

የመስተኞች መደርጋና ቅዱስ
ቁጥር የሚመለከት የሚገልጻ ቅዱስ

A GUIDE TO EARLY IRISH LAW

FERGUS KELLY

DUBLIN INSTITUTE FOR ADVANCED STUDIES

EARLY IRISH LAW SERIES

General editor: Fergus Kelly

VOLUME III

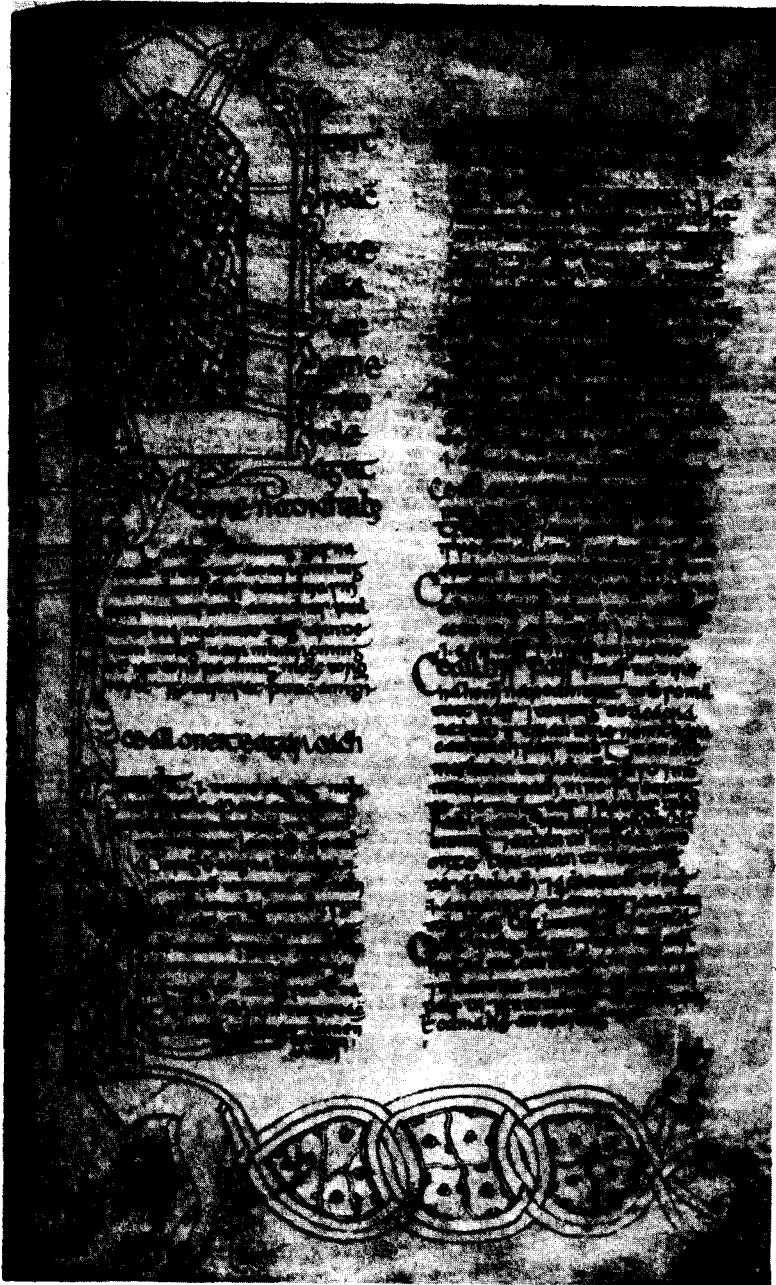
A GUIDE TO EARLY IRISH LAW



EARLY IRISH LAW SERIES

ISSN 0790-4657

- I *Bechbretha*: An Old Irish law-tract on Bee-Keeping, ed.
Thomas Charles-Edwards and Fergus Kelly.
- II *Uraicecht na Riar*: The Poetic Grades in Early Irish Law, ed.
Liam Breatnach.
- III *A Guide to Early Irish Law*, by Fergus Kelly.



This plate shows cols. 255-6 of the Trinity College Dublin manuscript H 3. 17, now numbered 1336, which was transcribed about the 15th century. The elaborately ornamented A at the top of col. 255 marks the beginning of the law-text known as the Heptads (Appendix I No. 3), composed about the 8th century. This passage deals with cases where church property may be damaged or destroyed without legal liability. It is reproduced at Corpus Iuris Hibernici 1821.28-1822.33 and translated in Ancient Laws of Ireland v 119 ff. Only the text in larger letters originates from the 8th century: the rest consists of glosses and commentary of later date (see p. 226). (by courtesy of the Board of Trinity College)

EARLY IRISH LAW SERIES
VOLUME III

A GUIDE
TO
EARLY IRISH LAW

BY
FERGUS KELLY



DUBLIN INSTITUTE FOR ADVANCED STUDIES
10 Burlington Road, Dublin 4
1988

© Dublin Institute for Advanced Studies

ISBN 0 901282 95 2

TO THE MEMORY
OF
E. J. GWYNN

Printed by
Mount Salus Press Ltd.
Dublin

Tréide con-aittig brithemnas: gáes, féige, fiuss
'Three things required of a judge: wisdom, sharpness, knowledge'.
The Triads of Ireland No. 78.

CONTENTS

FOREWORD		xv
ABBREVIATIONS		xvii
TERMINOLOGY		xxiii
INTRODUCTION		1
<i>Túath</i>		3
External relations		4
Outsiders		5
Rural character		6
Rank		7
Dependants		11
Unfree (<i>dóer</i>)		11
Change of rank		11
Kin-group (<i>fine</i>)		12
Maternal kin (<i>máithre</i>)		14
CHAPTER 1 Law of Persons (i)		17
King		17
King's justice		18
Legislation		21
Law-enforcement		22
Judgement		23
Law-observance		25
Lord		26
Clientship		29
Base client		29
Free client		32
<i>Fuidir</i> (semi-free man)		33
<i>Bothach</i>		35
<i>Senchleithe</i>		35
<i>Briugu</i> (hospitaller)		36

CHAPTER 2 Law of Persons (ii)	..	..	..	39
Cleric ..	..	..	..	39
Poet ..	..	..	..	43
Woman poet ..	..	..	..	49
Illegal satirist ..	..	..	..	49
Lawyer ..	..	..	..	51
<i>Brithem</i> ..	..	..	..	51
<i>Aigne</i> ..	..	..	..	56
Physician ..	..	..	..	57
Druid ..	..	..	..	59
Wright ..	..	..	..	61
Blacksmith ..	..	..	..	62
Other manufacturers ..	..	..	..	63
Entertainers ..	..	..	..	64
Servants ..	..	..	..	65
CHAPTER 3 Law of Persons (iii)	..	..	..	68
Woman ..	..	..	..	68
Marriage ..	..	..	..	70
Divorce ..	..	..	..	73
Separation ..	..	..	..	75
Legal capacity of women ..	..	..	..	75
Offences by women ..	..	..	..	78
Offences against women ..	..	..	..	79
Son of a living father ..	..	..	..	80
Child ..	..	..	..	81
Legal capacity of children ..	..	..	..	81
Offences by children ..	..	..	..	83
Offences against children ..	..	..	..	83
Sick-maintenance of children ..	..	..	..	84
Rearing of children ..	..	..	..	85
Fosterage ..	..	..	..	86
Specialized training ..	..	..	..	91
Person of unsound mind ..	..	..	..	91
Offences by persons of unsound mind ..	..	..	..	92
Rights of persons of unsound mind ..	..	..	..	93
The half-sane ..	..	..	..	94
Senility ..	..	..	..	94
Other disabilities ..	..	..	..	94
Slave ..	..	..	..	95
<i>Cimbid</i> (captive) ..	..	..	..	97

CHAPTER 4 Property	..	..	..	99
Land ..	..	..	..	99
Ownership of land ..	..	..	..	100
Co-operative farming ..	..	..	..	101
Inheritance of land ..	..	..	..	102
Female inheritance ..	..	..	..	104
Inheritance by adoption ..	..	..	..	105
Common rights on land ..	..	..	..	105
Rights of neighbours ..	..	..	..	108
Usucaption (i.e. adverse possession) of land ..	..	..	..	109
Buildings ..	..	..	..	110
Movable property ..	..	..	..	110
Transfer of movable property ..	..	..	..	111
Barter and sale ..	..	..	..	111
Currency ..	..	..	..	112
<i>Cumal</i> ..	..	..	..	112
Cattle ..	..	..	..	113
Ounce (of silver) ..	..	..	..	114
<i>Sét</i> ..	..	..	..	114
The relationship of the currencies ..	..	..	..	115
Payment for a service ..	..	..	..	116
Marriage and fosterage payments ..	..	..	..	116
Fief and rent ..	..	..	..	117
Loan ..	..	..	..	117
Unauthorised or enforced loan ..	..	..	..	119
Deposit ..	..	..	..	120
Gift ..	..	..	..	120
Inheritance of movable property ..	..	..	..	122
Bequest ..	..	..	..	122
Lost property ..	..	..	..	123
CHAPTER 5 Offences	..	..	..	125
Killing ..	..	..	..	125
Kin-slaying (<i> fingal</i>) ..	..	..	..	127
Secret killing ..	..	..	..	128
Lawful killing ..	..	..	..	128
Injury ..	..	..	..	129
Sick-maintenance ..	..	..	..	130
Payment for injury ..	..	..	..	131
Abandonment of sick-maintenance ..	..	..	..	133
Lawful injury ..	..	..	..	133

Rape	134	Restrictions on distraint	183
Penalties for rape	135	The lawyers' rôle in distraint	185
Non-liability for rape	135	Legal entry (<i>tellach</i>)	186
Marriage by rape	136	Female entry	187
Sexual harassment	136	Entry by a vagrant	188
Satire	137	Illegal entry	189
Refusal of hospitality	139	CHAPTER 8 Procedure	190
Violation of protection	140	Eight stages of a law-case	191
Injury to land	142	Oaths	198
Animal-trespass	142	'Over-swearng' (<i>fortach</i>)	199
Damage to trees	144	Denial by oath (<i>dithech</i>)	200
Offences against buildings	144	Vicarious oath (<i>airthech</i>)	201
Damage to movable property	145	Compurgatory oath (<i>imthach</i>)	201
Theft	147	Repudiation (<i>fretech</i>)	201
Stolen goods	148	Perjury (<i>éthech</i>)	201
Habitual thief	149	Female oath	202
Liability for an offence	149	Witnesses	202
Accidents	149	Written evidence	204
Ignorance	151	Indirect evidence	204
Negligence	152	Inadmissible evidence	206
Stress or necessity	153	Female evidence	207
Drunkenness	154	False witness	208
Insanity	154	Lots	208
Onlookers and accessories	154	Ordeals	209
Liability after death	157	Duels	211
CHAPTER 6 Contracts, pledges and sureties	158	CHAPTER 9 Punishment	214
Contracts	158	Payment	214
Invalid, voidable or unenforceable contracts	159	Non-payment of fines	215
Adjustment of contracts	163	Putting to death	216
Written contracts	163	Hanging	217
Pledges	163	The pit	218
Sureties	164	Slaying	219
ráth (paying surety)	168	Setting adrift	219
naidm (enforcing surety)	171	Mutilation	221
aitire (hostage-surety)	172	Flogging	221
Hostages	173	Outlawry	222
CHAPTER 7 Distraint and legal entry	177	Recovery of legal rights	224
Distraint	177		
Fasting	182		

CHAPTER 10	Law-texts	..	..	..	225
	The manuscripts	..	..	..	225
	The origin of the law-texts	..	..	..	231
	The authors of the law-texts	..	..	..	232
	Case-law	..	..	..	238
	External sources relating to Irish law	..	..	..	240
CHAPTER 11	Law-schools	..	..	..	242
	'Senchas Már school'	..	..	..	242
	'Nemed school'	..	..	..	246
	Other schools	..	..	..	246
	Annalistic references to lawyers and law-schools	..	..	..	248
	Post-Norman law-schools	..	..	..	250
	Mac Aodhagáin	..	..	..	252
	Mac Flannchadha	..	..	..	254
	Ua Deoráin	..	..	..	256
	Ua Duibhdabhoirenn	..	..	..	257
	Ulster law-schools	..	..	..	259
	The end of the law-schools	..	..	..	260
APPENDIX 1	List of Law-texts	..	..	..	264
	General	..	..	..	266
	Status, rank	..	..	..	267
	Professional groups	..	..	..	267
	Categories of person	..	..	..	269
	The law on injury	..	..	..	271
	The law on other offences	..	..	..	272
	The law on land, domestic animals, etc.	..	..	..	273
	Contracts	..	..	..	277
	Loans and deposits	..	..	..	278
	Pledges	..	..	..	278
	Sureties and hostages	..	..	..	278
	Distraint	..	..	..	279
	Legal entry	..	..	..	280
	Procedure	..	..	..	280
	Ecclesiastical legislation	..	..	..	281
	Canon law	..	..	..	282
APPENDIX 2	List of Wisdom-texts	..	..	..	284
APPENDIX 3	Bibliography	..	..	..	287

APPENDIX 4	Guide to Pronunciation	..	..	..	296
INDEX 1	Index of Irish Terms	..	..	..	301
INDEX 2	Index of anglicized forms of Irish and Scottish legal terms	..	..	..	324
INDEX 3	Welsh and Breton Index	..	..	..	326
INDEX 4	General Index	..	..	..	328
	Samples from the Law-texts	..	..	..	347

PLATES AND MAPS

Plate 1	..	..	..	..	..	..	227
Plate 2	..	..	..	..	..	..	228
Plate 3	..	..	..	..	..	..	229
Plate 4	..	..	..	..	..	..	230
Map 1	..	..	..	..	..	..	247
Map 2	..	..	..	..	..	..	255

FOREWORD

This book is intended to be of use to all who are interested in early Irish laws and institutions, particularly of the pre-Norman period. It gives a general account of the main topics dealt with in the surviving law-texts, and provides footnote references to more detailed discussion elsewhere, as well as a list of suggested further reading in the Bibliography (Appendix 3). The use of Old Irish terminology has been kept to a minimum, and linguistic information has for the most part been relegated to the footnotes.

I am indebted to many people for their assistance and encouragement during the preparation of this book. First and foremost, I must mention Daniel A. Binchy, Professor Emeritus at the Dublin Institute for Advanced Studies, who has devoted the greater part of his long career to the study of early Irish law. Without his *Corpus Iuris Hibernici* and his many fine editions of Old Irish law-texts, the present book would have been a very much more difficult undertaking.

I would also like to express my thanks to a number of other scholars, who read the whole or part of this book, or helped me on specific points: Bette Crigger, Colin Ireland, Proinsias Mac Cana, Neil McLeod, Damian McManus, Máirín Ní Dhonnchadha, Máirtín Ó Murchú and David Sellar. The last draft was read by Liam Breathnach of Trinity College, Dublin, and Thomas Charles-Edwards of Corpus Christi College, Oxford, and many of their suggestions have been gratefully incorporated in the final version. I am, of course, solely responsible for all remaining shortcomings.

Karen Elson typed (and often retyped) the whole work, and I much appreciate her patience and accuracy. Máire Úi Chinnseala saw it through the press with her usual competence, and Eugene Tighe of Mount Salus Press eased the transition from typescript to printed book. Pádraig de Brún was unstinting of his expertise when instructing me on computerising the indexes.

Bernard Meehan of the Library of Trinity College, Dublin, was most helpful in discussing the reproduction of the frontispiece, Plates 2 and 3, and the dust jacket. Thanks are also due to the

trustees of the Bodleian Library and of the British Library for permission to reproduce Plates 1 and 4 respectively.

I conclude by hoping that this book will make the fascinating subject of early Irish law accessible to a wider readership than before. All comments will be gratefully received.

FERGUS KELLY

Dublin Institute for Advanced Studies.

ABBREVIATIONS

<i>AC</i>	<i>Annála Connacht: The Annals of Connacht</i> ed. A. Martin Freeman, Dublin 1944 (repr. 1971).
<i>ACL</i>	<i>Archiv für celtische Lexikographie</i> i-iii ed. Stokes and Meyer, Halle 1898-1907.
<i>AF</i>	<i>Airne Fingein</i> ed. J. Vendryes, Dublin 1953. Mediaeval and Modern Irish Series vol. 15.
<i>AFM</i>	<i>Annals of the Kingdom of Ireland by the Four Masters</i> i-vii ed. J. O'Donovan, Dublin 1848-51.
<i>AI</i>	<i>The Annals of Inisfallen</i> ed. Seán Mac Airt, Dublin 1951.
<i>AL</i>	<i>Ancient Laws of Ireland</i> i-vi, Dublin 1865-1901.
<i>ALC</i>	<i>The Annals of Lough Cé</i> i-ii ed. William M. Hennessy, 1871.
<i>ALIW</i>	<i>Ancient Laws and Institutes of Wales</i> i-ii ed. Owen, London 1841.
<i>AM</i>	<i>Audacht Morainn</i> (App. 2 No. 1).
<i>AN</i>	Anglo-Norman.
<i>Anal. Hib.</i>	<i>Analecta Hibernica</i> Coimisiún Láimhscríbhinní na hÉireann: the Irish manuscripts commission, Dublin 1930-.
<i>Anecd.</i>	<i>Anecdota from Irish manuscripts</i> i-v ed. Bergin, Best, Meyer and O'Keeffe, Hall 1907-13.
<i>angl.</i>	anglicized (i.e. represented in English orthography).
<i>Ann. Clon.</i>	<i>The Annals of Clonmacnoise</i> tr. into Eng. A.D. 1627 by Conell Mageoghagan, ed. D. Murphy, Dublin 1896.
<i>App.</i>	Appendix.
<i>AT</i>	<i>The Annals of Tegernach</i> ed. Whitley Stokes RC 16 (1895) 374-419; 17 (1896) 6-33, 116-263, 337-420; 18 (1897) 9-59, 150-303, 374-9.
<i>AU</i>	<i>Annals of Ulster</i> i-iv ed. W. M. Hennessy and B. MacCarthy, Dublin 1887-1901; ed. Seán Mac Airt and Gearóid Mac Niocaill i (to A.D. 1131), Dublin 1983.
<i>BB</i>	<i>Bechbretha</i> (App. 1 No. 44).
<i>BBCS</i>	<i>Bulletin of the Board of Celtic Studies : Bwletin y Bwrdd Gwybodaeth Celtaidd</i> University of Wales, 1921-.
<i>BC</i>	<i>Bretha Crólige</i> (App. 1 No. 29).
<i>BDC</i>	<i>Bretha Déin Chéch</i> (App. 1 No. 30).
<i>bk.</i>	book.
<i>BM Cat.i</i>	<i>Catalogue of Irish manuscripts in the British Museum</i> i, S. H. O'Grady, London 1926.
<i>Bret.</i>	Bretton.
<i>Bürgschaft</i>	<i>Die Bürgschaft im irischen Recht</i> , Rudolf Thurneysen, Aus den Abhandlungen der preussischen Akademie der Wissenschaften, Jahrgang 1928. Phil-hist. Klasse Nr.2 Berlin 1928.
<i>c.</i>	century.
<i>c.</i>	<i>circa</i> (= about, around).
<i>CA</i>	<i>Cáin Adomnáin</i> (App. 1 No. 74).
<i>Cat.</i>	Catalogue.
<i>CCCG</i>	<i>A Concise Comparative Celtic Grammar</i> , Henry Lewis and Holger Pedersen, Götingen 1961.

CCF	<i>Cóic Conara Fugill</i> (App. 1 No. 69).
CEIS	<i>The Church in Early Irish Society</i> , Kathleen Hughes, London 1966.
Celtica	<i>Celtica</i> , The Dublin Institute for Advanced Studies, Dublin 1946.
cf.	confer (compare).
CG	
CGH	<i>Critik Gablach</i> (App. 1 No. 6). Unless otherwise stated, references are to line numbers.
ch.	<i>Corpus Genealogiarum Hiberniae</i> ed. M.A. O'Brien, Dublin 1962. chapter.
CIH	<i>Corpus Iuris Hibernici</i> ed. D.A. Binchy, Dublin 1978.
CL	<i>Cdín Lánamna</i> (App. 1 No. 17).
CMCS	<i>Cambridge Medieval Celtic Studies</i> . University of Cambridge 1981-.
col.	column.
comm.	commentary.
Confessio	ed. Newport White, in <i>Libri Sancti Patricii: The Latin Writings of St. Patrick</i> , Dublin 1905 = <i>PRIA</i> 25 C (1905) 201-326; ed. Bieler, <i>Libri Epistolarum Sancti Patricii Episcopi</i> i-ii, Dublin 1952.
cpd.	compound.
d.	<i>denarius</i> (penny).
DAC	<i>Di Astrud Chor</i> (App. 1 No. 54).
DC	'Dimentian Code' in <i>ALIW</i> i 337-617.
DIL	<i>Dictionary of the Irish Language</i> , compact edition. Royal Irish Academy, Dublin 1983.
EC	<i>Études celtiques</i> , Paris 1936-.
ed.	edited, edition.
Éigse	<i>Éigse: A Journal of Irish Studies</i> . Published for the National University of Ireland, Dublin 1939-.
EIHM	<i>Early Irish History and Mythology</i> , T. F. O'Rahilly, Dublin 1946 (repr. 1957, 1964).
Epistola	ed. Newport White, in <i>Libri Sancti Patricii: The Latin Writings of St. Patrick</i> , Dublin 1905 = <i>PRIA</i> 25 C (1905) 201-326; ed. Bieler, <i>Libri Epistolarum Sancti Patricii Episcopi</i> i-ii, Dublin 1952.
Ériu	<i>Ériu</i> , Royal Irish Academy, Dublin 1904-.
esp.	especially.
facsim.	facsimile.
fem.	feminine.
FR	<i>Fingal Rónán and other stories</i> , ed. David Greene, Dublin 1955, Mediaeval and Modern Irish Series vol. 16.
ft.	feet.
Gael. Jrn.	<i>Gaelic Journal : Irisleabhar na Gaedhilge</i> , Dublin 1882-1909.
GC	<i>Gúbretha Caratniad</i> (App. 1 No. 5).
gen.	genitive.
gl.	gloss.
GOI	<i>A Grammar of Old Irish</i> by Rudolf Thurneysen, tr. from the German by D.A. Binchy and Osborn Bergin, Dublin 1961; revised ed. 1975 repr. 1980.
GMWL	<i>A Glossary of Mediaeval Welsh Law</i> , Timothy Lewis, Manchester 1913.
Heptad(s)	Old Irish legal heptads (App. 1 No. 3).
HIRL	<i>Historical Introduction to the study of Roman law</i> , H.F. Jolowicz. 1st ed. Cambridge 1932, 2nd ed. 1952, repr. 1954, 1961.
ibid.	<i>ibidem</i> (= in the same place).

id.	
IEIE	<i>idem</i> (= the same).
IEW	<i>Indo-European and Indo-Europeans</i> . Papers presented at the Third Indo-European conference, at the University of Pennsylvania. Ed. Cardona etc. Philadelphia 1970.
IJ	<i>Indogermanisches etymologisches Wörterbuch</i> , Pokorny, Bern 1959.
IK	<i>The Irish Jurist</i> , University College Dublin, new series 1966-.
Introd.	<i>Die irische Kanonensammlung</i> , Wasserschleben, Leipzig 1885. Introduction.
Immr.	<i>Imrama</i> ed. A.G. Van Hamel, Dublin 1941. Mediaeval and Modern Irish series vol. 12.
IP	<i>The Irish Penitentials</i> ed. Ludwig Bieler, Dublin 1963. <i>Scriptores Latini Hiberniae</i> vol. 5.
IR	<i>Irisches Recht</i> , R. Thurneysen. Aus den Abhandlungen der preussischen Akademie der Wissenschaften, Jahrgang 1931. Philhist. Klasse Nr. 2, Berlin 1931.
IT	<i>Irische Texte I-IV</i> ed. Windisch and Stokes, Leipzig 1880-1909.
ITS	Irish Texts Society: Cumann na Scríbhéann Gaedhilge. London, Dublin, 1899-.
JCS	<i>The Journal of Celtic Studies</i> , Baltimore: Temple University 1949-58.
JRSAI	<i>The Journal of the Royal Society of Antiquaries of Ireland</i> , Dublin, 1849-.
KZ	(Kuhn's) <i>Zeitschrift für vergleichende Sprachforschung</i> , Berlin, Göttingen 1852-.
l(l).	line(s).
Lat.	Latin.
LEIA	<i>Lexique étymologique de l'irlandais ancien</i> , J. Vendryes, E. Bachellery, P.Y. Lambert, Paris, Dublin 1959-.
lit.	literally.
LL	<i>The Book of Leinster, formerly Lebar na Núachongbála</i> i-vi ed. R.I. Best, Osborn Bergin, M.A. O'Brien and Anne O'Sullivan, Dublin 1954-83. References are to volume and line numbers.
Ll. Ior.	<i>Llyfr Iorwerth</i> ed. A.R. Wiliam, Cardiff 1960; tr. Dafydd Jenkins, <i>The Law of Hywel Dda</i> (see pp. xxxix-xl), Llandysul 1986.
LM	<i>The Laws of Manu</i> tr. G. Bühler, Oxford 1886 repr. Delhi 1964. The Sacred Books of the East vol. 25.
LU	<i>Lebor na hUidre, Book of the Dun Cow</i> ed. R.I. Best and Osborn Bergin, Dublin 1929. References are to line numbers.
MD	<i>The Metrical Dindshenchas</i> i-v ed. E.J. Gwynn, Dublin 1903-1935. Todd Lecture Series viii-xii.
Med.W.	Medieval Welsh (12th-14th c.).
Mid.Ir.	Middle Irish (10th-12th c.).
MI.	The Milan Glosses on the Psalms, <i>Thes.</i> i 7-483. References are to folio numbers.
Mod.Ir.	Modern Irish (13th-20th c.).
MS(S)	manuscript(s).
MV	<i>Mittelirische Verslehrten</i> ed. Thurneysen in <i>IT</i> III i 1-182, Leipzig 1891.
no(s).	number(s).
nom.	nominative.
O'Dav.	O'Davoren's Glossary, ed. Stokes, <i>ACL</i> ii 197-504. References are to gloss numbers. It is printed at <i>CIH</i> 1466.11-1531.24.
O.Ir.	Old Irish (7th-9th c.).

O'Mulc.	O'Mulconry's Glossary, ed. Stokes, <i>ACL</i> i 232-324. References are to gloss numbers.
op. cit.	<i>opere citato</i> (= in the work previously quoted).
p(p)	page(s).
PB	<i>The Poems of Blathmac son of Cú Brettan</i> ed. James Carney, Dublin 1964. <i>ITS</i> vol. 47.
PBA	<i>Proceedings of the British Academy.</i>
Peritia	<i>Peritia, Journal of the Medieval Academy of Ireland</i> , ed. Donnchadh Ó Corráin etc. 1982-.
pers. comm.	personal communication.
pl.	plural.
PRIA	<i>Proceedings of the Royal Irish Academy</i> Dublin 1836-.
PTBA	<i>The Patrician texts in the Book of Armagh</i> ed. L. Bieler, Dublin 1979. <i>Scriptores Latini Hiberniae</i> vol. 10.
RC	<i>Revue celtique</i> , Paris 1870-1934.
Rec.	Recension.
repr.	reprinted.
retr.	retranslated.
RIA Cat.	<i>Royal Irish Academy Catalogue</i> , Dublin 1926-.
s.a.	<i>sub anno</i> (= under the year).
SCC	<i>Serglige Con Culainn</i> ed. Myles Dillon, Dublin 1953. <i>Mediaeval and Modern Irish Series</i> vol. 14.
SEIL	<i>Studies in early Irish law</i> ed. D.A. Binchy, Dublin, Royal Irish Academy, 1936.
sg.	singular.
Sg.	The St. Gall Glosses on Priscian, <i>Thes.</i> ii 49-224. References are to folio numbers.
SGS	<i>Scottish Gaelic Studies</i> . University of Aberdeen 1926-.
SM	<i>Senchas Már</i> (see p. 242).
Sources	<i>The Sources for the Early History of Ireland</i> , James F. Kenney, New York, Columbia University Press, 1929.
SR	<i>Saltair na Rann</i> ed. Whitley Stokes, Oxford 1883. <i>Anecdota Oxoniensia. Mediaeval and Modern Irish Series</i> vol. 1 part iii.
Stud. Celt.	<i>Studia Celtica</i> . Published on behalf of the Board of Celtic Studies of the University of Wales. Cardiff 1966-.
Stud. Hib.	<i>Studia Hibernica</i> , á fhoilsíú ag Coláiste Phádraig, Baile Átha Cliath 1961-.
s.v.	<i>sub voce</i> (= under the head-word).
TBC LL	<i>Táin Bó Cúailnge from the Book of Leinster</i> ed. Cecile O'Rahilly, Dublin 1967. Also distributed as <i>ITS</i> vol. 49. References are to line numbers.
TBC Rec. I	<i>Táin Bó Cúailnge</i> , Recension I ed. Cecile O'Rahilly, Dublin 1976. References are to line numbers.
TBC St	<i>The Stowe Version of Táin Bó Cúailnge</i> ed. Cecile O'Rahilly, Dublin 1961. References are to line numbers.
TBDD	<i>Togail Bruidne Da Derga</i> ed. Eleanor Knott, Dublin 1936. <i>Mediaeval and Modern Irish Series</i> vol. 8. References are to line numbers.
TC	<i>Técosca Cormaic</i> (App. 2 No. 2).
TCD Cat.	<i>Catalogue of the Irish manuscripts in the Library of Trinity College, Dublin</i> , Abbott and Gwynn, Dublin 1921.
Thes. i-ii	<i>Thesaurus Palaeohibernicus: A collection of Old-Irish glosses, scholia, prose and verse</i> , ed. Stokes and Strachan, Cambridge 1901-03, repr. Dublin 1975.

TPS	<i>Transactions of the London Philological Society</i> , 1854-.
tr.	translated.
Triads	<i>The Triads of Ireland: Treheng Breth Féne</i> (App. 2 No. 3).
UB	<i>Uraicecht Becc</i> (App. 1 No. 7).
UR	<i>Uraicecht na Ríar</i> (App. 1 No. 13).
vb. n.	verbal noun.
VC	'Venedotian Code' in <i>ALIW</i> i 1-335.
VKG	<i>Vergleichende Grammatik der keltischen Sprachen</i> i-ii, Pedersen, Göttingen 1908-11.
v. 1.	<i>varia lectio</i> (= variant reading).
vol.	volume.
VSC	<i>Vita Sancti Columbae</i> : Adomnán's Life of Columba, ed. A.O. and M.O. Anderson, London 1961. References are to folio numbers of the Schaffhausen MS.
W.	Welsh.
Wb.	The Würzburg glosses and scholia on the Pauline Epistles, <i>Thes.</i> i 499-712. References are to folio numbers.
WLW	<i>The Welsh Law of Women</i> , ed. Dafydd Jenkins and Morfydd E. Owen, Cardiff 1980.
YBL	<i>The Yellow Book of Lecan</i> , Photo-lithographic reproduction; with introduction, analysis of contents and index by Robert Atkinson. Dublin 1896.
ZCP	<i>Zeitschrift für celtische Philologie</i> , Halle, Tübingen 1897-.

TERMINOLOGY

I provide here a list of Irish words and phrases commonly used in this book. The probable pronunciation is given in the International Phonetic Alphabet. For further discussion of early Irish pronunciation, see pp. 296-300. Pronunciations are also given in the Index of Irish terms, pp. 301-23.

Ranks of society (in descending order)

rí ruirech /Ri: Rur'ēx/	<i>supreme king</i>
rí túath /Ri: tuaθ/	<i>overking of a few petty kingdoms</i>
rí túaithé /Ri: tuaθ'ē/	<i>king of a single petty kingdom</i>
aire forgill /ar'ē for'g'il/	<i>lord of superior testimony</i>
aire tuiseo /ar'ē tuiṣo/	<i>lord of precedence</i>
aire ard /ar'ē aRd/	<i>high lord</i>
aire désó /ar'ē de:so/	<i>lord of vassalry</i>
bóaire /bo:ar'ē/	<i>prosperous farmer, strong farmer</i>
ócaire /o:gar'ē/	<i>less prosperous farmer, small farmer</i>
fer midboth /fer miðvoθ/	<i>'man of middle huts', semi-independent youth</i>
fuidir /fuð'ir'/	<i>semi-freeman, tenant at will</i>
bothach /boθax/	<i>cottier</i>
senchléithe /ſen'x'lē:θ'ē/	<i>hereditary serf</i>
mug /muγ/	<i>male slave</i>

Units of currency (with usual value in relation to one milch cow — see pp. 115-6)

dartaid /daRtið'/'	<i>yearling bullock</i>	1/8
dairt /daR't/'	<i>yearling heifer</i>	1/4
colpthach /kolpθax/	<i>two-year-old heifer</i>	1/3
samaisc /sävisk'/	<i>three-year-old dry heifer</i>	1/2
bó inláeg /bo: iNLaiγ/	<i>in-calf cow</i>	2/3
bó mlícht /bo: mlíxt/	<i>milch cow</i>	1
sét /ſe:d/	<i>standard object of value</i>	1/2
cumal /kūval/	<i>female slave (or equivalent)</i>	3
screpul /skrebul/	<i>scruple (of silver)</i>	1/24
ungae /unγe/	<i>ounce (of silver)</i>	1

Titles of commonly quoted law-texts and wisdom-texts
 (with references to Appendixes 1 or 2)

Audacht Morainn /auðaxt moriN'/	App. 2 No. 1.
Bechbretha /bex'v'r'eθa/	App. 1 No. 44.
Berrad Airechta /beRað ar'exta/	App. 1 No. 61.
Bretha Comaithchesa /breθa kõvaθ'x'esa/	App. 1 No. 41.
Bretha Crólige /breθa kro:l'i'y'e/	App. 1 No. 29.
Bretha Déin Chécht /breθa de:n' xe:xt/	App. 1 No. 30.
Bretha im Fúillema Gell /breθa im ul'eva g'eL/	App. 1 No. 60.
Bretha im Gata /breθa im γada/	App. 1 No. 35.
Bretha Nemed toísech /breθa Nēv'eð tois̄e/	App. 1 No. 14.
Bretha Nemed déidenach /breθa Nēv'eð de:ð'enax/	App. 1 No. 15.
Cáin Adomnáin /ka:n' aððvna:n'/	App. 1 No. 74.
Cáin Aicilne /ka:n' ag iL'N'e/	App. 1 No. 24.
Cáin Domnaig /ka:n' dðvniγ'/	App. 1 No. 73.
Cáin Íarraith /ka:n' iaRaθ'/	App. 1 No. 19.
Cáin Lánamna /ka:n' La:nävna/	App. 1 No. 17.
Cáin Śóerraith /ka:n' hoiRaθ'/	App. 1 No. 23.
Coibnes Uisci Thairidne /kov'n' es usk'i ðar'ið'n'e/	App. 1 No. 45.
Cóic Conara Fugill /ko:g' konara fuγ'iL/	App. 1 No. 69.
Córus Béscnai /ko:rus be:skni/	App. 1 No. 10.
Críth Gablach /kri:θ gavlax/	App. 1 No. 6.
Di Astud Chirt 7 Dlidig /di astuð xiR't' ogus dliγ'ið/	App. 1 No. 4.
Di Chetharslicht Athgabála /di xeθarhl'ixt aθγava:la/	App. 1 No. 66.
Di Dligiud Raith 7 Somaíne /di ðliγ'uð raθ' ogus sðvain'e/	App. 1 No. 25.
Din Techtugad /diN' textuγað/	App. 1 No. 68.
Gúbretha Caratniad /gu:v'r'eθa karadn'i-að/	App. 1 No. 5.
Maccslechta /makhl'exta/	App. 1 No. 18.
Míadslechta /miaðhl'exta/	App. 1 No. 8.
Senbriáthra Fíthail /ʃen'v'r'iaθra fi:θil'/	App. 2 No. 6.
Tecosca Cormaic /tegoska kormik'/	App. 2 No. 2.
Uraicecht Becc /urak'ext beg/	App. 1 No. 7.
Uraicecht na Ríar /urak'ext na Riar/	App. 1 No. 13.

INTRODUCTION

This guide to early Irish law is based on the Old Irish law-texts, most of which originate in the 7th-8th centuries A.D. but survive — often incompletely and corruptly — in 14th-16th century manuscripts (see ch. 10). Most of these texts have been published and translated (often very inaccurately) in the *Ancient Laws of Ireland* (*AL*) vols. i-v, Dublin 1865-1901. A number of them have been re-edited by Rudolf Thurneysen (in German), D. A. Binchy and other scholars, and there have also been editions of some law-texts not included in *AL*. In his six-volume *Corpus Iuris Hibernici* (*CIH*), Dublin 1978, Binchy has collected the surviving legal material in a diplomatic edition, without translation.

To gain any degree of understanding of early Irish law, it is necessary first to look briefly at the society in which it developed. An outside view of a society is often particularly illuminating, but apart from a few comments by Saint Patrick in the 5th century,¹ there are no foreign accounts of Ireland before Giraldus Cambrensis's *Topography of Ireland* of the late 12th century. We are, therefore, mainly dependent on the information which can be gleaned from the rich and varied native literature — in Old Irish and in Latin — which has come down to us from the Early Christian period. Law-texts, wisdom-texts, sagas, histories, praise-poetry, annals, genealogies, saints' lives, religious poetry, penitentials and monastic rules all add in different ways to our understanding of early Irish society.

Not surprisingly, there are often inconsistencies and even contradictions between different sources. Thus, according to one law-text, *Bretha Crólige*, a person who injures another illegally must arrange for him to be brought away on sick-maintenance (*othrus*), and cared for until he has recovered.² However, another law-text, *Críth Gablach*, states that the institution of sick-maintenance is obsolete,

¹ e.g. *Confessio* §§41, 42; *Epistola* §1.

² See pp. 130-1.

and has been replaced by the payment of appropriate fines.³ Such variation may sometimes betray a difference of date between different texts. It may also reflect differences in local custom,⁴ or merely a conflict of opinion between law-schools or even between individual lawyers in the same school. There is also much variation in the degree of Christian influence in the law-texts: for instance, *Cáin Lánamna* gives detailed descriptions of the procedure for divorce without any word of condemnation,⁵ whereas the author of Heptad 51 quotes from St. Mark 10: 9 'what God has joined, let not man put asunder'.⁶ The author of *Bretha Crólige* frankly admits that there is dispute in Irish law as to whether it is proper to have many sexual unions or a single one. He justifies the practice of polygyny from the Old Testament, pointing out that the chosen people of God lived in plurality of unions.⁷

In spite of such divergences and disagreements, our sources display an essential unity, and we often find them confirming and complementing one another. Thus, legal rules are sometimes illustrated by episodes in saints' lives,⁸ and events in a saga may be explained by reference to a law-text.⁹

The wisdom-texts (listed in Appendix 2) are particularly useful in that they contain some general statements expressing early Irish views on the society's structure and ethos. For example, Triad 200 gives a convincing assessment of the pressures which enforce lawful behaviour (*bescnae*) on the individual. It reads: 'the three rocks to which lawful behaviour is tied: monastery, lord, kin'.¹⁰ A maxim in *Tecosca Cormaic* expresses the aristocratic outlook of virtually all early Irish sources: 'every commoner is low'.¹¹ Another maxim in

Senbriathra Fíthail voices the general admiration for art or skill (*dán*): 'an art is better than an inheritance of land'.¹²

Our main information on the economic basis of the society comes from the law-texts (increasingly being confirmed and supplemented by the findings of modern archaeology).¹³ They describe a self-sufficient mixed farming economy based on the rearing of cattle, sheep and pigs, and on the growing of cereals. The economic system is sustained by the inter-relationship of lord and client: the lord advances a fief of stock or land to his clients, and in return receives rent and services (see ch. 1). Sufficient wealth is generated to support not only a hierarchy of lords and kings, but also various professional men, of whom the most important are poets, judges, smiths, physicians and wrights (see ch. 2).

The Church is an extensive landowner, and its economic position is also dependent on clientship. Like any secular lord, the abbot advances a fief to the monastic clients, who respond with rent and services. In addition, the Church receives offerings, tithes, bequests, first-fruits etc. from the laity in general. The result is a very wealthy Church, with the resources to fund the scholarship and craftsmanship for which Early Christian Ireland is renowned.

In a Thomas Davis lecture delivered in 1953, D. A. Binchy described the main characteristics of early Irish society as 'tribal, rural, hierarchical, and familiar (using this word in its oldest sense, to mean a society in which the family, not the individual, is the unit) — a complete contrast to the unitary, urbanised, egalitarian and individualist society of our time'.¹⁴ In the remainder of this introductory chapter, I propose to look at early Irish society under each of these headings.

TÚATH (TRIBE)

The law-texts indicate that the basic territorial unit is the *túath*, conveniently translated 'tribe' or 'petty kingdom'. On the evidence of genealogies and other sources, F. J. Byrne calculates that there were probably at least 150 kings in Ireland at any given date between

³ *CIH* 777.36-8 = *CG* 47-51.

⁴ e.g. *CIH* 26.8 = *AL* v 216.21-2.

⁵ *CIH* 502.29-519.35 = *SEIL* 1-75.

⁶ *CIH* 47.18 = *AL* v 290.24.

⁷ *CIH* 2301.35-8 = *Ériu* 12 (1938) 44 §57.

⁸ The story of the homicide Librán in Adomnán's *VSC* (late 7th c.) illustrates a number of legal points — see pp. 215, 224.

⁹ In 'The Story of the Finding of Cashel' (*Ériu* 16 (1952) 66.82) Cork lays claim to territory by planting house-posts (*cletha*), just as is described in a passage on the division of land among co-heirs in the law-text *Cóic Conara Fugill* (Recension H §65 = *CIH* 1034.9).

¹⁰ *Trí all frisa timargar bescna: mainistir, flaith, fine.*

¹¹ *isel cach aithech*, *TC* §15.15.

¹² *ferr dán orbu*, *RC* 45 (1928) 18 §4.1.

¹³ In a forthcoming book, *Early Irish Farming: the written evidence*, I hope to show that the archaeological evidence relating to agriculture in Early Christian Ireland is in substantial agreement with the information provided in the law-texts.

¹⁴ *Early Irish Society*, ed. Dillon (Cork 1954) 54.

the 5th and 12th centuries.¹⁵ Each of these kings would have ruled over his own *túath* (and many would also have been overlords of the *túatha* of other kings). Any estimate of the total population of Ireland at this period is of course highly speculative, but a figure of something under half a million has been proposed.¹⁶ On this basis, the average *túath* could be reckoned to have contained about 3,000 men, women and children.

According to one law-text, no *túath* can be regarded as a proper *túath* unless it has an ecclesiastical scholar (*ecnae*), a churchman, a poet and a king.¹⁷ The life of a *túath* centres around its king: all the freemen owe him their direct loyalty, and pay him a special tax.¹⁸ At any time the king may summon them for a *slógad* or 'hosting' to repel invaders or to attack a neighbouring *túath*.¹⁹ He also convenes the *óenach*, a regular assembly for political, social, and perhaps commercial purposes.²⁰ In the case of an overking, such an assembly may be attended by people from a number of *túatha*. For example, the *Óenach Tailten* 'Fair of Tailtiu' is held each year at the festival of Lughnasad (early August) under the auspices of the king of Tara.²¹ Another type of gathering is the *airecht* 'meeting of freemen' at which legal business is transacted, apparently supervised by the king (see p. 24).

External relations

Except when on military service or pilgrimage or when attending an *óenach* outside the territory, the ordinary freeman stays within his own *túath*. Beyond its borders he normally does not have rights: only the learned classes appear to be entitled to travel freely. Thus,

¹⁵ *Irish Kings and High-Kings*, (London 1973) 7. Eoin MacNeill, on the other hand (*Early Irish Laws and Institutions* (London 1935) 96), gives an estimate of only about 80 *túatha*, each ruled by a king. See also D. Ó Corráin 'Nationality and kingship in pre-Norman Ireland' 10-1 in *Nationality and the pursuit of national independence* ed. Moody (Belfast 1978).

¹⁶ F. J. Byrne quotes this estimate from Liam de Paor (*Ériu* 22 (1971) 160⁴). It is based on an extrapolation of the Domesday Book figures for late 11th c. England.

¹⁷ *CIH* 1123.32 = *Ériu* 13 (1942) 31.10.

¹⁸ *CIH* 219.5 = *AL* iv 50.22-3.

¹⁹ *CIH* 569.7-9 = *CG* 509-14. In later times, the chieftain's right to summon his men to a hosting is referred to as *gairm slóighidh* (anglicized *garem sloaeg*).

²⁰ See *CG* Legal Glossary p. 102 and *Ériu* 18 (1958) 124.

²¹ *Ériu* 18, 115.

a text on distraint refers to 'the right of a poet beyond a boundary',²² and the saints' lives provide evidence of a highly mobile clergy. The fairly uniform nature of early Irish law suggests too that the lawyers kept in contact with their colleagues in other *túatha*.

The king is responsible for relations with other *túatha*. Most kings recognise the overlordship of the king of a more powerful neighbouring *túath* (see p. 17). The usual method of acknowledging overlordship is to accept gifts from the superior king.²³ In addition, the subject king may be required to pay tribute and hand over hostages to the superior king.

A king can also make a treaty (*cairde*) with the king of another *túath*. Such a treaty is bound upon his people at an *óenach*,²⁴ and entitles the victim of a crime committed by a member of the other *túath* to obtain legal redress for the injury which he has suffered. According to a short text on *cairde* (Appendix 1 No. 62) the injuries covered under such an arrangement include killing or wounding, robbery with violence, theft, house-breaking, rape, arson and satire.²⁵

Outsiders

The law-texts distinguish between the *deorad* 'outsider' and the *aurrad* 'person of legal standing within the *túath*'.²⁶ The rights of the outsider are very restricted, unless he is a *deorad Dé* lit. 'an outsider or exile of God' — i.e. a hermit — in which case he has special status and privileges (see p. 41).

The law-texts refer to various types of outsider, and the distinctions between them are not always clear. There are many references to the *ambue*, the literal meaning of which seems to be 'non-person'.²⁷ Heptad 16 states that it is not a legal offence to avoid payment of a body-fine (*éraic*) for an *ambue*.²⁸ This would mean that an *ambue* can be killed or injured with impunity, so it

²² *CIH* 391.28 = *AL* i 184.16-7.

²³ See F. J. Byrne, *Ériu* 22 (1971) 133.

²⁴ *CIH* 569.2-6 = *CG* 502-9. See *CG* Legal Glossary s. vv. *cairde* and *aire échta*.

²⁵ *CIH* 791.5-6.

²⁶ e.g. *CIH* 307.12 = *AL* iii 380.25.

²⁷ *LEIA* s.v. *bue*. Kim McCone, on the other hand, suggests (*CMCS* 12 (1986) 11) 'one who does not have cows'.

²⁸ *CIH* 17.1 = *AL* v 178.8.

is clear that this type of outsider has not come from a *tuath* with which there is a treaty. Because of his lack of status, the *ambue* cannot get anyone to act as a valid surety for him (Heptads 30-31)²⁹ or to give a valid pledge on his behalf (Heptad 32).³⁰ He is thus excluded from normal legal agreements and remedies.

Another type of outsider is the *cú glas* lit. 'grey dog'³¹ who is explained by a 9th century legal glossator as an exile from overseas.³² Most references to the *cú glas* deal with the legal consequences of his marriage to a woman of the *tuath*. Being an outsider, he has no honour-price (i.e. legal standing) in his own right. However, if the union is recognised by the woman's kin, he is counted as having half his wife's honour-price. But he is not entitled to make any legal contracts without his wife's permission, and she pays for any fines or debts which he may incur.³³ He has no responsibility with regard to the rearing of his children;³⁴ this is a matter for the woman and her kin.³⁵ He is also not responsible for offences committed by his children.³⁶

Occasional mention is also made of the *murchoirthe* lit. 'one thrown up by the sea, a castaway'. He has no legal standing unless taken into service,³⁷ in which case his honour-price is normally one third³⁸ that of his master, who must pay for any offences which he commits.³⁹ The *murchoirthe* may in some cases have been a criminal who was punished by being set adrift (see p. 219) and subsequently taken into service in the *tuath* where he was washed up.

RURAL CHARACTER

The society depicted in our sources is almost entirely rural in character. Concentrated settlements seem to have been few, and

²⁹ *CIH* 28.11 = *AL* v 224.3-4; *CIH* 29.2 = *AL* v 228.3.

³⁰ *CIH* 29.11 = *AL* v 228.16.

³¹ cf. Old Norse *vargr* 'wolf, outlaw' (discussed by Wagner, *ZCP* 31 (1970) 3-4).

³² *cú glas* i.e. *deorad loingsigh*, *CIH* 917.18.

³³ *CIH* 427.4-18 = *IR* 64 §4.

³⁴ *CIH* 22.8 = *AL* v 202.5.

³⁵ *CIH* 442.13 = *IR* 31 §33.

³⁶ *CIH* 31.8 = *AL* v 234.24.

³⁷ e.g. *CIH* 17.17-8 = *AL* v 182.9-10.

³⁸ *CIH* 1913.10 = *IR* 39. If he is in the service of a king (or man of equivalent rank) his honour-price is only one seventh that of his master, *CIH* 1915.26-7 = *IR* 7.

³⁹ *CIH* 382.18 = *AL* i 156.30.

sited mainly around important monasteries. Thus, the 8th century *Liber Angeli* describes the monastic settlement of Armagh as a town (Lat. *urbs*).⁴⁰

There must also have been trading settlements on the coasts, particularly in the South and East. The wisdom-text *Técosca Cormaic* includes 'ships putting in to port' as one of the signs of a good king.⁴¹ Their cargo would have included wine,⁴² fine cloth,⁴³ and various other luxury items.⁴⁴ There is also evidence of the import of British horses.⁴⁵ Little is known about exports from Ireland at the time of the law-texts. Writing in the late 12th century, Giraldus Cambrensis refers to the export of the hides of wild and domestic animals,⁴⁶ and this trade may also have been carried on in earlier times. A legal glossator refers to cargoes of furs and hides.⁴⁷ It is indicative of a relatively low level of trading that the trader (*cennaige*) is neither included in the extensive lists of professions in *Uraicecht Becc*⁴⁸ or *Bretha Nemed toisech*⁴⁹ nor mentioned elsewhere in the Old Irish law-texts.

RANK

Early Irish society is hierarchical and inegalitarian. These characteristics are reflected clearly in the laws. So, an offence against a person of high rank entails a greater penalty than the same offence against a person of lower rank. Similarly, the oath of a person of high rank automatically outweighs that of a person of lower rank. Native Irish law never subscribed to the Roman principle of all citizens being equal before the law. The early Irish lawyers knew of the Roman principle from canon law; thus the

⁴⁰ *PTBA* 184-6.

⁴¹ *TC* §1.25, cf. *CIH* 2155.16.

⁴² *TC* §1.44.

⁴³ e.g. *TC* §1.28.

⁴⁴ They are often referred to collectively as *allmuire sét* 'foreign goods', e.g. *TC* §1.26; *CIH* 901.38.

⁴⁵ e.g. *CIH* 1507.34 = O'Dav. 1051.

⁴⁶ *Topographia Hibernica* ed. Dimock (London 1867) I ch. 6 p. 28; tr. J. J. O'Meara, *The History and Topography of Ireland* (The Dolmen Press, Mountrath 1982) 35.

⁴⁷ *CIH* 2155.20.

⁴⁸ *CIH* 1612.4-1617.16 = *AL* v 90.19-108.23.

⁴⁹ *CIH* 2219.33-2220.16.

author of *Bretha Crólige*⁵⁰ observes that everybody — both king and subject, free and servile, weak and strong — has equal honour-price in the books [of canon law]⁵¹ but that in native law (*sénechas*) their honour-price is unequal. In the Introduction to the main collection of law-texts, the *Senchas Már*, it is claimed that the world was in equality until the coming of the *Senchas Már*, which introduced distinctions between king and commoner, queen and non-queen, free and unfree, prosperous and indigent, rich and poor.⁵² This claim is of course untrue: it is clear from linguistic evidence that distinctions of rank go back into the distant past. For example, a long history of social inequality among the Celtic peoples is indicated by the fact that one of the Irish words for 'lord', *tigern* (also *tigernae*), is cognate with Welsh *teyrn* of the same meaning.⁵³

Distinctions of rank figure prominently in practically all Irish law-texts. For instance, in the texts on injury, *Bretha Déin Chécht* and *Bretha Crólige*, as much space is devoted to the rank of the victims as to their injuries. The practical implications of these distinctions can be seen from §13 of the former text.⁵⁴ For a small facial wound, the highest grade of lord is entitled to a milch cow. For the same injury, the *inol* (apprentice?) receives only one fleece.

The measure of a person's status is his honour-price or *lög n-enech* (lit. 'the price of his face').⁵⁵ This has to be paid for any major offence committed against him, e.g. murder, satire, serious injury, refusal of hospitality, theft, violation of his protection, etc.⁵⁶ For offences which are not held to involve the victim's honour — such as animal trespass or minor damage to property — lesser fines are due. According to *Críth Gablach*, the honour-price of a freeman ranges from 14 *cumals* (= 42 milch cows) in the case of a provincial king⁵⁷ down to a yearling heifer in the case of the lower grade of *fer midboth*⁵⁸ (a youth living on his father's land).

⁵⁰ CIH 2287.16-20 = *Ériu* 12 (1938) 8 §5.

⁵¹ See Binchy's note at *Ériu* 12, 57.

⁵² CIH 347.27-348.11 = *AL* i 40.10-4.

⁵³ *LEIA* s.v. *tigern*.

⁵⁴ CIH 2308.30-7 = *Ériu* 20 (1966) 30.

⁵⁵ Compare Welsh *wynebwyrth* 'honour-price' lit. 'the value (gwerth) of the face (wyneb)'.

⁵⁶ CIH 779.5-7 = *CG* 121-4; CIH 1123.22-4 = *Ériu* 13 (1942) 30.33-6.

⁵⁷ CIH 568.26 = *CG* 475.

⁵⁸ CIH 777.21 = *CG* 24.

A person's capacity to perform most legal acts is linked to his honour-price. He cannot make a contract for an amount greater than his honour-price, nor can he go surety beyond this amount. Likewise, his compurgatory oath (see p. 201) and his evidence (see p. 203) are only given a weight commensurate with his honour-price.⁵⁹

Three law-texts dealing mainly with rank in early Irish society have survived: *Críth Gablach*, *Uraicecht Becc* and *Mádšlechta*. In some respects they differ among themselves (e.g. p. 28), and their detailed classifications of rank can only have borne a limited resemblance to reality. In practice, the most important social distinctions seem to be 1) between those who are *nemed* 'privileged', and those who are not *nemed*, and 2) between those who are *sóer* 'free' and those who are *dóer* 'unfree'.

The basic meaning of the term *nemed* is 'sacred, holy' — the Gaulish cognate *nemeton* is used of sacred places⁶⁰ — so it seems that the privileges of rank were originally sustained by religious feeling as well as respect for wealth and power. The chief categories of *nemed*⁶¹ in society are king, lord (*flaith*), cleric, and poet — each of whom is discussed in detail in chapters 1 and 2. The most numerous of these categories would undoubtedly be the lord, whose status depends on his possession of clients (*céili*).

A *nemed* has special legal privileges. For example, his property cannot be distrained in the normal manner (see p. 182); instead the plaintiff has to fast against him. He is also immune from some legal obligations. Triad 235 advises against going surety for a king or other *nemed* on the grounds that his honour (*enech*) is too great for the surety to sue in the event of default. Other law-texts emphasise that a contract with a *nemed* is unenforceable (see p. 162). However, no *nemed* — even a king — is entirely above the law. Heptad 63 states that an absconder from justice (*éludach*) cannot find refuge

⁵⁹ CIH 777.20-2 = *CG* 23-6.

⁶⁰ For a discussion of the various uses of the word *nemed* in Irish and other Celtic languages, see *BB* 107-9.

⁶¹ In *Bretha Nemed toisech* (CIH 2225.7, cf. 1147.22) it is stated: *ní tuath cin tri saornemthib samuidter, eclais flaith file* 'no tuath is established without three noble *nemed*: churchman, king/lord, poet' (here *flaith* must include both 'king' and 'lord'). To these three, most versions of *UB* add *Féni* 'freemen' (mistranslated 'nobles' in *BB* 108), e.g. CIH 1593.4-6 *It e saernemead filead ann: ecalsi flaitha filidh feine* 'these are the three noble *nemed*s that there are: churchmen, lords, poets, freemen'. However, it is possible that *Féni* was not present in the original text of *UB*.

with a *nemed*, however elevated.⁶² Some texts include the physician, judge, blacksmith, coppersmith, harpist, carpenter, and other craftsmen as a lower appendage of the *nemed* class, called *dóernemed* 'base *nemed*'.⁶³ But it is clear that they do not enjoy full *nemed* privileges.

Ranking below the *nemed* is the *non-nemed* freeman, who probably comprises the majority of the adult male population at our period. He has an honour-price in his own right, and can take independent legal action i.e. he can buy, sell, make contracts, act as surety or witness, etc. He attends the assembly,⁶⁴ and thereby plays a part — however small — in decisions affecting the *tiúath*. The law-texts distinguish two main categories of *non-nemed* freeman: the *ócaire* and the *bóaire*, who can be roughly equated respectively with the 'small farmer' and 'strong farmer' of 20th century Ireland. The *ócaire*⁶⁵ has an honour-price of 3 *séts* (equivalent to 1½ milch cows). He is the client (*céile*) of a lord, from whom he receives a fief of 8 cows,⁶⁶ and in return provides food-rent and services. *Críth Gablach* gives a fairly detailed account of the *ócaire*'s property.⁶⁷ This information should not be taken too literally, but it gives an approximate idea of the average 8th century *ócaire*'s wealth. Thus, he is said to have a dwelling-house of 19 feet (in diameter) and an out-house of 13 feet. He has land worth 7 *cumals* (see p. 112) and owns 7 cows, a bull, 7 pigs, 7 sheep and a horse. He has a quarter share in a plough-team and a share in a kiln, a mill and a barn. If an *ócaire* prospers he may acquire enough land, cattle and other wealth to be ranked as a *bóaire*, lit. 'cow-freeman', probably so called because his basic annual rent to his lord consists of one milch cow. The typical *bóaire* has an honour-price of 5 *séts*.⁶⁸ He possesses half a plough-team, so he can make a co-ploughing arrangement (*comar*) with a neighbour of the same rank.

⁶² *CIH* 55.1-6 = *AL* v 318.12-9. This heptad is also found in *BB* §39.

⁶³ e.g. *CIH* 1612.4-9 = *AL* v 90.19-21; cf. *AM* §52. According to *UB* (*CIH* 1593.11-2 = *AL* v 14.18-9) they are described as *dóer* 'base' because they serve persons of *soérnemed* 'noble *nemed*' status.

⁶⁴ See *CG* Legal Glossary p. 73 s.v. *airecht*.

⁶⁵ The literal meaning of *ócaire* is 'young freeman'. See *CG* Legal Glossary p. 101.

⁶⁶ *CIH* 778.34 = *CG* 105.

⁶⁷ *CIH* 778.23-34 = *CG* 89-105.

⁶⁸ *CIH* 532.8 = *AL* iii 42.20; cf. *CIH* 779.30 = *CG* 160.

Dependants

The honour-price of an adult freeman derives from his rank. The honour-price of his dependant is a proportion of his own honour-price. For example, according to *Críth Gablach*⁶⁹ a man's wife, son, or daughter is normally entitled to half his honour-price. But a son who has not fulfilled his filial duty (*goire*) is entitled only to one quarter of his honour-price.

A youth who sets up house on his father's land is called a *fer* and *both* lit. 'man of middle huts'. He occupies a position intermediate between dependence and independence, as he is still subject to his father, but has his own honour-price and some limited legal capacity — see p. 82.

Unfree (*dóer*)

Leaving freemen and their dependants, we turn our attention to those who are *dóer* 'unfree'. The first group which can be included here are the various types of *fuidir*, usually translated 'semi-freeman' or 'tenant at will' (for discussion, see pp. 33-5). In general, the *fuidir* must be regarded as *dóer*, as he has no honour-price in his own right, and no land of his own. However, some types of *fuidir* have the right to leave their lord, provided that they surrender two thirds of the produce of their husbandry to him.

The *senchleithe* 'hereditary serf' (see p. 35) has even less control over his destiny, as he is bound to the soil and cannot leave his lord. Finally, the *mug* 'male slave' and *cumal* 'female slave' (see pp. 95-7) are simply the property of their master.

Change of rank

In spite of the rigid stratification of society, there are many circumstances in which a person's ranking may be changed. If a *nemed* behaves in a manner unbefitting to his status or fails to carry out his obligations, his rank is reduced. Thus, the honour-price of a king who displays cowardice in battle is reduced to that of a commoner.⁷⁰ According to *Di Astud Chirt 7 Dlidid*, a false-judging

⁶⁹ *CIH* 779.7-8 = *CG* 125-7.

⁷⁰ *CIH* 569.27 = *CG* 539.

king, a stumbling (i.e. sexually immoral) bishop, a fraudulent poet and a dishonest lord are degraded into 'small persons' i.e. commoners.⁷¹ The same applies to the lord who does not have the requisite number of clients to sustain his status.⁷²

The reduction of a man's rank does not involve his family. According to *Bretha Crólige*, if a man is degraded for some offence, his son's honour-price remains at the original level 'for the misdeed of the guilty should not affect the innocent'.⁷³ In the same way, a wife's honour-price is not diminished because of her husband's reduction in rank.⁷⁴ Likewise, if she fails in her obligations as wife, her husband's honour-price is not affected.⁷⁵ In contrast to the Patricians of early Rome or the Brahmins of India, the early Irish *nemed*s are not a closed caste. It is possible to become a *nemed*: thus a text on distress refers to a new *nemed*.⁷⁶ According to the author of *Uraicecht Becc*, elevation in rank may result from a man's art (*dán*) or husbandry or God-given talent. He then quotes the important legal maxim 'a man is better than his birth' (*ferr fer a chiniud*).⁷⁷

If a *bóaire* acquires enough wealth to support clients, he attains a position between commoner and lord, in *Críth Gablach* called *fer fothlai* 'man of withdrawal' (see p. 28). Neither he nor his son can become a full lord, but his grandson can attain the rank of *aire dés* 'lord of vassalry' with an honour-price of 10 *séts*.

KIN-GROUP (FINE)

The kin-group most commonly referred to in the law-texts is the *derbfine* 'true kin', whose members are all descendants through the male line of the same great-grandfather. A kin-group possesses very considerable legal powers over its members. Each kin-group has its own kin-land (*fintiu*) for which every legally competent adult male in the group has some degree of

⁷¹ CIH 234.4-5 = AL v 458.20-2.

⁷² According to CIH 782.36-9 = CG 354-7, 5 *séts* of the lowest grade of lord's honour-price of 10 *séts* stem from his possession of 5 base clients.

⁷³ CIH 2300.29-32 = Ériu 12 (1938) 42 §53.

⁷⁴ CIH 427.22-3 = IR 65 §5.

⁷⁵ CIH 427.23-4 = *ibid.*

⁷⁶ CIH 1726.30 = AL ii 12.25.

⁷⁷ CIH 1594.24-32 = AL v 20.13-6.

responsibility. A man may own land independent of his kin, and is free to dispose of it as he sees fit.⁷⁸ But no-one can sell his share of the kin-land against the wishes of the rest of the kin.⁷⁹ Provided he has successfully farmed his share of the kin-land and has fulfilled his obligations to the rest of the kin-group, a kin-member may annul the contract of another kinsman.⁸⁰

The kin-group may have to pay for the crimes and debts of its members. So if an offender absconds — and he has no son or father from whom reparation can be extracted — his kin becomes liable.⁸¹ If payment is not forthcoming voluntarily, the plaintiff can distrain cattle from a kinsman of the offender, using a special form of restraint (see p. 180). An offender who has involved a kinsman in liabilities must subsequently make good the loss incurred. If he fails to do so he may be ejected by the kin, thereby losing his legal rights in society. For example, no-one can give a legally valid pledge,⁸² or go surety⁸³ on behalf of one who has been proclaimed by his kin (*capthach fine*). One who evades his obligations to his kin cannot be given protection, even by a person of *nemed* rank.⁸⁴

When a member of a kin-group is illegally killed, his or her kinsmen get a share of the *éraic* or 'body-fine'.⁸⁵ If the culprit fails to pay, the kinsmen are expected to prosecute a blood-feud against him⁸⁶ (see p. 127). The crime of *ingfal* 'killing a kinsman' breaches the solidarity of the kin-group, and is therefore particularly abhorred (see pp. 127-8). The kin-slayer forfeits his share of the kin-land, but is still under obligation to pay for the crimes or debts of other kin-members.⁸⁷

The head of the kin is known as the *ágae fine* or *cenn* (or *conn*)

⁷⁸ CIH 532.28-30 = AL iii 44.14-7.

⁷⁹ CIH 247.24-5 = AL v 510.7-9.

⁸⁰ CIH 489.8-490.19 = ZCP 14 (1923) 370-3 §§32-5.

⁸¹ CIH 411.22-3 = AL i 260.1-3. This principle of kin-liability was unfamiliar to the Anglo-Normans, and there are frequent references in English documents of the 13th-17th centuries to the Irish custom of *kincogish* (= Ir. *cin comocuis* '[liability for] the crime of a kinsman').

⁸² CIH 18.20 = AL v 186.6.

⁸³ CIH 28.12 = AL v 224.4-5; CIH 29.3 = AL v 228.4-5.

⁸⁴ CIH 451.24 = BB §39.

⁸⁵ IR 14-5; cf. CIH 2015.10-3.

⁸⁶ CIH 733.37.

⁸⁷ CIH 430.21-2 = AL iv 284.10-1.

fine.⁸⁸ He is chosen — presumably by election among the kin-members — on the basis of his superior wealth, rank and good sense.⁸⁹ He speaks for his kin at public occasions,⁹⁰ such as an assembly or court of law. He gives pledges on behalf of his kin to ensure the fulfilment of any responsibility which kin-members may have towards the king, Church or poets.⁹¹ As public representative of his kin, he is open to satire if a kinsman fails to discharge his obligations. For example, a poetess may legally satirize him if one of his kinsmen allows her pledge to become forfeit.⁹² He may also take on responsibility for an unmarried kinswoman on the death of her father. He pays any fines which she may incur, and receives half of her *coibche* 'bride-price' if she marries.⁹³

Maternal kin (*máithre*)

On marriage a woman does not totally sever her connections with her own kin. As Binchy points out 'the more formal the marriage, the greater the severance'.⁹⁴ In the case of a *cétmuinter* (chief wife) with sons, one third of her inheritable assets (*dibad*) goes on her death to her own kin, and the remaining two thirds go to her sons.⁹⁵ Likewise her own kin gets one third of any *éraic* paid for her, and must pay one third of any fine which she incurs. In the case of a *cétmuinter* without sons, her assets and liabilities are divided equally between her own kin and her husband.⁹⁶ In a marriage where she has not been betrothed by her kin, but the union has not been forbidden, two thirds of her assets and liabilities go to her own kin, and only one third to her sons.⁹⁷ Where a woman is abducted against the wishes of her kin, all her assets go to her own kin, and all her liabilities fall on her abductor.⁹⁸

⁸⁸ later anglicized *canfinny*.

⁸⁹ CIH 488.33-5 = ZCP 14 (1923) 369 §31.

⁹⁰ CIH 781.29 = CG 280, cf. CIH 227.1 = AL v 436.13-4.

⁹¹ CIH 781.30-1 = CG 280-2. In this text he is described as *aire coisring* 'lord of obligation' (lit. 'of drawing together') on account of his duties on behalf of his kin. See CG Legal Glossary s.v.

⁹² CIH 466.5-7 = AL v 388.1-4.

⁹³ CIH 222.28-223.1 = AL iv 62.9-10.

⁹⁴ SEIL 182.

⁹⁵ CIH 441.6-7 = IR 27 §28.

⁹⁶ CIH 441.10-1 = IR 27 §29.

⁹⁷ CIH 442.4-5 = IR 28 §31.

⁹⁸ CIH 442.8-9 = IR 28 §32.

The maternal kin has rights and responsibilities in relation to the children of a marriage. If a son or daughter is killed illegally (whether in childhood or in adulthood) the maternal kin is entitled to a payment equivalent to one seventh of the *éraic*.⁹⁹ If this is not paid, the male members of the maternal kin are obliged to join in a blood-feud against the culprit.¹⁰⁰ The maternal kin is also required to intervene if a child's fosterage is improperly carried out.¹⁰¹ It is probable that it is the maternal uncle who is expected to take a particular interest in the rearing of his nephews.¹⁰²

In some cases the paternal kin has no connection at all with the children, and they are the responsibility solely of the maternal kin. This applies if the mother is a prostitute,¹⁰³ or if the father is an outsider such as an *ambue* or *cú glas*,¹⁰⁴ or a person unequipped for carrying out normal paternal duties, such as a lunatic, a priest, a slave, etc.¹⁰⁵ On the other hand, the maternal kin has no responsibility for the child of an insane woman, a slave woman, or a sick woman, or for a child begotten against the wishes of the woman's father, or by rape.¹⁰⁶ Such children are reared solely by the paternal kin.

For inheritance through the maternal kin, see p. 104, and for inheritance by adoption, see p. 105.

By way of introduction and background to this book, I have given above a brief account of what seem to be the most important general characteristics of early Irish society.

In their treatment of legal issues the authors of the law-texts pay particular attention to the 'law of persons'.¹⁰⁷ Hence the rank, profession or sex of a person concerned in a law-case — whether as plaintiff, defendant, surety or witness — is of crucial legal significance. For this reason, I have devoted the first three chapters

⁹⁹ CIH 442.13-5 = IR 31 §33.

¹⁰⁰ SEIL 186.

¹⁰¹ CIH 2194.5-6 = ZCP 15 (1925) 320 §13.

¹⁰² CIH 442.13 = IR 31 §33.

¹⁰³ CIH 21.27-22.10 = AL v 202.1-7; CIH 1575.15-8 = SEIL 195.

¹⁰⁴ CIH 20.27-21.24 = AL v 198.1-7.

¹⁰⁵ See CG Introduction xviii.

of the book to a discussion of the various categories of person distinguished in the texts. I then examine in ch. 4 the laws relating to property. Having set the scene in this way I proceed in ch. 5 to deal with a) offences against persons, and b) offences against property. In chs. 6, 7, 8 and 9 I look in turn at the various legal processes described in the law-texts: the making of contracts, the function of pledges and sureties, distress, legal entry, court procedure, and the punishment of offenders. Finally, I discuss in ch. 10 the origin and manuscript tradition of the law-texts, and give in ch. 11 an account of the law-schools which produced them.

In Appendix 1 (pp. 264-83) I provide a numbered list of law-texts (secular and ecclesiastical), arranged according to subject-matter. I indicate where the texts (many of them fragmentary) are to be found in the *Corpus Iuris Hibernici*, and whether they have been — or are about to be — edited and translated in the journals *Ériu*, *Celtica*, *Zeitschrift für celtische Philologie*, *Peritia*, etc. or in the Early Irish Law Series.

CHAPTER 1

LAW OF PERSONS (i)

As outlined in the Introduction, early Irish society is hierarchical in character, and lays great stress on distinctions of rank and profession. In chapters 1 and 2, I examine in more detail the rôles of the main categories of freeman, starting at the top of the social scale.

KING

The most important *nemed* (i.e. privileged) person in a *túath* is the king, *rí túaithe*, of whom there would probably have been at least 150 at any given date between the 5th and 12th centuries (see pp. 3-4). *Críth Gablach* states that the honour-price of the lowest grade of king is seven *cumals*.¹ He exercises direct rule only over his own *túath*. Sometimes, however, a king acquires dominance over other *túatha*, receiving military assistance from them in times of war. According to *Críth Gablach*, a king who is overlord of three or four *túatha* has an honour-price of eight *cumals*.² He is generally described as a *rí túath* 'king of *túatha*' or *rúiri* 'great king'.³

The most elevated type of king recognised in most law-texts has an honour-price of fourteen *cumals*, and is to be equated with the provincial king (*rí cóicid*)⁴ of sagas, annals, and legal commentaries. He is variously described as *rí ruirech* 'king of great kings',⁵

¹ *CIH* 568.10-2 = *CG* 450-1. A *cumal* is normally worth three milch cows — see p. 116.

² *CIH* 568.17-8 = *CG* 459-60.

³ e.g. *CIH* 2305.7; 601.25; 1125.9. In *CG* he is called a *rí buidén* 'king of bands', a term not found elsewhere.

⁴ Thus, *UB* gives the king of Munster (*rí Mumana*) an honour-price of fourteen *cumals* (*CIH* 1617.33 = *AL* v 110.16).

⁵ *CIH* 2307.34 = *Ériu* 20 (1966) 28 §11; *CIH* 568.26 = *CG* 475. In *UB* the term *rí ruirech* is used for the intermediate grade of king, with three kings under him (*trí rig lais*), *CIH* 1602.9 = *AL* v 50.9.

ollam ríg 'chief of kings'⁶ or *rí bunaid cach cinn* 'the ultimate king of every individual'.⁷ The king of Ireland (*rí Érenn*), who figures so prominently in the sagas,⁸ is rarely mentioned in the law-texts. Though the idea of a kingship of the whole island had already gained currency by the 7th century,⁹ no Irish king ever managed to make it a reality, and most law-texts do not even provide for such a possibility.¹⁰

King's justice

The law-texts, wisdom-texts and sagas constantly stress the importance of the king's justice (*fir flathemon*). If the king is just, his reign will be peaceful and prosperous, whereas if he is guilty of injustice (*gáu flathemon*) the soil and the elements will rebel against him. There will be infertility of women and cattle, crop-failure, dearth of fish, defeat in battle, plagues, lightning, etc.¹¹ The relationship between a king and his territory may be viewed in sexual terms, as when the inauguration of Fedlimid son of Áed is described as his 'sleeping with the province of Connacht' (*feis re cóiced Connacht*).¹²

Many crimes and omissions on the part of the king are regarded as breaches of his justice. For example, if he expels a synod without due cause, it is one of the 'witnesses which prove his injustice'.¹³ According to Heptad 13, a king who is guilty of *fingal* 'kin-slaying' (see p. 127) loses his honour-price.¹⁴ Triad 186 gives injustice, extortion and kin-slaying as the three things which cause the overthrow of a king.

As well as avoiding such crimes, the king is expected to behave

⁶ CIH 2305.6 = Ériu 20 (1966) 22 §2. *Bretha Nemed toisech*, on the other hand, gives the *ollam* [ríg] an honour-price of 21 *cumals* (CIH 2212.37).

⁷ CIH 568.24 = CG 472.

⁸ e.g. TBDD 1; AF 16.

⁹ In his VSC (36b) Adomnán claims that Diarmait son of Cerball was ordained by God as ruler of all Ireland (*totius Scotiae regnator*).

¹⁰ There are three law-texts on status: *Críth Gablach*, *Uraicecht Becc*, and *Miadslechta*. Only *Miadslechta* refers to a king of the whole of Ireland (CIH 583.7-12 = AL iv 344.17-346.5). The king of Ireland is also mentioned in a Mid. Ir. law-text on the distribution of *cró* and *dibad* (CIH 600.11 = Ériu 1 (1904) 214.15).

¹¹ See AM' §§12-21 (and notes).

¹² AC s.a. 1310 §7.

¹³ CIH 219.16-7 = AL iv 52.5-6.

¹⁴ CIH 15.4 = AL v 172.19.

in a kingly manner, and be strong enough to claim the respect and privileges due to his office. According to *Críth Gablach*, when he does manual work with mallet, spade or axe, his honour-price is reduced to that of a commoner.¹⁵ He must always be accompanied by a retinue: a king who takes a hound and goes off hunting by himself loses his honour-price.¹⁶ He also loses his honour-price if he defaults on his oath, or if he tolerates satire¹⁷ (see p. 138). He must be able to enforce his rights: 'he is not a king who does not have hostages in fetters, and to whom no royal tribute (*cíis flatha*) is rendered, and to whom no fines for breach of promulgated law (*féich cána*) are paid'.¹⁸ He must likewise ensure that his subjects carry out their public duties, such as preparing the site of an assembly, road-making, and taking part in a hosting (*slógad*) for defence or attack.¹⁹

In theory, a king loses his honour-price if he is defeated in battle, as this is regarded as a sign of injustice.²⁰ However, the annals provide no record of a king being deposed or suffering loss of rank as a result of defeat in battle. According to *Críth Gablach*, cowardice in battle reduces the honour-price of a king. If he is wounded in the back of the neck while fleeing from battle, he (or his kin if he dies) is entitled only to the rate of payment due to a commoner. However, if he has received the wound after breaking through the ranks of the enemy, he is entitled to the rate of payment due to a king.²¹

A king is expected to have a perfect body, free from blemish or disability. The sagas provide a number of instances of a king losing his kingship through some disfigurement.²² The only case cited in a law-text is that of Congal Cáech, who for a time held the kingship of both Ulster and Tara. According to *Bechbretha* §§31-2 he was blinded in one eye by a bee, 'and this put him from the kingship of Tara'. However, in spite of this blemish he retained the kingship of Ulster until his death in the battle of Mag Roth in 637 A.D.²³

¹⁵ CIH 569.21-3 = CG 530-3.

¹⁶ CIH 15.3 = AL 172.18-9; cf. CIH 569.23-4 = CG 533-4.

¹⁷ CIH 15.2-3 = AL v 172.17-8.

¹⁸ CIH 219.5 = AL iv 50.22-3.

¹⁹ *Celtica* 10 (1973) 39-40.

²⁰ CIH 219.17-8 = AL iv 52.7.

²¹ CIH 569.27-8 = CG 538-41. Such payment would presumably be made in the event of a subsequent treaty between warring *tuatha*.

²² See BB Notes p. 131.

²³ ibid. p. 123.

According to the wisdom-text *Tecosca Cormaic*, §6, a king should be *sogeis*, which seems to mean that he must not break his *geisi*. A *geis*²⁴ is a supernatural injunction or 'tabu' which forbids the performance of certain acts by an individual or group. The term may also be used of the prohibited action itself. *Geisi* are not mentioned in the surviving law-texts, but legal commentary says that it was *geis* for a king with a physical blemish to rule in Tara.²⁵ It is probable that the breach of a king's *geisi* — whether voluntary or involuntary — was regarded as a violation of his justice or *fir flathemon*.

The sagas provide many examples of the *geisi* of kings and heroes. For example, the saga *Togail Bruidne Da Derga* deals mainly with King Conaire's breach of his nine *geisi*, and his consequent death. Conaire had been supernaturally begotten on the daughter of the king of Ulster by an Otherworld Bird-man. As a youth, Conaire was once hunting birds near Dublin, when the birds revealed themselves as his relatives. Their leader instructed him to go to Tara, where he would be appointed king. He told him that he must observe nine *geisi*, which included such prohibitions as not approaching Tara from the right, not permitting three red-haired men to precede him into the house of a red-haired man, and not settling the dispute of two serfs. Conaire's reign was peaceful and prosperous until some young men — including his own fosterbrothers²⁶ — took to brigandage. This marked the beginning of the collapse of his kingship. When the brigands were caught he ordered that they all be hanged except for his fosterbrothers. This was an unjust decision, and hence a breach of his *fir flathemon*.²⁷ Conaire realised his error, and remarked 'that judgement which I have given is not an extension of life for me'. He then ordered that all the brigands be banished instead of being hanged. Some time afterwards he went south to Thomond to settle a dispute between two subjects, thereby breaking one of his *geisi*. Returning to Tara, he found the way blocked by armed men and a cloud of fire. When he asked 'what is this?' his followers replied that the law (*cáin*) had broken down — clearly as a result of his disregard for his *geisi*. He

²⁴ See D. Greene, 'Tabu in early Irish narrative' in *Medieval narrative. A symposium*, ed. Bekker-Nielsen, etc. (Odense 1979) 9-19.

²⁵ CIH 250.13-4. = AL iii 84.3-4.

²⁶ TBDD 192. Elsewhere in the text they are referred to as his fostersons, e.g. 214.

²⁷ See T. Ó Cathasaigh, *Eigse* 17 (1977-79) 145-6.

was forced to make a detour and approach Tara from the right, thereby breaking another *geis*. By evening, Conaire's nine *geisi* had all been broken, and he was then killed in Da Derga's hostel by an invading band of brigands. Among them were the fosterbrothers whom he had unjustly spared.

Legislation

Many early law-codes were put together at the instigation of powerful kings. For example, Anglo-Saxon law was codified at the direction of Kings Alfred and Ine. The Emperor Justinian did the same for Roman law, King Hammurabi for Assyrian law, Kings Rothari and Liutprand for Lombardic law, etc. By contrast, there is little evidence of royal involvement in the composition of the Old Irish law-texts. Admittedly, there is a tradition — preserved in the pseudo-historical prologue to the *Senchas Már*²⁸ — that King Loígire summoned the men of Ireland to reform the law in accordance with Christianity.²⁹ There are also a number of kings among the list of guarantors who enjoined *Cáin Adomnáin* 'the law of Adomnán' (Appendix 1 No. 74) on the people of Ireland at the synod of Birr in 697 A.D.³⁰ But in general the formulation of the law seems to have been in the hands of a legal class (with strong clerical links)³¹ which had some degree of national organisation and was not under the control of any particular king. This low involvement by kings in law-making is no doubt to be attributed to the political fragmentation of the country at the time of the writing of the law-texts. As we have seen above, no Irish king was ever in control of the whole island, and most kings ruled over small kingdoms of only a few thousand people. Such conditions do not favour the development of royal law-codes.

On the other hand, it is clear that an early Irish king — in particular an overking — could issue an ordinance (*rechtgae*) in times of emergency. *Crit Gablach* refers to ordinances which a king binds on his *túatha* after defeat in battle or after a plague.³² The same text also refers to an ordinance of traditional law

²⁸ See Binchy, *Stud. Celt.* 10-11 (1975-76) 17-20.

²⁹ CIH 341.39-40 = AL i 14.22-3.

³⁰ See M. Ó Dhonnchadha, *Peritia* 1 (1982) 178-215.

³¹ See p. 233 below.

³² CIH 569.12-3 = CG 517-9.

(*rechtgae fénechais*), which the *túatha* choose and the king confirms.³³ This implies that the initiative for such an ordinance may come from the subjects — presumably voiced at an assembly (*ðenach*). But it is the king who confirms it by taking pledges from them for its observance.³⁴

Crit Gablach further uses the term *rechtgae* to refer to ecclesiastical law. Thus, one of three ordinances for which it is right for a king to take pledges is given as 'the law of Adomnán'. The annals provide numerous instances of the promulgation of ecclesiastical law (Latin *lex*, Irish *cáin*). Sometimes no king is mentioned, e.g. *Annals of Ulster* s.a. 798 = 799 'the law of Patrick [promulgated] in Connacht by Gormgal son of Dindathach (abbot of Armagh)'. In other cases, only the king's name is recorded, e.g. *AU* s.a. 743 = 744 'the law of Ciarán son of the wright, and the law of Brénainn [were promulgated] simultaneously by Forgus son of Cellach (king of Munster)'. Often, both a king and a prominent ecclesiastic are named. Thus *AU* s.a. 782 = 783 records the promulgation (*forus*) of the law of Patrick in Cruachu by Dub da Leithe (abbot of Armagh) and Tipraite son of Tadc (king of Connacht). The promulgation of these laws seems often to have been accompanied by a display of the relics of the particular saint to whom the law was attributed, and also by the collection of a tax for the Church.³⁵

Law-enforcement

It is difficult to tell from our surviving records to what extent early Irish kings were involved in law-enforcement. It is clear that the law was to a large extent enforced through elaborate systems of suretyship (pp. 167-73), pledging (pp. 164-7) and distraint (pp. 177-82) rather than by a king or his officials. However, *Crit Gablach* speaks of the king enforcing³⁶ the emergency ordinances

³³ *CIH* 569.10-1 = *CG* 515-6 *it túatha dodegúiset, is rí nodedlúthai*. The cpd *dó-gúisi* is otherwise unattested, but it is clearly cognate with *as(a)-gúisi* 'wishes', *do-goa* 'chooses', etc. (CCCG §567).

³⁴ *CG* Legal Glossary p.95. In this connection Thomas Charles-Edwards points out to me that much medieval legislation is concerned to re-enact or confirm existing laws which have been flouted, rather than to introduce legal innovations.

³⁵ *Sources* 237; *CEIS* 167-8.

³⁶ The verb used is *do-immaíríg* 'compels, constrains', *CIH* 569.12 = *CG* 517.

referred to in the preceding section. He also enforces ordinances of traditional law and of ecclesiastical law by taking pledges from his subjects, which are forfeit in the event of non-compliance. The wisdom-texts envisage that a king should enforce the law in a general way by suppressing robbers, crushing criminals, preventing lawlessness, etc.³⁷

The Middle Irish law-text on the distribution of *cro* and *dibad* (Appendix 1 No. 64) deals with the king's rôle in law-enforcement across a boundary.³⁸ A subordinate king whose subject has been killed by a member of another *túath* can enforce payment of the body-fine (*cro*). This is only possible, however, where both *túatha* owe allegiance to the same overking. The subordinate king goes to the court of the overking and takes a hostage representing the culprit. To release this hostage, the culprit must pay the body-fine. One seventh of this goes to the hostage. Of the remainder, one third stays with the overking, one third goes to the victim's kin, and one third goes to the victim's lords (*flaithi*). The subordinate king is responsible for dispensing the payment to the kin and the lords, and himself receives one third of the lords' third.

A noteworthy feature of this complicated procedure is that both the overking and the subordinate king receive payment for their part in enforcing the law.

Judgement

In his *Early Irish Laws and Institutions* (pp. 97-8) Eoin MacNeill states that 'the chief functions of a king of a *túath* were three: he was president of the assembly, commander of the forces in war, and judge in the public court'. On the next page he asserts that 'the public function most regularly and frequently exercised by a king was the function of judge'. Binchy has, however, argued that the evidence of the law-texts does not substantiate MacNeill's view of the king as public judge.³⁹ Nonetheless, a short text on court procedure⁴⁰ (Appendix 1 No. 71) makes it clear that the king does have some rôle in relation to judgement in important cases. He —

³⁷ e.g. *TC* §§1-2.

³⁸ *CIH* 600.1-601.11 = *Ériu* 1 (1904) 214-5.

³⁹ *Celtic and Anglo-Saxon Kingship* (Oxford 1970) 16.

⁴⁰ *CIH* 601.20-602.4; ed. F. Kelly, *Peritia* 5 (1986) 74-106.

along with the bishop and chief poet⁴¹ — is described as 'the cliff which is behind the courts for judgement and for promulgation' (*fri breth 7 forus*). So it seems that the judgement (although it is formulated by a judge or judges) is promulgated by the king or other dignitary, or at least announced in his presence and with his approval.

A practice of consultation between king and judge is indicated also by the law-text *Gúbretha Caratniad* 'the false judgements of Caratnia'. Caratnia was the judge — doubtless legendary — of King Conn Céchathach. Whenever a request for judgement was brought to Conn he would refer it to Caratnia.⁴² In each of the 51 cases quoted (involving a wide variety of legal issues) the king challenges Caratnia's decision with the words *ba gó* 'it was false', but Caratnia is able to defend every judgement. It is clear, therefore, that the author of the text envisaged that a law-case would normally be decided by a judge, but that the king would confirm — or perhaps overturn — the judgement.

In some cases the king plays a part in judgment only when there is failure by the judge. A text on the duties of a judge (Appendix 1 No. 11) says that if a judge refuses to swear in support of his judgement, the case is referred to the king (or to the bishop in ecclesiastical matters).⁴³ An Old Irish penitential also gives the king a rôle in the case of a cleric who has committed murder: the penalty is fixed by the king in consultation with the bishop.⁴⁴

The most important area in which a king would have to make legal decisions must have been that of public security. The author of *Togail Bruidne Da Derga* no doubt reflects reality when he represents King Conaire as deciding the fate of the captured brigands who had threatened the peace of the country.⁴⁵ To aid him in such decisions, and to avoid *gáu flathemon* ('king's injustice'), each king has a special judge known as the *brithem túaithé* ('judge of the *túath*') whose title testifies to his public function. The wisdom-text *Audacht Morainn* §23 stresses the importance of appointing a suitable judge: 'let him (i.e. the king)

⁴¹ See p. 193.

⁴² *Nach breth dobeirthe co Conn foscerdded Conn cuci-sium*, CIH 2192.5-6 = ZCP 15 (1925) 306 §1.

⁴³ CIH 1966.14-5.

⁴⁴ IP 271 §2.

⁴⁵ TBDD 212-4.

not elevate any judge unless he knows the true legal precedents'.⁴⁶

In addition to matters of public security, the king would also have to make legal decisions affecting his clients. Like any lord,⁴⁷ he is expected to be just in such decisions. A further legal responsibility which falls on the king is for dependent persons with no other superior; a frequently repeated maxim states 'every person without a superior is the responsibility of the king' (*cach dicenn co rig*).⁴⁸

Law-observance

In general, the authors of the law-texts seem to expect the king to observe the law like other members of the *túath*. For example, Heptad 13 enjoins that the king — on pain of losing his honour-price — must not eat food known to be stolen nor refuse hospitality (see p. 139).⁴⁹ However, the obvious difficulties of imposing law-observance on the most important and powerful man in the *túath* are also recognised: Heptad 81 concedes that a borrowed article cannot be extracted from a king by legal process 'because of the heaviness of the king's honour'.⁵⁰ Similarly, Triad 235 advises against going surety for a king; if the king defaults, it will be difficult for the surety to secure compensation 'for a king's honour is wider than any claim'.

The law-texts describe an ingenious method of balancing the maintenance of the king's honour with his legal accountability. For legal purposes the king may be represented by a 'substitute churl' (*aithech fortha*). This is a man of low rank dependent on the king whom Binchy has described as 'a kind of legal whipping boy'.⁵¹ In the event of wrong-doing by the king, the plaintiff distrains the property of the 'substitute churl'. It is thus possible for legal claims to be made against a king without his having to endure the dishonour of distraint.

Even if a king has no 'substitute churl', the plaintiff must adopt a special procedure for obtaining legal redress from him. This is described in 'a text on the form of distraint' (Appendix 1 No. 66). The plaintiff must first give proper notice to the king. He then fasts

⁴⁶ cf. CIH 568.41 = CG 498.

⁴⁷ e.g. CIH 1910.1.

⁴⁸ e.g. CIH 218.32 = AL iv 50.13-4; CIH 2011.27 = AL iv 240.12.

⁴⁹ CIH 15.1-2 = AL v 172.15-7.

⁵⁰ CIH 572.7-8 = AL v 372.5-6.

⁵¹ *Celtica* 10 (1973) 84.

against him (see p. 182) and distrains the king's calves by locking them away from their mothers.⁵² They must not be released until the king agrees to right whatever wrong he has committed.

Lastly, our sources do not tell us how far the kings themselves observed the ordinances — especially of ecclesiastical law — which they had promulgated. For example, it is doubtful whether many of the kings⁵³ who had promulgated the Law of Dar Í ('not to steal cows')⁵⁴ paid much attention to its contents, as cattle-raiding was traditionally one of a king's most important and prestigious activities.⁵⁵

The subject of succession to the kingship, being essentially political rather than legal, falls outside the scope of this book. For discussion, see Eoin MacNeill 'The Irish law of dynastic succession' (*Studies* 8 (1919) 367-82, 640-53), and a reappraisal of his views by Donnchadh Ó Corráin in *Studia Hibernica* 11 (1971) 7-39, and by Thomas Charles-Edwards in the section 'succession to the kingship' in his forthcoming book *Early Irish and Welsh Kinship*. The term *tánaise* 'heir-apparent' (later anglicized *tanist*, *tawnist* etc.) is discussed by D. A. Binchy in 'Some Celtic legal terms' (*Celtica* 3 (1956) 221-31) and by Charles-Edwards in 'The heir-apparent in Irish and Welsh law' (*Celtica* 9 (1971) 180-90).

LORD

The rights and duties of a lord (*flaith*)⁵⁶ relate mainly to his

⁵² CIH 898.13-4 = *Celtica* 10 (1973) 80 §9.

⁵³ e.g. *AI* s.a. 810 *Boslechta la Mumain la Dare* *7 la Adhuar mac nEchin* 'cow-sections [promulgated] in Munster by Dar Í and by Adúar son of Echen'; *AU* s.a. 812 = 813 *Lex Darii la hU Neill* 'the law of Dar Í [promulgated] by the Uí Néill'. See Appendix 1 No. 50.

⁵⁴ *Thes.* ii 306.28 *Cain Dari*, *cen bú do gait*; cf. CIH 1946.29.

⁵⁵ P. Ó Riain, *Éigse* 15 (1973-74) 24-30.

⁵⁶ *Flaith* is the usual word for 'lord' in the law-texts, but it is sometimes used to mean 'king', e.g. CIH 570.11 = CG 574. In non-legal texts 'lord' is normally *aire*, and this usage is also found in the law-texts, e.g. CIH 15.5-9 = *AL* v 174.13-9; CIH 203.2 = *AL* iv 146.21. But, more often, *aire* in the law-texts means 'commoner, freeman', as in the cpd *bó-aire* discussed in the Introduction. A third term *tigernae* (also *tigern*, cf. Welsh *teyrn* 'lord') is not to my knowledge attested in the law-texts, but occurs in the legal section of the Triads. Thus Triad 167 includes the lord (*tigernae*) who sells off his lordly prerogatives (*déis*, see CG p. 82) as one of the three whose status is reduced. The cpd *óctigern* lit. 'young lord' is used of the lowest grade of lord in sagas and wisdom-texts, and also occurs in early Scots law, spelled *ogthearn*, *ochthiern*, etc. (Skene, *Celtic Scotland* iii (Edinburgh 1880) 218, 242). Further terms for 'lord' in the O. Ir. law-texts are *coimdui* (e.g. CIH 462.32 = *AL* v 378.4) and *muire* (e.g. CIH 1758.20 = *AL* ii 142.28).

clients (*ceili*,⁵⁷ also *aithig*⁵⁸) as it is the possession of clients which makes him a lord. According to *Críth Gablach*, the lowest grade of lord must have five free clients and five base clients.⁵⁹

The lord advances a fief⁶⁰ of stock or land to his clients in return for food-rent, winter-hospitality, and various other services (see below). In *Cáin Lánamna* §2 the relationship between a lord and his base client is classified as being similar to that between a husband and his wife, a teacher and his pupil, or the Church and its monks.⁶¹ In his poem in praise of the Virgin Mary, Bláthmac goes further and compares God to a lord whose clients are the Jewish people.⁶² It is clear, therefore, that power in the lord/client relationship is felt to reside primarily in the hands of the lord. But in spite of his superior position, the lord is expected to deal justly with his clients. According to the Introduction to the *Senchas Már*, a dishonest lord is demoted to the rank of commoner.⁶³ If a lord makes an unjust decision (*gúbreth*) against his client, the client is entitled to leave him without paying the normal heavy fine for desertion.⁶⁴

As in the case of a king, a lord loses his honour-price for a wide range of offences and failings. These include refusal of hospitality, sheltering a fugitive from the law, tolerating satire, eating food known to be stolen, and betraying his honour.⁶⁵ He likewise loses his honour-price for failure to fulfil his obligations to his clients. Thus, *Gúbretha Caratniad* states that the honour-price of a lord is extinguished if he has failed to fulfil his side of the contract with a client.⁶⁶

The law-texts distinguish a number of grades of lord, and differ slightly in their arrangement of them. There is, however, agreement in placing the *aire déso* at the bottom of the list. He is clearly the typical lord — his title simply means 'lord of vassalry' (*déis*).⁶⁷ In

⁵⁷ sg. *céile*, cognate with Welsh *cilydd* 'fellow, companion'.

⁵⁸ sg. *aithech*, from *aithe* vb.n. of *ad-fen* (*aith-fen*) 'repays', CCCG §545.

⁵⁹ CIH 566.15-6 = CG 330-1.

⁶⁰ In general it seems that the term *rath* is used of the fief advanced to the free client, whereas the *taurchrecc* is the fief to the base client. However, this distinction is not always present, e.g. CIH 432.28 *rath n-aicille* 'fief of base clientship'.

⁶¹ CIH 502.29-504.6 = *SEIL* 3 §2.

⁶² PB 36 §106.

⁶³ CIH 352.11 = *AL* i 54.9.

⁶⁴ CIH 16.1 = *AL* v 178.3.

⁶⁵ CIH 15.5-9 = *AL* v 174.13-9.

⁶⁶ CIH 2196.29-30 = ZCP 15 (1925) 342 §33.

⁶⁷ See CG p. 82.

Críth Gablach's scheme the average *aire déso* has an honour-price of 10 séts.⁶⁸ He has a retinue (*dám*) of six persons, and if he is injured he is entitled to be accompanied by this number on sick-maintenance. He has a wife of equal rank to his own, and five horses, including a saddle horse with a silver bridle. His house is 27 feet in diameter, and has eight bed-cubicles. He has 10 clients.

Above the *aire déso*, *Críth Gablach*⁶⁹ places the *aire ard* 'high lord' with an honour-price of 15 séts, the *aire tuíseo* 'lord of precedence or leadership' with an honour-price of 20 séts, and the *aire forgill* 'lord of superior testimony' with an honour-price of (probably) 30 séts.⁷⁰ These lords have 20, 27, and 40 clients respectively.

In different law-texts there is variation in the terminology used of men whose rank is intermediate between lord and commoner. In *Cáin Sóerraith*,⁷¹ such a man is called *flaith aithig* 'a commoner lord'. In other texts,⁷² he is confusingly described as *aire iter da airig* 'an *aire* between the two classes of *aire*' i.e. between *aire* in the sense of lord, and *aire* in the sense of ordinary freeman. It is generally assumed that it takes three generations to become a full lord. Hence, in *Críth Gablach* a *bóaire* who acquires double the wealth of an ordinary *bóaire* — and is therefore able to support clients — is called a *fer fothlai* 'man of withdrawal' because he is withdrawing from the rank of *bóaire*.⁷³ *Críth Gablach* fixes his honour-price at 8 séts, intermediate between the highest grade of *bóaire* (6 séts) and the lowest grade of lord, the *aire déso* (10 séts). Neither the *fer fothlai* nor his son can become a full lord, but — if the same level of wealth is maintained — his grandson attains the rank of *aire déso*.⁷⁴

⁶⁸ CIH 566.27 = CG 347-8.

⁶⁹ For other arrangements, compare *Míadšeulta* (CIH 1595.35-8 = AL iv 344.3-5), *Uraicecht Becc* (CIH 1595.35-8 = AL v 24.10-11), *Cáin Lánamna* (CIH 514.5-8 = SEIL 51), *Bretha Crólige* (CIH 2286.31-5 = Ériu 12 (1938) 6 §2), and *Bretha Déin Chécht* (CIH 2308.31-2 = Ériu 20 (1966) 30 §13). *Córus Béscnai* (CIH 532.9-10 = AL iii 42.21-3) has the same arrangement as CG.

⁷⁰ The MS in fact has 15 séts (CIH 567.36 = CG 423), which can hardly be correct. In *Uraicecht Becc* the honour-price of the *aire forgill* is given as 30 séts (CIH 1601.19 = AL v 46.24), cf. CIH 532.10 = AL iii 42.23-4.

⁷¹ CIH 1772.34 = ZCP 15 (1925) 245 §4.

⁷² e.g. *Bretha Crólige* (CIH 2298.30 = Ériu 12 (1938) 36 §46), *Bretha im Fuillem Gell* (CIH 472.30-1 = AL v 410.5).

⁷³ CIH 781.9-10 = CG 248-9.

⁷⁴ CIH 566.18-9 = CG 335, cf. CIH 583.33 = AL iv 348.1.

Clientship

The law-texts distinguish two types of client: the base client (*céile gíallnae* lit. 'client of submission', or, in the glosses and commentary, *dóerchéile*) and the free client (*sóerchéile*). As we have seen, the possession of clients provides the lord with status, as well as food-rent and services. In return, the client gains a number of benefits. He can use the lord's advance of stock or land to provide the essentials of life for himself and his dependants. With good husbandry and favourable conditions, he may even hope to increase his wealth through clientship. He may also look to his lord for legal support, e.g. to act as surety for his contract (see p. 158). Triad 73 includes 'serving a good lord' as one of the three excellent things (*búada*) of husbandry, and the poet Aithirne advises 'let everyone cling to his lord . . . the chief of everyone is his lord'.⁷⁵

It is clear from the law-texts that lord and client may sometimes be kinsmen. Indeed, *Cáin Aicillne* 'the law of base clientship' states that it is preferable for a man to enter into a contract of free or base clientship (as well as other contracts) with a kinsman.⁷⁶

Base client

In base clientship, the lord advances to his client a fief (usually called *taurhrecc* lit. 'fore-purchase'). It is generally of livestock, but may also be of land⁷⁷ or other valuables, especially farming equipment.⁷⁸ The size of the fief varies according to the rank of the recipient. Thus the *ócaire* ('small farmer') gets a fief worth 16 séts, whereas a *bóaire* ('strong farmer') gets a fief worth 30 séts.⁷⁹ If a client pays the rent fully for at least seven years, the fief becomes his property on the lord's death.⁸⁰ In addition to the fief, the lord purchases the base client's honour-price by advancing him goods known as the *séoit taurchludio* 'chattels of subjection' which are of equal value to his honour-price.⁸¹

⁷⁵ CIH 1116.5-6 = Ériu 13 (1942) 20.9-10.

⁷⁶ CIH 490.1-4 = ZCP 14 (1923) 372 §34 (esp. note to *céilsine*). *Di Dligiud Raith Somaine* distinguishes the category of *finerath* 'a fief which is granted within a kin-group' in its list of fiefs (CIH 432.27).

⁷⁷ CIH 778.35-6 = CG 106-8.

⁷⁸ CIH 26.29-32 = AL v 220.9-13.

⁷⁹ CIH 485.16-7, 19-20 = ZCP 14 (1923) 361 §§18-9.

⁸⁰ CIH 486.24-5 = ibid. 364 §24.

⁸¹ CIH 1780.9 = ibid. 342 §4.

In return the base client pays his lord an annual food-rent (*bés (tige)*) proportional to the fief. For example, the *ócaire* pays a two-year-old bullock, and the *bóaire* pays a milch cow. In addition, each client pays an accessory food-rent (called *timthach* or *fosair*) which consists of fixed quantities of bread, wheat, bacon, milk, butter, onions and candles.⁸² In later non-legal sources the base client is known as the *biat(t)ach* lit. 'provider of food [-rent]', anglicized *betagh*.⁸³ If a client fails in his rent, he must pay the heavy fine of twenty *séts*, as well as restoring double the rent owed.⁸⁴ Each base client is obliged to provide winter hospitality (*cóe*) for his lord.⁸⁵ This requires the preparation of a feast between New Year's Day and Shrovetide, to which the lord can bring an entourage of 20 people⁸⁶ (if he is an *aire déso*) or 40 people (if he is an *aire ard*) or 60 people (if he is an *aire tuíseo*).

The base client is required to perform a fixed amount of manual labour (*drécht giallne*) for his lord. He must join the reaping party (*meithel*) in his lord's cornfields,⁸⁷ and must help in the construction of the rampart about his lord's *dún* (fortified dwelling).⁸⁸ *Di Dligiud Raith 7 Somaine*⁸⁹ lists seven duties which the client must carry out in the event of the lord's death.⁹⁰ These include digging the lord's gravemound,⁹¹ paying a death-levy, and attending a commemorative feast. If he fails in any of these duties he must pay a fine to the lord's heirs.

⁸² e.g. *CIH* 483.12-37 = *ibid.* 355-6 §13.

⁸³ See Price, *Ériu* 20 (1966) 185-90, and Mac Niocall, *EC* 12 (1968-71) 514-5, *IJ* 1 (1966) 292-8. (Note that the term *biattach* is also used of the *briugu* 'hospitaller': see p. 37.)

⁸⁴ *CIH* 488.13-4 = *ZCP* 14 (1923) 368 §29.

⁸⁵ This institution survived down to the 16th century. The general term for it in post-Norman times is *cóisir*, anglicized *coshery*. According to Stanihurst (Holinshead's *Chronicles* ii (London 1586) 45) such feasts were attended by bards, harpers, gamblers and story-tellers. The term used for the food and drink consumed is *cuid oidhche* lit. 'a night's supper', usually anglicized *cuddy*. This term is also attested from Scotland (Skene, *Celtic Scotland* iii (Edinburgh 1880) 233). For further discussion, see Binchy, 'Aimser Chue' in *Féilgríbhinn Éoin Mhic Néill* (ed. J. Ryan, Dublin 1940) 18-22, and C. A. Empey and K. Simms, *PRIA* 75 C (1975) 184.

⁸⁶ *CIH* 782.24 = *CG* 334-5.

⁸⁷ *CIH* 778.20 = *CG* 84, cf. *CIH* 434.30.

⁸⁸ *CIH* 570.9 = *CG* 570 (and note), cf. *CIH* 1906.15-6.

⁸⁹ This text is at present being prepared for publication by Bette Crigger of the Dept. of Anthropology, Univ. of Chicago.

⁹⁰ *CIH* 434.28-31.

⁹¹ cf. *CIH* 51.34 = *AL* v 306.5.

He also has military duties. Thus, he must help to maintain the security of the neighbourhood by carrying out the duties of *fubae* and *rubae*.⁹² The glossators' explanations of these terms seem convincing: *fubae* includes such tasks as hunting down pirates, horse-thieves and wolves, while *rubae* consists of patrolling the borders of the territory and strategic points such as promontories and mountain-passes.⁹³ The client must also escort his lord to a public assembly,⁹⁴ and assist him in the prosecution of a blood-feud.⁹⁵ When the king organises a hosting (*slóagad*) against another *túath*, it is likely that each lord acts as commander of his own clients in battle. It is clear from Old Irish commentary at *CIH* 890.1-5 that a client may be required to provide maintenance (*congbáil*) for men gathered for military service on behalf of king or *túath*.⁹⁶ He may also have to maintain those attending a synod (*senod*) for the purpose of enacting ecclesiastical legislation. The cattle of a client who fails to carry out such duties may be distrained after three days' notice.⁹⁷

At any time, a lord and his client may terminate their contract by mutual agreement. In such a case the lord takes back what he has given, less the value of the rent and services already provided by the client.⁹⁸ However, if it is only the lord who wishes to terminate the arrangement — and the client has fulfilled his side of the contract — the lord must recompense him further. For example, if a lord takes away the fief from his client so as to give it to another, he must normally pay half the original client's honour-price as well as what is owed for rent and services.⁹⁹ If it is the client who wishes to discontinue, the penalties may be stiffer. If his severance of the contract is held to be out of contempt for his lord, he must return twice the fief, hand over twice the rent due and pay the lord's honour-price.¹⁰⁰ If there is no contempt, he still must pay half the lord's honour-price, together with twice the fief and rent. But if his

⁹² *CIH* 486.33 = *ZCP* 14 (1923) 364 §24.

⁹³ *CIH* 487.2-3 = *AL* ii 270.4-5, cf. *CIH* 890.6-9.

⁹⁴ *fri dáil*, *CIH* 486.32.

⁹⁵ *fri digail*, *CIH* 486.33.

⁹⁶ This duty is described as *coinnem*, *coinnmed* (anglicized *coign* etc.) 'billetting' in later times — see Empey and Simms, *PRIA* 75 C (1975) 178-9.

⁹⁷ *CIH* 381.8-30 = *AL* i 156.27-8.

⁹⁸ *CIH* 495.8-11 = *ZCP* 14 (1923) 384 §49.

⁹⁹ *CIH* 501.12-4 = *ibid.* 392 §60.

¹⁰⁰ *CIH* 499.20-1 = *ibid.* 390 §56.

new lord is of higher status than his previous lord, he need only pay one third of the latter's honour-price. No payment of honour-price is necessary if the new lord is more closely related to the client than the previous lord.¹⁰¹

A man can be the base client of one, two or three lords at the same time.¹⁰² The only legal restriction is that the fief received from a second lord (*flaith forgiallnae*) must not be more than two thirds of that which is received from the first lord (*flaith cétgíallnae*). A fief received from a third lord (*flaith cuitrid*) cannot exceed one third of the first lord's fief.

Free client

As the main text on free clientship, *Cáin Sóerraith*, survives only in a fragmentary form,¹⁰³ much less is known about this form of clientship than about base clientship. As in the case of the base client, the free client pays an annual rent, but it is at a very much steeper rate. So the free client who receives a fief of three milch cows, pays an annual rent of one cow or its equivalent for six years.¹⁰⁴ In the seventh year no rent is due, but he must return the same number of cows as in the original fief.

In spite of these stiff terms, free clientship is regarded as a more desirable arrangement on account of its greater freedom. *Di Dligiud Raith 7 Somaine* states that a fief of free clientship is 'the best of fiefs' because either party can terminate the contract at any time without penalty.¹⁰⁵ Because free clientship involves no surrender of his independence, the free client is not paid the 'chattels of submission'. For the same reason, the free client may have often been of the same social class as his lord.

According to *Cáin Sóerraith*, the most burdensome duties of a free client are *airéirge* and *manchuine*.¹⁰⁶ The former term means rising up as a mark of homage, and is the entitlement of every lord.¹⁰⁷ Failure to do so on the part of the client entails a fine of 3

¹⁰¹ *CIH* 499.25-9 = *ibid.* 390 §§57.

¹⁰² *CIH* 488.1-3 = *ibid.* 367 §28, cf. *CIH* 434.13; 435.9, 32.

¹⁰³ *CIH* 1770.15-1778.33 = *ZCP* 15 (1925) 239-53.

¹⁰⁴ *CIH* 1770.28-1771.18 = *ibid.* 240 §3. Note especially the O. Ir. gloss at *CIH* 902.19-20.

¹⁰⁵ *CIH* 433.1-2, cf. *CIH* 1774.15-1775.28 = *ibid.* 246-8 §§5-6.

¹⁰⁶ *CIH* 1770.14-5 = *ibid.* 240 §2, cf. *CIH* 436.9.

¹⁰⁷ *CIH* 1907.25 *dligid gac flaith urerge* 'every lord is entitled to homage', cf. *CIH* 570.31 = *CG* 605.

séts.¹⁰⁸ The term *manchuine* is more difficult to interpret. It is the abstract from *manach* 'monk' and its basic meaning is 'the calling of a monk, monastic life'. However, just as *manach* came to mean 'monastic client' as well as 'monk' (see p. 39) *manchuine* developed the meaning 'the rents and services due to a monastery from its clients' which developed further to 'the rents etc. due to a lord from his clients'. In the context of free clientship *manchuine* clearly includes the duty of personal attendance on a lord.¹⁰⁹ Legal glosses suggest also that the free client must provide some labour-services for his lord. This is fixed at 'a man for every *samaisc*'¹¹⁰ every third year, i.e. for every *samaisc* (half the value of a milch cow) which is given in the fief, the client must provide a man's labour. Presumably, it would be normal for this work to be done by a dependant (e.g. a slave or a *fuidir*) rather than by the free client himself.

In free clientship, unlike base clientship, the fief must always be restored to the lord's heirs on his death.¹¹¹

Fuidir

Both free and base clients are freemen of independent legal capacity. A lower category of dependant is the *fuidir*, who cannot make any legal contract without the permission of his lord.¹¹² The word *fuidir* is of uncertain derivation, and is usually translated 'semi-freeman', or 'tenant at will' but it is applied to a wide range of tenants in varying circumstances. A short law-text on the *fuidir*¹¹³ distinguishes no less than ten different types,¹¹⁴ but many of these distinctions seem to be of little significance. For example, it is hard to say what basis there can have been for separating the *sóerfuidir* 'free *fuidir*' from the *slánfuidir* 'full *fuidir*'.¹¹⁵

¹⁰⁸ *CIH* 1907.14.

¹⁰⁹ In *Crith Gablach*'s section on the arrangement of a king's house for a festive occasion, his free clients are described as *ðes bis [i] coimhecht do flaith* 'those who are in attendance on a lord' *CIH* 570.24 = *CG* 594, cf. *CIH* 569.26 = *CG* 537; *CIH* 15.3 = *AL* v 172.18-9.

¹¹⁰ *fer eacha samaisce*, *CIH* 1770.23: 435.25; 436.13.

¹¹¹ *CIH* 436.9.

¹¹² *CIH* 491.24 = *ZCP* 14 (1923) 375 §§38.

¹¹³ *CIH* 426.1-429.10 = *IR* 63-7.

¹¹⁴ *CIH* 428.9-12 = *ibid.* 65 §§7.

¹¹⁵ See *IR* 75.

In spite of the complexities of the *Fuidir*-text, some generalisations about the *fuidir* can be hazarded.¹¹⁶ Unlike the clients, who have fixed and limited duties, the *fuidir* must carry out whatever tasks the lord chooses to assign him. The author of *Críth Gablach* does not include the *fuidir* among the lord's vassalry (*déis*) and remarks that 'every uncertain service is double-edged'¹¹⁷ i.e. possession of a *fuidir* entails disadvantages as well as advantages for the lord. Thus, the lord must maintain his *fuidir*, and pay for any crimes committed by him or his family.¹¹⁸ On the other hand, the lord is entitled to the fines for offences against the *fuidir*. Therefore, in the case of the theft of an article belonging to a *fuidir*, his lord is paid the fine for theft, while the *fuidir* receives restitution (*aithgein*) of the article stolen or its equivalent.¹¹⁹

In general, the *fuidir* is not tied to his lord's land. He may leave — provided that he surrenders two thirds of the produce of his husbandry, and does not leave debts or liabilities behind him.¹²⁰ This right is not possessed by the *dóerfuidir* 'base *fuidir*' who has no legal standing in his own right¹²¹: his honour-price is calculated at one quarter that of his lord, and his wife's at one eighth.¹²² An early law-text¹²³ paints a dramatic picture of the disasters which result if a lord allows freedom to his *fuidir* (presumably — as the glossator suggests — a *dóerfuidir*): 'it brings a time in which the lord's produce perishes so that there is failure of corn and milk and fruit.'

The list of ten types of *fuidir* in the *Fuidir*-text provides some information as to how this class of person originated. The first two on the list are the '*fuidir* who has withdrawn from his paternal kin-groups' and the '*fuidir* who parts from his kin'.¹²⁴ These are clearly persons who have been reduced to semi-free status through the severance of their connection with their kin. The lowest type of

¹¹⁶ For further discussion, see Thomas Charles-Edwards, *Early Irish and Welsh Kinship* (forthcoming) ch. 9 'The half-free in Ireland'.

¹¹⁷ *CIH* 782.17 = *CG* 324 (and note).

¹¹⁸ The wisdom-text *Senbráthra Fíthail* states *dligid fudir fritholta* 'a *fuidir* is entitled to his returns' (*RC* 45 (1928) 31 §11).

¹¹⁹ *CIH* 426.1-6 = *IR* 63 §1.

¹²⁰ *CIH* 428.12-5 = *ibid.* 66 §8.

¹²¹ *CIH* 429.9-10. = *ibid.* 67 §11.

¹²² *CIH* 426.35-427.1 = *ibid.* 64 §3.

¹²³ (later entitled *Di Astud Chirt* 7 *Dligid*) *CIH* 231.15-7 = *AL* v 450.12-15.

¹²⁴ *CIH* 428.9 = *IR* 65 §7.

fuidir is one who has been saved from the gallows, from slaying [by sword, spear, etc.] or from the pit (see p. 218). It would seem that such a *fuidir* is a criminal who is unable to pay the fine for his crime, and has been ransomed from death by a lord whom he must then serve. Thurneysen suggests¹²⁵ that Librán, mentioned in Adomnán's *Vita Sancti Columbae*, is an example of this type of *fuidir*. (For an account of Librán's crime, see p. 215 below.) Another *fuidir* with a criminal background is the *fuidir cinad o muir* lit. 'a *fuidir* of crime from the sea'. He has been set adrift at sea for some offence (see pp. 219-21 below) and taken into service in the territory where he has been washed up.

Bothach

This word means 'cottier, one who lives in a *both* (hut)'. In the law-texts it is generally used in conjunction with *fuidir*. *Cáin Aicilne* includes both the *fuidir* and the *bothach* in the list of persons who cannot make a valid legal contract in defiance of their superior.¹²⁶ *Críth Gablach* similarly links the state of being a base cottier (*dóerbothas*) with that of being a base *fuidir* (*dóerfuidrius*).¹²⁷ The distinction between the *fuidir* and the *bothach* is unclear.¹²⁸

Senchléithe

A *fuidir* or *bothach* whose forbears have occupied the same land for three generations¹²⁹ is reduced to the status of *senchléithe*,¹³⁰ a term which means 'ancient dwelling'. Such a person is not a slave (for whom see p. 95) but he is bound to his lord, and cannot renounce his tenancy. If the land is acquired by a new owner, the *senchléithe* goes with it. It seems likely that this is the category of person referred to in *Additamenta 5(2)* in the *Patrician Texts in the*

¹²⁵ *IR* 77, footnote 3.

¹²⁶ *CIH* 491.24 = *ZCP* 14 (1923) 375 §38.

¹²⁷ *CIH* 570.15 = *CG* 580.

¹²⁸ Charles-Edwards suggests that the lord may have provided the *bothach* with his *both*.

¹²⁹ For a discussion of the term *co nómad nádó* 'for three generations', see Binchy, *Celtica* 16 (1984) 1-12.

¹³⁰ *CIH* 566.12 = *CG* 327.

Book of Armagh.¹³¹ This passage records how the sons of Fiachrae granted some land to Patrick for ever along with 'the serfs attending upon them there' (*cum servis in eo sibi famulanibus*). Similar passages in *Bethu Phátraic*¹³² describe the presentation to Patrick of certain areas of land along with the occupying *senchleithe*.

BRIUGU

All householders are to some extent under obligation to provide hospitality to any freeman (see p. 139). In the case of the *briugu* 'hospitaller', this obligation is said to be limitless. According to *Uraicecht Becc* he can refuse no type of person or his retinue (*dám*) and 'does not keep an account against any person however often he comes'.¹³³ If he refuses hospitality he ceases to be classed as a *briugu*, hence the proverbial phrase 'a man is a *briugu* until refusal'.¹³⁴ The 10th century tale *Esnada Tige Buchet* 'The Melodies of the House of Buchet' provides an account (admittedly fictitious) of the extent of a *briugu*'s obligations.¹³⁵ The *briugu* Buchet — described as 'the cauldron of generosity among the Leinstermen' — is reduced to near-penury by the frequent visits of the king's thirty-two sons.

According to a triad in *Bretha Nemed toisech*,¹³⁶ the *briugu*'s status depends on his having 'a never-dry cauldron, a dwelling on a public road,'¹³⁷ and a welcome to every face'. The office of *briugu* seems to have been one by which a wealthy man of non-noble birth could acquire high rank through displaying the hospitality and generosity so admired by the early Irish. Unlike a king or lord, the *briugu* has no military rôle.¹³⁸ This is clear from the text on pledge-

¹³¹ *PTBA* 170.26-8.

¹³² *Bethu Phátraic: the Tripartite Life of Patrick* ed. K. Mulchrone (Dublin 1939) 48.792-5; 51.880-2. In *Peritia* 1 (1982) 314 C. Doherty makes the plausible suggestion that the *senchleithe* on land given to the Church is to be identified with the *scoloc*, the lowest grade of church tenant in later times. For the *scoloc* in Scotland, see Barrow, *Kingship and Unity: Scotland 1000-1306* (London 1981) 17, 65, 175.

¹³³ *CIH* 1608.20-1; 654.8-10; 1545.2-4 = *AL* v 76.10-2.

¹³⁴ *TC* §31.9.

¹³⁵ *FR* 472-505.

¹³⁶ *CIH* 2220.8-9.

¹³⁷ In *TBDD* 429-30, the house of the *briugu* Da Derga is situated on the *Slige Cúalann*, the road south to the district of Cúalú.

¹³⁸ Compare *CIH* 1268.16, which states that it is proper for a *briugu*, physician, harpist or queen to have a lap-dog, but that a lord (*flaith*) should have a hunting hound.

interests (Appendix 1 No. 60) which states that if a weapon given in pledge by a *briugu* is destroyed, there is no entitlement to interest (*fuilleam*), only to restitution (*aithgein*). On the other hand, if he gives his walking-stick¹³⁹ in pledge, he is entitled to interest worth 3 *séts*. Normally, a *briugu* pledges his cauldron¹⁴⁰ or his cows.¹⁴¹

In *Uraicecht Becc* the *briugu* is defined as a man who, by acquiring twice the land and property of a lord (*flaith*), attains equal rank with him.¹⁴² A chief *briugu* (*ollam briugad*) has equal rank with the lowest grade of king or with a chief poet. The idea that a *briugu* should have hundredfold wealth is found in both law-texts and annals. *Uraicecht Becc* states: 'he is not a *briugu* who is not a possessor of hundredfold wealth (*cétach*)'.¹⁴³ The commentator — displaying the characteristic literal-mindedness of the later law-schools — takes this to mean that the *briugu* must have 100 servants, cows, pigs, horses, sheep, goats, bees (!), dogs, cats, hens and geese. But the author of *Uraicecht Becc* was doubtless thinking primarily of the *briugu*'s herd of cattle, which would be expected to be at least a hundred strong. *Uraicecht Becc* refers also to an even richer category of *briugu*, the *briugu leitech*,¹⁴⁴ who has twice the property of the *briugu cétagh*, and whose house is at the meeting of three roads.

The evidence of the annals shows that the office of *briugu* survived in a recognisable form down to the 16th century. Sometimes the old term *briugu* (later *brugaid*) is used. For example, the *Annals of Inisfallen* s.a. 1108 record the death of Cú Óenaig hua Mail Guirm, noble *briugu* (*flaithbriugu*) of eastern Munster, and the *Annals of Loch Cé* s.a. 1403 record the death of Muircheartach óg hua hÉilidhi, a rich *briugu* of hundredfold wealth (*brugaid céadach conáich*). More often, however, such a person is referred to as *fer tige oiged* 'guest-house owner' or *biattach* 'provider of food'.¹⁴⁵ The latter term is to be distinguished from *biattach* (anglicized *betagh*) 'base client' (see p. 30).

¹³⁹ *CIH* 476.27-30 = *AL* v 420.7-12.

¹⁴⁰ *CIH* 32.19-20 = *AL* v 238.20.

¹⁴¹ *CIH* 470.2-9 = *AL* v 400.20-402.3 (note gloss).

¹⁴² *CIH* 1608.8-9 = *AL* v 76.1-2.

¹⁴³ *CIH* 1608.14 = *AL* v 76.10.

¹⁴⁴ *CIH* 1608.30 = *AL* v 78.7-8. See McCone, 'Hounds, heroes and hospitallers in early Irish myth', *Ériu* 35 (1984) 3, footnote 8.

¹⁴⁵ e.g. *AFM* s.a. 1225 (vol. iii p. 218).

In the later annals, a deceased *briugu* is often recorded as having had another profession (or professions). Thus, the *Annals of Ulster* s.a. 1479 record the death of Matha Hua Mailruanaigh, who was a guesthouse owner and an expert goldsmith. The *Annals of Loch Cé* s.a. 1527 record the death of *an doctúir* Mac Eogain Í Duinnsléibe who was a guesthouse owner, and 'an expert in medicine and most other arts'.

CHAPTER 2

LAW OF PERSONS (ii)

In the last chapter I dealt with those persons who owe their status to their political power and/or wealth: the king, the lord (including his clients and tenants) and the *briugu* (hospitaller). In this chapter I deal with those who owe their status to a particular knowledge or skill.

CLERIC

It must be admitted that my inclusion of the cleric¹ in this category is not altogether satisfactory. The early Irish Church was not merely an organisation of pious and learned men and women;² it also owned a great deal of land and other wealth. Many clients served a church — generally represented by an abbot — rather than a secular lord. The extent to which the Church was involved in clientship is illustrated by the fact that the word *manach* — whose basic meaning is 'monk' (Latin *monachus*) — is often used in the law-texts of the church client.³ The Church also wielded considerable political power. Leading churchmen were very often of royal lineage — Columba, for example — and in a few cases were actually kings.⁴ The abbot of a monastery regularly belonged to the ruling

¹ The law-texts distinguish between the cleric who is in orders and the cleric who is not in orders. *Uraicecht Becc* lists those in orders (*gráda eclasa*) as *liachtróir* (lector), *aistreór* (usher), *exarcistid* (exorcist), *subdechon* (subdeacon), *dechon* (deacon), *sacari* (priest), and *epskop* (bishop), with honour-prices of 7, 10, 15, 20, 30 séts, 3½ *cumals* and 7 *cumals* respectively (*CIH* 1594.37-1595.14 = *AL* v 22.1-2). This list appears in the same form — apart from the position of the lector between the exorcist and the subdeacon — in *Bretha Nemed tolsech* (*CIH* 2212.24-6). The seven grades of *ecnae* 'ecclesiastical scholar (not in orders)' are listed at *CIH* 2101.1-7 and at *CIH* 586.1-2 (*Míadíslechta*), but different nomenclature is employed in each case. For further discussion on Church grades, see Liam Breatnach *UR* 84-7.

² For the rôle of women in the Church, see p. 77.

³ Compare the later use — in both Ireland and Scotland — of the term *scolóc* (angl. *scoloc*) 'scholar, monastic student' to refer to the lowest grade of church tenant. See p. 36 above.

⁴ *CEIS* 221-2.

kin-group of the territory.⁵ Through such links with secular power, the Church was able to gain privilege and influence.

Our earliest extensive sources, the 5th century writings of Saint Patrick, give some idea of the activities and concerns of a missionary bishop in a pagan society. It is noteworthy that Patrick was careful to gain the favour of kings and judges with gifts, and was accompanied by a paid retinue of the sons of kings.⁶ However, he did not concentrate exclusively on the upper ranks of society as he tells that he converted many slaves whose faith endured 'in spite of terrors and threats'.⁷

From approximately a century later, the canonical text, the *First Synod of Saint Patrick*⁸ reveals a semi-christianised Ireland in which the cleric and his flock are in regular contact with pagans and paganism. It is thus necessary for it to be stated that a Christian must not make an oath before a druid in the pagan manner.⁹ Similarly, a cleric must not act as an enforcing surety for a pagan¹⁰ or accept alms from a pagan for his church.¹¹

The *First Synod of Saint Patrick* does not insist on clerical celibacy, but directs that any cleric, from door-keeper (*ostiarius*) to priest (*sacerdos*) whose wife goes about with her head unveiled, shall be removed from the Church.¹² The use of the word *uxor* for 'wife' implies that respectable clerical monogamy was regarded as normal. On the other hand, the *Penitential of Finnian* (from approximately the same person)¹³ states that a cleric, formerly a married layman, who continues to have sexual intercourse with his wife is guilty of fornication and 'his sin is not less than if he had sinned with a strange girl'.¹⁴

By the time of the Old Irish secular law-texts (7th-8th centuries) the Church had clearly triumphed over organised paganism. The druid had been relegated to obscurity (see p. 60) and his place in society largely taken over by the cleric. In the law-texts on status

⁵ W. Davies, 'Clerics as rulers', in *Latin and the Vernacular languages in Early Medieval Britain*, ed. N.P. Brooks, (Leicester 1982) 82.

⁶ *Confessio* §52.

⁷ *ibid.* §42.

⁸ IP 54-9. For a discussion of its date, see *CEIS* 49-50.

⁹ IP 56 §14.

¹⁰ *ibid.* 54 §8.

¹¹ *ibid.* 56 §13.

¹² *ibid.* 54 §6.

¹³ For dating, see *ibid.* 4.

¹⁴ *ibid.* 82 §27.

high-ranking clergy are treated as equal or superior to kings. The author of *Crit Gablach* asks the question 'who is nobler, the king or the bishop?' and concludes that the bishop is nobler because 'the king rises up before him on account of the Faith'.¹⁵ In *Uraicecht Becc* an archbishop (*ollam uasalepscoip*)¹⁶ is given an honour-price of 14 *cumals*,¹⁷ which is the same as that of a provincial king. The importance of the abbot (*abb*)¹⁸ is indicated by the fact that this text also assigns an honour-price of 14 *cumals* to the abbot of a great monastery such as Cork or Emly.¹⁹ Even an abbot not in orders is entitled to the same rate of honour-price as an ordained cleric, depending on the status of his monastery.²⁰ *Uraicecht Becc* gives the *sui litre* 'expert in ecclesiastical learning' the same honour-price as the king of a *tuath*.²¹ According to a text on distraint,²² there are three churchmen whose evidence cannot be overturned, even by a king. They are a *sui*, a bishop and a hermit (*deorad Dé lit.* 'exile of God'). The latter is especially revered for his ability to perform miracles²³ and is obliged to act as enforcing surety (*naidm*) in cases where a contract has been bound by the gospel of Christ or by the heavenly host.²⁴

As with the other *nemed*-persons, the cleric's status depends on his possessing the necessary qualifications and behaving in a proper manner. The author of *Bretha Nemed toisech* sees the relationship between the Church and the rest of society in terms of a contract.²⁵ For the contract to be valid, the Church for its part must give good

¹⁵ *CIH* 570.31-2 = *CG* 604-5.

¹⁶ At the period of the law-texts there was no recognised religious leader of the whole country. For the rise of the see of Armagh, see L. de Paor 'The Aggrandisement of Armagh' in *Historical Studies* 8 (1971) 95-110.

¹⁷ *CIH* 1618.5 = *AL* v 112.1

¹⁸ For a recent discussion of the relative position of the abbot and the bishop in the early Irish Church, see Sharpe, *Peritia* 3 (1984) 230-70.

¹⁹ *CIH* 1618.7; 2282.27; 2334.35-6 = *AL* v 112.1-3.

²⁰ *CIH* 647.36-648.2; 2269.40-2270.3 = *ibid.* 54.1-3. The term used here is *comarbae ealso* 'ecclesiastical heir'. The abbot — whether in orders or not — is often referred to as the *comarbae* 'heir' of the founder of the monastery (*Peritia* 3 (1984) 264-5). Later this term is anglicized *coarb*.

²¹ *CIH* 1615.4 = *AL* v 102.1. The *sui litre* is doubtless the head of a monastic school, and to be identified with *fer léigid* 'learned man' often referred to in the annals. He is the highest-ranking *ecnæ* 'ecclesiastical scholar (not in orders)'.

²² *CIH* 357.25-7 = *AL* i 78.20-1.

²³ *CIH* 2289.8, 13 = *Ériu* 12 (1938) 12 §12.

²⁴ *CIH* 460.1-2 = *Ériu* 17 (1955) 66 §7 (see Binchy's note pp. 80-1).

²⁵ *CIH* 2211.4-14.

'considerations' (*dagfolad*). Its monks must be devout, its *airchinnig*²⁶ (monastic superiors) must be honest, and its seven grades of ordained clergy must be properly qualified, and provide the services of baptism, communion, mass, requiem for the dead, preaching of the gospel, etc. Another law-text, *Córus Béscnai* (Appendix 1 No. 10), covers much the same ground, and in addition devotes particular attention to the counter-obligations — offerings, tithes, bequests, first-fruits, etc. — which the laity owe to the Church.

If a cleric fails in his duties or is guilty of misconduct, the contract between the Church and the laity is felt to have been breached. For example, if a church building is allowed to become a den of thieves or a place of sin, it can be destroyed without penalty,²⁷ and if a cleric misuses a layman's offerings they can be recovered from him with the support of the donor's kin-group.²⁸

Sexual activity on the part of a cleric is treated severely in the law-texts, though in actual practice it would seem that clerical chastity was never widely observed (except perhaps for periods in the wake of the reform movements of the 8th and 12th centuries). According to the 7th century law-text *Di Astud Chirt 7 Dlidid*, the 'stumbling bishop' loses his *nemed*-status 'because purity is required of a bishop'.²⁹ Triad 96 gives the three ruins of a *túath* as 'a dishonest lord, an unjust judge, and a lustful priest'. However, other law-texts (following penitentials such as that of Finnian)³⁰ allow for the rehabilitation of an errant cleric. This may be at the expense of the woman with whom he has had sexual relations. It is clear from Heptad 22 that a cleric who has impregnated a woman may become laicized and take on responsibility for the child. On the other hand, he may remain in the Church, and expiate his offence by penance, in which case the woman is solely responsible for rearing the

²⁶ The term *airchinnech* lit. 'head, ruler' is used in the O. Ir. law-texts of a monastic superior, whether clerical or lay. Thus Heptad 1 (CIH 2.4 = AL v 118.4) refers to a church where there is a lay superior (*airchinnech laich*) who is not under the control of an abbot. This implies the existence of clerical *airchinnig*. In later times the *airchinnech* (anglicized *erenagh*) is a layman who holds church lands from the bishop in return for rent and refection. See CEIS 223; *Peritia* 3 (1984) 259; and J. Barry 'The distinction between coarb and *erenagh*' in *Irish Ecclesiastical Record* 94 (1960) 90-5.

²⁷ CIH 1.27 = AL v 118.2-3.

²⁸ CIH 4.2-17 = AL v 128.13-9.

²⁹ CIH 234.4-8 = AL v 458.20-6.

³⁰ IP 80 §21.

child.³¹ Another heptad states that a bishop — unlike most fathers — is not obliged to pay any fines or debts incurred by his son.³²

In general it seems that offences committed by a cleric against a layman are paid for in the usual manner.³³ In addition, a cleric would be required by his own superiors to carry out various forms of penance, depending on the nature of the offence. For example, the *Penitential of Finnian*³⁴ lays down spiritual, financial and practical atonements to be undertaken by a cleric who murders a layman. He must go into exile for ten years, of which seven are spent in penance and abstinence. He must then return, compensate the bereaved kinsmen, and offer himself to the parents of his victim, saying 'Behold, I am in place of your son, I will do for you whatever you tell me'. As Bieler points out in his notes,³⁵ there is no mention of this form of vicarious *goire* (the duty of looking after one's parents) in the secular law-texts.

A person who commits a serious offence against a cleric must pay an extra penalty (*pennait*) in addition to the victim's honour-price.³⁶ Likewise, an extra fine (*dichubus*) must be paid for damage to church property.³⁷

POET

The only lay professional who has full *nemed* status is the poet (usually termed *fili*³⁸ or *éces*); all other professionals are counted as *dóernemed*.³⁹ One of the poet's most important functions is evidently to satirize and to praise.⁴⁰ His high status thus reflects early Irish society's deep preoccupation with honour (*enech* lit. 'face'): it is damaged through satire and increased through praise.

³¹ CIH 22.9-10 = AL v 202.6-7.

³² CIH 31.7 = AL v 234.21.

³³ Heptad 2 (CIH 4.16 = AL v 128.16-7) includes *eiric a cintaib* 'fine for offences' among the payments which a cleric might make.

³⁴ IP 80 §23.

³⁵ ibid. 243, note 10.

³⁶ e.g. CIH 1602.38-1603.2 = AL v 52.23-5; CIH 2287.17-8 = *Ériu* 12 (1938) 6 §4.

³⁷ CIH 1.1 = AL v 118.2.

³⁸ The commonest word for poet is *fili* (later *file*), which is cognate with Welsh *gweled* 'to see'. In Hiberno-Latin texts it is normally rendered by Latin *poeta*, e.g. PTBA 92.10 where Dubthach macu Lugair is described as *poeta optimus*.

³⁹ CIH 1593.8-10 = AL v 14.17.

⁴⁰ According to Triad 248, the king grants speech to the poet (*fer cerda* lit. 'man of [poetic] craft') for satire and praise.

The same characteristic was noted in the 16th century by the English chronicler Stanhurst who describes the Irish as 'greddie of praise and fearful of dishonour'.⁴¹ Even in the present century, Tomás Ó Criomhthainn in his autobiography *An t-Oileánach* tells how he abandoned his day's work to listen to the island poet (*file*) rather than risk being satirized by him.⁴² Irish literature contains a number of references to the raising of facial blemishes through a poet's satire.⁴³ Poets could even kill by such means: the *Annals of Connacht* record the death in 1414 of the Lord Lieutenant, John Stanley, from a poet's spell (*firt filed*).⁴⁴ The *Annals of Ulster* s.a. 1024 recount how Cúán hua Lothcháin, chief poet of Ireland (*priméices Érenn*) was killed in Tethba. Before dying he was able to cause the bodies of his murderers to rot within an hour by means of *firt filed*. The alleged power of Irish poets to 'rhyme to death' both men and animals (particularly rats) is often referred to in English sources from the 16th century onwards.⁴⁵

The poet's supernatural powers were not only for destructive purposes. Legal commentary states that the chief poet (*ollam*) should remain in the king's presence to protect him from sorcery.⁴⁶ The poet is also frequently accredited with the power of prophecy, similar to that wielded by the druids. According to a fragment stated to be from *Bretha Nemed*,⁴⁷ the *file* derives his status from three skills: *imbas forosna* 'encompassing knowledge which illuminates',⁴⁸ *teinm láeda* 'breaking of marrow (?)'⁴⁹ and *díchetal di chennaib* 'chanting from heads (?)'.⁵⁰ The first of these skills gives the poet the power to describe future events in verse. Thus at the

beginning of the saga *Táin Bó Cuailgne*,⁵¹ Queen Medb — setting off on her expedition against the Ulstermen — meets a maiden in a chariot. She is Fedelm, a woman poet of Connacht (*banfili di Chonnachtaib*), who has just returned from learning the art of poetry (*filidecht*) in Britain. Addressing her as a prophetess (*banfáith*), Medb asks her to use her skill in *imbas forosna* to foresee the success of her expedition against the Ulstermen. Fedelm looks into the future and replies with a reference to the bloodshed to be wreaked on Medb's army by Cú Chulainn. Characteristically, Medb refuses to believe the poetess's prophecy.

There is no early account of the technique employed in *imbas forosna*. The description⁵² of the rite given by the 9th century bishop-king Cormac mac Cuilennáin seems fanciful. The poet is represented as chewing a piece of the raw flesh of a pig, dog, or cat, which he then offers to idols. He puts his two palms about his cheeks (this is suggested by the pseudo-etymological interpretation of *imbas* as *im* 'about' + *bas* 'palm of the hand') and sleeps. During his sleep the future is revealed to him. According to Cormac, St. Patrick banned both *imbas forosna* and *teinm láeda* because of their pagan character, but did not object to *díchetal di chennaib*.⁵³

In spite of such pagan associations, the poets were clearly a wealthy and powerful group in early Irish society. For each poem commissioned by a patron, the poet receives a fee (*dúas*) depending on the nature of the composition. A passage in *Bretha Nemed deidenach*⁵⁴ lists the payments due for various types of metrical composition (*aiste*). For the most prestigious type, the *anamain*, the poet is entitled to a chariot worth a *cumal*, whereas for the least admired type, the *dían*, only a three-year-old dry heifer (*samaisc*) and a cauldron are due. A successful poet could become very rich: Triad 255 gives the three whose coffers are of unknown depth as a king, the Church and a great poet (*nemed file*). However, a poet is expected to give value for money: if he is fraudulent (*díupartach*) through overcharging or through inadequacies in the subject-matter of his poem,⁵⁵ he loses his *nemed*-status.⁵⁶ His composition should

⁴¹ quoted E. Knott, *Irish Classical Poetry* (Dublin 1960) 73.

⁴² *An t-Oileánach*, ed. An Seabhaic (Dublin 1929) 99.

⁴³ e.g. CIH 2113.26-8 (tr. Ériu 11 (1932) 53 (§iv)); TBC St. 2618-21, cf. TBC Rec.I 2578-81.

⁴⁴ Compare the form of black magic called *glám díenn*, described in legal commentary at CIH 1564.34-1565.19. The poet can bring about the death of a king who has committed an offence against him. This is effected by reciting satirical verse and sticking thorns into a clay effigy of the victim. See L. Breatnach *UR* 140.

⁴⁵ See F. N. Robinson, *Satirists and Enchanters in Early Irish Literature*, (New York, 1912).

⁴⁶ CIH 668.12.

⁴⁷ CIH 1533.26-8 = AL v 56.20-3. The same three skills are listed in Triad 123.

⁴⁸ See Nora Chadwick, 'Imbas Forosna', SGS 4 (1934-35) 97-135.

⁴⁹ EIHM 336-40.

⁵⁰ Watkins, *Celtica* 6 (1963) 216; Nagy, *Stud. Celt.* 16-17 (1981-82) 136-7.

⁵¹ TBC Rec.I 29-113.

⁵² *Sanas Cormaic* §756 (*Anecd.* 4 (1912) 64).

⁵³ cf. CIH 879.13-4 = AL i 44.17-9.

⁵⁴ CIH 1119.27-32 = Ériu 13 (1942) 25.17-23; CIH 1120.34-6 = ibid. 27.7-9.

⁵⁵ ZCP 16 (1927) 181 §14².

⁵⁶ CIH 234.4-8 = AL v 458.20-6.

also be technically faultless, though *Gúbretha Caratniad* §47 allows that a poet is still entitled to his fee, though he be guilty of the fault of *rudrach* (monotony) in *dichetal di chennaib*.⁵⁷

Our sources reveal a high degree of organisation among the poets, and there must have been a good deal of contact between the poets of different *túatha* — unlike most people, the poet has rights outside his own *túath* (see p. 5).⁵⁸ Poetry is regarded as a hereditary profession: a poet is expected to be the son and grandson of a poet.⁵⁹ Triad 167 includes the son of a poet who abandons his craft among the three whose status is reduced from noble (*sóer*) to base (*dóer*).

Two main categories of poet are recognised in the early Irish period: the *fili* and — inferior in status and accomplishment — the *bard*.⁶⁰ According to a Middle Irish metrical tract, the *bard* is entitled to only half the honour-price of his equivalent rank among the *filid*.⁶¹ The law-text on status, *Uraicecht Becc*, does not refer to the *bard* but lists the seven grades of *fili*, each with his honour-price and privileges.⁶² The highest grade of *fili* is the *ollam*,⁶³ who has the same honour-price (seven *cumals*)⁶⁴ as the king of a *túath*. He is accompanied by a retinue of 24 persons and can give protection for a month. The lowest grade is the *fochloc* who has an honour-price of a *sét gabla* (see p. 115),⁶⁵ is accompanied by two persons and can give protection for a day. According to another Middle Irish metrical tract⁶⁶ the more difficult forms of poetical composition are only attempted by the higher grades; so the

⁵⁷ CIH 2199.11-2 = ZCP 15 (1925) 362.

⁵⁸ CIH 391.28 = AL i 184.17; cf. TBC Rec.1 668-9 *fri snádud neich dothíssad co n-airchetul* 'to provide protection for anyone coming [to the boundary] with poetry'.

⁵⁹ CIH 2337.1.

⁶⁰ Murphy, 'Bards and Filidh', *Éigse* 2 (1940) 200-7. In a 17th century Scottish source ('Letter to John Aubrey', SGS 8 (1958) 22) the *philies* are given as the highest of the four grades of *bard*.

⁶¹ MV i §3.

⁶² CIH 1603.31-1606.18 = AL v 56.13-68.18. For the grading of men of learning (lay and clerical) in sevens, see Reynolds, *Speculum* 54 (1979) 669-84, and Breatnach, *UR* 85-7.

⁶³ In later English sources, the highest grade of poet (*ollam dána*) is commonly anglicized *olaff danie*, *olowe dane*, etc. PRIA 36 C (1922) 115.

⁶⁴ UR 102 §2 (CIH 2336.6) gives the *ollam* an honour-price of 40 *séts*, which corresponds approximately to 7 *cumals*, cf. CIH 2336.12; 1114.29.

⁶⁵ UR 110 §17 (CIH 2339.20) gives the *fochloc* an honour-price of 1½ *séts*, and places below him the three sub-grades *taman*, *drisiuc* and *oblaire*.

⁶⁶ MV ii §1, cf. O'Mulc. §537.

*anamain*⁶⁷ is reserved for the *ollam*, whereas the *fochloc* has mastered only the basic *dían* form.

Bretha Nemed déidenach lists no less than sixteen grades of bard: eight *sóerbaird* 'noble bards' and eight *dóerbaird* 'base bards'.⁶⁸ However, another law-text *Bretha im Fuillema Gell*,⁶⁹ uses a simpler sevenfold classification of bards, which extends from the *tigernbard* ('lord-bard' i.e. a lord who is a bard) down to the *drisiuc*.⁷⁰ In his edition of *Uraicecht na Ríar* (pp. 98-9) Liam Breatnach demonstrates that the essential difference between the *fili* and the *bard* is the latter's lack of professional training.

In addition to the composition of satires, praise-poems and elegies, the *fili* also tells stories,⁷¹ and is a repository of traditional lore (*senchas*) i.e. history, genealogy, place-lore, etc.⁷² According to *Uraicecht na Ríar*, the number of stories which a poet must know is dependent on his grade. Thus an *ollam* is required to know 350 tales (*dréchta*),⁷³ whereas a *fochloc* need only know 30 tales.

The degree to which the *fili* was involved in the theory and practice of law in the early Irish period is difficult to assess, and there seems to have been considerable variation in his legal rôle. Binchy has suggested⁷⁴ that the jurists (*brithemain*) originated as an offshoot from the parent order of *filid*. In his view⁷⁵ such texts as *Uraicecht Becc*, *Bretha Nemed toísech* and *Bretha Nemed déidenach* come from a poetico-legal school (which he calls the 'Nemed school') in which the separation of law and poetry had not taken place. Thus, in *Bretha Nemed déidenach*⁷⁶ it is stated that

⁶⁷ See Watkins, *Celtica* 6 (1963) 217, for this term.

⁶⁸ CIH 1131.16-24 = *Ériu* 13 (1942) 42.8-19. The same list (in a slightly different order) is found in MV i §2.

⁶⁹ CIH 466.8-9 = AL v 388.5-6.

⁷⁰ See UR 56, 82.

⁷¹ MV ii §91 *niba fili cen scéla* 'he is not a poet who does not have stories'. See Mac Cana, *The Learned Tales of Medieval Ireland* (Dublin 1980) esp. 122-5.

⁷² It should be stressed that the *fili* was not the only person who could practise storytelling and *senchas* in early Ireland. Triad 248 includes 'the knowledgeable man of retentive memory for narration and story-telling' (*fer coimgni cuimnech fri ainsnéis 7 scéligud*) among the four whom the king allows to speak in public, but does not specify that he must be a *fili* or other class of poet. There are references in the literature to the telling of stories by a *drúth* (buffoon), and even — in a 13th century poem — by players of the tympanum (Mac Cana op. cit. 12).

⁷³ For a discussion of the term *drécht*, see Mac Cana op. cit. 111-5.

⁷⁴ *Ériu* 18 (1958) 45.

⁷⁵ *Ériu* 17 (1955) 4-6.

⁷⁶ *Ériu* 13 (1942) 32.6-7 = CIH 1124.16-7.

for a poet to be entitled to fees (*diúasa*) he must be knowledgeable in three types of judgement: a judgement relating to freemen,⁷⁷ a judgement relating to a noble *fili*, and a referred (?) judgement (*breth fuigill*).⁷⁸

In law-texts emanating from other schools there is less emphasis on the *fili*'s rôle in legal matters, and a clear distinction is made between the *fili* and the *brithem*.⁷⁹ However, there remains a tradition of the *fili*'s involvement in the original framing of the laws. *Córus Béscnai* (a text of the *Senchas Már* school) asserts that the *fili* Dubthach macu Lugair — a convert to Christianity — showed the law to Saint Patrick. What did not conflict with the word of God was retained 'in the legal system of the judges by the Church and the poets'.⁸⁰ Similarly, the *Senchas Már* text on distraint traces the origin of the law on this topic to 'the advice of the Church, the customs of the *túatha*, the true laws of the poets, the opinions of lords, and the advice of judges'.⁸¹

There is also evidence that the poet has a rôle in the practice as well as in the compilation of law. In a short text which sets out the seating-arrangement for the hearing of a law-case (see p. 193) the court is presided over by the king, the bishop, and the *súi cach bérli ollaman* lit. 'an expert of every form of language with the rank of *ollam*', whom the glossator may well be right in identifying as the *ollam filid* 'chief poet'.⁸² Another possible co-occurrence of these three faces of public authority in a legal context is found in a passage in *Críth Gablach*⁸³ which sets out the duties of the *aire coisring*. He is the head of a kin who represents his kinsmen in their dealings with external authorities, and may be required to give a pledge on their behalf to king, ecclesiastical authority (*senod*) and *óes cerdd*. The term *óes cerdd* can refer to those who practice any form of art or craft, but here it may be restricted to the poets.⁸⁴

⁷⁷ Cf. *UR* 102 §2 (*CIH* 2336.6) where it is stated that a chief poet (*ollam*) should be knowledgeable with regard to judgement in customary law (*brithemnacht fénechais*).

⁷⁸ For a discussion of this difficult passage, see Mac Cana, *Stud. Celt.* 5 (1970) 76-8.

⁷⁹ e.g. in the list of professions in *BC* §12 (*CIH* 2289.9-10 = *Ériu* 12 (1938) 12).

⁸⁰ *CIH* 529.2-3 = *AL* iii 30.33-32.1.

⁸¹ *CIH* 396.4-5 = *AL* i 208.2-4.

⁸² *CIH* 602.9 = *Peritia* 5 (1986) 85 §2.

⁸³ *CIH* 781.28-32 = *CG* 277-83.

⁸⁴ See *CG* p. 70 s.v. *aire coisring*. Cf. *Triad* 248 where *fer cerda* clearly means 'poet' only. Cf. also, Welsh *pencerd* 'chief poet'.

The poet seems also to be entitled to use his power of satire (see p. 138) in law-enforcement across boundaries. Thus, one text includes 'the enforcing of claims for members of a *túath*' (*tobach do thúathaib*) among the three prerogatives of a chief poet.⁸⁵

Woman Poet

The *Annals of Inisfallen* s.a. 934 record the death of Uallach daughter of Muinechán, who is described as *banfili Érenn* 'the woman poet of Ireland'. It is clear, therefore, that a woman could be recognised as a fully-fledged poet, though it must have been regarded as unusual.⁸⁶ It is probable that the admission of a woman into the poetic class occurred mainly when a poet had no sons, and a daughter showed some aptitude for the profession. As with other professional women (see p. 77), the *banfili*'s status as a poet would presumably invest her with a legal capacity generally denied to women.

Judging by the references in the law-texts, it would seem that most women who composed verse were not legally recognised poets, but satirists who used verse for malicious purposes, in particular sorcery or witchcraft. See next section.

Illegal satirist

Satire can legally be used by a *fili* to exert pressure on a wrongdoer to get him to obey the law. However, to satirize anyone without just cause is a serious offence, requiring the payment of the victim's honour-price (see p. 137). The purveyor of illegal satire (usually called *cáinte*⁸⁷ or *rindle*⁸⁸) is often denounced in our sources. The authors of the law-texts seek to punish his misuse of

⁸⁵ *CIH* 552.9-10, tr. L. Breathnach, *Ériu* 35 (1984) 189. Cf. *CIH* 1592.30 (UB Comm.) *Is e taidbeas a seodu eigni doib amuig i fail i tincaidter renda aer 7 na tincaidter renda airm* 'it is he [the poet] who levies the penalty for their forcibly removed chattels for them outside [the territory] where barbs of satire are responded to and barbs of weapons are not' (tr. *ibid.* 190).

⁸⁶ The English translation of *Ann. Clon.* s.a. 905 refers to Gormflaith, daughter of king Flann, who made 'many pittiful and learned ditties' lamenting the death by drowning of her son Domnall. But she does not seem to have been a professional poet.

⁸⁷ *Cáinte* must be, as Breathnach suggests in *Ériu* 34 (1983) 194, an agent noun from *cáiniud* 'to satirize'.

⁸⁸ The first element of this word is doubtless *rind-* 'to cut, satirize'.

the magic power of satire by reducing or even cancelling his status. According to *Bretha Crólige* §51 an injured *cáinte* is entitled only to the sick-maintenance of an ordinary freeman (*bóaire*), no matter how exalted his rank 'because it is more proper in the sight of God to repudiate [him] than to protect [him]'.⁸⁹ In Heptad 22 'the *rindile* who does not concede right or justice to a person' is grouped with other categories of legally irresponsible person, such as the man expelled from his kin, the alien, and the loose woman.⁹⁰

The law-texts reserve particular odium for the illegal satirist who is female. In *Bretha Crólige*⁹¹ the *birach briathar* (lit. 'one who is sharp with words')⁹² is classed along with the female werewolf and the vagrant woman. These three types of woman are not to be brought away on sick-maintenance 'for no-one dares to assume responsibility for a crime of their audacity' (i.e. they would inevitably cause trouble in the house in which they would be nursed). According to Heptad 15⁹³ the woman who satirizes every lawful person (*ben rindas cach recht*)⁹⁴ loses her honour-price altogether.

The illegal satirist is treated with deep hostility in religious material: according to *Fís Adomnán*, the *cáinte* is doomed to spend all eternity up to his waist in the black mires of Hell, along with sorceresses, brigands, preachers of heresy and other miscreants.⁹⁵ The wisdom texts are equally hostile: in the view of the author of *Tecosca Cormaic* (§27), the *cáinte* is the epitome of shamelessness. However, like the druid (see p. 60), the satirist wielded enough influence in society to achieve some degree of recognition in the law-texts. For example, *Bretha Nemed toisech* contains a list of the three qualifications required by various professions and includes the *cáinte* along with the *filii*, druid, cleric, doctor, harpist, etc.⁹⁶ I cannot translate the first and third of the *cáinte*'s qualifications, but the second qualification illustrates his characteristic behaviour: 'an

⁸⁹ CIH 2300.9 = Ériu 12 (1938) 40.

⁹⁰ CIH 22.8 = AL v 202.5.

⁹¹ CIH 2295.27 = Ériu 12 (1938) 28 §34.

⁹² The term is also employed in *Di Astud Chirt 7 Dlidid* (CIH 233.12 = AL v 456.5-6).

⁹³ CIH 15.14 = AL v 176.2

⁹⁴ The MSS of Heptad 15 are divided between *cach recht* 'every (any) lawful person', and *cach richt* 'every shape of person'. The general sense is unaffected.

⁹⁵ LU 2191; cf. CIH 526.16 = AL iii 24.6.

⁹⁶ CIH 2219.32-2220.16.

extempore request which causes a blush'.⁹⁷ *Bretha im Fuillema Gell* recognises the right of the female satirist (*ben rindas*) to satirize the head of the kin of the person for whom she has given a pledge if it has been allowed to become forfeit.⁹⁸ This text recognises the same right in the male satirist (*fer rindas*) who is treated as being on a par with the lower class of poets, the *bards*.⁹⁹

For the *crossán*, buffoon and composer of satirical verse, see p. 64 below.

LAWYER

The texts distinguish two types of professional lawyer, the *brithem* and the *aigne*.¹⁰⁰

Brithem

This word is an agent noun from *breth*, and so means 'maker of judgements'¹⁰¹ i.e. judge, arbitrator.¹⁰² *Uraicecht Becc* distinguishes three grades of judge.¹⁰³ The lowest grade is competent to decide on matters relating to craftsmen (*óes dána*)¹⁰⁴ and has an honour-

⁹⁷ CIH 2219.32 *ailges do ceanduibh co nimdertar gruaide*. Compare the demand of Redg Cáinte (Redg the satirist) to Cú Chulainn: *Tuc dam-sa do gai* 'give me your spear' (TBCRec. I 1513).

⁹⁸ CIH 466.5-9 = AL v 388.1-6.

⁹⁹ The same approach is found in the metrical tracts where the *rindaid* 'satirist' is included as a sub-division of the *doerbaid* 'base bards' (MV i §2).

¹⁰⁰ For example, in a list of categories of person who do not go on sick-maintenance, the *aigne* and *brithem* are treated as separate professions (CIH 2289.9-10. = Ériu 12 (1938) 12 §12).

¹⁰¹ Cf. W. *brawdwr* 'judge' from *brawd* 'judgement' (cognate with Ir. *bráth* 'id.') + agent suffix. Another O. Ir. term for 'judge' is *medam*, formed from the root *med-* 'measures, judges' + the agent suffix -*am*(on) (for discussion, see Watkins, *Indo-European Origins of the Celtic Verb* (Dublin 1962) 182-3).

¹⁰² *Brithem* is used to translate Latin *iudex* and *arbiter* in the O. Ir. Glosses. In English documents of the 13th-17th centuries, this word is anglicized *brehon*, *brehyan*, *brehowne*, etc., forms based on the gen. sg. and pl. *britheman* and nom. pl. *brithemain*. The word is also attested in Manx (*briw*) and Scottish Gaelic (*britheamh*). The latter is angl. *brieve* (see p. 261). In the English-speaking world the word *br(e)ithem* survives in the Connacht surnames *Brehon*, *Brehony*, *Breheny*, (Judge), anglicizations of *Mac an Bheithreamhan* or *Mac an Bheithreamhnaigh* 'son of the judge'. It also survives in a few place-names, e.g. *Ballynebrehon* (*Baile na mbreitheamhan* 'townland of the judges') in Co. Mayo.

¹⁰³ CIH 1613.38-1614.33 = AL v 98.1-100.16.

¹⁰⁴ In *Bretha Nemed déidenach* (Ériu 13 (1942) 41.21-42.2 = CIH 1130.38-1131.8) there is a section entitled *mesbretha* 'estimation-judgements' attributed to the legendary judge Morann. It deals mainly with the criteria for estimating the soundness of various artefacts, and so provides an illustration of the range of expertise required by this grade of judge.

price of seven séts. Above him is the judge who is competent in both traditional law and poetry,¹⁰⁵ with an honour-price of 10 séts. The highest grade is the 'judge of three languages',¹⁰⁶ who is competent in traditional law, poetry, and canon law, and has an honour-price of 15 séts. This three-fold grading of the judge is not referred to elsewhere, and may have been peculiar to the *Nemed* school. Other texts give no indications of grading beyond references to the judge who is an *ollam* ('master, expert')¹⁰⁷ and to the 'high judge'¹⁰⁸ (which implies the existence of a lower grade or grades).

Each *túath* seems to have an official judge, the *brithem túaithe*, who is presumably appointed by the king. In the wisdom-text *Tecosca Cormaic* (§34) King Cormac advises his son Cairbre not to have an indulgent man as his judge. The close link between the king and his judge is stressed in *Críth Gablach*: the judge is in constant attendance on the king — even during the sowing season when the king has only a retinue of three.¹⁰⁹ At feasts in the king's house the judge — if the queen is absent — sits next to the king.¹¹⁰

The major function of the *brithem túaithe* is, doubtless, to advise the king on all legal decisions which he may have to make (see p. 24). But there is evidence that the *brithem túaithe* also has a public rôle independent of the direct concerns of the king. For example, few of the imaginary law-cases dealt with by Caratnia, the judge of King Conn Céchathach (see Appendix 1 No. 5), have anything to do with the legal rights and duties of a king. Similarly, *Bretha Crólige* states that unmarried women who are ineligible for sick-maintenance (see p. 133) are entitled to be paid for any injuries illegally inflicted upon them. The amount of this payment depends on their status and possessions, and is assessed by the judge (*brithem na túaithe*).¹¹¹

The references quoted above from *Críth Gablach* and *Tecosca Cormaic* suggest that a single *brithem*, appointed by the king, acts as public judge in each *túath*. Much the same situation seems to have obtained in Gaelic Ireland in post-Norman times. In an

¹⁰⁵ *brithem bérta Féne* 7 *filidechta*, CIH 1614.20 = AL v 100.1.

¹⁰⁶ *brithem tri mbérla*. UB also refers to him as *brithem téora mbreth* 'judge of three judgements' (CIH 1612.23-6 = AL v 92.16-7). For discussion, see Mac Cana, *Stud. Celt.* 5 (1970) 66-7.

¹⁰⁷ e.g. CIH 1964.39; 1965.30; LL i 3722.

¹⁰⁸ CIH 1727.35 = AL ii 16.12.

¹⁰⁹ CIH 569.25-7 = CG 535-8.

¹¹⁰ CIH 570.25 = CG 595.

¹¹¹ CIH 2295.4 = Ériu 12 (1938) 26 §33.

explanatory aside on Irish law in his 1627 translation of the (now lost) *Annals of Clonmacnoise* Conell Mageoghagan remarks (s.a. 1317) 'The brehons of Ireland were divided into several tribes and families, as the McKiegans, O'Deorans, O'Brisleans, & McTholies,¹¹² every contry had his peculiar brehan dwelling within itselfe, that had power to decide the cases of that contry & to maintaine theire controversies against their neibor-contries; by which they held their lands of the lord of the contry where they dwelt; this was before the lawes of England were of full force in this contry or land, and before the kingdome was devided into shieres.'

A *brithem túaithe* presumably derived the greater part of his income from his work on behalf of the king. The question then arises: how did other trained products of the law-schools survive? Having no official position, such men must have earned their living by arbitrating between two (or more) parties who had previously agreed to abide by their decision. Their fee, described in Heptad 25¹¹³ as *lög mbérlai* 'the payment for legal language', is calculated by the glossators as one twelfth (*aile déc*)¹¹⁴ of the amount involved in the case. Another possible source of income would have been teaching in the law-schools (see p. 242), and it is also to be assumed that most lawyers came from families with substantial holdings of land.

As one would expect, law-texts and wisdom-texts devote a great deal of attention to the qualities required in a judge. One law-text gives the three blemishes of a judge as 'foolishness, ignorance and negligence'.¹¹⁵ A legal heptad states that a judge without

¹¹² I cannot identify the McTholies. A family by the name of *Mac Tuile* or *Mac an Tuile* (angl. MacTully, MacAntully, MacAtilla, Tully, Flood) acted as hereditary physicians to the O'Reillys of Breifne and the O'Connors of Connacht (MacLysaght, *Irish Families* (Dublin 1957) 278-9) but I have found no evidence that they were also involved in law.

¹¹³ CIH 24.22 = AL v 212.3.

¹¹⁴ Anglicized as 'oylegeag', the judge's fee is mentioned in documents in the English language. Thus a jury of Waterford in 1537 found that the widow of Lord Power 'hath ordeyned an Irishe judge called Shane McClaunagh and that the said Shane useth Brehens lawe and ordreth the matters of variannce of the countie moche after her wille and commaundement, and taketh for th'use of his judgement called Oylegeag, xvi d. sterling of every mark sterling, and taketh as moche of the playntif as of the defendant' (quoted T. F. O'Rahilly, *PRIA* 36 C (1922) 114-5). As a mark is equal to 160 d., the judge's fee is here represented as one tenth rather than one twelfth of the amount involved. Conell Mageoghagan, on the other hand (*Ann. Clon.* s.a. 1317), takes the fee to be one eleventh.

¹¹⁵ CIH 573.20-1.

foundation of knowledge should not be allowed to adjudicate in Irish law.¹¹⁶ Another heptad lists the 'seven props which serve judgement'¹¹⁷ i.e. the seven main areas of legal knowledge: the law relating to the rights of sons (*cáin mac ina téchta*)¹¹⁸, the law relating to monks or monastic clients (*cáin manach*), the law relating to lordship (*cáin flatha*), the law of marriage (*cáin lánamna*), the law of kinship (*cáin cairdesa*), boundary law (*cáin críche*) and law relating to a treaty between territories (*cáin cairde*). A Middle Irish text (Appendix 1 No. 12) gives a more detailed list of the legal topics with which a judge should be familiar.

A judge must be prepared to give a pledge worth five ounces [of silver] in support of his judgement.¹¹⁹ His judgement is not valid unless he swears on the gospel that he will utter only the truth.¹²⁰ If he refuses to do so, he is no longer regarded as a judge within the *túath*, and the particular case is referred to the king or the bishop.¹²¹ If he leaves a case undecided he must pay a fine of 8 ounces [of silver].¹²²

An often repeated maxim in the law-texts is *cach brithemoin a báegul* 'to every judge his error' i.e. every judge must bear the responsibility for any mistake which he makes.¹²³ Hence, he must pay a fine of one *cumal* for an erroneous judgement.¹²⁴ On the other hand, if his judgement is challenged and he can show it to be correct, the judge is himself entitled to a *cumal* from the complainant in addition to his normal fee.¹²⁵ (For the rules governing appeal against a judgement, see p. 166.)

A mistake or oversight on the part of a judge can be remedied by his paying a fine, but for a more serious breach of duty, he is deprived of his office and his honour-price. This is his punishment, for example, if he passes judgement after hearing only one side of a case (*leth-tacrae*).¹²⁶ Such a judgement is described as an

¹¹⁶ CIH 1377.40 = AL v 352.21.

¹¹⁷ CIH 1931.35-40 = AL v 364.1-11.

¹¹⁸ See Appendix 1 No. 18.

¹¹⁹ CIH 1377.39 = AL v 352.20; CIH 1986.31.

¹²⁰ CIH 1966.1-2.

¹²¹ CIH 1966.12-5.

¹²² CIH 1969.30-1.

¹²³ e.g. CIH 292.33; 1477.29; 1966.31.

¹²⁴ CIH 1968.1.

¹²⁵ CIH 1968.2.

¹²⁶ CIH 1149.1 = AL v 352.6.

'injustice on *túatha* and leaders' (*gó thíath 7 cenn*) and leads to failure of corn and milk and fruit, as well as diseases and disasters. (Compare the similar supernatural consequences of *gáu flathemon* 'injustice of a ruler'; see p. 18). Triad 96 includes the judge who is unjust (*guach*) among the three ruins of a *túath*, and another text holds that one of the three falsehoods which God most avenges on a *túath* is a false judgement secured by bribery.¹²⁷ A false judgement may even have physical side-effects on the judge responsible. The cheeks of the legendary judge Sencha are said to have become blotched when he pronounced a biased judgement (*cilbreth*)¹²⁸ regarding legal entry by women (see p. 187). The blotches disappeared, however, when Brig¹²⁹ passed a true judgement (*fírbreth*) on the matter.

No doubt to reduce the chance of error, it is clear that many cases were decided by more than one judge. Thus, the text on the seating-arrangement of a law-court (Appendix 1 No. 71) refers to the judges (*brithemain*) who 'expound and promulgate'¹³⁰ their judgement. Later sources also indicate that it was regular for a decision to be reached by a number of judges. For example, a judgement on the ownership of land has been preserved from A.D. 1561 (CIH 1016) which was made by four members of the O'Doran family.

The term *brithem* is normally used in our sources of a trained professional lawyer, whether lay or clerical. Thus, the Old Irish text on the *brithem* (Appendix 1 No. 11) states that a free people (*sáeraicme*) should have two judges.¹³¹ In another fragment of this text¹³² they are identified as the *brithem túaite* ('for matters affecting the laity')¹³³ and the *brithem eclaso* ('for matters affecting the Church').¹³⁴ However, the term is also used of other persons of standing or expertise in the community who may be called upon to decide particular legal issues. *Bretha Crólige* states that the sick-maintenance of a woman skilled in handicraft is assessed by three *brithems*: a *brithem* who is knowledgeable about

¹²⁷ *gúbreth ar fochraic*, CIH 219.30 = AL iv 52.25-6.

¹²⁸ CIH 209.12-3 = AL iv 14.29-31.

¹²⁹ The glossator takes her to be Sencha's daughter.

¹³⁰ *tasbenad 7 foros*, CIH 601.29 = *Peritia* 5 (1986) 86 §4.

¹³¹ CIH 1965.5.

¹³² CIH 1147.17-8, 21.

¹³³ cf. CIH 1965.30-31 *ollam laich*.

¹³⁴ cf. CIH 1968.33 *ollam cléirig*.

food, a *brithem* competent in legal language, and an evaluating (?)¹³⁵ *brithem*. Of these, only the second would seem to be a professional judge; the first and third are probably — as suggested by the glossator — a physician and a neighbouring freeman who is capable of assessing the value of her work. Similarly, in *Bretha Comaithchesa*¹³⁶ the extent of damage by trespassing cattle is assessed by a neighbour of good standing (*comaithech inraig*) rather than by a professional judge.

For a discussion of law-schools and legal families from the earliest records down to the 17th century, see ch. 11.

Aigne

If the *brithem* fulfils some of the functions of a modern judge, the *aigne*¹³⁷ can be equated with the modern barrister or advocate. His job is to plead the case of his client in court, and — if successful — he is entitled to one third of his client's award.¹³⁸ Triad 178 stresses the wisdom of employing a good advocate (*dagaigne*) to plead one's case.¹³⁹

Though the texts make a clear distinction¹⁴⁰ between *aigne* and *brithem*, it is probable that both received the same basic training in the law-schools. According to Conell Mageoghagan,¹⁴¹ this was the case in 16th century Gaelic Ireland. Using the term *brehon* to cover both types of lawyer, he remarks 'This *fenechus* or *brehon* law is none other than the *sivil* law, which the *brehons* had to themselves in an obscure & unknown language, which none could understand

¹³⁵ With some doubt I take *cuimlechta* to be gen. sg. of *cuimlecht* 'advantage, fitness, etc.' For other interpretations, see Binchy's note at *Ériu* 12 (1938) 64.

¹³⁶ CIH 580.18-9 = *AL* iv 146.11.

¹³⁷ The etymology of *aigne* is obscure, see Binchy, *Celtica* 11 (1976) 24-6. The division of the *aigne* into grades (like the *brithem*, *fili* etc.) is not attested from the main O. Ir. law-texts. However, a late O. Ir. text (CIH 896.19) contains a reference to three grades. Other names for these three are given in O'Dav. 559 (CIH 1487.3-5). The second grade in the latter list (*diabolchorach* 'he who has a double contract (?)' is referred to in an apparently archaic section of the *Airecht*-text (CIH 602.1 = *Peritia* 5 (1986) 88 §7(f)).

¹³⁸ CIH 591.23-4.

¹³⁹ According to commentary to Rec. R of CCF (§7, = CIH 2200.31-3) the *aigne* is expected to choose the correct 'path of judgement' (see p. 191) for the case.

¹⁴⁰ The *aigne* and *brithem* are assigned to separate parts of the court (CIH 601.26, 33).

¹⁴¹ Ann. Clon. s.a. 1317. Conell, writing in 1627, is referring to the Irish lawyers of the preceding century.

except those that studied in the open schooles they had, whereof some were judges and others were admitted to plead as *barresters*'.

The text on distress *Di Chetharslicht Athgabála* gives a rule which is clearly designed to protect the advocate who has been misinformed about the circumstances of a case. Normally, a fine of 5 *séts* is due for illegal distress (of cattle, etc.). However, this does not apply to the 'three errors of an advocate' (*trí báeguil aigneda*): to distress where there is no liability, to distress where the debt has already been paid, and to distress from the green of a noble *nemed* who has power to protect the property taken.¹⁴²

In an article in *Celtica* 11 (1976) 18-33, Binchy suggests that a person was originally represented in court by a *fethem* (lit. 'guardian')¹⁴³ who was not a professional lawyer. Normally, he would have been the head of a kin-group (see p. 14) who spoke in public on behalf of kinsmen and other dependants. Later, Binchy argues, the legal profession took over this function in the person of the *aigne*, who may have first made his appearance in relation to the law of distress — where a layman might easily fall foul of its complex procedural rules.

By the time of the law-texts, the terms *aigne* and *fethem* seem to have much the same meaning. For example, according to *Berrad Airechta* the *aigne*'s right to his fee stems from his function as *fethem* (*fethemnas* i.e. legal representation).¹⁴⁴

PHYSICIAN

The text on status *Uraicecht Becc*¹⁴⁵ assigns an honour-price of 7 *séts* to the physician (Old Irish *liaig* or *midach*). Gradations of rank within the medical profession seem to have been of little concern to the lawyers, as the author of *Uraicecht Becc* goes on to state that a master of the profession (*ollam*) has the same honour-price as an ordinary physician.¹⁴⁶ The law-texts make a number of references

¹⁴² CIH 360.13 = *AL* i 90.30. For discussion, see Binchy, *Celtica* 10 (1973) 32.

¹⁴³ *Fethem* is taken by Thurneysen (CCF 82) and by Binchy (*Celtica* 11 (1976) 20) to be an agent noun from the root *feth-* 'cares for, attends to'.

¹⁴⁴ CIH 591.24 = *Bürgschaft* 7 §4.

¹⁴⁵ CIH 2277.40. One MS tradition of *UB* gives the physician, blacksmith, coppersmith and silversmith an honour-price of 8 *séts*, e.g. CIH 1613.12 = *AL* v 94.21.

¹⁴⁶ For a discussion of rank in the early Irish medical profession, see Binchy, *Ériu* 20 (1966) 6-7.

to the qualifications and legal duties of the physician. According to *Bretha Nemed toisech* 'three things confer *nemed*-status on a physician: a complete cure, leaving no blemish, a painless examination'.¹⁴⁷ These are obviously ideals to be striven after rather than minimum legal requirements.

It is clear that a physician required public recognition before he was free to practise medicine in the *tuath*. Heptad 6 refers to treatment by a properly qualified physician (*midach téchta*) 'at the behest of *tuath* and family [of the patient]'.¹⁴⁸ No information on the early Irish physician's training survives, but the law-texts show a fairly high degree of medical awareness (for examples, see p. 237). It is likely that the practice of medicine — like other professions — was usually hereditary. This was undoubtedly the case in post-Norman Ireland,¹⁴⁹ where certain families are known to have practised medicine over many generations under the patronage of a particular ruling dynasty. Thus, the O'Hickeys (Ó hÍceadha) were physicians to the O'Briens of Thomond, the O'Shiels (Ó Siadhail) to the MacMahons of Oriel, the O'Cassidys (Ó Caiside) to the Maguires of Fermanagh, etc.

Our main sources of information on the duties and methods of the early Irish physician are the sagas and the law-texts. As one would expect, the former contain much that is fantastic. For example, *Táin Bó Cúailnge* tells how King Conchubar's physician Fingen *fáithliaig* ('seer-physician') restored a warrior's strength even though 'the sinews of his heart had been severed so that it was rolling around inside him like a ball of thread in an empty bag'.¹⁵⁰ This temporary cure (which enabled Fingen's patient to survive for three days) was effected by the administration of a marrow-mash made from the bones of cattle.

The sagas and law-texts agree in stressing the medical importance of herbs. *Táin Bó Cúailnge* describes how a poultice of healing herbs was placed in Cú Chulainn's wounds.¹⁵¹ *Bretha Crólige* states that the purpose of herb-gardens is the care of the sick,¹⁵² and

¹⁴⁷ CIH 2219.39 = Triad 119.

¹⁴⁸ *a forcongra tuaithe, cineoil*, CIH 8.21 = AL v 142.8.

¹⁴⁹ For an account of medicine in post-Norman Ireland, see Shaw 'Irish Medical Men and Philosophers' in *Seven Centuries of Irish Learning* (ed. Ó Cuív, Dublin 1961) 75-86.

¹⁵⁰ TBC Rec.I 3250-1.

¹⁵¹ ibid. 2142-3, cf. CIH 2307.21-3 = Ériu 20 (1966) 26 §9.

¹⁵² CIH 2293.25-6 = Ériu 12 (1938) 22 §27.

refers to the great service given by garden herbs in nursing.¹⁵³ This text stresses in particular that the patient must eat a lot of *umus* (possibly celery?) 'which does not stir up sickness, prevents thirst, and does not cause infection in wounds'.¹⁵⁴

As well as applying herbs and supervising diet, there is evidence that a physician might carry out surgery on a patient. Unfortunately, no details have survived of the techniques employed — apart from impossible transplants and other operations described in the sagas. According to Heptad 6, the physician is entitled to cause bleeding during the course of the treatment; but if he cuts a joint or sinew he is obliged to pay a fine, and must at his own expense assume responsibility for the sick-maintenance of the patient.¹⁵⁵

Bretha Crólige and — to a lesser extent — *Bretha Déin Chécht* provide information on the physician's function in the case of illegal injury (for the details of the procedure see p. 129). The physician's fee in such cases is relatively high: for the more serious types of injury he is entitled to half the penalty due to the victim, and for lesser injuries he is entitled to a proportion varying between one third and one quarter.¹⁵⁶

The law-texts make no mention of veterinary medicine, but some indication of a scientific approach to animal disease is provided by the extensive list of the diseases of horses, cattle, sheep, goats, pigs, dogs and poultry.¹⁵⁷ In late commentary the god of healing Dian Cécht is accredited with a judgement that he who cures a domestic animal is entitled to one quarter of the penalty paid by the person responsible for its injury.¹⁵⁸

For the woman-physician of the *tuath* (*banliaig tuaithe*) see p. 77.

DRUID

Tradition preserved in the sagas and saints' lives indicates that the druids of pre-Christian Ireland had a similarly high status to their

¹⁵³ CIH 2299.40 = ibid. 40 §49.

¹⁵⁴ CIH 2298.15-8 = ibid. 36 §45.

¹⁵⁵ CIH 8.21-2 = AL v 142.7-8.

¹⁵⁶ CIH 2309.27-2310.32 = Ériu 20 (1966) 32-4 §§15-20. Binchy (ibid. 12) contrasts the relatively low fee paid to the judge (*brithem*). He is entitled to only one twelfth of the amount at issue in a case which he decides.

¹⁵⁷ CIH 1000.26-40. See Appendix 2 in Neil McLeod's forthcoming *Early Irish Contract Law*.

¹⁵⁸ CIH 1626.3-6 = AL iii 362.1-4.

British and Continental counterparts, the *druides* of Latin sources. The druid (Old Irish *drui*) was priest,¹⁵⁹ prophet,¹⁶⁰ astrologer,¹⁶¹ and teacher of the sons of nobles.¹⁶² According to the 6th century *First Synod of Saint Patrick* oaths were sworn in his presence.¹⁶³ By the time of the law-texts (7th-8th centuries) it is clear that the advance of Christianity had reduced his position to that of sorcerer or witch-doctor. He is discriminated against in law: *Bretha Crólige* insists that the druid (along with the satirist and brigand)¹⁶⁴ is entitled to sick-maintenance only at the level of *bóaire* (see p. 10) no matter how great his rank, privilege or other rights.¹⁶⁵ However, he retains enough influence to secure inclusion among the *dóernemed*s of *Uraicecht Becc*.¹⁶⁶

It is difficult to make any definite statement about the druids' rôle in society during our period. No records survive from them and others' accounts of their activities may be based on ignorance or prejudice. Their magic spells were certainly feared: an 8th century hymn asks God for protection from the spells of women, blacksmiths and druids.¹⁶⁷ They may also have concocted the love-potions which are mentioned in law-texts and other sources.¹⁶⁸ Some of their sorcery was effected through *corruginecht*, a term which seems to mean 'heron (or crane) killing',¹⁶⁹ and apparently involved the recitation of a satire standing on one leg with one arm raised and one eye shut (in imitation of a heron's stance?). The druids' power could be useful in war. The *Annals of Ulster* s.a. 560 = 561 (marginal addition of later date) record the use of a druidic fence (*erbe ndruad*) in the battle of Cúil Dremne. Any warrior who

leaped over it was killed. According to *Bretha Nemed toísech*, a druid can ensure victory for the weaker side in battle.¹⁷⁰

WRIGHT

The *sáer* 'wright, builder, carpenter, etc' is the craftsman who works mainly in wood.¹⁷¹ *Bretha Nemed toísech*¹⁷² gives the three things which confer status on him as 'joining without measuring or warping, carving a decorative border (?), an accurate blow'. According to *Uraicecht Becc*¹⁷³ a wright who is skilled in church-building¹⁷⁴ or mill-construction or boat-building or manufacturing articles in yew-wood¹⁷⁵ has an honour-price of 7 *séts*. If he has all four of these skills, his honour-price rises to 15 *séts*.¹⁷⁶ If he has further qualifications (unspecified in the text) he may be classed as a 'chief expert wright'¹⁷⁷ with an honour-price of 20 *séts* — greater than that of the highest grade of *brithem*.

The terms used for the fee of the wright (or other craftsman) are *dúlchinne*¹⁷⁸ and — less frequently — *foibrithe*.¹⁷⁹ There must be a distinction between them, as they are listed separately in the tract on constraint.¹⁸⁰ However, this distinction has not been explained. According to Triad 164 there are 'three payments (*dúlchinni*) in which workmen get a share: the payment for a cauldron, the payment for a mill, the payment for a house'. These are presumably jobs which a craftsman cannot manage on his own, and so must employ at least one workman (*gniae*). A craftsman is expected to

¹⁵⁹ In his records of Patrick (PTBA 132 §12) Tírechán cites a tradition that the druids (*magi*) believed in a Day of Judgement (dies *erdathe*).

¹⁶⁰ TBC Rec.I 613-5, 642-5; *Longes mac n-Uislen* (ed. Hull, New York 1949) §§3-5; PTBA 74-6.

¹⁶¹ *Bethu Bríte* ed. Ó hAodha (Dublin 1978) 1 §3.

¹⁶² TBC Rec.I 611.

¹⁶³ IP 56 §14.

¹⁶⁴ For a recent discussion of the *díberg(ach)* 'brigand, marauder', see McCone, Ériu 35 (1984) 15-30.

¹⁶⁵ CIH 2300.6-10 = Ériu 12 (1938) 40 §51.

¹⁶⁶ CIH 1612.8 = AL v 90.20.

¹⁶⁷ *Thes.* ii 357.8.

¹⁶⁸ e.g. CIH 48.11; IP 100 §6.

¹⁶⁹ See Éigse 10 (1961-63) 338. Cf. CIH 1480.12-3 (= O'Dav. 383); CIH 1482.30 (= O'Dav. 457).

¹⁷⁰ CIH 2220.14 *maidm necomluinn, dislige luirg, imdergad crich nemtiger druagh* 'a defeat against odds, . . ., [and] setting territories at war confer status on a druid'.

¹⁷¹ *Sáer* can also mean 'stone-mason'. Although stone buildings survive from our period (see ch. 4, footnote 77) the law-texts concentrate on the doubtless more common work in wood by the *sáer*.

¹⁷² CIH 2219.37-8 = Triad 118.

¹⁷³ CIH 1615.22-37 = AL v 102.24-104.12.

¹⁷⁴ *saer drondaurchaige* 'a builder of firm oak houses'. *Daurthech* 'oak-house' is used of the smallest type of church building.

¹⁷⁵ Domestic vessels — cups, bowls, etc. — were commonly of yew; see *Celtica* 11 (1976) 110 for further discussion.

¹⁷⁶ This is in accordance with the stated principle *bes ildánach bid ildírech* 'he who has many crafts has many honour-prices' CIH 1617.6 = AL v 108.11-2.

¹⁷⁷ *ollam suad sairsí*, CIH 1618.35 = AL 112.18-9.

¹⁷⁸ This term is also used of a physician's fee in PB 14.156.

¹⁷⁹ e.g. AM §50 (see note).

¹⁸⁰ e.g. CIH 370.20-2 = AL i 124.2.

finish his work by the agreed time: Triad 156 states that no delay (*taurbaid*) is allowed on a manufactured article (*aicde*).¹⁸¹

If a wright (or other craftsman) accidentally injures another during the course of his lawful work, he does not have to pay any fine or compensation — see 'accidents' p. 149. According to *Crith Gablach*,¹⁸² if a craftsman is illegally injured, he is entitled to sick-maintenance at half the rate due to whatever lord or cleric is employing him at the time.

BLACKSMITH

After the wright, the most prominent craftsman in our sources is the blacksmith (*gobae*). Like the physician, coppersmith and silversmith, his honour-price is fixed at 7 *séts* in *Uraicecht Becc*, and it does not increase even if he attains the grade of *ollam* (master). Though of lower rank than a many-skilled wright, the blacksmith seems to have occupied a position of particular esteem in the community,¹⁸³ as he makes the plough-irons, spades, etc. essential for food-production. The importance of his craft is expressed dramatically in Triad 148: 'the three renovators of the world: the womb of a woman, the udder of a cow, the moulding-block of a blacksmith'.¹⁸⁴

Perhaps because he also forges the weapons of death, the blacksmith is sometimes thought to possess supernatural powers. As we have seen, the author of an 8th century hymn asks God for protection from the spells of blacksmiths.¹⁸⁵ The supernatural aspect of this craft is indicated further by the special treatment of the blacksmith in the list of professions in *Bretha Nemed toisech*.¹⁸⁶ In the case of other craftsmen, three necessary skills are

¹⁸¹ *Aicde* is verbal noun of *ad-guid* 'asks for, commissions', and refers to any manufactured article which has been commissioned from a craftsman.

¹⁸² *CIH* 568.34-5 = *CG* 486-7. This presumably applies only to dependent craftsmen. A master craftsman — such as the chief expert wright with an honour-price of 20 *séts* in *UB* — would no doubt be maintained according to his own rank, cf. *nach fer folongar i fenechus diligid a biathad a miod a gráid* 'any man who is maintained according to Irish law is entitled to be fed according to the dignity of his rank' *CIH* 2291.29-30 = *Eriu* 12 (1938) 18 §22.

¹⁸³ For example, in *TBC* Rec. I 540-607 the blacksmith C(a)ulann entertains King Conchobar and his retinue to a feast.

¹⁸⁴ Cf., also, Triad 146.

¹⁸⁵ *Thes.* ii 357.8.

¹⁸⁶ *CIH* 2219.32-2220.16. Most of this list is repeated in Triads 116-23.

listed (see for example under 'wright' above) but in the case of the blacksmith, the author draws on pagan mythology: 'three things which confer status on a blacksmith: the cooking-spit of Nethin,¹⁸⁷ the cooking-pit of the Morrígan,¹⁸⁸ the anvil of the Dagda'.¹⁸⁹

OTHER MANUFACTURERS

According to *Uraicecht Becc*,¹⁹⁰ the silversmith (*cerd*)¹⁹¹ and coppersmith (*umaige*) are entitled to the same honour-price (7 *séts*) as the blacksmith. At a much lower level — with an honour-price of 3 *séts* — are placed the chariot-builder, engraver, and various craftsmen of uncertain identity.¹⁹² Lower still are the turner, ring-maker (?), leather-worker and comb-maker, whose honour-price is only 1 *dairt* (i.e. a yearling heifer, generally equal to $\frac{1}{2}$ *sét*). The author of *Bretha Nemed toisech* seems to be poking fun at the despised comb-maker, who must find the raw material (bones and horns) for his wares in the middens and dunghills of the community: 'three things confer status on the comb-maker: racing a dog in contending for a bone, straightening the horn of a ram by his breath without fire, chanting on a dunghill so that he summons (?) on top what there is below of antlers and bones and horns'.¹⁹³

This section of *Uraicecht Becc* concludes with the important observation that a craftsman's honour-price does not diminish if he does not practise his craft.¹⁹⁴

¹⁸⁷ Nethin (or Nechin) is described as the 'chief blacksmith of Tara' in *Suidiugud Tige Midchuita*, YBL facs. p. 419^a (= col. 245) l. 24. Cf., also *CIH* 974.18-33.

¹⁸⁸ For the fury or war-goddess Morrígan, see *RC* 12 (1891) 128, and references given at *DIL* s.v. *Morrígan*.

¹⁸⁹ For the *Dagda* 'good god' see O'Rahilly, *EIHM* 469 and Mac Cana *Celtic Mythology* (London 1970) 66-7.

¹⁹⁰ *CIH* 2277.36-40; cf. footnote 145 above.

¹⁹¹ *Cerd* in its wider sense can refer to any craftsman, including the poet, blacksmith and coppersmith, but in its narrow sense it means 'silversmith' (including goldsmith). *UB*'s distinction between *cerd* and *umaige* 'coppersmith' is also found in *Bretha Nemed toisech* (*CIH* 2219.36-37) where the technical skills of both professions are listed in triad form. Unfortunately, neither triad is readily comprehensible. I hope to discuss possible interpretations in a forthcoming edition of the *Triads of Ireland*.

¹⁹² For suggested identifications, see MacNeill, *PRIA* 36 C (1921-24) 280.

¹⁹³ *CIH* 2220.5-7 = Triad 117.

¹⁹⁴ *CIH* 1616.37-1617.3 = *AL* v 108.1-4.

ENTERTAINERS

According to *Uraicecht Becc*, the only entertainer with independent legal status (*soíre*) is the harpist (*cruit*), who has an honour-price of 5 *séts*.¹⁹⁵ He is expected to be able to play music to bring on tears (*goltraige*), to bring on joy (*gentraige*) and to bring on sleep (*súantraige*).¹⁹⁶ Other entertainers are described as belonging to subordinate professions (*fodána*), and they have no honour-price in their own right. Any offence against such a person is paid for as a proportion (not specified in the text) of the honour-price of his employer or master.¹⁹⁷

In addition to lower grades of musician (e.g. *cuislennach* 'piper', *cornaire* 'horn-player')¹⁹⁸ there are many other entertainers who perform at feasts and assemblies. *Uraicecht Becc* refers to the juggler (*clesamnach*),¹⁹⁹ jester (*fuirsire*), acrobat (*monach*), raconteur (?) (*creccaire*),²⁰⁰ professional farter (*braigetóir*) and others. The *Uraicecht Becc* list does not include two types of entertainer who feature prominently in legal and other sources: the *crossán* and the *drúth*. The former seems to have originated as the cross-bearer²⁰¹ in Church ceremonies, but no trace of this religious function is apparent from the description of his activities in *Bretha Nemed toísech*²⁰² — 'three things which confer status on a *crossán*:

¹⁹⁵ The early Irish esteemed the harp beyond all other musical instruments, cf. the proverbial saying *cáid cach céol co cruit* 'every music is sweet until [it is compared with] the harp' (TC §31.21). Triad 89 (YBL version) gives the three excellences of Ireland as 'a wise quatrain, a tune from a harp, shaving the face'.

¹⁹⁶ CIH 2219.34-5 = Triad 122.

¹⁹⁷ CIH 2281.37-2282.11 = AL v 108.24-5 is *a inchaib cáich oca-mbíat no ba aí*, is as *di-renatar* 'they are paid according to the honour of he who has them [in attendance] or who owns them'.

¹⁹⁸ Harpists, pipers and horn-players are placed in attendance on the king in CIH 570.21-2 = CG 589-90. *Bretha Nemed déidéanach* (CIH 1117.41 = Ériu 13 (1942) 23.2) disagrees with UB in including the piper among those professionals who have their own honour-price (*eneclann*).

¹⁹⁹ Accidental injury caused by a juggler during the course of his act entails no liability, CIH 288.7 = AL iii 284.19.

²⁰⁰ The same word (in the spelling *kreahkir*) is used in a 17th century Scottish source to describe the third grade of bard, who 'could discourse on any short and transient subject, told news and such modern things'. See SGS 8 (1955-58) 22 and my discussion in Ériu 37 (1986) 185-6.

²⁰¹ *Crossán* is a derivative of *cross* 'cross, crucifix'. The same semantic development has taken place in Welsh: the normal word for 'jester' in law-texts is *croesan* (from *croes* 'cross').

²⁰² CIH 2220.2 = Triad 116.

distending his cheek, distending his bag,²⁰³ distending his belly'. The *crossán* may also have amused his audience by composing a form of crude satirical verse (*crosántacht*) which later achieved some degree of respectability. Thus the *Annals of Clonmacnoise* s.a. 1137 record the death of Moyle Issa called Crossan ffyn a king (= Ó Cuinn?) who is described as 'arch-poet of Ireland in that kind of meeter which is called Crossanaght'. The word *drúth* can refer both to the congenital idiot (see p. 92) and the professional entertainer who earns a living by imitating him. It is clear from literary references that the *drúth* might also provide entertainment by telling stories²⁰⁴ or composing satirical verse.²⁰⁵

SERVANTS

The law-texts provide us with little information on the rights of servants and other menial occupations. For this reason it is not always possible to distinguish between the slave — who is the property of his or her master — and the servant — who has some degree of control over his or her destiny. It could be argued that some of the categories of person treated here belong more appropriately in the section on slaves in the next chapter.

In the household of a king or lord there are clearly a large number of servants. As some words are used for both 'servant' and 'bodyguard' (e.g. *amus*, *fergniae*) it can be assumed that these functions often overlapped. The most important functionary in such a household is the *rechtaire* 'steward, agent'²⁰⁶ who is often referred to in law-texts, sagas and wisdom-texts. He is described as 'the man who arranges seating, lying [i.e. sleeping accommodation] and food for all'²⁰⁷ and is also responsible for collecting the rent. His honour-price is half that of his employer.²⁰⁸ *Tecosca Cormaic* §34 advises a king not to employ as *rechtaire* one who has many companions. Another important person in the

²⁰³ *Tíag* 'bag' (Latin *theca*) may refer to the inflated bladder brandished by the jester, or possibly to his testicles — he may distend his scrotum for comic effect.

²⁰⁴ *Cath Almaine* ed. P. Ó Riain, Mediaeval and Modern Irish Series vol. 25 (Dublin 1978) 5.64-7.

²⁰⁵ DIL s. v. 2 *drúth*.

²⁰⁶ In later sources he is referred to as the *máer*.

²⁰⁷ TBDD 799.

²⁰⁸ CIH 1607.6 = AL v 70.25; CIH 568.31-2 = CG 484.

household is the *techt* or *techtaire* 'messenger' whose honour-price is likewise half that of his employer.²⁰⁹

Other servants carry out the various household chores. Some have particular functions, such as the *rannaire* 'carver' who divides up the food, and the *dáilem* 'dispenser' or *deogbaire* 'cup-bearer' who serves the drink. *Bretha Nemed toisech* gives the three necessary qualifications of the latter as 'filling up, emptying, self-control'.²¹⁰ It is noteworthy that there is no mention of the professional cook in the various lists of servants in lay households.²¹¹ The cook (*coic* < Lat. *coquus*) is, however, included among the seven officers of the Church.²¹²

The farmwork on the estate of a lord or king would, doubtless, have been mainly carried out by servants or slaves. At certain times of year there would also have been assistance from base clients (see p. 30) and perhaps semi-free tenants (see p. 33).

Finally, our sources devote much attention to those who are responsible for security in the house of a king or lord. Watch is kept by a look-out (*dercaid*).²¹³ According to *Críth Gablach* §46 the king himself is protected by four bodyguards (*amuis*) — one in front, one behind, and one on either side. These guards are men whom the king has freed from execution, slavery or service — they are, therefore, owned by him.²¹⁴ *Críth Gablach* advises the king not to have as bodyguard one whom he has spared in battle. Such a man's feelings of patriotism (*condalbae*) for his own *túath* might prompt him to betray or kill the king. In addition to his personal bodyguard, the security of the king's house is also maintained by the presence of a *fénnid* 'champion' and a man to guard the door (*fergniae fri forngaire ndoirseo*).²¹⁵ Each is armed with a spear.

²⁰⁹ *CIH* 568.31-2 = *CG* 484. He is also referred to as *fer taistil* 'traveller' *CIH* 382.18 = *AL* i 156.30.

²¹⁰ *Tuile, aithbe, etla nemtiger deogbhuire* *CIH* 2220.14.

²¹¹ e.g. *TC* §34; *MD* 1 (1903) 24-6; *CIH* 568.31-3 = *CG* 483-5; *CIH* 1118.1-2 = *Ériu* 13 (1942) 23.5-6.

²¹² *CIH* 2213.32-3 *Airchinnech, secnap, coic, fethigis, lubgortóir, dorsaid, muilleoir, na grád uird ealso* 'Monastic superior, prior, cook, guest-master, gardener, door-keeper, miller — the officers of the Church'.

²¹³ *CIH* 1118.2 = *Ériu* 13 (1942) 23.6, cf. *TC* §34.10.

²¹⁴ Compare *BDC* §6 where the bodyguard is treated simply as a form of currency (see p. 113). Thus if a king is wounded in the temple, the culprit must give him an unfree bodyguard with a breastplate (*fergniae dóer co luirig*), *CIH* 2306.34-5 = *Ériu* 20 (1966) 26.

²¹⁵ *CIH* 570.23 = *CG* 591-92. He is the *dorsaid* 'door-keeper' of the sagas. *TC* §34.11 advises against employing a 'bitter proud man' as *dorsaid*.

After the arrival of the Vikings, the changing nature of warfare required an increase in the number of professional soldiers attached to the household of a king or lord. They were referred to as *cethern aige* 'household war-band' (angl. *kernety*).

The sagas give great prominence to the charioteer (*arae*). For instance, the charioteer Lóeg in *Táin Bó Cúailnge* is represented as the confidant of the hero Cú Chulainn. In *Uraicecht Becc*²¹⁶ the charioteer is placed among the subordinate professions (*sodána*) with a status which depends on that of his employer. This presumably means that for an offence against a charioteer, the culprit must pay him half²¹⁷ his employer's honour-price.

The king's servants and other attendants may carry out acts of violence during the course of their duties without liability. Thus *Bretha Nemed déidenach* asks 'What are the exempt fists which are permitted in the attendances of kings? Buffoon, charioteer, champion, look-out, dispenser, cupbearer'.²¹⁸

²¹⁶ *CIH* 1617.12 = *AL* v 108.20.

²¹⁷ cf. *CIH* 568.31-2 = *CG* 483-4.

²¹⁸ *CIH* 1118.1-2 = *Ériu* 13 (1942) 23.5-6.

CHAPTER 3

LAW OF PERSONS (iii)

In this chapter I look at those categories of person who are defined as 'legally incompetent, senseless' (*báeth, éconn*). They are the woman, the child, the dependent son of a living father, the insane person, the slave, and the unransomed captive (*cimbid*). In general, such a person has no independent legal capacity, and therefore cannot make a contract without the authorisation of his or her legal guardian, carry out distress, or act as a witness or surety, etc. However — particularly in the case of the woman and the dependent son — there are important exceptions to this legal incapacity, which will be detailed below.

WOMAN

Exaggerated claims have sometimes been made about the degree of power and freedom enjoyed by women in early Irish society. It is certainly true that women feature prominently in Old and Middle Irish literature.¹ In the saga *Táin Bó Cúailnge*, Queen Medb is the real leader of Connacht, and occasionally takes part in the fighting herself.² Her husband King Ailill generally defers to her dominant personality, and turns a blind eye to her sexual adventures.³ In the Mythological Cycle of tales, Otherworld women also have an important and sometimes aggressive rôle; thus, in *Serglige Con Culainn*⁴ two green-clad women from the Otherworld beat the hero Cú Chulainn with whips until he is nearly dead. In the voyage-tale *Imram Curaig Maile Dúin*, one of the Otherworld islands on which Máel Dúin lands is ruled over by a beautiful queen with

¹ The *Banshenchas* (ed. M. E. Dobbs, *RC* 47 (1930) 283-339; 48 (1931) 163-234; 49 (1932) 437-89), a 12th century collection of mainly genealogical lore about women, is unique in early European literature.

² *TBC* Rec. I 3202-11.

³ *TBC* LL 37.

⁴ *SCC* 71-8.

seventeen daughters. She is the widow of the king of the island who had died without leaving a male heir (*ferchomarbae*). Each day she goes to give judgement and settle the disputes of her subjects.⁵

But in real life, the power of women was undoubtedly much more restricted. The annals provide no instances of a female political or military leader. Indeed, the male imagery which surrounds the office of kingship (see p. 18) would seem to preclude even the possibility of a female ruler. In non-literary sources I know of only one dubious reference to a female ruler or military leader. This is in a difficult passage in the law-text *Bretha Crólige*⁶ which lists some categories of women who are particularly important in the *tuath*, including 'the woman who turns back the streams of war' (*ben sues srutha cotha for cula*) and 'the hostage ruler (?)' (*rechtaid géill*). The former could refer to a female military leader, though the glossator may be right in identifying her as an abbess⁷ or female hermit 'who turns back the many sins of wars through her prayers'. The term *rechtaid géill* is equally obscure: the glossator takes it to refer to a woman ruler who takes hostages, citing Queen Medb as an example.

Probably the most accurate picture of the actual position of women in early Irish society is provided by the wisdom-texts, especially the *Triads of Ireland*.⁸ Reticence, virtue and industry seem to be the qualities most admired in a woman. Triad 180 gives the three steadiness of good womanhood as 'a steady tongue, a steady virtue, a steady housewifery'.⁹ The types of female behaviour most consistently censured are sexual promiscuity,¹⁰ making spells¹¹ or illegal satires (see p. 50) and thieving.¹² Feminine beauty — so often enthused over in the sagas — does not count for much in the wisdom-texts, though Triad 88 gives the three glories of a gathering as 'a beautiful woman, a good horse and a swift hound'.

⁵ *do breithemnacht, do etarcert na tuaithe, Immr.* 645 = *RC* 10 (1889) 66.

⁶ *CIH* 2294.35-2295.4 = *Ériu* 12 (1938) 26 §32.

⁷ There are frequent references to abbesses in the annals, e.g. *AU* s.a. 771, 773, 778, 780.

⁸ *App. 2 No. 3.*

⁹ cf. *Triads* 75, 76.

¹⁰ *Triads* 83, 185.

¹¹ *Triad* 185, cf. *Thes.* ii 357.8.

¹² *Triad* 185; cf. *CIH* 2298.9-10 = *Ériu* 12 (1938) 34 §44.

Marriage

Most legal references to women relate to marriage, and this is the subject of a special text *Cáin Lánamna* (Appendix 1 No. 17). Nine forms of sexual union (*lánamnas*) are distinguished.¹³ At the top of the list the author places the 'union of joint property' (*lánamnas comthinchuir*) into which both partners contribute movable goods (*tinchor*). The woman in such a union is called a 'wife of joint authority' (*bé cuitchernsa*). Next come the 'union of a woman on man-property' (*lánamnas mná for ferthinchur*) into which the woman contributes little or nothing, and the 'union of a man on woman-property' (*lánamnas fir for bantinchur*) into which the man contributes little or nothing. The fourth category is the 'union of a man visiting' (*lánamnas fir thathigtheo*) — a less formal union in which the man visits the woman at her home with her kin's consent. In the fifth union, the woman goes away openly with the man, but is not given by her kin. In the sixth union she allows herself to be abducted (*lánamnas foxail*) and in the seventh she is secretly visited (*lánamnas táidi*) — in both cases without her kin's consent. The eighth and ninth unions can in no sense be described as marriage, as they are union by rape (see p. 134) and the union of two insane persons (see p. 93).

This picture of early Irish marriage is further complicated by the fact that polygyny (i.e. the possession of more than one wife at the same time) was permitted, and probably widespread.¹⁴ So a man could, for example, have one wife in the first form of marriage, and another woman whom he visits with the consent of her kin in the fourth form of marriage. The sons of both unions would have rights of inheritance (see p. 102) but their mothers would not have equal status. Most texts distinguish two¹⁵ grades of wife: a man's chief

¹³ For discussion, see Thurneysen, *SEIL* 16-75. There are two slightly different versions of this list in *Cáin Lánamna*: that of §4 with ten forms of union, and that of §§5-36 with nine forms. See also Charles-Edwards, *WLW* 37-8.

¹⁴ The large numbers of sons begotten by kings (see *CGH* *passim*) indicate widespread polygyny among royalty.

¹⁵ *Bretha Crólige*, on the other hand, distinguishes three ranks of wife. Thus, when on sick-maintenance, a chief wife (*ben hi coir lanamnusa*) is entitled to half the amount of food which would be due to her husband (the same as her proportion of his honour-price, *CIH* 427.2 = *IR* 64 §4), a second wife (*ben tónaise*) is entitled to one third, and any other wife (*cach ben olchena*) to one quarter (*CIH* 2301.21-4 = *Ériu* 12 (1938) 44 §56).

wife or *cétmuinter* (no doubt normally married to him in one of the first three forms of union) and his concubine (*adaltrach*¹⁶ or *dormun*). The legal connection of a concubine with her husband is looser than that of a chief wife. Hence a concubine may choose whether she wishes to be under the rule (*cáin*) of her son, her kin or her husband.¹⁷ A chief wife, on the other hand, must be under the rule of her husband unless he fails to carry out his obligations in the marriage. Generally, the law-texts assign to the concubine half the status and entitlements of the chief wife. Thus, if a man rapes the chief wife of another he must pay him full body-fine (*éraic*), whereas if his victim is a concubine, he only pays half body-fine.¹⁸

As would be expected, the Church opposed polygyny,¹⁹ but with limited success. As we have seen above (p. 2) the author of *Bretha Crólige* managed to find justification for the practice in the Old Testament: 'there is dispute in Irish law as to which is more proper, whether many sexual unions or a single one: for the chosen people of God lived in plurality of unions, so that it is not easier to condemn it than to praise it'.²⁰ Marriages — particularly those of the more formal types — were no doubt usually arranged by the families of the couple,²¹ and the betrothal (*airnaidm*) was a contract sustained by sureties representing both families.²²

If a child is born of a union forbidden by the girl's father, the man alone is responsible for rearing it.²³ The same applies if a man abducts a woman in defiance of her father or kin (*lánamnas foxail*).²⁴ If a child is born of a union forbidden by the man's father, the girl has to rear it by herself (presumably at her parents' home).²⁵

As in other societies, the husband is felt to purchase his bride from her father — hence the use of the expression 'purchasing a

¹⁶ from Lat. *adultrix* 'adulteress'.

¹⁷ *CIH* 443.21-4 = *IR* 34 §37.

¹⁸ *CIH* 519.1-4 = *SEIL* 71 §35.

¹⁹ *IK* bk. 46 ch. 18 *De concubinis non habendis cum legitima uxore* 'on not having concubines as well as a legitimate wife'.

²⁰ *CIH* 2301.35-8 = *Ériu* 12 (1938) 44 §57.

²¹ The sagas and saints' lives contain many references to arranged marriages, e.g. *FR* 10-6, 65-7; *VSC* 93b.

²² *CIH* 25.13-5 = *AL* v 214.26-30; *CIH* 47.21-2 = *AL* v 292.16-9.

²³ *CIH* 20.29 = *AL* v 198.4-5.

²⁴ *CIH* 442.8-9 = *IR* 28 §32.

²⁵ *CIH* 22.1 = *AL* v 202.3-4 (inserting *mac* before *beiris*).

wife' (*creic céimuintire*).²⁶ The husband gives a *coibche*²⁷ 'bride-price' to his bride's father.²⁸ It is clear that the bride is entitled to a portion of the *coibche*, but if she attempts to conceal from her father the fact that she has received a *coibche* she forfeits her share.²⁹ The terms *tinnscrá*³⁰ and *tochra*³¹ (both containing the root *cren-* 'to buy') are also used with apparently the same meaning as *coibche*. If a marriage breaks up through the fault of the husband (see below under 'divorce'), the *coibche* is retained by the bride's father, but if the fault lies with the bride, it must be returned to the husband.

Our sources provide little information on the property contributions made by the wife's kin,³² and there appears to be no Old Irish term corresponding to 'dowry' (Latin *dos*).³³ However, as we have seen, in some marriages there is a substantial contribution from both sides (*lánamnas comthinchuir*), and in others the property comes mainly — or even wholly — from the wife's side (*lánamnas fir for banthinchur*). For further discussion, see D. Ó Corráin 'Marriage in early Ireland' in *Marriage in Ireland* ed. Art Cosgrove (Dublin 1985) 5-24.

Other early legal systems lay great stress on bridal virginity, and the bride who is not found to be a virgin may be subjected to various forms of humiliation,³⁴ financial loss,³⁵ or even death.³⁶ The surviving Irish law-texts do not refer to the legal consequences of non-virginity in a bride. However, Triad 126 implies that a chief wife is normally expected to be a virgin — 'the three drops of a

²⁶ CIH 2193.5-6 = ZCP 15 (1925) 311 §7.

²⁷ later generally angl. *caif* or *cayf*.

²⁸ *cach athair a chétoibche* 'to every father his [daughter's] first bride-price' CIH 294.40 = AL iii 314.5.

²⁹ CIH 222.7-8 = AL iv 60.10-2. In the case of a bride's father not being alive, the head of her kin gets half the *coibche* if it is her first marriage, a third if it is her second marriage, or a quarter if it is her third marriage, CIH 222.28-223.2 = AL iv 62.9-11.

³⁰ This term is common in the sagas and wisdom literature, but less so in the laws (CIH 1235.4; 2198.22).

³¹ *Tochra* is also common in the sagas (SEIL 121-2) and occasional in the laws (CIH 1237.17). It passed into Scots in the form *tocher* 'dowry'.

³² For the payments made in cases of marriage between partners of differing social class, see p. 73.

³³ In later Irish *spréidh* is used in this meaning.

³⁴ e.g. WLW 152²⁹, 166 §47⁵.

³⁵ ibid. 152²⁶, 166 §47³.

³⁶ Deuteronomy 22: 20-1.

céimuinter: a drop of blood (presumably at the rupture of the hymen on the wedding night), a drop of sweat, a tear-drop.³⁷ It is clear from the massive quantity of genealogical material which has survived from the early Irish period that the paternity of a man — particularly if he were of royal lineage — was of great significance. It can be assumed that a society which set such store on paternity also had a high regard for bridal virginity and marital fidelity (at least in the short term).

Our sources often stress that husband and wife in the more formal types of union should be of the same social class. So, according to *Críth Gablach*, a *bóaire* is expected to marry the daughter of a man of equal rank.³⁸ The financial burden of a socially-mixed marriage falls more heavily on the family of the lower class partner.³⁹ If the son of a *bóaire* marries the daughter of a lord, *his* family supplies two thirds of the cattle. On the other hand, if the son of a lord marries the daughter of a *bóaire*, *her* family supplies two thirds of the cattle. In the light of such regulations it is not surprising that Triad 71 regards it as a misfortune for the son of a commoner (*aithech*) if he marries the daughter of even the lowest grade of lord (*ócthigern*).

For a wife's share in the responsibility for rearing her offspring, see under 'child' below p. 85.

Divorce

Divorce (*imscarad*) is permitted for many reasons, and much of *Cáin Lánamna* (§§26-33) deals with the division of property at a divorce. The share due to each depends on the status of the marriage, the amount of property brought into it by each partner, and the proportion of the household work (*aurgnam*) borne by each.

Heptads 3⁴⁰ and 52⁴¹ list the circumstances in which a wife may divorce her husband and retain her *coibche* 'bride-price'. If he

³⁷ Cf. *Senbríathra Fíthail* §11 (RC 45 (1928) 56 (N Version) *Cid as dech do mnáib?*

Ní hanna: ben maith nad fitir fer romat ríam 'What is the best sort of wife? Not hard: a good woman whom a man has never known before you'.

³⁸ CIH 780.15-6 = CG 199.

³⁹ CIH 46.18-22 = AL v 286.2-7.

⁴⁰ CIH 4.33-5.32 = AL v 132.1-8.

⁴¹ CIH 47.21-48.26 = AL v 292.16-27.

repudiates her for another woman, she is free to leave him — but she has the right to stay on in the house if she wishes. She may also leave him if he fails to support her, if he spreads a false story about her, if he circulates a satire about her, or if he has tricked her into marriage by sorcery.⁴² A husband may strike his wife to correct her, but she may divorce him if his blow causes a blemish.

Various sexual failings on the part of the husband also provide grounds for divorce. She may divorce him if he is impotent ('because an impotent man is not easy for a wife') or if he becomes so fat as to be incapable of intercourse.⁴³ Practising homosexuality is another reason for divorce: a wife may divorce her husband if he spurns the marriage bed and prefers to lie with boys. A man who is sterile can also be divorced, though it is not clear how this sterility could be proved — unless the wife has previously shown her fertility by bearing a child to another man (for another solution to the problem of male infertility in a marriage, see under 'separation' below). A husband must be reticent about the intimate details of his sexual relationship with his wife: she may divorce him if he is indiscreet 'because it is not right for a man who tells of bed to be under blankets'.⁴⁴ Finally,⁴⁵ she may divorce her husband if he is in holy orders, because it is not easy for him to reconcile his mutual obligations (*cuindliged*) to wife and to Church.

The law-texts adopt a very severe line towards the woman who leaves her husband without just cause: in Heptad 51 she is classed as 'an absconder from the law of marriage'.⁴⁶ Such a woman has no rights in society, and cannot be harboured or protected by anybody, of whatever rank.⁴⁷ Even in cases where a woman has adequate ground for divorce, she forfeits her *coibche* if she leaves her husband before a recognised period of time.⁴⁸

⁴²cf. IP 78.29-31.

⁴³ni *tualaing toile nach rochollach*, CIH 5.24-5 = AL v 132.7-8.

⁴⁴ni *cóir fo brataib fer forinnet coemdaí*, CIH 1883.36. This phrase is omitted in the Rawlinson B 487 version of this heptad (CIH 4.33-5.32).

⁴⁵I omit another obscure category of husband, the *fer coirthé* 'man of stone (?)', who can be divorced because 'it is not right for a son to be on the road' (CIH 5.24 = AL v 132.6, cf. CIH 905.11; 1549.36). The glossators take him to be a landless man who cannot support his child, CIH 5.21; 1884.1-2.

⁴⁶ben *aslúi a cáin lánamna*, CIH 47.2-3 = AL v 290.23.

⁴⁷CIH 451.24-5 = BB §39.

⁴⁸ria ré téchtaí, CIH 2198.22-3 = ZCP 15 (1925) 356 §44. The length of time is not specified, and probably varied in accordance with the circumstances of the husband's offence.

An Old Irish heptad quoted in a gloss on *Gúbretha Caratniad* §44 gives seven grounds on which a husband may divorce his wife.⁴⁹ They include unfaithfulness, persistent thieving, inducing an abortion on herself, bringing shame on his honour, smothering her child, and being without milk through sickness.⁵⁰

Separation

An expanded heptad (no. 53) lists eleven circumstances in which a married couple may separate without fine or penalty from either partner.⁵¹ Apart from the separation of death, and the parting of a husband to enter the priesthood (*gabáil bachla*),⁵² these separations are normally of a temporary nature. In most cases it is the husband who leaves, e.g. to go on pilgrimage, to seek a friend across a boundary, to enter a ship, or to take part in a vengeance-slaying (*dígal*). However, either partner may be brought away from home on sick-maintenance if illegally injured by a third party. Similarly, if either partner is infertile, the other may go away 'to seek a child'. This seems to mean that the husband of a barren woman may leave her for a while to impregnate another woman in a lower form of marriage. The wife of an infertile husband (if she does not wish to divorce him as provided for in Heptad 3) may likewise leave him temporarily so that she may become pregnant by another man. In such cases the resultant child is treated as the husband's.⁵³

Legal capacity of women

The laws reveal a society in which a woman is generally without independent legal capacity. Thus Heptad 49 debars her from acting as a witness,⁵⁴ and she normally cannot make a valid contract without the permission of her superior (usually her husband or

⁴⁹CIH 2198.24-6 = ibid. §44 gl. 1.

⁵⁰I do not understand the seventh ground *belletus cach reta*, cf. CIH 1476.33 = O'Dav. 278.

⁵¹CIH 48.27-32 = AL v 296.13-20.

⁵²See DIL s.v. *bachall*.

⁵³CIH 294.13 = AL iii 310.16 *cach fuich(e) a mac co ndergelltar de* 'to every cuckold belongs his [i.e. his wife's] child unless it is bought from him [by the actual father]'.

⁵⁴CIH 45.3 = AL v 284.4; cf. IK bk. 16 ch. 3.

father).⁵⁵ Here Irish law agrees with other early legal systems: according to the Indian *Laws of Manu*⁵⁶ 'her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never fit for independence'. Strikingly similar sentiments are expressed in the Old Irish *Díre*-text: 'her father has charge over her when she is a girl, her husband when she is a wife, her sons when she is a [widowed] woman with children, her kin when she is a 'woman of the kin' (i.e. with no other guardian), the Church when she is a woman of the Church (i.e. a nun). She is not capable of sale or purchase or contract or transaction without the authorization of one of her superiors'.⁵⁷

However, in spite of such uncompromising general statements,⁵⁸ it is clear that a woman's legal incapacity is not total. In certain circumstances her evidence may be valid (see p. 207). A woman also has the right to give items of her own personal property (such as her embroidery needle, work-bag or dress) as a pledge on behalf of another, and is entitled to a fine and interest if her pledge is allowed to become forfeit. But she cannot give pledges of cattle, horses, silver, gold, copper or iron without her husband's permission.⁵⁹

A woman can inherit a life-interest in land when her father has no sons. She is called the *banchomarbae* 'female heir', and — like any male land-owner — has the right to distrain goods (see p. 177) and to make formal legal entry (see p. 187) into her rightful inheritance. If she marries a landless man or a stranger from another *túath*, the normal rôles of husband and wife are reversed:⁶⁰ she makes the decisions and pays his fines and debts.⁶¹ After her death, the property of a *banchomarbae* normally reverts to her own kin and does not pass to her husband or sons.

In a marriage of joint property, either partner can dissolve a contract of the other, except in the case of certain essential or beneficial contracts (listed in *Cáin Lánamna* §5).⁶² Even in a marriage into which a woman has brought little or no property, she can 'disturb' (i.e. impugn) her husband's disadvantageous contract

⁵⁵e.g. *CIH* 351.26 = *AL* i 52.2; cf. *Triads* 150, 151.

⁵⁶*LM* ix 3; *SEIL* 223.

⁵⁷*CIH* 443.30-444.6 = *IR* 35 §38.

⁵⁸They are collected by Binchy in *SEIL* 211-4.

⁵⁹*CIH* 464.27-9 = *AL* v 384.2-5.

⁶⁰*CL* §29 (*CIH* 515.23-4 = *SEIL* 57).

⁶¹*CIH* 427.1-6 = *IR* 64 §4.

⁶²*CIH* 505.35-506.26 = *SEIL* 18-9.

(*dochor*), provided she is a chief wife.⁶³ If she is a wife of lower status, she can still impugn contracts relating to food, clothing, cattle and sheep.⁶⁴

Apart from the possession of property, there are other factors which may confer independent legal capacity on a woman. I have referred above to the list in *Bretha Crólige* §32 which includes various women of particular importance in the *túath*. If such a woman counts herself as not being dependent on a husband, her award in a case of illegal injury is assessed by the judge of the *túath* in proportion to her dignity (*míad*) and possessions.⁶⁵ In addition to 'the woman who turns back the streams of war' and 'the hostage ruler' already discussed, this list refers to other women of special status or skill: the female wright (*bansáer*), the woman-physician of the *túath* (*banliaig túaithe*),⁶⁶ the woman revered by the *túath*,⁶⁷ and the woman who is abundant in miracles (?).⁶⁸

The influence of the Church must have helped to raise the status of women in early Irish society. In his *Confessio* (5th century) Saint Patrick lays great stress on his conversion of women of all classes to Christianity. Women feature largely in later accounts of his mission: the 7th century lives of Patrick by Muirchú and Tírechán refer to the conversion of many women, including the two daughters of King Loiguire of Tara.⁶⁹ Some were consecrated as nuns, e.g. Lassar daughter of Anfolmth,⁷⁰ Senmeda daughter of Énde,⁷¹ Adrocht daughter of Tálán,⁷² etc. Tírechán also mentions Brigit, reputed foundress of the monastery of Kildare.⁷³ However, it seems more likely that Brigit was a pagan goddess whom hagiographers transformed into a national saint.⁷⁴

⁶³*CL* §22 (*CIH* 512.29-31 = *ibid.* 46).

⁶⁴*CL* §21 (*CIH* 512.22-4 = *ibid.* 45).

⁶⁵*CIH* 2295.3-4 = *Ériu* 12 (1938) 26 §33.

⁶⁶Her main work may have been midwifery. Gloss 7 to §32 (*Ériu* 12 (1938) 26 = *CIH* 2295.10-1) recte *ben fritháileas mnaí bíis ac lámnad* 'the woman who attends a woman at childbirth' must have originally referred to the *banliaig*.

⁶⁷*airmitnech túaithe*.

⁶⁸*maínech ferta* (gl. i. in *banogh* i. in *bandeorad dé* 'i.e. the female virgin i.e. the female hermit').

⁶⁹*PTBA* 144.

⁷⁰*ibid.* 172.25.

⁷¹*ibid.* 150.14.

⁷²*ibid.* 148.21.

⁷³*ibid.* 136.15.

⁷⁴Thurneysen, *KZ* 28 (1885) 146; O'Rahilly, *EIHM* 38.

The law-texts recognise the special position of the nun. According to *Bretha Nemed déidenach* 'at a proper age a girl should be betrothed to God or to a man'.⁷⁵ A nun has certain legal rights not possessed by laywomen. Hence the evidence of a nun may be accepted against that of a cleric,⁷⁶ though a woman is not normally entitled to give evidence (see p. 207).

A queen (*rígain*) does not seem to have enjoyed any extra legal powers independent of her husband. She has the right to give pledges, but in this she is no different from other freewomen. The author of the text on pledge-interests (*Bretha im Fuillema Gell*) attaches more significance to the use of the articles pledged by women than to the rank of the donor. He states that the interest on the needle of an embroideress extends up to an ounce of silver 'because the woman who embroiders earns more profit even than queens'.⁷⁷ According to the *Díre*-text, the mother of a king, bishop or sage (*sui*) has the same honour-price as her son, provided that she is fully law-abiding.⁷⁸

Offences by women

If a crime is committed or debt incurred by an unmarried woman it is normally paid by her father (or by her kin if he is dead). In the case of a married woman, the status of the marriage determines who pays: the more formal the marriage the greater the responsibility assumed by her sons. So, if a chief wife incurs a liability, two thirds are paid by her sons and only one third by her kin.⁷⁹ If a chief wife has no sons, her husband and her kin must each pay half.⁸⁰ If she is a wife of lower status — but her marriage is recognised and bound by her kin⁸¹ — her liability is evenly divided between her sons and her kin. But if the marriage is merely

⁷⁵ CIH 1117.24-5 = *Ériu* 13 (1942) 22.17-8.

⁷⁶ CIH 2197.5-6 = ZCP 15 (1925) 345 §35.

⁷⁷ CIH 464.2-3 = *AL* v 382.3-4.

⁷⁸ *IR* 10 = CIH 1964.13-5. Compare the special reverence for saints' mothers indicated by the Mid. Ir. text 'Mothers of Irish Saints' at *LL* vi 51933-52155.

⁷⁹ CIH 441.6-7 = *IR* 27 §28. This corresponds to the division of her inheritable assets (*dibad*) and her body-fine (*éraic*) if she is killed. Her sons receive $\frac{2}{3}$ and her kin $\frac{1}{3}$.

⁸⁰ CIH 441.10-1 = *ibid.* §29.

⁸¹ *ben aititen ara-naisc fine* 'a recognised wife whom the kin binds' *ibid.* §30. The *Díre*-text's classification of marriages does not correspond exactly with that of *Cáin Lánamna*.

recognised without being bound,⁸² two thirds of any liability are paid by her kin, and one third by her sons. Finally, if the wife has been abducted against the will of her father or kin, all her liabilities must be paid by her abductor.⁸³

In certain circumstances a woman may injure another woman without incurring liability. Thus, injuries inflicted in a female fight are not actionable.⁸⁴ Similarly, a chief wife is allowed to inflict injury on her husband's second wife (*adaltrach*).⁸⁵ The texts do not make it clear for how long this right lasts, but a gloss says that the chief wife is free to inflict any non-fatal injury for a period of three days (presumably after her husband's second marriage).⁸⁶ In retaliation, the second wife can only scratch, pull hair, speak abusively or inflict other minor injuries.⁸⁷

For the punishment of women, see p. 220.

Offences against women

In early Irish law, a crime against a woman is normally regarded as a crime against her guardian (husband, father, son, head of kin) and consequently the culprit must pay him his honour-price or a proportion thereof.⁸⁸ The Church sought to make it a more serious offence to kill a woman than to kill a man. *Cáin Adomnán* (Appendix 1 No. 74) lays down very heavy penalties for the murder of a woman. The culprit has a hand and foot cut off, is then put to death and his kin pays 7 *cumals* (the normal *éraic* of a freeman). Alternatively, he may do 14 years' penance and pay double *éraic* of 14 *cumals*.⁸⁹ The fines for injury to a woman are similarly heavy.⁹⁰ Whether the Church actually succeeded in increasing the fines for violent offences against women is unknown, as no records of particular cases have been preserved.

For the offence of rape, see p. 134.

⁸² *ben aititen nad aurnascar nad forngarar* 'a recognised wife who is not bound or forbidden' *ibid.* §31.

⁸³ *ibid.* §32. This is the *lánamnas foxail* of *CL* §34. The abductor is entitled to none of her assets: her *dibad* and her *éraic* go to her kin.

⁸⁴ CIH 289.16 = *AL* iii 290.1.

⁸⁵ CIH 7.29 = *AL* v 142.6; CIH 289.31 = *AL* iii 292.1.

⁸⁶ CIH 8.15-6 (contrast 8.9-10).

⁸⁷ CIH 8.18-9.

⁸⁸ CIH 779.5-8 = *CG* 121-7; CIH 519.4 = *SEIL* 71 §35.

⁸⁹ CA §33.

⁹⁰ *ibid.* §§44, 50.

SON A LIVING FATHER

Berrad Airechta distinguishes three categories of *macc béo-athar* 'son of a living father'.⁹¹ Of these, the *macc té* (lit. 'warm son') is a dependent son who is 'subject to proper controls'. He has 'no power of feet or hand' i.e. his father directs his movements and actions. He cannot act as a valid contractual witness (*roach*), eyewitness (*fiadu*) or surety (*ráth*).⁹² Except with his father's consent, his contract is generally invalid.⁹³ However, he can annul a contract made by his father which might endanger his own survival. Hence, the father cannot dispose of a valuable which might be used as a pledge for his son's life. Similarly, he cannot alienate land or other property so that his son is unable to make a living.⁹⁴

A second category of son is the 'cold son' (*macc úar*).⁹⁵ He has failed in his duty to provide filial service⁹⁶ and obedience (*goire* lit. 'warmth') to his father.⁹⁷ His contract is invalid, and he cannot be harboured or protected by anyone.⁹⁸ There is no legal support for anyone who gives a pledge⁹⁹ or acts as a surety (*ráth*¹⁰⁰ or *aitire*¹⁰¹) on his behalf after he has been proclaimed by his father.

⁹¹ CIH 593.26-34 = *Bürgschaft* 11 §36.

⁹² CIH 989.5-10 = *DAC* §57.

⁹³ CIH 351.25-6 = *AL* i 52.1; cf. CIH 536.23-4 = *AL* iii 58.6-7 *ni cria . . . do mac béo-athar* 'do not buy from the son of a living father'.

⁹⁴ CIH 227.7-10 = *AL* v 436.22-7.

⁹⁵ He is to be equated with the *macc ingor* of other texts, e.g. CIH 534.26 = *AL* iii 52.17; CIH 779.8 = *CG* 126-7. In *Celtica* 3 (1956) 228-30 Binchy demonstrates that the Welsh legal term *mab anwar* 'undutiful son' corresponds in both form and meaning to O.Ir. *macc ingor*.

⁹⁶ The story of Librán in Adomnán's *VSC* (87a-92b) suggests that this duty is normally shared by a man's sons. When Librán returned home after seven years' penance in Iona, his brothers insisted that he should carry out the filial service (*pietas*) which he had so long neglected. On his father's death shortly afterwards, most of his brothers urged him to undertake the care of his mother. However, a younger brother volunteered to release him from this obligation, and he was then free to return to monastic life.

⁹⁷ The duty of *goire* may also extend to a daughter. *BB* §39 states that a son or daughter who fails to look after a father or mother is classed as an *éliudach* 'evader of the law' and cannot be given protection, even by a high-ranking *nemed* (CIH 451.25). A father who is a criminal, however, is not entitled to *goire* from either son or daughter.

⁹⁸ CIH 593.27-9 = *Bürgschaft* 11 §36; cf. CIH 14.8-9 = *AL* v 168.12-3; CIH 46.39 = *AL* v 290.20.

⁹⁹ CIH 18.13 = *AL* v 186.5; CIH 29.10 = *AL* v 228.15-6.

¹⁰⁰ CIH 28.10-1 = *AL* v 224.2-3.

¹⁰¹ CIH 29.1-2 = *AL* v 228.2-3.

The third category of son is the *macc ailte* 'reared son'. *Berrad Airechta* defines him as a son who has been allowed independence (*macc sórléicthe*). His father has permitted him to choose whether he wishes to devote himself to a profession, or to husbandry. He is competent to make any contract which does not detract from the value of the inheritance i.e. which is a *sochor* 'advantageous contract' (see p. 159). Heptad 50 provides a list of such contracts, all of which are valid without his father's permission.¹⁰² These include the renting of land when there is insufficient room for him to farm on his father's land, a co-ploughing agreement when he does not plough with his father, the purchase of necessary household goods, a marriage-contract with a wife of equal rank,¹⁰³ and other contracts 'whose advantages are greater than their disadvantages'. In cases where the father is entitled to overturn the contract of an independent son, he must register his opposition within three days — otherwise the contract becomes fixed.¹⁰⁴

CHILD

Two law-texts deal mainly with children: *Cáin Íarraith* (on fosterage) and *Maccslechta* (on inheritance). Unfortunately, only some portions of the former survive, and the latter is even more fragmentary. Consequently, our picture of the legal position of the early Irish child must be built up largely from scattered references in other law-texts. An additional difficulty is that the law has only a very limited concern with the internal affairs of the family. How a man treated his child is mainly a matter for himself, his kin and his wife's kin.

Legal capacity of children

A child under fourteen has no legal responsibility nor any right to independent legal action. *Gúbretha Caratniad*¹⁰⁵ cites an insignificant exception: a child's agreement is held to be legally valid if it is merely the exchanging of articles of equal value.

At the age of fourteen a girl has normally completed her period

¹⁰² CIH 45.17-46.22 = *AL* v 284.25-286.7.

¹⁰³ cf. CIH 2193.5-6 = *ZCP* 15 (1925) 311 §7.

¹⁰⁴ CIH 1348.25-6 = *DAC* §1.

¹⁰⁵ CIH 2195.24-5 = *ZCP* 15 (1925) 332 §24.

of fosterage (see below). It is then time for her to be betrothed to God or to a man,¹⁰⁶ after which her legal capacity is that of a nun or wife.

Our sources devote a fair amount of attention to the legal capacity of a male freeman between fourteen and twenty, but it is not easy to interpret this information. The text on status *Críth Gablach*¹⁰⁷ distinguishes two categories of *fer midboth* (or *-botha*),¹⁰⁸ a term which probably means 'man of middle huts' i.e. a youth who occupies temporary habitations on his father's land. The lower *fer midboth* — whom Binchy takes to be aged between fourteen and seventeen — has an honour-price worth a yearling heifer (*dairt*).¹⁰⁹ He can act as a surety, oath-helper or witness up to the value of his honour-price. He can provide legal protection (*snádud*) for a boy of his own rank to the border of the territory.

The higher *fer midboth* — whom Binchy takes to be aged between seventeen and the age of 'beard-encirclement' i.e. twenty — has an honour-price worth a two year-old heifer (*colpthach*). He is more prosperous¹¹⁰ than the lower *fer midboth*, and can act as a surety, oath-helper or witness up to the value of his honour-price. He can likewise provide legal protection for a boy of his own rank to the border of the territory. Unlike the lower *fer midboth* he can accept a fief worth 5 *séts* from a lord.

If a boy under twenty inherits his share of the kin-land and thus acquires the property qualifications of a *bóaire* ('strong farmer'), the status of his oath (*luge*) still remains at the level of a *fer midboth*.¹¹¹ Conversely, the status of the oath of a man over twenty

¹⁰⁶ *CIH* 1117.24-5 = *Ériu* 13 (1942) 22.17-8.

¹⁰⁷ *CIH* 777.20-36; 778.5-21 = *CG* 23-46; 63-86. The other main text on status, *Uraicecht Becc*, uses different terminology in its account of the legal capacity of a male between childhood and adulthood. The author distinguishes only one category of *fer midboth*, with an honour-price worth a yearling heifer (*CIH* 1610.21 = *AL* v 84. 20-21). Below him he places, in descending order, the *gairid* with an honour-price worth one sheep, the *flescach* with an honour-price worth one lamb, and the *inol* with an honour-price worth a fleece. *Bretha Déin Chécht* §13 (*CIH* 2308.34-7 = *Ériu* 20 (1966) 30) has yet another arrangement descending from the *fer midboth* to the *bruider*, and then to the *inol*.

¹⁰⁸ This term is spelt *fer midbotha* in *CG* (*CIH* 777.16, 20; 778.9, 16) but in other texts it is *-bod* (e.g. *CIH* 2308.34) or *-bad* (e.g. *CIH* 1609.9; 1610.21). See Thurneysen, *IR* 83-7.

¹⁰⁹ For his discussion on the age of the *fer midboth*, see *CG* Legal Glossary, pp. 89-90 and note to 1. 66. For another view, see Neil McLeod, *Ériu* 33 (1982). 59-63.

¹¹⁰ *is trebairiu side*, *CIH* 777.30-1 = *CG* 39.

¹¹¹ *CIH* 778.8-9 = *CG* 67-9.

remains at that of a *fer midboth* until he inherits, even if this does not happen until he is old.¹¹²

Offences by children

Liability for a child's offence is normally borne by his father, or by his fosterfather while he is on fosterage. Heptad 34 lists seven fathers who are not considered to be liable for their children's offences.¹¹³ Four of them are men of high status — king, bishop, poet, hermit¹¹⁴ — and it is likely that the victims of offences by such children would be unable to secure any redress. (For the difficulty of taking legal action against persons of high rank, see p. 9). In other cases the injured party has to secure redress from the kin of the culprit rather than from his father. This would apply if the offence is committed by the child of an insane or senile father,¹¹⁵ or a father who is an alien (in this case the mother's kin is liable).¹¹⁶ Lastly, an offence by the child of a *fuidir* (tenant at will) is paid for by his lord.¹¹⁷

A dependent child is classed as a 'thief of restitution' (*táid aithgena*) from the age of twelve to seventeen, i.e. if he steals something he is only required to restore it or its equivalent.¹¹⁸ No further penalty need be paid.

Offences against children

The influence of Christianity is clearly responsible for the high legal worth of a young child. According to *Bretha Crólige*, the honour-price (*díre*) of a child between baptism and the age of seven is the same as that of a cleric.¹¹⁹ Consequently, any injury inflicted on a young child entails a heavy penalty no matter what social class he or she belongs to.¹²⁰

¹¹² *CIH* 778.10-1 = *CG* 69-70.

¹¹³ *CIH* 31.6-8 = *AL* v 234.20-4.

¹¹⁴ *fer rosvara frisin domun* 'a man who has parted from the world'.

¹¹⁵ *fer fris rosvara a chonn* 'a man who has parted from his sense'.

¹¹⁶ *CIH* 442.13 = *IR* 31 §33.

¹¹⁷ *CIH* 426.1-6 = *ibid.* 63 §1.

¹¹⁸ *CIH* 439.33-5 = *ibid.* 22 §24.

¹¹⁹ *CIH* 2288.1-2 = *Ériu* 12 (1938) 8 §7. Compare *CA* §35, which gives 8 *cumals* as the penalty for killing an innocent child or clerical student.

¹²⁰ *CIH* 923.3-4 *id comdile mac rig* *γ* *mac aithig co cenn .u.ii. mbliadnae* 'the son of a king and the son of a commoner have the same honour-price up to seven years'.

After the age of seven a child's honour-price is half¹²¹ that of his or her father (or guardian)¹²² and stays at that level as long as he or she remains dependent on him. If the father's honour-price is reduced for some offence, this does not affect the child's honour-price.¹²³ If an offence is committed against a child while being fostered (and no blame can be attached to the fosterfather) two thirds of the fine go to the father, and one third to the fosterfather.¹²⁴ If a married woman kills her child or deliberately induces an abortion, her husband is entitled to divorce her.¹²⁵

For the death or injury of children during games, see 'accidents' p. 150.

Sick-maintenance of children

If an innocent person is injured by another, the culprit is normally required to provide sick-maintenance (*othrus*) for the victim. *Bretha Crólige* §§52-4 deals with the sick-maintenance of children (*maccothrus*).¹²⁶ The injured child under seven is evidently to be maintained at the level of a cleric (i.e. with all possible comfort). If the child is unweaned it must be accompanied by its mother.¹²⁷ Between the ages of seven and ten an injured child is to be fed the normal food to which he or she would be entitled on fosterage (see p. 86) provided it does not endanger the child's health in the opinion of a physician. After the age of ten, a boy or girl is entitled to adult sick-maintenance (*ferothrus*) according to the rank of his or her father.

Bretha Crólige §54 gives some cases where a fine (fixed by a judge) is substituted for the normal sick-maintenance. These include children of high rank, such as the son of a poet or of a queen, and also children who are particular favourites, such as 'the pet of a household' (*dretoll teglaig*).

¹²¹ *CIH* 779.7 = *CG* 125.

¹²² A fatherless child would presumably be entitled to half the *dire* of the head of his kin, or of whoever has adopted him. If the child were a clerical student his *dire* would be paid to the Church, and if he were a slave it would be paid to his master (*CIH* 439.28-9 = *IR* 22 §22).

¹²³ *CIH* 2300.31-2 = *Ériu* 12 (1938) 42 §53.

¹²⁴ *CIH* 440.8-10 = *IR* 25 §25.

¹²⁵ *CIH* 2198.25 = *ZCP* 15 (1925) 356 §44 gl.1.

¹²⁶ *CIH* 2300.24-34 = *Ériu* 12 (1938) 40-2.

¹²⁷ *CIH* 2294.9-10 = *ibid.* 24 §29.

Rearing of children

The rearing of children is usually the responsibility of both parents. However, if the child has been conceived through wrongdoing on the part of its father, he alone is responsible. This is the case if he impregnates another man's wife,¹²⁸ servant-woman (*banamus*)¹²⁹ or slave-woman (*cuma*)¹³⁰ or if he takes advantage of a woman by stealth,¹³¹ or is guilty of forcible rape.¹³² Even if he impregnates an unmarried woman of free status with her consent he may still have sole responsibility for rearing the child if her father has forbidden the union.¹³³

In other cases, sickness or disability in a woman may require the father to assume total responsibility for their child, even if the mother is his lawful wife. So, a child is not reared by a mother who is ill, because 'necessity saves her [from this responsibility]'.¹³⁴ Similarly, a child is not reared by a mother who is insane,¹³⁵ blind,¹³⁶ deaf,¹³⁷ maimed in one hand,¹³⁸ leprous,¹³⁹ or who suffers from a wasting sickness.¹⁴⁰ If she is an outcast from her *kin*¹⁴¹ or a woman satirist¹⁴² she is also regarded as being unsuitable for rearing a child. Lastly, the father has sole responsibility for rearing his child if the mother dies.¹⁴³

¹²⁸ *CIH* 21.11 = *AL* v 198.6.

¹²⁹ *CIH* 1575.14.

¹³⁰ *CIH* 20.28 = *AL* v 198.3; cf. *CIH* 1575.12.

¹³¹ *CIH* 1575.13. For *sleth* 'rape by stealth', see p. 135.

¹³² *CIH* 20.29 = *AL* v 198.4; cf. *CIH* 1575.13.

¹³³ *CIH* 20.29. = *AL* v 198.4-5.

¹³⁴ *CIH* 21.24 = *AL* v 198.6-7.

¹³⁵ *CIH* 20.29 = *AL* v 198.4; cf. *CIH* 375.8-9 = *AL* v 124.21-2.

¹³⁶ *CIH* 1575.13; cf. *CIH* 375.9 = *AL* i 124.22.

¹³⁷ *CIH* 1575.13; cf. *CIH* 375.8 = *AL* i 124.21.

¹³⁸ *CIH* 375.9 = *AL* i 124.22.

¹³⁹ *CIH* 375.8 = *AL* i 124.21. A quotation in O'Dav. 1364 (= *CIH* 1520.40) states that a child is not reared by a leprous mother for fear that it may be infected by her sores.

¹⁴⁰ *mac anfobrachta*, *CIH* 1575.14; cf. *di anbobracht*, *CIH* 375.9 = *AL* i 124.22.

¹⁴¹ *CIH* 1575.13.

¹⁴² *CIH* 1575.14.

¹⁴³ Heptad 21 refers to the *mac ad-cuirethar for fine n-athar tar cró* 'the child who is returned to its father's kin after [the mother's] death', *CIH* 20.29-30 = *AL* v 198.5, cf. also *CIH* 375.6 = *AL* i 124.20, *dingbál maic di chrú* 'removing a child after death [of its mother]'. Both these instances seem to refer to cases where the child has been reared by its mother in a separate household to that of its father.

In many of the above cases, the child to be taken into the care of its father would be still unweaned,¹⁴⁴ and he would therefore be required to procure a wet nurse. If the mother has died, this is obviously of particular urgency.¹⁴⁵

Heptad 22 provides a list of situations in which the father has no responsibility for rearing his child.¹⁴⁶ The mother must rear it herself — presumably with the help of her kin — if its father is an alien (*cú glas*), a slave, a satirist, or a man expelled by his kin. If a woman allows herself to be impregnated by a dependent son against the wishes of his father, she is solely responsible for rearing the child. If a woman becomes pregnant by a priest, he may either be laicized (in which case he assumes co-responsibility) or he may turn to repentance and remain in the priesthood (in which case the woman is solely responsible for the child). A prostitute (*baítsech*) likewise rears her child on her own.

Fosterage

It seems to have been common for children to be sent away from home to be fostered while still very young.¹⁴⁷ An unusual feature of the Old Irish language illustrates the importance of fosterage in early Irish society. In most Indo-European languages the words for 'father' and 'mother' have intimate forms, used particularly in childhood.¹⁴⁸ Thus in modern English a female parent is usually addressed as 'Mummy, Mammy, Mum, Mom, etc' rather than 'Mother'. In some languages the intimate forms have ousted the inherited Indo-European forms. For example, in Welsh the Indo-European forms survive only in compounds (e.g. *modryb* 'aunt', *edrydd* 'patrimony'); otherwise the intimate forms *mam* and *tad* are used in all circumstances. In Old Irish, on the other hand, the intimate forms have been transferred to the fosterparents. Thus, *muimme* (cf. English *mummy*) is not used of the mother, but of the fostermother. Similarly, the usual word for fosterfather is *aite*,

¹⁴⁴ CIH 375.4 = AL i 124.21 *dingbáil maic di chích* 'removing a child from the breast'.

¹⁴⁵ CIH 400.4 = AL i 226.32-3 *athgabáil dingbála meic di marbchích a mathar* 'distraint to enforce the removal of a child from the dead breast of its mother'.

¹⁴⁶ CIH 21.27-22.10 = AL v 202.1-7; cf. CIH 1575.15-8.

¹⁴⁷ The *Díre*-text (IR 20 §21 = CIH 439.16) refers to a fosterbrother reared in the same cradle (*comalta óencléib*).

¹⁴⁸ IEW 1056; 694.

which can be compared with Gothic *atta* 'father'. Less common Old Irish words for fosterparents are *datán* 'fosterfather' and *datnat* 'fostermother',¹⁴⁹ in which the first element *dat-* (pronounced /dad/) can be compared with English *dad, daddy*. If fosterage were not common in early Irish society, this shift in meaning could not have occurred.

The laws distinguish two types of fosterage. One is fosterage for affection (*altramm serce*) for which no fee is paid.¹⁵⁰ The other type of fosterage is for a fee and is dealt with in the law-text *Cáin farráith* 'the law of fosterage-fee' (Appendix 1 No. 19). The fee ranges from 3 séts for the son of an *ócaire*¹⁵¹ up to 30 séts for the son of a king.¹⁵² The fee for a girl is higher than for a boy; thus the fosterage-fee for the daughter of an *ócaire* is 4 séts.¹⁵³ No explanation for this disparity is given in the text. The commentary offers various suggestions, such as the greater difficulty of rearing a girl, or the fact that she is less likely to be of benefit to her fosterparents in later life.

The fosterparents are required to maintain their fosterchild according to his or her rank. Hence, the son of a king must be supplied with a horse for riding,¹⁵⁴ and with clothing worth 7 sets.¹⁵⁵ The fosterchild must also be educated in accordance with his or her rank. According to glosses and commentary on *Cáin farráith* the son of a king or noble must be taught the board-games *fidchell* and *brannuigecht*, horsemanship, swimming, and marksmanship.¹⁵⁶ A daughter is taught sewing, cloth-cutting and embroidery. Lower down the social scale, the son of an *ócaire* must learn how to look after lambs, calves, kids and young pigs, as well as drying corn, combing wool, and chopping firewood. A daughter must learn how to use the quern, the kneading-trough, and the sieve.¹⁵⁷

The arrangement to place a child in fosterage is a legal contract

¹⁴⁹ For the feminine suffix *-nat*, see GOI §273.

¹⁵⁰ CIH 1764.29 = AL ii 168.26.

¹⁵¹ CIH 1760.12 = AL ii 150.19.

¹⁵² CIH 1761.1 = AL ii 154.14.

¹⁵³ CIH 1760.12 = AL ii 150.19-20.

¹⁵⁴ CIH 1761.3 = AL ii 154.14-5.

¹⁵⁵ CIH 1762.5 = AL ii 158.24.

¹⁵⁶ CIH 1760.33-4 = AL ii 154.5-7; CIH 1761.24-5 = AL ii 156.28-30.

¹⁵⁷ CIH 1760.21-2 = AL ii 152.10-2.

which is regarded as being of benefit to both households,¹⁵⁸ and may be bound by sureties.¹⁵⁹ Once the fosterage contract has been agreed to, the child must remain with the fosterparents until the period of fosterage is complete. If the father wishes to take him back prematurely without a legitimate reason it is regarded as a legal error (*báegul*) and the entire fosterage-fee (*iarrath*) is forfeit.¹⁶⁰ However, if the child is being improperly treated,¹⁶¹ the contract is annulled, and the fee must be returned to the father.¹⁶² In such a case, the kin of the child's mother — as well as the parents — have the right to intervene.¹⁶³ It is also a legal error for the fosterfather to return the child prematurely. He must then restore the entire fee to the father,¹⁶⁴ unless the child has been guilty of serious misconduct.¹⁶⁵

The fosterfather must pay any fines incurred by a child while under his care,¹⁶⁶ and the child has no right to make an independent legal contract while on fosterage.¹⁶⁷ In cases where a minor's relatives are dead, the fosterfather may be solely responsible for him. An Old Irish gloss on *Cáin Aicillne* refers to an *ðenchniud* lit. 'solitary offspring' who has no living kinsmen, but only the fosterfather by whom he is reared.¹⁶⁸

It is not clear when a child's fosterage normally ended. *Críth Gablach* implies that a boy could have completed his fosterage by his fourteenth year to become a lower *fer midboth* (see above p. 82).¹⁶⁹ Old Irish glosses to *Cáin Íarraith* give fourteen as the age at which a girl completes her fosterage, and seventeen as the age at which a boy completes his fosterage.¹⁷⁰ *Bretha Crólige* §7 allows for fosterage to continue up to seventeen for both sexes.¹⁷¹

¹⁵⁸ *CIH* 507.10-1 = *SEIL* 26 §7 (tr. 217), cf. *CIH* 45.37 = *AL* v 284.32.

¹⁵⁹ *CIH* 25.13-5 = *AL* v 214.26-30.

¹⁶⁰ *CIH* 592.1-4 = *Bürgschaft* 8 §11.

¹⁶¹ According to *Berrad Airechta*, the child's treatment can be assessed from appearance, weight and clothing, *CIH* 592.9-10 = *Bürgschaft* 8 §12.

¹⁶² *CIH* 25.15 = *AL* v 214.30.

¹⁶³ *CIH* 442.14-5 = *IR* 31 §33.

¹⁶⁴ *CIH* 592.6 = *Bürgschaft* 8 §12.

¹⁶⁵ *CIH* 1764.14 = *AL* ii 168.5.

¹⁶⁶ *CIH* 440.8 = *IR* 25 §25.

¹⁶⁷ *CIH* 491.24 = *ZCP* 14 (1923) 375 §38.

¹⁶⁸ *CIH* 902.28-9.

¹⁶⁹ *CIH* 777.25-7 = *CG* 30-4.

¹⁷⁰ *CIH* 901.35-6; 902.4.

¹⁷¹ *CIH* 2288.6-8 = *Ériu* 12 (1938) 8 §7.

Probably there was variation in practice. According to *Cáin Íarraith*, the fosterfather gives a *sét gertha* 'a valuable of affection' to his fosterson at the conclusion of the fosterage.¹⁷² It is also likely that — as suggested in the commentary to this text — a fosterdaughter likewise receives a parting gift.¹⁷³

Strong links remain between a fosterfather and his fostersons. If a fosterson is killed, one third of his honour-price goes to his fosterfather, even after the completion of fosterage.¹⁷⁴ If necessary, the fosterfather must avenge his death: one of the four blameless killings is given as 'avenging the fosterson of the kin'.¹⁷⁵ The sagas provide many instances of the enduring bonds of loyalty between fosterparents and fosterchildren.¹⁷⁶ For example in *Táin Bó Cuailnge* Fergus and his fosterson Cú Chulainn retain their affection for one another in spite of being on opposite sides in the war against Ulster. In *Esnada Tige Buchet*, Eithne remains faithful to her fosterfather Buchet; even though he has been reduced to near-penury she finds ways of treating him with due honour.¹⁷⁷ When she marries King Cormac she ensures that her bride-price (*tinnsgra*) — which would normally be paid to her father — is in fact paid to her fosterfather. This bride-price consists of all the land and property which Buchet can see from the ramparts of Cenannas (Kells).¹⁷⁸

The wisdom-texts — with characteristic caution — are very dubious about the benefits of fosterage. Triad 249 gives the three dark (i.e. uncertain) things of life as 'depositing an object into somebody's custody, going surety, fosterage'.¹⁷⁹ Nonetheless, for

¹⁷² *CIH* 1769.26 = *AL* ii 190.13.

¹⁷³ *CIH* 1770.2 = *AL* ii 192.12.

¹⁷⁴ *CIH* 440.9-10 = *IR* 25 §25.

¹⁷⁵ *CIH* 2014.3-18 = *AL* iv 252.17-254.15.

¹⁷⁶ Campion, writing in the 16th century, states 'They (the Irish) love tenderly their fosterchildren, and bequeathe to them a childe's portion whereby they nourish sure friendshipe, so beneficall every way, that commonly five hundredth kyne and better are given in reward to winne a nobleman's childe to foster' (quoted in *Tracts relating to Ireland*, printed for the Irish Archaeological Society, Dublin 1843, ii 56). Fosterage is attested from Gaelic Scotland as late as the 17th century (Skene, *Celtic Scotland* iii (Edinburgh 1880)321-5). The fosterchild receives a donation of cattle and other goods both from his parents and his fosterparents, which is known as *mac-shealbh* (angl. *makhelvē, mcheliff*) 'son-property'.

¹⁷⁷ *RC* 25 (1904) 28 §11 = *FR* 522-5.

¹⁷⁸ *ibid.* 30 §13 = *FR* 540-4.

¹⁷⁹ cf. *TC* §31.15 *sobraig cás co altrom* 'everyone is tranquil until [he undertakes] fosterage'.

fosterage to have been so widespread in Irish society the advantages must have generally outweighed the disadvantages. Apart from the financial gain,¹⁸⁰ the fosterfather must have benefited from the forging of links with his fosterson's kin, and could hope for assistance in times of trouble. Some literary references suggest that the fosterfather was often of lower rank than the father of his fosterchild. For instance, Buchet is a hospitaller (*briugu*), while his fosterdaughter Eithne is the daughter of the king of Leinster.¹⁸¹ It seems that a child of high rank might be fostered for consecutive periods by a number of fosterparents.¹⁸² In his account of Patrick's career, Tírechán puts the question 'Have many fostered [Christ]?' into the mouth of the daughter of King Loíguire.¹⁸³ It was evidently to be expected that the son of a Great King would have had many fosterparents.

A further benefit of fosterage must have been to provide children with companionship other than that of their siblings. It is clear that the fosterparents' own children were often reared along with their fosterchildren. The resulting emotional bonds between foster-brothers (*comaltai*) are referred to in the sagas¹⁸⁴ and annals¹⁸⁵ and are given a monetary value in the laws. According to the *Díre*-text, if a man is killed a fine (called an *airer*, equalling one seventh of his honour-price) is paid to his fosterbrother.¹⁸⁶ This fine is payable in full only where the victim was reared in close intimacy with his fosterbrother i.e. 'a fosterbrother of the same blanket and of the same cup and of the same bed? Where there is not this degree of intimacy, only half the *airer* is payable.

For adoption, see p. 105.

¹⁸⁰ *CL* §7 (*CIH* 507.10-1 = *SEIL* 26, 217) refers to good fosterage (*so-aice*) as a proper contract which brings prosperity to the household. *Heptad* 50 (*CIH* 45.37 = *AL* v 284.32) also considers fosterage to be an advantageous contract from the point of view of the natural father.

¹⁸¹ *RC* 25 (1904) 20 §2 = *FR* 474-5.

¹⁸² cf. *CIH* 438.5-10 = *IR* 19 §20.

¹⁸³ *PTBA* 142.20.

¹⁸⁴ It takes all Medb's wiles to induce Fer Diad to fight against his fosterbrother Cú Chulainn (*TBC* Rec.I 2603-5). After he has killed Fer Diad, Cú Chulainn utters a bitter lament for him (*ibid.* 3106-42).

¹⁸⁵ e.g. *AI* s.a. 1128 §7.

¹⁸⁶ *CIH* 439.15-8 = *IR* 20 §21.

Specialized training

The commentary on *Cáin Íarraith* is no doubt correct in stating that the education which a boy of high rank receives from his foster-parents is generally limited to board-games and outdoor sports,¹⁸⁷ whereas a boy of lower rank is trained in farmwork.¹⁸⁸ Some boys, however, receive specialized training in poetry, medicine, and various other crafts. As we have seen in the case of the poet (p. 46), a son normally follows the profession of his father. The aspiring poet or craftsman may be sent away to learn his trade from a master (*fithidir*) for a fee.¹⁸⁹ Even though his father is likely to be a poet or craftsman himself, this system would have the benefit of exposing the boy to techniques unknown to his father. Some masters must have run training establishments rather like modern boarding-schools. In *Táin Bó Cúailnge* the druid Cathbad is portrayed as having many pupils, whom he instructs in the art of divination.¹⁹⁰

The relationship between a pupil (*felmac*) and his master is similar to that between a fosterchild and his fosterfather. Cathbad's charges are described either as his pupils (*felmaicc*)¹⁹¹ or his fostersons (*daltaí*).¹⁹² Like a fosterson, a pupil cannot make a valid legal contract 'during the period of subjection to a master'.¹⁹³

The boy or girl intended for the Church (*maccléireach* 'young cleric', *macailleach* 'young nun') would be placed in a monastery for instruction. It seems to have been very rare for a girl to be educated for anything other than domestic life or nunhood. However, a poet or craftsman may sometimes have had a daughter trained in his profession if he had no sons: our sources refer to the woman-poet, woman-wright and woman-physician (see pp. 49, 77).

PERSON OF UNSOUND MIND

The law-texts employ a wide range of terminology¹⁹⁴ when

¹⁸⁷ *CIH* 1760.33-4 = *AL* ii 154.5-7.

¹⁸⁸ *CIH* 1760.21-2 = *AL* ii 152.10-1.

¹⁸⁹ *CIH* 592.12-3 = *Bürgschaft* 8 §14.

¹⁹⁰ *TBC* Rec.I 610-1.

¹⁹¹ *ibid.* 612, 636.

¹⁹² *TBC* LL 923, 957. In legal glosses *fithidir* is regularly glossed *i.e. aite forcetail* 'i.e. foster-father of instruction'.

¹⁹³ *CIH* 491.24-5 = *ZCP* 14 (1923) 375 §38.

¹⁹⁴ e.g. *baileadh* (*CIH* 522.2); *finelach* (593.38); *fulla* (359.29; 363.23); *oin*, *oinmit* (1459.8); *bobre*, *buice*, *boicmell* (1381.18-9); *caeptha* (1277.4); *mer*, *drúth*, *dásachtach* (2289.10).

referring to persons of unsound mind, and it is particularly difficult to tell what legal or psychiatric significance is attached to the less commonly used terms.¹⁹⁵ However, the meaning of the three most frequent terms (*mer*, *drúth*, and *dásachtach*)¹⁹⁶ seems clear. The *dásachtach* is the person with manic symptoms who is liable to behave in a violent and destructive manner. The *mer* (lit. 'one who is confused, deranged') poses less of a threat to other people, and is normally permitted into the ale-house (see below). The *drúth* appears to be a person who is mentally retarded. (The term *drúth* is also used of the professional clown or buffoon whose act would include imitations of the insane — see above p. 65).

Offences by persons of unsound mind

In general, responsibility for an offence committed by a person of unsound mind devolves on his or her guardian (*conn*) who would presumably be a near kinsman, such as a father or brother. The laws are concerned to protect society from the dangerously insane. Thus, tying up a *dásachtach* is given as a valid excuse for lateness in discharging a legal obligation.¹⁹⁷ However, in certain circumstances a lenient view is taken of the offences of persons of unsound mind. For example, injuries caused by missiles thrown by a *drúth* do not require compensation: it is clearly the responsibility of the passer-by to keep out of the way.¹⁹⁸ Similarly, the guardian of a *mer* is not responsible for his offences in an ale-house, provided he (the *mer*) is not a person of known criminality (*bibdu*).¹⁹⁹

Similar principles are applied to the offences of domestic animals

¹⁹⁵ For example it is difficult to guess what form of insanity the *fulla* is suffering from. One glossator (CIH 359.30) suggests that he has been bewitched by a magic wisp, but another (363.30) takes the *fulla* to be a homeless vagrant.

¹⁹⁶ There must be a distinction of meaning between *mer*, *drúth*, and *dásachtach*, as all three are included in the list of men who are not brought away on sick-maintenance and are paid a fine instead. The reason given is that they are difficult to guard (CIH 2289.10-1 = Ériu 12 (1938) 12 §12). In some law-texts *mer* seems to be used mainly of women and *drúth* of men, e.g. *cor drúth no mire* 'the contract of a male *drúth* or a female *mer* (CIH 351.26 = AL i 52.1-2), *ben mer* beres mac do drúth 'a *mer* who bears a child to a *drúth* (CIH 1277.1 = Ériu 11 (1932) 71.7). However, there are clear instances of a male *mer* (e.g. CIH 2289.10) and a female *drúth* (CIH 519.23 = SEIL 74 §36).

¹⁹⁷ CIH 420.31 = AL i 268.3.

¹⁹⁸ CIH 271.10 = AL iii 206.23.

¹⁹⁹ CIH 269.23; 939.10-11 = AL iii 198.21.

which have gone berserk. No fine or compensation is payable by the owner of a bovine 'which has parted from its sense'.²⁰⁰

Rights of persons of unsound mind

Early Irish law is not only concerned to protect society from the insane: a fragmentary text *Do brethaib gaire* (Appendix 1 No. 28) deals with the kin's obligation to care for its members who are insane, aged or suffering from physical disabilities. Similarly, the text on distraint allows a day's grace if a defendant is looking after a *drúth* or *mer*, and observes 'the rights [of the insane] take precedence over other rights'.²⁰¹

Exploitation of the insane is against the law. A contract with a person of unsound mind is invalid,²⁰² and anyone who incites a *drúth* to commit a crime must himself pay the fine.²⁰³ A man who impregnates a *mer* is solely responsible for rearing the offspring,²⁰⁴ and a sane woman who bears a child to a *drúth* is similarly obliged to rear it unaided.²⁰⁵ Anyone who mischievously allows two insane persons to mate is responsible for rearing the offspring, and must pay for any offences committed by the offspring. On the other hand, if any payments become due to this offspring, they go to the king, to the Church or to its kin.²⁰⁶ If either partner in a marriage becomes insane,²⁰⁷ the other is entitled to a separation (see p. 75).

A late Old Irish tract (entitled *Do Drúthaib 7 Meraib 7 Dásachtaib* in the manuscript)²⁰⁸ deals with the use of land belonging to an insane person. It lists the three lands (*orbaí*) which are divided up among the heirs (*comarbaí*) during the owner's lifetime: the land of a *drúth*, the land of a man who has parted from his sense, and the land of a man whom it is time to maintain (i.e.

²⁰⁰ CIH 41.2 = AL v 269.19. There are a number of non-legal references to the bull, cow or horse which has gone mad. See DIL s.v. *dásachtach*.

²⁰¹ *im gaire ndrúith, im gaire mire, ar dofet a cert certaib*, CIH 372.21 = AL i 124.9-10.

²⁰² CIH 351.26 = AL i 52.1-2.

²⁰³ CIH 7.11-2 = AL v 142.4-6; CIH 1264.33 = AL iii 156.4-5.

²⁰⁴ CIH 20.29 = AL v 198.3-4.

²⁰⁵ CIH 1276.36-7 = Ériu 11 (1932) 71.1-2; CIH 1575.15.

²⁰⁶ CIH 519.23-7 = SEIL 74 §36.

²⁰⁷ *fogal cuind* 'damage to sense' CIH 48.32 = AL v 296.20.

²⁰⁸ CIH 1276.18 = Ériu 11 (1932) 68.

because of his age).²⁰⁹ Each heir's portion is guarded by sureties during the lifetime of the owner. If any of the heirs fails in the duty of looking after the insane or elderly owner, he must pay a fine of 5 séts and suffer forfeiture²¹⁰ of his portion of land.

The half-sane

The later glossators and commentators devote much attention to the legal position of the person who is half-sane (*fer lethchuinn*)²¹¹. Though there are a few references to this category of person in the Old Irish law-texts,²¹² they do not generally recognise a state intermediate between sanity and insanity.

Senility

The law-texts sometimes include the *esconn* (< *ess-conn 'one whose sense has departed' i.e. a senile person) among those who are legally incapable on account of their mental condition.²¹³ According to *Berrad Airechta* the evidence of a person who is too old is invalid, because 'his memory does not reach far'.²¹⁴

Other disabilities

Physical disabilities may also limit a person's legal capacity or responsibility. As we have seen above (p. 85) a woman who is sick, blind, deaf, leprous or maimed in her hand is not responsible for rearing her child. A person who is *aimbil* (dumb?) cannot be subjected to distress — instead the plaintiff must proceed against the *aimbil*'s guardian.²¹⁵ An epileptic (*talmaidech*)²¹⁶ is legally

²⁰⁹ A shorter version is given in Triad 205: *Trí orbaí rannaiter fiad chomarbaib: orba drúith 7 orba dásachtai 7 orba sin* 'three lands (inheritances) which are divided in the presence of heirs: the land of a *drúth*, the land of a *dásachtach*, the land of an old man'.

²¹⁰ *fri hinncreic a orbu CIH 1276.21, la hinncreic a norbu 1276.24, cf. la increic a orbu 2107.1.* This presumably means that the sureties can put up for sale the portion of the heir who fails in his duty of maintenance.

²¹¹ e.g. *CIH 2308.22-9 = Ériu 20* (1966) 28 §12 (commentary); cf. *CIH 1381.23 = Ériu 11* (1932) 73 §7.

²¹² e.g. *CIH 394.32 = AL i 200.29*.

²¹³ e.g. *CIH 405.12 = AL i 242.12; cf. Triad 235 éconn, esconn.*

²¹⁴ *CIH 596.16-9 = Bürgschaft 19-20 §59.*

²¹⁵ *CIH 1459.9 = AL ii 46.1.*

²¹⁶ This word is a derivative of *talam* 'ground' i.e. 'one who falls to the ground'.

competent, provided that he is of sound mind. However, he must be watched over by a guardian to prevent injury to himself or to others during fits.²¹⁷ 'Running to the assistance of an epileptic' is included among the valid grounds for a delay in the process of distress.²¹⁸ According to commentary, a heavy fine is levied on anyone who mocks the disability of an epileptic, a leper, a lame man, a blind man or a deaf man.²¹⁹

Any physical disability renders a man ineligible for kingship (see p. 19).

SLAVE

At the bottom of society are the slaves (*mug* 'male slave', *cumal* 'female slave'). They originated as prisoners of war,²²⁰ foreigners picked up by slave-traders,²²¹ or people who could not pay a debt or fine,²²² and so passed into slavery. It is implied in *Gubretha Caratniad* that parents sometimes sold their children into slavery.²²³

In early Irish law the slave is subject to all the restrictions of other *báeth*-persons, but enjoys none of their rights. He cannot act as a witness,²²⁴ or make any kind of contract except under his master's orders.²²⁵ He has no legal protection against ill-treatment or even death at the hand of his master. His master must pay for any crime which he commits, and is entitled to compensation for offences committed against him.²²⁶ The runaway slave is classed as an *éludach* 'absconder', and cannot be given protection, even by a high-ranking *nemed*.²²⁷

A man who impregnates a slave-woman belonging to somebody else must himself arrange for the rearing of the child.²²⁸ Similarly,

²¹⁷ cf. *CIH 1180.23 = AL iii 506.1 talmaidech cin imchoimét* 'an unguarded epileptic'.

²¹⁸ *CIH 420.30-1 = AL i 268.2-3.*

²¹⁹ *CIH 1015.14-5; cf. CIH 1031.12-4 = CCF 35 §39.*

²²⁰ That prisoners of war might be enslaved is clear from *CIH 570.15-6 = CG 580-2*; see *CG Notes* p. 38.

²²¹ In his *Confessio* (§1), Patrick describes how he was taken captive by raiders near his home in Britain, and brought to Ireland as a slave.

²²² cf. *VSC 84b.*

²²³ *CIH 2196.18-9 = ZCP 15* (1925) 339 §30.

²²⁴ *CIH 596.16 = Bürgschaft 19-20 §59.*

²²⁵ *CIH 351.24 = AL i 50.33.*

²²⁶ *CIH 402.8 = AL i 232.3.*

²²⁷ *CIH 47.1 = AL v 290.21.* See *BB Notes* p. 144.

²²⁸ *CIH 20.28 = AL v 198.3.*

if a free woman allows herself to become pregnant by a slave, she alone is responsible for rearing the child.²²⁹ Whatever his paternity, the son of a slave woman cannot become a lord because 'his vices are like his mother's'.²³⁰

The advent of Christianity seems to have contributed to some small improvement in the position of the slave in Irish society. Patrick, having been a slave himself, is clearly sympathetic to the plight of converted slave women who endured in the Faith 'even unto terrors and threats'.²³¹ The 6th century *Penitential of Finnian* attempts to legislate against the use of slave women for sexual purposes.²³² The man who has intercourse with his slave woman is urged to sell her, and to do a year's penance. But if he has a child by her, he should set her free. The law-text *Córus Béscnai* — which deals with the relationship between Church and laity — quotes a prophecy about Patrick: 'he will free slaves, he will elevate the low-born (*dochenél*)'.²³³

However, it is clear that slavery continued to be of considerable economic importance in Irish society during our period. One indication of this is the number of references to slaves in the law-texts, sagas, saints' lives, etc. and another is the use of the word *cumal* 'slave woman' as a unit of value (see p. 112). Male slaves did the most menial work on the farm, such as herding livestock²³⁴ and chopping wood.²³⁵ Female slaves worked at the quern,²³⁶ the kneading slab and trough,²³⁷ and at other domestic tasks. The law-text *Di Astud Chirt 7 Dligid* is strongly disapproving of the release of slaves, including it among the things which cause a lord's corn and milk and fruit to fail.²³⁸ This implies that the author regards slavery as basic to a lord's prosperity. There may also be a suggestion that the release of slaves is not merely economic folly, but also an immoral and antisocial act liable to bring the same sort

²²⁹ CIH 21.27-8 = AL v 202.2-3.

²³⁰ CIH 233.10-1 = AL v 456.3-4.

²³¹ *Confessio* §42.

²³² IP 88 §§39-40. Cf. *Penitential of Cummean* ibid. 116 §§26-7.

²³³ CIH 528.5 = AL iii 30.1.

²³⁴ This was Patrick's job (*Confessio* §16).

²³⁵ If a slave accidentally kills or injures a passer-by while chopping wood, neither he nor his master are liable for a fine or other punishment, CIH 285.23-32 = AL iii 272.23-4.

²³⁶ CIH 467.32-3 = AL v 394.3.

²³⁷ CIH 285.36 = AL iii 274.16.

²³⁸ CIH 231.15-7 = AL v 450.12-5.

of supernatural retribution as royal injustice. (*Gáu flathemon* 'king's injustice' also causes failure of crops, milk, etc. — see p. 18).

CIMBID (Captive)

The *cimbid*²³⁹ is also included among those who are without legal capacity.²⁴⁰ He is a person who has committed a serious offence, which has not been paid for. The individual or kin whom he has wronged can seize him and keep him captive. The pursuit of such a person is given as one of the valid grounds for delay (*taurbaid*) in the process of distressment,²⁴¹ and is regarded by the Church as a lawful necessity (*deithbirse téctae*) which is permitted on a Sunday.²⁴²

The story of a reed-cutter named Librán in Adomnán's *Vita Sancti Columbae* (87a-92b) provides an example of how a person might come to be a *cimbid*. Librán had killed a man and was consequently held in chains under sentence of death. He was unable to pay the fine for murder, so his life was at the mercy of his victim's family: he could have been killed, or sold into slavery. Heptad 35 gives the killing of a *cimbid* as one of the seven killings which do not entail any penalty.²⁴³ (However, a *cimbid* should only be killed by the man or kin whom he has wronged: a legal maxim instructs 'do not kill a *cimbid* unless he is yours').²⁴⁴ Fortunately for Librán, a wealthy kinsman paid the fine, and so rescued him from death (*de morte . . . eripuit*). In return he was required to enter the service of the man who had ransomed him (see p. 215).

A *cimbid* might also be ransomed by a non-kinsman. *Crith Gablach* advises that a king should include among his bodyguards 'a man whom he has freed from captivity (*cimbidechti*)'.²⁴⁵

²³⁹ The word *cimbid* (< Celtic **kmbiati-*) is cognate with Gallo-Latin *cambiare* 'to exchange', and so means 'someone whose life can be exchanged, ransomed' — see Watkins, *IEIE* 351¹⁸. In the O.Ir. Glosses *cimbid* is used to explain the Latin words *anathema* 'a condemned person' and *vinctus* 'one who is bound, a captive'. In legal glosses *cimbid* is explained as *dilsech báis* 'one whose life is forfeit'.

²⁴⁰ e.g. CIH 536.23 = AL iii 58.6 *ni crial . . . do mnaí, do cimbid, do mug* etc. 'do not buy . . . from a woman, a captive, a slave, etc.' (cf. TC §19.7).

²⁴¹ CIH 420.4 = AL i 266.21-2.

²⁴² Ériu 20 (1966) 160.12 (*Cáin Domnaig* §1).

²⁴³ CIH 31.20 = AL v 236.12.

²⁴⁴ *ni gona cimid manub lat*, CIH 328.7 = AL iii 484.4; cf. CIH 1133.30-31 = Ériu 13 (1942) 45.27-8.

²⁴⁵ CIH 570.14 = CG 579.

Naturally, a bodyguard of this type would feel particular gratitude and loyalty towards the king who had saved him. It appears from Triad 235 that a man can procure the release of a *cimbid* if he owns a slave (*mug dóer*) whom he can give in exchange.

In non-legal sources the word *cimbid* is used of a person who faces death on behalf of a group or tribe. For instance, in *Táin Bó Cuailnge* Cú Chulainn asks the men of Connacht to send someone to fight him.²⁴⁶ Each of them replies: 'It will not be I, it will not be I. No *cimbid* is owed by my people (*cenél*), and even if there were, it is not I who would go in his stead as a victim (*i cimbidecht*)'. In religious writings, Christ is often portrayed as the *cimbid* for the sins of the world.²⁴⁷ Possibly this meaning is also present in a legal passage on unsupported evidence which is valid because of the specially solemn circumstances in which it is sworn (CIH 1570.1-8). Thus the evidence of a woman is valid when she is in danger of death at childbirth, as is the evidence of a sick man facing death. Such persons are obviously regarded as being unlikely to lie because of the nearness of eternal retribution. The evidence of a *cimbid* on the field of combat (*fiadnaise cimeda i rroi*) is similarly regarded as valid because of the danger of imminent death. In this case, the *cimbid* may be a man who is about to fight a duel (see p. 211) on behalf of his kin. Alternatively, *róe* may here mean the place where an unransomed *cimbid* is put to death.

CHAPTER 4

PROPERTY

The main items of property mentioned in the laws are land, buildings, livestock, domestic and farm utensils, weapons, clothes and ornaments. Livestock are referred to as *béodili* 'living valuables' and other articles of movable property are called *marbdili* 'inanimate valuables'.

LAND

A short text beginning *Cis lir fodla tire?* 'how many kinds of land are there?' (Appendix 1 No. 47) discusses the value of different types of land. The unit of area used is the *cumal*, which originally meant 'female slave' (see below p. 112). The value of a *cumal* of land ranges from 24 milch cows for best arable down to 8 dry cows for bogland. The text defines the area of a *cumal* as 6 *forrachs* by 12 *forrachs*, but gives an impossible figure for the length of a *forrach*.¹ Later commentary on another text² suggests the more plausible equation of 1 *forrach* = 144 feet, in which case the area of a *cumal* would be 1,492,992 square feet i.e. 34.23 statute acres or 13.85 hectares.³

¹ The relevant portion of the text reads: '[there are] three grains in a standard inch, six inches in a fist, and two fists in a foot, six feet in a pace (*deiscéim*), six paces in an *innrit*, six *innrit* in a *lait*, six *laiti* in a *forrach*'. This would give a *forrach* of 1296 feet, and thence an impossibly large *cumal* of 120,950,352 sq. ft. = 2776.2 statute acres or 1124 hectares. An added difficulty of this passage is the fact that the words *innrit* and *lait* are not elsewhere attested as units of measurement. The former is a hapax legomenon of obscure origin, and the latter is from Lat. *latitudo* 'breadth' (McManus, *Ériu* 35 (1984) 148).

² CIH 299.30 = AL iii 334.21-2. This commentary takes there to be 12 feet in a *fertach* and 12 *fertachs* in a *forrach*. *Fertach* (also *pertach*, e.g. CIH 140.16) is a borrowing from Lat. *pertica* 'rod, pole, perch'. In Late Latin, *pertica* is common as a unit of length, generally varying between 10 and 20 feet (see Du Cange, *Glossarium Mediae et Infimae Latinitatis* (repr. Graz 1954)).

³ It should be stressed that this figure is purely tentative, having been procured by conflating selected information from two texts of widely differing date.

²⁴⁶ TBC Rec.I 2496-2500.

²⁴⁷ e.g. PB 42 §123.

Ownership of land

Most farmland is *fintiu* 'kin-land'. When kin-land is being divided, each heir gets a share which he will work with the help of his wife (or wives), sons, daughters, and perhaps servants or slaves. According to *Crith Gablach*'s picture of society, the average *ócaire* 'small farmer'⁴ inherits land worth seven *cumals*,⁵ on which he grazes seven cows. The more affluent *bóaire*⁶ inherits land worth fourteen *cumals*, on which he grazes twelve cows.

Each heir farms as an individual, but his fellow kinsmen have some control over what he does with the land. He cannot sell his share of the kin-land without the permission of the rest of the kin. If he attempts to do so, the sale is invalidated by the opposition of his kin because 'the twelve tongues [of the kinsmen] are stronger overthrowing the contract than one tongue establishing it'.⁷ His kinsmen may also be held responsible for his misuse of his land: for example, if he becomes an *esert* (absentee) and neglects to fence his holding properly, a near kinsman (*fine comocuis*) can be distrained to do the job in his stead.⁸

The man who makes a surplus through successful farming or the practice of a profession may acquire further land. As this is not kin-land he has greater power to dispose of it according to his wishes. Nonetheless, the kin retains the right to a proportion of this acquired land if it is to be sold or bequeathed.⁹ If the original surplus arose merely through the productivity of his share of the kin-land, he can freely dispose of only one third of his acquired land. If the surplus is the result of his own exertions, he can dispose of half of it. But if the surplus is the result of his professional

⁴CIH 778.25 = CG 91. The omission of *thri* of the MS is required by the sense: see Notes to Binchy's ed.

⁵Note that the term *cumal* is here used of the value of the land, whereas in *Cis lir fodla tire* it is used of land-area. See p. 99.

⁶CIH 779.26 = CG 153 (cf. CIH 217.21-2 = SEIL 155). This is the *bóaire febsa* 'bóaire of worth'. Also included among the ranks of the *bóaire* in CG is the *mruigfer* 'land-man' with 21 *cumals* of land (CIH 779.37 = CG 172).

⁷CIH 247.24-5 = AL v 510.7-9. In his forthcoming book *Early Irish and Welsh Kinship* (ch. 2 IV) Thomas Charles-Edwards suggests that the thirteen tongues (one for and twelve against alienation of the property) denote the thirteen men of the *tarfine* 'after-kin' i.e. the descendants through the male line of the same great-great-grandfather.

⁸CIH 75.24-7 = AL iv 128.3-7.

⁹CIH 533.17-20 = AL iii 48.15-9.

earnings, he can freely dispose of two thirds of it. For the bequest of property to the Church, see p. 122.

A portion of the land in each *túath* is attached to the office of kingship, and therefore becomes the property of each king as he succeeds to the throne. Some of this land may be assigned to his *brithem* (judge), chief poet, physician, etc.¹⁰ Much land belongs to the Church, some of it rented out to church clients — see p. 39.

Co-operative farming

In *Crith Gablach*'s portrayal of society, the *ócaire* has only one quarter of a ploughing outfit,¹¹ so he would have to make a co-ploughing agreement (Ir. *comar* = Welsh *cyfar*¹²) with three others of the same rank, probably kinsmen. Such arrangements would no doubt be confined to less affluent freemen. A farmer with sufficient resources to manage on his own would not have to submit to the inconvenience and risk the potential friction of co-operative farming.¹³ Triad 125 warns that there are three undertakings with sorrow to follow: 'co-ploughing, vying in feats of strength, a marriage alliance'.

Another potentially troublesome form of co-operative farming is joint-herding (*comingaire*), a system whereby a number of farmers graze their stock together. This can lead to a difficult legal situation if an animal belonging to one farmer is killed by another animal, and there is no evidence to decide whether the culprit belongs to him or to another farmer. According to *Bechbretha* this is one of

¹⁰According to the early 17th c. *Lawes of Ireland* (see p. 241) 'the chief lord [equivalent to the *ri* 'king' of the Old Irish law-texts] had certain landes in demesne which were called his *loughthy* or mensall landes wherein hee placed his principall officers, namely his brehon, his marshall, his cupbearer, his phisicion, his surgeon, his chronicler, his rimer, and others which offices and professions were hereditary and peculiar to certen septes and families.' *Loughthy* is Ir. *lucht tige* 'household'.

¹¹CIH 778.27-8 = CG 95-6.

¹²For the Welsh law on co-ploughing, see *ALIW* III xxiv (= *Ll. Ior.* 96-9 §§148-53), and D. Jenkins, *Agricultural Co-operation in Welsh Medieval Law* (Amgueddfa Werin Cymru, 1982).

¹³According to CG the *mruigfer* has full ploughing equipment (CIH 780.4 = CG 181), whereas the *bóaire febsa* has only half a ploughing outfit (CIH 779.29 = CG 158), and so must co-plough with another *bóaire febsa* or with two *ócaires*. An *ócaire*, *bóaire febsa* or *mruigfer* is expected to have a share in the ownership of a water-mill, in which he may grind his corn on a rota-basis (CIH 778.28, 779.27, 780.11 = CG 96, 155, 192).

the cases in Irish law where 'a group is liable for the offence of one'.¹⁴ A solution is for lots to be cast on the whole herd to fix guilt on one particular animal (see 'lots' p. 208).

In co-operative farming, some of the work (especially the ploughing) is done in co-operation, but the produce of each holding belongs to the individual kinsman. This form of land-utilisation should be distinguished from collective farming, in which the land is owned and worked collectively, and the produce is pooled. Our sources provide no evidence for the existence of collective farming in Ireland in our period.

Inheritance of land

To ensure fairness in the division of an inheritance (*orbae*), the division is made by the youngest inheritor (*comarbae*), but the eldest gets the first choice, the second eldest the second choice, and so on.¹⁵ The youngest gets the last choice, so it is in his interest to divide the property into equally valuable portions.

For the purpose of inheritance, a man's son by another woman — provided the union is recognised by his kin — has the same rights of inheritance as the son of his chief wife. (This was one of the many features of Irish society which shocked English commentators. The early 17th century author of the *Lawes of Ireland* remarks that 'lands . . . descended in course of gavelkinde & were partible among the males only, in which division the bastards had their portions as well as the legitimate'). The fragmentary text on inheritance *Maccslechta* (Appendix 1 No. 18) gives rights of inheritance to three categories of son: the *mac aitinen* 'recognised son', the *mac óige* 'son of a pure woman' (i.e. of a chief wife), and the *mac adalraig[e] urnadma* 'the son of a betrothed concubine'.¹⁶

Other sons are normally ineligible for a share of the inheritance. *Maccslechta* lists nine such sons, who are described as 'sons of darkness'. The son who is conceived in the bushes (*macc muine*)¹⁷

is excluded because of the doubt as to his paternity.¹⁸ The same applies to the son of a *baitsech* 'prostitute, loose woman', and to the *macc raite* 'the son of the road'¹⁹ i.e. an abandoned child who has been taken into a household but not formally adopted by the kin. Also excluded is the *mac toimten* 'the putative son'. One glossator²⁰ describes him as the son of a woman who had been having sexual relations with two men at the time of his conception. He is without the characteristic family voice, appearance and behaviour (*fineguth*, *finechruth*, *finebés*) which would serve to establish his paternity conclusively. In some circumstances a putative son may be admitted to a share of the inheritance if his mother successfully undergoes an ordeal to prove her claims as to his paternity (see p. 209). However, his share of the inheritance is less than that which normally goes to a son.²¹ It is stated in Triad 152 that the son of a girl in plaits (i.e. an under-age girl) cannot inherit.²² This is obviously because such a union would not have the authorisation of either the girl's kin or that of her seducer.

Criminal or unfilial behaviour also deprives a son of his right of inheritance. In this category the *Maccslechta* list includes the *macc fócrái* 'proclaimed or outlawed son' among the sons of darkness.²³ Similarly, *Córus Béscnai* states that the impious son (*mac ingor*) who neglects the care of his aged or ailing father is deprived of his share of his inheritance.²⁴ Whoever carries out this duty instead of him is entitled to a share of the inheritance worth the price of a man (i.e. 7 *cumals*). If the Church undertakes this duty, it receives up to one third of the man's acquired property.²⁵

There is also a mechanism for dealing with the situation which arises if a man predeceases his father before the division of the inheritance. If this man has sons, they are given the share which would have fallen to him. They therefore share along with their paternal uncles.²⁶

¹⁸ *CIH* 232.7 = *AL* v 452.16.

¹⁹ Cf. *CIH* 741.7 (fragment of text) *os fer do rot cid arna hurranda finntiu?* 'and a man from the road, why does he not get a share of the kin-land?'

²⁰ *CIH* 857.28-9.

²¹ *CIH* 1297.25-6.

²² Compare the reference at *CIH* 1242.16 (= *Ériu* 12 (1938) 87) to *trillsech re toga* 'a girl in plaits before [a husband] is chosen for her'.

²³ *CIH* 1296.36.

²⁴ *CIH* 534.26-8 = *AL* iii 52.17-20.

²⁵ *CIH* 535.1-2 = *AL* iii 52.29-31.

²⁶ *CIH* 739.17-8; 1547.13-7.

¹⁴ *CIH* 449.28 = *BB* §34.

¹⁵ *CIH* 1289.11 *rannaid ósar* *dogoa sinser* 'the youngest divides and the eldest chooses'.

¹⁶ *CIH* 1296.32-6.

¹⁷ *CIH* 1296.37. Compare the *mab llwyn a pherth* 'the son of bush and brake' of Welsh law, *WLW* 32-3.

Though the texts are difficult to interpret,²⁷ there is evidence that a more prolific branch of a kindred is entitled to demand some resharing of the kin-land at the expense of a less prolific branch with relatively large land-holdings. This entitlement does not involve complete redistribution, but merely guarantees each heir the property of a *bóaire* i.e. land worth fourteen *cumals*.²⁸

If a whole kin-group (*derbfine*) becomes extinct (i.e. all the descendants on the male line of a great-grandfather) the property is distributed among a wider circle of the kin.²⁹ The procedure takes five years to complete — no doubt to ensure that each heir has ample opportunity to discover the quality of every portion of land to be divided. For the first year, the land is temporarily shared among the heirs. In the second year, the shares are exchanged. In the third year, the shares are measured. In the fourth year, house-posts (*cletha*) are established in each share. This can hardly mean that each heir has to erect a permanent dwelling-house. Rather, the intention seems to be symbolic: the erection of any sort of structure demonstrates a claim to ownership. Finally, in the fifth year, lots are cast among the heirs and the shares are apportioned on that basis.

Female inheritance

According to an Old Irish quotation in later commentary³⁰ a daughter is entitled to a share of her father's personal valuables, but not of his land. However, if she has no brother, she is known as a *banchomarbae* 'female heir', and is entitled to a life-interest in her father's land.³¹ Normally, she cannot pass this land on to her husband or her sons; on her death it reverts to the wider circle of her own kin. But if her husband is an alien, such as a Briton — who would have no land in the *túath* — she is entitled to pass on to her son 'the inheritance of a sister's son' (*orbae niad*).³² According to

²⁷ See the detailed discussion by Charles-Edwards in his forthcoming *Early Irish and Welsh Kinship*, ch. 2 IV. For the redistribution of land in later times, see K. W. Nicholls 'Land, law and society in sixteenth-century Ireland' (O'Donnell Lecture 20 (1976) National University of Ireland) 18-9.

²⁸ *CIH* 217.21-2.

²⁹ *CIH* 1034.3-11 = *CCF* 42 §§64-5.

³⁰ *CIH* 736.28-9.

³¹ Our sources refer to a single female heir (cf. *IK* bk. 32 ch. 9). However, if a man has a number of daughters but no sons, presumably each daughter gets a share of the land.

³² *CIH* 431.30-1 = *AL* iv 284.19-21.

an Old Irish glossator, this consists of land worth 7 *cumals* i.e. the property-qualification of an *ócaire*.³³

By virtue of her ownership of land, a female heir has more extensive legal rights than other women (see p. 76). In particular, if her inheritance is occupied by somebody in defiance of her lawful claim, she can institute the procedure of *bantellach* 'female entry' (see p. 187) against him.

Inheritance by adoption

Rights of inheritance may be acquired by a person adopted into a kin-group, either through payment of an adoption fee (*lög fóesma*) or through invitation, in which case he is described as *fine thacair* 'kinsman by summoning'. His adoption (*fóesam* lit. 'taking into protection') is a contract which must be bound by sureties, and ratified by the head of the kin.³⁴ He does not gain automatic entitlement to a full share of the kin-land, but only to what is stipulated in the contract.³⁵ As we have seen above, a man may disinherit a son who fails to carry out his filial duties (*goire*) and adopt another person in his stead.

Common rights on land

The 1865-1901 edition of the *Ancient Laws of Ireland* almost always translates *fine* as 'tribe' rather than 'kin-group'. This misled Engels and other modern political thinkers into believing that land was held in common by all members of the *túath* in early Ireland. In fact, early Irish society clearly attached great importance to the principle of the private ownership of property, and even extended it to mines³⁶ and fishing-rights.³⁷

The rights enjoyed by all members of a *túath* on private property are extremely limited, and apply only to those who are classed as *recht* 'law-abiding person, one of legal status' (thereby excluding outlaws, slaves, and aliens). According to one text these rights

³³ *CIH* 917.30-1.

³⁴ *CIH* 459.13-4 = *Ériu* 17 (1955) 66 §6.

³⁵ *CIH* 431.14 = *AL* iv 284.17-8.

³⁶ Thus the text on distraint refers to the crime of digging in someone else's silver mine (*CIH* 384.19 = *AL* i 166.26) or of excavating iron or copper ore from his cliff (*CIH* 390.8 = *AL* i 184.12-3).

³⁷ *Ériu* 17 (1955) 81-2.

include such minor concessions as a quick dip of a fishing net in a stream, collecting enough wood to cook a meal, cutting rods for a bier, collecting hazel-nuts, etc.³⁸ In an archaic poem, the latter entitlement is fixed at a 'handful of nuts if one is hungry'.³⁹

It is unclear to what extent there is a public right to hunt and trap on private property. *Di Astud Chirt 7 Dlidid* includes 'the wild animals of every wood'⁴⁰ among the perquisites of the law-abiding freeman. However, the surviving legal fragments on hunting and trapping (Appendix 1 Nos. 51-2) indicate that there are important restrictions on this right. A quotation in O'Davoren's Glossary refers to the setting of a bird-trap without the permission of the landowner: this is clearly regarded as an offence.⁴¹ Late commentary — presumably reflecting the general principles of the lost *Bretha Forma* 'judgments of trapping (birds)' — deals with the division of the feathers and flesh of a bird caught on another's property.⁴² The proportions retained by the trapper depend on the rank of the landowner, and also on whether permission to trap has been secured. Hence, if he traps a bird without permission on church land, he must surrender to the Church two thirds of the bird's flesh and all its feathers, and in addition he must do 40 nights' penance. But if he has got permission, he need only surrender one third of the flesh, and two thirds of the feathers. A quotation in O'Davoren's Glossary⁴³ shows that there is no penalty for trapping without permission a very small bird (*minnta*)⁴⁴ or birds held to be a nuisance i.e. the heron (*corr*)⁴⁵ and the hawk (*seig*).⁴⁶

³⁸ CIH 241.19-29 = AL v 482.22-484.5.

³⁹ CIH 571.2-3 = *Celtica* 9 (1971) 157.45-8.

⁴⁰ *fiad cacha feda*, CIH 241.24-5 = AL v 482.29-30. O.Ir. commentary (CIH 916.40-1) lists these animals as deer, wolves, and badgers.

⁴¹ CIH 1502.15 = O'Dav. 932 *sén fuirmither dichmairc* 'a bird-trap which is set without permission'.

⁴² CIH 2108.24-9.

⁴³ CIH 1526.1-2 = O'Dav. 1480. An archaic legal poem (CIH 571.15-6 = *Celtica* 9 (1971) 159.101-2) probably refers to these permitted trappings in its question *Cis formenn écnadair do-sliat dílse* 'what are the trappings carried out in the absence [of the landowner] which are entitled to immunity?'

⁴⁴ The word *minnta* (also *minntán*) is used of any small bird, but particularly tits (*Paridae*).

⁴⁵ The heron (*corr*) may have been disliked because of its depredations on fish.

⁴⁶ The word *seig* seems generally to refer to hawks — it is regularly glossed by *seboc* (Mod. Ir. *seabac*) 'hawk'. In this context, however, *seig* may also refer to other birds of prey, e.g. kites, buzzards, harriers, etc. In the St. Gall Glosses (*Thes.* ii

Similar principles seem to apply to the trapping of deer, either in a pit (*cuithech*) or on a spike (*bir airndil*). Though nowhere explicitly stated in surviving legal material, it is doubtless an offence to set a trap on another's land without permission. On common land, the trapper must issue a general warning; if he fails to do so he is held responsible for the death or injury of any person or domestic animal caught by his trap.⁴⁷ A legendary judgement — reputedly the first judgement delivered in Ireland⁴⁸ — rules that if a hunted deer is brought down by dogs, its belly (*tarr*) goes to the owner of the land. The rest is divided among the hunters and dog-owners.

As in other societies, private and public rights vie at the seashore. Privately owned grazing-rights at the seashore are clearly recognised, as *Bretha Comaitchesa* refers to 'shore-trespass' (*ruiriud tráchta*) by a neighbour's cattle.⁴⁹ In general there seems to be a common right to the seaweed cast up on the shore,⁵⁰ though one text refers to privately-owned seaweed.⁵¹ The edible seaweed *duiles* (*Palmaria palmata*), which grows on rocks near low water mark, is also said to be common property.⁵² According to the text on land-value, access to a 'productive rock' (i.e. with seaweed and shellfish) adds three cows to the value of a holding.⁵³

If a whale is washed up, its highly valued whalebone is divided out among the members of the *túath*.⁵⁴ Apart from seaweed and whales, anything cast up on the shore or floating near it belongs to

119.27) *seig* is used to explain Latin *uultur* 'vulture'. The hostility of the early Irish farmer towards the hawk and similar birds of prey no doubt stems — as O'Davoren suggests — from their depredations on young pigs and fowl. One can contrast the Welsh law-books from about the 13th century, when the demands of falconry put a high value on falcons and hawks. To kill a hawk (*hebog*) or falcon (*gwach*) entails a fine of 50 pence to the landowner, and the value of the bird to the king (DC II viii §37).

⁴⁷ CIH 285.11-4 = AL iii 272.4-9; cf. VSC 84a-85b.

⁴⁸ CIH 2127.13-8.

⁴⁹ CIH 579.34-580.1-2 = AL iv 138.1-6.

⁵⁰ *sem cacha tráchta* 'the seaweed of every shore' (CIH 241.25 = AL v 482.30). Seaweed can be an important element in the diet of cattle and sheep (cf. IP 158 §61). It may also have been used as a fertiliser.

⁵¹ *sem . . . dia rotechtairder*, CIH 238.31 = AL v 474.1. It is unclear whether this ownership is permanent (e.g. all seaweed on a particular shore) or merely temporary (e.g. the seaweed cast up by a particular tide and appropriated by the finder).

⁵² *duilix cacha cairrge* 'the *duiles* of every rock' CIH 241.25-6 = AL v 484.1.

⁵³ CIH 676.9 (reading *cummae*) = Ériu 22 (1971) 82.36.

⁵⁴ CIH 371.30 = AL i 124.7-8. According to the glossator it is used to make saddles and riddles.

the owner of the adjacent land.⁵⁵ However, anything brought in from the sea (beyond nine waves from the shore) is the property of the finder.⁵⁶ A freeman seems to have enjoyed almost unrestricted rights on *dírann* 'unshared land' — no doubt mainly mountainous waste, marsh or remote forest.⁵⁷ He is entitled to hunt at will, though he must give a public warning of any trap which he sets. However, there is evidence that even in unshared land there may be private ownership of some of its assets. One text refers to wild apples which have been appropriated,⁵⁸ and another refers to 'an appropriated tree in the wilderness'.⁵⁹ This seems to suggest that an individual or kin-group could acquire ownership of a tree or its produce on unshared land, perhaps by cutting some generally recognised mark on it.

If a man finds a bees' nest in inaccessible country, unshared land or great forest it becomes his property, except for one ninth of the honey which goes to the head of his kin, and one ninth which goes to his church.⁶⁰

Rights of neighbours

In addition to the rights enjoyed by every freeman, a landowner has certain rights on the property of his immediate neighbours. For example, he can if necessary cut a mill-race across his neighbour's land, provided he pays compensation appropriate to the value of the land.⁶¹ He may also use a bridge or erect a fishing-weir on or adjacent to his neighbour's land.⁶² Where there is no other access, he may have the right to drive cattle — under proper supervision⁶³ — across his neighbour's land.

The notorious problem⁶⁴ of fruit which falls on a neighbour's

⁵⁵ *diles tochar do fir puit* 'that which is cast up belongs to the owner of the shore', *CIH* 315.4 = *AL* iii 424.13. Cf. *CIH* 384.18 = *AL* i 166.25.

⁵⁶ *CIH* 314.17 = *AL* iii 422.1-2. See Mac Niocaill, *IJ* 6 (1971) 103-110 'Jetsam, Treasure Trove, and the Lord's share in Medieval Ireland'.

⁵⁷ The surviving law-texts make no mention of restrictions on summer-grazing in the unshared land of the territory. For discussion on *dírann*, see *BB*, Notes to §48.

⁵⁸ *CIH* 238.31 = *AL* v 474.1.

⁵⁹ *CIH* 395.23 = *AL* i 202.2-3.

⁶⁰ *CIH* 455.1-4 = *BB* §49.

⁶¹ *CIH* 460.32-5 = *Ériu* 17 (1955) 68 §10.

⁶² *ibid.* §9.

⁶³ *CIH* 205.1-16 = *AL* iv 156.17-21.

⁶⁴ For its treatment in Roman law, see *HIRL* 158.

land is treated in an admirably fair manner in *Bechbretha*.⁶⁵ If a tree growing on land belonging to A drops fruit onto land belonging to B, this fruit is divided between them both for three years, then in the fourth year it all goes to B. In the fifth year the cycle is re-started.

Usucaption (i.e. adverse possession) of land

It is an offence to squat⁶⁶ or farm⁶⁷ on another's land without permission. However, — as in other legal systems — a man can establish right of ownership of land if his presence thereon is uncontested⁶⁸ for a period of time. The period required for ownership to become absolute is known as *rudrad*, which the glossators — no doubt correctly — take to be from *ro* 'great, excessive' + *dírad* 'duration'.⁶⁹ Its length varies according to the circumstances. Thus, an heir's ownership of land (even if there is some doubt about his entitlement) becomes absolute after a *rudrad* of one or two years of uncontested use.⁷⁰ In other circumstances, it may take some generations before ownership is securely established.⁷¹

An Old Irish passage interspersed with later glosses deals with the various methods of indicating opposition to another's occupation of one's land.⁷² These include ejecting his cattle, putting on one's own cattle, tearing up his fences, and verbal complaints. Such actions — carried out before witnesses — indicate that the occupier's presence on the land is not accepted, and thereby prevent his taking over the land by usucaption.

⁶⁵ *CIH* 445.33-446.5 = *BB* §§12-3.

⁶⁶ *CIH* 75.5 = *AL* iv 124.11, cf. *CIH* 571.8 = *Celtica* 9 (1971) 158.74.

⁶⁷ *CIH* 75.4 = *AL* iv 124.11, cf. *CIH* 866.23.

⁶⁸ If ownership is contested, the usucaption does not take effect: *fúaslaicthe cach rudrad forsna íada aititiu* 'every prescriptive period is void which acknowledgement does not make fast' *CIH* 750.1 = *AL* v 496.1.

⁶⁹ e.g. *CIH* 1520.24 = O'Dav. 1355; *CIH* 620.12. For another use of the term *rudrad*, see *Celtica* 10 (1973) 44.

⁷⁰ *CIH* 53.30-2 = *AL* v 314.11-3.

⁷¹ At *CIH* 573.30-574.6 (= ZCP 12 (1918) 363.15-29) a distinction is made between *rudrada becci* (= *becca*) 'short rs' and *rudrada mári* (= *mára*) 'great rs'. The former may extend to a year or a month or even only one day, cf. *rudrad ar aenla*, *CIH* 53.29 = *AL* v 314.9-10. The latter are counted in lives (of 70 or 80 years) up to five lives.

⁷² *CIH* 749.27-38, cf. 1376.21-4.

For a description of the legal process of laying claim to land which is occupied by another, see *tellach* 'legal entry' (p. 186).

BUILDINGS

Críth Gablach provides a general account of the dimensions and construction of the buildings which each class of person would be expected to own. For example, a *bóaire sebsa* typically has a dwelling-house of 27 feet (in diameter), an outhouse of 15 feet, a kiln, a barn, a pig-sty, a calf-pen and a sheep-pen.⁷³

Destruction of any part of a man's house is heavily penalised (see p. 145). Even to look into a house unbidden entails a fine of one cow⁷⁴ and to cross a man's courtyard without permission,⁷⁵ or to open the door of his house⁷⁶ renders the culprit liable to pay 5 *séts*.

Apart from church buildings⁷⁷ and the forts of kings and nobles,⁷⁸ early Irish houses seem to have been impermanent daub and wattle structures thatched with reeds. The ease with which a new house could be erected must account for the lack of discussion on the question of which heir is to get the parental house.⁷⁹

MOVABLE PROPERTY

Críth Gablach gives an extensive list of the domestic utensils, fittings, tools, etc. which should be present in the house of the average *mruigfer*, one of the categories of *bóaire* distinguished in this text.⁸⁰ Each item must be his own, and not on loan from

⁷³CIH 779.26-8 = CG 154-6.

⁷⁴CIH 780.23 = CG 211.

⁷⁵CIH 780.21-2 = CG 209-10.

⁷⁶CIH 780.23 = CG 210-1; cf. CIH 383.33 = AL i 162.24-5.

⁷⁷The law-texts refer to church buildings of wood (*daurthech* lit. 'oak house' e.g. CIH 1615.22) and of stone (*dom líac* lit. 'house of stones' e.g. CIH 2100.1). None of the former type have survived, but fine examples of the latter, dating from about the 9th century, can be seen at Glendalough, Kells, Fore, etc. Later legal commentary refers also to the round tower (*cloicthech* lit. 'bell house' e.g. CIH 2100.6), a style of church architecture confined almost entirely to Ireland of the 10th-12th centuries.

⁷⁸See B. Raftery 'Irish hill-forts' in *The Iron Age in the Irish Sea Province* ed. C. Thomas (London 1972) 37-58.

⁷⁹Contrast Welsh law, where the buildings are taken into account in the division of land among heirs, e.g. VC II xii §3 = Ll. Ior. 54 §82.

⁸⁰CIH 779.37-780.4 = CG 171-82.

another.⁸¹ This list probably agrees quite closely with the reality of 7th-8th century Irish life, as many of the items mentioned can be identified archaeologically. On the other hand, the author's information on the ownership of domestic stock seems less trustworthy. He claims that the average small farmer (*ócaire*) has 7 cows (with a bull and an ox) 7 pigs and 7 sheep,⁸² the next grade has 10 of each (with a bull and an ox),⁸³ and the *mruigfer* has 20 of each (with 2 bulls and 6 oxen).⁸⁴ His figures with regard to cattle may be roughly correct,⁸⁵ but the archaeological evidence does not support his claim that there were approximately equal numbers of cattle, pigs and sheep. The average proportion of the bones found on 8th century sites has been calculated at about 80% cattle, 10% pigs and 10% sheep.⁸⁶ The dependence on cattle indicated by these percentages is confirmed by early Irish literature generally (sagas, annals, law-texts, wisdom-texts, etc.) where the cow features very much more prominently than the pig or sheep.

The text on pledge-interests *Bretha im Fuiilema Gell* (Appendix 1 No. 60) gives an important account of the articles of particular value — ornaments, weapons, clothing, vessels, etc. — owned by different classes and professions.

Transfer of movable property

In this section I examine the main legal ways by which movable property passes from one person to another, whether permanently or temporarily: barter, sale, payment for a service, fine, marriage and fosterage payments, fief and rent, loan, deposit, gift, inheritance, bequest, pledge, and distraint.

Barter and Sale

It is not easy to draw a dividing line between barter and sale in our sources, as Early Christian Ireland did not have a system of coinage. The first Irish coins — imitations of the silver pennies of

⁸¹CIH 780.2 = CG 179.

⁸²CIH 778.23-4 = CG 90.

⁸³CIH 779.12-3 = CG 132-3. The text does not mention the bull here, but its presence can be assumed by analogy with the *ócaire*'s livestock.

⁸⁴CIH 780.12-3 = CG 194-5.

⁸⁵Thomas Charles-Edwards points out to me that in 12th c. England it was common to have a 'vaccary' (*vaccarium*) of 10 cows, with a bull.

⁸⁶Frank Mitchell, *The Irish Landscape* (London, 1976) 179.

Aethelred II of England — were minted by the Norse king Sihtric III of Dublin about 1000 A.D.⁸⁷

Texts from the early Irish period record transactions which can be described as barter. Thus, the *Additamenta* to Tírechán's records of St. Patrick tell how 'Cummen made a mantle which was exchanged with Éladach for a brown horse'.⁸⁸ As the horse was not normally employed as a unit of currency (see below) this transaction can be regarded as barter. Later, Éladach exchanged this horse with Colmán for a *cumal* of silver. This can be regarded as a sale because the *cumal* (see below) was a regular unit of value, and silver was the main metal of currency. The Irish text uses the same verb (*renaid*) for both transactions.

Currency

The currency system revealed by the law-texts and other documents is extremely complex. The value of an article or the amount of a fine may be given in terms of *cumals*, *séts*, cattle or ounces of silver. Sometimes a combination of two or three currencies is used. For instance, *Bretha Déin Chécht* rules that a person who inflicts a grain-sized wound in the hollow of a king's temple must pay an ounce of silver, a milch cow and 5 *séts*.⁸⁹

Cumal

The basic meaning of *cumal* is 'female slave', and it is sometimes used in this sense in the law-texts. More often, however, *cumal* is used as a unit of value.⁹⁰ For example, the honour-price of the lowest grade of king is given as seven *cumals*.⁹¹ Originally this presumably meant that seven female slaves were actually handed over to the king for a breach of his honour-price. But it is clear that already by the 7th century some other currency may be substituted for female slaves. Thus Irish Canon IV (dated by Bieler to 'not later than the mid 7th century') states that a man who sheds the blood

⁸⁷ W. O'Sullivan, *JRSAI* 79 (1949) 191.

⁸⁸ *PTBA* 174.12.3.

⁸⁹ *CIH* 2308.3-4 = *Ériu* 20 (1966) 28 §12.

⁹⁰ Confusingly, the word *cumal* is occasionally used in the O.Ir. law-texts as a general term meaning 'value, price, payment' rather than a fixed unit of value. Thus *Bretha im Fiillema Gell* (*CIH* 475.1-4 = *AL* v 414.22-4) refers to a horse of the value of 10 *séts* (*ech cum- .x. set*) and a horse of the value of 30 *séts* (*ech cumal trichat set*). For *cumal* as a unit of area, see above p. 99.

⁹¹ *CIH* 568.11 = *CG* 450.

of a bishop pays a fine of seven female slaves (*ancillae*) or their equivalent in gold and silver.⁹² If the assistant strikes the bishop without drawing blood he must pay half [the price of] seven female slaves.⁹³ In early Ireland the male slave (*mug*) does not seem to have been generally used as a unit of currency or value.⁹⁴

Cattle

Cattle were undoubtedly the most common form of currency in the period of the law-texts. Even after coinage was introduced by the Norsemen in the early 10th century, and re-introduced by the Anglo-Normans in the early 13th century,⁹⁵ cattle continued to be the normal currency of the Irish. As late as 1400 the *Annals of Connacht* record that 126 cows were paid as *éraic* for the accidental killing of Grigóir Ó Maolchonaire.

The basic unit is the milch cow (*lulgach* or *bó mlicht*), normally accompanied by her calf.⁹⁶ Below her in value is the in-calf cow (*bó inláeg*) which is worth — according to later legal commentators — two thirds of a milch cow. Text and commentary agree in placing the *samaisc* 'three year-old dry heifer'⁹⁷ at half the value of a milch cow.⁹⁸ Below her is the *colpthach*⁹⁹ 'two year-old heifer' which

⁹² *IP* 170 §1.

⁹³ *Ibid.* §4 *dimedium .iii. ancillarum*.

⁹⁴ Contrast the inclusion of the male slave (*servus*) in a list of payments for injuries in the *Canones Wallici*, probably of 6th century Breton origin (*IP* 138 §8).

⁹⁵ *Celtica* 8 (1968) 169.

⁹⁶ e.g. *CIH* 2315.38-9 = *Ériu* 20 (1966) 46 §36, cf. *ibid.* 232.

⁹⁷ Because it has not had a calf, the *samaisc* produces no milk: the literal meaning of the word is 'summer-dry' (*sam* + *sesc*, cf. the Breton cognate *hañvesk*). Scholars often translate *samaisc* as 'two year-old heifer' (e.g. *DIL*) and take *colpthach* to be a year-old heifer, and *dairt* to be a heifer between weaning (at about six months) and one year. However, there is good evidence that *samaisc* normally refers to a three year-old (dry) heifer. Thus commentary at *CIH* 845.22-38 = 2106.15-33, which is clearly based on an O.Ir. text, uses the term *samaisc* to refer to a heifer from when it is three years old (and worth 12 scruples = 1 *sét*) until it is bulled in the following autumn. It is assumed in this commentary that the average heifer does not produce its first calf until it is four years old (*CIH* 845.32 .iii. *bliadna is [s]an di andsikh[e]*). This does not of course mean that heifers were never put in calf as two year-olds, but does suggest that it was exceptional. In modern practice, on the other hand, a first calf at three years old is the norm. Similarly, according to the c. 13th century Welsh law-texts a heifer is bulled at $2\frac{1}{4}$ and has its first calf at three years old, when it is known as a *cynflith* lit. 'first milk' (*DC* II xxvi §12).

⁹⁸ *CG* 212-3 (*CIH* 780.24) gives the fine for removing half a bundle of thatch from somebody's roof as a *samaisc*, whereas a milch cow is the fine for removing a whole bundle.

⁹⁹ This is the *colpindach* of Scots law, valued at thirty pennies (*SGS* 2 (1927) 234).

legal commentators take to be $\frac{1}{3}$ the value of a milch cow. Below the *colpthach* is the *dairt* or 'yearling heifer' at $\frac{1}{4}$ the value of a milch cow, and finally the least valuable of the cattle is the *dartaid* 'yearling bullock' at $\frac{1}{6}$ the value of a milch cow. Values below the *dartaid* are given in terms of sheep, fleeces or sacks of grain.

Ounce (of silver)

Two terms from the Roman system of weights were taken over into the early Irish currency system: *screpul* (from Latin *scriplus* 'scruple') and *ungae* (from Latin *uncia* 'ounce'). There are 24 scruples in an ounce.

In the fines and payments given in the law-texts and other sources, there is very much less reference to gold¹⁰⁰ than to silver.¹⁰¹ Consequently, when *ungae* is used by itself as a unit of value it seems always to mean an ounce of silver, rather than of any other metal. Thus the *Additamenta* to Tírechán's records of St. Patrick¹⁰² refer to *lög leith ungae di muccib*. This no doubt means 'the value of half an ounce [of silver] in pigs' as the preceding sentence includes *.iii. ungai argait* 'three ounces of silver'. Similarly in *Críth Gablach*,¹⁰³ *clothdelg n-ungae* is likely to mean 'a precious brooch worth an ounce of silver' rather than 'a precious brooch weighing an ounce'.

Sét

The honour-price of ranks below the level of king is generally given in terms of the *sét*, and it is also frequently used in fines — the fine of 5 *séts* being particularly common. It seems to be the same word as *sét* 'treasure, jewel, valuable' which is attested at all periods of the language, and survives as Modern Irish *seod*. How widely this standard *sét* was recognised is uncertain (see below). However, there is some agreement in values and fines involving *séts* between texts associated with different parts of the country. For example, the *Senchas Már* texts (most probably written in the

¹⁰⁰ In the law-texts I have noted *CIH* 2313.16 = *Ériu* 20 (1966) 40 §31; *CIH* 583.9 = *AL* iv 344.23; *CIH* 588.19 = *AL* iv 364.1 (= *IP* 170 §2). Cf. also *CA* §24. For a brief discussion on the availability of gold in Early Christian Ireland, see *AM*, Notes to §42.

¹⁰¹ See M. Ryan 'Some archaeological comments on the occurrence and use of silver in pre-Viking Ireland' in *Studies on early Ireland* (ed. B. G. Scott) 45-50.

¹⁰² *PTBA* 174.10.

¹⁰³ *CIH* 782.32 = *CG* 346.

Northern Midlands) and *Bretha Nemed* (with Munster associations) agree roughly in the number of *séts* assigned for each grade's honour-price.¹⁰⁴

Some texts distinguish a unit of value called the *sét gabla*: it is given in *Uraicecht Becc* as the honour-price of the *fochloc*, the lowest of the seven grades of poet.¹⁰⁵ In *Uraicecht na Ríar* the *fochloc* has an honour-price of one *sét* and half a *sét*,¹⁰⁶ so it would seem that 1 *sét gabla* = $1\frac{1}{2}$ *séts*. The meaning of *gabla* is obscure. The *Dictionary of the Irish Language* takes it to be gen. sg. of *gabal* 'tax, tribute', but this word is of doubtful authenticity so it might be better to take it as gen. sg. of *gabul* 'fork' i.e. 'forked *sét*'. Glossators generally explain the *sét gabla* as being made up of a *dartaid* 'yearling bullock' and a *colpthach* 'two year-old heifer',¹⁰⁷ perhaps taking the view that this payment is 'forked' or 'bifurcate' because it consists of two animals.

The relationship of the currencies

In general the currencies seem to be interchangeable in the law-texts. So, in *Bretha Déin Chéicht*¹⁰⁸ a physician's fee is given as a yearling heifer or its equivalent in silver. But sometimes there are restrictions: in *Críth Gablach*¹⁰⁹ the honour-price of an *ócaire* 'small farmer' is given as 3 *séts*, with the proviso that he must be paid in cattle. Presumably it was felt that someone as lowly as an *ócaire* could not be paid in silver. By contrast, a supreme king (*rí ruirech*) wounded in the cheek gets 'the worth of a milch cow in silver'.¹¹⁰ Clearly, the cow herself will not suffice: one as elevated as a supreme king must be paid in silver. Sometimes, it is specified that a proportion of a fine is to be paid in a particular currency. Thus, he who is responsible for maiming another's hand pays a *cumal*, of which one third must be in silver, and the rest in cattle.¹¹¹

The relative value of the different currencies is difficult to work

¹⁰⁴ Thus the *Senchas Már* text *Córus Béscnai* gives the *bóaire* an honour-price of 5 *séts*, (*CIH* 532.8 = *AL* iii 42.20), which is the same as the amount assigned to him in *Bretha Nemed* *toiscech* (*CIH* 2212.31).

¹⁰⁵ *CIH* 1604.12 = *AL* v 58.16.

¹⁰⁶ *CIH* 2339.20 = *UR* 110 §17.

¹⁰⁷ e.g. *CIH* 922.20-1 = *IR* 6 §6.

¹⁰⁸ *CIH* 2307.10-1 = *Ériu* 20 (1966) 26 §7.

¹⁰⁹ *CIH* 779.3-4 = *CG* 120; cf. *CIH* 584.19-20 = *AL* iv 350.6-7.

¹¹⁰ *CIH* 2306.26 = *Ériu* 20 (1966) 26 §5.

¹¹¹ *CIH* 2312.33 = *ibid.* 40 §30.

out, and there must have been considerable fluctuation. For example, after one of the many cattle-plagues recorded in the annals, the value of a healthy milch cow no doubt appreciated against silver.

The later glossators generally took the equation to be 1 milch cow = 1 ounce of silver = 2 séts = $\frac{1}{3}$ *cumal*. Sometimes the Old Irish law-texts agree more or less closely with these equivalences. Thus *Bretha im Fuillema Gell* makes it clear that an ounce of silver was regarded as the normal price of a milch cow.¹¹² A passage in *Di Astud Chirt 7 Dlidig*¹¹³ indicates that 1 *cumal* = 7 séts, which is close to the glossators' equation of 1 *cumal* = 6 séts. Another text, *Uraicecht na Riar*, gives a similar correspondence with 7 *cumals* = 40 séts.¹¹⁴ On the other hand, *Cáin Aicillne* provides a totally different equation of 1 *cumal* = 20 séts.¹¹⁵ The *sét* seems also to vary in relation to the cow. In *Crith Gablach*, 1 *sét* is taken to be equivalent to $\frac{4}{5}$ of a (milch) cow,¹¹⁶ whereas elsewhere 1 *sét* = $\frac{1}{2}$ milch cow.¹¹⁷

Payment for a service

There are many references in the law-texts to the payment of craftsmen, poets, lawyers, etc. For example, *Bretha Nemed déidenach* lists the payment (*dúas*) due to the poet for various types of metrical composition (*aiste*) — see p. 45.

Fine

Almost all offences can be atoned for by the payment of a fine — see p. 214.

Marriage and fosterage payments

A husband normally purchases his wife from her father by paying him a *coibche* 'bride-price' (see p. 72). In many marriages the

¹¹² *CIH* 467.11-2 = *AL* v. 392.1-2. This equation seems to have remained fairly constant, as *AU* s.a. 1106 puts an ounce [of silver] as equivalent to $\frac{3}{4}$ of a milch cow.

¹¹³ *CIH* 225.33-226.19 = *AL* v. 432.21-4.

¹¹⁴ *CIH* 2336.4-7, 12-3 = *UR* 102 §§2-3.

¹¹⁵ *CIH* 488.13-9; 1790.21-4 = *ZCP* 14 (1923) 368 §29. For another explanation of this passage, see Neil McLeod, *ZCP* 42 (1987) 110.

¹¹⁶ *CIH* 778.34 = *CG* 105. Or perhaps *ba[1]* here includes younger cattle.

¹¹⁷ For example *Uraicecht Becc* (*CIH* 1601.3; 1618.16-36 = *AL* v. 44.31; 112.18-9) states that the honour-price of a poet of the grade of *ároth* is 20 séts. *Bretha Nemed déidenach* (*CIH* 1124.31 = *Ériu* 13 (1942) 32.22) gives him an honour-price of 10 cows. This agrees with the regular equivalence of 1 *sét* = $\frac{1}{2}$ milch cow.

contribution from the woman's side may be of roughly equal value to what the man brings to the marriage, in which case it is described as a 'union of joint property' (*lánannas comthinchuir*). A marriage into which the man contributes little or nothing is a 'union of a man on woman-property'.

At the beginning of a fosterage, the father of the child pays the fosterfather a fee (*iarrath*). This ranges from 3 séts for the son of an *ócaire* up to 30 séts for the son of a king. When fosterage has been completed, the fosterfather gives the child a *sét gertha* 'a valuable of affection'.

Fief and rent

The relationship between lord and client involves the exchange of movable property. The lord advances a fief (generally of cattle) in return for which the client pays an annual food-rent (*bés*) and other services — see p. 27.

Loan

Two types of loan — *ón* and *airliciud* — are commonly distinguished in the law-texts and other sources, but the difference between them is unclear.¹¹⁸ The editors of the Würzburg Glosses¹¹⁹ suggest that *ón* (*úan*) corresponds to *commodatum* (a loan for use)¹²⁰ of Roman law, and that *airliciud* corresponds to *mutuum* (a loan for consumption). However, the list of *ón*-loans in Heptad 48¹²¹ includes property which is consumed (e.g. salt) and which is used (e.g. a horse). Similarly, the list of *airliciud*-loans in Heptad 82¹²² includes property which is consumed (e.g. food) and which is used (e.g. a weapon). So the distinction cannot depend on whether the loan is used or consumed. The short passage preceding Heptad 81 states that 'it is not easy to reconcile the rule of *airliciud* in native law with the books [of canon law]'.¹²³ This suggests that *airliciud* in particular was felt to conflict with the Church's ban on usury.¹²⁴ However, there seems to be no other evidence to support the theory

¹¹⁸ The more general term for 'loan', *tasacht*, is also commonly used in the law-texts, see *DIL* s.v.

¹¹⁹ *Thes.* i 700.37.

¹²⁰ *HIRL* 300.

¹²¹ *CIH* 43.21-44.3 = *AL* v. 278.1-6.

¹²² *CIH* 572.12-9 = *AL* v. 372.11-22.

¹²³ *CIH* 571.32-3 = *AL* v. 370.9-10.

¹²⁴ e.g. *IP* 72 §13.

that *airliciud* is a loan requiring interest, whereas *ón* is an interest-free loan.¹²⁵

The laws and wisdom-texts tend to discourage lending. *Tecosca Cormaic*¹²⁶ includes 'much lending' (*airliciud il*) among the ways of folly. Heptads 80¹²⁷ and 81¹²⁸ give a wide range of circumstances in which a lender will find it difficult or impossible to recover his property by legal means. These include lending to a man who has been proclaimed as an outlaw, to a person who is without legal responsibility (*éconn*), to a man who does not recognise justice or law, and to a man from whom sureties cannot enforce repayment because of his insolvency. Lending to a person of high rank is particularly discouraged. According to Heptad 80 a loan (*ón*) to a noble cannot be recovered by sureties on account of his nobility. Similarly, Heptad 81 states that a loan (*airliciud*) to a king cannot be recovered by suing 'because of the weight of the king's honour'.

A person cannot expect to recover his property if he lends it for particularly dangerous purposes without first binding the loan by sureties. The examples given in Heptad 48 include lending a boat for going to sea, lending a sword in a battle, lending a dog for hunting, and lending a horse for racing. There is also no right to recover an article loaned to a man who has died unless the loan was bound by sureties, because 'heirs are responsible only for a formally bound contract'. But if a person avoids lending his property to risky borrowers or in risky circumstances, he is legally entitled to its safe return, even if the loan is not bound by sureties.¹²⁹

The law of lending distinguishes a loan for a fixed period (*fri airchenn*) and an open loan (*fri anairchenn*).¹³⁰ The latter is compared with God's gift of life to man which can be called back at any time.¹³¹ If a fixed loan is not restored within the proper period, the borrower is penalised. For example, if he fails to replace food in time, he may be the cause of the lender not having enough to feed a party of guests. The lender thus becomes guilty of 'refusal

¹²⁵ There is a reference to the interest on a loan (*lög a fasachta*) in TBC LL 93-7. For a year's loan of the bull Donn Cúalnge, Medb offered interest of 50 dry heifers (*samaisci*).

¹²⁶ TC §14.29.

¹²⁷ CIH 571.26-31 = AL v 370.1-8.

¹²⁸ CIH 572.3-8 = AL v 370.21-372.6.

¹²⁹ CIH 44.29-30 = AL v 278.7-8.

¹³⁰ CIH 571.17 = AL v 368.9-10.

¹³¹ CIH 571.22-4 = AL v 368.18-20.

'hospitability' (*esáin*, p. 139) and so the borrower must pay *h* in his honour-price in compensation.¹³² The same may apply if *meal* (meat required for beer-making) is not replaced in time for a festival, or a cleric's cowl is not returned in time for a synod. A lender is also entitled to his honour-price if there is failure to return a horse needed for a journey, or a sword needed in time of danger.

Unauthorized or enforced loan

Normally it is illegal to borrow property without the *consent* of the owner. The text on distraint refers to the unauthorized taking (*strim*) of a race-horse,¹³³ and the unauthorized use (*formill*) of an axe or billhook.¹³⁴ In some circumstances, however, unauthorized borrowing is permitted. According to Triad 163 a person may take another's property without consent when *in sea* when going to warn his neighbours of some danger. A gloss on the Triad suggests that a horse could be borrowed under these circumstances. A legal commentator refers to the unauthorized taking of a boat, which is likewise permitted for the purpose of *ing from danger*.¹³⁵

There seems also to be an entitlement to borrow *without* *consent* from a kinsman, an in-law, or a connection *through marriage*. This is referred to in a fragmentary text as *fír-attach* (i.e. 'seizure under trust').¹³⁶ According to the accompanying commentary, it can only be availed of once a year, and not *when called in the owner's presence against his wishes*.

Errec has special powers to extract an enforced loan (*errec*) from his subjects.¹³⁷ He may take dry cattle to feed his army after *travelling back across the border* (e.g. after a military expedition to a neighbouring *túath*). When travelling within his own *suí* (i.e. company of a king from outside), he may feed his party by enforced loan until a royal fort is reached. In both these cases he must recompense the owners of the cattle. The term *errec* is also used to describe the king's power to provision the army while subjugating a people which resists his rightful overlordship. In this *case* no *consent* is made.

¹³² 14 = AL v 372.14-5.

¹³³ 16-7 = AL i 230.26.

¹³⁴ 18 = AL i 166.24-5.

¹³⁵ 7-9 = AL v 208.10-2.

¹³⁶ 30 = AL iii 486.7.

¹³⁷ 1-5 = CG 559-65. See CG Legal Glossary p. 87.

that *airliciud* is a loan requiring interest, whereas *ón* is an interest-free loan.¹²⁵

The laws and wisdom-texts tend to discourage lending. *Tecosca Cormaic*¹²⁶ includes 'much lending' (*airliciud il*) among the ways of folly. Heptads 80¹²⁷ and 81¹²⁸ give a wide range of circumstances in which a lender will find it difficult or impossible to recover his property by legal means. These include lending to a man who has been proclaimed as an outlaw, to a man who is without legal responsibility (*éconn*), to a man who does not recognise justice or law, and to a man from whom sureties cannot enforce repayment because of his insolvency. Lending to a person of high rank is particularly discouraged. According to Heptad 80 a loan (*ón*) to a noble cannot be recovered by sureties on account of his nobility. Similarly, Heptad 81 states that a loan (*airliciud*) to a king cannot be recovered by suing 'because of the weight of the king's honour'.

A person cannot expect to recover his property if he lends it for particularly dangerous purposes without first binding the loan by sureties. The examples given in Heptad 48 include lending a boat for going to sea, lending a sword in a battle, lending a dog for hunting, and lending a horse for racing. There is also no right to recover an article loaned to a man who has died unless the loan was bound by sureties, because 'heirs are responsible only for a formally bound contract'. But if a person avoids lending his property to risky borrowers or in risky circumstances, he is legally entitled to its safe return, even if the loan is not bound by sureties.¹²⁹

The law of lending distinguishes a loan for a fixed period (*fri airchenn*) and an open loan (*fri anairchenn*).¹³⁰ The latter is compared with God's gift of life to man which can be called back at any time.¹³¹ If a fixed loan is not restored within the proper period, the borrower is penalised. For example, if he fails to replace food in time, he may be the cause of the lender not having enough to feed a party of guests. The lender thus becomes guilty of 'refusal

¹²⁵ There is a reference to the interest on a loan (*lóg a iasachta*) in *TBC* LL 93-7. For a year's loan of the bull Donn Cúalnge, Medb offered interest of 50 dry heifers (*samaisci*).

¹²⁶ *TC* §14.29.

¹²⁷ *CIH* 571.26-31 = *AL* v 370.1-8.

¹²⁸ *CIH* 572.3-8 = *AL* v 370.21-372.6.

¹²⁹ *CIH* 44.29-30 = *AL* v 278.7-8.

¹³⁰ *CIH* 571.17 = *AL* v 368.9-10.

¹³¹ *CIH* 571.22-4 = *AL* v 368.18-20.

of hospitality' (*esáin*, p. 139) and so the borrower must pay him his honour-price in compensation.¹³² The same may apply if malt (required for beer-making) is not replaced in time for a festival, or if a cleric's cowl is not returned in time for a synod. A lender is also entitled to his honour-price if there is failure to return a horse needed for a journey, or a sword needed in time of danger.

Unauthorized or enforced loan

Normally it is illegal to borrow property without the consent of the owner. The text on distraint refers to the unauthorized taking (*foimrimm*) of a race-horse,¹³³ and the unauthorized use (*fomailt*) of an axe or billhook.¹³⁴ In some circumstances, however, unauthorized borrowing is permitted. According to Triad 163 a person may take another's property without consent when in fear or when going to warn his neighbours of some danger. A gloss on this triad suggests that a horse could be borrowed under these circumstances. A legal commentator refers to the unauthorized taking of a boat, which is likewise permitted for the purpose of escaping from danger.¹³⁵

There seems also to be an entitlement to borrow without permission from a kinsman, an in-law, or a connection through fosterage. This is referred to in a fragmentary text as *fiatach fo hairisin* 'seizure under trust'.¹³⁶ According to the accompanying commentary, it can only be availed of once a year, and nothing can be taken in the owner's presence against his wishes.

A king has special powers to extract an enforced loan (*errech*) from his subjects.¹³⁷ He may take dry cattle to feed his army after coming back across the border (e.g. after a military expedition against a neighbouring *túath*). When travelling within his own *túath* in the company of a king from outside, he may feed his party by an enforced loan until a royal fort is reached. In both these cases he must recompense the owners of the cattle. The term *errech* is also used of the king's power to provision the army while subjugating a *túath* which resists his rightful overlordship. In this case no compensation is made.

CIH 572.14 = *AL* v 372.14-5.

CIH 401.16-7 = *AL* i 230.26.

CIH 384.18 = *AL* i 166.24-5.

CIH 23.7-9 = *AL* v 208.10-2.

CIH 328.30 = *AL* iii 486.7.

CIH 570.1-5 = *CG* 559-65. See *CG* Legal Glossary p. 87.

Deposit

Under various circumstances the owner of an object of value may wish to deposit it with another person for safe keeping. The term *aithne* (cognate with Welsh *adnau* of the same meaning) is used both of the act of depositing, and of the object deposited.

The regulations on *aithne* — surviving mainly in Heptads 19-20 — are similar to those which govern lending.¹³⁸ Thus, there is no right to recover property entrusted with a person who is without legal responsibility (*éconn*), with a person of high rank (*ardnemed*), with a criminal or outlaw, or with a person who has since died. There is likewise no right of recovery if property is deposited in a dangerous place such as a kiln or forge (on account of the risk of fire), or in dangerous circumstances.

A person who entrusts his horse to a messenger on a journey for his own (i.e. the owner's) benefit, is not entitled to compensation if the horse is lost, stolen or injured. The same applies if he entrusts his dog for hunting or if he deposits anything in a boat. There is also no right to compensation if the deposited article is burnt in a fire caused by lightning. As with loans, a deposit may or may not be bound by sureties.

Triad 87 refers to a topic which is not covered in the surviving law-texts: the use (*fomait*) of deposited articles by their custodian. According to this triad the three deposits 'with use' are a woman, a horse and salt. Binchy suggests (pers. comm.) that if a woman's husband or guardian is unwise enough to leave her in somebody else's house, he has no legal redress if she is taken advantage of sexually.

Gift

A gift may be given out of personal affection or in the hope of obtaining some political or social benefit, but the law will not compel the recipient to respond according to the donor's expectations. Often the donor may not be seeking a particular return for his gift, but rather has the general aim of securing friendship, enhancing his own prestige, and honouring the recipient. The exchange of gifts between two persons or groups forms a social bond with mutual obligations. To avoid compromising his and the Church's position, St. Patrick stresses that he was careful not to accept gifts — even at the risk of causing offence.¹³⁹ On the other

¹³⁸ *CIH* 19.3-20.15 = *AL* v 190.13-196.4.

¹³⁹ *Confessio* §49.

hand, he himself gave gifts to kings and judges¹⁴⁰ to secure their support.

The sagas, annals, and saints' lives provide many instances of the giving of gifts, but — because of their essentially non-legal nature — the law-texts devote relatively little attention to such transactions. The commonest word for 'gift' in the law-texts is *tabart* (verbal noun of *do-beir* 'gives') but it is used also of other types of property-transactions. Thus Heptad 25 lists seven *tabarta* which cannot be recovered even though the transaction has not been bound by sureties.¹⁴¹ They are: an offering to the Church for the soul, payment to a poet, lawyer, messenger, or craftsman, and a gift to a king or bishop. Such *tabarta* have the legal status of a contract (*cor*).¹⁴²

The giving of gifts by women particularly engages the lawyers' attention. As we have seen above (p. 75) the legal rights of a woman are normally very restricted. However, a legal quotation (now detached from context)¹⁴³ allows a woman to make a gift (*tabart*) in accordance with her rank without obtaining her husband's permission. The *Díre*-text¹⁴⁴ assigns to the woman a more restricted right to give: she can make a proper gift (*tabart bes téchtae*) to a male superior, who may be her father, husband, son (if she is widowed) or the head of her kin (if she has no other immediate male relative). *Cóic Conara Fugill* also refers to the right to make a gift (*tabart*) within a close relationship (*lánamnas*) i.e. between husband and wife, mother and son, father and daughter, etc.¹⁴⁵ *Berrad Brechta* lists three types of gift made by a parent to a son or daughter (*maccslabraise*): a gift in exchange for maintenance in old age (*goire*), a gift of tears (i.e. to assuage a child's tears), and a gift of love.¹⁴⁶ Such gifts are *ruidles*, i.e. totally immune from claim by anyone else, but there are legal limits to the amount which may be given.¹⁴⁷

¹⁴⁰ *ibid.* §§52-3, translating *illis qui iudicabant* 'to those who judged'.

¹⁴¹ *CIH* 24.11-25.5 = *AL* v 212.1-5. This heptad is also found in *CCF* 147 §81 = *CIH* 1035.36-9.

¹⁴² In *CIH* 459.23-460.2 = *Ériu* 17 (1955) 66 §7 a similar list of *tabarta* are described as 'noble contracts' (*úasalchuir*).

¹⁴³ *CIH* 2103.35-6.

¹⁴⁴ *CIH* 444.6 = *IR* 35 §38.

¹⁴⁵ *CIH* 2201.17 = *CCF* 19 §11. For discussion see *CCF* 73-4.

¹⁴⁶ *CIH* 591.31-4 = *Bürgschaft* 7 §9.

¹⁴⁷ *CIH* 1109.17-23.

For a woman's right to bequeath movable property to the Church, see below.

Inheritance of movable property

A son inherits a share of his father's movable property, as well as his land.¹⁴⁸ Unless she is brotherless (see above p. 104), a daughter does not inherit land. She is, however, entitled to a share of her father's personal valuables (*séuit saindilsi*).¹⁴⁹

Bequest

On a man's death the general rule is that his property passes automatically to his dutiful sons, or is divided out among his kinsmen if he is childless. However, Irish law allows him in certain circumstances to bequeath a portion of his property according to his own wishes.

Two terms — *audacht* and *imnae* (or *timnae*) — are used for such bequests, but so far no convincing explanation of the distinction between them has been put forward. The glossators¹⁵⁰ take the *audacht* to be made at the point of death (*fri bás*) and the *imnae* to be made in full health (*a nertsainte*). However, a number of Old Irish references show this to be false: thus Heptad 78 refers to *timnae fri éc* 'a bequest at death'.¹⁵¹ (For a fuller discussion of the evidence, see *Bechbretha* pp. 159-60).

Both *audacht* and *imnae* are native words,¹⁵² and it therefore seems likely that a limited right to bequeath property according to the owner's wishes goes back long before the coming of Christianity. However, in our sources both terms are used mainly in relation to bequests to the Church. Thus, in an unedited collection of legal material a distinction is drawn between three types of contract (*cor*): a devilish contract, a human contract, and a godly contract.¹⁵³ The godly contract is for an *imnae* or *audacht*, or for a requiem. The text

¹⁴⁸ *CIH* 736.20-1.

¹⁴⁹ *CIH* 736.28-9.

¹⁵⁰ e.g. *CIH* 529.34 = *AL* iii 34.14.

¹⁵¹ *CIH* 596.30 = *AL* v 368.3-4.

¹⁵² *Audacht* is taken by O'Brien to be from **ad-ukʷ-to-* 'that which has been said', a *t*-participle from the root **wekʷ* 'to say' (AM Notes p. 22). *Imnae* [**imb-ad-no-*] and *timnae* [**to-imb-ad-no-*] contain the verb *noid* 'proclaims, makes public' (*VGK* ii 585). In Mod. Ir. *audacht* survives as *uacht* 'will', and *timnae* as *tiomna* 'testament'.

¹⁵³ *CIH* 1247.33-1248.7; cf. *CIH* 524.18-9 = *AL* iii 18.12-3.

on the relations between the laity and the Church, *Córus Béscnai*, lays down the sum which each rank is normally expected to bequeath to the Church.¹⁵⁴ It corresponds to his honour-price, so an *ócaire* 'small farmer' gives an *imnae* of 3 *séts*, etc. But there are restrictions on the amount which can be bequeathed: a man who has diminished the value of his inheritance by a considerable amount cannot bequeath anything to the Church.¹⁵⁵ On the other hand, the man who has increased the value of his inheritance may bequeath what he likes from his personal acquisitions, provided he leaves a proportion (varying between one third and two thirds) to his kin.¹⁵⁶ A woman — normally not entitled to transfer property — may bequeath the produce of her own hands to the Church.¹⁵⁷ But she cannot do this if she leaves liabilities behind her which must be met by surviving relatives.

A bequest is normally oral: thus the *audacht* before death is described as the noblest and highest type of speech because it is not known whether the soul may go to Hell or to Heaven.¹⁵⁸

Pledge and distraint

Property may also change hands — usually only for a limited period — when given as a pledge or taken by distraint. See pp. 164 and 177 respectively.

Lost property

Heptad 54 deals with the rights of the finder of lost property (*fríth* or *fríthe* lit. 'that which has been found').¹⁵⁹ The main principle is that the more remote the place where an article is found, the greater the proportion of its value which goes to the finder. Also, if an article is found in a likely or frequented place, the finder gets a slightly greater proportion than if it is found in an unlikely or unfrequented place — presumably the honest finder is felt to deserve extra credit for spotting a lost article in an obvious place, where it might easily have been picked up by a thief.

If an article lost for more than three nights is found in a house,

¹⁵⁴ *CIH* 532.1-11 = *AL* iii 42.14-24.

¹⁵⁵ *CIH* 532.20 (reading *is meisech*) = *AL* iii 44.6-7.

¹⁵⁶ *CIH* 533.17-20 = *AL* iii 48.15-9.

¹⁵⁷ *CIH* 442.21-2 = *IR* 32 §34. Cf. *SEIL* 225-6.

¹⁵⁸ *CIH* 1192.12-4.

¹⁵⁹ *CIH* 55.18-59.30 = *AL* v 320.7-322.6.

the finder returns it to the owner and gets one fifth of its value (or one quarter if it is in a likely place). If it is found on a road, he gets half its value (or two thirds in a likely place). If it is found in the forest or mountain, he gets two thirds of its value (or three quarters in a likely place). If it is found on a strand, he gets four fifths of its value (or twenty-nine thirtieths¹⁶⁰ in a likely place). If it is found in the sea he gets twenty-nine thirtieths¹⁶⁰ of its value (in this case no distinction can reasonably be made between likely and unlikely places).

Other references to lost or stray property are sparse. A difficult passage in *Bechbretha* (§42) concludes with what seems to be the general rule about property which is deposited — by whatever means — on another's land: 'every land is entitled to *autsad* (storage-fee?) from whatever is deposited on it'.¹⁶¹ This implies that if property belonging to A is found on B's land (whether it has been lost, hidden, deposited by flood, etc.) B is entitled to payment from A.¹⁶² In accordance with this rule, the owner of land on which a bee-swarm of known origin settles is entitled to ownership of the bees or a share of their produce (*Bechbretha* §§36-45).¹⁶³ *Bechbretha* §§46-9 deals in great detail with the rights of the finder of a stray swarm (*fríth mbech*) whose origin cannot be ascertained. The bees and their produce go in varying proportions to the finder and to the owner of the land where they are found.

A fragmentary quotation in O'Davoren's Glossary¹⁶⁴ states that the finder of lost property must proclaim his find throughout the territory. According to commentary,¹⁶⁵ the find must be proclaimed to the king, monastic superior (*airchinnech*), chief smith, hospitaller (*briugu*), judge, and also at the mill and in the presence of the occupants of the same house-enclosure (*les*) and townland (*baile*).

¹⁶⁰ One might expect the owner to retain one sixth rather than one thirtieth of its value. However, the original text seems definitely to have had *cóiced sesid* 'one fifth of one sixth' (CIH 58.26; 906.34-5; 1211.20-1). This is confirmed by the glossator's in *trichadmad rand* 'the thirtieth part', e.g. CIH 58.28.

¹⁶¹ CIH 452.26 = BB §42. For a discussion of the term *autsad* (DIL s.v. *etsad*) see Notes to BB pp. 150-1.

¹⁶² In the case of stolen property, payment is of course made by the thief rather than the owner of the property; see p. 148.

¹⁶³ The details are set out in a table on p. 140 of BB.

¹⁶⁴ CIH 1484.10 = O'Dav. 488; cf. CIH 2062.27. Binchy (quoted Ériu 12 (1938) 200) reads *diam frithe fogba, fo thuathaib comairser* 'if you find an estray, you should enquire throughout the territories'.

¹⁶⁵ CIH 2063.1-3; CIH 59.34-6 = AL v 336.2-4.

CHAPTER 5

OFFENCES

KILLING

The most serious offence against another person is to deprive him of his life. Many systems of justice balance the taking of one life by the taking of another, i.e. by putting the killer to death. A well-known expression of this view is found in *Exodus* 21: 24 'thou shalt give life for life, eye for eye, tooth for tooth, etc.'. Even to cause another's death through negligence may entail the same penalty; thus *Exodus* 21: 29 states that if an ox of known viciousness kills a freeman or freewoman, both the ox and its owner are put to death.

Other legal systems — including that of early Ireland¹ — allow for a killer to atone for his crime by payment. No Irish law-text

¹ Some features of the Irish system of payment for homicide — with its associated terminology — reappear in Medieval Scots law. Thus *cro* or *croy* 'the compensation or satisfaction made for the slaughter of any man according to his rank' (*A Dictionary of the Older Scottish Tongue* s.v.) is the same word as O.Ir. *evó* 'violent death, compensation for violent death'. It is found in legal documents both in Latin and in Scots, e.g. 1432 Acts II 21/1 'he sall pay to the king xl pundis and the *croy* to the nerrest of the kyn of the slane man'. Scots law also uses the term *enach* or *enauach* (= O.Ir. *enech* 'face, honour' cf. *lög n-enech* 'honour-price') in the wider meaning of the payment for any crime: 'ane mendis or satisfaction for ane fault or trespass'. Both terms are used together at Acts I 276/2 along with the Cumbric legal term *galnys* (= Welsh *galanas* 'fine for homicide'): *Le cro et le galnys et le enach unius cuiusque hominis sunt pares scilicet in respectu de le trach feminarum suarum*. A Scots version is found at Acts I 300/3: 'Item the *cro* and the *galnys* and the *enauach* of euerilkman are lik that is to say in respic of *trach* of that wiffis'. (For further discussion of Scots *cro*, see David Sellar, *Scottish Studies* 29 (forthcoming)). On receipt of the *cro*, the Scots custom was for the relatives of the deceased to write 'letter(s) of slains' acknowledging that the case had been satisfactorily resolved, and applying to the Crown for the culprit to be pardoned. In her article 'Bloodfeud, Kindred and Government in Early Modern Scotland' (*Past and Present* 87 (1980) 62) Jenny Wormald points out that the word *slains* (also spelled *slanes*, *slanys*, *slayans*) is not the past participle of the English verb *slay*, as claimed in the *Oxford English Dictionary* s.v. *slain*. She equates it with Ir. *sláinte* 'exemption, release from liability, indemnification', but perhaps it would be easier on phonetic grounds to identify it with Ir. *slán* of the same meaning (see DIL s.v. *slán* II (c), (d)).

survives which deals comprehensively with the payments to be made for illegal killing, and it is not always possible to reconcile the information contained in different sources.² However, it seems that two main types of fine are normally paid to the victim's kin. The first is the fixed penalty for homicide which amounts to 7 *cumals* for every freeman, irrespective of rank. It is generally called the *éraic*,³ but — particularly in later Old Irish — *cró*⁴ is employed with the same meaning. This fine goes in full to the victim's kin-group (*derbfine*), apart from an enforcer's third (*trian tobaig*) which may be deducted if it is necessary for payment to be enforced by a lord or other person of power.⁵

The other main fine is based on the honour-price (*lög n-enech*) of the victim's kin, and is distributed among both his paternal and his maternal kin. For example, a man receives *ländire* 'full payment' (presumably of his own honour-price) for the illegal killing of his father or mother.⁶ He gets half payment for the killing of his paternal uncle or his maternal aunt, and one third payment for the killing of the son or daughter of either of them i.e. his first cousin on his father's or mother's side. He is even entitled to a payment (one seventh of his honour-price) for the killing of his fosterfather⁷ or fosterbrother.⁸

From the above it can be seen that illegal killing could be extremely expensive⁹ if the victim is of high rank, and it is clear that the culprit's kinsmen are expected to contribute to the payments.¹⁰ But there may be occasions when the kin is reluctant or unable to pay for a killing by one of its members. In such

²For discussion, see Thurneysen, *IR* 14-6; Binchy, *CG* Legal Glossary s.vv. *enech*, *éraic*, and at *Ériu* 12 (1938) 93.

³This term is commonly employed — angl. *erick* — in English documents relating to Ireland (see p. 141 below).

⁴It is used in this sense in the law-text on the distribution of *cró* 7 *dibad* (App. 1 No. 64); see Greene, *Celtica* 15 (1983) 7-8, and note¹ above. It is noteworthy that Scots *cro* clearly refers to a payment dependent on rank, whereas O.Ir. *cró* refers to the fixed penalty of 7 *cumals*.

⁵e.g. *CIH* 778.20 = *CG* 85. In Welsh law, the enforcer is entitled to the same proportion, known as *traean cymyll* 'third of enforcement' *WLW* 219.

⁶*CIH* 437.13-20 = *IR* 16-17 §§15-16.

⁷*CIH* 438.5-10 = *IR* 19 §20.

⁸*CIH* 439.15-8 = *ibid.* 20 §21.

⁹For example, *AC* s.a. 1400 §8 records that 126 cows were paid as *éraic* (the term is presumably here used to cover both payments) for the accidental killing of Grigoire Ó Maolchonaire.

¹⁰*CIH* 430.21-2 = *AL* iv 284.10-1.

circumstances the victim's kin can hold the killer captive¹¹ until such time as payment is made — either by the kin or another party¹² — or may put him to death or sell him into slavery.

If a non-paying killer is at large, the victim's kinsmen are obliged to carry out a blood-feud to exact vengeance (*dígal*) on behalf of the dead man.¹³ If the victim was a lord, his base-clients must also join in the vengeance party.¹⁴ As in Welsh law,¹⁵ this blood-feud clearly has legal standing. For example, it seems from an obscure passage in *Críth Gablach* that for one month after the conclusion of a peace-treaty (*cairde*) between two *túatha*, a party of avengers may pursue a blood-feud in the territory of the other *túath*.¹⁶

Kin-slaying (*fingal*)

The laws and wisdom-texts frequently stress the horrendous character of *fingal* 'kin-slaying',¹⁷ which strikes at the heart of the kin-based structure of early Irish society. Because a killing is normally atoned for by payments to the victim's kin, it is impossible to accommodate the crime of *fingal* into the early Irish system of compensation. Similarly, it could not be avenged by other members of the kin, as they would themselves be guilty of *fingal* if they put the killer to death.

The laws apply heavy sanctions against the perpetrators of *fingal*. For example, a fort in which the crime of *fingal* has been committed can be destroyed with impunity,¹⁸ and a king who has been guilty of *fingal* loses his honour-price.¹⁹ But in practice, some kings who

¹¹Adomnán (*VSC* 88a) records how the murderer Librán was held in chains by his victim's kin.

¹²It is unclear whether the rich man who ransomed Librán was his own kinsman, or a kinsman of his victim.

¹³The Church attempted to discourage this custom, e.g. *IP* 271 §3. The futility of vengeance is also the theme of the tale *Imram Curaig Maile Dúin* 'the Voyage of Máel Dúin's Boat' (ed. Stokes, *RC* 9 (1888) 447-95; 10 (1889) 50-95).

¹⁴*CIH* 486.33 = *ZCP* 14 (1923) 364.

¹⁵e.g. *DC* II viii §14. See *WLW* 199 s.v. *dial*.

¹⁶See Binchy, *CG* pp. 70-2 s.v. *aire échta*, and McLeod, *ZCP* 42 (1987) 46-50.

¹⁷e.g. *AM* 66 (Rec. A §38). In the poems of Bláthmac (*PB* 16 §47; 36 §103) the crucifixion of Christ is seen as *fingal* because the Jews were regarded as his maternal kin (*maidhire*). In legal commentary (*CIH* 1539.30) the suicide is classed as a kin-slayer (*fingalach*).

¹⁸*CIH* 14.16 = *AL* v 168.13.

¹⁹*CIH* 15.4 = *AL* v 172.19.

acquired their kingship through *fingal* are known to have reigned successfully for many years.²⁰

Secret killing

Our sources contain many references to *duinetháide*. From the literal meaning of its components (*duine* 'person' + *táide* 'theft') one might take it to refer to kidnapping or abduction — with or without killing. However, as far as one can tell from the sources, *duinetháide* always involves secret murder.²¹ According to legal commentary, a killing is classed as *duinetháide* if the body is concealed, or left in a mountain or wilderness, and the killer fails to acknowledge his crime.²² As in early societies generally, secret murder is regarded as a more serious offence than publicly acknowledged killing.²³ So, if the crime of *duinetháide* is fixed on a particular person by another's oath,²⁴ he must pay twice the normal penalty for killing.²⁵ In *Cáin Adomnáin* it is treated as an equally serious offence as causing another's death by magic spells.²⁶

Lawful killing

Like other legal systems, early Irish law recognises that there are circumstances in which the killing of another person is justified, and therefore entails no penalty. Heptad 35²⁷ lists seven cases — some of them obscure to me — in which a violent death (*cro*) does not require payment of a fine (*colainnéraic*). For example, it is

²⁰For example, Coirpre mac Diarmata acquired the kingship of Uí Cheinnselaig through the *fingal* of his brother Tadc (AU s.a. 864 = 865). He reigned for 11 years, and was then himself a victim of *fingal* (AU s.a. 875 = 876).

²¹e.g. AU s.a. 878 = 879 *Fergil m. Cumsaid abbas Domnaigh Sechnaill do marbad i nduinetaithiu* 'Fergal son of Cumsad, abbot of Dunshaughlin, was secretly murdered'.

²²CIH 252.16-20 = AL iii 98.2-8.

²³Compare the distinction in Old Norse law between *víg* 'publicly acknowledged killing' and the more serious offence of *morð* 'secret murder' (cf. Anglo-Saxon *morb*, Late Latin *murdrum* 'id').

²⁴The text on distraint refers twice to *dindis*-(-as) *duinetháide* 'an oath denying secret murder' (CIH 390.5 = AL i 184.9; CIH 403.5 = AL i 236.25).

²⁵CCF 65.

²⁶CA 30 §46.

²⁷CIH 31.19-32.1 = AL v 236.11-5.

lawful to kill in battle,²⁸ or to kill a thief caught in the act of stealing. An unransomed captive (*cimbid*) may be killed by the individual or kin whom he has wronged,²⁹ and a violator of the law (*fer coilles cáin*) may be killed by anybody.³⁰

A number of texts stress that it is permitted to kill in self-defence.³¹ The *Cairde*-text also deals with a situation which might arise if there is a treaty between two peoples, *túath* A and *túath* B.³² A member of *túath* A kills a member of *túath* B. However, the victim is in a war-band (*fíallach*) along with members of *túath* C, which has no treaty with *túath* A. The killer is not aware that his victim belongs to *túath* B, and is therefore exonerated from liability.

INJURY

The law relating to illegal injury is to be found mainly in *Bretha Crólige* (Appendix 1 No. 29) and *Bretha Déin Chécht* (Appendix 1 No. 30), and in some fragmentary material on 'wounding' (*eisce*) at CIH 2029.31-7 and 2076.21-2084.2. The normal procedure when an illegal injury takes place is for the victim to be brought to his own home, where he is looked after by his kin (doubtless under medical supervision) for a period of nine days.³³ If he dies during this period the culprit must pay the full penalties for killing.³⁴

In the event of his still being alive after nine days, he is then formally examined by a physician.³⁵ If he is so well recovered that he no longer needs nursing, the culprit has only to pay for any lasting blemish or disability³⁶ (see below). But if the physician believes that recovery is unlikely, the culprit must pay the heavy fine

²⁸cf. CIH 779.19 = CG 143.

²⁹cf. CIH 328.7 = AL iii 484.4 *ni gona cimid manub lat* 'do not kill a captive unless he is yours'.

³⁰cf. CIH 324.7 = AL iii 464.12 *ógdiles each nanrechtaid* 'every unlawful person is wholly without legal protection'.

³¹e.g. CIH 866.34 *diles gac frithguin* 'every counter-wounding is free from liability'.

³²CIH 791.13-5.

³³Most sources refer to a nine-day period (*nómad*) before the physician's prognosis is made, e.g. GC §27 (CIH 2196.1 = ZCP 15 (1925) 335); cf. PB 14 §38. However, BC §41 (CIH 2297.17 = Ériu 12 (1938) 32) refers to a ten-day period (*dechmad*).

³⁴Ériu 12, 93.

³⁵CIH 2297.19 = BC §41.

³⁶CIH 2297.36-7 = BC §42.

for *crólige báis*, lit. 'blood-lying of death'.³⁷ The texts are not explicit, but Binchy suggests that the payment of this fine releases the culprit from further payments, whether the victim lives or dies.

Sick-maintenance

If the victim is still in need of nursing at the end of the nine-day period — but the physician believes that he will live — the culprit must take him on *folog n-othrusa* 'sick-maintenance' (often referred to simply as *othrus*).³⁸ This entails bringing the injured man to the house of a third party (probably a kinsman of the culprit)³⁹ and nursing him at the culprit's expense until he is cured. The conveyance of the injured man on sick-maintenance has to be done formally ('in the presence of three lords').⁴⁰ Pledges are exchanged between the culprit and the injured man's kin,⁴¹ and a surety (*aitire*) guarantees that the culprit's obligations will be fully discharged.⁴²

As well as paying medical expenses,⁴³ the culprit must provide suitable food and accommodation — not only for the victim but also for an accompanying retinue appropriate to his status. §61 of *Bretha Crólige* gives a vivid description of the type of accommodation to which the victim and his retinue are entitled: 'There are not admitted to him into the house fools or lunatics or senseless people or half-wits or enemies. No games are played in the house. No tidings are announced. No children are chastised. Neither women nor men exchange blows No dogs are set fighting in his presence or in his neighbourhood outside. No shout is raised. No pigs squeal. No brawls are made. No cry of victory is raised nor shout in playing games. No yell or scream is raised'.⁴⁴

³⁷ *AU* provides a clear example of a *crólige báis* which did not prove fatal. It is recorded for the year 1004 that Máel Sechnaill, king of Tara, fell from his horse so that he lay near death (*corbo crólighi báis do*). However, he recovered and lived for a further 18 years, dying in 1022 at the age of 73. See *Ériu* 12, 130-1.

³⁸ *Ériu* 12, 96, cf. *CG* pp. 91-3.

³⁹ *Ériu* 12, 106.

⁴⁰ *CIH* 2302.11 = *BC* §59.

⁴¹ *CIH* 2302.13 = *BC* §60.

⁴² *BC* makes no mention of a surety, but see *Ériu* 12, 104, with reference to *CIH* 777.39 = *CG* 52.

⁴³ *Ériu* 12, 120.

⁴⁴ Cf. *CIH* 2291.36-2292.3 = *BC* §23, which lists three types of house regarded as unsuitable for sick-maintenance.

The culprit has to provide a substitute to do the normal work of the victim.⁴⁵ If the victim (male or female) is married and of reproductive age, the culprit has to pay an additional fine for *airíadad comperta* 'barring of procreation' to compensate for the fact that the victim cannot reproduce while away on sick-maintenance.⁴⁶ This is one of the cases where the oath of a woman is legally acceptable: she is entitled to swear that she was away on sick-maintenance during suitable times for conception. In the case of an injury to a man who is known to be excessively lustful, he is allowed to bring his wife with him on sick-maintenance⁴⁷ — presumably to protect the women of the house in which he is nursed.

It is stressed in *Bretha Crólige* §42 that any injury which does not detract from a person's capacity for work, action or movement does not entail a right to sick-maintenance or additional penalty (*iartaige*)⁴⁸ but only to the appropriate payment (*díre*).

Payment for injury

Bretha Déin Chécht deals mainly with the fines to be paid for various types of injury. Such payments are intended to cover 'the fear of death, the gravity of the [accompanying] sickness and the extent of the blemish'.⁴⁹ Where there is no need for nursing, it is likely that the fine for illegal injury must be paid without delay, but in more serious cases it is reasonable to assume that payment is made after the physician's verdict (*derosc*) at the end of the period of nursing.⁵⁰ The assessment of the amount due is perhaps made by a judge rather than a physician: the Middle Irish text on the duties of a judge states that he must know the correct body-fine (*corpdíre*) for every limb from temple to heel.⁵¹

Bretha Déin Chécht's description of the various types of injury displays considerable anatomical knowledge, and the relation of the

⁴⁵ *Ériu* 12, 115.

⁴⁶ *CIH* 2296.29-31 = *BC* §38.

⁴⁷ *CIH* 2294.9-10 = *BC* §29.

⁴⁸ Binchy suggests (*Ériu* 12, 68) that *iartaige* here has the same meaning as *iarmbrithemnas* 'after-judgement' (see p. 132). For further discussion of the term, see Thurneysen, *ZCP* 14 (1923) 371-2; *SEIL* 53-4.

⁴⁹ *CIH* 2307.24-6 = *BDC* §10.

⁵⁰ For discussion, see Binchy, *Ériu* 20 (1966) 16-8.

⁵¹ *CIH* 2103.10-1 = *ZCP* 18 (1930) 363 §23.

injuries to the fines was clearly thought out in some detail. For instance, no less than six classes of tooth-injury are distinguished, with the heaviest fines going for injury or loss of a molar or front tooth.⁵² The penalty for an injury varies also according to the rank of the victim. For a grain-sized wound in the face, the lowest grade of king (*rí túaithe*) is paid 6 scruples and 2½ *séts*. An *inol* (apprentice?) with no master receives only one fleece for the same wound.⁵³

The physician is entitled to a proportion of the fine paid for an injury. He gets half the fine for any wound, great or small, on the 'twelve doors of the soul'.⁵⁴ Dr Patrick Logan (quoted *Ériu* 20 (1966) 52) suggests that these areas were regarded as peculiarly mysterious and dangerous in that an injury to any of them, though it might at first appear to be trivial, often resulted in the death of the victim. 'The twelve doors of the soul' include such places as the Adam's apple (where a blow causing fracture of the cartilage would almost certainly cause death) and the navel (where a blow might cause fatal rupture of the bladder or stomach). The physician is also entitled to half the fine for 'the seven principal bone-breakings'⁵⁵ and for a wound which causes constant vomiting of blood or passing of blood in the urine.⁵⁶ For lesser injuries, such as a wound in the fleshy part of the body,⁵⁷ the physician gets one third of the fine, and for the least serious type of wound he gets only one quarter.⁵⁸

If the effects of an injury prove permanent, additional penalties become due (assessed at the *iarmbrithemnas* 'after-judgement').⁵⁹ So, a permanent leg injury requires the provision of a horse by the culprit, as well as a fine of one *cumal*.⁶⁰ A blemish on the face is regarded as particularly serious, as it exposes the victim to public ridicule. A *cumal* has therefore to be paid for each public assembly which the victim has to endure with facial disfigurement.⁶¹

⁵² *CIH* 2314.26-9 = *BDC* §34.

⁵³ *CIH* 2308.30-7 = *BDC* §13.

⁵⁴ *CIH* 2306.1-4 = *BDC* §2A.

⁵⁵ *CIH* 2306.5-7 = *BDC* §2B.

⁵⁶ *CIH* 2309.38-2310.1 = *BDC* §17.

⁵⁷ *CIH* 2309.27-9 = *BDC* §16.

⁵⁸ *CIH* 2310.23-5 = *BDC* §19.

⁵⁹ *Ériu* 20, 15-6.

⁶⁰ *CIH* 2312.29-33 = *BDC* §30. A passage at *CIH* 587.30-5 fixes one *cumal* as the value of each organ or limb.

⁶¹ *CIH* 2313.12-9 = *BDC* §31; cf. *CIH* 588.20-1 = *IP* 170 §3.

A blemished man is considered ineligible for kingship — see p. 19.

Abandonment of sick-maintenance

In spite of its advantages, it is obvious that the system of sick-maintenance described above was cumbersome and inconvenient to all parties concerned. It is not surprising, therefore, to find signs that it was beginning to be discarded already in the society described by *Bretha Crólige*. In this text, twelve categories of men⁶² and twelve categories of women⁶³ have a payment (*lög a n-othrusa*) substituted for sick-maintenance. These include the poet, judge and advocate on the grounds that it would be impossible to find a substitute to do their work. The king, bishop and *briugu* are excluded because their 'excursions (?) and retinues' would be an excessive burden, and the insane are excluded because of the difficulty of guarding them. The twelve categories of women are excluded either because they possess some special skill or status (e.g. a woman physician, a woman wright, a woman revered by the *tuath*) or because they would be a danger or nuisance to those nursing them (e.g. a werewolf, a sharp-tongued virago).

The compiler of *Críth Gablach*, writing around 700 A.D., states that the practice of sick-maintenance had already been abandoned by his day. Instead, the victim receives a payment according to his rank. This includes the physician's fee (*fochraic*), supply of food and drink, and a payment for blemish, hurt or loss of limb.⁶⁴

Lawful injury

As we have seen above (p. 128) Heptad 35 lists seven circumstances in which a violent death (*croí*) may be inflicted with impunity. Another heptad (no. 6)⁶⁵ provides a list of the circumstances in which the shedding of blood (*fuil*) is free from liability. These include non-malicious bloodshed, such as that caused by a competent physician during authorized surgery, or by

⁶² *CIH* 2289.6-14 = *BC* §12.

⁶³ *CIH* 2294.35-2295.2 = *BC* §32.

⁶⁴ *CIH* 777.36-8 = *CG* 47-51.

⁶⁵ *CIH* 7.9-9.33 = *AL* v 142.

a boy during a game (unless there is foul play, see p. 151). In most cases, however, the blood is shed deliberately. Thus bloodshed may lawfully be inflicted by a *naidm*-surety on a defaulting contractor, or by opponents in a duel or battle, or in self-defence.⁶⁶

There may be circumstances in which it is lawful to injure but not to kill another person. Heptad 6 states that a first wife is free to shed the blood of her husband's second wife (*adaltrach*), but I can find no evidence in the Old Irish texts that she may go so far as to kill her. According to one later commentary, she is free to inflict non-fatal injury for three days (presumably after her husband's second marriage).⁶⁷

Bretha Crólige makes it clear that there is no liability for injuries inflicted on persons who have been guilty of anti-social behaviour of various types. For example, the man who steals everyone's property, or is false to his honour or refuses to provide hospitality is not entitled to sick-maintenance or fines if he is injured.⁶⁸ The same applies to the woman who does not care who she sleeps with, or who robs everyone, or who is a *baislec auptha* (some kind of sorceress).⁶⁹ Even being a 'timid dotard' (*omnach esconn*) renders one ineligible for sick-maintenance or fines if injured.⁷⁰

Accidental injury — where there is no fault on the part of the injurer — entails no right to sick-maintenance or fines. See accidents pp. 149-50.

RAPE

Early Irish law regularly distinguishes two types of rape (*forcor* and *sleth*) though both seem to entail much the same penalties and responsibilities.⁷¹ *Forcor* refers to forcible rape, whereas *sleth*⁷²

⁶⁶ CIH 594.1-2 = *Bürgschaft* 12 §38.

⁶⁷ CIH 8.15-6 = *AL* v 146.5-6.

⁶⁸ CIH 2298.1-3 = *BC* §43.

⁶⁹ CIH 2298.8-10 = *BC* §44.

⁷⁰ CIH 2288.14 = *BC* §8.

⁷¹ Heptad 47 (CIH 42.1-13 = *AL* v 272.1-3) states that *féich* and *éraic* are paid for *forcor*, whereas *díre* and *eneclann* are paid for *sleth*. There seems to be no implication that the total payment for one type of rape is necessarily greater than the other. The payment of *éraic* 'body-fine' for *forcor* might be taken as a recognition of the violent nature of this offence, with possible physical injury to the victim. On the other hand, *Cáin Lánamna* (CIH 519.2 = *SEIL* 71 §35) refers to payment of *éraic* for both forcible rape and for *sleth*.

⁷² Early Indian law likewise distinguishes forcible rape (*LM* iii 33) from seduction by stealth of a girl who is sleeping, intoxicated or disordered in mind (*ibid.* 34).

covers all other situations where a woman is subjected to sexual intercourse without her consent. *Sleth* is often associated with drunkenness in the texts,⁷³ and it would seem that intercourse with a drunken woman is usually regarded as an equally serious offence to forcible rape. However, in some circumstances, a drunken woman has no redress if advantage is taken of her. For example, if a married woman goes unaccompanied to an ale-house, she gets no compensation if she is the victim of *sleth* because 'it was wrong for her to be in the [ale] house without her husband to protect her'.⁷⁴

Penalties for rape

The rapist must pay the honour-price of his victim's legal superior (i.e. her husband, father, son, or guardian).⁷⁵ In addition, full body-fine (*éraic*)⁷⁶ must be paid for the rape of a girl of marriageable age, a chief wife or a nun who has not renounced the veil. For the rape of a concubine (*adaltrach*), only half the body-fine need be paid. If the victim of rape becomes pregnant, the rapist is responsible for rearing the child.⁷⁷

Non-liability for rape

Heptad 47 lists eight categories of women who get no redress if subjected to rape, whether *forcor* or *sleth*.⁷⁸ Most of these are promiscuous or adulterous women, such as an unreformed prostitute, a woman who makes an assignation to bush or bed, or

O'Brien takes *sleth* to be the verbal noun of *seilid* 'creeps' (EC 3 (1938) 371), and in the O.Ir. Glosses the agent noun *slithid* is used to explain Lat. *leno* 'seducer, flatterer' (*Thes.* ii 106.21). A glossator at CIH 384.10 suggests that *sleth* refers to incomplete intercourse (*cen forba ngníma*). However, there seems to be no other evidence to support this suggestion. At all events, it is clear that pregnancy may result, e.g. CIH 1296.28 *mac sleithe* 'a child begotten through *sleth*'.

⁷³ e.g. Triad 155 *a sleith tre mescai* 'taking advantage of her when drunk'. One commentator regards intercourse with a woman who is very tired as *sleth* (CIH 975.28-976.3 = ZCP 16 (1927) 225).

⁷⁴ GC §40 (CIH 2198.1-2 = ZCP 15 (1925) 351), cf. CIH 827.5-6.

⁷⁵ CIH 519.1-4 = *SEIL* 71 §35; CIH 779.5-7 = CG 121-4.

⁷⁶ Thurneysen (*SEIL* 71) takes *éraic* here to refer to the fixed payment for homicide i.e. seven *cumals* (cf. commentary at CIH 1090.13). CA 32 §50, on the other hand, puts the penalty for raping a girl at 3½ *cumals*.

⁷⁷ CIH 20.29 = *AL* v 198.4.

⁷⁸ CIH 42.1-43.20 = *AL* v 272.

a married woman who agrees to meet another man. There is also no redress for the women who — for whatever motive — conceals the fact that she has been raped.⁷⁹ If she is assaulted in a town or settlement (*i cathair*) a woman is legally obliged to call for help, but not if the assault is made in the wilderness.⁸⁰

Triad 100 gives 'the three darknesses into which women should not go: the darkness of mist, the darkness of a wood, the darkness of night'. This is clearly to be taken as good advice rather than the statement of a legal principle: there is no evidence that a woman raped under these circumstances lost her right to redress.

Marriage by rape

It is probable that in practice some lasting marriages originated in rape.⁸¹ Such marriages are recognised in early Irish literature,⁸² but not in the law-texts. The text on marriage *Cáin Lánamna* lists nine types of sexual union, including 'mating by forcible rape or stealth' (*lánamnas éicne nó sleithe*).⁸³ But such a union is regarded as being of its nature criminal, and is distinguished from union by abduction (*lánamnas foxail*) and union by secret visiting (*lánamnas táidi*).⁸⁴ In both these cases the woman consents to the union,⁸⁵ though her kin does not (see p. 70 above).

Sexual harassment

Bretha Nemed toisech states that her full honour-price must be

⁷⁹ According to commentary at *CIH* 1090.23 she must lodge her complaint of *sleth* within three days.

⁸⁰ cf. *GC* §39 (*CIH* 2197.25-6 = *ZCP* 15 (1925) 350). In *Ériu* 20 (1966) 66 Heinrich Wagner draws attention to a similar distinction in Hebrew and Hittite law.

⁸¹ Marriage by capture and rape was recognised in early Rome (*HIRL* 116⁴), and until recent times rape was a socially acceptable method of acquiring a wife in Sicily.

⁸² For example, according to the tale *Esnada Tige Buchet* (*FR* 533-40 = *RC* 25 (1904) 30 §§12-3) King Cormac raped and impregnated Eithne Thóebiota who subsequently became his queen.

⁸³ *CIH* 519.1-4 = *SEIL* 71 §35.

⁸⁴ *CIH* 518.22-7 = *SEIL* 68 §34.

⁸⁵ A story in legal commentary (*CIH* 1532.1-17 = *Ériu* 11 (1932) 46 §7) refers to the case of a girl carried off partly by force and partly willingly (*aill ar éicen aill ar aiss*). However, the O.Ir. texts avoid this complication, and it is not treated in the long commentary on rape and abduction in *CIH* 1178.34-1180.11.

paid if a woman is kissed against her will.⁸⁶ A gloss on this passage (O'Davoren's Glossary No. 1225 = *CIH* 1515.8-9) refers to the shaming of a woman by raising her dress, but does not say what penalty is due for this offence. According to *Cáin Adomnán* §50 an assailant pays ten ounces (of silver) for touching a woman or putting his hand inside her girdle and seven *cumals* and three ounces for putting his hand under her dress to defile her.

SATIRE

Verbal assaults on a person are regarded with the utmost seriousness.⁸⁷ The words for 'to satirize' (*áerad*⁸⁸ and *rindad*⁸⁹) have the basic meanings 'to strike' and 'to cut', which indicates the destructive power which satire was believed to hold. (For the poet's ability to cause blisters or death through satire, see p. 44 above). Heptad 33 lists the types of satire (*áer*) which require payment of the victim's honour-price.⁹⁰ These include a wide range of verbal assaults: mocking a person's appearance, publicizing a physical blemish, coining a nickname which sticks,⁹¹ composing a satire, and repeating a satire composed by a poet in a distant place.⁹² A person may be guilty of satire even by mocking through gesture another's physical defect or peculiarity.⁹³ *Bretha Nemed déidenach*⁹⁴ adds the offences of taunting, wrongfully accusing another of theft, and publicizing an untrue story which causes shame⁹⁵ — any of these offences requires payment of the victim's honour-price. It is also an offence to satirize a person after his

⁸⁶ *CIH* 2229.15.

⁸⁷ In early Roman Law of the Twelve Tables, the singing of defamatory verses was punishable by death (*HIRL* 175).

⁸⁸ Hamp, *BBCS* 25 (1974) 390.

⁸⁹ *LEIA* s.v. *rind*.

⁹⁰ *CIH* 29.17-31.5 = *AL* v 228. A short text on the different types of satire is ed. and tr. by H. Meroney in 'Studies in Early Irish Satire' (*JCS* 1 (1949-50) 199-226).

⁹¹ *lesainm lenas*. One could also read *lesainm lénas* 'a nickname which wounds'. Commentary at *CIH* 1100.7-8 and 1229.39-41 provides examples of the physical defects (e.g. bad breath, a squint) to which such nicknames could refer.

⁹² This form of satire entails a double fine (*CIH* 30.8-9 = *AL* v 228.28-9).

⁹³ *CIH* 30.8 = *AL* v 228.27-8 *eccosc namat* (and gloss); cf. *CIH* 1134.34 = *Ériu* 13 (1942) 47.11.

⁹⁴ *CIH* 1123.22-4 = *Ériu* 13, 30.33-6.

⁹⁵ Cf. *CIH* 15.14 = *AL* v 176.3 *canait scél co n-éiren fine a gúscél* 'a reciter of tales whose kin pays for her lying tale'.

death. His full honour-price — as it would be if he were alive — is paid to his kin.⁹⁶

A distinction is regularly drawn between unjustified and justified satire.⁹⁷ The former is an offence which normally entitles the victim to receive his honour-price from the offender.⁹⁸ In some circumstances, however, the equivalent of a public retraction is adequate. Thus, according to *Gúbretha Caratniad*⁹⁹ the honour of a satirized king may be restored if the satire is cancelled by the publication of a praise-poem. The same idea is illustrated by the story of the quarrel between the poet Aithirne and the river Modarn (= Mourne), partially preserved at the beginning of *Bretha Nemed déidenach*.¹⁰⁰ The poet was angry with the river (according to a later version¹⁰¹ this was because the river refused to provide him with a salmon for his supper) and recited a satire against it. The river then rose up and pursued him. In fear, he quickly composed a praise-poem which caused the river to fall back to its original level. This is described in the text as 'praise which washes away satire' (*moladh donigh aoir*).

Legitimate satire plays an important part in the early Irish system of justice, being one of the pressures which make people — particularly of high rank — obey the law. Often, the satire is directed against the head of the offender's kin rather than the offender himself (see p. 14 above). It is an offence to ignore satire: according to Heptads 13 and 14 if a king or lord 'tolerates satire' he loses his honour-price.¹⁰² If the satire is unjustified he must extract compensation from the satirist for the insult to his honour.¹⁰³ If it is justified he must either pay whatever fine (*éraic*)

⁹⁶ *CIH* 2124.23-4. The text goes on to describe the circumstances in which half or quarter of his honour-price is to be paid for satirizing a dead man. However, uncertain manuscript readings render this section (2124.26-35) obscure to me. *Di Chetharslicht Athgabála* also refers to the offence of satirizing a man or woman after death (*CIH* 390.4-5 = *AL* i 184.7-9).

⁹⁷ e.g. *CIH* 1122.11-2 = *Ériu* 13, 29.6-7 *arná rod aorad dlighedh sgeo indlighedh* 'lest they satirize you legally or illegally'.

⁹⁸ *CIH* 779.14 = *CG* 122.

⁹⁹ *CIH* 2199.23-4 = *ZCP* 15 (1925) 366 §51.

¹⁰⁰ *CIH* 1111.1-11 = *Ériu* 13 (1942) 13.1-13.

¹⁰¹ See *Ériu* 13, 57.

¹⁰² *CIH* 15.2 = *AL* v 172.17; *CIH* 15.6 = *AL* v 174.15.

¹⁰³ It is clear from *CIH* 1135.36 = *Ériu* 13, 48.29 that a person who unjustifiably satirizes a king is liable to be put to death. If not, he must pay the very heavy fine of 14 *cumals* — see L. Breathnach, *Peritia* 3 (1984) 457.

he owes,¹⁰⁴ or give 'a pledge to save his honour' (*gell dia inchaib*).¹⁰⁵ This pledge indicates his willingness to discharge his liabilities or to submit the case to arbitration.

As we have seen in chapter 2, satire and praise are among the main functions of the poetic class. The author of *Gúbretha Caratniad* holds that a poet's praise should bear some relation to reality. Thus he claims that a poet is not entitled to payment for a false praise-poem on the grounds that false praise is equivalent to satire.¹⁰⁶

REFUSAL OF HOSPITALITY

Much stress is placed on the duty of hospitality¹⁰⁷ in the laws, wisdom-texts and sagas. As we have seen (p. 36) the *briugu* or 'hospitaller' attains high status through his capacity to provide hospitality to all freemen. A base client is also under obligation to provide a feast for his lord (with retinue) during the winter.¹⁰⁸ To a lesser extent, the obligation to provide hospitality falls on all householders. To refuse food and shelter where it is due is to be guilty of the offence of *esáin* lit. 'driving away' (also termed *etech* 'refusal') and requires compensation appropriate to the injured party's rank.¹⁰⁹ In a list of women who lose their honour-price, Heptad 15 includes 'the woman who refuses hospitality to every law-abiding person',¹¹⁰ and Heptad 10 states that the house from which everybody is refused hospitality forfeits its *díre* i.e. the payment made in the event of its destruction.¹¹¹ Similarly, a monastery from

¹⁰⁴ *CIH* 1268.3 = *AL* v 368.6.

¹⁰⁵ *CIH* 782.3 = *CG* 304-5.

¹⁰⁶ *CIH* 2192.20-1 = *ZCP* 15 (1925) 309 §4.

¹⁰⁷ For a general discussion of the duty of hospitality in Indo-European societies, see Benveniste, *Le Vocabulaire des Institutions indo-européennes* i (Paris 1969) 87-101.

¹⁰⁸ *CG* p. 81 s.v. *cóe*.

¹⁰⁹ A person to whom hospitality is refused is paid his full honour-price, *CIH* 1123.22-4 = *Ériu* 13, 30.33-6. Irish Canon V (*IP* 172-4) deals with the offence of *iectio*, which is apparently a latinization of *esáin* of secular law. However, the fines for refusing hospitality to various ranks (mainly clerical) consist of fractions of the offended party's honour-price, rather than his full honour-price as in the Old Irish law-texts.

¹¹⁰ *ben astoing cach recht*, *CIH* 15.15 = *AL* v 176.4. Cf. *BC* §43 (*CIH* 2298.2 = *Ériu* 12 (1938) 34).

¹¹¹ *CIH* 13.1 = *AL* v 162.20. The same applies to a fort (*dún*) from which everybody is refused hospitality (*CIH* 14.1-2 = *AL* v 168.10).

which guests are turned away loses its legal status i.e. its buildings can be damaged or destroyed without compensation.¹¹²

There are limits to the obligation to provide hospitality. A *fer midboth* is only required to provide hospitality to his lord.¹¹³ An *ócaire* is likewise free from the full obligation to provide hospitality 'on account of the smallness of his wealth'.¹¹⁴ Heptad 13 makes it clear that a king is obliged to provide hospitality to a law-abiding freeman (*recht*) but not to his retinue.¹¹⁵

In some circumstances hospitality *must* be refused. Thus a criminal cannot be fed or protected (see also 'violation of protection' below). According to the text on Sunday-observance, *Cáin Domnaig*, he who supplies food to one who labours on a Sunday is as guilty as the offender himself.¹¹⁶

If a person indirectly causes another to refuse hospitality to a guest, he must himself pay the honour-price of the embarrassed host. This applies, for example, if he fails to return borrowed food which a householder needs for his guests.¹¹⁷

VIOLATION OF PROTECTION

An important principle of Irish law is the right of a freeman to provide legal protection (*snádud*,¹¹⁸ also *turtugud*) for a certain period of time to another person of equal or lower rank.¹¹⁹ Thus an *aire ard* can provide protection for 15 days,¹²⁰ an *aire tuiseo* for 10 days,¹²¹ etc. Even a *fer midboth* can provide protection for as long as it takes a person to get to the border of another territory.¹²² The idea of protection is also prominent in the sagas,¹²³ where it is

¹¹² CIH 1.11 = AL v 118.2; cf. CIH 2211.29.

¹¹³ CIH 778.14-6 = CG 77-80.

¹¹⁴ CIH 779.10-1 = CG 130-1.

¹¹⁵ CIH 15.1-2 = AL v 172.15-6.

¹¹⁶ Ériu 20 (1966) 168 §8.

¹¹⁷ CIH 572.14 = AL v 372.14-5.

¹¹⁸ *Snádud* is cognate with Welsh *nawdd* of the same meaning (LEIA s.v. *snád*-). This agreement indicates that the concept of legal protection goes back to the Common Celtic period.

¹¹⁹ CIH 778.40 = CG 114.

¹²⁰ CIH 1601.5 = AL v 44.31-2.

¹²¹ CIH 1600.35 = AL v 44.16-7.

¹²² CIH 777.23 = CG 27-8.

¹²³ e.g. Ériu 16 (1952) 37 §3.

usually called *commairce*¹²⁴ or *fóesam*.

To kill or injure a person under protection is to commit the crime of *díguin* 'violation of protection'.¹²⁵ This entails payment of the protector's honour-price, as well as the appropriate payment to the victim or his kin.

A freeman is also felt to exercise permanent protection over his own house and its environs, known as *maigen dígona*. If a person is killed or injured within this area the culprit is guilty of *díguin* against the householder. This idea of a protected area around a house fitted in with the Church's tradition of *asylum* in and around a monastery.¹²⁶ Hence the Old Irish word *termonn* (from Latin *terminus* 'limit, extent [of the monastic lands]') developed the meaning 'sanctuary, refuge'.

It is illegal — even for a cleric or layman of *nemed* rank — to give protection to various categories of absconder, e.g. a runaway wife or slave, a fugitive killer ('a man of a blood-stained weapon'), an absconder from his kindred, a son who fails to look after his father, etc.¹²⁷

¹²⁴ This term (angl. *comrick*) is used with the meaning 'legal protection' in official English documents. The provision of protection was clearly regarded as one of the central features of the Irish way of life, and many attempts were made to suppress it. For example, in an agreement of 28 August 1583 with the Lord Deputy, Sir John O'Reilly of Breifne undertook 'not to use any iraghets (= Ir. *airechti*) or parleys upon hills to the intent to do any unlawful act to any of her majesty's subjects, not to make any distresses upon amenable persons other than for rent or duties without the special permission of the state, not to keep Irish brehons or suffer Brehon Law, not to take ericks (= Ir. *éraic*) but proceed by indictment for murder, and not to give comrick (= Ir. *commairce*) to any lords or their children or brethren that shall be offenders, but bring them to punishment' (Anal. Hib. 24 (1967) 147 §§7-11; see also PRIA 49 C (1943-44) 128-9). Another group of terms which should be mentioned here are *slánd*, *slánachus*, *sláinte* (angl. *slantie*), *slánaigecht* (angl. *slanyacht*), *sláint(ig)echt* (angl. *slantyeght*), which are commonly used in the Mid. and Early Mod. Ir. period for 'legal protection, guarantee, security'. The last term is used in a treaty in the English language made on 18 August 1560 between O'Rourke and O'Reilly (quoted BM Cat. i 153) which places both under the protection of the Earl of Kildare. They agree that if either of them break the Earl's *slantyeght* by killing, robbing or burning in the other's territory, he will pay 1,000 cattle to the Earl.

¹²⁵ See CG Legal Glossary p. 83 s.v. *díguin*.

¹²⁶ See IK bk. 28 *De civitibus refugii* 'on cities of refuge'.

¹²⁷ BB §39 = CIH 451.23-7; Heptad 51 (CIH 46.37-47.3 = AL v 290). For a discussion of both, see BB 144-5.

OFFENCES AGAINST PROPERTY

Injury to land

The law-texts refer to a wide range of offences against a man's land: damaging his grass,¹²⁸ crops¹²⁹ or trees,¹³⁰ breaking his fences,¹³¹ ploughing up his land,¹³² digging in his turf-bank,¹³³ mining metal ore,¹³⁴ digging a deer-trap,¹³⁵ or erecting a dwelling on his land.¹³⁶

Animal-trespass

Most of *Bretha Comaithchesa* 'the judgements of neighbourhood' (Appendix 1 No. 41) deals with damage to land and crops by the domestic animals of a neighbour — clearly a major source of legal action in early Ireland, as in any mixed farming community. To lessen the chance of dispute, each farmer gives a fore-pledge (see p. 165) to his neighbours, which becomes forfeit in the event of trespass.

Naturally, a landowner cannot claim for damage done by a neighbour's animals if his fences are inadequate. *Bretha Comaithchesa* therefore describes in detail the construction and dimensions of the four legally approved types of fence and wall. For example, the post-and-wattle fence must be so constructed that a small animal cannot get through it because of its closeness, and an ox cannot get over it because of its height and firmness.¹³⁷

Bretha Comaithchesa and other texts discuss in great detail the various forms of animal trespass. The general principle is the obvious one of relating the amount of compensation to the amount of damage done. Hence, the penalty when cattle break into meadow is twice as much as when they break into moorland or after-

¹²⁸e.g. *CIH* 70.3-6 = *AL* iv 90.16-20.

¹²⁹e.g. *CIH* 384.17 = *AL* i 166.23-4.

¹³⁰*CIH* 78.15-79.9 = *AL* iv 146.18-148.2; *CIH* 383.3 = *AL* i 162.20.

¹³¹*CIH* 79.10-2 = *AL* iv 152.7-10.

¹³²*CIH* 75.4 = *AL* iv 124.11; *CIH* 866.23.

¹³³*CIH* 385.9 = *AL* i 166.28.

¹³⁴*CIH* 384.19 = *AL* i 166.26.

¹³⁵*CIH* 1483.16 = O'Dav. 472.

¹³⁶i.e. *atrab* 'squatting': *CIH* 571.8 = *Celtica* 9 (1971) 158.74; *CIH* 75.5 = *AL* iv 124.11.

¹³⁷*CIH* 73.11-2 = *AL* iv 112.6-8.

grass.¹³⁸ Similarly, grazing-trespass in winter when grass is scarce entails a heavier fine than in summer.¹³⁹

Certain animals may be specially penalised. If pigs merely crop the grass in a neighbour's field the fine is the same as for other animals.¹⁴⁰ But if the pigs root up the ground, their owner has to lend alternative land until the damaged field has been restored to its former condition. An ingenious method is employed to decide when the field is ready to be grazed again. Two yoked horses are let loose in it, and if no earth sticks to their teeth as they graze, the field is judged to be fit for use. Another exceptional treatment has been devised for the case of a dog which defecates on a neighbour's land — this was clearly felt to be a particularly polluting form of trespass.¹⁴¹ The dog-owner is required to remove the faeces, and to give the neighbour the same quantity of butter, curds and dough.

Bretha Comaithchesa deals mainly with trespass by cattle and pigs, but mention is also made of trespass by various pet animals, including a pet wolf, fox, deer, heron, and crow (?).¹⁴² In each case the owner of the pet surrenders the fore-pledge to the landowner.

Where there is malice or neglect on the part of the owner of trespassing livestock, the penalty is greater, as it is counted as a 'human trespass' (*duine-chaithig*) rather than an 'animal trespass' (*rop-chaithig*).¹⁴³ This applies where a farmer drives his cattle onto his neighbour's land,¹⁴⁴ or deliberately breaks down a fence.¹⁴⁵ It also applies where a farmer allows his animals to trespass across three or four holdings (*ruiriud*), as in such a case 'the neglect is complete'.¹⁴⁶ Similarly, trespass by night involves twice the penalty for trespass by day because 'cattle should be locked up in an enclosure at night'.¹⁴⁷

¹³⁸*CIH* 70.3-5 = *AL* iv 90.16-8.

¹³⁹*CIH* 71.22-3 = *AL* iv 94.29-96.2.

¹⁴⁰*CIH* 72.1-4 = *AL* iv 96.16-20.

¹⁴¹*CIH* 74.26-30 = *AL* iv 120.15-22.

¹⁴²*CIH* 73.19-20 = *AL* iv 114.10-3.

¹⁴³When an animal's offence (*ropchin*) is the result of its owner's negligence, it is classed as a human offence (*duinechin*) with a greater penalty. For example, if a horse is known to be a biter (*daintech*), any injury which it inflicts is counted as a human offence (Triad 168); cf. *GC* §20 (*CIH* 2195.8-9 = *ZCP* 15 (1925) 329).

¹⁴⁴*CIH* 205.15 = *AL* iv 156.20.

¹⁴⁵*CIH* 79.10 = *AL* iv 152.7.

¹⁴⁶*CIH* 77.38-9 = *AL* iv 136.19-20.

¹⁴⁷*CIH* 72.4-13 = *AL* iv 96.21-6.

As in other legal systems,¹⁴⁸ no liability is attached to trespass by cows in heat, rutting rams, bulling bulls, etc.¹⁴⁹ It was obviously felt that no fence could reasonably be expected to restrain these animals. There is also no liability when animals are caused to trespass (*airlimm*) through being pursued by dogs or men, or through being frightened for other reasons.¹⁵⁰

Damage to trees

To cut trees on another's land is also counted as a 'human trespass'.¹⁵¹ *Bretha Comaitchesa* arranges trees and shrubs into four groups of seven in accordance with their economic importance.¹⁵² The fine (*dire*) due for cutting one of the most valuable trees ('the seven nobles of the forest') is 5 *séts*. As well as this, the culprit has to make restitution (*aithgein*). If he cuts a branch, this is a yearling heifer (*dairt*), if he cuts a fork — i.e. a large limb — this is a two year-old heifer (*colpthach*), and if he cuts the tree at the base, this is a milch-cow (*bó*).

Offences against buildings

The surviving law-texts devote relatively little attention to offences against buildings. The text on distraint¹⁵³ refers to various unauthorized uses of another's buildings: grinding corn in his mill, drying corn in his kiln, opening his house, squatting in his house, etc. *Críth Gablach* deals with penalties due to a *mruigfer* if such offences are committed against his house. Thus, if corn is ground in his mill without permission, the culprit must pay 5 *séts* and surrender the ground corn.¹⁵⁴ If he damages the mill, he must pay the owner's (or owners')¹⁵⁵ honour-price and restore the damage. Similarly, if somebody dries corn without permission in another's kiln, he must pay a milch cow and a yearling heifer, and must restore any damage.¹⁵⁶

¹⁴⁸e.g. *VC* III xxv §§20-4 = *Li. Ior.* 101 §156.

¹⁴⁹*CIH* 71.1-2 = *AL* iv 92.25-7.

¹⁵⁰*CIH* 78.15 = *AL* iv 146.18.

¹⁵¹*CIH* 78.18-79.9 = *AL* iv 146.21-148.2. For discussion see F. Kelly 'The Old Irish tree-list', *Celtica* 11 (1976) 107-24.

¹⁵²*CIH* 383.32-3 = *AL* i 162.23-4.

¹⁵³*CIH* 781.2 = *CG* 238-41.

¹⁵⁴It is clear from *CIH* 780.11 = *CG* 192 that the *mruigfer* normally has only part-ownership of a mill.

¹⁵⁵*CIH* 781.4 = *CG* 241.2.

Críth Gablach also deals in considerable detail with damage to thatch.¹⁵⁶ The penalties range from a yearling bullock for removing a wisp from the thatch to a milch cow for removing a sheaf. The culprit must also restore the damage which he has done in each case. For breaking open the door of a house he must pay 5 *séts*,¹⁵⁷ for breaking the front door-post he must pay a yearling heifer, and for breaking the back door-post he must pay a yearling bullock.¹⁵⁸

As most houses were largely of wood, the offence of arson (*forloscud*) is viewed as particularly serious, and there seems to have been a separate text — now lost — entitled *Bretha Forloiscthe* 'judgements of arson' (Appendix 1 No. 38). Some idea of its contents can be gained from surviving commentary on the text.¹⁵⁹ It distinguishes fires caused with deliberate intent (*comraite*) or by negligence (*anfot*), and lays down the fines for the burning of various buildings, and for causing death or injury to people or domestic animals inside. An Old Irish quotation preserved in this commentary¹⁶⁰ claims that the three offences (*fogla*) which St. Patrick particularly forbade among the Irish are killing trained oxen, offences against milch cows and arson. Nonetheless, a king is entitled to perpetrate arson on his royal circuits if his subjects have evaded their duties towards him.¹⁶¹

Damage to movable property

The surviving Irish law-texts — in contrast to Welsh law¹⁶² — do not give a full list of tools, utensils, weapons, ornaments, etc. with the legal values of each.¹⁶³ There are, however, some passages which provide a limited amount of information on how early Irish law dealt with damage to movable property. *Críth Gablach* describes in detail the fines which an intruder or guest must pay for damage to various household items ranging from vats to pillows. He must pay for any damage to furniture or fittings on the floor of the

¹⁵⁶*CIH* 780.23-5 = *CG* 212-3.

¹⁵⁷*CIH* 780.25 = *CG* 213-4.

¹⁵⁸*CIH* 780.26-7 = *CG* 216-7.

¹⁵⁹*CIH* 1945.8-1947.21.

¹⁶⁰*CIH* 1946.28-30.

¹⁶¹*CIH* 763.10.

¹⁶²e.g. *VC* III xxii = *Li. Ior.* 92-5 §§140-5.

¹⁶³A passage at *CIH* 921.9-36 gives details of the correct manufacture and dimensions of various tools which may be given in a lord's fief (*rath*) to his clients.

house, but not for damage to a precious object of gold, silver or copper which had been left on the floor (as it clearly should have been in a safer place).¹⁶⁴

The texts devote more attention to injury to livestock. A landowner may drive another's cattle out of his land, but if he does so in a negligent or malicious manner he is liable for any injuries sustained by the animals (see p. 152). It is also illegal to drive another's cattle into the sea, into a marsh, to a place frequented by wolves, into a disease-ridden cow-house (unless the cattle had come out of this particular cow-house — in which case they would have been exposed to infection already), or 'to startle them with angry fierceness from which bones are broken'.¹⁶⁵ One who drives another's cattle illegally must not only pay for any damage caused during the driving, but is liable for *tigradus* 'final responsibility'. This means that he is responsible for death or injury sustained by the cattle even if this occurs after he has left them (e.g. by drowning in the marsh into which he has driven them).

If livestock belonging to more than one owner are grazing together (*comingaire*) it may happen that one man's animal kills another man's animal. In this case the normal procedure is for the offending animal to be killed, and the meat of both to be divided among the two owners.¹⁶⁶

The law-text *Conslechta* (from which only a few quotations with commentary survive — see Appendix 1 No. 48) clearly dealt with offences against and by dogs. The section on dogs in Irish Canon VI may derive from native law on this topic.¹⁶⁷ The penalties for killing another's dog without justification are severe: he who kills a dog which guards a man's flocks must pay 5 cows, supply a dog of the same breed, and replace any livestock killed by wild animals until the end of the year. He who kills 'a dog of the four doors' — i.e. which guards the dwelling-house, the sheep-fold, the calf-pen, and the cow-shed — must pay 10 cows, and supply a dog of the same breed. An Old Irish text on distraint refers to the offence of poisoning another's dog.¹⁶⁸

¹⁶⁴ CG 221-3 = CIH 780.29-30.

¹⁶⁵ Heptad 5 (CIH 6.23-6 = AL v 138.10-5).

¹⁶⁶ CIH 192.24-6 = AL iv 102.7-10.

¹⁶⁷ *De canibus Sinodus sapientium*, (IP 174).

¹⁶⁸ *mimir do chor do choin*, AL i 176.4 = CIH 387.32.

Theft

Our knowledge of the early Irish law of theft is hampered by the incomplete survival of the main text on the subject, *Bretha im Gata*.¹⁶⁹ This text has evidently been influenced by canon law to a greater extent than other secular law-texts. Thus, if a man steals a sheep he must give back four sheep, and if he steals a cow or an ox he must give back five cows or five oxen. But if he steals a horse, a pig, or an inanimate object (*marbdil*) he has merely to return twice what he has stolen. These regulations stem directly from canon law,¹⁷⁰ and are based on Exodus 22: 1. The disproportionately low value assigned to horses and pigs does not seem to have been a traditional feature of Irish law, and is not referred to in a short passage on livestock in *Bretha Nemed déidenach*.¹⁷¹ Similarly, *Bechbretha*'s reference to the theft of livestock (§§52-3) distinguishes merely between the fine which is due for the theft of large animals (*úasalnemid chethrae*) and small animals (*lúchethrae*).

Apart from *Bretha im Gata* there are many references to theft in the surviving law-texts, and a distinction is often made between *gat* 'theft by stealth' and *brat* 'theft with violence'.¹⁷² Much attention is devoted to the actual place where the theft takes place: *Bechbretha* regards it as a more serious offence if bees are stolen from a yard or garden than if they are stolen from a field near the house,¹⁷³ which in turn is a more serious offence than if they are stolen from a field further away.¹⁷⁴ The penalty for theft is assessed not only in relation to the value of the object and the rank of its owner, but also in relation to the rank of the owner of the land or house where the theft takes place.¹⁷⁵ For example if A steals a cauldron owned by B which is on loan or deposit in the house of C (a man of *nemed*-rank), he must pay one third of C's honour-price to B, and the rest to C. He must also restore two cauldrons or

¹⁶⁹ ed. Hull, ZCP 25 (1956) 211-25.

¹⁷⁰ as in *An Irish Penitential* ed. Gwynn, Ériu 7 (1914) 154 §3, and IK bk. 29 ch. 3.

¹⁷¹ CIH 1121.1-20 = Ériu 13 (1942) 27.15-28.3.

¹⁷² e.g. CIH 779.18 = CG 142-3 *cen gait cen brat*; CIH 15.2 = AL v 172.16-7 *rí ithes gait 7 brat*.

¹⁷³ *i faithchi* 'in a green', CIH 456.11-2 = BB §52.

¹⁷⁴ *sechtar faithchi* 'outside a green' CIH 456.19-20 = ibid. §53.

¹⁷⁵ CIH 478.21-22 = ZCP 25 (1956) 219 §3. See also discussion in BB 163-4.

their value to B. A's greatest expense, therefore, is his payment to high-ranking C, rather than to the owner of the cauldron, B.

Every law-abiding freeman is permitted certain acts which are technically theft.¹⁷⁶ He can take anything from a burning building, from a corpse on a battlefield,¹⁷⁷ or from a great depth (presumably from the bottom of a lake or sea). He can take anything from a place of terror (the glossator cites as examples Loch Bél Sét and Loch Bél Draguin, both haunted by monsters) or anything which can only be reached by ropes. He can take scrap metal from a forge, the sweepings of a threshing-floor and similar waste.

Stolen goods

The sale of stolen goods is included in the list of contracts which are invalid, even if bound by sureties.¹⁷⁸ On the other hand, stolen goods which have been given in recompense for a violation of a treaty (*cairde*) cannot be claimed back by the rightful owner once they have crossed the territorial boundary.¹⁷⁹ A man who receives stolen goods is referred to as *fer medóngaité* 'a man of middle theft'. He is guilty of a crime only if he is aware that the goods were stolen. If a thief brings stolen goods into another's house, he must pay half the householder's honour-price¹⁸⁰ (as well as the usual fine to the owner of the goods), and if he brings stolen goods into another's *airlse* (the enclosed area around his house) he must pay one seventh of the householder's honour-price.¹⁸¹ Stolen goods belonging to a *nemed* can be distrained if found in the possession of another.¹⁸²

An Old Irish quotation from an otherwise lost portion of text refers to stolen property found in a tree.¹⁸³ The accompanying commentary states that it becomes the finder's property if he does not know who the owner is; if he does know he himself is guilty of theft.

¹⁷⁶ CIH 49.8-35 = AL v 298.8-12; CIH 242.17-22 = AL v 486.12-8.

¹⁷⁷ *tabairt foidb fir dotuit a ré* 'taking the booty of a man who has fallen in battle'.

The victors can strip the corpses of a defeated army on the battlefield. To strip a corpse in other circumstances is the offence of *folomrad do mairb* 'plundering your dead', CIH 386.20 = AL i 174.28.

¹⁷⁸ CIH 25.14 = AL v 214.28.

¹⁷⁹ CIH 592.13-5 = Bürgschaft 8 §16.

¹⁸⁰ CIH 779.6 = CG 124.

¹⁸¹ CIH 780.28 = CG 218.9.

¹⁸² CIH 39.7-8 = AL v 260.21-262.1. Presumably a non-*nemed* would have to make a formal complaint of theft, and could not repossess his stolen property immediately.

¹⁸³ CIH 1429.19.

Habitual thief

The habitual thief loses his or her rights in society. Thus Heptad 15 states that a woman who steals is not entitled to receive payment (*díre*) or honour-price (*lög n-enech*) for any offence committed against her.¹⁸⁴ Similarly, the man who steals everyone else's property loses his entitlement to sick-maintenance (*othrus*) or fines for injury (*féich*).¹⁸⁵ A house which has been turned into a den of thieves can be destroyed without compensation.¹⁸⁶

For the punishment of thieves, see p. 217.

LIABILITY FOR AN OFFENCE

Early Irish law pays a good deal of attention to the circumstances in which liability for an offence may be reduced or cancelled. I deal firstly with cases where death or injury results from an accident, and the person responsible is held to be free from liability. I then treat the various states of mind which may be taken into account when the penalty for an offence is being assessed: ignorance, negligence, stress, drunkenness and insanity. I then discuss the degrees of guilt attached to onlookers and accessories to a crime, and finally deal with the liability of a man who has died before paying the fine for a crime.

Accidents

Information on early Irish law relating to accidents is provided mainly by *Bretha Étgid* 'judgements of inadvertence' (Appendix 1 No. 33). This text gives only the briefest description of each accident, but it is usually clear what circumstances are covered. So, when the author states 'the immunity (*blat*) of hammers is an anvil'¹⁸⁷ he presumably means that if a person is killed or injured through going too near a working blacksmith, there is no liability for the accident. The same applies to accidental death or injury caused by a flail at a drying kiln,¹⁸⁸ a flying chip during

¹⁸⁴ CIH 15.14 = AL v 176.2.

¹⁸⁵ CIH 713.1-3; cf. CIH 2298.9-10 = Ériu 12 (1938) 34 §44.

¹⁸⁶ CIH 12.27 = AL v 162.18.

¹⁸⁷ *bla ord indeuin* CIH 267.2 = AL iii 186.6.

¹⁸⁸ CIH 273.29 = AL iii 220.15; cf. CIH 11.12 = AL v 156.14-5.

carpentry,¹⁸⁹ a mill during milling,¹⁹⁰ etc. On the other hand, there is liability if an accident is caused by a tool with a defect which has not been announced (to those nearby)¹⁹¹ e.g. a hammer without a bolt, a billhook without a rivet — in either case the head might fly off the handle and hit a bystander. Similarly, there is liability for accidental death or injury caused by a falling tree if the tree-cutter fails to shout a warning beforehand.¹⁹² There is also liability for injury sustained while meat is being taken out of a cauldron with a fleshfork, if no warning is given.¹⁹³

Death or injury caused accidentally by a dangerous object in its proper place is free from liability. For example, if a person is injured by a brooch no fault is attached to the wearer, provided it is in its proper place on the shoulder.¹⁹⁴ Injury to man or animal caused by a fencing-stake is not actionable, provided it is in its proper place i.e. in a fence.¹⁹⁵ There is no liability if a person accidentally causes a branch to fly back and injure another,¹⁹⁶ nor if he dislodges a stone which rebounds and hits another person.¹⁹⁷

A person is felt to have willingly exposed himself to the risk of accidental death or injury by travelling in a ferryboat. The owner of the boat is liable only if he sets out overloaded or in stormy weather.¹⁹⁸ Similarly, by attendance at a fair (*óenach*) a person is evidently felt to have willingly exposed himself to the risk of being killed or injured by horses or chariots, and there is consequently no recompense for such accidents.¹⁹⁹

A boy may suffer accidental injury while playing games with other boys. Some information on the legal consequences of such accidents is contained in the fragmentary text *Mellbretha* (Appendix 1 No. 34). There is no right to a fine or sick-maintenance for a boy injured in most games, e.g. hurling, jumping, swimming,

¹⁸⁹ *CIH* 275.1 = *AL* iii 226.18; cf. *CIH* 10.39 = *AL* v 156.12-3.

¹⁹⁰ *CIH* 287.1 = *AL* iii 280.4.

¹⁹¹ *Triad* 172.

¹⁹² *CIH* 274.17-8 = *AL* iii 224.3.

¹⁹³ *CIH* 283.32-4 = *AL* iii 266.3-8; cf. *Triad* 172.

¹⁹⁴ *CIH* 289.25 = *AL* iii 290.15.

¹⁹⁵ *CIH* 289.22 = *AL* iii 290.10.

¹⁹⁶ *aithseinnm craibe tara ais* 'the rebounding of a branch backwards', *CIH* 11.7; 1047.8 = *AL* v 156.14.

¹⁹⁷ *CIH* 11.18 = *AL* v 156.16.

¹⁹⁸ *CIH* 271.14-272.1 = *AL* iii 208.6-210.24.

¹⁹⁹ *CIH* 265.41 = *AL* iii 180.6; *CIH* 283.28 = *AL* iii 264.22.

hide-and-seek, juggling, etc.²⁰⁰ However, if a boy is injured in the more dangerous *fíanchluichi* 'paramilitary games', such as spear-throwing or hurling rocks²⁰¹, the culprit's kin must apparently provide sick-maintenance.²⁰² A quotation²⁰³ — no doubt from *Mellbretha* — lists four 'guilty games' (*colchluichi*), e.g. throwing a wooden javelin into a meeting, an uneven contest ('few against many'). It is likely, as Binchy suggests²⁰⁴, that such games entail both a fine and sick-maintenance.

Normally, the owner of an animal is liable for any damage which it may cause to a person, to another animal or to property. In some circumstances, however, such injuries are regarded as accidental, and entail no penalty, e.g. when caused by a cow after calving,²⁰⁵ a dog in a dog-fight,²⁰⁶ a bull when bulling,²⁰⁷ an ox when being yoked,²⁰⁸ etc. No liability is attached to a horse-owner if somebody injures himself in a fall from his horse;²⁰⁹ nor is there liability for an injury caused by a stone thrown up by a horse's hoof.²¹⁰

Ignorance

Ignorance (*anfis*) may halve the penalty for an offence. For example, illegal distraint normally carries a fine of 5 *séts*, but if it is carried out in ignorance this fine is halved.²¹¹ The same approach is found in *Cáin Adomnáin* §35: he who kills a clerical student must pay eight *cumals*, but if the crime is committed in ignorance of the victim's clerical status only half this payment is due. In some cases, ignorance entails no penalty. For instance, no crime is committed by a lord who eats stolen food, provided he does so in ignorance.²¹² (Normally for a king or lord to eat stolen food would result in the loss of his honour-price — see p. 27 above).

²⁰⁰ *CIH* 1589.11-20 = *Celtica* 8 (1968) 149.10-3.

²⁰¹ *CIH* 1589.21-6 = *ibid.* 149.20-1.

²⁰² *ibid.* 153.1-3.

²⁰³ *CIH* 1344.5-6 = *ibid.* 150.3-4.

²⁰⁴ *ibid.* 153.14-24.

²⁰⁵ *CIH* 9.35 = *AL* v 152.2-3.

²⁰⁶ *CIH* 268.12 = *AL* iii 192.9.

²⁰⁷ *CIH* 276.3 = *AL* iii 230.25.

²⁰⁸ *CIH* 10.17 = *AL* v 152.3-4.

²⁰⁹ *CIH* 10.18 = *AL* v 152.5.

²¹⁰ *CIH* 11.18 = *AL* v 156.15.

²¹¹ *CIH* 1736.29-1737.28 = *AL* ii 48.11-52.6.

²¹² *CIH* 591.15-7 = *Bürgschaft* 6 §2.

Ordinarily, if an offence has been committed the injured party must take the appropriate legal measures against the culprit. If he fails to do so within a fixed period, the case 'dies from neglect'. But if he can plead ignorance that the offence has been committed (e.g. damage to his property while he was away from home) the time-limit for legal action (*air*) is extended.²¹³

Negligence

The early Irish law-texts employ a number of terms (most commonly *étged*, *anfot*, *anfaitches*,²¹⁴ and *díchell*²¹⁵) to cover various forms of negligence. On the basis of scattered information available in the law-texts and other sources it does not seem possible to define these terms with greater precision.²¹⁶

In general, Irish law rules that an offence against property through negligence requires merely the replacement of the object damaged or destroyed. Thus the phrase 'every negligence requires restitution' (*aithegin cach étged*) is quoted in a number of texts.²¹⁷ *Gúbretha Caratniad* §21 gives a similar ruling: 'an offence committed through negligence entails only restitution' (*ní áli . . . anfot acht athgein*).²¹⁸ But there are also situations where negligence requires more than restitution. If someone drives another's cattle with negligence (*díchell*) or malice (*elguin*) he must pay the fines for any injuries which he causes.²¹⁹ Negligence is likewise no defence for damage committed by trespassing animals (see p. 143).

When a person's death or injury is the result of negligence rather than malicious intent, the penalty may be halved. This is based on the principle 'anger doubles the penalties' (*díablad fiach ferg*).²²⁰ Thus *Cáin Adomnáin* §35 states that if someone kills a clerical student through negligence (*étged*), he must pay half the penalty for

²¹³ Triad 153; cf. Triad 162 and *CIH* 756.1-2; 1251.7-9.

²¹⁴ *an* (negative prefix) + *faitches* 'caution, heed'.

²¹⁵ *di* 'from, lacking in' + *cíall* 'attention, thought'.

²¹⁶ There is a brief O.Ir. account of the different forms of *étged* at *CIH* 1066.16-41, which I find difficult to interpret. There is also a later passage on the twelve forms of *étged* (*CIH* 926.19-927.35 = *AL* iii 88.18-92.15).

²¹⁷ e.g. *CIH* 1459.33 = *AL* ii 54.13.

²¹⁸ *CIH* 2195.12-3 = *ZCP* 15 (1925) 330.

²¹⁹ *CIH* 6.1-2 = *AL* v 136.10.

²²⁰ *CIH* 252.16 = *AL* iii 98.1.

deliberate killing. Similarly, a passage on injuries to clerics²²¹ gives 7 *cumals* as the fine for shedding the blood of a bishop, but this is reduced to 3½ *cumals* if the injury is the result of negligence (*anfot*).²²² According to an Old Irish quotation in later commentary,²²³ a person who injures another only provides sick-maintenance (*othrus*) when the injury has been inflicted through negligence (*étged*). If the injury has been inflicted in anger, a payment is substituted for sick-maintenance. This curtailment of the obligation to provide sick-maintenance is at variance with the main text on the subject, *Bretha Crólige*.²²⁴

Surprisingly, there is some evidence²²⁵ that a person could plead negligence (*anfaitches*) as an excuse for not having registered an objection in time to a situation in which he was being wronged by another. Perhaps this could apply in cases such as illegal occupation of land, where the rightful owner had neglected to object within the proper period.

Stress or necessity

The penalty for an offence may be cancelled if it is committed under mental or physical stress. As we have seen above (p. 79) a jealous first wife is legally entitled to inflict injury on her husband's second wife. When in fear of some danger, a person may borrow another's property (e.g. a horse, a weapon, a boat) without permission.²²⁶ He may also drive his cattle across another's land if it is a 'driving of necessity'.²²⁷ Naturally, a contract made in fear (*cor omna*) is invalid.²²⁸

It is no offence for a hungry 'fox of a cooking-pit' (clearly a term for a wandering down-and-out) to steal a piece of food.²²⁹

²²¹ *CIH* 588.17-8.22 = *AL* iv 362.25; 364.3.

²²² Cf. *CIH* 251.34-5 = *AL* iii 94.20 (commentary): *lanfíach isin comraiti 7 lethfíach isin anfot* 'full penalty for a deliberate offence, and half penalty for negligence'.

²²³ *CIH* 1217.5 = *Ériu* 12 (1938) 89.

²²⁴ See discussion by Binchy, *Ériu* 12, 124-5.

²²⁵ e.g. *CIH* 756.1-2 *Atait a tri forsna laigh aititiu na dils i. baes 7 anfis 7 anfaitches* 'there are three things on which recognition or inactionability does not lie (i.e. they are grounds for challenging legal recognition): legal incapacity and ignorance and negligence', cf. *CIH* 1251.7-8 and Triad 162; also *CIH* 1193.5.

²²⁶ Triad 163; see p. 119 above.

²²⁷ *CIH* 205.15 = *AL* iv 156.21.

²²⁸ *CIH* 593.39.

²²⁹ *CIH* 2193.26-7 = *ZCP* 15 (1925) 317-8.

Similarly, herbs for an invalid²³⁰ and a morsel of food desired by a pregnant woman²³¹ can be taken without penalty. A legal obligation may be postponed on account of serious illness.²³²

Drunkenness

There are a few references in the law-texts to drunken brawls in ale-houses.²³³ I have found no evidence to suggest that a killing or injury committed under the influence of drink is treated more leniently than would be the case if the culprit were sober.

A contract made when either party is in a state of drunkenness is normally invalid.²³⁴ (Commentary at *CIH* 2159.27 defines drunkenness as not being able to remember the previous night's events in the morning). However, a contract relating to joint ploughing, clientship or the law of neighbourhood is valid though made in drunkenness (see below p. 159).

Insanity

An offence committed by an insane person is normally paid for by his or her guardian,²³⁵ or by the person who incited the crime.²³⁶ But in some circumstances, such offences are not actionable; for example an injury caused by a missile thrown by a *drúth* (fool) is regarded as accidental, and does not require compensation.²³⁷

Onlookers and accessories

A person who witnesses an offence without attempting to prevent it may be guilty of a 'crime of the eye' (*cin súlo*)²³⁸ commonly

²³⁰ *losa bro[th]cháin cacha muige* 'herbs for [an invalid's] broth from every plain', *CIH* 242.17-8 = *AL* v 486.12-3.

²³¹ *mír méin(n)*, *CIH* 242.17-8 = *AL* v 486.12. I follow the glossator's interpretation of *mír méin(n)*, e.g. *CIH* 387.34 = *AL* i 180.5. Cf. *BB* 99 (note to §6 *mían ngalair*).

²³² *CIH* 868.30.

²³³ e.g. *CIH* 570.34-5 = *Celtica* 9 (1971) 156.5; *CIH* 401.15-6 = *AL* i 230.25.

²³⁴ Cf. *TC* §19.6-7 *ni cria . . . di mesc* 'do not buy from a drunk'.

²³⁵ *CIH* 1459.8-9 = *AL* ii 46.1-2.

²³⁶ *CIH* 7.11-2 = *AL* v 142.4-6.

²³⁷ *CIH* 271.10 = *AL* iii 206.23.

²³⁸ *CIH* 403.18-9 = *AL* i 238.10. Cf. W. *llygadrudd* lit. 'red-eyed' i.e. a culpable onlooker.

referred to as *aircsiu* (also *forcsiu*) 'looking on'. Legal commentary includes *aircsiu* among the four things which debase a lord and his family, on the grounds that 'everyone who looks on at an offence consents to it' (*aititnech gach aircsinach*).²³⁹ The offence of *aircsiu* can arise in many situations,²⁴⁰ but most cases treated in the texts relate to land-law. For example, a farmer who observes his cattle grazing on his neighbour's land and does nothing about it is guilty of *aircsiu*.²⁴¹ Because of his awareness of what his cattle are doing, his offence is classed as *duine-chaithig* 'human trespass', and is more serious than *rop-chaithig* 'animal trespass' (i.e. trespass without the owner's knowledge or other aggravating circumstances — see p. 143). It would appear from commentary that a farmer is obliged to intervene if he sees his neighbour's cattle in danger from wolves, robbers or a pit (presumably a deer-trap).²⁴²

A short text (Appendix 1 No. 36) deals with the onlooker (*sellach*) who is in varying degrees an accessory to a crime. The first type of onlooker, even though he did not commit the crime himself, must pay the full penalty for it, as he instigates it, accompanies the man who does it, and exults in it when it is done. Liable to half the penalty is the man who accompanies and exults, but does not instigate. Liable to one quarter of the penalty is the man who looks on without attempting to stop the crime.²⁴³ Naturally, a man who does his best to stop a crime, but is unsuccessful, is not liable to any penalty. The same applies to any clergy, women, children, or persons of unsound mind who might be looking on. As they do not bear arms, they are not obliged to make an attempt to stop the crime taking place. Any injury inflicted by one who intervenes to prevent a crime is, of course, free from liability. Thus Triad 154 includes 'bloodshed of intervention' among the three bloodsheds which do

²³⁹ *CIH* 1315.15-8.

²⁴⁰ Thus a passage on sick-maintenance (*CIH* 2283.3 = *Ériu* 12 (1938) 80-1) stresses that the injurer must arrange that his victim be taken away for nursing *cen airgsiu* 'without looking on'. Presumably this means that he must not turn a blind eye to any mistreatment of the injured man while on sick-maintenance.

²⁴¹ *CIH* 235.29 = *AL* v 464.7-8.

²⁴² *CIH* 708.24 = *ZCP* 15 (1925) 344.

²⁴³ Heptad 35 seems to take a much more severe line with the man who looks on at a crime of violence. Thus, one of the seven killings which do not entail body-fine is given as *cro fir frisiaige leca* (= *léciud*) *sola nad urgair* 'the killing of a man who looks on at the spilling of blood which he does not hinder' (*CIH* 31.20-1 = *AL* v 236.13-4). This suggests that a passive onlooker at a killing or wounding may himself be killed without liability — presumably by the victim's kinsmen.

not entail responsibility. An informer who betrays a criminal undertaking, though he himself may have been involved, is also free from liability.²⁴⁴

The passive onlooker is particularly heavily penalised in ecclesiastical legislation. For example, *Cáin Adomnáin* §35 states that a man who witnesses the wounding or killing of a clerical student or an innocent child, and does not attempt to save him with all his might, must pay the same fine (eight *cumals*) as the actual culprit. Similarly, according to a passage in *MíadSlechta* — deriving from a Latin source²⁴⁵ — he who accompanies a person who inflicts a severe wound on a bishop, and does not attempt to prevent the crime, must pay the full fine for homicide i.e. 7 *cumals*.²⁴⁶ *Cáin Domnaig* ‘the Law of Sunday’ also makes use of the principle of the onlooker’s equal guilt. If a man sees another person violating Sunday by doing servile work etc. he must sue him and levy a fine on him. If he fails to do so, he himself becomes liable for the same fine.²⁴⁷

A person who provides hospitality or protection to a criminal is also regarded as an accessory, and is liable for various penalties (see pp. 140 and 141). According to *Cáin Adomnáin*, he who assists, protects and advises the perpetrator of an offence against women, children, or clerics, is guilty of complicity (*comláithre*) and must be punished to the same degree as the culprit, even to the extent of the death penalty.²⁴⁸

A short passage from *Córus Béscnai* deals with the case of a person who harbours somebody else’s son who has failed to carry out his filial obligations and has been proclaimed by his father.²⁴⁹ Responsibility for this son’s misdeeds is borne by the person who harbours him rather than by his father. The same applies if a person entices or tricks another away from his father, guardian, fosterfather, master or whoever is in charge of him. In this case the enticer must pay for any offences which his victim commits, and must also act as surety (*ráth*) on his behalf. On the other hand, in the event of the victim’s death, his body-fine (*éraic*) and any

²⁴⁴ *CIH* 1361.36 *slán cách mairnes mígnim* ‘anyone who betrays an evil deed is free from liability’, cf. *CIH* 1517.21-2 = O’Dav. 1272.

²⁴⁵ See Appendix 1 No. 8.

²⁴⁶ *CIH* 588.15-6 = *AL* iv 362.24-5.

²⁴⁷ *Ériu* 20 (1966) 162.21-2.

²⁴⁸ *CA* 30 §47.

²⁴⁹ *CIH* 2123.33-2124.4, cf. 904.23.

property which he owns (*dibad*) go to his father, guardian, etc. rather than to his enticer.

Liability after death

Liability for a man’s personal offences generally does not pass on to his heirs after his death. This principle is vividly expressed in the phrase ‘every dead man kills his offences’ (*marbaid each marb a chinta*).²⁵⁰ However, if he dies while committing an offence, his heirs are liable to pay the fine for this offence.²⁵¹

If a man is a hostage-surety (*aitire*) his responsibilities are not passed on to his kinsmen after his death. But if he is a paying surety (*ráth*), liabilities which he has incurred through his suretyship are passed on to his heirs in the *derbfine*. So, unless settled, these liabilities do not become extinguished until after the fourth generation, i.e. until the death of his great-grandsons through the male line.²⁵² Similarly, if a man leaves debts on his property, these must be paid off by his heirs.²⁵³ On the other hand, if the owner of an object on loan dies, his heirs are not entitled to claim it back.²⁵⁴

²⁵⁰ *CIH* 487.5-6 = *AL* ii 270.29.

²⁵¹ *CIH* 1572.9.

²⁵² *Celtica* 16 (1984) 11.

²⁵³ *CIH* 595.11-2 = *Bürgschaft* 15 §51 b.

²⁵⁴ *CIH* 44.1 = *AL* v 278.3.

CHAPTER 6

CONTRACTS, PLEDGES AND SURETIES

CONTRACTS

The commonest legal act in early Irish society was no doubt the verbal contract or *cor bél* (lit. 'putting of lips') often referred to simply as *cor*.¹ This term covers all commercial undertakings, as well as agreements to marry, to foster, to engage in co-operative farming, to enter clientship, etc. A contractor (*féchem*) agrees to confer some benefit or 'consideration' (*folud*) on the other party in return for a counter-benefit (*frithfolud*).²

Normally, the law requires that a contract be formally witnessed³ and bound by sureties⁴. A person cannot contract independently for an amount greater than his honour-price.⁵ If he wishes to enter such a contract (e.g. to become a client) he must get permission from his kin. Similarly, a person who acts as a witness or surety for a contract secures only as great a proportion of it as is covered by his honour-price.

Until sunset on the day a contract is made either party can change his mind and cancel the agreement.⁶ But after this period of grace

¹ Another common term for 'contract' in the law-texts is *cundrad*. It is not clear how a *cundrad* differs from a *cor* (*bél*), but it seems to be used particularly of commercial agreements. In the O.Ir. Glosses, *cundrad* serves to explain Lat. *merx* 'merchandise' (Ml. 122a3, Sg. 68b5), and the compound *i cundrath-tig* translates Lat. *in macello* 'in the food-market' (Wb. 11b19).

² e.g. CIH 1793.15 = ZCP 14 (1923) 373 §36 *cach folud cona frithfolud* 'every benefit with its counter-benefit'. See discussion by Binchy, *Stud. Hib.* 16 (1976) 23-30, and by Charles-Edwards in *Lawyers and Laymen* (ed. Charles-Edwards, Owen and Walters, Cardiff 1986) 346-7.

³ The special term for the witness to a contract is *roach* (e.g. CIH 594.9; 989.5) but the general term *fiadu* 'eye-witness' is often used.

⁴ *Di-cenglaither cach cor cen ráith la Féiniu* 'every contract without a surety is non-binding in Irish law', CIH 459.14 = Ériu 17 (1955) 66 §6.

⁵ CG 208, 265, 296, 349, etc. Cf. CIH 511.19-22 = SEIL 40 §19.

⁶ CIH 993.18-9 = §28 of Neil McLeod's forthcoming edition of *Di Astud Chor* (DAC) in his book on *Early Irish Contract Law*.

a contract which has been properly witnessed and bound by sureties cannot be rescinded — whether it is advantageous (*sochor*) or disadvantageous (*dochor*) to either party. A basic principle reiterated in the law-texts⁷ is that every legally competent person (*sochonn*) should know when he is being taken advantage of (*saithiud*). Unless there is fraud or some other legal defect (see below) he cannot back out of a contract. An extreme example of a disadvantageous contract is cited from Scripture in the Introduction to the *Senchas Már*.⁸ The Fall is seen here as a contract through which Adam exchanged the whole world for one apple. Though this contract was clearly a case of *saithiud* on a colossal scale, it was nonetheless valid, because Adam was a legally competent adult (*sochonn*). The author of this Introduction saw the honouring of contracts as essential for the prevention of anarchy. He lists the three periods in which 'the world is frenzied' as the visitation of famine, the onslaught of war, and the dissolution of contracts.⁹ *Uraicecht Becc* likewise stresses the crucial importance of the contract: 'law is founded on contracts and legal recognition'.¹⁰

Invalid, voidable or unenforceable contracts

There are a number of situations in which a contract is invalid.¹¹ Thus all contracts made under duress, in fear or in ignorance are invalid.¹² The same applies to fraudulent contracts,¹³ and to a 'contract of protection'¹⁴ — presumably the equivalent of a modern protection racket. A contract made in drunkenness is normally invalid,¹⁵ but an exception is made when it relates to co-ploughing (*comar*), clientship or the law of neighbourhood; evidently such arrangements were regularly entered into at feasts or

⁷ e.g. CIH 992.12; 2193.17-8.

⁸ CIH 351.27-8 = AL i 52.3-4.

⁹ CIH 350.26-7 = AL i 50.9-11.

¹⁰ *Consuiter dliged for coraib bél 7 aititin*, CIH 1591.20-1 = AL v 6.22. *Aititin* 'recognition' refers to the acceptance by the interested parties of the legality of a particular situation, e.g. a marriage, ownership of property, etc.

¹¹ In *Féilsgribhinn Éoin Mhic Néill*, ed. J. Ryan (Dublin 1940) 158-9, Thurneysen draws attention to the distinction between *dochor* 'a disadvantageous contract' and *micchor* 'an invalid contract'.

¹² CIH 593.39. = *Bürgschaft* 11 §37.

¹³ e.g. CIH 988.12 *cor díthle* 'a cheating contract' (DAG §54).

¹⁴ CIH 988.11-2 *cor diten*.

¹⁵ CIH 592.17 = *Bürgschaft* 8 §17; CIH 991.31-7 = DAG §21.

in an ale-house. An earlier contract takes precedence over one made later: 'any first contract is nobler (i.e. more binding) than a subsequent contract'.¹⁶ The sale of stolen property is also held to be an invalid contract.¹⁷

If a contract contains a fault which could not reasonably have been detected or predicted by the disadvantaged party, it is a case of *díupart* 'over-reaching'.¹⁸ The contract can then be rescinded or adjusted (see below). *Gúbretha Caratniad*¹⁹ gives the example of a sale paid for in defective silver: because this was a concealed defect it is a case of *díupart*, and the contract can be subsequently rescinded.

Thurneysen took the terms *saithiud* and *díupart* to be interchangeable.²⁰ However, in his forthcoming *Early Irish Contract Law* in the Early Irish Law series, Neil McLeod argues that in a case of *saithiud*²¹ the disadvantaged party knows of the defect at the time of the agreement whereas in a case of *díupart* he does not. Confusingly, *saithiud* is also called *derb-díupart* 'true (i.e. known) over-reaching' in the law-texts.²² In non-legal material, the term *saithiud* is unattested, and *díupart* is used for an overreaching with or without the full knowledge of the disadvantaged party.²³

Certain categories of person are incapable of making a valid contract in their own right, e.g. a minor,²⁴ a lunatic,²⁵ a slave,²⁶ a captive (*cimbid*)²⁷ or an alien (*deorad*).²⁸

The law-texts devote much attention to the contractual rights and limitations of persons in close social relationships with another, e.g. husband and wife, father and (grown-up) son, monk and abbot, etc. These rights depend largely on the degree of independence enjoyed by the contracting party.

In general, women do not have independent legal capacity. The

¹⁶ *Sruithiu cach céthcor iarcor*, CIH 727.29; 1247.22-3.

¹⁷ CIH 25.14 = AL v 214.28.

¹⁸ *Is indles cach díubart* 'every over-reaching is actionable' CIH 987.18 = DAC §48.

¹⁹ CIH 2192.11-2 = ZCP 15 (1925) 307 §2.

²⁰ SEIL 27.

²¹ He suggests reading *saithiud*.

²² CIH 351.27 = AL i 52.4.

²³ e.g. Murphy, *Early Irish Lyrics* (Oxford 1956) 160 §54.

²⁴ CIH 593.37 = *Bürgschaft* 11 §37.

²⁵ CIH 988.8, 21 = DAC §§53-4.

²⁶ CIH 988.6, 20 = DAC §§53-4.

²⁷ CIH 536.23 = AL iii 58.6.

²⁸ CIH 536.24 = AL iii 58.8; CIH 593.38 = *Bürgschaft* 11 §37.

limitations on their ability to contract are spelled out starkly in the *Dire*-text:²⁹ 'The worst of transactions are women's contracts. For a woman is not capable of selling anything without authorisation of one of her superiors: her father has charge over her when she is a girl, her husband when she is a wife, her sons when she is a [widowed] woman with children, her kin when she is a "woman of the kin" (i.e. with no other guardian), the Church when she is a woman of the Church (i.e. a nun). She is not capable of sale or purchase or contract or transaction without the authorization of one of her superiors, except for a proper gift to one of her superiors, with agreement and without neglect'.

However, a wife in a 'marriage of joint property' (i.e. *bé cuitchernsa*) is entitled to make advantageous contracts (*sochor*) independently of her husband.³⁰ These concern the household and farm, including the renting of land, purchase of provisions, buying in young animals, etc. In such a marriage the husband has of course the same right to make an advantageous contract independently of his wife, and either partner can dissolve the other's disadvantageous contract (*dochor*).³¹ Even in a marriage into which a wife has brought no property she can still impugn her husband's disadvantageous contract, provided she is a main wife (*cétmuinter*).³² If she is a wife of lower status she can only impugn contracts relating to food, clothing, cattle and sheep.³³ A wife can dissolve all her husband's contracts in a marriage into which he has brought no property, e.g. if he is an outsider from another *túath*.³⁴

A father cannot dissolve an advantageous contract made by his grown-up son, provided he is a *macc gor* 'dutiful son'.³⁵ Heptad 50³⁶ lists seven such contracts: they relate to the son's running of his own household and farm, and include the purchase of land if there is not enough room for him to farm on his father's land, a marriage-contract with a girl of his own rank, and a contract for joint-ploughing if he does not plough with his father. Otherwise, a father can dissolve his grown-up son's disadvantageous contract up

²⁹ CIH 443.29-444.6 = IR 35 §38 (SEIL 213).

³⁰ CIH 505.35-506.26 = CL §5.

³¹ CIH 507.16-8 = CL §8.

³² CIH 512.29-31 = CL §22.

³³ CIH 512.22-4 = CL §21.

³⁴ CIH 427.1-18 = IR 64 §4.

³⁵ CIH 536.2-3 = AL iii 56.22-3.

³⁶ CIH 45.17-38 = AL v 284.25-32.

to three days after it has been made.³⁷ Likewise, a dutiful son cannot dissolve his father's advantageous contract, but he can dissolve his disadvantageous contract.³⁸ In particular, the son is entitled to dissolve any contract which could adversely effect the value of his own inheritance, or a contract to sell an object of value which could be used as a pledge for his life (*gell fri bás*).³⁹

A man's kin-group (*fine*) can dissolve his contract in cases where the kinsmen will be liable to pay for any losses which he may sustain thereby.⁴⁰ An abbot can dissolve a contract made without his permission by one of his monks, but he must do so within five days.⁴¹ The monks can similarly dissolve their abbot's contract within ten days.⁴² A lord can dissolve the contract of a dependent tenant. Thus Triad 151 states that a lord's dependant (*dóer flatha*) is incapable of making a separate contract (*sainchor*). Such dependants include the semi-free *fuidir*⁴³ and *bothach*⁴⁴ (see p. 33), and presumably also the *senchleithe*, the serf bound to the land (see p. 35).

The law-texts refer on a number of occasions to contracts between a commoner and a person of *nemed* rank. According to *Bretha Nemed déidenach* 'a contract with *nemeds* is not a contract' (*ní cor cor for nemthiu*).⁴⁵ Another text states 'contracts of *nemeds* are not binding, for a *nemed* is like a chariot, any bond which is bound to it is released'.⁴⁶ This does not mean that any contract with a *nemed* is automatically invalid, but rather — because of the difficulty of taking legal action against a *nemed*⁴⁷ — the commoner will find it extremely difficult to enforce the contract if the *nemed* reneges. In the same spirit *Tecosca Cormaic* §19 advises 'do not buy from a high-ranking person' (*ni cria . . . di ardd*).

A contract without sureties is normally unenforceable. However, the texts provide a considerable number of exceptions to this general

rule.⁴⁸ Thus a contract for the services of a poet, lawyer, messenger, smith and other craftsmen is legally binding even without sureties. The same applies to donations to the Church or to a bishop or king, contracts of clientship, contracts securing the care of the aged, and contracts of fosterage.

Adjustment of contracts

A contract — bound by sureties and in which there is no fraud or other impediment — may turn out to be unfair to one party. In such circumstances the aggrieved party may be entitled to adjustment of the contract, rather than full rescission. The basic principle is stated in *Di Astud Chor* §45 'every lop-sidedness should be evened up against the other, so that no-one should deprive the other'.⁴⁹ The aggrieved party must bring his action for adjustment within ten days of discovering the defect in the contract.⁵⁰

Written contracts

In secular affairs there seems to have been little use of written contracts. However, Canon law required that agreements relating to the Church be written down,⁵¹ and the validity of such documents is recognised in the Old Irish law-texts. For example, *Berrad Airechta* includes an 'immovable rock' (*ail anscuicthe*) among the seven things which can prevent the overturning of a contract.⁵² According to the Old Irish glossator to *Gúbretha Caratniad*, an 'immovable rock' can refer to a letter i.e. a written document (see p. 204).

³⁷ *CIH* 1348.25-6 = *DAC* §1.

³⁸ *CIH* 536.1 = *AL* iii 56.20. He can merely register a protest (*fo-éigi*) at his father's advantageous contract.

³⁹ *CIH* 227.7-10 = *AL* v 436.22-7. See *ZCP* 15 (1925) 322-3.

⁴⁰ *CIH* 489.8-27 = *ZCP* 14 (1923) 370 §§32-3.

⁴¹ *CIH* 1348.27 = *DAC* §1.

⁴² *CIH* 1348.28-9 = *ibid.*

⁴³ *CIH* 491.24 = *ZCP* 14 (1923) 375 §38; cf. *CIH* 593.38 = *Bürgschaft* 11 §37.

⁴⁴ *CIH* 988.21 = *DAC* §54; cf. *Triad* 150.

⁴⁵ *CIH* 1118.21 = *Ériu* 13 (1942) 23.26.

⁴⁶ *CIH* 433.27-9.

⁴⁷ See p. 9.

⁴⁸ These exceptions are listed in *Heptad* 25 (*CIH* 24.11-25.5 = *AL* v 212), *Coibnes Uisci Thairidne* (*CIH* 459.23-460.2 = *Ériu* 17 (1955) 66 §7) and *Berrad Airechta* §§1-15 (*CIH* 591.8-592.13, tr. *Bürgschaft* 6-8).

⁴⁹ *CIH* 786.32-4. For a discussion of the complex rules governing the adjustment of contracts, see Neil McLeod's forthcoming *Early Irish Contract Law*.

⁵⁰ *CIH* 992.37-8 = *DAC* §26.

⁵¹ e.g. *IK* bk. 34 ch. 6. See Wendy Davies 'The Latin charter-tradition in western Britain, Brittany and Ireland in the early mediaeval period' in *Ireland in Early Mediaeval Europe* ed. Whitelock, McKitterick and Dumville (Cambridge 1982) esp. 276-7.

⁵² *CIH* 596.30 = *Bürgschaft* 21 §62.

PLEDGES

Early Irish law relies greatly on the use of pledges (*gell*) to ensure that legal obligations are carried out. One text includes 'a pledge through which enforcement is made in contracts' (*gell frisi timargar a coruib bél*) among the four things which fulfil the law.⁵³ A pledge is an object of value delivered by its owner for a fixed period into the custody of another.⁵⁴ Its delivery signifies the pledger's willingness to meet the other's claim, or — if this is disputed — to submit the case to arbitration. Where agreement has already been reached, the pledge is a sort of material hostage to ensure the proper fulfilment of the agreed terms.⁵⁵ For example, when an injurer agrees to provide sick-maintenance,⁵⁶ he must hand over three pledges to the family of his victim. These are 1) a pledge that the injured man will be adequately looked after, 2) a pledge that a substitute will be provided to do his work, and 3) a pledge that on his recovery the injured man will be returned home safely. The family reciprocates by depositing three counter-pledges (*frithgell*) with the injurer.⁵⁷ It is thus in the interest of both parties that they should keep to the agreed terms of the sick-maintenance.

Usually, a pledge is an object intimately associated with the life of the pledger;⁵⁸ for example an embroideress may pledge her needle⁵⁹ or a champion may pledge his weapon.⁶⁰ Only a king, a church dignitary or lord may pledge an object of gold.⁶¹

⁵³ *CIH* 413.12-4 = *AL* i 260.23-5.

⁵⁴ Occasionally, a pledge remains in the custody of the pledger, though he is prohibited from making any use of it while it is pledged. It is known as a *gell forsen* 'pledge of overseeing', *CIH* 462.20 = *AL* v 376.3. Cf. *CIH* 781.39 = *CG* 294 (discussed *CG* Legal Glossary pp. 94-5).

⁵⁵ In the Celtic languages there is a close connection between the ideas of 'pledge' and 'hostage'. The O. Ir. term *gell* 'pledge' (Mod. Ir. *geall*) is from the same root as *gáll* 'hostage' (*VKG* i 136). The W. cognate of *gáll* is *gwystl*, which is normally used of a pledge, but also of a hostage (*GMWL* s.v. *gwystyl*, *guestel*). Ir. *gell* is also occasionally used of a hostage, e.g. *ALC* s.a. 1390 *Eoghan Ua Ruairc* 7 *mac Cathail Riabhaigh do thabhairt a ngell* 'E. and Mac C. were given as hostages'.

⁵⁶ *CIH* 2302.13-5 = *Ériu* 12 (1938) 46 §60.

⁵⁷ *Ériu* 12, 104.

⁵⁸ Thurneysen, *ZCP* 15 (1925) 266-7; Binchy, *CG* Legal Glossary s.v. *gell*.

⁵⁹ *CIH* 464.1-3 = *AL* v 382.1-4.

⁶⁰ *CIH* 476.10 = *AL* v 418.12-3.

⁶¹ *CIH* 467.34-5 = *AL* v 394.6-7.

Our sources are in some disagreement as to which articles can be given as pledges. One text⁶² refers to the pledging of cattle, sheep, pigs, horses, plough-irons, vessels, goblets, drinking horns, clothing, belts, pins, work-bags, weapons, ornaments, and 'beautiful nuts'.⁶³ But another text⁶⁴ states that nothing can be given as a pledge which is vulnerable to rust, mouse, death or clothes-moth: this would exclude iron objects,⁶⁵ food, livestock and clothing.⁶⁶ Heptad 37 provides a further list of items which are regarded as 'most difficult' (i.e. most unsuitable) for the head of a kin to pledge on behalf of his kin.⁶⁷ These are clearly unsuitable on the grounds of insufficient value or because they are in some way defective: a chess-set, children's toys, whale-bone, a beautiful tooth (presumably of a wild animal), an untrained watchdog, and an unbroken horse or ox.

A pledge may be given even before any offence has taken place. For example, neighbouring farmers exchange fore-pledges (*tairgille*)⁶⁸ to cover potential injury, especially trespass by cattle and other domestic animals.⁶⁹ The regulations regarding fore-pledges for bees are of particular interest as they show that — even though the basic principles of early Irish law are fairly constant — the authors of different law-texts can approach the same problem in quite different ways. According to *Bechbretha*, a fore-pledge is given by a bee-keeper to his four nearest neighbours when he starts bee-keeping.⁷⁰ This fore-pledge guarantees three years of immunity from claim (*soíre*) for his bees. In the fourth and fifth years, the neighbours each receive in turn a swarm from the bee-keeper. This means that they themselves become bee-keepers, so the trespasses of their bees (i.e. collecting nectar etc.) cancel out any committed by the bees of the original bee-keeper. The fore-pledges are then returned to him.

⁶² *Bretha im Fiillema Gell* (App. 1 No. 60).

⁶³ These are probably tropical nuts ('sea-hearts') brought to Irish shores by the North Atlantic Drift. See p. 249.

⁶⁴ *CIH* 2004.13-5.

⁶⁵ *GC* §8 (*CIH* 2193.12-3 = *ZCP* 15, 314) states that an iron implement may be given as a pledge for payment of a fine relating to the fencing of land.

⁶⁶ *GC* §32 (*CIH* 2196.26 = *ZCP* 15, 342).

⁶⁷ *CIH* 35.19-24 = *AL* v 250.1-8.

⁶⁸ Also *tairgell* (*CIH* 781.4 = *CG* 241). See *CG* Legal Glossary p. 100.

⁶⁹ *CIH* 412.1-3 = *AL* i 260.9-11.

⁷⁰ *CIH* 444.12-5 = *BB* §§1-3. See *BB* Notes 90.

Another law-text takes a contrary view.⁷¹ The author states that a fore-pledge should *not* be given on behalf of bees, because they are flying creatures which cannot be kept in by a fence. Instead he holds that a penalty (*caithig*) should be paid by the bee-keeper for the trespasses of his bees. Yet another approach to the problem is found in a text on *distraint*.⁷² Here the fore-pledge is identified with the payment of honey or swarms which the bee-keeper gives to his neighbours. If this fore-pledge is not given, a neighbour may kill any of the bees which he catches trespassing on his land.

The professional judge (*brithem*) who decides a law-case has himself to deposit a pledge of 5 ounces of silver in case of dispute with his judgement.⁷³ The intention is clearly to give a dissatisfied litigant some leverage if he wishes to get a judge's verdict re-examined. A judge who refuses to give a pledge for his judgement is debarred from further practice in the territory.⁷⁴

As well as giving pledges on his own behalf, a person may give a pledge on behalf of another. In this case, he is entitled to receive interest (*fuillelm*) for the period during which the pledged object is out of his possession. If a pledged article becomes forfeit (normally after a month)⁷⁵ its owner is entitled to greatly increased interest and heavy compensation for the lost article. A long law-text, *Bretha im Fuillema Gell* 'judgements about pledge-interests'⁷⁶ deals with the complex regulations on the payment of interest for articles belonging to various ranks and professions. For example, if a lord supplies a goblet to be given as a pledge, he is entitled to receive interest of one *sét* for every three days until nine days are up. After that, the rate of interest is increased and he receives three *séts* for every five days until a further fifteen days are up.⁷⁷ If a king gives his festival garment as a pledge on behalf of another, he receives three garments as interest when 30 days are up. But after that — if there is a festival gathering which the king must attend — he is entitled to his full honour-price to atone for the shame of appearing

⁷¹ CIH 196.18-29; 578.24-33 = BB App. 5.

⁷² CIH 898.19-27 = BB App. 6.

⁷³ CIH 1968.31.

⁷⁴ CIH 1377.39 = AL v 352.21.

⁷⁵ CIH 781.36 = CG 289.

⁷⁶ CIH 462.19-477.30 = AL v 376-423. Damian McManus is preparing an edition for the Early Irish Law Series.

⁷⁷ CIH 34.5-6 = AL v 240.1-3.

without his own festival garment. The person on whose behalf he has pledged the garment must pay this fine within ten days.⁷⁸

In certain cases,⁷⁹ a person who gives a pledge on behalf of another has no legal support if it is not returned, and has no entitlement to interest. This applies in the case of a pledge on behalf of an outsider (*ambue*), a runaway slave, a person ejected from his kin, the dependent son of a living father (against his father's wishes), or a dependent wife (against her husband's wishes) or in the case of a pledge for an illegal purpose.⁸⁰

A wife has the independent right to give various items of minor value in pledge, such as clothing, personal effects, pigs, sheep, etc. But she cannot give a pledge of cattle, horses, gold, silver, copper or iron against her husband's wishes. If her husband allows her to give such a pledge, the interest goes to him rather than to her.⁸¹

SURETIES

In the absence of a state-administered system of justice, much of the responsibility for the enforcement of contracts is borne by private individuals acting as sureties. For an important contract, each party has to find a number of sureties before it is legally valid. The early Irish law of suretyship is treated in a text entitled *Berrad Airechta* (Appendix 1 No. 61) translated and discussed by Thurneysen (*Die Bürgschaft im irischen Recht*, Berlin 1928).⁸² Binchy has also dealt with the subject in an article 'Celtic Suretyship, a fossilized Indo-European Institution?' in *Indo-European and Indo-Europeans* (ed. Cardona, Hoenigswald and Senn, Philadelphia 1970) 355-67. This article has been reprinted in *The Irish Jurist* 7 (1972) 360-72.

Three main types of surety are distinguished in early Irish law: the *ráth*, the *naidm* (or *macc*) and the *aitire*.

⁷⁸ CIH 469.19-23 = AL v 398.25-400.4.

⁷⁹ listed in Heptad 18 (CIH 17.30-18.32 = AL v 186) and Heptad 32 (CIH 29.9-13 = AL v 228.13-9).

⁸⁰ reading *gell doberar étechu* 'a pledge which is given for an illegality' CIH 18.5 (cf. 1892.16-7; 1997.37).

⁸¹ CIH 464.27-9 = AL v 384.2-6 (where the punctuation is incorrect, see SEIL 234).

⁸² Robin Stacey provides an English tr. in *Lawyers and Laymen* (ed. Charles-Edwards, etc. Cardiff 1986) 210-33.

1. *ráth* 'paying surety'.⁸³ This word is doubtless closely connected with *rá(i)th* 'fort, stronghold',⁸⁴ so its basic meaning is 'one whose function is to strengthen or secure a contract'. The *ráth* does this by guaranteeing with his own property that the principal (i.e. the party for whom he is going surety) will fulfil his side of a contract. If the principal defaults, the other party to the contract gives notice to the *ráth* that he will distrain the amount due (plus a fine of one third) from the *ráth*'s property. At this, the *ráth* gives a pledge to the other party which must be redeemed within a certain period. If the principal redeems it by paying the amount due plus one third, he must compensate the *ráth* for having given the pledge on his behalf.

If, on the other hand, the principal defaults again, the amount due is taken from the *ráth*'s property. This involves the principal in heavy penalties. He must pay the *ráth* double the amount of the debt and fine, as well as the *ráth*'s honour-price, and any other expenses which he may have incurred through acting as surety. The *ráth* is entitled to distrain goods to this value from the principal.

By agreeing to act as a *ráth*, a person takes on a very serious responsibility, possibly involving himself in much inconvenience, worry, and expense (albeit temporary). He has no legal redress for losses he may sustain through unwisely going surety for the 'son of a living father' against his father's wishes, for an alien (*ambue*), for a slave who has escaped from his master, for a person ejected from his kin-group, for a wife against her husband's wishes, or for a noble or prohibited person (on whom it is not possible to enforce compensation in the event of default).⁸⁵ Furthermore, the *ráth* who evades the obligations which he has undertaken to perform suffers the loss of his honour-price.⁸⁶

The wisdom-texts warn particularly against acting as *ráth*. Triad 235 remarks 'every *ráth* is worried' and Triad 135 advises an

⁸³ *Ráth* can refer both to the person who goes surety and the property which he puts in security. It is borrowed into Hiberno-Latin as *rata* e.g. *IK* bk. 34; see Thurneysen, *ZCP* 18 (1930) 368-71.

⁸⁴ Binchy, *IEIE* 360. A coda to Heptad 65 (*CIH* 63.7-28 = *AL* v 348) plays on the word's ambiguity. It refers to the leading case of Aimirgin *ráthach* who had seven forts. He put one of these forts (*rátha*) in security (*ráth*) on behalf of Conall *echluath*, and was thus reputedly the first person in Ireland to act as a paying surety according to law (*iar cíl dligid*).

⁸⁵ Heptad 30 (*CIH* 27.32-28.34 = *AL* v 224.1-7).

⁸⁶ *CIH* 782.4 = *CG* 306 *élud ráthaigis*.

unprosperous person not to act as a *ráth* because 'he must pay for his suretyship'. Triad 249 gives the three dark things of the world as 'depositing, suretyship (*ráthaiges*) and fosterage'. However, the smooth functioning of the society depended a great deal on paying suretyship, so it must be assumed that such sureties were forthcoming in sufficient numbers to keep the system going. It should also be borne in mind that a *ráth* who carries out his duties correctly after the principal's default can ultimately expect to make a profit (*somoine*).⁸⁷

Heptad 65 gives an account of *ráth* suretyship in different situations.⁸⁸ For example, one type of *ráth* goes surety at the bidding of his kin-group,⁸⁹ who will presumably help him out if he is unable to pay for the principal's default. Another type⁹⁰ goes surety up to a fixed limit, and is not responsible for failure by the principal beyond this sum. A further type is the 'back surety' (*ráth iar cíl*). In glosses and commentary he is called the *cúlráth*,⁹¹ and is distinguished from the *cétráth* 'chief surety'. *Críth Gablach* makes it clear that a person cannot act as a *ráth* (or any other type of surety) for an amount greater than his honour-price.⁹² So a party to a major contract might be unable to find a *ráth* of sufficiently high rank to guarantee payment in the event of default. In such a case two sureties of lesser rank can fulfil this function. According to commentary at *CIH* 2027.22-9 the main surety normally

⁸⁷ *CIH* 28.10 = *AL* v 224.2.

⁸⁸ *CIH* 61.8-11 = *AL* v 340.15-9.

⁸⁹ *ráth forngartha fine* 'a surety commanded by his kin'. Thurneysen (*Bürgschaft* 54) suggests that one might read *fócarthai* and translate 'a surety of one proclaimed by his kin'. However, Heptad 65 seems to include only sureties who are entitled to full compensation, which would not apply in this case (cf. *CIH* 28.12 = *AL* v 224.4-5). Furthermore, the phrase *ráth forngartha fine* is also attested at *CIH* 790.4.

⁹⁰ *ráth airnaise* 'bound surety'. His functions are defined at *CIH* 789.25-6 'most difficult for a principal in Irish law is the bound surety, for he is bound by contracts that his compensation (*slán*) does not exceed a fixed sum'.

⁹¹ e.g. *CIH* 61.18 = *AL* v 342.10; *CIH* 790.20. In Scotland this term was commonly anglicized *culrath*, *culrach*, *colrath*, *colrach*, *culreath*, etc. 'surety, pledge'. See *SGS* 2 (1927-8) 233-4 and *A Dictionary of the Older Scottish Tongue* s.vv. *colrach*, *culrach*. According to J. Skene's *De Verborum Significatione* (Edinburgh 1597) *colrath* is properly to be called 'ane backborgh' (i.e. a back surety) which corresponds closely to the Irish usage. Cf., also, *cíl-aitire* 'back hostage-surety' in *TBDD* 604, discussed *Bürgschaft* 73.

⁹² See *CG* p. 103, and the section on 'honour-price' in Neil McLeod's *Early Irish Contract Law* being prepared for the Early Irish Law Series.

guarantees two thirds of the value of the contract, and the secondary or 'back surety' guarantees the remaining third.

Our sources provide a good deal of information on the sort of person regarded as being a suitable *ráth*. According to Triad 218, he should possess the attributes of 'permanence in residence, honour so that he should not tell a lie, and meekness in payment i.e. to allow himself to the wrongfully stripped of his possessions for the sake of the debtor'. *The Advice to Doíden*⁹³ lists the categories of person whom one should not accept as a *ráth* on behalf of the other party to an agreement. For example, a person of too low or too high rank should be avoided. The former is unsuitable because he does not have sufficient property to fulfil his obligations if the other party defaults. The high-ranking person is unsuitable because of the difficulty of enforcing a claim against someone of his status (see p. 9). For the same reason a king or royal heir (*rígdomna*) is to be avoided. Various professional men are unsuitable because their obligations do not pass on to their heirs. So if one acquiesces when the other party to an agreement appoints a blacksmith, *briugu* (hospitaller) or judge as a *ráth*, one will be left with an unsecured contract in the event of the *ráth*'s death. A poet of any type (*éces*, *bard* or *cáinte*) is also unsuitable because of the danger that he may satirize one rather than fulfil his obligations as *ráth* to the other party. Similarly unacceptable are a sick man, an old man, a lunatic, a dependent son of a living father (because his father may annul his suretyship), and an apprentice still under instruction. The other version of this text⁹⁴ also excludes the outsider (*deorad*), cottier (*bothach*), base monastic client (*dóermanach*) and servant (*fergniae*).

Both versions conclude with this description of a proper *ráth*: 'a man with his own property, his four kins are living,⁹⁵ his shield is five fists (in diameter), his sword is six fists (in length), he is the

⁹³ed. and tr. Smith, *Ériu* 11 (1932) 73-85. Another version, with some omissions and some additional matter, is found in *Bretha Nemed déidenach* (CIH 1122.3-37 = *Ériu* 13 (1942) 28.30-29.34).

⁹⁴CIH 1122.20-22 = *ibid.* 29.15-7.

⁹⁵*béo a cheithirfine*. It is obviously important that he should have kinsmen to pay for any liabilities which he may incur as a surety. The text on distraint, *Di Chetharslicht Athgabála*, points out that a man's liabilities are sustained by four circles of kinship: *gelfine* 'true kin', *derbfine* 'true kin', *tarfine* 'after kin', and *indfine* 'end kin' (CIH 411.22-3 = *AL* i 260.1-3). See Index 1 s. v. *fine*.

victor of three fights, his size is impressive, his speech (?) is clear, he does not owe anything, he has ten cows, he is a true *bóaire* (see p. 10), his memory is lively, he ensures [payment], he pays, he does not deny on oath'.

2. *naidm* 'enforcing surety'. Binchy notes⁹⁶ that the *ráth* seems never to function separately, but always in association with a *naidm*. The word *naidm* means 'binding, bond' and the functions of this type of surety are 'to hold in mind that for which he is invoked so that nothing be added to or subtracted from it, swearing to it without reservation, and enforcing it without negligence'.⁹⁷ Unlike the *ráth* (and the *aitire*) the *naidm* has no financial liability towards the other contracting party in the event of default by the principal. However, his honour is involved in the principal's carrying out of the terms of the agreement. If he acquiesces in a default by the principal, he loses his honour-price.⁹⁸ With so much at stake, it is not surprising that he has wide powers to force the principal to carry out his obligations. He can distrain his property (see p. 177) or seize and imprison him.⁹⁹ He is legally entitled to use violence on a defaulting principal: Heptad 6 includes 'blood spilt by a man who is enforcing his surety (*naidm*)' as one of the seven blood-sheddings of Irish law which do not entail fines or sick-maintenance.¹⁰⁰

There seems usually to be more than one *naidm* on each side of a contract.¹⁰¹ A late Old Irish glossator, drawing a comparison between a *ráth* (fort) and a *ráth* (surety) states that the two door-posts of the former correspond to the two *naidm*-sureties (*dénaidm*) of the latter.¹⁰² So a typical contract may be bound by two *naidm*-sureties on each side — one to compel each contracting party to fulfil his part of the bargain, and one to compel each *ráth* to pay up in the event of default.

Perhaps because of the number of *naidms* involved in any contract — and the relatively small risk attached to this form of suretyship — *Berrad Airechta* §40 assigns a fee of only a *colpthach*

⁹⁶IEIE 364.

⁹⁷CIH 594.18-20 = *Bürgschaft* 13 §43.

⁹⁸CIH 782.4 = CG 305 *áilsed nadma*.

⁹⁹cf. CIH 239.37 = AL v 476.24 (discussed *Bürgschaft* 57 and IEIE 366¹⁸).

¹⁰⁰CIH 9.5 = AL v 142.9.

¹⁰¹*Berrad Airechta* sometimes refers to *nadmann* in the plural, e.g. §26 (CIH 592.40), and §75 (CIH 598.27).

¹⁰²CIH 906.36-7.

(a two year-old heifer) to a *naidm* of *bóaire* rank.¹⁰³ In a rare admission of legal change, *Berrad Airechta* §41 states that a *bóaire* cannot act as a *naidm* for an amount greater than 5 séts (his honour-price) but that formerly he could act as a *naidm* for up to 7 *cumals* (the honour-price of the lowest grade of king).¹⁰⁴

Another word for 'surety', *macc*¹⁰⁵ (cognate with Welsh *mach* of the same meaning), is quite common in the earlier law-texts. It seems to have generally had the sense of 'enforcing surety', as it is used interchangeably with *naidm* in *Berrad Airechta*¹⁰⁶ and other texts.¹⁰⁷ On the other hand, the author of the *Airecht*-text on court procedure clearly intended a distinction between the two terms. In his court plan (illustrated on p. 194) he distinguishes between *maic cor mbél* 'sureties to contracts' and *nadmann* (pl. of *naidm*) 'enforcing sureties'. He places both in the 'court apart' (*airecht fo leith*).¹⁰⁸

3. *aitire* 'hostage-surety'. This word is a derivative from the preposition *etir* 'between',¹⁰⁹ so an *aitire* is 'one who stands between' the parties to an agreement. The *aitire* guarantees the performance of an obligation with his own person, and not (like the *ráth*) with his property. For agreeing to take on this risk an *aitire* of *bóaire* rank receives the relatively high fee of one milch cow.¹¹⁰ If the principal defaults, the *aitire* must surrender himself to the other party, who keeps him in his custody for a fixed period (usually ten days). If the *aitire* himself evades his obligations as surety, he loses his honour-price.¹¹¹

At the making of the contract, the *aitire* is formally addressed in the following terms by the other party: 'Swear by God that you will be ready and willing to remain in stocks or in prison, with your foot in a fetter or your neck in a chain until you be freed therefrom by debt-payments [by the principal] or until, having become forfeit,

¹⁰³ *CIH* 594.9-10 = *Bürgschaft* 12. Contrast the higher fee of one milch cow for an *aitire*.

¹⁰⁴ *CIH* 594.10-2 = *Bürgschaft* 12.

¹⁰⁵ It presumably fell out of use because it was liable to be confused with the very common homonym *macc* 'son' (cognate with Welsh *mab* 'id').

¹⁰⁶ e.g. *CIH* 598.26-7 = *Bürgschaft* 27-8 §§74d-75.

¹⁰⁷ Compare (in similar contexts) *CIH* 23.10 *la naidm 7 ráith 7 fiadnuse*; *CIH* 1375.27 *mac na ráith na fiadnaisi*.

¹⁰⁸ For discussion, see my edition of this text in *Peritia* 5 (1986) 96.

¹⁰⁹ *Bürgschaft* 4; cf. L. Breathnach, *Celtica* 15 (1983) 18.

¹¹⁰ *CIH* 594.10 = *Bürgschaft* 12 §40.

¹¹¹ *CIH* 782.4 = *CG* 306 *dul tria aitiri*.

you give a pledge for yourself' (i.e. to pay the normal ransom fee).¹¹²

The *aitire* can be ransomed during the ten days' custody by the principal's payment of the original debt (plus a surcharge for default). In this case the *aitire* is entitled to compensation for 'disturbance', and to a refund of any expenses incurred during his captivity. But if the principal has not paid up by the end of this period, the *aitire* is classed as a *cimbid*¹¹³ (i.e. captive — see p. 97). He must, therefore, ransom himself by paying seven *cumals*, the body-price of a freeman. The principal is then liable to pay twice the original sum to the other party, as well as refunding the seven *cumals* to the *aitire*, and paying him his honour-price for the indignity of being held in captivity. The *aitire* can distrain goods to this value from the principal.

Like the *ráth*, the *aitire* has no redress if he foolishly goes surety for various categories of legally incompetent person, such as an alien (*ambue*), an escaped slave, etc.¹¹⁴ Unlike the *ráth*, the *aitire* does not act in conjunction with one (or more) *naidm*. The rôle of the *aitire* is in some respects similar to that of the *gáll* 'hostage'¹¹⁵ (see below), and Binchy suggests that this form of suretyship may be an adaptation of hostageship to matters of private obligation.¹¹⁶

For contracts with and without sureties, see pp. 162-3.

HOSTAGES

The law-texts refer frequently to the hostage (*gáll*). As we have seen above (p. 164) the ideas of 'hostage', 'pledge' and 'surety' are closely connected. Especially in non-legal sources, both *gell* (normally 'pledge') and *aitire* (normally 'surety') may be used with the meaning of 'hostage'.

Law-texts and wisdom-texts stress the political importance of hostages held by a king. One legal passage states 'he is not a king who does not have hostages in fetters' (*géill i nglasab*),¹¹⁷ and

¹¹² *CIH* 597.21-3 = *Bürgschaft* 24 §65 f.

¹¹³ *CIH* 597.27-8 = *ibid.* §67.

¹¹⁴ Heptad 31 (*CIH* 29.1-5 = *AL* v 228.1-7).

¹¹⁵ For example, in the 10th-century Biblical epic poem *Saltair na Rann*, Isachar — left as a hostage in Egypt by the sons of Jacob — is referred to as an *aitire* (*etere*) (*SR* 3499, 3503).

¹¹⁶ *IEIE* 363.

¹¹⁷ *CIH* 219.5 = *AL* iv 50.22.

Tecosca Cormaic §1 lists 'hostages in fetters' among the things which are best for a king. *Críth Gablach* assigns a position to 'forfeited hostages in fetters'¹¹⁸ in the king's banqueting-hall. These are hostages whose lives are forfeit to the king because of rebellion, withholding of tribute or other treason by the underking or lord whom they represent.

The annals contain numerous references to hostages (usually *gíall*, but also *aitire*, and later *brágae*). The *Annals of Ulster* for the year 737 = 738 (§9) record that Cathal mac Finguini (king of Cashel) conducted a hosting (*slógad*) against the Leinstermen, and carried off hostages from the Uí Fáeláin.¹¹⁹ Hostages were normally taken to ensure the continued submission of a territory over which a king claimed sovereignty. If the authority of the overking was flouted, the hostages were forfeit,¹²⁰ and they might be killed,¹²¹ blinded,¹²² or ransomed.¹²³

Hostages were usually the sons of kings or lords. Occasionally, however, a daughter was given as a hostage. The *Annals of Ulster* s.a. 1165 record that the king of Ireland, Muirchertach Ua Lochlainn, gave the kingship of Ulster to Eochaid mac Duinn-sléibhe. In return, Eochaid gave his own daughter and a son of every chieftain (*toísech*) in Ulster as hostages.¹²⁴ Important churchmen might also be kept as hostages: the *Annals of Ulster*¹²⁵ record that Mael Bríte Ua Crichiden, abbot of Mag Bile, was held by the Cenél nÉogain as a hostage for the Ulaid.

The conditions for the ransom of a forfeited hostage no doubt depended on all sorts of variable factors in inter-territorial politics, and there do not seem to have been any generally accepted conventions regarding the amount paid. A ransom could be enormous: the *Annals of Ulster*¹²⁶ record that the Norse king Amlaim, held by Mathgamain Ua Riagáin of Brega, was ransomed for 1,200 cows,

¹¹⁸ *géill díthra i nglasaib*, CIH 570.26 = CG 596.

¹¹⁹ *co rucc gíallu* O Fáeláin.

¹²⁰ *a ngéill do dilsiugad*, AU s.a. 1127 §5.

¹²¹ AI s.a. 1124 §6.

¹²² AU s.a. 1259.

¹²³ AU s.a. 1029 §6.

¹²⁴ Welsh law also refers to the giving of women as hostages, *Ll. Ior.* §53/5 (WLW 174).

¹²⁵ s.a. 1007 §7.

¹²⁶ s.a. 1029 §6.

120 British horses, 60 ounces of gold, the sword of Carlus,¹²⁷ and the return of the Irish hostages held by the Norsemen. In addition, Mathgamain received 60 ounces of silver as Amlaim's 'fetter-ounce' (*ungae geimlech*).

As well as being used as a means of asserting political power, hostages also play a part in the enforcement of justice in early Irish society. Unfortunately, relatively little is known about this aspect of hostageship, because the law-text *Di gnímaib gíall* 'on the actions of hostages' (Appendix 1 No. 65) survives only in a few fragments. From the limited evidence it would seem that the legal functions of a *gíall* are closely similar to those of an *aitire* 'hostage-surety'. In his *Bürgschaft* (pp. 82-3) Thurneysen isolates three differences between the *gíall* and the *aitire*:

- (1) Unlike the *aitire*, the *gíall* is always held by a king.
- (2) If the debtor defaults, the *gíall* remains in custody for a period of 30 days. By contrast, the *aitire* remains in custody for only 10 days. At the end of the 30-day period, the *gíall* does not pay his full body-price as in the case of the *aitire*, but only one half or two thirds.
- (3) The *gíall* can avoid surrendering himself into custody by giving a pledge to the injured party.¹²⁸ So far as one can tell from the surviving texts, this possibility is not available in the case of the *aitire*.

It should also be added that the *Airecht*-text (on court-procedure) distinguishes hostages (*géill*) and hostage-sureties (*aitiriga*), placing both categories in the side-court.¹²⁹ But here it is not clear whether the hostages are present because of some legal function, or merely to emphasise the power and prestige of the presiding king.

The Middle Irish text on the distribution of *cró* and *díbad* (Appendix 1 No 64) deals with the special use of hostageship to enforce the law across the boundary of a *túath*, and can only apply where the two *túatha* owe allegiance to the same overking. In a case of murder, the king of the victim goes to the court of the

¹²⁷ Carlus was a Norse chieftain who was killed in 867 A.D. (AU (ed. Hennessy, Dublin 1887) Vol. 1 p. 560⁸).

¹²⁸ On the other hand, Triad 156 includes hostageship (*gíallaigecht*) among 'the three things which are not entitled to postponement (*taurbaid*)'. This seems to imply that a hostage cannot postpone his being taken into custody, even by giving a pledge.

¹²⁹ CIH 601.25 = *Peritia* 5 (1986) 85 §3.

overking,¹³⁰ and takes a hostage (*gáll*) representing the *tuath* of the culprit. To release the hostage, the culprit pays the body-fine for murder (*cro*). One seventh of this goes to the *gáll*. Of the remainder, one third goes to the king who enforces the payment, one third goes to the victim's kin, and the remaining third goes to the victim's lords (*flaithi*).

A hostage is also represented as playing a part in the implementation of ecclesiastical legislation. The text on offences against women, *Cáin Adomnán*,¹³¹ concludes by stating (§53) that there must be three sureties (*aitire*) from every main church to uphold the law of Adomnán, and a surety for the law (*aitire cána*) from every kin-group (*derbfine*) in Ireland. In addition, there must be two sureties for the law from every *ardflaith* (king?) as well as hostages in custody (*gáll gabála*) to ensure payment in the event of proven evidence (*túarasndal*) by women. The holding of a hostage or hostages to enforce such legislation is also referred to in *Cáin Domnaig* 'the law of Sunday'¹³² and in the text on distraint.¹³³

CHAPTER 7

DISTRAINT AND LEGAL ENTRY

DISTRAINT

As we have seen above (p. 22) the public administration of justice is still in an embryonic stage at the period of the Old Irish law-texts (7th-8th centuries). Hence, the law allows a private individual to enforce a claim against another by means of distraint, i.e. the formal seizure of property belonging to the other, without recourse to a court of law. The Irish term for this procedure is *athgabál* lit. 'taking back'.¹ Distraint in Irish law is discussed by D'Arbois de Jubainville in his *Études sur le droit celtique* (Paris, 1895), vol. i pp. 255-384, and by Binchy in *Celtica* 10 (1973) 22-71.

The Irish material on distraint is of particular interest to legal historians, as it describes an institution which belongs largely to the pre-history of other documented legal systems. For example, in early Roman law at the time of the Twelve Tables² distraint (*pignoris capio*) was permitted only in a very limited number of cases, mainly connected with religious rites.³ The Old Irish law-texts, by contrast, reveal the institution of distraint in full vigour. It is given very detailed treatment in *Di Chetharślicht Athgabála* 'on the four sections of distraint',⁴ the first text of the *Senchas Már* (excluding the Introduction), and it is also the subject of a shorter text probably of later date.⁵ In post-Norman times, the Irish practice of distraint became a target of English legislation. For

¹ It is cognate with O. Bret. *adgabael*, Med. Welsh *adauayl* (*adafael*) of the same meaning. In Med. Welsh, however, the usual term for distraint is the simplex *gauayl* (*gafael*) lit. 'seizure': see *Celtica* 10 (1973) 27.

² Their compilation is generally taken to have been in the 5th century B.C. (*HIRL* 110).

³ *ibid.* 193-4.

⁴ App. 1 No. 66. For a discussion on the meaning of the title of this text, see *Celtica* 10 (1973) 57.

⁵ App. 1 No. 67.

¹³⁰whether *rí Érenn* 'king of Ireland' or *rí cóicid* 'provincial king'.

¹³¹CA 32 §53.

¹³²*Ériu* 20 (1966) 166.57.

¹³³*gáll fri cáin*, CIH 412.14 = AL i 260.16-7.

instance, an act of Edward IV prohibits 'distresses to be taken contrary to the common law'.⁶

Di Chetharslicht Athgabála describes the normal order in which the various procedures are carried out during the course of distress. Firstly, the plaintiff must give formal notice (*airfócre* or *apad*) to the defendant that he intends to impound his property. There is then a delay (*anad*) of one, two, three or five days. The length of the delay depends on the nature of the matter at issue; for example if the distress arises from the defendant's having taken the plaintiff's pigs, the delay is for three days,⁷ whereas if the distress arises from the defendant's having neglected to raise the funeral mound of his lord, the delay is for five days.⁸ It is not clear why some offences entail a longer period of delay than others (for discussion, see Binchy, *Celtica* 10 (1973) 38-45).

During the period of delay, the defendant may put matters to rights by paying whatever fine is due, or otherwise fulfilling his obligations. In some cases he may merely give a pledge (see pp. 164-7) to signify his readiness to come to terms. If he fails to make a move, the plaintiff is entitled to enter his land, and remove cattle to the value of the amount due. This procedure is termed *tóchsal* 'carrying off' (also occasionally *tobach* 'levying') and must be carried out in the early morning⁹ in the presence of a professional *aigne* 'advocate, law-agent'. As cattle were the normal currency of early Irish society, it can be assumed that distress involved cattle more frequently than other domestic animals. However, it is clear that horses, sheep and pigs might also be distrained.¹⁰

The plaintiff then drives the distrained cattle to a private 'pound' (*forus n-athgabála*), and is responsible for any injuries which they may sustain while being driven there. The pound may be the green (*faithche*) of the plaintiff, or he may secure the use of somebody else's land. The pound must be well fenced, and different kinds of animal must not be mixed together.¹¹ An animal which is diseased must be segregated from the rest.¹²

⁶ *PRIA* 49 C (1943-44) 96 §63.

⁷ *CIH* 384.17 = *AL* i 166.24.

⁸ *CIH* 389.28 = *AL* i 184.6.

⁹ *CIH* 897.1.

¹⁰ *CIH* 897.16-21.

¹¹ *CIH* 422.15-35 = *AL* i 268.19-22.

¹² *CIH* 1726.25 = *AL* ii 12.19.

The next stage is called *díthim*, which here means 'delay in pound'.¹³ The texts do not say how long this period of delay lasts, but it seems likely that it is normally the same length as the first period of delay (*anad*).¹⁴

If the defendant has done nothing to meet the plaintiff's case by the end of the period of *díthim*, the final stage in the process of distress begins. This is the progressive forfeiture of the animals, known as *lobad*, lit. 'decay'.¹⁵ On the first day, livestock to the value of 5 séts are forfeit. On each subsequent day, livestock to the value of 3 séts are forfeit until none remains. Once an animal has been forfeited, the defendant cannot recover it. However, he can — at any time during the period of *lobad* — regain possession of whatever cattle remain unforfeited by paying (or giving a pledge for) the balance of the amount owed. In this case he must pay an additional charge to cover the plaintiff's expenses in feeding the cattle while in the pound.¹⁶

The above procedure is known as *athgabál íar fut* 'distress with a stay', and it seems to have been the normal method of distressing livestock in 7th or 8th century Ireland. The text also refers to *tulathgabál* 'immediate distress' which allows no period of delay (*anad*) between notice and seizure. Binchy suggests that this is an older form of distress, and that the compiler of the text has — with the characteristic conservatism of the early Irish lawyer — retained the earlier form beside the procedure which replaced it (for discussion, see *Celtica* 10, 51-60). An argument in favour of this view is the fact that no case of *tulathgabál* involves distress by a woman. In *athgabál íar fut*, on the other hand, all thirty-three cases with a stay of two days involve women or women's work.¹⁷ It is possible, therefore, that *tulathgabál* goes back to a period when women were without even the limited legal capacity which they enjoyed in the 7th-8th centuries (see p. 75).

A special form of distress, known as *athgabál inmleguin*,¹⁸ allows the plaintiff to distrain the property of a surrogate for the

¹³ In other contexts *díthim*, verbal noun of *do-tuit*, means 'forfeiture' — see p. 174.

¹⁴ See *Celtica* 10, 48.

¹⁵ See *ibid.* 50.

¹⁶ *CIH* 409.29-30 = *AL* i 258.15-7 (discussed, *Celtica* 10, 48-50).

¹⁷ *CIH* 378.18-379.12 = *AL* i 146.31-150.13.

¹⁸ See *Celtica* 10, 32-3.

defendant. The term *inmlegon* means 'milking out into'¹⁹ so it seems that the plaintiff was originally envisaged as 'milking' the surrogate in place of the defendant. The surrogate was no doubt usually a member of the defendant's kin-group, though he might also be a *ráth* (surety) who had guaranteed a contract which the defendant had broken.

In the case of the distress of a surrogate, the law allows twice the normal period of notice. If there is no reaction, the plaintiff formally removes the animals from the surrogate's land, accompanied by a legal representative (*fethem*)²⁰ and witnesses.²¹ The surrogate must be informed of the offence for which his cattle are being taken, where they are being impounded, and the identity of the *fethem* who is acting on behalf of the plaintiff.²² As in normal distress, the cattle ultimately become forfeit if the surrogate does not discharge the debt. In the case of his being a kinsman of the defendant, his recovery of equivalent property would be an internal matter for the kin. If he is a *ráth*-surety, he would take legal action against the defendant for twice the amount distrained, as well as his own honour-price (see p. 168).

The shorter text on distress deals with the offences of various animals, prescribing different procedures for cows, oxen, pigs, sheep, horses, dogs, cats and bees. For example, if dry cattle have committed an offence (e.g. grazing trespass) the plaintiff must throw a stone over them three times in the presence of witnesses.²³ After 24 hours he is entitled to drive them to a pound, where they will ultimately become forfeit (the text does not say how soon) if the proper fine is not paid. If a watch-dog has committed an offence, the plaintiff must place a plank across its feeding-trough, and give notice (*apad*) that it is not to be fed until the owner has paid the fine. If the owner feeds it in spite of this prohibition, he becomes guilty of a 'human offence' (*duinechin*), which entails a much heavier fine than the original 'animal offence'. The section of the text dealing with the procedure for distressing bees contains a

¹⁹ *Inmlegon*, gen. sg. *inmleguin*, is verbal noun of *in-omlig* [*in-od-mlig-] lit. 'milks out into'.

²⁰ For a discussion of the distinction between *aigne* and *fethem*, see Binchy, *Celtica* 11 (1976) 18-33.

²¹ *CIH* 417.28-418.3 = *AL* i 266.6-7.

²² *CIH* 421.26-30 = *AL* i 268.11-16 (corrected, Binchy, *Celtica* 10, 47).

²³ *CIH* 897.32 = *Celtica* 10, 78 §2.

number of linguistic problems, but it is clear that the plaintiff is required to walk around the offending hive(s) accompanied by witnesses, and in some way identify the offending bees.²⁴

This text also describes the correct formalities to be used in the distress of various categories of person. In the case of *dóernemid* 'dependent professionals', the procedures are similar to those described above. For example, a smith is distrained by tying a withe around his anvil, and giving notice that he should not make anything on it, until he has conceded justice to the plaintiff. If he persists in working on his anvil, his property can be distrained in the usual manner. A similar procedure is used against other *dóernemid*, such as wrights, welders, and workers with adze or axe. In the case of a physician, the formal acts of distress are generally carried out against his professional equipment. Thus the plaintiff takes away his horse-whip²⁵ and his lancet (*fraig*). The text goes on to state that if the physician has no medicine-bag (*linchor*) in his possession, the plaintiff ties a thread around the finger next to his little finger. The text does not say what the procedure is if the physician *has* a medicine-bag, as one would normally expect.²⁶ Presumably, the plaintiff would in this case take away the medicine-bag or place a withe across it. At all events, if the physician refuses to concede justice after the appropriate formalities, he becomes guilty of *élud* 'evasion of a legal obligation', with ultimate loss of his honour-price (see p. 222).

In general, when the author of an Old Irish law-text uses the term *athgabál*, it is clear that he is referring to the seizure of another's livestock to enforce a legal claim. However, in *Di Chetharślicht Athgabála*²⁷ the term is once used in a much wider sense to include seizure of land, persons and inanimate property (*marbdili*) as well

²⁴ for discussion of this passage, see *Celtica* 10, 85-6 and *BB* 189-91.

²⁵ In *Celtica* 10, 83, Binchy suggests that *echlasc* 'horse-whip' in the existing text may be a scribal substitution for some term referring to a special stave or wand carried by the physician in token of his office. On the other hand, one could argue that the removal of the physician's horse-whip was intended to signify that he was debarred from using his horse. He was thus deprived of the mobility essential for carrying out his professional duties — rather like a modern doctor whose driving licence has been withdrawn.

²⁶ As Binchy points out (op. cit.), *tuillem linchuir* 'the earning of the medicine-bag' refers to the physician's profits in *Berrad Airechta* (*CIH* 592.11 = *Bürgschaft* 8 §13).

²⁷ *CIH* 409.1-2 = *AL* i 258.4-5.

as livestock. This raises the possibility (discussed by Binchy in *Celtica* 10, 29-30) that at an earlier stage in the development of Irish law the plaintiff's powers of distressment were much wider than those described in the texts. What may be a survival of a right to distressment directly against the person of an offender is found in a passage in *Di Chetharslicht Athgabála* dealing with offences by dependants of low rank, such as a slave, a tenant-at-will (*fuidir*), a shepherd or a cowherd.²⁸ Having no cattle of his own, such a person cannot be distressed in the normal way. The plaintiff can, therefore, put a fetter on his foot and keep him on short rations until his owner or master pays whatever is due.

Fasting

If the defendant is of full *nemed* rank the position of the plaintiff is more difficult (cf. p. 9). Here early Irish law uses the practice of fasting (*troscud*) against a person of high status to pressurize him into conceding justice.²⁹

Di Chetharslicht Athgabála contains only a short section on fasting,³⁰ but this is adequate to give a general idea of the procedure. The fast probably takes place outside the *nemed*'s house.³¹ The text does not say how long it normally lasts, but later commentators take it to be merely from sundown to sunrise³² (thereby missing the main evening meal) rather than a fast until death or settlement.

When a plaintiff fasts against a *nemed*, the latter must guarantee to concede justice to the plaintiff either by appointing a surety (*ráth*) or by giving a household article in pledge. If the *nemed* eats during the fast without having made any guarantee, he must pay

²⁸ *CIH* 363.23-28 = *AL* i 104.35-106.4.

²⁹ The use of fasting for political purposes — the 'hunger strike' — is distinct from legal fasting, though its ultimate purpose is the same, i.e. to exert moral pressure on a more powerful adversary. Legal fasting is also recognised in early Indian law (e.g. *LM* viii 49, footnote) and remained in use in Nepal into the late 19th century (Jolly, *Recht und Sitte in Grundriss der indo-irischen Philologie und Altertumskunde* ii 8 (1896) 48). For further references, see Binchy, *Stud. Hib.* 15 (1975) 24-6.

³⁰ *CIH* 365.5-367.7 = *AL* i 112.14-118.7. See edition and discussion by Thurneysen, *ZCP* 15 (1925) 260-275, cf. Binchy, *Celtica* 10, 34-5.

³¹ In Indian law the plaintiff fasted outside the defendant's house.

³² *aduid in troiscthe* 'the night of the fasting' *CIH* 1741.5 = *AL* ii 64.12-3. See Thurneysen, *ZCP* 15 (1925) 266.

twice the amount originally owed. On the other hand, if the plaintiff persists in his fast even though the *nemed* has offered to settle, the case automatically lapses. It is unclear from the text how soon after the fast the plaintiff may distress the *nemed*'s property. Later commentary allows the *nemed* a three-day respite before distressment is permitted.³³ If the *nemed* has a 'substitute churl' (*aithech fortha*)³⁴ the plaintiff must distress the substitute's property rather than that of the *nemed*. If he distresses the *nemed*'s property he must pay the fine for illegal distressment.³⁵

A *nemed* who holds out against a justified and properly conducted fast (presumably by opposing the subsequent attempt at distressment) loses his entitlement to be paid for any offences committed against him.³⁶ In effect, he is deprived of his legal rights in society.

The shorter text on distressment (see above) provides more information on the use of fasting as a means of securing redress from *sóernemed* persons such as poets, churchmen (*óes ecalso*) or kings. For example, a plaintiff who wishes to sue a churchman³⁷ must fast against him and give notice (*apad*) that he is not to recite his *pater* or his *credo* or go to the sacraments or Mass. If he is an ordained cleric or a monastic superior (*airchinnech*), a withe is tied around the tongue (?) of his bell or the foot of his altar, and notice is given that the bell may not be struck nor Mass said until he has conceded justice. If he ignores these formalities, his cattle may be distressed.

Restrictions on distressment

There are many restrictions on the practice of distressment. Various exceptional circumstances allow a postponement (*taurbaid*).³⁸ These include the death of a member of the defendant's family,³⁹ the attack of a host from outside which brings fire and slaughter,⁴⁰ seeking a midwife for a woman who is in labour,⁴¹ getting a

³³ *CIH* 366.13 = *AL* i 116.9. See Thurneysen, *ZCP* 15, 268.

³⁴ See p. 25.

³⁵ *CIH* 36.24-5 = *AL* v 254.4.

³⁶ *CIH* 366.1 = *AL* i 112.17-18. See Thurneysen, *ZCP* 15, 271-2.

³⁷ *CIH* 898.8-12 = *Celtica* 10, 78 §8. Cf. *CIH* 2211.22-23.

³⁸ See *Celtica* 10, 44.

³⁹ *CIH* 898.28 = *Celtica* 10, 80 §12.

⁴⁰ *CIH* 420.30 = *AL* i 268.2.

physician for a person who is in danger of death,⁴¹ and similar pressing duties or emergencies.

The arrival of a party of guests also allows the defendant to postpone the distress of his property. However, this excuse can only be used once, unless the visitor is a king with his retinue.⁴² The defendant must name witnesses to swear that there are genuine grounds for the postponement. The length of the postponement is apparently decided by a judge.⁴³

It is an offence to distress in defiance of a postponement.⁴⁴ It is also an offence to distress on a holy day,⁴⁴ or in defiance of the protection (*turtugud*) of a third party,⁴⁴ or to distress the stock of a person who is moving house, unless he is a thief or fugitive.⁴⁵ Distress must be carried out in accordance with local custom or whatever special ordinance (*cáin*) has been issued by king or Church.⁴⁶ It is not lawful to distress across a boundary,⁴⁷ except in time of war, e.g. when an overking distresses property in the territory of a defaulting subsidiary king.⁴⁸ No son can distress the property of his father.⁴⁹

There are important restrictions on the types of animal which may be distressed — the intention is to cause the minimum of hardship or inconvenience to the defendant. Thus, the plaintiff is not allowed to distress a cow which has just calved,⁵⁰ a cow which is due to be paid as rent to a lord or church,⁵⁰ a bull while the cows are in heat,⁵¹ a horse which is required for racing,⁵² the horse of 'a man who strives for the honour of the *túath*',⁵³ (presumably on some mission for the common good), oxen needed for ploughing,⁵⁴ pigs while being fattened,⁵⁵ etc. In effect, a wide range of livestock

⁴¹ CIH 420.5-6 = AL i 266.23.

⁴² CIH 898.32-3 = *Celtica* 10, 80 §13.

⁴³ CIH 898.30-1 = *ibid.* §12.

⁴⁴ CIH 37.26-36 = AL v 256.26-33.

⁴⁵ CIH 39.7-18 = AL v 260.20-262.3.

⁴⁶ CIH 37.7 = AL v 254.7.

⁴⁷ CIH 2199.16 = ZCP 15 (1925) 364 §49.

⁴⁸ *Celtica* 10 (1973) 56, 69; cf. CIH 570.1 = CG 559-60.

⁴⁹ CIH 37.6-7 = AL v 254.6-7.

⁵⁰ CIH 38.19-21 = AL v 260.1-4.

⁵¹ CIH 897.16.

⁵² CIH 897.16-7.

⁵³ CIH 897.18.

⁵⁴ CIH 897.15.

⁵⁵ CIH 897.20.

would be ineligible for distress at any one time. However, such animals might be distrained for their own offences: thus the shorter text refers to the distress of oxen at ploughing-time.⁵⁶

As we have seen above, a plaintiff can secure the use of somebody else's property as a pound for cattle which he has distrained. There are, however, a number of restrictions. He cannot bring distrained cattle to the house of various high-ranking people i.e. to the house of a king, hospitaller or hermit (*deorad Dé*) or to an important monastery (*cathair úasalnemid*). For their own safety cattle are not to be brought to the house of a thief or of a satirist (see p. 49) or to an empty house.⁵⁷ For the same reason they must not be driven to a cave or into the wilderness or forest, or in secret or in the dark.⁵⁸ In the case of distress of a surrogate (*athgabál inmleguin*) the cattle must be brought to the green of an *aire forgill* ('lord of superior testimony') or of a chief poet or of a high judge.⁵⁹

The lawyers' rôle in distress

As can be seen from the foregoing, the early Irish regulations on distress were complex, and a plaintiff who did not know his law could find himself paying the fine of five *séts* for improper distress.⁶⁰ It is not surprising, therefore, that professional lawyers clearly played an important part in the practice of distress. *Di Chetharślicht Athgabála* states that a plaintiff should obtain the services of one who is skilled in speech⁶¹ to supervise his actions. The original function of the *aigne* 'advocate, law-agent' (see p. 56) may have been, as Binchy suggests, 'to steer the claimant through the shoals and quicksands of the law of distress'.⁶²

The *aigne* gets a fee of one third of the amount distrained.⁶³ His position is protected by the stipulation in *Di Chetharślicht Athgabála* that he is not liable to be fined for 'the three mistakes

⁵⁶ CIH 898.17-8 = *Celtica* 10, 80 §10.

⁵⁷ CIH 40.20-3 = AL v 266.19-23.

⁵⁸ CIH 900.12-3.

⁵⁹ CIH 1727.34-5 = AL ii 16.11-2.

⁶⁰ CIH 359.34 = AL i 90.29.

⁶¹ *suithengha[i]d*, CIH 358.2 = AL i 84.10; see *Celtica* 10, 31-2. I take *suithenghaid* to be an agent noun from *suithnge* 'eloquent': see *Peritia* 5 (1986) 105.

⁶² *Celtica* 11 (1976) 25-6.

⁶³ CIH 591.23-4 = *Bürgschaft* 7 §4.

of an *aigne*⁶⁴ provided he acted in good faith. The mistakes are listed as 'distaining without there being a liability, distaining for a liability which has already been discharged, and distaining from the green of a noble dignitary who has power to protect it (i.e. the animal distrained)'. Presumably the claimant would himself have to pay the fine for improper distaint in these circumstances, if he had intentionally misled his *aigne*.

LEGAL ENTRY

The practice of legal entry (*tellach*) is, like distaint, circumscribed by many formalities and must be carried out in the presence of witnesses and with fixed periods of delay. The basic meaning of the term *tellach* is 'putting-into'⁶⁵ and it is used of the legal procedure whereby a person takes possession of land to which he or she is entitled, and which is held by another. This procedure is described in a text, mainly in verse, entitled *Din Techtagad* 'on legal entry' (Appendix 1 No. 68).

The ordinary procedure in *tellach* is for the claimant to initiate his claim by formally entering the land, holding two horses and accompanied by a witness and sureties.⁶⁶ He must cross the boundary mound (*fertae*) of the holding to which he is laying claim.⁶⁷ After this 'first entry' (*céttellach*) the claimant withdraws, and the person who is occupying the land may submit the dispute to arbitration after five days.

If the occupant has made no move, the claimant enters the land again, ten days after his original entry. This is the *tellach medónach*, lit. 'middle entry'. On this occasion, he is accompanied by two witnesses and four horses, which are unyoked and therefore free to graze on the claimed land. He then withdraws, and the occupant may submit to arbitration after three days. The final entry (*tellach déidenach*) is made twenty days after the original entry. The

⁶⁴ CIH 360.13-361.6 = AL i 90.30-92.2.

⁶⁵ **to-in-lo(n)g-*, CCCG 379. The term *techtagad* is used in later glosses and commentary with the same meaning as *tellach*. In his forthcoming book *Early Irish and Welsh Kinship*, Thomas Charles-Edwards discusses the similarities and differences between *tellach* and the equivalent Welsh legal procedure of *dadannu*.

⁶⁶ The seven legal entries listed in Heptad 23 (CIH 22.23-23.12 = AL v 206.1-7) include *tellach la naidm* 7 *ráith* 7 *fiadnaise*.

⁶⁷ *Celtica* 6 (1963) 221.9 = CIH 206.21; 2019.16.

claimant is accompanied by three witnesses and eight horses.⁶⁸ On this occasion he is allowed to minister to his horses, i.e. to feed and stable them.

What happens next is not totally clear from the texts. It appears that the claimant is granted 'speedy arbitration' if the occupant is now willing for the case to be submitted to a judge. This probably takes place on the day after the third entry. If the occupant still fails to submit to arbitration, the claimant acquires legal ownership of the disputed property. To demonstrate his ownership he is required to spend the night on the property, to kindle a fire, and to tend his animals.⁶⁹

Female entry (*bantellach*)

Part of *Din Techtagad*⁷⁰ deals with legal entry by a female claimant (for female rights of landownership, see p. 104). The principles governing the law of female entry are illustrated by a series of legendary leading cases.

One concerns a judgement passed by a legendary judge named Sencha. He adjudged that female entry should be conducted in the same manner as male entry. However, blisters appeared on his cheeks as a sign that this was a false judgement. A female judge, Brig,⁷¹ cured these blisters by laying down the correct procedure for female entry.

Another leading case, that of Ciannacht, describes how female entry differs from male entry. Ciannacht made her first entry across the burial mounds of the holding to which she laid claim, accompanied by female witnesses of virtuous character⁷² (number unspecified) and two ewes. The holding was occupied by kinsmen of hers,⁷³ who clearly did not believe that she was entitled to the land. After a period of four days the case could have gone to

⁶⁸ CIH 210.30 = AL iv 18.26-7. Few claimants would have owned as many as eight horses. It is clear, therefore, that a claimant would need backing from others — not only to act as witnesses and sureties, but also to supply horses.

⁶⁹ CIH 210.32-4 = AL iv 20.1-2.

⁷⁰ CIH 207.22-209.31 = AL iv 8.17-16.24 (partially tr. *Celtica* 6 (1963) 227-8).

⁷¹ The legendary figure Brig appears also in *Di Chetharślicht Athgabála* (CIH 407.1 = AL i 250.28).

⁷² *nad renat a cetrusa* lit. 'who do not sell their virginity' CIH 208.15 = AL iv 8.20-1.

⁷³ *ba-ch* for fine a *forcomal* 'and her seizure was against the kin' CIH 208.14 = AL iv 8. 18-9.

arbitration (in contrast to five days in the normal law of entry). After eight days, she made her second entry with double numbers. This presumably means that she brought four ewes and twice the number of witnesses. Two days after this, the occupant had a second opportunity to submit to arbitration. Sixteen days after her first entry, Ciannacht made her final entry, no doubt accompanied by eight ewes, though this is not specified in the text. From one phrase⁷⁴ it would seem that she was accompanied by at least one male witness on her final entry. To symbolize her rightful possession of the disputed holding she also brought a kneading-trough and a sieve for baking.⁷⁵ After Ciannacht's final entry, she was entitled to 'speedy arbitration', as in the case of male entry. The defendant apparently made no response, so the holding became Ciannacht's property.⁷⁶

Another passage on female entry⁷⁷ concerns a woman called Seither who 'made entry into holdings'. Her seizure was accepted by her kin-group 'because it was a habitation of return' i.e. it would return to the kin-group after her death.

Entry by a vagrant

A third form of entry is briefly described in an obscure passage.⁷⁸ This is entry by a *raitech*, a rarely attested word which seems to mean 'man of the road, vagrant'.⁷⁹ He only occupies one third of the estate 'until payment or judgement' i.e. until the land is paid for (presumably by him) or until a judgement is made about the ownership. If he fails to pay, or if the judgement goes against him, he is ejected on the third day, and apparently must pay fines for trespass (*féich faithche*).

⁷⁴ *la fear foirgell fiadnaise* 'with a man of overriding testimonies as witness' *CIH* 208.18 = *AL* iv 8.24-5.

⁷⁵ In *Noinden Ulad* Crunchnu's fairy wife brings, among other things, a kneading-trough and sieve to assert her position as mistress of the house, *Celtica* 8 (1968) 28 §1.

⁷⁶ This is clear from the beginning of the poem: *to-combaig Ciannacht cian[m]ruige* 'C. has taken distant lands', *CIH* 207.22 = *Celtica* 6 (1963) 227 (*AL* iv 8.17).

⁷⁷ *CIH* 209.29-31 = *Celtica* 6, 234-5 (*AL* iv 16.21-4).

⁷⁸ *CIH* 212.32-213.17 = *AL* iv 28.1-5.

⁷⁹ *Raitech* is evidently a derivative from *raite* [iā.f] 'road'.

Illegal entry

It is, naturally, an offence to make an entry into property to which one has no right. The law takes a severe view of this offence: the text on entry ends by picking out illegal entry, illegal distraint, and illegal duelling as the three occasions when the Féni prosecute illegality.⁸⁰ The text concludes: 'it is a falsehood for a *tuath*, falsehood for a judge who does not award fines for each of them'.

Various forms of entry which entail fines are given in Heptad 24.⁸¹ Thus, it is an offence to make an entry in defiance of an agreement, or where the occupant has agreed to submit the matter to arbitration. It is also an offence to make an entry 'over the mound of a church' or with the incorrect number (of livestock).⁸² It is an offence for a man to make an entry into the holding of a kinsman (*bráthair*) after they have both agreed to the division of the property.

On the other hand, Heptad 23 states that it is legal to make an entry into the abandoned holding of a kinsman, or into the holding of a lawless man.⁸³ It is also legal for an abbot to force entry into a church building to evict his monks (who presumably have been guilty of abuses). The glossator adds that if they resist they may be dragged out by the hair at the top of their heads.⁸⁴

⁸⁰ *CIH* 213.27-9 = *AL* iv 32.3-6.

⁸¹ *CIH* 23.26-24.3 = *AL* v 210.

⁸² A difficult section in the text on legal entry (*CIH* 211.35-212.28 = *AL* iv 20.5-8) deals with entry into enclosures (*cruï tire do thellach*). Here the fine for making entry with cows (rather than the normal horses) is given as six *séts*.

⁸³ *CIH* 22.23-23.12 = *AL* v 206.

⁸⁴ *CIH* 23.21-2 = *AL* v 208.27-8.

CHAPTER 8

PROCEDURE

Most legal systems attach great importance to procedure. The initiator of a law-case must use the correct form of words, follow the correct timetable, etc. The main source of information on procedure in early Irish law is *Cóic Conara Fugill* 'the five paths of judgement' (Appendix 1 No. 69). The texts on restraint, legal entry, and sick-maintenance also provide information on procedure in particular areas of law.

The first thing a plaintiff must do to initiate a law-case (*ai*) is to indicate publicly that an offence has been committed. This is referred to as *aidbriud* 'assertion',¹ and is no doubt normally done by the victim, or by a relative of the victim.² To take legal action (*acrae*)³ against the offender, the plaintiff must hire an advocate (*aigne*)⁴ to plead on his behalf. Triad 178 stresses the wisdom of engaging a good advocate.

¹ *Aidbriud* is verbal noun of *ad-firi* 'asserts, claims to be true (*fír*)'. See Binchy, *Ériu* 20 (1966) 62.

² *Cáin Domnaig* ('the law of Sunday') refers to an onlooker's obligation to publicize (*aidbriud*) a breach of Sunday-observance by another, and to levy (*tobach*) the appropriate fine. For doing so, he is entitled to receive half of this fine (*Ériu* 20 (1966) 162 §2). This provision — whereby an onlooker *must* institute legal proceedings against an offender — seems confined to ecclesiastical legislation and is not found in the secular law-texts.

³ *Acrae* is verbal noun of *ad-gair* lit. 'calls to' i.e. 'sues, takes legal action'.

⁴ In the law-texts it is assumed that all law-cases are conducted by professional advocates, though in mythology there are instances where a litigant acts as his own advocate (see Binchy, *Celtica* 11 (1976) 31). In practice it seems quite likely that a litigant could legally conduct his own case — particularly if it concerned a minor matter — or that this function could be carried out by the head of his kin rather than a professional advocate. In her 'People and places in dispute in ninth-century Brittany' (in Davies and Fouracre (eds.) *The Settlement of Disputes in Early Medieval Europe*, Cambridge 1986) 74, Wendy Davies notes that advocates are mentioned in relation to only two court-cases in the *Cartulaire de Redon*.

Eight stages of a law-case

Recension H of *Cóic Conara Fugill* (§16) lists the eight stages of a law-case: (1) fixing a date for the hearing, (2) choosing the proper 'path of judgement' by the plaintiff's advocate, (3) the giving of security (*árach*), (4) pleading (*tacrae*), (5) rejoinder (*frecreae*), (6) judgement (*breth*), (7) promulgation (*forus*), (8) conclusion (*forbae*). These eight stages will be discussed in order:

(1). The secular law-texts provide little information on the procedure for fixing the day of a hearing. However, ecclesiastical legislation of roughly contemporary date suggests that secular cases are dealt with more slowly than ecclesiastical cases. Thus, *Cáin Adomnáin* 'the law of Adomnán' (Appendix 1 No. 74) seems to imply that the normal secular practice is for the defendant to give a pledge on the third day after an offence, judgement is pronounced on the fifth day, and the fine — if the defendant is found guilty — is paid on the tenth day. By contrast, in the case of an alleged breach of *Cáin Adomnáin* (i.e. an offence against women, children or clerics), judgement is given on the *third* day, and the fine is paid on the fifth day.⁵ Another text containing ecclesiastical legislation, *Cáin Domnaig* 'the law of Sunday' (Appendix 1 No. 73), similarly states that judgement may be passed on a Sabbath-breaker on the *third* day after the offence.⁶ In certain cases, however, it is clear that a final judgement may be a matter of years rather than days. For example *Bretha Déin Chécht* states that the final assessment of the severity of an illegally inflicted head injury may be made up to three years after the offence.⁷

Postponement (*taurbaid*) of legal proceedings is permitted where there is a good reason, such as a religious festival, illness, bereavement, etc.⁸

(2). Recensions R and E of *Cóic Conara Fugill* give the five 'paths' along which a case must be pursued as *fir* 'truth', *dliged* 'entitlement', *cert* 'justice', *téchtae* 'propriety' and *coir n-athchomairc* 'proper enquiry'. The advocate must know which path is proper for the particular case which he is pleading, as each

⁵ *CA* 26 §38.

⁶ *Ériu* 20 (1966) 164 §4.

⁷ *CIH* 2316.1 = *Ériu* 20, 46 §37.

⁸ *CIH* 868.28-870.33; cf. p. 183 above.

path has its own special procedures and bonds.⁹ If the advocate chooses the wrong path, or if he changes from one path to another during the pleading, he must pay a fine (*smacht*) of one cow.¹⁰ It does not appear, however, that the case fails in the event of an incorrect path being chosen.

The advocate must follow the first path, i.e. that of truth, in cases involving perjury, difficult cases (?),¹¹ division among kinsmen, acceptance of a lord, seeking the property of an extinct kin-group, and headship of a kin-group. The second path, that of entitlement, is used to enforce contractual rights. The third path, that of justice, is used to adjust unfair contracts. This adjustment may be effected by 'emptying the too full' or 'filling up the too empty'. The fourth path, that of property, is used in matters affecting servile or semi-servile dependence, e.g. that of a *bothach* or *fuidir* (see pp. 33-5). It appears to be used also in the case of a crime committed long previously.¹² It is difficult to ascertain the nature of the fifth and final path, that of proper enquiry.¹³ One would expect it to be the correct path for all cases which do not fit under the previous four headings.

(3). Before the case can proceed both parties must be bound by either a pledge or surety, depending on which path is chosen. This is to ensure that the decision of the judge is accepted. The first path is bound by a 'truth pledge' (*fírgille*) which the glossator takes to be worth one cow. The second path is bound by a *naidm*-surety (see pp. 171-2). The third path is bound by a 'penalty-pledge' (*smachtgille*),¹⁴ which the glossator takes to be worth one seventh of a cow. The fourth path is bound by a *ráth*-surety (see pp. 168-70) and the fifth path by an *aitire*-surety (see pp. 172-3).

(4). The pleading (*tacrae*) takes place in a court (*airecht*) before one or more judges. For minor cases it is likely that one judge is adequate, but more serious or complicated cases require a number of judges (see p. 55 above). The judge's house is the most probable

⁹ *CIH* 2200.2-3 = Recension R §2.

¹⁰ *CIH* 2200.9-10 = Recension R §2.

¹¹ *CIH* 2200.13 = Recensions R and E §3 *fri aincessa mára* lit. 'for great difficulties'. The glossator takes it that such cases must be resolved by an ordeal (*fír nDé* lit. 'truth-test of God' — see p. 213, footnote¹⁶⁰).

¹² *Sensmúr cinad* lit. 'the old embers of an offence'. See Thurneysen's discussion at *CCF* 78, note 55.

¹³ See discussion at *CCF* 79-80, note 62.

¹⁴ See discussion at *CCF* 75-6, note 51.

location for the hearing of minor cases,¹⁵ but cases involving large numbers of witnesses, supporters, etc.¹⁶ would presumably be held in the open air at a regular site. Later English sources refer to the hearing of law-cases by brehons on hill-tops,¹⁷ and this may have also been common practice in the Old Irish period.

A short text (Appendix 1 No. 71)¹⁸ describes the seating-arrangement of the various persons in a law-court,¹⁹ though the terminology is not always clear. At the back of the court (*cúl-airecht*) sit the (provincial) king, the bishop,²⁰ and the chief poet (?).²¹ These three are described metaphorically as 'the cliff which is behind (i.e. controlling) the courts'. In the side-court (*táeb-airecht*) are historians, overkings (*ruirig*),²² hostages, *ráth*-sureties and *aitire*-sureties. The text explains that this part of the court is called the side-court 'because the court relies upon²³ the traditional lore (*senchas*) and clarification of the historians (*senchaid*)'.

In the waiting court²⁴ sit the plaintiff and defendant (together referred to as *féchemain*) with their advocates. At the other side of the court (presumably opposite the *táeb-airecht*) is the *airecht fo leith* i.e. the court apart. Here sit *naidm*-sureties, *ráth*-sureties,²⁵ witnesses, and sureties to contracts (*maic cor mbél*). According to

¹⁵ *CIH* 2202.33-4 = *CCF* 25 §27; cf. *Triad* 171.

¹⁶ *CIH* 2342.6 (= *TC* §22.16) gives one of the sixteen signs of bad pleading as 'inciting the crowd' (*sprecad sochuide*). This shows that an advocate in a court may be addressing a considerable number of people.

¹⁷ *The Chronicle of Ireland 1584-1608* by Sir James Perrott (ed. Wood, Dublin 1933) 20. Compare also the hearing of law-cases at the *lögberg* 'law-rock' in early Iceland.

¹⁸ *CIH* 601.20-602.4. I have edited and translated this text for *Peritia* 5 (1986) 74-106.

¹⁹ One can compare the description and diagram of a Welsh law-court (hearing a case in land-law) in *Ll. Ior.* §§72-81 = *VC* II xi.

²⁰ For the bishop's rôle in judgement cf. *CIH* 1966.13-5 which states that if a judge refuses to swear to his judgement, it must then be referred to the king or bishop of the *túath*.

²¹ I follow the glossator's suggestion (*CIH* 602.9) that the *sai gacha berlai ollamand* 'the sage of every language with the rank of master' is the chief poet (*int ollam filed*).

²² I assume that *ruiri* here refers to the second grade of king (= *rí túath*) whereas the *rí* in the back of the court is the provincial king (= *rí cóicid*).

²³ This is a play on the phrase *do-beir táeb fri* 'relies on', lit. 'puts one's side towards'.

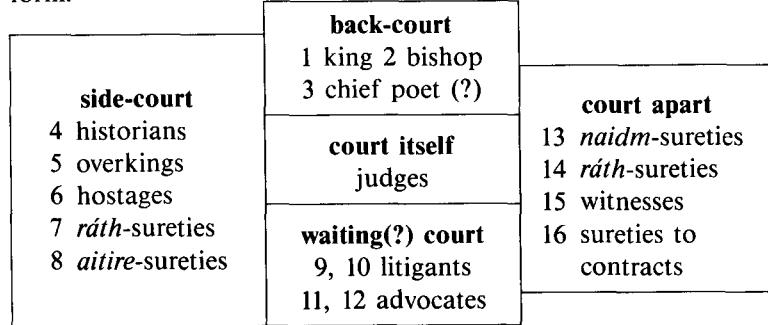
²⁴ I tentatively emend *airecht oirdnide* 'ordained court' to *airecht airnaide* 'court of waiting'.

²⁵ For a brief discussion as to why the *ráth*-sureties should be placed both in the side-court and in the court apart, see *Peritia* 5 (1986) 79.

the text, 'they do not go to anybody, and no-one goes to them, but they remain properly seated until they go with clear memories into the midst of the court, and it is for that reason that it is called the court apart'.²⁶

Where the judges sit is described as 'the court itself' (*airecht fodesin*) 'with the 16 persons of the court about them'. The number 16 here must refer to the categories of person listed above: (1) king, (2) bishop, (3) chief poet (?), (4) historians, (5) overkings, (6) hostages, (7) *ráth*-sureties in the side-court, (8) *aitire*-sureties, (9) and (10) the litigants (*féchemain*), (11) and (12) their advocates, (13) *naidm*-sureties, (14) *ráth*-sureties in the court apart, (15) witnesses, and (16) sureties to contracts. This is obviously a theoretical construct, as many court-cases would hardly have merited the presence of dignitaries such as a king or bishop. In other cases, there would be no necessity for hearing from more than two categories of surety.

Very tentatively, I represent the court seating in diagrammatic form:



Apart from this text, our sources provide little information on court usage and protocol. Naturally, those present in court are expected to behave in a quiet and orderly manner. Triad 176 gives the three destructions (?) of wisdom as 'a harsh pleading, a judge without knowledge, a talkative court'.²⁷

One can guess that the proceedings of the court opened with certain ritual phrases uttered by the king or presiding judge, perhaps with some words of blessing from the bishop, if present.

²⁶ CIH 601.30-2.

²⁷ *Téora tonna (donnad v.l.) gaisse: tacrae calad, brithem (breath v.l.) cen éolas, airecht labar.*

However, I have found no information on these points.

After the court is open, the advocate for each party makes his pleading (*tacrae*).²⁸ A short passage on court procedure lists sixteen signs of bad pleading,²⁹ which include opposing a known fact, much abuse, praising oneself, speaking in an undertone, uncertain proof, speaking too loudly, shifting one's pleading, angry pleading,³⁰ and inciting the crowd. For some at least of these defects, the advocate may be fined. Thus *Cóic Conara Fugill* states that the advocate who shifts his plea, or who speaks too loudly or too softly must pay a fine of one cow.³¹

It is likely that the evidence of witnesses and sureties is heard at this stage.

(5). The next stage is the counter-pleading (*frecreae*) during which the advocates rebut each other's cases. Triad 174 seems to envisage a skilled advocate carefully demolishing the case of his opponent: 'the three doors through which truth is recognised — a patient counter-pleading, a firm case, reliance upon witnesses'.³²

(6). After the counter-pleading comes the judgement (*breth*). It is clear from the *Airecht*-text that both the judges and the dignitaries of the back court are involved in this stage. The actual judgement is formulated by the judges, but it seems that it is promulgated by the dignitaries of the back-court³³ i.e. the king (in secular matters), the bishop (in ecclesiastical matters) or the chief poet (in poetical matters).³⁴

A text on court procedure distinguishes five types of judgement: 'a judgement based on Scripture with its true examples, a firm steadfast judgement between two equally clever pleadings, a straight mild judgement between friends and kinsmen, a discerning stern judgement between cunning false lying people, a mild soothing judgement between foolish unruly quarrelsome people'.³⁵

(7). The next stage is the *forus*, a term which is often used of the

²⁸ *Celtica* 11 (1976) 30. Six forms of pleading are distinguished at CCF Rec. R E §26 = CIH 1041.11-5; 2202.23-6.

²⁹ CIH 2342.1-6; cf. TC §22 + vii.

³⁰ The same text includes an angry pleading (*tacrae fercach*) among the six doors of falsehood in Irish law, CIH 2341.21-4; cf. Triad 173.

³¹ CIH 2200.3-10 = CCF 15 §2.

³² *Trí dorus i n-aithgnintar fir: frecreae n-ainmnetach, aí fossad, soud fri siadna.*

³³ Thus, the dignitaries of the back-court are described as 'the cliff which is behind the courts for judgement and for promulgation' (*fri breth 7 forus*) CIH 601.23-4.

³⁴ UB (CIH 1612.25 = AL v 92.16-7) refers to *breth filid* 'judgement by a poet'.

³⁵ CIH 2341.8-13.

promulgation of a law.³⁶ In this context it seems likely to refer to the public announcement of the judgement, probably by a dignitary of the back-court. As *forus* also means 'foundation, basis', the announcement may be accompanied by an exposition of the basis upon which the judgement has been decided.³⁷ According to Recension H of *Cóic Conara Fugill*,³⁸ a judge must state whether his judgement is based on (i) *roscad* 'legal verse', (ii) *fásach* 'maxim', (iii) *teistimin* 'scriptural text', (iv) *cosmailius* 'analogy' or (v) *aicned* 'natural law'. He must keep in mind their correct order; for example if he says that his judgement is based on analogy, and in fact it can be justified on the basis of a maxim, he must pay a fine for false judgement (*gúbreth*).

The terms *roscad* and *fásach* are often used together in the context of judgement,³⁹ and there has been much discussion about the difference between them.⁴⁰ *Roscad* is a word which is found in both legal and non-legal material, and usually refers to a non-syllabic alliterative type of verse.⁴¹ Thus, the verses on 'legal entry' referred to in the previous chapter (p. 186) are presumably *roscads*, and could be quoted by a judge to substantiate his decision. According to *Uraicecht Becc* a judgement by a poet (*breth file*) is based on *roscads* only, whereas a judgement by a lord (*breth flatho*) must be based on *roscads*, *fásachs* and true texts.⁴²

Unlike *roscad*, the term *fásach* is found only in law-texts or in legal contexts.⁴³ It is used in the sense of legal maxim or principle,

³⁶e.g. *AU* s.a. 782 (= 783) §9 *Forus Cano Patricii hi Cruachnibh* 'the promulgation of the Law of Patrick in Cruachu'.

³⁷One of the four deaths of judgement is given as *breth cen forus* 'a judgement without basis' (Triads 244).

³⁸*CIH* 1040.37-9 = *CCF* 59 §139.

³⁹Thus the 9th c. story 'The Conversion of Loíguire' (*LU* 9790, cf. *CIH* 876.11) refers to *brithem fri brithemnas ar roscadaib 7 fasaigib* 'a judge for judgement based on *roscads* and *fásachs*', and Rec. L of *AM* (p. 61 §19 v.l.) states *it fasaig 7 roscaid bert(h)e bretha* 'it is *fásachs* and *roscads* which bring about judgements'.

⁴⁰See Binchy, in *Indo-Celtica*, Gedächtnisschrift für Alf Sommerfelt ed. Pilch and Thurow (München 1972) 31.

⁴¹See Mac Cana, *Celtica* 7 (1966) 72.

⁴²*CIH* 1592.12-20 = *AL* v 10.19-12.2.

⁴³For example, *AM* §23 advises the king *ní húasligethar nach mbrithemoi mani fásach firinne fiastar* 'let him not exalt any judge unless he knows the true legal maxims'. Cf. *Airecht*-text §4 (*CIH* 601.28-9) *cein bit brethemain fri tasbenad 7 foros* 'while the judges are directing their attention towards expounding and promulgating'. On the basis of an etymological gloss one should probably read *fásach* rather than *foros* (-us) here. See *Peritia* 5, 95.

and seems always to consist of a single sentence. For example, one law-text describes the saying 'everybody is amenable to a request'⁴⁴ as an ancient maxim (*senfásach*) among the Irish. A list of legal maxims includes the statement 'truth is wider than *fásachs*'.⁴⁵ This, presumably, means that a judge cannot expect to find all truth contained in *fásachs*.⁴⁶

The third basis for a judgement is given as *teistimin*, a borrowing from Latin *testimonium* 'testimony, evidence, attestation, text, extract', with a similarly wide range of meanings (see *Dictionary of the Irish Language* s.v.). In the context of judgement, however, it refers primarily to the text of Scripture as a guide and model for the early Irish judge.

The law-texts provide many examples of how analogy (*cosmailius*) may be used to assist a judge in arriving at a decision. The law-text on water-mills, for example, uses the analogy of the three circles of the kin (*derbfine*, *íarfine*, and *indfine*) for working out the milling rights of the owners of the land which contains the source of the mill-race, of the land through which the water is conducted, and of the land in which the mill-pond is situated.⁴⁷ Similarly, the law-text on bee-keeping treats the offences of hive-bees by analogy with the offences of other domestic animals.⁴⁸

The fifth basis is that of *aicned* 'nature', i.e. natural law. According to the opening sentence of *Uraicecht Becc*, judgement in Irish law is founded on truth (*fír*), right (*dliged*) and nature (*aicned*).⁴⁹

Failure of corn, milk, and fruit, diseases and hardships in a *túath* are caused by a judge who passes judgement without listening to both sides of a case, or who has no foundation of knowledge, or who does not put forward a pledge to defend his decision.⁵⁰ In general, a judge must take no part in the pleading of either side of a law-suit. However, a judge is permitted to plead on behalf of a woman who is incapable of speaking for herself, or on behalf of a hermit, or on behalf of a man 'who cannot speak for his own good

⁴⁴*lianchar cách guidiu*, *CIH* 204.17-8 = *AL* iv 154.21-2.

⁴⁵*leithiu firinde fasaigib*, *CIH* 1193.28.

⁴⁶cf. *UR* 132, notes 64-66.

⁴⁷*CIH* 457.11-8 = *Ériu* 17 (1955) 64 §§1-3. See Binchy's note to §3.

⁴⁸e.g. *CIH* 444.30-445.1; 449.28-32 = *BB* §§8, 34-5.

⁴⁹*CIH* 634.11 = *AL* v 2.1-2.

⁵⁰*CIH* 1377.37-41 = *AL* v 352.17-354.3.

in court' or in support of an unequal case (i.e. where one party is at a disadvantage ?).⁵¹

For the legal consequences of a mistake or injustice on the part of a judge, see pp. 54-5.

(8). After the judgement has been explained by the judge(s), the court proceedings are brought to a conclusion (*forbae*). This, presumably, involves certain formalities, but no details have survived. Possibly, the term *forbae* also includes the subsequent putting into effect of whatever judgement has been announced.

OATHS

Early legal systems rely heavily on the magical power of an oath.⁵² Old Irish sagas make numerous references to the practice of swearing by the elements: anyone who broke such an oath could expect to be punished by the elements themselves.⁵³ The sagas also refer to swearing by a local god.⁵⁴ It is likely that such forms of oath-taking were used in early Irish law, though no direct evidence has survived. The only clear reference to pre-Christian swearing is in the 6th-century *First Synod of Saint Patrick*. This synod ordained that a Christian who swore before a druid in the pagan manner (*more gentilium ad aruspicem iurauerit*) had to do a year's penance.⁵⁵

Oaths in secular law had clearly been christianized by the time of the main body of law-texts (7th-8th centuries). Thus, a surety (*aitire*) swears by God,⁵⁶ and a judge swears by the Gospels.⁵⁷ In a passage on witnesses at *CIH* 1151.17 there is a reference to 'swearing under oath by the battle of the soul' (*o cath anma*).⁵⁸ This is obviously a Christian form of oath, as it is referred to in the 8th-century *Cáin Domnaig* 'Law of Sunday': *fortgellat huili o cath anmae* 'they all testify by the battle of the soul'.⁵⁹

⁵¹ *CIH* 36.5-9 = *AL* v 252.6-12.

⁵² See *Encyclopaedia Britannica* (1911) s.v. oath.

⁵³ See *DIL* s.v. *grian*; cf. *LU* 9797-9815.

⁵⁴ e.g. *TBC* Rec. I 794, 808, 3629, 4018.

⁵⁵ *IP* 56 §14.

⁵⁶ *CIH* 597.6 = *Bürgschaft* 22 §65.

⁵⁷ *CIH* 1966.1.

⁵⁸ *AL* iii 394.12.

⁵⁹ *Ériu* 20 (1966) 166 §5. Cf. also *tongair fri corp 7 anmain* 'oath is made by body and soul' *CIH* 777.38-9 = *CG* 52. This is in an early passage incorporated in *CG*.

In later commentary there is frequent reference to swearing at Christian cemeteries. According to commentary at *CIH* 820.42 an oath relating to injury (*fogal*) must be sworn at three cemeteries, whereas on oath relating to a contract or agreement (*cor 7 cunnrad*) need only be sworn at one cemetery. Oaths were often sworn on sacred objects associated with saints, hence the word *mind* 'halidom, sacred object' came to mean 'oath' in later Irish (spelled *mionn*).

The terminology connected with the swearing of oaths is extensive,⁶⁰ and the law-texts distinguish a number of different types of swearing. See below.

'Over-swear'ing' (*fortach*)

The oath of a person of higher rank automatically overrides the oath of a person of lower rank. This principle is stated in *Di Astud Chirt 7 Dlidig*: 'any grade which is lower than another is oversworn, any grade which is higher than another overswears'.⁶¹ An 'over-swear'ing' can refute the accusation of an inferior⁶² or can rebut an inferior's evidence with regard to a third party, or can fix guilt on an inferior.

A king can overturn the evidence of everybody else in the territory, except for a bishop, sage (*sui*) or hermit (*deorad Dē*).⁶³ However, if he has debased himself by engaging in menial work or by travelling without a retinue, his honour-price is reduced to that of a commoner, and he loses his capacity to 'over-swear'. Consequently, a child can be fathered on him by the unsupported oath of its mother.⁶⁴ A difficult heptad (*CIH* 1283.6-10) lists seven circumstances in which a king may be 'oversworn'. Most of them involve overswearing by ecclesiastics or other kings, but it is noteworthy that a king may also be oversworn by 'the testimony of

⁶⁰ Words used in the law-texts with the meaning 'oath' include *luge*, *oeth*, *fir*, *imdénam*, and *noill* (cpd. *frithnoill* 'counter-oath'). The verb most commonly used for 'swears' is *tongid*, with cpds *for-toing* (vb. n. *fortach*), *do-toing* (vb. n. *dithech*), *ar-toing* (vb. n. *airthech*), *imm-toing* (vb. n. *imthach*), *as-toing* (vb. n. *etech*), and *fris-toing* (vb. n. *fretech*). The verb *as-féna* (vb. n. *aspénad*) is well-attested in the meaning 'swears' in the O.Ir. *Glosses*, e.g. *Wb.* 22a20.

⁶¹ *Nach grad bes issle araile is fair fortongar, nach grad bes uaisle araile is e fortoing araill*, *CIH* 234.20-2 = *AL* v 460.16-7. Cf. *CIH* 783.38 = *CG* 415.6.

⁶² *fortach séna* lit. 'overswearing of denial', *CIH* 1192.26.

⁶³ *CIH* 357.25-7 = *AL* i 78.18-21.

⁶⁴ *CIH* 569.21-5 = *CG* 530-5.

a host' (*forgell sluaig*). This implies that in Irish law a king's oath may be overridden if a large number of his subjects swear against him. The Church normally can overswear anybody, and cannot itself be oversworn.⁶⁵ But if a particular church has been guilty of abuses, it loses the right to overswear, and can itself be oversworn by a righteous man (*fírénn*).⁶⁶

As there was no equivalent to 'overswearing' in Roman law, the term is translated by the calque *super-* or *supraiurare* (also *iurare super*) in Hiberno-Latin.⁶⁷

Denial by oath (*díthech, díthach*)⁶⁸

Our sources contain a number of references to *díthech* 'denial by oath' lit. 'swearing away'.⁶⁹ A general principle quoted at *CIH* 657.8 states 'suspicion requires denial by oath' (*dligid doig díthech*). Triad 135 advises an unprosperous person not to give evidence as it is likely to be sworn away (*dotoing dia fiadnaisi*).

According to *Cáin Domnaig*⁷⁰ a person accused of working on Sunday can be exonerated through an 'oath of denial' (*fir ndíthraig*) made by himself, his mother and his father. If they are not living, the oath can be made by his brother or uncle or whoever is responsible for him, as well as the oaths of his lord (*muire*), an *aire déso* and two *bóaires*. But another piece of ecclesiastical legislation, the lost *Cáin Dar Í* (Appendix 1 No. 76 = No. 50) seems to have contained a provision which precluded 'swearing away' in the face of the evidence of three persons.⁷¹ *Cáin Dar Í* was enacted to protect cattle from killing and theft — a cause which was clearly championed by the Church, no doubt partly because of its own farming interests (see p. 39). The reduced entitlement to 'swear

⁶⁵ *CIH* 2211.18.

⁶⁶ *CIH* 2212.1.

⁶⁷ Binchy, *Stud. Hib.* 2 (1962) 62. See also Sharpe 'Dispute settlement in medieval Ireland' in Davies and Fouracre eds. *The Settlement of Disputes in Early Medieval Europe* (Cambridge 1986) 176-7.

⁶⁸ Another term for 'denial by oath' is *etech* vb. n. of *as-toing* lit. 'swears out', e.g. *CIH* 568.40 = *CG* 496. But this cpd of *tongid* is normally used to mean 'refuses hospitality'; see p. 139. The term used for denying guilt in a case of secret murder is *dindis* vb. n. of *do-indet* [*di-ind-fét].

⁶⁹ e.g. *CIH* 777.11 = *CG* 8; *CIH* 1033.37 = *CCF* 41 §62; Triad 159. *Díthech* is latinized *iurare de eo*, e.g. *PTBA* 138.18.

⁷⁰ *Eriu* 20 (1966) 166.51-3.

⁷¹ *CIH* 1413.25-6.

'away' may have been intended to strengthen *Cáin Dar Í*'s impact on the cattle-raiding ethos of Irish society.

Vicarious oath (*airthech*)

An oath sworn on behalf of another person is called an *airthech* (vb. n. of *ar-toing* lit. 'swears for'). For example, the 'West Munster Synod' (*ZCP* 8 (1912) 315) records that various saints swore vicarious oaths on behalf of their peoples that there would be a perpetual alliance between them.⁷²

Compurgatory oath (*imthach*)

The oath of either party in a law-case can be supported if another swears a compurgatory oath in his favour. A person can make a compurgatory oath (*imm-toing* lit. 'swears about, around' vb. n. *imthach*) up to the value of his honour-price.⁷³

An *imthach* differs from an *airthech* in that it is merely an additional oath, whereas the other is a substitute for the oath of the principal in a law-case.

Repudiation (*fretech*)

The compound *fris-toing*⁷⁴ (vb. n. *fretech*) lit. 'swears against' is used in the laws of a husband repudiating his wife,⁷⁵ of a kin-group repudiating one of its members,⁷⁶ and of a debtor who has fulfilled his obligations renouncing any further claim by his creditor.⁷⁷

Perjury (*éthech*)

A person who swears a false oath (*éthech*, Mod. Ir. *éitheach* 'a lie')⁷⁸ is not entitled to give testimony about anyone.⁷⁹

⁷² For further discussion on the use of *airthech* (*aurthach*) in both legal and non-legal texts, see *BB* Notes pp. 137-8.

⁷³ e.g. *CIH* 777.17, 20, 27 = *CG* 19, 23-4, 33.

⁷⁴ It is cognate with Welsh *gwrthdwng* 'counter-swears' (*GMWL* s.v. *gurthtug*). In non-legal contexts *fretech* is commonly used of renouncing sin, the Devil etc.

⁷⁵ e.g. *CIH* 48.5 = *AL* v 292.21.

⁷⁶ *CIH* 31.8 = *AL* v 234.23.

⁷⁷ e.g. *CIH* 595.26 = *Bürgschaft* 17 §53.

⁷⁸ *Éthech* is from the root *tong-* 'to swear' preceded by the Indo-European preverb *epi- 'away from, against', which survives in Irish only in a few compounds (*IEW* 324).

⁷⁹ *CIH* 1422.15.

Female oath

A woman's oath (*bannoill*) is normally invalid. Triad 159 lists the three who cannot deny by oath as a woman, an undutiful person (especially to his parents) and a dumb person.⁸⁰ In certain cases, however, a woman's oath is acceptable at law. According to the law of sick-maintenance (see p. 130), a person who injures another illegally is obliged to arrange for him or her to be nursed back to health. If the victim is married and of reproductive age, the culprit must pay an additional fee to compensate for the fact that he or she is unable to reproduce while away on sick-maintenance. In such a case, Irish law allows a woman's oath, though the text makes it clear that this was regarded as exceptional: 'most difficult in the judgement of sick-maintenance in Irish law is the barring of procreation if it is in the proper times [of fertility]; for it is one of the oaths which are sworn by women in Irish law that their proper times have come to them'.⁸¹ The reasoning is apparently that only a woman would be in a position to know how many periods of fertility had passed during her own or her husband's absence on sick-maintenance.

A woman's oath with regard to the paternity of her child is accepted when she is in danger of death at childbirth. Thus Triad 165 gives the oath of a woman at childbirth as one of the three oaths which cannot be countersworn (*téora noillig dona dlegar frithnoill*).⁸²

For other circumstances when a female oath can override a male oath, see discussion of female witnesses below p. 207.

WITNESSES

As a witness normally supports his evidence by oath, the law relating to witnesses is closely connected with oaths, discussed above. The Old Irish term for a witness is *fiadu*, which literally means 'one who sees'.⁸³ He must be 'sensible, honest, conscientious and of good memory'.⁸⁴

⁸⁰ *Triar na díthoing . . . ben, angor, amlabar.*

⁸¹ *CIH* 2296.29-31 = *Eriu* 12 (1938) 31 §38.

⁸² Cf. *CIH* 1570.6. Also, *CIH* 387.30 = *AL* i 176.1.

⁸³ *Fiadu* is from the Indo-European root **weid-* 'sees' (*IEW* 1127) and is cognate with Gothic *weitwōds* 'witness'. The Welsh term for 'eye-witness', *gwybyddiad*, though not an exact cognate, also contains the root **weid-*.

⁸⁴ *CIH* 1421.34.

According to *Berrad Airechta* a person can only give evidence about what he has seen or heard, and must be prepared to swear in support of this evidence.⁸⁵ Another text states that what does not take place before a witness's eyes is to be regarded as 'dead': he may only swear about what he has seen or noticed.⁸⁶ On the other hand, Binchy observes that witnesses other than direct eyewitnesses also have a rôle in the early Irish legal system. He suggests that recognition of the validity of evidence as to character stems from canon law,⁸⁷ and points to the fact that one of the two terms for witness, *teist*, is a borrowing from Latin *testis*.⁸⁸

The evidence of a single witness is usually regarded as invalid. The section on the law of evidence in *Berrad Airechta* states that 'one man is not proper for giving evidence, it is [necessary for there to be] two or three'.⁸⁹ There are, however, some cases where Irish law regards the evidence of a single witness as sufficient. According to *Gúbretha Caratniad*⁹⁰ the evidence of a trustworthy witness (*teist*) is preferred against the evidence of two untrustworthy witnesses (*anteist*)⁹¹ when he has found them committing a crime. Another text lists ten cases where the evidence of a single person overturns an agreement.⁹² These include the evidence of a holy bishop given between the host and the chalice (i.e. between the two acts of Communion), the evidence of a sick man about to die, the evidence of a woman in childbirth in danger of death, the evidence of a man who has waited at an altar (see ordeals p. 210), the evidence of an honest person who does not stand to gain from a case, and the evidence of a pious person.⁹³

A freeman is normally capable of giving evidence up to the value of his honour-price. Thus, the evidence of an *ócaire* counts up to the value of 3 *séts*, whereas the evidence of a *bóaire febsa* counts up to the value of 5 *séts*.⁹⁴

⁸⁵ *CIH* 596.28-9 = *Bürgschaft* 21 §61.

⁸⁶ *CIH* 2342.12-4.

⁸⁷ *TPS* (1959) 23.

⁸⁸ *Testis* was also borrowed into Welsh (as *tyst*).

⁸⁹ *CIH* 596.4-5 = *Bürgschaft* 19 §58, cf. *Deuteronomy* 19: 15.

⁹⁰ *CIH* 2195.2-3 = *ZCP* 15 (1925) 327 §19.

⁹¹ The literal meaning of *anteist* is 'non-witness' or 'bad witness'.

⁹² *CIH* 1570.1-8.

⁹³ Cf. *CIH* 599.35 = *Bürgschaft* 31 §84 *nibi fiadha oinfer acht mad craibdech hirisech* 'a man is not a witness alone, unless he be pious and devout'.

⁹⁴ *CIH* 779.9, 34 = *CG* 129, 166.

Written evidence

The use of the *ogom* alphabet in inscriptions probably antedates the coming of Christianity to Ireland by about a century.⁹⁵ It is clear from references in the law-texts that stones with *ogom* inscriptions were erected at the boundaries of properties to serve both as grave-stones, and as evidence of title to land. Thus, a legal poem refers to 'the stone pillars of contest, fighters who fasten [title]',⁹⁶ and a later glossator states that the *ogom* inscription on a stone pillar is like a witness.⁹⁷ According to *Gúbretha Caratniad* a plaintiff's oath is upheld if an immovable rock (*ail anscuichthe*) 'over-swears' with him.⁹⁸ The Old Irish glossator on this text takes 'immovable rock' here to be a figurative expression used of various inanimate objects which can provide conclusive evidence on a case, e.g. weighing-scales, a measure, a stone pillar, a boundary-mark, a letter (i.e. written evidence). The 'immovable rock' can even be an abstraction such as time (*amser*) or possession (*tuinide*).

The use of written evidence no doubt increased greatly after the coming of Christianity. One of the ten sorts of evidence which may overturn a contract is given as 'the evidence of ancient holy writing'.⁹⁹ This may refer to Biblical precedents and also — as suggested by Mac Niocaill¹⁰⁰ — to agreements recorded in sacred books.¹⁰¹

Indirect Evidence

The surviving law-texts contain little information on indirect evidence, but later commentary at *CIH* 822.6-823.10 and 1359.26-1367.3 quotes a list — probably of Old Irish origin — which describes some indications of guilt, other than the direct evidence of an eye-witness.

Most such evidence consists of incriminating behaviour on the part of one suspected of an offence. The law acknowledges that

⁹⁵ *GOI* §11.

⁹⁶ *CIH* 570.37 = *Celtica* 9 (1971) 157.17-8.

⁹⁷ *CIH* 1566.6-7; cf. *CIH* 596.8 = *Bürgschaft* 19 §59.

⁹⁸ *CIH* 2199.5-6 = *ZCP* 15 (1925) 361 §46; cf. *CIH* 1376.2 = *AL* v 368.2-3.

⁹⁹ *CIH* 1570.7; cf. *CIH* 596.30 = *Bürgschaft* 21 §62; *CIH* 231.8 = *AL* v 450.2-3.

¹⁰⁰ *IJ* 4 (1969) 333.

¹⁰¹ For example, the Book of Armagh contains details of an 8th c. land purchase (*PTBA* 174). Presumably this document could have been produced in court as evidence of ownership.

there are grounds for suspicion if he is known to have been out on the night of a crime, or if he sleeps in very heavily on the following morning, or if he claims to have been in another house at the time of the crime, and it can be proved that he was not in fact there (i.e. his alibi is broken). If a person is known to have threatened or boasted of a particular crime, suspicion naturally falls on him.

His physical reaction to the accusation may provide evidence against a suspect. He may tremble, blush, turn pale or develop a thirst (dryness of the mouth being a common symptom of nervousness). Indirect evidence may be provided by a footprint, or by the finding of a shoe or glove belonging to the suspect near the scene of the crime. In the case of a stolen animal, the finding of bones or entrails near the suspect's house may also indicate guilt. In *Gilla na Náem Mac Áedagáin*'s late 13th century manual of Irish law (see p. 251) wet clothing is added as another possible indication of guilt.¹⁰² Even the evidence of a young child in his own household may be used against a suspect. The example given by *Gilla na Náem* is of a stolen animal believed to have been eaten the previous night. The child can be asked — presumably in the presence of witnesses — 'What did you have [to eat] last night?'¹⁰³ The child's reply may be used as evidence against the suspect.

Indirect evidence of the types listed above is not of itself conclusive. Legal commentary shows that the status and previous character of the suspect is also taken into account. For example, if a person accused of having threatened to commit a crime (which subsequently was committed) is held to be a trustworthy witness (*teist*), he can clear himself by oath (*fir testa*). But if he, through previous criminality or low rank, is held to be an untrustworthy witness (*anteist*) he must undergo an ordeal (*fir nDe*) to prove or disprove the allegation.¹⁰⁴ In other cases, guilt can be fixed on a suspect by the oath of a number of reputable persons. So, in the case of an *anteist* who sleeps in heavily on the morning after a crime, guilt can be fixed on him by the oath of 30 persons (*leth-arræe*)¹⁰⁵ unless he can show that there was some innocent reason

¹⁰² *CIH* 692.14.

¹⁰³ *CIH* 692.15-6.

¹⁰⁴ *CIH* 1362.1.

¹⁰⁵ I am not sure whether it is correct to take *leth-arræe* 'half arræe' to refer to 30 persons. At *CIH* 821.11 = *CCF* 67 a full *arræe* (also called *arræe cuir*) is given as 60 persons. However, at *CIH* 716.36 an *arræe cuir* is given as only 15 persons. For a discussion of the difficult term *arræe*, see Binchy, *Ériu* 19 (1962) 51-3.

(*deithbires*) for his behaviour.¹⁰⁶ No amount of oaths can fix guilt on a *teist* solely because of his sleeping in.

Inadmissible evidence

Our information on the categories of person whose evidence is inadmissible comes mainly from three sources: Heptad 49,¹⁰⁷ *Berrad Airechta*,¹⁰⁸ and a collection of material on evidence of varying date in the O'Davoren manuscript Egerton 88.¹⁰⁹ Some persons are excluded from giving evidence in all circumstances, e.g. a slave, a castaway, a landless man, an alien, an insane or senile person, a prostitute, a robber, and a man who ingratiates himself with everybody. Other witnesses are excluded only in particular cases. For example, a man cannot give evidence if he has been cuckolded by either party in a law-case, or if he hates or is angry with either party in a law-case, or if he has been bribed.¹¹⁰ A man who is courting cannot give evidence in a case involving the family of the woman he loves. The glossator illustrates the sort of offer which he might be tempted to make: 'give me your daughter or sister, and I shall give evidence for you'.¹¹¹ A man cannot give evidence if it could bring advantage to himself. This exclusion is justified by the legal maxim *foben inracus accobar* 'greed detracts from honesty'.¹¹² A cleric who has fallen from holy orders is also debarred from giving evidence.

Evidence given under the influence of fear is automatically excluded.¹¹³ The same applies to hearsay evidence: according to *Berrad Airechta* 'everyone's hearing is a harlot (*bé carna*), so that a report which is heard is invalid, whether the matter concerning which the report is heard be true or untrue'.¹¹⁴

¹⁰⁶ CIH 1362.37-8.

¹⁰⁷ CIH 45.1-5 = AL v 284.1-8.

¹⁰⁸ CIH 596.13-8 = *Bürgschaft* 19 §59.

¹⁰⁹ esp. CIH 1419.22-1422.16.

¹¹⁰ Note, however, that a witness to a contract (*roach*) is paid a yearling heifer, CIH 594.9-10 = *Bürgschaft* 12 §40.

¹¹¹ CIH 1419.32-3.

¹¹² CIH 45.4 = AL v 284.5-6.

¹¹³ CIH 1419.35-6 = 2207.2 *faisneis fir omhna aidhus ég, ní fil [ni] na gella tar cenn anma* 'the evidence of a frightened man who fears (= *áiges*?) death: there is nothing which he may not promise for the sake of his life'.

¹¹⁴ CIH 596.14-5 = *Bürgschaft* 19 §59.

Cáin Domnaig 'the Law of Sunday' illustrates how the system of admissible and inadmissible evidence works.¹¹⁵ A *teist* 'trustworthy witness' who claims to have seen an *anteist* 'untrustworthy witness' working on a Sunday can give evidence against him so that he is fined. If it is the *anteist* who claims to have seen the *teist* at work, the latter can refute this evidence by oath (*luge*). If an *anteist* claims to have seen another *anteist* at work, further proof (*fír*) must be produced before his guilt is established.

Female evidence

Our main sources¹¹⁶ agree in a general ban on female evidence, which one glossator describes as 'biased and dishonest'.¹¹⁷ Irish canon law advances a very shaky scriptural justification for this ban: 'the testimony of a woman is not accepted, just as the apostles did not accept the testimony of women about the resurrection of Christ'.¹¹⁸ The fact that Christian doctrine recognises that the women were right is ignored.

As with other limitations on the legal capacity of women (see p. 76) exceptions are made. According to the archaic text *Din Techtagad*, the evidence of a woman is valid in the law of female entry.¹¹⁹ Similarly, the evidence of a woman may be accepted against that of a cleric if she is also a religious.¹²⁰ It is clear too that the evidence of the female witness (*teist*) who accompanies an injured woman on sick-maintenance will carry weight in court if the injured woman is illtreated or abused in any way.¹²¹

According to legal commentary, female evidence is regarded as conclusive in relation to various sexual matters.¹²² If a husband claims that he has been unable to consummate his marriage owing to a physical defect in his wife which prevents intercourse, she is to be examined by female witnesses. If they find a defect the *coibche* (bride-price) is returned to the husband, but if there is no defect it stays with

¹¹⁵ *Ériu* 20 (1966) 166 §5.

¹¹⁶ e.g. CIH 45.3 = AL v 284.4; CIH 1421.30.

¹¹⁷ CIH 45.11 = AL v 284.16-7.

¹¹⁸ JK bk. 16 ch. 3.

¹¹⁹ CIH 208.15 = *Celtica* 6 (1963) 227.11 (= AL iv 8.20).

¹²⁰ CIH 2197.5-6 = ZCP 15 (1925) 345 §35.

¹²¹ CIH 2296.4-5 = *Ériu* 12 (1938) 30 §37.

¹²² CIH 966.2-5 = ZCP 16 (1927) 218-9; CIH 145.30-146.4 (partially tr. *Ériu* 33 (1982) 161-3).

the wife. Likewise if a wife complains that her husband has not made her a woman, but he claims that he has done so, she is examined by female witnesses, and their evidence is regarded as conclusive.

False witness

A person who bears false witness (*gúfiadnase*) or false testimony (*gúthestas*) loses his honour-price.¹²³ *Din Techtagad* gives false witness (*forgell gúfiadnase*) as one of the three falsehoods which God avenges most severely on a *túath*.¹²⁴ *Di Astud Chirt 7 Dlidid* counts the three hardest afflictions in the world as famine, the slaughter of a people, and plague.¹²⁵ One of the means of avoiding these disasters is for there to be no false oaths (*nemforgell gua*) or false witness (*gúfiadnase*) in the *túath*.¹²⁶

Culpable witness

For the liability of an onlooker at a crime, see pp. 154-6.

Lots

If there are no witnesses,¹²⁷ or if the oaths on either side of a dispute are evenly balanced, recourse may be had to lot-casting or ordeals to decide where the truth lies. Lots are used particularly in relation to the unwitnessed offences of domestic animals. For example, if a bee from a particular apiary blinds the eye of an innocent passer-by, lots are cast to decide which hive in the apiary is given in compensation for the injury.¹²⁸ Similarly, if an animal is killed in a jointly owned herd,¹²⁹ and the identity of the culprit is unknown, lots are cast to fix guilt on one of the animals in the

¹²³ *CIH* 1268.3-5 = *AL* v 368.5-8.

¹²⁴ *CIH* 219.29-30 = *AL* iv 52.24-5.

¹²⁵ *CIH* 231.24-5 = *AL* v 450.25-7.

¹²⁶ *CIH* 231.29-31 = *AL* v 452.1-4.

¹²⁷ *CIH* 1117.16-7 = *Ériu* 13 (1942) 22.7-8 *dlighidh imreson edorghaire caire no crannchoir nad comhad fiadhain* 'a dispute should be resolved by the mediation of the cauldron (ordeal) or of lot-casting where witnesses are of no avail' (lit. 'do not preserve [evidence]').

¹²⁸ *CIH* 449.20-1 = *BB* §30.

¹²⁹ Animals belonging to different owners are often put to graze together (*comingaire*): see p. 101.

herd.¹³⁰ The owner of this animal must then compensate the owner of the victim.

Lots may also be used in the division of land between heirs,¹³¹ though this seems to be exceptional, as the normal procedure is for the land to be divided out by the youngest heir with the eldest having the first choice (see p. 102). Late commentary¹³² refers to the casting of lots for the kingship, but there seems to be no historical record of this practice.

There are no accounts in the secular Old Irish law-texts of the procedure used in the casting of lots.¹³³ However, it is clear that a piece of wood (*cocrann*) is distributed in such a way as to single out one of two or more persons, animals, etc.

Ordeals

In an ordeal the suspect is generally subjected to some form of violence, such as burning, scalding, immersion, poisoning, etc. From his physical reaction a conclusion is reached as to his guilt or innocence. Whether ordeals could ever genuinely separate truth from falsehood is of course impossible to conclusively prove or disprove. One could argue that an intense faith in one's innocence could give the body the capacity to withstand burning or other injuries, just as religious exaltation allows barefoot devotees to walk unscathed on hot coals or pass knives harmlessly through their arms, legs or cheeks. But, on the other hand, there is no doubt that many thousands of totally innocent women were convicted of witchcraft in medieval Europe by means of immersion ordeals (see footnote¹⁴³ below).

*Di Astud Chirt 7 Dlidid*¹³⁴ credits St Patrick with the

¹³⁰ *CIH* 449.28-31 = *BB* §34. See discussion in Notes to §35, and cf. *CIH* 192.23-33.

The use of lots to fix guilt on a particular animal is described in an O.Ir. gloss to *BB* §34 as *brithemnas for inderb* 'a judgement upon an uncertain thing' (*CIH* 924.9).

¹³¹ e.g. *CIH* 1250.7 *Berae cocrann for comranna iter comarbaib* 'cast lots for divisions between heirs' cf. *Gúbretha Caratniad* §10 (*CIH* 2193.22-3 = *ZCP* 15 (1925) 316) and *CIH* 1034.4-11 = *CCF* (Rec. H) 42 §65. This practice is referred to in *IK* bk. 32 ch. 8 in a section entitled *De Divisione hereditatis inter fratres sorte* 'on the division by lot of an inheritance among brothers', and is justified by reference to *Joshua* 18: 10.

¹³² *CIH* 1289.7-9.

¹³³ But cf. *CA* 30 §46 and legal commentary at *CIH* 299.37-300.4 = *AL* iii 336.7-14.

¹³⁴ *CIH* 238.4-19 = *AL* v 470.33-7.

introduction of the various forms of ordeal to Ireland. However, ordeals are a feature of many early legal systems,¹³⁵ and it is probable that at least some of these methods of fixing guilt were in use in Ireland long before the advent of Christianity.

The ordeal most frequently mentioned in the Irish law-texts is *fir coiri* lit. 'the proof of the cauldron'.¹³⁶ The procedure is described in a late Old Irish text entitled *Echtra Cormaic* 'the expedition of Cormac'.¹³⁷ Water is heated to boiling point in a cauldron, and the suspect is required to put his (or her) hand into the water. The text does not say how long the hand must be kept in the water, but it is likely that an object has to be picked up from the bottom of the cauldron.¹³⁸ After an unspecified period the hand is examined.¹³⁹ If it is found to show marks of scalding the suspect is held to be guilty; if not, he is held to be innocent.

Other forms of ordeal require the suspect to hold or touch red-hot metal. One of these is described in the law-texts as 'the tongue on a hot adze' and requires the suspect to lick a red-hot adze of bronze or lead.¹⁴⁰ If his tongue is burnt he is guilty, if not he is innocent.

Ordeals by poison are found in many primitive legal systems: the suspect is required to drink a non-fatal dose, and from his physical reaction it is decided whether he is innocent or guilty. *Di Astud Chirt 7 Dlidid* refers to a semi-christianized version of such an ordeal, and ascribes its introduction to St Patrick.¹⁴¹ It is called *airisem oc altóir* 'waiting at an altar', and is described in *Echtra Cormaic*: the suspect must first walk nine times around an altar, and then drink water over which a druid's spell has been uttered. If he is innocent, the water will not harm him.

A similar ordeal — also ascribed to St Patrick — is called *fir compertae noíbe* 'ordeal of holy adjudication(?)'. Legal commentary describes the procedure:¹⁴² some of the letters or text

¹³⁵ See *Encyclopaedia Britannica* (1911) s.v. ordeal; Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford 1986).

¹³⁶ The same ordeal is described in early English law-texts; see Attenborough, *The Laws of the Earliest English Kings* (Cambridge 1922) 170-2.

¹³⁷ ed. Stokes *IT* III i (Leipzig 1891) 183-229, esp. 191-2.

¹³⁸ In early English law a stone must be picked up from the bottom of the cauldron; Attenborough, op. cit. 170 §2.

¹³⁹ In early English law the hand is inspected after three days; ibid. 172 §5.

¹⁴⁰ *CIH* 1495.11 = O'Dav. 764; *CIH* 1569.4; 1990.4; cf. *CIH* 238.4 = *AL* v 470.33.

¹⁴¹ *CIH* 238.17 = *AL* v 470.34.

¹⁴² *CIH* 1990.9-11.

of the Long Book of Leighlin (*Lebar Fata Leithglinne*) are steeped in water, which the suspect must drink. If his intestines rot, he is held to be guilty. In *Ériu* 9 (1921-23) 115, Plummer suggests that *fir compertae noíbe* is based on the ordeal of the 'water of bitterness' described in the Old Testament (*Numbers* 5: 11-28). The 'water of bitterness' contains dust from the floor of the tabernacle, and must be drunk by a woman suspected of adultery where there are no witnesses. If she is guilty her belly will swell, and her thigh fall away.

Irish sources show hardly any trace of the ordeals by immersion common in other early legal systems.¹⁴³ The only comparable ordeal is the *slisén senchrainn* 'chip of an old tree' included in the list of ordeals attributed to St. Patrick.¹⁴⁴ This is probably to be identified with the *senchrann Sín* 'the old tree of Sín' in *Echtra Cormaic*. According to the latter text, three pieces of wood are thrown into water: the wood of the suspect, the wood of the lord, and the wood of the master (of law ?). Unlike other immersion ordeals, if the wood of the suspect *sinks* he is held to be guilty.

Duels

Another type of ordeal recognised in early Irish law is the formal duel (*róe*).¹⁴⁵ Justice is believed to be on the side of the victor: *Audacht Morainn* (Recension A) advises 'do not undertake a duel in falsehood, for there has not been found and there will not be found a truer judge than a duel'.¹⁴⁶

A duel has no legal validity unless carried out in accordance with the correct procedure, and the terms of the contest must be agreed beforehand and confirmed by sureties from both parties. *Din Techtagad* declares that duels without [prior] agreements are a falsehood for the *tuath* (*gó thúaithe*), and it is a falsehood for a judge not to levy fines on the participants.¹⁴⁷ A duel has to be

¹⁴³ For example, in the code of King Hammurabi of Assyria, a suspect's guilt or innocence may be decided by throwing him into the river. If he floats he is held to have been rejected by the River-Goddess, and is therefore guilty. But if he sinks, he is innocent. In Europe in the Middle Ages — and later — the same principle was applied to the detection of witches.

¹⁴⁴ *CIH* 238.4 = *AL* v 470.33.

¹⁴⁵ See discussion by D'Arbois de Jubainville: *Études sur le Droit celtique* (Paris, 1895) i ch. 4 pp. 36-74.

¹⁴⁶ *AM* 64 §31. = *ZCP* 11 (1917) 83.

¹⁴⁷ *CIH* 213.27-9 = *AL* iv 32.3-6.

fought in a proper place; according to Heptad 56¹⁴⁸ it cannot be fought on church land, in the fort or green of a king, in the green of a hospitaller or poet, or in the fort or house of a noble. It cannot be fought at the time of a fair or hosting.

Not all legal disagreements can be resolved by a duel. According to Heptad 55 'a duel should not be fought about certain things but about uncertain things'.¹⁴⁹ These uncertain things are listed as: a duel about bringing a son into a kin-group (see p. 105), a duel about contesting ownership of a holding,¹⁵⁰ a duel about an oath denying secret murder,¹⁵¹ a duel about a false accusation,¹⁵² and a duel about an improper (?) exaction of tribute from a *túath* or a kin-group.¹⁵³

Normally, if one combatant fails to appear at the time appointed for the duel, he loses his case. However, the law allows a duel to be postponed for various reasons.¹⁵⁴ These include either party being obliged to attend a hosting, to repel invaders, to attend the funeral of his wife, or to help to dig his lord's grave-mound. A duel can also be postponed to allow either party time to recover from illness under the direction of a physician. If one of the combatants is visited by a king, bishop or poet, he can postpone the duel for three days. If his father, mother or wife dies he can postpone it for seven days.

A wound inflicted in a legal duel is not actionable. However, an early Irish duel does not necessarily end with the death or serious injury of one of the participants. Quite a minor setback can be taken to indicate that justice is on the side of the other combatant. Heptad 59 lists 'seven witnesses which reveal the falsehood of [one party in] a duel'.¹⁵⁵ These are 'falling down, being seized by illness

¹⁴⁸ *CIH* 50.28-30 = *AL* v 302.31-4.

¹⁴⁹ *CIH* 49.36-50.27 = *AL* v 300.21-6.

¹⁵⁰ An O.Ir. gloss on this phrase at *CIH* 906.18 explains 'for it is doubtful whose it (the holding) is unless it is known through a duel'.

¹⁵¹ For *duinetháide* 'secret murder', see p. 128.

¹⁵² I follow the glossator at *CIH* 50.11-12 in taking *gúthuidme* to refer to a false accusation.

¹⁵³ The text has *re im dingbail cisa dia tuaith 7 ciniul na finta co bith*. The last four words are obscure to me. Perhaps they mean 'which was not known until the time' i.e. no proper notification or evidence of entitlement had been given. This interpretation is supported by the gloss at *CIH* 50.22 *nocha finntar asar fasastar he no gu mbither aga iarraid* 'it is not known whence it (the tribute) originated until it is being demanded'.

¹⁵⁴ Heptads 57-8 (*CIH* 51.13-52.8 = *AL* v 306-8).

¹⁵⁵ *CIH* 52.17-35 = *AL* v 310.1-5.

after coming onto the field of combat, fleeing without necessity, his weapon falling from his hand after coming onto the field, his shield bursting in his hand, or his pleading for quarter.¹⁵⁶

The law-texts provide no account of the duel itself, apart from specifying that witnesses must be present.¹⁵⁷ However, the description in Tírechán's *Collectanea*¹⁵⁸ (written c. 700 A.D.) in the Book of Armagh is likely to reflect actual practice. According to Tírechán, Patrick came across two men about to fight each other in Drummut Cérrigi (near Elphin, Co. Roscommon). They were the two sons of a recently deceased coppersmith of the race of Cíarraige Airnen, and they were unable to agree on the division of their inheritance. The matter was therefore to be resolved by a duel. Tírechán describes how 'the wood of contention (*lignum contentionis*) had been set, which the pagans call *caam* . . . and they took up two-edged swords, raising their hands, with their feet wide apart, one brother being about to slay the other'. Patrick miraculously deprived their arms of movement, and effected a reconciliation. The *caam* is also referred to in a 9th-century gloss on the *Díre*-text.¹⁵⁹ Its nature is uncertain: it may have been a log placed between the combatants which neither was allowed to step across during the duel.

The Church seems to have been more hostile to duels than to other forms of ordeal,¹⁶⁰ and in Tírechán's account quoted above duelling is associated with pagans (*gentiles*). In particular, the Church disapproved of involvement in duels by its clergy. Thus the 6th century *First Synod of Saint Patrick* states that if a cleric fights a duel with a pagan who has defaulted on his surety, he is excommunicated.¹⁶¹

¹⁵⁶ The text has *atach fáesma* and *atach comairce*, both meaning 'pleading for protection'. It seems most likely that the author included both merely to complete his heptad. Possibly, however, *atach fáesma* refers to the seeking of protection from one who is not present at the duel (e.g. a king or lord), whereas *atach comairce* refers to the seeking of protection from the opponent, or some other person who is present. According to commentary at *CIH* 1065.30-2, *fáesam* refers to protection in the presence of the protector, while *comairce* refers to protection in his absence.

¹⁵⁷ *CIH* 406.28 = *AL* i 250.18.

¹⁵⁸ *PTBA* 148 §32.

¹⁵⁹ *CIH* 922.33-34 = *IR* 12 §13⁴.

¹⁶⁰ Ordeal by fire or water is often referred to as *fír nDÉ* lit. 'truth-test of God', *Ériu* 16 (1952) 42 §5².

¹⁶¹ *IP* 54 §8.

CHAPTER 9

PUNISHMENT

Payment

The authors of the Old Irish law-texts seem to envisage that payment can atone for almost any crime.¹ In this respect Irish law contrasts with many other early law-codes, where death or mutilation is the normal punishment for a wide range of offences.² The capacity of a murderer or other criminal to pay for his offence was one of the features of Irish law which English officials and observers found repugnant, and there were many attempts to legislate against it. For example, an act of Henry VII orders 'that no person take any money or amedes for the death or murder of his frende or kynsman, other than the kynges law will'.³

In spite of the absence of a State system of law-enforcement in pre-Norman Ireland (see p. 22) it is likely that in most cases the prestige of the law and of the judge's office — combined with the system of pledges and sureties — would have ensured that the fines imposed by judges in court were actually paid. From references in both secular and ecclesiastical law-texts, it would seem that payment has to be made within a few days of judgement (or of the offence itself if the defendant does not contest the case). Thus in a case involving illicit hunting, restitution (*aithgein*) must be made after a

¹ For the difficulties in paying for the crime of kin-slaying (*fingal*), see p. 127.

² For example in the Indian *Laws of Manu*, crimes punishable by death include treason, murder, arson, adultery, theft and harbouring a criminal. The form of death is often based on the crime: thus the adulterer is roasted on an iron bed (*LM* viii 372) and the breaker of a dam is drowned (*ibid.* ix 279). For his first offence, a thief loses two fingers; for his second offence, a hand and a foot; and for his third offence he is put to death (*ibid.* ix 277). In the law-code of King Hammurabi of Assyria, the death penalty is prescribed even more widely, being the punishment for sorcery, rape, kidnapping, receiving stolen goods, threatening a witness, falsely claiming ownership of lost property, etc. (C.H.W. Johns, *The Oldest Code of Laws in the World*, (Edinburgh 1903); Driver and Miles, *Assyrian Laws* (Oxford 1935)).

³ *PRIA* 49 C (1943-44) 100 §78.

day, and the penalty-fine (*díre*) must be paid after three days, or — in exceptional circumstances — after five days.⁴ As we have seen above (p. 191), *Cáin Adomnáin* states that in a case involving a crime against a woman, child or cleric, judgement is given on the third day after the offence, and payment made on the fifth day.⁵

Non-payment of fines

What happens if a defendant is unable or unwilling to pay a fine or debt? In his *Vita Sancti Columbae*, written in the late 7th century, Adomnán refers to a situation of this kind, involving a 6th century reed-gatherer named Librán who became a monk under Columba. The story of Librán, as recorded in the *Vita*,⁶ may be partly or even wholly fictitious, but it at least shows in what way a well-informed 7th-century cleric such as Adomnán expected Irish law to operate.

Adomnán records that Librán killed a man in his native province of Connachta, but the circumstances of the crime are not given. He is described as being held in chains as one condemned (*quasi reus in vinculis retentus*).⁷ It is clear, therefore, that he was held by the relatives of his victim as a *cimbid* 'condemned person' (see p. 97). Being a poor man, he was unable to pay whatever fine (unspecified in the *Vita*) was due for the murder. However, a rich kinsman of his⁸ intervened and paid the fine: in return he vowed to serve him for the rest of his life. Adomnán makes it clear that Librán could have been put to death⁹ by the relatives of the victim but for the intervention of this rich kinsman.

⁴ *CIH* 388.18-26 = *AL* i 182.1-4.

⁵ *CA* 26 §38.

⁶ *VSC* 87a-92b (II 39).

⁷ There were no public prisons for the punishment of offenders in pre-Norman Ireland. However, it is clear from our sources that there are a number of circumstances in which it is permissible for a wrongdoer to be confined by the kin or individual whom he has wronged. As we have seen above (p. 182) if a dependant of low status commits an offence, he may be put in fetters by whoever he has wronged, and fed on a meagre diet until his owner or master pays for his release (*CIH* 363.23-8 = *AL* i 104.35-106.4). Similarly, a hostage-surety (*aitire*) must swear that he is prepared to be held with fetters on his leg, and a chain around his neck if the principal defaults on an agreement (see p. 172).

⁸ It is not clear whether this man is a kinsman of Librán or of his victim. The text has *quidam cognationalis homo ejusdem parentellae* 'a certain relative of the same kindred' (*VSC* 88a).

⁹ The text has *de morte reum eripuit* 'he (the kinsman) rescued the condemned man from death'.

The decision as to whether a non-paying murderer is to be killed or sold into slavery seems to be left to the relatives of the victim. Where the victim of a serious crime (maiming, theft, satire, etc.) is still alive, the decision as to the fate of the non-paying culprit is apparently his alone. Thus a number of law-texts¹⁰ quote the principle *ní gonae cimbid manip lat* 'do not kill a condemned person unless he is yours' i.e. only the person wronged is entitled to kill the culprit. This stipulation clearly could cause problems for a cleric who had been wronged, as he was forbidden by canon law to bear arms or to kill. That clerics occasionally violated this prohibition can be concluded from §74 of *The Monastery of Tallaght*,¹¹ which states that a cleric who kills a *cimbid* must, like any murderer, do seven years' penance on light gruel.

Slavery is a common alternative to the death penalty. In the *Vita Sancti Columbae* we are told of a woman of Lochaber who feared that an accidental killing by her husband would result in the enslavement or execution of herself, her husband and her children.¹² As a slave is a valuable possession, the economic inducements for the wronged party to opt for enslavement rather than execution are considerable.

Putting to death

In general, Irish canon law places more emphasis on the death penalty than the secular law-texts.¹³ Thus the introduction to the Old Irish version of Canon IV states: 'There are three types of crime which a person commits: a crime which is of lesser value than himself for which he pays from his own property; a crime which is of equal value to himself for which he goes [into slavery]; a crime which is of greater value than he is for which he is killed and a fine paid by his kindred'.¹⁴ In the opinion of the canonist, therefore, the perpetrator of a crime for which the fine is greater than his honour-price not only forfeits his life but also involves his kin in payment of the fine. In the secular law-texts, on the other hand, the

¹⁰ e.g. *CIH* 328.7 = *AL* iii 484.4.

¹¹ *PRIA* 29 C (1911) 158.

¹² *VSC* 84b (II 37).

¹³ See Ó Corráin, Breathnach and Breen, *Peritia* 3 (1984) 391.

¹⁴ *CIH* 588.8-10 = 731.19-20 = 1303.8-10. (*CIH* 588.11-25 is a paraphrase of §§1-6 of Irish Canon IV, *IP* 170).

death penalty seems to be employed only as an alternative to payment or enslavement.

Hanging

The commonest form of execution seems to have been hanging (*crochad*) from a gibbet (*gabul*). In *Críth Gablach* the king is advised to include among his bodyguard a man whom he has saved from the gibbet.¹⁵ One of the ten types of *fuidir* (see p. 33) listed in Heptad 72¹⁶ is the *fuidir goible* 'gibbet *fuidir*'. He is, presumably, a condemned man saved from the gibbet. The person who pays the fine for whatever crime he has committed becomes his master.

Hanging is given as a possible punishment for wounding or theft. Thus, Irish Canon IV¹⁷ states that he who sheds the blood of a bishop, monastic superior or scribe is to be hanged (*crucifigi*)¹⁸ or must pay a fine of the value of seven female slaves. An early (9th century ?) gloss on a legal fragment implies that a thief found in possession of stolen property may be put to death.¹⁹ Text and gloss read 'Any thief on whom [stolen property] is found i.e. three deaths are recognised as being carried out by the laity: slaying and the pit and hanging; one death by the Church i.e. hanging only'.²⁰ This appears to mean that the only form of the death penalty which can be inflicted on the authority of the Church is hanging. A late 11th century comic tale, *Aislinge Meic Conglinne*,²¹ describes how the anti-hero Ainiér Mac Conglinne is sentenced to death by the abbot of Cork for having complained about the poor hospitality which he received in the monastic guest-house. The sentence is not

¹⁵ *CIH* 570.14 = *CG* 579.

¹⁶ *CIH* 428.9-12 = *AL* v 360.13-7 (ed. Thurneysen, *IR* 65 §7).

¹⁷ *IP* 170 §1.

¹⁸ In an Irish context *crucifigi* must refer to hanging from a gibbet rather than Roman-style nailing to a cross.

¹⁹ cf. Triad 92 *Trí báiss ata ferr bethaid: bás iach, bás muicce méithe, bás foglado* 'three deaths which are better than life: the death of a salmon, the death of a fat pig, the death of a robber.' In a Mid.Ir. recension of this triad *bás bithbinig* 'the death of a habitual criminal' is substituted for *bás iach*, e.g. *CIH* 2005.19-21. Compare *Senbriathra Fithail* §4.43 (*RC* 45 (1928) 27), *YBL* version, *Ferr bás bithbinu* 'death is better than habitual crime'.

²⁰ *CIH* 1101.27-8 *Nach gataige forsa finntar 7rl- .i. tri bais aithfegar do denam don tuaith: guin 7 golo 7 crochad; aenbas do eclais .i. crochad nama.*

²¹ ed. K. Meyer (London 1892); re-ed. K. Jackson (Dublin, forthcoming).

carried out, however, because Mac Conglinne manages to cure King Cathal Mac Finguini of Munster, who was possessed by a demon of gluttony. Needless to say, the value of this extravaganza as a source of legal information is small, but it is at least worth noting that power of life or death is here attributed to an abbot.

In earlier tales, hanging is the most frequently mentioned form of execution. For example, the 8th century *Togail Bruidne Da Derga* tells how King Conaire ordered that the father of each young man who had taken to brigandage should hang his own son.²² Subsequently, he altered his judgement and banished the offenders instead (see below).

The annals also contain a number of references to the hanging of criminals. The *Annals of Ulster* record that in the year 745 (= 746) six criminals were hanged for violating the sanctuary of the monastery of Downpatrick.²³ The same annals record the hanging of a thief in the year 1197 for stealing five goblets. Hanging for theft under Irish law is also adverted to in a report by the jurors of Waterford in 1537.²⁴ In this document, the jurors complain that Lady Catherine, widow of Lord Power, is using Irish law rather than the King's law, and has appointed an Irish judge named Shane McClaunaghe (see p. 254). Part of their complaint relates to the manner in which a thief could expiate his offence by paying a *cane* (= Ir. *cáin* 'fine') to the local lord or lady: 'there is *Kane godde* (= Ir. *cáin gaite* "law of theft") which is that the lord or lady taketh of the poor thief 5 marks and of the rich thief much more; and if he have nothing, he shall be hanged; his friends (i.e. relatives) shall be warned to redeem him by a certain day or else [the thief] to be hanged'. The jurors claim that such hangings were being carried out without the King's authority. They complain 'that the said lady Catherine suborneth the King's laws, as hanging men without authority, pardoning thieves by taking *canes*, and letting felons at liberty'.

The pit

The most obscure of the three forms of execution listed in the gloss at *CIH* 1101.27-8 is *góla* 'the pit'. It appears that the

²² *TBDD* 277, cf. *Echtra Nera* §§1-4 (*RC* 10 (1889) 214-6).

²³ *Sarughadh Domnaigh Phatraicc*: *.ui. cimmidi cruciati*.

²⁴ *Gael. Jnl.* 8 (1897-98) 74-5.

condemned person — presumably in chains or fetters — is left to die of starvation and exposure in a pit.²⁵ Heptad 72 refers to a *fuidir góla*, i.e. a *fuidir* who has been ransomed from a pit. There is also a reference to the punishment pit (*cuite*) in a remarkably harsh poem *Cert cech rig co rréil* by the 9th century cleric Fothud na Canóine in which he advises a king on how best to reduce his subjects to obedience. Among the methods of subduing peoples (*túatha*) and bringing about peace he includes 'a foul dripping pit'.²⁶ A spell in the pit may of course be a prelude to death by other methods. A Middle Irish poem beginning *A maccáin ná cí* refers to the criminal who is brought from fetters to the pit (*ó gebind co cuthi*) and from the pit to the gallows (*ó chuthe co croich*).²⁷

Slaying

The third form of execution given in the *CIH* 1101.27-8 gloss is *guin* 'slaying', presumably by sword, spear, or axe. It is also referred to as *cró*, lit. 'bloody death'.²⁸ For example, *Críth Gablach* advises the king to include among his bodyguard a man whom he has saved from slaying (*fer sóeras di chrú*).²⁹ Similarly, Heptad 72 refers to *fuidir chrui*, a *fuidir* who has been ransomed from slaying.

Setting adrift

Heptad 72 mentions also the *fuidir cinad o muir*, lit. 'a *fuidir* of an offence from the sea'. This must refer to the case of a man who has been set adrift on the sea for some offence,³⁰ and is then taken into servitude on being washed ashore. This form of punishment is only rarely mentioned in the Old Irish law-texts, but features prominently in canon law-texts and in later legal commentary. It seems likely to be a form of punishment introduced with

²⁵ *CA* 22 §33 refers to death in a pit (*in fovea*).

²⁶ *cuite* *salach* *sig*, *LL* iii 18990.

²⁷ *LL* iii 18643-46.

²⁸ See Greene, *Celtica* 15 (1983) 7, *cró* (b).

²⁹ *CIH* 570.14 = *CG* 578.

³⁰ See M.E. Byrne 'On the punishment of setting adrift' *Ériu* 11 (1932) 97-102.

The decision as to whether a non-paying murderer is to be killed or sold into slavery seems to be left to the relatives of the victim. Where the victim of a serious crime (maiming, theft, satire, etc.) is still alive, the decision as to the fate of the non-paying culprit is apparently his alone. Thus a number of law-texts¹⁰ quote the principle *ní gonae cimbid manip lat* 'do not kill a condemned person unless he is yours' i.e. only the person wronged is entitled to kill the culprit. This stipulation clearly could cause problems for a cleric who had been wronged, as he was forbidden by canon law to bear arms or to kill. That clerics occasionally violated this prohibition can be concluded from §74 of *The Monastery of Tallaght*,¹¹ which states that a cleric who kills a *cimbid* must, like any murderer, do seven years' penance on light gruel.

Slavery is a common alternative to the death penalty. In the *Vita Sancti Columbae* we are told of a woman of Lochaber who feared that an accidental killing by her husband would result in the enslavement or execution of herself, her husband and her children.¹² As a slave is a valuable possession, the economic inducements for the wronged party to opt for enslavement rather than execution are considerable.

Putting to death

In general, Irish canon law places more emphasis on the death penalty than the secular law-texts.¹³ Thus the introduction to the Old Irish version of Canon IV states: 'There are three types of crime which a person commits: a crime which is of lesser value than himself for which he pays from his own property; a crime which is of equal value to himself for which he goes [into slavery]; a crime which is of greater value than he is for which he is killed and a fine paid by his kindred'.¹⁴ In the opinion of the canonist, therefore, the perpetrator of a crime for which the fine is greater than his honour-price not only forfeits his life but also involves his kin in payment of the fine. In the secular law-texts, on the other hand, the

¹⁰ e.g. *CIH* 328.7 = *AL* iii 484.4.

¹¹ *PRIA* 29 C (1911) 158.

¹² *VSC* 84b (II 37).

¹³ See Ó Corráin, Bretnach and Breen, *Peritia* 3 (1984) 391.

¹⁴ *CIH* 588.8-10 = 731.19-20 = 1303.8-10. (*CIH* 588.11-25 is a paraphrase of §§1-6 of Irish Canon IV, *IP* 170).

death penalty seems to be employed only as an alternative to payment or enslavement.

Hanging

The commonest form of execution seems to have been hanging (*crochad*) from a gibbet (*gabul*). In *Críth Gablach* the king is advised to include among his bodyguard a man whom he has saved from the gibbet.¹⁵ One of the ten types of *fuidir* (see p. 33) listed in Heptad 72¹⁶ is the *fuidir goible* 'gibbet fuidir'. He is, presumably, a condemned man saved from the gibbet. The person who pays the fine for whatever crime he has committed becomes his master.

Hanging is given as a possible punishment for wounding or theft. Thus, Irish Canon IV¹⁷ states that he who sheds the blood of a bishop, monastic superior or scribe is to be hanged (*crucifigi*)¹⁸ or must pay a fine of the value of seven female slaves. An early (9th century ?) gloss on a legal fragment implies that a thief found in possession of stolen property may be put to death.¹⁹ Text and gloss read 'Any thief on whom [stolen property] is found i.e. three deaths are recognised as being carried out by the laity: slaying and the pit and hanging; one death by the Church i.e. hanging only'.²⁰ This appears to mean that the only form of the death penalty which can be inflicted on the authority of the Church is hanging. A late 11th century comic tale, *Aislinge Meic Conglinne*,²¹ describes how the anti-hero Ainiér Mac Conglinne is sentenced to death by the abbot of Cork for having complained about the poor hospitality which he received in the monastic guest-house. The sentence is not

¹⁵ *CIH* 570.14 = *CG* 579.

¹⁶ *CIH* 428.9-12 = *AL* v 360.13-7 (ed. Thurneysen, *IR* 65 §7).

¹⁷ *IP* 170 §1.

¹⁸ In an Irish context *crucifigi* must refer to hanging from a gibbet rather than Roman-style nailing to a cross.

¹⁹ cf. Triad 92 *Trí báiss ata ferr bethaid: bás iach, bás mucce méithe, bás foglado* 'three deaths which are better than life: the death of a salmon, the death of a fat pig, the death of a robber.' In a Mid.Ir. recension of this triad *bás bithbinig* 'the death of a habitual criminal' is substituted for *bás iach*, e.g. *CIH* 2005.19-21. Compare *Senbriathra Fithail* §4.43 (*RC* 45 (1928) 27), *YBL* version, *Ferr bás bithbinu* 'death is better than habitual crime'.

²⁰ *CIH* 1101.27-8 *Nach gataige forsa finttar 7rl- .i. tri bais aithfegar do denam don tuath: guin 7 golo 7 crochad; aenbas do eclais .i. crochad nama.*

²¹ ed. K. Meyer (London 1892); re-ed. K. Jackson (Dublin, forthcoming).

Christianity³¹ and was evidently regarded as particularly suitable for dealing with serious crimes by women, no doubt from a general reluctance to put a woman to death by the direct methods of hanging or slaying.

The procedure is described in *Cáin Adomnáin*: if a woman commits murder or arson, or breaks into a church, she is put into a boat with one paddle and a vessel of gruel, and is set adrift on an offshore wind. Judgement on her is left to God.³² In legal commentary at *CIH* 109.8-16 and 744.32-6 this punishment is prescribed for those guilty of crimes of negligence (*anfot*) or carelessness (*indeithbire*). Commentary at *CIH* 1301.39-1302.1 prescribes the same punishment for kin-slaying (*fingal*).

These commentators give differing accounts of how a criminal is treated if he is washed back into his own territory (this possibility is not considered in *Cáin Adomnáin*). According to *CIH* 109.13-15 one convicted of crimes of negligence or carelessness is taken back into his kin as a 'lawful person' (*duine dligthech*) because 'God has given judgement on him'. Likewise, at *CIH* 744.36 he is classed as a 'lawful son' (*mac dligthech*).³³ On the other hand, the commentator at *CIH* 1302.1 states that the kin-slayer who is washed back to his own territory is condemned to serve as a *fuidir* (*fognam fuidre*). He would thus fall into the category of the *fuidir cinad o muir*³⁴ of Heptad 72.

A fragment of law-text at *CIH* 744.28 refers to the *mac scríne* lit. 'the son of a shrine'. The accompanying commentary suggests that this refers to the practice of placing a child born of incest in a

³¹ Much the same form of punishment is said to have been prescribed by St. Patrick for the wicked ruler Mac Cuill (*PTBA* 102-6). He was brought by the sea to Euonia (Isle of Man) where he ultimately became bishop. Compare also the association of this punishment with a saint in the Mid.Ir. prose version of *Imram Snédgusso 7 Maic Ríagla* 'the voyage of Snédgus and Mac Ríagla' (tr. Stokes, *RC* 9 (1888) 14-25). The Fir Roiss — of the present Co. Monaghan — had murdered their tyrannical overking Fíachu. His brother Donnchad first intended to burn all the Fir Roiss to death in vengeance. However, before doing so he consulted his confessor, Columba, who recommended instead that sixty couples of the Fir Roiss be set adrift in a boat, so that God should pass judgement on them (*co rucad Día a breith forru*). Donnchad did this, and the sixty couples drifted to an island where they will remain under the Day of Judgement in the company of the Old Testament prophets Elijah and Enoch.

³² *CA* 30 §45 *La Día brithimnachtí furi isin*.

³³ The manuscript has *amal cach mac ndligtec*, and not *indligtec* as in *CIH*.

³⁴ See Charles-Edwards, *Celtica* 11 (1976) 48.

leather shrine, which is put out to sea 'as far as a white shield is visible'. If the child is washed ashore, his life is spared, but he is reared to be a servant to his kin.

Mutilation

Many law-codes prescribe mutilation for certain offences. The usual members amputated are fingers, hand or feet, but eyes, noses, ears, testicles, tongues or breasts may also be cut out. Sometimes an attempt is made to correlate the amputation with the offence: for example, theft is punished by cutting off a hand in many law-codes, and rape is widely punished by castration.

The pre-Norman annals of Ireland give many instances of politically motivated mutilation, mainly blinding or castration. However, I have found no record of a judicial mutilation until 1224, when the *Annals of Connacht* (§3) record that the hands and feet of a robber were cut off.

The Old Irish secular laws make no mention of mutilation, but *Cáin Adomnáin* lays down the twofold punishment of mutilation and death for the killing of a woman.³⁵ First, the right hand and left foot of the culprit are cut off, and he is then put to death. In addition, his kin must pay a fine of seven female slaves and carry out a seventh part of the penance for homicide. The text does, however, state that a payment of fourteen female slaves and penance for fourteen years may be substituted for mutilation and death.

Irish Canon IV lays down that a person who injures a bishop (without causing the blood to fall to the ground) has a hand cut off, or pays the value of three and a half female slaves.³⁶ If an assailant causes the blood of a presbyter to fall to the ground, he likewise suffers amputation of a hand or pays the value of three and a half female slaves.³⁷

Flogging

Flogging with rods, leather straps, whips, etc. is often referred to in early law-codes, particularly as a punishment for slaves. For

³⁵ *CA* 24 §33.

³⁶ *IP* 170 §4.

³⁷ *ibid.* §7.

example, in early Norwegian law flogging is the regular penalty for offences by slaves,³⁸ and in the Indian *Laws of Manu*³⁹ it is stated that a man may beat his slave, wife, son, pupil or younger brother with a rope or split bamboo.

Flogging is prescribed as the punishment for various sins and crimes in early Irish penitential literature. Thus *The Monastery of Tallaght* says that an anchorite who is angry with his servant receives a hundred blows on the hand with a scourge.⁴⁰ According to the *Penitential of Finnian*, a thieving cleric is beaten with rods.⁴¹ I have found no references to flogging in the Old Irish law-texts. However, the wisdom-text *Senbríathra Fíthail*⁴² contains the maxim *ferr ledb lugu* 'a leather strap is better than an oath'; which might suggest that the truth is more effectively elicited from a suspect by flogging him rather than by trusting in his oath. But this would seem to run counter to the well-documented use of ordeals in doubtful cases (see previous chapter p. 209).

Outlawry

A person may be deprived of his or her rights for a wide range of criminal or anti-social activities. Thus one text states that a wrongdoer is fully *diles*⁴³ i.e. he has no legal recourse if an offence is committed against him. For example, a thief loses the normal right to sick-maintenance and fines for injury,⁴⁴ and his house may be burnt with impunity.⁴⁵ Heptad 63 lists seven categories of person who are classed as *élúdaig* 'absconders' and therefore lose their rights in society.⁴⁶ They include the woman who has absconded from her marriage without due cause, the man or woman who has failed to look after an elderly parent, a 'man of bloodstained weapon'⁴⁷ and an absconder from his or her kin.

³⁸ *The Earliest Norwegian Laws* (ed. L. M. Larson, Columbia University Press, 1935) 45 §16, 48 §20 etc., cf. *Exodus* 21: 20; *IP* 152 §20.

³⁹ *LM* viii 299.

⁴⁰ *PRIA* 29 C (1911) 142 §37.

⁴¹ *IP* 84 §31.

⁴² *RC* 45 (1928) 18 §4.2.

⁴³ *ogdiles each nanrechtaid*, *CIH* 324.7 = *AL* iii 464.12.

⁴⁴ *CIH* 2298.2-3 = *Ériu* 12 (1938) 34 §43.

⁴⁵ *CIH* 11.27 = *AL* v 160.3.

⁴⁶ *CIH* 55.1-6 = *AL* v 318.12-9; *CIH* 451.23-7 = *BB* §39.

⁴⁷ The *fer airm deirg* is a man who has just committed a homicide and whose guilt is undeniable. For discussion, see *BB* Notes p. 146.

Anybody — even a person of high rank — who harbours an *éludach* loses his honour-price.⁴⁸

Our sources stress that a person is not regarded as an outlaw until his offence has been publicized (perhaps at an assembly). Thus *Tecosca Cormaic* states 'everyone is an *aurrad*' ('law-abiding freeman') until he is proclaimed,⁴⁹ and a law-text refers to 'a criminal (*bibdu*) whom king and people proclaim'.⁵⁰ The usual course of action for an outlawed person must have been to leave his own territory as an exile (*deorad*), perhaps in the hope of being taken on as a servant or bodyguard elsewhere. Such an exile might even establish himself as a legally-recognised *aurrad* in another territory: one text states that an exile who buys a holding of land is classed as an *aurrad*.⁵¹

The sagas contain some references to the banishment (*indarbe*) of wrongdoers overseas. In his emended judgement in *Togail Bruidne Da Derga*⁵² King Conaire prescribes banishment for his fosterbrothers and the other young men who had taken to brigandage (*díberg*). His instruction is that they should carry out brigandage in Britain instead.

Unlike other early law-codes⁵³ the Old Irish law-texts give no evidence of formal banishment for a fixed period — either from a *túath* or province or from the whole country.⁵⁴ However, *Cáin Adomnáin* 'The Law of Adomnán' (App. 1 No. 74) refers to the banishment of one who has not paid the fines imposed upon him under this law, i.e. for an offence against women. His king must pay on his behalf, and he suffers 'banishment until the end of the law' (*indarbae co cenn rechtgi*).⁵⁵ Presumably this means banishment for life, as *Cáin Adomnáin* is described earlier in the text (§§28, 34) as a perpetual law (*bithcháin*).

The early Irish Church regarded penitential exile as particularly

⁴⁸ *CIH* 15.7-8 = *AL* v 174.17-8; cf. *CIH* 2121.5 *deoraid coid 7 cercaille* 'an outlaw of cup and pillow' i.e. who is fed and harboured.

⁴⁹ *TC* §31.17.

⁵⁰ *CIH* 1397.11 = 2199.3-4 *bidbaid fonocair ri 7 túath*.

⁵¹ *CIH* 1631.1 *is urrad imorro in deorad crenus selv.*

⁵² *TBDD* 217-8.

⁵³ For example, Early Icelandic law distinguishes lesser outlawry (for three years) and full outlawry (for life).

⁵⁴ The post-Norman annals provide a few examples of judicial banishment overseas, e.g. *AC* s.a. 1246 §5. Cf. *TBDD* 217-8.

⁵⁵ *CA* 30 §47.

meritorious.⁵⁶ The holy man who leaves his own territory and becomes a hermit elsewhere is referred to as a *deorad Dé* 'exile of God'. In the law-texts he is credited with the power to perform miracles,⁵⁷ and is given the same honour-price as a king or bishop.⁵⁸ See p. 41.

Recovery of legal rights

Outlawry in Irish law is not necessarily permanent: it is clear that an outlawed person can recover his rights in society if he is able — either by payment or other means — to atone for whatever crime he has committed. The Story of Librán in Adomnán's *Vita Sancti Columbae* illustrates the procedure. As we have seen above, Librán vowed to serve his master for the rest of his life in return for his rescue from death. However, after some days of servitude, he escaped and made his way to Iona, wanting to become a monk. In Irish legal terms, he was an *élídach*, 'absconder'. Columba ordered him to undertake seven years' penance in Tiree. After this was completed, Columba summoned him to his presence, and handed him a sword decorated with shaped pieces of ivory. He instructed him to offer the sword to his former master, though he prophesied that it would not be accepted, due to the good offices of the master's wife.

Librán duly returned to Ireland, and his master 'loosed according to custom the captive's belt from [his] loins'.⁵⁹ As prophesied, the sword was refused on the advice of the master's wife. Though released from his obligations to his master, Librán was still an *élídach*, because he had neglected to carry out his duty towards his parents (*goire*). He was, therefore, compelled by his brothers to look after his father. His father died within a week — as prophesied by Columba — and he was then obliged to look after his mother. However, he was released from this duty by a younger brother, and was able to return as a free man (*liber reversus*) to Columba in Iona. He spent the rest of his life as a monk.

⁵⁶ Charles-Edwards, *Celtica* 11 (1976) 43-59.

⁵⁷ CIH 2289.8, 13 = *Ériu* 12 (1938) 12 §12.

⁵⁸ CIH 2287.8 = *ibid.* 6 §4.

⁵⁹ VSC 89a (II 39).

LAW-TEXTS

The Manuscripts

The manuscripts in which the law-texts are found date mainly from the 14th-16th centuries A.D.,¹ but the linguistic evidence shows that many of these texts were originally written in the 7th-8th centuries. Because of the long gap between the date of composition and the date of the earliest surviving manuscript most law-texts show some signs of scribal corruption. Even the texts in the best of the legal manuscripts, H 2. 15 A, contain many examples of scribal misreadings, duplications and omissions.² In addition, scribes often modernise the Old Irish spelling of the texts, with varying degrees of accuracy and consistency.

Though they contain many examples of fine penmanship (e.g. plate 2), Irish legal manuscripts are on the whole rather austere productions, with little of the exuberant decoration characteristic of early gospels such as the Book of Kells (8th century). The page of manuscript H 3. 17 reproduced in the frontispiece is unusually elaborate for a law-text. Here the neck of what seems to be a dog extends from the bottom of the page up the left margin to form an initial A. Its tail curls around most of the bottom margin in circles interspersed with floral designs. The upper third of its neck is shaped in a way which may have been intended to represent the cross-section of a church, as the text on this page deals with the law relating to church buildings in various circumstances. Most initial letters in our manuscripts are much more modest, with conventional zoomorphic designs of the type illustrated in Plate 1. Colour is used

¹ There are two law-texts (Appendix 1 Nos. 5 and 69 = CIH 2192-2203) in the early 12th century manuscript Rawlinson B 502 in the Bodleian Library, Oxford. The opening section of the first of these texts, *Gúbretha Caratniad*, is reproduced in Plate 1. The earliest surviving manuscript which contains mainly legal material is H 2. 15A in Trinity College Dublin, dating probably from the early 14th century.

² For examples, see BB 2.

sparingly by legal scribes, and is usually limited to touches of red or yellow in and around initial letters. The colourful pages reproduced from H 3. 17 (cols. 31-32, 94-95) on the cover of this book are exceptional.

In the manuscripts the law-texts are normally written in a large minuscule,³ and are almost always glossed (in smaller script), sometimes by many different glossators.⁴ Some glossing goes back to the 9th century,⁵ but in general it dates from the 12th-16th centuries. The glosses are often helpful in illuminating the meaning of a passage, but may be misleading or irrelevant.⁶ Most law-texts are also accompanied by extensive commentary, dating from approximately the same period as the glosses. These commentaries explain and expand upon the original text, and are particularly valuable where the original text is absent or incomplete. In the later law-schools the text is usually referred to as *cóip* 'copy', and the glosses and commentary as *com(m)aoin* 'addition'.

Plate 2 shows part of page 19^b of H 2. 15A. The text deals with honour-price,⁷ and was originally composed in about the 8th century. It is not known who transcribed the text, but he probably worked at a MacEgan law-school. The interlinear glosses were added by a scribe named Lúcas Ó Dalláin in the first half of the 14th century.⁸ The section of commentary in the bottom margin is in the hand of Aed mac Aedagáin (Hugh MacEgan) who worked on H 2. 15A in 1350, when he was twenty-one years old. The *Annals of Ulster* record his death nine years later, and describe him as 'a potential master of law'.⁹ The pan-pipes above the commentary show to what section of text it refers.

Plate 3 shows another stage in the evolution of Irish legal manuscripts. The commentary is more extensive than in Plate 2, and is incorporated in the page rather than being confined to the margins. The photograph is of a heptad on women who are not

³In CIH this large minuscule is indicated by small capitals, whereas the smaller script normally reserved for glosses and commentary is indicated by ordinary ten-point type.

⁴For example, the text of *BB* in H 2. 15A is glossed by five different glossators.

⁵*Celtica* 10 (1973) 72.

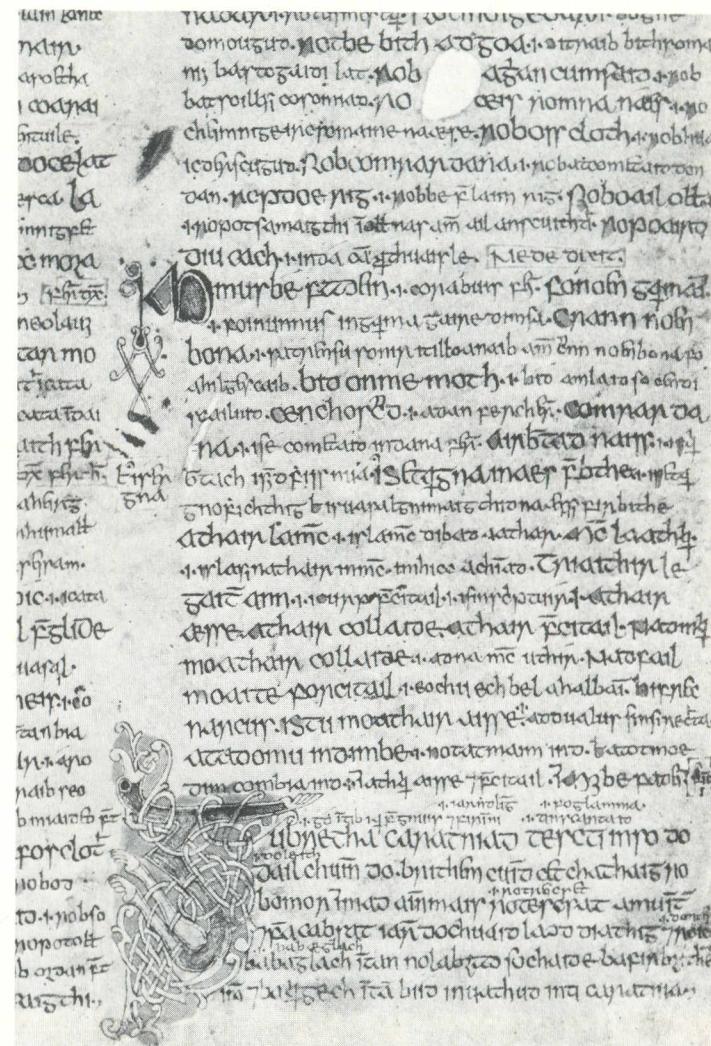
⁶BB 17-22.

⁷CIH 442.23-443.23 = IR 33 §35-34 §37.

⁸Best, *Anal. Hib.* 10 (1941) 301-2.

⁹*adbur suadh re breithemhnus, AU s.a. 1359.*

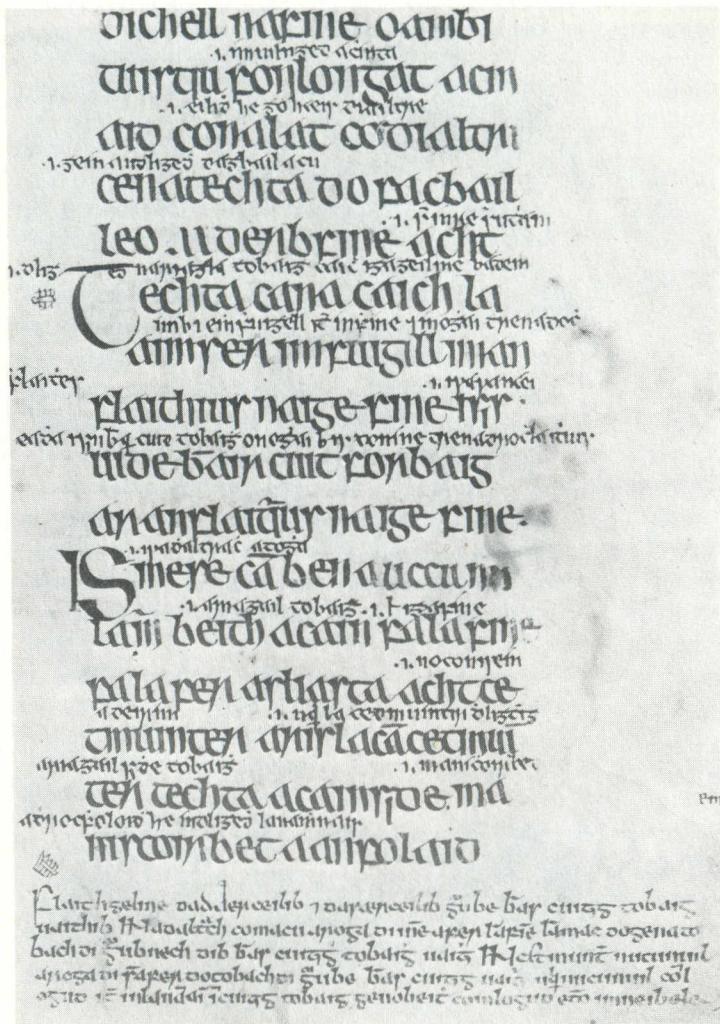
PLATE 1



Part of folio 62^d of the early 12th century manuscript Rawlinson B 502 in the Bodleian Library Oxford. The large elaborately ornamented G (bottom left) marks the beginning of Gúbretha Caratniad 'the false judgements of Caratniad' (Appendix 1 No. 5). The bottom six lines are reproduced at CIH 2192.1-5 = ZCP 15 (1925) 306.

(by courtesy of the Bodleian Library)

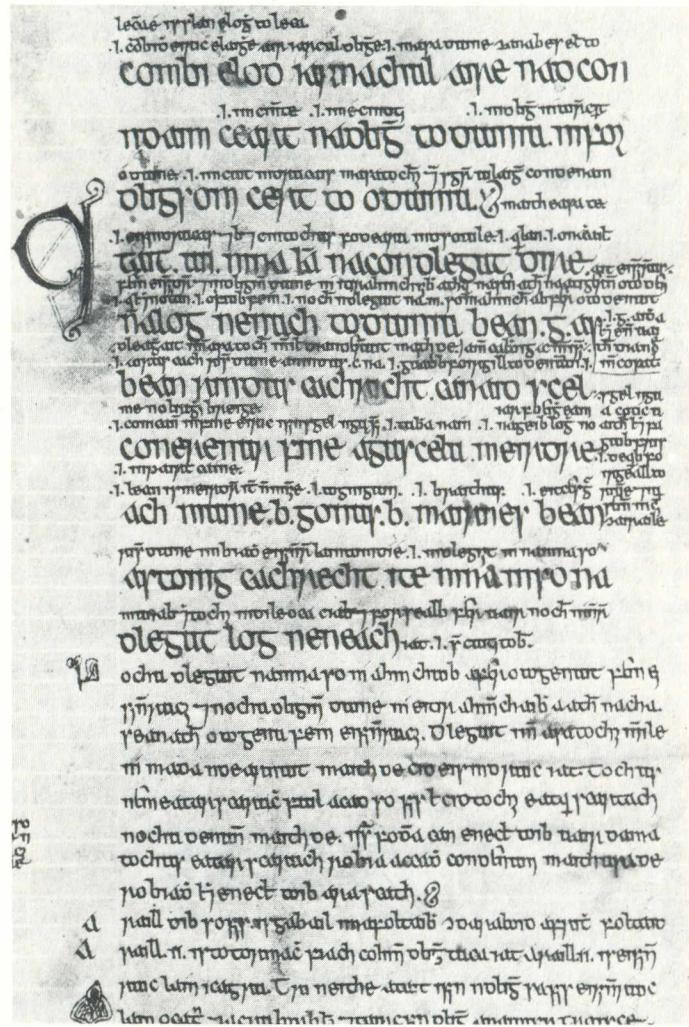
PLATE 2



Part of page 19^b of the c. 14th century legal manuscript H 2. 15A, now numbered 1316, in Trinity College Dublin. The text (in large minuscule) is reproduced at CIH 442.23-5; 443.10-1, 21-3 = IR 33 §35 - 34 §37. The interlinear glosses are at CIH 443.1-2, 12-4, 25-7, and the commentary on the bottom of the page is at CIH 443.15-20. For a brief discussion on the scribes, see p. 226.

(by courtesy of the Board of Trinity College)

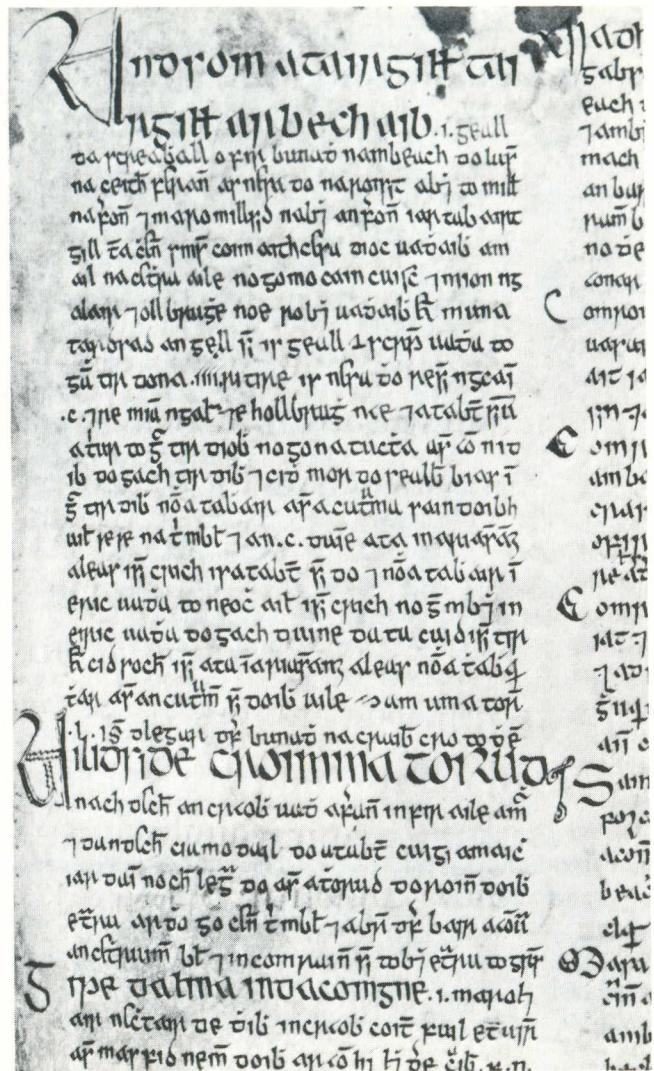
PLATE 3



Part of page 43^b in a fragment of H 2. 15A transcribed c. 1466. The text after the initial 'A' on the fourth line of large minuscule is a heptad on women who are not entitled to honour-price. It is reproduced at CIH 538.17-20 (= AL V 176, from another version). The glosses are at CIH 538.21-33, and the commentary is at CIH 538.34-539.6. The first three lines are from a preceding heptad (CIH 538.4-6, 13-6).

(by courtesy of the Board of Trinity College)

PLATE 4



Part of folio 8^a of the British Library manuscript Egerton 88, written between 1564 and 1569 (see p. 258). The three quotations are from the law-text on bee-keeping Bechbretha, interspersed with glosses and commentary (amalgamated together). It is reproduced at CIH 1286.1-21 = BB Appendix 2 (a)-(c).

(by courtesy of the British Library)

entitled to honour-price, and is found in a fragment of H 2. 15A¹⁰ transcribed in or around 1466.¹¹

Plate 4 illustrates a further stage: the glosses and commentary have been run together, and the original text reduced to occasional quotations. This example is from folio 8^a of the British Library manuscript Egerton 88,¹² written between 1564 and 1569 by Domnall O'Davoren and various pupils. The few quotations of original text — of which three can be seen in larger script in this photograph — are from the 7th century *Bechbretha* 'bee-judgements' (preserved in its entirety in H 2. 15A).¹³ The rest is gloss and commentary, originating from around the 12th-13th centuries.¹⁴ Many law-texts survive only as fragmentary quotations imbedded in a mass of later commentary. For example, the text on fosterage, *Cáin Íarraith*, survives only as 30 short quotations interspersed with long passages of commentary.¹⁵ Consequently, our knowledge of the early Irish institution of fosterage¹⁶ rests on a far less secure foundation than that of other topics about which complete texts survive. This is because commentators — though basing their commentaries on the original texts — may add information which relates to their own time rather than to the time of the texts. They also habitually elaborate upon the rules of the original texts,¹⁷ sometimes to an extraordinary degree of complexity (see p. 252 for examples).

The origin of the law-texts

It is clear from linguistic evidence that many of the essentials of the early Irish legal system go back at least as far as the Common Celtic period (c. 1000 B.C.). For example, the Old Irish legal term *athgabál* 'distraint' corresponds to Old Breton *adgabael* and Medieval Welsh *adauayl* (*adafael*) of the same meaning.¹⁸ From the

¹⁰ CIH 538.17-539.6 (= AL v 176, from another version).

¹¹ See *Facsimile of the Oldest Fragments from MS. H 2. 15* (ed. Best and Thurneysen, Dublin 1931) Introd. xii.

¹² CIH 1286.1-30.

¹³ CIH 444-57.

¹⁴ BB 24.

¹⁵ CIH 1759.6-1770.14.

¹⁶ See p. 86.

¹⁷ cf. BB 21.

¹⁸ *Celtica* 10 (1973) 27.

regular sound laws it can be shown that these three words go back to a postulated Common Celtic form **ategabagla*. One can deduce therefore that some form of the legal process of distress (see p. 177) was practised in the Common Celtic period.¹⁹

When the Christian missionaries arrived in Ireland in the 5th century they encountered a legal system²⁰ which can be assumed to have developed from Celtic law with little or no outside influence. There could well have been some influence from pre-Celtic inhabitants of Ireland, but — in the absence of documentary evidence — one can only speculate about the legal ideas of these peoples.²¹

This pre-literate Irish legal tradition was presumably passed on by lawyers from generation to generation in the form of alliterative verse and legal maxims. The introduction of Latin letters revolutionized the transmission of legal material. Legal topics could now be treated at length and in detail, whereas previously only the salient points could be passed on by word of mouth. The writing down of law-texts in Irish may have started as early as the 6th century, but the linguistic evidence shows that the bulk of this work was done in the 7th and 8th centuries. Only a few of the surviving law-texts are of later date — see below p. 250.

The authors of the law-texts

Legal manuscripts use much the same spelling-system, script, punctuation, abbreviations and illuminated capitals as are found in

¹⁹ Other examples of agreement in the legal terminology of the Celtic languages include O.Ir. *snádud* 'legal protection' = W. *nawdd*; O.Ir. *macc* 'surety' = W. *mach*; O.Ir. *luge* 'oath' = W. *llw*; O.Ir. *tongid* 'swears' = W. *tyngu*, Med. Bret. *touï*; O.Ir. *deidm* 'law' = W. *deddf*; O.Ir. *diles* 'immune from legal process' = W. *dilys*, O. Bret. *diles*, *dilis*; O.Ir. *dire* 'penalty' = W. *dirwy*; O.Ir. *recht* 'law, rule' = W. (*cyf*)*raith*; O.Ir. *aithne* 'deposit' = W. *adnau*, O. Bret. *adnou*; O.Ir. *macc gor* 'dutiful son' (see p. 80) = W. *mab gwar*; O. Ir. *comar* 'co-ploughing' = W. *cyfar*.

Some Irish legal concepts can be traced back even further than the Common Celtic period. Thus two cognate legal terms are found in both the Celtic and Germanic language-groups: O.Ir. *oeth* 'oath' = Gothic *aips*, Mod. Germ. *Eid*, Mod. Eng. *oath* (Benveniste, *Le Vocabulaire des institutions indo-européennes* (Paris 1969) ii 116, 164); O.Ir. *fiádu* 'eye-witness' = Goth. *weitwōds* (*ibid.* 173).²⁰ St Patrick tells of the expenses of his Irish mission, and records that he gave money — not less than the price of fifteen men — to those who judged (*Confessio* §53, reading *illis qui iudicabant* with B).

²¹ For example, the people who built Newgrange (c. 3000 B.C.) must have been subject to a legal system, but its provisions will never be known.

manuscripts of monastic origin. In addition, many of the law-texts in these manuscripts show the influence of the Latin grammarians in their use of the question-and-answer technique,²² and of 'etymological' explanations of legal terms and other words.²³

What sort of people wrote these law-texts and why? These questions have been much discussed over the last few years, but no consensus has yet emerged. In the Introduction to *CIH* (pp. ix-x) Binchy summarises the arguments in favour of the view that the law-texts were composed by professional lay jurists, whose main motive would have been to preserve in written form as much as possible of traditional Irish law in the face of the gradual encroachment of Christian ideas and organisation.²⁴ He emphasises the difficulties in the assumption that the law-texts were written by clerics, and expresses doubt that a cleric could have been responsible for the justification of polygyny in *Bretha Crólige* §57 (*CIH* 2301.35-8), the wide rights to divorce described in Heptad 3 (*CIH* 4.33-5.25) and in *Cáin Lánamna* (*CIH* 507.27-511.22) or the restrictions on gifts to the Church in *Córus Béscnai* (*CIH* 442.22-5). It also seems doubtful that a cleric would have included his arch-enemy the druid in the list of *dóernemed* (dependent professional) persons in *Uraicecht Becc*.²⁵

On the other hand, in two articles in *Peritia* 3 Donnchadh Ó Corráin, Liam Breathnach and Aidan Breen have recently drawn attention to the extent to which many Old Irish law-texts are based on canon law. Particularly significant is Breathnach's discovery that parts of *Bretha Nemed toísech* consist of a translation or précis of the *Collectio Canonum Hibernensis*.²⁶ Ó Corráin concludes that — far from being in competition — 'the law-tracts, in Latin and in the vernacular, are the work of a single class of learned men who were as well versed in scripture as in the legal lore of their ancestors

²² Thus *CG* introduces each topic with a question, e.g. lines 1, 5, 6, 10, 13, 16, etc. The answer is often preceded by the phrase *ní ansae* 'not difficult' (corresponding to Latin *non difficile*) e.g. 1, 21, etc.

²³ The technique is to break up the word into two or three elements, each of which is explained separately. Thus the term *comaitches* (which is really an abstract from *com-aithech* 'fellow rent-payer') is represented as containing the elements *comait* 'equally good' and *gnás* 'custom, practice', *CIH* 64.7 = *AL* iv 68.2-3. For further examples, see *BB* 17-9.

²⁴ See also Charles-Edward's review of *CIH* in *Stud. Hib.* 20 (1980) esp. 160-2.

²⁵ *CIH* 1612.8 = *AL* v 90.20. It must be admitted, however, that the druid is fiercely denounced in *Bretha Crólige* (*CIH* 2300.6-10 = *Ériu* 12 (1938) 40 §51).

²⁶ *Peritia* 3 (1984) 444-52; cf. *ibid.* 417-20.

and founded their laws on a conscious and sophisticated compromise between the two'.²⁷ In a recent review article Kim McCone has argued along similar lines that the Old Irish law-text on bee-keeping, *Bechbretha*, is of clerical authorship.²⁸ He points in particular to the special rights enjoyed by the Church in relation to stray swarms found on unowned land.²⁹

The assumption that all Old Irish law-texts were composed by clerics disposes of some problems of Irish legal tradition. For example, it would account for the fact that texts of known ecclesiastical provenance — such as *Cáin Domnaig* (Appendix 1 No. 73) and *Cáin Adomnáin* (Appendix 1 No. 74) — use substantially the same legal terminology as other law-texts. It would explain why legislation on a purely secular topic such as offences by and against dogs appears in the Irish Canons (Appendix 1 No. 78). It would also provide a good reason for what appears to be ecclesiastical bias in some law-texts, as in the concluding lines of *Críth Gablach*: 'Who is nobler, a king or a bishop? The bishop is nobler, for the king rises before him on account of the Faith. The bishop raises his knee before the king'.³⁰

But there are also difficulties. In some respects the legal principles of *Cáin Domnaig* and *Cáin Adomnáin* are so different from other law-texts that one would hesitate to ascribe their composition to the same class of learned men.³¹ For example, *Cáin Adomnáin* advocates that a woman should be put to death not only for murder but also for arson or breaking into a church.³² By contrast, the law-texts of the *Senchas Már* collection consistently

²⁷ibid. 412.

²⁸CMCS 8 (1984) 50.

²⁹BB §49. I think he is going too far, however, when he claims that *úasalnemed* in BB §36 refers specifically to church land. This would mean that the Church gets a higher proportion of the produce of an incoming swarm than a lay dignitary such as a king or poet. I take *úasalnemed* to refer to land owned by *any* high-ranking dignitary, lay or clerical. Compare CIH 594.30 = Bürgschaft 14 §45 where *úasalnemeth* is used in an abstract sense of the privilege due to both lay and clerical dignitaries. Compare also BB §52 where large livestock (milch cows, oxen, etc.) are described as *úasalnemid*.

³⁰CIH 570.31-32 = CG 604-6.

³¹Thomas Charles-Edwards points out to me, however, that in at least some of the cases cited here the differences may be between traditional law (*fénechas*, *ाjurradas*) and promulgated law (*cáin*, *rechtaghe*). The latter may prescribe — sometimes only for a limited period — more severe penalties than those ordinarily imposed.

³²CA 30 §45.

favour reparation by payment rather than the death-penalty for murder and other serious offences (by either sex).³³ Similarly, *Cáin Domnaig*'s treatment of the offence of working on a Sunday relies on principles which I have been unable to discern in other law-texts. The offender not only pays a fine of four dry heifers, but also forfeits whatever clothing and other property (including a horse) which he may have with him at the time of the offence. The witness who takes legal action against him is entitled to receive half the fine.³⁴ In no other law-text are witnesses offered such a strong inducement to come forward. *Cáin Domnaig* is correspondingly severe on the witness who fails to report a violation of Sunday: he must pay as heavy a fine as the offender himself.³⁵ This contrasts markedly with the *Sellach*-text (Appendix 1 No. 36) which states that an uninvolved witness who fails to intervene when an offence is being committed need only pay one quarter of the fine for the offence.³⁶ *Cáin Domnaig* further adds that a violator of Sunday must be prosecuted even if he or she is father, mother or other relative of the witness.³⁷ This stipulation is difficult to reconcile with the strong emphasis on kin-solidarity in the other law-texts.³⁸ Lastly, *Cáin Domnaig*'s ban on the grinding of corn on Sundays³⁹ is at variance with the law-text on water-mills, *Coibnes Uisci Thairidne*, which allows for a water-mill to be operated seven days a week.⁴⁰

Another difficulty which emerges if one argues that the law-texts were written by clerics is how to understand the relationship between some of these texts and the Old Irish wisdom-texts (Appendix 2). For example, there is good evidence that *Bretha Nemed toísech* and *Bretha Nemed déidenach* (Appendix 1 Nos. 14 and 15) draw from the same learned tradition as the 7th century wisdom-text *Audacht Morainn* (Appendix 2 No. 1). Thus, the latter text is addressed by the legendary judge Morann to his pupil Neire

³³For example, it is implicit in Heptad 35 (CIH 31.19-21 = AL v 236.11-15) that an illegal killing (*cro*) is normally atoned for by payment (*éraic*). See p. 214 above.

³⁴Ériu 20 (1966) 162 §2 l. 25.

³⁵ibid. ll. 21-2. The same principle applies in CA 26 §35 which states that a man who witnesses the killing or wounding of a clerical student or an innocent child and does not intervene must pay the same fine as the actual culprit.

³⁶CIH 404.28-30 = AL i 242.3-5.

³⁷Ériu 20, 168 §9.

³⁸e.g. CIH 489.8-9 = ZCP 14 (1923) 370 §32.

³⁹Ériu 20, 160 §1 l. 4, cf. §2 l. 29.

⁴⁰Ériu 17 (1955) 59.

Núallgnáth.⁴¹ Sections of *Bretha Nemed toisech* are similarly presented as replies by Morann to Neire's queries.⁴² A series in *Audacht Morainn* in which each line begins *Admestar* 'let him estimate'⁴³ has a good deal in common with a series attributed to Morann in *Bretha Nemed déidenach* in which each line begins *Mesir* 'may you judge'.⁴⁴ The question then arises: was *Audacht Morainn* composed by a cleric? I would doubt this. Apart from a few Christian Latin loanwords (e.g. §59 *bendacht* 'blessing') and a reference to the Creator (§32 *dúilem*), *Audacht Morainn* seems devoid of Christian elements. If it were the work of a cleric, one would surely expect him to attribute the prosperity of the territory not only to the king's justice (*fír flathemon*)⁴⁵ but also to divine favour.

Leaving aside the question of the Church connections of the authors of the law-texts, some general comments can be made about them and their achievements. By and large, their approach to legal problems is — within the limits set by the strictly hierarchical structure of the society — fair and humane. *Bechbretha* lays down as a basic principle of fair dealing between neighbours that 'no-one is obliged to give something to another for nothing'.⁴⁶ A number of texts uphold the rights of the innocent dependant of an offender,⁴⁷ as in *Bretha Crólige*'s maxim 'the misdeed of the guilty should not affect the innocent'.⁴⁸ So that all the evidence in a case is presented fairly, Heptad 49 excludes as a witness anyone who stands to gain by the outcome, on the grounds that 'greed detracts from honesty'.⁴⁹

The law-texts contain many provisions aimed at protecting the weaker members of the community.⁵⁰ The texts on base clientship

⁴¹ AM §§2, 53, 63.

⁴² e.g. CIH 2220.26-2221.21.

⁴³ AM §§32-52. See discussion in AM Introduction pp. xviii-xix and note to §32.

⁴⁴ CIH 1130.38-1131.8 = Ériu 13 (1942) 41.21-42.2.

⁴⁵ AM §§12-21.

⁴⁶ CIH 445.3 = BB §10 ni fulaing nech deolaid díalailiu.

⁴⁷ Contrast the Assyrian law-code which states that if a householder is killed by the collapse of his house, the builder is put to death; but if his son is killed, the builder's son is put to death (C.H.W. Johns, *The Oldest Code of Laws in the World* (Edinburgh 1903), 48 §§229-30).

⁴⁸ CIH 2300.31-2 = Ériu 12 (1938) 42 §53 ni fuben ni imon nennac mignim ind anenacce. See also Introd. p. 12 above.

⁴⁹ CIH 45.4 = AL v 284.5-6 *foben inracus acobuir* (read *accobur*).

⁵⁰ excluding slaves, who seem to have no legal protection and are classed along with livestock, e.g. CIH 1000.30-1.

(Appendix 1 Nos. 24-25) are concerned to protect clients from violent, improvident or dishonest lords. As we have seen in chapter 3, a number of texts include safeguards designed to prevent the exploitation of persons of unsound mind. There are also — admittedly less frequently — attempts to provide legal support for the destitute. For example, the author of *Gúbretha Caratniad* holds that it is not a crime for a wandering down-and-out (*sinnach brothlaig*, lit. 'fox of a cooking-pit') to steal a small quantity of food.⁵¹ Heptad 43 stresses that a lord's grant to a destitute person (*doim*) can in no circumstances be distrained by a third party.⁵² But there is in general little tolerance for unproductive members of society. A widely quoted maxim states: 'no unproductive (lit. barren) person is entitled to a share'.⁵³ Criminals and non-observers of the law are of course frequent targets of the law-texts, and it is often stressed that by their actions they have placed themselves outside the protection of the law.

The authors of the law-texts are obviously well-informed about the topics with which they are dealing. For example, *Cáin Aicilne* gives a full account of the proper method of preparing malt from barley, which has been confirmed by modern brewers.⁵⁴

Another impressive display of expertise is the list of twenty-eight trees and shrubs in *Bretha Comaitchesa*.⁵⁵ Very few native trees are omitted, and the arrangement — on economic grounds — into four groups of seven shows an accurate knowledge of the value of each kind of tree. The description of the proper legal dimensions of fences and other field-boundaries in the same text is similarly realistic.⁵⁶

The medico-legal text *Bretha Déin Chécht*⁵⁷ displays considerable medical knowledge, especially in the list of the twelve 'doors of the soul' (§2A),⁵⁸ the seven most serious bone-breakings

⁵¹ CIH 2193.26-7 = ZCP 15 (1925) 317 §11.

⁵² CIH 40.11 = AL v 264.16.

⁵³ CIH 2292.15-6 = Ériu 12 (1938) 20 §24; CIH 1292.22 = AL iv 386.13-4 *ní áili nach seac airrainn*.

⁵⁴ CIH 481.9-30 = ZCP 14 (1923) 348. See D.A. Binchy 'Brewing in Eighth-century Ireland' in *Studies on Early Ireland: essays in honour of M.V. Duignan* ed. B.G. Scott (Belfast 1981) 3-6.

⁵⁵ CIH 78.15-79.9 = AL iv 146.18-148.2. See *Celtica* 11 (1976) 107-24.

⁵⁶ CIH 73.7-18 = AL iv 112. See D. Ó Corráin, 'Some legal references to fences and fencing in early historic Ireland', *British Archaeological Report* 116 (1983) 247-51.

⁵⁷ CIH 2305.4-2316.39 = Ériu 20 (1966) 22-48.

⁵⁸ See p. 132.

(§2B), and the classification of teeth (§34). *Bretha Nemed toísech* provides some technical information on the various processes which must be mastered by builders, coppersmiths and silversmiths.⁵⁹ The tract on restraint, *Di Chetharślicht Athgabála* lists the eight parts of a water-mill, displaying the author's understanding of this form of technology.⁶⁰

In addition to their technical knowledge, the authors of the law-texts often show great ingenuity in their treatment of legal problems. A striking example is the masterly way in which the owner's and finder's share of lost property is worked out in *Heptad 64*⁶¹ (for details see p. 123). Similarly ingenious are *Críth Gablach*'s regulations on liability for breaking an object in somebody else's house. If it is a precious object which was on the floor (where it should not have been) there is no penalty; but if it is an ordinary object, such as a tub or an article of furniture, its value must be refunded to the householder.⁶²

Sometimes, however, the authors of law-texts could justifiably be accused of overingenuity. For example, the legal concept of 'grazing-trespass' (*tairsce*) by bees gives rise to what seem to be unnecessary complications in the early Irish law of bee-keeping.⁶³ As in other law-codes, one can also find instances of unreal schematism, inconsistency, confusion, casuistry and oversight. Nonetheless, there is unquestionably a solid basis of fact underlying the Old Irish law-texts. So, although one might doubt the practical application or authenticity of a particular rule in a law-text, it must be accepted that in general the law-texts are a sound guide to early Irish legal institutions.

Case-law

Sadly, almost no case-law has survived from the period of the law-texts, so we do not have reliable accounts of actual cases to illustrate how legal theory worked out in practice. Of the few

⁵⁹CIH 2219.36-8.

⁶⁰CIH 374.19-20 = *AL* i 124.17-9. See Gearóid Mac Eóin 'The Early Irish Vocabulary of Mills and Milling' in *Studies on Early Ireland: essays in honour of M.V. Duignan* 13-9.

⁶¹CIH 55.18-59.30 = *AL* v 320.7-322.6.

⁶²CIH 780.29-31 = *CG* 221-3.

⁶³See *BB* esp. Appendix 6.

leading cases cited in the law-texts, most are obviously legendary, such as the judgements on legal entry attributed to Sencha and Brig (see p. 187). Even the case involving the Ulster king Congal Cáech — though he was undoubtedly an historical personage — has a number of unlikely features. According to *Bechbretha*, which was probably composed within a generation of Congal's death in 637 A.D.,⁶⁴ he was blinded in one eye by bees.⁶⁵ He took legal action against their owner, and was awarded a hive in compensation. This seems an extraordinarily lenient verdict, and it is noteworthy that in a later literary account of this case in *Cath Maige Rath*,⁶⁶ the Ulstermen first demanded that the eye of the beekeeper's son be put out in retribution for their king's injury. But as the beekeeper was (according to *Cath Maige Rath*) king Domnall mac Aeda meic Ainmirech of Tara this demand was resisted, thereby leading to a lasting sense of grievance on the part of Congal. Another suspicious feature of the case is the nature of the injury itself. According to modern beekeepers, the human eye-closing reflex is so fast that a bee's sting would be unlikely to penetrate to the cornea. To lose the sight of an eye from a bee-sting would therefore be a most unusual accident.⁶⁷

Probably the best-known legal decision of Irish tradition relates to the copyright of a manuscript. The story goes that Saint Columba secretly copied a gospel belonging to Saint Fintan. When Fintan discovered what had happened he claimed ownership of the copy, which Columba refused. Both men then agreed that Diarmait, king of Ireland, should act as judge (*brithem*) on the case. By analogy (*cosmailius*) with the maxim 'to every cow its calf' (*la cach mboin a boinín*),⁶⁸ Diarmait ruled that the copy belonged to Fintan, the owner of the original manuscript. Columba repudiated this verdict (described by Keatinge as a *cloainbheith* 'crooked judgement') and this was traditionally given as one of the causes of the battle of Cúil Dremne. Accounts of this judgement are found

⁶⁴BB Introd. 13.

⁶⁵CIH 449.20-26 = *BB* §§30-31.

⁶⁶Ériu 5 (1911) 234,40.

⁶⁷For discussion of such injuries, see *BB*, note to §30.

⁶⁸This maxim is included among the first utterances of Noidiu of the nine judgements in 'The Story of Noidhiu Naembreathach' (ZCP 19 (1933) 50.7 = ZCP 20 (1936) 196.24).

with minor variations in Keating's *Foras Feasa ar Éirinn*,⁶⁹ and in *Betha Colaim Chille* by Maghnus Ó Domhnaill.⁷⁰ However, there is no mention of it in earlier and more reliable sources, notably Adomnán's *Vita Sancti Columbae*, so it is very likely to be fictitious.

The same can be said of the beautiful story of Cormac Mac Airt's judgement on the trespassing sheep.⁷¹ As a young man he was approaching the gates of Tara for the first time, when he saw the steward of king Mac Con telling a woman something which caused her to weep. He enquired what was wrong, and was told that the woman's sheep had broken into the queen's woad-garden and had eaten the leaves off the plants. Mac Con had passed judgement that the woman's sheep be forfeit for their offence, and this was the cause of her distress. Cormac immediately pointed out to the steward that the judgement should have been 'one shearing for another' i.e. the woman should only have to forfeit the shearings of her sheep in recompense for their shearing of the woad-plants. When Mac Con was told of this judgement he immediately realised that he had been guilty of injustice, and handed over the kingship of Tara to Cormac. Though this tale is obviously apocryphal, it serves to illustrate the enormous importance which the early Irish attached to the concept of *fir flathemon* 'king's justice' (see p. 18).

In spite of the lack of well-authenticated case-law, the broad outline of the legal system described in the Old Irish law-texts can be confirmed from a number of independent sources. For instance, the story of Librán⁷² in Adomnán's *Vita Sancti Columbae*, written in the late 7th century, confirms the evidence of the law-texts on various legal matters, including punishment for murder, unfree service to a lord, and the duty of looking after one's parents.

External sources relating to Irish law

There are no foreign descriptions of Irish laws and customs from the period of the law-texts. The earliest detailed account of Ireland

⁶⁹ *The History of Ireland*, by Geoffrey Keating ed. Dinneen vol. 3, lines 1387-1396 (ITS vol. 9, London 1906).

⁷⁰ O'Kelleher and Schoeppler, *Betha Colaim Chille* (Chicago 1918) 178.20.

⁷¹ T. Ó Cathasaigh, *The Heroic Biography of Cormac mac Airt* (Dublin 1977) 122.85-96.

⁷² See above pp. 215, 224.

by a foreign author — that of Giraldus Cambrensis in the 12th century — gives little information on these topics. Later English sources are more fruitful, and often show how little the institutions of Irish society changed between the Old Irish period and the Flight of the Earls at the beginning of the 17th century. Thus much of the anonymous early 17th century 'Lawes of Ireland' (Huntington Library MS No. 7042)⁷³ could equally apply to the 7th or 8th century. As law of Irish origin was in use for long periods in the Isle of Man and in Scotland, the records of both these countries are important in corroborating some aspects of Irish law.⁷⁴

The evidence of Welsh law can also be useful in casting light on obscure areas of Irish law. As we have seen above (p. 231) both Irish and Welsh law stem from Common Celtic law. The surviving Welsh law-books date mainly from the 13th-14th centuries, and are thus considerably later than the Irish law-texts. Furthermore, Welsh law has been influenced to some extent by Anglo-Saxon law, Canon law, and perhaps Roman law,⁷⁵ whereas Irish law shows influence only from Canon law. In spite of these differences, Irish law-texts may sometimes be clarified and confirmed by reference to the Welsh texts, and vice versa. For example, no full account survives of the Irish system of *comar* 'co-operative ploughing', though there are frequent references to it. The Welsh texts,⁷⁶ on the other hand, contain detailed descriptions of co-operative ploughing (*cyfar*, cognate with Irish *comar*) which give some idea of how the Irish system is likely to have operated. Conversely, the Welsh law on *dadannudd* 'legal entry' becomes clearer on comparison with the Old Irish text on *tellach* (see p. 186).⁷⁷

Indo-European legal systems further afield may also confirm the factual basis of the Old Irish law-texts. Thus the text on the legal use of fasting (see p. 182) might be dismissed as fanciful were it not for the existence of similar provisions in Indian law (still practised in 19th century Nepal). It is difficult to say whether India and Ireland both inherited legal fasting from Common Indo-European times, or whether it developed independently in both societies. In either case, the Indian evidence sheds light on the sparse Irish documentation.

⁷³ This text is as yet unpublished.

⁷⁴ See esp. pp. 125, 169, 261.

⁷⁵ See the discussion on the term *priodolder* 'proprietary right to land' in Thomas Charles-Edward's forthcoming *Early Irish and Welsh Kinship*.

⁷⁶ e.g. *VC* III xxiv = *Li. Ior.* §§148-53.

⁷⁷ See the chapter on *dadannudd* in Charles-Edwards, op. cit.

CHAPTER 11

LAW-SCHOOLS

The purpose of the law-texts was clearly to instruct judges (*brithemoin*) in the theory and practice of Irish law.¹ It is reasonable to assume that there were a number of centres of legal knowledge at which such instruction could be obtained, but there is no firm evidence of their location at the period of the composition of the law-texts (7th-8th centuries). In the 9th century *Triads of Ireland*, however, there are references to the monasteries of Cloyne, Cork and Slane as legal centres.²

'Senchas Már school'

The most important collection of Old Irish law-texts is that known as the *Senchas Már* lit. 'great tradition'. It seems likely to have been put together at a law-school (or law-schools) in the territory of the Northern Féni, i.e. roughly the Northern midlands. Many of the proper names in the *Senchas Már* texts relate to this area,³ and some to the neighbouring region of Ulster.⁴ It is noteworthy, however, that the *Senchas Már* text *Bretha Comaithchesa* refers in its section on tree-damage to the *caithne* 'arbutus' (*Arbutus unedo*),⁵ a tree which now grows almost exclusively around Killarney in Co. Kerry. Botanists regard it as

¹ Thus, BB §36 (CIH 450.13) is introduced with the words *ní asu for brithemnaib i mbéchbrethaib . . .* 'it is no easier for judges in bee-judgements . . .'. The author is clearly attempting to anticipate a difficulty which a judge may be called upon to resolve in his professional career.

² Triad 12 *Fénechas Érenn: Cluain Úama*; Triad 16 *Bérlae Féne Érenn: Corcach*; Triad 21 *Brithemnas Érenn: Sláine*.

³ e.g. Temair (Tara, Co. Meath) CIH 449.26, 527.21; Loíguire mac Néill (king of Tara) CIH 226.32, 527.26; Bóand (river Boyne, Co. Meath) CIH 352.27, 528.3.

⁴ e.g. Ulaid (the Ulsterman), CIH 449.27; Congal Cáech (king of Dál nAraide and briefly of Tara) CIH 449.25; Eogan mac Durthacht (king of Fernmag, Co. Monaghan) CIH 63.10; Loch Rudraige (bay off Co. Down) CIH 354.12-3.

⁵ CIH 79.6 = AL iv 146.27. See F. Kelly 'The Old Irish tree-list' in *Celtica* 11 (1976) 107-24, esp. 118-9.

extremely unlikely that this tree would have been present in central or eastern Ireland at the time of the compilation of the *Senchas Már*, as it is rather intolerant of frost, and can only regenerate in regions where the mean January temperature is above 40°F (4.5°C). So it appears that the compilers of the *Senchas Már* — though mainly concerned with events, persons and places in and around the Northern midlands — were prepared to take into account a legal eventuality (i.e. damage to an arbutus) which was most unlikely to occur outside the South-West.

The texts of the *Senchas Már* collection had already been placed in a fixed order in the Old Irish period. This is clear from the manuscript H 3. 18 which gives quotations (with Old Irish glosses) from the *Senchas Már*, starting with the Introduction (CIH 877.4) and breaking off in the middle of *Coibnes Uisci Thairidne* (CIH 924.31). Other manuscripts — whose glosses bear little or no relation to those of H 3. 18 — follow the same order. Thus H 3. 17 provides quotations and some longer passages from the same texts as H 3. 18, starting with the Introduction (CIH 1657.10) and reaching *Bechbretha* (CIH 1916.37), the text before *Coibnes Uisci Thairidne*. Another manuscript, Rawlinson B 506, is particularly important because it extends further than H 3. 18 and H 3. 17, providing information on the order of texts in the least well preserved part of the *Senchas Már*, the last third (see below).

In the later law-schools, the *Senchas Már* was divided into three parts: *trian toisech* (or *toisenach*) 'first third', *trian medónach* 'middle third', and *trian déidenach* 'last third', and this division may perhaps go back to the Old Irish period.⁶ There is good evidence that the first third ended with *Córus Béscnai*,⁷ and that the middle third began with the *Heptads*.⁸ There is much more uncertainty about where the break occurred between the middle and last third. Thurneysen very tentatively suggests that *Bretha im Gata*

⁶ The arrangement of ideas in groups of three is very common in early Irish literature, e.g. *The Triads of Ireland* (Appendix 2 No. 3).

⁷ In H 3. 18 the quotations from *Córus Béscnai* are followed by the note *Finim don trian taoisenach* 'end of the first third' (CIH 905c). In H 3. 17 a phrase from *Córus Béscnai* is accompanied by the marginal note *trian .t. (= toisech) senchusa* 'the first third of the *Senchas*' (CIH 2037i).

⁸ In H 3. 17 four Heptads are accompanied by the marginal note *trian medónach senchusa so* 'this is the middle third of the *Senchas*' (CIH 1976^a, 1997^b, 2000^b, 2007^c; cf. 2194.27).

was the last text of the middle third.⁹

The *Senchas Már* might be reconstructed as follows:

First third: Introduction (Appendix 1, No. 1), *Di Chetharslicht Athgabála* (No. 66), *Di Gnímaib Gíall* (No. 65), *Cáin Íarraith* (No. 19), *Cáin Sóerraith* (No. 23), *Cáin Aicillne* (No. 24), *Cáin Lánamna* (No. 17), *Córus Béscnai* (No. 10).

Middle third: *Heptads* (No. 3), *Bretha Comaithchesa* (No. 41), *Din Techtagad* (No. 68), Kinship poem (No. 22), *Di Astud Chirt 7 Dlidig* (No. 4), *Do Tuaslucadh Rudradh* (No. 56), *Fuidir*-text (No. 26), *D'Fodlaib Cineoil Tuaithi* (No. 20), *Di Dligiud Raith 7 Somaíne la Flaith* (No. 25), *Díre*-text (No. 9), *Bechbretha* (No. 44), *Coibnes Uisci Thairidne* (No. 45), *Bretha im Fuillema Gell* (No. 60), *Bretha im Gata* (No. 35).

Last third: *Sellach*-text (No. 36), *Maccslechta* (No. 18), *Catslechta* (No. 49), *Consléchta* (No. 48), *Osbretha* (No. 51), *Cairde*-text (No. 62), *Bretha Crólige* (No. 29), *Bretha Déin Chécht* (No. 30), *Aer*-text (No. 37).

The reconstruction of the last third is based mainly on the evidence of Rawlinson B 506 (CIH 107.9-118.13) which provides Middle Irish commentary with occasional quotations from the texts. Some sections of commentary seem to be out of order in this manuscript: thus two paragraphs occur at CIH 110.22-36 between *Catslechta* and *Consléchta* which may belong to *Maccslechta*.¹⁰ Elsewhere *Consléchta* follows directly after *Catslechta*.¹¹ Another section of Rawlinson B 506 commentary (CIH 116.24-35) deals mainly with the case of a client who absconds from his lord, and therefore may have originally belonged to one of the other texts on clientship (Appendix 1 Nos. 23-25). The original position of the *Sellach*-text is also uncertain, as it does not appear in the Rawlinson B 506 series. A version of this text is found interpolated in *Di Chetharslicht Athgabála* in the manuscript Harley 432 (CIH 404.7-405.12).¹² A shortened version is found in H 3. 17 (CIH

⁹In his first article on the composition of the *Senchas Már* (ZCP 16 (1927) 167-96), Thurneysen put *Di Astud Chirt 7 Dlidig* as the last text of the middle third. He revised this view, however, in the same volume of ZCP (ibid. 406-7) and in ZCP 18 (1930) 356-62.

¹⁰See Thurneysen, ZCP 18 (1930) 361.

¹¹CIH 1550.15-1551.12.

¹²Note that the O.Ir. excerptor and glossator of *Di Chetharslicht Athgabála* in H 3. 18 includes no quotations from the *Sellach*-text. (One might expect such quotations to occur after CIH 895.40). This suggests — though it does not prove — that the *Sellach*-text was interpolated in *Di Chetharslicht Athgabála* after the O.Ir. period.

2033.31-9) with the marginal note *trian deidheanach senchusa so* ‘this is the last third of the *Senchas*’. So all one can say is that the *Sellach*-text is likely to have belonged originally to the last third.

In his introduction to his edition of *Bretha Déin Chécht*, Binchy is doubtful whether this text belonged to the *Senchas Már*.¹³ However, the evidence of Rawlinson B 506 indicates that both *Bretha Crólige* and *Bretha Déin Chécht* were part of the last third. Thus the Rawlinson commentary at CIH 116.36-117.7 is closely related to the commentary on *Bretha Crólige* §41 (CIH 2297.28-35). It is followed by commentary on *Bretha Déin Chécht* (CIH 117.8-29) which includes one direct quotation from the text (CIH 117.14 = 2308.35).

Even allowing for a detailed treatment of each topic in the texts assigned to the last third in the above list, it would still seem considerably shorter than the first and middle thirds. It is therefore probable that this third originally contained further texts. For example an unidentified fragment at CIH 1943.9-16¹⁴ (= 1142.28-30) has the marginal note *trian deidhenac .s. (= senchusa)* so ‘this is [from] the last third of the *Senchas*’. It deals with the taking of an oath to deny an offence.

The order of texts in the *Senchas Már* and their division into thirds bear little relation to subject-matter, though a few texts dealing with similar topics occur side by side, e.g. *Cáin Sóerraith* and *Cáin Aicillne* (on free and base clientship respectively) in the first third, *Bechbretha* and *Coibnes Uisci Thairidne* (on two special cases of the law of neighbourhood)¹⁵ in the middle third, and *Catslechta* and *Consléchta* (on cats and dogs) in the last third. The texts of the *Senchas Már* range in date from the 7th to the 8th centuries, and were probably brought together before the middle of the 8th century. It is possible that the scholiast who collected them was also responsible for the Introduction. In it he refers to the four *cána* (i.e. *Cáin Íarraith*, *Cáin Sóerraith*, *Cáin Aicillne*, *Cáin Lánamnussa téchta* (= *Cáin Lánamna*))¹⁶ and quotes from *Córus*

¹³Ériu 20 (1966) 2.

¹⁴ed. without translation, Thurneysen, ZCP 18 (1930) 358.

¹⁵Both texts are probably by the same author (Binchy, Ériu 17 (1955) 54).

¹⁶CIH 350.13-4 = AL i 40.21-3. It is likely that these four texts are by the same author, or at least group of authors. Thus *Cáin Lánamna* refers to *Cáin Sóerraith* and *Cáin Aicillne* with the words *acht ni roraidsem i ndligid flatha* ‘except what we have discussed in relation to the entitlement of a lord’ (CIH 502.8 = SEIL 2 §1).

*Béscnai*¹⁷ of the first third, and from *Di Astud Chirt 7 Dligid*¹⁸ of the middle third.

'Nemed school'

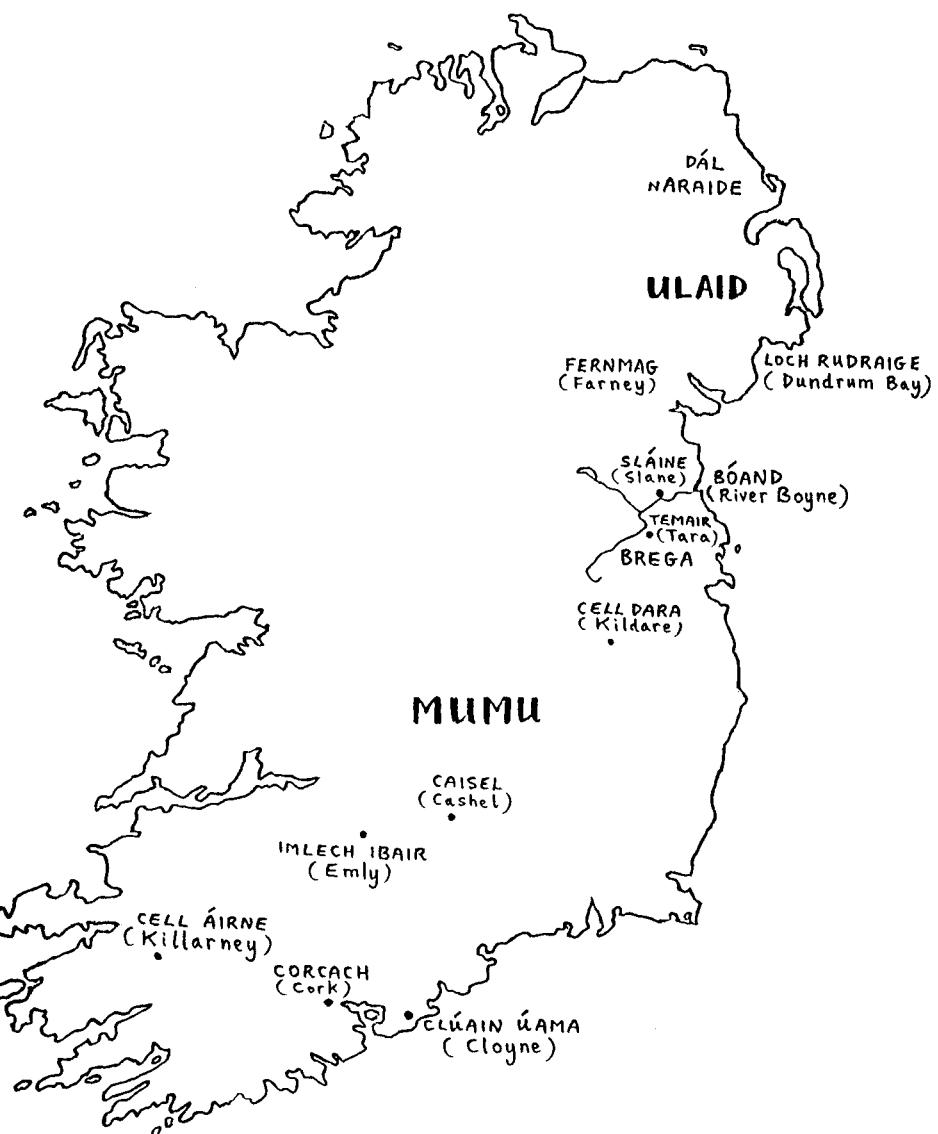
Binchy suggests that another group of texts comes from a 'poetico-legal' school.¹⁹ He refers to this group as the *Nemed*²⁰ collection of texts, and points to their preoccupation with the rights and duties of 'men of art', especially poets. These texts include the text on status *Uraicecht Becc*,²¹ the oldest recension of *Cóic Conara Fugill* 'the five paths of judgement',²² the text on accidents *Bretha Étgid*,²³ and the two *Bretha Nemed* texts (Appendix 1 Nos. 14-15). There is some evidence to connect this *Nemed* school with the territory of *Mumu* 'Munster'. Thus *Uraicecht Becc* refers to the pre-eminence of the king of Munster,²⁴ and also to the Munster monasteries of Cork (*Corcach*) and Emly (*Imlech Ibair*).²⁵

Other schools

Some law-texts do not seem to fit into either the postulated *Senchas Már* or *Nemed* schools, and may belong to other schools. For instance, in his style and presentation the author of *Críth Gablach* exhibits a quite different approach to legal composition than is found in other surviving texts. It is noteworthy that a later commentator at *CIH* 2121.27-9 distinguishes what the fine for a particular offence is in *Críth Gablach*, the *Senchas* [Már] and *Cáin Fuithirbe* (Appendix 1 No. 39). *Críth Gablach* was clearly known to the author of *Bretha Nemed toisech* (Appendix 1 No. 14) as he refers to its discussion of the lay grades (*CIH* 2213.30).

Where *Críth Gablach* is likely to have been written is difficult to say, but the references to the Saxon raid on Brega (in modern Cos.

MAP 1



Map showing place-names referred to in discussion on pre-Norman law-schools.

¹⁷ *CIH* 350.26-351.19 = 522.28-35.

¹⁸ *CIH* 352.10-2 = 234.4-8.

¹⁹ *Ériu* 17 (1955) 4-6; 18 (1958) 44-54.

²⁰ For the term *nemed* 'holy, privileged', see p. 9.

²¹ *CIH* 1590-1618 = *AL* v 2-114.

²² *CIH* 2200-2203 = *CCF* 15-26.

²³ *CIH* 250.1-337.36 = *AL* iii 82-546.

²⁴ *CIH* 1617.33 = *AL* v 110.16.

²⁵ *CIH* 1618.8 = *AL* v 112.2.

Meath and Louth) and to the Law of Adomnán point to a Meath/South Ulster origin.²⁶ On the other hand, there is also a reference to Caisel (in modern Co. Tipperary).²⁷

Another important text which stands apart from the rest is *Gúbretha Caratniad* 'the false judgements of Caratnia' (Appendix 1 No. 5).

Annalistic references to lawyers and law-schools

The annals provide no information about lawyers or law-schools during the main period of the compilation of the law-texts (7th-8th centuries). The *Annals of Ulster* (s.a. 438) contain the entry *Senchus mór do scribunn* 'the *Senchas Már* was written' but this is obviously a later insertion, intended to link the compilation of the *Senchas Már* with Saint Patrick, whose arrival in Ireland is recorded s.a. 432. According to the *Senchas Már* text *Córus Béscnai*, the Irish people were governed by the law of nature (*recht n-aicnid*) until the coming of Patrick.²⁸ The poet Dubthach macu Lugair is said to have supplied the details of this law to Patrick who eliminated from it all those elements which were contrary to Christian doctrine.²⁹ Consequently, the Irish people were thereafter subject to two laws: the law of nature and the law of the letter (*recht litre*), i.e. scriptural law.³⁰ The tradition of Patrick's involvement in the compilation of the *Senchas Már* is further developed in the later Introduction (Appendix 1 No. 2).

The earliest annalistic references to persons described as *brithem* or *iudex* date from the beginning of the 9th century. The *Annals of Ulster* record the death in 801 (= 802) of Ailill son of Cormacc, *abbas Slane*,³¹ *sapiens et iudex optimus* 'abbot of Slane, a learned man and an excellent judge'. Four years later the same annals record the death of a judge with no ecclesiastical connection: *Connmach, iudex nepotum Briuin, moritur* 'Connmach, judge of the Uí Briúin, dies'. These two judges can be taken as examples of the two types of judge distinguished at *CIH* 1147.17-21 (see p. 55).

²⁶ *CG* p. xiv.

²⁷ *CIH* 569.14 = *CG* 520.

²⁸ *CIH* 527.14-6 = *AL* iii 26.28-30.

²⁹ *CIH* 528.27-529.3 = *AL* iii 30.30-3.

³⁰ *CIH* 527.16-7 = *AL* iii 28.1-3.

³¹ cf. *Triad 21 Brithemnas Érenn: Sláine* 'The jurisprudence of Ireland: Slane'.

Ailill is therefore, presumably, a *brithem eclaso* who deals with matters affecting the Church, and Connmach is a *brithem túaithe* who deals with matters affecting the laity.³² Of the fifteen judges or lawyers who are mentioned in the annals up to 1200 A.D. all but four seem to have held ecclesiastical office, often very elevated.³³

The annals give no information on the work of the law-schools during this period (9th-12th centuries). But we know from linguistic evidence that the composition of explanatory glosses and commentaries on the law-texts had already started in the 9th century law-schools. As we have seen, the manuscript H 3. 18 contains glosses on the *Senchas Már* (*CIH* 877.4-924.31), which can be dated to the 9th century.³⁴ Occasionally, this glossator misunderstands the text which he is interpreting.³⁵ By the end of the 12th century it is clear that many law-texts had been provided with an apparatus of gloss and commentary. Of the two law-texts preserved in the early 12th century manuscript Rawlinson B 502, *Gúbretha Caratniad* (*CIH* 2192-2199) is quite heavily glossed, and *Cóic Conara Fugill* (*CIH* 2200-2203) is accompanied by both glosses and commentary.

The manuscripts provide no clue as to the identity of those who wrote the legal glosses and commentaries of this period. However, at *CIH* 965.39-966.1 a commentator discusses the *cno[e] gnae* ('beautiful nuts') treated as valuables in the text on pledge-interests *Bretha im Fuillema Gell*.³⁶ He suggests that these are nuts which grow on a tree 'in the Eastern world', and which are left to harden in the ground.³⁷ He then goes on to say that they have been identified with the mythological *cna imais* ('nuts of inspiration')³⁸ by Ferdomain, bishop of Kildare and master of wisdom and

³² Compare the distinction at *IK* bk. 21 ch. 1 between judges in ecclesiastical and in secular cases.

³³ See D. Ó Corráin 'Nationality and Kingship in pre-Norman Ireland' in T.W. Moody ed. *Nationality and the pursuit of national independence* (Belfast 1978) 14-5.

³⁴ Binchy, *Celtica* 10 (1973) 72. Thurneysen places the H 3. 18 glosses in the 8th century (*IR* 60) but if there was really such a short gap between the composition of the *Senchas Már* texts and their H 3. 18 glosses, it is hard to explain why the glossator should occasionally misunderstand the texts. See next note.

³⁵ For examples, see *BB* Introd. 19.

³⁶ *CIH* 472.16, 22-3 = *AL* v 406.22; 408.12-3.

³⁷ It is probable that the *cnoe gnáe* are the nuts of various tropical trees (especially *Entada gigas*) which are brought to the coasts of Ireland from the West Indies by the North Atlantic Drift.

³⁸ For inspiration deriving from hazel-nuts, see O'Rahilly, *EIHM* 322-3; Gwynn, *Ériu* 13 (1942) 26.17-23; Breatnach, *Ériu* 32 (1981) 66 §11.

knowledge, and by Lorcán Ua Michid, chief master in native law (*ardollam in feinechuis*). The latter is not mentioned elsewhere, but the former is doubtless the same person as Ferdommach, bishop of Kildare, whose death in 1101 is recorded in the *Annals of Ulster*. This reference is significant in that it shows that prominent 11th century³⁹ scholars — clerical and lay — were engaged in discussion on the meaning of a phrase in an Old Irish law-text.

As far as is known, little original material was written during this period — the emphasis of the schools was on the interpretation and elaboration of the existing Old Irish texts, rather than on the composition of new or revised treatments of legal topics. However, linguistic and other evidence shows that a few law-texts were composed after 900 A.D. Thus 'the distribution of *cro* and *dibad*' (Appendix 1 No. 64) was probably written in the 10th century. *Urcuite Bretheman* (No. 12) and Recension H of *Cóic Conara Fugill* (No. 69) seem somewhat later, and are perhaps of 11th century date.

Post-Norman law-schools

After the Norman invasion of 1169, clerical involvement in Irish law diminished, and law increasingly became the preserve of laymen from a small number of legal families. One result of the decrease in clerical involvement was a decline in the standard of Latin in the law-schools. Even the best-known Biblical quotations⁴⁰ are liable to appear in a severely mangled form, e.g. *CIH* 1303.29-31 *oculus pro oculo, deansa pro dindti, anima pro ananama, damnam pro damno* for Exodus 21: 23 *oculus pro oculo, dens pro dente, anima pro anima, damnum pro damno* 'an eye for an eye, a tooth for a tooth, a life for a life, injury for injury'. Nonetheless, Campion (*History of Ireland*, 1571) was impressed by the fluency with which Latin was spoken in both medical and legal schools: 'Without either precepte or observation of congruity they speake Latine like a vulgar language, learned in their common Schools of Leach-craft and Law, whereat they begin Children, and hold on sixteene or twenty yeares conning by roate the Aphorismes of Hypocrates and the Civil Institutions, and a few other parings of those two faculties. I have

³⁹Lorcán need not necessarily be a contemporary of Ferdomain (-nach) but this seems likely.

⁴⁰Liam Breathnach has collected the Latin quotations from *CIH* in *Peritia* 3 (1984) 431-6.

seen them where they kept Schoole, ten in some one chamber, grovelling upon couches of straw, their Bookes at their noses, themselves lying flatte prostrate, and so to chaunte out their lessons by preece-meale, being the most part lustie fellowes of twenty-five yeaeres and upwards'.⁴¹ Whatever about the quality of their Latin, these law-schools maintained quite a good knowledge of Old Irish, so that even archaic forms are usually correctly identified by the glossators.⁴²

The work of transmitting and interpreting the Old Irish law-texts was carried on energetically in the later schools, with the result that most texts in 14th-16th century legal MSS are accompanied by a mass of gloss and commentary. On the other hand, there is little evidence of activity in the area of legal innovation. We have no new treatments of legal topics from this period, and the only known work of synthesis — a 14th century legal manual by Gilla na Naomh mac Duinn tsleibhi mic Aodhagain⁴³ — is basically a précis of Old Irish law-texts.⁴⁴ He also composed an address in verse containing general advice to a student of law,⁴⁵ in which he emphasises in particular the importance of a good knowledge of the wisdom-texts.

The later glosses and — to a lesser extent — commentaries provide considerable assistance towards our understanding of early Irish law. Unlike modern scholars, those who composed them belonged to the same legal tradition as did the authors of the 7th-8th century law-texts. They also had access to legal material now lost. For example, in his glossary⁴⁶ the 16th century lawyer Domnall O'Davoren provides tantalising quotations from many

⁴¹quoted *Sources* 35.

⁴²For example, the original Heptad 21 (*AL* v 198.7) is fairly certain to have had the form *conden-anach* 'so that it saves her', as the MSS have *condinanaic* *CIH* 21.23; *codenug* 546.6 etc. The gloss *co naincend . . . hi* at *CIH* 21.25-6 etc. shows acquaintance with the archaic 3 sg. fem. Class C infixed pronoun *-de(n)-*.

⁴³*CIH* 691.1-699.4.

⁴⁴For example, his treatment of accidental injury (*CIH* 695.20-31) is based entirely on the section on *blái* 'immunity from liability' in *CIH* 263.34-291.5 = *AL* iii 166.17-296.18.

⁴⁵*CIH* 1584.1-1585.8. This poem is edited by Máirín Ní Dhonnchadha in *Sages, Saints and Storytellers: Celtic studies in honour of Professor James Carney* ed. Breathnach, McCone and Ó Corráin (forthcoming). Gilla na Naomh also composed a summary in verse of the law-text on distraint *Di Chethar-slicht Athgabála* (*CIH* 871.1-874.34).

⁴⁶ed. Stokes, *ACL* ii 197-485 = *CIH* 1466.11-1531.24.

law-texts which no longer survive. But it must be emphasised that glosses and commentaries sometimes contain misrepresentations of the law of the Old Irish texts, as well as irrelevancies and unreal distinctions.⁴⁷ For example, in *Bretha Crólige* §47 the Old Irish text states that an *ócaire* or *bóaire* who owns more property than the minimum required of his rank is entitled to proportionately more food when on sick-maintenance.⁴⁸ The glossator concludes that this must refer to a *briugu* 'hospitaller' (see p. 36) though §12 of the text lists the *briugu* among the twelve categories of man who are *not* brought away on sick-maintenance, but instead receive a payment to cover their nursing expenses.

As an almost comical example of an unreal distinction, one could cite the *Bretha Déin Chécht* commentary which distinguishes between the fines for a scratching injury inflicted by a sane castaway (*murchoirthé codnach*) and by a half-sane castaway (*murchoirthé lethcuinn 7 lethcéille*).⁴⁹ An even more extreme case is the *Di Astud Chor* commentary (CIH 989.11-6)⁵⁰ which distinguishes between a limitation period before a limitation period (*iubaile ría niubaile*), a limitation period after a limitation period (*iubaile iar niubaile*), the limitation period of the limitation periods (*iubaile na niubaile*), and the limitation period of the limitation period of the limitation periods (*iubaile iubaile na niubaile*)! It would be difficult to argue that such recondite distinctions could ever have had any direct relevance to practical law. They must, therefore, be regarded as ingenious academic exercises, solely for internal consumption in the schools, where they presumably helped to develop the forensic skills of aspiring lawyers.

In general, I would conclude that the evidence of the glosses and commentaries must be treated with respect — but also with caution.

Mac Aodhagáin

From the evidence both of the annals and of the surviving legal manuscripts it is clear that the MacEgan⁵¹ (*Mac Aodhagáin*)

⁴⁷ For a detailed appraisal of the glosses and commentary on a particular law-text (*Bechbretha*), see BB 14-24.

⁴⁸ CIH 2299.18-21 = *Ériu* 12 (1938) 38.

⁴⁹ CIH 2308.20-9 = *Ériu* 20 (1966) 28 §12.

⁵⁰ This passage is edited and translated under the heading 'commentary to §58' at the end of Neil McLeod's *Early Irish Contract Law*.

⁵¹ For information on the MacEgan family, see Martin J. Blake, 'Two Irish Breton scripts: with notes on the MacEgan Family' in the *Journal of the Galway*

family was the most active and influential of the post-Norman legal families. There are far more references to MacEgans than to any other legal family in the annals, and most surviving legal manuscripts have a MacEgan connection. They had schools in Ormond (now Co. Tipperary), and at Duniry, Park and other locations in Co. Galway. Some important non-legal manuscripts were also produced at MacEgan schools, notably the mainly religious *Leabhar Breac* i.e. *Leabhar Mór Duín Daighre* 'the great book of Duniry' compiled c. 1390-1410.

As well as being academic lawyers, the MacEgans were widely involved in legal practice.⁵² Between the 14th and 16th centuries, MacEgans are known to have acted as lawyers for most of the ruling families of western and central Ireland, including MacCarthy More of Desmond,⁵³ Butler of Ormond,⁵⁴ O'Kennedy of Ormond,⁵⁵ Burke of Clanricard,⁵⁶ O'Connor of Offaly,⁵⁷ Mageoghegan of Keneleagh,⁵⁸ O'Farrell of Annaly,⁵⁹ O'Connor Roe,⁶⁰ O'Conor

Archaeological and Historical Society 6 (1909) 1-8; T. B. Costello, 'The ancient law school of Park' *ibid.* 19 (1940) 89-100; Joseph J. Egan and Mary Joan Egan, *History of Clan Egan* (published for the Irish American Cultural Institute, Michigan 1979); Caitilin Ni Maol-Chroíin, 'Geinealaigh Clainne Aodhagáin A.D. 1400-1500' in *Measgra i gcuimhne Mhichil Uí Chléirigh* ed. S. O'Brien (Dublin 1944) 132-9.

⁵² Note the distinction in Campion's *History of Ireland* (1571) between these two aspects of the legal profession. Having described the law-schools (quoted above p. 250) he proceeds 'Other lawyers they have, liable to certayne families which after the custome of the country determyn and judge causes. Thes consider of wronges offered and receyved amonege their neigboures. Be it murder or felonye or trespass, all is redeemed by composition (excepte the grudge of parties seeke revenge). And the tyme they have to spare from spoyling or proying they lightly bestowe in parling abowt suche matters. The *Breighon* (so they call this kynde of lawyer) sittethe him downe on a bancke, the lordes and gentlemen at variaunce rounde about hym and then they proceede' (quoted MacNiocall, *IJ* 2 (1967) 299 and Kenney, *Sources* 35-6).

⁵³ *PRIA* 36 C (1921-4) 96-7.

⁵⁴ In *AFM* s.a. 1601 (p. 2272) the death is recorded of Cairpre Ó mac Cairpre mic Aedacáin 'who was standard-bearer to the son of the Earl of Ormond'. In a juror's report of 1537 Donoughe Makhewgan (= Donnchadh Mac Aodhagáin) is included among the brehons acting in Kilkenny (*Gael. Jnl.* 8 (1897-8) 74).

⁵⁵ *Gael. Jnl.* 8, 86-90.

⁵⁶ *AC* s.a. 1438 §3.

⁵⁷ *AC* s.a. 1422 §9.

⁵⁸ *ibid.* cf. *BM Cat.* i 152.

⁵⁹ *AFM* s.a. 1393.

⁶⁰ *ibid.*

Don,⁶¹ O'Rourke of Brefny,⁶² O'Connor Sligo,⁶³ O'Dowd of Tireragh,⁶⁴ and Barret of Tirawley.⁶⁵ The fact that the Butlers, Burkes and Barrets employed native lawyers shows the extent to which Irish law was used by the Anglo-Norman lords of this period. The Statute of Kilkenny of 1366 prohibited the use by the colonists of the law of the march and of the brehon (*la ley de merche et de brethan*),⁶⁶ the former apparently being an amalgam of Irish and English law. Such prohibitions were ineffective, however, and in some colonised areas English law seems to have been totally ousted. Thus in 1476 the common law was not in use in Co. Waterford, 'but only the wicked and damnable law called Brehon law'.⁶⁷ Lord Chancellor Gerrard's *Notes of his Report on Ireland* (1577-8), quoting earlier records, speak of the adoption of Irish laws and customs by 'Englishe degenerates' who 'imbrace rather Irishe braghan lawes than sweete governement by justice'.⁶⁸

Mac Flannchadha

Next to the MacEgans, the most prominent legal families in the annals are the MacClancies (*Mac Flannchadha*) and the O'Dorans (*Ua Deoráin*, *Ua Deoradháin*). The earliest annalistic reference to a MacClancy is in the *Annals of the Four Masters* s.a. 1482 where the death is recorded of Muirchertach Mac Flannchadha, described as *adbar ollaman Tuadmuman* 'potential [legal] expert of Thomond'. The MacClancies are associated with the O'Briens of Thomond,⁶⁹ the Butlers of Ormond,⁷⁰ the Powers of Waterford,⁷¹ and the Fitzgeralds of Desmond.⁷²

⁶¹ AC s.a. 1473 §40.

⁶² AC s.a. 1390 §11.

⁶³ In *AFM* s.a. 1378 Tadhg mac Aedhagáin is described as *ollam breitheman lochtair Connacht* 'chief judge of Lower Connacht'. His main patron was presumably O'Connor Sligo.

⁶⁴ AC s.a. 1399 §4.

⁶⁵ *ibid.*

⁶⁶ *Anal. Hib.* 2 (1931) 270.

⁶⁷ K. Nicholls, *Gaelic and Gaelicized Ireland in the Middle Ages* (Dublin 1972) 48.

⁶⁸ *Anal. Hib.* 2, 96.

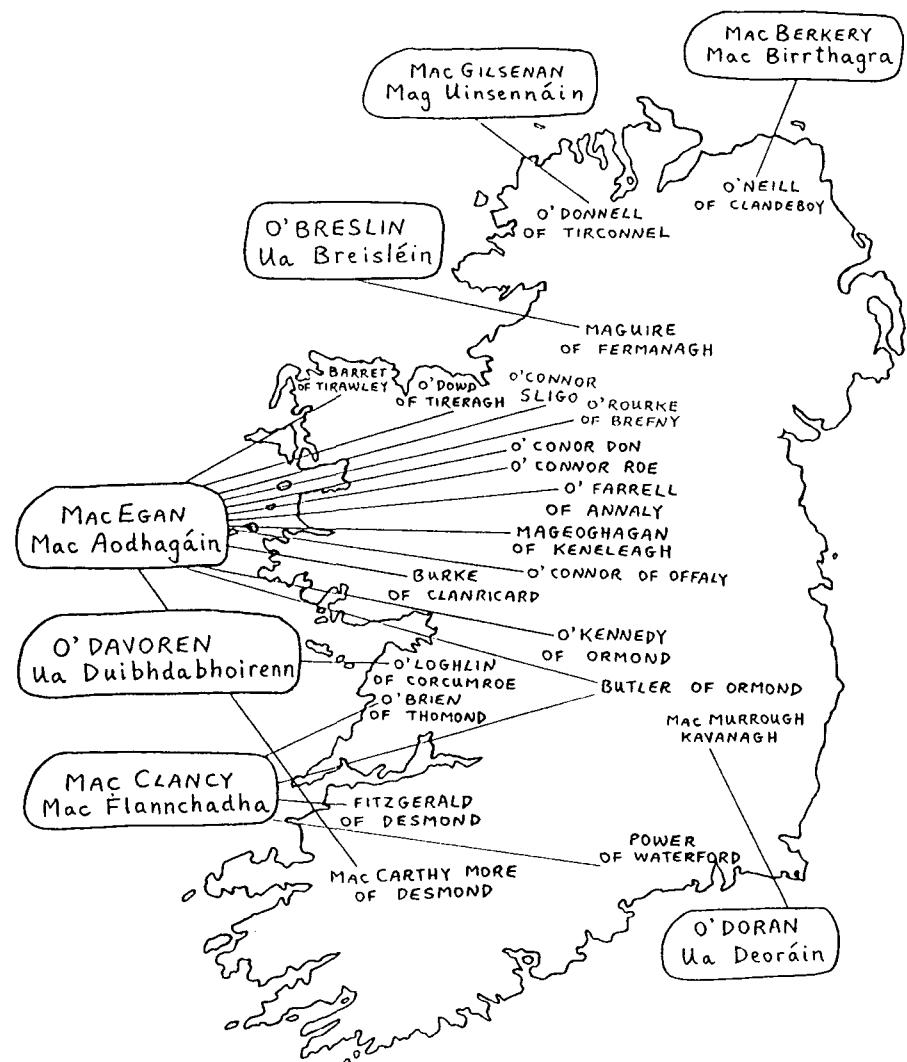
⁶⁹ e.g. *AFM* s.a. 1482, 1492, 1576.

⁷⁰ Nicholls, op. cit. 48; cf. *Gael. Jnl.* 8 (1897-8) 75.

⁷¹ A jury in Waterford complains in 1537 that Lady Katharine, widow of Lord Power, had ordained an Irish judge called Shane McClaunaghe (= Seán Mac Flannchadha). Lady Katharine was a Butler. (*Gael. Jnl.* 8 (1897-8) 75; *PRIA* 36 C (1921-24) 114-5).

⁷² *AFM* s.a. 1578 *Sean Mac Flannchadha ollam larla Desmumhan le breithemhnuis d'ecc.*

MAP 2



Map showing the principal legal families and their employers, 14th-16th centuries.

The MacClancies did not confine themselves to law: the *Annals of the Four Masters* describe Conchobhar Mac Flannchadha on his death in 1483 as 'an excellent sage of literature and poetry', and other MacClancies are known to have had commercial interests. Thus, these annals record the death in 1575 of Aodh Mac Flannchadha, who was a teacher of law and poetry, and also a buyer of wine. The same annals record in the next year the death of Baothgalach óc Mac Flannchadha, who is described as 'chief lawyer of the Dalcassians, and the owner of a general guest-house'. Judging by the surviving legal manuscripts (which admittedly must be only a small fraction of what was written in the post-Norman law-schools) it would seem that the MacClancies did not play a large part in the transcription of the Old Irish law-texts and associated material. The extant documents associated with the MacClancies are mostly English-style deeds relating to various Clare families.⁷³ Unlike the glosses and commentary being copied and composed in contemporary law-schools, such documents contain a lot of legal terminology and ideas of Anglo-Norman or English origin.⁷⁴ For example, two deeds⁷⁵ written by MacClancies at Rosmanagher, Co. Clare, in 1548 use the loan-word *eighre* 'heir' (from Anglo-Norman *eir*)⁷⁶ rather than the native term *comharba*.

Ua Deoráin

The O'Dorans of Leinster are linked with four important legal or partly legal manuscripts. H 3. 18 contains the record of a decision on a Westmeath land dispute given by four O'Doran judges in 1561 (*CIH* 1016.1-38).⁷⁷ A single folio in Egerton 90 (*CIH* 1636.9-31)⁷⁸ is

⁷³ A number of the deeds published by Hardiman in *Ancient Irish Deeds and Writings* (Dublin 1826) were drawn up or witnessed by a MacClancy, e.g. xvii, xviii, xix, xxiii, xxiv.

⁷⁴ Considering that Anglo-Norman or English law was in force in parts of Ireland since the 12th century, it is remarkable how little of its terminology had penetrated into the law-schools even as late as the 16th century. In *CIH* I have noted *goiste* (*CIH* 329.8) from OE *godsbibb* 'godparent', *baránta* (*CIH* 693.30; 1276.10) from AN *warantie* 'warrant, guarantor', and *seimiscal* (*CIH* 691.29) from AN *senescal* 'seneschal, steward'. *Finné* 'jury' (*fine* *CIH* 696.20) is probably from AN *visné*: see R. A. Breathnach, *Eigse* 18 (1980-81) 107-9, and G. Mac Niocaill, 'The Interaction of Laws', in *The English in Medieval Ireland* (ed. J. Lydon, Dublin 1984) 105-17.

⁷⁵ Hardiman op. cit. xxiii-xxiv (= Egerton Charters 98-9, BM Cat. i 155-6).

⁷⁶ Risk, *EC* 14 (1974-5) 79.

⁷⁷ TCD Cat. 150.

⁷⁸ BM Cat. i 78 (4).

stated by the scribe to have been copied from a book of Dáibí Ua Deoráin. At the bottom of cols. 192-93 of the mainly legal composite manuscript H 3. 17⁷⁹ the scribe records that a particular quaternion (i.e. a gathering of four sheets of parchment) was begun in lower Leinster, presumably at an O'Doran school. At the top of col. 224 the same scribe states that he took a quatrain (*CIH* 1797.10-1) from a book of Émann Ua Deoráin. Section A of the legal manuscript 23 Q 6⁸⁰ comes from the MacEgan school at Duniry (Dún Daighre), but one of the scribes is an O'Doran who contributes a colophon 'Misi Gaibrial O Deoradhain . . . anno domini 1575'. Section B is clearly from an O'Doran manuscript; it contains references to various scribes (including at least two O'Dorans) who all seem to be working for Cairbre mac Domnaill Ó Deoráin.

In the annals, the O'Dorans figure mainly as lawyers to the MacMurrough Kavanaghs of Leinster.⁸¹ Their legal authority was recognised by the English administration: in 1559 the Lord Chancellor was ordered to resolve a boundary dispute between the Baron of Upper Ossory and Lord Mountgarret with the assistance of four O'Doran brehons.⁸²

Ua Dubhdabhoirenn

The law-school of the O'Davorens (Ua Dubhdabhoirenn) in the Burren, Co. Clare,⁸³ was of great importance for the preservation of Old Irish law-texts. The O'Davorens were a relatively minor legal family, and seem mainly to have acted as lawyers in the small territory of Corcumroe.⁸⁴ Nonetheless, they clearly had an extensive collection of early legal texts, and produced one of the most important Irish legal manuscripts, now called Egerton 88.⁸⁵

⁷⁹ TCD Cat. 125, 138.

⁸⁰ RIA Cat. facs. xxvii 3440-44.

⁸¹ e.g. AC s.a. 1404 §30 *Uilliam .h. Deoradáin ollam bretheman na Caemanach mortuus est.*

⁸² Nicholls, op. cit. 50.

⁸³ The ruins of an O'Davoren school can still be seen at Cahermacnaghten (Cathair mic Neachtain). For an account of the family, see George U. Macnamara, 'The O'Davorens of Cahermacnaghten, Burren, Co. Clare' in *North Munster Archaeological Society Journal* 2 (1912-13) 63-93, 149-64, 194-201.

⁸⁴ e.g. AC s.a. 1364 §8 *Gilla na Naem .h. Duib da Borenn ollam Corcumruadh re brethennus do ec.*

⁸⁵ CIH 1266-1531.

This manuscript was compiled by Domnall O'Davoren and his pupils between 1564 and 1569. It contains a variety of legal material, much of which is not preserved elsewhere. It also contains an invaluable glossary, which gives quotations mainly from law-texts, but also from some non-legal texts, in particular the 8th century *Féilire Óengusso*.⁸⁶

The abundant marginal comments of Egerton 88 give a vivid insight into the life and general atmosphere of a 16th century law-school. The O'Davorens clearly took their work seriously. At the end of one text⁸⁷ Domnall O'Davoren remarks that it had been culled (from various unnamed sources) 'with the same care as would be used in the preparation of the Host', though he acknowledges that it is defective at one point. In a marginal entry⁸⁸ he apologises for the excessive brevity of his commentary on invalid evidence, and in another⁸⁹ he blames the defects of his text on the exemplar, claiming that he had merely followed 'the track of the pen'. Elsewhere he fears that his discussion on honour-price may mislead subsequent scholiasts, expressing his apprehension in a surgical metaphor 'some-one will cut out the testicle instead of the gall-stone'.⁹⁰

Domnall was evidently quite a hard task-master, and his pupils were in the habit of voicing their complaints — usually in a light-hearted manner — on the margins of the manuscript. One anonymous pupil accuses Domnall of making him do so much work that the week seemed to have two Thursdays.⁹¹ There are frequent complaints about the quality of the pens, ink and vellum,⁹² and also references to cold, fatigue and lack of food.⁹³ A scribe named Aedh laments that Domnall is out harvesting while he is slaving away for him in the law-school of Park (Co. Galway).⁹⁴ However, in spite of such complaints, Domnall seems to have been generally popular with his pupils. One of them writes 'By God, the owner of this book is dear to me'⁹⁵ referring to Domnall.

⁸⁶ Stokes, *The Martyrology of Oengus the Culdee* (London 1905, repr. Dublin 1984).

⁸⁷ quoted by O'Grady *BM Cat.* i 116 (23).

⁸⁸ *ibid.* 126 (65).

⁸⁹ *ibid.* 139.

⁹⁰ *ibid.* 113 (16).

⁹¹ *ibid.* 110 (6).

⁹² *ibid.* 120 (35), 132 (88).

⁹³ *ibid.* 134 (98).

⁹⁴ *ibid.* 128 (73).

⁹⁵ *ibid.* 129 (80).

The O'Davorens were in contact with other legal and learned families. A marginal entry addressed to Domnall shows that a member of the learned Sligo family of Mac Firbhisigh (see p. 262) was present in the school.⁹⁶ There are also entries by a MacEgan⁹⁷ and a MacClancy,⁹⁸ and it is clear that much of the manuscript was written at the MacEgan law-schools of Park⁹⁹ and Tuam.¹⁰⁰ In an entry dated 1567 Magnus O'Davoren records that Domnall is at present travelling all over Ireland (*ag gabáil Érenn*)¹⁰¹ — no doubt in search of legal manuscripts. The same member of the family expresses his contempt for the O'Dorans, remarking that they cannot distinguish a groat from a penny, or a penny from a groat.¹⁰²

Ulster law-schools

Very little is known about Ulster law-schools of this period. The most prominent Ulster legal family were the O'Breslins (*Ua Breisléin*), lawyers to the Maguires of Fermanagh.¹⁰³ They are mentioned among the principal legal families of Ireland in the *Annals of Clonmacnoise*,¹⁰⁴ along with the MacEgans, O'Dorans and MacTholies.¹⁰⁵ In a letter¹⁰⁶ written in 1606 to Sir William Cecil, the Attorney-general of Ireland, Sir John Davies, describes a meeting with 'one O'Brislan, a chronicler, and principal brehon of that country' (i.e. Fermanagh). Davies wished to find out the rents due to the late Hugh Maguire, killed at the Battle of Kinsale in 1601, and sent for O'Brislan 'who was so aged and decrepid as he was scarce able to repair unto us'. O'Brislan was reluctant to provide the information, but eventually took from his bosom a roll 'written on both sides in a fair Irish character'. Its contents were then translated into English for the benefit of Davies and his officials.

⁹⁶ *ibid.* 134 (99).

⁹⁷ *ibid.* 112 (12).

⁹⁸ *ibid.* 125 (61).

⁹⁹ *ibid.* 112 (11), 134 (97).

¹⁰⁰ *ibid.* 110 (5), 129 (79).

¹⁰¹ *ibid.* 111 (10).

¹⁰² *ibid.* 119 (33).

¹⁰³ The death is recorded in *AU* s.a. 1513 of Domnall mac Concabuir Í Bhreislén, who is described as *ollam bretheman Mhég Uidhir* 'chief judge of Maguire'.

¹⁰⁴ *Ann. Clon.* s.a. 1317.

¹⁰⁵ For the McTholies, see footnote¹¹² to ch. 2.

¹⁰⁶ The relevant portion of this letter is quoted in Kenney, *Sources* 33-4.

Other Ulster legal families were the MacBerkeries (*Mac Birrthagra*),¹⁰⁷ lawyers to the O'Neills of Clandeboy, and the Mac Gilsenans (*Mac Giolla Senáin, Mag Uinsennáin*),¹⁰⁸ lawyers to the O'Donnells of Tirconnel. The former are mentioned along with the O'Breslins in Keatinge's *History of Ireland: muinntear Bhrisléin is clann Bhiorthagra breitheamhain fhéineachais Uladh uile* 'the O'Breslin family and the MacBerkery family were the judges in Irish law of all Ulster'.¹⁰⁹

To my knowledge, the only legal manuscript with an Ulster connection is Nero A 7 in the British Library,¹¹⁰ written in 1571 by Matha Ó Luinín of the Ard, Co. Fermanagh (sometimes known as Ard Muinntire Luinín). This scribe is doubtless to be identified with 'Matthew O Lonine of the Arde' who was pardoned in the Fiants of Elizabeth in 1586.¹¹¹ The Ó Luinín family were historians rather than lawyers, and for many generations acted in this capacity for the Maguires of Fermanagh. For example, the *Annals of Ulster* record the death in 1528 of Ruaidhrí hUa Luinín, who is described as *ollamh Mheg Uidhir re seachas* 'chief historian of Maguire'. Other annalistic references show that members of the Ó Luinín family also achieved distinction in poetry, music and medicine.¹¹² However, so far as I have been able to discover, Matha's work in Nero A 7 is the only evidence of legal interests on the part of any member of this family.

The end of the law-schools

The Elizabethan wars, culminating in the Flight of the Earls in 1603, delivered the coup de grâce to native Irish law. The lords who had formerly employed the legal families were banished, dispossessed, or had adopted English law. One or two law-schools

¹⁰⁷ In *ALC* s.a. 1529 the death is recorded of Domnall mac Birrthagra, *adbar olloman tuaiscert Ulad re béra fínechuis* 'potential master of Irish law in northern Ulster'. The surname Mac Birrthagra — now anglicized Berker(r)y — may possibly originate from the occupational soubriquet *birr-thagra* 'short pleading' (O.Ir. *berr + tacrae*).

¹⁰⁸ *AU* s.a. 1507 record the death of Feidhlimidh Mag Uinsennáin who is described as *breithemh i Dhomnaill* 'the judge of O'Donnell'. He was also a cleric, being referred to as *sáí cléirigh* 'a learned cleric'. For the various Irish and English forms of this surname, see P. Woulfe *Sloinnte Gaedheal is Gall* (Dublin 1923) 380.

¹⁰⁹ *The History of Ireland* by Geoffrey Keatinge, ed. Dinneen vol. 3 lines 171-2 (ITS vol. 9, London 1906).

¹¹⁰ *BM Cat.* i 141-6.

¹¹¹ *PRIA* C 36 (1922) 96.

¹¹² e.g. *AU* s.a. 1396, 1441, 1477, 1478.

may have struggled on in remote areas during the 17th century, but by the 18th century they were certainly extinct. Some members of the old legal families put their training at the disposal of the new régime. According to Fiants of Elizabeth, dated 1591¹¹³ and 1602,¹¹⁴ a *brehowne* named Patrick MacEgan of Correbeg alias Balle mKeagen, Co. Longford, was appointed seneschal 'with license to prosecute and punish by all means malefactors, rebels, vagabonds, rymors, Irish harpers, idle men and women and other unprofitable members'. Boethius MacClancy (*Baothghalach mac Flannchadha*) served the Crown as high sheriff of Clare, and was a member of the Parliament of 1585. When he died in 1598 the *Annals of the Four Masters* describe him as 'a man fluent in Latin, Irish and English'. Two members of the O'Davoren family (James and William) were practitioners of English law in the 18th century. But, in general, the old legal families were unable or unwilling to transfer to English law, and declined in importance. Séamas Ó Duilearga, writing of his experience in collecting folklore in Co. Clare in the 1930s, notes the disappointing fact that no folk-memory seems to have survived of the law-schools of the O'Davorens and MacClancies.¹¹⁵ Elsewhere in Ireland the native lawyers also appear to have been forgotten in popular memory, except in the description of certain megalithic tombs as 'brehon chairs', as at Rathfarnham, Co. Dublin, and Slieve Bloom, Co. Tipperary. So far as I know, there is no actual evidence that medieval brehons ever held courts at such tombs, but they would certainly provide a suitable platform for addressing a court or other gathering. In Scotland it seems that some memory of the native lawyers persisted longer than in Ireland. Writing in 1937, John Cameron states that the site of the house of the chief of the Clan Morrison is still pointed out in Habost, Island of Lewis. According to what he describes as well-authenticated tradition, the chief of the Clan Morrison was *brieve* (= Gaelic *britheamh*) or hereditary judge of Lewis, and held land in respect of this office.¹¹⁶ There are also a number of Scottish place-names containing the element *britheamh*, e.g. *Suidhe a' Bhrithaimh* 'the judge's seat' and

¹¹³ Fiants Eliz. no. 5528 (quoted O'Rahilly, 'Irish poets, historians and judges in English documents, 1538-1615' *PRIA* 36 C (1921-4) 94).

¹¹⁴ Fiants Eliz. no. 6658.

¹¹⁵ *JRSAI* 95 (1965) 144.

¹¹⁶ J. Cameron, *Celtic Law* (London, Edinburgh, Glasgow 1937) 193-5.

Eilean a' Bhrithheimh 'the judge's island'.¹¹⁷

When Irish law was no longer practised it became of interest only to antiquarians, but for whom hardly any Old Irish law-texts would now survive. Of particular importance is Dubhaltach Mac Firbhisigh (anglicized Duard Mac Firbis) who lived in the 17th century. He came of an old Sligo family who had been poets and historians to the O'Dowds of Tireragh for many generations.¹¹⁸ Though not lawyers, the family had legal interests. The *Yellow Book of Lecan* (cols. 573-958 of which were written about 1391 by Gill Íosa mac Firbhisigh)¹¹⁹ contains a copy of the law-text on status *Uraicecht Becc*.¹²⁰ A marginal entry in Egerton 88 shows that a member of the family (also called Dubhaltach) was present at Domnall O'Davoren's law-school.¹²¹ The antiquarian Dubhaltach may himself have attended a MacEgan school,¹²² and certainly had access to legal material of O'Davoren origin. His copy of O'Davoren's Glossary in H 2. 15B¹²³ is remarkable in that it often has better readings than Egerton 88.¹²⁴ Also in H 2. 15B, Dubhaltach has preserved for posterity — albeit with many corruptions — the law-text *Bretha Nemed déidenach* (Appendix 1 No. 15). In the introduction to his *Book of Genealogies*, written in Galway in 1650, he stated that he was working on a lexicon of legal terms. However, only seven folios of a draft version are known to exist.¹²⁵

Dubhaltach was a link between the ancient tradition of the law-schools, and the newly kindled interest in Irish antiquity among scholars of the English-speaking world.¹²⁶ For a time he was

employed by the antiquarian and collector of manuscripts Sir James Ware, and was killed at an advanced age in 1670.

¹¹⁷ W.J. Watson, *History of the Celtic Place-names of Scotland* (Edinburgh 1926) 261, 517; Carmichael, *Carmina Gadelica* ii (1928) 253.

¹¹⁸ e.g. AT s.a. 1138 *Amlaim mor mac Firbhisigh, ollam O Fiachrach uile re senchus* *7 re filidhecht . . . a ec and* (RC 18 (1897) 157); AFM s.a. 1362 *Amhlaobh mac Firbhisigh adhbar ollamhan ó ffiachrach . . . do ég*.

¹¹⁹ T. Ó Conchearnainn, *Ériu* 25 (1974) 157.

¹²⁰ Cols. 920-38 = CIH 2318-2335.

¹²¹ BM Cat. i 134 (99).

¹²² John O'Donovan, *The Genealogies, tribes and customs of Hy-Fiachrach* (Dublin 1844) vii.

¹²³ TCD Cat. 93. The glossary is at pp. 43(120)-58 (134) of the MS.

¹²⁴ See the variant readings given in Stokes's ed. (ACL ii 197-485), where those of Egerton 88 are marked E, and those of H 2.15B are marked F. In most cases, the superiority of F lies merely in its closer adherence to O.Ir. spelling, but sometimes it corrects an error in E, e.g. No. 1284 *branen* E, *braen* F; No. 1345 *rurach* E, *rudrach* F; No. 1349 *rechta* E, *rechtaid* F.

¹²⁵ This is the Trinity College MS H 5. 30 = no. 1401 (TCD Cat. 265).

¹²⁶ John O'Donovan op. cit. vi-xi; Anne and William O'Sullivan, *The Transactions of the Honourable Society of Cymmrodorion*, Session 1962 (London 1962) 63.

APPENDIX 1

LIST OF LAW-TEXTS

I provide here a numbered list of Old and Middle Irish law-texts. They are arranged roughly according to subject-matter, under the headings: *general* 1-5; *status, rank* 6-9; *professional groups* 10-16; *categories of person* 17-28; *the law on injury* 29-34; *the law on other offences* 35-40; *the law on land, domestic animals, etc.* 41-53; *contracts* 54-56; *loans and deposits* 57-58; *pledges* 59-60; *sureties and hostages (including cairde 'treaty')* 61-65; *distraint* 66-67; *legal entry* 68; *procedure* 69-72. I give the main *CIH* references for each text (fuller references can be found in the Introduction to *CIH* vol. i pp. xxiii-xxv). I also state whether a text has been (or is about to be) edited and/or translated, and provide the appropriate reference.

About half of these texts belong to the *Senchas Már* collection. It is known from scribal references that this collection was divided into three sections, though there is uncertainty about the make-up of the last section (see p. 244). I mark texts from the first third *SM* 1, texts from the middle third *SM* 2, and texts which are probably from the last third *SM* 3.

Texts which are not in the *Senchas Már* may have been part of other less well preserved collections, such as that of the poetico-legal *Nemed* school proposed by Binchy (see p. 246). Others (e.g. Nos. 5 and 6) seem likely to have been independent compositions, not part of a collection or series of law-texts (see pp. 246-8).

Many of the texts listed here were clearly composed as a unit by a single author, e.g. Nos. 5, 10, 13, 17, 24, 25, 44, 45, 47, 60, 64. However, some texts contain strata of different ages. Thus, No. 6 (*Críth Gablach*) includes a passage from an earlier source, *CIH* 777.38-778.5 = *CG* 52-62, and No. 71 (on court-procedure) consists of two sections which are likely to be of different authorship and date.

Many law-texts survive in an incomplete form. For instance, the only surviving copy of No. 35 breaks off in the fifth paragraph due to the loss of the next page in the manuscript. Other texts (e.g. Nos.

19, 48, 51) survive only in fragments, interspersed with later commentary which can sometimes shed light on the lost portions of text. To give as full a picture as possible of the range of topics treated in the law-texts, I include some texts which are known only in title, or from quotations in glossaries. These are prefixed by an asterisk *.

It is impossible to be consistent about the titles of the texts. In some cases there is little or no doubt about the original title. For example, No. 23 is introduced as *Cain tSaorraith* in the main MS (*CIH* 1770.16) and is given the same title (spelled *Cain Saerraith*) in the Old Irish Introduction to the *Senchas Már* (*CIH* 350.13-4). But in many cases the title is clearly much later than the text. Thus No. 68, which deals with *tellach* 'legal entry', is entitled *Din Techtugad* in two of the four surviving MSS (*CIH* 1858.36; 2018.15). The term *techtugad* has the same meaning as *tellach*, but is not attested in Old Irish. *Din Techtugad*, therefore, can hardly have been the original title of the text. However, it would be pointless to attempt to suppress this title, as it is perfectly accurate and has been generally accepted since the publication of vol. iv of the *Ancient Laws of Ireland* in 1879. On the other hand, some titles used in the *Ancient Laws* are inaccurate, and have therefore been abandoned. Thus the *Ancient Laws* (vol. iv 344-58) print No. 8 under the title 'Sequel to *Críth Gablach*' whereas it has no connection with this text. The title used here, *Mádšlechta*, is referred to twice in the opening lines of the text (*CIH* 582.32; 583.1, cf. 585.34).

Where there is no clear evidence of a title, early or late, I have either followed Thurneysen's practice of describing the text by its contents (e.g. No. 26 *Fuidir*-text, No. 71 *Airecht*-text) or I have used the title coined by a modern editor, e.g. No. 42 'An Archaic Legal Poem'.

It should be stressed that this is not a complete list of the surviving Old and Middle Irish legal material, as I have omitted many short, fragmentary or obscure passages. In the near future Liam Breatnach will produce a catalogue of the contents of *CIH* which will give readers a complete guide to these sources.

In general, I do not attempt to date the texts, apart from indicating whether they belong to the Old Irish period (7th-9th centuries) or to the Middle Irish period (10th-12th centuries).

At the end of this list I provide references to ecclesiastical legislation (Nos. 73-77) and canon law (Nos. 78-79). For a brief

discussion of the relationship between secular and canon law in Ireland, see pp. 233-6 above.

GENERAL

1. *SM* 1. Introduction to the *Senchas Már* (CIH 344.24-352.24; 1657.10-1663.19; 1896.23-1897.15; 877.4-881.3). It is translated in *AL* i 30.24-60, and edited and translated (into German) by Thurneysen in *ZCP* 16 (1927) 174-87.
2. Pseudo-historical prologue to the *Senchas Már* (CIH 339.1-344.23; 1650.1-1657.9; 874.35-877.3). This introduction to *SM* was prefixed to No. 1 in the late O.Ir. period. It is translated in *AL* i 3.1-31.25. See Binchy, *Studia Celtica* 10-11 ((1975-76) 15-28 and McCone, 'Dubthach maccu Lugair and a matter of life and death in the pseudo-historical prologue to the *Senchas Már*' in *Peritia* 5 (1986) 1-35.
3. *SM* 2. Heptads (CIH 1.1-64.5; 1881.9-1896.22; 537.16-549.18; 1821.28-1854.36). The *SM* collection of heptads — put together in the O. Ir. period — contains material from many areas of law, usually arranged in groups of seven. In commentary this collection is referred to as *na sechta* 'the sevens', cf. CIH 1584.11-2. It is translated in *AL* v 119-351.
- The editors of *AL* have also collected legal heptads from other sources under the title 'Additional Heptads'. They are translated in *AL* v 353-373.
4. *SM* 2. *Di Astud Chirt 7 Dlidid* 'on the confirmation of right and law' is the late title (CIH 1060.3, cf. CIH 223^d) of a long text containing a wide variety of legal matter (CIH 223.22-244.22). It is translated in *AL* v 427-493.
5. *Gúbretha Caratniad* 'the false judgements of Caratnia' (CIH 2192-9). This text, edited and translated (into German) by Thurneysen in *ZCP* 15 (1925) 302-70, gives exceptions to many of the basic principles of Irish law.
- There are also some references to a text entitled *Antéchtae Breth* 'impropriety of judgements', e.g. CIH 2211.25; 1978.24. Possibly this text likewise consisted of examples of incorrect judgements.

STATUS, RANK

6. *Crith Gablach* 'branched purchase (?)' (CIH 777.6-783.38; 563.1-570.32). It is translated by Mac Neill in *PRIA* 36 C (1923) 281-306, and edited (without translation) by Binchy in the Mediaeval and Modern Irish Series, vol. 11 (Dublin 1941, reprinted 1970). The translation in *AL* iv 299-339 is unreliable. The title is discussed by Meroney, *JCS* 2 (1953) 192-95. See also No. 42.
7. *Uraicecht Becc* 'small primer' (CIH 1590-1618; 634-655; 2318-2335). It is translated in *AL* v 3-115 and by Mac Neill in *PRIA* 36 C (1923) 272-81.
8. *Míadšlechta* 'rank sections' i.e. passages dealing with rank (CIH 582.32-589.32). It is translated in *AL* iv 345-69. The last section (CIH 588.1-589.32 = *AL* 362.6-368.12) may originally have been a separate text. Some paragraphs of this section (CIH 588.11-25 = *AL* iv 362.19-364.8) are a paraphrase of Irish Canon IV — see below No. 78. There is a brief discussion on *Míadšlechta* by MacNeill in *PRIA* 36 C (1923) 311-3.
9. *SM* 2. *Díre*-text (CIH 922.12-923.17; 436.33-444.11). This untitled text on *díre* 'honour-price' is edited and translated (into German) by Thurneysen in *IR* 1-37. In *ZCP* 19 (1933) 346, Thurneysen takes the last part of the text (§§27-38 on *bandíre*) to be a separate composition, but this is far from certain.

PROFESSIONAL GROUPS (clergy, judges, poets, craftsmen)

10. *SM* 1. *Córus Béscnai* 'the regulation of proper behaviour' (CIH 520.1-536.27; 903.37-905.9; 1812.33-1821.27) deals mainly with the mutual obligations of clergy and laity. It is translated in *AL* iii 3-79.
11. *Dia fis cía is breitheamh i ngach cúis* 'to find out who is a judge for every case' is the late title of a short unedited text on the duties of a judge. It is printed at CIH 1964.21-1973.40.

12. *Urcuite Bretheman* 'the forbidden things of a judge' (CIH 2102.31-2103.32). This Mid. Ir. text describes the proper behaviour of a judge, and lists the legal topics with which he should be familiar (mostly by reference to the titles of law-texts). It is printed with a few suggested emendations by Thurneysen in *ZCP* 18 (1930) 362-4 and by Smith in *Irish Texts* iv (ed. Fraser, Grosjean and O'Keeffe, London 1934) 24-7, but has not been translated.

13. *Uraicecht na Ríar* 'the primer of the stipulations' deals with the qualifications of the various grades of poet. It is printed at CIH 2336.1-2341.7 and has been edited and translated by Liam Breatnach in vol. 2 of the Early Irish Law Series (1987).

14. *Bretha Nemed toisech* 'the first *Bretha Nemed*' is the title used by legal scribes to refer to the text in the British Library manuscript Nero A 7 (BM Cat i 141-6) which is printed at CIH 2211-2232. Thus, citations from the Nero A 7 text have the marginal ascription *bretha nemed t.* (= *toisech*) at CIH 1920^a, 1964^a, 1967^a and 2004^a. The passages cited correspond to CIH 2225.7, 2215.11, 2222.26 and 2223.22 respectively (I owe these references to Liam Breatnach). In Nero A 7 the text begins *Corus breatha neimead* 'the regulation of *Bretha Nemed*' but this is nowhere used as the title.

Bretha Nemed toisech contains material on clerics, poets and other professionals. Three passages from this text are edited and translated by Breatnach in 'Canon law and secular law in early Ireland: the significance of *Bretha Nemed*' in *Peritia* 3 (1984) 439-59. He argues in this article that the text was composed in Munster between 721 and 742 by three kinsmen: Forannán hua Búirecháin, a bishop, Máel Tuile hua Búirecháin, a poet, and Báethgalach hua Búirecháin, a judge. He intends to publish a translation of the first part of the text in a future number of *Ériu*, and has translated some passages with notes in *UR* 20-42.

The phrase *Bretha Nemed* 'judgements of privileged (or professional) persons' seems to have been regarded as a unit, hence the use of a singular adjective after it (see also No. 15 below). Compare the use of nom. pl. *Bretha* in *Córus Bretha Nemed* where one might expect gen. pl. *Breth*.

15. *Bretha Nemed déidenach* 'the last *Bretha Nemed*' is the title used by later scribes to refer to the text printed by Gwynn in *Ériu*

13 (1942) 1-60, 220-36 with the description 'An Old-Irish tract on the privileges and responsibilities of poets.' He provides notes but no translation. The text is also printed at CIH 1111-1138. Parts of it are translated by Watkins in *Celtica* 6 (1963) 226, 230, 233, 236, 240, by Ó Corráin, Breatnach and Breen in *Peritia* 3 (1984) 420-2, and by Breatnach in *UR* 42-57. The main topic of the text is the law relating to poets, but it also contains passages on many other legal topics, such as fosterage, sureties, pledge-interests and land-law.

As Gwynn points out (p. 7) excerpts from this text are included in an H 3. 18 glossary (CIH 603.16) under the heading *A bretha neime deidhinach so* 'this is from the last *Bretha Nemed*'. Further material from the text is found in two columns on p. 207 of H 3. 18 (CIH 725.7, 725^m), likewise attributed to *bretha nimhi deighinach*. Other quotations from the text refer simply to *Bretha Nemed* (Gwynn, p. 8).

In an article in *Ériu* 17 (1955) 4-6, Binchy suggests that the title *Bretha Nemed* may have been used to cover a whole series of texts. He believes that they were the product of a Munster poetico-legal school (see p. 246).

16. **Bretha Crédine* 'the judgements of Crédine (a mythological coppersmith)'. This lost text on the law relating to the craft of the coppersmith is referred to in O'Dav. 679 = CIH 1491.16. The late text on the qualifications of a judge (No. 12 above) states that he must be *treorach i mbrethaib dein cecht 7 goibhnenn 7 credhine 7 luchtaine* 'versed in the judgements of Dían Cécht (a mythological physician), of Goibniu (a mythological smith), of Crédine, and of Luchtaine (a mythological wright)'. This reference (CIH 2103.11-2) suggests that there were also law-texts relating to blacksmiths (**Bretha Goibnenn*) and to wrights (**Bretha Luchtaine*). For *Bretha Déin Cécht*, see No. 30 below.

CATEGORIES OF PERSON (wives, sons, fosterchildren, kinsmen, clients, tenants, lunatics)

17. *SM* 1. *Cáin Lánamna* 'the law of couples' (CIH 502.29-519.35) is translated in *AL* ii 343-409 and edited and translated (into German) by Thurneysen in *SEIL* 1-75. It deals with the law of women in relation to marriage.

18. *SM 3. *Maccslechta* 'son-sections'. A few glossed quotations from this lost text survive at *CIH* 107.9-110.13, 1296.17-1301.16 and 1546.26-1550.14. This text is also referred to in late O. Ir. material at *CIH* 896.30, and in a gloss at *CIH* 1378.8 = 1931.38. It seems to have dealt mainly with a son's rights of inheritance.

19. *SM 1. Cáin farraith* 'the law of the fosterage fee' (*CIH* 1759.6-1770.14) is translated in *AL* ii 147-193. This text, which survives only in fragments interspersed with commentary, deals with the proper treatment of fosterchildren, and the fee payable to the fosterparents.

20. *SM 2. D' Fodlaib Cineoil Tuaithe* 'on the divisions of the kin in the *túath*' (*CIH* 429.14-432.15) is the late title of a text on the *fine* 'kin-group' which is translated in *AL* iv 283-91. Its original title may have been *Fodla Fine* 'types of kin (or kinsman)' (cf. *CIH* 429.20) and this is the title used by Charles-Edwards in his forthcoming *Early Irish and Welsh Kinship*.

21. *Córus Fine* 'the regulation of the kin-group'. Some fragments of this text are preserved at *CIH* 728.17-746.16, and it is referred to occasionally in later glosses and commentary, e.g. *CIH* 159.12; 1844.14; 1931.40. Its original title may perhaps have been *Finebretha* 'kin-judgements' (referred to in the main text on distraint, *CIH* 388.18; cf. 891.5).

22. *SM 2. Kinship poem* (*CIH* 215.15-217.23). An archaic untitled poem on kinship is incorrectly treated as part of *Din Techtagad* (No. 68 below) by the editors of the *Ancient Laws*. It is translated in *AL* iv 39.12-45.18, and edited and translated by Dillon in *SEIL* 135-59.

23. *SM 1. Cáin Sóerraith* 'the law of free fief' i.e. free clientship (*CIH* 1770.15-1778.33). It is translated in *AL* ii 195-221, and edited and translated (into German) by Thurneysen in *ZCP* 15 (1925) 239-53. Only the first part of this text survives. It deals with the rights and duties of the free client.

24. *SM 1. Cáin Aicillne* 'the law of base clientship' (*CIH* 1778.34-1804.11; 479.23-502.6). It is translated in *AL* ii 223-341, and

edited and translated (into German) by Thurneysen in *ZCP* 14 (1923) 338-94. It deals with the rights and duties of the base client.

25. *SM 2. Di Dligiud Raith 7 Somaine la Flaith* 'on the law relating to the fief and profit of a lord' is the late title of a text partially preserved at *CIH* 432.21-436.32. It is being edited by Bette Crigger of the Department of Anthropology of the University of Chicago.

Another unedited text on this topic is printed at *CIH* 919.25-922.11.

26. *SM 2. Fuidir-text* (*CIH* 426.1-429.12). This short untitled text on the *fuidir* 'semi-freeman, tenant-at-will' is translated in *AL* v 513-521 and edited and translated by Thurneysen in *IR* 62-7.

27. *Do drúthaib 7 meraib 7 dásachtaib* 'on idiots, insane persons and lunatics' is the title supplied in the MS to a late O. Ir. law-text on the insane (*CIH* 1276.18-1277.13). It is edited and translated by Smith in *Ériu* 11 (1932) 68-72, under the heading 'The Advice to Doidin'.

28. *Do brethaib gaire* 'on judgements of maintenance' is the late title of a fragmentary text on the kin's obligation to care for its incapacitated members. The first part deals with the care of the aged, the blind, the deaf and the sick (*CIH* 2106.34-2107.20) and the second part — entitled *De druthbrethaib* 'on judgements relating to idiots' — deals with the care of the insane (*CIH* 2107.21-35).

THE LAW ON INJURY

29. *SM 3. Bretha Crólige* 'judgements of blood-lying' (*CIH* 2286.24-2305.3) deals with the obligation of a person who has inflicted illegal injury on another to provide sick-maintenance (*othrus*) for his victim. It is edited and translated by Binchy in *Ériu* 12 (1938) 1-77.

30. *SM 3. Bretha Déin Chécht* 'judgements of Dían Cécht (a mythological physician)' (*CIH* 2305.4-2316.39) deals with the fines for illegal injury, and the share due to the physician. It is edited and translated by Binchy in *Ériu* 20 (1966) 1-66.

31. **Slicht othrusa* 'section on sick-maintenance'. There seems to have been another text on sick-maintenance in addition to *Bretha Crólige*. The late list of the qualifications of a judge (No. 12 above) states that he should be knowledgeable . . . *i mbrethaibh crolich 7 i slicht othrusa iter leghes 7 meth bidh 7 legha 7 fir mama modh, 7rl.* ' . . . about judgements of blood-lying and about the section on sick-maintenance, including medical treatment and failure to provide food and a physician and a substitute worker, etc.' (CIH 2103.9-10 = ZCP 18 (1930) 363 §§21-22).

A number of MSS (CIH 1163.13-6; 1634.15-23 etc.) preserve a short passage beginning *Segar slicht othrusa* 'let the section on sick-maintenance be sought' which may have been the opening paragraph of *Slicht othrusa*. It is edited and translated by Binchy in *Ériu* 12 (1938) 80-1. He also edits six other short passages on *othrus* (ibid. 81-90) and raises the possibility that some of these may have originated from *Slicht othrusa*.

32. Passages on *eisce* 'wounding'. There are short glossed passages on wounding at CIH 2029.31-7 and 2076.21-2084.2 which have never been edited or translated.

33. *Bretha Étgid* 'judgements of inadvertence' (CIH 250.1-337.36; 925.1-945.19 etc.) deals with accidental death or injury where no liability is attached to the perpetrator. It is translated in *AL* iii 83-547 under the incorrect title *Lebar Aicle* 'the book of Aicill' (see Binchy, 'The Linguistic and Historical Value of the Irish Law tracts', *PBA* 29 (1943) 220-1).

34. *Mellbretha* 'sport judgements' (CIH 1589). A fragment of this law-text, which deals with injuries sustained during games, was discovered by Anne and William O'Sullivan. It is edited and translated by Binchy in *Celtica* 8 (1968) 144-54.

THE LAW ON OTHER OFFENCES

35. *SM 2. Bretha im Gata* 'judgements about thefts' (CIH 477.31-479.22). This text breaks off in the fifth paragraph due to the loss of a page in the MS. It is edited and translated by Hull in *ZCP* 25 (1956) 211-25.

The title and first paragraph are also preserved at CIH 1974.1-10,

followed by other fragments on theft (1974.11-1980.39) which may come from the missing part of *Bretha im Gata*.

36. *SM 3. Sellach*-text (CIH 404.7-405.16). An interpolation in *Di Chetharślicht Athgabála* (No. 66 below) deals with the *sellach* 'culpable onlooker at an offence' (see pp. 154-6). It is translated in *AL* i 241-3.

37. *SM 3. *Aér*-text. Commentary at CIH 117.30-118.13 may derive from a lost text on *áer* 'satire', which belonged to the last third of the *Senchas Már* (see p. 244).

38. **Bretha Forloiscthe* 'judgements of arson'. O'Davoren's Glossary contains two quotations from this lost text (CIH 1497.1; 1523.23 = *ACL* ii 331 §808; 449 §1418). The title and some commentary are preserved at CIH 1945.8-1947.21.

39. *Cáin Fuithirbe* 'the law of Fuithirbe (a place-name ?)'. Some glossed passages from this text, dealing mainly with offences, survive at CIH 756.21-764.40; 766.36-777.5; 1553.26-1555.40; 1580.1-1581.6. In commentary at CIH 1816.37 = *AL* iii 60.4 *Cáin Fuithirbe* is distinguished from the *Senchas Már*. Binchy suggests (*Ériu* 18 (1958) 51) that in its language, style and Munster connections this text is close to the *Nemed* school. He dates it to between 678 and 683 A.D.

Parts of the text are edited and translated by L. Breathnach in 'The ecclesiastical element in *Cáin Fuithirbe*' in *Peritia* 5 (1986) 36-52.

40. *Do breitheamhnus for na huile chin doní gach cintach* 'on judgement on every crime which an offender commits' (CIH 2011.10-2016.3) is the late title of a fragmentary text which deals mainly with the liability of relatives for a person's crimes. It is translated in *AL* iv 241-261. The first section (CIH 2011.12-26) is based on *IK* bk. 42 ch. 30; see *Peritia* 3 (1984) 454.

THE LAW ON LAND, DOMESTIC ANIMALS, ETC.

41. *SM 2. Bretha Comaithchesa* 'judgements of neighbourhood' (CIH 64.6-79.12; 191.1-205.21) deals mainly with trespass by domestic animals. It is translated in *AL* iv 69-159.

42. 'An Archaic Legal Poem' (CIH 570.34-571.16) covers much the same topics as No. 41 but also includes some further offences, mostly relating to land-law (*mruigrecht*). It is edited and translated by Binchy in *Celtica* 9 (1971) 152-68. In the manuscript this poem follows No. 6 *Críth Gablach*. Though obviously not by the compiler of *CG*, it may have been added by him to *CG* from another source to illustrate the sort of legal knowledge which would be required of a king. Compare the archaic passage on sick-maintenance which he inserts earlier in the text (CG 52-62 = CIH 777.38-778.5).

43. *Comingaire*-text (CIH 192.1-33; 576.24-577.24). This short O.Ir. text on *comingaire* 'joint herding' (see p. 101) is interpolated as commentary in No. 41. It is translated in *AL* iv 101.6-103.26.

44. *SM* 2. *Bechbretha* 'bee-judgements' (CIH 444.12-457.10) deals with trespass by bees, bee-stings and ownership of swarms. It is edited and translated by Charles-Edwards and Kelly, Early Irish Law Series vol. 1 (Dublin, 1983).

45. *SM* 2. *Coibnes Uisci Thairidne* 'kinship of conducted water' (CIH 457.11-462.18) gives the rules for conducting water across neighbours' land to power a mill. This text is referred to in §11 of *Bechbretha* (CIH 445.25) and is probably by the same author (see *Ériu* 17 (1955) 54 and *BB* Introd. 27-9). It is edited and translated by Binchy in *Ériu* 17, 52-85.

46. **Fidbretha* 'tree-judgements'. This lost text is referred to by title in *Di Chetharślicht Athgabála* (CIH 388.18 = *AL* i 182.1), in *Bechbretha* §14 (CIH 446.6), and in the late list of legal topics which a judge should know (CIH 2103.14 = *ZCP* 18 (1930) 363 §30). It is possible that *Bechbretha* §§12-16, which deal with the ownership of fruit and liability for tree-cutting, derive from *Fidbretha*. The list of trees in *Bretha Comaithchesa* (CIH 78.15-79.9 etc. = *AL* iv 146.18-148.2) may also come from this text: see *Celtica* 11 (1976) 107-24. What may have been its opening lines are preserved with commentary at CIH 2106.3 *Can rosuidigthea fidbretha la?* 'Whence have tree-judgements been established in Irish law?'

47. *Cis lir fodla tire?* 'how many kinds of land are there?' is the opening sentence of a short text on the value of various types of

land (CIH 675.18-676.16). It is edited and translated by Mac Niocaill in *Ériu* 22 (1971) 81-6, along with a later text on the same subject (CIH 843.3-21).

48. *SM* 3. **Consléchta* 'dog-sections'. Some quotations from this text, with glosses and commentary, are preserved at CIH 111.3-114.7; 311.36-314.16; 1395.15-1396.6; 1550.24-1551.12 etc. and it is included in the late list of legal topics at CIH 2103.8 = *ZCP* 18 (1930) 363 §17. A short quotation is given in O'Davoren's Glossary (No. 424 = CIH 1481.26) where the text is referred to as *Bretha conslechta a senchus* 'judgements of dog-sections from the *Senchas* [Már]'. Another O'Dav. quotation (No. 1248 = CIH 1516.12-4) is also likely to be from this text.

Irish Canon VI (*IP* 174) is entitled *De canibus sinodus sapientium* 'a synod of wise men: concerning dogs'. For a brief discussion of possible connections between this Latin text and O. Ir. legal material on dogs, see p. 146 above.

49. *SM* 3. **Catsléchta* 'cat-sections'. Some glossed quotations from this text survive at CIH 1550.15-23 under the heading *Bretha for catsleachtaib 7rl* 'judgements on cat-sections, etc'. There is also commentary from this text at CIH 110.14-21. *Catsléchta* is included in the late list of legal topics at CIH 2103.8 = *ZCP* 18 (1930) 363 §18.

50. **Bóslechta* 'cow-sections'. On account of the supreme importance of the cow in the early Irish economy, it is reasonable to assume that there was a separate O. Ir. law-text on this subject. Possibly, the O. Ir. passage on calves at CIH 967.35-968.15 = 1267.17-31 derives from such a text.

No quotation accredited to *Bóslechta* is preserved in glossaries, and it is not mentioned in the late list of legal topics (No. 12 above). However, there are at least two references to *Bóslechta* in legal commentary (CIH 254.22-3; 1367.4). The *Annals of Innisfallen* for the year 810 record the promulgation of ecclesiastical legislation with the title *Bóslechta la Mumain la Dare ocus la Adhuar mac Nechin* 'cow-sections in Munster by Dare (recte Dar Í) and Adhuar mac Echin'. Presumably this law existed in written form (in O. Ir.) and was read out in public. In the *Annals of Ulster* it is referred to on three occasions as *Lex Darii* (e.g. 812 = 813 *Lex Darii la hU*

Neill 'the law of Dar Í [promulgated] among the Uí Néill'. It seems to have dealt mainly with killing or stealing cattle (see Thurneysen, *ZCP* 18 (1930) 386-7; 19 (1933) 130-1). Thus, a gloss on Colmán's hymn (*Thes.* ii 306⁵) gives the four principle laws of Ireland as the Law of Patrick ('not to kill clerics'), the Law of Dar Í ('not to steal cows'), the Law of Adomnán ('not to kill women') and the Law of Sunday ('not to travel [on a Sunday]'). In legal commentary at *CIH* 1946.28-30 it is stated that the three offences which Patrick forbade most strenuously were the killing of trained oxen, offences against milch cows (glossed 'i.e. stealing them') and arson; cf. *IP* 178 §15.

51. *SM* 3. **Osbretha* 'deer-judgements'. This lost text is referred to by title in *Di Chetharslicht Athgabála* (*CIH* 388.18 = *AL* i 182.1). What were probably its opening words (*diles i nosbrethaib* 'free from claim in deer-judgements'), followed by a long stretch of commentary, are preserved at *CIH* 320.28-322.33 (translated in *AL* iii 449.20-459.14). It is clear from this commentary that the original text dealt with the catching of deer in a pit or on a spike (see p. 107). A single quotation followed by a short section of commentary at *CIH* 113.37-114.7 is also likely to be from *Osbretha*.

In addition, there is a difficult O. Ir. passage on the division of the carcase of a hunted deer brought down by dogs which is printed by Smith in *Irish Texts* i (ed. Fraser, Grosjean and O'Keeffe, London 1931) 63 = *CIH* 2127.13-8.

52. **Bretha Forma* 'judgements of trapping' (also entitled *Bretha Sén Forma* 'judgements relating to nets for trapping' and *Sénbretha* 'net-judgements' (*Anecd.* iv 102 No. 1170)). A short section of commentary from this lost text is preserved at *CIH* 2108.24-9, and deals with the penalties for setting a bird-net in another's land without permission and also with the division of flesh and feathers in various circumstances (see p. 106). This text is mentioned in O'Davoren's Glossary (No. 1479 = *CIH* 1525.40), and it is probable that it is the source of entries No. 932 (= *CIH* 1502.15) and No. 1480 (= *CIH* 1526.1-2). According to the late list of legal topics, a judge should be knowledgeable about net-trapping (*fesach . . . i sen forma*, *CIH* 2103.15 = *ZCP* 18 (1930) 363 §33).

53. **Muirbretha* 'sea-judgements'. This lost text is referred to by title in *Di Chetharslicht Athgabála* (*CIH* 388.18 = *AL* i 182.1) and

in *Cormac's Glossary* No. 539 (*Anecd.* iv 45). Three quotations, apparently from this text, are preserved with commentary at *CIH* 314.17-316.8 (translated in *AL* iii 423.1-431.5). The first, beginning *diles i muirbrethaib* 'free from claim in sea-judgements' deals with ownership of flotsam, the second with ownership of jetsam, and the third with ownership of goods carried off by a stream and either deposited downstream or washed out to sea. According to the late list of legal topics (*CIH* 2103.13 = *ZCP* 18 (1930) 363 §§27-8) a judge should be *treorach . . . i murbrethaib 7 i rodomnaib* 'versed in sea-judgements and in great depths'. The latter presumably refers to ownership of property taken or recovered from a great depth, cf. *tabuirt a rodomuin* 'taking [property] from a great depth', *CIH* 49.9 = *AL* v 298.10.

It is clear that Irish law also dealt with estuarine fishing rights (e.g. *CIH* 369.6 = *AL* i 122.16 *im chain n-inbir* 'about the law of the estuary'), possibly as part of *Muirbretha*.

CONTRACTS

54. *Di Astud Chor* 'on the binding of contracts', (*CIH* 985.24-1002.31; 1194.10-1198.20; 1348.21-1359.25; 1962.27-1963.35; 2040.28-2045.36; 2046.34-2050.32). In his forthcoming book *Early Irish Contract Law* in the Early Irish Law Series, Neil McLeod reconstructs this two-part O. Ir. text on contracts. Part I (entitled *do asta cor*, *CIH* 1348.21⁶; *do fasta qundartha*, *CIH* 1962.27) deals with the general rules concerning the binding nature of contracts, and Part II (entitled *do taithmech cunnarrta* 'on the dissolution of contracts', *CIH* 1963.11) deals with cases where a contract may be set aside.

55. *Córus Iubaile* 'the regulation of periods of immunity'. After a fixed period — varying according to the nature of the article involved — a defect in a contract is no longer actionable. Some fragments of an O. Ir. text on this subject survive with commentary at *CIH* 1082.1-1087.17; 2186.39-2187.28; 680.19-681.40. A related commentary occurs in *Di Astud Chor* §58 (*CIH* 989.12-26, 997.21-998.27) and is translated in McLeod's *Early Irish Contract Law* (see No. 54). There is also a brief discussion of *Córus Iubaile* in section 5 of the Legal Introduction to his book.

56. *SM 2. Do Tuaslucud Rudradh* 'on the dissolution of prescriptions' (CIH 244.23-247.27; 423.1-425.27). This O.Ir. text is translated in *AL* v 497-511 under the heading *Do tuaslucad cundrad* 'on the dissolution of contracts'.

LOANS AND DEPOSITS

57. *Cáin Óna* and *Cáin Airlithe*. A short O. Ir. passage at CIH 571.17-572.19 deals in turn with the two types of loan: *ón* and *airliciud* (see pp. 117-9). It is translated in *AL* v 369.13-373.30.

58. *Córus Aithni* 'regulation of deposit'. This short O.Ir. text, accompanied by extensive glosses and commentary, is found at CIH 2108.30-2111.16. For its close relationship to canon law, see *Peritia* 3 (1984) 415. There is also material on deposits in Heptads 19-20 (CIH 19.3-20.26 = *AL* v 190.13-196.26) and Triad 157.

PLEGES

59. *Do breithemhnas for gellaib* 'on judgement about pledges' is the late title of some O.Ir. material on pledges, accompanied by glosses and commentary (CIH 1997.34-2004.26). This material consists of extracts from law-texts such as the Heptads (CIH 1997.35-1999.13), *Bretha Nemed toísech* (CIH 2004.3-12) and *Finnsruth Fíthail* (CIH 2004.13-26; cf. App. 2 No. 6).

60. *SM 2. Bretha im Fuillema Gell* 'judgements about pledge-interests' (CIH 462.19-477.30) is being edited by Damian McManus for the Early Irish Law Series. It is translated in *AL* v 377-423.

SURETIES AND HOSTAGES (including *cairde* 'treaty')

61. *Berrad Airechta*, lit. 'shearing of the court' is the title of a long text on suretyship at CIH 591.8-599.38. It is edited (partially) and translated into German by Thurneysen in *Bürgschaft* 6-32. It is translated into English by Robin Stacey in *Lawyers and Laymen* (ed. Charles-Edwards, Owen and Walters, Cardiff 1986) 210-27, with notes 228-33. The title may mean 'court summary, synopsis of court procedure': see discussion by O'Brien in *Ériu* 11 (1932) 88-9, and by Meroney in *JCS* 2 (1953) 189-92.

This text contains a subsection on evidence, entitled *Córus fiadnuise* (No. 72 below).

62. *SM 3. Cairde*-text. There was clearly a law-text on the subject of *cairde*, a treaty with another *túath* which allows a fine to be exacted across a political boundary by means of an *aitire* or *gáll* (cf. Nos. 63-64 below). According to the late list of legal topics (CIH 2103.9 = ZCP 18 (1930) 363 §20) a judge is required to be knowledgeable about treaties (*i cairdib*).

What may be quotations from the *Cairde*-text are to be found, with glosses and commentary, at CIH 791.5-792.23 and 807.17-809.2. Commentary on *cairde* at CIH 114.8-116.23 may also derive from this text. The position of this commentary (after commentary on No. 48 *Conslechta* and No. 51 *Osbretha*) suggests that the original text belonged to the last third of the *Senchas Már* — see p. 244 above.

63. *Slán n-aitire cairde* 'the immunity of a hostage-surety in a treaty' (CIH 574.18-30; 892.39-893.10). This short O.Ir. is edited and translated by Thurneysen in *Bürgschaft* 32-3.

64. 'The distribution of *cro* and *dibad*' is the title supplied by Meyer to a Mid. Ir. text which he printed without translation at *Ériu* 1 (1904) 214-5 (= CIH 600.1-601.11). This text describes the use of a hostage (*gáll*) to procure payment of body-fine (*cro*) by a killer from another *túath*, and also deals with the division of the dead man's property (*dibad*).

65. *SM 1. Di Gnímaib Gáll* 'on the actions of hostages' (CIH 1755.17-1759.5; 901.14-33) survives only in fragments. It is translated in *AL* ii 133-45.

DISTRAINT

66. *SM 1. Di Chetharślicht Athgabála* 'on the four divisions of distress' (CIH 352.25-422.36; 1438.36-1465.27; 1723.11-1755.16 etc.). This long O.Ir. text is translated in *AL* i 65-305; *AL* ii 3-119.8. It is discussed by D'Arbois de Jubainville in *Études sur le droit celtique* i-ii (Paris 1895) and by Binchy in *Celtica* 10 (1973) 22-71.

67. 'A text on the forms of distraint' is the title given by Binchy to an O.Ir. passage which he edited and translated in *Celtica* 10 (1973) 72-86. It deals mainly with distraint of animals, but also refers to the distraint of *nemed*-persons such as kings, poets and smiths. In one of the two manuscripts, H 3. 18, this passage is preceded (*CIH* 896.9-897.29) and followed (*CIH* 898.33-901.33) by further material on distraint, most of which is in O.Ir.

LEGAL ENTRY

68. *SM 2. Din Techtagad* 'on legal entry' is the late title of an O.Ir. text at *CIH* 205.22-213.37 (translated in *AL* iv 3.1-33.23 and partially retranslated in *Celtica* 6 (1963) 221, 227-8, 234-5). It is followed at *CIH* 214.1-223.5 by miscellaneous legal material (including the Kinship Poem, No. 22 above) which the editors of *AL* mistakenly treated under the same heading (translated in *AL* iv 33.25-65.23).

PROCEDURE

69. *Cóic Conara Fugill* 'the five paths of judgement'. There are early (R, E), intermediate (U), and late (H) recensions of this text on procedure which is edited and translated by Thurneysen in *Aus den Abhandlungen der preussischen Akademie der Wissenschaften* Nr. 7 (Berlin 1926) cf. *ZCP* 19 (1933) 165-73. Recensions R and E are to be found at *CIH* 2200-2203 and 1280.1-1282.23 respectively, Rec. U at *CIH* 2257.12-2261.17, and Rec. H at *CIH* 1027.21-1041.38.

A lost law-text, *Aí Cermna* 'the law-suit of Cermna (a legendary poet)' is occasionally quoted in relation to procedure, e.g. *CIH* 2202.33 = *CCF* 25 §27. There is also O.Ir. material on procedure at *CIH* 1148.35-1150.15.

70. *Taurbaid*-text. An O.Ir. text on *t(a)urbaid* 'legal postponement', is to be found at *CIH* 868.28-870.33. It has not been edited or translated. The late list of legal topics (*CIH* 2103.15 = *ZCP* 18 (1930) 363 §34) states that a judge should be knowledgeable about the entitlement to postponement (*dligid turbada*).

71. *Airecht*-text. This O.Ir. text consists of two sections (*CIH* 601.20-33 and *CIH* 601.34-602.4), probably of different authorship and date. Both deal with procedure at an *airecht* 'court', and are edited and translated by Kelly, *Peritia* 5 (1986) 74-106. There are also O.Ir. passages on proper court behaviour at *CIH* 2341.8-2342.15.

72. *Córus fiadnuise* 'regulation of evidence' (*CIH* 596.3-597.3) is the title of a subsection of No. 61 *Berrad Airechta*. It is edited and translated into German by Thurneysen in *Bürgschaft* 19-22, and translated into English by R. Stacey in *Lawyers and Laymen* ed. Charles-Edwards, Owen, and Walters, (Cardiff 1986), 219-21. There is also O.Ir. material on evidence at *CIH* 1150.16-1151.2; 1421.30-1422.16 and 1570.1-8.

ECCLESIASTICAL LEGISLATION

73. *Cáin Domnaig* 'the law of Sunday'. This O.Ir. text deals with the penalties for breaking the sanctity of Sunday. It is edited and translated by Hull in *Ériu* 20 (1966) 151-77.

74. *Cáin Adomnán* 'the law of Adomnán'. This O.Ir. text deals mainly with offences against women, but also touches on offences against clerics and children. It is to be identified with the *Lex Innocentium* 'law of innocents' which the *Annals of Ulster* record as having been brought to Ireland in the year 696 (= 697) by Adomnán, abbot of Iona. In *Críth Gablach* 524 = *CIH* 569.17 it is referred to as *Recht Adamnáin* (see *CG* Introd. xiv).

It is edited and translated by Meyer in *Anecdota Oxoniensia*, Mediaeval and Modern Series, Part xiii, Oxford 1905. For further discussion, see J. Ryan, *SEIL* 269-76, and Máirín Ní Dhonnchadha, *Peritia* 1 (1982) 178-215.

75. **Cáin Phátriac* 'the law of Patrick'. The *Annals of Ulster* record for the year 736 (= 737) *Lex Patricii tenuit Hiberniam* 'the law of Patrick took effect in Ireland'. This lost text seems to have dealt mainly with offences against clergy, as it is summed up in a gloss on Colmán's Hymn (*Thes.* ii 306⁵) with the words *cen*

chlérchui do marbad 'not to kill clerics'. It is referred to in *Cáin Domnaig* (No. 73 above) §3.

Cáin Phátraic is to be distinguished from the short O.Ir. text *Ríagail Phátraic* 'the rule of Patrick', which deals with the proper behaviour and payment of clerics (edited and translated by O'Keeffe, *Ériu* 1 (1904) 216-24, and discussed briefly by Sharpe, *Peritia* 3 (1984) 252-4).

76. **Cáin Dar Í* 'the law of Dar Í'. This lost text deal with offences against cattle. See No. 50 *Bósléchta* 'cow-sections' for discussion.

77. *Rith na cánann* 'the extent of the laws' (CIH 1587.1-10). This short Mid. Ir. text deals with the individual payments to be made in the case of ecclesiastical legislation being violated by a crowd of persons numbering less than a stated limit. It is edited and translated (into German) by Thurneysen in *ZCP* 18 (1930) 382-6.

CANON LAW

78. *Canones Hibernenses* I-VI 'Irish Canons I-VI'. These synodal decrees in Latin include regulations relating to penance, as well as canon and secular law. They are edited and translated by Bieler, *IP* 160-75. Canon VI is purely secular — dealing with offences by and against dogs — and may have some connection with the lost O.Ir. law-text *Consléchta* 'dog-sections' (No. 48 above).

Other Latin texts edited and translated in *IP* also contain canon law material of relevance to early Irish law, and are occasionally quoted in the present book, e.g. pp. 40, 43, 96, 198, 213 above.

79. *Collectio Canonum Hibernensis* 'the Irish Collection of Canons'. This collection is based chiefly on Biblical and patristic sources, but also contains elements of native Irish legal tradition (see Maurice Sheehy, 'Influence of Ancient Irish law on the *Collectio Canonum Hibernensis*', *Proceedings of the third International Congress of Medieval Canon Law*, *Monumenta Iuris Canonici Series C, Subsidia 4*, (Vatican City 1971) 31-42). In one MS, compilers of the *Collectio* are identified as Rubin of Dairinis (died 735) and Cú Chuimne of Iona (died 747) — see Thurneysen, *ZCP* 6 (1908) 1-5. The *Collectio* survives in two recensions, A and B. Wasserschleben's edition (without translation) in *IK* is based on

Recension A, whereas Sheehy's forthcoming edition (with translation) is based mainly on Recension B.

In *Peritia* 3 (1984) 445-52 Liam Breathnach has demonstrated that parts of *Bretha Nemed* *toísech* (No. 15 above) derive from the *Collectio*. Thus CIH 2211.8-12; 2212.18-23; 2213.7-20 are from bk. 42 *De ecclesia et mundo* chs. 1-4. Cf. *Peritia* 3, 417-20.

APPENDIX 2

LIST OF WISDOM-TEXTS

I provide here a list of the main Old Irish wisdom-texts i.e. those texts which contain precepts, proverbs and gnomic statements bearing on human behaviour, society, nature and other topics. All wisdom-texts contain material of relevance to early Irish law, particularly Nos. 1-3 below.

1. *Audacht Morainn* 'the testament of Morann' is a 7th century text on kingship attributed to the mythical judge Morann. The older recension is edited and translated by F. Kelly, Dublin 1976. It has a certain amount in common with the two *Bretha Nemed* texts (App. 1 Nos. 14 and 15) and Binchy suggests that it is also a product of the *Nemed* 'poetico-legal' school. For a discussion of similarities between *Audacht Morainn* and *Bretha Nemed*, see pp. 235-6 above.

2. *Tecosca Cormaic* 'the teachings of Cormac' deals mainly with the proper behaviour of kings and warriors, but also contains important passages on court procedure (§22 = *CIH* 2342.1-6; §§23-6). It is edited and translated by Meyer, Todd Lecture Series xv, Dublin 1909.

3. *Trecheng Breth Féne* lit. 'a triad of judgements of the Irish' is the title given in the best MS (*YBL* p. 414^b 24) to a late O.Ir. (probably 9th c.) compilation of gnomic material, arranged mainly in triadic form. It is edited and translated by Meyer, Todd Lecture Series xiii, Dublin 1906, under the title *The Triads of Ireland*. I hope to publish a new edition within a few years.

Triads 149-86 are almost entirely legal, and there are occasional legal triads elsewhere in the collection, e.g. 87, 205, 220, 235, 244, 256. Some of the triads in the legal section were clearly taken directly from the law-texts. Thus Triads 183, 184 and 185 are from *Bretha Crólige* §§16, 25 and 44 respectively (note that the compiler retains the same order as the original law-text). He has simplified the *Bretha Crólige* text in all three cases. For example *BC* §44 (*CIH* 2298.8-10 = *Ériu* 12 (1938) 34) reads *Ataat .iii. mna i tuaith nad alet*

otrus na fiacha cia forruastar friu: ben lasambi cuma cip cia las fia, ben gadas ar cach recht, baislec auptha 'there are three women in the *túath* who are not entitled to sick-maintenance or fines though injury be done to them: a woman who does not care who she sleeps with, a woman who steals from every law-abiding person, a sorceress'. In the Triads this appears as *Téora mná na dlegat díre: ben lasambi cummae cipé las fia, ben gatach, ben aupthach* 'three women who are not entitled to honour-price: a woman who does not care who she sleeps with, a thieving woman, a sorceress'. Here the verb *álid*, uncommon outside the laws, has been replaced by *dligid*, *othrus na fiacha* has been reduced to *díre* 'honour-price', and the phrase *baislec auptha* lit. 'basilisk of sorcery' has been replaced by the more ordinary *ben aupthach* 'sorceress'.

4. *Bríathartheosc Con Culainn* 'the precept-instruction of Cú Chulainn' is edited and translated by Smith in *ZCP* 15 (1925) 187-92, and edited by Dillon in *SCC* 262-302. It contains some legal material (e.g. §8 = *SCC* 270) but consists mainly of general advice to a king.

5. *Tecosc Cuscráid* 'the instruction to Cuscráid' (edited and translated by Best, *Ériu* 8 (1916) 173, 180-1) contains advice to a king.

6. *Senbriáthra Fíthail* 'the ancient sayings of Fíthail' (edited and translated by Smith, *RC* 45 (1928) 1-61) contains general precepts, proverbs and gnomes. *Bríathra* (or *Roscada*) *Flainn Fína* 'the sayings of Flann Fína' (edited and translated by Smith, *ibid.* 61-92) overlaps to a large extent with *Senbriáthra Fíthail*. Flann Fína was the Irish name borne by the Northumbrian king Aldfrith son of Oswy, who ruled Northumbria from 685 to 705 A.D. He had an Irish mother, and studied in Ireland in his youth. His learning is referred to in an entry in *AU* s.a. 703 (recte 705): *Aldfrith mac Ossu sapiens, rex Saxonum moritur* 'Aldfrith the learned, son of Oswy, king of the Saxons, dies'.

Colin Ireland, currently at the Dublin Institute for Advanced Studies, is preparing a new edition of these texts.

The name Fíthail is also associated with a lost law-text *Findsruth Fíthail* 'the fair stream of Fíthail' from which occasional quotations survive, e.g. *CIH* 2004.13-26 (footnote⁶).

7. *Aibidil Luigne maic Éremóin* 'the alphabet (= instruction) of Luigne mac Éremóin' consists of a collection of legal and proverbial maxims. Some of them are also found in the surviving law-texts and in other wisdom-texts, particularly *Tecosca Cormaic*. This text was first printed by Meyer in *ACL* iii (1907) 226-30 under the title 'Das Alphabet des Cuigne mac Emoin', and was subsequently edited and translated by Smith in *ZCP* 17 (1928) 45-72 under the title 'The Alphabet of Cuigne mac Emoin'. In *Ériu* 31 (1980) 107 Brian Ó Cuiv pointed out that the title (half cut off by a binder of the Book of Lecan) should read *Aibidil Luigne maic Éremóin*, cf. *CGH*, Index of Personal Names s. v. Luigni.

APPENDIX 3

BIBLIOGRAPHY

This bibliography contains a list of books and articles of relevance to the study of early Irish law. For further bibliographical information, see R. I. Best, *Bibliography of Irish Philology and of printed Irish Literature* (Dublin 1913) 256-61; R. I. Best, *Bibliography of Irish Philology and manuscript Literature 1913-1941* (Dublin 1942) 170-6; Rolf Baumgarten, *Bibliography of Irish Linguistics and Literature 1942-72* (Dublin 1986) 537-47; Liam Ronayne, 'Seandlithe na nGael: an annotated Bibliography of the Ancient Laws of Ireland', *The Irish Jurist* 17 (1982) 131-44. A supplement to the latter was published by Neil McLeod in *The Irish Jurist* 18 (1983) 360-3.

The titles of articles are given between inverted commas.

Baumgarten, Rolf 'The Kindred Metaphors in *Bechbretha* and *Coibnes Uisci Thairidne*', *Peritia* 4 (1985) 307-27.

Best, R. I., and Thurneysen, Rudolf *Senchas Már: Facsimile of the Oldest Fragments from MS. H 2. 15*, with Descriptive Introduction (Dublin 1931).

Bieler, Ludwig *The Irish Penitentials*, with an Appendix by D. A. Binchy. *Scriptores Latini Hiberniae* vol. 5 (Dublin 1963).

Binchy, D. A. ed. *Studies in Early Irish Law* (Dublin 1936).

——— 'Family Membership of Women' *ibid.* 180-6.

——— 'The Legal Capacity of Women with regard to Contracts' *ibid.* 207-34.

——— 'Bretha Crólige', *Ériu* 12 (1938) 1-77.

——— 'Sick-maintenance in Irish Law' *ibid.* 78-134.

——— 'Aimser Chue' in *Féil-sgríbhinn Eóin Mhic Néill* ed. John Ryan (Dublin 1940) 18-22.

——— *Crit Gablach*, Mediaeval and Modern Irish Series vol. 11 (Dublin 1941 repr. 1970).

——— 'The Linguistic and Historical Value of the Irish Law Tracts', *Proceedings of the British Academy* 29 (1943) 195-227, repr. in *Celtic Law Papers* ed. D. Jenkins (Brussels 1973) 71-107.

——— 'Secular Institutions' in *Early Irish Society* ed. Myles Dillon (Dublin 1954) 52-65.

- 'Bretha Nemed', *Ériu* 17 (1955) 4-6.
- 'Coibnes Uisci Thairidne', *ibid.* 52-85.
- 'Some Celtic Legal Terms', *Celtica* 3 (1956) 221-31.
- 'The Date and Provenance of *Uraicecht Becc*', *Ériu* 18 (1958) 44-54.
- 'Linguistic and Legal Archaisms in the Celtic Law-books', *Transactions of the Philological Society* 1959, 14-24; repr. in *Celtic Law Papers* ed. D. Jenkins (Brussels 1973) 109-20.
- 'Lawyers and Chroniclers' in *Seven Centuries of Irish Learning: 1000-1700* ed. B. Ó Cuív (Dublin 1961) 58-71.
- 'The Old-Irish Table of Penitential Commutations', *Ériu* 19 (1962) 47-72.
- 'The Passing of the Old Order' in *Proceedings of the International Congress of Celtic Studies* (Dublin 1962) 119-32.
- 'Ancient Irish Law', *The Irish Jurist* 1 (1966) 84-92.
- 'Bretha Déin Chécht', *Ériu* 20 (1966) 1-66.
- 'Mellbretha', *Celtica* 8 (1968) 144-54.
- 'St. Patrick's "First Synod"', *Studia Hibernica* 8 (1968) 49-59.
- *Celtic and Anglo-Saxon Kingship* (Oxford 1970, O'Donnell Lectures for 1967-8).
- 'Celtic Suretyship, a Fossilized Indo-European Institution?' in *Indo-European and Indo-Europeans* ed. Cardona, Hoenigswald and Senn (Philadelphia 1970) 355-67; repr. *The Irish Jurist* 7 (1972) 360-72.
- 'An Archaic Legal Poem', *Celtica* 9 (1971) 152-68.
- 'Distraint in Irish Law', *Celtica* 10 (1973) 22-71.
- 'A Text on the Forms of Distraint' *ibid.* 72-86.
- 'The Pseudo-historical Prologue to the *Senchas Már*', *Studia Celtica* 10-11 (1975-76) 15-28.
- 'Irish History and Irish Law', *Studia Hibernica* 15 (1975) 7-36; 16 (1976) 7-45.
- 'Féchem, Fethem, Aigne', *Celtica* 11 (1976) 18-33.
- *Corpus Iuris Hibernici* vols. 1-6 (Dublin 1978).
- 'Corpus Iuris Hibernici — Incipit or Finit Amen?' in *Proceedings of the Sixth International Congress of Celtic Studies, 1979* ed. G. Mac Eoin (Dublin 1983) 149-64.
- 'De Fontibus Iuris Romani', *Celtica* 15 (1983) 13-7.
- 'The Original Meaning of *co nómad náu (nó)*; Linguists v. Historians?', *Celtica* 16 (1984) 1-12.
- Breatnach, Liam** 'Canon Law and Secular Law in Early Ireland: the Significance of *Bretha Nemed*', *Peritia* 3 (1984) 439-59.

- 'Ardri as an Old Compound', *Ériu* 37 (1986) 192-3.
- *Uraicecht na Ríar: the Poetic Grades in Early Irish Law*. Early Irish Law Series vol. 2 (Dublin 1987).
- 'The Ecclesiastical Element in the Old-Irish Legal Tract *Cáin Fuithirbe*', *Peritia* 5 (1986) 36-52.
- Byrne, Francis John** 'Tribes and Tribalism in Early Ireland', *Ériu* 22 (1971) 128-66.
- *Irish Kings and High-Kings* (London 1973, paperback ed. 1987).
- Byrne, Mary E.** 'On the Punishment of Setting Adrift', *Ériu* 11 (1932) 97-102.
- Charles-Edwards, Thomas** 'Some Celtic Kinship Terms', *Bulletin of the Board of Celtic Studies* 24 (1970-72) 105-22.
- 'The Heir-apparent in Irish and Welsh Law', *Celtica* 9 (1971) 180-90.
- 'Kinship, Status and the Origins of the Hide', *Past and Present* 56 (1972) 3-33.
- 'The Social Background to Irish *Peregrinatio*', *Celtica* 11 (1976) 43-59.
- 'Boundaries in Irish Law' in *Medieval Settlement: Continuity and Change* ed. P. H. Sawyer (London 1976) 83-7.
- 'The *Corpus Iuris Hibernici*', review in *Studia Hibernica* 20 (1980) 141-62.
- 'The Church and Settlement' in *Irland und Europa: Die Kirche im Frühmittelalter* ed. Próinséas Ní Chatháin und Michael Richter (Stuttgart 1984) 167-75.
- 'Críth Gablach and the Law of Status', *Peritia* 5 (1986) 53-73.
- Charles-Edwards, T., and Kelly, F. Bechbretha: an Old Irish Law-tract on Bee-keeping.** Early Irish Law Series vol. 1 (Dublin 1983).
- Charles-Edwards, T., Owen, M., and Walters, D.** eds. *Lawyers and Laymen: Studies in the History of Law presented to Professor Dafydd Jenkins on his Seventy-fifth Birthday* (Cardiff 1986).
- D'Arbois de Jubainville, Honoré** *Études sur le droit celtique* vols. 1-2 (Paris 1895).
- Davies, Wendy** 'Clerics as Rulers: Some Implications of the Terminology of Ecclesiastical Authority in Early Medieval Ireland' in *Latin and the Vernacular Languages in Early Medieval Britain* ed. N. P. Brooks (Leicester 1982) 81-97.

Dillon, Myles 'Stories from the Law-tracts', *Ériu* 11 (1932) 42-65.

— 'The Relationship of Mother and Son, of Father and Daughter, and the Law of Inheritance with regard to Women' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 129-79.

Doherty, Charles 'Exchange and Trade in Early Medieval Ireland', *Journal of the Royal Society of Antiquaries of Ireland* 110 (1980) 67-89.

— 'Some Aspects of Hagiography as a Source for Irish Economic History', *Peritia* 1 (1982) 300-28.

Gerriets, Marilyn 'Economy and Society: Clientship according to the Irish Laws', *Cambridge Medieval Celtic Studies* 6 (1983) 43-61.

— 'Money in Early Christian Ireland according to the Irish Laws', *Comparative Studies in Society and History* 27 (1985) 323-39.

— 'Kingship and Exchange in Pre-Viking Ireland', *Cambridge Medieval Celtic Studies* 13 (1987) 39-72.

— 'The King as Judge in Early Ireland', *Celtica* 20 (1988) 1-24.

Gwynn, E. J. 'An Old-Irish Tract on the Privileges and Responsibilities of Poets', *Ériu* 13 (1942) 1-60, 220-36.

Hancock, O'Mahony, Richey, Hennessy and Atkinson eds. *Ancient Laws of Ireland* vols. 1-6 (Dublin 1865-1901).

Hogan, James 'The Irish Law of Kingship, with Special Reference to Ailech and Cenél Eoghain', *Proceedings of the Royal Irish Academy* 40 C (1932) 186-254.

Hughes, Kathleen 'The Distribution of Irish Scriptoria and Centres of Learning from 730 to 1111' in *Studies in the Early British Church* ed. Chadwick, Hughes, Brooke and Jackson (Cambridge 1958) 243-72.

— *The Church in Early Irish Society* (London 1966).

— *Early Christian Ireland: Introduction to the Sources* (London 1972).

Hull, Vernam 'Bretha im Gatta', *Zeitschrift für celtische Philologie* 25 (1956) 211-25.

— 'On Coibnes Uisci Thairidne', *ibid.* 26 (1957) 302-7.

— 'A Note on Cain Airlitheo', *ibid.* 29 (1964) 188-90.

— 'Cain Domnaig', *Ériu* 20 (1966) 151-77.

Jenkins, Dafydd ed. *Celtic Law Papers*: Studies presented to the International Commission for the History of Representative and Parliamentary Institutions xlii, Aberystwyth 1971 (Brussels 1973).

Jenkins, D., and Owen, M. eds. *The Welsh Law of Women*: Studies presented to Professor Daniel A. Binchy on his Eightieth Birthday (Cardiff 1980).

Joseph, Lionel 'A Survival from the Italo-Celtic Legal Vocabulary', *Ériu* 37 (1986) 119-25.

Kelly, Fergus 'The Old Irish Tree-list', *Celtica* 11 (1976) 107-24.

— 'An Old Irish Text on Court Procedure', *Peritia* 5 (1986) 74-106.

Knoch, August 'Die Ehescheidung im alten irischen Recht' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 235-68.

McAll, Christopher 'The Normal Paradigms of a Woman's Life in the Irish and Welsh Law Texts' in *The Welsh Law of Women* ed. Jenkins and Owen (Cardiff 1980) 7-22.

Mac Cana, Proinsias 'The Three Languages and the Three Laws', *Studia Celtica* 5 (1970) 62-78.

McCone, Kim 'Notes on the Text and Authorship of the Early Irish Bee-Laws', *Cambridge Medieval Celtic Studies* 8 (1984) 45-50.

— 'Dubthach macu Lugair and a Matter of Life and Death in the Pseudo-historical Prologue to the *Senchas Már*', *Peritia* 5 (1986) 1-35.

McLeod, Neil 'The Two *fer midboth* and their Evidence in Court', *Ériu* 33 (1982) 59-63.

— 'Interpreting Early Irish Law: Status and Currency' (Part 1) *Zeitschrift für celtische Philologie* 41 (1986) 46-65; (Part 2) *ibid.* 42 (1987) 41-115.

MacNeill, Eoin, 'Some Irish Law Documents', *The Gaelic Journal : Irisleabhar na Gaedhilge* 8 (1897) 74-5, 86-90, 99-100, 114-5.

— 'The Irish Law of Dynastic Succession', *Studies* 8 (1919) 367-82, 640-53.

— *Celtic Ireland* (Dublin 1921, repr. 1981 with Introduction and Notes by Donnchadh Ó Corráin).

— 'Ancient Irish Law: the Law of Status or Franchise' *Proceedings of the Royal Irish Academy* 36 C (1923) 265-316.

— 'Ireland and Wales in the History of Jurisprudence', *Studies* 16 (1927) 245-58, 605-15; repr. in *Celtic Law Papers* ed. D. Jenkins (Brussels 1973) 171-92.

— *Early Irish Laws and Institutions* (Dublin 1935).

— 'Prolegomena to the Study of the *Ancient Laws of Ireland*' ed. with Introduction and Footnotes by D. A. Binchy, *The Irish Jurist* 2 (1967) 106-15.

Mac Niocaill, Gearóid 'The Origins of the *betagh*', *ibid.* 1 (1966) 292-8.

— 'Notes on Litigation in Late Irish Law', *ibid.* 2 (1967) 299-307.

— 'The "Heir designate" in Early Medieval Ireland', *ibid.* 3 (1968) 326-9.

— 'Admissible and Inadmissible Evidence in Early Irish Law', *ibid.* 4 (1969) 332-7.

— 'A propos du vocabulaire social irlandais du bas moyen âge', *Études Celtiques* 12 (1968-71) 512-46.

— 'Jetsam, Treasure Trove and the Lord's Share in Medieval Ireland', *The Irish Jurist* 6 (1971) 103-10.

— 'Irish Law and the Armagh Constitutions of 1297', *ibid.* 339-44.

— 'Tír Cumáile', *Ériu* 22 (1971) 81-6. This is an edition of the texts listed in Appendix 1 No. 47.

— 'Aspects of Irish Law in the Late Thirteenth Century', *Historical Studies* 10 (1976) 25-42.

— 'Christian Influences in Early Irish Law' in *Irland und Europa: Die Kirche im Frühmittelalter* ed. Próinséas Ní Chatháin und Michael Richter (Stuttgart 1984) 151-6.

— 'The Interaction of Laws' in *The English in Medieval Ireland* ed. J. Lydon (Dublin 1984) 105-17.

Meroney, Howard 'The Titles of some Early Law-tracts', *The Journal of Celtic Studies* 2 (1958) 189-206.

Meyer, Kuno 'A Collation of *Críth Gablach*, and a Treatise on *Cró* and *Díbad*', *Ériu* 1 (1904) 209-15. (For the latter see Thurneysen, 'Zu Ériu 1 214f.', *Zeitschrift für celtische Philologie* 16 (1927) 205).

— *Cáin Adomnáin*: an Old-Irish Treatise on the Law of Adamnan. *Anecdota Oxoniensia*, Mediaeval and Modern Series, Part xii (Oxford 1905).

Mulchrone, Kathleen 'The Rights and Duties of Women with regard to the Education of their Children' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 187-205.

Nicholls, Kenneth *Land, Law and Society in Sixteenth-century Ireland*. O'Donnell Lecture 1976, National University of Ireland [Dublin].

Ní Dhonnchadha, Máirín 'The Guarantor List of *Cáin Adomnáin* 697', *Peritia* 1 (1982) 178-215.

O'Brien, Michael 'Varia 5. *Berrad Airechta*', *Ériu* 11 (1932) 88-9.

Ó Buachalla, Liam 'Some Researches in Ancient Irish Law', *Journal of the Cork Historical and Archaeological Society* 52 (1947) 41-54, 135-48; *ibid.* 53 (1948) 1-12, 75-81.

Ó Corráin, Donnchadh 'Irish Regnal Succession: a Reappraisal', *Studia Hibernica* 11 (1971) 7-39.

— 'Nationality and Kingship in pre-Norman Ireland', in *Nationality and the Pursuit of National Independence* ed. T. W. Moody (Belfast 1978) 1-35.

— 'Irish Law and Canon Law' in *Irland und Europa: Die Kirche im Frühmittelalter* ed. Próinséas Ní Chatháin und Michael Richter (Stuttgart 1984) 157-66.

— 'Marriage in Early Ireland' in *Marriage in Ireland* ed. Art Cosgrove (Dublin 1985) 5-24.

Ó Corráin, D., Breatnach, L., and Breen, A. 'The Laws of the Irish', *Peritia* 3 (1984) 382-438.

O'Keeffe, James G. 'The Rule of Patrick', *Ériu* 1 (1904) 216-24.

O'Rahilly, T. F. 'Irish Poets, Historians and Judges in English Documents, 1538-1615', *Proceedings of the Royal Irish Academy* 36 C (1922) 86-120.

O'Sullivan, Anne and William 'A Legal Fragment', *Celtica* 8 (1968) 140-3.

Patterson, Nerys 'Material and Symbolic Exchange in Early Irish Clientship' in *Proceedings of the Harvard Celtic Colloquium* 1 ed. Doan and Buttmer (Harvard 1981) 53-61.

Plummer, Charles 'Notes on some Passages in the Brehon Laws', *Ériu* 8 (1916) 127-32; *Ériu* 9 (1923) 31-42, 109-17; *Ériu* 10 (1928) 113-29.

— 'On the Fragmentary State of the Text of the Brehon Laws', *Zeitschrift für celtische Philologie* 17 (1928) 157-66.

Power, Nancy 'Classes of Women described in the *Senchas Már*' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 81-108.

Price, Liam 'The Origin of the Word *betagius*', *Ériu* 20 (1966) 185-90.

Ryan, John 'The *Cáin Adomnáin*' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 269-76.

Sharpe, Richard 'Some Problems concerning the Organisation of the Church in Early Medieval Ireland', *Peritia* 3 (1984) 230-70.

— 'Dispute Settlement in Medieval Ireland: a Preliminary Enquiry' in *The Settlement of Disputes in Early Medieval Europe* ed. Davies and Fouracre (Cambridge 1986) 169-89.

Smith, Roland 'The Advice to Doidin', *Ériu* 11 (1932) 66-85.

— 'The *cach* Formulas in the Irish Laws', *Zeitschrift für celtische Philologie* 20 (1936) 262-77.

Stacey, Robin 'Berrad Airechta: an Old Irish Tract on Suretyship' (translation and notes) in *Lawyers and Laymen* ed. Charles-Edwards, Owen and Walters (Cardiff 1986) 210-33.

Stokes, Whitley 'O'Davoren's Glossary', *Archiv für celtische Lexikographie* ii (1903-4) 197-504.

Thurneysen, Rudolf 'Aus dem irischen Recht I' [1. Das Unfrei-Lehen], *Zeitschrift für celtische Philologie* 14 (1923) 335-94.

— 'Aus dem irischen Recht II' [2. Das Frei-Lehen; 3. Das Fasten beim Pfändungsverfahren], *ibid.* 15 (1925) 238-96.

— 'Aus dem irischen Recht III' [4. Die falschen Urteilssprüche Caratnia's; 5. Zur Überlieferung und zur Ausgabe der Texte über das Unfrei-Lehen und das Frei-Lehen], *ibid.* 15 (1925) 302-76.

— *Cóic Conara Fugill*: Die fünf Wege zum Urteil. Abhandlungen der preussischen Akademie der Wissenschaften. Jahrgang 1925. Phil.-Hist. Klasse. Nr. 7 (Berlin 1926).

— 'Aus dem irischen Recht IV' [6. Zu den bisherigen Ausgaben der irischen Rechtstexte], *Zeitschrift für celtische Philologie* 16 (1927) 167-230.

— 'Nachträgliches', *ibid.* 406-10.

— *Die Bürgschaft im irischen Recht*. Abhandlungen der preussischen Akademie der Wissenschaften. Jahrgang 1928. Phil.-Hist. Klasse. Nr. 2 (Berlin 1928).

— 'Aus dem irischen Recht V' [7. Zu Gúbretha Caradniad; 8. Zum ursprünglichen Umfang des Senchas Már; 9. Zu der Etymologie von irisch *ráth* 'Bürgschaft' und zu der irischen Kanonensammlung und den Triaden; 10. Nachträge zur Bürgschaft], *Zeitschrift für celtische Philologie* 18 (1930) 353-408.

— *Irisches Recht* I. Díre. Ein altirischer Rechtstext, II. Zu den unteren Ständen in Irland. Abhandlungen der preussischen Akademie der Wissenschaften. Jahrgang 1931. Phil.-Hist. Klasse. Nr. 2 (Berlin 1931).

— 'Nachträge zu *Irisches Recht*', *Zeitschrift für celtische Philologie* 19 (1933) 346-51.

— 'Das keltische Recht', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 55 (1935) 81-104; tr. 'Celtic Law' in *Celtic Law*

Papers ed. D. Jenkins (Brussels 1973) 49-70.

— 'Cáin Lánamna' in *Studies in Early Irish Law* ed. Binchy (Dublin 1936) 1-80.

— 'Heirat' *ibid.* 109-28.

— 'Sochor' in *Féil-sgríbhinn Eóin Mhic Néill* ed. John Ryan (Dublin 1940) 158-9.

Wasserschleben, Herrmann *Die irische Kanonensammlung* (Leipzig 1885).

Watkins, Calvert 'Sick-maintenance in Indo-European', *Ériu* 27 (1976) 21-5.

APPENDIX 4

GUIDE TO PRONUNCIATION

I provide here a rough guide to the pronunciation of Old Irish at the period of the law-texts (7th-8th centuries). Obviously, there must have been substantial development in pronunciation during this two hundred-year span, not to mention local dialect differences. In general, the pronunciation given here and in Index 1 is intended to be that of the early 7th century. A few Middle and Early Modern Irish terms are however quoted in Index 1 with appropriate later pronunciations, e.g. *eighre* /air'e/ 'heir'. I also give the later pronunciation of some terms used in the titles of law-texts, e.g. *uraicecht* /urak'ext/ 'primer'. This is because some Old Irish law-texts are traditionally referred to by a Middle Irish title (see p. 265) e.g. *Uraicecht Becc*, App. 1 No. 7; cf. Nos. 11, 13, 20, 25, 27, 28, etc.

The rather cumbersome spelling system of O.Ir. makes it difficult to be sure about some aspects of early Irish pronunciation, and there is continuing disagreement among scholars, particularly about the diphthongs and the weakly stressed vowels. The following brief description is intended to be phonemic, i.e. it expresses significant distinctions only and minor phonetic details are omitted. For example, the /a/ preceding a slender consonant, as in Old Irish *caitt* /kat'/ 'of a cat', is likely to have had a more fronted pronunciation than the /a/ preceding a broad consonant, as in the nom. sg. *catt* /kat/ 'cat'. However, this phonetic difference is not expressed in the transcription.

The simple vowels

The simple vowels *a e i o u* can be short or long. In Old Irish, as in Modern Irish, the latter are expressed with an acute accent: *á é í ó ú* (represented in the International Phonetic Alphabet by /a:/, /e:/, /i:/, /o:/, /u:/). Many words are distinguished solely by a contrast between short and long vowels, e.g. *ban* /ban/ 'of women', *bán* /ba:n/ 'white'; *fer* /fer/ 'man', *féir* /fe:r/ 'grass'.

The diphthongs

In O.Ir. manuscripts the following nine diphthongs are commonly written with a length mark:

- ia* /ia/, e.g. *iasc* /iask/ 'fish'.
- úa* /ua/, e.g. *tuáth* /tuaθ/ 'petty kingdom'.
- ái* or *áé* /ai/, e.g. *gáí*, *gáé* /gai/ 'spear'.
- óí* or *óé* /oi/, e.g. *oín*, *óén* /oin/ 'one'.
- úí* /ui/, e.g. *druí* /drui/ 'druid'.
- áú* or *áó* /a:u/, e.g. *gáú*, *gáo* /ga:u/ 'falsehood'.
- óú* /o:u/, e.g. *bóú* /bo:u/ 'of a cow'.
- íú* /i:u/, e.g. *-bíú* /bi:u/ 'I am'.
- éú* or *éó* /e:u/, e.g. *béú*, *béo* /be:u/ 'alive'.

In the manuscripts the accent is written indiscriminately over either letter of the diphthong. In modern transcriptions of O.Ir., however, the general convention is to write *ái*, *óí*, *úí* with the accent over the *i*, so as to distinguish these diphthongs from the simple vowels followed by an *i*-glide. Thus, *moín* 'treasure' contains a diphthong /oi/ whereas *móin* 'turf' contains the simple long vowel /o:/ followed by an *i*-glide /mo:n/. In my transcription I use the hyphen to distinguish diphthongs from sequences of two syllabic vowels. Thus, O.Ir. *fiach* 'debt' is a monosyllable /fiax/ whereas *fiach* 'raven' contains two syllables /fi-ax/.

In the O.Ir. Glosses the distinctions between the diphthongs /ai/, /oi/, and /ui/ are already breaking down, a process which was completed by the Mid.Ir. period. So *moídem* 'boasting' is spelled *maidem* at Wb. 17c14, and *oís*, *óes* 'people' is often written *aís*, e.g. Wb. 25c19, MI. 31c6. Similarly, *toísech* 'leader' and *soír* 'free' are spelled *tuissech* and *suír* at Wb. 33b20 and Wb. 4a10 respectively. (For further discussion, see Warren Cowgill 'On the fate of *w in Old Irish' in *Language: Journal of the Linguistic Society of America* 43 (1967) 129-38).

One can also distinguish four short diphthongs (see David Greene, *Ériu* 27 (1976) 40-2):

- iu* /iu/, e.g. *fiuss* /fius/ 'knowledge'.
- eu* /eu/, e.g. *deug* /deuγ/ 'drink'.

au /au/, e.g. *daur* /daʊr/ 'oak'.

ou /ou/, e.g. *routh* /rouθ/ 'to a wheel'.

Weakly stressed vowels

At the beginning of our period there seems to have been a clear distinction between *a e i o u* in open final position. So the final vowel of nom. pl. *bretha* /breθa/ 'judgements' would have been distinct from the final vowel of gen. sg. *sílo* /su:lo/ 'of an eye'. From about 700 A.D., however, -*o* falls together with -*a* (GOI p. 61). But in pre-stress position the distinction between -*o*- and -*a*- is maintained until the 9th century (GOI p. 260) e.g. *do-scara* /do·skara/ 'he overthrows'; *da-scara* /da·skara/ 'he overthrows him'.

From about 700 A.D. there seems also to have been a falling together of weakly stressed -*u*- and -*o*- in closed final position. So we get variants such as -*águr* 'I fear' Thes. ii 290.5 beside -*agur* Ml. 74d4, *diltod* 'refusal' Wb. 5b7 beside *diltud* Wb. 10c13, *taidchur* 'return' Wb. 3a14 beside *tadchor* Ml. 131c11.

Consonantal quality

Apart from /h/, each consonant has a 'broad' or 'slender' quality (comparable to the 'hard' and 'soft' consonants of Russian). Slender consonants are palatal or palatalized, that is, articulated at or as near as possible to the hard palate. Broad consonants are neutral or velarized. In word initial, consonants are pronounced slender before *i* and *e*, and broad before *a*, *o*, and *u*. In my transcription I use a tick to mark palatalization in non-initial position (it is superfluous to mark palatalization in initial position). So, the dat. sg. *leicc* 'to a stone' has a palatal *k*, and is represented /Lek^č/, whereas the nom. sg. *lecc* has a velar *k* and is represented /Lek/. For an English speaker a convenient approximation to slender quality is to pronounce a slight y-sound after the consonant: /Lék^č/.

In O.Ir. orthography, glide-vowels are often used to indicate whether a consonant is broad or slender. The glide-vowel *a*, following a consonant, shows that it is broad. The glide-vowel *i*, preceding a consonant, shows that it is slender. These glide-vowels are often omitted, e.g. *berid* or *beirid* /ber'ið/ 'he bears', *bermi* or *bermai* /bermi/ 'we bear'.

The consonants

For the reader who knows Mod.Ir. a particularly confusing feature of O.Ir. orthography is the fact that the letters *c*, *t*, *p*; *g*, *d*, *b* normally have different values in the middle or at the end of a word to what they have at the beginning. Thus, the voiced stops /g/, /d/, /b/ are usually indicated by the letters *c*, *t*, *p* in the middle and at the end of words. At the beginning of words, however, they are always indicated by *g*, *d*, *b*. So Mod.Ir. *bog* 'soft' is spelled *boc* in O.Ir. (but pronounced /bog/). On the other hand, Mod.Ir. *gob* 'beak' is spelled *gop*, occasionally *gobb*, in O.Ir. (pronounced /gob/). The voiceless stops /k/, /t/, /p/ are always indicated by *c*, *t*, *p* at the beginning of words, but often by *cc*, *tt*, *pp* in the middle and at the end of words. So Mod.Ir. *mac* 'son' is usually spelled *macc* (pronounced /mak/) in O.Ir.

The voiced fricatives /γ/, /ð/, /v/ are indicated by *g*, *d*, *b* in O.Ir. and the voiceless fricatives /χ/, /θ/, /f/ by *ch*, *th*, *f* (occasionally *ph*). The velar voiceless fricative /χ/ is that used in German *Buch* /bu:x/ 'book' or Scots *loch* /Lox/ 'lake', and its voiced equivalent /γ/ is found in Spanish (e.g. *fuego* /fweγo/ 'fire'). The phonemes /ð/ and /θ/ have the value of the *th* in Mod.Eng. *this* and *think* respectively. O.Ir. /v/ and /f/ are approximately as in Mod.Eng.

The other O.Ir. voiceless fricatives are /s/, its slender equivalent /ʃ/, and /h/. They are pronounced approximately as in Mod.Eng. *see*, *she*, and *he*. In consonant clusters before *i* and *e*, it is likely that /s/ rather than /ʃ/ is used, e.g. *screpul* 'scruple', probably /sk'r'ebul/ rather than /ʃ.k'r'ebul/.

Of the nasal consonants, /m/ and /m'/ are usually written *mm* in non-initial position in O.Ir., e.g. *lomm* /Lom/ 'bare', gen. sg. masc. *luimm* /Lum/. In initial position, however, a single *m* is regular, e.g. *már* /ma:r/ 'great'. O.Ir. also uses a single *m* to indicate /v/ with contiguous nasalization. So O.Ir. distinguishes *dumae* /dūvə/ 'mound' from *dubae* /duvə/ 'gloom'.

Unlike English, O.Ir. distinguishes strong and weak *n*-sounds, each with broad and slender qualities. So *conn* /koN/ 'sense' is distinguished from *con* /kon/ 'of a dog', and *cuinn* /kuN/ 'of sense' is distinguished from *cuin* /kun/ 'whence?'. The strong /N/ is no doubt articulated for longer duration than the weak /n/. There is also a velar nasal /ŋ/ probably pronounced with a /g/ in medial and final position, e.g. *long* /Long/ 'ship'. It seems likely that this

word should be pronounced something like the element *long-* in Mod.Eng. *longer*.

Like the *n*-sounds, the O.Ir. liquids show an opposition between strong and weak members, each with broad and slender qualities. So *toll* /tɔL/ 'hole' is distinguished from *tol* /tɔl/ 'will', and *tuill* /tuL/, gen. sg of *toll*, is distinguished from *tuil* /tul/, dat. sg. of *tol*. Similarly, *tarr* /taR/ 'belly' is distinguished from *tar* /tar/ 'over', and *tairr* /taR/, dat. sg. of *tarr*, from *tair* /tar/ 'come!'. As with /N/ and /n/, the main phonetic difference between /L/ and /l/, and between /R/ and /r/ is likely to have been the length of the strong member. Compare the distinction in Spanish between *perro* 'dog' and *pero* 'but'.

At the beginning of words *l r n* have their strong forms, e.g. *rí* /Ri:/ 'king', *náire* /Na:r'e/ 'shame'. But when preceded by a word which causes lenition the weak form is used, e.g. *mo rí* /mo ri:/ 'my king', *a náire* /a na:re/ 'his shame'. In consonant groups *l r n* have their strong forms before *t d s l r n* and after *s l r n* (GOI pp. 74-5).

Stress

In general, the stress in O.Ir. falls on the first syllable of the word. But in compound verbs the stress is usually on the second syllable. This is indicated by a raised point in my transcription, e.g. *do-beir* /do·b'er/ 'he gives'.

INDEX I

INDEX OF IRISH TERMS

This index provides a list of the most important Irish terms — all of relevance to law — which are used in this book. In general, the headword is given in its Old Irish spelling with a pronunciation appropriate to that period (see Appendix 4: Guide to Pronunciation). However, in some cases a word may be quoted directly from a manuscript in a later spelling. Cross-references are given to facilitate the reader, e.g. *bérla*: see *bélrae*. This shows that the Old Irish form is *bélrae*, but that the legal manuscripts usually have the later spelling *béra*.

I also include a few Mid. and Early Mod.Ir. legal terms in this index, e.g. *cuid oidhche*, *baránta*, *eighre*, and give pronunciations appropriate to the later period of the language.

The references are to page-numbers, with footnote-numbers superscript. In the case of terms used more than once in this book, the italicization of a page-number (or numbers) indicates that the main discussion is to be found at this point. For example, the main discussion of the *briugu* 'hospitaller' is at (pp.) 36-7, but there are also references to this category of person at (pp.) 90, 124, 133, 139, 170, 252.

abb /ab/ *abbot* 41.
acrae /ag're/ (vb. n. of *ad-gair* *sues*); *legal action, suing* 190.
adaltrach /aðaLtrax/ *second wife, concubine* 71, 79, 134, 135; *mac adaltraig[e]* *urnadma son of a betrothed concubine* 102.
ad-firi: see *aidbriud*.
áer /air/ *satire, slander* 49⁸⁵, 137-8; *Áer-text* App. 1 No. 37.
áerad /airəð/ (vb. n. of *áeraid* *satirizes*); *satire, satirizing* 137.
ágae fine /a:ye fin'e/ *head of kin* 13. See also *cenn fine* and *conn fine*.
ái /ai/ *law-case, law-suit* 152, 190, 195³²; *Ai Cermna* *law-suit of Cermna* App. 1 No. 69.
aicde /ag'ð'e/ *manufactured article* 62.
aice /ag'e/ *fosterage* 90¹⁸⁰. See also *altramm*.
aicillne /ag'iL'N'e/ (vb. n. of *ad-gíallna* *serves, submits to*); *Cáin Aicillne* *law of base clientship* App. 1 No. 24; *rath n-aicill[n]e* *fief of base clientship* 27⁶⁰.
aicme /ak'm'e/ *people, tribe, race; sáraicme* *free people* 55.
aicned /ag'n'eð/ gen. sg. *aicnid*; *natural law* 196, 197; *recht n-aicnid* *natural law* 248.
aidbriud /að'v'r'uð/ (vb. n. of *ad-firi* *asserts, claims to be true*); *assertion, initiation of law-case* 190.
aigne /a:y'n'e/ gen. sg. *aigneda*; *Mid.Ir. nom. pl. aigneda*; *advocate, barrister* 51, 56-7, 185, 186, 190.
ail anscuicthe /al' anskux'θ'e/ *'immovable rock'; conclusive evidence from inanimate object, etc.* 163, 204.
aille déc /al'e de:g/ *one twelfth, fee due to judge* 53.
áilsted: see *naidm*.

aimbil /am'bil/ *dumb person(?)* 94.
ainces(s) /an'k'es/ *difficult case, legal problem* 192¹¹.
airchenn /ar'x'eN/ *fixed period (of loan)* 118. Neg. anairchenn *open period (of loan)* 118.
airchinnech /ar'x'iN/ex/ *monastic superior, later angl. erenagh* 42, 66²¹², 124, 183; *airchinnech laich lay superior* 42²⁶.
aircsinach /ar'k'finax/ *one who is guilty of culpable onlooking* 155.
airesiu /ar'k'f.u/ (vb. n. of ar-aicci *looks on*); *the crime of looking on (at an offence)* 155. See also **foresiu** and **sellach**.
aire /ar'e/ *freeman, lord* 26⁶; *aire ard high lord* 28, 30; *aire coisring lord of obligation, head of kin* 14⁹¹, 48; *aire désó lord of vassalry, ordinary lord* 12, 27-8, 30, 200; *aire échta lord of blood-vengeance* 127¹⁶; *aire etir da airig one whose rank is intermediate between lord and commoner* 28; *aire forgill lord of superior testimony* 28, 185; *aire tuíseo lord of precedence* 28, 30, 140. See also **bóaire** and **óaire**.
airecht /ar'ext/ gen. sg. *airechta; public assembly, court* 141¹²⁴, 192, 194²⁷; *airecht airnaide(?) waiting court* 193²⁴; *airecht fodesin court itself* 194; *airecht fo leith court apart* 172, 193; *cúlairecht back-court* 193; *táebairecht side-court* 193; *Berrad Airechta court summary* App. 1 No. 61; *Airecht-text* App. 1 No. 71.
airéirge /ar'e:r'γ'e/ *later uréige (vb. n. of ar-éirig rises); rising as a mark of homage* 32.
airer /ar'er/ *fine amounting to one seventh of a person's honour-price* 90.
airfócræ /arofg're/ (vb. n. of ar-fócar *proclaims, announces*); *notice* 178.
airfádád **comporta[e]** /ar'iaðð kom'b'erte/ *barring of procreation, loss of opportunity for procreation* 131.
airisem oc altóir /ar'iðév og aLto:r'/ *waiting at an altar (type of ordeal)* 210.
airliciud /aR'L'ig'uð/ gen. sg. *airlicthe[o]; loan, lending* 117-8; *Cáin Airlicthe law of lending* App. 1 No. 57.
airlim(m) /aR'L'im'/ (vb. n. of ar-ling *leaps*); *leaping-trespass by livestock, trespass over a fence or wall* 144.
airlise /aR'L'ife/ *the enclosed area around a house (described in CG 219-20 as having a radius of one spear-cast)* 148.
airnайдm /aRNað'm'/ also (a)urnайдm, ernaидm (vb. n. of ar-naisc *binds*); gen. sg. *urnadma; betrothal* 71, 102.
airthech /ar'θ'ex/ (vb. n. of ar-toing *swears for*); *vicarious oath* 199⁶⁰, 201.
aiscid /aʃk'ið'/ *gift* 121.
aisndís /aʃN'd'i:ʃ/ *later faisnéis (vb. n. of as-indet *tells, declares*); evidence* 206¹¹³.
aiste /aʃt'e/ *metre, metrical composition* 45.
aistreóir /aʃt'r'o:r'/ *earlier aistire; usher, door-keeper in monastery* 39¹.
aite /ad'e/ *fosterfather* 86; *aite forcedail fosterfather of instruction, master* 91¹⁹².
aithech /aθ'ex/ gen. sg. and nom. pl. *aithig; rent-payer, client, commoner, churl* 2¹¹, 27, 73, 83¹²⁰; *aithech fortha substitute churl* 25, 183; *flaith aithig a commoner lord, one whose rank is intermediate between lord and commoner* 28.
aithegin /aθ'γ'en'/ gen. sg. *aithegna (vb. n. of ad-gainethar *restores*); restitution* 34, 37, 144, 152, 214; *táid aithgena thief of restitution* 83.
aithne /aθ'n'e/ gen. sg. *aithni; deposit* 120, 232¹⁹; *Córus Aithni regulation of deposit* App. 1 No. 58.
aithsceinm /aθ'ʃk'en'm'/ *rebounding* 150¹⁹⁶.

aitire /ad'ir'e/ *hostage-surety, hostage-suretyship* 80, 130, 157, 167, 172-3, 174, 175, 176, 192, 193, 194, 198, 215⁷, 279; *aitire cána surety for the law (of Adomnán)* 176; *cúlaitire back surety, additional surety* 169⁹¹.
aititíu /ad'id'u/ gen. sg. *aititen (vb. n. of ad-daim *acknowledges, allows, concedes*); acknowledgement, legal recognition* 109⁶⁸, 153²²⁵, 159¹⁰; *ben aititen recognised wife* 78⁸¹.
aititnech /ad'id'n/ex/ *one who acknowledges or tolerates a situation* 155.
altramm /aLtram/ *fosterage* 89¹⁷⁹; *altramm serce fosterage for affection* 87. See also **aice**.
ambue /ambu-e/ *outsider, alien* 5, 15, 167, 168, 173.
amus /ávus/ *servant, attendant, bodyguard* 65, 66; *banamus female servant* 85.
anad /anað/ (vb. n. of *anaid* *stays, waits*); *delay in pound* 178.
anamain /anāvín'/ *type of metre proper to a master poet* 45, 47.
anennac: see **ennac**.
anfaitches /anvat'x'es/ *negligence* 152, 153.
anfis /an'v'is/ *ignorance* 151, 153²²⁵.
anfobracht /anvovraxt/ gen. sg. *anfobrachta; one who suffers from a wasting sickness* 85¹⁴⁰.
anfot /anvod/ *negligence* 145, 152-3, 220.
angor /an'yor/ *undutiful person (esp. to parents)* 202⁸⁰. See also **macc** (ingor) and **goire**.
anrechtaid /aN'R'extið'/ *criminal, lawless person* 129³⁰, 222⁴³.
ánruth /a:NRuθ/ also *ároth, ánrad; second grade of poet (fili)* 116¹¹⁷.
antéchtae /aN't'e:xtē/ *impropriety* 266. Neg. of **téchtae**.
anteist: see **teist**.
apad /abað/ (vb. n. of *ad-boinn* *proclaims, gives notice*); *notice of intention to distraint* 178, 180, 183.
aphach fine /apθax fin'e/ *one proclaimed by his kin, one expelled from his kin* 13.
árách /a:rax/ *bond, guarantee, security* 191.
arae /are/ *charioteer* 67.
ard(d) /aRd/ as noun *high-ranking person* 162; as adj. *aire ard high lord* 28; in cpds *ardflaith high lord, king(?)* 176; *ardnemed high dignitary* 120.
arrae /aRe/ *sixty(?) oath-helpers* 205¹⁰⁵, *letharrai thirty(?) oath-helpers* 205¹⁰⁵. See *Binchy, Ériu* 19 (1962) 51-3.
ar-toing /ar·toŋ'g'/ *swears for, swears on behalf of* 199⁶⁰, 201; vb. n. **airthech**.
as-féna /as·f'e:na/ *swears* 199⁶⁰.
aspénad /as'b'e:nað/ (vb. n. of *as-féna*); *swearing* 199⁶⁰.
as-toing /as·toŋ'g'/ *swears away, denies by oath* 199⁶⁰, 200⁶⁸; *refuses hospitality* 139¹¹⁰; vb. n. **etech**.
astud /astuð/ (vb. n. of *ad-suidi* *fixes, binds*); *fixing, binding*; *Di Astud Chirt* 7 *Dligid on the confirmation of right and law* App. 1 No. 4; *Di Astud Chor on fixing contracts* App. 1 No. 54.
athchomare /aθxóvark/ gen. sg. *-aire enquiry; coir athchomairc proper enquiry* 191.
athgabál /aθ'javá:l/ gen. sg. *athgabála[e] (vb. n. of ad-gaib, ath-gaib recovers); distraint* 86¹⁴⁵, 177-82, 231; *athgabál iar fut distraint with a stay* 179; *athgabál inmleguin distraint of a surrogate* 179, 185; *tulathgabál immediate distraint* 179; *Di Chetharślicht Athgabála on the four divisions of distraint* App. 1 No 66; *forus n-athgabála pound where distrained animals are kept* 178.

attrab /atrav/ (vb. n. of ad-treba *inhabits, possesses*); *squatting, illegal occupation of land* 142¹³⁶.
audacht /auðaxt/ also edocht, idacht, later udacht; *will, bequest* 122, 123.
aurgnam /aʊrðnæv/ later urgnam (vb. n. of ar-fogni *ministers to, prepares*); *household work e.g. tending cattle* 73. See Thurneysen, *SEIL* 29.
aurrad /auRað/ later urrad; *person of legal standing, law-abiding freeman* 5, 223.
aurradas /auRaðas/ later urradas; *traditional law, customary law* 234³¹.
autsad /autsað/ also etsad, itsad; *storage fee(?)* 124.

báegul /baiyul/ *legal error, procedural mistake* 54, 57, 88.

báes /bais/ *legal incapacity* 153²²⁵.

báeth /baiθ/ *legally incompetent* 68, 95.

baile /bal'e/ *townland* 124.

baislec auptha /baʃl'eg aupθa/ *sorceress* 134, 285.

baitsech /baitʃ ex/ *prostitute, loose woman* 86, 103.

ban-: see **ben**.

baránta /bara:Nta/ *Early Mod.Ir. warrant, guarantor* 256⁷⁴.

bard /baRd/ nom. pl. baird; *lower grade of poet* 46, 51, 170; dóerbard *base bard* 47, 51⁹; sóerbard *noble bard* 47; tigernbard *lord-bard, a lord who is a bard* 47.

bé /be:/ *woman, wife; bé carna harlot* 206; *bé cuitichernsa wife of joint authority* 70, 161.

belletus cach réta ? 75⁵⁰.

bélrae /be:LRe/ later bérla *language, esp. technical language* 52¹⁰⁶, 260¹⁰⁷; bérla *Féne the language of the Féni, legal language* 52¹⁰⁵, 242² (see **Féni**); lóg mbérli *payment for legal language, judge's fee* 53; suí cach bérli *ollaman an expert of every form of language with the rank of master* 48, 193²¹.

ben /ben/ *woman, wife* 69, 70¹⁵, 73³⁷, 74⁴⁶, 97²⁴⁰, 139¹¹⁰, 202⁸⁰, 285; *ben aitien recognised wife* 78⁸¹, 79⁸²; in cpds *ban-amus, -chomarbae, -díre, -fáith, -fíli, -liaig, -noíll, -sáer, -telleach*.

béodil /be:uð'il/ nom. pl. bédili; *living possession, livestock* 99. See also **marbdil**. *bérla*: see **bélrae**.

bés /be:s/ often bés *tige food-rent* 30.

bescnæ /be:sgne/ *lawful behaviour* 2; Córus Béscnai *the regulation of proper behaviour* App. 1 No. 10.

bíthad /biaθað/ *provision of food, refection* 62¹⁸².

biattach /biatax/ Mid. and Early Mod.Ir. *supplier of food-rent, betagh* 30; also *hospitaller (= briugu)* 37.

bibdu /bivðu/ later bidba *criminal* 92, 223.

bine: see **bithbine**.

bir airdnill /bir aR'N'd'il/ *fixed spike (for trapping)* 107.

birach briathar /birax br'iaθar/ *one who is sharp with words, female satirist* 50.

birrthagra: see **tacrae**.

bithbine /biθ'v'in'e/ *habitual crime, innate criminality* 217¹⁹; *bithbinech habitual criminal* 217¹⁹.

blaí /blai/ later bla; *exemption, immunity from liability* 149, 251⁴⁴.

bó /bo:/ *cow* 144; bó mlícht *milch cow* 113; bó inláeg *incalf cow* 113.

bóaire /bo:ar'e/ *cow-freeman, yeoman farmer, 'strong farmer'* 10, 12, 28, 29, 30, 60, 73, 82, 100, 104, 115¹⁰⁴, 171, 172, 200, 252; *bóaire febsa b. of worth, substance* 100⁶, 101¹³, 110, 203.

bothach /boθax/ *cottier, one who lives in a hut* 35, 162, 170, 192.

brágae /bra:γe/ *hostage* 174.

braigetóir /bray'edor:/ also braigire; *professional farter, buffoon* 64.

brannuigecht /braNiy'ext/ *a board-game* 87.

brat /brad/ *plunder, robbery with violence* 147.

bráth /bra:θ/ *judgement* 51¹⁰¹.

bráthair /bra:θir/ *kinsman* 189.

breth /breθ/ nom. pl. bretha, gen. pl. breth, dat. pl. brethib; *judgement, verdict, decision* 24, 51, 52¹⁰⁶, 191, 194²⁷, 195, 196³⁷, 196³⁹, 220³¹, 266; *breth filed judgement by a poet* 195³⁴, 196; *breth flatho judgement by a lord* 196; *breth fuigill referred(?) judgement* 48; *Trecheng Breth Féne a triad (or triads) of judgements of the Féni* App. 2 No. 3; *cilbreth biased judgement* 55; *claoinbhreith crooked judgement* 239; *firbreth true judgement* 55; *gúbreth false judgement* 27, 55¹²⁷, 196; *mesbretha estimation judgements* 51¹⁰⁴. For Bretha in the titles of law-texts, see App. 1 Nos. 5, 14, 15, 16, 28, 29, 30, 33, 34, 35, 38, 41, 44, 46, 51, 52, 53, 60.

brithem /briθ' ēv/ (Mod.Ir. breitheamh, Sc.Gael. britheamh) gen. sg. britheman, dat. sg. brithemain, nom. pl. brithemain; *judge, arbitrator, jurist* 47, 51, 54, 55, 56, 59¹⁵⁶, 101, 166, 194²⁷, 196³⁹, 196⁴³, 239, 242, 248, 260, 261, 267; *brithem túaithe judge of the túath, judge of the laity* 24, 52-3, 55, 249; *brithem eclaso ecclesiastical judge* 55, 249; *ollam br(e)itheman chief judge* 254⁶³, 257⁸¹, 259¹⁰³; *Urcuite Bretheman the forbidden things of a judge* App. 1 No. 12.

brithemnacht /briθ' ēvnaxt/ *judging, judgement* 69⁵, 220³²; *brithemnacht fénechais judgement of customary law* 48⁷⁷.

brithemnas /briθ' ēvnas/ *judging, judgement* 196³⁹, 209¹³⁰, 242², 273, 278; *adbur suad re breithemnus potential master of judgement* 226⁹; *ollam le (re) breithemnus chief judge* 254⁷², 257⁸⁴. See also **fármbrithemnas**.

briugu /briuγu/ (later briugaid, brugaid) gen. sg. briugad; *hospitaller* 36-7, 90, 124, 133, 139, 170, 252; *briugu cétagh hospitaller with hundredfold wealth* 37; *briugu leitech hospitaller with two hundredfold wealth* 37; *ollam briugad chief hospitaller* 37; *flaithbriugu noble hospitaller* 37.

brugaid: see **briugu**.

brúider /bruð'er/ *a category between childhood and adulthood* 82¹⁰⁷.

caam /ka:m/ *log placed between contestants in a duel* 213.

cáe: see **cóe**.

caillech /kaL'ex/ *nun; maccaillech young nun* 91.

cáin /ka:n'/ gen. sg. cána, later gen. pl. cánann; *promulgated law (as opposed to fénechas customary law), regulation, rule, written law, tribute, fine* 19, 20, 22, 54, 71, 74⁴⁶, 129, 176, 176¹³³, 184, 218, 234³¹, 277; *cáin gaite law of theft* 218; *atire cána surety for the law (of Adomnán)* 176; *bithcháin perpetual law* 223. For Cáin in the titles of law-texts, see App. 1 Nos. 17, 19, 23, 24, 39, 57, 73, 74, 75, 76, 77.

cáinte /ka:N't'e/ *satirist* 49-50, 51⁹⁷, 170.

cairde /kar'd'e/ *treaty between tuatha* 5, 54, 127, 148; *Cairde-text* App. 1 No. 62.

cairdes /kaR'd'es/ gen. sg. cairdesa; *kinship* 54.

caithig /kaθ'iy/ also cathaig, cathach; *trespass-fine* 166; *duinechaithig fine for human trespass i.e. for animal trespass resulting from owner's wrongdoing* 143, 155; *ropchaithig fine for animal trespass* 143, 155.

cathair /kaθir'/ *monastic settlement, fort, place where there are buildings* 136, 185.
céile /ke:l'e/ nom. pl. céili; *client* 9, 10, 27; céile giallnai *base client* 29; dóerchéile
 (in glosses and commentary) *base client* 29; sóerchéile *free client* 29.
céilsine /ke:l'ʃin'e/ *clientship* 29⁶.
cenél /ken'e:l/ *later cinél*; gen. sg. cinéoil; *kin, race, people* 58¹⁴⁸, 98, 212¹⁵³, App. 1 No. 20; dochenél *low-born stock* 96.
cenn /keN/ *head, chief* 55; cenn fine *head of kin* 13. See also **ágae fine** and **conn fine**.
cennaige /keNiy'e/ *trader* 7.
cerd(d) /keRd/ gen. sg. cerda; *art, craft, craftsman; oes cerdd men of art, poets* 48; fer cerda *poet* 43⁴⁰, 48⁸⁴; cerd *silversmith, goldsmith* 63.
cert /keRt/ gen. sg. cirt; *justice, right, entitlement* 93²⁰¹, 191; Di Astud Chirt 7 Dlidig on the confirmation of right and law App. 1 No. 4.
cethern tige /keθ'eRN tiy'e/ *household war-band* 67.
cétmuinter /ke:dvūN't'er/ gen. sg. cétmuintire; *first wife, chief wife* 14, 71, 72, 73, 161.
cétráth: see **ráth**.
cimbid /kim'b'ið'/ *later cimmid; captive, unransomed criminal* 97-8, 129, 160, 173, 216, 218²³.
cimbidecht /'k'ím'b'ið'ext/ *captivity* 97-8.
cin /kin/ gen. sg. cinad, acc. pl. cinta; *crime, offence* 43³³, 157, 273; cin comocuis the crime of a kinsman (liability for) 13⁸¹; cin sólo the crime of an eye (i.e. culpable onlooking) 154; fuidir cinad o muir a fuidir of an offence from the sea 219, 220; sensmúr cinad the old embers of an offence 192¹²; duinechin human offence 143¹⁴³, 180; ropchin animal offence 143¹⁴³.
cinél: see **cenél**.
cintach /kiNtax/ *criminal, guilty party* 273.
cís /ki:s/ gen. sg. cisa; *tribute, tax* 19, 212¹⁵³.
cléirech /kle:r'ext/ gen. sg. clérig; *cleric* 282; ollam cléirig *chief ecclesiastical judge* 55¹³⁴; saí cléirigh *learned cleric* 260¹⁰⁸; maccléirech *young cleric, clerical student* 91.
clesamnach /klesávnax/ *juggler* 64.
cleth /kleθ/ nom. pl. cletha; *housepost* 2⁹, 104.
cocrann /kograN/ *lot-casting* 209.
cóe /koi/ *later cáe; gen. sg. cue; winter hospitality to lord* 30, 139¹⁰⁸.
coibche /kov'x'e/ *bride-price* 72, 73, 74, 207.
coic /kog'/ *cook* 66.
coimdui /kóvð'u/ *lord* 26⁵⁶.
coinnmed /koN'v'ðø/ *billetting* 31⁹⁶.
coinnmed /koN'v'ðø/ *billetting* 31⁹⁶.
cóip /ko:p'/ Mid.Ir. text 226.
coir /ko:ir'/ *later cóir; right* 70¹⁵; coir n-athcomaire *proper enquiry* 191.
coire /kor'e/ gen. sg. coiri; *cauldron (ordeal)* 208¹²⁷; fir coiri *the proof of the cauldron* 210.
colainnéraic /koliN'e:rik'/ *body-fine* 128.
colchluiche /kolxiux'e/ nom. pl. colchluichi; *guilty, illegal game* 151.
colpthach /kolpθax/ *two year-old heifer* 82, 113, 144, 171.
comaithches /kóvaθ'x'es/ gen. sg. comaithchesa; *neighbourhood* 233²³; Bretha Comaitchesa *judgements of neighbourhood* App. 1 No. 41.

comaithech /kóvaθ'ext/ *neighbour* 233²³; comaithech inraic *neighbour of good standing* 56.
comaltae /kóvaLte/ nom. pl. comaltai; *fosterbrother* 86¹⁴⁷, 90.
comar /kóvar/ *co-ploughing, co-operative ploughing* 10, 101, 159, 232¹⁹, 241.
comarbae /kóvarbe/ nom. pl. comarbai; *heir* 93, 94²⁰⁹, 102, 209¹³¹, 256; comarbae (ecalso) *ecclesiastical heir* later angl. coarb 41²⁰; banchomarbae *female heir* 76, 104; ferchomarbae *male heir* 69.
comingaire /kóv'inyar'e/ *joint herding* 101, 146, 208¹²⁹; *Comingaire-text* App. 1 No. 43.
comláithre /kóvla:θ'r'e/ *being an accessory or accomplice* 156.
com(m)aire /komir'g'e/ later comairge, comairche etc.; *legal protection* 141; attach comairee *pleading for protection* 213¹⁵⁶.
com(m)aoin /komoin'/ Mid.Ir. *addition, glosses and commentary (on earlier texts)* 226.
compert: see **fír**.
comraite /kóvrid'e/ *intention, design, deliberate offence* 145, 153²²².
condalbae /koNdalve/ *patriotism, loyalty to one's own túath or kinsmen* 66.
congbáil /koŋgva:l/ *public duty of maintaining king, synod or army* 31.
conn /koN/ gen. sg. cuinn; *head, sense, responsible person, guardian* 83¹¹⁵, 92; conn fine *head of kin* 13; fogal cuind *damage to the sense, insanity* 93²⁰⁷; fer lethchuinn *man of half sense* 94; sochonn *legally competent person* 159. See also **éconn**, **esconn**.
cor /kor/ *contract, agreement* 121, 122, 158, 162, 199; usually cor bél *verbal contract* 158, 159¹⁰, 164; cor díten *contract of protection, protection racket(?)* 159¹⁴; cor dithle *cheating contract, fraud* 159¹³; cor omna *contract made in fear* 153; maic cor mbél *sureties to contracts* 172, 193; Di Astud Chor on the binding of contracts App. 1 No. 54; céthor *first contract* 160¹⁶; dochor *disadvantageous contract* 77, 159, 161; iarcor *subsequent contract* 160¹⁶; míchor *invalid contract* 159¹¹; sainchor *separate contract, contract in one's own right* 162; sochor *advantageous contract* 81, 159, 161; úasalchor *noble (i.e. indissoluble) contract* 121¹⁴².
cornaire /koRNir'e/ *horn-player* 64.
corpdiré: see **díre**.
corruginecht /koRγun'ext/ *sorcery* 60.
córus /ko:rus/ *regulation; in titles of law-texts* App. 1 Nos. 10, 14, 21, 55, 58, 72.
cosmailius /kosvál/us/ *similarity, analogy* 196, 197, 239.
crannchor /kraNxor/ *lot-casting* 208¹²⁷.
creccaire /krekir'e/ *raconteur(?)* 64.
creic /krek'/ (vb. n. of crenaid *buys*); creic cétmuintire *purchasing a wife* 72.
crích /kri:x/ gen. sg. críche; *boundary, border; cáin críche boundary law* 54.
cró /kro:/ gen. sg. crui, dat. sg. crú; *wound, violent death, execution (by sword etc.); body-fine, compensation for death* 23, 85¹⁴³, 125¹, 126, 128, 155²⁴³, 219, 235³³, 279; fer sóeras in chru a man whom he has saved from execution 219; fuidir chru a fuidir saved from execution 219; crólige (báis) *injury which could be fatal* 130; Bretha Crólige *judgements of blood-lying* App. 1 No. 29.
croch /krox/ *gallows* 219.
crochad /kroxað/ *hanging* 217.
cros(s)án /krosa:n/ *buffoon* 64, 65.

cros(s)ántacht /krosa:Ntaxt/ *satirical verse* 65.
cruit /krut'/ *later cruitire; harpist* 64.
cú glas /ku:glas/ *grey dog; exile from overseas* 6, 15.
cuid oídhche /kud' i:he/ *Mid. and Early Mod.Ir. night's supper for a lord, 'cuddy'* 308⁵.
cuindliged /kuN'd'l'i:y'eð/ *mutual obligations* (com + dlidged) 74.
cúis /ku:s/ *earlier cau(i)s; law-case* App. 1 No. 11.
cuisleannach /ku:l'eNax/ *piper* 64.
cuithe /kuð'e/ *pit (for punishment)* 219.
cuithech /kuθ'ex/ *pit (for trapping)* 107.
cúlairecht: see **airecht**.
cúlaitre: see **aitre**.
cúlráth: see **ráth**.
cumal /kuväl/ *nom. pl. cumala; female slave* 85, 95; *unit of value* 8, 10, 17, 41, 45, 46, 54, 79, 83¹¹⁹, 100, 103, 104, 105, 112, 115, 116, 126, 132, 135⁷⁶, 137, 138¹⁰³, 153, 156, 173; *unit of area* 99; *price, payment* 112⁹⁰.
cundrad /kuNdrað/ *gen. pl. cundartha[e]; contract* 158¹, 199; *Do Taithmech Cunnartra (= Cundartha) on the dissolution of contracts* App. 1 No. 54.
dáil /da:l'/ *assembly* 31⁹⁴.
dáilem /da:l' ðv/ *dispenser* 66.
dairt /daR't/ *yearling heifer* 63, 82, 114, 144.
daltae /daLte/ *nom. pl. daltaí; fosterson* 91.
dám /ðá:v/ *retinue, company* 28, 36.
dán /da:n/ *gen. sg. dána, nom. pl. dána; art, skill, poetry* 3, 12; óes dána *craftsmen* 51; *ollam dána chief poet* 46⁶³; *fodána subordinate professions, skills* 64, 67; *ildánach having many crafts* 61¹⁷⁶.
dartaid /daRtið'/ *yearling bullock* 114, 115.
dásachtach /da:saxtax/ *violent lunatic* 92, 94²⁰⁹; *berserk (of cattle etc.)* 93²⁰⁰.
datán /dada:n/ *fosterfather* 87. See **aite**.
datnat /dadnad/ *fostermother* 87. See **muimme**.
dechmad /dexváð/ *ten-day period (before physician's prognosis)* 129³³.
dechon /dexon/ *later deochain; deacon* 39¹.
deidm /ðeð'v'/ *law* 232¹⁹.
déis /de:f/ *gen. sg. déso, désa; vassalry, rights of a lord* 27, 34; *aire déso lord of vassalry, ordinary lord* 12, 27-8, 30, 200.
deiscéim /deʃk'e:m'/ *pace (in measurement)* 99¹.
deithbires /deθ'v'ir'es/ *blamelessness, innocent reason* 206.
deithbirse /deθ'v'ir'f'e/ *blamelessness, innocent reason, necessity* 97.
deogbaire /deuγvir'e/ *cup-bearer* 66.
deolaid /de-olið'/ *gratuity* 236⁴⁶.
deorad /de-orað/ *later deóraid; outsider, alien, exile* 5, 160, 170, 223; *deoraid coid* 7 *cercaille outlaw of cup and pillow, i.e. one who is fed and harboured* 223⁴⁸; *deorad Dé exile of God, anchorite* 41, 77⁶⁸, 185, 199, 224; *deorad loingsigh exile from overseas* 6³².
derbfíne: see **fine**.
dereaid /derkið'/ *look-out, watchman* 66.
derosc /derosk/ *(medical) verdict* 131.

diabalchorach /diavalxorax/ *double-contracted one(?)*, *second grade of advocate* 56¹³⁷.
dían /dian/ *simplest type of metre* 45.
dibad /di:vað/ *inheritable assets, property of a deceased person* 14, 78⁷⁹, 79⁸³, 157, 279.
díberg /di:v'erg/ *brigandage* 60¹⁶⁴, 223.
díbergach /di:v'ergax/ *also díberg; brigand, marauder* 60¹⁶⁴.
dícenn /di:g'eN/ *person without a superior, with no legal guardian* 25.
díchell /di:x'eL/ *neglect, negligence* 152.
díchetal di chennaib /di:x'edal di xeNiv'/ *chanting from heads(?) (a poetic skill)* 44, 45, 46.
díchmaire /di:xvär'k'/ *without permission* 106⁴¹.
díchubus /di:xuvus/ *extra fine* 43.
dígal /di:yal/ *vengeance, blood-feud* 31⁹⁵, 75, 127.
díguin /di:yun'/ *gen. sg. digona; violation of protection* 141; *maigen digona area around house under householder's protection* 141.
díles /di:l'es/ *(di + les); not subject to legal claim, immune from legal process, incapable of legal remedy, without legal protection, forfeit* 108⁵⁵, 129³¹, 222, 232¹⁹, 276, 277; *ógdiles totally unprotected by law* 129³⁰, 222⁴³. Neg. *indles involving liability, protected by law, actionable* 160¹⁸.
dílse /di:L'se/ *immunity from legal process, ownership* 106⁴³, 153²²⁵.
dílsech báis /di:L'se/ *one whose life is forfeit, condemned criminal* 97²³⁹.
dílsigud /di:L'siγuð/ *forfeiture* 174¹²⁰.
dindís /di:N'd'i:f/ *later dindas (vb. n. of do-indet declares); denial by oath* 128²⁴, 200⁶⁸.
dingbáil /dingval/ *(vb. n. of do-ingaib removes) gen. sg. dingbála; removal (of child from mother, of invalid on sick-maintenance, etc.)* 86¹⁴⁴, 86¹⁴⁵, 212¹⁵³.
dírann /di:raN/ *unshared land, wilderness* 108.
díre /di:r'e/ *(vb. n. of di-ren, do-ren pays); payment (esp. of honour-price), penalty, fine* 83, 84²², 131, 134⁷¹, 139, 144, 149, 215, 285; *bandíre female honour-price 267; corpdíre body-fine* 131; *lándíre full payment of honour-price* 126; *ildirech having many honour-prices* 61¹⁷⁶; *Díre-text* App. 1 No. 9.
díthech /di:θ'ex/ *also díthach (vb. n. of do-toing swears away); denial by oath* 200.
díthim /di:θim'/ *(vb. n. of di-tuit becomes forfeit) gen. sg. díthma; delay in pound* 179; *géill díthma forfeited hostages* 174¹¹⁸.
diupart /di:ubaRt/ *over-reaching by one party to contract, defrauding* 160.
díupartach /di:ubaRtax/ *fraudulent, dishonest* 45.
dlidged /dliy'eð/ *gen. sg. dlidgid, dat. sg. dlidiud; entitlement, due, legal right, law* 138⁹⁷, 159¹⁰, 191, 197, 245¹⁶, 280; *iar cùl dlidgid according to law* 168⁸⁴; *Di Astud Chirt* 7 *Dlidgid on the confirmation of right and law* App. 1 No. 4; *Di Dligid Raith* 7 *Somaíne la Flaithe on the law relating to the fief and profit of a lord* App. 1 No. 25. See also **cuindliged**.
dligthech/dliy'θ'ex/ *lawful, legally recognised; duine dligthech lawful person* 220; *mac dligthech lawful son* 220.
dochenél: see **cenél**.
dochor: see **cor**.
dóer /doir/ *unfree, base, dependent* 9, 10⁶³, 11, 46, 66²¹⁴, 162; *in cpds dóer-bard, -chéile, -fuidir, -manach, -nemed*.

doim(m) /dom'/ *destitute person* 237.
dormun /dorvün/ gen. sg. *dormuine; second wife, concubine* 71.
dorsaid /doRsið'/ *door-keeper* 66²¹², 66²¹⁵.
do-toing /do·toŋ'g/ *earlier di-toing; swears away, denies by oath* 199⁶⁰, 200, 202⁸⁰; vb. n. **díthech**.
drécht /dre:xt/ nom. pl. *dréchta; portion, literary composition, tale* 47; *drécht giallne portion of labour due from a base client to his lord* 30.
dretoll /dretol/ *favourite, child regarded as pet* 84.
drisiuc /drisug/ *sub-grade of poet* 46⁶⁵.
drúi /drui/ gen. sg. *druid; magician, sorcerer* 60, 61¹⁷⁰.
drúth /dru:θ/ *mentally retarded person* 92, 93, 94²⁰⁹, 154; *professional buffoon* 47⁷², 64, 65; *De drúthbrethaib on judgements relating to idiots; see App. 1 No. 28.*
dúas /duas/ nom. pl. *dúasa; see to poet* 45, 48.
duinechaithig: see **caithig**.
duinechin: see **cín**.
duinetháide /dun'θe:ðe:ðe/ *secret murder, murder with concealment of the body* 128.
dúlchinne /du:l'x'iN'e/ *also dúlginne; nom. pl. dúlchinni; payment (esp. to a craftsman)* 61. *See also foibrithe.*
dún /du:n/ *fortified dwelling, stronghold* 30, 139¹¹¹.
éces /e:g'es/ *poet* 43, 170; *príméices Érenn chief poet of Ireland* 44.
echlasc /exlask/ *horse-whip* 181²⁵.
eclais /egliʃ/ gen. sg. *ecalso, later eclasa; church, churchman* 96¹, 217²⁰; *gráda eclasa grades of the Church* 39¹; *grád uird ecalso officers of the Church* 66²¹²; *óes ecalso churchmen* 183.
ecnae /egne/ *ecclesiastical scholar (not in orders)* 4, 39¹, 41²¹.
éconn /e:goN/ *legally incompetent, without legal responsibility* 68, 120. Neg. of **conn**.
éicen /e:g'en/ gen. sg. *éicne; violence, violation, rape* 136⁸⁵; *lánamnas éicne mating by rape* 136. *See forcor.*
eighre /air'e/ *Early Mod.Ir. heir* 256.
éiric: see **éraic(c)**.
eisce /efk'e/ *wounding* 129; App. 1 No. 32.
elguin /el'yun/ *malice* 152.
élud /e:lu:/ (vb. n. of *as-lui evades*); *evasion of legal obligation* 168⁸⁶, 181.
éludach /e:lu:ðax/ nom. pl. *éludaig; evader of law, absconder from justice* 9, 80⁹⁷, 95, 222, 223, 224.
enech /en'ex/ dat. pl. *inchaib; face, honour* 9, 43, 64¹⁹⁷, 125¹, 139. *See also lóg n-enech.*
eneclann /en'eklaN/ *honour-price* 64¹⁹⁸, 134⁷¹. *See also lóg n-enech.*
ennac /eNag/ *innocent party* 236⁴⁸; neg. *anennac guilty party* 236⁴⁸.
epsycop /epskob/ *later escob; gen. sg. epscoip; bishop* 39¹; *ollam úasalepscoip chief bishop, archbishop* 41.
éraic(c) /e:rik'/ *later also éiric (vb. n. of as-ren pays); body-fine, fixed penalty for homicide, later angl. erick* 5, 13, 14, 15, 43³³, 71, 78⁷⁹, 79, 79⁸³, 113, 126, 126⁹, 134⁷¹, 135, 138, 141²⁴, 156, 235³³; *colainnéríc body-fine* 128.
errech /eR'ex/ *also airrech, arrach; enforced loan, requisition* 119.

esáin /esa:n/ *refusal of hospitality* 119, 139. *See also etech.*
esconn /eskoN/ *senile person* 94; *omnach esconn timid dotard* 134.
esert /eʃeRt/ *absentee, one who neglects or abandons his land* 100.
etech /et'ex/ (vb. n. of *as-toing swears away, refuses*); *refusal of hospitality* 139, 199⁶⁰, 200⁶⁸. *See also esáin.*
étechtae /e:d'exte/ dat. sg. *étechta; illegality* 167⁸⁰. Neg. of **téchtae**.
étged /e:d'γeð/ gen. sg. *étgid; inadvertence, negligence* 152, 153; *Bretha Étgid judgements of inadvertence* App. 1 No. 33.
éthech /e:θ'ex/ *perjury, false oath* 201.
exarcistid /eksar'k'iʃt'ið/ *exorcist* 391.
fáesam: see **fóesam**.
faisnéis: see **aisndis**.
féith /fa:θ/ *seer; fáithliaig seer-physician* 58; *banfáith prophetess* 45.
faithche /faθ'x'e/ *green, in-field, fields near farmhouse* 147¹⁷³, 147¹⁷⁴, 178; *féich faithche fines for trespass on green* 188.
fásach /fa:sax/ nom. pl. *fásaige, later fásraig; dat. pl. fásraigib; legal maxim, legal principle* 196-7; *senfásach ancient maxim* 197.
féchem /fe:x'ev/ (*fiach + agent suffix*) nom. pl. *féchemain; contractor, party to a legal agreement, creditor, debtor, plaintiff, defendant* 158, 193, 194.
felmacc /felvæk/ *pupil* 91.
fénechas /fe:n'exas/ gen. sg. *fénechais; the law of the Féni, customary or traditional law, native law (as opposed to Canon law or, later, English common law)* 8, 56, 62¹⁸², 234³¹, 242², 260, 260¹⁰⁷; *brithemnacht fénechais judgement of customary law* 48⁷⁷; *rechgtae fénechais ordinance of customary law* 22; *ardollam in feinechuis chief expert in customary law* 250.
Féni /fe:n'i/ acc. pl. *Féniu; gen. pl. Féne; freemen of full legal capacity* 96¹; *la Féniu among the Irish, according to Irish law* 158⁴; *bérlae (later bérla) Féne the language of the Féni, legal language* 52¹⁰⁵, 242²; *Trecheng Breth Féne a triad (or triads?) of the judgements of the Irish* App. 2 No. 3. *In some early legal sources Féni is used in the specialized sense of the most powerful of the three peoples of Ireland, the other two being the Ulaid (Ulstermen) and the Laigin (Leinstermen). See BB Notes pp. 133-4 la Ultu 7 Féniu.*
fénmid /fe:N'ið/ *champion, warrior* 66.
fer /fer/ *man; fer arm deirg man of bloodstained weapon* 222⁴⁷; *fer cerda poet* 43⁴⁰; *fer fothlai 'man of withdrawal'; man whose rank is intermediate between lord and commoner* 12, 28; *fer légind man of learning, head of monastic school* 41²¹; *fer lethchuinn half-sane man* 94; *fer máma mod substitute worker (for a person on sick-maintenance)* 272; *fer medóngate 'man of middle theft'; receiver of stolen goods* 148; *fer midboth (also fer midbotha) 'man of middle huts'; semi-independent youth living in huts on his father's land* 8, 82, 88, 140; *fer taistil messenger* 66²⁰⁹; *fer tige oíged guest-house owner* 37; *ferchomarbae male (as opposed to female) heir* 69; *fergniae male servant, guard* 65, 66, 66²¹⁴, 170; *ferothrus adult sick-maintenance* 84.
ferg /ferg/ *anger, malicious intent* 152.
fertach /feRtax/ *also pertach; rod, pole, perch* 99².
ferthigis /ferbiy'iʃ/ *guest-master* 66²¹².
fethem /feθ'ev/ *spokesman, guardian, legal representative* 57, 180.

fethemnas /feθ' ēvnas/ *legal representation* 57.

fiach /fiax/ nom. pl. féich, acc. pl. fiachu; *fine, penalty* 134⁷¹, 149, 152, 285; féich cána *fines for breach of promulgated law* 19; féich faithche *fines for trespass* 188; lántiach *full penalty* 153²²²; lethfíach *half penalty* 153²²².

fiadnaise /fiaðnise/ *evidence* 98, 172¹⁰⁷, 186⁶⁶, 188⁷⁴, 200; guifádnaisce *false witness* 208; Córús Fiadnaisce *regulation of evidence* App. 1 No. 72.

fiadu /fiaðu/ nom. pl. fiadain; acc. pl. fiadna; *witness, esp. eye-witness* 80, 158³, 195³², 202, 203⁹³, 208¹²⁷, 232¹⁹.

fíallach /fiaLax/ *war-band* 129.

fianchlúiche /fianluxlúiche/ nom. pl. -chlúichi; *paramilitary game* 151.

fidchell /fið'x'eL/ *a board-game* 87.

filí /fil'i/ *later file; gen. sg. filed; poet* 96¹, 43, 46, 47; breth filed *judgement by a poet* 195³⁴; firt filed *poet's spell* 44; nemed filed *great poet, distinguished poet* 45; ollam filed *chief poet* 48, 193²¹; banfili *woman poet* 45, 49.

filidecht /fil'ið'ext/ *poetry* 45, 52¹⁰⁵, 262¹¹⁸.

fine /fin'e/ *kin, family group, kinsman* 21⁰, 78⁸¹, 85¹⁴³, 137⁹⁵, 162, 169⁸⁹, 187⁷³, 270; *fine comocuis near kinsman* 100; *fine thacair kinsman by summoning i.e. adoption* 105; ágæ fine, cenn fine, conn fine *head of kin* 13; aphach fine *one proclaimed by his kin* 13; Fodla Fine *types of kin (or kinsmen)* App. 1 No. 20; Córús Fine *the regulation of the kin* App. 1 No. 21; Finebretha *kin-judgements* App. 1 No. 21; fineguth, finecruth, finebés *family voice, family appearance, family behaviour* 103; finerath *fief granted within kin-group* 297⁶; gelfine *'bright kin', descendants on the male line of the same grandfather* 170⁹⁵; derbfíne *'true kin', descendants on the male line of the same great-grandfather* 12, 104, 126, 157, 170⁹⁵, 176, 197; iarfine *'after kin', descendants on the male line of the same great-great-grandfather* 100⁷, 170⁹⁵, 197; indfine *'end-kin', descendants on the male line of the same great-great-great-grandfather* 170⁹⁵, 197; ceithirfine *four circles of kinship* 170⁹⁵.

fingal /finyal/ *kin-slaying, killing a kinsman* 18, 127-8, 214¹, 220.

fingalach /finyalax/ *kin-slayer* 127¹⁷.

finné /fiN'e:/ *Early Mod.Ir. jury, witness, testimony* 256⁷⁴.

fintiu /fiN't'u/ *kin-land* 12, 100, 103¹⁹.

fir /fi:r/ *true, just; as noun truth, justice, oath, proof, test, ordeal* 191, 195³², 197, 199⁶⁰, 205, 207; fir coiri *the proof of the cauldron, cauldron-ordeal* 210; fir compertae noíbe *ordeal of holy adjudication(?)* 210, 211; fir flathemon *king's justice* 18, 236, 240; fir nDé *truth-test of God, ordeal* 192¹¹, 205, 213¹⁶⁰; fir ndithaig *oath of denial* 200; firbreh true judgement 55; firgille *truth pledge* 192.

fíréin /fi:r'e:n/ *righteous man* 200.

fírinne /fi:r'iN'e/ *truth* 196⁴³, 197⁴⁵.

firt filed /fiRt fil'eð/ *poet's spell* 44.

fithidir /fið'ið'ir/ also fithir; *teacher (esp. of craft or poetry)* 91.

flaith /flaθ'/ gen. sg. flatho, flatha; nom. pl. flaithi; *ruler, king, lord* 21⁰, 9, 23, 26, 26⁵⁶, 33¹⁰⁹, 36¹³⁸, 54, 245¹⁶; flaith aithig *one whose rank is intermediate between lord and commoner* 28; flaith céigiallne *the primary lord of a base client* 32; flaith forgiallne *secondary lord* 32; flaith cuitrid *tertiary lord* 32; breth flatho *judgement by a lord* 196; cís flatha *royal tribute* 19; dóer flatha *lord's dependant* 162; ardflaith *high lord (= king?)* 176; flaithbriugu *noble hospitaller* 37.

flaithem /flaθ' ēv/ gen. sg. flathemon; *ruler, king; fir flathemon king's justice* 18, 236, 240; gáu flathemon *king's injustice* 18, 24, 55.

flescach /fleskax/ *stripling, youth* 82¹⁰⁷.

fochloc /foxlog/ *lowest grade of poet* 46, 47, 115.

fochraic(e) /foxrik'/ *payment, bribe* 55¹²⁷; fochraic (lego) *physician's fee* 133.

fochsáil: see **foxal**.

fodán: see **dán**.

fóesam /fóisav/ later fáesam (vb. n. of fo-sisedar *stands under, acknowledges, protects*); gen. sg. fóesma, fáesma; *legal protection, adoption into kin* 105, 141; lóig fóesma *adoption fee* 105; atach fáesma *pleading for protection* 213¹⁵⁶.

fogal /foyal/ nom. pl. fogla; *damage, injury, trespass, offence* 145, 199; fogal cuind *damage to the sense, insanity* 93²⁰⁷.

foglaid /fɔylid'/ gen. sg. foglado; *robber, plunderer* 217¹⁹.

fognam /fɔynāv/ (vb. n. of fo-gni *serves*); *service to a lord; fognam fuidre service by tenant at will* 220.

foibrithe /fɔv'r'ið'e/ *payment (esp. to a craftsman)* 61. See also **dúlchinne**.

foimrimm /fom'r'im'/ *unauthorised taking* 119.

folog /foly/ (vb. n. of fo-ling *supports*), also folag, folach, etc.; *maintenance (usually of an injured person); folog n-othrusa sick-maintenance* 130. See also **othrus**.

folud /foluð/ also folad; *benefit, 'consideration'; carrying out one side of a contract 158; dagfolad 'good considerations', satisfactory carrying out of obligations* 42; frithfolud, acc. pl. frith[ð]olta *counter-benefit, return* 34¹¹⁸, 158. For a discussion of the terms folud and frithfolud, see Binchy, *Studia Hibernica* 16 (1976) 27-31.

fomailt /fóviL't'/ (vb. n. of fo-meil *uses*); *unauthorised use* 119, 120.

forbae /forve/ (vb. n. of for-fen *concludes*); *conclusion of a law-case* 191, 198.

forcomal /forkóval/ also forcomol; *seizure (of land)* 187⁷³.

forcor /forkor/ *forcible rape* 134-5. See also **éicen** and **sleth**.

foresiu /for'k'ju/ (vb. n. of for-aicci *looks on, oversees*) gen. sg. forcesen; *the crime of looking on (at an offence) 155; gell forcesen a pledge of overseeing, a pledge retained in the custody of pledger* 164⁵⁴. See also **aircsiu**, **sellach**.

forgell /for'g'eL/ (for + gell) also forcell, forgall; gen. sg. forgill; *superior testimony, overriding testimony (of one of higher rank)* 188⁷⁴, 200; forgell gúfiadnaisce *false witness* 208; nemforgell gua *lack of false testimony* 208; aire forgill *lord of superior testimony* 28, 185.

for-gella /for'g'eLa/ *testifies (often with petrified infix pronoun fortgella)* 198.

forloicsud /foRLoskuð/ gen. sg. forloiscthe[ø]; *arson* 145; Bretha Forloiscthe *judgements of arson* App. 1 No. 38.

forrach /foRax/ *a measurement of length* 99.

fortach /foRtax/ (vb. n. of for-toing *overswears*); *overswearing, overriding oath* 199; fortach séna[e] *overswearing of denial, denial by overriding oath* 199⁶².

for-toing /for·ton'g'/ *overswears* 199⁶⁰, 199⁶¹. See **fortach**.

forus /forus/ *basis, foundation (of judgement), promulgation (of law, judgement) 22, 24, 55¹³⁰, 191, 195-6; resting place, station, appointed place; forus n-athgábla *pound where distrained animals are kept* 178.*

fosair /fosir'/ *accessory food-rent* 30.

foxal /foxsal/ also fochsáil (vb. n. of fo-coislea *carries off*) gen. sg. foxail; lánamnas foxail *union of abduction* 70, 71, 79⁸³, 136.

fraig /fray'/ *physician's lancet* 181.

frecrea /fregre/ (vb. n. of fris-gair *answers, responds*); *rejoinder, counter-pleading* 191, 195.

fretech /fret'ēx/ (vb. n. of fris-toing *swears against, repudiates*); *repudiation, renunciation* 199⁶⁰, 201.

fris-toing /fris·toɪŋ'g/ *swears against, repudiates* 199⁶⁰, 201.

frith /fri:θ/ also *frithe; something which is found, waif, estray* 123-4.

frithfolud: see **folud**.

frithgell: see **gell**.

frithgnam /friθgnāv/ (vb. n. of fris-gní *serves*); *reciprocal service (by client to lord)* ZCP 14 (1923) 336. Cf. **fognam**.

frithguin: see **guin**.

frithnoill: see **noill**.

fuatach /fuadax/ *seizure; fuatach fo thairisin seizure under trust, unauthorised loan from kinsman* 119.

fubae /fuve/ (vb. n. of fo-ben *attacks*); *neighbourhood security duties, hunting down thieves, etc.* 31.

fuich /fux'/ also *fuiche; cuckold* 75⁵³.

fuidir /fuð'ir'/ gen. sg. *fuidre; tenant at will, semi-freeman* 33-5, 83, 162, 182, 192, 271; *fuidir chru a f. who has been ransomed from slaying (cró)* 219; *fuidir cinad o muir a f. of an offence from the sea* 35, 219, 220; *fuidir goible a f. who has been ransomed from the gibbet* 217; *fuidir góla a f. who has been ransomed from the pit* 219; *fognam fuidre service by a f.* 220; *sóerfuidir free f.* 33; *dóerfuidir unfree f.* 34; *slánfuidir full f.* 33.

fuigell /fuy'ēL/ (fo + gell) gen. sg. *fuigill; submission to arbitration, adjudication; breth fuigill referred(?) judgement* 48.

fuil /fui'l/ *bloodshed, wound* 133.

fuillem /fuL'ēv/ (vb. n. of fo-slí *earns*), acc. pl. *fuillema; interest, profit (esp. on pledged articles)* 37, 166; *Bretha im Fuillema Gell judgements about pledge-interests* App. 1 No. 60.

fuisire /fuR'sir'e/ *jester* 64.

fulla /fuLa/ *a type of lunatic* 92¹⁹⁵.

gabul /gavul/ also *gobul*; gen. sg. *gabla, goible; fork of a tree, gibbet, gallows* 217; *fuidir goible a fuidir who has been ransomed from the gibbet* 217; *sét gabla forked(?) sét* 115.

gaire: see **goire**.

gairid /gar'ið'/ *minor* 82¹⁰⁷.

gairm slóighidh: see **slógad**.

gat /gad/ gen. sg. *gaite; acc. pl. gat(t)a; theft by stealth* 26⁵⁴, 147; *cáin gaite law of theft* 218; *fer medóngaita 'man of middle theft'; middleman, receiver of stolen goods* 148; *Bretha im Gat(t)a judgements about thefts* App. 1 No. 35.

gataid /gadið'/ *steals* 285.

gataige /gadiγ'e/ *thief* 217²⁰.

gáu /ga:u/, also *gáo, gó*; gen. sg. *gue, later gua*; composition form *gú-*; *falsehood, injustice* 24; *gáu flathemon king's injustice* 18, 24, 55; *gó thúaithe falsehood for the túath* 211; *gó thúaith 7 cenn injustice on túatha and leaders* 55; *nemforgell gua lack of false witness* 208; *gúbreth false judgement* 27, 55, 196; *Gúbretha Caratniad false judgements of Caratnia* App. 1 No. 5; *gúfiadnaisse false evidence*

208; *gúscél lying tale* 137⁹⁵; *gúhestas false testimony* 208; *gúthuidme false accusation(?)* 212¹⁵².

gébend /ge:v'eNd/ *fetter, bond, captivity* 219.

gelfine: see **fine**.

geis /geʃ/ *supernatural injunction, tabu, prohibited action* 20.

gell /geL/ dat. pl. *gellaib; in composition usually -gille; pledge, gage* 164, 167⁸⁰, 173; *gell forcsen pledge retained in custody of pledger* 164⁵⁴; *gell dia inchaib pledge to save one's honour* 139; *gell fri bás pledge against death i.e. for a person's life* 162; *Bretha im Fuillema Gell judgements about pledge interests* App. 1 No. 60; *Do Breithemhnas for Gellaib on judgement about pledges* App. 1 No. 59; *fírgille truth pledge* 192; *frithgell counter pledge* 164; *smachtgille penalty pledge* 192; *tairgille, also tairgell forepledge* 165.

gíall /gial/ gen. sg. and nom. pl. *géill; hostage* 164⁵⁵, 173-6, 279; *géill díthma forfeited hostages* 174¹¹⁸; *gíall gabála hostage in custody* 176; *Di Gnímaib Gíall on the actions of hostages* App. 1 No. 65; *rechtaid géill hostage ruler(?)* 69.

gíallaigecht /giaLiy'ext/ *hostageship* 175¹²⁸.

gíallnae /giaLNē/ *base clientship; céile gíallnae base client* 29; *drécht gíallnae portion of labour due from base client to lord* 30. See also *flaith cétgíallnae, flaith forgiallnae s.v. flaith*.

-gille: see **gell**.

glám dicenn /glā:v di:g'eN/ *poet's black magic* 44⁴⁴.

glas /glas/ dat. pl. *glasaiib; fetter, géill i nglasaiib hostages in fetters* 173, 174¹¹⁸.

gniae /gni-e/ *workman* 61; *fergniae workman, male servant, bodyguard* 65-6, 66²¹⁴, 170.

gó: see **gáu**.

gobae /gove/ *blacksmith* 62.

goire /gor'e/ *later gaire; filial duty, duty towards incapacitated relatives* 11, 43, 80, 93²⁰¹, 105, 121, 224; *Do Brethaib Gaire on judgements of maintenance* App. 1 No. 28. See **mace** (gor).

goiste /goſt'e/ *Early Mod.Ir. godparent* 256⁷⁴.

góla(e) /gole/ also *gólo; punishment pit* 217²⁰, 218-9; *fuidir góla a fuidir who has been ransomed from a pit* 219. See also *cuite*.

gor: see **macc** (gor).

grád /gra:ð/ gen. sg. *gráid, nom. pl. grád, gráda; grade, rank* 62¹⁸², 199⁶¹; *gráda eclasa grades of the Church* 39¹; *na grád uird ecalso officers of the Church* 66²¹².

gú-: see **gáu**.

gúach /gu:ax/ *unjust* 55.

guin /gun'/ *slaying, execution (by sword etc.)* 217²⁰, 219; *frithguin counter-wounding, killing or wounding in self-defence* 129³¹.

iarfine: see **fine**.

íarmbrithemnas /iarm'r'iθ'ēvnas/ *'after-judgement', final assessment of fine for injury* 131⁴⁸, 132.

iarrath /iaRaθ/ gen. sg. *íarraith; fosterage* see 88; *Cáin íarraith the law of the fosterage* see App. 1 No. 19.

iartaige /iardiγ'e/ *additional penalty* 131.

íasacht /iasaxt/ gen. sg. *íasachta; loan* 117¹¹⁸; *lóg íasachta interest on a loan* 118¹²⁵. See also **airliciud** and **ón**.

imbas for-osna /imbas for·osna/ *encompassing knowledge which illuminates (a poetic skill)* 44, 45.

imdénam /im'ð:enāv/ *oath, proof by oath* 199⁶⁰.

imm-toing /im·tɔŋ'g/ 'swears about'; *swears in support of* 199⁶⁰, 201; vb. n. **imthach**.

imnae /imne/ *bequest* 122-3. See also **timnae**.

imresan /im'r'esan/ *dispute* 208¹²⁷.

imsearad /imskarad/ *divorce* 73.

imthach /imθax/ (vb. n. of imm-toing *swears about*); *compurgatory oath, supporting oath* 199⁶⁰, 201.

indarbe /iNdarbe/ *banishment* 223.

indeithbire /iN'deθ'v'ir'e/ *carelessness, blameworthiness* 220.

inderb /iN'd'erv/ *uncertain thing, uncertainty* 209¹³⁰.

indfine: see **fine**.

indles: see **diles**.

inmlegon /in'm'l'e-yon/ (vb. n. of in-omlig 'milks out into', *mulcts, levies*) gen. sg. *inmleguin*; athgábil *inmleguin distract of a surrogate* 179-80, 185.

inncħreic /iN'x'r'ek/ *selling up* 94²¹⁰.

innrit /iN't'r'id/ *a measurement of length* 99¹.

inol /inol/ *apprentice(?)* 8, 82¹⁰⁷, 132.

inraic(c)us /iNRakus/ *honesty, integrity* 206, 236⁴⁹.

inraic(e) /iNRik/ *honest, worthy, legally qualified; properly made (of manufactured article)*; *comaithech inraic neighbour of good standing* 56.

iubaile /iuvil'e/ *jubilee, period of legal immunity (in relation to contracts), limitation period* 252; Córus lubaile *the regulation of periods of immunity* App. 1 No. 55.

láech /Laix/ gen. sg. laích; *layman; airchinnech laích lay superior* 42²⁶; *ollam laích chief lay judge* 55¹³³.

lait /Lad/ nom. pl. laiti; *a measurement of length* 99¹.

lánamain /La:nāvīn/ gen. pl. lánamna[e] *pair, couple (esp. married couple)* 54, 74⁴⁶; Cáin Lánamna *the law of couples* App. 1 No. 17.

lánamnas /La:nāvna/ *close relationship, marriage, sexual union* 70, 121; lánamnas comthinchuir *union of joint property* 70, 72; lánamnas fir for bantinchur *union of a man on woman property* 70; lánamnas mná for fertinchur *union of a woman on man property* 70; lánamnas fir thathigtheo *union of a man visiting* 70; lánamnas foxail *union of abduction* 70, 71, 79⁸³, 136; lánamnas táidi *union of secret visiting* 70, 136; lánamnas éicne nó sleithe *union by forcible rape or stealth* 136.

ledb /Leðb/ *leather strap* 222.

les /Les/ *house-enclosure, courtyard* 124.

lethchonn: see **conn**.

lethtacrae: see **tacrae**.

liachtróir /Liaxtror/ also liachtóir, liachtreóir; *lector* 39¹.

liaig /Li-aγ/ gen. sg. lega; *physician, medical doctor* 57, 272; banliaig túaithé *woman physician of the túath* 59, 77; fáithliaig seer-physician 58.

linchor /Li:nxor/ gen. sg. línhuir; *medicine bag(?)* 181; tuillem línhuir *physician's earnings* 181²⁶.

lobad /Lovað/ 'decay', *forfeiture of distrained animals* 179.

lóg /Lo:γ/ *payment, price, fee; lóg fóesma adoption fee* 105; lóg iasachta *interest on loan* 118¹²⁵; lóg mbérli *payment for legal language, judge's fee* 53; lóg n-enech *price of a person's face, honour-price* 8, 125¹, 126, 149; lóg n-othrusa *payment for sick-maintenance* 133.

lubgortóir /LuvγoRtoir/ *gardener* 66²¹².

luge /Luγe/ dat. sg. lugu; *oath* 82, 199⁶⁰, 207, 222, 232¹⁹.

lulgach /Lulγax/ *earlier laulgach, tilgach, etc.; milch cow* 113.

mac(c) /mak/ nom. pl. maic; *surety, enforcing surety* 167, 172, 232¹⁹; maic cor mbél *sureties to contracts* 172, 193.

mac(c) /mak/ gen. sg. maic, later meic, mic; *son, child* 54, 75⁵³, 85¹⁴³, 86¹⁴⁴, 86¹⁴⁵; mac adaltraig[e] *urnadma son of a betrothed concubine* 102; macc aille *reared son* 81; mac aitinen *recognised son* 102; macc béoathar *son of a living father* 80; mac dligthech *lawful son* 220; macc fócrá *proclaimed son, outlawed son* 103; mac gor *dutiful son* 161, 232¹⁹; macc ingor *undutiful, neglectful or disobedient son* 80⁹⁵, 103; macc muine *son conceived in the bushes* 102; mac óige *son of a pure woman* 102; macc raite 'son of the road'; *abandoned child* 103; macc scirne 'son of a shrine'; *child born of incest* 220; mae sleithe *child begotten through rape by stealth* 135⁷²; macc sōerleicthe *son allowed independence* 81; macc tó 'warm son', *dutiful dependent son* 80; macc toimten *putative son* 103; macc úar 'cold son', *undutiful son* 80; maccailech *young nun, novice nun* 91; maccléirech *young cleric, clerical student* 91; maccothrus *sick-maintenance of children* 84; mac-sleabhl *property given to fosterson* 89¹⁷⁶; maceslabrae *gift by parent to son or daughter* 121; Maceslechta *son-sections* App. 1 No. 18.

máer /mair/ *steward, agent* 65²⁰⁶.

maigen dígona: see **díguin**.

máithre /ma:θ'r'e/ *mother-kin* 127¹⁷.

manach /manax/ *monk, monastic client* 33, 39, 54; dóermanach *base monastic client* 170.

manchuine /manxin'e/ *rents and services due to a monastery from its clients, to a lord from his clients; personal attendance on a lord* 32, 33.

marbdil /mar'v'ð'il/ nom. pl. marbdili; 'dead' *possession, inanimate movable property* 99, 147, 181. See **béodil**.

medam /meðāv/ *Judge* 51¹⁰¹.

meithel /meθ'el/ *reaping-party* 30.

mer /mer/ dat. pl. meraib; *deranged person* 92-3; App. 1 No. 27.

mese /mesk/ *drunken person* 154²³⁴.

mescae /meske/ *drunkenness* 135⁷³.

míad /miað/ *rank, status, dignity* 62¹⁸², 77; Míadšechta *rank-sections* App. 1 No. 8. michor: see **cor**.

midach /miðax/ *physician, medical doctor* 57-8.

mind /miNd/ later mionn; *halidom, sacred object, oath* 199.

mír méin /mi:r' me:n'/ *morsel of food desired by an invalid (esp. a pregnant woman)* 154²³¹.

molad /molað/ *praise* 138.

monach /monax/ *acrobat* 64.

mruigfer /mruiγ'er/ *land-man', highest grade of bóaire distinguished in CG* 100⁶, 101¹³, 110, 111, 144.

mruigrecht /mruγ'r'ext/ *land-law; law dealing with damage to land by trespass of man or animal* 274.

mug /muγ/ *male slave* 95, 97²⁴⁰, 113.

muilleoir /muL'o:r'/ *miller* 66²¹².

muimme /mum'e/ *fostermother* 86.

muire /mur'e/ *lord* 26⁵⁶, 200.

murchoirthe /murxorθ'e/ *castaway, shipwrecked person* 6; in commentary murchoirthe codnach *sane castaway* 252; murchoirthe lethchuinn 7 *lethchéille half-sane castaway* 252.

naidm /Naδ'm/ gen. sg. nadma, nom. pl. nadmann; *enforcing surety* 41, 134, 167, 171-2, 173, 186⁶⁶, 192, 193, 194; *áilsted nadma neglecting to enforce a surety* 171⁹⁸; *dénaidm two enforcing sureties* 171.

neimhigdir /Nēv'θ'iγ'ið'ir'/ *confers status on* 61⁷⁰, 66²¹⁰.

nemed /Nēv'eð/ gen. sg. and nom. pl. nemid, acc. pl. nemthiu; *privileged person, dignitary, professional; privilege, sacredness; sanctuary, sacred place, land owned by a privileged person* 9, 12, 57, 80⁹⁷, 95, 141, 147, 148; *nemed filed great poet* 45; *ardnemed high dignitary* 120; *dóernemed dependent professional* 10, 43, 60, 181, 233; *sóernemed noble dignitary* 96¹, 106³, 183; *úasalnemed noble dignitary, privileges of a noble dignitary, land owned by a noble dignitary* 234²⁹; *úasalnemid chethrae large domestic animals* 147, 234²⁹; *cathair úasalnemid important monastery* 185. For further discussion on nemed, see BB, Notes pp. 107-9.

niae /Ni-e/ gen. sg. niad; *sister's son, nephew; orbae niad inheritance of a sister's son* 104.

noill /NoiL/ nom. pl. noillig; *oath* 199⁶⁰, 202; *frithnoill counter-oath* 199⁶⁰, 202; *bannoill female oath* 202.

nómad /Nō:vað/ *nine-day period (before physician's prognosis)* 129³³.

oblaire /ovlir'e/ *sub-grade of poet* 46⁶⁵.

ócaire /o:gar'e/ *'young freeman', lowest grade of adult freeman, small farmer* 10, 29, 30, 87, 100, 101, 105, 111, 115, 123, 203, 252.

ócthigern: see **tigern**.

óenach /oinax/ *assembly, fair, gathering* 4, 150.

óenchiniud /oin'x'in'uð/ *'solitary offspring'; minor without living descendants* 88.

óes /ois/ also **áes**; *people; óes cerdd men of art, poets* 48; *óes dána craftsmen* 51; *óes ecolso churchmen* 183.

óeth /oiθ/ *oath* 199⁶⁰, 232¹⁹.

ogom /oγom/ *ancient alphabet used especially in inscriptions on stone* 204. See GOI pp. 9-11.

ollam /oläv/ gen. sg. ollaman; *expert, master, chief* 44, 46, 47, 48, 48⁷⁷, 52, 57, 254, 262¹⁸; *ollam br(e)itheman chief judge* 254⁶³, 257⁸¹, 259¹⁰³; *ollam le (re) brethennus chief judge* 254⁷², 257⁸⁴; *ollam briugad chief hospitaller* 37; *ollam cléirig chief ecclesiastical judge* 55¹³⁴; *ollam dána chief poet* 46⁶³; *ardollam in feinechuis chief expert in traditional law* 250; *ollam filed chief poet* 48, 193²¹; *ollam laích chief lay judge* 55¹³³; *öllamh re seanchas chief historian* 260; *ollam re senchus 7 re filidhecht expert in history and poetry* 262¹⁸; *ollam rig chief of kings* 18; *ollam suad sairsi chief expert wright* 61¹⁷⁷; *ollam úasalepscoip chief bishop, archbishop* 41; *adbair ollaman re berla feinechuis potential master of Irish law* 260¹⁰⁷; *súi cach*

bérli ollaman *an expert of every form of legal language with the rank of master* 48, 193²¹.

omnach esconn: see **esconn**.

omun /ðvun/ gen. sg. omna; *fear; cor omna contract made in fear* 153; *faisnéis fir omhna the evidence of a frightened man* 206¹¹³.

ón /o:n/ gen. sg. óna; *loan, lending* 117-8; *Cáin Óna the law of lending* App. 1 No. 57.

orba(e) /orbe/ nom. pl. orbai; *inheritance of land, patrimony* 3¹², 93, 94²⁰⁹, 94²¹⁰, 102; *orbae niad inheritance of a sister's son* 104.

othrus /oθrus/ gen. sg. othrusa; *sickness, sick-maintenance* 1, 130, 133, 149, 153, 271, 272, 285; *folog n-othrusa sick-maintenance* 130; *Slicht Othrusa section on sick-maintenance* App. 1 No. 31; *maccothrus sick-maintenance of children* 84; *ferothrus adult sick-maintenance* 84.

pennait /peNid'/ *penance, extra fine for offences against Church* 43.

pertach: see **fertach**.

raitech /Rad'ex/ *man of the road, vagrant* 188.

rannaire /RaNir'e/ *divider, carver (of meat)* 66.

rath /Raθ/ gen. sg. raith; *fief* 27⁶⁰, 145¹⁶³; *rath n-aicill[n]e fief of base clientship* 27⁶⁰; *Di Dligiud Raith 7 Somaine la Flaithe on the law relating to the fief and profit of a lord* App. 1 No. 25; *finerath fief granted within a kin-group* 29⁷⁶; *Cáin Sóerraith law of free fief (i.e. free clientship)* App. 1 No. 23.

ráth /Ra:θ/ *latinized rata; paying surety, one who goes surety with his property, property put into security* 80, 156, 157, 158⁴, 167, 168-70, 171, 180, 182, 186⁶⁶, 192, 193, 194; *ráth airnnaise bound surety* 169⁹⁰; *ráth forngartha fine surety commanded by his kin* 169⁸⁹; *ráth iar cúl (later cíulráth angl. culrath, colrach, etc.) back surety, secondary surety* 169; *cétrath chief surety, main surety* 169.

ráthaiges /Ra:θiγ'es/ gen. sg. ráthaigis; *paying suretyship* 169; *élud ráthaigis evasion of obligations as surety* 168⁸⁶.

ré /Re:/ *period of time, legally fixed interval* 74⁴⁸.

ré: see **róe**.

recht /Rext/ *law, rule; law-abiding person, person of legal status* 50, 105, 139¹¹⁰, 140, 232¹⁹, 285; *recht n-aicnid the law of nature, natural law* 248; *recht litre the law of the letter, scriptural law* 248; *Recht Adomnán (= Cáin Adomnáin) the law of Adomnán* App. 1 No. 74; *mruigrecht land-law* 274. (In legal MSS *recht* person of legal status is often used interchangeably with *richt* shape of person, type of person, e.g. CIH 15.15 ben istoing cach *richt* = 538.19 bean astoing cach *recht*).

rechtaid /Rextið/ *law-abiding person (neg. **anrechtaid**); ruler; rechtaid géill hostage ruler(?)* 69.

rechtaire /Rextir'e/ *steward, agent* 65.

rechtgae /Rextγe/ *ordinance, decree, law* 21, 22, 223, 234³¹.

renaid /Renið/ *sells, exchanges* 112.

rí /Ri/ gen. sg. and gen. pl. ríg; *king* 17, 83¹²⁰, 147¹⁷², 193²², 219, 223⁵⁰; *rí buidén king of bands* 17³; *rí bunaid cach cinn ultimate king of every individual* 18; *rí cóicid provincial king* 17, 176¹³⁰, 193²²; *rí Érenn king of Ireland* 18, 176¹³⁰; *rí Muman king of Munster* 17⁴; *rí ruireach king of overkings, supreme king* 17, 115; *rí túaithe king of a túath, lowest grade of king* 17, 132; *rí túath king of túatha* 17, 193²²; *ollam rig chief of kings* 18; *rígdomna royal heir* 170. See also **ríri**.

ríar /Riar/ *stipulation, demand; Uraicecht na Ríar the primer of the stipulations* App. 1 No. 13.

rígain /Ri:yin'/ *queen* 78.

rindaid /RiNdað/ (vb. n. of rindaid *cuts, satirizes*); *satire, satirizing* 137.

rindaid /RiNdið'/ *satirist* 51⁹⁹.

rindaid /RiNdið'/ *satirizes; ben rindas woman who satirizes* 50, 51; *fer rindas man who satirizes* 51.

rindle /RiN'd'il/e/ (*illegal*) *satirist* 49.

roach /Ro-ax/ *witness to a contract* 80, 158³, 206¹¹⁰.

róe /Roi/ *later ráe, ré; duel, single combat; field of combat, battlefield* 98, 148¹⁷⁷, 211.

ropchaithig: see **caithig**.

ropchin: see **cín**.

roscað /Roskað/ nom. pl. roscáid, dat. pl. roscadaib; *legal verse* 196; Roscada Flainn Fína *the sayings of Flann Fína* App. 2 No. 6.

rubae /Ruve/ *patrolling duties* 31.

rudrach /Ruðrax/ *monotony in verse* 46.

rudrad /Ruðrað/ *prescription, prescriptive period* 109; *Do Tuaslucud Rudradh on the dissolution of prescriptions* App. 1 No. 56.

ruidles /Ruð'l'es/ (ro + diles); *totally immune from claim* 121.

ruiri /Rur'i/ (ro + ri) nom. pl. ruirig, gen. pl. ruirech; *overking, great king, second rank of king* 17, 193; ri ruirech *king of overkings* 17, 115.

ruiriud /Rur'uð/ *animal-trespass over three or four holdings, stampede* 143; *ruiriud tráchta shore-trespass* 107.

sacart /sagaRd/ *priest* 39¹.

sáer /sair/ *wright, builder, carpenter, mason* 61; *banšáer female wright* 77.

sáer-: see **sóer**.

sai: see **suí**.

saírse /saiR'se/ *craftsmanship; ollam suad saírse chief expert wright* 61¹⁷⁷.

saithiud /sað'uð/ *over-reaching* 159.

samaisc /sávís'k/ nom. pl. samaisci; *'summer-dry; three year-old dry heifer* 33, 45, 113, 118¹²⁵.

sárugud /sa:ruγuð/ *Violation, profanation, outrage* 218²³.

scolóic /skolo:g/ *scholar, monastic student, lowest grade of church tenant* 36¹³², 39³.

serepul(l) /skrebul/ *scruple (unit of value)* 114.

secht /fext/ *seven, heptad; Mid.Ir. na sechta the heptads* App. 1 No. 3.

secnap /fegnab/ *prior* 66²¹².

seiniscal /fén'iskal/ *Early Mod.Ir. seneschal* 256⁷⁴.

selb /félv/ *property, holding of land* 223⁵¹; *mac-shealbh property given to fosterson* 89¹⁷⁶.

sellach /félax/ *culpable onlooker at an offence* 155; *Sellach-text* App. 1 No. 36.

sen /fén/ gen. sg. sin; *old man* 94²⁰⁹.

senchae /fénxe/ nom. pl. senchaid; *historian, custodian of tradition* 193.

senchas /fénxas/ *traditional lore, history* 47, 193, 260, 262¹¹⁸; *Senchas Már 'great tradition' (collection of law-texts)* 48, 114 etc. (see Index 4).

senchleithe /fén'x'l'c:θ'e/ *hereditary serf, serf bound to the land* 35-6, 162.

senchrainn Sín /fénxraN f i:n'/ *'the old tree of Sín' (type of ordeal)* 211; *slisén*

senchrainn *'chip of an old tree' (same ordeal?)* 211.

senod /fenoð/ *synod, ecclesiastical authority* 31, 48.

sensmúr cinad /fénsmu:r kinað/ *the old embers of an offence, an offence committed a long time previously* 192¹².

sét /fæd/ Mod.Ir. *seed; nom. pl. séuit, séoit; jewel, treasure, valuable, a fixed unit of value* 10, 12, 28, 49⁸⁵, 52, 57, 61, 62, 63, 64, 87, 110, 112, 114-5, 116, 117, 123, 132, 144, 145, 151, 166, 179, 185; *sét gabla forked(?) sét* 46, 115; *sét gertha 'valuable of affection'; parting gift to fosterson* 89; *séuit ſaindilsi personal valuables* 122; *séuit taurchluideo chattels of subjection* 29.

sinnach brothlaig /fíNax broθliγ'/ also *brothlaige; 'fox of the cooking pit'; wandering down-and-out* 237.

slabréa: see **macc-**.

sláinte /sLa:N't'e/ *legal protection, security; exemption, release from liability, indemnification* 125¹, 141¹²⁴.

slán /sLa:n/ *whole, safe, free from liability* 156²⁴⁴; as noun *payment, compensation, indemnification, immunity, release from liability* 125¹, 169⁹⁰.

slánad /sLa:nað/ *legal protection, guarantee, security* 141¹²⁴.

slánaigecht /sLa:niv'ext/ *legal protection, guarantee, security* 141¹²⁴.

slánfuidir: see **fuidir**.

-slechta: see **slicht**.

sleth /sLeθ/ gen. sg. sleithe; *rape by stealth* 134, 135, 136⁷⁹; *macc sleithe child begotten by stealth* 135⁷². See also **éicen** and **forcor**.

slicht /sLixt/ nom. pl. slechta; *section, division, extract; Slicht Othrusa section on sick-maintenance* App. 1 No. 31; *Di ChetharSlicht Athgábála on the four divisions of distress* App. 1 No. 66; *MíadSlechta rank sections* App. 1 No. 8; *MaccSlechta son-sections* App. 1 No. 18; *ConSlechta dog-sections* App. 1 No. 48; *CatSlechta cat-sections* App. 1 No. 49; *BóSlechta cow-sections* App. 1 No. 50.

slisén senchrainn: see **senchrainn**.

slithid /sLiθ'ið'/ *seducer* 135⁷².

slógad /sLo:γað/ *hosting, military expedition* 4, 19, 31, 174; *gairm slóighidh summoning of host* 4¹⁹.

smacht /smaxt/ *fine, penalty* 192; *smachtgille penalty pledge* 192.

snádud /sNa:ðuð/ (vb. n. of snáidid *protects*); *legal protection* 82, 140, 232¹⁹.

sochonn: see **conn**.

sochor: see **cor**.

sóer /soir/ *later sáer; noble, free, independent* 9, 46; in cpds *sóer-aième, -bard, -chéile, -fuidir, -nemed, -rath*.

soíre /soir'e/ *independent legal status* 64; *immunity from claim* 165.

somoine /sovöin'e/ *later somaine; profit, revenue, return* 169; *Di Dliugið Raith 7 Somaíne la Flaith on the law relating to the fief and profit of a lord* App. 1 No. 25.

subdechon /sub'ð'exon/ *subdeacon* 39¹.

suí /suí/ *later sai; gen. sg. suad; man of learning, sage, expert, head of monastic school* 41, 78, 199; *suí cach bérliai ollaman expert of every form of language with the rank of master* 48, 193²¹; *sai cléirigh learned cleric* 260¹⁰⁸; *suí litre expert in ecclesiastical learning* 41; *adbur suadh re breithemhnus potential master of judgement* 226⁹; *ollam suad saírse chief expert wright* 61¹⁷⁷.

suithengthaid /suθ'engθið'/ *spokesman* 185⁶¹.

tabart /tavaRt/ (vb. n. of do-beir *gives*) nom. pl. tabarta; *gift, property transaction* 121.

taclae /tagre/ (vb. n. of do-accair *pleads, sues*); *pleading, law-suit* 191, 192, 194²⁷, 195; lethtaclae 'half-pleading'; *pleading one side of a case* 54; birr-thagra *short pleading(?)* 260¹⁰⁷.

táebarrecht: see **airecht**.

táid aithgena: see **aithgein**.

táide /ta:ð'e/ also táithe; *theft; lánamnas táidi secret sexual relationship* 70, 136; *duinetháide secret murder* 128.

tairgell, tairgille: see **gell**.

tairsce /taR'ʃk'e/ *grazing-trespass* 238.

taithmech /taθ'v'ɛx/ (vb. n. of do-aithbig *breaks up, annuls*); *dissolution, annulment*; Do Taithmech Cunnarrrta (= Cundartha) *on the dissolution of contracts* App. 1 No. 54.

talmaidech /talvið'ɛx/ *epileptic* 94, 95²¹⁷.

taman /tāvān/ *sub-grade of poet* 46⁶⁵.

tánaise /ta:nise/ later tánaiste, angl. tanist; *heir-apparent, successor to kingship* 26.

tasbénad /tasb'e:nəð/ (vb. n. of do-aisféná *shows, sets forth*); *exposition (of judgement)* 55¹³⁰, 196⁴³.

taurbaid /taurvið/ later turbaid, gen. sg. turbada; *legal postponement, delay* 62, 97, 175¹²⁸, 183, 191; *Taurbaid-text* App. 1 No. 70.

taurchluiideo: see **sét**.

taurchrecc /taurx'r'ek/ later turchrec(c) (vb. n. of do-aurchren *fore-purchases*); *sief, grant of land or stock in return for food-rent* 27⁶⁰, 29.

techt /text/ later techtaire; *messenger, courier* 66.

téchtae /te:xte/ as noun *property, legality, legal due* 54, 191; as adj. *proper, as prescribed by law* 58, 74⁴⁸, 97, 121. See also neg. **étechtae**.

techtaire: see **techt**.

techtugad /textuɣað/ (vb. n. of techtaigid *takes possession of*); *legal entry (regular gloss on tellach)* 186⁶⁵, 265; *Din Techtugad on legal entry* App. 1 No. 68.

teinn láeda /ten'm' Laiða/ *breaking of marrow(?) (a poetic skill)* 44.

teist /teſt'/ gen. sg. testa; *trustworthy witness, one qualified to give evidence* 203, 205, 207; neg. anteist *untrustworthy witness, unqualified witness* 203, 205, 207.

teistimin /teſt'iv'in'/ *testimony, written text* 196, 197.

tellach /teLax/ *legal entry* 186, 189⁸², 241; bantellach *female entry* 105, 187.

termonn /termoN/ *monastic sanctuary, refuge* 141.

testas /testas/ *testimony; gúthetas false testimony* 208.

tigern /tiɣ'eRN/ *lord* 8, 26⁵⁶; óchtigern 'young lord'; *lowest grade of lord* 26⁵⁶, 73; *tigernbard lord who is also a bard* 47.

tigernae /tiɣ'eRNe/ *lord* 26⁵⁶.

tigradus /tiɣraðus/ *later tiugradus; the legal responsibility of the last person in whose possession or view an article or domestic animal was* 146.

timnae /timne/ *bequest, testament* 122.

timthach /timθax/ *accessory food-rent* 30.

tinchor /tinxor/ gen. sg. tinchuir, dat. sg. tinchur; *movable goods, equipment; esp. property brought into a marriage* 70; bantinchor *property brought into a marriage by a wife* 70, 72; comtinchor *property brought in by both partners* 70, 72; ferthinchor *property brought in by a husband* 70.

tinnscra(e) /tiNskre/ also tindscra; *bride-price* 72, 89.

tobach /tovax/ (vb. n. of do-boing *exacts, levies*) gen. sg. tobaig; *exaction, levying* 49, 178, 190²; trian tobaig *enforcer's third* 126.

tochra(e) /toxre/ *bride-price* 72.

tóchsal /to:xsal/ (vb. n. of do-fochsla *seizes*); *carrying off, seizure (in restraint)* 178.

togu /toɣu/ later toga; *choosing (husband for girl)* 103²².

toísech /toiʃex/ *leader, chief, chieftain* 174.

tongid /ton'g'ið/ *swears* 198⁵⁹, 199⁶⁰, 232¹⁹. See also cpds **ar-toing, as-toing, do-toing, for-toing, fris-toing, imm-toing**.

trebar /trevar/ *prosperous, solvent* 82¹⁰; abstr. trebare *prosperity; suretyship*. **trecheng** /trex'eng/ *triad; Trecheng Breth Féne a triad (or nom. pl. triads?) of the judgements of the Féni* App. 2 No. 3.

trian tobaig: see **tobach**.

trillsech /triL'ʃex/ *girl in plaits, under-age girl* 103²².

troscud /troskuð/ gen. sg. trosctho, later troiscthe; *fasting (as part of legal procedure)* 182-3.

túarasndal /tuarasndal/ later túarastal; *eye-witness evidence* 176.

túaslucud /tuasLuguð/ (vb. n. of do-fúasailci *releases, dissolves*); *dissolution*; Do Túaslucud Rudradh *on the dissolution of prescriptions* App. 1 No. 56.

túath /tuaθ/ gen. sg. túaithe, nom. pl. túatha, gen. pl. túath; *petty kingdom, territory, tribe; the laity* 3-5, 17, 21, 22, 23, 31, 42, 46, 48, 49, 52, 54, 55, 58, 59, 66, 69, 76, 77, 101, 104, 105, 107, 119, 124¹⁶⁴, 127, 129, 133, 161, 175, 176, 184, 189, 193²⁰, 197, 208, 211, 212, 217²⁰, 219, 223⁵⁰, 279; brithem túaithé *official judge of the territory* 24, 52-3; *lay judge* 55.

tuillem /tuL'ev/ (vb. n. of do-slí *earns*); *tuillem línhuir physician's earnings* 181²⁶.

tuinide /tun'ið'e/ *possession* 204.

tulathgabál: see **athgabál**.

turbaid: see **taurbaid**.

turtugud /tuRtuɣuð/ *legal protection* 140, 184.

úasalnemed: see **nemed**.

umaige /üvɪɣ'e/ *coppersmith* 63.

ungae /unge/ *ounce, esp. ounce of silver* 114; ungae geimlech 'setter-ounce'; *additional ransom payment* 175.

uraicecht /urak'ext/ earlier airaicecht; *primer, book of instruction; Uraicecht Becc small primer* App. 1 No. 7; *Uraicecht na Ríar primer of the stipulations* App. 1 No. 13.

urnaidm: see **airnaidm**.

urrad: see **aurrad**.

INDEX 2

ANGLICIZED FORMS OF IRISH AND SCOTTISH LEGAL TERMS

Some Irish, Scottish Gaelic and Manx legal terms are quoted in English, Lowland Scots, Norman-French or Latin documents of the 12th-17th centuries. Although all these sources are later than the Old Irish law-texts, the use which they make of such terms sometimes provides additional insight into early Irish laws and institutions (see especially pp. 125, 169).

This index has no pretensions to completeness, and merely provides a list of those anglicized terms which are mentioned in this book. Spellings from Scottish sources are marked (S) and a spelling from a Manx source is marked (M). Unmarked forms are from Irish sources or sources relating to Ireland.

I print anglicized spellings (often highly variable) of each term in heavy type, after which I give the equivalent Irish spelling in ordinary type. The references are to page-numbers, with footnote-numbers suprascript.

bard bard *poet (especially of lower grade)* 46⁶⁰, 64²⁰⁰.
betagh (latinized **betagius**) biattach *base client* 30.
brehon, brehowne, brethan, braghan, breighon, breawen, brieve(S) brithem(ain)
judge 51¹⁰², 53, 56, 101¹⁰, 141¹²⁴, 193, 253⁵², 253⁵⁴, 254, 257, 259, 261.
c- (with **k-**)
caif, cayf (also **coghe**) coibche *bride-price* 72²⁷.
cane, kane, can(S), chan(S), kan(S) cáin *law, tax, rent, fine* 218.
kane godde cáin gaite *law of theft* 218.
canfinny ce(a)nn fine *head of kin* 14⁸⁸.
kernety cethern tige *household war-band* 67.
kincogish, kincogus, kencogus, kynkonges cin comocuis *offence of a kinsman* 13⁸¹.
coarb, corbe, cumherbe(S) comarba(e) *ecclesiastical heir* 41²⁰.
coghe: see **caif**.
colpindach(S) colpthach *two year-old heifer* 113⁹⁹.
comrick, comrycke commairce *legal protection* 141¹²⁴.
cosher, coshery, coysser cóisir *feast which is provided for a lord* 30⁸⁵.
coyne, coign, coigney, conyow(S), kuneveth(S), conveth(M) coinnmed, coinnmed
billeting 31⁹⁶.
kreahkir(S) creccaire *raconteur* 64²⁰⁰.
cro(S), croy(S) cró *compensation for killing* 125¹, 126⁴.
cuddy, cudihie, coydhye, cuddiche(S), cudeich(S) cuid oidhche *guesting (lit. 'food
for the night')* 30⁸⁵.
culrath(S), colrach(S), culrehath(S) cúlráth *back surety, secondary surety* 169⁹¹.
enach(S), enauch(S) enech *honour, compensation for killing* 125¹.
erenagh airchinnech *monastic superior* 42²⁶.
erick, erycke éraic *body-fine* 126³, 141¹²⁴.

filli, phili(S) fili *higher grade of poet (usually translated 'rymer' in English documents)* 46⁶⁰.
garemsloaeg gairm slóighidh *summoning the host* 4¹⁹.
iraghte airecht *assembly* 141¹²⁴.
k-: see **c-**
letter(s) of slains: see **slains**.
loughty lucht tige *(king's) household* 101¹⁰.
makheliff(S), mcheliff(S) mac-shealbh *donation to fosterchild* 89¹⁷⁶.
ogethearn(S), ochethiern(S) ócithigern *lowest grade of lord* 26⁵⁶.
olaff danie, olowe dane ollam dána *chief poet* 46⁶³.
oylegeag aile déc *one twelfth (i.e. judge's fee)* 53¹¹⁴.
ph-: see **f-**
scoloc(S), scolog(S) scolóc *lowest grade of church tenant* 36¹³², 39³.
slains(S), slanes(S), slanys(S), slayans(S) slán(?) *release from liability* 125¹.
slantie sláinte *legal protection* 141¹²⁴.
slanyacht (also **slantyeght**) slánaigecht *legal protection* 141¹²⁴.
tanist, taynist, tanest, tawnist tánaist(e) (ríg) *heir-apparent to king* 26.
tocher(S) tochrae *dowry* 72³¹.

INDEX 3

WELSH AND BRETON INDEX

This index lists the Welsh and Breton words referred to in this book. Unmarked words are from Welsh, and are given in modern spelling. The references are to page-numbers, with footnote-numbers suprascript.

adafael (O.Bret. *adgabael*) *distraint* 177¹, 230.
adnau (O.Bret. *adnou*) *deposit* 120, 232¹⁹.
brawd *judgement* 51¹⁰¹.
brawdwr *judge* 51¹⁰¹.
cilydd *fellow, companion* 27⁵⁷.
croesan *jester, buffoon* 64²⁰¹.
cyfar *co-ploughing* 101, 232¹⁹, 241.
cyfraith *law* 232¹⁹.
cynflith *three year-old heifer with calf* 113⁹⁷.
dadannudd *legal entry* 186⁶⁵, 241.
deddf *law* 232¹⁹.
dial *vengeance* 127¹⁵.
dilys (O.Bret. *diles, dilis*) *immune from legal process* 232¹⁹.
dirwy *penalty* 232¹⁹.
edrydd *patrimony* 86.
gafael *distraint* 177¹.
galanas *fine for homicide* 125¹.
gwalch *falcon* 107⁴⁶.
gweled *to see* 43³⁸.
gwrthdwng *counter-oath* 201⁷⁴.
gwybyddiad *eye-witness* 202⁸³.
gwystl *pledge, hostage* 164⁵⁵.
Mod.Bret. **hañvesk** *dry heifer, dry cow* 113⁹⁷.
hebog *hawk* 107⁴⁶.
llw *oath* 232¹⁹.
llygadrudd *'red-eyed', culpable onlooker* 154²³⁸.
mab *son* 172¹⁰⁵.
mab anvar *undutiful son* 80⁵.
mab gwar *dutiful son* 232¹⁹.
mab llwyn a pherth *son of bush and brake* 102¹⁷.
mach *surety* 172, 232¹⁹.
mam *mother* 86.
modryb *aunt* 86.
nawdd *legal protection* 140¹¹⁸, 232¹⁹.
pencerd *chief poet* 48⁸⁴.
priodolder *proprietary right to land* 241⁷⁵.
tad *father* 86.

teyrn *lord* 8, 26⁵⁶.
traean cymyll *third of enforcement* 126⁵.
tyngu (Med.Bret. *toui*) *to swear* 232¹⁹.
tyst *witness* 203⁸⁸.
wynebwerth *honour-price* 8⁵⁵.

INDEX 4

GENERAL INDEX

This index gives references to the main topics treated in this book. It also includes the names of persons, places and manuscripts, as well as the titles of texts (italicized). The references are to page-numbers, with footnote-numbers suprascript.

abbess 69.
abbot 3, 22, 39, 41, 162, 174, 189, 248.
abduction, marriage originating in 70.
abortion, by wife, a ground for divorce 75.
absconder, from justice 9, 222.
accessory, to crime 155-6.
accident, main discussion 149-51; involving craftsman 62; in deer-trap 107.
Adam, disadvantageous contract by 159.
Additamenta: see **Patrick**.
Adomnán, abbot of Iona 215; author of *Vita Sancti Columbae*; promulgator of *Cáin Adomnáin*.
adoption, inheritance by 105.
adverse possession, of land 109.
Advice to Doíden 170.
advocate, main discussion 56-7; proper pleading by 191-2.
Áer-text (App. 1 No. 37) 244.
age, for end of fosterage 88.
Aí Cerma App. 1 No. 69.
Ailill, husband of **Medb** 68.
Ailill, son of Cormac, abbot of Slane and an excellent judge 248.
Aimirgin ráthach, as surety, leading case of 168⁸⁴.
Airecht-text (App. 1 No. 71) 55, 175, 193, 195, 196⁴³.
Aislinge Meic Conglinne 217.
alibi, breaking of 205.
alien 5-6.
analogy 196, 197.
animal-trespass, main discussion 142-4; in winter 143; by pigs 143; by dogs 143; by bees 165-6, 238; by cows in heat 144; nocturnal 143.
annals, early references to judges in 248-9; references to post-Norman legal families in 253-60.
Annals of Clonmacnoise (*Ann. Clon.*) 49⁸⁶, 53, 56¹⁴¹, 65, 259.
Annals of Connacht (*AC*) 44, 113, 126⁹, 221, 223⁵⁴, 253⁵⁶, 253⁵⁷, 254⁶¹, 254⁶², 254⁶⁴, 257⁸¹, 257⁸⁴.
Annals of Inisfallen (*AI*) 26⁵³, 37, 49, 174¹²¹, 275.
Annals of Loch Cé (*ALC*) 37, 38, 164⁵⁵.
Annals of the Four Masters (*AFM*) 253⁵⁴, 253⁵⁹, 254⁶³, 254⁷², 256, 261, 262¹¹⁸.
Annals of Tigernach (*AT*) 262¹¹⁸.

Annals of Ulster (*AU*) 22, 26⁵³, 38, 44, 60, 69⁷, 116¹¹², 128²⁰, 128²¹, 130³⁷, 174, 196³⁶, 218, 226, 248, 250, 259¹⁰³, 260, 275.
Antéchtae Breth App. 1 No. 5.
appeal, against judgement 166.
arbitrator: see **judge**.
arbutus, tree, reference to 242-3.
archaeological evidence, compared with evidence of law-texts 3¹³.
arson 145; law-text on, App. 1 No. 38.
arts, prestige of 3.
assemblies 4.
asylum: see **protection**.
Audacht Morainn (*AM*) (App. 2 No. 1) 24, 211, 235, 236.
banishment, for crime 223.
Banshenchas 68¹.
barring of procreation 131.
barrister: see **advocate**.
barter 111-2.
Bechbretha (*BB*) (App. 1 No. 44) 19, 101, 122, 124, 147, 165, 230, 231, 234, 236, 239, 243, 244.
bees, blinding by 239; trespass by 165-6; finder's rights to bees and their produce 124.
bequest 122-3.
Berrad Airechta (App. 1 No. 61) 57, 80, 81, 94, 121, 163, 167, 171, 172, 181²⁶, 203, 206.
Betha Colaim Chille 240.
Bethu Bríte 60¹⁶¹.
Bethu Phátráic 36.
betrothal 71.
bishop, status of 39¹, 41; misbehaviour by 42; assault on 113; rôle in judgement of 193²⁰, 195.
black magic, by poet 44⁴⁴.
blacksmith, importance of 62, 124; supernatural powers of 62-3; distraint of 181.
blemish, disqualifies from kingship 19; raised by poet's satire 44; fine for causing 132; fine for drawing attention to 137.
blood-feud, base client must help his lord in 31; to avenge death of fosterson 89; by kinsmen 127; with participation by maternal kin 15; across the border of another territory 127.
board-games, must be taught to fosters 87.
bodyguard, of king 66, 97-8.
Bóšlechta (App. 1 No. 50) 26⁵³.
boy, training of 91; age at which fosterage ends for 88.
Brega, plain of (Cos. Meath and Louth) 246.
brehon, described in *Annals of Clonmacnoise* 53; described by Campion 253⁵²; principal brehon of Fermanagh 259; 'brehon chairs' 261. See also Index 2 s.v. Brehon, Brehony, Breheny: see **Mac an Bhreitheamhan**.
Bretha Comaitheasa (App. 1 No. 41) 56, 107, 142, 144, 237, 242, 244.
Bretha Crólige (*BC*) (App. 1 No. 29) 1, 2, 8, 12, 50, 52, 55, 58, 59, 60, 69, 70¹⁵, 71, 77, 83, 84, 88, 129, 130, 131, 133, 134, 153, 233, 236, 244, 245, 252, 284.

Bretha Déin Chécht (BDC) (App. 1 No. 30) 8, 59, 112, 115, 129, 131, 191, 237, 244, 245, 252.

Bretha Étgid (App. 1 No. 33) 149, 246.

Bretha Forloiscthe (App. 1 No. 38) 145.

Bretha Forma (App. 1 No. 52) 106.

Bretha im Fuiilema Gell (App. 1 No. 60) 47, 51, 78, 111, 112⁹⁰, 116, 165⁶², 166, 244, 249.

Bretha im Gata (App. 1 No. 35) 147, 243, 244.

Bretha Nemed (App. 1 Nos. 14-15) 44, 115, 246, 269; Bretha Nemed toisech ('Corus breatha neimead') 7, 9⁶¹, 18⁶, 36, 39¹, 41, 47, 50, 58, 61, 62, 63, 64, 66, 104, 115¹⁰⁴, 136, 233, 235, 238, 246; Bretha Nemed déidenach ('An Old-Irish tract on the priviléges and responsibilities of poets') 45, 47, 51¹⁰⁴, 64¹⁹⁸, 67, 78, 116, 137, 138, 147, 162, 170⁹³, 235.

Briathra Flainn Fina: see App. 2 No. 6.

bribe, invalidates judgement 55; invalidates evidence 206.

bride-price 72, 73.

brieve, hereditary judge of Lewis (in the Hebrides) 261.

Brig, legendary female judge 55, 187.

brigand 20, 60¹⁶⁴.

Brigit, of Kildare 77.

Buchet, hospitaller in saga 36, 89.

buffoon, as entertainer 64-5.

buildings, dimensions and types of 110; unauthorized entry into 144; unauthorized use of 144; damage to 145; types of church buildings 110⁷⁷.

bull, injury by 151.

Cahermacnaghten, site of O'Davoren law-school in Co. Clare 257⁸³.

Cáin Adomnáin (CA) (App. 1 No. 74) 21, 22, 79, 128, 137, 151, 152, 156, 176, 191, 215, 220, 221, 223, 234, 248.

Cáin Aicilne (App. 1 No. 24) 29, 88, 116, 237, 244, 245.

Cáin Airlithe App. 1 No. 57.

Cáin Dar Í (App. 1 No. 76) 26, 200-1, 275-6.

Cáin Domnaig (App. 1 No. 73) 97²⁴², 140, 156, 176, 190², 191, 198, 200, 207, 234, 235.

Cáin Fuithe (App. 1 No. 39) 246.

Cáin Íarraith (App. 1 No. 19) 81, 87, 88, 89, 91, 231, 244, 245.

Cáin Lánamna (CL) (App. 1 No. 17) 2, 27, 70, 73, 134⁷¹, 136, 233, 244, 245.

Cáin Óna App. 1 No. 57.

Cáin Phátriaic (App. 1 No. 75) 22.

Cáin Sóerraith (App. 1 No. 23) 28, 32, 244, 245, 265.

Cairde-text (App. 1 No. 62) 129, 244.

Caisel (Cashel, Co. Tipperary) 248.

Campion, Edmund; 16th century English historian 89¹⁷⁶, 250, 253⁵².

canon law 7, 52, 117, 147, 203, 216, 233, 241, 282-3.

captive 97-8, 129, 215-6.

Caratnia Tescthe, legendary judge to Conn Céchathach 24.

case-law, dearth of 238-40.

castaway 6.

cat, law-text on, App. 1 No. 49.

Cath Almaine 65²⁰⁴.

Cath Maige Rath 239.

Cathbad, legendary druid 91.

Catslechta (App. 1 No. 49) 244, 245.

cattle, berserk 93; as currency 113-4; trespass by 142-4; injury to 146; diseases of 59; joint-grazing by 101, 146; negligent or malicious driving of 146; injury caused by ox, bull or cow after calving 151; distract of 178; lost law-text on, App. 1 No. 50.

cauldron-ordeal: see **ordeal**.

cemetery, oath at 199.

Cenannas (Kells, Co. Meath) 89.

Cert cech ríg co rréil 219.

charioteer 67.

chattels: see **property** (movable).

chief wife 70-1.

child, legal capacity of 81; offences by 83; offences against 83-4; sick-maintenance of 84; responsibility for rearing 85-6; fosterage of 86-90; specialized training of 91; sold into slavery 95; evidence of, can be used against relative 205.

Christ, fosterparents of 90; portrayed as captive (*cimbid*) 98; crucifixion regarded as kin-slaying 127¹⁷.

Church, ownership of land by 3, 39; clients of 3, 33, 39, 54; political power of 39-40; struggle with paganism 40; buildings of 42, 110⁷⁷; bequest to 122-3. See also **cleric**.

Ciannacht, legal entry by 187.

cleric, monogamy required of 40; celibacy of 40, 42; proper behaviour by 41; offences by 42; offences against 43; young cleric 91; fine for killing young cleric 83¹¹⁹; cleric as hostage 174; possible clerical authorship of law-texts 233-6; monk 33, 39, 54, 162, 189, 224; monastic client 3, 33, 39, 54; church tenant 36¹³², 39³.

client, relationship with lord 27, 29; base client 29-32; winter hospitality for lord 30; labour for lord 30; military duties 31; termination of contract 31; free client 32-3; homage to lord 32; monastic client 3, 33, 39, 54.

Cluain Uama (Cloyne, Co. Cork), legal centre 242.

Coibnes Uisci Thairidne (App. 1 No. 45) 163⁴⁸, 235, 243, 244, 245.

Cóic Conara Fugill (CCF) (App. 1 No. 69) 2⁹, 121, 190, 191, 195, 196, 246, 249, 250.

coinage, introduced by Norsemen 112.

Columba (Columb Cille), of royal lineage 39; biography by Adomnán (*Vita Sancti Columbae*).

comb-maker 63.

Comingaire-text App. 1 No. 43.

commentary, on law-texts 226, 231, 251-2; by Domnall O'Davoren 258.

Common Celtic law 140¹¹⁸, 231-2, 241.

common rights, on land 105-8.

complicity, in crime 155-6.

compurgation: see **oath**.

Conaire, legendary king 20-1, 24, 223.

concubine, second wife; 71, 79, 134, 135.

Confessio: see **Patrick**.

Congal Cáech, disqualified by blemish from kingship of Tara 19, 239.

Conn Céchathach, king of Tara 24.
Connmach, judge of Uí Briuin 248.
Conslécha (App. 1 No. 48) 146, 244, 245.
contract, main discussion 158-63; between lord and client 31-2; by son of a living father 81, 162; of fosterage 87-8; rescission of 158-9; disadvantageous 159; invalid, voidable or unenforceable 159-62; by wife 161; with high-ranking person 162; without sureties 162-3; adjustment of 163; written 163.
cook 66.
co-operative farming 101-2.
coppersmith 63.
copyright, legendary case involving copy of manuscript 239.
Coreach (Cork) legal centre 242; *Uraicecht Becc* reference to 246.
Cormac mac Airt, legendary king of Tara 52, 240; Eithne raped and subsequently married by 136⁸²; accredited with authorship of *Tecosca Cormaic* (App. 2 No. 2).
Cormac mac Cuilennáin, king and bishop, killed 920 A. D.; author of Glossary 45, 277.
Córus Aithni App. 1 No. 58.
Córus Béscnai (App. 1 No. 10) 42, 48, 96, 103, 115¹⁰⁴, 123, 156, 233, 243, 244, 245.
Córus breatha neimead: see *Bretha Nemed*.
Córus Fiadnuise App. 1 No. 72.
Córus Fine App. 1 No. 21.
Córus Iubaile App. 1 No. 55.
cottier 35.
court, procedure in 192-8; categories of person in 193-4; proper behaviour in 194-5.
cow: see *cattle*.
craftsmen 61-3; accidental injury by 62, 149-50; illegal injury of 62; distraint of 181.
Crédine, mythological coppersmith 269.
crime: see *offence*.
Crith Gablach (CG) (App. 1 No. 6) 1, 8, 9, 10, 11, 12, 17, 18¹⁰, 19, 21, 22, 27, 28, 33¹⁰⁹, 34, 35, 41, 48, 52, 62, 66, 73, 82, 88, 97, 100, 110, 114, 115, 116, 127, 133, 144, 145, 169, 174, 217, 219, 234, 238, 246, 264.
cró and dibad, text on the distribution of (App. 1 No. 64) 18¹⁰, 23, 126⁴, 175, 250.
Cú Chulainn, legendary hero 45; affection for his fosterfather 89; for his fosterbrother 90¹⁸⁴.
Cúán ua Lothcháin, chief poet, supernatural powers of 44.
cuckold, is treated as father of wife's illicitly begotten child 75⁵³; cannot give evidence against wife's lover 206.
Cúil Dremne, battle of 60, 239.
cup-bearer 66.
currency, main types of 112-6.
customary law: see Index 1 s.v. *fénechas*.

Dagda, chief of gods; anvil of 63.
Dar Í, law of (App. 1 No. 76) 26, 200, 201, 275-6.
daughter, inheritance of life-interest in land by 104-5; inheritance of movable property by 122; giving and receiving of gifts by 121. See also *filial duty*.

dead person, satire on 137-8; plundering of, permitted after battle 148¹⁷⁷; liability for his offences does not pass on to his heirs 157.
death-penalty, circumstances in which it may be applied 138¹⁰³, 216; by hanging 217-8; for theft 218; in a pit 218-9; by slaying with sword, etc. 219; by setting adrift 219-20; in *Cáin Adomnáin* 234-5.
debt 13, 215.
defamation: see *satire*.
defeat, of king in battle, with consequent loss of honour-price 19.
denial by oath: see *oath*.
dependants, main discussion 65-7, 68-98; honour-price of 11.
deposit 120.
D'Fodlaib Cineoil Tuaithi (App. 1 No. 20) 244.
Dían Cécht mythological physician 269.
Di Astud Chirt 7 Dlidig (App. 1 No. 4) 11, 34¹²³, 42, 96, 106, 116, 199, 208, 209, 210, 244, 246.
Di Astud Chor (DAC) (App. 1 No. 54) 158⁶, 163, 252.
Di Chetharślicht Athgabála (App. 1 No. 66) 57, 138⁹⁶, 170⁹⁵, 177, 178, 181, 182, 185, 238, 244, 251⁴⁵.
Di Dligiud Raith 7 Somaíne (App. 1 No. 25) 29⁷⁶, 30, 32, 244.
Di Gnímaib Gíall (App. 1 No. 65) 175, 244.
Din Techtagad (App. 1 No. 68) 186, 187, 207, 208, 211, 244, 265.
Dire-text (App. 1 No. 9) 76, 86¹⁴⁷, 90, 121, 244.
disability, mental 91-4; physical 94; mocking of 95, 137.
distraint, main discussion 177-82; of king 25-6; notice of 178; with a stay 179; immediate 179; of surrogate 179-80; for offences by livestock 180; against person of offender 182; of craftsman 181; of physician 181; of churchman 183; restrictions on 183-5; postponement of 183-4; domestic animals which cannot be distrained 184-5; lawyer's rôle in 185-6.
divorce, division of property at 73; wife's entitlement to 74; husband's entitlement to 75.
Do Breithemhnas for Gellaib App. 1 No. 59.
Do Brethaib Gaire (App. 1 No. 28) 93.
doctor, of medicine: see *physician*.
Do Drúthraig 7 Meraib 7 Dásachtaib (App. 1 No. 27) 93.
dog, defecation by, on neighbour's land 143; chasing livestock 144; offences against and by 146; poisoning of 146¹⁶⁸; law-text on dogs, App. 1 No. 48.
Domnall mac Aeda meic Ainmirech, king of Tara 239.
Do Tuaslucud Rudradh (App. 1 No. 56) 244.
dowry 72.
druid, 59-61, 198, 233; pre-Christian rôle of 60; spells by 60; beliefs of 60¹⁵⁹.
drunkenness, contracts made in, normally invalid 154; brawls in 154.
Dubthach macu Lugair, poet who traditionally showed Irish law to Saint Patrick 48, 248, 266.
duel, correct procedure in 211; circumstances in which legal 212; postponement of 212; signs of victory in 212-3; attitude of Church towards 213.
Duniry (Dún Daighre), MacEgan law-school in East Galway 253, 257; Great Book of 253.
duress, contract under, illegal 159.

ecclesiastical legislation 22; App. 1 Nos. 73-77.
ecclesiastical scholar 4, 41²¹; seven grades of 39¹.
Echtra Cormaic 210, 211.
economy, basis of early Irish 3.
education: see **child**.
effigy, sticking thorns into, by poet 44⁴⁴.
Egerton 88, legal manuscript from O'Davoren law-school 206, 231, 262; marginal comments in 258; portion of text illustrated 230.
Eithne, fosterdaughter of Buchet 89; raped and subsequently married by King Cormac 136⁸².
elopement 70, 71.
emergency, right to borrow horse, boat, etc. in 119.
Emly: see **Imlech Ibair**.
enforcing surety: see **surety**.
English law, used alongside Irish law 254; loses ground 254; gains ground 260-1; practised by some members of Irish legal families 261.
entertainers 64-5.
entry, formalities of 186; by a woman 187-8; by a vagrant 188; illegal 189.
epileptic, legal competence of 94-5; care of 95; mocking of 95.
equality, disapproval of, in Introduction to *Senchas Már* 8.
Esnada Tige Buchet 36, 89, 136⁸².
estray: see **property**, lost.
etymological glosses: see **glosses**.
evidence, written 204, indirect 204-6; inadmissible 206-7; female 207-8; false 208. See also **witness**.
exemption from liability, for violence by king's servants 67; in accidents 149-51.
exile: see **banishment**.
external relations, responsibility of king of túath 4-5.
eye-witness: see **witness**.

family: see **kin-group**.
fasting, against high-ranking person 182; duration of 182; penalty if ignored 183; as part of process of distress 183; in Indian law 182²⁹, 241.
father, cases where solely responsible for rearing his child 85; cases where not responsible for rearing his child 86; gets bride-price of daughter 72.
favourite, of household, not brought away on sick-maintenance 84.
fear, contract made in, invalid 153; evidence given in, invalid 206¹¹³.
Fedelm, legendary poet and prophetess 45.
fee, of poet 45; of judge 53; of physician 59; of wright, etc. 61.
Félire Oengusso 258.
fences, proper construction of 142.
Fer Diad, fosterbrother of Cú Chulainn 90¹⁸⁴.
Ferdomain (Ferdomnach), bishop of Kildare 249.
Fergus mac Róich, Ulster hero, fosterfather of Cú Chulainn 89.
Fidbretha App. 1 No. 46.
fief, advanced by lord to client 27, 29.
filial duty, owed by sons and daughters 11, 80, 121; of Librán 224.
Findsruth Fíthail 285.

Finebretha App. 1 No. 21.
Fingen, legendary physician 58.
Fintan, Columba copied manuscript belonging to 239.
First Synod of Saint Patrick 40, 60, 198, 213.
Fís Adomáin 50.
fishing, rights restricted 106.
Fithal, legendary judge, accredited with authorship of *Senbriathra Fíthail* (App. 2 No. 6).
flogging, judicial 221-2.
flotsam, ownership of 107-8, 277.
food-rent, paid to lord 30.
fore-pledge: see **pledge**.
fosterage, importance of 86-7; two types of 87; fee for 87; end of 88; benefits of 89-90.
Fothud na Canóine, views on punishment 219.
fraud, in a contract 159.
freeman, main categories of 8-10.
fruit, ownership of, when fallen from neighbour's tree 108-9.
Fuidir-text (App. 1 No. 26) 34, 244.

gage: see **pledge**.
gardener 66²¹².
Gerrard, Lord Chancellor, refers to adoption of Irish law by English degenerates 254.
gift, main discussion 120-1; by woman 121; within family 121.
Giraldus Cambrensis: see **Topography of Ireland**.
girl, more expensive to foster than boy 87; training of 87, 91; age at which fosterage ends for 88.
glosses, legal 226; etymological 233²³; value of 251.
Goibniu mythological wright 269.
gold, as currency 114¹⁰⁰; pledges of 164.
Gospels, contract bound by 41; judge swears by 54, 198.
guardian, liability of 92.
Gúbretha Caratniad (GC) (App. 1 No. 5) 24, 27, 46, 75, 81, 95, 138, 139, 152, 160, 163, 203, 204, 225¹, 227, 237, 248, 249.

half-sane 94.
hanging 217-8.
harbouring, of criminal 156.
harlot: see **prostitute**.
harpist, three types of music played by 64.
hawk, not protected by law 106⁴⁶.
head of kin 13-4.
heir: see **son**, **daughter**.
Heptads (App. 1 No. 3) 5, 6, 9, 18, 25, 42, 43, 50, 53, 54, 59, 73, 74, 75, 81, 83, 86, 117, 118, 120, 121, 122, 123, 128, 133, 134, 135, 139, 140, 149, 167⁷⁹, 169, 189, 206, 212, 217, 219, 222, 229, 233, 236, 237, 243, 244.
herbs, medical use of 58-9, 154²³⁰.
hereditary serf 35-6.

heron, not protected by law 106⁴⁵.
hermit 41, 185, 199, 224.
hides, export of 7.
hierarchical, form of society 7-8.
homage, by client to lord 32; by king to bishop 41, 234.
homicide: see **killing**.
homosexuality, a ground for divorce 74.
honour-price, payment of 8; reduction of king's 19; loss of king's 19; loss of lord's 27; of higher clerics 41; fine for killing based on 126.
horse, known to be a biter 143¹⁴³; import of, from Britain 7; barter of 112; accidental injury caused by 151.
horse-whip, removed during distraint of physician 181²⁵.
hospitality, must be provided by hospitaller 36; general obligation to provide 139-40; must not be provided for criminal 140, 156.
hospitaller 36-8, 90.
hostage, held by king 19, 173-4; fate if forfeit 174; female 174; clerical 174; ransom of 174-5; rôle in law-enforcement across political boundary 175-6; in ecclesiastical legislation 176; cannot secure legal postponement 175¹²⁸.
hosting, for military purposes 4, 19, 31, 174.
hot metal, ordeal by 210.
hot water, ordeal by 210.
H 2. 15A, legal manuscript 225, 226, 231; portions of text illustrated 228-9.
H 2. 15B, legal manuscript 262.
H 3. 17, legal manuscript 225-6, 243, 257; portions of text illustrated on cover and in frontispiece.
H 3. 18, legal manuscript 243, 256, 269.
hunting, common rights of 106; law-texts on, App. 1 Nos. 51-52.
husband, categories of 70; should be in same social class as wife 73; rights of divorce by 75; contracts by 161.

ignorance, may halve penalty 151; may extend time-limit for legal action 152.
illuminated letters, in legal manuscripts 225-6.
Imlech Ibair (Emly, Co. Tipperary) *Uraicecht Becc* reference to 246.
Immram Curaig Maile Dúin 68, 127¹³.
Immram Snédgusso 7 Maic Riagla 220³¹.
impotence, a ground for divorce 74.
imprisonment 215⁷. See also **caption**.
incest, child born of, set adrift 220-1.
infanticide, by mother, a ground for divorce 75.
infertility, by either partner in marriage a ground for divorce 74; for separation 75.
informer, free of liability 156.
inheritance: see **son**, **daughter**, **adoption**.
injury (physical), main discussion 129-34; accidental injury to or by a workman 62; obligations of injurer 130-1; payment for 131; to teeth 132; to face 132; to 'doors of the soul' 132; permanent 132; accidental 149-51. For injury to movable property, land, etc. see **offences**.
injustice, of king 18-21; of judge 54-5.

insane person, types of 91-2; offences by 92-3, 154; rights of 93-4; child of 93; right to separation by husband or wife of 75; property of 93-4.
insult: see **satire**.
interest, on loan 117-8; on pledge 166; law-text on pledge-interests, App. 1 No. 60.
intermediate rank, between commoner and lord 28.
intervention, to prevent crime obligatory 155-6.
Introduction to Senchas Már (App. 1 No. 1) 8, 27, 159, 243, 244.
invalid, herbs for 154²³⁰.
jester 64.
jetsam, ownership of 107, 277.
joint herding 101.
joint ploughing 101, 241.
judge, main discussion 51-6; three grades of 52; of túath 24-5, 52; fee of 53; qualities required in 53-4; pledges given by 54; mistake by 54; injustice of 54-5; number of judges in court 55; ecclesiastical 55, 248-9; 5th century judges referred to by Saint Patrick 232²⁰; trained in law-schools 242, 250-1; judges named in annals 248-9; decision by four O'Doran judges 256; hereditary judges of Lewis (in the Hebrides) 261. For legendary judges, see **Brig**, **Caratnia**, **Fithal**, **Morann**, **Sencha**.
Judge (surname): see **Mac an Bhreitheamhan**.
judgement, king's rôle in 23-4; referred to king 24; by judge 51-6; causes blotches to appear on judge if false 55; by persons other than professional judge 56; legendary first judgement 107; in court 195; five types of 195; basis of 196-7; consequences if false 197-8; bishop's rôle in 193²⁰.
justice, of king 18; of judge 54-5.

Kilkenny, Statute of, prohibited the law of the march and the brehon 254.
kill, payment for 125-6; blood-feud to avenge 127; of kinsman 127-8; secret 128; concealment of body after 128; lawful 128-9; in self-defence 129.
kiln, illegal use of 144.
kin-group, its place in society 12-4; maternal 14-5; its responsibilities towards kin-members' land 100; extinction of 104; adoption into 105; severance or expulsion from 34, 222.
kin-land, division of 100.
kin-liability, for crimes and debts of kin-members 13.
kin-slaying, deprives king of honour-price 18; causes overthrow of king 18; horrendous character of 127-8; crucifixion of Christ classed as 127¹⁷; setting adrift as punishment for 220.
king, rôle in society of 4, 17; three grades of 17-8; of Ireland 18; justice of 18-21; reduction or loss of honour-price by 19; proper behaviour by 19; blemish on 19; tabu on 20-1; ordinance by 21-2; ecclesiastical legislation by 22; law-enforcement by 22-3; rôle in judgement of 23-5, 195; law-observance by 25-6; legal claims against 9, 25-6; succession to kingship 26; land reserved for 101; distraint of 25-6; rises before bishop 41, 234.

labour, by client on behalf of lord 30, 33; on public duties 19.
land, types of 99; belonging to kin-group 100; attached to office of kingship 101; inheritance of 102-5; common rights on 105-7; common rights on unshared land

108; rights on neighbour's land 108-9; ownership of fruit falling onto neighbour's land 109; usucaption of 109; offences against land 142-4; legal entry into 186-9; law-texts relating to, App. 1 Nos. 41-52.

law, enforcement of 22-3; enforcement of, across political boundary 23; observance, by king 25-6; competence of judge in 54; Common Celtic 140¹¹⁸, 231-2, 241; adoption of Irish law by English colonists 254; extinction of Irish law 260-2.

Lawes of Ireland, an early 17th c. English account of Irish law 101¹⁰, 102, 241.

law-schools, early Irish 242; *Senchas Már* 242-6; *Nemed* 246; other 246-8; references to, 9th-12th centuries 248-50; post-Norman 250-60; decline of Latin in 250; Campion's description of 250-1; good knowledge of Old Irish in 251; life in, under O'Davorens 258-9; no folk memory of 261. See also **legal families**.

law-texts, variation in 1-2; manuscripts of 225-31; origin of 231-2; reasons for composition of 233; authorship of 233-6; fair and humane approach of 236; reliable information contained in 237-8; ingenuity of 238; confirmation of content of, in foreign sources 240-1; reconstructed list of *Senchas Már* law-texts 244; list of law-texts arranged according to subject-matter, App. 1.

lawyer, two types of 51. See **advocate, judge, legal families**.

lay superior, of monastery 42²⁶.

Leabhar Mór Dúin Daighre, also called Leabhar Breac; MacEgan manuscript 253.

leading cases, legendary 239-40; historical 239.

Lebar Aicle, incorrect title of *Bretha Étgid*, App.1 No. 33.

Lebar Fata Leithglinne, manuscript used in ordeal 211.

legal entry: see **entry**.

legal error 54, 57, 88.

legal families: see **MacClancy, MacEgan, O'Breslin, O'Davoren, O'Doran**.

legally incompetent person 68.

legislation, by king and/or ecclesiastic 22.

Lex Darii (App. 1 No. 76) 26⁵³, 200-1, 275-6.

Lex Innocentium App. 1 No. 74.

liability, for offence reduced or cancelled 149; of kinsmen 13; of heirs, after death 157; of guardian 92; for offences by women 78-9; of onlooker or accessory 154-7.

Liber Angelii 7.

Librán, story of killing by 97, 215, 224.

lignum contentionis, in ordeal 213.

livestock: see **cattle**.

loan, main discussion 117-9; interest on 117; unauthorized or enforced 119.

Loch Bél Draguin, lake haunted by monster 148.

Loch Bél Sét, lake haunted by monster 148.

Loiguire, son of Niall; king of Tara 21, 77, 90.

Longes mac n-Uisleann 60¹⁶⁰.

Lorcán ua Michid, 11th(?) century lawyer 250.

lord, antiquity of rank of 8; relationship with clients 26-8; grades of 28.

lost property 123-4.

lots, casting of 208-9.

Luchtaine, mythological wright 269.

Mac Aedagáin: see **MacEgan**.

Mac an Bhreitheamhan, also Mac an Bhreitheamhnaigh, angl. Brehon; Brehony, Breheny, Judge 51¹⁰².

MacBerkery, Mac Birrthagra, Ulster legal family 260; Domnall mac Birrthagra, potential master of Irish law in northern Ulster 260¹⁰⁷.

MacClancy, Mac Flannchadha, Munster legal family 254-6; Shane McClaunagh (Seán mac Flannchadha) 218, 254⁷¹; Baothghalach óc mac Flannchadha, chief lawyer of Dál Cais 256; Boethius MacClancy (Baothghalach mac Flannchadha), high sheriff of Clare 261.

Mac Con, king; false judgement by 240.

Macslechta (App. 1 No. 18) 81, 102, 103, 244.

Mac Cuill, set adrift by order of Saint Patrick 220³¹.

MacEgan, Mac Aodhagáin (Mac Aedagáin), most prominent post-Norman legal family 252-4; McKiegan 53; marginal commentary written by Aed mac Aedagáin 226; legal manual by Gilla na Naomh mac Duinn tsleibhi mic Aodhagáin 251; location of MacEgan schools 253; Cairpre Óg mac Cairpre mic Aedacáin, standard-bearer to the son of the Earl of Ormond 253⁵⁴; Donouche Makhewgan, brehon in Kilkenny 253⁵⁴; Tadhg mac Aedhagáin, chief judge of Lower Connacht 254⁶³; Patrick MacEgan, brehowne, appointed seneschal 261.

Mac Firbhisigh, learned Sligo family 262; Dubhaltach mac Firbhisigh, antiquarian 262-3; Gilla Íosa mac Firbhisigh, scribe of part of the Yellow Book of Lecan 262; Dubhaltach mac Firbhisigh (not the same person as the above), present at O'Davoren law-school 262.

Mac Flannchadha: see **MacClancy**.

MacGilsenan, Mac Giolla Senáin, Mag Uinsennáin; Ulster legal family 260; Feidhlimidh Mag Uinsennáin, judge of O'Donnell 260¹⁰⁸.

MacTholie, Mac (an) Tuile, medical and possibly legal family 53¹¹².

Mag Uinsennáin: see **MacGilsenan**.

malt, preparation of, described in law-text 237.

Manu, Laws of, 76, 134⁷², 182²⁹, 214², 222.

manufacturers 61-3.

manuscripts, legal 225-31.

march, law of the 254.

marriage, types of 70-1; property contributions into 70; bridal virginity in 72-3; social class of partners in 73; termination of 73-5; separation during 75; originating in rape 136; contracts by partners in 161.

maternal kin, rights and responsibilities of, in relation to children of a marriage 15; obligations of, in relation to fosterage 88.

Medb (Maeve), legendary queen of Connacht 45, 68, 90¹⁸⁴.

medical, profession 57-9; families 58; fees 59; medical knowledge displayed in law-texts 237-8.

Mellbretha (App. 1 No. 34) 150.

mensal lands, allotted by king to his brehon, cupbearer, etc. 101¹⁰.

messenger 66.

Miádšechta (App. 1 No. 8) 9, 18¹⁰, 39¹, 156, 265.

military and security duties, of client 31.

mill: see **water-mill**.

mill-race, neighbour's right to dig 108.

mining, illegal 105³⁶, 142.

Monastery of Tallaght, The 216, 222.

monastic client: see **client**.

monastic superior, clerical or lay 42²⁶.

monk: see **cleric**.

Morann mac Moín, legendary judge 235; accredited with authorship of *Audacht Morainn* (App. 2 No. 1).

Morrígan, war-goddess 63.

mother, of king, bishop, or sage 78; of saint 78⁷⁸; cases where not responsible for rearing child 85; cases where solely responsible for rearing child 86.

movable property, owned by average *mruigfer* 110-1; transfer of 111-23; inheritance of 122.

Muirbretha App. 1 No. 53.

Muirchú: see **Patrick**.

Munster (Mumu), association of *Nemed* school with 246.

murder: see **killing**.

musicians 64.

mutilation, judicial 221.

necessity, offences committed through 153-4.

negligence 152-3.

neighbour, right to dig mill-race on land of 108; right to use bridge of 108; right to drive cattle across land of 108; right to share in fruit of (where tree is on boundary) 109; trespass by domestic animals of 142-3; right to swarm of bees from hive of 165.

Neire níallgnáth 235; pupil of **Morann**.

Neithin, mythological blacksmith 63.

Nemed school, law-school with Munster associations 47, 246.

Nero A 7, 16th century Ó Luinín manuscript 260, 268.

nickname, coining an offensive nickname illegal 137.

ninth day, physician's prognosis on 129³³.

Noídui of the nine judgements 239⁶⁸.

Noínden Ulad 188⁷⁵.

notice, before distraint 178, 180.

nun, novice 91; legal rights of 76, 78; rape of 135.

oath, main discussion 198-9; magical power of 198; by god of túath 198; in front of druid 198; by Gospels 198; at Christian cemeteries 199; on sacred objects 199; by person of higher rank 199-200; of denial 200-1; vicarious 201; compurgatory 201; of repudiation 201; false 201; female 202.

O'Breslin, Ó Breisléin; Ulster legal family 259-60; mentioned in *Annals of Clonmacnoise* 53; O'Brislan, brehon to Hugh Maguire 259.

Ó Búirecháin, Forannán, Máel Tuile and Báethgalach hua Búirecháin, possible authors of *Bretha Nemed toisech*, App. 1 No. 14.

O'Cassidy, Ó Caiside, medical family 58.

Ó Criomhthainn, Tomás; encounter with poet 44.

Ó Dalláin, Lúcas; 14th century glossator of H 2. 15A 226.

O'Davoren, Ó Dubhdabhoirenn; Clare legal family 257-9; Gilla na Náem h. Duib da Borenn, chief judge of Corcu modruad (Corcumroe) 257⁸⁴; Domnall O'Davoren, school of 231, 258-9; O'Davoren's Glossary 106, 124, 137, 251, 258, 262, 269, 273, 275, 276; Magnus O'Davoren 259.

Ó Deoráin, Ó Deoradáin: see **O'Doran**.

O'Doran, Leinster legal family 256-7, 259; mentioned in *Annals of Clonmacnoise* 53; decision by four O'Doran judges 256; Dáibí ua Deoráin 257; Émann ua Deoráin 257; Gaibrial O Deoradhain 257; Cairbre mac Domnaill Ó Deoráin 257; Uilliam hua Deoradáin, chief judge of the Kavanaghs 257⁸¹.

Ó Duibhdabhoirenn: see **O'Davoren**.

offence, by king 18-9, 25-6; by or against cleric 42-3; by or against woman 78-9; by or against child 83-4; by or against insane 92-3; against body 125-37; against honour 137-41; against land 142-4; against a building 144-5; against movable property 145-6; against livestock 146; liability for, reduced or cancelled 149; public assertion of 190; punishment of 214-23.

ogom, inscriptions as evidence 204.

O'Hickey, Ó hÍeada, medical family 58.

Ó Luinín, Matha; Ulster scribe 260.

onlooker at an offence, degrees of culpability of 154-6; text on, App. 1 No. 36. **ordeal**, theory of 209; Saint Patrick credited with introduction of 209-10; by boiling water 210; by hot metal 210; by poison 210; by immersion 211; by duel 211-3.

ordinance, royal 21-2.

O'Reilly, Sir John; agreement with Lord Deputy not to keep brehons or suffer Brehon law, etc. 141¹²⁴; treaty between O'Rourke and O'Reilly 141¹²⁴.

Osbretha (App. 1 No. 51) 244.

O'Shiel, Ó Siadhail, medical family 58.

outlawry, as punishment 222-3; reversal of 224.

outsider, types of 5-6.

ox, injury by, when being yoked 151.

paganism, struggle with Church 40.

Park (An Pháirc), MacEgan law-school in West Galway 253, 259.

paternity, oath fixing 199.

Patrick (Pátraic), mission of 40; enslavement of 95²²¹; tradition of his involvement in codifying Irish law 48, 209, 210, 248; *Confessio* of 1¹, 40⁶, 77, 95²²¹, 96²³⁴, 120¹³⁹, 232²⁰, *Epistola* of 1¹; biographical material on, by Muirchú 77, 220³¹; by Tirechán 77, 90, 213; *Additamenta* on 35, 112, 114; *Cáin Phátraic* (App. 1 No. 75) 22; *Riagail Phátraic* 282.

payment, of tribute to king 19; to poet 45; to judge 53; to physician 59; to wright 61; of bride-price 72; of fosterage fee 87; for offences 125-6, 131-2, 135, 214-6.

penance, by errant cleric 42-3; fine of, for offences against cleric 43; by homicide Librán 224.

Penitential of Finnian 40, 43, 96, 222.

perjury 201.

pet animals, trespass by 143.

physician, qualifications of 57-8; female 77; fee of 59; distraint of 181.

pig, trespass by 143.

pit, execution by exposure in 218-9; imprisonment in 215⁷.

pleading, main discussion 192-5; sixteen signs of bad pleading 195; counter-pleading 195.

pledge, rôle of, in legal system 164; counter-pledge 164; articles given in 164-5; fore-

pledge 165; on behalf of another 166-7; interest on 166; right of wife to give 167; can remain in custody of pledger 164⁵⁴.

Poems of Bláthmac (PB) 27, 127¹⁷.

poet, supernatural powers of 44; wealth of 45; fraud by 45; rights of, outside own territory 5, 46; seven grades of *filii* 46; sixteen grades of *bard* 47; storytelling by 47; involvement in law 47-8; rôle of chief poet in court 48, 193²¹; woman poet 49.

polygyny, practice of, in early Irish society 70.

population, estimate of 4.

postponement, of completion of craftsman's work not permitted 62; of distraint 183-4; law-text on, App. 1 No. 70.

praise-poem 43-4, 138; false praise 139.

pregnant woman, food desired by 154.

prescriptive period 109.

principle, legal 196-7.

privileged person 9.

Privileges and responsibilities of poets, an Old-Irish tract on: see **Bretha Nemed**.

procedure 190.

professions 39-67.

promulgation, of laws 21-2; of judgement 195.

property, main discussion 99-124; amount of, brought into marriage by husband and/or wife 70; movable 110-24; lost 123-4; damage to movable 145-6; theft of 147-8.

prostitute, solely responsible for rearing her child 86; son of, cannot inherit 103; hearsay evidence likened to 206.

protection, violation of 140-1; area of, around house 141; by Church 141; of criminal is illegal 141, 156; 'protection racket' 159.

punishment, by fines 214-5; by slavery 95, 216; by hanging 217-8; by exposure in a pit 218-9; by killing with sword, etc. 219; by setting adrift 219-21; by mutilation 221; by flogging 221-2; by outlawry 222-4.

pupil, relationship with master 91.

queen, in sagas 68-9; legal position of 78.

racket, protection 159.

rank, importance of 7-10; reduction in 11-2; elevation in 12.

rape, by force 134-6; by stealth 134-6, 134⁷², 134⁷³; penalties for 135; non-liability for 135-6; concealment of 136; in wilderness 136; in frequented place 136; marriage originating in 136.

Rawlinson B 502, earliest manuscript containing law-texts 249; opening portion of text illustrated 227.

rearing, of child; father solely responsible for 85; mother solely responsible for 86; rôle of fosterparents in 87-90.

receiver, of stolen goods 148.

recognition, of legality of a particular situation 159¹⁰; recognised wife 78⁸¹.

restitution, payment of 214; to *fuidir* 34; to hospitaller 37; of stolen property by child 83; for damage to tree 144; for offence committed due to negligence 152.

retinue, king must be always be accompanied by 19; of lord 28; must be received by hospitaller 36; on sick-maintenance 130.

Rith na Cánann App. 1 No. 77.

road-construction and maintenance, subject's duty of 19.

roof, damage to 145.

Roscada Flainn Fína: see App. 2 No. 6.

royal tribute 19.

rural, character of society 6-7.

sage, expert in ecclesiastical learning 41, 41²¹; honour-price of 41; evidence of 199.

sale, main discussion 111-2; with defective silver 160.

Saltair na Rann 173¹⁵.

satire, by poet 43-4; seven types of 137; satirizing a person after death 137-8; justified and unjustified satire 138; offence of ignoring satire 138.

satirist, illegal 49-50.

Saxon, attack on Brega 246.

Scots law, use of same terminology as early Irish law 125¹, 169⁹¹. See also headwords marked (S) in Index 2.

scribes, of legal manuscripts 225-31.

'Sea-hearts' (*Entada gigas*), 'beautiful nuts' 165⁶³, 249³⁷.

sea-shore, grazing rights on 107; rights to seaweed on 107; rights to jetsam on 107-8.

Sechta, na: see **Heptads**.

Seither, leading-case of 188.

Sellach-text (App. 1 No. 36) 155, 235, 244.

semi-free: see **tenant at will**.

Senbríathra Fíthail (App. 2 No. 6) 3, 34¹¹⁸, 73³⁷, 217¹⁹, 222.

Sencha, legendary judge 55, 187.

Senchas Már, collection of law-texts 114, 234, 243, 249, 264; school of 48, 242-6; original order of texts in 244; reference to composition of, in *Annals of Ulster* 248.

senility 83, 94; timid dotard 134.

separation, during marriage 75.

serf: see **hereditary serf**.

Serglige Con Culainn 68.

servants 65-7.

setting adrift, as punishment 219-21.

sexual harassment 136-7.

sexual intercourse, failure to perform, in marriage 74; by force 134-5; by stealth 134-5.

sheep, grazing-trespass by 240.

sick-maintenance, main discussion 130-1; law-texts differ on 1-2; abandonment of 133; law-texts on, App. 1 Nos. 29, 31.

Sihtric III, minted first Irish coinage 112.

silver, illegal mining of 105³⁶; as currency 114; defective, used in sale 160; king to be paid in 115; *ócaire* not to be paid in 115.

silversmith 63.

sister's son, inheritance of 104.

Sláine (Slane, Co. Meath), legal centre 242; abbot of, an excellent judge 248.

slave, main discussion 95-7; Patrick as 95²²¹; release of 96-7; as currency 112-3; enslavement as punishment 216.

Slicht Othrusa App. 1 No. 31.

smith: see **blacksmith**, **coppersmith**, **silversmith**.

social mobility, upward and downward 11-2.

society, main characteristics of early Irish 3; foreign accounts of Irish 240-1.

son, of living father 80-1; categories of, excluded from inheritance 102-3; inheritance of, if he predeceases father 103; inheritance of movable property by 122. See also **filial duty**.

sorceress, not entitled to sick-maintenance 134, 285.

sorcery, poets protect king from 44; marriage invalid if brought about through sorcery 74.

spade, axe or mallet, use of, reduces honour-price of king 19.

spokesman, in court 57.

squatting, on another's land 142.

status: see **rank**.

steward 65.

stolen goods, sale of, invalid 148; penalties for bringing onto another's property 148.

storage fee 124.

stress, offences committed under 153-4.

substitute, churl, for king's offences 25, 183; worker, for victim of illegal injury 131, 272.

succession, to kingship 26.

suicide, classed as kin-slaying 127¹⁷.

Suidiugud Tige Midchuita 63¹⁸⁷.

Sunday-observance 235; legislation on, App. 1 No. 73.

surety, main discussion 167-73; liabilities of, after death 157; paying surety 168-71; risks of acting as paying surety 168-9; secondary paying surety 169; qualities required of paying surety 170-1; enforcing surety 171-2; powers of enforcing surety 171; hostage surety 172-3; position of sureties in court 193-4.

surgery, blood spilt during 59.

swearing: see **oath**.

tabu, on Conaire 20-1.

Tailtiu, Fair of 4.

Táin Bó Cuailnge 45, 58, 67, 68, 89, 91, 98.

Tara: see **Temair**.

Tecosca Cormaic (App. 2 No. 2) 2, 7, 20, 50, 52, 65, 118, 154²³⁴, 162, 174, 223.

teenager, legal capacity and status of male 82-3.

teeth, injuries to 132.

Temair (Tara, Co. Meath) 19, 20-1, 240, 242³.

tenant at will (*fuidir*) 33-5.

thief, influence of canon law in relation to 147; by stealth 147; with violence 147; situations in which permitted 148; death penalty for 217-8; mutilation for 221; law-text on, App. 1 No. 35.

thief, can be killed in the act 129; loses rights to sick-maintenance 222; house can be burnt 222. See also **brigand**.

Tírechán: see **Patrick**.

Togail Bruidne Da Derga 20, 24, 218, 223.

Topography of Ireland, by Giraldus Cambrensis 1, 7⁴⁶.

towns, relatively small importance of 6-7.

trade 7.

trader, not mentioned in law-texts 7.

trapping, common rights of 106; illegal 106-7; law-texts on, App. 1 Nos. 51-52.

treaty, between territories 5; law-texts on, App. 1 Nos. 62-63.

Trecheng Breth Féne: see **Triads of Ireland**.

trees, damage to 144; injury caused by falling 150; reference to arbutus, significance of 242-3; lost law-text on, App. 1 No. 46.

trembling, blushing, turning pale, great thirst, etc. as indications of guilt 205.

Triads of Ireland (*Trecheng Breth Féne*) (App. 2 No. 3) 2, 9, 18, 25, 42, 45, 46, 55, 56, 61, 62, 63¹⁹¹, 64¹⁹⁵, 69, 73, 89, 94²⁰⁹, 101, 119, 120, 135⁷³, 136, 162, 168, 169, 170, 190, 194, 195, 196³⁷, 202, 217¹⁹, 242.

Tuam, MacEgan law-school in East Galway 259.

twelve doors of the soul, injury to one of 132.

ua: see **Ó**.

Uallach, daughter of Muinechán; woman poet 49.

Ulaid (Ulster(men)) 259-60; kingship of 19, 239; references to, in *Senchas Már* texts 242⁴.

unfree persons 11.

unshared land, common rights on 108.

Uraicecht Becc (App. 1 No. 7) 7, 9, 12, 18¹⁰, 36, 37, 39¹, 41, 46, 51, 57, 60, 61, 62, 63, 64, 67, 82¹⁰⁷, 115, 159, 196, 197, 233, 246.

Uraicecht na Riar (App. 1 No. 13) 47, 115, 116.

Urcuite Bretheman (App. 1 No. 12) 250.

usucaption, of land 109.

vagrant, entry into land by 188.

vengeance: see **blood-feud**.

verdict, of physician at end of period of nursing 131; of judge in court 195.

veterinary medicine 59.

violation of protection: see **protection**.

virginity, expected in chief wife 72-3.

Vita Sancti Columbae (*VSC*), life of Columba (Columb Cille) by Adomnán 35, 97, 215, 216, 224, 240.

Ware, Sir James, 17th century collector of Irish manuscripts 263.

water-mill, illegal use of 144; damage to 144; eight parts of 238.

whale, public right to share in stranded whale 107.

wife, categories of 70-1; virginity expected in 72-3; rights of divorce by 73-4; rights of divorce from 75; rights to make contracts by 160-1; rights to give pledges by 76.

will: see **bequest**.

wine, import of 7.

winter-hospitality, by client for lord 30.

winter-trespass, by cattle 143.

wisdom-texts 2-3; listed in App. 2.

witness, main discussion 202-3; culpable 154-6; to contract 158³; to legal entry 186, 187, 188; vouching that there are genuine grounds for postponement of distraint 184; at court 194; cases where evidence of a single witness is valid 203; at duel 213; who fails to report violation of Sunday 156, 235. See also **evidence**.

women, main discussion 68-79; poets 45, 49; satirists 50; as rulers 68-9; as military leaders 69; qualities admired in 69; in marriage 70-5; legal capacity of 75-8; in Church 77-8; as heirs 76, 104-5; of independent legal capacity 76-7; with special skills 77; offences by 78-9; fighting among 79; offences against 79; as slaves 95-7, 112-3; gifts by 121; right to bequeath own produce to Church 123; categories of women not brought away on sick-maintenance 133; categories of women not entitled to compensation for injury 134; legal entry by 187-8; oath of 202; evidence of 207-8; punishment of 220; ecclesiastical legislation protecting women, App. 1 No. 74.

wounding: see **injury**.

wright, qualifications of 61-2; fees of 61; injury to or by 62; female 77.

written, contracts 163; evidence 204.

Yellow Book of Lecan (YBL) 63¹⁸⁷, 64¹⁹⁵, 262.

SAMPLES FROM THE LAW-TEXTS

In the following pages I provide some short extracts from Old Irish law-texts (with translation) so as to give the reader a general impression of the material on which this book is based, and also to illustrate some of the different styles and methods of presentation employed by the authors of the law-texts. No attempt has been made to produce restored texts: the spelling is given as it stands in the manuscripts, apart from the expansion of regular abbreviations and contractions, which are italicized. Later glosses and commentary have been omitted. Photographs of the manuscript versions of Heptads 1 and 15 are reproduced in the frontispiece and on p. 229 respectively.

I also print Irish Canon VI, taking the Latin text and English translation from Ludwig Bieler's *The Irish Penitentials* (Dublin 1963) 174. For a discussion of the connections between secular and canon law, see L. Breathnach 'Canon Law and Secular Law in Early Ireland: the Significance of *Bretha Nemed*', *Peritia* 3 (1984) 439-59 and pp. 233-4 of this book.

(1) HEPTADS (Appendix 1 No. 3)

Heptad 1

CIH 1821.28-1822.23 = *AL* v 118.1-9 (which gives a full version from another manuscript). This heptad, reproduced in the frontispiece of this book, deals with cases where a church building may be damaged or destroyed without legal liability. I quote here the Old Irish text, which is in larger letters than the accompanying glosses and commentary. Three categories of church building are omitted from this version, cf. *CIH* 1.1-2.34.

Atait seacht cealla la feine nad dleagat dire na dichubus: ceall o neiteagar cach riucht, ceall a mbi airchinreach dorairngert a bithdenmu, ceall occna frithairthur tratha, ceall bis fass.

Heptad 6

CIH 7.9-9.19 = *AL* v 142. This heptad lists seven cases where the shedding of blood is not regarded as a legal offence. See pp. 133-4.

Atait .uui. fuile la *Féiniu* feardar nacon tuillet fiachu na othrus amail fil fuli la *Féiniu* na fearadh o laim na forngrar do tenga sechis tu doren a fiachu 7 othrus: fuli fearus druth for cach slan dia laim 7 dia tenga is cach dotanurgair isitren, fuli fearus *cetmuindter* oc etach techta for adhaltraigh dotaet *fora* ceand, fuli midaig techta occna hairdbenar alt no feich a forcongra tuaithe 7 cineoil, fuli fearthar a cath, fuli fir saiges naidm, fuli fir saidus re, fuli mic a cain cluite.

Heptad 15

CIH 538.17-20 = *AL* v 176. This heptad, reproduced in Plate 3 on p. 229 of this book, lists seven types of women whose anti-social behaviour deprives them of their legal rights.

Atait .uui. mna la *Féiniu* nacon dlegut dire na log nenuch do duiniu: bean *gatas*, bean *rindus* cach richt, canaid scel co nerener fine a guscelu, meirdreach muine, *ben* gonus, *ben* mairnes, bean astoing cach recht. Ite mna inso na dlegut log neneach.

(1)

Heptad 1

There are seven church buildings in Irish law which are not entitled to payment or additional fine: a church building from which every class of person is turned away, a church building where there is a monastic superior who has vowed perpetual chastity [... and turns to sin again, *CIH* 2.23-4], a church building where the canonical hours are not observed, a church building which is vacant.

Heptad 6

There are seven bloodsheds in Irish law which are inflicted and do not incur fines or sick-maintenance, as there is bloodshed in Irish law which your hand does not inflict (reading *fera do lam*, as in *CIH* 1885.10) nor your tongue command, yet it is you who pays their fines and sick-maintenance: the bloodshed which an insane person inflicts on anyone — he is exempt with regard to his hand and to his tongue; it is the person who incites him who pays for it, bloodshed which a chief wife inflicts in proper jealousy on the concubine who comes in spite of her, bloodshed by a proper physician — provided a joint or sinew be not cut — with the authorization of the people of the territory and the family, bloodshed which is inflicted in battle, bloodshed by a man who enforces suretyship, bloodshed by a man who takes part in a duel, bloodshed by a boy in proper sport.

Heptad 15

There are seven women in Irish law who are not entitled to payment or honour-price from a person: a woman who steals, a woman who satirizes every class of person, a chantress of tales whose kin pays (reading *co neiren*, as in *CIH* 15.14) for her lying stories, a prostitute of the bushes, a woman who wounds, a woman who betrays, a woman who refuses hospitality to every law-abiding person. These are women who are not entitled to honour-price.

(2) BRETHA CRÓLIGE §§30-36 (Appendix 1 No. 29)

CIH 2294.19-2296.3 = *Ériu* 12 (1938) 24-8. This section deals with the sick-maintenance of women who have been illegally injured. For a discussion of sick-maintenance, see pp. 130-1.

(§30) Annsom i mbrithemnacht otrusa la *Féniu* banotrus. Co berdar for otrus 7 co fuilngiter 7 cis lir a nircoilte? Letbiatad gach fir otrusa dia mnai.

(§31) Ata dano ben la *Féniu* ales tri brithemna do mes a folaig: brithem eolai i mbiadaib 7 brithem belrai fene 7 brithem cumlechta. Ben lamtoruid isi ales na tri so do mes a folaigh.

(§32) Ata di mnai dec hi tuait aroscuile cain otrusa la *Féniu*: ben sues sruta cocta for cula, rechtaid geill, maineach ferta, be rinnuis, bansaer, airmitnech tuaite, banliaig tuaite, birach briatar, be foimrimme, confael conrechta, mer, dasachtag. Is focruic focrenaiter na mna so dia finib; ni dingbail dingbaidter dibh.

(§33) Fertair a focruic a imcomus fer arocuile otrus la *Féniu*. Ma rosmesadar na mna so fri nech natbi lanamnusa, direnar reir brithemon na tuaithe asa miadaib 7 asa totgusaib.

(§34) Ata .iii. mna dib assa miad a lanamnasa direnaiter a notrusa .i. birach briatar 7 confaoil 7 be foimrime. Is aire ni berddar sidi for foluc la *Féniu* ar ni laimter arratas ar cin a leten.

(§35) Cach ben olcena di aircuiltib brite for otrus direnaiter loigh nennech asa feib 7 asa totgus amail direnar fer otrusa la *Féniu*.

(§36) Cach ben tete for otrus ailid letdaim a ceile do dol le for otrus.

(2)

(§30) Most difficult in judgement of sick-maintenance in Irish law is female sick-maintenance. How are they brought away on sick-maintenance and how are they maintained and how many of them are debarred? Half the refection of every man on sick-maintenance is due to his wife.

(§31) There is also in Irish law a woman who is entitled to have three judges to estimate her maintenance: a judge who is knowledgeable about food and a judge who is competent in legal language and an evaluating(?) judge (see p. 56¹³⁵).

(§32) There are twelve women in the territory whom the regulation of sick-maintenance in Irish law excludes: a woman who turns back the streams of war, a hostage ruler(?), one who is abundant in miracles(?), a female satirist, a female wright, a woman revered by the territory, a woman-physician of the territory, a sharp-tongued virago, a vagrant woman, a werwolf in wolf's shape, a deranged woman, a female lunatic. It is by payment to their kin that these women are compensated; they are not brought away [to be nursed].

(§33) The fee for them is paid in proportion to that of men whom [the regulation of] sick-maintenance excludes in Irish law. If these women have estimated themselves as a person without a partner (e.g. not dependent on a husband, see p. 77), they are paid according to the decision of the judge of the territory in relation to their dignities and possessions.

(§34) There are three of these women whose nursings are paid according to the dignity of their marriage i.e. a sharp-tongued virago and a werwolf and a vagrant woman. The reason why they are not brought away on sick-maintenance is that no-one dares to assume responsibility for a crime of their audacity.

(§35) Every other woman of those debarred from being brought away on sick-maintenance is paid honour-price according to her worth and her possessions, just as a man being nursed is paid in Irish law.

(§36) Every woman who goes on sick-maintenance is entitled to have half the number of retainers proper to her husband to go with her on sick-maintenance.

(3) *CRÍTH GABLACH* §40 (Appendix 1 No. 6)

CIH 569.21-8 = *CG* 530-41 = *PRIA* 36 C (1923) 303-4 §§126-8. This section deals with cases where the honour-price of a king is reduced to that of a commoner (see p. 19).

Ataat cethair toraic doberat dire naithig do rig. Cateat? A thoraic for teora lorggaib athich: lorgg forcca, lorgg šamtaighi, lorgg rammai — *ar* cen mbis forai is aithech — a thoraicc a aenur, ar ni corus do rig *imthecht a aenur*, is *ed* laa insin *fortoigg* ben a aonur a mmacc for rig, laa na tabir neich a test. *Acht* nammá ataa mi nad nimtet ri *acht* cethrar. Cia cetrar? Ri 7 brithem 7 dias i manchune. Cia mi in nimtet in *tucht* sin? Mi siltai.

A guin inna dí culaid dna oc teched a rroi dober diri naithaig do, act mad treo docoi; ar isamlaid sóon direnatar dí cùlaid righ asa inchaib.

(4) *SELLACH-TEXT* (Appendix 1 No. 36)

CIH 404.7-405.12 = *AL* i 240-2. This text deals with the degree of culpability of various categories of onlooker at a criminal offence. See p. 155.

(§1) Ar ataa .i.ii. sellaig la *Féiniu*, isain *cach ae*: sellach lanfeich 7 sellach leithfeich 7 sellach cethramthan feich 7 sellach slan.

(§2) Sellach dosli lanfiachu fer tairdelba 7 *conimtet* 7 docomet 7 buadtair a gnim i tuaith ach nid goin a lam.

(§3) Sellach dosli lethfiachu ni tairdelbai ni goin dogni gnimu olchena lethfiach fair.

(§4) Sellach dosli cethramthain feich ni tairdelbai ni dena ni don gnamaib seo *acht* docaemhet nama 7 nad nurgair 7 na tesairgg.

(§5) Sellach slan ni tairdelb ni dene ni dinaib gnamaib seo 7 gaibes oca cach nirt 7 cach folud *acht* docaemtet a heslinn co in/nill co netarscarad friu i ninill.

(§6) Bit sellaig slana and chena .i. cleirig 7 mna 7 mec 7 aes nad meisi gona na anacal na urgair 7 eccuind 7 escunid.

(3)

There are four findings which give the honour-price of a commoner to a king. What are they? Finding him at the three handles of a commoner: the handle of a mallet, the handle of an axe, the handle of a spade — for while he is at them he is a commoner — finding him alone, for it is not proper for a king to go off by himself; that is the day that a woman alone swears her son onto a king, the day that no-one [else] need give testimony for her. But nonetheless there is a month when a king only goes about in a group of four. What four? King and judge and two in attendance. What month does he go about in that manner? The month of sowing.

An injury to the back of his head while he flees from the battlefield gives the honour-price of a commoner to him, unless he has gone through them (the enemy), for in that case a wound in the back of the king's head entails the same fine as a wound in his face.

(4)

(§1) There are four onlookers in Irish law, each of them is distinct: the onlooker of full penalty and the onlooker of half penalty and the onlooker of quarter penalty and the exempt onlooker.

(§2) The onlooker who incurs full penalties is the man who instigates and accompanies and escorts and exults at his deed in the territory, but his hand does not wound.

(§3) The onlooker who incurs half penalty, he does not instigate, he does not wound, he does the other acts; it is half penalty for him.

(§4) The onlooker who incurs quarter penalty, he does not instigate, he does none of these deeds except only that he accompanies and does not forbid and does not rescue.

(§5) The onlooker who is exempt, he does not instigate, he does not do any of these deeds, and supports them (the persons attacked) with all his might and power, and only accompanies them from the place of danger to a safe place, and separates from them in the safe place.

(§6) There are also other exempt onlookers i.e. clerics and women and boys and those who are not able to wound or protect or forbid and senseless persons and senile persons (reading *escuinn*, as in *CIH* 1337.26).

(5) IRISH CANON VI (Appendix 1 No. 78)

IP 174 §§1-4. This text deals with offences by and against dogs. See p. 146.

De canibus sinodus sapientium

(§1) Catene autem canis quicquid in nocte mali fecerit non reddetur. Canis peccorum quodcumque malum fecerit in bouello uel in pascuis pecorum non reddetur. Si autem extra fines exierit, reddetur quod mali fecerit.

(§2) Item: canis quodlibet manducet, prima culpa nihil reddatur nisi ille solus. Si uero secundo uel tertio iterauerit, reddetur quod fecerit uel commederit.

(§3) De his qui canem occident qui custodit peccora uel in domu manet prudentes dicunt: Qui occidit canem qui custodit peccora, .v. uacas reddat pro cane et canem de genere eius reddat et quodcumque bestiae commendent de peccoribus usque ad caput anni.

(§4) Item statuta prudentium: Qui canem .iiii. hostiorum, id est domus ubi habitat dominus eius et caule ouium et uitulorum et bouum, occidit, .x. uaccas reddat et canem de genere eius opera ipsius facientem restituat.

(6) AIRECHT-TEXT (Appendix 1 No. 71)

CIH 601.20-33 = *Peritia* 5 (1986) 84-7 §§1-6. This section of the text deals with court procedure and the position of the various categories of person present at court. See diagram and discussion at pp. 193-4.

(§1) Cis lir cenela airechta dochusin la *Fénium*? Ni *ansae*, a .u. culairecht 7 taebairecht 7 airecht uirdnidhe 7 airecht fo leth et airecht fodesin.

(§2) Culairecht didiu, is a suide bit righ 7 espoc 7 sai gacha berlai ollamand, 7 is aire is culairecht fo bith isiat all bis iar gul na nairechta fri breth 7 forus.

(§3) Taebairecht, is a suidi bit senchaid 7 ruirig 7 geill 7 ratha et aitiriga 7 is aire is taebairecht fo bith is fri senchus na senchad 7 is fri rellad na sencad dobeir int airecht taeb.

(§4) Airecht uirdnidhe, is a suide bit fechemain 7 aighnedha oc idhnaidhe breithi cein bit brethemain fri tasbenad 7 foros.

(§5) Airecht fo leth, is a suidhi bit nadmand 7 ratha 7 fiadain maic cor mbel, noch ni tiaghat saide co neoch ni tedi nech cucussum acht bit oc seis coir co tiaghat co cumnib glanaib i craes na hairechta 7 is aire is airect fo leth.

(§6) Airecht fodesin, is a suidhi bit brethemain co .ui. linaib .x. airecta umpu.

(5)

Concerning dogs: a synod of wise men

(§1) Now a chained dog, whatever mischief he does in the night shall not be paid for. And whatever mischief a dog of the flocks does in the byre or in the pastures of the flocks shall not be paid for. But if he goes beyond the boundaries [of his master's land], what mischief he does shall be paid for.

(§2) Further: whatever a dog eats, nothing is paid for his first offence except himself (i.e. if caught he may be killed but no fine is paid by his master). If he repeats the offence a second or a third time, what he does or eats shall be paid for.

(§3) Concerning those who kill a dog that guards the flocks or stays in the house wise men say: He who kills a dog that guards the flocks shall pay five cows for the dog and supply a dog of the same breed and restore whatever wild animals eat from the flock until the end of the year.

(§4) Also, the constitutions of the wise: He who kills a dog of the four doors (cf. *cú cethardoruis*, CIH 2216.37) — namely, of the house where his master lives, and of the sheep-fold, and of the byres of the calves and of the oxen — shall pay ten cows and substitute a dog of the same breed that will perform the dead one's services.

(6)

(§1) How many kinds of court are there in Irish law? Not difficult, five: the back court and the side court and the waiting(?) court and the court apart and the court itself.

(§2) The back court then, it is there that there are the king and the bishop and the expert in every legal language with the rank of master (= chief poet?) and it is for this reason that it is called the back court, because they are the cliff which is behind the courts for judgement and for promulgation.

(§3) The side court, it is there that there are historians and overkings and hostages and paying sureties and hostage-sureties, and it is for this reason that it is called the side court, because it is on the lore of the historians and on the clarification of the historians that the court relies.

(§4) The waiting(?) court, it is there that there are litigants and advocates awaiting judgement while the judges are directing their attention towards expounding and promulgating(?).

(§5) The court apart, it is there that there are enforcing sureties and paying sureties and witnesses [and] sureties to contracts, and they do not go to anybody, and no-one goes to them, but they remain properly seated until they go with clear memories into the midst of the court and it is for this reason that it is called the court apart.

(§6) The court itself, it is there that there are judges with the sixteen persons of the court about them.

(7) 'AN ARCHAIC LEGAL POEM' (Appendix 1 No. 42)

CIH 570.34-5 = *Celtica* 9 (1971) 156. This poem consists of a long list of legal topics about which a king should be knowledgeable. I reproduce here the first ten lines. Most lines in this poem contain two syllables, and are connected by alliteration.

Madbé ríg rofessir
recht *flatha*
fothoth iar mbiad
mescbaid a slógh
sabaid cuirmmtigi
cuir mesca
mess tíri
tomus forrag
forberta diri
dithle mesraid.

(8) BECHBRETHA §§45-9 (Appendix 1 No. 44)

CIH 453.28-455.4 = BB 80-4 §§45-9. These paragraphs deal with the legal rights of a person who follows or finds a stray swarm of bees under various circumstances and on various types of land. See p. 124.

(§45) Mad airm i mbi immed mbech noch arrulla saithe *cacha* lestar nach laimether nech luigu bed lais, inotat saithe doeit hi thir comaithich bes comoccus doib uile: confodlat eturru uile lethorud intaithi sen co cenn teora m bliadnae, a lethorad naill hi tir i suidigher inna laimther forgull na airthiuch bid nech intainrudach.

(§46) Fer fongaib frith mbech hi faithchi techtai — is si ind faithchi techta la *Féniu* ni rosaig guth cluicc *no* gairm cailig cercc — ailid cethramthain a thoraid co cenn m bliadnae do fir fodgaib; na teora cetrامتain aile do faithchi hi fogbaither.

(§47) Fer fongaib crann mbech hi faithchi techtai: mad iarmota bliadnai leth do fir fodgaib, leth naill do faithchi hi fogabar.

(§48) Fer fogaib frith mbech i nneoch mad sechtar faithchi co ruicce rud mar *no* ecmacht no dirainn: trian do fir fodgaib, da trian do tir hi fogbaiter.

(§49) Fer fodgaib frith mbech hi rud *no* dñirainn no ecmacht: is diles do suidiu ar is oenruidles la *Féniu* acht cuit naige fine 7 cuit neclaso frisa mbi audacht; nochis si a cuit side: trian as *cach* triun arnacon derbathar *eclais* na fine di neoch doruillet a membr.

(7)

If you are a king you should know
the prerogative of a ruler,
refection according to rank,
contention in the host(?),
cudgels in the ale-house,
contracts made in drunkenness,
valuation of lands,
measurement by poles,
augmentations of penalty,
theft of tree-fruit.

(8)

(§45) If it be a place where there are many bees, and a swarm has escaped from every hive and no-one ventures an oath that it was his [and] the swarm which he may follow enters the land of a neighbour near to them all: they divide between them all half the produce of that swarm for three years, the other half goes to the land where it settles when neither oath nor testimony is ventured that it belongs to a particular person.

(§46) The man who finds a stray swarm of bees in a lawful green — the extent of a lawful green in Irish law is as far as the sound of a bell or the crowing of a cock reaches — it gives a claim to one quarter of its produce for a year to the man who finds it: the other three quarters go to the [owner of] the green where it is found.

(§47) The man who finds a tree with bees in a lawful green: if it be after a year, one half goes to the man who finds it, the other half to [the owner of] the green where it is found.

(§48) The man who finds a stray swarm if it be outside the green up to a great forest or inaccessible country or unshared land, one third goes to the man who finds it, two thirds to [the owner of] the land where it is found.

(§49) The man who finds a stray swarm in a forest or unshared land or inaccessible country: it is immune for him, for it is one of the complete immunities in Irish law except for the share of the chief of the kindred and the share of the church to which he makes a bequest; and this is their share: one third from every third lest the church or the kindred be defrauded of anything which their members may be entitled to.

(9) *DIN TECHTUGAD* (Appendix 1 No. 68)

CIH 209.12-23 = *Celtica* 6 (1963) 227-8. This verse describes the consequences of Sencha's wrong judgement on female entry, and how it was put right by Brig. See p. 187.

Beartaid sencha cetbrethach
 bantellach ar fertellach
 comdar ferba fulachta
fora gruaide iar cilbhrethaib.
 Hicsai brig a firinde a firbreathaib
 isi conmididhar banteallach
 comdar fearba falguide
fora gruaidaib iar firbreathaib.

Sencha judged it in his first judgement
 female entry for male entry
 so that blisters were sustained
 on his cheeks after biased judgements.
 The truth of Brig* cured him by true judgements,
 it was she who estimated female entry
 so that the blisters were alleviated
 on his cheeks after true judgements.

*Reading *brig*, *CIH* 1860.33.

