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Customary law - Local - Udal Rights - Feudal
Customs not good against express written law
The Law is the Subject's best Right
The Ignorance of Law, or the not knowing what a Law prescribes, cannot
excuse l. 2. ff. 2. de jur. & fact. ignor. cap. 13. de reg. jur. in 6. for no body is
be ignorant of them. But Minors not having acquired by Experience
such a solid and perfect Knowledge, as is necessary for discerning the
consequences of the Engagements in to which they may chance to enter;
they are relieved from the contracts which turn to their prejudice,
tho they err'd in Matters of Law l. 9. ff. de reg. jur.
Where the Construction of any Act is left to the Law, the Law will
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certain Rules for solving Matters depending merely on Custom and Use
there; they ought to regulate themselves by Principles arising from the
Customs of those very places. And if that does not determine the Difficulty,
they ought to follow what is regulated by the Customs of the neighbouring
place, and especially by those of the principle Towns l. 32. pr. ff. de Legib.
where the same Matters are likewise in Use, and so minutely regulated as
to determine Difficulties.

Our general Customs are those in Force over all Scotland: as the
Rules and Degrees of Succession; the Right of Primogeniture; the Legi-
time of Children; Law of Deathbed; Communion of Goods between Husband
Wife; and the Division thereof at their Death; the Husband's Courtship
and the Wife's Force

Particular or Local Customs, are those peculiar to certain plac-
es: as the Udal Right of Orkney. Whereby it is a sufficient Right to
Lands in that County, that the Proprietor can instruct by Witnesses, that
he hath possessed them as reputed Proprietor thereof. These are termed Udal
Lands, from the word deal, to divide; because such Lands were dealt and divided
amongst the Proprietors heirs, by the Sheriff or his Deputies and an In-
quest of honest men, upon Evidence by Witnesses, that the Predecessor
had in possession. The Shire of Gallaway had also, its peculiar Laws
and Customs, that ^{anciently} Stat. Rob. 1. cap. 36. now
taken away, Hence some old Charters run thus: Omnibus Sclis et Gal-
vidensibus. Char. l. v. Glasg. Char. Dav. 1. fol. 2. Malc. 4 fol. 3. 52. Wilhm. f. 4. 52.

But no particular Customs contrary to express Law are binding l. 3. s. 5.
ff. de Sepulchro violato 15 December 1666 L. Colvil contra Feuars of
Aulbrek. Customs of inferior Courts derogatory to Statute are not regarded
15 July 1700 Houston contra L. Ross 10 June 1709 Moir contra
Creditors of Jack.

Appendix

Rules concerning Laws in general; and the Interpre-
tation of them; or the Ways of Understanding and apply-
ing them justly to Questions that are to be decided.

The Law is the Subject's best Right l. 2. Inst. 56.
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now or construe it to work a Wrong. 'Tis better to suffer a Mischiefe
peculiar to one than a general Inconvenience l. 1. Inst. 97. b. 152. b.
252. b.

The Agreement of parties cannot make that good which the Law makes
void l. 1. Inst. 51. b. The Laws have their Effect independently from
the Will of particular persons. And non can hinder by Contract or Testa-
ment, or otherwise the Laws from regulating what concern such things
l. 38. ff. de pactis l. 45. s. 1. ff. de reg. jur.
When the Law gives any thing, it gives by Implication, what is necessary
for taking and enjoying the same, l. 1. Inst. 56. a.

Laws are never made for one particular person, nor limited to one
single Case; but they are made for the common good, and ordain what is
most useful in ordinary Occurrences of humane Life, l. 3. 4. 5. ff. de
Legib. ea que communiter omnibus present, is que specialiter quibusdam
ut hinc sunt proponimus Nov. 39. cap. 1. And a particular Enumeration
in any Law of all the Cases it may have Relation to, were both im-
possible and to no purpose l. 10. l. 12. ff. cod. If any Case happen that
is not regulated by some express Law, it is to be determined by the na-
tural Principles of Equity, which is an universal Law extending to
every thing l. 2. s. 5. in fin. ff. de aqua & aqua pluv. arc. l. 7. pr. ff.
de bon. damnat. l. 13. s. 7. ff. de excus.

The Use and Authority of all Laws consists in commanding, forbidding,
permitting, and punishing l. 7. ff. de Legib. According to the several
Uses necessary to the forming and maintaining the Order of Society,
many Laws ordain, some prohibit, others permit, and all punish and
restrain those who transgress their different Dispositions; whether it
be that they ~~do~~ do not accomplish what the Laws prescribe, or do
what these forbid, or transgress the Bounds of what is permitted.
It belongs not to a Law to persuade or advise Arg. s. 6. Inst. man-
dati. For to do what is enjoyned by Law, is an Act of Duty, what
by Counsel, an Act of Choice or Freewill: A Counsel only takes Effect
over those who are willing, a Law over those that are unwilling. All
Laws extend to every thing that is essential to their Intention l. 2. s.
5. in fin. ff. de aqua & aqua pluv. arc. l. 7. s. 2. l. 2. ff. de jurisd.
Laws restrain and punish not only what is evidently contrary to the
plain Sense of the words, but also what is directly, or indirectly against
the Intent of the Law, and every thing done in Fraud of it, or to elude
it l. 5. C. de Legib. l. 29. & l. 30. ff. cod. and whatever is done contra-
ry to the prohibition of Law, is void and null, with all its consequen-
ces, without any ministerial Act of justice, tho not declared so
expressly to be so by special words l. 5. C. de Legib. That is, as the
term