The Bar Review

Journal of the Bar of Ireland • Volume 19 • Issue 5 • November 2014

Suspended Sentences and Recent Case Law

ROUND HALL

Bloomsbury Professional

Now Available!

Landlord and Tenant Law

3rd Edition

J C W Wylie

The eagerly awaited third edition of **Landlord and Tenant Law** is now available. This definitive work is an essential read for all practitioners with an interest in property Law.

Practical and comprehensive, **Landlord and Tenant Law** covers all aspects of this wide-reaching area; from the basics (explaining the nature of the relationship between landlord and tenant) to more complex matters, such as what to do when disputes arise, and the controversial topics of rent reviews and guarantees.

Your one-stop source of the latest developments

A wealth of property legislation and case law has been enacted in the last few years. The new edition of **Landlord and Tenant Law** will help you keep up with the changes, ensuring that the advice you give your clients is based on solid, up-to-date information.

You'll find detailed discussion of all the relevant legislation, including:

- The Residential Tenancies Acts 2004 and 2009
- The Landlord and Tenant (Ground Rents) Act 2005
- The Civil Law (Miscellaneous Provisions) Act 2008
- The Land and Conveyancing Law Reform Act 2009 (s 132)
- The Multi-Unit Developments Act 2011

Extensive case law

The third edition also incorporates extensive case law on several important aspects of the law, including rent reviews, guarantees, break options, service charges, alienation covenants, forfeiture, new tenancy rights and acquisition of the fee simple.

It also considers the numerous proposals for reform made by the Law Reform Commission.

About the author

Professor J C W Wylie holds the degrees of LLB and LLD from Queen's University Belfast and LLM from Harvard University. He was Frank Knox Fellow at Harvard Law School and held a Fulbright Scholarship to the USA during 1966-67. After various teaching posts at Belfast and Cardiff, Professor Wylie held a chair of law at Cardiff from 1979 to 2009, and he has been an Emeritus Professor since then.

He is the leading authority on Irish property law and, apart from his work on law reform, has written the standard texts on land law, conveyancing and landlord and tenant law and practice, all available from Bloomsbury Professional. He has been a consultant to A&L Goodbody Solicitors for over 20 years.

ORDER YOUR COPY TODAY

ISBN: 978 1 78043 480 3 **Pub Date:** Oct-14
Format: Hardback **Price:** €245 + €5.50 P&P

TO ORDER A COPY OF THIS BOOK

Contact Jennifer Simpson, Bloomsbury Professional. **T:** +353 (0) 1 637 3920 **F:** +353 (0) 1 662 0365 **E:** jennifer.simpson@bloomsbury.com

Purchase a copy online at: www.bloomsburyprofessional.com/ie/

Cover Illustration: Brian Gallagher T: 01 4973389
E: bdgallagher@eircom.net W: www.bdgart.com
Typeset by Gough Typesetting Services, Dublin
shane@goughtypesetting.ie T: 01 8727305

The Bar Review

Volume 19, Issue 5, November 2014, ISSN 1339-3426

Contents

ROUND HALL THOMSON REUTERS

Editorial Correspondence to:

Eilis Brennan BL
The Editor
Bar Review
Law Library
Four Courts
Dublin 7
DX 813154
Telephone: 353-1-817 5505
Fax: 353-1-872 0455
E: eilisebrennan@eircom.net

The Bar Review is published by Round Hall in association with The Bar Council of Ireland.

For all subscription queries contact:
Round Hall
Thomson Reuters (Professional) Ireland Limited
43 Fitzwilliam Place, Dublin 2
Telephone: + 353 1 662 5301
Fax: + 353 1 662 5302
E: info@roundhall.ie
web: www.roundhall.ie

Subscriptions: January 2014 to December 2014—6 issues
Annual Subscription: €297.00 + VAT

For all advertising queries contact:
David Dooley,
Direct line: + 44 20 7393 7775
E: david.dooley@thomsonreuters.com
Directories Unit. Sweet & Maxwell
Telephone: + 44 20 7393 7000

Lost Evidence and the Court of Trial

Garnet Orange SC

Introduction

There is a well-worn path leading from the various trial courts through the High Court and on to the Supreme Court made by accused persons who are applying to stop their trials because evidence has been lost. A quick review of the relevant decisions shows that the higher courts will only prohibit a trial for this reason in exceptional circumstances. In many cases the judgments comment that the accused can still raise the issue of lost evidence during his trial and note that the trial court is well equipped to deal with any difficulties that may emerge for the accused during the trial for this reason.[1]

However, it does not appear that there is any great body of jurisprudence within Ireland to guide the trial courts on this issue. While it hardly seems possible that the problem of lost evidence has only arisen in Ireland within the last twenty years, the recent development of the jurisprudence may be seen to be linked to the advent of CCTV and expanded forensic testing. This suggests that in earlier cases, the trial judge was able to deal with the issue by rulings based on the existing law.[2] This article is intended to consider how issues arising where evidence has been lost may be dealt with by the court of trial rather than by the higher courts.

Duties and relevant evidence

The gardaí have a duty to seek out and preserve all potentially relevant evidence.[3] This is evidence that may have a bearing on either the guilt or innocence of the accused. The Supreme Court has linked this duty to preserve evidence with the constitutional guarantee of a fair trial and the proper administration of justice.[4] However, the duty is not absolute and is subject to "commonsense parameters of reasonable practicality".[5] The duty does not impose an obligation on the gardaí to engage in disproportionate commitment of resources in an exhaustive search for every conceivable kind of evidence, and the duty must "be interpreted in a fair and reasonable manner."[6] Nor does the duty oblige the gardaí "to preserve every useless exhibit or every item which has yielded no practical forensic result."[7] There is a corresponding duty on the accused and his legal advisers to identify any evidence that ought to be apparent to them will be required to sustain any defence they wish to advance and to request, with reasonable expedition, that it be preserved or that they be given access to it for examination.[8]

The decided cases show that there are two ways in which evidence may be said, for present purposes, to have been lost. The evidence may have been seized, but the gardaí failed to preserve or retain it (either by mislaying it or by releasing it to a third party). Alternatively, the gardaí may not have obtained the evidence in the first place. The courts have recognised that there is no obvious distinction between cases in which the gardaí obtained evidence that has been mislaid and those in which they failed to seize (or preserve) material that might be evidentially significant.[9] The courts tend not to concern themselves with blame as part of the consideration of an application to prohibit a trial on the basis that the courts have no role in the management or in the disciplining of the gardaí.[10]

Relevant and significant evidence

It is a standard defence tactic to try and expose failings in the investigation of an offence as a means of showing the paucity of evidence against the accused and thereby establishing that doubts must remain as to his guilt as a result of the failure to secure all available evidence.[11]

It goes without saying that the judge should be satisfied that the relevant evidence comes within the duty to seek out and preserve evidence and that, taking a realistic approach to the case, it is relevant to the defence. The decisions of the higher courts tend to show that the missing evidence is central to the case. The defence must engage with the evidence as it develops to show that there is a reality in the argument that the accused has been unfairly prevented from mounting a proper defence owing to the loss of that evidence.[12] It may be that the missing evidence would have assisted the defence or that the accused has been deprived of the chance to test it in an adversarial sense. It may be asked whether the breach of the duty to preserve evidence led to the loss of relevant evidence which should be available in an "independently verifiable form" and, if so, has the accused been prejudiced in his defence as a result?[13] Alternatively, does the loss of the

1 *McFarlane v DPP* [2007] 1 IR 134.

2 For example, the absence of a piece of evidence may have led to the exclusion of any reference to that evidence or anything arising from it on the basis of a break in the chain of evidence.

3 *Braddish v DPP* [2001] 3 IR 127 at p. 133 to 135; *Murphy v DPP* [1989] ILRM 71at p. 76; *Dunne v DPP* [2002] 2 IR 305; *Bowes v DPP* [2003] 2 IR 25 at p. 33; *Savage v DPP* [2009] 1 IR 185 at paras. 41(iii) and 59.

4 *Dunne v DPP* [2002] 2 IR 305 at p. 324; also *Byrne v DPP* [2011] 1 IR 346 at para. 20.

5 *Scully v DPP* [2005] 1 IR 242 at p. 256; *Bowes v DPP* [2003] 2 IR 25; and, *Murphy v DPP* [1989] ILRM 71.

6 *Bowes v DPP* [2003] 2 IR 25 at p. 33; *D(C) v DPP* [2009] IESC 70 at para 36; and *Byrne v DPP* [2011] 1 IR 346 at para 24.

7 *McCormack v Judges of the Circuit Court* [2007] IEHC 123 at para. 14.

8 *Dunne v DPP* [2002] 2 IR 305 at p. 323; *Bowes v DPP* [2003] 2 IR 25; and *Scully v DPP* [2005] 1 IR 252 at p. 251.

9 *Dunne v DPP* [2002] 2 IR 305; and *Byrne v DPP* [2011] 1 IR 346 at para. 24.

10 See *McFarlane v DPP* [2007] 1 IR 134 at para. 21.

11 See the comments of O'Donnell J in *Wall v DPP* [2013] IESC 56 at para. 39.

12 See *Bowes and McGrath v DPP* [2003] 2 IR 25; *O'Brien v DPP* [2008] IESC 67; *C (R) v DPP* [2009] IESC 32; *McHugh v DPP* [2009] IESC 15; and *Stirling v Judge Collins* [2014] IESC 13.

13 *McFarlane v DPP* [2007] 1 IR 134 at para. 31; and *D(C) v DPP* [2009]

relevant evidence mean that "the accused will be unable to advance a point material to his defence"?[14]

One decision that may indicate the approach to be taken by the courts is *Bowes (No. 3)*.[15] Here the applicant had been convicted of possession of a substantial quantity of heroin which had been found in the boot of a car that was being driven by him. Following the imposition of sentence the usual order was made for the forfeiture and destruction order of the drugs, which were destroyed shortly afterwards. The Court of Criminal Appeal quashed the conviction and ordered a retrial.[16] As the retrial was about to commence, it became apparent that the drugs had been destroyed. The prosecution relied on photographs of the drugs and the certificate of analysis. The applicant raised the absence of the hard evidence at the trial and on appeal. The Court of Criminal Appeal found that there was no prejudice to the applicant in that, while he denied possession, it had never been suggested that there were no drugs in the vehicle. The issue that was identified by the Court was "whether prejudice in the conduct of the trial has been established". The Court also rejected a suggestion that the prosecution were obliged to give a "positive explanation" for the loss of the drugs before the secondary evidence could be adduced.

The role of the trial judge

The criminal trial provides the forum in which the prosecution case is tested by the cross-examination of witnesses and the consideration of evidence. The importance of trial judges in protecting and vindicating the rights of an accused person have been noted in a number of decisions.[17] The accused is protected by the trial judge having the power to exclude evidence, and give appropriate warnings in any given case, and by having the power to withdraw cases from the jury where the prosecution evidence fails to establish a sufficiently strong *prima facie* case against an accused.

It is for the trial judge to rule on the admissibility of evidence. For present purposes it may be noted that the trial judge has discretion to exclude a particular piece of evidence on the grounds that it would be unfair to admit it in evidence against an accused.[18] It might be argued that this discretion should be invoked in a case in which an accused is able to show that it would be unfair to him, or that he would be prejudiced, if evidence relating to the lost evidence was adduced against him. The trial judge must also consider what warnings, if any, should be given to the jury arising from missing evidence.[19] In addition, the trial judge may take missing evidence into consideration in ruling whether a direction of not guilty should be given at the conclusion of the prosecution case.[20]

If all else fails the trial judge also retains a discretion to stop a trial from proceeding to a final verdict. This jurisdiction is described by Denham J, for the Supreme Court, in the following terms:

> "the trial court retains at all time its inherent and constitutional duty to ensure that there is due process and a fair trial. Thus, in the course of the trial matters may arise, evidence may be given, which renders a trial unfair, or the process unfair. In these circumstances the trial judge retains the jurisdiction of preventing the trial from proceeding. This jurisdiction is exercised in the course of a trial but does not enable, or relate to, a preliminary hearing at the commencement of a trial on the issue of delay."[21]

In each case, the trial judge must assess the evidence as it develops in the case and determine whether there is unfairness to the accused which cannot be remedied by the exclusion of the contested evidence, or by an appropriate warning to the jury, and he may exercise his discretion in favour of stopping the trial if it would be unfair to the accused to proceed to a final verdict because of the lost evidence.[22] However, it seems safe to assume that this discretion is one that will only be invoked in exceptional cases where clear prejudice to the accused has been demonstrated.

The burden on the accused

It remains to be seen what burden is on an accused to persuade a trial judge to exercise these discretions in the accused's favour. The decisions of the higher courts in cases of this type appear to indicate the approach that the trial court should take. These show that each case must be considered on its own circumstances.[23] The onus on the applicant for prohibition has been described in terms by Hardiman J that might also show what is required in a trial setting:

> "[T]here is obviously a need for an applicant to engage in a specific way with the evidence actually available so as to make the risk apparent....This is not a burdensome onus of proof: what is in question, after all, is the demonstration of a real risk, as opposed to an established certainty, or even probability of an unfair trial."[24]

Therefore, Hardiman J appears to be stating that an accused is not required to prove prejudice on the balance of probabilities but is required to show that a reasonable doubt exists as to the fairness of the trial. This approach is in accordance with

IESC 70 at para. 27.

14 *Savage v DPP* [2009] 1 IR 185 para. 60.

15 *People (DPP) v Bowes* (No. 3) [2006] IECCA 183.

16 *People (DPP) v Bowes* [2004] 4 IR 223.

17 See, for example *Byrne v DPP* [2011] 1 IR 346 per O'Donnell J at para. 20.

18 See *D(C) v DPP* [2009] IESC 70 at para. 23; also *People (DPP) v Breen* [1995] WJSC-CCA 2054.

19 For example, see the delay warning in *People (DPP) v R.B.* Unreported, Court of Criminal Appeal, 12th February, 2003. The loss of evidence is often of feature in cases of delay. Also, *People (DPP) v PJ* [2003] 3 IR 550.

20 *People (DPP) v O'Shea* [1983] ILRM 592.

21 *People (DPP) v P O'C* [2006] 3 IR 248; also *McFarlane v DPP* [2007] 1 IR 134; and *Donnellan v Judges of the Dublin Circuit Criminal Court* [2014] IEHC 158 at para. 15.

22 *McFarlane v DPP* [2007] 1 IR 134.

23 *Byrne v DPP* [2011] 1 IR 346 at para. 9.

24 *McFarlane v DPP* [2007] 1 IR 134 at para. 23. Also, *Scully v DPP* [2005] 1 IR 242 at para. 22; *Wall v DPP* [2013] IESC 56 at para. 11 of Denham CJ's judgment, and, also, see paras. 15 to 19 of the judgment of O'Donnell J.

the burden on an accused in other circumstances during a criminal trial.[25] A trial court will be unlikely to impose a higher burden on an accused person than would apply if he were trying to prohibit his trial.

European and UK jurisprudence

Further guidance might be obtained from outside Ireland. In the UK, it is recognised that trial courts have, at common law, "a residual discretion to prevent anything which savours of an abuse of process" and have "an inescapable duty to secure fair treatment for those who come or are brought before them."[26] Trial courts have a discretionary power to stay proceedings for an abuse where the court concludes that the accused cannot receive a fair trial or where it would be unfair for him to be tried.[27] It is now accepted that this discretion may be invoked in cases where relevant evidence has been lost or destroyed and the accused can show that he has been prejudiced to the extent that a fair trial cannot be had.[28] It appears that this places a greater burden on an accused person than would be the case before a trial court in Ireland.[29]

There are also two decisions of the European Court of Human Rights in which applicants claimed that their right to a fair trial, as guaranteed by Art. 6 of the Convention, was breached owing to the loss of relevant evidence. These decisions show that the Court is concerned with the fairness of the proceedings and not with the rules of evidence applied. In *Papageorgiou v Greece*[30] the applicant was a bank clerk who was convicted of forgery and fraud. The defence case was that the instructions for fraudulent payments had been written on the original cheques by other employees of the bank. The production of the original cheques had been vital to his defence since it would have enabled him to show that he was not guilty of fraud.

During the trial process, the applicant had requested the production of certain documents, including the original cheques, and that the prosecution's handwriting expert should be cross-examined in the presence of the defence expert. This was refused by the Court of Appeal which relied on photocopies of the cheques after these had been destroyed by order of the Court of First Instance. At no stage of the proceedings did the courts of trial examine extracts from the log file of the bank's computer or the original cheques, or check whether the copies submitted to them corresponded with the originals. The applicant's conviction for fraud was therefore based to a large extent on the photocopies of the cheques in question. The Court of Human Rights held that there had been a violation of the Convention in that there had been a failure to provide the applicant with an adversarial procedure that would meet the requirements of Art. 6(3)(d).

In *Sofri v Italy,*[31] the applicants had been arrested on suspicion of having ordered the killing of a public prosecutor who had been murdered on 17th May, 1972. On 20th July, 1988, an accomplice gave himself up to the police, claiming that he had been the gunman and that he had acted on the orders of the applicants. The applicants were arrested and charged with the murder. During the subsequent trial, it became apparent that certain evidence relating to the murder was not available. The defence argued that it would be unfair to proceed without this evidence, but the argument was rejected and the applicants were convicted.

The European Court of Human Rights found that the complaint under Art. 6 was unfounded. The destruction of items of evidence relating to the murder was regrettable but this did not give rise to any inequality of arms to the detriment of the defendants. The applicants were unable to explain how the missing evidence was relevant to their case. Whilst expert examination of the evidence was relevant to establishing the exact sequence of events and thus to challenging the credibility of the accomplice's evidence, the defence did have access to forensic reports and photographs of the evidence that had been made shortly after the killing and were able to carry out computer analysis of the photographs. Moreover, the defence was able to challenge witness testimony on other grounds and the prosecution laboured under the same difficulties as the defence because of the destruction of the evidence.

In summary

In the absence of any clear judicial statements on the law relating to lost evidence in trial situations, the following points may represent the law:

(i) the trial judge has a duty to ensure that an accused receives a fair trial;
(ii) Arising from that duty, the trial judge retains a discretion to exclude items of evidence if it would be unfair to have it admitted into evidence against the accused;
(iii) In addition, the trial judge retains jurisdiction to stop a trial if it would be unfair to the accused to proceed to a verdict;
(iv) This jurisdiction may be invoked in cases of lost evidence and delay;
(v) The jurisdiction to stop a trial may only be sparingly invoked and will only be invoked where the ordinary protections that are available to an accused during the trial process (i.e. exclusion of evidence and warnings) are inadequate to ensure a fair trial;
(vi) An application to exclude evidence on this ground should be dealt with as a trial-within-a trial;
(vii) The onus is on the accused to show that he has been prejudiced by the loss or unavailability of the evidence or that there is a real risk of the trial being unfair. ■

25 See, for example, *People (DPP) v Smyth* [2010] 3 IR 688.
26 *Connelly v DPP* [1964] AC 1254.
27 *R v Beckford* [1996] 1 Cr App R 94 per Lord Justice Neill at 100G.
28 *R v Feltham Magistrates' Court ex p Ebrahim* [2001] All ER 831. Also, *B (Prosecution Appeal)* [2008] EWCA 1144; *R v Khalid Ali* [2007] EWCA Crim 691; and *R v Birmingham* [1992] Crim LR 117. See, Martin "Lost and Destroyed Evidence: The Search for a Principled Approach to Abuse of Process" (2007) 171JPN 556.
29 See the comments of Hardiman J in *Wall v DPP* [2013] IESC 56 at p. 51.
30 *Papageorgiou v Greece* [2004] Crim LR 844 [2004] 38 EHRR 30.
31 *Sofri v Italy* [2004] Crim LR 846 (Application No. 37235/97).

Minding your P's and Q's – Detention, Capacity and the Law

Ciarán Doherty BL

Introduction

As we await the introduction of the Assisted Decision-Making (Capacity) legislation in this jurisdiction, which promises to overhaul our outdated laws with respect to mental capacity and the Ward of Court system, recent developments in England highlight the need for further reform.

The term 'Bournewood gap' was coined in England as a result of the *H.L. v. United Kingdom*[1] case, where the European Court of Human Rights held that the involuntary admission to hospital of a man with autism, who remained in the hospital compliantly but who was incapacitated, was unlawful and in contravention of Article 5 of the European Convention on Human Rights. The Court held that there were no sufficient procedural review safeguards. The *H.L.* case led to substantial legal reform in England and Wales. This included the introduction of the Mental Capacity Act 2005, and the Deprivation of Liberty Safeguards (DoLS) which were introduced by the Mental Health Act 2007 so as to protect the Article 5 rights of vulnerable people. To date, this legislative lacuna has not been filled in this State.

The recent decision of the United Kingdom Supreme Court in *P (by his litigation friend the Official Solicitor) v. Cheshire West and Chester Council* and *P and Q (by their litigation friend, the Official Solicitor) v. Surrey County Council*[2], handed down on 19th March 2014, focuses on the issues surrounding the care of vulnerable persons. The case underlines the importance attached to ensuring that there are adequate procedural safeguards for persons suffering from a mental disorder who lack the capacity to consent to treatment programmes which require their placement in a hospital, home or form of supported housing.

Before the decision in *P & Q and P,* there was some uncertainty as to which cases were intended to be the subject of DoLS. Since their introduction, the safeguards had been used much less than had been envisaged. Therefore, in practical terms, the authorities and the courts had interpreted the legislation such that most cases of long or short term residential care were simply not covered. This had led to uncertainty, inconsistency and discrepancies in the protections that should have been afforded under Article 5. Indeed the reasoning of Court of Appeal in *P & Q and P* was essentially that persons suffering from a serious disability were being deprived of their liberty as a consequence of the disability itself.[3]

The *P & Q and P* case

The case of *'P & Q and P'* concerned two sisters who had learning disabilities and required support. P (referred to as MIG in the judgment) was placed with a foster mother, who provided her with intensive support. P never left the home by herself and showed no wish to do so, but if she did, the foster mother would restrain her.[4] Q (referred to as MEG in the judgment) was in a residential home for learning disabled adults with complex needs. Her care needs were met only as a result of continuous supervision and control. She showed no wish to go out on her own and so did not need to be prevented from doing so. She was accompanied by staff whenever she left.[5] In the case of *'P'*, P was born with cerebral palsy and Down's syndrome and required 24 hour care to meet his personal needs. He was placed in a small residence with two others, where care staff were permanently present and he was monitored.[6]

The issue before the court was whether these three people were 'detained' such that the Deprivation of Liberty Safeguards were applicable. Lady Hale reviewed the Strasbourg jurisprudence, and concluded as follows:

> "48. So is there an acid test for the deprivation of liberty in these cases? I entirely sympathise with the desire of Munby L.J. to produce such a test and thus to avoid the minute examination of the living arrangements of each mentally incapacitated person for whom the state makes arrangements which might otherwise be required. Ms. Richards is right to say that the Guzzardi test is repeated in all the cases, irrespective of context. If any of these cases went to Strasbourg, we could confidently predict that it would be repeated once more. But these cases are not about the distinction between a restriction on freedom of movement and the deprivation of liberty. P, MIG and MEG are, for perfectly understandable reasons, not free to go anywhere without permission and close supervision. So what are the particular features of their "concrete situation" on which we need to focus?
>
> 49. The answer, as it seems to me, lies in those features which have consistently been regarded as "key" in the jurisprudence which started with *HL v United Kingdom* 40 EHRR 761: that the person concerned "was under continuous supervision and

1 *H.L. V United Kingdom* 45508/99 [2004] 40 EHRR 761.

2 *P (by his litigation friend the Official Solicitor) v. Cheshire West and Chester Council* and *P and Q (by their litigation friend, the Official Solicitor) v. Surrey County Council* [2014] UKSC 19.

3 "Deprivation of Liberty: Issues Following P & Q and P" Paper presented by Lizanne Gumbel QC to Leigh Day seminar on Deprivation of Liberty and Unlawful Detention 3 June 2014.

4 [2014] UKSC 19, at para. 13.

5 *Ibid*, at para 14.

6 *Ibid,* at para 17.

control and was not free to leave" (para 91). I would not go so far as Mr Gordon, who argues that the supervision and control is relevant only insofar as it demonstrates that the person is not free to leave. A person might be under constant supervision and control but still be free to leave should he express the desire so to do. Conversely, it is possible to imagine situations in which a person is not free to leave but is not under such continuous supervision and control as to lead to the conclusion that he was deprived of his liberty. Indeed, that could be the explanation for the doubts expressed in *Haidn v Germany*.

50.The National Autistic Society and Mind, in their helpful intervention, list the factors which each of them has developed as indicators of when there is a deprivation of liberty. Each list is clearly directed towards the test indicated above. But the charities do not suggest that this court should lay down a prescriptive list of criteria. Rather, we should indicate the test and those factors which are not relevant. Thus, they suggest, the person's compliance or lack of objection is not relevant; the relative normality of the placement (whatever the comparison made) is not relevant; and the reason or purpose behind a particular placement is also not relevant. For the reasons given above, I agree with that approach.[7]"

Lady Hale concluded that all three people were detained and stressed the importance of ensuring that the rights of highly vulnerable individuals are vindicated. She stated:

> 57. Because of the extreme vulnerability of people like P, MIG and MEG, I believe that we should err on the side of caution in deciding what constitutes a deprivation of liberty in their case. They need a periodic independent check on whether the arrangements made for them are in their best interests. Such checks need not be as elaborate as those currently provided for in the Court of Protection or in the Deprivation of Liberty Safeguards (which could in due course be simplified and extended to placements outside hospitals and care homes). Nor should we regard the need for such checks as in any way stigmatising of them or of their carers. Rather, they are a recognition of their equal dignity and status as human beings like the rest of us.[8]"

The Court decided that the term "deprivation of liberty" in respect of persons with a mental incapacity should be construed in line with decisions of the European Court of Human Rights. The test was whether a person was under continuous supervision and control and not free to leave. The Court held that this test should remain the same regardless of whether a person was being deprived of their liberty for benevolent motives such as providing for their needs or for other reasons. Therefore, even though P lived in an ordinary family home and neither P nor Q wished to leave their respective accommodation, the reality was that both were in fact under the complete supervision and control of those caring from them and would have been prevented from going out without supervision. The Court thus decided by a majority of 4:3 (Lord Clarke, Lord Hodge and Lord Carnwath dissenting) that both were deprived of their liberty and that a declaration would be made to that effect.

In the second case of P, the arrangements of P's care were considered to constitute a deprivation of his liberty, by reason of the complete control his carers had over him and that he was subject to occasional, though necessary, physical restraints and intrusive procedures.

In setting out the ethical and moral background to the Courts decision Lady Hale stated:

> "36. The whole point about human rights is their universal character. The rights set out in the European Convention are to be guaranteed to "everyone" (article 1). They are premised on the inherent dignity of all human beings whatever their frailty or flaws. The same philosophy underpins the United Nations Convention on the Rights of Persons with Disabilities ("CRPD"), ratified by the United Kingdom in 2009. Although not directly incorporated into our domestic law, the CRPD is recognised by the Strasbourg court as part of the international law context within which the guarantees of the European Convention are to be interpreted. Thus, for example, in *Glor v Switzerland* (Application No 13444/04) (unreported) given 30 April 2009, para 53, the court reiterated that the Convention must be interpreted in the light of present-day conditions and continued:
>
> > "It also considers that there is a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment (see, for example, Recommendation 1592 (2003) towards full inclusion of people with disabilities, adopted by the Parliamentary Assembly of the Council of Europe on 29 January 2003, or the United Nations Convention on the Rights of Persons with Disabilities, which entered into force on 3 May 2008).[9]"

UN Convention on Rights of People with Disabilities

In this jurisdiction, the suggestion that the UN Convention of the Rights of People with Disabilities should be seen as part of the international law context within which Convention rights are to be interpreted is evident in the judgment of McMenamin J in *M.X. V Health Service Executive*[10] in which it was held that:

> "Although the United Nations Convention itself is not part of our law, it can form a helpful reference point for the identification of the "prevailing ideas and concepts" which are to be assessed in harmony with the constitutional requirements of what is "practicable" in mind.[11]"

7 *Ibid*, at paras 48 – 51.
8 *Ibid,* at para 57.
9 *Ibi*d, at para 36.
10 *M.X. V Health Service Executive* [2012] 3 I.R. 254.
11 [2012] 3 I.R. 254, at 282.

The UN CRPD has not yet been ratified by Ireland. However, the Minister has indicated that she intends to ratify the Convention as soon as possible and that the passing of the Assisted Decision Making (Capacity) Bill is one of the core elements of the remaining work to be completed to enable ratification by the State of the UN Convention.[12]

Consequences of the Decision

The most obvious implication of the UK Supreme Court decision in *P & Q and P* is that it cannot be assumed that lack of complaint or objection constitutes consent to the deprivation of ones liberty. While on the one hand, this may strengthen the hand of residents of homes or their families to complain about their situation, it may also cause difficulties in situations where the authorities and a patient/resident's family are content with a placement, even though it constitutes a deprivation of liberty.

The implications for Ireland

The UK Supreme Court decision may yet have direct implications for planned reforms in this jurisdiction. In answer to a recent Parliamentary Question in the Dáil on the matter Justice Minister Frances Fitzgerald stated:

> "I am currently considering the implications of this case for the provisions of the Assisted Decision-Making (Capacity) Bill 2013. As the Deputy will be aware, the aim of the Bill is to safeguard the autonomy of individuals with capacity difficulties to the greatest extent possible. To that end, the Bill explicitly references the obligations regarding deprivation of liberty outlined in Article 5 of the European Convention on Human Rights.[13]"

It would seem almost inevitable that at some point a statutory scheme will have to be introduced to provide for some form of independent scrutiny and some review procedure on placements in care homes, supported living or other settings. Indeed whether the decision leads to changes to the Government's planned bill or not, the decision could potentially have implications for any adult who does not have capacity to make decisions about their care and treatment, has not been detained pursuant to the Mental Health Act and is living in a supported living placement or in a domestic setting. It would seem there could be a multitude of cases in this jurisdiction where person are in effect unlawfully detained due to their lack of capacity and the absence of procedural safeguards governing their detention. ■

12 Dáil PQ 22239/14 answered on 27 May 2014.

13 Dáil PQ 26189/14 answered on the 18 June 2014.

Pro Bono Work and the Bar

Diane Duggan BL*

Pro bono work is becoming a more prominent feature of the legal landscape in Ireland and throughout the legal world, for a variety of reasons. The cornerstone of any functioning democracy is an effective legal system to which all members of society have access. As societies develop and economies rise and fall, the obstacles experienced by those seeking access to justice can vary over time. In recent years in Ireland, our legal and administrative systems have endured profound challenges that bring the resilience and strengths, or otherwise, of our democracy into sharp focus. The plight of those who do not have access to justice is a stark measure of just how effective we are at meeting those challenges.

Pro Bono Law

The latin term *pro bono publico* means *'for the public good; for the welfare of the whole'*[1]. In ancient Rome, the patricians, or ruling class gave legal advice without charge as part of their training for higher political position[2] and were often restricted from accepting money or gifts in return for their services in the name of serving the higher good. In England in 1275, the First Statute of Westminster stated that sergeants, the advocates of the day, were obliged to serve the poor for free, vowing not to covet profit over service to the King's people[3]. The initiation point for any lawyer of the day was clear – the client's interest was served first, and self interest or payment was a distant second.

Common law practices in England survived transition to the new world. A Virginia statute in 1645 expressly prohibited lawyers from charging any fees for their work (though it has been suggested that the ultimate motivation for this was to prohibit the practice of law entirely and to ban lawyers outright)[4]. The notion of banning lawyers outright was arguably a unique and novel interpretation of *'for the public good; for the welfare of the whole'*. However, the concept of eradicating the practice of law did not survive the 17th century.

The altruistic motivations of the practice of law for the common good was rooted in religious ideals and puritanical thought throughout the centuries that followed, towards the 20th century. While such motivations were admirable, it is arguable that the 13th century sergeants of Westminster and their American descendants had a lifestyle or source of income that was funded other than by their legal work and if such circumstances prevailed today, one would hope many more lawyers could afford to spend a substantial amount of time championing pro bono law.

The Bar Voluntary Assistance Scheme

The Voluntary Assistance Scheme (VAS) is ten years old this year. In 2004, it seemed that there was an important role for the bar in providing legal services where there was an unmet legal need and VAS has strived to meet this need on a growing basis in the decade that has passed. In that time, VAS has taken on almost 500 cases for over 100 charities and is expanding its outreach to new organisations on a consistent basis. VAS makes the services of a barrister available to the requesting organisation for the purposes of legal advice, or, where appropriate, for litigation. The parameters within which VAS operates are strictly adhered to:

- VAS does not deal directly with individuals, but instead through non-government organisations, charities and civic society organisations who make representations on their own behalf or on behalf of their clients.
- Representatives of the organisation in question act as the intermediary between the barrister and the client when legal advice is required, assuming the role that is otherwise filled by solicitors.
- Where VAS takes on a case involving court proceedings, VAS engages the services of one of the scheme's firm of solicitors.
- The Scheme does not seek out points of law of particular interest or importance, but rather dedicates itself to assisting anybody who comes through established channels in any way that it can. The remit is clear: where there is a genuine issue arising and there is no other means of accessing the legal system – VAS can provide assistance.

Types of cases include debt, housing, landlord and tenant, employment and equality issues arising for individuals as well as general organisational issues arising for charity organisations. The work can range from something as straightforward as assisting with the drafting of a letter to representing a defendant in repossession proceedings.

A recent case involved a Limerick family who had been forced to abandon their house in a disadvantaged area earmarked for regeneration because of a prolonged period of vandalism and abuse. Proceedings were instituted against the Local Authority as the regeneration agency and against the State. The case has settled on good terms.

In order to ascertain a volunteering profile of the Bar, VAS conducted a survey of members in June of last year. Practitioners were asked if they either volunteered currently or did so in the past. 82% of those who responded said

---

* Diane Duggan is the co-ordinator of the Bar Council Voluntary Assistance Scheme. This article is an edited version of a speech given by her at the Bar of Ireland Conference in Westport in May 2014.

1 Black's Law Dictionary, 1363, 2nd Ed. 1910
2 Judith L. Maute, "Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Change Noblesse Oblige to Stated Expectations," 77 Tul. L. Rev. 91 - 162 (2002)
3 *Ibid*, p.97
4 *Ibid*, p.98

they had volunteered and would do so again in the future. Volunteering was not limited to legal services but consisted of a wide range of activities across the volunteering sector. Many practitioners remarked that much of their so called 'paying work' was not bearing any dividends and thus were engaging in pro bono work by default. Many went further to say they now actively pursued pro bono work because if there was any inevitability to not being paid for work, they would prefer to do it within a structured, formalised scheme with clients who had a genuine and worthy need. The paths and motivations to the world of pro bono are varied and numerous. The difference made is sometimes small but often immeasurable.

One of VAS's most recent initiatives is the establishment of a Legislative Drafting Committee with the aim of assisting NGOs who are endeavouring to further their legitimate aims through the process of law reform. VAS has provided legislative drafting services to numerous organisations in the past, including Focus Ireland, the Irish Penal Reform Trust and currently, the Ana Liffey Drug Project.

A Critical Approach to Pro bono work

Since the turn of the century, international bar associations, such as in the United States, have taken a view that in order to serve the unmet legal need and assist genuine litigants in accessing justice, pro bono work should become mandatory for all practitioners. While Ireland has been far slower than other jurisdictions to recognise an intrinsic value in providing pro bono services, it is questionable as to whether imposing a mandatory obligation on practitioners to carry out such work is the correct approach.

VAS provides three CPD points to all barristers who carry out work for the scheme. One risk inherent in a mandatory scheme is that it increases the prospect of pro bono lawyers filling a role that should otherwise be filled by a state funded service. Also, recent controversies in the Central Remedial Clinic and Rehab have taught us that charity work needs to be examined in a critical light. The enactment of the Charities Act 2009 in recent months will go a long way towards addressing those challenges of transparency and accountability. In a similar vein, there is a need to constantly scrutinise the needs that are being addressed. In some instances, law reform is required, in particular, in addressing the chronically under funded statutory legal aid schemes.

Interaction between State funded legal aid schemes and pro bono work – the VAS experience

The State's Civil Legal Aid Scheme established in 1970 went some way towards addressing the insurmountable difficulties around access to justice prior to then. The validly held view was that individual rights were meaningless without effective mechanisms to enforce those rights. The service provided by the Legal Aid Board over the last 34 years has gone some way towards providing that mechanism, but due to a chronic lack of resources, huge gaps remain and access to justice for all is far from being fully realised. The focus has been on family and asylum law which accounted for 87% of 11,638 initial appointments to the Legal Aid Board in 2012[5].

5 Legal Aid Board Annual Report 2012

A 2005 FLAC report stated that:

> "after 25 years of state legal aid, the scheme has failed to achieve its stated goals. Despite the ongoing commitment and dedication of staff and Board members, it neither provides the necessary service nor ensures that it is delivered to all those entitled to it.[6]"

It went on to say that:

> "The primary focus in Law Centres is on family law and on individual clients. Thus the Board interprets its mandate narrowly and does not engage in legal education and training or law reform. It does not engage in dissemination of information on legal entitlements, research or innovation into how best to meet the changing need for legal services of vulnerable people in society.[7]"

These were the problems at the height of the Celtic Tiger. In 2010, Ms. Anne Colley, Chairperson of the Legal Aid Board, said that their research suggested that 50% of the population is eligible to apply for civil legal aid[8]. In 2012, waiting lists for an appointment with the Legal Aid Board were up to 15 months in some places. This is not surprising where 50% of the population are eligible to apply to a scheme that had just 363 staff members in 2012 (though it is not clear how many of these are practicing solicitors, certainly a minority of that figure).

VAS policy has been to direct people towards a state funded service where it is available rather than taking on cases that should be serviced elsewhere. However, given the extended waiting times and overstretched resources, VAS has routinely taken on cases where it is clear that the Legal Aid Board will not be able to take on a case in advance of an impending court date.

There is a significant political debate to be had about the appropriate interaction between State funded legal aid schemes and voluntary legal aid schemes. One view is that the more extensive and efficient the voluntary legal aid schemes become, the more the State will abdicate its responsibility for ensuring access to justice. This author's view is that, as barristers, we should not hesitate to meet the need whilst at all times being free to express the strongest possible views on the inadequacies of the State funded schemes.

Emerging benefits of pro bono work

There are obvious benefits to pro bono work. For the individual barrister and indeed, for the Bar, as a profession, there is the satisfaction of doing what is intrinsically good and providing a service to disadvantaged members of our society. A recent Sunday Independent article referencing VAS inspired the following comment from social media:

> "A slam dunk argument for an independent referral

6 'Access to Justice: A Right or a Privilege? A Blueprint for Civil Legal Aid in Ireland', FLAC, July 2005

7 Ibid, p.57

8 Access to Justice and the Role of the Legal Aid Board – 30th Anniversary Legal Aid Board Conference

bar. If all lawyers were in firms this would be very unlikely."

In addition however to the obvious benefits of pro bono work, there are some less obvious benefits beginning to emerge. When VAS first approached the five largest firms of solicitors in Dublin to assist in the provision of voluntary services, they agreed to do so for wholly altruistic reasons. However, in the first decade of the 21st century, a practice emerged whereby public authorities and many large private corporations putting out tenders for the provision of legal services by solicitors requested those solicitors to identify their corporate and social responsibility policy. When the practice first emerged, solicitors were pleased to be able to reference their work with VAS. There were therefore unforeseen practical benefits to those solicitors engaging with the VAS.

The future may well also hold previously unforeseen practical benefits for barristers who engage in pro bono work. It cannot be long before applicants for judicial office, for silk, or for publicly funded work are asked about their approach to, and involvement in, pro bono work.

Conclusion

The future of pro bono work at the Bar is bright. The response of individual members of the Bar approached by VAS is prompt and enthusiastic. Their diligence and professionalism reminds me that there is much to be proud of and many reasons for us to be able to state that we act "*for the public good; for the welfare of the whole.*" A special thank you is due to all those who have made themselves available for VAS work in the past and in anticipation, to those who will volunteer in the future. ■

Legal The Bar Review Update

Journal of the Bar of Ireland. Volume 19, Issue 5, November 2014

A directory of legislation, articles and acquisitions received in the Law Library from the 18th June 2014 up to 14th October 2014
Judgment Information Supplied by The Incorporated Council of Law Reporting

Edited by Deirdre Lambe and Vanessa Curley, Law Library, Four Courts.

ADMINISTRATIVE LAW

Library Acquisitions

Wade, William
Forsyth, Christopher
Administrative law
11th ed
Oxford : Oxford University Press, 2014
M300

Statutory Instruments

Appointment of special adviser (Minister for Arts Heritage and the Gaeltacht) order 2014
SI 305/2014

Appointment of special adviser (Minister for Education and Skills) order 2014.
SI 33/2014

Appointment of special advisor (Minister For Finance) order 2014
SI 372/2014

Civil registration (Certified Extract Of Register Of Deaths) regulations 2014
SI 371/2014

Public service management (sick leave) regulations 2014
SI 124/2014

ADVOCACY

Library Acquisitions

Hampel, George
Brimer, Elizabeth
Kune, Randall
Australian Advocacy Institute
Advocacy manual: the complete guide to persuasive advocacy
Australia : Australian Advocacy Institute, 2008
L93

AGENCY

Library Acquisitions

Watts, Peter
Bowstead and Reynolds on agency
20th ed
London : Sweet & Maxwell, 2014
Reynolds, F M B
N25

Articles

Fogarty, Paul
Commercial agents directive and liability
Bergin-Cross, Caroline
2014 (32) (13) Irish Law Times 195 - part 1
2014 (32) (14) Irish Law Times 209 - part 2

AGRICULTURE

Acts

Johnstown Castle Agricultural College (Amendment) Act 2014
Act No.10 of 2014
Signed on 22nd June 2014

ANIMALS

Statutory Instruments

Animal health and welfare (restriction on horned cattle) (no.2) regulations 2014
SI 224/2014

Prohibition on tail-docking (bovines) (no.2) regulations 2014
SI 225/2014

ARBITRATION

Contract

Sub-contractor – Arbitrator appointed by president of Construction Industry Federation – Standard form contract – No signed contract – Main contract – Terms – Model law – De novo hearing – Intention – Whether arbitration agreement existed – Whether valid appointment – Whether standard form contract incorporated into contract – Whether arbitral tribunal had jurisdiction – Whether arbitrator erred in fact and law in finding jurisdiction – Lynch Roofing Systems Limited v Bennett & Son Limited [1999] 2 IR 450; British Crane Hire v Ipswich Plant Hire [1975] 1 QB 303; McCrory Scaffolding Limited v McInerney Construction Limited [2004] 3 IR 592 and Barnmore Demolition & Civil Engineering Ltd v Alandale Logistics Ltd (Unrep, Feeney J, 11/11/2010) considered – Arbitration Act 2010 (No 1), ss 6 and 9 – Rules of the Superior Courts 1986 (SI 15/1986), O 56, r 3(1)(f) – Finding that no arbitration agreement existed (2013/8MCA – Laffoy J – 19/6/2013) [2013] IEHC 284
John G Burns Ltd v Grange Construction & Roofing Company Ltd

Library Acquisitions

Dowling-Hussey, Arran
Dunne, Derek
Arbitration law
2nd ed
Dublin : Round Hall, 2014
N398.C5

Chern, Cyril
The commercial mediator's handbook
Abingdon : Informa Law, 2015
N398.3

Articles

Anyadike-Danes, Monye
Mediation privilege
2014 (32) (15) Irish law times 223

Stephens, Michael
Brims construction, waiver and breaches of natural justice
19 (3) 2014 Bar Review 70

AVIATION

Articles

Gallagher, Donal
The unique jurisdiction of the Irish high court under the Cape Town convention.
2013/14 1(2) Irish business law review 47

Acts

State Airports (Shannon Group) Act 2014
Act No.27 of 2014
Signed on 27th July 2014

BANKING

Guarantees

Validity – Past consideration – Bankruptcy – Scheme of arrangement – Whether creditor entitled to have guarantees entered into scheme of arrangement – Whether company loan made on basis that personal guarantee was necessary – Whether guarantees valid and enforceable – Contra proferentem rule – Whether guarantees executed prior to drawing down of loan monies – Whether facility letters ambiguous – First National Bank plc v Anglin [1996] 1 IR 75 and Bradford v Roulston (1858) 8 ICLR 468 considered – Application granted (2330AD & 2329AD – Gilligan J – 14/12/2011) [2011] IEHC 553
In re Mullee; ACC Bank v Mullee

Validity of transactions

Application for judgment on foot of loan – Defences – Liability – Liquidated demand – Debt – Irregularities in documents –

Forged signature – Restitution – Statutory responsibilities of lender – Materiality of evidence – Mis-selling – Inducement – Financial advice – Consumer protection code – Central Bank code for lending to small and medium businesses – Fraud – Graphologist – Whether case proven – Whether loans entered into – Whether valid defence – Whether signatures real – Whether defect in documentation – Whether borrowing as consumer – Whether bank acted as financial adviser – Stepstone Mortgage Funding Ltd v Fitzell [2012] IEHC 142, [2012] 2 IR 318; ACC Bank Ireland Plc v Fahey [2010] IEHC 41, (Unrep, Kelly J, 12/2/2012); Allied Irish Bank plc v Higgins [2010] IEHC 219, (Unrep, Kelly J, 3/6/2010); Zurich Bank v McConnon [2011] IEHC 75, (Unrep, Birmingham J, 4/3/2011); ACC Bank plc v Fahey [2010] IEHC 41, (Unrep, Kelly, 12/2/2010); Seldon v Davidson [1968] 1 WLR 1083; Chapman v Jaume [2012] EWCA Civ 476, (Unrep, English Court of Appeal, 29/3/2012); Verity v Lloyd's Bank [1995] CLC 1557 and Irish Life and Permanent Plc v Duff [2013] IEHC 43, (Unrep, Hogan J, 31/1/2013) considered - Central Bank Act 1989 (No 16), s 117 – Consumer Credit Act 1995 (No 24) – Consumer Protection Act 2007 (No 19) – Judgment granted (2011/2131S & 2012/1COM – Ryan J – 28/6/2013) [2013] IEHC 427
ACC Bank Plc v Deacon

Validity of transactions

Appeal from decision of Financial Services Ombudsman – Seeking return of investment premium – Principle of utmost good faith – Full disclosure of material facts – Failure of investment – Risk – Fair procedures – Duty to give reasons – Adequacy of reasons – Jurisdiction – Nature of appeal – Brevity of decision – New grounds of appeal – Role of ombudsman – Role of court on appeal – De novo appeal – Burden of proof – Onus of proof – Whether error of law – Whether decision reasonable based on facts – Whether compliance with statutory requirement to give reasons – Whether failure to have regard to principle of uberrimae fidei – Whether contract of assurance – Ulster Bank v Financial Services Ombudsman [2006] IEHC 323, (Unrep, Finnegan P, 1/11/2006);Hayes v Financial Services Ombudsman (Unreported, MacMenamin J, 3/11/2008); Square Capital Ltd v Financial Services Ombudsman [2009] IEHC 407, [2010] 2 IR 514; Hyde v Financial Services Ombudsman [2011] IEHC 422, (Unrep, Cross J, 16/11/2011); Irish Life and Permanent plc v Financial Services Ombudsman [2011] IEHC 439, (Unrep, White J, 16/11/2011); Koczan v Financial Services Ombudsman [2010] IEHC 407, (Unrep, Hogan J, 1/11/2010); Murphy v Financial Services Ombudsman [2012] IEHC 92, (Unrep, Peart J, 21/2/2012); Lyons v Financial Services Ombudsman [2011] IEHC 454, (Unrep, Hogan J, 14/12/2011); Mallak v Minister for Justice, Equality and Law Reform [2012] IESC 59, (Unrep, SC, 6/12/2012); Banque Keyser Ullmann SA v Skandia (UK) Insurance Co Ltd and Others [1991] 2 AC 249; Murray v The Trustees and Administrators of the Irish Airlines (General Employees) Superannuation Scheme [2007] IEHC 27, [2007] 2 ILRM 196; Faulkner v Minister for Industry and Commerce [1997] ELR 107; Ryan v Financial Services Ombudsman (Unreported, MacMenamin J, 23/9/2011); Carr v Financial Services Ombudsman [2013] IEHC 182, (Unrep, O'Malley J, 26/4/2013); Aldrich v Norwich Union Life Insurance Society [2002] Lloyds Rep 1; Walsh v Financial Services Ombudsman [2012] IEHC 258, (Unrep, Hedigan J, 27/6/2012) and Faulkner v Minister for Industry & Commerce [1997] ELR 107 considered - Central Bank Act 1942 (No 22), ss, 57CL(2)(b), 57CL(2)(c), 57 CI(2) and 57CI(3)(a) – Central Bank and Financial Services Authority of Ireland Act 2004 (No 21), ss 16, 57BB and 57BK4 – Appeal dismissed (2012/289MCA – Hedigan J – 26/8/2013) [2013] IEHC 403
Governey v Financial Services Ombudsman

Validity of transaction

Claims for loan amount and guarantee – Husband guarantor of wife's loan – Defence of non est factum – Guarantee dependent on validity of principal contract – Document signature purportedly witnessed – Consideration – Whether loan contract entered into – Statutory rights – Abrogation of duty – Departure from financial institution procedures – Credibility of evidence – Given documents by husband to sign – Want of care – Whether negligent in signing – Whether meeting of mind – Whether dealing in context of business – Allied Irish Bank plc v Higgins [2010] IEHC 219, (Unrep, Kelly J, 3/6/2010) – Consumer Credit Act 1995 (No 24), s 38 – Claims dismissed (2012/990S, 2012/127COM, 2012/989S & 2012/128COM – Charleton J – 9/5/2013) [2013] IEHC 201
Friends First Finance Ltd v Lavelle

Library Acquisitions

Malek, Ali
Paget's law of banking
14th ed
London : LexisNexis, 2014
Odgers, John
N303

Yates, Madeleine
Montagu, Gerald
The law of global custody : legal risk management in securities investment and collateral
4th ed
Haywards Heath : Bloomsbury Professional, 2013
N304.1.E95

Articles

Bergin-Cross, Caroline
The growing popularity of electronic funds transfers as a means of payment and its legal implications
2014 (21) 6 Commercial law practitioner 127

Heslin, Mark
A tort of reckless lending?
2014 21 (7) Commercial law practitioner 164

Kane, James
The IBRC liquidation - A right to bid on own loans and decisions affecting residential mortgages
2014 (32) (12) Irish law times 174

Acts

Strategic Banking Corporation of Ireland Act 2014
Act No.22 of 2014
Signed on 26th July 2014

Central Bank Act 2014
Act No.9 of 2014
Signed on 4th June 2014

Statutory Instruments

Central Bank Act 1971 (approval of scheme of transfer between ICS Building Society and The Governor and company of the Bank of Ireland) order 2014
SI 257/2014

Strategic Banking Corporation of Ireland Act 2014 (commencement) order 2014
SI 359/2014

BUILDING CONTRACTS

Library Acquisitions

Wren, Tom
Public works in Ireland procurement and contracting
Dublin : Clarus Press Ltd, 2014
N83.8.C5

BUILDING LAW

Library Acquisitions

Rawley, Dominique
Williams, Kate
Martinez, Merissa
Construction adjudication and payments handbook
Oxford : Oxford University Press, 2013
N83

Coulson, Peter
Coulson on construction adjudication
2nd ed
Oxford : Oxford University Press, 2011
N83

Articles

Del Rio, Alan
Building bridges
Bearpark, Alison
2014 (July) Law Society Gazette 36

CHILDREN

Library Acquisitions

Ward, Paul
The child care acts: annotated and consolidated
3rd ed
Dublin : Thomson Round Hall Ltd, 2014
N176.26.C5

Articles

Coulter, Carol
The Child Care Act in practice: Some emerging issues from the child care law reporting project
2014 (2) Irish journal of family law 35

Forde, Louise
Aftercare for young people leaving care and detention
2014 (32) (12) Irish law times 180

CIRCUIT COURT

Statutory Instruments

Circuit Court (fees) order 2014
SI 23/2014

Circuit court rules (examinership) 2014
SI 284/2014

Circuit court rules (family law reporting) 2014
SI 408/2014

Circuit court rules (provision of transcripts of sentencing hearings) 2014
SI 410/2014

COMMERCIAL LAW

Articles

Meehan, Alan V
Addressing hidden ownership-a role of EMIR?
2013/14 1 (2) Irish business law review 1

COMPANY LAW

Directors

Restriction – Liquidation – Company unable to pay debts – Failure of directors to act responsibly in conduct of affairs of company – Whether court ought to consider unprecedented collapse of construction sector – Whether failure by directors to recognise insolvency of company – Whether directors ought to have ceased trading – Whether failure to engage appropriately with banks – Whether directors permitted undervalued transactions – Whether directors irresponsibly in acquisition of assets – Whether fraudulent disposition of assets – Whether directors engaged in reckless trading – Whether failure to keep proper books of account – Whether just and equitable to restrict directors – Whether court bound to impose mandatory 5 year period of restriction - Business Communications Ltd v Baxter (Unrep, Murphy J, 21/7/1995) approved – Companies Act 1990 (No 33), s 150 – Company Law Enforcement Act 2001 (No 28), s 56 – Application granted (2010/205COS – Cooke J – 28/11/2013) [2013] IEHC 544
In re Congil Construction Ltd (In liquidation); Mannion v Connolly

Directors

Litigation – Costs – Interlocutory injunction – Whether use of company resources and funds to assist directors in litigation ought to be prohibited – Whether legal costs of directors covered by insurance – Whether funding of legal costs ultra vires company powers – Whether rule of law prohibiting funding of legal costs – Whether participation and expenditure necessary or expedient in interests of company – Whether "rebuttable distaste" as to necessity and expediency – Whether rule prohibiting company monies being expended on disputes between shareholders – Whether use of company resources and funds by directors constituting misfeasance – Whether grant of petition inappropriate due to potential impact on costs determination of trial judge – Whether company insurance policy covering costs of litigation – Re a company (No 001126 of 1992) [1993] BCC 325 approved – Irish Life v Dowling [2013] IEHC 75, (Unrep, Charleton J, 21/2/2013); Dowling v Cook [2013] IEHC 129, (Unrep, Gilligan J, 27/3/2013); Dowling v Cook [2013] IESC 25, (Unrep, SC, 16/5/2013); Permanent TSB plc v Skoczylas [2013] IEHC 42, (Unrep, Cooke J, 4/2/2013); Pickering v Stephenson (1872) LR 14 Eq 322; Re Crossmore Electrical and Civil Engineering Ltd (1989) 5 BCC 37; Re Milgate Developments Ltd [1991] BCC 24; American Cyanamid Co v Ethicon Ltd [1975] AC 396; Re a Company (No 004502 of 1988) ex p Johnson [1991] BCC 234; Kelly v Kelly [2011] IEHC 349, (Unrep, Laffoy J, 31/8/2011); Re Beddoe [1892] 1 Ch 574 and Fitzpatrick v FK [2006] IEHC 392, [2007] 2 IR 406 considered – Companies Act 1963 (No 33), ss 200, 205 and 218 – Companies Act 1990 (No 33), s 160 – Credit Institutions (Stabilisation) Act 2009 (No 36), s 9 – Treaty on the Functioning of the European Union, arts 267 and 139 – Companies Act 1985 (UK), s 459 – Insolvency Act 1986 (UK), s 127 – Application refused (2013/36COS – Laffoy J – 23/8/2013) [2013] IEHC 406
Dowling v Cook

Liquidation

Application for directions as to quantum of liquidator remuneration – Application for directions as to funds out of which remuneration to be discharged – Customer funds – Constructive trust – Whether work in administering customer monies properly task for liquidator – Whether remuneration associated with administration of customer monies could properly be discharged from customer funds – Quantum of remuneration – Custom House Capital Ltd. (In Liquidation) [2012] IEHC 382, [2012] 3 IR 93; Re Berkeley Applegate (Investment Consultants) Ltd [1988] 3 All ER 71; Re GB Nathan & Co Pty Ltd (In Liquidation) [1991] 24 NSWLR 674; Re Marine Mansions Co (1867) LR 4 Eq 601; Scott v Nesbitt [1803–13] All ER Rep 216 and Boardman v Phipps [1967] 2 AC 46 considered – Companies Act 1963 (No 33), ss 228, 244 and 249 – Companies Act 1990 (No 33), s 150 – Directions given (2011/457COS – Finlay Geoghegan J – 25/10/2013) [2013] IEHC 507
Re Home Payments Limited

Receivership

Application by receiver for directions as to entitlement to withhold possession of property – Validity of appointment of receiver – Demand for payment by close of business – Loans payable on demand – Requirement of strict compliance with contractual terms in debenture for appointment of receiver – Family home – "Close of business" – Whether receiver validly appointed – Whether entitled by virtue of appointment to take possession of properties – Cripps (Pharmaceuticals) Ltd v Wickenden and another [1973] 2 All ER 606; Sheppard & Cooper v TSB Bank plc [1996] 2 All ER 654; Bank of Geroda v Panessar [1986] 3 All ER 751; The Merrow Limited v Bank of Scotland plc [2013] IEHC 130, (Unrep, Gilligan J, 22/3/2013) and Damache v DPP and others [2012] IESC 11, (Unrep, Supreme Court, 23/2/2012) considered – Credit Institutions (Stabilisation) Act 2010 (No 36) – Interpretation Act 2005 (No 23) – Declaration granted that appointment of receiver valid; Declaration of entitlement to take possession of properties (2012/411COS – Peart J – 8/11/2013) [2013] IEHC 495
Re Electron Holdings Limited: McCann v Halpin

Register

Strike off – Voidance of dissolution of company – Application by insurer of company to restore company to register – Whether Registrar of Companies could be directed by court to restore company to register following strike off – Circumstances in which company may be restored to register following strike off – Whether petitioner insurer had locus standi to bring an application to restore company if not creditor of company – In re Belmont & Co Ltd [1952] 1 Ch 10, [1951] 2 All ER 898; Re Deauville Communications Worldwide Limited [2002] 2 IR 32; MH Smith (Plant Hire) Limited v DL Mainwaring (t/a Inshore) [1986] BCLC 342; In re Test Holdings (Clifton) Ltd [1970] 1 Ch 285 and In re Walsh Maguire and O'Shea Limited [2011] IEHC 457, (Unrep, Laffoy J, 5/12/2011) considered - Companies (Consolidation) Act 1908, s 223 – Companies Act 1963 (No 33), ss 310, 311 and 311A – Companies (Amendment) Act 1982 (No 10), ss. 12, 12A, 12B and 12C – Taxes Consolidation Act 1997 (No 39), s 882 – Companies (Amendment) (No 2) Act 1999 (No 30), s 46 – Order refused (2013/146COS – Laffoy J – 10/12/2013) [2013] IEHC 382
Re Command Financial Services Ltd

Winding up

Petition to wind up – Debt disputed – Cross-claim – Unsatisfactory nature of grounding documentation – Incorrect address – Advertisements not exhibited – Practice direction – Deemed insolvency – Whether by reason of cross-claim by company against petitioner the debt was being disputed in good faith and on substantial grounds – Damages for loss of profits – Whether any cause of action – Re WMG Toughening Limited (No 2) [2003] 1 IR 389 – Rules of the Superior

Courts 1986 (SI 15/1986), O 74 – Winding up order granted (2013/4COS – Laffoy J – 4/3/2013) [2013] IEHC 97
In re Mi-Zone Technology Ireland Ltd

Library Acquisitions

Cordes, Madeleine
Pugh-Smith, John
Burton, James
Shackleton on the law and practice of meetings
13th ed
London : Sweet & Maxwell, 2014
N263.9

Articles

Dillon, Gabrielle
Directors: VAT issues where there is restructuring of property let to companies
2014 (2) Irish tax review 53
Quinn, John

Companies bill 2012 - directors' fiduciary duties
2013/14 1(2) Irish business law 57

Statutory Instruments

Companies (Miscellaneous Provisions) act 2013 (commencement) order 2014
SI 121/2014

Companies (Miscellaneous Provisions) Act 2013 (section 2) (commencement) order 2014
SI 285/2014

COMPETITION LAW

Practice and procedure

Application for admission to competition list – Definition of 'competition proceedings' – Claim of unconstitutionality and unlawfulness of air travel tax – Claim for restitution – Discretion – State under obligation to enforce recovery of unlawful aid – Whether competition proceeding – Whether claim as pleaded concerned application of provisions of State aid articles – Stylianakis (Case C-92/01) [2003] ECR 1-1303 – Competition Act 2002 (No 14) – Finance (No 2) Act 2008 (No 25), s 55(2)(b) – Regulation (EC) No 1/2003 – Regulation (EC) 1008/2008 – Regulation (EC) No 659/1999, art 141 – Treaty on the Functioning of the European Union, arts 56, 107 and 108 – Rules of the Superior Courts 1986 (SI 15/1986), O 63A, r 1 and 4 and O 63B, r 1 and 4(1) – Application refused (2012/6736P– Cooke J – 4/7/2013) [2013] IEHC 327
Ryanair Ltd v Revenue Commissioners

Acts

Competition and Consumer Protection Act 2014
Act No.29 of 2014
Signed on 28th July 2014

Statutory Instruments

Competition and Consumer Protection Act 2014 (commencement) order 2014
SI 366/2014

Competition and Consumer Protection Act 2014 (establishment day) Order 2014
SI 367/2014

CONSTITUTIONAL LAW

Habeas corpus

Application pursuant to Article 40.4.2° – Deportation order – Reasonable cause to suspect to be informed of entitlement to access to solicitor – Right to be cautioned on arrest – Requirement that warrants contain clear information on face as to basis of jurisdiction – intention to avoid removal from State – Objective test – False address – Intention to deport – Existence of deportation order as adequate evidence of concluded intention to deport – Right Requirement to direct Governor that person be detained until further notice – Whether reasonable cause to suspect intended to avoid removal from state – Whether intention to deport at time of arrest – Whether communication of entitlement to access to solicitor lacked formality or substance – Whether sufficient restraint of liberty to trigger need for formal arrest and caution – Whether Governor was informed that detention would be until further notice – Troci v The Governor of Cloverhill Prison [2011] IEHC 405, (Unrep, Hogan J, 2/11/2011); McKee v Chief Constable of the RUC [1996] UKHL 6, [1997] AC 286; Illegal Immigrants (Trafficking) Bill (In the matter of Article 26 of the Constitution and in the matter of Sections 5 and 10 of the Immigrants (Trafficking) Bill 1999, [2000] 2 IR 36; East Donegal Cooperative v. Attorney General [1970] IR 317; BFO v The Governor of Dochas Centre [2005] 2 IR 1; Lavery v Member in Charge, Carrickmacross Garda Station [1999] 2 IR 390; The People (DPP) v Peter Pringle (Unrep, CCA, 22/5/1981); Dunne v Clinton [1930] IR 366; E(G) v The Governor of Cloverhill Prison [2011] IESC 41, (Unrep, SC, 28/10/2011) and Darchiashvili v The Governor of Mountjoy Women's Prison [2011] IEHC 264, (Unrep, Edwards J, 23/6/2011) – Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (SI 119/1987), regs 8 and 11 – Immigration Act 1999 (Deportation) Regulations 2005 (SI 55/2005), reg 7 – Immigration Act 1999 (No 22), ss 3(9), 5(1) and 8 – Illegal Immigrants (Trafficking) Act 2000 (No 29) – Constitution of Ireland 1937, Art 40.4.2° – Application refused (2013/755SS – MacEochaidh J – 5/16/2013) [2013] IEHC 217
Seeruttun v Governor of Cloverhill Prison

Habeas corpus

Inquiry into lawfulness of detention – Warrants in respect of custodial sentences – Temporary release – Removal order – Notification requirements – Conditions of temporary release – Action taken on foot of unlawful order tainted with illegality – Whether notice provisions concerning proposal to make removal order complied with – Whether granting of temporary release lawful – Whether detention to serve out remaining part of custodial sentences lawful – People (Director of Public Prosecutions) v Alexiou [2003] 3 IR 513; The State (Murphy) v Kielt [1984] IR 458; M v Governor of Mountjoy Prison [2011] IEHC 336, [2011] 4 IR 621; The State (McDonagh) v Frawley [1978] IR 131; In Re ÓLaighléis [1960] IR 93 and The People (Director of Public Prosecutions) v Walsh [1980] IR 294 considered – European Communities (Free Movement of Persons) Regulations 2006 (SI 226/2006), arts 20 and 26 – Criminal Justice Act 1960 (No 27), s 6 – Immigration Act 1999 (No 22), s 3 – Constitution of Ireland 1937, Art 40.4.2° – Legality of detention upheld (2013/838SS – McDermott J – 16/5/2013) [2013] IEHC 528
Grackovs v Governor of Wheatfield Prison

Legislation

Delegation of law making authority – Appeal from judicial review proceedings – Registered employment agreement – Labour Court – Terms and conditions of employment – Excessive delegation – Extent of delegation – Natural and ordinary meaning – Variation of agreement – Power of cancellation – Terminology – Whether unauthorised delegation of legislative power contrary to Article 15 of the Constitution – Whether unlimited grant of power – Whether sufficient limitation on regulation making power – Whether Supreme Court entitled to determine issue heard but not determined by High Court – Burke v The Labour Court [1979] IR 354; Cityview Press v An Chomhairle Oiliúna [1980] IR 381; John Grace Fried Chicken v The Labour Court [2011] IEHC 277, [2011] 3 IR 211; AA v Medical Council [2003] 4 IR 302; Dunnes Stores v Ryan [2002] 2 IR 60; Laurentiu v The Minister for Justice [1999] 4 IR 26 and Pigs Marketing Board v Donnelly (Dublin) Ltd [1939] IR 413 considered – Industrial Relations Act 1946 (No 26), ss 27, 28, 30, and 34 to 58 – Industrial Relations (Amendment) Act 2012 (No 32) – Industrial Training Act 1967 (No 5), s 21 – Constitution of Ireland 1937, Art 15.2.1° – Appeal allowed and declaration that provisions of Part III of the Industrial Relations Act 1946 invalid (310/2010 – SC – 9/5/2013) [2013] IESC 21
McGowan v Labour Court

Personal rights

Detention - Habeas corpus – Vulnerable minor - Right to reasonable access to solicitor - Whether detention unlawful where vulnerable minor not permitted to have solicitor present during interview – Lavery v Member in Charge, Carrickmacross Garda Station [1999] 2 IR 390 applied - Cadder v HM Advocate [2010] UKSC 43, [2010] 1 WLR 2601; Director of Public Prosecutions (Garda Lavelle) v McCrea [2010] IESC 60, (Unrep, SC, 9/12/2010); Donegan v Dublin City Council [2012] IESC 18, [2012] 3 IR 600; Dublin City Council v Gallagher [2008] IEHC 354, (Unrep, O Néill J, 11/11/2008); Gäfgen v Germany (2010) 52 EHRR 1; Mulligan v Governor of Portlaoise Prison [2010] IEHC

269, (Unrep, MacMenamin J, 14/7/2010); Panovits v Cyprus (App No 4268/04) [2008] ECHR 1688; The People (Director of Public Prosecutions) v Buck [2002] 2 IR 268; The People (Director of Public Prosecutions) v Healy [1990] 2 IR 73; The People v Madden [1977] IR 336; Salduz v Turkey (App No 36391/02) (2008) 49 EHRR 19; Sharkunov and Mezentsev v Russia (App No 75330/01) [2010] 52 ECHR 892 and GT v KAO (Child abduction) [2007] IEHC 326, [2007] IESC 55, [2008] 3 IR 567 considered - Misuse of Drugs Act 1977 (No 12), ss 2 and 15 - Constitution of Ireland 1937, Article 40.4.2° - Legality of detention upheld (2013/648SS – Sheehan J – 3/5/2013) [2013] IEHC 251
M(J) (a minor) v Member in Charge of Coolock Garda Station

Statute

Validity – Mandatory consecutive sentence – Separation of powers – Principle of proportionality – Test of totality – Right to equality before law – Right to trial in due course of law – Whether mandatory consecutive sentence encroachment on judicial function – Whether unconstitutional discrimination – Fleming v Ireland [2013] IESC 19, [2013] 2 ILRM 73 and Quinn's Supermarket v Attorney General [1972] IR 1 followed - Brennan v The Attorney General [1994] ILRM 355; Buckley and others (Sinn Féin) v Attorney General and another [1950] IR 67; Cox v Ireland [1992] 2 IR 503; Crotty v An Taoiseach [1987] IR 713; Deaton v The Attorney General and The Revenue Commissioners [1963] IR 170; East Donegal Co-operative Livestock Mart Ltd v Attorney General [1970] IR 317; The Employment Equality Bill, 1996 [1997] 2 IR 321; In re Haughey [1971] IR 217; Lynch and Whelan v Minister for Justice [2010] IESC 34, [2012] 1 IR 1; McDonald v Bord na gCon (No 2) [1965] IR 217; Osmanovic v Director of Public Prosecutions [2006] IESC 50, [2006] 3 IR 504; The People (DPP) v Healy [1990] 1 IR 388; The State (O) v O'Brien [1973] IR 50 and The State (Sheerin) v Kennedy [1966] IR 79 considered - Criminal Law Act 1976 (No 32), s 13 – Constitution of Ireland 1937 – Charter of Fundamental Rights of the European Union 2000, art 49(3) – Appeal against dismissal of claim challenging constitutionality of section dismissed (419/2013 – SC – 14/10/2013) [2013] IESC 45
Gilligan v Ireland

CONSUMER LAW

Statutory Instruments

Consumer Credit Act 1995 (section 2) (no.1) regulations 2014
SI 355/2014

CONTINENTAL SHELF

Statutory Instruments

Continental shelf (designated areas) order 2014
SI 87/2014

CONTRACT

Breach

Solicitor - Undertaking – Misrepresentation – Counterclaim – Deficit on client account – Whether misrepresentation by defendants – Whether failure to comply with undertaking – Whether plaintiff permitted deficit to arise on client account – Claim dismissed; counterclaim succeeded (2007/5218P – Birmingham J – 9/7/2013) [2013] IEHC 315
Butler p/a Butler Solicitors v McKenna

Breach

Mediation settlement agreement – Lease – Non-payment of rent and service charge – Equitable relief against forfeiture – Fundamental breach – Misrepresentation – Mistake - Right of way – Adverse possession – Failure to call evidence – Whether entitlement to withhold rent and service charge – Whether mistake or misrepresentation in entering mediation settlement agreement – Whether inference could be drawn from failure to call evidence – Whether fundamental breach of contract – Whether entitlement to equitable relief against forfeiture – Fyffes PLC v DCC PLC and ors [2005] IEHC 477, [2006] IEHC 32, [2007] IESC 36,[2009] 2 IR 417; M'Queen v Great Western Railway Company [1875] LR 10 QB 569; Reg v IRC, ex p Coombs & Co [1991] 2 AC 283; Wisniewski v Central Manchester Health Authority [1998] Lloyd's Reports Med 223; Pedley v Avon Insurance [2003] EWHC 2007, (Unrep, Hegarty J, 31/7/2003); Rock Nominees v RCO Holdings [2003] 2 BCLC 493; Lewis v Eliades (No 4) [2005] EWHC 488 (Unrep, Smith J, 23/3/2003); Herrington v British Railways Board [1972] AC 877; Irish Telephone Rentals v ICS Building Society [1992] 2 IR 525; Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Limited [1962] 1 QB 26; Parol Limited and Carroll Village (Retail) Management v Friends First Pension Funds Limited and Superquinn [2010] IEHC 498, (Unrep, Clarke J, 8/10/2010); Wallersteiner v Moir [1975] QB 373 and Campus and Stadium Development Ltd v Dublin Waterworld Ltd [2006] IEHC 200, (Unrep, Gilligan J, 21/3/2006) considered – Sale of Goods and Supply of Services Act 1980 (No 16), s 22 – Judgment for plaintiff; issue of forfeiture adjourned (2012/6741P – Charleton J – 2/9/2013) [2013] IEHC 526
Leopardstown Club Limited v Templeville Developments Limited

Breach

Claim for payment in respect of provision of accommodation centres for refugees – Statute of Limitations – Delay – Laches – Mutual mistake – Effect of delay in hampering ability of court to ascertain precise state of affairs – Estoppel – Provisions of agreement – Termination of agreement – Whether statute-barred – Whether claim should be struck out on grounds of delay – Whether laches applied to claim in damages for breach of contract – Whether mutual mistake – Whether breach of contract – Moloney v Lacey Building & Civil Engineering Ltd [2010] IEHC 8, [2010] 4 IR 417; Doyle v Gibney [2011] IEHC 10, (Unrep, Hogan J, 18/1/2011); Hynes Ltd v Independent Newspapers Ltd [1980] IR 204; United Scientific Holdings Ltd v Burnley Borough Council [1978] AC 904; Hales v Minister for Industry and Commerce [1967] IR 67; Shelley-Morris v Bus Atha Cliath [2003] 1 IR 232; Primor plc v Stokes Kennedy Crowley [1996] 2 IR 459; McBrearty v North Western Health Board [2010] IESC 27, (Unrep, SC, 10/5/2010) and Donnellan v Western Textiles Ltd [2011] IEHC 11, (Unrep, Hogan J, 18/1/2011) considered – Mespil Ltd v Capaldi [1986] ILRM 373 applied – Rules of the Superior Courts 1986 (SI 15/1986), O 8, r 2 – Statute of Limitations 1957 (No 6), s 5 – Supreme Court of Judicature (Ireland) Act 1877 (c LVII), s 28 – Civil Liability and Courts Act 2004 (No 31), s 26 – Constitution of Ireland 1937, Art 34.3.1° – Judgment granted in part (2005/336P – Hogan J – 1/11/2013) [2013] IEHC 474
Meagher v Dublin City Council

Interpretation

Plenary proceedings seeking declaratory reliefs as to interpretation of contract – Loan agreement – Partnership – Security – Personal liability – Ordinary meaning – Factual matrix – Commercial sense – Contra Proferentem – Whether security provision ambiguous – Whether to be construed so as to give same meaning as earlier agreement – Whether mutual mistake – Whether unilateral mistake due to misrepresentation – Analog Devices BV v Zurich Insurance Co [2005] IESC 12, [2005] 1 IR 274; Kramer v Arnold [1997] 3 IR 43; Igote Limited v Badsey [2001] 4 IR 511; Ryanair Limited v An Bord Pleanála [2008] IEHC 1, (Unrep, Clarke J, 11/1/2008); Investor's Compensation Scheme Limited v West Bromwich Building Society [1998] 1 WLR 896; Rainy Sky SA v Kookmin Bank [2011] 1 WLR 2900; Equity and Law Assurance Society plc v Bodfield Limited [1987] 1 EGLR 124; Emo Oil Limited v Sun Alliance [2009] IESC 2, (Unrep, SC, 22/1/2009); Danske Bank v McFadden [2010] IEHC 116, (Unrep, Clarke J, 20/4/2010); Irish Life Assurance Company Limited v. Dublin Land Securities Limited [1989] IR 253; Lucey v Laurel Construction Co Limited (Unrep, Kenny J, 18/12/1970); Joscelyne v Nissen [1970] 2 QB 86 and Rooney and McParland Limited v. Carlin [1981] NI 138 considered – Partnership Act 1890, s 9 – Reliefs refused (2011/8591P – Cooke J – 7/6/2013) [2013] IEHC 250
King v Ulster Bank Ireland Ltd

Shareholders agreement

Debt – Arrears for dividends – Share purchase equity investment – Renewable energy tax relief – Money subscribed for shares – Amendment to articles of association – Debt due when dividend not paid – No distributable profits – Counterclaim – Exclusion of rent from reserves – Entire agreement – Public policy – Protection of creditors – Substance of agreement –

Intention of parties – Collateral non-statutory contract – Definition of 'distribution' – Whether debt due – Whether creditor of company – Whether payment distribution – Whether special contract existed – Whether collateral contract existed – Igote Ltd v Badsey Ltd [2001] 4 IR 511; Progress Property Co Ltd v Moor and Others [2011] 1 WLR 1; Bailey v New South Wales Medical Defence Union Ltd [1995] HCA 28; Allied Irish Bank v Galvin Developments (Killarney) Ltd [2011] IEHC 314, (Unrep, Finlay Geoghegan J, 22/7/2011); Industrial Steel Plant Ltd v Smith [1980] 1 NZLR 545 and Tennants Building Products v O'Connell [2013] IEHC 197, (Unrep, Hogan J, 17/4/2013) considered – Taxes Consolidation Act 1997 (No 39), s 486B – Companies (Amendment) Act 1983 (No 13), ss 45(1), 45(2) and 51 – Companies Act 1963 (No 33), s 25 – Judgment granted (2012/3488S – Kearns P – 14/11/2013) [2013] IEHC 498

Lisavaird Sales Ltd v Muingnaminnane Windfarms Ltd

Breach

Mediation settlement agreement – Lease – Non-payment of rent and service charge – Equitable relief against forfeiture – Fundamental breach – Misrepresentation – Mistake - Right of way – Adverse possession – Failure to call evidence – Whether entitlement to withhold rent and service charge – Whether mistake or misrepresentation in entering mediation settlement agreement – Whether inference could be drawn from failure to call evidence – Whether fundamental breach of contract – Whether entitlement to equitable relief against forfeiture – Fyffes PLC v DCC PLC and ors [2005] IEHC 477, [2006] IEHC 32, [2007] IESC 36,[2009] 2 IR 417; M'Queen v Great Western Railway Company [1875] LR 10 QB 569; Reg v IRC, ex p Coombs & Co [1991] 2 AC 283; Wisniewski v Central Manchester Health Authority [1998] Lloyd's Reports Med 223; Pedley v Avon Insurance [2003] EWHC 2007, (Unrep, Hegarty J, 31/7/2003); Rock Nominees v RCO Holdings [2003] 2 BCLC 493; Lewis v Eliades (No 4) [2005] EWHC 488 (Unrep, Smith J, 23/3/2003); Herrington v British Railways Board [1972] AC 877; Irish Telephone Rentals v ICS Building Society [1992] 2 IR 525; Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Limited [1962] 1 QB 26; Parol Limited and Carroll Village (Retail) Management v Friends First Pension Funds Limited and Superquinn [2010] IEHC 498, (Unrep, Clarke J, 8/10/2010); Wallersteiner v Moir [1975] QB 373 and Campus and Stadium Development Ltd v Dublin Waterworld Ltd [2006] IEHC 200, (Unrep, Gilligan J, 21/3/2006) considered – Sale of Goods and Supply of Services Act 1980 (No 16), s 22 – Judgment for plaintiff; issue of forfeiture adjourned (2012/6741P – Charleton J – 2/9/2013) [2013] IEHC 526

Leopardstown Club Limited v Templeville Developments Limited

Breach

Claim for payment in respect of provision of accommodation centres for refugees – Statute of Limitations – Delay – Laches – Mutual mistake – Effect of delay in hampering ability of court to ascertain precise state of affairs – Estoppel – Provisions of agreement – Termination of agreement – Whether statute-barred – Whether claim should be struck out on grounds of delay – Whether laches applied to claim in damages for breach of contract – Whether mutual mistake – Whether breach of contract – Moloney v Lacey Building & Civil Engineering Ltd [2010] IEHC 8, [2010] 4 IR 417; Doyle v Gibney [2011] IEHC 10, (Unrep, Hogan J, 18/1/2011); Hynes Ltd v Independent Newspapers Ltd [1980] IR 204; United Scientific Holdings Ltd v Burnley Borough Council [1978] AC 904; Hales v Minister for Industry and Commerce [1967] IR 67; Shelley-Morris v Bus Atha Cliath [2003] 1 IR 232; Primor plc v Stokes Kennedy Crowley [1996] 2 IR 459; McBrearty v North Western Health Board [2010] IESC 27, (Unrep, SC, 10/5/2010) and Donnellan v Western Textiles Ltd [2011] IEHC 11, (Unrep, Hogan J, 18/1/2011) considered – Mespil Ltd v Capaldi [1986] ILRM 373 applied – Rules of the Superior Courts 1986 (SI 15/1986), O 8, r 2 – Statute of Limitations 1957 (No 6), s 5 – Supreme Court of Judicature (Ireland) Act 1877 (c LVII), s 28 – Civil Liability and Courts Act 2004 (No 31), s 26 – Constitution of Ireland 1937, Art 34.3.1° – Judgment granted in part (2005/336P – Hogan J – 1/11/2013) [2013] IEHC 474

Meagher v Dublin City Council

Library Acquisitions

Lawson, Richard
Exclusion clauses and unfair contract terms
11th ed
London : Sweet & Maxwell, 2014
Exclusion clauses: Contract
N18.8

Cartwright, John
Formation and variation of contracts : the agreement, formalities,
consideration and promissory estoppel
London : Sweet & Maxwell, 2014
N10

CORONERS

Library Acquisitions

Matthews, Paul
Jervis on the office and duties of coroners : with forms and precedents
13th ed
London : Thomson Sweet & Maxwell, 2014
L254

CORPORATE GOVERNANCE

Library Acquisitions

Cardale, Mark
A practical guide to corporate governance
5th ed
London : Sweet & Maxwell, 2014
N255

COURTS

Articles

Biehler, Hilary
The proposed court of appeal
2014 (1) Criminal law and practice review 129

Acts

Court of Appeal Act 2014
Act No.18 of 2014
Signed on 20th July 2014

CRIMINAL LAW

Appeal

Plea of guilty – Search warrant – Subsequent unconstitutionality – Enlargement of time to appeal – Failure to appeal within time allowed – Whether guilty plea bar to grant of enlargement of time to appeal – Whether application to be refused in interests of legal certainty – Whether concluded proceedings based on enactment subsequently found unconstitutional should be reopened – A v The Governor of Arbour Hill Prison [2006] IESC 45, [2006] 4 IR 88 followed - Burns v Judge Early [2003] 2 ILRM 321; CC v Ireland [2006] IESC 33; [2006] 4 IR 1; Corrigan v Irish Land Commission [1977] IR 317; Damache v Director of Public Prosecutions [2012] IESC 11, [2012] 2 IR 266; de Búrca v Attorney General [1976] IR 38; Eire Continental Trading Company Limited v Clonmel Foods Limited [1955] IR 170; Murphy v The Attorney General [1982] IR 241; The People (Director of Public Prosecutions) v Cronin (No. 2) [2006] IESC 9; [2006] 4 IR 329; The People (Director of Public Prosecutions) v Kavanagh [2012] IECCA 65; (Unrep, CCA, 24/5/2012) and The State (Byrne) v Frawley [1978] IR 326 considered - Offences Against the State Act 1939 (No 13), s 29 – Application dismissed (141/2012 – CCA – 2/7/2012) [2012] IECCA 69

The People (Director of Public Prosecutions) v Hughes

Arrest

Search – Evidence – Admissibility – Powers of member of Garda Síochána to conduct search – No objection to search – Whether obligation to inform arrested person of legal justification for search where no objection – Whether duty on trial judge to give reasons at stage of application for non-suit - The People (Director of Public Prosecutions) v Cronin (No 2) [2006] IESC 9, [2006] 4 IR 329 and R v Lucas [1981] 1 QB 720 followed - Christie and another v Leachinsky [1947] AC 573; Dillon v O'Brien and Davis (1887) 20 LR Ir 300; Elias and others v Pasmore and others [1934] 2 KB 164; Jennings v Quinn [1968] IR 305; Kenny v Judge Coughlan [2008] IEHC 28, (Unrep, Ó Néill J, 8/2/2008); Lyndon v District Judge Collins [2007] IEHC 487, (Unrep, Charleton J, 22/1/2007); O'Mahony v Ballagh [2002] 2 IR 410; The People (Attorney General) v White [1947] IR 247; The People (Director of Public Prosecutions)

v Thomas Kelly [2010] IECCA 75, (Unrep, CCA, 28/6/2010); The People (Director of Public Prosecutions) v McFadden [2003] 2 IR 105; The People (Director of Public Prosecutions) v O'Donnell [1995] 3 IR 551; The People (Director of Public Prosecutions) v Rooney [1992] 2 IR 7; R v Galbraith [1981] 1 WLR1039; Sisk v O'Neill [2010] IEHC 96, (Unrep, Kearns P, 23/3/2010) and The State (Holland) v Kennedy [1977] IR 193 considered – Leave to appeal refused (231/2009 – CCA – 29/6/2012) [2012] IECCA 71

The People (Director of Public Prosecutions) v Kelly

Delay

Application for judicial review - Prohibition – Right to fair trial – Prosecutorial delay – Prosecution of child – Duty of expedition – Age of accused at time of alleged offences – Right to expeditious trial – Prejudice – Responsibility for delay – Delay in execution of warrant – Unavailability of witness – Seriousness of offence – Public interest in prosecuting crime – Balancing exercise – Weight to be given to admissions – Whether blameworthy delay on part of prosecution – Whether real and serious risk of unfair trial – Whether prejudice established – Whether prohibition to be granted on grounds of delay even though prejudice not established - BF v Director of Public Prosecutions [2001] 1 IR 656 applied - Jackson v Director of Public Prosecutions and Walsh v Director of Public Prosecutions [2004] IEHC 380, (Unreported, Quirke J, 8/12/2004) approved - McArdle v Director of Public Prosecutions [2012] IEHC 286, (Unreported, Hedigan J, 5/7/2012) distinguished - SA v Director of Public Prosecutions [2007] IESC 43, (Unreported, Hardiman J, 17/10/2007); Barker v Wingo (1972) 407 US 514; Braddish v Director of Public Prosecutions [2001] 3 IR 127; AC (a minor) v Director of Public Prosecutions [2008] IEHC 39, [2008] 3 IR 398; Cormack v Director of Public Prosecutions [2008] IESC 63, [2009] 2 IR 208; Devoy v Director of Public Prosecutions [2008] IESC 13, [2008] 4 IR 235; SH v Director of Public Prosecutions [2006] IESC 55, [2006] 3 IR 575; Kennedy v Director of Public Prosecutions [2012] IESC 34, [2012] 3 IR 744; Noonan (orse Hoban) v Director of Public Prosecutions [2007] IESC 34, [2008] 1 IR 445; State (O'Connell) v Fawsitt [1986] IR 362 and PT v Director of Public Prosecutions [2007] IESC 39, [2008] 1 IR 701 considered – Relief granted (2012/384JR – O'Malley J – 17/6/2013) [2013] IEHC 269

Cullen v Director of Public Prosecutions

Detention

Application for release from custody – Arrest on foot of deportation order – Immigration – Non-national – Detention at airport – Leave to land resfued – Transfer to garda station – Definition of 'examine' – Designated place of detention – Events amounting to force majeure – Error on formal detention notice – Whether detention lawful – Whether legal basis for detention – Toidze v Governor of Cloverhill Prison [2011] IEHC 395, (Unrep, Hogan J, 24/10/2011) – Ni v Garda Commissioner [2013] IEHC 134, (Unrep, Hogan J, 27/03/2013) and Kristo v Governor of Cloverhill Prison [2013] IEHC 218, (Unrep, MacEochaidh J, 16/05/2013) considered – Immigration Act 2004 (No 1), s 4(5)(a) – Immigration Act 2003 (No 26), s 5(2)(a) – Constitution of Ireland 1937, Art 40.4.2° – Application refused (2013/1965SS – Hogan J – 12/11/2013) [2013] IEHC 511

Ganyiu v Governor of Cloverhill Prison

Judicial review

Application for judicial review – Certiorari – Decision of Circuit Judge to discharge order allowing appeal – Assault – Appeal – Prosecuting garda not present and appeal allowed – Appeal subsequently reinstated - Whether respondent acted without jurisdiction – Whether reinstating of appeal without notice to applicant contrary to fair procedures – Whether matter in 'the breast of the court' – Practicalities of District Court – Whether fair procedures demanded opportunity to be heard and argue against variation of order – The State (Dunne) v Martin [1982] IR 229; Kennelly v Cronin [2001] 4 IR 292 and The State (Kiernan) v de Burca [1963] IR 348 considered - Finding that applicant entitled to be heard (2012/989JR – Birmingham J – 8/11/2013) [2013] IEHC 487

Richards v O'Donohoe

Practice and procedure

District Court - Hybrid offence – Offences capable of being tried summarily or on indictment – Decision of Director of Public Prosecutions to prosecute summarily – Refusal of jurisdiction - Return for trial – Consent of Director of Public Prosecutions – Whether return for trial valid – Jurisdiction of court – Whether jurisdiction to send matter forward for trial on indictment – Gormley v Smyth [2008] IEHC 266, [2010] IESC 5, [2010] 1 IR 315 followed - Reade v Reilly [2009] IESC 66, [2010] 1 IR 295 distinguished - Attorney General (O'Connor) v O'Reilly (Unrep, Finlay P, 29/11/1976); Carlin v Director of Public Prosecutions [2010] IESC 14, [2010] 3 IR 547; Cumann Lúthchleas Gael Teo v Judge Windle [1994] 1 IR 525; Director of Public Prosecutions v Logan [1994] 3 IR 254; Eviston v Director of Public Prosecutions [2002] 3 IR 260; Robinson v O'Donnell and ors [2009] IESC 51, (Unrep, SC, 2/7/2009); The State (Clancy) v Wine [1980] IR 228 and The State (McEvitt) v Delap [1981] IR 125 considered - Criminal Procedure Act 1967 (No 12), s 4A – Criminal Damage Act 1991 (No 31), s 2 - Criminal Justice Act 1999 (No 10), s. 9 – Appeal dismissed (80/2011 – SC – 30/10/2013) [2013] IESC 44

Dillon v McHugh

Practice and procedure

Application for judicial review – Deposition – Application for deposition rejected in circuit court – Return for trial with indictable offence – Corrupt planning payments – Different accounts of events previously given – Preliminary examination procedure – Object and purpose of deposition procedure – Material assistance – Legislative intention – Jurisdiction – Judicial discretion – Fair trial – Preliminary issues – Material non-disclosure – Delay – Whether witness to be deposed before District Court in advance of criminal trial – Whether in interests of justice – Whether application bona fide – Whether benefit demonstrated – Kennedy v DPP [2011] IEHC 311, (Unrep, Hedigan J, 28/7/2011); Kennedy v DPP [2012] IESC 34, (Unrep, SC, 7/6/2012); The State (Williams) v Kelliher [1983] IR 112; O v Minister for Justice, Equality and Law Reform [2012] IEHC 1, (Unrep, Hogan J, 6/1/2012); The People v Boggan [1958] IR 67; The State (Sherry) v Wine [1985] ILRM 196; The People v DL (Unreported, CCA, 19/7/2002); Dunne v Governor of Cloverhill Prison [2009] IESC 11, [2009] 3 IR 378; Cruise v O'Donnell [2007] IESC 67, [2008] 3 IR 360; The State (Holland) v Kennedy [1977] IR 193 and Killeen v Director of Public Prosecutions [1997] 3 IR 218 considered – Rules of the Superior Courts 1986 (SI 15/1986), O 84, r 20 – Criminal Procedure Act 1967 (No 12), ss 4, 4B to 4G and 7(2) – Criminal Justice Act 1999 (No 10), s 9 – Public Bodies Corrupt Practices Act 1889 (52 & 53 Vict c 69), s 1(2) – Prevention of Corruption Act 1916 (6 & 7 Geo 5 c 64), s 4(2) – Ethics in Public Office Act 1995 (No 22), s 38 – Ruling quashed; matter remitted (2013/36JR – Hogan J – 19/3/2013) [2013] IEHC 115

Kennedy v Judge Nolan

Prosecution

Successive trials – Prohibition – Test to be applied – Whether ex ante rule prohibiting third successive trial – Whether special and unusual circumstances permitting third successive trial to proceed – Gravity of offences – Delay – Whether excessive delays in prosecution – Bail – Whether bail conditions between trial onerous – Whether considerable stress and anxiety caused to accused and family – Whether juries having failed to return verdict after full trials – Whether fact of long trials and jury deliberations to be taken into account – Whether compelling new evidence to be adduced – Whether new evidence likely to be admissible – Whether evidence obtained via constitutionally impugned search warrant powers likely to be admissible – Whether trial ought to be prohibited – DS v Judges of the Cork Circuit Court [2008] IESC 37, [2008] 2 IR 379; People (DPP) v Quilligan (No 2) [1989] IR 46 and AP v DPP [2011] IESC 2, [2011] 1 IR 729 applied – Carter v State [1999] UKPC 24, [2000] 1 WLR 384; Williams v The State (1988) 258 Ga 305 and R v Henworth [2001] 2 Cr App R 4 approved – People (DPP) v Kavanagh [2012] IECCA 65, (Unrep, CCA, 24/5/2012); United States v Gunther (1976) 546 F 2d 861; United States v Perez (1824) 22 US 579; In re McInerney Homes Ltd [2011] IESC 31, (Unrep, SC, 22/7/2011); Damache v DPP [2012] IESC 11, [2012] 2 IR 266 and R v Momodou [2005] EWCA Crim 177; [2005] 1 WLR 3442 considered – Offences Against

the State Act 1939 (No 13), s 29 – One trial prohibited, one trial allowed (2012/155JR & 2012/186JR – Hogan J – 5/9/2012) [2013] IEHC 396
Byrne v Judges of the Circuit Court

Prosecution

District Court – Private prosecution - Common informer – Indictable offence – Statute - Interpretation – Abolition of preliminary examination procedure before District Court – Definition of "prosecutor" – Whether right of private prosecution for indictable offence abolished – Whether right of accused to be heard before information laid before District Court – Issuing of summons – Whether prosecution rendered abusive by private grievance – Whether decision to issue summons unreasonable – Attorney General (McDonnell) v Higgins [1964] IR 374; Cumann Lúthchleas Gael Teo v Judge Windle [1994] 1 IR 525; Minister for Industry and Commerce v Hales [1967] IR 50; R v The Bow Street Magistrates, ex parte Kazuhiro Sakashita (Unrep, Queen's Bench Division, 15/10/1996); Reg v Bow Street Metropolitan Stipendiary Magistrate, Ex parte South Coast Shipping Co. Ltd [1993] QB 645; R (Dacre) v City of Westminster Magistrates' Court [2008] EWHC 1667 (Admin), [2009] 1 WLR 2241; Stephenson v McWhirter (Unrep, Queen's Bench Division, 23/1/1989); TDI Metro Ltd v Delap (No 2) [2000] 4 IR 520; The State (Clarke) v Roche [1986] IR 619; The State (Ennis) v Farrell [1966] IR 107 and Wedick v Osmond & Son [1935] IR 820 considered - Ó Ceallaigh v An Bord Altranais [2000] 4 IR 54 distinguished – Criminal Justice (Administration) Act 1924 (No 44), s 9 – Criminal Procedure Act 1967 (No 12), ss 4(1) and 4A – Criminal Justice (Theft and Fraud) Offences Act 2001 (No 50), ss 6 and 53 – Constitution of Ireland 1937, Art. 30.3 - Relief refused (2012/436JR – Hogan J – 9/7/2013) [2013] IEHC 321
Kelly v Ryan

Public order

Breach of peace – Intention to provoke breach of peace – Recklessness – Whether appellant reckless as to occasioning breach of peace - Failure to appear – Facts not requiring formal proof – Orders of court of record – Whether bench warrant evidence of failure to appear – Effect of whether appellant admitted to bail on recognisance by court or in a garda station – Clifford v Director of Public Prosecutions [2008] IEHC 322, (Unrep, Charleton J, 29/10/2008); Corporation of Dublin v Flynn [1980] IR 357; DPP v Orum [1989] 1 WLR 88; Marsh v Arscott (1982) 75 Cr App R 211; The People v Murray [1977] IR 360; The People (Director of Public Prosecutions) v Cagney [2007] IESC 46, [2008] 2 IR 111; [2008] 1 ILRM 293; Reg v Hogan [1974] QB 398; Reg v Humphries [1977] AC 1; Criminal Justice Act 1984 (No 22), s 13 - Criminal Justice (Public Order) Act 1994 (No 2), s 6 – Questions answered and conviction upheld (368/2008 – SC – 25/10/2013) [2013] IESC 43
Clifford v Director of Public Prosecutions

Trial

Prohibition – Judicial review – Autrefois acquit – Summary trial – Trial on indictment – Abuse of process – Order dismissing summary proceedings followed by prosecution on indictment for same offence – Words and phrases – Dismiss – Dismiss on merits – Jurisdiction – Record of decision of District Court – Equality of arms in criminal trials – Cleary v Director of Public Prosecutions [2010] IEHC 100 (Unrep, Ó Néill J, 26/3/2010); In re Comhaltas Ceoltóirí Éireann (Unrep, Finlay P, 14/12/1977); Connelly v Director of Public Prosecutions [1964] AC 1254; Director of Public Prosecutions v Ní Chondúin [2007] IEHC 321 (Unrep, MacMenamin J, 31/7/2007); Fitzgerald v Director of Public Prosecutions [2003] 3 IR 247; Great Southern and Western Railway Co v Gooding [1908] 2 IR 429; Grennan v Kirby [1994] 2 ILRM 199; Haynes v Davis [1915] 1 KB 332; Holmes v Campbell [1998] EWHC JO508-33 (1998) 162 JP 655; Mapp v Ohio (1961) 367 US 643; People v Defore (1926) NY 13 (150 NE 585); The People v O'Shea [1982] IR 384; The People (Attorney General) v Marchel O'Brien [1963] 1 IR 92; The Queen v Justices of Antrim [1895] 2 IR 603; R (Wilbond) v Armagh Justices [1918] 2 IR 347; Richards v The Queen (PC) [1993] AC 217; DS v Judges of the Cork Circuit Court [2008] IESC 37, [2008] 4 IR 379; The State (Attorney General) v Judge Binchy [1964] IR 395; The State (O'Callaghan) v O hUadhaigh [1977] 1 IR 42; The State (Trimbole) v The Governor of Mountjoy Prison [1985] 1 IR 550; The State (Tynan) v Keane [1968] IR 348 and Weeks v United States (1914) 232 US 383 considered - District Court Rules 1997 (SI 93/1997) O 23, r 3 – Courts Act 1971 (No 36), s 14 – Appeal against refusal of injunction allowed (153/2010 – SC – 23/11/2011) [2011] IESC 43
Cleary v Director of Public Prosecutions

Library Acquisitions

Articles

Bacik, Ivana
Legislative developments in criminal law and procedure
2014 (1) Criminal law and practice review 45

Davey, Elizabeth
Sentence structure
2014 (June) Law Society Gazette 30

Durack, Martin
Killing under the influence
19(4) 2014 Bar review 74

Khan, Farook Sana
Corporate manslaughter - the need for reform
2013/14 1(2) Irish business law review 37

Kilcommins, Shane
Victims of crime with disabilities in Ireland
2014 (1) Criminal law and practice review 107

Maguire, Niamh
When is prison a last resort? Definitional problems and judicial interpretations
2014 (24) (3) Irish criminal law journal 62

O'Malley, Tom
Sentencing white-collar crime: problems and principles
2014 (1) Criminal law and practice review 35

Prendergast, David
Addressing uncertainty in the defences of self-defence, diminished responsibility and provocation
2014 (1) Criminal law and practice review 21

Travers, Mary
Mail and wire fraud: the United States prosecutors' "true love" - Should equivalent offences be enacted in Ireland?
2014 (24) (2) Irish criminal law journal 46 - Part 1
2014 (24) (3) Irish criminal law journal 73 - Part 2

Acts

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014
Act No.11 of 2014
Signed on 22nd June 2014

DAMAGES

Library Acquisitions

McGregor, Harvey
McGregor on damages
19th edition
London : Sweet & Maxwell, 2014
N37.1

DATA PROTECTION

Statutory Instruments

Data Protection Act 1988 (commencement) order 2014
SI 337/2014

Data Protection (Amendment) Act 2003 (commencement) order 2014
SI 338/2014

Articles

Morgan, Anna
Forget me not
2014 (July) Law Society Gazette 28

DEFENCE FORCES

Statutory Instruments

Defence (delegation of ministerial functions) order 2014
SI 307/2014

DISTRICT COURT

Statutory Instruments

District Court (criminal justice act 2013) rules 2014
SI 409/2014

District Court districts and areas (amendment) and variation of days and hours (Abbeyfeale, Carrickmacross, Cavan, Limerick, Monaghan, Newcastle West and Virginia) order 2014
SI 142/2014

EDUCATION

Statutory Instruments

Education Act 1998 (unregistered persons) regulations 2014
SI 32/2014

Student grant scheme 2014
SI 201/2014

Student support regulations 2014
SI 200/2014

ELECTORAL

Referendum

Petition – Annulment of referendum result – Information campaign – Public funding – Whether referendum poll materially affected by information campaign – Whether leave ought to be granted to bring petition – Whether prima facie case made out – Whether bona fide issue to be tried – Onus of proof – Standard of proof – Material affect – Whether referendum petition proceedings ought to be conducted in inquisitorial nature – Whether result of referendum as a whole materially affected by unlawful conduct – Whether onus of proof ought to be reversed – Whether change in polling following information campaign – Whether Government ministers sought to obfuscate effect of Supreme Court ruling concerning information campaign prior to referendum – Hanafin v Minister for the Environment [1996] 2 IR 321 applied – McCrystal v Minister for Children [2012] IESC 53, [2012] 2 IR 726; McKenna v An Taoiseach (No 2) [1995] 2 IR 10; O'Donovan v AG [1961] IR 114; SA v Refugee Appeals Tribunal [2012] IEHC 101, (Unrep, Cross J, 1/3/2012); Hetherington v Ultra Tyre Service Ltd [1993] 2 IR 535; O'Toole v Heavey [1993] 2 IR 544; Hanrahan v Merck Sharpe & Dohme [1988] ILRM 629 and Fitzgibbon v Ireland (Unrep, SC, 8/6/2001) considered – Rules of the Superior Courts 1986 (SI 15/1986), O97 – Referendum Act 1994 (No 12), ss 8, 10, 14, 15, 18, 34, 37, 40, 42, 43, 48 and 52 – Illegal Immigrants (Trafficking) Act 2000 (No 29), s 5 – Planning and Development Act 2000 (No 30), s 50 – Constitution of Ireland 1937, arts 16, 40, 42, 46 and 47 – European Convention on Human Rights and Fundamental Freedoms 1950, arts 6, 10, 13 and 14 – Leave granted; petition dismissed (2012/152IA – McDermott J – 18/10/2013) [2013] IEHC 458
In re the Referendum on the Proposal for the Amendment of the Constitution contained in the Thirty-First Amendment of the Constitution (Children) Bill 2012

Acts

Electoral (Amendment) (No.2) Act 2014
Act No.24 of 2014
Signed on 26th July 2014

Statutory Instruments

Electoral Act 1992 (section 165) regulations 2014
SI 204/2014

Electoral Act 1997 (commencement) order 2014
SI 95/2014

Electoral (amendment) (no. 2) regulations 2014
SI 321/2014

Local Elections (Disclosure of Donations and Expenditure) Act 1999 (period for reckoning election expenses) order 2014
SI 144/2014

Local elections (forms) regulations 2014
SI 100/2014

EMPLOYMENT LAW

Discrimination

Appeal on point of law – Declaration that Labour Court erred in law – Right to equal treatment in respect of employment conditions – Voluntary severance not available to fixed term workers – Whether permanent employees could be made compulsorily redundant – Objective grounds – Justification – Legitimate objective – Principle of proportionality – Status of fixed term workers – Role of High Court – Whether fixed term workers should have been treated the same as permanent employees for redundancy purposes – Whether treated less favourably – Whether treatment objectively justified – Whether exclusion appropriate and necessary – University College Cork v Bushin [2012] IEHC 76, (Unrep, Kearns P, 17/2/2012); Sunday Newspapers Ltd v Kinsella & Bradley [2008] ELR 53; Castleisland Cattle Breeding Society Ltd v Minister for Social and Family Affairs [2004] IESC 40, [2004] 4 IR 150; National University of Ireland Cork v Ahern [2005] IESC 40, [2005] 2 IR 577; Adeneler v Ellinikos Organismos Galaktos (Case C-212/04) [2006] ECR I-6057; Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud (Case C-307/05) [2007] ECR I-331; Gavieiro v Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia (Joined Cases C-444/09 and C-456/09) (Unrep, EUECJ, 22/12/2010); Horan v CWS-Boco Ireland Limited [2012] IEHC 514, (Unrep, Murphy J, 7/11/2012); Henry Denny and Sons (Ireland) Ltd v Minister for Social Welfare [1998] 1 IR 34; Wilton v Steel Company of Ireland Ltd [1999] 10 ELR 1; Minister for Finance v McArdle [2007] IEHC 98, [2007] 2 ILRM 438 considered – Protection of Employees (Fixed-Term Work) Act 2003 (No 29), ss 5, 6, 7(1) and 15(6) – Directive 99/70/EC, art 4 – Appeal refused (2012/373MCA – Hedigan J – 26/8/2013) [2013] IEHC 404
An Post v Monaghan

Discrimination

Appeal on point of law against determination of Labour Court – Discrimination on grounds of sex – Application for promotion – Prima facie case of discrimination – Onus of proving absence of discrimination on respondent – Whether failure by Labour Court to carefully evaluate evidence tendered by respondent to rebut inference of discrimination – National University of Ireland Cork v Ahern & Ors [2005] IESC 40, [2005] 2 IR 577 and North Western Health Board v Martyn [1987] IR 565 considered – Employment Equality Act 1998 (No 21), ss 85 and 90 – Appeal rejected (2013/21/MCA – Cooke J – 8/11/2013) [2013] IEHC 508
O'Higgins v Labour Court

Discrimination

Equality – Discrimination – Membership of Garda Reserve – Applicability of Equality legislation – Statutory interpretation – "Employment contract" – "Vocational training" – Whether Garda Reserve member employee – Whether training for garda reserve vocational training – Whether Equality Tribunal having jurisdiction to determine dispute – Words and phrases – "Vocational training" – Garda Reserve – Whether training for Garda Reserve vocational training – Whether training exclusively concerned with training for an occupational activity – Cable & Wireless plc v Muscat [2006] EWCA Civ 220, [2006] 1 ICR 975; Carmichael v National Power Plc [1999] 1 WLR 2042; [1999] 4 All ER 897; Clark v Oxfordshire Health Authority [1998] IRLR 125; DPP v Grey [1986] IR 317; Nethermere (St Neots) Ltd v Gardiner [1984] ICR 612; Ní Eilí v EPA [1997] 2 ILRM 458; Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497; X v Mid Sussex Citizens Advice Bureau [2012] UKSC 59, [2013] 1 All ER 1038; Garda Síochána (Admissions and Appointments) Regulations 1988 (SI 164/1998), reg 5 – Garda Síochána (Reserve Members) Regulations 2006 (SI 413/2006) – Garda Síochána (Admissions and Appointments)(Amendment) Regulations 2006 (SI 509/2006) - Employment Equality Act 1998 (No 21), ss 2, 6, 8, 12 and 79 – Equality Act 2004 (No 24), s 3 – Garda Síochána Act 2005 (No 20), ss 3 and 15 – Criminal Justice Act 2007 (No 29), s 43 – Directive 2000/78/EC, art 3 – Appeal of applicant dismissed; appeal of respondent allowed (2012/174MCA & 2012/136MCA – Feeney J – 30/5/2013) [2013] IEHC 267
Singh Oberoi v Commissioner of An Garda Síochána

Library Acquisitions

Honeyball, Simon
Honeyball and Bowers' textbook on employment law
13th ed
Oxford : Oxford University Press, 2014
N192

Thomson Round Hall
Bolger, Marguerite
Kimber, Cliona
Casserly, Dermot
Meenan, Frances
Mallon, Tom
Thomson Reuters employment law conference 2014 : an essential update
Dublin : Round Hall, 2014
N192.C5

Articles

Conlon, Michael
"Mutality of obligation" before the Irish courts
2014 (2) Irish employment law journal 44

Kimber, Cliona
The emergence of the shadow employer
Lowry O'Reilly, Hannah
2014 (11) (3) Irish employment law journal 75

Treanor, Bernadette
Selected appeals to the labour court of equality tribunal decisions
2014 (11) (3) Irish employment law journal 68

Yannakourou, Matina
Austerity measures reducing wage and labour costs before the Greek courts: a case law analysis
2014 (2) Irish employment law journal 36

Acts

Employee Permits (Amendment) Act 2014
Act No.26 of 2014
Signed on 27th July 2014

Statutory Instruments

Further Education and Training Act 2013 (property vesting day) (no 2) order 2014
SI 261/2014

Further Education and Training Act 2013 (Property Vesting Day) (No 3) Order 2014
SI 262/2014

Further Education and Training Act 2013 (property vesting day) (no 4) order 2014
SI 263/2014

Further Education and Training Act 2013 (property vesting day) (no 6) order 2014
SI 265/2014

Further Education and Training Act 2013 (property vesting day) (no 7) order 2014.
SI 266/2014

Further Education and Training Act 2013 (property vesting day) (no 8) order 2014
SI 267/2014

ENERGY

Statutory Instruments

Electricity Regulation Act 1999 (water) levy order 2014
SI 101/2014

Liquefied petroleum gas safety (liquefied petroleum gas incident) regulations 2014
SI 77/2014

Liquefied petroleum gas safety (liquefied petroleum gas incident reporting and investigation) regulations 2014
SI 78/2014

EQUITY & TRUSTS

Trusts

Constructive trust – Subordinated loan agreement – Fiduciary relationship – Whether facts supportive of fiduciary relationship between parties – Whether relationship between parties commercial in nature – Whether monies invested in defendant company – Whether monies retained by way of fraudulent conduct – Whether fraudulent representations made – Whether reliance placed upon representations to detriment of plaintiff – Whether constructive trust created in favour of plaintiff – McMullen v Clancy [2005] IESC 10, [2005] 2 IR 445 and McCaughey v Irish Bank Resolution Corporation Ltd [2013] IESC 17, (Unrep, SC, 13/3/2013) applied – Bristol & West Building Society v Matthew [1998] Ch 1 approved – Corporation of Dublin v Building and Allied Trade Union [1996] 1 IR 468, Muchinski v Dodds [1986] 160 CLR 583 and Forshall v Walsh (Unrep, Shanley J, 18/6/1997) considered
European Communities (Markets in Financial Instruments) Regulations 2007 (SI 60/2007), regs 11 and 166 – Companies Act 1963 (No 33), s 280 – Relief granted (2011/219MCA – Finlay Geoghegan J – 5/12/2013) [2013] IEHC 559
In re Custom House Capital Ltd (In liquidation); Scott v Wallace

Library Acquisitions

Articles

Dunne, Peter
Bribes, secret commissions and fiduciary duties: the recognition of proprietary remedies in FHR European Ventures v Cedar Capital Partners
2014 (32) (16) Irish law times 236

EUROPEAN UNION

Library Acquisitions

Ezrachi, Ariel
EU competition law: an analytical guide to the leading cases
4th ed
Oxford : Hart Publishing, 2014
W110

Gordon, Richard
EU law in judicial review
2nd ed
Oxford : Oxford University Press, 2014
Moffatt, Rowena
M306

Chalmers, Damian
Davies, Gareth
Monti, Giorgio
European Union law: text and material
3rd ed
Cambridge : Cambridge University Press, 2014
W86

Morais, Luis Silva
Joint ventures and EU competition law
Oxford : Hart Publishing, 2013
European Union: Competition law
W110

Wren, Tom
Public works in Ireland procurement and contracting
Dublin : Clarus Press Ltd, 2014
N83.8.C5

Bruun, Niklas
The economic and financial crisis and collective labour law in Europe
Oxford : Hart Publishing, 2014

Lorcher, Klaus
Schomann, Isabelle
W104

Schwarzenegger, Christian
Summers, Sarah
Ege, Gian
The emergence of EU criminal law: cyber crime and the regulation of the information society
Oxford : Hart Publishing, 2014
W133

Arrowsmith, Sue
The law of public and utilities procurement: regulation in the EU and UK
3rd ed
London : Sweet & Maxwell, 2014
European Union: Public Procurement
W109.6

Articles

Moore, Anthony
Achtung minen! how the euro's path to safety has been blocked by the German constitutional court
19 (3) 2014 Bar Review 65

Sammon, Garret
The meaning of acquis
2014 (32) (14) Irish Law Times 206

Wade, Gordon
The arbitrability of EU competition law disputes revisited: support from the continent
2014 (21) 6 commercial law practitioner 135

Statutory Instruments

European Communities (admissions to listing and miscellaneous provisions) (amendment) regulations 2014
(DIR/2001-34, DIR/2004-109)
SI 177/2014

European Communities (aerosol dispensers) (amendment) regulations 2014
(DIR/2013-10)
SI 72/2014

European Communities (animal remedies) (amendment) (no.2) regulations 2014
(DIR/2001-82)
SI 361/2014

European Communities (animal remedies) (amendment) regulations 2014
(DIR/2001-82)
SI 162/2014

European Communities (Compulsory Use of Safety Belts And Child Restraint Systems In Motor Vehicles) (amendment) regulations 2014
(DIR/2014-37/EC)
SI 380/2014

European Communities (control of avian influenza) regulations 2006 (amendment) regulations 2014
(DIR/2005-94)

SI 223/2014

European Communities (intra-community transfers of defence related products) (amendment) regulations 2014
(DIR/2014-18)
SI 176/2014

European Communities (late payment in commercial transactions) (amendment) regulations 2014.
(DIR/2011-7)
SI 196/2014

European Communities (medical ionising radiation protection) (amendment) regulations 2010
(DIR/97-43/EURATOM [DIR/1997-43/EURATOM])
SI 459/2010

European Communities (minimum conditions for examining agriculture plant species) (amendment) regulations 2014
(DIR/2013-57)
SI 255/2014

European Communities (minimum conditions for examining agriculture plant species) (amendment) (no.2) regulations 2014
(DIR/2013-57)
SI 313/2014

European Communities (minimum conditions for examining vegetable species) (amendment) regulations 2014
(DIR/2013-57)
SI 254/2014

European Communities (official controls on the import of food of non-animal origin for pesticide residues) (amendment) (no.3) regulations 2014
(REG/718-2014)
SI 343/2014

European Communities (official controls on the import of food of non-animal origin) (amendment) (no. 3) Regulations 2014
(REG/718-2014)
SI 353/2014

European Communities (pesticide residues) (amendment) regulations 2014
(REG/1317-2013, REG/36-2014, REG/51-2014, REG/61-2014, REG/79-2014, REG/87-2014, REG/289-2014, REG/318-2014, REG/364-2014, REG/398-2014)
SI 252/2014

European Communities (protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in poultry) (no.2) regulations 2006 (amendment) regulations 2014
(DEC/2006-563)
SI 221/2014

European Communities (protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds) (No.2) regulations 2006 (amendment) regulations 2014
(DEC/2006-563)
SI 222/2014

European Communities (two and three wheel motor vehicle entry into service) (amendment) regulations 2014
(DIR/2013-60)
SI 220/2014

European Union (alternative investment fund managers) (amendment) regulations 2014
(DIR/2011-61, DIR/2013-14)
SI 379/2014

European Union (batteries and accumulators) regulations 2014
(DIR/2006-66, DIR/2008-103, DIR/2009-603)
SI 283/2014

European Union (biocidal products) (amendment) regulations 2014
(REG/492-2014, [REG/492-2014], REG/334-2014, [REG/334-2014])
SI 344/2014

European Union (capital requirements) regulations 2014
(DIR/2013-36)
SI 158/2014

European Union (cereal seed) (amendment) regulations 2014
(DIR/66-402 [DIR/1966-402],DIR/71-162 [DIR/1971-162], DIR/72-274 [DIR/1972-274], DIR/72-418 [DIR/1972-418], DIR/73-438 [DIR/1973-438], DIR/75-444 [DIR/1975-444], DIR/78-55 [DIR/1978-55], DIR/78-692 [DIR/1978-692], DIR/79-641 [DIR/1976-641], DIR/79-692 [DIR/1979-692], DIR/86-155 [DIR/1986-155], DIR/86-320 [DIR/1986-320], DIR/87-120 [DIR/1987-120], DIR/88-380, [DIR/1988-380], DIR/90-654 [DIR/1990-654], DIR/96-72 [DIR/1996-72], DIR/98-95 [DIR/1998-95], DIR/98-96 [DIR/1998-96], DIR/99-54 [DIR/1999-54], DIR/2001-64, DIR/2003-61, DIR/2004-117, DIR/2009-74, DIR/2012-1, DIR/2012-37, DEC/2014-150)
SI 289/2014

European Union (charging of heavy goods vehicles for use of certain infrastructures) (amendment) regulations 2014
(DIR/2011-76, DIR/1999-62)
SI 384/2014

European Union (citizens' initiative) (amendment) regulations 2014
(REG/211-2011, REG/1179-2011)
SI 94/2014

European Union (consumer information, cancellation and other rights) (amendment) regulations 2014
(DIR/2011-83)
SI 250/2014

European union (end-of-life vehicles) regulations 2014
(DIR/2000-53)
SI 281/2014

European Union (energy efficiency obligation scheme) regulations 2014
(DIR/2012-27)
SI 131/2014

European Union (good agricultural practice for protection of waters) regulations 2014
(DIR/91-676 [DIR/1991-676], DIR/2000-60, DIR/2003-35, DIR/2006-11, DIR/2006-118, DIR/2008-98)
SI 31/2014

European Union (good agricultural practice for protection of waters) (amendment) regulations 2014
(DIR/91-676 [DIR/1991-676], DIR/2000-60, DIR/2003-35, DIR/2006-11, DIR/2006-118, DIR/2008-98)
SI 134/2014

European Union (liability of carriers of passengers by sea) (amendment) regulations 2014
(REG/392-2009, DEC/2012-22, DEC/2012-23)
SI 179/2014

European Union (packaging) regulations 2014
(DIR/1994-62, DIR/2004-12, DIR/2013-2)
SI 282/2014

European Union (prevention of sharps injuries in the healthcare sector) regulations 2014
(DIR/2010-32)
SI 135/2014

European Union (protection of animals at the time of killing) (amendment) regulations 2014
(REG/1099-2009)
SI 290/2014

European Union (railway safety) (reporting and investigation of serious accidents, accidents and incidents) regulations 2014
(DIR/2004-49)
SI 258/2014

European Union (value-added tax) regulations 2014
(DIR/2008-8 Art 5)
SI 340/2014

European Union (veterinary practice act 2005) (amendment) regulations 2014
(DIR/2013-25)
SI 362/2014

European Union (waste electrical and electronic equipment) regulations 2014
(DIR/2012-19)
SI 149/2014

EVIDENCE

Admissibility

Wife convicted of murdering husband – Intestate – Probate proceedings – Admissibility of evidence of trial and conviction for murder – Trial of issue – Whether a criminal conviction for murder admissible in later civil proceedings – Whether admissible conviction would be conclusive of fact of murder or simply prima facie evidence of fact of murder – Whether defendant would have right to argue that she should not have been convicted – Exclusion of persons from succession – Statutory interpretation – Strict construction – Issue estoppel – Abuse of process – Whether reasoned decision prerequisite for admissibility – Beyond all reasonable doubt – Exception to hearsay rule – Justice and fairness – Crippen, In the Estate

of [1911] P 108; Hollington v F Hewthorn & Co Ltd [1943] 1 KB 587; McIlkenny v Chief Constable of West Midlands Police Force [1980] 2 All ER 227; Hill v Clifford [1907] 2 Ch 236; Hunter v Chief Constable of the West Midlands Police [1982] AC 529; Jorgensen v News Media (Auckland) Ltd [1969] NZLR 961; Goody v Odhams Press Ltd [1967] 1 QB 333; Barclays Bank Ltd v Cole [1967] 1 QB 738; Harvey v The King [1901] AC 601; Hill v Clifford [1907] 2 Ch 236; Myers v Director of Public Prosecutions [1965] AC 1001; Kelly v Ireland [1986] ILRM 318; Breathnach v Ireland [1989] IR 489 and Madden v Doohan & Ors [2012] IEHC 422, (Unrep, Irvine J, 9/10/2012) considered - Succession Act 1965 (No 27), ss 27(4) and 120 – Civil Liability Act 1961 (No 41) – Conviction found to be admissible as prima facie evidence of guilt (1997/13003P– Kearns P – 1/3/2013) [2013] IEHC 80
Nevin v Nevin

Library Acquisitions

Articles

Berry, John
The perils of ID parades
19(4) 2014 Bar review 92

Daly, Yvonne Marie
Improperly obtained evidence, silence and legal advice: ongoing change in seemingly settled situations?
2014 (1) Criminal law and practice review 1

O'Dwyer, David
Ireland's proposed DNA framework
2014 (1) Criminal law and practice review 57

EXTRADITION LAW

Appeal

Appeal against order for release made by High Court – European arrest warrant proceedings – Appeal against order for surrender – Appeal struck out on non-appearance – Order for arrest and detention pending surrender – Habeas corpus – Order for release – Whether trial judge erred in concluding European Arrest Warrant Act 2003, s 16 mandated immediate release – Whether trial judge erred in determining 10 day period ran from date of dismissal of appeal – Construction of statute – Time limits – O Fallúin v Governor of Cloverhill Prison [2007] IESC 20, [2007] 3 IR 414; Rimsa v Governor of Cloverhill Prison [2010] IESC 47, (Unrep, SC, 28/7/2010); Re Linden's Application for Judicial Review [1998] NI 316 and Re McKenna's Application for Judicial Review [1998] NI 287 considered – European Arrest Warrant Act 2003 (No 45), s 16 – Appeal dismissed (36/2012 – SC – 27/6/2013) [2013] IESC 33
Voznuka v Governor of the Dóchas Centre

European arrest warrant

Application for surrender – Poland – Surrender for serving of sentences – Breach of family rights – Best interests of the child – Private interests – Public interest – Delay – Difference between relocation in immigration and extradition – Trial in absentia – Flight – Correspondence – Minimum gravity – Sui generis – Application of rules of evidence – Admission of evidence – Whether breach of right to respect for private and family life – Whether private interests outweigh public interest – Whether in best interests of children – Whether public interest in extradition – Whether disproportionate measure in terms of aim pursued – Whether fled to evade justice – Whether controversial and uncontroversial requirements satisfied – Whether minimum gravity threshold met – Whether gross or manifest error – Minister for Justice, Equality and Law Reform v Tobin (No 1), [2007] IEHC 15 & [2008] IESC 3, [2008] 4 IR 42; Minister for Justice, Equality and Law Reform v Ciechanowicz [2011] IEHC 106 (Unrep, Edwards J, 18/3/2011); Minister for Justice, Equality and Law Reform v Sliczynski [2008] IESC 73, (Unrep, SC, 19/12/ 2008); The Leopardstown Club Limited v Templeville Developments Limited [2010] IEHC 152, (Unreported, Edwards J, 29/1/2010); Minister for Justice, Equality and Law Reform v Bednarczyk [2011] IEHC 136, (Unrep, Edwards J, 5/4/2011); HH v Deputy Prosecutor of the Italian Republic, Genoa, [2012] UKSC 25, [2013] 1 AC 338; Minister for Justice and Equality v TE [2013] IEHC 323, (Unrep, Edwards J, 19/6/2013); Minister for Justice and Equality v NM [2013] IEHC 322, (Unrep, Edwards J, 25/6/2013); Minister for Justice, Equality and Law Reform v Gorman [2010] IEHC 210, [2010] 3 IR 583; Launder v United Kingdom [1997] ECHR 106, (1997) 25 EHRR CD67; Babar Ahmad v United Kingdom [2012] ECHR 609, (2013) 56 EHRR 1; Huang v Secretary of State for the Home Department [2007] UKHL 11, [2007] AC 167; Zigor Ruiz Jaso v Central Court of Criminal Proceedings (No 5) Madrid [2007] EWHC 2983, [2008] 1 WLR 2798; Norris v Government of the United States of America (No 2) [2010] UKSC 9, [2010] 2 AC 487; ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166; Minister for Justice and Equality v Ostrowski [2013] IESC 24 (Unrep, SC, 15/5/2013); Minister for Justice, Equality & Law Reform v DL [2011] IEHC 248, [2012] 1 ILRM 270; Agbonlahor v Minister for Justice, Equality and Law Reform [2007] IEHC 166, [2007] 4 IR 309; Minister for Justice, Equality and Law Reform v Gheorghe [2009] IESC 76, (Unrep, SC, 18/11/2009); R (Razgar) v Secretary of State for the Home Department [2004] 2 AC 368; Neulinger v Switzerland (2010) ECHR 1053, (2012) 54 EHRR 31; AO and DL v Minister for Justice [2003] 1 IR 1; R (Mahmood) v Secretary of State for the Home Department [2001] 1 WLR 840; Üner v The Netherlands [2005] ECHR 464, (2006) 45 EHRR 421; Rodrigues da Silva and Hoogkamer v The Netherlands [2006] ECHR 86, (2006) 44 EHRR 729; Nunez v Norway [2011] ECHR 1047, (2014) 58 EHRR 17; Antwi v Norway (App no 26940/10) (Unrep, ECHR 14/2/2012); Shakurov v Russia (App No 55822/10) (Unrep, ECHR, 5/6/2012); King v United Kingdom (App No 9742/07) (Unrep, ECHR, 26/1/2010); Abdulaziz v United Kingdom [1985] ECHR 7, (1985) 7 EHRR 471; R (Bermingham) v Director of the Serious Fraud Office [2006] EWHC 200, [2007] QB 727; Re Ó' Laighléis [1960] IR 93 considered – European Arrest Warrant Act 2003 (Designated Member States) (No 3) Order 2004 (SI 206/2004) – European Arrest Warrant Act 2003 (No 45), ss 10, 13, 16, 21A, 22, 23, 24, 37(1), 37 (2), 38(1)(a)(ii), 38(1)(b) and 45 – Criminal Justice (Miscellaneous Provisions) Act 2009 (No 28) – Constitution of Ireland 1937, Art 29 – Council Framework Decision 2002/584/JHA, art 2(2) – European Convention on Human Rights 1950, arts 6, 7 and 8 – Charter of Fundamental Rights of the European Union, arts 7, 24, 47 and 48 – United Nations Convention on the Rights of the Child, arts 3.1 and 24(2) – Surrender granted (2009/340EXT – Edwards J – 18/7/2013) [2013] IEHC 54
Minister for Justice and Equality v G(RP)

Provisional arrest warrant

Application for provisional arrest warrant – Discretion of court – Minimum content of request for provisional arrest warrant – Whether statement that one of documents in s 25(1)(a) existed – Whether statement specifying nature and description under law of requesting country of offences – Whether circumstances, time and place of offences specified in request – Whether degree of involvement of person in respect of whom request made specified – Extradition Act 1965 (No 17), ss 25, 26 and 27 – Application refused (2013/168EXT – MacEochaidh J – 6/7/2013) [2013] IEHC 308
Attorney General v Snowden

Extradition

European arrest warrant – Application for postponement of surrender pending service of term of imprisonment in state – Application for temporary surrender for trial in issuing state – Right to trial with reasonable expedition – Relationship between ss 18 and 19 of European Arrest Warrant Act 2003 – Judicial discretion – Factors to be considered in determining whether to make temporary surrender order – Whether appropriate to postpone surrender – Whether appropriate to make temporary surrender order – Rattigan v DPP [2008] IESC 34, [2008] 4 IR 639; DPP v Wharrie [2013] IECCA 4 (Unrep, CCA, 19/4/2013); Cormack v DPP [2008] IESC 63, [2009] 2 IR 208; SH v DPP [2006] IESC 55, [2006] 3 IR 575; Quebec Railway, Light, Heat and Power Co v Vandry [1920] AC 662; Goulding Chemicals Ltd v Bolger [1977] IR 211; Shelly v District Justice Mahon [1990] 1 IR 36; State (O'Connell) v Fawsitt [1986] IR 362; Barker v Wingo (1972) 407 US 514; Sorokins v Latvia (App No 45476/04), (Unrep, ECHR, 28/5/2013); H v France (App No 10073/82), (1990) 12 EHRR 74; Stögmuller v Austria (App No 1602/62), (1979-80) 1 EHRR 155; McMullen v Ireland (App No 42297/98), (Unrep, ECHR, 29/7/2004) considered – European Arrest Warrant Act 2003 (No 45),

ss 13, 15, 16, 18 and 19 – European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 (No 30), ss 11 and 12 – Council Framework Decision 2002/584/JHA, art 24 – Transfer of Sentenced Persons Act 1995 (No 16), s 4 – European Convention on Human Rights 1950, art 6 – Order for temporary surrender to be made once required undertakings received in writing from issuing state (2013/111EXT – Edwards J – 5/11/2013) [2013] IEHC 515
Minister for Justice and Equality v Gordon

Extradition

European arrest warrant - Surrender – Execution for purpose of criminal prosecution – "Non conclusive" conviction in absentia – Jurisdiction – Abuse of process – Rule in Henderson v Henderson – Whether failure to convey fact of conviction amounted to abuse of process – Whether denial of fair trial – Whether surrender sought for purposes of appeal hearing – Whether mala fides on part of requesting state – Whether surrender would deny respondent right of appeal if convicted – Whether respondent would come before court of requesting state as a convicted person – Whether requesting state required to provide undertaking in writing that respondent would be retried – Henderson v Henderson (1843) 3 Hare 100; Minister for Justice v Koncis [2011] IESC 37, (Unrep, SC, 29/7/2011); Minister for Justice v Majer (Unrep, Peart J, 30/7/2010); Minister for Justice v Gherine [2012] IEHC 535, (Unrep, Edwards J, 30/11/2012); Minister for Justice v Tobin [2012] IESC 37, (Unrep, SC, 19/6/2012); Bolger v O'Toole (Unrep, SC, 2/12/2002); Krombach v France (App No 29731/96) [2001] ECHR 88; Greene v US [1957] 355 US 184; Minister for Justice v Tobin [2007] IEHC 15, [2008] IESC 3, [2008] 4 IR 42; In re Vantive Holdings [2009] IESC 69, [2010] 2 IR 118; State (McLoughlin) v Judge Shannon [1948] IR 439; In re G (an infant) [1960] NI 35 and AG v Mallen [1957] IR 344 considered – European Arrest Warrant Act 2003 (No 45), s 10, 13, 16, 20, 37 and 45 – European Union Council Framework Decision on the European Arrest Warrant of the 13th June 2002, arts 2, 5 and 26 – Constitution of Ireland 1937, Art 40.4.2° – European Convention on Human Rights and Fundamental Freedoms 1950, art 6 – Surrender refused (2011/184EXT – Edwards J – 5/11/2013) [2013] IEHC 534
Minister for Justice and Equality v Horvath

Extradition

Application for surrender – Italian European arrest warrant – Warrant endorsed – Drugs trafficking – Warrant stated wanted for prosecution – Already convicted of offences – Tried, convicted and sentenced in absentia – Time for lodgement of appeal expired – Whether notified of time and place of trial – Direction to State central authority to inform issuing judicial authority and Eurojust of reasons for refusal – Minister for Justice v Gherine [2012] IEHC 536 (Unrep, Edwards J, 30/11/2012) – European Arrest Warrant Act 2003 (No 45), ss 13, 16(3),16(7), 16(10) and 45 – European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 (No 30) – Application refused (2010/17EXT – Edwards J – 5/3/2013) [2013] IEHC 96
Minister for Justice v Kosterri

FAMILY LAW

Custody

Circuit Court – Jurisdiction – Child abduction – Hague Convention – Transmission of documents – Whether transmission of documents from High Court to Circuit Court led Circuit Court to mistaken view that High Court had pending child abduction proceedings – Whether Circuit Court dismissal of custody proceedings founded on mistaken view – Whether Circuit Court had jurisdiction to remit documents to High Court – Whether refusal of Swedish Court to order summary return of child affected jurisdiction of Irish courts to determine custody – Whether mistake by Circuit Court judge formed integral part of order – Whether order of Circuit Court ought to be quashed – AO'K v MK (Child Abduction) [2011] IEHC 82, [2011] 2 IR 498 and AO'K v MK [2011] IEHC 360, (Unrep, Finlay Geoghegan J, 9/9/2011) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 133 – European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005 (SI 112/2005) – Circuit Court Rules (Jurisdiction in Matrimonial Matters and Matters of Parental Responsibility) (SI 143/2006) – Rules of the Superior Courts (Jurisdiction, Recognition, Enforcement and Service of Proceedings) (SI 506/2005) – Guardianship of Infants Act 1964 (No 7) – Courts (Supplemental Provisions) Act 1961 (No 39), s 45 – Hague Convention on the Civil Aspects of International Child Abduction 1980, art 19 – Regulation 203/2201/EEC, arts 8, 9, 10, 11, 13, 16, 17, 20, 40 and 42 – Relief granted; Circuit Court order quashed (2013/645JR – Finlay Geoghegan – 16/9/2013) [2013] IEHC 418
E(E) v Judge O'Donnell

Library Acquisitions

Articles

Madden, Deirdre
An analysis of legislative proposals for parentage in assisted reproduction and surrogacy
2014 (2) Irish journal of family law 52

McCarthy, Paula
Order in the court
2014 (July) Law Society Gazette 40

Ryan, Fergus
"Playing away from home on an uneven pitch?" Spouses, civil partners and adultery in Irish and UK law
2014 (2) Irish journal of family law 41

FINANCE

Acts

National Treasury Management Agency (Amendment) Act 2014
Act No.23 of 2014
Signed on 26th July 2014

Statutory Instruments

Financial transfers (Somalia) (prohibition) order 2010
(REG/147-2003, REG/356-2010)
SI 537/2010

Prize bonds (amendment) regulations 2014
SI 136/2014

FINANCIAL SERVICES

Acts

Friendly Societies and Industrial and Provident Societies Act 2014
Act No.19 of 2014
Signed on 21st July 2014

Statutory Instruments

Friendly Societies and Industrial and Provident Societies (miscellaneous provisions) act 2014 (parts 1, 2 and 3) (commencement) order 2014
SI 356/2014

Investor Compensation Act 1998 (members of investor compensation company) regulations 2014
SI 295/2014

Investor Compensation Act 1998 (representatives of financial services industry) regulations 2014
SI 294/2014

Articles

Khan, Sana Farooq
The regulatory restructuring of EU's financial services market
2014 (32) (10) Irish law times 146

Khan, Sana Farooq
Corporate governance in the hedge fund industry
2014 (32) (11) Irish law times 158

Thompson, Mary
The new short-selling regulation; more powers for the EU
19 (3) 2014 Bar Review 58

FISHERIES

Statutory Instruments

Inland fisheries (fixed charge notice) Regulations 2014
SI 363/2014

Wild salmon and sea trout tagging scheme (amendment) regulations 2014
SI 301/2014

FOOD

Statutory Instruments

Food Safety Authority of Ireland act 1998 (amendment of first and second schedules) order 2014
SI 390/2014

FREEDOM OF INFORMATION

Acts

Freedom of Information Act 2014
Act No.30 of 2014
Signed on 14th October 2014

GARDA SÍOCHÁNA

Complaints

Garda Síochána Complaints Board – Appeals Board – Judicial review – Remission to Board – Finding that Appeals Board acted ultra vires – Whether remission to Appeals Board would permit board to make only one finding – Whether remission would expose applicant to third disciplinary hearing – Whether applicant prejudiced by remission – Whether court ought to restrain further disciplinary charges beyond charge relevant to quashed decision – Walsh v Revington [2013] IEHC 408, (Unrep, Hogan J, 25/7/2013); Walsh v Commissioner of An Garda Síochána [2010] IEHC 257, (Unrep, Kearns P, 5/7/2010); McGrath v Commissioner of An Garda Síochána (Unrep, SC, 26/1/1993) and Haughey v Moriarty [1993] 3 IR 1 considered – Rules of the Superior Courts 1986 (SI 15/1986), O 84, r 27 – Garda Síochána (Discipline) Regulations 2007 (SI 214/2007), arts 34 and 37 – Misuse of Drugs Act 1977 (No 12), s 23 – Matter remitted (2012/885JR – Hogan J – 7/11/2013) [2013] IEHC 485
Walsh v Revington

Discipline

Judicial review proceedings – Certiorari – Whether Appeals Board acted ultra vires – Disciplinary proceedings arising out of search for controlled drugs – Charges of discreditable conduct and improper practice – Appeal against determination of board of inquiry - Decision regarding discreditable conduct affirmed by Appeals Board and appeal against improper practice allowed – Vires of decision – Alleged absence of power to quash part of determination and affirm part of determination – Alleged absence of power to recommend dismissal - Statutory powers of board – Walsh v The Garda Commissioner of an Garda Síochána [2010] IEHC 257, (Unrep, Kearns P, 5/7/2010) and Keane v An Board Pleanála [1997] 1 IR 184 considered – Garda Síochána (Discipline) Regulations 2007 (SI 214/2007), art 37 – Certiorari granted (2012/885JR – Hogan J – 25/7/2013) [2013] IEHC 408
Walsh v Revington

GUARANTEES

Articles

Kaar, Ken
Common defences to the enforceability of a guarantee
2014 21 (7) Commercial law practitioner 151

HARBOURS

Statutory Instruments

Harbours Act 1996 (extension of the pilotage district of the port of Waterford company) order 2006 (revocation) order 2014
SI 81/2014

HEALTH

Acts

Health (General Practitioner Service) Act 2014
Act No.28 of 2014
Signed on 28th July 2014

Health Identifiers Act 2014
Act No.15 of 2014
Signed on 8th July 2014

Health Services Executive (Financial Matters) Act 2014
Act No.17 of 2014
Signed on 17th July 2014

Public Health (Sunbeds) Act 2014
Act No.12 of 2014
Signed on 24th June 2014

Radiological Protection (Miscellaneous Provisions) Act 2014
Act No.20 of 2014
Signed on 23rd July 2014

Statutory Instruments

Health (General Practitioner Service) Act 2014 (commencement) order 2014
SI 370/2014

Election of members for appointment to the radiographers registration board bye-law 2014
SI 150/2014

Medicinal products (prescription and control of supply) (amendment) regulations 2014
SI 300/2014

Misuse of drugs (amendment) regulations 2014
SI 323/2014

Misuse of drugs (designation) (amendment) order 2014
SI 324/2014

Nursing and Midwifery Board of Ireland rules specifying criteria to be considered for applications for restoration to the register
SI 88/2014

Nursing homes support scheme (allowable deductions) regulations 2014
SI 311/2014

Public Health (Sunbeds) Act 2014 (commencement) order 2014
SI 299/2014

Recognition of professional qualifications (health and social care professions) (Directive 2005/36/EC) (amendment) regulations 2014 (DIR/2005-36)
SI 315/2014

The election of members for appointment to the social workers registration board bye-laws 2014
SI 213/2014

HOUSING

Judicial review

Social housing – Transfer – Priority – Local authority – Exceptional Social Grounds Scheme – Fair procedures – Duty to provide reasons – Whether applicants experiencing abuse and harassment – Whether circumstances for transfer of housing exceptional – Whether difficulties only capable of relief by transfer – Whether refusal to transfer constituting breach of rights – Whether refusal proportionate – Whether reasons for refusal sufficient – Whether relevant evidence taken into account – Whether refusal reasonable and proportionate – Whether incidents of law and order constituting exceptional social grounds for purposes of scheme – Whether incorrect test applied by local authority housing officer – Mallak v Minister for Justice [2012] IESC 29, [2013] 1 ILRM 73; R v Westminster (Ex p Ermakov) [1996] All ER 302; West Wood Club Ltd v An Bord Pleanála [2010] IEHC 16, (Unrep, Hedigan J, 26/1/2010); Meadows v Minister for Justice [2010] IESC 3, [2010] 2 IR 701; Rawson v Minister for Defence [2012] IESC 26, (Unrep, SC, 1/5/2012); R v Court of Westminster [1996] 28 HLR 819; Mishra v Minister for Justice [1996] IR 189 and Kelly v Commissioners of an Garda Síochána [2013] IESC 47, (Unrep, SC, 5/11/2013) considered – Local Government Acts 1925-2012 – Housing Act 1966 (No 21) – Housing Act 1988 (No 28) – Housing (Miscellaneous Provisions) Act 2009 (No 22), ss 15 and 22 – Constitution of Ireland 1937, Art 40.3, 40.4, 41 and 42 – European Convention on Human Rights and Fundamental Freedoms 1950, arts 6, 8 and 13 – Relief granted (2013/436JR – Hedigan J – 4/12/2013) [2013] IEHC 556
Zatreanu v Dublin City Council

Statutory Instruments

Housing (adaptation grants for older people and people with a disability) (amendment) regulations 2014
SI 104/2014

Acts

Housing (Miscellaneous Provisions) Act 2014
Act No.21 of 2014
Signed on 23rd July 2014

HUMAN RIGHTS

Library Acquisitions

Goss, Ryan
Criminal fair trial rights, article 6 of the European convention on human rights

Oxford : Hart Publishing, 2014
M582

Harris, David
O'Boyle, Michael
Bates, Edward
Buckley, Carla
Harris, O'Boyle & Warbrick law of the European Convention on Human Rights
3rd ed
Oxford : Oxford University Press, 2014
C200

Amos, Merris
Human rights law
2nd ed
Oxford : Hart Publishing, 2014
C200

Acts

Irish Human Rights and Equality Commission Act 2014
Act No.25 of 2014
Signed on 27th July 2014

Statutory Instruments

Human rights commission spouses', civil partners' and childrens contributory pension scheme 2014
SI 181/2014

IMMIGRATION

Asylum

Application for leave to seek judicial review – Certiorari – Ghana – Sexual orientation – Credibility – Internal relocation – Whether finding on sexual orientation – Whether correct approach followed in respect of claim of persecution on grounds of sexual orientation – O(T) v Refugee Appeals Tribunal [2012] IEHC 576, (Unrep, MacEochaidh J, 21/12/2012); S(DVT) v Minister for Justice, Equality and Law Reform [2007] IEHC 305, (Unrep, Edwards J, 4/7/2007) and J(H) v Secretary of State for the Home Department [2010] UKSC 31, [2010] 3 WLR 386 followed – Adams v Minister for Justice, Equality and Law Reform (Unrep, Cooke J, 17/12/2009) and K(J) (Uganda) v Minister for Justice and Equality (Hogan J Unrep, 6/12/2011) considered –European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 9(2)(b) – Leave granted (2008/1365JR – MacEochaidh J – 27/2/2013) [2013] IEHC 85
A(EP) v Refugee Appeals Tribunal

Asylum

Application for leave to seek judicial review – Certiorari – Telescoped hearing – Challenge to decision of Tribunal – Nigeria – Medical evidence – Whether failure to properly consider medical evidence – Khazadi v Minister for Justice, Equality and Law Reform [2006] IEHC 175, (Unrep, MacMenamin J, 2/5/2006); Khazadi v Minister for Justice, Equality and Law Reform (Unrep, Gilligan J, 19/4/2007); M(N) v Minister for Justice, Equality and Law Reform [2008] IEHC 130, (Unrep, McGovern J, 7/5/2008); Ahmed v Refugee Appeals Tribunal [2009] IEHC 23, (Unrep, Cooke J, 15/1/2009); E(M) v Refugee Appeals Tribunal [2008] IEHC 192, (Unrep, Birmingham J, 27/6/2008) and N(AM) v Refugee Appeals Tribunal [2012] IEHC 393, (Unrep, McDermott J, 3/8/2012) considered – Leave refused (2009/388JR – MacEochaidh J – 27/2/2013) [2013] IEHC 84
A(DL) v Minister for Justice, Equality and Law Reform

Asylum

Application for judicial review – Certiorari – Nigeria – Negative credibility findings – Accelerated hearing - Ten month delay between date of hearing and date of decision of tribunal – Principles of fairness and justice – Absence of explanation for delay – Whether excessive delay in provision of reasons – Whether delay of such nature per se caused prejudice – Whether prejudice or flaw had to be shown or implied – AWS v Refugee Appeals Tribunal [2007] IEHC 276, (Unrep, Dunne J, 12/6/2007) and HR (Belarus) v Refugee Appeals Tribunal [2010] IEHC 510, (Unrep, Ryan J, 8/10/2010) considered – Refugee Act 1996 (No 17), s 13 – European Communities (Asylum Procedures) Regulations 2011(SI 51/2011) - Council Directive 2005/85/EC – Decision quashed and appeal remitted for fresh consideration by different tribunal member (2009/190JR – Clark J – 12/11/2013) [2013] IEHC 504
A(R) v Minister for Justice, Equality and Law Reform

Asylum

Application for leave to seek judicial review – Certiorari – Bangladesh – Religious discrimination – Challenge to refusal to revoke deportation order – Irrationality – Proper consideration of country of origin information – Matters relevant to decision on asylum claim rather than decision refusing to revoke deportation order – Whether country of origin information properly considered – DVTS v Minister for Justice Equality and Law Reform [2007] IEHC 305, [2008] 3 IR 476 and Germany v Y and Z (Joined cases C-71/11 and C-99/11), (Unrep, Grand Chamber of the Court of Justice of the European Union, 5/9/2012) considered – Refugee Act 1996 (No 17), s 17(7) – Immigration Act 1999 (No 22), s 3(11) – Leave refused (2013/229JR – MacEochaidh J – 12/6/2013) [2013] IEHC 257
B(A) v Minister for Justice and Equality

Asylum

Application for judicial review – Certiorari – Applications of minor born in Ireland and Nigerian mother – Asserted fears of female genital mutilation and trafficking - Availability of state protection – Internal relocation – Whether applicant met criteria of refugee – Whether well-founded fear of persecution – Whether state protection available – Whether internal relocation alternative option – Negative credibility findings – Whether substantial ground for quashing decision – Law on state protection – Whether cogent evidence to displace presumption that state protects citizens – Whether country of origin information unfairly selected – E v Refugee Appeals Tribunal (Unrep, Clark J, 13/11/2009) and GOB v Minister for Justice [2008] IEHC 229, (Unrep, Birmingham J, 2/6/2008) considered – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), regs 5 and 7 – Applications refused (2009/690JR – Clark J – 8/11/2013) [2013] IEHC 488
I(C) v Refugee Appeals Tribunal

Asylum

Application for leave to seek judicial review – Certiorari – Telescoped hearing – Challenge to decision of Minister refusing refugee status – No challenge to decision of Tribunal – Application to amend pleadings to include Tribunal – Kenya – Mungiki tribe – Error of fact – Credibility – Internal relocation – Whether error of fact having material effect on outcome – Whether failure to consider all evidence in credibility assessment – Whether correct approach to internal relocation – E v Secretary of State for Home Department [2004] QB 1044; R v Criminal Injuries Compensation Board, Ex p A [1999] 2 AC 330; R (Alconbury Developments Limited) v Secretary of State for the Environment, Transport and the Region [2003] 2 AC 295; L(VCB) v Refugee Appeals Tribunal [2010] IEHC 362, (Unrep, Cooke J, 15/10/2010); Richardson v Mahon [2013] IEHC 118, (Unrep, Dunne J, 21/3/2013); Ryanair v Flynn [2000] 3 IR 240; Traore v Refugee Appeals Tribunal [2004] IEHC 606, (Unrep, Finlay-Geoghegan J, 14/5/2004); R(I) v The Refugee Appeals Tribunal [2009] IEHC 353, (Unrep, Cooke J, 24/7/2009) and M(V) [Kenya] v The Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform [2013] IEHC 24, (Unrep, Clark J, 29/1/2013) – Illegal Immigrants (Trafficking) Act 2000 (No 29), s 5 – Leave to seek judicial review refused; Application to amend pleadings refused (2009/215JR – MacEochaidh J – 6/6/2013) [2013] IEHC 282
N(S) v Refugee Appeals Tribunal

Asylum

Application for leave to seek judicial review – Certiorari – Telescoped hearing – Challenge to decision of Tribunal – Nigeria – Particular social group of women subjected to human trafficking and prostitution – Credibility – State protection – Internal relocation – Whether decision lacked clarity and consistency – Whether credibility findings based on conjecture and peripheral matters – Whether letters improperly discounted – Whether finding on state protection flawed due to selective assessment of country of origin information – Whether internal relocation finding based on reasoned assessment – Ogugua v Refugee Appeals Tribunal [2007] IEHC 172, (Unrep, Herbert J, 15/5/2007) considered – T(AA) v Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform and the Attorney General [2009] IEHC 51, (Unrep, Clark J,

11/2/2009) followed – Refugee Act 1996 (No 17), s 5 – Leave refused (2009/260JR – MacEochaidh J – 22/2/2013) [2013] IEHC 89
O(G) v Refugee Appeals Tribunal

Asylum

Application for leave to seek judicial review – Certiorari – Challenge to decision of Minister – Subsidiary protection – Deportation order – Determination of issues previously adjourned pending decisions in other cases – State protection – No issue of credibility – Lifelong effect of deportation order – Separate and independent evaluation of subsidiary protection application – Application to amend pleadings – Exceptional circumstances – Functus officio – Whether lifelong deportation order disproportionate – Whether separate and independent evaluation of subsidiary protection application – Whether appropriate to allow amendment of pleadings after delivery of judgment and before formal order made – Whether new cause of action – U(MA) v Minister for Justice, Equality and Law Reform [2010] IEHC 492, (Unrep, Hogan J, 13/12/2010); M(M) v Minister for Justice, Equality and Law Reform (Case C-277/11) (Unrep, First Chamber of the Court of Justice of the European Union, 22/11/2012); Emre v Switzerland (No1) (App No 42034/04), (Unrep, ECHR, 22/5/2008); Emre v Switzerland (No.2) (App No 5056/10), (Unrep, ECHR, 11/10/2011); M(JC) (Democratic Republic of Congo) v Minister for Justice, Equality and Law Reform [2012] IEHC 485, (Unrep, Clark J, 12/10/2012); M(M) v Minister for Justice, Equality and Law Reform (No 1) [2011] IEHC 547, (Unrep, Hogan J, 18/05/2011); M(M) v Minister for Justice and Equality (No 3) [2013] IEHC 9, (Unrep, Hogan J, 23/1/2013); HID v Refugee Applications Commissioner (Case C-175/11) (Unrep, Second Chamber of the Court of Justice of the European Union, 31/1/2013) and U(MA) v Minister for Justice [2011] IEHC 95, [2011] 1 IR 749; Cox v Electricity Supply Board (No 2) [1943] IR 231 considered – Sivsivadze v Minister for Justice, Equality and Law Reform [2012] IEHC 244, (Unrep, Kearns P, 21/6/2012) followed – Re McInerney Homes Ltd [2011] IESC 31, (Unrep, SC, 29/7/2011) applied – Rules of the Superior Courts 1986 (SI 15/1986), O 58, r 2 and O 28, r 1 – Immigration Act 1999 (No 22), s 3 – European Convention of Human Rights Act 2003 (No 20), s 5 – Council Directive 2004/83/EC, art 4 – Treaty on the Functioning of the European Union, art 267 – European Convention on Human rights 1950, art 8 – Leave to seek judicial review refused; leave to amend pleadings refused (2011/512JR – Hogan J – 1/3/2013) [2013] IEHC 95
Z(S) (Pakistan) v Minister for Justice and Law Reform

Asylum

Application for leave to apply for judicial review – Asylum – Negative credibility findings – Persecution – Ethnicity – No documentation – Burden of establishing claim – Illogical finding of availability of internal relocation – No consideration of general conditions prevailing in relocation zone – Costs – Extension of time – Illiteracy – Translator required – Affidavit sworn in English – Admissibility – De bene esse – Whether decision sufficiently clear – Whether the merits of the case were such that it would be unfair not to consider the application – Whether internal relocation correctly considered – MAMA v Refugee Appeals Tribunal [2011] IEHC 147, [2011] 2 IR 729 and Secretary of State v AH (Sudan) [2007] UKHL 49, [2007] 3 WLR 832 considered - European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), regs 7(1) and 7(2) – Rules of the Superior Courts 1986 (SI 15/1986), O 40, r 14 – Application refused (2008/1412JR – Clark J – 4/10/2012) [2012] IEHC 488
A(SI)(Sudan) v Refugee Appeals Tribunal

Asylum

Judicial review – Telescoped hearing – Persecution – Evidence of attack – Positive and negative credibility findings – Internal relocation – Whether decision explained rationally and clearly – Whether tribunal member acted consistently – Whether breach of fair procedures – Whether stricter standard of proof imposed – DH v Refugee Applications Commissioner (Unrep, Herbert J, 27/5/2004) and O'Keeffe v An Bord Pleanála [1993] 1 IR 39 considered – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 5(2) – Order of certiorari granted (2012/425JR – Hanna J – 1/3/2013) [2013] IEHC 99
B(M)(Georgia) v Refugee Appeals Tribunal

Asylum

Internal relocation – Principles applicable to internal relocation alternative – AA (Morocco) v Refugee Appeals Tribunal [2011] IEHC 389, (Unrep, Cooke J, 12/10/2011); CA v Refugee Applications Commissioner [2008] IEHC 261, (Unrep, Birmingham J, 2/7/2008); SIA (Sudan) v Refugee Appeals Tribunal [2012] IEHC 488, (Unrep, Clark J, 4/10/2012); BOB v Refugee Appeals Tribunal [2013] IEHC 187, (Unrep, MacEochaidh J, 2/5/2013); GOB v Minister for Justice [2008] IEHC 229, (Unrep, Birmingham J, 3/6/2008); SBE v Refugee Appeals Tribunal [2010] IEHC 133, (Unrep, Cooke J, 25/2/2010); CE v Minister for Justice [2012] IEHC 3 (Unrep, Hogan J, 11/1/2012); WMM v Refugee Appeals Tribunal [2009] IEHC 1, (Unrep, Cooke J, 11/11/2009); PO (Nigeria) v Minister for Justice [2010] IEHC 513, (Unrep, Ryan J, 22/10/2013) and DT v Minister for Justice [2009] IEHC 482, (Unrep, Cooke J, 3/11/2009) considered - European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 7 – Decision quashed (2009/623JR – Clark J – 1/11/2013) [2013] IEHC 481
D(K)(Nigeria) v Refugee Appeals Tribunal

Asylum

Refugee – Refugee Appeals Tribunal – Refusal of refugee status – Adverse credibility findings – Judicial review – Mental disability – Evidence – Medical reports – Whether tribunal failed to take medical evidence in account in making adverse credibility findings – Whether substantial error in tribunal decision – Whether substantial grounds shown – IR v Refugee Appeals Tribunal [2009] IEHC 353, (Unrep, Cooke J, 24/7/2009) applied – ME v Refugee Appeals Tribunal [2008] IEHC 192, (Unrep, Birmingham J, 27/6/2008); Nicolai v Refugee Appeals Tribunal [2005] IEHC 345, (Unrep, Ó Néill J, 7/10/2005) and Pamba v Refugee Appeals Tribunal (Unrep, Cooke J, 19/5/2009) considered – UNHCR Handbook on Procedures and Criteria for Determining Refugee Status 1992 – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 5 – Refugee Act 1996 (No 17), s 11 – Leave refused (2009/437JR – Clark J – 30/9/2013) [2013] IEHC 538
E(RA)(Cameroon) v Refugee Appeals Tribunal

Asylum

Judicial review – Telescoped proceedings – Failure to put certain matters arising from documents to applicant at hearing – Manner in which documentary evidence treated – Negative findings – Whether unfair and breach of due process – Whether unlawful – What reasonable decision maker would have decided – Availability of State protection – Whether obligation to make independent inquiry – Idiakheua v Minister for Justice [2005] IEHC 150, (Unrep, Clarke J, 10/5/2005) considered – Leave and order quashing decision of Tribunal granted (2009/622JR – Mac Eochaidh J – 7/6/2013) [2013] IEHC 252
G(A) v Refugee Appeals Tribunal

Asylum

Judicial review – Telescoped hearing – Negative credibility findings – Legality of decision – Inadequacy of reasons – Deference to decision makers – Reasonable decision maker – Error of fact – Speculation and conjecture – Whether rejection of credibility rational – Whether conclusion flowed from premises – Whether fundamentally at variance with reason and common sense – Whether reason given enabled applicant to understand basis for dismissal – Whether reason lawful – Meadows v Minister for Justice [2010] IESC 3, [2010] 2 IR 701; RO v Minister for Justice [2012] IEHC 573, (Unrep, Mac Eochaidh J, 20/12/2012) and IR v The Minister for Justice, Equality and Law Reform[2009] IEHC 353, (Unrep, Cooke J, 24/7/2009) considered – Leave and order of certiorari granted (2009/570JR – Mac Eochaidh J – 18/7/2013) [2013] IEHC 339
K(M) v Minister for Justice

Asylum

Refugee – Refugee Appeals Tribunal – Judicial review – Adverse credibility findings – Substantial grounds – County of origin information – Whether tribunal permitted to take account of common knowledge in

assessment of credibility – Whether failure to consider relevant documentation and country of origin information – Whether need to carry out artificial assessment of country of origin information where core claim disbelieved – Whether substantial grounds demonstrated to impugn validity of decision – Imafu v Minister for Justice [2005] IEHC 416, (Unrep, Peart J, 9/12/2005) considered – UNHCR Handbook on Procedures and Criteria for Determining Refugee Status 1992 – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 5 – Refugee Act 1996 (No 17), s 13 – Leave refused (2007/1256JR – Clark J – 10/12/2013) [2013] IEHC 563
O(NTM)(Sudan) v Minister for Justice, Equality and Law Reform

Asylum

Refugee – Refugee Appeals Tribunal – Refusal – Judicial review – Leave – Substantial grounds – Well founded fear of persecution – Adverse credibility findings – Country of origin information – Internal relocation – State protection – Whether well founded fear that minor applicant would be subjected to female genital mutilation – Whether tribunal erred in finding no well founded fear of persecution – Medical treatment – Whether treatment for sickle cell disease available in Nigeria – Whether assessment of internal relocation and availability of state protection unnecessarily carried out – Whether failure to identify particular area to which applicant could relocate – Whether internal relocation and availability of state protection determining factor in refusal – Whether technical error invalidating decision – Whether substantial grounds demonstrated – N v United Kingdom (App No 26565/05) [2008] 47 EHRR 39 and EMS v Minister for Justice [2004] IEHC 398, (Unrep, Clarke J, 21/12/2004) considered – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), regs 7 and 9 – European Convention on Human Rights and Fundamental Freedoms 1950, art 3 – Leave refused (2009/666JR – Clark J – 1/11/2013) [2013] IEHC 536
O(S) (a minor) v Refugee Appeals Tribunal

Asylum

Judicial review – Negative credibility findings – Persecution – Lack of knowledge – Basic principles – Weight to be attached to documents – Whether failure to have regard to relevant country of origin information – Whether failure to properly investigate claim – Whether treatment of country of origin information selective and incomplete – Whether findings unfair – Whether matters peripheral to core of claim – Horvath v Secretary of State for the Home Department [1999] INLR 7 – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 5 – Decision quashed (2009/1582JR – Clark J – 12/6/2013) [2013] IEHC 262
S(H)(Morocco) v Refugee Appeals Tribunal

Asylum

Refugee – Refugee Appeals Tribunal – Well founded fear of persecution – Adverse credibility findings – Judicial review – Country of origin information – Prohibition against refoulement – Whether possible to discern reasons for refusal of refugee status – Whether acceptance of account of applicant logically required consideration of refoulement – Whether failure to consider existence of UN protection for applicant – Whether failure to consider relevant country of origin information – Whether consideration of likelihood of persecution – Refugee Act 1996 (No 17), ss 11 and 13 – Relief granted (2009/869JR – Clark J – 30/9/2013) [2013] IEHC 535
V(NH)(Bangladesh) v Minister for Justice, Equality and Law Reform

Deportation

Injunction – Test to be applied – Judicial review – Revocation of deportation order – New facts – Country of origin information – Whether additional information provided in application to revoke deportation order beyond information provided in application for asylum and leave to remain – Whether deportation constituting infringement of fundamental rights – Whether application for revocation of deportation order giving rise to entitlement to interlocutory injunction restraining deportation – Whether new facts demonstrated – Whether fair issue to be tried – Whether arguable or stateable grounds demonstrated – Whether balance of convenience favoured restraint of deportation – Whether additional relevant factors – Whether due consideration given to rights of child – Okunade v Minister for Justice [2012] IESC 49, [2012] 3 IR 152; Smith v Minister for Justice [2013] IESC 4, (Unrep, SC, 1/2/2013) and ADS (Ghana) v Minister for Justice [2012] IEHC 73, (Unrep, Cross J, 14/2/2012) applied – Efe v Minister for Justice [2011] IEHC 214, (Unrep, Hogan J, [2011] 2 IR 798 and Zambrano v Office National de l'Emploi (Case C-34/09) [2011] ECR I-1177 considered – Refugee Act 1996 (No 17), s 5 – Immigration Act 1999 (No 22), s 3 – Criminal Justice (United Nations Convention Against Torture) Act 2000 (No 11), s 4 – European Convention on Human Rights and Fundamental Freedoms 1950, art 8 – Relief refused; leave refused (2013/867JR – McDermott J – 6/12/2013) [2013] IEHC 566
N(K) v Minister for Justice and Equality

Family reunification

Application for judicial review – Mandamus – Somalian national – Reasonableness of ministerial decision to insist on production of identity documents in respect of family members – Power to reunify families of declared refugees – Discretionary nature of power – Requirement for proof of dependence – Necessity for powers to be exercised in compliance with constitutional principles – Entitlement to insist upon adequate proofs –Whether wrongful refusal to perform public duty – Whether egregious delay in performing public duty - Whether unreasonable to demand original passports where department policy of refusing to accept Somali embassy documentation as acceptable proof of identity – East Donegal Co-Operative v Attorney General [1970] IR 317; R (Butler)v Navan UDC [1926] IR 466 and Point Exhibition Company v Revenue Commissioners [1993] 2 IR 551 considered - Refugee Act 1996 (No 17), s 18 – Relief refused (2011/812JR – Cooke J – 24/5/2012) [2012] IEHC 221
H(ZM) v Minister for Justice and Equality

Practice and procedure

Judicial review – Statement of grounds – Amendment – Extension of time – Good and sufficient reason – Whether errors of lawyers could constitute good and sufficient reason to permit amendment – Whether application to amend ought to be brought as soon as practical one pleading error identified – Whether four year delay between filing of pleadings and application to amend excusable – Whether reasonable for lawyers to postpone work on case until weeks leading up to hearing – Muresan v Minister for Justice [2004] 2 IRLM 364 approved – Illegal Immigrants (Trafficking) Act 2000 (No 29), s 5 – Application refused (2009/308JR – Mac Eochaidh J – 25/7/2013) [2013] IEHC 416
R(R) v Refugee Appeals Tribunal

Subsidiary protection

Application for judicial review of refusal of subsidiary protection – Bangladesh – Credibility – Applicability of rule requiring consideration of home country circumstances – Requirement to show clearly process by which finding on credibility reached – Whether Minister lawfully rejected credibility – Whether EC (Eligibility for Protection) Regulations 2006, reg 5(1)(a) could be disapplied where credibility rejected – SBE v Refugee Appeals Tribunal [2010] IEHC 133 (Unrep, Cooke J, 25/2/2010) followed – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 5 – Refugee Act 1996 (No 17), ss 11 and 13 – Certiorari granted (2012/1021JR – Mac Eochaidh J – 8/11/2013) [2013] IEHC 502
A(F) v Minister for Justice and Equality

Subsidiary protection

Leave to remain – Deportation – Judicial review – Leave – Substantial grounds – Fair procedures – Audi alterem partem – Proportionality – Right to effective remedy – Adverse credibility findings – Whether Minister entitled to take adverse credibility findings from asylum process into account when making decision on subsidiary protection – Whether fresh credibility ought to be carried out – Child – Medical condition – Best interests of child – Whether separate consideration given to rights of child – Whether convention rights engaged – Whether substantial grounds shown – Principle of refoulement – Whether refoulement considered personally by Minister – Whether indefinite effect of

deportation breach of constitutional and convention rights – Whether failure to provide effective remedy – Delay – Extension of time – Whether blameworthiness for delay in seeking judicial review – MM v Minister for Justice [2013] IEHC 9, (Unrep, Hogan J, 23/1/2013); AAA v Minister for Justice [2013] IEHC 422, (Unrep, McDermott J, 10/9/2013); LAT v Minister for Justice [2011] IEHC 404, (Unrep, Hogan J, 2/11/2011); Sivsivadze v Minister for Justice [2012] IEHC 244, (Unrep, Kearns P, 21/6/2012); BJSA v Minister for Justice [2011] IEHC 381, (Unrep, Cooke J, 12/10/2011); CC v Minister for Justice [2012] IEHC 143, (Unrep, Cooke J, 19/4/2012); SL v Minister for Justice [2011] IEHC 370, (Unrep, Cooke J, 6/10/2011) and CS v Minister for Justice [2004] IESC 44, [2005] 1 IR 343 followed – Agbonlahor v Minister for Justice [2006] IEHC 56, [2007] 4 IR 309; Oguekwe v Minister for Justice [2008] IESC 25, [2008] 3 IR 795; Kadri v Governor of Wheatfield Prison [2012] IESC 27, [2012] 2 ILRM 392; D v United Kingdom [1997] 24 EHRR 423; FCN v Home Secretary [2005] UKHL 31, [2005] 4 All ER 1017; MM v Minister for Justice (Case C277/11) (Unrep, ECJ, 22/11/2012); Boultif v Switzerland (App No 54273/00), [2001] ECHR 497; Üner v The Netherlands (App No 46410/99), [2006] ECHR 873 and Okunade v Minister for Justice [2012] IESC 49, [2012] 3 IR 152 considered – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006) – Refugee Act 1996 (No 17), s 13 – Immigration Act 1999 (No 22), s 3 – Illegal Immigrants (Trafficking) Act 2000 (No 29), s 5 – Directive 2004/83/EC – Constitution of Ireland 1937, art 40.3 – United Nations Convention on the Rights of the Child 1989, art 3 – European Convention on Human Rights and Fundamental Freedoms 1950, arts 3 and 8 – Leave granted (2012/424JR – McDermott J – 3/12/2013) [2013] IEHC 554
A(FB) (an infant) v Minister for Justice and Equality

Visa

European Union law – Citizens' Directive - Visa – Qualifying family members of European Union citizen – Test to be applied – Dependence – Evidence of dependency – Whether test requiring evidence of assistance for all family members' essential needs – Whether visa officer applied correct test – Whether sufficient reasons given for refusal of visas – Whether refusals ought to be quashed – Jia v Migrationsverket [2007] QB 545 approved – Centre Public d'Aide Sociale Councelles v Lebon [1987] ECR 2811; Chen v Home Secretary [2005] QB 325; O'Leary v Minister for Justice [2012] IEHC 80, [2013] 1 ILRM 509; O'Leary v Minster for Justice [2011] IEHC 256, (Unrep, Hogan J, 30/6/2011) and Meadows v Minister for Justice [2010] IESC 3, [2010] 2 IR 701 considered – European Communities (Free Movement of Persons) (No 2) Regulations 2006 (SI 656/2006), reg 2 – Directive 2004/38/EC, arts 1, 2, 3, 4 and 5 – Constitution of Ireland 1937, Art 41 – European Convention on Human Rights and Fundamental Freedoms 1950, art 8 – Relief granted (2012/674JR – Mac Eochaidh J – 22/8/2013) [2013] IEHC 424
Kuhn v Minister for Justice, Equality and Law Reform

Library Acquisitions

Hathaway, James C
Foster, Michelle
The law of refugee status / James C. Hathaway
2nd ed
Cambridge : Cambridge University Press, 2014
C205

Statutory Instruments

Immigration Act 2004 (visas) (amendment) order 2014
SI 195/2014

INDUSTRIAL DEVELOPMENT

Acts

Industrial Development (Forfas Dissolution) Act 2014
Act No.13 of 2014
Signed on 29th June 2014

Statutory Instruments

County and city development boards dissolution order 2014
SI 233/2014

County Enterprise Boards (Dissolution) Act 2014 (commencement) order 2014
SI 160/2014

County Enterprise Boards (Dissolution) Act 2014 (dissolution day) order 2014
SI 175/2014

County Enterprise Boards (Dissolution) Act 2014 (section 2) order 2014
SI 170/2014

County Enterprise Boards (Dissolution) Act 2014 (section 2) (no. 2) order 2014
SI 171/2014

County Enterprise Boards (Dissolution) Act 2014 (section 2) (no. 3) order 2014
SI 172/2014

County Enterprise Boards (Dissolution) Act 2014 (section 2) (no. 4) order 2014
SI 173/2014

INJUNCTIONS

Interlocutory injunction

Application for a prohibitory interlocutory injunction pending s 205 petition hearing – Serious issue to be tried – Balance of convenience – Obligation to retire as director – Shareholder voting rights – Possibility of restricting lawful action – Whether balance of convenience favoured granting relief – Whether effective remedy for any breach of European Union Law – McGilligan v O'Grady & ors [1999] 1 IR 346 and Avoca Capital Holdings and The Companies Act [2005] IEHC 302, (Unrep, Clarke J, 29/7/2005) considered – Companies Act 1963 (No 33), s 205 – Application for interlocutory relief refused (126/2013 – SC – 16/5/2013) [2013] IESC 25
Dowling v Cook

Interlocutory injunction

Application for interlocutory injunctions – Operating agreement – License agreements – Extension of agreement – Refusal to vacate filling stations – Trespassing – Threshold – Implied terms – Jurisdiction to strike out proceedings – Discretion – Whether serious issue for trial – Whether defence frivolous or vexatious or had no prospect of success – Whether damages inadequate remedy – Whether balance of convenience lay in favour of grant of injunction – American Cyanamid v Ethicon [1975] 1 All ER 504; Moorcock [1889] 14 PD 64; Dakota Packaging Ltd v AHP Manufacturing BV [2004] IESC 102, [2005] 2 IR 54; Rainy Sky v Kookmin Bank [2011] 1 WLR 2900; Sweeney v Duggan [1997] 2 IR 531; Barry v Buckley [1981] IR 306; Sun Fat Chan v Osseous Limited [1992] 1 IR 425; Shell & BP Limited v Costello [1981] ILRM 66; Kenny Homes v Leonard [1997] IEHC 230, (Unrep, Costello J, 11/12/1997) and Gatien Motor Company Limited v Continental Oil Company [1979] IR 406 considered – Application refused (2013/6119P – Kelly J – 4/7/2013) [2013] IEHC 389
Esso Ireland Ltd v 911 Retail Ltd

Interlocutory injunction

Application for interlocutory injunction restraining defendant from terminating contracts pending substantive proceedings – Application for interlocutory injunction restraining defendant from contacting customers of plaintiff without prior consent – Adequacy of damages – Balance of convenience – Mandatory injunction – Whether strong case likely to succeed at hearing of action – Okunade v Minister for Justice, Equality and Law Reform [2012] IESC 49, [2013] 3 IR 152; Kinsella & Kinsella v Wallace [2013] IEHC 112, (Unrep, Laffoy J, 12/3/2013); Campus Oil Limited v Minister for Industry and Energy (No. 2) [1983] IR 88 followed – Ó Murchú v Eircell Limited, (Unrep, SC, 21/2/2001) and Maha Lingham v Health Safety Executive [2005] IESC 89, (Unrep, SC, 4/10/2005) considered – Data Protection Act 1988 (No 25) – Council Regulation (EC) No 1400/2002 – Mandatory injunctive relief refused (2013/4143P – Moriarty J – 4/7/2013) [2013] IEHC 318
O'Leary v Volkswagen Group Ireland Ltd

Interlocutory injunction

Probate – Life insurance – Proceeds – Whether applicant entitled to injunction restraining personal representative dissipating disputed proceeds of life insurance policy – Test to be applied – Whether fair or bona fide or serious issue to be tried – Whether damages constituting adequate remedy – Whether risk of assets being removed or dissipated

– Campus Oil v Minister for Energy (No 2) [1983] IR 88; American Cyanamid v Ehticon [1975] 1 All ER 504 and O'Mahony v Horgan [1995] 2 IR 411 applied – Application refused (2013/408P – Laffoy J – 6/9/2013) [2013] IEHC 400
Cullinan v Keogh

Interlocutory injunction

Application for interlocutory mandatory injunction to repair property – Application for order extinguishing appointment of receiver – Receiver appointed over mortgaged property – Deeds – State of dereliction – Rent receiver – No physical possession – Interlocutory reliefs – Higher threshold – Receiver's duty of care – Whether strong case that was likely to succeed at hearing of action – Whether appropriate to determine validity of appointment of receiver on interlocutory application – Adequacy of damages – Undertaking as to damages – Balance of convenience – Shepherd Homes Ltd v Sandham [1971] Ch 340; Okunade v Minister for Justice [2012] IESC 49, [2012] 3 IR 152; Maha Lingham v Health Service Executive [2006] 17 ELR 137; B & S Ltd v Irish Auto Trader Ltd [1995] 2 IR 142 considered - Conveyancing Act 1881 (44 & 45 Vict c 41), ss 19(1)(iii) and s 24 – Application dismissed (2012/5281P – Laffoy J – 25/7/2013) [2013] IEHC 362
O'Mahony v Lowe

Interlocutory injunction

Real property – Trespass – Mortgage – Charge – Receiver – Whether serious issue to be tried – Whether deed of mortgage lawfully executed – Whether charge created on correct folio – Whether damages constituting adequate remedy for infringement of property right – Whether balance of convenience favouring grant of injunction – Whether evidence that defendants capable of securing better sale price – Metro International SA v Independent News and Media [2005] IEHC 309, [2006] 1 ILRM 414; Savill v Byrne [2012] IEHC 415, (Unrep, Laffoy J, 21/6/2013) and McCann v Morrissey [2013] IEHC 288, (Unrep, Laffoy J, 21/6/2013) followed – Injunction granted (2013/7810P – Mac Eochaidh J – 19//8/2013) [2013] IEHC 412
Swinburne v Geary

Interlocutory injunction

Application for interlocutory injunction requiring deliverance of possession of apartment and restraining trespass on tenancy – Tenancy – Receiver – Obligation of candour when seeking interim ex parte relief – Duty to disclose material that might affect mind of court – Discretion of court to grant interlocutory relief – Bona fide question to be tried – Undertaking as to damages – Balance of convenience – Whether significant culpable failure to disclose matters – Whether entitlement to interlocutory injunction – Bambrick v Cobley [2005] IEHC 43, [2006] 1 ILRM 81; Tate Access Floors Inc v Boswell [1991] Ch 512; Atkin v Moran (1871) IR 6 Eq 79; Criminal Assets Bureau v BGS Ltd & Ors [2013] IEHC 302, (Unrep, Cross J, 3/7/2013); Balogun v Minister for Justice, (Unrep, Smyth J, 19/3/2002); European Paint Importers Ltd v O'Callaghan [2005] IEHC 280, (Unrep, Peart J, 10/8/2005); Campus Oil Ltd v Minister for Industry and Energy (No 2) [1983] IR 88; Westman Holdings Ltd v McCormack [1992] 1 IR 151; Collen Construction Limited v Building and Allied Trades Union & Ors [2006] IEHC 159, (Unrep, Clarke J, 16/5/2006); Pasture Properties v Evans, (Ex tempore, Laffoy J, 5/2/1999); Contech v Walsh [2006] IEHC 45, (Unrep, Finlay Geoghegan J, 17/2/2006); Mitchelstown Co-Operative Agricultural Society Ltd v Golden Vale Products Ltd, (Unrep, Costello J, 12/12/1985); Fitzpatrick v Commissioner of An Garda Síochána [1996] ELR 244; Meskell v Córas Iompair Éireann [1973] IR 121; Martin v Bord Pleanála [2002] 2 IR 655 and American Cyanamid Co v Ethicon Ltd [1975] AC 396 considered – Residential Tenancies Act 2004 (No 27), ss 4 and 12 – Landlord and Tenant Law Amendment Act Ireland 1860 (c CLIV), s 41 – Injunctions refused (2013/10002P – Keane J – 31/10/2013) [2013] IEHC 491
Szabo v Kavanagh

Mareva

Discharge – Undertaking as to damages – Fortification – Test to be applied – Whether special liquidation of plaintiff rendered undertaking as to damages worthless – Whether offer of fortification of undertaking as to damages sufficient – Whether onus of proof on party seeking discharge to demonstrate scale of potential damages – Whether undertaking intended to comprise complete indemnity to defendant – Whether court entitled to take in account parallel proceedings for breach of undertakings and contempt of court – Whether balance of convenience lying in favour of injunctions remaining in place – Hoffman-LA Rocher & Co ASG v Secretary of State for Home and Industry [1975] AC 295 approved – Cheltenham & Gloucester Building Society v Ricketts [1993] 4 All ER 276; Pasture Properties Ltd v Evans (Unrep, Laffoy J, 5/2/1999); Martin v An Bord Pleanála (Unrep, O'Sullivan J, 24/7/2002); First Netcom Pty Ltd v Telstra [2000] 101 FCR 77; Combet v Commonwealth of Australia [2005] 221 ALR 621; Estuary Logistics & Distribution Co Ltd v Lowenenergy Solution Ltd [2007] IEHC 410, [2008] 2 IR 806; Shell E&P Ireland Ltd v McGrath [2007] IEHC 144, [2007] 4 IR 277; Riordan v Minister for the Environment [2004] IEHC 89, (Unrep, Finnegan J, 26/5/2004); Cauldron v Air Zaire [1986] ILRM 10; Harding v Cork County Council [2006] IEHC 80, [2006] 1 IR 294; O'Connell v Environmental Protection Agency [2001] 4 IR 494; Broadnet Ltd v Director of Communications Regulation [2000] 3 IR 281; Allen v Jambo Holdings [1980] 2 All ER 502; Minister for Justice v Devine [2012] IESC 2, [2012] 1 IR 326; Dunne v Dun Laoghaire Rathdown County Council [2003] 1 IR 567; American Cyanamid Co v Ethicon Ltd [1975] AC 396 and Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd [1993] AC 227 considered – O'Mahony v Horgan [1995] 2 IR 411 distinguished – Application to discharge injunctions refused (2011/5843P – Peart J – 6/8/2013) [2013] IEHC 437
Irish Bank Resolution Corporation Ltd (In special liquidation) v Quinn

INSURANCE

Statutory Instruments

Health Insurance Act 1994 (determination of relevant increase under section 7A and provision of information under section 7B) regulations 2014
SI 312/2014

Health Insurance Authority employee superannuation scheme, 2014
SI 318/2014

INTELLECTUAL PROPERTY

Copyright

Application for injunction requiring internet service providers to block or disable access to website – Copyright – Unlawful downloading of material over internet – Concern of over-blocking – Appropriateness of order – Whether fresh applications required where website changes location on internet – Costs of implementing order – Costs of court application – EMI Records (Ireland) Limited and Others v UPC Communications Ireland Limited [2010] IEHC 377, (Unrep, Charleton J, 11/10/2010) followed – 20th Century Fox Film Corporation v British Telecoms Plc [2012] Bus LR 1461; Dramatico Entertainment Ltd & Ors v British Sky Broadcasting Ltd & Ors [2012] EWHC 268 (Ch.); Dramatico Entertainment Ltd & Ors v British Sky Broadcasting Ltd & Ors (No 2) [2012] EWHC 1152 (Ch); EMI Records Ltd & Ors v British Sky Broadcasting Ltd & Ors [2013] EWHC 379 (Ch); EMI Records (Ireland) Ltd & Ors v Eircom plc [2009] IEHC 411, (Unrep, Charleton J, 24/7/2009); EMI Records (Ireland) Ltd & Ors v Eircom Ltd [2010] IEHC 108, [2010] 4 IR 349; EMI Records (Ireland) Ltd & Ors v UPC Communications Ireland Ltd & Ors [2013] IEHC 204, (Unrep, Kelly J, 3/5/2013); Norwich Pharmacal Co v Customs & Excise Commissioners [1974] AC 133 and UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH (Munich) (Case C-314/12) (Unrep, Fourth Chamber of the Court of Justice of the European Union, 27/3/2014) considered – European Union (Copyright and Related Rights) Regulations 2012 (SI 59/2012) – Copyright and Related Rights Act 2000 (No 28), ss 40(5A) and 205 – Injunction granted (2012/12381P and 2012/225COM – McGovern J – 12/6/2013) [2013] IEHC 274
EMI Records Ireland Ltd v UPC Communications Ireland Ltd

INTERNATIONAL LAW

Articles

Gogarty, Brendan
Truth commissions and the rule of law
19 (3) 2014 Bar Review 61

Sammon, Garret
Unpacking the EU-Ukraine association agreement
2014 (32) (10) Irish law times 141

JUDICIAL REVIEW

Fair procedures

Application for judicial review – Certiorari – Examination candidate – Alleged breach of examination regulations – Disciplinary procedures envisaging two stage process – Meeting to determine whether prima facie case to be answered – Determination that applicant had breached examination relegations – Right to fair procedures – Whether respondent amenable to judicial review – Exercise of disciplinary function – Regulatory powers deriving from statute – Re Haughey [1971] IR 217; Flanagan v University College Dublin [1988] IR 724; Rajah v The Royal College of Surgeons [1994] 1 IR 384; Quinn v The Honorable Society of Kings Inns [2004] IEHC 220, [2004] 4 IR 344; Geoghegan v Institute of Chartered Accountants [1995] 3 IR 86; Eogan v University College Dublin [1996] 1 IR 390; McKenna v O Ciarán [2002] 3 IR 35; O'Donnell v Tipperary (South Riding) County Council [2005] IESC 18, [2005] 2 IR 483; Beirne v Commissioner of An Garda Síochána [1993] ILRM 1 and Re Malone's Application [1998] NI 67 considered – Certiorari granted (2013/339JR – Dunne J – 14/6/2013) [2013] IEHC 390
Zhang v Athlone Institute of Technology

Fair procedures

Statutory body – Powers – Investigation – Legality – Statutory interpretation – Standards in public office – Whether statutory body had powers to appoint investigator – Whether decision to appoint investigator amounted to prima facie finding – Whether applicant suffered reputational damage – Whether power to appoint advisor or consultant permitting appointment of investigator – Whether applicant ought to have been afforded opportunity to be heard – Whether documents giving rise to investigation ought to have been furnished to applicant – O'Sullivan v Law Society of Ireland [2012] IESC 21, (Unrep, SC, 23/2/2012) and Ó Ceallaigh v An Bord Altranais [2000] 4 IR 54 applied – In re Tralee Beef & Lamb Ltd (In liquidation); Kavanagh v Delaney [2008] IESC 1, [2008] 3 IR 347; AG v Great Eastern Railway Co (1880) 5 App Cas 473; McCarron v Kearney [2010] IESC 28, [2010] 3 IR 302; Casey v Minister for Arts [2004] IESC 14, [2004] 1 IR 402 and An Blascaod Mór Teoranta v Commissioners for Public Works in Ireland (Unrep, Kelly J, 18/12/1996) considered – Irish Sports Council Act 1999 (No 6), ss 6, 7, 13, 20 and 21 – Relief granted (2013/507JR – Peart J – 6/8/2013) [2013] IEHC 438
Byrne v Irish Sports Council

Prohibition

Prosecution – Indecent assault – Delay – Fair trial – Prejudice – Health of accused – Test to be applied – Whether real risk of unfair trial – Whether degree of disability suffered justifying prohibition of criminal trial – Whether failure of investigating gardaí to take notes of interview justified prohibition of criminal trial – Whether death of witness gave rise to real risk of unfair trial – SH v DPP [2006] IESC 55, [2006] 3 IR 575 and K v Judge Moran [2010] IEHC 23, (Unrep, Charleton J, 5/2/2010) applied – People (DPP) v Lacy [2005] IECCA 70, [2005] 2 IR 241; R v Oliva (1965) 49 Crim App R 298 and PT v DPP [2007] IESC 39, [2008] 1 IR 701 considered – Relief refused (2012/74JR – O'Malley J – 6/9/2013) [2013] IEHC 401
B(P) v Director of Public Prosecutions

JURISDICTION

Jurisdiction

Related actions – Enforcement application taken in England and Wales – Subsequent action in Ireland – Whether court to decline jurisdiction in favour of prior assumption of jurisdiction by the courts of England and Wales – Whether court to stay proceedings until the jurisdiction of the courts of England and Wales is determined – Whether Irish and English proceedings involving same cause of action – Deutsche Bank AG v Murtagh [1965] 2 IR 122; Gubisch Maschinenfabrik KG v Palumbo (Case C-144/86) [1987] ECR 4861; Gantner Electronic GmbH v Basch Expolitatie Maatschappij BV (Case C-111/01) [2003] ECR I-4207; Gonzalez v Mayer [2004] 3 IR 326; [2004] 1 ILRM 351; Popely v Popely [2006] IEHC 134, [2006] 4 IR 356; Sarrio SA v Kuwait Investment Authority [1999] 1 AC 32 and The Tatry (Case C-406/92) [1994] E.C.R. I-5439 considered – European Communities (Civil and Commercial Judgment) Regulations 2002 (SI 52/2002) – Council Regulation EC/44/2001- Council Regulation EC/805/2004 - Application refused (2012/7293P – Charleton J – 26/10/2012) [2012] IEHC 424
Bank of Ireland v O'Donnell

JURISPRUDENCE

Articles

Keating, Albert
The primacy of principles
2014 (32) (11) Irish law times 165

Keating, Albert
Jurisprudence finnis ' natural law theory
2014 (32) (13) Irish Law Times 191

LAND LAW

Adverse possession

Counterclaim for adverse possession – Claim for injunction restraining quarrying activity – Animus possidendi – User of definite and positive character – Factual possession – Appropriate degree of physical control – Minimal acts of possession by owner of paper title sufficient to establish not dispossessed – Whether intention to possess all lands subject matter of claim – Whether sufficient degree of exclusive physical control – Dunne v Iarnród Éireann [2007] IEHC 314, (Unrep, Clarke J, 7/12/2007); Durack Manufacturing Limited v Considine [1987] IR 677; Murphy v Murphy [1980] IR 183; Doyle v O'Neill, (Unrep, O'Hanlon J, 13/1/1995); Powell v McFarlane [1979] 38 P & CR 452 and Tracey Enterprises Limited v Drury [2006] IEHC 381, (Unrep, Laffoy J, 24/11/2006) considered – Statute of Limitations 1957 (No 6), s 13 – Registration of Title Act 1964 (No 16), s 49 – Claim to adverse possession not established (2004/318CA – O'Keeffe J – 27/1/2011) [2011] IEHC 549
Scanlon v Larkin

Statutory Instruments

Registration of title act 1964 (compulsory registration of ownership) (Longford, Roscommon and Westmeath) order 2005
SI 605/2005

LANDLORD AND TENANT

Injunction

Injunction for possession of garage premises – Termination of concession agreement – License – Tenement – Entitlement to new tenancy – Exclusive jurisdiction of Circuit Court in event relationship one of landlord and tenant – Notice period – Implied term – Enforceability of agreement to negotiate in good faith – Counterclaim for damages for breach of contract – Contractual interpretation – Whether license or tenancy – Whether agreements provided for period of notice – Whether reasonable period of notice should have been given – Whether agreement to negotiate in good faith enforceable – Whether parties negotiated in good faith – Whether right to new tenancy – Whether entitlement to recover damages for breach of contract – Kenny Homes & Co Limited v Leonard, (Unrep, Costello P, 11/12/1987); Smith v Irish Rail (Unrep, Peart J, 9/10/2002); National Maternity Hospital v McGouran [1994] 1 ILRM 521; Triatic Limited v The County Council of the County of Cork [2006] IEHC 111, [2007] 3 IR 57; Walford v Miles [1992] 2 AC 128; Rooney v Byrne [1933] IR 609; Fluid Power Technology Company v. Sperry (Ireland) Limited (Unrep, Costello J, 22/2/1985); Petromec Inc & Ors v Petroleo Brasileiro SA Petrobras & Ors [2005] EWCA Civ 891; Irish Shell and BP Ltd v John Costello Ltd [1981] ILRM 66; Analog Devices BV v Zurich Insurance Company [2005] IESC 12, [2005] 1 IR 274 and ICS v West Bromwich BS

[1998] 1 WLR 896 considered – Landlord & Tenant (Amendment) Act 1980 (No 10), ss 3, 5, 16, 21, 28 and 85 – Injunctive relief granted; counterclaim dismissed (2013/6119P & 2013/91COM – McGovern J – 14/11/2013) [2013] IEHC 514
Esso Ireland Limited v Nine One One Retail Limited

Lease

Application for declaration of amount of rent payable – Application for order seeking to prevent re-entry – Rent payable in future – Agreement to vary lease and reduce rent – Arrears of rent – Forfeiture of lease – Breach of contract – Counterclaim – Duration of rent reduction – Intention of parties – Surrounding circumstances – Economic circumstances – Consideration – Promissory estoppel – Collateral advantage – Rule in Pinnel's case – Improvements to property – Whether enforceable agreement to reduce rent – Whether consideration for reduction of rent – Whether rule in Pinnel's case represented law in Ireland – Whether entitled to rely on doctrine of promissory estoppel – Whether unambiguous representation – Whether reliance – Whether element of unfairness or unconscionability – Whether lease effectively forfeited – Pinnel's Case (1602) 5 Co Rep 117A; Foakes v Beer (1884) 9 App Cas 605; Corporation of Drogheda v Fairtlough (1858) 8 Ir CLR 98 – In re Selectmove Ltd [1995] 1 WLR 474; Williams v Roffey Brothers & Nicholls (Contractors) Ltd [1991] 1 QB 1; Truck and Machinery Sales Ltd v Marubeni Komatsu [1996] 1 IR 12; Collier v P & MJ Wright (Holdings) Ltd [2008] 1 WLR 643; London Property Trust Limited v High Trees House Ltd [1947] 1 KB 130; Furey v Lurgan-ville Construction Co Ltd [2012] IESC 38, [2013] 2 ILRM 110; Ajayi v RT Briscoe (Nigeria) Ltd [1964] 1 WLR 1326 and Association of General Practitioners Ltd v Minister for Health [1995] 1 IR 382 considered – Conveyancing Act 1881 (44 & 45 Vict c 41), s 14 – Land and Conveyancing Law Reform Act 2009 (No 27), s 51 – Companies Act 1963 (No 33) – Application granted (2013/602P – Laffoy J – 15/8/2013) [2013] IEHC 387
The Barge Inn Ltd v Quinn Hospitality Ireland Operations 3 Ltd

Lease

Outstanding sums paid – Relief against forfeiture granted – Costs awarded jointly and severally – Form of order finalised – Stay on costs order pending appeal to Supreme Court – Extension matter for Supreme Court – Costs awarded (2012/6741P – Charleton J – 12/11/2013) [2013] IEHC 529
The Leopardstown Club Ltd v Templeville Developments Ltd

Articles

Walshe, Willis
Edward Lee & Company (1974) Ltd v N.I. Property Development Ltd
[2012] 3 I.R. 201: A new view of landlord and tenant rights
2014 19 (3) Conveyancing and property law journal 76

LEGAL AID

Statutory Instruments

Civil Legal Aid Act 1995 (section 11) order 2014
SI 237/2014

LEGAL HISTORY

Library Acquisitions

O'Nolan, Caroline
The Irish District Court : a social portrait
Cork : Cork University Press, 2013
L243.C5

LEGAL PROFESSION

Articles

Hosier, Maeve
The legal services regulation bill 2011: changes and challenges for the legal profession
2013/14 1(2) Irish business law review 17

Neuberger, David
Some reflections on the legal profession; Address to the Bars of Ireland and Northern Ireland in Belfast, June 2014
19(4) 2014 Bar review 80

LICENSING

Transport

Judicial review - Refusal to grant small public service vehicle licence – Certiorari and mandamus – Taxi driver – Fixed charge notices and charges – Application for new licence – Availability of alternative remedy – Right of appeal to District Court – Opportunity to make representations – Discretion – Whether statutory remedy insufficient alternative to judicial review – Whether entitlement to consider events prior to grant of temporary licence – Whether deemed to be a fit and proper person to receive licence – Whether decision unreasonable or disproportionate – Whether breach of fair procedures – Donnelly v Commissioner of An Garda Síochána [2006] IEHC 361, [2008] 1 IR 153; Meadows v Minister for Justice [2010] IESC 3, [2010] 2 IR 701; Mooney v An Post [1998] 4 IR 288; Doupe v Limerick County Council [1981] ILRM 456; Cremin v Smithwick [2001] IEHC 101, (Unrep, Kelly J, 27/6/2001); Buckley v Kirby [2000] 3 IR 431; McGoldrick v An Bord Pleanála [1997] 1 IR 497 and O'Donnell v Tipperary (South Riding) County Council [2005] IESC 18, [2005] 2 IR 483 considered – Road Traffic (Public Service Vehicle) Regulations 1963 (SI 191/1963), regs 34, 35(2), 36 and 37 – Taxi Regulation Act 2003 (No 25), s 43 – Reliefs refused (2012/1026JR – Kearns P – 4/7/2013) [2013] IEHC 320
Fatus v Murphy

LIMITATIONS

Library Acquisitions

McGee, Andrew
Limitation periods
7th ed
London : Sweet & Maxwell, 2014
N355

LOCAL GOVERNMENT

Statutory Instruments

Local Government Act 1991 (regional authorities) (amendment) order 2014
SI 228/2014

Local Government Act 2001 (commencement of certain provisions) order 2014.
SI 37/2014

Local Government (application of certain provisions of the Local Government Act 2001 to municipal district members) regulations 2014
SI 230/2014

Local Government (audit committee) regulations 2014
SI 244/2014

Local Government (expenses of local authority members) regulation 2014
SI 236/2014

Local Government (financial and audit procedures) regulations 2014
SI 226/2014

Local Government (performance of reserved functions in respect of municipal district members) regulations 2014
SI 231/2014

Local Government Reform Act 2014 (2014 establishment day) order 2014
SI 215/2014

Local Government Reform Act 2014 (commencement of certain provisions) order 2014
SI 38/2014

Local Government Reform Act 2014 (commencement of certain provisions) (no. 2) order 2014
SI 146/2014

Local Government Reform Act 2014 (commencement of certain provisions) (no. 3) Order 2014
SI 214/2014

Local Government Reform Act 2014 (dissolution of the county Tipperary joint libraries committee and transfer of assets and liabilities) order 2014
SI 232/2014

Local Government Reform Act 2014 (transfer date) order 2014
SI 216/2014

Local government (representational payment for members) (amendment) regulations 2014
SI 235/2014

The local community development committee

(Section 128E) regulations 2014
SI 234/2014

The local community development committee (section 128E) (amendment) (no.1) regulations 2014
SI 314/2014

MARITIME LAW

Statutory Instruments

Maritime jurisdiction (boundaries of exclusive economic zone) order 2014
SI 86/2014

Merchant shipping (Maritime Labour Convention) (accommodation recreational facilities food catering and ships cooks) regulations 2014
(DIR/2009-13)
SI 374/2014

Merchant shipping (Maritime Labour Convention) (flag state inspection and certification) regulations 2014
(DIR/2009-13, DIR/2013-54)
SI 376/2014

Merchant shipping (Maritime Labour Convention) (seafarer employment agreement and wages) regulations 2014
(DIR/2009-13, DIR/1999-63)
SI 373/2014

Merchant shipping (Maritime Labour Convention) (shipowners liabilities and repatriation) regulations 2014
(DIR/2009-13, DIR/1999-63)
SI 375/2014

Sea-Fisheries and Maritime Jurisdiction (mussel seed) (opening of fisheries) regulations 2014
SI 386/2014

Sea-Fisheries (celtic sea discard reduction dividend scheme) regulations 2014
SI 387/2014

Sea-fisheries (quotas) regulations 2014
(REG/43-2014)
SI 161/2014

Sea pollution (prevention of oil pollution) (amendment) regulations 2014
SI 275/2014

MENTAL HEALTH

Consent

Child – Blood test – Consent – Capacity to refuse consent – Interference with autonomy and bodily integrity – Suicidal patient – Ancillary to treatment – Consent from children – Parental support – Statutory interpretation – Purposive approach – Whether suicidal child having capacity to refuse consent – Whether treatment encompassing taking of blood samples – Whether taking blood sample without consent proportionate – Health Service Executive v MX [2011] IEHC 326, [2012] 1 IR 81 approved - Gillick v West Norfolk AHA [1986] AC 112; Gooden v St. Otteran's Hospital (2001) [2005] 3 IR 617; EH v Clinical Director of St. Vincent's Hospital [2009] IESC 46, [2009] 3 IR 774; North Western Health Board v HW [2001] 3 IR 622; In re R (A Minor) (Wardship: Consent to Treatment) [1991] 3 WLR 592; In re a Ward of Court (withholding medical treatment) (No 2) [1996] 2 IR 79 and MX v Health Service Executive [2012] IEHC 491, [2012] 3 IR 254 considered - Mental Health Act 2001 (No 25), ss 2, 4, 14, 25, 56, 57, 60, 61 and 69 – Taking of blood sample permitted (2012/11101P – Birmingham J – 16/1/2013) [2013] IEHC 12
Health Service Executive v M(J)

Detention

Voluntary patient – Lawfulness – Admission order – Involuntary admission – Statutory interpretation – Whether voluntary patient residing at approved centre could be involuntarily admitted – The Electoral (Amendment) Bill, 1983 [1984] IR 268 considered - Mental Health Act 2001 (No 25), ss 8, 9, 10, 14, 23 and 24 – Constitution of Ireland, 1937, Art 40.4.2 – Legality of detention upheld (2013/1129SS – Hogan J – 4/7/2013) [2013] IEHC 310
C(K) v Clinical Director of St Loman's Hospital

Detention

Constitution – Legality of detention – Voluntary patient – Statutory requirements – Discharge – Whether mandatory statutory requirements for involuntary detention complied with – Whether emergency situation allowing departure from statutory provisions – Whether distinction between transfer and discharge relevant – Whether gross abuse of power – Whether default of fundamental requirements – Whether applicant had capacity to agree to voluntary detention – EH v Clinical Director of St Vincent's Hospital [2009] IESC 46, [2009] 3 IR 744 and RL v Clinical Director of St Brendan's Hospital (Ex temp, SC, 15/2/2008) applied – Mental Health Act 2001 (No 25), ss 2, 3, 23, 14, 15, 17, 23 and 24 – Constitution of Ireland 1937, Art 40 – Applicant refused (2913/1472SS – Laffoy J – 28/8/2013) [2013] IEHC 409
K(M) v Clinical Director of St Patrick's University Hospital

NEGLIGENCE

Contributory negligence

Appeal from finding of no contributory negligence – Loan – Whether solicitors firm negligent for failing to ensure security obtained – Professional negligence – Failure to carry out adequate inquiries as to financial standing of borrowers – Causation – Proximate cause – Duty of bank – Want of care for own interests – Reasonable care – No transaction case – Findings of deception – Alteration of language used by trial judge – Whether guilty of contributory negligence – Whether negligence caused loss – Whether negligence only effective cause – Whether guilty of want of care – Banque Bruxelles SA v Eagle Star [1997] AC 191; O'Sullivan v Dwyer [1971] IR 275; Conole v Redbank Oyster Company Ltd [1976] IR 191; Sahib Foods Ltd v Paskin Kyriadse Sands (a Firm) [2003] EWCA Civ 1832, (Unrep, CA, 19/12/2003); Carroll v County Council for the County of Clare [1975] 1 IR 221; Nationwide BS v JR Jones [1999] Lloyds Reports PN 414 and Platform Home Loans Ltd v Oyston Shipways Ltd [2000] 2 AC 190 considered – European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992) – Civil Liability Act 1961 (No 41), s 34 – Appeal allowed (334/2012, 335/2012, 443/2012 & 444/2012 – SC – 25/6/2013) [2013] IEHC 32
KBC Bank Ireland Plc v BCM Hanby Wallace (A Firm)

Solicitors

Purchase of property – Registration of title – Property not registered properly – Undertaking of solicitor – Retainer – Breach of duty – Breach of contract – Unable to show good marketable title – Loss of sale – Property market falling – Offer and acceptance – Completed transaction – Failure to mitigate loss – Conditional contract – Interest on borrowings – Capital gains tax liability – Whether decision to accept offer – Whether contract existed – Whether transaction would have proceeded to completion – Whether breach of duty of care – Whether negligent in not ensuring property registered – Whether breach of duty caused loss – Whether guilty of contributory negligence – Kelleher v O'Connor [2010] IEHC 313, [2010] 4 IR 380 considered – Damages awarded (2010/3135P – Peart J – 8/11/2013) [2013] IEHC 494
Rosbeg Partners v LK Shields (A Firm)

Library Acquisitions

Hale, Brenda
Mental health law
5th ed
London : Sweet & Maxwell, 2010
N155.3

Bartlett, Peter
Sandland, Ralph
Mental health law: policy and practice
4th ed
Oxford : Oxford University Press, 2014
N155.3

Gostin, Lawrence
Bartlett, Peter
Fennell, Philip
Principles of mental health law and policy
Oxford : Oxford University Press, 2010
N155.3

Foster, Charles
Herring, Jonathan
Doron, Israel
The law and ethics of dementia
Oxford : Hart Publishing, 2014
N155.3

PENSIONS

Statutory Instruments

Occupational pension schemes (funding standard) (amendment) regulations 2014
SI 268/2014

Occupational Pension Schemes (sections 50 and 50B) regulations 2014
SI 392/2014

Articles

Coady, Catriona
Pension matters: Post Finance (No.2) Act 2013
Heffernan, John
2014 (2) Irish tax review 71

McGrath, Niall
Stirring the pot
2014 (June) Law Society Gazette 38

PERSONAL INSOLVENCY & BANKRUPTCY

Practice and procedure

Petition to have debtor adjudicated bankrupt – Judgment debt – Negotiations – Adjournments – Adjudicated bankrupt in Northern Ireland – Centre of main interest – Residency – Time of opening of proceedings – Definition of 'judgment' – Vesting in assignee – Divestment of property – Definition of 'insolvency proceedings' – Whether bankruptcy proceedings had been opened in this jurisdiction within meaning of Regulation (EC) No 1346/2000 – Whether decision to adjourn adjudication was an opening of proceedings – Whether appropriate to recognise adjudication in Northern Ireland – Ascertain centre of main interest – Whether petitioner could proceed with bankruptcy petition in this jurisdiction – Re Eurofood IFSC Ltd [2004] 4 IR 370; Re Eurofood IFSC Ltd (Case C-341/04) [2006] ECR 1-03813 – Bankruptcy Act 1988 (No 27), ss 11(1),14(1) and 44(2) – Regulation (EC) No 1346/2000, art 2 – Finding that proceedings not opened; Northern Irish adjudication not recognised (Insolvency Proceedings 538P – Dunne J – 29/11/2010) [2010] IEHC 543
Emo Oil Ltd v Mulligan

Articles

O'Dwyer, Sarah
Trespass against us
2014 (July) Law Society Gazette 44

O'Dwyer, Sarah
Trespass to the person claims and PIAB
19 (3) 2014 Bar Review 56

O'Neill, Barry
A minimum standard for debt discharge in Europe?
2014 21 (7) Commercial law practitioner 156

Statutory Instruments

Personal Insolvency Act 2012 (regulatory disclosure statement of a personal insolvency practitioner) regulations 2014
SI 319/2014

PLANNING & ENVIRONMENTAL LAW

Development

Application to quash decision to grant approval for waste water treatment plant – Proposed development – Environmental effects – Environmental impact assessment – Environmental impact statement – Objective bias – Adequacy of process – Discretionary provisions – Failure to give reasons – Trans-boundary effect – Conservation of natural habitats – Adverse effects – Flora and fauna – Water quality – Whether objective bias – Whether failure to assess trans-boundary impact – Whether environmental impact statement and assessment adequate – Whether compliance with requirements of the Environmental Impact Assessment Directive – Whether error of law – Kenny v Trinity College Dublin [2007] IESC 42, [2008] 2 IR 40; Commission v Ireland (Case C-50/09) [2011] ECR I-873; Berkeley v Secretary of State [2000] UKHL J0706-1, [2000] 3 All ER 897; Waddenzee v Staatssecretaris van Landbouw (Case C-127/02) [2004] ECR I-7405; Commission v Portugal (Case C-239/04) [2006] ECR IA-10183; Usk and District Residents Association Ltd v An Bord Pleanála [2009] IEHC 346, [2010] 4 IR 113; O'Reilly v Cassidy [1995] ILRM 306; O'Neill v Irish Hereford Breed Society Limited [1992] 1 IR 431; Sweetman v An Bord Pleanála [2010] IEHC 53, (Unrep, Hedigan J, 2/3/2012); Klohn v An Bord Pleanála [2008] IEHC 111, [2009] 1 IR 59; Hereford Waste Watchers Ltd v Hereford Council [2005] EWHC 191; Grealish v An Bord Pleanála [2006] IEHC 310, [2007] 2 IR 536; Mulholland v An Bord Pleanála (No2) [2005] IEHC 306, [2006] 1 IR 453; O'Neill v An Bord Pleanála [2009] IEHC 202, (Unrep, Hedigan J, 1/5/2009); Arklow Holidays Ltd v An Bord Pleanála [2006] IEHC 15, (Unrep, Clarke J, 18/1/2006); Bula Ltd v Tara Mines Ltd (No 6) [2000] 4 IR 412 and Kenny v An Bord Pleanála [2001] IR 565 considered – Waste Water Discharge (Authorisation) Regulations 2007 (SI 684/2007), reg 44 – European Communities (Natural Habitats) Regulations 1997 (SI 94/1997) – Planning and Development Regulations 2001 (SI 600/2001), arts 94 and 111 – Planning and Development Act 2000 (No 30), ss 34(10), 175, 106 and 226 – Environmental Protection Agency Act 1992 (No 7) – Planning and Development (Strategic Infrastructure) Act 2006 (No 27), s 15 – Directive 85/337 EEC, art 3 – Directive 92/43/EEC, art 6(3) – Reliefs refused (2011/947JR – Hedigan J – 26/8/2013) [2013] IEHC 402
Craig v An Bord Pleanála

Development

Application for re-zoning of land from residential to retail – Development of lands as shopping centre linked to construction of motorway – Local area plan – Submissions made –Material alterations – Further modification – Statutory procedures – Fair procedures – Reasonableness – Adequacy of reasons – Opportunity for further submissions – Presumption of constitutionality – Whether further modification minor in nature – Whether Planning and Development Act 2000, s 23(3) complied with – Whether increase in the area of land zoned for any purpose – Wexele v An Bord Pleanala [2010] IEHC 21, (Unrep, Charelton J, 5/2/2010); Dellway Investments Ltd v NAMA [2010] IEHC 364, [2011] IESC 4, [2011] IESC 13 & [2011] IESC 14, [2011] 4 IR 1 – Haverty v An Bord Pleanala [1987] IR 485; Evans v An Bord Pleanala, (Unrep, Kearns J, 7/11/2003) and Klohn v An Bord Pleanala [2008] IEHC 111, [2009] 1 IR 59 considered – Planning and Development Act 2000 (No 30), ss 20(3)(n), 20(3)(o) and 23(3)(q) – Certiorari granted (2011/863JR – Peart J – 8/11/2013) [2013] IEHC 493
Tesco Ireland Ltd v Cork County Council

Unauthorised development

Application for injunctions – Operator of airport – Operation of private long term car park – Competitor – Planning permission – History of site – Discretion – Conduct of applicant – Hardship – Disproportionate – Economic and public interest – Whether unauthorised development – Whether disproportionate and oppressive to grant injunction – Whether to permit application for planning permission – Whether use materially different – Whether ancillary unauthorised use –Whether authorisation for use as car park – Whether development – Whether exempted development – Whether use commenced more than seven years ago – National Federation of Drapers and Allied Trades Limited v Allied Wholesale Warehouses, Irish Times, 29/11/1979; Fusco v Aprile (Unrep, Morris P, 6/6/1997); Morris v Garvey [1983] IR 319 and Lanigan v Barry [2008] IEHC 29 (Unrep, Charleton J, 15/2/2008) considered - Planning and Development Act 2000 (No 30), ss 5 and 160(1) – Applications for planning permission allowed to be processed (2012/445MCA & 2012/444MCA – Birmingham J – 13/11/2013) [2013] IEHC 510
Dublin Airport Authority Plc v JD Motorline Ltd

Unauthorised development

Application for mandatory injunction – Cessation of operation of wind farm – Claim that wind turbines erected in contravention of permission – Planning permission – Whether turbines constructed in accordance with permission – Claim that deviations minor and immaterial – Claim that turbines substantially in accordance with permission – Claim that deviations permitted by local authority – Alleged failure to discharge onus of proof to demonstrate material deviation – Conduct of respondents – Whether order would be draconion and disproportionate hardship – Dublin Corporation v McGowan [1993] 1 IR 405; Altara Developments Ltd v Ventola Ltd [2005] IEHC 312, (Unrep, O'Sullivan J, 6/10/2005) and Sweetman v Shell E & P Limited [2006] IEHC 85, [2007] 3 IR 13

considered – Planning and Development Act 2000 (No 30), s 160 - Relief refused (2012/166MCA - Peart J – 27/9/2013) [2013] IEHC 509
Bailey v Kilvinane Wind Farm Limited

Development

European Union law – Habitats – Special area of conservation – Natura 2000 site – Judicial review – An Bord Pleanála – Consent to public authority development – Sewage treatment – Whether failure by Minister to inform Board of impending designation of special conservation area – Whether development prohibited by habitats protection – Whether sufficient proof shown of lack of protection for special area of conservation – Whether suitable assessment of risk of adverse impact on special area of conservation – Directive – Statutory interpretation – Conforming interpretation of directive with national law – Whether basis to conclude that protection requirement would not be met – Shadow notification – Whether intended designation of special area of conservation giving rise to protection requirements – Whether development constituting unlawful conduct – Costs – Whether statutory provisions regarding costs in environmental protection proceedings applicable – Whether each party to bear own costs – Marleasing SA v La Comercial de Alimentation SA (Case C106/89) [1990] 4 ECR I-4135; Pfeiffer and ors v Deutches Rotes Kreuz (Joined cases C397/01 & C-403/01) [2004] ECR I-8835; Criminal Proceedings Against Pupino (Case 105/03) [2005] ECR I-5285; Societá Italiana Dragaggi sPa v Ministero della Infrastrutture e dei Transporti (Case C-117/03) [2005] ECR I-167; Bund Naturschtz in Bayern eV v Freistaat Bayern (Case C-244/05) [2006] ECR I-8445 and Commission v Hellenic Republic (Case C-103/10) [2012] ECR I-147 considered – European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477/2011) – Foreshore Acts 1993 to 2011, s 3 – Planning and Development Act 2000 (No 30), s 50B –Planning and Development (Amendment) Act 2010 (No 30), s 33 – Directive 92/43/EEC, arts 2, 3, 6 and 27 – Directive 85/337/EEC, art 10a – Proceedings dismissed (2013/29JR – Charleton J – 19/11/2013) [2013] IEHC 542
Sandymount and Merrion Residents Association v An Bord Pleanála

Judicial review

Reference to Board – Compliance with planning conditions – Development – Material change of use – Notice of reference – Application for leave to amend pleadings – Requirement to state in full grounds of reference and reasons, considerations and arguments – Whether non-compliance Planning and Development Act 2000, s 127(1)(d) rendered reference invalid – Whether reference asking whether occupier operating in compliance with planning conditions valid – Whether reference could be made without notice to relevant landowner – Keegan v Garda Siochána Complaints Board [2012] IESC 29, (Unrep, SC, 1/5/2012); O'Reilly Brothers (Wicklow) Ltd v An Bord Pleanála [2006] IEHC 363, [2008] 1 IR 187; Roadstone Provinces Ltd v An Bord Pleanála [2008] IEHC 210, (Unrep, Finlay-Geoghegan J, 4/7/2008); Monaghan County Council v Brogan [1987] IR 333; Galway County Council v Lackagh Rock [1985] IR 120; McMahon v Dublin Corporation [1997] 1 ILRM 227; Palmerlane Ltd v An Bord Pleanála [1999] 2 ILRM 214; Grianán an Aileach Interpretative Centre Co Ltd v Donegal County Council [2004] IESC 41, [2004] 2 IR 625; O'Ceallaigh v An Bord Altranais [2000] 4 IR 42; West Wood Club Ltd v An Bord Pleanála [2010] IEHC 16, (Unrep, Hedigan J, 26/1/2010); Dellway Ltd v National Asset Management Agency [2011] IESC 14, [2011] 4 IR 1 and Keegan v Garda Siochána Complaints Board [2012] IESC 29, (Unrep, SC, 1/5/2012) considered – Planning and Development Regulations 2001 (SI 600/2001) – Planning and Development Act 2000 (No 30), ss 3, 5, 127, 128, 129 and 160 – Local Government Act 2001 (No 37), s 155 – Certiorari granted (2012/563JR – Hogan J – 4/6/2013) [2013] IEHC 261
Heatons Limited v Offaly County Council

Public authority

Appeal from decision that NAMA public authority – Statutory interpretation – Practice and procedure – Point of law – Statutory appeal – Definition of 'includes' – Literal interpretation – Natural and ordinary meaning – Dictionary definition – Whether word of limitation – Environmental information – Transposition of directives into national law – Ejusdem generis rule – Role of the court on appeal – Inherent jurisdiction – Implementation of directive – De novo ruling – Power to remit – Legislative intention – Presumption of faithful transposition – Whether NAMA public authority – Whether respondent erred in law in concluding that NAMA public authority – Whether plain and ordinary meaning of words clear – Whether legal ambiguity existed – Whether definition expanded – Whether High Court had jurisdiction to quash decision and remit matter – Whether High Court had jurisdiction to substitute own decision – Whether court limited in appellate jurisdiction to consideration of issue brought before it on appeal – Dilworth v Stamp Commissioner [1899] AC 99; Inland Revenue Commissioners v Joiner [1975] 3 All ER 105; Allen v Grenier (1997) 145 DLR (4th) 286; The Governors and Guardians of the Hospital for the Relief of Poor Lying-in Women v Information Commissioner [2009] IEHC 315, (Unrep, McCarthy J, 2/7/2009); Von Colson v Land Nordrhein Wesifalen [1984] ECR 1891; Meagher v Minister for Agriculture [1994] 1 IR 329; MST v Minister for Justice [2009] IEHC 529, (Unrep, Cooke J, 4/12/2009); Usk v An Brd Pleanála [2007] IEHC 86, [2007] 2 ILRM 378; FP v The Information Commissioner [2009] IEHC 574, (Unrep, Clark J, 13/7/2009); McK v Information Commissioner [2006] IESC 3, [2006] 1 IR 260; Glancre Teo v Cafferkey [2004] 3 IR 40; Rye Investments Ltd v Competition Authority [2009] IEHC 140, (Unrep, Cooke J, 19/3/2009); E v Secretary of State of the Home Department [2004] QB 1044; Vavasour v Northside Centre for the Unemployed [1995] 1 IR 450; The Governors and Guardians of the Hospital for the Relief of Poor Lying-in-Women, Dublin v Information Commissioner [2011] IESC 26, (Unrep, SC, 19/7/2011); Flachglas v Federal Republic of Germany (Case C-204/09) [2013] QB 212; Von Colson (Case C-14/83) [1984] ECR 1891, Marleasing (Case C-106/89) ECR [1990] I-4135; O'Dwyer v Keegan [1997] 2 ILRM 401; Inspector of Taxes v Kiernan [1981] IR 117; County Council of the County of Cork v Whillock [1993] 1 IR 231; Mara (Inspector of Taxes) v Hummingbird [1982] 2 ILRM 42; Henry Denny & Sons (Ireland) Limited v Minister for Social Welfare [1998] 1 IR 34; Castleisland Cattle Breeding Society Limited v Minister for Social and Family Affairs [2004] IESC 40, [2004] 4 IR 150; Sheedy v Information Commissioner [2005] IESC 35, [2005] 2 IR 272; Deely v Information Commissioner [2001] 3 IR 439; Kruse v Information Commissioner [2009] IEHC 286, (Unrep, Sheehan J, 23/6/2009); Minister for Agriculture and Food v Barry [2008] IEHC 216, [2009] 1 IR 215; Pawys v Pawys [1971] P 340; OH v OH [1990] 2 IR 558 and McCann Ltd v Ó Culachain (Inspector of Taxes) [1986] 1 IR 196 considered – European Communities (Access to Information on the Environment) Regulations 2007 (SI 133/2007), arts 3, 6, 12 and 13 – European Communities Act 1972 (No 27), s 3 – Interpretation Act 2005 (No 23), s 5(2) – Constitution of Ireland 1937, Art 29.4.7° – Council Directive 2003/4/EC, arts 1 and 2(2) – Council Directive 90/313/EEC – Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25/6/1998 – Appeal dismissed (2011/357MCA – Mac Eochaidh J – 27/2/2013) [2013] IEHC 86
National Asset Management Agency v Commissioner for Environmental Information

Unauthorised development

Enforcement – Planning injunction – Exempted development – Jurisdiction – Whether court had free-standing jurisdiction to determine whether development exempted where planning authority made s. 5 declaration – Whether appropriate to adjourn proceedings to allow making of s. 5 application – Whether placement of caravan and mobile home constituted development – Whether constitutional protection of the dwelling applicable to caravan or mobile home – Whether applicant having discharged burden that development commenced seven years prior to initiation of enforcement proceedings – Grianan an Aileach Interpretative Centre Co Ltd v Donegal County Council [2004] IESC 41, [2004] 2 IR 625 and Sligo Council v Martin [2007] IEHC 178, (Unrep, Ó Néill J, 24/5/2007) applied – Wicklow County

Council v Fortune [2012] IEHC 406, (Unrep, Hogan J, 4/10/2012); Wicklow County Council v Fortune [2013] IEHC 255, (Unrep, Hogan J, 6/6/2013); Cunningham v An Bord Pleanála [2013] IEHC 234, (Unrep, Hogan J, 15/5/2013); Mallak v Minister for Justice [2012] IESC 59, [2013] 1 ILRM 73; Meadows v Minister for Justice [2010] IESC 3, [2010] 2 IR 701; People (AG) v Hogan (1972) 1 Frewen 360 and Dublin Corporation v Lowe (Unrep, Morris P, 4/2/2000) considered – Planning and Development Regulations 2001 (SI 600/2001), art 9 and Sch 2 – Planning and Development Act 2000 (No 30), ss 3, 5, 152 and 160 – Directive 92/43/EEC – Constitution of Ireland 1937, Art 40.5 – Orders made (2011/25CA & 2011/26CA – Hogan J – 5/9/2013) [2013] IEHC 397
Wicklow County Council v Fortune

Articles

Barrett, Eva
Problems of the Irish Wind Energy sector from the Aarhus Convention to the strategic environmental assessment (SEA) directive
2014 (21) 2 Irish planning and environmental law journal 58

Hastings, Amy
Assessment of impacts under Irish law - the visual component
2014 (21) 2 Irish planning and environmental law journal 51

O'Callaghan, Ellen
Protective costs orders for environmental cases; the first successful
application in an Irish court
19 (3) 2014 Bar Review 53

PRACTICE AND PROCEDURE

Amendment of pleadings

Application for leave to amend judicial review proceedings – Subsidiary protection – Credibility – Effective remedy – Independent assessment of credibility claim by subsidiary protection decision-maker – Reliance on recent decision of Court of Justice of European Union – Whether appropriate to grant leave to amend pleadings – Whether functus officio – Whether entirely new cause of action – Whether exceptional circumstances – MM v Minster for Justice, Equality and Law Reform (Case C-277/11) [2012] ECR I-000; HID v Refugee Applications Commissioner (Case C-175/11), (Unrep, Second Chamber of the Court of Justice of the European Union, 31/1/2013); Wilson v Ordre des avocats du barreau de Luxembourg (Case C-506/04) [2006] ECR I -8613; Diouf v Ministre du Travail, de l'Emploi et de l'Immigration (Case C-69/10) [2011] ECR I-07151; M(P) v Minister for Justice and Law Reform (No 2) [2012] IEHC 34, (Unrep, Hogan J, 31/1/2012); D and A v Refugee Applications Commissioner [2011] IEHC 33, (Unrep, Cooke J, 9/2/2011); MM v Minister for Justice and Equality (No 3) [2013] IEHC 9, (Unrep, Hogan J, 23/1/2013); U(MA) v Minister for Justice [2011] IEHC 95, [2011] 1 IR 749; U(MA) v Minister for Justice [2010] IEHC 492, (Unrep, Hogan J, 13/12/2010) and Cox v Electricity Supply Board (No 2) [1943] IR 231 considered – Re McInerney Homes Ltd [2011] IESC 31, (Unrep, Supreme Court, 22/7/2011) applied - SZ (Pakistan) v Minister for Justice and Law Reform [2013] IEHC 95 followed – Rules of the Superior Courts 1986 (SI 15/1986), O 58 r 2 and O 28 r 1 – European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006), reg 2 – Refugee Act 1996 (No 17), ss 13 and 17 – Immigration Act 1999 (No 22), s 3(1) – Illegal Immigrants (Trafficking Act) 2000 (No 29), ss 5(2) – Council Directive 2005/85/EC, arts 4(1) and 39(1) – Leave to amend granted in respect of subsidiary protection issue; leave to amend refused in respect of effective remedy issue (2011/147JR – Hogan J – 14/6/2013) [2013] IEHC 271
M(P) (Botswana) v Minister for Justice & Law Reform

Appeal

Copyright – Breach of confidential information – Reformulation of statement of claim in High Court – Micro-management – Argument abandoned in High Court – Whether evidence adduced on copyright claim sufficient to shift evidential burden of proof – Whether appropriate to allow new issue on appeal – Whether argument diametrically opposed to case in High Court – Whether court could remit matter to High Court to allow significantly different case be made – Koger Inc v O'Donnell [2010] IEHC 350, (Unrep, Feeney J, 8/10/2010); House of Spring Gardens Ltd v Point Blank Ltd [1984] IR 611; Saltman Engineering Co Ltd v Campbell Engineering Co Ltd [1948] RPC 203; FSS Travel and Leisure Systems Ltd v Johnson [1999] FSR 505 and Lough Swilly Shellfish Growers Cooperative Society Limited v Bradley [2013] IESC 16, (Unrep, SC, 13/3/2013) considered – Copyright and Related Rights Act 2000 (No 28), s 37 – Appeal dismissed (422/10 – SC – 18/6/2013) [2013] IESC 28
Koger Inc v O'Donnell

Contempt

Application for an order directing attachment and committal for contempt of court – Breaches of orders made for production of minor to court – Standard of proof – Factors in determining whether committal to prison should be ordered –Whether guilty of contempt of court – Whether committal to prison should be ordered – DPP v Nevin [2003] 3 IR 321 and Button v Salama [2013] EWHC 2474 (Fam) considered – Order of committal made with stay on order to facilitate steps to purge contempt (2011/2031P – Birmingham J – 7/11/2013) [2013] IEHC 517
Health Service Executive v R (a minor)

Costs

Child care proceedings – District Court – Jurisdiction of District Court to award costs in child care proceedings – Meaning of civil proceedings – Whether child care proceedings civil proceedings – Whether District Court having jurisdiction to award costs in child care proceedings – Rule that cost follow event – Discretion of court to depart from rule – Means of litigant – Separation of powers – Public policy – Whether public body performing functions pursuant to statutory duty should be liable for costs – Whether permissible on costs application to consider whether litigant had applied for legal aid – Whether necessary on costs application to consider whether litigant had applied for legal aid – Dunne v Minister for the Environment [2007] IESC 60, [2008] 2 IR 775 and Dublin Corporation v Ashley [1986] IR 781 applied - Director of Public Prosecutions v Buckley [2007] IEHC 150, [2007] 3 IR 745 and The National Authority for Safety and Health v O'K Tools [1997] 1 IR 534 approved - Attorney-General v Crawford [1940] IR 335; TD v Minister for Education [2001] 4 IR. 259; Dillane v Ireland [1980] ILRM 167; Garnett v Bradley (1878) 3 App Cas 944; Henehan v Allied Irish Banks Ltd (Unrep, Finlay P, 19/10/1984); Law Society of Ireland v Competition Authority [2005] IEHC 455, [2006] 2 IR 262; Magee v Farrell [2009] IESC 60, [2009] 4 IR 703; Sinnott v Minister for Education [2001] 2 IR 545; Southern Hotel Sligo Ltd v Iarnród Éireann [2007] IEHC 254, [2007] 3 IR 792; The State (Attorney General) v Shaw [1979] IR 136; The State (Freeman) v Connellan [1986] IR 433 and Wheat v United States (1988) 486 US 153; 108 S Ct 1692; 100 L Ed 2d 140 considered - Re T (Children) [2010] EWCA Civ 1585, [2011] 2 FLR 264; [2012] UKSC 36, [2012] 1 WLR 2281 not followed – Rules of the District Court 1997 (SI 93/1997), O 51 – Courts of Justice Act 1924 (No 10), s 91 –Interpretation Act 1937 (No 38), s 17 – Courts (Supplemental Provisions) Act 1961 (No 39), s 34 - Civil Legal Aid Act 1995 (No 32), ss 25 and 33 - Questions answered in the negative (2012/1568SS – O'Malley J – 12/4/2013) [2013] IEHC 172
Health Service Executive v A(O)

Costs

Protective costs order – Planning- Whether applicant entitled to protective costs order – Application to join notice party - Whether notice party could be joined so as to be fixed with costs- Whether court should exercise jurisdiction to make a non-party liable for costs – Moorview Developments Ltd v First Active plc [2011] IEHC 117, [2011] 3 IR 615 and The Queen (Edwards) v Environment Agency & Ors (Case C-260/2011) (Unrep, ECJ, 11/4/2013) followed - Cullen v Wicklow County Manager [2010] IESC 49, [2011] 1 IR 152; McNamara v An Bord Pleanála [1995] 2 ILRM 125 and Thema Intl Fund v HSBC Inst Trust Services (Ireland) [2011] IEHC 357, [2011] 3 IR 654 considered - Planning and Development Act 2000 (No 30), s.160 – Environmental (Miscellaneous Provisions) Act 2011 (No 20), s. 3 and 7 - Rules of the Superior Courts, 1986 (SI 15/1986), O 15, r 13 - Supreme Court of Judicature (Ireland) Act 1877 (40 & 41 Vict, c 57), s

53 – Applications granted (2012/470MCA – Hedigan J – 17/9/2013) [2013] IEHC 430
Hunter v Nurendale Ltd t/a Panda Waste

Costs

Application for costs where case moot – Decision on application for naturalisation – Delay – Judicial review – Inquiry into good character by third party – Whether mootness result of factor or occurrence outside control of parties or unilateral action of one party – Whether court had sufficient information to determine cause of mootness – Whether in all circumstances reasonable for applicants to have commenced application for leave to seek judicial review – Whether decision to commence judicial review proceedings proportionate reaction to actions of respondent – Whether indication given to applicant as to reason for delay – Whether estimated timeframe furnished to applicant – Whether entitlement to costs – Cunningham v President of the Circuit Court & Anor [2012] IESC 39, [2012] 3 IR 222; SG & NG v The Minister for Justice, Equality and Law Reform [2006] IEHC 371, (Unrep, Herbert J, 16/11/2006); Salman v Minister for Justice & Equality [2011] IEHC 481, (Unrep, Kearns P, 16/12/2011); Nawaz v Minister for Justice, Equality and Law Reform [2009] IEHC 354, (Unrep, Clark J, 29/7/2009); Nearing v Minister for Justice, Equality and Law Reform [2009] IEHC 489, [2010] 4 IR 211 and Matta v Minister for Justice and Law Reform [2010] IEHC 488, (Unrep, Clark J, 21/7/2010) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 99, r 4 – Irish Nationality and Citizenship Act 1956 (No 26), s 15 – Official Secrets Act 1963 (No 1) – Convention relating to the Status of Refugees 1951, art 34 – Applicant awarded one half of costs of proceedings (2012/28JR – McDermott J – 29/1/2013) [2013] IEHC 527
Mansouri v Minister for Justice & Law Reform

Costs

Wasted costs – Immigration – Judicial review – Office of the Refugee Appeal Commissioner – Whether judicial review proceedings bound to fail – Whether solicitor ought to be faulted in proceedings with instructions to bring judicial review proceedings where case bound to fail – Whether High Court erred in failing to make wasted costs order – Whether jurisdiction to make wasted costs order discretionary – Whether actions of solicitor constituted misconduct – Kennedy v Killeen Corrugated Products Ltd [2006] IEHC 385, [2007] 2 IR 561 approved – Kayode v Refugee Appeals Tribunal (Unrep, SC, 28/1/2009); BNN v Minister for Justice [2008] IEHC 308, [2009] 1 IR 719; OJ & TJ (minors) v Refugee Applications Commissioner [2010] IEHC 176, [2010] 3 IR 637; Idris v Legal Aid Board [2009] IEHC 596, (Unrep, Cooke J, 10/12/2009) and Myers v Elman [1939] 4 All ER 484 considered – Rules of the Superior Courts 1986 (SI 15/1986), O 11, r 7 and O 99, r 7 – Directive 38/2004/EEC – Appeal dismissed (360/2012 – SC – 23/10/2013) [2013] IESC 41
O(H) v Minister for Justice, Equality and Law Reform

Costs

Appeal against refusal of ex parte application for costs order – Refusal based on departure from fair procedures – Refusal to grant costs order without notice to affected parties - Appeal considered on papers – Fair procedures – R(Edwards) v Environmental Agency (Case C-260/11) ECR 2013 considered – Appeals dismissed (451, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 464 & 498/2012 – SC – 26/2/2013) [2013] IESC 31
Coffey v Environmental Protection Agency

Disclosure

Application for further and better disclosure – Injunctive relief previously granted – Order for disclosure of assets – Disclosure on affidavit of all documents relating to actions taken to place assets beyond reach of plaintiffs – Cross-examination on contents of affidavit – Incomplete disclosure – Employment contracts – Salaries – Bank accounts – Rent rolls – Companies ownership – Practice of deletion of electronic files – Disclosure of documents in possession only – Documents in power or procurement – Jurisdiction – Mareva injunction – Inherent jurisdiction to grant injunction – Whether disclosure order complied with – Whether full and proper disclosure made – Whether documents in possession, power or procurement that were not disclosed – Whether affidavits sworn complete – Whether misapprehension as to disclosure obligation – Irish Bank Resolution Corporation Ltd v Quinn [2012] IEHC 510, (Unrep, Kelly J, 11/12/2012); House of Spring Gardens Limited & Ors v Waite & Ors [1985] FSR 173; AJ Bekhor & Co v Bilton [1981] 2 All ER 565; A v C [1980] 2 All ER 347 and Deutsche Bank v Murtagh [1995] 2 IR 122 considered - Rules of the Superior Courts 1986 (SI 15/1986), O 40, r 1 – Supreme Court of Judicature (Ireland) Act 1877 (40 & 41 Vict c 57), s 27(7) – Courts (Supplemental Provisions) Act 1961 (No 39), s 48 – Application granted in part (2011/5843P – Kelly J – 10/7/2013) [2013] IEHC 388
Irish Bank Resolution Corporation Ltd v Quinn

Discovery

Application for non-party discovery – Defamation – Justification – Privilege – Security – Witness protection – Judicial discretion – Role of court in administration of justice – Requirement that claim of privilege be sufficiently particularised – Inherent jurisdiction to refuse application where purpose could never be achieved – Whether document fell within class of documents which should be withheld on public interest grounds – Whether disclosure should be denied as contrary to public policy – Whether success on plea of privilege unavoidable – Whether relevant and necessary – Whether moving party disclosed some information upon which plea of justification based – Whether application oppressive – Director of Consumer Affairs and Fair Trade v Sugar Distributors Ltd [1991] 1 IR 225; Foley v Bowden & Anor [2003] 2 IR 607; McLaughlin v Aviva Insurance (Europe) & Anor [2011] IESC 42, [2012] 1 ILRM 487; Corscadden v BJN Construction Ltd & Anor [2007] IEHC 42, (Unrep, Master of the High Court, 9/2/2007); Hannon v The Commissioner of Public Works & Ors, (Unrep, McCracken J, 4/4/2001); McDonagh v Sunday Newspapers Ltd [2005] IEHC 183, [2005] 4 IR 528; Haughey & Ors v Moriarty & Ors (Unrep, Geoghegan J, 20/1/1998); Ambiorix & Ors v Minister for the Environment & Ors (No 1) [1992] 1 IR 277; Breathnach v Ireland & Ors (No 3) [1993] 2 IR 458; Livingstone & Ors v Minister for Justice & Ors (Unrep, Murphy J, 2/4/2004); Allied Irish Banks plc & Anor v Ernst & Whinney & Anor [1993] 1 IR 375; Murphy v Dublin Corporation and The Minister for Local Government [1972] IR 215; Fitzpatrick v Independent Newspapers and Anor [1988] IR 132; Skeffington v Rooney & Anor [1997] 1 IR 22; O'Brien v Minister for Defence & Ors [1998] 2 ILRM 156; In re Kevin O'Kelly [1974] 108 ILT 97; Burke & Ors v Central Independent Television plc [1994] 2 IR.61; Stafford v Revenue Commissioners (Unrep, Supreme Court, 27/3/1996); Compagnie Financière et Commerciale du Pacificque v Peruvian Guano Company (1882) 11 QBD 55; Sterling-Winthrop Group Ltd v Farbenfabriken Bayer AG [1967] IR 97; Ryanair plc v Aer Rianta cpt [2003] 4 IR 264; Taylor v Clonmel Healthcare Ltd [2004] 1 IR 169; Framus Ltd. & Ors. v CRH plc & Ors [2004] 2 IR 20; Galvin v Graham-Twomey [1994] 2 ILRM 315; Bula Limited (In Receivership) & Or v Crowley & Ors [1991] 1 IR 220; Aquatechnologie Ltd v National Standards Authority of Ireland & Ors (Unrep, SC, 10/7/2000); Megaleasing UK Ltd & Ors v Barrett & Ors [1993] ILRM 497 and Doyle v Garda Commissioner [1999] 1 IR 249 considered – Rules of the Superior Courts 1986 (SI 15/1986), O 31, rr 12 and 29 – Appeal dismissed (381/2008 – SC – 9/5/2013) [2013] IESC 22
Keating v Radio Teilefís Éireann

Dismissal of proceedings

Motion to dismiss on grounds of inordinate and inexcusable delay – Claim for damages for maladministration – Refusal of planning permission – Tribunal of Inquiry into Planning matters – Balance of Justice – Obligation to conduct proceedings expeditiously where pre-commencement delay – Failure to communicate decision to await report of Tribunal to defendant – Inherent jurisdiction in certain special cases to hold unfair in all circumstances to force defendant to defend case – Allegation of corruption of most serious nature – Prejudice to defendant – Whether unique or exceptional circumstances – Whether delay inordinate – Whether delay inexcusable – Whether balance of justice in favour of proceeding of case – Rainsford v Limerick

Corporation [1995] 2 ILRM 561 followed – Primor plc v Stokes Kennedy Crowley [1996] 2 IR 459; Comcast International Holdings Incorporated and Ors v Minister for Public Enterprise and Ors [2012] IESC 50, (Unrep, SC, 17/10/2012); Desmond v MGN Limited [2008] IESC 56, [2009] 1 IR 737 applied – McBrearty v North Western Health Board [2010] IESC 27, (Unrep, SC, 10/5/2010); O'Domhnaill v Merrick [1984] IR 151; Toal v Duignan (No 1) [1991] ILRM 135; Toal v Duignan (No 2) [1991] ILRM 140; Stephens v Paul Flynn Limited [2008] IESC 4, [2008] 4 IR 31; Birkett v James [1978] AC 297 and Redmond v Mr. Justice Fergus Flood and Ors [2012] IEHC 253, (Unrep, Gilligan J, 28/3/2012) considered – Local Government (Planning and Development) Act 1963 (No 28) – Proceedings dismissed (1999/10181P – Dunne J – 14/11/2013) [2013] IEHC 519
Clare Manor Hotel Limited v Lord Alderman & Burgesses of Dublin

Dismissal of proceedings

Motion to dismiss on grounds of delay – Trial of preliminary issue of law – Statute of Limitations - Public law time limits – Abuse of process – Inordinate and inexcusable delay – No reasonable cause of action – Locus standi – Collateral challenge to criminal proceedings – Diseases of animals – Failure of Minister to establish statutory system of compensation – Proper transposition of EU Directives – Damages for breach of constitutional rights – Whether statute-barred when plenary summons issued – Whether public law reliefs claimed within applicable time limits – Whether good reason for extending time – Whether barred from seeking equitable relief on the grounds of laches and acquiescence – Lucey and Madigan v The Minister, Ireland and the Attorney General, (Unrep, Lardner J, 19/12/1990); Tate v Minister for Social Welfare [1995] 1 IR 418; McDonnell v Ireland [1998] 1 IR 134; Minister for Justice and Law Reform v Devine [2012] IEHC 159 (Unrep, Feeney J, 18/4/2012); Hegarty v O'Loughran [1990] 1 IR 148; Irish Equine Foundation Limited v Robinson [1999] 2 IR 442; Tuohy v Courtney [1994] 3 IR 1; Clerkin v Irwin Pharmacy Limited (Unrep, Carroll J, 30/4/1993); Howard v Minister for Agriculture and Food [1990] 2 IR 260; Farrell v Minister for Agriculture and Food (Unrep, Carroll J, 11/10/1995); Rooney v Minister for Agriculture and Food and Ors [1991] 2 IR 539; Rooney v Minister for Agriculture and Food and Ors [2010] IESC 12, (Unrep, SC, 9/3/2010); Shell E & P Ireland Limited v McGrath and Ors [2013] IESC 1, (Unrep, SC, 22/1/2013); O'Donnell v Dun Laoghaire Corporation [1991] ILRM 301; Murphy v The Attorney General [1982] IR 241; Byrne v Minister for Defence [2005] IEHC 147, [2005] 1 IR 577; Cahill v Sutton [1980] IR 269; Sun Fat Chan v Osseous Limited [1992] 1 IR 425 and Kelly v Ireland [1986] ILRM 318 considered – Rules of the Superior Courts 1986 (SI 15/1986), O 19, r 28, O 84, rr 20 and 21 – Brucellosis in Cattle (General Provisions) (Amendment) Order 1996 (SI 86/1996) – Statute of Limitations 1957 (No 6) s 11 – Diseases of Animals Act 1966 (No 6) s 6 – Council Directive 64/432/EEC – Council Directive 77/391/EEC – Council Directive 78/52/EEC – Council Directive 92/102/EEC – Council Regulation (EC) No 21/2004 – Commission Regulation (EC) 494/98 – Council Regulation (EC) No 820/97 – Constitution of Ireland 1937, art 15.2.1° – Proceedings dismissed (2010/6822P – Laffoy J – 1/11/2013) [2013] IEHC 520
Kenny v Minister for Agriculture and Food & ors

Dismissal of proceedings

Motion to dismiss – Contract claim statute barred – Tort claim based on fraud allowed to proceed – Fraud pleaded only by way of reply to defence – Whether plaintiff should be allowed await outcome of similar claims – Whether time should be allowed to facilitate plaintiff seeking leave to amend statement of claim – O'Hara v ACC Bank Plc [2011] IEHC 367, (Unrep, Charleton J, 7/10/2011); Gallagher v ACC Bank Plc [2012] IESC 35, (Unrep, SC, 7/6/2012); Cuttle v ACC Bank plc [2012] IEHC 105, (Unrep, Kelly J, 30/3/2012); Packenham v Irish Ferries (Unrep, SC, 31/1/2005) considered – Claim dismissed; stay on terms granted (2010/5537P – Charleton J – 11/10/2012) [2012] IEHC 396
Gallagher v ACC Bank Plc

Dismissal of proceedings

Applications to dismiss case in limine – Whether manifest claim could not proceed - Personal injuries - Claim for damages arising out of adoption of child without knowledge or consent – Whether plaintiff entitled to prosecute claim for damages without challenging validity of adoption order – M v An Bord Uchtála [1977] IR 287 considered – Adoption Act 2010 (No 1), s 50 – Applications refused (2001/16485P – Ryan J – 31/5/2013) [2013] IEHC 425
M(P) v C(D)

Dismissal of proceedings

Appeal from decision to dismiss proceedings on basis that statement of claim did not disclose cause of action – Previous proceedings settled – Lease – Term of lease – Document altered – Examination of lease by experts – Garda investigation – Reopening of legal issues – Fresh allegation of fraud – Client privity – Legal advice – Admission of new evidence – Whether trial judge correct in dismissing claim – Whether settlement of proceedings agreement to not litigate again – Whether fresh evidence could have been obtained earlier with reasonable diligence – Mahon v Burke [1991] ILRM 59; Gleeson v J Wippell & Company Limited [1977] 1 WLR 510; Shaw v Sloan [1982] NI 393; Kelly v Ireland [1986] ILRM 318 and McIlkenny v Chief Constable of the West Midlands [1980] QB 283 considered – Appeal dismissed (29/2012 – SC – 9/5/2013) [2013] IESC 20
Mulrooney v John Shee & Co Solicitors

Dismissal of proceedings

Motion to dismiss – Plenary proceedings seeking declaration of entitlement to make application for subsidiary protection – Interlocutory injunction restraining deportation – Failure to challenge deportation order – Application for revocation of deportation order non-suspensive – Whether reliefs sought would, if granted, amount to collateral attack on deportation order – Whether object or effect of proceedings questioned validity of measure which could only be questioned under judicial review – Nawaz v Minister for Justice, Equality & Ors [2012] IESC 58, (Unrep, SC, 29/11/2012) applied – R (Razgar) v Home Secretary [2004] 3 AC 368; Re Article 26 of the Constitution and Sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999 [2000] IR 360; Mekudi Yau v Minister for Justice, Equality and Law Reform and Governor of Cloverhill Prison [2005] IEHC 360, (Unrep, O'Neill J, 14/10/2005) and Lelimo v Minister for Justice [2004] IEHC 165, [2004] 2 IR 178 considered – O'Donnell v Dun Laoghaire Corporation [1991] ILRM 301 followed – Rules of the Superior Courts 1986 (SI 15/1986), O 84 – Refugee Act 1996 (No 17), s 5 – Immigration Act 1999 (No 22), ss 3 and 5 – Illegal Immigrants (Trafficking Act) 2000 (No 29), s 5 – European Convention on Human Rights 1950, art 8 – Proceedings struck out (2013/4086P – MacEochaidh – 9/5/2013) [2013] IEHC 206
O(F) v Minister for Justice and Equality

Leave to appeal

Application for certificate of leave to appeal to Supreme Court – Leave to seek judicial review refused – Decision refusing planning permission – Consideration of finding not yet of legal effect in decision making process – Point not raised in pleadings but in course of legal argument – Failure to apply for leave to amend pleadings – Whether point could be considered by court where not raised in pleadings – Whether point of exceptional public importance – Whether lack of fair procedures – Whether desirable in public interest to determine point – Glancré Teoranta v An Bord Pleanála [2006] IEHC 250, (Unrep, MacMenamin J, 13/7/2006); Urrinbridge v An Bord Pleanala [2011] 400 IEHC, (Unrep, MacMenamin J, 28/10/2011); Roadstone Provinces Ltd v Wicklow County Council [2008] IEHC 210, (Unrep, Finlay Geoghegan J, 4/07/2008); Harding v Cork County Council [2006] IEHC 450, (Unrep, Clarke J, 30/11/2006); Kenny v An Bord Pleanala [2001] 1 IR 704 and Commission v Ireland (Case C-215/06) [2008] ECR I-04911 – Planning and Development Act 2000 (No 30), ss 5 and 50 – Council Directive 85/337/EEC – Application refused (2011/154JR – Hedigan J – 3/5/2013) [2013] IEHC 92
Shillelagh Quarries Limited v An Bord Pleanala

Legal representation

Appeal against refusal of ex parte application for costs order – Refusal based on departure from fair procedures - Application to appear

as representative or advocate of appellants – Role of McKenzie friend – Right of audience before courts – Exclusive right of counsel to audience – Statutory extension of right to solicitors – Litigants in person – Regulation of counsel and solicitors – Representation of companies – Inherent jurisdiction of court – Whether obligation on court of Member State to permit litigants to be represented by persons other than qualified lawyer – McKenzie v McKenzie [1970] 1 P 33; Collier v Hicks (1831) 2 B & Ad 663; RD v McGuiness [1999] 2 IR 411; In the matter of the Solicitors (Ireland) Act and in the matter of an application by Sir James O'Connor [1930] 1 IR 623; RB v AS [2002] 2 IR 428; Abse and Others v Smith [1986] 2 WLR 322; Battle v Irish Art Promotion Centre Ltd [1968] 1 IR 252; Tritonia Ltd v Equity and Law Life Assurance Society [1943] 1 AC 584; Re GJ Mannix Ltd [1984] 1 NZLR 309; PMLB v PHJ (Unrep, Budd J, 5/5/1992) and Coffey v Tara Mines Limited [2007] IEHC 249, [2008] 1 IR 436 considered – Courts Act 1971 (No 36), s 17 – Statute of the Court of Justice, art 19 – Rules of Court of the European Court Human Rights, r 36 -

Application rejected (451, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 464 & 498/2012 – SC – 26/2/2013) [2013] IESC 11

Re Applications for Orders in Relation to Costs in Intended Proceedings by Coffee and Ors

Non-suit

Appeal from decision to grant non-suit – Solicitor's negligence – Loan transaction to carry out works to house –Transfer of house to joint names – Sale of house – Manner in which cheque made out – Mental capacity to understand advice – Illiterate – Motion seeking order pursuant to inherent jurisdiction of court dismissing appeal as abuse of process or on grounds that bound to fail – Legal test in non-suit applications – Whether trial judge erred in failing to assess case at highest – Whether prima facie case – Whether evidence from which negligence could be inferred – Whether trial judge erred in failing to consider report – Whether prima facie evidence of vulnerability – Whether trial judge failed to have due regard for evidence – Hetherington v Ultra Tyre Services Ltd [1993] 2 IR 535; O'Toole v Heavy [1993] IR 544; O'Donovan v Southern Health Board [2001] 3 IR 385; Schuit v Mylotte [2010] IESC 56, (Unrep, SC, 18/11/2010) and Hay v O'Grady [1992] 1 IR 210 considered – Civil Liability Act 1961 (No 41), ss 17(2) and 35(1)(h) – Appeal allowed; motion struck out (483/2011 – SC – 19/6/2013) [2013] IESC 30

Murphy v Beauchamps

Particulars

Further and better particulars – Personal injury proceedings – Pleadings – Object of particulars – Relevance and necessity – Whether extent to provide particulars in personal injury cases affected by Civil Liability and Courts Act 2004 – Whether particular related to matter in pleading – Cooney v Browne [1985] IR 185; [1985] ILRM 673; Coyle v Hannan [1974] NI 160; McGee v O'Reilly [1996] 2 IR 229 and Mahon v Celbridge Spinning Co Ltd [1967] IR 1 considered - Doyle v Independent Newspapers (Ireland) Ltd [2001] 4 IR 594 applied - Rules of the Superior Courts 1986 (SI 15/1986), O 19, r 7(1) – Civil Liability and Courts Act 2004 (No 31), ss 10, 11, 13(1) and 14 – Majority of particulars disallowed (2011/4081P – Hogan J – 28/3/2013) [2013] IEHC 148

Armstrong v Moffatt

Preliminary issue

Application for trial of preliminary issue – Point of law – Whether duty of care owed by An Garda Síochána in relation to investigation of complaint – Tort – Negligence – Facts in dispute – Concession of facts for purpose of issue – Saving of court time and costs – Whether necessary that determination of preliminary point would bring proceedings to end – Exceptional case – Whether statute barred – Whether res judicata – Kilty v Hayden [1969] IR 261; Murray v Fitzgerald [2009] IEHC 101, (Unrep, MacMenamin J, 27/2/2009); Tritton Development Fund Ltd v Markin AG [2007] IEHC 21, (Unrep, Dunne J, 12/2/2007); Nyembo v Refugee Appeals Tribunal [2007] IESC 25, [2008] 1 ILRM 289; Emma Silver Mining Company v Grant [1879] 11 Ch D 918; Tara Mines v Minister for Industry and Commerce [1975] IR 242 considered - Rules of the Superior Courts 1986 (SI 15/1986), O 25, r 1, O 34, r 2, O 36, r 7 and 9 – Application granted (2002/15244P & 2003/15671P – Peart J – 16/5/2013) [2013] IEHC 209

Smyth v Commissioner of An Garda Síochána

Reconstitution of proceedings

Rule in Henderson v Henderson – Discretionary jurisdiction to bar reconstitution – Ultimate aim of discretion – Entitlement of plaintiff to reconstitute proceedings – Whether rule in Henderson v Henderson depriving court of jurisdiction to permit reconstitution – Whether reconstitution barred where no adjudication made on underlying merits of claim –

McFarlane v Director of Public Prosecutions [2008] IESC 7, [2008] 4 IR 117 and SM v Ireland [2007] IESC 11, [2007] 3 IR 283 applied - Johnson v Gore Wood & Co [2002] 2 AC 1 followed - AA v Medical Council [2003] 4 IR 302; [2004] 1 ILRM 372; Ashcoin Limited (in creditors' voluntary liquidation) v Moriarty Holdings Limited [2012] IEHC 365, (Unreported, Hogan J, 31/7/2012); Henderson v Henderson (1843) 3 Hare 100 and Re Vantive Holdings [2009] IESC 69, [2010] 2 IR 118 considered – Application granted (2008/2471S – Hogan J – 16/1/2013) [2013] IEHC 8

Ashcoin Ltd (in liquidation) v Moriarty Holdings Ltd

Security for costs

Application for security for costs - Limited company - Proceedings arising from supply of stone allegedly containing pyrite – Onus on defendant to show prima facie defence – Whether court satisfied plaintiff would be unable to pay costs –Whether prima facie defence – Nature of prima facie defence – Whether content of affidavits matters of assertion – Tribune Newspapers (in receivership) v Associated Newspapers Limited (Unrep, Finlay Geoghegan J, 25/3/2011) – Companies Act 1963 (No 33), s 390 – Application refused (2010/758P – Gilligan J – 12/11/2013) [2013] IEHC 525

Marchbury Properties Limited v Murphy Concrete (Manufacturing) Limited

Security for costs

Appeals to Supreme Court – Orders for security for costs – Fixing of amount of security by Master of High Court – Appeal against ruling of Master – Whether High Court had jurisdiction to hear appeal – Whether appeal should be referred directly to Supreme Court – Whether amount fixed reasonable – Non-corporate litigant – One third rule -

Rules of the Superior Courts (SI 15/1986), O 63, r 9 and O 125, r 1 – Appeal allowed and amount of security fixed (2003/9017P, 2003/9018P, 2003/18785P, 2005/272S, 2005/1850P, 2005/2463P and 2006/379SP – Gilligan J – 31/5/2013) [2013] IEHC 370

Moorview Developments Limited v First Active plc

Set aside

Motion to set aside order of Supreme Court – Appeal struck out for failure to disclose stateable cause of action – Setting aside order of Supreme Court – Established criteria for setting aside – Alleged denial of fair procedures – Litigant in person - Refusal of adjournment to obtain legal advice regarding identification of grounds of appeal – Motion to discharge lis pendens – Greendale Developments Ltd (in liquidation) [2000] IR 514; Bula Ltd v Tara Mines Ltd (No 6) [2000] 4 IR 412; People (Director of Public Prosecutions) v McKevitt [2009] IESC 29 (Unrep, SC, 26/3/2009) – Motion refused (29/2011 – SC – 12/6/2013) [2013] IESC 26

Kennedy v Harrahill

Set aside

Summary summons – Judgment in default of appearance – Delay – Whether explanation furnished for failure to enter appearance – Whether defendant as practising solicitor ought to have known consequences of failure to enter appearance – Whether evidence furnished giving rise to jurisdiction to set aside judgement – Whether evidentiary basis of valid and bona fide defence to proceedings – Whether application grounded on vague queries concerning accuracy of figures in support of judgment – Whether lapse of time exceptional and wholly unexplained – Rules of the Superior Courts 1986 (SI 15/1986), O 13, r 11 – Application to set aside refused (2009/5405S – Cooke J – 4/11/2013) [2013] IEHC 560

FCR Media Ltd v Farrell

Set aside

Motion to set aside where party did not appear at trial – Application to extend time – Application to set aside pursuant to inherent jurisdiction of court – Mental capacity – Judgment for damages arising from sexual abuse – Whether element of mistake or surprise about cases being listed – Whether real prospect of success for party applying to set aside – Whether appropriate to set aside judgment pursuant to O 36, r 33 – Whether exceptional circumstances arising from conduct of proceedings by court – Whether alternative remedy of appeal available such as to render it inappropriate to exercise inherent jurisdiction – Whether cognitive ability impaired to extent of insufficient understanding of nature, extent and consequences of decisions made for litigation at relevant time – Schafer v Blyth [1920] 3 KB 140; Wise v Swami Omkarananda (Unrep, Popplewell J, 21/2/1985); Hayman v Rowlands [1957] 1 All ER 321; Shocked and Another v Goldschmidt and Another [1994] Times (4/11/1994); In Re Greendale Developments Limited (No 3) [2000] 2 IR 514; Bula Limited v. Tara Mines Limited (No 6) [2000] 4 IR 412; Desmond v Moriarty [2012] IEHC 202, (Unrep, Dunne J, 17/2/2012); LP v MP [2002] 1 IR 219; People (DPP) v McKevitt [2009] IESC 29, (Unrep, SC, 26/3/2009); Talbot v McCann Fitzgerald [2009] IESC 25, (Unrep, SC, 26/3/2009); Bank of Scotland (Ireland) Limited v Mannion [2010] IEHC 419, (Unrep, Laffoy J, 18/11/2010); Hay v O'Grady [1992] 1 IR 210; O'Connor v Dublin Bus [2003] 4 IR 459; Cooper Flynn v RTE (Unrep, SC, 28/4/2004); Wiszniewsky v Central Manchester Health Authority [1998] PIQR 324; Fyffes Pic v DCC plc [2005] IEHC 477, [2006] IEHC 32, [2007] IESC 36, [2009] 2 IR 417; Masterman-Lister v Brutton and Company (Nos 1 and 2) [2003] 1 WLR 1511; Fitzpatrick v KF [2008] IEHC 104, [2009] 2 IR 7; Dunhill v Burgen (No 2) [2012] EWHC 3163 (QB), [2012] 1 WLR 3739; Presho v Doohan [2009] IEHC 631, (Unrep, Murphy J, 29/4/2009) considered – Rules of the Superior Courts 1986 (SI 15/1986) O 36, r 33 and O 58, r 7 – Courts of Justice Act 1936 (No 48), s 39 – Constitution of Ireland 1937, Art 34.4.6° – Applications to set aside refused (2004/19859P and 2004/19860P – Dunne J – 25/10/2013) [2013] IEHC 523
Nolan v Carrick

Strike out

Delay – Right of access to courts – Right to have proceedings determined in reasonable time – Professional negligence claim – Alleged failure to process personal injury claim in Spanish courts within time – Whether proceedings should be struck out for undue delay – Delays in furnishing particulars and making discovery – Proceedings commenced within time – Whether ability to defend proceedings significantly compromised – Whether delay inordinate – Whether delay excusable – Balance of justice – Primor plc v Stokes Kennedy Crowley [1996] 2 IR 459 applied - Adamson v North Eastern Health Board [2013] IEHC 191, (Unrep, Hogan J, 19/4/2013); McBrearty v North Western Health Board [2010] IESC 27, (Unrep, SC, 10/5/2010) and II v JJ [2012] IEHC 327, (Unrep, Hogan J, 5/7/2012) considered – Motion adjourned to allow plaintiff apply for hearing date (2005/3112P – Hogan J – 9/5/2013) [2013] IEHC 391
Casserly v O'Connell

Strike out

Failure to disclose cause of action – Proceedings alleging breach of covenant and seeking recovery of possession of lands – Alleged absence of privity of contract – Alleged failure to serve forfeiture notice – Allegation that claim statute barred – Jurisdiction to strike out – Mitchell v Ireland [2005] IEHC 102, (Unrep, Hanna J, 18/3/2005) considered – Rules of the Superior Courts (SI 15/1986), O 19, r 28 – Proceedings struck out (2008/4749P – Moriarty J – 17/12/2012) [2012] IEHC 608
Looney v Punch Holdings

Strike out

Proceedings arising out of alleged failure to process arbitration of claim for illness pension - Application for orders striking out proceedings - Alleged failure to disclose cause of action – Claim that proceedings bound to fail – Claim that proceedings abuse of process – Alleged delay – Arbitration process in existence – Impermissibility of bringing parallel proceedings in court - Whether delay inordinate and inexcusable – Prejudice - Henderson v Henderson (1843) 3 Hare 100; Barry v Buckley [1981] IR 306; Riordan v Ireland [2001] 4 IR 463; Primor plc v Stokes Kennedy Crowley [1996] 2 IR 459; Aer Rianta cpt v Ryanair Ltd [2004] IESC 23, [2004] 1 IR 506 and Lawlor v Ross (Unrep, SC, 22/11/2001) considered – Rules of the Superior Courts (SI 15/1986), O 19, r 28 – Claim struck out (2010/8021P – Ryan J – 8/11/2013) [2013] IEHC 513
Murray v Irish National Insurance Public Limited

Strike out

Motion to strike out for no reasonable cause of action – Application for interlocutory injunction restraining first and second defendants from dealing with shares in third defendant and from reducing assets below present value of plaintiff's investment – Security on loan – Registration of notice as to stock – Actual notice – Constructive trust – Creation of equitable charge through promise to pay out of particular fund – Whether established that no reasonable prospect that plaintiff could succeed if case proceeded to hearing – Whether plaintiff entitled to interlocutory orders in respect of third defendant's shares – Barry v Buckley [1981] IR 306; Rogers v Michelin Tyre Plc [2005] IEHC 294, (Unrep, Clarke J, 28/6/2005); McKillen v Misland (Cyprus) Investments Ltd & Others [2013] EWCA Civ 781; Barry v Buckley [1981] IR 306; Tett v Phoenix Property and Investments Company Ltd [1986] BCLC 149; Re Claygreen Ltd [2005] EWHC 2032 (CH); Re Champion Publications Ltd (Unrep, Blayney J, 4/6/1991); HKN Invest Oy v Incotrade PVT Ltd [1993] 3 IR 152; Kelly v Cahill [2001] 1 IR 56; In Varko Ltd (In Liquidation) [2012] IEHC 278, (Unrep, Gilligan J, 3/2/2012); Eves v Eves [1975] 1 WLR 1338 and Fitzpatrick v DAF Sales [1988] 1 IR 464 considered – Rules of the Superior Courts 1986 (SI 15/1986) O 19, r 28 – Companies Act 1963 (No 33), s 123 – Motion to strike out dismissed; order granted restraining payment or other distribution or disposal of proceeds of sale of shares in third defendant until hearing of action otherwise than (a) on notice to plaintiff and (b) with his consent (2013/6852P – Ryan J – 31/10/2013) [2013] IEHC 489
Anderson v Finavera Wind Energy Inc

Strike out

Motion to strike out appeal of second and third appellant as nullity – Appeal of order striking out proceedings for inordinate and inexcusable delay – Liquidator – Requirement of consent of liquidator for legal action of company in voluntary liquidation – Creditors' resolution in favour of continuation of appeal – Supervisory jurisdiction of High Court over companies under the Companies Acts – Whether liquidator had given consent for appeal – Whether appropriate to allow opportunity to invoke supervisory jurisdiction of High Court to allow appeals to proceed lawfully – Framus Limited and Others v CRH plc and Others [2012] IEHC 316, (Unrep, Cooke J, 19/7/2012) and Re Amantiss Enterprises Ltd [2013] IEHC 21, (Unrep, Laffoy J, 22/1/2013) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 58, r 8 – Companies Act 1963 (No 33), s 309 – Appeals of second and third appellants struck out with stay of three months on order (445/2012 – SC – 14/5/2013) [2013] IESC 23
Framus Ltd v CRH Plc

Summary judgment

Loan – Trial of issues – Previous finding of no fiduciary relationship – Pleadings – Pleading requirements – Defence and counterclaim – Amount of interest – Wrongful interest rate – Wrongful conduct – Breach of trust and confidence – Equitable fraud – Misrepresentation – Prayer for relief – Whether entitled to judgment without trial of further issues – Whether issues remained to be determined – Whether matter pleaded – Whether court could determine on evidence amount to which plaintiff entitled – Whether matters pleaded predicated on existence of fiduciary relationship – Whether dispute determined by earlier judgment – Whether defence existed – Irish Bank Resolution Corporation Ltd v Morrissey [2013] IEHC 208, (Unrep, Finlay Geoghegan J, 14/5/2013); Croke v Waterford Crystal Ltd [2004] IESC 97, [2005] 2 IR 383; Keaney v Sullivan [2007] IEHC 8, (Unrep, Finlay Geoghegan J, 16/1/2007); Forshall v Walsh and Bank of Ireland (Unrep, Shanley J, 18/6/1997) and McCaughey v Irish Bank Resolution

Corporation Ltd [2013] IESC 17, (Unrep, SC, 13/3/2013) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 19, r 5(2) and O 63A, r 5, 6 and 14 – Irish Bank Resolution Corporation Act 2013 (No 2) – Council Directive 2001/24/EC – Counterclaim dismissed; trial of issue ordered (2011/1548S & 2011/86COM – Finlay Geoghegan J – 12/11/2013) [2013] IEHC 506
Irish Bank Resolution Corporation Ltd v Morrissey

Summary judgment

Guarantee – Promissory estoppel – Whether agreement of defendant to use best endeavours to procure payment of third party debts sufficient to estop plaintiff from seeking summary judgment – Whether reliance placed upon representations – Whether defendant acted to detriment – Whether unjust or inequitable to permit plaintiff to seek summary judgment – Whether arguable defence raised – Whether guarantees enforceable – Whether agreement to use best endeavours capable of binding parties – Whether fair or reasonable probability of establishing real or bona fide defence – Doran v Thompson Ltd [1978] IR 223; Ryan v Connolly [2001] 1 IR 627; Industrial Yarns Ltd v Greene [1984] ILRM 15; Daly v Minister for Marine [2001] 3 IR 513; McGuinness v McGuinness (Unrep, Kinlen J, 19/3/2002); Danske Bank v Durkan New Homes [2010] IESC 22, (Unrep, SC, 22/4/2010); Aer Rianta Cpt v Ryanair Ltd [2001] 4 IR 607; McGrath v O'Driscoll [2006] IEHC 195, [2007] 1 ILRM 203 and First National Bank v Anglin [1996] 1 IR 75 applied – Walford v Miles [1992] 2 AC 128 distinguished – Rules of the Superior Courts 1985 (SI 15/1986), O 37 – Summary judgment granted (2013/1388S & 2013/97COM – McGovern J – 11/9/2013) [2013] IEHC 420
Bank of Scotland plc v Kennedy

Summary summons

Master of the High Court – Jurisdiction – Contested or uncontested case – Whether Master having jurisdiction to strike out summary summons in contested case – Whether filing of affidavit disputing plaintiff's claim rendering case contested – ACC Bank plc v Tobin [2012] IEHC 348, (Unrep, Laffoy J, 27/7/2012) and Grace v Molloy [1927] IR 405 considered -Rules of the Superior Courts 1986 (SI 15/1986), O 37, rr 1, 2, 3, 4 and 6 – Appeal allowed (2011/2085S – Hogan J – 4/11/2013) [2013] IEHC 557
ACC Bank plc v Heffernan

Time limits

Appearance – Time limits – Extension of time – Jurisdiction – Statutory appeal – Statutory interpretation – Rules of court – Whether rule of court mandating entry of appearance within specified time ousted jurisdiction to extend time – Whether general provision of rules of court permitting extension of time – In re MJBCH Ltd (In liquidation) [2013] IEHC 256, (Unrep, Finlay Geoghegan J, 15/4/2013) and Dunmanus Bay Mussels Ltd v Aquaculture Licences Appeals Board [2013] IEHC 214, (Unrep, Hogan J, 10/5/2013) applied – White v Dublin City Council [2004] IESC 35, [2004] 1 IR 545; Blehein v Minister for Health [2008] IESC 40, [2009] 1 IR 275; Cooke v Walsh [1984] IR 710; Mulcreevy v Minister for the Environment [2004] IESC 5, [2004] 1 IR 72 and O'Higgins v Labour Court [2013] IEHC 508, (Unrep, Cooke J, 8/11/2013) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 12, r 2A, O 84C and O 122, r 7 – Protection of Employees (Fixed Term Work) Act 2003 (No 29), ss 2, 14 and 15 – Illegal Immigrants (Trafficking) Act 2000 (No 29), s 5 – Companies Act 1963 (No 33), s 222 – Constitution of Ireland 1937, Art 15 – Time for entry of appearance extended (2013/123MCA – Hogan J – 9/9/2013) [2013] IEHC 432
Gokul v Aer Lingus plc

Time limits

Appeal - Supreme Court – Time limits – Extension of time – Test to be applied – Objective bias – Whether unusual circumstances giving rise to application for extension of time to appeal – Whether party becoming aware of facts giving rise to appeal outside of time to appeal – Whether reasonable to expect party to engage in further inquiry following High Court hearing – Whether arguable grounds of appeal – Whether applicant placed upon further inquiry following disclsoure by trial judge of financial interest in party – Whether evolution in jurisprudence subsequent to hearing giving rise to entitlement to extension of time to appeal – Framus Ltd v CRH plc [2013] IESC 23, (Unrep, SC, 14/5/2013), Goode Concrete v Cement Roadstone Holdings plc [2011] IEHC 15, (Unrep, Cooke J, 20/1/2011), Goode Concrete v CRH plc [2012] IEHC 116, (Unrep, Cooke J, 21/3/2012), Goode Concrete v CRH plc [2012] IEHC 198, (Unrep, Cooke J, 15/5/2012), Mavior v Zerko Ltd [2013] IESC 15, [2013] 2 ILRM 167, Éire Continental Trading Co v Clonmel Foods [1955] IR 170, Brewer v Commissioners for Public Works [2003] 3 IR 539, Smith v. Kvaerner Cementations Foundations Ltd [2006] EWCA Civ 242, [2006] 3 All ER 593 considered – Extension of time granted for one ground only (2012/579, 2012/580 & 2012/581 – SC – 10/10/2013) [2013] IESC 39
Goode Concrete v CRH plc

Articles

Fitzpatrick, Stephen
Extension of time to appeal where the test in Éire Continental cannot be satisfied
2014 (32) (16) Irish law times 232

Kavanagh, David
McKenzie friends and the right of audience before a court
19 (3) 2014 Bar Review 50

Statutory Instruments

Rules of the Superior Courts (case stated) 2014
SI 293/2014

Supreme Court and High Court (fees) order 2014
SI 24/2014

PRISONS

Detention

Legality – Regime of treatment – Fair procedures – Authorised structured activities – Communal recreation – Education – Visitation – Mootness – Whether proceedings rendered moot by subsequent actions of prison governor – Whether issues in proceedings continuing to affect or potentially to affect prisoner – Whether restrictions placed on prisoner constituting unjust deprivation of rights – Whether failure by prison authorities to monitor and supervise prisoner following restriction of rights – Whether failure by prison governor to invoke formal rule – Whether breach of constitutional rights – O'Brien v Personal Injuries Assessment Board [2006] IESC 62, [2007] 1 IR 328 and Devoy v Governor of Portlaoise Prison [2009] IEHC 288, (Unrep, Edwards J, 22/6/2009) applied – McDaid v Sheehy [1991] 1 IR 1; Murphy v Roche [1987] IR 106; Goold v Judge Collins [2004] IESC 38, [2005] 1 ILRM 1; Borowski v Canada [1989] 1 SCR 342; PV (a minor) v Courts Service [2009] IEHC 321, [2009] 4 IR 264 and Salaja v Minister for Justice [2011] IEHC 51, (Unrep, Hogan J, 10/2/2011) considered – Prison Rules 2007 (SI 252/2007), r 62 – Limited relief granted (2012/647JR – O'Malley J – 3/12/2013) [2013] IEHC 608
Dundon v Governor of Cloverhill Prison

Library Acquisitions

Rogan, Mary
Prison law
Dublin : Bloomsbury Professional, 2014
M650.C5

Statutory Instruments

Prison (amendment) rules 2014
SI 227/2014

Saint Patricks Institution partial closing order 2014
SI 85/2014

PRIVATE SECURITY

Statutory Instruments

Private security (licensing and standards) (security guard monitoring) regulations 2014
SI 190/2014

Private Security Services Act 2004 (commencement) order 2014
SI 191/2014

PROFESSIONS

Medical profession

Application to quash decision of admonishment and findings of poor professional performance – Paediatric

surgeon – Frenulum release procedure – Writing error in notes – Fitness to practice committee – Definition of 'poor professional performance' – Threshold – Adequacy of reasons – Fair procedures – Hospital systems failure – No appeal mechanism – Whether error amounted to poor professional performance – Whether error in interpretation of poor professional practice – Whether error causative of damage – Whether findings and sanctions irrational – Whether failure to give reasons – Whether breach of fair procedures – R (on the application of Calhaem) v The General Medical Council [2007] EWHC 2606, [2007] All ER (D) 300 (Oct); Krippendorf v General Medical Council [2001] 1 WLR 1054; O'Laoire v Medical Council (Unrep, Keane J, 27/1/1995); Meadows v Minister for Justice Equality and Law Reform [2010] IESC 3, [2010] 2 IR 701; Efe v Minister for Justice [2011] IEHC 214, [2011] 2 IR 798; O'Keeffe v An Bord Pleanála [1993] 1 IR 39; Prendiville v Medical Council [2007] IEHC 427, [2008] 3 IR 122; McManus v Medical Council [2012] IEHC 350 (Unrep, Kearns P, 14/8/2012) and Brennan v An Bord Altranais [2010] IEHC 193 (Unrep, Dunne J, 20/5/2010) considered – Rules for the Maintenance of Professional Competence (No 2) (SI 741/2011) – Medical Practitioners Act 2007 (No 25), ss 2, 69, 70, 71, 74 and 91(1) – European Convention on Human Rights Act 2003 (No 20), s 5 – Medical Practitioners (Amendment) Act 2011 (No 12), ss 12 and 17 – Medical Practitioners Act 1978 (No 4) – Certiorari granted (2012/1028JR – Kearns P – 14/11/2013) [2013] IEHC 500
Corbally v Medical Council

Solicitors

Claim against solicitor – Appeal – Right to fair trial – Undue influence – Coercion – Collaboration with senior counsel – Separate action alleging professional negligence – Evidence given by senior counsel on behalf of solicitor – Absence of evidence of coercion – Conspiracy – Function of court on appeal – Findings of fact – Inferences – Whether improper conduct sufficient to establish cause of action – Whether improper conduct undermined right to fair trial – Whether findings of fact should be disturbed – Whether trial judge correctly applied law to facts – Whether inferences from circumstantial evidence reasonably based on findings of fact – Whether cogent evidence before trial judge to support inferences and findings – Burden of proof – Application to admit new evidence – Comments of judge on nature of case – Fallon v Gannon [1988] ILRM 193; Park Hall School Ltd v Overend [1987] ILRM 345; McMullen v Clancy [1999] IEHC 37, (Unrep, McGuinness J, 3/11/1999); McMullen v Clancy (No2) [2005] IESC 10, [2005] 2 IR 445; Hay v O'Grady [1992] IR 210 and Northern Bank Finance Ltd v Charlton [1979] IR 149 considered – Appeal dismissed (85/2012 – SC – 13/6/2013) [2013] IESC 29
McMullen v Kennedy

PROPERTY

Articles

Heslin, Mark
Lis pendens-an analysis
2014 19 (3) Conveyancing and property law journal 58

PUBLIC PROCUREMENT

Tender

Contract for provision of services – Minimum requirements – Whether reference to incorrect tendering entity giving rise to ground for challenge – Time limits – Date of knowledge – Whether challenge to tender out of time – Culpability – Extension of time – Whether court ought to extend time – Award criteria – European Union law – Transparency – Equal treatment – Whether failure to disclose award criteria in tender – Whether distinction between treatment of Annex IIA and Annex IIB tenders in European Directive – Whether manifest or clear error in scoring of award criteria – Whether respondent entitled to score applicant's tender in manner done – Whether breach of principles of transparency and equal treatment – Whether respondent applied undisclosed criteria to tender process – Whether respondent ought to have clarified apparent ambiguity in tender – Whether formal error in tender – SIAC Construction Ltd v National Roads Authority [2004] IEHC 128, (Unrep, Kelly J, 16/7/2004); Veolia Water UK plc v Fingal County Council (No 1) [2006] IEHC 137, [2007] 1 IR 690; Jobsin Co UK plc v Department of Health [2002] 1 CMLR 44; Uniplex (UK) Ltd v NHS Business Services Authority (Case C-406/08) [2010] ECR I-817; Easycoach Ltd Department for Regional Development [2012] NIQB 10; ATI EAC Srl v ACTV Venezia sPa (Case C331/04) [2005] ECR I-154; Tideland Signal Ltd v Commission (Case T-211/02) [2002] ECR I-3781; Commission v Ireland [2010] ECR I-11807; Telaustria Verlags GmbH v Telekom Austria [2001] ECR I-10745; Strong Seguranca SA v Municipio de Sintra (Case C-95/10) [2011] ECR I-1865; Release Speech Therapy Ltd v HSE [2011] IEHC 47, (Unrep, McMahon J, 18/2/2011); Dekra Éireann Teoranta v Minister for Environment [2003] 2 IR 270; Commission v Ireland [2010] ECR I-859; SIAC Construction v Mayo County Council [2001] ECR I-7725 and Fresenius Medical Care (Ireland) Ltd v Health Service Executive [2013] IEHC 414, (Unrep, Peart J, 16/7/2013) considered – Rules of the Superior Courts 1986 (SI 15/1986), O 84 & 84A – European Communities (Award of Public Authorities' Contracts) Regulations 2006 (SI 329/2006), reg 47 – European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (SI 130/2010), regs 7 and 8 – Review of Award of Public Contracts (SI 420/2010) – Directive 2004/18/EEC, arts 23, 35, 41 and Annex II – Proceedings dismissed (2012/287JR – Peart J – 16/7/2013) [2013] IEHC 413
Baxter Healthcare Ltd v Health Service Executive

Tender

European union – Eligible persons – Whether applicant having standing to challenge award of public contract – Whether entity which had not submitted tender entitled to challenge award of contract – Whether allegedly discriminatory specifications in tender constituting reason for plaintiff's failure to submit tender – Whether contract award notice in compliance with Regulations – Minister – Powers – Circular – Whether ministerial circular unlawfully amending tender – Whether circular mandated all public authorities to use services based upon outcome of tender – Whether applicant would have submitted tender if circular issued prior to tender – Time limits – Whether challenge to validity of circular brought within time – Whether circular having continuing effects on applicant – Grossman Air Service v Austria (Case C-230/02) [2004] ECR I-1829 and Ryanair v Minister for Transport [2009] IEHC 171, (Unrep, Finlay Geoghegan J, 2/4/2009) applied – McGowan v Labour Court [2013] IESC 21, (Unrep, SC, 9/5/2013) and Shell (E&P) Ireland Ltd v McGrath [2013] IESC 1, (Unrep, SC, 22/1/2013) considered – Lammerzahl GmbH v Freie Hansestadt Bremen (Case C-241/2006) [2007] ECR I-8415 distinguished – Rules of the Superior Courts 1985 (SI 15/1986), O 84 and O 84A – Circular 60/12 Public Procurement (Framework Agreements) – European Communities (Award of Public Authorities' Contracts) Regulations 2006 (SI 329/2006) – European Communities (Award of Public Authorities' Contracts) (Review Procedures) Regulations 2010 (SI 130/2010), art 4 – State Authorities (Development and Management) Act 1993 (No 1) – Commissioners of Public Works (Functions and Powers) Act 1996 (No 3) – Directive 89/605/EEC – Directive 07/66/EC – Relief granted (2012/918JR – Hogan J – 29/5/2013) [2013] IEHC 230
Copymoore Ltd v Commissioners of Public Works in Ireland

Tender

Contract for provision of services – Award criteria – Transparency – Equal treatment – European Union law – Whether distinction between treatment of Annex IIA and Annex IIB tenders in European Directive – Standard of review – Margin of appreciation – Manifest or clear error – Whether principles of transparency and equal treatment under European Union law applicable to impugned tender process – Whether manifest of clear error in scoring of award criteria – Whether respondent entitled to score tender in manner done – Whether breach of principles of transparency and equal treatment – Clare Civil Engineering Ltd v Mayo County Council [2004] IEHC 135 (Unrep, Ó Néill J, 9/7/2004) approved – AP v DPP [2011] IESC 2, [2011] 1 IR 729; Dekra Éireann Teoranta v Minister for Environment [2003] 2 IR 270, Commission v Ireland [2009] ECR I-225; Commission v Ireland [2010] ECR I-11807; Commission v Denmark [1993] ECR I-3353; Commission v Belgium [1996] ECR I-2043;

Release Speech Therapy Ltd v HSE [2011] IEHC 47, (Unrep, McMahon J, 18/2/2011); Strong Seguranca SA v Municipio de Sintra (Case C-95/10) [2011] ECR I-1865 and Telaustria Verlags GmbH v Telekom Austria [2001] ECR I-10745 considered – SIAC Construction v Mayo County Council [2001] ECR I-7725 distinguished in part – Rules of the Superior Courts 1986 (SI 15/1986), O 84 & 84A – European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (SI 130/2010), reg 7 – Directive 89/665/EEC – Directive 2004/18/EC on Consolidated Public Procurement, arts 23, 35 and Annex II – Proceedings dismissed (2012/232JR – Peart J – 16/7/2013) [2013] IEHC 414

Fresenius Medical Care (Ireland) Ltd v Health Service Executive

REAL PROPERTY

Charge

Possession – Mortgage – Demand – Whether demand sufficient to render principal monies due – Whether offer to accept instalments or other alternative rendering demand equivocal – Stare decisis – Decision of court of equal jurisdiction – Test to be applied – Whether circumstances permitting departure from decision of court of equal jurisdiction – In re Worldport Ltd (In liquidation) [2005] IEHC 189, (Unrep, Clarke J, 16/6/2005) and GE Capital Woodchester Home Loans Ltd v Reade [2012] IEHC 459, (Unrep, Laffoy J, 12/11/2012) applied – Start Mortgages Ltd v Gunn [2011] IEHC 275, (Unrep, Dunne J, 25/7/2011); EBS Ltd v Gillespie [2012] IEHC 243, (Unrep, Laffoy J, 12/11/2012); In re a Company [1985] BCLC 37; Bank of Baroda v Panessar [1987] Ch 335; NRG Vision Ltd v Churchfield Leasing Ltd [1988] 4 BCLC 56; Wise Finance Co Ltd v Lanigan [2004] IESC 4, (Unrep, SC, 21/1/2004); Brady v DPP [2010] IEHC 231, (Unrep, Kearns P, 23/4/2010) and Irish Trust Bank Ltd v Central Bank of Ireland [1976-77] ILRM 50 considered – Registration of Title Act 1964 (No 16), s 62 – Proceedings dismissed (2009/493SP, 2009/418SP, 2010/878SP & 2010/809SP – Dunne J – 16/5/2013) [2013] IEHC 540

GE Capital Woodchester Home Loans Ltd v Madden

Receiver

Injunction – Application for injunction restraining defendant from interfering with receiver – Application restraining interference with collection of rents from tenants of properties – Validity of appointment – Powers of receivers – Relevance of defendant's case against bank in separate proceedings – Claim against bank for gross negligence and misrepresentation – Allegations of interference with exercise of functions – Criteria for grant of interlocutory injunction – Adequacy of damages – Balance of justice – American Cyanamid v Ethicon [1975] 1 All ER 504 and Campus Oil v Minister for Industry and Energy (No 2) [1983] IR 88 considered – Conveyancing and Law of Property Act 1881 (44 & 45 Vict, c 41), ss 19 and 24 – Orders made (2013/8682P – Laffoy J – 4/9/2013) [2013] IEHC 405

Taite v Quearney

REVENUE

Vehicle registration tax

European law – Open market selling price – Assessment of vehicle value – Discrimination – Calculation of tax applicable to vehicles – Whether system of valuation of vehicles discriminating against imported vehicles in favour of domestic vehicles – Whether system of administration of tax ultra vires – Whether overcharging of tax – Whether residual value of tax diminishing proportionately with depreciation of vehicle – Whether legitimate for Revenue Commissioners to establish fixed scale in relation to make and model of vehicles – Whether operation of vehicle registration tax system secretive and arbitrary – Whether plaintiff required to purchase imported vehicles without knowledge of likely tax rate – Whether plaintiff's business adversely affected by tax system – Jus tertii – Whether plaintiff seeking to advance claim based on assumption or hypothesis – Whether European law prohibition against discrimination in favour of domestic products applicable to non-European Union imports – Whether satisfactory evidence of alleged overvaluation of vehicles – Whether appeals process fair – Whether plaintiff failed to avail of appeals process – Whether legislative basis for vehicle registration tax – Whether administrative action giving rise to recognised tort - Whether system of taxation unreasonable – Whether damage proven – Whether breach of legitimate expectation – Whether principle of proportionality infringed – Whether administration of tax system reasonably transparent – Whether vehicle registration tax comprising unjust attack on constitutional property rights – Nadasi and Nemeth v Vam-es Penzugyorseg Eszak-Alfoldi Regionalis Parancsnoksaga (Cases C-290/05 and C-333/05) [2006] ECR I-10115; Tatu v Statul roman prin Ministerul Finantelor si Economiei (Case C-402/09) [2011] ECR I-2711; Commission v Greece (Case C74/06) [2007] ECR I-7585, Kawala v Gmina Miasta Jaworzna (Case C-134/07) [2007] ECR I-10703; Tivoli v Wurzburg (Case C-20/67) [1968] ECR 199; Simba sPa v Ministero Delle Finanze (Joined cases C-288/90, C-234/90 & C-353/90) [1992] ECR I-3713 and OTO v Ministero della Finanze (Case C-130/92) [1994] ECR I-3281 applied – Kennedy v DPP [2012] IESC 34, (Unrep, SC, 7/6/2012); Madigan v AG [1986] ILRM 136; Norris v AG [1984] IR 36; A v Governor of Arbour Hill Prison [2006] IESC 45, [2006] 4 IR 88; Fazenda Publica v Nunes (Case C-345/93) [1995] ECR I-479; Byrne v Conroy [1998] 3 IR 1; McGrath v McDermott [1988] IR 258; Glencar Explorations plc v Mayo County Council (No 2) [2002] 1 IR 84; Pine Valley Developments v Minister for the Environment [1987] IR 23; Blanchfield v Hartnett [2002] 3 IR 207, Revenue Commissioners v O'Flynn Construction Ltd [2011] IESC 47, (Unrep, SC, 14/12/2011); Revenue Commissioners v Doorley [1933] IR 750; State (Lynch) v Cooney [1982] IR 337; O'Donnell v Dun Laoghaire Corporation [1991] ILRM 301; State (Keegan) v O'Keeffe [1986] IR 642; Quinn Supermarket v AG [1972] IR 1; Browne v AG [1991] 2 IR 58; Lowth v Minister for Social Welfare [1988] 4 IR 321 and Murphy v AG [1982] IR 241 – Motor Distributors Ltd v Revenue Commissioners (Unrep, Kearns J, 2/2/2001) and Brennan v AG [1984] ILRM 355 distinguished – Capital Acquisitions Tax Act 1976 (No 8), s 15 – Finance Act 1992 (No 9), s 133 – Finance (No 2) Act 1992 (No 28), s 9 – Directive 388/77/EC – Constitution of Ireland 1937, Art 40 – Treaty Establishing the European Community 1958, arts 3, 7, 9, 12, 30 and 95 – Treaty on the Functioning of the European Union, art 110 – Proceedings dismissed (1995/1988P – Murphy J – 15/3/2013) [2013] IEHC 128

Used Car Importers of Ireland v Minister for Finance

ROAD TRAFFIC

Statutory Instruments

Road Traffic Act 2014 (section 10(a) and (f)) (commencement) order 2014
SI 345/2014

Road Traffic Act 2014 (sections 1 and 2) (commencement) order 2014
SI 382/2014

Road traffic (construction and use of vehicles) (amendment) (no.2) regulations 2014
SI 253/2014

Road traffic (Licensing Of Drivers) (amendment) (no.2) regulations 2014
SI 381/2014

Road traffic (licensing of drivers) (amendment) regulations 2014
(DIR/2006-126)
SI 326/2014

Road traffic (lighting of vehicles) (amendment) regulations 2014
SI 249/2014

Road traffic (national car test) regulations 2014
(DIR/96-96 [DIR/1996-96], DIR/2003-27, DIR/2009-40, DIR/2010-48)
SI 322/2014

Road traffic (signs) (amendment) regulations 2014
SI 330/2014

Road traffic (traffic and parking) (car clubs and electrically powered vehicles) regulations 2014.
SI 325/2014

Road vehicles (registration and licensing) (amendment) regulations 2014
SI 243/2014

SOCIAL WELFARE

Judicial review

Certiorari - Decision refusing domiciliary care allowance – Proper intelligible and adequate reasons – Requirement of medical examination where difference of medical opinion – Alternative remedy – Whether adequate and identifiable reasons given – Whether difference in medical opinion – Whether statutory appeals mechanism more appropriate route – P(F) v Minister for Justice [2002] I IR 164; MJT Securities Ltd v Secretary of State for the Environment [1998] JPL 138; O'Donoghue v An Bord Pleanála [1991] ILRM 750; Rawson v The Minister for Defence [2012] IESC 26, (Unrep, SC, 1/5/2012); Kenny t/a Denture Express v The Dental Council & Ors [2004] IEHC 105, [2009] 4 IR 321; Howard v Commissioners of Public Works [1994] 1 IR 101; South Bucks District Council v Porter (No 2) [2004] UKHL 33; O'Connor v The Private Residential Tenancies Board [2008] IEHC 205, (Unrep, Hedigan J, 25/6/2008); Nova Colour Graphic Supplies Ltd v The Employment Appeals Tribunal [1987] IR 426 and O'Donnell v Tipperary (South Riding) County Council [2005] IESC 18, [2005] 2 IR 483 considered – Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (SI 142/2007), arts 135(1) and 191(2) – Social Welfare (Consolidated Claims, Payments and Control) (Domiciliary Care Allowance) (Amendment) (No 3) Regulations 2009 (SI 162/2009), arts 3 and 140 – Social Welfare (Appeal) Regulations 1998 (SI 108/1998), arts 14 and 15 – Social Welfare Consolidation Act 2005 (No 26), ss 186, 300, 301, 311 and 318 – Social Welfare and Pensions Act 2008 (No 2), s 15 – Social Welfare (Miscellaneous Provisions) Act 2010 (No 28), s 26 – Application dismissed (2012/1037JR – Hanna J – 25/10/2013) [2013] IEHC 524
M(A) v Minister for Social Protection

Articles

Mannering, Ben
Aye, there's the rub
2014 (June) Law Society Gazette 26

Acts

Social Welfare and Pensions Act 2014
Act No.16 of 2014
Signed on 17th July 2014

Statutory Instruments

Social Welfare and Pensions Act 2013 (sections 13 and 14) (commencement) order 2014
SI 308/2014

Social Welfare (consolidated claims payments and control) (amendment) (no.2) (recovery of certain benefits and assistance) regulations 2014
SI 332/2014

Social welfare (consolidated claims payments and control) (amendments) (no. 3) (discrimination on grounds of age) regulations 2014
SI 369/2014

Social Welfare (Consolidated Contributions And Insurability) (amendment) (no.2) (excepted emoluments and income) regulations 2014
SI 333/2014

Social Welfare (consolidated contributions and insurability) (no.3) (excepted self-employed contributors) regulations 2014
SI 347/2014

SOLICITORS

Articles

O'Rourke, James
The lure of the dark side
2014 (June) Law Society Gazette 34

Travers, Sinead
Howdy partner
2014 (June) Law Society Gazette 42

STATISTICS

Statutory Instruments

Statistics (business expenditure on research and development survey) order 2014
(REG/995-2012)
SI 169/2014

Statistics (carriage of goods and passengers by sea) order 2013
(DIR/2009-42)
SI 90/2014

Statistics (carriage of passengers, freight and mail by air) Order 2013
(REG/437-2003)
SI 91/2014

SUCCESSION

Articles

Keating, Albert
The admissibility of evidence of a conviction for an offence in subsequent inheritance proceedings
2014 19 (3) Conveyancing and property law journal 71

TAXATION

Library Acquisitions

Bober, Lynnette
Bradford, Sarah
Brooks, Caroline
Finance act handbook 2014
Simon's direct tax service
London : LexisNexis UK, 2014
M335

Brennan, Philip
Tax acts 2014
Dublin : Bloomsbury Professional, 2014
M335.C5.Z14

Walton, Kevin
Harper, Lisa-Jane
Tolley's corporation tax 2014-15
2014-15
London : LexisNexis, 2014
M337.2

Smailes, David
Tolley's income tax 2014-15
99th ed
London : LexisNexis, 2014
M337.11

Gunn, Malcolm
Tolley's inheritance tax 2014-15
2014-15
London : LexisNexis, 2014
M337.33

Miller, Alex
Rudling, David
Tolley's value added tax 2014-15
2nd ed
London : LexisNexis Tolley, 2014
M337.45

Brodie, Sean
Dillon, Gabrielle
Mitchell, Frank
Devenney, Kevin
Kennedy, Donal
Value-added tax, finance (no. 2) act 2013
18th ed
Dublin : Irish Tax Institute, 2014
M337.45.C5

Kennedy, Pat
VAT acts 2014
2014 ed
Dublin : Bloomsbury Professional, 2014
M337.45.C5.Z14

Articles

Byrne, Dermot
Forestry Taxation
2014 (2) Irish tax review 84

Cosgrove, Gareth
Ell scheme: How it is working in practice
2014 (2) Irish tax review 76

Harney, Patrick
The winds of change: Recent UK private-client developments
White, Emma
Walter, Sara
2014 (2) Irish tax review 93

Kennedy, Conor
O'Flynn Construction: the need for tax certainty
Phelan, Diarmuid Rossa
2014 (2) Irish tax review 100

Maguire, Tom
Section 811: a revolutionary provision waiting for evolution?
2014 (2) Irish tax review 88

Raine, Michael
Tax accounting: Current and deferred tax
Holt, Oliver
2014 (2) Irish tax review 58

Stone, Amanda
FATCA and the CRS: the global development of financial information reporting
McCleane, Lisa
2014 (2) Irish tax review 68

Walsh, Aoife
UK budget 2014 and non-UK residents
2014 (2) Irish tax review 80

Statutory Instruments

Stamp duty (designation of exchanges and markets) regulations 2014
SI 256/2014

Taxes Consolidation Act 1997 (accelerated capital allowances for energy efficient equipment) (amendment) (no.1) order 2014
SI 208/2014

Taxes (electronic transmission of tax returns by certain PAYE taxpayers) (specified provision and appointed day) order 2014
SI 186/2014

TORT

Misfeasance in public office

Claim for damages arising out of earlier judicial review proceedings – Proceedings seeking prohibition preventing further investigations into allegations of sexual abuse – Order of prohibition refused but finding of breaches of right to fair procedures and natural justice – No challenge to evidence – Conversion to plenary hearing – Malfeasance in public office – Abuse of power – Misrepresentations during investigation – Withholding of material – Delay in investigation – Bias – Malice – Whether conduct amounted to misfeasance in public office – Whether conduct honest attempt to perform public functions – Whether subjective recklessness – Whether targeted malice – General damages – Loss of earnings – Whether failure to mitigate loss – Future loss of earnings – Negligence – Scope of assessment of liability – Breach of duty – Breach of statutory duty – Breach of constitutional rights – Breaches of European Convention on Human Rights – Constitutional tort – Right to good name – Right to earn a livelihood – Right to privacy – Right to reasonable expedition – Common law remedies – Doctrine of res judicata – Whether duty of care – Whether public official could be liable in damages for injury and loss caused by unfair and unlawful acts in course of discharge of public duty – Whether reliance on common law torts – Whether loss – Whether damages could flow only from findings of fact – Whether court entitled to make further findings of fact – W v Ireland (No 2) [1997] 2 IR 141; Lockwood v Ireland [2010] IEHC 430, [2011] 1 IR 374; LN v Commissioner of An Garda Síochána [2011] IEHC 14, [2012] 1 ILRM 132; McDonnell v Ireland [1998] 1 IR 134; Glencar Explorations plc v Mayo County Council [2002] 1 IR 84; Northern Territory v Mengel (1995) 185 CLR 307; An Blascaod Mor Teo v Commissioner of Public Works (No 4) [2003] 3 IR 565; Kennedy v Law Society of Ireland (No 4) [2005] IESC 23, [2005] 3 IR 228; Three Rivers DC v Bank of England (No 3) [2000] 2 WLR 1220; Omega and Leisure Limited v Superintendent Barry [2012] IEHC 23, (Unrep, Clarke J, 12/1/2012) and McQ v Gleeson [1998] 4 IR 84 considered – Child Care Act 1991 (No 17), s 3(1) – Data Protection Act 1988 (No 25), s 2 – Data Protection (Amendment) Act 2003 (No 6), s 3 – European Convention on Human Rights 1950, arts 6, 8 and 13 – Damages awarded (2006/890JR – Ó Néill J – 21/12/2012) [2012] IEHC 591
P(PD) v Health Service Executive

Negligence

Employee – Breach of duty – Personal injury – Contributory negligence – Safety training – Engineering evidence – Whether guilty of negligence – Whether adequate safety training – Whether trolley loaded in unsafe manner – General damages – Pain and suffering – Loss of earnings – Special damages – Award of damages granted with reduction for contributory negligence (2011/1376P – Irvine J – 12/6/2013) [2013] *IEHC 259*
Barry v Dunnes Stores Clonmel (Ltd)

Negligence

Fatal injuries – Death of adult child – Assessment of damages – Solatium – Mental distress – Loss of dependency – Whether services provided by deceased – Whether cost of holidays provided by deceased – Whether grocery bills paid by deceased – Whether cost of foreign property paid by deceased – Whether sums claimed excessive – Regulation 97/2027/EC, reg 5 – Damages assessed (2010/9466P – Irvine J – 6/11/2013) [2013] IEHC 567
Ivanova v Societé Air France

Negligence

Employee – Breach of duty – Personal injury – Contributory negligence – Safety training – Engineering evidence – Whether guilty of negligence – Whether adequate safety training – Whether trolley loaded in unsafe manner – General damages – Pain and suffering – Loss of earnings – Special damages – Award of damages granted with reduction for contributory negligence (2011/1376P – Irvine J – 12/6/2013) [2013] IEHC 259
Barry v Dunnes Stores Clonmel (Ltd)

Negligence

Fatal injuries – Death of adult child – Assessment of damages – Solatium – Mental distress – Loss of dependency – Whether services provided by deceased – Whether cost of holidays provided by deceased – Whether grocery bills paid by deceased – Whether cost of foreign property paid by deceased – Whether sums claimed excessive – Regulation 97/2027/EC, reg 5 – Damages assessed (2010/9466P – Irvine J – 6/11/2013) [2013] IEHC 567
Ivanova v Societé Air France

Personal injuries

Medical negligence – Liability – Balance of probabilities – Medical treatment – Medical advice – Whether plaintiff warned not to take two drugs in combination – Whether conflict of evidence ought to be resolved in favour of plaintiff – Whether case made out on balance of probabilities – Proceedings dismissed (2007/8410P – Ryan J – 25/7/2013) [2013] IEHC 429
Leo v Health Service Executive

Personal injuries

Plaintiff struck by egg thrown by passenger in car owned and driven by defendant – Whether defendant vicariously liable for actions of passengers – Whether defendant directly liable due to failure to control activities of passengers – Whether evidence established defendant in breach of duty of care – Curley v Mannion [1965] IR 543 considered – Road Traffic Act 1961 (No 24), s 118 – Action dismissed (2010/5156P – Cross J – 13/11/2013) [2013] IEHC 505
Doody v Clarke

Personal injuries

Claim for damages – Fall in night club – Whether defendant liable – Whether floor wet or slippery – Claim dismissed (2009/835P – Ryan J – 28/6/2013) [2013] IEHC 426
O'Connell v Brenagh Catering Limited

Personal injuries

Injury in course of employment – Negligence and breach of statutory duty of employer – Knowledge of employer of dangerous practice – Failure by employer to prohibit dangerous practice – Contributory negligence – Different standard for contributory negligence in action for breach of statutory duty and in action for common law negligence – Statutory duty of employees – Quantum – Application for dismissal for fraudulent action – Extension of discovery beyond relevant materials – Aggravated damages – Whether negligence and breach of statutory duty by employer – Whether contributory negligence – Whether fraudulent action – Whether aggravated damages could be awarded – Whether general damages could be increased for damage to reputation and good name in pursuit of dismissal – Stewart v Killeen Paper Mills Ltd [1959] IR 436; Coffey v Kavanagh [2012] IESC 19, (Unrep, SC, 7/3/2012); Quinn v Bradbury & Bradbury [2012] IEHC 106, (Unrep, Charleton J, 18/4/2012); Folan v Ó Corraoin [2011] IEHC 487, (Unrep, Murphy J, 16/11/2011); Rahman v Craigfort Taverns Ltd [2012] IEHC 478, (Unrep, O'Neill J, 11/10/2012); Montgomery v Minister for Justice, Equality and Defence [2012] IEHC 443, (Unrep, O'Neill J, 23/10/2012); De Cataldo v Petro Gas Group Ltd [2012] IEHC 495, (Unrep, O'Neill J, 30/11/2012); Salako v O'Carroll [2013] IEHC 17, (Unrep, Peart J, 25/1/2013); Ludlow v Unsworth [2013] IEHC 153, (Unrep, Ryan J, 12/4/2013) and Armstrong v Sean Moffatt and Thomas Moffatt t/a Ballina Medical Centre and Maureen Irwin, (Unrep, Hogan J, 28/3/2013) considered – Safety, Health and Welfare at Work Act 2005 (No 10), ss 8, 13 and 19 – Safety in Industry Act 1980 (No 9), s 8 – Factories Act 1955 (No 10), s 125 – Safety, Health and Welfare at Work Act 1989 (No 7), ss 2 and 9 – Civil Liability in Courts Act 2004 (No 31), s 26 – Judgment for plaintiff for sum of €60,000 being 75%

of total damages – (2011/8203P – O'Neill J – 26/7/2013) [2013] IEHC 360
Smith v Health Service Executive

TRANSPORT

Statutory Instruments

Commercial Vehicle Roadworthiness (vehicle licensing) regulations 2014
SI 397/2014

Córas Iompair Éireann bye-laws (confirmation) order 2014
SI 251/2014

Small public service vehicle (consolidation and reform) regulations 2014
SI 165/2014

TRUSTS

Construction summons

Deed of trust - Bog land - Tenant purchasers – Deed with object of preserving rights of turbary – Whether trustees obliged to use compensation monies to compensate turf cutters – Nature of rights of turbary – Rights of beneficiaries under trust deed – Re King-Harman's Estate [1908] 1 IR 202 and Callinan v McMahon [1918] 2 IR 1 considered – European Communities (Natural Habitats) Regulations 1997 (SI 94/1997), art 20 -Finding that trustees entitled to compensation monies paid (2009/316SP – Hogan J – 19/6/2013) [2013] IEHC 411
O'Reilly v O'Connell

Articles

Sammon, Garret
The rule in re Hastings-Bass: recent clarification from the UK
2014 (32) (15) Irish law times 218

WHISTLEBLOWERS

Library Acquisitions

Guerin, Sean
Report to An Taoiseach, Enda Kenny TD on a review of the action taken by An Garda Siochana pertaining to certain allegations made by Sergeant Maurice McCabe 6th May 2014
M615.C5

Acts

Protected Disclosures Act 2014
Act No.14 of 2014
Signed on 8th July 2014

Statutory Instruments

Protected Disclosures Act 2014 (commencement) order 2014
SI 327/2014

Protected Disclosures Act 2014 (section 7(2)) order 2014
SI 339/2014

WILDLIFE

Statutory Instruments

Wildlife Act 1976 (temporary suspension of open season) (no. 2) order 2010
SI 582/2010

BILLS INITIATED IN DÁIL ÉIREANN DURING THE PERIOD 19TH JUNE 2014 TO THE 12TH OCTOBER 2014

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

Court of Appeal 2014
Bill 68/2014

Customs Bill 2014
Bill 92/2014

Electoral (Amendment) (No.4) Bill 2014
Bill 67/2014

Environment (Miscellaneous Provisions) Bill 2014
Bill 86/25014

European Stability Mechanism (Amendment) Bill 2014
Bill 87/2014

Garda Síochána (Amendment) Bill 2014
Bill 83/2013

Health (Miscellaneous Provisions) Bill 2014
Bill 77/2014

Houses of the Oireachtas (Appointments to certain Offices) Bill 2014
Bill 75/2014

Intellectual Property (miscellaneous provisions) Bill 2014
Bill 81/2014

Irish Collective Asset–Management vehicles Bill 2014
Bill 78/2014

Registration of Lobbying Bill 2014
Bill 59/2014

Sport Ireland Bill 2014
Bill 85/2014

Strategic Banking Corporation of Ireland Bill 2014
Bill 66/2014

Water Services (Exempt Charges) Bill 2014
Bill 69/2014

Workplace Relations Bill 2014
Bill 79/2014

Central Bank and Financial Services Authority of Ireland (Amendment) Bill 2014
Bill 88/2014
[pmb] Deputy Pearse Doherty

Committee of Public Accounts of Dail Éireann (Compellability of Witnesses) Bill 2014
Bill 72/2014
[pmb] Deputy Shane Ross

Criminal Law (Child Grooming) Bill 2014
Bill 89/2014
[pmb] Deputy Marcella Corcoran Kennedy

Electoral (Amendment) (No.5) Bill 2014
Bill 91/2014
[pmb] Deputy David Stanton

Local Government (Rates & Miscellaneous Provisions) Bill 2014
Bill 58/2014
[pmb] Deputy John McGuinness

Local Government (Amendment) Bill 2014
Bill 64/2014
[pmb] Deputy Kevin Humphries

Nursing Home Support Scheme (Amendment) Bill 2014
Bill 57/2014
[pmb] Deputy Willie O'Dea

Parliamentary Scrutiny of Appointments (European Commision) (no.2) Bill 2014
Bill 65/2014
[pmb] Deputy Lucinda Creighton, Deputy Billy Timmins, Deputy Terence Flanagan, Deputy Denis Naughten

Planning and Development (Amendment) Bill 2014
Bill 73/2014
[pmb] Deputy Timmy Dooley

Thirty-Fourth Amendment of the Constitution Bill 2014
Bill 90/2014
[pmb] Deputy Ruth Coppinger, Deputy Joe Higgins

Water Services (Taking in Charge of Estates by Local Authorities) (Amendment) Bill 2014
Bill 70/2014
[pmb] Deputy Barry Cowen

BILLS INITIATED IN SEANAD ÉIREANN DURING THE PERIOD 19TH JUNE 2014 TO THE 12TH OCTOBER 2014

Civil Registration (Amendment) Bill 2014
Bill 71/2014

Criminal Justice (Mutual Assistance) (Amendment) Bill 2014
Bill 84/2014

Criminal Justice (Terrorist Offences) (Amendment) Bill 2014
Bill 82/2014

Criminal Law (Protection of Older People) (Sentencing) (Amendment) Bill 2014
Bill 74/2014

Education (Miscellaneous Provisions) Bill 2014
Bill 61/2014

Medical Practitioners (amendment) Bill 2014
Bill 80/2014

Defamation (Amendment) Bill 2014
Bill 63/2014
[pmb] Senators John Crown, Sean D. Barrett and Mark Daly

Health Insurance (Reform) Bill 2014
Bill 60/2014
[pmb] Senator Feargal Quinn and Senator Rónán Mullen and Senator Seán Barrett.

Immigration Reform for U.S. citizens living in Ireland bill 2014
Bill 93/2014
[pmb] Senator Mark Daly, Senator Darragh O'Brien, Senator Denis O'Donovan

Intoxicating Liquor (Amendment) Bill 2014
Bill 62/2014
[pmb] Senators Imelda Henry and Maurice Cummins and Colm Burke

Planning & Development (Temporary Moratorium) Bill 2014
Bill 76/2014
[pmb] Senators Thomas Byrne, Mark Daly and Diarmuid Wilson

Suicide Prevention & Mental Health Fund Bill 2014
Bill 56/2014
[pmb] Senator Marc MacSharry and Senator Terry Leyden and Senator Darragh O'Brien

PROGRESS OF BILL AND BILLS AMENDED DURING THE PERIOD 19TH JUNE 2014 TO THE 12TH OCTOBER 2014

Betting (Amendment) Bill 2013
Bill 86/2013
Report Amendments (Dáil Éireann)

Civil Registration (Amendment) Bill 2014
Bill 71/2014
Report Amendments

Companies Bill 2012
Bill 116b/2012
Report Stage –(Seanad)

Competition & Consumer Protection Bill 2014
Bill 21a/2014
Passed by Dáil Éireann

Court of Appeal 2014
Bill 68/2014
Passed By Dail Éireann
Enacted

Education (Miscellaneous Provisions) Bill 2014
Bill 61a/2014
Committee Amendments (Seanad)

Employment Permits (Amendment) Bill 2014
Bill 36/2014
Committee Amendments (Seanad Éireann)

European Stability Mechanism (Amendment) Bill 2014
Bill 87/2014
Committee Stage (Dáil)

Forestry Bill 2013
Bill 43/2013
Passed by Dáil Éireann

Freedom of Information Bill 2013
Bill 89/2013
Report Stage -Seanad

Health (General Practitioner Service) Bill 2014
Bill 34/2014
Passed by Dáil Éireann

Health (Miscellaneous Provisions) Bill 2014
Bill 77/2014
Committee Stage -Dáil

Housing (Miscellaneous Provisions) Bill 2014
Bill 39a/2014
Report Amendments

Industrial Development (Forfas Dissolution) Bill 2013
Bill 138a/2013
Amendments (Seanad)

Irish Human Rights and Equality Commission Bill 2014
Bill 20/2014
Report Amendments [Seanad]

Legal Services Regulation Bill 2011
Bill 58/2011
Report Amendments -- Dáil

National Treasury Management Agency (Amendment) Bill 2014
Bill 44/2014
Committee Amendments-Seanad

Public Health (Standardised Packaging of Tobacco) Bill 2014
Bill 54/2014
Committee Stage

Radiological Protection (Miscellaneous Provisions) Bill 2014
Bill 52/2014
Report Amendments (Seanad)

Social Welfare and Pensions Bill 2014
Bill 47a/2014
Report Amendments (Seanad)

State Airports (Shannon Group) Bill 2014
Bill 35b Amendments [Dail Eireann]
Enacted

Strategic Banking Corporation of Ireland Bill 2014
Bill 66/2014
Committee Stage – (Seanad)
Enacted

FOR UP TO DATE INFORMATION PLEASE CHECK THE FOLLOWING WEBSITES:

Bills & Legislation

http://www.oireachtas.ie/parliament/

Government Legislation Programme updated 15th January 2013

http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/

"Hanging on a knife-edge". Suspended Sentences and recent case law.

Julia Fox BL

Introduction

This article explores recent case law regarding suspended sentences and the operation of section 99 of the Criminal Justice Act 2006, as amended by s.60 of the Criminal Justice Act 2007 and s.51 of the Criminal Justice (Miscellaneous Provisions) Act 2009 (hereafter "the 2006 Act, as amended"). In *McCabe [No.2] v. The Attorney General and the Director of Public Prosecution*[1], Mr Justice Hogan, while not declaring s.99 to be unconstitutional, made a declaration that a reactivation of a suspended sentence by the Circuit Court (when that sentence was originally imposed by the Circuit Court on appeal from the District Court) would be unconstitutional, absent the legislature introducing provision for an appeal of that reactivation. This article looks at that decision as well as a series of judgments preceding it wherein the Courts have examined the operation of s.99 in the context of the principle that conviction and sentence in the District Court are not severable.

The Legislation

Section 99 (1) of the 2006 Act, as amended, provides:-

> "Where a person is sentenced to a term of imprisonment (other than a mandatory term of imprisonment) by a court in respect of an offence, that court may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.

Section 99(9) of the 2006 Act, as amended, provides:

> "Where a person to whom an order under subsection (1) applies is, during the period of suspension concerned, convicted of an offence, being an offence committed after the making of the order under subsection (1), the court before which proceedings for the offence were brought shall, before imposing sentence for that offence, remand the person in custody or on bail to the next sitting of the court that made the said order."

Section 99(10) of the 2006 Act, as amended, provides:-

> "A court to which a person has been remanded under subsection (9) shall revoke the order under subsection (1) unless it considers that the revocation of that order would be unjust in all the circumstances of the case, and where the court revokes that order, the person shall be required to serve the entire of the sentence of imprisonment originally imposed by the court, or such part of the sentence as the court considers just having regard to all the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody (other than a period spent in custody by the person in respect of an offence referred to in subsection (9)) pending the revocation of the said order."

Section 99(10A) of the 2006 Act (as amended) provides:-

> "The court referred to in subsection (10) shall remand the person concerned in custody or on bail to the next sitting of the court referred to in subsection (9) for the purpose of that court imposing sentence on that person for the offence referred to in that subsection."

Where a person is subject to a suspended sentence and is, during the period of the bond, convicted of an offence which occurred during the period of the bond, the person must be remanded to the court that originally imposed the suspended sentence prior to sentencing for the second offence. The court that imposed the suspended sentence must, unless it considers that revocation would be unjust in all the circumstances of the case, revoke the suspension. That court must then remand the person back to the court that imposed the second conviction, for sentencing on the second conviction.

Murphy v. Judge Watkins & Ors.[2]

In *Murphy,* the applicant brought judicial review proceedings in which he sought, *inter alia,* to quash an order of the District Court remanding him in custody to the Circuit Court pursuant to s.99(9) as well as the subsequent order of the Circuit Court partly reactivating a suspended sentence. The applicant had pleaded guilty to offences in the District Court. The court presenter then outlined the facts and relayed previous convictions including that the applicant had received a suspended sentence from the Circuit Court. Judge Watkin remanded him in custody pursuant to s.99 to the Circuit Court where the Circuit Judge reactivated part of the suspended sentence. The applicant was then remanded back to the

1 Unreported, High Court, Hogan J., 30th September, 2014.

2 Unreported, High Court, Moriarty J. 11th July, 2014.

District Court for sentencing on the District Court charges at which point Judge Watkin made no order.

The applicant argued that s.99(9) provides that where a person is *convicted of an offence* the court shall remand that person to the court where the suspended sentence was imposed and that since he was not convicted, in the sense of having been sentenced, the court had no jurisdiction to remand him. Furthermore, since there was no jurisdiction to remand him pursuant to s.99, the Circuit Court could not make an order pursuant to s.99 reactivating part of the suspended sentence.

The applicant relied on the judgment of Mr Justice Henchy in *State (de Burca) v hUadhaigh*[3] in support of the proposition that sentence and conviction are inextricably linked. In that case, it had been held that where either conviction or sentence was quashed on appeal, the other fell. Mr Justice Moriarty held that the link between conviction and sentence was confined to that particular context. Moriarty J. distinguished the cases of *Burke v Director of Public Prosecutions & Judge McNulty*[4] and *Muntean v Hamill and the Director of Public Prosecutions*[5]. These cases had considered the severability of conviction and sentence but Moriarty J. emphasised that they occurred in a specific statutory context (s.24 of the Criminal Procedure Act 1997 and the Rules of the District Court in *Burke* and s.99 and s.50 of the Courts (Supplemental Provisions) Act 1961 in *Muntean*). He held that he would follow the decision in *Harvey v Leonard*[6] as that was the only case that considered the same statutory context.

The applicant in *Harvey* had entered pleas of guilty in the District Court where it transpired that the applicant had previously received a suspended sentence. The judge indicated that she was convicting the applicant but remanding him pursuant to s.99 to the court that had imposed the suspended sentence. The applicant brought judicial review proceedings in which he argued that the district judge had no jurisdiction to remand him pursuant to s.99(9). He argued that he was not a convicted person as he had not yet been sentenced and a conviction in the District Court had no free standing efficacy divorced of penalty. Mr Justice Hedigan held that while conviction and sentence were not severable, in the sense that where one fell the other did too, in this case, neither had fallen. He held that conviction and sentence were separate actions and that the applicant's "challenge was based on….the mistaken view that conviction and sentence are so inextricably linked that nothing of substance can occur between them. That proposition cannot be correct."[7] Hedigan J. noted that District Court judges frequently convict and then remand for sentencing (e.g. for preparation of a probation report) and that the procedure contemplated by s.99, which could not be clearer from the wording of the 2006 Act (as amended), occurred within the same hiatus between conviction and sentencing. In *Murphy v Judge Watkins*, Moriarty J. refused the application.

3 1976 I.R. 85.
4 Unreported, High Court, Charleton J., 16th April, 2007.
5 Unreported, McCarthy J. 11th May, 2010.
6 Unreported, High Court, Hedigan J., 3rd July, 2008.
7 Unreported, High Court, Hedigan J., 3rd July, 2008, para 16.

McCabe v. Governor of Mountjoy[8]

In *McCabe v. Governor of Mountjoy*, similar themes in respect of s.99 were explored. This case led to a separate set of plenary proceedings (referred to above and discussed in detail below) wherein Mr Justice Hogan identified an unconstitutional lacuna in respect of s.99(12) but *McCabe No.1* dealt with the severability issue. The applicant had been convicted in the District Court and received a six month sentence suspended for two years. The conviction was affirmed on appeal by the Circuit Court on appeal. Within the period of the bond, he was convicted in the District Court of a public order offence and was remanded to the Circuit Court pursuant to s.99 of the 2006 Act, as amended. The Circuit Court revoked the suspended sentence and the applicant went into custody to serve the sentence with sentencing for the District Court offence postponed. In Article 40 proceedings, he argued (along with a point in relation to a defective warrant) that (i) the word 'convicted' in s.99 can only refer to a sentenced person so that s.99 is inoperable and (ii) that s.99 is unconstitutional because there is no right of appeal from the Circuit Court on appeal despite the wording of s.99(12).

Hogan J. held that the word conviction in respect of the District Court implies that the person has been both convicted and sentenced. He noted that the Supreme Court had twice confirmed that conviction and sentence are entirely intertwined so that an invalid sentence "cannot be severed from a conviction so as to validate a conviction on its own" (the *State (de Búrca) v. Ó hUadhaigh*). Further evidence of the link was that the right of appeal in District Court criminal matters is confined to those cases where sentence has been imposed.[9] However, Hogan J. held as follows:-

> "But if, in general, the law (and more specifically statutory law) treats conviction and sentence as inseparable, this does not mean that this is so for all purposes or, more particularly that the Oireachtas is not free to depart from these concepts. It follows that the meaning of the word conviction has not been fixed unalterably by some sacred tablet of stone which has permanently abridged the capacity of the Oireachtas to give this word any different meaning, even in the plainly different legal concept of the 2006 Act"[10]

Where a District Court had found a person guilty but adjourned the matter for sentencing, lawyers and lay people alike would correctly say that the person had convicted the accused of the offence. He held that the principle of *noscitur a sociis (known by its companions) i.e.* that words derive meaning from their context:-

> "applies with a particular force to the present case. The entire language, structure and format of s.99 and particularly s.99(9) and s.99(10) expressly presupposes that the second court will transfer the question of the reactivation of suspended sentence to the first court and that this will be done before the second

8 Unreported, High Court, Hogan J., 3rd June, 2014.
9 Ibid, paras 10-11. See s.18(1) of the Courts of Justice Act 1928
10 Ibid, para 15.

> court imposes sentence. If the phrase "convicted of an offence" were to have the meaning for which the applicant contends, then these provisions would be otiose and unworkable."[11]

Hogan J. rejected the applicant's separate contention that the warrant was bad on its face. As far as the non-constitutional questions were concerned, he was satisfied that the applicant was in lawful detention. The constitutional questions were left to be dealt with by way of plenary summons in *McCabe No.2*.

McCabe [No.2] v. The Attorney General & the Director of Public Prosecutions[12]

In *McCabe No.2,* Hogan J. examined whether a person who had a suspended sentence reactivated by the District Court appeals had a constitutional right to appeal that reactivation. Section 99(12) provides:-

> "Where an order under subsection 1 is revoked in accordance with this section, the person to whom the order applied may appeal against the revocation to such court as would have jurisdiction to hear an appeal against any conviction, or sentence imposed on, a person for an offence by the court than revoked the order."

Hogan J. held that there was no mechanism for an appeal of the reactivation of a suspended sentence where the sentence was reactivated by the Circuit Court (in circumstances where the Circuit Court had imposed the original suspended sentence on appeal from the District Court). In contrast, suspended sentences reactivated in the District Court can be appealed to the Circuit Court. There was no appeal from the Circuit Court (when it is exercising its appellate jurisdiction from the District Court) to the Court of Criminal Appeal as appeals to the CCA are confined to prosecutions on indictment only (ss.63 of the Courts of Justice Act 1924 and s.31 of the Criminal Procedure Act 2010).

The plaintiff had argued that the failure to provide an appeal mechanism was arbitrary and contrary to the equality guarantee in Article 40.1. Hogan J. recalled that the policy objective as expressed in s.99(12) was that the reactivation of an suspended sentence should be capable of being appealed to a higher court. He held that there was no possible justification for the radically different treatment of persons whose suspended sentences for minor offences had been reactivated by the Circuit Court as distinct from the District Court.[13]

Citing several authorities[14], Hogan J. held that:-

> "The equal treatment of similarly placed persons within the criminal justice system is at the heart of the concept of equality before the law which, as the language of that provision makes clear, is one of the fundamental objectives of Article 40.1."[15]

He noted that s.99(12) does not provide for the automatic reactivation of a suspended sentence in every case and this acknowledgement that reactivation may be unjust in certain circumstances made the right to appeal provided by s.99(12) of such vital importance.[16]

He held that,

> "In these circumstances, the denial of the right of appeal to one category of litigant simply because of the essentially accidental fact that the suspended sentence which has now been re-activated was imposed on appeal by the Circuit Court rather than at first instance by the District Court has the inherent capacity to work a considerable injustice and unfairness..."[17]

Hogan J. examined whether Article 34.3.4[18] requires the existence of a right of appeal from a reactivation of a suspended sentence by the Circuit Court in the circumstances outlined above. He rejected the defendant's argument that the decision to reactivate a suspended sentence was part of the appellate jurisdiction which had already been exercised when the applicant persuaded the Circuit Court on appeal to suspend the sentence which had been appealed from the District Court. The language, structure and form of s.99(12) necessarily presupposes that the decision to reactivate is a decision taken at first instance. He referred to the Supreme Court decision in *The People v. Foley*[19] and the dicta of Chief Justice Denham which he said strongly supported the view that the reactivation of the suspended sentence pursuant to s.99(1) represents a new exercise of a statutory jurisdiction.[20] Hogan J. rejected the argument that the case stated procedure provided by s.16 of the Courts of Justice Act 1947, which allows a case to be stated by the Circuit Court to the Supreme Court was a right of appeal as the ultimate decision continues to rest with the Circuit Court judge.

Hogan J. noted that Article 34.3.4 does not contemplate a universal right of appeal in all cases. However he said that the right of appeal is subject to "law". The learned Judge noted that this includes not only positive law in the sense of a statute but also the provisions of the Constitution. He stated that Article 34.3.4, in the words of Henchy J. in *King*

11 Unreported, High Court, Hogan J., 3rd June, 2014, para 20.
12 Unreported, High Court, Hogan J., 30th September, 2014
13 Unreported, High Court, Hogan J. 30th September, 2014, para.15.
14 *Cox v Ireland* [1992] 2.I.R.305, *S.M. v. Ireland (No.2)* [2007] 4 IR 369, B.G. *v. Ireland (No.2*) [2011] 3.I.R. 748 and *Byrne v Director of Oberstown School* [2014] 1 I.L.R.M. 346.
15 Unreported, High Court, Hogan J. 30th September, 2014, para.15.
16 Ibid., para.16.
17 Ibid., para.17.
18 *"The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right to appeal as determined by law."*
19 Unreported, Supreme Court, Denham C.J., 23rd January, 2014. The Supreme Court had held that the appropriate venue for consideration of reactivation of a suspended sentence was the Court of Criminal Appeal as opposed to the Circuit Court in circumstance where the length of the suspension imposed by the Circuit Court upon conviction on indictment had been varied following an undue leniency appeal by the DPP. The limited right of appeal to the Supreme Court pursuant to s.29 of the Courts of Justice Act 1924 was held to be clear from the wording of the section and justified by the Legislature's policy of restricting appeals from the CCA to the Supreme Court.
20 Unreported, High Court, Hogan J., 30th September, 2014, para 23.

v. Attorney General[21] *"must [not] ignore the fundamental norms of the legal order postulated by the Constitution"*.[22] Hogan J. held that the right of an accused to appeal against sentence has been a fundamental feature of the criminal justice system and that:-

> "In view of the centrality to the criminal justice system and given that the protection of liberty, the trial of offences in due course of law and the existence of appeal are themselves all fundamental norms expressively safeguarded by the Constitution, it is difficult to see how a law which did not provide for a right of appeal against sentence imposed by a court of local and limited jurisdiction could be said to be a law which represented those fundamental norms, so that it was a "law" in the sense identified by Henchy J. in *King*..."[23]

It was unnecessary to decide whether Article 34.3.4 requires the existence of a right of appeal against sentence in every single case, however he said that a denial of a right of appeal against a sentence imposed by a court of local and limited jurisdiction was something which, at the very least, required to be objectively justified. For the reasons he already articulated regarding the equality guarantee in Article 40.1, Hogan J. found that such justification was not present. Accordingly, he held that the failure to provide a right of appeal against the reactivation of a suspended sentence by the Circuit Court in the circumstances of the case amounted to a breach of Article 40.1 and Article 34.3.4.

Hogan J. found that because the separate findings of unconstitutionality related to a legislative failure or lacuna, an order declaring the section unconstitutional would not be appropriate. He held, citing his own judgment in *BG v. Ireland (No.2)*, that a finding of unconstitutionality would serve no real purpose in the present case *"other than a Samson-like collapsing of the legislative pillars which gave rise to the unconstitutionality in the first instance.*"[24] The court must nonetheless fashion an effective remedy. To create a right of appeal for accused persons in the same position as the plaintiff would be to go far beyond the judicial capacity, given the constitutionally mandated separation of powers. Rather, he made a declaration that it would be unconstitutional to give effect to a reactivated sentence in the absence of a legally conferred right of appeal.

Conclusion

Other recent case law regarding s.99 includes the *Director of Public Prosecutions v. Carter*[25] (under appeal) wherein it was held that the regime for the suspension of sentences is one now entirely governed by statute and that the requirement in s.99(9) that the convicted person be remanded to the very next sitting of the court that imposed the suspended sentence was mandatory[26]. In the *Director of Public Prosecution v Vajeuskis*[27], following the *dicta* in *Carter,* Mr Justice Peart held that the regime regarding suspended sentences previously based on common law was obsolete and it was not now the law that, except in exceptional circumstances, a sentence could not be suspended for a period longer than the sentence itself.

Several other judicial reviews have been initiated by applicants who face reactivation of a suspended sentence in the Circuit Court (in circumstances where the sentence was imposed on appeal from the District Court) and who challenge the constitutionality of s.99 of the 2006 Act (as amended) on various grounds. A number of these cases were opened together at the beginning of 2014 and then adjourned pending the outcome of the decisions in *Murphy* and *McCabe*. One of the complaints made in these cases was that the section fails to provide a mechanism to appeal a conviction that triggers the re-entry of the suspended sentence for possible reactivation.

McCabe [No 2] will presumably prompt the legislature to once again amend s.99 to provide a right of appeal from a reactivation by the Circuit Court in the McCabe type scenario. While this will remedy an important lacuna, other problems will persist without further amendment. There is no doubt about the advantage of the suspended sentence as a sentencing option. One hopes that the Oireachtas might also consider consolidating this unwieldy piece of legislation and in addition tackling some of the other procedural difficulties that have been encountered in operating the section. ■

21 [1981] I.R.233.
22 Unreported, High Court, Hogan J., 30th September, 2014, para 34.
23 Ibid. para 37.
24 Unreported, High Court, Hogan J., 30th September, 2014, para 42.
25 Unreported, High Court, O'Malley J., 21st March, 2014.
26 While this requirement is necessitated by statute, anecdotally, it has caused logistical problems that may not be justified, particularly where the person is being remanded on bail and consents to a longer remand.
27 Unreported, High Court, Peart J., 23rd May, 2014.

Insolvency of defined benefit pension schemes

Stephen O'Sullivan BL

Introduction

Defined benefit pension schemes (hereinafter DB schemes) provide members with retirement and death benefits based on formulae set out in the rules of the scheme. Benefits are often based on a member's salary at retirement age and on his or her pensionable service. The pension benefit under a DB scheme is often for a lump sum up to one and a half times final remuneration and for an annual payment up to two thirds final remuneration - sums greater than this are not as tax efficient. Very often account is taken of the State pension in calculating a members pensionable salary.

Many DB schemes have solvency issues. Aer Lingus, Marks and Spencers and ESB, in particular, have had difficulties leading to industrial unrest. This is partly caused by the worldwide market turmoil since 2007. Other causes are increased life expectancy, the increased cost of buying annuities for pensioners and the rate of increase of final salaries. The projected assets do not meet the projected liabilities. As a result, many DB schemes have been closed off to new members after a certain date. Trustees are unsure what to do with the scheme going forward and members are unsure what benefits they can expect on reaching normal retirement age.

The trustees of a DB scheme must submit an actuarial funding certificate to the Pensions Authority[1] at least every 3 years, signed by an actuary[2]. The certificate demonstrates that the scheme complies with the funding standard under the Pensions Act 1990, stating whether the scheme is capable of meeting specified liabilities in a statutory order of priority in the event of its being wound up on the date of the certificate. The Funding Standard ensures that a DB scheme has sufficient funds to secure the pensions rights that members have built up, should the scheme have to be wound up at any stage[3].

The term 'pensioners' is used to describe persons over the retirement age and benefiting from pension payments. Active members are members who have not reached retirement age and are still contributing to the scheme – they are usually still in the employment. Deferred members are members who have not reached retirement age and are no longer contributing to the pension – they have usually left the employment.

1 The title "The Pensions Authority" replaces the title "The Pensions Board", by reason of an amendment to s. 9 Pensions Act 1990, effective from 7/3/14.
2 S.42 and 43 of the Pension Act 1990 as amended.
3 S.44 Pension Act 1990 as amended.

Options for the company when the DB scheme does not meet the funding standard

Amendment of trust deed

The trustees might amend the trust deed to reduce benefits of active and deferred members. Some trust deeds even allow for benefits of pensioners to be reduced, but the trust deed has to clearly allow for this. Whenever the trustees exercise this power, they must do so in accordance with their fiduciary duties which might mean they cannot unduly favour one group of beneficiaries over another. Amendments might mean increasing the retirement age or changing the way in which final salary is calculated to make it lower.

Funding proposal

If a DB scheme doesn't meet the funding standard set out by the Pensions Act, the scheme trustees must submit a funding proposal[4] to The Pensions Authority explaining how they intend to rectify the scheme's funding. Typically the funding proposal increases contribution rates and reduces benefits of active and deferred members. If it is sought to reduce the benefits of pensions in payment. a section 50 order is needed. The funding proposal does not require the vote of members, though some trustees might hold a vote where the unions are strong. The funding proposal must bring the pension into compliance with the funding standard within 3 years, or such longer period as determined by the Pensions Authority, being the later of 21st December 2023 or 6 years from the commencement of the funding proposal. In *Greene v. Coady*[5] the employer made a funding proposal of 10.725m per year for 12 years to bring a DB scheme with a funding deficit of €100m into line by 2020. The court held *obiter* that this could amount to a contract between the trustees and the employer, which could be sued on, and could amount to a preferential debt on liquidation. Often, a funding proposal necessitates an amendment to the trust deed.

Contribution demand notice

Some trust deeds allow the trustees to serve a contribution demand notice (CDN) on the employer, if the funding of the scheme is not sufficient. The words contribution demand notice need not be used – it is enough to show that the deed can be interpreted to meant that the employer is liable for the sum demanded by the trustees in the period it is demanded, usually after the employers serves notice of intention to

4 S.49 of the Pension Act 1990 as amended.
5 Unreported, High Court (Charleton J.) 4th February 2013

discontinue contributions and the expiry of that notice. The trust deed does not always make clear if the employer is liable to make up the difference on a statutory minimum basis (the funding standard), a annuity buy out basis (the most expensive standard) or a hybrid (somewhere in between in expense terms) In some cases, the trust deed may not have this detail and it will fall to be determined by the court.

In *Holloway v. Damianus BV* (Unreported High Court 25/7/14)[6], the court directed the employer to pay €2.23 million to the DB scheme trustees pursuant to a contribution demand issued by the trustees. The court held the terms of the trust deed meant that the employer was liable to satisfy any contribution demand notice made in the period after their notice of cessation of contribution was served, and before expiry of that notice. Further the employer was liable on a hybrid basis as calculated by the trustees, and not merely on a statutory minimum basis - the court pointed to the failure of the defendant to consult with the plaintiff in relation to the figures and found the trustees acted reasonably in arriving at this figure.

In *Greene v. Coady*, the DB scheme had an estimated €129.2m deficit. The trust deed provided that, if the trustees served a CDN on the employer, the employer was liable for the whole amount of the deficit – not all trusts have such a provision. The trustees accepted an offer by the employer of an injection of €23.1m into the DB scheme, plus €14m to a defined contribution scheme for active members and liquidating the DB scheme, instead of serving a CDN on the employer. The trustees accountant estimated that serving a CDN could have netted up to €42.5m to the DB scheme. The court held the trustees did not act in breach of duty in adopting this course because they had not acted dishonestly or in bad faith, they took into account relevant considerations and excluded irrelevant considerations and the decision was not one that no reasonable body of trustees would have made. The trustees had taken into account *inter alia* that the employers operations might close at Shannon if the CDN was served and the employer liquidated and the risk that assets of the employer would move to related companies. The decision was not appealed to the Supreme Court. It is quite common for trustees to serve a CDN on the employer and then negotiate on a settlement *in lieu* of putting the employer into liquidation.

Section 50 Order

If the funding of the scheme is not sufficient to satisfy the Funding Standard, the Pensions Authority can make a Section 50 order, of it's own initiative. or at the request of the trustees. Under such an order, accrued benefits relating to members' past service can be reduced. Trustees must have asked the employer for the contributions necessary to sustain the scheme without benefit reductions, and the employer must have declined to pay those contributions. Members must be notified of the proposal and are allowed make submissions in relation to the proposal, which submissions must be considered by the trustees. Affected persons can appeal a Section 50 order to the High Court, where the order was made other than on the application of trustees[7]. Also, the Pensions Authority will be able to wind-up a pension scheme where, *inter alia*, a scheme is underfunded, but will have to consult with scheme members before making such an order.

Recently, Section 50 of the Pensions Act 1990 was amended[8] so that an order can reduce pensions in payment. The section now allows for pensions in payment of between €12,000 to €60,000 to be reduced by up to 10%, and for pensions in payment of €60,000 or more to be reduced by up to 20%. No pension can be reduced below €12,000, and no pension of €60,000 or more can be reduced below €54,000.

Winding up

Perhaps the last option is the winding up of the pension scheme. It was the case that under the Pensions Act 1990, as amended, pensioners had to be paid off in full before deferred or active members. This could result in pensioners getting all or nearly all of their entitlement with active and deferred members getting nothing. Section 48 of the Pensions Act 1990 has been amended[9] effective from 25/12/13. The order of priorities is now as follows:-

Where the DB scheme is insolvent and the employer is solvent, the priority is as follows:-

1. Additional voluntary contributions.
2. Winding up expenses.
3. Pensions in payment.
   - 100% of pensions up to €12,000 per annum.
   - 90% of pensions between €12,000 and €60,000 per annum.
   - 80% of pensions above €60,000 per annum.
4. Active and deferred members up to 50% of entitlement.
5. Any remaining assets used to bring pensioners up to 100%.
6. Any remaining assets used to bring active and deferred members up to 100%.

Where the DB scheme is insolvent and the employer is insolvent, the priority is as follows:-

1. Additional voluntary contributions.
2. Winding up expenses.
3. 100% of pensions in payment up to €12,000 per annum.
4. The remainder of the scheme assets are apportioned to ensure that all members receive 50% of their

6 The words contribution demand notice were not used in the deed. Clause 8 provided "The Employers … shall pay to the Trustees the moneys which the Trustees determine, after consulting the Actuary and the Principal Employer, to be necessary to support and maintain the Fund in order to provide the benefits under the Scheme." Clause 18 provided the employer could cease contribution at the end of the notice. Clause 19.1 provided the scheme could be wound up on the date of expiry of the notice. Clause 20.1 provided that employer continued to be liable for contributions which were due but were unpaid on the date of winding up.

7 S.50.6 of the Pensions Act 1990 as inserted by s.30 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013.

8 Amended by s. 11 of the Social Welfare And Pensions (No. 2) Act 2013

9 Amended by s. 11 of the Social Welfare And Pensions (No. 2) Act 2013

benefits. In the event that a scheme does not have sufficient funds, the Act provides that the State will, subject to certain criteria, provide the necessary funds to cover the shortfall. This is to provide for *Robins v Secretary of State for Work and Pensions*[10] , analysed below.

5. Where the scheme has sufficient assets to meet the 50% target, the assets of the scheme are next prioritised to bring the pensioners back towards 100%

Litigating for members who do not get their full DB pension entitlement

Breach of contract

Even if the trustees and the employer have acted in accordance with the trust deed and the legislation, there may be a cause of action in contract.

In *IBM v. Dalgleish*[11], the English High Court found the employer breached the implied term of mututal trust and confidence under the employment contract to it's employees by the way it closed the DB scheme to future accrual and introduced new benefit restrictions. The court found that members had been entitled to hold reasonable expectations about the future of the schemes, and in particular the continuation of DB scheme accrual for a period, as a result of the earlier pension change projects in 2004 and 2006,. These reasonable expectations were engendered by the defendant through communications issued to members as part of the previous scheme change exercises.

Pensions ombudsman

A complaint can be made to the pensions ombudsman[12] in relation to "any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme". It is a requirement to complete any internal dispute resolution procedure before such a complaint is made[13]. The pension ombudsman can order *inter alia* compensation to be paid by the employer or trustees to the claimant, which order is without monetary limit and is enforceable in the Circuit Court[14]. By analogy with case-law on the financial services ombudsman litigation[15], it is likely that a case brought to the pensions ombudsman estops the claimant from later bringing the same complaint before a court by way of plenary proceedings. If a complaint is in being before a court, you cannot bring the claim before the pensions ombudsman[16].

10 Case C-278/05

11 (Unreported, High Court of England and Wales, 4/4/14)

12 Part XI of the Pensions Act 1990 inserted by the Pensions (Amendment) Act 2002.

13 S.131.6 of the Pension Act 1990.

14 Sections 139 and 141 Pensions Act 1990.

15 In *O'Hara v. ACC Bank Plc* (Unreported, High Court, 7/10/11) the claimant had failed in a claim before the financial services ombudsman, that the bank misrepresented to him, when investing in a particular fund, that the money would be invested in blue-chip companies when this did not turn out to be the case. The court held that the plaintiff was estopped from proceeding with fresh High Court proceedings claiming misrepresentation arising from the same facts.

16 S.131.7 of the Pension Act 1990.

Claim against the State in the event of winding up

If the DB scheme is wound up, members of the DB scheme who do not get their full benefit might take a claim against the State. Article 8 of Directive 2008/94/EC (hereinafter the directive) provides *inter alia* that member states shall take necessary measures to protect entitlements of members under occupational pension schemes. The directive leaves it to the member state to decide what form the protection should take. The directive only applies where there is a double insolvency – where the employer is declared insolvent and the pension scheme is declared insolvent. In *Robins v Secretary of State for Work and Pension,* the ECJ held that the United Kingdom did not adequately protect the interests of employees in accordance with Article 8 of the Insolvency Directive, where an employee would receive less than half of her pension entitlements on winding-up. In *Hogan v The Minister for Social and Family Affairs Case*[17] , the ECJ held that Ireland did not adequately protect the interests of employees in accordance with Article 8, where the plaintiffs were likely to get between 18% and 28% of their full entitlements on one calculation, and between 16% and 41% on another calculation. The matter has been returned to the High Court to determine just what percentage the plaintiffs should get. Arising from *Hogan v The Minister for Social and Family Affairs Case*, the Minister for Finance introduced an additional 0.15% levy on private pension funds to meet the state liability that is likely to arise as a result of this judgment.

In *Greene v. Coady,* the court held the trustees were not in breach of duty in failing to make a CDN, which would have created a double insolvency situation and put themselves a position to sue the state – the *Hogan v The Minister for Social and Family Affairs* decision had not been made when they made their decision. Also, creating a double insolvency situation would have meant closure of operations in Shannon which was a factor that motivated them to accept the employers offer of less than the funding deficit.

Since 25th December 2013[18], a member who gets less than 50% of their entitlement in a double insolvency situation can make a claim to the State for the balance to bring them up to 50% – there is a question mark over whether this is adequate to implement the Directive.

Industrial action

Lastly, workers might threaten industrial action. This is not a litigation route but can be effective at stopping the trustees or employer doing what they are entitled to do under the trust deed or have been permitted to do by the Pensions Authority, either by way of section 50 order or otherwise. The procedures set out in the Industrial Relations Act 1990 should be complied with.

Conclusions

Funding proposals are in place for many DB schemes, with the aim of bringing the scheme into solvency by 2023, at the latest. Trustees should consider serving a CDN if this is possible under the trust deed. The trustees and employee

17 Case C-398/11

18 The Social Welfare And Pensions (No. 2) Act 2013

then often negotiate a compromise, with the closure of the scheme going forward. Trustees who do not serve a CDN, where this is possible under the trust deed, might find they are in breach of fiduciary duty. A decision to settle for less than the sum demanded should be well documented and trustees should seek advice.

Now that a section 50 order can reduce pensions in payment, it may be that this is the option the Pensions Authority will seek, *in lieu* of winding up the scheme. The order of priority of payments in liquidation still put pensioners in a strong position compared with active and deferred members, particularly where the scheme is insolvent but the employer is solvent. It may be that active and deferred members will push for methods other than winding up for dealing with the deficits.

Industrial action will continue to be the main way that employees will seek to prevent a change that is otherwise authorised by the trust deed and the Pensions Authority. ■

Northside Community Law Centre Changes Name to *Community Law & Mediation*

For over 39 years, *Northside Community Law Centre* has been a pioneering organisation in the provision of community based legal services. Work carried out includes free legal, mediation and information services, as well as advocacy and support for law reform campaigns at national level. Since it was established in Coolock in 1975, the range of services has expanded to include a free mediation service, *Mediation Northside.* A second community law centre has been set up in Limerick.

To more accurately reflect the expanded range of services on offer, the members have voted to adopt a new name for the organisation, *Community Law & Mediation*. Community Law & Mediation will continue to provide the same services concentrating on mediation, law reform, community education, and resources such as the *Irish Community Development Law Journal* and the Social Welfare decision database, C*asebase.*

If you would like further information, please sign up to the Community Law & Mediation mailing list at *http://communitylawandmediation.hc1.webtrade.ie/about-us/mailing-list.41.html* or visit our new website: *www.communitylawandmediation.ie*

Rose Wall is the Director of Community Law & Mediation.

Female Genital Mutilation

Caroline Bergin-Cross BL*

Female Genital Mutilation (FGM) is recognised internationally as a clear form of domestic violence against women and girls. The UK Crown Prosecution Service is currently prosecuting its first claim for FGM since the enactment of the Female Genital Mutilation Act (UK) 2003. The Irish equivalent is the Criminal Justice (Female Genital Mutilation) Act 2012,[1] which is closely mirrored on the UK legislation.

FGM constitutes torture and cruel, inhuman or degrading treatment as affirmed by international jurisprudence and legal doctrine, including by many of the UN treaty monitoring bodies, the Special Procedures of the Human Rights Council, and the European Court of Human Rights. To expel or return a girl or woman to a country where she would be subjected to FGM would amount to a breach by the State concerned of its obligations under international human rights law. On foot of major campaigning by AkiDwA, the network of African and migrant women in Ireland, the Oireachtas recently enacted The Criminal Justice (Female Genital Mutilation) Act 2012,[2] which had been in the making in one form or another for over ten years. Prior to this in Ireland, FGM was recognised as a form of persecution and may lead to a grant of asylum in certain circumstances. Implementation of best practice gender guidelines in the Irish asylum process will allow for improved practices in assessing gender-related claims of persecution. It is hoped The Criminal Justice (Female Genital Mutilation) Act 2012 will lead to the increased investigation and persecution of this crime.

FGM reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is not necessarily an offence committed by men on women, as women also commit the offence. However, it is regularly carried out on minors and is a violation of the rights of children. The practice violates a person's rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death. Labour Senator Ivana Bacik, who had first proposed The Criminal Justice (Female Genital Mutilation) Bill 2011, said that the legislation had been long overdue.

For example, in the U.K., FGM has been a specific criminal offence since 1985, with the introduction of the Prohibition of Female Circumcision Act 1985. At an international level, Article 38 of the Istanbul Convention has also recognised the seriousness of the offence and the need for lawmakers to have a statutory framework in place to tackle the problem. Furthermore, over 3,000 women living in Ireland are believed to have undergone FGM. To illustrate, of females aged between 15-49, an estimated 98% of Somalian, 19% of Nigerian, and 90% of Sudanese girls and females undergo FGM.

"International research shows the enormous dangers to the health of women and girls represented by the barbaric practice of female genital mutilation," said Senator Bacik. "This is a pressing issue in this country, particularly for migrant women and girls and their families".[3] Figures show as many as 140 million women and girls have been subjected to FGM worldwide, with an estimated 8,000 new cases every day.

Prior to the enactment of the Criminal Justice (Female Genital Mutilation) Act 2012, the Irish Government had taken a firm position against FGM in African countries which receive Irish state aid, however, there has been somewhat of a delay in their acknowledgement of FGM as a domestic issue. In this regard, it is worth noting that no evidence exists that FGM has been or is practiced on Irish soil, anecdotal evidence suggests that parents originally from practicing communities are experiencing pressure to have their daughters undergo FGM during visits to their country of origin. This point is significant in that the Act now provides a strong rationale for those parents to explain that they could be prosecuted on their return to Ireland. The Act is modelled on the UK Female Genital Mutilation Act 2003, wherein, the legislation has failed to yet lead to a completed prosecution, appearing to have a largely symbolic and perhaps deterrent value.

The first prosecution either in Ireland or the U.K. in respect of FGM is currently being brought by the UK Crown's Prosecution Service against Dr. Dhanoum Dharmasena, from the Whittington Hospital in London, and Hasan Mohamed, who is not a medic. It is alleged that Dr. Dharmasena carried out a procedure on a female patient who had given birth in November, and that Mr. Mohamed had encouraged and helped Dr. Dharmasena contrary to s.1(1) of the Female Genital Mutilation Act (UK) 2003. This case will be closely watched in Ireland. Mr. Mohammad is charged on two counts – one charge of intentionally encouraging an offence of FGM, contrary to s.44(1) of the Serious Crime Act 2007, and a second charge of aiding, abetting, counselling or procuring Dr. Dharmasena to commit an offence countrary to s.51(1) of the UK 2003 Act.

The passing of the Criminal Justice (Female Genital Mutilation) Act 2012 in Ireland now brings Ireland in line with a number of other EU Members States that have developed specific criminal legislation on FGM. Sections 2, 3 and 4 of The Criminal Justice (Female Genital Mutilation) Act 2012 clearly outlines what is regarded as an offence of FGM for the purposes of the Act, and in accordance with international law Section 5 makes it a hybrid offence. Therefore, if a person

* BCL (UCD), LLM Commercial (UCD), BL.

1 S.I. 11 of 2012.

2 S.I. 11 of 2012.

3 http://www.thejournal.ie/female-genital-mutilation-officially-banned-in-ireland-399.

is found guilty of FGM on indictment, such person can face a maximum of 14 years imprisonment.[4]

At present, one can only speculate as to the effect, ambit and protections the Act will produce. However, the prosecution by the UK Crown Prosecution Service of Dr. Dhanoum Dharmasena and Hasan Mohamed will most probably provide much guidance to Irish lawyers as to how Criminal Justice (Female Genital Mutilation) Act 2012 will be interpreted and applied. The trial will be held at Westminster Magistrates' Court in April 2015.

The Irish legislation is an extremely important development in the protection of the human rights of women and girls who may be or have undergone female circumcision. The Act helps prevent the occurrence of FGM procedures in Ireland, thereby stop the damaging effects it causes on women, girls and female babies, for example, severe bleeding and problems urinating, and later cysts, infections, infertility as well as complications in childbirth and increased risk of newborn deaths.

4 Section 5(b) of The Criminal Justice (Female Genital Mutilation) Act 2012.

FGM constitutes an extreme form of discrimination against women, and replicates deep-rooted inequality between the sexes. Minors are generally, in particular from certain ethnic backgrounds, forced to undergo this horrific and needless procedure, which represents a violation of the rights of children. The Act, in criminalizing FGM, epitomizes a females' right to be free from torture and cruelty, inhuman or degrading treatment, and the right to life when the procedure results in death. The practice also violates a person's rights to physical integrity, security, and health. The 2012 Act strengthens the human rights of females and shows that Ireland will not be jurisdiction that will permit such an act on Irish soil or that will tolerate the transport of any girl out of the country for the purpose of undergoing the procedure.

FGM is a form of persecution from which women and girls are now provided protection for under Irish law. While laws banning FGM as a form of persecution will not alone end the outdated customary practice, the Act reflects Irelands' disapproval of female genital mutilation and will support the global struggle against it. ■

Launch of *Arbitration Law* by Derek Dunne and Arran Dowling-Hussey

Pictured at the launch of Arbitration Law *(2nd edition) is: (l-r) The Hon Mr Justice Nial Fennelly, Derek Dunne BL (Author), Arran Dowling-Hussey (Author) and John Tackaberry QC (Consultant Editor).*

THOMSON REUTERS
ROUND HALL™

REUTERS/Todd Korol

NEW TITLE

THE LAW OF LOCAL GOVERNMENT

1ST EDITION
DAVID BROWNE

The Law of Local Government provides a comprehensive and definitive analysis of the law on local government, including the substantive and procedural provisions which are relevant for the application of law on local government and local authority legislative provisions.

- Provides a comprehensive analysis of local government law and the legislative provisions applying to local government law
- Details the main statutory provisions and provides an exhaustive and extensive analysis of relevant case-law
- Analyses particular points of law which require clarification and deserve academic analysis
- Refers to the relevant District Court, Circuit Court and Superior Court Rules for applications and enforcement proceedings under the local government statutory code
- Summarises the law relating to local government administration, functions and services
- Deals with key provisions on the local government system, including the role of the manager, elected members and officials and employees
- Provides an overview of the legal capacity and potential liability of local authorities
- Includes a specific chapter on public procurement and local authorities which will hopefully be of use to a wider audience in the absence of a specific text on public procurement
-

€295
December 2014
9780414035195

TO ORDER:

Email: TRLUKI.orders@thomsonreuters.com
Or Call: 1 800 937 982 (From Landlines only) or +44 (0) 203 684 1433 (INT)

THOMSON REUTERS™

THOMSON REUTERS
ROUND HALL™

REUTERS/Tim Wimborne

NEW EDITION - ORDER YOUR COPY TODAY

EVIDENCE

DECLAN MCGRATH

Evidence is unique in its breadth of coverage and detail. It deals not only with the law of evidence as it applies to criminal trials but also with the rules applicable in civil trials.

- Examines the concept of relevance and the basic rules governing the admissibility of evidence
- Discusses the competence and compellability of witnesses, the rules and principles governing the examination of witnesses, previous consistent statements, and legislative provisions permitting evidence to be given by live television link and certificate
- Analyses the various measures adopted to deal with the problems posed by unreliable evidence including accomplice evidence, the evidence of sexual complainants and children, and the rules regarding identification evidence
- Reviews in detail all of the privileges available in criminal and civil proceedings including legal professional privilege, without prejudice privilege and public interest privilege

- **TO ORDER:**
  Email: TRLUKI.orders@thomsonreuters.com
  Or Call: 1 800 937 982 (From Landlines only) or +44 (0) 203 684 1433 (INT)

  Exclusive to barristers under 7 years qualified: Please email pauline.ward@thomsonreuters.com to avail of a very special price for barristers under 7 years qualified. €195. Terms and Conditions apply.

Evidence
2nd Edition
December 2014
€395

THOMSON REUTERS™