COMMERCIAL LAW

Review on Directors Compliance Statements

The Minister for Finance subsequently published further guidelines clarifying a number of issues including:
- the application of the original Regulations to services provided by intermediaries,
- the enforceability of contracts to which the Regulations apply, and
- the fraudulent use of payment cards in distance contracts for financial services.

The amending Regulations were effective from 15 February 2005.

European Communities (Distance Marketing of Consumer Financial Services) (Amendment) Regulations 2005 (SI 63/2005)

Compulsory Publication in CRO Gazette

The Minister for Enterprise, Trade and Employment has published Regulations to replace the requirement of publication in Iris Oifigual for the purposes of disclosure of certain compulsory documents and particulars in relation to companies with a requirement to publish in the Companies Registration Office Gazette which is to be kept solely in electronic form.

European Communities (Companies) Regulations 2004 (SI 839/2004)

The Regulations follow from the amending provisions of Directive 2002/65/EC concerning the distance marketing of consumer financial services. The Regulations are effective from 15 February 2005.

The Directive is a follow-on to the 1998 Directive governing the distance marketing of non-financial goods and services and it also complements the e-Commerce Directive (which is confined to transactions entered into over the internet). The objectives of the Directive are to ensure that consumers have appropriate information applicable to the distance marketing of financial services (irrespective of the means by which the information is provided), to provide for the establishment of a regime applicable to the distance marketing of financial services in the case of companies which are not acting within the scope of the e-Commerce Directive, and to lay down rules concerning the organisation of the provisions of Directive 2003/58/EC. The Regulations follow from The Companies Acts were the central means for regulating business activity in the State, it was important that the legal provisions in the Acts were appropriate and proportionate.

The Companies Law Review Group is currently in the process of its review no later than 31 July 2005

Distance Marketing of Financial Services

The Minister for Finance has published Regulations which implement the provisions of Directive 2002/65/EC concerning the distance marketing of consumer financial services. The Regulations are effective from 15 February 2005.

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The statement must also indicate whether there have been any changes from such standards and the effect of and reasons for such changes must also be noted. Accounting standards are defined as statements of generally accepted accounting principles and any written interpretation of those standards issued by any body or bodies to be prescribed.

The Regulations set out the requirements for preparation of individual and group accounts in line with IAS standards and as a result the regulations substantially amend existing requirements contained in the Companies Act 1990 as amended. The Regulations also substantially amend the provisions contained in the European Communities (Companies: Group Accounts) Regulations 1992 and make consequential amendments to provisions of the Companies Act 1963-2003, European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (SI 116/2005).

New Anti Money Laundering
Offence

The Criminal Justice (Terrorist Offences) Act 2005 was signed into law on 8 March. All of its provisions have immediate effect (with the exception of section 32 which is operative from 8 July 2005). The Act gives effect to a number of international measures to combat terrorism and in result the regulations substantially amend existing requirements contained in the Companies (Amendment) Act 1996 as amended. The Regulations also substantially amend the provisions contained in the European Communities (Companies: Group Accounts) Regulations 1992 and make consequential amendments to provisions of the Companies Act 1963-2003, European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (SI 116/2005).

Competition Proceedings in the
High Courts

Notwithstanding the Supreme Court's set out detailed arrangements for the operation of the 'Competition List' in the High Court. The new Rules set out the procedures for case management and include certain forms that shall be used by parties. The new Rule also includes the definition of 'Competition List' as defined in a list in which competition proceedings and any related applications or competion proceedings are to be heard in accordance with the new Order 63B. Competition proceedings will now be dealt with in accordance with section 14(1) of the Competition Act 2001 in a manner approved in consequence of the introduction of a new type of investment fund vehicle, the Bill contains a number of amendments to existing legislation and to certain provisions of the Central Bank Acts 1942 to 2003. The Bill also amends existing requirements contained in the Companies Acts 1963 to 2003. The main provisions of the Bill are:

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New Bill on Investment Funds

Amends Company Law

The Minister for Enterprise, Trade and Employment has published the Investment Funds, Companies and Miscellaneous Provisions Act 2000. This Act introduces a new type of investment fund vehicle, the Bill contains a number of amendments to existing legislation and to certain provisions of the Central Bank Acts 1942 to 2003. The Bill also amends existing requirements contained in the Companies Acts 1963 to 2003. The main provisions of the Bill are:

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New and Restricting Directors

The Bill amends the provisions of the Criminal Justice Act 1994 and creates a new offence of "financing terrorism" as well as extending the provisions of the 1994 Act to include provisions for the freezing and confiscation of relevant funds. The Bill also amends the anti-money laundering provisions of the Criminal Justice Act 1994 by extending existing provisions to require the identification of "clean money" which may be processed or laundered to be used in terrorist activities. Designated bodies (which include solicitors, accountants, financial institutions and investment companies) will be required to take reasonable steps to prevent and detect the commission of an offence of financing terrorism. Designated bodies will also be required to maintain records containing any suspicion of an offence of financing terrorism being committed or having been committed.

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The Prentice Hall Practice Guide.
permissible for the directors to effectively abdicate all decision making in relation to the affairs of each company. The directors must be able to establish that they informed themselves about the affairs of the Irish subsidiary companies which are distinct from any other company within the Group and together with their fellow directors, show that they took real steps to consider and take decisions upon significant transactions to be entered into or projects undertaken by the Irish subsidiary companies. There must be evidence of a real consideration by the directors of whether significant transactions or operations to be undertaken were desirable in the interests of the Irish subsidiary companies or could be said to be for the benefit of the Irish subsidiary companies.

On the facts, the Court found that there was a total abrogation of responsibility for the financial affairs of the company to Group companies that went beyond what is permissible. Declarations of restriction were made against the directors.

**At Hand Cleaning Services Limited – Unliquidated insolvent companies**

A number of provisions of the Companies Act, 1990 can apply to companies which are insolvent, but which are not placed in liquidation due to the insufficiency of their assets. Any amounts in excess of €1,270 has locus to bring a section 150 application where the company does not apply for a winding up in liquidation. The Director of Corporate Enforcement also has this power. On 8 March 2004 the Director of Corporate Enforcement for the first time obtained a restriction order against a director of an insolvent but unliquidated company.

**GJT Engineering Services Ltd – Costs**

In this case the High Court decided that where a liquidator’s application for a restriction order against a director is unsuccessful costs will not be awarded against the respondent director. This overruled the practice that had previously been adopted by the Court. This means that the legal costs of any unsuccessful application will be deducted from the available assets of the company thereby reducing any dividend available to the creditors. If the assets of the company do not have sufficient funds to cover such costs they are borne by the Liquidator and/or his lawyers.

**Digital Channel Partners Limited (In Voluntary Liquidation) - Costs**

Part 24 of the Companies Act, 1990 deals with the completion of the Section 56 Report by the liquidator and refers specifically to Question 22(g) of Section 56 Report which asks whether the director has demonstrated that he/she has acted soberly and responsibly in relation to the conduct of the affairs of the company. The Liquidator did not address the specific role of one of the directors that held that the matters being brought to its attention had occurred prior to the appointment of the director in question, and had therefore not been restricted. There was no evidence that the Liquidator had given the respondent director an opportunity of commenting on his role. The Court made an award for costs against the Liquidator.

**Mitex Pharmaceuticals Limited (In Liquidation) - Costs**

In February 2005 the Court had previously made declarations restricting 2 of the directors of the company. The liquidator then applied for costs under section 150(4B) of the 1990 Act which provides that “the court may order that the directors against whom the declaration is made shall bear the costs of the application and any costs incurred by or against the company in investigating the matter.” In the course of the application for costs the issue arose as to whether the phrase “the matter investigated by the applicant in investigating the matter” includes remuneration due to the liquidator for time spent investigating the matters involved in the section 150 application. It was argued on behalf of the liquidator that the purpose of the provision was to ensure that where a successful application under Section 150 was made by the liquidator that the costs of the investigation should not be borne by the directors and not by the creditors of the company. Ms Justice Feetham determined that the term referred to the sums of money which the liquidator is liable to pay to a third party for remuneration for the purposes of the director’s own remuneration. Fergus Doorly

**NEW HOUSES**

Practitioners are reminded that purchasers of a new house are entitled to a copy of the Notices on the date fixed for the hearing for such purposes. If the other party agrees to such an adjournment the Judge will direct the parties to continue on the date fixed for the hearing for directions from the Court.

**LODGING TITLE DEEDS**

In the case where practitioners are lodging title deeds pursuant to a undertaking that they will not be required to do so if they satisfy that they are fully protected by agreements with the conveyancing department of the banks. If the clients are not satisfied that the Bank's solicitor has not agreed that it will be fully protected by the deed. Certain financial institutions are now insisting that, where a practitioner wants to receive title deeds already lodged, they must take the title deeds up to ATR, thereby incurring a further charge, and re-lodge them with an agreement from the financial institution.

**THE IN CAMERA RULE**

Practitioners should note that the Superior Courts (Civil) Act 1947 and the Civil Liability and Courts Act 2004 have now been signed. Section 33 of the Civil Liability and Courts Act 2004 provides for a. Limited reporting in family law cases b. The accommodation of parties to family law proceedings by a third party. A person referred to in section 40(3)(a) or (b) of the Civil Liability and Courts Act 2004 may apply in person either before or at the hearing of the proceedings for permission to report provided there is no restriction on reporting under section 33. If the court is satisfied that the applicant is a relative of the person named in the application the court may order that the reports referred to in the application be limited to a relative of the person named in the application.

**RESIDENTIAL TENANCIES ACT 2004**

The Conveyancing Committee have now drafted 8 Notices of Termination. These notices were submitted for approval by 21st of June in the Wartory Hotel and are now available on disk from the Dublin Bar 2 Corpoos, Lower Hatch Street, Dublin 2. Practitioners are reminded that practitioners who purchased the revised Letting Agreement will be entitled to a copy of the Notices on disk free of charge and should contact the DBSA offices.

**FAMILY LAW**

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adverb "intentionally", whereas in §328 no such qualification was adopted as a mechanism for the resolution of issues according to law. If a lawyer gains information from documents disclosed by the defendant of his or her co-accused, it is effectively

3. The conduct of the applicant between the date the matter was adjourned and the actual sentencing was a relevant factor when it came to the ultimate sentencing of the applicant. Reporter: L.O.

People (DPP) v Michael Murphy

Criminal law – Appeal against conviction

Facts

This was an appeal against the order of the trial judge who had sentenced the applicant to four years for the malicious damage. The applicant submitted that the trial judge should have taken into account that the High Court had adopted an erroneous construction of ss. 2 and 3 of the Criminal Law (Defences) Act 1997 in reversing the decision of the trial judge. The Court held that the High Court judge had erred in restricting the scope of the powers in question. In a dissenting judgment Kearns J held that given the independence, the Chairperson of the Tribunal to some extent power to remove these cases and the decision to do so was ultra vires. Reporter: R.F.

Edобор and Messanou v Refugee Appeals Tribunal Supreme Court Mr. Justice Fennelly, Mr. Justice Hogan, Mr. Justice Blackwell 16/03/2005 416/04, 417/04 [FL10489]

Young Children and Persons, Enforcement, Family law

Facts

The petition of a minor child was made and the question of his<br/>'future was brought before the Court on the ground of an opinion of the law which had been communicated to the parents about the application of the law to the particular case. The petition stated that the child was not capable of understanding the nature of the proceedings or the effect of the decision. The Court granted leave to the petition and ordered that the child should be placed in the care of the applicant and that the applicant should take steps to have the child returned to the jurisdiction of the court. The Court further ordered that the applicant should provide an undertaking that the child would not be removed from the jurisdiction of the court without the consent of the Court.

The purpose of the proceeding was to determine the legal status of the child and to determine the appropriate course of action to be taken in the circumstances. The Court found that the child was not capable of understanding the nature of the proceedings or the effect of the decision. The Court further ordered that the applicant should provide an undertaking that the child would not be removed from the jurisdiction of the court without the consent of the Court.

The judgment of the Court is set out in full in the transcript of the hearing. The judgment is based on an analysis of the relevant law and on a consideration of the evidence presented at the hearing. The Court found that the child was not capable of understanding the nature of the proceedings or the effect of the decision. The Court further ordered that the applicant should provide an undertaking that the child would not be removed from the jurisdiction of the court without the consent of the Court.
contributions to approved share option schemes, pensionable earnings, sick pay and contributions to approved share option schemes, pensionable earnings, sick pay and

opposite to it and sought an order directing its two directors, who were also sharing the joint. The two
directors had individually to use any monies so recovered to repay loans made by them to the company.

7. Held by Finnegan J in refusing the application for injunctive relief that even assuming that the petitioner had raised a serious question under section 117 of the Act of 1965 and

accusing the plaintiff of negligence, breach of duty of care, and negligence. The Court awarded her general damages to date and for the future of €250,000 and an agreed sum for special damages.

reported by R.W.

O'Sullivan (a minor) v Kiernan

 Negligence – Whether solicitor retained in respect of the administration of the estate of the plaintiff’s late mother. The plaintiff was an executrix in respect of the estate and was required to pay the deceased’s worldwide assets to the Inland Revenue under the Inheritance (Provision for Family and Inexhaustible

Reports: R.F.

Gamble v An Garda Síochána

High Court Mr Justice Geoghegan 17/12/2005

2004/7119P [FL10476]

Mortgage Security – Injunction – Whether mortgage security was necessary to enforce the judgment

Facts The plaintiff sought damages for negligence and breach of contract suffered in the course of her delivery by the first defendant consultant obstetrician. Held by Mr. Justice Peart that the defendant had been guilty of negligence but further held that the plaintiff had not suffered any loss as a result. The plaintiff appealed against the decision of her claim and the defendant, in turn, challenged the finding of negligence. Held by the Supreme Court (Hardiman, Geoghegan, and O’Sullivan JJ) that the plaintiff’s appeal that the defendant was not negligent, in breach of duty or in breach of contract. The trial judge also correctly decided the issue of causation.

Report: R.W.

Rojack v Taylor High Court Mr. Justice Geoghegan

16/02/2005 2002 No. 14739P [FL10621]

Professional Negligence, Solicitors 

Tort – Professional negligence – Solicitors – Negligent client – Whether defendant negligent – Whether plaintiff suffered loss as a result

Facts The plaintiff brought proceedings against the defendant, who was a solicitor, claiming damages for professional negligence, breach of duty of care, and negligence. The plaintiff alleged against the

defendant the opinion of insuring against tax on the transfer of the fund may be attractive where children are over the age of 21.

CREDIT AGAINST CAT FOR FOREIGN TAX (S137FA05)

Ireland only has CAT double taxation agreements with 59 countries, including the UK. If a benefit is taxed by any other jurisdiction and is also subject to Irish CAT a credit for the foreign tax, but historically the credit only applied where the asset was located in the foreign tax jurisdiction. No relief was available for French tax on the transfer of a Luxembourg based fund because they pass under a separate non

Irish personal representative (possibly acting on behalf of relatives), or a non-Luxembourg domiciled executor. For example an Irish resident paying French inheritance tax and Irish CAT could only claim a credit for the foreign tax paid on the transfer of a

French property. No relief was available for French tax on a Spanish property. In these instances the section is intended to relieve double taxation it is not always possible to claim a credit for the foreign tax paid on the transfer of a non-

Irish personal representative (possibly acting on behalf of relatives), or a non-Luxembourg domiciled executor. For example an Irish resident paying French inheritance tax and Irish CAT could only claim a credit for the foreign tax paid on the transfer of a Luxembourg based fund because they pass under a separate non-Irish will.

CAT EXEMPTION FOR INSURANCE POLICIES (S133FA05)

Income tax arises on the inheritance of an approved retirement fund (“ARF”) by a child under the age of 21. The...
STAMP DUTY DUTY RATES FOR SECOND HAND PROPERTIES (S126FA05)

New reduced stamp duty rates were introduced for second hand “owner occupier” homes in 2004 for first time purchasers. With effect from 2 December 2004 consideration of up to €371,500 will be exempt from stamp duty (at a rate of 3%) will apply to up to €381,000, rising to 6% for consideration of up to €635,000 and properties costing in excess of €635,000 will be stamped at the top rate of 9%. This should facilitate the purchase of second hand properties in the lower price brackets by first time purchasers, who were previously attracted to new properties by the “floor area” certificate exemption.

STAMP DUTY ON RESIDENTIAL PROPERTY: ANTI-AVOIDANCE (S117FA05)

Before FA05 the stamp duty rate on a dwelling was only chargeable by splitting the transaction. This involved a transfer to a number of intermediate purchasers followed by a number of transfers to an ultimate purchaser, who paid a lower rate of stamp duty on the fragmented consideration paid to each. FA05 introduced an anti-avoidance provision with effect from 3 February 2005. It provides that if an existing interest in a dwelling is acquired by more than one instrument executed within a period of 12 months any instrument will be deemed to form part of a larger transaction. In addition if the “first transfer” of an interest in a dwelling (occuring before or after 2 December 2004) is followed by a “subsequent transfer” of other interests in the same dwelling within a 12 month period the transferee of the first transfer will be liable to a penalty. 

ARGUALLY this legislation has a retrospective effect and undercuts the reliance a purchaser can place on the fact that an instrument had been presented for stamping. A purchaser who has paid stamp duty on a purchase deed executed before 1 December 2004 (say in December 2004) could find himself with a further liability under this

STAMP DUTY ON THE CONSOLIDATION OF FARMS (S127FA05)

Stamp duty relief applies where individuals who are “farmers” (i.e. those living at least 50% of the time farming) exchange farmland between 1 July 2005 and 30 June 2007. Stamp duty is restricted to any difference in the value of the lands exchanged. “Agricultural” land for VAT purposes for a 5 years clawback period and any “equality money” paid must be in the form of cash, share capital or shares required and the deed must be notarised. The conditions attached to the relief may be affected by a subsequent transfer to a number of intermediate purchasers who spend at least 50% of their farming time working on the farm.)  Guideines are to be published by the Minister for Agriculture and Food.

CAPITAL DUTY RATES (S127FA05)

The capital duty rate has been reduced from 1% to 0.5% with effect from 1 December 2004 for company formations and 3 February 2005 for share capital. New rates apply to share capital [the transfer of the effective centre of management of a company/legal entity].

CAPITAL GAINS TAX

CGT PARTICIPATION EXEMPTION (S54FA05)

FA05 introduced an exception from CGT on the sale by a company of shares in another company, in which it was a dual resident with ECMOS. Any sale of shares within 10 years of the date on which an exempted share was first acquired was subject to EU approval and in order to obtain EU approval the shareholding requirement was amended in FA05 by removing any reference to the value of the shares and setting the minimum holding at 25%.

This exemption is likely to provide a valuable relief for Irish holding companies who wish to reduce their tax exposure to foreign groups as a location for a group holding company.

CGT CLEARANCE CERTIFICATES (S55FA05)

The section on existing revenue practice on a statutory basis from 25 March 2005. A vendor may now claim a clearance certificate paid to revenue by purchaser where consideration takes a form other than money (e.g. an exchange of assets) or the vendor pays CGT, withholding tax to the Revenue which is recovered from the vendor. In addition where assets are transferred which are exempt from CGT (e.g. Local Authorities) are no longer obliged to provide a CGT clearance certificate.

INCOME TAX

PAYS AND PROPRIETARY DIRECTORS (S131FA05)

From 1 January 2005 proprietary directors (i.e. those holding at least 15% of the shares in their employer) will be entitled to a credit for PAYE withheld from emoluments if the PAYE has been paid to the Collector General and any shortfall in the PAYE paid by the company will be attributed first to those directors.

EMPLOYEE SHARE OPTIONS (S16FA05)

Share options granted on or after 3 February 2005 to an employee who is either an Irish resident or employed in Ireland but the current employment in Ireland) but the current income tax if exercised while the employee is a non-resident will attract income tax. In addition the Revenue will have a number of the shares on the exercise date and BANKING on the exercise date.

"CASH EXTRACTION" SCHEMES (S39FA05)

Schemes which create anti-avoidance provisions designed to prevent the extraction of cash from certain “close” companies in the form of a capital payment (liable to capital gains tax at 20%) rather than income (which may be taxed at the marginal rate of 42%). These provisions have been extended with a view to reducing the opportunities for tax planning the extraction of cash.

CAPITAL ALLOWANCES (S34FA05)

From 3 February 2005 hotels and holiday camps will need to register under the VAT Travel Industry Scheme. Arguably the ) will no be excluded claiming of pre 2004 allowances are to be claimed on expenditure. In addition a registered guest house or hotel will no longer qualify for hotel capital allowances at a rate of 4% per annum.

FOREIGN PENSION SCHEMES (S21FA05)

Following the EU Presidencies Directive, a number of schemes were set up to allow the treatment of pensions and the Irish Revenue may now approve EU pension schemes. The Revenue may now authorize foreign pension schemes to provide a number of tax advantages to migrants coming to Ireland may obtain Irish tax relief on contributions to an approved EU pension scheme.

Fiach O’Hanlon, Purcell McCauley Tax Partners Limited

MISSOURISCE

NEW INTERNATIONAL FINANCIAL REPORTING STANDARDS (S21FA05)

The adoption of the new International Financial Reporting Standards in place of Generally Accepted Accounting Principles (GAAP) or International Accounting Standards (IAS) is intended to harmonise financial reporting in the EU. The changeover will significantly alter the treatment of property transactions which will in turn impact on the tax treatment. Companies listed on an EU stock exchange are obliged to operate IFRS for accounting periods beginning on or after 1 January 2005 and non-quoted companies will be required to adopt IFRS for accounting periods beginning on or after 1 January 2009 for the future, and may voluntarily switch at this stage. The FA 05 contains provisions to ease the transition from GAAP to IFRS and to prevent artificial tax advantages or unfair tax treatment arising from the adoption of IFRS.

These provisions will have a very substantial impact on the accounts of Irish companies which will in turn impact on the tax treatment of their companies.

GROSS ROLL UP FUNDS (S42FA05)

Under existing legislation, no tax is charged on income and gains arising in a gross roll up fund operated by a listed company. This has lead to investors cashing in the fund, but a 23% tax applies on exit. FA05 contains provisions to close this feature of a gross roll up fund and tax every seven years, but these provisions are subject to Ministerial Order.

VAT ON PROPERTY FINANCE ACT 2005

The Finance Act 2005 ("FA 05") introduced a number of significant changes to VAT on property transactions. These mainly relate to:-

Supplies of reversions

Documents issued by persons surrendering or assigning leases

Surrender of property which are exempt from VAT

Deducibility adjustments

This article reviews these changes, with references to the pre FA05 position where relevant.

SUPPLIES OF REVERSIONARY INTERESTS

Before the decision in Errin Executor and Trustee Co. Ltd v Revenue Commissioners [5 ITR 76] the general view was that when a long lease was granted the landlord made a self-assessment for VAT purposes and this took the property outside the VAT net. In effect the lease property was treated as a property transaction for VAT purposes when the long lease was granted.

In the Errin Executor’s case the Supreme Court held that the self-supply of the reversionary interest did not take the property out of the VAT net. Therefore a landlord could be required to register for VAT on expenses he incurred after the grant of the long lease, i.e. post-letting expenditure. Following this judgment a supply of property to a tenant for VAT purposes and this took the property outside the VAT net. In effect the lease property was treated as a property transaction for VAT purposes when the long lease was granted.

In the Finance Act 2000 ("FA 00") introduced a number of amendments to an existing legislation to the supplies of reversionary interests. This exemption is likely to provide a valuable relief for Irish holding companies who wish to reduce their tax exposure to foreign groups as a location for a group holding company.

VAT ON PROPERTY TRANSACTIONS

The FA 05 removes the “trapped” VAT once the landlord or any post letting development work was undertaken by, on behalf of, or at the direction of, the tenant. The Revenue stated in their Guidance Notes to FA 05 (available on the Revenue website www.Revenue.ie) that in an arm’s length the lease tenant has little incentive to carry out work on the property beyond what is included in the terms of the lease and therefore the bulk of work carried out by tenants is not likely to be to the benefit of landlords and tenants alike. It is understood that if substantial work is carried out during a tenancy which “significantly upgrades” a premises this could be regarded as for the benefit of the landlord which would ensure that any sale of a reversion by the landlord is within the charge to VAT.

DOCUMENTS TO BE ISSUED BY PERSONS SURRENDERING OR ASSIGNING LEASEHOLDS

The FA 05 introduced a requirement that a person who is surrendering or assigning a leasehold interest must provide a document showing the taxable value of the transaction for VAT purposes. VAT arising on the transaction. There are three methods of valuing a lease for VAT purposes. These are known as: -

- Valuation by the landlord
- Valuation by the tenant
- Comparison of price paid for the property with the price paid for a similar property in the cost in the economic value test.

EXEMPT SUPPLIES OF PROPERTY

Before the FA 05, a supply of property was exempt from VAT where the person making the supply did not have an entitlement to recover VAT arising from the supply of the property or the development of the property.

Example: Supply pre FA05

A limited company purchased an office in 1994 for €600,000 plus VAT of €75,000 for use in its trade, which was subject to VAT. A Limited would have recovered the VAT paid on the office.

In 2002 A Limited moved to a new premises and let the office for 3 years. In 1994 the cost of the office was exempt from VAT, but is treated as a self supply by A Limited, giving rise to irrecoverable input tax.

In 2004 A Ltd sold the building to an insurance broker for €1M. This sale was not eligible to be zero rated because A Limited did not have an entitlement to recover the VAT on the self-supply of the property in 2002. Since the sale was treated as exempt from VAT where the person making the supply did not have an entitlement to acquire the VAT arising from the acquisition of the property or its
Self supply of the property pre FA05 legislation is outside the scope of this analysis of the operation of the ownership of the taxpayer. Detailed reflect the fact that the property has been effect of reducing the claw-back to claw-back and this generally has the formula is used to calculate the

Prior to FA 05 when the short lease is waiver of exemption, and the grant of OF A SHORT LEASE no self-supply occurs. within the charge to VAT and therefore lettings and the effect of such a waiver claw-back which is a cost for the owner. making a self supply of property by appropriating the property to an exempt VAT and the owner is therefore exempt. This can be illustrated using an example.

Example: Supply post FA05 If the sale in the above example occurred in 2005; post FA 05, the VAT treatment would change. Instead of looking at the VAT recovery on the 2002 supply the taxpayer must look to the VAT recovery on the 1994 acquisition of the property.

As A Limited had an entitlement to recovery of the VAT paid on the acquisition of the property in 1994 the sale to the insurance broker in 2001 would be subject to VAT.

DEDUCTIBILITY ADJUSTMENTS The FA 05 introduced new VAT "deductibility adjustments" rules which apply from 1 May 2005 to a person who makes a self supply of property by granting a short lease (less than 10 years). Such a lease is exempt from VAT and the owner is therefore appropriating the property to an exempt use and this is treated as a self supply of the property resulting in a VAT claw-back which is a cost for the owner. The taxpayer also has the option of waiving the exemption on short term lettings and the effect of such a waiver would be that the property remains within the charge to VAT and therefore no self-supply occurs.

SELF SUPPLY ON THE GRANT OF A SHORT LEASE The new rules apply where there is no waiver of exemption, and the grant of the short lease results in a claw-back. Prior to FA 05 when the short lease is granted the VAT input credit obtained on the acquisition of the property would be clawed back by levying a VAT charge on the self-supply. Post FA 05 a formula is used to calculate the claw-back and this generally has the effect of reducing the claw-back to reflect the fact that the property has been used to make taxable supplies during the ownership of the taxpayer. Detailed analysis of the operation of the legislation is outside the scope of this article but the operation of the new rules is illustrated by the following examples.

Self supply of the property pre FA05 (using the example above) In 1994 A Limited purchased a freehold paying VAT of €75,000. If it left the office in 2002 for 3 years (making a self-supply) then all the VAT claimed when it bought the property (€75,000) would be clawed back.

SELF SUPPLY OF THE PROPERTY POST FA05 (SAME EXAMPLE)

If A Limited in the example above purchased the freehold in 1994 (paying VAT of €75,000) but did not grant the 3 year lease until 1 June 2005 (making a self-supply) the VAT reclaimed on the purchase would not be clawed back in full. The deductibility adjustment formula gives the following VAT claw-back:

\[
75,000 \times (20-11) = €33,750
\]

Due to the FA 05 changes. A Limited incurs a claw-back of VAT of €33,750 instead of a claw-back of €75,000 on the short-term letting of the property.

SUBSEQUENT SUPPLY OF THE PROPERTY

On a subsequent taxable supply of the property an additional VAT input credit can be claimed, which effectively gives an additional VAT credit to reflect the fact that the property is being used to make a further VAT supply. Again this credit is calculated using a statutory formula, and can best be explained by using an example.

Subsequent supply of the property In our example if A Limited sells the property in 2006 after having granted the short lease in 2005 the VAT deductibility adjustment is calculated using the formula:

\[
75,000 \times (20-12) = €30,000
\]

A Limited has an additional input credit of €30,000. The impact of the first deductibility adjustment is that A Limited remained entitled to €41,250 from the original VAT input credit as it only had to pay back €33,750 of the €75,000 originally reclaimed in 1994 when it bought the building. In effect the new rules reduce the claw-back to allow for the fact the property was used to make taxable supplies for eleven years (from 1994 to 2005).

The second deductibility adjustment on the sale of the property by A Limited recognises that the remaining eight year VAT life of the property is the subject of a taxable supply for VAT purposes. The net effect of the two deductibility adjustments is that A Limited suffers a net clawback of VAT input credit of €3,750 (first adjustment of €33,750 - second adjustment of €30,000). This represents the VAT attributable to the one year of short term letting to the

10 GOOD REASONS WHY YOU SHOULD RENEW YOUR MEMBERSHIP OF THE ASSOCIATION

1. COLLEGIALLY
2. FORUM
3. INDEPENDENCE
4. STATUTORY RECOGNITION
5. SOCIAL LIFE
6. HELPLINE
7. ACKNOWLEDGING THE ROLE OF OUR ELDER COLLEAGUES
8. PRECEDECE
9. NON-JUDGEMENTAL
10. FUNDING

This Charter applies to Dublin Circuit Court Civil Office only. There is a Courts Service Customer Charter which deals with the standards of service you can expect throughout the Courts Service. The standards of customer service outlined in the Courts Service Customer Charter also apply to Dublin Circuit Court Civil office, in addition to the standards in this Charter.

1. We will serve you at the counter in 20 minutes. If not, we will provide extra staff at the counter.
2. If you lodge a Notice of Trial, you will be notified of your court date within 2 weeks. If you are not notified, let us know and we will give you feedback.
3. All injunction orders will be available on the day of court.
4. All orders with time limits will be available within 10 days of court.
5. All infant orders will be available within 10 days of court.
6. All other orders will be available within 4 weeks of court delivery. If an order is not available within the times specified above and you draw our attention to this, we will process the order for you that day.
7. We will automatically post all orders to the party setting down the trial/motion. We will post out orders to other parties on request. Other parties can request orders by e-mailing circuitcourtorders@courts.ie.
8. We will process Judgment Sets within 4-6 weeks.
9. We will process Judgment Mortgage Affidavits, Memorandum of a Judgment and Satisfaction Pieces within 2 weeks.
10. We will pay out judgments within 3 weeks of acceptance.
11. We will reply to letters within 10 days.
12. We will reply to e-mails within 5 days.
13. If a file is stored off site we will arrange to make it available to you in less than 5 days (assuming it is available).
14. We will pay out bail within 4 weeks of being requested to do so.
15. We will pay out minor awards within 4 weeks of being requested to do so.
16. We will meet regularly with customers to discuss this Charter and we will take their views on board.
JUDGE KATHERINE DELAHUNT

It doesn’t seem like three and a half years ago that Katherine Delahunt became the first and, so far, only female solicitor to be plucked from practice and thrust into the spotlight as a judge of the Circuit Court. She may wear a wig and gown now but she is still the same feisty and forthright character she was as a solicitor. Stuart Gilbwool went to Donnybrook to talk to her about the transition to the judiciary, the future for solicitors and judges and Doheny & Nesbitts.

Donnybrook Fair Café is quiet on a Friday morning at 9.00am. Apart from the few stragglers finishing their last strands of coffee, there sits only a judge on vacation and a DSBA magazine editor who should be in his office but is instead wallowing into some seriously good pancakes and listening to the same judge discussing life on bench in the same way that she tackled colleagues in practice. In other words, without pulling any punches.

Katherine Delahunt started and finished her career as a practising solicitor with Vincent & Beatty. She says she was spoiled there. Katherine has been assigned to Dublin since she was appointed for the simple reason that she was direct replacement for the retiring Kieran O’Connor. Although she has enjoyed her stint in Cork where she was faced with task of sorting out the family law list which she did with her usual directness, she is happier here and has recently been assigned to the long cases list which suits her down to the ground.

“There’s great meat in those cases. I enjoy them much more that the one hour road traffic case”

This may be something to do with her work as a solicitor where, of course, cases have a much longer gestation period than if you come straight into them at a hearing in the way that a barrister does. For this reason, she bemoans the lack of solicitor judges appointed in the Circuit and High Court. Although the numbers of solicitors being appointed in the Circuit Court is much higher than above (it wouldn’t be hard), it is still considerably lower than the magistrates’ court.

“There are a lot of journalists and lawyers there so I only go there about once or twice a year during the vacation. I do miss that”

Like many members of the judiciary, although she still socialises about once or twice a year during the vacation. I do miss that.”

Whatever about the genesis of the judiciary, what about their behaviour? We are all sick of waiting for the Judicial Conduct Committee to take its place. She insists that any delay is not the fault of the judges, in fact quite the opposite.

“If you are going to ask them a question they don’t know the answer to.”

But what about the impression that many practitioners would be afraid to make a complaint about a judge for fear of being ostracised forever.

“I don’t know if that works any more. There has to be some sort of forum for people to go to.”

Another subject that exercises the minds of regular judicial critics is that of training. Is it necessary?

“A must. I was lucky in one respect in that I was a vice chair in the EAT for a number of years. For things like crime, I would have liked a lot more assistance. I did go and watch a case for a week because I didn’t have an expertise in that area. We do have our conferences which means that the facilities for ongoing training have much improved. Eamonn Smyth has been great about that. But I do think that a month or so training for new judges would be helpful. My new colleagues were great when I was appointed and they were on the phone constantly checking how I was getting on and seeing if there was any way they could help.”

“One subject that really concerns Katherine Delahunt is the increase in lay litigants in family law matters. She sees this as becoming a real problem.

“There are a lot of journalists and lawyers there so I only go there about once or twice a year during the vacation. I do miss that.”

But whatever about the stresses of the bench, Judge Delahunt is enjoying every minute of it. She has become a pioneer for the solicitor, and the female solicitor in particular. We continue to hope that she will not be alone for much longer as the sole flag carrier for the female side of the profession. And you never know maybe the next woman solicitor appointed will be in the High Court. It might even be the same person!”
RESIDENTIAL TENANCIES ACT, 2004

Many other points could arise.

1. Leases are:
   - possible practical implications of the lease with the Private Residential Tenancy Agreement (which may be a management company).
   - Management Companies (which are useful in blocks of flats under Part 5.
   - appropriate.

Accordingly, lessors in such leases have consented to by respondents. She "will fight the issue to death".

As for the assessments themselves, it is expected that it will not differ in any material way from the Rules of the Superior Courts.

The Circuit Court were expected to print, the High Court and District Court had produced their new rules. As 31 March approached, the Rules were not yet clear how many with the High Court and District Court in reaching such decisions must.

The Circuit Court is not dealt with here, and it is in that area that I will be concentrating. Although the Circuit Court is not dealt with here, it is expected that it will not differ in any material way from the Rules of the Superior Courts.

S.I. 248 OF 2005 - RULES OF THE SUPERIOR COURTS (PERSONAL INJURIES) 2005

Personal Injuries Summons:

As you will now be aware, the Plenary Summons in personal injuries actions is no longer. It has been replaced by all the allegations, all damages in personal injuries summons which will appear in all courts from now on. It must contain the Plaintiff's name, address, the number, Defendant's name and address, injuries to the Plaintiff, full particulars of the wrong alleged, full particulars of the award and whose clients have rejected the most glowing of terms praising in the most glowing of terms. a press release which sang their own praises.

PIAB ISSUE FIRST ASSESSMENTS

With much fanfare, and stopping just short of blowing trumpets and bugles, PIAB announced on 4 May that they had made the grand total of 25 assessments. This was accompanied by a press release which sang their own praises in the most glowing of terms. a press release which sang their own praises.

The good news is that since the O'Brien case, they have been corresponding directly with the claimant and the claimant, who are in such a relationship that an unsolicited observer might believe that they were progressing at great speed. However, as the day wore on, it became clear that they had in fact received only as many as 564 replies to applications by 2 September 2004 and therefore their rather meagre total of 25 represented a less than 5% success rate. They have since told us through the pages of Sunday Business Post on 29 May that they have now made 68 assessments which take their total to 12% within their projected nine month period. Now, here at Parchment headquarters, we are a little biased but we're not one bit impressed. Reports can only do better than this.

Interestingly enough, PIAB's CEO, Patricia Byron, announced in the same SBP article that as many as 50% of those claims registered have not been consented to by respondents. She claimed that many cases are being settled without PIAB’s involvement but while this is true of a certain proportion, anecdotal evidence, including the experience of your writer, has been that 50% is close to the percentage that is not willing to consent and is not willing to consent to proceeding. Presumably, PIAB have the exact figures and we will let you know if and when they tell us.

As the assessments themselves, it would seem that nearly all of those not represented by solicitors are accepting the award. It is not surprising therefore that Mr Justice Hanna on 13 June 2005. By the time they were reached in the list, undertakings to preserve the evidence in all Motions had either been given or were being negotiated by the parties. The judge gave an ex tempe pressure judging dealing with the issues arising from all three Motions.

In general terms, he commented that although the terms of Section 12 effectively mirrored provisions already provided for in the 1986 Superior Court Rules, that it still amounted to a new and discrete jurisdiction. The implications for a Claimant/Plaintiff would be very serious indeed. The Court in reaching such decisions must balance the rights of both parties but bearing in mind the importance of the Claimant/Plaintiff's right to bodily integrity as against the commercial interests of most Defendants/Respondents, he felt the claimant’s rights would usually take priority, although there would be exceptions to this.

In respect of such motions, he felt that costs as a general rule should be reserved to the trial judge. However, there would be occasions in which the behaviour of the Defendant/Respondent would create a situation in which the Plaintiff would be entitled to costs, particularly in cases where Defendants/Respondents ignored the initial correspondence or failed to deal with the issue of the undertaking. In the Motions before him, he awarded costs to the Plaintiff/Claimant in one Motion where the Defendants/Respondents did not attend Court at all and reserved the costs in the other two Motions where he was of the opinion that the Defendant/Respondent had acted reasonably and had addressed the Court. He also confirmed that the Motion of the Plaintiff is that there is no jurisdiction to deal with such Motions and all future applications should be made to the Court.

Stuart Gilhooly

HIGH COURT MAKES SECTION 12 DECISIONS

The High Court, in guise of Mr Justice Michael Hanna, has given its first judgments on the controversial section 12 applications. Section 12 of the Personal Injuries Summons Act allows a claimant to issue a Notice of Motion to, among other things, provide a summons which must be served within a certain time limit.

The rules specify that where a fatal injuries action is involved, the summons must state the name, age, date of birth and PPS number of the deceased person. Where there are dependants, the summons must state the names and dates of birth of each dependant must be stated.

Where a Plaintiff has not been issued with a PPS number, this must be stated and where any information supplied by Section 10 of the Act cannot be provided at time of issue then the reason why it cannot be supplied and such outstanding details be provided at time of service or soon as may be.

No Statement of Claim is required in a personal injuries action.

In an application for judgment in default of appearances, it is necessary to file an affidavit verifying the content of the summons. A Defence must be delivered within eight weeks of the delivery of the personal injuries summons.

It must specify all allegations of which it does not require proof, all allegations of which it does require proof, the grounds on which the Defendant is not liable for the injuries, and where contributory negligence is alleged, the grounds on which it is alleged.

Verifying Affidavit

An affidavit must be sworn where assertions or allegations are made in any pleading or reply to particulars or new particulars provided. A similar affidavit must be sworn by the Defendant in respect of any pleading or particulars. In the case of an infant or person of unsound mind, the same affidavit must be lodged in court 21 days after the service of the pleading or particulars or such longer time as the Court may allow. The affidavit must specify that the party has given or were being negotiated by the parties. The judge gave an ex tempore judgment dealing with the issues arising from all three Motions.
Interlocutory Applications:
The Rules specify certain occasions in which Motions can be brought on foot of the provisions of the Act. There are five such occasions:
1. An application for stay or dismissal for failure by the Plaintiff to comply with Section 10 of the Act.
2. An application for stay or dismissal by reason of the Plaintiff’s failure to provide further information under Section 11 of the Act.
3. An application for stay or judgment by reason of the Defendant’s failure to comply with Section 12 of the Act.
4. An application by either party for further and better particulars.
5. An application by either party to have evidence given on affidavit in accordance with Section 19 of the Act.

In each of the above instances, the moving party must have written to the opposing party seeking compliance, allowed 28 days and the opposing party must have refused, failed or neglected to comply.

No such application can be successful unless the moving party has verified any previous pleadings in accordance with Section 14.

Mediation Conference:
Any party can request the court to set up a mediation conference. It will be presided over by a chairperson and if the court directs it, then the parties must attend the conference. The costs of the conference will be borne by whichever the court at the hearing of the action directs. If a party fails to comply with a direction to have a mediation conference, the court may order that the party refusing to comply suffers a costs penalty.

The Rules say that any such request must be made by way of Motion by either party on notice to the other party and with a grounding affidavit. The Court may adjourn the proceedings while the conference takes place and may extend for compliance of other rules of court in the meantime.

The Chairperson of the conference must by way of affidavit verify his appointment, whether or not the conference was held and if not, why not. If it was held, he must verify the time and place of the conference, the parties in attendance, whether or not a settlement was reached and the terms of any such settlement.

Formal Offers:
Both parties will be obliged to make a formal offer of settlement to each other before the trial of the action within a prescribed period. The period in question has been set by S.I. 169 of 2005 and is the time from the service on the Defendant of the Personal Injuries Summons until 14 days after the service of the Notice of Trial. The Defendant may refuse to make an offer but must say so. A copy of the formal offers will be lodged in court as soon as may be after the expiry of the prescribed period.

The court will when making an award of costs take into account the reasonableness of the terms of the offers themselves. The usual rules for tenders and lodgments still apply. Service of the offer must be by registered post or by hand delivery.

Pre-Trial Hearings:
The court may determine that a pre-trial hearing is necessary to determine what further matters are still in dispute. It can be presided over by a judge or the Master, or such person as the Court may direct. The person presiding over the hearing may make such orders or directions as he deems appropriate. Any such order or direction may be appealed to the court by the person affected.

S.I. 257 OF 2005 - DISTRICT COURT - (PERSONAL INJURIES) RULES 2005
As the District Court has traditionally seen very few personal injuries actions and presumably won’t see too many in the future, I am not going to go into any detail. Suffice to say that the rules are very similar in nature to those in the Superior Courts. What is innovative, however, is the introduction of a Defence and Notice for Particulars in personal injury District Court cases.

The various forms required to commence the new procedures are all to be found on the Courts Service website at www.courts.ie under the “rules and fees” section. The rules can also be found there in their entirety. It is essential for every practitioner with any interest in this area to completely familiarise themselves with these new rules.

Stuart Gilhooly

**ARE YOU AN EXPERT?**
**IF SO, YOUR PROFESSION BADLY NEEDS YOU!**
Colleagues in the professional negligence area will be familiar with the difficulties in sourcing an expert witness to act in a legal negligence action.

One’s reluctance to appear in judgement on the alleged failures or omissions of a colleague and being open to cross-examination on that assessment is understandable and is not everyone’s idea of job fulfilment!

However, in the wider public interest, and to avoid such cases failing to get off the ground the DSBA heartily encourage colleagues having the requisite standing to volunteer for this type of work.

If you have over 10 years past qualification experience and could objectively be regarded as highly proficient in a particular area, please drop a line or email Kevin O’Higgins, Hon. Secretary, DSBA, 26 Lr Hatch Street, Dublin 2, email – kevinoh@dsba.ie. Please indicate your area of speciality. Your name will be put on a panel and will be made available on request to members requiring the involvement of a solicitor expert witness. The make up of the panel, apart from bona fide requests for disclosure, shall remain entirely confidential.

**THE SOLICITORS HELPLINE**
[28 8484]

**Stuart Gilhooly**

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**DUTCH LAWYERS COME TO DUBLIN**
Kobra bar on Leeson Street was the venue on Friday 13th May when the DSBA Younger Members hosted some welcome drinks for a group of 30 young lawyers from the Dutch province of Zwolle. The group were visiting Dublin on their annual trip and great fun was had in finding the Dutch translation of “junket”! Having been for a tour of the Four Courts and a visit to Kilmainham Gaol, the tour group were due to visit Leinster House and Glendalough during their trip also. A trip to the Celtic Cup final was added to the agenda on Friday night which proved to be a very interesting and enjoyable cultural encounter. A return invite was offered, along with a bottle of extremely dubious local Zwolle liquor which may have to be tested in a lab before consumption at a later date!

John Hogan

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**THE LEGAL DIARY**
*In line with recent tradition, the DSBA held a dinner for the Dublin Circuit judiciary which was remarkably well attended. As well as 15 out of the 17 judges sitting in Dublin, a number of firms were asked to nominate solicitors from their litigation departments and interspersed with council members of the DSBA, it made for a hugely enjoyable evening.

We all recognise how important it is to foster good relations with the judiciary and the judges themselves all remarked how rare it was to meet practitioners in a relaxed setting without any of usual convention!

The highlight of the evening was an excellent speech by Judge Joseph Matthews which I can safely say was one of the best speeches I have ever witnessed anywhere. It was the perfect send-off for retiring Circuit Court President, Esmonde Smyth who will remain on the bench and who was and, no doubt will continue to be, a great friend to the solicitors profession.

Stuart Gilhooly*
DISTRICT COURT
JUDGES DINNER

As colleagues will know, the President of the District Court, Judge Smithwick has recently vacated his Presidency, although he will no doubt be kept equally busy as he chairs a Government enquiry.

We were delighted that he and very many of his Dublin colleagues were enabled to avail of the DSBA invitation to a dinner in their honour, held in a private room in a Dublin club. Like other nights of similar vein, it was a most enjoyable occasion and the only chance we have to thank the committee members who give of their time voluntarily and ask for nothing in return. The DSBA would be nothing without its committees and we thank them all profusely for their hard work.

Kevin O’Higgins

(left to right) Judge Bridget Reilly, Hugh O’Donnell, Solicitor, Judge Catherine Murphy, Council member, John O’Malley and John Campbell, Solicitor.

DSBA MEET THE LORD MAYOR

The May DSBA council meeting was held in the luxurious surroundings of the Mansion House. The meeting was addressed by the Lord Mayor, Michael Conaghan, following which the President, Orla Coyne, presented him with a cheque for the Mansion House Coal fund.

The meeting was followed by dinner in Fitzwilliam Lawn Tennis Club for the committee members of the DSBA, known as the Co-optees dinner. It is an annual event and the only chance we have to thank the committee members who give of their time voluntarily and ask for nothing in return. The DSBA would be nothing without its committees and we thank them all profusely for their hard work.

Stuart Gilhooly

(left to right) Fiona Duffy, Reisin Byrne, Helene Coffey and Hugh Cunniam before the Co-optees Dinner.

PRESENTATION OF CHEQUE TO ARC

On the 16th March last the DSBA presented a cheque to Barbara Cosgrave one of the directors of ARC which is a Cancer Support Centre. The cheque was in the sum of €10,000 which was the charity I nominated at my Annual Dress Dance in January.

ARC was set up in 1994 by Professor Des Carney, Professor of Oncology in the Mater Hospital. The reason for its creation was to provide a safe place for people diagnosed with cancer to go to and to provide support and information not only for the people who have been treated for cancer but also for their partners and spouses. The centre is situated in Eccles Street and through education, support, counselling and complementary procedures for instance relaxation and stress management the individual gains huge benefit during and post treatment. The centre is open to both male and female and all comers are welcome. An important statistic which ought to be noted is that there were 7,402 visits made to the centre last year. People who attend are never charged and donations are obviously greatly appreciated.

Because of the success of the centre in Eccles Street, another similar centre has opened up in Cork while a further centre has been given the go-ahead from Galway. It is only when I paid a visit before Christmas that you actually realise the full extent of what they do. While I appreciate that all charities are very

(left to right) Barra O’Cochlain, John Glynn and Mark Ronayne at Fitzwilliam.
I believe that the opportunity to meet with lawyers outside our jurisdiction can only help to enhance our profile as an Association. The exchanging of ideas and opening up of opportunities and contacts for members of the DSBA is always to be encouraged.

Orla Coyne

DSBA ATTEND TRIPARTITE

Chairman of the Belfast Bar Association, Gavin Patterson, presents a framed photograph of herself at their Annual Ball to DSBA President, Orla Coyne.

MEETING IN BELFAST

We received an invitation from the Chairman of the Belfast Bar Association, Mr Gavin Patterson, to attend a weekend of events in Belfast together with the President of the Liverpool Solicitors Bar Association Mr Paul McCarthy. Kevin O’Higgins, Brian Gallagher, Michael Quinlan and myself attended.

The event was highly organised, culminating in a dinner on Saturday the 21st day May 2005. During the course of the evening many matters were discussed between the solicitors who attended not least the ongoing development of Continuing Professional Development on-line which Belfast is also seriously considering. This meeting between the three Bar Associations always proves to be fruitful both in ideas and contacts.

Towards the end of the meal I was presented with a framed photograph by Gavin of their annual dance which I attended in January last. This Tripartite meeting which had not been held for a number of years was revived by the Belfast Solicitors Bar Association. This allowed the ‘war stories’ to commence!

Orla Coyne

YOUNGER MEMBERS GO TO CORK

The Dublin Solicitors Bar Association Young Members Committee decided it was time to take a break from their busy schedule to visit the more recently qualified members of the Southern Law Association and where else for such an occasion other than the European Capital for Culture 2005. The weekend of the 15th April to the 17th April was allocated for the event. Since the events on the programme calendar in Cork for that weekend ranged from contemporary dance to opera and from classical art to modern sculpture, it seemed to be the place to go.

Many worked at tremendous speed to clear their desks in order to make the 5pm direct train to Cork. Upon prompt arrival in Cork a reception was held in the Metropole Hotel to assist the interaction between the members of the DSBA and the SLA. This allowed the ‘war stories’ to commence!

Orla Coyne

On Saturday everyone dispersed throughout the City and enjoyed the culture, which was made all the more enjoyable by the beautiful sunny day. That evening there was a large gathering of members of the DSBA and the SLA for a wonderful meal in Luigi Malone’s Restaurant accompanied by some of Luigi’s specialist cocktails. The night drew to a close a lot later!

The Young Members Committee would like to thank the SLA for the welcome which was received in the European Capital for Culture 2005. The Committee was delighted to have the opportunity to encourage collegiality between the DSBA and our colleagues in the SLA. Everyone really enjoyed the weekend and the Young Members Committee look forward to welcoming the SLA in Dublin’s fair city hopefully in the near future.

The Committee would highly recommend a trip to the European Capital for Culture 2005 and if anyone is considering such a trip in the near future the website at www.cork2005 should prove most worthwhile.

Aine Burke

DSBA COUNCIL GOES TO TALLAGHT AND SWORDS

Orla Coyne has been following the tradition of her predecessors and has brought the DSBA Council Meetings for April and June to Swords and Tallaght. On each occasion, the President has invited local practitioners and the audience has been addressed by law Society President Owen Bimchy and Director General Ken Murphy. Both were enjoyable and fruitful evenings, not least for the Law Society men who had some interesting questions to answer!

“Lord Mayor of Tallaght”, John Glynn hugs Orla Coyne and Geraldine Kelly.

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Aine Burke

DSBA Council Members and local practitioners meet Law Society Director General Ken Murphy and President Owen Bimchy in Tallaght.
We were delighted to be able to honour nearly 60 solicitors to a mid-May lunch in a Dublin Club, all of whom were over 50 years qualified.

This event is now in its sixth year and is becoming one of the most popular functions put on by the Council of the DSBA. In a very witty address to the large gathering, DSBA President, Orla Coyne, delved into the archives for the year 1955, being the particular year being celebrated and in which Dermot J. Gardiner, Fintan P. Clancy, former President of the DSBA, Gordon A. Henderson and Max William Abrahamson had qualified. Orla regaled the gathering with the price of butter and spuds and all the old reliables at the time. Apparently it was a very bad winter with serious flooding and what struck those of us who have enjoyed practice in the more affluent times was how fortunate we had been notwithstanding all the vicissitudes thrown at us.

DSBA Council Members in attendance apart from the President, Orla Coyne, included Vice President, Brian Gallagher, Secretary, Kevin O’Higgins, Programmes Manager, John O’Malley, PRO, David Bergin, Council Member, Pauline O’Donovan and Council Member, Aaron McKenna. A number of Past Presidents also in attendance included John O’Connor, the originator of this great occasion, Gerard Doherty, Hugh O’Neill, John Hooper, Justin McKenna, Michael D. Murphy and Terence E. Dixon. The DSBA would particularly like to record its appreciation to AIB for their kind and generous patronage on this occasion, which we hope will continue to be an annual feature.

In thinking of next year, would any Dublin based colleagues who qualified in 1956 be good enough to contact our Administrator at 661 0067 with their details.

Kevin O’Higgins
Girl Power

OK, I know the heading on this column is trite but the alternative was “Sisters are doing it for themselves” and no-one could have handled that. So what could have driven your columnist to such a hackneyed Spice Girls quote? Well, in case you hadn’t noticed, women are quietly taking over the solicitor’s profession. It’s been coming for years but, in the next decade, women will become the majority gender. It’s not just here either, all of the solicitors professions in these islands are finding the same. The numbers of solicitors entering the profession has been dominated by women for the last ten years and in the last five years, the professional practice courses have had a woman/man ratio of on average 2 to 1. So why is this? Well, it hurts to say it but the answer is simple – girls are smarter than boys. It is an inescapable conclusion. I have grappled with this statistic for a while now and tried to convince myself that men were simply attracted to more virile trades like bricklaying or carpentry but the reality is that the law is still a very attractive profession for any gender and girls are just doing better in exams. They are outperforming boys in the Leaving Cert, university exams and then ultimately the final entrance exam to Blackhall Place. I’m afraid we proud blokes are just going to have to cope with being second best.

So what’s the big deal? The age-old gender debate is the problem. If our profession is be dominated by women in the future, then things are going to have to change. For years, it has been a man’s world and the majority of the partners and managing partners have been male. Mathematics now tells us that this cannot continue and we may have to change the way we view our work practices.

Most women get married and the vast majority of them have children. Solicitors are no different. What then happens is that the female solicitor is faced with a choice. Career advancement or child care priority. It is no surprise that most women put their family first. This is not a sign of a lack of ability or ambition. It is simply the reality of modern day living. Most find this choice a very difficult one to make and struggle with it and their working lives for some time before succumbing.

But it doesn’t have to be like that. It is possible to have it all. However, it requires flexibility on both sides, particularly that of the employer. Over the last few years, more and more firms are realising that unless they provide an alternative to the ten hours a day, five days a week routine, that they will lose some of the best talent in the legal profession.

More and more, we are seeing young (and older!) mothers on four and three day weeks with reduced hours. Some firms are extremely progressive and they are seeing the benefits. Other firms could learn from this. Many offices fight hard to get the best trainees on the market, train them particularly well, keep them on and turn them into fine solicitors. It would be ludicrous to then let them go purely because of a misguided adherence to the five day week.

The argument is frequently made that certain specialties do not lend themselves to part-time or reduced hours working. It is certainly true that some areas are more suited than others but almost any job is doable in a shorter time period if you have the appropriate support in your job and at home. I was speaking to a litigator recently who has been working reduced hours for some time now. She works from eight until three and although it’s difficult, she can handle it. She simply arranges her meetings for those hours and, while on occasion, she has to work longer, she has the support at home. Most of the time, however, she picks up her children from school and goes home. Her clients know her hours and they respect them. She is a partner in her firm.

Our litigator is not alone though. Even in transactional work, more mothers are arranging time to suit their families and the roof hasn’t caved in yet. Now, it mightn’t suit your firm and if so, that’s up to you. But don’t expect to hold onto the best female solicitors in the future.

What we have to be wary of is a new “brain drain”. If alternatives are offered and encouragement of advancement provided, then it will all work out fine. Which is more than can be said for the Spice Girls.

Stuart Gilhooly