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# THE LAW...

## Recent case law

### Refusal of 'widow's pension' to surviving civil partner was contrary to the Constitution

**O'Meara v Minister for Social Protection [2024]**  
IESC 1 (Supreme Court, Hogan J, O'Donnell J, Woulfe J, 22 January 2024)

Supreme Court: (a) grants a declaration that the statutory restriction on Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension (WCP) to widows, widowers and surviving civil partners was unconstitutional insofar as it did not extend to a surviving co-habitant who was the father of three children with a deceased partner; (b) quashes a decision of the Minister for Social Protection to refuse WCP to the applicant; but (c) refuses to overturn a previous statement of the Supreme Court that a family at Irish law was founded on the institution of marriage, on the grounds that it was not necessary for the determination of the case and that there still remained at law distinctions between marital families and non-marital families.

### Retrial ordered despite directed acquittal after exclusion of admission made to psychologist

**DPP v B.K. [2023] IESC 38 (Supreme Court, Murray J, 14 December 2023)**

Supreme Court, in supplemental judgment, orders the retrial of a woman accused of sexual assault and neglect of her children, where the court had previously determined that the trial judge had erred in excluding evidence of admissions made by the woman to a clinical psychologist giving rise to a directed acquittal, on the grounds that it was in the public interest that such serious offences be prosecuted, and that no prejudice would be suffered by her owing to any lapse of time.

### Prosecution needed to establish that there was no other reasonably possible source of HIV infection

**Director of Public Prosecutions v R.K. [2023]**  
IESC 36 (Supreme Court, O'Malley J, 14 December 2023)

Supreme Court allows appeal from Court of Appeal, and quashes conviction of man on a charge of knowingly infecting two women with HIV, on the grounds that: (a) the expert evidence from the prosecution should have been handled with more care in circumstances where the expert had initiated the investigation by Gardai, and had not given sufficient evidence concerning the subtype of HIV involved; and (b) the complainants had misled the expert in relation to their previous sexual history, in circumstances where it was necessary for the prosecution to establish that there was no other reasonably possible source of infection.

### Judicial appointments legislation was not an unconstitutional fetter on the Government's discretion

**In re Article 26 and the Judicial Appointments Commission Bill 2022 [2023] IESC 34 (Supreme Court, Dunne J, 8 December 2023)**

Supreme Court advises the President of Ireland that pending legislation concerning appointments to judicial office was in accordance with the constitution, on the grounds, inter alia, that: (a) the legislation did not require the government to nominate a person who was recommended by the proposed Judicial Appointments Commission, and it was thus not a fetter on the discretion of the executive; and (b) the Oireachtas was constitutionally obliged to legislate in respect for judicial eligibility, and was thus entitled to regulate the circumstances in which a candidate for judicial office was recommended by the government.

## Fire fighter was not ‘working’ for his employer while on standby

**Walsh v Kerry County Council [2023] IEHC 719 (High Court (General), Barr J, 15 December 2023)**

Court of Appeal dismisses an appeal on a point of law from the Labour Court, and affirms a determination that a fire fighter’s time spent on standby was not ‘working time’ as it did not objectively and significantly affect his ability to manage his time, business interests or social life.

## Use of ‘expressions of doubt’ in tax returns had not been sufficient to avoid imposition of penalties

**Thornton v Revenue Commissioners [2023] IECA 316 (Court of Appeal (civil), Allen J, 21 December 2023)**

Court of Appeal dismisses appeal from High Court, and affirms in respect of cases stated from the Tax Appeals Commission, inter alia: (a) that dividend purchase transactions arising from a syndicate dealing with the British Virgin Islands did not amount to a ‘trade’ in financial instruments; (b) that dividend income received by appellants was not to be deemed not to have been received by them, where they sought to establish losses that could be set off against income tax; and (c) that the use of ‘expressions of doubt’ by some of the appellants in their tax returns was not sufficient to relieve them from the imposition of penalties in respect of the tax not paid, where the expressions did not sufficiently set out the doubt alleged to arise.

## Claim against architects to continue despite extensive delay

**Beggan v Deegan [2024] IECA 4 (Court of Appeal (civil), Noonan J, 11 January 2024)**

Court of Appeal, in proceedings relating to the alleged negligence of the defendants in both the design and building of a house which subsequently had structural defects, dismisses the appeal and affirms the order of the High Court refusing to dismiss the proceedings on the grounds of delay, despite finding that there had been both inordinate and inexcusable delay on the part of the plaintiffs, where the balance of justice lay in favour of refusal dismissal, given that the defendants failed to establish moderate prejudice which would render it unfair for the defendants to further defend the case.

## Playground equipment had been properly installed and maintained

**Hickey v Limerick City Council [2024] IEHC 10 (High Court (General), Bolger J, 11 January 2024)**

High Court dismisses claim for personal injury arising from a fall from ‘monkey bars’ in a playground, on the grounds that: (a) the defendants had complied with their obligations in the design, manufacture, installation and inspection of the equipment; and (b) evidence from an expert engineer that the monkey bars included inherent risks were reliant on authorities that were not properly identified to the court.

## Pledge agreements concerning 37 aircraft worth US\$2 billion were void

**In re GTLK Europe DAC; Moroney v Joint Stock Company State Transport Leasing Company [2023] IEHC 743 (High Court (General), Mulcahy J, 19 December 2023)**

High Court, in the course of the winding up of a company owning 37 aircraft worth over \$2 billion, grants a declaration that ‘pledge agreements’ to a connected company concerning the aircraft were void, on the grounds that: (a) the Irish courts had jurisdiction to determine the enforceability of the pledge agreements; (b) the pledge agreements had not been registered as a charge as required by legislation, and were therefore void; (c) the pledge agreements had not been authorised in accordance with the shareholders’ agreement; and (d) the pledge agreements amounted to a ‘fraudulent transfer’ in that they were a purported conveyance of property with the intention of hindering creditors in the recovery of their debts.