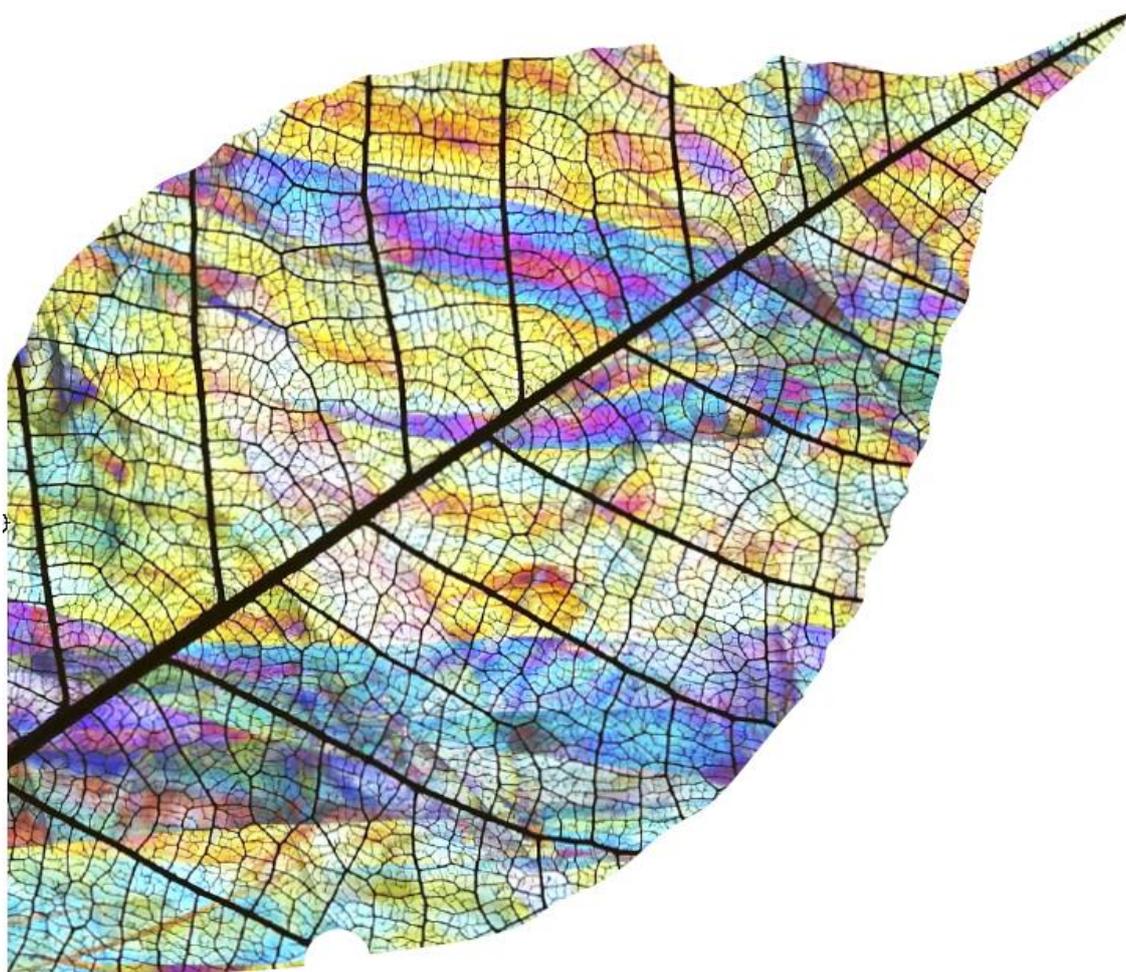


World Universities Comparative Law Project

Legal rating of Scotland

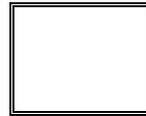
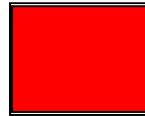
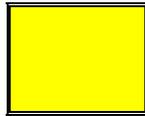
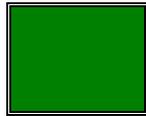
carried out by the University of Edinburgh

A production of the Allen & Overy Global Law Intelligence Unit



September 2015

World Universities Comparative Law Project
Legal rating of Scotland
carried out by students at the University of Edinburgh
September 2015



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Scotland was carried out by students at the University of Edinburgh.

The members of the School of Law at the University of Edinburgh who assisted the students were:

Scott Wortley, Lecturer in Commercial Law at the Law School, University of Edinburgh.

Laura Macgregor, Professor of Commercial Contract Law at the Law School, University of Edinburgh.

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

Michael Stoneham, banking and finance partner and Head of Energy & Infrastructure Finance, Brodies LLP

Malcolm Wood, Group Company Secretary, Lloyds Banking Group Plc

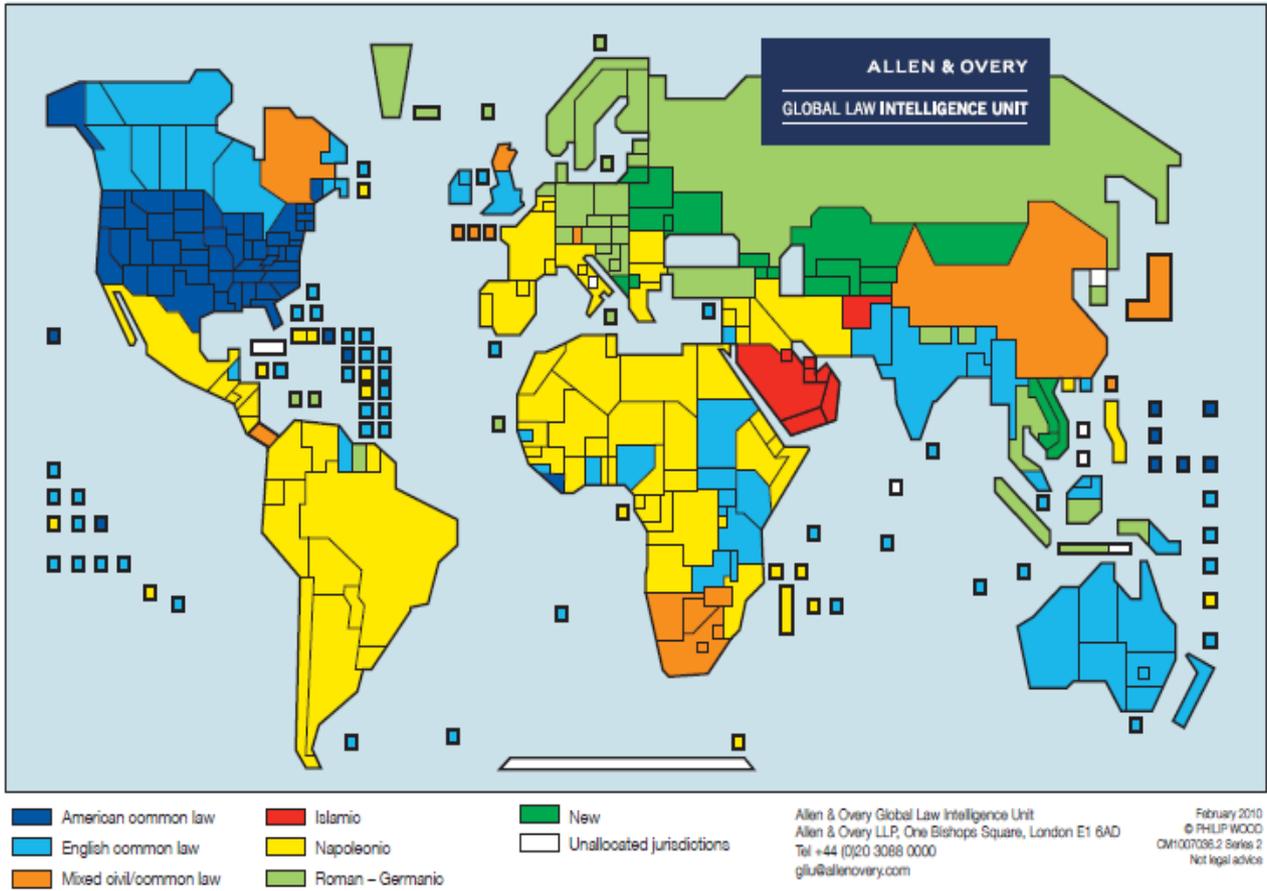
Gordon Taylor, Head of Legal (Funds & Derivatives) Baillie Gifford & Co

John Alpine, Head of Corporate and Business Banking team, Legal and Governance, Clydesdale Bank PLC

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

I am very pleased to present this assessment of the Scottish legal system by students from the School of Law in the University of Edinburgh. Congratulations are due to the students involved, who have produced an excellent piece of work.

Scots law is a “mixed” legal system which incorporates elements of both civil law and common law traditions. The core of the system is the civil law. This was largely adopted from the Roman Dutch law of the seventeenth and eighteenth centuries. During that period Scottish lawyers had extensive contact with the Netherlands, and many studied at the universities of Leyden and Utrecht. French law has also had some influence on Scots law.

Since about 1800 Scots law has been influenced by English law, and latterly by the other common law jurisdictions in the Commonwealth and the United States. Contact is also maintained with countries such as South Africa and Botswana, where Roman Dutch law is the basis of the legal system. This reflects the close and productive links that Scotland has had with England and Wales and with other English-speaking countries.

In the commercial field, most of the law relating to companies and limited liability partnerships has been enacted on a United Kingdom basis. The general law of contract and set off, however, is distinctive to Scotland, and the same is largely true of partnerships and the general law of insolvency. The Scottish courts attempt to keep the law of contract relatively simple and straightforward, without what are considered excessively refined distinctions found in some common law systems. The law has also been subject to extensive review in recent years; bankruptcy and partnership have been the subject of major reports from the Scottish Law Commission, and the Commission is currently undertaking a comprehensive study of the law of contract, to ensure that it meets modern commercial conditions. Such reviews of the law involve detailed consideration of the law in other jurisdictions, to discover what Scots law can usefully adapt from them.

Thus throughout the history of Scots law its practitioners have sought to learn from other systems, and to borrow good features of those systems, wherever they may be found. Historically, Scots lawyers have frequently studied in other jurisdictions, and the Scottish universities maintain important links with similar institutions in many other parts of the world. It is perhaps not an exaggeration to say that Scots law is largely the product of comparative law, seeking to incorporate the best features of other systems. It is that tradition of comparative law that makes the present project so valuable. Scottish students and practitioners will be able to learn from the survey, and consider the implications that it has for our own system. The same, of course, is true of the other jurisdictions that are involved. I should accordingly thank Allen & Overy’s Global Law Intelligence Unit and Professor Philip Wood for inviting Edinburgh University to take part.

Finally, I must pay tribute to Professor Macgregor of Edinburgh University and Michael Stoneham of Brodies LLP, Solicitors, who have been in charge of this project. It is their work and enthusiasm that has made it possible. I hope that further similar exercises may be carried out in future.

Lord Drummond Young
Senator of the College of Justice
Edinburgh

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Scotland with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

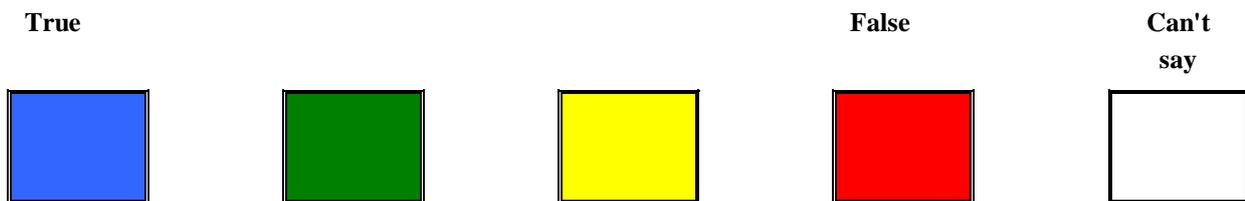
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Edinburgh. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Edinburgh, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Scotland. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators

intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

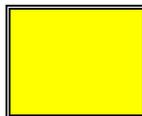
Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

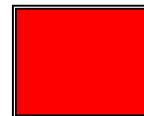
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Scotland, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

The ability to set off mutual debts on insolvency, or the “balancing of accounts in bankruptcy,” is recognised at common law in Scotland (Bell, *Comm.*, ii, 122). These rules have been extended to include companies in liquidation (*Atlantic Engine (1920) Co Ltd (In Liquidation) v Lord Advocate 1955 S.L.T. 17*). In practice, it is also common to include express set-off clauses. However, for the debts to be set off, both the obligations must exist prior to the insolvency (*Asphaltic Limestone Co v Glasgow Corp 1907 S.C. 463*).

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

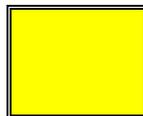
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

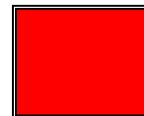
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Scotland, the law offers a security interest which is highly protective of the secured creditor.

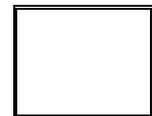
True



False



Can't
say



Comment:

(1) Scope of eligible assets:

Scots law allows for a debtor to grant security over a wide range of assets, including all kinds of corporeal, incorporeal, heritable and moveable property. Securities for future personal rights are also possible through assignation of receivables. Furthermore, the ability of a company to grant a floating charge under *Companies (Floating Charges) (Scotland) Act 1961* allows formation of a security that encompasses all their assets, whether corporeal or incorporeal. Thus both universal securities and securities for future debts are possible.

It is interesting to note that the Scottish Law Commission submitted in their *Eighth Programme of Law Reform* (2010) that the law of standard securities (the only recognised form of security over heritables in Scotland) should be reformed. This is due to the complexity and problems of the regime, which is incorporated in the provisions of the *Conveyancing and Feudal Reform (Scotland) Act 1970*. Thus, this is an area of law that will see interesting developments in the future.

(2) Debt secured:

The debt secured must be for performance of either a monetary or positive obligation. They can arise expressly upon agreement, or involuntarily; for example retention of title until debts owed are paid to the creditor, *s 17 and s 19 Sale of Goods Act 1979*. Scots law also strives to treat all creditors fairly. If there are two securities over a single asset, ranking of the first creditor will be in a way that minimizes the impact on the secondary creditor. The law also enforces the "offside goals" rule for competing securities, which is in favour of the good faith creditor by striking down the priority of a creditor who is aware of a prior agreement to grant a security .

(3) Trustee:

It is common practice for a trustee or security agent to be used in Scotland and the Parallel debt clause concept is recognised in Scots law. For the avoidance of doubt, it is preferable to use an express trust.

(4) Priority over preferred creditors:

Preferred creditors (including unpaid employees) are entitled to a preferential claim in a winding up according to *s 175 and Sch. 6 Insolvency Act 1986*.

(5) Private enforcement and receiver:

A receiver may be appointed by a party holding a floating charge over some or all of the company's assets. Legislative provisions for receivership in Scotland are found in *Part III Insolvency Act 1986*. However, since the enactment of the *Enterprise Act 2002* a receiver may only be appointed in very limited circumstances. As a result, an administrator is normally appointed for floating charges created after 15th March 2003, according to *Sch. B1 Insolvency Act 1986*.

(6) No rescue freezes:

When a company enters administration, there will be a moratorium period where the company is protected from creditors, insolvency and other legal proceedings (*Sch. B1 para 42 Insolvency Act 1986*).

(7) Low costs:

Due to Anglo-Saxon influences, enforcement of securities in Scots law are lower in costs compared to other jurisdictions that are more influenced by Civilian traditions.

Universal trusts

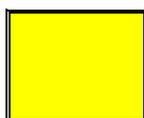
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

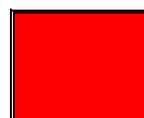
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Scotland has a universal trust for all assets.

True



False



Can't say



Comment:

In creation of a trust, property must be transferred in order to constitute intention to do so. Therefore in Scots law there is the need for a declaration of trust (McLaren, *Wills and Succession*, 3rd Edn., 824). Generally any property which can be alienated can be subjected to a trust.

There has been some uncertainty in the law with regards to truster-as-trustee trusts, a common form of trust in many commercial transactions. The Outer House in *Joint Administrators of Rangers Football Club 2012*

S.L.T 599 held that creation of this form of trust fails where the property or asset is a future one and is non-existent at the time of creation of the trust. This point is also supported by the Inner House in *Clark Taylor & Co. v Quality Site Development Ltd* 1981 S.C. 11.

On the other hand is the Inner House's decision in *Tay Valley Joinery Ltd v CF Financial Services Ltd* 1987 S.L.T 207, where a trust was created over book debts owed to a company both in existence and coming into existence in the future.

Although the decisions are somewhat conflicting, *Tay Valley* shows that Scottish courts are 'giving the green light' to allowing the use of quasi-securities despite the comments made in *Clark Taylor*. Trusts remain a very commonly used mechanism for many commercial transactions.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

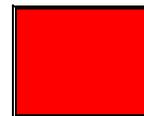
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Scotland the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

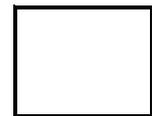
True



False



Can't
say



Comment:

Directors have high standards of duty upon insolvency proceedings and it is very common that misconduct at this time leads to their disqualification by regulatory bodies. Directors of companies in Scotland may be held personally liable for deepening an insolvency. Actions may be brought in respect of the director's negligence or breach of duty (*ss 170-178 Companies Act 2006*), misfeasance (*s 212 Insolvency Act 1986*), fraudulent trading (*s 213 IA 1986*), or wrongful trading (*s 214 IA 1986*).

Nonetheless, liability for mere business misjudgments seems to be limited, and there is no specific rule that directors must file for insolvency when the company is insolvent. Though note that The Insolvency Service's 'Guide for Directors' Handbook advises Directors to seek advice when the company is in financial trouble, as not doing so can lead to 'serious financial consequences' (i.e. extensive fines).

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

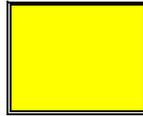
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

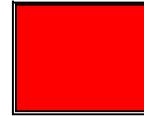
A contravening transaction is usually a criminal offence and void.

Q5 Scotland permits a company to grant financial assistance for the purchase of its own shares.

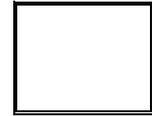
True



False



Can't
say



Comment:

Part 18 of the Companies Act 2006 allows companies to acquire their own shares in a number of ways. *Sections 658-259* provide a general rule against a limited company acquiring its own shares but with exceptions. *Section 690* establishes the power of limited companies to purchase their own shares with *ss 690-692* delineating regulations towards the payment and financing of the purchase.

Two general rules of financing of purchase of own shares in *s 692* are:

(1) out of capital in accordance with provisions in *chapter 5 (Companies Act 2006)* on redemption or purchase by private companies; or

(2) with cash up to an amount in a financial year not exceeding the lower of £15,000 or the value of 5% of its share capital.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

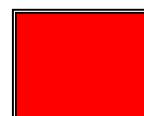
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Scotland is open and has few restrictions.

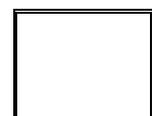
True



False



Can't
say



Comment:

- I. **Mandatory Bids:**
The bidder does have to make a mandatory bid in cash or a cash or alternative when the threshold of 30% or more voting rights (within one year) is reached (*Rule 9.1, The City Code on Mergers and Takeovers*)
- II. **Same price to all shareholders:**
One principle that underpins the Code is one of equity. Thus it follows that all shareholders that are of a similar class must receive the same bid and comparable offers.
- III. **Partial Orders:**
The Panel's consent is required to officiate any partial order. It will normally be granted if certain conditions are met (*Rule 36.1, The City Code*)
- IV. **Proof of Funds to Implement Offer:**
Under *Rules 24.3, 24.8, and 28.1* the offeror has to show that he has sufficient funds to implement the offer in full before making a bid.
- V. **'Squeeze Out':**
When 90% voting rights or shares are obtained and an offer has been made under *s 974 Companies Act 2006*, then under *s 979* the company taking over has the right to express the desire to acquire the remaining degree of control. The minority (10%) can also ask to be bought out (*s 983 Companies Act 2006*).
- VI. **Fixed Timetable:**
Rule 31 of The City Code sets out a timeline in which the process should keep to.
- VII. **Managers cannot frustrate bid without shareholder approval:**
A manager would be in breach of their fiduciary duties if they frustrated a bid without shareholder approval. This is also set out in *Rule 21.1 of The City Code*.
- VIII. **Control of the content of circulars:**
Part M of the City Code is dedicated to the rules surrounding circulation of documents during an offer.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing

requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

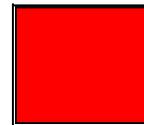
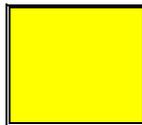
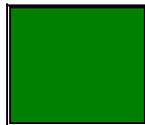
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Scotland, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't
say



Comment:

In Scotland, the phrase "subject to contract" has no recognised legal meaning. However, it is "open to construction" and the courts will analyse it on a case-by-case basis (*Stobo Ltd v Morrisons (Gowns) Ltd 1949 SC 184*). When assessing the formation of the contract, the judges will look at the parties' objective intention and in practice, if there is a statement "subject to contract", this will not constitute a part of the contract. However, lack of the statement "subject to contract" creates the risk of proceeding with contractual negotiations (*Grant v Bragg [2009] EWCA Civ 1228*). Therefore, it may help to use this phrase along with an express statement that the parties do not intend that heads of terms have a binding effect (in clear and unambiguous wording). Thus, in Scotland it is possible to have terms that are not legally binding, as long as it is express.

Termination clauses

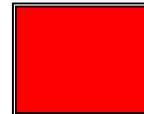
Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In **Scotland**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True

False

Can't
say



Comment:

In Scotland, there is no established principle of good faith and generally, the courts give effect to freedom of contract. If such termination clauses are clearly expressed in the contract, the judges look at the parties' intention and usually uphold them.

Exclusion clauses

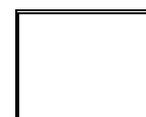
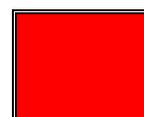
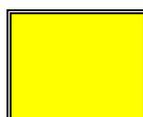
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In **Scotland**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True

False

Can't
say



Comment:

In Scotland, exclusions of liability clauses in B2B situations are governed by the *Unfair Contract Terms Act 1977 (UCTA)*. Precisely, contracts for sale of goods are governed by *s 20 UCTA*. If the exclusion clause purports to exclude liability for breach of obligations arising from *s 12 Sale of Goods Act 1979* (seller's implied undertakings as to title), such a clause is void. If the exclusion clause purports to exclude liability for breach of obligations arising from *ss 13-15 Sale of Goods Act 1979* (seller's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose), it is subject to fairness and reasonableness test – *s 20(2)(a)(ii) UCTA*. Therefore, the exclusions of liability clauses in commercial contracts between companies, such as sale of goods, must be fair and reasonable, so consequently 'clear'.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

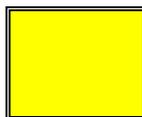
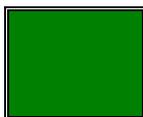
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Scottish courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Scottish public policy and mandatory statutes.

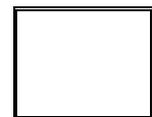
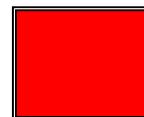
True



False



Can't say



Comment:

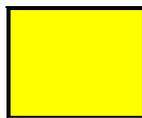
The issue of governing law clauses in contractual obligations is regulated by the *Rome I Regulation* which has been in force in the UK, and therefore, Scotland. *Art 3(1)* of the *Rome I Regulation* states that “a contract shall be governed by the law chosen by the parties. The choice must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.” However, the *Rome I Regulation* will not allow parties to circumvent certain rules of law by choosing the governing law of another country. In particular, it makes provision for the “mandatory rules” and “public policy” (*Art 3(3)*). Consequently, in Scotland, the contract may contain explicit provision to be governed by a foreign law chosen by the contracting parties. Therefore, the parties' choice of governing law will usually be upheld by courts. There is no condition on the contract's connection with the foreign jurisdiction. However, Scottish courts may decline to apply a foreign law otherwise applicable on the basis that it is contrary to Scottish public policy or mandatory rules.

Foreign jurisdiction clauses

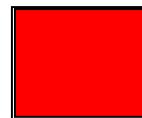
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Scottish courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say



Comment:

This matter is governed by the Brussels Convention 1968 which was incorporated into UK by s 2 of the *Civil Jurisdiction and Judgments Act 1982* (and Sch. 8 applicable to Scotland). The Brussels Convention generally allows jurisdiction clauses in contracts and such a decision of the parties should in principle be respected, even if a court outside the Brussels Convention states is selected (*Art 17*).

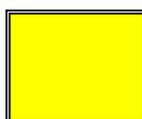
However, the Scottish courts recognise the doctrine of *forum non conveniens* which allows a court to dismiss an action where an appropriate and more convenient alternative forum exists in which to try the action.

Arbitration recognition

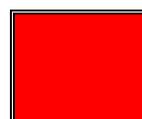
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Scotland, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Scottish courts.

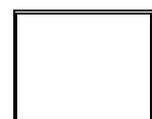
True



False



Can't say



Comment:

In Scotland, arbitrations are governed by the *Arbitration (Scotland) Act 2010*, which applies to both domestic and international arbitration. As the UK has ratified the New York, Washington, and Geneva Conventions, the Scottish Government and courts are bound to these treaties. Procedurally, that the arbitration is seated in Scotland has no implication on the substantive law to be applied to the dispute. Rather, it is up to the tribunal to decide the dispute in accordance with the law chosen by the parties. If no such choice has been made, then

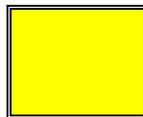
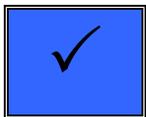
the decision should be in line within the law determined by the conflict of law rules that the tribunal considers applicable. Typically, Scots law is not widely used as the substantive law of contract outside of domestic contracts. It is possible for either party to object to the tribunal on the ground that it does not have, or has exceeded, its jurisdiction in relation to any matter.

Class actions

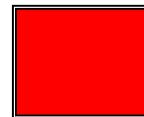
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In, class actions where the class is bound if they do not opt out are generally not allowed.

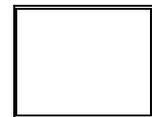
True



False



Can't
say



Comment:

Although there have been two pivotal reports discussing class actions in Scotland: 1) the Scottish Law Commission (SLC) report on multi-party actions (*SLC Report No. 154 of 1996*) and 2) the report of the Scottish Civil Courts Review (the Gill Review), class actions do not exist in Scotland. Resultantly, class actions where the class is bound if they do not opt out are generally not allowed.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

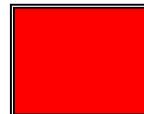
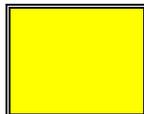
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Scotland nationals and local corporations are entitled to own land absolutely.

True

False

Can't say



Comment:

Following the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#), brought into force on the 28 November 2004, land can be owned absolutely in Scotland.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Scotland is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True

False

Can't say



Comment:

In Scotland there are two registers. The General Register of Sasines was set up in 1617 and is a register of deeds. This register is in the process of being replaced by the Land Register (a register of titles), through a system of first registration. Almost all land in Scotland is registered in one of these registers. Ownership, securities, longer term leases (of twenty years or longer in duration) and subordinate real rights such as servitudes and real burdens (which are conditions which regulate the use or maintenance of land) can be registered. The *Land Registration etc. (Scotland) Act 2012*, came into force on 8 December 2014.

Land development restrictions

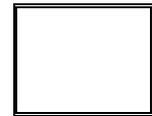
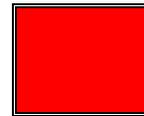
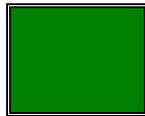
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Scotland, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True

False

Can't
say



Comment:

In Scotland planning permission is required for any land 'development' as defined under *section 26 of the Town and Country Planning (Scotland) Act 1997*. Planning permission is also required for many proposed changes of use of land (*Town and Country Planning (Use Classes) (Scotland) Order 1997*). Where planning permission is required it can take 2 to 4 months for a decision depending on the extent of the proposed development or change of use. There is a great deal of planning-based litigation in the Court of Session.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

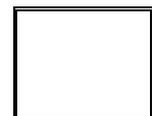
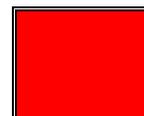
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Scotland, there are few controls on hiring and firing employees or on the terms of employment.

True

False

Can't
say



Comment:

All workers are entitled to protection of wages under the *National Minimum Wage Act 1998*. However, these are at low rates in comparison to other developed nations, such as Australia and France. For example, the minimum wage for a person 20 years of age is £5.03 in the UK and \$16 AUD in Australia (equivalent to

approximately £8.70).

Maximum working hours are limited to 48 hours per week (*EU Directive 2003/88, Working Time Regulations 1998*), though clauses to opt out will often be included in employment contracts and agreed to by the employee.

Under the *Working Time Regulations 1998*, since 2009 workers are entitled to their weekly pay during 28 days of annual leave. This is considered generous in comparison with the EU’s minimum entitlement of 20 days under the Art. 7 Directive 2003/88.

The *Equality Act 2010* requires an employer to pay a woman the same as a man for work that is of equal value (*s 65*). If inequality exists, the contracts should be modified. Otherwise an employee is allowed to bring a claim in an employment tribunal for damages or arrears of pay for a period of six years.

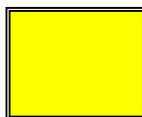
Employees are also entitled to a period of 52 weeks consisting of 26 weeks of ordinary and 26 weeks of additional maternity leave (*ss 71-73 Employment Rights Act 1996 (ERA)*).

The common law provides weak protection for the severance of employees' contracts. Development of the common law in the United States has resulted in the rule that employers can terminate contracts with no notice. Although common law applicable to employment in the UK offers a slightly higher level of protection by implying a term of reasonable notice, it still offers little constraints. Statutory control under *s 86 ERA* has attempted to create stricter rules by basing notice on length of service (minimum of 1 week when provided 12 weeks of service). Termination of a contract on breach of terms can lead to damages being awarded. Furthermore, compensation for unfair dismissal is currently capped at either 12 months’ worth of salary or £74,200.

Environmental restrictions

Q18 In Scotland the rules governing the environment and liability for clean-up are very light and relaxed.

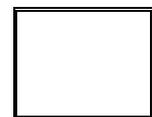
True



False



Can't say



Comment:

In Scotland, the rules governing the environment and liability for clean-up are strict. A non-departmental public body, the Scottish Environment Protection Agency (SEPA) is Scotland’s environmental regulator, and is accountable to the Scottish Parliament. The majority of SEPA’s work focuses on licensing and enforcement activity and functions include carrying out inspections, reviews, variations, and revocations of licenses. Overall, SEPA operates within European Communities Directives. Regulation encompasses activities that can result in harmful pollution in Scotland’s air, land, and water, as well as making provisions controlling the accumulation and disposal of radioactive substances. Specific legislation in Scotland includes: *Waste Management Licensing Regulations 1994, Control of Pollution (Silage, Slurry and*

Agricultural Fuel Oil) Scotland Regulations 2003, The Radioactive Contaminated Land (Scotland) Regulations 2007 (as amended), and The Contaminated Land (Scotland) Regulations 2005.

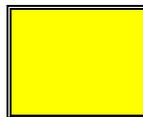
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

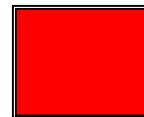
Foreign direct investment

Q19 In Scotland foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't
say



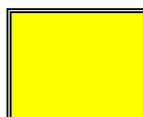
Comment:

Although there are overarching regulatory requirements to pay heed to, there is no restriction on foreign ownership of companies in Scotland. However, strict regulation exists in gambling, life sciences, media transactions, and telecommunications. In general, both foreign companies and individuals are able to acquire businesses in Scotland, as well as obtain securities without a special license, an example of which being the takeover of Scottish Power by Spanish Iberdrola in 2006. Foreign owners of companies in Scotland are entitled to apply for Regional Selective Assistance (RSA), an investment grant scheme for businesses that are looking to invest in designated areas of Scotland. The Takeover Code, developed in 1968, governs acquisitions of a public company in Scotland, and the UK as a whole. The rules stipulated in the code have a statutory basis in the UK, and follow the general principles set out in *Article 3 of the Takeovers Directive (2004/25/EC)*.

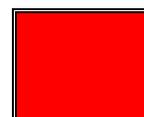
Exchange controls

Q20 In Scotland, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True



False



Can't
say



Comment:

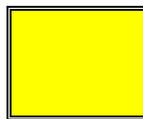
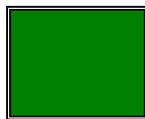
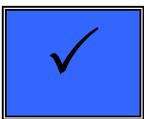
Currently, there are no exchange controls or currency regulations affecting inward or outward investment, the repatriation of income or capital, the holding of currency accounts, or the settlement

of currency trading transactions in Scotland. However, it should be noted that there are separate restrictions, such as financial and trade sanctions, with regard to the dealing of assets of sanctioned individuals and entities. These can be either regime or non-regime specific (e.g. entities relating to terrorism). The main provisions relating to the prevention of money laundering in Scotland are contained in *Part 7 of the Proceeds of Crime Act 2002* and the *Money Laundering Regulations 2003*.

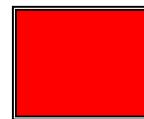
Alien ownership of land

Q21 In Scotland, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

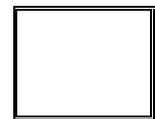
True



False



Can't say

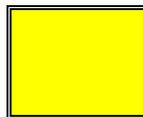


Application of the law

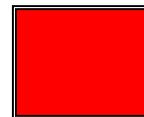
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Scotland, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

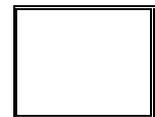
True



False



Can't say



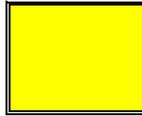
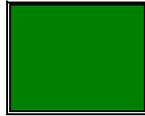
Comment:

The general consensus of practitioners is that the higher courts generally treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

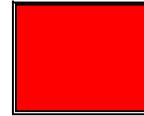
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Scotland are not considered materially greater than in other comparable countries.

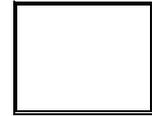
True



False



Can't
say



Comment:

Relative to other comparable countries, such as the USA and Canada, commercial litigation in higher courts in Scotland is less costly, and is dealt with without a lengthy delay, primarily due to diverging case management systems. There is an attempt to deal with clients and transactions in an expedited manner, due to the ramifications that a dispute can have for a commercial organization. As an example, a petition for judicial review presented by Brodies took ten weeks from first presentation to the issuing of an appeal decision by the Inner House. It should be noted that there have recently been several reports focusing on how commercial litigation in Scotland can be made even more efficient. Furthermore, there has been an increase in alternative dispute resolution techniques, such as commercial arbitration and mediation.

Overall ranking

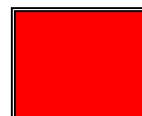
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

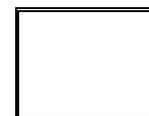
True



False



**Can't
say**



Profiles

The survey was carried out by the following students:

Oscar Bjartell is a third year LL.B. student at the University of Edinburgh. With roots in Sweden and the United States, Oscar is pursuing a career in commercial law with an international and dynamic setting.

Having transitioned east from Glasgow to Edinburgh, **Adam Bushnell** is currently 3 years through his undergraduate LLB. With an enthusiasm for pragmatically- orientated private law, he will be undertaking placements at leading Scots commercial law firms during the coming summer and pursuing a career in this area thereafter.

Born, raised and educated in South-West Scotland, **Emily Hunter** has a strong interest in the Scottish legal system and how it compares to that of other countries. Now in her 3rd year of the LLB, she is hoping to practise commercial law in Edinburgh or London, perhaps specialising in litigation or property law.

Seong Wook Kim is currently in the first year of Graduate LLB (2-year Programme). He was born in South Korea but has lived in Fiji since he was 10 years old. He was awarded MA (Hons) Economics at the University of Edinburgh before pursuing the Graduate LLB. Due to his background, Seong is interested in international trade, banking and commercial law.

Shayan Najib is currently enrolled on the two-year graduate entry LLB at the University of Edinburgh, having received an undergraduate degree in International Relations from the University of Calgary last May. What excites him most about a career in commercial law is how it integrates legal and business advisory work. He will enjoy providing clients with specific solutions, applying the knowledge and skillset acquired from his studies, as well as from work experience and projects across four continents.

Agata Starczewska is currently in the fourth year of her LLB. Born and raised in Poland, she is simultaneously undertaking a second LLB in Polish law and aspires to become dual qualified. She is particularly interested in aspects of contract law and litigation and aspires to become a commercial law practitioner.

Lauren Vas is currently a third year LL.B student studying courses with a focus on the commercial sphere. As she is from the international city of Hong Kong, she hopes to go on to practise commercial law or work in a similar field that will give her the opportunity to learn about how business is conducted in other jurisdictions.

Profile of expert panel

Michael Stoneham, banking and finance partner and Head of Energy & Infrastructure Finance, Brodies LLP

Michael studied law at Downing College, Cambridge and then joined Allen & Overy, London for articles followed by four enjoyable years in the international banking and project finance department working for Philip Wood.

He then departed for Scotland, where he became a partner in Dundas & Wilson CS in 1987 and also with Arthur Andersen in 2000 (as Dundas & Wilson had joined Andersen Legal). Michael joined Brodies LLP as a partner in 2011, and is the Brodies relationship partner for its worldwide dealings with Allen & Overy LLP.

Malcolm Wood, Group Company Secretary, Lloyds Banking Group Plc

After a career as a corporate lawyer in private practice in London and Edinburgh, latterly as Head of the Corporate Department at the Scottish law firm Burness, Malcolm Wood joined Standard Life as Director of Legal Services in 2001. He became Group Company Secretary and General Counsel of Standard Life Plc in 2004 and was closely involved in the work which led to the demutualisation of The Standard Life Assurance Company and the flotation of Standard Life Plc on the London Stock Exchange in July 2006. Standard Life Plc joined the FTSE 100 in September 2006. Malcolm joined Lloyds Banking Group Plc, London as its Group Company Secretary in November 2014

Gordon Taylor, Head of Legal (Funds & Derivatives) Baillie Gifford & Co

Gordon joined Baillie Gifford in 2003 and is primarily responsible for delivering legal support to Baillie Gifford's collective investment schemes and derivatives trading activities. He manages a team of four other lawyers and two paralegals.

Prior to joining Baillie Gifford, Gordon was an Associate with Shepherd + Wedderburn in private practice in Scotland. He is a Scottish qualified lawyer, having graduated LLB from the University of Edinburgh in 1992 and DipLP in 1993. He is admitted as a Member of The Law Society of Scotland and participates in the UK Investment Association's Derivatives Working Group. He has been an active organiser of and participant in various industry forums.

John Alpine, Head of Corporate and Business Banking team, Legal & Governance, Clydesdale Bank PLC

John is part of the legal team at Clydesdale Bank PLC. At the time of the survey, he headed up the Corporate and Business Banking Legal Team supporting the Corporate and Commercial banking teams and associated projects, products and issues within the Bank. A recent example was supervising the review and launch of a new suite of business lending security documents which were made available to Bank solicitors via an online channel under a new set of standing instructions. John also represents the Bank on the legal Committee of the Committee of Scottish Banks. He was previously with Dundas & Wilson and Andersen Legal before joining the Bank.

Profiles of Staff

Scott Wortley is a Lecturer in Commercial Law at the Law School, University of Edinburgh. His research is primarily in property law. He has been an adviser to the Scottish government on execution of judgments over land, and is co-author of Scottish Land Law (3rd edition) and Professor McDonald's Conveyancing Manual (7th edition).

Laura Macgregor is Professor of Commercial Contract Law at the Law School, University of Edinburgh. She is also Director of a research centre there, the Edinburgh Centre for Commercial Law. Her expertise lies in contract law, specifically commercial contracts, including agency and partnership law. Her book, *The Law of Agency in Scotland*, was published by W.Green in 2013.

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Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

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Special Global Counsel at Allen & Overy LLP

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Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary College, University of London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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