



Client Update



IN THIS ISSUE

COMPANY DIRECTORS

Company Directors must act honestly and responsibly or face the consequences

FAMILY

Law relating to pre-nups to be reconsidered for benefit of family farms

PERSONAL INJURIES

Court of Appeal cracks down again on excessive awards in personal injury claims

High Court allows for recovery in case of severe depression caused by shock of accident

PROBATE

Failure of a parent to make proper provision in a will: the Section 117 application

COMPANY DIRECTORS

Company Directors must act honestly and responsibly or face the consequences

If a liquidator winding up a company believes that the directors may have breached their duties, an application can be made to the High Court to have them restricted from acting as a director or company secretary for a period of five years.

This is a severe punishment for a director and in defending such an application the onus will be on them to show that they acted responsibly in respect of their company's affairs.

Such an application is made under section 819 of the Companies Act 2014 and was recently considered by the High Court in the case of McAteer & anor v McBrien & ors [2016] IEHC 229.

The Court heard that the company College Freight Ltd had been unable to pay its debts since the commencement of its winding up. The company had filed incorrect tax returns in 2011 and amassed tax liabilities to the Revenue to the amount of almost €800,000.

Although a repayment plan was agreed,

no payments were made by the company. This raised the question to the Court whether the Directors had continued to allow the company to trade while it was insolvent.

The Directors, in contesting the application failed to provide the Court with a satisfactory explanation to the concerns of the liquidator.

In particular, the Directors had failed to provide any sufficient explanation for the filing of the incorrect tax returns and why they failed to follow the payment plan entered into with the Revenue.

The Court held that the Directors had a duty to question the viability and solvency of the company in the wake of the economic downturn, but had failed to do so and continued to trade. They had also failed to keep adequate company records.

The Court was satisfied that the Directors had not acted responsibly in their conduct of the company affairs and granted the restriction orders to the liquidators.



From left to right:
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Mark Felton - Solicitor
Mary Redmond - legal executive

FAMILY

Law relating to pre-nups to be reconsidered for benefit of family farms

The Department of Justice has begun a policy analysis review of the law in respect of pre-nuptial agreements.

The review comes in response from increased pressure from the Irish Farmers Association and its members to reconsider the issue so that farmland can be given proper protection in cases of marital breakdown.

By legislating for pre-nups, farmers believe this will offer a pragmatic business solution to secure farmland and a family's livelihood into the future.

The policy analysis review is to focus on the impact of pre-nups on families and family income.

Currently, a pre-nuptial agreement is unenforceable in Irish law, although it is something that a Judge may give consideration to when dividing assets between parties.

PERSONAL INJURIES

Court of Appeal cracks down again on excessive awards in personal injury claims

The Court of Appeal has slashed another award of compensation to a plaintiff in what is now being perceived by many as an orchestrated attempt to combat a growing 'compensation culture' and ever increasing motor insurance premiums.

The recent decision of Shannon v O'Sullivan [2016] IECA 93 saw an overall award of €220,000 made by the High Court cut down remarkably by over 50% on appeal.

The plaintiffs were involved in a motor

accident and had suffered serious injuries after their car was hit by a motor bike being driven by the Defendant.

The High Court's award of damages was appealed on the basis that the amount was unjustifiably high. In particular it was argued that one of the plaintiff's had not sought any medical treatment until 15 months after the incident. Furthermore it was also not anticipated she would need additional treatment in the future.

Despite these facts she personally was awarded €130,000 by the High Court.

The Court of Appeal set out the law that relates to whether an award of damages would be deemed proportionate. The

level of compensation must be fair to both the Plaintiff and Defendant, and also must be proportionate to social conditions and the common good. The award should also be in line with others made by the courts in similar circumstances.

In making any award, the Court stated that the focus will be the evidence given on the pain and suffering of the plaintiff and the effect that the injuries will have on the plaintiff's enjoyment of life.

In this case the Court of Appeal decided that the evidence of the injuries given were not proportionate to the award given and reduced the award to a total figure of €105,000 for both plaintiffs.

High Court allows for recovery in case of severe depression caused by shock of accident

When someone is in a particularly horrific accident, the entitlement to recover compensation may also be extended to their close family members, in cases where the shock of hearing of the incident has caused them to suffer from psychiatric harm.

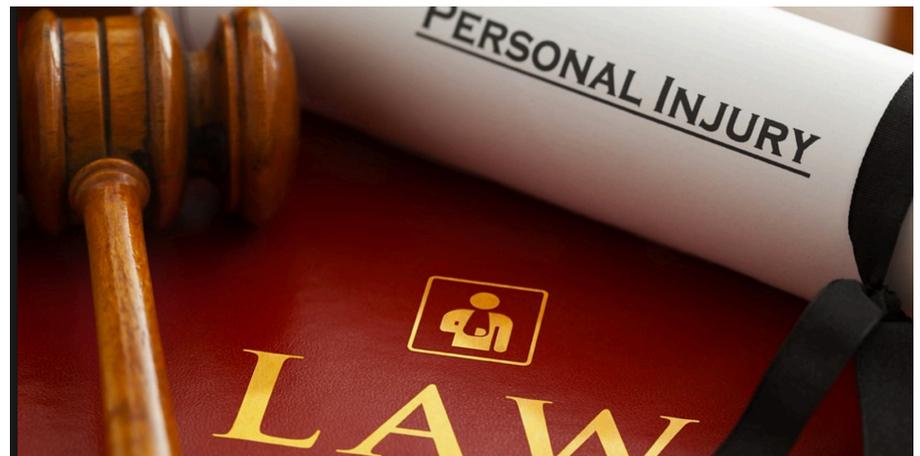
Such claims are becoming increasingly common in the courts. The principles behind this growing area of law were outlined by the High Court in the recent case of Purcell v Long [2015] IEHC 385.

In this tragic case, a mother 'who could not cope with the pain of her

grief' began to harm herself after her son died in a road traffic accident.

The woman had suffered from depression before the accident but this was severely exacerbated from the shock of hearing her son had passed. The court accepted the woman's evidence that the accident had caused her to become suicidal and that she would require medication for the rest of her life.

The High Court awarded the woman over €225,000 as compensation for her suffering.



PROBATE

Failure of a parent to make proper provision in a will: the Section 117 application

The duty of a parent to their child is an onerous one which does not necessarily stop just because the child reaches adulthood; indeed the duty may even continue beyond the grave.

If a deceased person has failed to make 'proper provision' for a child in accordance with their means in their will, the child, no matter what age they are, may take an action against the deceased's estate under section 117 of the Succession Act 1965.

This piece of legislation is based upon the idea that parents have a moral duty

to provide for their children and in cases where that duty is not met the courts may intervene and alter the will.

If the court is satisfied that the deceased failed to make proper provision for the child (whether by the will or during their lifetime) it may vary the will in whatever way it decides to be just and equitable.

In such applications the court will place themselves in the position of a 'prudent and just parent' and consider a variety of factors.

These factors include the amount left to the surviving spouse, the number of children and their position in life, the means of deceased and the age of the applicant and their financial position and personal circumstances.

The court will also consider whether the deceased had made any proper provision for the child during their lifetime.

The definition of 'child' under the legislation is broad and includes an adopted, non-marital, foster and step-child.

If a person wishes to challenge a will they must move promptly. The Succession Act prescribes a time limit of six months from the first taking out of representation of the deceased's estate.

WHAT WE DO

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