The representation in Old Irish law texts of the legal position of women in early medieval Ireland as regards the ownership of property

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Publication Date
2013-09-23

Item record
http://hdl.handle.net/10379/4413

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‘The Representation in Old Irish Law Texts of the Legal Position of Women in Early Medieval Ireland as regards the Ownership of Property’.

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September 2013
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Bibliography.
I, Hanne-Mette Alsos Raae, hereby declare that all the work presented in this thesis is my original work, and no degree has previously been obtained on the basis of this work.

Hanne-Mette Alsos Raae
Summary of contents:

This thesis is a detailed analysis of women’s property rights in early Irish law, and their extended legal rights arising from their ownership of property. Property in early Irish society is defined as both moveables and immoveables. Each chapter deals with a specific legal right, ranging from the rights a woman had to property through marriage, to a woman owning property in her own right, and therefore also the passing of property upon the death of a female land owner. Two of the chapters discuss legal procedures a woman was entitled to perform in regard to property. One of them regarding a claim to payment for property she was already in possession of, the other regarding the procedure which was used in order to take possession of land a person had a hereditary claim to. The final chapter presents a comparison with the laws regarding women and property in the Middle Welsh laws, and discusses the differences and similarities between the two legal systems.
Acknowledgements

There are so many people who deserve an acknowledgement for helping and supporting me while I have been working on my doctoral research for the last four years. Without all of you, I would not have managed to complete such a massive project.

First of all, I would like to thank my two supervisors, Dr. Graham Isaac and Prof. Dáibhí Ó Cróinín for giving me the freedom to find my way through the jungle that is early Irish law, the support I needed to believe in myself and my own abilities, and giving me the guidance that was necessary for me to complete this thesis. You have allowed me to find my own way when I wanted to, and helped me through many hurdles where I have not been able to do it myself. For this I am forever grateful.

Secondly, there are such a large amount of great scholars who have, through discussions, by making available articles which I would not otherwise have found, and by stimulating my curiosity, helped in a way I can never completely show my gratitude for. I would especially like to thank Prof. Fergus Kelly for sending me articles, for always being willing to answer my (many) emails, for finding time to talk to me at every conference we have both attended, for accepting my invitation to come to Galway to give a guest lecture, and thus allowing me to pick his brain, and most of all for being the fantastically friendly scholar that he is. I will never forget all your help.

I would like to thank Prof. Gearóid Mac Eoin for the many healthy discussions, for all the help and support he has given me, and for making available his personal copy of an article I would never have been able to find otherwise. I would like to thank Prof. Máirín Ní Dhonnchadhá for the support she has given me, all her curiosity and the questions which have forced me to think further, for setting aside so many hours to help me go through texts and especially for explaining the weaving terminology to me. Your help has been invaluable.
Dr. Jacopo Bisagni, for being an important member of my GRC, for asking critical questions and guiding me to knowledge outside of my own field. To Dr. Muireann Ni Bhrolcháin and Dr. Colmán Etchingham for first introducing me to early Irish law, without you I would never have been here today. Dr. Mark Stansbury, my M.A. director, whose support I know I will always have. Everyone connected to the M.A. in Medieval Studies also deserve a big thank you, lecturers and students both.

To Prof. Neil McLeod, Prof. Anders Ahlqvist and Dr. Pamela O’Neill for the warm welcome in Sydney, and for the indispensable feedback on my paper, and for allowing me my first publication.

Prof. Thomas Charles-Edwards and Jaqueline Bemmer for inviting me to Oxford, and for the many interesting discussions. Fangzhe Qiu and Riona Doolan for the questions and help I have received. Prof. Donncha Ó Corráin also deserves an acknowledgement for all the help he has given me.

To all my housemates, thank you for not killing me while I was driven crazy by my thesis, and for the love and support you have always showed me. To An Cumann Staire for the possibility of learning so much more than just Old Irish, to the committee for being such a great group of friends. To all my friends, I appreciate how you have been driving me insane while at the same time keeping me sane. You know who you are. Ciaran, you are just wonderful. Thank you for being there. Esther, Kicki, for the love, support, sparkle and ALL the turquoise. To Ira and Anne, thank for all the beer, pizza and pool, I needed those days. To Kathrine, you are the best friend a girl could ever hope for.

To my family, and especially my parents, you have allowed me to chase my own interests, even though I know you have not understood how you could have raised your daughter to be interested in something you find so obscure. I love you, always.

For everyone I forgot to mention, I am sorry.

The Duracell Bunny strikes again!
Abbreviations:

AL  Ancient Laws of Ireland i-iv (Dublin, 1865-1901).
ALW  Ancient Laws and Institutes of Wales, A. Owen (ed.) (London, 1841)
App.  Appendix.
BB  Bechbretha: An Old Irish Law-Tract on Bee-Keeping. eds. and trans. T.M. Charles-Edwards and F. Kelly (Early Irish law Series) 1, (Dublin, 1983)
BDC  Bretha Dén Chécht.
Bleg  Llyfr Blegywryd.
CA  Cán Adomnáin.
Celtica  Celtica, The Dublin Institute for Advanced Studies (Dublin 1946-).
cf.  confer (compare).
CG  Críth Gablach, ed. D.A. Binchy (Dublin: The Dublin Institute for Advanced Studies, 1941, reprinted 1979)).
ch.  chapter.
CL  Cán Lánanna ed. C. Eska (Leiden; Boston: Brill, 2010)).
col.  column.
comm.  commentary.
cpd.  compound.
Cyfn  Llyfr Cyfnerth.
DAC  Di Astud Chor, ed. N. McLeod (Sydney: Centre for Celtic Studies, University of Sydney, 1992).
EC  Études celtiques (Paris, 1936-).
EIF  Early Irish Farming, F. Kelly (Dublin, 1998).
Éigse  Éigse: A Journal of Irish Studies. (Published for the National University of Ireland: Dublin, 1939-).
Ériu  Ériu (Royal Irish Academy: Dublin, 1904-).
esp.  especially.
facs.  facsimile.
fem.  feminine.
GC  Gúbretha Caratniad.
**GEIL**  *A Guide to Early Irish Law*, Fergus Kelly (Dublin: Dublin Institute for Advanced Studies, 1988)

gen.  genitive.

gl.  gloss.

**GOI**  *A Grammar of Old Irish*, by Rudolf Thurneysen, tr. from German by D.A. Binchy and Osborn Bergin (Dublin, 1961; revised ed. 1975, repr. 1980).

Heptad(s)  Old Irish legal heptads.

ibid.  *ibidem* (= in the same place).

id.  *idem* (= the same).

**IJ**  *The Irish Jurist* (University College Dublin, new series 1966-).


**IP**  *The Irish Penitential*, ed. Ludwig Bieler (Dublin, 1963).


l(l).  line(s).

Lat.  Latin.

lit.  literally.


MW  Medieval Welsh (12th-14th c.).

Mo.I.  Modern Irish (13th-20th c.).

MS(S)  Manuscript(s).

no(s)  Number(s).

nom.  nominative.

O.I.  Old Irish (7th-9th c.).

op. cit.  *opere citato* (= in the work previously quoted).

p(p)  page(s).

**PBA**  *Proceedings of the British Academy*.

**Peritia**  *Peritia. Journal of the Medieval Academy of Ireland*, ed. Donnchadh Ó Corráin etc. 1982-.

pl.  plural.

**PRIA**  *Proceedings of the Royal Irish Academy* (Dublin, 1836-).


Rec.  Recension.

repr.  reprinted.

retr.  retranslated.

**SEIL**  *Studies in Early Irish Law*, ed. Dan Binchy (Dublin: Royal Irish Academy, 1936)

sg.  singular.

**SM**  *Senchas Már*.

**Stud. Celt.**  *Studia Celtica*. Published on the behalf of the Board of Celtic Studies of the University of Wales. (Cardiff, 1966-).
| s.v. | sub voce (= under the head-word). |
| TC  | Tecosca Cormaic. |
| tr. | translated. |
| UB  | Uraicecht Becc. |
| UR  | Uraicecht na Riar). |
| vn. | verbal noun. |
| vol. | volume. |
| ZCP | Zeitschrift für celtische Philologie. (Halle; Tübingen, 1897-). |
1. Introduction.

1.1. Background and outline of study.

Early Irish law is a subject which was long a neglected area in the studies of medieval Ireland, but which has received more attention over the last few decades. There is still much work left to be done on the subject, especially on the legal status of women. The general rule of the laws is that women were considered *báeth*, ‘legally incompetent’ or ‘senseless’, but there are many exceptions to this rule. In certain circumstances a woman was allowed to own property, and therefore also be the person in charge of that property. To allow for instances like this, there were necessarily laws regarding the exceptions to the rule of women’s legal incapacity.

My main concern in this thesis is to analyse the legal rights of women, specifically in regards to the ownership of property, and their extended legal rights for owning property. Chapter One gives an outline of the legal system of early medieval Ireland, with a focus on the laws regarding women. Because of this, not every institution of the legal system will be discussed. Chapter Two will focus on women and property. Since most of the information discussing women and their property rights is found in a law text discussing marriage and divorce, this will necessarily be the emphasis of the chapter. Chapter Three will offer an analysis of the female heir, the *banchomarbae*. Many of the laws regarding this person are found in the same law text as discussed in Chapter Two, and will be an extension of the second chapter, but with the primary focus on the woman who owns property in her own right, and is thus not dependent on the property of her husband. Chapter Four will be discussing one of the rights a woman had regarding her property, which is distraint. One of the extant law tracts focusses specifically on distraint, and within this text there is a section regarding women and distraint. A translation of this section can be found in Appendix 1. Chapter Five will focus on another of the legal rights a woman could be entitled to: legal entry. This legal remedy was only valid in certain circumstances, and if these circumstances were met, there were very specific
procedures which had to be followed in order for the legal entry to be taken into consideration. There are many similarities between the steps which have to be followed in both distraint and legal entry, and these two chapters are therefore discussed in conjunction with each other. Chapter Six will be discussing the contractual capacity of women. Some evidence covered in the previous chapters is recalled, since there are some references to these rights in more than one law tract. Chapter Seven will be a discussion on the passing of property, an issue which did not receive much attention in the laws since women were generally not allowed to own property. Chapter Eight will give a comparative aspect of the legal rights of women in early medieval Ireland to those found in the Middle Welsh laws. To avoid having the work becoming too unwieldy I have restricted this comparison to the Middle Welsh laws, a legal system which is almost contemporary and is also a Celtic legal system which is geographically close, and which is a system that the literary evidence shows that the Irish were in close contact with. This comparison is fascinating as the laws can both differ so drastically, but at the same time be very similar.

Through the analyses of these different aspects of the legal status of women, and their property rights I hope to find new information to shed light on what the lives of medieval Irish women were like, and give a nuanced discussion of our presuppositions about the Dark Ages. Throughout this discussion it is important to keep in mind that all laws are abstractions, and it is difficult to know to which degree the laws as we have them were in use. This becomes apparent in the discussion regarding the glosses and commentaries which much of the analysis in Chapter Four, Chapter Five and Chapter Seven have been based on, especially in Chapter Seven where the commentary divides the property into very small fractions. Nevertheless, the detailed treatment in the glosses and commentaries shows that the lawyers considered every possibility and had written law to refer to in any possible case. Whether this is the exact way that society dealt with the different issues at hand is improbable, but it shows a consideration of the many possible outcomes of the different legal issues, and the glosses and
commentaries can therefore be seen as a guideline as to what the lawyers believed could be the correct treatment of the different situations.

The glosses and commentaries were written much closer in time to the law tracts than the modern scholar, and they can include some important parts of information. They may seem an unreliable directory to the laws and their understanding, but they were written within a linguistic tradition which no longer exists, and their guesses can, at times, give connections between words and phrases which may no longer be obvious. If the glosses and commentaries were to be ignored, they would all have to be ignored, since one cannot accept certain parts of the glosses and commentaries without accepting them all. It is possible, however, to accept their importance without taking their meaning at face-value, and rather regard them as pieces to a puzzle.

1.2. Previous scholarship.
Some work has been done on the legal rights of women in early Irish law. The most notable work is *Studies in Early Irish Law*,¹ which was published in 1936. In the preface to this volume it is stated² that the legal status of women is the main subject of investigation. Though it is a great collaborative work of the time, it is unfortunately dated, and some of the conclusions have been disproved by later scholars.³ Nevertheless, it is still the leading work on women in early Irish law.

There are other sources which give some information on the early Irish laws regarding women. Fergus Kelly’s *A Guide to Early Irish Law* has a sub-chapter on the subject of women,⁴ but, as the title states, it is a guide to the laws with a relevant overview of each section, and not an in-depth investigation of the relevant subjects. There is also some information on

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¹ D. Binchy (ed.), Royal Irish Academy, Dublin, 1936. *Studies in Early Irish Law* will henceforth be referred to as *SEIL*.

² Binchy, *SEIL*, p. v.


women found in Kelly’s *Early Irish Farming*. Another recent work is *Early Irish and Welsh Kinship*, which deals with the comparative aspects of the early Irish and Middle Welsh legal systems, mostly in regard to the structure of the kin groups.

One of the most prominent names in regard to early Irish law is Rudolf Thurneysen, who began working in this field at a time when not much work had been done on the subject except for the *Ancient Laws of Ireland*, which were compiled at a time when the study of the Old Irish language was in its infancy. Binchy’s great contribution to the field cannot go without mention, especially the *Corpus Iuris Hibernici*, which has become an absolute necessity for anyone with an interest in early Irish law. Since CIH lacks detailed discussion of contents, Liam Breatnach has published his *A Companion to the Corpus Iuris Hibernici*, which gives a great overview of the CIH.

1.2.1. Previous scholarship: women and property.

It is in the laws regarding marriage that the issue of women and property is most prominently discussed, especially the law text *Cáin Lánamna*. Thurneysen first published an edition and translation of *CL* in *SEIL*. As so much of the earlier scholarship, this edition was translated into German and

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5 Fergus Kelly, *Early Irish Farming*, Dublin Institute for Advanced Studies, Dublin, 1997. *Early Irish Farming* will henceforth be referred to as EIF.


9 D. A. Binchy (ed.), (6 vols.), Dublin Institute for Advanced Studies, Dublin, 1978. The *Corpus Iuris Hibernici* will henceforth be referred to as CIH.

10 Liam Breatnach, *A Companion to the Corpus Iuris Hibernici*, Dublin Institute for Advanced Studies, Dublin, 2005. *A Companion to the Corpus Iuris Hibernici* will henceforth be referred to as CCIH.

11 *Cáin Lánamna* will henceforth be referred to as CL.

12 Thurneysen, ‘*Cáin Lánamna*’, in *SEIL*, pp.1–80.
his translation has been left untranslated into English. After Thurneysen’s
translation, the field of marriage and divorce laws in early Ireland was
largely ignored until Donnchadh Ó Corráin’s many articles on the subject,
including a translation of CL.13 The most recent edition of the text was
published in 2010 by Charlene Eska,14 and includes the glosses and
commentary to the tract.

The above translations and editions of CL all discuss the main
subject matter of the tract: the laws regarding marriage and the division of
assets upon the dissolution of a marriage. For this thesis, I will look at the
text from a new perspective, specifically analysing the issues of what the
text says about women and their property rights.

1.2.2. Previous scholarship: the bancho marbae.

The bancho marbae, ‘female heir’, has been mentioned in most of the
works from 1.2 and 1.2.1., but there has not been a proper analysis of the
legal rights of this figure. The articles that discuss the bancho marbae in
greatest detail are Dillon’s and Binchy’s contributions to SEIL,15 both of
which are great contributions to the existing knowledge on the
bancho marbae. The female heir has also been discussed by Nancy Power
in her article on the ‘Classes of Women Described in the Senchas Már’,16 but
not in as great detail as one would expect in an article discussing the

13 Donnchadh Ó Corráin, ‘Cáin Lánamna’, in A. Bourke, S. Kilfeather, M. Luddy, M. Mac
Curtain, G. Meaney, M. Ó Dhonnchadha, M. Ó Dowd and C. Wills (eds.) The Field Day
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and D. Ó Corráin (eds.) Women in Irish Society: the Historical Dimension, Dublin &

14 Charlene Eska, Cáin Lánamna: An Old Irish Tract on Marriage and Divorce, Brill,
Leiden; Boston, 2010.

15 Myles Dillon, ‘The Relationship of Mother and Son, of Father and Daughter, and the
Law of Inheritance with regard to Women’, in SEIL, pp. 129–79, D.A. Binchy, ‘Family
Membership of Women’, in SEIL, pp. 180–6; idem. ‘The Legal Capacity of Women in
Regard to Contracts’, in SEIL, pp. 207–34.

different types of women found in the Senchas Már. The many, but brief, mentions of the banchomarbae in the Senchas Már invite a more detailed discussion than has been undertaken thus far, and this figure therefore deserves a chapter devoted to understanding the rights and restrictions she faced in the eyes of the laws.

1.2.3. Previous scholarship: distraint.

The first scholar\textsuperscript{17} to devote attention to a detailed analysis of the subject of distraint was d’Arbois de Jubainville in his \textit{Études sur le droit celtique},\textsuperscript{18} in which he edited and translated a large section of the tract called \textit{Di Chetharslìcht Athgabálae}, ‘on the four sections of distraint’, which he discussed as the ‘traité de la saisie mobilière privée dans le senchus mor’.\textsuperscript{19} Binchy, while researching the subject, found de Jubainville’s reconstructed text ‘far from satisfactory’\textsuperscript{20} and discusses the text in detail in his two articles on the subject.\textsuperscript{21} Though both scholars have briefly discussed the relevant passage on women and distraint, neither have analysed the section on \textit{athgabál aíle}, ‘distraint with a two-day stay’, in detail.

1.2.4. Previous scholarship: legal entry.

Tellach, ‘legal entry’, has been somewhat neglected by scholars, and there is no satisfactory translation published on the subject. Parts of the text have been translated by Binchy in Calvert Watkins’ article in \textit{Celtica} 6,\textsuperscript{22} but these are only certain paragraphs of the tract\textsuperscript{23} that matter for Watkins’ argument regarding metrics. Charles-Edwards has a full chapter on the

\textsuperscript{17} i.e. the first scholar to research the subject after \textit{AL}.

\textsuperscript{18} d’Arbois de Jubainville, \textit{Études sur le droit celtique}, Thorin, Paris, 1895.

\textsuperscript{19} The aspects of both the ‘saisie mobilière’ and the ‘saisie immobilière’ have also been discussed by d’Arbois de Jubainville in \textit{Revue Celtique} 7 (1886), pp. 2–37. \textit{Revue Celtique} will henceforth be referred to as \textit{RC}.


\textsuperscript{23} \textit{Din Teachtugud}, ‘on legal entry’. \textit{Din Teachtugud} will henceforth be referred to as \textit{DT}. 

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procedure in his *EIWK*,
and though this chapter provides a great
discussion and analysis of the topic, there is unfortunately no translation of
the text.

1.2.5. Previous scholarship: women’s contractual capacity.
Binchy’s chapter on women’s legal capacity in *SEIL* was the leading view
on the subject until Neil McLeod’s *EICL* was published. In his chapter on
women, McLeod discusses much of the same evidence as Binchy, and
disproves some of his conclusions. *EICL* includes an edition of *Di Astud
Chor*, ‘on the securing of contracts’. Though there are not many paragraphs
on the subject of women and contracts in the tract, the accompanying
glosses and commentary are very helpful, as is the introductory chapter on
women. The two authors disagree on some points, but they give a good
introduction to the exceptions in which women were not completely
dependent in regards to contracts. Much information on women’s
contractual capacity is also found in *CL*, and is therefore a useful source of
supplementary evidence.

1.2.6. Previous scholarship: passing of property.
There is not much evidence on the passing of property regarding women.
This is because women were generally not entitled to own property, and
therefore not allowed to pass it on as inheritance. However, there is some
evidence on the topic, especially in the Kinship poem which was first edited
and translated by Myles Dillon in *SEIL*. This poem has later been
retranslated by Charles-Edwards in his *EIWK*. It is an archaic and very

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26 Neil McLeod, *EICL*.
28 See e.g. Eska, *Cáin Lánamna*; cf. Chapter 2 Women and Property and Chapter 3
*Banchomarbae* for more information.
29 Myles Dillon, ‘The Relationship of Mother and Son, of Father and Daughter, and the
Law of Inheritance with regard to Women’, in *SEIL*, pp. 129–79.
complicated poem which is not easily understood, and it therefore needs much more research in order to fully understand the legal implications of the subject matter. It discusses the exceptions to the law when women were in fact legally entitled to pass on property to their children, which could only happen in certain circumstances.

1.2.7. Previous scholarship: The Welsh laws.
As a comparative aspect to this thesis, I chose to look at a geographically close legal system which was near contemporary to the early Irish legal system: the Middle Welsh laws. The *Welsh Law of Women*\(^{31}\) discusses many of the same aspects regarding women and the law as those I am analysing in this thesis. It is a superb work, which also includes comparative chapters to early Irish law, especially Christopher McAll’s chapter on ‘The normal paradigms of a woman’s life in the Irish and Welsh law texts’.\(^{32}\) Thomas Charles-Edwards has spent much of his career on the comparative aspects between early Irish and middle Welsh laws, and this is also the main aspect of his *EIWK*.

1.3. Legal introduction.
There is no single legal tract which deals with the property rights of women in early Irish society. The reason for this is apparent; women were considered legally incompetent, and were thus thought to be unable to deal with property. In fact, women were grouped in a category of person along with the child, the son of a living father, the insane person, the slave, and the unransomed captive, all of whom were considered *báeth*, ‘legally incompetent’ or ‘senseless’.\(^{33}\) All of these persons are dependants and as a result they are not entitled to make any legal contracts without the authorisation of their legal guardian. The guardian of these people depends

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\(^{33}\) *GEIL*, p. 68; cf. *DIL* s.v. *báeth*.
on which person in this group is being dealt with. For women, the guardian changed throughout their lifespan and therefore depended on which period of life they were in: as a child her father or head of kin would be her guardian, when she was married her husband was her guardian, when she was divorced or widowed her sons would be her guardians, and if she was a nun her priest would be considered her guardian.

As women were lacking any legal independence in early Irish society, it comes as no surprise that the legal texts deal mostly with men, with some very obvious exceptions. These exceptions deal for the most part with the woman’s domain, such as marriage, and the household; domains in which there was a strong need for laws regarding both women and men. Some of the exceptions are found in law tracts in which one would not expect to find laws regarding women, but which have parts dealing with the laws of women in very specific situations. These laws are clear exceptions from the general rule of women’s legal dependance, and these exceptions will in turn be examined in this thesis.

One of the early Irish legal texts in which there is the most evidence of laws regarding women is CL. The text deals with the nine different types of sexual unions in early Irish law, as well as the division of assets upon the termination of the unions. Instead of treating the legal and illegal unions separately, the lawyers have dealt with the subject of all types of sexual unions that may result in children as well as the consequences of

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34 The head of kin was normally the guardian of a woman if her father was dead.

35 There are certain exceptions to this rule, see 2.5. Lánamnas comthinchuir and Chapter 3 Banchomarbae for more information.

36 Dire-text §38; IR, p. 35 §38; GEIL, p. 76; EICL, p. 71.

37 See 1.2.1. Previous scholarship: women and property. For a discussion on the text, see Chapter 2 Women and Property and Chapter 3 Banchomarbae.

38 CL §4 distinguishes between 10 different types of unions, but only nine are explained in detail. The mysterious and intermediate ‘union of wandering mercenaries’ has no further explanation after the brief mention in §4, although it may be influenced by the Roman law stating that soldiers, while they were in service, were not allowed to marry, thus leaving concubinage as the only choice for those who wanted a stable union.

39 I have chosen to use the term union, because the last two unions especially, can in no way be described as marriages. These are the union of rape or stealth (lánamnas eicne no sleithe), and the union of mockery (lánamnas genaige), where one or more persons of sound mind has joined together two persons of unsound mind for sport.
these unions in one legal tract. This is a most practical legal tract which does not discuss the morality or immorality of the unions, but rather describes the rules of the different unions, the legal standing of each partner before the union is entered into, the rights and entitlements of each partner, and the amount of assets each of the partners would bring out of the union upon its termination.

1.3.1. The structure of early Irish society.

In order to understand the law tracts, it is important to first look at the structure of early Irish society. Since there are hardly any contemporaneous accounts of early Irish society, and no accounts of contemporary case law, we are dependent on the information we can extract from the rich legal material and native literature — the sagas, poetry, wisdom-texts, annals, genealogies, penitentials and monastic rules — which all add nuance to our picture of early Irish society. According to Francis J. Byrne, ‘The most difficult and specialised of secular sources, of prime importance for the social history of the archaic period, are the law tracts’.40 Although the lawyers wanted to give an impression of a static society with constant rules, this is certainly not the case. Some legal tracts concerning the same topics can disagree on the details; while *Uraicecht Becc* ranks the ‘seven grades of government’41 as the ‘aire désso, aire échta, aire túise, aire ardd, aire forgill, king, and overking’,42 *Críth Gablach*43 ranks the *airig*44 in a slightly different order:

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42 id.

43 *Críth Gablach* will henceforth be referred to as *CG*.

44 In non-legal texts *aire* normally means ‘lord’, and this usage is sometimes found in the law texts as well, but in the legal material the more common translation of *aire* is ‘commoner, freeman’. (*GEIL*, p. 26 n. 56). In this list of the *aire*, however, it is translated as ‘lord’, with agreement between the different legal texts on status and rank to place the *aire désso* at the bottom of the list.
Question: What are the orders of the *tuath*? *Fer midboth, bòaire, aire dèsa, aire ardd, aire tūise, aire forgill*, and king — if it be by the right of Féni law; and if it be not that, the following seven orders are distinguished: *Aire dèsa, aire échta, aire ardd, aire tūise, aire forgill, tánaise rig*, and king.45

The differences between these ranks are clearly traceable to the different law schools which existed in early Ireland, the most prominent of which was the ‘*Senchas Már*-school’.46 Neither *Uraicecht Becc* nor *CG* were parts of this school, but neither do they belong to the same school. While *Uraicecht Becc* belonged to the ‘*Nemed*-school’, a school which was predominantly preoccupied with the laws regarding poets and other ‘men of art’,47 *CG* ‘exhibits a quite different approach to legal composition than is found in other surviving texts’48 and may therefore belong to a different school than those previously mentioned.49

Charles-Edwards notes another rule from *CG* which is in direct opposition to the rule given in the Kinship Poem and the *Fuidir*-tract: the tract allows for a man to remain a *fèr midboth*50 or *óenchiuniud*51 for the remainder of his life even if he does not receive his share of the *fintiu*, ‘kin-land’.52 Both the Kinship Poem and the *Fuidir*-tract note that the *fuidir* is a person from a kindred without sufficient land to give him an inheritance.

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46 *GEIL*, p. 242.

47 ibid., p. 246.

48 id.

49 For more information on the different law schools, see *GEIL*, pp. 242–63.

50 *EIWK*, p. 553: ‘*fèr midboth* (*midbad*), literally "a man of middle huts"; i.e. a non-noble minor who has passed the age of fosterage but has not yet reached his majority. His name apparently derives from the possibility that he may have a temporary home distinct from his father’s house. *CG* distinguishes two grades of *f.m.* according to age: (1) from 14 to 17; (2) from 17 to 20. The second is identified with the *óenchiuniud*”.

51 *EIWK*, p. 556: ‘*óenchiuniud*, literally "single offspring"; a category of freeman, either a minor or an adult who has not yet received his share of land. The reason why such a person was entitled a "single offspring" remains unclear”.

52 *CG* II. 69–70; *EIWK*, p. 474.
Charles-Edwards points out that in these law texts ‘landlessness is a mark of the unfree or semi-free’. This means that the landless *fer midboth* or *óenchainiud* would not be able to stay landless and still retain their rank.

1.3.2. **Contradictory evidence in the law texts.**

Some legal tracts even disagree within themselves, such as *Bretha Crólige* which in §8 states that ‘a lustful longer’ is among the three persons who are not brought away on sick-maintenance, but have to be nursed back to health by their families, while in §29 states that the ‘man who is accused of excess of lust’ is among the three persons ‘whom their women-folk accompany on sick-maintenance’. In addition to these differences, we also find evidence from the glosses and commentaries which are written at different periods to the main tracts, and sometimes disagree with the rules of the legal tracts: for example, in the case of *CG*, there is a passage referring to sick-maintenance which states that the practice of sick-maintenance is now obsolete. There are even differences between the tracts and its accompanying glosses and commentaries: in the case of *DT* the ensuing commentaries give a different time frame between the different entries than those found in the tract. The contradictory evidence of the law tracts is also clear in the case of attacks by pigs; while *Bretha Étgid*, a law text on accidents, states that fights between pigs are an exemption for which

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53 *EIK*, p. 474.

54 Binchy, ‘Bretha Crólige’, *Ériu*, vol. 12, 1938, p. 11. The law tract *Bretha Crólige* will henceforth be referred to as *BC*. When the abbreviation *BC* is used it is referring specifically to the law tract, while a reference to Binchy, ‘Bretha Crólige’ is referring to his article on the law tract.

55 Binchy seems to be uncertain of the meaning and has a question mark after the translation. The Old Irish term is *sírechtach tuile*, and must mean something along the lines of ‘[a man] wistful of sexual desire’.


57 id.


59 For more information, see 5.3. Legal entry for women, esp. 5.3.3. Evidence from the E 3.5. commentary.

60 *GEIL*, p. 272 App. 1 Text 33: *Bretha Étgid* ‘judgements of inadvertence’. Parts of the commentary to this text will be discussed in Chapter 7 The Passing of Property.
neither owner would be liable in the case of death or injury, *Bechbretha* treats the killing of a pig in a jointly-owned herd as an offence for which retribution must be paid by the owner of the pig.

Despite these differences, the law texts essentially show a unity with respect to the underlying laws. The divergences may come from the texts originating from different times or different regions, or they may come from the law schools having different opinions regarding the laws. Overall, they show a mostly consistent system which is often confirmed by law texts quoting and affirming rules from other law texts.

### 1.3.3. The structure of the kin-group.

Early Irish society was patriarchal, polygynous, status-based and hierarchical. It was a self-sufficient farming society which revolved around the kin and the farm. The status and amount of farm-land a person’s family had would define this person’s life from the very beginning. With these basic principles in mind, the law texts give a vivid portrayal of the society itself and the way it worked.

There are four main types of kin-groups in early Irish society, but the one most often referred to in the laws is the *derb ún*, the 'true kin', which consists of the descendants through the male line from a common great-grandfather. Charles-Edwards mentions that the word *derb ún* is ‘likely to have been a term of much greater antiquity than either *íarfín* or *indún*’, which along with the *derb ún* were the three original kin-groups found in the laws. The final of the four kin-groups referred to in the laws is the

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61 *GEIL*, p. 274 App. 1 Text 44: *Bechbretha* ‘be-judgements’. While *Bechbretha* is a part of the *Senchas Már*, *Bretha Étgid* is not. This could explain the divergences between these two texts.


63 *EIWK*, p. 51.

64 *GEIL*, p. 312: ‘*íarfín* “after-kin”, descendants on the male line of the same great-great-grandfather’. *EIWK*, p. 554: ‘*íarfín* "after-kindred"; one of the "three (later four) fini".

65 *GEIL*, p. 312: ‘*indún* "end-kin", descendants on the male line of the same great-great-grandfather’. *EIWK*, p. 554: ‘*indún*, "end-kindred" the last of the "three (later four) fini".'
1.3.4. The territorial units in the law texts.

There are two types of territorial units referred to in the law texts: the túath and the fintiu, each with its own specific laws connected to a person’s legal standing.

1.3.4.1. The túath.

The territorial unit of the law texts is the túath, which is often translated as ‘tribe’ or ‘petty kingdom’, each ruled by a rí túaithe, ‘king of a túath’. The general rule of the law texts is that the status of each person would only be valid within this túath, except for certain persons of higher status, known as the nemed-rank, such as the king, the poet, the lord, the cleric, the lawyer and other members of the learned class, who would retain their status while travelling in other túatha, and were thus able to move freely between the different parts of the country. The other groups of persons who do not have

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66 GEIL, p. 312: ‘gelfine "bright kin", descendants on the male line of the same grandfather’. EIWK, p. 554: ‘gelfine, "white kindred"; after c.700 the immediate lineage in relation to a given individual, the minimal lineage seen from the perspective of one of its members’.


68 EIWK, p. 55. McLeod, however, argues against this view in his article ‘Kinship’, and states that he sees ‘little evidence for change in the structure of the kinship system over the entire period covered by the law-texts’ (McLeod, ‘Kinship’, p. 2).

69 GEIL, p. 3. I have chosen to leave this term untranslated, as these translations do not accurately describe the meaning of the word.

70 With the exception of certain circumstances, such as going on pilgrimage, or performing the duty of military service and similar obligations to his lord.
nemed-rank are based within the túath, which is the only place in which they retain their legal standing.

1.3.4.2. The fintiu.

The smaller territorial units found within the túath are the many separate kin-lands, known as fintiu, the hereditary lands which belong to the different kin-groups. There are strict rules regarding the fintiu, and it cannot be alienated without a joint decision of the kin, fine.71 Even though each heir will farm his share of the fintiu individually,72 the kin-group has the ultimate ownership of the land. If one of the heirs tries to sell his share of the fintiu without the permission of the rest of the kin, the sale will be invalidated by the rest of the kin-group. It is, however, possible to sell excess land which a person has acquired through successful farming or from his professional earnings, but even in this case the kin-group will have a right to a proportion of this land if it is sold or bequeathed.73

1.3.5 Categories of person.

Status and rank decided one’s position and rights in society, and the legal tracts distinguish a number of different ranks; some would have their own rank, while others would be dependent upon another person for their rank, such as the class of the legally incompetent, the category of person which includes women.74 The structure of the ranks in the society is roughly divided into two main groups; those who are nemed, ‘sacred, holy’, and those who are not nemed. This division is further sub-grouped into those who are sóer, ‘free’, and those who are dóer, ‘base’.

71 GEIL, p. 13.

72 The amount of individual farming done by a person depends on his status, and therefore his share in farming equipment. The laws regarding joint farming are found in Bretha Comaithchesa.

73 GEIL, p. 100.

74 For status and rank, see MacNeill, ‘Ancient Irish Law. The Law of Status or Franchise’, which contains both Uraicecht Becc (CIH 1590–1618; 634–655; 2318–2335) and CG (CIH 777.6–783.38; 563.1–570.32), also Míadlinglechta (CIH 582.32–589.32; AL 345–69) and the Dire-text (CIH 922.12–923.17; 436.33–444.11; IR, pp. 1–37; ZCP 19, 1933, pp. 346–51.
1.3.5.1. The nemed.

These sub-categories are further divided into the smaller, and more commonly distinguished categories of persons. The main categories of person which are considered nemed are the king, the poet, the cleric and the lord (flaith or aire). The lord is by far the most numerous of this category, and the difference between the different types of flaithi depends on the number of clients, céili, he has. Some texts add a group to the nemed-class which is described as dóernemed, ‘base nemed’; a group of persons who, though considered nemed, do not enjoy all the privileges of the sóernemed, ‘noble dignitary’.

1.3.5.2. The non-nemed freemen.

The rank below the nemed is the non-nemed freeman, which is most likely the category that the majority of the adult males belonged to. The persons belonging to this category are clients of the lords from the previous category of person, and they receive a fief from their lords, the size of which depended on the rank of the client. The two main categories of the non-nemed freeman are the bóaire and the ócaire, the former being of a slightly higher status than the latter. According to the law text Cáin Aicillne, the bóaire receives a fief worth 30 sét, and the less prosperous ócaire receives a fief worth 16 sét. These fiefs are given to both the

75 Cf. Uraicecht Becc, MacNeill, ‘Ancient Irish Law. The Law of Status or Franchise’, p. 273: ‘There are two [kinds of] nemeth that exist on earth, the free nemeth (sóernemeth) and the subject nemeth (dóernemeth). The free nemeth that are, are churchmen, rulers, filid, Fínti; the subject nemeth, however, the folk of every art or craft besides’.

76 The lowest grade of lord, the aire déso (‘lord of vassalry’) must have five free clients and five base clients, and an honour-price of 10 sét. GEIL, pp. 27–8; MacNeill, ‘Ancient Irish Law. The Law of Status or Franchise’, p. 296; CG II. 330–1.

77 GEIL, p. 10.

78 lit. ‘cow-freeman’, normally referred to as the ‘strong farmer’.

79 lit. ‘young freeman’, normally referred to as the ‘small farmer’.

80 GEIL, p. 10.

81 GEIL, pp. 270–1, App. 1 Text 24, Cáin Aicillne ‘the law of base clientship’, CIH 1778.34–1804.11; 479.23–502.6.

82 CIH 485.19–20; GEIL, p. 29.

83 CIH 485.16–17; GEIL, p. 29.
bóaire and the ócaire in a base clientship contract, and in return for the fief they provide food-rent and other services for the lord.

There is also a second type of clientship, the free clientship, which is regarded as a more desirable contract than the base clientship, even though the rent is much steeper. This type of a clientship can be left at any time without penalties for the breaking of a contract. It is not specified who the client in a free clientship is, but Kelly suggests that the free client may have been ‘of the same social class as his lord’. There are several ranks within the category of the bóaire, among them the mruigfer ('land-man') and the more prosperous bóaire; the bóaire febsa ('bóaire of worth'). CG classifies the different grades of bóaire thus:

What are the subdivisions of bóairig? Two (grades of) fer midboth, and ócaire, and vassal who precedes vassals in husbandry, and bóaire of excellence, and mruigfer, and fer fothlai, and aire coisring.

1.3.6. Rank and honour-price.

Practically every single early Irish legal tract is concerned with some aspect of the division of rank. This is because one’s rank, and thus honour-price, is the measure of entitlement concerning every facet of life in the society, from the size of one’s farm to the size of the penalty for illegal injury. Every freeman was born into his status, and thus assigned a lóg n-enech, ‘honour-price’, which would determine, among other things, which part of society

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84 GEIL, p. 270, App. 1 Text 23: Cáin Sóerraith ‘the law of free fief’, CIH 1770.15–1778.33.

85 GEIL, p. 32.

86 According to Myles Dillon, the highest rank of bóaire had land worth 28 cumals, SEIL, p. 155 n. 3.


88 lit. ‘value of the face’.
he belonged to and how big a penalty was to be paid to him or his kin in case of crimes committed against him or his dependants. A freeman’s dependants would be his wife, children, servants, and others in his household, and they would have a fraction of his honour-price. His rank decides his legal entitlement, how large his land-holding is, how many animals he is to have of each kind, how big his share in a plough-team, kiln, mill, barn and cooking pot is to be, as well as how big his houses are to be. His honour-price also determines his capacity to perform most legal acts, as these are tied to his honour-price.

1.3.6.1. Women as dependants.

There is information on a man’s dependants in several law tracts; while CL discusses the matter of a woman’s honour-price and her rights in marriage, the Dire-text touches on the subject of a woman’s legal and contractual capacity, and states that:

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.

She was, however, capable of pledging her personal property up to the amount of her honour-price.

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89 e.g. rechtaire ‘steward, agent’, techtaire ‘messenger’, GEIL, p. 65.
90 cf. Uraicecht Becc, translation from MacNeill, ‘Ancient Irish Law. The Law of Status or Franchise’, p. 276: ‘Half the dignity of each man to his wife, or to his dutiful son, or to his administrator, or to his prior’.
91 E.g. CG ll. 87–120, which gives the above-mentioned information regarding the ócaire.
92 For more information, see Chapter 2 Women and Property and Chapter 3 Banchomarbae.
93 For more information, see Chapter 6 Women’s Contractual Capacity.
94 Dire-text §38; CIH 443.30–444.6; IR, p. 35 §38; GEIL, p. 76; EICL, p. 73. Translation from GEIL, p. 76.
95 Eska, Cáin Lánamna, p. 10.
1.3.6.2. Persons of no honour-price.

There are also certain persons who would not have an honour-price of their own. These are known as dóer, the ‘unfree’, such as the fluidir, ‘semi-freeman’ or ‘tenant-at-will’, and the bothach, ‘cottier’. The fluidir is a lower type of dependant, and the term bothach is often used in conjunction with the fluidir in the law tracts. He is unable to make any legal contract without the permission of his superior, and hence has no independent legal capacity. In the case of both the bothach and the fluidir whose ancestors have occupied the same land for three generations, they will have their legal status reduced to that of a senchléithe, and their legal standing is therefore lower than before. Though this person is not a slave, he is bound to his lord, and should the land he occupies be sold, he will go with it and be bound to his new lord. The slaves, mug, ‘male slave’, or cumal, ‘female slave’, were the property of their superior, and had no legal independence. They were considered amongst the group of people who were baeth, but they had none of the rights or legal entitlement that some of the persons within this group had in certain circumstances.

1.3.6.3. Illegal killing.

Each person was also assigned an éraic, ‘body-fine’, a set penalty for murder. This fine was 7 cumals for all independent persons. Those who did not have an honour-price of their own were therefore not included in the question of éraic. This fine was to be paid to the kin of the deceased, as well as a fine based on the victim’s honour-price which was distributed to both the maternal and paternal kin of the deceased. This means that if a bóaire was killed, his kin received the 7 cumals as éraic as well as his

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96 *DIL* s.v. *senchléithe*: ‘(a) an old (i.e. hereditary) house, (b) a technical term for the hereditary serf or villein who holds a parcel of land in return for uncertain services and is *adscriptus glebae*, passing as an appurtenance should the land be alienated’.

97 Sometimes referred to as cró, especially in later Old Irish. *Cró* has been used in this manner in e.g. Kuno Meyer, ‘A Collation of *Críth Gablach* and a treatise on *cró* and *díbad*’, *Ériu* 1, 1904, pp. 209–15.

98 This fine goes to the victim’s derbfine, ‘true kin’, the descendants of the same great-grandfather, and thus this was also the kin-group which was liable to pay for the penalties incurred by a member of the derbfine.

99 *GEIL*, p. 126; Eska, *Cáin Lánamna*, p. 4.
honour-price of 5 sêts. Calculating these values in milch cows, a common unit of value, the éraic was 21 milch cows and the honour-price 2 ½ milch cows.\textsuperscript{100} This shows how expensive illegal killing could be for a kin-group, especially if the victim is of high rank. In the example discussed here the victim is only of bóaire rank, a relatively low rank compared to the different ranks of lords. In the case of lords or any member of the nemed class, the fine would increase drastically. If the kin was unwilling or unable to pay for the offence of one of its members, the victim’s kin can either hold the perpetrator captive until a payment is made, or keep him as a slave, sell him as a slave, or even put him to death without any further penalties.\textsuperscript{101} For the killing of a woman, her honour-price would normally be half that of her husband, but since it was the honour-price of the victim’s superior which was to be paid, it would be her husband’s honour-price the perpetrator and his kin had to pay in addition to the éraic.

1.3.7. Sick-maintenance.
In the cases of a person being injured but not killed, there was a different provision in the laws, called sick-maintenance, or folog n-othrusa,\textsuperscript{102} which is dealt with in the law text Bretha Crólige, ‘judgements on blood-lyings’. When a person was illegally injured, he\textsuperscript{103} was first brought to his own home for a period of nine days. If the injured party died during these nine days, the culprit owed the kin of the deceased the full penalties for illegal killing. However, if the injured person was still alive after the nine days, he is first examined by a physician. If he no longer needs nursing, the culprit only pays for any lasting injuries. If the physician believes that he is not likely to survive, the culprit must pay the steep fine of crólige báis, lit. ‘blood-lying of death’. If the physician thinks he is likely to survive, but will

\begin{itemize}
\item \textsuperscript{100} These figures are based on the table of the units of currency found in GEIL, p. xxiii.
\item \textsuperscript{101} GEIL, pp. 126–7; Eska, Cán Lánamna, p. 4.
\item \textsuperscript{102} Sometimes referred to only as othrus. DIL s.v. othrus: ‘(b) as law-term sick-maintenance or provision made for a wounded or disabled person by the causer of the injury: the orig. expression being folach (fulach) n-othrusa’.
\item \textsuperscript{103} Or she, the rules were the same for both sexes. For simplicity, I will refer to the injured party as a man.
\end{itemize}
need further nursing, this is when the sick-maintenance starts. The culprit must pay for all costs during the time the injured party is away on sick-maintenance, including the medical expenses, the food for the injured party and for the accompanying retinue\textsuperscript{104} and for all the expenses for the hired worker who would be doing the regular work of the victim. This legal remedy also applied to women. \textit{BC} §3 states that:

> In the assessment of blood-lying his wife has equal \textit{d ire} with each class [of husband] in the case of every lawful couple. Half the \textit{d ire} for blood-lying due to every lawful union [is payable] to every unlawful union.\textsuperscript{105}

From this paragraph it seems like a woman would receive equal \textit{d ire}\textsuperscript{106} as her husband. This has, however, been glossed ‘half of what is due to every man is fixed for his wife after she has been forced into blood-lying’,\textsuperscript{107} and follows the general rule that a wife will have half the honour-price of her husband. Later in the same tract, in §36, it is stated that every woman on sick-maintenance ‘is entitled to half the number’\textsuperscript{108} of retinue according to her husband’s rank.\textsuperscript{109} There are another eleven paragraphs\textsuperscript{110} which discuss the rules regarding women on sick-maintenance, which strongly suggests that the issue of women on sick-maintenance was seen as a difficult topic for the author of the tract. Two of these paragraphs\textsuperscript{111} deal with the sick-maintenance of unmarried women, who were paid ‘honour-price according

\textsuperscript{104} The size of the accompanying retinue differed depending on the status of the victim.

\textsuperscript{105} Binchy, ‘Bretha Crólige’, p. 7.

\textsuperscript{106} \textit{DIL} s.v. \textit{d ire}: ‘(a) honour-price, (b) penalty, mulct, payment’.

\textsuperscript{107} Binchy, ‘Bretha Crólige’, p. 7.

\textsuperscript{108} Binchy, ‘Bretha Crólige’, p. 29.

\textsuperscript{109} This mirrors the rule in \textit{CL} stating that a woman ‘entertains half the number of the husband in accordance with the status of the wife’s spouse’. (Eska, \textit{Cáin Lánamnna}, p. 215 \textit{CL} §25 = Thurneysen/O Corráin §24.) For more information, see Chapter 2 Women and Property.

\textsuperscript{110} \textit{BC} §§ 30–40.

\textsuperscript{111} \textit{BC} §§ 33 and 35.
to her worth and her property just as a man entitled to nursing [fee] is paid according to Irish law'.  

BC §38 states that:

Most difficult in the judgement of sick-maintenance in Irish law is the barring of procreation if it occur in the proper periods [suitable for procreation]; for it is one of the oaths which are sworn by women in Irish law that their proper periods have come to them.

The author of the tract found this such a difficult part of the law that he dedicated three full paragraphs on the subject. The barring of procreation, *airiadad comperta*, caused for an extra fine for the culprit to compensate for the victim not being able to procreate while he was away on sick-maintenance, or if the wife was on sick-maintenance. In addition to the laws regarding women on sick-maintenance and the barring of procreation, there is also a paragraph on the three persons ‘whom their women-folk accompany on sick-maintenance’. It is clear from the paragraph that these persons needed their women with them on sick-maintenance, as they are the ‘man who is accused of excess lust, a constant sinner’ and ‘the mother of every child at the breast’. Kelly points out that BC §42 explains that any injury which is not so severe as to incapacitate a person from his or her duties will not entail a right to sick-maintenance, only the appropriate *díre*.

### 1.3.8. Marriage.

It is not only rank that comes up regularly in the law texts, marriages, or certain aspects of marriage, appear in many tracts as well. In the different

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113 Binchy, ‘Bretha Crólige’, p. 31. For further information on female evidence, see 1.3.11. Female Evidence.


115 BC §29.

law texts it is often stated what a husband or a wife is entitled to, such as the 
aforementioned rules in BC where it is stated which men are to be 
accompanied by their ‘women-folk’ on sick-maintenance,\textsuperscript{117} and how big 
the retinue of a wife brought away on sick-maintenance could be.\textsuperscript{118} For 
women, their entitlements are generally a fraction of that of their husband, 
just as their honour-price was a fraction of that of their husbands. Because 
early Irish society was polygynous, it is important to examine the different 
types of marriages.\textsuperscript{119} The main text on marriages is \textit{Cáin Lánamna}, which 
is a part of the \textit{Senchas Már}.\textsuperscript{120} The text mentions 10 types of sexual unions, 
and discusses the details regarding nine of the unions. Three of the unions 
are seen as the most honourable marriages: \textit{lánamnas comthinchuir} ‘the 
union of mutual contribution’,\textsuperscript{121} \textit{lánamnas mná for ferthinchur} ‘the union 
of a woman on man-contribution’,\textsuperscript{122} and \textit{lánamnas fir for bantinchur co 
fognam} ‘the union of a man on woman-contribution with service’.\textsuperscript{123} These 
unions are bound by sureties, and are seen as binding contracts. The groom 
gives the bride’s father or other guardian a \textit{coibche}, ‘bride-price’,\textsuperscript{124} parts of 
which will be given to the bride as part of her contribution. This percentage 
varies depending on the number of times the bride has been married 
before.\textsuperscript{125}

\textsuperscript{117} BC §42.
\textsuperscript{118} BC §36.
\textsuperscript{119} For more information on marriages, see Chapter 2 Women and Property and Chapter 3 Banchomarbæ.
\textsuperscript{120} For more information on \textit{Cáin Lánamna}, see 1.3. Legal Introduction above and Chapter 2 Women and Property.
\textsuperscript{121} For more information, see 2.5. \textit{Lánamnas comthinchuir}.
\textsuperscript{122} For more information, see 2.6. \textit{Lánamnas mná for ferthinchur}.
\textsuperscript{123} For more information, see 3.4. \textit{Lánamnas fir for bantinchur co fognam}.
\textsuperscript{124} This is the terminology often used in the law texts, in literature the terms \textit{tinnscra} and \textit{tochra} are generally used, cf. \textit{GEIL} p. 72.
\textsuperscript{125} \textit{GEIL}, p. 72; cf. 2.4. Unions by betrothal.
1.3.9. Divorce.

The main subject of *CL*, though dealing with marriages, is divorce, and more importantly: the movement of property in case of a divorce.\(^{126}\) The tract discusses the percentages of the different types of produce each partner will receive in case of a divorce, based on the principles of a land-third, cattle-third and labour-third. The percentages given to each spouse differ depending on the type of union, mostly based on the amounts of land and cattle each spouse brought into the union, but also based on the amount of labour each of the spouses have put into the union. The basic rule is that whatever each spouse brought into the union is also what they will bring out of the union, and the surplus from the union will be divided depending on the labour and type of produce is in question.

1.3.10. Inheritance.

One of the issues that arises in *CL* is the question of women’s inheritance. The laws state that a woman was not allowed to inherit land from her parents, only moveables, while the sons would inherit the land and divide it between themselves. The division of the shares of *fintiu* was done by the youngest son, and the eldest son would start choosing his share, the second eldest chose second, and so on, so it was in the youngest son’s interest to divide the shares as equally as possible.\(^{127}\) In the case of a father dying without sons, his daughter or daughters were entitled to inherit his land, but only as a life-interest. Thus each of them became a *banchomarbae*, ‘female heir’. Whether they, if there were more than one daughter, would divide the land in the same fashion as the sons is not stated, but it is likely. For simplicity of illustration, I have considered the case of only one daughter to inherit a life-interest in land. At the time of her death, the land would revert back to her father’s kin, and even though she be married at the time of her death, her spouse and sons would not inherit any part of this property.

\(^{126}\) Eska, *Cáin Lánamna*, p. 21.

\(^{127}\) GEIL, p. 102.
Binchy\textsuperscript{128} understands the lines in stanza (xii)\textsuperscript{129} of the Kinship Poem\textsuperscript{130} to mean that if the father of a \textit{banchomarbae}'s sons was ‘near in kinship’, i.e. a member of the same \textit{fine} as the mother, her sons would be in line to inherit the family estate, the \textit{fintiu}. Thus, if the \textit{banchomarbae} married someone within her own kin-group, i.e. her own \textit{derbfine}, who was in line to inherit a part of the \textit{fintiu} upon her death, her sons would be able to inherit the relevant portion of the kin-land, otherwise they were left with nothing.\textsuperscript{131} The glosses to stanza (xii) mention that ‘if it be ”land of hand and thigh”\textsuperscript{132} to the mother’\textsuperscript{133} the sons are allowed to take a part of it, since it is not a part of the \textit{fintiu}, but rather personally acquired land.\textsuperscript{134}

**1.3.11. Female evidence.**

The profession, rank and sex of any person being a part of a law case was of crucial legal significance. Just like an offence against a person of high rank entailed higher penalties than an offence against a person of lower rank, so was the oath of a person of high rank seen as more valid than that of a person of low rank: the oath of a person of high rank outweighs the oath of a person of low rank. Women were normally not allowed to act as witnesses, nor were their oaths seen as valid except in certain circumstances. The sources agree that female evidence is invalid and should not be trusted, and one glossator describes \textit{banfiadnaise}, ‘female testimony’, as \textit{ecoitenn eisinruic}, ‘biased and dishonest’.\textsuperscript{135} However, a woman’s oath was accepted regarding the paternity of her child if she was in danger of death at

\textsuperscript{128} Binchy, SEIL, p. 183.

\textsuperscript{129} Dillon, SEIL, p. 150.

\textsuperscript{130} SEIL (ed. and transl. by Dillon), pp. 135–59. See EIWK, pp. 516–19 for a new translation by Prof. Charles-Edwards. For more information, see 7.2. Property as inheritance to a woman.

\textsuperscript{131} GEIL, pp. 104–5; EIWK, pp. 82–7; Binchy, SEIL, pp. 183–4; Eska, C\’ain L\’anamna, p. 11; EIF, p. 416.

\textsuperscript{132} For more information on the ‘land of hand and thigh’, see 3.5.1. \textit{Orbae cruib n\’o sliasta}, 4.3.3. ‘Women in general’ and 7.3.1.1. The Kinship Poem.

\textsuperscript{133} Dillon, SEIL, p. 150.

\textsuperscript{134} For more information, see 3.5.1. \textit{Orbae cruib n\’o sliasta} and 7.3.2. The distribution of a woman’s personal property.

\textsuperscript{135} CIH 45.11; GEIL, p. 207.
childbirth. Female evidence was also regarded valid in case of a woman in religious orders testifying against a cleric, and it was a necessity regarding sexual matters, especially concerning the consummation of a marriage and issues regarding procreation. That a female oath is seen as evidence in these matters is specifically stated in for example Bretha Crólige which includes the extra fine for the barring of procreation, in which a woman needs to swear an oath that her proper period of fertility has come to her.

1.3.12. Legal entry.

In certain circumstances female testimony was even seen as necessary, such as in the case of bantellach, ‘female legal entry’, in which the text states that for the legal procedure to be performed by the rules, a woman had to bring a certain number of female witnesses, the number of which depended on which part of the procedure she was performing. This legal procedure was performed when a woman wanted to claim kin-land she was entitled to by hereditary right, but which was occupied by someone else. It was a ritualistic performance, which entailed many separate steps which had to be performed in the correct manner in order for the claim to become valid.

1.3.13. Distraint.

The legal procedure of distraint was carried out in a similar manner. This was not performed to claim land, but rather to claim the payment owed for a contract or lending, which had not been paid. In this procedure it was the defendant’s moveables, usually cattle, which were distrainted. Distraint, like

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137 Eska, Cáin Lánamna, p. 11; GEIL, p. 207; cf. CIH 2197.5–6.

138 GEIL, p. 207; Eska, Cáin Lánamna, p. 11; Kelly, 'The Place of Women in Early Irish Society, with Special Reference to the Law of Marriage', pp. 170–1.

139 For more information on sick-maintenance, see 1.3.7. Sick-maintenance above.

140 For more information, see 5.3. Legal entry for women.

141 CIH 207.22–209.31; GEIL, 207. For more information on female legal entry, see Chapter 5 Bantellach.
legal entry, consisted of many small ritualistic steps which had to be performed in a correct order and manner for the claim to be valid. There were five different types of distraint, which included notices and delays of either one, two, three, five or ten days. For women the delays were always two days, and thus the procedure was called *athgabál aile*, ‘distraint with a two-day stay’.

1.3.13.1 Fasting.

Regardless of the gender or rank of the claimant, this procedure could not be performed against someone of *nemed*-status because of their high rank. Instead, the practice of fasting, *troscod*, was used. Fasting was used for the same reasons as distraint, the main difference was the high status of the defendant. Just as distraint was a means of enforcing a claim against someone, so fasting was used to coerce the defendant into conceding to justice.

There is only a short section regarding fasting in the text on distraint, but it gives enough information to understand the basic principles of the procedure: the fast seems to have taken place outside the defendant’s house, and lasted from sundown to sunrise until the defendant agreed to submit the case to arbitration or conceded to justice. This means that the fast is not an equivalent to a hunger strike, instead the claimant missed the main meal of the day until the defendant gave a pledge or a guarantee that the case would be solved. If the defendant ate while the claimant was still fasting without having made a guarantee that he will concede to justice, he had to pay twice as much to the defendant as he originally owed. If the claimant continued the fast after the defendant had made a guarantee to settle the case, the case automatically lapses.

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142 For more information on distraint, see Chapter 4 *Athgabál aile*.

143 *GEIL*, p. 182; Eska, *Cáin Lánamna*, p. 12.

144 *CIH* 365.5–367.7.

145 *Di Chetharslicht Athgabálæ*, ‘on the four sections of distraint’, found in *CIH* 352.25–422.36; 1438.36–1465.27; 1723.11–1755.16. For more information, see *GEIL*, p. 279 App. 1 Text 66.

2. Women and Property.

2.1. Introduction.

There have been made exaggerated claims of a woman’s legal position in early Irish society, many of which seem to derive from the position enjoyed by certain high-status women in the early Irish literature. Although most of the claims in the literature are far from the maxims of the legal texts, some texts discuss the law as it is found in the law tracts. For this reason, a non-legal text has to be briefly examined: the introduction to the Book of Leinster recension of Táin Bó Cuailnge.\(^{147}\) This recension begins with the so-called ‘Pillow-Talk’ between king Ailill and queen Medb of Crúachu. Queen Medb is a perfect example of a woman of great status in the literary tradition, and therefore an example of how the literature could give a distorted view of women’s legal position in early Irish society. She is clearly seen as a woman of high status who is able to make decisions of her own instead of being dependent upon a guardian the way women normally were in the laws. ‘The Pillow-Talk’ begins with the king and queen having a conversation while getting ready for their royal bed. The result of this conversation is a discussion about their respective wealth.

‘In truth, woman,’ said Ailill, ‘she is a well-off woman who is the wife of a nobleman.’ ‘Why do you think so?’ ‘I think so,’ said Ailill, ‘because you are better off today than when I married you.’\(^{148}\)

This statement creates the great debacle with which the narrative of TBC is concerned. Queen Medb disagrees with Ailill and argues that she was doing very well for herself before she married Ailill; she was the ‘noblest and worthiest’\(^{149}\) of her sisters, and hence she was the one to receive the kingship of Crúachu as inheritance from her father, a legally almost

\(^{147}\) Táin Bó Cuailnge will henceforth be referred to as TBC.


\(^{149}\) ibid.
impossible event. Ailill replies with another legal impossibility: that he inherited his kingship through his mother. The discussion ends up with Medb and Ailill getting out of bed to count their respective wealth. They bring all their possessions outside to the courtyard. They have the same value of everything, from their least valuable possessions, such as their wooden cups and washing-basins, to their most valued possessions, including their treasures of gold and their garments, until they start counting the cattle.

They were counted and reckoned and recognised, and they were of equal size and equal number. But among Ailill’s cows there was a special bull. He had been a calf of one of Medb’s cows, and his name was Finnbennach. But he deemed it unworthy of him to be counted as a woman’s property, so he went and took his place among the king’s cows.

Medb is clearly very displeased when she realises that Ailill has a possession more valuable than she has, and ‘it was to Medb as if she owned not a penny of possessions since she had not a bull as great as that among her kine’. One of her men informs her that there is a bull the equal of Finnbennach in Ulster, so Medb sends messengers to retrieve this bull, the Donn Cuailnge, the brown bull of Cooley. When the owner of Donn Cuailnge, Dáire Mac Fiachna, refuses to send the bull back to Medb in Crúachu, the plot of TBC has commenced.

While ‘The Pillow-talk’ has clear references to the early Irish legal system, it cannot be taken as a literal understanding of the laws. Ailill tries to suggest that Medb is a wife in a ‘union of a woman on man-

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150 See discussion below. For further information on female inheritance, see Chapter 3 *Banchomarbae*.


152 O’Rahilly, p. 139.

153 ibid.
contribution’, while Medb believes that Ailill is the husband of a ‘union of a man on woman-contribution’, but because of the equal contribution of both parties, they are, in fact, equal partners of a ‘union of mutual contribution’. These three types of marriages were the most respected marriages in the early Irish legal system.

2.2. Women’s legal status.
The reality in early Irish law was that women were normally regarded as *báeth*, ‘legally incompetent’ or ‘senseless’, alongside the child, the son of a living father (*mac béo-athar*), the insane person (*mer, drúth, dásachtach*), the slave (*mug or cumal*) and the unransomed captive (*cimbid*). This absolute dependency is outlined in §62 of *Córus Béscnai*:

\[
\text{Ni crie di báethaib do-choisin la Féniu: di mnai, di chimbid, di mug, di chumail, di manach, di mac béo-athar, di deorad, di tháid.}
\]

You should not buy from the ‘foolish’ persons that exist according to Irish law: from a woman, from a forfeit person, from a male slave, from a female slave, from a monastic tenant, from the son of a living father, from an outlander, from a thief.

There is also evidence found in the Triads showing that women are not allowed to make contracts:

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154 For more information, see 2.6. *Lánamnas mná for ferthinchar* below.

155 For more information, see 3.4. *Lánamnas fir for bantinchur co fognam* below.

156 For more information, see 1.3. Legal Introduction above.

157 McLeod, *EICL*, p. 59, has normalised this paragraph from *CIH* 536.23 (≈*AL* iii 58.6–8), cf. *CIH* 2123.30.

Three contracts that are reversed by the decision of a judge: the contracts of a woman, of a son, of a cottar.\textsuperscript{159}

Three that are incapable of special contracts: a son whose father is alive, a betrothed woman, the serf of a chief.\textsuperscript{160}

These persons were generally incapable of making any legal decisions on their own behalf, but were dependent on a guardian or superior. Who the guardian or superior was depended on which of the aforementioned persons was in question. In the case of the woman the guardian changed depending on which part of her life span she was in. Thus this person was either the husband, father, son, or head of kin, and the guardian was responsible for every legal decision having to do with the woman:

\begin{quote}
Adagair a athair imbe ingen. Adagair a cetmuinter imbi be cetmuintere. Adagairet a mmecc imbi be clainne. Adagair fine imbi be fine adagair eclair imbi be eclairse. Ni tualain reicce na creice na cuir na cuinduruda sech oen a chenn acht tabairt bes techta d’oen a cenn cocur dichill.\textsuperscript{161}
\end{quote}

Her father watches over her when she is a girl; her prime husband watches over her when she is the wife of a prime husband; her sons watch over her when she is a [widowed, divorced etc.] woman of

\begin{footnotes}
\footnotetext[159]{Meyer, \textit{The Triads of Ireland}, p. 20, §150.}
\footnotetext[160]{ibid., p. 21.}
\footnotetext[161]{ibid., p. 20, §151.}
\footnotetext[162]{ibid., p. 21.}
\footnotetext[163]{\textit{CIH} 443.30–444.6 = Dire-text §38; cf. \textit{EICL}, p. 71.}
\end{footnotes}
children; the kin watches over her when she is a woman [lacking father or husband] of the kin; the church watches over her when she is a woman of the church. She is not capable of sale nor of purchase nor of contract nor of bargain without one of her guardians, except for a conveyance which is proper for one of her guardians [and which she undertakes as agent] upon consultation [and] without neglect.\textsuperscript{164}

\textbf{2.3. Cáin Lánamna.}

As many rules have their exceptions, so also with the laws regarding women. Some of these exceptions have been dealt with in \textit{CL}.\textsuperscript{165} \textit{CL} was written circa A.D. 700,\textsuperscript{166} and is the most extensive law tract on marriage and divorce in Medieval Ireland.\textsuperscript{167} The full text is found in one manuscript only,\textsuperscript{168} while parts of the text are found in two other manuscripts.\textsuperscript{169} The glossed text is found in \textit{CIH} 502.7–519.35.\textsuperscript{170}

\textit{CL} deals with the ‘full couples’ in the early Irish legal system. It briefly mentions the eight main couples in the society, from the most public sphere, such as the Church and its tenantry, to the most private sphere, such

\begin{flushright}
\begin{footnotesize}
\addcontentsline{toc}{footnote}{\textsuperscript{164} EICL, p. 71; GEIL, p. 76; IR, pp. 35–6, Dire §38.}


\textsuperscript{166} Liam Breatnach has suggested an earlier date for the compilation of the \textit{Senchas Már} (\textit{CL} is a part of the first third of \textit{SM}) to ‘roughly between 660 and 680’ in ‘The early Irish Law Text \textit{Senchas Már} and the Question of its Date’, University of Cambridge: Retrographics Centre, 2011, p. 42.

\textsuperscript{167} Jaski, ‘Marriage Laws’, p. 21.

\textsuperscript{168} For a manuscript description of H 2.15A, see \textit{CCIH}, p. 4. This MS is now known as TCD 1316.

\textsuperscript{169} For a manuscript description of H 3.17 which contains part of the text with commentaries, see \textit{CCIH}, p. 7.\textit{This MS is now known as TCD 1336, and has been dated to no earlier than the sixteenth century. For a manuscript description of H 3.18, see \textit{CCIH}, pp. 4–5. TCD H 3.18, now known as TCD 1337, contains a small part of the text, briefly glossed. This fragment is important as it is a quite different transmission than the other two MSS, and the language in both the fragment and the glosses seem to be older than what you find in the other two MSS. Thurneysen, ‘Cáin Lánamna’, \textit{SEIL}, p. 1.}

\textsuperscript{170} cf. \textit{AL} ii 342–409.
\end{footnotesize}
\end{flushright}
as the husband and his wife.\textsuperscript{171} The main body of the text deals with the nine\textsuperscript{172} different types of sexual unions\textsuperscript{173} in early Irish law, which range from the most respected types of unions bound by betrothal, to the least respected unions, such as the union of rape or stealth, \textit{lánamnas éicne nó sleithe}, and the union of mockery, \textit{lánamnas genaige}.\textsuperscript{174} Instead of dealing with legally recognised unions in one text and illegal unions in another text, the early Irish lawyers chose to deal with all the sexual unions, and hence also the legal consequences of the dissolution of all sexual unions, in one legal tract. These consequences range from the division of property and assets at the dissolution of the more recognised unions, to the unions where the only thing the couple would share was the most natural consequence of a sexual union: a child. In the union of rape, the couple would necessarily not have any moveables or immoveables to divide, which the text also acknowledges: ‘Union by rape or stealth: they have no possessions except offspring’.\textsuperscript{175}

2.4. Unions by betrothal.

Some of the exceptions to the rule of women’s legal dependancy is found in this law tract. One exception is that of a woman who brought equal amounts of goods into a marriage, a type of marriage known as \textit{lánamnas}...
comthinchuir, ‘union of mutual contribution’. This is the first of the unions dealt with in \textit{CL}, and it is also the union which is given the most attention in the tract. According to Thurneysen, this was regarded as the normal type of marriage at the end of the seventh century, on the basis that this union has been dealt with in the most detail in \textit{CL}.\textsuperscript{176} The three main types of marriages were \textit{lánamnas comthinchuir}, ‘union of mutual contribution’, \textit{lánamnas mná for ferthinchur}, ‘union of a woman on man-contribution’, and \textit{lánamnas fir for bantinchur co fognam}, ‘union of a man on woman-contribution with service’.\textsuperscript{177} These unions were brought about by a procedure called \textit{airnaidm},\textsuperscript{178} ‘betrothal’. This was a formal contract which concluded with the exchange of property and the payment of coibche, ‘bride-price’.\textsuperscript{179} Though a percentage of the \textit{coibche} went to the woman’s guardian, it is clear from the law texts that the bride would also receive a portion of the bride-price:

\begin{quote}
Leath cacha .c.coibche cacha mna dia hagha fine, mad iar negaib a athar, mad he folo a chinaid; trian don tanisde, ceathramthu don treass coibche mad cumascaideach co ndeithbire. Ota suide, confoglaighear a comslechtaib feine ar ita cuit a coibchi cacha mna dia haga fine amail fil a cuit a nabad baidside. Is for sund dofeisidear breatha buain 7 ambuain lâ.\textsuperscript{180}
\end{quote}


\textsuperscript{177} These three sexual unions take up 27 of the 36 paragraphs of the tract, following Thurneysen’s original paragraph division from \textit{SEIL}, which Ó Corráin followed in his translation of \textit{CL} in \textit{The Field Day Anthology of Irish Writing iv}. Charlene Eska has divided the tract into 38 paragraphs in her edition of \textit{Cáin Lánamna}. The third of these unions, \textit{lánamnas fir for bantinchur co fognam}, will be looked at in detail in the next chapter on the banchomarbae.

\textsuperscript{178} The verbal noun of \textit{ar-naisc}, ‘binds’.


\textsuperscript{180} \textit{CIH} 222.28–223.5; \textit{AL} iv 62.9–16.
Half of each first bride-price to her head of kin, if it be after the death of her father, if it be he who sustains his liabilities, one-third of the second [bride-price], and one-fourth of the third bride-price. If she leaves with adequate reason, it [the bride-price] will be shared according to the divisions of the Féni, because there is a share of every woman’s bride-price to her head of kin, just as he has his share in the proscribing\(^{181}\) of a harlot. It is by this the judgements of the lawful and unlawful [women] are known amongst the Féni.\(^{182}\)

Hence a woman would receive a larger share of her *coibche* for each new marriage. If she, however, attempted to conceal from her kin the fact that she had received *coibche* from a man, she would lose her entire share.\(^{183}\)

### 2.5. Lánamnas comthinchuir.

In *lánamnas comthinchuir*\(^{184}\) both parties were expected to bring equal amounts of marriage goods into the union. The goods were not held in a common conjugal kitty, but rather in a ‘marriage pool’. Each partner was ultimately the owner of what they brought into the marriage, and neither was entitled to alienate any part of the other partner’s assets without their consent. This was true for every type of union, even if the goods supplied by each partner were not of equal amount, i.e. whatever a person brought into a union, regardless of their status or the value of the assets, would also be brought out of the union in case of a dissolution, *imscarad*, ‘mutual separation’.\(^{185}\) According to Thomas Charles-Edwards the ‘joint input’ the partners brought into the union were not land, but rather cattle.\(^{186}\) Since early Irish society was a patrilineal society, daughters were not entitled to

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\(^{181}\) cf. *DIL* s.v. *apthach*, (derivative of *apad*) ‘a proscribed person, someone no longer belonging to the kin’.

\(^{182}\) My translation, based on *AL* iv 63.12–23.

\(^{183}\) *GEIL*, p. 72; *CIH* 222.7–8; *AL* iv 60.10–2.

\(^{184}\) *CL* §§5–20.

\(^{185}\) This is also referred to as *scarad*, ‘the act of separating, parting’.

\(^{186}\) *EIWK*, pp. 465–8.
Thus, Charles-Edwards’ suggestion is likely to be correct, which implies that the land was contributed by the groom’s side, and the joint contribution consisted of moveables. Hence, the bride would bring cattle and other moveables, while the groom would bring approximately the equal amount of cattle to his bride as well as contributing the full share of land. These nuances seem to have often been neglected, and hence much of the available literature on the topic, such as Nancy Power’s article in *Studies in Early Irish law*, have statements such as:

In the first of these marriages (*comthinc[h]ur*) – the normal one in which both parties severally contributed land, cattle, and household equipment in accordance with the accepted scale …

### 2.5.1. Types of wives in the *airnaidm*-unions.

The wife’s contribution, or rather the contribution from the wife’s kin, meant that she would enjoy a certain amount of legal independence from her husband, the degree of which depended on the amount of goods she brought with her into the union, in which type of union she was a partner, and what type of wife she was. In the three main types of marriages, the wife would normally be regarded a ‘primary wife’, *cétmuinter*, but in *lánamnas comthinchuir*, if she was of equal rank and standing as her husband, she would be known as a ‘woman of condominium’, and hence enjoy a larger legal independency than what a regular *cétmuinter* would:

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187 For exceptions to this rule, see Chapter 3 *Banchomarbae* and Chapter 7 The passing of property.

188 Power, ‘Classes of women described in the *Senchas Már*, *SEIL*, pp. 81–108.

189 Power, *SEIL*, p. 82.

190 In *CL* §21, regarding *lánamnas mná for ferthinchur*, it seems that the wife was envisaged to be an *adaltrach*, but in *CL* §22 the wife is ‘a woman of proper primary wife-ship’. For more information, see 2.6.2. Types of wives in *lánamnas mná for ferthinchur*.
Lanamnas contincuir ma co tir 7 cetra 7 interb 7 mad comsair comtechta a cuma lanamnusa 7 is don ben-sin asherar be cuitcernsa.\textsuperscript{191}

Union of mutual contribution, if it be with land and livestock and household goods and if their equality of union be of equal independence [and] equal propriety; and it is this woman who is called the woman of condominium.\textsuperscript{192}

Because early Irish society was polygynous,\textsuperscript{193} if a man already had a cétmuinter but still chose to take a second wife, she would become a secondary wife, adaltrach, and thus be of a lower legal status than his cétmuinter. Nancy Power describes, in her article on ‘Classes of women described in Senchas Már’,\textsuperscript{194} the difference between a cétmuinter and a bé cuitchernsa by stating that:

...the latter is a much narrower term, limited by considerations of family, status and property, but every cétmuinter was a person of importance, who enjoyed a clearly defined standing with considerable privileges and responsibilities.\textsuperscript{195}

Jaski notes that the independent status and prestige of the bé cuitchernsa are reflected in a gloss on CL §5, which says that she is ben is comtigerna dó,\textsuperscript{196} ‘a woman who is co-ruler with him’.\textsuperscript{197}

\textsuperscript{191} CIH 505.35–36.
\textsuperscript{192} EICL, p. 73 = CL §5.
\textsuperscript{193} i.e. a man having more than one wife, not to be confused with polygamy in which both spouses can have multiple partners.
\textsuperscript{194} Power, SEIL, pp. 81–108.
\textsuperscript{195} Power, SEIL, p. 82.
\textsuperscript{196} CIH 506.9.
2.5.1.1. The *adaltrach*.

The term *adaltrach* has been translated very differently by the various scholars who have dealt with the issue of multiple marriages in early Irish society. The word derives from Latin *adultrix*, ‘adulteress’, but with the less derogatory meaning of a ‘second wife’. Some scholars have chosen to leave the word untranslated and render it in italics.\(^{198}\) Binchy translates it as ‘subordinate wife’.\(^{199}\) Charles-Edwards has translated *mac adaltraige airnadma* as ‘the son of a second wife who has been betrothed’.\(^{200}\) ‘Second wife, concubine’ is the translation found in the Index of Irish terms in *GEIL*,\(^{201}\) and ‘concubine’ is also the translation used in *EICL*\(^{202}\) and Kelly’s *The Place of Women in Early Irish Society, with Special Reference to the Law of Marriage*.\(^{203}\)

Many scholars are very inconsistent in their use of the term. Jaski, for example, most often renders *adaltrach* in italics, but he also discusses the ‘*adaltrach airnadma* (“betrothed concubine”)’,\(^{204}\) and points out that the literal meaning of the word is ‘adultress’,\(^{205}\) while he also describes her as ‘a (secondary) wife’.\(^{206}\) McAll is also inconsistent in his use of terminology, and has, in addition to *adaltrach*, also translations of the term such as *adaltrach urnadma*, ‘betrothed adulteress’,\(^{207}\) and he uses ‘secondary wife’ on multiple occasions.\(^{208}\) Ó Corráin states that ‘non-dowry marriage was also common in Ireland in the seventh and eighth centuries, but it would

\(^{198}\) e.g. Dillon, *SEIL*, p. 161 etc.; Power, *SEIL*, pp. 84–5 etc.; McAll, *WLW*, p. 14 etc.; Jaski, ‘Marriage Laws’, p. 38 etc.

\(^{199}\) Binchy, *SEIL*, p. 212 etc.

\(^{200}\) *EIWK*, p. 313.

\(^{201}\) *GEIL*, p. 301.

\(^{202}\) *EICL*, p. 75 etc.

\(^{203}\) Kelly, *The Place of Women in Early Irish Society, with Special Reference to the Law of Marriage*, p. 175 etc.

\(^{204}\) Jaski, ‘Marriage Laws’, p. 38.

\(^{205}\) ibid.

\(^{206}\) ibid.

\(^{207}\) McAll, *WLW*, p. 12.

\(^{208}\) ibid., p. 14 etc.
seem that it was used to acquire secondary wives, wives of low status and concubines’, 209 and thus makes use of multiple terms in the one statement. He continues to discuss the ‘concubine’, 210 but switches to ‘secondary wife’ a few pages later. 211 In another article 212 he describes the *adaltrach* as a ‘secondary wife [literally: adulteress]’, while in ‘Women in Early Irish Society’ he uses three separate terms on the same page: *adaltrach*, adulteress, and second wife. 213 In his translation of *CL*, he has translated a section of §23 ‘every secondary wife who comes ‘over the head’ of a *cétmuinter* is liable to penalty,’ 214 but adds an explanatory footnote which states that ‘… the text uses the pejorative term *adaltrach*, ‘adulteress’. 215

*Adaltrach* seems to most often be translated as ‘secondary wife’, and Power states that ‘the term *adaltrach* is used in reference to a secondary wife’ 216 and adds that ‘the words *ben aiteten ara naiscc fine* are glossed *ind adaltrach urnadhma* (“the contracted secondary wife”). 217 In the glossary to *EIWK*, the *adaltrach* is described as a ‘secondary wife’, 218 and Eska is consistent in her use of ‘secondary wife’. 219 Newlands has a full discussion on the terminology regarding the terminology of the different types of wives in her article ‘*Ban*: an Alternative Model of the Impact of Christian Conversion on Women in Irish Society’, 220 and states that

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209 Ó Corráin, ‘Marriage in Early Ireland’, p. 17.

210 ibid.

211 ibid., p. 19.

212 Ó Corráin, ‘Women and the Law in Early Ireland’, p. 49.


214 Ó Corráin, ‘*Cáin Lánamna*’, p. 25; cf. 2.6.3. Polygyny.

215 Ó Corráin, ‘*Cáin Lánamna*’, p. 25 n. 12.

216 Power, *SEIL*, p. 84.

217 ibid.

218 *EIWK*, p. 545.

219 Eska, *Cáin Lánamna*, p. 197 § 21 n. 4; p. 209 § 24 etc.

although we are used to accepting the idea of *adaltrach*, for example, as normal terminology for secondary wife, if we analyse the incidence of such terms, particularly those which are Latin-based and carry negative status connotations, they occur with overwhelming predominance in the commentaries and interlinear glosses.\textsuperscript{221}

And though she states that ‘it is a borrowed term with distinctly damning overtones, it is an alien concept to the society’,\textsuperscript{222} she does not discuss the actual meaning of the word in other matters than being another type of wife which is presented as an alternative or parallel to the *cétmuinter*.\textsuperscript{223}

McLeod discusses the term in connection to his discussion of *CL* §21:

The woman envisaged here is not only a dependent wife but also a ‘secondary wife’, a spouse of subordinate standing in the polygynous Irish household, and usually a woman of subordinate social rank to her husband and his ‘primary wife’. Such a concubine has an interest in her husband’s property only so far as it is basic to her relationship with him.\textsuperscript{224}

He therefore sums up most of the meanings and translations of the term in two sentences.

Thurneysen uses the German term *Nebenfrau* in his translation of *CL*,\textsuperscript{225} and again in his translations of the *Díre*-text,\textsuperscript{226} and though *Nebenfrau* can be translated as both ‘concubine’ and ‘secondary wife’, it

\textsuperscript{221} ibid., p. 430.

\textsuperscript{222} ibid., p. 434.

\textsuperscript{223} ibid.

\textsuperscript{224} EICL, pp. 74–5.

\textsuperscript{225} Thurneysen, SEIL, p. 49 etc.

\textsuperscript{226} IR, p. 27 §30 etc.
seems the English translation must in most cases be ‘secondary wife’, seeing as the *adaltrach* in *CL* is envisaged to have been betrothed.

The term was most definitely a pejorative term at first. The Church opposed the practice of polygyny, and the term must have originally come through the Christian Church due to its Latin origins. However, the law tracts do not seem to judge the *adaltrach* as an adulteress or a concubine. Concubinage was not necessary in early Irish society due to the practice of polygyny, but there was a need for terminology for the different types of wives. The *adaltrach* is clearly a wife of inferior status to the *cétmuinter*, but she is also regarded as a wife in some of the most honourable forms of marriage. In *CL* §21, *i.e. a secondary wife without children,*²²⁷ are found as a gloss on *ben airnadma*, *i.e. the betrothed woman.*²²⁹ Based on the betrothal of the *adaltrach* in most of the translations, and that, on the condition that she had sons, was considered one of the ‘four lawful women’,²³⁰ I choose to use the term ‘secondary wife’ or leave the word untranslated in my discussions of the relevant legal paragraphs. However, in translations from other works, or if I discuss the translation of another, I use the term they have made use of in their translation. I therefore have subchapters such as 6.4.4. The concubine without sons, since I am basing the discussion in Chapter Six on McLeod’s translation of *Di Astud Chor*, in which he translates *adaltrach* as ‘concubine’.

2.5.2. **Contractual capacity.**

The *cétmuinter*²³¹ in *lánamnas comthinchuir* had contractual independence to a certain degree. Neither she nor her husband were entitled to make a contract without the consent of the other, but there were some exceptions.

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²²⁷ *CIH* 512.27.


²²⁹ cf. Ó Corráin, ‘*Cáin Lánamna*’, p. 24: ‘the duly contracted wife.’

²³⁰ For more information, see Chapter 6 Women’s Contractual Capacity.

²³¹ Since she is a wife in *lánamnas comthinchuir*, she is not only considered a *cétmuinter*, but also a *bé cuitchernsa* as long as she fulfils the criteria regarding equal rank and standing before marriage.
They were both entitled to make certain advantageous contracts, *sochor*, without consulting the other. The aforementioned paragraph, i.e. *CL* §5, continues to expand on the different advantageous contracts:

*Nibi cor cor nechtar da lina sech araile inge curu lesaigter a cumtus. It e-side in so comul comuir fri coibne techta in tan nad bi occaib fadesin comobair trebta do luad. Fochraic tire tinol cua comull sollumum sil cethra do luad lanad treb intreib comul comsa creic neich dodaisib do toiscidib. Cach cunnrad cen dichell socur socubus iarna coir coitechta co nimaititiu i neoch crenar amail bes selb neich renar and.*

The contract of either of the two parties without the other is no contract, except contracts by which their joint economy is benefited. Those latter are these: a joint ploughing agreement with a proper kinsman to purchase ploughing equipment when they themselves do not have it. The renting of land. The collection of [food for] coshering [and for] the observation of festival days. Paying for the mating of livestock. The furnishing of households with household goods. A partnership agreement. The purchase of any item of necessaries which they lack. Every bargain [to be] without neglect, an advantageous contract, of good conscience in accordance with that which is right and proper for it, with mutual acknowledgement in regard to anything which is purchased in proportion to the ownership of anything alienated for it.

The following two paragraphs of *CL* add to the rules regarding advantageous and disadvantageous contracts:

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232 *CIH* 506.1–26. See *EICL*, pp. 72–3 for McLeod’s normalisation of the text.

233 *EICL*, p. 73 = *CL* §5.
Ni renar nach ainim dofeilce domaine i trebad cen cocur cen comairle cen comlogud ar ni coir etla cumtusa lanamnusa contincuir cen comlogud.\textsuperscript{234}

\textit{Aurail coimperta a soaici sochraití is cor each techta dober socomul a cumtus a comaitreib.}\textsuperscript{235}

\textit{CL} §6: Nothing the lack of which brings loss to the household is sold without consultation, without conferring, without mutual concession. For it is not correct to deplete the joint economy of a union of mutual contribution without mutual concession [or ‘set off’].

\textit{CL} §7: The commending of offspring into the good-fosterage of friends is a contract of every propriety which brings well-being to the joint economy of their cohabitation.\textsuperscript{236}

\subsection*{2.5.3. The similarities between the \textit{cétmuinter} and the \textit{mac béo-athar}.}

According to Neil McLeod,\textsuperscript{237} the list of these contracts ‘by which their joint economy is benefitted’\textsuperscript{238} is exceptionally close to the list of advantageous contracts for the ‘son of a living father’, \textit{mac béo-athar},\textsuperscript{239} who was also defined as \textit{báeth}, ‘legally incompetent, senseless’, in the early Irish legal system. He had not yet come into his inheritance, thus he did not have his share of the \textit{fintiu}, ‘kin-land’, and without land he was not considered to be completely independent from his father. Heptad 50 states:

There are seven contracts which the son of a living father makes without his father and which the father does not reverse against his son. Even though the father should not authorise them, they are

\begin{footnotes}
\item[234] \textit{CIH} 507.1–3. Thurneysen/Ó Corráin §6 = Eska §7.
\item[235] \textit{CIH} 507.10–11. Thurneysen/Ó Corráin §7 = Eska §8.
\item[236] Translation from \textit{EICL}, p. 73.
\item[237] ibid., p. 73.
\item[238] In this comparison he takes \textit{CL} §§5–7, as one list, and Heptad 50 as the second list.
\item[239] Heptad 50 = \textit{CIH} 45.17–46.18; \textit{AL} v 284,25–286,2; cf. \textit{EICL}, p. 70; \textit{GEIL}, p. 81.
\end{footnotes}
contracts [nevertheless]. The renting of land when there is no room on the land with the father. [Contracts required under] the regulation of neighbour-relations on the land in which he is acknowledged. The purchase of an article in relation to buying equipment for his holding to the extent that it is required in husbandry. The purchase of joints of meat for his house until there is an abundance for coshering. A joint ploughing agreement when he is not ploughing with [his] father. Fosterage fee with the addition of offspring. The proper bride-price for a primary wife of equal birth. For the benefit of those contracts is greater than the disadvantage.240

The contracts a mac béo-athar is entitled to make have also been stressed in Gűbretha Caratniad §7:

‘Rucus ráith ar macc mbéo-athar’.
‘Ba gó’, ar Conn.
‘Ba deithbir dam’, ol Caratnia, ‘ar ba crecc cétmuinter ; fochraic thíre’.241

‘I adjudged [that there could be] a paying surety for [the contracts of] the son of a living father’.
‘It was a false judgement’, said Conn.
‘It was appropriate for me [to give it]’, said Caratnia, ‘for it was a case of the purchase of a primary wife and the renting of land’.242

Though these two lists are not the exact same, there are many more similarities than differences. Both the cétmuinter and the mac béo-athar are entitled to rent land, agree to a joint ploughing contract, to pay the fosterage fee of their children,243 and organise food for coshering. While the

240 EICL, p. 70.
241 Normalised by McLeod from CIH 1582.5–6, 2193.5–6.
242 EICL, p. 70.
243 Is this perhaps meant as organising the fostering of the children, not paying for it?
cétmuinter could agree to a partnership contract and furnish the household with household goods, the mac béo-athar could agree to a contract with his neighbours, and purchase farming equipment.

The main differences between the two lists are that the mac béo-athar was entitled to contract a marriage with a cétmuinter,244 which the cétmuinter was not entitled to, clearly because she was already a married woman.245 On the other hand, the cétmuinter was entitled to pay for the mating of livestock, as well as purchasing all the necessities the household may be in lack of. Both the mac béo-athar and the cétmuinter were also entitled to impugn their guardian’s disadvantageous contracts, dochor; the former was entitled to protect his inheritance, i.e. he was entitled to impugn any contract his father made which would alienate any part of the fintiu, and the latter was entitled to dissolve the disadvantageous contracts of her spouse in order to protect their joint economy. Thus, the evidence implies that the mac béo-athar, a son yet to come into his inheritance, and the cétmuinter, a betrothed woman who had received coibche, were of approximately the same legal standing. Neither of them were completely independent, but neither of them were completely without contractual capacity of their own.

2.5.4. The rules regarding divorce in lánamnas comthinchuir.

CL deals mostly with this first union in which both partners contribute ‘equally’, and gives a clear idea of the role of either spouse in early Irish society through its rules on the division of assets in case of a dissolution of the union. CL §§9 and 10 explain the basic rules of a separation:

\[
Mad \ scarad \ cach \ scarad \ cen \ imdiupairt \ mad \ imtoga \ scartha \\
confodlat \ iar \ techta \ trian \ cach \ toraid \ do \ tir \ acht \ lamtorad \ trian \ do \\
cethra \ besa \ bunadas \ on \ innuide \ trian \ do \ urgnam \ confodlaither \ fo
\]

244 Note that Heptad 50 qualifies this contract to ‘a primary wife of equal birth’. For more information and a discussion on the importance of the partners being of equal status, see 2.6.2. Types of wives in lánamnas mná for ferthinchur.

245 It is important to remember that early Irish society was polygynous, not polyandrous or polygamous, hence only the man could have more than one spouse, not the woman.
If there is a separation, every separation is without mutual defrauding. If the separation is by mutual consent, they divide [their possessions] according to proscribed law. One-third of all produce [goes] to [the owner of the] land except handiwork, one-third of the cattle born during the marriage [goes] to [the owner of the] original stock from which they were born, one-third to [whomever did the] labor. It is divided according to the merit of each in regard to land and cattle and labor. If their conduct is equally good or if it is equally bad, it is in this way that they divide their thirds.

These paragraphs thus explain three basic principles of separation. Firstly, by specifically stating that there is a possibility of separation by mutual consent, the lawyer implies that there are ways of dissolving a union for grounds other than by mutual consent. Secondly, the proscribed law says that there is a threefold division of assets in case of a separation, that is: one-third to the owner of the land, one-third to the owner of the cattle, and one-third for the labour. As this union is called the ‘union of mutual contribution’, it is clear that these thirds will be divided further based on this threefold division. Thirdly, as the condition for this division is that it is only used if both partners behave equally good or equally bad, it means that there must be other ways to divide the assets upon a dissolution of the union than by the principle which is explained in the above paragraph.

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246 CIH 507.27–31.

247 AL ii 363 has this phrase as ‘if their property be equally good…’, which would imply the contribution of property from both sides. Eska’s translation makes much more sense, especially seen in conjunction with §13, cf. 2.5.4.4. The division of the labour-third.

248 Translation from Eska, Cúin Lánamna, p. 139. She has taken the two paragraphs of the earlier, original division of Thurneysen as one, i.e. §10.

249 For more information, see 2.5.4.4. The division of the labour-third.

250 Note, however, that this division occurs with all kinds of produce, except for handiwork.

251 For a discussion of §13, see 2.5.4.4. The division of the labour-third.
2.5.4.1. The division of the cattle’s produce.

It should come as no surprise to anyone familiar with early Irish law that the law is not as straightforward as it seems in §§ 9 and 10, and there is a further explanation of how the assets are divided in the subsequent paragraphs, the first of which is regarding the division of the cattle’s produce. Since the division of all assets is threefold between land, cattle, and labour, and the first two divisions are linked to the percentages of land and cattle the spouses brought into the union, it is clear that it is the labour-third of the cattle’s produce which is to be divided further in the following paragraph, i.e. §11:

\[\text{Trian nurgnuma innuda cethra confodlaither a tri trian do aithiuch tige trian do mnaí frisi mbi aithechus tige trian di urgnamtaib i.e. dia ugaire is de ata macslabra gaire.}\]

One-third of the labor of the cattle’s produce is divided into three: one-third to the master of the house, one-third to the woman who is the mistress of the house, one-third to the laborers, i.e. to the herders. *Mac-slabrae goire* comes from it.

The final clause of this paragraph, i.e. ‘*[m]ac-slabrae goire* comes from it’, has been completely left out of Donnchadh Ó Corráin’s translation. His view has also been shared by Thurneysen who believes it to be a later, erroneous insertion, and Eska briefly mentions this as a possibility in her footnote on the clause. She mentions that ‘it is difficult to understand what the last sentence is doing in this section of the text; it seems out of place’. Thurneysen, although he mentions the possibility of the clause

\begin{itemize}
  \item [252] CIH 508.7–9.
  \item [253] Translation from Eska, Cáin Lánamna, p. 143.
  \item [254] Ó Corráin, Cáin Lánamna, p. 24.
  \item [255] Eska, Cáin Lánamna, p. 143.
  \item [256] ibid.
\end{itemize}
being a later insertion, discusses the significance nonetheless, and states that:

Das kann man wohl nur so verstehen, dass die Kinder (Söhne), weil sie das Vieh hüten, das neuntel erhalten.  

Fergus Kelly, who does not discuss whether this is a later insertion or not, notes that the *mac-slabrae goire*, which is a gift in exchange for maintenance in old age, is a gift that can be given to not only a son, but also to a daughter or an adopted child. According to *Berrad Airechta* the *mac-slabrae goire* is one of three gifts made by a parent to a child, whether it be son or daughter or an adopted child. The other two gifts are ‘a gift of tears’ to assuage a child’s tears, and ‘a gift of love’. These three gifts are perceived as *ruidles*, and are completely immune from claim by anyone else. There are, however, legal limits to the amount one is allowed to give as such a gift.

The significance of the labour-third of the cattle’s produce being further divided into assigned thirds is that, depending on the amount of cattle or land the spouses originally brought into the union and the work they did during the marriage, their shares in the produce of the cattle can differ quite drastically.

Thurneysen discusses the possibilities of the division according to the commentary to MS B. The scribe takes the land to belong exclusively to the man, which seems more than likely to have been the standard legal

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258 *GEIL*, p. 105; p. 121; *CIH* 591.31–4; cf. *GEIL*, p. 80 n. 97 ‘The duty of goire may also extend to a daughter. *BB* §39 states that a son or a daughter who fails to look after a father or mother is classed as an élúdach ‘evader of the law’ and cannot be given protection, even by a high-ranking named (*CIH* 451.25)’.

259 Lit. ‘shearing of the court’, a long law text on suretyship, *CIH* 591.8–599.38.

260 *GEIL*, p. 121; *CIH* 591.31–4.

261 *DIL* s.v. *ruidles*: ‘that which is specially belonging to (someone), the peculiar property, right or characteristic (of a pers. or thing)’.


263 MS B = TCD 1336, previously known as H 3.17.
practice, and implies that the land-third from CL §10 would undoubtedly be the husband’s share. So too was the one-third of the labour-third, i.e. one-ninth of the whole of the cattle’s produce, to the man of the house, while, in this scenario from the commentary to MS B., the only fixed part for the woman was the one-third of the labour-third, i.e. one-ninth of the whole, to the ‘woman who is the mistress of the house’.

However, if the woman owned all the original cattle, bunad, and was also the person to hire and pay the labourers she would receive five-ninths of the cattle’s produce, while the husband would receive four-ninths. The woman would then have the cattle-third, the one-third of the labour-third to the ‘mistress of the house’, and the one-third of the labour-third ‘to the labourers’. But if the labourers belonged to the man, he would receive five-ninths and the wife four-ninths, since he would have the cattle-third, the one-ninth to the ‘master of the house’, and the one-third of the labour-third ‘to the labourers’.

If they brought equal amounts of cattle to the union and they both hired and paid the labourers, they would divide equally, i.e. each would receive four-and-a-half-ninths of the whole.

If all the original cattle belonged to the man, while the labourers belonged to the woman, she would only receive two-ninths, while her husband would receive seven-ninths.

If both the cattle and the labourers belonged to the man, his wife would only receive one-ninth, i.e. the third of the labour-third of the cattle’s produce ‘to the mistress of the house’, while he would receive as much as eight-ninths.

If he owned the cattle, but they both hired the labourers, the wife would receive one-and-a-half-ninths, i.e. one-sixth, and the husband would receive seven-and-a-half-ninths, i.e. five-sixths.

Furthermore, the sucking calves were to be distributed according to the above rules, but only when they were sold.265

\[ \text{264 cf. Ó Corráin, Cúin Lánamna, p. 24.} \]

\[ \text{265 Thurneysen, SEIL, p. 30.} \]
In other words, according to the commentator to MS B. a céitmuinter in a union of joint-contribution could receive anything between one-ninth and five-ninths depending on her original contribution to the union and whether or not she was in charge of hiring and paying the herders. However, this union was supposed to be of ‘mutual contribution’, hence it is not likely that the woman would not have brought any cattle to the union, and it is thus much more probable that she would receive a minimum of two-and-a-half-ninths of the whole of the cattle’s produce, i.e. the one-ninth to the ‘mistress of the house’, up to one-and-a-half-ninths from the cattle-third if she brought an equal amount of cattle as her husband, as well as a fraction of the one-ninth ‘to the labourers’ because of women’s close relationship with the labour of cattle.\textsuperscript{266}

2.5.4.2. The division of grain.

The commentary to B further says that if the wife is ‘a "great"-worker with property, she gets one-sixth of the grain’,\textsuperscript{267} but that she only gets one-ninth of the grain if she is ‘a "small"-worker with property’.\textsuperscript{268} If she, however, is:

\begin{itemize}
\item a "great"-worker without property, one-seventh of one-third of the labor, that is one twenty-first of all the grain, or one-seventh of one-half of one-third of it, that is one forty-second of all the grain, or her portion and the portion of the "small"-worker without property are identical, i.e. one-ninth. If she is a "small"-worker without property, she gets one-ninth of one-third of the labor, that is one twenty-seventh of all the grain, or one-seventh of one-ninth, i.e. one sixty-third of all the grain, or one-seventh of one-third of the labor according to Mac Samradáin.\textsuperscript{269}
\end{itemize}

\textsuperscript{266} cf. §12; for more information, see 2.5.4.3. The division of milk products.

\textsuperscript{267} Eska, \textit{Cáin Lánamna}, p. 145.

\textsuperscript{268} id.

\textsuperscript{269} id. Mac Samradáin is an unidentified person who appears in §§11 and 15 of CL, and he does not seem to have been mentioned by Bretnach in \textit{CCIH}.  

50
Eska notes that the use of the words márdéntaid, “'great'-worker”, and beccdéntaid, “'small'-worker”, implies that if the wife was a hard worker, she would be entitled to one-ninth of the profits, i.e. one-third of the labour-third of the cattle’s produce, even if she had not brought property into the union. Hence, not only does the amount of goods, both moveables and immoveables, brought into a union or the amount of responsibility each partner had, matter, but also the amount of labour each of the partners put into the farm, and this amount of labour could give each partner a higher entitlement to goods upon a dissolution of the union than what their original contribution would dictate, but of course, there is no guidance as to the procedure for judging this in the text.

2.5.4.3. The division of milk products.

The next paragraph on the division of milk products furthers this division between land, cattle and labour, and divides the labour-third into smaller fractions in the same fashion as done in the previous paragraph, but in this instance the glosses add an important piece of information regarding the women. The text states that the labour-third is to be divided into thirds, one-half of the first third goes to the wife who does the work, to which the glosses add that:

\[ i. \text{ seised loineda do mardentaidh, } \gamma \text{ mardentaid each bean a leith re lacht} \]  

\[ \text{i.e. one-sixth of the produce of the churn-dash for a 'great'-worker, and every woman is a 'great'-worker in regard to milk.} \]

From this gloss it is clear that the labour regarding milk was seen as work done by women, and that it was their responsibility, and hence a woman could not be a "small"-worker in regard to milk. This is even more clear when the rest of the paragraph is taken into consideration:

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270 CIH 508.21–22; cf. Eska, Cáin Lánamna, p. 150.

271 Eska, Cáin Lánamna, p. 151.
the other one-half of it [the first third of the labour-third\textsuperscript{272}] – of the one-half of one-third – for [whomever owns] the vessels; two-thirds of it – of the other one-half of it – for the master of the house, one-third to the farm-workers.\textsuperscript{273}

This means that the woman would get half of one-third, i.e. one-sixth, for the labour, and one-half of a half-third for owning the vessels,\textsuperscript{274} i.e. one-twelfth. The man of the house would get two-thirds of a half of a half-third, i.e. one-eighteenth, and the dairy-workers would receive one-third of a half of a half-third, i.e. one thirty-sixth. It is plausible that in this case the final third of a half-third to the dairy-workers is meant to go to the person who hired and paid the workers, not to the workers themselves.\textsuperscript{275} But this is not stated in either the text or the glosses, and unfortunately there is no commentary to this specific paragraph of the text. However, on the basis of the previous paragraph, I believe there is a strong possibility that the fraction given to the labourers is actually meant to be going to the person who hired and paid them.

\textbf{2.5.4.4. The division of the labour-third.}

The following paragraph, §13, is expanding on a piece of information that has been hinted at in one of the previous paragraphs:\textsuperscript{276}

\textsuperscript{272} My explanatory insertion, not a part of the translation by Eska.

\textsuperscript{273} Eska, \textit{Cáin Lánamna}, p. 151.

\textsuperscript{274} Though it is not specifically stated that the woman owned the vessels, this is a very likely scenario due to the higher share she is entitled to from the milk products, and because the vessels are likely to be included in the ‘female implements’ which are referred to in gloss 6 to \textit{CL} §32; cf. Eska, \textit{Cáin Lánamna}, p. 251.

\textsuperscript{275} cf. Ó Corráin, \textit{Cáin Lánamna}, p. 24, n. 4.

\textsuperscript{276} cf. \textit{CL} §10 in 2.5.4.1. The division of the cattle’s produce = Eska, \textit{Cáin Lánamna}, p. 139; Thurneysen, \textit{SEIL}, p. 28.
If either of the two behaves badly, the badly-behaved one’s share of labor is left with the well-behaved one, and the [portions] of land and cattle are not taken away.\(^{278}\)

\(^{277}\) CIH 508.29–30.

\(^{278}\) Eska, Cáin Lánamna, p. 155.
It is also worth noting that the glosses to MS A. inform the reader that ‘this is a section about the secondary wife and her spouse’, and that ‘the share of labor is forfeited from the secondary wife’, but seeing that it is only in the glosses that the *adaltrach*, ‘secondary wife’, has been mentioned, and that the commentary from source L adds that ‘if either of the two is guilty of misconduct, the badly-behaved one’s share of the labor is forfeited to the well-behaved one’, this could very well be a misunderstanding by the glossator.

2.5.4.5. The division of the salted meat.

The next two paragraphs of *CL*, i.e. §§14 and 15, continue to explain this division of different types of assets in case of a dissolution of the union. The land- and cattle-thirds of *lánamnas comthinchuir* are not mentioned after §10, so it is understood that the division the rest of the paragraphs are concerned with is the labour-third, while the land- and cattle-thirds are static. They are only divided further if both partners brought a share of land and/or cattle into the union: in that case, these thirds are divided according to the amount each partner originally had. As stated above in §§ 10 and 11, the labour-third is always further divided depending on the amount of work each of the partners have done. Hence, §14 is concerned with the division of the labour-third of the grain and salted meat:

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279 TCD 1316, previously H.2.15A, the only complete surviving copy of *CL*.

280 Eska, Cúin Lánamna, p. 155; cf. *CIH* 508.31: *i. sliocht adaltraighi γ a ceile in so*. Binchy notes that this gloss has been written midway between both pars.

281 Eska, Cúin Lánamna, p. 155; cf. *CIH* 508.32: *i. dilsi a cotach frithghnai on adultraidh*. This sentence is glossing the word ‘badly-behaved’, and implies that the *adaltraich* would necessarily be the badly-behaved. In the next gloss (on ‘cattle’) it is stated that ‘and she is not deprived of [her] portion of land and cattle’.

282 Eska, Cúin Lánamna, p. 49 explains that source L is a part of a digest, which in *CCIH*, 61 is listed as section 42 of digest B, corresponding to section 26 of digest C, and it is the 16th century MS Egerton 88. It only contains the line *ma ailed a lina bes anfoiltach, is dilis cuid hurfoghna an mifoltaigh don sofoltach* from *CL* (printed in *CIH* 1372.29–31), which is imbedded in a short extract stating that ‘no one dissolves another’s contract when he himself is unlawful’.

283 Eska, Cúin Lánamna, p. 155.
Trian urgnuma etha 7 sailli ranntair a tri i trian as do mnai frisi mbi ar 7 buain 7 crudh 7 biathad 7 methad acht methad for blicht it da trian i suidiu do mnai.²⁸⁴

Frithgnam erraig fri har 7 crudh da trian a dligid na mna as.²⁸⁵

One-third of the labor of the grain and salted meat is divided into three, i.e. one-third of it for the wife who attends to the ploughing and reaping and tending sties and feeding and fattening except fattening on milk: in that case the wife has two-thirds’.²⁸⁶

‘Spring work in regard to ploughing and tending sties, two-thirds of it is the wife’s legal entitlement.’²⁸⁷

Yet again, the wife’s work has been outlined clearly, stating that she is the one who attends to the cattle and pigs. This is especially obvious where it is said that the wife gets two-thirds of the labour-third, i.e. two-ninths of the whole, if the pigs have been fattened on milk, clearly showing that the wife was expected to deal with not only the cattle and their produce, but also the pigs. The glosses add that in the case of the feeding, this is ‘of the ploughmen and of the swineherds’;²⁸⁸ i.e. she is expected to prepare food for the workers. It is not specifically stated exactly what type of labour the husband does regarding grain and salted meat, but it is likely to be any other aspect of the work that has not been mentioned in this paragraph. Eska has divided the latter half of the paragraph into a separate paragraph in which spring work is discussed. According to her notes on spring work, frithgnam erraig can mean both ‘spring work’ as well as the ‘work of one spring’,²⁸⁹ which includes the months of February, March and April, i.e. the busiest months of the farm. This involves the lambing season, and also the months

²⁸⁴ CIH 509.1–3.
²⁸⁵ CIH 509.34.
²⁸⁶ Eska, Cáin Lánamna, p. 157. Eska has divided CL §14 into §§14 and 15.
²⁸⁷ Eska, Cáin Lánamna, p. 163 = Eska §15, Thurneysen’s latter half of §14.
²⁸⁸ ibid. p. 163.
²⁸⁹ See discussion below in 2.5.4.5.1. An Old Irish gloss on spring work.
in which ploughing and sowing would begin.\textsuperscript{290} It is clear from the paragraphs of CL which have been examined this far that women were involved in all of these activities.

2.5.4.5.1. An Old Irish gloss on spring work.

One of the glosses on this section needs to be examined closer. It is not found in the continuous copy of CL, but rather in an extract included in the Old Irish glossing of Senchas Már, found in CIH 903.25.\textsuperscript{291} This gloss has been discussed thoroughly in Breatnach’s article on ‘An Old Irish gloss on Cáin Lánamna’.\textsuperscript{292} He has restored it to read:

\begin{quote}
Ar óenerrach .i. dá trian nómith, ar ní roich ben co cenn téora mbliaidnae, .i. co toib trí coinnliu, a nnómath comlán.
\end{quote}

Ploughing. A single spring, i.e. two-thirds of a ninth, for a wife does not get the full ninth until the end of three years, i.e. until she reaps three [growths of corn-] stalks.\textsuperscript{293}

Thurneysen commented on the aforementioned gloss, that it was ‘mir unverständlich’.\textsuperscript{294} Breatnach explains that Thurneysen must have misread the minims of coinnliu, having read -\textit{inn-} as -\textit{m-} with a suspension-stroke. Neither does Breatnach agree with Thurneysen’s translation of the phrase \textit{frithgnam erraig}, ‘Für (blosse) Frühlingsarbeit’,\textsuperscript{295} which is explained as a woman who is only doing the necessary work during spring, but not during the autumn over any number of years. Breatnach takes the phrase to mean

\begin{itemize}
\item \textsuperscript{290}Eska, Cáin Lánamna, p. 163.
\item \textsuperscript{291}CIH 903.25–7: \textit{Ar oenerrach .i. da trian nómith, ar ní roich ben co cenn .iii.a mbliaidhu, .i. co toib trí coinnliu, a nnómath comlán.}
\item \textsuperscript{293}ibid. p. 156.
\item \textsuperscript{294}Thurneysen, \textit{SEIL}, p. 33; p. 33 n. 1.
\item \textsuperscript{295}‘for mere springwork’; see Thurneysen, \textit{SEIL}, p. 33.
\end{itemize}
'the work of one spring’, which would refer to the possibility of a husband and wife separating before the end of a full year. He then states that: ‘It is doubtless such a case that the glossator in OGSM\textsuperscript{296} has in mind’.\textsuperscript{297} There are plentiful indications that early Irish law required a husband and a wife to be together for a certain amount of time before the wife was entitled to her bride-price. Both \textit{Gúbretha Caratniad} §44\textsuperscript{298} and an unidentified Old Irish law text\textsuperscript{299} mention that a wife is not entitled to her coibche if she leaves her husband before a certain period of time, but neither of the texts specifies that period. \textit{CIH} 2198.26 says:

\begin{quote}[	extit{ut est}]: Nascar a coibche do mnaí co n-ernadmaim ind fir bes díles dí acht ro ana co áge a òcce fria <..<>a òarum.\textsuperscript{300}
\end{quote}

Her bride-price is bound by surety for a woman on the occasion of the betrothall of the man who will be hers, provided that she remain until the due date of its payment.\textsuperscript{301}

There is also later evidence of a proper period of time, but in this case the proper period of time is regarding the conception of children:

In their marriages, especially in those counties where cattle abound, the parents and friends of each met on a side of a hill [...] about midway in between both dwellings; if agreement ensue, they drink the agreement bottle [...] for payment of the portion, which generally is a determinate number of cows [...]... nevertheless caution is taken from the bridegroom on the day of delivery for restitution of the

\textsuperscript{296} The Old Irish glossing of \textit{Senchas Már}, with its fullest copy in \textit{CIH} 874.35–924.31.

\textsuperscript{297} Breatnach, ‘Varia’, p. 156.


\textsuperscript{299} Breatnach, ‘Varia’, p. 157.

\textsuperscript{300} Normalised by Breatnach from \textit{CIH} 2198.26 in ‘Varia’, p. 157.

\textsuperscript{301} ibid.
cattle, in case the bride die childless within a certain day limited by agreement, and in this case every man’s own beast is restored.302

One can argue that the idea of a proper period of time can even be found in the Heptads on women’s grounds for divorce. Heptad 52 mentions the seven women in early Irish law, who though bound by sureties, can separate from their husband whatever day they like, and still retain their coibche.303 Breatnach takes this to mean that the offences on the part of the husband are so serious that the wife does not have to stay the appropriate period in order to receive her bride-price.304 These women include:

a woman of whom her husband circulating a false story; a woman upon whom her husband gives circulation to a satire until she is laughed at; a woman upon whom a cheek-blemish is inflicted; a woman who is sent back and repudiated for another; a woman who is cheated of bed-rites, so that her husband prefers to lie with servant-boys when it was not necessary for him; a woman to whom her mate has administered a philtre when entreating her, so that he brings her to fornication; a woman who is not able to receive her desire in the community of marriage.305

These women are indeed the victims of offences which were seen as very serious in early Irish law. All of the above grounds, but the first two in particular, are regarding honour. There are also grounds regarding a lasting blemish, being the victim of potions, and regarding procreation, which was a particularly important outcome of marriage.


303 CIH 47.21–48.22 AL v, 292.16–27. Heptads 3 and 52 give the 14 grounds for divorce for a woman.


305 Translation from AL v, 293.
According to Breatnach, a suggested length of time for the proper period is found in a text he has called a Tract on Marriage and Divorce which states that:

_Día téora mbliadnae is deithbir in choibche._

At the end of three years the bride-price is fitting
or At the end of three years it is fitting to … the bride-price.

In the commentary on Heptad 3, which gives the final seven grounds for divorce for a woman, there is a similar period of time granted for accumulating property in case of the dissolution of a union:

_Mása tochus ro freiscred a ndliged lānamnus aca, is [rē] frepta tēoru mbliadna re hīarrugh tochusa._

If it is material goods which have been exhausted in the rightful state of marriage, there is to be a remedial period of three years for seeking material goods.

This suggested time frame can be compared to the Middle Welsh law texts, though the suggested three years of the Old Irish legal texts is quite a lot shorter than the seven years a union had to last in the Welsh laws for a woman to receive her half of the marriage wealth; before the seven years she would only be entitled to her _agweddi._ The Welsh law of the 13th

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307 Breatnach, ‘Varia’, p. 158. I am following his suggested restoration of the phrase which in _CIH_ 145.27 is _Dia tora bliadan is deithbir in choibche._

308 Ibid.

309 For more information on Heptad 52, see 2.5.4.5.1. An Old Irish gloss on spring work.

310 Breatnach, ‘Varia’, pp. 159–60; _CIH_ 1823.18–9.


312 See discussion of the term _agweddi/egweddi_ in _WLW_, pp. 187–8 and Chapter 8 The Welsh laws, esp. 8.3.1.3. _Agweddi_, 8.4.1.2. _Agweddi_ and 8.6. Divorce.
century expected that a woman given in marriage would bring moveable goods with her into the union. For the first seven years the husband was not allowed to consume or alienate any part of his wife’s contribution, and if they separated during this period, or rather, if either the wife rightfully left her husband or the husband wrongfully left his wife, she was entitled to bring her *agweddi* with her. However, if the wife wrongfully left her husband or her husband rightfully left her before the passing of seven years, she would not be entitled to her *agweddi*. After seven years had passed, as the marriage would then be considered a fully lawful marriage no matter how disreputable the origins were, the wife would be entitled to half the marriage wealth if they separated, and her *agweddi* would no longer be payable.

The material goods having been ‘exhausted in the rightful state of marriage’ in the commentary on Heptad 3 simply means the normal usage and consumption of the goods brought into a union. A common moveable to be exhausted in such a way is cattle. According to Kelly, male cattle would normally be slaughtered between the ages of seven and twenty-four months, but there is also evidence of older bovines, such as an ox which pulls the plough, *dam timchill arathair*, which can attain the same value as a milch cow. According to the commentary on animal values, an ox of eight years would reach the value of 24 scruples, i.e. the same value as a milch cow. Seeing that there is a possibility of a certain amount of the moveables being brought into the union being slaughtered after as little as seven months, depending on when the calf was born and when the union was entered, a significant amount of the original stock could easily, and legally, be ‘exhausted’ within a short period of time. Hence, Heptad 3 allows for a period of three years for the partner or partners to ‘seek the material goods’.

313 *WLW*, p. 20; p. 76.
314 ibid., p. 16; pp. 28–9.
315 *EIF*, p. 53.
317 *EIF*, 65; ibid. 534–5.
Breatnach suggests that the division of assets upon the dissolution of a union requires a minimum period to have lapsed in order for the regular division of assets, as outlined in *CL*. He argues that this minimum period is likely to have been three years, on the basis of an extract of commentary from the Tract on Marriage and Divorce\(^\text{318}\) which states that:

\[
\text{Ben in bōairech is tāiri hī, .lazy i cind trī mblīadan ēar comruc dōib is and do scaratar.}\(^\text{319}\)
\]

She is the wife of the lowest ranking *bōaire*, and three years after their consummation, it is then that they parted.\(^\text{320}\)

Though this is a piece of later commentary, and hence it is difficult to say with any certainty that this was the normal procedure during the time of the early Irish legal tracts, it is following the rule of the gloss on *CL* §14 from *OGSM*, stating that the wife will only get the full two-thirds of the labour-third of spring work if she reaps three growths of cornstalks.

### 2.5.4.6. The division of handiwork.

The last of the paragraphs from *CL* dealing with the division of assets in case of a dissolution of *lánamnas comthinchuir* is §15.\(^\text{321}\) It states that:

\[
\text{Leath do mnai a etach no lamtorad snithiu trian a cirthu adblam lethtrian a lloaib 7 a scuapatb lin trian a cruib glaise leth mad coitethe.}\(^\text{322}\)
\]

The wife gets one-half of the clothing or woven handiwork, one-third of prepared combed wool, a one-half third of fleeces and of

\(^{318}\) Tract 40 of *SM*, see n. 306 above.

\(^{319}\) Breatnach, ‘Varia’, p. 160; *CIH* 2105.29.

\(^{320}\) Breatnach, ‘Varia’, p. 160.

\(^{321}\) = Eska, *Cáin Lánamna*, p. 166, §16.

\(^{322}\) *CIH* 510.15–17.
sheaves of flax, one-third of containers of woad, one-half if it is dried.\textsuperscript{323}

This paragraph deals with the handiwork mentioned above in \textit{CL} §10, which states that ‘one-third of all produce [goes] to [the owner of the] land except handiwork’.\textsuperscript{324} The paragraph thus emphasises the woman’s domain by showing that the woman’s share of handiwork increases depending on how much preparation of the handiwork has been done, i.e. she only gets half of a third\textsuperscript{325} of the wool, because she has not spent a great amount of time working with the wool yet, but she gets as much as half of all the clothing or woven handiwork, because she will have spent time preparing it, dyeing it, combing it, and weaving it. Because a woman spent such a large amount of time on handiwork, a great deal of the recorded cases regarding distraint with a two-day stay\textsuperscript{326} are concerning handiwork. Thurneysen notes that in \textit{AL} ii 370.30,\textsuperscript{327} the commentary says that:

\begin{quote}
Flax and woad, there is nothing from these for [the owner of the] land on account of the smallness of that which [the owner of the] land would get and the greatness of the labor involved in it and the valuableness [of the finished product]\textsuperscript{328}
\end{quote}

while in \textit{AL} ii 418.4\textsuperscript{329} the owner of the land gets the usual land-third.\textsuperscript{330}

\begin{flushright}
\textsuperscript{323} Eska, \textit{Cáin Lánamna}, p. 167.
\textsuperscript{324} cf. \textit{CL} §10 in 2.5.4.1. The division of the cattle’s produce.
\textsuperscript{325} This amount equals one-sixth of the wool.
\textsuperscript{326} For more information, see Chapter 4 \textit{Athgabál aile}.
\textsuperscript{327} = \textit{CIH} 510.13-14.
\textsuperscript{328} Translation Eska, \textit{Cáin Lánamna}, p. 165.
\textsuperscript{329} = \textit{CIH} 176.32-5. ‘One-sixth for the wife for woad; if it is the husband’s woad, if it is in the time of cutting the woad that they separated, he gets one-third of the original amount and one-third of the land; and one-third of the labor, she gets then up to one-half of it if she is a ”great”-worker, or up to one-third of it if she is a ”small”-worker, so that she has one-sixth or one-ninth of all the woad in this case’. This is from the so-called ‘Appendix to \textit{Cáin Lánamna}’ in \textit{AL}. The ‘Appendix’ has been translated by Eska, \textit{Cáin Lánamna}, Appendix 3, pp. 311–23. Translation from Eska, \textit{Cáin Lánamna}, p. 321.
\textsuperscript{330} Thurneysen, \textit{SEIL}, p. 36.
\end{flushright}
2.5.4.7. Restitution and replacement.

The final five paragraphs in CL which deal with lánamnas comthinchuir\textsuperscript{331} are concerned with whatever has been rightfully consumed during the union and thus exempt from liability,\textsuperscript{332} replacement of what has been consumed unlawfully,\textsuperscript{333} restitution of whatever has been taken unlawfully,\textsuperscript{334} lawful loans, leases, sales and purchases exempt from liability,\textsuperscript{335} and the duties each partner has regarding hospitality and refection,\textsuperscript{336} and are hence not dealing specifically with the property, whether it be moveables or immovable. There is, however, a legal maxim in CL §16\textsuperscript{337} worth noting:

\textit{Is de asbeir islan cach cocraithe comloige}.\textsuperscript{338}

Whence it is said: Without penalty is anything mutually discussed, mutually conceded.\textsuperscript{339}

\textsuperscript{331}This is four paragraphs in Eska’s edition.

\textsuperscript{332}CL §16 = Eska §17. ‘Anything that either of them may consume from [what belongs to] the other is exempt from liability if it is by mutual consent. Whence it is said: Without penalty is anything mutually discussed, mutually conceded’. CIH 510.30–1, translation from Ó Corráin, Cáin Lánamna, p. 24.

\textsuperscript{333}CL §17 = Eska §17, she has taken the older division of §§16 and 17 as one paragraph, i.e. §17. ‘Every defrauding is paid off by replacement in kind unless the person entitled waives claim, or else compensation is paid on the day of parting’. CIH 510.31–2, translation from Ó Corráin, Cáin Lánamna, p. 24.

\textsuperscript{334}CL §18. ‘Anything taken by stealth, or despite mild protest, or by violent seizure, is repaid with its interest and with double its replacement if dry goods; if it is livestock, it is repaid with milk and young, with double replacement, and with interest’. CIH 511.7–9, translation from Ó Corráin, Cáin Lánamna, p. 24.

\textsuperscript{335}CL §19. ‘Exempt from liability is every loan, every lease, every sale, every purchase, without mutual defrauding by either, made with the private property of each up to the amount of the honour-price of each, in accordance with the contracting rights of each’. CIH 511.19–21, translation from Ó Corráin, Cáin Lánamna, p. 24.

\textsuperscript{336}CL §20. ‘Hospitality [and] refection [are due] from each of the two parties according to status. A bóaire entertains another, then he does not entertain until after the end of three days. Each of the two parties entertains his lord and his own church and his friends and his kinsmen’. CIH 511.21–2, 512.14–6, translation from Eska, Cáin Lánamna, p. 193.

\textsuperscript{337} = Eska §17.

\textsuperscript{338}CIH 510.31, normalised in Eska, Cáin Lánamna, p. 170 to: \textit{Is de as-beir: is slán cach cocraithe comloithe}.

\textsuperscript{339}Translation from Ó Corráin, Cáin Lánamna, p. 24.
It thus states an important rule of the marriages in medieval Ireland, in that as long as something has been taken by mutual consent, it will be exempt from liability. By giving this rule it is also clear that, even though the couple is married, they cannot consume anything of their partner’s goods without it first having been discussed with their partner. If they still choose to consume their partner’s goods, it has to be repaid ‘with its interests and with double its replacement if dry goods; if it is livestock, it is repaid with milk and young, and with interest’.

2.6. Lánamnas mná for ferthinchur.

In the second union discussed in *CL*, *lánamnas mná for ferthinchur*, ‘union of a woman on man-contribution’, the groom would still contribute the land as we have seen in the previous union, but he would also contribute a larger quantity of cattle and moveables than his bride. As the shares of the contribution were unequal, so were the rights of the spouses. The groom would, because of his majority of contribution, have much more control of the joint economy than the bride would, and thus she would be more financially dependent on him than the wife of *lánamnas comthinchuir*, though she could still be a *cétmuinter*, and thus of the same status as the wife in the previous union.

2.6.1. Contractual capacity.

Because of the unequal contribution from the two spouses, the wife of *lánamnas mná for ferthinchur* would not have the same contractual capacity as the wife of *lánamnas comthinchuir*. Hence the opening paragraph of the discussion of this union states that:

*Lánamnus mna for ferthinucur* is *cor a cor in fir sech in mbein acht reic etaig ã bid ã rec bo ã cærech mad ben urnadma nabe cetmunnter.*

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340 *CL* §18, translation from Ó Corráin, *Cúin Lánamna*, p. 24; cf. n. 334 above.
341 i.e. *lánamnas mná for ferthinchur*, ‘union of a woman on man-contribution’.
342 *CIH* 512.22–24.
The union of a woman on man-contribution: the contract of the man without the woman is a [valid] contract except for the sale of clothes and of food and the sale of cows and of sheep if she be a betrothed wife who is not a primary wife.\textsuperscript{343}

While neither partner in \textit{lánamnas comthinchuir} was allowed to make a contract without the consent of the other except for \textit{sochors}, ‘advantageous contracts’, the wife in \textit{lánamnas mná for ferskinchur} did not have a say in what contracts her husband made, other than the greatest necessities of the house, such as food and clothing, with an extension to cows and sheep, i.e. where the food and clothing originated. The following paragraph\textsuperscript{344} expands on this issue, by stating that:

\begin{quote}
\textit{Mad be cetmunterasa techta comaithe \textsuperscript{7} comceniuil sech is comceniuil cach comaithe fofusna-ide a curu uile mat baith ar ni said dilse for diubirt na fogurriud conda tathbongat a meic.}\textsuperscript{345}
\end{quote}

If she be a woman of proper primary wife-ship, equally good and of equal birth – that is, every equally-good person is of equal birth – she disturbs all his contracts if they be made in ignorance [of their defects], for immunity from legal challenge does not come into

\textsuperscript{343} Translation from \textit{EICL}, p. 74 = \textit{CL} §21.

\textsuperscript{344} i.e. \textit{CL} §22.

\textsuperscript{345} \textit{CIH} 512.29–31.
effect for unwitting over-payment nor [=and] protest, so that his enforcing sureties\textsuperscript{346} dissolve them.\textsuperscript{347}

This paragraph then implies that the primary wife was entitled to disturb only the \textit{dochor}, ‘disadvantageous contracts’, but only in the cases in which the husband had made the contract unaware of the disadvantages. Had he, however, knowingly made the disadvantageous contract, she would be unable to interfere and cancel the contract.

\textbf{2.6.2. Types of wives in \textit{lánamnas mná for ferthinchur}.}

While \textit{CL} §21 is referring to the ‘betrothed wife who is not a primary wife’, \textit{CL} §22 is dealing specifically with ‘a woman of proper primary wife-ship’. In addition to that, the woman in \textit{CL} §21 is not only a dependent wife, but she is also a secondary wife. She is not only subordinate to a primary wife in the polygynous medieval Irish society, but most probably also of subordinate status and rank to her husband; hence the stress on the primary wife being ‘equally good and of equal birth’ in \textit{CL} §22. It was expected that a primary wife in the more formal types of union should be of the same social standing, which is clearly laid out in the law. In the list of advantageous contracts a \textit{mac béo-athar} could make without the supervision

\textsuperscript{346} Note the different terms used to translate \textit{tathbongat a meic} (normalised to \textit{a maic} by both Eska and McLeod). While McLeod has translated this to mean ‘his enforcing sureties dissolve them’, Eska (\textit{Cáin Lánamna}, p. 199) has translated it ‘and her sons dissolve them’. Ó Corráin (\textit{Cáin Lánamna}, p. 24) has translated this ‘and her sureties dissolve them’. As there is no initial mutation visible after \textit{a}, it can mean both ‘his’ and ‘her’. \textit{Mac} (pl. \textit{meic}) can mean both ‘enforcing surety’ as well as ‘son’, both of which are o-stem m. nouns. Binchy, in his ‘Celtic Suretyship, A Fossilized Indo-European Institution’, suggests that \textit{mac}, ‘enforcing surety’, had been replaced by \textit{naidm}, ‘enforcing surety’, (see \textit{GEIL}, pp. 171–2 for discussion on the \textit{naidm/mac}) by the time of the compilation of most of the early Irish legal texts, because of the possible confusion with \textit{mac}, ‘son’. Thurneysen (\textit{SEIL}, pp. 48–9) suggests that the lawyer must have meant ‘son’, although the glossator seems uncertain whether the paragraph is referring to ‘enforcing surety’ or ‘son’. Jaski (‘Marriage Laws’, p. 22 n. 28) understands the phrase to mean ‘her sons’ because of the importance in the early Irish laws of a woman to have sons (see Power, \textit{SEIL}, pp. 81–108 for a discussion on classes of women described in the \textit{Senchas Már} and the importance of sons. See also \textit{Díre}-tract §§ 27–32.). Eska points out (\textit{Cáin Lánamna}, p. 199 n. a) that because of the older form of \textit{ben} attested in §§ 5 and 23 (note the attestation in further paragraphs, e.g. §21, §23) it is not impossible that the compiler indeed meant ‘enforcing sureties’ instead of ‘sons’. Furthermore, she says that the tract is not concerned with whether or not the wife had sons, but rather the wife’s legal capacity compared to her husband’s legal capacity. She explains McLeod’s translation of ‘his enforcing sureties’ because ‘the husband would not normally be able to dissolve a contract for which he had appointed sureties’. (Eska, \textit{Cáin Lánamna}, p. 199 n. a)

\textsuperscript{347} Translation from \textit{EICL}, p. 75.
of his father it is stated that he could pay ‘The proper bride-price for a primary wife of equal birth’. Críth Gablach states that a bóaire should marry the daughter of a man of the same status as himself, i.e. the daughter of another bóaire:

*A ben, ingen a chomgráid inna coir chétmuinterasa.*

His wife [should be] the daughter of his compeer in her propriety of primary spouse-ship.

The reason for this is, as explained by Kelly, that the financial burden of a socially mixed marriage would fall on the family of the partner of lower class.

*Ar mad ingen in boairech gu mac in airech feibi da trian cethre uaithe. Mad ingen in airi feibi tes co mac in boairech. Da trian cethre o mac in boairech 7 aentrian o ingin in airech feibi. Ar is mo dteggar cethre do boairib oldas do airechuib feibi.*

for, if it be the daughter of a "bo-aire" who marries the son of an "aire feibe," there are two-thirds of the stock of cattle from her; if it be the daughter of the "aire feibe" that comes to the son of the "boaire," two-thirds of the cattle are from the son of the "boaire," and one-third from the daughter of the "aire feibe"; for more cattle are due from those of "boaire" grade than from the "aire feibe".

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348 Heptad 50, translation from *EICL*, p. 70. For a discussion of the *mac beo-athar* and the *cétmuinter*, see 2.5.3. The similarities between the *cétmuinter* and the *mac béo-athar*.

349 *CG* ll. 199–200.

350 My translation.

351 *GEIL*, p. 73.

352 Heptad 50, *CIH* 46.18–22; *AL* v 286.2–7.

353 Translation from *AL* v 287.
Triad 71 confirms the rule of Heptad 50, and states that the three unfortunate things for the son of a commoner are:

\[\text{clemnas}\] fri hócthigern, gabáil for tascor rig, commaid fri meirlechu.\]

marrying into the family of a franklin, attaching himself to the retinue of a king, consorting with thieves.

Since the ócthigern, ‘young lord’, was the lowest grade of a lord, Triad 71 thus implies that marriages between the social classes were seen as great misfortune, and it was likely that they were avoided. Charles-Edwards refers to the evidence from \(CG\) and \(CL\) which shows that the standard form of union was one in which both partners were of approximately equal legal standing and of approximately equal wealth. On the basis of these sources he suggests that a regular commoner would probably not expect to receive a significant proportion of cattle from his own family, and neither from his wife through her contribution to the union. He would then be dependant on a fief from a lord for the cattle, and the contribution of his wife would consist mostly of domestic goods and other moveables. Hence, he states, ‘the typical union of two commoners, therefore, was a lánamnas mná for ferthinchur "pairing of a woman upon man-input"’. Ó Corráin, on the other hand, believes that lánamnas mná for ferthinchur is ‘an older form for marriage, probably less common in the late seventh and early eighth centuries, and must have been the usual type of marital arrangement in the older, more patriarchal stage of society’.

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354 See \(EIWK\), pp. 85–7 for a discussion on the term \textit{clemnas}, a type of relationship through a marriage union.


356 ibid., p. 9.

357 See \(GEIL\), p. 26 n. 56 for a discussion of the term \textit{tigern/tigernae} and its compound \textit{ócthigern}.

358 \(EIWK\), p. 466.

359 Ó Corráin, ‘Women in early Irish society’, p. 3.
2.6.3. Polygyny.

The following paragraph from CL brings up the issue of the polygynous medieval Irish society. It states that:

\[Mad\ coibche\ fri\ bein\ darata\ cid\ dia\ setaib\ fadesin\ is\ dilis\ don\ cetmuin\ tir\ in\ coibche-sin\ ma\ ogaid\ a\ mamu\ techta\ a\ lanamnais.\]

\[Is\ fiaach\ cach\ adaltrach\ doteit\ for\ ceand\ cetmuin\ fre\ asren\ log\ nenech\ na\ cetmuintire.\]

If he gives bridewealth to [acquire] another woman, even from his own private property, that bridewealth is forfeit to his cetmuinter if she carries out her marital obligations. Every secondary wife who comes "over the head" of a cetmuinter is liable to penalty: she pays the honour-price of the cetmuinter.

This is the first paragraph of the tract that mentions the fact that a man can take a second wife, the term here being used of the secondary wife is adaltrach, of which the etymological meaning is ‘adulteress’. The glosses explain that:

\[.i.\log\ nenech\ \gamma\ coibche\ di-sid\ o\ fir;\ \gamma\ log\ nenech\ on\ adaltraige\ \gamma\ in\ coibchi\ doratad\ di,\ \gamma\ coibchi\ ftia\ o\ fir\ dia\ nana\ hi\ fus,\ ar\ is\ fogal\ etarscarthach.\]

i.e. she gets honor-price and bride-price from [her] husband, and honor-price from the secondary wife and the bride-price that was

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360 = CL §23.
361 CIH 513.7–8. = CL §23 (Thurneysen, Ó Corráin); Eska, Cáin Lánamna, p. 205 §23.
362 CIH 513.14–5. = CL §23 (Thurneysen, Ó Corráin); Eska, Cáin Lánamna, p. 209 §24.
363 Translation from Ó Corráin, Cáin Lánamna, p. 25.
364 < Lat. adultrix. For more information, see 2.5.1. Types of wives in the airnaimh-unions above.
365 CIH 513.10–11.
given to her, and she gets bride-price from [her] husband if she remains here, because it is a reason for separation.366

The latter part of this gloss gives her an ‘extra’ bride-price for deciding to stay with her husband despite him having taken another wife. This seems to be the same woman as ‘the woman who is sent back and repudiated for another’ from Heptad 52. The commentary to the Heptad states that:

Bean dobetar freithach 7 leicter ar bein.
.i. coibchi 7 eneclann di, 7 a dilsi o uair in freithig amach.367

A woman who is repudiated and abandoned for [another] woman, i.e. [she is entitled to] her bride-price and honour-price, and her freedom from the time of the repudiation.368

At first glance one would not necessarily think that the woman who is sent back and the woman who receives the extra bride-price is the same woman, but she has chosen to stay with her husband instead of leaving the union because of the new wife, and thus gets a ‘reward’ for staying. Heptad 6 does, however, allow for the jealousy of the new wife. Thus the ‘blood shed by a "cetmuinnitir" wife through just jealousy, from an adulttress who goes over her head”369 is included in the ‘seven bloods that are shed, which deserve not debts nor sick-maintenance’. Although the Heptad itself does not state for how long these injuries are without penalty, the glosses add that these retaliations can continue until the end of three nights without incurring penalties. Thus the glosses state that ‘the "cetmuinnitir" wife is safe of her minor offences and her major offences, i.e. both of death and life to the end of three nights, and half debt [upon her] form the end of three nights out […]’ Or, the "cetmuinnitir" wife is justified in whatever she does to the end

366 Translation from Eska, Cáin Lánamna, p. 205.
367 CIH 48.5-7; AL v 294.22–3.
368 My translation, based on AL v 295.
369 AL v 142.6–7, translation AL v 143.
of three nights, up to death, and she pays compensation after death, and half
debt from that out'.\textsuperscript{370} The \textit{adaltrach} can only reciprocate ‘in injury by
finger-nails and reproachful words, and in laceration and tearing the hair,
and minor injuries in general’.\textsuperscript{371} In other words, while the \textit{cétmuinter} can
inflict any type of injuries, possibly as far as killing the secondary wife,
without any penalties for the first three nights, and only half of the normal
penalties after the three nights, the secondary wife can only scratch, pull
hair, speak abusively or inflict minor injuries in general in retaliation.

The aforementioned paragraph is not the only place that the issue of
polygyny appears in the laws. There is an often quoted paragraph in \textit{Bretha
Crólige} which states that:

\begin{quote}
\textit{Direnar do cach a lanamnus a bescnu inse erem ciapa lin ciapa
nuaithe. ar ata forcosnam la Féne cia de as techta in nilar comperta
fa huathad. ar robattar tuiccsi i (n)nilar lanamnusa, connach airissa
a caithiugud oldas a molad}.\textsuperscript{372}
\end{quote}

§57. Everyone is paid \textit{díre} for his union according to the custom of
the island of Ireland, whether it be manifold or single. For there is a
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.\textsuperscript{373}

This paragraph brings up the issue of the Church opposing polygyny, while
the early Irish law allowed for a man to have multiple wives. It seems that
the author of \textit{Bretha Crólige} tried to justify the customs of secular society
by referring to the ‘chosen people of God’ who lived in a society with the
same custom of polygyny as the Irish. The Church’s disapproval of the

\textsuperscript{370} CIH 8.9–13; AL v 144.26–146.2, translation from AL v 145–7.
\textsuperscript{371} CIH 8.18–19; AL v 146.8–9, translation from AL v 147.
\textsuperscript{372} Binchy, ‘Bretha Crólige’, p. 44, §57.
\textsuperscript{373} ibid. p. 45.
secular customs is visible in the Irish penitentials, which agree that a man cannot take another wife while his first wife is still alive, and that the only acceptable reason for a separation is that of fornication. Thus the canons of Adamnan state that:

16. Of a wife who is a harlot, thus the same man explained, that she will be a harlot, who has cast off the yoke of her own husband, and is joined to a second husband or a third. Her husband shall not take another *wife* while she lives.\(^{374}\)

These two legal systems disagreed strongly on this point, but they retained their separate views and their separate laws.

The commentary to A\(^{375}\) expands on the matter of the bride-price to be paid to the primary wife:

If the bride-price of the woman who had been brought there and the bride-price of his own wife, i.e. of the primary wife, are the same, the bride-price is forfeited to her [i.e. to the primary wife], and honor-price from the woman who had been brought to her and honor-price from the husband. If the bride-price of the woman who had been brought there is smaller, the husband adds to it until it equals her [i.e. the primary wife’s] bride-price then, and honor-price from each of the two in addition. If the bride-price of the woman who had been brought there is greater, she [i.e. the secondary wife] is to have the surplus.\(^{376}\)

Hence, if the *coibche* of the *adaltrach* was the same as the *coibche* of the *cétmuinter*, the husband paid it directly to the *cétmuinter*, rather than to give it to his new bride, i.e. the *adaltrach*. If, however, the *coibche* of the

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\(^{374}\) Bieler, *The Irish Penitentials*, p. 179.

\(^{375}\) The quoted section of the commentary to A also appears in the first commentary to B. See Eska, *Cáin Lánamna*, p. 211.

\(^{376}\) Translation from Eska, *Cáin Lánamna*, p. 209; cf. *CIH* 513.15–19.
adaltrach was smaller than that of the cétmuinter, the husband would have to add to it to reach the amount due to the cétmuinter. If the coibche of the adaltrach was greater than that of the cétmuinter, the husband would pay that which was due to the cétmuinter to her, and the excess part of the coibche would go to the adaltrach. In all of these cases the cétmuinter was also entitled to her honour-price from both her husband and the adaltrach. Thus the second commentary to B states that the cétmuinter who decides to stay with her husband despite him taking a second wife will receive:

three bride-prices, the bride-price the husband had given to her in the first place and the bride-price the secondary wife had brought, and honor-price from the secondary wife, and the bride-price from the husband since he had given [a bride-price to another woman] subsequently, so that in this way there are three bride-prices and an honor-price.\(^{377}\)

If the union was later dissolved, the coibche was either kept or forfeited to the man depending on the reason for the dissolution of the union. If the union was dissolved in a manner so that the woman could retain the coibche, it would be hers to keep or to bring into another marriage.\(^{378}\) This was true for all the different types of unions in which the woman had been given a coibche.

2.6.4. The legal capacity of the different types of wife.

The commentary to A goes on to discuss the differences between the different types of wife as regards their legal capacity in entering suretyship, loaning and borrowing.\(^{379}\) The commentator differentiates between the rights of two groups of women; first the primary wife with sons, the primary wife without sons, the secondary wife with sons and the woman of

\(^{377}\) Translation from Eska, Cáin Lánamna, p. 213; cf. CIH 1809.21–4.

\(^{378}\) Heptads 3 and 52 each give 7 grounds for divorce in which a woman would retain her coibche. For a discussion, see 2.5.4.5.1. An Old Irish gloss on spring work. The grounds for divorce for a husband are found in a heptad quoted in a gloss on Gúbretha Caratniad §44.

condominium. These women are entitled to enter suretyship to the value of their honour-price in the presence of their husband, and one-third of their husband’s honour-price in his absence. Since a wife would normally have half the honour-price of her husband or other guardian, one-third of her husband’s honour-price equals two-thirds of her own honour-price. They are also entitled to give a loan, borrow and make a contract from their personal excess property up to the value of their own honour-price. If they have, however, no excess property of their own, they are only entitled to make such contracts, loans and borrow up to one-third of their husband’s honour-price.

The second group of women the commentator discusses is the secondary wife without sons. Her entitlement to contract is inferior to the previous group of women, and proves the importance in the laws of having sons. She is only entitled to enter into suretyship to the value of one-third of her husband’s honour-price in his presence, but only two-thirds of the third in his absence. She can only give two-thirds of her own honour-price for a loan or borrowing from her personal excess property, ‘or they do not give anything at all for a loan and for lending except that which her spouse commands her and weaving implements’. The only entitlement both groups of women share is that they are able to give the whole of their excess as a pledge for their friends in imprisonment or in chains.

2.6.5. Hospitality and refection.
The rest of the paragraphs dealing with lánamnas mná for ferthinchur all correspond quite closely to the rules of division in lánamnas comthinchuir, but with a slightly different division as the main contributor gets the majority of the goods. The following paragraph from CL is referring to

380 e.g. if the husband’s honour-price was 6 sét, the wife’s honour-price would be 3 sét, and one-third of the husband’s honour-price would be 2 sét, which is the same as two-thirds of the wife’s honour-price.

381 i.e. the secondary wife without children.

382 Translation from Eska, Cáin Lánamna, p. 211.

the same practice as in §20, i.e. hospitality and refection. Just as the partners give refection and hospitality according to their status in §20, so they do the same in this paragraph. Here, however, it is stated that:

Fosuididter in ben lethdam in fir amail bes miad chele na mna.

Mad ben boairech fosuidithter ocairig mad ben airech desa fosuidithear boaireig mad ben airech tuisi fosuidithter airig ndesa mad ben airig aird fosuidither airig tuisi mad ben airech forgill fosuidither airig ard.

The wife entertains half the retinue of the husband in accordance with the status of the wife’s spouse.

If she is a wife of a bóaire, she entertains an ócaire; if she is the wife of an aire déso, she entertains a bóaire; if she is the wife of an aire tuíseo, she entertains an aire déso; if she is the wife of an aire ard, she entertains an aire tuíseo; if she is the wife of an aire forgill, she entertains an aire ard.

As a woman would normally have half the honour-price of her husband, this paragraph states the exact same principle in regard to hospitality. The commentary to A expands on the principle by explaining that it is the partner the retinue comes seeking which decides how many are to be entertained. If they come seeking the husband, they will be provided according to the husband’s status, even in his absence, but if they come seeking the wife, only half the retinue according the husband’s status will be entertained, even in his presence. The following paragraph expands on the rules of hospitality, and explains that refusing hospitality if someone arrives with a

384 cf. CL §20 in n. 336 above.
385 CIH 513.33.
386 CIH 514.5–8.
retinue of too great a size will not damage one’s honour as it is not deemed a refusal because the guest with the excessive retinue is to blame.\textsuperscript{390} This rule is valid for all the different types of union, not just for \textit{lánamnas mná for ferthinchur}, although this is the only place in which it has been explicitly stated.

\textbf{2.6.6. The rules regarding divorce in \textit{lánamnas mná for ferthinchur}.}

The tract goes on to discuss the rules regarding a separation of \textit{lánamnas mná for ferthinchur}:

\begin{quote}
Mad scarid 7 bid imtocad leo noch bid commaithi a folaid fri himscarad doib rodbi slan særtoimilt caich diarailiu cen ecubus co comtinucur\textsuperscript{391} fri himscarad arna ‘mderbara each naithgin feib robrondtar co nas co ngeert co fuilliud each taide each egean cach fojal cen logud cein aithce cen digide is cona diri.\textsuperscript{392}
\end{quote}

If they divorce and the divorce is by mutual consent and their behaviour is equally good at the time of the parting, what the one may have freely consumed as against the other is without penalty at the time of the parting if it is done without bad faith and with consent, so that they may not defraud each other. Every replacement in kind shall be as that consumed, with milk and young and dung and with interest. Everything taken by stealth, by force, by secret


\textsuperscript{391} Thurneysen questions this word and notes ‘l. comthindnacul? Oder comlogud?’, Thurneysen, \textit{SEIL}, p. 54. Eska, \textit{Cáin Lánamnna}, p. 228, has \textit{comlogud} without any notes or variants.

\textsuperscript{392} CIH 514.23–8, \textit{CL} §26, = Eska §28.
removal, without consent, without recompense, without asking pardon, is levied with penalty fine.\textsuperscript{393}

Thus this paragraph explains the same principles as those explained in §§16-8 of \textit{lánamnas comthinchuir} regarding the consumption of goods and replacement of anything taken without consent.

\textbf{2.6.6.1. The division of assets.}

The following paragraphs discuss the division of assets in case of a separation. The rules are very similar to those in \textit{lánamnas comthinchuir}, but as the man was the main contributor in the union, his share of the assets would necessarily be larger than that of his wife:

\begin{quote}
\textit{Leth lamtoraid do mnai amail isrubrad isin lanamnas taisech isrubartmar leithtrian a mblicht cosnadib cobdailaib taisechaib iter tir \(\gamma\) bu \(\gamma\) lestraib \(\gamma\) fognamadaib.}\textsuperscript{394} \textit{Nomad a indud \(\gamma\) a arbim \(\gamma\) a saill mad mardentaig.}\textsuperscript{395}
\end{quote}

The wife receives half the handiwork, as we said in the first type of union we discussed; a sixth of the dairy-produce with the same proportions as previously between land and cows and vessels and servants. She receives a ninth of the cattle dropped during the union, a ninth of the corn, and a ninth of the salt meat, if she is a great worker.\textsuperscript{396}

Here we see the same principles as in §§10–15 of \textit{lánamnas comthinchuir}. The wife’s shares of the different assets are similar to the shares the wife of \textit{lánamnas mná for

\footnotesize
\begin{itemize}
\item\textsuperscript{393} Translation from Ó Corráin, \textit{Cáin Lánamna}, p. 25. He does not have the Old Irish in his version of \textit{CL}, but his translation is very close to Eska’s, and I believe they have both read \textit{comlogud} instead of \textit{comthinchur}. Cf. DIL s.v. \textit{comlogad} ‘mutual concession’.
\item\textsuperscript{394} \textit{CIH} 515.6–8 = Ó Corráin / Thurneysen § 27; Eska, \textit{Cáin Lánamna}, pp. 234–5 §29.
\item\textsuperscript{395} \textit{CIH} 515.14 = Ó Corráin / Thurneysen § 27; Eska, \textit{Cáin Lánamna}, pp. 236–7 §30.
\item\textsuperscript{396} Translation from Ó Corráin, \textit{Cáin Lánamna}, p. 25.
\end{itemize}
ferthinchur would not receive as big a share of the cattle-third as the former, as her contribution of cattle was smaller than that of the previous union.

2.6.6.2. The early Irish equivalent of alimony.

The following paragraph\(^{397}\) states a principle additional to what we have encountered thus far.

\[
Is \text{ miach di cach mis arabi co ceand mbliadh\text{\textsc{\textipa{na}}}} \text{ .i. cusna belltanaib bida nesom armubiad in aimsir imscarta i scarad}.^{398}
\]

She receives a sack of corn for every month that remains until the year end i.e. until the first of May next, following the time they part.\(^{399}\)

Ó Corráin notes that May Day is the time for entering into new contracts, which also includes marriage contracts. Eska, on the other hand, finds the first part of the paragraph, i.e. \textit{is miach di cach mis ara-bi co cenn mbliadnae},\(^{400}\) difficult to interpret, because the subject of the verb \textit{ara-tá}, ‘remains’, can either be \textit{mí}, ‘month’, or meant to be understood as ‘she’. Thurneysen understood the subject to be \textit{mí} and translates:

Sie erhält einen Sack (Weizen)\(^{401}\) jeden (oder: für jeden) Monat, der übrig ist bis zum Ende des Jahres.\(^{402}\)

He explains that because the wife does not have anything except her legal portion at the end of their union, her husband has to give her a means of subsistence to last her until the day she can enter a new union, i.e. May

\(^{397}\) Ó Corráin / Thurneysen §28 = Eska cont. §30.

\(^{398}\) \textit{CIH} 515.14–16.

\(^{399}\) Translation from Ó Corráin, \textit{Cáin Lánamna}, p. 25.


\(^{401}\) See \textit{EIF}, pp. 582–3 for a discussion of the \textit{miach}.

\(^{402}\) Thurneysen, \textit{SEIL}, p. 56.
Day. This means of subsistence can be seen as an early form of alimony. Eska further notes that since the wife has contributed little or nothing, she only takes a very small portion of the labour profits to which she has contributed, and hence she would be left destitute without this monthly sack, especially if she does not have any surviving family members to support her. If she has stayed in the union for over a year, she will be entitled to profits for the entire period the union lasted, and she is likely to be in a better position than if the union only lasted less than a year. It is nowhere stated whether or not this alimony would be due to a wife who has stayed in the marriage for more than a year, or if it is a provision for the union to have lasted less than a year.

The last of the main types of marriage in CL consists of one of the exceptions to the general rules regarding women. She is the main contributor in the marriage, not only regarding cattle, but also regarding land. Since she has land to contribute to the union, she is also likely to have inherited the kin-land from her father, hence she is a bancho marbae. This union is called länamnas fir for bantinchur co fognam, ‘the union of a man on a woman’s contribution, with service’.

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403 id.

404 Eska, Càin Länamna, p. 237 n. c.
3. **Banchomarbae.**

3.1. **Introduction.**

The main exception to the rule that women did not have any independent contractual capacity is that of the *banchomarbae*, ‘female heir’. The rules of inheritance in early Irish law are mostly assumed rather than fully expressed. However, there are some rules that are strictly set; a daughter was not entitled to inherit immovable property, only the sons were entitled to inherit the kin-land, ‘*fintiu*’. However, both sons and daughters were allowed to inherit the moveable property. This means that a daughter would normally only bring moveable property into a union, hence the land-third\(^{405}\) of the division of assets in case of a separation normally went to the man, while the woman received her shares of the cattle-third and labour-third.

3.2. **The female heir.**

The rules regarding division of assets change slightly in the third of the unions in *CL*, which is the last of the unions based on betrothal, and hence being seen as the most respectable unions discussed:\(^{406}\) *lánamnas fir for bantinchur co fognam*, ‘the union of a man on a woman’s contribution, with service’. The woman in this type of union would most likely be a *banchomarbae*, ‘female heir’, since the only way for a woman to inherit land was if her father died in default of sons. The *banchomarbae*, and her right to receive *orbae*, ‘inheritance’, is the main topic of the *Kinship Poem*,\(^{407}\) while her rights in marriage are discussed in the third union in *CL*. Since the *banchomarbae* was an exception to the rule of inheritance, her rights had to be clearly set out in the laws. Charles-Edwards describes her situation as:

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\(^{405}\) See Chapter 2 Women and Property for information on the division between land, cattle and labour, esp. 2.5.4. The rules regarding divorce in *lánamnas comthinchuir* and 2.5.4.1. The division of the cattle’s produce.

\(^{406}\) See Chapter 2 Women and Property for further information on *lánamnas comthinchuir*, ‘the union of mutual contribution’, and *lánamnas mná for ferthinchur*, ‘the union of a woman on man-contribution’, esp. 2.5. *Lánamnas comthinchuir* and 2.6. *Lánamnas mná for ferthinchur*.

\(^{407}\) For a full discussion, see 7.3. The distribution of a woman’s property and 7.3.1.1. The Kinship Poem.
uncertainly balanced between two kindreds, attached by her land to her natal kindred but tied to the lineage of her husband by marriage and by her children, … an extreme instance of a general truth: the difference between the kinship of women and the kinship of men.  

3.2.1. The approximate occurrences of female heirs.
The rules of solely agnatic inheritance are at times complex. Not every couple is able to procreate, and regarding the couples who are able to procreate, not every couple will have sons, some couples will have only daughters. Jack Goody, in his article ‘Strategies of Heirship’,\textsuperscript{409} quotes Andrew Collver’s findings concerning the number of childless couples or couples who reach the end of their reproductive age without a living son in India, from his article on ‘The family cycle in India and the United States’.\textsuperscript{410} Despite a high rate of reproduction, 22 percent of couples do not have a living son at the end of their reproductive age, and 30 percent have only one living son. With the higher mortality rate of the middle ages, the percentage of fathers dying without a male heir would necessarily be higher than the 22 percent of present-day India. However, since a man could take a second wife, the proportion of fathers with only female heirs would be less than one in five.\textsuperscript{411} Because it was expensive to take a second wife, this would be more likely in the wealthier strata of the society, as they were more likely to be able to afford multiple unions. With the strict penalty of a man who would take a secondary wife while still being married to his primary wife,\textsuperscript{412} the less fortunate would be less likely to enter into multiple

\textsuperscript{408} EIWK, p. 84.


\textsuperscript{412} For more information, see 2.6.3. Polygyny.
unions. Charles-Edwards argues that the poorer men in the society were more likely to marry later, and less likely to enter into a secondary union, and hence their likelihood of not begetting sons was proportionally higher than that of the wealthier men.

3.2.2. The legal implications of the *banchomarbae*.

The main implication of being a *banchomarbae* was that she was not seen as a woman in the eyes of the law. By having inherited the *fintiu*, ‘kin-land’, she had to be capable of managing that land, and by extension having a certain amount of contractual capacity she would not have been entitled to if she had not inherited the land. She would have the same rights as a male landowner in matters such as distraining goods, making formal legal entry into her rightful inheritance, and entering into contracts regarding her land and her household. She would clearly not be able to manage her farm without the possibility of making purchases, sales and other essential contracts, such as co-ploughing agreements and other contracts equally necessary to maintain the farm. The main difference between her and a male landowner was that she only inherited a life-interest in the land, and when she died the property reverted to her father’s kin. She was thus not entitled to pass her property on to her sons, except in special circumstances. There was also a restriction on the amount of land she was entitled to inherit; the maximum she could inherit was 14 *cumals* of land, the same amount as the normal freeman, the *bóaire*, had. The maximum limit to the *banchomarbae*’s inheritance did not depend on how prosperous her father had been, this amount was the limit even if her father had a much larger amount of land. The implication is that the rest of the father’s *fintiu*

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413 cf. 2.6.3. Polygyny, which discusses §23 of *CL*, for more information on the additional penalties a man would have to pay his céitmuinter if he chose to give *coibche* to another woman despite his céitmuinter having performed her marital duties.

414 *EIWK*, p. 84.

415 For more information, see Chapter 4 *Athgabál aile*.

416 For more information, see Chapter 5 *Bantellach*.

417 For more information, see 7.3. The distribution of a woman’s property.

418 Dillon, *SEIL*, p. 155 (xv); *CIH* 217.20–2.
probably reverted to her father’s kin at the time of his death, while the *banchomarbae* would keep the 14 *cumal*s of land until the day of her death, after which the land she had farmed while alive would revert back to her father’s kin who already had the excess land of her father.419

### 3.3. The *cumal* as a unit of value.

*CG*, a law text on status which deals specifically with the different assets, values of assets and rights each person had in early Irish society, uses the *cumal* as a unit of value. Though this is a unit often used in the law texts, it is unclear how big a *cumal* of land was in reality, or indeed what exactly the texts mean when they discuss a *cumal*. *Cumal* originally meant a ‘female slave’,420 but the word was later used for a unit of value. This implies that the original meaning of *cumal*, the ‘female slave’, was used as a type of currency at an earlier stage. There are many Irish sources in which the word is used in its original sense, but for the most part, at least in the laws, the *cumal* is used to designate a unit of value.421 The *cumal* as a fixed value is difficult to compare to other units of value in the sources, but based on the values found in the different legal texts Kelly has approximated one *cumal* to three milch cows.422 An example is the law text *Uraicecht na Ríar*,423 which gives the honour-price of an *ollam*, ‘chief poet’, as forty *sét*s, which is equated with seven *cumal*s. If two *sét*s equal one milch cow, one *cumal* is nearly three milch cows.424 The same value is also found in many of the legal glosses, which often refer to *cumal tri mbó* ‘a *cumal* of three cows’, i.e. a *cumal* worth three cows. The *cumal* can also mean a non-specific ‘value’ or ‘fine’ where the value of the *cumal* varies massively. This is

419 This would most likely be the case if the father only had the one daughter, but it is also likely that if he had more than one daughter they would each inherit up to 14 *cumal*s of land.

420 See *DIL* s.v. *cumal*.

421 *EIF*, p. 592. See the saga of Fergus Mac Léti where he distinguishes the *cumal* as a currency which could consist of land, gold or silver, to the *duine-chumal*, ‘the human-*cumal*’; cf. *EIF*, p. 592 n. 270.

422 *GEIL*, p. xxiii. This is also the value found in *DIL* s.v. *cumal*, b).

423 ‘the primer of stipulations’, see *GEIL*, App. 1, text 13.

evident in *Bretha im Æillema Gell*,\(^{425}\) where, even though the text mentions the same animal, the value differs from *ech cumal x. sét* ‘a horse valued at 10 sét’s’, to *ech cumal trichat sét* ‘a horse valued at thirty sét’s’.\(^{426}\)

### 3.3.1. *Tír cumaile*.

Finally there is the type of *cumal* discussed above, the value for a unit of land, *tir cumaile*, ‘land of a *cumal’*. *CG* refers to the expected amount of land each class of person was to have. The normal freeman, the *bóaire*, was expected to have fourteen *cumals* of land, whereas the young freeman, the *ócaire*, was expected to have seven *cumals* of land. In his article ‘*Tír Cumaile*’,\(^{427}\) Gearóid Mac Niocaill has translated the text discussing this exact question, which is called *Fodla Tire* in *AL*, a title Mac Niocaill calls ‘factitious’.\(^{428}\) The text deals with the exact measurements of a *cumal*:

\[
Cesc, \text{ce toimsither tir cumaile? A} \text{ grainni}[b]. \text{ Tri grainne i n-ordlach in[n]raic, se ordlaige i ndorn, & da dorn a traigid; se traigthi i ndeisceim, se deisceimeanda a n-inntrit, se inntrit a lait, se laiti a forraig, se foirrge i n-airceand. Tir cumaili, da forrach x. dia fot.}^{429}
\]

Query: how is a land of a *cumal* measured? By grains. Three grains in a standard inch, six inches in a fist and two fists in a foot; six feet in a pace, six paces in an *inntrit*, six *inntrit* in a *lait*, six *lait* in a *forrach*, six *forrach* in an end [of the land of a *cumal*]. The land of a *cumal*, its length is twelve *forrach*.\(^{430}\)

\(\text{\(^{425}\) \text{‘judgements about pledge-interests’, see GEIL, App. 1, text 60.}\)

\(\text{\(^{426}\) EIF, p. 593.}\)

\(\text{\(^{427}\) Gearóid Mac Niocaill, ‘*Tír Cumaile*’, Ériu 22, 1971, pp. 81–6.}\)

\(\text{\(^{428}\) Mac Niocaill, ‘*Tír Cumaile*’, p. 81.}\)

\(\text{\(^{429}\) Mac Niocaill, ‘*Tír Cumaile*’, p. 82.16–20; cf. CIH 675.30–3.}\)

\(\text{\(^{430}\) Translation from Mac Niocaill, ‘*Tír Cumaile*’, p. 84.}\)
Mac Niocaill\textsuperscript{431} notes that Atkinson\textsuperscript{432} has pointed to this size being a very unlikely size for a \textit{cumal} of land: on the basis of this passage, the \textit{tir cumaile} works out at a little over 2,776 statute acres. The most prosperous grade of \textit{bóaire}, the \textit{mrugfér}, is given twenty-one \textit{cumal}s of land in \textit{CG}, which means he is given the very unlikely measure of 58,296 statute acres of land. As the piece of land known as \textit{tir cumaile} was seen as a rectangular landholding with a headland, \textit{airchin}, and a side, \textit{tóeb}, and the side was 12 \textit{forrach}s in length, and the headland half of that, i.e. 6 \textit{forrach}s, the question of figuring out the area of this land depends on the size of the \textit{forrach}. Elsewhere\textsuperscript{433} the \textit{forrach} has been given as 144 feet, which Mac Niocaill argues to be a much more likely number. MacNeill\textsuperscript{434} argues the size of the \textit{forrach} from the evidence in \textit{CG}, and he comes to the same conclusion as Mac Niocaill. The text\textsuperscript{435} states that:

\begin{quote}
He has the land of thrice seven cumals. That is a "cow’s land" in the tradition of the Féni, it sustains seven cows for a year; that is (when it is let for grazing), seven cows are put into it, (and the grazier) leaves one of the seven cows at the year’s end for the rent of the land.\textsuperscript{436}
\end{quote}

Hence, according to \textit{CG}, the \textit{ócaire} has 21 \textit{cumals} of land,\textsuperscript{437} and for this amount of land the annual rent was one cow. MacNeill argues that this has to be ordinary pasture land, not mountain grazing, and as ‘The \textit{cumal} of land measured six \textit{forrach}s in breadth and twelve \textit{forrach}s in length’\textsuperscript{438} and ‘The

\begin{itemize}
\item Mac Niocaill, ‘\textit{Tír Cumaile}’, p. 84 n. 10.
\item \textit{AL} vi, p. 407, s.v. \textit{forrach}.
\item \textit{CG}, ll. 91–4. This section of \textit{CG} discusses the farm size of the \textit{ócaire}.
\item In other texts the \textit{ócaire} has 14 \textit{cumals} of land, not 21 \textit{cumal}s like \textit{CG} states here.
\item MacNeill, ‘Ancient Irish Law. The Law of Status or Franchise’, p. 286 n. 2; \textit{AL} v p. 276.
\end{itemize}
forrach was twelve times the fertach of 12 feet: 144 feet’.439 Thus, the side was 144 feet in length, and the headland was half of that, i.e. 72 feet in length, which gives the tír cumaile the areal of 34½ English statute acres. Since the mruigbe had twenty-one cumals of land, which adds up to about 721 acres, MacNeill argues that this is too much land to hold only seven cows, and hence when the compiler says that ‘That is a cow’s land’, he must mean one cumal of land, not the twenty-one cumals of land that the mruigbe had. The later commentators specifically state that one forrach is 144 feet in length, but this would give the tír cumaile as 1,728 feet by 864 feet,440 which again seems an implausible figure, and it seems much more likely for it to be the 34½ acres of CG. The text on tír cumaile only gives the numbers on the size of the cumal of land, but it also distinguishes between six types of land with dissimilar values. This refers to the cumal of variable value, as explained above:

First class cultivable land, its value is a cumal of twenty-four milch cows; upland cultivable, a cumal of twenty milch cows; land cultivable by labour, its value is a cumal of sixteen milch cows. Rough [land], a cumal of sixteen dry cows for it. Very rough [land], a cumal of twelve dry cows for it. Shallow [land], a cumal of eight dry cows.441

However, the type of land to the banchomarbae was entitled to inherit is not referred, only the size of the farmland she was to have. Hence, the fourteen cumals of land both she and the common bóaire were entitled to have, according to the measurements from Tír Cumaile, was about 483 English statute acres, while the ócaire was entitled to seven cumals of land, which equals about 241.5 English statute acres. The banchomarbae was only entitled to give her sons a maximum of fifty percent of her own land upon


440 EIF, p. 575.

her death, and only in certain circumstances,\textsuperscript{442} the maximum of which would equal the same amount as the land of the \textit{ócaire}, i.e. 241.5 English statute acres of land. However, these measurements cannot possibly be correct, as these are enormous amount of land.\textsuperscript{443}

\textbf{3.4. Lánamnas fir for bantinchur co fognam.}

In \textit{lánamnas fir for bantinchur co fognam}, ‘the union of a man on woman-contribution with service’, the roles of the husband and wife are reversed, as it is the woman who contributes the main bulk of the marriage goods, including the land. Hence, in the eyes of the law, the woman was the main provider, and was thus seen as the ‘man’ in the relationship, while her husband was her dependant:

\begin{quote}
\textit{Lánamnas fir for bantidnacur is a suidiu teit fer i nuidiu mna }\gamma
\textit{ben a nuidiu fír mad fer fognama is nomad a harbim don fír }\gamma
\textit{don saill mad ceand comairle cuindrig muintire fri comairle comnirt.}\textsuperscript{444}
\textit{Lethtrian do blicht confoglaigther in tri leth do lestrai a leth naill da trian a suidiu don fir. Nomad a lamtoraid fri himscarad doib mad imtucu doib scarad is amne a scarad.}\textsuperscript{445}
\end{quote}

Union of a man on a woman’s contribution: in that case, the husband goes in the track of the wife and the wife in the track of the husband. If he is a man of service he receives a ninth of the corn; and of the salt meat, if he is a "head of counsel" who controls the people of the household with advice of equal standing. The sixth of milk produce is divided in two: one half (1/12) goes to the vessels; of the other half, the husband receives two-thirds (1/18). He receives

\textsuperscript{442} For more information, see 7.3. The distribution of a woman’s property.

\textsuperscript{443} For a short discussion on the plausibility of the measurements, see Mac Niocaill, ‘\textit{Tír Cumaile}’, p. 85.


a ninth of the handicraft when they divorce. If they divorce by mutual consent, they part in this way.\textsuperscript{446}

This paragraph states that the roles of the husband and wife have been reversed from that of \textit{lánamnas mná for ferthinchur}, ‘the union of a woman on man-contribution’,\textsuperscript{447} in which the husband was the main contributor in the union, and the wife brought little or nothing. Hence one of the glosses states that ‘i.e. it is for that "lawful case" that the man becomes subject to the law that the above-mentioned woman is subject to’.\textsuperscript{448}

**3.4.1. The husband as a ‘head of counsel’**.

The husband of \textit{lánamnas fir for bantinchur} could, however, have a greater legal capacity than the wife of \textit{lánamnas mná for ferthinchur} if he was a ‘head of counsel’. The implication is that he would offer advice to his wife on how the farm was to be run, even if he did not bring in any, or only a small fraction of, immoveable or moveable property to the union. Eska notes that he does not necessarily give advice on his own labour, but most likely on how to manage the people and equipment involved in the labour.\textsuperscript{449}

The glosses further add that the husband would only receive a ninth of the grain if he does the labour. If someone else does the labour but he does not, he will not be entitled to this share.\textsuperscript{450} The following gloss implies that this man does not own the regular implements that a man would normally own, and hence the wife would receive a larger portion of the labour-third, i.e. the portion which would normally go to the owner of the implements.

\textsuperscript{446} Translation from Ó Corráin, \textit{Cáin Lánamna}, p. 25. Eska’s division of this paragraph (= Thurneysen/Ó Corráin §29) into §§ 31–2 closely follows the division in \textit{CIH}.

\textsuperscript{447} For a detailed discussion on \textit{lánamnas mná for ferthinchur}, see 2.6. \textit{Lánamnas mná for ferthinchur}.

\textsuperscript{448} \textit{CIH} 515.26–7; Eska, \textit{Cáin Lánamna}, pp. 240–1, gloss 2.

\textsuperscript{449} Eska, \textit{Cáin Lánamna}, p. 243 n.f.

\textsuperscript{450} Cf. \textit{CIH} 515.28; Eska, \textit{Cáin Lánamna}, p. 240 gloss 5. \textit{i. mad he in fer done in foghnum i mbith for bantinchur} ‘i.e. if the man who does the service is he who is in [a union] on the woman’s contribution’. Translation from Eska, \textit{Cáin Lánamna}, p. 241.
i.e. the arrangement and half the labor of the ploughing which he has in this case, and [he gets] one-third of one-third of the labor [portion] that the "male-implements" that the wife has instead of him for doing labor had taken, and he has two-ninths then and the wife undertakes her work and she takes one-ninth of them from him, and he does not own land or seed then.\footnote{\textit{CIH} 515.29–32.}

Both the commentary to A and the first commentary to B\footnote{\textit{The first commentary to B is the previous quotation.}} add to the information on the division of shares between the husband and wife in this type of union.

i.e. the man who is in a legal union on the woman’s contribution. A man on the woman’s contribution, he takes one-ninth from the cattle born during the marriage and from the grain and from the salted meat if he does work and is a "head of counsel"; he gets one-seventh of one-third of the labor for work if he is a "head of counsel"; he gets one-seventh and one-third of the one-seventh if [he is] a "head of counsel" only without work, for that reason it is two-sevenths and one-third of the one-seventh, one-ninth of the whole. If he happens to be then without work, and he is not a "head of counsel", one-half of the one-seventh for "taking of hands"\footnote{i.e. being married.} only; and the wife takes four shares from the husband’s wool, it is one-ninth of each of these shares that the husband takes from the wife, and he gets one-ninth of one-sixth of the produce of

\footnote{Translation from Eska, \textit{Cáin Lánamna}, p. 243.}
the churn-dash from milk; he takes these five-ninths whether he is a "head of counsel" or not a "head [of counsel]". 455

Hence, there is quite a significant difference of the shares the husband gets depending on whether or not he has the equipment to do the work, or if he has to use that of his wife, whether or not he has the equipment, but does not do the work, whether or not he is a ‘head of counsel’, but does not do the work, and whether or not he is both the ‘head of counsel’ as well as doing the work. Thus this gloss continues the rules of division in that the more a person has brought into the union, and the more work this person does, the bigger the share of assets will be upon the dissolution of the union.

3.4.2. The role reversal of husband and wife.

One of the glosses on the latter half of the paragraph regarding the division of the handiwork, furthers the sense of the role reversal of the husband and wife compared to their positions in the previous unions: 457

\[ .i. \text{amail na fuair in ben aice-sium ni i ndechsad s' in da nomadh don arbar, cona dechsad-som eice-si s' i nda nomad; l 'no cena i bail i ta trian ar cirtha adbullom, banaicdigh robi aice-sium ina aigid-sium, co ruc nomadh uaith-sium, } \gamma \text{ da nomad eicce-si ann-saide, } \gamma \text{ dul dosum ina gnimrad co mberann nomad dib uaithe.} \] 458

i.e. just as his wife did not get anything when she left except the two-ninths of the grain, so her [husband] did not [get anything when] he left except the two-ninths; or else then in a situation in which there is one-third on account of ready combed wool, the "female implements" that she has as against him, so that he has taken one-ninth from her, and she has two-ninths in that case, and

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455 Translation from Eska, Cáin Lánamna, p. 245; cf. CIH 1809.35–1810.7.

456 i.e. Eska §32.

457 For more information, see Chapter 2 Women and Property.

458 CIH 516.16–20.
he undertakes his work and he takes one-ninth of them from
her.\footnote{59}

This gloss refers to the similar gloss quoted above\footnote{60} on the first half of this paragraph,\footnote{61} in which the wife gets two-ninths of the grain. The glossator seems to have taken the first gloss on this paragraph to mean that the woman will get two-ninths of the grain if she is the one to leave, and this second gloss to mean that the husband will get two-ninths of the grain if he leaves. However, the text specifically states that the above division is in case they separate by mutual consent, not if it is by fault of one of the two. If the divorce is because of the bad behaviour of one of the spouses, the well-behaved partner will get the third of the labour-third in question. The former gloss seems to imply that the wife in the union was the owner of the ‘male implements’, i.e. the tools used for farming etc., while the latter states that the wife is also the owner of the ‘female implements’. These ‘female-implements’ were the implements a woman was expected to own and use in house-work, such as the vessels previously mentioned regarding the division of milk, as well as the spinning and weaving implements she would also be expected to have.\footnote{62} The likelihood that a woman would have these implements is suggested by the larger share a woman gets in regard to the division of milk and handiwork compared to the other assets being divided in case of a dissolution of a union.\footnote{63}

\footnote{59} Translation from Eska, \textit{Cúin Lánamna}, p. 251.

\footnote{60} Gloss on Thurneysen /Ó Corráin §29 = Eska §31. For the gloss, see 3.4.1. The husband as a ‘head of counsel’.

\footnote{61} I.e. Eska §31 = Thurneysen/Ó Corráin §29.

\footnote{62} For a list of these implements, see Chapter 4 \textit{Athgabál aile} below, which lists the implements a woman was entitled to distrain on account of.

\footnote{63} cf. the glosses (\textit{CIH} 508.21–22; cf. Eska, \textit{Cúin Lánamna}, p. 150–1) stating that ‘every woman is a "great"-worker in regard to milk’ as well as the difference in the shares the woman gets in regard to handiwork; the more preparation has gone into the wool and fleeces, i.e. the closer it is to be a finished garment or cloth of some kind, the larger the woman’s share in it is. These divisions seem to be relatively equal in the different unions, because of the work which has been put into it.
3.4.3. The division of assets.

The following paragraph of *CL* discusses the division of assets in case of the union being dissolved because of the fault of one of the partners:

*Mad aile da lina bes anfoltach is dilis cuit urgnuma in mifoltach dont ofoltach mad cetmuinter is diles uile donti bis ina mamaithectai nb na heir araile cuit a tir na bunad cethra acht scarait amail condrecat i ndabeir cach lais cusan aile a marathar de is ed beres lais fri himscarad na aithgin dia torad muna marathar.*

If either of the two is badly behaved, the share of the labor of the badly-behaved one is forfeited to the well-behaved one. If it is [concerning] a primary spouse, everything is forfeited to the one who does his [or her] proper duties except for what the other takes as a share from the land or original stock of cattle. But they separate as they join: what each brings in to the other, what is left of it, is what each takes away at [the time of] separation or replacement from each [spouse’s] profit if it does not survive.

The legal principle in this paragraph is the same as in the two previous unions; if the union is dissolved because one of the two partners has been badly behaved, the well-behaved partner will receive the share of the labour-third which would have gone to the other partner had he or she not behaved badly. However, if both of the partners have been badly behaved, the shares of the labour-third will remain the same as if both partners had been well behaved. The specification that this division is concerning a primary spouse is not too significant in this context, as it is very likely that the partners in *länamnas fir for bantinchur* were primary spouses. If the

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464 *CIH* 516.25–9. = Thurneysen / Ó Corráin §30; Eska §33.
465 Translation from Eska, *Cáin Lánamna*, p. 255. (A typo has been silently corrected.)
466 cf. §13 (*länamnas comthinchuir*) and §26 (*länamnas mná for ferthinchur*).
467 This principle is clear from *CL* §10, see *CL* §10 in 2.5.4.1. The division of the cattle’s produce.
husband had enough property, he would either have the same amount of
property as his wife, and thus it would be lánamnas comthinchuir, or he
would have more property than his wife and the union would be lánamnas
mná for ferthinchur. He would necessarily not be able to afford to be in a
union on a woman’s contribution and only have it as a secondary union,
because the wife would most likely be of higher status than the husband if
he did not have equal or more property than her.468 The paragraph ends by
stating an important principle of the early Irish laws: whatever a person
brought into a union was his or hers to bring out of the union as well. Hence
there are many references to consumption of the other partner’s property,
stating that had the property been consumed by mutual consent, it is lawful,
but if the property has been consumed without the owner’s knowledge of it,
there are penalties and interests that have to be paid.

3.4.4. A husband as a dependant.
Because the husband is the dependant in this union, his inferior contractual
capacity is not the only contrast with husbands in lánamnas comthinchuir
and lánamnas mná for ferthinchur. Since he is economically dependant on
his wife, his status will also be dependant on that of his wife, instead of the
wife’s status being dependant on his:

acht is fer doranar a hinhaib na mna mad le in tothchus uile inge
mad sofoltachu in fer oldas in ben no mad caidiu no mad saire no
mad airmidnechu.469

But he is a husband who is paid [penalties470] on the basis of the
wife’s status, if she has all the property, except if the husband has

468 cf. the legal principle from CG quoted in 2.6.2. Types of wives in lánamnas mná for
ferthinchur, regarding the financial burden of a socially-mixed marriage; CIH 46.18–22;
GEIL, p. 73.

469 CIH 516.30–2. = Thurneysen / Ó Corráin §31; Eska §33.

470 Whereas Eska chooses to add the word ‘penalties’ here, Ó Corráín has chosen to add
‘honour-price’. Thurneysen has translated this as ‘Aber er ist ein Mann, der gemäss der
Ehre seiner Frau Busse erhält…’ Thurneysen, SEIL, p. 62.
better property qualifications than the wife, or is more holy, or is
nobler, or is more respected.\textsuperscript{471}

The implication of being a dependant is that he has half of the honour-price
of his wife instead of the wife having half the honour-price of her husband
which is what happened under normal circumstances. Since the man is now
the dependant, and the wife has taken the husband’s role from the man, the
circumstances have been reversed in this situation. It is clear that this
paragraph refers to the principle outlined in §4 of the \textit{Fuidir}-text:\textsuperscript{472}

\begin{quote}
\textit{Ar cach riucht la Féniu, acht óen-triar, is lethlóg a enech dia
mná. Fer són cen šeib cen tothchus las mbi banchomarbae - a
inchuib a mná di-renar-side; 7 fer in-étet tóin a mná tar crích - di-
renar a inchuib a mná; 7 chú glás - di-renar-side a inchuib a mná
7 is si íccas a chiint a iarna airnadmáim nó aititin dia finib. It
túalaing inna téora mná-so ímechoed cor a cèle, connatat meise
recce na crece sech a mná acht ni for-chongrat.}\textsuperscript{473}
\end{quote}

For [there] is half the value of everybody’s honour-price for his
wife according to Irish law, except for three persons alone. That
is, a man without property, without possessions who has a female
heir [as wife] - the aforementioned is paid in atonement in
accordance with the honour of his wife; and a man [from another
kingdom] who pursues his wife’s arse across the border - he is
paid in atonement in accordance with the honour of his wife; and
a fugitive outlaw [lit. grey wolf] - the latter is paid in atonement
in accordance with the honour of his wife and it is she who pays
for his offences if it be after her betrothal or the acknowledgement
of her kin. These three wives are able to abrogate the contracts of

\textsuperscript{471} Translation from Eska, \textit{Cáin Lánamna}, p. 255.

\textsuperscript{472} \textit{GEIL}, p. 271: App. 1, text 26.

\textsuperscript{473} \textit{EICL}, p. 76. Normalised by McLeod from \textit{CIH} 427.1–18.
their spouses, so that [the latter] are not competent to sell nor to buy without their wives except that which they authorise.\textsuperscript{474}

Hence, the *Fuidir*-tract expands on the information given in *CL* §29\textsuperscript{475} which states that in the case of *lánamnas fir for bantinchur co fognam* ‘the husband goes in the track of the wife and the wife in the track of the husband’.\textsuperscript{476} The *Fuidir*-tract also expands on the different types of men whose honour-price is dependent on their wives, as it is not only the husband of a *banchomarbae* who is in this position, but all husbands who are dependent on their wives’ property, hence all the husbands in *lánamnas fir for bantinchur co fognam*. These husbands were then in the same position as women were generally expected to be in, as expressed in §38 of the *Dire*-tract:

She is not capable of sale nor of purchase nor of contract nor of bargain without one of her guardians.\textsuperscript{477}

A dependant husband will have to follow the decisions of his guardian, who in *lánamnas fir for bantinchur co fognam* will naturally be his wife. Though it is nowhere specifically stated in *CL* that the husband in this type of union has to be married to a *banchomarbae*, it is stated that it was a man who had less property than his wife, hence the wife was the main contributor of the union. However, in order to have enough property to successfully run a farm, it is much more likely that she would be a *banchomarbae* than a woman who had acquired property in some other fashion, even if it was possible for a woman to have property that was not inherited kin-land, *fintiu*.

\textsuperscript{474} Translation from *EICL*, p. 77; cf. *EIWK*, p. 310; *IR*, p. 64; Binchy, *SEIL*, p. 215.

\textsuperscript{475} =Eska §31.


\textsuperscript{477} *EICL*, p. 71; *GEIL*, p. 76; *IR*, pp. 35–6, *Dire* §38; see full quote in 2.2. Women’s legal status.
3.5. Personally acquired land.

Although it seems that there were limited opportunities for a woman to acquire personal land, the law texts do not express this as a legal impossibility. Just as a man who made a surplus from his own professional earnings or through successful farming of the *fintiu* was able to acquire further land, there is the distinct possibility that a woman was indeed capable of doing the same. As this land was not the inherited kin-land, the person who acquired it could also dispose of it more easily than had it been the *fintiu*. If a woman had managed to acquire excess land, whether it be through successful farming or through her own professional earnings, she would be able to bequeath this land in the same way as any male land-owner would. Not every woman would have such a profession that she would be able to acquire excess land, but there were certain women who were seen as very important in the society, and were thus more likely to have a higher wage than others. In *Bretha Crólige*, §32 there is a list of the women of the highest importance in the society:

§32. There are twelve women in the territory whom the rule of nursing in Irish law excludes: a woman who turns back the streams of war, a ruler entitled to hostages, one who is abundant (?) in miracles, a woman satirist, a woman wright, a woman revered by the territory, a woman leech of a territory, a sharptongued virago, a vagrant (?) woman, a werewolf in wolf’s shape, an idiot, a lunatic. It is by a fee to their kin that these women are compensated: they are not brought away [to be nursed].

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478 *GEIL*, pp. 100–1: *‘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 earning, he can freely dispose of two-thirds of it’.*

479 *GEIL*, p. 271: App. 1, text 29.

480 sic.

481 Binchy, ‘Bretha Crólige’, p. 27.
Kelly\(^{482}\) explains that if these women counted themselves as not being dependent on their husbands, their award in case of injury was to be assessed by the judge of the \(tíúath\) in relation to her possessions and her dignity.\(^{483}\) Although it is not easy to know what or who these women were, they seem to have in common that they were women of special status or skill. This status was not necessarily always positive, since the women in this paragraph include the women who were considered to be too dangerous for the host community, and would therefore need special consideration when injured.

### 3.5.1. Orbae cruib nó sliasta.

The legal commentary to the Kinship Poem §13 refers to property described as \(\text{orba cruib no sliasta}\),\(^{484}\) ‘inheritance of land or thigh’.\(^{485}\) Dillon explains of this type of property:

Besides "family land" (\(\text{finntiu}\)) held for life by a \(\text{banchomarba}\), she, like other women, might hold land acquired in other ways, namely "land of hand and thigh" or land freely bestowed upon her by her father. According to the text this land is not restorable to her \(\text{fine}\), but vests in her son upon her death. … H\(^{1}\) points out that this is an instance of a \(\text{banchomarba}\) whose land is not restorable to the \(\text{fine}\), that is to say an exception to the general rule.\(^{486}\)

Though Dillon does not refer to this as property that a \(\text{banchomarbae}\) could give as inheritance to her daughter or daughters if she died in default of sons, one of the glosses on \(\text{Di Chetharślicht Athgabálae}\)\(^{487}\) specifically

\(^{482}\) GEIL, p. 77.
\(^{483}\) Binchy, ‘Bretha Crólige’, p. 29, §35.
\(^{484}\) Dillon, \(\text{SEIL}\), p. 151. For more information on this term, see 4.3.3. ‘Women in general’ and 7.3.1.1. The Kinship Poem.
\(^{485}\) Translated as ‘land of hand and thigh’ in Dillon, \(\text{SEIL}\), p. 152.
\(^{486}\) Dillon, \(\text{SEIL}\), pp. 152–3.
\(^{487}\) \(\text{Di Chetharślicht Athgabálae}\). GEIL, p. 279: App. 1, text 66.
states that this could be the case.\textsuperscript{488} Kelly explains the \textit{orbae cruib ñ slíasta} as ‘land which a parent has acquired through his or her own exertions and which may be given to a son or a daughter’.\textsuperscript{489} Thus, the implication is that a woman who has acquired property independently of the \textit{fintiu} could also bequeath this type of land to her children. Dillon has noted a couple of possibilities of what he believes the \textit{orbae cruib nó slíasta} to be:

A woman is regarded as contracting with her father or her husband for service, and thus entitled to compensation. \textit{Orba cruib} could be acquired from either for domestic service, \textit{orba sliasta} presumably from a husband on separation, perhaps in consideration for children born of her.\textsuperscript{490}

Whether this is correct or not, it would explain the use of the words \textit{crob},\textsuperscript{491} ‘hand’, and \textit{slíasait},\textsuperscript{492} ‘thigh’. However, these words are almost always used in conjunction in the phrase and not separated in such a way as Dillon has understood them, thus this could be a misinterpretation. It is certain that \textit{orbae cruib nó slíasta} is a type of property which is not a part of the \textit{fintiu}, and can thus be bequeathed the way the person who acquired this property wished, except for the fraction of the land that the kin would have a right to.\textsuperscript{493} Yet, there is no reason to believe that \textit{orbae cruib nó slíasta} is always referring to land, and it is very likely that it can also be any other type of moveable property that has been acquired independently, which can therefore be given freely as inheritance to a son or a daughter.

\textsuperscript{488} \textit{CIH} 378.18: \textit{Athgabail aile do ingin im comorbus a mathar} ‘distraint of two days for a daughter concerning the inheritance of her mother’. Cf. Chapter 4 \textit{Athgabál aile}, esp. 4.3.3. ‘Women in general’.

\textsuperscript{489} \textit{EIF}, p. 416.

\textsuperscript{490} Dillon, \textit{SEIL}, p. 152.

\textsuperscript{491} Nom. sg., gen. sg.: \textit{cruib}. See \textit{DIL} s.v. \textit{crob}.

\textsuperscript{492} Nom. sg., gen. sg.: \textit{sliasta}. See \textit{DIL} s.v. \textit{slíasait}.

\textsuperscript{493} For more information, see 4.3.3. ‘Women in general’ and 7.3.1.1. The Kinship Poem.
4. Athgabál aile.\textsuperscript{494}

4.1. Introduction.

Distraint is a well-known legal procedure in early Irish law, much thanks to Professor Binchy’s articles ‘Distraint in Irish law’ and ‘A text on the forms of distraint’,\textsuperscript{495} and the works of d’Arbois de Jubainville,\textsuperscript{496} both of whom have worked on all the different types of distraint, including athgabál aile, ‘distraint with a two-day stay’, a type of distraint not based on the nature of the claim involved as the other types of distraint, but rather on the gender of the person who does the distraining, who is always female. Athgabál aile is a part of the lengthy tract named \textit{Di Chetharslíocht Athgabálae},\textsuperscript{497} which is the opening tract of the \textit{Senchas Már},\textsuperscript{498} and occupies most of the first volume and half of the second volume of the \textit{Ancient Laws of Ireland}, glosses and commentary included.\textsuperscript{499} It is clear that the compiler of the tract was confused by its title, as the legal principles he describes not only have four, but rather five, sections of distraint. While he is trying to explain the title of the tract, he gives twenty-two reasons\textsuperscript{500} for the title, all twenty-two explanations being tetrads, starting with:

\begin{quote}
\textit{Cair cid ara nepnar .iii.slicht for aithgabail arindi as cetharda
dodafet fodafera cinud iar tuisti \textsuperscript{7} cin iar cinud faill iar cin apad
dligid iar faill \textsuperscript{7} elud dligid iar napud \textsuperscript{7} idnaiidu fiad fiadnaisib}\textsuperscript{501}
\end{quote}

\textsuperscript{494} Parts of this chapter were first published under the title ‘Aspects of athgabál aile’, in \textit{Medieval Irish Law: Text and Context} (ed. Ahlqvist and O’Neill) Sydney Series in Celtic Studies 12 (Sydney: University of Sydney, 2013), pp. 25-40. It is reproduced here with permission of the series editor.

\textsuperscript{495} Both published in \textit{Celtica} 10, 1973.

\textsuperscript{496} \textit{Études sur le Droit Celtique} (Paris, 1895), comprising vols. VII and VIII of his \textit{Cours de littérature celtique}, which incorporate much of his material on early Ireland published in the earlier volumes of \textit{RC}.

\textsuperscript{497} ‘On the four sections of distraint’, also called simply \textit{Cethairísliocht Athgabálae}.

\textsuperscript{498} Excluding the Introduction.

\textsuperscript{499} \textit{AL} i, pp. 64–304 (end of volume), \textit{AL} ii, pp. 2–130.

\textsuperscript{500} \textit{AL} i, pp. 256–62.

\textsuperscript{501} \textit{CIH} 408.23–6.
Question: why is distraint said [to have] four divisions? Because four things precede it, which brings it about: being born after procreation, and liability after being born, [and] neglect after liability, [and] giving notice of law after neglect, and [to which are added] evasion of law after giving notice, and waiting in the presence of witnesses.\textsuperscript{502}

The greater part of these tetrads do not seem to deal with distraint at all. However, the next two reasons make slightly more sense:

\textit{Ocus arindhi it .iiii. athgabala gaibtir ann .i. duine }\gamma hiriu \, \gamma \, marbdili \, \gamma \, beocethrae. Ocus fo bith it cetheora fodlai \, \gamma \, cetheora aithgabala for cach ae for duiniu for duine\textsuperscript{503} for hirind for mairbdilib for beocethraib.\textsuperscript{504}

And because four types of distraint are taken then, i.e. man, and land, [and] inanimate possessions, and animate possessions. And because there are four divisions and four [types of] distraint upon each of them, upon man, upon land, upon inanimate possessions, upon animate possessions.\textsuperscript{505}

These explanations would have been more convincing if there were any evidence in the main provisions of the legal tract of there being a division based on those kinds of considerations, but Binchy has, in his main article, clearly shown that this is not the case, and has come to the conclusion that the reason for the title is that it refers to the original, older system of distraint, where there were only four sections, not five. The compiler identifies the same reason for the title as Binchy with the twentieth and twenty-first reasons, where he states:

\textsuperscript{502} My translation, based on AL i 257.23–27.
\textsuperscript{503} CIH 409 n. c: ‘dittography.’
\textsuperscript{504} CIH 409.1–2, 5–7.
\textsuperscript{505} My translation, based on AL i 259.5–9.
And because there were four periods of notice of law: one day, and three days, five days, and ten days, except for temporary exemption and preparing a feast. And because there were four divisions of notices for distraint. And each notice was of one day; for no one sustained the liability of another but his own liability. And that division which has one day [stay], had one day of notice. That division which has three days [stay], had three days of notice, that division which has five days [stay], had five days of notice, and that division which has ten days [stay], had ten days of notice.

4.2. Distraint.

Both de Jubainville and Binchy have suggested that what is referred to as tulathgabáil, ‘immediate distraint’, was an older form of distraint which was later superseded by athgabáil íar fut, ‘distraint with a stay’, and the former type of distraint was indeed ‘of one day anciently’, as the compiler says. While de Jubainville made the case that these two systems were not originally a part of the same tract, but rather two separate tracts, Binchy believes that this must be another example of the conservatism of the early Irish lawyers and their unwillingness to leave any part of the law out. He argues that while the law is showing what looks like one unified and

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506 CIH 413.29–30, 414.4–8.
507 cf. CIH 1715.10: ‘fuirthi dal.’
508 My translation, based on AL i 263.5–15.
petrified system by the time of the compilation of the tract, instead it is both earlier strata and later developments compiled in one text.

The system Binchy refers to as the later system, with a stay, must originally have been divided into four different sections, which were of either one, three, five or ten days’ stay, just as the twenty-first explanation of the compiler states. The final stage of the development of distraint with a stay must necessarily be the recognition of a certain legal capacity for women, with the *athgabál aile*, the ‘distraint with a two-day stay’, as it is the fifth section which is not recognised in the title of the tract. According to Binchy, all of these legal developments must have been completed by, at the latest ‘the seventh century, possibly earlier’. 510 Based on Liam Breatnach’s more recent dating of the *Senchas Már* to ‘roughly between 660 and 680’, 511 the developments must have happened by the third quarter of the 7th century.

Binchy argues that because there is no ‘two-day stay’ in the *tulathgabál*-part of the tract, this shows the constraints on the legal capacity of women, and suggests that *athgabál íar fiú* may be a later invention of the law which included the limited legal rights of women. 512 He suggests that there were ‘two successive stages in the evolution’ of distraint, and that *tulathgabál* was the older type of distraint which had become obsolete by the time of compilation. 513 McLeod, however, suggests that the lists that Binchy created in his article on women’s contractual capabilities in *SEIL* 514 do not show evidence from separate eras of early Irish law, but rather show examples of the general rule of women lacking contractual capacity versus the exceptions where women were capable of making contracts. He believes that Binchy was looking for evidence of the invention of women’s legal capacity, and hence he found it. 515 Kelly suggests that an argument favouring Binchy’s view is that ‘no case of *tulathgabál* involves distraint by

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510 ibid., p. 65.
511 Breatnach, ‘The early Irish Law Text *Senchas Már* and the Question of its Date’, p. 42.
513 ibid., p. 56.
515 EICL, p. 77.
a woman’ and that ‘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’.  

Binchy does, however, note that ‘the language is more or less uniform, and the sections on "immediate" distress do not appear to be linguistically older than those on distress with a "stay"’.  

He has noted the same conclusion in relation to the lists relating to women’s contractual capacity, in which he states:

> It is impossible to prove definitely, on linguistic grounds for example, that the passages in A are older than those in B; all one can say is that there is certainly no linguistic reason for believing them to be later.

Without any linguistic evidence to prove that there was an evolution of the legal capacity of women, I believe McLeod is correct in his proposition that Binchy’s lists are, in fact, contemporary accounts of the rights and restrictions regarding women’s legal capacity. Thus, we are not examining the different eras of the laws, but rather the contemporaneous exceptions to the legal restrictions for women.

### 4.2.1. Types of distraint.

According to the compiler of *Di Chetharślicht Athgabálae* there is a two-fold distinction of distraint, the first distinction being concerned with the owner of the property which is distrained. First, there is *athgabál cintaig*, which Binchy explains as ‘distress levied on the person directly liable’.

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516 *GEIL*, p. 179.


519 For a discussion of these lists, see 6.3.2. Increased legal standing with time or contemporaneous exceptions?

520 Binchy, ‘Distraint in Irish Law’, p. 32.
Secondly, there is *athgabáil inmleguin*,\(^{521}\) distraint which is levied on a substitute-churl instead of the actual defendant, and since it was not the defendant’s property which would be distrained, the lawyers allowed for twice the normal notice period.\(^{522}\)

The second distinction is between the two types of distraint: immediate distraint, *tulathgabál*, and distraint with a stay, *athgabál iar fut*. The compiler deals with *tulathgabál* in the latter part of the tract, and explains it as ‘exceptional, the result of special circumstances’.\(^{523}\) The main body of the tract is concerned with *athgabál iar fut*, which implies that this was regarded as the normal type of distraint by the time of the compilation of the tract.

4.2.1.1. *Athgabál iar fut*.

*Athgabál iar fut* is a lengthy procedure which consists of five successive stages; each of these stages are important for the successful completion of this legal remedy. The length of each stage of the procedure varies between one, two,\(^{524}\) three, five and ten days, the length of which will be repeated multiple times throughout the completion of the operation. The first stage is the notice, *apad*,\(^{525}\) which the plaintiff gives to the defendant stating that he\(^{526}\) is intending to distrain his property.\(^{527}\) After this notice period has expired, the second stage of the procedure begins. This stage is a delay, *anad*, which varied in length between one, two, three, five or ten days. The

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\(^{521}\) *GEIL*, p. 180: ‘The term *inmlegon* means "milking out into" so it seems that the plaintiff was originally envisaged as "milking" the surrogate in place of the defendant’. For more information, see *DIL* s.v. *in-omblig*..

\(^{522}\) Binchy, ‘Distraint in Irish Law’, p. 33; p. 63: ‘Notice of five days for a debtor and of ten days for a [member of the] fine if it be distrain of an *inmlegon* that is being taken’.

\(^{523}\) ibid., p. 51.

\(^{524}\) For a detailed analysis of distraint with a two-day stay, see 4.3. *Athgabál aile*.

\(^{525}\) The notice stage is sometimes referred to as *aurfócra*; cf. *GEIL*, p. 178. So far I have only come across *apad*, and I will therefore use this term throughout this examination of distraint.

\(^{526}\) I use the pronouns ‘he’ and ‘his’ here because in the normal types of distraint, both the plaintiff and the defendant were normally men, since women were not normally entitled to have property. The exception to this rule in distraint is *athgabál aile*, ‘distraint with a two-day stay’ which will be treated below in 4.3. *Athgabál aile*.

\(^{527}\) From the section on *athgabál aile* it is clear that the notice period is the length of the stay, which gives two waiting periods before the carrying off begins.
duration of the delay depended on the grounds for distraining, though it is not certain how the lawyers classified these grounds. Binchy tried to find a common factor in the different types of distraint, but found himself unsuccessful in the matter.\textsuperscript{528} Kelly gives two examples for the nature of the length of distraint:

for example if the distraint arises from the defendant’s having taken the plaintiff’s pigs, the delay is for three days, whereas if the distraint arises from the defendant’s having neglected to raise the funeral mound of his lord, the delay is for five days.\textsuperscript{529}

At any time during the delay, regardless of the length of delay, the defendant may either pay the fine which is due from him, fulfil his obligations, or give a pledge in acknowledgement of the claim, and the matter will be settled. If the defendant does nothing, the procedure enters into the next phase: \textit{tóchsal}, ‘carrying off’.\textsuperscript{530} During this stage of the procedure, the plaintiff will carry off the defendant’s property up to the value of the broken contract. According to the text\textsuperscript{531} this has to be done early in the morning, and the plaintiff must be accompanied by an \textit{aigne}, ‘advocate, law-agent’.\textsuperscript{532} The property in question is doubtless cattle, since cattle were a common type of currency, which were also easy to drive off. However, there is evidence of other types of animals being distrained.\textsuperscript{533} The distrained cattle are then driven to a pound called \textit{forus n-athgabála}, which can be either the plaintiff’s pound, or a third party pound. The plaintiff is responsible for the cattle during this period, including any injury which the cattle sustain while being driven to the pound or during the period in which they are being kept

\begin{footnotesize}
\textsuperscript{528} See Binchy, ‘Distraint’, pp. 38–45, for a discussion on the possible grounds for the differentiation in the length of the delays.

\textsuperscript{529} \textit{GEIL}, p. 178.

\textsuperscript{530} This phase is sometimes called \textit{tobach}, ‘levying’; cf. \textit{GEIL}, p. 178.

\textsuperscript{531} \textit{CIH} 897.1.

\textsuperscript{532} \textit{GEIL}, p. 178.

\textsuperscript{533} See Binchy, ‘A text on the forms of distraint’, \textit{Celtica} 10, pp. 72–86, for more information.
\end{footnotesize}
in the pound. He is also responsible for the safety of the pound, and must make sure that the pound is well-fenced. Different types of animals must be kept apart, and any diseased animal must be segregated from the rest, lest the rest of the cattle be contaminated.\footnote{Binchy, ‘Distraint in Irish Law’, p. 46; GEIL, p. 178.}

After the cattle have been brought safely to the pound, the fourth phase begins, which is called \textit{díthim}, ‘delay in pound’.\footnote{Sometimes referred to as \textit{ré ndíthma}, ‘period of delay in pound’. \textit{Díthim} is the verbal noun of \textit{di-tuit}, and its primary meaning is ‘lapsing, becoming forfeit, forfeiture’ (see \textit{DIL} \textit{s.v. díthim}), but in this specific legal procedure means delay in pound.} During this phase, the cattle remain in the pound for a certain period of time. The specific length of this period is not stated in the text,\footnote{The only place there is a positive statement regarding the length of the \textit{díthim} is regarding \textit{athgabál aile}, in which it given as twice the length of the \textit{anad}.} but both Binchy and Kelly believe the period of the \textit{díthim} was the same as the \textit{anad}, ‘delay’. The defendant will once again have the possibility of redeeming his cattle, by the same means as during the \textit{anad}, but in this case he will have to pay the expenses for feeding and tending to the cattle in the pound.

If the defendant still does nothing, the final stage of the distraint begins: \textit{lobad}, lit. ‘rotting, decay’.\footnote{Binchy, ‘Distraint in Irish Law’, p. 50; GEIL, p. 179.} This phase is a progressive forfeiture of the cattle, in which a certain value of the cattle will be forfeited to the plaintiff for each day passing. The first day cattle of the value of five \textit{séts} are forfeited, and every subsequent day cattle of the value of three \textit{séts} are forfeited until there are none left. At any time during the period of forfeiture, the defendant can regain the possession of the remaining cattle, but not the cattle which has already been forfeited, by paying the remainder of the amount owed to the plaintiff. Thus the full amount will eventually be paid, whether it is through the defendant agreeing to pay the amount owed or through the distraint.

\textbf{4.2.1.2. Tulathgabál.}

After the discussion of \textit{athgabál iar fut}, the compiler briefly discusses the differences between \textit{athgabál iar fut} and \textit{tulathgabál}, ‘immediate distraint’.
There seems to be two main differences: firstly, there is no *anad* in *tulathgabál*, i.e. there is no period of delay between the notice and seizure of the cattle. Secondly, there is no stage equivalent to *lobad*, ‘decay’: when the *díthim*, ‘delay in pound’, runs out, the full amount of cattle will be distrained immediately, hence the name ‘immediate distraint’.

There is one other difference which needs to be mentioned. There were only four sections of *tulathgabál*, not five as in *athgabál íar fut*. The missing section is the section corresponding to *athgabál aile*, distrain with a two-day stay, which is one of the reasons Binchy gives for his belief that *athgabál íar fut* was a later innovation in the laws.

4.3. *Athgabál aile*.

There are in total 314 cases recorded under *athgabál íar fut*, most of them belonging to either *athgabál oíne*, with its 103 cases, or *athgabál treise*, with its 110 cases. *Athgabál cóicthe* and *athgabál dechmaide* are almost equal to each other with 36 cases in the former and 32 cases in the latter. These correspond quite closely in number to the later *athgabál aile*, with its 33 recorded cases. Binchy has tried to find a common factor to unite the cases in the different sections, but without success. The only uniting factor found is that most of the cases recorded under *athgabál aile* have to do with women’s work or household articles. The main connection is that it is the woman who does the distraining. However, the gender of the defendant does not matter, as the text states that:

\[
\text{Apad naile o mnai for mnai \gamma o mnai for fer; mad fer actas for mnai, is apad .u.thi l x. maide forri.}^{538}
\]

There is a notice of two days from a woman on a woman and from a woman on a man. If it be a man who sues a woman, it is a notice of five or ten days upon her.\(^{539}\)

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\(^{538}\) *CIH* 378.14–15; *AL* i 146.26–7.

\(^{539}\) Unless otherwise stated, the translations from the section on *athgabál aile* are mine. For the full text, see Appendix 1.
4.3.1. **Available translations.**

The only available translations of the tract regarding *athgabál aile* are the translation in *AL* and de Jubainville’s translation in his *Études sur le Droit Celtique*,\(^{540}\) which Binchy claims ‘have been rendered largely out of date’.\(^{541}\) The glosses and commentary have also been included in this examination. Although they have often been seen as an unreliable guide to the understanding of the laws, they were written within a linguistic tradition which is now lost, and hence their guesses can sometimes indicate connections between words which would not be immediately apparent to the modern researcher.\(^{542}\)

4.3.2. **Available text.**

The text on *athgabál aile*, including glosses and commentary, runs for two and a half pages in the *Corpus Iuris Hibernici*,\(^{543}\) with the equivalent text over four pages in the first volume of *Ancient Laws of Ireland*, as well as another four pages of glosses and commentary.\(^{544}\) As mentioned above, there are 33 recorded cases in this section of distraint. I have further divided these cases into four categories according to their nature. By far the greatest category of these four is the one I have called ‘women’s work’, which includes 26 out of the 33 cases. The second largest category is dealing with ‘women in general’ and has three cases, and the last two categories, ‘work’ and ‘women’s pets’, have two cases each.\(^{545}\)

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\(^{540}\) de Jubainville’s translation of the section on *athgabál aile* can be found in *Cours de littérature celtique*, vol. 8, ch. 5 ‘Saisie avec délais de deux nuits’, pp. 110–24 (= *Études sur le Droit Celtique*, vol. 2).


\(^{543}\) *CIH* 378.14–380.31.

\(^{544}\) *AL* i, pp.146.26–150.17, with glosses and commentary on pages *AL* i, pp. 152.4 to 156.4.

\(^{545}\) For a full translation of *athgabál aile*, including glosses and commentary, see Appendix 1.
4.3.3. ‘Women in general’.

Firstly, there is the category I have called ‘women in general’. These three cases are dealt with in the first paragraph of the relevant text in CIH. The rest of the cases follow in a separate paragraph after the glosses and commentary of the first paragraph.

The first section reads:

*Athgabál aile do ingin im comorbus a mathar imifocul mna diaraile im dingbail mbantellaig ar ní bi i mbantellach $ co coirib $ losat $ criathar do cach mnai for araile.*

Distraint of two days for a daughter concerning the inheritance of her mother, concerning the evil word of a woman to another, concerning the removal of women’s legal entry, for there is no [going] into women’s legal entry but with sheep and a kneading-trough and a sieve for every woman upon the other.

The first case is particularly interesting as it deals with the inheritance of one woman to another. In his book *Early Irish Farming*, Professor Fergus Kelly takes this to mean that if a female heir has no sons, she may bequeath land to her daughter or daughters. This is further confirmed by the glosses:

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546 CIH 378.18–20; AL i 146.31–148.2.
547 CIH 379.4–12; AL i 150.3–13.
548 These three items can also be found in two versions of DT; cf. CIH 908.34; *co cairib $ losat $ criathar*; CIH 2018.28: *co cairib $ losat $ criathar*. In Noïnden Ulad, Crunchnu’s wife also brings a kneading-trough and a sieve, amongst other things, to establish her position as mistress of the house; cf. GEIL, p. 188 n. 75; Hull, ‘Noïnden Ulad: The Debility of the Ulidians’, Celtica 8 (1968), p. 28.
549 CIH 378.18–20; AL i 146.31–148.2.
550 EIF, p. 416.
im cæm-orba uais a mathar. i. cairig 7 crela i. orba feirtni. i. orba cruib l sliasta a mathar.551

i.e. concerning the noble family-inheritance of her mother, i.e. sheep and baskets, i.e. inheritance of the spindle, i.e. the inheritance of hand or thigh of her mother.

Myles Dillon has argued that the ‘inheritance of hand or thigh’ is a type of land that a woman, or a man, has acquired independently, rather than as finiu, ‘kin-land’, and is therefore free to dispose of it almost the way he or she pleases,552 except for the proportion that the kin has a right to in cases of sale or bequest.553 The amount of land that he or she is free to dispose of is one-third if the surplus arose from the productivity of his or her share of the kin-land, but two-thirds if it has come purely out of his or her own professional earnings.554 This is exemplified in the Additamenta in the eighth-century Book of Armagh, which describes how Cummen, a nun, bought an estate together with a man called Brethán, for the valuables which she would have brought into her marriage as a dowry:555

Hence half of this heritage belongs absolutely to Cummen, in house, in man, until her chattels be paid to her, that is, three ounces of silver, and a can of silver, and a necklace with three ounces, and a circlet of gold (calculated) according to ancient measurements and ancient dimensions: the value of half an ounce in pigs and the value of half an ounce in sheep, and a garment worth half an ounce, all of these (calculated) according to ancient

551 CIH 378.21–2; AL i 148.3–5. For more information on the orbae cruib nó sliasta, see 3.5.1. Orbae cruib nó sliasta and 7.3.1.1. The Kinship Poem.

552 Dillon, SEIL, p. 152.

553 GEIL, p. 100; EIF, pp. 416–17.

554 GEIL, pp. 100–1. ‘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 professional earnings, he can freely dispose of two thirds of it’.

measurements (and given) on account of a marriage settlement. Cummen made a mantle which was sold to Éladach son of Maelodar, lord of Cremthenn, for a brown horse. That horse was sold to Colmán of the Britons for a cumal of silver. That cumal went to the additional price of Óchter Achid (i.e. to make up or eke out the price).\textsuperscript{556}

Cummen was able to buy the latter half of the estate because of the sale of her own handiwork, which, through the sale of the brown horse, accumulated into the value of the other half of the estate. Thus this paragraph from the text on distraint clearly shows that women were, at least in theory and probably also in practice, able to purchase property and thus also inherit property from their mothers.

The second case in this category of \textit{athgabál aile}, ‘concerning the evil word of a woman to another’, is dealing with a woman’s honour. The glosses indicate that we are dealing with a suit relating to:

\textit{.i. in drochfocul dobeir in ben ara cheili, ima lesaínm l anfocul na bi furri […] i. mifocul nad fiu fuirri […]}\textsuperscript{557}

the bad word the [one] woman inflicts upon another, concerning her nickname or a false attribution which she does not merit, […] i.e. an evil word which she does not deserve […]

In a society where honour was so important, it is not surprising that a woman was entitled to distrain for this type of insult. There are numerous examples of the legal importance of honour from early Irish society; there is, for example, a heptad related to women’s grounds for divorce based on the insult of a woman’s honour through a serious offence on her husband’s

\textsuperscript{556} Bieler, \textit{Patrician texts}, p. 175.

\textsuperscript{557} \textit{CIH} 378.22–24; \textit{AL} i 148.5–8.
part, in which she could still retain their *coibche*.

Two of the grounds are based on name-calling:

\[
\text{bean o toimsi a ceile guscel ben fora fuirme a celi tinchur naire co mbi namat fuirre.}
\]

a woman of whom her husband circulates a false story; a woman upon whom her husband gives circulation to a satire until she is laughed at.

The third case deals with another of women’s legal rights, namely *tellach*, ‘legal entry’. This section is glossed with further information concerning the correct manner in which a woman could perform legal entry. These glosses regarding distraint give much of the same information found in *DT*, the law tract on legal entry:

\[
[\ldots] \text{.i. indligthech(?) berait isin ferann .i. mainipat cairig .i. uair lchan fuil ni dlegar(?) doina mnaib do breith do techtug feraim s̄ cairig 7 lamtorad.}
\]

[\ldots] illegal is that which they bring onto the land, i.e. unless they be sheep, i.e. because there is nothing which it is necessary for the women to bring for taking possession of land by legal entry save sheep and handiwork.

---

558 Heptad 52 (*CIH* 47.21–48.22; *AL* v 292.16–296.13). All of the grounds found in this heptad are related to a woman’s honour, through name-calling, lasting blemishes, being repudiated for another woman, being brought to commit fornication and not receiving her sexual desires in marriage for different reasons. The full heptad can be found in 2.5.4.5.1. An Old Irish gloss on spring work.

559 *CIH* 46.23–30; *AL* v 292.19–20.

560 Translation from *AL*.

561 For more information, see Chapter 5 *Bantellach*, esp. 5.3. Legal entry for women.

562 *CIH* 378.25–7; *AL* i 148.9–12.
Both the glosses on *athgabál aile* and the tract on *tellach* add that: ‘if it be making entries, two sheep [should be brought] on the first occasion’, and the glosses on distraint further say that the sieve should be brought ‘the last time’, and ‘all her goods in the end of the 12 days’.

### 4.3.3.1. Bríg and Senchae.

In *DT*, Senchae gives a false judgement in which he says that ‘female entry is according to male entry’, a judgement corrected by Bríg, the mythical female judge who appears whenever there is a judgement in the laws favouring women. Her correction then cures the blemishes that appeared on Senchae’s face because of his false judgement. Both Senchae and Bríg appear in the end of the text on *athgabál aile*, where it is said that the distraint with a two-day stay has been ‘judged by Bríg Briugad and Senchae Mac Ailella’. The glosses state that ‘it was adjudged by Bríg Banbriugu, mother of Senchae, and by Bríg Breithem, his wife’. According to Liam Breatnach, Bríg Breithem is the same figure as Bríg Ambue, to whom the tract *Bretha Bríge Ambue* is assigned. The glosses seem to be confused about Bríg. She has been both described as the

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563 *i.e.* *DT*; for more information see Chapter 5 *Bantellach*.


565 *cf.* *CIH* 208.17–18.

566 *CIH* 378.28; *AL* i 148.14. *in fecht dedenach*.

567 *CIH* 378.27–8; *AL* i 148.13–14. *i. a crod uili i forba na .iii.a cethramthan; cf. CIH* 208.10–11: *ś a crod uili do breith in amund a forba na teora ceathramad.* For more information, see Chapter 5 *Bantellach*.

568 For more information on legal entry for women, see Chapter 5 *Bantellach*.


570 *CCIH* p. 367: ‘[Senchae] and Bríg appear together as judges twice in *SM1*, 2. *Cethairślicht Athgabálae*, at 377.24 and 380.15, and once in *SM2*, 11. *Din Techtugud*, at 209.12–22’. Bríg also appears in the Kinship Poem in a section discussing female inheritance, this time without Senchae. For more information, see *CIH* 215.16; *EIWK*, p. 517; Dillon, *SEIL*, p. 155; 5.3.4. Senchae and Bríg; Chapter 7 The Passing of property.

571 *CIH* 380.14–15; *AL* i 150.14–16.

572 *CIH* 380.23–4; *AL* i 154.27–9.

573 *CCIH*, p. 175.
daughter of Senchae as well as his wife. Whether she was the daughter or the wife of Senchae, the important point here is that the mention of Bríg is the lawyers’ way of justifying a woman’s legal entitlement, by making it an archaic ruling given by the banugdar fer neirind i.e. lanbreithem ‘the female authority of the men of Ireland, i.e. the female judge’.

4.3.3.2. The procedure in the commentary.

After the first paragraph there is a long commentary explaining the legal procedure of athgabál aile.

Nochan fuil .x.bir nesaim na nemnesaim imn athgabail gabait na mna, lchan fuil .x.bir cintaig na inbleogain, lchan fo.x.lait muige na cricha anad na dithim doib, s’anad naile apad naile dithim cethramthan; ben tuc toichid for fir l for mnai and sin.

There is no difference between [distraining for] that which is indispensable or dispensable in the distraint that the women take, and there is no difference between [their distraint against] the guilty party or a surrogate, and neither space nor land remove [the need for] stay or delay in pound for them, but [they have] a stay of two days and a notice of two days and delay in pound of four days; and in this case a woman brought a suit against a man or on a woman.

\[\text{\textsuperscript{574} CIH 209.24, 1241.17, 1665.1.}\]
\[\text{\textsuperscript{575} CIH 380.23–4; 2019.29.}\]
\[\text{\textsuperscript{576} Binchy, CIH 380 n. g: ‘sic, for ban’-}\]
\[\text{\textsuperscript{577} CIH 380.24–5.}\]
\[\text{\textsuperscript{578} For the relevant paragraph, see 4.3.3. ‘Women in general’}.\]
\[\text{\textsuperscript{579} CIH 378.29–379.3 (commentary written by the scribe of the text); AL i 148.15–150.2.}\]
\[\text{\textsuperscript{580} CIH 378 n. m: ‘sic, for imin’}.\]
\[\text{\textsuperscript{581} CIH 378.29–32 (CIH 378 n. i–i: commentary written by the scribe of the text); AL i 148.15–19.}\]
The commentary continues with an explanation of what seems to be a special case of distraint, where there are three separate notices of two days, making the period of notice a total of six days, and producing a total of twelve days for the full procedure. It concludes with a simple statement:

\[ Sund \ im–\ nochan \ fuil \ s’ \ apad \ naili \ 7 \ anad \ naile \ 7 \ dithim \ cethraimthe, \ conid \ ocht \ la. \]

Here, however, there is only a notice of two days and a stay of two days and a delay in pound of four days, so that it is eight days.

The last statement refers to the initial explanation in the commentary with a notice of two days, a stay of two days, and a delay in pound of four days. The glossator is here describing two separate types of distraint with a two-day stay: one with a notice of two days, a stay of two days, and a delay in pound of four days, which is a total of eight days, another with three separate notices of two days each, a stay of two days and a delay in pound of four days, which is a total of twelve days. The latter case, with a total of twelve days, is likely to be a special case, and the former case with a total of eight days, which has been referred to on numerous occasions in the tract, seems to be the regular procedure of \( \textit{athgabáл aile} \). In \( AL \), the text explicitly states that: ‘Every distress of two days shall have its right upon four days; its delay in pound upon eight days’.\(^{583}\) This means that there is a notice of two days, a stay of two days, and a delay in pound of four days, twice the length of the stay, and this equals a total of eight days, which means that the period of forfeiture starts on the ninth day. The doubling of the stay during the delay in pound in \( \textit{athgabáл aile} \) is very interesting because it seems likely that the normal procedure in the original four sections of distraint was that the delay in pound was the same length\(^{584}\) as the stay.\(^{585}\) The above

\(^{582}\) CIH 379.2–3; \( AL \) i 150.1–2.

\(^{583}\) CIH 377–27-8; \( AL \) i 144.24–5. \( \textit{Cach athgabail aile a dligid for cethraimthain a dithim for ochtmad} \).

\(^{584}\) For more information, see discussion in 4.2.1.1. \( \textit{Athgabáл iar fut} \).

\(^{585}\) This in turn is the same length as the period of notice.
quotation is the only place where it specifically says how long the delay in pound was, but it is important to note that athgabál aile was an innovation of the law, and a special case for women. As the duration of the delay in pound is nowhere specifically stated with regard to the other four sections of distraint, it is much more likely that it was in fact the same length as the stay. The lawyers were careful to note every time frame in the law tracts, so it would be surprising had this lawyer not noted it if the duration was actually a different length of time, which is exactly what they did in the distraint with a two day-stay. This implies that the duration of the suit before the beginning of the forfeiture would be three, nine, fifteen and thirty days in the four original sections of distraint.

4.3.4. ‘Women’s work’.

I have chosen to call the next category ‘women’s work’. It is the largest category, and includes 26 of the 33 cases. This category may be divided into two sub-categories; four of the cases deal with the completion and payment of women’s work, and the last 22 cases deal with the materials with which they work.

4.3.4.1. ‘The completion and payment of women’s work’.

It starts with the four cases that may be sub-categorised as ‘the completion and payment of women’s work’ and continues with a long list of the different implements used by women in their handiwork.

Athgabail aile im log lamhoraid. Im duilchine. Im fobrithe im apartain mna diaraile.⁵⁸⁶

Distraint of two days concerning the value of handiwork, concerning wages, concerning payment [for the weaving after it is taken down from the loom], concerning blessings of one woman on another […].

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⁵⁸⁶ CIH 379.4–5; AL i 150.3–4.
It is clear from the text itself that these cases concern a woman’s handiwork, but the glosses enlighten us on the type of work the woman does, and explains that the ‘value of handiwork’ is:

\[ .i. \text{im log in toraid doni-si o laim } .i. \text{bocad } \frac{7}{7} \text{breadh } \frac{7}{7} \text{fige}. \]

concerning the value of the produce she makes by hand, i.e. softening and flecking and weaving wool.

The glosses do not add much information on these four cases, rather they state the amount a woman is entitled to for the different cases. ‘Concerning wages’ has, for example, been glossed ‘i.e. a tenth of every article’,\(^{588}\) and ‘concerning payment [for the weaving after it is taken down from the loom]’ has been glossed ‘i.e. half of the payment to the female weaver, i.e. payment of clipping, i.e. value of weaving’\(^{589}\). The gloss on ‘the blessings of a woman on another’ add a little more information than the other glosses:

\[ .i. \text{uii.mad } \text{lanbiata na mna na derna in hennachad, no na mna dia ngaither } .i. \text{nembennachadh doni in ben ar aicdi na mna } .ii. \text{ann-saide}. \]

a seventh of the woman’s full refection who did not fulfil the blessing of the woman for whom [distraint] is taken, i.e. in this case the woman does not make a blessing on the material of the other woman.

It was customary to bless people and the work they were doing when entering a room, so if a someone entered a room without giving a blessing upon the woman working in the room, it was as if he or she did the opposite

\(^{587}\) CIH 379.13–14; AL i 152.4–5.

\(^{588}\) CIH 379.14; AL i 152.5–6. \(i.\) x.mad cacha dula.

\(^{589}\) CIH 379.14–15; AL i 152.6–7. \(i.\) leth na fuba don mnaí ign \(i.\) fuba berrtha \(i.\) luag fige.

\(^{590}\) CIH 379.15–16; AL i 152.7–9.
of blessing the work, and thus the woman whose handiwork was not blessed
was entitled to distrain on account of it.\textsuperscript{591}

4.3.4.2. ‘The materials of women’s work’.

The next 22 items of the tract make the second sub-category in my
classification of ‘women’s work’, and they comprise a list of the materials
over which a woman is entitled to distrain:

\begin{quote}
\textit{Im cach na}\textsuperscript{adbur bis i feirtsib im fertais im snimaire im pesbolg
im fethgeir. Im aiced fige uile. Im fleisc lin. Im cuicil. Im
lugarmain. Im cloidem corthaire. Im abrus. Im comopair nabairse.
Im corthair. Im aiste lamthoraid. Im iadag cona ecortaig im criot. Im
crandbolg. Im rinde im chusail im snathait im snaithe liga. Im
scaideire focoisle ben araile.}\textsuperscript{592}
\end{quote}

Every raw material which is on spindles, the spindle, the spinning-
stick, the wool-bag [at her feet], the weaver’s reed, all equipment of
weaving, the scutching-stick, the distaff, the spool-stick, the rod used
for making fringes, the yarn, the equipment of the yarn-spinning, the
border, the pattern of the handiwork, the wallet with its content, the
bag, the leather scoop, the tippet, the hoops (?), the needle, the
lustrous thread, the mirror which a woman takes from another.

The first of these items, ‘every raw material which is on spindles’, has two
glosses; the first gloss on ‘every material’, and the second on ‘which is on
spindles’. Both of the glosses are concerned with the material in use, but
with different materials, the first being ‘the grey flax thread’,\textsuperscript{593} and the
second being ‘the grey woollen thread’.\textsuperscript{594} The glosses further add that the

\begin{flushright}
\textsuperscript{591} Explained in personal communication from Prof. Máirín Ni Dhonnchadha.
\textsuperscript{592} \textit{CIH} 379.5–11; \textit{AL} i 150.4–11.
\textsuperscript{593} Glosses \textit{CIH} 379.13–380.13; \textit{AL} i 152.4–154.26. \textit{CIH} 379.17; \textit{AL} i 152.9–10. \textit{i. glaslin.}
\textsuperscript{594} \textit{CIH} 379.17; \textit{AL} i 152.10. \textit{i. snath glasolla.}
\end{flushright}
spindle is used for flax, and that the spinning stick is used for wool, but that the woman was also able to distrain for ‘the bare spinning stick, i.e. of [the] woof’. I believe that the treatment of the next item on the list shows that our glossator had a good knowledge of Latin as well as Irish. *Pesbolg* has been translated ‘wool-bag’ in *AL*, and because of this ‘a bag for holding wool?’ is how the word has been translated in *DIL*. The glosses explain that this is ‘concerning the bag which is *fo peis*, at the foot, out of which she combs her yarn-spinning, i.e. the combing-bag’. *AL* translates this as ‘the bag which she has at her "pes", i.e. foot’, and in the glossary to *AL pes* is treated as an Irish word. However, it is much more likely that the glossator tried to explain *pesbolg* by means of an ‘etymology’ involving the Latin noun *pes*, ‘foot’. The etymology of *pes* is really from *pexus*, the past participle of *pecto*, ‘to comb’, used in phrases such as *tunica pexa*, ‘woolly jumper’.

Most of the glosses give unsurprising information about the items on the list. ‘Concerning all equipment of weaving’ has been glossed ‘i.e. the equipment of the weaving for beams and for swords, i.e. the rods of weaving’. *Garmanib*, the dative plural of *garman*, can both be translated ‘beams’ and ‘looms’, i.e. it can be describing both the entire loom, but also the top beam of the loom, and the *claidmib*, dative plural of *claideb*, can be equated with the weaver’s reed, often also called the weaver’s sword, and hence these two beams make up the ‘rods of weaving’, i.e. the two main

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595 *CIH* 379.17; *AL* i 152.10. *i. lin.*
596 *CIH* 379.17; *AL* i 152.11. *i. olla, l in fertais loim i. nindich.* ‘i.e. of wool or the bare spindle, i.e. of [the] woof’.
597 *DIL* s.v. *pesbolg*, p. 183.
598 *CIH* 379.18; *AL* i 152.11–12. *i. imin bolg bis fo peis, fo traigid, asa cirann a abrus i. in cirbolc.*
599 Translation in *AL* i 153.16.
600 *AL* vi 603.
601 Explained in personal communication with Dr. Graham Isaac. He also points out that there is also a Middle Welsh word *peis*, meaning ‘tunic’ or ‘smock’ which is also a Latin borrowing from *pecto*, but in this case from the fem. past part. *pexa*.
602 *CIH* 379.19–20; *AL* i 152.14–15. *i. comobair na fige do garmanib γ do claidmib i. na slata fige.*
beams needed for weaving on a loom. The glosses also state that the weaver’s reed ‘brings a sharp sinew across her weaving’, and that the scutching-stick is the stick ‘by which the flax is scutched, i.e. the distaff of flax, the spindle’. “The distaff” has been clarified as ‘i.e. of wool’, i.e. as opposed to the one used for flax, while ‘the rod used for making fringes’ is ‘out of which the border is woven’. ‘The yarn’ is ‘the noble material except its weaving, i.e. the white balls of thread, i.e. the white thread’, which implies that this case is not for the weaving itself, but rather for the actual ball of yarn. The next item on the list concerns something quite similar, which is ‘the equipment of the yarn-stuff’, ‘i.e. the beam of reel or of winding, i.e. work upon work, i.e. small, wooden beams, the end of borders’. The following item is concerned with the final word of the previous gloss, namely the border, corthar, which is glossed simply ‘i.e. for itself’. The exact meaning or significance of this gloss is not clear to me.

The gloss on the next item, ‘concerning the pattern of the handiwork’, contains noteworthy information, in its reference to the patterns used to create items, whether they be clothes or any other item in need of a pattern. The gloss notes the near truism by stating that ‘i.e. she makes the handiwork with more ease with the leather-patterns in her presence, i.e. the pattern of the handicraft upon it’.

The next item concerns ‘the wallet with its content’. This item has two glosses, the first on ‘its content’ and the second on ‘the wallet’. The
second of these glosses, i.e. on ‘the wallet’, specifies the type of wallet, which the glossator explains as an *aiteog*. This gloss has been left untranslated in *AL*, as many of the less commonly known words have. I believe this could be translated tentatively as ‘the little repository’. The first gloss describes what the wallet was used for, i.e. the wallet together with what is put into it, the yarn-spinning, and what it looked like, i.e. the string which is around it, i.e. around its mouth. This implies that the wallet in question was a small bag, hence the diminutive *aiteog*, with a string around the top in order to close it, i.e. the string around its opening, into which items used in weaving were put, for example the yarn-spinning. The wallet leads neatly onto the next case; ‘concerning the bag’. This item has a typically incorrect etymological explanation in the gloss, which stated that it is ‘concerning the "enclosure-lace," the enclosure sewed with laces or the enclosure with laces out of it’. The glossator has clearly tried to explain the bag, *criol*, by interpreting it as *cro-iall*.

The following item on the list is the leather scoop, which the glossator identifies to be ‘of leather, i.e. a bag out of which there used to be a little wooden opening, i.e. which is under the wash-pot’. This item clearly has to do with washing, and was probably a leather bag which was used as a ladle to scoop the water used for washing.

The next two items, ‘the tippet’ and ‘the hoops’, have been combined in the glosses, by stating that the tippet is ‘the long’, and that the hoops are ‘the short’. The hoops have further been described as ‘i.e. of

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612 CIH 379.25–6.

613 AL i 153.33: ‘i.e. the material, i.e. the ‘aiteog’ […]’

614 CIH 379.26; AL i 152.25. DIL s.v. 3) *aite*, ‘case, repository’ + a suffixed diminutive.

615 CIH 379.25–6; AL i 152.24–5. *i. in tiag cusani ecarthar innti, int abra*. *i. in loman bis imbe*. *i. ima beolu.*

616 CIH 379.26–7; AL i 152.26. *i. im cro-iall, cro fuaigther d’iallaib, l cro ass d’iallaib fene*. (CIH 379 n. 1: ‘partly erased, omitted in O’Don.’ I have also omitted the word in my translation.)

617 CIH 379.27–8; AL i 152.27–8. *i. lethair*. *i. bolg asa mbid crannbelan annalut*. *i. bis fon palt foilethi.*

618 I am not certain about the translation ‘hoops’, but it is thus far the best translation I have been able to find.

619 CIH 379.28; AL i 152.28. *i. in fota.*
tough and stiff wood, i.e. he used to have old small wooden shavings about
the yarn’.\textsuperscript{620} James Carney has also combined these two items in an article
in \textit{Celtica} 1\textsuperscript{621} where he gives an example from O’Curry’s \textit{Law
transcripts}:\textsuperscript{622} \textit{[r]inde i. cruind, [c]ausail i. rainde fota son}, from which
he believes that the final part of the gloss on \textit{causail} (\textit{i. cruind ... abhras}\textsuperscript{623})
belongs as a gloss to \textit{rinde}, not to \textit{causail}. By exemplifying his suggestion
with an anecdote from the life on St. Senán, he comes to the conclusion that
‘\textit{rinde} denotes some article or garment proper to a woman’,\textsuperscript{624} which he then
states that must be ‘a garment worn upon or from a woman’s head’, and
hence it would ‘be the semantic equivalent of English \textit{tippet}’.\textsuperscript{625} He takes
the \textit{causail} to an archaic spelling of the dative singular of \textit{casal}.\textsuperscript{626} Carney
takes this to mean that both the \textit{rinde} and the \textit{causail} would be a type of
headgear.

‘Concerning the needle’ has simply been glossed ‘i.e. the path of the
thread into its eye’,\textsuperscript{627} a self-explanatory gloss, which gives information on
the needle itself. The next gloss, on ‘concerning the lustrous thread’ explains
the thread, and states that it is ‘i.e. coloured thread’.\textsuperscript{628} The colour of the
thread would depend on the status of the person who was wearing the
garment which was being made. According to Kelly, the legal commentary
on fosterage gives very specific details on what type of colours were
appropriate to wear for the different ranks.

The sons of commoners may only wear clothing which is dun-
coloured (\textit{lachtnae}), yellow (\textit{buide}), black (\textit{dub}) or white (\textit{find}). The

\footnotesize{\textsuperscript{620} CIH 379.28–9; \textit{AL} i 152.28–9. \textit{i. gairit i. cruind rigind i. crandoga beca nobith aca
anallót iman abraus. i. crandoga...’ CIH 379 n. m–m: ‘glosses both \textit{rinde} and \textit{cusail}.\textsuperscript{621}


\textsuperscript{622} O’Curry, \textit{Law transcripts}, p. 794.

\textsuperscript{623} \textit{abraus} in the \textit{CIH} transcription; cf. \textit{CIH} 379.28–9; \textit{AL} i 152.28–9.

\textsuperscript{624} Carney, ‘Miscellanea’, p. 299.

\textsuperscript{625} ibid.

\textsuperscript{626} \textit{casal} \textless \textit{causal} \textless \textit{Lat. casula}.

\textsuperscript{627} CIH 379.30; \textit{AL} i 152.30. \textit{i. set int snaith ina cro}.

\textsuperscript{628} CIH 379.30; \textit{AL} i 152.30–1. \textit{i. snath datha}.}
sons of lords may wear clothing which is red (*derg*), grey (*glas*) or brown (*donn*), and the sons of kings may wear purple (*corcra*) or blue (*gorm*). 629

Although it is impossible to know how strictly these regulations were followed, it is known that persons of the higher ranks would wear more brightly coloured clothes, as the brighter dyes were more expensive. For example, purple and burgundy are known to have been worn by the pharaohs in Egypt, and they are also associated with royalty in later civilisations, at least in Europe and circum-Mediterranean region. 630

The following case, ‘concerning the looking glass’ 631 which a woman takes away from another’, has two glosses, neither of them giving much new information. The first gloss is on ‘concerning the looking glass’, and states ‘i.e. the looking-glass of the women, i.e. mirror’. 632 The second gloss is on the latter half of the sentence and states ‘i.e. the woman takes [it] from the other’. 633 Both of these glosses seem to be more of a filler than a proper explanatory gloss and to have been added in order to have a gloss on every case rather than of necessity.

Some of the glosses are more elaborate than the previous set, for instance, the gloss on the spool-stick, *lugarman*, which says that it is the ‘smaller weaver’s beam or the *lingua garman*, i.e. the weaver’s beam without a spike, i.e. without a sharp edge’. 634 Firstly, the word ‘spool-stick’, used in the translation in *AL*, is unknown to the Oxford English Dictionary and Wright’s *English Dialect Dictionary*, but must have been intended to be

629 *EIF*, p. 263.

630 ibid.

631 I have translated *scadarc/-erc* here as ‘looking glass’ in order to show the difference between the word used in the tract compared to *scáthán*, ‘mirror’, the word which is used in the gloss.

632 *CIH* 379.30–1; *AL* i 152.31. *i. scathderc na mban .i. scathan.*

633 *CIH* 379.31; *AL* i 152.31–2. *i. beris in ben o ceili.*

634 *CIH* 379.21; *AL* i 152.16–17. *i. luga garman, l lingua garman .i. in garman cen biur. (CIH 379 n. i: ‘sic for biur’) .i. cen faeabor.*
equated with ‘distaff’ or ‘spindle’. Secondly, the noun *lúgarman*\textsuperscript{635} consists of *lú*, meaning ‘small’, and *garman*, meaning ‘weaver’s beam’, which is exactly what the first part of the gloss explains. The issue at hand is to understand what the *lingua garman* is, which the ‘smaller weaver’s beam’ has been equated with. In personal communication with Prof. Gearóid Mac Eoin, he has explained that he thinks that *lingua* was based on the term for the movable part of the flax clove called *teanga*, ‘tongue’, in Irish. This is also the exact meaning of the Latin noun *lingua*. Again, the glossator draws on his knowledge of Latin, as he did in the case of *pesbolg*, but this time to explain the etymology of *lingua*. The glossator therefore describes the *lugarman* as *lingua garman* because it, i.e. the *lingua garman*, happens to look very much like a small weaver’s beam, at least if it were to be equated with the distaff, and would, just like the tongue of the flax clove, be a movable part of the equipment.

4.3.4.3. ‘Work’.

The next category I would like to examine is the one I have simply called ‘work’. In this category, the two cases for which a woman was entitled to distrain are ‘concerning the contribution of a (battle-)field’\textsuperscript{636} and ‘the supplying of a weapon’.\textsuperscript{637} These cases do not seem like anything a woman would be concerned with, especially the latter of the two. They do, however, go hand in hand in the tract, and the glosses seem to unite them into a separate category by adding that these two cases are relevant in the time of battle.\textsuperscript{638} The former has been glossed:

\textsuperscript{635} *CIH* 1902.37 has a variant reading: *luthgarmain*, glossed in *CIH* 1903.10 as *i. garma chenbair*, the first element is obviously a misspelling of *garmina*. Prof. Ní Dhomhnaill has suggested in personal communication that the second element is a variant reading of the word meaning ‘headdress’.

\textsuperscript{636} *CIH* 379.11–2: *Im tincur roe*.

\textsuperscript{637} *CIH* 379.12: *Tairec nairm*.

\textsuperscript{638} For a possible explanation of these cases see 7.2.1. ‘Property as inheritance to a *banchomarbae*’.
im tinecor a coibdelailg isin re comraic .i. dia ferlesach gaibes\textsuperscript{639}

i.e. concerning the supplying of her relative [with a weapon] in the time of battle i.e. [it is] from her male guardian she takes [it].

and the latter:

\textit{arm comraic bis oca do gres .i. uaithi-se dia feichem .i. don coibdelach .ii. .i. ben in fir gaibis di-se. .i. im tiachtain le do cosnam a lesa do feichemain}\textsuperscript{640}

i.e. the weapon of battle which they always have, i.e. from her to her guardian, i.e. to the other relative, i.e. the wife of the man who takes [it?] from her, i.e. concerning the guardian coming with her to fight her legal action.

This ties in with the final sentence of this section of the tract: \textit{ar is im fir ban ciatoimargaet roe} "it is concerning the women, in fact, that the battle was first fought".\textsuperscript{641} The change of style from a list consisting of \textit{im + item} to a grandiose statement of a battle in this sentence suggests that it is possibly not an original part of the tract, and the ensuing gloss seems misplaced to me. The gloss, which is 14 lines long in CIH, is a short story about how the two sons of Partholón married the two daughters of Partholón, and how the first battle was fought for the true right of women, because Fer, one of the sons, did not receive the bride-price of Ám, one of the daughters, although it was his by law because her father was dead, which meant that he was the head of the kin.\textsuperscript{642}

\textsuperscript{639} CIH 379.33–4; AL i 154.1, which omits the first part of this gloss.

\textsuperscript{640} CIH 379. 34–6; AL i 1–3, which omits the final gloss.

\textsuperscript{641} CIH 379.12; AL i 150.13.

\textsuperscript{642} cf. CIH 222.28–223.5. For more information, see 2.4. Unions of betrothal.
4.3.4.4. ‘Women’s pets’.

I have named the final category ‘women’s pets’. I have left this to the end because of the uncertainty of the translation of the first of the two cases. The second case is straightforward: ‘concerning the lap dog of a queen’,643 to which are added the glosses ‘after [the] calves of the queen he is, i.e. [the] lap dog’.644 The first of the cases, im baircne cat ban, is one I, as well as others looking at the text before me, have had problems with. AL has translated it as ‘for the black and white cat’. This, however, cannot be the correct translation of im baircne cat ban, as there is nothing in the text itself (as opposed to the ensuing gloss) that can be made to mean ‘black’, it should rather be ‘concerning the white pet cat’. This could be a correct translation, but there are another three translations of the phrase that have to be taken into consideration.

Firstly, Fergus Kelly has suggested that the translation could be ‘concerning a small basket of women’s cats’,645 taking báircne to be a diminutive of bárc, ‘boat, vessel, container’, instead of baircne meaning ‘pet cat’, and ban to be the genitive plural of ben, ‘woman’, instead of the adjective bán, ‘white’.

The glossator explains the case as:

\[
\text{im bairc-nia: nia, tren, tucad a bairc bresail bric i mbit cait bronnfimna duba.} \]

\[
i.e. \text{concerning the ship-warrior: a strong warrior was taken from the ship of Bresal Bric in which there are black white-bellied cats} \]

It seems as though he has tried to explain all possible translations of the case. He uses the noun bárc as ship, the same noun as Kelly has in his

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643 CIH 379.11; AL i 150.12. Im oircne rigna.
644 CIH 379.32–3; AL i 152.34. . i ndiaid orcan na rigna bis i. mesan.
645 AL i 150.11 ‘for the black and white cat’, cf. Kelly EIF, p. 122 n. 142.
646 CIH 379.31–2; AL i 152.32–4.
647 CIH 379.31–2; AL i 152.32–4.
translation of *báircne*, but instead of using the adjective *bán*, he has rather used the compound *bronnfinna*.

Secondly, Kevin Murray has, in his article on ‘*Catślachta* and other medieval legal material relating to cats’, translated *im bairencat ban* as ‘concerning a *bairenc*, i.e. a cat for women’,\(^{648}\) by adding *ed ón* after *bairenc*, which gives *im bairenc an cat ban*, and taking the o-stem *cat* as the nominative singular instead of the genitive plural of Kelly. He is basing this translation on extracts from *Catślachta* which are discussing different types of cats,\(^{649}\) from which he takes *bairenc* to be another type of cat. He dismisses Kelly’s translation of ‘a basket of women’s cats’ because of the lack of the expected nasalisation for such an interpretation after the genitive plural *cat*. I am, however, not certain Murray is correct in his reason for disagreeing with Kelly, as there are multiple examples of the lack of initial mutations in the text. In the relevant paragraph,\(^{650}\) I have only found three occurrences of nasalisation, where, in fact, there should have been another three if Kelly’s translation is correct, or another two if Murray’s translation is correct,\(^{651}\) and I have only found one instance of lenition, where there should have been another nine, disregarding the lenition of initial *f* and *s*, as these were not always written. With such a large amount of unwritten initial mutations, I do not believe Kelly’s translation can be dismissed on such grounds.

Thirdly, in a discussion with Prof. Máirín Ní Dhonnchadha, she suggested that given Murray’s identification of *bairenc* as a type of cat, the phrase *im bairencat ban* could be translated ‘a *bairenc*-cat for women’. This would again mean that there would be a missing nasalisation, this time after the accusative singular of *cat*. This translation would also produce alliteration in the text, and does not seem an improbable solution.

\(^{648}\) Murray, ‘*Catślachta* and other medieval legal material relating to cats’, *Celtica* 25, 2007, pp. 143–59, on p. 147.

\(^{649}\) ibid, p. 147, where he states that the formation of *bairenc* is paralleled by *meoinne* and *breoinne*, and seems to refer to a type of cat.

\(^{650}\) CIH 379.4–12; *AL* i 150.3–13.

\(^{651}\) e.g. *im cach nadbur mbis i feirtsib; im fir mban ciatoimargaet roe*. 127
However, during a presentation on this subject\textsuperscript{652} it was suggested to me that the translation of \emph{im baircne cat ban} is likely to be as simple as ‘concerning the white pet cat’, as this would nicely group together with ‘the lap dog of the queen’ in the second case in this group.\textsuperscript{653} I will therefore leave the translation of this item as ‘concerning the white pet cat’ until further investigation has been done on this subject.

\textsuperscript{652} ‘Aspects of \emph{athgabál aile}’ at the Medieval Celtic Law Texts Conference, University of Sydney, 25\textsuperscript{th}–26\textsuperscript{th} October 2012.

\textsuperscript{653} I am indebted to Prof. Neil McLeod and Prof. Anders Ahlqvist for this suggestion.
5. **Bantellach.**

5.1. **Introduction.**

There are many similarities between *athgabál*, ‘distrain’, and *tellach*, ‘legal entry’. Both are legal procedures that include many formal steps, all of which have to be performed in a specific order to make the claim valid. Both of these legal remedies have to be performed in front of witnesses and each step includes fixed periods of delay. For this reason these two legal procedures are often mentioned in conjunction to each other.

The Old Irish word for legal entry is *tellach*, but the legal tract on the subject is called *Din Techtugud*, ‘on legal entry’, a name which comes from the Middle Irish name for ‘legal entry’, *techtugad*. The law tract belongs to the middle third of the *SM* and it is preserved in four copies, all dating to the sixteenth century. There is, however only one complete copy, while the other three extant copies are very fragmentary. It has been translated in *AL* iv 3.1–33.23, and partially retranslated in *Celtica* 6 (1963).

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654 See e.g. Binchy, ‘Distraint in Irish Law’, p. 30; *GEIL*, p. 186; *EIWK*, p. 272, all of whom compare the two procedures.

655 *GEIL*, p. 186 n. 65: *to-in-lo(n)g*. For more information, see *DIL* s.v. 2 *tellach* b).

656 *CIH* 205.22–213.37; *GEIL*, p. 280, App. 1, text 68.

657 For more information, see *DIL* s.v. *techtugad*.

658 *CCIH*, p. 292, tract 11: ‘The only evidence for this title is *Din techtugud sisana* which precedes the first extract from the tract in 1858.36. … This tract, ‘On Taking Possession’, deals with legal entry. There is one continuous copy of this tract at 205.22–213.37; fragments with OIr. glosses are at 907.36–910.36, and longer extracts with later glosses and commentary are at 1858.37–1864.9. The *AL* edition is in volume 4, pp. 2–33, which does not distinguish it from the following two tracts’.

659 *CCIH*, p. 4: ‘E 3.5: This MS is bound in two volumes, the second (pp. 61–92) containing a copy of *Lebor Gabála*. The first volume, which contains legal texts alone, consists of two sections belonging to originally separate manuscripts, namely pp. 1–20 and pp. 21–60, as notes in Abbott and Gwynn (1921, 308). There the whole is dated to the fifteenth century; the note on p. 19 (added by a later scribe) provides, however, no evidence for this, as the second digit of the date read as 1442 is in fact a 5’. The dating of all four copies to the 16th century is based on Breatnach’s correction of E 3.5. to the 16th century instead of the 15th century.

660 One fragment is found in the H 3.18, while the final two fragments are found in H 3.17. For more information on H 3.18, now known as TCD 1337, see *CCIH*, pp. 4–5; for more information on H 3.17, now known as TCD 1336, see *CCIH*, p. 7. Both manuscripts have been dated to the 16th century.

explains that the basic meaning of the word *tellach* is ‘putting-into’, and that the term is used of the legal procedure in which a person takes possession of land he or she claims to be entitled to have by hereditary right, while the land is occupied, supposedly wrongfully, by someone else. Charles-Edwards points out that unless the current occupier of the land agrees to take the case to arbitration, the entire procedure can take place without any verbal transaction between the claimant and the defendant.

The normal procedure, which is intended for men, is performed in three separate stages, which are referred to as separate entries, i.e. *céttellach*, ‘first entry’, *tellach medónach*, ‘middle entry’, and *tellach déidenach*, ‘final entry’. Charles-Edwards has broken down the procedure into two phases. The first phase consists of a series of ceremonies which display the claim, and the second phase is a further ceremony which displays the satisfaction of the claim. The three ceremonial entries belong to the first phase, while the culmination of the second phase is the taking of possession of the land.

### 5.2. The regular procedure for legal entry.

The ordinary type of *tellach* is described in two places in *DT*; in the opening poem and in a prose passage in which the legendary wise man Ninne instructs his pupil Doiden on the correct customs of *tellach*. The first paragraph of *DT*, i.e. the opening poem, briefly describes the proper procedure, while the prose passage describes the different stages to the procedure in more detail.

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662 *GEIL*, p. 186.
663 *EIWK*, p. 259. In the discussion of this legal procedure, the defendant is referred to in singular, though the hereditary claim of ownership of a property was probably normally made against a kin-group, not an individual. This is done as a simplification of the procedure.
664 *ibid.*
665 *CIH* 205.22–206.23 = §1 in Isaac’s text and translation.
666 §6 in Isaac’s text and translation.
667 This character is sometimes called Nin. This legendary figure is also found in the *H 3.18* material, see *CIH* 907.36–908.6, which gives much the same information as the prose section in 5.2.2.
668 *CIH* 210.12–35 = §6 in Isaac’s text and translation.
5.2.1. Opening poem.

The first step is called the cétellach, ‘first entry’. During this step the claimant formally initiates his claim to the holding by entering the land. When he enters the land, he must bring two horses and be accompanied by one witness and an unknown number of sureties. The first entry is to be made by crossing the grave mound of the land holding to which he lays claim. After this cétellach the claimant leaves the land holding and awaits the reaction from the defendant, who then has a choice of either agreeing to submit the case to arbitration or to ignore the claimant’s initiative. If the defendant agrees to submit the case to arbitration, which can be done five days after the first entry, the dispute will be heard by a judge who will make a decision about which party has the legal entitlement to the property, and the case will then be settled. If the defendant does nothing, the claimant waits for a fixed period of ten days from the first entry, i.e. five days after the case could have been submitted to arbitration, before he starts the second stage of the procedure: tellach medónach, ‘middle entry’. The first paragraph of DT reads that:

To·com·bachta selba sóerthellug
    o modaib marc mrogsaite,
    ba-ch tar crícha comacomol.
Áithem gaibes tuinide
    mad ón tellug medónach:
    ni firthellach tuinidi.
Tellach tar fertai cétellach,
    ad na-techta tuinide.
Tellach da dechmad cianramar,

In an article by Charles Plummer the grave mound has been argued to be the boundary of a kin-land, but he did not believe them to also function as grave stones. (Plummer, ‘On the Meaning of Ogam Stones’, RC 40, 1923, pp. 387–90.) Charles-Edwards, on the other hand, argues that the ogam stones were used as both boundary marks and grave stones, hence the word fert/fertae meaning both grave mound and boundary mound, EIWK, p. 262. The evidence from DT supports his view, since the claimant is instructed to enter the land across the fert, which then functions as the boundary to the disputed land. See DIL s.v. 1 fert: A mound or dyke used as a boundary-mark.

Following the division in Isaac’s unpublished text and translation.
Properties have had claims on them enforced by free entry, through the services of horses which advanced, and it was a uniting across borders. Most speedy is he who takes ownership if it be from the middle entry: it is not true entry of ownership. Entry past the boundary mound is the first entry, a legal custom which is not to legalise ownership. An entry of twice ten days is long and firm, a legal custom which is to proceed to ownership. 

Though this opening paragraph gives some detail of the legal customs of tellach, it is obviously more of an introductory poem rather than a proper explanatory section of the different stages of the procedure, such as the prose section later in the tract is. It gives the introductory remark that the tract is regarding tellach and a few phrases on the procedure, but it would not be possible to understand the full procedure through knowing this poem only. Lines 1–3 state that we are dealing with legal entry, and that horses have to be brought for this procedure, though it does not explain the number of horses or when they are to be brought, lines 4–6 state that if one were to start the procedure at the second stage ‘it is not true entry of ownership’, i.e. it is not a correct way to claim ownership and is thus an illegal entry, lines 7–8 state that while the first entry is to be made across the boundary mound, this entry alone is not enough to claim ownership of the property, and lines 9–10 give the correct way to claim ownership, i.e. to go through the two waiting periods of ten days, which may culminate in ownership of the property if the claim is valid.

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671 CIH 205.22–206.23, normalised by Isaac.

672 Translation by Isaac.
5.2.2. Prose section.

In the second stage of the procedure, *tellach medónach*, the method differs slightly from the first entry, the specifics of which are explained in the prose passage instructing Doiden on *tellach*.

Doidin, ara·feiser bésu tellaig.
*I teoraib dechmadaib dliged, mad fri gais·comairser.*
Ó-thá cumal co trichoït, a n-óen bësngae tellaig, cid diábol fut forrge.
Da ech i lláim, lethsóer selbae.
*Fiadnaisiu inraicc for·acces dliged.*
* Cóide do dliged, dia-ndat-bé féinechas.*
*Mani-bé féinechas, tellais iar suidiu i midranndechnaid.*
*Cethair eich áiles, scurtar soer selbae.*
*Déide ferfíadan lat ranntae cosmailius.*
*Treise do dliged, dia-ndat-bé féinechas.*
*Mani-bé féinechas, tellais iar suidiu i ndédendechmaid.*
*Ocht n-eich áiles, im threib torumae.*
*Tréide ferfíadan lat, do grádaib Féine, ranntae cosmailius.*
*Tulfuigell úadaib, dia-ndat-bé féinechas.*
*Mani-t-bé féinechas, techtae tuinide.*
*A lóg do aircsin co feis, co n-atód, co tein, co n-atrub, co torumu cethrae.*
*Acht tír Cuinn Chétchoraig, nó imthicud mrogo, nó chís nemed,*
*is asin tellug-so do·bongar cach selb la Féniu.*\(^{673}\)

Doiden, may you know the customs of entry.
In three periods of ten days due process takes its course, if you make the claim with wisdom.

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\(^{673}\) *CIH* 210.12–35, normalised by Isaac.
Whether the property is worth one *cumal* or thirty, it is the same legal custom of entry, even if (the property) be a double *forrach* in length.

Two horses in the hand, with half-freedom of the property.

It is by (single) trustworthy testimony that the legal process has been overseen.

Five days for your legal right, if your case is to be contested.

If no objection is raised, you may enter after that in the middle ten days.

It is four horses that it requires, which are to be unyoked with the freedom of the property.

Two male witnesses with you, who are to apportion likelihood.

Three days for your legal right, if your case is to be contested.

If no objection is raised, you may enter after that in the last ten days.

It is eight horses that it requires, tended around the holding.

Three male witnesses with you, of free status, who are to apportion likelihood.

A speedy verdict with their help, if your case is to be contested.

If your case is not contested, you are to have legal ownership.

Its price (is) to be offered with sleeping overnight, with kindling, with a fire, with occupation, with tending livestock.

Apart from the land of Conn of the Hundred Treaties, or a piece of land which has been opened up, or *nemed*-people’s rent,
it is by means of this (form of) entry that a claim is enforced on any property according to the (law of the) Féni.674

This passage gives much more information on the full procedure of *tellach* than the first poem did. Doiden is being told that the procedure will take ‘three periods of ten days’, a different length of time from the one given in the poem, which gives ‘an entry of twice ten days long’, i.e. a total of twenty days from the first entry until the final entry, not thirty days as in the

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674 Translation by Isaac.
prose section.\textsuperscript{575} It is interesting to note that the procedure is the same whether the disputed land holding is small or very large. This means that legal entry will be performed in the same way whether it is a person of high or low status who makes the claim. Neither does the status of the defendant matter, only the claim to hereditary right to the land is important.

5.2.2.1. Céttellach.

First, céttellach is explained. Doiden is being told that the claimant is to bring two horses in hand, and that he needs to bring a trustworthy witness to oversee the procedure. Since the procedure of legal entry is mostly ceremonial, the presence of a witness to give an oath that the procedure has been performed in the correct manner is of great importance, especially in a legal system which is based on orality and memory rather than on written documents. Though the prose section is very informative on most of the details of tellach, the entry point of the land holding is not mentioned, but this information was given in the opening poem, and we therefore know that this is to happen over the boundary mound. It is then explained that the defendant can agree to arbitration after five days, but if there is no reaction from the defendant the second entry will be made ten days after the first.

5.2.2.2. Tellach medónach.

The claimant enters the land holding for the second time, the tellach medónach, after a period of ten days, but for this entry he is accompanied by two witnesses and four horses.\textsuperscript{676} The horses are unyoked on the property, i.e. they are left free to graze on the disputed land, a symbolic act of claiming ownership. He withdraws from the land holding a second time, and awaits the reaction from the defendant. The defendant still has the same two options; either he disregards the entry or he agrees to submit the case to arbitration. This time the defendant may submit the case to arbitration after only three days. If there is still no reaction from the defendant, the claimant

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\textsuperscript{575} For more information and a discussion, see 5.3.3. Evidence from the E 3.5. commentary.

\textsuperscript{676} This looks like a doubling of each from the first entry, but as will be clear below, it is actually a doubling of the horses, while there is one witness added for each entry.
will have to wait until ten days from the middle entry before he enters the land for the third and final time.

5.2.2.3. **Tellach déidenach.**

The final entry, *tellach déidenach*, is thus made twenty days after the first entry, as the final two lines of the first poem of the text reads:

Tellach da dechmad cíanramar,
ad do·choislea tuinide.\(^{679}\)

An entry of twice ten days long and firm,
a legal custom which is to proceed to ownership.\(^{680}\)

Again, the procedure is similar to the first entry, but with a different number of horses and witnesses; this time the claimant is accompanied by three witnesses and eight horses. The number of witnesses increases by one witness for each entry, while the number of horses is doubled for each entry. The prose section explains that during the *tellach déidenach*, the ‘final entry’, the claimant is free to tend to his horses, i.e. to stable and feed them on the land holding he is laying claim to. After the *tellach déidenach* there are again two possibilities:

*Tulfuiigell úadaib, dia-ndat·bé féinechas.*
*Maní-t·bé féinechas, techtae tuinide.*

A speedy verdict with their help, if your case is to be contested,
If your case is not contested, you are to have legal ownership.

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\(^{677}\) lit. ‘final / last entry’. For more information, see *DIL* s.v. *déidenach*.

\(^{678}\) i.e. twenty days according to the poem, but thirty days according to the prose section. For a possible explanation of this discrepancy, see 5.3.3. Evidence from the E 3.5. commentary.

\(^{679}\) *CIH* 206.21–2, normalised by Isaac.

\(^{680}\) Translation by Isaac.
If the defendant agrees to submit the case to arbitration, there was a procedure called ‘speedy arbitration’. This happened most likely on the day after the final entry, but the text is silent on this point. It is then up to a judge to decide who was entitled to be the legal owner of the property. If the defendant will still not agree to arbitration, the claimant will be deemed the legal occupant of the land holding. In order to demonstrate his ownership the claimant will have to spend the night on the property, to kindle a fire, and to tend to his animals. After spending the night, he is seen as the legal owner, and the defendant will have to vacate the disputed property, i.e. it is in the defendant’s best interest to agree to arbitration at some point during the procedure so that he will have at least a small possibility of retaining his property.

5.3. Legal entry for women.

*Din Techtugud* not only discusses the regular procedure of legal entry, there are also paragraphs on what was to happen in case of a vagrant or a woman laying claim to a property. In case of a woman laying claim to a property, the procedure was slightly different for women from that for men, and the correct procedure of *bantellach* is dealt with in three separate paragraphs of *DT*. As in the case of *athgabál aile*, ’distraint with a two-day stay’, the early Irish lawyers dealt with the legal capacity of women by illustrating the principles in a series of legendary leading cases.

5.3.1. Ciannacht.

The first leading case is regarding a woman named Ciannacht. This case gives a detailed explanation of the procedure of legal entry for women. The paragraph reads:

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681 I will only be discussing *bantellach*, not entry by a vagrant. For more information on entry by a vagrant, see GEIL, p. 188; EIWK, pp. 269–70.

682 For more information, see Chapter 4 *Athgabál aile*.

683 This woman is not one of the people mentioned in Bretnach’s list of legal authorities in *CCIH* 8.3.

684 §3 in Isaac’s text and translation.
To·com·baig Ciannacht cianmruigi.
Di oí and sin samaiges.
Do·luid tar fert i céttellug,
ba·ch for fine a forcomol.
Im·ana iarum ar féinechas
co ocht làu inndidi:
fiadnaise ban i céttellug,
nad·renat a cètrusu.
Cethramad làu aitherrach,
is ed techtae cach bantellaig.
Do·luid iarum dia cennadaig
co ndiablad áirme, aitherrach,
losait, criathar, certfuini:
cúairt saiges a comnadmaim,
la fer forgell fiadnaise.
Is iarum aitherrach
dia·nda·frecra dagdliged.
Cethramthu a cétdliged,
aile a medónach,
tulfuiggell a ndéidenach.685

Ciannacht has enforced a claim on distant lands.
It was two ewes that she placed there.
She passed the boundary mound on her first entry,
and her forced entry was against the kin.
She remains there according to féinechas,
for eight days of waiting.
Testimony of women on her first entry,
who do not sell their virginity.
On the fourth day there is arbitration,

685 CIH 207.22–208.20, normalised by Isaac. Calvert Watkins, in his article ‘Indo-European Metrics and Archaic Irish Verse’, p. 227, has only the first eight lines of this paragraph (transl. Binchy), and does not have a translation of the rest. However, it is clear that all twenty lines belong together as a single leading case.
that is lawful procedure in every entry by women.
She came then from her territory
with double the number, (and) again,
(with) a kneading-trough, a riddle, a baking-(?utensil).\footnote{686} a visit which she enforces through her joint surety,
with the statement of men of superior testimonies.
It is then that there is arbitration
through which due legal process is to answer her.
Four days is the first rightful (period of arbitration),
two days is the second,
a speedy verdict is the third.\footnote{688}

This paragraph shows how \textit{bantellach} differs from the regular \textit{tellach}, or \textit{ferthellach}, ‘male legal entry’. It is clear that the land holding Ciannacht claimed ownership of was held by her own kinsmen, as the paragraph states that ‘her forced entry was against the kin’. This could imply that the kin in possession of the land suspected that she would want to claim it, but that they did not believe that she was entitled to it. The H 3.18. commentary states that her \textit{braithri}\footnote{689} had possession of the property. If this is to be understood as her \textit{brothers} enjoying the ownership of the property in question, it would be an impossible situation in which a woman would not be able to claim entitlement to land because she had a living brother. \textit{DIL} \textit{s.v. \textit{braithair}} gives the meaning as both ‘(a) brother’ and ‘(b) kinsman, cousin; fellow member of the same kindred’, and if we understand the word to be translated as \textit{kinsmen} instead of \textit{brothers} it would mean that Ciannacht was not claiming the land of her brothers, but rather someone in her kin

\footnote{686}{i.e. a sieve.}

\footnote{687}{Professor Liam Bretnach has suggested to me that \textit{certfuini} should rather be translated as ‘of proper baking’.}

\footnote{688}{Translation by Isaac. Binchy’s translation of the first eight lines reads: ‘Ciannacht has recovered distant lands, she placed two ewes there, she came over the mound-fence as the first entry, and her seizure was against the \textit{fine}. She afterwards remained according to the Féinechus, to the end of eight days of waiting, with women witness on the occasion of the first entry, who do not sell their virginity’. Watkins, ‘Indo-European Metrics and Archaic Irish Verse’, p. 227.}

\footnote{689}{\textit{CIH} 908.40–1: \textit{Cianmbruighe .i. is cian mor ronshata lìa braithri riam}.}
group, someone she was related to. In his discussion of the structure of Irish kinship, Charles-Edwards points out the secondary meaning of bráthair as referring to either a brother or a kinsman.

Secondly, its attested meaning "brother", distinguishes it from bráthair which may refer either to a brother or a kinsman.690

In order to have a legal claim to the land she would necessarily need to be in the same kin group as the possessors of the land, but she would not be able to utter a legal claim against her own brothers. This is supported by the E 3.5. glossator who states that Cíannacht had been living among the Féni, but that she wanted to claim land among the Ulstermen.691 If the glossator is correct, this must mean that her father’s kin was originally from Ulster for her to have a legal claim to possession of land. If this is the case, her brothers would probably also have lived among the Féni and thus not had ownership of land in Ulster, unless their father had children with multiple women from different parts of the country, and the brothers had been living in the same part of the country as their father. If that is the case, her father would still have had sons, and Cíannacht would therefore not have had any claim to the land because a woman was not entitled to inherit, or have the ownership, of land if her father had one or more sons. Thus, it has to have been her kinsmen, and not her brothers, who Cíannacht claimed land from. Charles-Edwards suggests that this could, however, be a change in the laws, or a case in which brothers ‘may have been entitled, but not obliged to grant such life-interest’692.

5.3.2. The procedure of bantellach.

There are certain differences in the procedure between ferthellach and bantellach. These differences include both the length of the waiting periods

690 EIWK, p. 51.

691 CIH 207.26–7: ’i. cian mor rombatar cin foghurruad, no as ar fot uathi rombuit (CIH 207 n. k: ’rombui tir O’Don’) i. o fenibh co hulta.

692 EIWK, pp. 268–9, where Charles-Edwards is specifically discussing the glosses to the Seithir poem, and this may therefore be a specific exception rather than the normal case.
as well as the types of livestock which was to be brought with the claimant during the different stages of the legal entry.

5.3.2.1. Céttellach.

The procedure outlined in the paragraph above explains that Ciannacht crossed the burial mound when she entered the land she claimed ownership to, in the same manner that it should be done in case of men, but instead of bringing two horses with her, she brought two ewes, i.e. instead of bringing horses as the men were to do, she brought a female animal, representing her femininity. She also had to bring female witnesses, or as the text says; she needed the ‘testimony of women on her first entry’. These women were not just any women, but women of virtuous character, women ‘who do not sell their virginity’. This is one of the few cases where female testimony was seen as necessary; following the general rule of the early Irish law of women being considered baeth, ‘legally incompetent/senseless’, women were not normally allowed to act as witnesses. A witness would normally support his or her testimony by an oath. A bannoíl, ‘female oath’, was generally regarded as invalid, but in certain cases a female oath was regarded as acceptable, and sometimes even necessary, by law. These instances would normally have to do with a woman’s reproductive cycle, such as, if her husband is brought away on sick-maintenance, an extra penalty for the ‘barring of procreation’, airíadad comperta, could be given if the sick-maintenance happened during a period in which there was a possibility of conceiving a child, and thus the wife would have to give an oath stating that the sick-maintenance was happening at a time of the reproductive cycle in which she was fertile.

5.3.2.2. Tellach medónach.

As well as having to bring ewes instead of horses, and female witnesses of virtuous character instead of male witnesses, there was also a difference in

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693 lit. ‘their first redness’.

694 GEIL, p. 131. For more on female evidence, see GEIL, pp. 207–8; cf. 1.3.7. Sick-maintenance.
the length of the waiting periods before the case could go to arbitration. While the men could submit the case to arbitration five days after the first entry, it was four days in the case of Cíannacht. As her kinsmen still did not believe she should have ownership of the land holding, but did not want to submit the case to arbitration, she entered the land again after eight days. This is a doubling of the waiting period before the case could be submitted to arbitration, just as it was in the case of men: there was the possibility of submitting the case to arbitration five days after the first entry, and the *tellach medónach* could happen after ten days if the defendant had not agreed to submit the case to arbitration. As the first period before the possibility of arbitration was shorter than it was for the men, so was the whole waiting period before the *tellach medónach*, i.e. eight days for women instead of the ten days for men. For the middle entry, Cíannacht entered ‘with double the number’. This would presumably mean that she brought four ewes and double the amount of female witnesses though this paragraph does not specify the numbers of either. As the number of witnesses is nowhere specified for any of the entries, it is difficult to say the exact number. However, it is possible to speculate on this matter because of the evidence of male legal entry. In the first paragraph on *ferthellach*, the man brought two horses and one witness on the first occasion, and four horses and two witnesses on the second occasion. If one is to follow the same increase in number, this would mean that Cíannacht brought four ewes and two female witnesses on her middle entry, but this is not a certain conclusion.

5.3.2.3. *Tellach déidenach.*

From the information found on the second last line in the passage on Cíannacht, it is evident that the second waiting period for arbitration is two days, i.e. half of the first period. It does not state the length of time before the final entry, but based on the evidence from the opening poem, the waiting period before the final entry, *tellach déidenach*, would most likely happen eight days after the middle entry, i.e. sixteen days after the first entry. The lines ‘she came from her territory, with double the numbers, (and)
again’, would suggest that on her final entry, there was again a doubling of the ewes, and possibly also the witnesses, although based on the ferthellach, it is more likely to be a doubling of the ewes, i.e. eight ewes, but only an increase of one witness, i.e. three witnesses. The text suggests that this witness was possibly a man: ‘a visit which she enforces though her joint surety, with the statement of men of superior testimonies’. To symbolise her rightful ownership of the property, she was to bring a kneading-trough and a riddle. Just as the ewes represent her femininity, so do the female implements show that she is a woman who is making a home on the property. After the third entry a ‘speedy verdict’ was the third rightful period of arbitration for Cíannacht, as it was for ferthellach in the first paragraph. There is no mention of Cíannacht’s kinsmen after the fourth line of the paragraph, which makes it clear that they never agreed to submit the case to arbitration, thus Cíannacht was deemed the rightful owner of the disputed property because of her kin’s lack of willingness to resolve the case.

5.3.3. Evidence from the E 3.5. commentary.

Much speculation is necessary if one wants to form a full picture of how the legal procedure of legal entry worked, both for men and for women. However, there is a commentary written by the scribe of the text in the E 3.5 version, i.e. the full version of DT, at the beginning of the paragraph on Cíannacht and her claim to ownership of the land holding. It gives more details regarding numbers of ewes and witnesses, but it also speculates on the length of time that a woman were to spend at the property for each entry, and on the amount of notices she were to give. It starts by stating that:

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695 The final word in the sentence, certñuni, has been translated as ‘baking-(? utensil)’ by Isaac, but has been left untranslated in the other discussions on the subject (cf. GEIL, pp. 187–8; EIWK, pp. 266–9.), and it has been suggested to me by Prof. Liam Breatnach that this compound is to be translated as ‘of proper baking’; cf. 5.3.1. Cíannacht, esp. n. 687.

696 For the use of terms such as ‘male-implements’ and ‘female implements’ regarding what each spouse is expected to have in a household, see Chapter 2 Women and Property and Chapter 3 Banchomarbae.

697 See Appendix 2 for the full commentary.
Cach uair is abad teora ndechmad doberaid na fir is abad teora cethramad doberaid na mna, 7 cutruma d’echaib doberaid na fir 7 do cairaib doberaid na mna

i.e. every time the men give notice of thrice ten days, it is a notice of thrice four days that the women give and the equivalent of the horses the men bring, the women bring of ewes.

Hence, the commentator states that when a man enters the land-holding he is claiming ownership to, his waiting period, i.e. from the beginning of the first entry to the possible legal ownership of the estate, is to be a total of thirty days, while for a woman it is to be a total of twelve days. This disagrees with the evidence previously given by Charles-Edwards who states that it is twenty days for a man and sixteen days for a woman. Charles-Edwards does, however, propose a possible explanation for this. The commentary to the first poem on ferthellach in the E 3.5. version seems to have added one step to the procedure. This step is also found in the H 3.18. material. Both in the opening poem on ferthellach and in the poem on Ciannacht, the first step of the procedure is the first entry over the grave-mound. The commentary on ferthellach, on the other hand, explains that the first step is a preliminary notice, and that the first entry only happens if there is no response to the preliminary notice after a period of ten days in the case of men. Thus, there would indeed be three waiting periods of ten days for men, which means that they could gain ownership of the property after a total of thirty days. This does not, however, explain how women would gain legal possession of the property after a period of ‘thrice four days’, i.e. twelve days. In the poem on Ciannacht’s claim to ownership,

698 CIH 207.30–32.
699 My translation.
700 EIWK, p. 266, table 5.1.
701 CIH 205.25–206.10. According to Charles-Edwards, the commentary is ‘Early Modern Irish, no earlier than the thirteenth century’. (EIWK, p. 270.)
702 CIH 907.36–910.36. According to Charles-Edwards, the H 3.18. material is ‘ninth-century’. (EIWK, p. 270.)
there was a waiting period of eight days between the first and second entry, and based on the evidence from the *ferthellach*, it is supposed that the second waiting period was the same, hence if the defendant did not submit the case to arbitration, she would gain ownership after sixteen days. However, it is possible that the commentator has thought of the second waiting period of the *tellach medónach* as a doubling of the time after which the case could be submitted to arbitration (which was two days), making the full second period four days, which equals a total of twelve days before the possible ownership of the disputed property. This could then suggest that there had been a bigger change than the commentary apparently shows at first sight; that not only had the preliminary notice been added to the procedure, but all the waiting periods for *bantellach* had also been shortened to three periods of four days, i.e. a woman could then gain possession after twelve days. If Charles-Edwards is correct in believing a change to have happened, then the commentary to the poem on Cíannacht probably gives more information on the changes.

5.3.3.1. Notice period in the E 3.5. commentary.

The commentary continues to explain how the procedure is to happen:

> *cach uair is mna betaíd in techtugud is abadh teora ceathramad doberad arin mbidbaid ann, 7 is amlaid doberad i.e. abadh do tabairt doib arin mbidbaid cach lae re re na ceathraimthe, l dó ceana comad isin c.lo 7 isin lo medhonach 7 isan lo degeanach*703

Every time it is women who bring the legal entry it is a notice of thrice four days they give the defendant then, and it is thus they give [it], i.e. they give a notice to the defendant every day during the time of the four days or indeed it could be [levied] on the first day and on the middle day and on the final day.704

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703 *CIH* 207.33–6.

704 My translation.
The commentary supports Charles-Edwards in that there are three notices that have to be given, though the commentator seems uncertain of exactly what is meant by how often these notices are to be given. The clause ‘i.e. they give a notice to the defendant every day during the time of the four days or indeed it could be levied on the first day and on the middle day and on the final day’ is repeated three times during the commentary, i.e. before the explanation of the procedure of each of the entries. I thus take the notices on ‘the first day and on the middle day and on the final day’ to mean the first day of each of the three notice periods, not to mean the first, middle, and final day of each notice period, which is implausible as the notice periods are four days each according to this commentator.

5.3.3.2. Céttellach in the E 3.5. commentary.
This is supported by the continuation of the commentary:

\[dul\ di\ amach\ a\ forba\ na\ ceathramтан\ tuisige\ \gamma\ a\ ninditecht\ na\ ceathramaím\ \textit{m.}\]\textsuperscript{705} \textit{tar fært}\textsuperscript{706} in ferman, \textit{\gamma\ da\ cairigh\ le\ \gamma\ banfidadnaise\ le,\ \gamma\ beth\ di\ ann\ re\ la\ co\ naíteichi}\textsuperscript{707}

She goes out in the end of the first four days, and at the beginning of the middle four days, over the boundary mound of the land and [she brings] two ewes with her and a female witness with her, and she remains there for a day and a night.\textsuperscript{708}

From the information we have from the tract, this is clearly an explanation of the first entry. That she sets forth at the ‘end of the first four days and at the beginning of the middle four days’, supports that this is to be explained as one entry only: the céttellach, and the end of the first four days and the beginning of the middle four days are in fact the same day. Hence, we are

\textsuperscript{705} CIH 207 n. p: ‘i.e. medonaige.’
\textsuperscript{706} CIH 207 n. q: ‘f inserted above line: =feart.’
\textsuperscript{707} CIH 207.36–8.
\textsuperscript{708} My translation.
being informed of the procedure of the first entry at this point, in which Ciannacht, and any other woman wanting to perform the rituals of legal entry, would have to bring two ewes and one female witness while entering over the boundary mound. The final part of this section gives information which has not been given in the poem on Ciannacht; that she is to remain on the property for a day and a night. This could either be an invention by the commentator, or it could be a new development of \textit{tellach}, just as the preliminary notice seems to have been. The commentator has described a similar addition to the procedure of \textit{ferthellach}, in which he says that the man performing the legal procedure should ‘remain there for a day and a night’,\textsuperscript{709} \textit{beth do thall re la co naithci},\textsuperscript{710} during his entry at the end of the first ten days and the beginning of the middle ten days, i.e. the \textit{céttellach}. This is in direct contradiction to the tract itself, which states that it is only during the final entry that the claimant is to spend the night at the landholding in question.\textsuperscript{711}

5.3.3.3. \textit{Tellach medónach} in the E 3.5. commentary.

The commentary on Ciannacht explains the further process; that if she is not responded to after spending the day and night at the land holding, she is to return home and wait there for the middle four days.\textsuperscript{712} After this, the clause, ‘And she gives notice every day to the defendant during the time of the middle four days, or it could be on the first day and on the middle day and on the final day’\textsuperscript{713} occurs for the second time, before the explanation of the \textit{tellach medónach}:

\begin{footnotes}
\textsuperscript{709} My translation.
\textsuperscript{710} \textit{CIH} 205.30–1.
\textsuperscript{711} For more information, see 5.2.2. Prose section.
\textsuperscript{712} \textit{CIH} 207.38–208.1: \textit{γ} \textit{muna tincar hi, dul dia thigh γ beth di amr re re na ceathrainthe.m}.
\textsuperscript{713} \textit{CIH} 208.1–3: \textit{γ} \textit{abadh do tabairt cach le arin mbidbaid re re na ceathrainthe.m., no comad asin .c.lo γ isín lo medonach γ isín lo deiganach}.
\end{footnotes}
And she goes out there then up to a third of the land and [she brings] four sheep with her and two female witnesses, and she remains there for a day and a night.

According to the commentator, there is not only a steady progression in the amount of animals and witnesses she is to bring, which in this case is four sheep and two female witnesses, but there is also a steady progression of how far into the land she is to go for each entry. She is apparently meant to go as far as a third of the land on her middle entry. This raises the question how far she was to go on the first entry. The only part of the land mentioned in the commentary regarding Ciannacht’s céttellach is that she was to enter over the fert, but it is not stated how far into the land she was to go. If the commentator is correct in stating that she was to remain on the property for ‘a day and a night’, but the text says that she was only supposed to enter just past the fert, it has to be assumed that this is also where she was to spend the night.

5.3.3.4. Tellach déidenach in the E 3.5. commentary.

The commentary once again states that if she is not responded to, she is to go home and wait for the final four days before her tellach déidenach. During these four days she is, according to the commentator, giving notice ‘to the defendant every day during the time of the four days, or it could be on the first day and on the final day’. The procedure of the final entry is given in the following section of the commentary:
She goes out as far as half the land and [she brings] eight ewes with her and three female witnesses, and she remains there for a day and a night. If right is ceded to her then, they are to make a law concerning the land and if right is not ceded to her, it is free from liability for her though she should not come, but she [is to] bring all her cattle over at the end of the thrice four days. And although it ought to be fixed before going over that right was not ceded to her, though right had not been brought to anyone, or the law concerning legal entry, but she is to go over there with her cattle and her household forthwith.

Hence, on her final entry, Cíannacht is meant to go as far as half the land, with eight ewes and three female witnesses. The procedure of the final entry is one in which the poem itself gives more information than the commentary. While the commentary only mentions that she is to spend a day and a night at the land-holding she is laying claim to, the poem gives a lot more information on what she is to do while she is there:

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717 CIH 208 n. c: ‘= is s-.’
718 CIH 208 n. e: ‘supply slan (or nochon indligthech) di.’
719 CIH 208.7–13.
720 Cf. CIH 378.27–8; AL i 148.13–14. i. a crod uili i forba na .iii.a cethramthan. For more information, see Chapter 4 Athgabál aile.
721 My translation.
722 I suspect this means the middle of the land holding.
**Do·luid iarum dia cennadaig**

*co ndíablad áirme, aitherrach,*

*losait, criathar, certfuini.*

*cúairt saiges a comnadmair,*

*la fer forgell fíadnaise.*

*Is iarum aitherrach*

*dia-nda·frecre dagdlinged.*

She came then from her territory with double the number, (and) again, (with) a kneading-through, a riddle, a baking-(?utensil): a visit which she enforces through her joint surety, with the statement of men of superior testimonies. It is then that there is arbitration through which due legal process is to answer her. 

The poem thus informs us that she is to bring household implements which symbolise that she is settling down on the territory as the mistress of the house. Charles-Edwards explains the importance of the household implements:

> As the man looked after the livestock at the house, so Ciannacht baked bread: a characteristic domestic activity for each sex is transformed into a symbolic act, the mark of possession, *tuinide.*

Though the commentator has suggested that Ciannacht is meant to spend the night at the disputed land holding for every entry she makes, the tract only mentions the overnight sleeping during the final entry, though this is not mentioned in the relevant paragraphs on *bantellach.* However, as there are so many similarities between *ferthellach* and *bantellach* it is a reasonable

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723 For more information on the term *certfuini,* see 5.3.1. Ciannacht above.

724 Translation by Isaac, see 5.3.1. Ciannacht above.

725 *EIWK,* p. 266.
assumption that a woman too would spend the night at the land holding as a symbol of ownership. Doiden is told that when a man obtains legal ownership, he is then to spend the night at the property:

\[A \text{ lóg do aircsin co feis, co n-atód, co tein, co n-atrub, co torumu cethrae.}\]

Its price (is) to be offered with sleeping overnight, with kindling, with a fire, with occupation, with tending livestock.\(^{726}\)

Since women brought much of the same equipment and livestock as the men did, though the appropriate female equivalents of that of the men, it is appropriate to suggest that women were meant to spend the night, kindle a fire, bake bread, and tend to their livestock as a symbolic act of ownership.

### 5.3.4. Senchae and Bríg.

In the second leading case on bantellach we encounter two mythological judges who also appeared in the text on athgabál aile:\(^{727}\) Senchae and Brig.\(^{728}\) The paragraph\(^{729}\) reads:

\[
\text{Bertait Senchae cétbrethach}
\]
\[
\text{bantellach ar férthellach,}
\]
\[
\text{co-mbtar ferba-fulachta}
\]
\[
\text{fora grúaide iar cilbrethaib.}
\]
\[
\text{Hicsai Brige fírinne fírbrethaib.}
\]
\[
\text{Is-i con-mídir bantellach,}
\]

\(^{726}\) Translation by Isaac; cf. 5.2.2. Prose section above.

\(^{727}\) For more information, see Chapter 4 Athgabál aile, esp. 4.3.3.1. Brig and Senchae.

\(^{728}\) For more information on Senchae and Brig, see CCIH, p. 367, and for information on Breatha Bríge Ambue, see ibid., p. 175. These mythological judges also appear in one the commentary on Cianachti from H 3.18., esp. CIH 908.26–34. Brig appears alone in the Kinship Poem on the topic of female inheritance, see CIH 215.16; EIWK, p. 517; Dillon, SEIL, p. 155, 4.3.3.1. Brig and Senchae, 5.3.4. Senchae and Brig and Chapter 7 The Passing of property for more information.

\(^{729}\) §4 in Isaac’s text and translation.
Sencha judged in his first judgement (that) female entry is according to male entry, so that blisters were caused on his cheeks after false judgements. The justice of Brig healed him by just judgements. It is she who prescribed female entry (correctly), so that the blisters were overthrown on his cheeks after just judgements.

The mythological judge Sencha proclaims a false judgement (gúbreth or cilbreth), stating that the procedures of legal entry for men and women were the same. Since this was a false judgement, blisters appeared on his face. Fair judgements were very important in early Irish society, in which honour was a matter of highest importance. In the case of a lord proclaiming an unjust judgement against his client, the client is entitled to leave his lord without any further penalties, penalties which would have been quite heavy had the lord not proclaimed a false judgement. However, the mythological case of Sencha’s unjust judgement in the case of bantellach made a physical disfigurement appear on his face. This disfigurement disappeared as soon as the mythological female judge Brig proclaimed the just judgement, that bantellach was different from ferthellach. The paragraph in question does not describe the exact measures of Brig’s just judgement, but it is clearly understood that the correct procedures of

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730 CIH 209.12–23, normalised by Isaac. This paragraph is also found in GEIL, p. 358.

731 Translation by Isaac. Binchy’s translation reads: ‘Sencha judged it in his first judgement, woman possession-taking as man possession-taking, so that blisters were suffered, on his cheeks after (having passed) wrong judgements. The truth of Brig cured him, it was she who estimated female entry, so that the blisters were concealed, on his cheeks after the true judgements (were passed)’. Watkins, ‘Indo-European Metrics and Archaic Irish Verse’, p. 228.

732 GEIL, p. 27.
bantellach is the detailed description from the previous paragraph discussing Ciannacht’s legal entry.

5.3.5. Seithir.

The third of the leading cases regarding women’s legal entry discusses Seithir and her fate in claiming her kin-land.\(^{733}\)

\begin{quote}
\textit{In\textsuperscript{\textdagger}lolaig Seithir selba}

techtsa conn, a cen\textael.  
\textit{Ba-ch \textup{\textemdash} bé degabail cinnes.}  
\textit{Ba rechtaid críche corsir.}  
\textit{Ni\textdagger\textdagger biad fo bésaib mogo,}  
\textit{na fonnaid raite.}  
\textit{Sóerthae la fine a forcomol,}  
\textit{fo bith ba n-\textup{\textdagger}\textdagger ba taisic.}\(^{734}\)
\end{quote}

Seithir entered properties which her kin-leader, her race, legally possessed, and she was a woman who stemmed from a bifurcation. She was a ruler of a territory long in contract. She would not live according to the customs of a slave, nor of a vagrant of the road. Her forced entry was approved by the kin, because it was a habitation of return.\(^{735}\)

In this case it is clear that Seithir did not need to go through more than the first step of the procedure of \textit{tellach}. Her kin agreed to her demand as soon

\(^{733}\) §5 in Isaac’s text and translation.  
\(^{734}\) \textit{CIH} 209.22–1, normalised by Isaac.  
\(^{735}\) Translation by Isaac. Binchy’s translation reads: ‘Seither made entry on the lands, which her "head" [and] her race possessed, and she was a woman who sprang from two forks, she was the ruler of a territory long enduring in contract, she would not exist according to the customs of a slave, nor would she exist according to a "chariot of the road", (her?) seizure was spoken free by her \textit{fine}, because it was a habitation of (entailing) return’. Watkins, ‘Indo-European Metrics and Archaic Irish Verse’, p. 235.
as she laid claim to the property, and hence there was no need for her to follow through with the final two entries. This leading case informs us of a very specific reason for a woman to claim ownership of her kin-land. The paragraph does not focus on the procedure of *bantellach* the way it was explained in detail in the paragraph on Cíannacht, but the focus is now on the relationship between Seithir and her kin. She was a woman ‘who stemmed from a bifurcation’: she was originally a woman whose kin came from one province, i.e. the province in which the *fintiu* was located, but that she had lived in a different province for most of her life, and now she had decided to return to her original birthplace. Both the H 3.18. glossator and the E 3.5. glossator state that her mother came from the Féni and her father was from Ulster, and that she wanted to return to the Ulstermen. Incidentally, this is almost the same claim that the glossator in E 3.5. makes about Cíannacht. Because someone else from her kin enjoyed the ownership of the property which Seithir laid claim to when she returned to her father’s lands, she started the ritualistic act of entering into her kin-land across the boundary mound. Since her claim was immediately approved by her kin she did not need to finish the ritual. This is the main difference between the case of Cíannacht and the case of Seithir. While the person who was in control of the property that Cíannacht laid claim to neither acknowledged the validity of her claim, nor agreed to arbitration, Cíannacht eventually gained possession of the property. Seithir’s kin agreed on her claim and hence she gained possession straight away.

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736 *CIH* 909.18–9: *Bach mbe degabail .c. .i. di ultaib a athuir γ do fenib a mathair.*

737 *CIH* 209.34–210.1: *iss de a athair d’ultaib γ a mathair do feinib temrach.*

738 *CIH* 209.18: *i. gabais eolchairi a crich fene, dluid (sic, for doluid?) a crich nauladh.*

739 *CIH* 207.26–7: *i. cian mor rombatar cin foghurrud, no as ar fót uathki rombuit (CIH 207 n. k: ‘rombui tir O’Don’). i. a fenibh co hulta. For the glosses in H 3.18. on Cíannacht’s claim to land, see discussion in 5.3.1. and 5.3.3. above.

740 As in the case of Cíannacht (see discussion in 5.3.1. Cíannacht above), the commentary of H 3.18. also claims that it was Seithir’s *bráthair* who were in possession of the property. Unless *bráthair* in this instance, as in the case of Cíannacht, is to be translated ‘kinsman’ it would be a legal impossibility that either of the women were claiming ownership of the land, as a woman was not entitled to land as long as she had a living brother.
5.3.6. The implications of female landowners.

The implication of these women receiving their *fintiu* is that they would only have life-interest in the property, the same way a *banchomarbae* was only entitled to life-interest in her property before it would revert back to her father’s kin. The reason for this is that if a woman was allowed to keep the property in her new, married kin, the *fintiu* would be alienated from the original owners. In a society in which most people were farmers, the kin-land was extremely important for the everyday life, and alienating property was clearly not ideal. Therefore there were strict rules on how much of the property any member of the kin-group could alienate or bequeath.\(^{741}\)

In the case of Seithir, her claim to ownership of the property is described as a ‘habitation of return’. The land would thus have to be given back to the defendants upon her death since they were a part of her kin which would be in a position to inherit parts of the kin-land. The only possibility a *banchomarbae*, and other women such as Ciannacht and Seithir,\(^{742}\) had to give property as an inheritance to their sons\(^{743}\) was the *orbae niad*, ‘the inheritance of a sister’s son’.\(^ {744}\) Thus it is the original paternal kin group of the women who allow the sons inheritance, not the women themselves. This inheritance consisted of a maximum of 7 *cumal* worth of land,\(^ {745}\) the same amount as the minimum property-qualification of an *ócaire*.

The occasion this is most likely to have happened was if a woman of property, whether inherited, bought from her professional earnings, or acquired through *bantellach*, was married to a landless man. There are many

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\(^{741}\) For information on bequeathing property other than the *fintiu*, e.g. property bought from the exertions of one’s successful farming, or from professional earnings, see esp. 3.5. Personally acquired land and 3.5.1. *Orbae crúb nó sliasta*; cf. n. 478 in Chapter 3 *Banchomarbae*.

\(^{742}\) It is nowhere stated that Ciannacht and Seithir were in fact female heirs, but they are likely to have been female heirs based on their successful claims to their kin-land.

\(^{743}\) Or daughters; cf. 4.3.3. ‘Women in general’ which explains that a woman could distrain goods ‘concerning the inheritance of her mother’.

\(^{744}\) EIF, p. 418; GEIL, p. 104; cf. CIH 431.30–1: Glasfíne mac mna dit fini beres do alhanach ni gaib-saide s’orba niad no duthrachta dedlaid fri fine. For more information, see Chapter 7 The Passing of Property.

\(^{745}\) For a discussion on the size of the *tír cumáile*, see 3.3.1. *Tír cumáile*. 155
reasons why a man could be landless, the most common of them being if he
had married a woman from outside his own túath and moved to her túath, if he was from a different country, or if he was a cú glas (lit. ‘grey hound’).

The children of a woman of property were not regarded as any less important than children of other types of marriages, and were thus not likely to be left without any inheritance. Procreation was one of the main goals of a marriage, not only to have someone to inherit the farm, but also to have someone to take care of the parents in old age. It is therefore likely that the woman’s kin (i.e. her father’s kin) would either adopt her children into the kin group or to allow them the orbae niad without being officially adopted. Her children could also perform the duties of the mac goire, ‘dutiful son’, and thus receive a certain part of either moveables or immoveables as inheritance from their mother’s paternal kin group. Córus Béscnai §59 says of the mac goire:

\[ Im-fúich \ mac \ gor \ cach \ ndochor \ ima \ athair. \ Ní \ imfúich \ cach \ sochor; \ fo-égi \ ceni \ ro-thaithim. \ Is \ samlaid \ int \ athair \ frisin \ mac \ ngor; \ im-fúich \ cach \ ndochor, \ ní \ imfúich \ cach \ sochor. \]

A dutiful son annuls every disadvantageous contract against his father. He does not annul every advantageous contract; he objects even though he cannot dissolve. It is thus [with] the father against the dutiful son: he annuls every disadvantageous contract, he does not annul every advantageous contract.

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746 A person’s legal standing was only valid within his or her own túath.

747 In CIH 917.17–18 a ninth century glossator has explained the cú glas to be an outsider from overseas; cf. GEIL, p. 6. CIH 442.13 states that only the maternal kin had responsibility of a child if the father was a cú glas. See 3.4.4. A husband as a dependant for a section of the Fuidir-text which also deals with the cú glas.

748 For information on adoption, see GEIL, p. 88, p. 105; for the laws of adoption, see Cáin Íarrath, GEIL, p. 270, App. 1, Text 19.

749 Sometimes called gormac or mac gor.

750 Normalised by McLeod from CIH 536.1–3.

751 EICL, p. 68.
If the child was to be adopted, it was a decision which affected the whole kin, and thus the adoption had to be agreed upon by every legally independent person from the kin. This was because when the child was adopted into the kin, he would have a claim to parts of the kin-land, fintiu, which meant that the land would have to be divided up between more individuals than if the child was not an official part of the kin. There were therefore laws restricting adoptions:

\[ Ar \text{ } ní \text{ } táchte \text{ } nach \text{ } fóessam \text{ } arna \text{ } tegat \text{ } rátha \text{ } fine \text{ } nad \text{ } forngara ága \text{ } fine.\]

For no adoption is proper which paying sureties of the [original] kin do not cover and which the head of the [adoptive] kin should not authorise.

5.3.7. Illegal entry.
Because of the ritualistic nature of the procedure, there were also strict laws to make sure the procedure was not abused. Illegal entry, tellach n-indligthech, was seen as a serious offence, and thus also had serious ramifications. There were different ways of entering into land illegally. First, for entry to be legal, it was important that it was carried out according to the rituals in the exact fashion that was explained in the texts. Secondly, it was seen as illegal if the procedure was carried out in spite of an offer to submit the case to arbitration, or in defiance with a contract between heirs. Thirdly, if the wrong number or the wrong type of livestock was brought while entering the land, the legal entry was no longer legal. Likewise it was also important to bring the correct number and gender of witnesses. If someone made an illegal entry and was not appropriately fined for it, it was seen as a

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53 Only a boy would have a claim to the kin-land, following the rules of sons inheriting kin-land, and the daughters inheriting moveables.

553 Coibnes Uisci Thairidne §6, normalised by McLeod from CIH 459.12–13.

554 EICL, p. 81.
‘falsehood of the kingdom’, gö thúaithe.\textsuperscript{755} The final paragraph of DT states that:

There are three occasions on which illegality is prosecuted according to the Féni:
unlawful distraint,
illegal entry,
a contention without contracts or without the breaking of mutual legal obligation.
It is a false judgement of a túath, a false judgement of a judge who does not impose fines for each of them.\textsuperscript{756}

Thus, the tract ends with the three illegalities for which one can be prosecuted under the early Irish law.

\textsuperscript{755} cf. EIF, pp. 432–3.

\textsuperscript{756} CIH 213.27–9; cf. §9 in Isaac’s text and translation.
6. Women’s Contractual Capacity.

6.1. Introduction.

The first line of Córus Béscnai §6\(^{757}\) states that sochorach cach sóer, ‘every independent person is of good contractual capacity’.\(^{758}\) This means that every person of independent legal standing is capable of making contracts. A woman was not regarded as a person of independent legal standing except in certain exemptions to the law, such as if she was a banchomarbae or had gained a high status through her profession. Hence, Córus Béscnai §62 explains that women, and the rest of the group of persons considered bàeth, ‘legally incompetent/senseless’, should not be regarded as a contractual party and thus warned society from buying anything from this group:

\[
\text{Ni crie di bàethaib do-choisin la Fêniu: di mnai, di chimbid, di mug, di chumail, di manach, di mac béo-athar, di deorad, di tháid.}\] \(^{759}\)

You should not buy from the ‘foolish’ persons that exist according to Irish law: from a woman, from a forfeit person, from a male slave, from a female slave, from a monastic tenant, from the son of a living father, from an outlander, from a thief.\(^{760}\)

Because this group did not have any independent contractual capacity, any contract they had entered could be dissolved by their guardian or superior.\(^{761}\)

6.2. Guardians and dependants.

Most of the persons making up this group of persons are not senseless in the sense of being a person of unsound mind,\(^{762}\) but they are considered as

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\(^{757}\) Di Astud Chor §32 has been based on this paragraph from Córus Béscnai.

\(^{758}\) EICL, p. 45.

\(^{759}\) Normalised by McLeod from CIH 536.23.

\(^{760}\) EICL, p. 59.

\(^{761}\) ibid., p. 55.

\(^{762}\) For information on the person of unsound mind, see GEIL, pp. 91–4.
dependants in the eyes of the law, and were therefore not entitled to any individual competency in legal matters. The opposite of the group of persons considered *báeth* were their guardians, who were considered *gáeth*, ‘legally competent/sensible’.\(^{763}\) In the case of a woman, this person would be either her father, her husband, her sons, or her head of kin.\(^{764}\) The *Dire*-text §37 explains that certain women were allowed a choice of who their guardian should be:

> *Is meise cach ben a uccu im la mac beith a cain fa la fini fa la fer a sliastae, acht cétmuintir. Ar is la cach cétmuintir tèchtaí a cain-side manis coirbet a anfolaid lánamnais. A n-am inda coirbet, is ann as meise-side imscartho fris.*\(^{765}\)

Every woman is allowed her choice whether her son or her kin or her sexual partner should have authority over her, except for a primary wife. For every proper prime husband has authority over the latter unless his failure to fulfil the obligations of marriage should degrade her. When [his failure] degrades her, it is then that the latter is allowed to separate from him.\(^{766}\)

In order for a person categorised as legally incompetent to act in any legal matter, their guardians had to act on their behalf, but the guardians did not need to agree to the requests of their dependants. If a dependant tried to contract on his or her own behalf, even if this was done by appointing sureties, their guardians could dissolve the contract:

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\(^{763}\) *DIL* s.v. *gáeth*: ‘1. *gáeth* ‘wise, intelligent, shrewd, skilful (?)’.

\(^{764}\) *Dire*-text §38; *IR*, pp. 35–6; *EICL*, p. 71; *GEIL*, p. 76; cf. Chapter 2 Women and Property.

\(^{765}\) Normalised by McLeod from *CIH* 443.21–4.

\(^{766}\) *Dire*-text §37; *EICL*, p. 71; *IR*, p. 34. The matters of the primary spouses has been dealt with in Chapter 2 Women and Property, esp. 2.5.1. Types of wives in the *airnaidm*-unions and 2.6.2. Types of wives in *lánamnas mná for fethinchur*. 

160
Any contract, then, which is made with persons under [the] direction [of others] in the absence of anyone who guards them, is not a contract even though enforcing sureties and paying sureties should go [surety] for it, for their contracts are annulled by their guardians so that there is no enforcement upon them; like a contract with a woman, with a boy, with a slave, with a dependant, with a monastic, with an outlander, with a dependent tenant, with a landless person, with a half-wit, with a crazed person, with a crofter.\footnote{Normalised by McLeod from CIH 593.35–8; cf. Berrad Airechta §§35–7, which give the contracts which can be dissolved after they were entered, since they were made with a person whose guardian was not present. Berrad Airechta §37 (= CIH 593.35) states that 'Any contract, then, which is made with people [requiring the] supervision [of a "head"] in the absence of the person who protects them is no contract even though naidm-sureties and ráth-sureties may have guaranteed it, for their contracts are annulled by their "heads" so that they are not enforced against them...’ Charles-Edwards, T. M., Owen, M., Walters, D. B., Jenkins, D. (eds.), Lawyers and Laymen: Studies in the History of Law Presented to Dafydd Jenkins on his Seventyfifth Birthday, University of Wales Press, Cardiff, 1986, p. 215.}

In fact, most of this group is referred to in Cáin Aicillne §38, which equates this category of dependants with a proscribed, i.e. formally disowned, person:

\[\text{Is airfócrach cach fuidir, cach bothach, cach daltae co dialtir, cach felmac i n-aimsir doire do fithidir, cach mac bèo-athar nad bi sóer a chor, nach ben forsa mbi cenn comairle.}\]

[Like] a proscribed person [with regard to contractual capacity] is every servile tenant, every cottier, every fosterling until the
termination of fosterage, every student during the time of dependency on a teacher, every son of a living father whose contract is not independent, any woman over whom there is a guardian of counsel.\textsuperscript{769}

Though these persons had no independent contractual capacity, \textit{Córus Béscnai} §9 states that they were entitled to act as an agent on behalf of their guardians:

\textit{Fuidri flatho, dóer-manaig ecolso, foíndledaig fine bite for airfócru, maic, mná, baith, baïledaig, drúith, dochuinn, dásachtaig, f’óenán chummu choir: ní astaither saíthiud na dochor na sochor foraib cen a firchodnachu oc forngairiu a cor.}\textsuperscript{770}

The servile tenants of a lord, the dependent monastics of the church, kin deserters who are proscribed, sons, women, incapable people, deranged people, imbeciles, incompetent people, lunatics [are all] correctly one and the same: neither obvious over-payment nor disadvantageous contract nor advantageous contract is secured upon them without their truly adult [superiors] directing their contracts.\textsuperscript{771}

Thus, \textit{Córus Béscnai} states that this group of person could only act as an agent through clear directions from the guardian, otherwise it would not be seen as a contract made by the guardian, and therefore the contract should be dissolved.

\textbf{6.3. Women and contracts.}

In general, a woman lacked independent contractual capacity, and hence was dependent on a guardian for the entirety of her life span. The guardian would change throughout her life depending on her life situation, whether

\textsuperscript{769} \textit{EICL}, p. 63.

\textsuperscript{770} Normalised by McLeod from \textit{CIH} 522.1–4.

\textsuperscript{771} \textit{EICL}, p. 62.
she was a girl, a nun, a wife, a widow or a divorcee.\textsuperscript{772} The first two lines of the \textit{Díre}-text §38 makes it clear that regardless of her life situation, entering into a contract with a woman was undesirable:

\textit{Messam cundarthae cuir ban. Ar ní túalaing ben ro-ria ní sech óen a cenn.}\textsuperscript{773}

The worst bargains [are] the contracts of women. For a woman is not capable of selling anything without [the authorisation of] one of her guardians.\textsuperscript{774}

\textbf{6.3.1. Exceptions to the rule.}

There are clearly some exceptions to this rule, especially regarding the situation of the \textit{banchomarbae},\textsuperscript{775} but the normal situation for a woman in medieval Ireland was that she was expected to be a dependant for as long as she lived. The rules regarding the contractual capacity of women in marriage have already been discussed above,\textsuperscript{776} showing a certain degree of legal capacity for a married woman. The amount of independence a wife would have depended on the type of union she was a partner in. The general rule of a woman lacking contractual capacity has two main exceptions: that of a woman who contributes equally in a marriage, and the woman who contributes all of the marriage goods, i.e. the wife of \textit{lánamnas comthinchuir}\textsuperscript{777} and the wife of \textit{lánamnas fir for bantinchur co fognam}.\textsuperscript{778}

\hypertarget{footnotes}{\footnotesize
\begin{itemize}
\item \textsuperscript{772} cf. \textit{Díre}-text §38, quoted in 2.2. Women’s legal status.
\item \textsuperscript{773} Normalised by McLeod from \textit{CIH} 443.29–30.
\item \textsuperscript{774} \textit{Díre}-text §38, first two lines; \textit{EICL}, p. 71; \textit{IR}, pp. 35–6.
\item \textsuperscript{775} For more information, see Chapter 3 \textit{Banchomarbae}, and Chapter 7 The Passing of Property.
\item \textsuperscript{776} For more information, see Chapter 2 Women and Property and Chapter 3 \textit{Banchomarbae}.
\item \textsuperscript{777} For more information on this union, see 2.5. \textit{Lánamnas comthinchuir}.
\item \textsuperscript{778} For more information on this union, see 3.4. \textit{Lánamnas fir for bantinchur co fognam}.
\end{itemize}
}
6.3.2. Increased legal standing with time or contemporaneous exceptions?

Binchy has examined the contractual capacity of women in his article ‘The legal capacity of women in regard to contracts’\(^{779}\) in which he argues that the legal capacity of women in early Ireland increased with time. He states that in a strictly patriarchal society:

In a society of this kind, women have at first no independent legal capacity. They cannot inherit property (save in exceptional circumstances) they cannot perform any juristic acts without the authorisation of some man or group of men whom the law regards as their guardians.\(^{780}\)

This statement explains the general situation in the early Irish legal system. He goes on, however, to claim that:

In the course of time the status of women is progressively raised. They are first accorded a limited capacity: they can inherit and dispose of chattels, some of their contracts may be made without authorisation, they can bring suits and be admitted as witnesses in court proceedings etc. The line of development extends from original total incapacity to equal or virtually equal capacity with men; the concluding stage is that the legal position of the female adult is equated to that of the male adult.\(^{781}\)

Many scholars have agreed with Binchy’s view on women’s legal standing progressively being increased.\(^{782}\) However, there is no universal consensus on his evidence for the progression of contractual capacity for women. In

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\(^{779}\) Binchy, *SEIL*, pp. 207–34.

\(^{780}\) ibid., p. 207.

\(^{781}\) ibid.

his article, Binchy discusses three classes of evidence in favour of a change in the laws, each class being supported by a separate list of legal quotations. These classes include lists A, B, and C:

A, portions of the text which postulate a total incapacity of women to contract independently; B, other portions of the text which recognise a limited capacity in regard to contracts, and C, glosses and commentary which assume a much wider capacity.\textsuperscript{783}

Binchy’s list A\textsuperscript{784} consists of twelve separate extracts of text.\textsuperscript{785} In list B\textsuperscript{786}, five out of six extracts are from CL\textsuperscript{787}, while the first item on this list is the \textit{Fuidir}-text \S 4.\textsuperscript{788} List C\textsuperscript{789} consists of five extracts of commentary. Clearly list C must be of a later date than lists A and B, since it consists solely of commentary to the law tracts, but the dates of lists A and B are more difficult to ascertain. Binchy himself states that:

It is impossible to prove definitely, on linguistic grounds for example, that the passages in A are older than those in B; all one can say is that there is certainly no linguistic reason for believing them to be later.\textsuperscript{790}

\textsuperscript{783} Binchy, \textit{SEIL}, p. 208.

\textsuperscript{784} ibid., pp. 211–15.

\textsuperscript{785} Most of these extracts have been quoted in this or previous chapters of this thesis.


\textsuperscript{787} For more information, see Chapter 2 Women and Property and Chapter 3 \textit{Banchomarbae}.

\textsuperscript{788} For more information, see 3.4.4. A husband as a dependant.


\textsuperscript{790} Binchy, \textit{SEIL}, p. 208. All extracts have been previously quoted above.
McLeod points out that Binchy has drawn attention elsewhere to “a great many archaic verbal forms” and to the usage of the old acc. sg. *bein* instead of the later form *mna* in certain items in list B. In this way Binchy has in fact proven that list B must be of approximately the same date as list A, if not earlier. Apart from his own argument regarding the archaisms we find in list B, which disagrees with the point he is trying to make in his article in *SEIL*, there is also the issue that all but one of the extracts in list B are from *CL*, which in turn is a part of *SM*, and therefore cannot be older than 660–680, if Breatnach’s arguments for the dating of *SM* are correct. This does not, of course, compromise the interest of list B, it simply means that based on Binchy’s evidence it cannot be seen as a later development of the laws. McLeod argues that lists A and B are in fact from approximately the same time, and that while list A states the general rule that women lacked independent contractual capacity, list B deals with the specific exceptions to that rule, namely the women who have contributed some or all the property in their marriages. It is obvious that Binchy struggled to justify his own argument regarding the date of the lists, especially with a statement such as: ‘Portions of some texts which I give under A, in order to avoid breaking context, really belong under B...’ which strongly disagrees with the point he is trying to make in his article.

Though Binchy does not discuss the possibility of list B consisting of exceptions to the general rule as McLeod argues, he discusses one other

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791 *EICL*, p. 78.


793 ibid.; cf. *EICL*, p. 78.

794 Breatnach, *On the early Irish law Text Senchas Már and the Question of its Date*, p. 42.

795 Binchy does, however, state that ‘linguistic evidence can never be conclusive in regard to the date of the legal rules contained in a given text. A late compiler may have set down in a modern dress a rule which, although its original form may be lost (or for that matter never previously committed to writing), may be much more ancient than a conflicting rule which survives in more ancient language’, Binchy, *SEIL*, p. 208 n. 2. In other words, a text with late language does not necessarily have to mean that the law is late, but, on the other hand, early language must mean that we are dealing with early law.

796 *EICL*, p. 77.

This seems to be a reserve argument from Binchy in case of disagreement with his conclusions. He does not seem to believe this to be even a remote possibility, and he argues against this possibility as soon as it has been stated. From his conclusion that list A must necessarily be older than list B, he claims that it would be impossible to imagine a marriage in which a woman contributed equally, and thus had a certain degree of legal independence, in a society which denied legal capacity to women.800 However, this is exactly what the evidence from CL shows, with the main focus of the text being on lánamnas comthinchuir.

Binchy’s list A begins with the passage from Córus Béscnai §62 which was quoted above as an example of the general rule of women being considered legally incompetent under the early Irish legal system: ‘Thou shalt not buy from one who is "senseless" (i.e. incapable) according to Irish law, from a woman …’801 Item 2 on the list is Berrad Airechta §37, which has also been used as an example of how a dependant was not able to make a contract, even by appointing sureties. This, too, is a quotation which is often used as an example of the general rule of early Irish law. Both of the two Triads802 on Binchy’s list A803 have also been used to exemplify the rules of the general legal incapacity of women.804 Binchy’s list A continues

798 Binchy, SEIL, p. 209.
799 i.e. lánamnas comthinchuir, for more information on this type of union, see 2.5. Lánamnas comthinchuir.
801 ibid., p. 211.
802 Meyer, Triads, §§ 150–1.
803 Binchy, SEIL, pp. 211–12.
804 For a discussion of the Triads, see 2.2. Women’s legal status.
in the same fashion: the items in list A are legal quotations that are often used to show the general rules of early Irish law, and this use of the legal maxims is found in many books and articles on the subject of women and the law.805

6.3.3. The importance of leading cases.

McLeod points out that three-quarters of the items in list A, when given in full, group women together with sons as being incapable of contracting,806 which in itself is proof of Binchy being mistaken regarding women’s complete incapacity in the laws. Sons could gain contractual capacity, and so could women. It has been proved that a son of a living father, \textit{mac béo-athar}, could gain a certain degree of legal independence,807 and while this is not being claimed to be an innovation in the laws, it seems very often to be claimed that regarding women’s contractual capacity it has to be an innovation. It is true that the laws regarding women are commonly cited by leading cases: both in the case of distraint and in the case of legal entry the mythological female judge Bríg is cited to have been the first among the Irish to have judged that women were to have these rights.808 It has often been stated that whenever there is a leading case in the laws, it has to signify that there was a change in the laws, an innovation from the older form of the laws to the newer form.809 If a leading case was there to show an innovation in the laws, how are the leading cases regarding men supposed to be interpreted? In \textit{DT} there is also a leading case for men: the long prose section where Ninne explains the rules of \textit{ferralach} to his pupil Doiden.810


806 \textit{EICL}, pp. 77–8.

807 See e.g. \textit{EICL}, pp. 62–71; \textit{GEIL}, pp. 80–1; \textit{SEIL}, p. 129.

808 For distraint, see e.g. \textit{CIH} 380.14, with a following gloss on 380.24–5 stating: \textit{i. banrudar fer neiring i. lanbreithem} (sic. for \textit{banbreithem}) ‘i.e. [the] female authority of [the] men of Ireland, i.e. a female judge’. For legal entry, see e.g. \textit{CIH} 209.22–3, with glosses 209.24–8.

809 e.g. Binchy, \textit{SEIL}, p. 209: ‘The recognition of legal capacity to women is regarded as an innovation, and some celebrated incident - what we should now describe as a "leading case" - is cited to explain its origin’.

810 For more information on this section, see Chapter 5 \textit{Bantellach}.
This case has not been explained as an innovation in the laws, it has been described as an explanation of the procedure itself. The leading cases regarding women’s legal capacity are not necessarily present to show a change in the laws, but since women did not normally have any legal independency, which has been clearly shown by the many legal paragraphs stating the general rule, the leading cases are there to show that, though these cases were not normal occurrences, nevertheless they did represent recognised exceptions to the rule. Therefore we often find leading cases when it comes to the laws regarding women’s legal capacity in which they are entitled to perform certain legal procedures in their own right instead of having their guardian perform the procedures on their behalf.

6.4. *Di Astud Chor.*

In addition to the texts which have been discussed thus far, there are more examples regarding women’s contractual capacity which have to be taken into consideration. One of the most important texts concerning contractual capacity is *Di Astud Chor*, a two-part tract which deals exclusively with contracts. McLeod has made an edition of both parts in his *Early Irish Contract Law*. He explains that Part I, i.e. §§1–36, deals with the general rules concerning contracts, while Part II, i.e. §§37–60, discusses the exceptions to these rules.

6.4.1. Women in *DAC*.

In the very first paragraph we encounter the normal rule regarding a contract of woman without her spouse:

§1. *Ataat secht cuir ata astaiithi iar réib rudilse conid œen rudarthaecom na seacht cù*: *iar cóíthi deac.*

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811 ‘on the binding of contracts’, *GEIL*, p. 277, App. 1, Text 54. *Di Astud Chor* will henceforth be referred to as *DAC*.

812 *EICL*, p. 101. I follow McLeod’s edition here, and all the relevant translations are his. Paragraph numbers and page numbers are given from his book.

813 The superscript letters refers to the letters McLeod has appointed to the relevant glosses in *EICL*. 
§1. There are seven contracts which are to be secured after intervals of absolute immunity from legal challenge so that it is one of the prescriptive periods according to Irish law. [...] The contract of a woman without her spouse: after fifteen days. The contract of every dependent person, of every outlander, of every illicitly contracting son has come into effect after a month. Everyone overrules his incapable [dependant] up to a month. The four women with legal rights, i.e. [it is] because of the lack of necessity for anyone to make a bargain with them that the interval in regard to which she is liable to the impugning of contracts is [so] long. (B)

Thus, this paragraph states that if a woman enters a contract without the presence of her husband, it will be regarded as a valid contract unless the husband impugns it within fifteen days of the woman entering into it. If he impugns it before the passing of fifteen days, the contract is no longer valid. If he agrees to the contract his wife has made, the husband will have to secure the contract with sureties, as it is not to be secured until the passing of fifteen days. Interestingly, the woman has a shorter prescriptive period than other dependants. Contracts by the latter are regarded as valid after the passing of a month, twice as long a prescriptive period as that of a woman. This is likely to be because a married woman would have a certain entitlement to enter into contracts, the amount of independence constrained

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814 The capital letters after a gloss refers to the relevant MS from EICL, in this case B refers to Egerton 88.
815 EICL, p. 124.
816 These four women are discussed below in 6.4.5.1. ‘The four legally capable women’ in the commentaries.
817 EICL, p. 125.
by the type of union she was in, but in all the airnaidm-unions she would be legally entitled to make certain contracts regarding the household and the everyday necessities of the farm. Hence, it is equally likely that all the unmarried women were regarded under the headword doir, ‘dependent’, and would then have a prescriptive period of a month for the contracts they make without the presence of their guardian.

6.4.2. Contracts of two persons considered gáeth.

As a comparison to the fifteen days’ prescriptive period for a married woman, §26 gives a ten-day period for regrets in contracts between two independent persons of sound mind:

§26. Cor dá gáeth gaibte.

Co sainte sáithiugud,
Cen meso moíniugud:
Teumaic iarum aíthirge
Ría ndechmaide díth.821

§26. The contract of two capable persons which they undertake,
In succumbing to [their] eagerness,
Without the benefit of an evaluation:
Regret occurs thereafter
Before the expiry of ten days.822

In the case of two independent persons, it would not be a question of having a superior impugning their contract, as they were their own guardians: they

818 For more information on these unions, see Chapter 2 Women and Property and Chapter 3 Banchomarbae.

819 i.e. the unions in which betrothal was one of the conditions, i.e. the unions which have been discussed in 2.5. Lánamnas comthinchuir, 2.6. Lánamnas mná for firthinchuir and 3.4. Lánamnas fir for bantinchur co fognam.

820 For more information, see DIL s.v. doir.

821 EICL, p. 156. Note that these are only the first five lines out of eleven lines in the paragraph.

822 EICL, p. 157.
were gáeth, not báeth. It is nonetheless possible to compare the two cases, since the guardian or superior in the case of women and other dependants were given a certain period of time before they decided whether or not to impugn the contract made by the dependant. Hence, they were given time to consider whether or not it was an advantageous or disadvantageous contract their dependants had made, i.e. a sochor or a dochor. Likewise, the two persons of sound mind were given ten days in which they could regret the contract they had entered into. The possibility of regret was qualified, however, by there not having been an evaluation of the contract, or according to the gloss: ‘without the support of an appraisal of consideration of full value therein’. Thus, the ten-day prescriptive period was only allowed in certain cases.

6.4.3. Contracts that are dissoluble though they are bound by sureties.

The next time women are mentioned in *DAC* is in §53:

§53. *Ataat cóic cuir ata thaithbechtai la Fêniu cía ro-násatar: cor mogo cen a fláith, cor manaig cen apaid, cor maic béo-athar cen a athair n-oca, cor drúith nó mire, cor mná secha cêile.* \(^1\)

\(^1\) *i. in adaltrach cen clainn, .i. acht cuic curu foceird sec a fer ata core.* (X)

§53. There are five contracts which are dissoluble according to Irish law although they have been bound by sureties: the contract of a slave without his lord, the contract of a monastic tenant without his abbot, the contract of the son of a living father without his father’s participation, the contract of an imbecile or a mad-woman, the contract of a woman without her spouse.\(^1\)

\(^1\)*the concubine without children, i.e. except for the five contracts which she makes without her man which are correct.* (X)

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823 ibid.; cf. *EICL*, p. 156: *i. cen mainiugud meisemhnachta folaid lanloighi ann A (B).*

824 *EICL*, p. 190.

825 ibid., p. 191.
This is the opposite of the rule which was explained in §1, in which a man had fifteen days to impugn a contract made by his wife without his presence. One important difference between these paragraphs is that in §1 the contract has not yet been secured, but is to be secured after the fifteen days if the husband agrees to it, while §53 explains that a contract a wife has entered into and secured with sureties without her husband’s presence is dissoluble by law. This disagrees with the rules from CL in which a wife has a certain legal capacity in regard to matters of the household. However, the glossator in the Harley 432 MS826 explains that this is not the situation regarding all types of wives, but regarding the adaltrach cen clainn, ‘the concubine without children’, and this rule can therefore be taken as an exception to the general rule of a certain degree of legal capacity the different wives have in CL since the adaltrach cen clainn would have a much lower legal standing than the other types of wives, even compared to ‘the concubine with sons’. While gloss [h] to §1 explains that the rules outlined in that paragraph is regarding ‘the four women with legal rights’, gloss [j] to §53 is regarding ‘the concubine without children’, and the laws clearly state that there is a massive difference in the legal rights of the different types of wives.

6.4.4. The concubine without sons.827

From the discussions found in Nancy Power’s article on the ‘Classes of Women Described in the Senchas Már’828 and from Bart Jaski’s ‘Marriage Laws in Ireland and on the Continent in the Early Middle Ages’829 it is clear that a secondary wife without sons was not very strongly connected to her husband’s kin, but more so to her natal kin, i.e. her father’s fine:

826 The reference in EICL is given as X, which McLeod explains as ‘additional isolated portions of text […] found scattered throughout the law manuscripts. These minor sources are referred to collectively by the letter X. (Remember “X for extra”.)’ (EICL, pp. 94–5.) In this case the gloss is from CIH 352.3–4.

827 For the use of the translation ‘concubine’ for adaltrach, see 2.5.1.1. The adaltrach.

828 Power, SEIL, pp. 81–108. See also Binchy, SEIL, pp. 217–23 = Binchy’s list C, which clearly gives the ‘subordinate wife without sons’ insubstantial legal capacity. cf. Eska Cūán Lānamna, e.g. pp. 189–91; p. 203; p. 211 etc.

Without sons an *adaltrach* had only limited contractual capacity, because she had only her family (and for a small part her husband) to fall back upon - her legal position was still more that of a daughter than of a wife; legally speaking she was still *báeth*.\footnote{Jaski, ‘Marriage Laws’, p. 38.}

The same distinction is also made by the glossator in H 3.18\footnote{CIH 988.22.} in the following paragraph of *DAC*:\footnote{CIH 988.9–25.}

\section*{§54. *Cisné cuir forsna iada mac na ráth la Féniu?*}

*Cor tobaig, cor tothlaigthe, cor díten, cor díthli, cor écuinn, cor écne, cor éicis, cor ecaîlse, cor mogo, cor manaig, cor bothaig, cor bailethaig, cor mná,*\footnote{EICL, p. 192.} *cor maic béo-athar – i mbet a cenna uili i n-écmais.}

\textit{In *adaltrach gin maca.* (A)}\footnote{ibid., p. 193.}

§54. What are the contracts which neither enforcing surety nor paying surety secure, according to Irish law? A forced contract, an extorted contract, a protection contract, a contract of defrauding, the contract of a non-competent person, a contract of compulsion, the contract of a poet, the contract of the church, the contract of a slave, the contract of a monastic tenant, the contract of a dependent tenant, the contract of a deranged person, the contract of a woman,\footnote{ibid., p. 193.} the contract of the son of a living father - when all their superiors are in absence.

\textit{The concubine without sons. (A)}
Again, the paragraph concerns the contracts which sureties do not secure, this time regarding both *macc*, ‘enforcing surety’, and *ráth*, ‘paying surety’, while the previous paragraph did not state what type of sureties were appointed to bind the contracts. In this paragraph there is no mention of a spouse, it is just explained that a contract of a woman is not valid. The glossator\textsuperscript{835} further explains this as *i. in adalltrach gin maca*, ‘i.e. the concubine without sons’. Based on the material from *CL, Di Chetharslicht Athgabálae*, and *DT* it is likely that these restrictions did not include a woman who was a *cétmuinter* nor a *banchomarbae*, as these women had a higher independent legal capacity than most women.

6.4.5. Evidence from the commentaries.

*DAC* has, like most of the Old Irish law tracts, been added to by later glossators and commentators. Some of the glosses have been discussed above, but there are longer commentaries to *DAC* which need to be considered.\textsuperscript{836}

6.4.5.1. ‘The four legally capable women’ in the commentaries.

First, there is commentary [g] to §1:\textsuperscript{837}

\begin{verbatim}
§1. [g] Na .íii. the mna dlígtheca 7 in mac gor 7 in daorceile: id astaithi i sochur 7 itaithmithidh a ndochur. 7 is amhlaid doib-siumh fria cennadh: taithmíght a ndochar 7 id astaithi a sochur: Acht in daorceile; ní thaithmíghenn-siadha sochur na dochur in cinn.\textsuperscript{838}
\end{verbatim}

[g] The four legally capable women and the dutiful son and the base client: their advantageous contracts are secured and their

\textsuperscript{835} Note that it is a different glossator from the previous paragraph.

\textsuperscript{836} These commentaries with translations are found in *EICL*, pp. 262–311 = *CIH* 994.23–996.38.

\textsuperscript{837} Only the relevant commentaries to §1 are quoted here, since there is no relevant commentaries to the other paragraphs discussed above.

\textsuperscript{838} *CIH* 995.6–9 = *EICL*, p. 264.
disadvantageous contracts are dissolved. And it is the same for them as against their superiors: they dissolve their disadvantageous contracts and their advantageous contracts are secured. Except for the base client; he dissolves neither the advantageous contract nor the disadvantageous contract of his superior, as explained in DAC §1, that the guardian of the ‘four legally capable women’, in this case her husband, can decide which contracts which have been entered into that are to be dissolved or to be secured by sureties. The guardian will clearly want to secure the advantageous contracts and dissolve the disadvantageous contracts. The four legally capable women are here equated with the *mac gor*, ‘dutiful son’, and the *daorceile*, ‘base client’. It has been shown earlier that a *cétmuinter* was of more or less equal legal standing as the son of a living father, *mac béo-athar*, and here the commentator explains that the *mac gor* was also of approximately the same legal standing as the *cétmuinter* and the *mac béo-athar*. The commentator also adds the base client to this equation. However, the final sentence in the commentary qualifies this comparison to a certain extent. While the ‘four legally capable women’ and the dutiful son are entitled to dissolve the disadvantageous contracts of their guardians, and secure their advantageous contracts, the base client is neither allowed to dissolve nor secure any contracts his superior makes, i.e. the only comparison there is between the base client, the *mac gor*, and the four legally capable women is that the advantageous contracts they make are secured by their superiors and their disadvantageous contracts are dissolved.

### 6.4.5.2. ‘The concubine without sons’ in the commentaries.

Another commentary to DAC §1 discusses the rest of the type of person mentioned in the aforementioned paragraph:

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839 *EICL*, p. 269.

840 The ‘four legally capable women’ are explained below in commentary [k].

841 cf. 2.5.3. The similarities between the *cétmuinter* and the *mac béo-athar*. 176
h) *In daor aigeanta, immorro, ґ in daormanach ґ in daorbothach ґ in daorfuidir ґ in senceleithi ґ in mac ingor ґ in druth gu rath ґ in mer gin rath ґ in adhaltrach gen maca: itaitmighthi i sochur ґ in ndochur ona cennaib.*

h) However, the normal dependant and the dependent monastic and the dependent cottier and the dependent tenant and the hereditary tenant and the undutiful son and the imbecile with property and the mad-man without property and the concubine without sons: their advantageous contracts and their disadvantageous contracts are dissolved by their superiors.

This commentary discusses the lower status dependants, a group which includes the *adhaltrach gen maca*, ‘the concubine without sons’. The contractual capacity of this group of person is as expected based on their low status: all of their contracts, whether advantageous or disadvantageous, are dissolved by their superiors. Thus the commentator stays faithful to the rules of marriage: the lower status the wife has in marriage, the lower her legal capacity is, especially in the situation of the secondary wife without children, as is exemplified in this commentary. It has been shown above that a secondary wife without children is very loosely connected to her husband, she is much more closely connected to her own natal kindred, and so is her legal capacity; it is closer to that of a daughter than that of a wife.

6.4.5.3. The contractual capacity of ‘the four legally capable women’.

The next relevant commentary is discussing the four legally capable women mentioned in commentary [g] and their contractual capacity:

k) *Na cethre mna dligthecha, .i. in cétmuinnter co macaibh ґ in cétmuinnter gin macaibh ґ in adhaltrach co macaibh ґ in bê*

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842 *CIH* 995.10–12 = *EICL*, p. 264.

843 *EICL*, p. 269.
The list of ‘four legally capable women’ is clearly not given in the order from highest to lowest status of wives, since the wife of condominium, who was seen as the wife of the highest legal standing is given as the fourth of the four legally capable women. If the bé cuitchernsa had been given as the first legally capable woman on this list, it would have listed the women

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845 EICL, p. 270.

846 The four legally capable women are therefore explained as the same four in DAC as in the commentary to CL, for more information see Eska, Cán Lánamna, Appendix 1, pp. 303–7, and ibid., Appendix 4, pp. 325–8.

847 cf. 2.5.1. Types of wives in the airnaim unions.
in the order from the highest to the lowest status. In this commentary, too, the *mac gor* has been equated with a group of women, the same group as he was equated with in commentary [g] above. Thus, this commentary adds information to the contractual capacity of this group of person, though it gives much the same information as that given in *DAC* §1: that this group of person had their contracts impugned within fifteen days. Exactly what is meant by the members of this group impugning their superiors’ contracts within ten days is uncertain, but it is probably a repetition of the statement in [g], that they dissolve their superiors’ disadvantageous contracts. This is another repetition of the rules given in *CL*, that a wife in all of the three *airnaimd*-marriages could impugn their husbands’ disadvantageous contracts in regard to the household.

6.4.5.4. The contractual capacity of ‘the concubine without sons’.

Commentary [p] discusses the secondary wife without sons whose contractual capacity was discussed in commentary [h]. The prescriptive period for this type of wife has not yet been explicitly mentioned in the law tract, but she is likely to have been included in the final group in §1, i.e. the incapable dependant who has a prescriptive period of a full month:

p) *Cidh fodera conad siadh in ré iarsa tecar fo coraibh na hadhalltraidhe gin macaibh na fo coraibh na cétmuinntire, 7 gurab truime dlighi lanamhnais for cétmuinntir ná for adhalltraidh? Is e in fath: d’aithi inndligthigí forintí dorinne cunnrad fria a negmais a fir nó a cind.*

p) For what reason is it that the period for which the contracts of the concubine without sons are impugned is longer than [that for] the contracts of the primary wife, given that the entitlement of marriage is heavier upon the primary wife than upon the concubine? The reason is this: to exact retribution for unlawfulness upon the one who

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*CIH* 996.9–13 = *EICL*, p. 265.
made the bargain with her in the absence of her man or of her guardian.\textsuperscript{849}

The commentary explains that the secondary wife without sons has a longer prescriptive period than that of the four legally capable women, which supports the suggestion that the adaltrach without sons is part of the group of legally dependants, doir, from DAC §1. This group is the only group in §1 which has a longer prescriptive period than the groups discussed in commentary [g] and [k]. Commentary [p] only discusses the secondary wife without sons and not the full group of dependants which is dealt with in other parts of the commentary which are not relevant to the topic of this discussion. The commentator seems to be more interested in explaining why the prescriptive period is different in length for the secondary wife without sons in comparison to the four legally capable women from commentary [k]. It is clear from other legal material, especially from the evidence found in CL, that the more responsibility a wife had in her marriage, the more legal entitlement was given to her. Therefore, a secondary wife without sons, who would not have much responsibility in her marriage, was not given much legal independency. For this reason the prescriptive period to impugn the contracts she had made without her husband’s guidance was longer than that of the four legally capable women.

6.4.5.5. ‘The two orders of members’.

More information on how the commentator viewed the different groups of person is found in commentary [y], in which he describes ‘two orders of members’:

\begin{verbatim}
\textit{y) ‘Ata da ord forna memraíb’ i. drung dibh fona tecaír coraíb acht fo’ ndocoraíb γ a ndiubairt: amail itait na .iii. mna dlíghtheca, γ adhalltrach co macu γ in céilmuinnter co macu γ gin macu γ in bé cuitgherns, γ in mac i tsgairé γ in mac faosma γ in saormanach γ in
\end{verbatim}

\textsuperscript{849} EICL, p. 271.
saorceile. In adhalltrach cen macu, immorro, 7 in daormanach 7
daorbothach 7 in daorcele 7 in daorfuidhir 7 in seinclethe 7 na
digcenn cen agha aicsina: taithmither a sochur sidhe [C: 7 a
ndochar uile, cia riasat a les a fine cenco riasat, arna rognathaigic
curu a necmais a cenn, ar indlighti doibh cuir no cunnarrta do
denamh ina necmais.850

y) "There are two orders of members", i.e. some of them do not
have their contracts impugned except for their disadvantageous
contracts and their over-payment: just as there are the four legally
capable women, i.e. the concubine with sons and the primary wife
with and without sons and the wife of condominium, and the son
in [his father’s] warm-care and the adopted son and the
independent monastic and the independent client. However, the
concubine without sons and the dependent monastic and the
dependent cottier and the base client and the dependent tenant and
the hereditary tenant and the people without an overseeing
superior: their advantageous contract is dissolved and their entire
disadvantageous contract, whether their kin require them or not,
lest they should be accustomed to [making] contracts in the
absence of their superiors, for it is unlawful for them to make
contracts or bargains in their absence.851

Here, the commentator gives an even clearer description of the different
groups described in the previous commentaries. Everyone included in the
two orders of members are legally dependants, the difference between them
 is to what degree they are dependent upon their superior. The first ‘order’
includes a) the four legally capable women previously discussed in
commentary [k], b) the mac gor, c) the adopted son, d) the independent
monastic and e) the independent client. The only addition to the persons

850 CIH 996.33–8 = EICL, p. 267.
discussed in commentaries [g] and [k] is the adopted son. Previously\textsuperscript{852} it has been shown that the adopted son and the \textit{mac gor} can be one and the same person. This suggests that the adopted son, though not specifically mentioned by name, can reasonably be thought to form a part of the group from commentaries [g] and [k], and thus be expected to have a certain degree of contractual independence, in that his advantageous contracts will be secured by his superior, but his disadvantageous contracts will be dissolved. In turn he is entitled to dissolve his superior’s disadvantageous contracts. This first ‘order’ thus consists of persons who do not have their advantageous contracts impugned, only their disadvantageous contracts and their ‘over-payment’\textsuperscript{853} will be impugned by their superiors.

The second ‘order’ the commentator describes consists of a) the secondary wife without sons, b) the dependent monastic, c) the dependent cottier, d) the base client, e) the dependent tenant, f) the hereditary tenant, and g) everyone without an overseeing superior. Kelly\textsuperscript{854} explains that the term ‘cottier’, \textit{bothach}, is generally used in conjunction with the \textit{fuidir}, a lower category of dependant who is not legally entitled to make any contracts without his guardian.\textsuperscript{855} Whether there is a difference between a common cottier and a dependent cottier, and whether he is to be identified as a \textit{fuidir}, is difficult to say. A short law text\textsuperscript{856} on the \textit{fuidir} distinguishes as many as ten different types of ‘semi-freemen’, without there being a great difference between these ten types,\textsuperscript{857} none of the ten types of \textit{fuidir} is the \textit{daorfuidhir}, ‘the dependent tenant’, of the second ‘order’ of this commentary. The \textit{senchléithe}, or ‘hereditary tenant’, mentioned in this ‘order’ is a \textit{fuidir or bothach} whose ancestors have occupied the same land for three generations. He is bound to his lord and thus cannot renounce his

\begin{footnotes}
\item[\textsuperscript{852}] For more information, see 5.3.6. The implications of female landowners.
\item[\textsuperscript{853}] For the term \textit{diupart} (also \textit{derb-diupart} and \textit{saithiud}), see \textit{EICL}, ch. 2.4, pp. 43–6.
\item[\textsuperscript{854}] \textit{GEIL}, p. 35.
\item[\textsuperscript{855}] \textit{GEIL}, pp. 33–5. For more information on the \textit{fuidir}, see \textit{EIWK}, pp. 307–36.
\item[\textsuperscript{856}] \textit{CIH} 428.9–12; \textit{IR}, p. 65 §7, which is an extended Heptad, which though begins by stating that there are seven types of \textit{fuidir} (\textit{Ata\textsubscript{at} \textsubscript{uii}, fiuir\textsubscript{i}re la Feniu}), expands the second category with the three ‘die die unfreiesten von ihnen sind’. (\textit{IR}, p. 66).
\item[\textsuperscript{857}] \textit{GEIL}, p. 33.
\end{footnotes}
tenancy, but he is of slightly higher status than a slave. Everyone in this ‘order’ are regarded as being of very low status, and they have therefore very little contractual independence. Indeed, the commentator states that all of their contracts are to be dissolved ‘lest they should be accustomed to [making] contracts in the absence of their superiors, for it is unlawful for them to make contracts or bargains in their absence’. This final line of commentary shows clearly how low a status this ‘order’ had. Not only are their disadvantageous contracts dissolved, which is to be expected of anyone who is not fully independent, but even their advantageous contracts are to be dissolved, so that they will not become accustomed to making any contracts at all. In other words, they are not to be trusted with any legal decisions, and they are fully dependent upon their superiors.

6.5. The giving of gifts.

There are a few more rights women had which have not been discussed thus far, the giving of gifts and bequeathing of property. The giving of gifts by women seems to have been especially important for the early Irish lawyers. A legal maxim allows women to give gifts up to the value of their own honour-price without the permission of her husband. The honour-price, lóg n-enech, was generally seen as the maximum value of which a person could make any legal decisions, whether it be the giving of gifts, of a pledge, acting as a surety etc. Thus the rank or status of every person dictated their lives. A woman normally had half the honour-price of her guardian, except for special circumstances such as the banchomarbae, whose husband’s status was dependent on hers. If a woman is the wife of the highest grade of bóaire, who has an honour-price of 6 sēts, she would in turn have an honour-price of 3 sēts. So in the case of the wife of the highest grade of

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858 GEIL, p. 35; cf. Dillon, SEIL, p. 158; IR, pp. 82–3.

859 CIH 2103.35–6: Nach tualaing in ben reca na creca sech in fer s’tabaítt cach mna fo miad.

860 For more information, see Chapter 3 Banchomarbae.

861 According to Críth Gablach. The different law texts on status and rank differ slightly between the values of the honour-price of the different ranks.
bóaire, she would be entitled to give a gift up to the value of 3 sēts without asking her husband permission to do so.

6.6. Bequeathing property.\textsuperscript{862}

A woman is also allowed to bequeath her làmthorad to the Church.\textsuperscript{863}

Normally a woman would not be allowed to deal with property of any kind, except for moveables, but in the case of property she has acquired through the work of her two hands\textsuperscript{864}, she is entitled to bequeath parts of it. She is not entitled to do this if it leaves liabilities which her kin will have to deal with, since they would be held responsible for any liabilities left by any of the members of the fine. In the case of a woman who has acquired property from her own professional earnings, she is allowed to bequeath a part of it almost the way she pleases.\textsuperscript{865}

\textsuperscript{862} For more information on a woman bequeathing, giving or lending property while married, see 2.5.2. Contractual capacity, 2.6.1. Contractual capacity and 2.6.4. The legal capacity of the different types of wife.

\textsuperscript{863} CIH 442.21–2: Cach ben nad faccaib cin nad ciniud na soethar i tuaith is messe torad a da llam.

\textsuperscript{864} I believe that torad a da llam can be taken both as ‘handiwork’ as well as ‘property acquired through the sale of handiwork’; cf. 4.3.3. ‘Women in general’ where a section from the Book of Armagh describes how Cummen, a nun, could acquire property through the sale of her own handiwork.

\textsuperscript{865} For more information, see 3.5. Personally acquired land, 3.5.1. Orbae cruib nó sliasta, 4.3.3. ‘Women in general’ and 7.3.1.1. The Kinship Poem.
7. The passing of property.

7.1. Introduction.

There are two types of passing of property which have to be considered in this discussion: the passing of property from one or both parents to a daughter, and the passing of property from a woman to her sons, daughters or kin-group. Some of the laws regarding the banchomarbae have been discussed in a previous chapter, but the most part of the previous discussion concerns the regulations of marriage in which the woman is the main contributor of land. The following discussion will deal with the rules regarding the acquisition of property for a woman, whether it be from inheritance or from gifts, and the laws regarding her property being passed on to the next generation.

The most important text regarding the distribution of a woman’s estate is the Kinship Poem, an archaic poem in an early rhythmical form. Extracts of commentary to the law text on injury, Bretha Êtlgid, contain evidence regarding the distribution of the cin and dibad, as well as the property of a woman upon her death, depending on the status of each class of woman. The part of the text found in SEIL deals with the distribution of a woman’s personal property, i.e. property other than that which a banchomarbae would receive life-interest in. The extracts go into details about the division of assets for children of different marriages, and even further into the details of the division depending on the gender of the children from a woman’s consecutive marriages. It thus gives information

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866 For more information, see Chapter 3 Banchomarbae.

867 Full text with glosses and commentary is found in CIH 215.15–217.23 = AL iv 39.12–48.15.


869 CIH 250.1–337.36; 925.1–945.19, etc. the portion of texts found in SEIL are from CIH 1153.5–1155.9 (= 23 Q 6), and CIH 309.21–311.2 (= E 3.5).


871 CIH 1153.5–1155.9 and CIH 309.21–311.2.
on the laws of marriage additional to that which is found in *CL*. The *Bandíre*-text\(^{872}\) gives much of the same information on the division of property as that of *Bretha Êtgid*, but the fractions differ slightly from that of the latter, which differentiates between a larger number of women other than those found in the *Bandíre*-text.

### 7.2. Property as inheritance to a woman.

The normal rule of the distribution of a deceased father’s estate is that each of the sons would get equal shares of their father’s property. For the division of the estate to be as fair as possible, the youngest son divided the property while the eldest chose his share first, then the second eldest son chose, and the youngest son got the last share.\(^{873}\) It would thus be in the best interest to the youngest son to divide the shares as equally as he could. According to *Córus Fine*\(^{874}\) the daughters would only receive the *lann*, *rann* and *bregda*,\(^{875}\) which in MS 23 Q 6\(^{876}\) has been glossed:

\[
\text{Lann}, \text{i.e. of gold, and } \text{rann}, \text{i.e. the silver needle, and } \text{bregda}, \text{i.e. the speckled cloth.}\(^{877}\)
\]

The author of *Córus Fine* also states that the daughters would receive an equal share of any property which the father had acquired independently of

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\(^{872}\) *IR*, pp. 27–37.

\(^{873}\) *GEIL*, p. 102; cf. *CIH* 1289.11.

\(^{874}\) ‘The regulation of the kin-group’, *CIH* 728.17–746.16.

\(^{875}\) Dillon, *SEIL*, p. 133 = *CIH* 736.26–7. For a discussion of these terms, see Thurneysen, *IR*, p. 30; Dillon, *SEIL*, p. 171.

\(^{876}\) *CCIH*, p. 5: ‘23 Q 6: *RIA Cat.* 3440–51 distinguishes five originally separate sections on this composite MS: 1 (pp. 1–6), 2 (pp. 7–30), 3 (pp. 31–2), 4 (pp. 33–52) and 5 (pp. 53–6), while O’Sullivan (1999, 284) regards the bifolium consisting of pp. 33–4 and pp. 51–2 as separate from the rest of section 4. The fifth section contains no legal material, while the others consist solely of such. All of the fourth section belonged originally to Egerton 88 (q.v.), and the first three may also have been written in the sixteenth century’.

\(^{877}\) Dillon, *SEIL*, p. 169; *CIH* 1154.29.
the *fintiu*. Kelly explains that a daughter is entitled to a share of a father’s personal valuables, but not of his land.

7.2.1. Property as inheritance to a *banchomarbae*.

The main exception to the rules of inheritance is in the situation of the *banchomarbae*. In this event, the father has passed away in default of a living son. As stated above in 7.2., *Córus Fine* does not give a daughter any part of her father’s moveables except for the *lanna*, *ranna* and *bregda* as long as there is a male heir. The paragraph goes on to state that:

\[ \text{\textit{Muna fúil comarba ferrdha ann, na scuichthi do breith uilí, 7 na hann-scuichthi go (?) fuba 7 co ruba. No a leth gen fuba 7 gen ruba.}} \]

If there is no male heir, all the movables are given to her, and the immovables with obligation to provide military service, or half of them without obligation to provide military service.

In other words, the daughter will receive half of the property if she did not provide military service, but if she did, she would receive the whole property. The mention of military service could refer to the final part of *athgabál aile*, ‘distraint with a two-day stay’, in *Di Chetharslicht Athgabálae*:

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880 *CIH* 736.30–1.
881 Dillon, *SEIL*, p. 133.
882 For more information, see 4.3.4.3. ‘Work’. 
The contribution of a (battle-)field, the supplying of a weapon.\textsuperscript{884}

The former of these two cases has been glossed:

\textit{im tinecor a coibdel aig isin re comraic i. dia ferlesach gaibes}\textsuperscript{885}

i.e. concerning the supplying of her relative [with a weapon] in the time of battle, i.e. [it is] from her male guardian she takes [it].

and the latter:

\textit{arm comraic bis oca do gres i. uaithi-se dia feichem i. don coibdelach .ii. i. ben in fir gaibis di-se. i. im tiachtain le do cosnam a lesa do feichemain}\textsuperscript{886}

i.e. the weapon of battle which they always have, i.e. from her to her guardian, i.e. to the other relative, i.e. the wife of the man who takes [it?] from her, i.e. concerning the guardian coming with her to fight her legal action.

In the tract, these two cases do not seem to make much sense on their own, but in the light of the evidence from \textit{Córus Fine} there seems to be a plausible explanation for the woman to be able to distrain on the account of ‘the supplying of a weapon’ and ‘the contribution of a (battle-)field’. If the daughter was to inherit the entire estate, and thus provide military service,

\textsuperscript{883} CIH 379.11–12.

\textsuperscript{884} All the translations from the section on \textit{athgabál aile} are my own translations, see Appendix 1 for the full translation.

\textsuperscript{885} CIH 379.33–4; AL i 154.1, which omits the first part of this gloss.

\textsuperscript{886} CIH 379.34–6; AL i 1–3, which omits the final gloss.
which includes both weapons and the contribution of a battle-field, it is clear why these cases have been mentioned in the law tract on distraint.

7.2.2. Limitations to the inheritance.

Though *Còrus Fine* states that the daughter would inherit the entire estate should she agree to the obligation of military service, the Kinship Poem and its glosses put a limit on the amount of land a *banchomarbae* was entitled to inherit. Dillon believes this limitation is found in (xv):

\[
\begin{align*}
\text{Fine o chiurt chobrainne} \\
\text{Nis tic di chiurt chomocais} \\
\text{Acht certorbae mbóairech,} \\
\text{Da .uii. cumal comardae,} \\
\text{Orbae biatas bóairig.}^{887}
\end{align*}
\]

A kinsman, by right of sharing
There comes to him by right of kinship
Only the proper inheritance of a *bóaire*,
Fourteen *cumals* of equal value.\(^{888}\)

Dillon and Charles-Edwards’ translations of the Kinship Poem differ on certain points, and the most notable difference in this stanza is the recipient of the inheritance. Charles-Edwards, whose translation has been supplied here, takes this stanza to concern a son inheriting kin-land, not the limitations to the inheritance of a *banchomarbae*. While Dillon translates the second line of the stanza ‘there comes to her by right of kinship’,\(^{889}\) Charles-Edwards translates it ‘there comes to him by right of kinship’. He believes the stanza to mean that a freeman can demand a resharing of his

\(^{887}\) *EIWK*, p. 518, normalised by Charles-Edwards from *CIH* 217.20–2.

\(^{888}\) *EIWK*, p. 519; cf. Dillon’s translation in *SEIL*, p. 155: ‘From right division by the *fine* there comes to her by right of kinship only the right land of a *bóaire*, two equal sevens of *cumals*, land of tenants who maintain a *bóaire*’. Note that Dillon and Charles-Edwards’ translations differ in the gender of the recipient. The final line of translation has been omitted by Charles-Edwards.

\(^{889}\) Dillon, *SEIL*, p. 155.
inheritance to claim the land appropriate to his status, and that the 14 *cumals* is the limit to his claim.\(^{890}\) Dillon on the other hand, believes this stanza to concern the limitation to the inheritance of a *banchomarbae* to 14 *cumals* of land,\(^{891}\) i.e. the same amount of land as a *bóaire* was expected to have.\(^{892}\) Whether it is the son or the *banchomarbae* who is the recipient of the inheritance, the glosses add the limitation of inheritance for the *banchomarbae*. The limitation in the glosses is further qualified, and they state that it is only the daughter of the highest rank of *bóaire* who would inherit the 14 *cumals* of land:

\[
\textit{tir da }\text{ uii. cumal do ingin in boairech is ferr}.\(^{893}\)
\]

twice seven *cumals* of land to the daughter of the highest *bóaire*.\(^{894}\)

However, the glosses also add a distinction between the property qualifications of the different ranks of *bóaire* which Dillon explains to be ‘a distinction which appears to belong to the later period’,\(^{895}\) i.e. that the 14 *cumals* of land that the daughter could inherit was half of the estate of the highest rank of *bóaire*, who had 28 *cumals* of land,\(^{896}\) while the middle or lowest grade of *bóaire* would normally have an estate of 14 *cumals* of land.\(^{897}\) Though the law texts differ slightly in the classification and the property qualifications of the different ranks, the highest grade of *bóaire*, the *mrugfer*, never seems to have been given more than 21 *cumals* of land.\(^{898}\)

\(^{890}\) *EIWK*, pp. 69–70.

\(^{891}\) *CIH* 217.21; Dillon, *SEIL*, p. 155; *EIF*, p. 415; ibid. p. 421.

\(^{892}\) *CIH* 563.6, 779.26; *CG* ll.153–4; *EIF*, p. 415 n. 105; ibid. p. 421.

\(^{893}\) *CIH* 217.29–30.

\(^{894}\) Dillon, *SEIL*, p. 155.

\(^{895}\) ibid.

\(^{896}\) *CIH* 217.31–3.

\(^{897}\) *CIH* 217.33–4.

\(^{898}\) *CG* ll. 172; *{EIF*, p. 421.
middle or lowest grade of *bóaire* were only entitled to inherit seven *cumals* of land, unless she offered military service, in which case she would be entitled to the full 14 *cumals* of land. They also state that the daughter of the highest grade of *bóaire* would inherit the 14 *cumals* of land ‘without hosting without rent without coigny’ which implies that the glossator believed that if the daughter agreed to the obligation of military service, she would be entitled to the 28 *cumals* of land. It therefore seems like the limitation on the inheritance for a *banchomarbae* in the law tract, i.e. the 14 *cumals* of land, was misunderstood by the glossator because of the development regarding the property qualifications of the different grades of freemen, and he therefore needed to invent a different reason for the limitation of the inheritance for women.

Dillon points out that the maximum inheritance for a woman being equal to the property qualification of a *bóaire* is a coincidence, which is most likely a correct observation. However, since the men of higher rank were more likely to be able to afford multiple marriages, they were also less likely to die in default of a living son, and the situation of the *banchomarbae* was therefore more likely to occur in the strata of the lower classes of the society. Because of this, the amount of a possible inheritance for a woman exceeding the 14 *cumals* of land would not often be an issue for the higher classes of society.

### 7.2.2.1. Limitations to female inheritance in the glosses.

The glossator of the E 3.5. version of the Kinship Poem has added another limitation to the inheritance of a daughter from that previously discussed. The Kinship Poem (iv) states that:

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899 *CIH* 217.33–5.

900 *CIH* 217.31–2; Dillon, *SEIL*, p. 155. Dillon gives ‘coigny’ as the translation of the word *congbáil*. DIL s.v. *congbáil* b) ‘maintenance, entertainment, legal right or obligation as regards entertainment’.

901 cf. Dillon, *SEIL*, p. 156.

902 id.


904 i.e. the full tract with glosses and commentary.
Óthá cach chiunn chomocais
Fo lin moini midetar
Óthá bun co iarmui.\textsuperscript{905}

From each "head" of kin
They adjudge wealth per capita
From the stock as far as the iarmui.\textsuperscript{906}

To this the glossator has added that:

\begin{quote}
.i. otha aisneis dam do dibad each cind dar comfoicsied in ferann; in geilfine uili rodibda and, γ in ferann uile do breith don ingin a dualgus bancomarbas.\textsuperscript{907}
\end{quote}

Since I am telling of the death of each to whom the land was near by kinship. The whole geilfine was extinct there, and the land was taken by the daughter by right of banchomarbas.\textsuperscript{908}

Thus, the glossator limits the possibility for a woman to become a banchomarbae further than that which has been explained so far: he states that a woman could only inherit the patrimony if the entire geilfine was extinct. This is an even more strict limitation to the inheritance than the evidence from the texts which have been examined thus far, which state that a woman will become a banchomarbae if her father dies without a living male heir. According to the E 3.5. glossator her entire geilfine must be extinct, and only in that case can she inherit the fintiu. The geilfine was the most shallow of the four fini in early Irish society, and the most ego-

\textsuperscript{905}EIWK, p. 517, normalised by Charles-Edwards from CIH 215.33–4. Charles-Edwards translates (iv) and (v) as one quatrain. I have left out the final line, i.e. (v), of Dillon, SEIL p. 140.

\textsuperscript{906}Translation from EIWK, p. 517; cf. Dillon, SEIL, p. 140: ‘After (reversion to) each of the next of kin, the property is judged among the whole group, from the top to the great-grandson’.

\textsuperscript{907}CIH 216.3–4; cf. Dillon, SEIL, p. 140.

\textsuperscript{908}Translation from Dillon, SEIL, p. 140.
centred. It consisted of five categories of men: the grandfather and his male descendants, and was thus only three generations deep. The depth of the gelfin is normally counted as 1) a man, 2) his father, 3) his grandfather, 4) his father’s brother(s), and 5) his father’s brother’s son(s), which gives the five men of the gelfin. The banchomarbae-to-be, in this example, would therefore not have been counted as a member of this kin-group, she would have been the sister of 1). Therefore, according to the glossator, every male relative in her nearest kin-group would have to be dead for her to inherit the property in question. Though these glosses are from the Kinship Poem, which deals mostly with the distribution of a woman’s estate, Dillon takes this to mean that for a woman to become a banchomarbae, her father’s gelfin had to have become extinct. Kelly, on the other hand, explains that a woman would become a banchomarbae if she had no brother, but does not mention the condition of the extinction of the gelfin. Ó Corráin supports Kelly in that a daughter would inherit the kin land ‘in default of male siblings’ and states the Kinship Poem envisages a case in which the gelfin issued a female heir to the fintiu. This is strengthened by a later quatrain of the Kinship Poem, i.e. (xii), which states that a son of a banchomarbae could not inherit the fintiu of his mother unless his father, i.e. the husband of the banchomarbae, was also the nearest relative in succession to inherit the fintiu, i.e. a cousin of the banchomarbae. Though this cousin could be a member of her father’s derfhin and did not necessarily need to be in her father’s gelfin, the glosses to the quatrain only state that:

909 EIWK, p. 55.
910 ibid., pp. 55–6.
911 See EIWK, p. 56, Table 1.13; McLeod, ‘Kinship’, pp. 2–3.
912 Dillon, SEIL, p. 174.
913 GEIL, p. 104.
915 id.
916 CIH 216.35–217.10; EIWK, p. 518; Dillon, SEIL, pp. 150–1; EIF, p. 416.
Ni mac bratus .i. mac bancomarba ani-siu, ɣ is inann fine dia mathair ɣ a athair, acht ni bratfe finmtiu in mac-sin a comarbus a mathar manip nesa do-sum ara athru in grian-sin ina bancomarba oldas don fine olchena.\textsuperscript{917}

[He is no son who steals.]\textsuperscript{918} i.e. this is the case of the son of a banchomarbae, and his mother and father are of the same fine, and that son shall not take family land as heir to his mother unless that land of the banchomarbae be nearer to him on account of his father’s kin than to the rest of the fine.\textsuperscript{919}

Ó Corráin explains that if a gelfine has no one else to inherit the fintiu but the banchomarbae the land will revert to her patrilateral kin upon her death, and her sons are excluded from the equation. However, if their father is nearer in relationship to being the ultimate heir of the fintiu than their mother, they, too, can inherit, since they must then be among the ultimate heirs.\textsuperscript{920} He further explains that upon the death of the banchomarbae the fintiu would revert to her father’s nearest relatives: ‘to males within her gelfhine or, in default of these, to males within her derbfhine’,\textsuperscript{921} and by marrying a cousin, the banchomarbae would preserve a property interest for her children. He envisages that the marriage of a banchomarbae to a second cousin would happen less frequently than the marriage to a first cousin.\textsuperscript{922} Thus, if the ancient solution to the problem of the banchomarbae, and keeping the fintiu in the family while still securing property interest for her sons, was for her to marry her first cousin, the whole gelfine cannot possibly

\textsuperscript{917} CIH 912.26–8.

\textsuperscript{918} Supplied on the basis of Charles-Edwards’ translation from EIWK, p. 518, l. 25.

\textsuperscript{919} Dillon, SEIL, p. 150.

\textsuperscript{920} Ó Corráin, ‘Women and the Law in Early Ireland’, p. 53.

\textsuperscript{921} Ó Corráin, ‘Marriage in Early Ireland’, p. 11.

\textsuperscript{922} id.
have always been extinct in order for the woman to take the role as a female heir.

7.2.3. The daughters of Salphaad.

The Church clearly forbade parallel cousin marriages, and though the laws in question are secular, the lawyers tried to find evidence in the Bible to prove that the practices were correct both in the secular and the canonical laws. The obvious example for the justification of parallel cousin marriages in the Old Testament is the story of the daughters of Salphaad:

Lex dicit: Filiae Selphat de tribu Manassen accesserunt ad Moysen in campestribus Moab dicentes: pater noster mortuus est, non habens filios, nec fuit in seditione Chore et Dathan, sed in suo peccato mortuus est, cur privamur hereditate ejus? Moyses retulit hanc questionem ad judicium Dei, qui dixit: Rem justam postulant filiae Selphat; date eis hereditatem in medio fratrum suorum. Sed Dominus praecepit, ut viris tribus suae nuberent, ne transferatur hereditas de tribu in tribum. In quo intelligendum est, quod Dominus ideo dixit: Nemo copuletur uxori nisi de tribu sua, ne hereditas transferatur de tribu in tribum.923

Scripture says [paraphrase of Numbers 27:1–11 and Josh. 17:3–6]: The daughters of Salphaad came to Moses in the plains of Moab saying: our father died in the desert nor did he take part in the sedition of Core and Dathan but he died in his own sin. And he had no sons. Why are we deprived of his inheritance? And Moses referred their cause to the judgement of the Lord, who said: The daughters of Salphaad demand a just thing. Give them an inheritance amongst their father’s kindred. And the Lord commanded [Numbers 36:8–13] that they should marry men of their own tribe, so that the inheritance should not be transferred from tribe to tribe. From which

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is to be understood: let no man be joined to a wife not of his own tribe, lest the inheritance be transferred from tribe to tribe.\footnote{Ó Corráin, ‘Women and the Law in Early Ireland’, p. 55.}

Salphaad had died in default of sons, and therefore his daughters claimed the inheritance of property. The tribe objected to the daughters of Salphaad inheriting the land since they would marry outsiders, and the land would be alienated from the tribe. The daughters thus came to Moses with their problem, Moses consulted God, who declared that they could inherit the land as long as they married someone from inside their own tribe. By marrying the sons of their father’s brothers the land was kept within the tribe, and the daughters were entitled to keep their inheritance. Here, then, the early Irish lawyers found the biblical justification they needed to claim that the parallel cousin marriages for the reason of retaining the property in the family were acceptable.\footnote{cf. Binchy, ‘Bretha Crólige’, p. 44–5, §57, regarding the justification of polygyny. ‘For the chosen [people] of God lived in plurality of unions, so that it is not easier to condemn it than to praise it’. See Chapter 2 Women and Property for a discussion.}

\textbf{7.3. The distribution of a woman’s property.}

There are two types of property which need to be discussed: the distribution of the land holding a woman has inherited as a \textit{banchomarbae}, and the distribution of a woman’s personal property. These types of property were treated very differently, and are dealt with in the texts previously discussed. The former type of property is discussed in the Kinship Poem, while the latter type is dealt with in the extracts of \textit{Bretha Étgid} which are found in \textit{SEIL}.\footnote{Dillon, \textit{SEIL}, pp. 160–174.}
7.3.1. The distribution of the estate of a *banchomarbae*.

The full text of the Kinship Poem is only found in one MS,\(^{927}\) but there are another four extracts of the text with glosses and commentary.\(^{928}\) Dillon has edited and translated the text including glosses and commentaries, and gives the MS variants,\(^{929}\) while Charles-Edwards has normalised and retranslated the text, without glosses.\(^{930}\) Ó Corráin has discussed the meaning of the text, and translated certain extracts of the poem.\(^{931}\)

7.3.1.1. The Kinship Poem.

The poem begins by explaining that an heiress has been appointed, and Ó Corráin clarifies that this has been done by the *gelfine*.\(^{932}\) Dillon takes the first paragraph to mean that if a woman possesses land, she may give it as inheritance to her daughters for their life time if she has no sons, and then the *gelfine* succeeds the daughter after her death.\(^{933}\) It goes on to explain that it is the head of the kindred who binds the land by contract. He enters into a contract with the female heir that she will not alienate the *fintiu* by attempting to transfer the land to her children, clearly in the case that she would have children with a man to whom she was not related. The *finšruith*\(^{934}\) of (ii) would be the senior male of the *gelfine* or, if he is deceased or otherwise incapable of making the decisions for the *fine*, one of the other ultimate heirs of the *fintiu*, i.e. a member of the *derbfine*, who would take on the responsibility of being the head of kin. Only by entering

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\(^{927}\) *CCIH*, p. 4: ‘E 3.5.: This MS is bound in two volumes, the second (pp. 61–91) containing a copy of *Lebor Gabála*. The first volume, which contains legal texts alone, consists of two sections belonging to originally separate manuscripts, namely pp. 1–20 and pp. 21–60, as noted in Abbott and Gwynn (1921, 308). There the whole is dated to the fifteenth century; the note on p. 19 (added by a later scribe) provides, however, no evidence for this, as the second digit of the date read as 1442 is in fact a 5’.

\(^{928}\) Dillon, *SEIL*, pp. 135: ‘H\(^1\) = H 3.18, 387; H\(^2\) = H 3.17, 322; H\(^3\) = H 3.17, 563; Eg. 88, 22.’

\(^{929}\) Dillon, *SEIL*, pp. 135–59.

\(^{930}\) *EIWK*, pp. 516–19.

\(^{931}\) Ó Corráin, ‘Women and the Law in Early Ireland’, pp. 52–3.

\(^{932}\) ibid., p. 52.

\(^{933}\) Dillon, *SEIL*, p. 136.

\(^{934}\) The *finšruith* was considered to be the head of the kindred.
such a contract with her kin could a woman inherit lawfully. This is confirmed in (iii) in which Brig makes another appearance in the laws.\[935\]

\[Do-bert\ Brig\ ar\ banchuru\]

\[Orbae\ moine\ mesoirche.\[936\]

Brig adjudged, in return for women’s legal acts,

The inheritance of wealth lawfully contracted.\[937\]

After a woman has entered a contract with her *fine* she may lawfully take possession of the *fintiu*. Dillon takes *main mescorach* to mean ‘property about which contracts can be made, personal property acquired by the woman, distinct from inherited land’,\[938\] which is far from the translation by Charles-Edwards. However, Dillon left those words untranslated in *SEIL*, which must mean that he was uncertain of the meaning of the phrase, and he is therefore dependent on the glosses. By supplying the meaning Charles-Edwards has given to the phrase, the following gloss makes much better sense than Dillon’s translation in which he has left the variant *meisemcorach* untranslated:

\[.i.\ \textit{in ferann\ arar\ meisemcorach\ a main\ a\ mathair};\ \textit{l\ mair\ a\ mathair}.\ i.\ \textit{mær\ ingen\ cobtaig\ cail\ breg}.\ i.\ \textit{rig\ eirend}.\[939\]

The land for which their mother [has lawfully contracted], or Mair, their mother, i.e. Máer, daughter of Cobthach Cáel mBreg, king of Ireland.\[940\]

\[935\] For other cases in which Brig appears, see 4.3.3.1. Brig and Senchae and 5.3.4. Senchae and Brig.

\[936\] Normalised by Charles-Edwards from *CIH* 215.16–17.

\[937\] *EIWK*, p. 517.

\[938\] Dillon, *SEIL*, p. 139.

\[939\] *CIH* 215.26–8.

\[940\] Translation by Dillon, *SEIL*, p. 139, with supplied words in brackets [ ]. I have supplied these words based on Charles-Edwards’ translation from *EIWK*, p. 517.
Based on Charles-Edwards’ translation of the phrase, it therefore looks as though this case concerns the kin-land of (ii). However, this is no certain assumption, and the stanza could be about another type of land, especially based on the commentary which directly follows this gloss. The following commentary, which is clearly not discussing the fintiu, gives much of the same information as Córus Fine:\[941\]

\[.i. \text{orba cruidd}^{942} \ 7 \text{t̄sliasta na mathar sumn, 7 dibugud rodiaighi in} \]
\[\text{mathair. 7 ni fuilit mic s̄ingeana nama; 7 betaidh in ingean in} \]
\[\text{feram uili co fuba 7 co ruba, l a leth gan fuba gan ruba, 7 coimde} \]
\[\text{fuirre re aiseac uaithe iarsna re.}^{943} \]

\[\text{i.e. it is "land of hand and thigh" here, and the mother has died, and} \]
\[\text{there are no sons but only daughters. And the daughter receives all} \]
\[\text{the land with liability for military service, or half the land without} \]
\[\text{liability for military service, and restraint upon her for its reversion} \]
\[\text{on her death.}^{944} \]

Dillon notes that this piece of commentary, which he calls a gloss, was added later in a larger hand.\[945\] Binchy, on the other hand states that this is ‘commentary written by scribe of text’.\[946\] The commentary repeats the same rules as those given by Córus Fine regarding the fintiu, the hereditary kin land, but states that in this case it is orbae cruib 7 sliasta, the ‘inheritance of hand or thigh’,\[947\] and the commentator thus assumes that the deceased

\[941\] \text{CIH 736.30–1. For more information, see ‘7.2.1. Property as inheritance to a} \]
\[\text{banchomarbae’}. \]

\[942\] \text{CIH 215 n. g: ‘sic, for cruib.’} 

\[943\] \text{CIH 215.29–32.} 

\[944\] Dillon, SEIL, p. 139. 

\[945\] ibid., p. 139*. 

\[946\] \text{CIH 215 n. f–f.} 

\[947\] For a discussion of this term, see 3.5.1. \textit{Orbae cruib nó sliasta} and 4.3.3. ‘Women in general’.
woman in this case has acquired a large surplus of personal property, which
the daughters inherit as *banchomarbai* since there are no sons. Hence, at
least in the time of the commentator, a daughter could inherit land not only
from her father, but also from her mother, and thus be an heiress on the basis
of the personally acquired land from her mother. Again, since she precedes
the inheritance of the *gelfine* in this case, the daughter can only inherit a
life-interest in the property, which will revert to her maternal grandfather’s
kin at the time of her death.

The subsequent stanzas, i.e. (iv) – (xi), deal with the inheritance of a
woman’s estate within the various types of *fíni*, before the poem returns to
the more specific rules in (xii).\(^{948}\) Stanzas (xii) – (xiv) deal with the son of
the *banchomarbae* and his right to inherit land, which would only be true in
the cases in which the *banchomarbae* has married a member of her kin,
(xii). If she has indeed married one of her cousins, and thus entered into a
marriage contract with her own kin, she may make her son an heir by
testamentary right (xiii), but he will not be able to inherit the entire
property:

\[
\begin{align*}
    Do-a\text{-}
    a\text{-}
    isic\ a\ leth\ immurgu
    
    Dochum\ fine\ firgrian;
    
    A\ leth\ n-aill\ a\ firbrethaib
    
    Síl\ a\ féola\ f Oddlaither.\(^{949}\)
\end{align*}
\]

He restores a half of it, however
To the true kindred of the land.
The other half, according to just judgements,
Is divided among the seed of her flesh.\(^{950}\)

\(^{948}\) (xii) and the following glosses have been discussed above in 7.2.2.1. Limitations to
female inheritance in the glosses.

\(^{949}\) Normalised by Charles-Edwards from *CIH* 217.19–20.

\(^{950}\) *EIWK*, p. 518.
This stanza therefore limits the inheritance of the son of the *banchomarbae* to half of the estate the *banchomarbae* herself has enjoyed the ownership of, and this could be the inheritance known as *orbae niad*, ‘the inheritance of a sister’s son’, a type of inheritance which could also be given to an adopted son for the undertaking of maintaining the adoptive parents in old age. While Ó Corráin implies that the half of the inheritance given to the son is *fintiu*, Dillon seems uncertain of what type of property is being discussed but regards the property as *orbae cruib 7 sliasta* of the *banchomarbae*, i.e. land she has acquired independently of the *fintiu*. Charles-Edwards, on the other hand, states quite directly that, if this land is inherited land, it can in no way be the *fintiu* of the woman:

The only difficulty in so interpreting this passage is the use of the term *orbae* "inheritance". Yet the text may only be assuming that the land in question has been inherited from the woman’s father or other immediate predecessor: from her point of view it is *orbae*, from the point of view of the last male kinsman to hold the land it constitutes acquisitions; in either event it is not *fintiu*.

Because of the position of this stanza in the poem, i.e. after the discussion regarding the personal property of the woman, but before the stanza which includes the limitation of the amount a woman can inherit as a *banchomarbae*, Charles-Edwards may well be correct in his deduction from the text that it is not the woman’s *fintiu*, but since it is land she is passing on as an inheritance to her son, it is still *orbae* for her. If the poem had meant for this land to be the hereditary kin land of the *banchomarbae*, I

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951 Though these words are not used in the text. See *CIH* 431.30–1 (*Di Údlaib Cenéoil Tiáithe*) *GEIL*, p. 104; *EIF*, p. 418.


954 *EIWK*, p. 83. Charles-Edwards does take into consideration that this property may not have been inherited property, but that it could rather be a reference to personal acquisitions being bequeathed to the son.

955 For more information and a discussion, see ‘7.2.2. Limitations to the inheritance’. 
believe stanza (xv), which limits the inheritance of the *banchomarbae* to 14 *cumals* of land, would have been placed before the stanza discussing how large a portion of this land her son could inherit.

Regarding the final stanza of the Kinship Poem, i.e. (xvi) which Charles-Edwards translates but does not discuss, Dillon is not sure if it originally belonged to the rest of the poem. He bases this on the lines being found elsewhere\(^\text{956}\) in a different setting, followed by the lines:

\[
\text{orba for set foc[h]raici as direnar triandire.}^{957}
\]

He does, however, note that if these lines are included in the text by mistake, it has to have happened at an early stage since all of the MSS try to interpret the case as referring to the *banchomarbae*, while they also include the issues of the *fluidir*-tenure which is discussed alongside with the similar lines quoted above.\(^\text{958}\)

### 7.3.2. The distribution of a woman’s personal property.

The laws regarding the distribution of a woman’s personal property are found in extracts of commentary to *Bretha Étgid*, ‘judgements of inadvertence’, which have been translated by Dillon,\(^\text{959}\) and §§ 5–12 have been translated by Thurneysen.\(^\text{960}\) The commentary has been translated in *AL* iii pp. 83–547 under the incorrect title of *Lebor Aicle*, ‘the book of Aicill’,\(^\text{961}\) with the relevant extracts beginning on *AL* iii 396.20. The text is a

\(^{956}\) *AL* v 34.3–4 = *CIH* 1012.29; 1865.16 (\(=\) extracts from *Tosach Bésgnai*).

\(^{957}\) Dillon, *SEIL*, p. 158; *CIH* 1598.1 = *AL* v 34.7–8 (\(=\) extracts from *Uraicecht Becc*).

\(^{958}\) Dillon, *SEIL*, p. 158; cf. *AL* v 34.

\(^{959}\) ibid., pp. 160–74.

\(^{960}\) *IR*, pp. 54–6.

long commentary which is found in three MSS. Dillon has chosen to print two of the MSS side by side, since the texts differ from each other, but bases his translation mainly on one of them because of the better reading. The texts which are printed in *SEIL* are MS 23 Q 6, 8a and MS E 3.5., 47a 45. Dillon notes that the order of the text differs in E 3.5. from that of 23 Q 6, and it is also a shorter version. The differences between the texts are outlined by Dillon in *SEIL*, p. 160. In the following discussion, I will follow Dillon’s division of paragraphs.

7.3.2.1. *Bretha Étgid*.

The first section of the relevant extracts from the commentary to *Bretha Étgid* categorises different types of wives, and further distinguishes between whether they had children or not. The categorisation from *Bretha Étgid* can be compared both with the women in the *Bandire*-text and the ‘four legally capable women’ of *DAC*, though all three texts differ slightly between the types of women discussed and the division of assets and liability. While the *Bandire*-text distinguishes between a) the *cétmuinter* with sons, b) the *cétmuinter* without sons, c) the acknowledged woman betrothed by her family, *ben aititen aranaisce fine*, d) the acknowledged woman who has not been betrothed, who has not been sanctioned [to enter the relationship], *ben aititen nad-auranascar nad-forngarar*, and e) the woman who has been abducted in defiance of her father or her kindred, *ben bis for foxul dar apud n-athur no fine*, *DAC* describes ‘the four legally

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962 Dillon, *SEIL*, p. 135: ‘23 Q 6, Eg. 90, E 3.5.’ The law tract *Bretha Étgid* can be found in 13 segments in five MSS (Eg. 90 (3), H 3.18 (14) and (20), 23 Q 6 (2) E 3.5.(2) and 23 P 3 (3) and (4)), but the relevant parts of the commentary is only found in 23 Q 6, Eg. 90 and E 3.5. For more information on *Bretha Étgid*, see *CCIH*, pp. 176–80.

963 = *CIH* 1153.5–1155.9.

964 = *CIH* 309.21–311.2. The relevant parts of the commentary from Eg. 90 can also be found in 1643.19–1645–33, where it breaks off incomplete. There are some corresponding citations in other MSS, eg. 1154.30 and 1645.3–5=2039.39–40 (H 3.17).


966 For more information, see *EICL*, pp. 264–7; pp. 269–74; 6.4.5.1. ‘The four legally capable women’ in the commentaries, 6.4.5.3. The contractual capacity of ‘the four legally capable women’ and 6.4.5.5. ‘The two orders of members’.

capable women’ as a) the primary wife with sons, b) the primary wife without sons, c) the concubine with sons, and d) the woman of condominium.\textsuperscript{968}

7.3.2.2. The division of inheritance from the different classes of women.

The first 14 paragraphs\textsuperscript{969} are concerned with distinguishing between the different types of wives, and the division of a woman’s personal property between her married family, and her original kin depending on what type of wife she is and if she had children or not. In the case of these paragraphs the children in question are always male, as there are special provisions regarding the inheritance of daughters, which are being discussed later in the tract.

The first two paragraphs envisage the case in which a married woman dies, and has no sons. The difference between the paragraphs is that in §1 she is a betrothed \textit{cétmuinter}, i.e. a \textit{cétmuinter urnadma}, without sons, while in §2 she is a betrothed \textit{adaltrach}, i.e. an \textit{adaltrach urnadma}, without sons.\textsuperscript{970} In the former, the division of her assets is divided in two between her \textit{fine} and her husband, and in the latter, the husband receives one-third and the \textit{fine} receives two-thirds. Both of the paragraphs give a separate provision for the division of the two different types of women in case they had sons. If the betrothed \textit{cétmuinter} had sons at the time of her death, her husband receives nothing, the sons receive two-thirds and her \textit{fine} receives one-third of her assets. In the case of the betrothed \textit{adaltrach} the division of her assets would be in two equal parts between her sons and her \textit{fine}. This means that a husband, even in the most respected type of marriage, would receive nothing from his wife’s inheritance if they had children, since her sons would be the obvious heirs. The woman’s natal kindred received a fraction of her inheritance in all cases, even when there were sons, but they

\begin{thebibliography}{99}
\bibitem{EICL} EICL, pp. 264–5; 6.4.5.3. The contractual capacity of ‘the four legally capable women’.
\bibitem{Dillon} Dillon, SEIL, pp. 160–5.
\bibitem{adaltrach} The \textit{adaltrach urnadma} can be compared to the \textit{ben aititen aranaisce fine} of the Bandire-text, which is glossed \textit{i. adaltrach urnadma}. See IR, p. 27, §30, gloss 1.
\end{thebibliography}
would receive a smaller part of the inheritance than they would if there were no sons.

The third paragraph explains why the husband of the betrothed *adaltrach* would receive a third of the woman’s inheritance if they had no sons:

*Can asa ngabat in ttian ata d’fer adhaltraighe urnadhma, uair na hinnisinn leabar: Is as ghabar, o macaib .c.muimtire urnadhma. uair .ui.edh d.imforcaidh ata do macaib .c.muimtirei urnadhma sech fer .c.muintire urnadhma; coir ‘no de-sic* 971 *cema .ui.id d’imforcraft robeth do macaib adhaltraigi urnadhma sech fer adhaltraighe urnadhma.* 972

Whence is it taken the third that is for the husband of a betrothed *adaltrach*, since the book does not tell it? It is taken from (the analogy of) the sons of a betrothed *cétmuinter*: for the sons of a betrothed *cétmuinter* receive one-sixth more than the husband of a betrothed *cétmuinter*, and from that it is right that sons of a betrothed *adaltrach* should receive one-sixth more than the husband of a betrothed *adaltrach.* 973

Hence, the author explains that the husband of the betrothed *adaltrach* receives one-third of the inheritance of his wife if they have no sons, based on the law stating that the sons of a betrothed *cétmuinter* receive one-sixth more than what her husband would have received in case there were no sons.

7.3.2.3. The division of liability of the different classes of women.

The following 11 paragraphs, i.e. §§ 4–14, discuss the division of the liability, *cin*, of the different types of women. In the first three paragraphs,

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971 *CIH* 1153 n. c: ‘*sic* (subscript i misplaced).’

972 *CIH* 1153.8–13.

973 Dillon, *SEIL*, p. 161, §3; *CIH* 1153.8–13; 399.25–9.
only two types of women have been discussed, i.e. the types of betrothed wives: the *cétmuinter urnadma* and the *adaltrach urnadma*. The following section introduces another two main types of wives: the acknowledged wife, *ben aittiten*; and the abducted wife, *ben foxail*. The two types of wives from the first section are further discussed in these paragraphs, and the author continues the distinction of each type of wife whether she has sons or not. Another distinction is introduced in §4: the issues regarding a woman who has borne sons in consecutive marriages:

\[ Cin \ .c.muintire \ for \ macu \ 7 rl- \ .i. \ .c.muinter \ urnadma \ co \ macaib, \ da \ trian \ a \ cinaidh \ fora \ macaibh, \ òentrian \ fora \ fine. \ Dia \ mbeta^{974} \ do \ .c.muintir \ 7 \ ruc \ mac \ d’fer \ .ii. \ iar \ sin, \ rannait \ a \ cinaidh \ etara \ i \ ndé \ 8 .ui.idh \ d’imforcraid \ for \ mac \ na \ .c.muintire, \ 7 \ is \ eisidhe \ beires \ do- \ som \ a \ fine, \ 7 \ is \ ed \ firenaighes \ asin \ imad \ cinadh \ icus \ cechtar \ de \ fo \ leth \ manab \ inann \ mathair \ doibh \ 7 \ in \ .ui. \ id \ ata \ iter \ in \ leth \ 7 \ an \ trian, \ 7 \ bidh \ amlaid-sin \ cidh \ inann \ mathair \ doibh.^{975} \]

Liability of a *cétmuinter* on her sons, etc. *i.e.* a betrothed *cétmuinter* with sons. Two-thirds of her liability on her sons and one-third on her *fine*. If she bear a child to a *cétmuinter* and she bore a son to another man after that, they share her liabilities between them in two halves, save one-sixth more upon the son of the *cétmuinter*, and it is that which his *fine* bears for him. And it is that which justifies the proportion of liabilities that each party pays if their mother have not the same status, and the sixth which is between the half and the third, and it is thus though their mother have the same status.\(^{976}\)

Hence, in the case of the betrothed *cétmuinter* with sons, the division of the liability is the same as the division of inheritance, two-thirds on her sons,

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\(^{974}\) *CIH* 1153 n. d: ‘supply mac’.

\(^{975}\) *CIH* 1153.14–19.

\(^{976}\) Dillon, *SEIL*, p. 161, §4; *CIH* 1153.14–19.
and one-third on her fine. The following paragraph follows the same pattern, and states that in the case of the betrothed cétmuinter without sons, there is a two-fold division of her liabilities between her husband and her fine. A very interesting aspect of §4 is the detail regarding the division of the cétmuinter’s liabilities in the case where she has children with more than one man. Since early Irish society was polygynous, not polygamous or polyandrous, this case must be regarding a wife who has divorced her first husband, or become a widow, and then remarried and borne a son to her second husband. The extra one-sixth that falls on the son of the cétmuinter, which is explained that his fine bears for him, implies that the second marriage was not that of a ‘proper primary spouse-ship’, since the sons of only one of the husbands would bear this extra burden. This can be compared with Triad 126, which shows that a cétmuinter was expected to be a virgin:

\[\text{Tri bainne cétmuintire: bainne fola, bainne dér, bainne aillse.}\]

Three drops of a wedded woman: a drop of blood, a tear-drop, a drop of sweat.

The implication of the wife not being a primary wife in the second marriage, is that she would have had a different status in the two marriages, and though all sons inherited regardless of the status of their mother or father, or whether they were children of consecutive or simultaneous marriages, the burden of liability fell differently on the children depending on the status their mother had in the different marriages. The extra burden being carried

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977 Dillon, SEIL, p. 163, §5.

978 Here meaning ‘primary husband’. It is clear from the context that in this case cétmuinter is referring to the husband, not the wife.

979 cf. 2.6.1. Contractual capacity, CL §22.

980 Meyer, p. 16.

981 ibid., p. 17; cf. GEIL, pp. 72–3.
by the son’s *fine* was because he belonged to his father’s *fine*, not his mother’s *fine*.\textsuperscript{982}

The next class of woman described is the acknowledged *cétmuinter* with sons. She is described as an abducted wife whom the *fine* acknowledges after the abduction has taken place. She may be compared to the *ben aititien nad-aurnascár nad-forngarar* of the *Bandire*-text, since she is not a betrothed wife, but the relationship has been acknowledged after it was first entered, although this comparison is not fully correct since the acknowledged wife of the *Bandire*-text is not a *cétmuinter*, and she is the second last on a list which ranges from the wives of the highest status to the lowest status. She is, however, also glossed *ind adaltrach urnadhma*.\textsuperscript{983}

\begin{quote}
.C.muinnter aititin co macu, .i. ben foxal γ adaim fine iar sin, is trian a chainadh bhis fota maicne ina urnaidm dligthech; is leth\textsuperscript{984} gatus fine dib ara inddliged da fine aititin na mna iarna foxal gan urnaidm co dligthech iarna foxal; condat e cinaidh mhaicne na c.muinntre iar sin: leth in chinadh s’ lethnomad; γ leth in chinadh da fine γ lethnomad.\textsuperscript{985}
\end{quote}

An acknowledged *cétmuinter* with sons, *i.e.* an abducted wife whom the *fine* acknowledges after that: one-third of the liability which is on her sons in the case of lawful betrothal (*i.e.* two-thirds) the *fine* takes from them because it is unlawful for the *fine* to acknowledge the wife after her abduction without lawful betrothal after her abduction, so that the liabilities of sons of the *cétmuinter* after that are half the liability save the half one-ninth, and half the liability to the *fine* and the half one-ninth (4/9 and 5/9 respectively).\textsuperscript{986}

\vspace{1em}

\textsuperscript{982} For information on the structure of the Irish kin groups, see *EIWK*, pp. 23–88.

\textsuperscript{983} *IR*, p. 28, §31, gloss 1.

\textsuperscript{984} *CIH* 1153 n. e: ‘error for edh’.

\textsuperscript{985} *CIH* 1153.20–5.

\textsuperscript{986} Dillon, *SEIL*, p. 163, §6; *CIH* 1153.20–5.
Because the kin has made an unlawful act by acknowledging the union after the abduction, whether voluntarily or involuntarily from the woman’s side, the *fine* will have a larger responsibility regarding the woman’s liabilities than had they acknowledged the union before the abduction. Therefore four-ninths of the liability fall on her sons and five-ninths fall on her *fine*. This puts her in a medial position between the *ben aititen aranaiscc fine* and the *ben aititen nad-aurnascar nad-forngarar* of the Bandire-text, which divide the liabilities of the former equally between sons and kin, while of the liabilities of the latter, two-thirds fall on her kin and one-third on her *bronnfine*, ‘belly-kin’. For the acknowledged *cétmuinter* without sons, one-third of the liabilities fall on her husband and two-thirds on her *fine*.

After the liabilities of the acknowledged *cétmuinter* with or without sons have been discussed, the text deals with the betrothed *adaltrach* with and without sons. If there were sons, the division of her liabilities falls equally on her sons and her *fine*, while without sons two-thirds of the liabilities fall on her kin, and one-third on her husband. This is the same division between sons and kin as that of the *ben aititen aranaiscc fine* of the Bandire-text. For the abducted *adaltrach* the division changes drastically:

987 *Madh cin macu, cethraithe s’ cethraithe nomaid for fer, da trian im 7 trian triin for fine.*

[An abducted *adaltrach* with sons…] If it were without sons, one-fourth save one-fourth of one-ninth on the husband, two-thirds,

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989 ibid. §8.
990 *CIH* 1153 n. g: ‘omission; supply Adaltrach aititen or the like; cf. *Ir. Recht* p. 55’.
991 *CIH* 1153.27–9.
992 Dillon, *SEIL*, p. 163 n. 1: ‘The sentence missing here can be supplied in substance from 14. [...] There is no lacuna in the MS’. Though Binchy suggests (*CIH* 1153 n. g) that *adaltrach aititen* should be supplied, I have chosen to follow Dillon’s suggested addition of ‘an abducted *adaltrach* with sons’ since the division follows the same pattern as that of §14 below.
however, and one-third of one-third on the fine (2/9 and 7/9 respectively).\textsuperscript{993} 

It would be expected that this woman is the same woman as the \textit{ben bis for foxul dar apud n-athur no fine} of the \textit{Bandire}-text, since she has clearly been abducted in defiance of her father. However, the division of assets and liabilities of this woman are divided very differently:

\begin{quote}
\textit{Os ben bis for foxul dar apud n-athar no fine, la fine a n-eraicc \(\gamma\) a ndibad, \(\gamma\) fir foda-coisle a cin \(\gamma\) a ciniid}.\textsuperscript{994}
\end{quote}

Und eine gegen die Warnung (Verweigerung) des Vaters oder der Sippe entführte Frau: deren Wergeld und Hinterlassenschaft gehört der Sippe; und dem Mann, der sie entführt, ihr Vergehen und ihre Nachkommenschaft.\textsuperscript{995}

In the commentary to \textit{Bretha Étgid} most of the liabilities fall on her \textit{fine} and a fraction on her husband, while in the \textit{Bandire}-text the kin receives her \textit{éraic} and inheritance, and her liabilities and the responsibility for the children fall on the man who abducted her. Hence, the two texts show a distinct difference between the laws regarding what seems to be the same type of woman.\textsuperscript{996}

In the subsequent paragraph the author once again discusses the possibility for a woman to have children in consecutive marriages, which was also an issue in §4. In this case it is the division of the liabilities which is in question, not the division of inheritance which was the previous topic:

\begin{quote}
\textit{The Passing of Property}
\end{quote}

\textsuperscript{993} Dillon, \textit{SEIL}, p. 163, §9; \textit{CIH} 1153.27–9.

\textsuperscript{994} \textit{IR}, p. 28, §32.

\textsuperscript{995} id.

\textsuperscript{996} This cannot be a case of the difference between the abducted \textit{adaltrach} with or without sons, since the division follows the pattern of §14 (Dillon, \textit{SEIL}, p. 165) which states that ‘if there are sons, three-ninths to the sons and six (ninths) to the fine.’
7 ben berus mac do .c.muinür 7 bidh ag fer .ii. iar sin, 7 ce dech lais, ni icfa fine ni lasin fer, as is dóchu is laisna maca licfairess a meic-suim 7 icaid fine laisium.997

And a woman who bears a son to a cétmuinter and is with another man after that, though she go with him [i.e. the second husband] the fine shall not make any payment together with the [second] husband, for it is more likely that his sons should pay together with the sons (of her former husband) than that the fine should make payment together with him [i.e. the second husband].998

In the case of a woman’s consecutive marriages, neither her kin nor her husband will partake in the payment of her crimes and liabilities, since the sons from her different marriages are expected to divide the responsibility between themselves. This proves how close a woman’s ties to her sons were, in this case both her husband and her kin are completely free from liabilities because of her sons. There are no such provisions discussed in the Bandire-text, which proves that texts on the same subject do not always show uniformity in their details.

The next two paragraphs, i.e. §§ 11–12, discuss further divisions of the liabilities and inheritance. The first in the case of abduction, and the second in the case of a betrothed cétmuinter. In both of these cases the division has a different pattern from the previous paragraphs, in that they seem to be special explanatory cases:

Madh tainic foxal cucu, scuiridh aititiudh foxail trian a cota dibh, 7 a tabairt-sidhe don lucht roboi i naititin in foxail d’aithi indligid orra ara beth i naititin in foxail; rann mor don dibad doib, oir inti berus rann mor don dibad icfaid rann mor don cinaid. uair mince cin do chomroind ina in dibadh do comroim.999

997 CIH 1153.29–31.

998 Dillon, SEIL, p. 163, §10. I have supplied the words in brackets for clarification.

999 CIH 1153.32–6.
If abduction has happened in their case the acknowledgement of the abduction releases one-third of their share from them, and that is given to those who have acknowledged the abduction to punish them for the unlawfulness of their acknowledgement of the abduction. A large share of the inheritance to them, for he who receives a large share of the inheritance, he shall pay a large share of the liability, for liability is more often shared than inheritance.1000

Thurneysen takes this case to be referring to the kin of the abducting man: ‘Das ist offenbar die Familie, in die die Frau entführt wurde’.1001 Dillon explains that this is not the case, since it must refer to the woman’s sons, and that their share of the inheritance and liability will be reduced if their mother’s fine acknowledges her union by abduction. He gives the translation from the E 3.5. commentary (§§ 11, 21):1002

And with regard to the portion due to children by abduction, the abduction subtracts one-third of their share from them to punish the fine for the unlawfulness of acknowledging the abduction. For the consideration in the mind of the author was that liabilities are more often to be divided than assets, for he who would receive a great share of the inheritance would pay a great share of the liability.1003 And the portion which the abduction takes away from children by abduction is to be divided into seven parts, four parts to sons of a betrothed cétmuinter, and two parts to the fine and one part to the husband of a betrothed adaltrach.1004

1000 Dillon, SEIL, pp. 163–5, §11; CIH 1154.32–6; CIH 310.14–17. The extract from E 3.5. differs from that of 23 Q 6. See below for the translation of the latter.

1001 IR, p. 55 n. 4.

1002 Dillon, SEIL, p. 163 n. 2.

1003 CIH 310.14–17 = §11.

1004 CIH 310.17–20 = §21.
The justification of this reduction of inheritance is that the payment for the liabilities could be due more often than how often the inheritance is being shared. While the liabilities may be due multiple times during a woman’s lifetime, the inheritance will only be shared once, when she dies. The final division of the E 3.5. translation will be dealt with below.

The second of the paragraphs discussing the further division of the liabilities and inheritance is dealing with the same type of woman as was dealt with in §4, the betrothed cétmuinter with sons, and aims to explain the term nómad do fine ‘one-ninth to the fine’:

In bail ata nomad do fine. Is ed fuil ann-sidhe: clann .c.muintire urnadma 7 fine 7 cin 7 dibad; da trian in dibaid docuaidh isin cinaidh, 7 in trian .ii. do roinn a tri, a da trian do macaib .c.muintire urf1005 7 a trian d’fine, 7 is e-sin in næmadh d’fine a dibad 7rl-.1006

Where it is "one-ninth to the fine," there are children of a betrothed cétmuinter and the fine and liability and inheritance: two-thirds of the inheritance went to meet the liability, and the other third is divided into three parts, two-thirds of it to sons of a betrothed cétmuinter and one-third to the fine. And that is the "ninth to the fine out of inheritance," etc.1007

In this case it seems like liabilities are due at the time of division of the inheritance, and are therefore taken out of the inheritance before it is divided between the sons and the fine. Thus, two-thirds of the inheritance are taken out for the payment of the liabilities, and the final third is divided up between the sons and the kin, two-thirds of the one-third, i.e. two-ninths of the whole, to the sons and one-third of the third i.e. one-ninth of the whole, to the kin. It is from the final one-ninth that the expression nómad do fine comes. The division of both inheritance and liabilities is the same as in §§ 1

1005 CIH 1153 n. i: ‘ error for urnadma’.
1006 CIH 1153.37–40.
1007 Dillon, SEIL, p. 165, §12; CIH 1153.37–40.
and 4, which both deal with the betrothed céitmuinter, except for the two-thirds of the inheritance which go directly to pay for the liabilities.

The final two paragraphs which deal with the division of the liabilities discuss the céitmuinter by abduction and the adaltrach by abduction respectively, and they both take into consideration the difference if children have come from the union or not. The former states that in the case of the abducted céitmuinter, if there are no sons, the division is three-ninths to the husband and six-ninths to the fine. If there are sons, the division is ‘four-ninths to the sons and five-ninths to the fine, one-half and the half of one-ninth to the fine, one-half less the half of one-ninth to the sons’.  

This division is equal to that of §§6 and 7, which discusses the acknowledged céitmuinter with sons and the acknowledged céitmuinter without sons. The division of the liabilities of the adaltrach by abduction is the exact echo to the division of §9; the division is the same without sons, i.e. two-ninths to the husband and seven-ninths to the fine, however §9 does not mention the abducted adaltrach with sons. In §14, the division for the abducted adaltrach with sons is one-third of the liabilities to the sons and two-thirds to the fine.  

7.3.2.4. The division when there are children from consecutive marriages.

The next topic of the extracts from the commentary to Bretha Étgid is the division of a woman’s estate when she has children from multiple marriages:

\[
\begin{align*}
\text{Tellaigi imdha is ecen do denam do dibad sisana re tecmaisin saine clainni ag mnaí re saine fer, l re tecmaisin saine (?) urnadma re henfer gemad inam clann .i. u. ranna 7 .uii. ranna 7 .uiii. ranna 7 .ix. ranna 7 aenram .x. do denamh dhe.}
\end{align*}
\]

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1008 Dillon, SEIL, p. 165, §13; CIH 1154.1–4; CIH 309.30–2.
1009 Dillon, SEIL, p. 165, §14; CIH 1154.5–6; CIH 309.33–5.
1010 CIH 1154.7–10.
Here are various divisions of the estate which must be made in the case of a woman who has children by different husbands, or who has been differently betrothed to one husband, even though the children are all by him, i.e. division into five parts and into seven parts and into eight parts and into nine parts and into eleven parts.\textsuperscript{1011}

The difference between these divisions is given in §§ 16–22.\textsuperscript{1012} The divisions are each dealt with in the first five of the paragraphs. §21 gives further information on a fraction from §20, and §22 gives the reason for the division in §21. MS E 3.5. differs from MS 23 Q 6 in the divisions which in § 15 in E 3.5. are into six, seven, eight, nine, ten and eleven parts. However, in the following paragraphs, the E 3.5. version only gives the details regarding the division into six,\textsuperscript{1013} eight, nine, and eleven parts, whereas the 23 Q 6 version gives details about the divisions into five, seven, eight, nine and eleven parts.

The meaning behind a woman who has been ‘differently betrothed to one husband’ seems to be that she may have either been a wife in different types of unions with the same man, or that she have had children by him both before and after a betrothal, or a wedding. We have seen, and will see in greater detail, that the status of a wife matters for the share the children will have of her inheritance. Therefore, the status she had at the time when her children were born matters greatly for their share of her inheritance, even though they are all children of the same man and woman. The rules of inheritance will differ for the children where the woman has been multiple types of wife to a husband compared with the children resulting from parents who have had all their children within one type of union.

The first type of division, i.e. when the estate is divided into five parts, two-fifths are given to the fine, two-fifths to the sons of the betrothed

\textsuperscript{1011} Dillon, \textit{SEIL}, p. 165, §15; \textit{CIH} 1154.7–10; \textit{CIH} 309.36–7; \textit{CIH} 310.4–5.

\textsuperscript{1012} Dillon, \textit{SEIL}, pp. 165–7.

\textsuperscript{1013} This division corresponds to the division into seven parts in MS 23 Q 6, and must have been misplaced by Dillon, since he places it to correspond to the division into five parts of MS 23 Q 6. The maths of this division do not work, and Binchy (\textit{CIH} 310 n. c) notes: ‘\textit{sic}, for .u.ii.’
adaltrach, and one-fifth to the husband of the betrothed adaltrach.\footnote{Dillon, \textit{SEIL}, pp. 165–6; \textit{CIH} 1154.10–11. Dillon has placed \textit{CIH} 310.5–7 to correspond to this passage, but it has to correspond to the following passage which deals with the division into seven parts.} It is noteworthy that this case can be understood as there only having been one marriage where the sons of the betrothed adaltrach and the husband of the betrothed adaltrach are by the same adaltrach. However, it is much more likely that that they are from two different marriages, where the wife has been a betrothed adaltrach in both marriages, and the second union has not been successful in procreating. From the evidence above, it has been shown that a husband loses his share of his wife’s inheritance when they have sons, and this strengthens the theory of the sons and husband not being from the same union.

When the division is into seven parts, four-sevenths go to the sons of a betrothed cétmuinter, two-sevenths to her fine and one-seventh to the husband of a betrothed adaltrach.\footnote{Dillon, \textit{SEIL}, p. 167, §17; \textit{CIH} 1154.11–13.} The extract from MS E 3.5., which Dillon has given to correspond to the previous division, must be the equivalent to this division since it gives the provisions as:

\begin{quote}
\small
\textit{\text{7 cach uair is .ui.\footnote{\textit{CIH} 310 n. c: ‘\textit{sic, for .uiii. ranna do macaib cetmuindiri urnadma 7 da rain\d{d}’fine 7 rain\d{d} d’f\textit{ir adaltraighi urnadma.’\footnote{\textit{CIH} 310.5–7, my translation.} Every time there are six\footnote{\textit{sic}. \textit{CIH} 310.6 has .ui. which must be a mistake since the provisions given equal seven parts.} shares, four shares [go] to the sons of a betrothed cétmuinter, and two shares [go] to the kin, and a share to the husband of a betrothed adaltrach.\footnote{\textit{CIH} 310.5–7, my translation.}} \text{ranna, .iiii. ranna do macaib cetmuindiri urnadma 7 da rain\d{d} d’fine 7 rain\d{d} d’f\textit{ir adaltraighi urnadma}.}}}
\end{quote}

This extract is identical to that of MS 23 Q 6, except for what has to be a mistake of six shares instead of seven. Here it is clear that there have to be
two separate marriages discussed since the text mentions the sons of a betrothed *cétmuinter* and the husband of a betrothed *adaltrach*. In other words, the woman in question has first been married as a *cétmuinter*, then she has either become a widow or the marriage has been dissolved for some reason, and then she has entered into a new union, but this time as an *adaltrach*. Since the husband receives a share of the inheritance, there cannot have been any children from the second union.

The division into eight follows the same pattern as the division into seven parts, but in this case there have been children in both of the woman’s marriages. Therefore, the children of the union in which she was a betrothed *cétmuinter* receive four-eights, i.e. half of the estate, while her *fine* and her sons from the union in which she was a betrothed *adaltrach* share the second half of the estate equally between them, two shares to the kin and two shares to the sons of the second union.\(^1\) The children of the union in which she was a *cétmuinter* receive a higher proportion of the inheritance than the children of the union in which she was an *adaltrach* because of the former’s higher status, and thus follows the same pattern as before: the sons of a *cétmuinter* always receive double the amount of inheritance to what the sons of an *adaltrach* do. The fractions given in MS E 3.5. are erroneous also in this case, where it is said that four shares go to the sons of the betrothed *cétmuinter*, five shares, *u. ranna d’fine*,\(^2\) to the *fine* and two shares to the sons of the betrothed *adaltrach*.

In the following division into nine parts there is evidence of a third union for the woman:

\[
\textit{Cach uair is} \ .ix. \ r. \ \textit{doníther de,} \ .iii. \ r. \ \textit{do macaíbh} \ .c.muintire \ urnadma \ .7 \ da \ .r. \ \textit{do fine} \ .7 \ da \ .r. \ \textit{do macaíb} \ \textit{adaltraig} \ urnadma \ .7 \ .r. \ \textit{d’fer} \ \textit{adaltraig} \ urnadma. \ \textit{1024}
\]

\(^{1020}\) Dillon, SEIL, p. 167, §18; CIH 1154.13–15; CIH 310.7–9.

\(^{1021}\) CIH 310.8.

\(^{1022}\) CIH 1154 n. a: ‘*i.e. ranna*’. Also in the following case.

\(^{1023}\) CIH 1154 n. b: ‘*i.e. rann*’. Also in the two following cases.

\(^{1024}\) CIH 1154.15–17.
When it is divided into nine parts, four parts to the sons of a betrothed *cétmuinter* and two parts to the *fine* and two parts to the sons of a betrothed *adaltrach* and one part to the husband of a betrothed *adaltrach*.

Hence, the woman was a *cétmuinter* in her first marriage, and an *adaltrach* in the following two marriages. She had children in the first two marriages, but not in the third, and therefore her last husband receives a share of her estate.

The division in the final paragraph in this section considers a woman who has been married many times, and in many different unions:

> Cach uair is aoen.r.\(^{1026}\) x. donethar de, .iii. ranna do macaib .c.muintire urnadma γ da .r. do fine γ da .r. da macaib adhaltraigi urnadma γ .r. do γ adhaltraigi urnadma γ da .r. do macaib adhaltraigi foxail, γ is dib-sidhe sceires foxal trian a cota; γ ce tomaither re fer .c.muintire l adhaltraighe ni dhe, ma tait mic ann, lcho berat ni de.\(^{1027}\)

When it is divided into eleven parts, four parts to the sons of a betrothed *cétmuinter* and two parts to the *fine* and two parts to the sons of a betrothed *adaltrach* and one part to the husband of a betrothed *adaltrach* and two parts to the sons of an *adaltrach* by abduction; and one-third of the share of these last is forfeited on account of the abduction. And though some of it is allotted to the husband of a *cétmuinter* or *adaltrach*, they receive nothing if there are sons.

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\(^{1025}\) Dillon, *SEIL*, p. 167; *CIH* 1154.15–17. The extract from *CIH* 310.9–10 differs greatly from the provisions given here.

\(^{1026}\) .r. = *rann* in each case in this paragraph.

\(^{1027}\) *CIH* 1154.17–21.

\(^{1028}\) Dillon, *SEIL*, p. 167, §20; *CIH* 1154.17–21; *CIH* 310.11–14.
In this case it is assumed that the woman has first been married as a *cétmuinter* and had sons in that marriage, then been married as an *adaltrach* and had children. Presumably, she must first have been abducted and had children by her abductor, whether voluntarily or involuntarily, before she has been married again to another man as an *adaltrach*, but not had children by this husband. Though this order differs from that of the text, it is the only way in which her husband could have received his one-eleventh of her estate, which is explained in the final part of the paragraph where it is said that the husband receives nothing if there are sons. The third of the share of ‘these last’ which is forfeited is explained in the following paragraph. The persons who will forfeit a third of their share are the sons from the abduction, who were to receive two-elevenths of the estate. Thus one-third of two-elevenths is further divided as follows:

\[ \text{Dena .uiii. r.}^{1029} \text{ do ttium-isin .i. iii. ranna do macaib .c.muiintire urnadma 7 da rann do fine 7 da .r.}^{1030} \text{ do macaib}^{1031} \text{ urnadma.}^{1032} \]

Make eight parts of that third, four parts to the sons of a betrothed *cétmuinter* and two parts to the *fine* and two parts to the sons of a betrothed *adaltrach*.\(^{1033}\)

These shares are therefore rather small fractions of the whole. The sons of the betrothed *cétmuinter* will receive half of the third, i.e. one-sixth, of the two-elevenths the sons of the abducted *adaltrach* have to forfeit, while the *fine* and the sons of the betrothed *adaltrach* each receive one-twelfth of the one-eleventh. The reason for this division is given in §22, which explains that the one-third in question in §21 is divided into those fractions so that the kin and the sons of a betrothed *adaltrach* receive half of that which the

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1029 i.e. *ranna*.

1030 i.e. *rann*.

1031 *CIH* 1154 n. c: ‘supply *adaltraige*’.

1032 *CIH* 1154.21–3.

sons of the betrothed cétmuinter does, and thus the fine and the sons of the adaltrach receive equal shares. It also states that the husband of the betrothed adaltrach receives half of that, although he is not mentioned at all in §21, but in the case of there not being any sons from the union with the betrothed adaltrach, the husband would receive half of what the sons of that union would receive otherwise.

7.3.2.5. Inheritance by daughters.
The next six paragraphs of the commentary to Bretha Étgid, i.e. §§ 23–8, deal specifically with the cases in which there are no sons, but there are daughters. The first of these paragraphs has partly been dealt with in 7.2. above, and it gives much the same information as that of Córus Fine,1034 except that this paragraph is dealing with the mother’s estate, not the father’s estate which was the topic of the relevant paragraph of Córus Fine:

\[ Gein\ beit\ mic\ ann\ le\ berat\ ingena\ ni\ do\ dibad\ in\ athar\,\ \text{do} \ \text{gres,}\ \text{cidi} \ \text{inn} \ \text{athair doibh}\ \gamma\ \text{do} \ \text{na ma} \ \text{c} \ \text{cob in} \ \text{ann.}\ \text{S mad}\ \text{lanna}\ \gamma\ \text{ranna}\ \gamma\ \text{bregdha};\ \text{lann}\ \text{i. oir;}\ \gamma\ \text{rann}\ \text{i. in}\ \text{snaithi airgit,}\ \gamma\ \text{bregdha}\ \text{i. in}\ \text{brcin.}\ \text{l do}\ \text{co}\ \text{roindis,}\ \gamma\ \text{is as gabar eisidhe}\ \text{i. conrammat}\ \text{ingena}\ \text{fri}\ \text{macd dligthecha.}\ \text{s.aib}\ \text{sain} \ \text{ilchoragh cenmotha orba}\ \text{urrannat}\ \text{maicne}\ \text{ciniuda}\ \text{caime.} \]

1036

So long as there are sons, daughters never receive anything of the mother’s estate, whether they are by the same father as the sons or not, except lanna, ranna, and bregda i.e. Lann i.e. of gold, and rann i.e. the silver needle, and bregda i.e. the speckled cloth. Or it may be that they divide, and that is based on the principle: "Daughters share with legitimate sons in the case of chattels which are the special

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1034 CIH 736.26–31.
1035 CIH 1154 n. e: ‘sic, for mathair?’
1036 CIH 1154.27–31.
The quotation of *CIH* 1154.29–31 is the same as is found in *CIH* 736.27–9 and is the middle third of the relevant paragraph of *Córus Fine*. This is therefore a familiar legal maxim: only sons will inherit land, whether it be from the estate of only their father, or if they inherit from both father and mother, and the daughters will only receive a share of the moveables.

The next paragraph gives another familiar maxim:

> *Ona biat mic ann do gres, manab ac fir is marb in athair,*\(^{1038}\) *in dibad uile don*\(^{1039}\) *hinghenuib re re, coinghi orra nar broimat re hindethbitirus hi, ɣ a haiseg uaithib don fine iarsan re.*\(^{1040}\)

When there are no sons, if the mother has not died in wedlock, the whole estate goes to the daughters for life; and they are restrained from alienating it wrongfully and it is restored to the *fine* after them.\(^{1041}\)

This is very close to the rules given in the Kinship Poem in 7.3.1.1. above. Daughters are allowed to inherit the estate as long as there are no sons, but it will revert to the kin after that. This paragraph adds to the rule of the Kinship Poem by stating that in this case the mother has not been married at the time of her death, and her daughters and her kin would therefore be the sole inheritors. Since the daughter\(^{1042}\) would only inherit a life-interest, her

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1037 Dillon, *SEIL*, p. 169, §23; *CIH* 1154.27–31; *CIH* 310.34–6. The legal principle from 1154.30–1 can also be found in *CIH* 2039.39–40.

1038 *CIH* 1154 n. f: *‘sic, for mathair’*.

1039 *CIH* 1154 n. g: *‘supply -a’*.

1040 *CIH* 1154.31–4.


1042 Though it is likely that if there were more than one daughter, every daughter would inherit equally, for simplicity I have chosen to consider the inheritance of only one daughter.
kin’s share of the inheritance is postponed until the daughter dies. The rule is further qualified in the following paragraph:

*Mas ag fir is marbh in mathair, s’mas ac athair na hinghine is marbh hi, cuit fir 7 fine don dibad dona higenaib*\textsuperscript{1043} re re, 7 coimghi orra na robromat a nindetibis è, 7 aisiicc uaithib d’fer 7 d’fine iarsna ré, comroinneat etarru.\textsuperscript{1044}

If the mother has died in wedlock, and that it be the daughter’s father with whom she has died,\textsuperscript{1045} the share of husband and fine of the estate go to the daughters for life, and they are restrained from alienating it wrongfully, and it is restored to husband and fine after them. They share it equally between them.\textsuperscript{1046}

In this case the mother was married at the time of her death, and because there were no sons her husband, who became a widower, was entitled to a share of the property. However, the share to both the husband and the kin are postponed until the time of death of the daughters, who receive life-interest in the estate, and the property will then be divided equally between the kin and the father. This is likely to have been after the death of the father, and his share would presumably go to his sons, if he had sons by a different woman, or to his kin if he had no sons.

The rule is further qualified by the possibility of consecutive marriages:

*Manab e athair na hinghine in fer acana marbh hi .i. beirid in fer rann as ar tús fo aicned fir na hadhaltraigí urnadma l fir adhaltraighi foxail, 7 berait na hingena cuit fine don dibad ré ré, 7*

\textsuperscript{1043} *CIH* 1154 n. h: ‘sic, n-stroke omitted’.

\textsuperscript{1044} *CIH* 1154.34–7.

\textsuperscript{1045} i.e. the husband becomes a widower.

\textsuperscript{1046} Dillon, *SEIL*, p. 169, §25; *CIH* 1154.34–7; *CIH* 310.37–8.
coimhe orra na robromat re hindethbitus e, 7 aiscic uaithib don fine iarsna re. 1047

If the husband with whom she has died be not the father of the daughter, the husband receives a share of it first in the quality of husband of a betrothed adaltrach or husband of an adaltrach by abduction, and the daughters receive the fine’s share of the estate for life, and they are restrained from alienating it wrongfully, and it is restored to the fine after them. 1048

Here the husband of the deceased woman was not the father of her daughter, and they did not have children from their marriage. The husband receives his share of the inheritance because he is married to the woman at the time of her death. Had he been the father of the daughter, as was the case in the previous paragraph, he would not have received a share of his own since his daughter would have received the full inheritance for life. The daughter in this paragraph receives the kin’s share immediately, which will return to them at the time of her death.

The author of Bretha Étgid also took into consideration the possibility of the woman having had daughters with multiple husbands, but no sons:

Ma tait ingena aice risín fer acana marbh hi 7 ingena aice re fer .ii., berait ingena in fir acana marbh hi rann as ar tús fo aicned in athar ré ré, 7 coimghi orra na robromat i nindethbitus, 7 a aiscic uaithibh don athair iarsna re; 7 cuttigh fine don dibad do breth doibh fo cutruma re ré, 7 coimhe orra na robromat i nindethbitus hi, 7 a aiscic uaithibh do fine iarsna re. 1049

1047 CIH 1154.38–41.
1048 Dillon, SEIL, p. 169, §26; CIH 1154.38–41.
1049 CIH 1155.1–5.
If she has daughters by the husband with whom she dies, and
daughters by another husband, the daughters of the husband with
whom she dies receive a share at first through their father for life,
and they are restrained from alienating it wrongfully, and it is
restored from them to their father after them; and they (i.e. both
groups of daughters) receive the fine’s share of the estate in equal
parts for life, and they are restrained from alienating it wrongfully,
and it is restored from them to the fine after them.1050

Thus, in this case the woman has been married twice, and has daughters, but
no sons, in both marriages. The daughters of the husband to whom she was
married at the time of her death receive his share of the estate, and the kin’s
share is divided equally between all of the daughters. This means that the
daughters of the final marriage receive a larger share of the estate than that
which the daughters of the first marriage do, since they not only receive half
of the kin’s share, but also their father’s share.

The final paragraph which discusses the division of the property
which includes the daughters also adds that the woman had sons from a
previous marriage at the time of her death:

Ma tait inghena aice risin fer agan marbh hi 7 atait meic aice re
fer,1051 agan marbh hi ram as ar tús fo aicned fir adhaltraigigh urnadma
l fir adhaltraigigh foxail, 7 berait na mic in dibad otha sin amac, uair is
inann do-som 7 ibeth clann a mbreith dibaid (?) in clann uilet aice,
uaire is clann na dhligh dibad na hingena.1052

1050 Dillon, SEIL, p. 171, §27; CIH 1155.1–5; CIH 310.37–40.
1051 CIH 1155 n. c: ‘Some words dropped, see 1645.20’. Dillon, SEIL, p. 170 n. a, points
out that this is probably an error, and suggests the reading of E 3.5. which begins Ma tait
ingena di risin fer onad marbh hi, 7 mac di risin fer aile (CIH 311.1). This is supported by
Eg. 90, which is referred to in CIH 1155 n. c, and reads Ma tait ingena aice risin fer aca
marbh hi, 7 atáit mic re fer .ii. (CIH 1645.20).
1052 CIH 1155.6–9.
If she has daughters by the husband with whom she dies, and she has sons by another husband, a share of it goes first [to the daughters] through the husband of a betrothed *adaltrach* or the husband of an *adaltrach* by abduction, and the sons receive the rest of the estate; for the children she has are the same for him as would be children succeeding to an inheritance, for the daughters are children who are not entitled to inherit.\textsuperscript{1053}

Though this paragraph seems to contradict itself, there are rules that can be extracted from it. Firstly, if the woman has sons from her first marriage and daughters from her second marriage, and she is still married to her second husband at the time of her death, her daughters receive their father’s share of the estate, while the sons from the previous marriage receive the rest. Secondly, Dillon points out that in the final sentence of this paragraph, the commentator is referring to the author of the tract, and hence it is to the author of *Bretha Étgid* that all the children are the same as any other children succeeding to an inheritance.\textsuperscript{1054} It means that for the author of the tract the gender of the children does not matter in this case, since we are discussing the estate of a woman. Thirdly, the rule still stands that if there are sons, daughters will not inherit. However, since there were no sons in the second marriage, the daughters are entitled to their father’s share, since he had no sons with this wife. While daughters never inherited property from their father if he had sons, they were entitled to inherit property from their mother as long as she had no sons with their father, i.e. in the case of a woman’s estate she could have children from multiple marriages, and the rules of inheritance were applied for the children of each father. All the children were thus not taken as one group as they were in the case of inheritance from a man, but rather multiple smaller units which would inherit separately from their own father, and they would all take a share in their mother’s inheritance depending on the gender of their biological siblings.

\textsuperscript{1053} Dillon, *SEIL*, p. 171, §28; *CIH* 1155.6–9; *CIH* 311.1–2.

\textsuperscript{1054} Dillon, *SEIL*, p. 171 n. 2.
7.3.2.6. The division of cin and dibad with regard to minors.

The two following paragraphs deal with the issue of sharing the liabilities and inheritance between children who are considered ‘legally incapable’ but will become legally capable later, which is to be understood as male children who are minors. The first of the two paragraphs, i.e. §29, discusses how this division would happen if there is both liability and assets to be shared. In this case the inheritance goes towards the payment of the liability. If there is a surplus of the inheritance after the liabilities have been covered, the children receive the rest of the inheritance and share it amongst themselves according to the rules which have been laid out thus far. If the inheritance is not large enough to cover the full payment of the liabilities, the children will not be liable to pay the rest, but the case will be considered as having been settled by the full inheritance being used to cover the fine.

The latter of the two paragraphs, i.e. §30, deals with the possibility of the underage children only being left with liabilities to be paid, but no inheritance. The text gives two options on what is to happen in this case. The first option is that the husband and the woman’s fine pay the liabilities, while the children do not have to pay until they are considered legally capable, and when they are no longer considered legally incapable, they are liable to pay the amount which was due from them at the time of their mother’s death. The second possibility is that the liabilities are remitted temporarily because of the children not being legally capable, and are later cancelled permanently. It is difficult to say which of these options was the normal action, but it is likely that these two options were given so that in the case of the liabilities being of a very low value the second option was chosen, while in the case of higher liabilities, the claimant could still receive their lawful payment.

1055 CIH 1155.10–12.
1056 CIH 1155.12–16.
1057 Dillon, SEIL, p. 173, §30.
7.3.2.7. The status of children conceived before and after ‘the month’.

The final three paragraphs of this tract deal with the status of the children of the marriage depending on when they were conceived. These paragraphs distinguish between what is called ‘the month’, but the text of MS 23 Q 6 offers no satisfactory explanation of what is meant by this. By adding the evidence from MS E 3.5., which in this case is much clearer, we can distinguish between three periods which distinguish the status of the children.

§31 deals with the children who are conceived before or during ‘the first month’. These children belong fully to the fine of the father until ‘the full price of their necks is given to’ the fine. When this payment has been made, the children will be seen as children of a betrothed cētmuinter or a betrothed adaltrach. MS E 3.5. states that:

In clann ru co mbe coemachtu tobaig in fir re dliged co cend mis asa aithle, is an ndilsi d’fir no d’fine, γ ana rogha ata in racfat l na racfat; γ da racat, nocon urailenn dliged orro-seic a reic manab ail leo fein.  

The children who shall be begotten by them until there be power to compel (?) the husband by law (and) for a month afterwards belong to the husband or to his fine, and it is for them to choose whether they will sell or not. And if they sell, the law does not require them to sell them if they themselves do not wish it.

MS E 3.5. gives more information than what MS 23 Q 6 has given, and MS E 3.5. § 31 states that not only do the children belong to the father or his fine, but they have the option of selling them, possibly to the mother’s fine,

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1058 CIH 1155.16–8; CIH 310.21–3.
1059 Dillon, SEIL, p. 173; CIH 1155.17.
1060 CIH 310.21–3.
1061 Dillon, SEIL, p. 174 n. 1, §31.
and according to MS 23 Q 6 the children will then be seen as the children of a betrothed *cétmuinter* or a betrothed *adaltrach*.

The next paragraph discusses the ‘children begotten after the month, and until they (the parents) enter into a lawful betrothal’.

In this case the children are considered the children of a *cétmuinter* by abduction or an *adaltrach* by abduction. The commentary adds that it is this type of children who have one-third of their inheritance taken away from them because of the abduction. MS E 3.5. contains the same information, but adds that if the children are begotten after their parents have been legally betrothed, they are the children of a lawful *cétmuinter* or a lawful *adaltrach*.

The final paragraph of 23 Q 6 gives an unsatisfactory explanation of what is meant by this month:

\[
\text{Cid is reisi mis ann? \(\gamma\) cidh is iarsan mis. Is ed is riasin mis ann co roibh cæmachtu timairce in fir re dliged, \(\gamma\) otha sin amac ata aithfegad in mis.}
\]

What means "before the month" and what means "after the month"? "Before the month" is until there is power to compel the husband by law, and after that there is specification of the month.

MS E 3.5. has no corresponding paragraph to this final paragraph of MS 23 Q 6, but due to the extra information found in the previous sections of MS E 3.5., it is clear that ‘the month’ is distinguishing three separate periods. The first period shows that there was a period of intimacy before the husband can be ‘compelled’ to marry the woman. The children conceived during

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1062 ibid., p. 174, §32.
1063 cf. Dillon, *SEIL*, p. 167, §§20–1; 7.3.2.4. The division when there are children from consecutive marriages.
1064 Dillon, *SEIL*, p. 174 n. 1, §32a; *CIH* 310.26–7.
1065 *CIH* 1155.20–2.
1066 Dillon, *SEIL*, pp. 173–4, §33; *CIH* 1155.20–2.
1067 *CIH* 310.21–27.
this period belong to the father or his fine and the mother’s fine will have to buy them from the father’s fine in order for the children to have an official status as the children of a betrothed céitmuinter or betrothed adaltrach.

Second, there is a period of one month before the official betrothal takes place. The children conceived during this month are considered children of an abducted céitmuinter or abducted adaltrach. They will lose a third of their share from their mother’s inheritance due to their status as children of an abducted céitmuinter or abducted adaltrach.

Finally, there is the official betrothal as either céitmuinter or adaltrach. The children conceived during this time are the children of a lawful céitmuinter or lawful adaltrach.

It seems, therefore, that ‘the month’ is referring to the second period: the period of one month before betrothal. Children begotten ‘before the month’ will be considered to be a part of only their father’s kin. This is referring to the rules regarding the rearing of children and the consent of the mother’s fine. If a man and a woman conceives a child in a union which has been forbidden by the woman’s father, the man will have the full responsibility of rearing the child.\textsuperscript{1068} This is also the case if a man abducts a woman in defiance of her father or kin.\textsuperscript{1069}

Children begotten during the second and third periods belong to their mother’s kin, though only the children conceived during the third period will have the status as children of a lawful céitmuinter or a lawful adaltrach, the children conceived during the second period will be considered the children of an abducted céitmuinter or an abducted adaltrach.

At first glance this section does not seem to be important for the distribution of a woman’s estate, but as has been shown from the previous sections, the status of both the mother and the children are extremely important to distinguish the division of both the inheritance and the liabilities of the mother upon her death, and thus explains why this section has been included in this tract.

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{1068} GEIL, p. 71.
  \item \textsuperscript{1069} ibid.; cf. Eska, \textit{Cáin Lánamna}, pp. 274–5 § 36 (lánamnas foxail : lánamnas táide).
\end{itemize}
\end{footnotesize}
8. The Welsh laws.

8.1. Introduction.

The early Irish legal texts were mainly written down in the seventh century,\textsuperscript{1070} while the Welsh legal texts were written between the early thirteenth and the fifteenth centuries.\textsuperscript{1071} Though the Welsh laws were written down at a considerably later time than the early Irish laws, there are still many aspects of the Welsh legal system which are worth a comparison to the Irish laws. Both of these legal systems are Celtic, though neither of the societies would have considered themselves related in the same fashion we consider them related today. The two languages are both descendants from a single spoken Celtic language which dissolved into several successor languages in the first millennium BC,\textsuperscript{1072} and had therefore developed extensively by the time the laws were written in either of the two societies. Though the societies developed individually, there were still multiple resemblances between them, but also clear differences. At the time the Irish law texts were written down, the island was thoroughly Christianised, but there were two legal systems: the secular law and the canon law. The two legal systems did, however, overlap partly, and there are clear references to the Bible in the secular law, as well as some vernacular laws that are specifically Christian.\textsuperscript{1073} The Welsh laws were also written in a Christian society, something which is strongly reflected in them. However, this legal system, too, shows strong connections to earlier, pagan laws. Almost all the law books\textsuperscript{1074} claim to be versions of Cyfraith Hywel, ‘the law of Hywel’, an early 10\textsuperscript{th} century Welsh king. In the preface to these laws, Hywel is described as summoning six men, four laymen and two churchmen, from every cantref in Wales to affirm the laws. Hence, the laws

\textsuperscript{1070} Breitnach, On the early Irish law Text Senchas Már and the Question of its Date, p. 42.


\textsuperscript{1072} EIWK, p. 1.

\textsuperscript{1073} e.g. Cáin Adamnáin, also known as Lex Innocentium.

\textsuperscript{1074} With the exception of Llyfr Cynog; cf. EIWK, p. 15.
were agreed upon by men from all parts of Wales. This preface, then, shows
that though the law texts as we have them are written in a Christian society,
the lawyers stressed the importance of having both laymen and churchmen
affirming the law. To this degree, medieval Irish and Welsh legal institutions
have much of the same background as regards the situation in the respective
countries at the time the laws were written. Both legal systems were written
in a Christian society, but still retained strong ties to the earlier times.

8.2. Manuscript introduction.

There are three complete law books\textsuperscript{1075} in the vernacular, and another four
law books in the Latin language. There are also three incomplete law books,
two of them are Welsh, while the third is in Latin.

\textit{Llyfr Iorwerth}\textsuperscript{1076} is one of the main law books, and the only one
which Charles-Edwards accepts the title of.\textsuperscript{1077} It was compiled in the early
thirteenth century, and is the basis for the translation of Dafydd Jenkins’ \textit{The
Law of Hywel Dda},\textsuperscript{1078} though other texts have been used as additions to the
text. Ior has been edited without translation by Aled Rhys Wiliam.\textsuperscript{1079} A
translation of \textit{Cyfraith y Gwragedd}, ‘The Laws of Women’, from Ior is
found in \textit{WLW},\textsuperscript{1080} while the relevant parts regarding suretyship are found in
\textit{Lawyers and Laymen}.\textsuperscript{1081} It was formerly known as the ‘Venedotian Code’.

\textsuperscript{1075} ‘Law book’ has here been used to mean a tradition of laws ascribed to an author,
whether a historical or mythological figure. When used, ‘law book’ does not mean that the
book is only collected in one MS, but rather that there are many MSS copies of the same
tradition, with slight variations.

\textsuperscript{1076} \textit{Llyfr Iorwerth} will henceforth be referred to as Ior.

\textsuperscript{1077} \textit{EIWK}, p. 13 n. 42. Though Charles-Edwards believes the other titles to be incorrect, he
follows them ‘for convenience’ (\textit{EIWK}, p. 13), and I will follow his lead.

\textsuperscript{1078} = Jenkins, \textit{LTMW}.

\textsuperscript{1079} \textit{Llyfr Iorwerth}, a critical text of the \textit{Venedotian Code} of Medieval Welsh Law, Aled


of Law Presented to Dafydd Jenkins on his Seventyfifth Birthday}, T. M. Charles-Edwards,
137–78.
Llyfr Cyfnerth is a loose family of redactions which were mainly composed in the thirteenth and fourteenth centuries. It was formerly known as the ‘Gwentian Code’, and was published under this name in the Ancient Laws and Institutes of Wales. It has also been published by Wade-Evans in his Welsh Medieval Law, and a translation of Cyfraith y Gwragedd is found in WLW, while the paragraphs on suretyship has been translated in Lawyers and Laymen.

The third of the complete Welsh law books is Llyfr Blegywryd, formerly known as the ‘Dimetian Code’. Both Charles-Edwards and Jenkins explain that Bleg is the main rendering of the Latin redactions, specifically Red. D, into Welsh, and can therefore be taken to form a part of the Latin tradition. It is found without translation in Cyfreithiau Hywel Dda.

The Latin law books consist of five Latin redactions, four of them complete: Lat. Red. A, B, D, and E, while Red. C is incomplete. The Latin equivalent of Cyfraith y Gwragedd, i.e. De lege puellarum et feminarum, from Lat. Red. A has been translated in WLW.

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1082 Llyfr Cyfnerth will henceforth be referred to as Cyfn.
1083 EIWK, p. 13.
1084 Ancient Laws and Institutes of Wales, A. Owen (ed.), London, 1841. The Law of Women is found on pp. 81–105 (Venedotian Code = Iorwerth); pp. 514–31 (Dimetian Code = Blegywryd); pp. 746–53 (Gwentian Code = Cyfnerth). The Ancient Laws and Institutes of Wales will henceforth be referred to as ALW.
1088 Llyfr Blegywryd will henceforth be referred to as Bleg.
1090 Jenkins, WLW, p. 132.
The incomplete law books comprise of *Llyfr Colan*, which is a revised version of *Ior*, 1093 *Llyfr Cynog*, which is also closely related to *Ior*, 1094 and the aforementioned Lat. Red. C.

### 8.3. The life-cycle of women.

The contents of the list referred to as *Nau Kynywedi Teithiauc*, 1095 which gives the names for nine different types of sexual unions in the Welsh legal system, is quite close to the list found in *CL §4*, but there are not many more similarities between the Irish and Welsh laws of marriage, and by extension the laws of a woman’s property. One important difference is that by the time the Welsh law texts as we have them were written, polygyny was illegal: a man was only allowed to have one wife at any given time, and a wife was only allowed to have one husband. 1096

The differences start before the young women were of marriageable age; in the Irish laws a child of any gender will have the same honour-price as a cleric until the age of seven. After the age of seven, a child will have half the honour-price of his or her father, and it remains at that level for as long as he or she is dependent upon him. 1097 In the Welsh laws, however, children, independently of their gender, will only be of the same status until birth, ‘since it is not known what it is, whether man or woman’. 1098 The

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1093 *EIWK*, p. 15; Jenkins, *WLW*, p. 69; *LTMW*, p. xil.
1094 *EIWK*, p. 15.
1095 For more information, see 8.4. *Nau Kynywedi Teithiauc*.
1098 *LTMW*, p. 130; *ALW*, p. 201.
child will therefore have the *galanas*\(^{1099}\) of a man until baptism.\(^{1100}\) After baptism, a son will be ‘at his father’s platter, with his father as lord over him’\(^{1101}\) until the age of fourteen, while for a daughter ‘from when she is born until she is twelve years old it is right for her to be at her father’s platter’.\(^{1102}\) At this time, a girl’s *sarhaed*\(^{1103}\) and *galanas*\(^{1104}\) are calculated as half that of her brother, and when she is married, her *sarhaed* is one-third that of her husband, while her *galanas* remains at half the value of her brother’s:\(^{1105}\)

\[
\text{Sarhaet g6reic 6rya6c vrt h u CGRect y g0r yd a; nyt angi6n trayan Sarhaet y g0r. Ky6n y rodi y 6r, hanher sarhaet y bra6t. Y galanas, na hi a uo gwed6 na hi a uo g6rya6c, hanher galanas bra6t.}\(^{1106}\)
\]

The *sarhaed* of a married woman is according to the status of her husband, namely a third of the husband’s *sarhaed*. Before she is given to a man, it is half the *sarhaed* of her brother. Her *galanas*, whether she be single or whether she be married, is half the *galanas* of her brother.\(^{1107}\)

---

\(^{1099}\) *WLW*, pp. 202–3: ‘*galanas*, cf. Irish *galnas, galannas*, ‘slaughter’; Cumbric *galnes/galnys*, used in the *Leges inter Brettos et Scotos* for part of the compensation for homicide; Breton *glanasoc*, glossing *uir sanguinosus*. The word is used with three meanings: (a) in most examples it means *life-price* (the Anglo-Saxon *wergild*), and alternates with *gwerth* or in Latin *precium*; (b) it has the meaning *homicide*, alternating with *llofruddiaeth, llad celain*, and *homicidium*; (c) it is occasionally used for feud or enmity. [...] This enmity was probably originally settled by a payment agreed between the two kins; the payment later became a fixed sum which varied according to the status of the victim and was related to the *sarhaed*.’

\(^{1100}\) McAll, *WLW*, p. 7; *EIWK*, p. 175; *LTMW*, p. 130; *ALW*, p. 201.

\(^{1101}\) *LTMW*, p. 130; *ALW*, p. 203; *EIWK*, p. 176.

\(^{1102}\) *LTMW*, p. 131; *ALW*, p. 205; *EIWK*, p. 176.

\(^{1103}\) *WLW*, p. 216: *‘sarhaed, literally insult, has the primary meaning of the offence (which can be compared with the Roman law *iniuria*), and the secondary meaning of the compensation payable to the victim, which varies according to his status. In the Law of Women a distinction is drawn between sarhaed and wynebwerth and gwyn*.\`

\(^{1104}\) Following the practice of *WLW*, technical legal terms are given here in Modern Welsh orthography.

\(^{1105}\) *ALW*, p. 75; McAll, *WLW*, p. 7.

\(^{1106}\) Ior §46/1–2, *WLW*, p. 164; *ALW*, p. 84.

Whereas the Irish girl was expected to be fostered, the Welsh girl was expected to be raised in close proximity to her father. Virginity was an important factor of marriage, and if the girl was found not to be a virgin on her wedding night, she would not receive her rightful share of the marriage wealth to which she would normally be entitled after nine nights of marriage, called the agweddi. Instead she would be given a one-year-old steer with a greased tail. If she was able to hold on to its tail she would receive the steer as her marriage present, but if she was not able to she would only receive the wax and tallow which stuck to her two hands:

\[ Os \; hitheu \; ny \; mynn \; y \; diheuru6, \; lladher \; y \; chrys \; yn \; gyuul6ch \; a’e \; gwerdyr, \; a \; roder \; dinawet \; bl6yd \; yn \; y \; lla6 \; g6edy \; ira6 \; y \; losg6rn. \; Ac \; o \; geill \; y \; gynhal, \; kymeret \; yn \; lle \; y \; ran \; o’r \; argyfreu. \; Ac \; ony \; eill \; y \; kynhal, \; bit \; heb \; dim. \]

If she does not wish to be vindicated, let her shift be cut off as high as her genitals and let a year-old steer with its tail greased be put into her hand. And if she can hold it, let her take it in place of her share of the argyfrau. And if she cannot hold it, let her have nothing.

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1108 McAll, WLW, pp. 8–9.
1109 For more information, see 8.3.1.3. Agweddi.
1110 cf. Cyfn §73a/15, WLW, pp.140–1: *ac onys dicha6n, kymeret a lynho o’r g6er 6rth y d6y la6, ‘and if she cannot, let her take what sticks to her two hands of the tallow’.*
1111 Ior §47/5, WLW, p. 166.
1112 The translation in WLW states that if she can hold the bull, she should take it as her argyfrau, while the translation of the same passage in LTMW states that she should take the bull instead of her agweddi. WLW, p. 191 explains the argyfrau thus: ‘the goods brought by the wife to a union. […] The argyfrau was not to be consumed during the seven-year agweddi period; after that it fell into the common pool of matrimonial property, but it was treated as part of the common pool during the seven years in one case: if the husband of an agweddiol wife was an alien who left his lord, he was bound to leave half his goods for the lord, and his wife’s argyfrau was treated as part of his property’.
1113 Tr. Charles-Edwards, WLW, p. 167; cf. LTMW, p. 49.
By following this ceremonial act, the girl, who will at this stage be referred to as a *twyllforwyn*, ‘false virgin’, will have a chance of receiving a small part of marriage wealth, though it be a very slim chance, and at the same time she will also be ridiculed in front of the wedding guests, the *neithiorwyr*. However, before this act would take place she could ask her next of kin, *cyfneseifiaid*, i.e. her parents, brothers and sisters, to give evidence for her still being a virgin. Obviously they would not be able to give such evidence had she been away at fosterage and therefore not by her family’s side during the important years before she was of marriageable age, which was considered to be between the ages of twelve and fourteen.\(^{1114}\)

Charles-Edwards explains that she was probably betrothed at the age of twelve, but that she should not have her first child before she was fourteen.\(^{1115}\) The period between the ages of twelve and fourteen was therefore the time when a girl developed into a woman. From the time she is married, and thus expected to bear children, the next step in her life cycle is the menopause, when she is no longer able to bear children:\(^{1116}\)

\[\text{Sef y dyly blodeua6 o’e phedeir bl6yd ar dec allan; o hynny hty a deugein ml6yd y dyly ymd6yn. Sef y6 hynny pedeir bl6yd ar dec a deugeint; a hty hynny y byd yn y ieuengtit, ac gwedy hynny pe[i]dy6a6 ac ymd6yn.\(^{1117}\)}\]

The period during which she should menstruate is from fourteen years onwards; then until she is forty she should bear children, that is to fifty-four, and till then she is in her youth, and after that she ceases to bear children.\(^{1118}\)

\(^{1114}\) McAll, *WLW*, p. 8; *EIWK*, p. 176.

\(^{1115}\) *EIWK*, p. 176.

\(^{1116}\) *EIWK*, p. 177.

\(^{1117}\) Ior §55/4, *WLW*, p. 178; cf. *ALW*, p. 103.

\(^{1118}\) Tr. Charles-Edwards, *WLW*, p. 179.
The calculation on a woman being able to bear children until the age of fifty-four is clearly a miscalculation, as Charles-Edwards has also noted.\footnote{WLW, p. 178 n. 55/4*.} He refers to Ior §99/6 for the correct calculation:

At twelve years old it is right for a woman to menstruate, as we have said above. And from twelve to fourteen years old it is right that she should not become pregnant, and from fourteen until she is forty it is right for her to conceive, and from then on galanas does not fall on her and she gives no oath that she will not have children, since it is undoubted that she will not.\footnote{LTMW, p. 132; ALW, p. 207.}

In this way, the Welsh law texts explicitly define the woman’s life cycle through her reproductive cycle.

8.3.1. The three payments due for a woman’s sexuality.

Whereas the Irish laws only refer to the \textit{coibche}, ‘bride-price’, which was due for a proper betrothed wife, the Welsh legal system had a much more complicated set of rules for the payments for a woman. The Welsh laws describe three main payments which were payable at the time of, or because of, a wedding:

\begin{quote}
\textit{Triplex est pudor puelle: primus, cum pater suus ea presente dixerit se illam viro dedisse; secundo, cum viri lectum intraverit; tercio, cum a lecto surgens inter homines venerit. Et ideo pro primo datur amwabyr, pro secundo cowyllh, pro tercio egwedy si relict\textit{a} fuerit.}\footnote{Lat. Red. A §52/65–6, WLW, p. 158.}
\end{quote}

The shame of a maiden is threefold: first, when her father declares in her presence that he has given her to a man; secondly, when she enters her husband’s bed; thirdly, when upon rising from the bed she
comes among people. And therefore, for the first amwabry is given, for the second cowyll, for the third egwedd if she is left.\footnote{Tr. by Fletcher, \textit{WLW}, p. 159; cf. M. Owen, ‘Shame and Reparation: Women’s Place in the Kin’, in \textit{WLW}, pp. 40–68, on p. 49.}

In order to understand this law properly, it is important to first examine the significance of these payments. It quickly becomes clear that all of these payments are due because of a wedding, but some of them will be due for any type of sexual relationship.

8.3.1.1. Amobr.

The first of the payments is called amobr,\footnote{\textit{WLW}, p. 190: \textit{amobr}, the fee payable to a woman’s lord in respect of a sexual relationship. Originally perhaps payable for loss of virginity (actual or presumed), it was certainly sometimes claimed in respect of a second union, and though originally paid to a patron-lord (of whatever political status) it became a part of the income of the territorial lord. In the Latin texts the Welsh word, when it appears, has the form amwabry (pl. amwabereu), but the translation \\textit{merces} is more often found; the Latinised \textit{amobragium}, which is usual in record sources, does not seem to occur in the lawbooks. The word, a derivative of \textit{gobr}, has the air of having been coined for use in a restricted sense in place of gobr, which was also used in a wider sense for other payments; the form amwabry suggests that the coining was early. […]’} often spelt amwabry in the Latin texts, and was a payment to the feudal lord for any type of sexual relationship:

\[
P\text{by bhynhac a rodo g6reic y 6r, ef bieu talu y hamobyr, neu ynteu a gymero meicheu y genti hi ar y talu. Ac os hitheu ehun a ymryd, talet y hamobyr, cansy hi ehun a uu rodyat arnei. O d6c g6r wreic laithlut, a’e dyuot y ty mab uchel6r y gysgu genti, ac na chymero y g6rda mach ar y hamobyr; talet ehun yr a amobyr.}\footnote{Ior §48/1–2; \textit{WLW}, pp. 166–8.}
\]

Whoever gives a woman to a man, it is for him to pay amobr for her, or he shall take sureties from her for its payment. And if she gives herself, let her pay her amobr, for she herself has been her own giver. If a man abducts a woman and comes to the house of a mab
uchelwr to sleep with her, and the householder does not take surety for her amobr, let him pay the amobr himself.¹¹²⁵

This payment is due even in the case of rape:

O deryd y 6r adef d6yn treis ar wreic, talet deudeng mu y’r brenhin a’e hamobyr y harg6yd; ac os morwyn uyd, y chowyll a’e hegwded yn y ueint u6yhaf a dylo, a’e h6ynedberth, a’e dilyssr6yd; ac os g6reic vrya6c uyd y sarhaet, gan y hardyrchauel ar uod y hanher, o’e g6r.¹¹²⁶

If it happens that a man admits raping a woman, let him pay twelve cows to the king and her amobr to her lord; and if she be a virgin, her cowyll and her egweddi according to the greatest amount to which she may be entitled, and her face-value and her dilyssrwydd; and if she be a wife then his sarhaed, augmented to the extent of a half, goes to her husband.¹¹²⁷

This payment was thus due immediately when any type of sexual relationship began or was about to begin. Ior §51/10 states that amobr is due for three main reasons: 1) when a woman is given to a man, even if she ‘be not slept with’, 2) by ‘open cohabitation’ even though the woman has not been formally given by her kin, and 3) if a woman becomes pregnant.¹¹²⁸ The third of these reasons must clearly be in the case of a secret relationship from which the result was a pregnancy.¹¹²⁹ In this case the woman has not been given by her kin, or eloped openly with the man, and thus amobr was not paid immediately. The amount which was to be paid depended on the

¹¹²⁶ Ior 50/4, WLW, p. 170.
¹¹²⁷ Tr. Charles-Edwards, WLW, p. 171.
¹¹²⁸ Ior §51/10, WLW, pp. 172–3.
¹¹²⁹ cf. 8.4.1.6. Beichogi twyll gwreic llwyn a pherth below.
status of the woman, and ranges from £1 for the daughter of a maer
cynghellor\textsuperscript{1130} to twelve pence for the slave’s daughter.\textsuperscript{1131}

8.3.1.2. Cowyll.

The second of the payments is known as cowyll,\textsuperscript{1132} and can be compared to
the morning-gift or Morgengabe which features in many medieval
societies.\textsuperscript{1133} This payment is not necessarily specified before the wedding,
but can be bargained for the morning after the wedding. However, it must be
specified before the bride rises from bed:

\begin{quote}
O deruyd rodi mor\textsubscript{b}yn y \textit{6r ac na ouynher y chowyll kyn y chyuodi y}
ar y gwely tranoeth, ny dyly ef ateb idi o hynny allan.\textsuperscript{1134}
\end{quote}

If it happens that a virgin is given to a man and her cowyll is not
requested before she rises from bed the next day, he is not obliged to
answer her henceforth.\textsuperscript{1135}

A woman’s cowyll will be transferred to the common marriage pool once
she is married unless she ‘uses’ it the following morning, i.e. names the
chattels which are representing the price they have agreed to be her
payment.\textsuperscript{1136} Therefore, if the woman does not specify what she wants as her
cowyll before she rises from the marriage bed on the morning following the
wedding, she will receive nothing, and her husband will not have to make
this payment. The cowyll can also be seen as a payment for the girl’s

\begin{footnotesize}
\begin{enumerate}
\item The \textit{maer cynghellor} was a local official of the king, for more information, see \textit{WLW},
pp. 197 and 211.
\item Ior 51/11, \textit{WLW}, pp. 172–3.
\item \textit{WLW}, p. 196: ‘cowyll, the "morning-gift" made to a virgin bride by her husband. The
basic meaning of the word is a veil or head-covering, cf. Latin \textit{cucullus}, English \textit{cowl}. […]
We seem to have here a hint of the symbolism of a change of headdress as a mark of
marriage’.
\item D. Jenkins, ‘Property interests in the Classical Welsh Law of Women’, in \textit{WLW}, pp. 69–
92, on p. 76.
\item Ior §53/6, \textit{WLW}, p. 174.
\item \textit{WLW}, p. 78.
\end{enumerate}
\end{footnotesize}
virginity. Dafydd Jenkins explains that when the girl has reached puberty, she was required to give an oath that she was still a virgin as a claim to her cowyll. Because the cowyll is among the ‘privy things’ of a woman, the man will have to pay her cowyll even if she is found not to be a virgin on the wedding night.

8.3.1.3. Agweddi.

The final of the three payments which are due because of the wedding is the agweddi. This word has two very specific meanings, only one of which is a payment.1139 In *Nau Kynyweddi Teithiauc*1140 this word represents the second of the unions of the ennead, and is thus a union inferior only to priodas.1141 In the meaning of a payment, it is the specific amount that a woman receives from the common pool if the marriage has lasted less than seven years. If the marriage lasts for more than seven years, she will no longer receive the agweddi, but is instead entitled to half of the common marriage pool. The value of the agweddi depended on the status of the woman:

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1137 For more information and a discussion of a woman’s privy things, see 8.5. *Prifai Gwraig*.

1138 Jenkins, *WLW*, p. 77.

1139 *WLW*, pp. 187–8: ‘agweddi, egweddi: The word appears in forms representing agweddi, egweddi, and engweddi, but the medieval examples representing engweddi all seem to be in the hand of the same scribe, who was probably misinterpreting his exemplar. It has two senses: (a) a part of the property to which a wife was entitled on separation from her husband in certain circumstances; (b) in the *Naw Cynyweddi*, the second class of marital union. […] In sense (a) agweddi means the specific sum from the common pool of matrimonial property to which the wife was entitled on a justified separation from the husband before the union had lasted seven years. The measure of this sum depends on the natal status of the wife, which is determined by her father’s status, whereas after the union has lasted seven years her natal status is irrelevant, since she takes a half of the pool; this provides one more illustration of the ambivalent position of the woman between two kins. Some texts seem to indicate that the name agweddi was originally given only to the entitlement of a wife given by her kindred, but at a later stage the smaller entitlements of women not so given were certainly sometimes called agweddi. (b) In the *Naw Cynyweddi*, agweddi means a class of union inferior to priodas. If the entitlement was called agweddi only when the wife had been given by her kindred, the union called agweddi was probably one created by gift but not yet matured into priodas by the lapse of seven years’.

1140 For more information, see 8.4. *Nau Kynyweddi Teithiauc*.

1141 For more information and a discussion on the different types of union, see 8.4. *Nau Kynyweddi Teithiauc*. 
Pedeir punt ar hugeint y6 heg6edi. Or a merch breyr gan 6r yn lllathrut heb rod kenedyl, pan atter sef uyd y heg6edi, whech eidon kyhyt eu kyrn ac eu hyscyfn. Y verch taya6c y telir tri eidon gogyfoet a rei hynny. Or kymer g6r wreic o rod kenedyl, ac os gat kyn pen y seith mlyned, talet idi teir punt yn y heg6edi os merch breyr uyd.1142

Her1143 agweddi is £24. If a breyr’s daughter elopes with a man without gift of kindred, when she is left her agweddi will be six bullocks whose horns are as long as their ears. To a taeog’s daughter are paid three bullocks of the same age as those. If a man takes a wife by gift of kindred and if he leaves her before the end of seven years, let him pay her £3 for her agweddi if she is a breyr’s daughter.1144

The tract continues to explain that the agweddi of a taeog’s daughter is £1 ½ if she is given by her kin.1145 From this paragraph it is thus clear that the value of the agweddi depends not only on the status of the woman, but also on whether she was given by her kin or if she had eloped with the man. Thus, if a breyr’s1146 daughter eloped her agweddi is six bullocks, but if she was given by her kin her agweddi was £3. If a taeog’s daughter eloped her agweddi was three bullocks, but if she was given by her kin it was £1 ½.

1142 Cyfn §73/2a–5, WLW, p. 136.
1143 cf. Cyfn §73/1, regarding the merch brenhin, ‘king’s daughter’.
1144 Tr. D. Jenkins, WLW, p. 137.
1145 Cyfn §73/7a.
1146 The breyr was the freeman of the highest natural status, see WLW, p. 193 for more information.
8.4. *Nau Kynywedi Teithiauc*.

In two of the Latin law books\(^{1147}\) and three of the Welsh ones\(^{1148}\) there is a collection of enneads, mnemonic lists of nines which can easily be compared to the Heptads of the early Irish laws. One of these enneads is *Nau Kynywedi Teithiauc*, a list which gives the nine ways in which a man and a woman were sexually united in the eyes of the law\(^{1149}\) much like *CL* §4 which gives the ten sexual unions in the early Irish law\(^{1150}\). Whereas *CL* is a tract which explains the details regarding the list in §4, *Nau Kynywedi Teithiauc* does nothing more than to merely state the names for nine sexual unions without explaining what these unions are. Thomas Charles-Edwards has cast considerable light on these unions in his chapter in *WLW*\(^{1151}\) and based on his explanation of the sexual unions, it is clear that the ennead is even more comparable to *CL* §4 than seems at first glance, in that the list is treating both the legitimate and illegitimate unions in a sequence of declining legal status, from the most respectable to the least respectable union. There are two clearly distinct textual groups of the ennead, (α) consisting of Peniarth MS 35 (G) and Wynnystay MS 36 (Q), and (β) consisting of B.L. Add. MS 22,356 (S) and the two Latin versions, Red. B and Red. E.\(^{1152}\) The two groups differ slightly in the sequences, but the reconstructed lists can be set out in the following way:

\((\alpha)\) *Na6 kynegwedi\(^1\) teithia6c*:

1. priodas,
2. agwedi,
3. caradas,

\(^{1147}\) Redactions B and E. (*WLW*, p. 23.)

\(^{1148}\) Peniarth MS 35 (G), Wynnystay MS 36 (Q) and B.L. Add. MS 22,356 (S). (*WLW*, p. 24.)

\(^{1149}\) Charles-Edwards, ‘*Nau Kynywedi Teithiauc*’, in *WLW*, pp. 23–39, on p. 27.

\(^{1150}\) *CL* §4 contains a list of ten sexual unions, while the tract itself only gives details on nine of these unions. For more information on *CL*, see Chapter 2 Women and Property and Chapter 3 Banchomarbae.


\(^{1152}\) ibid., pp. 23–4.
4. deu lysuab llathlut,
5. llathlut goleu,
6. llathlut t6yll,
7. beichogi t6yll yr6g ll6yn a pherth,
8. kynniwedir3 ar li6 ac ar oleu4,
9. t6yll uor6yn.

1 kynyg6edi
2 r6ng
3 kyne6edi
4 olei

(β) Nau kynwyedi teithiauc, *scilicet*,
1. priodas
2. aguedi
3. karadas
4-7. *duo privigni* ladrut twill beichogi twyll *mulieris* llwyn et perth,1
8. nau affeith2 kennewedi ar lu ac3 aruoll,

1 *duo privigni* et ladrut twill beichodi twyll *mulieris* lluyn et perth, Red. B;
*duo privigni* lladlut twyll ueichiogi tuyll *mulieris* llwyn a perth, Red. E;
deu privei a lladryd gida hynny a gwreic ll6yn a pherth, S.
2 g6eith, S.
3 omitted in S.
4 tuyl uoroyn, Red. B; t6ylluor6yn, S.1153

It is clear from the reconstructed lists that the two traditions differ in the sequence of the different unions, especially between numbers 4 and 7. Charles-Edwards takes the difference to be caused by a scribe in the (β)-tradition to jump ‘from the *llathlut* (or *llathrut*) which corresponded in his

1153 ibid., *WLW*, p. 25.
exemplar to the *llathlut* of (a) 4 to the *llathlut* corresponding to that of (a) 6’.\textsuperscript{1154} By doing so, (a) 5 has been completely omitted.

\section*{8.4.1. The different types of marriages from \textit{Nau Kynyweddi Teithiauc}.}

The (a) tradition seems to have the clearest order of the unions in descending order according to status, and will therefore be followed here.

\subsection*{8.4.1.1. Priodas.}

The first of the unions is called \textit{priodas}. The problem with this union is to understand the exact meaning of the term. The Middle Welsh law texts call the married man and the married woman \textit{gwr priod} and \textit{gwaig briod},\textsuperscript{1155} but there does not seem to be a proper explanation of the word \textit{priodas},\textsuperscript{1156} only the consequences for a woman of being \textit{priod}:

\begin{quote}
 Ny dyly g6reic prynu na gwerthu ony byd pria6t heb ganyat y g6r. O byd pria6t hi a dyly prynu a gwerthu.\textsuperscript{1157}
\end{quote}

A wife is not entitled to buy or sell, unless she be \textit{priod}, without the permission of her husband. If she be \textit{priod}, she is entitled to buy and sell.\textsuperscript{1158}

This paragraph from Ior has strong ties to the Irish laws, which state that a woman is not able to buy or sell without the explicit authorisation from one of her guardians.\textsuperscript{1159} However, the \textit{cétmuinter} in \textit{lánamnas comthinchuir}, ‘union of mutual contribution’, was entitled to make contracts independently of her husband, but only if these contracts benefitted the joint

\begin{itemize}
\item \textsuperscript{1154} id.
\item \textsuperscript{1155} Normalised to Modern Welsh orthography.
\item \textsuperscript{1156} \textit{Priodas} has, however, developed into being the standard modern Welsh word for ‘marriage’.
\item \textsuperscript{1157} Ior §53/4, \textit{WLW}, p.174.
\item \textsuperscript{1158} Tr. Charles-Edwards, \textit{WLW}, p. 175.
\item \textsuperscript{1159} CIH 443.30–444.6 = Dire-text §38; \textit{EICL}, p. 71; \textit{GEIL}, p. 76; \textit{IR}, pp. 35–6.
\end{itemize}
economy of the union.\textsuperscript{1160} Because a woman is entitled to make contracts if she is \textit{priod} as well as the position of \textit{priodas} in the ennead, this union is generally considered to be the union of the highest status in the Welsh laws,\textsuperscript{1161} and the wife must therefore have been given by her kin. Since a woman was not expected to bring anything but moveables into a marriage, the right to contract must be a consequence of the woman having been betrothed by her family, otherwise this legal right in relation to property could have highly negative consequences for the husband. \textit{Priodas} can therefore possibly be compared to the three unions of highest status in the early Irish laws, i.e. \textit{lánamnas comthinchuir}, \textit{lánamnas mná for ferthinchur} and \textit{lánamnas fir for bantinchur co fognam}.

The payments due from the husband because of the union have been dealt with above, but there was also expected to be a contribution from the wife’s side. The \textit{cowyll} which she receives from her husband as a payment for her virginity will immediately fall into the common marriage pool unless she names the chattels she wishes to represent this gift.\textsuperscript{1162} However, her contribution of moveable goods, her \textit{argyfrau}, will not fall into the common marriage pool, not until the passing of seven years of marriage, and the husband is forbidden to alienate or consume any part of his wife’s \textit{argyfrau}.

\textit{Os kyn y seithuet ulbydyn yd ysgarant, talher idi y hegwedi a’e hargyfryeu, a’e chowyll os yn uorfwyn y rodir - yr hyn a ou ar garn o’r petheu hynny.}\textsuperscript{1163}

If they part before the seventh year, let her be paid her \textit{egweddi} and her \textit{argyfrau}, and her \textit{cowyll} if she is given as a virgin - that part of these things which is on the hoof.\textsuperscript{1164}

\textsuperscript{1160} CIH 506.1–26 = CL §5. For more information, see Chapter 2 Women and Property, esp. 2.5. \textit{Lánamnas comthinchuir}.

\textsuperscript{1161} Charles-Edwards, \textit{WLW}, pp. 28–30.

\textsuperscript{1162} Jenkins, \textit{WLW}, pp. 76–7.

\textsuperscript{1163} Ior §45/2, \textit{WLW}, p. 164.

\textsuperscript{1164} Tr. Charles-Edwards, \textit{WLW}, p. 165.
After the passing of seven years the *argyfrau* fell into the common marriage pool, and the wife was no longer entitled to bring these moveables out of the union in case of a divorce, instead she would receive half of marriage pool:

\[O\text{ deruyd }y\text{ wrec }bot\text{ rodyeit }idi,\text{ ydan }y\text{ hangweddi }y\text{ dyly }bot\text{ hyt }ym\text{ pen }y\text{ seith mlyned;}\text{ ac }o\text{ cheiff teir nos }o’r\text{ seith[u]et bl6ydyn }ac\text{ yskar onadunt, rannent }yn\text{ deu }hanher\text{ pob peth }a\text{ uo }ar\text{ }y\text{ helo oe }a\text{ uo }udunt.\]

1165

If it happens that a woman has givers, she is entitled to be under her *egweddi* until the end of seven years. And if she gets three nights from the seventh year and they part, let them divide into two halves everything which is in their possession.1166

In his discussion on *Nau Kynyweddi Teithiauc*, Thomas Charles-Edwards argues that it is likely that *priodas* is a union in which the wife’s contribution of moveables is “at least half the husband’s portion of moveables, but not much more”.1167 His argument is based on *Llyfr Colan*’s suggestion that a woman is considered a *gwraig briod* when she has contributed more goods than her husband, in which case it would not be surprising that she would have a certain amount of legal capacity in regards to contract. Since the law of inheritance is much the same as in the early Irish laws, in that a woman was not entitled to inherit property except for in certain exceptions to the law, a woman would not be considered to bring property into a marriage. However, whereas in the Irish laws a daughter inherits an equal share of moveables as her brother, her Welsh equivalent would only inherit half the value of moveables as her brother.1168 This would mean that for a woman to bring equal or more moveables than her

\[\text{1165 Ior }\S 44/2, \text{ WLY, p. 162.}\]

\[1166 \text{ Tr. Charles-Edwards, WLY, p. 165.}\]

\[1167 \text{ Charles-Edwards, WLY, p. 29.}\]

\[1168 \text{ id.}\]
husband, she would either have to be of a considerably higher status than him, or, if they were of approximately equal status, he would come from a family with a considerably larger amount of children. Regardless of the amount of moveables the wife was expected to bring into the marriage, it is clear from the position in *Nau Kynywedi Teithiauc* that it was considered the most honourable union, but if Charles-Edwards’ suggestion regarding the comparable values of the shares of moveables the spouses brought with them into the union is correct, this marriage would be very close to that of *lánamnas comthinchuir*, but not the other two *lánamnas* which were suggested above, due to their unequal contribution of moveables.

8.4.1.2. *Agweddi*.

The second union on the list is *agweddi*, a term which has previously been discussed, but only in the sense of a payment. Here, it is clear that it is not meant as a payment since *Nau Kynywedi Teithiauc* is listing the nine types of sexual unions that existed in the eyes of the law. *Agweddi* is thus the name of a type of a sexual union inferior only to that of *priodas*. Though the word is not meant as a payment in this situation, it is still closely connected to the payment of *agweddi*. This must be a union in which *agweddi* was payable in case of a dissolution of the marriage. From the evidence from Cyfn §73 discussed in 8.3.1.3. above, it is clear that there are two distinct values of the *agweddi* due to a woman of each status depending on whether she was given by her kin or if she had eloped with her husband. Because of the position of the *agweddi*-union as the second most honourable union on the list, the woman would clearly have been given by her kin in this case. The implication of the payment of *agweddi* only being due to the woman if the union is dissolved before the end of the seventh year is that if the union lasted for seven years or longer it would be considered to have matured into the status of *priodas*, and the wife would be entitled to half of the goods they had in common, but no longer her *agweddi*.

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1169 This ‘half’ of the goods is not the exact half of everything, but specific items were allocated to each of the spouses, cf. Ior §44.

From the end of seven years onwards there is a division into two halves as with a woman with givers for her, for no wife, whether by abduction or by gift, remains of the status of her egweddi save until the end of the seven years, and she is not entitled to egweddi from the end of the seven years onwards. Therefore let them take equal shares.

The evidence from Ior therefore makes it clear that any type of union, regardless of the status of the union at its beginning, will develop into a union considered honourable if it lasts for seven years or longer. The next section of Ior explains that any union which lasted longer than three days would be considered a lasting union, and even though its origins were disreputable, it could develop into the status of priodas:

\[ P6ybhnac a gyseco teir nos gan wradic o’r pan anhudher y tan hyt pan datanhudher tranoeth, a mynnu ohona6 y wadu, talet idi eidyon a talo ugeint ac arall a talho dec ar ugeint ac arall a talho tri ugeint. Ac os d6c ar ty ac anll6yth a’e bot y gyt ac ef hyt ym penn y seith mlyned, rannu a hi uegys a g6reic a rodyeit arnei. \]  

1171 Ior §48/6–7, WLW, p. 168.

1172 The word used in the Welsh is agweddiol, which in WLW, p. 188 is explained as: ‘(of a woman) entitled to agweddi: her union with a man is recognised as established, but is not fully matured’.

1173 Tr. Charles-Edwards, WLW, p. 169.

1174 Ior §48/8, WLW, p. 168.
Whoever sleeps with a woman for three nights from the time when the fire is covered up until it is uncovered the next day, and wishes to repudiate her, let him pay her a bullock worth twenty pence, and another worth thirty and another worth sixty. And if he takes her to house and holding, and she is with him until the end of seven years, he shares with her as with a woman who had givers.\(^{1175}\)

Thus, if the woman has been slept with for less than three nights, she is only entitled to three bullocks, worth twenty, thirty and sixty pence.\(^ {1176}\) However, if she is slept with for more than three nights her entitlement depends on the union she was a part of. Ior §48/3 states that if she has been abducted, she is entitled to ‘three bullocks whose horns are as long as their ears’ until the end of the seven years, after which the union would be considered priodas and she would be entitled to half of the common goods. The three bullocks with ears and horns of the same length comprise the exact same measures as Lat A §51/14 gives a woman who has been slept with openly for three nights. This shows how the laws were not a unified entity in the Welsh legal society, the same way as the Irish laws show certain inconsistencies.\(^ {1177}\)

Since both of the two first unions on the list seem to be unions by gift of kin, there needs to be a difference between the two unions. Since priodas is the first union on the list, it cannot simply have only been the union which every other type of union developed into after the passing of seven years, but there needs to be more of a difference between priodas and agweddi. Charles-Edwards believes the difference to have been the amount of argyfrau the wife brought into the union; whereas he believes that in a priodas-union the wife’s argyfrau to have been at least half of the value of the husband’s share of moveables, he has suggested that in an agweddi-union, which was also a union by gift of kin, the wife’s argyfrau was perhaps less than half the value of the husband’s moveables.\(^ {1178}\) If he is

\(^{1175}\) Tr. Charles-Edwards, WLW, p. 169.

\(^{1176}\) In Lat A §51/14, she is entitled to ‘three beasts of the same length of ears and horn’.

\(^{1177}\) For examples, see 1.3. Legal Introduction.

\(^{1178}\) Charles-Edwards, WLW, p. 35.
correct in this assumption, **priodas** would be the equivalent of the Irish *lánamnas comthinchuir*, while **agweddi** would be the equivalent of the Irish *lánamnas mná for ferthinchur*.

### 8.4.1.3. Caradas.

The third of the unions in *Nau Kynywedî Teithiauc* is called **caradas**. This is neither a union by gift nor a union in which the woman elopes or is abducted, but it seems to be a union in which the woman is visited at home openly, and thus with her parents knowledge and consent. This assumption is based on a triad found in *ALW*:

> _Teir gêraged ny dyly eu gêr ia6n gantunt am y godineb: vn yê gôreic a dyccer lathrut; kyt gônel yr gêr arall a vo da genti, ny dyly 6reuthur ia6n yr gêr ae duc lathrut: eil yê, gôreic agyscer genti ygkaradas ac yn gyhoed hynny; kyt gônel honno a vo da genti, ny dyly y gêr a gysgêys genti caffel vn ia6n: trydyd yê, gôreic lôyn a pherth; ny dyly y gorderch caffel ia6n genti, kyt gônel any6eirdëb o gymryt ohonei orderch arall._

Three women whose husbands are not to have right from them for their adultery: one is, a woman taken clandestinely; if she do what she may please with another man, she is not to do right to the man who took her clandestinely: the second is, a woman slept with as a concubine, and that publicly known; though she do what she may please, the man she slept with is to receive no right: the third is, a woman of bush and brake; her paramour is to receive no right from her, though she may commit fornication by taking another paramour.\(^{1180}\)

This translation is from 1841, and has *gôreic agyscer genti ygkaradas* as ‘a woman slept with as a concubine’. Charles-Edwards explains that this

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\(^{1180}\) *ALW*, p. 531.
should be ‘a woman who is slept with in caradas’, and therefore *gôreic agyscer genti ygkaradas* means a woman who is one of the two partners in the sexual relationship known as *caradas*. An important factor to this union is that it has been done *yn gyhoed*, publicly. Therefore, it is not a secret union, and has been distinguished from that of *llathlud*, and is thus a different type of union from elopement or abduction, and it has also been separated from that of ‘a woman of bush and brake’. Based on the inclusion of *caradas* in this triad alongside the other two unions which are far from the most honourable unions in *Nau Kynywedi Teithiauc*, it is clearly not a union by gift of kin. Since it is neither a union by elopement or abduction, nor a union by gift, it implies that the woman is visited at home with the knowledge of her parents. *Caradas* thus shows many similarities to the Irish *lânamnas fir thathigthe cen urgnam, cen urail, cen tarcud, cen tinöl*, ‘[union of] a man of visiting without providing service, without solicitation, without provision, without material contribution’, in which the man visits the woman openly at home with the knowledge of the parents, but without a betrothal and without providing any type of contribution. One important difference between the two types of union is that while *lânamnas fir thathigthe* is a union which can last for as long as the partners wish, *caradas* will develop into *priodas* if the union lasts for more than seven years, and will then be considered a fully legitimate and honourable marriage.

### 8.4.1.4. *Deu lysuab llathlut.*

The following union on the list is called *deu lysuab llathlut*, or *duo privigni (ladrut)*. It is the union which is the most problematic to identify. Charles-Edwards suggests that the scribe might have repeated the word *llathlut* from the two succeeding unions on the list, and that the name of the union is meant to be simply *deu lysuab*. The problems do not end by identifying what the original name should have been. Charles-Edwards therefore

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1181 For more information, see 8.4.1.5. *Llathlud*.

1182 For more information, see 8.4.1.6. *Beichogi twyll gwyreic llwyn a pherth*.

1183 Eska, *Cáin Lánamna*, p. 115.
suggests that in the context of marriage, the meaning must therefore be ‘two step-children’. He poses a possible explanation of the union from

*Culhwch ac Olwen*:

Cilydd’s first wife, Goleuddydd, bears him a son, Culhwch, and then dies. After seven years have gone by Cilydd married the wife of King Doged, having defeated her husband in battle and having killed him. Doged and his wife had a daughter, and her mother proposed that Culhwch should marry her daughter. The situation was therefore as follows: [...] Culhwch is the step-son of X, the former wife of Doged; the daughter of Doged is step-daughter of Cilydd.

The two step-children are therefore not related by blood. The suggestion is therefore that it is technically not an illegal union in the secular law, though the Church opposed such a union. The problem arising from a union such as this, is that the marriage would not create a new alliance between two ruling kindreds, which was an important element of marriage, especially for people of high status. This is a highly speculative solution and not a certain explanation of the union, and Charles-Edwards points out that in the case of *deu lysuab* the meaning of this union may possibly have been lost in time.

8.4.1.5. *Llathlud*.

The next two unions, *llathlud goleu* and *llathlud twyll*, can be described together. *Llathlud* is a term which can be used with many different meanings: it can be both with and without the consent of the woman, and there is therefore a difference between ‘to go *llathlud*’ and ‘to take *llathlud*’. The former meaning implies an elopement, while the latter is an abduction. If *llathlud* happens without the consent of the woman, it can also be called *trais*, ‘rape’. If *llathlud* is with the consent of the woman, it can either be in

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1186 id.
the open or within a house, however, when *llathlud* is with the consent of the woman, it is customary to use the meaning of a woman who has been brought away from her father’s house, but without the gift of kin, to subsequently be slept with in another house.\(^{1187}\) The further distinction between *llathlud goleu* and *llathlud twyll* is whether the union was entered into as a public or secret *llathlud*. Ior §48/1–2 deal with the issues that arise regarding the payment of *amobr* for an abduction,\(^{1188}\) while Ior §48/3 deals with the *agweddi* and *argyfrau* in the same situation.\(^{1189}\) However, because of the mention of both *argyfrau* and *agweddi* in the latter paragraph, it seems more likely in that case it was an elopement, not an abduction.

If the woman was a virgin when she either ‘went *llathlud*’ or ‘was taken *llathlud*’, her kin could bring her back against her will, but if she was not a virgin at the time of the *llathlud*, she could not be brought back:

\[
O \text{deruyd y 6r d6yn mor6yn lathrut, y hargl6yd a’e chenedyl a eill y d6yn y ganta6, kyn bo dr6c ganta6 ef. Ac o bu gynt gan vr, ny ellir y d6yn y gan y g6r a’e duc g6edy hynny hi lathrut, onyt ehun a’e myn.}\(^{1190}\)
\]

If it happens that a man abducts a virgin, her lord and her kindred can remove her from him, though he object. And if she has been with a man previously she cannot be removed from the man who afterwards abducted her, unless she herself wishes it.\(^{1191}\)

The final sentence implies that if the woman who was a virgin at the time of the abduction or elopement wanted to be with the man, if she had lost her virginity during the elopement all she had to do was to elope again, and no

\(^{1187}\) ibid. p. 32.

\(^{1188}\) For more information, see 8.3.1.1. *Amobr*; cf. *ALW*, pp. 204–5.

\(^{1189}\) For more information, see 8.4.1.2. *Agweddi*.

\(^{1190}\) Ior §50/5, *WLW*, p. 170.

\(^{1191}\) Tr. Charles-Edwards, *WLW*, p. 171; cf. Cyfn §73/13a–13b. Cyfn §73/13a states that it is her father who can re-take her, and he does not pay *amobr* to the lord in that case.
one could reclaim her after that.\footnote{Jenkins, \textit{WLW}, p. 72.} If the kin did not oppose the union, they could consent to it by not doing anything, even though it was not a union by gift of kin.

\section*{8.4.1.6. Beichogi twyll gwreic llwyn a pherth.}

\textit{Beichogi twyll gwreic llwyn a pherth},\footnote{See Charles-Edwards, \textit{WLW}, p. 26 for the explanation of the spelling, which differs from that of (α), for more information on the two traditions of the ennead, see 8.4. \textit{Nau Kynywded Teithaun.}} ‘secret pregnancy of a woman of bush and brake’ is a self-explanatory name of a union. The union itself is \textit{twyll}, ‘secret’, and the woman has become pregnant as a consequence of the relationship. By definition it is a secret union to which the woman herself consents, but that her kin would not have had knowledge of before the pregnancy. Had the relationship remained secret there would be no legal consequences, but because of the pregnancy \textit{amobr} is due to the woman’s lord.\footnote{Ior §51/10, \textit{WLW}, pp. 172–3, which states that pregnancy is one of the three reasons for \textit{amobr} to be due to the lord; cf. 8.3.1.1. \textit{Amobr}.} In this case it will be the father’s responsibility to rear the child:

\begin{quote}
\textit{O deryd y wr ueichogi g6reic o l6yn y pherth, ef a dyly gossymdeitha6 y mab, canys y kyureith a dyweit na dyly hi gaffel treul o achos y gôr cany chauas y u6ynant, ac 6rth hynny y dyly ynteu meithrin y mab.}\footnote{Ior §49/1, \textit{WLW}, p. 168.} \\
\end{quote}

If it happens that a man impregnates a woman of bush and brake, he is obliged to maintain the child, for the law says that she ought not to incur expense because of the man since she has not received benefit from him, and therefore he is obliged to rear the child.\footnote{Tr. Charles-Edwards, \textit{WLW}, p. 169.}
There are further consequences for the child. Because it is an illegitimate child, the *mab llwyn a pherth*, ‘son of bush and brake’, will not be entitled to inherit its father’s land.\footnote{197}{See discussion in 8.7. Sharing the patrimony below on inheriting the patrimony; cf. e.g. Bleg 112.3–8.}

\begin{quote}
*Tri meib yn tri broder un uam un dat, ac ny chan ydeu rann otref eu tat gan eu bra6t un uam dat acwynt: un ohonunt mab ll6yn ap pherth, ac gwedy cael y mab h6nn6 kymryt y wreic o rod kenedyl or g6r achaffel mab or un wreic honno; ny dyly y mab h6nn6 rannu tir ar mab agaffat kyn noc ef yn ll6yn ac ym perth […]*\footnote{198}{AWL, p. 760, Gwentian Code, Book 2, xxxi. iv.}
\end{quote}

There are three sons, three brothers, by the same mother, the same father, two of whom have no share of their father’s property from their own brothers: one of them is a son of bush and brake, whose father afterwards takes the woman, by gift of kindred, and begets a son by the same woman; such son is not to share with the land with the son begotten before him in bush and brake […]\footnote{199}{ALW, p. 761.}

The rules of inheritance are thus complicated further, and even though the man who has first had a relationship with a *gwreic o lwyn a pherth* marries her by gift of kin, the first son, who was conceived illegitimately, will not receive any share of their common father’s inheritance. However, if the paternity of the *mab llwyn a pherth* was undoubted and accepted, he could inherit his proper share of the patrimony.\footnote{200}{Charles-Edwards, *WLW*, p. 33; cf. Ior §102/16.}

The final two unions of *Nau Kynywed i Teithiauc* will not be dealt with here, since they are of very low status, and will not develop into *priodas* at any point. *Beichogi twyll gwreic llwyn a pherth* will not develop into *priodas* either, but because of the possibility of the woman at a later stage being given by gift of kin, and thus have legitimate children with the
same man with whom she conceived the *mab llwyn a pherth*, as well as the
property consequences of the further children this union has been considered
in this section.

8.5. *Prifai Gwraig*.

*Prifai gwraig* is a list which deals with the privy things of a wife, i.e. the
property to which the wife has exclusive right in case of a divorce. This is
explained in Ior §55/15:

\[ Tri aghyuarch g6reic y thri phrifei; a hynny ny dyly hitheu y rannu a’r g6r. \] ¹²⁰¹

The three things for which a woman may not be asked are her three
privities; and she is not obliged to share these with the husband. ¹²⁰²

The problem with understanding what the privy things of a wife were is that
*prifai gwraig* can be either a triad, pentad or hexad, and even in the texts
where it is for example a triad, the three things differ between the different
versions. Thus, Ior (G) ¹²⁰³ §51/1 explains:

\[ Tri phriuei g6reic: y chowyll, a’e gouyn, a’e sarhaed. Sef achos y gelwir yn tri phriuei g6reic vrypt eu bot yn [tri] phria6t g6reic, ac na ellir eu d6yn o neb achos y genti. \] ¹²⁰⁴

The three privities of a woman: her *cowyll* and her *gowyn* ¹²⁰⁵ and her
*sarhaed*. This is the reason why they are called the three privities of

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¹²⁰¹ Ior §55/15, *WLW*, p. 178.


¹²⁰³ Ior (G) is from the Peniarth MS 35, which is the text which Charles-Edwards has edited
and translated in *WLW*, pp. 161–79.

¹²⁰⁴ Ior §51/1, *WLW*, p. 170.

¹²⁰⁵ In *LTMW*, p. 348, *gowyn* has been explained as the compensation to a wife for her
husband’s infidelity.
a woman, because they are the three appropriated things of a woman, and they cannot be taken from her for any reason.\textsuperscript{1206}

However, the same passage in Ior (B) gives the three privities as her cowyll, her agweddi and her sarhaed, and the version of the same triad in Damweniau Colan states that the three privities are her cowyll, her gwarthrudd and her sarhaed.\textsuperscript{1207} Owen explains that ‘guardrut is defined in the same way as gowyn in G’.\textsuperscript{1208} There is a triad found in Bleg, Cyfn and the Latin texts which corresponds quite closely to the triad found in Ior, but which is introduced differently:

\textit{Tri pheth ny chyll g\textit{6}reic kyt gatter am y cham: y chowyll, a\’e hargyfreu, a\’e h\text{\&}ynebwerth – nyt amgern wheugeint uyd y h\text{\&}ynebwerth.}\textsuperscript{1209}

Three things which a wife does not lose though she be left for her fault: her cowyll, and her argyfrau, and her wynebwerth – to wit, her wynebwerth is 120d.\textsuperscript{1210}

In Lat B and E, the prifai gwraig are collected in a pentad, which is extended to a hexad if the woman in question was a virgin when she was married, and the pimp priuei gureic are defined as ‘aguedi, amobyr, argyureu, gouin, sarhaet; sextum puelle: scilicet, cowyl’.\textsuperscript{1211} Many of these versions thus mention the same payments: a) cowyll, b) agweddi, c) gowyn/ guardrut, d) wynebwerth, e) sarhaed, f) argyfrau and g) amobr. Owen has,

\begin{footnotesize}
\begin{enumerate}
\item Tr. Charles-Edwards, \textit{WLW}, p. 171.
\item Owen, \textit{WLW}, p. 65.
\item ibid., p. 66.
\item Cyfn 73/15c, \textit{WLW}, p. 138.
\item Tr. Jenkins, \textit{WLW}, p. 139; cf. Wade-Evans, p. 92; cf. Lat A §52/56, \textit{WLW}, pp. 156–7, which gives additional information: ‘There are three things which they cannot take away from a woman, even if she is sent away for her own fault: these are, cowyll; and argyfrau, that is, the animals which she brought with her from her parents; and the animals which are rendered for wynebwerth if her husband has intercourse with another woman’.
\item Owen, \textit{WLW}, p. 66.
\end{enumerate}
\end{footnotesize}
in her discussion of the *prifai gwraig*,\textsuperscript{1212} created a table in order to make a comprehensible comparison of the five different versions of the *prifai*. This table will be referred to when necessary in the following discussion.

All the different versions mention the *cowyll*, which was the morning-gift the woman received from her husband on the morning following their wedding. This would only be due to the wife had she specifically named the chattels she wanted as her *cowyll* before she rose from the bed on the first morning after the wedding; had she not named them, they fell into the common marriage pool. Thus the *cowyll* could only be one of the *prifai* of the woman if she had named them specifically at the appropriate time following the wedding.

In the table of the different items Owen has in her article, she has equated the *agweddi* of Ior (B) with the *gowyn* of Ior (G), and as explained above, the *gowyn* of Ior (G) has already been compared to the *guardrut* of *Damweiniau Colan*. She also compares the *wynebwerth* of Bleg to the previous two items, and notes that the *sarhaed* of Ior (B) may possibly also be equated to the previous three items. She explains this by showing to other parts of the law books where if the wife leaves her husband without just cause, or if her husband leaves her for a just cause, in Ior (G) and Bleg the payment which the wife is still entitled to is called *gowyn* in the former and *wynebwerth* in the latter, is also called *sarhaed* in Ior (B).\textsuperscript{1213} She explains that:

> In the Law of Women, the editors of the Iorwerth texts would seem to be trying to use a series of terms in a specialised and restricted meaning. Cross-references suggest that some of these terms were in fact synonymous and that all in fact were some form of *sarhaed*.\textsuperscript{1214}

It is therefore not always easy to know which meaning of the words which are applicable at any given place. However, the normal use of *sarhaed* has

\begin{footnotes}
\item[1212] Owen, *WLW*, pp. 65–8, on p. 66.
\item[1213] ibid., p. 67.
\item[1214] id.
\end{footnotes}
been explained above,\textsuperscript{1215} and is a payment for insult and depended on the status of the person. For a woman the *sarhaed* was calculated from the status of a male relative: before she was married it was one-half of her brother’s *sarhaed*, and after marriage it was calculated as one-third that of her husband.\textsuperscript{1216}

The word *argyfrau* is used only in the Bleg triad and in the pentad/hexad of the Latin texts.\textsuperscript{1217} It seems like a very reasonable privity, since it was the personal property that a woman brought into the marriage. Therefore, had she been married for less than seven years, it would be her entitlement to bring her personal contribution out of the union,\textsuperscript{1218} but if she had been married for more than seven years, her *argyfrau* would have become a part of the common marriage pool, of which she would be entitled to half of the full value if the marriage ended after the seven years had passed. Whereas the *agweddi* was a specific sum which depended on the status of the woman before her marriage, the *argyfrau* was her contribution of the marriage goods.

The *amobr* of Lat B and E cannot possibly be the same as the *amobr* discussed above in 8.3.1.1. *Amobr*, if it is to be regarded as one of the privities of a woman, since the *amobr* previously discussed a payment due to the woman’s lord, and the woman would thus never have been in possession of this payment. Owen notes that this item ‘cannot be properly regarded as *prifai*’, and the mention of the *amobr* in Lat B and E must therefore be a mistake.

However, because of the close relationship between Bleg and the Latin texts and since the word *argyfrau* is only found in these texts,\textsuperscript{1219} while Ior is generally considered to be the text with the reliable

\textsuperscript{1215} For more information, see 8.3. The life-cycle of women.

\textsuperscript{1216} Ior §46/1–2.

\textsuperscript{1217} For more information on the *argyfrau*, see 8.3. The life-cycle of women.

\textsuperscript{1218} cf. Ior §45/2.

\textsuperscript{1219} The triad is also found in Cyfn §73/13c regarding the things a woman will still be entitled to if she is left for her own wrongdoing.
terminology,\textsuperscript{1220} it is more probable that it is the *cowyll*, *gowyn*, and *sarhaed* which cannot be taken from the woman for any reason. If Owen is correct in her comparison of the *gowyn* of Ior (G) to the *agweddi* of Ior (B), the *gwarthrudd* of *Damweiniau Colan* and the *wynebwerth* of Bleg, it means that the two Ior versions give the same information as each other and as the *Damweiniau Colan* version, and the only difference in Bleg is the use of *argyfrau* instead of *sarhaed*.

8.6. Divorce.

Thus far there have been mentioned the privy things that no one can take away from a wife upon divorce, even though she was as fault, but no explanation of the reasons for divorce. The entitlement to each spouse depends on whether one of them had left for a good reason or was wrongfully repudiated, or if one of the partners left without a good reason or was rightfully repudiated.

8.6.1. Grounds for divorce.

While the legal grounds for divorce for a woman in the Irish laws is collected in two heptads,\textsuperscript{1221} which means that there are fourteen grounds for divorce for a woman,\textsuperscript{1222} there are only three justified grounds for divorce for a woman in the Welsh laws. These are found in Ior §45/4:\textsuperscript{1223}

\begin{quote}
Os y g6r a uyd clauur, neu anadyl drewedic, neu na allo ymrein, os a achos un o’r [try] pheth hynny yd edeu hi euo, hi a dyly caffel c6byl o’r eidi.
\end{quote}

\textsuperscript{1220} This is also noted by Jenkins, *WLW*, p. 76.

\textsuperscript{1221} i.e. Heptads 3 and 52.

\textsuperscript{1222} The grounds for divorce for a husband in the Irish laws are found in a heptad which is quoted in a gloss on *Gúbretha Caratniad* §44, and we therefore only have evidence for seven grounds for divorce for men other than mutual consent. However, a short text on marriage and divorce, called *Tract on Marriage and Divorce* in *CCIH*, contains more information on offences committed by a spouse against the other (a total of 23 offences, of which 8 are sexual in nature), and arrangements on divorce. The tract, which is also referred to as *Cáin Lánamna Bec*, is found in *CIH* 144.15–150.16, for more information, see *CCIH*, pp. 306–7. For a discussion on this text, see Kelly, ‘The Place of Women in Early Irish Society, with Special Reference to the Law of Marriage’, pp. 159–79.

\textsuperscript{1223} Cf. Lat A §52/54; Cyfn §73/15b.
If the man is leprous or his breath stinks or he cannot copulate – if she leaves him because of one of these three things – she is entitled to have all that which is hers.\textsuperscript{1224}

Therefore, if a wife left her husband for one of these three reasons, she would be entitled to everything which was hers, not just her privities which were discussed in the previous section. Only one of the reasons has been further explained in the laws:

\begin{quote}
\textit{O deruyd y wreic, \textrenewcommand\arraystretch{1.5} [o] achos mynnu yscar, dywedut na allo y g\textsuperscript{6}r hymrein, kyufreith a eirch y proui. Sef ual y proui: tannu llenlliein wenn newyd olchi adanadunt; a mynet y g\textsuperscript{6}r ar warthaf honno y uot genti; a phan del y ewyllis y ell\textsuperscript{6}ng ar y llenlliein. Ac o geill hynny ual y gwelher ar y llenlliein, dogyn y\textsuperscript{6} 6 ida6, ac g\textsuperscript{6}edy hynny ny eill hi yscar ac euo o`r achos honno. Ac ony eill ynteu hynny, hi a eill yscar ac ef a mynet a`r etidi yn c\textsuperscript{6}byl.}\textsuperscript{1225}
\end{quote}

If it happens that a woman, because she wants parting, says that her husband cannot copulate with her, the law requires it to be proved. This is how it is proved: a white sheet newly washed is stretched under them, and the man goes onto it to have intercourse with her; and when his desire comes let him ejaculate it upon the sheet. And if he can do that so that it is seen upon the sheet, it is sufficient for him, and after that she cannot part with him for that reason. And if he cannot do that, she can part with him and take all that is hers.\textsuperscript{1226}

Therefore, if it was clear to everyone that he was indeed able to ejaculate, the woman would not be able to divorce him for that reason, or to claim that he was unable to copulate after that. But if he was unable to ejaculate on the

\begin{itemize}
\item \textsuperscript{1224} Tr. Charles-Edwards, \textit{WLW}, p. 165.
\item \textsuperscript{1225} Ior §54/1–3, \textit{WLW}, p. 176.
\item \textsuperscript{1226} Tr. Charles-Edwards, \textit{WLW}, p. 177.
\end{itemize}
sheet, the woman was entitled to part from him and still take everything she was entitled to have upon a divorce. The exact measures of the things a woman was entitled to depended on how long the marriage had lasted. If it had lasted for less than seven years, she was entitled to her *agweddi* and her *argyfrau*, and if she had been given as a virgin she would also be entitled to her *cowyll*. The value of the *agweddi* would depend on the considerations of how the union was entered, whether it was by gift of kin, elopement or abduction, and it is also clear that in some of these instances the wife would not have brought an *argyfrau* into the union. However, if she left her husband for a different reason than the three reasons quoted above, or if her husband had rightfully repudiated her, she would only be entitled to her privities. There is also a final reason for a woman to leave her husband rightfully, which is if she has found him with another woman as many as three times.

### 8.6.2. Division of assets.

If the union had lasted for more than seven years, the laws state that they should ‘divide into two halves everything that is theirs in their possession’. At first glance it seems that everything should be divided equally between the two spouses, but the laws are far more complex than that. Though Ior §44/3 explains that ‘it is for the woman to divide and the man to choose’, the text still sets out a very specific set of rules for how every possession is to be divided, and it is difficult to see how the wife is to divide the assets with such a strict set of rules. The text starts the division thus:

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1227 Ior §45/2. Cyfn §73a gives a much more complicated division of assets when the marriage has lasted less than seven years, and this division is very similar to the division the Ior text gives for a marriage which has lasted for more than seven years. I believe there must have been a mistake in Cyfn, and that Ior is therefore correct, based on the massive evidence of the seven year period in which a woman is entitled to her *agweddi* if the union is dissolved; cf. Ior §44/2; §45/2; Lat Red A §51/1; §52/1; Cyfn §73/5.

1228 cf. Ior §48/4: ‘If she has an *argyfrau* let it remain unconsumed until the end of the seven years’.

1229 Cyfn 73/23a; Ior §51/4; Lat A §52/60. For more information, see 8.6.2. Division of assets.

1230 Ior §44/2, *WLW*, pp. 163–4; cf. Lat A, §52/2; Cyfn §73/8.
Y moch y’r g6r, a’r deuieit y’r wreic. Ony byd ont y neill, eu rannu yn deu hanher. Ac os deuieit a ge[i]uyr a uyd, y deuieit y’r g6r, a’r geiuyr y’r wreic.\textsuperscript{1231}

The pigs go to the man and the sheep to the woman. If they only have one kind, they are to be divided into two halves. And if there be sheep and goats, the sheep go to the man and the goats to the woman.\textsuperscript{1232}

Again, if there is only one kind of the latter, they too are to be divided into two halves. The beginning of Ior §44/3 could therefore mean that the wife divides the assets if they do not have the two kinds, and the husband chooses which of the two halves he would like.

The text continues with the division of children, and gives the division as ‘two parts go to the father, the eldest and the youngest, and the middle to the mother’.\textsuperscript{1233} Exactly how closely this division was followed is difficult to say, but there is a clear reason for the eldest and youngest son going to the father, which will be made clear below in the section on inheritance.\textsuperscript{1234} It is interesting that while the Welsh laws have the division of the children among the first things mentioned in case of a divorce, the children are not mentioned in the Irish laws at all when it comes to their sharing after the divorce. This could be because of the institution of fosterage in the Irish laws, where the children would spend a great deal of their childhood away on fosterage, while the Welsh laws make it clear that the children are to be in the vicinity of their father until marriage. However, even in the case the Irish fosterage, it is noteworthy that there is no mention of what happened to the children if the foster-parents divorced.

\textsuperscript{1231} Cont. Ior §44/3, \textit{WLW}, p. 162.

\textsuperscript{1232} Tr. Charles-Edwards, \textit{WLW}, p. 163.

\textsuperscript{1233} Ior §44/4; cf. Cyfn §73/9.

\textsuperscript{1234} For more information, see 8.7. Sharing the patrimony.
After dividing their animate possessions, the text starts the rules regarding the division of inanimate possessions. First are the household goods:

\[\text{Y dotdrefyn ual hyn y rennir: llestri y llaeth oll, eithyr un bayol ac un dysgyl, y'r gwreic yd a, a'r deu hynny y'r g6r.}\]

The household goods are divided as follows: all the milk vessels, except for one pail and one dish, go to the woman, and those two go to the man.

This division is quite close to the Irish division where the woman gets all the vessels, but the Welsh laws allow the man two pieces of household goods, i.e. a pail and a dish. However, the man is entitled to more vessels than these, as he also gets all the drinking vessels. The wife, on the other hand, is entitled to a car and yokes. The wife is also entitled to the fine sieve, but the man gets the riddle. These latter divisions seem very different from the Irish laws where the man’s and woman’s domains are emphasised by the division of assets in case of a divorce, and the woman will normally get a larger percentage of anything to do with the household, as well as milk and wool, since the woman was expected to be in charge of the milking and the raw materials from which she could make garments. However, in the light of the division of children, and the division of the following items in the paragraph, it cannot be said with any degree of certainty that these divisions were always followed:

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1235 Ior §44/14 also deals with animals, but animals of lesser value than the ones that have been dealt with above, and states that the man is entitled to all the hens as well as one cat, while the rest of the cats go to the woman.

1236 Ior §44/5, WLW, p. 162.

1237 Tr. Charles-Edwards, WLW, p. 163.

1238 Ior §44/5/4, WLW, pp. 162–3.

1239 Ior §44/5, WLW, pp. 162–3.

1240 Ior §44/7, WLW, pp. 162–3.
The man is entitled to the upper stone of the quern and the woman to the lower. The bedclothes which are over them shall belong to the woman. The clothes which are under them belong to the man until he marry. And when he marries, let him release the clothes to the woman. And if another woman sleeps upon the clothes, let him pay her face-value to her.\textsuperscript{1242}

It is difficult to say whether the husband and wife would divide the two stones for the quern in the way that the text explains, or divide the bedclothes with the upper clothes for the woman and the lower clothes for them man. There is a possibility that the author of the text is trying to make each spouse receive a share equivalent to a half of each item, and thus dividing these possessions in such a way. The reason for the wife receiving her honour-price, \textit{wynebwerth}, if another woman slept on the bedclothes she had shared with her husband is likely to be a residue of the law that says that:

\begin{quote}
Three times a woman has her \textit{wynebwerth} [from her husband] when he has a connexion with another woman, and if she suffers it beyond that she gets nothing.\textsuperscript{1243}
\end{quote}

However, the equivalent passage in Ior states that the wife is entitled to \textit{gowyn} when she finds her husband with another man. The value of the \textit{gowyn} changes for each time:

\begin{footnotes}
\textsuperscript{1241} Ior §44/8–9, \textit{WLW}, p. 162; cf. Cyfn §73a/3.
\textsuperscript{1242} Tr. Charles-Edwards, \textit{WLW}, p. 163.
\textsuperscript{1243} Cyfn §73/23a, \textit{WLW}, pp. 138–9.
\end{footnotes}
let her husband pay her six score pence the first time, and a pound
the second time. If she finds him a third time she can part with him
without losing anything of what is hers.\textsuperscript{1244}

To complicate the matter even further, the Lat A text says that a woman was
entitled to her \textit{wynebwerth} three times for this exact reason, but it also gives
almost the same values which were given to the \textit{gowyn} of Ior:

for the first time, half of a pound; for the second time, a pound; for
the third time, let her depart free together with her entire \textit{dos} and that
which is hers by right.\textsuperscript{1245}

The bedclothes are also mentioned in the next division of assets in Ior,
stating that the man should have:

the cauldron and the blanket and the pillows of the bed and the
coulter and the wood-axe and the auger and the \textit{pergyng} and all the
sickles except for one sickle, the latter goes to the woman.\textsuperscript{1246}

This seems to imply that the bedclothes consist of two separate sheets, one
to stretch on the bedding, another to put between the blanket and the lower
sheet, and pillows to rest the heads on. The woman will only get the top
sheet, while the man gets the bottom sheet, the blanket an the pillows, but
the bottom sheet will only be his until he remarries, at which point it is
given to the woman.

The Welsh woman receives a larger share of tools than the Irish
woman was entitled to. The previous section has already stated that she is
entitled to one sickle, but the text continues to give the woman many more
tools:

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1244} Ior §51/4, \textit{WLW}, pp. 170–3.
\item \textsuperscript{1245} Lat A §52/60, \textit{WLW}, pp. 159–60.
\item \textsuperscript{1246} Ior §44/10, \textit{WLW}, pp. 162–3.
\end{itemize}
\end{footnotesize}
To the woman belong the pan and the tripod and the broad axe and the billhook and the ploughshare and all the flax and the linseed and the wool and the trithgwd except for gold or silver, and the latter, if there is any, is divided. By the trithgwd is meant the handbags and what is in them except for gold and silver.\(^\text{1248}\)

In the Welsh laws, too, the woman will get the flax, the linseed and the wool, just like the woman did in \textit{CL}. The latter sentence seems to mean that the woman is entitled to the handbags, while the gold and silver, if there is any in the bags, will be divided between the two spouses.

The next item to be divided is quite interesting from the point of view of the Irish laws: ‘If there are any webs they are divided’.\(^\text{1249}\) This is the complete opposite of the rules of division of assets in the Irish laws, where the woman will receive a higher percentage of the items she has spent the most time on. It is highly probable that the woman is the one to have woven the fabrics, and had this been in Ireland, she would then be entitled to an equal percentage of the finished garments, but less than an equal share if the garments were not finished.\(^\text{1250}\) However, in this case it seems that the husband and wife are sharing these fabrics equally regardless of whether the products are finished or not. The same paragraph continues in an interesting fashion by stating that the balls of wool go to the sons if the couple has children, if they do not have sons the balls will be divided equally between the spouses.\(^\text{1251}\) It is unique in the laws not only that the children are both divided in case of a divorce, but also that they are the recipients of parts of

\(^{1247}\) Ior §44/11, \textit{WLW}, p. 162

\(^{1248}\) Tr. Charles-Edwards, \textit{WLW}, p. 163.

\(^{1249}\) Ior §44/12, \textit{WLW}, pp. 162–3.

\(^{1250}\) For more information, see 2.5.4.6. The division of handiwork.

\(^{1251}\) Ior §44/12, \textit{WLW}, pp. 162–3.
the material goods, though the balls of yarn are the only goods the sons are entitled to until the inheritance is divided.

Except for Ior§44/14 which deals with the division of hens and cats, the main part of the rest of the division deals with food. While the man is to receive all the corn, both what is above the ground and what is under the ground, the woman is entitled to much of the fresh meat:

\[
Y \text{ b}6y\text{t } u\text{al } hynn \ y \text{ rennir}; \ y \text{ wrei}c \ bieu \ y \text{ kic } \text{yn } \text{heli}, \ a' \text{r } \text{g}6r \ bieu \ g6edy \ c\text{roc}\text{cer}; \ y \text{ wrei}c \ bieu \ y \text{ kic } b61ch \ a'r \ ka6s \ b61ch; \ y \text{ wrei}c \ bieu \ kymeint \ [o \text{ ula}6t] \ ac \ a \ allo \ y \text{ r}6ng \ \text{nerth } y \text{ d}6y \ \text{vrei}c \ a'e \ \text{deu } \text{lin } y \text{ d}6yn \ o' \text{r } \text{gell } \text{hylt } y \text{ ty}.
\]

The food is divided as follows: to the woman belongs the meat which is in salt, and after it is hung up it belongs to the man; to the woman belongs the cut meat and the partly-used cheese; to the woman belongs as much flour as she can carry by the strength of her arms and her knees from the larder to the house.

Thus, the woman is entitled to the salted meat and the meat that has been cut, while the man is entitled to the cured meat. The woman is also entitled to the ‘partly-used cheese’. The significance of the ‘cut meat’ and the ‘partly-used cheese’ must be that these foods have been prepared in a way that they are already being used, and it is likely to be because of this preparation that the wife gets these pieces of food. The man will get the rest of the flour after the woman has taken as much as she can carry in her two arms from the storage house to the main house.

The final item to be divided is the clothes:

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1252 Ior §44/14 states that all the hens go to the man, and all the cats but one go to the wife.

1253 Ior §44/13, WLW, pp. 162–3.

1254 Ior §44/15–17, WLW, p. 162.

1255 Tr. Charles-Edwards, WLW, p. 163.
Pob un onadunt bieu y dillat dyeithyr y mentyll; a’r mentyll, eu rannu.¹²⁵⁶

To each of them belong their clothes except for the cloaks; and the cloaks are to be divided.¹²⁵⁷

The final part of the paragraph qualifies the entire division process, by adding what were to happen if the man was privileged:

Os y gër a vyd breinha6l, dangosset y vreint kynn rannu. A gëdëy kaffo ef y vreint, ranher mal y dywedassam ni uchot.¹²⁵⁸

If the man is privileged, let him reveal his privilege before the division. And when he has received whatever his privilege entitle him to, let the division proceed as we have said above.¹²⁵⁹

Therefore, if the man is privileged, and should receive a larger share of assets because of that, he is to first get his privilege before the rest of the assets will be divided according to the rules set out in Ior §44 as if the assets he first received had never been a part of the marriage pool.

The division of assets in the Welsh laws resemble the Irish laws in that there is a strict set of rules describing how every type of asset were to be divided, but the basis of the divisions differ greatly. The evidence from the Irish laws emphasises the everyday life of the husband and wife, and gives the person who has done the highest amount of work a proportionally higher percentage of the finished or unfinished products. The Welsh laws, on the other hand, seem to emphasise the equality of the shares. The implication of every type of marriage developing into priodas after the passing of seven years was that the laws stressed that when a union had

¹²⁵⁶ Ior §44/18, WLW, p. 162.
¹²⁵⁷ Tr. Charles-Edwards, WLW, p. 163.
¹²⁵⁸ Ior §44/19, WLW, pp. 162–3.
reached this status everything was to be divided into two halves. It has just been shown that the assets were in fact not divided into two equal halves, but instead there was an approximate half of the assets given to each of the spouses. Even if the two halves did not consist of the exact same type of assets, there was an approximate equal value to each half.

8.7. Sharing the patrimony.
There are very specific rules to inheritance of land in the Welsh laws, just like there are in the early Irish laws, and they give a fascinating picture of the structure of the medieval Welsh society. Charles-Edwards has laid out the main sentences as they appear in Cyfn, with additions from Ior:

1. Three times is land shared between kinsmen: first, between brothers; then between first cousins; a third time between second cousins. \(WML^{1261}\) 50.2–4
2. From then on there is no lawful sharing of land. \(WML\ 50.4–5\)
3. When brothers share their father’s holding between them, the youngest gets the special homestead and eight acres and all the equipment and the cauldron and the wood-axe and the coulter. \(WML\ 50.5–8\)
4. For the father can neither give them nor bequeath them except to the youngest son. \(WML, 50.9–10\)
5. And though they be pledged they never become forfeit. \(WML\ 50.10–11\)
6. Then let each brother take a homestead and eight acres. \(WML\ 50.11–12\)
7. And the youngest shares, and from eldest to next eldest they are entitled to choose. \(WML\ 50.12–13\)

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\(^{1260}\) For the specific paragraphs which contain the laws of sharing the patrimony, see *EIWK*, p. 211 n. 162.

\(^{1261}\) = Wade-Evans, *Welsh Medieval Law*. 

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8. No one is entitled to claim resharling except the one who did not get a choice, since there is no sur-payment together with choice. (*WML* 50.14–15.)

[9. And after the brothers are dead the first cousins are entitled to divide equally if they want to. This is how they are entitled: it is right for the youngest son’s heir to divide equally, and for the eldest son’s heir to choose, and so from the eldest to the next eldest down to the youngest. And it is right for that sharing to be among them during their lifetime. (Ior 82/8–9)

10. And if the second cousins do not like the sharing which their fathers had, they are entitled to equalize, like the first cousins; and after that distribution, no one is entitled to equalize or to change. (Ior 82/10)]

Charles-Edwards has clearly added the two last paragraphs from Ior since the first paragraph from Cyfn mentions the three sharings, but the rest of the text only explains the first. In order to get the full understanding of the text, the last two paragraphs explaining the sharing between first cousins and second cousins have been added to the Cyfn text. He notes that the above text belongs to the most conservative part of the Welsh laws on land, and that it is therefore a strong possibility that these laws show the system which was used long before the law books were written. 

The first sentence describes the three times the land is to be shared. The first time is between brothers, and happens when a father has died. The way this is to happen is described in the third and seventh sentences: first the youngest brother is to get the ‘special homestead’ as well as eight acres of land, all the equipment, the cauldron, the wood-axe and the coulter. After the youngest has divided the land into equal shares, the eldest first chooses his share, then the second eldest, and so on until there are no shares left. Ior expands on the principle of the sharing of the patrimony and states that:

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1262 *EIWK*, p. 212.

1263 id.
If there be no buildings on the land, the youngest son is to divide all the patrimony, and the eldest is to choose; and each, in seniority, choose unto the youngest. If there be buildings, the youngest brother but one is to divide the tyddyns, for in that case he is the meter; and the youngest have his choice of the tyddyns: and after that he is to divide all the patrimony; and by seniority they are to choose unto the youngest: and that division is to continue during the lives of the brothers.1265

This law has a clear resemblance to the Irish laws, in which the youngest son divides the land while the eldest son chooses. The main difference is that in the Welsh laws it is the youngest son who is entitled to the ‘special homestead’, while it is likely to have been the eldest son who inherits his father’s house in the Irish laws. Charles-Edwards suggests that the reason for the youngest son to inherit the paternal house is that it would delay the time when the son will take over the farm from his father.1266 This is also the reason why the eldest and the youngest sons go to the father if a married couple divorces,1267 since he was to receive the paternal house. According to Charles-Edwards, the ‘special homestead’ not only comprised the paternal house, but also the farm buildings which belonged to the father, and the

1264 ALW, p. 168, Venedotian Code, Book II, xii. iii., = Ior §88/2.
1265 ALW, p. 169.
1266 EIWK, p. 213.
1267 For more information, see 8.6.2. Division of assets.
immediately surrounding land,¹²⁶⁸ and the lines from Cyfn give additional information, saying that the immediately surrounding land consists of eight acres of land, and he is also to receive all the equipment, the cauldron, the wood-axe and the coulter.¹²⁶⁹ As we have seen from Ior above, the youngest son is to divide the land in equal portions so that the eldest brother can make his choice for his share, but this is only if there were no buildings on the land. If, however, there were buildings on the land it was ‘the youngest brother but one’, who was to divide the land, since the ‘special homestead’ had already been given to the youngest brother, and he was therefore not to get a choice of the shares. According to Cyfn, the father was only entitled to give the ‘special homestead’ to the youngest son.

The eighth sentence from Cyfn states that the only person who could claim a resharing of the estate is the youngest son if there were no buildings, or the second youngest if there were buildings on the land, since the youngest son had his share given to him first in this case. The reason for this person being the only person entitled to ask for a resharing is that he did not get a choice in which share he was to receive, since he would receive the last share.

The last two sentences Charles-Edwards has quoted are from Ior, and give additional information on the sharing of the land after the brothers have passed away. First, the first cousins will get their shares, and they follow the same principle as the sons first did, i.e. the youngest divides and the eldest chooses. After the first cousins have passed, the second cousins share the land after the same principle as the sons and first cousins did before them. After the second cousins had shared the land, it was not lawful to share it again.

It seems that the terms first and second cousins are used in order to make clear which part of the kin-group which is referred to, instead of using the terms for grandsons and great-grandsons as the terms were in the Irish laws. Hence, in the Irish laws the focus of the kin group was on the common ancestor instead of the contemporaneous kin, while in the Welsh laws the

¹²⁶⁸ EIWK, p. 215.
¹²⁶⁹ EIWK, p. 212.
focus was on the relationship the persons who were to share the patrimony had in relation to each other, not to their common ancestor. In fact, the Welsh and the Irish laws are discussing the same kin groups: the Welsh second cousins are the same as the youngest members of the Irish derbhine, while the Welsh first cousins would be the youngest members of the Irish gelfine.

8.7.1. Female inheritance.
Just like the Irish rules governing inheritance, the Welsh laws also stated that women were not to inherit land. In both legal systems, daughters were entitled to a share of their father’s moveables. As explained in Chapter 7 ‘The passing of property’, the daughters in the Irish laws were entitled to an equal share of their father’s moveables as their brothers. In the Welsh legal system, on the other hand, the daughters were only entitled to a share in their father’s moveables to half the value of that which their brothers were entitled to. This means that a daughter would receive half the value of moveables as her brother, and no land, since only male heirs were entitled to land.

The laws have a section entitled ‘A woman is not to have patrimony according to the men of Gwynedd’, which begins:


According to the men of Gwynedd a woman is not to have patrimony, because two rights are not to centre in the same person;

1270 Jenkins, WLW, p. 86.
1271 Ior §53/8, WLW, pp. 174–5.
1272 ALW, p. 175.
1273 ALW, p. 174, Venedotian Code, Book II, xv, i.
those are, the patrimony of the husband, and her own: and since she is not to have patrimony, she is not to be given in marriage, except where her sons can obtain patrimony: and if she be given, her sons are to have maternity.\textsuperscript{1274}

Thus, the justification for a woman not being entitled to patrimony is that if she were to receive patrimony, and her husband had his patrimony, she would have two patrimonies. Therefore, since she is not entitled to patrimony, she is only to be given in marriage to a man who has patrimony since her sons will not be able to obtain patrimony otherwise.

However, there is one law which gives a woman the possibility of inheriting land. This seems to happen in the same circumstances as in the early Irish laws:

\textit{Onnybyd y berchenna\textsuperscript{6c} tir etiued arall namyn merch y verch avyd etiued or holl tir.}\textsuperscript{1275}

If an owner of land have no other heir than a daughter, the daughter is to be heiress of the whole land.\textsuperscript{1276}

This shows that also in the Welsh laws, which seem to have been much more restrictive regarding women and property, a woman had a possibility of becoming a female heir. Since the Welsh laws did not allow for polygyny, this must have happened more often than in early Irish society.\textsuperscript{1277} But whereas the Irish laws have clear rules, and set laws regarding a woman inheriting property, the Welsh laws do not seem to have an equivalent.

\textbf{8.7.1.1. The sons of an \textit{alltud}.}

The text continues to give an exception to the above rule, and states that:

\hspace{1cm} \textsuperscript{1274} \textit{ALW}, p. 175; \textit{LTMW}, p. 107.
\hspace{1cm} \textsuperscript{1275} \textit{ALW}, p. 544.
\hspace{1cm} \textsuperscript{1276} \textit{ALW}, p. 545, The Dimetian Code, Book II, xxiii, vii.
\hspace{1cm} \textsuperscript{1277} cf. 3.2.1. The approximate occurrences of female heirs.
Some say, that the sons of no woman are to have an inheritance by maternity, except for the sons of one woman; and that one is, a woman whom her father and her brothers shall give legally in marriage to an alltud. Others say, that though her kindred shall give her in marriage to an alltud, yet, if she be not given by those above names, her sons are not to have patrimony.\footnote{1279}\

The laws therefore state that if a woman is legally given in marriage to an alltud, ‘alien’, by her father and her brothers, her sons are entitled to receive inheritance by mother-right. Again, there are strong connections to the Irish laws, in which the sons were only entitled to inherit through their mother if either there were no sons, so the mother was a banchomarbae and she was married to her cousin who would be in line to inherit the land, or if she had children by an alien, and her sons were not entitled to landed inheritance in any other way. Whereas the sons of an alien in Ireland would only be entitled to the orbae niad, ‘the inheritance of a sister’s son’, the sons of an alien in Wales was entitled to the full amount of land that they would have been entitled to had their father not been an alien. However, this inheritance is not the exact same as that which they would have received otherwise, since they would not be entitled to the ‘special homestead’ until the third generation:

\footnote{1278}{ALW, p. 174, Venedotian Code, Book II, xv, ii.}
\footnote{1279}{ALW, p. 175; cf. LTMW, p. 107.}
If a Welshwoman is given to an alien, her children will get a share of land, except the special croft. That they will not get until the third generation.\textsuperscript{1281}

Therefore the youngest son will not receive the paternal house, which in this case would be the house of his maternal grandfather, since his father would not be in possession of land for the children to inherit. However, the paternal house is not lost from them forever, since they will be entitled to it until the third generation. Charles-Edwards explains this as the pre-eminence of the paternal house representing the continuity of the lineage.\textsuperscript{1282} According to Ior §53/2, there is one exception to this rule, and that is the son of a foreign chief, since ‘the latter gets a share of everything’.\textsuperscript{1283} The texts mention a specific term used in conjunction with the sons of aliens; the cattle of dark ancestry:

\textit{Meibon y ry6 wraged hynny y telir gwarthec dyuach onadunt. Sef achos y gelwir yn warthec dyuach, canyt kenedyl y tat a‘e tal namyn kenedyl y uam.}\textsuperscript{1284}

It is the sons of such women for whom "cattle of dark ancestry" are paid. This is the reason why they are called cattle of dark ancestry, because it is not the kindred of the father which pays them but the kindred of the mother.\textsuperscript{1285}

\textsuperscript{1280} Cyfn §73/28–29, \textit{WLW}, p. 142; cf. Ior §53/2.
\textsuperscript{1281} Tr. Charles-Edwards, \textit{WLW}, p. 143.
\textsuperscript{1282} \textit{EIWK}, p. 215.
\textsuperscript{1283} Ior §53/2, tr. Charles-Edwards, \textit{WLW}, p. 175.
\textsuperscript{1284} Ior §53/3, \textit{WLW}, p. 174.
\textsuperscript{1285} Tr. Charles-Edwards, \textit{WLW}, p. 175.
The kindred of their father is therefore not responsible for the children, as they would normally have been had the children been born to a non-alien father, and not only do they inherit through their mother’s kin, but her kin is also responsible for them: they will pay the fines on their behalf, but they will also receive the fines that are paid for offences committed against these children. The implication of this son being a part of his mother’s kin, and his father being landless, is that when he inherits his maternal grandfather’s land, he will be his father’s lord:

If it happens that an uchelwr gives his daughter to his own alien, and that they have male children and after that the uchelwr dies and the alien’s sons get mother-right to their grandfather’s land: they will be lords over their father.1286

Though the text states that only the sons born to a woman who is legally given to an all tud are entitled to inherit through their mother, it gives another two exceptions:

\[Teir\ \text{g6raged} \ \text{a} \ \text{dyly eu meibon uam6ys herwyd kyureith: mab Kymraes a roder y alltut, a mab g6reic a 6ystler y wlat anghyfieith, o cheiff beichogi a’e g6ystla6 o’e chenedyl a’e hargl6yd, a gwreic a dycco alltut treis [arnei].}\] 1287

Three women whose sons are entitled to inheritance through the mother, according to law: the son of a Welshwoman who is given to a foreigner, and the sons of a woman given as a hostage to a country with another language, if she becomes pregnant and has been given as hostage by her kindred and her lord, and a woman who is raped by a foreigner.1288

1286 LTMW, p. 115.
1287 Ior §53/5, WLW, p. 174.
1288 Tr. Charles-Edwards, WLW, p. 175.
All of the above sons entitled to inherit through their mother are thus sons to foreigners, but only one is given in marriage by her kin. This woman is therefore the same woman as the first woman whose sons are entitled to inherit through mother-right mentioned above. The second woman is a woman who has been given as a hostage to another country, and has become pregnant while in this hostage-ship. Again, the persons giving the woman need to be the persons in charge of her for the sons who were conceived while she was a hostage to be entitled to inheritance by mother-right. Like the first woman had to be given by ‘her fathers and her brothers’, the second woman had to be given as a hostage by ‘her kindred and her lord’. The third woman whose sons are entitled to inheritance through their mother is the woman who is raped by a foreigner. This is going against the previous rule set out in 8.4.1.6. *Beichogi twyll gwreic llwyn a pherth* which states that if a man impregnates a woman of bush and brake, he is responsible for the children to come from such a relationship. In case of a woman being raped by a foreigner, on the other hand, the woman is responsible for the child, and the child will therefore be entitled to inherit through his mother. However, if a woman has given herself to an alien, her sons will not be entitled to inheritance by mother-right.

### 8.7.1.2. Inheritance from a woman.

Even though the Irish laws state that only in exceptional circumstances can a woman inherit land, there are still specific law texts dealing with the subject of where this inheritance would go once the woman died. The Welsh law texts do not concern themselves with this topic at all, even though there were specific laws regarding *mamwys*, ‘inheritance through mother-right’. This is most likely because a woman did not inherit land in her own right in

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1290 *WLW*, p. 175.
1291 *LTMW*, p. 108; *ALW*, p. 177.
1292 For more information, see Chapter 7 The passing of property, esp. 7.3. The distribution of a woman’s property.
1293 McAll, *WLW*, p. 22.
the Welsh laws. There is evidence of her sons inheriting through mother-right, but this inheritance will come directly from their maternal grandfather, not from their mother, and is therefore an inheritance by mother-right only because of which branch of the kin the property originated from, not because it comes directly from their mother. It is also clear from the law texts that while there is a certain amount of property that a woman can call her own, they are hardly ever in her possession: they are either kept in together with her husband’s moveables, but not consumed, for the first seven years of marriage, or they were kept in the common marriage pool after the marriage had lasted for more than seven years. When a woman divorced she most likely went back to her father’s house, which would have become her brother’s house in case of her father’s passing, or, if her sons were grown up, she would stay with them, and therefore keep her valuables together with, but still distinct from, her father’s, brother’s or son’s valuables.\textsuperscript{1294}

8.8. Women’s legal capacity.

It is becoming clear from the laws that have been examined thus far that women did not have a great deal of legal capacity in the Middle Welsh laws. The only legal capacity specifically stated is that a woman is only entitled to buy or sell without her husband’s permission if she is \textit{priod},\textsuperscript{1295} which, as we have seen above, she would be if her sexual relationship had lasted for more than seven years. The implication of her being entitled to buy and sell without her husband’s permission once she is \textit{priod} is that she could buy and sell with his permission before she was considered \textit{priod}, but the texts are silent on this topic. The rest of the laws dealing with the legal capacity of women follow the same trend of women not having a large amount of legal capacity on their own behalf.

\textsuperscript{1294} Ior §45/9 states that if a husband and wife divorce, she is entitled to stay in the house ‘until the nine nights and the nine nights are up’ and then she is to leave with all her valuables in front of her. There is no mention, however, on where she is to go.

\textsuperscript{1295} Ior §53/4.
8.8.1. Women acting as sureties or witnesses.

Ny chegein gōreic yn uach nac yn tyst ar 6r.  

No woman is competent as a surety or witness upon a man.

This is the same law as that of the Irish laws which give much the same information. However, the Irish women are entitled to act as witnesses in certain circumstances, most often in cases having to do with the female reproductive cycle. There was one case where women were able to act as witnesses against a male superior: a woman’s testimony was considered valid in the case of a woman in religious orders testifying against a cleric. The Welsh laws do not mention any exception to the aforementioned rule, but it would not be surprising if there were such an exception for women in religious orders also in Wales, since many of the same laws were valid for any members of the Church in different countries. It is also interesting to note that the paragraph only mentions that a female surety or witness is illegal against a man. This could imply that a woman could act as surety or witness against another woman, but unfortunately the laws are silent also on this matter.

8.8.2. A man repenting divorcing his first wife.

One law which differs very much from the Irish laws is regarding a woman’s freedom after divorce. The general rule is that if a man takes another wife after having divorced his first wife, the first wife is free to marry whomever she wishes:

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1296 Ior §52/6, WLW, p. 174.
1297 Tr. Charles-Edwards, WLW, p. 175.
1298 For more information, see 1.3.11. Female evidence.
1299 CIH 2197.5–6; cf. 1.3.11 Female evidence. Women were also entitled to act as witnesses in other matters, e.g. legal entry, but those matters were not considered to be against a male superior, For more information, see Chapter 5 Bantellach.
If a man would take another wife after he has parted from the first, the first shall be free.

However, if a man has first divorced his wife, but then regrets it and wants her back, he is entitled to have her back until the moment she has consummated her relationship with another man, regardless of what his wife wishes:

Thus, if the woman is so near consummation of her new relationship that she is about to get into bed with the new man, her first husband is nevertheless entitled to have her back, and she has to accept it. This probably shows the strong influence of the Church on the Welsh laws, which give strong preference to a single marriage rather than multiple marriages. Therefore, even though the husband and wife have been legally divorced, regardless of how long it has been since the divorce as long as the woman has not yet consummated a relationship with another man, the husband is

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1300 Ior §46/3, *WLW*, p. 164.
1302 Ior §46/4, *WLW*, p. 164.
entitled to get her back if he repents his decision to divorce his first wife. It is difficult to say if the laws were followed to this exact measure, but it sets an example of how far the first wife’s new relationship could go before her previous husband was no longer entitled to claim her back.

8.8.3. Bequeathing property.
All women were entitled to bequeath a part of their own property in the Welsh laws, as the women in the early Irish laws were. The Irish woman was entitled to lend, give or bequeath a certain amount of property depending on what type of wife she was, and whether this was done in the presence or absence of her husband. In the Welsh laws, the amount a woman could bequeath depended on her husband’s status:

\[G\text{6reic y brenhin a eill rodi heb ganyat trayan a del o dofot y gan y brenhin. G6reic mab uchel6r a eill rodi y mantell a’e chrys a’e phenlliein a’e hesgidyeu a’e b6yt a’e dia6n y chra6n y chell, a benffygya6 y holl dodrefyn. G6reic taya6c ny eill rodi dim namyn y phengu6ch, na benffygya6 namyn y gogyr a hynny hyt y clywer y llef y ar y tom o’e d6yn adref.}\]

The wife of the king can give without permission a third of the casual acquisitions which come from the king. The wife of an uchelwr can give her cloak and her shift and her headkerchief and her shoes and her food and her drink and the store of her larder, and can lend all her household goods. The wife of a villein cannot give anything except her headgear, nor lend anything except her sieve, and that [only] as far as her voice may be heard from the dunghill calling for it to be brought home.

\[1304\] For more information, see 2.5.2. Contractual capacity, 2.6.1. Contractual capacity and 2.6.4. The legal capacity of the different types of wife.

\[1305\] Ior §51/6–8, W\textit{LW}, p. 172.

The amount a wife could give differed greatly depending on the status of her husband: whereas the queen could give a half of the ‘casual acquisitions’ of the king, the wife of a villein could only give her headgear. The text says nothing about what the queen could lend, but based on the amount she was entitled to give without permission, it is likely to have been almost whatever she pleased. The wife of a villein, on the other hand, was only entitled to lend her sieve to the very near vicinity of the house, since she would have to be able to call for it and still be heard by the person who borrowed it.

8.8.4. Legal capacity in regard to land.
Two full chapters have been dedicated to women’s legal rights in regard to land in the early Irish laws.\textsuperscript{1307} It would therefore be very tempting to assume such rights for women in the Middle Welsh laws too. This is especially tempting since there is a very similar procedure to \textit{tellach} in the Welsh laws, called \textit{dadannudd}, which is the act of re-uncovering the fire on the paternal hearth.\textsuperscript{1308} Though there are many similarities between the two procedures, Charles-Edwards also points out the many differences in his discussion of the topic.\textsuperscript{1309} The difference that is the most important in the context of this study is that there is no suggestion of a Welsh counterpart to \textit{bantellach},\textsuperscript{1310} thus regardless of how alike or different \textit{dadannudd} possibly is to \textit{tellach}, women did not have the right to perform this legal act, and a discussion of \textit{dadannudd} is therefore irrelevant at this point. The reason for women not being entitled to re-uncover the fire at the paternal hearth is clearly because of their lack of property rights: since a woman was not entitled to be in possession of land, she would not be entitled to take possession of land she claimed to be entitled to by hereditary right, since personally she would never have had a hereditary right to the land.

\textsuperscript{1307} Chapter 4 \textit{Athgabál aile} and Chapter 5 \textit{Bantellach}.
\textsuperscript{1308} \textit{EIWK}, p. 274.
\textsuperscript{1309} For the full discussion, see \textit{EIWK}, pp. 274–303.
\textsuperscript{1310} \textit{EIWK}, p. 293.
8.9. Conclusion.

It is clear from the laws that have been examined in this chapter that though the laws in Ireland and Wales during the Middle Ages at first glance seem to be quite alike, there are many more differences than similarities. It has been shown that the differences start as early as childhood, where the Irish girl would be sent away on fosterage, while it was of great importance to the Welsh family that their daughter was kept nearby during her childhood.

The differences continue in a woman’s married life: the Irish marriage consisted of many different types of sexual unions, which are quite similar to the sexual unions found in *Nau Kynywed Teithiauc*, but that is where the similarities stop. Monogamy was the rule in the Welsh society, to such a degree that a woman was entitled to divorce her husband and take ‘all that which is hers’ if he is found to be unfaithful. It quickly becomes clear from the Irish laws that polygyny was far from uncommon, and that there are several categories of wife, all depending on many factors such as whether she was given by her kin, whether her husband was already married, and most importantly the amount of marriage goods she brought with her into the union. Though the Welsh laws stress the importance of monogamy, the laws are not as strict regarding the honourability of the very beginning of a sexual relationship. Clearly, there was a most honourable marriage, in which a woman had been given by her kin, with all the right payments being paid to her, on her behalf or to her lord, and in this case the marriage would be considered to be of the highest status from the very beginning. But the laws seem to imply that any type of sexual union, whether by gift of kin, by abduction or by elopement could turn into a marriage of the highest status, on the condition that it lasted for more than seven years, in which case the wife would be considered *priod* and be entitled to what the lawyers call ‘one half of the common marriage pool’. It is evident from the discussion on the division of assets that this was not an actual half of all the belongings, but an equivalent to half the value of the marriage pool, counted in very specific items for the two spouses who were about to divorce.
Though every type of sexual relationship could turn into a most honourable marriage in which the wife could be entitled to half of everything in the Welsh laws, the women seem to have had much less legal capacity than their Irish counterparts, who were both entitled to inherit land in certain circumstances as well as perform certain ceremonial legal acts in order to claim land. Welshwomen had no possibility to perform the legal procedure of *dadannudd*. Both of the legal systems allow for a woman to inherit property in specific circumstances, but this could only happen if there was no male heir. Whereas the Irish laws mention this possibility reasonably often, and explain the laws regarding the *banchomarbae*, the Welsh laws seem to only have added the possibility of a woman becoming the heir of the land in the laws, but without explaining the rules surrounding a woman as a property-owner. Except for the one passage stating that a woman could become an heiress, the only other mention of women and landed inheritance was that they were allowed to pass on their father’s property to their sons in the case that they were lawfully married to a foreigner, had become pregnant while being a hostage given by their kin to a foreign country, or if a foreigner had forced himself on a Welshwoman, and the result was that she had become pregnant.

It would seem then, that though the Irish laws were written approximately half a millennium earlier than the Welsh laws, the Irish laws give many more legal rights to their women than the Welsh laws do. This is not to say that the women in either of the two societies enjoyed a large amount of legal freedom - it is important not to forget the legal maxim from both societies that a woman was always dependent upon a man - but based on the laws that have been examined in this thesis, the Irish women had a greater possibility of having some sort of legal freedom than the Welsh women did.
9. Conclusion.

Throughout the discussion in the first seven chapters, the various legal rights women had in regard to property have been examined, as well as their extended legal rights arising from their ownership of property. This discussion includes both the rights they had if they already owned property as well as their rights to claim property to which they were legally entitled. Many of these rights have been dealt with separately previously by other scholars. However, they have been discussed in depth here not only as legal rights in isolation, but also in correlation with each other in order to understand how these rights affected one another. The thesis also includes a comparative chapter on the Middle Welsh laws, i.e. Chapter Eight, in order to see the similarities and differences between different legal systems.\footnote{For the conclusion on the Middle Welsh laws, see 8.9. Conclusion.}

Property was considered to be any type of wealth, and in a farming society both animate and inanimate possessions, moveable and immovable, were considered wealth, and as an extension therefore also considered property. This is especially clear in the laws of inheritance where it is said that the land is given to the sons, while the daughters will have an equal share of the moveables to that of their brothers.\footnote{CIH 736. 26–31.} In this case, both the immovable, landed property and the moveables are considered to be inheritance of property and are therefore dealt with together. Since the basic principle regarding inheritance is that daughters are not entitled to inherit land, a discussion of women and land necessarily has to deal both with the normal cases in which the woman will only have the possibility of dealing with landed property through marriage, and with the exceptional cases in which a woman was entitled to not only deal with land, but also be considered the owner of the land. Because moveables were also considered a type of property, the discussion will also need to include moveables.

For this reason I began this thesis by discussing the basic rights any woman could have with regard to property: the rights she had in marriage.
Normally a woman was expected to bring some sort of property into the union at the time of the marriage contract, but this property is very likely to have been moveable property, not landed property.\footnote{For more information and a discussion, see 2.5. Lánamnas comthinchuir, cf. EIWK, p. 465.} The exception is the case of lánamnas fir for bantinchur co fognam, ‘the union of a man on a woman’s contribution, with service’. In this union the woman was the main contributor of land, and for this to be a possibility, she would in most cases have been a banchomarbae, ‘female heir’. The rights a woman had in marriage strongly depended on the amount of property she brought with her: the bigger a contributor she was, the more rights she had. In other words, the more equal the spouses were with regard to their contribution of goods, whether moveables or immoveables, the more equal their legal rights were too. Therefore, the wife in lánamnas comthinchuir would have a higher degree of legal independence than the wife in lánamnas mná for ferthinchur, solely because of the equality of contribution to that of her husband. This is also the reason why the wife in lánamnas fir for bantinchur co fognam had more rights than her husband, since in this union the wife had brought more goods than her husband, and the role reversal of the two spouses is clearly due to this fact.

The legal rights a woman would enjoy in marriage not only depended on the contribution she made to the union, but also on her status as a wife. There are many different types of wives mentioned in the law texts, and the three types which have been examined in this thesis are, in descending order, the bé cuitchernsa, the regular cétmuinter, and the adaltrach.\footnote{For more information on other types of women in the laws, see Nancy Power, ‘Classes of Women Described in the Senchas Már’, in SEIL, pp. 81–108.} The difference between the amount of legal independence these women had did not only depend on their status, but also on whether or not they had sons, since having sons increased the legal standing of a woman. Women became more closely tied to their husbands, and their
husbands’ kin, after having a son, which is clear from the evidence found in the *Díre*-text and other texts dealing with inheritance.\footnote{For more information, see Chapter 7 The Passing of Property, esp. 7.3.2.1. *Bretha Étgid*.}

The first of these wives, the *bé cuitchernsa*, was the woman who enjoyed the highest legal standing, and she is the only type of wife whose status was not dependent on her having sons, but rather on her original status before marriage. *CL* states that a woman could only be considered a *bé cuitchernsa* if the union was with both land and livestock ‘and if their equality of union be of equal independence [and] equal propriety’.\footnote{Translation from *EICL*, p. 73 = *CL* §5. For more information, see 2.5. *Lánamnas comthinchuir*.} Thus, the woman had to be of the same status as her husband before they entered the union, and she had to bring an equal share of ‘land and livestock’\footnote{ibid.} into the union as that of her husband. If so, she would be considered to be a co-ruler with him, and would therefore have a higher status than the regular *cétmuinter*, the other type of wife of a very high status.

The difference between these two types of wives is that of their status and social standing before the marriage was entered, and that the *bé cuitchernsa* had to bring an equal amount of property into the union as that of her husband: had she not, she would have been considered a *cétmuinter*, not a *bé cuitchernsa*, and she would not have been a wife in *lánamnas comthinchuir*. However, she would have to be a *cétmuinter* in the proper meaning of the word, i.e. a primary wife, in order to be a *bé cuitchernsa*. Therefore, in the case of *lánamnas comthinchuir*, the use of the term *cétmuinter* implies that the wife was also considered to be a *bé cuitchernsa*, as long as she was of the same status as her husband before marriage. The *bé cuitchernsa* had to be a *cétmuinter*, but a *cétmuinter* did not necessarily have the status of *bé cuitchernsa*: a *cétmuinter* could also be a wife in *lánamnas mná for ferthinchur*, and therefore have brought little or no goods into the union. But because she was a betrothed wife, and *coibche* had been paid, she would still be considered a primary wife, i.e. a *cétmuinter*. The main distinction between the two types of primary wives is therefore the

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\footnotetext[1315]{For more information, see Chapter 7 The Passing of Property, esp. 7.3.2.1. *Bretha Étgid*.}

\footnotetext[1316]{Translation from *EICL*, p. 73 = *CL* §5. For more information, see 2.5. *Lánamnas comthinchuir*.}

\footnotetext[1317]{ibid.}
amount of property brought into the union, and their status before marriage. Because the cétmuinter in lánamnas mná for ferthinchur had contributed less than her husband, her contractual capacity was proportionally less than that of the primary wife in lánamnas comthinchuir.

The last of the three types of wives which have been discussed in the chapters on early Irish law is the adaltrach, the secondary wife. It is clear even from her name that she is of a much lower legal standing than the other types of wives, and her contractual capacity is evidently lower as well. However, she is considered to be one of the ‘four legally capable women’ which are found in the commentaries to both DAC and CL, but she was only considered to be in this group if she had sons. Therefore, the ‘four legally capable women’, with a certain degree of individual contractual capacity, are the bé cuitchernsa, the cétmuinter with sons, the cétmuinter without sons, and the adaltrach with sons. These four types of wives are entitled to many of the same rights in marriage and are taken together as a group in the discussions of these rights, while the adaltrach without sons is of a much lower legal standing and her legal rights are discussed separately from the rest. The commentaries therefore often contain paragraphs such as this:

The four lawful wives give their own full honor-price from their excess for a loan and for deposit and for lending in regard to contracts and for contracts, and they give two-thirds of their own honor-price from their half of the marriage contribution, whether in the presence or whether in the absence [of their husbands].

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1318 For more information on the legal capacity of these women, see 6.4.5.1. ‘The four legally capable women’ in the commentaries. In CL, the term na ceittrí mna dlightheacha is not found in the continuous copy of the text, but rather in the commentary from Rawlinson B.506 (corresponding to CIH 89.26–90.32), translated by Eska, Cín Lánamna, Appendix 1, pp. 303–7. The term is found in the glosses and commentary to DAC, see EICL, Ch. 4, pp. 93–311. While McLeod translates the term as ‘the four legally capable women’, Eska translates it as ‘the four lawful wives’ and thus stresses the fact that their rights in CL are as wives, not as independent women.

1319 cf. 6.4.1. Women in DAC, 6.4.5.1. ‘The four legally capable women’ in the commentaries and 6.4.5.3. The contractual capacity of ‘the four legally capable women’.

1320 cf. 6.4.4. The concubine without sons, 6.4.5.2. ‘The concubine without sons’ in the commentaries and 6.4.5.4. The contractual capacity of ‘the concubine without sons’.
The paragraph shows how much both status and having sons mattered for the legal capacity of women. Since a woman was more closely tied to her husband through the birth of her sons, it is not surprising to see how much having sons mattered for the adaltrach: before she had sons her legal status would be one of absolute dependency, but after having sons her status was raised to be among the four legally capable women.

It is clear, then, that many factors were of importance for the amount of legal independence a woman would have: her status before marriage, the size of the contribution she brought into the union, the type of wife she was, in which type of union she was married, and whether or not she had sons. Having established these principles, the amount of contractual capacity a woman had in marriage becomes clear. The legal capacity of the different types of wives becomes especially clear in CL, the glosses and commentary to which explain the maximum amount a woman was entitled to lend, borrow, pledge, sell and buy depending on the factors described above.

However, the main subject of CL is the division of assets in case of a divorce, and the ways of dividing assets in the different types of unions. Here, too, the status of the spouses matters, and the assets are divided based on the three basic rules of who contributed the land, who contributed the cattle and who did the work, and all assets are therefore divided into thirds, which are described as the land-third, the cattle-third and the labour-third. For the first two thirds, i.e. the land- and cattle-thirds, it is the status of the spouses and their contribution that decide how the thirds are divided. The basic principle is as follows:

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1321 Transl. Eska, Căin Lánamna, p. 306; CIH 89.34–41.

1322 For more information on the contractual capacity of the different types of women, see 2.5.2. Contractual capacity, 2.6.1. Contractual capacity, 3.4. Lánamnas fir for bantinchur co fognam, 6.3. Women and contracts and 6.4. Di Astud Chor.
One-third of all produce [goes] to [the owner of the] land except handiwork, one-third of the cattle born during the marriage [goes] to [the owner of the] original stock from which they were born, one-third to [whomever did the] labor.\textsuperscript{1323}

Therefore, if the spouses had contributed equally, the cattle-third would be divided equally between them, and, if the paragraph is to be taken literally, so is the land-third. However, if Charles-Edwards is correct in his assumption that the mutual contribution in lánamnas comthinchuir consisted of cattle, not landed property, the husband would be the recipient of the full land-third in the case of lánamnas comthinchuir and lánamnas mná for ferthinchur, while the wife would be recipient of the full third in lánamnas fir for bantinchur, if the husband had not contributed any land.\textsuperscript{1324} If he had contributed land of any size, he would receive a proportional fraction of the land-third in this case. Therefore, the land- and cattle-thirds were divided depending on the size of land or cattle each spouse had contributed to the union.

The labour-third, on the other hand, was divided depending on the amount of labour each spouse had done, or which spouse had been responsible for the hiring of the labourers. The division of the labour-third therefore depended on the labour which had been put into each type of work, whether it was working on the field, milking the cows, tending to the pigs and so on, and this is the division with which most of CL is concerned.\textsuperscript{1325} However, this third did not necessarily go to the person who did the work. The labour-third was also concerned with the behaviour of the spouses and the reason for their separation. If they separated because of the

\textsuperscript{1323} Translation from Eska, Cáin Lánamna, p. 139, §10; cf. 2.5.4. The rules regarding divorce in lánamnas comthinchuir.

\textsuperscript{1324} For more information, see 3.4. Lánamnas fir for bantinchur co fognam.

\textsuperscript{1325} For more information, see 2.5.4.2. The division of grain, 2.5.4.3. The division of milk products, 2.5.4.4. The division of the labour-third, 2.5.4.5. The division of the salted meat, 2.5.4.6. The division of handiwork, 2.6.6.1. The division of assets and 3.4.3. The division of assets for more information on the fractions each spouse was given for the different types of work. The land- and cattle-thirds are not discussed after the initial division in CL §10, and the labour-third is the third to be divided in the rest of the paragraphs discussing the different types of work.
fault of one of the spouses, the well-behaved spouse received the fraction of the labour-third which would have normally gone to the badly-behaved spouse. But, if they had both behaved equally well or equally badly, the division of this third was to remain according to the proscribed law depending on the amount of labour they had done. Therefore, had a woman contributed little or nothing to the union, but the marriage ended for the fault of her husband, she could receive a significantly larger share of assets than she would had they both behaved equally well or equally badly.

An exception to the general division of assets in the case of divorce is the case of lánamnas fir for bantinchur co fognam. In this union it is the woman who has been the main contributor, and is therefore the recipient of the larger shares of assets, including the shares which go to the land-third. However, in this case it is not unlikely that the husband contributed a small part of land, since all sons were in line to inherit land from their father, but this assumption is only valid if the husband was from the same túath as his wife. Nevertheless, it is clear that the wife must have contributed a larger share than what the husband did: if he had contributed a larger portion of land than his wife, the union would have been one of lánamnas mná for fethinchur, while if the portions were equal it would be lánamnas comthinchuir.

The implication of the woman being the main contributor of land is that she was more than likely a banchomarbae. Since the sons normally inherited land, and a daughter could not inherit landed property as long as there was a male heir, it is not likely that she would be able to contribute a larger share of land than her husband had she not inherited it. A woman could indeed inherit personal property, or even acquire personal property through the sale of other assets, but it would be highly unlikely for this property to be bigger than the portion contributed by her husband. However, if the husband was a landless man, or from a different túath, the property the woman brought did not have to be a very large share of land. Regardless of
the reasons why the husband had little or no land, the woman being a female heir is the most likely explanation for this union to have occurred.\footnote{1326 This is also supported by the glosses on the union. For more information on the different types of husbands who were dependent upon their wife’s status, see 3.4.4. A husband as a dependant, esp. the Fuidir-text §4, and 5.3.6. The implications of female landowners.}

It is clear from the law tract that there is a complete role reversal in lánamnas fir for bantinchur co fognam to that of lánamnas mná for ferthinchur. This is confirmed in the glosses, which state that the man becomes subject to the law that the ‘above-mentioned woman is subject to’,\footnote{1327 Transl. Eska, Cúin Lánamna, p. 241; CIH 515.26–7.} and that the ‘woman becomes subject to the law that the husband was subject to hitherto’.\footnote{1328 Transl. Eska, Cúin Lánamna, p. 241; CIH 515.27–8.} The ‘above-mentioned woman’ of the glosses refers to the cètmuinter of lánamnas mná for ferthinchur. This implies that the man would get approximately the same fractions of the different types of assets as the wife of lánamnas mná for ferthinchur would in case of divorce.\footnote{1329 For a full discussion on the topic, see 3.4. Lánamnas fir for bantinchur co fognam.} In this union, however, the husband could receive a larger share of assets than he would normally receive if he were the ‘head of counsel’ in the union, meaning that he had helped his wife, who was considered to be the ‘man’ in the eyes of the law, to control and give advice on how to run the household.\footnote{1330 For more information on the division of assets depending on the status of the husband, see 3.4.1. The husband as a ‘head of counsel’.} Regardless of the amount of work the husband contributed to this union, he was considered to be a dependant of his wife. Since the wife was the main contributor of the union, her husband was economically dependent on her, and his status was accordingly dependent on the status of his wife.\footnote{1331 For more information, see 3.4.4. A husband as a dependant, esp. the evidence from the Fuidir-text §4.}

Since the child mortality rate in the Middle Ages was high, it has been suggested that approximately one out of five couples would die without a male heir.\footnote{1332 For more information, see 3.2.1. The approximate occurrences of female heirs.} However, considering that early Irish society was polygynous, the percentage of female heirs would most likely be lower than...
20%. Due to the extra costs of having multiple wives, the occurrences of female heirs would be higher in the less wealthy groups, as there would be fewer polygynous relationships in the poorer classes of society. The wealthier groups of society would be more likely to be able to afford multiple wives, and therefore their possibility of having a male heir would be proportionally higher. The evidence on the approximate occurrences of female heirs implies that the *banchomarbae* was not uncommon, and it is therefore not surprising that *lánamnas fir for bantinchur co fognam* has been treated in detail in *CL*.

Inheriting the kin-land was not the only way in which a woman could come into possession of property. There was also a type of land that parents could give to their children, both sons and daughters, which was known as *orbae cruib nó sliasta*, the ‘inheritance of hand or thigh’. This land was property which the parents had acquired through their own exertions, and was therefore distinct from the *fintiu*. Hence, the person who had acquired this land could bequeath a large portion of it freely, while the kin had claim to a fraction of it. The commentary to the Kinship Poem envisages the possibility of a woman being able to acquire such a large amount of surplus land that, when bequeathed to her daughter, her daughter could become a *banchomarbae* on account of it. In the situation pictured by the commentator the parents had no sons, and thus the daughter could inherit the land. From the evidence found in the laws, especially in the extracts from the commentary to *Bretha Étgid*, it becomes clear that even in the case of bequeathing personal property the laws of inheritance were still valid, thus a daughter could not inherit the immoveables unless she had

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1333 For more information, see 2.6.2. Types of wives in *lánamnas mná for ferthinchur* and 2.6.3. Polygyny.

1334 Though there are only three paragraphs on this union in *CL*, the glosses and commentary explain that the division of assets is approximated to that of *lánamnas mná for ferthinchur*, but that in *lánamnas fir for bantinchur* the woman will be the main contributor and will therefore receive a larger portion of the land- and cattle-thirds than her husband.

1335 For more information, see 4.3.3. ‘Women in general’ and 3.5.1. *Orbae cruib nó sliasta*.

1336 For more information, see 7.3.1.1. The Kinship Poem.

1337 For more information, see 7.3.2. The distribution of a woman’s personal property.
no brothers. One of the paragraphs dealing with the distribution of a woman’s estate is very explicit regarding the laws on this topic:

So long as there are sons, daughters never receive anything of the mother’s estate, whether they are by the same father as the sons or not.

Therefore, a daughter would only be entitled to inherit the moveables from either of the parents’ estate as long as there were sons, regardless of whether the sons and daughters were the children of different fathers or the same father. The sons would inherit the land that the mother had, in this case, gained through successful farming, or otherwise come into possession of. However, if the mother was still married to her daughters’ father at the time she passed away, and she had not borne sons to that husband, the daughters were entitled to their father’s share of their mother’s estate. This is because a husband was only entitled to a share of his wife’s inheritance if they did not have children, and the daughters only inherit life-interest in their father’s share. From the text in question, it is clear that this passage concerns the personal property of the woman, not the inherited kin-land. It is clear from the law texts that women could acquire land in other ways than through inheritance or through successful farming. Women could also purchase property, as we have seen in the example of the nun Cummen who bought an estate together with Brethán for the valuables she would have brought with her into a marriage. Professional women would also have the capacity to purchase land, and some of the women in §32 of Bretha Crólige are likely to have been able to acquire land through their own profession earnings.

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1338 For more information, see 7.3.2.5. Inheritance by daughters.
1339 Dillon, SEIL, p. 169, §23; CIH 1154.27–31; CIH 310.34–6; 7.3.2.5. Inheritance by daughters.
1340 For more information, see 7.3.2.5. Inheritance by daughters.
1341 For more information, see 4.3.3. ‘Women in general’.
1342 For more information, see 3.5. Personally acquired land; Binchy, ‘Bretha Crolige’, p. 27, § 32; cf. GEIL, p. 69.
Two of the legal procedures that women were entitled to perform because of property or a claim to property have been dealt with in Chapter Four and Chapter Five. The former is the legal procedure called distraint, a specific legal remedy found in the early Irish laws, in which the law allows for a person to enforce a claim against another by the means of a formal seizure of property belonging to the other person. Whereas the law text dealing with this subject is called *Di Chetharslicht Athgabálæ*, ‘on the four sections of distraint’, the text deals with five sections, not four as the title says. From the different types of distraint discussed in the law text it is clear that one of the sections, the distraint with a two-day stay, is a later addition to the text. It is also the only type of distraint that can be performed by women, and only women.

The chapter is based on my translation of the relevant portions of the law tract, including glosses and commentary, since there is no other translation available on this section other than the translation found in *AL*. I have found that for the 33 cases for which a woman is entitled to distrain, 26 cases deal with the completion and payment of women’s work as well as the materials a woman worked with. These were normally the woman’s private possessions, and therefore the types of implements she was allowed to lend according to her status. It therefore comes as no surprise that she would also be allowed to distrain in order to claim payment for the implements in case they were not returned.

The payment for a woman’s work and the materials which were used are not the only things that a woman could distrain on account of. While most of the items in the section on *athgabál aile* are moveables, some of the items are immoveables: a woman was entitled to distrain both ‘concerning the inheritance of her mother’, and ‘concerning the removal of women’s legal entry’. The first of these cases is of high importance since it is dealing with the inheritance from a woman to a woman. By adding the

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1343 cf. Commentary to A to CL §23 (= Eska §24), Eska, *Càin Lánamna*, p. 211, stating that the secondary wives without sons ‘do not give anything at all for a loan or lending except that which her spouse commands her and weaving implements’; cf. 2.6.4. The legal capacity of the different types of wife.

1344 My translation, for more information, see 4.3.3. ‘Women in general’. 298
information from the glosses, it is clear that this case not only concerns the
moveables a daughter would normally be entitled to inherit, but also her
mother’s *orbae cruib nó sliasta*, ‘the inheritance of hand or thigh’,\(^{1345}\)
which, as explained above, is a type of personally acquired land. The laws
regarding the inheritance from a mother to a daughter are dealt with in
extracts from *Bretha Étgid*,\(^{1346}\) and the mention of distraining on account of
inheritance implies that the daughter was entitled to distrain goods as a legal
remedy if she did not receive her legal inheritance when her mother passed
away.

The second of these cases, concerning the removal of women’s legal
entry, concerns another legal procedure which is found in the latter of the
two chapters: *tellach*, ‘legal entry’. The procedure is quite closely connected
to that of distraint, in that there are many formalities which have to be
carried out in the presence of witnesses. These formalities include fixed
periods of delay, much like those found in the text on distraint. *Tellach*
literally means ‘putting into’, and it is used for the procedure where a person
takes possession of land that he or she has a hereditary claim to, but which
is held by someone else. In this case, then, the mention of legal entry in the
tract on distraint must mean that a woman could distrain on account of her
valid claim not being accepted, and it must therefore be a way to appeal a
legal decision.

The normal procedure in *DT*, which is intended for men,\(^{1347}\) is
performed in three separate stages, which are referred to as separate entries,
i.e. *céttellach*, ‘first entry’, *tellach medónach*, ‘middle entry’, and *tellach
déidenach*, ‘final entry’. The three passages dealing with female legal
entry\(^{1348}\) are all leading cases written in verse, and give much of the
information on how the procedure was to happen.\(^{1349}\) However, it is not

\(^{1345}\) For more information, see 4.3.3. ‘Women in general’ and 3.5.1. *Orbae cruib nó sliasta*.

\(^{1346}\) For more information, see 7.3.2. The distribution of a woman’s personal property, esp.
7.3.2.5. Inheritance by daughters.

\(^{1347}\) For more information, see 5.2. The regular procedure for legal entry.

\(^{1348}\) For more information, see 5.3. Legal entry for women.

\(^{1349}\) For more information, see 5.3.1. Ciannacht, 5.3.4. Senchae and Brig and 5.3.5. Seithir.
possible to understand the full procedure only from looking at these passages, and therefore the evidence from *ferthellach*, legal entry for men, has to be included in order to understand how the procedure was intended to happen. For the discussion on *bantellach*, some of the later commentary to the tract had to be examined and translated to fully understand this archaic ritual.\textsuperscript{1350}

While *DT* shows that *bantellach* was not an innovation in the laws, the commentaries show considerable change, especially in the waiting periods between the different entries, from the time of the tract to the time of the commentaries. While the E 3.5. commentary, which is the material which has been translated in Appendix 2, is late,\textsuperscript{1351} the same changes have already happened in the H 3.18. material, which is much earlier than E 3.5.\textsuperscript{1352} It is therefore clear that these changes happened very early, at the latest towards the end of the Old Irish period.

Therefore, both of the two legal procedures which have been examined in this thesis show some change. In the case of distraint, the change must have happened at a very early stage. While distraint with a two-day stay is not one of the sections included in the title, but is still a part of the tract itself, this must have happened at a stage when the title was known to the lawyers, but the tract was not yet set in its present form. Based on the inclusion of *athgabál aile* in the tract, and the fragments of Old Irish glosses and commentary,\textsuperscript{1353} the development seem to be from before the laws were written down. Binchy, who claims that there is a clear distinction between the times the sections on *tulathgabál* and *athgabál íar fut* were written, admits that ‘the language is more or less uniform, and the sections on "immediate" distress do not appear to be linguistically older than those

\textsuperscript{1350} For more information, see 5.3.3. Evidence from the E 3.5. commentary, which includes my translation of the commentary. For a full translation, see Appendix 2.

\textsuperscript{1351} No earlier than the 13\textsuperscript{th} century, according to Charles-Edwards. For more information, see 5.3.3. Evidence from the E 3.5. commentary.

\textsuperscript{1352} 9\textsuperscript{th} century according to Charles-Edwards. For more information, see 5.3.3. Evidence from the E 3.5. commentary.

\textsuperscript{1353} *CCIH*, p. 287, cf. *CIH* 881.4-899.6, which is from the H 3.18. material and therefore not later than the 9\textsuperscript{th} century.
on distress with a "stay". The only clear evidence for a change is that *athgabál aile* is the only section which has not been included in the title of the tract.

In the case of legal entry, the tract includes the procedure for women, which must therefore be as old as the tract. The only change which is evident is that the commentaries show a development of the time periods which the tract is based on. Since the time periods in the case of *ferthellach* have changed in a similar fashion, there is no reason to deduce that the change has happened as an innovation in the laws regarding women specifically.

In the laws concerning women’s contractual capacity, claims have been made about how the laws have changed from a legal system in which women had no legal capacity to a system in which women had legal independence to a certain degree. These claims are most obvious in Binchy’s article on women’s legal capacity in regard to contracts, in which he creates three lists which he claims to show the development of women’s legal capacity in the early Irish laws. However, in the same article, he states that there is no linguistic evidence for believing one of the lists to be later than the other. Both Binchy and McLeod point to the use of certain archaisms in the texts, which must mean that the law is early. While evidence of late language does not necessarily mean that the law is late, early language implies early law. This proves that the laws in the two lists must be from approximately the same time, and therefore shows that there is not a question of a gradual development from a society where women had no legal capacity to a time where women gained more and more legal rights, but rather a question of the exceptions to the normal circumstances. The general rules are clearly stated throughout the laws, but

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1356 For more information, see 4.2. Distraint and 6.3.2. Increased legal standing with time or contemporaneous exceptions?

1357 His statement is regarding lists A and B. The exception is his list C which is created from commentary alone; cf. Binchy, *SEIL*, p. 208. For more information, see 6.3.2. Increased legal standing with time or contemporaneous exceptions?
so are the exceptions, clearly because of the need for their existence. In certain circumstances women would be in charge of land, and therefore they would also be in need of the exceptions to the laws allowing them the possibility to make contracts, to farm the land, and to buy and sell. Because of these circumstances, there was also a need for laws on what would happen to the property when the woman, who was the owner of the land, died. It therefore comes as no surprise to find laws dealing with the inheritance of both the inherited land of a *banchomarbae* and the passing of a woman’s personal property. These laws were clearly needed, and therefore they existed.
Appendix 1:

Translation of *athgabál aile*.\(^{1358}\)

*Apad naile o mnai for mnai \(\gamma\) o mnai for fer; mad fer acras for mnai, is apad \(\cdot\cdot\cdot\) for for thi \(\cdot\cdot\cdot\) X. maide forri; ma fer lesach acrus cechtar de, is apad \(\cdot\cdot\cdot\) tit \(\cdot\cdot\cdot\) X. maide bias ima fiachu, \(\gamma\) is anad aicenta na \(\cdot\cdot\cdot\) \(\gamma\) ndithim aicenta bias and.\(^{1359}\)*

‘(There is) a notice of two days from a woman on a woman and from a woman on a man. If it be a man who sues a woman, it is a notice of five or ten days upon her. If a guardian sues either of them, it is a notice of five or ten days, which will be for their debts, and it will then be a natural stay of the sērs and their natural delay in pound then.’

*ATHGABAIL AILE*\(^1\) DO INGIN IM COMORBUS A MATHAR\(^2\) IMIFOCUL MNA DIARAILE\(^3\) IM DINGBAILE MBANTELLAIG\(^4\) AR NI BI I MBANTELLACH\(^5\) S CO COIRIB\(^5,7\) LOSAT\(^8\) CRIATHAR\(^9\) DO CACH MNAI FOR ARAILE.\(^{1360}\)

‘Distraint of two days\(^1\) for a daughter concerning the inheritance of her mother,\(^2\) concerning the evil word of a woman to another,\(^3\) concerning the removal of women’s legal entry,\(^4\) for there is no [going] into women’s legal entry\(^6\) but with sheep\(^5,7\) and a kneading-trough\(^8\) and a sieve\(^9\) for every woman upon the other.’

\(^{1}\).i. ara ta anad naili

\(^{2}\).i. im caem-orba uais a mathar. .i. cairig \(\gamma\) crela .i. orba feirts. .i. orba cruib \(\cdot\) sliasta a mathar

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\(^{1358}\) This is a translation of the text as it is found in *CIH*, and has been reproduced as it is without being edited in any way.

\(^{1359}\) *CIH* 378.14-17; *AL* i 146.26-30. *CIH* 378 n. i–i: ‘commentary written by the scribe of the text.’

\(^{1360}\) *CIH* 378.18-20; *AL* i 146.31-148.2.
3. i.e. in drochfocal dobeir in ben ara cheili, ima lesainm l anfocal na bi furri. i.e. diablad in feich dломus. i.e. mifocul nad fiu fuirri. i.e. in gell. i.e. fiach dligis ben diailaile.

4. i.e. im dingbail in techtaigti banda. i.e. indligid. i.e. indligthech(?) berait isin ferann. i.e. mainipat cairig

5. i.e. uair lecan fuil ni dlegar(?) dona mnaib do breith do techtugud ferainn s’ cairig n lamtorad

6. i.e. ndligtech

7. i.e. mad eoir.\(^\text{1361}\) i.e. cairig in c. fecht

8. i.e. a crod uili i forba na iii. a cethramthan

9. i.e. in fecht dedenach.\(^\text{1362}\)

\(^1\) i.e. for which there is a stay of two days.

\(^2\) i.e. concerning the noble family-inheritance of her mother, i.e. sheep and baskets, i.e. inheritance of the spindle, i.e. [the] inheritance of hand or thigh of her mother.

\(^3\) i.e. the bad word the [one] woman inflicts upon another, concerning her nickname or a false attribution which she does not merit, i.e. a doubling of the fine which declares, i.e. an evil word which she does not deserve, i.e. the surety, i.e. a fine which is owed a woman from the other.

\(^4\) i.e. concerning the removal of the female possession, i.e. of an injustice, i.e. illegal is that which they bring onto the land, i.e. unless they be sheep.

\(^5\) i.e. because there is nothing which is necessary for the women to bring for taking possession of land by legal entry save sheep and handiwork.

\(^6\) i.e. legally.

\(^7\) i.e. if it be making entries, i.e. two sheep on [the] first occasion.

\(^8\) i.e. all her goods in the end of the thrice four days [=12 days].

\(^9\) i.e. the last time.’

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\(^{1361}\) CIH 378 n. 1–l: ‘sic, for fa cedor?’ [forthwith?]

\(^{1362}\) CIH 378.21-28; AL i 148.3-14.
Nochan fuil .x. bir nesaim na nemnesaim imn\textsuperscript{1363} athgabail gabait na mna, 7 lechan fuil .x. bir cintaig na inbleogain, 7 lechan fo.x. lait muige na cricha anad na dithim doib, s’ anad naile 7 apad naile 7 dithim cethramthan; 7 ben tuic toichid for firl for mnai and sin; 7 masa fer tuic toichid for mnai, apad .u. thi for bangraid feine, 7 apad x.e for bangraid flatha 7 troscad 7 treisi imceimmnighi Deithbir etarru-sin 7 in bail ata asren fiachu dia cethraime lo on ochtmad lo: banaitire tanic tar cend banbidbad re laima banfechman and, 7 tri apad fuil and .i. apad naile on banfeichmain foran mbanbidbaid, 7 apad .ii. on banfeichmain for banaitire, 7 apad naili on banaitite forin mbanbidbaid, conad .ui. laithe sin; 7 anad naile, conid ocht laithi; 7 dithim cethramthan, conada\textsuperscript{1364} laithe x.; conide-sin asren fiachu dia cethraimthe lo in anta 7 in dithma on ochtmad lo in apaid. Sund im– nochan fuil s’ apad naili 7 anad naile 7 dithim cethraimthe, conid ocht la.\textsuperscript{1365} ‘There is no difference between [distraining for] that which is indispensable or dispensable concerning the distraint the women take, and there is no difference between [their distraint against the] guilty party or [the] surrogate, and neither space nor land remove [the need for] stay or delay in pound for them, but [they have] a stay of two days and a notice of two days and delay in pound of four days; and in this case a woman brought a suing on a man or on a woman; and if it is a man [who] brought a suing on a woman, [there is] a notice of five days on a woman of the Féni-grade [i.e. a regular woman], and a notice of ten days on a woman of sovereign-grade and fasting and three days of grace.

[The] difference between those [above] and the place it is [said] she pays her fines [the] fourth day from the eighth day: then a female surety came over the head of a female defendant on behalf of her female plaintiff, and then there are three notices, i.e. a notice of two days from the female plaintiff upon the female defendant, and a notice of two days from the

\textsuperscript{1363} CIH 378 n. m: ‘sic, for imin.’

\textsuperscript{1364} CIH 379 n. b: ‘conad da; conid de.’

\textsuperscript{1365} CIH 378.29-379.3; AL i 148.15-150.2. CIH 378 n. i-i: ‘commentary written by the scribe of the text.’
female plaintiff on the female surety, and a notice of two days from the female surety upon the female defendant, so that that is six days, and a stay of two days, so that it is eight days, and delay in pound of four days, so that it is twelve days, so that it is from that [period] she pays fines, from which the fourth day of the stay and of the delay in pound from the eighth day of the notice. Here, however, there is only a notice of two days and a stay of two days and a delay in pound of four days, so that it is eight days.’

‘Distraint of two days¹ concerning the value of handiwork,² concerning wages³ concerning payment [for the weaving after it is taken down from the loom],⁴ concerning blessings of one woman on another,⁵ concerning every [raw] material⁶ which is on spindles,⁷ concerning [the] spindle,⁸ concerning [the wool] spinning-stick,⁹ concerning [the] wool-bag [at her feet],¹⁰ concerning [the] weaver’s reed,¹¹ concerning all equipment of weaving,¹² concerning [the] flax scutching-stick,¹³ concerning [the] distaff,¹⁴ concerning [the] spool-stick,¹⁵ concerning [the] rod used for making fringes,¹⁶ concerning [the] yarn,¹⁷ concerning [the] equipment of [the] yarn-spinning,¹⁸ concerning [the] border,¹⁹ concerning [the] pattern of [the]

¹³⁶⁶ CIH 1903.4 gives a variant reading: im tairec a airm, ‘concerning the supplying of her/ his weapon.’

¹³⁶⁷ CIH 379.4-12; AL i 150.3-13.
handiwork, concerning [the] wallet with its content, concerning [the] bag, concerning [the] leather scoop, concerning [the] tippet, concerning [the] hoops (?), concerning [the] needle, concerning [the] lustrous thread, concerning [the] looking glass which a woman takes away from another, concerning [the] white pet cat/small basket of women’s cats/baircne-cat for women, concerning [the] lap dog of a queen, concerning [the] contribution of a field, [the] supplying of a weapon. For it is concerning [the] rectitude of women that a battle was first fought.

1. i. ara ta anad naili.
2. i. im log in toraid doni-si o laim i. bocad 7 brecadh 7 fige.
3. i. x.mad cacha dula.
4. i. leth na fuba don mna i gi i. fuba berrtha i. luag fige.
5. i. uii.mad lanbiata na mna na dern in hemachad, no na mna dia ngaibther i. nembemachadh doni in ben ar aicdi na mna .ii. am-saide.
6. i. glaslin.
7. i. snath glasolla.
8. i. lin.
9. i. olla, l in fettais loim i. nindich.
10. i. imin bolg bis fo peis, fo traigid, asa cirann a abrus i. in cirbolc.
11. i. dober feith ger dara figi.
12. i. comobair na fige do garmnib 7 do claidmib i. na slata fige.
13. i. da flesechar in lin i. cuicel lin. in fettais.
14. i. nolla.
15. i. luga garman, l lingua garman .i. in garman cen buiur. i. cen faeabur.

\footnote{\textit{AL i 150.11: ‘for the black and white cat’, cf. Kelly \textit{EIF} p. 122 n. 142, where Prof. Kelly suggests that \textit{baircne cat ban} ‘means “a basket of women’s cats”, taking \textit{báircne} to be a diminutive of \textit{báirc “boat, vessel, container”’. Dr. Kevin Murray has, in his article ‘\textit{Catṡlechta and other medieval legal material relating to cats}’ (Celtica 25, p. 147), suggested that, based on the evidence from \textit{catṡlechta}, the translation should be ‘concerning a \textit{baircne, a cat for women.’ In a private discussion with Prof. Máirín Ni Dhonnchadha she has suggested that based on Dr. Kevin Murray’s translation, the translation could also be “concerning a \textit{baircne-cat for women.” For more information, see discussion in Chapter 4 \textit{‘Athgabál aile’}.}

\footnote{\textit{CIH} 379 n. i: ‘\textit{sic, for biur.’}}

\footnote{\textit{1366}}

\footnote{\textit{1369}}
16. i. asa figther in corrrthar.
17. i. adbar uais S(?) a figi .i. na cert li gela .i. snath finn.
18. i. crann tochartha l tochas i. gnim ar gnim .i. cranda beca a cinn
corrrthar.
19. i. uirri fein.
20. i. usaite le in torad dogni o laim inn uathledb ina fiadhaisi .i. fuath in
gressa innti.
21. i. in tiag cusani ecarthar innti, int abras. .i. in loman bis imbe .i. ima
beolu.
22. i. aiteog.
23. i. im cro-iall, cro fuigther d’iallaib, l cro ass d’iallaib fene.1371
24. i. lethair .i. bolg asa mbid crambelan annalut .i. bis fon pait foilethi.
25. i. in fota.
26. i. gairit .i. cruind rigind .i. crandoga beca nobith aca anallôt iman
abraus.1372
27. i. set int snaith ina cro.
28. i. snath datha.
29. i. scathderrc na mban .i. scathan.
30. i. beris in ben o ceili.
31. i. im baire-nia: nia, tren, tu cad a baire bresail bric i mbit cait bronrsfin
a duba.
32. i. i ndiaid orcan na rigna bis .i. mesan.
33. i. im tinecor a coibdelaig isin re comraic .i. dia ferlesach gaibles.
34. i. arm comraic bis oca do gres .i. uathi-se dia feichem .i. don
coi bdelach .ii. .i. ben in fir gaibis di-se. .i. im tiachtain le do cosnam a lesa
do feichemain.
35. i. ar is imna mnaib iar fir ro-heim-fuachtnaiged in comarc1373 ar tus a re,
i ferann .i. im aim γ im iam .i. da ingin partaloin; γ da mac parthaloin is iat
dorighne in comruc .i. fer γ fergnia; γ is uime rocomraicset .i. in dara
brathair dib, .i. fergnia, tuc a siar i llanamnus .i. iam; γ tuc in brathair

1371 CIH 379 n. l: ‘partly erased, omitted in O’Don.’
1372 CIH 379 n. m: ‘glosses both rinde and cusail.’
1373 CIH 379 n. q: ‘sic, for comrac.’
eile, .i. fer, int siur .ii. d’f&i#xa0;³r1374 .i. am; 7 rob i a cetcoibchi, 7 roba leisim do reir dligid in coibchi, uair nir mair a athair, 7 adeir i racholl mbreth. leth cetcoibchi cach&aacute; mna do aigi fine mad iar necaib a hathar; 7 robai f&egrave;rgnia ac iarra a cotach don coibchi, 7 eisindra&igrave;ic he 7 ni dlig ni; 1 is coibche na sethar tucaid aigi i naigid na coibchi-so. ut d.x.

Da mac partol&oacute;in cen acht / is iat dorigni in comurc. / fer is f&egrave;rgnia co meit ngal / anmanda in da brath. ET deismerecht arin .c.na

Fer 7 f&egrave;rgnia na fir. / is ed innisit na sin. / am 7 iam derctas sloig. / da pr&iacute;m&iacute;ngin parthaloin. / is impu-sin, sretha&iacute;ib set / in re ciataimairget.

ET adeir a mbaile .ii. aine 7 aiffe anmanda na da ingin.1375

1 i.e. for which there is a stay of two days.
2 i.e. concerning [the] value of the produce she makes by hand, i.e. softening and flecking and weaving wool.
3 i.e. a tenth of every article.
4 i.e. half of the payment to the female weaver, i.e. payment of clipping, i.e. value of weaving.
5 i.e. a seventh of the woman’s full refection who did not fulfil the blessing of the woman for whom [distrain] is taken, i.e. in this case the woman does not make a blessing on the material of the other woman.
6 i.e. [the] grey flax thread.
7 i.e. [the] grey woollen thread.
8 i.e. [for] flax.
9 i.e. the bare spinning stick, i.e. of [the] woof.
10 i.e. concerning the bag which is under [the] foot,1376 under [the] foot, out of which she combs her yarn-spinning, i.e. the combing-bag.
11 i.e. it brings a sharp sinew across her weaving.

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1374 CIH 380 n. c: ‘omit? omitted in O’Don.’
1375 CIH 379.13-380.13; AL i 152.4-154.26.
1376 Latin pes, ‘foot’. 
i.e. [the] equipment of the weaving for looms and for swords, i.e. the rods of weaving.

i.e. by which the flax is scutched, i.e. [the] distaff of flax, the spindle.

i.e. of wool.

i.e. [the] smaller weaver’s beam or [the] "lingua garman", i.e. the weaver’s beam without a spike, i.e. without a sharp edge.

i.e. out of which the border is woven.

i.e. [the] noble material except its weaving, i.e. the white balls of thread, i.e. the white thread.

i.e. [the] beam of reel or of winding, i.e. work upon work, i.e. small, wooden beams, the end of borders.

i.e. for itself.

i.e. she makes the handiwork with more ease with the leather-patterns in her presence, i.e. [the] pattern of the handicraft upon it.

i.e. the wallet together with what is put into it, the yarn-spinning, i.e. the string which is around it, i.e. around its mouth.

i.e. [the] little repository.

i.e. concerning [the] "enclosure-lace", [the] enclosure sewed with laces or [the] enclosure with laces out of it.

i.e. of leather, i.e. a bag out of which there used to be a little wooden opening, i.e. which is under the wash-pot.

i.e. the long.

i.e. [the] short, i.e. of tough and stiff wood, i.e. he used to have old small wooden shavings about the yarn.

i.e. [the] path of the thread into its eye.

i.e. coloured thread.

i.e. [the] looking-glass of the women, i.e. mirror.

i.e. the woman takes [it] from the other.

i.e. concerning [the] ship-warrior: a strong warrior was taken from Bárc Bresal Bric in which there are black white-bellied cats.

i.e. after [the] calves of the queen he is, i.e. [the] lap dog.

i.e. concerning the supplying of her relative [with a weapon] in the time of battle, i.e. [it is] from her male guardian she takes [it].
i.e. [the] weapon of battle which they always have, i.e. from her to her guardian, i.e. to the other relative, i.e. [the] wife of the man who takes [it?] from her, i.e. concerning [the] guardian coming with her to fight her legal action.

i.e. for it is concerning the women, in fact, the battle was indeed first waged in [the] battle-field, into [the] land, i.e. concerning Am and concerning Iam, i.e. the two daughters of Partholón, and [the] two sons of Partholón, it is they who fought the battle, i.e. Fer and Fergnia, and it is about this they fought, i.e. the one brother, i.e. Fergnia, married his sister, i.e. Iam, and the other brother, i.e. Fer, married the other sister, i.e. Am, and it was her first bride-price and the bride-price was his according to law, because her father was not alive, and it says in Racholl mBreth: half the bride-price of every woman to [the] head of kin if it be after [the] death of her father, and Fergnia was seeking his share for the bride-price and he is unworthy, and is not entitled to anything, or it is [the] bride-price of the [other] sister [which] was brought face to face with this bride-price. As it said:

[The] two sons of Partholón without doubt / it is they who fought the battle / Fer and Fergnia with great valour / [the] names of the two brothers. And an example of [the] same: Fer and Fergnia, the men / as the ancient tell / Am and Iam whom the hosts beheld / [the] two chief daughters of Partholón / it is about these, way for arrangements / of the battle-field where they first mutually attacked. And it says in another place [that] Aine and Aiffe [were the] names of the two daughters.

IS CO SE CONAIMES ATHGABAIL AILE ROSUC BRIG BRIUGAD\(^1,2\) BUI HI FEISIN\(^3\) 7 SENCHA\(^4\) MAC AILELLA MAJC CUL CLAIN\(^5\) FONGELLTAIS ULAD\(^6\) IS\(^7\) IAR SUND\(^8\) ROLATHA | OENA TAR AILE\(^9,10\) AR ITBATH FIR FENE MANA TISTAIS TREISI\(^11\).\(^{1377}\)

\(^{1377}\) CIH 380.14-17; AL i 150.14-17.
Up to this [the] distraint of two days has been adjudged, judged by Brig the hospitaller1,2 who was in Feisin.3 And by Sencha,4 son of Ailell, son of Cul Clain.5 [The] Ulstermen6 submitted to them. It is7 according8 to this one day was added on two days,9,10 for the extinction of [the] truth of [the] Féini if [the] three days had not gone forward11.

1 i.e. is conuice so ro-cain-aimsiged l rocotaigsig anad .ii. forin athgabail rucustar brig banbriugu mathair sencha γ brigh breithem a ben(?)
2 i. banugdar fer neirind .i. lanbreithem.1378
3 i. dobüi i mug desten i nultaib .i. ainm in duine .i. im memoit.
4 i. a fer.
5 i. meic in fir rosoed nech o oil no o caingin clain, no aili saine aice .i. ail nocloed cach æn trena eolus.
6 i. teigdis ulaid ina fuiggill.
7 Anad naine γ anad .iii. forin slickt-so uile.
8 i. is iarsan anad naili.
9 i. is iarsani ada isin nalaad1379 aine na fer tar .ii. na mban co .iii. na fer.
10 i. tar in da la fil isinn aïh.
11 i. uair doeipled a firinne ona feinib muna tisad anad .iii. forna .s.aib .iii. .i. don cach is dail .iii.1380

1 i.e. up to this [the] law has been aimed at or [the] stay of two days has been assessed upon the distraint, it was adjudged by Brig [the] female hospitaller, mother of Sencha, and by Brig [the] judge, his wife.
2 i.e. [the] female authority of [the] men of Ireland, i.e. a female judge.
3 i.e. she was in Mag Desten in Ulster, i.e. [the] name of the person, i.e. of the district.
4 i.e. her husband.

1378 CIH 380 n. g: ‘sic, for ban-’
1379 CIH 380 n. i: ‘sic, for rolaad.’
1380 CIH 380.23-31; AL i 154.27-156.4.

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i.e. of the son of the man who turned people from disgrace or from unjust covenant, or he has special rocks, i.e. a rock which overcame all through his knowledge.

i.e. [the] Ulstermen went to his judicial pronouncement.

A stay of one day and a stay of three days upon all of this class.

i.e. it is after the stay of two days.

i.e. it is after this suitable time the one day of the men was added to [the] two days of the women up to [the] three days of the men.

i.e. beyond the two days which is in the other.

i.e. because their truth would have perished from the Féini if [the] stay of three days had not gone forward for the valuables for three days, i.e. for the judgement of three days is for all.’
Appendix 2:

Commentary to lines 3-5 of §3 of Din Techtugud.1381

.i. Cach uair is abad teora ndechmad doberaid na fir is abad teora cethramad doberaid na mna, 7 cutruma d’echaib doberaid na fir 7 do caíraib doberaid na mna, 7 in confad tiagaid na fir isin feramn is in confad-sín tiagad na mna; cach uair is mna beraid in techtugud is abadh teora ceathramad doberad arin mbidbaid anm, 7 is amlaid doberad .i. abadh do tabairt doib arin mbidbaid cach lae re re na ceathraimthe, l dó ceana comad isin .c.lo 7 isin lo medhonach 7 isan lo degeanach; dul di amach a forba na cethramtan tuisige 7 a ninditecht na ceathraimthe .m.1382 tar farf1383 in feraind, 7 da cairigh le 7 banfiadnaise le, 7 beth di amn re la co naitchi; 7 muna tincar hi, dul dia thigh 7 beth di amn re re na ceathraimthe .m.; 7 abadh do tabairt cach le1384 arin mbidbaid re re na ceathraimthe .m., no comad asin .c.lo 7 isin lo medonach 7 isin lo deiganach; 7 dul di amach amn sin co trian in feraind, 7 .iiii. cairir le da banfiadnaise, 7 beth di amn-side re la co naidchi; 7 muna damar dliged di, is dul di dia tigh 7 beth di amn sin re re na ceathraimthe deiginaghe; 7 abadh do tabairt cach lae di arin mbidhbaid re re na ceathraimthe deigincaidh, no comadh asin .c.lo 7 isin lo deiganach; dul di amach coruige leth in feraind, 7 .uiii. cairir le 7 tri banfiadnaise, 7 bet di amn re la co naidche; ma damar dliged di amn-seig, is dliged do denam doib ‘mún feramn; 7 muna damar dliged di, islan di ginco ti s`a crod uili do breith ind anuind a forba na teora cethramad; 7 gemad re ndul anund bud chindte na demta dliged di, ginco tuca dliged do neach l dliged techtaighte ime s`dul anund di cona crodh 7 cona muimntir fo .c.oir.

1381 CIH 207.30-208.13. This is a translation of the text as it is found in CIH, and has been reproduced as it is without being edited in any way.

1382 CIH 207 n. p: 'medonaige.'

1383 CIH 207 n. q: 'feart.'

1384 CIH 208 n. b: 'læe.'
‘i.e. every time the men give notice of thrice ten days, it is a notice of thrice four days that the women give and the equivalent of the horses the men bring, the women bring of ewes, and the equal length the men go into the land is the same length the women go. Every time it is women who bring the legal entry it is a notice of thrice four days they give the defendant then, and it is thus they give [it], i.e. they give a notice to the defendant every day during the time of the four days or indeed it could be [levied] on the first day and on the middle day and on the final day. She goes out in the end of the first four days, and at the beginning of the middle four days, over the boundary mound of the land and [she brings] two ewes with her and a female witness with her, and she remains there for a day and a night. And if she is not responded to, she goes to her house1385 and she remains there during the time of the middle four days. And she gives notice every day to the defendant during the time of the middle four days, or it could be on the first day and on the middle day and on the final day. And she goes out there then up to a third of the land and [she brings] four sheep with her and two female witnesses, and she remains there for a day and a night. And if right is not ceded to her, she goes to her house and she remains there then during the time of the final four days. And she gives notice to the defendant every day during the time of the last four days, or it could be on the first day and on the final day. She goes out as far as half the land and [she brings] eight ewes with her and three female witnesses, and she remains there for a day and a night. If right is ceded to her then, they are to make a law concerning the land and if right is not ceded to her, it is free from liability for her though she should not come, but she [is to] bring all her cattle over at the end of the thrice four days. And although it ought to be fixed before going over that right was not ceded to her, though right had not been brought to anyone, or the law of legal entry concerning it, but she is to go over there with her cattle and her household forthwith.’

1385 Though the text from CIH 207.38–208.1 has dia thigh, I have translated it as ‘her house’ based on CIH 208.5, which has dia tigh.
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