of the origin of MCAs and their collection in the UK concluded that the levy although called a levy and defined as a tax in any real meaning of that term. The principle object of a tax is to raise revenue, but this was not the object of the levy here. He therefore concluded that the offence charged against applicant is not a revenue offence. MCAs are not taxes, duties or exchange control measures.

Having regard to the European law dimension of the case, Kelly J. then considered the supremacy of European law and cited *Costa v. Enel,*[4] *Marleasing S.A. v. La Commercial Internacional de Alimentacionsia*[5] and *Faccini Dori v. Recreb.*[6] These cases indicate, inter alia, that in applying national law, a national court must interpret that law as far as possible 'in light of the wording and purpose of European Directives and the Treaty'.

Finally, Kelly J. examined Joined Cases 178/79 and 180/73 *Belgium and Luxembourg v. Mertens*[7] and Case 68/88 *Commission v. Greece*[8] relating to the interpretation of Article 8 of Regulation 729/90 (on the financing of the Common Agricultural Policy) and in particular the obligation stated to apply to each member State to take measures necessary to prevent and deal with irregularities and in this regard to 'undertake prosecutions and proceedings of the purpose of the system of levies and refunds' and to 'ensure in particular that infringements of Community law are penalised under condition, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance'.

In light of these judgments Kelly J. concluded that the appropriate way to construe the relevant provisions of the Extradition Act was in a manner consistent with the obligations of the State to the European Union, which was, inter alia, to protect the financial interests of the Union and he concluded that to construe the Extradition Act in a manner which would conclude that the offence charged against the Applicant is a revenue one and thereby prevent his extradition would impede the obligation to protect the financial interests of the Union.

Kelly J stated that it followed from this approach that in the case of ambiguity in the legislation, the strict constructionist approach would have to give way to an interpretation which would comply with the State's obligations in European law. Nevertheless, in the instant case he held that there was no such ambiguity.

The two decisions referred to by Kelly J indicate the obligations imposed on member States to pursue fraudulent activity involving Community funds by criminal prosecutions. They do not address the issue of whether the offences in question are to be considered as 'revenue offences' and they do not address the issue of whether the 'revenue offence' exception which emanates from Article 5 of the European Convention on Extradition, 1957 should apply to those offences. It is accordingly, far reaching to hold that the provisions of Article 5 of the European Convention does not apply to offences involving a fraud on EC funds, particularly having regard to Article 234 of the EC Treaty which states:

> 'The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude. In applying the agreements referred to in the first paragraph Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of commons institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States'.

Byrne v. Conroy is now under appeal to the Supreme Court. Unless the Supreme Court reverses the conclusion that the offences are not revenue offences without having regard to the EC Treaty and the Extradition Act, 1965 it appears that it would be necessary for the Supreme Court to refer a question of interpretation of European law to the ECJ; namely, whether the concept of a 'revenue offence' as defined in Irish law and emanating from Article 5 of the European Convention on Extradition, 1957 is to be limited having regard to the obligations arising from Ireland's membership of the European Union. ●

1. High Court, Kelly J., 22 January, 1997
2. Case 145/79, 1980 ECR 2917
3. Case 46/84 1985 ECR 3127
4. 1964 ECR 585
5. 1991 ECR 4135
6. 1994 ECR I- 3325
7. 1974, ECR 383
8. 1989 ECR 2965

The Bankers' Books Evidence Acts, 1879 and 1959

Anne Dunne, SC and Louise Davies, Barrister

For a number of reasons, including our membership of the European Union, there have been many changes in the conduct of litigation with a corresponding increase both in the number and complexity of disputes. It is incumbent on parties to litigation to have a clear and comprehensive understanding of their position and expectations before proceeding to court. Cases in the past in which discovery was not fully and comprehensively checked resulted in trawling exercises before the court. These are disapproved of by the bench and methods must be made to ensure that the time of the court is not wasted.

Applications under the Bankers' Books Evidence Acts have increased substantially in all types of civil matters. In addition, banks and financial institutions are no longer prepared to attend court on the basis of subpoenae duces tecum and require that investigation of bank documents must to be sought under the Bankers Books Evidence Acts. The application to inspect bank documents is made by way of an ex parte application to court, grounded on an affidavit on behalf of the person seeking to inspect. The court may make the order on such an application or may direct the application be made on notice to the bank and to the party whose accounts or documentation is to inspected.

The Bankers' Books Evidence Acts, 1879 and 1959 as amended, (the Acts) enables bankers to avoid the inconvenience of attending court under subpoena to produce and prove the original records and, in an exception to the hearsay rule, makes an entry in their records prima facia evidence of the accuracy of the matters, transactions and accounts therein recorded[1].

Furthermore the Acts provide a useful pre-trial tool in allowing either party to an action apply for leave to inspect and make copies of bankers' books relation to the other party or to third parties[2]. In general the courts have been reluctant to give a liberal interpretation of this provision but have ruled that the power is not to be exercised so as to extend the normal principles of discovery[3].

Where a bank's records can be proven under the provisions of the Acts, a banker or bank officer is not compellable as a witness unless by order of a court made for special cause[4]. Copies of entries received in evidence pursuant to s.3 of the Acts is admissible evidence against the world[5]. The conditions under which a copy of an entry in a banker's book will be received in evidence under the Acts are that the book must be one of the ordinary books of the bank, that the entry was made in the usual an ordinary course of business and that the book is in the custody or control of the bank. These matters may be proven by a partner or officer of the bank on affidavit. The examiner of the copy must further prove that the copy has been examined with the original entry and is correct[6]. The examiner need not be an employee of the bank[7].

The original Acts have now been amended to take cognisance of the reality that the vast bulk of banking transactions are now recorded by mechanical and/or electronic means[8].

As previously stated an application by a party to the court to allow inspection of bank documents may be made *ex parte* but would normally be by way of motion on notice to the person whose account is to be inspected[9]. Unless otherwise directed by the court the order should be served on the bank three clear days before it is to be obeyed[10]. The court does not have jurisdiction under the Acts to order inspection in a foreign country[11]. Section 8 of the Acts leaves the question of the costs of both making and complying with an application under these provisions to the discretion of the court. Interestingly the section provides that costs may be awarded against the bank where it has been occasioned by default or delay on its part.

In the United Kingdom there has been much litigation as to the meaning of the phrase "banker's books", however the issue does not appear to have come before the Irish courts. In the case of *Williams v. Williams*[12] the Court of Appeal had to consider whether cheques and paying in slips constituted bankers books or entries therein and whether the bank's duty to disclose extended t unsorted bundles of cheques and paying in slips retained in the banks possession after the conclusion of transactions. The case was a family law case where the wife was seeking ancillary orders as part of matrimonial proceedings against her husband. In separate proceedings the trustees of an unregistered charity of which her husband was chairman were seeking posses-

sion of the matrimonial home claiming it had been bought with charity monies. The proceedings were consolidated. The wife alleged that her husband had secret bank and building society accounts, and that he had mixed his own funds with that of the charity to disguise his wealth. For both proceedings she needed to discover what payments had been made into and out of the accounts of both her husband and the charity. The applicant sought to include inter alia all paid cheques and paying -in slips in the order for inspection. The bank resisted, claiming that these did no amount to entries into its books and therefore the court did not have the power to order their inspection. Part of the bank's acknowledged motivation in resisting the application was that the paid cheques and paying-in slips were retained in unsorted daily bundles and to identify particular paid cheques and paying-in-slips would be very time consuming and expensive. While the court accepted that the cheques could form part of the bank's records it could not accept that the addition of an individual cheque or paying-in slip was an 'entry' into those records. The term 'other records' in the United Kingdom was construed ejusdem generis with the rest of the words used and the unsorted bundles were not 'other records' within the meaning of the Act. The bank conceded that the applicant could have obtained a subpoena duces tecum addressed to the appropriate officer of the bank requiring him to attend the hearing with all the relevant documents. The rejection of this ingenious attempt to invoke the aid of the Bankers' Books Evidence Acts barred the applicant from a quick and effective means, before the trial, of discovering the husband's true financial position.

It should be noted that in this jurisdiction the Central Bank Act 1989[13] created a substantially different position in relation to what constitutes 'bankers books'. Section 9(2) now reads as follows:

Expressions in this Act relating to 'bankers' books'-

a) include any records used in the ordinary business of a bank, or used in the transfer department of a bank acting as registrar of securities, whether-

(i) comprised in bound volume, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards, or

(ii)kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a permanent legible form, and

b) cover documents in manuscript, documents which are typed, printed, stencilled by or created by any other mechanical or partly mechanical process in use from photographic or phostatic process.

In light of the substantially different statutory provisions as between the jurisdictions, it is not certain that Williams would be followed by the Irish courts. The argument could be made that paying in slips are, in fact, a replacement for deposit books of old and thus are the new generation of entry into the books of the bank.

The courts in both Ireland and the United Kingdom appear to be at one insofar as they have interpreted the provisions of the Bankers' Books Evidence Acts along the general rules in relation to discovery. In *Waterhouse v. Barker*[14] notwithstanding that the records sought would be admissible at the trial of the respondent. An application for inspection of the bank account of person not a party to the action ought not as a general rule, to be granted without notice to such person and to his bankers, and then only upon affidavit showing, to the full satisfaction of the court that there are good grounds for believing that there are entries in the account material to some issue to be tried in the action, and which would be evidence at the trial for the party applying for such inspection.[15] *Staunton v. Counihan*[16] shows that the courts will need to be cautious in exercising judicial discretion to grant inspection under s.7 of the Acts where the inspection is sought of accounts of a third party to the action. In a recent English decision Knox J. stated per curiam that an undertaking would be implied by law not to use the material garnered from an inspection granted under the Acts save for the purposes of the proceedings in question.[17]

"In my judgement it follows, by parity of reasoning, that a similar implied undertaking should be held to exist in relation to orders made under s.7 of the Banker's Books Evidence Act 1879. I see no reason... Not to import the well-established rules regarding the basis upon which discovery of documents is given into the similar process whereby a plaintiff secures access to what otherwise would not be available to him pursuant to the 1879 Act."

The 1959 Bankers Books Evidence Act extends the list of banks covered by the 1879 Act to include banks established within the State since 1879 and was further amended by the Central Bank Acts 1989, Section 131, and the Building Societies Act, 1989, Section 126. ●

1. Williams v. Williams [1988] 1 Q.B. 161
2. Bankers' Books Evidence Acts 1879 & 1959, as amended, s.7
3. Waterhouse v. Barker [1924] K.B. 131
4. Ibid s6
5. Harding v. Williams [1880] 14Ch.D. 197
6. Ibid s.4 and s.5
7. R v Albutt and Screen [1911] 6 Cr.App. R.55
8. Central Bank Act, 1989, s.131
9. Arnott v. Hayes (1887) 36 Ch.D.731
10. Ibid s7
11. Chemical Bank v. McCormack [1983] ILRM 350
12. [1988] 1 Q.B. 161. See also Barker v. Wilson [1980] 884 where a microfilm copy of a cheque was held to be included in the term 'bankers' books' and R. v. Dadson (1933) 77 Cr.App.R.291 where letters in a bank correspondence file were held not to be included.
13. s.131(d)
14. [1924] 2 KB 759
15. L'Amie v. Wilson [1907] 2 IR 131
16. [1957] 92 ILT 32
17. Bhimji and Ors v. chatwani and Ors [1992] 4 AER 913 at 918.

The Child Plaintiff

George Birmingham, Barrister and Helen Boyle, Barrister.

Jurisdiction/ Next Friend

Order 15 Rule 16 of the High Court Rules which allows an infant to sue as plaintiff by his next friend states

> "An infant may sue as plaintiff by his next friend in the manner heretofore in use, and may in a like manner, defend by his guardian appointed for that purpose. On the infant's attaining full age, the next friend or guardian may apply on affidavit to the Registrar in the Central Office for a Certificate that the plaintiff or defendant lately an infant may proceed or defend in his own name."

Order 15 Rule 20 provides that written authority of the next friend must be obtained and given to a solicitor prior to a summons being issued.

See O'Floinn and Gannon's book on Practice and Procedure in the Superior Courts for some of the procedural cases that have arisen from these rules.

An interesting situation arose in England in relation to the duty of the next friend to act in the best interests of the child. *Re Taylor's Application*[1], arose out of thalidomide litigation. The Distillers Group indicated that it would set up a trust fund for child thalidomide victims who were in the process of bringing claims. A condition of the setting up of the fund was that all the cases of the children involved had to be settled on the terms of the trust deed. Five parents refused to accept the terms of the trust deed. One of the parents of the children who wished to accept the terms of the trust brought an action to remove the five parents from being next friends, on the basis that they were being unreasonable and should be removed. The Court of Appeal refused this application.

On the duty of the next friend, Lord Denning stated

> "I take it to be clear that the father is prima facie the person entitled to be the next friend of his child so as to look after the interests of his child. He is the person entitled in the first place to consider whether or not the proposed settlement is reasonable. He is entitled to consider his child's case on its own merits. He is not bound to consider the cases of others which may not be as strong as his child's. If he is to be removed, it should only be done if the proposed settlement is so clearly beneficial for his child that he is acting improperly in refusing it... The burden is clearly on those who seek to remove a parent to show that he is not acting properly in the interests of his child as its next friend."

Infant Rulings

Neither the next friend nor the infant plaintiff's counsel has the authority to accept a settlement offer on behalf of the infant. Under Order 22, Rule 10 (1), only the Court may decide to approve the settlement.

Rule 10(2) provides that no money may be paid to the plaintiff or to the next friend of the plaintiff or to the plaintiff's solicitor unless the court so directs.

There are a number of reasons why the practice of court approval evolved in relation to infant settlements. Obviously, protection of the best interests of the infant is a factor, both from the lawyers in the case and from the infants own parents. The requirement also protects the defendant by giving him a binding discharge in respect of the claim, preventing the infant from suing at a later date. The costs of the legal advisors are controlled and the money received by the infant is controlled and supervised by the court until he /she is 18.

Lodgements and Costs

Ordinarily, under Order 22, Rule 6 of the RSC, if a lodgement is not exceeded, the plaintiff is entitled to the costs of the action up to the time the payment into court is made. The defendants are entitled to the costs of the action from the time the payment into court was made. However, under s.63 of the Civil Liability Act 1961 failing to beat a lodgement in a case involving an infant plaintiff is an exception to the normal rule.

This section provides that where a sum of money has been lodged in Court by the defendant in an action for a wrong in which the plaintiff is an infant, an application may be made to the judge by the plaintiff to decide whether that sum of money should be accepted and that action go to trial. If, on such an application, the judge decides that the action should go to trial, and an amount by way of damages is awarded to the plaintiff which does no exceed the sum so lodged, then, notwithstanding any rule of Court or practice to the contrary, the costs in the action shall be at the discretion of the judge. An appeal shall be from the order of the judge in relation to the costs of the action.

Thus it is very important for an infant to bring an application under s.63 to approve a settlement, as subsequent failure to beat a lodgement does not mean that post-lodgement costs will automatically be held against an infant. Failing to bring a s.63 application would almost certainly amount to professional negligence.

The issue of costs which are awarded to a defendant against an infant plaintiff

was considered in *McHugh v Phoenix Laundry Ltd*[2]., In that case, Lavery J. examined the law and showed that as far back as 1584, a court stated of an infant plaintiff "he shall render no costs", *Grave v Grave*[3], and stated:

> "The conclusion I reach is that an infant plaintiff, suing by his next friend as he must do, is not liable to the defendant for costs. If costs are given, they must be given against the next friend. The next friend may be given an indemnity out of the estate of the infant and is indeed *prima facie* entitled to such indemnity, but this is not a matter *inter partes* in the action."

In *Sheridan v McCartan*[4], the defendants applied to the Supreme Court to have the costs awarded against the infant plaintiff instead of the next friend, as the defendant had been advised that such an award "would be of more value."

The Supreme Court agreed with the statement of Lavery J. in McHugh that it was well established that costs would not be awarded against an infant plaintiff.

The Statute of Limitations

The limitation period for an action, where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries, is three years from the date on which the cause of action accrued or the date of knowledge if later, (Statute of Limitations 1957 and Statute of Limitations (Amendment) Act 1991).

Of note is the fact that in the case of an action claiming damages under section 13(7) of the Sale of Goods and Supply of Services Act 1980 where the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of TWO years from the date when the person ceased to be under a disability or dies, whichever event first occurred, notwithstanding that the period of limitation has expired.

An infant is a person under disability for the purposes of the Statute of Limitations 1957. s.48 (1)(a). In the case of actions for damages for negligence, nuisance or breach of duty, where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to any person, an action may be brought within three years of the date when the infant ceased to be under a disability, (Section 49). An infant ceases to be under a disability when he or she reaches the age of eighteen.

An interesting caveat to this was added in the original Statute of Limitations. Section 49(2)(a)(ii) provided that section 49 would not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent.

This section was declared unconstitutional in *O'Brien v Keogh*[5]. On the 8th September 1963, the 11 year old infant plaintiff suffered injuries, as a result of a collision between the car of his father (the first named defendant), in which the plaintiff was a passenger, and the car of the second named defendant. On the date of the accident the plaintiff was in custody of his parents. On the 25th of January 1968, the plaintiff issued proceedings, and the defendants pleaded that the proceedings were statute barred. The plaintiff raised the issue of the validity of Section 49(2)(a)(ii) having regard to the provisions of the Constitution.

The Supreme Court decided that the section was not in breach of the equality provisions contained in s. 1 of Article 40. The Court allowed the appeal however, on the basis that s.49 failed to protect and guarantee the plaintiff's property rights, contrary to the guarantee contained in Article 40.3.2, and decided that the plaintiff's action was not statute barred. The Court accepted that the right to litigate claims was a personal right under the Constitution.

O'Dalaigh C.J. mentioned a number of scenarios where an infants rights are not adequately protected by the offending section. He mentioned the possible scenario of an infant children and their parents being injured in a car collision. If the parents subsequently die, the statute with its three year limitation, immediately begins to run against the orphan children. Another scenario mentioned was the case of an infant being injured when a passenger in their parent's car as a result of their negligent driving. The parent, as happened in this case, may raise the statute against proceedings not taken within three years of the accrual of the right of action. O'Dalaigh C.J. stated

> "The indications are that the broad division into infants (or other persons suffering from a disability) in parental custody and infants not in such custody is not calculated to bring up for consideration the matters that should be borne in mind if the infant's rights are to be given reasonable protection." p. 157.

It is a decision and approach with which the Supreme Court has on occasions shown itself to be uncomfortable. In *Moynihan v Greensmith*[6] the Court had an opportunity to adopt a similar approach in the case of a claim brought against the estate of the deceased person where the time limit was two years and declined the opportunity and indeed, the Court hinted broadly that they would welcome another opportunity to reconsider the approach in *O'Brien v Keogh.*

Lapse of Time and Unfairness to the Defendant

Notwithstanding the fact that an infant plaintiff has three years from the age of 18 in which to bring a claim, the court still has inherent jurisdiction to dismiss any claim if it would be unjust to the defendants to allow it to proceed after a long lapse of time.

In *O'Domhnaill v Merrick*[7], the plaintiff suffered serious injuries in a road traffic accident, in 1961, when she was three. A plenary summons was served in 1977, with four years of the limitation period still to run. No statement of claim was delivered however. In 1982 the plaintiff applied for an extension of the time to

deliver a statement of claim. This application was refused and the action was dismissed for want of prosecution. The Supreme Court upheld the dismissal, even though the claim was not statute barred. The delay of 24 years between the date of the accrual of the cause of action and the hearing was held to be grossly unfair to the defendant. Henchy J stated that a balance needed to be struck between the plaintiff's need to carry on his delayed claim against the defendant and the defendant's basic right not to be subjected to a claim which he could not reasonably be expected to defend.

Two years earlier, in *Sheehan v Almond*,[8] the Supreme Court had dismissed for want of prosecution a plaintiff's action for damages for an action which occurred in May 1966. In both of these cases there was a delay in instituting the proceedings and in prosecuting them.

In *Toal v Duignan (No. 1)*[9] although the claim was not statute barred, the Supreme Court decided that it would be an injustice to certain of the defendants to allow the plaintiff's action to proceed 25 years after the events which gave rise to the proceedings.

In *Toal v Duignan (No. 2)*[10], the Supreme Court dismissed the claim against the remaining defendants. The court considered whether they had jurisdiction to dismiss a claim which had commenced within a time fixed by an Act of the Oireachtas, because of delay. Finlay CJ concluded that the courts had the jurisdiction, as to conclude otherwise would give the Oireachtas supremacy over the Courts, which would be inconsistent with the Constitution.

McCarthy J. however, disagreed with the majority. He did not believe that justice required of the courts

> "that an injured plaintiff, innocent of any responsibility for delay, and unaware of the existence of his cause of action at least in part because of the very failure in communication of which he complains in the substantive action itself, should lose his case without a trial on the merits because the doctor whom he sues is less adequately equipped to defend the case because she has lost or destroyed contemporaneous records which may or may not be relevant to the case itself." (p. 159)

Despite the late McCarthy J's eloquent, and in our submission correct, statement, it is advisable that actions be brought on behalf of infants sooner rather than later. As an aside it may be said that this is one of the relatively rare occasions where the English Courts seem to have adopted a more indulgent attitude towards Minors. It appears from *Tully v Morris*[11] that a Plaintiff Minor whose claim is not statute barred will not be shut out for delay.

The Statute of Limitations and Civil Actions for Sexual Assault

Our criminal courts have for some time now been required to deal with the particular problems presented by victims of sexual assault, coming to terms with their abuse many years later and for the first time, disclosing it to the authorities. It seems inevitable that the Civil Courts will be faced with similar problems. As we are now all aware it is not unusual for people who have been abused fifteen, twenty, thirty years ago, to come forward, explaining that they have been able to come forward only after the significance of their abuse emerged as a result of counselling or therapy. Where the abuse has occurred in a school setting or an institutional setting the Plaintiff's legal advisers will look to the possibility of joining the school of the institution as a Defendant, either on the basis of contending that vicarious liability applies because the abuser was acting in the course of his employment, (obviously not an easy argument to make), or alternatively, that the institution was negligent in not identifying what was going on and placing the abuser in proximity to children.

One's first thought would be that the Statute of Limitations Amendment Act 1991 with its concept of discoverability would provide a ready answer. However, a closer reading of the wording of the Statute would suggest that is not necessarily the case. The discoverability concession is available in respect of actions brought in respect of personal injuries caused by negligence, nuisance or breach of duty (Section 3)(1). Clearly, sexual assault could not be described as negligence and nuisance but the question really is whether such activity could be described as a breach of duty. The House of Lords in *Stubbings v Webb*[12] was required to consider the equivalent English legislation the wording of which was to all intents and purposes identical and held the discoverability concession was not available in the case of intentional assault. Were the Irish Courts to adopt a similar approach, public disquiet would be inevitable.

The statute also poses problems in the area of child sexual abuse, as is pointed out by David Goldberg BL, in his article "Civil Actions for Child Sexual Abuse-Statute of Limitations Problems".

Application to Join a Next Friend as a Third Party

There have been a number of decisions on the issue of joining a parent and next friend as a third party, and the factors that a court will take into account in coming to a decision. Petitioners will recall the weekly battles in the Motion List presided over by McKenzie J. as, for a period, the option of joining a parent became a fashionable stratagem for insurance companies.

Prima Facie Case of Negligence

The first consideration of the Court will be whether a prima facie case of negligence has been made against the parent or next friend by the applicant.

In *Margaret Darcy (a Minor) v Roscommon County Council*[13] and in the case of *Johnson (a Minor) v Fitzpatrick*[14], the applicant failed to discharge the onus

charge the onus of proving a prima facie case of negligence. In *Darcy,* Hederman J in the Supreme court also noted the possible intimidatory effects on the next friend. He stated

> "To grant such a discretionary order, which necessarily is intimidatory on the parents and in particular on the parent who is at present the next friend might well affect their ability to exercise their parental independence in considering the running of the case and any settlement which might be offered. All these are matters which in my view the court must take into consideration."

In the case of *Michael Quirke (a Minor), suing by his Mother and next friend, Mary Quirke v Francis O'Shea and C.L.R. Oil Limited*[15], the Court considered the general principles once a prima facie case of negligence had been made out. Finlay, C.J. held that the discretion of a Court to join a third party is not confined to whether the issues arising between the Plaintiff and the Defendant on the one hand and the Defendant and the third party on the other, are similar or appropriately tried together.

Disruption of Existing Proceedings

The Court also had a discretion to refuse to join a third party in a case where the result of doing so is to disrupt the existing proceedings, causing a mandatory alteration to the parties in the sense of an alteration of the next friend of the infant Plaintiff and depriving the infant Plaintiff, notionally at least, of the protection and consideration to which he or she is entitled, from a parent on the occasion of having to institute Proceedings.

In summary, the Court held that it is entitled to balance the disruption to the existing Proceedings which could arise from joinder of the next friend of the third party against the convenience of trying all the issues in the one action.

Means of the Next Friend

A further consideration is the means of the next friend. In this case, the next friend was not a person with substantial assets. If the potential liability of the next friend is very small proportionately, and the assets of the next friend are small, the Supreme Court has stated the disruption involved in the appointment of another next friend and the removal of one parent from the control of infant Plaintiff's action, is not justified by the convenience of trying both issues together.

In the case of *Ian Hallihan (a Minor) v Patrick Keane and John Harrington,*[16] O'Hanlon J. refused an application by the second-named Defendant to join the Plaintiff's father as a third party, claiming a contribution or indemnity against the father of the infant Plaintiff, in the event of this Defendant being held liable in damages to the Plaintiff. This case was also one where the next friend appeared to have very limited means of defraying the costs of the High Court proceedings and meeting any claim for contribution or indemnity that might be established against him. The decision to refuse the application to join the next friend as a third party was made without prejudice to the Defendant's entitlement to bring separate Proceedings against the Father and next friend of the infant Plaintiff, seeking contribution or indemnity, should he elect to do so.

The balancing of the destruction to the existing proceedings which could rise from joining the next friend as a third party against the convenience of trying all the issues in one action will depend on the individual facts of each case. Finlay C.J. in *Quirke v O'Shea* stated that it is possible to conceive a situation in which the next friend has such a high potential responsibility as a concurrent wrongdoer for the wrong in respect of which an infant is claiming, that it would be in the actual interests of the infant, and therefore in the interests of the just procedures of the case, that he or she should be removed as a next friend so as to avoid conflict of interests which would arise.

If *mala fides* is shown on the part of the defendants, the Court will also refuse to join a next friend.

Non-Pecuniary Loss

In *Hosford v John Murphy & Sons Limited*[17] an interesting attempt was made by infant Plaintiffs, suing by their Mother, to recover, inter alia, damages in tort and breach of constitutional duty for the loss of the non-pecuniary benefits which the father of a family bestows on his children. These benefits were claimed to be of a moral, intellectual, religious and educational nature, based on the guidance, love and affection which a father bestows on his family.

In this case the Plaintiffs' father suffered irreversible brain damage and since his accident he had been permanently hospitalised and had been unable to communicate adequately. The father was made a Ward of Court and his claim was settled with the approval of the President of the High Court by payment into Court of the sum of £420,000. Costello J. in the High Court. considered a House of Lords decision[18] which held that a careless driver owed a duty of care to the wife of another road user because the nervous shock which she suffered from learning of the accident too, and seeing its effects on members of her family, was a reasonably foreseeable consequence of his careless driving. Costello J. found it unnecessary to decide whether Irish Courts should follow this decision and extend it so that a careless employer owes a duty of care to the children of a person he injures by his wrongdoing. Costello J. based his decision on the fact that the Plaintiffs' claim in the proceedings is unsustainable at common law because the harm which it is alleged they suffered is not of a kind for which compensation would be awarded. On the basis that damages for grief and sorrow are not recoverable, he decided that the deprivation of the non-pecuniary benefits derived from the parent/child relationship must also be recoverable.

McMahon and Binchy have commented on the need for energetic law reform in the area of actions for loss of consortium, given the reluctance of the courts to

develop these area of law, as shown by the decision in Hosford. The Law Reform Commission, in its Working Paper on "The Law relating to Loss of Consortium and Loss of Services of a Child", recommended modification of the old cause of action for loss of consortium. They recommend removing the historical notion of a wife being in "service" of her husband. The Commission also recommends extending the right of action to all members of the family of the victim. Also recommended is that damages in this new action should be without limitation and cover

(a) all reasonable expenses and other financial losses incurred by the members of the family of the victim.
(b) mental distress resulting to members of the family
(c) damage to the continuity, stability and quality of the relationships between members of the family.

The proposed limitation period would be the same as that in an action for fatal injuries, namely, three years.

Contributory Negligence

In *Fleming v Kerry County Council*[14], O'Byrne J. stated that in the case of a child of tender years there must be some age up to which the child cannot be guilty of contributory negligence. In cases where contributory negligence is alleged against a child, it is the duty of the Trial Judge to rule, in each particular case, whether the Plaintiff, having regard to his age and mental development, may properly be expected to take some precautions for his own safety and consequently be capable of being guilty of contributory negligence. Having ruled in the affirmative, it becomes a question of fact for the Jury, on the evidence, to determine whether he has fallen short of a standard which might reasonably be expected from him having regard to his age and development.

In *Macken v Devine*[20], Gleeson J. in the Circuit Court, held that a three and a half year old Plaintiff who had fallen down unguarded steps was not guilty of contributory negligence as he "had not sufficient sense to understand the risk and was incapable of appreciating the danger". In *Beahan v Thornhill*[21], Davitt, P. was satisfied that a boy of nine years can be capable of contributory negligence.

Contrary decisions have been reached however, regarding children of similar ages[22].

There have been differing decisions as to whether an objective or subjective approach should be adopted when considering the question of contributory negligence in children. In *Fleming v Kerry County Council*, O'Byrne J. stated that the standard was "what may reasonably be expected, having regard to the age and mental development of the child and other circumstances of the case". In *Kingston v Kingston*[23], Walsh, J. referred only to the age and not the mental development of a child, thus leaning towards an objective standard. This was an *obiter* statement. In *Clancy v Commissioners Of Public Works In Ireland*[24], Barr J. referred only to the Plaintiff child's age.

Two Supreme Court decisions appear to endorse the subjective approach. In *McNamara v ESB*[25], It would appear that a subjective test was put forward by Walsh J. although he was in the minority in upholding the jury finding on contributory negligence.

Brennan v Savage Smith & Co.[26] considered the case of a 7 and a half year old child who was injured by a reversing van while "scutting" on the rear bumper. He had pretended to run away so that the driver would believe that he was not "scutting". The Supreme Court altered the jury finding of 5% contributory negligence to 25%. In doing so, the Court appeared to adopt a subjective test. O'Higgins CJ noted that no issue was raised as to the child's intelligence, nor as to his knowledge of what he was doing. "He was a child of the environment, well used to vans, lorries and cars and, since he deliberately sought to deceive the driver lest he be stopped, fully aware that 'scutting' was dangerous and wrong."(p. 277)

Evidence Of Infants

The law in this matter would appear to be set by *Mapp (a Minor) v Gilhooley*[27] The Supreme Court held that it is a fundamental principle of common law that for the purpose of trials in either civil or criminal cases *viva voce* evidence must be given on oath or affirmation.

Thus in the High Court in this case, it was not sufficient that the trial judge believed the infant plaintiff to be "remarkably bright and intelligent [and] had no difficulty in giving evidence", nor that the trial judge was satisfied that "he understood the importance of the occasion and the necessity for telling the truth."

Finlay CJ was satisfied that "what should have been done... was to have adjourned the commencement of the case for such time as might be necessary to enable this young child properly to be instructed in the meaning and importance of an oath and then to have sworn him."

Thus although provision has been made for the hearing of unsworn testimony from children in criminal cases, in civil cases an oath is required. It would appear that acting upon unsworn *viva voce* evidence in a civil case would inevitably lead to a mistrial.

An appellant would only be denied a finding of a mistrial by estoppel, arising from an express representation that he was waiving his right to challenge the admission of the evidence, on which the opposing party relied to his detriment, or that such a finding would constitute a virtual fraud or abuse of the court.(p. 263.) ●

1. [1972] 2 QB 369
2. [1966] IR 60
3. Cro. Eliz. 33
4. [1966] IR 7
5. [1972] IR 144
6. 1977 Irish Reports
7. [1984] IR 151
8. [1982] IR 235
9. (No. 1) [1991] ILRM 135,
10. [1991] ILRM 140
11. 1979 2 All England Reports
12. Gazette, Jan.-Feb. 1996, p. 27
13. (S.Ct. 1996 11 2706),
14. 1992 I.L.R.M. 269

cont'd

15. 1992 I.L.R.M. 267
16. 1992, I.L.R.M. 595
17. 1988 I.L.R.M. 300
18. See McLoughlin v O'BRIEN 1983 1 AC 410
19. 1955 to 1956 Irish Jurist Reports 71, at 72,
20. 80 I.L.T.R. 121
21. 62 I.L.T.R. 65
22. Menton v C.I.E., Supreme Court on the 27th July 1966, Lavery J. stated that a nine year old girl, by reason of her age, probably could not have negligence imputed to her. In Courtney v Masterson 1949 Irish Jurists Reports 6, Black J. in the High Court stated that he was not prepared to accept the contention that a boy of ten years is incapable of contributory negligence. In O'Gorman v Crotty 1946 Irish Jurists Reports, 34, the High Court held that a ten-and-a-half year old boy was capable of contributory negligence. In Hosty v McDonagh, Supreme Court, 29th May 1973, a child aged ten years and three months was held to be capable of contributory negligence to the extent of 30%. She ran out of school into the road and was hit by a car. The Supreme Court found that the original jury apportionment of 10% of the liability was perverse and increased her liability to 30%.
23. 102 I.L.T.R. 65
24. 1988 I.L.R.M. 268
25. [1975] IR 1
26. [1982] ILRM
27. [1991] 2 IR 253.

Applications for Security for Costs and the Prohibition of Discrimination on Grounds of Nationality in EC Law

Conor Dignam, Barrister

Order 29 of the Rules of the Superior Courts provides that a defendant to an action may apply to the court for an order for security for costs. Such an Order will not be available where the plaintiff[1] against whom such an order is sought resides within the jurisdiction of the court. While there is no express statement in Order 29 that a litigant residing outside the jurisdiction of the court may be required to give security for costs this, as acknowledged by both the High Court[2] and the Supreme Court [3] would appear to be the case. Order 29, Rule 2 provides that a defendant shall not be entitled to an Order solely on the grounds that the plaintiff resides in Northern Ireland.

In *Collins v Doyle*[4] Finlay P stated "In general it would appear to me that the principle underlying a defendant's right to security for costs must be that he should not suffer from an inability to recover the cost of successfully defending the claim arising from the fact that the unsuccessful plaintiff resides and has his assets outside the jurisdiction of the court."

Finlay P set out the principles of law applicable in an application under Order 29 as follows:

(a) prima facie, a defendant establishing a prima facie defence to a claim made by a plaintiff residing outside the jurisdiction has got a right to an order for security for costs but,
(b) this is not an absolute right and the court must exercise a discretion based on the facts of each individual case.

This statement of the law was expressly adopted by the Supreme Court in *Fares v Wiley*[5].

It fell to the High Court, in three recently reported cases[6], to examine and apply these principles of law in light of the provisions of the EEC Treaty and of the Brussels Convention as interpreted by the European Court of Justice in *Mund & Fester v Hatrex International Transport.*[7]

Mund & Fester involved a provision of German procedural law which provided that:

(1) an order for the seizure of assets shall be made when it is to be feared that enforcement of a judgment would otherwise be made impossible or substantially more difficult, and,
(2) the fact that judgment is to be enforced abroad shall be considered sufficient grounds for a seizure order.

The case was referred to the ECJ under Article 177 of the EEC Treaty for an interpretation of its validity in light of Article 7 (now Article 6) of the EEC Treaty, prohibiting discrimination on grounds of nationality, read in conjunction with Article 220 of the Treaty and the Brussels Convention. The Court held that the relevant national provision involved a form of covert discrimination as the great majority of enforcements abroad would be made against persons who were not of German nationality and therefore had the same result as if the provision were based on nationality. However in order for the discriminatory provision to be unlawful as being incompatible with Article 7 of the Treaty that provision must also be incapable of being justified by objective circumstances. One such objective circumstance could be that enforcement abroad would be more difficult. The Court recognised the validity of such an argument but held that it would only apply to enforcements in the territory of a non-EU member state as all member states were also contracting parties to the Brussels Convention and could therefore be treated as a single entity for the purposes of enforcement of judgments. The national provision, not being justified by objective circumstances, was therefore incompatible with the Treaty.

In the first of the three Irish cases, *Maher v Phelan*[8], Carroll J expressly stated that it is not possible to obtain an order for security for costs against an individual litigant who is resident in the jurisdiction regardless of any surrounding circumstances and that in light of the decision in *Mund & Fester* a plaintiff resident in another EU member state could not be ordered to give such security. If it was possible to obtain such an order the Rules of the Superior Courts would be giving effect to a form of covert discrimination. Carroll J did not examine the Brussels Convention from the perspective of assessing whether any objective circumstances justifying the discrimination existed but rather stated that even if she

was permitted to grant an order she would in fact exercise her discretion to refuse the order as the Brussels Convention, rendering it easy and inexpensive to enforce judgments, removed the rationale for awarding such an Order at least as far as residents of the EU member states were concerned. This case recently came before the Supreme Court and it was determined that the case involved an issue of European law and was appropriate to be referred to the European Court by way of an Article 177 Reference.

Proetta v Neil[9] examined *Mund & Fester* and considered whether the principles established were applicable to Order 29 applications in Ireland. Murphy J held that if an order for security for costs may only be awarded against individuals residing outside the jurisdiction the vast majority, though not necessarily all, of such orders would be against individuals of nationalities other than Irish and would therefore have the same result as discrimination based on nationality.

Keane J in *Pitt v Bolger*[10] expressly adopted the principles of law set down by Carroll and Murphy JJ although there is a slight change in emphasis which does not in effect alter the substance of the judgments. Keane J stated that the discretion under Order 29 must never be exercised to order that security be given by an individual who is a national of and resident in another EU member state which is a party to the Brussels Convention. He enters a possible caveat to these principles in stating that such an order may possibly be given in circumstances where there is very cogent evidence of substantial difficulty in enforcing a judgment in that other member state[11]. This caveat is founded upon the possibility that discrimination may be justified by objective circumstances.

In the case of *Data Delecta Aktiebolag & Anor v MSL Dynamics Ltd.*[12] the Court held that, as it had in *Hubbard*[13], the right to equal treatment laid down by Community law cannot be made dependent on the existence of international agreements concluded by the Member States. In other words, the principle of non-discrimination is found in the Treaty and is not conditional upon extrinsic agreements. As Advocate General La Pergola expresses it,

> 'Article 220 of the Treaty and the Brussels Convention do not serve to implement the principle of non-discrimination, but are designed to simplify and standardise the formalities required in order to attain the outcome of mutual recognition of judgments'.

The Court held that Article 6 (previously Article 7) precludes a Member State from requiring a legal person established in another Member State which has brought, before one of its courts, an action against one of its nationals or a company established in the Member State in question to lodge security for the costs of the proceedings, where no such requirement can be imposed on legal persons from the State, in a situation in which the action is connected with the exercise of fundamental freedoms guaranteed by Community law.

The Swedish provision at issue in that case differs from Order 29 in that the Swedish Courts have no discretion to refuse an application for security for costs whereas the Irish Courts have such a discretion which may be exercised in such a way as to ensure that the manner in which Order 29 is applied is compatible with the EC Treaty, i.e. so as to never make an Order for security for costs against a plaintiff who is resident in a Member State. This point may be important in assessing whether Order 29 per se is incompatible with the principle of non-discrimination.

The English Courts have on a number of occasions[14] over a period of six years also addressed the question of their national procedural provision, (Order 23 of the Rules of the Superior Courts), providing for an order for security for costs, against the background of the EEC Treaty and the Brussels Convention. Prior to the decision in Mund & Fester they were reluctant to hold that the provision was incompatible with Article 7. However, the Court of Appeal in *Fitzgerald & Ors v Williams & Ors*[15] held that the Courts should never exercise their discretion under Order 23 to order security to be given by a litigant who is a national of and resident in another Member State party to the Brussels Convention, "at any rate in the absence of very cogent evidence of substantial difficulty in enforcing a judgment in that other member state."

While it may have been expected to have been the case, the decision in *Mund & Fester* and the resulting Irish and English decisions have demonstrated very clearly that national procedural provisions such as that contained in Order 29 providing for an order for security for costs are required, just as national substantive law is required, to comply with the provisions of the EEC Treaty. The European Court of Justice held in *Data Delecta* that a rule of domestic civil procedure is subject to the principle of non-discrimination contained in Article 6 where that rule has an effect, whether direct or indirect, on the fundamental rights and freedoms, such as the free movement of goods and services, guaranteed by the Treaty. ●

1. Different rules apply to companies but are not the focus of this article.
2. Collins v Doyle [1982] ILRM 495.
3. Fares v Wiley [1994] 2 IR 379.
4. [1982] ILRM 495 at page 496.
5. [1994] 2 IR 379 at page 381.
6. Maher v Phelan [1996] 1 IR 95; Proetta v Neil [1996] 1 IR 100; Pitt v Bolger [1996] 1 IR 108.
7. [1994] I E.C.R. 467.
8. [1996] 1 IR 95
9. [1996] 1 IR 100
10. [1996] 1 IR 108.
11. Keane J at page 120 adopting the principles established in Fitzgerald & Ors v Williams & Ors [1996] 2 WLR 447.
12. Data Delecta Aktiebolag & Anor v MSL Dynamics Ltd [1996] 3 C.M.L.R. 741.
13. Hubbard v Hamburger [1993] I E.C.R. 3777.
14. Berkeley Administration Inc. v McClelland [1990] 2 Q.B. 407; De Bry v Fitzgerald [1990] 1 W.L.R. 552; Fitzgerald & Ors v Williams & Ors [1996] 2 W.L.R. 447.
15. [1996] 2 W.L.R. 447

THE IRISH LEGAL SYSTEM

3rd Edition *by Raymond Byrne and J. Paul McCutcheon, published by Butterworths, £40.00*

The Irish Legal System" by Messrs. Byrne and McCutcheon, which is now in its third edition, was first published in 1986. The current edition is more expansive than previous editions and reflects the rapid changes which have occurred in our legal system. The late Mr. Justice Niall McCarthy in his foreword to the first edition, expressed the view that the public at large were ignorant as to some of the intricacies of the legal system and stated that "In this book, the authors have set out to pierce that great curtain of ignorance". In my view, the authors achieve this objective by concentrating on the functioning of the legal system in general rather than scrutinising any of its particular rules. The book successfully examines the relationship between the legal institutions and the various sources of law. The book opens with a very general introduction to the legal system and charts its development from pre-Norman Ireland up to the creation of the Irish free state. The authors deal with the main professional bodies operating within the legal system and cover such topical questions as increased numbers in the professions, advertising, "no foal no fee litigation", and professional discipline. These issues are clearly pertinent in any analysis of the legal system and the book tackles these areas in an incisive and interesting manner. The passing of the Courts & Court Officers Act, 1995 has heralded many changes within the judiciary and Court administration, and the full effect of this new legislation is examined in detail.

The book also tackles the topical question of the need for reform within the management of the Court system, and has illustrated the need for such reform by highlighting the growth in litigation in recent years. The first instance and appellate jurisdiction of the Courts are treated separately and located differently in the book. This unnecessarily fragments these two associated topics and later editions of the book might ben-

efit from linking these two chapters together. The jurisdictions of the Courts are illustrated by means of excellent diagrams which assist in showing the often cumbersome and complicated paths followed by cases up to their conclusion. The often maligned criminal and civil legal aid systems are analysed within the chapter dealing with the powers of the Government. All of the main provisions of the Civil Legal Aid Act, 1995 are included in the chapter, but no indication is given as to the authors' views on whether these systems are adequate to provide equal access to the law for all citizens. The treatment of the question of law reform and the workings of the Law Reform Commission in the book is weak and fails to reflect the Commission's contribution to the development of our legal system.

The high points of the book are the chapters dealing with judicial precedent and statutory interpretation. The study of the doctrine of "stare decisis" examines the crucial difference between the ratio decidendi and obiter dictum. This complex area of law is then placed on a very understandable level by giving the reader a working example of precedent in action by means of presenting a series of well known Irish and English authorities governing the liability for the tort of professional negligence. The book also contains a superb discussion of the different rules and presumptions of statutory interpretation. Not only does the chapter cover the interpretation of European Union measures, but it also deals with the broad range of modern authorities on this area. The authors are to be congratulated for their logical presentation of this complex area of the law.

The recent landmark decisions of *Attorney General v. X* and *In Re a Ward of Court* have served to focus public attention on the interpretation of the various provisions of Bunreacht Na hEireann. This edition of the book has expanded its examination of the Constitution by including significant quotations from these cases. The use of extensive quotations reflect the practical style of presentation that is prevalent throughout the book.

The remaining chapters deal with the European Union and trace its development since the early days of the Treaty of Rome and incorporate the changes brought to the Union by the advent of the recent European Treaties. The book also comments on Ireland's membership of various international organisations such as the Convention on Human Rights & Fundamental Freedoms.

"This book is a very comprehensive guide to the dynamics and mechanisms of our legal system. It is very well prepared and researched and is of excellent value to any student pursuing a third level qualification in law. I was pleasantly surprised by how useful the book is to practitioners in that it contains a broad range of information on procedures, rules and developments in the legal system. In particular, practitioners commencing their legal careers will find the chapters dealing with the Court structure, Court procedure and the provisions of the Courts & Court Officers Act, 1995 very helpful. The third edition of the book represents a significant improvement on earlier editions and I was particularly impressed with the practical and comprehensive manner in which the various topics covered are dealt with. While of particular interest to law students, the book represents a useful addition to any practitioner's legal library.

- Micheal O'Scanaill, Barrister

SEXUAL OFFENCES, LAW, POLICY AND PUNISHMENT

by Thomas O'Malley, Roundhall, Sweet & Maxwell, 1996, £45.00

This is a very filthy case' observed Kennedy CJ in 1936 when considering a matter in the case of AG v Bert Lloyd alias Arthur H. Sugden, before the Court of Criminal Appeal. Such thoughts are probably still present in the judicial mind, but every case now seems very filthy. The increased number of sexual offences before the courts and the growth in domestic jurisprudence all point to the desirability of a clear text in this area. Thomas O'Malley's book is such a one. As the subtitle shows, this, unlike many text books, is wider than an Irish version of Archbold or Blackstone. Rather it is an intelligent, thoughtful and precise account of the area of sexual offences and offending. The author gives a clear account of all the relevant law on rape, sexual assaults, sexual abuse, indecency and prostitution. This is followed by a full treatment of the trial of such offences, sentencing, pornography, sexual harassment and law reform. The introduction on the changing perception of sexual violence is a balanced history and clearly marks the enormous changes in society's attitude (or was it men's attitudes?) and the law in the last twenty years. The criminal practitioner will be aware of the extraordinary changes not just in the law but upon what juries will now act. What prospect of prosecution, let alone conviction, could there have been twenty years ago of an uncorroborated allegation of sexual assault upon a minor by an adult? Perhaps the unwillingness to convict was due to the warnings given by the judge, or the free inquiry permitted as to previous sexual history of the complainant, or the almost exclusive composition of the jury by men. Whatever the reasons, the DPP now prosecutes cases and such cases with a greater prospect of success; victims are accorded rights, and even courtesies, which were denied to them previously. Therefore both the law an the practice in this area has changed radically, as has society.

As many old cases now surface, the challenge for the courts is to maintain the

balance between the competing claims for justice made by the parties, and so a fuller treatment of the delay area, where cases of twenty and thirty year's antiquity are now being processed, would have been helpful. The absence of a large body of case law in the Supreme Court is not helpful; practitioners might note that since publication, Budd J's decision in CB v. DPP was upheld on but Keane J's judgment in O'R v DPP was not, apparently overruled ex tempore on 18 March of this year. Perhaps charges that are forty or fifty years old may now be tried? In many areas the author relies on English cases, providing an acute analysis of the reasoning therein. Commonwealth and American cases are also treated, and Irish cases wherever they have been reported are fully considered: it is sobering to find so many with which one was not acquainted.

O'Malley considers contemporary problems such as the defence of consent in sadomasochistic practices, prostitution, public morals and sentencing. The latter is extensively dealt with and in conjunction with the recent successful appeal by the DPP in a rape case (DPP v Power, CCA, 3 March, 1997), will enhance a growing body of law.There are some minor errors, for instance the penalty under the Vagrancy Act 1824 is three months, not three years. Apart from that, this is a refreshing text which should be read by every criminal practitioner. I cannot remember which colleague of yore was reputed to have brought Fearne on Contingent Remainders on his honeymoon. Sexual Offences, Law, Policy and Punishment should be read by everyone involved in the administration of criminal justice in Ireland, if necessary while on holiday, and soon.

- Patrick Gageby, Senior Counsel

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MEDICAL NEGLIGENCE ACTIONS *by John White, published by Oak Tree Press, £80.00*

The engagingly wayward foreword to this book puts the reader on enquiry as to whether the author will treat his subject in an objective manner. The early reminder to practitioners that it constitutes professional misconduct for a barrister to settle, or a solicitor to issue a writ, against a professional person without being satisfied that there is evidence to sustain the action, unless the steps are taken either to prevent the Statute expiring or to obtain discovery, provides reassurance that he will do so. This reassurance is disturbed very quickly when the author considers that "little is to be gained" from advising the prospective Plaintiff to confront the doctor for an explanation of the events that led to "his present condition". It is undermined even further when the author demonstrates bewilderment at what he perceives to be the medical profession's unlimited access to experts to defend the indefensible. The author states that not alone has the medical profession enormous financial resources at its disposal but that it enjoys "access to literally a circus of medical experts who will be prepared to defend, if not a colleague then a profession." This is an unworthy comment to make, as is the author's description of the Plaintiff -v- doctor situation as being the "epitome of David and Goliath". In urging the reader to "be careful not to take even the sling-shot from David" the author might remember that if Goliath is slain, David will go untreated.

These examples of lack of objectivity appear however in part one of the book entitled "Conduct of a Medical Negligence Action". It accounts for only one quarter of the text and the reader at this stage must be apprehensive that the

remainder of the book which is entitled "Principles of Liability" will continue in this vein. Thankfully this concern is unnecessary. The authors treatment of these principles is exemplary. He guides the reader safely through the many Irish cases and points out some inconsistencies on the way. The persuasive precedents of other jurisdictions notably the United Kingdom, the United States of America, Canada and Australia are referred to in detail. Whilst one might certainly baulk at the author's description (see page 161) of the majority of the Supreme Courts view on informed consent in *Daniels and anor -v- Heskin*, 1954 IR 73, and possibly query his assessment of that decision in the light of *Walsh -v- Family Planning Limited*, 1992 1 IR 496, one cannot but admire his masterful comparison of these cases with the Bolam principles in the United Kingdom; the Canterbury doctrine in the United States of America; *Reibel -v- Hughes*, 1980 114 DLR (3d) 1, in Canada; and *Rogers -v- Whitaker, 1992* 175 CLR 479, in Australia.

However one might have expected the author to criticise the Supreme Court's decision in *Lindsay -v- Mid Western Health Board* 1993 2 IR 147 where O'Flaherty J. in delivering the Judgment of the Court held that the doctrine of *res ipsa loquitor* applied when a little girl underwent an appendectomy under general anaesthesia, from which she never recovered consciousness. The classic statement of this doctrine is to be found in *Scott -v- London and St. Katherine Docks Company* (1865) 3 HC 596. Erle CJ stipulated that two conditions need to be satisfied to raise the doctrine. Firstly the "thing" must be shown to have been under the management of the Defendant or his servants and secondly the "accident must be such as in the ordinary course of things, does not happen if those who have the management use proper care". The author substitutes the curious phrase "harm-causing agency" for "thing". It is easy to understand the doctrine applying in a case where a crane drops its haul on a pedestrian or a piece of steel is found in a black pudding because the ordinary person in the street knows that this should not happen. I suspect that the ordinary person or Judge knows little or perhaps nothing about anaesthesia.

Practitioners in this area will also find eighteen precedent documents commencing with the letter before action seeking discovery to a draft Affidavit resisting a Defendant's application for the trial of a preliminary issue as to whether the Plaintiff's cause of action is statute barred. There are of course numerous precedent Endorsement and Statements of Claim but the only minor cavil is that there are no precedent Defences. The author has also very helpfully included an index to the written Judgments of the Superior Courts in medical negligence actions between the years 1988 to 1994.This book is now the standard text book on medical negligence actions, in Ireland. Inevitably it will require subsequent editions to take into account likely changes in the law such as the mandatory sharing of medical experts reports prior to trial. It is to be hoped that the excellent author will write many more editions of this superb text book.

- Eugene Gleeson

Review Group Established to Consider the Structure and Operation of the Bar Council

The Bar Council has established a review group under the chairmanship of Frank Clarke, SC to consider, inter alia, the structure of the Bar Council and its interaction with management with a view to simplifying its operation and identifying targets and allocating responsibilities for the creation and implementation of Bar Council policy on an effective and timely basis.

The review group will assess the implementation of the Proposals for Reform and consider, in particular, issues concerning premises, publicly funded work, education, new areas of work and Council structures.

To assist it in its deliberations, the Review Group invites submissions from interested members. Because of the exacting timetable required for the Review Group to report to the Bar Council in June, submissions received up to 6th June are particularly welcome.

Submissions may be directed to Frank Clarke, SC, Chair, Bar Council Review Group, c/o Bar Council Office, Law Library Building, Church Street.

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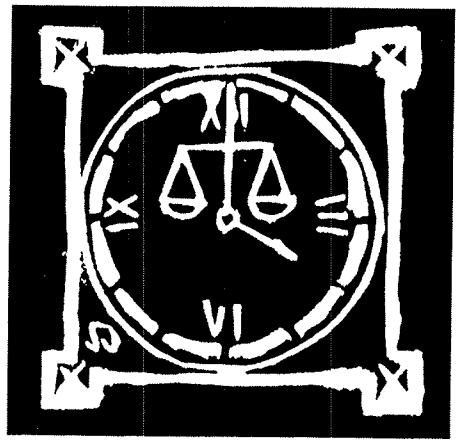
Library Service

Members requiring books for a following day may complete a form available from Albert McDonald, indicating the titles required. The books will be available for collection by them, as ordered, the following morning. Contact Albert McDonald.



Judicial Appointments and Retirements

Congratulations and best wishes to The Honourable Mr. Justice Kevin T. O'Higgins and The Honourable Mr. Justice John Quirke upon their appointment to the High Court.

Congratulations also to Carroll Moran and Jacqueline Linnane upon their nominations for appointment to the Circuit Court and congratulations to Mr. Justice James Carroll upon his retirement from the Circuit Court.

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Constitutional and Human Rights Experts Sought by the European Commission

The European Commission requires experts in constitutional and human rights law to assist it in establishing legal structures for the protection of constitutional and human rights in certain countries in Africa, Central and South America, Asia Eastern Europe and the former USSR.

At present the nature of the commitment required is unclear. The assistance required may range from participating in seminars over a number of days or to longer stays.

Practitioners and academic lawyers who are interested in further details are invited to contact Mr. Justice Paul Carney, High Court, Four Courts, Dublin 7, indicating their areas of expertise, relevant foreign languages, preferred destination in which they would be interested in working and whether available for short-term or longer term commitment.

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AIJA (International Association of Young Solicitors) Conference

Topic: International Worker Mobility – The Practical Impact

Date: 25-27 September 1997

Venue: Worcester College, Oxford

Fee: £200 (includes documentation, lunches and dinner)

Contact: Michael Tyrrell, Matheson Ormsby Prentice (01 667 1666)

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Contact: 276 2371 or 087 233 9940

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Conference on Refugee Law

Date: Friday, 13th June,
Venue:Pillar Rooms, Rotunda.

Contact: Irish Refugee Council, 872 4424.

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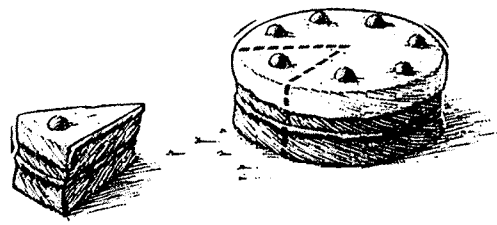

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