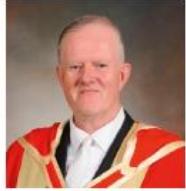


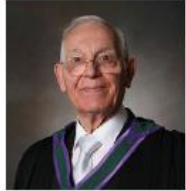
THE NOTARY OF IRELAND
LAW AND PRACTICE

EAMONN G. HALL
&
E RORY O'CONNOR

ABOUT THE AUTHORS



Dr Eamonn G Hall is a notary of Ireland, an examiner in constitutional law to the Law School of the Law Society of Ireland, Director of Education of the Faculty of Notaries Public in Ireland and Director of the Institute of Notarial Studies. He is the author of several published works and articles, nationally and internationally.



E. Rory O'Connor is a notary of Ireland and a former Dean of the Faculty of Notaries Public in Ireland. He is the author of several works on banking law and is the author of the first substantive book on notarial law and practice, *The Irish Notary* (1987), and joint author with Dr Hall of a supplement to that book (2007).

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THE NOTARY OF IRELAND

Writing is intertwined with the development of civilisation itself. When, in earlier times, writing was executed by an expert, such as a notary, the record so created assumed considerable significance. Expert writing, coupled with a knowledge of the law, may be stated to be the historical *raison d'être* of the notary.

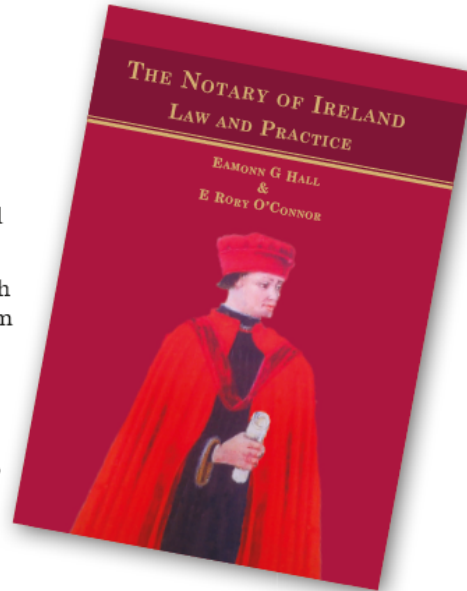
In 'early' times, the notary was entrusted with recording and publication in permanent form of the decrees and official communications of civil rulers, kings and emperors. Within the papal household, were men, described as apostolic notaries, whose function was to record and verify the decrees, dispensations, grants of faculties and letters of the Bishop of Rome.

To-day, in Ireland, the notary (the oldest of the three professions of practising lawyer) is recognised as sharing (in the context of the provision of legal services) many legal powers and functions similar to those of the solicitor and barrister with the exception of litigation. The notary's acts are universally recognised and received in international transactions.

The Notary of Ireland contains 552 pages, several illustrations, nineteen (19) chapters and eight (8) appendices together with a section on the history of the notary generally and with particular reference to Ireland.

There are also detailed chapters on the appointment of the notary in Ireland and his/her necessary qualifications for that public office; notarial accoutrements; oaths, affirmations and statutory declarations; deeds and wills; powers of attorney (general, special and enduring); bills of exchange; ship protests and legal developments in the European Union.

In addition, there are chapters on international conventions affecting the notary, anti-money laundering and terrorist financing legislation; intercountry adoption, electronic commerce; data protection (GDPR and the notary); company law; succession law (with particular reference to the European Union Succession Regulation and domestic law); child travel outside the State and the contribution of Roman Law to the jurisprudence of Ireland – conscious of the significant contribution of Roman law to the constitutional and jurisprudential framework of most Member States of the European Union.



The text of extant legislation (pertinent to the notary) of the parliament of the United Kingdom of Great Britain and Ireland up to 1922; the extant legislation of the Oireachtas (parliament) of Ireland (relevant to the notary) and the rulings and practice directions of the Chief Justice of Ireland (the principal regulator of the notary in Ireland) concerning the education, appointment and obligations of the notary in Ireland are included in the book. *The Notary of Ireland* also contains tables of legislation, judicial cases decided by international and the domestic courts of Ireland as well as a table of international conventions affecting the notary.

Finally, the authors provide specimen precedent documents, notarial certificates and texts of stamps which are intended to be a useful guide as to what should or might prudently be considered by the notary for inclusion in a particular instance – subject always to the critical faculty of the notary/lawyer as to what is appropriate in the relevant circumstances.

The Chief Justice of Ireland, The Hon Mr Justice Frank Clarke, in his *Foreword* to the book wrote:

[I]t is vital that notaries practising in Ireland maintain a reputation for the highest standards of competence and ethics so that transactions and documentation which require to be notarised can be trusted internationally.

I have no doubt that this new book ... will play a vital role in ensuring the continuance of the high reputation which the profession of notary enjoys in this jurisdiction.

The authors are due all our thanks for this impressive work.

While *The Notary of Ireland* will be of particular benefit to notaries and candidate notaries in Ireland, solicitors, barristers and lawyers generally should also benefit from the book as it sets out the law on oaths, affirmations and statutory declarations; data protection and the lawyer; anti-money laundering legislation, (as a notary is designated as a lawyer in that legislation together with the profession of solicitor and barrister); powers of attorney; the European Succession Regulation and domestic succession law; adoption law; electronic commerce law; child travel outside the State and company law.

Notaries and lawyers in jurisdictions beyond Ireland may also be interested in the book for comparative purposes or where they are dealing with legal matters with an Irish element. Notariats and jurisdictions (outside Ireland) may also be interested in how Ireland has developed a system of education for notaries at postgraduate level.

BOOK REVIEW

THE NOTARY OF IRELAND LAW AND PRACTICE

BY

EAMONN G HALL

AND

E RORY O'CONNOR

A textbook of this substance is a model of authoritative writing on the subject of notarial law and practice. Like all good textbooks it can be picked up and read from the back. Should one choose to do so we may begin with the biographical detail of the authors.

Their background as lawyers is impressive. They have devoted their long and successful careers to the pursuit of excellence in the practice, teaching and administration of law, not only as notaries but also as seasoned practitioners in the public and banking sectors.

What is striking about this subject is the pace of development over the past 30 years. Dr Hall, as Director of the Institute of Notarial Studies in Ireland, and E Rory O'Connor, as Dean Emeritus of the Faculty of Notaries Public in Ireland, have both witnessed the dramatic change that has taken place since Finlay CJ took an interest in establishing a compass for the notary in Ireland. This book is a testimony not only to their recording of those changes but also their role in bringing them about.

The Faculty was instituted in 1981 and two of the original directors are still active, namely David Walsh, the present Registrar, and Leo Mangan, currently President of the World Organisation of Notaries. The first book on the subject of the Irish notary was written by E Rory O'Connor in 1987 and a supplement was added in 2007 by the present authors. Since 1987 the number of notaries practising in Ireland has tripled.

Books of knowledge must today compete with Google and the omniscient internet but we have here a work that has shape and feel. It has also imbued the subject with context and sense.

Research, so often, begins with the index. This is then supported by the appendices and in this case they provide a comprehensive background to the subject.

The principal legislation is still the Public Notaries (Ireland) Act 1821. To this day a public notary must practise within a limited district only. The same cannot be said of our colleagues in England/Wales or Scotland. Indeed, our Scottish colleagues take the view that their notaries may conduct business anywhere.

The role of the chief justice is examined. The role of the Chief Justice can be found principally in Order 127 of the Rules of the Superior Courts. In 1994 Finlay CJ introduced the certificate of competency. In January 2006 Murray CJ removed the requirement to prove 'need' and in September of the same year he ruled that in order to be admitted as a notary the petitioner is required to observe the code of conduct of the Faculty.

Before the code of conduct for notaries is examined in Appendix 4, the authors take us through Rulings of Chief Justices. These relate to the appointment of notaries in Ireland from the year 2000 to 2017. The clear regard and high esteem of the Chief Justices for the profession is evident from the judgements handed down, especially notable in the comments of Denham CJ. Faithful account is given to the reporting of these judgements as they are not to be found anywhere else. A common strand throughout *obiter dicta* is the lamentable absence of modern legislation. There are many, however, who would prefer to see the attention of our legislators focused elsewhere.

The code of conduct for notaries was drawn up originally in 1986 and has been improved upon since then. The Professional Purposes Committee of the Faculty is an active body within the organisation. It would be fair to say that its role in maintaining regulation will be greatly enhanced by the clear elucidation of the terms of the code in this publication.

The international conventions and their incorporation into Irish law are set out in Appendix 6. The Hague Convention of October 1961 came into force in Ireland in March 1999. The simplification of the requirements for presenting certain public documents in the European Union are clearly set out in the 2016 Regulation, shortly to become a matter of our law.

From a practitioners point of view, the ‘go to’ section of the book is Appendix 7. This contains specimen precedent documents, notarial certificates, stamps and notarial records. It is worth quoting from the introductory note:

It is not an over exaggeration to state that each notarial function carried out by an individual Irish notary has the potential, positively or negatively, to reflect on the international standing of Ireland itself. Viewed in this way, what and how a notary frames his or her notarial certificate should be accurate and clear, because the ultimate recipient in the receiving country is entitled to assume its veracity.

In a curious but significant acknowledgement of changing idiom we are now encouraged to dispense with the old preamble ‘*To all to whom these presents shall come:*’ with the more simple ‘*Be it known...*’

Appendix 8 deals with the thorny subject of translations and offers useful advice and helpful vocabulary.

The body of the book contains 19 chapters. Apart from offering a fascinating history of the profession, the book deals with all the core issues of the modern practitioner and is right up to date on subjects such as cyber notarial activity, data protection, anti-money laundering, EU succession regulation, company law, intercountry adoption and child travel outside the state among other topics.

While the authors have made their acknowledgements it is worth offering high praise to the incumbent Dean of the Faculty (Michael V O’Mahony) for the many hours of helpful editing invested in this worthy publication.

While the authors have made their acknowledgements it is worth offering high praise to the incumbent Dean of the Faculty (Michael V O'Mahony) for the many hours of helpful editing invested in this worthy publication.

It has been said by other commentators that verifying the identity of people who execute documents is a notary's primary and most basic duty, the proper discharge of which is the cornerstone of the high degree of trustworthiness conferred on documents by virtue of notarial intervention. In the chapter entitled '*Conduct of a notary – professional ethics*' the authors deal with the manner in which one should establish the identity of an appearer. Pride of place goes to the passport but a question mark is placed over the drivers licence.

The Notary of Ireland is filled with information that is both essential and practical but I will finish with a quotation taken from a commentary of 1726

As to the qualifications of a notary, there are four things principally required thereunder, viz. First, he ought to be a person of trust and fidelity. Secondly, a person of some worth and dignity and not a person of a low fortune and station in the world. Thirdly, a person well instructed in the business of a notary and entirely adroit in framing acts of court, and in taking the examination of witnesses. And Fourthly, by the Civil and Canon law he ought to be born in lawful wedlock, and no bastard.

Justin McKenna is a solicitor and a notary. He is a former President of the Dublin Solicitors' Bar Association and a former editor of *The Parchment*.

January 2019