



Summer 2014

# NEWSLETTER

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## Welcome

**A**t the beginning of this year we celebrated our 21st birthday. We had a small celebration among ourselves but because our client base has grown in size we could not include you. Until now that is. This short newsletter is our way of communicating with you and reminding you that we haven't gone away. Indeed, the goodwill that has been fostered between us is the very reason of our existence. We hope that this special relationship will prosper in the years ahead.

Please feel free to click on our website [www.pals.ie](http://www.pals.ie). We would like to think that there is something that we can do for you, your family or your friends and that we can take care of all your legal needs in the years ahead. Many thanks for your kind custom in the past.

## PRACTITIONERS



- 1. Justin McKenna** Justin handles services within the firm to include trusts and estates, wills, probate and administration, powers of attorney, wardships, tax planning and property.
- 2. Rory O'Riordan** Rory specialises in personal injury litigation, contract disputes, licensing, corporate and private litigation
- 3. Ronald J. Lynam** Ronnie specialises in litigation with particular emphasis in Judicial Review and representation in every aspect of criminal litigation, including prosecutions brought by Statutory Bodies. Criminal Litigation also includes road traffic and other statutory offences.
- 4. Susan Gray** Susan practises in personal injury litigation, medical negligence and defamation law.
- 5. Ethna Ryan** Ethna specialises in residential and commercial transactions and landlord and tenant legislation. She also handles family law matters – principally judicial separation and divorce cases.
- 6. Andy Vallyely** Andy's area of practice is criminal litigation.
- 7. Nicola Hennessy** Nicola practises in civil litigation, family law and insolvency at all court levels.
- 8. Máirín O'Boyle-Finnegan** Máirín practises in District Court family law matters and criminal defence.

## Coping with marital breakdown and negative equity

Coping with the break-up of a marriage or long term relationship can be extremely difficult but is made even more so when the parties share a property in negative equity.

When the property market was stronger separating couples would fight on how to divide the equity of their home. Now the more common argument is how best to divide the debt.

Separating couples will now commonly continue to live together so as to avoid paying rent on a second property.

Another option for them is one party 'buying-out' the other and taking over the mortgage. However this can only be done with the authorisation of the mortgage lender.

If the couple make arrangements to sell the property but they will still remain liable together for any shortfall the sale has to the mortgage.

Parties to a mortgage are joint and severally liable for the debt and the mortgage provider will be entitled to claim repayment from either party whether they live there or not.

During separation proceedings the parties can consider the above options to decide on the best course of action. However if they cannot agree the court will intervene to make the decision for them.

The courts realise that in cases of negative equity it is nearly

impossible to provide each party with a 'clean break' from the marriage. However each case is different and the court will make whatever order it considers best in the circumstances.

An example of what a court may do is order for one spouse to remain in the home until the children reach a certain age before the house is sold and the proceeds are divided.



Ethna Ryan

## Personal Injury

*A step by step guide to the Personal Injury process.*

Trying to receive compensation for an injury may be a daunting prospect, but knowing beforehand what the process involves should remove any concerns.

The first step involves a consultation with your solicitor so you can be given legal advice. Following this your solicitor can start to gather the relevant evidence and details of your losses resulting from your injuries.

Next there will be an application to the Injuries Board. This is a pre-requisite to any court proceedings. They will make an as-

essment on what compensation they think is appropriate for you.

The intended defendant can either consent to or reject to having the Injuries Board assess the case. If they refuse, the Injuries Board will grant you authorisation to go to court. Similarly if their assessment is unacceptable to either party you will be given authorisation for court.

The potential value of your claim will determine what Court your claim will commence in- for example any claim in excess of €60,000 will commence in the High Court.

The majority of personal injury actions will be settled in advance of trial and parties commonly arrange settlement meetings once the proceedings begin.

In such circumstances your le-

gal representatives will advise you on the merits of any offer made.

If a case does not settle then it goes to trial where the court will hear oral testimony from the relevant parties and also consider evidence of treating doctors.

The court will decide firstly whether the defendant is at fault, and if so, the appropriate damages to be paid. This will be based on your losses to that date, into the future and general damages for your pain and suffering.

Once an award is made, it is commonplace for the Defendant to make payment within eight weeks.



Rory O'Riordan

## Using your mobile phone while driving – What is the law?

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Section 3 of the Road Traffic Act 2006 made it an offence to hold a mobile phone while driving. This is a fixed charge offence of €60 (€90 if not paid within 28 days) plus 2 penalty points (4 if convicted).

### What is a mobile phone?

The definition of mobile phone is a portable communication device, other than a two-way radio, with which a person is capable of making or receiving a call or performing an interactive communication function. This could therefore technically refer to an iPad or tablet also.

An 'interactive communication function' includes sending or receiving oral or written messages, faxes, still or moving images, or providing access to the internet.

### Holding a mobile phone

To hold a mobile phone actually means not only holding the phone by hand, but also supporting or cradling it with another part of the body. So resting your mobile phone on your lap while on 'speaker' is in fact included in the offence.

### New regulations

The loophole that existed was the ability to send text messages while your phone was in a cradle or hands-free device. This loophole has now been closed as of 1 May 2014 with a new offence of sending or reading a text message from a mobile phone while driving. A text message includes SMS, MMS and emails.

To read a text message means to access or open it, other than by voice-activation. To send a text

message includes composing and typing, but does not include anything done without touching the mobile phone. Therefore reading or sending text messages solely by voice commands is technically not an offence under these regulations, however one would always need to be mindful of other offences, including care-less driving.

The current penalty is a mandatory court appearance where a judge will decide what financial penalty the motorist should face. If convicted, the judge can fine the motorist a maximum of:

- €1,000 for a first offence
- €2,000 for a second or subsequent offence
- €2,000 and/or up to three months in prison for a third or subsequent offence within a twelve month period.

### Current position

The Department of Transport, Tourism and Sport has published an Information Note which clarifies that the new regulations apply to mobile phones which are not being held. Therefore if you are holding a mobile phone while driving, to include cradling or supporting it by any part of your body, you will be charged with the fixed charge offence of €60 and 2 penalty points. If your phone is sitting in a hands free device and you touch it to read or send a text you

will be subject to the new regulations.

The information note also clarifies that it is not an offence to speak via a hands-free device or to touch a button on a hands-free device in order to answer a phone call.

### May 2014

Should you have any queries in relation to any of the above please do not hesitate to contact Máirín O'Boyle-Finnegan or your usual contact at Partners at Law.



Mairin O'Boyle-Finnegan

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## Property

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Auctioneers held liable for 'incompetent' property valuation

Property prices may have plummeted in recent years but this is no excuse for estate agents who grossly over-estimate their valuations.

In the case of *Brownrigg v Leacy* [2013] IEHC 434 the High Court found auctioneers to be negligent when they excessively over-valued a piece of farmland.

The plaintiff had asked the defendants to value property he wished to sell. He was given a figure of between €6.9 and €10 million. →

On that basis the plaintiff put a deposit on another property he intended to purchase for the price of €5.9 million.

However when the plaintiff put his farmland up for sale, he was shocked when the offers did not exceed €1 million.

The court held that the auctioneers had been negligent in preparing the letters of valuation as they were not in accordance with standards required by "the Red Book", the international standard for property valuation.

If the letters had not been in-

tended as a valuation to be relied upon, as argued by the defendants, then this should have been expressly stated to the plaintiff.

The court made an award in the amount of the deposit lost by the plaintiff when he could not complete the other sale.

However the court reduced this award by 50% on the basis that the plaintiff had contributed to his own misfortune.

The plaintiff embarked upon a risk by purchasing property before he had secured a purchaser for his own land, the sale of which

was to finance the purchase.

The decision brings clarity to the law in respect of the liability of auctioneers who are negligent in property valuation.

The case also serves as a warning to those take the risk of buying before they sell.



Justin McKenna

## Personal Insolvency

### *The Personal Insolvency Act- an update*

The Insolvency Service of Ireland (ISI) is now up and running and has released its first quarterly statistical report.

The report makes for interesting reading and the figures may come as a surprise to many.

It states that the ISI has received over 500 applications in the past 7 months.

From these applications the statistics show that 44 Debt Relief Notices have been approved, compared to only 7 Debt Settlement Arrangements and 4 Personal Insolvency Arrangements.

The Report correctly states that many will consider these fig-

ures to be much lower than anticipated.

However it expects that as stakeholders become more familiar with these new schemes the amount of successful arrangements being completed will increase.

During this period the courts have issued 70 protective certificates to debtors. A protective certificate is issued to protect the debtor's assets for a period so that that the possibility of entering into one of the debt relief schemes can be considered.

The Report also details that since the new bankruptcy procedures came into force the number of bankruptcy orders in the first quarter of this year exceeds the total number in 2013.

The ISI was set up to administer the several new debt relief schemes provided for under the

Personal Insolvency Act 2012.

These schemes include a Debt Relief Notice which allows for a write off of qualifying debt up to €20,000 subject to a three year supervision period and a Debt Settlement Arrangement which allows for a write off of unsecured debt of no limit with a five year supervision period.

The third option under the Act is the Personal Insolvency Arrangement which facilitates the restructuring of debt up to €3 million.



Nicola Hennessy

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