

## FOREWORD

In December 2000 the Second Programme of Law Reform was approved by Government. At the launch in February 2001 of the Second Programme and of the Website, the Attorney General Michael McDowell SC commended the preliminary consultative process undertaken and approved the proposal that draft legislation should be appended to Reports. In particular he thanked Commissioner Arthur F Plunkett for his enormous contribution to the Commission and his dedication to the process of law reform. Sadly, Arthur died in March.

During 2001, research was carried out on a wide range of at least fifteen of the topics in the Second Programme. In March, a Report on *The Statutes of Limitations: Claims in Tort and Contract in respect of Latent Damage (Other than Personal Injury)* was published. A draft Bill was annexed in the hope that legislation drafted with the advice of Parliamentary Counsel should assist implementation. A Consultation Paper on *Homicide: The Mental Element in Murder* was published in March and a lively Seminar was held in the Italian Room, Government Buildings, by courtesy of the Taoiseach, Bertie Ahern, TD. This is the first in a series of Consultation Papers/Reports on Homicide being prepared by the Commission, the aim of which is to lay the groundwork for a codification of the law. This will be followed, in the near future, by two Consultation Papers dealing with the plea of provocation and the plea of legitimate defence, respectively.

Despite certain statutes which give substantial right to tenants in particular areas, the twentieth century left the basic framework of Landlord and Tenant Law largely untouched. To find the major structural law in the area, one has still to go to Deasy's Act (*Landlord and Tenant Amendment Act, 1860*) or to common law developments. Accordingly we believe that the law for renting buildings and land needs examination. In mid-2001 we convened a group of legal practitioners, academic lawyers and officials, under the leadership of Professor John Wylie, to make a comprehensive investigation and to propose reform.

On another front, in the next few months, the Department of the Environment and Local Government and the Department of Justice, Equality and Law Reform are likely to publish comprehensive legislation in the field of domestic tenancies. These Departments are represented on a Committee so that the Commission can keep in touch with their proposals, whilst ourselves focusing on business tenancies and the general framework of law in this field. We hope therefore that, as a result of these two initiatives, the State will soon have an up to date system of landlord and tenant laws. The Working Group dealing with Land Law and Conveyancing continued its expert work. The Commission is indebted to the members in both groups for the benefit of their expertise and experience so generously given.

During the year the Commission welcomed the appointment of Patricia T. Rickard-Clarke, former part-time Commissioner and Partner in McCann FitzGerald, Solicitors, as the full-time Commissioner. The Commission also welcomed the appointment of Marian Shanley, Solicitor, as part-time Commissioner.

In November, Mr Justice Robert Carnwath, Chairman of the Law Commission (England), visited the Commission. Contacts with both the English and Scottish Commissions have continued and the President visited the Commission in Edinburgh in November 2001.

In September the Commission met with the Attorney General and his senior staff to discuss law reform and administrative matters. During 2001 the Attorney General Michael McDowell SC was a constant source of support and encouragement to the Commission. We congratulate him on his appointment as Minister for the Justice, Equality and Law Reform. We look forward to working with his successor Rory Brady SC who, as Senior Counsel, has already given expert advice to the Commission and we welcome his appointment.

**Declan Budd**  
**President**

## RÉAMHRÁ

I mí na Nollag 2000 d'aontaigh an Rialtas leis an Dara Clár um Athchóiriú an Dlí. Nuair a seoladh an Dara Clár agus an láthair lín mhol an tArd-Aighne Michael McDowell SC an réamhphróiseas comhairleach a rinneadh agus ghlac sé leis an moladh gur cheart dréachtreachtaíocht a cheangal leis na Tuarascála. Ghabh sé buíochas faoi leith leis an gCoimisinéir Arthur F. Plunkett as a shaothar ollmhór ar son an Choimisiúin agus as a dhílseacht don phróiseas athchóirithe dlí. Faraor fuair Arthur bás í mí na Márta.

Le linn 2001, rinneadh taighde ar réimse leathan de na cúig cinn déag de thopaicí sa Dara Clár. I mí na Márta foilsíodh Tuarascáil faoi *Statúidí na Cinnteachta: Éilimh i dTort agus i gConradh maidir le Díobháil Neamhfhollasach (gan Díobháil Phearsanta san áireamh)*. Ceanglaíodh dréachtBhille léi i ndóigh go gcuideodh dréachtreachtaíocht mar aon le comhairle Abhcóide Phairliminte leis an gcur i ngníomh. Foilsíodh Páipéar faoi *Dúnbhás: Eilimint na hIntinne sa Dúnmharú* i mí na Márta agus tionóladh Seimineár anamúil sa Seomra Iodáileach, le caoinchead an Taoisigh, Parthalán Ó hEachthairn, TD. Seo é an chéad cheann i sraith de Pháipeir/Tuarascála faoi Dhúnbhású atá á n-ullmhú ag an gCoimisiún, leis an aidhm go leagfar síos bunús le haghaidh códú an dlí. Leanfar seo, ar ball, le dhá Pháipéar Chomhairleacha ag plé le pléadáil an bhriogtha agus pléadáil na cosanta dlisteaní faoi seach.

D'ainneoin roinnt statúidí a thugann cearta substaintiúla do thionóntaithe i réimsí áirithe, d'fhág an fichiú haois gréasán bunúsach an Dlí an bhaineann le Tiarnaí Talún agus Tionóntaithe gan athrú ar an mór gcóir. Chun teacht ar an dlí structúrtha is tábhachtaí sa réimse ní mór fós dul chuig Acht Uí Dhéisigh (*Acht Leasaithe faoi Thiarnaí Talún agus Tionóntaithe*, 1860) nó go dtí forásanna sa dlí comónta. Dá bhrí sin creidimid gur gá an dlí a bhaineann le foirgintí nó talamh a thógáil ar cíos a scrúdú. I lár 2001 thugamar grúpa de dhlíodóirí feidhmeacha, dlíodóirí acadúla agus oifigigh le chéile faoi stiúir an Ollaimh John Wylie chun iniúchadh cuimsitheach a dhéanamh agus chun athchóiriú a mholadh.

Ar thaobh eile, sna míonna beaga atá romhainn, is dócha go bhfoilsíodh An Roinn Comhshaoil agus Rialtais Áitiúil agus an Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí reachtaíocht chuimsitheach i réimse tionóntachtaí. Tá na Ranna seo rannpháirteach i gCoiste ionas gur féidir leis an gCoimisiún a bheith ar an eolas faoina moltaí fad atáimid ag díriú ar thionóntachtaí gnó agus ar ghréasán ginearálta an dlí sa réimse seo. Tá súil againn, dá bhrí sin, de bharr an dá thionscnamh seo, go mbeidh córas dlíthe faoi thiarnaí talún agus tionóntaithe suas chun dáta go luath. Lean an Grúpa Saothair a bhí ag plé le Dlí na Talún agus Tíolacas ar aghaidh lena sainobair. Tá an Coimisiún faoi chomaoin ag baill an dá ghrúpa as a saineolas agus as a dtaithe a bhronnadh go fíal.

I rith na bliana d'fháiltigh an Coimisiún le ceapachán Patricia T. Rickard-Clarke, iar-Choimisinéir páirtaimesire agus Comhalta in McCann FitzGerald, Aturnaithe, mar an Coimisinéir lánaimisire. D'fháiltigh an Coimisiún freisin le ceapachán Marian Shanley, Aturnae, mar Choimisinéir páirtaimesire.

Faoi Shamhain, thug an Breitheamh Uas. Robert Carnwath, Cathaoirleach an Choimisiúin Dlí (Sasana) cuairt ar an gCoimisiún. Leanadh ar aghaidh le teagmháil le Coimisiún Shasana agus na hAlban agus thug an t-Uachtarán cuairt ar an gCoimisiún i nDún Éideann i Samhain 2001.

I Meán Fómhair bhuaill an Coimisiún leis an Ard-Aighne agus lena a fhoireann shinsearach chun athchóiriú dlí agus cúrsaí riaracháin a phlé. Ba taca agus spreagadh buan é an tArd-Aighne, an t-Uas. Michael McDowell SC ar feadh na bliana 2001. Tréaslaímid leis a cheapachán mar Aire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí. Táimid ag tnúth le bheith ag obair lena chomharba, Rory Brady SC, a thug, mar Abhcóide Sinsir, comhairle shaineolach don Choimisiún agus fáiltímid roimh a cheapachán.

**Declan Budd**  
**Uachtarán**

## THE COMMISSION

The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners.

**The Hon Mr Justice Declan Budd**, Judge of the High Court (*President*)

\***Arthur F. Plunkett**, BA, Barrister-at-Law, on secondment from the Attorney General's Office (full-time Commissioner).

\*\***Patricia T. Rickard-Clarke**, BCL, Solicitor, Partner, McCann FitzGerald, Solicitors

**Dr Hilary A Delany**, BA, M Litt, PhD, Barrister-at-Law, Senior Lecturer in Law, Trinity College Dublin

**Professor Finbarr McAuley**, BCL, LLB, MPhil, LLD, Jean Monnet Professor of Criminal Law, University College Dublin

\*\*\***Marian Shanley**, BCL, Solicitor

**Secretary:** John Quirke.

\*Commissioner Plunkett died in March 2001.

\*\*Commissioner Rickard-Clarke who had been a part-time Commissioner was appointed a full-time Commissioner in October 2001.

\*\*\*Commissioner Shanley was appointed in November 2001.

## STAFF IN 2001

### **Director of Research:**

Professor David Gwynn Morgan LLB, LLM, PhD, Barrister-at-Law, on secondment from his position as Professor of Law at University College Cork.

### **Legal Researchers:**

Simon Kieron Barr LLB (Hons), BSc  
Olwyn Burke, BA, LLB, LLM (Edin.)  
Dara Dowling, BCL, LLM (University of Paris II).  
Jane Mc Cullough, BCL, EMA (Padua).  
Brónagh Maher BCL  
Niamh O'Brien, LLB, LLM (Cantab.)  
Mairéad O'Dwyer, MB, BCh, BAO, BCL  
Bairbre O'Neill, BCL, LLM (University of Dublin)

**Legal Information Manager:** Marina Greer, BA (Mod), H Dip LIS

**Cataloguer:** Eithne Boland, BA (Hons), H Dip Ed, H Dip LIS.

**Project Manager:** Pearse Rayel.

### **Administrative Staff:**

Liam Dargan (Private Secretary to the President)  
Denis McKenna  
Teresa Hickey  
Gerard Shiel

## FUNCTIONS OF THE COMMISSION

The Law Reform Commission was established as a statutory body corporate by the *Law Reform Commission Act, 1975*.

Section 4 (1) of the Act states:

“The Commission shall keep the law under review, and in accordance with the provisions of this Act, shall undertake examinations and conduct research with a view to reforming the law, and formulate proposals for law reform.”

The content of the Commission’s research is determined and directed in two primary ways:

*Under the Programme for Law Reform:* Section 4(2)(a) of the Act requires the Commission, in consultation with the Attorney General, from time to time to prepare, for submission by the Taoiseach to the Government, programmes for the examination of different branches of the law, with a view to their reform. If a programme prepared by the Commission is approved (with or without amendment) by the Government, the Commission will examine and research the subjects set out in it and, if appropriate, formulate and submit to the Taoiseach proposals for the reform of the law in those areas under section 4(2)(b).

*By references from the Attorney General:* Section 4(2)(c) of the Act provides that the Attorney General may request the Commission to examine and research a particular area of the law and, further, may request that proposals for reform in that area be submitted to him. The Commission must comply with such a request whether or not such area of the law is included in the programme submitted by the Commission and approved of by the Government.

No new references were received from the Attorney General in 2001, so that all the research carried out during the year 2001 was based upon either the Programme for Law Reform or earlier references from the Attorney General.

## **SECOND PROGRAMME FOR LAW REFORM**

Following the procedure prescribed in section 4(2)(a) of the *Law Reform Commission Act, 1975*, the Second Programme for Law Reform was approved by the Government on 19 December, 2000. The Second Programme identifies branches of the law for examination, with a view to their reform, during the period 2000 – 2007, though many of the topics listed are of a long-term character and are likely to have a life of more than seven years.

The contents of the Second Programme are shown in Appendix A.

## **METHODS OF WORK**

The Commission's Reports and Consultation Papers are based on careful and thorough research. In the course of research on any topic, consideration is given to case law, legislation, jurisprudence and academic writings, both domestic and international. The Commission gives particular attention to the laws of comparable jurisdictions, as well as to proposals put forward by law reform bodies in these jurisdictions.

### **The Consultation Process**

The consultation process is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission may meet with professionals working in a particular area, or representatives of interest groups. The Commission will then, in most cases, prepare a Consultation Paper (known up to 1985 as a Working Paper), which will either be published, or, if the subject is a specialised one, distributed to relevant experts. The Commission will seek written submissions from interested parties on the provisional recommendations made in the consultation paper. These submissions will be taken into account in the drafting of the final report on the subject, and any issues or concerns they raise will be dealt with in the report. In some cases, before the drafting of the final report, a seminar will be held to which the Commission may invite interested parties, or those who have made submissions.

## **STRATEGY AND BUSINESS PLAN**

The Strategy and Business Plan drawn up by the Commission in November, 1998, refers to the need to improve its level and quality of communication with outside organisations, interest groups and the public generally with regard to law reform.

With a view to enhancing outside public awareness of, and interest, in the law reform process, the Commission has taken the following action:

### **Website**

To make information available through technology, the Commission has established a Website ([www.lawreform.ie](http://www.lawreform.ie)) which contains a comprehensive description of the Commission and its work, giving details of law under review and inviting comments and submissions on research topics and Consultation Papers. The Website also lists all of the Commission's Consultation Papers and Reports which are now available online.

### **Communication with Government Departments**

Government Departments have their own responsibilities concerning the areas of law within their jurisdictions and these sometimes overlap with matters which are covered by the Commission's Programmes. It is the practice of the Commission to make known to Government Departments the projects within its Programme for Law Reform and references from the Attorney General upon which it is currently engaged or is likely to be engaged in the foreseeable future.

As a first step in establishing a formal relationship with Government Departments, the Commission has established a structured consultation procedure with the Department of Justice, Equality and Law Reform, providing for regular meetings to review matters of mutual interest. These meetings are proving very useful in that they enable both bodies to have a good working knowledge of issues being currently addressed by them.

### **Contact with the Law Society**

The Commission maintains very useful contacts with the Law Society and the Bar Council. With a view to developing these contacts, arrangements have been put in place to have periodic meetings with the Law Reform Committee of the Law Society.



## CONSULTATIVE COMMITTEE

Following extensive consultation between the Commission and the Attorney General on the Final Report of the Review of Organisation and Management of the Law Reform Commission, the Government announced in March 1998 the establishment of a Consultative Committee under the auspices of the Office of the Attorney General comprising representatives of certain Government Departments, the Bar Council, the Law Society, as well as the Commission.

The function of the Consultative Committee is to assist the Attorney General in his consultations with the Commission in relation to the Programmes for Law Reform and in the selection of specific topics for reference to the Commission, and to monitor the implementation of the Commission's recommendations.

The Second Programme for Law Reform was approved by the Government in December, 2000. At this stage the primary function of the Committee is to monitor the implementation of recommendations of the Commission.

Having considered how best to ensure that recommendations contained in the Law Reform Commission's Reports which remain unimplemented could continue to be the subject of review by Government Departments and be considered for inclusion in the Government Legislative Programme, the Committee have decided on the following procedure:

- the Consultative Committee to report directly to the Attorney General the views it may have on unimplemented recommendations in Law Reform Commission Reports;
- the Attorney General to be asked to channel those views to the Minister whose Department has responsibility for the subject matter and to seek a response;
- the Government Legislation Committee to be asked to note the outcome of the correspondence between the Attorney General and Ministers;
- at the presentation of each Annual Report of the Law Reform Commission to the Government, the Department of the Taoiseach to be asked to consider whether the deliberations of the Consultative Committee and the response of Ministers on unimplemented recommendations of Commission Reports should be brought to the attention of the Government.

## **LIBRARY**

### **Library**

The primary role of the Law Reform Commission library is to anticipate and respond to the needs of the Commissioners and the Commission's research team for library and information services in partnership with other libraries and information providers.

### **Staff**

Ms Marina Greer holds the position of Legal Information Manager, with responsibility for the daily management and development of library and information services. Ms Eithne Boland holds the position of Cataloguer. Clerical staff provide further assistance with general administration.

### **Developments in 2001**

The implementation of the Unicorn Collection Management System is ongoing. The system is being implemented on a shared basis in the libraries of the Attorney General's Office, the Chief State Solicitor's Office and the Law Reform Commission. This produces a multi-library system allowing each library to operate independently whilst benefiting from shared OPAC (online public access catalogue) and cataloguing modules.

The Legal Information Manager attended conferences and seminars during the year on the topics of legal research and methodologies, copyright and related issues, electronic resources, knowledge management, legal bibliography and legal history.

### **Library Resources & Services**

The library's print collection includes books, legal journals, law reports, official publications, legislation, Irish unreported judgments and a unique collection of publications from law reform bodies around the world.

Library holdings are augmented using extensive links which have been built up with other organisations, including other libraries and Government Departments. Document delivery is provided by subscription to the Information Service at Trinity College Library, Dublin; the Institute for Advanced Legal Studies, London and the inside web service of the British Library.

The research team have networked access from their desktops to the Internet and Lexis-Nexis; and to Eurolaw and the Irish Statute Book on CD-Rom. Further electronic services are under consideration.

The range of services provided by the library during the past year has included a current awareness service, document delivery, a research support and information service, training and loans (including interlibrary loans). In addition to queries from the research team, staff have also responded to external requests for information, as increasing interest in the collection has been shown by staff from Government Departments and other law libraries.

## FINANCE

### *Income & Expenditure*

The grant-in-aid approved by the Minister for Finance on the recommendation of the Attorney General represents almost the entirety of the Commission's income. Under the present accounting procedure, monies are drawn down on a monthly basis from the grant-in-aid with the consent of the Accounting Officer who is the Director General in the Attorney General's Office. The only other income derives from the sale of publications. It should be noted, however, that many publications are not sold but are distributed free to members of the judiciary, members of the Oireachtas and legal scholars, as well as to libraries in various countries and law reform agencies worldwide who in turn provide the Commission with copies of their work.

The expenses of the Law Reform Commission include rent and premises overheads, salaries of Commissioners and staff, emoluments of external researchers retained for specific tasks, the maintenance of the law library and the holding, from time to time, of public seminars.

### *Prompt Payment of Accounts*

There were no late payments by the Law Reform Commission during 2001.

The Secretary keeps all current liabilities of the Commission under review with a view to their prompt discharge. The appropriate payments are made by the Commission in accordance with its internal procedures.

Standard payment periods are not specified in written contracts.

### *Statement by Secretary to the Commission*

Throughout 2001 the Law Reform Commission was in compliance with the *Prompt Payment of Accounts Act, 1997*.

The payment procedures outlined above were operational throughout this period. While these practices can only provide reasonable and not absolute assurance against material non-compliance with the Act, they would appear to have worked very well, in particular, in view of the fact that there were no late payments during the period under review.

## THE COMMISSION'S WORK IN 2001

This part of the Annual Report contains a summary of the Commission's publications and other topics in relation to which research work was carried out during 2001.

### PUBLICATIONS

#### *Report on the Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury)*

This Report examines the law relating to the statutes of limitation in non-personal injury cases where the loss is latent. Latent damage is loss or damage which is not immediately obvious to the ordinary person. Often it is a number of years after the damage actually occurs before an ordinary person could be expected to be aware of it. Examples of latent damage are: cracks in the foundation of a building; a negligently executed conveyance; a carelessly drafted document; and negligent financial advice. Currently, under the *Statute of Limitation Act, 1957* a person must commence proceedings within six years from the date the damage took place.

The Commission is of the view that the present law can lead to much injustice and hardship. To remedy this, where the damage has not become apparent until a time which would be too late under the present law, it is proposed that there should be an alternative period of three years starting at the time when a reasonable person ought to have known that the damage had occurred.

The Commission, however, also felt that it is unreasonable to expect builders or professionals to keep records indefinitely and to take out insurance against such claims for an indefinite period of time. Therefore, the Commission recommends that, irrespective of when the person could have known of the damage, there should be a cut off period "long-stop" after which no claim can be brought. This period would run for ten years from the date the damage occurred.

Annexed to the Report is a draft Bill, which implements the recommendations set out in the Report. The practice of drafting legislation is an innovation on the part of the Law Reform Commission and is designed to facilitate speedier implementation of its Reports.

#### *Consultation Paper on Homicide: The Mental Element in Murder*

This paper is the first in a series of Consultation Papers which will be published by the Commission on the subject of homicide. It undertakes a review of the mental element in murder in Irish law, and the Commission makes several provisional proposals for reform. Section 4 of the *Criminal Justice Act, 1964* defines the mental element in murder as an intention to kill or to cause serious bodily injury. There is a possibility, however, that the fault element in murder under the legislation may be narrower than might be appropriate in that it can be interpreted as confining the ambit of murder to situations in which the accused purposely kills or causes serious injury to some person. On this interpretation, the formula excludes from the realm of murder, cases in which the accused may be able to raise the doubt, whether reasonable or not, that he only intended, for instance, to frighten his victim.

One of the main tasks which, in the Commission's view, needs to be undertaken is to import greater clarity into this area of law, particularly in relation to the meaning of "intention". There is little Irish authority on this matter, but in England the concept has been interpreted as including situations where the actor foresees death as a virtually certain result of his actions, even where it may not be

his conscious purpose or object to kill. Following this construction, however, a killing cannot be considered murder, irrespective of how culpable the risk taken by the actor may be, unless the actor foresees death as a virtually certain consequence of his actions. This excludes many forms of risk-taking and recklessness which, it can be strongly argued, should not be morally distinguishable from an intention to murder.

The provisional recommendations made in this paper include broadening the mental element for murder to embrace certain types of reckless killings, retaining the distinction between murder and manslaughter and retaining an intention to cause serious injury as part of the mental element in murder. A consultation seminar was held in July 2001 to obtain the views of various experts, practitioners and academics with a view to obtaining their recommendations for a Report on this matter. A rejoinder to submissions received was published to focus minds on the material issues.

## WORK IN PROGRESS

### Criminal Law and Procedure

Three Consultation Papers/Reports are currently being prepared on aspects of the law of homicide. The first Consultation Paper, published in 2001, deals with the question of whether the existing definition of the mental element in murder is under-inclusive, i.e., whether some non-intentional killings deserve to be punished as murder on moral grounds; and considers whether this difficulty should be addressed by expanding the current *mens rea* for the offence to include reckless indifference to the value of human life. A Consultation Paper on this topic was published in March 2001.

The second Consultation Paper examines the plea of provocation. The principal issue to be determined is whether the subjective test, which is currently applied in Ireland, should continue to apply in either its present form or some variation thereof; or whether a version of the objective test, which is applied in every other common law jurisdiction, should be introduced into Irish law. It is anticipated that this paper will be completed in 2002.

The third Consultation Paper being prepared is in relation to legitimate defence in cases involving homicide. Its principal focus is the apparent disjunction between the common law rules on the use of lethal force and the new regime on defensive force introduced by the *Non-Fatal Offences Against the Person Act, 1997*. The Consultation Paper examines the traditional rules for the defence, including the threat requirements (namely, that life is endangered, and the threat is imminent and unlawful), and the response requirements (namely, that the defender's response is necessary and proportionate). The Consultation Paper also considers which standard is most appropriate to the defence, namely an objective, a subjective, or a mixed or dual standard. This Consultation Paper is likely to be completed in 2002.

Other Consultation Papers/Reports in the Homicide series will deal with the arguments for and against a new system of internal classification for murder and manslaughter, also the proper limits of the basic categories of homicide. Special attention will be given to the problem of the alleged over-inclusiveness of the current definition of murder – the claim that some forms of intentional killing do not warrant being labelled as murder on moral grounds; and to the various strategies that might be adopted to meet this difficulty. The aim of the Homicide series is to lay the groundwork for codification.

## **Prosecution Appeals**

A Consultation Paper will be ready for publication in June 2002 in relation to prosecution appeals in cases brought on indictment. Concern has been expressed by members of the legal community, including most recently the Director of Public Prosecutions, as to the limited avenues of appeal available to the prosecution for appealing judicial rulings in criminal trials on indictment. At present, the only ruling which the Attorney-General or the Director of Public Prosecutions may challenge is the decision of a trial judge to direct the acquittal of an accused, and then only when it raises a question of law. Furthermore, the Supreme Court has no power to quash an acquittal and order a retrial where it finds that the trial judge was in error. The restricted power of appeal, even on points of law, has reduced the number of appellate judgments handed down on criminal law and therefore the quality of our law.

Options for reform include extending the prosecution right of appeal to include a wider range of trial decisions, and granting the Supreme Court the power to quash acquittals and order retrials. The Consultation Paper considers the options for reform and the difficulties they present, including issues of fairness to acquitted persons. A Seminar is planned for October of 2002.

## **Corporate Homicide**

A Consultation Paper is currently being prepared which deals with the liability of corporations for the death of human persons. It is widely perceived that the law does not deal appropriately with corporations and the persons who control them in circumstances where corporate wrongs result in death. The Consultation Paper will review the current law and consider whether a new corporate offence should be introduced or whether the existing law should be extended to take account, in either case, of corporate practice of policy and intent. This should be published in 2002.

## **Penalties for Minor Offences**

A number of issues of importance, both in principle and in practice arise in this area which concerns thousands of citizens each year, namely, sentencing by the District Court for a minor summary offence. In the first place, is it appropriate, on policy or constitutional grounds, that a person may be imprisoned for as much as a year without a jury trial? Secondly, ought not the wealth of a defendant be taken into account in assessing the level of fine in summary proceedings so as to make an impact on the person? In particular, in a case against a wealthy corporation possibly for environmental offences, can the amount of the fine be related to turnover or profit? A Consultation Paper will be published in March, 2002. A Seminar is planned for July 2002 and a Report will follow in 2003.

## **Court Poor Box**

This is a procedure which has been adopted over many years by the Courts, particularly by the District Court, apparently without statutory support. Following a criminal prosecution the District Judge may take the view that, although the prosecution has proved its case, it is not appropriate to enter a conviction. The most common reason for this abstention would be that the judge anticipates that the defendant will not commit any other offence. In such circumstances the defendant is not convicted on the basis that a contribution is made to the court poor box, the content of which is then given to various charities.

On the one hand, it may, in certain circumstance be appropriate to refrain from registering a criminal conviction, especially against a young person. On the other hand, concerns have been expressed by amongst others the Dáil Public Accounts Committee, as to the need to ensure equal treatment for offenders from different economic backgrounds, and also as to the lack of accountability regarding the use of the funds.

In a Consultation Paper to be published early in 2003, the Commission may propose a scheme which reformulates the present practice on a statutory basis, while omitting its adverse features.

### **Restorative Justice and Alternatives to Custodial Sentencing**

A Consultation Paper is in its early stages of preparation. Restorative Justice views crime as causing harm to both the victim and the community. It is effectively a problem-solving approach to crime, involving the parties themselves and the community generally. Restorative Justice seeks to attend to the needs of the victim and to try to reintegrate the offender into the community and thus prevent re-offending. It thus adopts a radically different approach from that which is traditionally taken in the criminal process. Plainly, there are many types of case in which the new approach would not be appropriate and on the other hand probably some in which it would be to everyone's advantage. Part of the Commission's research is directed to determining the point at which to draw this line. The Commission intends to examine the developments in Restorative Justice in this jurisdiction and in other jurisdictions such as New Zealand and Australia where it is already an integral part of the criminal justice system. Alternatives to custodial sentencing will also be examined.

### **The Indexation of Fines: *A Review of Developments***

The Commission's Report on the Indexation of Fines was published in 1991. In a new updating Paper (for publication in 2002) the Commission reviews the changes elsewhere in the last decade, and will be recommending changes here. The difficulty is that values of fines fixed in the past, from as far back as the Nineteenth Century, have since been eroded by inflation. The scheme proposed in the Report would establish 3-5 categories of fine and every offence would attract one or other of these. Every five years these categories of fines would be increased. Since publication of the 1991 Report, many other jurisdictions have introduced legislation to meet this problem.

### **Civil Liability**

#### **The Deductibility of Collateral Benefits from Awards of Damages**

In December 1997, the Attorney General requested the Law Reform Commission to review section 2 of the *Civil Liability (Amendment) Act, 1964*. This section provides that in assessing damages in a personal injury action to recover damages, any sum payable in respect of the injury, either under contract of insurance or as a statutory pension, gratuity or other like benefit, is not to be taken into account to reduce the damages. In essence the provision permits double recovery, where the plaintiff is insured against the accident (or otherwise in receipt of a third party benefit because of it).

Under the terms of the reference, the Commission was asked to address the question of repealing or amending this provision "with a view to ensuring that a plaintiff does not receive double compensation in respect of the same loss". The Commission issued a Consultation Paper in 1999 and is presently completing a Report.

## **Law and the Older Person**

The increasing number of older people in our society makes this subject timely. The work currently underway reflects an increasing social awareness of the plight of vulnerable groups in our society. It is now recognised that there is a need to provide adequate legal safeguards for citizens who are themselves unable to vindicate their legal rights, whether because of advanced age, ill-health, mental incapacity, lack of education, or lack of familiarity with our legal structures.

While individual elderly citizens may be affected by almost every branch of law, a Consultation Paper is being prepared by the Commission which will address the areas of law which impact most frequently on our elderly population. Some of the important subjects to be examined are: wills and testamentary capacity; care of the elderly person; decision-making on behalf of the incapacitated elderly person with proposals for reform of the law of wardship; 'Advance Care Directives'; and the problems of elder abuse and crimes against the elderly.

### **Class Actions**

The subject-matter of a Consultation Paper being prepared by the Commission concerns the procedure to be followed when numerous persons are pursuing the same cause of action against the same defendant, as for instance the recent army deafness claims against the Minister for Defence. In principle, subject to one exception, these are all separate actions to be pursued independently of each other. This is something which could lead to endless delay and duplication of costs.

There is one exception to the idea that all actions are independent of each other. This is the 'representative action'. However, there are several practical drawbacks to the representative action in a case involving several plaintiffs. In the first place, the court must be satisfied that the plaintiff has been authorised by the interested parties to sue in a representative capacity. Secondly, the action presupposes a common interest, narrowly defined. Thirdly, there is some uncertainty over the extent of the court's authority to award damages. Traditionally, the representative plaintiff was entitled only to declaratory and injunctive relief.

In view of this the Commission is considering whether there are likely to be many mass claims of this type in the future and, if so, whether a 'class action', as presently exists in many other jurisdictions, ought to be established.

### **Adverse Possession to Leasehold Land**

It is worth emphasising that no change to the present fairly stringent conditions which must be satisfied before land is acquired by adverse possession (so called 'squatter's rights') is being considered. There is a particular difficulty with the existing law in respect of the acquisition of title to leasehold land by adverse possession. It is that in contrast to the position of freehold land, the interests of three persons have to be considered, namely the landlord, the original paper tenant and the person claiming a tenancy by adverse possession.

The proposal under consideration by the Commission is that the person claiming a tenancy by virtue of adverse possession should simply inherit the title of the original tenant. This solution is usually referred to as a 'Parliamentary Conveyance'. If this solution is adopted, important second order questions have to be addressed. These include: the position of third parties like the landlord or any mortgagee; the situation where the terms of the lease cannot be ascertained; and the inclusion of



rights, like easements, over neighbouring land. A Report, with a draft Bill attached, will be published.

### **Rights and Duties of Cohabitees**

In its Consultation Paper, the Commission is examining the law in relation to the rights and duties of cohabitees, that is, persons who are not married but live together. According to the 1996 Census, at that time there were about 30,000 such couples. The question (which has already been faced in some particular areas, like tax and welfare) is whether the law should recognise this relationship. The issue has various legal implications in the field of: the rights to and transfer of property; enduring powers of attorney; life assurance; succession rights; and provisions for children.

A central feature of this work is firstly the definition of cohabitation to be recommended and secondly how the existence of any particular relationship is to be ratified or recognised.

### **Public Law**

#### **Judicial Review**

There are probably more applications for judicial review, per head of population, in Ireland than in any other jurisdiction in the world. This procedure is a way of securing administrative justice in individual cases and also, more widely, of calling ministers, local authorities and other public bodies to account. Its essential features should be speed and accessibility. At present we have not only the traditional general scheme for applying for judicial review, but also numerous special statutory regimes in such fields as planning or refugees.

The present law is working, it is thought, reasonably well and there have been a number of improvements in practice. However in such a crucial area which balances individual interests against effective policy making and unhindered administration, it is right that there should be, for the first time, a thorough review. This includes such aspects as: the leave stage; time limit; appeals to the Supreme Court; and the possibility of an Administrative Court.

#### **Public Inquiries**

The Commission is preparing a Consultation Paper on the subject of public inquiries. In recent years, such inquiries have been established in Ireland to inquire into various matters of public concern. The most important are conducted under the auspices of a British (pre-independence) statute, the *Tribunals of Inquiry (Evidence) Act, 1921*.

The Commission's survey includes but goes beyond this legislation. Its analysis and proposals are to be sufficiently broad to be used in improving the legislation and operation of all categories of public inquiry, including: inquiries under the *Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witness) Act, 1992*, local enquiries, transport accident enquiries and company investigations.

In this way, the Commission hope to capture good ideas and best practice from all sources (including any relevant foreign examples). These will then be available in an accessible form to inform public debate. The Consultation Paper will include drafts of legislative changes, as well as recommendations as regards improvements to practice.

## **Private and European International Law**

*Hague Conference on Private International Law: Special Commission on International Jurisdiction and the Effects of Foreign Judgements in Civil and Commercial Matters:*

The Commission continued its work in conjunction with the Hague Conference on Private International Law. Professor David Gwynn Morgan attended Special Commission meetings in Ottawa in March and Edinburgh in April, as a member of the Irish delegation (with Ms Jennifer Payne of the Office of the Attorney General and Ms Regina Terry of the Department of Justice, Equality & Law Reform) being the first part of a Diplomatic Conference which was held in the Hague in June 2001.

At each of these meetings the representatives from the Commission participated in the preparation and negotiation of a draft International Convention which would provide for common bases in different States for both the exercise of international jurisdiction and the recognition and enforcement of foreign judgments.

## EXPERT WORKING GROUPS

Because of the practical nature of the subjects which it investigates, the Commission from time to time seeks the advice of experienced practitioners both to suggest areas of difficulties and possible solutions and to comment on draft recommendations. The way in which this usually works is that the Commission convenes a working group or *ad hoc* group of expert practitioners, academics and public servants from the particular field. The Commission is grateful to the busy people who give of their time and wisdom so readily for the public good. Apart from the more specific work associated with the particular projects above, the Commission had two standing working groups in operation in 2001 dealing with more extensive fields.

### Working Group on Land Law and Conveyancing Law

The Working Group on Land Law and Conveyancing Law was set up in 1987, in response to a request by the Attorney General for an examination by the Commission of certain aspects of conveyancing law and practice. The Working Group has met regularly (usually every month) to review the law in that area, and has published six reports to date. The topics discussed in 2001 were the following:

- Enforceability of Positive Freehold Covenants
- Definition of “purchaser” in the *Succession Act, 1965*
- The *Irish Church Act, 1869*, and compulsory registration
- Acquisition of the fee simple: *Metropolitan Properties v. O’Brien*
- Proposals for a *Law Reform (Miscellaneous Provisions) Bill*

The members of the Group were as follows:

- Commissioner Patricia Rickard-Clarke;
- Professor David Gwynn Morgan, Director of Research, Law Reform Commission
- George Brady, Senior Counsel;
- His Honour Judge John F Buckley;
- Patrick Fagan, Solicitor;
- Ernest Farrell, Solicitor;
- Brian Gallagher, Solicitor;
- Mary Geraldine Miller, Barrister-at-Law;
- Chris Hogan, Land Registry;
- Deborah Wheeler, Barrister-at-Law;
- Professor John C.W. Wylie.

## Landlord and Tenant Project

In June, 2001, the Law Reform Commission decided to initiate a major research project on Landlord and Tenant Law with a view to making recommendations for reform which would include proposals for consolidation of the existing landlord and tenant legislation, including a draft Bill.

To this end, a Working Group of experienced practitioners was established to gain input on areas of difficulties and possible solutions and to comment on drafts of the report and recommendations. Professor JCW Wylie leads this Working Group, which meets on a regular basis.

The project is focussed on commercial tenancies as residential tenancies have already been the subject of a government report: *Report of the Commission on the Private Rented Residential Sector* (Department of the Environment and Local Government, July, 2000). It is accepted that much of the general law applies to all tenancies, including residential tenancies. Liaison with the Department of the Environment is therefore important and to this end a member of that Department has joined the Group.

The Group has decided to review this area of law in three stages. It has already commenced its consideration of the *Landlord and Tenant Acts, 1980-1994* with a view to consolidation and improving the provisions of those Acts. It will then go on to consider the Ground Rents legislation, and finally the common law as supplemented by general statutes, such as the *Conveyancing Acts, 1881-1911*. It is hoped that the project will be completed within two to two and a half years.

The members of the Group are as follows:

- The Hon Mr Justice Declan Budd, President, Law Reform Commission
- Commissioner Patricia T Rickard-Clarke
- Professor David Gwynn Morgan, Director of Research, Law Reform Commission
- Professor JCW Wylie, Leader of the Group
- His Honour Judge John F Buckley
- Ruth Cannon, Barrister-at-Law
- Patrick Fagan, Solicitor
- Ernest Farrell, Solicitor
- Colin Keane, Solicitor
- Michael McGrath, Senior Counsel
- Sheila McMahan, Department of the Environment and Local Government
- Gavin Ralston, Senior Counsel
- Regina Terry, Department of Justice, Equality and Law Reform
- John Walsh, Solicitor

Bairbre O'Neill acted as Secretary/Researcher to both land law groups up to July 2001. Her position was taken over by Brónagh Maher.

## **MEETINGS WITH OTHER LAW REFORM BODIES**

In April, the Director of Research, with his opposite numbers from the law reform bodies in England, Scotland and Northern Ireland gave a talk in Belfast to the annual meeting of the Socio-Legal Studies Association on the use of empirical research in law reform.

Later in October, the Northern Ireland Law Advisory Committee visited the Commission for the day, to discuss items of mutual interest, among them: the inclusion of Draft Bill in Reports; implementation of recommendations; involvement of the practising professions; collection of empirical facts. The visiting members of the Committee were: Mr. Justice Paul Girvan, Eithne Harkness and Geralyn McNally with Michael Foster, Secretary. It was agreed that the Commission and the Committee would collaborate on matters of mutual interest.

In November, the President and Researchers Douglas Clarke and Dara Dowling visited the Scottish Law Commission and attended the Scottish Association for the Study of Delinquency, where the subjects were relevant to the Commission's Consultation Paper on Restorative Justice and Alternatives to Custodial Sentencing.

## APPENDIX A

### SECOND PROGRAMME FOR LAW REFORM

#### **The Legal System**

1. Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
2. Limitation of actions.
3. Class actions and representative actions taken in the public interest.
4. Alternative dispute resolution.
5. Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation. (Report published in December 2002).

#### **Evidence**

6. Forensic evidence.
7. Other aspects of the law of evidence in civil and criminal cases.

#### **Administrative Law**

8. \*Tribunals of inquiry.
9. Appeals from administrative decisions including judicial review.

#### **Civil Rights Law**

10. The law of privacy
  - (i) Privacy and the law of confidentiality;
  - (ii) Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record;
  - (iii) Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.

## **Criminal Law**

11. \*The law of homicide.
12. Defences including provocation, legitimate defence, duress and necessity.
13. Inchoate offences.
14. Procedure in criminal cases.
15. Restorative Justice.
16. Corporate criminal liability.
17. \*Penalties for minor offences.

## **Law of Obligations**

18. The law of tort. \*Aspects of the law of compensation for personal injuries.
19. The law of contract. Privity of contract and the rights of third parties.

## **Real and Personal Property**

20. \*The law of trusts including the law of charities.
21. \*Succession law.
22. The law relating to condominiums.
23. The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

## **Commercial Law**

24. Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of commercial law will, as appropriate, be reviewed and examined.
25. Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.

## **Law and The Information Society**

26. Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:
- (i) privacy on the internet and encryption.
  - (ii) liability of service providers.

## **Vulnerable Groups and The Law**

27. \*Law and the elderly, including the legal protection of older persons transferring assets and ‘advance care directives’
28. The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

## **Family Law**

29. The law of adoption - a general review.
30. Rights and duties of co-habitees.

## **International Law**

31. Negotiation and preparation of various international agreements, including their implementation in Irish law. We pay particular regard to Ireland’s participation in conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law.

## **Miscellaneous Provisions Bill**

32. The Commission will continue to prepare an annual Law Reform (Miscellaneous Provisions Bill), as a vehicle for making minor reforms, ranging over the branches of the law which are covered by this Programme.

## **General**

It is naturally difficult to anticipate change which may call for law reform in the future. Accordingly, the Commission considers it best to supplement the list of discrete topics given above by stating that if events require law reform in any area within any of the branches of the law set out above, the Commission will, where appropriate, and subject to the limits of its available resources, bring forward the necessary proposals.

The Commission retains a continuing interest in codification of the law and proposes to address the issue of codification with regard to matters falling within branches of the law set out in this Programme as appropriate.



In all these areas, the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.

Note: The topics identified by means of an asterisk will be given priority by the Commission in addressing its tasks under the Programme

## APPENDIX B

### MATTERS EXAMINED UNDER THE FIRST PROGRAMME FOR LAW REFORM

MATTER EXAMINED	RESULTING REPORTS *
Administrative Law	Working Paper 8-1979 - Judicial Review of Administrative Action
Animals	Report on Civil Liability for Animals (LRC 2-1982)
Conflict of Laws	<p>Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983)</p> <p>Report on the Recognition of Foreign Divorces and Legal Separations (LRC 10-1985)</p> <p>Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985)</p> <p>Report on Private International Law Aspects of Capacity to Marry and Choice of Law Proceedings for Nullity of Marriage (LRC 19-1985)</p> <p>Report on Jurisdiction in Proceedings for Nullity of Marriage (LRC 20-1985)</p> <p>Report on the Service of Documents Abroad re. Civil Proceedings (LRC 22-1987)</p> <p>Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989)</p> <p>Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991)</p> <p>Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995)</p> <p>Report on the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997)</p>

	<p>Report on the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (LRC 58-1998)</p>
Criminal Law	<p>Report on Vagrancy and Related Offences (LRC 11-1985)</p> <p>Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985)</p> <p>Report on Intoxication (LRC 51-1995)</p>
Evidence	<p>Report on the Rule against Hearsay in Civil Cases (LRC 25-1988)</p> <p>Report on the Competence and Compellability of Spouses as Witnesses (LRC 13-1985)</p> <p>Report on Oaths and Affirmations (LRC 34-1990)</p>
Family Law	<p>Working Paper No. 4, 1978 - The Law Relating to Breach of Promise of Marriage</p> <p>Working Paper No. 5, 1978 - The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse</p> <p>Working Paper No. 6, 1979 - The Law Relating to Seduction and the Enticement and Harboursing of a Child</p> <p>Working Paper No. 7, 1979 - The Law Relating to Loss of Consortium and Loss of Services of a Child</p> <p>First Report on Family Law (LRC 1-1981)</p> <p>Report on Illegitimacy (LRC 4-1982)</p> <p>Report on the Age of Majority, the Age for Marriage, and Connected Subjects (LRC 5-1983)</p> <p>Report on the Restitution of Conjugal Rights, Jactitation of Marriage and Related</p>

	<p>Matters (LRC 6-1983)</p> <p>Report on Divorce a Mensa Et Thoro and Related Matters (LRC 8-1983)</p> <p>Report on Nullity of Marriage (LRC 9-1984)</p> <p>Report on Family Courts (LRC 52-1996)</p>
Privacy	<p>Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998)</p>
Sales	<p>Working Paper No. 1-1977 - The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises</p> <p>Report on Defective Premises (LRC 3-1982)</p> <p>Report on Minors' Contracts (LRC 15-1985)</p> <p>Report on the UN (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992)</p>
Statute Law	<p>Report on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> (LRC 61 – 2000)</p>

\* Where both a Working Paper and a Report, or both a Consultation Paper and a Report, have been published on the same topic, only the Report has been listed in this table. Working Papers and Consultation Papers have been listed only where they have not been followed by a Report. A full list of all the Law Reform Commission's publications appears on pages \*\* to \*\*.

**APPENDIX C**

**MATTERS EXAMINED PURSUANT TO  
REFERENCES FROM THE ATTORNEY GENERAL**

**(Recorded in chronological order of the References)**

<b>MATTERS REFERRED</b>	<b>RESULTING REPORTS</b>
<p>Conveyancing Law and Practice, and where this could lead to savings for house purposes (referred 1987).</p>	<p>Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989)</p> <p>Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989)</p> <p>Report on Land Law and Conveyancing Law: (3) Passing the Risk from Vendor to Purchaser (LRC 39-1991)</p> <p>Report on Land Law and Conveyancing Law: (4) The Service of Completion Notices (LRC 40-1991)</p> <p>Report on Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992)</p> <p>Report on Interests of Vendor and Purchaser in Land during Period between Contract and Completion (LRC 49-1995)</p> <p>Report on Land Law and Conveyancing Law: (6) Further General Proposals Including the Execution of Deeds (LRC 56-1998)</p> <p>Report on the Rule against Perpetuities and Cognate Rules (LRC 62 – 2000)</p> <p>Report on the Variation of Trusts (LRC 63 – 2000)</p>
<p>The Law relating to Sheriffs, the collection of taxes and debt collection (referred 1987).</p>	<p>Report on Debt Collection: (1) the Law Relating to Sheriffs (LRC 27-1988)</p> <p>Report on Debt Collection: (2) Retention of Title</p>

<p>The Law relating to compensation for personal injuries cases including in particular:</p> <p>(1) provision for periodic payments and the making of provisional awards (referred 1987); and</p> <p>(2) the Statute of Limitations in cases of latent Personal Injury; and</p> <p>(3) Limitation in cases of Child non-sexual abuse.</p>	<p>Report on the Statute of Limitations in Cases of Latent Personal Injuries (LRC 21-1987)</p> <p>Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996)</p> <p>Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse of Children (LRC-CP16-2000)</p>
<p>Aspects of Criminal Law, including:</p> <p>(1) sentencing policy;</p> <p>(2) indexation of fines;</p> <p>(3) confiscating the proceeds of crime; and</p> <p>(4) whether there is need to revise or update the law relating to the various offences which are mainly governed by pre-1922 legislation, including, in particular, the laws relating to dishonesty, malicious damage and offences against the person (referred 1987).</p> <p>Sexual Offences Generally (Including in particular the law relating to rape and the sexual abuse of children) (referred 1987).</p>	<p>Report on Receiving Stolen Property (LRC 23-1987)</p> <p>Report on Malicious Damage (LRC 26-1988)</p> <p>Report on the Confiscation of the Proceeds of Crime (LRC 35-1991)</p> <p>Report on the Indexation of Fines (LRC 37-1991)</p> <p>Report on the Crime of Libel (LRC 41-1991)</p> <p>Report on the Law Relating to Dishonesty (LRC 43-1992)</p> <p>Report on Non-Fatal Offences against the Person (LRC 45-1994)</p> <p>Report on Sentencing (LRC 53-1996)</p> <p>Report on Rape and Allied Offences (LRC 24-1988)</p> <p>Report on Child Sexual Abuse (LRC 32-1990)</p> <p>Report on Sexual Offences Against the Mentally Handicapped (LRC 33-1990)</p>

The Law of defamation and contempt of court (referred 1989).	Report on the Civil Law of Defamation (LRC 38-1991)  Report on Contempt of Court (LRC 47-1994)
The law relating to occupiers' liability (referred 1992).	Report on Occupiers' Liability (LRC 46-1994)
The Law relating to Bail (referred 1994).	Report on an Examination of the Law of Bail (LRC 50-1995)
Aggravated, Exemplary and Restitutionary Damages (referred 1997).	Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60 – 2000)
The Statutes of Limitation in cases in contract and tort involving latent damage other than personal injury (referred 1997).  'Gazumping'.  Overlap between damages award in personal injuries action and other benefits received by the plaintiff.	Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in respect of Latent Damage (other than Personal Injury) (1998)  Report on Gazumping (LRC 59-1999)  The Deductibility of Collateral Benefits from Awards of Damages under Section 2 of the Civil Liability (Amendment) Act, 1964 (LRC-CP15-1999).

\* Where both a Working Paper and a Report, or both a Consultation Paper and a Report, have been published on the same topic, only the Report has been listed in this table. Working Papers and Consultation Papers have been listed only where they have not been followed by a Report. A full list of all of the Law Reform Commission's publications appears on pages \*\* to \*\*.

## APPENDIX D

### IMPLEMENTATION OF THE COMMISSION'S RECOMMENDATIONS

(The implementing legislation listed in the chart does not necessarily implement all the recommendations of the corresponding Report in full. In many cases only some of the Report's recommendations have been implemented by the legislation; in others the Commission's recommendations have been implemented only in a modified form.)

REPORT	IMPLEMENTING LEGISLATION
First Report on Family Law	<i>Family Law Act, 1981</i>
Report on Civil Liability for Animals	<i>Animals Act, 1985</i>
Report on Illegitimacy	<i>Status of Children Act, 1987</i>
Report on the Age of Majority, the Age for Marriage, and Connected Subjects	<i>Age of Majority Act, 1985</i> <i>Family Law Act, 1995</i>
Report on Restitution of Conjugal Rights, Jactitation of Marriage, and Related Matters	<i>Family Law Act, 1988</i> <i>Family Law Act, 1995</i>
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Divorce <i>a Mensa et Thoro</i> and Related Matters	<i>Judicial Separation and Family Reform Act, 1989</i>
Report on the Recognition of Foreign Divorces and Legal Separations	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Vagrancy and Related Offences	<i>Housing Act, 1988</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Public Order) Act, 1994</i>
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters	<i>Child Abduction and Enforcement of Custody Orders Act, 1991</i>
Report on the Competence and Compellability of Witnesses	<i>Criminal Evidence Act, 1992</i>



Report on Offences Under the Dublin Police Acts and Related Offences	<i>Criminal Justice (Public Order Act), 1994</i>
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and the Hague Convention on the Celebration and Recognition of the Validity of Marriages	<i>Family Law Act, 1995</i>
Report on Receiving Stolen Property	<i>Larceny Act, 1990</i> <i>Criminal Justice Act, 1993</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Justice (No. 3) Act, 1994</i>
Report on the Statute of Limitations: Claims in respect of Latent Personal Injuries	<i>Statute of Limitations (Amendment) Act, 1991</i>
Report on the Service of Documents Abroad re Civil Proceedings (Hague Convention)	Hague Convention ratified 1994 Rules of the Superior Courts (no.3), 1994 (S.I. No.101 of 1994) <i>District Court (Service Abroad of Documents in Civil or Commercial Matters) Rules, 1994</i> (S.I. No.120 of 1994), now consolidated in <i>District Court Rules</i> (S.I. No.93 of 1997)
Report on Rape and Allied Offences	<i>Criminal Law (Rape) (Amendment) Act, 1990</i> <i>Criminal Justice Act, 1993</i>
Report on Malicious Damage	<i>Criminal Damage Act, 1991</i> <i>Criminal Justice Act, 1993</i>
Report on the Recognition of Foreign Adoption Decrees	<i>Adoption Act, 1991</i>
Report on Land Law and Conveyancing Law: (1) General Proposals	

Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney	<i>Powers of Attorney Act, 1996</i>
Report on Child Sexual Abuse	<i>Child Care Act, 1991</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Domestic Violence Act, 1996</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i> <i>Protection for Persons Reporting Child Abuse Act, 1998</i>
Report on Sexual Offences Against the Mentally Handicapped	<i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i>
Report on the Confiscation of the Proceeds of Crime	<i>Criminal Justice (No. 3) Act, 1994</i>
Report on Non-Fatal Offences Against the Person	<i>Non-Fatal Offences Against the Person Act, 1997</i>
Report on Occupiers' Liability	<i>Occupiers' Liability Act, 1995</i>
Examination of the Law of Bail	<i>Bail Act, 1997</i>
Report on Family Courts	<i>Children Act, 1997</i>
Report on Sentencing	<i>Criminal Justice Act, 1999</i>
Report on Abolishing Requirement of Legalisation of Foreign Public Documents (Hague Convention)	Rules of the Superior Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 – <i>SI No 3 of 1999</i>

## LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (Prl. 5984)	€0.13
Working Paper No. 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977)	€ 1.40
Working Paper No. 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977)	€1.27
Working Paper No. 3-1977, Civil Liability for Animals (November 1977)	€3.17
First ( <u>Annual</u> ) Report (1977) (Prl. 6961)	€0.51
Working Paper No. 4-1978, The Law Relating to Breach of Promise of Marriage (November 1978)	€1.27
Working Paper No. 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978)	€1.27
Working Paper No. 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (February 1979)	€1.90
Working Paper No. 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)	€1.27
Working Paper No. 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979)	€1.90
Second ( <u>Annual</u> ) Report (1978/79) (Prl. 8855)	€1.90
Working Paper No. 9-1980, The Rule Against Hearsay (April 1980)	€2.54
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