Criminal Law: Recent Developments and Emerging Trends

The Crime and Punishment Research Group at the Law School Trinity College Dublin will host a conference on Criminal Law: Recent Developments and Emerging Trends on Thursday 19th April 2018 from 6pm to 8.15pm.

Chaired by Ms Justice Una Ni Raifeartaigh, the conference will present papers from legal experts on developments in four key areas of law and practice: bail, evidence under the ECHR, criminal culpability, and sentencing.

Getting Ready for the General Data Protection Regulation (GDPR)

This panel event will provide a timely update on the General Data Protection Regulation (GDPR), which comes into force on the 25th of May 2018. Our speakers will cover a number of important topics including: state of play on the GDPR in the Irish context; data protection damages; the new Irish Data Protection Bill; and issues raised by emerging technologies, focusing on the example of commercial genetic tests.

This event is organised by Trinity College Law School’s Technology, Law and Society Research Group (TLS) and will take place on Wednesday, 9th May 2018 (6 pm - 8 pm)
### Programme

**Chair:** Ms Justice Una Ní Raifeartaigh

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| 6:00  | Dr. Eoin O’Connor BL  
*Criminal Evidence and the ECHR: Recent Developments*  
The paper will analyse recent judgments of the ECtHR on criminal law and evidence. It will focus in particular on the right of access to pre-trial advice in light of the recent judgments of the Strasbourg Court in *Ibrahim & Others v UK* (2016) and *Beuze v Belgium* (2017). It will also consider *M v the Netherlands* (2017), which examined whether restrictions on access to classified information breached the applicant’s Article 6 rights. In addition, it will also explore the judgment in *Van Wesenbeeck v Belgium* (2017) which concerned the refusal by a trial court to allow examination of undercover agents. Finally, it will look at recent decisions on surveillance and entrapment. |
| 6:25  | Professor Mary Rogan  
*Bail and the Use of Pre-Trial Detention: Findings from an Empirical Study*  
The legal framework governing bail and the use of pre-trial detention in Ireland is well described, but empirical research into how it operates in practice remains limited. This paper will present findings from interviews with lawyers, judges and staff of the Probation Service on matters including: the operation of the grounds on which bail can be denied in practice; the use of conditions; and future developments such as electronic monitoring and increased focus on the risk of reoffending. |
| 6:50  | Questions and discussion |
| 7:00  | Tea/Coffee Break |
| 7:15  | Dr. David Prendergast  
*Culpability in Irish Criminal Law: Recent Developments in Defences and Mens Rea*  
This paper focuses on significant legislative and judicial developments over the past two years or so pertaining to mental elements in crimes (mens rea) and affirmative defences such as duress and provocation. More specifically the paper analyses a retreat from strong subjectivism in sex offences as evident in the Criminal Law (Sexual Offences) Act 2017. By strong subjectivism is meant the idea that only intention, knowledge and advertent recklessness are appropriate at all points as mens rea in serious offences. Rejecting the assumption that mens rea alone does the work of reflecting and insisting on an offender’s culpability, the paper explores recent developments in defences such as provocation and duress. Finally the paper examines – principally through the careless driving case of *DPP v O’Shea* [2017] IESC 41 – a recent (subtle) shift in interpretive practices and the constitutional control of culpability in criminal law that again marks a retreat from strong subjectivism. |
| 7:40  | Mr. Tom O’Malley BL  
*Structured Sentencing: The Contribution of the Court of Appeal*  
Since its establishment in 2014, the Court of Appeal has dealt with hundreds of sentence appeals most of which have been fairly routine in nature. However, the Court has also developed a certain body of more general sentencing jurisprudence. Most notably, it has been insisting that trial court sentencing decisions should be transparent and structured, at least to the extent of an appropriate “headline” sentence being indicated in every case. Admittedly, failure to specify a headline sentence will not necessarily constitute an error of principle if the ultimate sentence seems appropriate in light of all the relevant circumstances. Recently, the Court has re-affirmed its commitment to structured sentencing by rejecting the “instinctive synthesis” approach in favour of a staged or two-step approach. In light of these and other developments, we shall ask if appeal court jurisprudence can generate a sufficient consistency of approach and outcome to satisfy the growing demand for more coherent and consistent sentencing. |
| 8:05 - 8:15 | Questions and discussion |

**Venue:** The Uí Chadhain Theatre, Arts Building, Trinity College Dublin
### Programme

**6:00 pm**

**GDPR State of Play**

Niall J Cavanagh  
This paper aims to deliver a high level overview of GDPR and how it relates to the current Data Protection regime - the principles of data protection – what is new - the implications of the changes which apply from 25 May in legal terms (new and enhanced data subject rights, controller and processor obligations, time limits, competencies, fines, DPOs); Practical changes in the regulatory environment as a result of GDPR – structure of the Data Protection Act 2018 (implications of implementing a Regulation instead of transposing a Directive) - a summary of the trans-EU impact of GDPR and the enhanced scope covering extra-EU aspects –implications of changes to the role of the Irish Data Protection Commissioner arising from the Data Protection Act[1] 2018; Where to get guidance (Article 29/EDPB; Commission web pages).

### 6:20

**Damages claims under the General Data Protection Regulation**

Dr. Eoin O’Dell  
This paper will consider damages claims under the General Data Protection Regulation (Regulation (EU) 2016/679; GDPR) in four contexts:  
(i) the incorporation of the Article 82(1) GDPR claim for compensation for material and non-material damage by section 112 of the Data Protection Bill, 2018;  
(ii) the possibilities of collective redress pursuant to Article 80 GDPR;  
(iii) jurisdictional issues, on which the GDPR and the Bill are silent; and  
(iv) special rules applicable to children, on which the GDPR and the Bill are incomplete.

### 6:40

**Questions and discussion**

### 6:50 Tea/Coffee Break

### 7:05

**Data Protection Act 2018: Key Issues and Challenges**

Dr. David Fennelly BL  
The Data Protection Bill 2018, which is currently being debated in the Houses of the Oireachtas, represents the most significant change to date in the Irish legislative landscape governing data protection. This paper examines the new legislative regime, considers its relationship with the GDPR and will explore a number of key issues and challenges to which it gives rise.

### 7:25

**Reading the fine print – direct-to-consumer genetic tests – privacy policies and electronic contracts**

Dr. Andelka M. Phillips  
This will provide an overview of key issues raised by emerging technologies, focusing on the example of direct-to-consumer (DTC) genetic tests. It will introduce you to the spectrum of services provided by the DTC industry and discuss the use of privacy policies and electronic contracts by the DTC industry. Stored genomic data poses serious risks for individual and group privacy and reform is needed in order for businesses to be compliant with the GDPR as well as consumer protection law. This work is linked to my forthcoming book, Buying Your Self on the Internet: Wrap Contracts and Personal Genomics (2018/19).

### 7:45-8:00 Questions and discussion

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[1] Assuming the Bill is passed by then.

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**FEES**

Normal: €150.00 for 1 person/1 conference; Group rates: €270 for 2*; €385 for 3; €480 for 3.  
TCD CPD members rate: €120 per 1 person per conference; €215 for 2 (at one conference) or for 1 to attend both conferences.  
Reduced rate**: €135 per 1 person per conference or €240 for 1 person to attend both conferences.  
Notes: Fees are inclusive of tea/coffee breaks and conference materials. Cheques should be made payable to TCD No. 1 Account. Invoices may be requested for payments by bank transfer. * For 1 person to attend both conferences or for 2 people to attend 1 conference. **For those called to the bar or commenced practice within the past 5 years.

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Reservations: Please complete the enclosed form and return it to CPD Events, School of Law, House 39, Trinity College Dublin 2.  
Tel (01) 896 2772 or lawevent@tcd.ie
Mr. Tom O’Malley is a Senior Lecturer in Law at NUI Galway, a practising barrister and a member of the Law Reform Commission. His main research interests are in the fields of criminal law, criminal procedure, sentencing and comparative law. His most recent book is Sentencing Law and Practice (3rd edition, 2016). He is currently working on the new edition of Sexual Offences and a Supplement to the 3rd edition of Sentencing, as well as a book on comparative sentencing law.

Dr. David Prendergast teaches jurisprudence at the School of Law at Trinity College Dublin. In journal articles on substantive criminal law he has analysed strict liability, self-defence, causation, inchoate offences and gross negligence manslaughter. He has examined the constitutional control of criminal law through mens rea doctrines and, more recently, vagueness. Current criminal law research is in the areas of murder mens rea, presumptions, criminalisation, consent, and the offence-defence distinction.

Professor Mary Rogan is an Associate Professor of Law at Trinity College Dublin. Professor Rogan’s research interests are in penal policymaking, human rights and imprisonment, and prison law. She is a barrister with expertise in prison law, the author of Prison Policy in Ireland (Routledge, 2011), Prison Law (Bloomsbury, 2014) and co-editor with Professor Ivana Bacik of Legal Cases that Changed Ireland (Clarus, 2017). Professor Rogan was awarded an ERC Starting Grant worth €1.5million in 2015 for a project entitled ‘Prisons: the rule of law, accountability and rights’. This work examines inspection, oversight and accountability in prison systems in the United States and Europe. She is currently leading research funded by the European Commission on bail and pre-trial detention in Europe, and work on leadership and penal change funded by the Irish Research Council. She is the Chairperson of the Implementation and Oversight Group on reforms to penal policy, which reports to the Minister for Justice and Equality and is a representative of Ireland on the International Penal and Penitentiary Foundation, a body with advisory status to the United Nations. Professor Rogan is a member of the Boards of the Irish Association for the Social Integration of Offenders and the Victims’ Rights Alliance, and is a former Chairperson of the IPRT.

Dr. Eoin O’Connor was called to the Bar in 2008 and began practising in 2009. His PhD analysed how informer privilege affects the right to a fair trial. He is the author (with Michael Lynn SC as consultant editor) of a forthcoming textbook on National Security Law (Bloomsbury).

Niall J. Cavanagh, BSc. (Hons), CEng MIEI, BL, Assistant Commissioner (Senior Legal Adviser) in the Office of the Data Protection Commissioner. Niall qualified with a degree in Computer Science in Queen's University of Belfast in 1991, then worked within international telecommunications companies as a Systems Manager, developer, Business Analyst and Programme Manager for 12 years. During that time, he was enrolled as a Chartered Engineer with the Engineering Institute of Ireland (now Engineering Ireland). He was called to the Bar of Ireland in 2005 and practised as a Barrister at Law in the Eastern Circuit and Dublin until 2017. In December 2017, he joined the Office of the Data Protection Commissioner in Ireland as an Assistant Commissioner, in the role of Senior Legal Adviser.

Dr Eoin O’Dell, BCL (NUI), BCL (Oxon), PhD (Cantab), MA (Jo) (Dubl), LLM (a e Oxon) (Dubl), Barrister (Kings Inns), FTCD, Associate Professor of Law in Trinity College Dublin. He researches and publishes primarily in the fields of freedom of expression, and private and commercial law - and especially where they overlap in IP, IT and cyberlaw. He has a diverse range of experience, which includes: chairing Copyright Review Group which presented its final report to the Minister for Jobs, Enterprise and Innovation in October 2013; he was a member of the Government Data Forum, established by the Minister of State with responsibility for Data Protection: Law, Policy and Practice on the LLM Programme. David is also a practising barrister and regularly appears in proceedings, including in the field of data protection, before the Irish and European courts. He is also a member of the Government Data Forum.

Dr Andelka M. Phillips, LLB/BA, BA (Hons), LLM (Auckland), DPhil (Oxon), Ussher Assistant Professor in IT Law in the School of Law, Trinity College Dublin where she is the convenor of Technology, Law and Society Research Group. She is also a Research Associate with the University of Oxford’s Centre for Health, Law and Emerging Technologies (HeLEX) Centre. Recent research has focussed on the regulation of direct-to-consumer genetic tests and she is currently working on a book, entitled Buying Your Self on the Internet: Wrap Contracts and Personal Genomics to be published by Edinburgh University Press as part of its Future Law series. She is also co-editing with Professor Jonathan Herring and Dr Thana Campos Philosophical Foundations of Medical Law, which will be published as part of Oxford University Press’ Philosophical Foundations of Law series.