

Neighbours and the Law

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By

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To Michael and Johanna

Foreword

In this book, by Tadgh Kelly, the author brings together every area of dispute which can arise between neighbours. It is a timely book as there is an ever increasing number of applications to the District Court relating to such disputes particularly those arising from matters such as noise, barking and dangerous dogs. He has simplified the legislation and the law relating to each particular topic in a comprehensive and realistic manner.

This book deals with all the traditional areas of neighbour disputes from boundary disputes to noisy neighbours from rights of way to squatters rights. His chapter (2) dealing with the carrying out of works on a shared boundary and the relevant provisions of the Land and Conveyancing Law Reform Act 2009 which provides for an application to the District Court for a works order is comprehensive and excellently set out both as to the procedure and the relevant precedent forms. Such applications are relatively new in the District Court and tend to be hotly contested and the hearings lengthy and acrimonious.

The chapter on planning procedure objections and appeals is a step by step guide which can be easily followed by non practitioners: I found his inclusion of a decibel level chart in the chapter relating to noisy neighbours both interesting and informative.

I highly commend the manner in which the author highlights and emphasises the need for mediation and conciliation in neighbour disputes and his explanation of the process most helpful.

The layout of this book makes each topic easily accessible.

The author lays down the relevant legislation and ties together the applicable District Court rules and precedent forms which all practitioners will appreciate. There are extensive footnotes referencing relevant case law and other related topics. For the non practitioner he has included very helpful draft letters, noise diaries and charts.

I anticipate that this will be a one stop reference book for both practitioners, students and the general public.

I welcome this publication and I congratulate the author in producing such a thorough and enlightening text book.

Ms Justice Mary Collins
September 2012

Preface

Too often people perceive the law as facilitating disputes in relation to valuable assets and large scale commercial disputes whilst providing no remedies for neighbourly disputes of a more modest nature where the emotional and psychological toll may far outweigh the financial worth of the dispute. Whilst other jurisdictions such as England and Wales and indeed further afield in the United States have a wealth of publications in the area of neighbourhood law, there was no such publication in the Irish context.

This book aims to remedy this situation providing legal practitioners, but also the lay reader, with a simple explanatory guide to the variety legal disputes and issues that arise between adjoining land owners thereafter providing the various statutory and civil remedies available to disputants. Emphasis is given of the need for disputants and their advisors to consider the increasingly important role that Alternative Dispute Resolution (ADR) plays in providing neighbours with a more appropriate forum for the resolution of disputes: especially where the protagonists must continue their daily lives in close proximity after the dispute has been determined.

The book also comes in the wake of the coming into law of Chapter 3 of the Land and Conveyancing Law Reform Act 2009 (the 2009 Act) pertaining to *party structures*, which is the first attempt by the Houses of the Oireachtas to codify and bring clarity to the extent one may carry out of a myriad of works at and on the boundary of their property from the lopping of trees or building of extensions to the their home, to name but two.

This book also deals with the abolition by the 2009 Act of the old methods of acquiring *easements*, such as rights of way, through prescription and details the interaction of the old common law and the new statutory framework along with advising in relation to the options available in relation to protecting the rights they may have acquired over the lands of adjoining land owners. This area of the law does not lend itself to simple explanation but there is hopefully ample clarity provided in order to allow the lay reader to grasp the key concepts in order to have an informed

discussion with their solicitor in order to secure their proprietary rights going forward.

Whilst new developments are obviously dealt with in detail, equal emphasis is given to the time honoured sources of dispute between neighbours: noise pollution, dangerous dogs, liability for escaping livestock, roots, overhanging branches, backyard burning, unauthorised developments, planning objections and planning appeals.

There are a number of acknowledgements that I wish to make. Firstly, to all my colleagues in Pearts Solicitors for their assistance and advices and in particular Monica Rowley for her clinical analysis of the nature and extent of occupiers' liability; to David McCartney of Clarus Press for his guidance and support; to Caroline Wade for her seemingly effortless skills in converting the written word to the diagrammatic; to John O'Hara of Laois County Council for his knowledge on the workings of local government; to Shelly Browne for her unwavering support. Sincere gratitude to Brendan Savage BL for sacrificing long hours editing as well as providing critical analysis and advices.

Finally to Valerie Peart and Gerard Wade of Pearts Solicitors for opening a door to the law and for ongoing support and professional guidance from that moment to the ongoing present.

Tadgh Kelly,
August 2012

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