

Latin Legal Maxims & Their Role in Our Modern Law

Jon Kiddie, Advocate

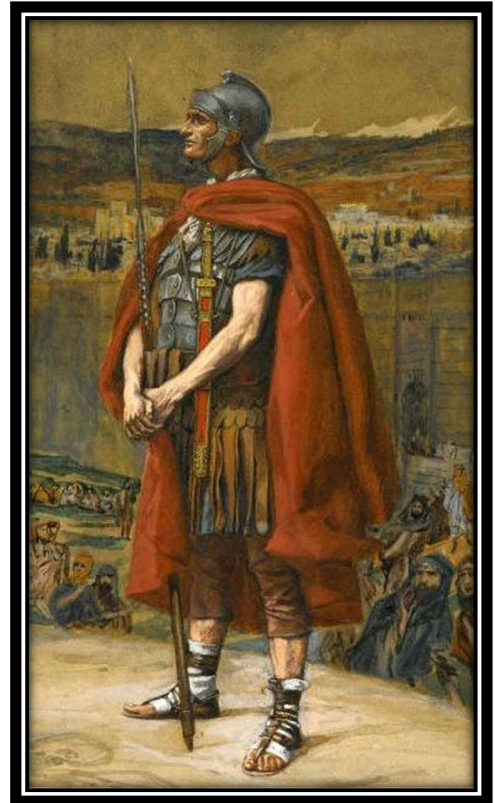
The Ghosts of Dead Centurions

I live very near the ruins of the Antonine Wall (the farthest the Romans ever advanced in Britain). In fact, I can just about make out its shape from my upstairs bedroom window.

Sometimes I walk my dog along it. And, in doing so, and particularly when ruminating upon an opinion I might be writing, for example, on some or other obscurer point of Scots property law, I occasionally wonder what exchange I could have with the ghost of a dead Roman Centurion, were I to happen upon such a phantasmagorical entity.

Perhaps he might be the son of a local magistrate back home in sunny Italy. 'Salve,' I would greet him, 'Quid agis?' And, 'While I'm here, if I may, quid juris? What would your pater familias, the magistrate, make of my opinion on this interesting point of law?'

Yet, alas, my Latin is not so good. For sure, he would raise up his gladius and chase me off his Wall like the barbaric Pict I truly am.



Suum Cuique

In this general interest article, I will discuss the role of Latin in our law today. And, I will provide a glossary of some (not all) Latin words, phrases and maxims drawn from Scots law, English law, and Roman law (and one Norman French one).

My glossary is adapted from Broom's 'Selection of Legal Maxims' (which is not Scots-specific).

I am old enough that, when I was at school, Latin was not only available as a subject of study (along with Ancient Greek and modern French and German), but moreover it was compulsory for at least a while. I myself did not study Latin all the way to any certificate exam level, preferring instead to take French. At that stage I was not sure what I would wish to study at university. Had I known it would be law, then I might have given further consideration to lengthier study of Latin.

As it is, I do recall some of my Latin lessons, albeit admittedly in very little detail (I can just about still conjugate the present tense of '**amare**', but it was rather a long time ago). And, I certainly cannot read Latin text, although sometimes I can make a fair guess at what short phrases might mean based on knowledge of Romance languages (including my French, and nowadays also Spanish, which I later studied to an extent, and which is in some ways closer to Latin).

Is a knowledge of Latin useful for law? Ought it still to be used in law? Frankly, nowadays no significant knowledge of Latin is necessary for the successful practice of law in the UK, and many very fine lawyers excel with almost none. Yet, and notwithstanding modern judicial admonition that it should be avoided (altogether, if possible), certain Latin words and phrases do still pop up now and again, e.g. in court writs, where virtually every professional litigator in our Scottish courts will be familiar with '**quoad ultra** denied', '**brevitatis causa**', and '**et separatim**'. And, for Scots property lawyers, in particular, so steeped is our Scots law in civil tradition, that again Latin is a not infrequent phenomenon, e.g. '**res nullius**' '**regalia majora / minora**', and '**pro indiviso**', to quote but a few. Moreover, since calling to the bar just over two years ago, and having since then written literally dozens of opinions (principally for solicitors), I am hard pressed to think of at least one opinion in which I did not at least use the term '**inter alia**' on at least one occasion.

Yet, necessity and utility are not the same ('**necessitas et utilitas non sunt idem**'). Thus, here are some reasons for which Latin might still be useful:—

- Historically, Latin was (much) more important to the extent that, until relatively late in the 20th century, devils preparing to call to the Scots bar were required to write a thesis entirely in Latin. Further back in history, entire legal disputes might even be settled or determined by reference to Latin maxims (some are even described as 'rules'). And, the reason for this is that knowledge of these maxims (or rules) provides insight into the jurisprudential philosophy of the judges, jurists and others who have contributed to our law over time.
- For example, many of the basic principles of justice to which we cling today are encapsulated by simple Latin maxims, e.g. '**audi alteram partem**' (the right to a fair hearing, Art.6 of the ECHR), '**nemo debet iudex in propria sua causa**' (nobody should judge his own case), or '**ad quæstionem facti non respondent iudices, ad quæstionem legis non respondent juratores**' (the judge is judge of the law, the jury of the facts).
- Use of Latin, while undoubtedly obscure to non-lawyers, nonetheless makes it clear to any reader that what is being referenced has specific legal significance. For example, where certain English words are used, these might, or might not, have a particular technical meaning, e.g. 'tenement' does, yet 'bungalow' does not — here, it is not easy to tell. Yet, by contrast, use a Latin word in bold italics, and it is immediately obvious that it means something particular (and advice should be sought).
- Even to this day, Latin remains an international language for certain professions, including lawyers. Thus, while US attorneys might use American English legal words and phrases differently, their Latin tends to reflect similar jurisprudential origin and significance to our own.

- Latin is a pithy language (sometimes), thus use of a simple brief Latin maxim can sometimes encapsulate an entire legal concept that would otherwise take much longer to explain in English, e.g. '*ipse dixit*', which is typically used as a (somewhat sarcastic) criticism of self-fulfilling authority, e.g. the expert witness who relies simply on his having been called as an expert, and on his own published opinions. '*Res ipsa loquitur*' is another.

Ought Latin still to be used in law? Democratisation and transparency tend to militate against it. It is actively discouraged by our courts. Yet, this also risks dilution of the law through a blurring of the boundaries between what is established law, on one hand, and, on the other, merely general opinion on the matter at stake — which is not to say that law is necessarily always set in stone, and in reality it seldom is (otherwise there would perhaps be little need for lawyers or legal debate / discussion), and one should also bear in mind '*communis error facit jus*'. Yet, the point is that Latin helps maintain the structural integrity of the foundation of our law by serving (a) to remind us of the tradition on which it is built, and (b) to signpost us back in time such as we can more readily research the jurisprudential views that have led us to where we stand legally today.

Should you learn Latin? As said, I do not know Latin to the extent of being able to read it outside a legal context. And, even if I did, that might actually detract from my understanding of legal Latin, given that it often connotes a particular meaning in a particular context. Yet, if one were to approach the earnest study of the language (and if one had time to do so), surely there could be no real harm in it. It would give one an advantage with legal Latin on condition that one bore in mind its context. And, as languages go, it is actually not so challenging as one might initially suppose:—

- While not an 'extinct language' in the sense that it is still used, nonetheless it is largely 'dormant' in the sense that it is not a spoken language *per se*. One is never going to have to rely on it for ordering lunch in Italy, for example. Thus, subject to certain fairly straightforward conventions, most people simply pronounce it using the phonology of their own native language. A student of Latin can learn how to pronounce it in an afternoon. By contrast, learning to pronounce French in such a way as to be comprehensible to most native French-speakers can take literally years (as I can attest).
- There is actually no single 'correct' way to pronounce Latin in any event, as its oral form altered over the centuries, e.g. Classical Latin might always render 'c' as 'k', whereas later Ecclesiastical Latin might sometimes render it as 'ch' before the vowels 'e' or 'i' (as in modern Italian). Soft / hard 'g' is the same.
- In a sense, legal Latin is (partly) a made-up language (it's sometimes called 'dog Latin'), having its original provenance in Roman law, yet having nonetheless also been supplemented over the centuries by those who were not native speakers. And, even at the height of the Roman Empire, many citizens (for example, my phantasmagorical Centurion) would not actually have spoken this way. Indeed, so cumbersome are some words that it is easy to see how Latin eventually evolved into the somewhat less tongue-twisting French, Spanish, Italian, Portuguese, Romanian etc. (all of which are, essentially, descendants of 'slang' Latin, as spoken by the imperial military, hence imported across Europe).

- Being principally an ancient language, it has a fairly small vocabulary. Some scholars estimate that knowledge of as few as about 800 base words (with their associated rules of grammar, e.g. declension of nouns and conjugation of verbs) should enable the student to read up to 90%+ of Latin texts. And, for the purposes of legal Latin, one will never need to know the Latin for words such as 'television', 'telephone' or 'fridge freezer', given these simply never existed when Latin was in at its height (albeit the Vatican has since 'invented' Latin words for them, as it does for all common modern vocabulary).
- While Latin grammar is certainly quite different from English, and arguably more complex (or arguably not, where English itself adopts some unusual grammatical rules that native speakers never even reflect upon), it is still an Indo-European language, thus relatively readily accessible and understand-able (especially if one already knows a Romance language, and perhaps especially Spanish or even Italian). And it is often less complex than some modern European languages, e.g. Latin has no word for 'the', whereas German has many (including words that combine the definitive article with one or other preposition); and, Latin, like English (yet unlike the modern Romance languages) avoids the double negative ('negative concord').
- One can always use a dictionary or glossary, if stuck, including the glossary appearing in this article.
- If using modern IT to render Latin in written form, care is apt that auto-correct does not alter the spelling to that of similar English words (which often have quite different connotations), e.g. '**et separatim**' becomes '**et separatiSm**'. And, also note the ending '-ion', common among English nouns, is often simply rendered '-io' in Latin (also common in it), e.g. 'obligation' and '**obligatio**' (yet, note the plural is '**obligationes**'). Almost always, your computer will simply just alter '-io' to '-ion' where the English word is a proximate cognate, thus you need to change it back.
- It is also apt to be aware of potential 'false friends', e.g. 'obligation' and '**obligatio**', as said, which mean similar, albeit not entirely the same ('**obligatio**' has more of a sense of contractual bond, from Latin '**ligare**', meaning 'to bind' or 'to tether').
- And, for example, '**quicquid**' does not refer to 'easy money', but rather simply means 'whatever', 'whoever', etc.

The Glossary

This is far from a complete list. Moreover, I have based it on part of the work by English legal writer, Herbert Broom (originally published in 1845). Thus, it is not specifically Scots in nature. Some of the maxims appearing here may not have application in Scots law (nor indeed in any law any longer). However, my purpose is merely to serve to illustrate, or at least to give a flavour of, the utility of legal Latin as an aid to understanding, as said, the jurisprudential philosophy of the judges, jurists and others who have contributed to our law over time, much of which will be common to, and recognisable by, lawyers across a range of jurisdictions.

Nor have I engaged in exposition of these maxims in their larger context. What I have done is simply to take Broom's list of primary maxims as it appears at the beginning of his work, and I have tried to render these with modern translations into English, sometimes quite literal, other times more figurative yet hopefully in keeping with the original sense of their use. Broom's work actually contains many more (perhaps somewhat 'lesser') maxims than this, as given in a second list appearing after his first.

For those who wish to delve deeper into this subject, and to explore these maxims in their larger context, Broom's work is available free of charge online from <https://archive.org>. And, other works are available for a more Scots-specific perspective, where some relatively common and well-known Scots legal Latin is conspicuously absent from this article, and from Broom, e.g. '*tantum et tale*'.

Rules based on Public Policy

Salus populi est suprema lex

The people's welfare should be paramount to the law

Necessitas inducit privilegium quoad juris privata

Refers to the right to trespass where necessary to avoid harm, and the risk to property is lesser

Summa ratio est quæ pro religione facit

The best rule is that which promotes religion

Dies Domminicus non est juridicus

Sunday is not a legal day

Maxims relating to the Crown

Rex non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem

The King is under nobody, yet is under God and the law

Rex nunquam moritur

The King / state never dies

Non potest Rex gratiam facere cum injuria et damno aliorum

The King cannot favour one subject to the injury of others

Nullum tempus occurrit Regi

The King is subject to no time limit

Quando jus Domini Regis et subditi concurrunt, jus Regis præferri debet

When the King's right and his subject's conflict, the King's takes precedence

Roy n'est lié per ascun statute, si il ne soit expressement nosmé (Norman French)

The King is not bound by statute unless named explicitly

Nemo patriam in qua natus est exuere nec ligeantiæ debitum ejurare possit

Nobody can renounce the country of his birth, or refuse service to it

Judicial Office

Boni judicis est ampliare jurisdictionem

A good judge takes an expansive approach to his jurisdiction (in order to render justice)

De fide et officio judicis non recipitur quæstio, sed de scientia sive sit error juris sive facti

The judge's good faith and purpose are beyond reproach, but his judgment is subject to challenge for error of law or fact

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est

He who acts upon the judge's order does so not for improper motive, but out of duty

Ad quæstionem facti non respondent judices, ad quæstionem legis non respondent juratores

Judges do not answer questions of fact, and juries do not answer questions of law

In præsentia majoris cessat potentia minoris

Minor power yields to superior power in its presence

Administration of Justice

Audi alteram partem

Refers to the natural law principle requiring the court to hear both sides to a dispute

Nemo debet judex in propria sua causa

Nobody may be the judge of his own case

Actus curiæ neminem gravabit

The court should prejudice nobody (i.e. is under a duty to correct its own mistakes)

Actus legis nemini est damnosus

The law should prejudice nobody

Executio juris non habet injuriam

Refers to the notion that, where an action is raised before a court of competent jurisdiction yet fails, this does not give rise to another cause

In fictione juris semper sequitas existit

Refers to the notion that an established legal fiction e.g. age of criminal responsibility (as opposed to one made up for convenience) always holds good

Cursus curiæ est lex curiæ

The court's custom and practice are binding law, i.e. the court regulates its own procedure

Consensus tollit errorem

Consent obviates errors in process,

	e.g. entering process cures defect in service of a writ
<i>Communis error facit jus</i>	Refers to the notion that common opinion (or error) constitutes law
<i>De minimis non curat lex</i>	The law does not concern itself with trifles
<i>Omnis innovatio plus novitiate perturbat quam utilitate prodest</i>	The disturbance caused by innovation outweighs its utility

Rules of Logic

<i>Ubi eadem ratio ibi idem jus</i>	Refers to the notion that law is based on reason, and not merely on precedent
<i>Cessante ratione legis cessat ipsa lex</i>	When the reason for a law ceases to exist, so too does that law itself
<i>De non apparentibus et non existentibus eadem est ratio</i>	Refers to the notion that a case should identify the law upon which it proceeds, otherwise the court need not determine it
<i>Non potest adduci exceptio ejusdem rei cujus petitur dissolutio</i>	It is not competent to rely on proceedings in bar of those same proceedings
<i>Allegans contraria non est audiendus</i>	The court will not entertain contradictory claims by the same party
<i>Omne majus continet in se minus</i>	The whole contains its lesser parts, e.g. a charge of murder also connotes culpable homicide / manslaughter
<i>Quod ab initio non valet in tractu temporis non convalescit</i>	A poor beginning does not improve over time

Fundamental Legal Principles

<i>Ubi jus ibi remedium</i>	Where there is right, there is remedy
<i>Quod remedio destituitur ipsa re valet si culpa absit</i>	Whatever lacks remedy is nonetheless valid if there if the party bears no fault
<i>In jure non remota causa sed proxima spectatur</i>	The law looks to the closest causal explanation
<i>Actus Dei nemini facit injuriam</i>	An Act of God is not a sound basis of claim

Lex non cogit ad impossibilia

The law should not require anybody to perform the impossible

Ignorantia facti excusat, ignorantia juris non excusat

Ignorance of facts is a defence, ignorance of law is not

Volenti non fit injuria

Refers to the principle of assumed risk

Nullus commodum capere potest de injuria sua propria

Nobody should profit from his own wrongdoing

Acta exteriora indicant interiora secreta

Outward behaviour gives away inner secrets

Res ipsa loquitur

The facts speak for themselves

Actus non facit reum nisi mens sit rea

An act alone does not render criminal guilt, unless it was intentional

Nemo debet bis vexari pro una et eadem causa

Nobody should be tried twice for the same matter

Property Maxims

Qui prior est tempore potior est jure

Whoever is first in time has the best right

Sic utere tuo ut alienum non lædas

One should use one's own property such as not to harm others

Cujus est solum ejus est usque ad cælum (et ad inferos)

Whoever owns the soil also owns that land all the way to Heaven (and Hell)

Quicquid plantatur solo solo cedit

Whatever is attached to the soil becomes part of it

Domus sua cuique est tutissimum refugium

Everybody's house is his castle

Alienatio rei præfertur juri accrescendi

The law favours alienation over accumulation

Cujus est dare ejus est disponere

Whoever has the right to give has the right to give away

Assignatus utitur jure auctoris

Assigned property includes the assignor's rights

Cuicunque aliquis quid concedit concedere videtur et id sine quo res ipsa esse non potuit

The grantor grants everything without which the grant would be useless

Accessorium non ducit sed sequitur suum principale

The incidental passes by grant of the principal, but the principal does not pass by the grant of the incidental

Licet dispositio de interesse futuro sit inutilis tamen fieri potest declaratio præcedens quæ sortiatur effectum interveniente novo actu

While a grant of future interest may be ineffective, this is curable by declaration upon an intervening event

Maxims relating to Marriage & Succession

Consensus, non concubitus, facit matrimonium

Consent, not intercourse, constitutes marriage

Hæres legitimus est quem nuptiæ demonstrant

Whoever is born in wedlock is a legitimate heir

*Nemo est hæres viventis
Hæreditas nunquam ascendit*

Nobody is heir to anybody still alive
Inheritance should never pass upwards (to the older generation)

Persona conjuncta æquiparatur interesse proprio

Blood relatives represent one's own interests

Interpretation of Statutes & Other Instruments

Leges posteriores priores contrarias abrogant

Later laws replace older laws where they contradict each other

Nova constitutio futuris formam imponere debet, non præteritis

Statute should not have retrospective effect

Ad ea quæ frequentius accidunt jura adaptantur

Laws adapt to the most common cases

Benignæ faciendæ sunt interpretationes propter simplicitatem laicorum ut res magis valeat quam pareat, et verba intentioni, non e contra, debent inservire

The law favours simple interpretation which given effect to intention as opposed to the literal meaning of words

Argumentum ab inconvenienti plurimum valet in lege

Arguments arising from inconvenient events may be of value

Ex antecedentibus et consequentibus fit optima interpretatio

The best interpretation refers to events before and after

Noscitur a sociis

An ambiguous word should be interpreted by reference to its surrounding words

Verba chartarum forties accipiuntur contra proferentem

Ambiguity should be interpreted in favour of the other party

Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur

Latent ambiguity may be interpreted by reference to evidence

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est

Where words are unambiguous, they should not be interpreted contrary to their meaning

Certum est quod certum reddi potest

When something can be made certain, it should be made certain, e.g. by reference to evidence

Utile per inutile non vitiatur

Utility takes precedence over the useless

Falsa demonstratio non nocet cum de corpore constat

False description alone does not void a contract where intention is nonetheless clear

Verba generalia restringuntur ad habilitatem rei vel personæ

General words should be confined to the character of what or whom they describe

Expressio unius est expressio alterius

Specifying one thing excludes the other

Expressio eorum quæ tacite insunt nihil operatur

Tacit implication from expression signifies nothing

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur

Words to which reference is made have the same effect throughout

Ad proximum antecedens fiat relatio, nisi impediatur sententia

What comes before relates to what follows unless contrary to it

Contemporanea exposition est optima et fortissima in lege

The best explanation of a law is its most recent

Qui hæret in litera hæret in cortice

Whoever clings to the letter of the law loses its spirit (gets stuck in its bark)

Contracts

Modus et conventio vincunt legem

Custom and practice take precedence over strict legal interpretation

Quilibet potest renunciare juri pro se introducto

Anyone may renounce a law made for his own benefit

Qui sentit commodum sentire debet et onus

Whoever enjoys the benefit should also bear the burden

In æquali jure melior est conditio possidentis

Where parties otherwise have equal rights, the law favours whoever has possession, i.e. 'possession is nine tenths of the law'

Ex dolo malo non oritur actio

No right of action may have its basis in fraud

Ex nudo pacto non oritur actio

A contract absent price is void (does not apply in Scotland)

Caveat emptor

Buyer beware

Quicquid solvitur, solvitur secundum modum solevantis, quicquid recipitur, recipitur secundum modum recipientis

Whatever is paid / received, is thus received in accordance with its recipient's intention

Qui est alium facit per seipsum facere videtur

Whoever acts through another acts himself

Respondeat superior

Refers to vicarious liability

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur

Refers to subsequent ratification by reference to prior authority

Nihil tam conveniens est naturali æquitati quam unumquodque dissolve eo ligamine est

A contract should only be set aside by an authority as high as that which created it

Vigilantibus, non dormientibus, jura subveniunt

The law aids whoever remains vigilant, not those who sleep, i.e. 'you snooze, you lose'

Actio personalis moritur cum persona

A right of action dies with whoever possessed it

Evidence

Optimus interpret rerum usus

The best interpretation refers to custom and practice

Cuilibet in sua arte perito est credendum

Refers to the expert witness's authority to give opinion on his area of expertise

Omnia præsumuntur contra spoliatores

Presumption against the wrongdoer

Omnia præsumuntur rite et solemniter esse acta

Presumption that, where a procedure has been performed in a certain way by custom practice in the past, then it has been performed thus in the instant case

Res inter alios acta alteri nocere non debet

A transaction between strangers should not affect a third party

Nemo tenetur seipsum accusare

Nobody should accuse himself, i.e. refers to the right not to incriminate oneself