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U.I.N.L

CIVIL LAW/COMMON LAW TASK FORCE

LEXICON

with translation of the juridical terms also in German,
Spanish, Dutch and Italian.

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UNION INTERNATIONALE DU NOTARIAT LATIN U.I.N.L
Secrétariat Administratif
Via Flaminia 158-A
00196 Rome (Italie)
téléphone 0039-06-3208 384
Télécopie 0039-06-3609 1499
E-mail :uinl@notariato.it

Foreword

The Civil Law/Common Law Task Force of the UINL was established to ensure that the civil law and common law traditions within which notaries operate could establish rapport, exchange ideas and work for a better mutual understanding of one another's traditions and legal systems.

The world's legal systems are generally considered to fall within two distinct traditions or families - the civil law tradition predominant in Continental Europe and in South America, which has a Roman law basis and which employs the use of substantive and procedural codes; and the common law tradition predominant in Anglo-American cultures where the influence is the common law of England, developed by precedent through the decisions of Judges.

Some legal systems fall within a mixed tradition where a legal system is subject to more than one influence - such countries may have a Roman law base and then be subsequently influenced by common law, or alternatively they may have a common law base and be influenced by civil law. Such jurisdictions in the world include Japan, Scotland, South Africa, Louisiana, Quebec and Zimbabwe. Furthermore, growing international influence such as Treaties organised under the World Trade Organisation or the European Union, have resulted in substantial elements of supra-national law or international law, which blur the distinctions between legal systems and require the legal professions within those systems to be more acquainted with the tradition, concepts and values which exist outwith any one jurisdiction.

The Civil Law/Common Law Task Force is dedicated to eliminating misconceptions and formulating useful, practical mechanisms which will enable notaries in either civil or common law jurisdictions to have enhanced understanding of the terms of art used within those jurisdictions. It is hoped that this Lexicon which deals with the following areas of law - contract, documents, loan/security, property, succession and miscellaneous terms will provide information for notaries, when acting with colleagues from another legal jurisdiction. Each section of the Lexicon is preceded by a short conspectus detailing aspects of the principal theme in the area of law concerned from both a civil and common law perspective.

Dr. Emanuele Ferrari
Chairman, Civil Law/Common Law Task Force

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Dr. Emanuele Ferrari (Chairman, Italy)
Michael P. Clancy, OBE (Secretary, Scotland)
Anthony Slingsby, William Kennair, Peter Lawson, M. Lightowler, R.A.D. Urquhart (England)
Brendan Walsh, James D. Donegan, Petria McDonnell, Walter Beatty (Republic of Ireland)
Marc J.G. Geleijns (Netherlands)
Joseph H. Saydon (Malta)
Stéphane Zecevic (France)
Rodrigo A.T. Tena- Pedro Carrion (Spain)
Christian Hertel – DnotI (Germany)

GENERAL CONSPECTUS ON THE LAW OF CONTRACT

Common Law

A contract is an agreement which is either enforced by law or recognised by law as effecting the rights and duties of the parties.

Agreement is constituted by a valid offer to contract on certain terms which is subsequently accepted, or agreed to. An acceptance must be communicated and silence does not presume consent. Prior to acceptance, an offer can be withdrawn or lapsed. An offer can also be rejected.

Where the requirements of offer and acceptance are met, an agreement may be too vague to give effect to a contract: vital terms may not be specified, or there may be terms to be agreed including the formulation of the contract in more formal documentation. The agreement may be subject to contingent conditions, which may either be conditions precedent or suspensive if the obligation does not accrue until the event occurs; or subsequent or resolutive if, on the occurrence of the event, the obligation is discharged.

English law and many common law systems deriving from English law, require contracts to be either made in a Deed or supported by "consideration". Consideration can generally be interpreted as payment. Accordingly, gratuitous promises made under the English legal system are not binding. It should be noted that Scots law has no rule requiring consideration and that gratuitous promises under the law of Scotland are binding. It is possible for contracts to provide for the release of the parties and also for the variation of the terms.

It is important for there to be contractual intention: not all agreements are binding in a contractual sense and frequently in the English legal system, agreements may be made "subject to contract" which indicates that contractual intention is specifically excluded from any antecedent negotiations.

There are some requirements in English common law for contracts to be in a specific form. For example, leases of land for more than three years require to be in a Deed; consumer credit agreements and most contracts for the sale of interests in land require to be made in writing. Guarantees require to be in writing, whereas other contracts require to be only evidenced by writing. The effect of not complying with any requirement of writing may differ with the type of contract envisaged.

Terms may be express or implied and many contracts have standard terms including terms seeking to limit or exclude liability for negligence, payment provisions, arbitration clauses, and provisions relating to the recording or registration of the documents involved. The Unfair Contract Terms Act 1977 strikes at terms which exclude or restrict liability: there may also be choice of law and jurisdiction clauses.

Mistake as a vitiating factor permitted in the common law, the mistake must be fundamental to the terms of the contract and may be where parties make common mistakes, or where they make mutual mistakes and are at cross purposes. Mistakes which do not go to the heart of the contract will not vitiate the contract.

It is possible for someone who has been induced to enter into a contract by a mis-representation to have remedies by way of damages or rescission. In this respect, where one is claiming damages, it is necessary to show either fraud or negligence in the making of a representation or a contravention of the Misrepresentation Act 1967. It is also possible to claim damages for breach of contract. Rescission occurs not only where there has been mis-representation, but also where there has been a breach of contract. A contract can be voidable if entered into by a person who is subject to duress or undue influence.

The common law doctrine of personal bar applies to contracts and someone who accepts the position, notwithstanding a perceived breach, may nevertheless be held bound by the bargain. The common law refuses to give legal effect to contracts which are contrary either to law or public policy. Accordingly, a contract in relation to the commission of a crime, or a civil wrong, will not be enforced. Similarly, contract which are contrary to public policy - for example by promoting sexual immorality, restricting freedom of marriage, excluding jurisdiction of the courts, perverting the course of justice, or engaging in bribery or corruption - will not be enforced. At common law contract terms in restraint of trade were void, but if reasonable and not contrary to the public interest, they can be found to be valid.

A particular feature of the common law is the doctrine of privity of contract. The general rule is that rights arising under a contract can be enforced or relied upon only by the parties to the contract and not by third parties. There are some exceptions including those obtained in the Contracts (Rights of Third Parties) Act 1999. In Scots law it is possible for a third party to exercise a *jus quaesitum tertio*. It is possible for contractual rights to be transferred by statutory assignment under the Law of Property Act 1925.

Performance in the common law discharges a contract and entitles the party rendering performance to enforce the other party's undertaking: whilst failure in performance gives the victim the right to rescind the contract.

A breach of contract is committed when a party fails or refuses to obtemper the obligations in terms of a contract, or incapacitates himself from forming a contract. In such a circumstance the option is for the innocent party to either rescind or affirm the contract and it is possible to seek damages for breach of contract.

Civil Law

General Provision

A contract is an agreement between two or more persons by which an obligation is created regulated or dissolved.

The obligation must be valuable. Essential conditions of the validity of contract:

a) consent or agreement

aa) "cause"

aaa) the subject-matter

aaaa) form when required by the law

a) the consent (as a result of offer and acceptance) binds the parties

aa) "cause" of the contract must be lawful .

The difference between "cause" and consideration is basically as follows: cause concerns the validity of the contract in civil Law, not the creation of the legal binding which arises from the agreement.

Cause is unlawful when contrary to public policy or morality.

aaa) subject-matter: a thing which one of the parties is bound to give or to do or not to do. It may be determinate or capable of being ascertained : futures things may be the subject of a contract.

aaaa) Form may be oral or written.

When written form is required it may concern the validity or evidence of the contract. Furthermore for a wide range of acts is required the notarial form for their validity or registration purposes.

EFFECTS OF CONTRACTS

Contracts have the force of law for the contracting parties. They may only be revoked by mutual consent or on grounds allowed by law. Contract must be performed in good faith.

Contract is operative only as between contracting parties and does not impose obligations or confer rights upon people who are not privy to it except in the cases established by law.

When things alienated are certain and determinate the ownership or other rights over them is transferred and acquired by consent of contracting parties and things remain at risk of the alienee even before the delivery.

When things alienated are uncertain or undetermined the ownership is transferred when the things have become certain or have been specified.

Where a movable thing or right over such thing is promised by successive contracts to more persons , the person to whom the thing is delivered shall have a prior right over the other or others.

If the movable thing or right over such thing is not delivered the contracting party who has certified title is entitled to it.

Where an immovable thing or right over such thing is promised by successive contracts to more persons, the person who has registered its title has a prior right over the others.

Person may stipulate for the benefit of a third party. The person may not revoke it, if the third party has signified his intention to avail himself thereof.

It shall be lawful for a person to stipulate with himself if specifically empowered and when subject matter is certain and determinate.

Contract may be:

-bilateral or synallagmatic where the parties have reciprocal obligations.

- unilateral where one party promises to do or not to do something: if the promisee does not refuse, it binds the contracting parties.

- conditional or future

- divisible or entire

- commutative

- standard

In civil Law contract to conclude a contract binds the parties,

Gifts are regarded as contracts in civil Law .

Promise to the public at large is regarded as an operative offer which binds the promisor: promisor may revoke it in the same way he has made the promise.

DISCHARGE OF CONTRACT

Contract may be discharged by:

- breach
- supervening hardship of contract
- supervening impracticability or impossibility of performance
- enormous disproportion between the obligations of the contracting parties.

Contract is **null and void** when there is:

- lack of essential conditions of its validity
- cause is illicit
- motive (i.e. what incites to conclude a contract) is both illicit and common to the contracting parties
- subject-matter is not determinate or capable to be ascertained, illicit and unfeasible.

Avoidance of contract concerns whether the incapacity of contracting parties whether vices of consent error, violence and fraud.

a) error is operative as follows:

- error of law shall avoid the contract when is the solely inducement thereof
- error as to the legal nature or subject-matter of contract
- error as to the identity of the contracting party or the substance itself of the thing

In any case error must be ascertainable by the other contracting party

b) violence

consent is considered extorted by violence when the violence is such as to produce an impression on a reasonable person and to create in such person the fear of having his person (his spouse, descendant or ascendant) or his property exposed to serious injury. In such cases, the age, sex and personal conditions shall be taken into account.

c) fraud

Fraud is on ground of avoidance when the artifices used by one of the contracting parties were such that without them the other party would not have concluded the contract

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Contract	Acceptance	1) Tacit acquiescence or agreement imported by failure to reject a thing offered. 2) The act of assenting to an offer provided certain other requirements are fulfilled.	Same as Scotland	Same as Scotland	[aanvaarding] 1) Tacit acquiescence or agreement imported by failure to reject a thing offered. 2) The act of assenting to an offer provided certain other requirements are fulfilled;	[acceptation] Expression of will of a person or legal entity indicating agreement to a contractual offer	[accettazione] The act of assenting to all the terms of an offer. It can be expressed or implied from conduct	[aceptación] Same as Italy	A contract is formed by offer [Angebot] and acceptance [Annahme]. Acceptance may be explicit or implied/tacit.
Contract	At will	A contract terminable by either party on reasonable notice as contrasted with terminable on the expiry of a fixed term	Same as Scotland	Same as Scotland	[eenzijdig ontbindbaar] A contract can be made <i>at will</i> if it implies the possibility for one of the parties to rescind the agreement unilaterally without giving any reason for doing so	N/A	[recesso unilaterale] Same as Germany	[desestimio] Faculty granted in certain contracts to one of the parties to detach him or herself unilaterally from the obligation	[freies Kündigungsrecht] A party may terminate a contract at will only if it has been agreed so in the contract.
Contract	Breach of contract	The failure by a party to a contract to implement any of its terms which are binding on him	Same as Scotland	Same as Scotland	[contractbreuk] The failure by a party to a contract to implement any of its terms which are binding on him.	Breach of a contract due to the fault of one of the contracting parties [rupture, violation]	[inadempimento del contratto] The discharge by failure by a party to a contract to implement any of the terms which are binding on him	[Incumplimiento de contrato] The failure by a party to a contract to implement any of its terms which are binding on him or her.	Only since 2002, breach of contract [Pflichtverletzung] is the basic concept for contractual liability. Before, the German law distinguished between impossibility

									[Unmöglichkeit], default [Verzug] and other breaches of contract [positive Forderungsverletzung].
Contract	Clause	A provision in a deed or instrument	Same as Scotland	Same as Scotland	[clausule/artikel] A provision in a deed or instrument	[clause] Particular provision of a contract	[clausola] A provision in the instrument	[Cláusula] A provision in a deed or instrument.	[Klausel or Vertragsklausel] a clause in a contract, including in a standard contract
Contract	Condition	A clause in a contract or disposition qualifying an obligation. This term has particular importance in contract law and requires to be carefully considered.	Same as Scotland	Same as Scotland	[voorwaarde] A clause in a contract or disposition qualifying an obligation	[condition] Term of a legal document on which the fulfilment of an uncertain future event depends	[condizione] A clause purported to suspend or resolve the enforceability of a contract. It must be licit and feasible. Condition can be precedent “sospensiva” or subsequent “risolutiva”	[Condición] A clause whose purpose is to suspend or resolve the enforceability of an obligation or of a patrimonial provision because of a future or uncertain event.	A contract or an obligation may depend on a condition precedent [aufschiebende Bedingung] or a condition subsequent [auflösende Bedingung]

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Contract	Contract	An agreement which is binding and which creates rights and obligations. In Scots law promises are enforceable	A contract is an agreement which is enforceable by law. In English law gratuitous promises are not enforceable	As England and Wales	[contract or overeenkomst] An agreement of mutual assent on the part of two or more parties which establishes, modifies, or extinguished one or various obligations to give, do or not do something	[contrat] An agreement giving rise to one or more obligations creating or transferring a property right	[contratto] A contract is an agreement between two or more persons by which an obligation is created, regulated or dissolved	[Contrato] An agreement of mutual assent on the part of two or more parties which establishes, modifies or extinguishes obligations.	A contract [Vertrag], being the mutual assent of two or more parties, may create an obligation [schuldrechtlicher Vertrag] or create or transfer a right in rem [dinglicher Vertrag]
Contract	Delegation	The substitution with the creditor's consent of a new debtor for an old one. The concept also applies in contracts other than for payment.	Novation	Same as England and Wales	[schuldovertopping] The substitution with the creditor's consent of a new debtor for an old one after notice by the old debtor and the new one to the creditor	[délégation] An agreement replacing one obligation with another	[delegazione] Substitution with the creditor's consent of a new debtor for an old one	[Asunción de deuda] The substitution with the creditor's consent of a new debtor for an old one.	The debtor may be substituted by a new debtor [vertragliche Schuldübernahme] only with the creditor's consent.
Contract	Implied	Not stated or expressed. This is used to refer to terms which the parties have agreed from their conduct.	Not stated or expressed	Same as England and Wales	[impliciet] Not stated or expressed]	[tacite] An implied contract	[clausole imposte dalla legge] This term refers to provisions arising from law or conventional use. The former are regarded as overriding in any case even though unexpressed.	[cláusula implícita o sobreentendida] Same as Italy	[stillschweigend] A declaration or a contract need not be explicit. It may also be implied or tacit.

							[clause d'uso] The latter when does not result the contrary		
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Contract	Obligation	A legal connection or relationship between two persons arising from a unilateral promise, agreement by force of law or by order of a Court whereby an obligee is endowed within enforceable rights and duties	Same as Scotland	Same as Scotland	[verplichting] A legal connection or relationship between two or more parties arising from a unilateral promise, agreement by force of law or by order of a Court whereby an obligee is endowed with enforceable rights and duties	[obligation] A legally enforceable relationship between two or more parties imposing agreed-upon duties, whose breach is enforceable at law.	[obbligazione] An undertaking arising either from a unilateral promise or contract or by judge to do or not to do anything	A legal connection or relationship between two parties arising from a) a unilateral promise, b) force of law or c) an order of a Court whereby an obligee is given enforceable rights and duties [obligación]	A debtor's obligation [schuldrechtliche Verpflichtung] or the corresponding creditor's right in personam [Anspruch] may arise from a contract (or a unilateral promise) [vertragliches Schuldverhältnis] or by operation of law [gesetzliches Schuldverhältnis].
Contract	Prescription	Rules of law by which certain rights or obligations are established or extinguished by lapse of time	Same as Scotland	Same as Scotland	[verjaring] Rule of law by which certain rights or obligations are established or extinguished by lapse of time	[prescription] Consolidation or extinction of a legal right due to the lapsing of a set time period	[prescrizione] The extinguishing or acquisition of rights by lapse of time	[Prescripción] Rules of law by which certain rights or obligations are established or extinguished by lapse of time.	After the lapse of time, the debtor of an obligation may plead the statute of limitations [Verjährung], whereas rights in rem may be established or extinguished by prescription [Ersitzung].
Contract	Presumption	An inference as to the existence of one fact drawn from the admission or proof of the	Same as Scotland	Same as Scotland	[rechtsvermoeden] An inference as to the existence of one fact drawn from the	[présomption] A mode of legal argument that establishes one fact by relying on another fact	[presunzione] An inference of fact drawn from another established fact. They may be	[Presunción] An inference as to the existence of one fact drawn from the admission or	The inference by a presumption [Vermutung] may be rebuttable [widerlegbar] or

		existence of another fact. There are also prescriptions of law which require further consideration.			admission or proof of the existence of another fact	that has not been proven	iuris et de iure (conclusive) which cannot be contradicted or iuris tantum (provisional) when there is no adverse proof	proof of the existence of another fact. May accept adverse proof (iuris tantum) or not (iuris et de iure).	irrebuttable [unwiderleglich]
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Contract	Rescind	To terminate or cancel a contract	A right of rescission of a partially executed contract will lie provided there are obligations which remain unperformed. Rescission is also available in cases of fraud, misrepresentation, duress, undue influence and mistake. It should be distinguished from repudiation by one party.	Same as Scotland	[ontbinden] To terminate or cancel a contract	[résilier] To terminate a contract due to the non-fulfilment of an obligation of one party to a contract	[recessione per lesione] Discharge of contract on the ground of disproportion between the obligations of the contracting parties. See also “breach of contract”	[Rescisión] To terminate or cancel a contract.	The unilateral rescission of a contract [Rücktritt] terminates the contract ex nunc and requires the parties to refund each other what they have received in performance of the contract. It must be distinguished from the revocation [Widerruf] or avoidance [Anfechtung], which avoid the contract retroactively, and from the termination of a continuing obligation (e.g. tenancy) [Kündigung] and from the termination by mutual assent [Vertragsaufhebung]
Contract	Retention	The withholding by one party to a contract of performance of his obligation	Same as Scotland	Same as Scotland	[retentierecht] The withholding by one party to a contract of performance of	[rétention] The legal right of a creditor to keep property of its debtor until	[riserva di proprietà] A provision inferring the transfer of	[Retención] The withholding by one party to a contract of performance of	[Zurückbehaltungsrecht] right to withhold

		under the contract until the other party performs his obligation under it retaining moveable property until a debt due by its owner is paid			his obligation under the contract until the other party performs his obligation under it retaining moveable property until a debt due by its owner is paid	the debt is repaid, despite the fact that the creditor did not receive the property in question via a contractual guarantee	property (e.g., instalments in sale) which passes only when the price is paid [ritenzione (diritto di)] The right of retaining moveable property until a debt due is paid by the party withholding of performance of his obligation under the contract	his obligation under the contract until the other party performs his obligation under it retaining moveable property until a debt due by its owner is paid.	

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Contract	Transfer	To convey or voluntarily hand over property or rights in property from one person to another	Same as Scotland	1. See Scotland 2. The instrument effecting the transfer of registered property	[levering] To convey or voluntarily hand over property or rights in property from one person to another	[cession] The transfer of a right from one party to another	[alienazione - trasferimento] The passing of property or rights in property	[Transferencia] To voluntarily hand over property or rights in property from one person to another.	The transfer of a contractual claim is called [Abtretung], the transfer of property [Eigentumsübertragung or short Übertragung]
Document	Affidavit	A written statement made on oath and signed	Recently affidavits have given way to written statements which are unsworn.	Same as Scotland	[beëdigde verklaring] Written statement made on oath and signed used for probative purposes	[attestation] A document attesting to a statement made by a competent authority, used for probative purposes	[attestazione - dichiarazioine sostitutiva di atto notorio] A document sworn by the party/ies before a notary or a competent authority stating some facts or circumstances, mainly for the use before authorities (DPR 28.12.2000 n. 445)	[Acta de referencia o manifestaciones] A notarial certificate in which the contents of a statement verified by an identified person are compiled.	The German [eidesstattliche Versicherung] differs from an affidavit, because it may be given only before the relevant state authority or before a notary for the exclusive use before state authorities – which may also be a foreign authority.
Document	Conveyance	A formal deed transferring heritable or moveable property, often called a Disposition in respect of land transfers	1) a transfer of land. 2) the deed which transfers.	The instrument effecting the transfer of unregistered property.	[levering van onroerend goed] The transfer of real estate	[transfert de propriété à titre onereux] A deed formalising the transfer of real estate property other than by gift or inheritance	[trasferimento immobiliare a titolo oneroso(atto di)] The instrument effecting the transfer of real estate other than by gift or inheritance . It requires an act	[transmisión de propiedad a título o oneroso] Same as France	transfer of property [Eigentumsübertragung]. The conveyance of real property requires a declaration of consent before a notary [Auflassung] and registration in the land register

							before a notary and its registration in the Land Register		[Eintragung]
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Document	Deed	A formal document executed and authenticated in accordance with prescribed formalities and incorporating the terms of an agreement, contract or obligation	A formal document executed and authenticated in accordance with prescribed formalities. Deeds can a) transfer rights or interests in property, b) create obligations, or c) confirm a transfer of rights.	As per Scotland	A written document wherein the manifestation of will is intended to have legal effect. Sometimes executed in the form of a notarial instrument [notariële akte] sometimes in the form of a private document [onderhandse akte]	A written document where the manifestation of will is intended to have a legal effect. An acte authentique is performed by a Notaire, and an acte sous seing privé directly between contracting parties	A written document for legal purposes. of which there is no exact equivalent in the civil law. The law prescribes when a document must be performed by a notary [atto pubblico] or directly by the parties [scrittura privata]	A written document for legal purposes. of which there is no exact equivalent in the civil law. The law prescribes when a document can or must be performed by a notary [escritura] or directly by the parties [documento privado] and attributes absolutely different effects to each kind of document.	There is no exact equivalent (nor translation) of the common law concept of “deed” in the civil law. Neither is there in the common law an exact equivalent of the civil law concept of “authentic act” [öffentliche Urkunde] or “notarial instrument” [notarielle Urkunde or notarielle Niederschrift]. However, both are both formal documents [Urkunden].
Document	Endorse	To write on the back of a document to express or modify terms.	Same as Scotland	Same as Scotland	[endosseren] To write on the back of a cheque or bill of exchange in order to transfer same	[endosser] A means of transferring any commercial instrument, whether negotiable or not	(girata) Same as Netherlands See” Negotiable instrument”	[endoso] Same as Netherlands	[Annahme – also called Indossament] A negotiable instrument (e.g. a bill) may be endorsed by the drawee
Document	Negotiable instrument	A document constituting evidence of the right to a sum of money	Same as Scotland	Same as Scotland	[vordering aan toonder] A document constituting evidence of the	[titre négociable] A document attesting to its holder’s short	[Titolo di credito] A document that contains an obligation to pay	[título valor] Same as Netherlands with same note as Italy	[Wertpapier]

		transferable simply by delivery or endorsement and delivery			right to a sum of money transferable simply by delivery or endorsement and delivery	term right to obtain payment and used for said payment	a sum of money, transferable by delivery and endorsement. Note: in Italian law shares and stocks, bills of lading and debentures are also regarded as negotiable instruments.		
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Document	Notarial instrument	Any instrument drawn up and executed by a Notary	Same as Scotland	Same as Scotland	[notariële akte] An authentic deed drawn up and executed before a notary	[acte authentique] A deed drafted by a Notaire, who is a public official; its content and that of its executory copies carry the force of a court judgement, unless proven false	A document drawn up by a Notary with legal requirement whose authenticity concerns the declarations of the parties who appeared before the notary which he or she attests to have taken in his presence or to have been done by him or her. It can only be deprived of its authenticity if declared false judicially and it is enforceable as a judgement according to the law. [atto pubblico]	[Instrumento público] Authorised public document drafted by a Notary. It comprises both the object of which are legal businesses and acts whose object are the facts directly certified by the Notary.	A notarial instrument [notarielle Urkunde] is the most important example of an authentic act [öffentliche Urkunde]. Notarial instruments comprise the mere certification of signature [Unterschriftsbeglaubigung] and the notarial instrument in the more restricted sense [notarielle Niederschrift]
Document	Recitals	Not a term of art in Scots law	Statements to introduce the operative part of an instrument (normally a conveyance of land or assignment of a lease). They are part of the document and care should be taken in their	Same as England and Wales	[overwegingen] Statements to introduce the operative part of an instrument	[préambule, exposé] The introductory portion of a legal document that explains the provisions setting forth the facts and grounds for drafting the document	[premessa – narrative] Preliminary statements explaining the operative part of an instrument	[exposición] Same as France	[Urkundseingang] A notarial instruments usually starts naming the notary, the parties and the time and date of the notarial act

			composition.						
Document	Title	The right of ownership in property (2) the deed or other instrument constituting evidence of that right	Same as Scotland	Same as Scotland	A right of ownership or document from which a right arises, e.g. a valid title is a legal requirement for a transfer of real estate and moveable property [titel]	A document attesting to the right of ownership [titre de propriété]	A right of ownership or a document attesting the right (usually a notarial instrument) [titolo]	A right of ownership or document from which a right arises. [Título]	(1) ownership [Eigentum] or (2) method of acquiring ownership [Erwerbsart], in particular the document transferring title [Erwerbsurkunde]

GENERAL CONSPECTUS ON THE LAW ON LOANS

Common Law

Meaning

A loan is the method whereby a sum of money (principal) is made available by one party (lender) to a third party (borrower) in return for obligations by the borrower relating to the repayment of the principal and a charge for the use of the money on a time/cost/risk basis (interest). Other charges may be levied by commercial lenders which typically include bank fees for arranging drawing down and pre paying a loan. This paper relates to loans of money and not chattels.

Form

A loan may be made orally or in writing. Loans may be repayable on a fixed date or by instalments or on demand. Enforceability does not depend upon the loan being recorded in writing but it clearly helps in identifying the terms and the intentions of the parties. There are a number of ways of constructing a loan, depending upon the circumstances, and the legal personality of the borrower. Written instruments commonly in use in England and Wales include:-

Promissory Note

This is a simple form of acknowledgement of debt. It is a negotiable instrument whose form and content are governed by the provisions of the Bills of Exchange Act 1882. It records the parties to the Loan, the amount of the principal, any interest charged and the date or dates for repayment of principal and interest. If it does not comply with the requirements of the Bills of Exchange Act 1882, it may be invalid. They are normally executed by a simple signature.

Loan Notes

These are used typically by English Companies as a security instrument to record the terms of a loan especially in circumstances where a company acquires shares or assets and part of the consideration is subject to deferred payments. Such notes normally carry interest at a commercial rate. Often they may be guaranteed or secured on the assets of the issuing company or by a third party. They are normally executed as a Deed.

Redeemable Shares

These are a form of equity issued by a Company in exchange for a cash subscription. The shares would normally be issued subject to terms (usually set out in the Company's Articles of Association) that they are repaid (redeemed) by the Company to the holder on a fixed date or on notice. The charge for the use of the money may be a rate of interest (fixed or variable) payable at intervals, or may be linked to a percentage of the Company's profits (Participating Redeemable Shares). On a liquidation of the Company, the holders are usually repaid in preference to other shareholders. Certificates representing the shares are normally executed as a Deed.

Loan Agreement

This is perhaps the most commonly used instrument which incorporates all of the terms of the loan and any requirements regarding security (see below). They may be executed either as a Deed or by simple signature subject, in the case of corporate bodies, to the relevant formalities relating to capacity and authority being observed.

Regulatory Framework

Loans in England and Wales are regulated in part by Statute and in part by the Common Law.

Certain loans to consumers (including individuals and partnerships) are governed by Statute for the protection of borrowers. Typically, loans under £25,000 may be governed by the requirements of Consumer Credit legislation and include obligatory “cooling-off” periods. Certain loans by companies are regulated by Companies legislation which, among other things, forbids loans to directors and other associated parties except where the amount of the loan does not exceed an amount prescribed by its Statutes or by law (typically £5,000 at present).

Security

Loans may be made subject to additional or collateral security being provided by the borrower or by a third party on the borrower’s behalf. In the case of loans to individuals, these may be additionally secured by a mortgage or charge over property owned by the borrower or a third party. A third party may provide a guarantee of the borrower’s obligations and may also provide security as described above. There are statutory provisions relating to the registration of certain types of security given by individuals and companies but this would require a separate paper to elaborate upon this. Failure to observe these provisions can lead to such security being invalid.

Enforcement

The enforcement of loans is regulated primarily by the law of contract and depends on the terms of the individual loan. Having first issued and served a demand for repayment of the loan when due, proceedings would normally be issued in the County Court or the High Court depending upon the amount of the loan. Having obtained judgment in favour of the lender, there are various means of enforcement either utilising the services of an officer of the court (such as a bailiff or sheriff in the seizure of the borrower’s assets) or under insolvency legislation and proceedings to obtain an order to recover monies in the liquidation of a company or the bankruptcy of an individual or individuals. There are shortened procedures available which may avoid the issue of court proceedings where it is clear there are unlikely to be any defences to the claim. If a borrower is served with a “Statutory Demand” and fails to pay within twenty one days, the lender may proceed directly to enforcement (as explained above) without further steps to obtain judgment. If security has been given for the loan, steps may also be taken to enforce third party guarantees or mortgages over property but these remedies would require explanation in a separate paper.

None of the procedures outlined in this paper require Notarial intervention assuming the instalments are governed by the laws of England and Wales and enforcement takes place in that jurisdiction.

Civil Law

Meaning

A loan is the agreement whereby a sum of money (principal) is made available by one party (lender) to a third party (borrower) in return for obligations by the borrower relating to the payment of the principal and a charge for the use of the money on a time/cost/risk basis (interest). Other charges may be levied by commercial lenders which typically include bank fees for arranging drawing down and pre paying a loan. This contribution relates to loans of money and not chattels.

Form

A loan may be made orally or in writing. Loans may be repayable on a fixed date or by instalments or on demand. Enforceability does not depend upon the loan being recorded in writing - as it may do insofar securities are concerned - but it clearly helps in identifying the terms and the intentions of the parties. There are a number of ways of constructing a loan, depending upon the circumstances and the legal personality of the borrower and the lender. The written instrument commonly in use is the loan agreement or credit facility agreement. Negotiable instruments such as promissory notes and bonds (not to mention any kind of shares in companies) can be part of a financial arrangement or bond loan, but are not regarded as loans themselves, since they are not considered as an agreement, which is essential for a loan under civil law.

Regulatory framework

Loans are regulated by law. A provision for the protection of consumer borrowers including obligatory cooling-off periods such as governed by Statute in England and Wales is not (yet) widely in force on the Continent.

Certain loans, as well as the provision of security by companies are regulated by companies legislation. A Dutch limited liability company for example or its subsidiary may not provide security, guarantee the price, otherwise guarantee or otherwise bind itself jointly and severally with or for third parties for the purpose of the subscription or acquisition by third parties of shares in its own capital or of depository receipts therefor. A loan for the purpose of the subscription or acquisition of shares in its capital and of depository receipts issued therefor may be provided only by a Dutch private limited liability company to the extent of its distributable reserves and to the extent so permitted by its articles.

Securities

Insofar securities are concerned civil law makes a distinction between personal securities such as a bailment or a guarantee and securities in the form of real rights, such as a pledge or hypothec or mortgage (right of hypothec, hereinafter also called: mortgage).

Personal securities may be provided in writing or orally. For some personal securities granted by a natural person the consent of the spouse may be required by law. Securities in the form of real rights can only be provided in writing: for a right of pledge either a private instrument or a notarial deed is required, depending on the kind of collateral. For a mortgage a notarial deed is always required.

Pledge

A right of pledge is a security interest which can be provided either by the borrower or by a third party in movables or pecuniary rights, such as a personal claim, shares in the capital of a company, etc.; in order to secure a payment obligation. A pledge can be possessory if the collateral is in the possession of the pledgee; otherwise the pledge is a non-possessory pledge in certain countries. Another distinction is made between a notified pledge on the one hand, whereby the person who is in the possession of the collateral (not necessarily the pledgor) is notified and the non-disclosed pledge on the other hand, whereby the person who is in the possession of the collateral is not notified.

Mortgage

A right of mortgage is a security interest which can be provided by the borrower or by a third party in registered property, in order to secure a payment obligation. Registered property is property for the transfer of which and for the creation of real rights on which registration of the notarial deed of transfer or the notarial deed of creation of a real right thereon in registers, kept by public authorities, is required. Registered property includes real estate, registered aircraft and registered ships/vessels.

Enforcement

For the execution of personal security an order from a cantonal judge or court must be obtained, depending on the amount of the sum of monies due. Both a pledge and a mortgage provide a right of preference to the pledgee and mortgagee and grant the pledgee or mortgagee a right to put the collateral up for public auction without the intervention of a judge in certain countries. The pledgee and mortgagee may recover their claims from the proceeds of the sale.

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Loan/ Securities	Caution	Security for a deed or a debt or for the administration of a trust estate	Same as Scotland of local land charges in Local Authority Registers. The word also refers to land charges in the Register of Mortgages.	Is a restriction on disposition by the registered owner of land without notice to a person who claims any right in, to or over registered land or a registered charge	N/A	[caution] A commitment to guarantee the execution of a contract	N/A	[fianza] A commitment to guarantee the execution of a contract or the administration of a trust	[Sicherheit]
Loan/ Securities	Charge	(1)An order to obey a decree or judgment of a Court (2) a security over the property of a company	Same as Scotland Of local land charges in local Authority Registers. the land also refers to land charge registration of mortgages	Same as Scotland	[bezwaring] A kind of encumbrance, not considered as a form of security	[Charge] An encumbrance on property	[peso, onere] An encumbrance on land, not considered as a type of security	[carga] An encumbrance on land or moveable assets not necessarily related to secure a payment of money	(1) court order [gerichtliche Anweisung] (2) A German land charge [Grundschuld] is the non accessory type of security interest in real estate [Grundpfandrecht], whereas a mortgage [Hypothek] is the accessory type.
Loan/ Securities	Collateral security	Additional security reinforcing a primary security for the performance of an obligation	Same as Scotland	Same as Scotland	[aanvullende zekerheid] Additional security reinforcing a primary security for the performance of an obligation	N/A	[garanzia accessoria] An insurance policy or a guarantee deposited or granted to secure the debt of another person.	Same as Netherlands [garantía superpuesta]	[Sicherheit]

Loan/ Securities	Creditor	A person to whom a debtor is obliged	Same as Scotland	Same as Scotland	[crediteur or schuldeiser] A person to whom a debtor is obliged (most often financially)	[créancier] A person to whom a debtor is obliged; a holder of a right for reimbursement	[creditore] A person to whom a debt is due	[accedor] Same as Italy	[Gläubiger] A person to whom a debtor is obliged
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Loan/ Securities	Guarantee	See Caution A secondary agreement in which one person (the guarantor) will become liable for the debt of the principal debtor if the principal debtor defaults.	A secondary agreement in which one person (the guarantor) will become liable for the debt of the principal debtor if the principal debtor defaults.	Same as England and Wales	[garantie] A secondary agreement in which one person (the guarantor) will become liable for the debt of the principal debtor if the principal debtor defaults	[garantie] A legal means of providing a creditor with a guarantee that protects said creditor against the risk of insolvency of a debtor	[fidejussione] A personal security for the debt of another person (principal debtor). It is a secondary agreement that protects the creditor if the principal debtor defaults	[garantía] Same as France	[Bürgschaft] A guarantee for a loan is a
Loan/ Securities	Mortgage	An English term for the grant of a loan secured on moveable or immovable property. Used colloquially in Scotland but not a term of art.	An English term for the grant of a loan secured on moveable or immovable property	An English term for the grant of a loan secured on moveable or immovable property	[hypotheek] A security conceded to a creditor on real estate (an aircraft or a ship/vessel registered in the public registers) belonging to the debtor or to a third party, that the owner retains in his possession permitting the creditor to put it up for auction to secure the execution in case of non compliance. Specific assurance of a credit or loan	[hypothèque] A lien on a building to the benefit of a debtor, guaranteeing payment of the debt. A mortgage does not entail dispossession of the building's owner	[ipoteca] A fixed charge in land or building (or ships, cars and aircraft registered in public registries) to secure the payment of a debt. The creditor is allowed to levy execution on property secured even against the third purchaser.	[hipoteca] A guarantee conceded to a creditor on real estate or personal property belonging to the debtor or to a third party, that the owner retains in his possession permitting the creditor to put it up for auction to secure the execution of the debt in case of non compliance.	Mortgage [Hypothek] is an accessory security in real estate [Grundpfandrecht], whereas a land charge [Grundschuld] is not accessory.
Loan/	Security	Something	Same as	Same as	[zekerheidsrecht]	[sûreté]	[garanzia]	[garantía]	A security

Securities		which tends to assure or secure that an obligation will be performed. Colloquially it also includes stocks and shares.	Scotland	Scotland	Something which tends to assure or secure that an obligation will be performed, be it a right or a personal right	A means by which one assures the performance of an obligation	A lien to assure or secure the satisfaction of a debt. It may be real (e.g. hypothec, pledge) or personal (e.g. guarantee)	Specific assurance of a credit, be it of a real nature (mortgage, pledge...) or of a personal nature (caution).	[Sicherheit] may be real [dingliche Sicherheit] or personal [Personalsicherheit]
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GENERAL CONSPECTUS ON THE LAW OF PROPERTY

Common Law

Property law concerns the ownership of things, hence, the term ‘property’ is defined as ‘anything that can be owned’. Property can be tangible or intangible, the former consisting of things which are physical in nature and the latter, of things which are not physical in nature but are capable of ownership. Property also includes ‘things in action, any interest in real or personal property’.

Proprietary rights

A proprietary right is a right that exists in relation to a thing, whether tangible or intangible. There are rights which are proprietary in nature and rights which are purely personal. A personal right is an entitlement which a person enjoys against another specific individual – the right can only be enforced against that specific person. It is often referred to as a right in personam. In contrast, a proprietary right is a right existing ‘in’ the item of property, or thing, to which it relates. The right is enforceable against the thing irrespective of who possesses or owns it at the time that the right is sought to be enforced – such rights are described as rights in rem. A proprietary right is capable of enduring through changes in ownership of the property to which it relates, so that it will be enforceable against the new owner.

Meaning of real property

Real property consists mainly of land (and things attached to land so as to become part of it) and rights in the land whether these involve full ownership or only some partial enjoyment of the land or the profits. ‘Real’ denotes that the thing itself, or a particular right in the thing, may be specifically recovered.

Meaning of personal property

Personal property (also known as personalty) may be roughly described as comprising all forms of property, movable or immovable, tangible or intangible (such as copyright, trademarks, design rights etc.), other than freehold estates and interests in land and its appurtenances. Moreover, by the equitable doctrine of conversion, equitable interests in freehold property are sometimes treated as personal property e.g. where the freehold is held by trustees upon trust for sale, where there is an agreement for the sale of land, or on the exercise of an option to purchase. Originally, personal property could not be specifically recovered like ‘real property’, the only remedy available being a mere ‘personal’ action for damages. There have been changes to the law providing remedies for recovery of some forms of personal property i.e. leaseholds but such innovations do not remove them from the sphere of personal property.

Meaning of things in action (otherwise known as choses in action)

Choses in action are intangible property – they are rights of action to obtain money and are transferred by documents. They include loan debts, bank balances, negotiable instruments, copyright, patents etc. Choses in action were formerly not assignable at law but since The Supreme Court of Judicature Act 1873 came into force on 1st November 1875, any debt or other legal thing in action is assignable in law so long as ‘express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action’. Assignments of choses in action have always been recognised in equity and the assignee may sue in his own name and in his own right, and if necessary, join the assignor as party to the suit or even get leave to use the name of the assignor to sue in a court of law.

General principles of the 1925 legislation

The only estates in land which are capable of subsisting or being conveyed or created at law are an estate in fee simple absolute in possession and a term of years absolute i.e. freehold and leasehold respectively. Legal estates and interests have to be in the form of a deed; they bind the person acquiring the subsequent interest automatically. Legal interests or charges consist of (1) an easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute, (2) a rent charge in possession issuing out of or charged on land being either perpetual or for a term of years absolute, (3) a charge by way of legal mortgage, (4) miscellaneous charges which are ‘not created by an instrument’ but

are also capable of legal status (5) rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rent charge. With regards to legal owners, there can only be a maximum of four co-owners of the legal title to land.

Other estates, interests and charges in or over land (other than those which can subsist at law) take effect as equitable interests. The difference between legal rights and equitable rights is that equitable rights do not bind automatically, instead, they are governed by the doctrine of notice. Provision is made for various kinds of equitable interests in the case of unregistered land, to be registered as land charges in order to protect against any overreaching by a purchaser where there is no notice, either actual or constructive. Registration as a general equitable charge or an equitable easement is deemed to be actual notice of the charge to all persons and for all purposes. For registered land, equitable interests may be protected by notices and cautions under the Land Registration Act 1925. The most obvious example of an equitable interest is an interest under a trust. Other equitable interests include estate contracts, vendors' liens, equitable mortgages, restrictive covenants, equitable easements and profits. Finally, there is no limit on the number of co-owners that can share entitlement to land in equity (through the mechanism of a trust).

Civil Law

To achieve an overall understanding of this subject, it is essential to start by distinguishing between a *jus in re*, or real right (derecho real, droit réel), and a *jus ad personam*, or personal right (derecho personal, droit personnel). Traditionally, real rights have been characterised by two features: immediacy and effectiveness *erga omnes*. What is implied by immediacy is that the authority of the vestee of the right operates and is exercised directly in respect of the property constituting the subject matter of the right without the need for any particular action or intermediation by other people. The significance of effectiveness *erga omnes* is that the vestee of the right is empowered to give effect to his interest vis-à-vis not only a specific obligor but also as against the world at large. The latter feature, whereby the holder of a limited real right, such as a mortgage or a usufruct, is able to exercise it against any subsequent acquirer of the property is sometimes perceived as the fundamental characteristic of this right. As compared with a real right, a personal right can be given only limited effect by its holder in so far as he can only require compliance (consisting in giving or doing or refraining from doing something) on the part of a specifically identified obligor.

Nevertheless, it must be borne in mind that there are legal creations (certain types of lease) which almost certainly cannot be brought within either of those two categories and there are also concepts which genuinely fall between the two, such as obligations *propter rem* in which the obligor in the relationship is ascertained by reference to the identity of the vestee of a particular real right, such as the obligation attaching to the owner of each apartment to contribute towards condominium expenses.

Within the concept of real rights, we can distinguish between absolute real rights, constituting ownership, and relative real rights or real rights in respect of a thing whose ownership is vested in another person. There is no doubt that ownership is a real right. Indeed, it is the prototype or paradigm of a real right because the owner can enjoy, use and dispose of the property without being subject to any limitations other than those imposed by law and because the owner can claim the property back from any person who is wrongfully in possession of it. The limitations upon these powers of enjoyment and disposal may be greater or lesser depending on the property owned. Thus, in the case of immovable property in an urban area the right to build is subject to certain limitations laid down by planning law which circumscribe that right but do not as a rule render it devoid of substance.

Real rights in respect of property of another (*jus in re aliena*) can for their part be subdivided into real rights of enjoyment, such as usufructs, easements, rights of use, emphyteusis and superficies rights; rights to realise the value of property, which empower the holder to demand or enforce alienation of property in order to receive its pecuniary value, such as mortgages, pledges and antichreses; and real rights of preferential acquisition, such as the pre-emptive right to repurchase.

The effectiveness *erga omnes* of real rights requires, to ensure certainty of transactions, an immovable-property registry which enables third parties to ascertain the true status of immovable property and even a register of movable property for goods and rights of certain kinds. The registers can be of two kinds: (a) of title deeds or documents; (b) of rights, depending on the substantive effects deriving from them. In the case of registers of rights, a person making a purchase C in certain circumstances C in reliance on the particulars recorded in the register will enjoy protection of his purchase even if the transferor's right is annulled, brought to an end or changed for reasons not on record in the register. As a general rule, only real rights are registrable.

Finally, brief reference should be made to the system of property transfer and, in general, the transfer of real rights in respect of immovable property. Ownership is transferred by the combined effect of the title or conveyance (a deed of purchase, for example) and delivery, which consists in the physical handing over of the property or signature of a public instrument before a notary. In some systems, delivery has become so unsubstantial that it has been subsumed into consent and the system is reduced to title deeds (France and Italy), a situation which raises a number of obstacles to acceptance of the possibility of property being sold by someone other than its owner. In others, entry in the register takes the place of delivery (Switzerland). Finally, the relationship between delivery and title is variable: it is abstract in Germany (nullity of the title does not affect the transfer) whereas in Spain it has concrete repercussions (nullity of the title prevents transfer of the property).

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Assignment	(1) act of transferring rights to incorporeal moveable property (2) the document transferring such rights	The term of art in English is Assignment. This concept corresponds to that in Scotland	Assignment	[cessie]	[cession] A deed where one party transfers or agrees to transfer property to another party who is bound to make payment	[trasferimento, cessione] Related to property or possession	[cesión] Same as Italy	The transfer of a contractual claim is called [Abtretung], the transfer of property [Eigentumsübertragung or short Übertragung].
Property	Corporeal moveables	Physical objects which are capable of being moved as distinct from heritable property	The term of in England and Wales is personal property. This concept corresponds to that in Scotland.	Same as England and Wales	[roerende zaken] Physical objects capable of human control which are not immovable (articles 3:2 and 3:3 clause 2 Dutch Civil Code)	[biens corporels] Goods that may be transported from one place to another, e.g. furniture	[beni corporali o materiali] Tangible items which are not immoveables	[Bienes muebles] Any good which may be transferred from one place to another, unless it is permanently attached or with a unit of destination to a piece of real property.	[bewegliche Sachen]
Property	Dominant tenement	Land the ownership of which includes a servitude over a adjoining land called the servient tenement	Land the ownership of which includes a servitude over a adjoining land called the servient tenement	This term is not known in Irish law	[heersend erf] A parcel of land in favour of which a servitude over an adjoining parcel of land (called dienende	[fonds dominant] A parcel of land that benefits from a servitude	[fondo dominante] Land which enjoys a servitude over another land	[fundo dominante] Same as France	In an easement appurtenant, the owner of the dominant tenement [herrschen-des Grundstück] has the rights over the servient

					erf)				tenement [dienendes Grundstück].
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Estate	All the property that a person owns both heritable and moveable	All the property that a person owns both real and personal	Same as England and Wales	[vermogen] The whole of property, debts and obligations of a person	[patrimoine] The totality of a person's property and obligations, considered as one entity.	[patrimonio] Totality of assets and liabilities of a person	[patrimonio] Same as France	The estate [Vermögen] comprises all a person's rights which have money value. A deceased person's estate is called [Nachlaß].
Property	Easement	Easement is not a term of art in Scots law	A right to use land in the possession of another person, often the subject of	Registerable right over real property e.g. right of way	[erfdienstbaarheid] Servitude	[servitude] A right of way or the right to use another's property	See servitude	[servidumbre] Same as France	An easement or servitude [Dienstbarkeit] may be classified as either an easement appurtenant [Grunddienstbarkeit] or an easement in gross (personal servitude) [beschränkte persönliche Dienstbarkeit].
Property	Immoveable	Tangible things that cannot be physically moved.	Real Estate	Same as Scotland	[onroerend] Physical objects capable of human control which can not be physically moved. Immoveables are the ground, minerals not yet won, vegetation united with the ground, as well as buildings and constructions,	[immeuble par nature] Not physically moveable; i.e. real property	[bene immobile] Things not moveable - i.e. land, buildings, goods attached to land as well as, trees, springs and water-courses.	[inmueble] Same as France	Immoveables [unbewegliche Sachen] are real estate [Grundstücke] and the parts/components of the real estate [Bestandteile] (such as the buildings).

					for permanence built and constructed thereon, either directly or indirectly by connection to other buildings or constructions (article 3:3 clause 1 Dutch Civil Code)				
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Incorporeal	Property or rights which are not tangible	Terms of not used in English law	Same as Scotland	[onlichamekijk] Property or rights which are not tangible	[incorporel] Intangible	[beni immateriali] Intangible property – i.e. intellectual property (e.g. patent, process patent, trademark, copyright)	[Bienes inmaterialiales o incorporeales] Property or rights which are not tangible	[nicht körperliche Gegenstände] Rights which are intangible.
Property	Land Certificate	A document issued by the Land Register of Scotland to the proprietor of registered land as proof of his or her ownership of it.	A document issued by the Land Registry to the proprietor of registered land as proof of his ownership of it.	Same as England and Wales	[kadastraal uittreksel] A document issued by the Land Registry to the proprietor or holder of a real right on a parcel of land as proof of his ownership/ entitlement at the time of issue thereof.	A Land certificate indicates the size of the property, but not [extrait cadastra] the ownership. Only the Notaire's deed proves ownership.]	[certificato catastale] A document containing the description of the land, issued by the Catasto (Land office) [certificato dei registri immobiliari] A document containing both the charges (Hypothec and attachment) affecting the land and the registration of the title document (i.e. the relevant notarial act) issued by the Agenzia del Territorio - servizi di pubblicità	[Certificación registral] A public document issued by the Land Register which describes the registral situation – from a legal point of view – or a particular real estate.	The German land register [Grundbuch] issues a copy of the register concerning one real estate [Grundbuchauszug], which might be compared to a land certificate.

							immobiliare (Register of title documents) [certificato di destinazione urbanistica] Certificate concerning the legal use and development of land issued by the Comune (Municipal Council)		
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Moveable	Personal property, e.g. goods, rights to intellectual property.	Personal property as distinguished from real property.	Same as England and Wales	[roerend] Physical object capable of human control not classed as immovable (article 3:3 clause 2 Dutch Civil Code)	[meubles] Physically moveable, i.e. personal property	[beni mobili] All property not immovable	[bienes muebles] Same as France	The German law defines only moveable goods [bewegliche Sachen]. The common law term of moveable property [bewegliches Vermögen] is used in conflict of laws and comprises also rights [Rechte] (and excludes only real estate).
Property	Moveable property	All property not classed as heritable	Personal property	Same as England and Wales	[roerende zaken] All property not classed as immovable	[bien(s) mobilier(s)]	[beni mobili or propriet� mobiliare] All property not immovable	[bienes muebles]	see above
Property	Possession	Physically holding or retaining a corporeal moveable or physically occupying heritable property	The enjoyment of real or personal property	Same as Scotland	[bezit] The holding of a good for oneself, either direct (by oneself) or indirect (through someone else) (article 3:107 clauses 1-3 Dutch Civil Code)	[possession] Physical control over a tangible object with the intent of the possessor to exercise a property right	[possessiono (di diritto)] The physical (actual) control of the thing combined with the animus possidendi	[Posesi�n] Physically holding or retaining a corporeal moveable or physically occupying heritable property	physical holding [Besitz] as to be distinguished from ownership [Eigentum]
Property	Real Estate	Not a term of art in Scots law	Interests in land and other hereditaments. All property which is not personal property is real	Same as England and Wales	[onroerende goederen] Immovable properties for the transfer of which a notarial deed and	[biens immobiliers] Real property	[beni immobili] Immovable property	[bien inmueble] Lands, buildings, constructions, mines and determined rights over real	Real estate [Grundst�ck] comprises not only the land but also the building and other components

			property.		registration thereof in the public registers is required			estate.	[Bestandteile] of the land.
Property	Real right	A right enforceable against all	N/A	Same as England and Wales	[beperkt recht] A right over property enforceable against all; right deducted from a more comprising right and hence called "limited right"	[droit réel] A right enforceable against all, as opposed to a personal right, enforceable against a person	[diritto reale] A right enforceable against all	[Derecho real] Right over a corporeal or non corporeal goods	ius in rem [dingliches Recht]

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Registered Land	Land to which the title is registered.	Same as Scotland	Same as Scotland	[kadastraal geregistreerd land] Land registered in the Dutch Land Registry. In the Netherlands the whole country is registered in the Land Registry	[terrain cadastré] Land registered at the French land registry	[terreno o fabbricato censito] Land or building entered in the Castato (Land Office) Note: in civil law land or building are always registered	[fincas inscritas o registradas] Land registered at the Spanish Land Registry	In Germany, almost all real estate is registered. Exempt from the necessity of registration [buchungsfreie Grundstücke] is only real estate owned by the state or the local governments and alike.
Property	Reversion	In relation to heritable property a right of redemption	In relation to real or personal property a right of redemption – a deferred entitlement. The residual right of the owner of land on the expiration of a lease.	Same as England and Wales	[aanwas] The increase of a deferred entitlement to a more comprising right	N/A	[riunione, consolidazione] A deferred entitlement (e.g. when usufruct expires this right reverts to the bare owner)	[reversion] The increase of a deferred entitlement to a more comprising right. [consolidación en pleno dominio] In the case an usufruct expires and it reverts to the bare owner	[Rückerverbsrecht] A right of reversion may be granted in the transfer of ownership.
Property	Sale	A contract comprising the transfer by agreement of the ownership of property in consideration of	A contract comprising the transfer by agreement of the ownership of property for a consideration.	Same as England and Wales	[verkoop] A contract comprising the sale of a good for a consideration, not necessarily	[vente] A contract whereby the vendor transfers or agrees to transfers goods to another party;	[vendita] A contract by which the seller transfers the ownership of goods (moveable or	[venta] A contract comprising the transfer of goods in consideration of a price	[Verkauf] Sales contract. Under German law, the lack of causa (e.g. an invalid sales contract) does

		a price			including the actual delivery or transfer.	the buyer of the goods has the obligation to pay its purchase price.	immovable) to the purchaser for a price agreed. The essentials are both the agreement on the good and the price to pay in return.		not invalidate the transfer of ownership. However, the property may be reclaimed by way of unjust enrichment.
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Property	Servitude	An obligation attaching to land restricting the owners use of it	Same as Scotland	Term not used in Ireland	[erfdienstbaarheid recht van overpad] A burden over a parcel of land - the servient tenement - in favour of another parcel of land - the dominant tenement (article 5:70 clause 1 Dutch Civil Code).	[servitude - droit de passage] An obligation burdening the use of one building, whether completed or not (the servient tenement), to the benefit of another building (dominant tenement) owned by an identifiable owner.	[servitù] A right attaching to land restricting the owner's use in favour of another land. (dominant tenement)	[Servidumbre] Real right over a property which limits the owner's right in benefit of its holder.	An easement or servitude [Dienstbarkeit] may be classified as either an easement appurtenant [Grunddienstbarkeit] or an easement in gross (personal servitude) [beschränkte persönliche Dienstbarkeit].
Property	Tenancy	A right of occupation under a lease	Same as Scotland	Same as Scotland	[huur] A right of occupation under a lease.	[location] The right of use and/or occupancy conferred by a lease.	[locazione] A grant of possession for a term in return for rent. Note: in civil law tenancy is not considered as real right.	[Arrendamiento] A right of occupation under a lease.	[Miete] Lease
Property	Tenant	A person who occupies heritable property in terms of a lease and in respect of which rent is paid	A person who occupies property under a lease from a landlord	Same as Scotland	[huurder] A person who occupies real property in terms of a lease and in respect of which rent is paid.	[locataire] A party to a lease who acquires the right to enjoy the rented good in exchange for the payment of a sum of money (rent).	[Affittuario, Locatario] A person who has rented the property	[arrendatario] A person who has rented the property for a certain period of time and rent.	[Mieter] is the person who has rented from the [Vermieter].

GENERAL CONSPECTUS ON THE LAW OF SUCCESSION

Common Law

The Principal (or Regional) Registry of the High Court of Justice of England has competence and jurisdiction to determine the succession to property of any person if, but only if, there is a properly constituted representative of the estate before the Court.

A Will is a document by which a testator expresses an intention to make certain dispositions which take effect on his/her death. Wills in England are nearly always typed, printed or produced on a computer. A Will has no legal effect before death.

By virtue of the Wills Act 1963, England adopted the Hague Convention of 1961 on conflicts of law in matters of testamentary dispositions which deals with the formal validity of Wills. A Will must be in writing but there are no restrictions to form or language. A Will must be signed by the Testator in the presence of two witnesses of full age who are both present at the same time and who will sign simultaneously and in the presence of the Testator.

An English Will will be revoked expressly by specific revocation in another Will or by a more recent Will or by marriage, or by express destruction on the part of the Testator or by a Declaration of Revocation.

Intestate estates are either totally intestate or partially intestate. The various laws governing intestate estates are the Administration of Estates of 1925, as amended by the Intestate Estate Act 1952, the Family Provision Act 1966, the Family Law Reform Act 1969, and the Administration of Justice Act 1977. Generally the intestate provisions favour the surviving spouse, if there is one. In accordance with the Family Law Reform Act 1969, a natural child has the same rights as a legitimate child. In every estate, whether testate or intestate, there is a personal representative. An executor is appointed in a testate estate, and administrators are appointed to intestate estates. The principal duties of an executor or an administrator are to get in the assets, determine the liabilities in the estate, complete the administration of the estate, pay the duties and taxes, deliver up the legacies, pay out the gifts made out of the Will, and obtain at the end of the administration the release from their duties from the beneficiaries.

The Probate Registry will issue a Grant of Probate for testate estates, or a Grant of Letters of Administration for an intestate estate, which is contrasted with the civil law procedure of producing a notarial act and/or a certificate of heirs.

There are no legally reserved heirs in English law. An intestate is free in principle to leave his estate to his children and/or his wife and/or a stranger. This freedom is restricted in certain cases by various laws, more particularly the Inheritance (Provisions for Family and Dependents) Act 1975.

Civil Law

General provisions

In civil law an inheritance is deemed as a whole or a portion of the property of the deceased person to devolve upon one or more persons either by will (testate succession) or by operation of law (intestate succession) .

The heir is the person in whose favour the deceased person has disposed by universal title. whereas if the disposition is by particular title (i.e. concerning a specified thing) the person to whom a disposition is made is considered a legatee.

The difference between heir and legatee concerns the title of the devolution and the liability of the named person as well.

Actually the heirs are jointly and severally liable for the debts of the inheritance whereas the legatee is liable up to the value of the legacy.

Acceptance and renunciation

According to most continental legal systems , the inheritance must be accepted unconditionally or under the benefit of inventory.

The acceptance may be either express or implied: the latter when the heir performs any act which implies necessarily his intention to accept the inheritance .

Nevertheless in some countries (e.g. in France) the acceptance of the inheritance is unnecessary, because the possession of the property is transferred by the operation of law by way of continuation (i.e. saisine) to the persons legally entitled (see below).

The effect of acceptance of inheritance retroacts as from the day of the death of the deceased.

The acceptance under benefit of inventory shall be made before a notary or a greffier and filed in the registry of the court: the effect of the inventory is that the heir is not liable for the debts of inheritance beyond its value.

The right to receive an inheritance or a legacy is transmissible to the heirs of a person in whose favour such disposition was made if he dies before the opening of the succession or before his acceptance.

The renunciation is not presumed.

The heir renouncing a testate succession forfeits his rights to intestate succession and he is considered as if he had never been an heir.

The devolution of the share of a person renouncing is according to the following scheme - in *intestate* succession it accrues to others heirs whereas in *testate* succession it shall operate either by substitution or accretion. In the event accretion does not take place, such a share shall devolve according to the provisions of the intestate succession. In any case the representation takes place.

Testate Succession

Legitim and disherison

In civil law systems the testamentary freedom is limited by the provisions for determining the legitim.

The legitim is a portion of an inheritance saved by law to certain persons: descendants and spouse and on failure of the descendants, the ascendants are entitled to a share of it.

The legitim is due in full ownership without any encumbrance and it is computed on the inheritance as a whole, after deducting their debts and any other burden. It shall be included all gifts disposed of by the deceased.

When such a gift exceed the disposable portion (i.e. legitim) it shall liable to abatement and limited to that portion.

The action of the abatement of gifts exceeding the legitim is allowed to exercise to the claimant even against the purchaser of the donee if not barred by the law , i.e. by prescription of the rights claimed. In the Netherlands the legitim is slightly different: it is a right of descendants only and consists of a claim expressed in an amount of money related to the value of the inheritance. It is not a claim on certain goods belonging to the deceased. The person with a right to a legitim portion is regarded as a creditor to the estate; not necessarily one of the heirs.

The disherison is merely considered on the ground of disqualification of the descendant (ascendant or spouse) to succeed, and it is placed in the field of the revocation as legal effect of such a hindrance (e.g , fraud, decoy, cruelty or violence towards the testator).

Wills

A will may be holograph, public or secret.

When the testator does know how to or cannot read and write, the will must be public - i.e. received by a notary in the presence of witnesses.

A secret will may be written by the testator or by a third person, it is normally delivered by the testator to a notary in presence of witnesses who shall declare that the envelope closed and sealed contains his will.

When the testator cannot read it is unlawful to apply to the provisions relating to the secret will.

Furthermore there are the privileged wills (i.e. will made at sea or in the event of epidemic disease and interruption of communications) . In any case they must be signed by the person receiving it and they become void on a certain lapse of time from the day when such a event is ended.

A nuncupative or verbal will is void. A will may be revoked wholly or in part by a subsequent will or by a disposition incompatible that operates as implied revocation.

If the last will is executed in the form of a notarial deed, the presence of witnesses is not required in the Netherlands. It is impossible to establish a will in the form of an agreement: it is a unilateral, highly personal disposition.

A will must be deposited with a notary for its enforcement (e.g.France, Italy)

Certain dispositions

Any disposition by universal or particular title is revoked by operation of law in the event of subsequent birth of children or the testator was unaware of their existence unless he made provision for such a case.

Any disposition by will in favour of a person who cannot be clearly identified is void. Nevertheless a disposition by particular title in favour of a person or a body corporate to be selected by the heir or a third party among several persons or bodies specified by the testator is lawful.

Any fiduciary disposition is inadmissible of evidence even though any word of the will could prove such intention of the testator.

Furthermore any disposition by universal or singular title may be conditional. Nevertheless dispositions on condition of mutual benefit are void.

When the condition is impossible or contrary to law or morals it is deemed as if had not been attached..

Accretion

When two or more persons have been instituted or named as legatees conjointly and one of such person dies before the opening of the succession, or refuses, or is incapable, his portion shall accrue to that of the other persons if it lacks representation or substitution.

Substitution

The testator may substitute another person to the heir or the legatee in the event they are not being able or willing to accept the inheritance or the legacy.

Any provision by which the heir is required to preserve and return the inheritance to a third person (grosso modo an entail) is void except in some cases as determined by the national legislation (e.g. in order to protect the incapable as in Italy).

Testamentary executors

The testator may appoint testamentary executor(s) for the purpose of executing his dispositions .

Unlike the personal representative of common law this appointment is optional: in civil law the inheritance is devolved directly to the beneficiaries.

Intestate Succession

The intestate succession takes place when there is no valid will or a partial disposition by the testator.

Persons succeeding on intestacy by relationship of the full or half blood are the descendants, the ascendants, the collateral relatives and the spouse according to the national provisions.

The illegitimate or adopted child is entitled to a share of the inheritance.

Succession between collaterals does not extend beyond a degree fixed by the law.

Beyond this degree the inheritance is devolved to the Government.

Representation

Whether the testate or intestate succession, the representation operates so as to put the representative in the same place degree and rights of the person represented.

It is lawful to represent a person whose inheritance or legacy is renounced.

The representation In the descending direct line takes place in infinitum whereas in the collateral line it takes place in favour of the descendants of brothers or sisters of the deceased.

Collation

Children and descendants and the spouse are bound to collate in favour of other children or descendants what they have received from the deceased unless he shall have otherwise stated.

Vacant Inheritance

Until an inheritance is accepted, the court may appoint a curator who before all shall make an inventory and exercise all actions pertaining to the inheritance. He is entitled to pay the debts thereof too.

Payment of Debts

The heirs shall contribute to the payment of debts among themselves in such proportion as has been stated by the testator.

In all cases the heirs are personally liable for the debts of inheritance with respect to the creditors in proportion of their shares, except in the event of a property charged with hypothec where every heir is liable for the whole.

The creditors of the inheritance or legatees may demand the separation of the property of the deceased person from that of the heir in the event of their prejudice in mandatory time.

Partition

The partition may be voluntarily or by legal proceeding.

The testator may impeach the partition for the time eventually fixed by the law,

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Succession	Beneficiary	A person who will benefit from the terms of a deed such as a will or trust instrument	Same as Scotland	Same as Scotland	[begunstigde] A person who will benefit from the terms of a deed such as a will or trust instrument	[héritier bénéficiaire, ayant droit] An entity which benefits from a will	[beneficiario, erede o legatario] A person who will benefit from the terms of a will	[beneficiario] A person called to succeed another by virtue of a will or by law.	The beneficiary [Begünstigter] may be either an heir [Erbe] or legatee [Vermächtnisnehmer]
Succession	Bequest	A gift of personal property by will	Same as Scotland	Same as Scotland	[making] A gift of personal property by will	[legs] A gift pursuant to a will	[legato] A particular provision pursuant to a will	[legado] A private testamentary provision	A bequest [Zuwendung von Todes wegen] can be either the designation of an heir [Erbeinsetzung] or a legacy [Vermächtnis].
Succession	Codicil	An addition to or alteration or revocation of a testamentary writing	Same as Scotland	Same as Scotland	[codicil] A hand written, dated and signed private instrument of last will (article 4:982 Dutch Civil Code)	[codicile] A deed subject to the execution formalities of a will that cancels or modifies a previous will	[codicillo] An addition to the will: it must be dated, hand written and signed by the testator	[codicilo] An addition to a will	[Testamentsnachtrag] Under German law, there are no special rules for a codicil
Succession	Executor	A legal representative of a deceased person whose duty is to wind up that person's estate	Same as Scotland	Same as Scotland	[exécuteur] Unless the deceased person disposed otherwise: a person appointed by the deceased person in his will whose task is to administer the goods belonging to the estate and to pay the debts	[exécuteur testamentaire] The person appointed by the testator to execute a will	[esecutore testamentario] In civil law the executor is appointed by the testator whose duty is to execute the testator's dispositions accurately as administrator	[albacea] Same as Italy	The deceased may choose to appoint an executor [Testamentsvollstrecker] or to leave the winding up to the heirs themselves. The estate devolves directly on the heirs; the [Testamentsvollstrecker] does

					belonging thereto, which must be paid during his administration (article 4:144 clause 1 Dutch Civil Code)				not become owner, but merely administrates the estate.
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Succession	Heir	A person who succeeds to the property of a deceased (Colloquial – no strict meaning in law)	Same as Scotland	Same as Scotland	[erfgenaam] A person who succeeds to the property of a deceased either by law or pursuant to the last will of the deceased person	[héritier] A person appointed by law or by will who succeeds a deceased person	[erede] A person entitled by law or will to succeed to a deceased person	[sucesor universal] A universal successor in the event of death in both rights and obligations	[Erbe] The estate devolves directly on the heir, being the universal successor of the deceased's estate.
Succession	Legacy	A bequest of money or moveable property to a beneficiary	Same as Scotland	Same as Scotland	[legaat] A disposal made by will in which the deceased person grants a right to claim to one or more persons (article 4:117 Dutch Civil Code)	[legs] The disposal of a share of the goods that a testator possesses at death	See bequest	See bequest	[Vermächtnis] The legacy may consist of moveables or immoveables. It is but a claim against the heir.
Succession	Occupancy or occupation	The physical possession and use of heritable property	Real	Physical possession and use of real property	[Feielijk bezit] Physical possession and use of a tangible object	[possession] Control over a tangible object corresponding to the execution of a real right	[possesto (di fatto)] 1) Physical possession of things. 2) Mode of acquiring property of <i>res nullius</i>	[posesión] Same as Italy	[Erbschaftsbesitzer] There is no special term for possession [Besitz] of real estate. However, there is a special term for whoever has possession or occupancy of the estate claiming falsely that he himself is the heir
Succession	Succession	The passing of property from one person to another especially on death	Same as Scotland	Same as Scotland	The passing of property from one person to another especially on death [most	[succession] The transmission of a deceased person's belongings	[successione] Devolution of inheritance to persons entitled by law or will	The transmission of the rights and obligations of a deceased person	[Erbfolge] The passing of the estate to the heirs upon the deceased's death.

					often is the French word “saisine” used]				
Succession	Will	A deed comprising the legal expression of a person’s intention as to the disposal of his of her property and the administration of his or her affairs after death	A disposition or declaration by which the person making it (the testator) provides for the distribution or administration of property after death.	Same as England and Wales	[uiterste wilsbeschikking] A unilateral legal act in which a person makes a disposition only effective after death and which is regulated by Book 4 of the Dutch Civil Code or is otherwise identified as such by Dutch law (article 4:42 Dutch Civil Code	[testament] A unilateral legal deed pursuant to which a person, known as a testator, expresses his or her last wishes and provides for the distribution of property after death.	[testamento] A unilateral written document, always revocable at will by which the testator provides for the distribution of total assets after his or her death. The joint and mutual will is forbidden	[testamento] A solemn declaration of a person disposing of his goods and rights after death	In German law, the will in a broader meaning [Verfügung von Todes wegen] comprises not only the individual will [Testament] and the joint and mutual will [gemeinschaftliches Testament], but also the contract of inheritance [Erbvertrag], in which the testator disposes of his estate in a binding manner.

Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Misc	Domicile	The country in which a person is, or is presumed to be permanently resident. It depends on the physical presence plus the intention of remaining.	Same as Scotland	Same as Scotland	[woonplaats] The domicile of a natural person is at his dwelling place and in the absence thereof at the place where he retains some connection. The domicile of a legal entity is at the place where it has its statutory place or seat according to its articles of association or regulations (article 2:30 Dutch Civil Code)	[domicile] The place in which a party is presumed to reside permanently. For a company, the legal domicile is located at its headquarters.	[domicilio] (a) The place where a person runs his business [residenza] (aa) the permanent home of a person Note In some cases they may coincide (aaa) For a company the legal domicile is located at its headquarters).	[domicilio] Same as Netherlands	The common law domicile may coincide with the civil law [Wohnsitz], but it is not quite the same concept. It must also be distinguished from the habitual residence [gewöhnlicher Aufenthalt].
Misc	Probate	See Confirmation	A certificate granted by the Family Division of the High Court of Justice to the effect that the will of a certain person has been proved and registered in the court and that administration of that person's effects has been	A certificate granted by the Probate Office of the High Court to the effect that the will of a certain person has been proved and registered in the court and that administration of that person's effects has been granted to the	N/A	[acte de notoriété] Probate proceedings do not exist as such in France. An [acte de notoriété] is a deed executed by a Notaire confirming that the heirs and beneficiaries of a succession are the only	This proceeding does not exist as such. In relation to succession it is required that an act of notoriety [atto di notorietà] be drawn up by a notary or other competent public officer issued at the request of an interested party	This proceeding doesn't exist as such in Spain. To prove who is the heir, if there is a last will, you need the will or an inheritance agreement (both usually made by a notary) with a death certificate and another certificate delivered by the	In civil law, the proceedings concerning the estate of a deceased's person [Nachlassverfahren] are not directed only to confirm the validity of a will (as the probate), but to a certificate of inheritance [Erb-schein] giving

			granted to the executor proving the will.	executor proving the will.		designated heirs or beneficiaries	<p>recording the testimony of two declarants under the oath in order to prove the existence of heirs.</p> <p>It may be replaced by the dichiarazione sostitutiva in certain cases - see affidavit.</p>	<p>Justice department showing that it is the last one (testamento o pacto sucesorio acompañado de certificado de ultimas voluntades),, if there aren't any will or inheritance agreement a deed must be prepared by the judge or by a notary confirming who are the legal heirs according to the law (acta judicial o notarial de notoriedad de delaración de herederos abintestato). In the praxis in order to prove in a easier way who are the heirs according to the last will and to the law a deed is prepared by a notary but this is an unofficial solution not specially recognized by</p>	proof of who is heir (and therefore may dispose of the estate).
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Category	Term	Scotland	England & Wales	Republic of Ireland	Netherlands	France	Italy	Spain	Germany
Misc	Settlement	The termination of an action or legal dispute on agreed terms	(1)The termination of an action or legal dispute on agreed terms (2) A disposition of land or other property, made by deed or will, under which trusts are created by the settler designating the beneficiaries and the terms on which they are to take the property.	Same as England and Wales	[dading] The termination of an action or legal dispute on agreed terms	This is an out-of-court settlement of a legal action or dispute [règlement à l'amiable d'un litige] The settlement by a court of law is referred to as [règlement judiciaire d'un litige]	[transazione] A compromise by parties to litigation out of court	[compromiso, transacción] Same as France	[Vergleich]
Misc	Stamp Duty	A tax on a legal document the payment of which evidence by impressing or affixing an official stamp is generally essential to the enforceability of the obligations constituted by the document. Now replaced by Stamp Duty Land Tax.	Same as Scotland	Same as Scotland	[zegelrecht] A tax on a document the payment of which is evidenced by impressing or affixing an official stamp is generally essential to the enforceability of the obligations constituted by the document; stamp duty was abolished in the Netherlands in 1969.	[droits de timbre] Taxes levied pursuant to the placing of official stamps on documents.	[imposta di bollo] A tax on a document evidenced by impressing or affixing an official stamp regarded as essential to enforce some document (e.g. bills) or for its fiscal use.	[timbre] Same as Italy	There is no stamp duty [Stempelsteuer or Urkundssteuer] in Germany.
Misc	Trust	A legal concept	Same as	Same as	N/A	The closest	The Hague	Same as Italy	[Treuhand]

		under which property is granted to or vested in a trustee or trustees by deed, will or operation of law in the confidence that they will be able to administer it and that the beneficial interest will be applied to or enjoyed by nominated persons or purposes	Scotland	Scotland		notion is the [fiducie], but its effects and moreover its practice are not at all comparable to those found in English law	Convention on the Law applicable to trusts and on their recognition came into force on 1 st January 1992 (ratified by L.16/10/1989). No translation of this term.		In Germany as in most civil law countries, there is no trust, but only a fiduciary relationship, being a special form of contract.
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TABLE OF TERMS

Contract

Netherlands

France

aanvaarding	-	acceptance	acceptation	-	acceptance
eenzijdig ontbindbaar	-	at will	not applicable	-	at will
contractbreuk	-	breach of contract	rupture, violation	-	breach of contract
clausule/artikel	-	clause	clause	-	clause
voorwaarde	-	condition	condition	-	condition
contract/overeenkomst	-	contract	contrat	-	contract
schuldovermening	-	delegation	délégation	-	delegation
impliciet	-	implied	tacite	-	implied
verplichting	-	obligation	obligation	-	obligation
verjaring	-	prescription	prescription	-	prescription
rechtsvermoeden	-	presumption	présomption	-	presumption
ontbinden	-	rescind	résilier	-	rescind
retentierecht	-	retention	rétenion	-	retention
levering	-	transfer	cession	-	transfer
beëdigde verklaring	-	affidavit	attestation	-	affidavit
-	-	-	-	-	-
levering van onroerend goed	-	conveyance	transfert de propriété à titre onereux	-	conveyance
onderhandse akte	-	deed	acte sous seing privé	-	deed
endosseren	-	endorse	endosser	-	endorse
vordering aan toonder	-	negotiable instrument	titre négociable	-	negotiable instrument
notariële akte	-	notarial instrument	acte authentique	-	notarial instrument
overwegingen	-	recitals	préambule, exposé	-	recitals
titel	-	title	titre de propriété	-	title

Italy		Spain			
accettazione	-	acceptance	aceptación	-	acceptance
recesso unilaterale	-	at will	desestimiento	-	at will
inadempimento del contratto	-	breach of contract	incumplimiento de contrato	-	breach of contract
clausola	-	clause	cláusula	-	clause
condizione	-	clause	condición	-	condition
contratto	-	contract	ccntrato	-	contract
delegazione	-	delegation	asunción de deuda	-	delegation
clausole imposte dalla legge: clausole d'uso	-	implied	cláusula implícita or sobreentendida		implied -
obbligazione	-	obligation	obligación	-	obligation
prescrizione	-	prescription	prescripción	-	prescription
presunzione	-	presumption	presunción	-	presumption
recessione per lesione	-	rescind (see also breach of contract)	rescisión		rescind
riserva di proprietà: ritenzione (diritto di)	-	retention	retención	-	retention
alienazione, trasferimento	-	transfer	transferencia	-	transfer
attestazione ,dichiarazione sostitutiva di atto notorio	-	affidavit	acta de referencia o manifestaciones	-	affidavit
trasferimento immobiliare a titolo oneroso (atto di)	-	conveyance	transmisión de propiedad a título oneroso	-	conveyance
scrittura privata	-	deed	documento privado	-	deed
girata	-	endorse	endoso	-	endorse
titolo di credito	-	negotiable instrument	título valor	-	negotiable instrument
atto pubblico	-	notarial instrument	instrumento público, escritura	-	notarial instrument
Premessa, narrative		recitals	exposición	-	recitals
titolo	-	title	título	-	title

Germany

Annahme	-	acceptance
freies Rücktrittsrecht (Widerrufsrecht)	-	at will
Pflichtverletzung (einer vertraglichen Pflicht)- (Vertrags-) Klausel	-	breach of contract clause
Bedingung	-	condition
Vertrag	-	contract
Schuldübernahme	-	delegation
stillschweigend (schuldrechtliche)	-	implied
Verpflichtung	-	obligation
Ersitzung (Verjährung)	-	prescription
Vermutung	-	presumption
zurücktreten (widerrufen/kündigen)	-	rescind
zurückbehalten	-	retention
Abtretung (einer Forderung)/ Übertragung (des Eigentums)- eidesstattliche Versicherung -	-	transfer affidavit
Eigentumsübertragung	-	conveyance
Urkunde	-	deed
(einen Wechsel) annehmen/ indossieren	-	endorse
Wertpapier	-	negotiable instrument
notarielle Urkunde	-	notarial instrument
Urkundseingang	-	recitals
Eigentum/Eigentumstitel	-	title

Loan/Securities

Netherlands

caution	-	not applicable	caution	-	caution
bezwaarig	-	charge	charge	-	charge
aanvullende zekerheid	-	collateral security	not applicable	-	collateral security
crediteur/schuldeiser	-	creditor	créancier	-	creditor
garantie	-	guarantee	garantie	-	guarantee
hypotheek	-	mortgage	hypothèque	-	mortgage
zekerheidsrecht	-	security	sûreté	-	security

France

Italy

not applicable	-	caution	fianza	-	caution
peso, onere	-	charge	carga	-	charge
garanzia accessoria	-	collateral security	garantía superpuesta	-	collateral security
creditore	-	creditor	acreedor	-	creditor
fidejussione	-	guarantee	garantía	-	guarantee
ipoteca	-	mortgage	hipoteca	-	mortgage
garanzia	-	security	garantía	-	security

Spain

Germany

Sicherheit	-	caution
Grundschild	-	
(or Hypothek)	-	charge
Sicherheit	-	collateral security
Gläubiger	-	creditor
Bürgschaft	-	
(Garantie)	-	guarantee
Hypothek	-	
(or Grundschild)	-	mortgage
Sicherheit	-	security

Property

France		Netherlands			
cession	-	assignation	cessie	-	assignation
biens corporels	-	corporeal moveables	roerende zaken	-	corporeal moveables
fonds dominant	-	dominant tenement	heersend erf	-	dominant tenement
patrimoine	-	estate	vermogen	-	estate
servitude	-	easement	erfdienstbaarheid	-	easement
immeuble par nature	-	immoveable	onroerend	-	immoveable
incorporel	-	incorporeal	onlichamelijk	-	incorporeal
extrait cadastral	-	land certificate	kadastraal uittreksel	-	land certificate
meubles	-	moveable	roerend	-	moveable
bien(s) mobilier(s)	-	moveable property	roerende zaken	-	moveable property
possession	-	possession	bezit	-	possession
biens immobiliers	-	real estate	onroerende goederen	-	real estate
droit réel	-	real right	beperkt recht	-	real right
terrain cadastré	-	registered land	kadastraal geregistreerd land	-	registered land
not applicable	-	reversion	aanwas	-	reversion
vente	-	sale	verkoop	-	sale
droit de passage	-	servitude	erfdienstbaarheid recht van overpad	-	servitude
location	-	tenancy	huur	-	tenancy
locataire	-	tenant	huurder	-	tenant
Italy		Spain			
trasferimento, cessione	-	assignation	cesión	-	assignation
beni corporali o materiali	-	corporeal moveables	bienes muebles	-	corporeal moveables
fondo dominante	-	dominant tenement	fundo dominante	-	dominant tenement
patrimonio	-	estate	patrimonio	-	estate
servitù	-	easement	servidumbre	-	easement
beni immobili	-	immoveable	immueble	-	immoveable
beni immateriali	-	incorporeal	bienes inmateriales or Incorporales	-	incorporeal
certificato catastale	-	land certificate	certificación registral	-	land certificate
beni mobili	-	moveable	bienes muebles	-	moveable
beni mobili,proprietà mobiliare- possesto (di diritto)	-	moveable property possession	bienes muebles posesión	-	moveable property possession

bene immobile	-	real estate	bien inmueble	-	real estate
diritto reale	-	real right	derecho real	-	real right
terreno o fabbricato	-	registered land	fincas inscritas or registradas	-	registered land
censito					
riunione/consolidazione	-	reversion	consolidación en pleno dominio		reversion
vendita	-	sale	venta	-	sale
servitù	-	servitude	servidumbre	-	servitude
locazione	-	tenance	arrendamiento	-	tenancy
affittuario/locatario	-	tenant	arrendatario	-	tenant

Germany

Abtretung	-	assignation
körperliche bewegliche	-	corporeal Gegenstände moveables
herrschendes Grundstück	-	dominant tenement
Vermögen (Nachlaß)	-	estate
(Grund-) Dienstbarkeit	-	easement
unbeweglich	-	immoveable
nicht körperlich	-	incorporeal
Grundbuchauszug	-	land certificate
beweglich	-	moveable
bewegliches Vermögen	-	moveable property
Besitz	-	possession
Grundstück	-	real estate
dingliches Recht	-	real right
im Grundbuch gebuchtes Grundstück	-	registered land
Rückerwerbsrecht	-	reversion
Verkauf	-	sale
Dienstbarkeit	-	servitude
Miete	-	tenancy
Mieter	-	tenant

Succession

Netherlands		France			
begunstigde	-	beneficiary	héritier bénéficiaire/ ayant droit	-	beneficiary
making	-	bequest	legs	-	bequest
codicil	-	codicil	codicile	-	codicil
exécuteur	-	executor	exécuteur testamentaire	-	executor
erfgenaam	-	heir	héritier	-	heir
legaat	-	legacy	legs	-	legacy
freitelijk bezit	-	occupancy/occupation	Possession	-	occupancy/ occupation
saisine (French)	-	succession	Succession	-	succession
uiterste wilsbeschikking	-	will	Testament	-	will
woonplaats	-	domicile	domicile	-	domicile
not applicable	-	probate	see this proceeding in France-	-	probate
dading	-	settlement	règlement judiciaire d'un litige	-	settlement
zegelrecht	-	stamp duty	Droits de timbre	-	stamp duty
not applicable	-	trust	fiducie	-	trust
Italy		Spain			
Beneficiario (erede or legatario)-	beneficiary	Beneficiario	-	beneficiary	
legato	-	bequest	Legado	-	bequest
codicillo	-	codicil	Codicilo	-	codicil
esecutore testamentario	-	executor	Albacea	-	executor
erede	-	heir	successor universal	-	heir
legato	-	see bequest	Legado	-	see bequest
possesto (di fatto)	-	occupancy/ occupation	posesión	-	occupancy/ occupation
successione	-	succession	sucesión	-	succession
testamento	-	will	Testamento	-	will
domicilio/residenza	-	domicile	domicilio	-	domicile
see this proceeding in Italy-	probate	see this proceeding in Spain -	compromiso or transacción	-	probate
transazione	-	settlement	compromiso or transacción	-	settlement
imposta di bollo	-	stamp duty	timbre	-	stamp duty
no term given	-	trust	no term given	-	trust

Germany

Begünstigter	-	beneficiary	
Zuwendung von Todes wegen (Vermächtnis)	-	bequest	
Testamentsnachtrag	-	codicil	
Wohnsitz	-	domicile	
Testamentsvollstrecker	-	executor	
Erbe	-	heir	
Vermächtnis	-	legacy	
Besitz	-	occupancy/occupation	
Nachlaßverfahren	-	probate	
Vergleich	-	settlement	
Stempelsteuer/Urkundssteuer-		stamp duty	
Erbfolge	-	succession	
Trust	-	trust	
Testament (or Verfügung von Todes wegen)-			will