The Clan MacNab histories reference the chiefs holding the “Barony of Bovain” but they were not styled or ennobled as Barons. In the Scots Peerage there is no rank of Baron, any large estate, in Scotland, is called a barony. The following articles explain why that is.

The Barons - Backbone of Parliament

Scotland's Feudal Barons have long played an important part in the nation's story, taking the leading role in such historic events as the Scots’ “Declaration of Independence”; the document sent to Pope John XXII from Arbroath in 1320.

This letter in elegant Medieval Latin, written during the long wars with England, sought papal recognition for Robert the Bruce as King of Scots. It has been described as “one of the masterpieces of political rhetoric of all time” and included such memorable lines as: "It is in truth and not for glory, nor riches, nor honors that we are fighting, but for liberty – for that alone, which no honest man gives up but with life itself." Thirty-eight barons and eight earls attached their seals to the document.

For centuries these feudal barons formed the backbone of the Scottish Parliament and upheld the King’s laws through their local courts.

In Scotland the Peers were originally an Order of Earls, an 'estait' that grew out of the 'Seven Earls of Scotland' who were the Ri or provincial kings of Ancient Alban. As such, in parliament, they sat on the 'Benches of the Throne' of the Ard-Righ-Alban, the High King of Scots. (The Crown of Scotland was therefore 'Ane Imperiall Croun'.) Initially the earls, like the barons derived their status directly from their territories. Sir Thomas Innes of Learney in 'The Robes of the Feudal Baronage of Scotland" wrote "In 1326 there were no Lords - in either the Scottish or English sense of that word". However, in 1358 a new type of earldom was established when Sir William Douglas was created the first Earl of Douglas. This was - a personal honor without any territorial rights. This relatively cheap form of royal patronage was later extended with the introduction of ‘Lords of Parliament'.

Baronies have been recognized by the Crown as land-holding titles for nearly 1000 years, but this link was broken by recent feudal reform in Scotland which has separated the dignity of barony from the ownership of land. Baronies are now treated in the same way as any other form of heritable property

What is a Barony

A Scottish Baron is a holder of an estate of land created by a direct grant from the Crown. The original grant is said to have "erected" the lands into a libera baronia, a freehold barony (Bell's Principles, s. 750). The right can be conferred only by the Crown and cannot be transmitted by the baron to be held base of himself (Bell's Dictionary (7th ed.), p. 99; Bankton's Institute, II.iii.86). In feudal classification a barony falls into the class of noble as opposed to ignoble feus. That classification is discussed by Craig (Jus Feudale, I.x.16) and Bankton (II.iii.83). In Scotland the distinction was recognized between the greater barons and the lesser barons, the former acquiring such titles as Duke or Earl. It was at the earliest a territorial dignity as distinct from the later personal peerage. Thus when one was divested of an estate the title of honor ceased (Bankton, II.iii.84). In the feudal system, however, whether the dignity was that of a baron or of the greater dignity of an earldom, the feudal effects were the same (Erskine's Institute, II.iii.46). As Stair put it (Institutions, II.iii.45): "Erection is, when lands are not only united in one tenement, but are erected into the dignity of a barony; which comprehendeth lordship, earldom, & c. all which are but more noble titles of a barony, having the like feudal effects". The grant of barony carried with it the right to sit in Parliament, but as the number of lesser barons increased, steps were taken from 1427 onwards to restrict attendance to a selected number of them (Erskine's Institute, I.iii.3). The grant in liberam baroniam also carried a civil and criminal jurisdiction (Erskine's Institute, I.iv.25). But Erskine also states that while such an erection or confirmation is necessary to constitute a baron "in the strict law sense of the word", all who hold lands immediately of the Crown to a certain yearly extent are barons in respect of the title to elect or be elected into Parliament (Institute, I.iv.25).” (as described by Lord Clyde ( Then Lord Ordinary of the Court of Session [i.e. a Judge of the Supreme Court] and more recently a Law Lord in the House of Lords. in Spencer-Thomas of Buquhollie v Newell 1992 SLT (The Scots Law Times, Law Reports) 973

Although many of the rights of a feudal Baron have been restricted over the years, any person who holds a Barony, with a land title recorded in the Public Register of Sasines or in the Land Register of Scotland, is entitled to the name, style and dignity of a Baron. If Camilo Agasim-Pereira holds the Lands and Barony of Fulwood, he would be entitled to be named and styled “Camilo Agasim-Pereira of Fulwood, Baron of Fulwood”. He would be entitled to call himself and be refered to as “The Baron of Fulwood” and his wife would be “Baroness of Fulwood or Lady Fulwood”. Further the Baron would be entitled to Petition the Lord Lyon to be officially recognized in the name, style and Dignity as “Camilo Agasim-Pereira of Fulwood, Baron of Fulwood”. Such a Baron is also eligible to Petition for a grant of a Coat of Arms with the Additaments appropriate to him as a Baron in the Baronage of Scotland. These additaments include a Chapeau [like a peerage coronet], the Baronial Robe behind his shield and a badge and standard – see Scots Heraldry by Sir Thomas Innes of Learney, Lord Lyon, 2nd Edition page 28 and “The Robes of the Feudal Baronage of Scotland” by Thomas Innes in Proceedings of the Society of Antiquaries in Scotland 1944 Vol LXXIX, 7th Ser. Vol. VII. In the “Robes of the Feudal Barony …” Sir Thomas wrote:

“According to the practice of the Lyon Court … a Petitioner who establishes his baronial status is, whether in the Register of Arms … or the Register of Genealogies, duly recorded as “Baron of X\_\_\_\_” and Baronial ancestors duly numbered in the usual manner.”

 Baronies are still officially recognized in Scotland can be seen from the Abolition of Feudal Tenure etc (Scotland) Act 2000. This Act is to come into force on an appointed day, in about one year’s time. The Act abolishes the feudal system in Scotland, but section 63(3) provides:

“(2) When by this Act, an estate held in barony ceases to exist as a feudal estate, the dignity of baron, though retained, shall not attach to land; on and after the appointed day any such dignity shall be, and shall be transferable only as, incorporeal heritable property (and shall not be an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33)…”

A Scottish Barons are noblemen according to the laws of Scotland, there are three types of noblemen in Scotland: The Peers of the Realm, the Barons and untitled Noblemen who possess Arms, granted by Letter Patent from by the Minister of The Crown, Lord Lyon King of Arms, who is the representative of HM the Queen in Scotland for such matters.

So if you friend want to use a title held by him, he is legally and quite correct entitled to do so and historically he should do so as per as per Sir Thomas Innes of Learney, The Late Lord Lyons of Scotland in his book The Clans, Septs and Regiments of the Scottish Highlands', 7th Ed., p. 407 'The late Lord Lyon Burnett emphasized that it is the duty of our baronial chiefs (and most of the Highland chiefs are such) to assert their position' and (p. 411) 'Celtic chiefly and territorial styles [including baronial styles] should be supplied and used on all official occasions and in official documents'.

NOTES:

Not every Baron has been granted territorial designation by Lord Lyon in Letter Patent.

Every Baron has the Prerogative to apply for arms with additaments, but has no obligation to do so.

Every Baron who holds the Caput of his Barony is also a Laird, but not every Laird is a Baron.

Not every Barony was erected by the Crown, some are "By Grace of G-D" there were granted by Bishops in medieval times.

Not every Baron uses his title, some have other titles, some Barons are actually Duke, Earl and etc.

Some Baronys are considered Peerage (i.e. Renfrew held by The Prince of Wales), many believe that all Baronies held directly from the Crown are Peerage. However this is a moot point as all most hereditary peers are no longer allowed to sit in Parliament.

It gets even more complicated, not every Barony is actually Barony some Baronies are actually Earldom or Lordship

Some Barony may have had high privilege (Baronies with Regalities held 'in liberam regalitatem' as opposed to 'in liberam baroniam' of an ordinary Barony.

If someone is using a Baronial title, and he is British Citizen, his title normally would be reflected in his passport, if it's not he still may be a Baron, but it's doubtful that he would be using his title without it reflecting in his passport. If he not a British Citizenship he would normally would have had his Arms matriculated with the Court of Lord Lyon. If however neither can be produced, he may still be a Baron. But short of somehow asking to see his disposition or deed of inheritance, you will probably continue with your doubts.

There are some 2277 Baronies listed however that number could be larger than that or smaller, as many Baronies merged with one another or simply were "forgotten" in no different manner that people sometime forget about money in the bank or an insurance policy. If the Scottish Government were to abolish all Barony today the compensate would run by some account in the region of £60.000.000 (Sixty Million Pounds), It's our believe and calculation that it could end up costing the Government over £150.000.000 (One and Fifty Million Pounds) as some Barony have change hand for more than £300.000 (Three Hundred Thousand Pounds), so those figures and calculations are academic, also many would began to "find" their long lost Baronies.

Until 28 of November 2004 Scotland was the only European country that had a active and legal Feudal system were Barons were superior of their lands and had quite a few judicial, legal and administrative privileges over his vassals and land.

A Barony is today a "Title of Nobility" that can be transferred only as, incorporeal heritable property. The legal Dignity of the Scottish Barons is protected in law by Act of the Scottish Parliament Under the Act of Abolition of Feudal Tenure etc (Scotland) Act 2000 on it section 63(3).

A Scottish Baron is not a Lord by virtue of his Baronial Title, some are however Lords by virtue of other titles held, most should not be address as The Right Honorable, as most are not members of the HM Privy Council or member of Parliament some however are and as such should be refereed in that style. The majority should not be refereed to as The Honorable as most are not sons of Peers, nor a member or former member of the Consular, Diplomatic Corps and/or senior government official, many however are or were and could be refer to in the style. The Proper Style to Address a Scottish Baron his capacity without fear of error is " The Much Honored Baron of XXX\_\_\_\_\_\_\_" and not Baron XXX\_\_\_\_\_\_ (as in Baroness Thatcher) a Scottish Baron is a territorial Baron, there are no Scottish Barons without a territorial designation, some do not have territorial designation attached to their names in a few Letter Patents of lately, but many believe that Lord Lyons was wrong in granting territorial designations in those instances and some judicial reviews are in progress to ratify those omissions. An introduction should always be done informally as “Please meet the Baron XXX\_\_\_\_\_\_\_\_ and/or Lady XXX\_\_\_\_\_\_\_, formally as in announcing him for a speech "The Much Honored Baron of XXX\_\_\_\_\_\_\_. The wife of a Baron is The Baroness of XXX\_\_\_\_\_\_ or Lady XXX\_\_\_\_\_\_\_ never Lady of XXX\_\_\_\_\_\_\_\_ as she is not the holder of a Lordship in Scotland and her title is a courtesy one.

However a person may adopt any surname that they wish and this includes the addition of a territorial designation; see Green’s Encyclopedia of the Laws of Scotland, Dunedin Edition Vol 10 “Name & Change of Name” paragraphs 305 and 310 and the cases there cited; J H Stevenson, Heraldry in Scotland (Glasgow 1914) Vol 2 p. 382. So by no mean believe that everyone your meet who has a "of" in his surname is a Baron or a nobleman chances are that he is not. Can you detect a "fraudulent" use of a title probably not if your not an expert and if you are searching for an answer is because you're not a expert and was "impressed" by what is a man's card and not what he really is, nobility is in actual fact much more that holding a title of nobility, belonging to the noblesse of a country does not necessary make your a person of "noble spirit". So if you met a man calling himself " of whatever " and he was polite and courteous with you, take him a face value and be nice to him too, just do not part with your money or daughter like you would not for anyone else who does not have a "of" in his business card or drives license.

Our Baronial Community like any other group of people have its fair share of eccentrics, self-obsessed with aggrandizement people, but the Babylonian Talmud teaches us an important lesson as well. "A person's nature can be recognized through three things: his cup, his purse, and his anger." In Hebrew, the language is alliterative: the Hebrew words are koso (cup), kiso (purse), and ka'aso (anger). This means you can reliably judge the traits of another by how he handles his drinking, his charity, and his conduct.

We are Commandment to accepting others as we accept yourself. Through an important principle of "Judge every person favorably'' (Jewish Ethics of the Fathers 1:6). This means giving a person a break, presuming we are not all-knowing of facts and motivations, and giving someone the benefit of the doubt. None of us is G-d after all, and it truly is not our place to judge others harshly. We may be frustrated, AND we may not understand someone's motivation. Judge others as you yourself would want to be judged. We all got our own eccentricities to deal with.

Barons and the Feudal System

Scotland's Kings adopted the feudal system of landholding in the 12th century as the Picts, Scots, Gaels and Britons forged their diverse peoples into a nation. Lands were granted to loyal supporters of the Crown -- many of them adventuring Flemings, Saxons and Normans -- in exchange for armed service. These new tenants were the barons.

In the Highlands and the North, where Celtic princes held power for centuries with only nominal loyalty to the King of Scots, baronies were also granted by the local rulers.

The untitled nobility of the baronage, similar in status to Continental barons, were the King's officers of the law. They had considerable powers in their barony courts and could call on their own tenants to serve under them in times of war.

In medieval times, when the vast majority of the population lived on the land, the barony was the rural unit of self-sufficiency, with its own mill, dam, forge, brewery, bleach-field and so on. This unit was held together by the baron and his court, who not only punished troublemakers but also allocated grazing rights and made many of the community’s agricultural decisions, such as those involving the digging of drains and building dykes.

From the middle 1500s, the baronage of Scotland was gradually divided into Lords of Parliament (equivalent to English barons), who continued to attend Parliament in Edinburgh until 1707, and the lesser barons, of whom there were several thousands, each with his caput (manor house or castle), court, services, rights and privileges. These barons were given conditional relief from the burden of attending parliament by the Act of Relief of 1587: the condition being that they appointed two of their number from each shire to represent them.

The Jacobite Rebellions of 1715 and 1745 led to the feudal powers of these barons being reduced by the Westminster Parliament, which passed the Heritable Jurisdictions Act (1747) to weaken the grip of the clan chiefs in the Highlands and the Braes. Even though the Lowland barons tended to derive their power from their landholdings rather than family leadership, the Act removed many of their rights. The feudal system was eventually ended by a vote of the devolved Scottish Parliament and at the time of writing (2001) this abolition is scheduled to come into effect within two years. Although the barons' feudal rights have been taken away, the baronial titles continue as before.

"The early precocity of Scotland in legislative wisdom and the extraordinary provisions made by its native parliament in remote periods, not only for the well-being of the people, but for the coercion alike of regal tyranny and aristocratic oppression, and the instruction, relief and security of the poorer classes, is one of the most remarkable facts in the whole history of modern Europe and one deserving of the special attention of historians and statesmen both in that and the neighboring country." Sir Archibald Alison, Blackwood's Magazine: November 1834.

The Scots Barony

In Scotland a barony is an area of land which has been "of New United, Erected, Annexed, Create and Incorporated ..... Into a hail and free Barrony, to be called ... the Barrony of ....... by the Sovereign in terms of a crown charter or which has been confirmed by the Sovereign in “libera baronia”, a free-hold barony. This had the effect of erecting possibly dispersed lands into one united barony.

“Erection is, when lands are not only united in one tenement, but are erected into the dignity of a barony; which comprehended lordship, earldom, &c. all which are but more noble titles of a barony, having the like feudal effects” .

The lands could be dispersed and even be in different counties or sheriffdoms.

In feudal classification a barony falls into the class of noble as opposed to ignoble feus. A barony therefore conferred on the holder the noble status of “baron". Whether the dignity was that of a barony or of the greater dignity of an earldom, the feudal effects were the same.

It was at the earliest a territorial dignity as distinct from the later personal peerage. Thus when one was divested of an estate the title of honor ceased. The grant was for the lifetime of the holder and could be forfeit if the holder incurred the Crown’s displeasure. The superior required loyal and competent support from his vassal. The Crown reserved the right to repossess the land and might do so if the heir in possession was a child or otherwise unable to provide the feu service or duty. The repossession by the Crown if the heir was a minor was only during minority, and restored on coming of age. Despite emphasis on the military nature of feudalism, an heir could negotiate to avoid the rigors of tenure by redeeming the conditions.

The creation of a barony included the grant of local power and responsibilities to the baron much of which was exercised via the Baron’s Court.

The idea of freedom here is the mediaeval one that the man, here the Baron, is free of control within his lands, just as the Scots under Bruce fought to be free of English control. Freedom as a concept has moved a long way over the ages. The Baron of course had the power of pit and gallows in his juridical capacity, which was removed in the C18,

English Barons are different from Scottish Barons. The majority of Scottish gentry of standing held their lands, or at least most of their lands in a barony. This was a purely territorial lordship and had nothing to do with the peerage, or Lordship. In England, only the greatest magnates held as barons, even in early Norman times and it gradually came to be that a Baron was a Lord, and a Lord was a Baron. In the Scots Peerage there is no rank of Baron, the equivalent of the English Baron is (still) a Lord of Parliament.

# The Scottish Naming Law

# The Scottish Naming Law was straight forward and simple. The first son was named after the father's father, the second son after the mother's father, the third son after the father, the first daughter after the mother's mother, the second daughter after the father's mother, the third daughter after the mother. If a death occurred before all these names had been used, the deceased name was reused at the FIRST opportunity. This meant that the first seven sons could be John, if the first six sons died soon after birth. There were exceptions allowed to the rule. The eldest and second son's names could be reversed, where one grandparent was deceased when the first child was born. Sometimes the first son was named after the mother's father, who had money and had set the couple up, say in a farm, but this was considered irregular and was frowned upon by the Parish Minister. After the first three boys and girls had been named and survived, it was standard practice to name the next boy after the Minister.

# When Is a “Mc” A “Mac”?

All “Mc” and “Mac” names are of Gaelic origin and are a patronymic, which means that they are derived from the father’s name. “Mac” means “son of,” as in MacGannon means “son of Gannon” and MacDonald means “son of Donald.”

The original form of “son of” was “Mac,” but it was often abbreviated as “Mc” (with or without a line or two dots under the “c” to show that the “a’ was removed), or as “Ma.” In addition, to make it even more confusing, “Mac” was sometimes abbreviated to a simple “M’ “, rather like the Irish “O”, meaning “of the line of” (e.g. O’Neill means “of the line of Neill).

The Gaelic language is one of several Celtic “Q” languages, spoken by Celtic tribes in Ireland, including the Scots, or Scoti. When the seafaring Scots re-settled in Scotland (and eventually gave their name to the country), they naturally brought their traditions and language with them. So, does that mean all “Mac,” “Mc,” “Ma” or “M’ “ names are Irish? Well . . . no.

The Scots were not the only Celtic tribe to settle in Scotland, and there was much intermarrying among these tribes. They also intermarried with the local people, including the Picts, who, of course, had their own language. As a result, Gaelic in Ireland and in Scotland diverged, becoming two related, but distinct languages.

Some Highlanders dropped the “Mac” prefix for political or economic reasons after the collapse of the Jacobite movement or during the Highland Clearances, or later, simply to be fashionable. And, just to make it even more confusing, some Lowland Scots (and English) actually added “Mac” prefixes to their names when being a Highlander was all the rage (after King George IV’s visit to Scotland in 1822 started a trend that roared through Britain).

OK, but at least we know that all the Irish “Mac” and “Mc” names are Irish, right? Well . . . no. There were several waves, starting in medieval times, of mercenaries from Galloway and other Scottish districts lending their sword arms to help Irish leaders. The Scottish men intermarried with the locals and their inherited names are called Gallowglass. McCabe is an example of a Gallowglass name; there are hundreds of others. Then there’s the “plantation” of Ulster, also centuries long, during which Scottish families, both Lowland and Highland, moved to Northern Ireland.

What about those “Ma” names, like Maguire and Malone? Maguire is the same name as McGuire or MacGuire, which originally, in Gaelic, was MacUidhir. The “g” was added when the name was Anglicized. So that would mean Malone was originally MacLone or some variant, right? Well . . . no. Malone is an example of a name from which the “O” was dropped; it was O’Maoileoin, or something similar, and might have been spelled a number of ways. How does one know? A hint - spelling isn’t everything. “Mac,” “Mc” and “Ma” names are spelled in a variety of ways, some quite creative. Today most people can spell their own names, but that was not always the case. Changing education levels, and fashion, were also factors, not to mention the alterations to names caused by spelling or reading errors through the centuries.

Spelling was sometimes changed as immigrants came through Ellis Island or other immigration stations, often by people who had never heard names like these before. One of the most common reasons for a name to change was translation from Gaelic to English; often names were written as they were pronounced, which would depend on the speaker’s accent. A good example of this is MacLean. In Scotland, it’s pronounced “MacLane”; in North America it has often been transformed to “MacLeen.” How? Well, think of Sean Connery pronouncing the name. Now add a Southern, Australian or New Zealand accent. See how these things can happen?

We haven’t even started to talk about the controversy over capitalization. Purists tell us that only the son of a Donald can be called “MacDonald,” that everyone else of that name should be Macdonald, with an uncapitalized “d.” Try telling that to a proud MacDonald.

The author of **The History of the Clan Neish or MacNish of Perthshire and Galloway** included in his book a number of entries from Scottish legal documents, containing legal terms and words from the Scots dialect. Since my education in British (not to mention Scots) Law came largely from watching episodes of Rumpol of the Bailey, many of those terms were, to say the least, unfamiliar. One such entry read as follows:

Complaint by John, Earl of Tullibardine, and William, Master of Tullibardine, that Sir Robert Creichtoun of Cluny remains unrelaxed from the horn, for not relieving them at the hands of James Dalzell, merchant in Edinburgh, of payment of 2000 merks (A silver coin worth 13 ½d, issued first in 1570). Pursuers appear by Donald Neische; defender not compearing is to be apprehended.

I put the entry up on an internet news group asking for someone to translate it for me and received the following explanation:

John, Earl of Tullibardine and (his son) William, Master of Tullibardine, filled a complaint and Sir Robert Creichtoun of Cluny was still required to trap (attend court to give evidence) in the matter of a dispute over the payment of a debt of 2000 merks between them and the merchant James Dalzell, who is represented by Donald Neische (solicitor, advocate or some other lawyer). He would be huckled (arrested) if he did not do so.

The person who translated this also directed me to several web pages concerning the Scottish Legal system and Law terms, authored by an Eve C. Athanasekou in the University of Glasgow, Department of Computing Science http://www.dcs.gla.ac.uk/~athanasp/history.htm

These pages had been last updated on 7 August 1996 and only a few weeks later they had disappeared. Nor was Eve C. Athanasekou still listed as a member of the faculty of the University of Glasgow.

I have based many of the footnotes in both the MacNeish book, and elsewhere, on these pages. They are included here in the hopes that some readers, especially the lawyers among us, will find them of interest.

David Rorer

**A Brief History of Scottish Law**

Although there are many similarities between the countries of Scotland and England, Scotland has its own legal, judicial, and educational system.

Back in the 11th century, Scotland was a feudal kingdom where land was granted in return for different services. The Monarch presided over criminal and civil justice, but in theory only. The local sheriffs actually performed the tasks of dispensing justice, while local landowners presided over the courts. The church courts, which applied Canon law, had jurisdiction over family matters and the inheritance of moveable property. Since there was an absence of universities in Scotland at that time, Scottish lawyers were educated in Europe, where Roman law was taught.

During the 16th century, the Scottish judiciary began to form, and 15 Lords of Council and Session became Senators of the College of Justice who sat together in one court with wide jurisdiction. The Faculty of Advocates and the Writers to the Signet evolved at that time, and were given exclusive rights to plead in court as advocates, and act as solicitors.

In the late 17th century, Lord Stair, who was the Lord President of the Court of Session, published the Institutes of the Law of Scotland. In doing so, he set forth a comprehensive and practical set of rules derived from common-sense principles, existing Scottish decisions and statutes, Roman law, Canon law, and the Romano-Germanic systems.

In 1707, the union of the Parliaments of Scotland and England created the United Kingdom of Great Britain. Scotland no longer had its own Parliament and English law began to replace Roman law as the main source of Scottish law. The House of Lords became the final court of appeal for Scottish civil cases, and the influence of English law in Scotland grew. Although Scottish law is still heavily influenced by English law, the Scottish and English courts are not bound by each other’s decisions, but the decisions are considered persuasive, especially when they interpret United Kingdom statutes. However, Scottish civil law is based more on generalized rights and duties than English law is, and Scottish law still distinguishes between the legal process and substantive law.

**Sources of Scottish Law**

There are a number of different sources from which Scottish law is derived:

**Legislation**

This is the most important source of law, as it stems directly from Acts of the Scottish Parliament and the European Community. Because the statutory language involved is highly technical, lawyers must look beyond the legislative text in order to interpret the statutes. This involves consulting decisions of the courts, and reading the legislative history.

**Court Decisions**

There is a great deal of law that does not result directly from legislation, but from previous court decisions that were recorded in the Law Reports. This type of law is commonly referred to as Acase law@ or “common law@, and each decision contains a narrative of the facts and the legal analysis involved in the judge’s decision. Lawyers are expected to derive rules of law from these cases, and apply those rules in the future. Click on Bailii.org to search for Scottish cases on-line.

**Legal Writings**

Legal Writings are useful because they interpret and explain case law, and can be found in textbooks and legal journals. Though they are not as strong a source of law as legislation and cases, Legal Writings are still considered persuasive.

**Institutional Writings**

Institutional Writings are found in very old books, and state the common law of Scotland before 1800. If a more recent source cannot be found, these writings will stand as law.

**Roman Law**

Otherwise known as Acivil law@, Roman law is a historically important source of Scottish law. Roman legal writings have been preserved in the ”Digest@, and specific Scottish sources enveloping these writings have been developed.

**English Law**

English law, also known as the “common law@, is still an important source of law for Scotland. Historically, English law heavily influenced feudal land law and commercial law. In recent times, English law still influences the Scottish law of obligations (contract, delict and unjust enrichment).

**Canon and Udal Law**

Canon law is the law of the Church, and many rules of modern Scottish law can be traced back to it. Udal law is Norse law, and it is still applied in the Northern Islands of Orkney and Shetland. Its main focus is on landownership, although it is rarely ever invoked.

**The Court System**

When the Scottish Parliament was first abolished in 1707, there were only two principle courts: the Court of Session for civil cases, and the High Court of Justiciary for criminal cases. Today, there are many more courts included in the Scottish legal system.

**The Court of Session**

The Court of Session sits only in the Parliament House and is the supreme civil court in Scotland. It is both a court of first instance and a court of appeals, and is composed of two houses - the Outer House and the Inner House. Seventeen junior judges called “Lords Ordinary” sit on the Outer House without a jury. It only hears cases for the first time, and its jurisdiction covers a large number of civil claims. The Inner House consists of two Divisions, both of which act as appeal courts for decisions of the Outer House and other lower courts. Only four judges sit on each of the Divisions.

**The High Court of Justiciary**

The High Court of Judiciary is the supreme criminal court of Scotland, and acts as both a trial court and a court of appeals. While performing as a trial court, it sits in Edinburg, but travels to different parts of Scotland. As a court of appeals, it sits only in the Parliament House in Edinburgh.

The High Court’s jurisdiction extends to all of Scotland. While it has jurisdiction over any type of crime not specifically reserved to another court, it has exclusive jurisdiction over all major crimes, such as treason and murder. There are no limits on sentences of imprisonment or the amount of any fine in any of the serious criminal matters. The High Court judges are the same as those who sit in the Court of Session, but when they sit on the High Court, they dress in different robes.

**The Sheriff Courts**

The Sheriff Courts deal with most of the civil litigation in Scotland, and there are forty-nine Sherriff Courts spread out over six Sheriff Court regions. When the Sheriff Court acts as a court of first instance in civil matters, it has very wide jurisdiction. The Sheriff Court’s jurisdiction as a criminal court is also wide, but does not include any major crimes, as they are reserved for the High Court of Justiciary.

**The District Courts**

This District Court system was established by the District Courts Act 1975, and is at the low end of the court hierarchy system. There are thirty District Courts in Scotland and they hear only summary criminal matters, such as breach of the peace, assault, vandalism, speeding and other miscellaneous road traffic offenses. A lay person, acting as Justice of the Peace, presides over the District Court alongside a legally qualified clerk. The District Court can imprison a person for up to sixty days, and can impose a fine for up to £2,500.

**The Stipendiary Magistrates Court**

Currently, the only Stipendiary Magistrates Court is located in Glasgow. This court hears criminal matters, and can impose up to three months imprisonment, or six months for a second or subsequent conviction, and a fine up to £5,000.

**The House of Lords**

The House of Lords is the final court of appeal for the civil courts of both Scotland and England, and hears cases of first instance only if they involve a breach of privilege, disputed claims to peerage, and impeachment. In matters that involve European Union law, the House of Lords is subject to decisions of the European Court of Justice. Five Lords of Appeal normally sit to hear an appeal to the House of Lords, and although at least two of them are normally Scottish, there is no rule governing who must preside, and a Scottish appeal could be decided by a majority of non-Scottish judges having minimal knowledge of Scottish Law.

**The European Court of Justice**

The purpose of the European Court of Justice is to ensure that European Law is correctly interpreted and observed. It consists of one judge from each member-state, and two judges from each of the larger member-states.

**Courts of Special Jurisdiction**

There are a number of courts of special jurisdiction, including: The Court of Exchequer, which deals with tax disputes; The Court of Lord Lyon King of Arms, which has jurisdiction over the right to bear coat-of-arms; and The Election Petition Court, which petitions to set aside the election of members of the Parliament on grounds of illegality and corruption. For more information on the Scottish court system, visit the University of Glasgow’s website, and the Scottish Court Service website.

**The Criminal Trial System**

In Scotland, the Prosecutor is responsible for presenting the case against the person charged with a crime. In the High Court, the Lord Advocate, or one of his deputes, acts as the Prosecutor. In the Sheriff Court, the Stipendiary Magistrates Court and the District Court, the local Procurator Fiscal, or one of his deputes, is responsible for presenting the case. The Prosecutor normally sits on the left-hand side of a table that faces the Judge. The individual charged with the crime is commonly called the Accused.

The Accused sits in the courtroom until his case is called, at which point he takes a seat behind the prosecutor. Although a solicitor usually represents the Accused, he is allowed to represent himself. If represented, his solicitor will sit on the right-hand side of the table, also facing the Judge. If the Accused denies committing the crime, a trial will be held, and evidence will be introduced in order to determine his guilt. In serious criminal cases, a Jury, comprised of fifteen individuals selected at random from the voters roll, hears the trial. In the High Court, a Jury hears all trials, whereas in the Sheriffs Court, only the most serious cases receive a Jury.

The Prosecutor will introduce and question witnesses in order to create a picture of the crime. The Accused’s solicitor will also question the witnesses and test their recollection. If a solicitor does not represent the Accused, he is allowed to question the witnesses directly. After the Prosecutor has presented and questioned all his witnesses, the Accused may present evidence of his own, and call his own witnesses to establish his innocence. The Prosecutor’s witnesses are known as the Crown Witnesses, and the Accused’s witnesses are known as Defense Witnesses. All witnesses must stand in the witness box when they give their evidence, and if unable to stand, the witness may ask the Judge for permission to sit down. Once in the witness box, the witness is asked to take an oath before God, and if he prefers not to swear under oath, he will be asked to affirm that he will tell the truth.

**Practicing Law in Scotland**

The legal profession in Scotland is divided into two categories: advocates and solicitors. Advocates are more specialized in presenting a case in court and advising clients on all aspects of litigation. They also work independently as sole practitioners, and receive their work from solicitors who instruct them and pay their fees. Solicitors are more generalized than advocates, and usually practice in partnerships with other solicitors. Persons in need of legal advice will first consult a solicitor, and if there is a need for expert legal advice or advocacy, the solicitor will consult an advocate. There are many more solicitors than advocates, as the number of solicitors is approximately 8,000, and the number of advocates is approximately 575.

**Becoming an Advocate**

In order to become an advocate in Scotland, one must progress through a number of stages:

1. The person must be admitted as an Intrant to the Faculty of Advocates. In order to be admitted as an Intrant, one must either have a law degree from a Scottish University, or prove to the Board of Examiners that they hold the qualifications needed to enter the curriculum for a degree of law from a Scottish University. References must also be submitted, and a petition presented to the Court before the candidate matriculates to become an Intrant.

2. The Intrant must pass or gain exemption from the Faculty’s examinations in Law and either obtain or gain an exemption from a Diploma in Legal Practice at a Scottish University.

3. The Intrant must then serve a 21 month period of training in a solicitor’s office, serve a period of about 9 ½ months as a pupil to a member of the Bar (a process called “devilling”, and pass the Faculty examination in Evidence, Pleading and Practice, and Professional Conduct. During the “devilling” period, the Intrant must not partake in any activities that would prevent them from devoting himself to a full-time pupillage, or any activity that would be considered inappropriate by the Dean.

**Becoming a Solicitor**

All practicing solicitors must be members of the Law Society of Scotland, and posses a current Practicing Certificate issued by the Law Society. The solicitor profession is governed by the Law Society, and regulated by the Solicitors (Scotland) Act 1980. As of October, 2000, a new system of training solicitors has been implemented:

1. The student must obtain a Diploma in Legal Practice after attending a twenty-six week course at a university. The course teaches students the basic skills and knowledge required to practice law.

2. Upon completion of the Diploma, the student will enter a traineeship with a law firm, where he is required to maintain logbooks that are reviewed on a quarterly basis by the trainer and submitted to the Law Society. The traineeship lasts for two years, and at the end of the first year, the student will be able to apply for a qualified practicing certificate in order to gain court experience. Satisfactory completion of the logbooks is a prerequisite for entry to the Test of Professional Competence.

3. The Professional Competence Course is required to strengthen the learning of knowledge and skills relating to the experience the student had in his traineeship. The course must be taken no earlier than six months, and no later than eighteen months, into the traineeship. It lasts for three weeks, and completion of the course is required for entry to the Test of Professional Competence.

4. After the trainee has taken his Competence Course and completed his logbook, he will be eligible to take the Test of Professional Competence. All trainees must pass the test in order to become fully qualified. The exam is structured in a way that it will test the trainee in areas relevant to his traineeship experiences, and it will be graded on pass or fail basis. Once the trainee passes the test, he will proceed to qualify as Scottish solicitor.

**Modern Developments Influencing The Scottish Legal System, The Scotland Act 1998**

For the first time in almost 300 years, a new Scottish Parliament sat in Edinburgh in May of 1999. The establishment of this new parliament resulted from the devolution of powers from the United Kingdom Parliament in London. The Scottish Parliament is now responsible for most aspects of Scottish life. Although many of the legislative powers held by the Westminster Parliament have been given to the Scottish Parliament, the Scottish Parliament’s power is limited. The national parliament in Westminster is still responsible for issues of defense, foreign affairs, and taxation. Members of the new Scottish Parliament are elected by a simple majority vote from each of the 71 constituencies, and elections are held every four years on the first Thursday in May.

**Scottish Law Commission**

The Scottish Law Commission was established in 1965 to help promote the reform of Scottish law. It is an independent body that prepares reports on a number of reform projects and presents them to the Ministers. It participates in the consolidation of statutes and statute revision, and also provides advice to the government.

The sources of Scottish history before AD 1100 are rare and difficult to interpret and the same is also true for the sources concerning law and other institutions. Nevertheless, and despite the fact that an entirely Scots Law does not appear until the 13th century, many of its components can be traced a lot earlier.

During the Middle Ages, there were four major political forces in the area that today constitutes Scotland: the Picts, the Scots of Dalriada, the Britons of Strathclyde and the Angles of Northumbria. In the 9th century (more specifically in 843), the Picts united with the Scots and formed, under the kingship of Kenneth MacAlpin of the Dalriadic Dynasty, the kingdom of Alba or Scotia, which in the 11th century also included the other two people of the area (Angles and Britons). The four people of Scotia had different laws, but since the driving force behind it were the Scots, their laws were soon to prevail.

From the 11th century on, Scotland became a feudal kingdom where land was granted in return for services, such as e.g. military service. The monarch (called "ard righ" in the Gaelic tongue of the Scots) was responsible for dispensing the so‑called "secular justice,” i.e. criminal and non‑criminal or civil justice, but only in theory. This task was actually performed by the local "sheriffs" while the courts were presided over by the local landowners. Meanwhile, the church courts, which applied canon law, had jurisdiction to judge various matters including family matters and the inheritance of moveable property. At that time, due to the absence of universities in Scotland until the 15th century Scots lawyers were educated in Europe. They studied mostly in Flanders, France and the Netherlands, where Roman law was taught.

The structure of the judiciary began to take form in the 16th century, when the 15 Lords of Council and Session became Senators of the College of Justice who sat together in one court with a wide civil jurisdiction. Moreover, the Faculty of Advocates and the Writers to the Signet evolved and were given the exclusive right to plead in court (as advocates) and to act as solicitors.

In the late 17th century, Lord Stair, Lord President of the Court of Session (and the first of the so‑called "institutional writers"), published his Institutes of the Law of Scotland. In doing so, he set out the whole of Scots law as a rational, comprehensive and practical set of rules. These rules were deduced from common‑sense principles, reported Scottish decisions and statutes, Roman law, canon law or the Romano‑Germanic systems. Other institutional writers such as Erskine, Bell and Hume, whose work incorporated new law developed by judges’ decisions or enacted in statutes, followed Stair in later centuries.

In 1707, the United Kingdom of Great Britain was created as a result of the Union of the Parliaments of Scotland and England. Gradually, English law began to replace Roman law as the main external source of Scots law, since the majority of Scots students now studied in England. The House of Lords became the final court of appeal for Scots civil cases, and the English principle of judicial precedent (known also as stare decisis) came to be more strictly applied. The reform of the Court of Session in the early 19th century further contributed to the move towards adapting English legal methods. As Scotland's industrial, commercial and cultural life began to resemble more and more that of England, English law appeared to be a more relevant source of law than Roman law. The influence of English law continued to grow and although Scottish and English courts are not bound by each other's decisions, they consider them persuasive especially if the decisions interpret United Kingdom statutes.

Still there are differences between the Scottish and the English legal system. The civil law in Scotland is based on more generalized rights and duties than in England and Scots law argues deductively from principles and still holds the distinction between legal process and substantive (i.e. actual) law.

References ‑ Manson‑Smith, Derek: The Legal System of Scotland, The Scottish Consumer Council, Edinburgh 1995

‑ Meston, M.C., Sellar, W.D.H. and Lord Cooper: The Scottish Legal Tradition, The Saltire Society, Edinburgh 1991

Suggested Readings

‑ Various: An introduction to Scottish Legal History, The Stair Society, Edinburgh 1958

‑ Walker, David M.: A Legal History of Scotland, vol. 1‑2‑3, W. Green & Son, Edinburgh 1988

Eve C. Athanasekou University of Glasgow, Department of Computing Science

Page last updated: 7 August 1996

http://www.dcs.gla.ac.uk/~athanasp/HISTORY.HTM

Absolute interest in land: This means a person has unfettered ownership of property, the equivalent of a freehold in English land law. In Scotland there are two distinct legal estates, Superiority and Feu. The estate of superior is clearly unfettered, and therefore absolute. Under a feudal estate the owner must not breach the feuing conditions, but he is otherwise entitled to complete possession of his property for all time, and therefore his ownership is also regarded as absolute, subject to any statutory restrictions, eg. planning. See "feuduty" and "blench holding.”

A caelo usque ad centrum: The grant of a feu charter confers on the feuar the dominium utile (Scottish equivalent of freehold) not only of the whole grounds described in the charter, but also buildings, woods, waters and fishing (not usually salmon) rights and any other property in or under the surface (such as mineral rights) or above it (e.g. the air space occupied by the building). This means that the feuar in theory owns everything a caelo (from the sky) usque ad centrum (right down to the center of the earth). However, in practice there are many exceptions to this principle. Planning law often restricts the use of the land; the mineral rights are usually reserved to the superior, and the use of the air space above by aircraft is covered by other legislation.

Actio quanti minors: Literally "the action of how much less.” Nowadays, the majority of contracts for the sale of land and/or buildings in Scotland provide that where the condition of the property does not match the terms of the contract by the vendor, the purchaser retains the property, but raises an action of damages against the seller based on "quanti minoris", that is how much less the property is worth than it would have been had the vendor not been in breach of contract.

Ad perpetuam remanentiam: A disposition from feuar to superior containing a clause 'ad perpetuam remanentiam' merges the two legal estates of Feu and Superiority together under one single ownership.

Allodial land: Land owned by the Crown, which has never been subject to the feudal system. It would include areas of the Scottish seashore, which the Crown still owns. The Crown has the ultimate superior interest in feudal land.

Assignation: An assignation is a document which transfers rights (eg. the tenancy under a lease) from an assignor to an assignee. In Scotland an assignation must be intimated to interested third parties in order to be effective. For example, the tenant would require to intimate the assignation to the landlord.

Blench holding: This is where land is held for a return, which is merely nominal. See "feuduty".

Burden: Any restriction, limitation or encumbrance affecting a property. Feudal conditions, such as restrictions or limitations on the use to which land may be put, servitudes including a private right of way or obligations to make a periodical payment in respect of land (eg. a feuduty) are all burdens on the land and its owner.

Common property: Property, either immovable or moveable, belonging to two or more owners pro indiviso, ie in an undivided manner with no separation of shares. Each co‑owner may sell his undivided share. In matters of administration, except in the case of necessary operations, the wishes of an owner objecting to a course of action prevail. However, any owner may compel division and sale of the property. See also pro indiviso.

Confirmation: Power judicially conferred on the executor of a deceased person's estate to administer the estate. By Confirmation an executor gains title to the property and assets of the deceased. Comparable to probate or grant of representation.

Confusio: This arises where one party owns both the Superiority and the feudal estate and holds both estates in the same capacity openly, peaceably and without judicial interruption for ten years without having been granted a Minute of Consolidation. In such circumstances, the law will automatically merge the two estates under the doctrine of 'confusio'.

Creditor: A person (natural or legal) to whom another person (the debtor) is indebted. A secured creditor over land is one who has been granted a deed by his debtor acknowledging indebtedness and providing security for the sum owed. If the security is over heritable property the granting of a standard security or floating charge is essential. A heritable creditor is the Scottish equivalent to a mortgagee such as a Bank or Building Society.

Croft: An agricultural smallholding located where the crofting statutes apply, namely the former Counties of Argyll, Caithness, Inverness, Orkney, Ross & Cromarty, Sutherland and Shetland. Although crofters (since 1976) are able to own their land, generally speaking crofting is a form of tenancy in respect of which the crofter has security of tenure.

Destination: A direction, usually in a disposition or will, prescribing the order of succession to moveable and heritable property.

Dispone: Used in relation to land, this word means to transfer ownership. It was formerly essential to use the word to give validity to any deed transferring ownership of land. Similar to "convey" in England.

Disposition: This is a formal document transferring title to the land. The delivery of disposition gives the purchaser a personal right in the land. Only recording of the disposition the Register of Sasines or Land Register in Scotland gives the purchaser a real right over the property.

Docquet: An authenticating endorsement on a deed or other document.

Dominant tenement: A dominant tenement enjoys a right to exercise a servitude (the Scottish equivalent of the English easement or right over land) over or from neighbouring land. The land or property over which the servitude is exercised is called the servient tenement.

Dominium directum: See 'Superiority'.

Dominium utile: See 'A caelo usque ad centrum' and 'Superiority'.

Excambion: A contract of excambion exchanges one piece of land for another.

Executor: A legal representative of a deceased person whose duty is to wind up the estate of the deceased.

Fee: Under the terms of a trust a person known as a liferenter may be entitled to possess or use a property temporarily during his lifetime or a shorter period. However, once the liferent has terminated, the property passes to the fiar, who is then entitled to full rights over the property. The rights of the property enjoyed by a fiar are known as the fee.

Feu: Land or‑property owned and possessed by a person known as Feuar or Vassal who holds it on Feudal tenure. The property owner is constrained by certain requirements, such as having to pay Feuduty sometimes to the Superior, the person who owns the "Superiority" of the Feu. However, a Feu is not regarded as being equivalent to a leasehold interest in English land law, and is treated like a freehold.

Feuar: Person who holds land under a feu.

Feudal system: The scheme of land tenure in Scotland by which an area of land or feu is held by a feuar (sometimes known as a vassal) from a superior for a fixed annual payment of a sum of money (known as feuduty) following an initial payment. In strict feudal theory, the Sovereign is the universal landowner. All other landowners hold their feus from the Sovereign. In Scotland sub infeudation is possible (it has been unlawful in England since the 13th century). Accordingly it is possible for a vassal who actually lives on the feu to hold of a superior which superior is in fact another person's vassal. The feudal system creates a chain or pyramid with the Sovereign as ultimate owner at the top and the intermediate positions being taken by the Sovereign's vassals who are ipso facto superior to those further down the chain, or at the base of the pyramid.

The feuar has all the rights of an owner subject however to the burdens or conditions imposed by the superior. Originally the burdens might require the vassal to perform personal services, such as military service or other forms of feudal duty, or to provide food or other necessities to the superior. Most services have been converted to a payment of feuduty, although some important services are still performed as originally intended.

Feuduty: Payment under certain conditions by the Feuar to the Superior. However, the Land Tenure Reform (Scotland) Act 1974 prohibits the creation of new feuduties, allows the Feuar to redeem his feuduty in payment of statutory redemption money, and makes redemption of feuduty compulsory when land is sold. For VAT purposes, feuduties are to be regarded as further consideration for the supply of land by the Superior to the Feuar. See also blench holding.

Fiar: A person who owns a fee.

Grassum: A single payment made in addition to a periodic payment such as rent or feuduty. A Grassum can also mean any payment made to a landlord by a person wanting to obtain the tenancy of it. Comparable to a premium in England.

Ground annual: A payment made annually in perpetuity. It is made in cases where a feuduty is not payable under the terms of a contract and is governed by the same legislation as feuduties.

Heritable property (also heritage): Heritable property ("real" or "immovable") as opposed to moveable property includes only subjects naturally immovable such as land minerals, or any object attached to the land such as buildings. Trees, crops and other plants are only regarded as heritable when they are still growing in the soil; once they are cut down they become moveable property. Rights connected with heritable property such as servitudes or debts secured over land are also heritable.

Holograph: A document in which the essential words are written in the handwriting of the signatory or grantor, this (because of the difficulty of forging it) making it valid without witnesses to the signature. A typed deed may be 'adopted as holograph' if these words are written by the signatory in his own hand, but some deeds must have witnesses. Offers and acceptances for buying and selling heritable property are frequently adopted as holograph.

Hypothec: A hypothec is a way of obtaining security for a debt without taking possession of the property itself. For example, in cases of non‑payment of rent, a landlord may have a right of hypothec over his tenants effects brought on to his premises.

Incorporeal moveable property: Incorporeal moveable property is not tangible property. It can take the form of decrees of court for payment of sums of money, a claim arising from non‑ payments of debts or for a breach of contract.

Infeft: When a vassal (Feuar) obtains full title to land, (see Register of Sasines) he is said to be infeft.

Irritancy: Irritancy is the Scottish equivalent of the English right of forfeiture. A superior may irritate a feu if the feuar fails to comply with the feuing conditions (burden). It is also the premature termination of the lease by the landlord alone, when the tenant has failed to comply with one or more of its obligations under the lease. The grounds for irritancy would almost always be set out in the lease; they would include non‑payment of rent by the tenant, breach of one or more of the conditions under the lease, or the tenant's insolvency. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, s.4‑7 deals with irritancies of leases.

Joint property: Property in which ownership is indivisibly vested in two or more persons. Each cannot dispose of any share as there are no shares. Examples include property of the members of a members' club and an estate vested in trustees. The interest of a deceased joint owner passes to the survivors. See "common property".

Jus quaesitum tertio: If a contract between two parties is drawn up expressly to benefit a third party who is clearly identified in the contract, it is said to confer a "jus quaesitum tertio" on the third party.

Land register of Scotland: A public register of interests in land in Scotland under the management and control of the Keeper of the Registers of Scotland. It is being brought progressively into effect under the Land Registration (Scotland) Act 1979. It will eventually supersede the recording of deeds in the Register of Sasines.

Lands tribunal for Scotland: The purpose of this tribunal is to settle disputes on compensation for acquiring land or to alter the burdens etc. on land and to allocate feuduties. An appeal against any decision can be taken to the Court of Session and ultimately to the House of Lords.

Lease/licence: They are not necessarily the same as in England. A licence has a more limited meaning in Scots law.

Legal rights: Rights to share in the estate of a deceased person, enjoyed by a surviving spouse and issue, regardless of any will.

Lien: A lien is a right to retain a debtor's moveable property until he has paid his debt.

Liferent: See 'Fee' above. There are two types of liferent, proper and trust. A proper liferent is one created by a disposition. A trust liferent is where a trust is interposed.

Minute of consolidation: This a means of merging a superiority and a feu where the two estates are held by one party.

Minute of waiver: The Scottish equivalent of a deed of variation. Land and buildings subject to feudal conditions may have restrictions on the use to which they may be put. For example, a feuar may be allowed only to build houses on an area of land, or use a building for a particular purpose. In such cases, the feuar may ask the superior to grant a waiver altering the terms of a feu to remove the restriction on the use of the land.

Missives: This is the first stage in the conveyance of property in Scotland. A missive is a document in letter form exchanged between the seller and purchaser of a property usually written by their respective solicitors as agents. Once the missives are concluded, the purchaser has a contractual (ie personal) right to demand the seller perform his obligation to convey the property. For the second and third stages of conveyancing, see 'Disposition', 'Land Register' and 'Register of Sasines'.

Moveable property: All property, which is not heritable, is regarded as moveable in Scottish land law. It includes animals, furniture, vehicles etc.

Notice of title: An instrument used infrequently setting out the right of a person to heritable property which, when recorded in the General Register of Sasines or the Land Register of Scotland, completes the person's title to the property.

Novadamus: A charter of novadamus is used to make an alteration to the provisions of the title of heritable property or to provide a new title.

Personal right: A contractual right, as opposed to a real right over the property itself. See Disposition.

Prescription: Rules of law by which certain rights and obligations are established or extinguished, for instance:

 (1) the grant of a right arising from long usage and enjoyment of the right (positive prescription: I0 years, or 20 years in certain cases), or

 (2) the extinction of a right arising from abandonment or long neglect to exercise or enforce the right (negative prescription: 5 years, or 20 years in certain cases).

Pro indiviso: The Scottish equivalent of the English tenancy in common. It is used to apply to one property owned by several persons in common, although they need not have equal shares in it. Each owner has a title to a fraction of the undivided property as a whole.

Reduction: To set aside or annul, usually by an action of reduction, a deed, contract, decree or award.

Regalia majora: Rights in land which belong to the Crown. The Crown cannot usually dispose of these rights as they are held for the benefit of the people.

Regalia minora: These rights which belong to the Crown, but which can be made over to members of the public. They include the use of the seashore and fishing for salmon and oysters in the sea as well as taking oysters, mussels and clams from the seabed.

Register of sasines: The General Register of Sasines is used to record the transfer of ownership of land. Only when a purchaser of land has the deed relating to the transfer of land recorded in the Register of Sasines can he be regarded as having full ownership over the property. See also 'Land Register'.

Renunciation: Similar to surrender in English Land Law. However, in English Land Law, when a tenant surrenders his lease or a landlord, the landlord obtains the tenant's interest in the property and any subleases under that interest would remain in force. This is different from Scots Law, where if a tenant renounces his lease, his contract is terminated completely and the landlord has personal possession of the property. Consequently any sublease under the tenant’s original contract would cease to exist, unless the landlord specifically consented to the sub‑lease.

Servient tenement: See dominant tenement

Servitude: The Scottish Equivalent of an English easement. It may involve granting a right of access or a right to a water supply and thus may limit the use to which a property may be put. See also Dominant Tenement.

Solum: A solum is an area of ground. It is used in relation to the ground upon which buildings have been constructed. An owner of a building will also own the solum, but not necessarily the mineral rights ‑ see also 'A caelo usque ad centrum'. In cases of blocks of flats, the owner of the ground floor flat may also own the solum, although the rest of the owners will have interest in the solum to ensure support of their flats. Frequently the titles provide that all the proprietors own the solum as various other common parts such as the roof.

Summary diligence: The end of a Scottish lease often uses the expression " ........ and we consent to registration for execution". This entitles a landlord to recover any rent, which the tenant has not paid by a process known as summary diligence. Instead of having to resort to proving the debt in a court, the landlord obtains an official judicial copy of the lease which is the equivalent of a court decree for the sum due and enforced by the Sheriff Officer (Bailiff) or Messenger at Arms.

Superior, superiority: The superior has a right over the land known as the superiority or dominium directum which entitles him to grant to the feuar (grantee) the dominium utile (feu) of the land. Although the dominium utile is an inferior right to the dominium directum, it enables the feuar to possess the land ‑ see 'absolute interest'.

Tacit relocation: The continuation of a lease after its expiry by operation of law because neither party has taken steps to terminate the lease.

Udal tenure: A form of allodial tenure in Orkney and Shetland (ie there is no formal superiority).

Vassal: Another name for a feuar.

Vest, to: When land or property or rights over them are vested in a person, it means that he has a legal right of disposal but not necessarily a title.

**Terminology of Scots Law**

A

absolvitor: the judgement pronounced when the court assoilzies

accessory action: an action that subserves an ulterior legal purpose

accessory obligation: an obligation undertaken in order to make an earlier obligation more effective

accretion: when the imperfect title of A, who has conveyed to B, is later perfected in A, the validation perfects also B's title

actings: acts, conduct

adhere: of a court, to affirm the judgement of a lower court

adjust: to alter the pleas in a written pleading before the record is closed

adminicle: a piece of supportive evidence

advise: to give a considered judgement in a case

advocate (v.) : to bring up the judgement of an inferior court for review

aggravation: circumstances in a criminal charge, which, if proven result to a more serious conviction, e.g. a previous conviction

amend (v.) : to make alterations on pleadings after the record is closed

annuity: the right to a yearly payment in money

answer: a written pleading given in reply to a claim

apparent heir: person to whom succession has opened with the death of his predecessor, but who has not completed his title to the estate succeeded to (It must not be confused with heir‑apparent)

appoint: of a court, to order or direct

apprehend: to arrest

arbiter: a person chosen voluntarily by parties to a dispute to decide the difference between them (In English Law, he is called "arbitrator")

arbitrary punishment: punishment inflicted at the discretion of the judge

arrest: 1. to apprehend; 2. to take the property of a debtor or defender in the hands of a third party

arrestee: the person holding goods arrested

art and part: in the capacity of an accessory or an accomplice

as accords of law: as is agreeable to law (often shortened to "as accords")

ascendant: in cases of succession, a person akin to the deceased belonging to a preceding generation

assolzie (v.) : to absolve or decide in favor of the defender

author: a person from whom one derives his title by sale or gift

aver: to state or allege in written pleadings

B

back (up): to endorse

bond: a written obligation to pay money or do something

border warrant: a warrant for the arrest of the effects and person of a man in England for debts owed in Scotland

burden: a limitation, or restriction affecting property

C

call (of summons): a summons is called by the exhibition, in a list on a wall of the court, of the names of parties and their legal representatives. From this date is estimated the time for entering appearance

casual homicide: an accidental killing involving no fault in the killer

catholic creditor: a person holding security for his debt over more than one piece of the debtor's property

caution: security in civil matters

certiorate: to give formal notice of a fact to

commixtion: mixture of property belonging people with varying results upon property rights

communicate: to make some right available to another in fulfilment of a legal duty

conjuct: joint

consanguinean: a sibling having the same father but not the same mother

constitute: to determine or establish a debt

continue: to postpone decision in judicial proceedings and adjourn them to a later for further action

conventional: of obligations, arising out of agreement or contract

culpable homicide: a killing caused by fault, but without the evil intention required for the constitution of murder (It is equivalent of the English manslaughter)

D

deed: a formal document, authenticated by the maker's signature, the signatures of two witnesses, and a proper testing‑clause

defender: the party against whom a civil action is brought

delict: a wrong in the civil sense

diligence: execution against debtors

dispone: to convey land

E

Effeirs: usually used in the phrase "As Effeirs" meaning as relates, as corresponds; in the proper way

elide: to oust or exclude

embezzle: to turn to one's own use an article handed over for another purpose

equipollent: equivalent

executor‑dative: an executor appointed by the court

executor‑nominate: an executor appointed by the testator

executry: the whole moveable property of a person deceased

exoner: to discharge of liability

expenses: the costs of an action

F

facility and circumvention: when a person by a dishonest course of conduct plays upon a facile person in order to secure an advantage

furth of: outside the borders of

G

gratuitous: made or granted without consideration

H

habile: apt or competent for some purpose

habit and repute: the reputation of being a thief

hamesucken: an assault committed upon a man in his own house

haver: a person having documents in his possession which he is required to produce as evidence in a lawsuit

holograph: wholly written by one person

homologate: to approve, and so validate a defective contract

I

incendiary letter: a threatening letter

infer: for a course of conduct, to involve as a consequence

interlocutor: an order or decision of the court short of the final judgement

intermeddle: to interfere improperly or without any right

interrogatories: written questions adjusted by the court to be put to witnesses examined under a commission

interruption: certain acts which frustrate the running of a period of prescription

J

joint adventure: a partnership for one particular transaction

joint obligation: an obligation binding several, yet each only for a share

justifiable homicide: killing in exercise of a public duty (e.g. execution of sentence of death), or of a private right (e.g. of self‑defense)

L

Lammas: the 1st of August

law agent: term used to denote a solicitor or a writer

lead evidence/proof: to adduce or call evidence

legal (n.): the period allowed by the law to a person whose property is in course of being adjudged, within which he may pay the debt and free the land of the adjudication

libel: 1. written defamation; 2. criminal indictment

lien: the right to retain the property of a debtor until he pays (originally an English term)

liferent: a personal servitude that entitles a man to use for his life anther man's property (can be legal if imposed by the law or conventional if agreed

light: a servitude binding one owner of property not to build on it so as to obstruct the light of his neighbor

liquid: of fixed and ascertained amount, e.g. a liquid debt

litiscontestation: joinder of issue, which in modern Scots law arises on the lodging of defenses

lodge: for pleadings and other documents, to leave them in the custody of the Clerk of Court

loose: to remove, cancel, or take off e.g. an arrestment

Lyon King of Arms, Lord: the principal administrative officer (who is also a judge) in Scottish heraldic matters

M

major: a person of full legal age (opp. minor)

malicious mischief: damaged done to property out of malice or cruelty

mandate: an authority given to a man to act (gratuitously) for another

marriage‑contract: a contract between two people married or about to be married, for the purpose of regulating the rights in property of themselves and their children

mid‑impediment: an event occurring between two others which prevents the later from operating retrospectively upon the earlier

minute: a document which is part of the process by which a party defines his position to certain procedural matters, e.g. by abandoning the action

motion: an application made in court for some subsidiary purpose during the course of an action

moveables: all property other than heritage

N

narrative: the part of a deed that sets out the names of the grantor and grantee as well as the cause of granting

negligence: failure in a duty to show care towards ones to whom such duty is owned

new trial: in civil jury cases one or more re‑trials (new trials) may be allowed on the score of irregularities in the preceding trial

novation: the replacement, by agreement between the parties involved, of one obligation by another

O

obediential: of obligations, to be imposed by law

obligant: the debtor in an obligation (opp. creditor)

onerous: granted for value or consideration (opp. gratuitous)

oppression: an offence which consists in using an office or process of law to commit injustice

outwith: outside of, beyond, without

P

pains of law: a penalty

parole evidence: oral evidence of witnesses (phrase originating from English Law)

penal action: an action in which extraordinary damages by way of penalty are sought

plea‑in‑law: a short legal proposition at the end of a pleading showing exactly the relief sought and the reasons for that

plead: to argue a case in court

poind: to take a debtor's moveables by way of execution

possession: detention of a thing with the intention to hold it as one's own or for one's own benefit

possessory action: an action founded on possession and used for holding or recovering possession

prestation: performance of an obligation or a duty

privative jurisdiction: jurisdiction residing in one court to the exclusion of others

production: an article produced as evidence in court

pupil: children up to 12 (girls) and 14 (boys) (n. pupillarity)

pursuer: the person suing in an action

Q

qualify: to establish a title

quasi‑delict: actionable negligence

R

real action: an action founded on a right of property in something, brought for recovering that thing

real burden: an obligation laid upon lands, which must enter the Register, in order to be effective

recrimination: a counter‑charge of adultery

relict: surviving spouse

reparation: the making goof of a civil wrong, usually by awarding damages

repel: of a court, to overrule a plea or an objection

resolute: of a condition, to bring an obligation to an end if a specified event occurs

retention: the withholding by one party to a contract of due performance in order to compel the other party to due performance

S

search for encumbrances: the process of inspection of the registers, in order to ascertain the validity of a title to land and whether or not any burdens exist

suspentive condition: a condition which suspends the coming into force of a contract until the condition is fulfilled

T

tender: an offer made during an action by the defender to the pursuer of a sum in settlement

testament: will

timeous: in due time

tutor: the guardian of children in pupillarity

U

ultronious: spontaneous or voluntary

umquhile: former, late, formerly

uterine: of a sibling, to have the same mother but different fathers

V

vest: to become the property of a person

view: an inspection of premises, the subject matter of an action, sometimes allowed to jurors before a jury trial takes place

W

warn: to notify of the termination of a service or lease

white‑bonnet: a person who bids at auction to enhance the price

wrongous: wrongful

Eve C. Athanasekou (athanasp@dcs.gla.ac.uk)

University of Glasgow, Department of Computing Science, Page last updated: 13 August 1996 http://www.dcs.gla.ac.uk/~athanasp/LEGTRM.HTML

Latin Terminology used in Scots Law, words, phrases and maxims

A

ab initio: from the beginning

accessorius sequitur: one who is an accessory to a crime cannot be guilty of a more serious crime than the principal offender

actus reus: a guilty deed or act

ad finem: at the end

ad infinitum: forever

ad litem: appointed for a lawsuit

ad personam: personal

ad rem: to the point; to the purpose

aemulatio vicini: spite against one's neighbour which, if a motive, may render unlawful an act otherwise lawfully within a man's legal power

altius non tollendi: a servitude preventing the servient owner from building beyond a certain height on his own ground

ante: before

apud acta: at the time of the proceedings

avizandum: the period during which the court considers its judgement

B

beneficium: a privilege, benefit, or right

bona fide: sincerely

bona fides: good faith

C

ceteris paribus: other things being equal

circa: approximately

consensus: agreement

conductio indebiti: an action for repayment of money paid in error

consensu: unanimously or, by general consent

consensus ad idem: agreement as to the same things

contra: against; to the contrary

contra bonos mores: contrary to good morals

corpus: body

corpus delicti: body of offence

D

damnum: damage, loss

damnum fatale: a loss due to an unusual accident e.g. a storm or a flood

de die in diem: from day to day

de facto: in fact

de futuro: in the future

de jure: by law, rightful (also de iure)

de integro: as regards the whole

de lege ferenda: according to the law as it ought to be

de lege lata: according to the current law

de legibus: of law

de minimis: trivial

dictum (pl. dicta): a saying or usu. a judicial statement

doli incapax: incapable of crime

dominium: ownership

E

esto: suppose it to be so

ex cathedra: with official authority

ex concessis: in view of what has already been accepted

ex gratia: freely; without a legal obligation

ex officio: by virtue of one's office

ex parte: for proceedings, when the party against whom they are brought is not heard

ex posto facto: after the event

e silentio: by the absence of contrary evidence

F

faciendum: something which is to be done

factum: an act or deed

fructus: fruit

fructus naturales: vegetation which grows naturally without cultivation

H

hinc inde: on the one hand and on the other

I

ibid: at the same place (used in footnotes for work already cited previously)

ignorantia juris neminem excusat: no‑one is excused by ignorance of the law

In camera: in private

in dubio: on a doubtful point

in esse: in existence

in extenso: at full length

in hoc statu: in this state of matters; at this stage

iniuria: wrongful act; injustice (also injuria)

injuria: wrongful act; injustice (also iniuria)

in loco parentis: in place of the parent

in modo probationis: in the way of proof

in omnibus: in every respect

in pleno: in full

in rem suam: to one's own advantage

in situ: in its place

in solidum: for the whole sum

inter alia: among other things

inter amicos: between friends

in terrorem: as a warning or deterrent

inter vivos: between living persons

in toto: in total, in full

ipsissima verba: the very words of a speaker

ipso facto: by that very fact; thereby

ius: right recognised by law (also jus)

ius ad rem: right to a thing (personal right) (jus ad rem)

ius in personam: personal right (also jus in personam)

ius in rem: right in a thing (real right) (also jus in rem)

ius naturale: natural justice (alsojus naturale)

ius quaesitum tertio: right acquired by a third party (in a contract between

others) (also jus quaesitum tertio)

J

jus: right recognised by law (also ius)

jus ad rem: right to a thing (personal right) (ius ad rem)

jus in personam: personal right (also ius in personam)

jus in rem: right in a thing (real right) (also ius in rem)

jus naturale: natural justice (also ius naturale)

jus quaesitum tertio: right acquired by a third party (in a contract between

others) (also ius quaesitum tertio)

L

labes realis: an inherent taint or defect in a title to property (also known as

vitium reale)

leonina societa: a partnership in which one of the partners take all the gains, whereas the other bears all the losses

lex: law (often written law)

lex loci contractus: the law of a place where a contract was made; according to private international law it is the proper law by which to resolve disputes about a contract

locus: place; the spot where an important event for the matter in hand has taken place

locus in quo: scene of the event

locus standi: the right to be heard before a tribunal

M

mala fides: bad faith; used in phrase "mala fide possessor" which refers to one who possesses property upon a title which he knows or should know to be invalid

male appretiata: for the property of a deceased person, to be wrongly valued medium concludendi: a ground of action

mens rea: wicked mind

modus: the narration of the facts and circumstances in a criminal charge

modus operandi: way of doing something

mora: the delay in asserting a claim, which, when coupled with prejudice to the defender, may prevent the pursuer from recovering

mortis causa: on account of death

munus publicum: a public office

mutatis mutandis: (in comparing cases) making the necessary alterations

mutuum: a contract by which fungibles lent without payment must be restored at an agreed date

N

negotiorum gestor: a person that in an emergency steps in and acts for another who cannot act for himself, e.g. due to absence (the relevant process is called negotiorum gestio)

nemo dat quod non habet: one can give a better title than the one he has

nexus: connection

nisi: unless

non compos mentis: not of sound mind and understanding

non sequitur: an inconsistent statement, it does not follow

non valens agere: the unfitness of a person to act by reason of minority

nova debita: debts, the payment of which is not struck at by the bankruptcy law, despite the fact that they were contracted within 60 days before bankruptcy

O

obiter dictum: of judicial statements, not essential to the decision of the case and therefore without binding authority (pl. obiter dicta)

occupatio: a mode of acquiring property by appropriating a thing

onus probandi burden of proof

ope et concilio: by help and counsel (a synonym for "art and part")

ope exceptionis: as a defence; by way of exception

P

pacta sunt servanda: agreements must be followed

pactum: agreement

pactum illicitum: unlawful contract

par delictum: equal fault

pari passu: equally

particeps criminis: accomplice

penuria testium: lack of witnesses

per curiam: in the opinion of the court

per minas: by means of menaces or threats

per quod: by reason of which

per se: by itself

post: after; later

post mortem: after death

pretium affectionis: a price or value placed upon a thing owing to its owner's attachment to it

prima facie: at first sight; on the face of it

prima impressionis: on first impression

probabilis causa litigandi: substantial grounds for participating in a trial

probatio probata: a fact given in evidence which may not be contradicted

pro hac vice: for this occasion

pro rata: in proportion

pro re nata: as the occasion arises

pro tanto: so far, to that extent

pro tempore: for the time being

publici juris: of public right (also of publici iuris)

Q

quaere: consider whether it is correct

quaeritur: the question is raised

quantum: how much, an amount

quid juris: what is the law? (also quid iuris) (used often in exam questions)

quid pro quo: consideration. something for something

R

ratio decidendi: the rule for which a stand as authority

re: in the matter of

res: thing; the object of an action; matter, affair

res communes things in their nature incapable of appropriation, such as light and air

res gestae: the circumstances of a case

res iudicata: a question decided by competent legal proceedings, which cannot again be raised (also res judicata)

res noviter veniens ad notitiam: information newly discovered, sometimes justifying the admission of new matter in a case, or a new trial

res nullius: a thing which never had an owner or which had, but lost its owner

res publicae: things in which the property resides in the state alone, like navigable rivers and highways

restitutio in integrum: restoration to the original position or condition

res universitatis: things belonging to a corporation, whose use is common to the members

S

sciens: knowingly

secus: the legal position is different

se defendendo: in self defence

sine die: indefinitely

sine qua non: an indispensable condition

socius criminis: accomplice in crime

solatium: damages given by way of reparation for injury to feelings

status quo: the existing state of affairs

sub modo: within limits

sub nomine: under the name of

sub silentio: in silence

suggestio falsi: the suggestion of something which is untrue

sui generis: unique

supra: above; earlier

suppressio veri: the suppression of the truth

T

talis qualis: such as it is

tertius: third party

U

uberrima fides: the utmost good faith

ultimum refugium: last resort

ultimus haeres: last heir; the Crown inherits as last heir for want of other heirs

uno flatu: at the same moment; with one breath

V

verbatim: word by word; exactly

veritas: truth

vide: see

vis et metus: force and fear

vitium reale: An inherent taint or defect in a title to property (also known as labes realis)

volens: willing

Copyright 1996 ‑ All rights reserved

Eve C. Athanasekou (athanasp@dcs.gla.ac.uk)

University of Glasgow, Department of Computing Science, Page last updated: 13 August 1996

<http://www.dcs.gla.ac.uk/~athanasp/LATTRM1.HTML>

Note: Eve C. Athanasekou seems to have left the University of Glasgow. Soon after I copied her web pages they disappeared.