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THE BAR REVIEW

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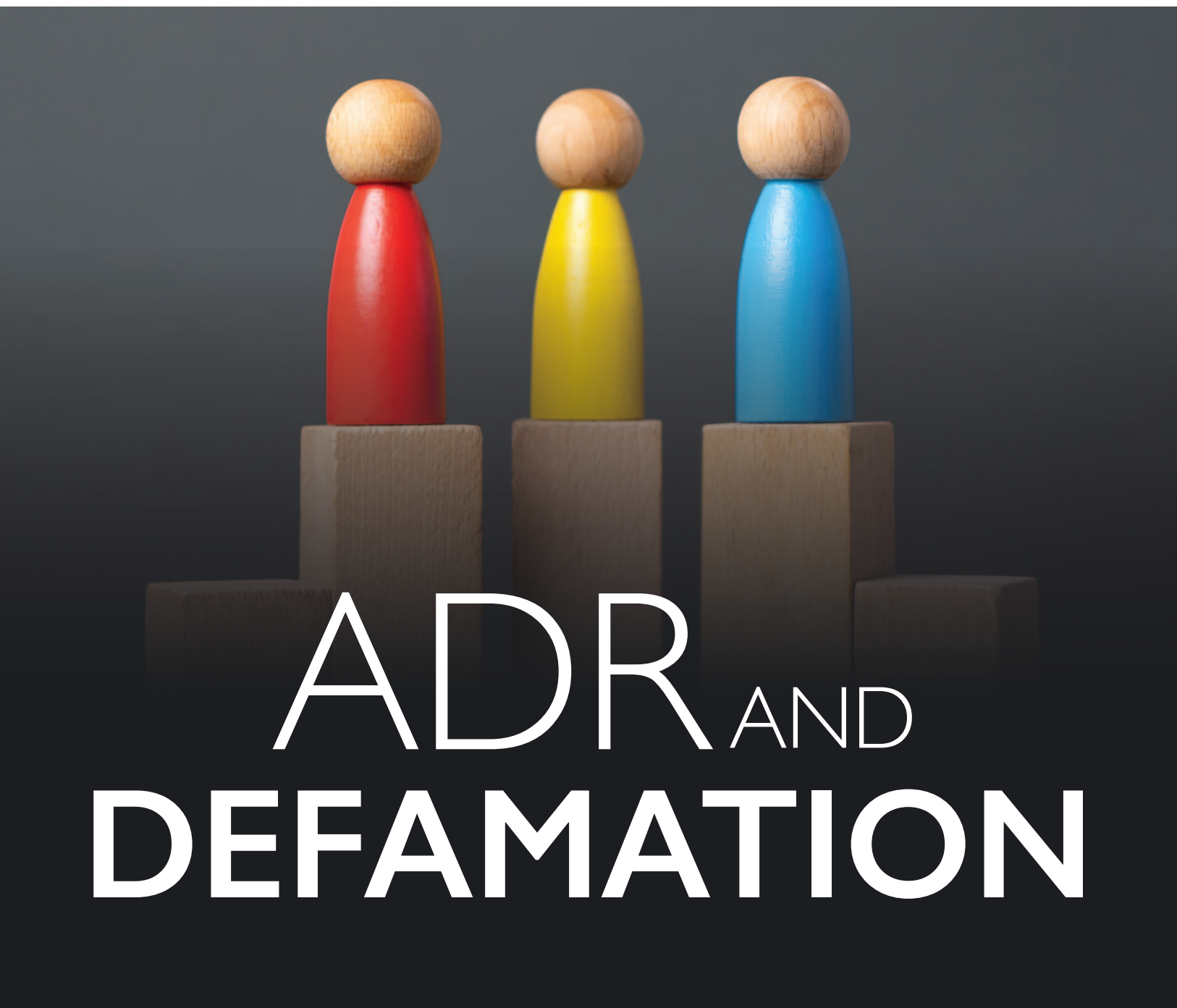

ADR AND DEFAMATION

BLOOMSBURY PROFESSIONAL

THE BLOOMSBURY PROFESSIONAL COMPANY LAW SEMINAR 2025

EMERGING AND OVERLOOKED LIABILITIES OF COMPANY DIRECTORS

Date: 10th April, 2025

Time: 8:30 am–12:30 pm

Venue: Chartered Accountants Ireland, Pearse St, Dublin 2

4 CPD points available to delegates

Bloomsbury Professional Ireland are delighted to be hosting a new company law seminar: ***Emerging and Overlooked Liabilities of Company Directors***, with speakers including **Prof William Binchy**, **Dr Thomas B. Courtney** (Chair), **Shelley Horan BL**, **Senator Michael McDowell SC**, and **Kelley Smith SC**.

Seminar topics include:

- Company Directors' Liability in Tort – William Binchy and Thomas B. Courtney
- Civil Liability of Directors for Company Breach of Court Orders – Michael McDowell
- Imposing Personal Liability on Company Directors by Lifting the Veil for Fraud – Kelley Smith
- The Criminal Liability of Directors – Shelley Horan

Price: €450 **Early Bird Price: €395**
(Early Bird offer ends February 28th)

Price includes a comprehensive information pack.

To book your place visit: **www.bloomsburyprofessional.com/company-law-seminar-2025**

Or Email: **BPIreland@bloomsbury.com**

FEBRUARY 2025

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A MEANINGFUL CONTRIBUTION

Barristers have a significant role to play in upholding the rule of law, both through the work of The Bar of Ireland, and through colleagues who achieve elected office.

Seán Guerin SC
Senior Counsel, Barrister – Member of the Inner Bar
Chair of the Council of The Bar of Ireland

"Self-government is our right, a thing born in us at birth, a thing no more to be doled out to us, or withheld from us, by another people than the right to life itself – than the right to feel the sun, or smell the flowers, or to love our kind."
Roger Casement, Speech from the Dock,
The Penguin Book of Historic Speeches (1995)

The election of the 34th Dáil is an occasion to reflect on the value of the right of self-government, and to reflect also on how that right has been and is to be exercised. We live in a time not just of change in political and social ideas but also of challenge to foundational ideas of political and social order. Whether the challenge comes from right or left on the political spectrum, it hardly seems possible to say, as Burke once did, that in all nations "the same principles are continually resorted to, the same maxims sacredly held".

The Council of The Bar of Ireland was delighted to be involved in the general election campaign in two new and important ways. First, on November 12, the Council hosted a well-attended election hustings event, featuring candidates – Jim O'Callaghan SC, Barry Ward SC, Ivana Bacik, Ruairí Ó Murchú, Sinéad Gibney and Patrick Costello – from across the political spectrum. This event provided a welcome opportunity to have a wide-ranging discussion on important issues relating to the administration of justice in Ireland. The willingness of those candidates to share their time, their thoughts and their ideas with an audience of barristers in the middle of a general election campaign was appreciated by all who attended.

Contributing to public debate

It was particularly satisfying that they were willing to do so at an event where the Council was launching our second electoral initiative: the publication of *Justice – A Manifesto for Fairness*. The Council always plays an active role, made possible only by the voluntary contribution of countless colleagues, in public policy debate and, in particular, regularly makes written submissions on matters of public interest at different stages of the policy and legislative cycles (all of which can be found on The Bar of Ireland's website). But those efforts can be somewhat reactive and the manifesto was an initiative designed to contribute, in a proactive and considered way, to public debate on justice issues. It was especially designed to contribute to the debate on matters in which the

profession could identify and articulate an important but underserved public interest, as distinct from matters of narrower concern to members of the profession as such.

What emerges clearly from the manifesto is that more than a century of self-government, at least within the geographical limits recognised in Article 3 of the Constitution, has been no panacea. Across a range of important issues – adequacy and resourcing of legal aid, civil and criminal; adequacy of court and judicial resourcing, particularly in areas such as family law; and, the development of new methods and procedures to secure access to justice, to name only a few – there is much unfinished business in urgent need of attention from the new Government.

Pride in the profession

Of course, it is a source of pride that so many members of The Bar of Ireland have secured the confidence of their fellow citizens through election to public office and even more so that three practising or former practising colleagues – Jim O'Callaghan SC, James Lawless and James Browne – hold senior ministerial office in the new Government. We congratulate them and wish them every good fortune.

Their success in the distinct but related fields of law and politics is a useful reminder that the one foundational idea on which self-government depends if it is to be more than mere assertion is the rule of law. That idea is expressed with simplicity, clarity and effectiveness in the language of Article 40 of the Constitution, and more lyrically in Yeats's fear of anarchy being loosed upon the world. Either way, the maintenance of the rule of law requires not just the public service of decent and thoughtful men and women in elected office, but also the active, engaged and ever-vigilant participation of those who may never aspire to public office but who nonetheless have a valuable and meaningful contribution to make to public debate and public life. There are many such people at The Bar of Ireland.

MEDIATION MATTERS

This edition covers a wide range of topics, from extreme weather events to imposing sentences on companies.

Helen Murray BL
Editor
The Bar Review

The impact of Storm Éowyn, one of the worst storms, if not the worst storm to hit Ireland, may be felt for a long time to come. Martin Canny BL, in this month's closing argument, examines the law's approach to insuring buildings in the aftermath of weather-related damage.

Lorna Lynch SC has prepared a comprehensive analysis of recent developments in employment injunctions, which is essential reading for colleagues regardless of whether or not they are practising in this area.

Mediation in defamation matters is the subject of an article written by Stephen Hanaphy BL. This article summarises the relevant provisions of the Defamation (Amendment) Bill, 2024, and explores the ramifications for the plaintiff who is determined to have their day in court.

What happens when a company is convicted of a criminal offence? James B. Dwyer SC explains how the courts are imposing sentences on companies.

And finally, it may feel like the depth of winter, but spring is around the corner and in keeping with this sunny outlook, *The Bar Review* has interviewed two colleagues who have recently been elected as MEPs, Cynthia Ní Mhurchú and Michael McNamara.

Specialist Bar Association news

PRDBA and Fieldfisher

On December 12, the Professional, Regulatory and Disciplinary Bar Association (PRDBA) and Fieldfisher hosted a well-attended event focused on 'Suspension Applications and Undertakings in Fitness to Practise Inquiries'. Held at the Fieldfisher offices on Mespil Road in Dublin, the event began with an opportunity to network over a light breakfast. Frank Beatty SC, Chair of the PRDBA, chaired the session. Colm Ó Néill BL delved into the complexities of suspension applications in the context of ongoing criminal investigations, offering valuable insights for legal and regulatory professionals. Alice Moore, Public and Regulatory Associate at Fieldfisher, provided an in-depth analysis of statutory time limits, particularly focusing on the recent judgment in the case of *Property Services Regulatory Authority and Gabriel Dooley* [2024] IECA 251. Aisling Ray, also a Public and Regulatory Associate at Fieldfisher, explored suspension applications and the practice of undertaking not to practise, shedding light on their legal and practical implications.

Climate Bar – a year in review

On December 19, the Climate Bar Association hosted a CPD session titled 'A Year in Review – A Round-up of Climate Litigation', in the Gaffney Room and online. The session was led by Gavin Rothwell BL, who provided a comprehensive overview of the most significant climate litigation cases of the year. Attendees were given valuable insights into the evolving landscape of climate law both within Ireland and internationally. The CPD was preceded by the 2024 Climate Bar Association AGM.

Examining employment law

Pictured at the EBA Annual Conference were (from left): Lorna Lynch SC; Cara Jane Walsh BL; Jason Murray BL; Remy Farrell SC; and, Ms Justice Nuala Butler.

The Employment Bar Association (EBA) Annual Conference took place on November 15 at the Distillery Building. Brendan Kirwan SC, Chair of the EBA, opened the event, and the first session was chaired by Ms Justice Nuala Butler, and featured speakers Remy Farrell SC, Lorna Lynch SC, Jason Murray BL, and Cara Jane Walsh BL. The papers presented gave insight into topics such as: equality claims; disciplinary and regulatory claims in criminal conduct; navigating workplace investigations; and, recent case law surrounding injunctions.

The second session was chaired by Alex White SC. Des Ryan BL spoke on his paper entitled 'Employment Law Remedies'. Des then joined a panel discussion with experts Ercus Stewart SC, Helen Callanan SC, and Rosemary Mallon BL. The day wrapped up with a drinks reception, providing a terrific opportunity for networking.

EBA CPD

On December 11, the EBA hosted an in-person and online event titled 'The Impact of the Supreme Court on the Development of Labour Law in Ireland'. Speaker Anthony Kerr SC delivered a presentation on the role of the Supreme Court in shaping labour law in Ireland. After the online portion concluded, an additional discussion was held exclusively for in-person attendees. The event ended with a Winter Warmer reception at the Sheds.

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Diploma in Commercial Property	19 March 2025	€2,700
Certificate in Property Law and Conveyancing for Legal Executives	20 March 2025	€1,750
LLM Advanced Legal Practice	22 March 2025	€3,700
Certificate in Enforcement for Public Bodies	9 April 2025	€1,750
Certificate in Mediator Training	16 April 2025	€1,750
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All lectures are webcast and available to view on playback, allowing participants to catch up on coursework at a time suitable to their own needs.
Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

Where employment and media law meet

On January 2, the Media, Internet and Data Protection Bar Association (MIDBA) and the EBA held a joint CPD in the Gaffney Room and online. This event was sold out in person and there were 400 online attendees. The session featured distinguished speakers, including Clíona Kimber SC, joint author of *Cyber Law and Employment*, and Michael O'Doherty BL, author of *Internet Law*. Chaired by Brendan Kirwan SC, the discussion covered critical topics such as recent WRC cases involving disciplinary actions linked to employees' social media activity, the balance between an employer's right to monitor social media and an employee's right to privacy, and the challenges employers face when an employee's controversial opinion damages the company's reputation. The event also explored whether disclaimers like "All opinions expressed are my own" can offer protection to employees, and how employers should respond to "internet pile-ons" when a post offends the public, including customers.

Pictured at the joint MIDBA/EBA event were (from left): Michael O'Doherty BL; Clíona Kimber SC; and, Brendan Kirwan SC.

Tax matters

The Tax Bar Annual Conference took place on December 4, and included a distinguished panel of experts, such as Niall Cody, Chairman of the Revenue Commissioners, and leading figures from PwC, EY, and Deloitte, including Danielle Cunniffe, David Fennell, and Tom Maguire. The programme featured a range of critical topics, including the Revenue's time limits, with insights into the recent High Court case *The Revenue Commissioners v Tobin*, as well as the current state of play surrounding general anti-avoidance provisions, which continue to raise important questions for both tax authorities and taxpayers. The conference also addressed the challenges of employment status in the modern workplace, with a detailed analysis of the implications of the landmark case *The Revenue Commissioners v Karshan (Midlands) Ltd t/a Domino's Pizza*.

Pictured at the Tax Bar Association Annual Conference were (from left): Dearbhla M. Cunningham BL; Gráinne Duggan SC; David Fennell, Director, EY; and, Michael M. Collins SC.

CIBA Breakfast Briefing

The Corporate and Insolvency Bar Association (CIBA) held a Breakfast Briefing on January 15. This event was chaired by Kelley Smith SC. The first part of the presentation, delivered by Noel McGrath BL, focused on the development of the law surrounding duties owed to creditors in insolvency scenarios, particularly in light of the UK Supreme Court's decision in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25. The second part, delivered by Aoife Sheehan BL, reviewed the Moorview principles, the joinder of non-parties for costs orders, and recent applications concerning those principles in the context of directors of insolvent companies.

Probate Bar Annual Conference

On November 29, the Probate Bar Annual Conference took place. The event featured a distinguished line-up of speakers, including Ms Justice Siobhán Stack, Elaine Byrne of Byrne Solicitors, and Anne Heenan from the Dublin Probate Office. Experts such as Paula Fallon of Gartlan Furey, and barristers John Donnelly SC, Edmund Sweetman BL, Catherine Duggan BL, and Mark O'Riordan BL, shared their expertise on critical issues. Topics discussed included the challenges of will drafting with international elements, the potential pitfalls in estate administrations, and practical strategies for managing Spanish assets. The afternoon also facilitated networking opportunities, with a reception in the Sheds afterwards.

Pictured at the Probate Bar Annual Conference were (from left): Catherine Duggan BL; Anne Heenan, Dublin Probate Office; Paula Fallon, Gartlan Furey; Ms Justice Siobhán Stack; and, John Donnelly SC.

Olympic issues

The 2024 Sports Law Bar Association (SLBA) Conference took place on December 6 at the Distillery Building. The event kicked off with opening remarks from Thomas Byrne TD, then Minister for Sport and Physical Education, setting the stage for a day filled with valuable insights. The first panel, 'Fair Sport: Selection & Integrity at Paris 2024', chaired by Gary McCarthy SC, featured Ms Justice Martina Christina Spreitzer-Kropiunik, Paddy Murphy, and Sarah Keane. They discussed the pressing issues surrounding selection processes and maintaining integrity in the lead-up to the Paris 2024 Olympics.

After a light lunch, the conversation continued with 'Highs and Hurdles: Navigating Challenges at Paris 2024', where Rebecca Lacy BL guided discussions with panellists Yvonne Nolan, Martin Gordon, and Gavin Noble. This session focused on the legal and logistical challenges faced by teams as they prepare for the Games.

The final panel, 'Chasing Dreams: The Athlete's Journey to the Olympic Games', chaired by Emma Davey BL, brought together such inspiring voices as Derry McVeigh, Tham Nguyen Gough, and Jack Kelly OLY. They shared their personal journeys, and the unique challenges athletes face on their road to the Olympics. The day concluded with closing remarks by Mr Justice David Barniville.

Pictured at the SLBA Annual Conference were (from left): Gary McCarthy SC; Sarah Keane, CEO, Swim Ireland; Paddy Murphy, Ogier; and Ms Justice Martina Christina Spreitzer-Kropiunik.

GAA review

The SLBA also held a seminar titled 'GAA Football Review Committee' on January 17. The session, which was chaired by Aoife Farrelly BL, Chair of the SLBA, focused on the disciplinary aspects of the new rules from the GAA Football Review Committee report, adopted at the Special Congress in November. Jim Gavin (Chair) and Séamus Kenny (Secretary) presented on how these changes would affect SLBA members advising clubs and teams. Participants gained a clear understanding of the new rules, particularly around discipline, and how to support clubs in the updated structure. Members of the SLBA also participated in a podcast with Seamus Kenny, which will be released soon.

Immigration and asylum update

The Immigration, Asylum and Citizenship Bar Association (IACBA) hosted an insightful immigration and asylum update in the Gaffney Room on December 13. The event featured a series of expert presentations on key developments in immigration and asylum law. The session was chaired by Rosario Boyle SC and included presentations from Anthony Hanrahan SC, who provided an overview of recent trends in credibility assessments in IPAT decisions, Cillian Bracken BL, who examined the ongoing developments towards mutual recognition of refugee status in the EU, focusing on recent cases at the Court of Justice of the European Union (CJEU), and Carol Sinnott, who discussed the recent challenges faced by immigration solicitors, including the rise of immigration consultants working in Ireland. The event was followed by a lively Q&A that explored the topics further.

CBA Christmas Tech Talk

The Christmas Construction Bar Association (CBA) Tech Talk took place on December 18, and was delivered by Patricia Hill BL. Entitled 'Right to Adjudicate – Discussion on Which Contracts and Disputes Fall Within the Construction Contracts Act 2013', the session provided attendees with a thorough analysis of the statutory right to adjudication under the Construction Contracts Act 2013. Patricia explored the scope of the Act, discussing which contracts qualify as construction contracts and outlining the types of disputes that are eligible for adjudication. The talk was well received and offered valuable insights into the practical applications of the Act.

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Pro bono assistance

THE BAR OF IRELAND
VAS Voluntary Assistance Scheme

The Voluntary Assistance Scheme (VAS) is the formal *pro bono* vehicle of The Bar of Ireland, matching the needs of NGOs and civil society groups with expert volunteers at the Bar. The VAS provides legal assistance to clients of NGOs and civil society groups through the requesting organisation. The scheme makes available every service that barristers ordinarily provide to clients. For a discussion or further information, email vas@lawlibrary.ie.

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- get advice on how to utilise LinkedIn to expand your professional network; and,
- get assistance with how to use the range of digital branding and communications resources provided by The Bar of Ireland.

Roadmap for 2024-2027

The Council of The Bar of Ireland has unveiled its new strategic plan *FutureBar: 2024-2027*, as it looks to strengthen the profession and address the evolving challenges of the legal landscape over the next three years.

In this comprehensive plan, published in early December 2024, the Council outlined its objectives for the future of the independent referral Bar and the profession, which it sets out under three key pillars: Optimised Practice; Connected Community; and, Expert Knowledge.

Combined with a strategic focus on enablers, including the skillsets of staff and financial resourcing, *FutureBar* is a declaration of the Bar's commitment to lead with confidence, to serve with integrity, and to stand as advocates for justice and the rule of law.

The 2024-2027 Strategic Plan is available on the Law Library website at: https://www.lawlibrary.ie/app/uploads/securepdfs/2024/12/TheBarOfIreland_StrategicPlan_2024_2027.pdf.

International Women's Day 2025

Join The Bar of Ireland for our International Women's Day evening event on March 6, 2025, at King's Inns, Dublin. The evening will feature food, drinks, and engaging discussions around the theme 'Accelerate Action'. Speaker announcements coming soon. Buy your tickets now on the Law Library website.

A PROFESSION WITH INFLUENCE

Molly Eastman McCarthy,
Policy & Public Affairs Officer, The Bar of Ireland.

The Bar's extensive lobbying and advocacy work aims to maintain and reclaim our political ground.

During the Family Courts Summit in April 2024. From left: Then Chair of the Council of The Bar of Ireland, Sara Phelan SC; Paul McCarthy SC, Chair of the Family Lawyers Association; Ingrid Miley BL; Keith Walsh SC, Manager of Keith Walsh Solicitors; and, Caroline Counihan BL, Legal Support Manager, Safe Ireland.

Criminal barristers gather at the steps of the CCJ in Dublin on July 9 in the first of three days of a national withdrawal of services.

In support of our 2,150 members, The Bar of Ireland's mission extends to advocating for a properly resourced and effective justice system, influencing relevant policy, and representing the profession in an evolving political and societal landscape. The Bar has prioritised our role as constructive contributors to public and Government debates over the last few years.

This article provides an overview of recent lobbying efforts that have supported our mission to promote access to justice and safeguard the integrity and influence of the Bar. In addition, we look ahead to goals within our *FutureBar 2024-2027* Strategic Plan, which will advance our interests and solidify our position as a profession with influence.

Advocacy in action: recent campaigns

The Bar of Ireland has actively engaged in campaigns addressing systemic legal and policy issues. Notable among these are grassroots, nationwide efforts in areas such as criminal fee restoration for barristers practising criminal law, and advocating for reform of the family justice system and the Family Courts Act 2024.

SUBMISSIONS IN 2023/24	
October 2023	1. General Scheme of the Criminal Justice (Legal Aid) Bill 2023
November 2023	2. Law Reform Commission: Consultation on Third-party Litigation Funding
January 2024	3. Submission to Revenue Commission in response to Consultation on Real-Time Digital Reporting & Electronic Invoicing 4. Submission to the Department of Justice on the Public Consultation on the Reform of the Coroner Service 5. Submission to the Legal Services Regulatory Authority on the admission policies of the legal professions as required by section 33 of the Legal Services Regulation Act 2015 6. Submission by the Council of the Bar of Ireland to the European Commission 2024 Rule of Law Report Targeted Stakeholder Consultation
March 2024	7. Submission to the Joint Committee on Foreign Affairs and Defence – General Scheme of the Defence (Amendment) Bill 2023 8. Submission on the Family Courts Bill 9. Submission to the Joint Committee on Justice General Scheme of the Proceeds of Crime (Amendment) Bill 2024
April 2024	10. Submission of the Department of Health and Proposals for Adult Safeguarding in the Health and Social Sector
May 2024	11. Submission to the Department of Justice on the Draft Civil Liability and Courts Act 2024 (Pre-Action Protocol) Regulations 2024
September 2024	12. The Bar of Ireland Pre-Budget Submission 2025
November 2024	13. Submission to the Advisory Council against Economic Crime and Corruption
December 2024	14. Consultation on Jury Reform

Following a recommendation from the Council of The Bar of Ireland, criminal barristers withdrew their services for the second time over the course of three days in July 2024. This was an escalation of the action taken by criminal barristers in October 2023, with the aim of seeking an independent, meaningful, time-limited and binding mechanism to determine the fees paid to criminal barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) Scheme. As a result, an 18% restoration of fees has now been implemented following announcements in Budget 2024 and Budget 2025, and this is a welcome and necessary step. However, even after this 18% fee restoration, there are outstanding FEMPI-era cuts that continue to apply to the profession and barristers continue to endure cuts of 10.5% to their professional fees.

The recently published Programme for Government includes a commitment to "fully restore criminal legal aid fees", and this commitment is welcomed. In the meantime, the Council is committed to engaging with the Department of Justice and the Office of the Director of Public Prosecutions to ensure appropriate fee payment structures, unravel the remaining cuts, and restore the link to public pay agreements in order to promote fairness in the Irish legal system.

The Family Courts Act was signed into law on November 13, 2024. Our lobbying efforts throughout the year were instrumental in securing crucial amendments to the Bill before its enactment. The Bar of Ireland has been at the forefront in engaging with Oireachtas members on the new Family Courts Act 2024, and the need for a practical family law system that reflects the needs of users, and in particular the welfare of children and vulnerable litigants.

In 2025, the Council and its supporting committees will continue to engage with legislation and areas of concern within the justice system where our lobbying and campaigning expertise will be required.

On April 16, Chair of the Criminal State Bar Committee Seán Guerin SC and Kate Egan BL appeared before the Joint Committee on Justice to provide comprehensive suggestions and feedback regarding the Proceeds of Crime (Amendment) Bill 2024 on foot of a submission to the Committee made in March 2024.

Advocacy in action: submissions and Oireachtas committee engagement

The Bar of Ireland – drawing from the expertise of our membership – regularly engages with Government consultations and pre-legislative scrutiny, which involve appearances before Oireachtas committees, where representatives of the Council and its committees provide expert knowledge and contributions on behalf of the profession, demonstrating legal expertise and solidifying credibility in public debate.

Key submissions

All of our formal submissions are available on the Law Library website, and form an integral part of our communications with Oireachtas members and other stakeholders.

Engaging with justice stakeholders

In its mission to uphold the rule of law and safeguard access to justice, The Bar of Ireland does not operate in isolation, but alongside a host of other valuable stakeholders in the justice field. Constructive working relationships have been carefully forged over the years with entities both in Government and public administration, as well as in civil society, alongside other representative bodies, all on the basis of a shared commitment to justice. These relationships ensure that practice- and policy-related priorities can be shared in a constructive spirit, and where the viewpoints of our members can be considered and understood.

Advocacy in action: communicating thought leadership

The Bar remains dedicated to maintaining regular channels of communication with politicians. The Bar's external newsletter *The Legal Edge*, which promotes our members' expertise, is sent to all Oireachtas members throughout the year and includes law in practice articles from *The Bar Review* and additional insights from members, including podcasts, blog articles and details of Specialist Bar Association events.

The Legal Edge

- 11 published issues since April 2023
- 3,700 recipients, of which approximately 3,400 are external.

2025 and beyond

Focusing on the future: engaging with the 34th Dáil

The formation of a new Dáil presents a valuable opportunity for The Bar of Ireland to engage with newly elected Oireachtas members and ministers, building new relationships and strengthening existing ones. On January 15, 2025, the Programme for Government was published with several key commitments that will significantly impact members and the legal sector. Notable commitments are outlined below.

Programme for Government 2025 – commitments to justice

- A commitment to fully restore criminal legal aid fees;
- an intention to restore the Defamation Bill to the order paper and make passing the legislation a priority;
- a commitment to appoint 20 additional judges within 12 months, with plans for further increases, addressing the growing demands on the judicial system;
- the intention to implement the Family Justice Strategy 2022-2025 and publish an implementation plan for a new Family Court system within 12 months;
- the establishment of a Judicial Training Institute under the Judicial Council to support ongoing training and continuous professional development for judges and prospective judges;
- the establishment of a dedicated division of the High Court to handle all immigration cases and consideration of the establishment of a dedicated medical negligence court;
- the introduction of independent oversight of professional legal education, support for the development of a national apprenticeship programme for solicitor training, and removing barriers to becoming a solicitor or barrister; and,
- the development of new guidelines to set clear rates and scales of fees for all forms of civil litigation, promoting transparency, competitiveness and fairness in legal costs.

By proactively engaging with members of Government on the commitments highlighted above, the Bar aims to advance shared justice priorities while advocating on behalf of the independent referral Bar.

Building political congruity: the role of specialist bars and committees

As the specialist providers of advocacy and legal services across 17 practice areas, Specialist Bar Associations (SBA) elevate the profession's broader profile as a trusted source of knowledge and expertise. To further amplify their impact and expand recognition of the Bar, we continue to support SBAs in building congruity with local Oireachtas members by identifying areas to engage on law reform and policy development within their specialist practice areas.

The work of our Public Affairs Committee, Human Rights Committee, and Civil and Criminal State Bar Committees, to name but a few, all contribute to this outreach goal.

History and heritage: advocating through history and public engagement

The confluence of the political and the legal over the decades and centuries provides The Bar of Ireland with a unique opportunity to develop initiatives that celebrate the profession's role in society and as a key influencer in public policy. Focusing on events, lectures, and forums celebrating the legal profession's history, heritage and public influence allows The Bar of Ireland to advocate for its key priorities while emphasising its societal contributions.

A lot done, more to do

The Bar of Ireland has long been a respected voice for justice, fairness, and professional excellence. As we look towards a new year and a new Government, our commitment is to actively and constructively engage with those in political and public administration all underpinned by the values of the Bar – independence, integrity and expertise.

BARRISTERS IN BRUSSELS

There is a long history of barristers moving into politics and MEPs Cynthia Ní Mhurchú and Michael McNamara are continuing this tradition in the EU Parliament.

Colm Quinn
Senior Journalist, Think Media

Cynthia Ní Mhurchú

Fianna Fáil MEP

Fianna Fáil MEP Cynthia Ní Mhurchú speaks to *The Bar Review* from her office in Brussels. Behind her there is a glass wall and as she talks, the silhouettes of busy EU workers flit by. The energy of the place is matched by Cynthia's enthusiasm as she speaks about her varied career, *grá* for the Irish language, and the challenges of preserving both the language and democracy itself.

Many will know Cynthia from her time working as a presenter on RTÉ but she began her career as a teacher at Gaelscoil Eoghain Uí Thuairisc in Carlow in the 1980s. In another life, that's where she may have stayed but due to funding cuts, she was unable to continue in her position in the Gaelscoil. She applied for many jobs in various areas and one was as a presenter on Irish-language current affairs programme *Cúrsaí* in RTÉ. She worked in RTÉ for many years, and is perhaps most well-known for presenting the Eurovision in 1994, the year Riverdance was unveiled to the world. Cynthia also worked in print media: "Which I really, really loved. And I gobbled it up for 10 years. Then I said, good lord, you're only 30".

She wanted to do something else. The options open to her were the BBC or CNN, hardly bad options, but Cynthia decided the Bar interested her more as it has done many journalists: "There were a lot of journalists

in RTÉ at the time who were doing it. I actually ended up in a class with Vincent Browne, a great journalist. I ended up with Teresa Lowe, out of my stable".

Her main area of practice for the first 10-15 years was personal injuries, but then she switched to mainly having a family law practice for the remainder of her career at the Bar.

Family matters

Cynthia says she is a people person first and foremost and family law affects not just the parties to the case, but the people around them and in particular, children. Family law is not about winners and losers, says Cynthia: "It's about balancing, it's about co-operating with the other side and mediating and getting a fair and proper and just result".

It's an area of law that she loved but says it was always difficult when the relationship between a parent and child broke down, particularly when this had been encouraged by the other parent. Alienation is not recognised by the courts but Cynthia says:

"I myself have a very open mind on alienation. But I use the word where a child is actually distanced from having a relationship with one parent by deliberate actions of the other parent. I saw that time and time again, and I found that was a huge low point for me to realise that the courts are limited in what they can do in that regard".

Although family law allows for the process of mediation, the courts process is by its nature adversarial, and Cynthia says perhaps there could be a different approach: "People coming to court expect there to be arguments, expect there to be winners and losers. Their defence systems are at 100% alert levels, and that's never good".

The infrastructure of the courts is also not always suitable for family law disputes. In cases where abuse was involved, Cynthia had clients pull the plug on cases because they had to be in the presence of their abuser.

Moving on

Following 27 years at the Bar, Cynthia found herself looking for a new challenge. She had danced with the idea of running for Fianna Fáil during her broadcasting days, and when her eye turned back to politics, she approached the party. Cynthia believes her career to date has prepared her extremely well for the EU Parliament: "I thought because Europe was so focused on legislation and developing laws, that that would be a more a comfortable forum for me than going into Dáil politics or local politics".

A good politician needs to be a good listener and a good talker, and broadcasting and the Bar were both great places to hone these skills. A career in law also means Cynthia is not daunted by being on EU legislative committees. She is on two in Brussels, one is the Committee on the Internal

The infrastructure of the courts is also not always suitable for family law disputes. In cases where abuse was involved, Cynthia had clients pull the plug on cases because they had to be in the presence of their abuser.

Market Consumer Protection (IMCO), and the other is TRAN, which deals with transport. She is also on the new Special Committee on the European Democracy Shield.

This is an initiative of the Renew Group in the European Parliament, of which Fianna Fáil is a member party: "This is something, obviously, that we're vastly interested at the moment, and me in particular, in relation to defending democracy".

The rise of the right in and outside of the EU is something that brings up a number of issues: "It not only affects economics, but it affects people, and it affects all sectors of society, but in particular, the vulnerable sectors of society, whether it's LGBTQI or whether it's people who are poor, or whether it's immigrants. Being a member of Renew Europe, we stand for the Democracy Shield. We want to stand up for minorities".

Protecting democracy means improving the lives of those disadvantaged communities, says Cynthia: "It's in disadvantage, in poverty that people get upset and disgruntled and they start turning to misinformation, disinformation, and dismantling democracy".

Gael-goer

Cynthia is also involved with the minorities inter-group in parliament, which includes both minorities of people and minority languages: "The Irish language is huge for me, given my background, and I very much want to engage with that intergroup in order to highlight the need of Gaeltacht communities".

While Irish is an official language of the EU, there is a derogation which means full Irish language services in EU institutions are not offered everywhere. This is due to a lack of interpreters rather than translators and Cynthia is leading a campaign to find out why there is a blockage in the training and recruitment of interpreters: "[The derogation is] only at parliamentary level, which is quite frustrating. The Commission can conduct all of its meetings for anybody at any level *trí Ghaeilge*,

but I can only speak at one meeting, *as Gaeilge*, and be 100% assured that there will be automatic translation and interpretation in the earphones. I can only do that at plenary session level, which happens in Strasbourg".

Cynthia believes the Irish language is our most precious national asset and says it would be remiss of all politicians, whether local, national or European, not to protect it: "If we don't have our own significant and a native language, we simply become a blending. We blend in with other countries and other cultures. Our language and culture is so strong, and it's so unique, and it's so immensely popular right throughout Europe and the world, and is experiencing a huge resurgence of popularity at the moment".

Even though it may feel like trying to push back the tide by complaining about online content, Cynthia believes it is important women do so: "I know people will say the complaint goes nowhere, but we are developing systems".

Encouraging women

Cynthia likes to promote women in politics, and would love to see more women take to the political field. Unfortunately, it is not always a welcoming place for women and she addresses that more ugly side: "It is horrendous what women candidates, and indeed, once you are elected, what female politicians have to put up with. My only advice, and this doesn't work for everybody, is to not read those outrageous bullying, intimidatory, sexually abusive texts and comments, to try and develop a thick skin around that from the start and to also have somebody that you can reach out to immediately if there is something that upsets you".

Even though it may feel like trying to push back the tide by complaining about online content, Cynthia believes it is important women do so: "I know people will say the complaint goes nowhere, but we are developing systems. I'm working on systems now in the IMCO committee and in the Digital Markets Act and so forth, and the Digital Safety Act in particular, on systems whereby complaints can be made swiftly and responded to and content taken down. I appreciate we're some distance away from that solution, but I'll keep fighting for it".

Michael McNamara

Independent MEP

Along with being an Independent MEP for Ireland South, Michael McNamara still practises at the Bar. Following a law degree at UCC, he began working for the Organization for Security and Co-operation in Europe's OSCE in 2000. This is an intergovernmental body set up following the end of the Cold War to increase co-operation between the West and the former countries of the Soviet Union. After a few years working on projects from the Balkans to Central Asia, he went to Afghanistan with the OSCE to support the presidential election of 2004. The following year he was back in that country as part of a UN project on the parliamentary elections, which he calls an eye-opening experience. The law stated that people could be disqualified from running if they had links to armed groups or were State employees, but Michael says this rule often didn't survive contact with reality: "Draft orders were issued to disqualify candidates, and then a NATO general would arrive, saying, 'This is going to destabilise a particular region and we're not having it'. Ultimately, that person wouldn't be disqualified from running. Many teachers were disqualified from running because they were State employees".

Following his work in Afghanistan, he studied at the King's Inns and was called to the Bar in October 2006. He completed his pupillage in Dublin and the South Western Circuit, and worked in a broad general practice on Circuit, including both crime and civil law, and mainly in immigration judicial review in Dublin In 2009, politics called and Michael decided to run for election to the EU Parliament for the first time. While unsuccessful at this attempt, he ran as a Labour candidate for the Dáil two years later and was elected. He lost his seat in 2016, but returned to the Dáil in 2020, this time as an independent, and was elected to the EU Parliament last year, also as an independent.

The privilege of being a barrister

Michael says it is a great honour to represent people as a barrister: "There are lots of people whose access to justice is very limited. I don't mean just access to courts. That's something that I feel very strongly about. We have a civil legal aid system in Ireland that I think is underfunded. A whole lot of rights guaranteed under EU law aren't covered by it. There are, in my view, question marks around its efficacy". Michael has been involved in some significant cases at the Bar. One he notes was in relation to vexatious applicants to the Workplace Relations Commission (WRC) and the Labour Court: "There are a number of litigants who have taken a large number of cases to these fora,

> "Although barristers are sole practitioners, there is great collegiality and camaraderie, whereas when you're in politics, even in a party, you're very much on your own".

which don't cost anything, nor should they, but nevertheless that can impose a large burden on respondents if they're facing repeated actions. Statutorily, those bodies don't necessarily have the power to make a civil restraint order".

In the High Court two years ago, Mr Justice Ferriter held that the High Court had a supervisory jurisdiction to grant civil restraint orders in respect of actions being taken or complaints being made to the WRC and to the Labour Court, and the Court of Appeal recently upheld this order. He was also involved in the case of *Clare County Council v McDonagh*, where he represented the respondents in the High Court and Court of Appeal before their landmark appeal to the Supreme Court.

The value of camaraderie

One thing Michael missed about the Bar when he first entered the Dáil was the camaraderie: "Although barristers are sole practitioners, there is great collegiality and camaraderie, whereas when you're in politics, even in a party, you're very much on your own".

The Dáil and the EU Parliament are very different, says Michael, and a lot of this is simply down to scale: "[The EU parliament] deals with so many issues in the day and time is divvied up between the political groupings. And then the easiest way to divvy it up is to give everybody a minute. But it's very hard to develop an argument in a minute. While I think being succinct is important, and it's clearly very important to barristers… I don't think anybody can say very much in a minute".

One of the aspects of EU politics Michael prefers to domestic is how politicians and their administrations interact. He believes there is a greater degree of respect between the EU legislature, the EU Commission and the EU Council than there is in Ireland between the Civil Service and members of the Oireachtas: "I think many civil servants take the Dáil for granted and regard TDs as a nuisance. I think that's very unhealthy because ultimately, be they good or bad, TDs are elected and have a legislative mandate, and if people don't like them, they can get rid of them, and do. And I've been at the receiving end of that. Whereas civil servants often feel impervious to the great unwashed. I think that's an increasing phenomenon. And it's a dangerous one".

Work in Europe

In the Parliament Michael sits on the LIBE committee, which is concerned with civil liberties, justice and home affairs, including the protection of citizens' data and privacy. Within the committee, the area Michael works most on is AI, and with the EU's landmark AI Act now coming into effect, he is busy: "That takes up a large amount of my time, listening to the concerns of academics, various non-governmental organisations, civil society organisations and also the industry".

The other area that takes up much of his time is GDPR, and he says this is an area where: "Ireland's reputation has taken quite a hit".

With many tech companies based here, both those companies and complainants who take cases here are vexed regarding the length of time it takes to resolve those complaints: "There's a new regulation being proposed to simplify, and introduce uniform procedures in, cross-border complaints".

Michael says when it comes to AI and GDPR it is important that a balance is struck between protecting the privacy and the data rights of citizens while ensuring that Europe doesn't fall further behind the US and China.

One thing Europe can't ignore is innovators in the tech field continually moving to the US, he says: "There are a number of reasons for that, obviously. Although some would say that it's solely because of regulation, it's not. There's the whole lack of capital investment and very different attitudes to risk. There are a lot of reasons, but it is happening and we can't ignore it".

> "Barristers are key, not just in the courts but in those bodies, and they need to be adequately remunerated for that work. It's a hugely important and growing role for the Bar."

Back at home

Resourcing of the justice sector is very important, says Michael. While the Bar has ultimately no control over funding of the courts and other quasi-judicial bodies, he believes the Bar has a crucial role "in terms of the human resources that are at the disposal of those bodies. They obviously rely on Government funding but they also rely on having human resources available to argue cases at a high level and professionally. Barristers are key, not just in the courts but in those bodies, and they need to be adequately remunerated for that work. It's a hugely important and growing role for the Bar".

LEGAL

UPDATE

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A directory of legislation, articles and acquisitions received in the Law Library from November 8, 2024, to January 23, 2025
Judgment information generated by Law Library AI
Edited by Vanessa Curley, Susan Downes & Clare O'Dwyer, Law Library, Four Courts.

AGRICULTURE

Statutory instruments

Agriculture Appeals (Amendment) Act 2024 (Part 3) (Commencement) Order 2025 – SI 7/2025

ANIMALS

Statutory instruments

Avian Influenza (Biosecurity measures) Regulations 2024 – SI 666/2024

Notification and Control of Diseases affecting Terrestrial Animals (No. 2) Regulations 2016 (Amendment) Regulations 2024 – SI 683/2024

ARBITRATION

Library acquisitions

Lavranos, N., Castagna, S. *International Arbitration and EU Law (2nd ed)*. Cheltenham: Edward Elgar Publishing Ltd., 2024 – N398.8

Articles

Kilroy, H. A day in the life. *Law Society Gazette* 2024; Dec: 42-45

McGuinness, M. The negative effect of kompetenz-kompetenz. *Commercial Law Practitioner* 2024; 31 (10): 135-139

ARTIFICIAL INTELLIGENCE

Articles

Blake, R., Anderson, C. The EU AI Act – practical considerations for the construction and energy sector. *Construction, Engineering and Energy Law Journal* 2024; (2): 4-7 [part 1]

Hyland, M. Clash of the Titans. *Law Society Gazette* 2024; Dec: 24-29

BANKING

Contract law – Dismissal order – Concurrent wrongdoers – Civil Liability Act 1961, s.35 – Appellants seek to overturn the High Court's decision to dismiss their claims against the bank – Whether the plaintiffs' claims against the bank for negligence, misrepresentation, and unjust enrichment could succeed – 04/12/2024 – [2024] IECA 293

Keane and anor v Ulster Bank Designated Activity Company

BREXIT

Articles

Grehan, D. Brexit breaks it. *Law Society Gazette* 2024; Dec: 54-57

BROADCASTING

Statutory instruments

Broadcasting Act 2009 (Section 21) Levy (No. 2) Order 2024 – SI 698/2024

BUILDING LAW

Articles

Hallissey, M. The concrete jungle. *Law Society Gazette* 2024; Dec: 30-33

CHAMPERTY

Library acquisitions

Mulheron, R. *The Modern Doctrines of Champerty and Maintenance*. Oxford: Oxford University Press, 2023 – N38.31

CHARITY

Statutory instruments

Charities Regulatory Authority Superannuation Scheme 2024 – SI 739/2024

CHILDREN

Statutory instruments

Institutional Burials Act 2022 (Extension of period of operation of Office of Director of Authorised Intervention, Tuam) Order 2024 – SI 625/2024

COMPANY LAW

Corporate Law – Sanction of scheme – Reconstruction scheme – Companies Act 2014, ss.450, 455 – Applicant seeks orders for sanction of the scheme of arrangement and transfer of certain assets, liabilities, and contracts to the respondent. Whether the scheme is a scheme of reconstruction of the applicant and whether it is appropriate to make the orders sought by reference to s.455 – 20/12/2024 – [2024] IEHC 738

Barclays Bank Ireland PLC v Companies Act 2014

Company law – Winding up order – Creditor status – Companies Act 2014, ss. 569- 570 – Joint liquidators seek an order winding up the company due to its inability to pay its debts – Whether the petitioner has established that it is a creditor of the company – 02/12/2024 – [2024] IEHC 686

City Quarter Capital II PLC v Companies Act 2014 [No. 2]

Company law – Modular trial order – Standing to maintain proceedings – Companies Act 2014, s.212 – Applicant seeks relief for alleged oppressive conduct in the management of two companies – Whether the applicant has standing to maintain these proceedings – 15/01/2025 – [2025] IEHC 11

Maxela Limited v Companies Act 2014

Company law – Certiorari order – Judicial review – Companies Act 2014, ss.343, 345 – Applicant seeks to quash the District Court orders granting a second extension of time for the delivery of annual returns – Whether the District Court had jurisdiction to grant a second extension of time for the delivery of annual returns under the Companies Act 2014 – 15/01/2024 - [2025] IEHC 16

Registrar of Companies v Greenway Limited, Registrar of Companies v Kitchen Innovation Limited

Articles

Breen, R., Dr. The conflation of fraudulent trading and reckless trading in recent case law. *Commercial Law Practitioner* 2024; 31 (8): 99-105

Keenan, N. On the horizon. *Law Society Gazette* 2024; Dec: 38-41

Kimber, C. Whoever pays the piper calls the tune? Cipher directors and fiduciary duties under the Companies Acts – can a breach be enforced? *Commercial Law Practitioner* 2024; 31 (8): 107-116

Statutory instruments

Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (Commencement) Order 2024 – SI 639/2024

COMPETITION LAW

Library acquisitions

Whish, R., Bailey, D. *Competition Law (11th ed.)*. Oxford: Oxford University Press, 2024 – W110

CONSTITUTIONAL LAW

Constitutional law – Costs order – Reopen proceedings – Legal Services Regulation Act 2015, s.169 – Plaintiff seeks to reopen proceedings and amend judgment based on new CJEU decision – Whether the decision of the CJEU in the Apple case constitutes exceptional circumstances to reopen the judgment – 03/12/2024 – [2024] IEHC 691

Skoczylas and ors v Ireland and ors

Articles

Pietrocola, M., Fitzsimons-Belgaid, C. Why did the 39th and 40th Constitutional Amendments fail: were the amendments fully understood? *Irish Law Times* 2024; 42 (14): 161-165

CONSUMER LAW

Statutory instruments

Consumer Protection Act 2007 (Competition and Consumer Protection Commission) Levy (No. 2) Regulations 2024 – SI 628/2024

CONTRACT

Contract law – Dismissal of claim – Contractual interpretation – Plaintiffs seek damages for breach of contract due to the bank changing the interest rate calculation method – Whether the bank was contractually entitled to alter the reference rate for the calculation of interest – 18/12/2024 – [2024] IEHC 714

Harte and ors v Governor and Company of the Bank of Ireland

Contract law – Summary judgment order – European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, s.13 – Plaintiff seeks an order for summary judgment against the defendant for €87,103.53 – Whether the plaintiff enjoys the benefit of the guarantee to bring the case – 22/11/2024 – [2024] IEHC 701

Linked Recoveries Limited v Dunne

Articles

Smyth, C.-M. *Law of Contract in Ireland*. Dublin: Clarus Press, 2025 – N10.C5

COSTS

Civil procedure – Order for costs – Costs of application – Legal Services Regulation Act 2015, ss.168, 169 – Defendants seek costs of the motion and proceedings to date. Whether the defendants are entitled to their costs for the application to strike out or dismiss the plaintiffs' proceedings – 13/01/2025 – [2025] IEHC 12

Curran and anor v Ulster Bank and ors

Judicial review – Costs order – Costs allocation – Legal Services Regulation Act 2015, s.169 – Applicant seeks to resist a costs order on the basis that her proceedings represent a test case – Whether the applicant should pay the legal costs of the State respondents and the Director of Public Prosecutions – 19/12/2024 – [2024] IEHC 712

Lynch v Minister for Health and ors

COURTS

Statutory instruments

Enforcement of Court Orders (Legal Aid) (Amendment) Regulations 2024 – SI 743/2024

CREDIT UNION

Statutory instruments

Credit Union Act 1997 (Regulatory Requirements) (Amendment) (No. 2) Regulations 2024 – SI 655/2024

Credit Union Fund (Stabilisation) Levy Regulations 2024 – SI 684/2024

CRIMINAL LAW

Criminal law – Order to add new ground – Disclosure of evidence – Appellant seeks to add a new ground of appeal and quash his conviction – Whether the appellant's trial was unsatisfactory or his conviction unsafe due to non-disclosure of telephone transcripts – 05/12/2024 – [2024] IECA 311

DPP v Dundon

Criminal law – Admissibility order – Admissibility of evidence – Criminal Justice Act 1999, s.30 – Misuse of Drugs Act 1977, ss.3,15 – Applicant seeks to admit a certificate under s.30 of the Criminal Justice Act 1999 as evidence despite the respondent's objection – Whether the trial judge may admit the certificate issued under s.30 of the Criminal Justice Act 1999 in evidence, even in the face of an objection by the accused – 20/12/2024 – [2024] IEHC 717

DPP v Joyce

Criminal law – Dismissal of appeal – Appeal against conviction – Criminal Law (Rape) (Amendment) Act 1990, s.2 – Child Trafficking and Pornography Act 1998, s.3(2A) – Appellant seeks to overturn conviction on six counts of sexual assault and one count of meeting a child for sexual exploitation – Whether the trial judge erred in failing to withdraw the case from the jury and in her charge to the jury – 14/03/2024 – [2024] IECA 315

DPP v M.D.

Criminal law – Forfeiture order – Questions of law – Criminal Justice Act 2006, s.7 – Criminal Justice Act 1994, s.38 – Appellant seeks the determination of certain questions of law pertaining to the Criminal Justice Acts of 1994 and 2006. Whether the Circuit Court judge was properly entitled to state this case under the 1947 Act so that in due course he has the benefit of this Court's view of the law when deciding it in substance – 05/04/2022 – [2022] IECA 334

DPP v McDermott

Criminal law – Review of sentence – Undue leniency – Criminal Justice Act 1993, s.2 – Non-fatal Offences against the Person Act 1997, s.3 – Firearms and Offensive Weapons Act 1990, s.11 – Applicant seeks review of the sentence imposed on the respondent by the Circuit Criminal Court on grounds that it was unduly lenient – Whether the sentence imposed at first instance was unduly lenient and should be quashed – 12/11/2024 – [2024] IECA 297

DPP v O'Neill

Criminal law – Post-release supervision order – Appeal against sentence severity – Criminal Law (Rape) (Amendment) Act 1990, ss.2,4 – Appellant seeks to appeal against the severity of the sentence imposed by the Central Criminal Court – Whether the sentencing judge erred in law in failing to make a sufficient adjustment for totality, resulting in a manifestly disproportionate sentence – 10/12/2024 – [2024] IECA 312

DPP v N.

Criminal law – Dismissal of appeal – Appeal against conviction – Criminal Law Rape Act 1981, s.2 – Non-Fatal Offences Against the Person Act 1997, s.5 – Appellant seeks to overturn the conviction for rape and sexual assault – Whether the trial judge erred in recharging the jury on recent complaint and demeanour – 12/12/2024 – [2024] IECA 314

DPP v O.M.

Criminal law – Enforcement order – Jurisdiction of Circuit Court – Fines (Recovery and Payment) Act 2014, s.7 – Appellant seeks to challenge the Circuit Court's jurisdiction to enforce a fine imposed by the District Court. Whether the Circuit Court has jurisdiction to hear enforcement proceedings and if an appeal lies from an enforcement order – 16/12/2024 – [2024] IECA 304

DPP (at the suit of Garda Damian P. Rafter) v O'Brien

Criminal law – Dismissal of appeal – Appeal against conviction – Criminal Justice (Theft and Fraud Offences) Act 2001, s.12(1)(b) – Courts and Court Officers Act 1995, s.32 – Appellant seeks to overturn the conviction imposed by the Circuit Criminal Court – Whether the trial judge erred in refusing to transfer the trial and in not withdrawing the case from the jury – 18/11/2024 – [2024] IECA 310

DPP v O'Reilly

Criminal law – Appeal against conviction – Right to silence – Criminal Law (Rape) Act 1981, s.2 – Criminal Procedure Act 2010, s.34 – Appellant seeks to overturn the conviction for rape. Whether the comments made by counsel for the respondent in his closing speech were unfair and highly prejudicial to the appellant – 12/11/2024 – [2024] IECA 305

DPP v S.R.

Criminal law – Majority verdict order – Appeal against conviction – Offences Against the Person Act 1861, s.48 – Criminal Law (Rape) Act 1981, s.2 – Criminal Law (Rape) (Amendment) Act 1990, ss. 21, 22 – Sex Offenders Act 2001, s.37 – Appellant seeks to overturn the conviction for rape and sexual assault – Whether the trial judge erred in law by allowing the prosecution to re-examine a witness on issues not raised during cross-examination – 10/12/2024 – [2024] IECA 31

DPP v T.

Criminal law – Prohibition order – Judicial review – Criminal Justice (Theft and Fraud Offences) Act 2001, ss. 48, 49 – Applicant seeks to challenge the provisions of Section 48 of the Criminal Justice (Theft and Fraud Offences) Act 2001 – Whether the provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001, ss. 48, 49 are unconstitutional – 11/12/2024 – [2024] IEHC 721

Poptoshev v Director of Public Prosecutions and ors

Criminal law – Order of prohibition – Judicial review – Non-Fatal Offences Against the Person Act 1997, ss.2, 3 – Firearms and Offensive Weapons Act 1990, s.11 – Appellant seeks leave to apply for an order of prohibition for his pending trial – Whether the appellant has established an arguable case that there is a real risk of an unfair trial – 06/12/2024 – [2024] IECA 303

Sutton v DPP

Library acquisitions

Blake, C. *Use of Force: Law and Practice*. Dublin: Clarus Press, 2024 – M615.2.C5

Ormerod, D., Laird, K., Gibson, M. *Smith, Hogan, and Ormerod's Criminal Law (17th ed.)*. Oxford: Oxford University Press, 2024 – M500

Walsh, D. *Walsh on Criminal Procedure (3rd ed.)*. Dublin: Round Hall, 2024 – M500.C5

Articles

Healy, J. Provocation – judicial legislation – in the context of the legislature's abdication. *Irish Criminal Law Journal* 2024; 34 (2): 31-40

McQuillan, C. Follow the money. *Law Society Gazette* 2024; Dec: 34-37

Nolan, N. A question of balance. *Irish Law Times* 2024; 42 (12): 142-143

Statutory instruments

Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2024 – SI 622/2024

Criminal Justice (Terrorist Offences) Act 2005 (Section 42) (Restrictive Measures concerning Certain Persons and Entities Associated with the ISIL (Da'esh) and Al-Qaida Organisations) (No.5) Regulations 2024 – SI 716/2024

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Sections 25 and 60) (Prescribed Class and Competent Authority) Regulations 2024 – SI 724/2024

Criminal Justice (Hate Offences) Act 2024 (Commencement) Order 2024 – SI 730/2024

Criminal Justice (Legal Aid) (Amendment) Regulations 2024 – SI 742/2024

DATA PROTECTION

Data protection law – Preliminary reference order – Preliminary reference – General Data Protection Regulation 2016, art.17 – Treaty on the Functioning of the European Union, art.267 – Applicant seeks a preliminary reference to the CJEU regarding the right to have judicial review proceedings anonymised – Whether the applicant's questions require a decision and ruling from the CJEU to enable judgment on the application to have judicial review proceedings held in camera or anonymised – 22/10/2024 – [2024] IEHC 726

O'Neill v Revenue Commissioners [No. 2]

Statutory instruments

Data Protection Act 2018 (Section 51(3)) (Defence Forces Tribunal of Inquiry) Regulations 2024 – SI 623/2024

Data Protection Act 2018 (Section 38(4)(b)) (Defence Forces Tribunal of Inquiry) Regulations 2024 – SI 624/2024

Data Protection Act 2018 (Control of Data for the Inquiry into the Historical Licensing and Use of Sodium Valproate) Regulations 2024 – SI 752/2024

DEFAMATION

Defamation law – Injunction order – Defamatory Facebook post – Defamation Act 2009, ss. 30, 31 – Applicant seeks damages for defamation and an injunction to remove defamatory comments – Whether the words in the Facebook post were defamatory and untrue – 04/12/2024 – [2024] IEHC 705

Casey v McMenamin

DEFENCE FORCES

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Defence (Amendment) Act 2024

(Commencement of Certain Provisions) Order 2024 – SI 609/2024
Rules of Procedure (Defence Forces) (Amendment) Rules 2024 – SI 611/2024
Defence Act 1954 (Part XIII) (Establishment Day) Order 2024 – SI 619/2024

DISCOVERY

Judicial review – Discovery order – Discovery of documents – Criminal Justice (Miscellaneous Provisions) Act 1997, s.10(1) – Criminal Justice Act 2006, s.6(1)(a) – Applicants seek discovery of documents related to the search warrant and arrest – Whether the applicants are entitled to discovery of documents related to the search warrant and arrest – 03/12/2024 – [2024] IEHC 687
Flynn and anor v Commissioner of An Garda Síochána and ors

DISCRIMINATION

Library acquisitions

Willers, M., Johnson, C. *Gypsy and Traveller Law (3rd ed.)*. London: Legal Action Group, 2020 – M208

EDUCATION

Judicial review – Interlocutory application – Teaching Council Act 2001, s.42 – Whether the Investigating Committee's decision to refer the complaint to the Disciplinary Committee was lawful – 31/12/2024 – [2024] IEHC 743
Johnson v Teaching Council

ELECTORAL

Statutory instruments

Seanad Electoral (University Members) (Amendment) Act 2024 (Part 2 and Section 29) (Commencement) Order 2024 – SI 676/2024
Seanad Electoral (University Members) (Amendment) Act 2024 (Prescribed Matters) Regulations 2024 – SI 680/2024

EMPLOYMENT LAW

Employment law – Dismissal order – Statute barred claim – Defendant seeks to dismiss the plaintiff's claim for being statute barred under s.13(2) of the Protected Disclosures Act 2014 – Whether the plaintiff's claim is barred by s.13(2) of the Protected Disclosures Act 2014 due to the previous WRC proceedings – 04/12/2024 – [2024] IECA 294
Hosford v The Minister for Employment Affairs and Social Protection
Employment law – Certiorari order – Judicial review – Protected Disclosures (Amendment) Act 2022, ss.8, 16 – Applicant seeks orders against the Minister for Enterprise, Trade and Employment and the Office of the Protected Disclosure Commissioner regarding the handling of a protected disclosure – Whether the Commissioner acted lawfully in sending the matter to the Secretary General of the Department and whether the Department's decision to close the report was lawful – 12/12/2024 – [2024] IEHC 696
McLoughlin v Minister for Enterprise, Trade and Employment and anor
Employment law – Isaac Wunder orders – Education and Training Board Teachers Superannuation Scheme 2015, s.70 – Respondent seeks Isaac Wunder orders to restrain the appellant from instituting further proceedings – Whether the High Court has jurisdiction to make Isaac Wunder orders to prevent abuses of process before statutory tribunals administering justice – 14/01/2025 - [2025] IECA 2
Morgan v The Labour Court and anor
Employment law – Order of mandamus – Judicial review – Vocational Education Act 1930, s.105 – Appellant seeks an order of mandamus to provide a fair opportunity to reply to a submission made in January 2015 – Whether the appellant's application for judicial review is an abuse of process and hopelessly out of time – 14/01/2025 – [2025] IECA 3
Morgan-v The Labour Court and anor
Employment law – Dismissal of statutory appeals – Statutory appeals – Employment Equality Act 1998, s.77 – Pensions Act 1990, s.81E – Appellant seeks to overturn the High Court's dismissal of her statutory appeals against the Labour Court's determinations. – Whether the appellant demonstrated any error of law in the Labour Court's determination regarding her complaints under the Employment Equality Act 1998 and the Pensions Act 1990 – 14/01/2025 - [2025] IECA 4
Morgan v The Labour Court and anor
Employment law – Special care order – Implied contract – Social Welfare Consolidation Act 2005, ss. 317, 318 – Appellant seeks to overturn the decision that Mr Clements was an employee of Ryanair. Whether the Appeals Officer's decision that Mr Clements was an employee of Ryanair during the period from February 15, 2010, to April 30, 2014, was correct – 26/11/2024 – [2024] IEHC 719
Ryanair DAC v Reddy and ors

Library Acquisitions

Davies, A.C.L. *Valuing Employment Rights: A Study of Remedies in Employment Law*. Oxford: Hart Publishing, 2024 – N192
Kerr, A., Kierans, L. *Protected Disclosures Act 2014 (2nd ed.)*. Dublin: Round Hall, 2024 – N192.29.C5

Articles

Casey, P. A new era for whistleblower rights? An examination of the amendments introduced by the Protected Disclosures (Amendment) Act 2022. *Irish Employment Law Journal* 2024; 21 (3): 51-56

Statutory instruments

Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 (Part 3) (Commencement) Order 2024 – SI 600/2024
Sectoral Employment Order (Construction Sector) 2024 – SI 620/2024
Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 (Commencement) Order 2024 – SI 630/2024
Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 (Section 6) (Commencement) Order 2024 – SI 640/2024
Employment Permits (Amendment) (No. 5) Regulations 2024 – SI 733/2024

ENERGY

Statutory instruments

Electricity Regulation Act 1999 (Electricity) Levy Order 2024 – SI 667/2024
Electricity Regulation Act 1999 (Gas) Levy Order 2024 – SI 668/2024
Electricity Regulation Act 1999 (Petroleum Safety) Levy Order 2024 – SI 669/2024
Electricity Regulation Act, 1999 (Water) Levy Order 2024 – SI 670/2024
Electricity Regulation Act 1999 (LPG Safety Licence) Levy Order 2024 – SI 671/2024

EQUITY AND TRUSTS

Library acquisitions

McGhee, J., Elliott, S., Snell, E.H.T. *Snell's Equity (35th ed.)*. London: Sweet & Maxwell, 2025 – N200

EUROPEAN UNION

Library acquisitions

Browne, D., McGovern, P. *Procurement Law in Ireland (2nd ed.)*. Dublin: Round Hall, 2024 – W109.6
Craig, P., de Búrca, G. *EU Law Text, Cases and Materials (8th ed.)*. Oxford: Oxford University Press, 2024 – W71
Dekker, C. *Directory of EU Case Law on State Aids (5th ed.)*. London: Kluwer Law International, 2024 – W110.1
Kramer, L., Badger, C. *EU Environmental Law (9th ed.)*. London: Sweet & Maxwell, 2024 – W125

Articles

Chatterjee, A., Chatterjee, A. The European Union's hydrogen fantasy: bridging gaps between economics and law. *Construction, Engineering and Energy Law Journal* 2024; 2: 9-23
Lowry, A. Decisions of convenience. *The Bar Review* 2024; 29 (5): 173-177
McNamara, M., Dr. The presumption of innocence in European Union law. *Irish Criminal Law Journal* 2024; 34 (4): 75-89

Statutory instruments

European Union (Charging of Vehicles for the use of Road Infrastructures) Regulations 2024 – SI 601/2024
European Union (Markets in Crypto-Assets) Regulations 2024 – SI 607/2024
European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2024 – SI 608/2024
European Union (Data Protection Act 2018) (Amendment of section 60) Regulations 2024 – SI 610/2024
European Communities (Carbon Border Adjustment Mechanism) (Amendment) Regulations 2024 – SI 626/2024
European Union (Adequate Minimum Wages) Regulations 2024 – SI 633/2024
European Union (Cosmetic Products) (Amendment) Regulations 2024 – SI 637/2024
European Communities (Extraction Solvents used in the Production of Foodstuffs and Food Ingredients) (Amendment) Regulations 2024 – SI 638/2024
European Union (Energy Performance of Buildings) Regulations 2024 – SI 642/2024
European Union (Restrictive Measures concerning South Sudan) (No. 2) Regulations 2024 – SI 643/2024
European Union (Restrictive Measures concerning Iran) (No. 4) Regulations 2024 – SI 644/2024
European Union (Restrictive Measures concerning Sudan) Regulations 2024 – SI 645/2024
European Union (Restrictive Measures concerning Iran) (No. 5) Regulations 2024 – SI 646/2024
European Union (Restrictive Measures concerning Haiti) (No. 4) Regulations 2024 – SI 647/2024
European Union Habitats (River Barrow and River Nore Special Area of Conservation) Regulations 2024 – SI 648/2024
European Union Habitats (Termon Lough Special Area of Conservation) Regulations 2024 – SI 649/2024
European Union Habitats (Lower River Suir Special Area of Conservation) Regulations 2024 – SI 650/2024
European Union Habitats (Turloughmore (Sligo) Special Area of Conservation) Regulations 2024 – SI 651/2024
European Union (Specific Stability Requirements for Ro-Ro Passenger Ships) Regulations 2024 – SI 654/2024
European Union (Renewable Energy) Regulations 2024 – SI 665/2024
European Communities (Pesticide Residues) (Amendment) Regulations 2024 – SI 678/2024
European Union (Capital Requirements) (No. 2) (Amendment) Regulations 2024 – SI 682/2024
European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) (No.

2) Regulations 2024 – SI 685/2024
European Union (Statistics) (Intra-Union Trade in Goods) (Amendment) Regulations 2024 – SI 686/2024
European Union (Restrictive Measures Against Serious Human Rights Violations and Abuses) (No. 4) Regulations 2024 – SI 694/2024
European Union (Restrictive Measures concerning Syria) (No. 4) Regulations 2024 – SI 695/2024
European Union (Restrictive Measures concerning Sudan) (No.4) Regulations 2024 – SI 696/2024
European Union (Restrictive Measures concerning the Democratic Republic of the Congo) (No. 5) Regulations 2024 – SI 697/2024
European Union (Restrictive Measures concerning Mali) (No.4) Regulations 2024 – SI 717/2024
European Union (Restrictive Measures concerning Belarus) (No.5) Regulations 2024 – SI 718/2024
European Union (Restrictive Measures concerning Russia) (No.4) Regulations 2024 – SI 719/2024
European Union (Restrictive Measures concerning Ukraine) (No.12) Regulations 2024 – SI 720/2024
Chemicals Act 2008 (CLP Regulation) Regulations 2024 – SI 723/2024
European Union (Value-Added Tax) Regulations 2024 – SI 725/2024
European Union (General Product Safety) Regulations 2024 – SI 726/2024
European Union (Restrictive Measures concerning Haiti) (No. 5) Regulations 2024 – SI 727/2024
European Union (Restrictive Measures concerning the Democratic People's Republic of Korea) (No. 5) Regulations 2024 – SI 728/2024
European Union (Restrictive Measures concerning Sudan) (No.5) Regulations 2024 – SI 729/2024
European Union (Data Governance Act) (No. 2) Regulations 2024 – SI 734/2024
European Communities (Greenhouse Gas Emissions Trading) (Aviation)(Amendment) Regulations 2024 – SI 740/2024
European Union (Information Exchange between Law Enforcement Authorities) Regulations 2024 – SI 748/2024
European Union (Energy Performance of Buildings) Regulations 2024 – SI 749/2024
European Union (Mercury) (Amendment) Regulations 2024 – SI 754/2024
European Union (Renewable Energy) (Amendment) Regulations 2024 – SI 755/2024
European Union (Requirements for Credit Transfers and Direct Debits in Euro) (Amendment) Regulations 2025 – SI 6/2025
European Union (Market Surveillance) (Compliance of Automotive Products) Regulations 2025 – SI 8/2025

EVIDENCE

Commercial law – Directions order – Admissibility of documents– Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, ss.15, 16 – Appellants seek to challenge the trial judge's treatment of evidence and admission of documents – Whether the trial judge was correct in concluding that the admission of the identified documents would be unfair – 12/12/2024 – [2024] IECA 298
Nolan and ors v Dildar Limited (IOM) and ors

Articles

McKeown, A. Weighing the cause in justice's (flexible) scales: standards of proof and the common law. *Irish Law Times* 2024; 42 (12): 135-141 [part 1]; *Irish Law Times* 2024; 42 (13): 145-151 [part 2]

EXTRADITION LAW

Extradition law – Surrender order – Trial in absentia – European Arrest Warrant Act 2003, s.16 – Applicant seeks the surrender of the respondent on foot of a European Arrest Warrant – Whether the rights of the defence were upheld in the process which led to the conviction and sentence for which the respondent's arrest is now sought – 15/11/2024 – [2024] IEHC 723
Minister for Justice v Anusiewicz
Extradition law – Surrender order – Extradition – European Arrest Warrant Act 2003, ss. 20, 21A, 22, 23, 24, 38, 45 – Applicant seeks an order for the surrender of the respondent to Italy to serve a custodial sentence – Whether the respondent should be surrendered to Italy under the European Arrest Warrants – 08/11/2024 – [2024] IEHC 722
Minister for Justice v Cantea
Extradition law – Surrender order – Extradition – European Arrest Warrant Act 2003, s.16 – Applicant seeks an order for the surrender of the respondent to the Republic of Croatia – Whether the respondent would be exposed to a real risk of inhuman or degrading treatment if surrendered to Croatia – 11/12/2024 – [2024] IEHC 724
Minister for Justice v Durbek

FAMILY LAW

Family law – Divorce order – Revisitation of asset values – Family Law (Divorce) Act 1996, ss.14, 15A(10) – Applicant seeks a fresh re-hearing of aspects of the divorce application – Whether the court can consider matters afresh after handing down judgment – 25/01/2023 – [2023] IEHC 50
A. v A. [No.2]
Family law – Decree of divorce – Divorce – Family Law (Divorce) Act 1996, s.20 – Appellant seeks to overturn the decision of the lower court (denial of stay on orders) – Whether the appellant's delay in resolving the matrimonial dispute was primarily responsible for the delay and whether the proposed ancillary reliefs constitute proper provision – 25/11/2024 – [2024] IEHC 745
F. v B.
Family law – Decree of divorce – Division of family home – Family Law (Divorce) Act 1996, ss. 20, 15 – Applicant seeks a larger portion of the family home – Whether the respondent should be afforded an option to purchase the property – 25/11/2024 – [2024] IEHC 736
S. v R.

Articles

Coulter, C. Seen to be done. *Law Society Gazette* 2024; Dec: 20-23
Reid O'Doherty, E. Surrogacy and the changed legal landscape. *The Bar Review* 2024; 29 (5): 179-183

FINANCE

Acts

Finance Act 2024 – Act 43/2024 – Signed on November 12, 2024

Statutory instruments

National Surplus (Exceptional Contingencies) Reserve Fund (Dissolution) Order 2024 – SI 629/2024
National Treasury Management Agency (Amendment) Act 2000 (State Authority) Order 2024 – SI 705/2024
National Treasury Management Agency (Amendment) Act 2014 (State Authority) (No. 2) Order 2024 – SI 706/2024
National Treasury Management Agency (Amendment) Act 2000 (State Authority) (No. 2) Order 2024 – SI 707/2024
National Treasury Management Agency (Amendment) Act 2014 (State Authority) (No. 3) Order 2024 – SI 708/2024
Finance Act 2024 (Section 54(1)) (Commencement) Order 2024 – SI 710/2024

FISHERIES

Statutory instruments

Sea-Fisheries (Quotas) (Amendment) Regulations 2024 – SI 679/2024
Sea-Fisheries (Technical Measures) (Amendment) Regulations 2024 – SI 715/2024
Wild Salmon and Sea Trout Tagging Scheme (Amendment) Regulations 2024 – SI 741/2024

GOVERNMENT

Statutory instruments

Appointment of Special Adviser (Minister of State at the Department of Foreign Affairs) Order 2024 – SI 711/2024
Appointment of Special Advisers (Tánaiste, Minister for Foreign Affairs and Minister for Defence) (No. 2) Order 2024 – SI 712/2024
Appointment of Special Adviser (Minister of State at the Department of the Taoiseach, the Department of Foreign Affairs and the Department of Defence) Order 2024 – SI 713/2024
Oireachtas (Allowances and Facilities) (Amendment) Regulations 2024 – SI 721/2024

HEALTH

Health law – Detention order – Breach of court order – Civil Law (Miscellaneous Provisions) Act 2008, s.27(1) – Applicant seeks to protect the respondent suffering from anorexia nervosa – Whether the respondent's transfer to another hospital breached the court order – 03/12/2024 – [2024] IEHC 698
Master Misericordiae University Hospital v C.B.A.

Statutory instruments

Health (Provision of Food Allergen Information to Consumers in respect of Non-Prepacked Food) (Amendment) Regulations 2024 – SI 656/2024
Social Care Workers Registration Board Approved Qualifications Bye-Law 2024 – SI 661/2024
Health Insurance Act 1994 (Section 11E(3)) (Amendment) Regulations 2024 – SI 690/2024
Health Insurance Act 1994 (Section 11E(2)) (No. 2) Regulations 2024 – SI 691/2024
Disabled Drivers and Disabled Passengers Fuel Grant (Amendment) (No. 2) Regulations 2024 – SI 731/2024
Infectious Diseases (Amendment) (No. 3) Regulations 2024 – SI 735/2024
Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 (Fees) Regulations 2024 – SI 736/2024
Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 (Commencement) (No. 3) Order 2024 – SI 737/2024
Public Health (Tobacco Products and Nicotine Inhaling Products) Act 2023 (Commencement) (No. 3) Order 2024 – SI 738/2024
Health (Provision of Information for Health Examination and Treatment Service) Regulations 2024 – SI 750/2024
Health Products Regulatory Authority (Fees) Regulations 2024 – SI 751/2024
Health (Miscellaneous Provisions) Act 2024 (Commencement) (No. 2) Order 2024 – SI 753/2024
Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) (Amendment) Regulations 2025 – SI 1/2025

HERITAGE

Library acquisitions

Bradley, M. *Art and Cultural Heritage Law: A Practical Guide*. Dublin: Clarus Press, 2024 – A70.A7.C5

Statutory instruments

Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023

(Commencement) (No. 2) Order 2024 – SI 663/2024
National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) Order 2024 – SI 702/2024
National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No. 2) Order 2024 – SI 703/2024
National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No. 3) Order 2024 – SI 704/2024
National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No. 4) Order 2024 – SI 709/2024

HOUSING

Statutory instruments

Housing (Adaptation Grants for Older People and Disabled People) Regulations 2024 – SI 612/2024
Remediation of Dwellings damaged by the use of Defective Concrete Blocks (Amendment) Regulations 2024 – SI 621/2024
Housing (Miscellaneous Provisions) Act 2024 (Commencement) Order 2024 – SI 627/2024
Rent Pressure Zone (Local Electoral Area of Sligo-Drumcliffe) Order 2024 – SI 675/2024

HUMAN RIGHTS

Library acquisitions

Eldergill, A., Prof., Evans, M. Sibley, E. *European Court of Human Rights and Mental Health*. London: Bloomsbury Professional, 2024 – C200

IMMIGRATION

Immigration law – Judicial review – Visa refusal – Equal Status Acts 2000-2015, art.21 – Applicants seek to challenge the refusal of a long stay (join family) visa – Whether the Minister's decision to refuse the visa application was justified based on the evidence and legal principles – 10/12/2024 – [2024] IEHC 702
Alamin and anor v Minister for Justice
Immigration law – Certiorari order – Statutory interpretation – Immigration Act 2004, s.4(3)(j) – Appellants seek judicial review of the decision to refuse them permission to land in the State – Whether the refusal of leave to land based on public policy was lawful – 19/12/2024 – [2024] IESC 58
Chain Wen Wei and anor v The Minister for Justice and anor
Immigration law – Deportation order – Revocation of deportation orders – Immigration Act 1999, s.3 – Applicants seek to revoke deportation orders issued against them – Whether there were unusual, special, or changed circumstances since the making of the deportation orders in 2017 – 20/12/2024 – [2024] IEHC 737
E.A. and anor v Minister for Justice
Inadmissibility recommendation – Admissibility of protection applications – International Protection Act 2015, ss. 21, 50A – Applicants seek to have their applications admitted to the international protection process in Ireland – Whether the applicants face a real risk of treatment contrary to Article 4 of the Charter if returned to Greece – 06/12/2024 – [2024] IEHC 699
H. v International Protection Appeals Tribunal and ors, A. v International Protection Appeals Tribunal and ors
Immigration law – Judicial review order – Judicial review – Irish Nationality and Citizenship Act 1956, ss. 15, 16 – Applicants seek judicial review of the Minister's decision to refuse their applications for naturalisation – Whether the Minister's refusal to grant naturalisation certificates to the applicants was valid and lawful – 31/10/2024 – [2024] IEHC 720
K.B. and ors v Minister for Justice
Immigration law – Refusal of naturalisation – Judicial review – Irish Nationality and Citizenship Act 1956, ss.14, 15 – Appellant seeks to overturn the High Court's decision refusing to quash the Minister's refusal of a naturalisation certificate – Whether the Minister's decision to refuse the appellant's naturalisation application based on road traffic convictions was lawful – 07/01/2025 – [2025] IECA 1
M. v The Minister of Justice
Immigration law – Judicial review order – Judicial review – European Convention on Human Rights, art.8 – Applicants seek judicial review of the decision to refuse long stay visa applications. Whether the decision failed to recognise the relationship or respect the institution of marriage under Article 41 of the Constitution – 04/12/2024 – [2024] IEHC 694
T.A. and ors v Minister for Justice

Library acquisition

Harvey, C. *Seeking Asylum in the UK: Problems and Prospects*. London: Butterworths, 2000 – C206

INSOLVENCY

Bankruptcy law – Leave to issue motion – Review of judgment – Bankruptcy Act 1988, s.85(3A) – Whether the court should grant leave to issue a motion seeking an order reviewing the judgment on constitutional grounds – 23/12/2024 – [2024] IECA 309
Carney and anor v Bank of Scotland Plc (Formerly Bank of Scotland Ireland) and anor
Bankruptcy law – Strike out motions – Validity of appointments – Bankruptcy Act 1988, s.44 – Applicant seeks to challenge the validity of the appointments of the respondents as Official Assignee in Bankruptcy – Whether the applicant can challenge the validity of the respondents' appointments as Official Assignee in Bankruptcy by way of motion – 03/12/2024 – [2024] IEHC 685
In the matter of Sean Dunne

INSURANCE

Acts

Health Insurance (Amendment) and Health (Provision of Menopause Products) Act 2024 – Act 42/2024 – Signed on November 11, 2024

Statutory instruments

Health Insurance Act 1994 (Section 11E(2)) (Amendment) Regulations 2024 – SI 693/2024
Motor Insurance Insolvency Compensation Act 2024 (Section 17(1)(a)) Order 2025 – SI 9/2025

IRISH LANGUAGE

Statutory instruments

Official Languages (Amendment) Act 2021 (Commencement) (No. 2) Order 2024 – SI 692/2024

JUDICIAL REVIEW

Judicial review – Certiorari and remittal order – Procedures adopted by PPC – Applicants seek leave to judicially review the decision of the second respondent – Whether to grant leave to seek reliefs and remit the case for re-hearing – 20/12/2024 – [2024] IEHC 734
Niland and ors v Medical Council and anor
Judicial review – Certiorari order – Unfair hearing – Road Traffic Act 2006, s.3 – Applicant seeks to set aside a conviction entered by the District Court – Whether the conduct of the criminal trial before the District Court was such that the applicant received an unfair hearing that cannot be corrected by way of an appeal to the Circuit Court – 13/01/2025 – [2025] IEHC 8
O'Neill v Director of Public Prosecutions and ors
Environmental law – Order for reference – Judicial review – Planning and Development Act 2000, s.50 – Appellants seek to challenge the validity of the development consent granted by the Board due to the absence of site-specific conservation objectives – Whether valid conservation objectives for a Special Protection Area are a pre-requisite to the competent authority's jurisdiction to carry out a valid appropriate assessment under Article 6(3) of Directive 92/43/EEC – 13/12/2024 – [2024] IECA 295
Power and anor v An Bord Pleanála and ors
Criminal law – Prohibition order – Judicial review – Criminal Law (Rape)(Amendment) Act 1990, ss. 2(1),2(a)(i) – Applicant seeks to prohibit his re-trial on a single charge of sexual assault – Whether the applicant has shown that any further trial will inevitably be unfair – 14/01/2025 – [2025] IEHC 10
Q.R. v DPP
Judicial review – Costs order – Costs – Legal Services Regulation Act 2015, ss. 168, 169 – Applicant seeks each party to bear its own costs – Whether the State respondents are entitled to their costs as the entirely successful party – 30/10/2024 – [2024] IEHC 718
R.G. v International Protection Appeals Tribunal and ors
Judicial review – Certiorari order – Credibility assessment – Legal Services Regulation Act 2015, s.169 – Applicant seeks certiorari of a decision refusing refugee status or subsidiary protection – Whether the International Protection Appeals Tribunal erred in law in its assessment of the applicant's credibility – 06/01/2024 – [2025] IEHC 4
S. v International Protection Appeals Tribunal and ors
Judicial review – Extension of time – Costs – Legal Services Regulation Act 2015, s.169 – Applicant seeks to quash the decision of the Legal Aid Board to refuse his application for payment of legal costs – Whether the applicant's proceedings were eligible for the Legal Aid Custody Issues Scheme – 31/12/2024 - [2024] IEHC 744
Winters v Legal Aid Board

INJUNCTIONS

Property law – Injunction order – Discharge of injunction – Defendants seek an order discharging or varying the Injunction Order due to plaintiff's delay and failure to comply with the Directions Order – Whether the plaintiff is no longer entitled to the benefit of the injunction granted by Roberts J. in December 2022 – 05/12/2024 – [2024] IEHC 688
O'Dwyer v Grogan and anor

LAND LAW

Library acquisitions

Newsom, G.L. *Preston and Newsom's Restrictive Covenants Affecting Freehold Land (12th ed.)*. London: Sweet & Maxwell, 2024 – N65.6

LANDLORD AND TENANT

Library acquisitions

Reynolds, K., Clark, W. *Renewal of Business Tenancies (6th ed.)*. London: Sweet & Maxwell, 2022 – N92.6

Articles

Carroll, G. Dilapidations and the law. *The Bar Review* 2024; 29 (5): 169-172

LEGAL HISTORY

Library acquisitions

Hogan, D., Maume, P. *The Reminiscences of Ignatius O'Brien: Lord Chancellor of Ireland 1913-18*. Dublin: Four Courts Press, 2024 – B10.C5
Howlin, N. *A Century of Courts: The Courts of Justice Act 1924*. Dublin: Four Courts Press, 2023 – L220.C5

McGrath, B. *The Operations of the Irish House of Commons 1613-48*. Dublin: Four Courts Press, 2023 – L403.C5

LEGAL PROFESSION

Professional misconduct – Limited practising order – Sanction proportionality – Solicitors (Amendment) Act 1960, ss. 7(3)(c)(iv),8 – Applicant seeks the imposition of the sanctions as recommended by the Solicitors Disciplinary Tribunal – Whether the recommended sanction by the Solicitors Disciplinary Tribunal to impose a limited practising order on the solicitor is excessive – 11/12/2024 – [2024] IEHC 709

Law Society of Ireland v Lohan, Lohan v Law Society of Ireland

Articles

Guigon, M., Carey, R. Your electronic library. *The Bar Review* 2024; 29 (5): 164-165

Ó Maolchalain, P. Direct access. *The Bar Review* 2024; 29 (5): 184

Statutory instruments

The Solicitors Acts 1954 to 2015 (Apprentices' Fees) Regulations 2024 – SI 657/2024

Solicitors Practising Certificate (Application Fee) Regulations 2024 – SI 658/2024 – Registered European Lawyers Qualifying Certificate (Application Fee) Regulations 2024

SI 659/2024

MEDICAL LAW

Professional regulation – Interim suspension order – Dentists Act 1985, s.44 – Applicant seeks interim suspension orders against the respondent, a registered dentist, pending the conclusion of the complaint and inquiry process – Whether the orders sought by the Dental Council should be granted to protect the public – 01/11/2024 – [2024] IEHC 731

Dental Council v A dentist

Medical law – Refusal of registration – Fitness to practice medicine – Medical Practitioners Act 2007, ss. 43, 54 – Appellant seeks to overturn the decision of the Medical Council refusing his registration – Whether the appellant was fit to practice medicine in Ireland – 31/10/2024 – [2024] IEHC 710

Sheill v Medical Council of Ireland

PERSONAL INJURIES

Personal injury law – Dismissal of case – Causation of shoulder injury – Plaintiff seeks compensation for injury to her right shoulder allegedly caused by a road traffic accident – Whether the injury to the plaintiff's shoulder was caused by the road traffic accident on April 16, 2016 – 13/12/2024 – [2024] IEHC 703

Daly v Ryans Investments Limited

Personal injury law – Dismissal of case – Reasonable foreseeability – Prisons Act 2007, s.13 – Plaintiff seeks compensation for injuries sustained during an assault in prison – Whether the defendants took all reasonable steps to prevent the type of injury that occurred and whether the injury could have been reasonably foreseeable or reasonably anticipated – 18/12/2024 – [2024] IEHC 715

Knowles v Minister for Justice and Equality and ors

Personal injuries law – Dismissal order – Inordinate and inexcusable delay – Companies Act 2014, s.678 – Plaintiff seeks to overturn the Circuit Court's dismissal of his claim for want of prosecution – Whether the balance of justice favours the dismissal of the case due to the plaintiff's delay – 14/01/2025 – [2025] IEHC 13

Maksym v S and S Recycling Limited and anor

Statutory instruments

Personal Injuries Resolution Board Act 2022 (Commencement) (No. 2) Order 2024 – SI 681/2024

PLANNING AND ENVIRONMENTAL LAW

Planning and environment law – Order of certiorari – Judicial review – Planning and Development Act 2000, ss. 131,137 – Applicant seeks an order of certiorari quashing the board's decision and remitting the application for reconsideration – Whether the board indirectly took into account the Ballyroe submission – 10/01/2025 – [2025] IEHC 2

Annagh Windfarm Limited v An Bord Pleanála

Planning and environmental law – Order of certiorari – Judicial review – Climate Action and Low Carbon Development Act 2015, s.15 – Applicant seeks an order of certiorari quashing the decision of the board to refuse permission for a wind farm – Whether the board failed to exercise its powers in a manner compliant with climate objectives and policies – 10/01/2025 – [2025] IEHC 1

Coolglas Windfarm Limited v An Bord Pleanála

Judicial review – No order as to costs – Costs in constitutional challenge – Planning and Development Act 2000, s.28(1C) – Legal Services Regulatory Authority Act 2015, ss.168, 169 – Appellant seeks an award of costs despite being unsuccessful in the constitutional challenge – Whether the appellant should be awarded costs despite being unsuccessful in the constitutional challenge – 17/12/2024 – [2024] IESC 56

Conway v An Bord Pleanála and ors

Planning and development law – Injunction order – Material deviations – Planning and Development Act 2000, s.160 – Appellants seek to overturn the High Court decision prohibiting further development at Meenbog Wind Farm – Whether the presence of material deviations from the grant of planning permission renders the entire development unauthorised – 18/12/2024 – [2024] IECA 300

Donegal County Council v Planree Limited and anor

Environmental law – Certiorari order – Judicial review – Planning and Development Act 2000, s.146 – Applicant seeks to quash the board's decision to grant planning permission for a wind farm development – Whether the board's decision to grant planning permission was valid despite the alleged procedural and substantive errors – 15/01/2025 – [2025] IEHC 15

Eco Advocacy CLG v An Bord Pleanála

Planning and environment law – Injunction order – Judicial review – Planning and Development Act 2000, ss.4, 262 – Applicant seeks to challenge exempted development regulations facilitating housing of international protection seekers and displaced persons – Whether the criteria for discharge of the leave order have been met – 06/12/2024 – [2024] IEHC 690

McGreal v Minister for Housing, Local Government and Heritage of Ireland [No 2]

Planning and environment law – Exemption order – Exemption from stamp duty – Planning and Development Act 2000, ss.10, 20 – Applicant seeks an exemption from stamp duty to file a notice of motion to set aside a previous judgment – Whether the applicant is entitled to an exemption from stamp duty for filing a notice of motion under Article 40.4 of the Constitution – 20/12/2024 – [2024] IEHC 728

McGreal v Minister for Housing, Local Government and Heritage of Ireland [No. 2]

Planning and development law – Quash planning permission – Judicial review of planning permission – Planning and Development Act 2000, ss. 48, 49 – Applicant seeks to quash the decision to grant planning permission to the first notice party – Whether the decision to grant planning permission was valid and complied with the Planning and Development Act 2000 – 10/12/2024 – [2024] IEHC 704

Minoa Ltd v An Bord Pleanála

Planning and environment law – Certiorari order – Overall strategy – Planning and Development Act 2000, ss. 10, 31 – Applicant seeks to quash the Ministerial Direction to delete the 0/0 Objective from the 2022 Development Plan – Whether the 2022 Development Plan failed to set out an overall strategy for the proper planning and sustainable development of the area – 15/01/2025 – [2025] IEHC 14

Mount Salus Residents' Owners Management Company Limited by Guarantee v An Bord Pleanála and ors

Planning and environment law – Dismissal order – Leave to appeal – Planning and Development Act 2000, ss.50, 50A, 50B – Applicant seeks leave to appeal the High Court's decision – 10/01/2025 – [2025] IEHC 3

Nagle View Turbine Aware [No. 2] v An Bord Pleanála

Environmental law – Remittal order – Public authority status – European Communities (Access to Information on the Environment) Regulations 2007-2014, art.13 – Appellant seeks to overturn the decision that it is a public authority – Whether Raidió Teilifís Éireann is a public authority under Directive 2003/4/EC – 20/12/2024 – [2024] IEHC 729

Raidió Teilifís Éireann v Commissioner for Environmental Information

Environmental law – Order of certiorari – Characterisation issue – European Communities (Access to Information on the Environment) Regulations 2007-2018, art.4 – Applicant seeks to challenge the decision on remittal regarding access to environmental information – Whether the applicant is precluded by *res judicata* from re-agitating the characterisation issue – 20/12/2024 – [2024] IEHC 713

Right to Know CLG v An Taoiseach

Planning and environment – Costs order – Costs of proceedings – Fisheries (Amendment) Act 1997, s.73 – Applicants seek costs of the proceedings – Whether the applicants should be awarded costs of the proceedings – 11/12/2024 – [2024] IEHC 700

Salmon Watch Ireland CLG and ors v Aquaculture Licences Appeals Board and ors

Planning and development law – Extension of time – Extension of time limit – Planning and Development Act 2000, s.50 – Appellants seek an extension of time to apply for judicial review of a planning decision – Whether the statutory time limit for judicial review applications should be extended when the final day falls on a non-working day – 05/12/2024 – [2024] IESC 55

Save the South Leinster Way and Tara Heavey v An Bord Pleanála

Planning and environment law – Formal reference order – Strategic environmental assessment – Treaty on the Functioning of the European Union (TFEU), art.267 – Applicant seeks to refer questions regarding environmental duties to the CJEU – Whether to refer the issues regarding the alleged duty to choose the most environmentally friendly option and the alleged duty to weigh alternatives comparably to the CJEU – 06/12/2024 – [2024] IEHC 692

An Taisce – The National Trust for Ireland v Minister for Housing, Local Government and Heritage and ors [No. 5]

Articles

Guiry, N. Reflections on Irish wildlife crime reforms: progress or stagnation? *Irish Planning and Environmental Law Journal* 2025; 1: 3-6

Statutory instruments

Derelict Sites Act 1990 (Urban Areas) Regulations 2024 – SI 606/2024

Planning and Development Act 2000 (Section 181(2)(a)) Order 2024 (Revocation) Order 2024 – SI 617/2024

Waste Management Act 1996 (End-of-Waste) Regulations 2024 – SI 660/2024

Planning and Development Act 2024 (Commencement) Order 2024 – SI 662/2024

PRACTICE AND PROCEDURE

Contempt of court – Release order – Contempt of court – Plaintiff seeks enforcement of court orders and fines against the defendant – Whether the defendant should remain in jail for continued refusal to abide by court orders – 20/12/2024 – [2024] IEHC 746

Board of Management of Wilson's Hospital School v Burke [No.1]

Civil procedure – Dismissal of proceedings – Delay in prosecution – Plaintiffs seek to overturn the High Court's decision to strike out their proceedings for inordinate and inexcusable delay. Whether the delay in prosecuting the case caused serious prejudice to the defendant justifying dismissal of the proceedings – 19/12/2024 – [2024] IECA 301

Campion and ors v South Tipperary County Council

Strike out order – Rectification of register – Registration of Title Act 1964, ss.30, 30(1) – Plaintiffs seek rectification of the register and relief against the defendants for alleged unlawful sale of lands. Whether the plaintiffs' claims against the Attorney General and Tailte Éireann should be struck out or stayed – 29/11/2024 – [2024] IEHC 682

Cinnéide and ors v An tÁrd-Aighne and ors

Civil procedure – Dismissal order – Delay in prosecution – Civil Liability Act 1961, s.27 – Appellants seek to overturn the High Court's decision dismissing their action for want of prosecution – Whether the respondents had been prejudiced by the appellants' delay in progressing the proceedings – 16/12/2024 - [2024] IECA 299

Coughlan and anor v Stokes and ors

Civil procedure – Dismissal order – Inordinate and inexcusable delay – Rules of the Superior Courts 1986, O.122 r.11 – Appellant seeks to overturn the High Court's dismissal of his proceedings for delay – Whether the appellant's delay in prosecuting the proceedings was inordinate and inexcusable – 17/12/2024 – [2024] IECA 302

Davey v Ulster Bank Ireland Limited

Civil law – Stay of proceedings – Dismissal due to ill-health – Credit Institutions (Stabilisation) Act 2010, s.1 – Appellant seeks to dismiss or permanently stay proceedings due to ill health and risk of unfair trial – Whether the appellant's inability to give instructions or evidence due to ill health justifies dismissing the case – 19/12/2024 – [2024] IESC 59

IBRC Ltd and anor v Fingleton

Personal injuries law – Strike out order – Delay in prosecution – Employment Equality Act 1998, s.101 – Defendant seeks to strike out the plaintiff's claim for want of prosecution – Whether the defendant has demonstrated that there is a real risk of an unfair trial – 09/01/2025 – [2025] IEHC 7

Lazarenco v Bus Átha Cliath – Dublin Bus

Civil procedure – Restraining order – Appeal without permission – Appellant seeks to appeal against the High Court's refusal to grant leave to institute proceedings – Whether the appellant can appeal without High Court permission under an Isaac Wunder order – 05/11/2024 – [2024] IECA 264

O'Connor v Property Registration Authority of Ireland and ors

Civil procedure – Substitution order – Substitution of parties – Supreme Court of Judicature Act (Ireland) 1877, s.28(6) – Defendant seeks to set aside the substitution order made by the Circuit Court – Whether the substitution order made by the Circuit Court on May 14, 2024, should be upheld – 14/01/2025 – [2025] IEHC 9

Promontoria (Oyster) DAC v McCool

PRIVILEGE

Library acquisitions

Passmore, C. *Privilege (5th ed.)*. London: Sweet & Maxwell, 2024 – N386.5

PROBATE

Probate Law - Grant of Letters of Administration - Succession Act 1965, s.27(4) - Applicant seeks liberty to apply for and extract Letters of Administration with Will Annexed de bonis non in the estate of the Testator - Whether it is necessary to permit the applicant to extract a Grant of Letters of Administration with Will Annexed de bonis non - 18/12/2024 - [2024] IEHC 733

Re: George McWilliams [Deceased]

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Professional Negligence - Striking out order - Res judicata - Defendant seeks an order striking out the plaintiff's action against him on the grounds that the issues raised in these proceedings are either res judicata, or are caught by the rule in Henderson v Henderson - Whether the present proceedings ought to be struck out against the defendant on the basis that the issues raised in the present proceedings are either res judicata, or are caught by the rule in Henderson v Henderson - 20/12/2024 - [2024] IEHC 716

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Property law – Injunction order – Trespass and property damage – Plaintiff seeks to prevent further trespass and damage to her property by the defendants – Whether the defendants' construction works caused dampness in the plaintiff's garage wall – 12/12/2024 – [2024] IECC 21

Considine v Flanagan

Property law – Possession order – Validity of receiver appointment – Conveyancing Act 1881, s.14 – Plaintiffs seek possession of the property and defendants counterclaim for damages – Whether the appointment of the receiver was valid and whether the breaking of the lock constituted peaceable re-entry – 10/12/2024 – [2024] IEHC 697

Coulston and ors v Elliot and anor

Property law – Relief against forfeiture – Lease qualification – Landlord and tenant (Ground Rents) (No. 2) Act 1978, ss.9, 10 – Applicants seek to acquire the fee simple of the property – Whether the lease in question is a non-qualifying lease within the meaning of the legislation – 10/12/2024 – [2024] IEHC 695

Crowley and anor v Sheehan and anor

Property law – Strike out order – *Res judicata* – Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 – Plaintiff seeks 19 different orders including a stay on the completion of the liquidation of Tanager and declarations related to the ownership and registration of the property – Whether the issues asserted in these proceedings as against Tarbutus have been determined in the Tarbutus proceedings, the doctrine of *res judicata* applies and, consequently, these proceedings are now bound to fail and have no reasonable chance of succeeding as against the Tarbutus defendants within the meaning of Order 19, Rule 28 – 20/12/2024 – [2024] IEHC 739

Hogan v Tanager DAC and ors

Property law – Determination order – Validity of notice of termination – Residential Tenancies Act 2004, ss. 34,35 – Appellant seeks to cancel or vary the determination order validating the notice of termination – Whether the Residential Tenancies Board erred in law in determining the validity of the notice of termination – 28/11/2024 – [2024] IEHC 730

Kelly v Residential Tenancies Board

Property law – Order for sale – Consolidation of proceedings – Land and Conveyancing Act 2009, s.31 – Plaintiff seeks an order for the sale of a jointly owned property – Whether the proceedings should be consolidated or not – 29/11/2024 – [2024] IEHC 665

O'Donoghue v O'Donoghue

Property law – Substitution order – Substitution of plaintiff – Rules of the Superior Courts, O.17 r.4 – Applicant seeks to be substituted as the first named plaintiff or joined as a co-plaintiff – Whether the applicant should be substituted as plaintiff in place of the first named plaintiff – 18/12/2024 – [2024] IEHC 727

Pepper Finance Corporation [Ireland] Designated Activity Company and anor v O'Connor and anor

Property law – Possession order – Substitution of plaintiff – Registration of Title Act 1964, s.62 – Land and Conveyancing Law Reform Act 2013 – Defendant seeks to contest the order of possession and the substitution of the plaintiff. 0 Whether the substitution of Pepper Finance Corporation (Ireland) DAC for the original plaintiff was correct – 06/12/2024 – [2024] IEHC 742

Pepper Finance Corporation [Ireland] DAC v O'Reilly

Property law – Possession order – Possession of properties – Registration of Title Act 1964, s.62(7) – Plaintiffs seek possession of two properties – Whether the defendant should be permitted to raise new defences in the plenary hearing – 03/12/2024 – [2024] IEHC 680

Permanent TSB formerly Irish Life and Permanent PLC and anor v Donohoe

Statutory instruments

Property Services (Regulation) Act 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2024 – SI 699/2024

PUBLIC EXPENDITURE

Acts

Appropriation Act 2024 – Act 45/2024 – Signed on November 13, 2024

Houses of the Oireachtas Commission (Amendment) Act 2024 – Act 46/2024 – Signed on November 13, 2024

ROAD TRAFFIC

Statutory instruments

Road Traffic Act 2024 (Commencement) (No. 4) Order 2024 – SI 614/2024

Road Traffic and Roads Act 2024 (Commencement) (No. 4) Order 2024 – SI 615/2024

Road Traffic Act 2024 (Commencement) (No. 5) Order 2024 – SI 616/2024

Road Traffic (Signs) (Speed limits) Regulations 2024 – SI 618/2024

Road Traffic Act 2016 (Section 4) (Manner of Notification) Regulations 2024 – SI 652/2024

Road Traffic (National Car Test) (Amendment) Regulations 2024 – SI 672/2024

Road Traffic (Licensing of Drivers) (Fees) Regulations 2024 – SI 673/2024

Commercial Vehicle Roadworthiness (Vehicle Testing) (Amendment)

Regulations 2024 – SI 674/2024
Road Traffic Act 1994 (Detention of Powered Personal Transporters) Regulations 2024 – SI 732/2024

SOCIAL WELFARE

Judicial review – Leave to apply – Extension of time – Social Welfare Consolidation Act 2005, ss. 186C, 317 – Applicant seeks leave to apply for judicial review regarding the refusal of domiciliary care allowance – Whether an extension of time should be granted pursuant to Order 84, rule 21 of the Rules of the Superior Courts – 18/12/2024 – [2024] IEHC 711
B. v Chief Appeals Officer and ors

Statutory instruments

Social Welfare (Child Benefit and Working Family Payment) (Temporary Provisions) Regulations 2024 – SI 602/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 13) (Assessment of Means) Regulations 2024 – SI 603/2024
Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 4) (Calculation of Means) Regulations 2024 – SI 604/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 17) (Conditions for Receipt of Jobseeker's Payments) Regulations 2024 – SI 605/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 11) (Disregard of Proceeds from Sale of Principal Residence – Disability Allowance, State Pension (Non-Contributory) and Blind Pension) Regulations 2024 – SI 613/2024
Social Welfare (Section 290A) (Agreement) Order 2024 – SI 631/2024
Social Welfare (Consolidated Occupational Injuries) Regulations 2024 – SI 632/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 14) (Jobseeker's Pay-Related Benefit) Regulations 2 – SI 634/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 14) (Jobseeker's Pay-Related Benefit) Regulations 2 – SI 635/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 16) (Jobseeker's Pay-Related Benefit) Regulations 2024 – SI 636/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 19) (Postponement of Maternity Benefit in Certain Circumstances) Regulations 2024 – SI 641/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 18) (Carer's Benefit and Carer's Allowance – Earnings Disregard) Regulations 2024 – SI 653/2024
Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No. 3) (Jobseeker's Pay-Related Benefit) Regulations 2024 – SI 677/2024
Social Welfare (Jobseeker's Pay-Related Benefit) Regulations 2024 – SI 689/2024
Social Welfare (Appeals) Regulations 2024 – SI 744/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Jobseeker's Benefit and Jobseeker's Benefit (Self-Employed) – Persons who have attained the age of 65 years) Regulations 2024 – SI 745/2024
Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 5) (Diet Supplement) Regulations 2024 – SI 746/2024
Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 20) (Change in Rates) Regulations 2024 – SI 747/2024

SPORTS

Library acquisitions

Brown, J. *Vicarious Liability in the Sports Industry*. Oxfordshire: Routledge, 2024 – N33.6
Coccia, M., Colucci, M. (eds.). *International Sports Justice*. Italy: Sports Law and Policy Centre, 2024 – N186.6
Donnellan, L, Dr. *Sport and the Law (2nd ed.)*. Dublin: Clarus Press, 2025 – N186.6.C5

STATISTICS

Statutory instruments

Statistics (Aircraft Transaction Register Survey) Order 2024 – SI 722/2024
Statistics (Monthly Balance of Payments Survey) Order 2025 – SI 4/2025
Statistics (Balance of Payments Survey) Order 2025 – SI 5/2025

SUCCESSION

Library acquisitions

Spierin, B.E. *Succession Act 1965 and Related Legislation: A Commentary (6th ed.)*. Dublin: Bloomsbury Professional, 2024 – N120.C5

Articles

Clarke, R. From positive prescription to negative definition: a new perspective for establishing the certainty of conditional testamentary gifts. *Conveyancing and Property Law Journal* 2024; 3: 38-44

TAXATION

Tax law – Assessment order – Right to deduct VAT – Value Added Tax Consolidation Act 2010, ss. 96(3), (12) – Appellant seeks to disapply section 96(12) of the Value Added Tax Consolidation Act 2010 and reduce the assessment to VAT to zero – Whether the Commissioner erred in concluding that the provisions of section 96(12) of the Value Added Tax Consolidation Act 2010 should be disapplied and the assessment to VAT for the period September 1, 2017, to December 31, 2017, raised on October 22, 2020, be reduced to zero – 20/12/2024 – [2024] IEHC 732
Killarney Consortium C v Revenue Commissioners

Statutory instruments

Return of Certain Information by Reporting Platform Operators (Amendment) Regulations 2024 – SI 687/2024

TRANSPORT

Statutory instruments

Aircraft Noise (Dublin Airport) Regulation Act 2019 Levy No. 6 Regulations 2024 – SI 664/2024
Roads Act 1993 (Designation of National Managed Roads) Order 2024 – SI 688/2024

Bills initiated in Dáil Éireann during the period November 8, 2024, to January 23, 2025

[pmb]: Private Members' Bills are proposals for legislation in Ireland initiated by members of the Dáil or Seanad. Other Bills are initiated by the Government.

No bills initiated.

Bills initiated in Seanad Éireann during the period November 8, 2024, to January 23, 2025

Arts (Amendment) (Artist Workspaces) Bill 2024 – Bill 101/2024 [pmb] – Senator Fintan Warfield and Senator Paul Gavan
Local Government (Support for Elected Members) Bill 2024 – Bill 99/2024 [pmb] – Senator Frances Black, Senator Alice-Mary Higgins, Senator Eileen Flynn and Senator Lynn Ruane
Public Procurement (Collective Bargaining and Collective Agreements Criteria) Bill 2024 – Bill 100/2024 [pmb] – Senator Paul Gavan and Senator Fintan Warfield
Public Health (Antacid Products) Bill 2024 – Bill 98/2024 [pmb] – Senator Vincent P. Martin, Senator Gerard P. Craughwell, Senator Victor Boyhan, and Senator Róisín Garvey

Progress of Bill and Bills amended during the period November 8, 2024, to January 23, 2025

No bills amended.

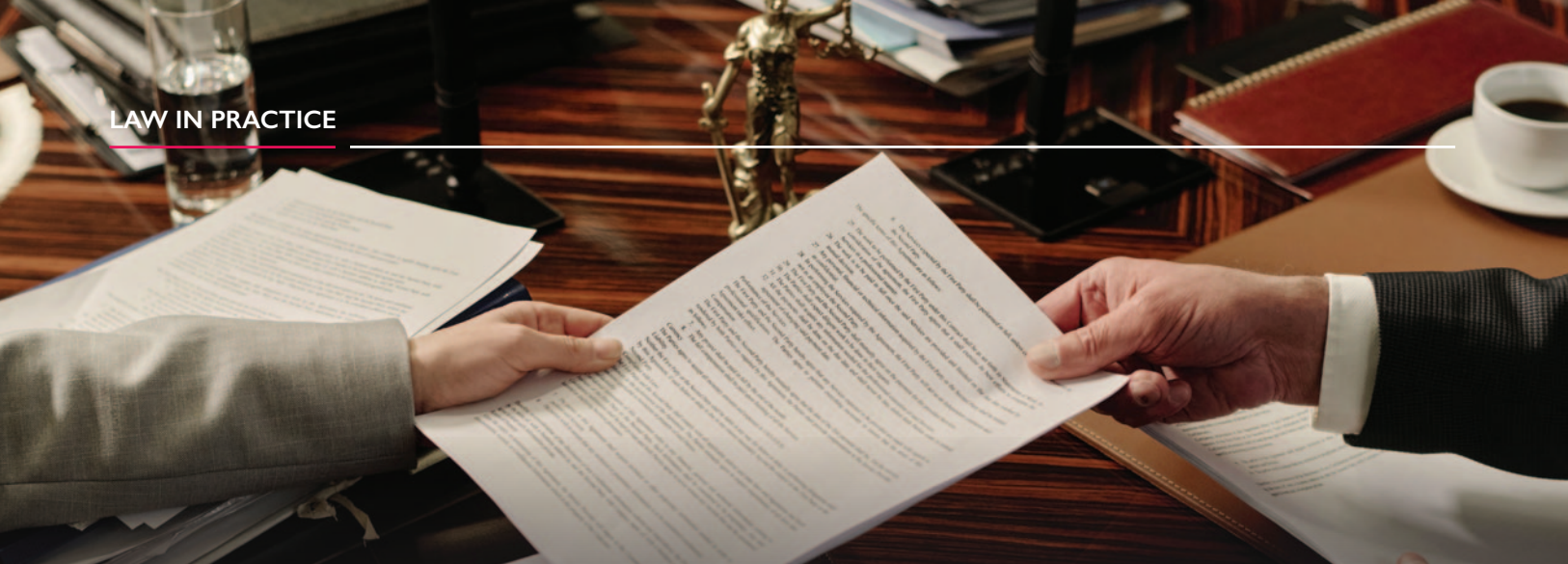
For up-to-date information, please check the following websites:

Bills and legislation
http://www.oireachtas.ie/parliament/
http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/
http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/

Supreme Court determinations – Leave to appeal granted
Published on Courts.ie – November 8, 2024, to January 23, 2025

B.D., T.D. (a minor suing by his mother and next friend B.D.) and M.D. (a minor suing by his mother and next friend B.D.) v Minister for Justice and The International Protection Appeals Tribunal [2024] IESCDET 161 – Leave to appeal from the Court of Appeal granted on the 18/12/2024 – (O'Malley J., Murray J., Donnelly J.)
Donegal County Council v Conor Quinn and The Attorney General [2024] IESCDET 149 – Leave to appeal from the High Court granted on the 06/12/2024 – (O'Malley J., Murray J., Collins J.)
Muhammed Imran v The Minister for Justice [2024] IESCDET 160 – Leave to appeal from the Court of Appeal granted on the 18/12/2024 – (O'Malley J., Murray J., Donnelly J.)
Francis McGuinness v A judge of the Circuit Court, The Director of Public Prosecutions, The Commissioner of An Garda Síochána and The Courts Service [2024] IESCDET 157 – Leave to appeal from the Court of Appeal granted on the 17/12/2024 – (Charleton J., Hogan J., Donnelly J.)
Michael Power v CJSC Indigo Tadjikistan, Telia Company AB and Aga Khan Fund for Economic Development SA [2024] IESCDET 138 – Leave to appeal from the Court of Appeal granted on the 14/11/2024 – (Dunne J., Woulfe J., and Hogan J.)
S. v The Minister for Justice, Ireland and The attorney General [2024]] IESCDET 159 – Leave to appeal from the Court of Appeal granted on the 17/12/2024 – (O'Malley, Murray, Donnelly JJ.)
Z.G. and anor v Ireland and ors [2024] IESCDET 146 – Leave to appeal from the High Court granted on the 29/11/2024 – (Hogan J., Murray J., Donnelly J.)

For up-to-date information, please check the courts website:
https://www.courts.ie/determinations



SENTENCING COMPANIES

Initiatives such as corporate probation, community service and compliance programmes may be more effective than fines in the case of criminal offences by a corporate entity.

James B. Dwyer SC

This paper seeks to address the issue of sentencing companies for criminal offences. Ireland has firmly adopted the approach of judicial discretion in imposing sentences generally. The approach is epitomised in the following comments of Finlay C.J. in *People (DPP) v Tiernan*:[1]

"…having regard to the fundamental necessity for judges in sentencing in any form of criminal case to impose a sentence which in their discretion appropriately meets all the particular circumstances of the case (and very few criminal cases are particularly similar), and the particular circumstances of the accused, I would doubt that it is appropriate for an appellate court to appear to be laying down any standardisation or tariff of penalty for cases".[2]

Thus, each offender will be treated in accordance with their own circumstances. A person with no previous convictions will get a lighter sentence than the person with 100. A 16-year-old child will usually get a lighter sentence than a 30-year-old adult, and a person with significant cognitive deficits will get a lighter sentence than the person who does not have such deficits.

Initially, it was thought that a company could not be guilty of a crime. A company has no mind and therefore cannot have a guilty mind. As an 18th century English Lord Chancellor put it: "Did you ever expect a corporation to have a conscience, when it has no soul to be damned and no body to be kicked?"[3] He is said to have added to the comment *sotto voce* "and by God it ought to have both". The emergence of large numbers of companies behaving badly in the 19th century swept away these theoretical difficulties. Soon companies began to be indicted.

The suite of measures available to a sentencing court in sentencing a human defendant is far wider than those applicable to a company. You cannot imprison a company. You cannot impose community service on a company (under the current legislative regime). You cannot remand a company on bail on condition that they provide clean urine analysis for six months and endeavour to keep of sober habits and stay out of public houses. In practice, the sentences imposed on companies are confined to fines. Many of the offences are in the Companies Act 2014. In that Act, offences are divided into four categories, one being the most serious, four being the most minor. Section 871 of the 2014 Act provides for the fines that can be imposed for each offence. For each offence triable summarily, a Class A fine can be imposed. Categories 3 and 4 are only triable summarily. Categories 1 and 2

when tried on indictment have a maximum fine of €500,000 and €50,000, respectively. The imposition of an appropriate fine with a company, as with a natural person, is usually assessed having regard to moral culpability of the offending and the means of the defendant. The means of a company is easy to assess using company accounts. Assessing the moral culpability of a company is more difficult in the absence of a corporate mind with a moral compass or lack thereof.

The court can have regard to the usual mitigating factors of absence of previous convictions, early guilty plea, previous good character, admissions to an investigator made, etc., as is the case with a natural person. In *People (DPP) v Cavan County Council and Oxigen Environmental Ltd*[4] (hereinafter *Oxigen*), a company (Oxigen Environmental Ltd) and a local authority (Cavan County Council) were both sentenced for unlawfully disposing of waste at a landfill in Cavan over periods of time. Both pleaded guilty. The local authority was fined €260,000. The company was fined €780,000. Both appealed to the Court of Appeal. Edwards J. conducted an analysis of the sentencing of companies and of these types of offences. Ultimately, the sentences were reduced to €50,000 for each defendant.

The 'overspill' problem

The main difficulty envisaged in sentencing companies is what is called the 'overspill' problem. In *Oxigen*, Edwards J. identified this issue as follows:

"63. Equally the court must be conscious of the spill over effects of a large fine that may unjustly punish persons not directly responsible for the offence such as shareholders, employees, creditors, customers, consumers, trading partners and, in the case of a public authority that might not be put out of business by a large fine in the same way that a commercial company might, but which might have to divert resources away from other public services being provided by it, the public at large. While a large fine that causes some spill over will not necessarily be wrong in principle, a court considering the imposition of such a fine is obliged to consider the potential spill over effects and satisfy itself that the proposed measure is nonetheless merited and proportionate, and a failure to do so would amount to an error in principle".[5]

A large company that is the subject of a significant fine is likely to mete out financial loss on others who were not criminally liable. The fine may be passed on (directly or indirectly) to shareholders who may not even have held shares at the time of the offending, or customers by way of increased prices, while leaving corporate bonuses intact. It is passed on to the company's creditors as the value of the debt is decreased by the impact of the fine on the company.

More often, a significant fine will result in a cost-cutting exercise within the company. This may result in laying off employees in the lower echelons of the company or a reduction in salary, while leaving intact those at the higher end, thus penalising those who are less likely to have received any direct benefit from the criminality and bear minimal moral culpability.

The deterrence trap

Deterrence is an important principle of sentencing: imposing a penalty that will deter both the defendant and others from offending. It will often require setting a fine at a very high level. However, the imposition of a very high fine may result in the closure of the company. To avoid this 'deterrence trap', the level of the fine must be tempered having regard to the resources of the defendant company.

In *R. v Yorkshire Water Services Ltd*,[6] the Court of Appeal of England and Wales remarked as follows:

"A balance may have to be struck between a fitting expression of censure, designed not only to punish but to stimulate improved performance on the one hand, and the counter-productive effect of imposing too great a financial penalty on an already under-funded organisation on the other".[7]

In *Oxigen*, Edwards J. made similar observations:

"62. …the limited sentencing options available in respect of a corporate offender mean that in reality a monetary sanction will often be the only appropriate penalty. That being so, a sentencing court will be required to avoid what Thomas O'Malley refers to as "the deterrence trap" (see *Sentencing Law and Practice*, Thompson Round Hall, 2006, 2nd ed., at para 19-06) of imposing a fine at a level likely to precipitate corporate dissolution. An appropriate balance must be struck between the need for deterrence on the one hand, and putting the offender out of business where that can be avoided".[8]

The difficulty

A combination of overspill and the deterrence trap will result in the significant reduction in fines as evidenced by the *Oxigen* case itself. On occasion this can result in fines being imposed that can appear moderate when compared to the offending involved. In 1984, the US Court of Appeals for the Eighth Circuit made the following observation:

"The present practice of punishing corporate crime with fines paid to the United States Treasury has done little to deter corporate crime. Once the payment is made to the Treasury, the public promptly forgets the transgression, and the corporation continues on its way, with its reputation only slightly tarnished by what it usually describes as a 'highly technical violation'".[9]

This has led to suggestions that the simple imposition of fines on companies is inadequate in sentencing corporate offenders. Subsequently, sentencing reforms were introduced in the US that provided for companies undergoing community service and engaging in corporate programmes.

Community service

Probation supervision is often deployed with natural persons in order to assist them in personal change. Section 2 of the Community Service Act 1983 provides that community service can be imposed on people over the age of 16 who, in the view of the court, should be sentenced to incarceration. This confines it to natural persons.

However, it could arguably be used for corporate offenders to instil more pro-social corporate values. There seems no reason in principle why a company could not carry out community service. A company cannot carry out painting of a community centre. However, the mandatory sponsorship of community projects associated with the harm done by the crime committed could prove a valuable sentencing tool.[10]

This is often done in the US. The US Sentencing Commission Guidelines provide in relation to corporate offenders that "community service may be ordered as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense".[11] The commentary in the US Guidelines states as follows:

"An organisation can perform community service only by employing its resources or paying its employees or others to do so. Consequently, an order that an organisation perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. However, where the convicted organisation possesses knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense, community service directed at repairing damage may provide an efficient means of remedying harm caused.

In the past, some forms of community service imposed on organisations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be consistent with this section unless such community service provided a means for preventive or corrective action directly related to the offense and therefore served one of the purposes of sentencing set forth in 18 U.S.C. § 3553(a)".

So, for example, community service might be appropriate in a dumping case like *Oxigen* if it involved the company using its resources and available skills to carry out environmental damage reduction in the area in which the dumping occurred.

Corporate programmes

In the US, legislation (at both federal and state level) encourages companies to establish internal compliance and ethics programmes to detect and avoid illicit conduct.

In the 1990s sentencing guidelines were introduced, which provided that the existence of an effective programme was a major factor in being treated leniently in sentence.[12]

The guidelines set out detailed criteria for the determination of what such programmes should contain. The commentary to the guidelines sets out the rationale as follows:

"The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of criminal conduct for which the organisation would be vicariously liable. The prior diligence of an organisation in seeking to prevent and detect criminal conduct has a direct bearing on the appropriate penalties and probation terms for the organisation if it is convicted and sentenced for a criminal offense".

Since the introduction of these programmes, internal audits by companies will often generate incriminating material. These materials are often sought by way of discovery in civil litigation against companies. The absence of confidentiality attaching to such audits has therefore impacted on the incentives to make them truly effective at revealing criminal behaviour.[13] An article by the chair of the United States Sentencing Commission made the following remarks about the impact of these programmes on corporate culture:

"The organisational guidelines have been credited with helping to create an entirely new job description: the Ethics and Compliance Officer. Such officers develop and manage an organisation's ethics and compliance programs. The Ethics Officer Association (EOA) recently completed a survey indicating that the organisational guidelines influenced many corporations to adopt compliance programmes.

Nearly half of those surveyed responded that the organisational guidelines had "a lot of influence" on an organisation's commitment to ethics as manifested through the adoption of a compliance programme.

In another survey by the EOA, a substantial majority (60%) of respondents believed that ethical dilemmas are not the "unavoidable consequence of business," in contrast to the prevailing public opinion of the 1970s and 1980s that "business ethics" was a contradiction in terms. According to the EOA, "[T]his survey…. . shows that today, a majority of workers believe that business and ethics can mix and that ethical dilemmas can be reduced"".[14]

Conclusions

The limitations of imposing only fines on corporate offenders are that the penalty can often be paltry and not enjoy public confidence.

Innovations such as corporate probation, community service and compliance programmes have the potential to be more effective tools in sentencing corporate offenders.

References

1. [1988] I.R. 250.
2. *ibid.*, at p. 254.
3. *per* Edward Thurlow, First Barron of Thurlow (1731-1806).
4. [2015] IECA 130.
5. *People (DPP) v Cavan County Council* [2015] IECA 130, at §63.
6. [2001] EWCA Crim. 2635; [2002] 2 Cr. App. R. (S.) 13.
7. *ibid.*, at p. 37.
8. *People (DPP) v Cavan County Council* [2015] IECA 130, at §62.
9. *per* Heaney J. in *United States v Missouri Valley Construction Company* 741 F.2d 1542 (8th Cir. 1984).
10. Murphy DE. The Federal Sentencing Guidelines for Organizations: A decade of promoting compliance and ethics. 2002; 87 Iowa L.R. 697.
11. United State Sentencing Commission Guidelines (2018), Chapter 8, §8B1.3.
12. United State Sentencing Commission Guidelines (2018), Chapter 8.
13. O'Reilly J.T. Environmental audit privileges: the need for legislative recognition. *Seton Hall Journal of Legislation and Public Policy* 1994; 19 (1): Article 6; Goldsmith M, King C.W. Policing corporate crime: the dilemma of internal compliance. Vanderbilt Law Review 1997; 50 (1).
14. Murphy D.E. The Federal Sentencing Guidelines for Organizations: A decade of promoting compliance and ethics. 2002; 87 Iowa L.R. 697, at p. 711.

ADR AND DEFAMATION

Stephen Hanaphy BL

The Defamation (Amendment) Bill 2024 adds to an increasing weight of emphasis on alternative dispute resolution (ADR).

> A willingness to take one's dispute outside court and attempt mediation is rarely a bad tactic, and examples of judicial encouragement of such action can be found in case law and in the efficient running of court lists.

"I do not know what the Queensberry rules are, but the Oscar Wilde rule is to shoot at sight."

Wilde to Edward Clarke KC in *R (Wilde) v Douglas (Marquess of Queensberry)*

"In my view, sophisticated litigators are less inclined to consider a nuanced willingness to negotiate or mediate as a sign of weakness." Kennedy J. in *Byrne v Arnold* [2024] IEHC 308 at para 25.

A willingness to take one's dispute outside court and attempt mediation is rarely a bad tactic, and examples of judicial encouragement of such action can be found in case law and in the efficient running of court lists. Practitioners will have noted a recent statement in the legal diary that: "No case [arising from alleged bullying and/or harassment] shall be listed [by the judge running the High Court Personal Injuries List] for trial unless and until the parties have been to mediation save for good reason". Also, whether one considers s.15 of the Civil Liability and Courts Act 2004 (which provides for court-directed mediation in personal injury actions), s.169(1)(g) of the Legal Services Regulation Act 2015 (which specifies the unreasonableness of a party who refuses to engage in settlement discussions or in mediation as the basis to depart from the usual order as to costs), or s.21 of the Mediation Act 2017 (the 2017 Act) (which empowers the court, when awarding costs, to have regard to any unreasonable failure by a party to consider using, or attending, mediation), legislative nudges towards mediation are not wanting.[1]

A new source of ADR-propulsion is contained in the Defamation (Amendment) Bill 2024 (the Bill). This article will summarise the relevant provisions of the Bill and consider them in the context of defamation law and practice.

Alternatives to legal proceedings in alleged defamation

The Bill contains numerous noteworthy – and some might say, controversial – provisions. Most striking perhaps is its proposed abolition of juries in all High Court proceedings instituted after the date of its implementation. When that provision was put before a Joint Committee on Justice tasked with pre-legislative scrutiny of the Bill, the Committee recommended the retention of juries,[2] a recommendation that has not found expression in the Bill in its current form. A provision that has survived, and may yet become law, is that relating to ADR.

Section 18 provides for the insertion into the Defamation Act 2009 (the 2009 Act) of a new Part 4B, which would require that a practising solicitor, before issuing defamation proceedings, inform clients of the availability of "specified ADR procedures". This is a reference to the procedure by which the Press Council receives, hears and determines complaints concerning the conduct of its members, and to the "right of reply" procedure in s.49 of the Broadcasting Act 2009, by which the Broadcasting Authority of Ireland facilitates a person whose "honour or reputation" has been impugned by an assertion of incorrect facts or information in a broadcast. This obligation arises only where the specified ADR procedures "are applicable to the medium of publication" involved: an acknowledgment that there are naturally instances in which defamatory comments are made by individuals other than journalists and broadcasters. The obligation is stated, at s.34J(1), to be without prejudice to the Mediation Act 2017, with the result that there would be a dual requirement to comply both with the terms of s.34J of the Bill, and with s.14 of the 2017 Act (albeit only where the alleged defamation would be caught by the resolution procedures of the Press Council and Broadcasting Authority). Section 34J details the other matters in respect of which the solicitor is to advise, including the implications of availing of the specified ADR procedures, or not, and costs.

Under s.34K(1), a court may, on an application, or of its own motion, invite the parties to consider the specified procedures and provide the parties with information about them. In a nod to the court's power under s.16 of the 2017 Act to invite parties to mediate, s.34K(4) states: "The power conferred by subsection (1) is without prejudice to any other discretionary power which the court may exercise at any time during the course of proceedings with a view to facilitating the resolution of a dispute".

Lastly, s.34L sets out the factors a court may consider in awarding costs where it has issued an invitation to avail of the specified ADR procedure. These are "any unreasonable refusal or failure by a party to consider using a specified ADR procedure" and "any unreasonable refusal or failure by a party to the proceedings to attend or engage" in such.

These provisions reflect the desirability of facilitating parties who wish to vindicate their position in an extra-curial forum. Since mediation was described as "a thousand times preferable than litigation",[3] there have been developments that have highlighted the value placed on ADR, and mediation particularly, as a means of resolving disputes. Most conspicuous in this regard is the 2017 Act, s.14 of which obliges solicitors to advise clients, prior to issuing proceedings, to consider mediation as a means of attempting a resolution, and in accordance with which a party may be penalised in costs where it unreasonably refuses to consider using mediation. That incentive would be buttressed in many defamation claims by the Bill, were it to be enacted in its current form. Before we consider some of these recent developments, some historical context will help to frame this discussion.

From duelling to mediating

Wilde's audacious declaration, quoted above, is taken from the transcript of the first of his most famous trials or, more precisely, the criminal libel trial of the Marquess of Queensberry of April 1895, which resulted in a successful plea of justification and the defendant's vindication, and ultimately to Wilde's own ignominious conviction for gross indecency and sentence to hard labour. The tragic irony of Wilde's downfall lies in his insistence on prosecuting the author of words suggesting his homosexuality: shooting at sight, in other words, without properly contemplating the consequences, or indeed the alternatives to a trial.

The law of criminal libel was developed in the Court of Star Chamber, formally constituted in 1487,[4] as a means of ensuring public peace and protecting social order. As explained to the House of Lords in *Gleaves v Deakin*, "one of the reasons for the creation of the offence was to do away with duelling. A criminal libel to be such must be a libel which to some extent affects the public interest".[5] The law of defamation may be said to have developed, therefore, partly on account of society's abhorrence of violence and social disruption, and of the value placed by the individual – and the community – on the protection of one's reputation and on facilitating the means by which one might obtain satisfaction in a manner conducive to the common good. To dismiss as quaintly Victorian the notion of defending one's honour or reputation is to overlook the survival of this concept in, for instance, s.49(2) of the Broadcasting Act 2009.

Equally ancient, the related concept of dignity is no less worthy of protection. Consider these observations of O'Donnell C.J.:

"The word dignity carries a considerable charge with a distinct moral component. The preamble of the 1937 Constitution was, it appears, the first time the word was used in the context of a fundamental rights guarantee. It has now come to be seen as a vital component in the protection of human rights in the post-war world".[6]

In his study of reputation "as property", and in which he reassuringly describes the law of defamation as "an intellectual wasteland", where "there is a great deal which makes no sense",[7] Robert Post has suggested that:

"The purpose of the law of defamation is to protect individuals within the market by ensuring that their reputation is not wrongfully deprived of its proper market value".[8]

Elsewhere, the purpose of defamation law has been articulated in more aspirational language thus:

"The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty".[9]

It should cause no surprise, therefore, if a client who alleges defamation – who feels that her reputation in the eyes of reasonable members of society has been injured – should seek satisfaction publicly. While a settlement (whether mediated or otherwise) could yield an apology in open court, there will doubtless be cases in which plaintiffs will insist on a restoration of their reputation through a full prosecution of their claim. Naturally, practitioners will advise on the validity of such grievance, as well as on the likelihood of the defendant relying successfully on one of the defences available under the 2009 Act. While practitioners will also be mindful of the obligations arising from the 2017 Act and – were the Bill enacted – the new statute governing defamation, particularly as regards the consequences in costs of a refusal to engage with an invitation to mediate, the client's desire to vindicate her position by availing of her right to access to the courts should be respected.

The phrase "one of the defences" above deserves comment in the context of the development of the law of defamation and of ADR generally. Through the accretion of cases, the contours of the law of defamation have been, and can be, made clearer. Cox and McCullough have discussed,[10] for instance, the question of whether

defendants may rely simultaneously on the defences of qualified privilege and truth, a proposition that was rejected in *McNamara v Dunnes Stores Parkway*,[11] but later found plausible in *Nolan v Laurence Lounge*.[12] Elsewhere, in his study of the development of the law of defamation, and specifically in his analysis of the "ridicule test", Lawrence McNamara comments on *Boyd v Mirror Newspapers Ltd*,[13] in which a rugby league player having been labelled "fat, slow and predictable", Hunt J. "awakened a dormant test" in finding that the article in question had a defamatory capacity in displaying the plaintiff in a ridiculous light.[14] The law of defamation, and the meaning of its constituent concepts, have been illuminated by cases – an illumination that would not have been achieved had those cases been resolved in private.

It may seem trite to state that the courts' role in the development of the common law of defamation is important. Against the background of the history of defamation, however, and in the context of what has been described as "the phenomenon of the vanishing trial",[15] that role should not be underestimated. Hazel Genn has described the risks to a civil justice system that relies too heavily on informal proceedings, noting:

"The desire to establish simplified methods of resolving disputes, and to improve access to justice for all sections of society, is a rational response to the perceived shortcomings of the civil courts. However, although there may be a common desire to search for court alternatives for the problems of the poor and for the problems of commercial men alike, it is highly improbable that the solution for one group will necessarily be appropriate for another. In order to devise court alternatives which serve the legal needs of the poor and disadvantaged, it is necessary to have a clear understanding of the nature of those needs, and second to appreciate how formal and informal legal institutions operate in practice, rather than in theory".[16]

Summarising Genn's theories on the deleterious effects of ADR, such as the loss of precedent in a common law system, Garrett Sammon has suggested that: "If too many disputes are decided privately, the law may become incapable of keeping up with the changing needs of society".[17]

Sociological concerns aside, the question of whether a defamation claim should be litigated is one that will properly occupy practitioners' minds before and after the institution of proceedings. To paraphrase Genn above, the solution to that question will differ depending on the circumstances and on the client. Individuals claiming to have been defamed are often, justifiably, determined to vindicate their reputation publicly. Similarly, defendants who rely on the defence of justification, and who are eager to have the truth established in public, may reasonably consider the court the most appropriate forum in which to assert that position. This reality, it might be noted, arguably sits uneasily with the Bill's proposed abolition of juries.

As regards what happens in practice, it is interesting to note a certain dissonance among the stakeholders who made submissions to the aforementioned Joint Committee as to the role that mediation plays, and can play, in the resolution of defamation disputes. Whereas Mediahuis Ireland stated starkly that: "Any legal practitioner with regular experience of defamation cases will attest that mediation is effectively unheard of as a means of resolving such disputes",[18] Dentons, on the other hand, expressed the view that: "In our experience mediation is particularly suited to defamation claims and can be a less costly and more effective means of resolving defamation disputes than court proceedings.[19]

From this practitioner's perspective, mediation can indeed be utilised to positive effect in defamation proceedings, particularly where defamation is one of a number of causes of action relied upon and where, owing to commercial and other sensitivities, privacy and speed of resolution are valued more than a public airing of the dispute.

A view from the bench

For a reminder of the importance of considering mediation, one might read the above-quoted *Byrne v Arnold*. Here Kennedy J. noted the provisions and jurisprudence governing the proper approach to the question of costs where there has been a failure to comply with s.14 of the 2017 Act. Having risen to allow for the giving of the necessary advice regarding mediation, Kennedy J. observed that, while the matter before him concerned the failure to advise before the issue of proceedings, rather than an unreasonable refusal to attend mediation, the failure to comply with s.14 of the 2017 Act was not insignificant. He stated, in terms worthy of note for those advising in defamation and other matters, that:

"It may well be that the plaintiffs would have been unlikely to propose mediation prior to issuing proceedings and that the defendant would have rebuffed any such overture in any event. Accordingly, the chances of the parties actually engaging at that point may have been low. However, the chances were not zero. Even if there was a 5% chance of such engagement at the outset, then the plaintiffs should have been encouraged to at least consider an option which, if successfully pursued, could offer significant benefits for the parties and for the courts, prior to significant costs being incurred. Secondly, there is a benefit to providing such advice at the outset. Even if the time is not right at that point for the plaintiff to propose mediation or for the defendant to engage, a seed is planted".[20]

In the event, Kennedy J. reduced the party and party costs awarded to the plaintiffs by 5% in respect of their default regarding s.14, and also in respect of their delay in delivering a statement of claim.

Another noteworthy and recent decision is that of the High Court for England and Wales in *Elphicke v Times Media Ltd*,[21] which arose from the alleged

defamation of the former Conservative Party MP for Dover. Here McCloud J. noted that, during the finalisation of her judgment, the Civil Procedure Rules had been amended following the Court of Appeal's decision in *Churchill v Merthyr Tydfil County Borough Council*,[22] allowing courts to order parties to engage in ADR where such an order is proportionate and does not undermine the parties' right to a judicial hearing. In deciding of her own motion that the parties must engage in ADR as to the costs claimed by the defendant, McCloud J. stated:

"It has always been the case that dispute resolution (or ADR, or DR) has been important as a means to avoid the use of court and parties' resources. Since *Churchill* and decisions such as that of my learned former colleague Master Thornett in *Worcester* and in *Jenkins*, this has become all the more important…[23]

"Any party which decides not to engage in ADR, as above, or to 'call it off' must be in a position to justify that non-engagement to the costs judge, and be alert to the provisions of CPR 44.11 and indeed the developing common law since *Churchill*".[24]

Though not concerned specifically with costs, *O'Brien v O'Brien*[25] also merits attention. Asked to extend the time beyond one year for the bringing of defamation proceedings, Ní Raifeartaigh J. conducted the following analysis of the circumstances of an offer to mediate:

"The tone of the January 2018 letter on behalf of the defendant, in which mediation was suggested, was overall far from conciliatory and indeed contained counter-allegations of defamation and assault. It seems to me that while there might be cases where a defendant's reasonable approach to matters and suggestion of mediation might well lean heavily against the granting of an extension of time, this is not such a case. The submission to the Court that the defendant was behaving with restraint and reasonableness is difficult to reconcile with the language of the January 2018 letter written on his behalf".[26]

This analysis, which reflects the court's sensitivity even to the tone of a letter suggesting mediation, reminds us that, whether in the context of the consideration of costs or otherwise, the courts can consider all the circumstances of such a suggestion (and of any disinclination to mediate).

Conclusion

While the fate of the Bill is currently unknown, its provisions are yet another reminder of the value attached to ADR as a means of addressing grievances and of diverting would-be litigants from protracted court proceedings. Mediation itself has, in recent years, acquired a prominence that is reflected in legislation and judicial commentary. As prominent as its status may be, however, and as potentially damaging in terms of costs as it may be to turn one's back on mediation, the experience of defamation law shows that the decision to mediate will, to echo Kennedy J. in *Byrne v Arnold*, necessarily require nuanced thought.

References

1. Other notable examples in this regard include s.27 of the Multi-Unit Developments Act 2011 and s.39 of the Workplace Relations Act 2015, which make provision for "mediation conferences".
2. Joint Committee on Justice Report on Pre-Legislative Scrutiny of the General Scheme of the Defamation (Amendment) Bill, September 2023, p.6.
3. *Per* Hogan J. in *Lyons v Financial Services Ombudsman* [2011] IEHC 454 at para 37.
4. Pursuant to the statute *Pro Camera Stellata* 3 Hen VII, c. 1. An excellent history of the development of the law in this area is found in McNamara L., *Reputation and Defamation*, Oxford University Press, 2007, pp.91-103. For this reference the author is grateful to Dr Derek Hanaphy, 'Property Rules, Liability Rules and the Protection of Dignity', in *Studien zur Rechtswissenschaft*, Vol. 325 (Hamburg, 2014).
5. [1980] A.C. 477 at 480. This historical point, made in the course of submissions, is omitted from the report published in the All England Reports: [1979] 2 All E.R. 497.
6. *Ruffley v Board of Management of Saint Anne's School* [2017] 2 I.R. 596 at 642.
7. Post RC. The Social Foundations of Defamation Law: Reputation and the Constitution. *California Law Review* 1986; 74 (3):691-742 at p.691. For a less jaundiced, and surely more accurate, appraisal of the law of defamation, one that "bristles with technicality", see the foreword by the late Justice Hardiman to Cox and McCullough, *Defamation: Law and Practice (2nd ed.)*, Clarus Press, 2022.
8. *Op. cit.*, p.695.
9. Stewart J. in *Rosenblatt v Baer* (1966) 383 US 75 at 92.
10. *Op. cit.*, pp.357-360.
11. [2017] IEHC 172.
12. [2022] 2 I.R. 596.
13. [1980] 2 N.S.W.L.R. 449.
14. McNamara, *op. cit.*, pp.172-3.
15. Sammon G. Resolving environmental disputes in Ireland: the challenge and promise of a "non-adversarial" approach. *Irish Planning and Environmental Law Journal* 2016; 23(3):88-93, at p.90.
16. Genn H. Tribunals and informal justice. *The Modern Law Review* 1993; 56 (3): 393-411 at p.397.
17. *Op. cit.*, p.90.
18. Submissions of Mediahuis Ireland Limited to the Committee on Justice Defamation (Amendment) Bill, para 12.
19. Submissions of Dentons Ireland LLP to the Committee, para 11.1.
20. [2024] IEHC 308 at para 24.
21. [2024] EWHC 2595 (KB).
22. [2023] EWCA Civ. 141. The new rules came into force on October 1, 2024.
23. [2024] EWHC 2595 (KB) at para 133.
24. *Ibid.*, at para 137.
25. [2019] IEHC 591.
26. *Ibid.*, at para 35.

RECENT DEVELOPMENTS IN EMPLOYMENT INJUNCTIONS

Recent case law may reflect a return to a more restrictive/rigid approach to employment injunctions in respect of a dismissal.

Lorna Lynch SC

The courts have always enjoyed wide discretion as to the circumstances in which they should order injunctive relief. In giving judgment for the Supreme Court in *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd* [2020] 2 IR 1, O'Donnell J. noted that the grant of the equitable remedy of an injunction had always been a "flexible remedy" and was "one of the most important ways in which equity tempered the rigidity of the common law".

In *Betty Martin Financial Services Ltd v EBS Dac* [2019] IECA 327, Collins J. in the Court of Appeal commented on the restatement of the test contained in *Merck* as follows:

"In my view, *Merck Sharp & Dohme* effects a significant (and, if I may say so, welcome) restatement of the appropriate approach to applications for interlocutory injunctions, mandating a less rigid approach, both generally and with particular reference to the issue of the adequacy of damages and emphasising that the essential concern of the court is to regulate matters pending trial pragmatically and in a manner calculated to minimise injustice".

The question arises as to whether some recent jurisprudence in this area reflects a more restrictive/rigid approach to granting injunctive relief in respect of a dismissal. Does this reflect a concern on the part of the courts regarding tactical considerations as addressed by Clarke J. in *Bergin v Galway Clinic Doughiska Ltd* [2008] 2 IR 205, with his observation that it would be:

"somewhat naïve not to surmise that a significant feature of the interlocutory hearing is concerned with both parties attempting to establish the most advantageous position from which to approach the frequently expected negotiations designed to lead to an agreed termination of the contract of employment concerned."[1]

A further question is whether some recent case law reveals a more flexible approach to injunctive relief in situations involving steps short of dismissal. This article will address the significance of the breakdown in the employment relationship in the context of an application for injunctive relief.

Injunctive relief in the context of dismissal – misconduct versus 'no fault' terminations

At one end of the spectrum is the principle that injunctive relief is engaged where an allegation of misconduct arises, coupled with a breach of contractual terms. On the other end of the spectrum is the principle that an employee can be dismissed for any or no reason on reasonable notice. The position was summarised in *Carroll v Bus Átha Cliath* [2005] 16 E.L.R. 149, where Clarke J. stated:

"The traditional position at common law was that a contract of employment could be terminated on reasonable notice without giving any reason. In those circumstances it was obvious that the only remedy for a breach of contract by way of dismissal was for the payment of the amount that would have been earned had the appropriate notice been given. However, it is now frequently the case that employees cannot be dismissed, as a matter of contract, save for good reason such as incapacity, stated misbehaviour, redundancy or the like. It would appear that the development of the law in relation to affording employees a certain compliance with the rules of natural justice in respect of possible dismissal derives, at least in material part, from this development. If the stated reason for seeking to dismiss an employee is an allegation of misconduct then the courts have, consistently, held that there is an obligation to afford that employee fair procedures in respect of any determination leading to such dismissal. That does not alter the fact that an employer may still, if he is contractually free so to do, dismiss the employee for no reason. It simply means that where an employer is obliged to rely upon stated misconduct for a dismissal or, where not so obliged chooses to rely upon stated misconduct, the employer concerned is obliged to conduct the process leading to a determination as to whether there was such misconduct in accordance with many of the principles of natural justice".

Misconduct

It is settled law that where an employer is inquiring into an allegation of misconduct that impacts on an employee's good name or reputation, basic fairness of procedure and natural justice must be ensured. The onus on an employer is greater where the consequences are of a particular gravity, including damage to professional and personal reputation. In *Giblin v Irish Life & Permanent plc* [2010] 21 ELR 173, Laffoy J. summarised the position in relation to natural justice and fair procedures as follows:

"…in conducting a process to determine whether the plaintiff should have a serious sanction, including the most serious sanction available, namely, dismissal, imposed on him, the defendant must act in accordance with the terms of the plaintiff's contract of employment, including the implied term that the plaintiff, as employee, is entitled to the benefit of fair procedures (*Glover v BLN* [1973] IR 388). However, it is well recognised that what fair procedures demand depends on the terms of the plaintiff's employment and the circumstances surrounding his proposed dismissal (*Mooney v An Post* [1998] 4 IR 288)".

It is clear on the basis of the above that the courts will intervene by way of injunctive relief where dismissal for misconduct is at play and a defendant has failed to act in accordance with the terms of the plaintiff's contract of employment, including the implied term that the plaintiff is entitled to the benefit of fair procedures.

'No fault' termination

While an employee can be dismissed for any or no reason on reasonable notice, the situation may not be so straightforward when the court is called upon to interrogate a purported "no fault" dismissal.

In *Naujoks v National Institution of Bioprocessing Research & Training Limited* [2006] IEHC 358, the plaintiff sought an injunction restraining his dismissal as CEO of the defendant. He was told that his dismissal was due to a loss of confidence in his management style arising from disputes that had arisen between the plaintiff and the head of the research team. The defendant also averred that the plaintiff had not been dismissed by reason of misconduct. Laffoy J. stated that she had a difficulty with the defendant's position that it had not made any allegation of misconduct against the plaintiff, and stated:

"The inference to be drawn is that Mr Gantly and the non-executive directors made a judgment as to who was responsible for the "serious human resources issues" which had arisen. It seems to me that that is not far removed from making a judgment that there was a failure on the part of the plaintiff to properly discharge his duties as CEO, which would entitle the defendant to summarily dismiss the plaintiff, but subject to affording him fair procedures. On this point, I can put the matter no further than that, having regard to the facts as disclosed in the affidavits before the court, it is not an answer to the plaintiff's contention that he should have been, but was not, afforded fair procedures that it is the defendant's stated position that his contract was not terminated on the grounds of misconduct".

A "no fault" termination was upheld in *Hughes v Mongodb Ltd*,[2] where Keane J. refused the injunctive relief sought. In that case the defendant had indicated that the dismissal was not for reasons of misconduct but the plaintiff was a "bad fit", and Keane J. held that such a dismissal could proceed. Keane J. noted that he did not believe that there was any authority for the proposition that "a bad reason that informs, but which is not relied upon to justify, the termination of an employment contract in accordance with its terms, renders that dismissal wrong in law". Interestingly, Keane J. did make reference to "the potentially vexed question of whether a fixed boundary can ever be drawn between 'mutual incompatibility' and 'individual fault' in any area of unsuccessful human interaction".

In *Buttimer v Oak Fuel Supermarket Limited* [2023] IEHC 126, Dignam J. addressed the test for injunctive relief and stated that there was a "strong case that the termination of the plaintiff's employment was on the basis of the allegation, at least in part". He referred to a "coincidence of events that cannot be ignored and in fact is not even explained by the defendant".

Significantly, in my view, Dignam J. cautioned that "to ignore the real reason or the substance of the reason for a termination in favour of what an employer chooses to state as the reason would not effectively protect the individual's rights and would allow an employer to avoid the obligation to observe fair procedures by simply stating a reason other than misconduct for the termination".

The potential difficulties in adjudicating upon injunctive relief where alleged misconduct lurks in the background, or indeed foreground, are revealed in *Nolan v Science Foundation Ireland* [2024] IEHC 368. The plaintiff's contention was that he had been dismissed because of the allegations of inappropriate behaviour made against him and where an investigation had been conducted but a disciplinary hearing had not been convened. The defendant contended that the plaintiff was not dismissed for misconduct. Mulcahy J. stated:

"The evidence does not suggest that the defendant's contention that this was simply a contractual termination is a 'cynical contrivance', as was the court's conclusion at the interlocutory stage in *Grenet*, or that the decision to dismiss was not made in good faith (cf. *Kearney v Byrne Wallace* [2019] IECA 206). In those circumstances and in light of the express averments on behalf of the Board as to why it did decide to terminate the plaintiff's contract, the plaintiff faced a formidable hurdle in seeking to establish a strong case that he had been dismissed on grounds of misconduct. In this regard, it is important to emphasise that the court cannot resolve any dispute of facts in an interlocutory application. I am not satisfied that he has overcome the necessary hurdle".

It must be considered whether reference to a cynical contrivance or a bad faith decision raises the bar to be met by a plaintiff in establishing a strong case. Can there be cases, absent cynical contrivance or *male fide*s, where the plaintiff's case is supported by evidence that is credible to the extent that it can be described as 'strong'? In *Nolan*, Mulcahy J. noted that in the affidavits filed on behalf of Science Foundation Ireland (SFI), it was stated that the decision to dismiss the plaintiff was not on the grounds of misconduct, but because of the "dire" situation and "dysfunction" in SFI. Mulcahy J. accepted that the dysfunction described in the SFI's affidavits was to a "perhaps significant extent" related to or connected to protected disclosures issues, but he went on to state that:

"Be that as it may, the Board's affidavits make clear that it did not make a decision that the plaintiff should be dismissed because of misconduct. There is no evidence of such a decision having been made".

Mulcahy J. stated that the evidence did not establish that the Board "determined that disciplinary issue and decided to terminate the plaintiff's employment".

Again a question arises as to whether reference to a conclusion of guilt or determination of the disciplinary issue raises the bar to be met by a plaintiff in establishing a strong case. On the basis of *Buttimer,* it may be sufficient to establish a strong case where the court is satisfied that an employee is likely to prove that the employment was terminated due to as yet unproven allegations. Having regard to the difficulties faced by a plaintiff adducing evidence that the decision was made on the basis of misconduct, *Buttimer* appears to envisage a situation where because of a coincidence of events that cannot be ignored or explained, a plaintiff may establish a strong case that the termination of employment was on the basis of unproven allegations "at least in part".

Injuncting steps short of dismissal

It is clear from the case law that the courts are reluctant to intervene in an ongoing process and the timing of an application for injunctive relief prior to dismissal can be determinative. In *Carroll v Bus Átha Cliath/Dublin Bus*,[3] Clarke J. stated that a court should be reluctant to intervene in an incomplete disciplinary process to avoid a situation developing where recourse "might well be had to the courts at many stages in the course of what would otherwise be a relatively straightforward and expeditious set of disciplinary proceedings".[4]

In *Minnock v Irish Casing Co. Ltd*,[5] Clarke J. referred to the authorities settling upon a test to be applied in relation to injuncting a process prior to dismissal, and stated:

"…in the ordinary way, the court will not intervene necessarily in the course of a disciplinary process unless a clear case has been made out that there is a serious risk that the process is sufficiently flawed and incapable of being cured, that it might cause irreparable harm to the plaintiff if the process is permitted to continue".

An injunction was granted to prevent an investigation proceeding in *Mason v ILTB Ltd. t/a Gillen Markets*[6] where, although the defendant had referred to a "gold standard" investigation, Butler J. made clear that that in and of itself did not address the "serious concerns" about the legality of steps taken by the defendant. She stated:

"The case is not simply whether procedural irregularities can be cured downstream in the course of an extended process, but whether the steps taken at the very outset of the process in order to establish the investigation which the employer wishes to pursue, have irredeemably tainted that process".[7]

These general principles are reflected in the judgments of Binchy J. in *Joyce v Board of Management of Coláiste Iognáid* [2015] IEHC 809 and Butler J. in *Lally v Board*

of Management of Rosmini Community School [2021] IEHC 633. See also *QQ v Board of Management of a School [2023] IEHC 302* and *Dunne v The Board of Management of Little Angels Special School [2023] IEHC 312*. Accordingly, the courts have, particularly in the context of disciplinary action against teachers and principals, shown a level of flexibility in approaching the question of injunctive relief prior to dismissal. In contrast to the issue of applying for injunctive relief in a manner deemed premature is the issue of delay in such an application. In *John Barrett v Commissioner of An Garda Síochána* [2023] IECA 222, Ni Raifeartaigh J. referred to the issues of timing in seeking interlocutory relief, stating:

"that this was not a case where the Rowland-McKelvey principles precluded the appellant from seeking interlocutory relief; that on the contrary most of the arguments the appellant was making involved such fundamental challenges to the very existence of the disciplinary process that it behoved him to move with reasonable expedition; and that his delay in seeking interlocutory relief was a factor which should in and of itself be regarded as a sufficient reason for refusing interlocutory relief, no matter how one views the other variables in the case. I would therefore uphold the view of the High Court judge in this regard".

A further issue regarding the timing of an application for injunctive relief arises for consideration. In *O'Donovan v Over-C Technology Limited* [2021] IECA 37, the Court of Appeal noted that the application in that case was made after the contract of employment had been terminated. The Court stated:

"If, as the appellants argued, and Mr O'Donovan apparently accepted, his contract of employment had, in fact, terminated when he instituted the proceedings, then he could not be reinstated on foot of an order granted in these proceedings. His claim was for wrongful, not unfair, dismissal. Had he remained in place when he commenced the proceedings he might have obtained an order restraining the termination of his employment if, for instance, he could show that his employment was about to be terminated for alleged misconduct without affording him fair procedures; but, once his contract was terminated he could not be reinstated to his former position in wrongful dismissal proceedings".

As argued in the case of *RM v SHC* [2023] IEHC 424 and noted by Mulcahy J. in his judgment, this contrasts with the view taken by Clarke J. in *Bergin*, where he stated:

"I should finally add that it does not seem to me to be appropriate to make a distinction as to the stage at which a disciplinary process has reached, in determining the entitlements of an employee to an injunction. It can hardly be the case that the entitlement or otherwise of an employee to an injunction could depend on whether he happened to get to court before a particular stage had been reached".

Injunctive relief where there is a breakdown in the relationship

The question of trust and confidence existing between the parties may also be a key consideration in terms of any order made. In *Stoskus v Goode Concrete*,[8] the plaintiff had indicated that he would not be seeking reinstatement at the trial of the action. Irvine J. noted that the plaintiff had effectively accepted that as of the date of the trial of the action, his relationship with his employers was over. As such, she did not believe that the balance of either justice or convenience warranted the continuance of the relationship between the parties. In *Boyle v An Post*,[9] Barrett J. observed that employers should be careful about asserting that they have no confidence in an individual. As he noted, that "is a very powerful assertion to make, and not one that ought lightly to be made".

In *Buttimer*, this issue was addressed in some detail by Dignam J., who stated that a significant factor in deciding where the balance of convenience lies in an application for an injunction is "whether the necessary relationship of trust and confidence is so broken that it would be untenable and unjust to compel the parties to continue to work together". He went on to state that:

"In my view, a court cannot base its decision as to whether the necessary trust and confidence no longer exists solely on the stated views of the parties. To do so would make it too easy for a respondent to defeat an application for a mandatory injunction by expressing the view that the relationship has broken down. Conversely, if the parties' stated views were to be determinative then all an applicant would have to do would be to convey the view that the relationship has not broken down. There has to be an objective basis for the view and upon which the court can determine whether or not the relationship has broken down".

He continued:

"Whether or not there is such a breakdown is a matter for fact to be determined at trial but I am satisfied that there is sufficient objective basis for finding that there are very significant difficulties in the relationship that it would not meet the balance of convenience or justice and would not be an appropriate way to arrange things pending trial to compel the parties to work together pending trial which, even if the trial was expedited, would not be for a period of months".

As identified by Dignam J., there is a danger that a tactical averment by a defendant expressing the view that the relationship has broken down could make it too easy to defeat an application for a mandatory injunction.

In *RM v SHC* [2023] IEHC 424, the defendant averred that in her view the relationship of trust and confidence had broken down, but Mulcahy J. stated that "In *Bergin*, Clarke J. makes clear that an employer's averment to this effect cannot be determinative and I respectfully agree". He concluded that while it

may be improbable that the court at the hearing would make an order requiring that the plaintiff be allowed to continue with her duties, it was in his view "premature to conclude that the employer/employee relationship is at an end at this stage, and it would be inappropriate to refuse an injunction which would otherwise be available on the basis that this was so".

Conclusion

Despite the *Merck Sharp & Dohme* case having been referred to as a significant restatement of the approach to injunction applications, which mandates a less rigid approach, the question arises as to whether some recent jurisprudence, and in particular the decision in *Nolan*, reflects a return to a more restrictive/rigid approach to employment injunctions in respect of a dismissal. If so, this could been seen as a development that is out of step with recent case law revealing a flexible approach to the traditionally more difficult area of injunctive relief in situations short of dismissal. Finally ,and to properly preserve the true benefit of the employment injunction as a flexible remedy, the courts must in my view remain wary of tactical averments or the stated views of one party designed to defeat an application for injunctive relief, particularly in relation to an alleged breakdown of an employment relationship.

This article was originally presented as a paper to the Employment Bar Association Annual Conference on November 15, 2024.

References

1. [2008] 2 I.R. 205 at 212.
2. [2014] IEHC 335.
3. [2005] 4 I.R. 184.
4. [2005] 4 I.R. 184 at 189.
5. [2007] 18 E.L.R. 229.
6. [2021] IEHC 477.
7. [2021] IEHC 477 at para.44.
8. [2007] IEHC 432.
9. [2015] IEHC 589.

WEATHERING THE STORMS

Extreme weather events are leading to evolution of the liability paradigms and have implications for the insurance of property.

Martin Canny BL

The California wildfires of January 2025, the highest profile being the fires in the Los Angeles suburb of Pacific Palisades, have reminded us of the risks posed by extreme weather events. Those fires led to the deaths of 29 people, 57,000 acres burning, 17,000 structures being destroyed or damaged, and 205,000 persons being evacuated, despite years of forewarning of the risks.

While California suffers from excess heat and dry winds, the Irish experience of extreme weather events is a story of excess rainfall and water-laden winds. Hurricane Charlie on August 26, 1986, set many rainfall records, including 280mm of rainfall on Kippure in Co. Dublin. It caused flooding to a depth of five feet in Bray, Co. Wicklow, with 500 houses damaged and 1,000 persons evacuated. This, in turn, led to the court case of *Superquinn Ltd v Bray UDC and ors* [1998] 3 IR 542, where the plaintiff's claims of negligence in relation to drainage construction works and a dam that failed were dismissed. In her judgment, Laffoy J. held, *inter alia*, that the storm fell within the category of extreme natural phenomena, which could not reasonably have been anticipated or guarded against, and that the flooding was not reasonably foreseeable. However, notably, Hurricane Charlie's rainfall records have since been surpassed.

Closer to home

The denizens of Cork are not immune to extreme weather events, with Cork City suffering severe flooding on November 19 and 20, 2009, when the River Lee broke its banks. This was then litigated in *University College Cork v Electricity Supply Board* [2020] IESC 38, in which the Supreme Court held that the ESB was negligent in its actions concerning upstream dams and the release of water. In the context of society seeking efficient answers to issues concerning allocation of risk, the case is notable for having had a 104-day High Court trial and two appeals.

Oíche na Gaoithe Móire on January 6, 1839, is described as the most damaging Irish storm. It is said to have caused 300 fatalities, 42 ships being wrecked, 20-25% of houses in north Dublin being damaged or destroyed, and crop damage leading to the subsequent death of livestock due to starvation. Hurricane Debbie in 1961 set several modern wind speed records, which Storm Éowyn on January 24, 2025, is now reported to have exceeded.

Where will responsibility lie?

Returning to the recent California wildfires example, the primary causes were drought conditions and hurricane-strength winds. Critical voices have pointed to fire department budget cuts, poor vegetation clearance, and prioritising of the delta smelt fish over diverting water to urban areas. Insurance exists to spread the risks that we all face. California legislators passed regulations in 2024 to force property insurers to cover high-risk properties. This market intervention was a conspicuous failure, with many insurers withdrawing fire insurance for all customers, leaving them totally uninsured for their losses in the recent fires.

The Building Regulations do not require a building owner to carry out works to ensure that a building complies with more recent building standards, but perhaps the law of negligence does impose a duty of care in this regard. For Chartered Building Surveyors, architects, structural engineers and other construction professionals, often acting in conjunction with legal advisers, the risks posed by extreme climate events must be borne in mind when designing, supervising or inspecting works, or advising a purchaser, property owner or insurer. While it is noble to seek to improve insurance availability for extreme weather events, the California example shows that ill-thought-out attempts by legislators having no 'skin in the game', may not serve their intended purpose.

From a different perspective, planners, local authorities and developers must acknowledge the fact that not every parcel of land can sustain a dwelling, whether a cottage or a multi-storey block. The Irish language has dozens of words for bog, marsh, swamp and wetland. The original place names *as Gaeilge* provide much insight into lands that are better left for the birds.

THE BAR OF IRELAND
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An Leabharlann Dlí

There's a buzz about the Bar these days.

The Bar of Ireland Law Library is taking steps to welcome biodiversity to our spaces. New planters here at The Sheds are the first step; introducing nature-friendly plants for everyone to enjoy.

Working with award-winning social enterprise Pocket Forests we have added 15 new planters with a variety of native and pollinator-friendly plants in peat-free compost. The large circular pots are made from recycled plastic in a factory powered by wind energy. Plants were sourced from Caherhurley Nursery in Co Clare, an organic-certified plant nursery.

We will be introducing native hedgerow plants and trees to the yard later this year. And in winter a side garden bordering St Mary of the Angels Church (pictured) will be planted with a 150 native shrub and tree Pocket Forest.

On the second floor balcony 5 planters have been filled with new native and pollinator friendly plants.

The 21 plants here at The Sheds are:

Natives:

Allium Ampeloprasum Babingtonii (Wild Leek)
Agrimonia Eupatoria (Sticklewort)
Cardamine Pratensis (Cuckoo flower)
Dipsacus Fullonum (Wild teasel)
Fragaria Vesca (Wild strawberry)
Geranium Sanguineum (Bloody Cranesbill)
Inula Helenium (Elecampane)
Lychnis Flos-cuculi (Ragged-robin)
Pimpinella Saxifraga (Burnet-Saxifrage)
Primula Vulgaris (Common Primrose)
Tanacetum Parthenium (Feverfew)
Tanacetum Vulgare (Tansy)
Anthriscus Sylvestris (Cow Parsley)
Galium Verum (Yellow Bedstraw)

Pollinator Friendly Perennials:

Salvia Superba (Woodland Sage)
Nepeta Hill Grounds (Catmint)
Rudbeckia Fulgida Fulgida (Orange Coneflower)
Achillea (Yarrow)
Scabiosa Ochroleuca (Cream Pincushions)
Saponaria Sicula Intermedia (Common Soapwort)
Monarda Bradburiana (Eastern Beebalm)

CLIMATE BAR COMHSHAOL

By supporting Pocket Forests The Bar Council is supporting nature reconnection and a restorative justice project in Shelton Abbey Open Prison, where Pocket Forests have a native tree nursery with more than 2000 native trees being cared for by prisoners.

pocket forests

Mercer

welcome to brighter

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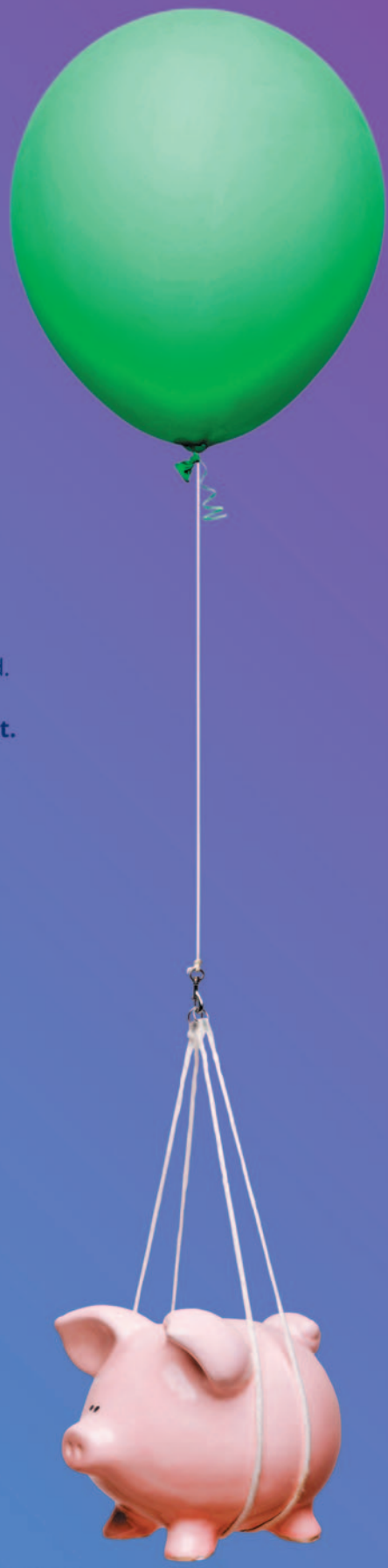

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