

The Notary of Ireland, Law and Practice

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The profession of notary is one that gets scant attention from the public, notwithstanding its antiquity and importance, predating the more modern legal professions of barrister and solicitor. Likewise, apart from *Brooke's Notary*¹ and the predecessor to this work, *The Irish Notary*², there have been few published works dedicated to the law and practice of the common law notary. Into this void has come this magisterial work by Dr Éamonn G. Hall, Director of the Institute of Notarial Studies in Ireland and E. Rory O'Connor, Dean Emeritus of the Faculty of Notaries Public in Ireland and author of *The Irish Notary*. That there is need for this book is evident first, by a supplement published in 2007³ and more recently by a cascade of new legislation regulating much of the primary areas of work of notaries. It is a detailed textbook for use by notaries in practice, aspirant notaries preparing for examinations and for lawyers and other professionals who will engage notaries.

The book's chapters can be broadly grouped under four headings. First there is chapter on the nature and history of the office of notary as well as a final chapter on the Roman law background. Secondly, there is a series of chapters focused on regulation of notaries and notarial practice – appointment, professional conduct, notarial accoutrements, money laundering compliance, electronic commerce and data protection. Thirdly there is a series of chapters dealing with the wide variety of documents that a notary is required to produce or notarize or both. Finally, there are two chapters that explain relevant EU developments and international conventions.

The evolution of the office of notary is explained lucidly. The Irish and UK notary has a function somewhat half-way between the civil law notary and the United States notary. A notary's primary function is to authenticate public and private documents, to verify and attest execution by parties to documents, the noting and protesting of bills of exchange and the issuing of certificates as to acts and instruments of persons and their identities. A notary can take an oath, affirmation or statutory declaration and, if competent to do so, make and verify translations of documents. However, in addition to these familiar duties, a notary "can carry out all legal functions of any lawyer with the exception of conduct of cases in court"⁴. The wide extent of the notary's areas of work means that the book must attempt to deal with the applicable law in those areas. In its coverage of deeds and wills, EU and Irish succession regulation and company law, it is necessarily by way of an overview, as such law is more

¹ Nigel P. Ready, *Brooke's Notary*, Sweet & Maxwell 14th edition 2013 ISBN-13:978-0414028388

² E. Rory O'Connor, *The Irish Notary: A Treatise on the Law and Practice of Notaries Public in Ireland*, Professional Books, 1987 ISBN 978-0862052386.

³ Éamonn G. Hall, E. Rory O'Connor, *The Irish Notary: A Treatise on the Law and Practice of Notaries Public in Ireland, Supplement*. Faculty of Notaries Public in Ireland 2007, ISBN-978-0950501208

⁴ Para 1.3.12, p. 11.

comprehensively dealt with in specialized works. In the core areas of notarial practice however, it deals with matters in considerable detail.

The notary's participation in a transaction or process is momentary, but adherence to the correct formality and knowledge of the legal context is crucial and the book provides the reader with that law. The chapter on oaths, affirmations and statutory declarations. is unsurprisingly detailed. Obedience to the law will ensure that a notary will avoid the embarrassment of an affidavit being inadmissible⁵ for want of due formality and indeed possible censure. The chapter on powers of attorney is similarly comprehensive. Whereas affidavits and declarations will typically be drafted by solicitors to the affiant, more often than not it is the notary that will draft or at least finalize the text of a power of attorney for its donor. As well as detailing the law, precedents are provided in a schedule. There is a thorough exploration of capacity in context of enduring powers of attorney and when such powers can be activated. The book examines the new legal concept of "decision-making capacity" under the as yet not fully-commenced Assisted Decision-Making (Capacity) Act 2015, which is anticipated to be more flexible and functional. Later in the book⁶ the authors note the vulnerability of notaries to litigation on account of their involvement, by reason of preparation or attesting of a power of attorney, in overseas real estate transactions that go awry. Hence the practical need for the notary to have a donor acknowledge the true scope of the notary's work, and that such work does not extend to advising on the transaction itself. Again there is a useful draft acknowledgement in a schedule.

Continuing in the core areas of notarial practice, the law and documentation relating to documentary collections and bills of exchange is detailed. Letters of credit and other such documents may be used relatively less in international financial and commercial transactions, but the documents do continue to be utilized and this is a core area of competence expected of a notary. For completeness, the book deals with the more quaint area of ships' protests. The book goes into detail on the law and process relating to inter-country adoption, in light of the requirement for intending adopters to have their adoption pack of documents notarized. In a related chapter, the book deals with documentation that is necessary to facilitate international travel by minors.

The book guides the reader through the thicket of conventions that regulate how and whether legalization of documents is required – Hague (5 October 1961), Council of Europe (9 June 1968), European Communities (25 May 1987) – as well as EU Regulation 2016/1191. Into this maze of detail are added the concepts of cybernotary, eNotarization and eApostille, in light of electronic commerce law both in Ireland and the EU. There is an entertaining narrative on the notary cases brought at EU legal and political levels, where civil law notaries have resolutely defended their privileges against the tide of EU single market legislation. The authors conclude it with the observation that "the non-application of the 2013

⁵ See 'Nothing but the truth', Law Society Gazette, Volume 110, No 4, May 2016 p. 34

⁶ Para 16.7.01, p. 245.

Directive⁷ on mutual recognition of professional qualifications to professional notaries cannot any longer be justified.”⁸

As well as its 19 chapters, the book contains 8 appendices containing in turn relevant legislation, rules of court and practice directions, Chief Justices’ rulings, Professional Practice Regulations and Code of Conduct, education regulations, the aforesaid international conventions, forms and precedents and finally words and numerals for use in foreign language documents. It also includes a most welcome glossary of words and phrases at the start, along with full tables of cases and legislation. As well as being indispensable for notaries, the book is required reading for those who engage notaries, not least on account of the book’s clarity in explaining the legal contexts in which the services of a notary will be sought.

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⁷ Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System. OJ L 354, 28.12.2013, p. 132–170.

⁸ Para 10.09.02, p. 151