

Appeal No. VA96/4/039

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

University College Cork

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Creche at Map Reference: 55b, College Road, Ward: Mardyke, Gillabbey B, County Borough of Cork (VA96/4/039)
Licensed shop at Map Reference: 59e, College Road, Ward: Mardyke, Gillabbey B, County Borough of Cork (VA97/5/016) and,
Shop, office & radio station at Map Reference 59d, College Road, Ward: Mardyke, Gillabbey B, County Borough of Cork (VA97/5/017)

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Michael Coghlan - Solicitor

Member

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 27TH DAY OF MARCH, 2000

By Notices of Appeal one dated the 28th day of August 1996 and the others dated the 13th day of August 1997, the appellant therein named appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of £38, £350 and £375 on the above described hereditaments.

The Grounds of Appeal as set out in the Notices of Appeal are that;

VA96/4/039 - "the owner and occupier University College Cork are exempt from rates"
5VA97/5/016 & VA97/5/017 - "the valuation is excessive and the owner and occupier University College Cork is exempt from the payment of rates".

1. The appeals proceeded by way of an oral hearing which took place on 26th day of February 1999 in the County Hall, Cork County Council, Victoria Cross, Cork. The appellant body was represented by Mr. Dermot Gleeson, S.C. and Mr. John Lucey B.L. instructed by Ronan Daly Jermyn, Solicitors. Ms. Siobhan Lankford B.L. appeared on behalf of the Commissioner of Valuation instructed by the Chief State Solicitor. Evidence in support of these Appeals was given by Mr. O'hAodha, described as the General Manager of the Student Centre and an Officer of the Student Union, by Professor Mortell, the Registrar of the College and by Mr. Deasy, who until recently was the College Secretary and Deputy Finance Officer. No oral evidence was given on behalf of the Commissioner of Valuation. However written submissions were received from Mr. Tom Stapleton and Mr. Liam Cahill, both valuers with the Valuation Office. Written submissions were also received from Mr. Edward Hanafin of Lisney & Co. on behalf of the appellant. Both opening and closing submissions were made. At the outset, the parties agreed;-
 - (a) that all three appeals were concerned with the issue of rateability and that the question of quantum arose only in Appeal No. VA 97/5/016, and secondly
 - (b) that since the Appellant was in a position to represent not only the University but also the Student Union and the Irish University Student Trust, then all bodies relevant to these Appeals were appropriately before this Tribunal.

2. **General Description of the Hereditaments:-**

The 1st Appeal, in time sequence, relates to a purpose built single storey detached building, with an outside play area both to the front and rear, which building is located on the south side of College Road at its junction with Perrot Avenue. It is constructed with concrete block walls, pitched timber and concrete tile roof and concrete floor. There are PVC double glazed windows throughout. It is used and is hereinafter referred to as "The Crèche".

The 2nd and 3rd Appeals, above numbered, relate to a building which in its entirety is known as the Student Centre, University College Cork. The Centre, purpose built in

1995 at a costs of £3.5million, stands on three Levels over part basement. It has an attractive red brick and stone exterior, with extensive glazing on the northern elevation, feature tower staircase with external stepped access to Level 2. It has all main services connected and an air handling system is installed. It is located within the main campus of the University.

Valuation Appeal VA 97/5/016 deals with Level 2 of this centre. On that level there is a multifunctional hall and a licensed premises with ancillary storage and toilet facilities.

Valuation Appeal VA 97/5/017 concerns itself with Levels 0, 1 and 3 of the centre. Level 0 is used for exhibitions/functions. On Level 1 there is a coffee shop, two convenience stores, a photocopying facility, a travel shop and a number of business/clerical offices and other related and ancillary facilities. On Level 3 there are rooms where snooker can be played and television watched. There are in addition at least five meeting rooms, a conference room and a studio wherefrom the campus radio, on 97.4FM broadcasts. In Irish this centre is known as Club Áras na Mac Léinn

3. Legal Framework of Ownership/Operation:

As appears from the documents hereinafter referred to, the College with others including the Student Union devised a method and mechanism under which the title of the Student Centre would in part devolve, and by which the centre would be operated. In all, in this context there are five relevant documents:

- (a) By Deed of Trust dated the 15th of December 1995 University College Cork established a Trust, to be known as the Irish University Student Trust, with the appointed Trustees being Professor Mortell, Mr. Michael Kelleher and Mr. James Cyril Deasy, who at that time respectively were the President, Finance Officer and Secretary and the Deputy Finance Officer and Secretary of the College. The Trust Fund consisted of the sum of £100.00 and any property which may be transferred to the Trustees. The objects, as set out in paragraph 6 were;-

- (i) *"to improve the academic and social life of staff and students of University College Cork and its successors through the provision of facilities for meetings, conferences and recreation and leisure time activities*
- (ii) *to endow and provide financial assistance to the constituent colleges of the National University of Ireland, their successors or any of them."*

Having made provision for the appointment and removal of Trustees, and having set specific powers, this Deed, at paragraph 9 directed that "any net income of the Trust had to be applied in furtherance of the objects of the trust and in particular for the benefit of such constituent Colleges of the National University of Ireland as the Trustees shall in their sole discretion decide."

- (b) As was contemplated by the definition of the "Trust Fund", in this Deed of Trust, the College by a Lease of the same date demised unto the Trustees, as Tenants, the Student Centre, therein described as Áras na Mac Léinn for the term of 25 years from the 14th of December 1995, subject to an initial yearly rent of £35,000, to five year reviews, and to the other terms and conditions therein contained. As a result of this Lease, therefore the Trust had a leasehold interest in this centre.
- (c) Again on the same day the Trustees, as Landlord, demised that part of the Student Centre, comprising Level 2, to Trustees of Club Áras na Mac Léinn which club was in the process of being established. Professor Charles Daly and Mr. O'hAodha were the nominated Trustees. The term of this lease was from year to year with the annual rent being £20,000.
- (d) Once more, on the same day, the Trustees of the Trust demised the balance of the Student Centre, in essence comprising Levels 0, 1 and 3, to the nominated Trustees of the UCC Student's Union. As with the lease to the club, the term was from year to year with the rent specified being £20,000 p.a. The Trustees were Mr. O'hAodha and Ms. Fiona Healy, and finally,

- (e) The Club Áras na Mac Léinn was of course established with its own set of rules. These rules conferred membership on all registered students of the college, members of the college staff, and such other persons whose application for membership was approved by the Committee of Management. Such Committee consists of nine ordinary members, four of whom are elected by a panel submitted by the President of the College who also appoints the Honorary Secretary.

As can therefore be seen a legal structure was put in place whereunder the Trust, as established, held the Student Centre for the term specified, but immediately demised the multifunctional hall and the licensed premises to the club as yearly tenants with the residue of the property being demised, in similar terms, to the Student's Union. It is the existence of this legal framework that creates one of the essential issues in these Appeals.

4. The Background/ the evidence as agreed or so found:

As previously stated evidence was given on behalf of the college by the three witnesses above identified. Therefrom the following facts, essentially not in dispute, emerge as being relevant to these appeals:-

The Concept:

- (a) The concept of a student's centre first arose following the attendance by Mr. O'hAodha at a conference run by the Association of College Unions International, in Colorado, Ohio, sometime in the 1980's. Being impressed with this idea and recognising the importance of such a facility, Mr. O'hAodha on his return and for several years thereafter, laid the foundation for what was ultimately built in 1995. Nowadays, such centres, in a variety of detail and form, are considered normal and are present in a great number of Universities not only domestically, but also in Europe and in Countries like Australia, Canada and the U.S. Whilst the exact services and facilities may differ from college to college, nonetheless the concrete manifestation of this core concept is now, in the opinion of those who gave evidence, an indispensable part of the totality of University life, knowledge, development and growth. So much so that Mr. O'hAodha who is effectively the

General Manager of the Centre (and who is also an officer of the Students Union) has his salary paid by U.C.C. He is the person designated as having responsibility for student affairs and whilst reporting via an Executive Committee to the Students Union, he also retains a liaison role with the college.

The Centre:

- (b) On Level 2 of the Centre, as above stated there is a very substantial area described as a multifunction hall as well as a licensed premises. This hall has a variety of uses and functions. It acts as a common room on a daily basis: because of its size all conferrings take place within. This occupies about three weeks per annum. It is available to minority groups, whether by race, religion or otherwise, on occasions and for purposes particular to the identity/culture of such groups. Lectures, either on unique topics or given by eminent persons, to which the public are invited, are also delivered in this hall. Students, in their multitudes, can be seen daily gathered within, debating, discussing, relaxing, exchanging ideas or otherwise simply using it as a refuge either before or after some experience. It is the hub of this building.
- (c) The bar is available to all members of the club which include students, all staff, academic and non-academic, and anyone else on the payroll of the University. Liquor is sold to such members in accordance with the Registration of Clubs Act 1904 and the code containing the Intoxicating Liquor Acts. For the purposes of renewing its license a list of its members is sent annually to the relevant authority. As with the Units contained on Level 1 the use of this and indeed all facilities within the centre, reflects University life whether one is in term or out of term.
- (d) On Level 0 there is, on the drawing provided, an area designated exhibition/functions.
- (e) On Level 1 there are several shops including a coffee shop, two convenience stores, at least one of which sells stationery, a photocopying shop and a travel

shop. In addition there are a variety of rooms/offices either for administrative or business purposes as well as other areas used for ancillary purposes.

The entire centre including this area is operated under the general superintendence of Mr. O'hAodha and his staff. Little if anything needs to be said about any of the activities carried on at this Level other than the travel shop. This shop is operated directly by the Student's Union with no concessionaire involved. A regulatory license is held by the Union. No private profit is derived therefrom. Sales are essentially and predominately to staff and student alike. No outside advertising takes place.

(f) On Level 3 there is an area called "the snooker gallery", an area for television, a conference room, five meeting rooms and also a studio from which the Campus Radio transmits. The meeting rooms in question are used extensively by the 120 or so Clubs and Societies of the University. In the summer period some revenue is obtained from the outside letting of these rooms. The radio station, which has a mixed variety of programmes including music, news, current affairs etc. and which has a listenership throughout the city of Cork, has two professional staff, a manager and a technician. It operates at a loss.

(g) The Crèche

In 1980 the requirement for a crèche was first raised by the Student's Union. Such a facility was provided in 1982 and though extended in the years following, it was and so remained insufficient to meet any respectable percentage of the then current demand. Ultimately the building which now houses the crèche was constructed in or about September 1993 at a cost of about £80,000. It is geographically separate from the Student Centre and is immediately adjacent to the main buildings. It was constructed by the University and is on lands owned by it. Originally it was operated on a concessionaire basis. After three to four months that proved non-viable. The Student's Union then took over its operation and continued to staff and manage the Centre. The crèche can cater for about 40

children. About two thirds have parents on the staff and one third are children of students. The facility is limited to these groups. No outsiders are admitted. There is a waiting list of between 50 and 60. The existence of such a list proves its demand.

5. The Academic View:

Evidence in addition to the foregoing was given by Professor Mortell. As well as being the Registrar of the College and lecturing in Statistics he also is the Chairman of a joint Forum for Student Affairs. The remit of this body includes all matters touching upon and being of concern to students, though its focus is more directed towards Clubs and Societies; towards the physical and mental health of Students and also with some matters of academic importance e.g. a change or alteration in the timing or content of the relevant curriculum. The composition of such a Forum draws its membership from the Student's Union, from the Clubs and Societies and also from the academic staff who are elected from the academic Council. In this multipurpose capacity Professor Mortell gave evidence that in his opinion the Student Centre was an integral part of the entire University and that he would regard the facilities provided therein as being quite normal, and as having existed in U.C.C. though perhaps in a lesser way for several years. With 12,000 full time students it was absolutely mandatory in his view for such structures/facilities/buildings to exist and be provided. Finally he felt confident that his views were not simply personal to himself but were widely held among the academic world.

6. The Reasons for the Framework:

Mr. Deasy also gave evidence. He told the Tribunal that when embarking upon the construction of the Student Centre, the College took both legal and accountancy advice. On that advice the legal framework above identified was put in place. The essential purpose was to enable the College to reclaim VAT on the construction costs of the building. This it did in the sum of £533,000. Without the establishment of the Trust and the execution of the Leases above mentioned, this rebate on the best advice available to him, would not have been obtainable. Accordingly the sole or predominant purpose in

reality, of establishing this regime, which we accept, was to reduce the overall cost of providing this facility to the College.

7. In addition he informed us that in reality the facilities provided for in the Students Centre had already existed elsewhere in the College and indeed had so existed for several years. All that changed were the structures. The activity remained the same. Furthermore on a general basis he confirmed that no surplus monies ever left the College and that all such finance was used for and became part of the revenue which the College applied exclusively for activities within its objects, principles and educational remit.

8. Concluding a recital of evidence it is also necessary to record that the crèche operates at a loss and that its source of operational funding, directly and indirectly, is a mixture of what is forthcoming from the College, from the Student Union itself and also of course from the modest charges imposed. Equally so with regard to this Student's Centre. Its requirements in order to operate are in part supplied by the Student's Union, by the College and from the funds generated by its activities as well as having some other sources of revenue. Any and all monies, which are limited and sparse, that might be described as surplus arising out of any of the activities herein described, go to the Student's Union and are used exclusively for student activities.

9. **The Issues:-**
 Against this background, in the context of the claim for exemption, it would appear that the most significant issues arising are as follows:-
 - (a) whether the operation of the crèche, by the Student's Union, should deprive that Building from exemption if it was otherwise so entitled,

 - (b) whether the existence of the legal framework above described, should likewise deprive the Student's Centre of exemption if it was otherwise so entitled and

- (c) whether in any event the facilities/activities provided at and carried out in the crèche and in the Student's Centre are of a kind and type which would not permit exemption on the ground claimed.

10. The Law:-

Ever since the decision in *Barrington's Hospital -v- Commissioner of Valuation [1957] IR 299* it has been both settled and accepted that the only statutory provision under which exemption from rates can be claimed is S.63 of the Poor Relief (Ireland) Act, 1838. That section, in so far as it is relevant, reads "*the following hereditaments shall be rateable hereditaments (a) under this Act; provided also that no church or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial groundhospital, charity, school, or other building used exclusively for charitable purposes, nor any building.....dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case, the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use*". See also S. 16 of the 1852 Act and S. 2 of the 1854 Act under which, procedurally, the Commissioner must show, as distinguished, those hereditaments entitled to exemption.

As can be seen this proviso deals with religious worship, the education of the poor, charitable purposes and public purposes. It is only, under the heading of "public purposes", that exemption is sought in this case. Therefore any consideration of the other uses which confer exemption is unnecessary.

- 11.** In his book on local government Mr. Justice Keane, now the Chief Justice, said, on this ground of exemption that "*this category has been the subject of more intense judicial discussion than any other portion of a much litigated section*". Even a recital, let alone an examination, of the multitude of relevant case law, provides ample support for this statement. The concept of "public purposes", has been looked at and considered from a variety of view points. Some of these are both mentioned and analysed in the decision of this Tribunal in the *University of Limerick -v- Commissioner of Valuation,*

Judgement 2/6/98. (VA95/5/010 to 014) At page 8 of that Judgement, a summary of the considerations which might be taken into account, when considering educational establishments, in the context of this public purposes exemption, are referred to. It is unnecessary in this Judgment, to repeat what was said in the University of Limerick case, though it is of some importance to point out that the criteria mentioned were not and were not intended to be exhaustive but were merely intended to be indicative. Each case must of course be considered on its own merits, and any generalised criteria if necessary must give way to the correct conclusion in the individual circumstances of each case.

12. In the University of Limerick case this Tribunal dealt with three Appeals. The most relevant, for present purposes was the Appeal dealing with the Conference/University Club. Part of a building, known as Plassey House, was used by the University Club. This Club was established at the instigation of the University, with its principal function being to develop a relationship between leaders of industry, commerce, business and professionals on the one hand and the staff and students of the University on the other hand. The intention was, that by so establishing this relationship, a direct benefit would be conferred, for the greater good on the staff and students of the University and would, not only help in the pursuit of greater knowledge, but also would bestow an advantage in obtaining employment post departure from College. In addition that part of the building in question was used by the Club to entertain people whom it was hoped would further these objectives and also people from whom donations or grants to the University Fund might be extracted.
13. In deciding to declare the University Club exempt from rates, this Tribunal considered the activities of the Club in the context of its beneficial relationship with the University and also considered whether exemption should be denied simply because these activities were performed by what the Commissioner urged was a separate and distinct body from the University. Being quite satisfied that its role conferred great benefit on the Institution the Judgment, at p19 then dealt with the latter point. It reads "*suppose for a moment that the activities of this Club were carried on by a group or committee or branch of the*

University itself without particular designation, could it be seriously suggested that the hereditaments could be rated? We doubt this strongly. In our opinion the establishment of this Club and the provision of facilities by which it can operate are entirely the doing of the University and are ultimately under its control, responsibility and desire. In our view, the actual entity or mechanism by which the purposes of the University are to be satisfied is not, at least exclusively, the determining factor in rateability. It is the use of the hereditament in its dedication to public purposes that is important. Accordingly we have no doubt that exemption should also apply to this hereditament".

14. Some eight years prior to the decision last mentioned there was a further decision of this Tribunal in the case of *Plassey Trust Company Limited -v- Commissioner of Valuation, decision 29/1/90. (VA89/0/112)* At issue in that case was whether or not the provision of 15 houses, designed as student accommodation, plus a warder's house, which were located on a site opposite the University of Limerick, were entitled to exemption from rates. On behalf of the Appellant the Tribunal was informed that the University had set up two Companies for the purposes of this Enterprise. One, to acquire the land, build the residences and make lettings. The second to manage the complex. Notwithstanding the existence of these entities, it was claimed on behalf of the appellant that the provision of residences was an activity deserving of exemption and that the role of these companies ought not to deprive the University of such an exemption. On behalf of the Commissioner it was claimed that the provision of accommodation, in an educational sense, though desirable, was not essential, and in any event exemption should not be permitted as the occupiers were separate legal entities, and not the University itself.

15. The Tribunal had no time for either argument advanced on behalf of the Commissioner. Having referred to the *University College Cork case, [1911] 2IR 593*, and having quoted from Cardinal Newman's Essay "*On the scope and nature of University Education*" (*Everyman's Library*), the Tribunal had no hesitation in holding that the residences were an integral part of the University. In addition, and likewise, it had no difficulty in lifting the veil of incorporation so as to discover the true entity behind the corporate status of these companies. It concluded without reservation, that exemption was justified.

16. In addition to these cases we were also referred to Cpt. III of the Irish Universities Act, 1908 and to certain sections of the Universities Act, 1997. S.12, of the last mentioned Act, specifies the objects of a University which include the promotion of learning in its student body, the promotion of the cultural and social life of society, which presumably must include its student body and also the promotion of a capacity for independent critical thinking amongst its students. It is the specific function of a University to further the objects and development of that University, see S13. S.15 and S.16 of this Act deal with governance and establish a governing authority for each University. That authority, in its composition, must include not only staff, academics and non-academics, but also students who are elected officers of the Student's Union. And finally in S. 48 it is stated that the members of each University include the members of its governing authority, the members of its academic council, its employees, its students, its graduates and such other persons as its governing authority may appoint to be members.

17. **Submissions:**

Submissions, extensive in nature, were made on behalf of both Parties to these Appeals. Without doing an injustice to the quality of such submissions could we attempt to summarize these in the manner following:-

On behalf of U.C.C. it was urged:-

- (a) that in accordance with *University College Cork -v- Commissioner of Valuation [1911] 2IR p593*, (the case which granted exemption to the College itself), the reasons and grounds for such an exemption, as therein specified, equally apply to the hereditaments the subject matter of these Appeals and accordingly exemption is also justified for the crèche and the Student Centre,
- (b) that from a consideration of the relevant case law there has been a substantial if not a total compliance with identified criteria thus also conferring exemption,

- (c) that education and educational activity in the context of exemption from rating should not be narrowly construed or rigidly confined. It is much more than just sitting in your place with your pencil sharpened writing down what wise men and women say. It should, and indeed has the breadth and scope of the philosophy which underpinned Cardinal Newman's essay above mentioned,
 - (d) that the provision of a Student Centre and a crèche are an integral part of a University and university life and in this instance both facilitate in a material way the advancement of the student body and accordingly these activities rightly should be accorded the same status as other indispensable elements in the proper functioning of a University, and finally
 - (e) that in accordance with case law the reality of occupation should be looked at and that when so viewed in this light the existence of the legal framework previously mentioned is no bar to exemption.
- 18.** On behalf of the Commissioner, Ms. Lankford made Submissions to the opposite effect. Whilst acknowledging that the facilities provided for in these buildings may be desirable, helpful and progressive, these were not, in her view, essential for the functioning of a University and could not be deemed to come within education in the context of obtaining an exemption. Secondly in a number of respects she challenged the alleged compliance with the relevant criteria for exemption and thirdly having deliberately established legal entities and having derived certain benefits therefrom the College ought not now be heard to say, when it suited it, that such entities can be disregarded.
- 19.** Prior to expressing our view on the central issues which arise in these Submissions there are a number of matters, of a miscellaneous type, which conveniently can be dealt with at this stage. Firstly in the Leases above mentioned there is an express covenant by which the Tenant is obliged to pay and discharge, *inter alia*, all rates. The insertion of this covenant in itself cannot of course, have any bearing on our decision. What parties insert into documents passing, is a matter for them. It could not bind us or decide the issue of

exemption. If for example there was no such covenant could it be argued that exemption automatically ought to follow. In our view it could not. Accordingly this is not relevant to the issues at hand.

Secondly, there is no doubt but that the question of occupation is one of fact and is in no way dependent upon the nature of the Title of the person in occupation. See **Ryde on Rating 1968 Ed. at p23.**

Thirdly, some attention during the course of the hearing was paid to the requirement that the hereditaments in question had to be of a public nature and that the public had to have access to them. That this is so is not in dispute. This however in our view does not mean that an institution is not entitled to put in place appropriate rules and regulations which are necessary or desirable for the proper, orderly, safe and efficient despatch of its business and use of its premises. It could not in our view be sustainably argued that a body, like a University, could not lock or secure a room where equipment is kept, an office where papers and other documents are stored, or an area where money and other valuables are deposited etc. In our opinion these and other similar steps are entirely compatible with the requirement of public access. Surely no one could argue but that the Authorities were entitled to control the way in which the traffic moved over the bridge in the Londonderry Bridge case, or how the boats got into Sligo harbour etc. How could it be said that the entire student body and staff, perhaps even the public, should have access to for example, the crèche when in terms of size and safety it can accommodate no more than 40 children. In our view this is not what is meant by public access or a building being open to the public. Such restrictions are permissible and when in place do not detract from what is otherwise the overall character of the hereditament in question.

- 20.** Of the criteria which have been identified as relevant for consideration to gain exemption on the ground alleged, it is agreed between the parties, firstly that the crèche and the Student's Centre have been constructed by public monies, secondly that these buildings are open to all without discrimination, thirdly that the same are of a public nature, fourthly that the staff are in whole or part publicly funded and fifthly that the accounts are

open to public scrutiny. In addition we are satisfied that the second part of the Objects of the Trust, as specified in paragraph 6 of the Trust Deed, does not detract from the overriding obligation to apply all monies for educational purposes. Accordingly the ability to assist another Constituent College of the National University of Ireland is not in our view in any way fatal to the status of the units in question.

- 21.** Ms. Lankford argues that because money is generated by the Student's Union in a variety of ways including the activities of the retail units at Level 1 and the licensed premises at Level 2, then it cannot be said that the hereditaments in question are maintained in whole or in part out of public monies. In our opinion it would be quite unjustified to impose a prohibition on the Student's Union from generating revenue by engaging in or operating services which are provided wholly within the circle of the College itself and when a surplus of any such Revenue must be applied by that Union for Student and educational purposes. To proceed otherwise would mean that a retail outlet, as modest as a sweet shop, could not be established and could not be operated by a Student's Union. That in our view cannot be the situation. Whilst it may well be that certain types of activities whether by description or location may be outside the remit of the Student's Union, such is not the situation pertaining here. Accordingly we do not see any inconsistency between the activities being carried on and compliance with the indicative criterion that the Institution is maintained in whole or part by public monies. Even however if we are wrong in this regard it is quite clear from the evidence that the College directly and indirectly makes, not an insignificant contribution to the maintenance of the buildings in question and accordingly since the College funding is essentially public funding, it can at least be said such maintenance is in part publicly funded.
- 22.** We are also satisfied that no person has a personal beneficial interest in the units in question and that no private profit or use is derived therefrom. Accordingly looking at the criteria as a whole, and fitting the units in question into the underlying composition of such criteria, we are satisfied, that subject to any other defences, both the crèche and Student's Centre is entitled to exemption under these general criteria.

Education, is to some incapable of definition. Its extremities are unknown. Its scope never ending, its evolution continuous. It is, some would say, a living and vibrant being which is not for touching but for seeing and feeling and experiencing. It is to others something entirely different. In truth it has no boundary and even where in the public good or interest, limits ought to be proposed it would be, as society and nature know, impossible to so enforce.

In our system there can hardly be a more appropriate Institution than a University for exploring the total concept of education and for providing and putting in place, the structures, means and facilities by which the imparting on the one hand and the acquisition on the other can take place. Education, undoubtedly, and to many, predominately means an academic education, exams, grades, levels, degrees etc. But to others it means much more. Academic excellence yes but that is part only. In our humble view there is no better institution in a structured way, in which this other aspect of education may be pursued than through a University. There are, it is true to say, many unstructured ways in which this may be pursued. But the role of the University in this regard cannot be denied, ought not be stultified, should be encouraged and should not either by leading the way or responding to society, be penalised in any way unless the circumstances so dictate. Indeed, it could be said that a University would not be truly performing its function unless it was capable of accommodating roles and views of great diversity. To serve its student body, which is the heart of a University and without which it could not exist, it may be crucial for it to provide facilities which reflect modern day activity and without which the full participation of that body could not continue. We therefore see no difficulty whatsoever in taking a broad based view of education, of educational facilities and educational requirements.

- 23.** In many respects it is entirely unnecessary to enter into this debate for the purposes of considering the facilities provided at both the crèche and the Student's Centre. With regard to the crèche it is our considered opinion that the provision of such facilities is now an every day occurrence and is one for which great demand has existed for a number of years. In almost every establishment of work or leisure, of any size or importance,

there is such a facility. Where there is not, pressure is ongoing from a variety of sources including staff, representative bodies, associations and so on. It is common knowledge, indeed notorious knowledge, that in modern day society both married and unmarried people, who have children, wish to continue either working or pursuing other activities including education. It is interesting to note that a crèche has existed in U.C.C. for almost 20 years. It is entirely proper that this is so. It serves not only the staff but also the student body. Both of these groups are expressly declared to be members of the University by and under S.48 of the 1997 Act. The existence of such a facility in our opinion, small though it is, can easily be described as an integral part of the University facilitating as it does both the employment of its academic staff and the continuing pursuit of knowledge by its students. We have no hesitation therefore in so concluding that this building is and should be treated as an integral part of the University.

24. Equally so the educational debate may not be critical to the student centre. Nothing turns on that part of the property at Level 0. At Level 1 it could not be argued with any conviction that the provision of a coffee shop, two convenience shops, a photocopying shop, offices and ancillary other uses are other than what one would normally expect to find in a University campus and without which a University could not function. The only area in which concern might arise is that part of the building from which U.C.C. Travel operate. In respect of this retail outlet it was submitted to us that travel is now, not only an accepted part, but also an integral part of a student's life and certainly of a student's education. The argument being the provision of a service whereby this may be facilitated can only be to the advancement of the student. Similarly so with the staff. Many years ago it was a rarity for a member of staff to attend a conference. Nowadays demands in this regard are enormous. Indeed, attendance at conferences, lectures, work shops etc., seem to be an important method by which ideas are acquired, developed and discussed as a result of which one's information and knowledge is enhanced. Accepting as we do that many students, as part of their formal course, travel and many others as a recognised part of their vacations also travel, we are of the opinion that this part of the building can be considered in the same light as the other uses above mentioned and accordingly we make no distinction between any part of Level 1.

25. On Level 2 as has been on a number of previous occasions described, there is the multifunctional hall and a licensed bar. These activities together with all of the activities on Level 3, can in our view be treated in exactly the same way as the retail outlets on Level 1. The only areas of potential debate, arise on Level 2 - the multifunctional hall and on Level 3 by reason of the operation of a campus radio. The multifunctional hall, as above stated, has a great number of uses, to only one of which objection is taken: it is that which can be described as "socialising". Apparently, a great number of students can be seen, regularly, in the hall without being engaged in works or activities of formal education: hence it is argued that social intercourse, discussion, informal debates, general reading, or simply doing nothing, are all incompatible with the role of college in a student's life and accordingly exemption should be denied. This is a view, which with conviction we would reject. Without ever having to rely on Cardinal Newman for support, it is clear beyond question to us that an area like the multifunctional hall is of considerable benefit to the integration of students and thus to interaction. Lecture theatres are quiet different: those attending usually do so for a specific purpose and for a limited time period: normally the students are of the same discipline and in the same year and class. Much greater variety of persons and disciplines frequent the hall. It is a forum, or as previously said, a hub for engagement. We are therefore quiet satisfied about the qualifying use of the hall.
26. With regard to the campus radio, whilst the provision of this service might be considered innovative, we are of the view that it can be properly viewed as a method by which communication and contact can be established and maintained between the University as an institution and the city in which it is located. This communication is a two way process and can only serve to strengthen and further the interaction between the various components of the University and the general public. Accordingly we are satisfied that all of these constitute an integral and indispensable part of the University and should be so treated.

This therefore being our view it follows that subject to the issue next hereinafter discussed both the crèche and the Student's Centre are entitled to exemption and should be shown as distinguished in the valuation list.

27. There is no doubt but that what Mr. Gleeson has described as "*legal scaffolding*" has been put in place in respect of the hereditaments comprising the Student's Centre. Unless the Student's Union, itself could be so described, there are no legal entities, other than the College itself, involved in the Crèche. A body representing the students has existed for several years. More recently the Student's Union has been established by regulation of the governing body. It has its own constitution. It is essentially student and educationally driven. Its very existence is dependent on students and on the relationship *inter alia* between students and the College itself: like students, being an integral part of the College so is the Student's Union itself. It is more than a component or organ of the College. We do not accept that it is in any real sense, a body or entity separate from the institution that is the College: therefore, its involvement in the crèche is not a ground for refusing exemption.
28. The reasons for the legal framework above mentioned were advanced by Mr. Deasy. These we accept. We also accept that this framework affects the resulting structures but that the underlying activities remain unchanged. On this aspect of these appeals therefore we are in a situation akin to that facing the Tribunal in the Plassey Trust Company Limited case. As is clear from that part of its judgment, quoted at page 12 above, the Tribunal had no hesitation in lifting the corporate veil and in concluding that the existence of these intermediate companies was no bar to exemption if otherwise the University was so entitled. In this we are likewise of the opinion that the mechanism in existence was established solely for the purposes of achieving, lawfully, a financial gain or accrual to the University. We are satisfied that the Trust and the Student's Union are but components of a single overall body namely the University and that such bodies are but manifestations of the same general entity. We are satisfied that there remains a major inter-linkage by way of support, personnel, participation and control between these

bodies. All are designed and operated for the purposes of furthering of the objects of the University.

- 29.** Accordingly in our view we respectfully agree with the approach adopted in both the Plassey Trust Company case and the University of Limerick case and propose to follow these decisions in this matter. Consequently it follows that the existence of these bodies should not in our opinion debar these hereditaments from exemption. By reason of these views the issue of quantum does not arise.