

The legal implications of the *banchomarbae*

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Abstract

The general rule regarding women and property in early Irish law is that a woman was not allowed to own or deal with land except for her obligations through marriage. However, if a man died without sons, his daughter was entitled to a life-interest in the land, and was considered the rightful owner of this land until she died. The legal situation of the *banchomarbae*, 'female heir', was therefore quite different from a woman's normal legal situation. This article offers a detailed analysis of the legal implications of a woman being considered the rightful owner of land, and how this would affect her legal standing and contractual capacity in early Irish society.

There is no single legal tract which deals with the property rights of women in early Irish society. The reason for this is clear; women were considered legally incompetent, and were therefore unable to deal with property. In fact, women were grouped in a category of person along with 'the child, the dependent son of a living father, the insane person, the slave, and the unransomed captive', all of whom were considered *báeth*, 'legally incompetent' or 'senseless' (Kelly 1988, 68; *DIL* s.v. *báeth*). These are all dependants and as a result they are not entitled to make any legal contracts without the authorisation of their legal guardians. For a woman, the guardian changed throughout her lifespan: as a child her father or head of kin¹ would be her guardian, when she was married her husband was her guardian,² 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 (*Dire*-text §38; Thurneysen 1931, 35; Kelly 1988, 76; McLeod 1992, 71).

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, but some rules are strictly set; a daughter was not entitled to inherit immoveable property; only the sons were entitled to inherit the kin-land, *finniu*. The author of *Córus Fine* states that the daughters would receive an equal share of any property,

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

2 There are certain exceptions to this rule, especially in regard to *lánamnas fir for bantinchur*, in which the wife was her husband's guardian, and in *lánamnas mná for ferthinchur*, in which the woman could decide whether she wanted to be under the guardianship of her husband, her sons, or her father (*CIH* 443.21–4; Thurneysen 1931, 34; Kelly 1988, 71).

i.e. both moveable and immovable property, which the father had acquired independently of the *fintiu* (Dillon 1936, 133–4). Kelly explains that a daughter is entitled to a share of a father’s personal valuables, but not of his land (1988, 104; *CIH* 736.28–9). However, *Córus Fine* goes on to state that:

Muna fuil comarba ferrdha ann, na scuichthi do breith uilí, ⁊ na hann-scuichthi go (?) fuba ⁊ co ruba. no a leth gen fuba ⁊ gen ruba (CIH 736.30–1).

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 (Dillon 1936, 133).

In other words, the daughter would 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 two cases of *athgabál aile*, ‘distrain with a two-day stay’, in *Cetharslicht Athgabálae*:

im tincur roe, tairec nairm (CIH 379.11–12).

concerning the contribution of a (battle-)field, the supplying of a weapon (Raae 2013, 36).

The former of these two cases has been glossed:

.i. im tinecor a coibdelaig isin re comraic .i. dia ferlesach gaibes (CIH 379.33–4; AL i 154.1).

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] (Raae 2013, 36).

and the latter:

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 (CIH 379. 34–6; AL i 1–3).

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 (Raae 2013, 36).

These two cases make much more sense in the light of the evidence from *Córus Fine*, and 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, which includes both weapons and the contribution of a battle-field, it seems clear why these cases have been mentioned in the law tract on distraint.

Though *Córus 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 to 14 *cumals* of land (*CIH* 563.6; 779.26; Binchy 1941, ll. 153–4; Kelly 1997, 415 n. 105; *ibid.* 421). Dillon believes this limitation is found in the Kinship Poem (xv):

*Fine o c[h]iurt c[h]obrainne
Nis tic do c[h]irt c[h]omfocais
Acht certorbae mboairech,
Da .uii. cumal comarda,
Orba biatas mboaireach* (Dillon 1936, 155; *CIH* 217.20–1).

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* (Dillon 1936, 155).³

Dillon’s and Charles-Edwards’ translations of this stanza differs in the recipient of the inheritance. Charles-Edwards takes this stanza to concern a son inheriting kin-land, not the limitations to the inheritance of a *banchomarbae*. While Dillon (1936, 155) translates the second line of the stanza ‘there comes to *her* by right of kinship’, Charles-Edwards (1993, 519) 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 inheritance to claim the land appropriate to his status, and that the 14 *cumals* is the limit to his claim (Charles-Edwards 1993, 69–70). Dillon on the other hand, believes this stanza to concern the limitation to the inheritance of a *banchomarbae* to 14 *cumals* of land (Dillon 1936, 155; *CIH* 217.21; Kelly 1997, 415; *ibid.*, 421),

3 Cf. Charles-Edwards (1993, 519): ‘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’. Note that Dillon and Charles-Edwards’ translations differ in the gender of the recipient, and while *CIH* 217.20 has *nis tic do cert...*, Charles-Edwards has *nis tic di chiurt...* (Charles-Edwards 1993, 518). The final line of translation has been omitted by Charles-Edwards.

i.e. the same amount of land as a *bóaire* was expected to have (*CIH* 563.6; *CIH* 779.26).

Irrespective of whether the Kinship Poem originally discussed the son or the *banchomarbae* as the recipient of the inheritance, the glossators have clearly taken it to be the *banchomarbae*, and the details regarding the limitation of inheritance for the *banchomarbae* are found in the glosses. The limitation is further qualified, and the glossators state that it is only the daughter of the highest rank of *bóaire* who would inherit the 14 *cumals* of land:

tir da .uii. cumal do ingin in boairech is ferr (*CIH* 217.29–30).

twice seven *cumals* of land to the daughter of the highest *bóaire* (Dillon 1936, 155).

However, the glosses also add a distinction between the property qualifications of the different ranks of *bóaire* which Dillon explains as ‘a distinction which appears to belong to the later period’ (1936, 155): 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 (*CIH* 217.31–3), while the middle or lowest grade of *bóaire* would normally have an estate of 14 *cumals* of land. Though the law texts differ slightly in the classification and the property qualifications of the different ranks, the highest grade of *bóaire*, the *mruigfer*, never seems to have had more than 21 *cumals* of land (*CIH* 217.33–4). According to the glossators, the daughter of the middle or lowest grade of *bóaire* was 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 (*CIH* 217.33–5). 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’⁴ which implies that the glossators 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* to 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 1936, 156).

Dillon points out that the maximum inheritance for a woman being equal to the property qualification of a *bóaire* is a coincidence (1936, 156), which seems to be a correct observation. This can be based on the complex rules of agnatic inheritance.

4 *CIH* 217.31–2. Dillon 1936, 155, gives ‘coigny’ as the translation of the word *congbáil*. *DIL* s.v. *congbáil* b) ‘maintenance, entertainment, legal right or obligation as regards entertainment’.

Not every couple is able to procreate, and not every couple will have sons. Jack Goody, in his article ‘Strategies of heirship’ (1973, 4–5), 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, which he argues can be compared to the rates in Medieval Europe (Collver 1963, 86–96). 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. This can be compared to the mortality rate of the Middle Ages, and the percentage of fathers dying without a male heir would be equal to, or higher than, the 22 percent of present-day India. Yet, since a man could take a second wife, the proportion of fathers with only female heirs would be less than one in five (Ó Corráin 1985, 11). However, it was expensive to take a second wife, and therefore more common in the wealthier strata of society, as they were more likely to afford multiple unions. With the strict payments to be made by a man taking a secondary wife while still being married to his primary wife,⁵ the less wealthy would be less likely to enter into multiple unions. Charles-Edwards argues that the poorer men in 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 (Charles-Edwards 1993, 84). Since men of higher rank were more likely to be able to afford multiple marriages, they were also less likely to die without a living son, and the situation of the *banchomarbae* was therefore more likely to occur in the lower classes of society. Therefore, the amount of a possible inheritance for a woman exceeding 14 *cumals* of land would not often be an issue.

The glossator of the TCD MS E. 3.5. version of the Kinship Poem added another limitation to the inheritance of a daughter from that previously discussed. The glossator states that:

.i. otha aisneis dam do dibad cach cind dar comfoicsied in ferann; in geilfine uili rodibda and, , in ferann uile do breith don ingin a dualgus bancomarbais (CIH 216.3–4; Dillon 1936, 140).

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* (Dillon 1936, 140).

Thus, the glossator limits the possibility for a woman to become a *banchomarbae* further than that which has been explained so far. This is an even more strict limitation to the inheritance than the evidence which states that a woman will

5 For more information on these payments, see Eska 2010, 209; *ibid.* 213; cf. *CIH* 513.15–19; 1809.21–4.

become a *banchomarbae* if her father dies without a living male heir. According to the E. 3.5. glossator the entire *gelfine* must be extinct, and only in that case can she inherit the *fintiu*.

The *gelfine* was the most shallow of the four *fini* in early Irish society, and the most ego-centred (Charles-Edwards 1993, 55). It consisted of five categories of men: the grandfather and his male descendants, and was only three generations deep. It is normally counted as 1) a man, 2) his father, 3) his grandfather, 4) his father's brother, and 5) his father's brother's son (Charles-Edwards 1993, 56; McLeod 2000, 2–3). 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 daughter of 1). 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 *gelfine* had to have become extinct (1936, 174). Kelly explains that a woman would become a *banchomarbae* if she had no brother (1988, 104), but does not mention the condition of the extinction of the *gelfine*. Ó Corráin supports Kelly in that a daughter would inherit the kin land 'in default of male siblings' (1995, 52) and states that the Kinship Poem envisages a case in which the *gelfine* issued a female heir to the *fintiu*, which clearly means that the whole *gelfine* could not be extinct in that case. This is strengthened by a later quatrain of the Kinship Poem, (xii), which states that a son of a *banchomarbae* could not inherit the *fintiu* of his mother unless his father was also the nearest relative in succession to inherit the *fintiu* (CIH 216.35–217.10; Charles-Edwards 1993, 518; Dillon 1936, 150–1; Kelly 1997, 416). The glosses to the quatrain state that:

*Ni mac bratus .i. mac bancomarba ani-siu, 7 is inann fine dia mathair 7 a athair;
acht ni bratfe fintiu in mac-sin a comarbus a mathar manip nesa do-sum ara
athru in grian-sin ina bancomarba oldas don fine olchena (CIH 912.26–8).*

[He is no son who steals,⁶] 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* (Dillon 1936, 150).

Ó Corráin explains that if a *gelfine* has no one else to inherit the *fintiu* but the *banchomarbae*, the land will revert to her patrilineal 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,

6 Dillon has no translation for *ni mac bratus*, and the translation of this phrase has been supplied on the basis of Charles-Edwards' translation of (xii) in which the exact same words occur (1993, 518, l. 25).

can inherit, since they are then among the ultimate heirs (Ó Corráin 1995, 53). 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*' (Ó Corráin 1985, 11), and by marrying a cousin, the *banchomarbae* would preserve a property interest for her children. Thus, 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 cousin; her father's entire *gelfhine* cannot possibly have always been extinct in order for the woman to take the role as a female heir.

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 their practices were correct in the eyes of God. The obvious example for the justification of parallel cousin marriages in the Old Testament is the story of the daughters of Salphaad (Ó Corráin 1995, 55):

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 iudicium 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 (Wasserschleben 1874, 137).

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 that they should marry men of their own tribe, so that the inheritance should not be transferred from tribe to tribe. From which 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 (Ó Corráin 1995, 55).

Here, then, the early Irish lawyers found the biblical justification they needed to claim that parallel cousin marriages were acceptable for the reason of retaining the property in the family.

The Kinship Poem begins by explaining an heiress has been appointed, which Ó Corráin clarifies has been done by the *gelfhine* (Ó Corráin 1995, 52). 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 *gelfhine*

succeeds the daughter after her death (Dillon 1936, 136).⁷ The head of kindred binds the land by entering into a contract with the female heir which prevents her from alienating the *fintiu* by attempting to transfer the land to her children. Only by entering such a contract with her kin could a woman lawfully inherit the *fintiu*. This is confirmed as an archaic ruling when Brig makes an appearance in the Kinship Poem (iii).

Do-bert Brig ar banchuru
Orbae moine mescoirche (CIH 215.16–17).

Brig adjudged, in return for women’s legal acts,
The inheritance of wealth lawfully contracted (Charles-Edwards 1993, 517).

After a woman has entered a contract with her *fine* she may lawfully take possession of the *fintiu*. The following commentary, though clearly not discussing the *fintiu*, gives much of the same information as the initial passage from *Córus Fine* (CIH 736.30–1):

.i. orba cruib⁸, tšliasta na mathar sum, ⁊ dibugud rodibaighi in mathair. ⁊ ni fuilit mic s̄ ingeana nama; ⁊ beraidh in ingean in ferann uili co fuba ⁊ co ruba, l a leth gan fuba gan ruba, ⁊ coimde fuirre re aiseac uaithe iarsna re (CIH 215.29–32).

i.e. it is ‘land of hand and thigh’ here, and the mother has died, and there are no sons but only daughters. And the daughter receives all the land with liability for military service, or half the land without liability for military service, and restraint upon her for its reversion on her death (Dillon 1936, 139).

The commentary repeats the rules given in *Córus Fine* regarding the *fintiu* but states that in this case it is *orbae cruib ⁊ sliasta*, the ‘inheritance of hand and thigh’, and the commentator thus assumes that the deceased woman in this case has personally acquired a large surplus of land, 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 her mother’s personal acquisitions. The property described here as ‘inheritance of land or thigh’ is explained by Dillon:

7 Dillon does not specifically state whose *gelfine* the land will revert to, but on the basis that the *fintiu* should always be returned to the *banchomarbae*’s father’s *gelfine*, or the descendants of his *gelfine*, this would presumably also be true in this instance, *i.e.* it would revert to the grandfather’s *gelfine*.

8 CIH 215 n. G: ‘*sic, for cruib*’.

Besides ‘family land’ (*fintiu*) held for life by a *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 *fine*, but vests in her son upon her death. ... H¹ [=H 3.18.] points out that this is an instance of a *banchomarba* whose land is not restorable to the *fine*, that is to say an exception to the general rule (Dillon 1936, 152–3).

Though Dillon does not refer to this as land that a *banchomarbae* could give as inheritance to her daughter if she died without sons, one of the glosses on *Cetharslicht Athgabálae* specifically states that this could be the case:

im caem-orba uais a mathar. .i. cairig , crela .i. orba feirtsi. .i. orba cruib l sliasta a mathar (CIH 378.21–2; AL i 148.3–5).

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 (Raae 2013, 29).

Kelly explains the *orbae cruib , sliasta* as ‘land which a parent has acquired through his or her own exertions and which may be given to a son or a daughter’ (1997, 416). Thus, the implication is that a woman who has acquired property independently of the *fintiu* could also bequeath this type of land to her children. Dillon has explained what he believes *orbae cruib nó sliasta* to be:

A woman is regarded as contracting with her father or her husband for service, and thus entitled to compensation. *Orba cruib* could be acquired from domestic service, *orba sliasta* presumably from a husband on separation, perhaps in consideration for children born of her (Dillon, 1936, 152).

Whether this is correct or not, it would explain the use of the words *croib*, ‘hand’, and *sliasait*, ‘thigh’. However, these words are almost always used in conjunction and not separated the way Dillon has understood them, and this could be a misinterpretation. It is certain that *orbae cruib ocus sliasta* is not a part of the *fintiu*, and can be bequeathed as the person who acquired it wished, except for the fraction of the land that the kin would have a right to. Yet, there is no reason to believe that *orbae cruib ocus sliasta* is always referring to land, and it is very likely that it can also be any type of moveable property that has been acquired independently, which can therefore be given freely as inheritance to a son or a daughter.

The third of the unions in *Cáin Lánamna*, *lánamnas fir for bantinchur co fognam*, ‘the union of a man on a woman’s contribution, with service’, is a union in which the woman was likely to be a female heir. 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:

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 (Charles-Edwards 1993, 84).

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 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 had she 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 concerning her land and her household.⁹ She would clearly not be able to manage her farm without the possibility of making purchases, sales and other essential contracts. 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 land reverted to her father's kin. She was not entitled to pass her immovable property on to her sons, unless she married a cousin (Dillon 1936, 155 (xv); CIH 217.20–2). As explained above, the maximum limit to the *banchomarbae*'s inheritance did not depend on how prosperous her father had been, the limit was 14 *cumals* of land even if her father had a much larger amount. The implication is that the rest of the father's *fintiu* reverted to her father's kin at the time of his death, while the *banchomarbae* would keep the 14 *cumals* of land until she died, after which her proportion of land would revert to her father's kin who were already in possession of the excess land of her father.¹⁰

In *lánamnas fir for bantinchur co fognam* 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 seen as the 'man' in the relationship, while her husband was her dependant:

Lanamnas fir for bantidnacur is a suidiu teit fer i nuidiu mna ,ben a nuidiu fir mad fer fognama is nomad a harbim don fir , don saill mad ceand comairle cuindrig muintire fri comairle connirt (CIH 515: 23–5; Eska 2010, 240–1 §31).

9 Though she can be considered to have had the same rights as a male land-owner in these cases, the procedures differed slightly for a woman from those of a man.

10 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 *cumals* of land.

Lethrian do blicht confoglaigher in tri leth do lestrai a leth naill da trian a suidiu don fir. Nomad a lamtoraid fri himscarad doib mad intucu doib scarad is amne a scarad (CIH 516.9–11; Eska 2010, 248–9 §32).¹¹

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 a ninth of the handicraft when they divorce. If they divorce by mutual consent, they part in this way (Ó Corráin 2002, 25).

This paragraph states that the roles of the husband and wife have been reversed from that of the 'union of a woman on man-contribution', 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 'it is for that "lawful case" that the man becomes subject to the law that the above-mentioned woman is subject to' (CIH 515.26–7; Eska 2010, 240–1 gloss 2), and giving the man the same limitations as the wife in the opposite situation.

However, the husband in this union could have a greater legal capacity than the wife who contributed little or nothing if he was a 'head of counsel', and offered advice to his wife on how the farm was to be run. Eska notes that he does not necessarily give advice on his own labour, but on how to manage the people and equipment involved in the labour (2010, 243 n. f). A gloss on this union implies that the man does not own the implements that a man would normally own, and hence the wife would receive a larger portion of the labour-third, the portion which would normally go to the owner of the implements:

.i. aradu 7 leithfrichnadh na trebaire fuil eice am, 7 trian trin rithgnama ruc feraicdigh robai acan mnai ina aidaigh ac denam friithgnama, 7 da nomad eicesium and 7 teit ben ina gnimradh gu mberim nomad dib uad, 7 ni leisium tir na sil ann sin (CIH 515.29–32).

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 (Eska 2010, 243).

11 Eska's division of this paragraph (= Thurneysen/Ó Corráin §29) into §§ 31–2 closely follows the division in *CIH*.

A later paragraph 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 mamaib techtaib nad beir araile cuit a tir na bunad cethra acht scarait amail condrecait i ndabeir cach lais cusan aile a marathar de is ed beres lais fri himscarad na aithgin dia torad muna marathar (CIH 516.25–9).

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 (Eska 2010, 255).

The legal principle in this paragraph is the same as in the other unions in *Cáin Lánamna*; 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 is concerning a primary spouse is not too significant, as it is highly likely that the partners in *lánamnas fir for bantinchur* were primary spouses. If the husband had more property, he would either have the same amount of property as his wife, and thus it would be a 'union of joint contribution', *lánamnas comthinchuir*, or he would have more property than his wife and the union would be 'a union of a woman on man-contribution', *lánamnas mná for ferthinchur*. The husband in *lánamnas fir for bantinchur* is less likely to afford to be in a union on a woman's contribution and only have it as a secondary union due to the many payments owed to his *cétmuinter* for entering into a secondary union. Not only would it be expensive, but such a scenario would also create more legal difficulties than solutions: the main problem would be how a man could be considered independent in one form of marriage and dependent in another form of marriage at the same time. 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.

Because the husband is the dependant in this union, his inferior contractual capacity is not the only contrast with husbands in other primary unions of early Irish law. 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 hinchuib na mna mad le in tothchus uile inge mad sofoltachu in fer oldas in ben no mad caidiu no mad saire no mad airmidnechu (CIH 516.30–2).

But he is a husband who is paid [penalties¹²] on the basis of the wife's status, if she has all the property, except if the husband has better property qualifications than the wife, or is more holy, or is nobler, or is more respected (Eska 2010, 255).

The implication of being a dependant is that he has half his wife's honour-price. Since the man is now the dependant, and the wife has taken the husband's role of the man, the circumstances have been reversed in this situation. This is a clear reference to the *Fuidir*-text §4 (McLeod 1992, 76–7; Charles-Edwards 1993, 310; Thurneysen 1931, 64; Binchy 1936, 215):

Ar cach riucht la Féniu, acht óen-triar, is lethlóg a enech dia mnaí. Fer sòn cen seilb cen tothchus las mbí banchomarbae - a inhuib a mná di-renar-side; 7fer in-étet tóin a mná tar crích - di-renar a inhuib a mná; 7 chú glás - di-renar-side a inhuib a mná 7 is sí íccas a chinta iarna airnadmáim nó aittin dia finib. It túalaing inna téora mná-so imfoichedo cor a céle, connatat meise recce na crecce sech a mná acht ní for-chongrat (CIH 427.1–18).

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 their spouses, so that [the latter] are not competent to sell nor to buy without their wives except that which they authorise (McLeod 1992, 77).

Therefore, it is not only the husband of a *banchomarbae* who is of inferior status to his wife, but all husbands who are dependent on their wives' property. These husbands were then in the same position as women were generally expected to be in, as expressed in the *Dire*-tract §38 (CIH 443.30–444.6; McLeod 1992, 71; Kelly 1988, 76; Thurneysen 1931, 35–6):

12 Whereas Eska chooses to add the word 'penalties' here, Ó Corráin (2002, 25) has chosen to add 'honour-price'. Thurneysen 1936, 62 has translated this as 'Aber er ist ein Mann, der gemäss der Ehre seiner Frau Busse erhält...'

Ni tualain reicce na creice na cuir na cuinduruda sech oen a chenn acht tabairt bes techta d'oen a cenn cocur cen dichill (CIH 444.5-6).

She is not capable of sale nor of purchase nor of contract nor of bargain without one of her guardians (McLeod 1992, 71).

Though the capacity for a woman to personally acquire land was not seen as a legal impossibility, the most common way for a woman to be a land-owner was if she inherited the kin-land or land her father had acquired independently, and became a *banchomarbae*. The most probable woman to enter a union of a man on woman-contribution was therefore the *banchomarbae*. She would presumably marry a man of lower or equal status as herself, but who had less land than what she had inherited, and she would therefore be the main contributor in the marriage. If the husband was of higher status than the wife, he would be likely to have more land than her and they would therefore be partners in a different type of union. The main implication of the union of a man on woman-contribution was that the wife was considered to be the superior, and therefore her husband's guardian, making him the dependant. In order to be a guardian, her contractual capacity had to be indicated in the laws. Rather than having a full law text on the contractual capacity of a *banchomarbae*, the lawyers dealt with this situation in the law text on marriage and divorce, and simply stated that 'the husband goes in the track of the wife and the wife in the track of the husband' (CIH 515.23–4). Hence they clearly expressed that in the eyes of the law, the *banchomarbae* was considered a man, with the same contractual capacity as a man would normally have.

ABBREVIATIONS

<i>AL</i>	<i>Ancient Laws of Ireland</i>
<i>CIH</i>	<i>Corpus Iuris Hibernici</i>
<i>DIL</i>	<i>Dictionary of the Irish Language</i>

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