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LAW REFORM COMMISSION

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The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLI

FIRST REPORT (1977)

Laid by the Taoiseach before both Houses of the Oireachtas
on 13 March 1978 pursuant to section 6 of the Law Reform
Commission Act 1975

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PART I

FOREWORD

1. The Law Reform Commission was formally established on 20 October 1975 under the Law Reform Commission Act 1975.
2. Mr Justice Brian Walsh, Senior Ordinary Judge of the Supreme Court, was nominated to act as President of the Commission for a period of five years in a full time capacity. Mr Justice Charles J. Conroy, the then retiring President of the Circuit Court, was nominated to act as a full time member of the Commission for a period of five years. Professor Robert Heuston, D.C.L., Regius Professor of Laws, Trinity College, Dublin, Mrs Helen Burke, M.A., Lecturer in the Department of Social Science, University College, Dublin, and Mr Martin E. Marren, LL.B., Solicitor, were nominated to membership of the Commission and were each appointed to act as part time members of the Commission for periods (suggested by them) of three years, two years and five years, respectively.
3. Negotiations concerning the staffing arrangements of the Commission and the method of recruitment were undertaken with the Minister for the Public Service and the Attorney General, and finally in February 1976 an agreement upon these matters was reached. It was agreed that the professional staff would comprise one Director of Research and two Research Counsellors and it was decided to fill these posts by way of public advertisement setting out the qualifications required. Advertisements in a form approved by the Attorney General were inserted in the newspapers and the final date for receiving applications was fixed as 29 March 1976.

4. The Commission had no offices or premises until April 1976 and effectively commenced operations only in that month, and then on the very limited scale possible in the absence of professional staff and in an office building which was still incomplete. The continued construction work on the building involved a great deal of disturbance, and interference with the functioning of the Commission.

5. The first Research Counsellor, appointed as a result of public advertisement, took up office in July 1976 but the second Research Counsellor was not available to take up office until January 1977. The Director of Research took up office in November 1976. In the same year the Commission drew up its First Programme of Law Reform which, pursuant to section 4 of the Law Reform Commission Act 1975, was sent to the Taoiseach for submission by him to the Government for the Government's approval. This Programme was sent on 1 December 1976 and was approved by the Government. On the 4 January 1977, it was laid by the Taoiseach before both Houses of the Oireachtas pursuant to section 5, subsection (2), of the Law Reform Commission Act 1975. Copies of this Programme have been available to members of the public since January 1977.

6. In addition to the subjects contained in the First Programme of Law Reform, the Commission was also given the task of undertaking an examination of and conducting research into matters referred to it by the Attorney General pursuant to the provisions of section 4, subsection (2)(c), of the Act of 1975. They were as follows:

- (a) "The Law relating to the Age of Majority" - referred to the Commission on 3 December 1975;

- (b) "The Law relating to the Domicile of Married Women" - referred to the Commission on 3 December 1975;
- (c) "The Prohibited Degrees of Relationship in the Law of Marriage" - referred to the Commission on 26 August 1976;
- (d) "The Application of Foreign Law in Cases in which the Courts of this Country have Jurisdiction to grant a Decree of Nullity of Marriage" - referred to the Commission on 26 August 1976.

7. The clerical staff, comprising one Clerical Officer and one Clerical Assistant, took up duty on 1 April 1976, and an officer was seconded from the Department of Posts and Telegraphs to act as Secretary to the Commission in January 1976.

8. In addition to commencing research on the work before it in 1976, the Commission also established contacts with the English Law Commission, the Scottish Law Commission, the several Law Reform Commissions in Canada and similar bodies in Australia and other parts of the world. The acquisition of law books was also undertaken, subject to the resources at the disposal of the Commission, with a view to forming the nucleus of a law library which it was anticipated would grow over the years. In this connection, the Commission would like to express its appreciation of the generosity of the French Ministry of Justice in donating to the Commission a number of authoritative works on French civil, commercial and criminal law as well as on international private law. The works have been of considerable value and assistance in the Commission's task. Another valuable addition to the Commission's library consists of the Chronological Table of the Statutes of Northern Ireland to 31 December 1972 and the Index to the

Statutes in Force in Northern Ireland to the same date. Both the Table and the Index are out of print, and the Commission is very grateful to its friends in the Office of Law Reform and in the Office of the Legislative Draftsmen, Belfast, for their generosity in supplying copies of both the Table and the Index as well as of other Northern Ireland law reform publications. The Commission would also like to express its appreciation to the Department of Justice for the loan of a set of pre-1922 statutes and of some legal text-books.

9. The Commission did not set up any working parties or advisory committees during the year 1976 and published no preliminary working papers.

PART II

WORK OF THE COMMISSION IN 1977Matters referred by the Attorney General(1) The Law relating to the Age of Majority

10. The study of this subject was commenced in 1976 and continued throughout 1977. It was particularly complex and required a great deal of research; and it ultimately resulted in the publication of a working paper entitled "The Law relating to the Age of Majority, the Age for Marriage and some connected Subjects", which was published in December 1977 as the Law Reform Commission Working Paper No. 2 of that year. The paper contains seven chapters, four appendices and draft legislation, and it runs to 144 pages. The paper examines in some detail the law relating to the age of majority in many other legal systems and considers the consequences of reducing the age of majority. The Commission proposes that the age of majority should be reduced to eighteen and that a person under that age should reach majority on marriage. The working paper gives general indications as to the existing legal status of a minor and his contractual obligations. The position of a minor in relation to his contracts, in relation to the sale and management of land and personal property and in relation to trusts was considered sufficiently important to warrant a separate working paper, in the preparation of which the Commission is at present engaged.

11. The Commission was of opinion that it was impracticable to deal with the Age of Majority without dealing also with the Age for Marriage. The published working paper provides a comparative study of the law in various legal systems as to the age at which a valid marriage may be contracted without parental or other consent (the free age for marriage), as to the age below which a valid marriage may not be contracted (the minimum age for marriage) and also as to the validity of a marriage contracted under a certain age without parental or other consent where the law requires such consent (the consent age for marriage). This part of the working paper represents the first publication by the Commission on the law of marriage and is the forerunner of further publications on a number of other aspects of marriage and matrimonial causes, including nullity of marriage. The Commission suggests for consideration certain options in regard to the free age for marriage, the minimum age for marriage and the consent age for marriage. The proposed legislation contained in the working paper is drafted on the basis of a free age for marriage (18), a minimum age for marriage (16) below which a marriage may not be validly contracted in any circumstances and a consent age for marriage (16 to 18). A marriage where one of the parties is under 16 or where the necessary parental or other consent has not been obtained would be null and void and intrinsically or substantively invalid.

12. Copies of the working paper have been available to the public since the end of December 1977 and a copy has been sent to each member of the Oireachtas. The Commission invited observations on the paper, to be made before 1 March 1978.

(2) The Law of Domicile of Married Women

13. Work on this subject commenced in 1976 and a first draft working paper was completed during 1977. As consideration of the subject raised some very fundamental matters concerned with whether the concept of domicile should be retained or should be replaced by some other concept such as habitual residence, publication of the working paper has been postponed pending further examination by the Commission, particularly having regard to recent developments in the conflict of laws as illustrated in the Conventions of The Hague Conference on Private International Law, of which Ireland is an active member.

Subjects from the Commission's First Law Reform Programme

(1) The Law relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises

14. The study of this subject was undertaken and completed in 1977 and a working paper containing draft legislation was published in July 1977 as Working Paper No. 1 of 1977. This working paper, in reviewing the present law in relation to builders, vendors and lessors of premises, highlighted the absence of legal protection for purchasers and lessees. It particularly stressed that, while the purchasers and hirers of goods receive a measure of legal protection in the Sale of Goods Act 1893 and the Hire Purchase Acts of 1946 and 1960, purchasers or lessees of houses (who must often make what is referred to as "the longest payment" of a person's life) had little or no such protection. The Law Reform Commission in its paper took the view that house

purchasers, whether full owners or lessees, should get more protection from the law and to this end it proposes legislation designed to give effective legal protection to such persons. The working paper has been available to the public since July 1977 and a copy of it has been sent to each member of the Oireachtas. Comments on the working paper were invited to be made by 1 November 1977.

(2) Civil Liability for Animals

15. The study of this topic was undertaken and completed in 1977 and formed the subject matter of Law Reform Commission Working Paper No. 3 of 1977. The paper contains a review of the law and examines in some detail the present unsatisfactory position of various aspects of that law. The working paper in its three appendices contains notes on the law in various civil law and common law jurisdictions and the text of the most recently enacted English statute on the subject of animals. The tentative reform proposals of the Commission are both radical and simple. They are briefly as follows:

- (1) It is proposed to abolish the existing immunity in the case of cattle straying on the highway;
- (2) It is proposed to impose strict liability on the owner of an animal for damage caused by the animal, subject to there being available to him the defence of Act of God and, where the injured party is a trespasser, the ordinary defences available in the law of negligence. In all cases the plaintiff's own fault would be a ground for reducing damages;

- (3) It is also proposed that the rules with regard to scienter, cattle trespass and dogs worrying cattle should be abolished, as they would be absorbed into the system of strict liability proposed by the Commission.

The working paper was published in December 1977 as Working Paper No. 3 of 1977 and has been available to the public since the beginning of January 1978. A copy of the working paper has been forwarded to each member of the Oireachtas. The Commission has invited comments and observations on the paper, to be made before 1 April 1978.

(3) Matrimonial Causes and Proceedings

16. In August 1977, pursuant to the provisions of section 4(2)(c) of the Law Reform Commission Act 1975, the present Attorney General requested the Law Reform Commission to undertake an examination of and conduct research in the "Law relating to Nullity of Marriage" and, if it thought fit, to formulate proposals for its reform and to submit them to him. (A decision to the same effect had already been taken by his immediate predecessor and communicated to the President of the Commission, but the formal letter conveying the request had not been sent before the former Attorney General ceased to hold office.) The present Attorney General also suggested to the Commission that it might be convenient for the Commission to incorporate in the examination the Commission's views or proposals relating to the two aspects of this subject which had already been submitted by the Attorney General in August 1976, namely, the one relating to the prohibited degrees of relationship in the law of marriage and the one relating to the application of foreign law in cases in which the courts of this country have jurisdiction to grant a decree of nullity of marriage. (See para. 6 supra.)

17. The Commission in its First Programme, under the heading "Family Law", indicated that it would undertake an examination of both the substantive and the procedural law

relating to matrimonial causes and the nature and the basis of existing matrimonial proceedings generally. Having regard to the request of the Attorney General to the Commission to examine the law relating to nullity of marriage, it was thought that it would be appropriate to combine an examination of that subject with an examination of the question of existing matrimonial causes generally, but that it would be logical to deal with the subject of nullity first. To this end the Commission has written to each of the persons and organisations that made submissions in writing to the Office of the Attorney General relating to the discussion paper published by that Office in August 1976 and entitled "The Law of Nullity in Ireland". Many of these persons and bodies have already responded positively to the Commission and have sent copies of the submissions they originally made and in some cases have elaborated on them. Others have indicated that they are considering what further submissions they may wish to make.

18. As the subject of matrimonial causes is one of interest to the whole island of Ireland, members of the Commission have already had some discussion with representatives of the Office of Law Reform in Northern Ireland, and it is proposed to have further discussions from time to time as the work of the Commission progresses. Research on the law of marriage has been going on for some time in the Commission and, as already mentioned, legislation proposals in regard to the age for marriage have been made in the Commission's Working Paper No. 2 - 1977. Also, in its First Programme of Law Reform the Commission indicated that it proposed to examine the law relating to causes of action (other than strictly matrimonial proceedings) such as criminal conversation, loss of consortium, and breach of promise to marry, and the adequacy of the existing law for the

protection of the family. In the view of the Commission, these matters are sufficiently closely linked with matrimonial causes to warrant their inclusion at some stage in the examination of the law of nullity and of matrimonial causes generally.

19. With regard to the question of the best type of judicial or court structure or structures appropriate to deal with the different matters which fall under the general heading of family law it is envisaged that the assistance of the Committee of Court Practice and Procedure (the Courts Committee) may be sought from time to time. The President of the Law Reform Commission is also the Chairman of the Courts Committee.

20. As mentioned already, the Commission is currently engaged in an examination of the law relating to the contractual obligations of a minor. It is to be understood that in this context "minor" means a person who is under the age of eighteen or is not or has not been married. This definition is in accordance with the proposals made in the Commission's Working Paper No. 2 - 1977 on the Age of Majority and the Age for Marriage. (See para. 10 supra.)

PART III

ACTIVITIES OUTSIDE THE FIRST PROGRAMME OF LAW REFORM AND
THE REFERENCES BY THE ATTORNEY GENERAL

21. As private international law or the conflict of laws and the law as to international sales are included in the First Programme, the Commission has endeavoured to keep in touch in so far as is possible with developments in these fields and to participate where possible in international meetings concerned with these matters. To that end, and at the request of the Minister for Justice, the Irish delegation to the Thirteenth Session of The Hague Conference on Private International Law held in October 1976 and in June 1977 was in the event composed of persons from the Law Reform Commission. The leader of the delegation was the President of the Law Reform Commission and the other two members were Mr Roger Hayes, the former Director of Research, and Mr William Binchy, Research Counsellor. The Session was not finally concluded until the signing on 16 June 1977 of the Protocol containing the Draft Convention on the Law Applicable to Agency. This subject was dealt with by the President of the Law Reform Commission, who attended the meetings of the Special Commission on Agency that met prior to the Thirteenth Session. Mr Hayes had been a member of the Special Commission which dealt with the Law Applicable to Matrimonial Property Regimes and Mr Binchy had been a member of the Special Commission which dealt with the Celebration and Recognition of the Validity of Marriages. The Thirteenth Plenary Session of the Conference completed a Convention on each of these three subjects.

22. The President of the Law Reform Commission leads the Irish delegation on the Committee of Experts on Private International Law which is engaged in drawing up a Convention for the European Economic Communities on private international law relating to contractual and non-contractual relations.

23. As a result of a recommendation by the President of the Commission, the Minister for Industry and Commerce agreed in May 1977 that Ireland should be represented at the Tenth Session of the United Nations Commission on International Trade Law (UNCITRAL) and that a representative of the Commission should be a member of the Irish delegation to that Session. The Minister for Industry and Commerce also agreed that Mr Roger Hayes, then Director of Research, be the Irish delegate to the Session (which concluded at Vienna on 17 June 1977). The Session was concerned with the preparation of a final text of a draft Convention on the International Sale of Goods to replace The Hague Uniform Law of 1964 and also with the preparation of a Convention on the formation of contracts for international sales, to replace a second Hague Uniform Law of 1964. (The two Hague Uniform Laws are referred to in paragraph 14 of the Law Reform Commission's First Programme.) Although not so far elected a member of UNCITRAL, Ireland is entitled to attend and take part in the discussions at the various sessions as an observer.

24. Ireland became a member of the International Institute for the Unification of Private Law (UNIDROIT) in April 1940. The Institute was established in Rome in 1926 as an auxiliary body of the League of Nations. It was separated from the League in 1939 and is now an autonomous body of 48 States (spread throughout the different Continents). In September 1976, on the

fiftieth anniversary of the founding of UNIDROIT, the President of the Law Reform Commission attended the 2nd International Congress on Private Law convened by the Institute in Rome. This was at the invitation of the present Secretary-General, Dr Riccardo Monaco, formerly a judge of the Court of Justice of the European Communities.

25. The Law Reform Commission is now considering the establishment of closer relations with various international legal organisations such as The Hague Conference, UNIDROIT, UNCITRAL and also with the International Commission on Civil Status (known as CIEC). This latter Commission, which is concerned with such matters as personal status and the family, was established by the Berne Protocol of September 1950 and has its headquarters at Frankfurt in the Federal Republic of Germany. Originally only Belgium, France, Luxembourg, the Netherlands and Switzerland were members, but subsequently, following the Luxembourg Protocol of September 1952, all the other Western European States except Denmark, Ireland and the United Kingdom became members. The work of CIEC is at present being studied by members of the Law Reform Commission and consideration is being given to the desirability of recommending that, in the interests of legal development and research, Ireland become a member of the International Commission.

PART IV

GENERAL(1) Members of the Commission

26. On 20 October 1977, Dr Helen Burke's term of office as a Commissioner ceased coincidentally with her appointment as a statutory full time lecturer in social science of the National University of Ireland at University College, Dublin. The Commission is very much indebted to Dr Burke (who while a Commissioner obtained a doctorate from the National University of Ireland) for her very valuable contribution to the Commission's work during her period of office and our good wishes go with her on her new academic appointment. She has been succeeded by Mr Roger Hayes, formerly Director of Research, who was appointed by the Government as a full time Commissioner for a period of five years from 1 November 1977. Mr Hayes's appointment raises the number of full time members of the Commission, including the President, from two to three.

(2) Staff of the Commission

27. Dr Bryan McMahon resigned as Research Counsellor to the Commission on the 31 December 1977, upon his appointment as a statutory full time Professor of Law in University College, Cork. The Commission desires to express its gratitude to him for his valuable contribution to the Commission's work and for the assurance of his continued interest in the work of the Commission. The Commission also extends its congratulations and good wishes to him on his new appointment. The vacancy created by Dr McMahon's

resignation was advertised and interviews were held with selected applicants. The position has been offered to and accepted by one of these applicants, but he will be unable to relinquish his present academic appointment to take up work with the Commission until mid-1978. The position of Director of Research is being left vacant for the moment and instead application was made before the end of 1977 to the Attorney General and to the Minister for the Public Service to sanction the appointment of a third Research Counsellor. The Commission is grateful for the approval received for this third post of Research Counsellor and also for the approval of an additional post of Legal Assistant. The latter post was filled on 1 February 1978. The third post of Research Counsellor has not so far been filled as another of the applicants for the vacancy created by Dr McMahon's resignation who has accepted the post following an offer made to him is unable, because of his existing duties, to take up work in the Commission before April next. In addition to the research staff, the staff of the Commission comprises the Secretary to the Commission, one Clerical Officer and three Clerical Assistants. The number of Clerical Assistants was increased by two early in 1977. All members of the staff are full time.

(3) Library

28. During 1977 the Commission continued to acquire, within the restrictions of its modest budget, further books for its library, including statutes and law reports. We have concentrated in the first instance on acquiring those books and works of which we are in most immediate need. The process of building up a full and adequate library is one which will take many years. However, we have had

the great advantage of receiving from our corresponding law reform authorities and bodies throughout the world copies of their publications and reports on the many topics which they study and in return we have distributed to these agencies our own publications. We are especially grateful to the various libraries of whose resources and facilities we have availed ourselves during the past year. The generous contributions made by the French Ministry of Justice, by the Office of Law Reform and the Office of the Legislative Draftsmen in Belfast and by our own Department of Justice have already been acknowledged in paragraph 8 supra.

