

## GLOSSARY OF TERMS

### A

**ACT.** Form of primary legislation also referred to as a statute.

**ACTIO POPULARIS.** A case taken by an individual where it affects the interests and rights of the public as a whole and no one person stands to be affected more than another person.

**ACTUAL KNOWLEDGE.** The parties involved discuss the matter and agree on its meaning; often arises in contract law.

**ACTUS REUS.** Element of a crime; guilty act; prohibited act or omission; must be a voluntary act.

**ADVOCATE GENERAL.** French concept with no equivalent in Ireland; makes reasoned Opinions in an open court on cases brought before the European Court of Justice; not binding but the Opinion is often followed; give lengthy Opinion setting out both sides of the case; 8 AG in the ECJ; none in the Court of First Instance but one of the 27 judges can act as an AG (rarely used).

**ATTORNEY GENERAL** Legal adviser to the government; nominated by the Taoiseach (Prime Minister) and appointed by the President; AG retires from office when Taoiseach resigns; continues in office until new Taoiseach is appointed; defends the government in constitutional cases and is sometimes the plaintiff in cases where constitutional provisions are being vindicated.

**ANNEX** Addendum or appendix at the end of a report, book, or treaty.

**ARBITRATION.** Form of alternative dispute resolution; a third party is empowered to impose a decision upon two or more parties who are seeking agreement in relation to an issue(s) that affect(s) the parties involved; see Mediation and Negotiation.

**ARTICLES OF ASSOCIATION.** Contains the regulations that

govern the internal management of a company.

**ASSEMBLY.** Now called the European Parliament; comprised of national parliament's delegates with mainly supervisory powers; role has changed over the years; can also refer to the lower house of the legislature in some US states.

## B

**BAD FAITH** Intent to deceive; a person intentionally tries to deceive or mislead another in order to gain some advantage.

**BILL.** Piece of legislation passed or deemed to have been passed by both houses of the Oireachtas, the Dáil, and the Seanad; yet to be signed into law by the President.

**BINDING.** Imposes obligations or duties.

## C

**CANON LAW.** Ecclesiastical law; law of the Catholic Church, the Eastern Orthodox Church, and the Anglican Church; regulates the organisation and its members; does not enjoy the force of law.

**CAPACITY TO CONTRACT.** In order to enter into a contract, a person must have capacity; infants (those who have not reached the age of majority, i.e. 18 years) and lunatics are deemed to lack capacity; if an infant enters into contract, the contract is voidable (it can be set aside at the option of the infant) if it is for something other than a necessity (necessities include goods and services essential to the condition of life of the infant – clothing, food, shelter, educational services, and apprenticeships).

**CASE LAW.** Collection of published legal decisions of the court.

**CHANCERY DIVISION.** Has jurisdiction at first instance over disputes involving wills; the administration of estates; trusts; company law; partnerships; intellectual property (trademarks and copyright); hears appeals from country courts in relation to bankruptcy cases.

**CHARTERED CORPORATIONS** Created by the grant of charter by the British Crown and some still exist in Ireland today e.g., Kings Inns, Law Society of Ireland.

**CHIEF STATE SOLICITOR.** Permanent solicitor that represents the State; also solicitor to the Attorney General, the DPP, government departments, and state bodies.

**CLOSER COOPERATION.** See Flexibility.

**COMMON LAW.** System of law, judge made law, law developed by the judges; judges no longer make law “against the principle of separation of powers”; defined as an identifiable body of law that has developed over centuries from judicial decisions, which has established the major categories into which legal rules are placed.

**CONTRACT.** An agreement giving rise to obligations that are enforced or recognised by law.

**CONTRACT *OF* SERVICE.** An employee who works under a contract of service for a person is employed to provide labour or skill in whatever way their employer dictates in return for wages.

**CONTRACT *FOR* SERVICE.** Not an employee but an independent contractor; one is self-employed and sells their services to a client.

**CONTRACT LAW.** Generally there is freedom of contract; an individual can enter into contracts as they wish; Contract law governs all contracts; some contracts, even if they contain the essential elements of offer, an intention to create legal obligations and consideration “money or money’s worth”, are illegal. Examples of illegal contracts include a contract to kill someone, a contract to defraud the Revenue, or a contract of an immoral nature.

**CONSTRUCTIVE NOTICE.** When an employee leaves the workplace but establishes that s/he did so as a result of the employers’ conduct rendering it impossible for him/her to stay and s/he is therefore treated as having been dismissed.

**CONSTRUCTIVE KNOWLEDGE.** No discussion on a matter but the courts believe that a reasonable person in the street would possess that knowledge and therefore the parties should be treated as they too had that knowledge, for example the Articles of Association and Memorandum of Association of a company are public documents and therefore are deemed to be read by persons who plan to engage in business with a company; they are deemed to have constructive knowledge/notice of the contents of the documents.

**CONSTITUTION.** Legal document outlining how a country is to be run; provides for the organs of the state and for human rights and fundamental freedoms; all laws enacted must be consistent with the constitution; in Ireland, the constitution can only be amended by way of a referendum.

**CONTRIBUTORY NEGLIGENCE.** Where the victim has in some way contributed to their injuries. Under the Civil Liability Act, 1961 if the plaintiff is contributory negligent, the defendant's liability is reduced proportionately, for example, a car passenger not wearing seat belt.

**CONTRA PROFERENTEM RULE.** Where there is a standard contract and one party is in a stronger economic position and has dictated the terms. If any of the terms are ambiguous, the court will favour the interpretation put forward by the weaker party; introduced to redress the imbalance between the parties.

**COUNCIL OF THE EUROPEAN UNION.** Consists of Foreign Ministers of the Member States; membership is not fixed; depends on what topic is under discussion; described as a place where Member States can assert their national interest; formerly called the Council of Ministers; name changed in 1993 by TEU to reflect the fact that Council represented not just the Community but also the Union.

**COURT OF FIRST INSTANCE.** Lower court in the European Union court system; hears cases at first instance.

**CRIME.** Wrongful act that directly and seriously threatens the

security and well-being of society, the appropriate remedy of which is punishment by way of incarceration; punishment is imposed by the courts; must be proved beyond reasonable doubt that the defendant carried out the wrongful act.

**CRIMINAL LAW.** Body of rules and regulations that prohibits criminal behaviour and punishes those who disobey such rules and regulations; Four main objectives: 1. Incapacitate, 2. Retribution, 3. Deterrence, and 4. Rehabilitation.

## D

**DAMAGES.** Monetary compensation awarded to the affected/wronged party.

**DEFENDANT.** A person against whom an action is brought; a person charged with a criminal offence.

**DEMOCRATIC DEFICIT** Argument that the European Community/Union suffers from a lack of democracy and is becoming remote from the ordinary citizen because its method of operating is becoming so complex.

**DIRECT DISCRIMINATION.** Being treated less favourably on grounds of gender, age, race, disability, ethnic origin, etc.

**DIRECT EFFECT.** Principle of European law; if a provision is said to be directly affective it means that it grants individuals' rights that must be upheld by the national court

**DIRECTIVE.** Secondary piece of EU legislation that is binding in its entirety. It does not automatically form part of the national legal system but it must be incorporated by way of the Act or Statutory Instrument. In Ireland an act is used to incorporate the directive if the directive significantly alters domestic law otherwise a statutory instrument is used.

**DIRECTLY APPLICABLE.** Concerns the way in which a piece of legislation goes directly into the national system without the need of an act to implement it, for example, a European regulation does not need to be incorporated by way of an act in Ireland; it is accepted as part of the legal system automatically.

**DIRECTOR OF PUBLIC PROSECUTIONS.** Prosecutes serious crimes in the name of the People. Unlike the Attorney General, the DPP does not resign when the Taoiseach resigns; this is to ensure continuity in prosecutions involving serious crime.

**DISTINGUISHING CASES.** The court distinguishes the case before it from an earlier case on the grounds that there are factual differences between this and the earlier case or because different legal issues are involved; see Precedent.

**DUALISM.** The legal concept that views national/domestic law as being separate and distinct from international law. Ireland is a dualist country and when a provision of international law is to form part of the legal system, it must be incorporated by way of an act; opposite of Monism; see Monism.

**DURESS.** Defence used by those who claim that an offence was carried out while under the coercion of another.

**DUTY OF CARE.** Duty owed by one individual to another depends on whether the loss suffered is reasonably foreseeable; depends on the circumstances of the case; duty is not owed to the world at large only those that one can reasonably foresee will be affected by your act or omission; there must some relationship between the parties, for example, doctor/patient; motorist/pedestrian; solicitor/client; accountant/client, etc; see Tort.

## E

**EGG SHELL RULE.** Defendant must take his victim as he/she finds him; if the plaintiff suffers greater harm as a result of the defendant's actions and this is due to some physical or psychological pre-disposition, the defendant will be liable even though the defendant or plaintiff may not have been aware of this pre-disposition.

**ENHANCED COOPERATION.** See Flexibility.

**ENUMERATED RIGHT.** Fundamental right expressly stated in the Constitution, examples include the freedom of expression and the right to own property.

**EQUITY.** A body of law, the origins of which lie in the decisions of the Court of Chancery, concerned with individual justice and looks to the conscience of the parties involved.

**ESSENTIAL FACILITY.** An essential facility is one to which a competitor needs access in order to compete in a specific market; the facility can be a physical one, or can take the form of material in which there is intellectual property; the owner of that facility may be required to authorise such access, even in situations where both the owner and competitor are operating in the same market.

**EUROPEAN COMMISSION.** Executive of the EU; “guardian of the Treaties”; involved in the initiation and drafting of legislation; involved on the international stage; 27 Commissioners.

**EUROPEAN ECONOMIC COMMUNITY TREATY 1957.** Economic in nature; aimed to approximate the economic policies of the Member States; promotes harmonious development of economic activities throughout the Community; increases stability and raises the standard of living; promotes closer relations between Member States; abolishes customs duties and creates a common customs tariff with non-Member States “third countries”; based on the Four Fundamental Freedoms: Workers, Goods, Capital, and Services.

**EUROPEAN COMMUNITIES.** Term used to denote all three Communities: ECSC, EEC, and EURATOM.

**EUROPEAN COMMUNITY.** The new name for the EEC as introduced by the Treaty on the European Union (TEU).

**EUROPEAN COUNCIL.** Has been in existence since 1974 but it was not formalised until 1986 in the Single European Act; political gathering in which the heads of government meet, at least twice a year, are accompanied by their foreign ministers, and discuss the political agenda for the ensuing months and years; these meetings are referred to as European summits; meetings held by the country holding the Council Presidency; no legislative power.

**EUROPEAN COURT OF JUSTICE.** Court of the European Union; interprets and applies European law; binding and the highest court of the EU created in 1952 under ECSC Treaty.

**EUROPEAN UNION.** Comprised of the three Communities (ECSC, EC, and EURATOM) and the two policies and forms of cooperation, the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA); the Union does not have a legal personality, instead it derives its legal powers from the Community pillar; see Maastricht Treaty.

**EX-OFFICIO.** By virtue of his/her office.

**EX-PARTE.** Without notice to the other side of an action.

**EXPRESS TERM.** Term negotiated by the parties to a contract; term found in the written contract.

## F

**FLEXIBILITY.** “Variable geometry” and “concept of differentiated integration”; participating in some spheres of activity while remaining outside of others/option to join at later stage etc.; amended by the Treaty of Amsterdam and renamed closer cooperation; renamed enhanced cooperation by the Treaty of Nice; allows a group of Member States to use the institutions of the European Union in furtherance of closer relations between those Member States in furthering the objectives of the Union; some Member States are hampered by social, economic, or political conditions and are unable to engage in a proposed measure; flexibility means that the other Member States are not kept back, the Euro for example, not all Member States opted to accept the Euro.

**FUNCTIONALISM.** Prevent war, not negatively by keeping states apart, but positively by engaging them in cooperative ventures; likelihood of future strife could be reduced if some sort of joint venture was pursued; the European Coal and Steel Community Treaty for example.

## G

**GENERAL PRINCIPLES.** Unwritten law developed by the ECJ

as an aid to interpreting the law.

## H

**HIGH AUTHORITY.** Now called the European Commission (renamed under the Merger Treaty 1965) consisted of nine independent appointees; main executive institution with decision-making powers; responsible for implementing the aims of the Treaty.

**HOUSE OF LORDS.** Has jurisdiction in both civil and criminal matters; mainly an appellate court in that it hears appeals; rarely hears cases in first instance; does not hear oral evidence from witnesses; considers legal documentation including evidentiary documents; gives opinions and not judgements.

## I

**IMPLIED TERM.** A term that has not been discussed by the parties to a contract but the court treat is as though it has been stated on paper; read into contracts for the benefit of the parties, for example, where a footballer signs a contract to play for a club and the contract does not include an express term that provides that the player can only play for that club, the court would imply such a term into the contract.

**INDICTABLE OFFENCE.** More serious offences that require trial by jury; tried in the Circuit Court or Central Criminal Court; in some situations such cases may be heard in the District Court; requires the approval of the DPP and the District Court judge must be of the opinion that the case involves a minor offence and it falls under Schedule 1 of the 1951 Criminal Justice Act (as amended by the 1967 Act) that lists the number of offences including perjury, assault, indecent assault.

**INDIRECT DISCRIMINATION.** Provision/rule/criteria seem to apply equally to all but the end result is that one group is disadvantaged more than another.

**INJUNCTION.** An order of the court directing a party to do an action or to refrain from doing something; equitable doctrine.

**INTELLECTUAL PROPERTY RIGHTS.** Generic term that covers industrial and artistic forms of property right; referred to intangible property as it lacks a physical existence, examples include copyright, trademarks, and patents

**INTERGOVERNMENTAL.** Being or occurring between two or more governments; association of States; based on a Treaty; pursues a common aim; has its own special organs to fulfil the particular functions within the organisation; example: Interpol.

**INTERGOVERNMENTAL CONFERENCE.** The formal procedure for negotiating amendments to the founding treaties of the European Union; accused of taking place behind closed doors with little or no involvement of the people of Europe.

**INTERNATIONAL LAW.** A combination of treaties and customs that regulates the conduct of states amongst themselves

**INTERPOL.** The world's largest international police organisation and cross-border police cooperation, to combat or prevent international crime; short for international police.

## J

**JUDICIARY.** Judges; power to interpret and apply laws whenever a dispute arises.

**JURISDICTION.** a) the power of a court or judge to hear an action, petition, or other proceeding, or b) the geographical area within which such power may be exercised.

## L

**LEGAL PERSON.** Any entity that is capable of having a legal personality to enter into legal relations; includes human persons, a company, a partnership, or a sole trader.

**LEGAL PERSONALITY.** Having rights and duties.

**LEGISLATION.** Law made by an agency with law making powers; in Ireland it is the Oireachtas that is the exclusive law-making body as stated by Article 15.2 of the Irish Constitution.

**LIMITED LIABILITY.** The principle in Company law where

members are liable for the amount unpaid on their shares; if they are fully paid up, they do not incur further liability.

**LOCUS STANDI.** Standing of a person to challenge the constitutionality of an act.

**LUXEMBOURG ACCORDS.** Agreement to disagree; where the Treaty provided for QMV and the vitally important interests of one or more Member States were involved, the Community had to try and find a unanimous solution.

## M

**MAGNA CARTA.** Document guaranteeing fundamental rights and freedoms, it was accepted by the King of England, King John in 1215; the King renounced certain rights and gave the barons and major land owners a series of rights that resulted in limiting the authority of the King.

**MAASTRICHT TREATY.** Also known as the Treaty on European Union (TEU); created the three pillar structure; second and third pillars are largely intergovernmental; introduced institutional change; pillars remain outside the formal structures of the European Communities, although the Council and ECJ of the European Communities have some involvement.

**MEDIATION.** Form of alternative dispute resolution; type of negotiation between two or more parties whereby a mediator facilitates and coordinates the discussion; mediator may introduce issues for discussion; see Arbitration and Negotiation.

**MEMORANDUM OF ASSOCIATION.** Contains the regulations governing the external affairs of a company; along with the Articles of Association, the Memorandum must be registered with the Registrar of Companies and as a public document, potential investors or creditors can inspect the Memorandum and see what kind of business the company is engaged in.

**MERGER TREATY.** Merged the institutions of the three European Communities (ECSC, EEC, and EURATOM) so that there was a single institutional structure.

**MENS REA.** Guilty mind that accompanies the guilty act or *actus reus*.

**MONISM.** Legal concept that views domestic/national law as having the same status as international law; national and international law are viewed as forming a single legal system; opposite of Dualism.

**MUNICIPAL LAW.** National or domestic law.

## N

**NATURAL JUSTICE.** Courts and all other persons/bodies who make decisions that affect the individual must act in a fair and bona fide manner as prescribed by law.

**NATURAL PERSON.** Human person as opposed to a company or business entity.

**NEGLIGENCE.** Failure to exercise care that a reasonable person would exercise in the circumstances of the case; it may consist of omitting to do something that ought to be done or doing something that ought to be done either in a different manner or not at all; it encompasses three essential elements: 1. a duty of care, 2. a breach of that duty, and 3. damages being sought in respect of the loss caused by the actions of the defendant; see Tort.

**NEGOTIATION.** Form of alternative dispute resolution where two or more parties seek to reach an agreement in regard to an issue affecting them both. The parties involved have direct control over what is discussed; see Mediation and Arbitration.

**NEIGHBOUR PRINCIPLE.** If people are considered to be “neighbours” in the eyes of the law, then a duty of care may arise; the question is whether the defendant could reasonably foresee that the plaintiff, who is in a proximate relationship with the defendant, would have been so injured if the defendant were to act carelessly in relation to him/her; established by Lord Atkin in the case of *Donoghue v Stevenson*.

## O

**OBITER DICTIM.** Statement made by a judge as an aside; comment linked to the decision; often judgements are lengthy and some comments do not form part of the binding decision.

**OFFICIOUS BYSTANDER TEST.** When a court is faced with a contract dispute involving an implied term “see above”, the court will decide if the inclusion of the term is necessary for efficacy of the contract.

**OIREACTHAS.** The Parliament; consists of the President and two Houses: Dáil Éireann “the House of Representatives” and Seanad Éireann “Senate”; it creates new legislation.

## P

**PARTNERSHIP.** As an association of two or more parties carrying on a business in common with a view to a profit.

**PASSING OFF.** The use of a trader of a business name or brand that is very similar to another business or brand that causes confusion in the minds of the public.

**PERSUASIVE AUTHORITY.** Decision of a court from another jurisdiction; no obligation to follow the decision.

**PILLARS.** Three pillars of the EU: 1. Community Pillar (EC, ECSC, and EURATOM), 2. CFSP (Common Foreign and Security Policy), and 3. JHA (Justice and Home Affairs); see Treaty on European Union/Maastricht.

**PLAINTIFF.** A person who brings a legal action against another.

**POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS.** Refers to name change of Justice and Home Affairs introduced by the Treaty of Amsterdam.

**PRECEDENT.** Application of principle of law as laid down by a higher court on a previous occasion in a case similar to that before the court; see Stare Decisis.

**PRELIMINARY REFERENCE/PROCEEDINGS.** Type of action

heard by the European Court of Justice; national courts, if in doubt about the interpretation or validity of this law, may, and sometimes must, ask the Court for advice.

**PRIVATE COMPANY.** A company that cannot sell its shares to the public, must have a minimum of two members and no more than 50, and has restrictions placed on it in relation to the transfer of shares; most Irish companies are private and trade using “Ltd” or “Limited” after its name.

**PRIVATE LAW.** Law governing legal rights and relationships of individuals (humans, companies, and associations) as opposed to the State; see Public Law.

**PRIVY COUNCIL.** Is not strictly a court; its main function is to advise the Crown; decisions are not binding on the domestic courts but are a persuasive authority; hears appeals from certain Commonwealth countries.

**PROCEEDINGS FOR ANNULMENT.** Type of action heard by the European Court of Justice, allows the Member States, Council, Commission and, under certain conditions, Parliament, to request the annulment of a Community provision and private individuals to request the annulment of legal acts that affect them directly and individually; also gives the Court the opportunity to examine the legality of acts adopted by Community institutions; if the proceedings are found to be justified, the disputed act may be declared null and void.

**PROCEEDINGS FOR FAILURE TO ACT.** Type of action heard by the European Court of Justice; contrary to the Treaty, if the European Parliament, the Council, or the Commission fails to make a decision the Member States, the other Community institutions and, under certain conditions, natural or legal persons can lodge a complaint with the Court with a view to having this violation officially recorded.

**PROCEEDINGS FOR FAILURE TO FULFIL AN OBLIGATION.** A type of action heard by the European Court of Justice to allow the Court to monitor Member States’ fulfilment of their obligations under Community law; proceedings may be

initiated either by the Commission (most common) or by a Member State (rarely because a MS may be doing so to make a political point); if found to be in default of Community law, the Member State concerned must rectify the situation without delay.

**PROMOTER.** People who come together with the intention of forming a company and take the necessary steps to do so; prepare the documentation and lodge documents with the Registrar of Companies.

**PROTECTION OF LEGITIMATE EXPECTATIONS.** Principle used by the European Institutions derived from German law; provides that if a system/provision/measure is introduced, there is a legitimate expectation of those concerned that the provision will be adhered to unless there is an overriding public concern, for example, if the Council introduced a system of salary payments for a three month period and then decided a few months into the scheme to change, this would not be allowed as those concerned have a right of legitimate expectations that the Council will abide by its decision.

**PROTOCOL.** Attached to a Treaty or international agreement that supplements a previous Treaty or international agreement; can amend the previous Treaty or add additional provisions, for example the TEU included 17 protocols and Ireland was given one to safeguard the constitutional ban on abortion.

**PROPORTIONALITY.** The extent of the action must be in keeping with the aim to be pursued.

**PUBLIC COMPANY.** Opposite of a private company (see above); no limit on the number of members but must have a minimum of seven; can sell its shares to the public; trades using "plc" or "Public Limited Co." after its name.

**PUBLIC LAW.** Law governing the relationship between the state and its citizens.

**PURE ECONOMIC LOSS.** Here there is no physical injury just financial loss; usually the courts are reluctant to award damages when there is no physical injury but will if there has

been a negligent statement made by one party to another and this statement is made in a situation involving a special relationship between the parties (doctor/patient, solicitor/client, etc.) and it is reasonably foreseeable that the statement will be relied upon.

## Q

**QUALIFIED MAJORITY VOTING.** This requires a specific number of votes, rather than a simple majority, be cast in favour of a measure in order for it to be passed.

## R

**RATIO DECIDENDI.** Most important part of a court judgement; deciding part that is followed in similar later cases; what the court holds binding

**RECISSION.** Equitable doctrine that allows a contract to be set aside if the parties can be returned to their original position (the position they were in before entering the contract).

**RE MOTENESS.** Cut-off point in a line of consequences; point beyond which the defendant will not be legally responsible.

**RESTRAINT OF TRADE.** Common law doctrine that may be invoked where an agreement between two others affects an individual's freedom to trade.

**REGULATION.** Piece of secondary legislation that is binding; in the European Union a regulation is like an act that is automatically incorporated into the national system without the need for an implementing measure, for example the Unfair Contract Regulations 1995; see also Directly Applicable.

**RETROSPECTIVE.** Applying to events/situations prior to the enactment of the provision.

## S

**SECONDARY LEGISLATION.** Subordinate or delegated legislation; delegated by Oireachtas; takes the form of ministerial regulations or orders and statutory instruments; the

act will contain general provisions not relating to an actual dispute; the order or regulation will contain more detail.

**SEPARATION OF POWERS.** Clear delineation of power between the organs of the state; legislature legislates, Executive (Government of the day) implements the legislation and the judiciary interpret and apply the law.

**SEPARATE LEGAL PERSONALITY.** The company and human agents are separate and distinct entities; there is a corporate veil that surrounds the company so its rights and obligations are not those of the managing agents but of the company itself.

**SINGLE EUROPEAN ACT 1987.** Called an act but it is a treaty; aim was establish an “internal market” that would be free from interstate barriers thereby ensuring the free movement of goods, persons, services, and capital; mainly economic Treaty.

**SOVEREIGNTY.** Exclusive right to have control over a nation, its people or oneself; see Article 1 and 5 of the Irish Constitution Bunreacht na hÉireann).

**SPECIFIC PERFORMANCE.** Equitable doctrine that orders a person or body to fulfil their obligations under a contract or trust. Generally not available if damages are the more appropriate remedy; usually used in cases involving the contracts for the sale of land.

**STARE DECISIS** “Let the decision stand”; basic principle that provides that once a decision on a certain set of facts has been made, the courts will apply that decision in cases that subsequently come before the courts involving the same set of facts; it is binding and must be followed; see Precedent.

**STATE LIABILITY.** Principle of European law; allows an individual to obtain damages against the state if the state has failed to implement a directive properly or has legislated contrary to Community law; Member State is put under pressure to implement directives on time so as not to incur a financial penalty.

**STATUTORY INSTRUMENT.** Form of secondary legislation in

the form of a ministerial regulation or order; see Secondary legislation.

**STRICT LIABILITY.** Doctrine of the criminal law; the *actus reus* (guilty action) and the *mens rea* (guilty mind) need to be present for a crime to have been committed, however, some offences do not need to have the *mens rea* present, for example environmental offences such as pollution, drug offences where one may protest their innocence but the fact that drugs were found on the person is sufficient.

**SUBSIDIARITY.** Principle of European law where decisions are taken as closely as possible to the citizen to see if the measure is best taken at national or community level. Is defined as "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the MS and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."

**SUMMARY DISMISSAL.** Dismissal without notice; the Minimum Notice and Terms of Employment Act 1973 provides that employees may be lawfully dismissed without notice for "misconduct", examples would include theft, assault, and use of illegal substances.

**SUMMARY OFFENCE.** Minor offences; tried in the District Court; no jury.

**SUPRANATIONAL.** Power is voluntarily transferred to an independent body whose institutions possess or demand jurisdiction over the Member States involved.

**SUPREMACY.** Principle of European law when there is conflict between national and European law, European law always prevails.

<b>T</b>
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**TAOISEACH.** Prime Minister of Ireland.

**TÁNAISTE.** Deputy Prime Minister of Ireland.

**TORT.** Civil wrong; covers a wide range of wrongs committed by one person against another; it can be economic, physical, or psychological injury; mainly involves incidents concerning unintentional harm; primary method of redress is damages; examples include car accidents, witnessing a traumatic event and suffering from post-traumatic stress disorder; giving of negligent advice from a professional (such as a solicitor or accountant) and relying on that advice and suffering a financial loss as result; defamation; passing off.

**TRANSFER OF UNDERTAKINGS.** A company/business (including charitable organisations) is taken over or merges with another company and as result there is a new employer, the employees must be protected.

**TRUST.** An equitable obligation binding a person (called a trustee) to deal with property over which he has control (called the trust property) for the benefit of persons (called the beneficiaries) of whom he may himself be one, and any one of whom may enforce the obligation; a trust can also be for charitable purposes.

## U

**UNFAIR DISMISSAL.** Is provided for in the Unfair Dismissal Acts 1977 to 2005; includes constructive dismissal; employee must be under a contract of service, have one-year continuous service (subject to certain exceptions) and have been dismissed; employer must prove that the dismissal was not unfair; burden of proof rests on the employer technically but it is the Employment Appeals Tribunal that makes the decision on fairness

**UNLIMITED COMPANY.** Members may be called upon to make good corporate debts to the full extent of their assets if the company is not able to meet its debts when they are due; liability of the members is unlimited.

**UNREPORTED JUDGEMENT.** Judgements circulated by judges and held by law libraries, universities, and other learning/educational institutions.

**UNENUMERATED RIGHT.** Fundamental right not expressly stated in the Constitution but that has been implied by the courts (High Court or Supreme Court) from the Constitution with reference to Article 40.3.1<sup>o</sup>-example: the right to privacy.

## V

**VARIABLE GEOMETRY.** see Flexibility.

**VICARIOUS LIABILITY.** Provides that the person receiving the services is liable for the wrongs of another even though the person did not commit the wrong; in most cases, an employer is vicariously liable for the wrongs of an employee that happens in the course of his/her duty. Employers are held to be vicariously liable because the employer benefits from the risk created by the employee, and also because in practical terms, the employer has more money and usually has insurance (deep pocket theory); no vicarious liability for the acts and omissions of an independent contractor.

**VOID.** Having no legal force or validity; null and unenforceable.

**VOIDABLE.** Void at the option of the affected party; it may be enforced or it may be set aside; see Capacity.

## W

**WRIT.** A formal written order issued by a body, usually a court.

**WRONGFUL DISMISSAL.** Originates from the law of contract where there is dismissal in breach of the employment contract; an alternative cause of action to unfair dismissal; is usually invoked where there is dismissal with inadequate notice; can be used successfully where the employee shows that the employer had no grounds for summary dismissal; see Unfair Dismissal.