

task, more often than not, of the Tribunal and in particular of its lawyer chairman.

The Industrial Tribunal is the one Tribunal which in practice carries out its function in a manner most akin to the traditional court. There is often (but certainly not always) legal representation, this being because the parties are an employer, who can generally afford it, and an employee who generally has trade union support. Even so in the Industrial Tribunal only 27 per cent of applicants (44 per cent of employers) had legal representation in 1989/1990. Legal representation at other Tribunals is far less (although sometimes non-legal representation is made available via Welfare Rights and similar organisations), this being because there is no State financial support to assist in the provision of legal representation. Legal aid is not generally available for Tribunal work. The only exception is in respect of the Mental Health Review Tribunal where for obvious reasons, the appellate would have considerable difficulty in representing himself.

The unavailability of legal aid in Tribunal work is not only relevant to representation by way of advocacy but also to pre-hearing preparation in all its aspects.

Procedural informality

In the Industrial Tribunal evidence is given on oath, there is pre-trial documentation which has to be prepared and which provides some form of pleading and the Tribunal does have a power (albeit rarely used) to make Orders as to costs in certain circumstances; but this Tribunal, in the way it has developed, is concerned with an adversarial contest and this is not — nor indeed is it intended that it should be — the case with most other Tribunals. Certainly in the Social Security and Medical Appeal Tribunals and the Mental Health Review Tribunals, an adversarial approach is very much discouraged.

Costs

The difficulties caused for Tribunals due to the unavailability of Legal Aid, and the consequential lack of legal representation, are, of course, difficulties which Tribunals readily assume. They are, however, exacerbated by the no-costs rule, and the resultant absence of any sanction

against the bringing of weak appeals. Unlike in normal civil litigation or, indeed, in the Industrial Tribunal, there is normally no scope for a settlement of the issues; and the absence in many Tribunals of any financial deterrent does result in some Tribunals having to hear many appeals which are not really of merit; or (part of the same syndrome) finding claimants do not appear despite the fact that it is the claimant who has set the appeal process in motion. This results not only in an expensive waste of manpower but general inefficiency. The listing problems are considerable.

Decision making

Another feature of the Tribunal system is that whereas the traditional civil judge only has to satisfy his own intellect in coming to his decision, the Tribunal's decision is that of a triumvirate, only one of whom is a lawyer. Expert Tribunal members, such as medical consultants, are clearly most qualified to make proper assessments on medical issues but might find it difficult to accept that as a result of the application of the law to their findings, a different conclusion follows to that which they had contemplated.

Tribunal Chairmen need to be competent and strong-minded and conscious of the philosophy flowing from the Franks Report and embodied in the various procedural regulations, that the Tribunal is, and must be seen to be, providing a service to the public.

Conclusions

Despite the weaknesses referred to above the Tribunal system does work and, it is submitted, has the confidence of the public. The informality, whilst perhaps making the law appear more in touch, does not always make the decision making process easy.

Recent changes in current trends in the traditional courts indicate a move away from formality. In assessing such changes, with the welfare of the public in mind, it might be relevant and worth while to consider the Tribunal experience.

The Polish Civil Code

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Introduction

The Polish Civil Code became law in Poland on 23 April 1964, its provisions came into force on 1 January 1965 and it is the basic legislative framework in Poland regulat-

ing civil law relations between all types of entities and individuals both in the business sector as well as in private life. The reason stems from the fact that the statute introducing the Civil Code in 1964 repealed several other pieces of legislation regulating business law relations (eg

a large part of the Commercial Code from 1934) and the principle of civil law equality for business and non-business entities became the norm.

Until 1990 the Civil Code contained a range of provisions favourable to the Treasury, state entities and co-operatives as well as broad powers for the Administration. As a result of the excision of various articles from the Civil Code by the Civil Code Amendment Act 1990 (Dziennik Ustaw [1990] No 55, item 321) the rights of the Administration were restricted and the rights of all persons in civil law relations were put on an equal footing. Presently work is in hand to modernise the Code and to supplement it particularly in the area of obligations with new institutions already found in practice.

The Civil Code is made up of over 1,000 articles and comprises four Books (1) General Provisions; (2) Ownership and Other Property Rights; (3) Obligations and (4) Inheritance. Despite the fact that Family Law belongs, in the opinion of learned academics, to the Civil Law, this area is governed separately in Poland by a statute from 25 June 1964 — the Family and Guardianship Code (Dziennik Ustaw [1964] No 9, item 59 as amended). Book One of the Civil Code, because of the general norms laid down therein, is essential reading when considering the provisions contained in the remaining sections of the Code. In turn, the provisions of each of the four Books cannot in practice be applied and understood when read separately from other articles contained in other statutes specifically regulating a particular issue at hand.

Definitions and provisions of Book One

The General Section of the Civil Code contains basic definitions and general norms which facilitate the proper understanding of the institutions and mechanisms of Polish civil law. The early articles in the Code are just such articles:

(i) 'this statute is not of retroactive force unless this appears from its meaning or purpose' (art 3) thereby tracing its origins to the Roman Law concept, 'lex retro non agit';

(ii) 'one cannot exercise a right which would be inconsistent with the socio-economic purpose of such a right or the principles of community life. Such an act or omission is not considered to be an exercise of a right and does not benefit from protection' (art 5). The purpose of this rule is to prevent the abuse of the law and in accordance with decisions of the Polish Courts, should be used as a shield and not a sword;

(iii) 'the burden of proving a fact falls on the party deriving legal consequences from this fact' (art 6). There are only a few isolated instances in Polish Law where the burden of proving shifts to the other party;

(iv) 'if a statute makes the validity of a legal transaction dependent on good or bad faith, good faith is presumed' (art 7). The presumption of good faith is a particularly important principle where the validity of a legal transaction depends on an individual's good or bad faith, for example in the case of possession or purchase of a thing.

In the General Section of the Code one finds definitions, inter alia, of natural and legal persons, juridical capacity and capacity to enter into legal transactions,

domicile, personal interests, representation, conditions, time frames and limitation periods. The provisions of Book One govern concepts important for ownership and property rights: property, real estate and things, components and appurtenances. It also defines the concept of business enterprise, legal transactions, the manner and form of concluding contracts including imperfect declarations of will and the way in which they can be perfected.

Every person from the moment of birth has legal capacity by which is meant that he is capable of being the subject of rights and obligations under the civil law (art 8). From the age of 13 a natural person has limited capacity to enter into legal transactions and upon reaching his or her majority (at the age of 18) acquires full legal capacity (arts 10 and 11). A person with limited capacity to enter into legal transactions may deal with his or her earnings and may conclude usual contracts in minor matters encountered in everyday life (arts 21 and 22). Legal persons acquire legal personality the moment they are established in accordance with relevant legal provisions and their own by-laws and generally after registration in the appropriate register. They conduct their affairs through their executory bodies in a manner envisaged by law and their by-laws drafted in accordance with legal regulations (arts 35, 37 and 38).

The domicile of a natural person is deemed to be the place where that person lives with the intention of permanently residing there. The basic principle is that a person can only have one domicile (arts 25 and 28). The seat (the equivalent of registered office under English Law) of a legal person is the place in which its main decision-making arm has its seat unless a statute or the by-laws of the legal person provide otherwise (art 41).

One of the provisions added to the Civil Code in 1990 introduced, rather unfortunately, a not too precise definition of a business enterprise. Within the meaning of this provision this is a group of material and non-material components designated for the realisation of specified commercial tasks encompassing inter alia the business name, trademarks and other markings individualising the business enterprise, the business' books, real estate and movables (chattels), patents, plans and designs, obligations, undertakings and rights stemming from licences and leases of occupied premises (art 55¹).

The Civil Code, quite independently of other legislation, ensures the protection of personal rights belonging to natural and legal persons but does not grant the right to bring an action for pecuniary damages in this regard for a person's own benefit. A natural person's personal rights are deemed to be health, liberty, honour, freedom of expression, name or pseudonym, ideas, confidentiality of correspondence, inviolability of one's home, intellectual, artistic, inventive and rational creativeness (arts 23, 24 and 43).

Basing itself on Roman Law a condition is deemed to be a future uncertain occurrence and a time frame a future certain occurrence. Subject to exceptions envisaged by statute or stemming from the propriety of a legal transaction, its effectiveness or cessation may be made dependent on a condition. However, an impossible condition as well as a condition inconsistent with the law or the principles of community life shall make the legal transaction null and void.

Under Polish law, subject to exceptions provided by statute property, claims are subject to limitation periods.

This means that upon the expiry of a limitation period the party against whom a claim is brought may avoid its satisfaction unless he renounced his right to take advantage of the limitation period. If, however, a debtor successfully raises the limitation defence in a court action, the court will not allow the case to be pursued on its merits but will reject the claim. Limitation periods in Poland are ten years but three years for claims connected with the performance of periodic services and claims connected with the running of a business enterprise. Statutes provide for separate limitation periods for certain types of activities and contracts.

Ownership and other property rights

Book Two of the Civil Code is in the language of Polish lawyers 'Property Law' which means a collection of civil law provisions on the establishment, content, amendment and cessation of ownership and other rights to things. This type of substantive right such as *ius in re* fundamentally differentiates itself from obligatory rights described in Book Three (*ius in personam*). First, these are rights exclusively relating to things and not to any type of interest or service such as an outstanding debt. Secondly, these are so called unimpeachable rights, that is, rights which are effective *erga omnes* and are not like an obligation which is only effective between a specific creditor and debtor. The most important characteristics of these rights worth mentioning is that property rights have priority over personal rights and follow the actual thing and may be enforced regardless of who is the present owner.

Within the meaning of the Civil Code only material objects, real estate and movables (chattels) are things. Real estate is deemed to be part of the surface of land constituting a separate object of ownership as well as buildings permanently affixed to land or a part of such a building if pursuant to specific provisions it constitutes an object of ownership quite separate from the land. Residential or business premises including a garage which is an integral part of a building may constitute a separate piece of real estate (arts 45, 46 and 136). The division of real estate into land, buildings and premises corresponds to Polish reality where often the land upon which a buildings stands, the building itself and the premises in such building often belong to different owners.

A component of a thing is everything which cannot be separated from the thing without damaging or fundamentally altering the whole thing or the part separated. Components of land include buildings, trees and other plants from the moment of planting. Components of real estate are also deemed to include rights connected with the ownership thereof. The basic principle, despite the existence of many exceptions, is that a component of a thing may not be a separate object of ownership and other property rights (arts 47-50).

However, accessories (appurtenances) are deemed to be movables (chattels) necessary for the use of the main thing in accordance with its purpose if in a factual nexus corresponding with its purpose. The principle is that a legal transaction affecting the main thing also affects the accessory unless otherwise provided (arts 51 and 52).

In Poland the principle of a closed list of property

rights exists and these rights are laid down by statute. These are ownership, perpetual usufruct and the so-called material rights such as usufruct, servitudes (which belong to the property or are personal), pledge, co-operative ownership of a residential apartment, co-operative right to business premises, right to a family home in a housing co-operative and a mortgage. With the exception of the last four rights listed all the other rights are regulated by the provisions of the Civil Code (art 244). The provisions of Book Two of the Civil Code also regulate the position of a possessor of a thing and the institution of possession as a state and not a right.

Ownership and perpetual usufruct

The Civil Code outlines the limits of benefitting from property rights, how they can be acquired and disposed of and how they can be protected. The main principle is that an owner may use and dispose of the thing to the exclusion of other persons in accordance with the socio-economic purpose of his right and in particular he may collect the fruits and other profits from the thing (art 140). An action may be brought against anyone acting in breach of this right to have the thing delivered to him (*rei vindicatio*) or to stop the breach (*actio negatoria*) (art 222).

Two matters relating to ownership should be mentioned at this stage. First, out of the two methods for acquiring ownership encountered in the continental legal systems (the German system where in order to transfer title to property two contracts are required, one to create a personal obligation and the second to transfer the estate, and the French system where it is sufficient to conclude one contract which transfers title), the Polish system has followed the French system. The conclusion of two consecutive contracts on the German model is only required where title to real estate is being transferred subject to a condition precedent or a time limitation (art 157). Moreover, contracts for the purchase of real estate must be in the form of a notarial deed.

Secondly, a thing (property) may be acquired by prescription. Under Polish law a person in exclusive possession may acquire title to real estate in this way if he remains in possession of the property in good faith for an uninterrupted period of 20 years and if in bad faith, then for an uninterrupted period of 30 years.

Land belonging to the Treasury, Local Authority or Local Authorities jointly and which is situated in a city may be transferred to a natural or legal person on a perpetual usufruct for a period of not less than 40 and not more than 39 years. The broad range of rights and obligations of a perpetual usufructuary give him a title which is very close to that of an absolute owner except that he must make a fixed annual payment to the owner of the land. The provisions on perpetual usufruct are governed to a large degree by the provisions of the Land Management and Expropriation of Real Estate Act dated 29 April 1985 (Dziennik Ustaw [1991] No 30, item 127).

Limited property rights

The relevant provisions on the transfer of ownership apply to the creation of limited property rights. A declaration by an owner that he is creating such a right over his property must be in the form of a notarial deed. A contract is required for the transfer or amendment of the

content of a limited property right over real estate and if such a right is not already registered in the Land and Mortgage Register then an appropriate amendment should be made to the register (arts 245 and 246).

Usufruct is a right to use a thing (property) and to collect profits therefrom. This is an undisposable right and the scope of the right may be determined by agreement (arts 252 and 254).

A land servitude exists where one real estate is burdened with a right in favour of the owner of another real estate to use the former or limit the ability to conduct specified activities or exercise specific rights. A personal servitude also depends on burdening real estate but in favour of a particular individual. It may not be disposed of nor may it be acquired by prescription (arts 285, 296 and 304).

Liens and mortgages are the only two forms of security in Poland regulated by statute. A lien may attach to movables (chattels) and disposable rights, whereas a mortgage affects real estate, limited property rights defined by statute and outstanding debts secured by a mortgage (so-called *subintabulat*).

The Civil Code regulates the institution of ordinary and banker's liens. A written contract is necessary for the establishment of a lien. A banker's lien arises the moment it is entered in the banking register and the subject of the lien may remain with the owner or a third party (arts 306 and 308).

The courts run registers for real estate and limited property rights pursuant to the Land and Mortgage Register Act dated 6 July 1982 (*Dziennik Ustaw* [1982] No 19, item 147 as amended). A mortgage arises the moment of registration in such a register.

Outside the Civil Code structure, the Co-operative Act dated 16 September 1982 (*Dziennik Ustaw* [1982] No 30, item 210 as amended) regulates ownership rights to all forms of co-operative housing and premises. Co-operative housing and premises are very popular in Poland as co-operatives were the main institutions engaged in the housing construction sector. Once construction is completed the co-operative remains the owner of the real estate but the members are entitled to an apartment, house or premises in the building. As a consequence of the last amendment to the Civil Code made on 25 October 1991 (*Dziennik Ustaw* [1991] No 115, item 496) as from 15 March 1992 all premises owned by virtue of membership of a co-operative may form the subject of a mortgage.

Obligations

Book Three of the Civil Code deals with obligations and is by far the longest part of the Code. It has its own general section which supplements Book One and a specific section regulating basic types of contracts.

The general section provides a definition for the term 'obligation'. This depends on a creditor being able to demand the performance of an obligation from a debtor and a debtor being obliged to satisfy such an obligation (art 353). It also contains some basic definitions essential for this area of law, inter alia, 'due diligence' (art 355), 'nominal sum' (art 358¹), 'adequate causal nexus' (art 361). This section also regulates the position where there are several debtors or creditors (joint and several, divis-

ible and indivisible obligations), the manner in which an obligation is to be performed as well as change of creditor or debtor, set-off, renewal or cancellation of a debt as well as protection of the creditor in the event of the debtor's insolvency. The articles of this part of the Code also regulate the concept of unjust enrichment whereby one party, without legal basis, obtained a material benefit at the expense of another party (art 405).

The Polish law on obligations recognises three fundamental forms of liability. Liability from delict (*ex delicto*), from contract (*ex contractu*) and from risk. The first form of liability is found in art 415 which provides that anyone who by his own fault caused harm to another is obliged to make good such damage. The second rule is found in art 471 which provides that a debtor is obliged to make good damage resulting from the non-performance or improper performance of the obligation unless this was a result of circumstances for which the debtor is not liable. The particulars and exceptions to this rule are found in the articles following art 471 under the collective heading 'consequences of non-performance of an obligation'. Liability based on risk is to be found in a few articles with regard to specific persons and situations and is an exception to the above mentioned principles. On this basis a person occupying premises may be liable for damage caused by an object falling out of the premises, a person in exclusive possession of a building for damage caused through its collapse or a person running a factory for damage caused by its equipment or installations (arts 433, 434 and 435).

The provisions of Book Three on contracts should be read in the light of the rules contained in the general section of the Code. They provide, inter alia, that a legal transaction not only brings about effects mentioned in the general section but also those provided by statute, the principles of community life and from established customs. One can invalidate a legal transaction through court proceedings where it is illegal or inconsistent with the principles of community life or where its purpose is the circumvention of the law (arts 57 and 58).

A declaration of will by the parties is required in order to make a valid legal transaction. With the exception of transactions stipulated in the Civil Code which require a declaration to be in a specified form (written or notarised) such a declaration may be expressed in any manner the parties feel is sufficient. A declaration made for the sake of appearance or as a result of a mistake, deception or threat may only be revoked within the periods set out by the Code.

The Civil Code sets out the manner in which contracts are to be concluded such as through participation at the signing or through exchange of correspondence. It also defines the concept of invitation to treat, offers and acceptance (of offers). An invitation to treat may be an unbinding presentation of information (eg price, display). An offer is where the other party is presented with a desire to conclude a contract with a declaration containing the essential terms of the contract and providing that other party with a specified period in which to reply. The date of acceptance of an offer is deemed to be the date on which notice of acceptance is received.

In the specific section of Book Three, one finds the following contracts defined: sale contracts (together with notes on warranties, guarantees and options), exchange (barter) contracts, supply contracts and contracts for the

supply of agricultural produce, contracts for specific work and construction contracts, leases and licences (including leases and licences of residential and business premises), lending for use, loans, bank accounts, conducting other peoples affairs without the requisite authority, agency and commission contracts, transportation and contracts of carriage, storage contracts, insurance contracts, civil law partnerships, guarantees, gifts, pensions and annuities, settlements and public promises. Book Three also contains articles on the liabilities, rights and obligations of persons running hotels and other similar institutions. In 1990 two further headings relating to transfers and securities were incorporated into the Civil Code framework.

Certain of the above-mentioned contracts are more particularly regulated by other statutes and the articles of the Civil Code only serve as a basic framework. This is the case with regard to contracts of carriage, bank accounts and insurance. If there are no such specific provisions in separate statutes, the provisions of the Civil Code insofar as no contrary intention appears from the provisions thereof are binding on the parties (*ius cogens*).

The contracts listed in the Code are 'named' contracts. The parties may, of course, conclude an un-named contract which is in accordance with their own intentions but whose terms may not be illegal or contrary to the principles of community life or be drafted in such a way as to circumvent the law.

Inheritance

Book Four of the Civil Code deals with the devolution of property upon death, the acquisition and division of a deceased's estate and the bringing of claims connected with succeeding to an inheritance. The provisions of this part of the Code did not require great changes as a result of the fundamental economic and political changes which took, and which still are, taking place in Poland. Only articles which sought to restrict a person's ability to inherit a farm or dispose of an estate (which included a farm) were removed from the Code.

The rights and obligations of a deceased person (with the exception of those which are closely connected with his person or which are transferred pursuant to specific rules) pass at the moment of death to one or more persons in accordance with the provisions of the Civil Code. An heir acquires an inheritance at the moment succession proceedings are commenced which *de facto* means from the date of death of the deceased. The decision of the court confirming the succession only serves officially to confirm this fact (arts 922, 924 and 925). An heir may accept the inheritance directly, accept an inheritance with the benefit of an inventory (thereby limiting liability) or may reject the inheritance. Unless an individual files a declaration rejecting or accepting the inheritance before the court or a notary within six months of learning of the inheritance, he or she is deemed to have accepted the inheritance, without limitation of any liability (arts 1012, 1015 and 1018).

In succession proceedings confirming an inheritance the court's role is to determine what proportion of the estate is to be taken by an individual heir irrespective of what property the estate comprises. Upon the conclusion

of such proceedings the heirs may divide the estate (ie who is to take what) by agreement or before the court.

A person who is no longer living at the moment succession proceedings are commenced or a legal person not in existence at such moment cannot succeed to a deceased's estate. The Civil Code only provides for two exceptions to this rule. A child which is conceived before the death of the deceased and which is born alive may be an heir. In the same vein a foundation which is appointed by the deceased in his will may succeed to the estate upon the death of the testator if established within two years of his death (art 927).

An heir may succeed on the basis of a will or pursuant to statute. If the deceased does not leave a will then the rules of intestacy apply. In first priority the children and the spouse take in equal shares with the proviso that the spouse may not receive less than one-quarter of the entire estate. If one of the deceased's children does not survive the commencement of succession proceedings his share of the estate passes to his children in equal shares.

If the deceased leaves no issue then his spouse, parents and brothers and sisters take jointly. The spouse's share in such situations amounts to one half of the estate. The share of each of the parents amounts to one-quarter of the share falling jointly on the parents and the brothers and sisters. The remainder of the estate is taken by the brothers and sisters in equal shares. If one of the parents does not survive the commencement of succession proceedings the share to which that parent would be entitled passes as to one-half to the surviving parent and as to the other half to the brothers and sisters of the deceased. If only the parents or only the brothers and sisters survive the deceased then they inherit in equal shares that which would have been taken by the parents and the brothers and sisters jointly. If any of the brothers or sisters does not survive the commencement of succession proceedings then his, her or their share in the deceased's estate will be divided amongst his, her or their issue (arts 931, 932, 933 and 934).

If there are no relatives, parents, brothers or sisters or issue of the brothers or sisters then the entire estate passes to the spouse. If there is no spouse either then the entire estate passes to the Treasury (art 935).

In certain very strictly defined situations an heir may be deemed by the court to be unworthy to succeed to the deceased's estate. An unworthy heir is excluded from succeeding as if he had not survived the commencement of succession proceedings (arts 928, 929 and 930).

Under the Code in the event of death an estate may only be disposed of by will. A will may only contain the instructions of one testator (arts 941 and 942). Thus joint or mutual wills are not permissible under Polish law. Specific and ordinary wills are distinguished. An ordinary will may be in the form of a notarial deed drawn up by a notary, handwritten by the testator, signed and dated or may be orally made in the presence of two witnesses before a local state body (arts 949, 950 and 951). The third type of will is very rarely encountered in practice. If there exists the fear that the testator could suddenly die or that as a result of particular circumstances the observance of the normal form of a will is impossible or unduly difficult the testator may make his final declaration orally in the joint presence of three witnesses (art 952).

The appointment of an heir in a will subject to a

condition or a time period is not in principle permitted. One can, however, lay down a condition or a time frame for a bequest to come into effect by which is meant obliging one's heir to perform a specific obligation (*zapis*) in favour of a particular individual (arts 968 and 975). A testator may also leave instructions which impose on an heir or beneficiary an obligation to perform or forbear from performing certain acts (*polecenie*) without making anyone a creditor (art 982).

The interests of those closest to the deceased are protected by the *legitim*. Relatives, the surviving spouse and the parents of the deceased who would have inherited pursuant to statute had the testator not left them out of his will may make a claim for a sum of money equivalent to one-half of their would be statutory entitlement. If the above are permanently unable to work or if a relative is a minor, then he or she can claim two-thirds of the value of his would be share in the estate (art 991). The deceased

may deprive his heirs of their right to a legitim by disinheriting them in the situations provided by the Code (art 1008).

Conclusion

The difficulty of explaining and condensing a long and complicated subject such as the Polish Civil Code into article form is that many, if not most, of the interesting and difficult issues cannot be discussed. We hope that what has been presented at least provides an insight into the workings and content of the Polish Civil Code and that the English version of the Civil Code together with a commentary which should be available next year will make the subject more comprehensible.

CONTINUING LEGAL EDUCATION

Validating Specialist Lawyer Skills

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Formal legal specialisation plans, like mandatory continuing legal education, had their origins in well publicised 1973 comments by United States Supreme Court Chief Justice Warren Burger in which he criticised the quality of trial advocacy and urged specialised training and certification for trial lawyers. The American Bar Association House of Delegates approved 'The Model Plan of Specialization' in August 1979, and through the years the ABA Standing Committee on Specialisation has promulgated Model Standards for 24 legal specialities. Each of the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia decides for itself whether or not to adopt a formal specialisation plan.

To respond to the Chief Justice's criticism and to provide greater information to legal consumers, states began to adopt specialisation plans in the mid-1970s. Until then, only patent, trademark, and admiralty lawyers had been allowed to hold themselves out as specialists because of the technical nature of practice in these areas and the great difficulty the consumer had in finding such lawyers. By 1992, only 15 states had adopted and implemented any specialisation plan (see Appendix A for the states and the specialisation areas in each). Some of these states have programmes for only a couple of specialities; none run

the gamut of all potential legal specialities. In addition, national organisations, such as the National Board of Trial Advocacy, offer specialisation certification. A few states merely adopt the certification of outside entities like the NBTA.

Under point 5 of the ABA Model and under all state plans, participation in a specialisation programme is voluntary. No lawyer is compelled to specialise, and no lawyer is required to be recognised as a specialist in order to practise in a particular speciality.

Although much of the United States legal profession is in fact specialised, relatively few US lawyers have opted to participate in specialisation plans even where they are available. Interest in specialisation certification has grown dramatically since the US Supreme Court decision in *Peel v Attorney Disciplinary Commission*, discussed below, upheld a lawyer's right to advertise specialty certification.

In 1992, only about 15,000 (2 per cent) of the approxi-

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