

Professor Joseph Barrett's Conveyancing CaseBook

General Structure and Form of Deeds & Attested Deeds General

Chancellor v Mosman (1872): The operative/dispositive clause of a deed is the ruling clause. It cannot be altered or varied by the other clauses of the deed.

Cooper Scott v Gill Scot (1924): The operative/dispositive clause of a deed is the ruling clause. It cannot be altered or varied by the other clauses of the deed.

Largs Hydropathic Ltd v Largs Town Council (1967): The operative/dispositive clause of a deed is the ruling clause. It cannot be altered or varied by the other clauses of the deed.

Orr v Mitchell (1893): HOL decision. Illustrates missives supersede prior informal communications. May only refer to other clauses to aid interpretation when operative/dispositive clause is vague or uncertain.

Lord Advocate v McCulloch (1874): May only refer to other clauses to aid interpretation when operative/dispositive clause is vague or uncertain.

Dick Lauder v Leather Cully (1920):): May only refer to other clauses to aid interpretation when operative/dispositive clause is vague or uncertain.

Smith v Bank of Scotland (1824): If deed consists single sheet folded it is sufficient to subscribe once at bottom of document.

Simsons v Simsons (1883): Deeds in pencil are not valid, this rule also applying to alterations.

Williamson v Kennedy (1857): More generous attitude towards wills/testamentary provisions. Court seeks to give effect to testators intent. Pencil alteration valid.

Lamont v Glasgow Magistrates (1887): More generous attitude towards wills/testamentary provisions. Court seeks to give effect to testators intent. Pencil alteration valid.

Muir Tr v Muir : More generous attitude towards wills/testamentary provisions. Court seeks to give effect to testators intent. Entire codicil added in pencil valid.

Munros Ex v Munro (1890): Contrast with cases above. Alteration to will in pencil not given effect. Replaced beneficiaries with wife and child after marriage. Court held as testator was solicitor was aware of legal effect of marriage, hence writings merely contemplative.

Curries Tr v Currie (1904): Lord Justice Clerk, Lord Traynor, Lord Moncrieff; Pencil alteration to holograph will, unauthenticated alteration had no effect, merely deliberative. Observed that in Lamont truster had expressly directed trustees to give effect to any writings of his.

Simpsons Tr v Macharg & Son (1902): Typewritten deeds have been valid since this case and year. Now are common practice.

Gibson v Hunter Home Designs Ltd (1976): Price paid for property on entry. However deed undelivered as languishing in London. Sequestration takes place upon seller and as no delivery purchaser loses out even though paid price. Highlights importance of delivery. Some dicta suggest delivery could have created some form of property right.

Sharp v Thomson (1997): HOL decision overruling Scots Courts on equitable grounds. Possible example of constructive trust in Scots law, a concept not generally favoured. Prof Rennie involved, instrumental in shifting focus of debate to company law in HOL. Held that delivery of disposition created a 'beneficial interest' in the purchaser sufficient to defeat the holder of a floating charge which subsequently crystallised. Form of intermediate property right previously unknown to Scots law, usually registration/infestment being required to create property right. Given that the conduct of the parties involved in the case was equivalent to criminal the scope of the decisions effect remains to be seen.

Cumming v Skeochs Tr (1879): IH decision, Lord Justice Clerk, Lord Ormidale, Lord Gifford. Witness not present at time of granter's subscription, signed later. Held any acknowledgement suffices. It need not be verbal.. Involved and turned on old conveyancing statutes.

McDougall v McDougall's Exrs (1994): Illustrates the importance of the witness possessing the granter's 'mandate'. Supports the principle from Walker v Whitwell, unico contextu rule. Solicitor went outside room in which granter had previously signed and procured witness signature. Witness had neither observed nor heard acknowledgement, Held deed invalid.

Lindsay v Milne (1995): Illustrates the importance of the witness possessing the granter's 'mandate'. Supports the principle from Walker v Whitwell, unico contextu rule. Held invalid.

Subscription

Gall v Bird (1855): Party who is not compos mentis cannot validly subscribe a deed.

Williamson v Williamson (1996): OH by Lord Cullen; Error in Subscription was prior to 95 and indeed still can be fatal, resulting in invalid deed. Witness signed 'DCR Williamson' when name was 'DCR Wilson'. Son of testator succeeded in reducing the deed.

Dunlop v Greenless Tr (1863): A married woman may validly subscribe using her maiden name.

Grieve's Tr v Jaap's Tr (1917): strictly a married woman should never mix her married and maiden surnames in subscription. However doing so does not invalidate the deed.

Allan & Crichton, Pet (1933): Sh Ct case; Authority that signing Mr/Ms + surname is an invalid subscription.

Ferguson, Pet (1959): However the use of Mr/Ms + christian name + surname is perfectly acceptable. In this case the use of the french name Mme Pion Roux was not challenged.

American Express Europe Ltd v Royal Bank of Scotland(No 2) (1989): Casts doubts on the validity of Allan Crichton, Pet. In this case the signature of a surname alone was held acceptable when it was shown to be the custom of the granter. Judgement of Lord Dervaid who believed the authority of Gordon v Murray to be binding on him.

Gardiner v Lucas (1878): HOL decision; Illustrates that prior to 95 subscription with iniials would not be a valid signature.

Spiers v Home Spiers (1879): However shows signature of initials being acceptable when custom of the granter.

Lowries Judicial Factor v McMillans Exr (1972): Initials acceptable in holograph will when custom of granter.

Draper v Thomason (1954): Acceptance of customary signatures lead to ridiculous subscriptions being upheld if granter's custom, in this case Connie.

Rhodes v Peterson (1972): Acceptance of customary signatures lead to ridiculous subscriptions being upheld if granter's custom, in this case Mum.

Crosbie v Wilson (1865): signature by a mark was not valid prior to 1995.

Donald v McGregor (1926): Involved partial signature and mark; signature by a mark was not valid prior to 1995.

Morton v French (1908): signature by a mark was not valid prior to 1995.

Stirling Stuart v Stirling Crawford's Tr (1885): signature must be complete but need not be legible.

Littlejohn v MacKay (1974): Sh Ct case; pre 95 controversy whether non partner could sign for partnership. Now resolved by the Act.

Position & Method of Signature

Taylor's Exr v Thom (1914): Must subscribe at bottom of deed. Provision below signature is presumed made after signature and is invalid.

McLay v Farrell (1950): Must subscribe at bottom of deed. Provision below signature is presumed made after signature and is invalid. Even if words are operative for entire deed; in this case list of items, then subscription then 'all to Annie McLay'. Entire deed invalid.

Robbie v Carr (1959): Must subscribe at bottom of deed. Provision below signature is presumed made after signature and is invalid. Signed the deed in the margin.

Boyd v Buchanan (1964): Must subscribe at bottom of deed. Provision below signature is presumed made after signature and is invalid.

Smith v Bank of Scotland (1824): If deed consists single sheet folded it is sufficient to subscribe once at bottom of document.

Bairds Tr v Baird (1955): Difficult case. Provisions on single face of single sheet with signature on other side. No operative linking words connecting. Held invalid.

De Montford Insurance Co v Dickson (1997): Contrast with Bairds Tr. In this case deed consisted of two sheets, provisions on one with signatures on other. Operative linking words present, Held deed was valid.

Noble v Noble (1875): Granters hand may be supported during signature, provided held above the wrist.

Crosbie & Pickens v Pickens (1749): Granter cannot sign over tracing made by another, or deed invalid.

Moncrieff v Money Penny (1710): granters hand must not be led through signature. Discuss distinction of lead and support. Signature must be complete.

Whyte v Watt (1893): Signature by Cyclostyle is invalid.

Brown v Duncan (1888): Subscription over your own earlier erasure is permissible, valid.

Stirling Stuart v Stirling Crawfurds Tr (1885): Granter may 'touch up' own signature. Signature by embossed stamp is not a valid signature.

Witnessing: Competency & Timing

Brock v Brock (1908): witness must theoretically know granter. In reality introduction immediately beforehand will suffice.

Simons v Simons (1883): Witness need not be independent, may have interest in deed or be named beneficiary. Deeds in pencil are not valid, this rule also applying to alterations.

Mitchell v Miller (1742): witness may be named trustee by deed, does not disqualify.

Ormiston v Hamilton (1708): Witness need not know the content of the deed either generally or specifically.

Frank v Frank (1795): Old case in which delay between granters subscription and witness signature was acceptable, in this case quarter of an hour. Deed was outside of granter's sight because they were in another room.

Thomson v Clarkstons Tr (1892): Old case in which delay between granters subscription and witness signature was acceptable, in this case three quarters of an hour. Delay caused because they took the deed back to the office.

Stewart v Burns (1877): Old case in which delay between granters subscription and witness signature was acceptable, in this case 4 months.

Walker v Whitwell (1916): HOL decision; Casts doubt on these previous decisions. Bench of seven judges held witnessing must occur as single continuous process, unico contextu rule. Thus signature by stealth on part of witness or signature after granter's death is invalid as require the implied authority or 'mandate' of granter.

Lindsay v Milne (1995): Illustrates the importance of the witness possessing the granters 'mandate'. Supports the principle from Walker v Whitwell, unico contextu rule. Held invalid.

McDougall v McDougall's Exrs (1994): Illustrates the importance of the witness possessing the granters 'mandate'. Supports the principle from Walker v Whitwell, unico contextu rule. Solicitor went outside room in which granter had previously signed and procured witness signature. Witness had neither observed nor heard acknowledgement, Held deed invalid.

Defects in Witnessing & Testing Clauses

Smith v Bank of Scotland (1824): Difficult to attack a deed which is acknowledged as validly subscribed on the basis of defective attestation.

McArthur v McArthur's Tr (1931): Onus to establish invalidity for defective attestation rests with the party averring and is a heavy one.

Forrest v Low's Tr (1907): Even if witness had not seen granter sign or acknowledge their purported signature the deed was still valid.

National Bank v Campbell (1892): granter may be personally barred from relying on defective attestation to reduce the deed.

Boyd v Shaw (1927): granter may be personally barred from relying on defective attestation to reduce the deed.

McDougall v McDougall's Ex (1994): Illustrates the importance of the witness possessing the granters 'mandate'. Supports the principle from Walker v Whitwell, unico contextu rule. Solicitor went outside room in which granter had previously signed and procured witness signature. Witness had neither observed nor heard acknowledgement, Held deed invalid.

McLeod v Cedar Holding Ltd (1989): Even when one of joint signatures on deed was shown to be fraudulent the other party was barred from reducing deed on the basis of defective attestation.

Williamson v Williamson (1996): Error in Subscription did invalidate the deed.

Smiths v Chamber's Tr (1878): HOL case; Held that provision in testing clause was incapable of altering or varying any provision of the deed. Decided on basis testing clause is added post subscription.

Blair v Assets Co (1896): HOL case; Held that provision in testing clause was incapable of altering or varying any provision of the deed. Decided on basis testing clause is added post subscription.

Caldwell (1871):

Millen v Birrell (1876):

Blair v Earl of Galloway (1827): 32 year delay in completing testing clause did not invalidate the deed.

McDougall v McDougall (1875): Error in testing clause may be ignored if information may be supplied by signatures.

Alterations to Deeds Prior to 1995

Kedder v Reid (1840): If unauthenticated alteration presumed made after execution and pro non scripto(ignored). If alteration is material, as it usually would be, occurs then the entire deed is invalid or if severable that section only is invalid. If non material it may be ignored.

Boswell v Boswell (1852): If unauthenticated alteration presumed made after execution and pro non scripto(ignored). If alteration is material, as it usually would be, occurs then the entire deed is invalid or if severable that section only is invalid. If non material it may be ignored.

Munro v Butler-Johnstone (1868): even the insertion of a small word such as 'not' can be a material alteration. The entire deed invalid as a result.

McDougall v McDougall (1875): Alteration written over erasure is presumed pro non scripto and ignored. Erasure is brought back to life. But cannot read any words you wish into the erasure.

Shepherd v Grant's Tr (1847): Alteration of names in deed is a material alteration.

Cattanach v Jamieson's Tr (1884):

Pattison's Tr v University of Edinburgh (1888): Lord McLaren's definitive statement on alterations to testamentary writings. 1) If signature is cancelled or line through dispositive clause then if shown to be testator's intent the entire will is cancelled 2) If only single legacy or codicil cancelled then if severable only that is affected 3) Marginal additions/interlineations will have no effect unless authenticated 4) If alterations over erasures then deletion is conditional on alteration taking effect, if not then original words revive.

Thomson v Bowhill Baptist's Church (1956): Example of Pattison Tr effects. Testator cut out residue clause of will on copy. Held valid alteration.

Spiers v Graham (1829): Courts usually require authentication of alteration but will look for testator's intent.

Barkers v Scottish Right of Way Society (1996): Letter to solicitor instructing alteration was held sufficient. Ct looks to testator's intent.

Blanks, Additional Solemnities and Defective Execution

Abernethie v Forbes (1835): If blank occurs in non material part of deed that part will not be probative but the rest will be unaffected.

Earl of Buchan v Scottish Widows Fund Society (1857): LJC Ross; if unauthenticated filled in blanks then presumed after execution without consent. Onus to establish contrary with party seeking to uphold alteration.

Ewen v Ewens Tr (1830): HOL decision; If blank occurs in material part of deed then entire deed is invalid.

Naysmith v Hare (1821): HOL decision; Granter of deed is free to require additional solemnities, in this case the affixation of a seal. Seal was not added so deed was invalid. House disagreed with inferior courts who thought could not require this as contrary to statutes of the time.

Abercomby v Innes (1707): Prior to 1874 any error in the deed made it invalid.

Dickson's Tr v Goodall (1820): But error in names which sound alike did not invalidate. Witness signed 'Wm C Davys' but was called 'WC Davis'. Held so minor it may be ignored.

Bissett, Pet (1961): Sh Ct decision; s.39 Conveyancing Act 1874, will consisting of two sheets only one signed. Held curable defect.

Notarial Execution

Duff v Earl of Fife (1823): A valid person could validly sign a deed.

Stephen v Scott (1927): Prior to 1995 a Solicitor did not need a practice certificate to act as a notary.

Hynd's Tr v Hynd (1955): HOL decision; Notarial execution must be performed unico contextu. Notary will not be disqualified merely because linked to granter eg cousin or employee.

Veitch v Horsburgh (1637):

Ferrie v Ferrie's Tr (1863): Appointment as trustee disqualified notary. As power to appoint law agent could potentially benefit.

Newstead v Dansken (1918): Notary named as solicitor by deed. Disqualified as would have financially benefited.

Finlay v Finlay's Tr (1948): Partner of notary appointed trustee, still disqualified as shared in profits.

Gorrie's Tr v Stiven's Ex (1952): Partner of notary appointed trustee, still disqualified as shared in profits. In this case urgency was irrelevant.

Crawford v Glasgow Royal Infirmary (1955): Strictest application of rule. Solicitor added codicil to previously executed deed. Partner was already appointed trustee under deed. Notary disqualified.

Craig v Richardson (1610): If more than one disabled person is involved in execution then different notaries should act for each.

Privileged Writings

Robertson v Ogilvie's Tr (1844): If alteration to holograph is in granter's hand that alone raises presumption of authentication.

Milne's Ex v Waugh (1913): Even unauthenticated holograph deletion allowed. However special case.

Bridgeford's Ex v Bridgeford (1948): If deed part holograph, part typed then provided holograph contains essentials of validity then entire deed treated as holograph.

Waterson's Tr v St Giles Boys Club (1943): Valid holograph deed can adopt informal deed by reference. Must 1) be valid 2) unmistakably identify 3) terms clear 4) later in date be subscribed.

Scottish Provident v Cohen (1888): Deed relating to moveables located in Scotland will receive effect if valid by place of execution.

Delivery of Deeds

McAslan v Glen (1859): Actual delivery is a question of fact to be determined with reference to the whole circumstances of the case.

Balvaird v Latimer (1816): Presumption that if in possession of granter then undelivered. If in possession of grantee then presumed delivered.

McManus tr v McManus (1978): same presumption applies if deed in possession of either parties Solicitor.

Mair v Thom's Tr (1850): If common agent deed is presumed delivered if price is paid.

Burnett v Morrow (1864): If deed is in possession of third party it is presumed delivered provided delivery is not onerous or gratuitous.

Stamfield's Cr v Scott's Cr (1696): Intention to deliver is necessary but is not alone sufficient, thus cannot deliver after death of granter.

Life Association of Scotland v Douglas (1886): death of granter precludes delivery.

Gibson v Hunter Home Design Ltd (1976): Price paid for property on entry. However deed undelivered as languishing in London. Sequestration takes place upon seller and as no delivery purchaser loses out even though paid price. Highlights importance of delivery. Some dicta suggest delivery could have created some form of property right.

Thomas v Lord Advocate (1953): On special facts of instant case property right between father and son was held to occur on delivery, not registration. The farm of Torrorie. Involved whether gift from father to son would be liable under statute for death duty. The statute only taxed gifts at time of death. The disposition had been delivered 5 years prior to death. The son had acquired all the benefits including rent's arising from the property at this date, only his occupation had been delayed. The speeches of Lord Mackintosh and the Lord Justice Clerk are more orthodoxly based on personal rights whereas Lord Patrick's speech contains the germ of the development of 'beneficial interest'.

Margrie Holdings Ltd v Commissioners of Customs & Excise (1991): Lord Hope stresses the importance of delivery for the purposes of passing a property right.

Sharp v Thomson (1997): HOL decision overruling Scots Courts on equitable grounds. Possible example of constructive trust in Scots law, a concept not generally favoured. Prof Rennie involved, instrumental in shifting focus of debate to company law in HOL. Held that delivery of disposition created a 'beneficial interest' in the purchaser sufficient to defeat the holder of a floating charge which subsequently crystallised. Form of intermediate property right previously unknown to Scots law, usually registration/infestment being required to create property right. Given that the conduct of the parties involved in the case was equivalent to criminal the scope of the decisions effect remains to be seen.

Warrandice

Coventry v Coventry (1834): Express warrandice will always override implied warrandice.

Strong v Strong (1851): Express warrandice will always override implied warrandice.

MacAlister v MacAlister's Exrs (1866): Express warrandice will always override implied warrandice.

Horsburgh's Tr v Welch (1886): Fact and deed warrandice is implied for fiduciaries but this may be overridden if they expressly grant a higher degree.

Reid v Barclay (1879): Fact and deed warrandice is implied in assignation of debt for a fair price. The existence of the debt is warranted not the debtors ability to pay.

Barclay v Liddle (1671): The debtor's solvency is not warranted.

Alexander v Lundies (1678): Simple warrandice is least onerous, merely warrants that will not act subsequently to compromise it.

Aberdeen Development co v Mackie, Ramsay & Taylor (1977): Absolute warrandice does not cover the physical condition of the property.

Duff v Fleming (1878): Absolute warrandice does not warrant against Damnum fatale.

Tay Salmon Fisheries Co v Speedie (1929): Absolute warrandice does not warrant against acts of government or local authorities.

Mackeson v Boyd (1942): Absolute warrandice does not warrant against acts of government or local authorities.

Urquhart v Halden (1894): Absolute warrandice will not warrant against servitudes unless heavy burdens.
Welsh v Russell (1894): Controversial whether the existence of an undisclosed servitude across property is a breach of warrandice. In contrast to earlier opinions, including Erskine who thought not opinions in this case suggest it *could* constitute a breach.

Armia Developments Ltd v Daejan Developments Ltd (1979): HOL decision; Not a warrandice case. However it was held that a servitude of access across a construction site could constitute an unduly onerous burden. Thus by implication it would be a breach of warrandice.

Lothian and Borders Farmers v McCutcheon (1952): Existence of a lease is not a breach of warrandice, but if the property is occupied it is.

Sinclair-McDonald v Hiatt (1987): Failure of seller to vacate timeously. Claimed damages but held if want vacant possession you must stipulate for it. Existence of a lease is not a breach of warrandice, it would seem neither is the fact that the property is occupied.

Christie v Cameron (1898): Only time you don't need eviction to sue for warrandice is when undischarged security in existence. On basis could clearly evict if chooses. Also indicates that warrandice granted transmits to a subsequent purchaser.

Dewar v Aitken (1780): No need of eviction when SS is in existence over property

Cobham v Minter (1986): Lord Kingraig in OH; Purchaser 1 who then sold to Purchaser 2, both titles defective. Held could not reassign rights.

Palmer v Beck (1993): Lord Kirkwood in OH; Received less than entitled to under missives but more than the purchaser intended. Involved property of 'Summerside', Elgin. Involved area of rough ground not carried in title. Need eviction (or partial) or at least clear threat of it before you may sue for breach of warrandice. Undeniable absence of title did not suffice. Reference to Watson v Swift & Co JF as remedy when no eviction, but action was raised in that case, also suggests damages could include solatium but this is wrong. What constitutes a threat of eviction depends on the circumstances of each case. Strip of land was in fact property of adjoining proprietor, owners paid bribe then tried to sue for breach of warrandice. Foolish error, unsuccessful as result. Damages for breach are restricted to diminution in value of the property, solatium clearly excluded.

Watson v Swift & Co's JF: Lord Morrison in the OH; In this case an action for breach of warrandice was allowed even though no actual eviction had occurred. But an action against which the purchaser had no stateable defence had been raised, it was held this would suffice. This is a view which is shared with Stair.

Clark v Lindale Homes Ltd (1994): IH decision of LP Hope (who issued the leading speech, Lord Mayfield, Lord Morrison; Failure to convey title to property, no assertion of ownership by true owner. Addressed the need for eviction, indicated required an actual attempt that was absent in this case. Issue arose when attempted resale and found unable to provide a clear title. Noted Stair and Erskine don't require eviction. However the court favoured the view of Bell that warrandice is an obligation to indemnify rather than protect.

Brigg's Tr v Dallyell (1851): In partial eviction damages are restricted to value of loss. Useful review of authority.

The Description

Murray's Tr v Wood (1887): A description may be valid as a general common law description even if riddled with errors provided it is sufficient to differentiate the property. In this case the seller only owned one property in Baker St, Aberdeen.

Matheson v Gemmell (1903): A description may be valid as a general common law description even if riddled with errors provided it is sufficient to differentiate the property

McDonald v The Keeper of The Sasine Register & Others (1914): The Keeper retains discretion to refuse to register a deed which is so vague as to cause difficulty linking it to other clauses.

Johnstone's Tr v Kinloch (1925): Valid description at common law by reference to identity of title owner.

Spencer Thomas of Buquhollie v Newell (1992): Illustrates the nature of Barony titles. At times only the title itself the 'caput' may remain.

Young v Carmicheal (1671): Illustrates that general descriptions are more likely to effectively carry ancillary rights.

Beneficial Bank v McConnachie (1996): A general description is insufficient for use in a Standard Security.

N.B Railway Co v Hutton (1896): General rule that it is not competent to subscribe outwith title boundaries.

Descriptions II

Smart v Mags of Dundee (1797); Keiller v Mags of Dundee (1886): Bounded by 'sea flood'; boundary is high water mark of spring tide, the foreshore is excluded.

Smith v Lerwick Harbour Tr (1903); Cadell v Allan (1905): Bounded by 'sea'; boundary is low water mark of spring tide, foreshore is included but subject to public right of access.

Fisherrow Harbour Comms v Musselburgh Real Estate Co (1903); Musselburgh Mags v Musselburgh Real Estate Co (1904); Luss Estates Co v BP Oil Grangemouth Refinery Ltd (1987): Bounded by 'beach'; Interpretation is controversial, Ct will look to intent of parties. In Muss Mags judicial opinion was divided evenly.

Todd v Clyde's Tr (1840); Hunter v LA (1869): bounded by 'navigable river'; boundary is low water mark of spring tide, foreshore included but no more.

Menzies v Marquess of Breadalbane (1901); Stirling v Bartlett (1993): Bounded by 'non tidal river'; boundary is median filum of the alveus. Sv B also illustrates accretion, through erosion.

Fleming v Baird (1841): Bounded by 'canal'; boundary is edge of water, toe path excluded.

Houston v Barr (1911): Bounded by private road; boundary is edge of road.

Butt v Galloway (): 'Hedge' at esge of road is exclude from the road.

Magistrates of Ayr v Dobbie (1898): bounded by 'public road'; boundary may be median filum of solum. If so useless possession as unable to act in respect of it. Particularly likely if person who conveyed previously owned property on both sides of the road.

Harris v Wyshart (1995): This will clearly not occur if road is a private one.

Description III

Wyshart v Wyllie (1853): bounded by 'navigable river'; boundary is low water mark of spring tide, foreshore included but no more.

Smyth v Allan (1813): bounded by 'a wall'; boundary is inside face of wall.

Gray v McLeod (1979): Sh Ct decision; But if bounded by 'mutual wall' either own up to half of solum, or either side up to inside face with pro indiviso share in solum.

Argyllshire Comissioners of Supply v Campbell (1885): bounded by 'lane'; boundary is edge of lane.

Baillie v Mackay (1994): But may have right of access across it.

NB Railway Co v Magistrates of Hawick (1862): Description by use of plan is valid method.

Hetherington v Galt (1907): Description by superficial measurements is valid method.

NB Railways Co v Moon's Tr (1879); Suttie v Baird (1992): If boundaries conflict with plan and superficial measurement is also detailed whichever measurements agree with will prevail.

Ure v Anderson (1834); Fleming v Baird (1841): If boundary is given along with a plan *or* superficial measurement the boundaries if clear will prevail. Others merely demonstrative.

Currie v Campbell's Tr (1888); Douglas v Lyne (1630): Thus measurement will not carry more land.

Description IV

Hepburn v Campbell (1781): If measurements stated to be taxative they will prevail over boundaries. If boundaries contain *material* shortfall the purchaser may resale.

Brown v NB Railways Co (1906): If measurements alone are stated they are deemed taxative.

Oliver v Gaughan (1990): s.8/9 of MP Act 1985 used to rectify description.

Gordon v Grant (1850): Reference to land as within particular county constitutes theoretical description.

Cattanach's Tr v Jamieson (1884): Statutory description by reference.

Pertinents

Stewart's Tr v Wood (1874): Definition of pertinent's as 'ancillary rights'.

Duke of Argyll v Campbell (1912): Lord Johnston's leading judgement. Pertinents more likely to be carried if possessed for the prescriptive period.

McArly v French's Tr (1883): Even property outwith boundaries may be carried as pertinent if use is clearly accessory to main subject

Richardson v Baroness Gray (1877): Salmon Fishings cannot be conveyed as pertinent. They must be granted by Crown.

Stuart v McBarnett (1868): HOL decision; Salmon fishings may be granted from superior with prescriptive possession.

LA v Lord Lovatt (1880): Barony title with prescriptive possession can convey salmon fishings.

LA v McCulloch (1874): Express grant from superior with prescriptive possession can carry salmon fishings.

LA v Sinclair (1867): Ordinary conveyance of land with general fishing's clause and prescriptive possession will suffice.

Patrick v Napier (1863); Earl of Galloway v Duke of Bedfordshire (1902): Ordinary fishings cannot be owned separately.

Reservations of Minerals

Caledonian railway Co v Glenboig Union Fireclay Co (1911); Caledonian railway Co v Symington (1912): What constitutes a 'mineral' is a question of fact to be determined with reference to the whole circumstances of the case. There is no determinative legal answer.

Caledonian railway Co v Glenboig Union Fireclay Co (1911); Marquis of Linlithgow v NB Railways Co (1912): In determining what is to constitute a mineral the courts will consider the intentions of the parties. The understanding of the term 'mineral' in the mining and commercial sense at the time of the grant will be influential.

Caledonian railway Co v Glenboig Union Fireclay Co (1911); Borthwick Norton v Paul & Sons (1947): a mineral must be distinct and separate from the ordinary subsoil. It should be of exceptional character or value, otherwise the owners title to the subsoil would be meaningless.

Duke of Hamilton v Dunlop (1885): HOL decision; Reservation of minerals includes the right to work them underground only. Reservation of the right to work minerals also probably carries the minerals themselves.

Craig v Jarvis(Scotland) ltd (1997): If wish to work minerals above ground must expressly provide for the right.

Bank of Scotland v Stewart (1891): Lord Adam; If the surface is in it's natural state when the reservation of minerals is granted there is an implied right of support. Right to interdict and damages. Principle sic utere tuo alienum non laedas(use property so as not to hurt others).

Dalton v Angus (1881): If surface not in natural state must expressly state right of support in grant. If buildings exist prior to grant on adjacent property right of support exists but only to extent of pre-existing buildings.

Ancillary Incorporeal Rights

Matheson v Tinney (1989): Absolute prohibitions of sale are illegal, clauses of preemption are not.

Peston v Earl of Dundonald's Cr (1805): Absolute prohibitions of sale are illegal, clauses of preemption are not. It is acceptable to specify a fixed price

Earl of Mar v Ramsay (1938): Draft clause in manner it clearly transmits to the singular successors.

Christie v Jackson (1898): Draft clause in manner it clearly transmits to the singular successors.

Roebuck v Edmonds (1992): Must strictly frame clause as it will be construed contra proferentum.

Ross and Cromarty D.C v Patience (1997): Concerned statutory right to purchase council House. A rogue had purchased an obscure superiority for peanuts. It contained an preemption clause he tried to use to take advantage of the tenant. Held that statute precluded the operation of the clause in this case.

McElroy v Duke of Argyll (1901): Clause of redemption is also legal even if the sum provided for is not the full value of the subjects.

Viscount Strathallan v Lord Grantley (1843): Clause of redemption is also legal even if the sum provided for is not the full value of the subjects.

Cargill v Muir (1837): Illustrates nature of feudal estate, no objection to more than one person owning superiority in pro indiviso shares.

Tailors of Aberdeen v Coutts (1840): Comprehensive statement of what is required to constitute a real burden. 1) No particular words, but must make clear it is the land itself burdened not the person. 2) Not illegal, vexatious or contrary to public policy. 3) Words specific as construed contra proferentum. 4) If sum of money, the amount should be definite.

Hislop v MacRitchies Tr (1881): HOL decision by Lord Watson; Statement on the enforcement of real burdens by co-feuars with ius quaesitum tertio. Require clear implied intent to establish it. Either 1) feued to uniform plan, or 2) imposed general restrictions for insertion into sub feus.

The Reddendo clause

Yuille and Others v Lawrie & Douglas (1823): The superior has the right of hypothec over the vassal's property for non payment of feu-duty.

Cassels v Lamb (1885): Superior requires decree before may enforce irritancy. Upon irritancy all property reverts to superior.

Anderson v Valentine (1957); Precision Relays Ltd v Beaton (1980): As a result of the drastic nature of the irritancy remedy the Ct has the discretion to allow payment up to the date of decree.

Short's Tr v The Keeper (1996): Illustrates distinction between decrees of irritancy and reduction. Reduction cannot be registered in Land Register, instead must use s.9 rectification procedure.

Sandeman v Scottish Property Investment Building Society (1885): HOL decision; A subfeuar can suffer the effects of irritancy for the non payment of the over duty. It may be necessary to pay entire over duty sum to avoid consequences.

Arnott's Tr v Forbes (1881): If the superior has undertaken positive obligations then the vassal may withhold payment of feu duty for non performance.

Extinction of the Feudal Estate

Love Lee v Cameron of Lochiel (1991): If consolidation is to be possible the superiority must be capable of embracing the dominium utile. If the title states 'superiority only' this will not be the case.

Middleton and Paterson v Earl of Dunsmore (1774): Consolidation by prescription when superior possesses dominium utile for 10 years openly, peaceably and without judicial interruption.

Bald v Buchanan (1787): When acquires titles consolidation does not occur automatically.

Hay v Paterson (1910): If destinations are present in consolidation via resignation or minute the destination in the higher title eg superiority, rules.

Earl of Glasgow v Boyle (1887): Titles should not be dealt with separately over 10 year prescriptive period as this will indicate an absence of intent to consolidate.

Earl of Zetland v Glover Incorp (1870): HOL decision per Lord Chancellor and Lord Westley; Consolidation does not extinguish the dominium utile in the manner of irritancy, rather it 'merges for the enjoyment of the superior' per Lord Chancellor, thus the existence of standard securities will be unaffected. Held salmon fishings not lost on consolidation.

Parks CB v Black (1870): Contrast view of Lord President Inglis who thought it did destroy dominium utile.

Fraser v Wilson (1824): Illustrates that standard securities on either superiority or utile are unaffected by consolidation.

Pattison v Dunn's Tr (1868): HOL decision; Destination in superiority prevails over one in dominium utile.

Missives I

Gardner v Lucas (1877): Illustrates the difficulty in relying on even constructive knowledge in relation to rei interventus. Held consequences would have to flow naturally from the relevant action. In this case giving up an existing business in anticipation of obtaining a new property would not qualify.

Danish Dairy Co v Gillespie (1922): Three main points:- 1) Solicitor requires actual authority to conclude missives, his ostensible authority will not suffice. 2) LP Clyde stresses the significance of the other party's knowledge and acquiescence in respect of the old doctrine of rei interventus. 3) Illustrates that in some circumstances the knowledge of the solicitor may be imputed to his client.

Merrick Homes Ltd v Duff (1997): Addressed the status of faxes, specifically whether they constituted writing. In the Outer house Lord Gill stated that the point did not have to be decided in the instant case but indicated they might. The Inner House reiterated that the point was not at issue in the present circumstances but specifically declined to endorse Lord Gill's suggestion. Thus the decision would indicate they don't constitute writing, a view favoured by Talman.

McIntosh v Alam & Hakeem (1997): Greenock Sheriff Ct by Sheriff Sr Steven Young; This case indicated a clear distinction between the requirement that the document itself be in writing and the requirement applicable to the communication of its existence to the other party. Held that while the fax itself was a copy of the document itself and probably not writing provided that the original validly subscribed document existed the fax would be a valid means of communicating its existence. This decision would seem to indicate that oral or electronic communication must be valid on the same basis.

Scott v JB Livingstone & Nicol (1989): If a solicitor concludes missives without the actual authority of the client he will become personally liable on the contract.

Thomson v James (1855): An offer is valid when it is received by the offeree. An acceptance is valid as soon as it is posted.

Henthorn v Fraser (1892): A withdrawal of an earlier offer must reach the recipient before an acceptance is posted to be effective.

McMillan v Caldwell (1990): Lord Kirkwood in the Outer House. A withdrawal of an offer may be validly constituted orally, even if the original offer is free of any error. This is in direct contrast to the offer itself which must be in writing. Onus of proving withdrawal is with party averring it. This decision could be said to achieve fairness but at the cost of clarity.

Wolf & Wolf v Forfar Potato Co (????): Classic rule of contract that qualified acceptance constitutes a counter offer which 'destroys' the original offer. Supports the view favoured by Gloag.

Rutterford v Allied Breweries Ltd (1990): Lord Caplan in Outer House. Follows the example set in *Wolf*, when a part has issued a qualified acceptance they cannot then withdraw it and purport to accept the terms of the original offer. There can in effect only be one offer on the table at any time.

Findlater v Mann (1990): See LJC Ross; Complex and very unusual facts. Through process of counter offers one qualified acceptance in effect became 'isolated' from the others. The court adopted a commercial perspective towards the use of qualified acceptances. Held in this case was in effect two distinct offers available at once. This case is difficult to reconcile with the opinions issued in *Rutterford*.

Missives II

Houldsworth v Gordon Cumming (1910): See Lord Chancellor Loreburn; In a conflict between the descriptions in the missives and disposition the purchaser is entitled to a conveyance of what was contracted for eg the missives. Moreover in determining what is included in the missives the purchaser is entitled to what he justifiably believes he is receiving. Agreement was for 'estate of Dallas'.

Barret Scotland Ltd v Keith (1994): It is missives not disposition that determines what property is carried.

Whyte v Lee (1879): Purchaser is entitled to have conveyed what is contracted for in the missives. If does not then may rescind, is not required to allow seller any time to rectify title. Also illustrates the presumption that title is a *coelo usque ad centrum*.

Campbell v McCutcheon (1963): Purchaser is entitled to have conveyed what is contracted for in the missives. If does not then may rescind, is not required to allow seller any time to rectify title. Value of land omitted is irrelevant; see Lord President Clyde.

McConnell v Chassells (1903): A lease is not equivalent to title, even one of 999 years. If the seller only has a lease then the purchaser may resale.

Hutchinson & Son v Scott (1830): Old case in which several years was held to long a period to remedy an unduly onerous burden on the property's title.

Raeburn v Baird (1832): A period of six months was held to be not to long a period to remedy a defect in title.

McLennan v Warner & Co (1996): Modern case, Lord Penrose held that the new standard to remedy a defect in the title is 28 days. This is the new going rate.

Duke of Devonshire v Fletcher (1874): The obligation to provide marketable means that not only must the title not be clearly bad, it must be such that that it could not be fairly objected to in court.

Lothian & Borders Farmers v McCutcheon (1952): The existence of a tenant/lease will not be a breach of absolute warrandice.

Stuart v Lort-Phillips (1976): Lord Stott in the OH; Missives provided for 'actual occupation. Area of land was occupied by neighbouring farmer on flimsy legal basis. Held that this was a breach that the purchaser was entitled to respond to with rescission.

Missives III

MacKenzie v Neil (1889): Absolute warrandice is implied in sales of heritage unless provided otherwise.

Newcastle Building Society v White (1987): Sh Ct decision; Inhibition was registered after the contract of sale had been concluded. Due to fact that inhibition appeared on personal register meant search was not clear. Seller attempted to challenge on basis it was not marketable. Held it was.

Hawke v Mathers (1955): Letters of comfort have no legal status and if offered in want of building or planning certificates the purchaser can refuse to accept. Failure to provide the certificates will constitute a breach of ancillary obligations, all of which Professor Rennie believes to be material. Held material breach then entitled to rescind.

Rodger (Builders) Ltd v Fawdry (1950): Failure of purchaser to pay price on date of entry is not material breach, does not entitle to rescind. Must allow purchaser 'reasonable' time to pay. Illustrates ultimatum procedure which should be used in the event of a failure to pay to make continued failure the basis of rescission.

Black v Duck (1814): Failure of purchaser to pay price on date of entry is not material breach, does not entitle to rescind.

Charisma Properties Ltd v Grayling (1994): States may only resale immediately for non payment of price if provide to that effect in the missives

Lloyds Bank v Bamberger (1993): difficult and questionable decision. Held when purchaser fails to pay price on time interest will only run if he eventually purchases property. If seller later resiles and sells elsewhere no interest will accrue.

Aitken v Hyslop (1977): If do not pay on date of entry but take possession then interest runs till you pay.

Sloans Dairies Co v Glasgow Corp (1977): Held that risk to property passes at conclusion of missives not at date of entry. This common law provision is almost universally varied by missive.

Gordon DC v Wimpey Homes Ltd (1988): Held that risk to property passes at conclusion of missives not at date of entry. This common law provision is almost universally varied by missive. Not essential to specify date of entry in missives.

Secretary of state for Scotland v Ravenstone Securities Ltd: Not essential to specify date of entry in missives.

Stobo Ltd v Morrison Gowns (1949); Law v Thomson (1978): Authority for the view that specifying a date of entry or at least a means of ascertaining it is an essential of the contract. See the speech of Lord Maxwell in Law.

McLeod's Exrs v Barr's Tr (1989): Price or method of ascertaining it is essential.

NJ & J MacFarlane (Developments) Ltd v McSween's Tr (1998): Must state price in missives, or at least method of ascertaining it. In this case the decision of an arbitrator was specified.

Scottish wholefoods Collective warehouse (1994): Value stated as 'current open market price' was sufficient.

Missives IV

Lee v Alexander (1883): HOL decision, Lord Watson giving the leading speech; Embodies single contract theory of conveyancing. As later and more formal document the disposition supersedes the missives.

Orr v Mitchell (1893): HOL decision; Missives supersede the parties prior informal communications.

Buffer v Fossier (1912): Missives supersede the parties prior informal communications

Great North of Scotland Railway v Duke of Fife (1901): HOL decision; Old rule did not apply if ambiguity present in the disposition.

Winston v Patrick (1980): Before this case it was commonly thought that any provision of the missives not directly related to the property itself was excepted from supercession. Involved warranties of planning permission in respect of the property. Held superseded by disposition, decided on basis provision was on construction simple positive statement rather than warranty. Confused issue of what conditions would be superseded, resulted in use on non supercession clauses. Stated three exceptions to the rule 1) relation to moveables 2) Collateral obligations 3) agreement to subsist

Jones v Heenan (1988): Sh Ct decision by Sheriff Mowat; Collateral obligations will not be superseded. Need not include n/s clause in disposition.

Jamieson v Stewart (1989): Sh Ct decision; Need not include n/s clause in disposition. Illustrates exception in cases of items of moveable property.

Hardwick v Gebbie (1991): Recognises collateral obligation as exception to Winston. In this case an obligation to build a house. As a result the purchaser could still claim damages for breach.

Pena v Ray (1987): Illustrates the difficulty with the use of time limits in n/s clause. In this case limit was 6 months and seller's obligation was to renovate castle. Attempted to sue for failure after period had elapsed. Clearly failed lord Wiley commented equivalent to 'shooting self in foot'. Practice favours using a period of 2 years. Also sufficient if action is raised within period, it need not be concluded.

Featherston v McDonald (1988): Action may prolong outwith period provided begun in time.

Finlayson v McRobb (1987): Sh Ct decision; Held n/s clause was itself superseded by disposition. Resulted in practice of n/s clause also being included in the disposition. Warrants of situations will not survive.

Parker v O'Brien: Contrasts with Finlayson. The term 'will warrant' was used and that was held sufficient to survive.

Fortune v Fraser (1995): Problems caused by the lack of availability of the actio quantis minoris.

Louitt's Tr v Highland Ry (1892): Lord McLaren states that Scots law has not accepted the actio quantis minoris. Must rescind before may claim damages.

Judicial Transmission

Martone (1992): Method of avoiding need to seek specific implement. In CoS Clerk can sign and in Sh Ct the Sheriff-Clerk can sign under s.17 of the Law Reform (miscellaneous provisions) Act 1985.

Alliance & Leicester Building Society v McGregor (1994): Dispositions may be granted by uninfert propretor with right to land. Trustees not need notice of title to complete title, instead need only send act and warrant to the Land register, the Keeper will update the Title sheet.

Bank of Scotland v Lord Advocate (1977): The inhibiting creditor will be given a preference over post inhibition debts.

Abbey National Building Society v Sheik-Aziz (1981): Sh Ct decision; The inhibiting creditor will be given a preference over post inhibition debts.

Heritable Reversionary v Millar (1982): HOL decision; the property on death will vest in the trustee 'in so far and as much as it vests in the banker'.

Colquhoun's Tr v Campbell's Tr (1902): Bankruptcy Act 1985 s.3, Provides that anything pleadable against the bankrupt is also pleadable against the trustee.

Sharp v Thomson (1997): Illustrates that the concept of constructive trust is not favoured by Scots law. Although this case perhaps comes close.

Intestate Succession, Special Destinations & Testate Succession

Newell v South Lanarkshire (1998): Lord Philip, Nursing home costs held to be defrayed.

Steele v Caldwell (1979): Problems caused by the need to properly evacuate special destination. If not the wives original half interest may revert to husband on her death.

Smith v McIntosh (1989): Problems caused by the need to properly evacuate special destination. If not the wives original half interest may revert to husband on her death.

Gardiner's Ex v Raeburn (1995): Problems caused by the need to properly evacuate special destination. If not the wives original half interest may revert to husband on her death. This time from perspective of wife evacuating in favour of the husband.

Smith's Ex v Smith (1918): 'Estate' is sufficient to convey heritage.

Craw's Tr v Blacklock (1920): 'Means and Estate' is sufficient to convey heritage.

Simson's Tr v Simson (1922): 'My belongings' sufficient to convey heritage.

Auld's Tr v Auld's Tr (1933): 'Capital' sufficient to convey heritage.

Pitcairn v Pitcairn (1870): 'My effects' is not sufficient.

Crozier's Tr v Underwood (1963): 'all my other effects' in special circumstances of the case was held to be sufficient.

Ord v Ord (1927): 'money' will usually not suffice but here the use of 'all the money I am possessed of' followed by a list of assets was held sufficient to carry the heritage.

Fraser's Ex v Fraser's Curator (1993): 'All the money left by my father' was held to carry the heritage when the father left heritage.

Mandeville v Duncan (1965): 'business carried heritage when it was carried on with the heritage owned by the deceased.

Accretion & Trust Transmission

Swans v Western Bank (1866): Clear example of accretion by reconveyance perfecting title.

Keith v Grant (1792): For validating deed to operate it must be in favour of the party who made the original grant of defective title. So if A gives a flawed title a deed in favour of his heir will not validate.

Redfean v Maxwell (1816): For validating deed to operate it must be in favour of the party who made the original grant of defective title. So if A gives a flawed title a deed in favour of his heir will not validate.

Neilson v Murray (1738): Operation of accretion perfects title back to date of grantee's infertment.

Martin v Martin's Tr (1841): This principle also applies when an infert trustee is assumed where the existing trustees have previously granted a flawed title.

Lockhart v Ferrier (1837): Accretion may operate when the validation occurs after the death of the party who made the original flawed grant.

Paterson v Kelly (1742): When accretion occurs those rights which have been granted by the party whose title is cured are also cured and will be preferred. By date of defective infertment.

Standard securities I

AIB Finance Ltd v Bank of Scotland (1995): Debtor signed security then floating charge on same day. Floating charge is effective when signed(CA 1985 s.462(5)), the Security is not effective till registered. As a result the security was postponed to the charge.

Griffith v Powdrill, Petr (1998): Need consent of floating charge before may grant another security. Held consent is not a ranking agreement. The security was still postponed to the charge.

Tamroui v Clydesdale Bank (1997): Sh Ct decision by Sheriff r Davidson; Creditor needs decree of possession.

Mumford/Smith v bank of Scotland (1996): Bank has duty to advise cautioner of potentially prejudicial transaction in certain limited circumstances.

Bennett v Beneficial Bank (1995): Postal address is neither a particular description or a statutory description by reference. Held that the terms of the 1970 Act in this respect are mandatory, not permissive.

Beneficial Bank v Wardle (1996): On the special facts of the instant case rectification of a postal address was allowed into a particular description.

Trade Development Bank Ltd v Warriner & Mason Ltd (1980): Lord Kissen dissenting, LP Emslie gave leading judgement; Lyon group tenant's on 120 year lease, granted SS to bank, 2 years later granted sublease to W & M. Variation of the standard terms of the security did not appear in the register. In these circumstances a third party may be deemed ignorant. However if there is a reference to the document and the variation then will be put on enquiry. In this case the lease granted to the third party contrary to standard condition 6 was struck down.

Trade Development Bank Ltd v Crittal Windows Ltd (1983): Someone who takes title to when knows granter is bound to grant to another is not in good faith. If creditor knows someone has real right, or a right that is capable of being made real then they cannot prevent that person exercising their rights.

Hambros Bank v Lloyds Bank plc (1999): qualification in deed prior to security, considered whether security superseded deed.

Standard Security II

Union Bank v National Bank (1886): HOL decision; Debtor granted a second standard security and intimated fact to his original creditor. Held intimation effectively 'froze' earlier creditors preference to the sums at date of intimation. Advances afterwards not covered.

Campbell's JF v National Bank of Scotland (1944): Held appointment of JF is equivalent to intimation to the creditor. Held that interest arising after intimation would not attract a preference. While possessed of a certain logic this was in fact unfair and has been replaced by statute, s.13 of 1970 Act.

Kippen v Stewart (1852): Debtor needs to pay or obtain discharge to be free. Creditor can still affect land even if conveyed to a third party. S.47 of the Conveyancing(Scotland) Act 1874 states the security and personal obligation may transmit if provide to that effect in the deed.

Carrick v Rodger, Watt & Sons (1881): Problems with what constitutes agreement for the purposes of s47. Assignment of original debtor did not discharge original debtor.

Wright's trs v McLaren (1891): Problems with what constitutes agreement for the purposes of s47.

University of Glasgow v Yuill's Tr (1895): Y granted security to University then disposition to Mr X, provided the personal obligation was transferred. Held no discharge, University held preference. Transfer of property does not terminate personal liability of original debtor.

MacKinlay v Webster's Tr (1895): Creditor has the right to enforce the personal obligation against others.

Adair's Tr v Rankin (1895): Creditor with a postponed standard security may sell and redeem an earlier security.

McWhirter v McCulloch's tr (1887): Creditor needed to give certain period of notice but held not applicable. May use remedies under personal obligation and security concurrently.

Hill Samuel & Co Ltd v Haas (1989): Sh Ct decision; requirements of s.19 in respect of serving a calling up notice must be strictly observed.

Gallagher v Ferris (1998): Must serve notice on the person who is last in fee eg as individuals, not as trustees.

Standard Securities III

Hewitt v Williamson (1999): No figure inserted in calling up notice. Debtor did not ask for statement, held interest continued to run.

A Dunlop & Sons JF v Armstrong (1995): Debtor can repay the sum due right up to the moment the creditor sells the property.

Scott v Davidson (1914): Duty on creditor to 'do justice to land' in sale by public roup.

Bank of Credit v Thomson (1987): creditor only advertised the subjects for sale in a trade journal, also failed to mention had planning permission for other developments. Held no duty to do so more extensively to get a better price.

Parks v Alliance Heritable Securities Co (1880): Lord Moncrieff states opinion that Court would not reduce a flawed sale by the creditor and rather would award damages if loss resulted from reckless and inequitable use of their powers.

Bissett v Standard Property Investment (1999): No requirement to obtain the 'market value' of the property. Need only take reasonable steps to sell.

Armstrong, Petr (1988): Sh Ct decision; H and W ran the farm, W's father became creditor. Held allowable to sell the property if in his interest's as creditor.

City of Glasgow Liquidators v Nicholson's Tr (1882): Creditor in possession of the property becomes liable for the payment of the feu-duty.

Greenock Police Board v Liquidators of Greenock P.I Soc (1885): Creditor in possession of the subjects is also liable for the payment of rates.

Baillie v Shearer's Tr (????): Creditor in possession is liable for consequences of public entering into property.

David Watson Property v Woolwich (1992): But a creditor in possession is not liable for the payment of prior common charges.

**Joseph Barrett 2000
Law Student,
University of Glasgow**