As the sun rose on another perfect day the calmness of Lough Corrib was reflected in the eyes of the quiet man who sat musing on what had been the Law Society of Northern Ireland Conference 2003. He sat in a comfortable armchair glowing with goodwill and modest satisfaction at a job well done. To his left lay the discarded Rembrandt-like emblems of the night before: a bow tie, a Stratocaster and a chain of office. To his right reposed the surviving relics of the company, a few otherwise well-respected colleagues and friends who may have enjoyed themselves not wisely but too well.

It had all begun so well with record-breaking numbers of guests, delegates, partners and assorted children. The arrival was spectacular not just in terms of blue skies and warm breezes but the magnificent entrance to Ashford Castle suggested that this was a special place where special things would happen which would make people feel very special indeed.

And no-one was disappointed. The early promise of the week-end was confirmed on the first evening when a superb dinner with excellent wines was made the more memorable by the absence of speeches and the shortest grace in history. Thereafter to the comfortable and (to some) obviously familiar setting of the Dungeon Bar. There into the small hours old friendships were renewed, new musical talent was discovered, songs were sung by many, and very little honest feedback was given.

The following day (for some, later the same day) the weather was again verging on the miraculous for the time of year. Perhaps equally astonishing was the turnout at the Conference Business Session on Risk Management led off by the inimitable Tom McGrath. He was followed by three speakers from one of the main Conference sponsors (St Paul Insurance) – Tim Prior, Jonathan Davies, Olivia Burren. The general theme was ‘Working within a more profitable and pleasurable practice’ and included sessions on claims experience, the role of the underwriter, and managing the life cycle of a file (from start to archive). It is a tribute to all of the speakers that they held the attention of the audience so effectively combining very practical risk management advice with an entertaining style of presentation. This was a high quality session commended by all who were able to be both present and sentient.

Then on to the afternoon at leisure. For many this meant golf (inevitably), tennis, fishing, for some a trip to Galway City, a boat cruise, falconry, horse-riding, or clay pigeon shooting. For others it meant the avoidance of all of the above, the recovery of equilibrium and sustained preparation.

Continued on page 2...
Connolly, the Larry Adler of Newry City. We were not worthy. However, the megastar was undoubtedly the excellent Tracey Diamond with her show-stealing soulful solicitors’ siren songs. And then, via the disco, once more into the cellar.

As he pondered in his chair on what had been, the President (for it was he) reflected on all the things for which he was thankful.

Thankful for the weather, for the organisational skills of Clair Balmer and her team, for the hotel staff who had made the whole event so warm and enjoyable, for the financial support provided by the sponsors particular mention should be made of our own President featured on rhythm guitar and lead vocals. Commendation due also to Norville

Northern Bank (ably represented by Lesley Burke), St Paul Insurance and Marsh, for Attracta Wilson and the outstanding children’s programme, for the support of his wife Agnes, and for the company of so many friends and colleagues. And as the haze lifted, meteorologically and metaphorically, he was thinking to himself: “Wouldn’t it be great if it was like this all the time?”

Diversity within the bands in terms of age, hair-style, waist measurement, artistic temperament and musical direction. All of them were stars, but solicitors’ siren songs. And then, via the disco, once more into the cellar.

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Law Society sees red for Comic Relief

On Red Nose Day, 14th March, all available male members of Society staff were fitted with fetching red hair extensions to raise money for Comic Relief.

Peter O’Brien, Kevin Delaney and John McCormick (pictured here) should be thoroughly congratulated for allowing their tresses to be doctored in the name of charity. Special mention should also be made of Miriam from the Northern Law Club who painstakingly (and in John McCormick’s case miraculously) fitted the extensions. In addition, all other members of staff donated money for the opportunity in taking part in a Denim Day free from uniforms. Staff and visitors to the Society and Club raised a fantastic £500 for Comic Relief.
Proceedings in the Family Division

The Family Division of the High Court has issued the following, all of which are effective from 20th February 2003:-

(i) Practice Direction – 2003/1 which details court requirements with regard to the preparation and content of court bundles of documents in all final hearings in family proceedings in the High Court.

(ii) Practice Direction - 2003/2 which requires parties to proceedings under the Children (NI) Order 1995 or under the inherent jurisdiction of the High Court relating to children which are pending before the Family Division of the Court and which are to be heard by an assigned Judge sitting in that Division to provide a time estimate of length of hearing in accordance with the procedure set out therein.

(iii) a Practice Note in relation to hearings for the renewal of interim care orders in proceedings brought pursuant to Article 50 of the Children (NI) Order 1995.

These are essential documents for family law practitioners. They are all available from the Library on request in hard copy or in e-mailable form from hsemple@lawsoc-ni.org

Costs in Legally Aided Family Care Centre Cases

Practitioners should note that the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) (Amendment) Order (NI) 2003 (SR 2003 No.43) increases the maximum amounts allowable as remuneration for solicitors and counsel acting for legally aided persons in proceedings (other than equity suits and actions remitted from the High Court) in the county court to accord with the new county court scale costs. The new maximum amount allowable for solicitors of £2400 (previously £700) may be exceeded if the judge before whom the proceedings take place certifies that the maximum amount shall not apply.

This Order applies to any assessment of sums allowable to solicitors and counsel in respect of proceedings commenced after 3rd March 2003. A copy of the Order is available at www.northernireland-legislation.hmso.gov.uk

The Family Proceedings (Amendment) Rules (NI) 2003 – SR 2003 No.75

These Rules amend the Family Proceedings Rules (NI) 1996 so as to introduce rules and forms relating to the adoption of children in accordance with the Adoption (NI) Order 1987 as amended by the Adoption (Intercountry Aspects) Act (NI) 2001. These Rules come into operation on 1st June 2003. They will be available shortly at www.northernireland-legislation.hmso.gov.uk

Children Order Advisory Committee

The Third Report of the Children Order Advisory Committee has recently been published. The Report sets out the Committee’s view on how the Children Order has been working in practice over the period from 1 January 2001 to 31 March 2002. While such a substantial piece of legislation has given rise to some difficulties, the Committee believes that many of the challenges presented by it have been met.

A copy of the Report can be downloaded from the Internet at www.courtsni.gov.uk/publications/reports.htm

UK and Pakistan Consensus on Child Abduction

The President of the Family Division of the High Court of England and Wales, Dame Elizabeth Butler-Sloss recently chaired a judicial conference in London attended by senior members of the Pakistani and UK judiciaries. A Joint Protocol was signed in relation to protecting the children of the UK and Pakistan from the harmful effects of wrongful removal or retention from one country to the other.

Mr Justice Gillen has requested that this Protocol be drawn to the attention of solicitors in Northern Ireland as it may be of importance to people from Pakistan living here. A copy of the Joint Protocol is available from the Library on request in hard copy or in e-mailable form from hsemple@lawsoc-ni.org

Child Support Scheme

The long awaited new Child Support Scheme came into force on 3rd March 2003. Practitioners will have to calculate child maintenance with the new formula. Initially this will only apply to new cases. Only four pieces of information will be required for the basic calculation: the net income of the ‘non-resident parent’, the number of children who will be subject to the calculation, the number of nights of staying contact the ‘non resident parent’ has with the children and the number of ‘relevant other’ children. The new streamlined rates will be 15% of net income for 1 child, 20% for 2 children and 25% for 3 or more children.

Child Tax Credit

Practitioners should be aware of a new system for family support known as child tax credit and working tax credit starting on 7 April 2003. By virtue of the Tax Credits Act 2002 child tax credit replaces the child-based element in Income Support, Job Seekers Allowance, Working Family Tax Credit, Disabled Persons Tax Credit and the current Children’s Tax Credit. Child Benefit remains unchanged.

Government advises that nine out of ten families with children will benefit from the new child tax credit so it is vital that everyone is aware of the changes and knows how to claim their entitlement. Further information can be obtained from the Inland Revenue or downloaded from the Internet at www.taxcredits.inlandrevenue.gov.uk
The New Bar Library Building

Information for Solicitors

The new Bar Library building at 91 Chichester Street, Belfast, will open for business from Monday 28 April 2003. As well as providing office and desk accommodation for approximately 550 barristers, the new building will provide the most modern consultation facilities in 11 new consultation rooms. Public opening hours for the new building will be 9am to 5.30pm. Members of the profession are asked to bear the following points in mind:

1. Change of Address
   After 22 April 2003 all correspondence to Members of the Bar at the Bar Library should be addressed to:
   The Bar Library
   91 Chichester Street
   BELFAST BT1 3JQ
   Any post for the attention of the General Council of the Bar of Northern Ireland should also be sent to this address.
   All Solicitors should in the first instance call at Reception of the new building whether or not their consultations are booked to take place there. Only those clients whose consultations are booked at the new Library should attend there and only then in the company of their Solicitor. All other clients should attend in the Main Hall of the RCJ.
   Everyone attending the new Library for a consultation will be asked to sign a Visitors’ Book.

2. Solicitors’ Boxes
   The Solicitors’ boxes currently housed in the reception area of the old Bar Library will cease to operate and will not be replaced in the new Library. Members of the Bar have been advised that outgoing correspondence to Solicitors should be sent via DX or Royal Mail. Solicitors’ messengers should be instructed to deliver mail directly to the Post Room on the ground floor of the new building.

3. Bar Library Reception
   The reception desk at the old Bar Library will cease to operate from 23 April 2003. All enquiries of whatever description should be made to reception in the new building.

4. Telephone System
   The switchboard in the old building will close on 11 April 2003. It is currently envisaged that there will be a skeleton service available between 14 April – 23 April 2003 after which normal service should resume. Telephone numbers for the General Council of the Bar of Northern Ireland, The Bar Library and for all its Members will remain unchanged.
   Any queries in relation to this note or otherwise regarding the move to the new building should be directed to our Chief Executive on 028 9056 2349. We look forward to welcoming everyone at the new Bar Library.

Reg Weir QC
Chairman
Seminar

Tuesday 6 May 2003 - Review of the Planning Appeals Commission
The Green Room, Belfast Waterfront Hall at 5.30 pm

This talk will discuss the role of the Planning Appeals Commission (‘PAC’) and reflect on its work over the past thirty years. John Warke, PAC Commissioner will discuss the PAC’s work and progress over this period. Reg Weir QC will critically assess the PAC’s development during this time.

(This seminar carries 2 hours CPD)

BOOKING FORM

Name of Attendee(s): ____________________________

______________________________

______________________________

Company Name: ____________________________

______________________________

Please reserve the following number of places at the above event __________

Members          Non-Members

£10.00            £15.00

I enclose a cheque for £_______________ as a non-refundable fee made out to the Environmental and Planning Law Association for Northern Ireland.

Please return completed Booking Form to Claire Duffy, Secretary, EPLANI, c/o Cleaver Fulton Rankin, Solicitors, 50 Bedford Street, Belfast, BT2 7FW, DX 421 NR Belfast

NB. The EPLANI AGM will take place in June (date to be confirmed) and details of this will be advertised in a future issue of the Writ.
3 Hour CPD Courses

9th April 2003
- Competition Law Update and the Enterprise Act

27th May 2003
- The Nil Rate Band Trust and Modern Will Drafting

6th June 2003
- Insolvency and Tenant Default - A Practical Overview

20th June 2003
- Small Building Estates - Getting it Right

3rd July 2003
- Stamp Duties for Commercial Properties - After Finance Act 2002

13th August 2003
- Rule 15 and Retainers - Is Your Client Care Working?

16th September 2003
- Agency and Distributorship

25th September 2003
- Disability and Illness Dismissals - The Law

Fee: £95 CLT Subscription Members  £190 Non Subscription Members

Please return to: The Registrar, Central Law Training, Wrens Court, 52-54 Victoria Road, Sutton Coldfield, Birmingham, B72 1SX
DX: 708700 Sutton Coldfield
Tel: 0121 355 0900  Fax: 0121 355 5517
Book via our website at www.clt.co.uk

Please photocopy for additional delegates

Title:  First Name:
Surname:
Employer’s Name:
Employer’s Address:
Postcode:
DX No:
Delegate’s Email:
Employer’s Tel:
Employer’s Fax:
Signed:
Date:

REPUBLIC OF IRELAND AGENTS

Lavelle Coleman Solicitors

51/52 Fitzwillian Square, Dublin 2, Ireland
DX: 109010 Fitzwilliam.
Tel: (3531) 6619826
Fax: (3531) 6614581
E-Mail: law@lavellecoleman.ie

Willing to undertake agency work on behalf of Solicitors in Northern Ireland
Contact
Marc Fitzgibbon (Partner)

LEGAL ACCOUNTING NI

Professional Legal Bookkeeping Service Provider

Our team includes ACA Qualified Accountants, highly experienced ILCA Bookkeepers, Legal Accounting Software Consultants and Trainers.

Our Services include:
• Legal Bookkeeping
• Year-end accounts
• Software installation/ upgrade/audit
• Staff training
• Systems & procedural advice
• Short & long term leave cover
• PAYE and VAT administration
NIYSA - ANNUAL CONFERENCE - DUBLIN

9th and 10th May 2003

The NIYSA has pleasure in inviting its members to attend our annual conference, which will take place in Dublin this year. We are hosting the conference jointly with the Society of Young Solicitors of Ireland (SYS) and the European Young Bar Association (EYBA). We are confident that the 2003 conference will be particularly special with a busy programme of seminar sessions and social functions. The venue for the conference is one of Dublin’s most lively and prestigious hotels, The Burlington.

The basic cost of the weekend is £285.00, per person, to include registration fee and the cost of b&b accommodation (on the basis of two persons sharing a room) and the Gala Dinner on Saturday night. Travel is not included.

The first thirty five places will be available at the substantially subsidised price of £175.00. Places will be secured only upon receipt of cheque and completed booking form.

NB
If the Burlington Hotel is oversubscribed, accommodation will be available at the Mespil Hotel.

AGENDA

Friday 9th May 2003

10.00-11.00
Burlington Hotel – Herbert Room
Registration and Welcome Address
President of the EYBA and Members of the Irish Legal Profession

Seminar
“From Chocolate to Kir Royale”
The ongoing impact of the Cassis De Dijon and Chocolate Cases for Food Law in the European Union and Beyond.
Raymond O’Rourke, M.A. Barrister, Mason Hayes & Curran, Author – European Food Law
Marie Gallagher, Solicitor, Arthur Cox

11.00-11.15
Coffee Break

11.45-12.30
Seminar
Speakers and topics to be announced

19.00
Bus Transfers from Burlington Hotel to Jameson Distillery

19.30-Late
Jameson Distillery (Smithfield, Dublin)
Traditional Irish Evening of Food, Entertainment, Irish Whiskey Sampling and Tour of the Jameson Distillery

Saturday 10th May 2003

10.00-11.00
Seminar
Online Dispute Resolution - Solving commercial disputes using the Internet

Brian Hutchison, BCL, LLM (NUI), DipArbLaw, FCIArb, BL, Associate Dean, Director Diploma in Arbitration, University College Dublin

11.00-11.15
Coffee break

11.45-12.30
Seminar
NB Mr. Justice Gillen will be delivering a lecture on Human Rights. Details to be confirmed.

18.30
Departure of Coaches for Gala Dinner at Royal Hospital Kilmainham

19.00-Late
Royal Hospital Kilmainham
Pre Dinner Reception, Gala Dinner, Band and DJ (Black Tie)
Transfers back to Hotels

Cheques and Booking Forms to NIYSA c/o Catherine Calvert, Samuel D Crawford & Co., 105-109 Victoria Street, Belfast BT1 4PD
E Mail – catherine@sdcrawford.co.uk

BOOKING FORM

Name: ____________________________________________

Firm: ____________________________________________

________________________________________________

Address: ________________________________________

________________________________________________

Email: __________________________________________

Tel: _____________________________________________

I enclose remittance of £ __________________________
Northern Ireland Young Solicitors’ Association presents a Practice Management Seminar

**DATE:**  
Friday 11th April 2003

**TIME:**  
1.30pm - 4.30pm (tea, coffee and sandwiches from 1.00pm)

**VENUE:**  
Law Society House, Victoria Street, Belfast

**COST:**  
£40 for members of the NIYSA* and £60 for non-members.

**LECTURES**

1. “Building the Customer Relationship” First Trust Bank
3. “The Operation of Practice Management Standards” Mary Norton, Client Manager, Lead Auditor, SGS ICS Ltd

Attendance at this Seminar will provide three hours’ CPD entitlement.

Cheques and Booking Forms to NIYSA c/o Catherine Calvert, Samuel D. Crawford & Co., 105-109 Victoria Street, Belfast BT1 4PD
E Mail – Catherine@sdcrawford.co.uk

* All Solicitors aged 36 or under are automatically members of the NIYSA.

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**NEW INSTITUTE REPRESENTATIVE FOR NIYSA COMMITTEE**

The NIYSA recently attended at The Institute for the important task of holding an election for one lucky Institute trainee solicitor to sit on the NIYSA committee. Your amazement will only be second to ours when we had not one, not two, but FOUR willing candidates! After a tense tie-breaker situation, we were thrilled to announce Karen Quinn as the lucky winner of what we are sure you will agree is a significant honour!

Karen, a trainee with Eamonn McEvoy & Co. Solicitors, Lurgan graduated from Queen’s in 2002 and says that her desire to sit on the NIYSA committee had absolutely nothing to do with the offer of two free tickets to the NIYSA Annual Conference in Dublin in May! Karen’s election was celebrated in style by members of the Institute at Rain City, Belfast where we all enjoyed free wine and nibbles courtesy of our good selves and our sponsor, First Trust Bank. Karen, we are reliably informed, took her new position very seriously indeed managing to celebrate into the wee small hours – further proving her worthiness and suitability as a member of the NIYSA committee!

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**BOOKING FORM**

| NAME | 
| FIRM | 
| ADDRESS (DX if possible) | 
| E-MAIL | 
| TEL | 
| NUMBER OF PERSONS ATTENDING | 

I ENCLOSE REMITTANCE OF £ ____________

---

**NIYSA EASTER DISCO**

**O’NEILLS BAR**

4 JOYS ENTRY (OFF HIGH STREET) BELFAST

Thursday 17th April 2003

9.00PM - TO LATE

ADMISSION £5.00
The BSA is pleased to announce the re-introduction of its Table Quiz to its social calendar. The event will take place at the Boathouse, Stranmillis, Belfast, on Friday 25 April at 8pm. Teams of four at £2.50 per person.

Enquiries to Gavin Patterson at Peden & Reid (9034 5617 or law@pedenreid.com).

"BSA GOLF OUTING"


This year’s Annual Golf Outing will take place on Thursday 15th May 2003 from 1.30 pm at what will then be the newly refurbished facilities (both on and off the course) at Malone Golf Club, Belfast.

The cost per person, thanks to Malone holding the prices to the BSA at the same figures as last year, will be £45.00 (£35.00 green fee, £8.00 meal and £2.00 subscription - Malone Golf Club members and persons not wishing to take a meal should adjust their payment accordingly). All members of the Association and their visitors will be welcome and you are invited to complete the Form and return it as soon as possible. There will be prizes for the main competition for members with official handicaps and for visitors. As usual there will also be a special competition for members without official handicaps. The main prizes will be decided on a Stableford Points basis on full handicap (maximum 24).

"BSA GOLF OUTING"

Thursday 15th May 2003

Name: ________________________________

Contact address: __________________________________________________________

_________________________________________________________________________

Telephone: ________________________________

Subscription attached: £ _____________

(payable to Belfast Solicitors' Association)

Please indicate against the names the prizes to be played for - Members/visitors/members special.

Return to: Richard Palmer of Peden & Reid, 22 Callender Street, Belfast, BT1 5BU

DX 389NR BELFAST

Telephone: 028 9032 5617  Fax: 028 9024 7343

E-mail: richardpalmer@pedenreid.com

Pub Quiz Notice

The BSA is pleased to announce the re-introduction of its Table Quiz to its social calendar. The event will take place at the Boathouse, Stranmillis, Belfast, on Friday 25 April at 8pm. Teams of four at £2.50 per person.

Enquiries to Gavin Patterson at Peden & Reid (9034 5617 or law@pedenreid.com).

BSA On-Line

The BSA website can be found at: www.belfast-solicitors-association.org
Seminar Programme

In an effort to avoid the end of year panic for CPD points that some of you experienced at the end of 2002, we are giving you advance notice of the seminars which will be available this year so that you can plan ahead.

RECENT DECISIONS BY ECHR
By Brice Dickson
At Law Society House
On Thursday 10th April 2003

DERMATITIS – WHAT IS IT?
By Dr Clifford McMillan FRCP
At Law Society House
On Thursday 17th April 2003

“LOUSY LEASES”
By Rowan White of Arthur Cox Solicitors
At Law Society House
On Friday 9th May 2003

LIBRARY SERVICES
By Heather Semple of Law Society, Library
At Law Society House
On Thursday 12th June 2003

RECENT DEVELOPMENTS IN ADR
By David Gaston and Brian Speers
At Law Society House
On Thursday 19th June 2003

Coffee and sandwiches will be available from 12.30 p.m. and the talks will start at 1.00 p.m.

The cost of all lunchtime seminars is £10.00 for BSA members and £20.00 for others. The cost of each Land Registry seminar is £10.00 for each seminar.

Cheques payable to BSA c/o Karen Henebry at Cleaver Fulton & Rankin Solicitors.

BSA EGM
An EGM will be held at the offices of Campbell Fitzpatrick on Monday 7th April at 5.30pm to:
(a) Approve last year’s accounts and
(b) To appoint a firm of auditors
Anyone wishing to attend should contact the Association by e-mailing us via our website or contacting any of the committee members of the Association. This is to ensure that numbers can be accommodated.

Accounts Ireland Ltd
 Experienced accounts personnel available to provide a comprehensive service covering all aspects of Solicitors’ Accounts. Our aim is to provide either long term service, or short term covering sickness or maternity leave. We also provide a salary/wages service calculated on a weekly or monthly basis. Delivering staff records and payslips to your office as required. Confidentiality is assured on all inquiries.
 For further information please telephone 028 3025 8406. Mobile 07905 929503.
We all know how exasperating some clients can be, with occasionally unreasonable demands and unrealistic time limits. We also know how unreasonable clients are often the first to complain that your firm has been negligent. However, did you realise a large percentage of these clients are only being difficult because they do not understand the legal process or realise what a lawyer does? Here are some simple points, which should help you have a smooth working relationship with your clients.

First give realistic advice. Explore all options with the client as opposed to simply doing what they want. Be realistic regarding the clients’ expectations, fully explain the process and procedures involved, and the full implications of the work. It is important to make a formal record of what is agreed to avoid misunderstandings at a later date, and remember always to use a retainer letter for this purpose.

Make sure you give clients a realistic time limit. It is probably better to err on the side of caution when estimating a completion date for work undertaken. One of the main causes for claims being made against practices is not meeting deadlines. Therefore, it is imperative the client has realistic expectations of the time taken to complete the job.

Explain exactly what the work entails in layman’s terms. Most clients do not understand what is involved when work such as residential conveyancing or litigation is embarked on, and as a result they do not realise the extent of work going on behind the scenes. It is important to explain everything clearly and detail what you will be doing on their behalf.

Also make sure you inform the client when each of these stages has been completed. Think of it as climbing a ladder; when you have reached each rung, make sure you let the client know what has been achieved. More often than not, a solicitor will see a telephone call to a client to update them as a waste of the client’s money, but often not making the phone call is perceived by the client as being forgotten. Understandably, this is not seen to be a priority for a lot of practices, and pressure from workload and from seniors can mean it is often overlooked. Yet keeping a client happy and feeling that they are ‘in the loop’ can counteract a lot of problems further down the line.

An important part of a firm’s risk management procedures is the realistic management of the client’s expectations. If the client has a good understanding of timing, the amount of work involved and the procedures taking place, they will be less likely to become disaffected, and less likely to make a claim against your practice.

This column was prepared by the Alexander Forbes Professions risk management team.

This article first appeared in ‘The Gazette’, the journal of the Law Society of England and Wales, 99/37 26 September 2002 and is reproduced here with the kind permission of the editor.
Historic Courts ‘Snapshot’ receives Judicial approval

A unique piece of legal memorabilia is set to aid a leading Northern Ireland charity.

It is in the form of a limited-edition lithograph featuring a distinctive montage of Belfast courthouses…from the old to the ultra-modern.

The 32-inches-by-28-inches lithograph is by award-winning caricaturist Stevie Lee, renowned for his remarkable depictions of landmark buildings. It is being published in an edition size of only 95 prints, each hand-signed and numbered by the artist, to raise funds for Action Cancer.

And to add to their collectability as an historic piece of artwork, they have been countersigned by the Lord Chief Justice, Sir Robert Carswell. Before going on general release, the prints are initially being offered exclusively to members of the legal profession by publishers Quantum Images, who represent the work of leading contemporary Irish artists and have a worldwide range of private and corporate clients.

The buildings depicted include the former Crumlin Road Courthouse, the old County Court in the Townhall Building in Victoria Street, the imposing columned Royal Courts of Justice in Chichester Street and the award-winning ultra-modern Laganside Courts, which were officially opened by the Queen two weeks ago.

Local artist Stevie Lee’s work regularly appears in national newspapers and other important publications. His original caricatures and lithographs are much sought-after collectors’ items and are to be found in private and corporate collections throughout the world.

Said Paul Hanna, of Quantum Images: “We are delighted to have been commissioned to create this authentic and collectable piece of legal memorabilia.

“As a truly historical ‘snapshot’ of the Belfast courts past and present by such a highly-acclaimed artist, it will undoubtedly become a valuable record of an important aspect of the city’s built heritage.”

Added Louise Warde Hunter, of Action Cancer: “We believe this impressive collection will provide a unique opportunity to raise much-needed funds for us in our commitment to the people of Northern Ireland whose lives are touched by cancer.

“We are grateful to Quantum Images and particularly to the Lord Chief Justice for adding his support by kindly agreeing to countersign the prints.”
EMPLOYMENT LAWYERS’ GROUP
(NI)

Sec. John O’Neill, Thompsons McClure Solicitors, 171 Victoria Street, Belfast
E-mail: JohnO’Neill@thompsons.Law.co.uk

Chairperson Adam Brett
Hon. Treasurer Orlagh O’Neill

Website: www.legal-island.com/elg.htm

Lunchtime Seminar

Data Protection - Issues in Employment Litigation

Speaker: Darren Newman, IDS Brief
Date: Friday 2 May 2003
Time: 1pm (tea coffee and sandwiches from 12.30pm)
Venue: Law Society House, Victoria Street, Belfast
Cost: Members £3, Non-members £6.

Booking forms and cheques, payable to The Employment Lawyers’ Group (NI), should be sent to our Treasurer, Ms Orlagh O’Neill, Napier & Sons, Solicitors, 1-9 Castle Arcade, High Street, Belfast BT1 5DE.

Booking Form

Name ______________________________
____________________________________
Firm ________________________________
____________________________________
Address ______________________________
____________________________________
____________________________________
I enclose remittance of £ ____________

Membership Renewal

Membership fees are now due for 2002-03. Fees are unchanged at £10 per annum. Members are invited to renew their membership for the forthcoming year. New members are encouraged to join. Please return the form below to our Treasurer, Ms Orlagh O’Neill, at the address cited above, with cheques made payable to Employment Lawyers’ Group (NI).

Membership Form

I enclose cheque for £10.00 made payable to ELG (NI)
Name ________________________________________________
Address _____________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
Tel (work) __________________________________________
E-mail _____________________________________________
Housing Executive – Ejectments Solicitors Panels
2003 – 2006

Introduction

Until now, the Executive has had only one external Solicitors Panel dealing with ejectments (that Panel covered the Belfast area).

Now, as a result of changes in housing management practices, Housing Executive Ejectments Solicitors Panels are being established throughout the Province. There will be six Panels in all, each covering a distinct geographical area. One of those Panels, the Greater Belfast Panel will have two members; the other five Panels will each have one member only.

The work mainly involves acting on behalf of the Executive where it is seeking to regain possession of dwellings let under secure tenancies or seeking to recover possession of dwellings which have been occupied by squatters.

Eligibility Criteria

A firm is free to apply for membership of up to two Panels.

A firm will be eligible for appointment to any particular Panel if it satisfies all of the following eligibility criteria:

1. The principal or one of the principals must have been in practice as a principal on his/her own account for at least three years.
2. At least two solicitors must be working in the firm (including any employed solicitor).
3. The firm must be willing to designate a solicitor in the firm who will be primarily responsible for actually carrying out Panel work.
4. The firm must have substantial relevant experience.
5. The designated solicitor must have at least three years post qualification experience (or post qualification experience for periods in aggregate amounting to three years) as a solicitor.

Duration of Panel

Membership of any Panel will be for a period of three years.

Procedure

A separate questionnaire must be submitted in respect of each Panel being applied for.

Any firm willing to be considered for appointment may obtain questionnaires and details of the selection criteria by writing to the Ejectments Solicitors Panels Co-ordinator, Housing & Regeneration Division, 2nd Floor, The Housing Centre, 2 Adelaide Street, Belfast, BT2 8PB.

Completed questionnaires must be returned to arrive with the Co-ordinator at the above address not later than 4.00 pm on Friday 18th April 2003. No acknowledgements will be sent.
The little slip ups that cause big bust-ups

Olivia Burren, Risk Manager, finds that delays and inefficiency, not poor legal know-how, are behind most complaints against solicitors. This article first was published in The Times newspaper.

Analysis of reported claims over recent years reveals distinct underlying causes of error and client dissatisfaction. Perhaps surprisingly, inadequate knowledge of the law is not especially common as a cause for complaint. Simpler things such as poor communication, delay, ineffective delegation, inadequate supervision and sheer disorganisation are responsible for the overwhelming majority or problems. The first thing firms need to do is to raise awareness among their staff of how these problems happen. A few cautionary tales – taken from real life negligence claims – can help show how things can go wrong.

Janice was thrilled to be given a hot-air balloon trip for her 40th birthday but came down to earth with a bump – literally – when the balloon landed. She instructed a solicitor to claim for the injuries she suffered. Everything seemed to go smoothly, and the solicitor issued proceedings just before the third anniversary of the accident. The defendants pointed out that this accident fell with the Carriage by Air Act 1961 – and the time limit was therefore just two years. It was too late, so Janice sued her solicitor instead.

The missed time limit is the single biggest cause of negligence claims against solicitors. A simple diary system could help overcome most of these – but not all of them. Many solicitors neglect to research time limits often with catastrophic results.

Administrative errors also account for a lot of mistakes. The following example is unfortunately typical: A solicitor acting in the administration of an estate sent a cheque to one of the beneficiaries for £10,000 instead of £1000. The mistake was uncovered only when the final estate accounts were prepared two months later. The solicitor immediately sent a letter asking for the return of £9,000. Three weeks later the beneficiary replied: “Sorry for the delay – I was in the Seychelles. I thought I was entitled to the money. It has all gone.”

Again a fairly simple system can greatly reduce the risk of drafting errors. Introduce a policy requiring all documents to be checked by someone other than their author – and check up on a regular basis to ensure this procedure is being followed.

Even where there is no formal time limit, delay can still cause complaints and claims. The following example just keeps on happening in one form or another.

Annette was delighted with her new home and decided that before she started decorating she would go ahead and have new windows fitted. The double-glazing company offered a cheap secured loan. Unfortunately, Annette’s solicitor had seen no urgency in registering her purchase and his search had expired. By the time he came to register the building society charge, the loan company had a first charge on the property. The only solution was for his insurers to pay off the loan so that the building society could take priority.

Sometimes things go wrong because a solicitor has failed to appreciate that communication is a two-way process. Clients need the opportunity to consider legal advice and to respond to it – solicitors in turn need to listen carefully to their client’s instructions. A lack of sensitivity to a client’s circumstances can lead to unforeseen difficulties, as the following case shows: Jane instructed Miriam, her solicitor, to draft her will.

She wanted to leave a substantial legacy to her life long friend, Alice, with the remainder to be divided equally between her two nephews. Straightforward. Miriam simply produced an engrossment, not bothering with a draft. Jane went to sign the will at Miriam’s office, where she was asked to sign in the reception area. She felt under pressure and was embarrassed, as there were other clients in the area. She signed without reading the will. There was no legacy in favour of Alice, and the problem only came to light when Jane died.

Hopefully tales such as these will help solicitors and their staff to recognise problems before they happen. Better still, every firm should appoint someone to take responsibility for risk management and for dealing with complaints and claims. By analysing past complaints an enormous amount can be learnt about how to improve your service. Procedures and systems can be introduced for monitoring their implementation.

Complaints and claims cost money and harm reputations. Hopefully the combined efforts of the Law Society, indemnity insurers and of course practitioners themselves can help to reduce the cost to the profession and secure a net decline in recorded complaints.
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No one tries harder for clients
New maternity, paternity and parental rights

The Employment NI Order 2002 and various regulations implementing its provisions have been introduced in Northern Ireland. Existing maternity rights are amended and new rights to paternity leave and pay and adoption leave and pay are created. Changes are summarised below.

Changes to maternity leave and pay

Changes and new rights will apply in connection with maternity leave and pay, but only to women whose babies are expected to be born after 6 April 2003. Where the maternity leave spans 6 April 2003, the provisions on maternity leave and pay will be slightly different. The main changes where babies are born after 6 April 2003 are set out below.

- Ordinary maternity leave will be increased to 26 weeks and additional maternity leave to 26 weeks – meaning that altogether an employee can have 52 weeks maternity leave.
- There will be a reduction in the period of qualifying service required for additional maternity leave. Only 26 weeks continuous service is required before the qualifying week to qualify for additional maternity leave. (The qualifying week remains the fifteenth week before the expected week of childbirth [EWC]).
- If an employee qualifies for SMP (ie if her average earnings are at least equal to the lower earnings limit [£77 from April 2003]) SMP will be payable for longer – 26 weeks.
- The guaranteed flat rate of SMP which was payable for the first six weeks is removed. Instead, for the first six weeks, employees will be paid 90% of average earnings. For the next 20 weeks, SMP will be either £100 or 90% of average earnings (whichever is less).
- There will now be entitlement to SMP for all women who qualify but leave work for any reason after the start of the qualifying week. (Prior to this, entitlement was lost if a woman voluntarily left work for reasons not related to pregnancy).
- An employee will now have to give notice of when leave is to commence by at least the fifteenth week before the EWC. The employee will be allowed to vary the date leave is to start provided 28 days advance notice is given (unless this is not reasonably practicable, for instance where birth is unexpectedly early). The employer will have to respond to the employee’s notice within 28 days of receiving it, confirming the date maternity leave is expected to end.
- If an employee wishes to return to work before the expiry of maternity leave, she must now provide 28 days notice or the employer can postpone the return date.

New rights to paternity leave and pay

There is a completely new right to paternity leave. The main provisions in relation to paternity leave and pay are as follows.

- Leave is not just available to the biological father. It can also be taken by a partner of a different sex or the same sex as the child’s mother, provided s/he has the main responsibility (apart from the mother) for the upbringing of the child.
- The partner of an adopter will also be entitled to paternity leave.
- To qualify for paternity leave, an employee must have been continuously employed for at least 26 weeks (in the case of birth, by the fifteenth week before the EWC, in the case of adoption, from when the child’s adopter is notified of being matched with the child).
- Leave can be taken for one week or two consecutive weeks (but not odd days) and must be taken within 56 days of birth (or placement with the adopter).
- Statutory paternity pay will be payable at a flat rate of £100 or 90% of the employee’s average earnings (whichever is less).
- Notice of the intention to take paternity leave must be provided by the fifteenth week before the expected week of confinement in the case of birth, and within seven days of an adopter being notified by an adoption agency of being matched with a child in the case of adoption.
- The employee may also have to provide a declaration confirming eligibility and entitlement to leave if requested by the employer.
- All terms and conditions except any relating to remuneration will continue during paternity leave.
- There will be a right to return to the same job after paternity leave.
- An employee will be protected from being subjected to a detriment or dismissed for taking or seeking to take paternity leave. A dismissal in such circumstances will be automatically unfair and no qualifying period of service will be required to bring such a claim.

New rights to adoption leave and pay

A new right to adoption leave will be available to an employee where an approved adoption agency notifies the employee of a match with a child and the placement is to take place on or after 6 April 2003. The rights are similar although not identical to maternity leave and pay entitlement. The main points are as follows.

- To qualify for adoption leave, an employee will have to have continuously worked for the employer for 26 weeks, leading into the week in which s/he is notified of being matched with a child for adoption.
- Adoption leave and pay will not be available in circumstances where a child is not newly matched for adoption, for example, when a step parent is adopting a partner’s child.
- An employee will be entitled to up to 26 weeks ordinary adoption leave followed by 26 weeks additional adoption leave.
- Only one period of leave will be available regardless of whether more than one child is placed for adoption as part of the same
arrangement.
• Adoption leave will be payable for up to 26 weeks. It will be paid at the same rate as the standard rate for SMP (ie £100 or 90% of average earnings: whichever is lower.) An employee may qualify for adoption leave but this does not automatically mean the employee will be paid. To qualify for payment, the employee must have average weekly earnings at or above the National Insurance lower earnings limit (£77 from April 2003) that applies at the end of the week in which the adopter is notified of being matched with a child.
• Adoption leave can start when the child is placed for adoption or fourteen days before the expected date of placement.
• An employee must give notice to the employer confirming the date the employee has chosen for leave to begin. This notice must be provided within seven days of being notified of being matched with a child for adoption. The employer may require documentary evidence issued by the adoption agency to be provided by the employee.
• The employee can vary the date for leave by giving 28 days notice or less if this is not reasonably practicable.
• An employer will be obliged to respond to the employee’s notice within 28 days confirming what date any additional leave the employee is entitled to will end.
• No other notice will be required to be given or sent by the employer or employee. However, if an employee wants to return early, 28 days advance notice of the return date must be given or the employer can postpone the date of return.
• The employee will be bound by and be entitled to the benefit of all terms and conditions other than terms about remuneration during ordinary adoption leave.
• During additional adoption leave, the employee will have the benefit of the implied term of trust and confidence, and terms regarding notice, compensation for redundancy, and disciplinary or grievance procedures. The employee will be bound by the implied term of good faith and terms relating to notice, disclosure of confidential information, the acceptance of gifts and participation in any other business.
• The employee is entitled to be offered any suitable available vacancies with the employer or an associated employer if there is to be a redundancy during the adoption leave period.
• The employee has the right to return after adoption leave.
• An employee will be protected from suffering detriment or unfair dismissal for reasons related to taking adoption leave. However, a small employer exception for employers employing less than six persons (which is similar to maternity leave) will apply. Thus, if an employee takes additional adoption leave, dismissal will not be automatically unfair if it is not reasonably practicable for an employer to permit the employee to return to a suitable job.

Law Centre (NI) is holding a training course on the new and existing law on Tuesday 5 June 2003 in Derry. If you are interested in attending, please contact Rose Logue at Law Centre (NI), 9 Clarendon Street, Derry BT48 7EP, telephone 028 7126 2433.

Mark Reid, Law Centre (NI)

CPD: Law Centre new training programme is out

Law Centre (NI) courses attract CPD points for solicitors. For more information, contact Patricia Morgan at Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY, or request a new training programme from our publications department at the same address.

Rights in Progress

Rights in Progress, the guide to the European Convention and the Human Rights Act recently published by the Law Centre, is available from our publications department at the cost of £9.95, including post and package.
Can you answer the following?
1. What is a ‘Stop Now’ order?
2. Is a guarantee guaranteed?
3. When does the ownership of goods pass?
4. Who is liable for defective products?
5. What is a package holiday under Package Travel Holiday and Package Tours Directive?
6. What is the difference between restricted and regulated consumer credit agreements?

If you feel uncomfortable with these questions you will be very interested in a seminar in TWO PARTS which shall cover all the basic Consumer Law points specifically in relation to –

Session 1 – Sale of Goods and Product Liability

Session 2 – Consumer Credit and Package Holiday Legislation

The seminar shall be given by Mr Brian Collins BCL LLM BL, Lecturer in Business Consumer Law, University of Ulster Magee Campus.

When: Wednesday 4th June and Wednesday 11th June 2003

Time: 6.00pm – 8.30pm

Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY

Cost: Full course fee £130 and either Seminar £75

This course attracts Law Society of Northern Ireland CPD points.

Booking form and cheques, made payable to Queen’s University, Belfast, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: Wednesday 28th May 2003

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**BOOKING FORM**

I am interested in attending:

- **Session 1** – Sale of Goods & Product Liability
- **Session 2** – Consumer Credit & Package Holiday Legislation

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FROM THE RIDLEY PARTNERSHIP

MONEY LAUNDERING
Wednesday 16th April
Are you ready for the regulatory changes?
Spend 3 hours at the CPD Seminar
finding out how the changes to the
Money Laundering Regulations
(MLR 2003) will affect your firm.
The seminar will include:
◆ Money laundering strategies targeted
at professional firms
◆ Identifying money laundering schemes
  ◆ The legislation, an outline of
the offences and the impact on partners,
fee earners and support staff
◆ Systems and procedures for compliance
  including the responsibilities of the
Money Laundering Regulations Officer
◆ Practical guidance for establishing
your office systems

COMPLAINTS HANDLING
Wednesday 30th April
Learn how to profit from complaints.
Research shows that 97% of
complainants will return to do
business or make recommendations
to your firm if their complaint has been
handled properly.
This 3 hour CPD seminar covers
the necessary steps for implementing an
effective complaints handling
programme in your firm.
The cost of replacing clients can be
5 times higher than looking after
the ones you have already got,
so it makes sense to put strategies
in place for client retention.

Qualifies for
3 hours CPD
VENUE:
The Law Society
Belfast
All seminar times:
2.00pm – 5.00pm
Cost per seminar:
£100.00 + VAT
per delegate

TO RESERVE A PLACE ON EITHER OF THESE SEMINARS
FAX THIS FORM NOW TO 01833 621150

Please indicate in the boxes below how many places you wish to
reserve at each of the following seminars

☐ MONEY LAUNDERING – Wednesday 16th April
☐ COMPLAINTS HANDLING – Wednesday 30th April
☐ I am unable to attend, however, I would like more
  information on Money Laundering Seminars
☐ I am unable to attend, however, I would like more
  information on Complaints Handling Seminars
☐ I am interested in receiving more information on running
  in-house CPD training courses.

Please list the names of those attending:
BLOCK CAPITALS

Name: __________________________
Position: _______________________

Name: __________________________
Position: _______________________

Name: __________________________
Position: _______________________

Name: __________________________
Position: _______________________

Firm: ____________________________
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Please return this form to: The Ridley Partnership, The Coach House, Barningham Park,
Richmond, North Yorkshire, DL11 7DW or telephone 01833 621130 for more details
www.theridleypartnership.co.uk
Insolvency Update

1. Voluntary Arrangements: The effect of Liquidation, Bankruptcy or Failure of the Arrangement on Trusts established under a Company Voluntary Arrangement (CVA) or an Individual Voluntary Arrangement (IVA).

Re: N T Gallagher & Son Ltd
[2002] ALL ER (D) 396

Company – Voluntary winding up – Distribution of company’s property – Company facing financial difficulties – Creditors approving voluntary arrangement – Directors putting company into voluntary liquidation – Whether trusts created by voluntary arrangement brought to an end by termination of voluntary arrangement through liquidation.

Where a CVA or an IVA provided for monies or other assets to be paid to or transferred or held for the benefit of CVA or IVA creditors, that would create a trust of those monies or assets for those creditors. The effect of the liquidation of a company or the bankruptcy of a debtor on a trust created by a CVA or IVA would depend upon the provisions of the CVA or IVA relating thereto. If the CVA or IVA provided what was to happen on liquidation or bankruptcy (or a failure of the CVA or IVA), effect had to be given thereto. If the CVA or IVA did not so provide, the trust would continue notwithstanding the liquidation, bankruptcy or failure and had to take effect according to its terms. The CVA or IVA creditors could prove in the liquidation or bankruptcy for so much of their debt as remained after payment of what had been or would be recovered under the trust. Accordingly, the judge had been correct except in relation to the last part of his order. In substitution for that it would be declared that the CVA creditors were entitled to prove in the liquidation for their CVA debts after giving credit for dividends received from the supervisors.

2. Update on Primary Legislation

With the suspension of the Northern Ireland Assembly, the Insolvency Bill and the Company Directors Disqualification Bill were referred to Westminster to proceed by way of Order of Council. Both Orders were made by Privy Counsel on 17th December 2002. Both Bills will now come into operation on 1st April 2003.

The Company Directors Disqualification Bill amends and consolidates existing disqualification legislation and introduces disqualification by administrative means as an alternative to High Court proceedings. The Insolvency Bill provides small companies in financial difficulties with a breathing space to put together a rescue package and to come to an arrangement with their creditors.

3. General

Further information on insolvency can be obtained from the Department of Enterprise, Trade and Investment Insolvency Service’s website and the address is www.insolvency.detini.gov.uk

NI COURT SERVICE NOTICE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 2003 [SR 2003 No 5]

The above named Rules have come into operation on 28th February 2003. These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as to:
- insert a new Order 123 into the principal rules which prescribe the practice and procedure to be used in proceedings under Parts 5 and 8 of the Proceeds of Crime Act 2002.
- insert into Order 116 a new Part III which prescribes the practice and procedure to be used in proceedings under Part 4 of the Proceeds of Crime Act 2002; and
- make consequential amendments to the principal rules.

LAW SOCIETY NOTICE


We have been asked by the Financial Services Authority (FSA) to remind members who are Authorised Professional Firms under the above that there is a requirement to seek re-authorisation following a change of corporate or legal status. This entails reapplying for FSA Authorisation when contemplating such a change of status. If the proposed change creates a distinct legal entity from the authorised entity, a fresh Part IV permission will be required to carry on regulated activities. These activities cannot be transferred from one legal entity to another.

It is our understanding that no firms of Northern Ireland solicitors are authorised professional firms, but if that status does apply to you, you should request a full copy of the FSA’s note from the Society.
2003 CPD SEMINAR PROGRAMME FOR NORTHERN IRELAND

Wednesday 14th May – MONEY LAUNDERING
Practical guidance for introducing systems and management controls into your firm relating to the Money Laundering Regulations 2003, including the responsibilities of the nominated officer, MLRO.

Wednesday 21st May – CLIENT CARE (1)
Building profits through improved client care. Learn how to increase repeat business and build client loyalty. Keeping clients happy and building client loyalty is a key factor in competitiveness. It has never been more important for firms to provide excellence in client care.

Wednesday 3rd September – MONEY LAUNDERING
Practical guidance for introducing systems and management controls into your firm relating to the Money Laundering Regulations 2003, including the responsibilities of the nominated officer, MLRO.

Wednesday 24th September – RISK MANAGEMENT (2)
What is the probability of a risk occurring in your firm and what would be the consequence of that risk – for you? your clients? your firm? Using techniques for risk modelling it is possible to profile potential risks and the likely consequences, crucial for your firm to maintain an appropriate risk management strategy. This seminar builds on the content of the “Building Profits Through Client Care” seminars presented by The Ridley Partnership in October and December 2002.

Wednesday 22nd October – PRACTICE MANAGEMENT
Firms large and small benefit from good quality practice management. Adopting management structures and best practice to ensure a quality service is the key to future success. This seminar will provide valuable insights into quality management for those considering introducing a quality management programme into their firm.

Wednesday 19th November – MARKETING SKILLS
Gaining and retaining clients through seminars and business functions. Many professional firms invest substantial amounts of money and time hosting and attending seminars, hospitality events and other professional networking functions. Learn how to make the most of these important business development opportunities.

Wednesday 10th December – CLIENT CARE (1)
Building profits through improved client care. Learn how to increase repeat business and build client loyalty. Keeping clients happy and building client loyalty is a key factor in competitiveness. It has never been more important for firms to provide excellence in client care.

Qualifies for 3 hours CPD
VENUE:
The Law Society
Belfast

All seminar times:
2.00pm – 5.00pm

Cost per seminar:
£100.00 + VAT per delegate

Please list the names of those attending:
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Position:______________________________________________
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Position:______________________________________________
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Position:______________________________________________
Name:________________________________________________
Position:______________________________________________

Please indicate in the boxes below how many places you wish to reserve at each of the following seminars
☐ MONEY LAUNDERING – Wednesday 14th May
☐ CLIENT CARE (1) – Wednesday 21st May
☐ MONEY LAUNDERING – Wednesday 3rd September
☐ RISK MANAGEMENT (2) – Wednesday 24th September
☐ PRACTICE MANAGEMENT – Wednesday 22nd October
☐ MARKETING SKILLS – Wednesday 19th November
☐ CLIENT CARE (1) – Wednesday 10th December

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Joint Seminar arranged for:

THE LAW SOCIETY OF NORTHERN IRELAND
AND
BELFAST SOLICITORS’ ASSOCIATION

ON
LAND REGISTRY PROCEDURES

on
Friday 25th April 2003

Due to introduction of Compulsory First Registration and the high demand for attendance at the two previous Land Registry seminars which were held in Belfast on 27 February and 10 March 2003, we are now holding a two hour lecture which will be a repeat of the following topics which were covered at the two previous Land Registry seminars:

- Transfers of whole and/part, New Developments, Charges, Mergers and the Ground Rent Scheme;
- Compulsory First Registration, common mistakes in the Land Registry and Registry of Deeds and Land Web Direct Scheme.

At The Lecture Hall, Law Society House, Victoria Street, Belfast

Coffee and sandwiches will be available from 12.30 p.m. and the talk will start at 1.00 p.m and will last until approximately 3.00 p.m.

The cost of the seminar is £20.00. attendance at this seminar is not restricted to members of the Belfast Solicitors’ Association or indeed Belfast solicitors

Attendance at the lecture will qualify for two hours CPD

NI COURT SERVICE NOTICE

The Crown Court (Amendment) Rules (Northern Ireland) 2003

These Rules, which come into operation on 24th March 2003, amend the Crown Court Rules (Northern Ireland) 1979 to provide:

- the procedure for applications to the Court under Parts 4 and 8 of the Proceeds of Crime Act 2002;
- for an application for leave to prefer a voluntary bill of indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 to be served on the accused who may make submissions; and
- the procedure for the variation and discharge of account monitoring orders made under the Terrorism Act 2000.

Compulsory First Registration

As readers will be aware, Compulsory First Registration (CFR) has been extended to Counties Fermanagh, Londonderry and Tyrone from 1st April 2003 and to County Antrim including Belfast from 1st May 2003. Presentations by the Land Registry have already taken place in Belfast, Ballymena, Derry, Enniskillen and Omagh. For those who were unable to attend, the Land Registry has kindly agreed to give a further presentation on CFR and Land Registry practice and procedure.

This seminar will be held under the auspices of the Belfast Solicitors’ Association at Law Society House at 1pm on Friday 25th April 2003. An updated copy of the Land Registry Guide to First Registration will be distributed to those attending. Attendance at the seminar will qualify for CPD. For further information on how to register your interest in attending, please see the BSA column in this edition of The Writ.

BOOKING FORM

Name: ____________________________
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Does CPD apply to you YES/N0

Please make cheques payable to Belfast Solicitors Association
I enclose a cheque in the sum of £________________________

Please complete the form and return it to Joanne Timoney of Cleaver Fulton Rankin Solicitors of 50 Bedford Street, Belfast BT2 7FW or DX No: 421 NR Belfast.
High Court, Court of Appeal and Tribunal Decisions

IN THE MATTER OF AN APPLICATION BY JOHN ADAIR FOR JUDICIAL REVIEW
Application for judicial review of Secretary of State’s decision to revoke licence granted to the applicant on release from prison. - applicant subsequently recalled to prison. - Northern Ireland (Remission of Sentences) Act 1995. - whether Secretary of State entitled to accept Sentence Review Commissioner’s decision. - whether fair trial. - appeal dismissed
QUEENS BENCH DIVISION
18 FEBRUARY 2003
CARSWELL LCJ

BOOTHS THE CHEMIST and WESTFIELD SHOPPING TOWNS LTD
Application for leave to appeal from Arbitrator’s interim award. - whether an issue of general public importance has been raised. - whether decision open to ‘serious doubt. - application dismissed
QUEENS BENCH DIVISION
13 FEBRUARY 2003
COGHLIN J

IN THE MATTER OF AN APPLICATION BY CHALMERS BROWN FOR JUDICIAL REVIEW
Appeal against dismissal of application for judicial review of Secretary of State’s refusal to renew a firearms certificate. - whether decision open to ‘serious doubt. - application dismissed
COURT OF APPEAL
18 FEBRUARY 2003
CARSWELL LCJ

SHOPPING TOWNS LTD

IN THE MATTER OF SIR JAMES DENNIS COMPTON FAULKNER
Application for registration. - whether respondent had acquired adverse possession to land. - HELD that respondent exercised sufficient dominion and factual possession for 12 years to constitute adverse possession
COURT OF APPEAL
7 FEBRUARY 2003
CARSWELL LCJ

MCCONVILLE, COLETTE and SOUTHERN HEALTH AND SOCIAL SERVICES BOARD
Damages. - personal injuries. - plaintiff required to lift patients during the course of employment. - whether statutory negligence on part of employers under Manual Handling Regulations 1992. - whether Court should allow claim to succeed since it was made outside statutory limitation period. - HELD that action allowed to proceed
QUEENS BENCH DIVISION
11 FEBRUARY 2003
HIGGINS J

R V JULIE MCGINLEY and MICHAEL MONAGHAN
CROWN COURT
12 FEBRUARY 2003
KERR J

IN THE ESTATE OF NORMAN EDWARD THOMPSON DECEASED 2002 NO. 1
Wills. - challenge to will. - whether properly executed. - testamentary capacity and want of knowledge. - whether undue influence was exercised on testator. - HELD that will properly executed and probate granted accordingly (further judgment given that plaintiffs’ and executors costs be taken out of the estate on the indemnity basis and subject thereto that one third of the defendants’ costs on the standard basis be paid out of
the estate)

FAMILY DIVISION
16 FEBRUARY & 26 FEBRUARY 2003
GIRVAN J

IN THE MATTER OF AN APPLICATION BY
DAVID WRIGHT FOR JUDICIAL REVIEW
Application for judicial review of Chief Constable of PSNI's refusal to disclose files of police investigation into murder of applicant's son. - whether police investigation thorough and impartial. - whether art.2 ECHR breached. - right to fair trial. - retrospective effect of Human Rights Act. - application dismissed

QUEENS BENCH DIVISION
7 MARCH 2003
KERR J

R V BELLINGHAM
Supply of drugs. - application that prosecution should be stayed. - whether abuse of process. - whether inducement by police test purchase officer. - application refused

ANTRIM CROWN COURT
10 MARCH 2003
SMYTH J

SMYTH, DAMIEN V SMYTH, BRENDAN
Damages. - claim of negligence and breach of occupier's liability. - applicant injured while playing on father's farm aged 12. - whether farmyard machinery or pallets constituted unusual danger, trap or allurement. - claim dismissed

QUEENS BENCH DIVISION
11 MARCH 2003
SHEIL J

INDUSTRIAL TRIBUNALS

BELL, RAYMOND V HEATONS LIMITED and MEADOWLANDS LIMITED
INDUSTRIAL TRIBUNAL, 12 DECEMBER 2002, 3688/01
Decision on a preliminary question. - Parties agreed to remove Heatons as a party to the proceedings. - Applicant who had been made redundant claimed there had been a relevant transfer of undertakings. - Tribunal ruled there had been a relevant transfer

BROWN, JOHN V MCCULLOUGH, DEREK
INDUSTRIAL TRIBUNAL, 18 DECEMBER 2002, 1690/02
Applicant alleged unfair dismissal. - Respondent did not appear and was not represented. - Tribunal had no evidence before it as to why applicant had been dismissed. - Tribunal rules dismissal was unfair on substantive and procedural grounds. - Respondent is ordered to pay compensation to applicant

CARRON, DAVID V HYND'S, MICHAEL T/A HYND'S ARCHITECTURAL SYSTEMS LIMITED
INDUSTRIAL TRIBUNAL, 28 NOVEMBER 2002, 1262/02
Applicant alleged respondent made unlawful deductions from his wages contrary to Part IV Employment Rights (NI) Order 1996. - Applicant claimed he was not paid for overtime hours he had worked. - Respondent stated overtime would only be paid to salaried staff at his discretion, and when it had been agreed in advance. - Tribunal dismisses application

CONWAY, JULIE V DUNNES STORES (BANGOR) LIMITED
INDUSTRIAL TRIBUNAL, 28 OCTOBER 2002, 2944/00
Applicant alleged unlawful discrimination, constructive dismissal and unfair dismissal. - Applicant was part-time worker who returned to work after extended maternity leave. - Tribunal dismisses application

COUSINS, NEIL and OTHERS V B E AEROSPACE (UK) LIMITED
INDUSTRIAL TRIBUNAL, 10 DECEMBER 2002, 00493/00
The respondent company dismissed ten applicants. - Respondent alleged they had been selected for redundancy due to a downturn in business. - Applicants alleged unfair dismissal. - Tribunal dismisses applications. - some of the applicants ordered to pay costs

CUMMING, GREGORY V CENTURY NEWSPAPERS LTD
INDUSTRIAL TRIBUNAL, 13 DECEMBER 2002, 2933/01
Applicant did not appear and was not represented. - Tribunal dismisses application

CUMMINS, TREVOR V QUEEN'S UNIVERSITY OF BELFAST and SCULLION, DENISE
INDUSTRIAL TRIBUNAL, 10 DECEMBER 2002, 04517/995D
Applicant dismissed by University due to poor performance. - Applicant alleged sex discrimination. - Tribunal rules fair procedures had not been followed leading to the applicant's dismissal, but that it was not discriminatory. - Tribunal rejects each of the applicant's complaints

DAY, ELLEN V OCS SUPPORT SERVICES ET AL
INDUSTRIAL TRIBUNAL, 29 NOVEMBER 2002, 1192/01
Applicant alleged harassment and constructive dismissal. - Tribunal rules a significant breach of a contractual term has not been established. - Application is dismissed

DE WET, ALEX V NETWORK NEIGHBOURHOOD LIMITED
INDUSTRIAL TRIBUNAL, 4 DECEMBER 2002, 1738/01
Applicant alleged breach of contract, sex discrimination, and unlawful deductions from wages, race discrimination and unfair dismissal. - Tribunal upholds complaint of unfair dismissal but dismisses all other complaints. - Tribunal orders compensation to be paid to applicant

EDMONDSON, CAROLINE P ET AL V ALLEN, MICHAEL and BURTON, BRIAN and CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY
INDUSTRIAL TRIBUNAL, 26 NOVEMBER 2002, 02239/975D; 02319/975D; 02404/975D
Preliminary decision issued to parties on 8 August 2002. - Member of Tribunal panel was a Commissioner in the Equality Commission. - All applicants were receiving funding from the Commission. - Tribunal revokes earlier preliminary decision and orders that a hearing of the preliminary issue will take place before a differently constituted tribunal

FARRELL, JOHN V DRIVER & VEHICLE TESTING AGENCY
INDUSTRIAL TRIBUNAL, 29 NOVEMBER 2002, 00349/98
Applicant alleged unfair treatment due to trade union activities. - Tribunal dismisses application

HENVY, TERESA V BREEN, GERARD ET AL and SOCIAL SECURITY AGENCY
INDUSTRIAL TRIBUNAL, 20 NOVEMBER 2002, 1787/01
Preliminary issue. - whether complaints of sex discrimination are within the time limits. - Tribunal dismisses first three respondents from the proceedings. - Tribunal rules applicant's complaint against the fourth respondent is within time

LARKHAM, GARY V DOWNEYS CARS LIMITED
INDUSTRIAL TRIBUNAL, 30 DECEMBER 2002, 1530/02
Applicant alleged unfair dismissal and breach of contract. - Tribunal was satisfied that the respondent had shown that the reason for the dismissal was the long-term absence of the applicant on grounds of ill health. - Application is dismissed
LARMOUR, BRENT V WRIGHT, SANDRA L and LA FITNESS PLC
INDUSTRIAL TRIBUNAL, 18 DECEMBER 2002, 2559/01
Applicant alleges unlawful sex discrimination. - Tribunal upholds applicant's complaint that he had been sexually harassed and discriminated against on the grounds of his sex. - Application to be relisted at a later date for a hearing on remedy

LEATH, TED V UNIVERSITY OF ULSTER
INDUSTRIAL TRIBUNAL, 2 DECEMBER 2002, 03702/01
Decision on a preliminary issue. - Applicant alleged sex and race discrimination by the respondent after attending job interview with respondent. - Respondent alleges application is outside the time limits. - Tribunal rules respondent fundamentally breached implied terms of trust and confidence inherent in employment relationship by his treatment of the applicant. - Tribunal upholds applicant's claim and orders compensation to be paid

LESLE, SHARON and OTHERS V ADY
ENTERPRISES LIMITED and DEPARTMENT OF EMPLOYMENT AND LEARNING
INDUSTRIAL TRIBUNAL, 5 DECEMBER 2002, 219/02
Applicants claimed redundancy payments, payments in lieu of notice, payments in respect of lying weeks and payments in respect of unpaid wages / holiday pay. - Tribunal rules applicants are entitled to receive sums under the heads of damages set out in the table

LIVINGSTON, LORNA V POLICE SERVICE OF NORTHERN IRELAND ET AL
INDUSTRIAL TRIBUNAL, 21 NOVEMBER 2002, 560/02
Decision on a preliminary issue. - Applicant alleged sex discrimination. - Tribunal rules complaint was not presented within the time limits. - Tribunal rules there is no reason to extend time and dismisses complaint

MCKEOWN, GERARD V CHAP CABLE
LIMITED and WREKIN CABLE SERVICES
LIMITED
INDUSTRIAL TRIBUNAL, 18 NOVEMBER 2002, 3473/01
Applicant claimed he was entitled to compensation for unfair dismissal and for monies due and unpaid. - Tribunal rules that applicant was a sub-contractor of the respondent and not an employee. - Tribunal rules applicant is not entitled to claim the protection covered by the Employment Rights (Northern Ireland) Order 1996

MORRIS, CIARA V DUMMIGAN, MARTIN
ET AL [STEEPING STONE]
INDUSTRIAL TRIBUNAL, 26 NOVEMBER 2002, 01737/00
Applicant complained of unfair dismissal and breach of contract. - Respondent claimed applicant was dismissed fairly. - Applicant failed to co-operate with investigatory and disciplinary process. - Tribunal decides employer's decision to dismiss was a reasonable response. - Application is dismissed

MULHOLLAND, W R V OTIS LTD
INDUSTRIAL TRIBUNAL, 11 DECEMBER 2002, 02333/00; 02807/00
Decision of Tribunal on review of earlier decision dated 29 April 2002 at respondent's request. - Applicant had been awarded compensation for unfair constructive dismissal. - Tribunal rules respondent's request. - Applicant had been awarded compensation for unfair constructive dismissal. - Tribunal rules amount for weekly maximum for basic award had been miscalculated. - Amount of compensation for psychiatric injury and damage to family life is upheld

O'NEILL, STEPHEN GERARD V MCGRATH, T A
INDUSTRIAL TRIBUNAL, 19 DECEMBER 2002, 778/02
Applicant alleged unlawful deductions from his wages in respect of one week's pay in lieu of notice. - Applicant was only employed by respondent for 7 months. - Tribunal dismisses application

PROCTOR, STEPHEN V NORTEL
NETWORKS LIMITED
INDUSTRIAL TRIBUNAL, 16 NOVEMBER 2002, 2527/01
Applicant alleged constructive dismissal. - Tribunal finds applicant resigned to leave for another post and was not unfairly dismissed

TAYLOR, GARY V NICHOLLS (FUEL OILS)
LIMITED
INDUSTRIAL TRIBUNAL, 30 DECEMBER 2002, 1236/01
Applicant alleges constructive dismissal. - Applicant was employed as an oil tank driver, but resigned due to the respondent's unreasonable attitude about the safety of his vehicles. - Tribunal rules respondent fundamentally breached implied terms of trust and confidence inherent in employment relationship by his treatment of the applicant. - Tribunal upholds applicant's claim and orders compensation to be paid

TONER, COLUMBA V NWIFHE
INDUSTRIAL TRIBUNAL, 18 NOVEMBER 2002, 848/02
Decision on a preliminary issue. - Applicant alleged deductions from wages arising out of a non-payment of a travel claim. - Originating application presented outside time limit. - Applicant failed to appear and no evidence was presented as to why time should be extended. - Application is dismissed

VIEIRA, JORGE V DERRYVALE FURNITURE
and O'ROURKE, JIM
INDUSTRIAL TRIBUNAL, 19 DECEMBER 2002, 2384/02
Decision on interim relief application. - Applicant alleged unfair dismissal after he informed respondent of his trade union activities. - Employer failed to attend hearing of this interim relief application. - Tribunal rules contract of employment should continue until determination of the complaint

FAIR EMPLOYMENT TRIBUNALS
KERR, JAMES ALAN V QUEENS
UNIVERSITY BELFAST
FAIR EMPLOYMENT TRIBUNAL, 2 DECEMBER 2002, 193/01FET
Applicant complained about his non-appointment to a post. - Originating application was presented outside the time limits. - Tribunal rules it is not just and equitable to extend the time limits

MCCANDLESS, EDITH V NORTHERN
IRELAND PUBLIC SERVICE ALLIANCE and
GRiffin, NOEL ET AL
FAIR EMPLOYMENT TRIBUNAL, 17
SEPTEMBER 2002, 00109/98FET
Applicant alleged discrimination on the grounds of her religious belief. - Tribunal found no evidence to support a claim of discrimination. - Application is dismissed

MCCORMACK, WILLIAM V BOXMORE
PLASTICS LIMITED
FAIR EMPLOYMENT TRIBUNAL, 18
SEPTEMBER 2002, 417/99FET; 04263/99D;
04264/99UD; 04265/99BC
Applicant alleged unlawful discrimination on the grounds of religious belief / political opinion, unfair dismissal, breach of contract and disability discrimination. - Applicant claimed respondent failed to make reasonable adjustments to accommodate his deafness. - Tribunal rules respondent was unlawfully discriminated against on the grounds of his disability and ordered respondent to pay him compensation. - Tribunal dismisses other complaints

MCCUE, JAMES V BRITISH GEOLOGICAL
SURVEY, QUEEN'S UNIVERSITY BELFAST
and NATURAL ENVIRONMENT RESEARCH
COUNCIL
FAIR EMPLOYMENT TRIBUNAL, 3
SEPTEMBER 2002, 00443/97FET
Applicant complained of discrimination when not selected for job interview. - Applicant refused to accept directions and failed to produce relevant evidence
and submissions. – Application dismissed

MCCURDY, LAUGHLIN V BELFAST CITY COUNCIL
FAIR EMPLOYMENT TRIBUNAL, 30 SEPTEMBER 2002, 00541/98FET
Decision on application for costs. – Applicant withdrew complaint of unlawful religious discrimination when only part heard. – Tribunal dismisses respondent’s application for costs

MCFETRIDGE, ANNA MAY V GRAMPIAN COUNTRY FOODS LIMITED and GALLAGHER, GARY ET AL
FAIR EMPLOYMENT TRIBUNAL, 4 SEPTEMBER 2002, 00452/98FET
Applicant alleged respondents discriminated against her on the grounds of religious belief and political opinion. – Tribunal does not accept on the balance of probabilities that applicant was subjected to a detriment by way of harassment. – Originating application is dismissed

MAGUIRE, MICHAEL V NORTHERN IRELAND RAILWAYS ET AL
FAIR EMPLOYMENT TRIBUNAL, 15 NOVEMBER 2002, 00414/96FET; 00052/97FET; 03517/96UD; 03518/96TUA
Case stated by the Fair Employment Tribunal in accordance with article 61 of the Rules of the Supreme Court. – questions for opinion of the Court of Appeal. – whether the Tribunal was correct in finding that the appellant in bringing or conducting these proceedings acted vexatiously so as to justify the award of costs made against him. – whether the Chairman was correct in law in refusing the appellant’s request for a review of the decision on costs on the grounds that it had no reasonable prospect of success

REID, SHIRLEY V ROYAL MAIL
FAIR EMPLOYMENT TRIBUNAL, 11 SEPTEMBER 2002, 595/01FET
Applicant alleged sexual and religious discrimination. – Application not lodged within relevant time limit. – Whether just and equitable to consider complaint. – Delay in the procedure was due to the appellant’s illness. – Tribunal decides to extend time and applications are allowed to proceed to hearing of substantive issues

Full text of the above may be obtained from the library

Centralisation of First Trust Bank Securities Function

First Trust Bank has centralised its commercial security function ie any non-domestic mortgage security items. The centralisation process commenced during May 2002 and was completed at the end of February 2003. As each of our branches is centralised all items of security will be removed from the branch to a central storage location and correspondence relating to all new and current security issues will be dealt with by a specialised team at the Central Securities Unit, 4 Queen’s Square, Belfast.

How will this effect local Solicitors?

• They will receive a professional, consistent, fast and reliable service from a dedicated central team.

• All instructions for new security and follow up on existing security items will be dealt with by the Central Securities Unit.

• Requests from Solicitors to forward security items, eg title deeds, life policies, licences will be dealt with by Central Securities Unit who may require up to five working days from receipt of the request, with the necessary client authority, to the posting of the item to the Solicitor. Central Securities Unit will use the DX Post System where it is available. Solicitors should bear these time scales in mind when requesting security items.

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Is your client’s farmhouse appropriate?

As all probate practitioners will know, one of the most important reliefs from inheritance tax is that afforded to agricultural property by sections 115 to 124 C of the Inheritance Tax Act 1984. Section 116 provides that where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property the whole or that part of the value transferred shall be reduced by the appropriate percentage. That percentage is either 50% or, more commonly, 100%. “Agricultural property” is defined in section 115(2) as meaning:

“agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.”

A great many farms in Northern Ireland are relatively small. Many are, at best, only marginally profitable, and some are not even that. Conacre lettings are a familiar feature of the Northern Ireland agricultural scene, where for a variety of reasons the landowner often does not wish to farm the lands himself, although he or his predecessors as owners may well have done so for many years while living in the principal house on the land. It has long been assumed that the owners of such houses, or their executors, will obtain agricultural relief, not only on the land but also on the main house, when a transfer of value occurs, whether on a death or by a lifetime gift. However, the Inland Revenue has clearly set out to whittle down the scope for such relief and a recent decision of the Special Commissioner in a Northern Ireland case will cause considerable concern to farm owners and their advisers.

The Higginson case (SpC 337), decided in October 2002, concerned Ballyward Lodge in County Down. The house was set in an estate of around 134 acres, including 63 acres of (mainly) grassland and 3 acres of formal gardens. The remaining 68 acres consisted of woodland and wetland around Ballyward Lake, most of the lake being within the property. There was a gardener’s cottage, a gate lodge and sundry outbuildings used for agricultural purposes, the latter being close to the main residence and some of them forming two sides of a yard immediately behind the house.

There was no issue regarding the lands or the agricultural outbuildings, the Inland Revenue accepting that they qualified for agricultural relief. However the Inland Revenue issued a determination that the house did not qualify, as it was not “of a character appropriate to the property” within the meaning of section 115(2). The executors appealed to the Special Commissioners.

It was common ground that Ballyward Lodge was not a typical farmhouse. It was built in the early part of the 19th century and was originally a hunting lodge. It is a very attractive period building, with, inter alia, a spacious hall, drawing room, library and dining room and five bedrooms. There was, on the other hand, evidence that parts of it were much in need of modernisation. It was accepted by both sides that the description in the estate agents’ brochure, when the property was put up for sale after John Higginson’s death, was accurate, viz: “…having enormous potential as a charming family home or as a small active farm”.

John Higginson, the deceased owner, was no mere gentleman farmer – although a member of a prominent Ulster linen family, he had decided early in life that he wished to pursue agriculture seriously, and to that end attended Greenmount College immediately before the Second World War, where he obtained a first class certificate in farming. After distinguished service in the RAF during the war, he acquired the Ballyward property in 1954 and lived there for the rest of his life. Until about 1985 he farmed the land himself, with the assistance of three full-time farm workers; however by then he was in his mid-seventies and, not unnaturally, decided to let the lands in conacre, while still taking an active interest as owner in the well-being of the lands and the agricultural buildings. He died in November 2001.

No evidence was given or sought of the profitability of the deceased’s own farming activities before he started to let the land. It was his wish that, if possible, his nephew (to whom the property was left in his Will) should follow in his footsteps; his nephew gave very serious consideration to this, and drew up a business plan, but for security reasons related to his former military career ultimately decided that he could not do so. The entire property was sold in 2001 for £1,150,000.

The Special Commissioner, Mr O’Brien, considered and accepted the view put forward by Christopher McCall QC, for the appellants, that the land and the house formed a unit, the house being integral thereto, but said:

“I am of the clear opinion that for the purposes of section 115 (2) the unit must be an agricultural unit: that is to say, that within the unit the land must predominate. As Morritt LJ said in Starke [1995] STC 689 at p.694h) “It is as though the draftsman had started with the land and then dealt with what should be going with it”. For present purposes any qualifying cottages, farm buildings or farmhouses must be ancillary to the land”.

Confusingly, the Special Commissioner then discussed the financial viability of the farm, saying inter alia that “in the present case, the single most significant fact is the price which was obtained on the sale not long after the deceased’s death” and that “quite apart from the fact that such a figure would be beyond the means of many who might otherwise show an interest, it would represent an appalling investment, in terms of yield from that farm”.

This, it
is submitted, is quite irrelevant, but he then came back to his original point that “within this particular unit it is the house which predominates, and that what we have here is a house with farmland going with it (and not vice versa).” Consequently he disallowed agricultural relief.

Reading the Higginson case by itself one might come to the depressing conclusion that to obtain agricultural relief for a “farmhouse”, not only should the farm be financially profitable (in which case a very large number of farmhouses in Northern Ireland and other parts of the UK would be unlikely to qualify), but the farmhouse should preferably be unattractive and cheap. As Mr McCall argued with some force:

“Only by saying that a farmhouse which is an integral part of a working farm can be not of a character appropriate to the farmland concerned can this house be denied relief and that can only be justified (if at all) by saying that the appropriateness of the character of the property is not to be judged by reference to the specific holding of land but by reference to some obscure and preconceived notion of what sort of property farmers at large should be expected to live in, whether farmhouses are to be allowed to have carpets, antique furniture and good reception rooms, whether they are to be disqualified by the elegance of the façade or the presence of a pleasure garden or a library. That could conceivably be a test which Parliament might have thought fit to adopt (though it is not clear how it could be expressed); but it is simply not the test actually adopted by the statute, which looks to the proportionality of the house to the land in question, and so to the question whether the two form an agricultural unit, not to the habits of farmers generally. . . . The taxpayers say that the tribunal should beware of the danger inherent in the Revenue’s attempt to deny relief in the present case that envy will become the yardstick of taxability.”

Fortunately, a much clearer decision on exactly the same point was delivered on the same day by another Special Commissioner, Dr Nuala Brice. In the Antrobus case (SpC 336) the property in question was Cookhill Priory, a Grade 2 listed property in Warwickshire with 126 acres of agricultural land. The house had a chequered history and had apparently been listed, not because of its attractiveness but because of its historical interest. Parts of it dated back to 1260, but it had been much altered and added to over the centuries. It was described by an expert witness as “a mongrel property”. The probate valuation stated that it “was very much in a time warp”. It was in a very poor state of repair and decoration with little work having been carried out for a considerable number of years. There was a long history of active farming prior to the death of the owner, Miss Rosemary Antrobus, in 2001, but it was scarcely profitable: in the years 1991 to 2001 inclusive, the farming business produced a profit, and a very small one at that, in only two years, and in one year made a loss of over £50,000.

It was accepted by both sides that the property was a working farm and that the house was a farmhouse. The only question, therefore, was whether the house was “of a character appropriate to the land” within section 115 (2).

The Special Commissioner considered the tests applied in a number of leading cases. In Korner (45 TC 287) Lord Upjohn said that “to be “the farmhouse” for the purposes of the section it must be judged in accordance with the ordinary ideas of what is appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farmland being farmed and not part of a rich man’s considerable residence”. The Special Commissioner considered that while this was a test of whether a property was a farmhouse at all rather than whether it was of a “character appropriate”, nonetheless it did “encapsulate the idea that it must be of a character appropriate to the property.”

In Starke [1994] STC 295, [1995] STC 689 (CA), Blackburne J. said:

“If cottages, farm buildings and farmhouses which are occupied and used for the purposes of agriculture fall within the meaning of agricultural land it is difficult to see what the point is of the “character appropriate” requirement in limb (3). If, however, cottages, farm buildings and farmhouses, together with any land occupied with them, are not within the expression “agricultural land or pasture” but will constitute “agricultural property” if used in connection with the agricultural land or pasture provided they are of a character appropriate to such agricultural land or pasture (that is, are proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question) then it is possible to attribute a full meaning to this limb.”

The Special Commissioner then turned to the analysis in McCutcheon on Inheritance Tax (ninth cumulative supplement, 1999) para 14.72, where the test is described in the following way:

“The present position is that the “character test” is considered against three main tests: (i) the elephant test – although you cannot describe a farmhouse which satisfies the character test you will know one when you see it! (ii)man on the (rural) Clapham omnibus: would the educated rural layman regard the property as a house with land or a farm? (iii) historical dimension: how long has the house in question been associated with the agricultural property and is there a history of agricultural production?”

She concluded:

“Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (Korner); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question (Starke); thirdly that although one cannot describe a farmhouse which satisfies the “character appropriate” test one knows one when one sees it (Dixon - 2001 SpC297); fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm (Dixon); and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (Dixon).”

In applying these tests to the Antrobus case itself, she concentrated on two
factors, namely the history of the property and the comparables. As to the history, the house and farm had been owned and occupied by the Antrobus family since 1907 and the Commissioner found that “the farmhouse was used just as any other farm building during the lifetime of Miss Antrobus the house was not used as a family home of distinction but as a working farm building”. (In passing, it might be felt that in this respect there was little difference between Cookhill Priory and Ballyward Lodge).

As to the comparables, the Commissioner accepted the expert evidence that “there are many farmhouses of the same size and nature as the dwelling house at issue in this appeal where the farming activities are conducted on agricultural land of approximately the same size and where the farming activities are also similar in nature (arable and stock). It is accepted that the evidence about the comparables did not extend to the profitability of their farming activities, but in my view, profitability cannot be a conclusive factor.

...The house in this appeal was, at the date of death of Miss Antrobus, a farmhouse with a farm and definitely not a house with land.”

The analysis in the Antrobus case is very helpful, that in the Higginson case rather less so. In any event, it is clear in the light of these cases that many landowners and their advisers should carefully reconsider whether or not the principal house is not only a farmhouse but also “of a character appropriate to the land”. Clearly a long history of agricultural use is useful but not conclusive, profitability is probably helpful but also not essential, and the existence of a good many comparable farmhouses in the area is extremely advantageous. A cynic might also consider it a good thing if the house is thoroughly run-down and unattractive, rather than one which many people might actually like to live in and for which they would pay a good price, but that is probably taking the case analysis a little too far.

Alan Hewitt.

Fujiyama Japanese Garden

Antrim solicitor, Billy Swann (a past president of the Rotary Club of Antrim) has just published a book detailing his exploits in the construction of this garden over the past seven years. Entitled ‘How I built a Japanese Garden’ the book is an hilarious account of how Billy was able to turn a muddy field into a place of contemplation and enjoyment. It has been highly commended by ‘Shakkei’ the journal of the Japanese Garden Society (UK), and was serialised in Water Gardener magazine some time ago.

The book runs to 93 pages and contains over 100 stunning full colour photographs. Copies of the book are available from the Secretary of the Rotary Club of Antrim (Robert Elliott) priced at £20 each plus post and packing, or from Billy at Holmes & Swann, Solicitors, 16 High Street, Antrim, BT41 4AN.

All profits from the sale of the book are being donated to the Antrim Club’s charity funds. You can also view the garden on the world wide web at: www.Cbtinteramagarden

Alan Swann

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Alan Swann

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Law Reform Advisory Committee for Northern Ireland

The Law Reform Advisory Committee for Northern Ireland has published its Report on Contracts relating to the Sale of Land or Interests in Land and the Rule in Bain v Fothergill.

The Report outlines the existing rules relating to formalities in respect of contracts for the sale of land and considers criticisms that have been made of the existing law.

Consideration is given to the reforms made in England and Wales as a result of the recommendations of the Law Commission in its Report on Formalities for Contracts for the Sale of Land (Law Commission no 164). The Report also considers the options for reform in this jurisdiction, and makes recommendations. The Report also makes recommendations in respect of the “anomalous rule” in Bain v Fothergill.

Copies of the Report are available from the Stationery Office, 16 Arthur Street, Belfast.

Any comments in relation to the Report should be forwarded in writing to the Secretary, Law Reform Advisory Committee for Northern Ireland, First Floor, Lancashire House, 5 Linenhall Street, Belfast BT2 8AA.

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Johns Elliot Solicitors 40 Linenhall Street Belfast BT2 8BA

Pertemps Legal
Solicitors Required for Portadown/Belfast
3 Years plus PQE in Litigation, Conveyancing or Criminal law.
Interested Contact Colm at Pertemps 02890236999
or
e-mail colm.cunningham@pertemps.co.uk

Missing Land Certificates

Re: Derrick Andrew McConnell, Foster Edgar, George Heatherington and Robert McCain.

Lands at Old Mountfield Road, Omagh, Co Tyrone (Omagh Evangelical Presbyterian Church)

TAKE NOTICE that any person having custody of or information as to the whereabouts of the documents of title including a Deed of Conveyance dated 14th April 1989 between Maureen McGrath of the one part and Derrick Andrew McConnell, Foster Edgar, George Heatherington and Robert McCain of the other part should forthwith produce the said deeds or communicate such information to the undermentioned solicitors within three weeks of publication of this notice.

Hewitt & Gilpin Solicitors 14/16 James Street South Belfast BT2 7GA

Folio: LY24247L County: Londonderry Registered Owner: Leo Madden and Grainne Madden Lands of: 16 Orchard Way, Portglenone Take notice that any person having custody of or information as to the whereabouts as to the Land Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the under-mentioned solicitors.

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Sheridan & Leonard Solicitors 19-21 High Street Belfast BT1 2AA

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Hewitt & Gilpin Solicitors 14/16 James Street South Belfast BT2 7GA

Folio: FE 2231 County: Fermanagh Registered Owner: Martin Leonard McGinley Lands of Moneygourgan (part) Take notice that any person having custody of or information as to there whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.

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McAttee & Company Solicitors 97 Bloomfield Road BELFAST BT5 5LN

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Please apply in the first instance in writing, enclosing full CV, in strictest confidence to Mr E Huey TEW Huey & Company Solicitors 11 Limavady Road Waterside Londonderry BT47 6JU

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or
e-mail colm.cunningham@pertemps.co.uk
Jones and Cassidy Solicitors, 220 Ormeau Road, Belfast, BT7 2FY, require an assistant solicitor with a particular interest in discrimination and employment law evidenced by specific experience and preferably qualifications in the field. The successful candidate will be a qualified solicitor of at least two years standing and presumably computer literate, able to undertake their own caseload but providing support to the current team of fee earners. The salary is negotiable and will be according to experience.

Application forms are obtainable from the above address and should be returned by the closing date of noon on Friday 25th April 2003. We are an equal opportunities employer.

Work Experience Required

Enthusiastic, reliable, discreet 2nd year undergraduate at QUB seeks summer work experience. Currently studying European Studies and specialising in European Law modules. Offers her services during summer months for relevant work experience in legal field or in research capacity. Remuneration optional. Preferably in Belfast or immediate area. Use of car. If interested please reply to:- PO Box Number 113 c/o Citigate Northern Ireland Ltd Citigate House 157-159 High Street Holywood Co Down BT18 9HU

Solicitor Seeking

Experienced child and family solicitor (4 year's PQE) seeking full-time permanent employment in Belfast area. Tenure 6 years in highly regarded niche family law practice in London. Specialist knowledge of all applications under the Children Act 1989 (private and public law), child abduction, adoption, injunctions, divorce. Member of the Law Society (England) Children Panel. Day to day experience of 'contracting' as per the Access of Justice Act 1999. For full curriculum vitae details please contact Maura on 028 9070 2237 or 07941 753114, email maurapaolo@hotmail.com

Assistant Solicitors Required

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Recommended Reading

Etridge - Undue Influence in Mortgage Transactions

The Etridge case highlighted the problems arising from a transaction in which a wife had agreed to grant a security to a lender over her share of the matrimonial home in order that her husband could obtain further finance. The case and the other joined cases focused on the alleged deficiencies in the quality of legal advice given to the wives. (The Writ, 2002)

Caselaw

Royal Bank of Scotland Plc V Etridge (No. 2)
Judgment Date – 11 October 2001
2001 3 WLR 1021
2001 4 ALLER 449

Articles

Risks in advising spouses – the Etridge effect

Under the influence (Discusses the implications for solicitors of the House of Lords' decision in Royal Bank of Scotland Plc v Etridge (No.2), concerning the presumption of undue influence which may arise when a person takes out a secured loan for another's benefit. Provides a checklist of issues which the solicitor must discuss.)
Wilson: N.L.J. 2003, 153(7068), 252-254

Banks, solicitors, husbands and wives (Analyses the current law of undue influence in the light of the House of Lords decision in Royal Bank of Scotland Plc v Etridge (No.2)
Skipwith: Adviser 2003, 95, 40-43

Undue influence - where's the disadvantage? (Criticism of upholding by HL of requirement for persons seeking to invoke presumption of undue influence to prove manifest disadvantage, comparison with abuse of confidence cases and duties of lenders and legal advisers)

Undue influence - whether bank was right to rely on solicitor's confirmation that wife received independent advice (Whether bank was entitled to rely on report of title from solicitor that wife had received independent advice relating to remortgaging of property or should have made additional inquiries before legal charge was signed).
Chuah: F. & C.L. 2002, 8(Sep), 6-7

To advertise in the Writ

please contact Karen Irwin at:
Citigate NI
Citigate House
157-159 High Street
Holywood
BT18 9HU
Tel: 028 9039 5500
Fax: 028 9039 5600
Email: karen.irwin@citigateni.co.uk

Copy deadline for April
Tuesday 15th April 2003

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