PART I

WORK OF THE COMMISSION IN 1985

7. During 1985, the Commission published eleven reports.

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985)

8. The subject matter of the Report on Recognition of Foreign Divorces and Legal Separations was treated earlier in the Commission's Working Paper No. 11-1984 published in October 1984. In that Working Paper observations on the Commission's proposals were sought from the general public. In fact, no observations were received from any quarter. The Commission, having reconsidered the subject, adhered to the recommendations which it had made in the Working Paper.

9. The Commission proceeded on the basis that its proposals had to be made within the context of, and have regard to the prohibition on, divorce contained in the Constitution. Accordingly, the Report recommended that different rules for the recognition of foreign divorces should apply to people who have close connections with the State than should apply to those who do not have such close connections. Wider recognition rules were proposed for the latter than for the former.

10. The Report proposed the following rules for persons who would be regarded as having close connections with the State:

(1) Where both spouses are habitually resident in the State

at the date of the institution of the divorce proceedings, a foreign divorce thus obtained by either of them should not be recognised.

(2) Where

(i) one of the spouses is an Irish citizen, and

(ii) one spouse is habitually resident in the State, and

(iii) the spouses last habitually resided together in the State,

a foreign divorce should be recognised here only if the spouse who is habitually resident in the State submitted to the jurisdiction of the foreign court granting the divorce is obtained in the country where the other spouse was habitually resident at the date of institution of the divorce proceedings. Entering an appearance as respondent in the divorce proceedings, unless solely for the purpose of challenging the foreign court's jurisdiction, would constitute submission to that court's jurisdiction. The idea underlying this proposal is that, where the spouse who is habitually resident in the State has submitted to the foreign court's jurisdiction, he or she may be regarded as having consented to the divorce proceedings.

For the purpose of the above rules the Report proposed that a person should be deemed to be habitually resident in the State who, having been habitually resident here, has temporarily ceased to reside here and has acquired a temporary residence abroad for the primary purpose of acquiring a foreign divorce. The reason for this is that

it should not be possible to evade the policy of Irish law (as represented by the Constitutional prohibition on divorce) by establishing a residence of short duration abroad for the primary purpose of acquiring a foreign divorce which could be recognised here. Of course, where a person has genuinely established an habitual residence abroad, there would be no question of that person being deemed to be still habitually resident here for divorce recognition purposes.

11. Wider rules were proposed in the Report for recognition of foreign divorces obtained by those who have not close connections with Ireland in the sense described above. The rules proposed for such people are those contained in the 1970 Hague Convention on Recognition of Divorces and Legal Separations. These rules would allow for recognition of foreign divorces in a number of different sets of circumstances - for example, where both spouses are nationals of the country where the divorce is obtained, or the respondent was habitually resident there at the time of the institution of the proceedings, or the petitioner was habitually resident there for at least one year prior to that time. The Report recommended that these rules should apply to the recognition of foreign legal separations whether or not the parties are habitually resident in Ireland.

12. In cases where a foreign divorce or legal separation is recognised in Ireland, the Report recommended that the courts should have a discretionary power to act on principles of domestic legislation in order to protect the rights of a spouse with respect to maintenance, occupation and beneficial ownership of the family home and barring orders.

Report on Vagrancy and Related Matters (LRC 11-1985)

13. In its First Programme for the Examination of certain Branches of the Law with a view to their Reform (Prl. 5984), the Commission indicated that it proposed to examine the law relating to minor offences concerned with public peace and order. As part of that project, the Report on Vagrancy and Related Matters examined the Vagrancy Acts and certain closely related provisions in other legislation.

14. The Report recommended the repeal without replacement of a number of offences contained in section 4 of the Vagrancy Act of 1824, which was extended to Ireland by the Prevention of Crimes Act, 1871. These offences are (i) fortune- telling, (ii) wandering abroad and lodging in various places not having any visible means of subsistence and not giving a good account of oneself, (iii) the desertion of a wife or child, and (iv) loitering with intent to commit a felony (which has been held to be unconstitutional). The Report also recommended that the offences in the Vagrancy Act, 1824, the Towns Improvement (Ireland) Act, 1854 and the Dublin Police Act, 1842 which relate to gaming should also be repealed without replacement there being adequate provision for them in the Gaming and Lotteries Act, 1956.

15. While proposing the abolition of the offence of "wandering abroad", the Report recommended that the maximum penalty for an offence of trespass to land under section 8 of the Summary Jurisdiction (Ireland) Act, 1851 should be increased to a fine of £500 and/or imprisonment for 6 months. At present, those found guilty of this offence are liable to a penalty not exceeding 50 pence or in default of payment, to imprisonment for a period not exceeding one week. However, the Commission was not prepared to recommend any offence of "sleeping rough". To meet the

problem of wandering animals trespassing on farmers' lands and causing damage, especially to crops and meadowland, it was also recommended that there should be a new offence, similarly punishable, of negligently or otherwise causing or permitting animals to trespass or to commit any nuisance on the land of another. This proposal is a modification of part of the proposals made in the Report of the Commission on Itinerancy (1963).

16. The Law Reform Commission's Report recommended the repeal of the provision in the Vagrancy Act, 1824 prohibiting the exposure in a public place of any obscene print, picture or other indecent exhibition and the repeal of several cognate provisions in other statutes. It also recommended that the common law offence of indecent exhibition, which covers the public exhibition of indecent acts as well as indecent things, should be repealed in so far as it applies to exhibitions of indecent matter. It was proposed that a new provision should be enacted making it an offence to display indecent matter in any place to which the public have access, whether as of right or by permission and whether on payment or otherwise. It was not envisaged that the new offence would apply to films, books or television broadcasts as they are covered by the Censorship of Films Acts, the Censorship of Publications Acts, and the Wireless Telegraphy Act, 1926 respectively, or to public museums or art galleries. The Commission also considered the common law and statutory offences of indecent exposure and its Report recommended that they should be repealed and replaced by an offence which would be committed by a person who intentionally commits any indecent act, (including indecently exposing his or her person):-

(i) in a public place or within view of the public in circumstances such that the act is likely to be seen by another person; or

(ii) in circumstances such that the act is seen by another person and that person does not consent to seeing it and the accused knows that that person does not so consent or is reckless as to whether he or she so consents.

It was recommended that the new offences should be triable only summarily and the maximum penalty should be a fine of £500 and/or six months imprisonment.

17. The Report recommended that the existing offences of begging should be replaced by a new offence of begging (i) in a public place or (ii) from house to house in a manner likely to cause fear or annoyance and the maximum penalty for this offence should be a fine of £300 and/or 3 months' imprisonment. At present, imprisonment is the only penalty available for begging. The Report further recommended that the offence (under section 14 of the Children's Act, 1908) of causing or procuring children to beg should be retained. It was also recommended that it should be made an offence for a collector in a collection within the meaning of the Street and House Collections Act, 1962 to obstruct passersby or to act in a manner likely to cause fear or annoyance.

18. The Report recommended that the offence under the Vagrancy Act 1824 of possession of any implement with intent feloniously to break into any dwelling house or certain other buildings should be replaced by a new provision making it an offence to be in possession of any article for the purposes of burglary, theft or taking a vehicle without authority. It proposed that the offence under that Act of possession of an offensive weapon with intent to commit a felonious act should be replaced by a new offence of possession of an offensive weapon in public place It was recommended that both these offences should be triable

both summarily and upon indictment. The Report also recommended that the offences (under the Vagrancy Act, 1824 and the Prevention of Crimes Act, 1871) of being found on enclosed premises for any unlawful purpose or without being able to give an account of oneself, should be replaced by a new summary offence of being found in or upon any building or in any yard or garden or in any enclosed area for any criminal purpose. It was further recommended that where a person is found on premises of the kind in question in circumstances giving rise to a reasonable suspicion that he is there with intent to commit a particular offence, this would be evidence that he had such intent. The Report also recommended that it should be an offence triable only summarily to trespass on residential premises in a manner which causes or is calculated to cause nuisance or annoyance or fear to another person.

19. The Report recommended that the existing provisions relating to loitering or soliciting by common prostitutes in public places and to persistent solicitation by a male person in a public place for an immoral purpose should be replaced by two new summary offences which would be committed by any person who in a public place

(i) solicits another person for the purpose of prostitution or loiters for the purpose or with the intention of so soliciting or being so solicited; or

(ii) loiters or solicits another person for the purpose of the commission of a sexual offence.

The Report went on to recommend that the existing offences under the Vagrancy Act, 1898, as amended by the Criminal Law Amendment Act, 1912, relating to a man living on the earnings of prostitution and to a woman exercising control

over a prostitute's movements should be replaced by a new provision making it an offence for a person (male or female)

(i) knowingly to live wholly or in part on the earnings of prostitution; or

(ii) to exercise control or direction over a prostitute or to organise prostitution.

20. The Report recommended that a member of the Garda Siochana should be empowered to arrest without warrant any person whom he finds in a public place and whom he reasonably suspects to be committing or have committed any of the new offences proposed in the Report; however in the case of the proposed new offence of public display of indecent matter and of living on the earnings of prostitution or exercising control over a prostitute, it was recommended that that power should be confined to situations where a Garda demands the name and address of a person whom he reasonably suspects of committing or having committed an offence and that person fails to give them.

Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters
(LRC 12-1985)

21. The Report on the Hague Convention on Civil Aspects of Child Abduction and some Related Matters recommended that legislation should be enacted giving the Convention the force of law in Ireland and that Ireland should subsequently become Party to the Convention. This Convention was adopted at the fourteenth session of the Hague Conference on Private International Law in 1980 at which Ireland was represented by Mr Justice Walsh, the President of the Law

Reform Commission. The Convention is designed to deal with situations where children are removed from their country of habitual residence against the will of one of their parents or whoever has custody of them. The purpose of the Convention is to ensure that the child is returned to the country where it was habitually resident prior to the abduction. To this end the judicial or administrative authorities in the country to which the child is removed are required by the Convention, subject to a number of stated specific exceptions, to order its return to its country of habitual residence if legal proceedings are instituted. The Convention also establishes a system of administrative co-operation between Central Authorities which are to be created in each country to facilitate and expedite the process of repatriation under its terms. It was pointed out in the Commission's Report that whenever the Convention would deprive Irish courts of jurisdiction to consider on its merits a custody application, in most cases where a child is abducted into the State from another country where it has been habitually resident, the normal practice of the Irish courts has been to order the return of the abducted child in these cases without going into the merits; also under the Convention an Irish Court retains the right to decline to order the return of a child where this would be unconstitutional or otherwise clearly undesirable. It was argued in the Report that the Convention would have the positive advantage that children abducted from their place of habitual residence in Ireland into another Convention country would be returned promptly in most cases; moreover, by making the abduction of children less effective as a device for gaining custody, the Convention should discourage a practice which inflicts suffering on innocent and defenceless children.

22. The Report recommended that the legislation giving effect to the Convention should provide that, in deciding on

applications for the return of children to another jurisdiction in cases where that return is not required by the Convention, the court shall have regard to the welfare of the child as the first and paramount consideration. It is envisaged that these provisions would cover abductions from countries not party to the Convention.

23. The Commission recommended that the Department of Justice should continue its consideration of the European Convention on Recognition and Enforcement of the Decisions concerning Custody of Children and on Restoration of Custody of Children with a view to its ratification by Ireland but this process should not be allowed to delay the recommended adherence to the Convention on the Civil Aspects of International Child Abduction.

24. The Report also contained a number of recommendations designed to prevent the abduction of children out of the jurisdiction. Thus, it was proposed that the Garda Siochana should be given power to detain a ward of court or other child when they reasonably suspect he/she is being removed from the jurisdiction in breach of a court order. The Report also recommended the creation of an offence of abduction out of the jurisdiction of a child under sixteen. This offence would be committed by anybody who takes or sends or keeps a child (being a child habitually resident in the State) out of the State in defiance of a court order or without the consent of each person who is a parent or guardian or to whom custody has been granted unless the leave of the court is obtained; it would be a defence that the accused either (i) honestly believed that the child was over 16; or (ii) tained the consent of the requisite persons or of the court; or (iii) was unable to communicate with the requisite persons having taken all reasonable steps to do so, and believed that they would all consent if they were aware of the relevant circumstances;

or (iv) being a parent, guardian or person having custody of the child, had no intention to deprive of their rights other persons having rights of guardianship or custody in relation to that child. The Report recommended that no prosecutions should be brought for child abduction under the proposed legislation without the consent of the person in breach of whose rights in relation to the child that child was abducted out of the jurisdiction.

25. The Commission considered section 40 of the Adoption Act, 1952 dealing with the removal of very young children out of the jurisdiction. Certain parts of this section were held to be in conflict with the Constitution in The State (M.) v Attorney General [1979] I.R. 731. The Report recommended that the section should now be repealed in its entirety and a provision enacted in its place prohibiting the removal of a child under one year of age out of the State unless the removal is made with the approval of the parents or guardians for the purpose of residing with a parent or relative outside the State or unless the removal is approved by the court on the ground that it would be in the best interests of the child.

26. The Commission was of the opinion that the position regarding the grant of passports by the Department of Foreign Affairs might involve the State being found to be in breach of its obligations under Protocol No. 4 of the European Convention on Human Rights. Accordingly, the Report recommended that legislation should be enacted compatible with that Protocol stating the grounds upon which the Minister for Foreign Affairs may refuse to issue a passport to an applicant. The Report proposed that such legislation should provide that a minor may obtain a passport on the application of any of its legal guardians, but no such passport should be issued upon such application without the approval of the court where any other legal

guardian objects; the legislation should also provide that the passport may not be issued upon such application without the consent of all the legal guardians of a minor unless the other guardians have been notified or all reasonable efforts have been made to notify them. The Commission believed that the requirement of parental consent for the issue of a passport to a minor who has passed the age of discretion does not respect his right to an existence independent of his parents and accordingly the Report recommended that a minor over 16 should be entitled to apply for a passport without the consent of its parents or guardians. However, it is recommended that no such passport should be issued until the legal guardian and persons having lawful custody of the minor have been notified or all reasonable efforts have been made to notify them.

Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985)

27. The Report on Competence and Compellability of Spouses as Witnesses set out in detail the present law govening the competence and compellability of spouses as witnesses. This is believed to be the first full statement of the law on this subject in Ireland. As a general rule a spouse is now not competent to give evidence for the prosecution when the other spouse is accused; a spouse is competent but not compellable to give evidence for the other spouse when that other spouse is accused; a spouse is competent but not compellable to give evidence for a co-accused of the other spouse in a joint trial provided the other spouse consents. Ad hoc exceptions have been evolved to these general rules over the years. These exceptional cases are to be found in numerous statutes from 1872 onwards. As a result, there are now many offences in respect of which the spouse of an accused is competent to give evidence in court

for the prosecution.

28. The rule that the spouse of an accused is incompetent to testify for the prosecution has been abolished in most other common law jurisdictions. The Director of Public Prosecutions has stated that its retention here has inhibited him from taking certain prosecutions, notably those for bigamy, sexual offences and offences against children. Accordingly, the Report recommended that the spouse of an accused should be competent for the prosecution in all cases, but not compellable except in joint trials where the other spouse is tried jointly with other persons. In such joint trials it was recommended that a spouse compelled to testify for the prosecution should be entitled to refuse to answer any question or to produce any document, if to do so would tend to incriminate the spouse who is accused.

29. In considering whether a spouse should be compellable as well as competent to testify for the defence, the Report proceeded on the basis that it is indefensible that an accused person should be deprived of any evidence which might exculpate him. It recommended, therefore, that a person should be compellable to give evidence for the defence even if his or her spouse is the accused or one of those accused. The rule that the prosecution may not comment on the failure of such a spouse to testify should, as a consequence, be abolished. Where a spouse of one accused is compelled to give evidence for the defence on behalf of another accused, it was recommended that the spouse so testifying should be entitled to refuse to answer any question or to produce any document if to do so would tend to incriminate the spouse who is accused. The Report contained specific recommendations relating to the position of former spouses, spouses who are judicially separated or parties to voidable marriages which have been annulled.

The basis of the recommendations on these matters was that the desire of a person not to incriminate a former spouse relative to events which occurred while they were married should be respected.

30. Under the present law, in joint trials, none of those accused is competent to testify for the prosecution. Nor may one accused be compelled to testify on behalf of another accused. These rules apply in cases where spouses are jointly accused as well as in other cases. No recommendations were made to change them in the Commission's Report which was concerned only with cases where one spouse is accused and the other is a prospective witness but not an accused.

31. The Report recommended that the parent or child of an accused should not be compelled to give evidence for the prosecution incriminating that accused unless a certificate from the Director of Public Prosecutions is tendered stating that he personally has examined the case and, having considered the hardship of compelling the witness to testify, the importance of the evidence that witness could give and the gravity of the offence charged, believes that it is in the public interest that the evidence be heard. At present, the law contains no provision under which a parent or child of an accused may claim a right not to testify.

32. The Report dealt with the privilege of a witness not to incriminate his or her spouse. The present law on this matter is uncertain. So the Report recommended that in both criminal and civil proceedings a witness should have the same right to refuse to answer any question or produce any document or thing tending to incriminate his or her spouse as that witness has not to incriminate himself. However, where the spouse of an accused is called as a

witness by the accused, it is recommended that he or she should not be entitled to refuse to answer any question or to produce any document on the ground that it would tend to incriminate the accused spouse as to the offence charged.

33. The Report pointed out that some doubts attach to the competence or compellability of spouses of parties in civil proceedings. For the removal of doubt, it was recommended that the existing enactments governing the matter should be repealed and replaced by a provision stating that in civil proceedings the present or former spouse of a party thereto is a competent and compellable witness.

34. A general scheme of a Bill to reform the law relating to the evidence of spouses in criminal cases was included in an Appendix to the Report.

Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985)

35. The Report on Offences under the Dublin Police Acts and Related Offences, which, like the Report on Vagrancy and Related Matters (LRC 11-1985), is part of the review of minor offences concerned with public peace and order mentioned in the First Programme of the Commission, dealt with offences under the Dublin Police Acts, mainly the Dublin Police Act, 1842, and a number of other statutory provisions relating to matters treated in the Dublin Police Acts. The Report recommended the repeal of provisions in these Acts concerning offences which are adequately covered by subsequent legislation. It also proposed the repeal of a number of other provisions to the Dublin Police Acts as being no longer appropriate to today's conditions. An example is section 17(3) of the Dublin Police Act, 1842, which prohibits the beating or shaking in any thoroughfare

of any carpet, rug or mat (except doormats before the hour of 8 in the morning). Another example is section 17(6) of that Act which requires every occupier of a house or other tenement in any town within the Dublin Metropolitan District to keep sufficiently swept and cleansed all footways and water courses adjoining the premises occupied by him. The Commission felt that in modern conditions the cleansing of pavements should be the function of local authorities and while it might be desirable that individual property owners should display sufficient sense of civic duty to undertake the task themselves on occasion when circumstances called for it, it was not appropriate that it should any longer be an offence for them to fail to do so.

36. Under the existing law, the balance of authority appears to favour the position that in a prosecution for assaulting a member of the Garda Siochana in the execution of his duty (for which provision is made in the Dublin Police Act, 1836, the Offences Against the Person Act, 1861 and the Prevention of Crimes Act, 1871) it is not necessary to prove that the defendant knew that the person assaulted was in fact a Garda; it is enough that the defendant should have adverted to the possibility that this was the case. The Report recommended that the existing provisions under which it is an offence to assault a policeman or other peace officer should be replaced by a new offence for which knowledge that, or recklessness as to whether, the victim was a peace officer and was acting in the execution of his duty would be required; a defendant wishing to deny knowledge or recklessness regarding the fact that the peace officer was acting in the execution of his duty would have to adduce sufficient evidence that he believed that the peace officer was not acting in the execution of his duty to raise an issue on the matter, but the ultimate or persuasive burden of proof should still remain on the prosecutor. The Report recommended that it should remain an offence to

resist or wilfully obstruct a Garda or other peace officer in the execution of his duty. This offence should be subject to the same requirements as to knowledge and recklessness as the offence of assaulting such a peace officer. It is recommended that in the proposed legislation the term "peace officer" should include members of the Garda Siochana, Prison Officers, members of the Defence Forces, Sheriffs and Traffic Wardens.

37. As regards the road traffic offences created by the Dublin Police Act, 1842 and subsequent legislation, the Report noted that most of the provisions are virtually redundant in view of the provisions of the Road Traffic Act, 1961 relating to driving without reasonable consideration, careless driving and dangerous driving. It appeared to the Commission that the only road traffic offence not adequately covered by the later legislation was the riding of a horse in a dangerous manner. Accordingly, the Report recommended that the provisions in the Dublin Police Act should be repealed and one enacted in its place making it an offence to ride an animal in a public place in a manner that is dangerous to the public. The Report recommended that provision should also be made for a new offence, to replace the existing offence of turning loose any animal or permitting it to wander in any public place. It was proposed that there should be a burden on the keeper, if charged with an offence, to adduce evidence that he did not permit his animal to wander in the public place.

38. The Report recommended that the existing provisions relating to the deposit of materials such as stones and bricks in thoroughfares for which provision is made in the Dublin Police Act, 1842 and subsequent legislation, should be replaced by a new provision making it an offence without lawful authority or excuse to deposit anything on a public

roadway or footpath

(i) to the interruption of any roaduser; or

(ii) in consequence of which a roaduser is injured or endangered.

It was further recommended that the deposit of building materials and builders' skips and the making of an excavation on a street would be subject to permission of the appropriate road authority and the conditions attached to such permission. It was proposed that a person to whom permission is thus granted should be under an obligation to ensure proper fencing and lighting of the obstruction or excavation; breach of such obligation would be an offence, as would depositing materials or a skip or making an excavation without permission, or in breach of any condition attached to such permission by the road authority.

39. The Report recommended that the existing offence of depositing offensive matter in the thoroughfares under section 17 of the Dublin Police Act, 1842 should be replaced by a new offence of depositing dung, compost or any other offensive matter on a public roadway or footpath without lawful authority or excuse. An offence was also proposed to cover cases where filth, dirt or other offensive matter or things are allowed to run or flow onto a public roadway or footpath from any adjoining premises. New provisions were recommended to replace existing provisions relating to the safety of vaults and cellars under streets.

40. The Dublin Police Act, 1842 made it an offence to use noisy instruments in any thoroughfare for certain purposes. The Report recommended that this provision should be

replaced by a new provision making it an offence:

(i) for any person, for the purpose of hawking, selling, distributing or advertising any article, to use any noisy instrument in any public place in circumstances likely to cause annoyance to other persons in the neighbourhood;

(ii) to use a loudspeaker in a street to advertise any entertainment, trade or business or for any purpose between the hours of 10 p.m. and 7 a.m.;

(iii) to use a loudspeaker on any premises at a volume or in a manner likely to cause annoyance to any person on any other premises or any person using the highway.

41. The Dublin Police Act, 1842 also made provision under which certain dangerous and annoying activities such as throwing stones or playing games are offences. The Report recommended that these provisions should be replaced by a new offence without lawful authority or excuse to light any fire or discharge any stone or other missile on or within twenty metres of the centre of any public road so that a roaduser is injured or interrupted or endangered; it should also be an offence to play any game which is dangerous or causes substantial inconvenience to a user of a public road. The Report also recommended that provision should be made for an offence of deliberately setting fire to a chimney causing, or likely to cause, personal injury or damage to the property of another. This would replace an offence under the Town Police Clauses Act, 1847.

42. The Report, having listed a number of provisions under which drunkenness in a public place is an offence, stated the Commission's view that mere drunkenness in a public

place without disorderliness or attendant circumstances involving risk and injury to the drunken person himself should not be an offence. Accordingly, the Report recommended that these provisions should be repealed and a new provision enacted making it an offence to be found in a public place under the influence of intoxicating liquor or a drug in a condition which is a source of danger to another person or oneself. It was recommended that the penalty of imprisonment should not apply to this new offence. In the Commission's view a fine, coupled with the court's power to bind a person over on condition that he or she recieve treatment, would be sufficient.

43. In place of the existing offences of being "drunk and disorderly" in a public place, "insulting behaviour", and disorderly conduct at public meetings, the Report proposed that it should be an offence

(i) in a public place to use or engage in any threatening, abusive or insulting words or behaviour, or distribute or display any writing, sign or visible representation which is threatening, abusive or insulting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned; or

(ii) at a public meeting to act in a disorderly manner for the purpose of preventing the transaction of the business of the meeting.

Being drunk and disorderly would not of itself constitute an offence when the conduct is not threatening, abusive or insulting or where there is no intent to cause, or any likelihood of there being, a breach of the peace. The Report went on to recommend that a new offence should be created which would be committed by anyone who in a public

place between the hours of 10 p.m. and 7 a.m. or, having been warned by a member of the Garda Siochana to desist at any other time, engages in any shouting, singing or boisterous conduct in circumstances likely to cause annoyance to other persons in the neighbourhood.

44. The Dublin Police Act, 1842 has provisions under which it is an offence to fail to control a dangerous dog. The Commission considered whether it was now necessary to have such an offence or whether the provision in the Dogs Act, 1871 (under which a person could be ordered to keep a dog under control or have it destroyed) together with civil liability, sufficiently covered the problem. They concluded that failure to control a dangerous dog involved sufficient risk of personal injury to members of the public and was sufficiently culpable to warrant its constituting an offence. Accordingly the Report recommended that, in place of the existing provisions, there should be a new provision making it an offence in a public place (i) to allow any dangerous dog to be at large, or (ii) to fail to exercise proper control over such a dog, or (iii) to set on or urge any dog to attack or worry any person or animal.

45. It had come to the attention of the Commission that large numbers of unregistered motor vehicles were being used on the public roads in Ireland. While this problem is not directly related to any of the provisions of the Dublin Police Acts, it was felt that it was sufficiently related to the road traffic provisions of those Acts to warrant the Commission's availing itself of the publication of its Report on Offences under the Dublin Police Acts to make proposals in regard to it. Accordingly, the Report recommended that a new offence should be created which would be committed by any person who delivers on retail sale, lease or hire, a mechancially propelled vehicle that has not been registered or has not fixed on it a mark indicating its

registered number.

46. In making proposals for fresh provisions relating to offences previously falling within the scope of the Dublin Police Acts, the Report recommended penalties, including fines more in line with the existing value of money. The Commission also adverted to certain problems of general application associated with the maximum penalties prescribed for offences. In the first place there are some summary offences for which imprisonment is the only penalty provided by law so that it is not open to a court to fine a person found guilty of it. Furthermore, courts other than the District Court have not power to impose a fine for an offence which is a felony. Another difficulty arises from the fact that some enactments contain provisions which enable only a specified period of imprisonment or a fine of a specified amount to be imposed on an offender so that no lesser punishment is permissible in such cases. As a result a court may find itself compelled to choose between no penalty or an excessive penalty. To meet these problems the Report made the following recommendations relating to fines:

(i) all courts should be enabled to impose a fine for all offences, whether summary or indictable; the maximum fine for a summary conviction should be £200;

(ii) where an enactment specifies a fixed, not a maximum, penalty (either by way of imprisonment or fine or both), it should be possible for a court to impose a lesser penalty.

47. The Commission recommended the repeal of the specific powers of arrest, stop and search contained in the Dublin Police Acts. As regards the new offences proposed in the

Report which do not carry the possible penalty of imprisonment, it was recommended that a member of the Garda Siochana should be enabled to demand the name and address of any person whom he finds committing, or suspects of having committed, such an offence. If the person refuses or fails to give his name or address or gives a name or address which the Garda has reasonable grounds to believe is false or misleading, the Garda should be empowered to arrest that person without obtaining a warrant to do so. In the case of offences carrying a possible penalty of imprisonment the Report recommended that a member of the Garda Siochana should be empowered to arrest without warrant any person whom he finds committing such an offence. In the case of the proposed new offence of drunkenness in a public place where one is a danger to oneself or to others, and for which it is not proposed that imprisonment should be available as a penalty, the Report recommended that there should nonetheless be a power for a Garda to arrest without warrant where he finds somebody committing that offence regardless of whether the Garda knows or can ascertain the person's identity. It was argued that the nature of this offence is such that it may be necessary, perhaps in the person's own interest as much as anything else, to prevent the continuation of the offence by arresting him.

Report on Minors' Contracts (LRC 15-1985)

48. The Report on Minors' Contracts arose out of the examination of the law relating to the age of majority which in December 1975 the then Attorney General, Mr Declan Costello S.C., requested the Commission to undertake. The Commission recognised that the practical size of the problem of minors' contracts had been significantly reduced by the reduction of the age of majority to 18, pursuant to one of its earlier Reports, by the Age of Majority Act, 1985.

Nonetheless, it was considered that it should be revised and modernised having regard to modern social and economic developments and, accordingly, the Report recommended a restatement of the entire law relating to minors' contracts.

49. The Report recommended the enactment of legislation which would introduce a general principle of restitution whereby a contract made between a minor and an adult would be enforceable by the minor against the adult but unenforceable by the adult against the minor; the adult would however be entitled to apply to the Court for compensation from the minor based on restitutionary principles. In making a decision on any such application it was recommended that the Court should have regard to

(a) the subject matter and nature of the contract;

(b) the nature and value of property where the contract relates (in part or entirely) to property;

(c) the age, mental capacity and general experience of the minor at the time of making the contract, and at the time of the hearing, respectively;

(d) the specific experience and knowledge of the minor relative to the particular circumstances of the contract;

(e) the respective economic circumstances of the parties at the time of the making of the contract and at the time of the hearing, respectively;

(f) the circumstances surrounding the making of the contract and, in particular, the reasonableness and fairness, or otherwise, of the conduct of each

party relative thereto;

(g) the extent and value of any actual benefit obtained by each party as a result of making the contract;

(h) the amount, if any, of any benefit still retained by each party at the time of the hearing;

(i) the expenses or losses sustained or likely to be sustained by each party in the making and discharging of the contract;

(j) all other relevant circumstances including whether the goods or services which were the subject matter of the contract were suitable to the condition in life of the minor and to the actual requirements at the time of making of the contract, so far as the other party was, or could reasonably be, aware having regard to the circumstances, including any information given by the minor on the question.

The Report recommended that the restitutionary principle should apply to both concluded transactions and those not yet concluded. This represents a different approach from the existing law under which, when the contract with the minor has been performed on both sides, the minor is not then permitted to resile from it whether, before it was performed, it was void, voidable or unenforceable. The Report proposed that the Court, in exercising its discretion in cases where a contract has been performed, should be required to have regard to the difficulties likely to result from reopening the contract for the party who contracted with the minor. The Commission was of the view that the application to contracts of this general equitable principle of restitution, whether executed or executory, would have the advantage of encouraging adults to contract responsibly

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with minors, while preventing minors from exploiting their lack of age so as to profit wrongfully at the expense of adults.

50. The Report recommended that property should pass irrespective of the fact that the contract is unenforceable because one of the parties is a minor. The Commission did not consider it proper or sensible that a person who receives any property from another person should have to concern himself or herself as to whether the donor, grantor, vendor or lessor, as the case might be, derived the article from a minor. This should be the case whether or not the person receiving the property is a bona fide purchaser for value. Accordingly, the Report recommended that property should pass in all such cases; however, this would not preclude the Court from making an order in accordance with restitutionary principles affecting title to the property as between the minor and the person with whom that minor had contracted.

51. The Report recommended that special provision should be made for contracts of employment. Under the present law a contract of employment will bind a minor if, taken as a whole, it is for the minor's benefit. The Commission saw merit in this approach and expressed itself reluctant to create any unnecessary disincentive to the employment of minors at a time when teenage employment is hard to obtain. Accordingly the Report recommended that a contract of employment or for personal services should bind a minor if, taken as a whole, it is for the minor's benefit; however, the Report went on to recommend that the present law should be modified so that where the Court finds that the contract, taken as a whole, is not for the minor's benefit because it contains a particular term or terms, then, rather than being obliged to declare the entire contract unenforceable against the minor, the Court should have power to strike out the

term or terms in question if they can be severed from the remainder of the contract. Under the recommendations in the Report none of the other categories of contract at present binding on the minor (such as contracts for the supply of necessaries) would continue to be binding, although the minor might, of course, be compelled to make restitution arising out of them.

52. The Report recommended that contracts of loans to minors should remain void as they are under the existing law; moreover, no action should be capable of being brought on a promise made after full age to pay any debt contracted during infancy and any negotiable instrument given in respect of such a loan should be void and incapable of enforcement against a former minor. This recommendation is applicable even to loans for the purchase of necessaries which would be enforceable against a minor under the existing law.

53. The Report recommended that minors, once they have come of age, should be free to ratify undertakings made during their minority as well as to make new contracts with fresh consideration with respect to such undertakings. The Commission also considered the position of contracts involving continuing obligations which commence when the party is a minor but which continue after that party comes of age. The Report recommended that such a contract should become fully enforceable with respect to obligations contracted and to be dischaged by the parties whether before or after the minor comes of age. Accordingly, if a minor wishes not to be bound by a contract of this nature it will be necessary, under the Commission's proposals, that that minor should take steps to have the court apply the restitutionary principles before reaching full age.

54. The Commission recommended that the proposed

legislation should include a procedure enabling the Court to validate a proposed contract when the minor is a party to it, or to confer full contractual capacity on a minor. The central argument in favour of such a validation procedure is that it would enable minors and those who are contracting with them to enter into agreements with the reasonable expectation that they would be legally enforceable. The imprimatur of the Court could well be the incentive that would encourage an adult to enter into a contract with the minor which is for the minor's benefit. So far as the grant of full contractual capacity to a minor is concerned, the Commission felt that the advantage would be that a minor with sufficient maturity to engage in contracts whether of every kind or of a limited range would not have to come back to the Court on frequent occasions in respect of different contracts. The Report recommended that any party to a contract should be permitted to apply to a Court for an order for validation but such application should be made only before the contract has been made or, if it has already been made, only when the contract contains a condition precedent that the validation will be obtained. In deciding whether to validate a proposed contract, it was recommended that the Court should have regard to all the circumstances including:

(a) the age of the minor;

(b) the nature, subject matter and terms of the contract;

(c) the reasonable likelihood of performance of the contract by each of the parties to it;

(d) the requirements of the minor, having regard to his particular circumstances;

(e) the financial resources of the minor;

(f) the wishes, where they can reasonably be ascertained, of a guardian or guardians of the minor.

The Report recommended that the proposed legislation should retain the rule that the minor should not be exposed to an action in tort where this would amount to an indirect enforcement of an unenforceable contract. It was further recommended that in cases where there is a misrepresentation by the minor as to age, the restitutionary principles applicable to contracts with such a minor should be applicable.

55. Under existing law it appears that an adult's guarantee of a minor's void contract is itself void. The Report recommended that this rule should be altered and that an adult who guarantees any contract made by a minor should be liable on the guarantee. It was the Commission's view that the present rule works against the interests of minors because anyone who might otherwise be prepared to advance money to a minor on the security of an adult guarantee is less inclined to do so.

Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985)

56. The Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters recommended that Ireland should become party to that Convention. The Convention was adopted by the Hague Conference on Private International Law at its eleventh session in 1968 at which Ireland was represented by the late Mr Roger Hayes, then an Assistant Secretary in the Department of Justice, who became a member of the Law Reform Commission. The Convention

provides for the taking of evidence in civil and commercial matters by the competent authority of a State party to it pursuant to a letter of request received from the judicial authority of another Contracting State. Such evidence must be intended for use in judicial proceedings, commenced or contemplated. Its exact scope is not further defined but it would appear that it includes the questioning of witnesses (who may give sworn or unsworn testimony) as well as the inspection of property or documents. It is doubtful if it includes the process known as pre-trial discovery under which parties may be granted permission to examine witnesses and obtain documents relevant to the case without being under any obligation to present them in evidence at the actual hearing of the case. If the process is included, a State party to the Convention is entitled to limit its obligations in this regard by declaring that it will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries. Each State party to the Convention must designate a central authority to receive letters of request and to transmit them to the authority competent to execute them. Letters of request must be in the language of the authority requested to execute it or be accompanied by a translation into that language. The witness called pursuant to the letter of request may refuse to give evidence insofar as he has a privilege or duty to refuse either under the law of the State of execution or the law of the State where the letter of request is issued. The State to which a letter of request is sent may refuse to execute it only to the extent that it does not fall within the functions of the judiciary, or if it considers that its sovereignty or security would be prejudiced thereby; execution may not be refused solely on the grounds that under its internal law a State claims exclusive jurisdiction over the subject matter of the action or that its internal law would not admit a right of action on it. The State

executing a letter of request is not entitled to recover any costs from the requesting State apart from those paid to experts and interpreters and the costs occasioned by the use of any special procedure which has been requested. Provision is also made in the Convention by which the diplomatic agents or consular agents of a State or a commissioner appointed by its courts may take evidence in the territory of another Contracting State. It is possible for a State party to the Convention to insist that prior permission be obtained before such evidence is taken.

57. The Report noted that it is the common practice in Irish litigation to invite all witnesses to travel to Ireland to give their evidence before the Court. If a witness is not prepared to travel but is willing to give evidence where he is resident, the usual practice is for the Irish court to appoint a commissioner (who is usually a barrister) to take his evidence there. The Commission concluded that the Convention was likely to be most useful in cases where a witness abroad is unwilling to give evidence voluntarily to a commissioner appointed by an Irish Court. Moreover, it believed that it represented a form of international co-operation which was conducive to the just resolution of litigation and was worthy of support on this ground. Since effect is now given to letters of request from other States under the Foreign Tribunals Evidence Act, 1856, the Commission concluded that no significant additional obligations would result from adherence to the Convention. For these reasons the Report recommended that Ireland should sign and ratify it. The Report also recommended that certain reservations and declarations should be made by Ireland at the time of ratification.

58. Adherence to the Convention would necessitate the amendment of the Foreign Tribunals Evidence Act, 1856 governing the execution of letters of request in Ireland for

proceedings before the courts of other States. It would be necessary, for instance, to provide for the taking of evidence where proceedings have not commenced but are merely contemplated, or where the evidence sought consists of unsworn testimony, the inspection of property or the medical examination of persons, none of which are provided for in the existing legislation. To enable foreign diplomats and consuls or commissioners appointed by foreign courts to take evidence on oath pursuant to the Convention, it would be necessary to restrict the general prohibition on the administration of an oath for the purpose of taking evidence contained in the Statutory Declarations Act, 1835. The Commission concluded that the best approach would be to repeal the Foreign Tribunals Evidence Act, 1856 and to enact a new statute on the lines of the General Scheme of a Bill set out in the Report. The proposed legislation would enable Ireland to become party to the Convention and would also contain some further provisions going beyond what would be required for this purpose. Under the proposed legislation

(i) the right to apply to the High Court for the taking of evidence pursuant to a letter of request from a court in another State would be vested in the Minister for Foreign Affairs;

(ii) the facility of obtaining evidence in Ireland pursuant to a Letter of Request would not be confined to States party to the Convention;

(iii) the Minister for Foreign Affairs would be empowered to make application to the High Court for the taking of evidence ir aid of proceedings before any court or other body which in pursuance of an international agreement to which the State or Government is a party exercises jurisdiction

of a judicial nature as if they were proceedings before a court in another State;

(iv) there would be provision enabling the Minister for Justice to apply to the High Court to make an order to give effect to letters rogatory from the Court of Justice of the European Communities;

(v) the High Court would be empowered to order the taking of evidence in relation to criminal proceedings in a foreign country upon application by the Minister for Foreign Affairs;

(vi) a diplomatic officer or consular agent representing a State party to the Convention would be empowered to adminster an oath to a national of that State for the purpose of taking evidence from that national in aid of proceedings pending in the courts of the State he represents;

(vii) a diplomatic officer or consular agent representing a foreign State would be empowered to administer an oath for the purpose of obtaining evidence in aid of proceedings pending in the courts of the State he represents, provided the consent of the Minister for Foreign Affairs is obtained;

(viii) a commissioner appointed by a court in a foreign State would be empowered to administer an oath for the purpose of obtaining evidence in aid of proceedings pending in the courts of that State, provided the consent of the Minister for Foreign Affairs is obtained;

(ix) the Minister for Foreign Affairs would be

empowered to apply to the High Court for an order requiring a person to give evidence before a diplomatic officer or consular agent of a foreign State or a commissioner appointed by a court in such a State;

(x) it would be provided that whenever evidence is taken by a diplomatic officer or consular agent of another State or by a commissioner appointed by a foreign State:

(a) the parties to the proceedings and the person giving evidence would be entitled to be legally represented;

(b) the request to a person to appear to give evidence would, unless the recipient is a national of the State where the action is pending for which the evidence is required, be drawn up in Irish or English or be accompanied by a translation into one of those languages;

(c) the request would inform the person whose evidence is sought that he may be legally represented at the taking of such evidence and, where such is the case, that he is not compelled to appear or to give evidence; and

(d) a person requested to give evidence would be entitled to refuse to give evidence in so far as he has a privilege or duty to refuse to give evidence either under the law of the State where the evidence is taken or the law of the State where the proceedings for which the evidence is required is pending.

Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17-1985)

59. The Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors began by noting the mental ingredients of different classes of torts. Some torts, such as a breach of the rule in Rylands v Fletcher or the obligations imposed by section 3 of the Animals Act, 1985, involve strict liability. The minority of the tortfeasor does not afford a defence in such cases and the Report made no recommendation that there should be any alteration in this position. To establish other torts such as defamation or malicious prosecution, proof of malice on the part of the wrongdoer must be established. The Report did not recommend any amendment of the law as it affects minors in such cases. In the case of torts where the negligence of the wrongdoer or the contributory negligence of the person injured is an issue, the Report recommended that the standard for determining whether a child is guilty of contributory negligence should be that appropriate to a reasonable child of the same age, mental development and experience as the child whose conduct is in issue in the case. This would not involve any amendment of the existing law. However, the Report went on to recommend that the legislation should specify that the special standard proposed in respect of children should not apply to persons over 16 years. The Commission considered that this offered the courts a clear and workable rule and avoided anomalies which might be involved in the application of a subjective standard of negligence for all minors. Under the present law there is no such clear dividing line based on a fixed age. In the Report, detailed consideration was given to whether, as an exception to the general rule, the standard of care required of a minor should be that of an adult when the minor performs adult activities such as driving a car, using a gun or playing sports normally played

by adults. It was noted that in some other common law jurisdictions an adult standard has been imposed upon minors in respect of some of these activities. However, the Report concluded that, having regard to the inherent injustice and uncertainty of this approach, no such qualification to the general criteria for determining the negligence and contributory negligence of children should be introduced into our law. To meet the special problem created by the negligence of drivers of motor cars who are minors the Report recommended that a compensation fund should be established to compensate persons injured by child drivers where the children, by reason of the application of the special standard of care applicable to children, are held not to have been negligent. The Commission considered cases where a child under 16 is sued for trespass to the person, to goods or to land. At present, a minor will be liable for such torts if he intended to do the act of which the plaintiff complained or was negligent in its regard; it appears that no allowance is made for his lack of maturity or judgment or sound appreciation of the seriousness of his acts in deciding on whether he intended to do the act complained of. The Commission considered that the law should establish a criterion of responsibility for children which fully harmonises with their capacity, no more and no less. Accordingly, the Report recommended that in proceedings against a child under 16 for trespass, where it has been established that the child's action was voluntary and intentional, liability should be imposed unless the child can show, to the satisfaction of the Court, that having regard to his or her age, mental development and experience he or she has not such personal responsibility for the action that it would be just to impose liability.

60. The Report contained a statement of the present law relating to the liability of parents and other persons for the wrongful act of a minor. According to decided cases,

a parent is not, as such, liable for the torts of his or her children. However, a parent may be liable where that parent has directed, authorised or ratified the tortious act of the minor or where there is a relationship of master and servant between the parent and child or where the parent is negligent in affording the child an opportunity of injuring another. Thus, a parent may be liable if he leaves dangerous things within access of a child in circumstances where injury to the child or another is foreseeable; a parent may be liable where he or she knows or ought to know of a particularly dangerous propensity of a child but fails to protect others against injury likely to result from it; similarly, a failure by a parent to control a child adequately so that an unreasonable danger to others results may give rise to liability. The Report recommended that these rules should continue to apply and that, outside their scope, parents should not be vicariously or strictly liable for their children's torts. A proposal that a presumption of parental negligence should obtain wherever a tort is committed by a child was rejected by the Commission.

Report on the Liability in Tort of Mentally Disabled Persons (LRC 18-1985)

61. The Report on the Liability in Tort of Mentally Disabled Persons dealt with the legal responsibility of mentally ill persons and of those affected by mental handicap and other disabling mental conditions. There has been virtually no case law on this subject in Ireland and the case law is scanty in other common law countries; consequently, many of the Commission's recommendations related to matters upon which the present law is unsettled. The general thrust of the recommendations in the Report was to make allowance for the mental condition of parties to litigation in determining their liabilities and rights.

62. The Report recommended that, where it is a necessary ingredient for establishing a tort that the defendant should have acted voluntarily, the defendant should be relieved of liability if it is shown (a) that he was so affected by mental disability as substantially to lack the capacity to act freely, and (b) that as a result of this substantial lack of capacity he did the act complained of. Where, as in the case of trespass, it is necessary to show that the defendant intended to do the act complained of, the Report recommended that he should be relieved of liability if he suffers from such mental disability as to prevent him from acting with the purpose of bringing about the effect in question. Where, under the present law, a reasonable mistake relieves the defendant of liability (as may be the case where there is an assault), the Report recommended that it should be an effective defence to establish that the defendant did the act complained of as a result of a mistake brought about by a mental disability. Where a tort requires proof of a specific intention on the part of the defendant, the Report proposed that if the defendant suffers from a mental disability which is such as to prevent him or her from acting with the specific purpose of bringing about the effect in question the defendant should be relieved of liability; similarly where the tort requires some other other specific state of mind, such as malice, it was recommended that the defendant should escape liability if he suffers from a mental disability which is such as to prevent him having that state of mind.

63. In cases where it is relevant to establish whether a person was guilty of negligence or contributory negligence, the Report recommended that the law should apply the objective test of "the reasonable man" when determining the question, unless the person whose conduct is in issue establishes (i) that, at the time of the act in question, he or she was suffering from serious mental disability which

affected him or her in the performance of the act, and (ii) that that disability was such as to have made him unable to behave according to the standard of care appropriate to the reasonable person. This recommendation involves the consequence that where the mental disability renders the person unable to behave according to the standard of the reasonable man, he or she would be entirely relieved of negligence or contributory negligence, as the case may be. The Commission did not consider it desirable to introduce a reduced standard of care for such persons according to the extent of their mental disability as it would be likely to prove unjust and unworkable in practice. The Commission considered whether its recommendations as to negligence and contributory negligence should apply to persons causing injury to others or themselves when driving a motor vehicle. The Commission concluded that road accidents represented such a serious social problem that the balance of argument in this context lay against the operation of the proposed new general defence of mental disability in this class of negligence action. Under the recommendations in the Report, a defendant in this form of negligence action would be entitled to be relieved of liability if he was so affected by mental disability as substantially to lack the capacity to act freely and as a result of this substantial lack of capacity, acted negligently. The Commission felt that this would afford sufficient flexibility to deal with cases involving a sudden onset of insanity.

64. The Report recommended that an employer or principal who is vicariously liable for a tort should be held liable notwithstanding the fact that the person guilty of the tort is entitled to escape liability by reason of his or her mental disability.

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Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19-1985)

65. The Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage is concerned with the choice of law rules which should govern the question of the validity of a marriage which has some foreign aspect. The Commission recommended that as a general principle the law of the place of celebration of a marriage (lex loci celebrationis) should continue to govern the formal validity of a marriage. In applying the law of the place of celebration, it was recommended that account should be taken of the choice of law rules of that legal system even if this results in the application of the law of another country; this is a matter upon which the present law is not settled. In cases where parties are unable for good reasons to comply with the law of the place of celebration, the Report recommended that a marriage should be formally valid where each party undertakes thereupon to become man and wife. No special legislative provision was recommended in the Report for consular marriages or for marriages by members of the Defence Forces abroad.

66. As far as matters of substantial or essential validity are concerned, the Report recommended that a marriage should be valid when each of the parties has the capacity to marry the other according to the law of that party's habitual residence, including any relevant conflict of laws rules. Under the present law it is necessary that each spouse should have the capacity to marry the other according to the law of his or her domicile at the time of marriage. This recommendation made by the Commission for an alteration of the law is consistent with its preference for habitual residence over domicile as a connecting factor in private

international law set out in the Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983). This preference for habitual residence over domicile was based on the notion that habitual residence is an easy concept to understand, being a question of fact in which the issue of subjective intention plays a less important role than in relation to domicile, and on the fact that habitual residence has an increasing international acceptance and is being used without apparent difficulty in the matrimonial law of a number of countries and in international conventions on private international law. Under the Commission's proposals the failure of the parties to comply with the requirements of Irish law relating to substantial or essential validity would not render invalid a marriage which would be valid according to the law of the habitual residence of each party. However, this general principle would be subject to the requirements of public policy. It would also be open to the Oireachtas to exclude specifically or modify the application of the law of the parties' habitual residence. Indeed, in its Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) the Commission recommended that the minimum age for marriage should apply to all marriages solemnised in the State irrespective of the habitual residence of the parties. That recommendation was reiterated in the Report under discussion.

67. The Report considered the position where the parties to a marriage have capacity under the law of their habitual residence, but where the dissolution of a previous marriage of one or other party is not recognised under Irish law. In such cases it was recommended that the subsequent marriage should not be recognised under Irish law whether or not it complies with the requirements of capacity to marry according to the law of the parties' habitual residence. Conversely, where a marriage fails to satisfy the

requirements of the law of the parties' habitual residence, the Report recommended that its validity should not be recognised in Ireland whether or not the prior dissolution is recognised under Irish law.

68. Where the validity of a marriage is questioned on account of lack of the necessary consent, the Report recommended that the question of the validity of a party's consent should be determined by the law of the country of that party's habitual residence; if the parties do not share the same habitual residence, the marriage should be invalid for lack of consent only when according to the law applying to the party in question that party did not provide the requisite consent. At present, it seems that the reality of a party's consent is determined by the law of the domicile, but it is not settled whether the consent must be valid by the law of both parties' domicile or merely by the law of the domicile of the party whose consent is questioned. As regards impotence as a ground of annulment, the Report recommended that a petitioner should be entitled to a decree of nullity on this ground if he or she is so entitled according to the law of the habitual residence of either party to the marriage. This position was adopted because impotence represents a failure going to the root of the marriage relationship rather than a defect in one of the parties. This is a matter upon which the existing law has not been clearly settled. It was also recommended that the ground of impotence should be determined by the law of the parties' habitual residence at the time of the marriage, rather than by the law of the parties' habitual residence at the time of the nullity proceedings. The Report envisaged that there might be circumstances in which the Courts of Ireland would grant a nullity decree on grounds of public policy where the law of the parties' habitual residence does not so provide. Thus, for example, if a foreign law failed to include as a ground for annulment one which appeared to

our courts to be of basic importance, such as impotence, it would be open to an Irish court to apply our rules of public policy to annul the marriage in spite of the lack of this ground in the foreign law. Conversely, while there should be no general rule that our courts would refuse to recognise a ground of annulment not included in our law, it should remain possible to decide that public policy would preclude in an appropriate case, the recognition of such an annulment.

69. It was recommended in the Report that such issues as the entitlement to petition after the other party to a marriage has died, the bars to the granting of a nullity decree, including approbation and ratification, and the issue of retrospection as regards the operation of a nullity decree, should be determined by the law of the parties' habitual residence subject to the application of the public policy proviso.

70. Finally, the Report recommended that where a decree for nullity is sought or obtained before an Irish court, any ancilliary financial matters relating to maintenance and property should be governed by Irish law, irrespective of whether other laws are applied to questions arising in the proceedings.

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 (1978) (LRC 20-1985).

70. In approaching the rules on jurisdiction the Commission took the view that the Courts of Ireland should have jurisdiction in nullity proceedings when, in broad terms, the parties have a reasonable connection with the State.

Accordingly the Report recommended that such jurisdiction should exist in the following cases:

(i) where, at the time of the marriage, the validity of which is in question, either party had his or her habitual residence in the State;

(ii) where, at the time of the proceedings, either party has his or her habitual residence in the State;

(iii) where the marriage was celebrated in the State and a ground on which the marriage is alleged to be invalid is one to which the law of the place of celebration is applicable;

(iv) where, in the opinion of the court, either spouse has, or has had, such substantial ties with the State as to make it appropriate to hear and determine the petition.

At present it is uncertain how far jurisdiction extends beyond cases where both parties are domiciled in the State at the time of the petition.

72. As regards the recognition of nullity decrees handed down in other jurisdictions, the Report noted that there have been no Irish decisions and that no clear principles have emerged from the decisions in other common law jurisdictions. The Commission decided that the best approach would be for our law to recognise such nullity decrees when the parties would reasonably expect that they would be recognised. Translating this broad and general criterion into specific terms, the Report recommended that a nullity decree obtained outside the State should be

recognised in the State in any of the following cases:

(i) where the court granting the decree applied the choice of law rules which the Commission proposed in the Report on Private International Law Aspects of the Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19-1985);

(ii) where the decree was obtained or recognised in the country of either spouse's habitual residence;

(iii) where the decree was obtained or recognised in a country with which either spouse had a real and substantial connection.

Regarding the withholding of recognition from foreign nullity decrees on grounds such as public policy, natural and constitutional justice and res judicata, the Report recommended that the courts should be allowed to develop the law because these questions are more easily considered in the context of a general judicial discretion than in terms of detailed statutory provisions which could not hope to anticipate in specific terms the wide variety of factual circumstances with which the courts may have to deal. Where a foreign nullity decree is obtained by fraud, whether as to the foreign court's jurisdiction or as to the actual merits of the petition, the Report recommended that the decree should not be recognised here. Where a party's predominant purpose in seeking to establish an habitual residence in, or a real and substantial connection with, a particular country was to obtain a nullity decree there, which would not otherwise be recognised, it was recommended that the decree should not in such circumstances be recognised. The object of this recommendation is to discourage "forum shopping".

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73. The Report recommended that Ireland should not accede to the Hague Convention on the Celebration and Recognition of the Validity of Marriages (1978). According to the Convention rules in chapter I (an optional part of the Convention), a marriage would have to be permitted in a State party to the Convention when the future spouses meet the essential requirements of the law of the State, even if they do not meet the essential requirements of the law of their habitual residence. This would run contrary to the recommendations made by the Commission in the Report on Private International Law Aspects of the Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19-1985). The Convention also provides that, where a marriage complies with the law of the place of celebration, it has to be recognised as valid by other Contracting States, save in certain exceptional circumstances. The Report noted that this concentration on the law of the place where the marriage is celebrated represents a compromise between those States which at present refer to the law of the domicile of the parties to determine the essential validity of the marriage and those States which refer to the law of their nationality. In settling for the law of the place of celebration of the marriage the Convention favours a rule long since abandoned in most countries and under attack in the United States and some other countries where it was formerly adopted. The Commission felt that it was not desirable that the Irish courts should be compelled to recognise the validity of a marriage which failed to comply with the law of the parties' habitual residence. The Report concluded that the effect of the rules in the Convention would be to increase rather than reduce the present complexity of the international dimensions on the subject.

PART II

ACTION TAKEN ON REPORTS OF THE COMMISSION

(1) First Report on Family Law (LRC 1-1981)

71. The First Report on Family Law was submitted to the Taoiseach on 19 September 1980. In the Family Law Act, 1981 effect was given to the Commission's recommendations that the actions for criminal conversation and harbouring of a spouse should be abolished. However, the Commission's proposals that there should be a family action for adultery and for the enticement of a spouse were not accepted. The Act also gave effect to the Commission's proposals for the abolition of the action for breach of promise of marriage and for the determination of questions relating to the property of engaged couples and gifts obtained by them. No action has been taken on the other recommendations in the Report but the Taoiseach told the Dáil on 6 November 1984 that legislation arising from them is in the course of preparation. The Commission's recommendations included the replacement of the actions for loss of consortium, for loss of services of a child, for seduction of a child and for enticement and harbouring of a child by a single action for the benefit of members of the family. There were also recommendations relating to the determination of questions as to property between spouses, the effect of which would be that a spouse who directly or indirectly makes a contribution in money or money's worth to the acquisition, improvement or maintenance of the family home would be entitled to such share in the family home as appears to the Court just and equitable in the circumstances. In April 1983 the Minister for Justice announced that the Government had decided in principle that legislation would be

introduced to give each spouse equal rights of ownership in the family home and contents. He said that a legal presumption would be established that a spouse is entitled to an equal share in the ownership of the home without requiring that spouse to produce proofs in Court about the value of his or her contribution. He stated that the proposal approved by the Government went further than that made by the Commission. On 10 December 1985, the Taoiseach told the Dáil that the legislation was at an advanced stage of preparation.

(2) Report on Civil Liability for Animals (LRC 2-1982)

73. The Report on Civil Liability for Animals was submitted to the Taoiseach on 5 April 1982. The Animals Act, 1985, which came into operation on 28 September 1985, was prepared following consideration by the Government of the Report. It follows the recommendation of the Commission in repealing the existing rule of law under which an occupier of land is not liable in negligence if an animal strays from his land onto the adjoining public road and causes injury or damage. The legislation also follows the recommendation of the Commission in providing that the person placing animals on unfenced land in an area where fencing is not customary is not to be regarded as having committed a breach of duty to take care. In imposing strict liability on the owners of dogs for damage caused by an attack on a person and in providing that an owner of a dog may be liable in negligence to a trespasser injured by it, the legislation also follows the Commission's recommendations. But the legislation does not give effect to the Commission's general proposal that the keeper of any animal should be strictly liable for any damage caused by it. The Commission's Report had also contained proposals for the impounding of animals wandering on any public road whose owner was unknown. The

legislation authorises the Gardaí to impound wandering animals even where the owner is known and also to impound any animals trespassing on public parks or other open spaces owned by a local authority or State authority. In several other details the legislation on this matter differs from the Commission's proposals. Another impounding provision recommended in the Report would have allowed the private detention of trespassing animals, even where the owner was known, with power to the occupier to sell the animals, if necessary, and reimburse himself out of the proceeds. This recommendation was rejected by the Minister for Justice when moving the Animals Bill in the Dáil on the grounds that to allow private persons to detain animals where the owner was known would not be justified and might lead to bad feelings and even violence. At present, under the Summary Jurisdiction Act, 1851, the occupier of land trespassed upon by an animal must return it to its owner, where known. Where the owner is not known, he may impound the animal in the public pound. In either case application may be made to the District Court to recover damages for any loss incurred as a result of the trespass.

(3) Report on Defective Premises (LRC 3-1982)

74. The Report on Defective Premises was submitted to the Taoiseach on 5 April 1982. The Taoiseach informed the Dáil on 6 November 1984 that it was being considered in the light of the passage through the Dáil of the Building Control Bill 1984, and the introduction of building regulations. No further action was reported by the Taoiseach replying to a question in the Dáil on 10 December 1985.

75. It should be noted that the judgment of the High Court in Ward and Ward v McMaster, Louth Country Council and Hardy & Co. Ltd., (1983 No. 4978P.) on 26 April 1985 brought the law into line with some of the recommendations in the

Report. In that case it was held by Costello, J. that the immunity in tort of a builder who owns land on which a house is built and who subsequently sells it to a purchaser (or who lets it to a lessee) no longer exists. He held the defendant builder in breach of his duty of care to the purchaser in causing defects not discoverable on reasonable examination by that purchaser. The purchaser was entitled to recover not only in respect of the defects which caused danger to health and safety [as had been held in Colgan v Connolly Construction Co. (Ireland) Ltd., unreported, 29 February 1980, High Court (MacMahon, J.)] but also in respect of other defects in workmanship that required to be remedied and inconvenience and discomfort suffered by the purchaser and his wife. The purchaser also sued the Louth County Council, from whom he had received a loan, under the Housing Act, 1966 because a valuer sent by them had reported that it was in good repair and had valued it as a figure which reflected this view. The Council were under a statutory duty to inspect the bungalow to ascertain its market value before granting a loan. It was held that in carrying out the inspection the Council owed a duty to the purchaser (but not his wife) which was breached by authorising an inspection by an auctioneer who lacked the necessary qualifications to ascertain reasonably discoverable defects. However, the auctioneer was not liable because it was not established that an auctioneer of ordinary skill and competence would have discovered the hidden defects of the type which existed in the bungalow.

(4) Report on Illegitimacy (LRC 4-1982)

74. The Report on Illegitimacy was submitted to the Taoiseach on 24 August 1982. On 24 October 1983 Mrs Nuala Fennell, Minister of State at the Department of Justice, announced that following consideration of the Report, the

Government had decided to introduce legislation to reform the law in this area at the earliest possible date. In regard to succession rights, she stated that the Government had decided to accept, subject to further consideration being given to the prevention of injustice to any party concerned, the Commission's recommendation that children born outside marriage should have the same succession rights as other children on the intestacies of their fathers and mothers and of relatives of their fathers and mothers. She said that the Government had also accepted the Commission's recommendation that the present rule of construction, under which words such as "children" and "issue", when used in wills, deeds, or other instruments, are presumed to refer to children born within marriage, should be set aside. However, as regards parental rights, she announced that the legislation would not, as recommended by the Commission, automatically give unmarried fathers the same rights as married fathers enjoy, but it would provide for the giving of parental rights to the unmarried father, subject to the guiding principle of what is in the best interests of the child. She also stated that the Government did not propose to accept the Commission's recommendation that a child should be able in its own right to apply for maintenance and barring orders.

76. The proposals of the Government were embodied in a Memorandum entitled The Status of Children (Pl. 3145) laid by the Minister for Justice before each House of the Oireachtas in May 1985. A draft Status of Children Bill was annexed to the Memorandum. Under the terms of this draft Bill children born outside marriage - described as non-marital children - would continue to have a separate status in law but most of the differences that now exist in the way in which the law treats persons born outside marriage and those born within marriage would be abolished. It is proposed to amend the Guardianship of Infants Act,

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1964 so as to enable the father of a child born outside marriage to apply to the District or Circuit Court for an order making him guardian of the child jointly with the mother. The consent of any father who is granted parental rights in this way would be required for any adoption procedure, unless dispensed with in accordance with law. The draft Bill would repeal the Illegitimate Children (Affiliation Orders) Act, 1930 in its entirety and replace it with provisions to be inserted in the Family Law (Maintenance of Spouses and Children) Act, 1976 on the lines of the existing provisions of that Act. The result of this change would be that the legal provisions governing maintenance for children born outside marriage and those applicable to dependent children of families based on marriage would be as nearly alike as possible. It is proposed that either parent (but not a child as recommended by the Commission) would have the right to institute proceedings against the other parent for maintenance for the child. The statutory requirements in the Illegitimate Children (Affiliation Orders) Act, 1930 that the mother identify the father on oath prior to the issue of a summons, that the mother's evidence as to paternity be heard and that that evidence be corroborated are, in line with the recommendations of the Commission, omitted from the draft Bill. It is also proposed to follow the Commission's recommendation that the time limit for the institution of proceedings for the maintenance of illegitimate children be abolished. The draft Bill would abolish any distinction between persons made for succession purposes based on whether or not their parents were married to one another. As regards wills or other dispositions made after the enactment of the Bill it is proposed to reverse the rule of construction whereby terms such as "child" and "issue" are interpreted as referring only to persons born within marriage. Both of these proposals are in line with the recommendations of the Commission, as are ancilliary

provisions proposed to protect trustees and personal representatives by enabling them to distribute property without having to ascertain that there is no person who may be entitled to any interest by virtue of the grant of succession rights to children born outside marriage or to their relatives. To safeguard the rights of a spouse and children who have made a substantial contribution to the estate of a deceased who has died intestate, having had a child born outside marriage, the draft Bill allows application to be made to the High Court by the spouse or children (including any non-marital child) for extra provision out of the estate over and above their entitlement on the intestacy. No such provision was envisaged in the Commission's Report. The draft Bill also differs from the Commission's recommendations in proposing that the court should be empowered to exclude the father of a person born outside marriage from succeeding to that child's estate where it is shown that the father has not made a substantial contribution to the person's upbringing. There is also provision in the draft Bill for a new procedure which would enable a person to apply to the Circuit Court for a declaration that the person named in the application is his or her father or mother. The Commission had recommended that it should be open to the mother, to a man alleging that he is the father, to the child or any person with a proper interest, to take proceedings seeking a declaration as to parenthood. The reason given for restricting the right in the draft Bill is that the putting of a person's parentage into question is a serious matter which could have repercussions on the self-respect and security of that person. The draft Bill follows the recomendations of the Commission in empowering a court to direct the taking of blood tests and to draw from any refusal such inferences as it shall think fit. Also in line with the recommendations of the Commission is the proposal that proof on the balance of probabilities should replace proof beyond reasonable

doubt as the appropriate standard to rebut the presumption that a child born to a married woman is the child of that woman and her husband. The draft Bill follows the Commission's recommendation that the register should be evidence of the paternity of a non-marital child and provides that such an entry should be made only on the basis of statements by the father or mother or on the basis of a court order. The Commission's recommendations as to the registration of paternity when a child is born to a married woman and a man who is not her husband are not given effect in the draft Bill. The retention of the distinction between marital and non-marital children resulted in several provisions which had no counterpart in the Commission's recommendations. Thus, it is proposed that children born in a marriage which is void or voidable would be treated as children born to their parents within marriage. The draft Bill would also repeal section 1(2) of the Legitimacy Act, 1931, under which the legitimation of a child by the subsequent marriage of its parents is not allowed, if the parents could not have been lawfully married to each other at the time of the child's birth or at some time during the preceding ten months. It is also proposed to enshrine in the legislation the effect of a recent High Court decision [S. v S. [1983] I.R. P.68] declaring unconstitutional the rule which prevented spouses from giving evidence of non-access where it tended to show that a child born within marriage was illegitimate. The draft Bill would also repeal section 3 of the Evidence Further Amendment Act, 1869, under which a witness in proceedings instituted in consequence of adultery cannot be required to answer any question tending to show that he or she has been guilty of adultery. It was the Commission's view that, in the interests of justice, all relevant evidence should be admissible with a view to establishing the truth.

(5) Report on the Age of Majority, the Age for Marriage and some Connected Subjects (LRC 5-1983)

77. The Report on the Age of Majority, the Age for Marriage and some Connected Subjects was submitted to the Taoiseach on 15 March 1983. On the 1 March 1985 the Age of Majority Act, 1985 became law. The Act adopts, with minor modifications, the central recommendation of the Report that the age of majority should be reduced from 21 to 18, or the age at which the person concerned marries, and that a person who has not attained that age should be described as a minor. The Act provides for the continuation of the existing statutory powers of the courts to make maintenance orders in respect of children up to 21 years of age. The Commission, having proposed a provision to this effect in its Working Paper on the subject (No. 2-1977), had concluded in its final Report that it would not be desirable to impose continuing maintenance obligations on parents of children (other than those who are mentally or physically disabled) who had reached the age of majority even if they were receiving full time education. The Act does not provide for the implementation of the recommendations of the Commission in relation to the minimum age for marriage or the effect on the validity of a marriage of the failure to obtain the consent of parents or guardians of a party who is below a certain age. The Minister for Justice stated that the Government considered that it was better to deal with this as a separate issue after having taken account of the Report of the Oireachtas Committee on Marital Breakdown. Other recommendations in the Report which the Minister stated were "being left over for another day" are those relating to the increase from 16 to 18 of the age up to which parents can be obliged to maintain a child under the Illegitimate Children (Affiliation Orders) Act, 1930 and the Family Law (Maintenance of Spouses and Children) Act, 1976, and those relating to the age at which a parent ceases to be

liable to maintain a child for the purposes of social welfare legislation. The Commission's recommendations in relation to certain ages for the purposes of adoption were also not included in the legislation because it was felt that changes in this area were more appropriate for consideration in the context of the recently published Report of the Review Committee on Adoption Services established by the Minister for Health.

(6) Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983)

78. The Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters was submitted to the Taoiseach on 7 November 1983. On 6 November 1984 he informed the Dáil that the general scheme of a Bill arising from matters in the Report was in course of preparation. No further action was reported by the Taoiseach replying to a question in the Dáil on 10 December 1985.

(7) Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983)

79. The Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws was submitted to the Taoiseach on 14 December 1983. On the 10 December 1985 the Minister for Justice told the Dáil that the general question of replacing domicile by habitual residence as a general connecting factor in our rules of private international law was being left for another day and would be taken up when the policy on whether divorce should be made available was settled one way or the other. Meanwhile, he said, it was proposed to abolish the domicile of dependency of married women under which they

automatically take their husband's domicile. A provision to this effect is included in the Domicile and Recognition of Foreign Divorces Bill, 1985, which was published by the Government on 11 December 1985.

(8) Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983)

80. The Report on Divorce a Mensa et Thoro and Related Matters was submitted to the Taoiseach on 16 December 1983. He told the Dáil on 6 November 1984 that the general scheme of a Bill in relation to the recommendations in it was in the course of preparation. No further action was reported by the Taoiseach when replying to a question in the Dáil on 10 December 1985.

(9) Report on Nullity of Marriage (LRC 9-1984)

81. The Report on Nullity of Marriage was submitted to the Attorney General on 30 July 1984. On 6 November 1984 the Taoiseach informed the Dáil that its recommendations would be considered as soon as possible. No further action was reported by the Taoiseach when replying to a question in the Dáil on 10 December 1985.

82. On 2 October 1985, in P.C. (or. D'B) v D.'B., Carroll, J. rejected a petition for nullity based on duress and lack of mental capacity to form and sustain a normal marriage relationship. On the former, she held that on the state of the law at present, the mere fact that a marriage was entered into because of pregnancy is not a ground for annulment. On the latter, she found that at the time of the marriage, the petitioner did have an inadequate or

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immature personality

> "which to me is a mental condition rather than a mental illness. On one view, anyone who is immature is unsuited for marriage. But as long as the law permits people as young as the Petitioner [she was eighteen] to marry it cannot be a ground for nullity unless it exists to an abnormal degree."

83. On 15 November 1985, in N (or. K) v K., the Supreme Court had to consider duress as a ground of annulment. This was a petition for nullity in which the petitioner was a girl who had been persuaded by her parents to marry the father of a child she was expecting. The Court approved McC v McC, [1982] ILRM 277, noted in the Report on Nullity of Marriage (LRC 9-1984), in which O'Hanlon, J. had rejected the earlier decisions which restricted the concept of duress in nullity to threats of physical harm or threats falsely based, or other harmful consequences. "If," said Finlay, C.J. "the apparent decision to marry has been caused to such an extent by external pressure or influence, whether falsely or honestly applied, as to lose the character of a full free act of that person's will, no valid marriage has occurred."

(10) Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985)

84. The Report on Recognition of Foreign Divorces and Legal Separations was submitted to the Taoiseach on 17 April 1985. On the 10 December 1985 the Minister for Justice told the Dáil that the Government did not regard the present time opportune or appropriate to undertake a wide-ranging review of the rules of recognition of foreign divorces. It was, in their view, necessary that the internal law as regards divorce should first be settled. On 11 December 1985 the

Domicile and Recognition of Foreign Divorces Bill, 1985 was published by the Government. It provides that the rule of law whereby a divorce is recognised if granted in a country where both spouses are domiciled should be replaced by a rule that a divorce will be recognised if granted in a country where either spouse is domiciled.

85. On 13 December 1985, in K.E.D. (or. K.C.) v M.C., Finlay C.J. delivering the majority judgment of the Supreme Court, made reference to the Report of the Commission:

> "It may well be, as was urged upon the Court, that anomalies exist in the law of domicile when applied to the recognition of foreign divorces. It may well be that this area of the law, the reform of which has been recommended by the Law Reform Commission, should receive statutory attention, but that is not a reason in itself for considering a test of domicile which was the only test put forward in the High Court and the only test which arises on the facts of this case."

Accordingly the Court declined to consider the recognition of a divorce obtained in England on the basis that the parties had a real and substantial connection with England.

86. As regards the other ten Reports submitted by the Commission in 1985 and summarised in Part I of this Report, the Taoiseach told the Dáil on 10 December that they would be considered as soon as possible. In relation to the Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985) he stated that the recommendations therein relating to road traffic offences were being examined in the context of the preparation of a Road Traffic Bill which the Minister for the Environment was expecting to bring before the Dáil in 1986.

PART IV

GENERAL

Staff

87. During 1985, Mr Joseph Brosnan, who had been a Research Counsellor at the Commission since 1983, took up an appointment as Assistant Secretary in the Department of Justice. The Commission expressed its appreciation of his valuable contribution to its work and wished him well in his new post.

International Meetings

88. On the nomination of the Minister for Justice, the Minister for Foreign Affairs accredited Mr Justice Walsh, the President of the Law Reform Commission, and Mr Charles Lysaght, Research Counsellor at the Commission as Chef de Mission and Delegate respectively to represent Ireland at the Extraordinary Session of the Hague Conference on Private Internation Law held in October. This Session, at which States who were not members of the Hague Conference were represented as well as Member States, adopted a Convention on the Law Applicable to Contracts for the International Sale of Goods. This Convention deals with such matters as freedom of the parties to choose the applicable law, applicable law in the absence of choice, essential and formal validity of a Contract of Sale and the scope of the applicable law. The draft Convention submitted to the Conference and substantially adopted by it had been drawn up

by a special Commission on which the late Mr Roger Hayes, who was then a member of the Law Reform Commission, had represented Ireland and of which he was elected a Vice-President.