# BOOK REVIEW: "THE HIGH COURT:A USER'S GUIDE"

## BY KIERON WOOD

## (FOUR COURTS PRESS, 1998)

THE HON. MR. JUSTICE RODERICK MURPHY*

The perspective of law depends on where one is standing. To a child it is somewhat forbidding and remote. To a teenager imbued with its representation in the media, it is part of a drama in which some few may want to become involved and others are, unwittingly, drawn into. To the student of law, it turns from being mysterious and enigmatic to being challenging and exciting. The cycle may, indeed, repeat itself to the practitioner whose early years seek to find the path, illuminated with a certain knowledge of the law, to develop the skills to resolve the enigma.

Kieron Wood's book will be helpful both to students and practitioners to enable them to move from substantive to procedural law. It will be particularly helpful to those whose practice of law is in the commerical, financial, administrative and educational areas. Both barristers and solicitors acquire skills in applying the law. Wood's guide is a useful outline of High Court practice for those whose litigation practice takes them to that court.

Newly qualified solicitors and barristers depend on the quality of their masters to learn the skills of practising the law rather than just learning the law. They have not had the benefit of a comprehensive guide. Neither the Rules of the Superior Courts[1] nor O'Floinn's *Practice and Procedure in*

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[1] S. I. No. 15 of 1986

*the Superior Courts* are guides: they are reference books as is indeed the English *Supreme Court Practice* ("the White Book").

A generation ago we relied on Delany's *The Administration of Justice* published by the Institute of Public Administration and later expanded and updated by Charles Lysaght.[2] This, of course, was essential reading both as an introduction to law and, indeed, as a final year text when it provided an overview for the convergence of the disparate elements in the study of law.

Kieron Wood's approach is that of a true journalist to render simple, intelligible and comprehensive the resolution of the complex issues of the day. He has already provided that public service as legal affairs correspondent of the national television service. He has used the same skills to explain in a simple and comprehensive manner the workings of the High Court.

In his preface he refers to the dicta of Barrington J. in *Murphy v. Donoghue and Fiat*: "...rules of procedure exist to serve the administration of Justice, and must never be allowed to defeat it. Nevertheless those who ignore the rules run the risk of finding themselves on an uncharted sea."[3]

Later the same year O'Flaherty J. warned that "the rules are there to be servants of the law rather than that the law should be subservient to the rules. However, there comes a time when it is absolutely critical from the point of view of the proper administration of justice and in order for justice to be done to all parties that there has to be compliance with the rules".[4]

The third chapter of the guide is entitled simply and refreshingly "First Steps". The first matters to be considered

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[2] Delany, *The Administration of Justice in Ireland* (4th ed., 1975), edited by Charles Lysaght.

[3] [1996] 1 I.R. 123, 141.

[4] *Lee v. Morrissey-Murphy and others* (Supreme Court, unreported, 22 November 1996).

by counsel, on receiving papers from a Solicitor in a High Court action is whether on the given facts there is a cause of action and, indeed, filter out elements where an action does not lie. Not every injury gives rise to a cause of action. It is not the function of the court alone to determine what rights are actionable. One is reminded of the notorious highwaymen plunder case[5] where the court held it scandalous and impertinent and affecting the honour and dignity of the court for highwaymen to litigate as to their share in plunder. In dismissing the case the court ordered the plaintiff's counsel to pay the costs, imprisoned the solicitor and returned the litigants for criminal trial for which they were subsequently executed.

A useful list for plaintiff and defendant is included; the function of the O'Byrne letter explained. References made to *Moynihan v. Moynihan*,[6] *Phelan v. Coillte Teo.*,[7] *Gaspari v. Iarnród Éireann*,[8] *Kavanagh v. Reilly and M.I.B.I.*[9] and *Troy v. CIÉ*[10] in negligence cases are apposite.

There is a useful chapter on drafting including draft pleadings which illustrate the interface between fact and legal procedure. Reference is made to case conferences to encourage settlement or to reduce the number of issues to be tried in personal injury actions, where liability is admitted. A useful pre-trial checklist is included.

In this regard it is of interest to note the practice of the International Court of Arbitration which requires the parties, at a preliminary meeting, to agree the terms of reference. This requires issues to be determined from the pleadings and to be

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[5] *The Highwayman's Case (Everet v. Williams)* (1893) 9 L.Q.R. 197

[6] [1975] I.R. 192.

[7] [1993] 1 I.R. 18.

[8] Supreme Court, unreported, Johnson J., 15 December 1993.

[9] High Court, unreported, Morris J., 14 October 1996.

[10] [1971] I.R. 321.

approved by the Court before the arbitrator or arbitrable tribunal enters on the reference.

It is outside the reference of this user's guide to deal with quantum. However, references by the High Court under section 49 of the Arbitration Act, 1954 could be usefully mentioned in that regard. That Section provides that in any cause or matter where the question in dispute consists solely or in part of matters of account the High Court (or the Circuit Court) may at any time order the whole cause or matter or any question or issue arising therein to be tried before an arbitrator agreed on by the parties or before an officer of the Court.

Too often in the client's mind the notion is that of delay where these applications are concerned. The loops created need to be seen in the context of the path from summons to decision. Practitioners have an obligation to advise their clients in this regard.

The author includes a simple diagram to explain Order 15 and 16 in relation to co-defendants and third parties and uses the example of *Gaspari v. Iarnród Éireann*[11] to illustrate that diagram. Legal authors seem reluctant to commit conceptual matters to geometric or mathematical formulae. A critical path analysis of proceedings in the High Court, as well as identifying blockages could also indicate critical timings and, indeed, cost. The data provided by the Court Service in their Annual Report for 2000 provides statistical data with regard to the waiting lists in the various courts and no doubt will be used in a subsequent edition of this work. The chapter on Interlocutory Applications covers "notices of motion" (intriguingly referred to as "notion of motion" in the contents) and discovery, privilege, interrogatories and lodgments.

There is a comprehensive overview of discovery requirements with references to cases where discovery will serve as a "fishing expedition" and disallowing third party

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[11] Supreme Court, unreported, Johnson J., 15 December 1993.

discovery where overly onerous or extensive discovery is required.

The requirement that lodgments can only be topped up once and, in that event, at least three months before the action is first specifically listed for hearing is well illustrated in *Donoghue v. Dillion*.[12]

The chapter on injunctions is comprehensive. The freezing on *Mareva* order is particularly useful. The duty of disclosure is highlighted. If the relevant parts are deliberately not disclosed the court may discharge the order immediately without examining the merits of the case.

A short chapter on judicial review would perhaps be improved in a future edition by referring to the number and nature of such applications (see page 35 of the Courts Service's Annual Report for 2000).

Enforcement of money judgments and mortgages should be linked by reference to the obtaining of a judgment mortgage. This transforms an adjudicated right in personam to a right in rem against the assets of the debtor. "These enforcement mechanisms can be expensive, cumbersome, time-consuming, and often ineffective", the author states but does not quantify. The value of a right to a litigant, is no greater than the available remedy. *Ubi jus, ibi remedium*. Of course security for costs cannot be forced against an individual person and, in practice, is limited to companies and residents outside the European Union. In *Pitt v. Bolger*[13] the Defendant having sought such an Order against the Plaintiff on the basis that she resided in the Isle of Man, was refused on the basis of reciprocal enforcement of judgments obtained in the Courts of the Isle of Man once the judgment was registered in the English High Court. The discretion provided for in Order 29 should, it was held, never be exercised by an Irish Court so as to order security to be given by an individual plaintiff who is a national of and resident in

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[12] [1988] I.L.R.M. 654.

[13] [1996] 1 I.R. 108; [1996] 2 I.L.R.M. 68.

another Member State of the European Union which is a party to the Brussels Convention. The possibility of cogent evidence of substantial difficulty in enforcing a judgment in that other Member State was a reservation of Sir Thomas Bingham M.R. in *Fitzgerald v. Williams*.[14] There the Master of the Rolls observed that the English Rule differed from the German provision of *Mund and Fester v. Hartex International Transport*.[15] This was referred to by Keane J. (as he then was) as a "possible qualification".[16]

Wood's guide does not pretend to be a comprehensively updated version of the rules nor indeed a definite expose of substantive law. It is a useful and very welcome practical guide to some of the more common problems faced by practitioners. For all readers interested in the law it will achieve what it sets out to do in its preface: to help remove some of the mystique from the subject of practice and procedure. The same publisher's *Practice and Procedure* will compliment this useful Guide.

"The High Court: A User's Guide" by Kieron Wood (Four CourtsPress, 1998), 180 pages.

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[14] *Times Law Reports*, 3 January 1996.

[15] Case C -398/92 [1994] E.C.R. I-467.

[16] [1996] 1 I.R. 108, 120.