

be obtained upon it. One who in his attempt to  
 to Commit Adultery perovnit ad actum proximum, yet  
 was hindered by some accident to consumm. like his  
 sign, is guilty of adultery. Mat. lib. 11. 10. Miconz is  
 those also are reputed Adulterers, who order and invite or  
 hire others to Commit adultery l. 14 51 f ad l. Jul. de  
 adul. Miconz Crim. part 1 Jul. 17 56 par. Yea, it seem  
 more Criminal for a man to hire others to do it, than to do  
 it himself: Seeing there is not so Natural a Conspiration  
 to the one, which is an act of pure Malice in Contempt  
 of the Law; as to the other, which proceeds from a just  
 full Inclination & therefore a husband who Encourages  
 hires others to be with his wife cannot punish her for the  
 adultery which he occasions, Miconz ibid. Because a  
 such a husband is not properly *bono fide* Accused, for the  
 non facti question de quibus supra: Yet there is more  
 lies in giving, than in taking Money in that case; in  
 part it can never be given without a Malicious design  
 where as a husband may perhaps take Money for  
 the use of his wife's body, to supply his necessities. A  
 husband's Consent to his wife's adultery, doth not hinder  
 her to be punished for the Crime at the suit of the  
 advocates 10 December 1668 Elizabetha Moris.

The Law of Scotland distinguishes the adultery into  
 single and double adultery. 29 Jul. 1609 and Ordina  
 or simple adultery.

Single adultery is, when a person not married  
 carnal Dealing with one that is married.

Double adultery is, the act of Unchastity committed  
 between two married persons.

Notorious or open and Manifest Adultery is either  
 10 when there are children one or more procreated by  
 twist the adulterers Act 105 Parl. 7 J. 6 Junt. act 11 July  
 Parl. 4. W. 1. the parties had never been pronounced  
 to separate from haunting together 3 August 1598  
 of Dalrymple 2 June 1676 and Lord Spens 22 when the  
 parties

parties keeping Company and bedding together is Note  
 mainly known d. act 105 Junt. d. act 11 the Act do not read  
 together openly and avoided by, nor are Excommunicated  
 25 January 1697 Daniel Nicolson & Marion Maxwells.  
 When a woman of her own Accord goes away and departs  
 from her husband and dwells with another, this  
 is called in the English law Elopement.

39 of a third sort of Notorious Adultery, in our Law, is when the  
 Parties being suspected of adultery together, and thereupon  
 duly admonished to abstain from conversing with each  
 other, and to satisfy the Church by Repentance or penance  
 are Excommunicated, for refusing to give obedience  
 d. act 105 Parl. 7 J. 6 Junt. d. act 11 July 1699 Parl. 4. W. 1. which  
 admonitions persons suspected of adultery, and bound  
 to adultery. But they are singly conversing together  
 after such prohibition is not Criminal, except it be in  
 suspected places, arg. d. with. de quibus d. Jul. de adul.  
 Miconz Crim part 1 Jul. 17. 53 a Case on act 74 Parl. 9  
 2 M.

Ordinary or simple adultery, is every act of single  
 or double adultery, that falls not within the descrip  
 tion aforesaid of Notorious adultery.

All Nations have in all ages punished this kind of  
 offences, some more and some less severely: but the  
 and lawyers are not well agreed what particular pu  
 nishments have every where been inflicted for it;  
 nor what the punishment ought to be. By the law  
 of Moses both the Adulterer and the adulteress were  
 put to death Levit. 20. 10. Deut. 22. 22. which was not  
 given as a law peculiar to the Jews, but is partly  
 Moral and partly Civil and agreeable to the law of  
 Nations: and was made to honour the second Command  
 ment of the Moral law Effectually, as it is clear from  
 the histories of Samar and Judah Gen. 38. 24 before  
 the law of Moses, so that it was not as some think