

# CONFERENCE PROGRAMME

(14<sup>th</sup> April 2011)

## *IRISH SOCIETY OF COMPARATIVE LAW*

### *Third Annual Conference*

Friday 29 – Saturday 30 April 2011

University College Dublin

School of Law, Roebuck Castle

### **Friday 29 April 2011**

Venue: Theatre 1, School of Law, Roebuck Castle, Belfield campus, UCD

- 2.30 Registration facilities open (tea & coffee available)  
(registration will remain open until 5.00pm)**
- 3.30 – 3.45 Welcome by Professor John Jackson  
Dean of the School of Law  
and Professor Brice Dickson,  
President of the Society**
- 3.45 – 4.30 Annual General Meeting of the Society**
- 4.30– 5.00 Refreshment break (tea & coffee available)**
- 5.00 – 6.30 Keynote Address by Dr. Eric Descheemaeker, University  
of Edinburgh, UK**

*'The Dangers of Mixing It Up – Some Remarks on Defamation and Truth in Civilian, Common-law and Mixed Jurisdictions'*

This paper looks into the role of truth in the civil law of defamation (or, more generally, of verbal attacks). It attempts a comparative and historical survey of the defence of truthfulness, examining its significance in Roman law, in the later civilian tradition, in English law and in three so-called "mixed" jurisdictions: South Africa, Scotland and Quebec. Two threads combine to make up this exploration. One relates the notion of truth in actions for verbal injuries to the underlying interests which the law of wrongs seeks to protect, and will be of particular relevance to tort or delict scholars. The other one is a

much broader analysis, through this specific example, of the nature of mixtures in law: what does it mean to be “mixed” and to be “un-mixed”? In what sense is it, or is it not, a good thing? In an area where the mixed ones are not necessarily those one would have expected, lessons of general relevance to the comparatist can be learnt from this story.

Eric Descheemaeker is Lecturer in European Private Law at the University of Edinburgh. Prior to taking up his appointment in Scotland, he was Fellow and Tutor in Law at St Catherine’s College, University of Oxford (2004–09) and then Lecturer in Law at the University of Bristol (2008–11). He is a comparative tort lawyer with a particular interest in the way Roman law has moulded modern legal systems in both Western legal traditions and in mixed jurisdictions. He was educated at the Universities of Paris, Berlin and London, before coming up to Oxford to read for the D.Phil. His doctoral thesis concerned itself with taxonomical issues within the law of civil wrongs and was published as *The Division of Wrongs: A Historical Comparative Study* (OUP, 2009).



There are no formal dinner arrangements and delegates are free to make their own amusement on Friday evening. The city centre of Dublin is easily accessible by bus and taxi from UCD Belfield campus.

**Saturday 30 April 2011**

Venue: School of Law, Roebuck Castle, Belfield campus, UCD

**8.30 – 9.00      Tea & coffee in the reception area of Theatre 1**

**9.00 – 10.30      Parallel Sessions**

**Session 1. Human Rights Law: Charters of Rights (Room 019)**

**Chairperson.** Rachel O'Toole

- Malachi Brown, The African Charter of Human and Peoples' Rights : An analysis
- Marie-Luce Paris, The Australian Bill of Rights debate in light of the European experience : The UK HRA and ACT HRA compared
- Ronagh McQuigg, The Human Rights Act 1998 and the Victorian Charter 2006: A comparative analysis

**Session 2. The Role and Work of the Judiciary (Room 020)**

**Chairperson.** Mark Coen

- Anne Fitzpatrick, Training and governance structure of the judiciary: A comparative analysis with reference to Ireland and France
- Maria Cahill, Comparing and contrasting the Irish 'guarantees' and the German Lisbon Decision
- Mathias Siems, Cross-citations between supreme courts in Europe

**Session 3. Issues in Constitutional Law I: The Fabric of a Constitution (Room 202)**

**Chairperson.** David Kenny

- Eoin Daly, Executive power and constitutional conventions in Ireland and the UK: The residual role of political sanctions post-codification
- Conor O'Mahony, Direct democracy and deference in same-sex marriage litigation
- John O'Dowd, In the constitutional hall of mirrors: Reflections of the Irish Constitution from abroad

**Session 4. Legal History I: Legacy and Hybridity (Room 206)**

**Chairperson.** Donal Coffey

- Mirela Krešić, Entitlement of female descendants to property of Croatian communal household
- Meryl Thomas, What have the Normans done for us? Community property and English disengagement
- Zülâl Muslu, The conflict of laws before ottoman mixed commercial courts in the late 19<sup>th</sup> century: Hybridity of the *lex fori*

**Session 5. European Perspectives in Key Legal Issues (Boardroom)**

**Chairperson.** Michael Doherty

- Anca Chirita, The Interplay of EU competition law and industrial property: A comparative perspective
- Carlo Panara, The new 'procedural' suit of the principle of subsidiarity in the Treaty of Lisbon
- Alain Couret & Bruno Dondero, The breakdown of negotiations in European judicial systems

**10.30 – 10.50 Break (tea & coffee in the reception area of Theatre 1)**

**10.50 – 12.20 Parallel Sessions**

**Session 6. The Protection of Rights I: Children's and Women's Rights (Room 019)**

**Chairperson.** Mathias Siems

- Rachel O'Toole, Practical implications for the family stemming from the respective positions of the child in the constitutions of Ireland and South Africa
- Aisling Parkes, A tale of two countries: A comparative analysis of initiatives taken to ensure the right of the child to be heard in family law proceedings in Ireland and New Zealand in accordance with Article 12 of the CRC
- Rayat Aysat, Veil or no veil? Are we on the right track?

**Session 7. The Criminal Trial: Evidence and Verdict (Room 020)**

**Chairperson.** Jennifer Schweppe

- Ilaria Colussi, When a silent witness helps criminal investigations: forensic DNA databases in Ireland, the UK, Italy and the Netherlands through virtuous and vitiated examples
- Flavia Albano, Scientific progress and the criminal trial in Italian and Irish law
- Mark Coen, Breaking the deadlock: Juries and verdicts

**Session 8. Issues in Constitutional Law II: Constitutional Adjudication and Judicial Review (Room 202)**

**Chairperson.** Marie-Luce Paris

- David Kenny, Overbreadth and proportionality in comparative perspective: Ireland, Canada and the UK
- David Prendergast, The case against judicial review of democratic procedures
- Niamh Connolly, An Irish perspective on judicial review of the constitutionality of laws in France

**Session 9. Legal History II: An Irish Perspective (Room 206)**

**Chairperson.** Meryl Thomas

- Laura Cahillane, The influence of the post-war European constitutions on the Constitution of the Irish Free State
- Donal Coffey, Comparative influences on the drafting of the 1937 Constitution
- Niamh Howlin, Uniquely Irish or typically colonial? Irish juries in the nineteenth and twentieth centuries

**12.20 – 1.30 Lunch (Boardroom)**

**1.30 – 3.00      Parallel Sessions**

**Session 10. The Protection of Rights II: Other Vulnerable Groups (Room 019)**

**Chairperson.** Ronagh McQuigg

- Keina Yoshida, Sexual and reproductive rights in Ireland and Latin America: A new comparative perspective
- Sarah Arduin, Enforcing the human rights perspective of disability in Ireland
- Claire Murray, The need for more than legislative reform: A comparative perspective on the difficulties associated with moving from a paternalistic to a rights-based model of mental health law

**Session 11. Offence and Punishment: A Comparative Perspective (Room 020)**

**Chairperson.** Ilaria Colussi

- Francesca Casarosa, Stalking: A comparison between the Italian and English legal systems in a civil prospective
- Jennifer Schweppe, Contextualising Punishment: Sentencing hate crimes from a comparative perspective
- Mary Rogan, Visiting committees and accountability in the Irish prison system: Proposals for reform

**Session 12. Life and Death in Law: Concepts and New Technologies (Room 202)**

**Chairperson.** Maria Cahill

- Andrea Mulligan, Revising the meaning of life: Legal protection of embryos in Ireland and Germany and assisted human reproduction
- Ciara Staunton, Regulating stem cell research through funding: Some lessons to be learned
- John Lombard, A legal definition of death: A comparison of the Irish and US approaches to defining death

**Session 13. Comparative Perspectives on International and European Law (Room 206)**

**Chairperson.** Bénédicte Sage-Fuller

- Eliana Augusti, Pasquale Fiore and the drafting Code of International Law
- James Gallen, Challenges to the rule of law: The experiences of Nepal and Timor-Leste
- Yauheni Bahdanau, The use of deadly force by state agents in Belarus and Strasbourg case law

**3.00 – 3.20      Break (tea & coffee in the reception area of Theatre 1)**

### **3.20 – 4.50            Parallel Sessions**

#### **Session 14. Equality and Anti-Discrimination: Concepts and Legislation (Room 019)**

**Chairperson.** Brice Dickson

- Andrew Flynn, A comparison of equality under the Irish and French Constitutions
- Verona O'Driscoll, Language legislation for Irish? The Northern Ireland experience in light of developments in Wales and Scotland
- Aisling de Paor, Genetic discrimination –An insight into the position in the US: A novel approach to anti-discrimination law

#### **Session 15. Regulatory Innovation: Comparisons in Challenging Areas (Room 020)**

**Chairperson.** Claire Murray tbc

- Stephanie Flynn, The proposed Irish regulation on the protection of animals: Comparative analysis
- Daniel Erskine, Re-examining the at-will doctrine of employment through comparison with statutory protections afforded to employees in Ireland and England
- Joseph Perkovich, Comparative Analysis of the Credit institutions (Stabilisation) Act 2010: The efficacy of national legislation in managing transnational financial problems

#### **Session 16. Regulatory Frameworks Compared: Examples in Tax Law and Insolvency Law (Room 202)**

**Chairperson.** Eoin Daly

- Bénédicte Sage-Fuller, The meaning of 'abuse or misuse' of Tax Provisions – s811 of the Taxes Consolidation Act 1997
- Joseph Spooner, Little Dorrit or the artful dodger? Reconstructing the Consumer Debtor in Ireland's 'Dickensian' personal debt laws
- Seán Ó'Conaill, Football clubs and insolvency: Same game different rules

#### **Session 17. EU Law: Comparative Perspectives on Directives' Implementation (Room 206)**

**Chairperson.** Carlo Panara

- Rory Hogan, How the PIAB Act 2003, Civil Liability and Courts Act 2004 and the EU Directive on ADR fit together to impact on civil and commercial litigation
- Michael Doherty, After the 'Flood': Protecting posted workers in the UK and Ireland
- Piotr Tereszkiwicz, Pre-contractual advice and responsible lending under Directive 2008/48/EC and its implementation in some member states

#### **Session 18. Challenging Issues in Comparative Law: Comparative Method(ology) and Comparative Legal Education (Boardroom)**

**Chairperson.** Conor O'Mahony

- Cliona Kelly, Ireland and the Europeanization of contract law
- Kanstantsin Dzehtsiarou, Comparative endeavours of the Strasbourg court
- Niamh Connolly, Legal education: Assessing a collaborative method for a comparative law module on European legal systems

**4.50 – 5.10 Break (tea & coffee in the reception area of Theatre 1)**

**5.10 – 6.30 Keynote Address by Professor H. Patrick Glenn, McGill University, Quebec, Canada**

Venue: Theatre 1, School of Law, Roebuck Castle, Belfield campus, UCD

***'Comparative Law and the Multi Valued Turn'***

Comparative law in the nineteenth and twentieth centuries was driven by an unsuccessful taxonomic project of classifying national legal systems into 'legal families.' The project was state-centric, not comparative, and never reached the stage of actual classification, given disputes over what qualified as a 'legal family.' In the meantime the jurisdictions of the world have become more obviously interdependent, and law is both practised and thought in an actively comparative manner, particularly within Europe. There has also been a 'multi valued turn' in formal logic, such that an 'included middle' has been opened between binary and opposing opposites or contradictions. Comparison and conciliation of laws therefore appears possible, as opposed to the separation and conflict of laws which have prevailed in the past.

H. Patrick Glenn is the Peter M. Laing Professor of Law at McGill University and a former Director of the McGill Institute of Comparative Law. He is a Member of the International Academy of Comparative Law and Fellow of the Royal Society of Canada. His publications include *Legal Traditions of the World* (4<sup>th</sup> ed., OUP, 2010) and *On Common Laws* (OUP, 2005). He is currently the Henry G. Schermers Fellow of the Hague Institute for the Internationalization of Law and the Netherlands Institute for Advanced Studies.

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**7.00 – 10.00 Dinner in the Talavera Restaurant, Radisson Blu, St Helen's Hotel, Stillorgan Road, Dublin 4**

Close of conference