

O'HARE & BROWNE: **CIVIL LITIGATION**

15TH EDITION

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KEVIN BROWNE

SWEET & MAXWELL

Civil Litigation

15th Edition

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Preface

2012 and 2013 will be years of great change for civil litigation in England and Wales. The implementation of the Jackson reforms will mean that success fees and most ATE insurance premiums will cease to be recoverable between litigants and the success fees payable to lawyers in personal injury cases will be restricted to a sum not exceeding 25 per cent of the damages recovered, sometimes less. The RTA Protocol, which presently applies to half a million cases each year, may be extended to include higher value cases, including some non-RTA cases. There are proposals to close over 150 county courts and to provide fixed costs in all cases allocated to the fast track. October 2011 saw the start of the de-regulation of legal services. Non-lawyers are to be allowed to set up *alternative business structures* in order to supply legal services (although approvals of alternative business structures by the Law Society will not begin until 2012). The Co-op is hoping to dominate the de-regulated market in legal services as soon as it can.

Lawyers and the legal press often criticise these changes as being likely to restrict access to justice for many claimants. The first such claimants to suffer will be those whose cases are not overwhelmingly strong: lawyers will cease to take on risky cases as readily as they have done in the past. In the cases they do take on, lawyers will receive substantially less remuneration than they previously received. Within a few years there may be fewer solicitors and barristers in practice and very much fewer of them will be self-employed. It may become more difficult to find a legal services provider and so the base costs of doing so may substantially rise. At this point, access to justice may be reduced for all claimants. De-regulating lawyers and de-skilling the work they do may solve some problems, but, sometimes, only at the expense of causing others.

These changes will increase the need for a straightforward account of the legal procedures which lawyers and litigants will have to deal with. We hope that this edition and future editions of this book will meet that need. It has always been our mission to explain, in down-to-earth language, basic procedural law covering most civil cases, and to point the reader towards those parts of the *White Book* which cover the more abstruse topics which may arise. With this edition *O'Hare & Browne* becomes available, not only on paper, but also electronically, via the internet. The online edition will permit readers to search the text for key words, case names and the like.

This is our fifteenth edition. We always endeavour to describe the law as it currently is without too much reference to where it has come from. However, some topics can only be explained by reference to their (usually chaotic) history. The prime example of that in this edition is the law of interest (Ch.3). Other

sections of the book which have been substantially revamped in this edition include Ch.2, the new professional conduct rules, Ch.12, concerning skeleton arguments, Ch.24, to include the RTA Protocol and Chs 22 and 30 concerning e-disclosure. Some topics have become less important than previously (for example, legal aid practice) and for these we now invite the reader to “consult earlier editions of this book”.

We hope you will find this text of value. As before we have prepared it with the aid, support and tolerance of our families, who would much prefer us to do something more useful to them, such as mowing the lawn again or helping with the cooking and washing up. John would like to pay tribute to Alison for all the generosity towards him that she has again shown, and to thank Alex for sorting out the computer glitches which John so regularly suffered. Kevin would like to thank Mary, Tom and Laurie for their love, support and inspiration.

We have endeavoured to state the law as at August 1, 2011. However, some problems and delays which occurred at the printing stages enabled us to make some further updates, including the changes to the CPR which come into force in October 2011.

John O’Hare

Kevin Browne

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