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LAW SOCIETY

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OF IRELAND

HABEAS CORPUS

Patents, medicine, and the human body

EU AI, OH!
The EU Council and parliament conclude negotiations on the *AI Act*

Ó CEALLAIGH'S HEROES
The *Gazette* speaks with veteran solicitor of 70 years Seán Ó Ceallaigh

LAND AND FREEDOM
Claims to ownership by adverse possession will only be upheld if proven

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gazette
LAW SOCIETY

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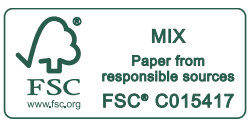

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FEATURES

REGULARS

Active engagement

Representing the profession is a key function of the Law Society, and it's important that we continue to represent the perspective and expertise of solicitors. Over the past few months, there has been active engagement with Government departments and key public bodies to help resolve some of the more challenging issues currently facing practitioners. Over the next few months, along with the director general Mark Garrett and other Law Society representatives, I intend to devote a lot of time to working on these issues.

In the area of property and conveyancing, the Law Society has communicated and met with Tailte Éireann to highlight that the recent and surprising changes to registration practices have given rise to a high level of confusion and delay. Following consideration of the views of the Law Society, Tailte Éireann has agreed that it will now specify the "first rejectable error identified" on any application that is to be rejected, and so will reverse its earlier practice of rejecting applications with no reason given. Discussions will continue with Tailte Éireann in order to improve the process in everyone's interest, especially those of the public.

Productive meeting

There was a productive meeting in the last few weeks with members of the Banking and Payments Federation Ireland on certain issues, including accountable trust receipts from lenders, redemption letters, take-up time for title deeds, and various special conditions in loan offers.

We have been corresponding with Revenue on residential zoned land tax to seek clarification on the related legislation, while a webinar by Revenue on local property tax is being planned to address common practitioner queries.

During March and April, the Law Society will attend three meetings in the Department of the Taoiseach to discuss improvements in probate and conveyancing practice.

Enduring power of attorney

I know that solicitors still have significant concerns about the new arrangements for EPAs. The Law Society shares those concerns and is engaging with the DSS and with Government. We have highlighted the difficulties for clients and solicitors engaging with the DSS Portal system, which ultimately means that EPAs cannot be created in urgent circumstances. We have also written to Government noting that urgent changes are required to the *Assisted Decision-Making (Capacity) Act 2015*.

Legal-aid fees

Last year, we welcomed the increase in criminal legal-aid fees paid to solicitors in Budget 2024 as a start on what is required. More needs to be done to achieve a sustainable, effective criminal legal-aid system, and we are engaging with the Department of Justice on the new process that was announced as part of Budget 2024.

In the area of civil legal aid, we are working to restore rates paid to lawyers on the Civil Legal Aid Family Law Private Practitioners' Panel, and with the Civil Legal Aid Review Group to determine appropriate next steps.

The Law Society has made an initial submission on the new strategic plan for the Courts Service. We will continue to engage with other stakeholders and subject-matter experts so we can collaborate in a meaningful way on the new plan.

Date for your diary

The Calcutta Run will take place in Dublin on Saturday 25 May, and in Cork on Sunday 26 May. It's heartwarming to see so many firms represented at this significant annual event and to have collectively raised over €5 million over the past 26 years to help the less fortunate in Dublin and Kolkata.

This year, our goal is to raise €350,000 in aid of The Hope Foundation and the Simon Community. I'm looking forward to meeting many of you on the day.

LAW SOCIETY OF IRELAND

> OUR GOAL IS TO RAISE €350k AT THIS YEAR'S CALCUTTA RUN

BARRY MacCARTHY,
PRESIDENT

THE BIG PICTURE

SPRING SONG

The Chureito Pagoda, located in the Fuji Five Lakes region near the northern base of Mount Fuji in Japan, is seen here veiled in cherry blossoms in spring, under the watchful eye of a snow-capped Mount Fuji

PIC: SEAN PAVONE, SHUTTERSTOCK

Sara Twomey, Bríd Kenny, Andrew O'Neill, Ciara Hennessy, and Kate Meenan

Graduates attending the Law Society of Ireland's parchment ceremony on 25 January 2024

Ruth Cormican and Law Society past-president James MacGuill

(Front, l to r): Ruth Cormican, Enda Mulkerrin, Genevieve Lynch, and Clodagh McGreal; *(middle, l to r)*: Ciaran Cummins, Lorna Cranny, Hristina Ignatova, Anjusha Puthan Purayil, and Ronan Deasy; *(back, l to r)*: Vicky Eckel, Amy Collins, Naoise Anderson, Conor O'Leary, Annemarie Shea, Catherine Walsh, Anthony Hopkins, and Dia Silverstein

PICS: JASON CLARKE

Sean Claffey and Tamara McLaughlin

Ciara Callan, Aedin McHugh, Aidan McDonnell, Ciara Murphy, Lucy Mulvaney, and Lauren Lynch

Sophie Lawless, Jane Purdom, Conor O'Leary, Vicky Eckel, and Lisa Collins

Aoife McVerry and Shona Goring

Law Society President Barry MacCarthy with members of the Education Committee and special guests

Guest speaker Ms Justice Eileen Roberts encouraged the new solicitors to "always display integrity in your interactions with clients and in your dealings with colleagues and the courts"

Celebrating the recent 21st anniversary of Ballymun Community Law Centre (BCLC) were team members Hayley Keegan, Claire McSweeney and Sandra Mpanyira

Gary Lee (chair, Law Society Human Rights Committee, and former head of BCLC)

Barry MacCarthy and Mark Garrett were in the audience for the address of the guest speaker, Minister Roderic O'Gorman

Mark Garrett (director general, Law Society), Catherine Hickey (chairperson, BCLC), and Barry MacCarthy (president, Law Society)

Cork solicitors mark International Women's Day

Practitioners from the Duhallow region of north Cork gathered for a CPD and social event in the Grand Hotel, Tralee, on International Women's Day. The event focused on the experiences of female solicitors practising in smaller firms. Mary Cronin (solicitor, James Lucey & Sons, Kanturk) spearheaded the event with the aim of providing support, empowering female practitioners, and addressing practice-management issues

LAW SOCIETY OF IRELAND

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Diploma in Sports Law	23 October 2024	€2,660
Diploma in Education Law	1 November 2024	€2,660
Certificate in Immigration Law and Practice	7 November 2024	€1,725

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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.

04_24

Copyright lecture targets data-mining and AI

Prof Eleonora Rosati

The fifth IMRO/Law Society Annual Copyright Lecture will focus on music IP, data-mining exceptions, and the EU's *AI Act*.

The lecture will be delivered by Dr Mark Hyland (Law Society/IMRO adjunct professor of intellectual property), with guest speaker Prof Eleonora Rosati (Stockholm University).

The event will take place on Wednesday 1 May from 5.30pm to 7pm at Blackhall Place, Dublin 7. Attendance is free and offers 1.5 general CPD hours. Booking is now open at lawsociety.ie.

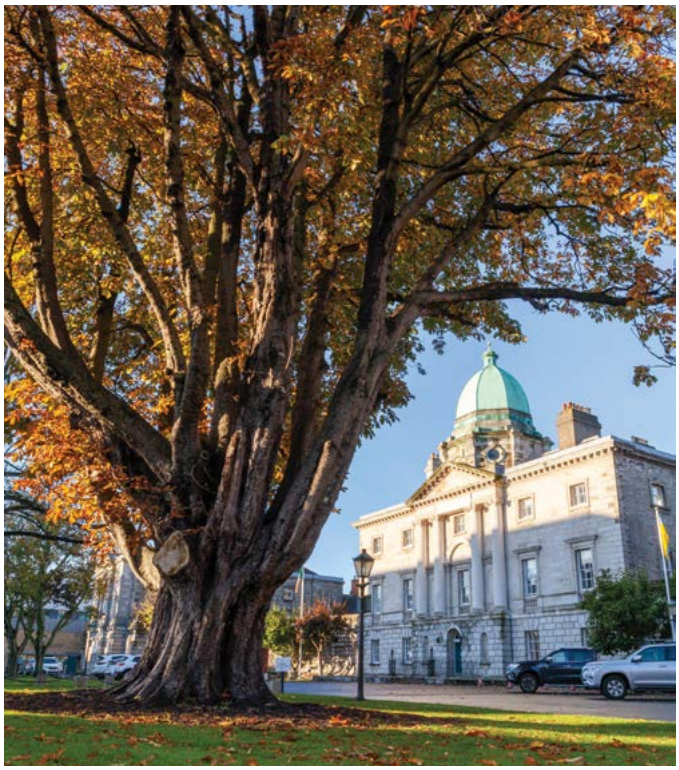
Small Practice Traineeship Grant open for applications

The Law Society's Small Practice Traineeship Grant for 2024 is now open for applications. The grant supports firms outside of large urban centres to foster the next generation of solicitors. In 2024, five such grants will be made available.

The scheme provides funding of €18,000 to the training firm over the course of the two-year training contract. It also provides funding of €7,000 to the trainee solicitor by way of a discount on the Professional Practice Course fee.

The proposed training firm should:

- Be located outside of the city and county of Dublin and the urban districts of Cork, Limerick, and Galway,
- Be a small firm, consisting of five or fewer solicitors (including principal, partners, consultants, and employed solicitors),
- Be able to comply with the related/connected persons rule, as set out in the scheme, and
- Agree to pay the trainee at least the living wage (currently €14.80 per hour).



For more information, visit lawsociety.ie and download the rules for the scheme and application form. Applications close on 7 June.

Cautious welcome for IAF changes

● The Law Society's Business Law Committee has outlined the key changes made by the Central Bank to the procedures it will apply when investigating and sanctioning senior executives and other employees for violations of financial-services rules.

The changes are set out in guidelines on how the regulator will implement its powers under the *Central Bank (Individual Accountability Framework) Act 2023*. They follow a public consultation that attracted submissions from 13 stakeholders – including one from the Law Society in June 2023 that focused mainly on the due-process rights of defendants under investigation.

Rights of defence

The committee says that, because of the consultation, the Central Bank has improved rights of defence at the investigation stage of the process. The procedures now provide an opportunity for a person under investigation to respond to allegations made against them at an earlier stage in the investigation process.

The revised guidelines also allow a defence team to respond to the initial notice of investigation that sets out which alleged breaches of the rules are under investigation.

The committee has also welcomed "an important new step" that improves due process at the investigation stage. The procedures now provide that a draft investigation report will be issued to the party under investigation, before delivery of a final investigation report.

The Central Bank has also taken on board comments on the timeframe for a defendant to respond to the draft investigation and has taken "a more nuanced outlook" on this, the committee says.

The revised guidelines also contain enhanced safeguards, clarifying that important investigative and decision-making functions will be split between separate Central Bank officials.

More flexible approach

The committee also highlights a more flexible approach to confidentiality, with the Central Bank stating that "recipients of confidential information may disclose it where required to do so by law or to their legal advisor". The revised guidelines recognise that there may be other circumstances where information needs to be shared.

The Law Society committee has also flagged changes that give defendants improved access to lawyers, with the guidelines now explicitly stating that an interviewee may be accompanied by an independent legal representative.

The committee has questioned, however, why the Individual Accountability Framework guidelines state that a lawyer is "not expected or required" to attend at the interview stage – pointing out that the guidelines also seek to restrict the role of a lawyer at any such meeting.

Concern expressed

In its submission to the consultation process, the Business Law Committee expressed concern that the Central Bank's settlement procedure, used to impose fines of over €400 million on firms to date, may also be heavily used when prosecuting individuals, rather than businesses.

The committee welcomes that the IAF guidelines no longer state that the undisputed-facts settlement procedure will be the Central Bank's primary or preferred settlement system.

However, the committee points out that this procedure is available only before an investigation is completed and, as the name suggests, allows defendants limited opportunity to contest the Central Bank's findings of fact.

Law Society team will don the green jersey at Jessup

● A Law Society team comprising Killian Farrelly (Matheson), Aoife O'Carroll (Arthur Cox), Aisling Tully (A&L Goodbody), David Leen (McCann FitzGerald), and Robert Dinan (Arthur Cox), guided by coaches Dr Thamil Ananthavinayagan and Dr Freda Grealy, were successful during the European rounds of the 2024 Philip C Jessup International Law Moot Court Competition. The team will represent Ireland at the international finals in Washington DC, which take place from 30 March to 6 April 2024.

Street Law at Trinity Comprehensive

● Ballymun Community Law Centre collaborated with the Law Society's Street Law Programme to deliver an eight-week Law Club in Trinity Comprehensive. The students even got the opportunity to take part in a mock trial in the moot court room at Blackhall Place.

ENDANGERED LAWYERS

DIALA AYESH, PALESTINE

Diala Ayesh

● Human-rights lawyer Diala Ayesh (28) was arrested by Israeli forces at a checkpoint near Bethlehem in the occupied West Bank on 17 January. She can be held in administrative detention without trial or charge for four months.

According to the Addameer human-rights organisation, she was subjected to assault, threats, and insults by Israeli soldiers during her arrest. She is now being held in Damon Prison, along with 80 other Palestinian women prisoners.

She became known due to her work over several years in defending prisoners, often without payment, in both Israeli and Palestinian Authority (PA) prisons. During these visits, she documented the harsh and deteriorating conditions that Palestinian political prisoners, including human-rights defenders, have been enduring.

In the aftermath of the Hamas massacre and Israeli invasion of the Gaza Strip in early October, she set up a volunteer collective of women lawyers to follow up on the unprecedented numbers of Palestinians being arrested by Israeli Defence Forces in the occupied West Bank and East Jerusalem – that is, outside the Gaza Strip.

"She would train these female lawyers to conduct visits to the occupation's Ofer Prison, particularly amid this information blackout about prisoners," Muhannad Karajeh (former colleague and head of Lawyers for Justice) told the Al Jazeera news channel.

Ayesh came to prominence as a human-rights defender during her time at the Ramallah-based Lawyers for Justice, representing Palestinian political detainees in PA prisons. Her efforts to monitor and document abuses against Palestinian detainees made her a target for both the Israeli Defence Forces and the PA.

Around 7,000 Palestinians arrested in the occupied West Bank and East Jerusalem since the assault on Gaza are held in administrative detention.

"This campaign includes activists, human-rights defenders, and political leaders," Tala Nassar of the Addameer prisoners' rights group told Al Jazeera. "It is important to note that every female that is arrested is violated in one way or another. They are all facing threats, intensive strip searches, verbal assault, and physical violence."

Alma Clissmann is a retired member of the Law Society's Human Rights and Equality Committee.

Tánaiste opens new Cork HQ

Tánaiste Micheál Martin congratulates managing partner Flor McCarthy on the opening of the new offices of McCarthy & Co in Clonakilty, Co Cork

● Cork firm McCarthy & Co Solicitors LLP celebrated the opening of its new offices at the West Cork Technology Park, Clonakilty, on 8 March.

Tánaiste Micheál Martin officially declared the offices open on International Women's Day. The launch date was fitting, given that McCarthy & Co was founded 37 years ago by pioneering solicitor Ann McCarthy.

Having previously had successful careers as a theatre nurse and transatlantic flight attendant in the 1960s and '70s (sadly, her career came to an end due to the marriage ban then in force), Ann went on to qualify as a solicitor in 1984 and set up her own business as McCarthy & Co in 1987, while raising a family of four boys. She was encouraged and supported by her husband Joe, who had qualified as a solicitor in 1969 and practised in West Cork for over 40 years. Their four sons now carry on Ann's vision for the business today. Flor, John, and Joseph McCarthy are currently solicitors with the firm, while Paul McCarthy is training as a solicitor.

Managing partner Flor McCarthy says: "We are extremely proud and privileged to continue Ann's legacy here in this wonderful new base for McCarthy & Co. This move positions us perfectly for further growth and will enable us to better serve the many great clients that make us all that we are."

Trainees raise €14k for Red Cross

PIC: CIAN REDMOND

Ross McMahon (chair, EU and International Affairs Committee), Ali Magee (corporate fundraising coordinator, Irish Red Cross), Barry MacCarthy (Law Society president), Emma Cooper (student advisor, Law Society Education Centre), and Cormac Little SC (member of the EU and International Affairs Committee)

● A table quiz for PPC trainees on 20 February raised more than €14,000 for the Irish Red Cross. The event was held in the Vanilla Café at Blackhall Place and raised funds for the Palestine Red Crescent Society and the Irish Red Cross Ukraine appeal. The organising committee wishes to thank GAM Investments for making a generous donation to this extremely worthy cause. On 6 March, Law Society President Barry MacCarthy presented a cheque for €14,385 to Ali Magee of the Irish Red Cross. The quiz was hosted by the PPC Connect Committee and the Law Society's EU and International Affairs Committee.

Tell me a story!

● Trainee solicitors from the PPC 2023 cohort have embarked on an educational initiative to promote literacy and forge connections with students at Stanhope Street Primary School.

Every Tuesday, a dedicated group of trainee solicitors visits the school to engage with senior-infant students in shared reading sessions. The trainees and pupils look forward to these classes, where favourite books are brought to life by the volunteers through animated discussions and lively conversations.

For the volunteers, guiding children through the world of storytelling is a rewarding experience, while the youngsters are encouraged to share their creative perspectives on the stories. The project is fostering a love for learning and reading among the junior infants, with the hope that it will provide the groundwork for great possibilities in the future. This endeavour is just one example of the Law Society's engagement with the local community and underscores the significance of educational outreach.

IRLI IN AFRICA

ECONOMIC AND FINANCIAL CRIMES

Keynote speaker Martha Chizuma (director general of the Malawi Anti-Corruption Bureau)

● Irish Rule of Law International (IRLI) operates across several partner countries, including Malawi, Tanzania, and Zambia, with projects also in Somalia and South Africa. Our work advances the rule of law and human rights, harnessing the skills and knowledge of justice-sector actors and institutions across the island of Ireland.

One recent aspect of our work in Malawi has been to support our counterparts in the area of economic and financial crimes. In November 2023, together with colleagues from the Attorney General's Alliance – Africa Programme, we organised a study visit for members of the newly established Financial Crimes Division of the Malawi High Court to their counterpart institution in Kenya, which is renowned for being at the forefront of handling economic and financial-crime cases in the region.

At the start of February, IRLI held a two-day conference in Malawi, 'Economic and financial crimes: information and experience sharing – Irish, regional, and local perspectives'. Bringing together representatives from all of the major relevant Malawian institutions, the conference was opened by Irish Ambassador Séamus O'Grady and Chief Justice Rizine Mzikamanda SC. It also included keynote speeches by the judge in charge of the Financial Crimes Division and the director general of the Anti-Corruption Bureau. Both outlined the challenges facing the justice sector and the opportunities for improved working practices.

Irish expertise was represented by online contributions from Mr Justice Peter Kelly (president of the High Court, retired), Barry Donoghue (deputy director of the Office of the DPP, retired), Lynne Carlin (assistant director, Public Prosecution Service for Northern Ireland), and a team from A&L Goodbody's Dublin office. Excitingly, a regional perspective was also shared through the expertise of Liya Tembo of Zambia's Financial Intelligence Centre.

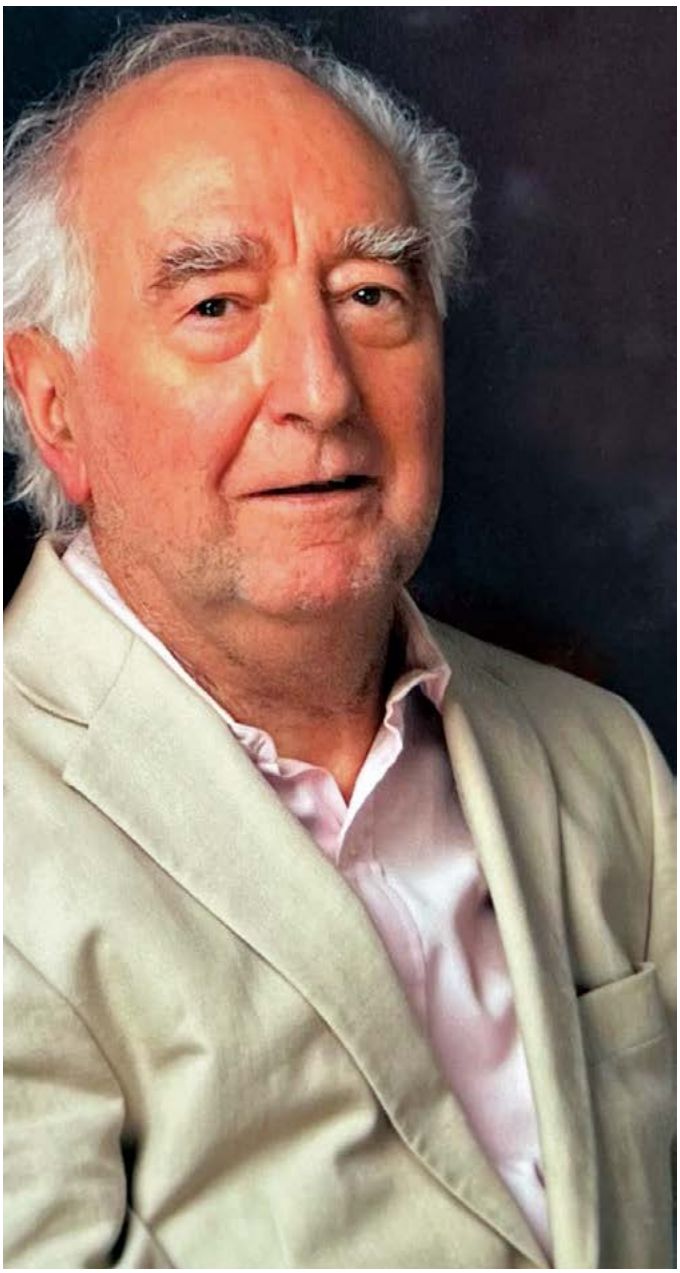
The conference sparked much debate on the issues and discussion on next steps and, while there are many hurdles to overcome, it was heartening to see the appetite for improved handling of economic and financial-crime cases as a result of IRLI's work.

Sean McHale is acting executive director of Irish Rule of Law International.

Cairbre Finan Snr 1946 – 2023

Cairbre Finan was a man of few words. In a nutshell, he was a respected gentleman who never complained – a great friend with a dry-wit humour. Born in in 1946, in Castelrea, Co Roscommon, he was raised in a family where hard work and academics were encouraged. He went to school at Belcamp House, Co Dublin, and studied hard. After the Leaving Certificate, he applied for legal studies in Dublin, qualifying as a solicitor at the very young age of 20. So began more than 50 years in legal practice.

It wasn't an start easy, however. Cairbre accepted a position in a small firm in Tipperary, only to learn that the principal partner had an alcohol-addiction problem and a terminal illness. In typical fashion, and unfazed, he put his head down and got to work, running the practice for two-and-a-half years on his own, before his partner died.



Fresh pastures

This provided the young solicitor with the opportunity to move to fresh pastures, transferring to Naas, Co Kildare, in 1970, and accepting a position at Wilkinson & Price. He enjoyed an improved social life, attending events and parties in Naas and Dublin. He even took a stab at learning French at the Alliance Française in Naas, where he met his future sister-in-law, Dee. She pointed him in the direction of her sister Mary, who was seeking an eligible bachelor!

A lifelong romance developed, they married, built a house and settled in Naas. Four children followed in the next seven years: Peter, Cairbre Óg, Conor, and Orlaith. During these years, he began building his practice at Wilkinson & Price. He would spend the next half century working there. His sense of duty, hard work and level of intelligence led to many of his clients remaining with him for all of half a century. In talking about Cairbre, it's impossible not to mention how cool, calm, and collected he was. He never complained and, even under the most stressful or annoying circumstances, kept his head.

One example that reveals his coolness harkens back to 1989, when Cairbre happened to be visiting an art exhibition in Dublin. The gallery was just closing, with Cairbre being the last to leave. Just as he was about to exit, a young fella in a cowboy hat and leathers came bursting through the door. Cairbre realised that he was now face to face with a very young Bono. Cool as you like, he asked him for his autograph, knowing that his sons were big fans. As Cairbre was leaving the gallery, a bunch of young women ran towards him, surrounded him and screamed for his autograph. When he quizzed them about who they were looking for, the response came, "Bono!". 'Cool Carb' had been mistaken for a global rock star!

Best lawyer ever

His son Cairbre Óg has worked alongside him in the office for the past 17 years, taking on the baton. His son Peter spent three years working there, too, before moving to foreign shores. Indeed, he still maintains that, having worked with lawyers from all over the world, his dad was the best lawyer he has ever worked with. This probably explains his loyal clients. He was more than a lawyer – he was someone you went to when you just wanted to ask, "What should I do?"

An avid sports fan, Cairbre had a heart condition diagnosed in his youth. In true style, it didn't hold him back. He became a champion bridge player, table-tennis player, and golfer. He would go on to win the coveted 'Golfer of the Year' trophy in Naas in 1996. Such was his prowess at the game that, one December, following a number of successful Christmas competitions, he had bagged nine full-sized turkeys.

Life has to end, but love doesn't. There's a Hebrew proverb: "Say not in grief, 'he is no more', but be thankful that he was." Or as Cairbre would have put it: "It's a great day for Naas!"

Ar dheis Dé go raibh a anam dílis.

PF

Attracta O'Regan 1968 – 2023

Attracta O'Regan, head of professional training at the Law Society, passed away in June 2023. She had been battling illness very bravely.

She was a lawyer, an educator, an advocate, a champion, a valued colleague, and a true friend. Her almost relentless positivity, her kindness, her interest in people, and her mischievous sense of fun will be long remembered.

After a degree in law from NUI Galway, Attracta qualified as a barrister. She practised for eight years and established a reputation, particularly in insurance law, where she wrote the leading text in the area and was the founding editor of the *Irish Insurance Law Review*. She also practised in criminal and family law.

As a barrister, Attracta lectured and tutored for the Law Society on a part-time basis. She was one of the authors of the course text *Criminal Litigation*, published by Oxford University Press. She joined the Law Society in 2005, initially, as the course leader for a part-time solicitors' training course. Attracta took on this role with efficiency, humanity, and a can-do attitude.

For 16 years, she headed up its continuing legal education programme, known as Law Society Professional Training. She was responsible for the direction and management of professional training for the organisation's 12,000 solicitor members. Attracta initiated many projects and plans, and its current programme of part-time education was shaped by her. She made a major contribution to solicitor education, and her work will have an impact for generations to come.

Attracta was an innovator and an original thinker. She devised new education formats to reach out to as many solicitors as possible – through an incredible variety of conferences, master classes, and seminars. A highlight was the introduction of regional events, known as 'clusters', which brought together local bar associations to be taught on topics that were relevant to them.

Another major achievement was the establishment of the Skillnet training network, funded by the national Skillnet organisation, which enables the Law Society to provide training that wouldn't otherwise be viable. Her vision and originality were evident in her work on this. Attracta loved working with Skillnet and enjoyed networking with other sectoral Skillnets and the staff of the national organisation.

Her strength in building relationships can be seen in the extent of partner organisations that she worked with, both in Ireland and throughout the world – from the Institute of Engineers to the Irish Medical Organisation, and all the way to the European Commission. There are few sectors that she did not collaborate with.

Ireland wasn't large enough for Attracta, however – in more recent years, she set her sights on global legal education. She was responsible for securing international funding to train lawyers in countries where the law itself was threatened.

Her expertise and insights were recognised at European level. She was a rule-of-law advisor to the CCBE, which involved compiling reports on human rights and the rule of law in states where it was threatened, and making recommendations. She chaired a group that secured EU funding to establish a website that brought together legal-education providers from all over Europe. She worked on programmes with the European Law Foundation and other EU training bodies.

After working with the Law Society for several years, she jumped the fence and requalified as a solicitor. She took great pride in that qualification and became a vocal champion of the profession. A postgraduate certificate in education was added a year later. In her last year, she had embarked on a PhD programme and brought her usual enthusiasm to it.

Attracta was an incredibly positive force of nature. She had so much more left to do. Above all, she valued people and took an interest in everyone she met. She leaves a formidable legacy that will endure for long into the future.

Ar dheis Dé go raibh a h-anam dílis.

T P K

ADVERTISEMENT FEATURE

Discover the Key Trends Shaping the Legal Profession in 2024 with Clio

Clio, the leading global provider of cloud-based legal technology, revealed the key trends shaping the future for lawyers in the Legal Trends Report. For solicitors, it is crucial to stay ahead of these trends to remain competitive and thrive. The report provides insights to help your firm grow from finance optimisation to AI integration.

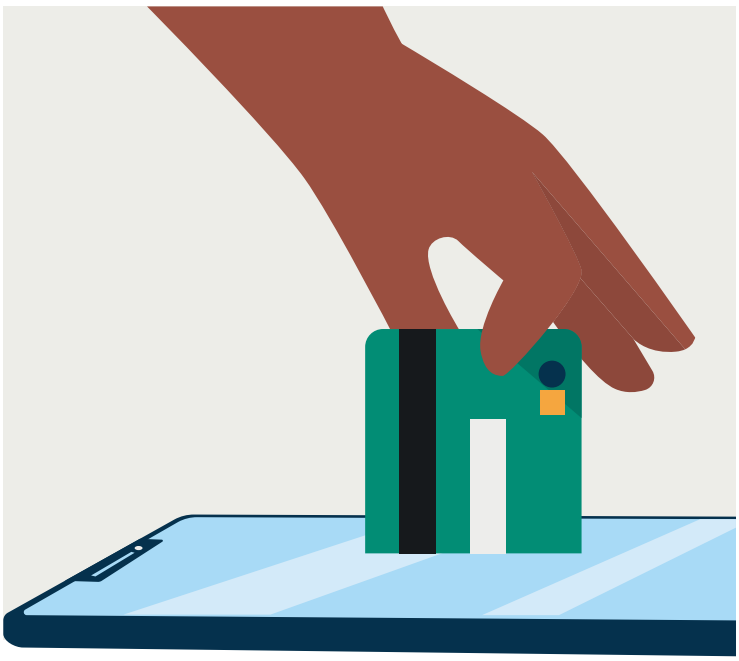
KEY TRENDS FOR 2024 FROM THE *LEGAL TRENDS REPORT*:

Steady Growth and Collections

Law firms are experiencing steady growth, with increased utilisation, realisation, and collection rates. On average, solicitors are working over 40% more cases and billing 70% more compared to 2016. However, collections have room for improvement; quick payment collection is crucial for success.

Online Payments

Implementing online payment options can significantly improve collection rates. According to the Legal Trends Report, firms using Clio Payments get paid twice as fast. Clio Payments, a secure payment solution, enables clients to make convenient online payments, resulting in faster collection times.



Cash Flow Management

"Lockup" measures the time it takes to receive payments for services rendered. The median lockup period is 97 days, indicating that firms have performed work that has yet to be billed or collected. Cloud-based legal practice management software like Clio can automate administrative tasks and reduce lockup times.

Client Payment Delays

Both solicitors and clients share responsibility for payment delays. 41% of solicitors say clients don't pay on time, and 24% said too many don't pay at all.

However, clients tell a different story; 15% say they never received a bill, and 28% say they waited a noticeably long time to receive their bill. Strategies such as encouraging electronic payments and investing in AI-enabled payment systems can reduce friction and expedite payments.

AI and the Future of Law

AI-powered tools are already impacting law firms, making operations more efficient and competitive. Despite some hesitancy, lawyers are increasingly interested in adopting AI technology to enhance the quality of legal services and improve decision-making—71% of legal professionals who want to use AI plan to do so within the next year.

Want to learn more? Read the full *Legal Trends Report* now and embrace the future of law. Visit clio.com/uk/LTR.

PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.

Changing lanes, changing gears

Most lawyers will start to consider, at some point, the transition from full-time employment to the next phase of their lives. Some may be uncertain or even anxious about what lies ahead. Similar feelings can arise during the transition process or in the years that follow.

The transition, often gradual, should not be about coming to a halt. It should be about "changing lanes and changing gears".

Strangely, society has not yet come up with a better word for this important life-adjustment than 'retirement' – a term that fails to capture the reality of the new, enjoyable, and stimulating ways of remaining active. These days, with improving life expectancy, most people can look forward to living long, active lives.

Finding new passions

As a former diplomat, including postings as Irish ambassador to the UK, the EU and Italy, my life has involved many transitions.

Following my retirement in 2018, I qualified as an executive coach, where my work now focuses on the issues that arise in the process of moving from a life dominated by work to a life offering a great range of new possibilities.

My own specific focus is on the transition from a lifetime shaped by formal work to a new way of living that can combine continuing fulfilment, with the enjoyment of a new work/life balance. Broadly, the same issues arise for people moving on from every walk of life, including lawyers. Lawyers can prepare for the transition by reflecting honestly – preferably at an early stage – on the change that lies ahead, and by being prepared to embrace it.

Psychologist Ian Robertson argues convincingly that continued personal fulfilment in life requires openness to three things: change, challenge, and learning. A good way to start reflecting on those objectives is to ask oneself what appears to be an easy question, but one that can be very difficult to answer: "What do I really want?"

Thinking about the phase of your life that now beckons after a full-time career in law can raise myriad questions. These thoughts can leave you feeling excited about options open to you – or perhaps a little uncertain about your direction and priorities.

Throughout my own personal experience of approaching the end of my career in diplomacy, and later moving on to new opportunities, I have been reflecting on the issues that arise in the context of such transition. Central to my reflections have been the insights I have gained into myself and others while training to be a coach. In my experience, this involves identifying options that would allow me to deploy the skills that I developed during my career, but also other options beyond my experience hitherto and outside my comfort zone.

As time goes on, it involves remaining open to adapting priorities and new opportunities. Of course, coming to the end of full-time employment is not only about seeking new 'employment-type' opportunities, but also about exploring a work/life balance that brings the most fulfilment and joy. g

Bobby McDonagh is an executive coach and former Irish ambassador to the EU and UK. Email: bobbymcdonagh@gmail.com; linkedin.com/in/bobby-mcdonagh-6994991b0.

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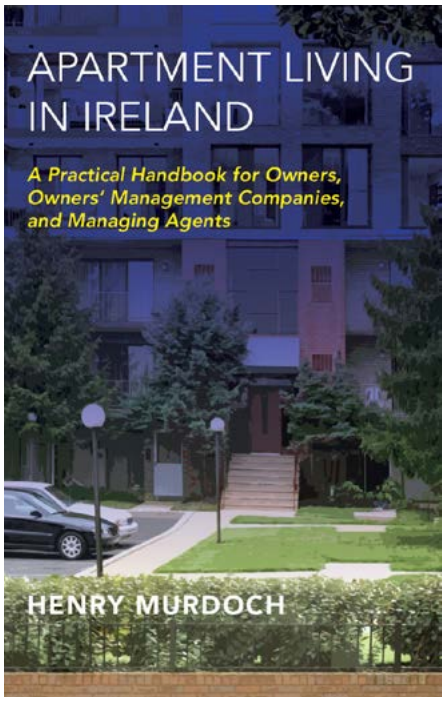
Apartment Living in Ireland

Henry Murdoch. Lonsdale Law Publishing (2022), lonsdalelawpublishing.com. Price: €30 (incl VAT).



● *Apartment Living in Ireland: A Practical Handbook for Owners, Owners' Management Companies, and Managing Agents* is a pleasure to read. It is extremely informative, practical, and written in an easy-to-follow, straightforward manner.

Henry Murdoch is a retired barrister and chartered engineer. Furthermore, he spent two years as the chairperson of an owners' management company. This gives him a particular expertise in respect of the content of this book.

The book deals with the facts and trends of apartment-living in Ireland, the relevant provisions of the *Multi-Unit Developments Act 2011* and the *Companies Act 2014*, and how these affect and work in practice for owners' management companies.

There is comprehensive material on the corporate governance of owners' management companies, the issues that can arise with the common areas (such as all-too-common leaks, or when these areas are not transferred to the owners' management company), service charges, and managing agents.

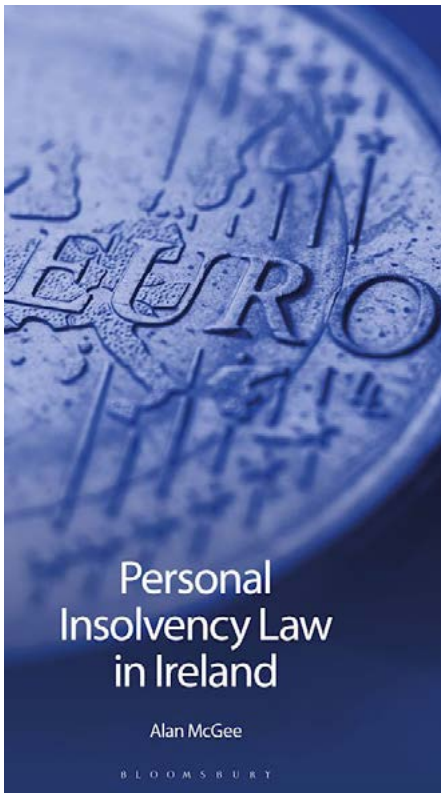
The layout and flow of the book make it extremely easy to follow and to dip in and out, as required. The language is conversational and down to earth. There are very clear explanations given, which will be helpful for both lawyers and non-lawyers. In each chapter, there are practical working examples dealing with how the law works, so far as it applies to owners' management companies. The book is full of practical tips and gives simple explanations of some complex issues, such as the beneficial interest in common areas. It also deals with relevant case law and explains it in a matter-of-fact manner. At the back, there are several very useful templates and guidance on what future changes are coming down the line.

In my view, this book will be a great resource for anyone involved with owners' management companies, whether they be directors, managing agents, members of an owners' management company, or professionals working in the area, including lawyers. The law in relation to multi-unit developments can be complex and the issues difficult to navigate, but this book presents and deals with all of the issues that can arise in a very practical, straightforward manner.

Suzanne Bainton is a solicitor with Liston & Company, Morehampton Road, Donnybrook, Dublin 4.

Personal Insolvency Law in Ireland

Alan McGee. Bloomsbury Professional (2023), bloomsburyprofessional.com. Price: €175 (incl VAT).



Around 30 years ago, I was asked to review a textbook for the *Commercial Law Practitioner* and, one day following the publication of my review, I was standing outside the Law Library in the Four Courts when I found myself rewarded for my efforts by a slap to the back of the head from the late, great, and still fondly remembered Twinkle Egan BL.

When I asked Twinkle what I had done to deserve this blow to my pate, I was informed that she had read my book review and wanted me to understand that one is supposed to say "nice things" when reviewing a book.

I can confidently say that I am unlikely to receive another blow to my older head as a result of reviewing this particular book – and not simply because Twinkle (sadly) is no longer with us, but because I find that I am in a position to say "nice things" about this work, and not simply because it is authored by fellow Corkman and solicitor colleague Alan McGee.

In his preface, Alan sets out his 'mission statement' (if I may term it as such), saying: "This book was written to address the knowledge gap in respect of the jurisprudence of personal insolvency law, so as to assist legal practitioners and personal-insolvency practitioners in understanding the law."

In my judgement, given that mission statement, Alan McGee has succeeded in his mission. But why rely on my judgement, when a judgement of no less an authority than Ms Justice Marie Baker of the Supreme Court is also available?

In her foreword to the book, Baker J states that, when first engaging with personal insolvency law, she would have been very happy to have had what she describes as this "very complete, useful and elegant text, which I am confident will be a handbook for practitioners, a guide for those contemplating recourse [to] the personal-insolvency regime, and a useful and very up-to-date text for judges".

The language used is clear and simple. Where, of necessity, reference is made to case law, the issues and principles involved are set out simply and the decision interpreted and explained, in context. Some practitioners who are the well-versed and skilled archangels in the heavenly world of bankruptcy and insolvency matters might, at times, seek to differ to some degree in their interpretations, but that is an area where the ordinary angels, who are your everyday general practitioners, might fear to, and have no need to, tread.

In the same way as every solicitor should know about the fundamentals of family law or mediation, every legal practitioner should also know about the fundamentals of personal-insolvency law. This book will certainly help to guide them on a safe path through that legal jungle. g

Bill Holohan SC is a solicitor at Holohan Lane LLP, Sundays Well Road, Cork.

District Court disaster

Dr Carol Coulter has argued that the proposal to allow the District Court to hear judicial separation and divorce applications should be welcomed. Keith Walsh SC argues to the contrary

> THE CHANGES, IF IMPLEMENTED, ARE LIKELY TO RESULT IN AN ILL-THOUGHT-OUT, UNDER-RESOURCED SYSTEM REPLACING ONE THAT COULD BE IMPROVED AT A FRACTION OF THE COST

Dr Carol Coulter, writing in the January/February *Gazette* (p20), argued that my concerns (raised in a winter *Parchment* article) that the provision in the *Family Courts Bill 2022* to move divorce and judicial-separation cases from the Circuit Court to the District Court were misplaced, and that the arguments against extending the jurisdiction of the District Court (following the establishment of a dedicated family-law jurisdiction at all court levels) do not stand up to scrutiny.

The only one

However, Dr Coulter, in her article, only referred to one of nine concerns raised by me – namely that the transfer of almost 6,000 judicial separation and divorce cases from the Circuit to the District Court would overwhelm the system. Dr Coulter relies on historical data she gathered in 2006-2007, based on 458 cases. She stated that 'only' 9% of 364 judicial separation cases went to a full hearing and, from an analysis of the contested cases, she claims that less than 5% of the total cases featured complex financial issues. No reference is made as to whether cases ruled on consent featured complex financial issues. No reference is made to the stage at which the judicial separation case was settled: was it settled prior to the issue of proceedings; was it settled immediately post issue of proceedings; were any interim applications made; was a defence and counterclaim filed; was case progression triggered; how many attendances at case progress occurred; was the case resolved on the date of the hearing?

Dr Coulter mistakenly states that there is no obvious reason why "the potentially 90% or so of cases (or whatever the proportion may be now) where the order is granted on consent cannot be dealt with by the District Court". She has made no provision whatsoever in her argument for any of the following, all of which were raised in my article:

1) The work and court time taken up by cases as they move on the journey through the Circuit Family Court, including default of appearance and defence applications, interim applications for section 32 reports where there are children, interim applications for maintenance, case-progression hearings, and applications for the court's directions on any matter. Dr Coulter seems to imply that cases settled on consent only require enough court time to rule the terms of settlement when, in fact, she has not taken into account the stage at which the terms are ruled. It is correct to say that many cases are settled, but they are all settled at different times in the Circuit Court journey, and each case will usually take some element of court time.
2) The fact that the infrastructure of the District Court is unsuitable for the conduct of divorce and judicial-separation cases – even though this is dealt with in some detail in my article.
3) The summary nature of the District Court, again as dealt with in some detail in my article.
4) The increase in the volume of family-law cases in the District Court to 55,205 in 2022, based on the Courts Service figures.
5) The fact that most judicial-separation and divorce cases will require more court time than the usual District Court summary matter.
6) The displacement of other cases dealt with in the District Family Court due to the likely reduction in time available for domestic-violence, guardianship, custody, access, and maintenance cases, leading to further delays.
7) The fact that the District Court is unsuitable to deal with judicial separation, divorce, and cohabitation cases, as it is a court of summary jurisdiction. The Law Reform Commission, in 1996, stated: "We do not believe that remedies such


PIC: SHUTTERSTOCK AI

as divorce, annulment, or judicial separation should be made available at the level of a court of summary jurisdiction."

8) That the transfer to the District Court of divorce and judicial separation is out of step with the entire courts system.
9) That no thought has been given to the financial implications of the proposed transfer and the resources required to provide new courthouses, set up entirely new District Court processes (when there is already a suitable system in the Circuit Court, which has detailed procedures in place to deal with interim applications, case progression, and applications for judgment in default).
10) That the objectives of the *Family Courts Bill* could be achieved without the necessity to move divorce and judicial-separation cases down to the District Court, namely by changing the current Circuit Court system to make it more efficient, which could be done by changing the rules to introduce earlier judicial intervention in cases – considering the imposition of cost sanctions where there is abuse of process or delay, improving case management of cases, granting further incentives to alternative dispute resolution, and earlier settlement of cases.
11) The most obvious result of the transfer to the District Court is likely to be frustration and delay. It is not likely to encourage quicker resolution of cases, nor lower costs, nor the management of cases more efficiently. Instead, it is likely to result in a system that is in need of overhaul being replaced with a system that does not work, and making things worse rather than better for those unfortunate enough to have to navigate this system.
12) The changes, if implemented, are likely to result in an ill-thought-out, under-resourced system replacing one that could be improved at a fraction of the cost. The likely result will be gridlock, delay, and absence of access to justice for those forced to seek a court hearing for judicial separation, divorce, cohabitation, and civil partnership cases.

Collateral damage

It should be apparent that the proposed move to the District Court will ultimately backfire on the most important people in the courts system – the litigants and their families. They will face delays, potentially higher costs, longer waiting times for everything – interim applications, contested hearings, and potentially also to rule settlements. Litigants and their families going through domestic-violence cases, access, custody, guardianship, and maintenance cases already in the District Court system are likely to be collateral damage. The influx of 5,000 to 6,000 additional divorce and judicial-separation cases to the District Court, whether they all settle at various stages or whether some of them run to full hearing or not, will undoubtedly cause further delays in an already overcrowded and under-resourced system.

Finally, Dr Coulter may have read further on in the *Parchment* article (titled 'Dublin family courts, Hammond Lane – nine years on'), in which I referred to the Groundhog Day-like announcement that construction will start on the new Family Justice Complex in 2026 and which *may* be built by 2028. My view is that we are unlikely to be in the new courts by the end of this decade.

It is nothing short of scandalous how low down on the priority list is family law – and the treatment of families who are trying to resolve very important family-law issues for themselves and their children. They are currently condemned in Dublin and around the country to litigate in unsuitable, unfit, and frankly inhumane conditions. One of the few things that could make that worse is by transferring divorce and judicial separation cases to the District Court. g

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Keith Walsh SC is a family-law solicitor based in Dublin. He has written extensively on this issue, on family law, and on practice and procedure in the District and Circuit Courts.

Patients pending

Johan Verbruggen assesses the recently enacted *Patient Safety Act* – and what remains to be done to ensure open, honest communication between doctor and patient when something goes wrong during medical treatment

STAKEHOLDER ENGAGEMENT IN GUIDELINE AND PROCEDURE FORMULATION MUST INVOLVE PATIENTS AND PATIENT-ADVOCACY GROUPS, IF THEIR RIGHTS AND DIGNITY ARE TO REMAIN FRONT AND CENTRE

The *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023* appears to be a step in the right direction. Patient safety involves identifying potential harm or injury that could be avoided, and taking necessary measures to prevent such risks for current and future patients. It is important that, in cases where a patient sustains injuries during medical treatment, clinicians and hospital staff strive to understand the circumstances and cause of the injury, learn from it, and use those lessons to improve the quality of services provided.

Patient safety incident?

The *Civil Liability (Amendment) Act 2017* defines a 'patient safety incident', in relation to the provision of a health service to a patient by a health-services provider, as "an incident which occurs during the course of the provision of a health service" which (i) "has caused an unintended or unanticipated injury, or harm, to the patient; (ii) did not result in actual injury or harm to the patient but was one which the health-services provider has reasonable grounds to believe placed the patient at risk of unintended or unanticipated injury or harm; or (iii) unanticipated or unintended injury or harm to the patient was prevented, either by 'timely intervention or by chance', but the incident was one which the health-services provider has reasonable grounds for believing could have resulted in injury or harm, if not prevented".

What is open disclosure?

This means communicating honestly and in detail with a patient or their family when there has been an unexpected harmful event in the course of their treatment in a hospital or under the care a doctor.

The concept of open disclosure is nothing new. In the 2008 report by the Commission on Patient Safety and Quality Assurance, *Building a Culture of Patient Safety*, it was said that "open disclosure following an adverse event should be supported through appropriate policies and practices which are well publicised and instituted widely".

The commission recognised then that every patient is entitled to open and honest communication regarding his/her healthcare, and to be informed regarding diagnosis and prognosis, treatment options and chances of recovery, if possible. The authors further stated: "If something happens to a patient in the course of treatment and care which impacts or could impact on the person's health or quality of life, that patient should be informed of this event, given an adequate explanation of the event, and reassured that measures have been taken to prevent such an event occurring again in the future to him/her or to anyone else."

Since 2013, the HSE's *National Open Disclosure Policy* has set out the professional and ethical approach to adverse incidents. There was a legislative footing for voluntary open disclosure in part 4 of the *Civil Liability (Amendment) Act*. There has always been a concern that voluntary open disclosure does not work in a health system that does not encourage it.

There was subsequently the HSE's *Incident Management Framework*, which reformed the previous approach to responding to patient-safety incidents and adverse events. It considered open disclosure to require an immediate action after an incident had occurred and had been identified. It is also stated in the framework that, where an incident involves a patient/service user, attention and effort must also be given to initiating open disclosure, as prompt, open, and transparent communication with the person affected and their support person is required.

Narrow definition

Schedule 1 of the *Patient Safety Act 2023* sets out the list of 'notifiable incidents' that are now subject to mandatory open disclosure. These are solely concerned with incidents resulting in death, including:

- Wrong site surgery or wrong surgical-procedure surgery

PIC: SHUTTERSTOCK AI

resulting in unintended and unanticipated death,
- Unintended retention of a foreign object after surgery, resulting in an unanticipated death,
- Any unintended and unanticipated death occurring in an otherwise healthy patient undergoing elective surgery, or where a health-service provider provides a service that is directly related to any medical treatment (the death must not have arisen from the illness or an underlying condition of the patient),
- Patient death associated with a medication error or due to transfusion of ABO-incompatible blood or blood components,
- An unanticipated death of a woman while pregnant, or within 42 days of the end of the pregnancy,
- An unanticipated and unintended stillborn child or perinatal death,
- An unintended death where the cause is believed to be the suicide of a patient within a health-service setting.

Section 8 of the act enables the minister to define additional circumstances as 'notifiable incidents', provided they meet certain criteria. There are, of course, a great many injuries sustained by patients every year that are not fatal, but that can prove catastrophic, life-changing, and life-limiting. These injuries and the circumstances that gave rise to them would not be the subject of a mandatory open disclosure under the provisions of the 2023 act.

It is therefore imperative that the minister expand the list of notifiable incidents to capture the more serious types of injury that some have been left with due to negligence, to ensure that they are informed properly of what has gone wrong in their treatment.

Duties to notify

Section 5 requires that, where a health-service provider is satisfied that a 'notifiable incident' has occurred, it shall hold a meeting in order to make open disclosure of the incident to the patient and/or 'relevant person'. The responsibility falls on the health-service provider, potentially allowing for selective disclosure. The timing and structure of that meeting is important. The Minister for Health and the HSE should act quickly to establish the appropriate procedures and mechanism around 'open-disclosure' meetings. The dignity of the patient should be the paramount consideration.

Section 6 sets out the obligation on health-service practitioners to notify the health-service provider of the occurrence of the notifiable incident, as soon as practicable.

Section 27 requires the health-service provider to notify the relevant external body within seven days. Depending on the provider involved, this will be HIQA, the Chief Inspector of Social Services, or the Mental Health Commission.


PIC: SHUTTERSTOCK AI

THERE HAS ALWAYS BEEN A CONCERN THAT VOLUNTARY OPEN DISCLOSURE DOES NOT WORK IN A HEALTH SYSTEM THAT DOES NOT ENCOURAGE IT

Guideline implementation

Section 77 provides for the issue of guidelines "for the purpose of providing practical guidance as regards the operation of, and compliance with, this act". This guidance will be crucial to the successful implementation of the new legislation.

Until such time as the procedures around notification and the timing of notification meetings are clearly set out, there will continue to be a concern that patients are not informed as early as they ought to be about a harmful event. Stakeholder engagement in guideline and procedure formulation must involve patients and patient-advocacy groups, if their rights and dignity are to remain front and centre.

Information

Section 18 outlines the information to be provided at the meeting, including the date and description of the incident, when it came to the attention of the healthcare provider, and the physical/psychological consequences for the patient. It also provides for the making of an apology, where appropriate.

Importantly, for health-service providers and their insurers, section 10 provides protection, in that any information provided during the course of the open-disclosure meeting, including an apology, shall not:

- Invalidate insurance,
- Constitute admission of liability,
- Be admissible as evidence in proceedings.

What is difficult to comprehend, but which is entirely possible, is a situation where a patient may be told frankly that their injuries are the result of negligent acts or omissions at the 'open-disclosure' meeting. Then, when litigating, they could be faced with a full defence, made to wait years for a hearing, and sit through a trial where an outright denial of liability is maintained. The patient, the doctors, and the lawyers would, in essence, have to pretend that information shared at the meeting, such as an admission of negligence, was not said. Who does that serve? Not the patient, and certainly not the taxpayer.

Cultural change?

It is said that the intention of the new act is to instil a cultural change in the doctor/patient relationship, to enhance learning, and ensure that openness and transparency are embedded across the health service.

The threat of a 'Class A' fine to drive a change in attitude is not conducive to an atmosphere of openness, and it remains incumbent on the HSE, hospital management, and the Department of Health to demonstrate through their actions, beyond implementing this act, that to acknowledge the harmful event and to discuss it openly with the patient is the right thing to do. That will take time. The HSE has operated an open disclosure policy since 2013, but many patients injured in the last decade will not have felt that they were communicated with properly, or at all, about what went wrong in the course of their treatment.

A welcome development is the creation of the *National Open Disclosure Framework*, prepared by the National Patient Safety Office of the Department of Health. The framework, informed by recommendations from the Independent Patient Safety Council, aims to provide overarching principles and a consistent national approach to open disclosure in health and social care in Ireland, which can then be drawn from to suit the needs of the various organisations.

The *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023* represents a meaningful step forward in patient safety, but the legislation – even when fully implemented – will not be a silver bullet. The concerns raised in this article emphasise the need for early action from the health service and Government, continuous scrutiny, and refinement in the implementation of this legislation. g

Johan Verbruggen is partner and head of medical-negligence claims at Fieldfisher.

LOOK IT UP

LEGISLATION:

- *Civil Liability (Amendment) Act 2017*
- *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023*

LITERATURE:

- *Building a Culture of Patient Safety* (Commission on Patient Safety and Quality Assurance, 2008)
- *Incident Management Framework* (Health Service Executive, 2020)
- *National Open Disclosure Framework* (National Patient Safety Office)
- *National Open Disclosure Policy* (Health Service Executive)

PICS: SHUTTERSTOCK

PATENTLY OBVIOUS

As contemporary technologies – including biotechnologies – develop, boundaries are blurring between what is patentable and what is not. Aisling McMahon explores the impact that patents are having on access to healthcare

A patent is a type of intellectual property right (IPR) that gives the rightsholder the ability to exclude or stop others from using an 'invention' (that is, a technology) under patent for commercial purposes for generally 20 years (referred to as the patent term). A patent is not, however, an automatic entitlement. Instead, applicants must apply for patent protection for the jurisdictions they are seeking this protection in.

The patent examination process considers whether the claimed invention meets three key patentability criteria: is the invention 'new' (novelty requirement); does it show an 'inventive step'; and does it have a 'technical' function (industrial application).

Alongside this, certain types of subject matter are not patentable – including, for example, discoveries of new naturally occurring materials (see article 52 of the 1973 *European Patent Convention* [EPC]).

Furthermore, there are provisions within 'European' patent law that exclude patents in certain contexts: for example, inventions whose commercial exploitation is against *ordre public* or morality are not patentable in Europe (article 53(a) EPC; article 6, *Biotechnology Directive*), nor are diagnostic, therapeutic and surgical methods (article 53(c), EPC).

The patent system varies, depending on the jurisdiction. By 'European', I mean the system within which the *European Patent Convention*, as amended, applies. This is an intergovernmental treaty signed by all EU

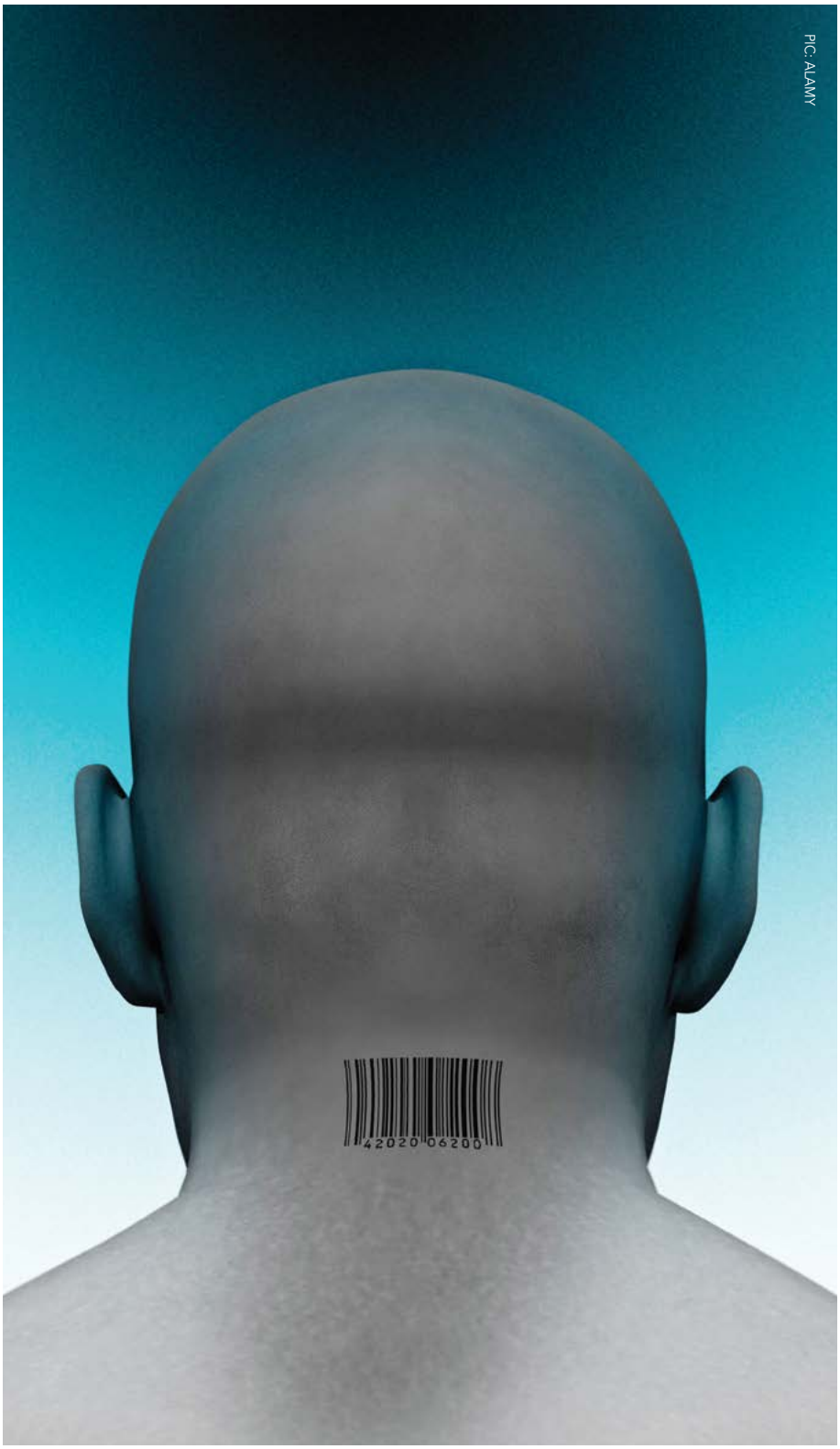
> A RANGE OF 'TECHNOLOGIES' THAT RELATE TO THE HUMAN BODY, INCLUDING ELEMENTS ISOLATED FROM OUR HUMAN BODIES, TECHNOLOGIES RELATED TO THE TREATMENT OF THE BODY, AND TECHNOLOGIES THAT CAN BE USED TO ENABLE BETTER FUNCTIONING OF OUR BODIES ARE PATENTABLE IN EUROPE

states and several non-EU states. This article focuses on EU states within that context, which are also bound by the *Biotechnology Directive* for patentability of biotechnological inventions.

Blurring of boundaries

The human body itself is not patentable (article 5, *Biotechnology Directive*). However, in practice, these provisions are often applied in a narrow technical manner in Europe. Furthermore, as contemporary technologies, including biotechnologies, have developed, there can be a blurring of boundaries between what is the human body and not patentable, and what is a 'technical invention' and therefore a patentable 'technology'.

Accordingly, a range of 'technologies' that relate to the human body, including elements isolated from our bodies (such as isolated human genes), technologies related to the treatment of the body (such as medicines and elements of vaccines), and technologies that can be used to enable better functioning of our bodies, including surgical tools and medical devices, are patentable in Europe. Importantly, how such patents are used by the rightsholders can have significant implications for access and delivery of healthcare.



PIC: ALAMY

To understand these implications, it is useful to consider the control that patents give rightsholders over certain aspects of patented technologies. Patents are often considered primarily as *economic* tools, because they enable rightsholders to develop an income stream from a patented technology. Once

IT IS USEFUL TO CONSIDER THE CONTROL THAT PATENTS GIVE RIGHTSHOLDERS OVER CERTAIN ASPECTS OF PATENTED TECHNOLOGIES. PATENTS ARE OFTEN CONSIDERED PRIMARILY AS ECONOMIC TOOLS BECAUSE THEY ENABLE RIGHTSHOLDERS TO DEVELOP AN INCOME STREAM FROM A PATENTED TECHNOLOGY

a technology is patented, third parties wishing to use that technology for commercial purposes must seek permission from the rightsholders.

Such permission can be granted, in the form of a licence, in return for an exchange, such as a payment or cross-license. Patents enable rightsholders to decide who they will license a technology to, and on what terms.

Monopoly rights

Rightsholders can also decide to refuse to license the technologies to third-parties. This can enable them to become the sole provider of a technology, potentially enabling them to exercise a monopoly right for the duration of the patent and therefore to set high prices for access to that technology. Accordingly, patents, together with other IPRs, are often a key consideration of entities' commercialisation strategy for developing health technologies, and patents are often seen as a mechanism to incentivise the development of technologies.

Having said that, the extent to which patents are the best or most suitable incentivisation tool for health technologies is highly contested, although such issues are beyond the scope of this article.

Alongside their economic role, patents also give rightsholders an important governance role over 'technologies', as they enable rightsholders to control key aspects of how patented technologies can be provided and licensed, to whom, and on what terms (such the price) for the duration of the patent term. When the patented technology is a health-related technology, such as a medicine, vaccine or medical device, how such patents are used can affect access, use, and delivery of such technologies. This, in turn, can have a range of bioethical implications, including impacts on how we can treat, use, or modify our bodies. Developing a deeper understanding and engagement with such issues is the key focus of the PatentsInHumans project.

Access and delivery

The 'PatentsInHumans' project is a large, five-year interdisciplinary project funded by a European Research Council Starting Grant. The project aims to:

- Develop a deeper understanding of the potential bioethical implications posed by the grant and use of patents over a range of technologies related to the human body, including medicines, elements of vaccines, medical devices, isolated elements from the body (such as isolated human genes), etc,
- To understand to what extent existing patent-grant, licensing, and other relevant legal decision-making systems currently engage with these issues, and
- To analyse to what extent current gaps between health law, bioethics, and patent law (and practice) can – or should – be bridged so that the current framework better engages with the bioethical implications that can be posed by patents over technologies related to the human body.

Ultimately, the project aims to reimagine European patent decision-making to develop a more person-centred approach to how we consider the bioethical implications posed by patents over technologies related to the human body.

An example of how patents could affect access to healthcare was in relation to the HIV/AIDS crisis in the 1990s. At that time, even though antiretroviral medications (ARVs) had been developed to treat HIV/AIDs, such ARVs were largely inaccessible to people in low- and middle-income countries (LMICs) due to their high prices. Millions were suffering from HIV/AIDS at that time, which could prove fatal without treatment.

Public backlash

In 1997, at the height of the crisis, the South African government introduced a law that sought to introduce provisions to ensure a greater supply of affordable medicines.

This law was subsequently challenged by over 30 pharmaceutical companies, whose claims included that it was contrary to IPRs under the international TRIPS agreement. Amid significant international public backlash, the challenge was dropped. Eventually, through international negotiations and civil society activism, greater availability of low-cost ARVs was made possible.

This crisis led to the *Declaration on the TRIPS Agreement* and *Public Health* in 2001 (the so-called *Doha Agreement*). This international legal text confirms that the international IP system should be interpreted in a manner that supports states in taking measures to protect public health within their states. This includes using TRIPS 'flexibilities', such as issuing a compulsory licence allowing countries, in certain circumstances, to issue a licence for a patented technology without rightsholder(s) permission.

Compulsory licences can be a useful avenue in some cases, such as to enable the generic production of medicines. However, compulsory licences have limitations and do not resolve all tensions that can arise between patents and access to health. For instance, LMICs may be reluctant to use compulsory licences due to fear of being issued with a trade sanction by higher-income countries (HICs). Compulsory licences must be applied for on a country-by-country basis. Systems for such licences can be bureaucratic and cumbersome to use in some states.

Furthermore, some states may not have the ability to develop generic versions of a medicine in that state, and while there is a mechanism for a state to import a patented product made under compulsory licences outside of that state, there are significant limitations with using this provision in practice.

International tension

This tension between international IPRs and health is not confined to the past, as recently illustrated by the COVID-19 pandemic. COVID vaccines were developed in the early stages of the pandemic. However, at that time, the demand for such vaccines globally outstripped the supplies available. How vaccines were provided, and to which states first, was controlled primarily by the relevant vaccine rightsholders/manufacturers based on contractual agreements between such rightsholders/manufacturers and states.

X spots the mark

A significant inequity arose between LMICs and HICs – with many HICs able to access vaccines for their populations in advance of LMICs and, in some cases, second doses of COVID-19 vaccines were made available to HIC populations before first doses were available in LMICs.

The significant disparity in access to vaccines in LMICs and HICs in the early stages of the pandemic was contrary to principles of health equity, raised significant moral issues and, from a scientific perspective, posed risks, as it left many LMICs with limited vaccine supplies, thereby potentially increasing risks of new strains of the virus emerging. Intellectual property rights were not the only issue affecting supplies and the provision of vaccines, but they were a key factor.

To reduce such tensions, India and South Africa, subsequently joined by other countries, proposed an international waiver or suspension on IPRs for COVID-19 health technologies during the pandemic. However, this received limited support from HICs, and ultimately the text adopted was a much watered-down version of the original proposal that only applied to patents (not to other IPRs) and only to vaccines, not to medicines or diagnostics, unlike the original proposal.

During the pandemic, there were also several voluntary licensing initiatives set up, where rightsholders could voluntarily share/license IP-protected technologies, such as the COVID-19 Technology Access Pool (C-TAP), but this received limited commitments from key rightsholders, including vaccine manufacturers, during the pandemic.

Patents and access to health

Moreover, although patents and access to health are often discussed in health-emergency contexts, the tensions that can arise between how patents are used and how we can access healthcare are also evident in everyday health contexts in both LMICs and in HICs.

For LMICs, there is a range of examples of how patents have been used by rightsholders in a manner that can hinder access to healthcare, including whereby patents have enabled rightsholders to charge prices that are inaccessible for LMICs.

For example, patents related to Bedaquiline, which is used in the treatment of TB, were recently in the spotlight in terms of the potential impacts of such patents on access to TB treatments in many LMICs. Following recent discussions and civil-society action, a deal was reached to enable greater generic provision of this medicine in certain LMICs to expand access.

Patents can also affect LMIC access to vaccines. For example, *Medicins Sans Frontières* has highlighted the impact of IPRs on access to the HPV vaccine (against cervical cancers) and the pneumococcal vaccine against pneumonia in LMICs. In

WHERE THERE ARE LIMITED GLOBAL SUPPLIES OF VACCINES AVAILABLE, VACCINES WILL OFTEN GO FIRST TO HIGHER-INCOME COUNTRIES, AS SUCH STATES HAVE SIGNIFICANTLY HIGHER PURCHASING POWERS THAN LOW AND MIDDLE-INCOME COUNTRIES

the HPV-vaccine context, for instance, in 2018, Tanzania established a HPV vaccination programme, but could only procure limited vaccine supplies, initially due to high demand globally for such vaccines. In such cases, where there are limited global supplies of vaccines available, vaccines will often go first to HICs, as such states have significantly higher purchasing power than can be offered by LMICs. Lack of vaccine supply in LMICs has significant public-health implications.

Such issues are not confined to LMICs: there are many examples of how patents can have an impact on access, affordability, and delivery of health-technologies in HICs. For instance, we increasingly see a range of emerging medicines and therapies, including cancer treatments, that can have life-saving effects for patients, but associated high prices can mean that such therapies/medicines are unaffordable in HICs.

Where HICs provide these medicines at high costs, this also poses bioethical issues. It may lead to 'opportunity costs' – where, due to finite national healthcare budgets, providing high-cost medicines can mean that other medicines cannot be provided. This can affect the overall affordability and provision of healthcare in public-health systems, with knock-on effects for patients.

Rightsholders' discretion

Patents have an economic function and can enable rightsholders to develop an income stream from the development of a technology. However, patents also give rightsholders significant discretion over how patented technologies are used by third parties, the terms of their access (including price), and who can produce such technologies.

Where the patented 'technology' is a health-related technology, such as a medicine, element of a vaccine, or a medical device, how patents are used can affect the access to and the delivery of healthcare. Notably, in terms of the bioethical implications posed by patents in the health context, the key issue is often not the patent right as such, but how such rights are used. Rightsholders can – and, in some cases, do – adopt socially responsible licensing practices, including licensing strategies to facilitate more equitable access to such technologies, especially in LMICs. Nonetheless, greater consideration is needed around how IPRs can be used in a manner that recoups investments, while also limiting the potential negative repercussions that patents can have on access to healthcare.

Moreover, governments, funders, universities, and intermediary bodies – such as biobanks that work with researchers – have a key role in ensuring that their IP licensing policies and agreements enable parties to step in when IPRs are used in a manner that unreasonably affects access to, and delivery of, healthcare. g

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LOOK IT UP

LEGISLATION:

- *Biotechnology Directive* (Directive 98/44/EC of the European Parliament and of the Council, 6 July 1998), articles 5 and 6
- *European Patent Convention 1973*, articles 52 and 53
- *Declaration on the TRIPS Agreement and Public Health* (14 November 2001)

A scholar and a gentleman

Seán Ó Ceallaigh celebrates 70 years qualified and practising as a solicitor this year, having qualified in Trinity term 1954. Mary Hallissey met Seán and his son Cormac at their Phibsborough practice in Dublin

Seán Ó Ceallaigh is a solicitor with a venerable pedigree, having entered the profession in Trinity term 1954 – making for a remarkable 70 years of service to his clients. The Cork native has Mayo roots and came to Dublin to study law at UCD, where he was a keen debater with the Solicitors' Apprentices' Debating Society of Ireland.

Born on 10 July 1931, Seán is a keen linguist and has tackled up to nine languages, having a particular *grá* for the Irish language and other Celtic tongues. He also campaigned in his time for the Law Society to engage in a greater use of the Irish language in the profession.

Seán is also a published poet and a scholar with a wide range of interests. The father of nine remains living in his Castleknock, Co Dublin, home with Pauline, his wife of almost 62 years. He still cuts the grass occasionally and maintains his zest for life.

Front-room practice

Seán studied for his BA and LLB in UCD, which was in Earlsfort Terrace at that time, and remembers getting the bus out to the countryside that was then Belfield. He was on the path to the solicitors' profession and won the silver medal in the preliminary exam – the gold medal was won by his friend Paul Callan SC. Seán did his apprenticeship with his uncle Martin Kelly of Fitzgerald & Kelly in Kilkenny, before establishing his own practice in Dublin.

He opened his practice at the age of 22 in the front room of the boarding house where he lodged in Phibsborough, Dublin 7. His landlady, a Mrs Reed, obliged by answering the door to prospective clients, while a nearby shopkeeper delivered telephone messages. His son Cormac now carries on the practice 70 years later in a building just across the street, with his nonagenarian dad acting as a consultant.

Court pleadings

Seán ran a broad general practice, from conveyancing to probate to workplace-accident cases, but particularly enjoyed litigation and pleading cases himself in the courts, where his debating background stood to him. His legal practice gradually expanded, and branch offices were eventually established in other Dublin suburbs.

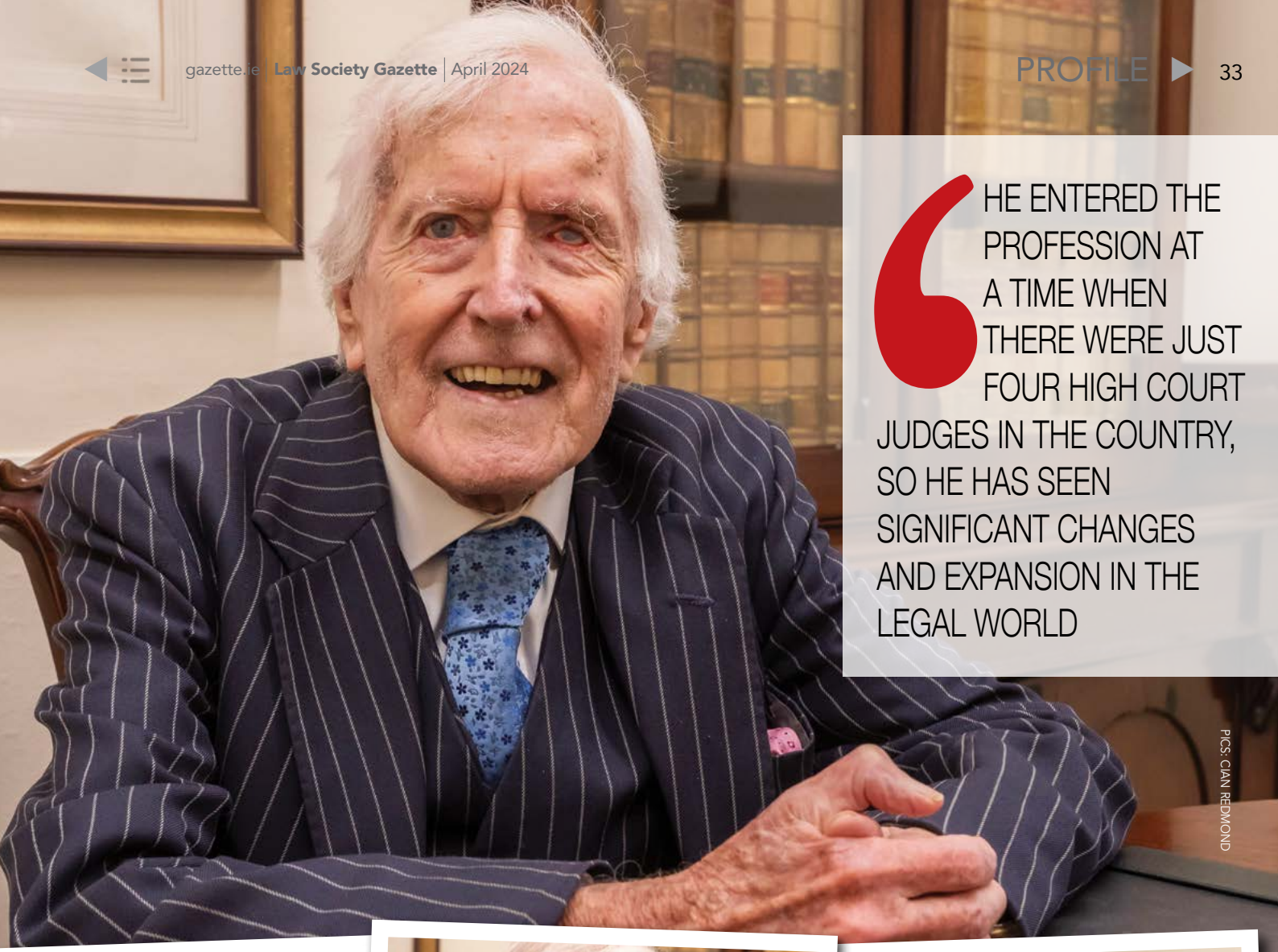
His son Cormac began working as a 'runner' in the office in his teens and learned his trade from the ground up. "I never despise humble beginnings," Cormac laughs. "I got to know the nuts and bolts of how things worked."

Cormac subsequently studied law at night at the College of Commerce in Rathmines, before eventually joining his father in the practice, which also has a niche in charity administration.

Vivid recall

Seán has a vivid recall of his peripatetic childhood in Munster as the son of a garda superintendent, and of doing the civil-service entrance exams, though he felt a calling to the law.

He entered the profession at a time when there were just four High Court



> HE ENTERED THE PROFESSION AT A TIME WHEN THERE WERE JUST FOUR HIGH COURT JUDGES IN THE COUNTRY, SO HE HAS SEEN SIGNIFICANT CHANGES AND EXPANSION IN THE LEGAL WORLD

PICS: CIAN REDMOND

judges in the country, so he has seen significant changes and expansion in the legal world.

One of his endeavours in the 1970s was establishing the Family Building Society, which helped to secure mortgages for working people before its eventual takeover by the EBS.

Seán recalls the firm making a big investment, at that time, in a fax machine – and remembers the days when a client drawing down a mortgage would engender a very big sense of occasion.

Nowadays, he continues to come into the office each week, helping out by reading title documents. A keen correspondent, he had a letter to the editor published recently in the *Sunday Independent*, about Ireland rejoining the Commonwealth.

Beir bua Seán! g

Mary Hallissey is a journalist at the Law Society Gazette.

PIC: INSTAGRAM/ABBA VOYAGE

KNOWING ME KNOWING YOU

The conclusion of negotiations between the EU Council and Parliament on the content of the *Artificial Intelligence Act* means that AI has hit the mainstream. Labhaoise Ní Fhaoláin and Dr Andrew Hines ask what's the name of the game?

It seems that artificial intelligence has been constantly in the headlines over the last 12 months. Between the arrival of ChatGPT and the conclusion of the negotiations between the EU Council and Parliament on the content of the *Artificial Intelligence Act*, AI has hit the mainstream. Similar to the GDPR, the *AI Act*'s effect will be felt by every industry and have worldwide impact, so solicitors of every specialty and firm size will need to become aware of concepts within the agreed text.

Work on the *AI Act* began over three years ago with the European Commission proposing it in April 2021. It is a culmination of years of drafting, negotiations and discussions between subject-matter experts, civil society, industry, and regulators. The goal of the act is to promote the uptake of human-centric and trustworthy AI while ensuring that people's health, safety and fundamental rights are protected against harmful effects of AI systems in the European Union. These fundamental rights are found in the *European Charter of Fundamental Rights* and include democracy, the rule of law, and environmental protection and sustainability. The act also seeks to support innovation and to improve the functioning of the internal market, through competitiveness. The practicality of implementation and impact on competitiveness have been debated.

Take a chance on me

Across academia and industry, and as AI has become a topic of public conversation, the definition of exactly what constitutes artificial intelligence is difficult to pin down. Despite efforts by the act's drafters to constrain the definition's scope under the act, it has been criticised as being too broad, with potential to apply to non-AI technology. Furthermore, where AI begins and ends within broader technology systems is a challenge the act tries to address. The commission has confirmed that guidelines will be issued to provide more information on how the definition should be applied in practice.

Under the act, an AI system is "a system that is designed to operate with elements of autonomy and that, based on machine and/or human-provided data and inputs, infers how to achieve a given set of objectives using machine learning and/or logic- and knowledge-based approaches, and produces system-generated outputs such as content (generative AI systems), predictions, recommendations or decisions, influencing the environments with which the AI system interacts".

To deliver regulations for AI and AI systems with a trustworthy and human-rights-first approach, the act:

WHERE AI BEGINS AND ENDS WITHIN BROADER TECHNOLOGY SYSTEMS IS A CHALLENGE THE ACT TRIES TO ADDRESS. THE COMMISSION HAS CONFIRMED THAT GUIDELINES WILL BE ISSUED TO PROVIDE MORE INFORMATION ON HOW THE DEFINITION SHOULD BE APPLIED IN PRACTICE

- Sets out rules for placing AI systems on the market or putting them into use in the union,
- Prohibits certain AI practices,
- Provides specific requirements for high-risk AI and sets out obligations for operators of such systems,
- Provides transparency rules for certain AI systems,
- Provides rules for general-purpose AI models,
- Sets out rules for market monitoring, market-surveillance governance and enforcement (at national and EU level),
- Provides measures to support innovation, with a particular focus on SMEs, including start-ups.

A risk-based approach is adopted in the *AI Act*, where 'risk' means the combination of the probability of an occurrence of harm and the severity of that harm. A higher risk of impact on health, safety, and rights entails more onerous compliance requirements.

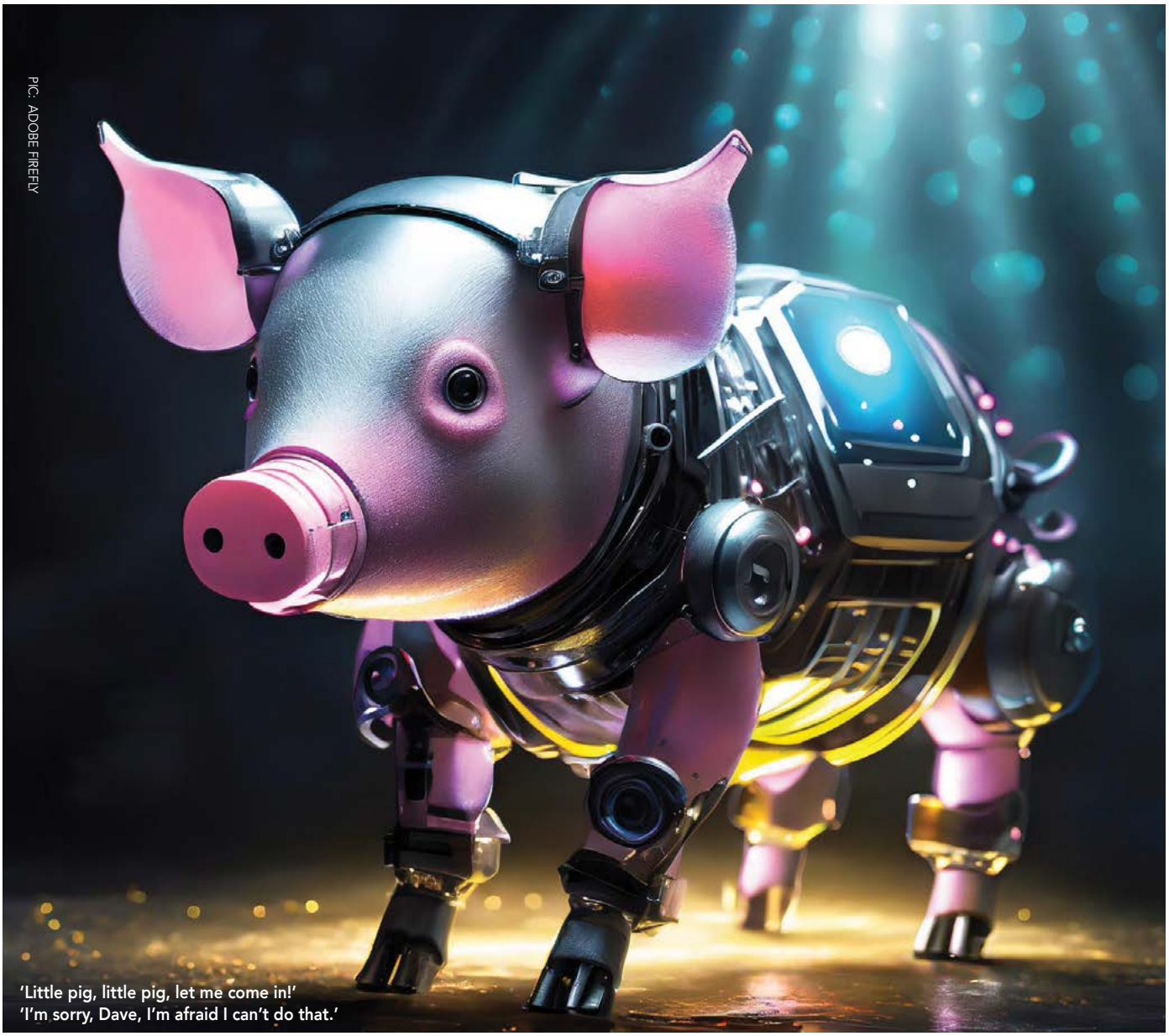
There are four risk categories defined within the act:

1) *Prohibited* – the risk of detrimental impact by some use-cases is so great that they are prohibited entirely. Examples of prohibited practices include using biometric categorisation to infer sensitive characteristics; using social behaviour or characteristics to create a social score that could result in unfavourable outcomes for a person or groups; untargeted scraping of facial images from the internet or CCTV footage to create or expand facial-recognition databases; and the use of emotion recognition in the workplace or education institutions. While real-time remote biometric identification systems are prohibited, there are narrow exceptions for law enforcement in public spaces, subject to prior authorisation.
2) *High risk* – Annex III sets out areas that are considered to be high-risk applications. Examples include critical-infrastructure AI systems used as safety components in critical digital infrastructure; the use of AI systems to determine access or admission to educational and vocational training; the use of AI systems in recruitment or selection to analyse candidates and in worker management; the use to evaluate the reliability of evidence in criminal offences; using AI systems to assess applications for migration and asylum; and, in the administration of justice and democratic processes, the use by a judicial authority in research or interpreting facts and applying the law to a set of facts (this also applies to alternative dispute resolution). However, even if a use appears on Annex III, it will not be considered as high risk if it does not pose a significant risk to harm to health, safety, or fundamental rights, and the act sets out the criteria that can be used to assess whether that may be the case. For example, if the AI system only performs a narrow procedural task, then it may not be deemed to be high risk. There is a further large tranche of cases that are *automatically* deemed to be high risk. This is where an AI system is intended to be used as a safety component in a product, or is a product itself, that is already governed by EU regulations, for example, machinery, toys, aircraft. If a use is deemed to be high risk, then it must undergo a conformity assessment (relating to data quality, documentation and traceability, transparency, human oversight, accuracy, cybersecurity and robustness) before the product is placed on the market, along with other obligations, such as registration.
3) *Limited risk* – under this heading fall technologies such as synthetic audio (for example, deep-fakes) and AI-powered direct interactions (for example, chatbots). There are transparency requirements for this level of risk. For these applications, the user must be informed that an AI system is behind the application.
4) *Minimal risk* – all other applications not falling into the other three categories will be deemed to have minimal risk.

Don't shut me down

There has been concentrated negotiation and lobbying around the high-risk categorisation, which is likely to remain under constant review. Further categorisation complicates the act, with a separate 'general purpose' AI category added late in the drafting stages. This deals with technologies such as 'large language models' (LLMs), used, for example, in ChatGPT. This category provides for further obligations, independent of the application risk classification.

Certain domains are not subject to the act, including national security, military, and defence. Also excluded are systems and models specifically developed and put into service for the sole purpose of scientific research and development. There is also an exemption for research, testing, and development of AI systems and models prior to being placed on the market or put into service (though testing in the real world is not covered by



'Little pig, little pig, let me come in!'
'I'm sorry, Dave, I'm afraid I can't do that.'

this exemption). Purely personal, non-professional use also falls outside the scope of the act.

The *AI Act* applies to both public and private organisations located within or outside the EU that place an AI system on the EU market. It also extends to where an AI system's use has an impact on people located in the EU.

Organisations developing an AI system (*providers*), along with organisations that acquire and implement AI systems (*deployers*), are subject to the act, as are importers and distributors.

Voulez-vous?

While the definition and boundaries around being a provider are clear, similar to the GDPR (where you need to establish whether you are a data processor or data controller), for the *AI Act* you may be a deployer and not realise it. Establishing whether you are a provider or a deployer is important, as they have different obligations. Indeed, a deployer may need to comply with the provider obligations in the event that the AI system is adapted or changed.

As a solicitor in practice, not advising on the area, what do you need to know? For a solicitor's practice, is there a need to know about the *AI Act*? Similar to the GDPR, the answer is likely 'yes', where law firms become deployers of AI systems. Solicitors should bear in mind that they may not even be aware that AI has been integrated into the systems they use.

When assessing your firm's obligations, the first question to ask is whether the use-case is prohibited. If so, then that is the end of the matter, as the AI system cannot be used. Next, does your AI system fall within the high-risk category? If yes, you must pause and ask whether what is being done also poses a significant risk of harm to health, safety, or fundamental rights. The area of employment is specifically referred to in Annex III (high risk), with use-cases. For

A RISK-BASED APPROACH IS ADOPTED IN THE ACT, WHERE 'RISK' MEANS THE COMBINATION OF THE PROBABILITY OF AN OCCURRENCE OF HARM AND THE SEVERITY OF THAT HARM. A HIGHER RISK OF IMPACT ON HEALTH, SAFETY, AND RIGHTS ENTAILS MORE ONEROUS COMPLIANCE REQUIREMENTS

example, the use of AI in employment-related systems or tools, whether for filtering CVs at recruitment or analysing billable-hour trends for promotion, could fall within the scope of the act. If AI systems are being deployed, there is an obligation to ensure that staff and others dealing with the operation and use of AI on their behalf have a sufficient level of AI literacy.

Of course, legal professionals will be aware that, while their use of AI in the legal practice may be in compliance with the *AI Act*, the use may breach the *Solicitor's Guide to Professional Conduct* or may give rise to professional negligence.

I have a dream

The European AI Office was established in February 2024 within the European Commission, and it will oversee the enforcement and implementation of the *AI Act* with the member states. Member states must designate national competent authorities under the act and, in Ireland, it is likely that the NSAI and CCPC will take roles under the act. However, other authorities may also be involved in areas such as conformity assessments. There will also be a mechanism for complaints to be made. Non-compliance with the act can result in fines ranging from €7.5 million or 1.5% of turnover, to €35 million or 7% of turnover.

There has been a lot of coverage in recent months, as the European Parliament agreed to the act in principle in December. Once the final text has been voted on by the Parliament and published in the *Official Journal*, the provisions relating to prohibitions come into effect six months after the notice, the provisions relating to general-purpose AI 12 months after the notice, and the high-risk provisions 24 months after the notice. However, even after enactment, the operational details will evolve over the coming years.

The commission will issue guidelines that will provide further information and details, including on the high-risk categories. There will be further consultations with stakeholders before the guidelines are published, and we can expect a significant amount of lobbying within that process. While it cannot add to the areas referred to in Annex III (high risk), the commission can add or modify the use-cases in Annex III without the need for the parliament to vote. For example, it could add use-cases to the area of administration of justice and democratic processes, or other scenarios if they are deemed to pose a risk of harm to health and safety, or an adverse impact on fundamental rights is equivalent to, or greater than, the existing use-cases.

Standards will play a central role in compliance, and a draft request for standardisation was sent to standards bodies even before the final text of the act had been agreed. All member states can feed into these standards through the representation by national standards bodies (the NSAI in Ireland, for example).

It is not unreasonable to assume that the *AI Act* could be as consequential a regulatory development as the GDPR, and it will take a decade to operationalise the guidelines and clearly establish the scope of the high-risk and deployer categories. In the meantime, it is advisable to be aware of the framework, obligations, stakeholders and enforcement – and the potential of being an accidental deployer of high-risk AI. g

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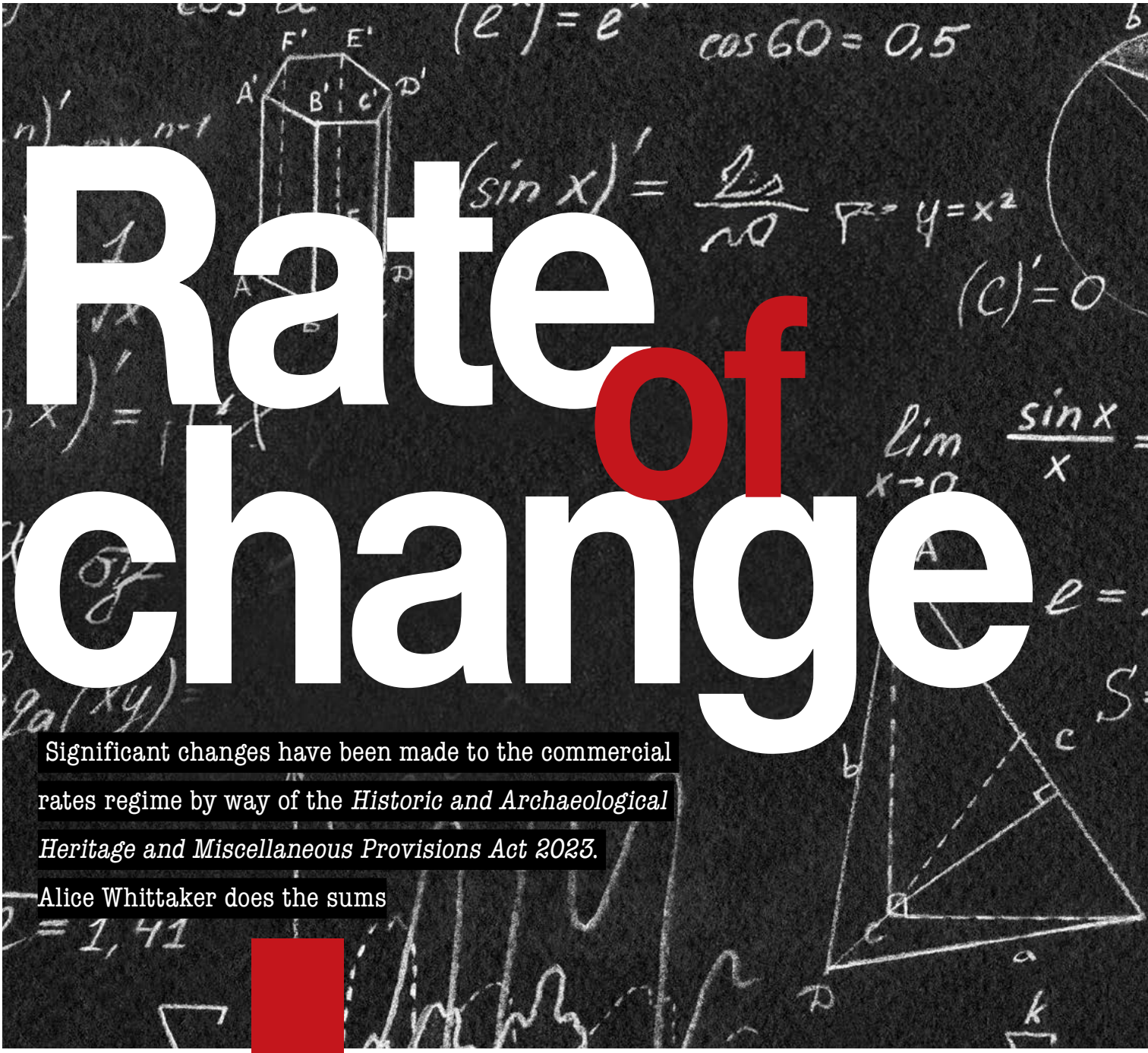
Labhaoise Ní Fhaoláin is a member of the Law Society's Technology Committee and is completing a PhD in the governance of artificial intelligence. Dr Andrew Hines is an assistant professor in the School of Computer Science, UCD.

LOOK IT UP

CASES:

- *Artificial Intelligence Act*
- *Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts* (21 April 2021, Document 52021PC0206)



Rate of change

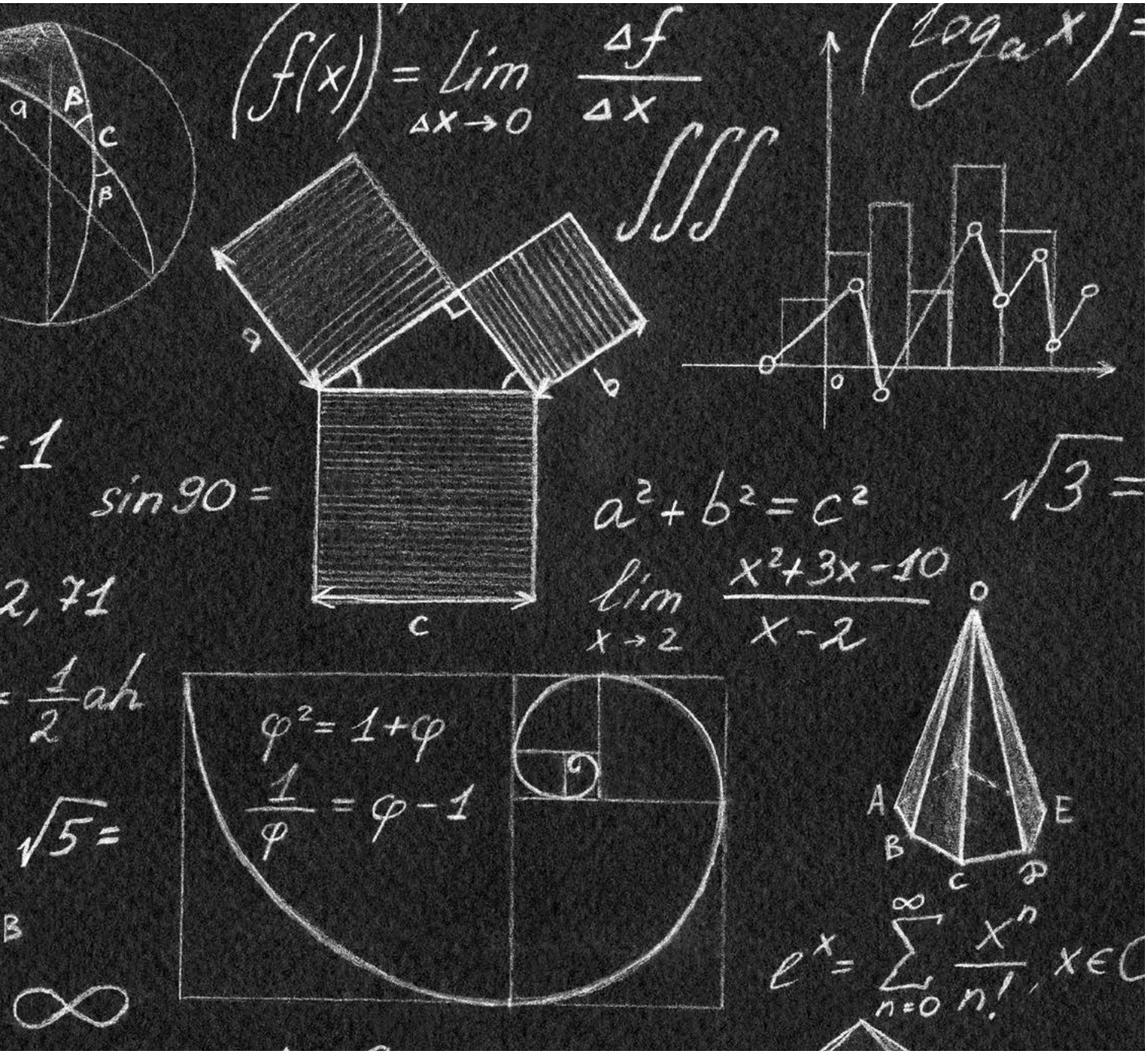
Significant changes have been made to the commercial rates regime by way of the *Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023*. Alice Whittaker does the sums

If you occupy, or are entitled to occupy, a rateable 'relevant property' (as defined in the *Valuation Act 2001*, as amended), you may be liable to pay your local rating authority a commercial 'rate'. You may also have a number of additional obligations to the local authority in relation to those rates.

Significant changes have been made to the commercial-rates regime by way of the *Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023*, as of 1 January 2024. The act makes a number of important amendments to the *Valuation Act 2001* and the *Local Government Rates and Other Matters Act 2019*, including the imposition of criminal liability for the failure to notify a local authority of ceasing to be, or becoming, the person liable to pay the rates on a relevant property, and for a failure by a liable person who intends to sell a property to discharge any outstanding rates due by that person prior to the sale of a relevant property.

Calculus

In order to be subject to a rate, a property must be a 'relevant property'. The Commissioner of Valuation periodically



publishes a 'valuation list', which lists each relevant property in a rating authority area and the rateable valuation of that relevant property (see valoff.ie/en/check-property-valuation-online).

As set out in section 4 of the 2019 act (as substituted by section 263 of the 2023 act), the amount of the rate for a financial year is calculated by multiplying the rateable valuation of the relevant property on the last day of the previous financial year by the annual rate on valuation (ARV). The rate is due and payable from the first day of the relevant financial year.

While the ARV is decided on by the rating authority, the rateable valuation of a relevant property is determined by the Commissioner of Valuation. If a person is dissatisfied with the valuation as determined by the commissioner, or indeed the determination to include the property on the valuation list, that valuation or determination can be appealed to the Valuation Tribunal (with a further appeal on a point of law to the High Court).

Section 258 of the 2023 act has amended section 38 of the 2001 act to clarify that an amendment to the valuation list as a result of a decision of the Valuation Tribunal or the court has full force from the date of the making of the amendment. It also provides for the refund to, or recovery from, a person concerned of a balance owing or owed (as the case may be) caused by an amendment to the valuation list that resulted in an overpayment or underpayment of rates (for indicative rates, see valoff.ie/en/revaluation/rates-calculator).

Differentiation

In accordance with section 4 of the 2019 act (as substituted by the 2023 act), the 'liable person' upon whom a rate may be levied is either:

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> THE AMOUNT OF THE RATE FOR A FINANCIAL YEAR IS CALCULATED BY MULTIPLYING THE RATEABLE VALUATION OF THE RELEVANT PROPERTY ON THE LAST DAY OF THE PREVIOUS FINANCIAL YEAR BY THE ANNUAL RATE ON VALUATION

- The occupier of the relevant property on the first day of the relevant financial year, or
- If the relevant property is unoccupied on that day, the person who is entitled to occupy the property on that day.

If there is a change to the liable person during the financial year, the rate is levied on a *pro rata* basis between the liable persons.

Constant

Section 32 of the *Local Government Reform Act 2014* imposed a duty on an owner of a relevant property to notify a rating authority of a transfer of that property if such transfer would result in a change of the person liable to pay the rates. The duty to discharge the outstanding rates fell on the person transferring the property (be it the owner or the occupier). However, if the owner of the property failed to notify the rating authority within two weeks of such a transfer, they could potentially have become liable for a charge equivalent to up to two years of any outstanding rates due by a previous occupier.

As of 1 January 2024, section 32 of the 2014 act has been repealed and effectively replaced by section 11 of the 2019 act (as substituted by section 267 of the 2023 act). Section 11 now imposes a duty on the 'person concerned' to give written notice to the rating authority within ten working days as to any change in their status as a 'person concerned'. A 'person concerned' is a person who either (a) ceases to be a 'liable person' in respect of a relevant property, (b) becomes a 'liable person' in respect of a relevant property, or (c) changes their status as a 'liable person' in respect of a relevant property.

In contrast with the position under the 2014 act, the new regime means that if a person, without 'reasonable excuse', fails to provide such notification to the rating authority, they may be guilty of an offence and liable to a €5,000 fine.

It will be interesting to see whether the replacement of the power to levy a charge on the property in respect of unpaid rates under section 32 of the 2014 act with the threat of criminal liability and a generally collected €5,000 fine under the 2019 act (as substituted by the 2023 act) results in a greater or lesser payment of rates to local authorities.

Continuous function

Section 13 of the 2019 act has been substituted by section 269 of the 2023 act, such that a liable person in respect of a relevant property who proposes to sell that property must, before the completion of the sale, pay to the local authority any rates and interest imposed under the 2019 act that are due and payable by that liable person in respect of that property for the period up to and including the day immediately before the completion of the sale.

The amendment will be beneficial for both landlords and tenants alike, as landlords may sell a property without the requirement to discharge the outstanding rates, as the obligation to discharge the rates now falls to the 'liable person' – for example, the sitting tenant. Additionally, a tenant will only be responsible for the commercial rates for their own period of liability/occupation. However, any rates that are due under the previous legislation (prior to 1 January 2024) are still governed by the 2014 act.

The new regime imposes strict notification timelines on both the vacating and incoming liable persons. Interestingly, there is also a requirement for a liable person to notify the local authority in writing if they become aware of any inaccuracies recorded in the database.

Non-compliance with the new amendments or failure to discharge outstanding rates and interest for which they are liable before the completion of a sale carries stringent penalties, including summary conviction, a €5,000 fine, and/or imprisonment for up to six months. Therefore, it is imperative for any party affected by the new amendments to take legal advice. g

Alice Whittaker is a solicitor and partner in the planning and environmental department at Philip Lee LLP.

LOOK IT UP

LEGISLATION

- *Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023*
- *Local Government Rates and Other Matters Act 2019*
- *Local Government Reform Act 2014*
- *Valuation Act 2001*

STAKE YOUR MONEYMAKER

A recent High Court judgment makes clear that a claim of land ownership by adverse possession will only be found to be just and upheld when factually proven. Duncan Grehan drains the bog

Land ownership claims based on alleged possession stem from old empire laws. In Ireland, land ownership rights need not be registered to be valid. Even registered entries can be contested and rectified. While today, Ireland's modern laws on adverse possessory title to land ownership are fairly unique within the EU member states, they are likely not exclusive, as so many of those states acquired global land empires by adverse possession.

Similar laws in Ireland still remain on the books since independence over 100 years ago. Such relics and legacies may be still traceable in the legal imperial frameworks of many European countries, like France, Spain, Portugal and The Netherlands. This is not clear from the materials available in answer to over 330 questions concerning land ownership and bank-loan security laws in 34 different countries, including the entire EU, found at www.vdpmortgage.com – to which I have supplied the answers regarding the laws of Ireland. Apart from Ireland, only the UK and Norway authors disclose that their systems recognise possessory title too. Such recognition may be found also in the land ownership laws of Russia, Israel, and other modern nations engaging in dispossession.

Coming your way

This postscript to my articles in the October and November 2023 *Gazettes* is now published because the justification for and conditions to such law has been considered and further clarified by a High Court judgment on 10 November. It makes clear that a claim of land ownership by adverse possession (frequently clogging our courts' hearing lists) will only be found to be just and upheld when factually proven. If it fails that test, it will be rejected and dismissed "in its entirety", with costs consequences for the claimant. (See paragraph 117 of the judgment in *Atlantis*, the name of Plato's fictional naval empire of the Western World, later to also submerge after defeat.)

So what is the burden of proof required for the claim to succeed the proof test? This is explained at the judgment's paragraphs 83-107.

Before the beginning

The detail of land-ownership registered and unregistered rights, challenges to them, the limited conclusiveness of Ireland's land-ownership public registry (Tailte Éireann), and the inconclusiveness of its boundary maps has been more detailed in my earlier articles.

The entries of registered-ownership rights can be challenged and can be rectified. Even unregistered rights and burdens are recognised as valid by our law.

THE PAST AND PRESENT FACTS OF PUBLIC AND PRIVATE LAND ACQUISITION BY ADVERSE POSSESSION, BOTH NATIONALLY AND GLOBALLY, JUSTIFIES REGULATION TO CONTROL RISKS TO FUNDAMENTAL RIGHTS

In my October article, I explain: "Entries about ownership filed in the Land Register folios are *prima facie* conclusive, binding, and State guaranteed. The 63-year-old law provided in section 31(1) of the 1964 *Registration of Title Act* recognises this basic principle, which is there to demystify ownership issues and to comply with private-property-ownership fundamental rights recognised by our Constitution of 1937 and by international law, including the ECHR, transposed into Ireland's law by its *ECHR Act 2003*.

"Section 31 also accepts, and provides exceptions to, the reliability of registered land-ownership rights. It does not permit the courts to undermine registered security rights on any application, per order 42, rule 24 of the *Rules of the Superior Courts*, as those entries are conclusive.

"In *Tanager v Kane* (2018), Baker J ruled that a court hearing a creditor's application for possession of registered land, and having adduced evidence of it being the registered chargee, may not undermine the correctness or conclusiveness of the register. Its exceptions include simple-entry clerical errors, mistakes, inaccurate delineations and mapping of property boundaries, fraud, and adverse possession causing acquisition of legal title – when proven to the court's satisfaction."

Coming home

The statutory right to claim land ownership by adverse possession, which challenges the public land-register conclusiveness, can be abused to create leverage advantages, as it causes uncertainty and costs time to resolve. To exploit this opportunity, a claim can be filed with the land registry per section 49 of the 1964 act.

Noted in my November article is how such an application, if contested, must then be proven to satisfy the court that it is just: "Acquisition of good title to land in good faith is 'possible' but also is challengeable: '*nemo dat quod non habet*'. By section 49(2) of the 1964 act, a claimant to land-ownership entitlement, to land he is not registered as owner, must prove to the satisfaction of the court *animus possidendi* and *actus possidendi*, exclusive, uninterrupted possession and occupation of the land claimed for in excess of 12 years, whether the land is registered in another's name or never has been registered in anyone's name. Proven must be factual uninterrupted possession (*actus possidendi*) (by, for example, installing fencing around its boundaries) and the intention to possess (*animus possidendi*) that land."

I also pointed out the 12-year time limit after which a registered landowner may lose to an adverse possession claimant: "A person's right to recover land expires 12 years from the date the right of action accrued (section 13(2)(a), *Statute of Limitations Act 1957*)."

After that, the registered owner ceases to own the land. Section 24 of the 1964 act provides that "at the expiration of the period fixed by this act for any person to bring an action to recover land, the title of that person to the land shall be extinguished". The successful owner by adverse possession can then be registered as the landowner of the disputed land (paragraph 86 of *Atlantis*). Even then, however, that land title under new ownership may remain limited by unregistered rights, servitudes, and encumbrances.

At paragraph 17 of the *Atlantis* judgment, Judge Mulcahy points out that, by section 72(11)(p) of the 1964 act, registered land "shall be subject to" registered but also to unregistered "burdens", namely, as provided, "rights in the course of being acquired under" the *Statute of Limitations*. He referred (paragraph 29) also to its section 42(2) limiting provision, whereby even if the claimant applicant is successful and may be then registered as the land's owner, that will still be "without prejudice to any right not extinguished by such possession". In Ireland, land-ownership rights need not be registered to be valid. Unregistered land rights exist and may be enforceable.

Merry-go-round

The *Atlantis* judgment proof-test takes account of the *dicta* in other Irish judgments, which it summarised as being that "minimal acts of ownership will defeat or negative a claim that lands have been adversely possessed, but the question of whether lands have been adversely possessed must be determined by reference to the particular facts of any given case" (paragraph 89). So a registered owner bears a light burden of title proof, compared with the onerous proofs of both possession and intention to dispossess and to acquire title that a claimant must deliver to successfully persuade a court that those test ingredients are sufficiently obviously present to find in favour of the claim and to remove the extinguished register entry and authorise entry of the claimant as owner.

Oh well

In *Atlantis*, Judge Mulcahy refers especially to the *dicta* of then High Court judge Frank Clarke, later upheld by the Supreme Court on appeal, in an earlier case to the *Atlantis* decision (*Dunne*).

In his High Court judgment, Clarke J underlined: "It is, therefore, important to emphasise that minimal acts of possession by the owner of the paper title will be sufficient to establish that he was not, at least at the relevant time of those acts, dispossessed. The assessment of possession is not one in which the possession of the paper title owner and the person claiming adverse possession are judged on the same basis. An owner will be taken to continue in possession with even minimal acts. A dispossessor will need to establish possession akin to that which an owner making full but ordinary use of the property concerned, having regard to its characteristics, could be expected to make. It is not, therefore, a question of weighing up and balancing the extent of the possession of an owner and a person claiming adverse possession. Provided that there are any acts of possession by the owner, then adverse possession cannot run at the relevant time."

In the later Supreme Court appeal judgment, Charleton J also gave clarity to this law, which gives a claimant only a very limited chance of success, by supporting the *dicta* of Clarke J: "Clarke J correctly identified that mere occupation is not enough to ground a claim of adverse possession and that what is also required is that the ostensible adverse occupier of the land does so with the intention of excluding the original owner."

No place to go

What type of ostensible action of possession may assist a claimant to prove *animus* and *actus possidendi* that will prevail when all that the paper title owner (whether registered or unregistered) has to show to defeat the claim amounts to less than "minimal acts of possession"?

In *Atlantis*, Mulcahy J restated (paragraph 92) that "the enclosure of a field by a wall is an example given by Charleton J in *Dunne* of an activity 'that speaks loudly of possession'". Fencing, farming, grazing, gardening, construction, or drainage would also be loud examples, best usefully combined, to assist in achieving a claim's success – always provided, however, that such activities are carried on uninterrupted beyond 12 consecutive years without any even minimal counter-action of the actual legal owner. Such actions would go towards achieving the required high proof-test level were they not objected to during the 12-year period or, better, were consented to by and/or with the knowledge of the owner.

Got to move

Typically, the owner (whether a natural person or a corporation) most at risk is an inattentive non-resident who has bought the land site for future development or who is the successor to an estate that has not been administered or probated. That risk, even if the land is not in regular use by the owner, can be simply overcome by taking 'minimal acts of possession' and 'occasional use' like publicly visiting the land, whether by the owner, estate executor, surveyor, or other agent, and taking ownership steps, such as securing and maintaining its boundaries. In that way, even the construction of a wall by the claimant of adverse possession will not be enough to satisfy the high standard proof-test justifying adverse ownership acquisition.

> THE STATUTORY RIGHT TO CLAIM LAND OWNERSHIP BY ADVERSE POSSESSION, WHICH CHALLENGES THE PUBLIC LAND-REGISTER CONCLUSIVENESS, CAN BE ABUSED TO CREATE LEVERAGE ADVANTAGES, AS IT CAUSES UNCERTAINTY AND COSTS TIME TO RESOLVE

In *Atlantis*, Mulcahy J highlighted this (paragraph 97): "However, overall, the evidence clearly suggests that in the years following the construction of the stone wall around the disputed property, there was occasional use by the first defendant of the field to graze animals, which constitute sufficient acts of ownership to defeat a claim for adverse possession. *Dunne* makes clear that more limited acts of ownership than actual use may defeat a claim for adverse possession."

The past and present facts of public and private land acquisition by adverse possession, both nationally and globally, justifies regulation to control risks to fundamental rights. Only under extremely onerous conditions will the law permit it. Policing compliance with its high standard of proof is the task of the public authorities and courts. This still brings with it, for the innocent victim, costs, inconvenience, process delays, injury, and loss, even if the acquisitor's claims are dismissed as unjustified by the law.

Staking a claim has little chance of being found to be legal. Legislation continues to permit it. g

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Duncan Grehan is a member of the EU and International Affairs Committee of the Law Society of Ireland.

LOOK IT UP

CASES:

- *Atlantis Developments Ltd (in Receivership) v Patrick Considine and Anor* [2023] IEHC 608
- *Dunne v CIE* [2007] IEHC 314; [2016] IESC 47
- *Tanager v Kane* [2018] IECA 352, [2019] 1 IR 385

New PC numbers point to growth and diversity

The latest stats on the top 20 firms and in-house teams reveal growth in demand for legal services and talent. A&L Goodbody leads PC numbers, female admissions are up to 60%, while in-house solicitors comprise 25% of the profession. Mark Garrett provides some insights

THERE WERE 24,161 SOLICITORS ON THE ROLL OF SOLICITORS AT YEAR-END 2023. IN ALL, 772 NEW SOLICITORS WERE ADMITTED IN THE YEAR UNDER REVIEW – A 50% INCREASE ON THE 515 IN 2022

Like every other part of the Irish business environment, the past three years have been challenging for legal firms. The post-pandemic economic performance of the country has continued to improve, despite entering a technical recession in the final quarter of 2023.

However, quantifying the level of demand for the services of practising solicitors on an annual basis poses challenges, as there is no one source that explicitly captures this data. In the past, Evelyn Partners has completed annual surveys of law firms, from which demand levels could be inferred. The 2022/23 survey, however, is not scheduled to take place until March 2024 and so other data sources must be used.

According to the SOLAS *National Skills Bulletin* for 2023 (data for 2022), average annual employment in the judges, solicitors, barristers, and related professionals group has declined for the second consecutive year, with some 13,400 employed. According to the 2023 bulletin: "Employment levels have declined annually since 2020 for this occupation, resulting in a negative growth rate for the five-year annual average."

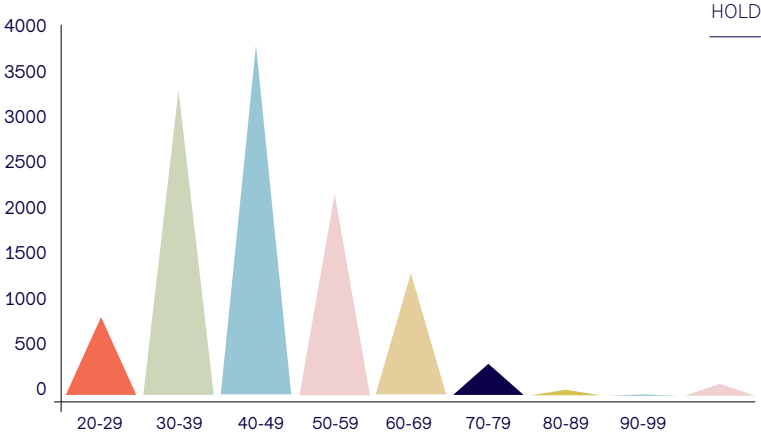
Main challenges

The most recent annual survey of law firms from Evelyn Partners for 2021/22 highlighted challenges around the economy and inflation, recruitment, the retention of staff, and maintaining profitability. While there have been marked improvements in the post-pandemic economic performance and levels of inflation, it is likely that these challenges continued to burden legal businesses into 2023.

Despite these challenges, a recent survey carried out by the Law Society (*Survey of the Profession – Overview of Key Findings*, July 2023) found that solicitors are generally upbeat about the profession, particularly those working in large firms and in-house in the private and public sectors. In all, 41% were optimistic about the profession's future, while 31% were neutral.

The situation is not consistent across urban and rural areas, however, with community-based services and smaller and sole partner-operated firms outside of Dublin more affected by the challenges already mentioned.

The picture from new admissions to the Roll of Solicitors paints a largely positive picture for



AGE PROFILE | PRACTISING CERT HOLDERS

Age	Amount
20–29	684
30–39	3,318
40–49	3,894
50–59	2,199
60–69	1,299
70–79	363
80-89	36
90-99	4
No DOB on record	74

the profession overall, with 772 new solicitors admitted in 2023 – a 50% increase on the 515 in 2022.

A total of 548 trainees were admitted – the highest figure since 2011. Admissions from England and Wales stood at 158 (an increase of 18% from the 134 in 2022). Transferring barrister numbers fell from 12 in 2022 to eight in 2023. There were 27 foreign-lawyer admissions in 2023 – 19 of whom came from common-law states, with the remaining eight being drawn from six EU countries. (This is an increase from the 22 foreign lawyers admitted in 2022.)

In terms of gender, 2023 saw a notable increase in female admissions – from 56% in 2022 to 60% in 2023. One of the key factors seems to be that the distortion effect of Brexit is declining. While admissions over the last decade and more have shown a significantly higher number of women qualifying as solicitors, this has yet to be fully reflected in the profession overall.

Total PC numbers

A total of 11,954 practising certificates (PCs) were issued throughout 2023. On 31 December 2023, the Law Society's records indicated that 11,871 PCs were in place. This follows the surrender of 80 PCs throughout 2023, the suspension of one solicitor who was holding a PC, and two solicitors holding a PC noted as deceased.

In all, 3,239 solicitors were noted on the Roll in 2023 and recorded as working 'in house'. Of these, 2,688 held a PC on 31 December 2023. A total of 476 solicitors on the Roll were classified as being in the full-time service of the State in 2023.

Top 20 and in-house

The table above outlines the number of solicitors listed on the Law Society's records connected to a firm or in-house team and holding a PC on 31 December in each of the last three years. In-house solicitors, in both the public and private sectors, now make up over 25% of the profession, and they are well represented in the top 20 by the Chief State Solicitor's Office, the Legal Aid Board, the Office of the DPP, Allied Irish Bank, and the Central Bank of Ireland.

	Firm Name	Practising Certificates 2021	Practising Certificates 2022	Practising Certificates 2023
1	A&L Goodbody LLP	299	348	365
2	Matheson LLP	308	336	361
3	Arthur Cox LLP	304	318	326
4	McCann FitzGerald LLP	273	292	290
5	Mason Hayes & Curran LLP	278	282	279
6	William Fry LLP	188	216	208
7	Chief State Solicitor's Office	165	154	186
8	ByrneWallace LLP	150	144	148
9	Legal Aid Board	106	142	129
10	Maples and Calder (Ireland) LLP	112	115	123
11	RDJ LLP	104	106	115
12	Office of the Director of Public Prosecutions	90	99	106
13	Allied Irish Banks plc	103	98	99
14	Eversheds Sutherland	111	94	98
15	Beauchamps LLP	86	93	97
16	Dillon Eustace LLP	89	85	94
17	Central Bank Of Ireland	80	77	85
18	Hayes Solicitors LLP	66	74	84
19	Philip Lee LLP	72	74	74
20	Fieldfisher LLP	63	64	70

Top 20 firms: the table above outlines the number of solicitors listed on the Law Society's records connected to a firm and holding a PC on 31 December 2023

Struck off the Roll

Two solicitors were struck off the Roll in 2023 – one for breaches of the *Solicitors Accounts Regulations*, including the misappropriation of client funds and breaches of the *Anti-Money-Laundering Regulations*, and another for breaches of the *Solicitors Accounts Regulations*, including the misappropriation of client funds.

It is likely, given emerging trends identified in recent Evelyn Partner surveys, that demand for the services of practising solicitors in 2023 remained robust, with firm revenues having increased in each of 2021 and 2022, along with profit levels (though not to the same extent). It will be very interesting to see the findings of the Evelyn. Partner survey for 2023.

Mark Garrett is Director General of the Law Society of Ireland.

ADMISSIONS BY YEAR AND GENDER

	2017	2018	2019	2020	2021	2022	2023
Female	514 (49%)	603 (49%)	1076 (45%)	475 (52%)	469 (54%)	288 (56%)	462 (60%)
Male	534 (51%)	626 (51%)	1305 (55%)	431 (48%)	407 (46%)	227 (44%)	310 (40%)

A safe space

The impact of psychological safety on lawyer wellbeing and turnover in legal practice is enormous. Emma Clarke argues that feeling safe to speak up is key, but it needs to be backed up by changes in work practices and specific employee supports

MANY FEMALE EMPLOYEES INTERVIEWED ARGUED THAT POOR WORK/LIFE BALANCE STEMS FROM THE BILLABLE-UNITS SYSTEM, AND WAS ONE OF THEIR PRIMARY REASONS FOR LEAVING OR FOR CONSIDERING LEAVING

Although I didn't realise it at the time, I first experienced psychological safety when I was 14 years old. I was in year ten, and was failing mathematics. I always felt so stupid not being able to figure out the answer – I decided I was a complete failure. My mother asked her friend Shirley, a teacher from another school, if she would tutor me. My progress improved surprisingly quickly. Shirley encouraged me to see that getting the final answer wrong doesn't mean I'm a complete failure – after all, I was getting most of the preliminary calculations correct! Shirley helped me to feel safe about experimentation and learning, which bolstered my confidence and enhanced the belief in my ability to figure out the correct answer. I now realise that Shirley wasn't just teaching me how to do mathematics, she was enabling me to feel psychologically safe. By the end of year 12, I was among the top students in my class and went on to study statistics and calculus at university.

Respect and trust

Amy Edmondson (2004) defined psychological safety as a belief that team members hold, regarding the respect and trust they have for each other, affecting their willingness to take intellectual risks and speak up about issues and mistakes without fear of negative repercussions to themselves or their career.

From 2021 to 2022, as part of my PhD research, I conducted surveys with 89 lawyers at two time points, and interviewed 35 practitioners (21 lawyers and 14 partners) across New Zealand who had previously or were currently working in law firms. My objective was to examine leadership behaviours, psychological safety, and employee wellbeing in legal practice, and to identify factors that lead to employees' decisions to leave.

Early in my interviews, I found that some female lawyers had resigned from their firms, leading to discussions about their decisions. Interestingly, all participants who had resigned or were considering leaving were women. I also uncovered insights influencing male lawyers, too.

High turnover of junior lawyers working in the legal profession, particularly among women, has been reported internationally and in New Zealand for over a decade. Lawyers are unlikely to want to share their true reasons for leaving or their desire to leave, due to poor psychological safety, which my first study indicated is present in some NZ law firms.

Stress and poor wellbeing have also been extensively reported within the legal profession, likely playing a role in high turnover rates. Employee retention should be a high priority for law firms, due to the cost of recruiting and training, sometimes exceeding 200% of an employee's annual salary.

Substantial risks

Formal hierarchical work environments are obstructive for some lawyers, as they can generate fear and create a barrier that discourages employees from speaking to their leader about issues and sources of work pressure.

Many lawyers described scenarios when they felt unable to 'be themselves' at work, the apprehension they felt about challenging a senior member in the law firm's hierarchy, and when taking intellectual risks. These encounters led to a large number of female employees feeling unable to be open and honest about problems that were having an impact on their work. They either resigned or were contemplating leaving because they believed that expressing themselves openly in the workplace carried substantial risks. These lawyers also believed that it was necessary to not disclose their real reasons for leaving, in order to protect their career prospects.

Alongside hierarchical structures, billable units were identified as one of the main sources of work pressure and a factor contributing to longer working hours. Employees


PIC: SHUTTERSTOCK.AI

explained that billable units placed enormous pressure on them and, in some cases, this led to feeling overworked and stressed.

Billable-units bias

Many female employees interviewed argued that poor work/life balance stems from the billable-units system and was one of their primary reasons for leaving or for considering leaving. I argue that the billable-units system is biased *because* it rewards those who work and bill longer hours, and disadvantages those who work part-time or have commitments outside of work, such as child-care obligations.

My research supports previous findings that show that when employees are provided with flexible working arrangements, women tend to use this resource to achieve better work/life balance, whereas men tend to increase their work commitment, enabling them to work longer hours. When law firms measure performance using billable units, and provide employees with flexible work options, this reinforces a stereotypical pattern of work. As the billable hours system incentivises long hours, this behaviour is rewarded with promotions and bonuses. Men have a comparative advantage because they are able to use time to create more value, and are able to complete work at a lower opportunity cost than women.

Access to resources

I also discovered gender differences in the allocation and access to resources at work, such as autonomy, leader support, and a culture of learning. Resources help lawyers to cope with stress in high-demand environments. Half the leaders in my research evaluated the ability of employees to cope in stressful situations as something that is managed by the individual, and considered that "some people are just better [at coping]".

One interpretation of this is that employees who were perceived by their leaders as more adept at coping may

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20 June	**Clare & Limerick Essential Solicitor Update 2024**	The Inn at Dromoland, Co. Clare		€160
IN-PERSON AND LIVE ONLINE				
20 March to 18 Dec	**Diploma in Legal Practice Management**	Full CPD hours for 2024 | Law Society of Ireland - Blended	€2350	€1950
10 April to 28 June	**Certificate in Professional Education 2024**	See website for details | Law Society of Ireland - Blended	€1950	€1550
01 May	**IMRO and Law Society Annual Copyright Lecture**	1.5 General (by group study)	Complimentary	
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Available now	**LegalED Talks Hub**	See website for details	Complimentary	
Available now	**Legaltech Talks Hub**	See website for details	Complimentary	
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01 May	**In-house & Public Sector Panel Discussion**			
08 May	**Criminal Law Committee Conference 2024**			
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02 October	**In-house & Public Sector Annual Conference 2024**			
03 October	**Younger Members Annual Conference 2024**			
16 October	**Business Law Update Conference 2024**			
17 October	**Property Law Annual Update Conference 2024**			
23 October	**Litigation Annual Update Conference 2024**			
06 November	**Employment & Equality Law Annual Update Conference 2024**			
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04 December	**Client Care Skills for Lawyers**			
06 December	**Family & Child Law Annual Conference 2024**			

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MALE PARTICIPANTS SAID THAT THEY HAD CONSIDERED LEAVING, BUT STAYED DUE TO HIGH PAY, FEELING TRAPPED IN THEIR JOB AS PRIMARY BREADWINNERS

have had access to particular resources that facilitated better time management, enabling them to cope with stressful situations. Alternatively, perhaps these employees had the ability to recognise the availability of resources and could easily access them, thereby enhancing their engagement at work, and were more effective at handling stress. Imbalances in the distribution of unpaid work in the home also expose women to additional stress in paid employment, as they have less time available to complete their work. Male participants said that they had considered leaving, but stayed due to high pay, feeling trapped in their job as primary breadwinners. Male lawyers also feel more cultural and societal pressures than women to stay working in legal practice, and could face social disapproval if they decide to leave.

Law firms need to reflect societal diversity to stay effective and economically relevant. Achieving a shift in organisational culture in order to build a psychologically safe climate and achieve greater gender diversity requires leadership committed to effecting change over an extended period of time. This is particularly important for law firms and all organisations that operate under a formal hierarchical structure, where employees may not feel safe voicing their concerns. g

Emma Clarke is a PhD candidate at the University of Canterbury, New Zealand.

SUGGESTIONS FOR CHANGE

Adjust the billable-units system

Adjusting billable units as the primary measure of performance is likely to help improve employee wellbeing and retain valuable talent, particularly among early-career women. Alternative business models for law firms include project-based models that measure success based on outcomes and provide clients with a fixed price, and subscription-based models where the price for legal work is agreed with the client and based on outcomes.

From an employment perspective, law firms could explore new methods of rewarding employee performance, such as the quality and outcome of their work, their contribution to value creation, the cultivation of strong client relationships, and the display of innovation and creativity in their roles.

Fostering psychological safety will help challenge gender stereotypes within legal practice by enabling employees to feel safe to speak up. Enhancing psychological safety within law firms will also increase awareness of the real origins of work-related pressures and the detrimental effects of the billable-units system on lawyers.

Foster a psychologically safe climate

Law firm leaders should develop a culture that counteracts the barriers brought on by formal hierarchical structures. When leaders behave in a way that minimises the perceptions of formal and informal hierarchies, this will improve perceptions of psychological safety and positively influence employee wellbeing. Such behaviours will enable more open and honest communication among colleagues, shielding lawyers from stress and burnout.

Creating an environment of psychological safety in law firms, where errors can have high-stakes consequences, is challenging. Empathetic leaders who foster a learning culture and are able to recognise and respond to their own and others' emotions, while providing support during challenging situations, contribute to improved perceptions of psychological safety. Ultimately, these positive work environments protect lawyers from stressors and reduce turnover intentions, particularly among women.

Address unconscious bias

Women may be disadvantaged in the allocation and level of access to valuable resources that support them effectively in the development of their professional career and when coping with stress. This could be due to the informal hierarchy in law firms as well as unconscious and gender biases that are present in legal practice. Law firm leaders should acknowledge that men and women use time differently, and address gender differences in how resources at work are allocated.

Leadership training in unconscious and gender biases, emotional regulation skills, self-awareness, empathy, and recognising when colleagues are struggling is essential. Understanding the different ways in which individuals access resources in order to cope with stress will bring greater awareness of gender differences to law firms. Law firm partners who seek professional development in these areas are likely to have more positive working environments, resulting in improved employee wellbeing and reduced turnover.

Hear my train a comin'

The CJEU has upheld the General Court's decision to endorse the European Commission's abuse findings in *Lithuanian Railways*. Cormac Little raises the green flag

GIVEN THAT LG'S OBJECTIVE JUSTIFICATIONS FOR REMOVING THE SECTION WERE NOT CONVINCING, THE COMMISSION FOUND THAT LG HAD ABUSED ITS DOMINANT POSITION AS THE PROVIDER OF RAILWAY INFRASTRUCTURE IN LITHUANIA AND IMPOSED A FINE OF APPROXIMATELY €28 MILLION

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

In a judgment delivered early last year, the Court of Justice of the EU rejected the appeal by Lieutuvos geležinkeliai AB (LG), the national railway company of Lithuania, against a 2020 decision of the General Court of the EU upholding a 2017 infringement finding by the European Commission.

In its decision, the commission found that LG, in removing a specific section of rail track, had abused its dominant position under article 102 of the *Treaty on the Functioning of the EU* (TFEU). The CJEU's judgment in Case C-42/21 P *Lieutuvos geležinkeliai AB v Commission* (12 January 2023) contains key lessons for the application of EU rules on abuse of dominance to exclusionary behaviour. Notably, the CJEU considered the potential application of the 'essential facilities' doctrine.

Sole refinery

LG has a twin role – it both manages railway infrastructure and provides rail transport services in Lithuania. (The Lithuanian State is both the sole shareholder in LG and has also developed, using public funds, the national railway infrastructure, which it now owns. Under EU law, LG is under an obligation to provide for access to this network on a non-discriminatory basis.)

Through its local subsidiary, Orlen Lietuva AB (OL), the Polish State oil company PKN Orlen SA owns and operates a large refinery in Lithuania, the sole such facility in the Baltic States. This refinery is located at Bugeniai, near the north-western town of Mažeikiai, close to the border with Latvia. At the end of the noughties, around 90% of the output of this facility was transported by train, with the majority destined for export by sea to the rest of Europe through the Lithuanian port of Klaipėda. The remainder of the fuel produced at Bugeniai was exported for use elsewhere in the Baltic States via a pair of train routes. In all, 60% of the fuel destined for use in Latvia/Estonia was transported via the shorter of the two routes, starting at Bugeniai and then passing through Mažeikiai junction before reaching Rengė in Latvia – 34km of this so-called 'Rengė route' is in Lithuania.

The remaining 40% of the fuel destined for the other two Baltic States travelled via a second and longer route through various stations, including Joniškis – 152km of this route is on Lithuanian track.

Commercial dispute

In 1999, OL contracted with LG to transport its fuel by rail in Lithuania. This agreement included a commitment to carry fuel on the Rengė route until 2024. LG then subcontracted transport on the Lithuanian element of the Rengė route to the Latvian national railway company, Latvijas dzelzceėš (LDZ), with the latter transporting the fuel in its own right once the border into Latvia was crossed.

In 2008, a dispute arose between OL and LG regarding the rates paid by the former for the transport of its fuel. OL openly considered the possibility of contracting directly with LDZ for transport on the Rengė route and also switching its seaborne export business from Klaipėda to the Latvian ports of Riga and/or Ventspils. Negotiations between OL and LG ultimately broke down, with the latter terminating the 1999 contract in response to the former's decision to withhold certain payments.

In September 2008, after the discovery of a safety defect


PIC: SHUTTERSTOCK AI

on the line, LG suspended traffic on a 19km-long section of the Rengė route. An LG report found that the section should not be reopened until the necessary repairs were completed. The following month, LG removed the section in its entirety. This was done quickly, without either securing funds or taking the necessary preparatory steps for the required repair work. Moreover, aware that it stood to lose business to LDZ, LG sought to persuade the Lithuanian Government not to rebuild the section.

Although engagement between OL and LDZ continued, with the latter applying for a licence to operate on the Lithuanian element of the Rengė route, negotiations eventually stalled in mid-2010 when it became clear that LG did not intend to reopen the section in the short term.

This realisation resulted in LDZ withdrawing its Lithuanian licence application, plus, in July 2010, the submission of a formal complaint by OL, alleging an abuse of dominance by LG within the meaning of article 102 TFEU, to DG Competition of the commission.

Abuse of dominance

Article 102 TFEU prohibits the abuse of a dominant position in the EU (or in a substantial part of it) that affects trade between member states.


PIC: SHUTTERSTOCK AI

THE KEY CONSEQUENCE OF THE CJEU'S JUDGMENT IN THE *LG* CASE IS ITS DELINEATION OF THE SCOPE OF THE 'ESSENTIAL FACILITIES' DOCTRINE

Accordingly, before finding that an undertaking has infringed article 102, the commission (or a national enforcement authority) must first establish that the relevant entity has a dominant position. This is defined as a position of economic strength that allows an undertaking to hinder effective competition being maintained in the relevant market by allowing it to behave, to an appreciable extent, independently of its competitors, customers and, ultimately, consumers. Dominance *per se* is not illegal, but dominant entities are under a special responsibility not to hinder effective competition in the marketplace.

Article 102 contains a non-exhaustive list of various types of abusive conduct. These include directly or indirectly imposing unfair trading conditions. A dominant company may argue that its behaviour is objectively justified and thus does not infringe article 102 TFEU. Abusive conduct may be exploitative (that is, adversely affecting customers) or exclusionary (that is, negatively impacting competitors).

Indeed, in 2008, the commission adopted guidelines on its enforcement priorities in applying article 102 regarding the latter category of abuses by dominant undertakings (elements of the 2008 guidelines were amended by the commission last year).

Breach and appeal

DG Competition's investigation targeted the effects of LG's conduct on two relevant markets. First, it identified the upstream market for the provision of railway infrastructure in Lithuania. Second, using the 'point of origin/point of destination' approach, also used in the air transport sector, it isolated

downstream markets for the transport of fuel by rail from the Bugeniai refinery to Riga, Ventspils, and Klaipėda.

The commission's investigation showed that LG had, under Lithuanian law, a statutory monopoly on the management of the railways. DG Competition also found that, except for the minimal presence in Lithuania of its Latvian equivalent (LDZ), LG was essentially a monopoly provider on the relevant rail-freight markets. Therefore, the commission found that LG was dominant in these relevant markets.

Turning to the relevant railway infrastructure, DG Competition found that LG was both aware of OL's plan to use LDZ's freight services to export via the pair of afore-mentioned Latvian ports and, contrary to standard business practice, removed the section hastily. This made it much more difficult for LDZ to provide cargo services in Lithuania, since the Rengė route – the shortest and most convenient rail journey from the refinery to Latvia – was no longer open/available. Given that LG's objective justifications for removing the section were not convincing, the commission found that LG had abused its dominant position as the provider of railway infrastructure in Lithuania and imposed a fine of approximately €28 million.

Although each of LG's five pleas in its action for annulment of the commission's decision were rejected, the GC, on the basis that the scope of the relevant breach of article 102 TFEU was limited to just one of the various railway links between Lithuania and Latvia, reduced the fine by nearly €8 million. Notwithstanding a resounding reversal at first instance, LG appealed the GC's judgment to the CJEU.

'Essential facilities' doctrine?

LG's key arguments before the CJEU (and the GC) were aimed at DG Competition's failure to assess the removal of the section through the lens of the 'essential facilities' doctrine. This concept was endorsed by the CJEU, notably in its judgment in C-7/97 *Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs und Zeitschriftenverlag GmbH & Co KG* (26 November 1998), and subsequently adopted by the commission in the 2008 guidelines. This doctrine provides a high threshold for a finding of abusive conduct, because it seeks to protect the incentives of a dominant undertaking to finance, develop, and operate infrastructure for the purposes of its own business.

Indeed, the *Bronner* line of jurisprudence contains a three-step test for finding a breach of article 102. Firstly, access to the facility must be indispensable (for example, duplication is impossible or can only be done with great difficulty and is also not economically viable). Secondly, access must be denied by the dominant undertaking without objective justification. And, finally, the refusal to

> THE CJEU THEREFORE HELD THAT THE GC (AND THE COMMISSION) WERE BOTH CORRECT TO FIND THE 'ESSENTIAL FACILITIES' DOCTRINE DOES NOT APPLY WHERE THE DOMINANT UNDERTAKING HAS A LEGAL/ REGULATORY DUTY TO GRANT ACCESS TO ITS NETWORK. ACCORDINGLY, THE REMOVAL OF THE SECTION OR DESTRUCTION OF INFRASTRUCTURE IS AN INDEPENDENT FORM OF ABUSIVE BEHAVIOUR UNDER ARTICLE 102

provide access must foreclose all competition on the market(s) on which the undertaking seeking same operates.

As stated above, LG's key criticism was that the commission should have applied the *Bronner* test. In particular, LG argued that the section was not indispensable, since LDZ could still compete in Lithuania using the longer route via Joniškis. The former also contended that finding an infringement of article 102 would undermine its freedom to conduct business, as it would, in this scenario, be obliged to invest in the railway network allowing a business rival to compete.

The GC held that the 'essential facilities' doctrine does not apply where a dominant undertaking is under a separate regulatory obligation to provide network access.

In its appeal to the CJEU, LG argued that the failure to apply the 'essential facilities' doctrine was a legal error by the GC. The CJEU found that the destruction of infrastructure must be distinguished from a refusal to provide access to same. Accordingly, contrary to LG's argument, this case does not entail a network access issue.

The CJEU noted that the *Bronner* test sought to balance the interests of fair competition with both the property and freedom-to-contract rights of the dominant undertaking. However, LG did not finance/develop, nor does it own the Lithuanian railway network. The CJEU therefore held that the GC (and the commission) were both correct to find the 'essential facilities' doctrine does not apply where the dominant undertaking has a legal/regulatory duty to grant access to its network. Accordingly, the removal of the section or destruction of infrastructure is an independent form of abusive behaviour under article 102.

Broader consequence

The key consequence of the CJEU's judgment in the *LG* case is its delineation of the scope of the 'essential facilities' doctrine. More specifically, the CJEU stipulated that this line of precedent does not apply in situations where a dominant undertaking is obliged, by law/regulation, to grant access to its infrastructure/network.

Given that the *Bronner* criteria impose a 'difficult-to-satisfy' threshold for finding an abuse of a dominant position, the *LG* decision constitutes a welcome development for the commission (and other competition enforcement authorities) who will, doubtless, reflect the CJEU's decision in its ongoing review of the 2008 guidelines, which will likely lead to the introduction of new guidance on exclusionary abuses. g

Cormac Little SC is head of the competition and regulation department at William Fry LLP and a member of the Law Society's EU and International Affairs Committee.

RECENT DEVELOPMENTS IN EUROPEAN LAW

Employment law

Case C-148/22, *Commune d'Ans*, 4 May 2023, opinion of Advocate General Collins

A female employee of the Belgian municipal authority of Ans was prohibited from wearing the Islamic headscarf in her workplace. The authority then amended its employment terms. It required employees to observe strict neutrality and banned the wearing of overt signs of ideological or religious affiliation. The employee brought proceedings before the Belgian Labour Court. She argued that the municipal authority had infringed her freedom of religion. The court considered the employment terms to constitute indirect discrimination. It questioned the imposition of neutrality on all employees of a public service, including those who have no direct contact with users of the service. It asked whether this is a legitimate aim and whether the means to achieve that aim (the prohibition of wearing any signs of belief) are appropriate and necessary. Advocate General Collins found that the terms of employment did fall within the scope of the anti-discrimination directive (2000/78/EC). The prohibition, such as the one here, falls within the scope of employment and working conditions within the meaning of the directive. The concept of religion covers both the fact of having a belief, and the manifestation of religious faith in public, such as wearing a headscarf.

The general framework leaves a margin of discretion to the member states. This is particularly broad where the principles at stake involve their national identities. He took the view that a public body's terms of employment that prohibit employees from wearing any visible sign of political, religious, or philosophical belief in the workplace, with the aim of putting place a neutral administrative environment, is not direct discrimination on grounds of religion or belief, provided that the prohibition is applied in a general and undifferentiated way. The prohibition can amount to indirect discrimination. It can affect a certain category of persons more than others, such as those who wear a headscarf on account of their Muslim faith. That point is for the referring court to assess. Such a difference of treatment would not be indirect discrimination if were objectively justified by a legitimate aim and if the means employed to achieve that aim were appropriate and necessary.

The desire to pursue a policy of political, philosophical, and religious neutrality within a public body is, in absolute terms, capable of being a legitimate aim. The municipal authority here had opted for "exclusive neutrality" to put in place an "entirely neutral administrative environment". The authority must demonstrate that this choice responds to a genuine need.

The local court should consider the apparent absence of any legislative or constitutional obligation in Belgium requiring employees of a municipal authority to observe exclusive neutrality. The court must also determine whether the facts justify the choice of the authority.

The wearing of signs of philosophical or religious belief is unconditionally permitted in other cities of Belgium, and this legitimately raises the question of whether the prohibition at issue is appropriate. g

PRACTICE NOTES

CONVEYANCING COMMITTEE

REMOTE WITNESSING OF DOCUMENTS

The Conveyancing Committee has been requested to give guidance with regard to the remote witnessing of execution of legal documents in the conveyancing process.

It is accepted practice that signatures to most legal documents of significance are witnessed by an independent person. There are statutory and non-statutory provisions setting out particular standards for certain legal documents.

This practice note deals specifically with the witnessing of certain documents in the conveyancing process.

Contracts for sale

The Conveyancing Committee believes that, as a matter of law, a Contract for Sale does not actually require to be witnessed but, in practice, for the most part, the execution of Contracts for Sale by the parties is witnessed by the solicitors acting for the purchaser and the vendor. Occasionally, one is witnessed by another independent person. This is good practice. If a solicitor is not physically present when a client signs a Contract for Sale, the signature of their client, whether the signature is 'wet ink' or digital, may be acknowledged to the solicitor either in person or remotely, and the solicitor may then witness the signature.

Remote acknowledgment can be by phone or over a virtual meeting, such as Teams, FaceTime, Zoom, or similar. It is perfectly proper for a solicitor to apply their signature as witness to the execution of a Contract for Sale based on the acknowledgment of the signatory, provided that they know their client. The solicitor may themselves apply their signature either in 'wet ink' or by digital means. A witness who is not a solicitor can follow the same procedure.

Deeds

The execution of deeds (conveyance, assignment, transfers and charges) is governed by the *Land and Conveyancing Law Reform Act 2009* and the Land Registry rules at tailte.ie (see: 'Execution of deeds and documents' in the practice directions section).

The wording of the 2009 act requires that the execution of a deed is acknowledged "in the presence of a witness". Therefore, while a deed may already have been signed in the absence of a witness, the execution of the deed must be acknowledged in the presence of a witness. Although it is a matter for statutory interpretation, the committee is of the view that 'presence' here almost certainly means in the physical presence of the witness signatory and, therefore, such acknowledgement should not be effected remotely. Solicitors involved in the execution of these documents should exercise all care reasonably practicable in accordance with (a) their letters of engagement, (b) their duty of care to their client, and (c) the requirements of the residential certificate of title system, where relevant. Particular care is needed when a charge could involve putting a family home at risk.

Guarantees

Particular care should be taken in relation to guarantees. A solicitor has a duty to understand fully the circumstances of the guarantor and then to give appropriate legal advice, which ideally should be in writing. If these duties have already been attended to by the solicitor, and provided that the guarantee is not being executed as a deed, the committee takes the view that it would be acceptable for the solicitor to have the signature of a guarantor acknowledged remotely. It follows that the failure to have those duties attended to before a guarantee is signed or acknowledged has the potential to be inconsistent with a solicitor's duty of care to the guarantor. As in the case of charges, particular care is needed when a guarantee could involve putting a family home at risk.

Signatory/witness names

Purchasers' solicitors should check that closing documentation is properly witnessed. If the signature of any party or witness, or the address and occupation of the witness, is handwritten and illegible, it is advisable to get these details clarified immediately, because they will be required for registration with Tailte Éireann and are more easily checked at the time.

The best practice is to write the name of the signatory in block capitals underneath the signature, and to do likewise if the address and occupation are illegible.

Attestation

The law relating to the execution of deeds is governed by section 64(2)(b)(i) of the 2009 act, in accordance with which it is perfectly proper for a party to a deed to sign in the presence of the witness or, where the deed is already signed, acknowledge their signature in the presence of the witness. The best practice would be for the attestation part of the execution block in any deed to reflect the factual situation, for example:

- As is most usual, where the party to the deed signs in the presence of the witness: "Signed by [*signatory party name] in the presence of …", or
- Where the signatory has already signed and acknowledges their signature: "Signed by [*signatory party name] who acknowledges their signature in the presence of…" g

NOTICE: THE HIGH COURT

In the matter of Orla Ellis, a solicitor previously practising as Ellis & Co, Solicitors, Station House, Saint Brigid's Street, Ballinamore, Co Leitrim, and in the matter of the *Solicitors Acts 1954-2015* [2023 112 SA]
Law Society of Ireland (applicant)
Orla Ellis (respondent solicitor)

Take notice that, by order of the President of the High Court made on 4 December 2023, it was ordered that the name of Orla Ellis be struck off the Roll of Solicitors.

Dr Niall Connors, Registrar of Solicitors, Law Society of Ireland, 29 February 2024

Dr Brian J Doherty, Chief Executive Officer, Legal Services Regulatory Authority, 29 February 2024

WILLS

Byrne, Matthew (deceased), late of Kilree Street, Bagenalstown (o/w Muine Bheag), Co Carlow, who died on 13 April 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Anita Byrne, James Cody Solicitors, The Parade, Bagenalstown, Co Carlow; tel: 059 972 1303, email: abyrne@jamescody.ie

Connor, John Joseph (deceased), late of Cloonshanville, Frenchpark, Co Roscommon, who died on 27 January 2024. Would any person having knowledge of any will made by the above-named deceased please contact Callan Tansey Solicitors LLP, email: info@callantansey.ie

Conway, John James (otherwise JJ) (deceased), late of Ballinacarra, Kilfenora, Co Clare and 44 Cloughleigh Road, Ennis, Co Clare, who died on 7 November 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rory Casey, John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare; tel: 065 682 8159, fax: 065 682 0519, email: rory.casey@caseylaw.biz

Downey, Muriel (née Poole) (deceased), late of Kylebelle, Ballinaboley, Leighlinbridge, Co Carlow, who died on 26 January 2023. Would any person having knowledge of any will made by the above-named deceased, or any knowledge of the above-named deceased, or if any firm is holding any will or documents, please contact McKenna and Co, Solicitors, 115 Baggot Street Lower, Dublin 2; tel: 01 485 4563, email: lisa@mckennaandcosolicitors.com

Fay, James (deceased), late of 29 Champions Avenue, Dublin 1, who died on 23 December 2023. Would any person having knowledge of any will made by the above-named deceased please contact O'Hanrahan Lally D'Alton LLP Solicitors, 77 Talbot Street, Dublin 1; tel: 01 855 5162, email: law@ohld.ie

Fitzpatrick, Alice (otherwise Rita) (deceased), late of 76 Rosemount, Clongour, Thurles, Co Tipperary, who died on 21 February 2023. Would any person or firm having knowledge of the whereabouts of any will made by the above-named deceased please contact Gibson and Associates LLP, Solicitors, 238 The Capel Building, St Mary's Abbey, Dublin 7; tel: 01 264 0626, email: neil.butler@gibsonandassociates.ie

Flanagan, Matthew (deceased), late of 23 Dubber Cross, St Margaret's, Co Dublin, who died on 23 November 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Amorys Solicitors, Suite 10, The Mall, Beacon Court, Sandyford Business Park, Dublin 18; tel: 01 213 5940, email: info@amoryssolicitors.com

Fleming, Annie Teresa Fleming (née McDermott) (deceased), late of Lishugh, Elphin, Co Roscommon, who died on 25 December 2016. Would any persons holding or having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Callan Tansey Solicitors, Crescent House, Boyle, Co Roscommon; tel: 071 966 2019; email: info@callantansey.ie

Hayward, Margaret Andrea (otherwise Margaret Hayward) (deceased), late of Carrowmoneen, Tuam, Co Galway, and formerly of Gall-Gaidhel, Port William, Newton Stewart, DG8 9LG. Would any person having knowledge of a will made by the above-named deceased, who died on 2 January 2023, please contact TA O'Donoghue Canney & Company, Solicitors, Dublin Road, Tuam, Co Galway; tel: 093 24118, email: paul@taodonoghue.com

Hughes, Conal Christopher (deceased), late of 115 Clareview Park, Ballybane, Galway City, Co Galway, formerly of 14 St Patrick's Park, Blanchardstown, Dublin 15, who died on 6 August 2023. If anyone knows of a will for the above-named

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €163 (incl VAT at 23%)
- **Title deeds** – €325 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €163 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for May 2024 *Gazette*: 15 April 2024.**

No recruitment advertisements will be published that include references to ranges of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice that indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

Conal Christopher Hughes please contact Caolán Doyle, Doyle & Company LLP, Solicitors, Main Street Blanchardstown, Dublin 15; tel: 01 820 0666, fax: 822 0880, email: info@doyleandcompany.ie

Jackman, Francis P (deceased), late of 1 Wasdale Park, Terenure, Dublin 6, who died on 13 February 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Joseph Ritchie, Donal M Gahan, Ritchie & Co, Solicitors, 36 Lower Baggot Street, Dublin 2; tel: 01 676 7277, email: joseph.ritchie@dmg.ie

Lillis, William (deceased), late of 17 Fair Green, Bagenalstown (o/w Muine Bheag), Co Carlow, who died on 4 November 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Anita Byrne, James Cody Solicitors, The Parade, Bagenalstown, Co Carlow; tel: 059 972 1303, email: abyrne@jamescody.ie

McLoughlin, David Patrick (deceased), late of 12 Belclare View, Poppintree, Dublin 11. Would any person having knowledge of a will executed by the above-named deceased, who died on 4 February 2024, please contact Philip O'Sullivan & Co, Solicitors, 14 Denny Street, Tralee, Co Kerry, V92 XY5C; tel: 066 712 3411, email: info@philiposullivan.com

Mulkearn, James (otherwise known as Johnny Mulkearn and Patrick James Mulkearn) (deceased), late of 6 Gortmore Avenue, Finglas, Dublin 11, who died on 4 January 2023. Would any person having knowledge of any will made by the above-named deceased please contact Rogers Law Solicitors, email: info@rogerslaw.ie or post to 48-49 North King Street, Dublin 7

O'Brien, Christina (deceased), late of Cornasaus, Mountainlodge, Cootehill, Co Cavan, who died on 17 June 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Lorna Cahill, DM O'Connor & Co, Solicitors, 5 Mary Street, Galway, H91 NXW0; tel: 091 569 170, email: info@dmoconnor.com

O'Brien, James (deceased), late of Cornasaus, Mountainlodge, Cootehill, Co Cavan, who died on 9 November 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Lorna Cahill, DM O'Connor & Co, Solicitors, 5 Mary Street, Galway, H91 NXW0; tel: 091 569 170, email: info@dmoconnor.com

O'Sullivan, Agnes (deceased), late of Filane East, Waterfall, Bantry, Co Cork (also late of Inchinteskin, Eyeries, Beara, Co Cork, and late of Our Lady's Hospital, Lee Road, Cork), who died on 18 July 2022. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Dan Leahy, O'Mahony Farrelly O'Callaghan Solicitors, 12 Barrack Street, Bantry, Co Cork; tel: 027 50132, email: dleahy@omahonyfarrelly.com

O'Sullivan, Paschal (deceased), late of Pax, Weavers Row, Clonsilla, and Castleknock Manor and Deer Park Road, Castleknock, Dublin 15, who was born on 23 April 1962 and who died on 5 January 2024. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Shea Legal, 3 Chancery Place, Dublin 7; tel: 01 677 7495, email: e.oshea@osheabusiness.ie

Raftery, Brian (deceased), late of Bloomfield Hospital, Stocking Lane, Rathfarnham, Dublin 16, and formerly of Stoney Meadows, Summerhill, Co Meath, who died on 16 January 2024. Would any person having knowledge of a will made by the above-named deceased please contact Ruairi O'Brien, solicitor, John C Walsh & Co, Solicitors, 24 Ely Place, Dublin 2; tel: 01 676 6211, email: ruairi.obrien@johncwalsh.ie

Ridgeway, Ann (deceased), late of 15 Montrose Drive, Artane, Dublin 5, who died on 4 August 2018. Would any person or firm having knowledge of the whereabouts of a will dated 15 November 2005, or any will or codicil made or purported to have been made by the above-named deceased, please contact Lockhart & Cleary, Solicitors, 7 Annesley Bridge Road, Fairview, Dublin 3; tel: 01 855 5255, email: gerard@lockhart.ie

TITLE DEEDS

Would any person having knowledge of the location of the title deeds to the premises at 107 Griffith Road, Finglas East, Dublin 11, or if any firm is holding same, please contact Tracey Solicitors LLP, 16/17 Andrew Street, Dublin 2; tel: 01 640 2714, email: law@traceysolicitors.ie

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the lands at 41 Upper Dominick Street, Broadstone, Dublin 7

Take notice any persons having any interest in the freehold estate or any superior leasehold estate of the following property: all that and those the lands and hereditaments, property, and business known as 'Cumiskeys', situate at 41 Upper Dominick Street, Broadstone, Dublin 7, comprised in a lease dated 10 January 1910 between John Fogarty of the one part and John Doyle and Joseph Doyle for a term of 250 years and, as set out in the map annexed to the said deed, at a yearly rent of 80 pounds.

Take notice that Stephen Cumiskey and Barbara Cumiskey (in their capacity as the executors

of the estate of Anna Cumiskey) intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple and all intermediate interests in the aforesaid premises, and take notice that any party asserting that they hold a superior interest in the said lands or any part thereof are hereby called upon to furnish evidence of their title to the below named within 21 days from the date of this notice.

Take notice that, in default of any such evidence being received, the applicants intend to proceed with the said intended application at the end of 21 days from the date of this notice and to apply to the county registrar for such directions as may be appropriate on the basis that the persons entitled to the reversion expectant on the determination of the aforesaid lease of 10 January 1910 and any interests superior thereto are unknown and unascertained.

Date: 29 March 2024

Signed: David F McMahon & Co, Solicitors LLP (solicitors for the applicants), Prosperity Chambers, 5/6 Upper O'Connell Street, Dublin 1

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property at 65 Lower Dorset Street, Dublin 1: an application by Rev Shane Daly SJ, Rev Terence Howard SJ, Rev Thomas Casey SJ, and Rev William Toner SJ

Take notice any person having an interest in the freehold estate or any intermediate interest in a portion of the property known as 65 Lower Dorset Street, Dublin 1, which was demised by an indenture of lease dated 6 June 1879 and made between Maurice Butterly of the one part and John Gaffney of the other part for a term of 195 years from 25 March 1879 at a rent of £1 16s thereby reserved, and therein described as "that piece or plot of ground on the west side of Lower Dorset Street and containing in front to said street 12 feet, and in depth from front to rear 173 feet and six inches or thereabouts, bounded on the east by Lower Dorset Street, on the west by lands in possession of said Maurice Butterly, on the north by a plot of ground let to Mr H Emery, and on the south by Saint Francis Xavier's Schools, and more particularly described and delineated on the map or terchart in the fold and which said piece or parcel of ground is situate in the parish of Saint George, barony of Coolock, and county of Dublin".

Take notice that the applicants, being the persons entitled to the lessee's interest created by the lease, namely Rev Shane Daly SJ, Rev Terence Howard SJ, Rev Thomas Casey SJ, and Rev William Toner SJ, all of Milltown Park, Sandford Road, Dublin 6, intend to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest and any intermediate interests in that portion of that property comprised in the aforementioned lease, and any party asserting that they hold a superior interest in the aforementioned premises is called upon to furnish evidence of the title to the aforementioned portion of the premises comprised in the lease to the below-named solicitors within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforementioned premises are unknown or ascertained.

Date: 29 March 2024

Signed: O'Connor LLP (solicitors for the applicants), 8 Clare Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Glasnevin Property Ventures Limited in respect of property situate at Glasnevin Hill, Glasnevin, in the city of Dublin, formerly parts of 48, 50 and 52 Glasnevin Hill

Take notice any person having any interest in the freehold estate or any intermediate interests in the lands comprised in Folio 186929L of the register of leaseholders, Co Dubin, situate at Glasnevin Hill, Glasnevin, in the city of Dublin, being formerly parts of 48, 50 and 52 Glasnevin Hill, held under a lease dated 1 December 1913 between Muriel Isabel Gerty, Jemima Hann, Margaret Lee and Charlotte Hester Hoey of the one part and Andrew Ryan of the other part from 1 May 1913 for the term of 150 years, subject to the yearly rent of £20.

Take notice that Glasnevin Property Ventures Limited, being the company now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold fee simple estate and all (if any) intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 29 March 2024.

Signed: McCann FitzGerald LLP (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* – notice requiring information from a lessor to: Joseph Nagle, late of the city of Cork; Jonathan Busteed, late of Dundanion in the South Liberties of the city of Cork; Sir Thomas Deane, late of the city of Cork, their executors, administrators, successors, or assigns

Description of the lands to which the notice refers: all that and those the land, hereditaments, and premises known as Drumcora House, Blackrock Road, Cork, as more particularly described in Folio CK22828L of the register of leaseholders.

Particulars of the lease or tenancy: (1) A lease for the term of 999 years agreed between the said Joseph Nagle and the said Jonathan Busteed, to run from 29 March 1731; (2) A lease or sublease for the term of 900 years agreed between the said Jonathan Busteed and Timothy Hughes, to run from 29 September 1777; (3) a lease or sublease for the term of 897 years agreed between the said Sir Thomas Deane and George Sherlock, to run from 8 October 1832; (4) a lease or sublease for the term of 897 years agreed between the said Sir Thomas Deane and George Sherlock, to run from 2 November 1832.

Part of the lands excluded: none.

Take notice that Kurland Properties Limited, being the person entitled under the above mentioned acts, as amended, proposes to purchase the fee simple and all intermediate interest in the lands described in the foregoing paragraphs, and requires you to give, within a period of one month after service of this notice on you, the following information: (a) nature and duration of your reversion in the land; (b) nature of any encumbrance on your reversion in the land; (c) name and address of (i) the person entitled to the next superior interest in the land and (ii) the owner of any such encumbrance; (d) the owner of the fee simple interest in the land and any other intermediate interest or encumbrance.

Date: 29 March 2024

Signed: O'Donovan Murphy & Partners (solicitors for the applicant), The Quay, Bantry, Co Cork

HIGH COURT

In the matter of section 50 of the *Land and Conveyancing Law Reform Act 2009* and in the matter of an application by HITC Properties Limited (record no 2023/346SP) in relation to 122A Cromwellsfort Road and 2 Cherry Grove, Walkinstown, Dublin 12

Take notice that, on 29 April 2024 at 10.30am or shortly thereafter, HITC Properties Limited intends to apply to the High Court (Chancery Motions 2 list) at the Four Courts, Inns Quay, Dublin 7, for orders under section 50 of the *Land and Conveyancing Law Reform Act 2009* discharging in whole from its lands at 122A Cromwellsfort Road and 2 Cherry Grove, Walkinstown, Dublin 12 (the lands registered in Folios 20925F and 17814F of the register), the following freehold covenant: "Not to cut or damage any of the principal walls or timbers of the buildings built or erected as aforesaid, not to make any alterations in the external elevation or architectural design and nor, without first obtaining the consent in writing of the lessor, to build, erect, or place, or permit or suffer to be built, erected, or placed on the demised premises any new or additional building or erection whatsoever."

The covenant appeared in the following two leases under which the lands were previously held: a lease dated 11 October 1952 between Patrick Byrne (as lessor), Malachy Dermot O'Callaghan and James G O'Callaghan (as builders), and Joseph Doyle (as lessee), with a term of 500 years from 1 May 1948; and a lease also dated 11 October 1952 between Patrick Byrne (as lessor), Malachy Dermot O'Callaghan and James G O'Callaghan (as builders), and Seigfried Debrowitsch (as lessee), with a term of 500 years from 1 May 1948. The interests under the said leases merged with the freehold interests in the lands in 1973 and 1976 respectively, when the applicant's predecessor-in-title acquired the freehold interests from Irish Life Assurance Company Limited. However, the covenant may nonetheless remain enforceable under section 28(2) of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* if it protects or enhances the amenities of any land occupied by Irish Life Assurance Company Limited or its successor in title.

The applicant is applying to have the covenant discharged on the ground that it constitutes an unreasonable interference with the use and enjoyment of the lands and is incompatible with modern planning and development legislation. We hereby call upon any person claiming to have the right to enforce the covenant, or to otherwise have an interest in the performance of the covenant, to contact the below named within 28 days of the date of this notice and/or appear before the said court on the said date.

In the absence of such contact or appearance, the applicant intends to apply for the relief sought on the basis that no person having such right or interest can be found.

Date: 29 March 2024

Signed: Donal M Gahan, Ritchie & Co (solicitors for the applicant), 36 Lower Baggot Street, Dublin 2 D02 XE16

PRO BONOBO

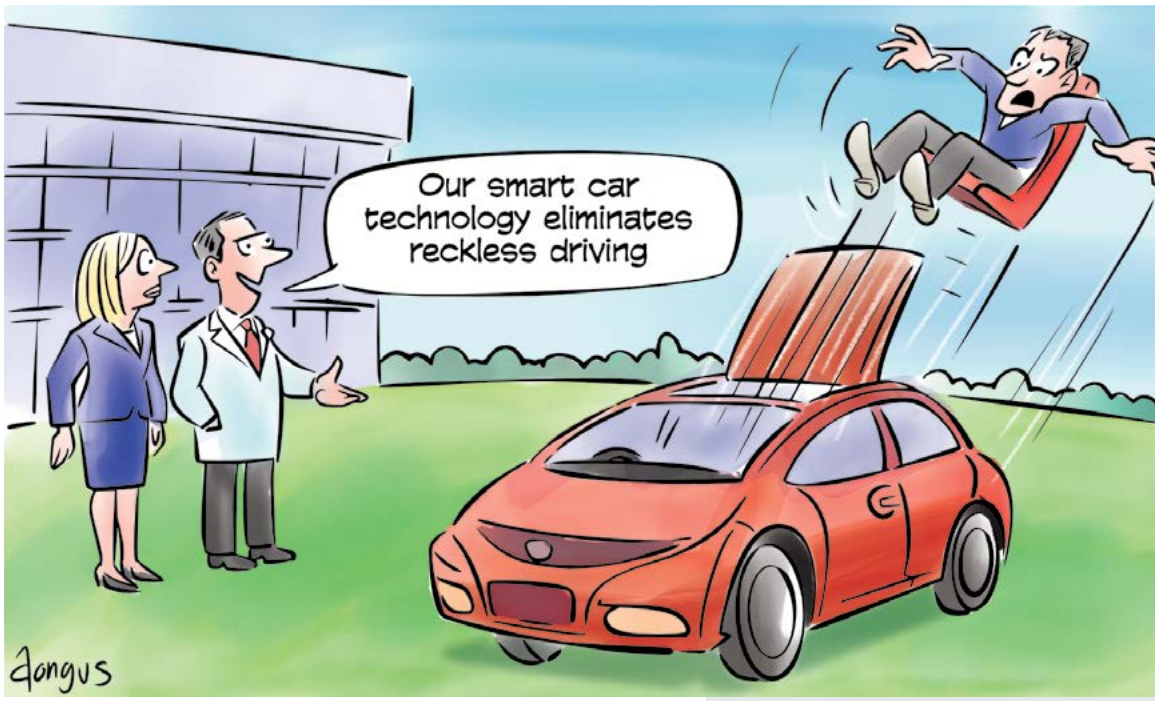
Car spies drive insurance spikes

● US drivers are discovering that their vehicles could be snitching on their driving habits to third-party data brokers, causing significant hikes in their insurance rates.

According to the *New York Times*, seemingly innocuous features like 'Driving Score' from Kia and Hyundai, 'Driver Feedback' from Honda, and 'OnStar Smart Driver' from General Motors are essentially turning cars into spies.

While car makers and data brokers insist they have drivers' permission, it appears that the consent is buried in fine print and murky privacy policies that nobody bothers to read.

California's privacy regulator has decided to launch an investigation into the claims.



Rozzer rats on reefer rats

● New Orleans' police chief Anne Kirkpatrick found herself making an unusual plea for a new headquarters. During a meeting with officials, she said: "The rats are eating our marijuana. They're all high."

According to *CBS News*, the current HQ is plagued by rats feasting on evidence and cockroaches roaming freely. Kirkpatrick highlighted the dire need for a change, emphasising the impact on employee morale and the potential jeopardy to criminal-case evidence.

"It's some joint."

The wisdom of Pooh

● An 'Oh bother' moment in an English court recently caused the judge to divert a potentially sticky situation by leaning on the wisdom of AA Milne.

The case involved a Greek food retailer labelling honey as 'raw', says *Legalcheek.com*. Trading standards officials said that the term 'raw' could mislead consumers, since honey is typically not cooked.

Judge Neville began his ruling with a quote from Piglet in *Winnie-the-Pooh*: "'The things that make me different are the things that make me me,' said Piglet, who must have seen quite a bit of honey eaten over the years. If he treated Pooh to some 'raw honey', what would be different about it?"

He concluded that the term 'raw' was not misleading, as "the average consumer would struggle to explain what 'cooked honey' might even look like".

Love me do

● Police in the Philippines have uncovered a disturbing scam, operating under the guise of an online gambling firm, that was a centre for exploitation.

A raid targeted Zun Yuan Technology Inc, a Chinese-owned entity, the BBC reports. Acting on a tip-off from a Vietnamese escapee who bore signs of torture, authorities intervened.

The victim, promised a chef's position, arrived in January only to realise he had fallen into a trap orchestrated by human traffickers.

The police raid saved 383 Filipinos, 202 Chinese, and 73 other foreign nationals trapped in the centre. The victims were coerced into forming online relationships with unsuspecting individuals, primarily from China, to manipulate and defraud them.

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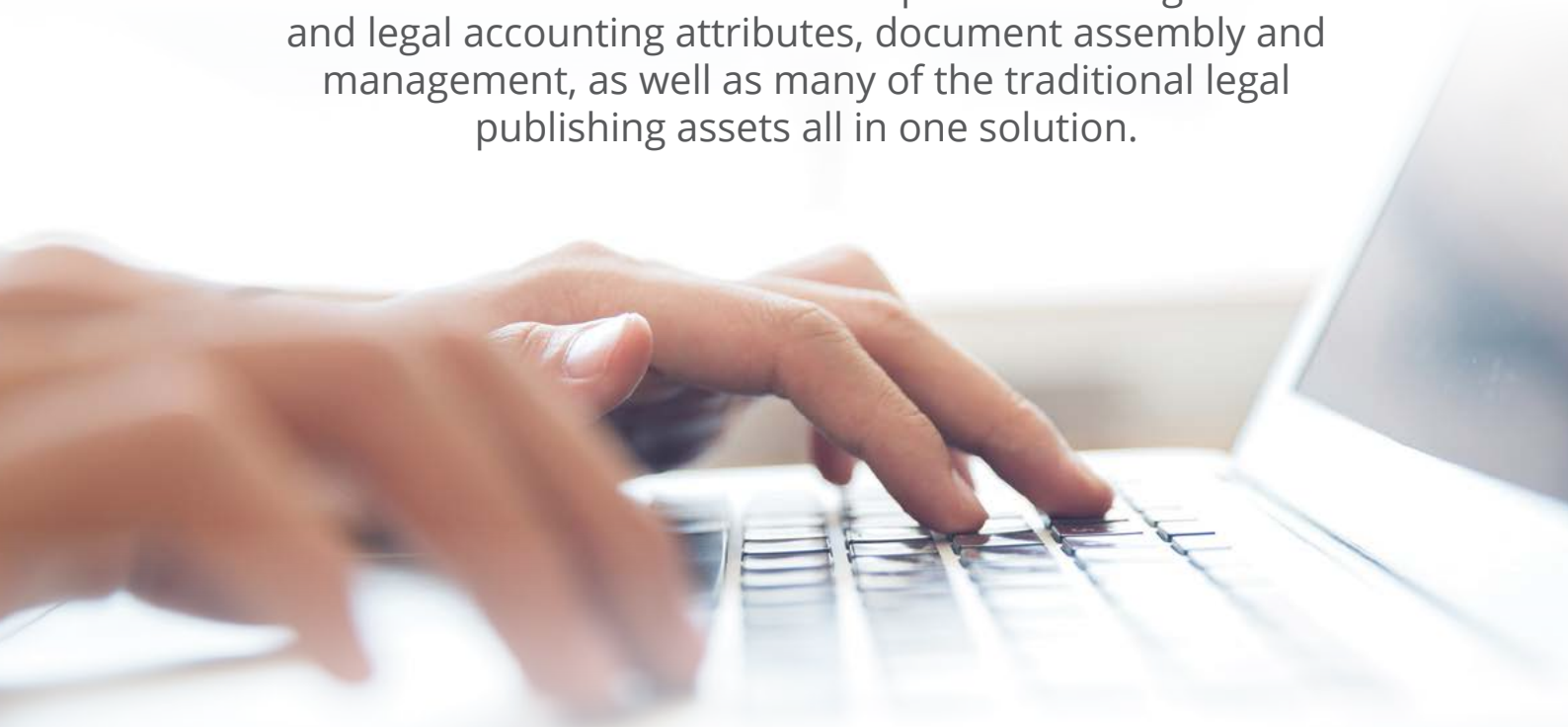

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