



# THE GOLDEN THREAD

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A&L Goodbody



# CONTENTS

<b><i>“Editor’s Welcome”</i></b> by Nicole Duffy	Page 1
<b><i>“Will you still love me tomorrow? A call for ‘pre-nuptial agreements’ to be legally recognised.”</i></b> by Brian Walsh	Page 2
<b><i>“The UN: United In Our Safety?”</i></b> by Freda McGeough	Page 4
<b><i>“The Gender Recognition Bill: A Good Start?”</i></b> by Aoife McMahon	Page 7
<b><i>“The 33rd Amendment on the establishment of a Court of Appeal.”</i></b> by Leah Holmes	Page 10
<b><i>“The Need For The Reform of Domestic Violence Legislation in Ireland.”</i></b> by Nicole Duffy	Page 12
<b><i>“Is it Time to Re-Evaluate the ‘Life Sentence’?”</i></b> by Rhys Thomas	Page 14
<b><i>“The Abolition of the In-Camera Rule in Family Law Courts.”</i></b> by Jessica Wilke	Page 17
<b><i>“How to achieve the best results in your first year law exams.”</i></b> by Mairéad Conway	Page 19
Exam Timetable	Page 20
<b><i>“Meet Prof. Michael Doherty; Our New Head Of Department.”</i></b> by Ryan McGuinness	Page 22
Contributors	Page 23
References	Page 24

# EDITOR'S WELCOME

As we worked on this issue of the Golden Thread, a clear theme emerged throughout our articles. That theme is progression, which is currently a very hot topic with regards to the Irish legal system. Any one of the writers in this new issue – Freda Mc Geough, Ryan Mc Guinness, Jessica Wilkie, Leah Holmes, Brian Walsh and Aoife Mc Mahon - has something to say about moving forward with new ideas for reform.

On the note of moving forward, we're entering that time of year again; exams are looming in the near distance and panic is beginning to take hold of the student population here at NUI Maynooth. The future is unpredictable and who knows what lies ahead? Well luckily, here at the Golden Thread we have quite a bit of experience when it comes to University exams and as always, we're here to help. Take note of Mairead Conway's article which is full of useful exam advice. It's reading time. It's writing time. Take this issue of the Golden Thread to the library and get busy!

***Nicole Duffy***





## Will you still love me tomorrow? A call for 'pre-nuptial agreements' to be legally recognised.

by Brian Walsh

The purpose of a pre-nuptial agreement is to regulate the affairs of spouses in the event of a marital breakdown. Essentially, it allows parties to protect their separate property and any other assets. The advantages of pre-nuptial agreements are many: they reduce conflict; reduce exorbitant cost; and give couples a piece of mind in the event of a divorce. However, unlike our European counterparts, in Ireland and the UK, it is at the judge's discretion on a case-by-case basis to decide if pre-nuptial agreements are deemed to be enforceable. Pressure is mounting on the legislature to pass a bill that will make these agreements legally binding. The IFA and The Family Lawyers Association have formulated policy documents proposing regarding this area of law that is in need of imminent reform. Similarly, as far back as 2006, the then Minister for Justice, Michael McDowell, established a study group on pre-nuptial agreements, with the idea of issuing a report which will give recommendations on the possibility of reform. I will later outline the recommendations the report made

### **This field is mine.**

Since divorce was legalised in 1996, there has been an average of 6,000 divorces per year. As a result of this change, there have been distant calls coming from rural Ireland advocating for pre-nuptial agreements to be legally enforced. The increase in percentage of divorces is beginning to worry many young farmers, as figures that were released show one in six farmland sales are as a direct result of marital breakdown. Now, many young farmers are very reluctant to get married, as they fear in the event of a marital breakdown their spouse may get the land, which has been the case for many a generation. This has also prevented the older generation from signing over the land during their lifetime. This matter also addresses a wider societal issue of the Irish love affair with property and land. Is this notion embedded in the psyche of a post-colonial people, whose previous generations were evicted from their land by an imperial power? I'd consider it food for thought.

### **The UK's position**

The recent landmark judgment of *Radmacher v Granatino* (2010) UKSC 42, has clarified the legal status of pre-nups in the UK. A French man and a German

woman divorced in Britain in 2007. The woman was from an affluent family. Prior to the marriage, the woman's father had pressured her to enter into a pre-nuptial agreement with her future husband. She agreed and the "pre-nup" was signed in Germany, where it was legally recognised. The husband brought a case for ancillary relief seeking both periodic payments and a lump sum. Mrs. Justice Barron awarded him a lump sum of £5.56 million, and periodic payments for each child a year while in fulltime education. The wife appealed the decision to the Supreme Court, who overturned the decision of Mrs. Justice Barron.

In referring to the Home Office 1998 consultation document, Lord Philips concluded: "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement." The significance of this case was that it overturned the Privy Council's decision *McLeod v McLeod* [2008] UKPC 64, which stated that pre-nuptial agreements could never be binding. Under *Radmacher*, the UK courts are obliged to consider 'pre-nups' as long as they don't result in harsh injustices being issued on one of the parties.

As time progresses, societal opinions and values change with it. This is a fitting judgment, as the idea of the "institution of marriage" for many people has changed dramatically compared to generations of the past. It will be interesting to see if the Irish courts will follow suit and give due weight to this case, should such a matter arise before them.

### **Time for a change.**

The Study group's final report issued on 2007 recommended: The Family Law (Divorce) Act 1996 be amended to include a definition of pre-nuptial such that an enforceable agreement must be in writing, signed and witnessed; made after each party has received separate legal advice; made with full disclosure of financial information; and not less than 28 days before the intended marriage.

Despite the Study groups report being published in April 2007, no successive government has adopted and implemented the reports recommendations. With the current economic climate, it may not be on the forefront of the government's mind. However, by legislating on this matter they will send a glimmer of hope and lift the burden of many individuals, especially the rural community of Ireland.



## **The UN: United In Our Safety? Assessing the enforceability of UN Resolutions in Syria.**

**by Freda McGeough**

The United Nations was founded in 1945. The primary objective of the organisation was to safeguard global peace during the aftermath of World War II, which claimed the lives of over sixty million people. Currently, the fundamental aim of the UN is to create a platform for successful international dialogue and essentially, to stop warfare erupting between countries. The UN is primarily a vehicle employed by the worldwide community to enforce a mentality of pacifism, and it does so through its multiple subsidiary organisations. From its offices around the world, the UN and its specialised agencies decide on worldwide substantive and administrative issues by holding regular meetings throughout the year. At its founding, the UN had 51 member states; there are now 193.

The United Nations came to fruition as a replacement for the League of Nations, its predecessor in worldwide affairs. The League of Nations failed as an entity to prevent the grand scale warfare of World War Two from erupting. The main failures of the League of Nations were:

1. Many major world powers were non-members. This included America, the Soviet Union and Germany.
2. Secondly, its regulations did not allow for any kind of military forces to be deployed for peace keeping purposes. Instead, its primary tactic was to rely on economic sanctions. These were evidentially abused by the worldwide markets which favoured economic enrichment rather than the development of global peace.
3. The League of Nations was viewed by many as the 'Anglo – French' club which had relatively little power and minimal political influence.

In current times, the United Nations has been attempting to manage the greatest threat to world peace seen in the 21st century. This threat comes as a result of the ever escalating civil war in Syria. This war involves rebel groups who are revolting against the oppressive regime of dictator Bashir Al – Assad. When an alleged chemical attack was reported in Damascus in August 2013, the UN attempted to maintain peace through diplomatic means. However, this caused the United States, under the leadership of President Barack Obama, to

act of their own accord and send their troops to Syria. Soon afterwards, the UN decided to deploy their peace keeping forces to the country.

The cardinal and supreme division of the UN is the Security Council which houses the five leading political, monetary and military superpowers in the modern day worldwide community. Under the guidance of the Security Council, the UN has unanimously adopted a binding resolution on ridding Syria of chemical weapons. At a session in New York City, the 15 member body voted in support of a draft document outlining this resolution, agreed upon earlier by Russia and the US. The deal breaks a two-and-a-half year deadlock in the UN over Syria, where fighting between government forces and rebels is ongoing.

The vote came after the international chemical watchdog agreed on a plan to destroy Syria's stockpile of chemical weapons by mid-2014. The UN resolution condemns the use of chemical weapons but does not attribute blame. The text has two legally binding demands:

1. that Syria abandons its weapons stockpile.
2. that the chemical weapons experts are given unfettered access to evidence which confirms this.

With regards to the use of military force - although the draft refers to Chapter VII of the UN Charter, which allows the use of military force, a second resolution authorising such a move would be needed. The US - backed by France and the UK - had pushed for a resolution carrying the threat of military action against Syrian President Bashar al-Assad's armed forces. Russia had opposed this. US Secretary of State John Kerry said the UN demonstrated that "diplomacy can be so powerful that it can peacefully defuse the worst weapons of war".

The appeasement tactics of the UN successfully illustrate the primary obstacle and complication facing the organisation in its quest for the purveyance of peace. The Security Council members are the only organ that can mandate the use of military force but with all five having the power to veto; it is incredibly difficult to gain a unanimous verdict. It also seems that, historical battles tend to characterise and frustrate relations between countries such as cold war enemies Russia and the USA. The prevailing modus operandi appears to be self-preservation of vested interests rather than the obtainment of world peace. Normally, the use of UN peace keepers would consist of soldiers who come from small, independent nations such as Ireland. Yet, the fundamental flaw which is repeatedly exposed with this military force is that instead of

actually remedying the causes of conflict, they ultimately end up taking on the role of keeping warring factions apart.

The ultimate successes of the United Nations can be seen as being in the social, humanitarian and educational spheres through the foundation of advantageous and pragmatic organisations which help to alleviate human sufferings such as the World Health Organisation, Food and Agricultural Organisation and UNICEF. In terms of the Syria debacle, it seems that the UN has somewhat failed in its dominant objective to be a curator of peace as the civil war still rages on and until Bashir Al – Assad makes the conscious decision to abide by the UN's resolution, the Syrian population remain endangered. Perhaps, it can be argued that the UN in its resounding exaltation and championing of multilateral diplomacy has compromised its integrity and vehemence as a placatory instructing force in the mind sets of the world's powerful and reactive military superpowers.

## Want To Get Involved in Extra-Curricular Activities at NUIM?

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## The Gender Recognition Bill: A Good Start?

by Aoife McMahon

As it stands, Ireland is currently the only country in Europe without recognition for transgender persons. Eleven years after the first Irish court case on this matter, the new “Gender Recognition Bill” was published in September of this year by the Minister for Social Protection, Joan Burton. If it is passed by the Oireachtas next year, the transgender community in Ireland will finally have their rights legally recognised.

The “Foy” case is not only a significant milestone in the progression and development of transgender rights in Ireland, but is also an extraordinary and inspiring example of how one person’s determination to stand up for what is right can make a huge difference for others.

Dr Lydia Annice Foy, (born Donal Mark Foy), a transgender woman, took the first legal case in Ireland to seek a new birth certificate and legal recognition in her female gender. Foy is a retired dentist and has two children, to whom she has been denied access by her former wife since the gender reassignment surgery. She was able to acquire a passport, driver’s licence, and medical card in her new name but was denied a new birth certificate. After four years of failed attempts to acquire a new birth certificate from the Registrar of Births, she began legal proceedings. In 2002, her case was heard in the High Court. She argued that by denying her a new birth certificate to acknowledge her new name and gender, the Registrar of Births had infringed upon her constitutional rights, namely privacy, dignity, equality, and marriage. The High Court held that, upon examination of scientific and medical evidence, Dr Foy was born male and, even after surgery, was not entitled to an amended birth certificate.

However, in his judgment, Justice McKechnie made reference to the need for the Oireachtas to consider the decisions of the European Court of Human Rights (ECHR) and review what changes should be made to Irish legislation. Although the ECHR did not have direct effect in Ireland at that time, it was given greater effect in this jurisdiction after the passing of the “European Convention on Human Rights Act” in 2003.

Relying on this development, Dr Foy applied once more to the Registrar of Births for a new birth certificate. When her application was denied, Dr Foy

then issued new proceedings in the High Court in 2007 and referred to the decision in *Christine Goodwin v UK* (2002). In *Goodwin*, the Strasbourg Court held that the United Kingdom had breached Ms Goodwin's rights (a transgender woman) under the European Convention on Human Rights by denying her a new birth certificate.

Although she was yet again refused a new birth certificate, the High Court granted the ground-breaking first ever declaration of incompatibility of Irish law with the European Convention on Human Rights, due the failure of our legal system to provide recognition of transgender persons. The High Court judge, again Justice McKechnie, expressed considerable frustration at the failure of the Oireachtas to take any steps to assist transgender persons in the five years since the decision of *Christine Goodwin v UK*. The Oireachtas then appealed this decision to the Supreme Court, contesting the finding that the Irish law was inconsistent with the Convention.

However, public opinion was beginning to change on the issue and in its "Renewed Programme for Government" in October 2009, the Government promised to "introduce legal recognition of the acquired gender of transsexuals". In accordance with this policy, the Government subsequently withdrew the appeal to the Supreme Court in 2010 and instead set up a Gender Recognition Advisory Group (GRAG) to work on legislation which would provide legal recognition by the State for transgender and transsexual persons. The product of this group was the Gender Recognition Bill.

The Bill will grant transgender people full marriage rights as well as a new birth certificate. This is a major development for the transgender community but it is not entirely sufficient in recognising their needs and rights. For example, the new legal status available to transgender persons will only apply to those who are over the age of eighteen, unmarried, and who bear a supporting statement from their doctor.

Members of the transgender community have expressed concerns about the age requirement in particular, stating that the Bill creates unfair terms for recognition. Young transgender people under the proposed age limit may be dealing with important changes in their lives but could be denied access to appropriate health, education, legal and other supports because they are not legally recognised as their appropriate gender. Having the appropriate documentation is very important for any member of society, as it is a significant requirement in many areas, such as employment, healthcare, and education. However, the Bill does not entirely ignore these issues, as it allows for the legal guardians of the transgender child to make an application

to the District Court on their behalf.

The provision requiring an individual to be unmarried may not be final, as the Oireachtas will be required to review the provision, depending on how it reacts to the Constitutional Convention recommendations on same-sex marriage. Until then, the position as it stands may create cases of ‘compulsory divorce’, in which happily married couples will be forced by law to divorce each other to avoid having an illegal same-sex marriage.

The ‘doctor’s note’ requirement has also been the subject of severe criticism, as it implies that being a transgender or transsexual person is a medical condition or illness. Some people feel that it diminishes the fact that a transgender person’s identification with another gender is very personal and may not be something that can be diagnosed or treated by a doctor. The Government, however, in a response that may not rest well amongst the transgender community, maintains that this measure was included in order to confirm that the person has ‘transitioned into their acquired gender’.

Although this Bill does not fully respect and acknowledge the rights of transgender and transsexual persons, it is certainly a major development for the transgender community in Ireland. Legal recognition will make a huge difference in the lives of people such as Lydia Foy, who, after twenty years, is still admirably fighting in the courts for her right to a new birth certificate. Even though she has still not been granted the legal remedy she desires, her case has achieved a great deal for the transgender community in general. It would be a very significant event for our society if the Bill were passed. The fact that we are the last country in the European Union to act on this issue is shameful and if the Bill is not passed, the shame will only grow.

The transgender persons of Ireland have already waited too long for their rights to be respected.

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## The 33rd Amendment on the establishment of a Court of Appeal.

By Leah Holmes

Following the successful referendum on October 4th last, Ireland is set to have a new court of appeal which has the premise to 'revolutionise' the Irish appeals system. The astounding almost two-to-one vote has highlighted the overwhelming hope for change within our appeal system. The referendum has proposed the establishment of a new court of appeal, which will be placed between High Court and Supreme Court levels, which will aid with the existing delays in the appeals process. This therefore means that the current system of appeals will be altered, transferring the majority of the appeals from the High Court, and other courts for that matter, to the Court of Appeal.

The concept of the Court of Appeal is that its judgments will be final, save for certain circumstances where an appeal to the Supreme Court may be made. There are many planned changes to come with the arrival of the new Court of Appeal. One nationwide concern which is proposed to be addressed is the current strain placed on the Irish Supreme Court. Solicitor and Junior Vice President of the Law Society, Stuart Gilhooly, synopsised this fear in his debate with Constitutional Lawyer Paul Anthony McDermott on Newstalk 106-108FM when he stated "We're asking our Supreme Court to work incredibly hard," he observed. "It's inevitable that the quality must drop a little bit. I can tell you [the Supreme Court judges] are the cream of the legal profession, but we're asking them to work like cart horses". The planned change to the Irish Appeals system expects to lessen the burden on the Supreme Court and ensure the highest standard of care taken in Supreme Court decisions. It is also believed that the new Court of Appeal will bring Ireland in line with the existing systems in many other jurisdictions. As we are in the 21st Century, it is imperative that we, as a nation, have a courts system that reflects those in other countries. The existing system is severely out-dated and the new Court of Appeal seeks to modernise the way appeal cases will be dealt with. The majority of European Countries have a devoted Constitutional Court; leaving Constitutional matters to the Supreme Court in Ireland will mirror this. The Court of Appeal will primarily deal with routine matters, leaving the more general public-importance cases to the Supreme Court. The Supreme Courts function will be to deal with those Constitutional matters that affect the citizens of Ireland greatly. The use of the new Court of Appeal for more mundane, routine matters will ensure that greater care

and time is taken in the Supreme Court with more pressing matters. This also ensures that the principles of law dealt with in these cases will become clearer hopefully leading, in the long-term, to fewer appeals on the matter. For prospective businesses coming to Ireland it is more ideal to have a courts system where they will have their disputes dealt with quickly. It is evident that there are many benefits to the establishment of the new Court.

Notwithstanding the astounding yes vote to the reform of the Irish appeals system, it has been met with a substantial amount of criticism. Paul Anthony McDermott, Constitutional Lawyer, expressed his reservations about the possible establishment of a new Court of Appeal, asserting that the introduction of a new court will only increase the delays. "In my experience in law, the more layers you introduce to a system and the more courts & judges you have, the more cases there'll be, the more delays there'll be. It won't solve the problem that Irish people are very litigious". Our very own Professor Seth Barrett Tillman has been quite vocal with his concerns over the proposed changes. He claims that the issue with the current backlog is a "productivity problem" which "a new court can't solve" further adding that the new Court of Appeal is "a new bailout". Professor Tillman, along with many other commentators, believes that this will not be a solution to the existing problem. The Master of the High Court has made his own comments on the matter calling the new system a "crude device" which will not reduce the backlog but rather increase the number of appeals. "The judges have come up with this idea for a Court of Appeal with lots of judges but it's a crude device which avoids addressing the problems of excessive complexity and paperwork," Possible separation issues between the High Court, Court of Appeal and the Supreme Court have too been advocated. Michael Gallagher, Professor of Comparative Politics, Trinity College Dublin, has raised such concerns. He believes that the new Court of Appeal will also hear some Constitutional cases which may blur the dividing line between the two Courts.

With regard to the differing arguments put forward it is difficult to discern whether the 33rd Amendment will be a positive advancement for Ireland. Is it possible that the backlog could have been fixed by some overhaul of the current courts system and is Ireland being lethargic and passing the baton? It may be asserted that the necessary overhaul would have been laborious and costly and the establishment of the new Court of Appeal is the most straightforward option. One must wonder whether the courts will truly separate or will they be so intertwined that, in reality, it will become a more complex version of the system currently in place. In this circumstance only time will tell whether the new Court of Appeal was the correct avenue for the Irish Courts system.



## The Need For The Reform of Domestic Violence Legislation in Ireland.

by Nicole Duffy

Under current Irish legislation, domestic violence refers to physical, sexual and emotional abuse between family members. Although men and children are often victims of domestic violence, the problem is more commonly linked with female victims. In fact, it is estimated that one in five women in Ireland experience domestic abuse at some stage in their lives. Furthermore, unlike most criminal offences, domestic violence is very rarely an isolated incident. Acts of domestic violence tend to follow a repetitive pattern, putting sufferers in constant danger.

The main source of legislation which deals with domestic abuse in Ireland is the Domestic Violence Act 1996. Under this legislation, the Gardai are given the authority to arrest violent family members. In addition to this, the legislation provides two main types of protection for the victims of domestic abuse: safety orders and barring orders. A safety order is issued by the court to prohibit the abusive family member from committing any further violent acts or making any threats of such violence. However, it does not necessarily force the violent party to leave the family home. If the defendant does not live in the family home but has a child with the victim, a safety order denies them access to the property. A barring order forces the defendant to leave the family home and also forbids them from intimidating the victim any further. The use of these orders has been extended to same sex couples in recent years and, failure to comply with either order can result in a large fine or up to twelve months imprisonment.

Although the enactment of the Domestic Violence Act 1996 was a step in the right direction for Irish law, according to the Irish Citizen's Information website; "statistics from an Garda Síochána show that 1,188 breaches of orders were recorded in 2005". This suggests that the legislation enacted to prevent domestic abuse is seriously flawed and in need of major reform.

One of the major flaws which can be seen in Irish domestic violence legislation; is that neither the safety nor barring orders can be availed of by parties who are not co-habiting at the time of an offence, unless they have a child together. When the protective orders were extended to those who are not co-habiting but do have a child together and same sex couples, there was an overall increase of 34% in applications for safety orders while applications

for barring orders increased by 23%. Therefore, it seems like an obvious choice for the government to extend the protection further to those who remain unable to access it.

Another issue which is in urgent need of address is the idea of emergency barring orders. Under current legislation, neither barring nor safety orders can be accessed by victims outside of regular court hours. Margaret Martin, director of the domestic violence charity Women's Aid, recently stated that "the lack of emergency protection when courts are not sitting leaves them (victims) very vulnerable to further violence and serious harm." Should we expect those victimised by violence in the home on a Friday evening to remain in such a dangerous environment until courts open on a Monday morning? Domestic violence cannot be contained within regular 'office hours' so why should the protection available to victims be limited by such restrictions?

Finally, on a political note, Ireland has yet to sign the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It is one of the very few EU member states which have failed to do so and it remains unlikely that the government will resolve this in the near future. Although it is clear that the Irish government do wish to resolve the problem of domestic violence, their progress has been quite slow. Therefore, I think that by signing the EU provision, they would show a strong commitment to the citizens of Ireland who are actively campaigning for reform in domestic violence legislation.

If you are interested in contributing to The Golden Thread, please get in touch with your submissions or suggestions at:

GoldenThread@  
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## Is it Time to Re-Evaluate the “Life Sentence”?

By Rhys Thomas

On March 5th 2013, Mr. Mick Philpott was sentenced to life imprisonment at Nottingham Crown Court, having been found guilty on six counts of manslaughter relating to a house fire started by Mr. Philpott which claimed the lives of his six children. The usual calls to bring back public hanging were heard from the red tops and the comment sections of news organisations reporting the sentence. However, some also asked “why call it a life sentence if he will be eligible for parole in fifteen (15) years?”

This once again poses the question; is it time to re-evaluate the “life sentence” and the “mandatory life sentence”?

In the United Kingdom and in this jurisdiction a life sentence can in theory mean that the remainder of the convict’s life can be spent in prison, however in reality this is a very rare occurrence. After a certain period of time spent in custody, on average twelve years in this jurisdiction, the Minister for Justice and Equality can, based upon the recommendations of a parole board, grant the prisoner a temporary or early release. The prisoner, subject to the minister’s approval, is released from custody on a life-long licence which can be revoked if the prisoner re-offends or is caught taking part in criminal activity. The offences which carry life sentences can be split into two categories: offences which can carry life sentences upon conviction, and those which require a mandatory life sentence be imposed upon conviction.

Conviction for offences such as “causing serious harm” and certain offences against the state such as possession of a firearm in suspicious circumstances can lead to a life sentence being handed down to the guilty party, however the judge has discretion in the matter. There are only two crimes which warrant a mandatory life sentence in this jurisdiction: treason, and murder. At present, S.2 of the Criminal Justice Act 1990 (herein referred to as the 1990 act) states that “A person convicted of treason or murder shall be sentenced to imprisonment for life”.

In recent years both the life sentence and the mandatory life sentence have been hit by criticism from across the spectrum of opinion. The media and the families of the victims often comment that life sentences, or rather, the average time served in prison for a life sentence is too short. In contrast, a

number of nations such as Spain, Portugal, Brazil, and Norway limit the number of years a person can spend in prison, effectively abolishing it altogether.

Section 2 of the 1990 act was recently the subject of an action brought before the Irish Supreme Court in the case of Lynch v. Minister for Justice, Equality and Law Reform, Ireland and the Attorney General. The Appellants argued that section 2 of the 1990 act is contrary to the constitution and the European Convention on Human Rights. The Appellants alleged that S.2 breached the separation of powers and the doctrine of proportionality as the minister's power to order an early release was essentially a judicial function; however, the Supreme Court disagreed. In their judgment they stated that the ECHR had previously "made a clear distinction" between the handing down of a mandatory life sentence and punitive life sentences, and the "exercise of the executive discretion to commute, remit, or grant an early release". More importantly, the Court also upheld the power of the legislator to stipulate a mandatory life sentence for murder, the rationale being that "murder, even at the lowest end of the scale, is so abhorrent an offence to society that it merits a mandatory life sentence". They also held that since the imposition of a life sentence for the crime of murder was a valid act, "as the offence of murder demanded the imposition of a life sentence" the doctrine of proportionality was not violated.

The court's reasoning is clear on the grounds of public policy; however, there are some quite powerful arguments for the abolition of the mandatory life sentence which the court did not consider. A 2011 consultation paper by the Law Reform Commission noted a number of practical arguments against mandatory life sentences. The paper states that mandatory life sentencing "precludes judicial discretion and thus, inevitably gives rise to disproportionate sentences". This is one of the more convincing arguments against such sentences. Should a woman who kills her abusive husband but does not have the option of pleading to voluntary manslaughter, or a family member who assists in the suicide of a terminally ill relative who wishes to take their own life deserve the same sentence as a person found guilty of murder during the commissioning of a burglary, or an armed robbery? One of the main arguments put forward by the proponents of mandatory life sentences is that they have a deterrent effect. However, the consultation paper noted that the imposition of a mandatory life sentence is, "not a sufficiently sophisticated response to the myriad of complex social issues which contribute to many offences, thus while a mandatory life sentence might ensure the punishment of one offender, it is unlikely to have an impact on the overall occurrence of the offence".

It would seem that a life sentence can be justified for the most heinous of

crimes, like those of Mr. Philpott mentioned at the beginning of this article. It is a bleak fact in life that some people, such as serial killers and certain types of sex offenders are so violent, so destructive, that they must be locked away from the rest of society for protection. However, there are some vulnerable people such as the battered wife who, out of dire circumstance find themselves taking a life, end up with the same mandatory life sentence as the violent killers and sex offenders mentioned above. That is not to suggest that such a person should literally “get away with murder”, but to be handed down a sentence identical to the violent offenders mentioned above is surely unjust and disproportionate.

It is up to the legislator to decide the future place of life sentences within our criminal justice system, and the sad fact is that to do away with a mandatory life sentence may attract criticism of being “soft on crime”. Even though governments are elected to legislate in a fair and just manner, that label, in today’s volatile political climate, could be political hemlock for any such government which attempts reform.

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## The Abolition of the In-Camera Rule in Family Law Courts.

by Jessica Wilkie.

"I am very pleased to bring forward legislation to amend the long standing in-camera rule in family law and child care proceedings, and to increase the monetary jurisdiction limits of the Circuit and District Courts. These reforms are long overdue". This statement was given by the Minister of Justice, Equality and Defence, Mr Alan Shatter, and it is commending the reformation of family law through the new Courts Bill 2013. However, the question is; should this Bill be commended by the citizens of Ireland?

The Courts Bill 2013 aims to amend the Civil Liability and Courts Act 2004, The Childcare Act 1991 and The Adoption Act 2010. The bill will allow bone fide representatives of the press to attend Court proceedings which would previously have been heard privately, except for in certain circumstances. The bill will also provide for the restriction of publishing or broadcasting of any of these matters by such representatives. The Minister of Justice, Equality and Defence published this Bill in March 2013 in an attempt to reform the operation of the in-camera rule and to increase monetary jurisdiction limits to the Circuit and District court with regards to personal injury actions and other civil proceedings.

Since 1991 it has become apparent that the value of money and the standard of living has changed throughout Ireland. Therefore, the government must attempt to limit the monetary jurisdiction of District and Circuit Courts. They can do so by modernising and reforming family law legislation. It must also be acknowledged that governmental budgets should be changed in accordance with any reforms. The following policy options for reform are currently being considered:

1. To do nothing and continue to maintain the limits set on monetary jurisdiction
2. To enforce sections 13 to 18 of the Courts and the Court Officer Act 2002, this act allocates a budget of 20,000 euro in District Courts and 100,000 in Circuit Courts
3. To revise the monetary jurisdiction and make changes to it while considering the value of money in modern times.

The in-camera rule literally means "in private". Previously, family law

proceedings in Irish courts have not allowed for media attendance. This was mainly due to the sensitive nature of the cases and the desire of the families to keep such proceedings private. It is my opinion that as a result of not allowing the media any access into Family law courts, there was a restriction on the reporting of cases and in turn, there was no platform for public debate on any issues that were raised. However, in a recent speech before the Oireachtas, Minister Shatter said: "Members of the public need to know what they could reasonably expect from the courts if they were to find themselves in the unfortunate position of having to seek access to the courts in such cases". It could be argued that by allowing media access into courts, the public will gain more knowledge of family law cases. It is also suggested that by opening barriers on the reporting of family law, the media could shed light on the experiences of neglected children in Ireland and help strengthen campaigns to stop domestic violence.

Although all the developments set out in the bill may seem positive, we must also investigate the possibility that any invasions of privacy. This may have serious repercussions on the strength of legislation in Ireland as many families may abandon the use of the courts, feeling embarrassed or ashamed by the idea of their personal lives being subjected to media attention. In Ireland many victims of sexual offences fail to report their suffering to legal authorities due to the fact that they are terrified of disclosing personal information for public and media consumption. Will reforming the in-camera rule in Irish courts have a similar effect? The ombudsman for children Emily Logan fears that the media may seek to reveal, the identity of the parties involved in sensational family law cases, causing victims to retract their statements and in turn, obstructing the course of justice. However, despite the bill permitting media access to the courts, there will be a strict prohibition on any use of names in the reporting of cases. Under the bill, a strong emphasis will be placed on maintaining the anonymity of the parties involved. Furthermore, the media cannot include any details of the cases that may reveal the identity of the parties.

It is clear that the overall aim of the Government is to modernise legislation regarding family law in Ireland. Whether this Bill will have a positive or negative effect on legal proceedings is yet to be established. However, it is my opinion that; if the Government succeed in creating a system wherein the media are supplied with strict guidelines dictating what information they can report, either by judicial supervision or by a code of conduct then, the amendments will be a positive step towards reducing any elements of secrecy which remain in our legal system.



## How To Achieve The Best Results In Your First Year Law Exams

by Mairead Conway

So, it's coming that time of the year again with exams just around the corner. Exam time can be a stressful time for all of us, so The Golden Thread is here to put you at ease with some helpful tips. For first year law students in particular, this can be a very daunting time. Sitting your very first law exam is challenging, so we are here to give you a few tips to help you achieve the highest marks possible.

Firstly, law exams are divided into two types of questions. These questions can either be: (1) Problem questions, or (2) Essay questions. These questions are easy to identify. Where you have a choice, it is advised to select a problem question over an essay question, as it is easier to pick up marks in problem questions if you use the ILAC formula. The ILAC formula is very straight forward:

- **ISSUE** – Identify the issue in question.
- **LAW** – Explain the current standing of the law on this issue. Draw on case law for examples.
- **APPLICATION** – Apply the law to the facts of the case in question.
- **CONCLUSION** – Conclude your answer.

With so much to cover before exams it is important to be productive with study time. It is never too early to begin revising the things that were covered during the first few weeks of the semester. But where to start? Go to the course outline on the module's Moodle page to find out exactly what was covered. From there, you can study each topic individually and then link them with case law.

For each topic it is a good idea to compile a list of the main relevant cases, with a very brief description of the facts and outcome of each case. This will be especially helpful the night before the exam for some last minute revision.

Make use of study groups. Get together and discuss the topics which you will be examined on. Help each other figure out cases and study areas of the law you find difficult in groups. Sometimes teaching is the best way of learning and retaining important information - so help struggling classmates and you too will be rewarded.

Balance your study time and be realistic. Don't set yourself unrealistic goals. Remember to eat healthy and get regular exercise over the study period, the last thing you want is to be sick, stressed and worn out during the exams.

# Examination

## January

<b>Code</b>	<b>Module</b>
LW101	CONTRACT LAW 1
LW102	LAW OF TORTS 1
LW104	INTRODUCTION TO LEGAL SYSTEMS
LW105B	CRIMINAL LAW 1
LW180	BUSINESS LAW & LEGAL PROCESS
LW201B	EU LAW 1
LW201L	EU LAW 1
LW202L	CRIMINAL LAW 2
LW203B	CONSTITUTIONAL LAW 1
LW301B	EQUITY AND TRUSTS
LW301L	EQUITY AND TRUSTS
LW302B	LAND LAW I
LW303B	JURISPRUDENCE
LW401L	COMPANY LAW 2 (LLB)
LW402L	TAX LAW
LW403L	INTERNATIONAL LAW
LW404L	ALTERNATIVE DISPUTE RESOLUTION (LLB)
LW602	INTERNATIONAL HUMAN RIGHTS
LW613	CRIMINOLOGY AND CRIMINAL JUSTICE 1
LW627M	EU LAW I

# Exam Timetable January 2014

Date	Duration	Time	Location
15 January 2014	120	12:30	SMALL SPORTS HALL
20 January 2014	120	12:30	MAIN SPORTS HALL
13 January 2014	120	15:30	SMALL SPORTS HALL
18 January 2014	120	12:30	LOWER LOFTUS
15 January 2014	120	12:30	IONTAS FOYER
21 January 2014	120	9:30	SMALL SPORTS HALL
10 January 2014	180	15:30	LOWER LOFTUS
16 January 2014	120	12:30	RYE HALL
10 January 2014	120	12:30	LOWER LOFTUS
21 January 2014	120	12:30	SMALL SPORTS HALL
10 January 2014	180	15:30	LOWER LOFTUS
15 January 2014	120	9:30	RYE HALL
17 January 2014	120	15:30	LOWER LOFTUS
11 January 2014	120	12:30	LOWER LOFTUS
13 January 2014	120	15:30	SMALL SPORTS HALL
17 January 2014	180	15:30	LOWER LOFTUS
16 January 2014	120	15:30	SMALL SPORTS HALL
18 January 2014	180	15:30	SMALL SPORTS HALL
13 January 2014	180	15:30	MAIN SPORTS HALL
10 January 2014	180	15:30	LOWER LOFTUS

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## **“Meet Prof. Michael Doherty; Our New Head Of Department.”**

**by Ryan McGuinness**

Prof. Doherty completed his PhD at the same time as studying for his bar exams at the King’s Inns. He decided to pursue a career in academia after he qualified as a barrister and spent most of that career at Dublin City University’s School of Law and Government. He was head of undergraduate studies for four years and head of the law group for two years. Prof. Doherty believes that during his time at DCU he developed the approach he has decided to take with regards to his role as head of the law department at NUI Maynooth. Michael is very student friendly and he is passionate about promoting positive relations between staff and students. Currently, Michael specialises in employment and labour law, industrial relations law and policy, and EU law.

Michael believes that NUI Maynooth’s law department is similar to the law department in Dublin City University in that they are both very young departments. He told us that this is what attracted him to the position he was offered at NUI Maynooth. As the department is young, it gives him the opportunity to strengthen and develop the law programme here by helping it to develop its own distinct identity.

Michael hopes to strengthen links with many of NUI Maynooth’s other departments. This will be especially helpful for those undertaking degrees in BCL and BBL.

Michael’s aim for the rest of the semester is to meet with law firms around the country and see what they can offer students, here at NUI Maynooth. Already, Michael has been able to organise a competition for first year students – the prize for which will be sponsored by Bloomsbury (details to be posted on the department’s website at a later stage).

Michael has stated that his best advice for students is to study subjects you are interested in and subjects you excel in. He believes that law is a great degree to have and will be very useful in a number of different fields, including politics and journalism. Michael hopes to introduce opportunities in extra curricular activities along with improved forms of assessment which will assess transferrable skills. Hopefully, this will allow students to see the potential in themselves.

**Editor**

Nicole Duffy

**Contributors**

Mairead Conway

Nicole Duffy

Leah Holmes

Freda McGeough

Ryan McGuinness

Aoife McMahon

Rhys Thomas

Brian Walsh

Jessica Wilkie

&

The NUIM

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## **Will you still love me tomorrow? A call for 'pre-nuptial agreements' to be legally recognised.**

'Report on the study of pre-nuptial agreements', < <http://www.inis.gov.ie/en/JELR/PrenupRpt.pdf/Files/PrenupRpt.pdf> > accessed 10/12/2013.

### **The UN: United In Our Safety?**

<http://www.bbc.co.uk/news/world-middle-east-24308763> - BBC Middle East.

<http://www.un.org/> - United Nations Website.

### **The Gender Recognition Bill: A Good Start?**

*Foy v An t-Ard Chláraitheoir, Ireland and the Attorney General* [2007] IEHC 407.

*Gender Recognition Bill 2013*, found at <<http://www.welfare.ie/en/Pages/Gender-Recognition-Bill-2013.aspx>>

*Christine Goodwin v UK* 35 EHRR 447.

Michael Farrell, '*Briefing on Lydia Foy case and Transgender Issues in Ireland*' <[http://www.flac.ie/download/pdf/foy\\_case\\_briefing\\_oct\\_2012.pdf](http://www.flac.ie/download/pdf/foy_case_briefing_oct_2012.pdf)>.

'*Mixed Reaction from Transgender Group to Gender Recognition Bill*' (The Journal.ie, 2013) <<http://www.thejournal.ie/gender-recognition-bill-997809-Jul2013>>.

### **The Need For The Reform of Domestic Violence Legislation in Ireland.**

Katie Dawson, '*Domestic Violence – The Need for Reform*' < <http://pila.ie/bulletin/june-2013/5-june-2013/guest-piece-by-katie-dawson-bl-domestic-violence-the-need-for-reform>> accessed 01/12/2013.

Sarah Stack, *'Calls for Tougher Domestic Abuse Laws'* <<http://www.irishexaminer.com/ireland/calls-for-tougher-domestic-abuse-laws-214826.html>> accessed 27/11/2013.

*'Barring, Safety and Protection Orders'* (Citizens Information) <[http://www.citizensinformation.ie/en/birth\\_family\\_relationships/problems\\_in\\_marriages\\_and\\_other\\_relationships/barring\\_safety\\_and\\_protection\\_orders.html](http://www.citizensinformation.ie/en/birth_family_relationships/problems_in_marriages_and_other_relationships/barring_safety_and_protection_orders.html)> accessed 20/11/2013.

*'Review of Domestic Violence Law Could Aid 20% of Victims'* (The Irish Examiner) <<http://www.irishexaminer.com/breakingnews/ireland/review-of-domestic-violence-law-could-aid-20-of-victims-614892.html>> accessed 03/12/2013.

### **The Abolition of the In-Camera Rule in Family Law Courts.**

<http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0032.pdf>

<http://pila.ie/bulletin/july-2013/17-july-2013/family-law-court-reforms-will-allow-media-access/>

<http://www.justice.ie/en/JELR/Regulatory%20Impact%20Analysis%20Courts%20Bill%202013.pdf/Files/Regulatory%20Impact%20Analysis%20Courts%20Bill%202013.pdf>

<http://www.justice.ie/en/JELR/Regulatory%20Impact%20Analysis%20Courts%20Bill%202013.pdf/Files/Regulatory%20Impact%20Analysis%20Courts%20Bill%202013.pdf>

