

'WORTHY OF NOTICE': THE LEGAL SYSTEM AND CUSTOMARY LAWS IN THE ISLE OF MAN

*Jennifer Corrin**

Commencing with some background on Isle of Man and its history, this article gives an overview of the legal system of the Isle of Man, including the sources of law and courts. It then looks more specifically at the nature and role of customary law on the island. The article explores two examples of longstanding customary laws (legitimacy and inheritance, and treasure trove), which remained in force until relatively recently. It concludes that, whilst the Manx legal system is strongly influenced by the English common law system, it has retained its unique character, stemming from its legal heritage.

L'île de Man est une dépendance de la Couronne britannique. Après un bref rappel historique de l'évolution de son statut, l'auteure propose aux lecteurs un aperçu des composantes de son système juridique actuel.

Les développements portent ensuite sur la place et la portée du droit coutumier encore pregnant dans cette dépendance et plus spécifiquement sur les règles qui sont restées en vigueur jusqu'à une date relativement récente, concernant le droit de succession et la découverte, par le pur effet du hasard, d'une chose cachée ou enfouie.

En guise de conclusion, l'auteure estime que si le système juridique de l'île de Man est fortement influencé par le système de la Common Law anglaise, il a néanmoins conservé un caractère unique, conséquence de son héritage juridique.

I INTRODUCTION

The Isle of Man is a small island marooned in the middle of the Irish sea. Contrary to popular belief, it is not a part of the United Kingdom; it was never absorbed by or

* The author wishes to thank Cains for hosting her recent visit to Douglas, during which this article was written. She would also like to acknowledge former Deemsters David Doyle and William Cain, Andrew Newton and Seth Caine for so generously sharing their time, knowledge and materials. Former Deemster Doyle's comments on a draft of this article were of immense assistance.

into the English or, later, British realm.¹ Nor has there ever been a treaty between the Isle of Man and England or Britain.² The Isle of Man is now a dependency of the Crown, but not a British possession or in the same category as other British dependencies.³ It is not a member of the European Community, but has a special relationship with it, which is mainly concerned with customs and free trade.⁴ The Manx law and legal system, whilst influenced, by Irish Celtic, Viking, Scottish, English and religious laws, is unique. Apart from the seminal works by Professor Edge⁵ and former First Deemster David Doyle,⁶ there is a dearth of literature on the law. In this respect, little has changed since 1811 when Johnson bemoaned⁷ the fact that 'few or none have deemed any investigation of the peculiarities of [the Isle of Man or its Constitution] worthy of notice'.⁸ In particular, there is little written about the Island's intriguing customary laws.

The Isle of Man has a land area of 572 square kilometres. It is 52 km length and 16 km wide, and has a population of about 83,300.⁹ Since 1869, Douglas, lying on the East coast, has been the capital. The island was occupied exclusively by the Celts from an unknown date BC to the latter part of the ninth century, and Manx people are proud of their Celtic ancestry. The Vikings arrived in the 8th century AD and ruled for nearly four centuries. During that time Norse became the dominant language, but Manx, a language of Celtic origin, managed to survive and gradually

-
- 1 *Re CB Radio Distributors Limited* [1981-83] MLR 381, 395. Whether or not it has ever been conquered is a matter of debate: see Peter Edge *Manx Public Law* (Isle of Man Law Society, Douglas, 1997) 13, who considered that it had and *Re CB Radio Distributors Limited* [1981-83] MLR 381, 395, where Hytner JA expressed the view that it had not.
 - 2 Royal Commission on the Constitution 1969-1973 (1973) Cmnd 4583 (Kilbrandon Report), Minutes of Evidence 6,7; *Re CB Radio Distributors Limited* [1981-83] MLR 381, 395.
 - 3 Kilbrandon Report, Minutes of Evidence 6,18. Cf *Ex parte Brown* (1864) 5 B&S 279.
 - 4 Treaty of Rome art 227, Act of Succession 1972, Protocol No 3.
 - 5 See, eg *Manx Public Law* 1997, Douglas: Isle of Man Law Society.
 - 6 See, eg *Manx Criminal Law and Procedure* (Isle of Man Law Society, Douglas, 2010); "Manx law: A Contribution from the Isle of Man" (2007) 33(4) Commonwealth Law Bulletin 671-680.
 - 7 These words are taken from the Advertisement seeking subscribers for what became James Johnson *A View of Jurisprudence of the Isle of Man* (George Ramsay & Co, Edinburgh, 1881). This stated "few or none have deemed any investigation of the peculiarities of the Isle of Man or its Constitution] worthy of notice". The Advertisement is set out on v to viii.
 - 8 James Johnson *A View of Jurisprudence of the Isle of Man* (George Ramsay & Co, Edinburgh, 1881) v.
 - 9 Isle of Man Census 2016, 2 <www.gov.im/media/1355783/2016-isle-of-man-census-presentation.pdf> accessed 27 March 2019.

reassert itself.¹⁰ In 1266, the King of Norway sold the Island to the Scottish King. Over the next 150 years England and Scotland disputed ownership, with the English Crown eventually prevailing in 1346.¹¹ The Isle of Man was granted to Sir John Stanley in 1403 and he and his heirs, the Earls of Derby, were Lords of Man¹² until 1736, when the 10th Earl died without heirs.¹³ It then passed to a distant relative, the second Duke of Atholl. In 1765 the third Duke was forced to sell the island to the British Crown, thus allowing its customs officers to control customs duties and receive the revenues.

During Norse rule a system of (essentially) democratic government was introduced, included the 'Thing', or local assembly; the Tynwald, or general assembly for insular affairs; the Deemsters, or judges; and the Keys, or advisors to the Deemsters.¹⁴ Over the years, the Tynwald developed into the parliament of the Isle of Man, constituted by the House of Keys, which is the lower house consisting of twenty-four directly elected members, and the Legislative Council, with eleven indirectly elected members.¹⁵ The two houses sit together as the Tynwald Court, which discusses policy and approves Bills passed by parliament. It also deals with secondary legislation. It has been described by the President of Tynwald as a third chamber, making Tynwald a unique tri-cameral legislature, The House of Keys no longer exercises a judicial function.¹⁶ The Head of State, known as the Lord of Mann, is the Queen, represented by the Lieutenant-Governor.¹⁷

II THE LEGAL SYSTEM

A The Constitution

As stated by Roberts-Wray, 'the connection of both the Channel Islands and the Isle of Man with the United Kingdom is historically unique and the constitutional

10 The last native speaker died in 1974, but attempts are currently being made to revive the language. See further, "How Manx Language Came Back from the Dead" *Guardian UK online edition* <www.theguardian.com/education/2015/apr/02/how-manx-language-came-back-from-dead-isle-of-man> accessed 9 April 2019.

11 See further Moore *A History of the Isle of Man*; Sir Spencer Walpole *The Land of Home Rule* (1893).

12 Lord Stanley refused the title of King of Man.

13 Lord MacDonnell *Report of the Departmental Committee on the Constitution of the Isle of Man* (HMSO, London, 1911) [4].

14 Lord MacDonnell *Report of the Departmental Committee on the Constitution of the Isle of Man* (HMSO, London, 1911) [2] to [3].

15 Tynwald Chamber and Information Service, *Visit Tynwald*, Douglas.

16 House of Keys Election Act 1866, as amended.

17 Above, n 15.

position of each is *sui generis*'.¹⁸ The Island does not have a written constitution. Constituent documents include the Royal Commission of Sir John Stanley II in 1417,¹⁹ the Act of Settlement 1704;²⁰ the Revestment Act 1765; the House of Keys Election Act 1866;²¹ the Isle of Man Constitution Amendment Act 1919; the Isle of Man Constitution Act 1961;²² and the Isle of Man Act 1958.²³ Many of these Acts have been amended, but their constitutional significance remains. The Constitution can also be found in the customary laws, in particular those found in what was later renamed the Customary Laws Act 1417. It is also located in the common law,²⁴ particularly decisions of the Privy Council.²⁵

Constitutional conventions play a major role in the relationship between the Isle of Man and the Britain, governing important matters, such as the circumstances in which the Parliament of the United Kingdom may legislate for the Isle of Man, which is discussed further below.

B Sources of Law

As stated by the Clothier Commission, the 'legislature, courts and legal system all have their origins in the period of Viking rule.'²⁶ It appears that a version of written laws existed in the Isle of Man in 'King Orry's days',²⁷ but there is no surviving record of those laws.²⁸ As discussed below, customary laws have been recorded since 1417, together with 'Ordinances', 'Orders' and 'Resolutions', made by the Lord of Man and

18 Kenneth Roberts-Wray *Commonwealth and Colonial Law* (Sweet & Maxwell, London, 1966) 139.

19 Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 1.

20 See also Act of Settlement (Further Provisions) Act 1704.

21 As amended by, eg House of Keys and Public Authorities Election Act 1941; Isle of Man Constitution (Elections to Council) Act 1971.

22 As amended by, eg Isle of Man Constitution Acts 1969 and 1971, Isle of Man Constitution (Amendment) Act 1975

23 See further the Kilbrandon Report.

24 See, eg *Re CB Radio Distributors Limited* [1981-83] MLR 381, 395.

25 See, eg *Re Derby (Earl of Derby's Case)* [1522-1920] MLR 1; *Isle of Man Case* [1522-1920] MLR 2.

26 Commission of Inquiry into Legal Services, May 1990, 5 (Clothier Commission).

27 King Orry is stated by Parr to be a son of the King of Denmark. The reference may be to King Godred Crovan who ruled the Isle of Man from some time after 1070; his descendants ruled in the for almost two centuries.

28 Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 40.

his officers and the Keys.²⁹ From 1637, a more formal procedure was adopted. Laws were 'enacted, established, and confirmed' by the Lord of Man, the Barons, the Keys and the inhabitants of the island assembled at a Tynwald Court.³⁰ They were then signed by the Governor, Council, Deemsters and Keys and submitted to the Lord who signed at the foot to certify approval.³¹

It is hard to set out the sources of law in hierarchical order, as there are several points of contention. However, in what is arguably the descending order of importance, they are:

- Acts of Tynwald;³²
- Acts of Parliament of the United Kingdom (on external matters only);³³
- Subsidiary legislation from either parliament;
- Customary law (discussed further below);
- Manx common law and equity.

Tynwald has an unlimited legislative competence and is the supreme legislative body.³⁴ As mentioned above, it consists of the House of Keys; the Legislative Council (known locally as 'LegCo'), and Tynwald Court. By convention, Bills are usually first introduced into the Keys and the Council is primarily a revising chamber.³⁵ Acts must pass both the Keys and the Council, although a mechanism exists to bypass Council should the need arise.³⁶ Acts of Tynwald still require the Royal Assent, which is usually given by the Lieutenant Governor on her behalf. The last occasion when Assent was refused was in 1962, when the Wireless Telegraphy (Isle of Man) Act was refused Assent.³⁷ Acts must be promulgated by proclamation in both English and Manx at Tynwald Hill, a practice that has endured from some time before 1417.³⁸ In 1865, the law was changed to allow the titles and a short

29 J C Bluett *The Advocate's Notebook* (Robert Heywood Johnson, Douglas, 1847) iv.

30 J C Bluett *The Advocate's Notebook* (Robert Heywood Johnson, Douglas, 1847) iv.

31 J C Bluett *The Advocate's Notebook* (Robert Heywood Johnson, Douglas, 1847) iv.

32 *Re CB Radio Distributors Limited* [1981-83] MLR 381, Appendix setting out the opinion of the Attorney-General on the question of proper constitutional authority to legislate for the Isle of Man, 407, 413.

33 *Re CB Radio Distributors Limited* [1981-83] MLR 381, 396.

34 *Re CB Radio Distributors Limited* [1981-83] 381.

35 An example of an exception is the Equality Bill, introduced in the Legislative Council in late 2016.

36 Isle of Man Constitution Acts 1961, s 10(1) and 1978, s 2 and schs 1 and 2.

37 John Belchem, Richard Chiverrell and Geoff Thomas (eds) *A New History of the Isle of Man: the Modern Period 1830-1999* (Liverpool University Press, 2000) 161.

38 Customary Laws Act 1417, s 1.

summary of the legislation and the Royal Assent to be read out, rather than the whole Act,³⁹ and now only the short title and a summary of the long title is read out.⁴⁰ An Act which is not promulgated within 18 months of its passing ceases to have effect.⁴¹ In *Re Robinson*,⁴² it was suggested that Tynwald cannot enact laws that conflict or override legislation of the United Kingdom Parliament, but those remarks were obiter. The better view was expressed in *Re CB Radio Distributors Limited*,⁴³ where it was stated, obiter, that if Tynwald passed an Act conflicting with an earlier Act of the United Kingdom Parliament the later Act would prevail. In any event, it is clear that Tynwald does, in practice, feel free to repeal United Kingdom legislation applying to the Isle of Man.⁴⁴

The authority of the United Kingdom Parliament is more limited and its precise boundaries are uncertain.⁴⁵ In 1598, in the *Isle of Man Case*,⁴⁶ it was held that any Acts of Parliament passed after the Island was 'conquered'⁴⁷ would not bind the Island, unless this was specifically mentioned in the Act itself. A customary law of 1606 declared in 1606 went further, stating:⁴⁸

The Statute Law of England no rule to direct us in judgement here Except such as the Lord and the whole Body of the Isle hath recd for Law, for if so, then all things of greater Importance for the Inheritor were altered'.

However, it has since been held that an Act of Parliament may apply either expressly or by necessary implication.⁴⁹ An Act may also apply to the Isle of Man by virtue of being extended to the Island under the authority of an Act of Tynwald.⁵⁰ The United Kingdom Parliament legislates by Act or by an Order in Council

39 Acts of Tynwald (Promulgation) Act 1865, s 1; Acts of Tynwald (Promulgation) Act 1895, s 1.

40 Promulgation Act 1988, ss 2 and 3(1).

41 Promulgation Act 1988, s 3(2).

42 (1936) [1921-51] MLR 154

43 [1981-83] 381, 396-7.

44 See, eg Child Custody Act 1987. See further Peter Edge *Manx Public Law* (Isle of Man Law Society, Douglas, 1997) 54.

45 Peter Edge, above n 44, 54.

46 [1522-1920] MLR 2.

47 As to whether the Isle of Man was ever conquered, see above n 2.

48 Libri Scaccarii, Manx Museum Library, Manuscript MS510C, 86.

49 *Christian v Curran* (1716) [1522-1920] MLR 10. See, eg Armed Forces Act 1991 (UK).

50 See, eg Social Security Administration Act 1992.

extending an Act which would otherwise not apply.⁵¹ By convention it does not normally legislate for the Isle of Man without the consent of Tynwald. The last Act to be passed without the consent of Tynwald was the United Kingdom Parliament was the Marine etc. Broadcasting Offences Act 1967 (UK).⁵²

Today, the legal system has a common law base, although the common law of England and Wales is not binding on Manx courts.⁵³ It is, however, persuasive, particularly if the decision is from the House of Lord (now Supreme Court) or the Court of Appeal. As stated in *Frankland v R*,⁵⁴ such decisions will generally be followed, unless they conflict with a Manx statute, a decision of a Manx Court, or are inapplicable to or unsuitable for local conditions.⁵⁵ The case of *AB v CD*⁵⁶ provides an example of a recent decision where the High Court of the Isle of Man felt able to depart from a decision of the Supreme Court of the United Kingdom, although the decision on whether to do so or not was left open.⁵⁷ It is worth noting that, on occasion, decisions of the Manx High Court have been followed by the United Kingdom courts.⁵⁸ On the other hand, decisions of the Privy Council hearing

51 Isle of Man (War Legislation) Act 1914; Isle of Man (War Legislation) Act 1939. See, eg Communications Act 2003. There is also a theoretical possibility that the Crown may retain the right to legislate for the Isle of Man by Order-In-Council: see Peter Edge *Manx Public Law* (Isle of Man Law Society, Douglas, 1997) 69-70, but it has never done so.

52 John Belchem, Richard Chiverrell and Geoff Thomas (eds) *A New History of the Isle of Man: The modern period 1830-1999* (Liverpool University Press, 2000) 161-162. See also the Companies Act 1900 (UK). See further in relation to Jersey, but applicable to Isle to Man, Sir Michael Birt *The Power of the United Kingdom to Legislate for the Crown Dependencies without Consent – Fact or Fiction*, Caroline Weatherill Memorial Lecture, 13 October 2016. In March 2019, amendments being proposed to the Financial Services Bill (UK) would have compelled the Isle of Man and other Crown Dependencies to create a publicly accessible register of the beneficial ownership of companies within their jurisdictions. See further BBC News Online "MPs in renewed attempt to force money laundering crackdown" <<https://www.bbc.co.uk/news/uk-politics-47422975>> accessed 9 April 2019.

53 *Frankland v R* [1987-9] MLR 65, 80; *Hamblett v HMAG* (2012) 2DS 16.

54 *Frankland v R* [1987-9] MLR 65; *Re Impex Services Worldwide Limited* [2003-05] MLR 115 [32].

55 *Frankland v R* [1987-9] MLR 65, 80.

56 [2016] MLR No 9.

57 [2016] MLR N 9, considering whether *Pitt v Holt* [2012] 2 Ch 132 was good law in the Isle of Man. See also *Re A's Application* [2017] MLR 1, where the High Court questioned whether *Government of India v Taylor* [1955] 1 All ER 292 was still part of Manx law.

58 See, eg *Re Impex Services Worldwide Limited* [2003-05] MLR 115, referred to with approval in *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36; Manx authorities referred to in *AB v CD* [2016] MLR No 9 were followed in *Pitt v Holt* [2013] 2 AC 108, although not expressly cited.

an appeal from the Isle of Man are binding, as in those cases the Privy Council forms the apex of the Island's court structure.⁵⁹

International conventions to which the United Kingdom is a party only apply to the Isle of Man if they are expressly extended to the island. By convention, extension only takes place with Tynwald's approval. An example of a convention which has been extended is the European Convention for Protection of Human Rights and Fundamental Freedoms (the 'Convention'), which was extended to the Isle of Man in 1953.⁶⁰ The Convention is justiciable before the European Court of Human Rights. Decisions of that Court as to whether the Isle of Man is in breach of a Convention obligation are binding in respect of whether or not a particular act is in breach, but, as the Convention is not part of municipal law⁶¹ it does not invalidate domestic laws.⁶² As mentioned above, Isle of Man is not a member of the European Community, but in some instances has passed legislation to allow the application of European Union instruments by Order and Regulation.⁶³ Pursuant to the European Communities (Isle of Man Act) 1973, questions arising under Protocol 3 may be referred by any domestic court to the European Court of Justice.⁶⁴ The rulings of the European Court, whilst in theory for guidance only, are in reality binding on the referring court and on subsequent appellate courts.⁶⁵

C The Courts

Stemming from the Viking era, the Isle of Man had numerous courts and judicial officers. For example, the Water Bailiff, 'an established officer of obvious importance' from at least 1422,⁶⁶ held an Admiral Court every Saturday at 2pm in the fishing season to deal with any 'wrongs committed throughout the fleet'.⁶⁷ It also

59 *Frankland v R* [1987-9] MLR 65, 81.

60 *Frankland v R* [1987-9] MLR 292.

61 Many of its provisions are now part of domestic law by virtue of the Human Rights Act 2001.

62 *O'Callaghan v Teare* [1981-83] MLR 103, 109-110. The Isle of Man has its own Human Rights Act, 2001, which came fully into force on 1st November 2006: Human Rights Act 2001 (Appointed Day) (No 2) Order 2006.

63 See, eg Data Protection Act 2018.

64 *Department of Health and Social Security v Barr* [1990-92] MLR 243, 257

65 *Re Barr and Anglo International Holdings Limited* [1990-92] MLR 398, 415-416; *Re Sharpe* [1996-98 MLR 1.

66 Deemster Moore *The Ancient Office of Water Bailiff or Judge of the Court of Admiralty*, Presidential Address, 1969-70.

67 *Parr's Abstract* 131.

had a complicated system of juries,⁶⁸ for example, the Setting Quest, a four man jury that had a key role in the allocation of new tenants.⁶⁹ Up until 1825 the 24 members of the House of Keys sat as part of the Court of General Gaol Delivery and as the Appellate (appeal) body of the courts.⁷⁰

Major changes to the court system were introduced by the Judicature Act of 1883. This Act was repealed by the High Court Act 1991, which made some amendments but kept the basic structure of the courts intact. The High Court Act has been further amended by the Administration of Justice Act 2008, but, again, the structure of the courts remains the same. Today, the principal courts are:

- Judicial Committee of the Privy Council
- High Court
- Court of General Gaol Delivery
- Courts of Summary Jurisdiction (Summary Courts)

1 Privy Council

The right of appeal (with leave) to the Judicial Committee of the Privy Council is of long standing, having been recognised by customary law.⁷¹ The right was endorsed by the Privy Council in 1716 in *Christian v Corren*,⁷² on the basis that the King in Council, as the fountain of justice, had an inherent right to distribute justice amongst his subjects. The right to appeal from the Staff of Government Division was preserved by the Isle of Man Judicature Act⁷³ and then by the High Court Act.⁷⁴ Appeal lies with leave of the Staff of Government Division or with the special leave of Her Majesty.⁷⁵

68 Ramsay B Moore "Juries in the Isle of Man" *Proceedings of the Isle of Man Natural History and Antiquarian Society*, 5:1 April 1942-March 1946, 100-108.

69 Robert Cannell "Evolution of Landownership" (2017) XV *Isle of Man Studies* 79, 80.

70 *R v Kelly* (1824) 1522-1920] MLR 21, 38.

71 Edge 210. A time limit of six months was imposed by the Criminal Law Act 1736, Part X, s 14, repealed by the Judicature Act 1921 sch.

72 (1716) [1522-1920] MLR 10.

73 1883, s 34,

74 1991, s 24.

75 Section 24.

2 *The High Court*

The High Court is the superior court of the Isle of Man. It is divided into the Civil Division and the Staff of Government Division (the Appeal Division).⁷⁶ At first instance, the court is constituted by one of the two Deemsters. The ancient oath of office for Deemsters, which remains in place today, underscores the importance of herring fishing to the Island's way of life:

By this book, and by the holy contents thereof, and by the wonderful works that God hath miraculously wrought in heaven above and in the earth beneath in six days and seven nights I [name of Deemster] do swear that I will, without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice, execute the laws of this Isle justly betwixt our Sovereign Lady the Queen and her subjects within this Isle, and betwixt party and party, as indifferently as the herring back-bone doth lie in the midst of the fish. So help me god and by the contents of this Book.⁷⁷

In the Staff of Government Division, a Judge of Appeal sits with at least one Deemster to hear appeals from decisions at first instance in both civil and criminal cases.⁷⁸

3 *Court of General Gaol Delivery*

The Deemsters deal with more serious criminal matters in the Court of General Gaol Delivery.⁷⁹ All trials in the Court of General Gaol Delivery are by jury of either seven or (in trials for treason, murder, or other grave matters) twelve members.⁸⁰ Appeal lies to the Staff of Government Division.⁸¹ As mentioned above, a further appeal lies to the Privy Council.

76 High Court Act 1991 s 2.

77 Set out in David Doyle "Legal System" in Mark Solly (ed) *Government and Law in Isle of Man* (Parallel Books, Isle of Man, 1994) chap 7, 467-468 and referred to by Lord David Hope in his contribution to Burrows, Johnston and Zimmermann (eds) *Judge and Jurist Essays in Memory of Lord Rodger of Earlsferry* (Oxford University Press, 2013) 75-76.

78 High Court Act 1991, ss 18 and 22(1).

79 As to the division of criminal matters between the Court of General Gaol Delivery and the Summary Courts see *Lamb v HM Attorney-General* [2017] MLR 447.

80 Jury Act 1980, s 24. Jurors must be between 18 and 65 and have been ordinarily resident in the British Islands for at least five years since attaining the age of thirteen: Jury Act 1980, s 1.

81 High Court Act 1991, s 18.

4 *Courts of Summary Jurisdiction (Summary Courts)*

The Summary Courts deal with less serious criminal matters and consist of the High Bailiff or Deputy High Bailiff sitting alone or lay justices.⁸²

When sitting with justices alone, the Summary Courts are known as Magistrates Courts. They deal mainly with minor criminal cases, but also with some family matters including the care and control of children, maintenance and domestic violence.

5 *Other Offices and Procedures*

An institution of note that has survived since ancient times is the Coroner, not to be confused with a coroner of inquests.⁸³ Coroners are still appointed under the Customary Laws 1422,⁸⁴ and are allocated to one or more of the Island's six sheadings⁸⁵ (districts). Originally, the Coroner had a broad range of responsibilities. The office is now restricted mainly to summoning jurors; service of documents; and enforcement of executions in respect of court judgments. Coroners are assisted in their duties by Lockmen (deputies), another ancient office.

There is also a Small Claims Arbitration procedure and a number of tribunals dealing with a variety of matters including an Employment Tribunal⁸⁶ and more obscure bodies, such as the Riding Establishments Appeal Tribunal, which deals with appeals from decisions of the Department of Environment, Food and Agriculture relating to licencing of riding establishments.⁸⁷

6 *International Courts*

At the international level, individual petitions may be addressed to the European Court of Human Rights by virtue of the Isle of Man's recognition of its competence.⁸⁸ As mentioned above, the Isle of Man has a special relationship with the European

82 Justices Act 1983; Summary Jurisdiction Act 1989.

83 See further William Blundell "A History of the Isle of Man" in William Harrison (ed) *Manx Notebook* (vol XXVII, Manx Society, Douglas, 1858) pp79-80.

84 Customary Laws Act 1422, s 49. Appointment was by the Lieutenant Governor. Coroners are now also regulated by the Coroners Act 1983.

85 The term 'sheading' is thought to be a Norse word for 'ship division' and each district was believed to be responsible for producing a certain number of warships.

86 Employment Act 2006; Employment Tribunal Rules 2008.

87 Riding Establishments Acts 1968 and 1986.

88 Formal Declaration extending arts 25 and 46 lodged by the United Kingdom on 3 June 1993 pursuant to the resolution of Tynwald, 17 November 1992. See, eg *Tyrer v UK* [1978-80] MLR 13.

Community and questions arising under Protocol 3 may be referred by any domestic court to the European Court of Justice.⁸⁹

III CUSTOMARY LAW

Manx customary law is essentially Celtic, although some parts may be derived from Gaelic Brehon law and Norse Udal law.⁹⁰ It is in a unique form, unlike that of any other Celtic country.⁹¹ It was no doubt heavily influenced by the Norse, Scottish and English, during their respective periods of rule in the Isle of Man. It appears that there was often a distinction between customary laws in the North and those in the South of the country.⁹² For example, the laws in the South relating to spouses' inheritance from their deceased partner, known as 'widowright', gave a half share in all property to the survivor, whereas in the North if there were any the legitimate children they were entitled to a one third share in moveable property.⁹³

Up until 1417, the customary laws of the Isle of Man were passed down orally from Deemster to Deemster. This custom is said to have originated with the Druids.⁹⁴ Customary law was 'committed to their loyalty and fidelity as a thing holy and sacred, and by them communicated to posterity by oral tradition'. They, 'would not by writing prostitute anything to the vulgar'.⁹⁵ and so laws were said to reside in 'the Deemster's Breast'. For this reason, customary laws were known as breast law.⁹⁶ In early days, laws were declared as required in the cases that came before the

89 *Department of Health and Social Security v Barr* [1990-92] MLR 243, 257

90 Per Sveaas Andersen "Nordic Immigration, Settlement, and Social Structure in the Isle of Man during the Middle Ages: A Study in Social History" *Collegium Medievale* 8.1 (1995, publ 1996), 5-49.

91 Report of the lecture by RB Moore "Manx Customary Law" (1924) 1 *Journal of the Manx Museum* 19.

92 See, eg *Attorney-General v Mylchreest* (1879) [1522-1920] MLR 180, where the evidence regarding the customary right to clay and sand was confined to the Northern part of the Isle of Man. The distinctions may have arisen partly because the two Deemsters sat separately, one in Castle Peel and one at Castel Rushen.

93 Churchwardens Ordinance c1577, ss 6 and 7: Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 40.

94 James Johnson *A View of Jurisprudence of the Isle of Man* (George Ramsay & Co, Edinburgh, 1881) 70; See further William Blundell "A History of the Isle of Man" in William Harrison (ed) *Manx Notebook* (vol XXVII, Manx Society, Douglas, 1858) 66.

95 Above n 94.

96 William Blundell "A History of the Isle of Man" in William Harrison (ed) *Manx Notebook* (vol XXVII, Manx Society, Douglas, 1858) 84. See also *Re Impex Services Worldwide Limited* [2003-05] MLR 115[36].

Deemsters.⁹⁷ In 1417, the Lord of Man demanded that the Deemsters commit breast law to writing. Consequently, on 24th June 1417 the eldest Deemster pronounced a series of customary laws at the Tynwald and these laws and the answers given by the Deemsters to various questions about them were published as a declaration of customary laws in the statute book.

Whilst published in the Statute Book, these declarations were not statutes, but were accepted as having the force of law until amended by statute or rendered obsolete by 'time and change in circumstances'.⁹⁸ From about the same time, decisions of the Deemsters in cases coming before them were recorded as precedents, but not made public. Instead, they were kept in a chest secured by three locks, the keys to which were held by the three chief officers of state.⁹⁹ These precedents were known as 'chest law'.¹⁰⁰ The loose precedents were replaced by bound volumes running from including the *Libri Placitorum* (1496 to 1901), *Libri Cancellarii* (1578 to 1890) and *Libri Scaccarii* (1580 to 1847),¹⁰¹ which are available in manuscript form in the Manx Museum library.¹⁰²

The practice of the Deemsters declaring law, sometimes in conjunction with the Keys,¹⁰³ continued from time to time, They included laws and procedures on a wide range of topics, including a large number on levies, rents and fines payable to the Lord of Man and certain government officials.¹⁰⁴ The island's main source of income is reflected in the fact that many of these levies were paid in the form of fish. The significance of herring fishing, reflected in the oath of Deemster set out above, is also highlighted in the customary laws. The preamble to the laws on herring fishing in *Parr's Abstract* states:¹⁰⁵

97 William MacKenzie "Legislation by Three of the Thirteen Stanleys Kings of Man" in William Harrison (ed) *Manx Notebook* (vol III, Manx Society, Douglas, 1860) 183.

98 Bluett, Advocate's Notebook (1847) iv; Sir Wadsworth Busk, Submission to Commission of Inquiry, 1791, 2.

99 Camden's Britannia, 1695, 1065, cited in David Doyle "Nature and Sources of Manx Law" in Mark Solly *Isle of Man Partnership Law* (Parallel Books, Isle of Man, 1996) 115.

100 William Blundell "A History of the Isle of Man vol II, 1656" in William Harrison (ed) *Manx Notebook* (vol XXVII, Manx Society, Douglas, 1858) 83.

101 See further, Peter Edge *Manx Public Law* (Isle of Man Law Society, Douglas, 1997) 83-84.

102 MS 510C.

103 Sir Wadsworth Busk, Submission to Commission of Inquiry, 1791, 3; Bluett, Advocate's Notebook (1847) iv.

104 Deemster Parr *Parr's Abstract of Manx Law* ('*Parr's Abstract*') undated manuscript, 49, 85, and 113.

105 *Parr's Abstract*, 128.

As the Herring fishing is as great a blessing as this poor Island receives in enabling the tenants for the better and speedier payment other rents and other impositions and have wherewithal to supply their other wants and occasions when as all other their endeavours and husbandry would scarce raise any such advantage and gain unto them

A further law, which remains in force today, specifically provided that all porpoises, sturgeon and whales within the heads of Man were the Lords' by virtue of his prerogative.¹⁰⁶ Some more unusual laws included the offence of pulling horses tails, the penalty for which was two hours on the wooden horse and being whipped from the waist upwards!¹⁰⁷

In 1629, the Deemsters were ordered to set out all the breast laws in writing.¹⁰⁸ However, it appears that this was not done as, in 1636, James Strange, the Lord of Man issuing the following Order and Direction:

Whereas, the Lord is informed that the deemsters of this Island do sometimes give judgment by laws unknown to his lordship or any of his council of the Island, called breast laws, his honour therefore declarath his pleasure, and doth order and direct that the deemsters do, upon notice of this his honor's order, set down in writing, and certify to his honor by the next passage boat after, what these breast laws are, and of what use and in what cases they are requisite, and how far the power and execution of them extends, and in particular, to certify whether the same be used in all cases; that is to say, criminal for punishment of offenders, and civil for decision of rights of lands and goods; and whether one breast law be contrary to another, and how the people may take notice thereof to frame their actions and contracts accordingly.¹⁰⁹

From that time a more formal procedure was adopted and laws were no longer 'executed' or 'given' for law, but 'Ordered, Enacted and Ordained' by the Tynwald Court. However, customary laws were still occasionally declared by the Deemsters and Keys.¹¹⁰ In 1691, the practice of giving the laws short titles and, in some cases, chapter numbers began.

106 Customary Laws Act 1422, s 5.

107 Larcenies and Other Offences Act 1629, s 5.

108 The last Tynwald at which customary laws are recorded as being 'executed for law' in the Statute Book is that of 24 June 1629: Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 84.

109 Orders Made and Directions, 20 November 1636: Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 83, 85.

110 See, eg Widowright Act 1687, s 2.

The declarations did not result in a comprehensive code of customary laws, and the Deemsters continue to make declarations of breast law in novel cases as they came before them. An example, discussed further below is a declaration in 1630 that herrings found buried underground belong to the Lord.¹¹¹ In about 1678, Deemster Parr prepared an 'Abstract' of customary laws, arranging them into 111 categories.¹¹² Another Manuscript, written by one Daniel Mylrea on an unknown date after 1667, records 39 customary laws,¹¹³ which would appear to be laws which were practised but not until that time recorded in the Statute Book. As mentioned above, from 1825, the Keys were no longer part of the Court and were not available to advise the Deemsters on customary law.¹¹⁴

Declarations by Deemsters in recent times are rare. However, an example can be found in *Re Shield Investments Limited*.¹¹⁵ In that case, each of the applicants held one company share as trustee for four others. One of the beneficiaries died and the trustees sought a declaration on whether the trust had created a tenancy in common so that the funds should be divided in four, with one quarter to go to the deceased's estate, or whether it had created a joint tenancy, meaning that the funds should be divided between the three survivors. It was held by Deemster Corrin that under Manx real property law, unlike the law in England and Wales, there was a presumption of tenancy in common when property was held in co-ownership. However, in relation to personal property, there was nothing to suggest that this established presumption applied. Rather, it appeared that the converse was true and there was a presumption of joint tenancy. As this point had never been expressed before Deemster Corrin declared this to be the law,¹¹⁶ and that, consequently, the funds were held *in trust under a joint tenancy* and were to be shared between the three survivors.

Another example is *Flintshire Car Hire Company Limited v Road Runner Freight Services (1978) Limited*,¹¹⁷ Deemster Luft declared that Manx customary law empowered a Coroner to arrest the debts owing to a judgment debtor in the hands of

111 *Libri Scaccarii*, 1630.

112 Deemster Parr *Parr's Abstract of Manx Law* undated manuscript, 1.

113 Daniel Mylrea *The Antient Customary Laws of the Isle of Man* (Manx Museum Library) MS683C.

114 *Re Kelly* (1824) [1522-1920] MLR 27.

115 [1990-92] MLR 275.

116 [1990-92] MLR 275, 277.

117 [1981-83] MLR 1.

a third party. This he said had, 'always been the law, as far as memory goes - and it goes back a very long time' in the Isle of Man.¹¹⁸

Undeclared customary laws may be upheld by a court on proof of their existence as being 'ancient and immemorial'. However, it was held in *Attorney-General v Mylchreest*¹¹⁹ that customary laws are not subject to that 'arbitrary rule of English law, fixing the reign of Richard I as the period of legal memory.' It was said that, if it was necessary to find an originating date, a time 'before the grant of Henry IV to Sir James Stanley, and certainly before the prohibition against alienation in the Act of 1607' would suffice. In that case, the rights of customary tenants to dig, use and sell the clay and sand on the customary estates were held not to be negated by the Act of Settlement,¹²⁰ as, in the context of that Act, the word 'minerals' did not extend to clay and sand. In *Teare v Clucas*,¹²¹ it was held that a custom need not be proved to have existed from time immemorial, although it must have subsisted for a reasonable length of time and be adequately proved. It was held that witnesses' opinions about custom were not sufficient proof, what was required was evidence of the practice drawn from particular instances, prevalent throughout the island.

A Some Illustrative Examples

These customary laws were enduring; in 1978, when the Pre-Revestment Written Laws Amendment Act was passed, most were still part of the law. The laws kept in force by the Pre-Revestment Written Laws Amendment Act and a summary of their content are set out in the Appendix, with a note as to whether or not they have since been repealed. As can be seen, a surprising number of customary laws were retained in 1978. For example, of the 109 laws declared in 1422, ten were kept in force, and six are still in force. These include the right of the coroner to arrest without warrant in certain cases¹²² and the right of the Lieutenant to hold an 'Enquest' at his pleasure.¹²³ Other laws kept in force in 1978 included Widowright, which gave a wife a life interest in the property of her partner, after which it would descend to her rightful heir.¹²⁴ This is presumably why the Deemsters declared in 1572 that the sale

118 [1981-83] MLR 1,4.

119 (1879) [1522-1920] MLR 180,187.

120 1704, s 16.

121 (1951) [1921-51] MLR Notes 6-7.

122 Customary Laws Act 1422, s 11.

123 Customary Laws Act 1422, s 13.

124 Robert Cannell "Evolution of Landownership" (2017) XV Isle of Man Studies 79, 83. See, eg *La Mothe v La Mothe* (1830) [1522-1920] MLR 44.

of land by a husband or wife required his or her spouse's formal consent.¹²⁵ Customary land laws continue to have a profound influence on the Isle of Man's distinctive law, and a useful discussion of many of these can be found in an article by Cannell on the evolution of Manx land tenure.¹²⁶

Two other examples of laws retained in 1978 are those relating to legitimacy and treasure trove. These customary laws are discussed in more detail to provide examples of the significance and endurance of customary laws, and their distinction from the common law of England.

B Legitimacy and Inheritance

A survivor of the Pre-Revestment Written Laws Amendment Act 1978 was the law that a 'bastard' could not inherit. This law, dating from 1577, stated that 'a bastard can have no Goodes, except they be given him by Will [or at the Discretion of the Ordinary upon charity,]¹²⁷ otherwise they can have none by Lawe.'¹²⁸ This was particularly significant in light of the customary law relating to inheritance of quarterlands,¹²⁹ which, if inherited by the deceased, descended automatically to the deceased's eldest son or daughter,¹³⁰ and could not be bequeathed by will. If purchased, quarterlands descended to the heir on payment of a price to younger children.¹³¹

In 1577, the Deemsters also 'gave for law' that 'if a man get a Maid or a young woman with Child before Marriage, and within a Year or two after doth marry her, if she was never slandered or defamed with any other Man before, that Child begotten before marriage shall have his father's Corbe and his Farme according to the Custom of this Isle.'¹³² This customary law was restated by the two Deemsters and the Keys in 1594, in answer to questions put to them by the Captain of the Isle

125 James Johnson *A View of Jurisprudence of the Isle of Man* (George Ramsay & Co, Edinburgh, 1881) 41; Robert Cannell "Evolution of Landownership" (2017) XV *Isle of Man Studies* 79, 83.

126 Robert Cannell "Evolution of Landownership" (2017) XV *Isle of Man Studies* 79-97.

127 The words in brackets were repealed by the Statute of 1777.

128 Customary Laws Act 1577, s 29.

129 A division of land, usually about 100 acres: Robert Airey (ed) *Feltham's Tour Through the Isle of Man*; William Harrison (ed) *Manx Notebook* (vol VI, Manx Society, Douglas, 1858) 42. For an interesting example of a decision of the Sheading Court relating to inheritance of Quarterlands in 1602 (Libri Scaccarii 1602, 21), see Robert Cannell "Evolution of Landownership" (2017) XV *Isle of Man Studies* 79, 83.

130 Robert Cannell "Evolution of Landownership" (2017) XV *Isle of Man Studies* 79, 82.

131 Inheritance Act 1662, s 5.

132 Customary Laws Act (No 2) 1577, s 16.

of Man,¹³³ adding specifically that, 'If a Man get a Maid or a young Woman with Child, and then within a Yeare or two after doth marry her, we judge them to be legitimate by our customary law.'

In 1886, the meaning of these laws was called into question in *Cottier v Corlett*.¹³⁴ In that case, the respondent sought a declaration that he was the eldest legitimate son and heir of the deceased. The appellant, his older brother, was born two years and nine months prior to his parents' marriage. At first instance it was held that the expression 'within a year or two' imposed a time limit of up to two years, which could not be extended. On appeal, the appellant submitted that it was inappropriate to construe customary law strictly, as if it were a modern statute and that 'within a year or two' to mean 'within a reasonable time'. It was argued that this would give effect to the meaning and object of the customary law, which was to legitimize and that two years and nine months from birth was a reasonable time within the meaning of customary law. It was held, dismissing the appeal that although old declarations of customary law were, in general, not to be construed as strictly as modern statutes, there was no authority for extending the time beyond two years. To the contrary, the time allowed by the customary law was 'within a year or two'. Moreover, it was held that allowing an unfixed time limit of 'a reasonable time' would introduce doubt for the future and allow judges to vary the limit according to their personal ideas of reasonableness. The Privy Council case of *Quane v Quane*¹³⁵ was distinguished as in that case the parents' marriage fell within the words of the customary law, as although it had been more than two years since the child's conception, the marriage took place within two years of the child's birth. It is notable that, in this case the court was equally divided, and accordingly, the appeal was dismissed. In dissenting, Sir Alured Dumbell referred to the customary provision as 'strange law', noting that:

[I]n every other country ... marriage after illicit cohabitation either does or does not legitimate the previously born offspring without referral to the date at which such marriage takes place or the lapse of time between the first cohabitation and the subsequent marriage. But in this Island, the strange and highly unsatisfactory state of things prevails that, where the parents under such circumstances ... marry and so seek to make atonement for the wrong done to their innocent offspring and there happen to be two such children born before the marriage, both of whom up to that time stood on precisely the same footing as regards legitimacy, the marriage may legitimate the later

133 Customary Laws Act 1594, ss 8 and 10.

134 (1852) 1522-1920 MLR 200.

135 (1852) 1522-1920 MLR 74.

born and leave out in the cold, unrecognized and uncondoned, the other who, under ordinary circumstances, would be the elder brother and the favoured heir.

The customary law that an illegitimate child could not inherit endured until 1928, when it was repealed by the Legitimacy Act 1928. The requirement that parents marry within two years of the birth of their child in order to render the child legitimate was removed for persons born after the Act. The statute also gave jurisdiction to hear legitimacy petitions to the Common Law Division of the High Court. Application was made under that provision by the petitioner in *Re AB*.¹³⁶ As the petitioner was born in 1899, the relevant substantive law was the customary law of 1577 as clarified in 1594. It was clear that the petitioner had been born within the two-year period, but, the respondent, the petitioner's younger sister, who had been born after the parents' marriage, questioned whether the husband was the petitioner's father. The court accepted the evidence of the five witnesses called for the petitioner and declared the petitioner to be legitimate. However, the respondent contended that the Customary Laws confined inheritance by legitimated children to males. This argument was based on the use of word 'his' to describe the father's 'Corbe'¹³⁷ and 'Farme' in the customary law of 1577 and its 1594 restatement. It was also contended that the customary law of 1419 showed that the law differentiated between the sexes in that corbes for a man were certain weapons of war, including firearms, whereas those for a woman were not.¹³⁸ This it was argued supported the view that the law was never intended to include a female heir, the object of the customary laws being to create an artificial male heir with the intention that he should be able to till the land and provide military service for the Lord.¹³⁹ The Court referred to the case of *Quane v Quane*¹⁴⁰ where the Privy Council on appeal from the Court of Chancery in the Isle of Man held that a daughter legitimated under the customary law could succeed to the property of her father which was settled on him on the term that on his death it was to be conveyed to his eldest daughter. The court expressly dismissed the argument that no female succession was known in the Isle of Man in 1577, as the Manorial Records showed that for many years prior to 1777 (when the Act of

136 [1921-51] MLR 238.

137 'Corb', 'corbe' or 'corbes' means property devolving to issue by birthright.

138 [1921-51] MLR 238, 243. Womens' corbs included 'the best pan or pot': Parr's Abstract, 63.

139 [1921-51] MLR 238, 243.

140 (1852) 14 ER 25.

Settlement provided that all land could be inherited by the heir at law)¹⁴¹ the eldest daughter had inherited in default of male issue.¹⁴²

The 1928 Act was itself repealed by the Legitimacy Act 1985.¹⁴³ However, the customary law still applies to a person born before 11 June 1928 (the date of the repeal of the customary law), unless that person's parents married before that date and provided that neither parent was married to a third party at the time of the birth.¹⁴⁴ Given that this will only apply to someone who is now over 90, though it survives, this customary law is unlikely to be of any practical significance.

C Treasure Trove

Treasure trove is an important topic in the Isle of Man, where there have been more finds per area of land than anywhere else in the United Kingdom. The customary law on point is a good example of an enduring law, which remained in force until 2017.

The customary law on treasure trove was first recorded in 1556, after Thomas Edwardson found a hidden hoard of gold. Henry Derby, Lord of Man, believing that he was entitled to the gold by virtue of his Prerogative of Right, but wanting to have this endorsed, wrote to his nephew, the Captain of the Isle of Man, the Water Bailiff, and other officers, asking them to refer the matter to the Keys. Consequently, on 15th December 1585, a meeting of the Deemsters and 24 Keys was convened. On the basis of the deliberations at that meeting the following was declared and recorded in the Statute Book:¹⁴⁵

By the Advise and Consent of the two Deemsters, as well as upon examination of the said Thomas Edwardson, as also upon good and deliberate Consideration, do say upon their Oathes in these Words: John Lucas and Thomas Samsbury, Deemsters of this Isle, with the Advise and Consent of the xxiiii Keyes for this present Cause assembled, do enact, and give for Law, that any Treasure whatsoever being found and secretly hidden under Ground either within the House or without in the field, or in the Thatch of the House or within any other covert Place, to the End to defraud the right Heyres, or for any other fraudulent Intent or Purpose, shall be the Lord's, as a Prerogative due unto his Lordship by the Lawes of this Isle.

141 Act of Settlement 1777, s 14.

142 [1921-51] MLR 238, 245.

143 Legitimacy Act 1985, s 7, inserting s 48A in the Administration of Estates Act 1960.

144 Legitimacy Act 1985, sch 1 paras 1 and 2.

145 Frederick Gill (ed) *The Statutes of the Isle of Man 1417-1824* (Eyre and Spottiswood, London) vol 1, 59-60.

Nevertheless be it provided, that any Man, for the Safeguard of his Goods from the Enemy, or for fear of any other mIschance, may, without Danger of this Law, lay up his Treasure in any such place , making either his Child, or any other Friend, privy to the same; and that any such Child or Friend may lawfully receive such Treasure soe hidden, and deliver it to the right Owner, without any Impeachment to the Lord his Prerogative, provided that the Party thus claiming be able to prove it by the Deposition of one sufficient witness at least, though he be Brother, Sister, or any other Kinsman or Friend, not detected of any notorious Crimes. And whereas Thomas Edwardson hath confessed before Mr Captaine, and others of my Lord his Councell, that he found the Sum of xxxiiiiil and upwards in the Thatch of the House, and is not able to prove it his proper Goodes by any sufficient Witness according to the Law in this Case provided, we find the said sum to be the Lord's by his Prerogative.

The extract is reproduced in full, as it illustrates not only the customary law in question, but also the manner of recording laws as part of the case in which the point arose, which was sometimes the process followed, as opposed to a declaration of laws at the request of the Lord or one of his officers.

Parr's Abstract sets out further customary law on treasure trove, extracted from three cases on treasure trove recorded in 1613, 1618 and 1630, as follows:

And if any person could find such hidden treasure or any other hidden commodities (which are also the lords by his prerogative), and not reveal the same unto the Coroner or Lockman, but conceal it and divert the same to his own proper use, and be thereof lawfully evicted by lawful proof or by the inquisitions of a jury, such person is to be severely fined, and the commodity so found to be the Lord's as aforesaid.

This broad provision extended to all commodities, and this is echoed in a declaration of customary law in 1630 found in *Libri Scaccarii*, stating:¹⁴⁶

There being a parcel of herrings found hid under the ground near Douglas are said to be the Lords according to his prerogative & Enquiry to be made for the ffelon, being supposed to be stolen.

A further provision, taken from the statutes by Parr provided:¹⁴⁷

And as oft as any discovery is made of any mine or ore to be had within the Isle, the Governor Receiver and Comptr. are to certify the Lord thereof, and if the Lord send over a miner that they see him do his duty and work faithfully and not to neglect the same upon any pretence and to acquaint the Lord with the proceeding and progress

146 *Libri Scaccarii*, 1630.

147 *Parr's Abstract* 217, citing Stat Fol 15.

herein, because the Lord should not be at expense, unless the same be to his advantage and profit.

The law thus set out differs in two important respects from the common law of England in that it is not necessary to show what is referred to in Latin as *animus revertendi* or *animus revocandi*, that is, the intention to recover the goods. For this reason grave goods are not covered by English law. Under Manx law that point is undecided.

The customary law on treasure trove was confirmed by the Pre-Revestment Written Laws (Ascertainment) Act 1978,¹⁴⁸ and endured until 2017. In that year attention was focussed on the law by an inquest regarding a significant find in 2016 of 14 pieces of Viking silver dated from the 10th Century. The Treasure Act 2017 clarified and defined treasure to include any object over 300 years old which has a content of at least 10% precious metal, is partly of gold or silver or is of 'historical significance'.¹⁴⁹ The 2017 Act did not follow the English law by requiring it to be shown that there was an intention to recover the goods. Although, it is not expressly stated in the Act, the provisions are broad enough to cover grave goods, stating that the section applies irrespective of, 'the nature of the place where the treasure was found' and 'the circumstances in which it was left (including being lost or being left with no intention of recovery)'.¹⁵⁰ However, they do not include a 'parcel of herrings'! The first find to be governed by the new legislation was a 600 year old silver and gilt ring which was declared as treasure by the Coroner of Inquests in December 2019.¹⁵¹ Whilst customary law was not raised in that case it is possible that it could still be relevant to questions arising under the legislation,

IV CONCLUSION

The legal system of the Isle of Man is unique. The English Common Law is obviously influential, and the Manx system has a Common Law base. However, in spite of this the island has maintained its distinct legal identity. There are many important differences, particularly in land law and in areas where Manx law has developed in response to the circumstances of the Island.¹⁵² The customary laws, or breast laws, are also an important, distinctive part of the legal system and were the

148 Schedule.

149 Treasure Act 2017, s 4.

150 Treasure Act 2017, s 6(4)

151 Manx National Heritage, *Mediaeval Ring Declared Treasure*, 14 December 2018 <<https://manxnationalheritage.im/news/medieval-ring-declared-treasure/>> accessed 28 March 2019.

152 Clothier Commission [1.1].

dominating source of law in the 15th century, and endured well into the last part of the 20th century. As can be seen from the Appendix, some survived beyond that time. In the case of Treasure Trove this was until 2017 and possibly beyond; others certainly remain in force.

The legal system has changed dramatically from the days when the King of Man was concerned to ensure that 'doome or judgement be not given at one time, one way, and another time contrary'.¹⁵³ However, many laws and procedures from that time endure, and laws are still proclaimed on 'the Hill of Tynwald' in the presence of 'the worthiest Men in [the] land'.¹⁵⁴ The Clothier Commission concluded that 'it is in the Island's best interests to preserve the distinctive character of its legal system'¹⁵⁵ and there is every indication that it will continue to do so.

APPENDIX

Customary Laws that Survived Pre-Reinvestment Written Laws Amendment Act 1978		
Year of Declaration and Number	Subject Matter and short title (if any) ¹⁵⁶	Subsequently Repealed?
1417:		
11	Coroner's right of arrest with or without warrant	No
1422:	Customary Laws Act 1422	
4	Vessels wrecked within Heads of Man belong to the Lord of Man (whilst this law is stated in Pre-Reinvestment Written Laws Amendment Act 1978 to be retained, it would appear to have been repealed by Shipping Casualties Act 1894, ss 46, 49).	Repealed by Wreck and Salvage (Ships and Aircraft) Act 1979 s 40 and sch 2
5	Royal fish	No
13	Lieutenant may hold an Inquest	No
32	Pleadings to be recorded	Repealed High Court Act 1991 sch 5
33	Council, Deemsters and Elders to assist Lieutenant in cases of difficulty	Repealed High Court Act 1991 sch 5
45	Partiality and misgovernment prohibited	No

153 Customary Law Act 1422, s 1.

154 Customary Law Act 1417, s 33.

155 Clothier Commission [1.5].

156 Short titles given by Pre-Revestment Written Laws (Ascertainment) Act 1978.

49	Appointment of Coroners to be recorded on the Roll	No
50	Coroners to hold office for one year only	Amended by Coroners Act 1930 sch 1 (which was partly repealed by Statute Law Revision Act 1989 s 8 and sch 2)
57	Gifts to officers forbidden	No
1523:	Customary Laws Act 1523	
7	Children of first marriage to be supported by father until they reach 14	Repealed by Statute Law Revision Act 1997 sch 2
1577:	Customary Laws Act 1577	
8	Defendant found in court may be sued without summons	Repealed by High Court Act 1991, sch 5.
11	Coroners to present offenders to the court for a fine to be imposed	Repealed by High Court Act 1991, sch 5.
15	Partition of farm	Repealed by Statute Law Revision Act 1997 sch 2
16	Obligation to divide land from neighbours in a way that restrains horses and cows	Repealed by Statute Law Revision Act 1989 s 8 and sch 2
29	Illegitimate children not to inherit on intestacy	Repealed by Legitimacy Act 1985
32	Right of way to the highway	No
1577	Customary Laws (No 2) Act	
unnumbered	Form and procedure for holding Sheading Courts	Repealed by High Court Act 1991, sch 5.
18	Imprisonment of debtors only pursuant to due process	Repealed by High Court Act 1991, sch 5.
1583	Boundaries Act 1583	
1	Lawful to enclose land	Repealed by Statute Law Revision Act 1992 sch 2
1586	Treasure Trove Act 1586	Repealed by Statute Law Revision Act 1992 sch 2
1	Treasure Trove belongs to the Lord of Man	Repealed by Treasure Act 2017
2	Treasure hidden for safety not to belong to the Lord of Man	Repealed by Treasure Act 2017
1586	Guardianship Act 1586	Repealed by Statute Law Revision Act 1997 sch 2

3	Guardians not to sell or let minor's property longer than minority	Repealed by Statute Law Revision Act 1997 sch 2
1593	Turf Act	
3	Custom turf	Repealed by Statute Law Revision Act 1997 sch 2
1594	Customary Law Act 1594	
9	Illegitimate child to have no goods except as provided by statute	Repealed by Legitimacy Act 1985
1645	Land Law Act 1645	
2	Re-Entry in the event of non-payment of rent	No
6	No land to be held rent free	No
1661	Turf and Ling Act 1661	No ¹⁵⁷
3	No carrying off turf or ling between 5pm and dawn	No
1662	Inheritance Act 1662	
5	Purchased quarterlands ¹⁵⁸ to descend to eldest son or daughter, paying price to younger children.	Repealed by Statute Law Revision Act 1992 sch 2
1687	Widowright Act 1687 ¹⁵⁹	
2	Widows who remarry or have a child to lose their widowright	Repealed by Statute Law revision Act 1997 sch 2.

157 Stated as remaining in force by the 1978 Act, but may have been incorporated in the Trespass Act 1753, s 3.

158 A division of land, usually between 50 and 180 acres: Manx Notebook, isle-of-man.com/manxnotebook/parishes/treen.htm accessed 30 March 2019.

159 Whilst this is an Ordinance, it has been held to describe the customary law: *Cain v Cain* [1952-1920] MLR 48, 49.

