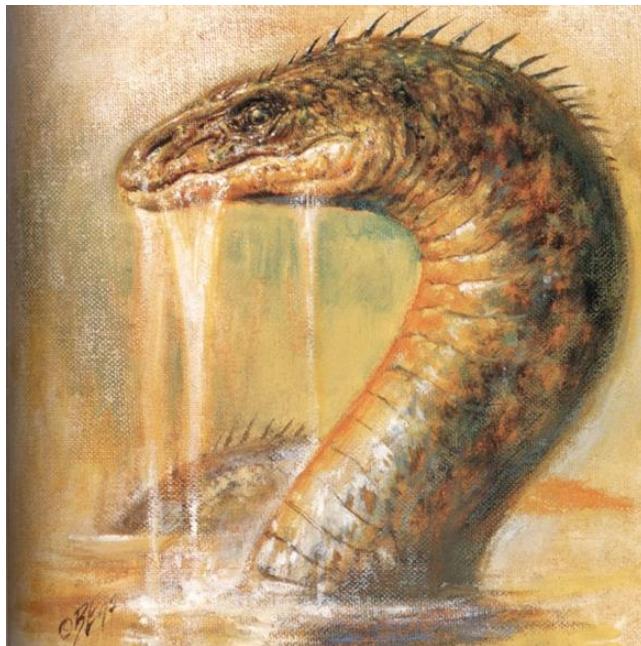


The Law in Legends

To what extent is contract law applied in *Tochmarc Étaine*, *Táin Bó Froích* and in *Branwen, uerch Lyr* and are the punishments in accordance with the law?



Púca, a water-beast of Irish and Scottish mythology

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ABSTRACT

Early Irish law (Brehon law, pre seventh century CE until the seventeenth century CE) and Medieval Welsh law (Laws of Hywel Dda, pre tenth century until 1536 CE) reflected the complexity of their societies and time periods. One of the major laws was contract law. Irish and Welsh myths and legends are more than tales to entertain. They were indicators of how Irish and Welsh peoples viewed their culture and their laws. The law is featured in Celtic myths and legends.

The aim of this thesis is to explore the extent to which contract law is applied in three Celtic legends. The three legends that are used are *Tochmarc Étaine*, *Táin Bó Froích* and the Welsh story, the second Branch of the *Mabinogi: Branwen, uerch Lyr*. Brehon law and the Laws of Hywel Dda considered marriage a contract. Therefore, to gain proper insight, this investigation also includes the law's regulations on marriage. In addition to this, if there are breaches in the contracts, what were the punishments and were the punishments in accordance with the law.

The findings are interesting. All three legends apply contract law and the law tracts on marriage in such a way that there are two arguments possible, valid and not valid. Breaches in the contract have monetary or even further reaching consequences. This is an interesting find, because it shows good knowledge of the law. All three legends are based on an oral tradition. It is therefore possible that the bards deliberately composed the stories in this way to get an immediate reaction from the audience or to get people talking, and that the scribes added to this.

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Chapter One - Introduction

Irish and Welsh literature constituted more than stories. This is evident through the large body of vernacular medieval literature preserved in Irish and Welsh manuscripts of the twelfth to fourteenth centuries.¹ The stories show signs of a long standing oral culture. They were indicators of how the Irish and Welsh people viewed their culture, their history and their laws. The law played a guiding role in providing reasons and consequences for legal actions taken in Early Irish and Welsh society. But the question is, how close do the stories remain to the regulations set by Early Irish law and the laws of Hywel Dda (Hywel the Good)? This investigation will concentrate on contract law, and the law tracts on marriage since marriage was considered a contract in Early Irish and Welsh society.² The literatures' faithfulness to the regulations set by Early Irish law and the laws of Hywel Dda in relation to contract law will be analysed. Each of the three stories involve important contracts made on inheritance and marriage between the main characters. The main question of this investigation is, to what extent is contract law applied in *Tochmarc Étaíne*, *Táin Bó Froích* and *Branwen, uerch Lyr*, and are the punishments in accordance with the law? The follow-up question is if the retribution for a breach in promise is in the confines of the law. I chose to explore these stories because they provide interesting examples of the use or misuse of contract law and the law tracts on marriage. Each analysis of the three stories will be done using key works in the field of Early Irish and Welsh law and legends, including Fergus Kelly, Dafydd Jenkins, Neill McLeod, Thomas Charles-Edwards, Wolfgang Meid, Charlene Eska, T. P. Ellis and Sioned Davies.

This thesis is laid out in six chapters. This introduction is chapter one. Background information on the law texts are covered in chapter two. Chapter three provides explanation on contract law and the law's regulations on marriage, and punishments for breaches in a contract while chapter four covers the analytical approach, where I will explain how I have compared the legends to the law. Chapter five provides the summary of the literature and the text analysis on *Tochmarc Étaíne*, *Táin Bó Froích* and the Welsh story, the second Branch of the *Mabinogi: Branwen, uerch Lyr* with regard to the contracts mentioned in each story. They will be compared to the laws' stipulations as laid out in chapter three. The conclusion of this investigation will be covered in chapter six.

1 The most well-known Irish epic from the Ulster Cycle is the *Táin Bó Cúailnge* ('The Cattle Raid of Cooley'). The story was composed in prose with passages in verse circa seventh century or eighth century. It is partially preserved in three manuscripts: *The Book of the Dun Cow (Lebor na hUidre, 1100 CE)*, *The Book of Leinster (1160 CE)* and *The Yellow Book of Lecan (late fourteenth century)*. With regards to Welsh literature, the story of Branwen is the second branch of the *Mabinogi*. The *Mabinogi* is a plethora of eleven tales, which are preserved in mainly two manuscripts of fourteenth century origin but are believed to be written down circa 1150 CE. These manuscripts are the *White Book of Rhyddrech (1325-1400)* and the *Red Book of Hergest (post 1382)*. These tales were believed to be preserved and developed as oral literature, in a preceding time period.

2 This is stated in the two standard works: Fergus Kelly's *A Guide to Early Irish Law* and Dafydd Jenkins' *The Laws of Hywel Dda*.

Chapter Two - Background of the Laws

The Irish law texts, also known as Brehon law from the Irish *brethemon* (judge), were originally oral in nature. They were first codified by Christian monks in the seventh and eighth centuries. The *Crith Gablach* ('Branched Purchase') law text, which was codified in 700 CE, dealt with the ranks of the members of a *túath* (tribe). It established a person's honour-price, in addition to the property and wealth they were permitted to possess and their rights within their *túath*. The honour-price was someone's 'price of face', or *lóg n-enech*.³ The *Di Astud Chor* law text dealt with contract law on the topic of legal adjustments in contracts.⁴ The *Díre* text was focused on the subject of a woman's legal and contractual capacity in the *túath*. *Cáin Lánamna* was a legal text centred around the subject of marriage, where it named the nine types of marriage. One such union is the fifth union where the woman openly goes away with the man, without her kin's consent. In the sixth union, a woman permitted herself to be abducted by the man (*lánamnas foxail*), without her kin's consent.⁵ Under the law, polygamy was permitted and it was quite normal for a man to have a "chief wife" (*cetmuintir*) and a wife from one of the other legal unions.

The Medieval Welsh laws, the laws of Hywel Dda (*Cyfraith Hywel*) were oral in nature, just as the Early Irish law texts, and were codified in the twelfth and thirteenth centuries.⁶ Unlike the Irish law texts, which were written in Old Irish, the Welsh law texts were written in Latin and not Welsh. Comparable to the Irish honour-price, the rights a person had under the law was influenced by their *wynebwerth*, which dictated a person's status and position in society.⁷ The Law of Women dealt with a woman's marriage, dowry and property. A woman could be married in one of two ways: she could be married off with her consent to a man of her kin's choice, or she could elope with a man without her kin's consent. If she remained with this man for seven years, a woman would be entitled to her dowry (*agweddi*). A *cowyll* (maiden-fee) would be given to her by her husband the morning after their wedding night, before she got out of bed. Assault or offences against a person's honour (*sarhad*) would be compensated with a fine. The status of the victim dictated the sum of the fine. Welsh contract law stated that a surety (*mach*) would lay down the provisions for the contract. The

3 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 169.

4 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 163.

5 The first union the scribe mentions was 'union of joint property' (*lánamnas comthinchuir*), where the man and woman brought equal amounts of property into the marriage. The second was 'union of woman on man-property' (*lánamnas mná for ferthinchuir*), where the woman contributed the least to the marriage in property. The third was 'union of man on woman-property', where the man contributed the least to the marriage in property. The fourth category was 'union of man visiting' (*lánamnas fir thathigtheo*), which was a less formal union where the man visits the woman with her kin's consent. The seventh union was a union where the man secretly visited the woman. The eight and ninth unions constituted rape, therefore were not considered legal. Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 70.

6 The standard works on the subject of Medieval Welsh law are Jenkins, Dafydd, *The Laws of Hywel Dda* (Llandysul 1986), Jenkins, Dafydd and Morfydd, E. Owen (eds.), *The Welsh Law of Women* (Cardiff 1980).

7 Jenkins, Dafydd, *The Laws of Hywel Dda* (Llandysul 1986).

principal debtor of the contract could deny the surety and so contest him. A contract (*amod*) had to be made with witnesses (*amodwyr*) present.

Chapter Three - Theoretical framework

Early Irish law, as outlined by Fergus Kelly, described in detail, the rules and regulations of legally binding contracts, pledges and sureties.⁸ The most common legal act in early Irish society when making a contract, was the verbal contract (*cor bél*).⁹ The verbal contract covered commercial undertakings such as marriage agreements, fosterage of children, the engagement in co-operative farming and clientship.

Kelly explained that in order for a verbal contract to be legally binding, the contractor (*féchem*) would agree to give a benefit or “consideration” (*folud*) onto the other party, in exchange for a counter benefit (*frithfolud*).¹⁰ This process was required to be witnessed by men and bound by sureties. Sureties had to be within the limit of a person’s honour-price. If a person could not contract independently, permission from the kin was required for the contract to be made. The surety was either kin to or a client of a party member, and pledged to safeguard the performance of the contractual agreement.¹¹ A surety was needed in order to ensure a contract was enforceable, but an instantaneous exchange between two parties did not require a surety.¹² The surety was in a better position to ensure adherence to a contract but was also in a precarious position regarding liability to public disgrace and payment.¹³ Similar regulations applied to the witnesses of the contract. Fergus Kelly stated that a person who acted as a surety or a witness (*roach, fiadu*) for a contract, only secured the portion of the contract that was within the limits of their honour-price.

Early Irish law relied greatly on the use of pledges (*gell*) in order to ensure that legal contractual obligations were carried out. The pledge symbolised the willingness of the pledger to meet the recipient’s demands. This pledge was normally an object linked intimately with the life of the pledger. For example, an embroideress could pledge her sewing needle.

There were a number of legal defects that would render a contract invalid. These defects were contracts made under duress, contracts made in fear or contracts made in ignorance. A ‘contract of protection’ was rendered void in the eyes of the law.¹⁴ The sale of stolen property also rendered a contract invalid. Drunkenness would also be a valid reason to render a contract invalid, but exceptions were made relating to contracts regarding co-ploughing, clientship or law of

8 Since both the Irish and Welsh laws were oral in nature, it is difficult to establish precisely when they originated. Hence the decision to state “pre” before the known date of codification. In the case of Brehon law, it was enforced until the early 17th century. Either under Queen Elizabeth I, or as aftermath of the Cromwellian onslaught. The Medieval Welsh laws were codified by King Hywel the Good in the tenth century. These laws were enforced until the Act of Union of 1536 under King Henry VIII when Wales became legally unified with England in laws.

9 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 158.

10 *Ibid.*, 158.

11 McLeod, Neil, *Early Irish Contract Law* (Sydney 1955) 16.

12 *Ibid.*, 18.

13 McLeod, Neil, *Early Irish Contract Law* (Sydney 1955) 16.

14 It was the equivalent of a modern day protection racket.

neighbourhood. Such arrangements were regularly made at feasts or in ale houses. The drunken state of the party members and the witnesses were often excused.¹⁵

Each party would have until sunset to cancel the agreement before the contract became legally binding. After this period, a properly witnessed contract was bound by the proper sureties, could not be undone – regardless whether it was advantageous (*sochor*) or disadvantageous (*dochor*) to either party. A contract without sureties was normally unenforceable, though the law texts provided a considerable number of exceptions to the rule. A basic principle was that every legally competent person (*sochonn*) should know when they were being taken advantage of (*saithiud*). Fraudulent contracts or legal defects in the contract made were the only legal conditions for backing out of a contract.¹⁶

The law also covered contracts that contained fault, which could not have been detected or predicted by the disadvantaged party.¹⁷ Adjustments could then be made, or the contract could be rescinded altogether. In such a circumstance, the basic principle, as laid out by *Di Astud Chor*, was that ‘every lop-sidedness should be evened up against the other, so that no-one should deprive each other’. The aggrieved party must bring his actions for adjustment within ten days of discovering the defect in the contract, or it remained unchanged.¹⁸

The Early Irish law texts devoted attention to the contractual rights and limitations of persons in joined social relationships: husband and wife, father and son, and monk and abbot. The rights depended on the degree of independence enjoyed by the contracting party.

People without a legal title or who were dependant on another person were not permitted to make contracts regarding property.¹⁹ These people consisted of: minors, lunatics, serfs, slaves, captives, aliens and women. Women in general did not have independent legal capacities. The *Díre* text spelled out the limitations on their ability to make contracts: “The worst of transactions are women’s contracts. For a woman is not capable of selling anything without authorisation of one of her superiors”. “She is not capable of sale or purchase or contract or transaction without the authorisation of one of her superiors, except for a proper gift to one of her superiors, with agreement and without neglect”.²⁰ The text referred to her superiors as her father, her husband or her son, when she was widowed.

15 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 159-160.

16 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 159.

17 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 159-160.

18 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 163.

19 McLeod, Neil, *Early Irish Contract Law* (Sydney 1955) 25.

20 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) pp. 161.

In Medieval Welsh law (the laws of Hywel Dda), the principal method of making contracts was verbal contract, comparable to Early Irish law. Moreover, contract law in the laws of Hywel Dda mentioned the use of witnesses (*amodwyr*). However, nature of the surety (*mach*), and the legal power of the principal debtor differed. A surety could be given under three regulations: 1) payment on behalf of another, 2) gaging or 3) denying surety.²¹ A surety in the Welsh laws, comparable to the Irish law, was a person. Unlike in Irish law, this person could be held hostage. But if both parties were in agreement of the surety, the proper thing to do was to release the person. If the surety was denied, the two parties and the surety came before a justice where the two parties were asked to admit whether the man in question was a surety or not. In the Irish laws, the principal debtor could not deny the surety.²²

The sureties and contracts did not cover commercial relations such as marriage. Regarding the law tracts on marriage, there were three stages in the rights of bestowal: 1) the right of all relatives, whether paternal or maternal, within four degrees of the relationship; 2) the right of the nearest male relatives only; 3) and the right of the feudal lord.²³ However, apparently only the second was officially recognised within the law. However, a woman had to consent to her marriage and could not be disposed off against her will.²⁴ This appeared to be as close as one can get to a legal marriage contract. Insults were remedied by legal payment: compensation for the damage done and reparation (*wynebwerth*) for the insult (*sarhad*).²⁵ Also, unlike the Irish laws, the Welsh laws did not specify, minors, slaves, aliens or people of insane mind as people who were legally unable to make a contract. Both Irish and Welsh law did not give any indication what the punishments were for a broken or illegal contract, other than compensation for the loss of the victim's honour.

21 Jenkins, Dafydd, *The Laws of Hywel Dda* (Llandysul 1986) 63.

22 If the principal debtor denied the surety, but the surety still claimed to be a surety, it was proper for the justice to examine the proper cause of action. The surety was permitted to counter-swear against the principal debtor. If he did, the principal debtor was not free of the claim in the contract and the surety did not legally need to pay the whole debt for the claimant. The counter-swear had to be done while the principal debtor put his lips to the relic that was part of the transaction. The surety was free from the claim and from suretyship at the counter-swear. If he did not counter-swear, he was required to pay the claim himself.

23 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 129.

24 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 125.

25 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 113.

Chapter Four – Analytical Approach

Using the conditions laid out by Irish and Welsh contract law and regulations on marriage, a text analysis on *Tochmarc Étaine*, *Táin Bó Froích* and *Branwen, uerch Lyr* will be done. The text analysis will be done on the appropriate areas of each of the pieces of literature.

With regards to *Tochmarc Étaine*, the regulations of Early Irish contract law, as explained in the theoretical framework will be applied on the verbal contract between the Dagda and Elcmar. The contract discussed between the Dagda and Elcmar is about land, and to ensure Óengus inherits what is seen to be rightfully his. An analysis using both Early Irish contract law in addition to the law's regulations on marriage will be done on the manner in which Midir won Étaine back from Eochaid. The extent of the legality of the contracts made between the Dagda and Elcmar, and between Midir and Eochaid will be compared to each other.

Táin Bó Froích will be analysed regarding Medb and Ailill's promise to wed Findabair to Froích. In addition to this, Findabair's own promise to Froích will also be investigated. The contracts will be analysed using Fergus Kelly's *A Guide to Early Irish Law* with linguistic evidence provided by Wolfgang Meid's rendition of *Táin Bó Froích*. Charlene Eska's article *Marriage by Purchase in Early Irish Law* will be reviewed to see whether Findabair's hand in marriage was purchased legally by Froích, and her other suitors.

Finally, *Branwen, uerch Lyr* will be analysed with regards to Matholwch and Branwen's marriage and the legal status of Efnysien. The legality of Efnysien's word on the matter of Branwen's union will be explored. The legal repercussions of the mutilation of horses will be analysed. This will be done using the laws of Hywel Dda.

The analysis will begin with an introduction of the literature.

Chapter Five – Analysis

Tochmarc Étaine, translated as ‘The Wooing of Étaine’, was a story divided into three parts.²⁶ The first part of the legend started with the conception of Óengus.²⁷ The Dagda, a king of the mythological pantheon of gods known as the Túatha dé Danann, had an affair with Eithne, the wife of Elcmar. In order to have this affair, the Dagda sent Elcmar on a trip that felt like a day and night when in fact he had been gone for nine months. The Dagda obtained Brug na Boínne, a pre-historical landscape in County Meath, for Óengus from Elcmar. Óengus ‘purchased’ Étaine from her father, Ailill. This was done to compensate Midir for being injured on Óengus’ behalf.²⁸ In doing so, Ailill forfeited any right of compensation should any injury be done to his daughter’s honour. In the second part of the story, Midir’s first wife, Fuamnach turned Étaine into a pool of water using her magic rod. After centuries, Étaine was born again with no memory of her previous life with Midir. She was married to Eochaid Airem. When Midir demanded that Étaine return with him, Eochaid refused.²⁹ In the final part of the story, Midir returned and proceeded to play games of *fidchell*, literally translated as “wood wisdom”. *Fidchell* was a respected game. Eochaid, because of his claim of proficiency at the game, would only play for stakes.³⁰ When the stakes the men played for were even, Eochaid won. At the next game, Eochaid was convinced into agreeing to play for an unspecified stake by Midir. Eochaid lost and the unspecified stake Midir wanted, was to embrace and kiss Étaine.³¹ Midir won Étaine back from her legal husband Eochaid by kissing and embracing her.

Táin Bó Froích, or ‘The Cattle raid of Froích’, was the story of a half-human, half-*aes sidhe* (people of the fairy mound) man who hears that Findabair (‘White Ghost’), the daughter of Queen Medb of Connacht and her husband Ailill.³² Froích went to Connacht with a retinue, including fairy

26 The story is primarily prose, but also contains passages of verse from the Mythological and Ulster Cycles. *Torchmarc Étaine* is contained as fragments in several manuscripts. These manuscripts are: *The Book of the Dun Cow (Lebor na hUidre)*, *The Yellow Book of Lecan*, MS Egerton 1782 and MS 1337. Link from Van Hamel’s CODECS website: https://www.vanhamel.nl/codecs/Tochmarc_%C3%89ta%C3%ADne

27 Original translation by: Bergin, Osborn, and Best, R.I (ed. And tr.) , “Torchmarc Étaine”, *Ériu* 12 (Dublin 1938).

28 Midir was injured while separating a fight between youths of Brug. Despite being healed by the physician of the Túatha de Danann, Midir demanded compensation if he was to remain with his foster son. Along with a chariot and a mantle, Óengus arranged a wife for him. Eska, Charlene M., ‘Marriage by Purchase in Early Irish Law’, *Tome: Studies in Medieval Celtic History and Law in Honour of Thomas Charles-Edwards*, Studies in Celtic History 31 (Woodbridge 2011) 184.

29 Eska, Charlene M., ‘Marriage by Purchase in Early Irish Law’, *Tome: Studies in Medieval Celtic History and Law in Honour of Thomas Charles-Edwards*, Studies in Celtic History 31 (Woodbridge 2011) 185.

30 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’, *Ogma* (Dublin 2002) 177.

31 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’, *Ogma* (Dublin 2002) 178.

32 *Táin Bó Froích* is a story from the Ulster Cycle and is a *remscéla* (prefatory tale) to *Táin Bó Cúailnge*. It exists in a fragmentary state in the Book of Leinster, the Yellow Book of Lecan, MS Egerton 1782, MS 72.1.40, MS 1337 and MS 1287. The translator used for this investigation is Wolfgang Meid’s *The Romance of Froích and Findabair*

musicians and cows, to ask Medb and Ailill for permission to marry Findabair. Froích tried to entice Findabair into an elopement but she did not consent as he had the means to obtain her legally. Medb and Ailill proposed such a high bride-price that Froích angrily refused to pay it, and left. They feared that he would elope with their daughter in retaliation. Because of this fear, they planned to kill him using the water monster that inhabited a pool. Findabair saved Froích, and he was taken back to the fairy mounds to recuperate.

The second branch of the *Mabinogi*, *Branwen, uerch Lyr*, was the story of Bendigeidfran, the King of the Isle of Mighty, who made an alliance with the King of Ireland, Matholwch.³³ They cemented this alliance through the marriage of Matholwch to Bendigeidfran's sister, Branwen, who was described to be one of the "chief maidens" of the Isle of Mighty. However, Efnysien, half-brother of Branwen and Bendigeidfran, was insulted because his permission was not sought regarding Branwen's marriage. He mutilated Matholwch's horses in retaliation. Matholwch later punished Branwen as revenge, despite being compensated for the insult. As a result, Bendigeidfran invades Ireland.

Tochmarc Étaine

In *Tochmarc Étaine*, the Dagda obtained Brug na Boínne for Óengus from Elcmar. Charles-Edwards stated that "he (the Dagda) judged everyone's contract according to his undertaking".³⁴ The manner through which the Dagda obtained Brug na Boínne for Óengus, involved what Thomas Charles-Edwards called a "formalised view of legal proceedings", and a strong view on "the inviolability of a contractual promise".³⁵ The Dagda thought a promise was a promise and could not be merely undone due to the unfairness of the promise. To him, a promise was what was said, not what was meant.³⁶

As discussed in the theoretical framework, the most common legal act in early Irish society when making a contract, is the verbal contract (*cor bél*).³⁷ This contract binds what was said, and not what was meant. In this sentiment the Dagda was correct. However, the Dagda's sentiment that a promise was a promise and cannot be undone by its unfair nature, did not entirely stand under the law. As with every other legally binding contract, either party had the ability to change their minds and

or *The Taking of Froích's Cattle* (Innsbruck 2015). Link from Van Hamel's CODECS website:

https://www.vanhamel.nl/codecs/T%C3%A1in_b%C3%B3_Fra%C3%ADch

33 There are nine well known translations of the Mabinogi. The translation that was used for this investigation was the translation done by Sioned Davies in 2007. Link from Van Hamel's CODECS website:

[https://www.vanhamel.nl/codecs/Branwen_uerch_Lyr_\(second_branch_of_the_Mabinogi\)](https://www.vanhamel.nl/codecs/Branwen_uerch_Lyr_(second_branch_of_the_Mabinogi))

34 Charles-Edwards, Thomas, 'Tochmarc Étaine: a literal interpretation' *Ogma* (Dublin 2002) 169.

35 The area of Brug na Boínne included Neolithic passage tombs such as Newgrange and Knowth, and it of great importance in the mythological landscape of Ireland. Charles-Edwards, Thomas, 'Tochmarc Étaine: a literal interpretation' *Ogma* (Dublin 2002) 169.

36 Charles-Edwards, Thomas, 'Tochmarc Étaine: a literal interpretation' *Ogma* (Dublin 2002) 170.

37 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 158.

cancel the agreement.³⁸ Each party would have until sunset to cancel the agreement before the contract became legally binding. Only after this period, a properly witnessed contract that had been bound by the proper sureties, could not be undone – whether it is advantageous (*sochor*) or disadvantageous (*dochor*) to either party.³⁹ Another factor that could render the contract null and void under the law, is if it was not bound by proper sureties.⁴⁰

Elcmar made the promise that Óengus could have Brug for a day and a night. However, the Dagda was not only the king, but also the judge in this matter.⁴¹ The importance of *dliged*, or “path to judgement”, is invoked. Óengus won Brug na Boínne by gaining a promise from Elcmar.⁴² The legality of the promise the Dagda gained from Elcmar can be called into question due to the lack of witnesses, a surety or a pledge in this particular agreement. Fergus Kelly makes it quite plain: without witnesses, sureties or pledges, a contract, verbal or otherwise, was not legally binding.⁴³

On one hand, Óengus should not have legally won Brug na Boínne, especially since Elcmar appeared to be ignorant of the faults in the contract.⁴⁴ On the other hand, Elcmar, being a legally competent person, should have known that the Dagda is taking advantage of him and thus should have the capability to undo the disadvantageous contract. On the basis of the law texts, the law is partially applied. Key elements such as witnesses and sureties are omitted and Elcmar shows a lack of legal knowledge.

Regarding the marriage of Étaine to Midir and Eochaid, Charlene Eska states that Thomas Charles-Edwards discussed the verbs buy (*crenaid*) or sell (*renaid*).⁴⁵ These verbs were used in relation to the marriage Óengus arranged for Midir and the later acquisition of Étaine from her mortal husband, Eochaid Airem.⁴⁶ Óengus states that he “shall purchase her”. Charles-Edwards states that *crenaid* and *renaid* can be applied to the ‘purchasing’ of an unmarried woman from her father being in addition to purchasing a wife from her husband.⁴⁷ However, Midir’s entire claim on Étaine was based on a stake from a game of *fidchell* and a promise Étaine made to him in private.

Midir later claimed that “that which is promised is a debt” and that “Étaine has promised me herself that she would come to me”.⁴⁸ Charles-Edwards clearly states that the consent of Étaine is

38 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 158.

39 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 159.

40 *Di-cenglaither cach cor cen ráith la Féniu*: ‘every contract without a surety non-binding in Irish law’, Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 158.

41 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’ *Ogma* (Dublin 2002) 170.

42 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’ *Ogma* (Dublin 2002) 176.

43 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 158.

44 This would usually be a condition where a contract is legally undone.

45 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’ *Ogma* (Dublin 2002) 179.

46 Eska, Charlene M., ‘Marriage by Purchase in Early Irish Law’, *Tome: Studies in Medieval Celtic History and Law in Honour of Thomas Charles-Edwards*, Studies in Celtic History 31 (Woodbridge 2011) 184.

47 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’ *Ogma* (Dublin 2002) 171-179.

48 Charles-Edwards, Thomas, ‘Tochmarc Étaine: a literal interpretation’ *Ogma* (Dublin 2002) 178.

required for the transaction to be considered legal.⁴⁹ This contradicts what is written in the law. *Cáin Lánamna* states that only wives of a “union of joint property” and “union of man on woman-property” are permitted to make legally binding contracts.⁵⁰ Furthermore, a woman was generally without independent legal capacity.⁵¹ As mentioned in the theoretical framework, the *Díre* text spelled out the limitations on their ability to make contracts: “The worst of transactions are women’s contracts. For a woman is not capable of selling anything without authorisation of one of her superiors”. Étaíne cannot ‘sell’ herself without her husband’s consent. It did not matter that Étaíne is Eochaid’s queen (*rígain*); queens did not have any extended legal powers.⁵²

To add to this, similarly to the Dagda and Elcmar’s agreement, the contractor (*féchem*), benefit or “consideration” (*folud*) and the counter benefit (*frithfolud*) of the promise are omitted. Furthermore, there were no witnesses to the agreement between Midir and Étaíne, nor were there sureties or pledges given. This should have rendered the agreement legally void, but Thomas Charles-Edwards states that the transaction of selling a wife was treated with an embrace and a kiss.⁵³

Thomas Charles-Edwards illustrates that Midir argues in terms of Brehon law, but his arguments are not watertight.⁵⁴ Unlike the Dagda, who uses the law to successfully regain his son’s lands, Midir struggles with the law in order to regain his wife. The agreements made between Midir and Eochaid were made as stakes in a game of *fidchell*. Charles-Edwards states that one should take the results of the unspecified stake as a formal act sealing the transaction of a bride-price.⁵⁵ Neither Fergus Kelly nor Neil McLeod mention that stakes from a game of *fidchell* were a legal method of making contracts. Moreover, it becomes apparent that the only reason Midir achieved victory, was because Eochaid weakened his hold over his wife and she in turn consented to Eochaid doing so.⁵⁶ Eochaid was the only one who was legally permitted to sell his wife to another man.⁵⁷ Had he not weakened his hold, Midir would not have won Étaíne back, no matter the promise or consent she made or gave, or the stakes of a game of *fidchell*. From a legal perspective, the promise Étaíne made to Midir, was rendered null and void. The only reason Midir won Étaíne, was because Eochaid gave his consent. In Midir’s case, on the basis of the law texts, the law is not applied in the legal manner prescribed by the legal texts. His agreement with Étaíne had neither witnesses nor sureties, which are essential to a legal contract. A game of *fidchell* is not a legal contract, nor a

49 Charles-Edwards, Thomas, ‘Tochmarc Étaíne: a literal interpretation’ *Ogma* (Dublin 2002) 179.

50 McLeod, Neil, *Early Irish Contract Law* (Sydney 1955) 77.

51 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 75.

52 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 78.

53 Charles-Edwards, Thomas, ‘Tochmarc Étaíne: a literal interpretation’ *Ogma* (Dublin 2002) 180.

54 Charles-Edwards, Thomas, ‘Tochmarc Étaíne: a literal interpretation’ *Ogma* (Dublin 2002) 180.

55 *Ibid.*, 180.

56 Charles-Edwards, Thomas, ‘Tochmarc Étaíne: a literal interpretation’ *Ogma* (Dublin 2002) 181.

57 Charles-Edwards, Thomas, ‘Tochmarc Étaíne: a literal interpretation’ *Ogma* (Dublin 2002) 180-181.

marriage agreement. Furthermore, Étaíne had no legal power or authority to make any promise to Midir. Only Eochaid applies the law correctly by “selling” Étaíne to Midir, as he has the legal power to do so.

Táin Bó Froíoch

In *Táin Bó Froíoch*, Medb and Ailill promised their daughter Findabair’s hand in marriage not only to Froíoch, but to every powerful, eligible warrior they wished to have on their side for the cattle raid of Cooley.⁵⁸ Medb and Ailill had a habit of disregarding or using the law based on their own interests and ambitions.⁵⁹

With regards to the legality of the marriage agreement between Medb, Ailill and Froíoch, the legality is questionable. This was evident when “Froíoch goes to them in the house of council”, meaning he went to seek a private audience with the king and queen of Connacht.⁶⁰ There were no witnesses present. Furthermore, the bride-price that Ailill named as the *coibche*, is out of the confines of the law because it far exceeded the reasonable amount. Ailill demanded “three score of dark gray horses with gold bridles; twelve cows, each with a white calf with red ears; his participation and the participation of his men; and *aes sidhe* (people of the fairy mound) musicians”.⁶¹

The honour-price of Froíoch was not mentioned in the story, however from a legal point it could not have been this extensive. As explained before, a person’s honour-price is entwined with status and position in society.⁶² *Críth Gablach* stated that one could not make a contract for any amount that was greater than his or her honour-price.⁶³ Under the law, Froíoch was of the *nemed* rank.⁶⁴ His father was Idatha of Connacht and his mother Bé Find of the *aes sidhe* were of the *nemed* rank. Froíoch’s retinue is quite extensive, including twelve white-and-red-eared cows and fifty sons of

58 Medb had her heart set on this bull due to a debate with her husband Ailill about who was the one with the most material power in the marriage. Medb and Ailill compared their goods; they were equal in all but one aspect: a bull. Medb had a bull but apparently, the bull did not particularly like the fact it was owned by a woman so it went to Ailill’s herd. Instigated by the Morrigan, Medb set her sights on the Brown Bull of Cualnge.

59 Medb had no qualm in showing cowardice in battle if it meant preserving her own life. As queen this threatened her rule. To show cowardice as king (or queen in this case) meant the honour-price and status would be reduced to that of a commoner. Faraday, L. Winifred, *The Cattle-Raid of Cualnge* (Cambridge 2002) 60.

60 Wolfgang Meid writes: *Do-tét Fróech cuccu issa tech n-immacaldmae. ‘In cocur fil lib?’ ol Fróech. ‘Dot-allfasu and,’ ol Ailill.* Meid, Wolfgang, *The Romance of Froech and Findabair or the Driving of Froech’s Cattle: Táin Bó Froíoch* (Innsbruck 2015) 44, lines 139-141.

61 ‘*Tri fichit ech ndubglass dam-sa,’ ol Ailill. ‘cona mbeillgib óir friu, ocus di laulgaich deec ó-mmeltar ól n-aiss ó cach aí, ocus láeg find áuderg la cach n-aí, ocus tuidecht duit linn cot lín uiliu ocus cot áes chíuil do thabairt inna mbó a Cúailngiu; ocus do-bérthar mo ingen-sa acht co-tís.’* Meid, Wolfgang, *The Romance of Froech and Findabair or the Driving of Froech’s Cattle: Táin Bó Froíoch* (Innsbruck 2015) 44, lines 146-149.

62 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 8-9.

63 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 9.

64 *Nemed* translates to ‘sacred, holy’. Those of *nemed* rank had special privileges: he has immunity from legal obligations and it is advised by Triad 235 to not go as surety against the *nemed* due to stark differences in honour-price. There is an emphasis by other law texts that contracts with *nemed* people are unenforceable. Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 9.

kings. One may deduce from this that he is either the *tanaise rí*, or ‘second king’, or a *aire forgill*. According to *Críth Gablach*, Froích’s honour-price would either be thirty milch (milk-producing cows) cows (*tanaise rí*), or fifteen milch cows (*aire forgill*).⁶⁵ This is important because the rank, wealth and honour-price were important when “purchasing” a bride (*creic cétmuintire*), paying *coibche* to her father (bride-price).⁶⁶ The *coibche* has to be in the legal confines of rank. By demanding thirty horses, twelve cows and calves, and *aes sidhe* musicians in addition to Froích’s participation in the cattle raid, Ailill is proposing an extortionate bride-price. A possibility for the extortion, is that the redactor of the tale embellished the amount in order to emphasize the wealth and high status of Medb, Ailill and Froích.

It was the norm for marriages to be arranged by the families of the couple. The betrothal (*airnaidm*) was a contract that was sustained by sureties representing both families.⁶⁷ In this contract the girl’s family was one of the parties, the other was her prospective husband not his family. There were no witnesses present at the meeting between Medb, Ailill and Froích, and there were no sureties presented by either party. A contract without sureties, as was discussed in the previous chapter, is usually unenforceable.⁶⁸ Furthermore, because Froích refused to pay the high bride-price and angrily left, it can be argued that there was no contract. A person could legally withdraw from a contract until sunset. Froích withdrew from the contract before sunset, therefore rendering the contract void. Moreover, the law texts state that “contracts with *nemed*s are not binding, for a *nemed* is like a chariot, any bond which is bound to it, is released”.⁶⁹ These law texts usually refer to contracts between a commoner and a *nemed*.

However, it was a different case regarding a contract that was between members of the *nemed* rank. *Críth Gablach* stated that “proof, right and nature” are required in a contract, and that “proof” and “right” are founded on the *nemed* class.⁷⁰ Therefore, every contract made between Medb, Ailill and Findabair’s suitors were enforceable in the eyes of the law. Due to this fact, Medb and Ailill feared retribution from the numerous other suitors Findabair was “engaged” to because they feared Froích would elope with their daughter.⁷¹ This concern and Ailill’s willingness to commit murder to

65 MacNeill, Eoin, ‘Ancient Irish Law: The Law of Status or Franchise’, *Proceedings of the Royal Irish Academy: Archaeology, Culture, History, Literature* Vol. 36 (1921 - 1924) 299-300.

66 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 71-72.

67 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 71.

68 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 162.

69 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 162.

70 §2. Proof is founded on rules and maxims and true testimonies. Right is founded on verbal contracts and acknowledgement. The law of nature is founded on cancellation of penalties and joint arrangement. §3. Both proof and right are founded on the “*nemed*” [sacred class]. §4. Any judgement that is not based on any of these is null and void.

71 ‘*For biba sochuide immunn de rígaib Érenn dia ruca-som in n-ingin. Aní as maith, foíprem inna degaid ocus marbam fo chétóir resíu fo rroma bine fornn.*’ Translation: ‘A multitude of kings of Ireland will fall upon us if he will take the girl from us. What is good, (is that) we should go after him and kill him at the first opportunity (we get) before destruction is brought down upon us.’ Meid, Wolfgang, *The Romance of Froech and Findabair or the Driving of Froech’s Cattle: Táin Bó Froích* (Innsbruck 2015) 45, lines 154-155.

ensure they are saved from “destruction” suggested that the contracts made between the “multitude of kings of Ireland” were valid in the eyes of the law. The loss of multitude of honours, and thus be obliged to pay a multitude of honour-prices would bring a loss of honour and status on Ailill and Medb.

However, it appeared that Ailill forgot that exacting retribution through killing would bring more shame on their honour, which Medb had to remind him of. According to Brehon law, the most serious offence one could commit was to kill someone.⁷² A person could be set adrift, exiled from one’s *tíath*. But the most common form of atonement for homicide was through payment.⁷³ According to Fergus Kelly, no law texts survived that dealt with payments made for illegal killings, though it would appear the fines for the two main types of killing were normally paid to the victim’s kin. The first type of payment showed that a price of seven *cumala* was paid to every freeman of the kin, regardless of their rank. The second type of payment is based on the honour-price of the victim’s kin, and is distributed between both the paternal and the maternal kin. In the case of Froích, one-third of the honour-price of Idatha and Bé Find would have to be paid, in addition to payments to his aunt, foster-brothers, and foster father. This altogether stacked up to a hefty sum.⁷⁴ Considering the prestige of Froích’s rank, his family may have exacted a blood-feud for vengeance (*dígal*) against Ailill and Medb. Hence, Medb’s objection to Ailill turning to homicide for a solution to the possibility of Froích eloping with Findabair is not without justifiable grounds, both financially and legally.

Ailill convinced Medb of a way he could arrange the hero’s death that would not cause a “loss of honour”. The king and queen of Connacht laid a trap for Froích: Medb ordered him to fetch a branch of rowan berries from across a deep, albeit dubious pool of water, which was the home of a water monster. Findabair, after no one else assisted Froích against the beast, leapt into the water with a sword only to be stopped by her father.⁷⁵ Nevertheless, Froích survived. Had he not, it is likely Ailill and Medb would have been required by law to pay a fine for secret killing (*dúinetháide*) due to the fact their murder weapon was a water monster they knew inhabited their pond. Alternatively, they would have had to pay for the injuries caused by the water monster.⁷⁶

However, there is a possibility that the contract between Ailill, Medb and Froích was not legally binding: the witnesses, the sureties and the pledges were missing from the agreement. Hence, the retribution Ailill and Medb sought against Froích was illegal. Furthermore, the argument may be made that the contract was already null and void because Froích refused to pay the extortionate

72 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 125.

73 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 125.

74 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 125.

75 Meid, Wolfgang, *The Romance of Froech and Findabair or the Driving of Froech’s Cattle: Táin Bó Froích* (Innsbruck 2015) 45, lines 189-201.

76 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 131.

coibche. Taking all of this into account, one can conclude that the law is only partially applied in the law-texts.

The contract between Froích and Findabair faces the same problems that existed in the contract between Ailill, Medb and Froích. The contract made between Froích and Findabair had no witnesses, but a surety/pledge was involved in the form of a ring given to Findabair by Ailill. According to Robin Chapman-Stacey, the true basis of contractual obligation, lay in the actual exchange of promises and goods by the parties involved.⁷⁷ However, this surety/pledge did not automatically make this contract binding.

As discussed in chapter two, women in general did not have independent legal capacities.⁷⁸ Hence, Findabair giving her ring as a pledge to Froích for her hand in marriage is rendered legally void due to her non-existent status as a legal personality. She had neither the authorisation of her father Ailill nor received his agreement to the ring being the pledge in the contract. Findabair had no legal authority to sell herself to Froích.

However, had Findabair agreed to elope with Froích, there is a possibility that their union would have been deemed legal and Medb and Ailill's fears could have been justified. *Cáin Lánamna* listed nine legal forms of sexual union. One such union was where the woman went openly away with the man, without her kin's consent.⁷⁹ This union is deemed legal. *Lánamnas foxail* was the union that Medb and Ailill feared. The man 'abducts a woman in defiance of her father or kin'.⁸⁰ Since the woman would have gone willingly in this union, according to Fergus Kelly, this union was legally binding. Both of these unions did not need a formal contract in order to be legally binding, nor is the *coibche* involved. Considering the fact Medb and Ailill promised Findabair's hand to many powerful men, their fear that either of these unions could occur was justified due to the fact these unions were legally binding. Retribution would have been sought by Findabair's jilted suitors, and Ailill and Medb would have lost their most important strategic pawn in winning allies as well as their honour and status.

Branwen, uerch Lyr

The second branch of the *Mabinogi* employed the laws with respects to the union between Matholwch, king of Ireland, and Branwen, daughter of Llyr and sister of Bendigeidfran, king of the Isle of Mighty. The primary focus is on law of marriage and if this union follows its regulations.

77 Chapman-Stacey, Robin, *The Road to Judgment* (Pennsylvania 1994) 46.

78 Chapman-Stacey, Robin, *The Road to Judgment* (Pennsylvania 1994) 58.

79 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 70.

80 Kelly, Fergus, *A Guide to Early Irish Law* (Dublin 1995) 71.

Sioned Davies' translation states that "they decided to give Branwen to Matholwch".⁸¹ In this passage, Davies refers to Branwen's brothers, Bendigeidfran and Manawydan, and their counsellors. T.P Ellis mentions the three stages in the rights of bestowal: 1) the right of all relatives, whether paternal or maternal, within four degrees of the relationship; 2) the right of the nearest male relatives only; 3) and the right of the feudal lord.⁸² Ellis illustrates that only the second stage was recognised by Welsh law.⁸³ Due to the fact Bendigeidfran agreed to the marriage, it was arranged that Matholwch would bed Branwen at Aberffraw. The Second Branch makes no mention of a surety (*mach*), nor does it indicate that hostageship was used.

The first point one should note is that the laws indicate that a woman must consent to her marriage and cannot be disposed off against her will.⁸⁴ Moreover, unlike Early Irish law, there was no buying or selling of wives in marriage under the laws of Hywel Dda. There is no evidence in the second branch of Branwen consenting to her marriage with Matholwch.⁸⁵ It is likely that the law was followed by Bendigeidfran and Manawydan; they asked their sister for her consent and she gave it. Evidence for this may be provided by Branwen permitting the marriage to take place, because she willingly slept with Matholwch at Aberffraw. As mentioned by Renske van der Linden, this was an important element in a marriage and sealed the deal.⁸⁶ Furthermore there were witnesses (*amodwyr*) present when the marriage was consummated. It can be argued that Branwen was given as a gift in marriage without her consent.⁸⁷ This may be the case as Branwen was not mentioned to be at the counsel that decided her marriage. One may argue the marriage between Matholwch and Branwen was legally invalid, due to the fact that her verbal consent was not given.

The second branch of the *Mabinogi* also did not clarify, whether or not contract law was followed with regards to Matholwch and Branwen. As mentioned in the theoretical framework, legal contracts under the laws of Hywel Dda, involved a surety (*mach*) and a principal debtor.⁸⁸ The translation of the story by Sioned Davies does not make a reference to a surety and a principle debtor. This may indicate that marriage was not seen as part of contract law in the Welsh perspective. The only minor reference was the witnesses to Branwen and Matholwch's consummation.

81 Davies, Sioned, *The Mabinogion* (Oxford 2008) 23. Other translations have used a plural translation as well.

82 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 129.

83 Ibid., 129.

84 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 125.

85 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 125.

86 Van der Linden, Renske, 'The Laws of Hywel Dda in the Four Branches of *The Mabinogi*', Bachelor thesis (Utrecht 2007) 30.

87 Ellis, T.P., 'Legal References, Terms and Conceptions in the "*Mabinogion*"', *Y Cymmrodor* (London 1929) 125.

88 Jenkins, Dafydd, *The Laws of Hywel Dda* (Llandysul 1986) 63.

There was one party who had not consented to the match: Branwen's maternal half-brother, Efnysien, who is called a "quarrelsome man" by Sioned Davies.⁸⁹ When he came across Matholwch's horses, Efnysien did not recognise them and immediately enquired to whom they belonged. He was promptly informed to whom the horses belonged. When he was told that Matholwch had wedded and bedded Branwen without his own consent, Efnysien saw fit to take retribution. He mutilated King Matholwch's horses, from "lips to the teeth" and beyond recognition.⁹⁰

The question on the matter of whether Efnysien's consent was legally obligated to be given is a question posed before. The three stages in the rights of bestowal list the right of all relatives, whether paternal or maternal, within four degrees of the relationship. Efnysien was Branwen's half-brother through her mother. Therefore, he was within four degrees of the relationship and thus his consent could theoretically be considered. However, Welsh laws only recognised the rights of the nearest male relatives in to consideration. The "nearest male relative" insinuated brother, father, uncle, son, etc, and not half-brother. Regarding Branwen's marriage, Efnysien's consent was not therefore legally obligated to be considered.

Furthermore, Natasha Sumner states that according to the *Blegywryd* Code, Efnysien is not part of the same agnatic kinship group as Branwen, Bendigeidfran and Manawydan. He did not inherit patrimony from their father, Llyr, but from his father, Euroswydd.⁹¹ Under the law, he is therefore not Branwen's co-heir and hence, his consent was not a legal requirement. Branwen's brother Bendigeidfran is not only her nearest male relative but he is also the king. His word overrules any of his subjects', including Efnysien.

Therefore, Efnysien's violent retribution – the mutilation of the horses – is an illegal act. There were cases where horse mutilation was a legitimate response to an offence, but in this case the mutilation had no legal ground because Efnysien's consent to the marriage was not legally required.⁹² Sumner stated that the mutilation was considered to be *gwaradwyd* on both Bendigeidfran and Matholwch's honour. *Gwaradwyd* was an act that was "insulting", and caused "dishonour, disgrace, ignominy and shame".⁹³

Bendigeidfran offered Matholwch what the law prescribed as legal payment: compensation for the damage done and reparation (*wynebwerth*) for the insult (*sarhad*) Matholwch suffered from the

89 Davies, Sioned, *The Mabinogion* (Oxford 2008) 23.

90 Davies, Sioned, *The Mabinogion* (Oxford 2008) 24.

91 Sumner, Natasha, 'Efnysien's Trickster Wives: Meanings, Motives and Mental Illness in the Second Branch of the Mabinogi' *Studia Celtica Posnaniensia Vol 1* (Harvard 2016) 76.

92 Sumner, Natasha, 'Efnysien's Trickster Wives: Meanings, Motives and Mental Illness in the Second Branch of the Mabinogi' *Studia Celtica Posnaniensia Vol 1* (Harvard 2016) 77.

93 Sumner, Natasha, 'Efnysien's Trickster Wives: Meanings, Motives and Mental Illness in the Second Branch of the Mabinogi' *Studia Celtica Posnaniensia Vol 1* (Harvard 2016) 81.

mutilation of his horses.⁹⁴ With regards to the reparation, Bendigeidfran offered “a sound horse for each one maimed, and . . . a rod of silver as thick as his little finger and as tall as himself, and plate of gold as broad as his face and as thick as the nail of a ploughman who has been ploughing for seven years”.⁹⁵

Since Efnysien insulted Matholwch’s honour directly, and not his physical person, only the insult to the king of Ireland’s honour had to be paid.⁹⁶ According to T.P Ellis, Bendigeidfran’s offer was according to the laws of Hywel Dda, and gives strong evidence for the suggestion that the scribe of the second branch of the *Mabinogi* had legal knowledge.⁹⁷ However, van der Linden points out that in this case, the law is not strictly followed and acts more as a guideline.⁹⁸ Keeping this in mind, it appears that, in marriage, Welsh contract law was not considered as important as in Early Irish law. This could explain why the scribe did not include it in the story.

94 Ellis, T.P., ‘Legal References, Terms and Conceptions in the “*Mabinogion*”’, *Y Cymmrodor* (London 1929) 113.

95 Davies, Sioned, *The Mabinogion* (Oxford 2008) 25.

96 Ellis, T.P., ‘Legal References, Terms and Conceptions in the “*Mabinogion*”’, *Y Cymmrodor* (London 1929) 115.

97 Ellis, T.P., ‘Legal References, Terms and Conceptions in the “*Mabinogion*”’, *Y Cymmrodor* (London 1929) 113.

98 Van der Linden, Renske, ‘The Laws of Hywel Dda in the Four Branches of *The Mabinogi*’, Bachelor thesis (Utrecht 2007) 32.

Chapter Six - Conclusion

Each contract made in each of the legends, is a verbal contract. This was the most common form of contract, and is concurrence with every day life. In *Tochmarc Étaíne*, the Dagda uses the law to his own advantage, and uses Elcmar's legal ignorance in order to gain Óengus' right to Brug na Boínne. The law described that witnesses and sureties were essential components in a contract. There were no witnesses present at the agreement between the Dagda and Elcmar, and the same counts for the agreement between Midir and Étaíne. Due to this, the legal validity of each contract is questionable. Furthermore, women were deemed to be legally incapable of making a legally binding contract. The promise Midir claimed Étaíne made to him had no legal power. Étaíne needed consent from her legal guardian. She had no legal power to "sell" herself to Midir. As her husband, and therefore her legal authority, Eochaid had not given his consent to Étaíne to make such a promise. Moreover, a stake in a game of *fidchell* was not a legally binding contract. Therefore, the only legal way Midir won Étaíne, was because Eochaid relaxed his hold on her. There were no punishments, which could suggest that there was no breach of contract. In Elcmar's case, there was no punishment because of his ignorance of the defects in the contract. Regarding these cases, there is legal knowledge present but is applied in a manner that two interpretations of the validity of the contracts can be applied.

The contract between Medb, Ailill and Froích in *Táin Bó Froích* regarding Findabair's hand in marriage had also no witnesses or sureties present. To add to this, Ailill attempted to extort Froích. Unlike Elcmar, Froích was aware of this disadvantageous bride-price and verbally rendered the contract void. Medb and Ailill attempt to illegally kill him because they feared retribution from Findabair's other suitors should Froích and Findabair elope. Under *Cáin Lánamna*, the union where a woman went openly away with the man, without her kin's consent, and *lánamnas foxail* were deemed to be legal marriages. Every agreement Medb and Ailill made with Findabair's suitors were legally enforceable. Therefore, losing Findabair would mean a loss of honour and status for Medb and Ailill due to a loss of honour to a great number of jilted suitors. However, the retribution Medb and Ailill sought was illegal. Killing Froích secretly by using a water monster would have ensured they would pay a fine for secret killing, sick-maintenance or would have faced a blood-feud from his family. The contract made between Froích and Findabair was also dubious in nature because of a lack of witnesses. Findabair did make a pledge – the ring given to her by her father – but this may not have held any legal power. Findabair needed her father's consent in order to make a contract and pledge the ring. This she did not have. Taking all of this into consideration, akin to *Tochmarc Étaíne*, the argument can be made that the application of the law in the story allows for a dual interpretation.

Regarding the second branch of the *Mabinogi*, *Branwen, uerch Lyr*, the translation of the story by Sioned Davies does not make any visible reference to contract law, including the surety and the principle debtor. The only visible element of contract law are the witnesses (*amodwyr*) to Branwen and Matholwch's consummation. This was the act that sealed a marriage deal. In relation to the law tracts on marriage, a woman's permission had to be obtained to arrange her marriage. Furthermore, Efnysien felt offended at his consent being asked for his marriage, but he had no legal grounds to be offended that his permission was not required because he was not her co-heir by law. Furthermore, Bendigeidfran was not only Branwen's co-heir but also the king. His word overruled his subjects'. Efnysien's mutilation of Matholwch's horses was therefore illegal. There are clear legal elements in the story, but key elements of the law tracts have been omitted. The scribes have legal knowledge, which makes the inconsistencies – such as Branwen's permission not asked and Efnysien's offence at not being asked to give consent to the marriage – very interesting.

All three works of medieval literature apply contract law. However, despite the fact the scribes show legal knowledge, in neither story do they ensure the contracts and punishments apply fully to what we see in the law texts. The appropriate application of contract law in each of the stories is only partially done. Each contract omits key elements that require a contract to be legally valid, either witnesses, sureties and legal consent. Regarding legal consent, Charles-Edwards states that Midir needed Étaíne's consent to 'buy' her back in addition to manoeuvring Eochaid into selling his wife. However, the law makes it clear Étaíne had no such legal power. Similarly, Findabair did not have her father's permission to pledge her ring in a marriage contract to Froích, thereby rendering the contract void. Akin to this, Branwen's permission was not mentioned in the second branch. Her permission was needed to make her marriage to Matholwch legally valid. Therefore, one is left to speculate that her permission was perhaps sought behind the scenes.

With regards to punishment, Medb and Ailill's punishment for Froích was illegal due to 1) no crime being committed on Froích's part and 2) because the attempted murder was done in secret. Similarly, Efnysien's punishment for his permission not being sought regarding Branwen's marriage was also illegal. This could suggest a lack of legal knowledge from the scribe, or it may have been a case of artistic licence blended together with legal knowledge. From analysing each contract, there are two possible arguments: a valid contract or an invalid contract. It is therefore a possibility that the bards composed the stories in this way in order to entice a desired reaction from the audience or to get people talking, and that the scribes added to this when codifying the stories. Further research is needed in order to establish this.

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