

THE HIGH COURT

[2015 No. 4888P]

BETWEEN

DENIS O'BRIEN

PLAINTIFF

AND

THE CLERK OF DÁIL ÉIREANN, SEAN BARRETT, JOE CAREY, JOHN HALLIGAN, MARTIN HEYDON, PAUL KEHOE, JOHN LYONS,
DINNY MCGINLEY, SEAN O'FEARGHAIL, AENGUS Ó SNODAIGH AND EMMET STAGG

(MEMBERS OF THE COMMITTEE ON PROCEDURE AND PRIVILEGES OF DÁIL ÉIREANN), IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 3rd day of November, 2016

Introduction

1. Two questions arise for consideration on this application.
2. The first is whether evidence from the distinguished American constitutional law expert Professor Laurence Tribe, which the plaintiff wishes to adduce, is admissible on the trial of this action.
3. If that question is answered in favour of the plaintiff, is such evidence "*reasonably required to enable the court to determine the proceedings*"? (O.36, r.58(1) of the Rules of the Superior Courts). Unless that question is answered in the affirmative the plaintiff will not be entitled to adduce the evidence.
4. These matters fall to be considered in the context of the issues which the court will have to decide at trial. In order to identify these issues, I turn to a consideration of the pleadings which have been exchanged between the parties.

The Statement of Claim

5. In his amended statement of claim delivered on 14th July, 2015 the plaintiff alleges as follows:-

"1. The plaintiff is a citizen of the State. He is a businessman with extensive investments across several sectors including international telecoms, radio, media, property, aircraft leasing, golf, recruitment, fuel import and supply, hotels and industrial services and other interests. He resides at Apartment 401, White Mansions, Ghar-id-dud St, Sliema, slm 1573, Malta.

2. As a citizen of the State, the plaintiff has a constitutional right of privacy which extends to, and includes, the privacy and confidentiality of information pertaining to his banking affairs. This right of privacy and confidentiality also exists under the common law, under Statute and under the European Convention on Human Rights and Fundamental Freedoms as incorporated into the domestic law of the State by the European Convention on Human Rights Act 2003.

3. As a citizen of the State, the plaintiff has a constitutional right of access to the Courts established by the Constitution. This right of access to the Courts also exists under the European Convention on Human Rights and Fundamental Freedoms to which domestic effect is given by the European Convention on Human Rights Act 2003.

The Defendant

4. The first named defendant is the Clerk of Dáil Éireann and is joined in a representative capacity as representing the members of Dáil Éireann.

5. The second through to the eleventh named defendants are the members of the Committee on Procedure and Privileges of Dáil Éireann.

6. The twelfth named defendant is the juristic person liable to ensure that the Oireachtas does not interfere with the courts in a purely judicial domain.

7. The thirteenth named defendant is the Law Officer of the State designated by the Constitution of Ireland. The said defendant is joined herein for the purpose of effecting service upon the twelfth named defendant.

The Plaintiff's proceedings against Radio Teilifís Éireann

8. On or about 29th April, 2015, the plaintiff received a letter from Radio Teilifís Éireann (RTE), dated 28th April, 2015, making a number of assertions regarding his private and confidential banking arrangements and facilities with the Irish Bank Resolution Corporation Ltd (IBRC). The letter sought a number of confirmations and ultimately advised of its intention to broadcast information concerning the plaintiff's private and confidential banking affairs in a broadcast scheduled for transmission on 1st May, 2015. The plaintiff did not provide this information to RTE. Nor was it provided by anyone acting on the plaintiff's behalf or with his permission or authority.

9. On 30th April, 2015, the plaintiff exercised his right of access to the Courts and issued proceedings entitled *Denis O'Brien v. Radio Teilifís Éireann* [2015 No. 3350P], to protect the confidentiality of the said information.

10. In the plenary summons, the plaintiff sought, *inter alia*, an injunction restraining RTE, its servants or agents or otherwise whosoever from making any use whatsoever (and in particular from making publication of):-

- (a) any confidential documentation or information identifying or tending to identify or providing details of or relating to the plaintiff's banking arrangements with IBRC;
- (b) any confidential documentation or information identifying or tending to identify or providing details of or relating to any transactions on the plaintiff's personal accounts with IBRC;
- (c) any confidential documentation or information identifying or tending to identify or providing details of or relating to the terms of the plaintiff's facilities with IBRC;
- (d) any confidential documentation or information identifying or tending to identify the plaintiff's negotiations with IBRC regarding the terms of his facilities.

11. Wrongfully, and in breach of the plaintiff's constitutional right to have the said justiciable controversy determined by the courts of the State, and in breach of Article 6 and of Articles 34-37 inclusive of the Constitution, which vest in the courts of the State the sole and exclusive right to determine the said justiciable controversy, the Oireachtas interfered in the operation of the Courts in its purely judicial domain by substantially determining the said justiciable controversy before the matter had been determined by the courts."

6. The statement of claim then sets out the particulars of wrongdoing alleged against the defendants. This is what it says:-

"(a) On 30th April, 2015, the plaintiff issued a notice of motion seeking interlocutory relief substantially in terms of the relief claimed in his plenary summons.

(b) The issue of the said proceedings and the said interlocutory application received widespread publicity in the broadcast and print media, both national and local, as well as on various social media and internet fora.

(c) Subsequent to the issue of the said proceedings and the said interlocutory application (but prior to the hearing of the said application), on 6th May, 2015, a Dáil deputy, Deputy Catherine Murphy, published details of the said confidential information during the course of a debate on a Private Members Motion on the Sale of Siteserv under parliamentary privilege in Dáil Éireann.

(d) The effect of the said publication was to interfere in the proceedings which were then pending before the courts and to determine in part the justiciable controversy then pending before the courts in the said proceedings. This was acknowledged by the plaintiff when his application for interlocutory relief came on for hearing before the High Court on 12th May, 2015.

(e) On 12th May, 2015, the High Court made an order restricting but not prohibiting reportage of the proceedings on terms agreed between the parties on the grounds that otherwise such reportage as would follow would render the plaintiff's application for injunctive relief moot.

(f) On 21st May, 2015, the High Court delivered judgment on the plaintiff's application in which it concluded that the plaintiff had established a convincing case that he would succeed in obtaining the reliefs claimed in the plenary summons at the full trial of the hearing. As damages would not be an adequate remedy, the High Court granted the plaintiff's application for an interlocutory injunction. The order of the court, which was drawn up and perfected on 21st May, 2015, granted the plaintiff an interlocutory injunction directed to the defendant its servants or agents or any person having notice of the injunction and restrained the publication of any confidential documentation or information identifying or tending to identify or providing details of or relating to the plaintiff's personal banking arrangements with IBRC. The terms of the said order specifically excluded the information disclosed by Deputy Catherine Murphy under parliamentary privilege in Dáil Éireann on 6th May, 2015.

(g) The grant of the said interlocutory injunction received widespread publicity in the broadcast and print media, both national and local, as well as in various social media and internet fora.

(h) Subsequent to, and in full knowledge of, the granting of the said interlocutory injunction, Deputy Catherine Murphy published further details of the said confidential information in Dáil Éireann under parliamentary privilege during the course of a debate on a motion on the disposal of shares in Aer Lingus on 27th May, 2015 and during the course of the reading of the first stage of the Comptroller & Auditor General Bill 2015 on 28th May, 2015.

(i) The effect of these utterances by Deputy Murphy under parliamentary privilege was to interfere yet further in the proceedings which were then before the courts and to determine further the justiciable controversy then pending before the courts in the said proceedings. The plaintiff was forced to concede this on 2nd June, 2015 when the High Court, on his application, varied the terms of the interlocutory injunction to reflect the loss of confidence (sic) in the information falling within the categories described in the schedule to the plenary summons occasioned by Deputy Murphy's utterances in Dáil Éireann on 27th May, 2015 and 28th May, 2015.

(j) On 2nd June, 2015 the defendant in the said proceedings, RTE, issued a notice of motion seeking *inter alia* the discharge and/or variation of the said interlocutory injunction, as a result of Deputy Murphy's utterances in Dáil Éireann on 27th May, 2015 and 28th May, 2015.

(k) The making of the said application received widespread publicity in the broadcast and print media, both national and local, as well as on various social media and internet fora.

(l) Subsequent to, and in full knowledge of, the granting of the said interlocutory injunction, the variation made on 2nd June, 2015, and of the application of RTE, Deputy Pearse Doherty published details of the said confidential information in Dáil Éireann on 9th June, 2015 under parliamentary privilege during the course of a debate on a motion on the Draft Commission of Investigation (Certain matters concerning transactions entered into by IBRC) order 2015.

(m) The effect of these utterances by Deputy Doherty under parliamentary privilege was to interfere yet further in the said proceedings and to determine yet further the justiciable controversy then pending before the courts in the said proceedings, a fact that the plaintiff was forced to concede when the application of RTE came on for hearing before the High Court on 10th June, 2015.

(n) On 10th June, 2015, the plaintiff was forced to concede that the substantial effect of the aforementioned utterances made by Dáil deputies under privilege in Dáil Éireann on 6th, 27th and 28th May, 2015 and 9th June, 2015 was to determine in whole or in large part the justiciable controversy then pending before the courts in the said proceedings. In fact, the entire of the script proposed to be published by RTE and the subject of the restraining order of the court thereby became publishable.

(o) On 12th June, 2015, the High Court delivered judgment on the application of RTE in which it varied the order of 21st May, 2015 to take account of the aforementioned interventions by Dáil deputies under privilege in Dáil Éireann. The High Court refused to vacate and/or discharge the said order on the grounds that the plaintiff had established a convincing case and that he was likely to succeed at a full trial of the proceedings and damages would not be an adequate remedy, notwithstanding that the plaintiff may already have sustained damage as a result of the aforementioned interventions by Dáil deputies under privilege in Dáil Éireann.

(p) By letter dated 20th May, 2015 to the Ceann Comhairle of Dáil Éireann the plaintiff complained that the statements made by Deputy Murphy under parliamentary privilege in Dáil Éireann on 6th May, 2015 were inaccurate and a clear abuse of privilege. The letter asked that steps be taken to ensure that parliamentary privilege would not be utilised to interfere in the justiciable controversy then pending before the courts in the said proceedings.

(q) By letter dated 28th May, 2015 to the Ceann Comhairle of Dáil Éireann the plaintiff pointed out that the statements made by Deputy Murphy under parliamentary privilege in Dáil Éireann on 28th May, 2015 clearly and knowingly breached the terms of the injunction made by the High Court on 21st May, 2015 and were accordingly a clear abuse of privilege designed to frustrate the said order and to usurp the function of the court. The letter asked that steps be taken to ensure that parliamentary privilege would not be utilised to interfere in the justiciable controversy then pending before the courts in the said proceedings.

(r) By letter dated 29th May, 2015 to the Ceann Comhairle of Dáil Éireann the plaintiff pointed out that the statements made by Deputy Murphy under parliamentary privilege in Dáil Éireann on 27th and 28th May, 2015 clearly and knowingly breached the terms of the injunction made by the High Court on 21st May, 2015 and were accordingly a clear abuse of privilege designed to frustrate the said order and usurp the function of the courts. The letter asked that steps be taken to ensure that parliamentary privilege would not be utilised to interfere in the justiciable controversy then pending before the courts in the said proceedings.

(s) On 11th June, 2015, the plaintiff learned from a report in the online section of the Irish Times newspaper that his complaints in respect of the statements made by Deputy Murphy under parliamentary privilege in Dáil Éireann on 27th and 28th May, 2015 had been rejected by the Committee on Procedure and Privileges. The plaintiff received no official communication from the Committee on that date, either before or after the said news report.

(t) By letter dated 15th June, 2015 to the Ceann Comhairle, the plaintiff (not having received the letters from the Committee bearing the same date and referred to below) complained that he had learned from the media that his complaints in respect of the statements made by Deputy Murphy under parliamentary privilege in Dáil Éireann on 27th and 28th May, 2015 had been rejected. The letter outlined in detail his complaints in respect of Deputy Murphy and went on to complain about the statements made by Deputy Doherty in Dáil Éireann on 9th June, 2015. The letter asked that steps be taken to ensure that parliamentary privilege would not be utilised to interfere in the justiciable controversy then pending before the courts in the said proceedings.

(u) By letter dated 15th June, 2015 to the plaintiff, the Committee on Procedure and Privileges of Dáil Éireann informed him that it had considered his letter of 20th May, 2015 at its meeting of 10th June, 2015 and had concluded that Deputy Murphy had not abused parliamentary privilege on 6th May, 2015.

(v) By a further letter dated 15th June, 2015 to the plaintiff, the Committee on Procedure and Privileges of Dáil Éireann informed him that it had considered his letters of 28th and 29th May, 2015 at its meeting of 10th June, 2015 and had concluded, *inter alia*, that Deputy Murphy had not abused parliamentary privilege, that her comments were a justifiable expression of free speech by a parliamentarian and that she did not breach standing order 57(3) the sub judice rule, as the utterances made by Deputy Murphy *'were made on the floor of the house, in a responsible manner, in good faith and as part of the legislative process'*.

(w) By letter dated 17th June, 2015 in response to the plaintiff's letter of 15th June, the Acting Clerk of the Dáil informed him that his complaint in respect of the utterances of Deputy Murphy on 27th and 28th May, 2015 had been definitively determined by the Committee on Procedure and Privileges which had issued its findings to him by letter dated 15th June, 2015. The letter also stated that the plaintiff's complaint regarding the actions of Deputy Doherty on 9th June, 2015 had been referred to the Committee on Procedure and Privileges for its consideration.

(x) The Committee on Procedure and Privileges did not, insofar as the plaintiff is aware, invite or receive any submission from Deputy Murphy in relation to the plaintiff's complaint. If it did the plaintiff was given no opportunity to consider, respond to or test same.

(y) The Committee on Procedure and Privileges did not furnish the plaintiff with the detailed legal and procedural advice which it states that it received in connection with his complaint for the purposes of submission, comment or observation by the plaintiff.

(z) By further letter dated 3rd July, 2015 to the plaintiff, the Committee on Procedure and Privileges of Dáil Éireann, informed him that it had considered his letter of 15th June, 2015, insofar as it related to the complaint made in respect of Deputy Doherty, at its meeting of 1st July, 2015 and had concluded *inter alia* that Deputy Doherty's *'exercise of his constitutional freedom of speech in Dáil Éireann fell outside the scope of, and did not contravene, Standing Order 57 by which Standing Order, among others, the internal workings of the house with regard to debate are regulated'*.

(aa) The Committee on Procedure and Privileges of Dáil Éireann did not, insofar as the plaintiff is aware, invite or receive any submission from Deputy Doherty in relation to the plaintiff's complaint. If it did, the plaintiff was given no opportunity to consider, respond to or test same."

7. In the remaining part of the amended statement of claim the plaintiff asserts that in breach of his rights of access to the courts in pursuit of his right to privacy and confidentiality of information pertaining to his banking affairs and in breach of the principle of the separation of powers, the Oireachtas interfered in the operation of the court in its purely judicial domain by substantially determining the justiciable controversy before the matter had been determined by the courts. He also asserts that the Committee on Procedure and Privileges erred in law in its interpretation of Standing Order 57(3). In addition, he alleges that the finding that Deputy Murphy had acted in good faith and in a responsible manner was made either on the basis of no evidence, or if there was evidence, in breach of the plaintiff's right to fair procedures because he was given no opportunity to consider, respond to or test same.

8. All of the substantive reliefs claimed in these proceedings are declaratory. They are as follows:-

"(a) A declaration that the effect of Article 6 and of Articles 34-37 inclusive of the Constitution is to vest in the Courts the exclusive right to determine the justiciable controversy arising in the proceedings entitled *Denis O'Brien v. Radio Teilifís Éireann*, [2015 No. 3350P].

(b) A declaration that the substantial effect of various utterances made by Dáil deputies under privilege in Dáil Éireann on 6th, 27th and 28th May, 2015 and 9th June, 2015 was to determine in whole or in large part the justiciable controversy then pending before the courts in the proceedings entitled *Denis O'Brien v. Radio Teilifís Éireann* [2015 No. 3350P].

(c) A declaration that, by causing and permitting the said utterances to be made, and by failing to enforce the provisions of Standing Order 57, the defendants are guilty of an unwarranted interference with the operation of the courts in a purely judicial domain.

(d) A declaration that, in causing and permitting the said utterances to be made, the defendants have caused or permitted a breach of the plaintiff's rights pursuant to Article 40.3.1 of the Constitution.

(e) A declaration that the finding of the Committee on Procedure and Privileges of Dáil Éireann of 15th June, 2015 was:-

(i) based on an erroneous interpretation of Standing Order 57(3) and or

(ii) made without any evidence to support the finding that Deputy Murphy had acted in a responsible manner and in good faith and or

(iii) in breach of the plaintiff's right to fair procedures.

(f) A declaration that the finding of the Committee on Procedure and Privileges of Dáil Éireann of 1st July, 2015 was

(i) based on an erroneous interpretation of Standing Order 57(3) and or

(ii) in breach of the plaintiff's right to fair procedures."

9. I have set out the amended statement of claim extensively because it demonstrates that the case which the plaintiff will seek to make at trial is rooted exclusively in his alleged entitlements under Irish law. Those rights are alleged to arise from the Constitution and Irish statute or common law.

The Defences

10. Two defences have been delivered to the proceedings. The first was delivered on behalf of the first to the eleventh defendants and the second on behalf of the twelfth and thirteenth. It is not necessary to set out these defences in an extensive way. It is sufficient to identify the principal points of defence which they raise.

11. The first to eleventh defendants contend by way of preliminary objection that insofar as the plaintiff asks the court to review or adjudicate upon matters which are assigned to the Oireachtas under the Constitution, his claim is not justiciable. Furthermore, insofar as he seeks to have this Court review and or adjudicate upon the utterances of members of the Dáil or the carrying out by the Committee on Procedure and Privileges of its functions in respect of such utterances, the plaintiff's claim is not justiciable by reason of Articles 15.10 to 15.13 of the Constitution. There is a denial that the Oireachtas or such parts of it as are joined in the proceedings interfered in the operation of the courts in their judicial domain and it is further denied that there was any breach of the principle of the separation of powers, the plaintiffs right of access to the courts, his right to an effective remedy and/or his right to privacy.

12. These defendants also assert that the Committee on Procedure and Privileges has exclusive jurisdiction and authority to consider and examine complaints in respect of the utterances of members of Dáil Éireann under parliamentary privilege. They deny that that Committee erred in law in its interpretation of the relevant standing orders but in any event the plaintiff's claim in this regard is, it is said, not justiciable.

13. The remaining defendants raise a number of preliminary matters which are peculiar to them and then deal with a number of general defences. However, without prejudice to all of those items, there is a plea that by virtue of the express provisions of the Constitution and the separation of powers between the Oireachtas and the judiciary, the complaints made by the plaintiff are not justiciable before the courts insofar as they concern utterances made in Dáil Éireann. They contend that the right and duty of the courts to intervene in the affairs of the Oireachtas does not extend to a review of the internal debating practices of the Oireachtas or the conduct of a house or members of the House in making parliamentary utterances. They also deny that the plaintiff's right to a private life was breached or that he was denied his right of access to the courts or to an effective remedy.

14. This short summary of the defences demonstrates that in defending these proceedings the defendants will be doing so by reference to issues of Irish law.

15. It is clear that no issue of foreign law will fall to be decided in this case.

Pre-Trial Preparation

16. In advance of the trial, certain procedures were agreed to and directed by the court. They included the exchange of written submissions. As of the date of hearing only the plaintiff's submissions have been delivered. They run to some 64 pages with a minimal reference to United States jurisprudence. There is only one reference in the substantive text to a United States authority. It is to the judgment of Chief Justice Burger in *United States v. Brewster* 408 US 501 (1972). That reference is to be found at para. 109. Four other United States cases are referred to, all in footnotes. They are to be found on pp. 12 and 26 of the submissions. A fair reading of the submissions demonstrates that minimal reliance is being placed upon United States jurisprudence.

17. An agreed statement of facts has been prepared. A consideration of it raises no issue of foreign law. I am informed that it was never anticipated that the trial would proceed solely by reference to it. It was always understood that the plaintiff himself might give evidence. In due course no doubt a proof of his evidence will be forthcoming.

Enter Professor Tribe

18. On 14th October, 2016 the plaintiff's solicitor wrote to the defendant solicitors and stated inter alia as follows:-

"Further, the introduction of the new Conduct of Trials Rules (S.I. No. 254/2016) brings with it new obligations in relation to the exchange of expert reports (O.39, r.58)(2). In the circumstances, we propose seeking directions of the President as to the timeframe for the exchange of expert reports as our client intends to call Prof. Laurence Tribe to give expert evidence on his behalf. We also propose to seek directions as to the exchange of witness statements in circumstances where it is proposed that the plaintiff would be called to give evidence."

That letter was sent on the afternoon of Friday, 14th October, 2016 and gave notice that it was the intention of the plaintiff to seek directions from me on the following Monday at 2.00pm.

Not surprisingly that elicited a complaint concerning what was described as the truncated notice of the application, but, in any event asked for an explanation as to what issues in the proceedings Professor Tribe would be addressing.

19. On Monday, 17th October, the matter was first mentioned before me at a time when I had not seen Prof. Tribe's proof of evidence. At the short hearing which took place, I directed that the plaintiff should indicate his reasons for calling Prof. Tribe as a witness, the issues or areas that his evidence would seek to address and an outline of the opinion which it was hoped he would express.

20. Since then a draft of Prof. Tribe's proof of evidence has been circulated and I have had an opportunity of perusing it.

21. All of the defendants strenuously object to the evidence on the basis that, having regard to the questions that have to be decided in this case, Prof. Tribe's evidence is inadmissible. Even if it is admissible it is said that it falls foul of the new Conduct of Trials Rules which came into effect on 1st October, 2016. That is so because it is said that this evidence is not reasonably required to enable the court to determine the proceedings.

22. Obviously if I answer the first question in a manner adverse to the plaintiff it will not be necessary to consider the second one.

Admissibility

23. It is clear from the statement of claim that the plaintiff seeks to assert rights which he says he enjoys under Irish law. They principally derive from the Irish Constitution but his statement of claim also refers to the common law and statute law with particular reference to the European Convention on Human Rights Act 2003. Thus, the court will be called upon to make determinations on matters of Irish law.

24. It is well settled that expert evidence is not admissible in respect of any matter of domestic law (see McGrath *Evidence* 2nd Ed., para. 692 and the cases cited). Thus it is not open to the court to receive expert testimony from anyone in respect of the law of this State. That is so regardless of how eminent such an expert might be.

25. Professor Tribe makes it clear in his draft proof of evidence that he does not purport to give evidence of Irish law or to be an expert on Irish law. Even if he were, the evidence would not be admissible.

26. The matter is, of course, different if a question of foreign law falls to be determined in Irish proceedings. In such event, the court can and does receive expert testimony from foreign lawyers on the topic. If they disagree the court is placed in the position of having to decide what the foreign law is as a matter of fact. Thus, in *O'Callaghan v. O'Sullivan* [1925] 1 I.R.90 it was held that where an issue of foreign law arises it *"must be proved as a fact in the particular case, and ... it must be so proved by the testimony and opinion of competent expert witnesses shown to possess the skill and knowledge, scientific or empirical, required for stating, expounding and interpreting that law"* (per Kennedy C.J.).

That approach has been followed in many subsequent decisions.

27. Prof. Tribe has been Professor of Constitutional Law at Harvard Law School where he has taught since 1968 and he is the Carl M. Loeb University Professor at Harvard University. He is so well known in the world of the constitutional law of the United States that it is not necessary to set out his impressive curriculum vitae save to record that he helped write the constitutions of South Africa, the Czech Republic and the Marshall Islands.

28. There can be no doubt but that if an Irish court were called upon to decide an issue of American constitutional law Prof. Tribe would be admirably qualified to give evidence in respect of it and furthermore his evidence would be admissible. But there is no issue of American constitutional law which falls for determination in these proceedings. On the contrary, this Court will be asked to adjudicate upon the plaintiff's rights under the law of this State.

29. In many cases involving a consideration of the Irish Constitution it is by no means unusual to have cited, as persuasive authorities, decisions of the courts of other states. In many instances decisions of the United States courts are called in aid. In such cases the relevant passages from such judgments are drawn to the attention of the trial judge for consideration as a persuasive

authority. In such an instance it has never been permissible to adduce evidence from an expert from such jurisdiction to give his opinion as to what the law in that jurisdiction might be.

30. In the course of his draft proof, Prof. Tribe goes far beyond the small number of American cases cited in the plaintiff's written submissions. Indeed, it is also his intention to refer to decisions from the United Kingdom, Australia, New Zealand and South Africa. No issue of law from those jurisdictions arises to be decided as a matter of fact in this case either.

31. It is also to be noted that although Prof. Tribe admits that he is not in a position to give evidence of Irish law he does make observations about it in the course of his draft proof of evidence.

32. Counsel on behalf of the plaintiff was unable to cite any authority in support of the proposition that Prof. Tribe's evidence was admissible. He sought to argue that this is a "unique and important" case raising issues of Irish law which have never fallen to be decided before. All cases are unique to their own facts and important to the litigants. This case does raise interesting and important questions and the court may well have to decide issues not adjudicated on before, but that does not provide any justification for admitting this evidence. On the question of principle I hold that Prof. Tribe's evidence is inadmissible.

33. Having decided that issue, there is also a very practical question which would present itself if Prof. Tribe's evidence were to be admitted. Counsel for the plaintiff indicated that in such circumstances it would be open to the defendants to call counter evidence from a United States constitutional expert. Given that Prof. Tribe also wishes to rely on decisions from the United Kingdom, Australia, New Zealand and South African courts it would surely follow that evidence from experts from each of those jurisdictions would also be entitled to give evidence on both sides. In the conduct of a trial involving solely issues of Irish law this would be absurd.

34. If the plaintiff wishes, United States decisions may be cited by him and advanced as persuasive authority to which this Court should have regard. That is a course which is frequently followed. There is no reason to depart from it.

Order 36, rule 58

35. Having held that Prof. Tribe's evidence is not admissible it is not necessary for me to deal with the second objection. However, since this is the first time that rule 58 of the Conduct of Trials Rules has been raised, I will say a few words about it.

36. This rule gives a measure of badly needed statutory control to the Court in respect of expert evidence. The various decisions in recent years where judges both at trial and at appellate level have commented adversely on the number, extent and costs of experts, demonstrates this need. Under this rule the court is entitled to restrict such evidence to that which is reasonably required to enable the court to determine the proceedings. No longer are parties free to call expert witnesses willy nilly. The court can determine what is needed and restrict expert testimony accordingly.

37. Having regard to the issues which will fall to be decided in this case I cannot see how the proposed evidence of Prof. Tribe could be said to be required at all, still less reasonably required, to enable the court to determine the plaintiff's claim.

38. As there is no reasonable requirement for this evidence it follows that even if it were to be regarded as admissible it should, nonetheless, be disallowed.

Disposal

39. On both issues I find against the plaintiff. I rule that Prof. Tribe's evidence may not be adduced at the forthcoming trial.