

The Shetar's Effect on English Law - A Law of the Jews Becomes the Law of the Land

English Law, like the English language, is an amalgam of diverse cultural influences. The legal system may fairly be seen as a composite of discrete elements from disparate sources.

By c. 900 the Vikings had ravaged northern France to such an extent that there was little plunder to be found along the rivers which had formed their major avenue of attack. Ironically it was a Danish Army (under a leader called Hrolf or Rolf in some chronicles), which arrived in 911 to pillage the lower Seine Valley that created the Vikings' only lasting impact on western Europe.

Hrolf attempted to besiege Chartres without success, but his army was such a threat to the Seine valley, that Charles, King of the Franks, negotiated a treaty at St. Clair-sur-Epte.

The Normans' love of the sea and their dynamism led to commercial prosperity.

In Normandy William 'the Bastard' succeeded to the dukedom at the age of seven or eight. For the next twelve years of his minority the dukedom was in a constant state of anarchy. The rebellion of the barons came to a head in 1047, when the whole of lower Normandy rose against him. With the help of his feudal overlord Henry I of France, William, aged twenty, crushed the revolt on the field of Vales Dunes, near Caen. The castles of the rebellious barons were razed and the nobles never challenged the duke's power again.

The **Norman conquest of England** began in 1066 [AD](#) with the [invasion](#) of the [Kingdom of England](#) by the troops of [William, Duke of Normandy](#) ("William the Conqueror"), and his victory at the [Battle of Hastings](#). This resulted in [Norman](#) control of England, which was firmly established during the next few years.

Boren: Among the early Normans was the clan More. They changed their name to St. Clair. William the Conqueror, invaded and conquered England with the aid of his fellow Normans. Nine members of the St. Clair family accompanied the Conqueror and were present at the Battle of Hastings, for which service they were rewarded with extensive grants of land in England. The anglicized the spelling of their name from St. Clair to Sinclair.

The Norman Conquest was a pivotal event in [English history](#) for several reasons. It largely removed the native ruling class, replacing it with a foreign, French-speaking monarchy, aristocracy and clerical hierarchy. This in turn brought about a transformation of the [English language](#) and the culture of England. By subjecting the country to rulers originating in France it linked England more closely with continental Europe, while lessening [Scandinavian](#) influence, and set the stage for a rivalry with France that would continue intermittently for more than eight centuries. It also had important consequences for the rest of the [British Isles](#), paving the way for

further Norman invasions in [Wales](#) and [Ireland](#), and the extensive penetration of the aristocracy of [Scotland](#) by Norman and other French-speaking families.

William I of England ([1027](#)^[1] – [September 9, 1087](#)), better known as **William the Conqueror** (*French: Guillaume le Conquérant*), was [Duke of Normandy](#) from 1035 and [King of England](#) from [1066](#) to his death. William is also referred to as "William II" in relation his position as Duke of Normandy, and particularly before the conquest of [England](#), he was known as "William the Bastard" because of the illegitimacy of his birth.^[2]

To claim the English crown, William invaded England in 1066, leading an army of [Normans](#) to victory over the [Anglo-Saxon](#) forces of [Harold Godwinson](#) (who died in the conflict) at the [Battle of Hastings](#), and suppressed subsequent English [revolts](#) in what has become known as the [Norman Conquest](#).^[3]

His reign, which brought Norman culture to England, had an enormous impact on the subsequent course of [England in the Middle Ages](#). In addition to political changes, his reign also saw changes to [English law](#), a programme of building and fortification, changes to the vocabulary of the [English language](#), and the introduction of continental European [feudalism](#) into England.

After the conquest of 1066, the Normans imposed on the English an efficiently organized social system that crowded out many Anglo-Saxon traditions. The Jews, whom the Normans brought to England, in their turn contributed to the changing English society. The Jews brought a refined system of commercial law: their own form of commerce and a system of rules to facilitate and govern it. These rules made their way into the developing structure of English Law

Several elements of historical Jewish legal practice have been integrated into the English legal system. Notable among these is the written credit agreement - shetar, or starr, as it appears in English documents. The basis of the shetar, or "Jewish Gage," was a lien on all property (including realty) that has been traced as a source of the modern mortgage. Under Jewish law, the shetar permitted a creditor to proceed against all the goods and land of the defaulting debtor. Both "movable and immovable" property were subject to distraint.

In contrast, the obligation of knight service under Anglo-Saxon law barred a land transfer that would have imposed a new tenant (and therefore a different knight owing service) upon the lord. The dominance of personal feudal loyalties equally forbade the attachment of land in satisfaction of debt; only the debtor's chattels could be seized. These rules kept feudal obligations intact, assuring that the lord would continue to be served by his own knights. When incorporated into English practice, the notion from Jewish law that debts could be recovered against a loan secured by "all property, movable and immovable" was a weapon of socio-economic change that tore the fabric of feudal society and established the power of liquid wealth in place of land holding.

The Crusades of the twelfth century opened an era of change in feudal England. **To obtain funds from Jews, nobles offered their land as collateral.** Although the Jews, as aliens, could not hold land in fee simple, they could take security interests of substantial money value. **That Jews were permitted to hold security interests in lands** they did not occupy expanded interests in land beyond traditional tenancies. The separation of possessory interest from interest in fee contributed to the decline of the rigid feudal land tenure structure.

At the same time, the strength of the feudal system's inherent resistance to this widespread innovation abated. By 1250, scutage had completely **replaced feudal services: tenant obligations had been reduced to monetary pay- ...**

The tax of **scutage** or **escuage**, in the law of [England](#) under the [feudal system](#), allowed a knight to "buy out" of the military service due to the Crown from the holder of a knight's fee. Its name derived from the knightly shield (in Latin: *scutum*).

The term sometimes loosely applies to other pecuniary levies on the basis of the [knight's fee](#).

Traces of the shetar procedure survived for centuries in English law. A sealed debt continued to be dischargeable only by a deed of release or by cancellation or destruction of the debt instrument. The practice of debt cancellation by requiring return of *pes* of the chirograph continued from 1194 until its abolition in 1833.

Most important, **the encumbrance of real property permitted by the Jewish Law of shetar** had been adopted by English law. Bonds contained the traditional Hebrew formula pledging "all my goods, movable and immovable." **Creditors had the statutory right to execute against the debtor's land. No longer were personal obligations and rights in land rigidly separate.** Even while Edward was divesting himself of his Jewish moneylenders, he made their legacy permanent. A small but **significant principle of Jewish Law, wherein personal debt superseded rights in real property** had become the law of the land.

The author traces the two instrument (debt & release) mortgage to its origin as a device to avoid *asmakhta*, a Jewish principle invalidating penalty clauses. Under that doctrine, Jewish money lenders were forbidden to exact a penalty conditioned on the future failure of the debtor's obligation. If a conveyance involved *asmakhta*, it was void. Invalidation as *asmakhta* could be avoided if all obligations were incurred at the time of the original transaction. **Land was seizable as security only in the creditor went into possession at the time of the loan:** For this reason the debt instrument included an immediate conveyance of the land that was to serve as security against default. A second instrument, the acquittal, would release the security and reconvey the land to its original owner if the debt were paid on or before its due date. The entire **written obligation (shetar) remained in the hands of a third party** for the duration of the debt. The document proved that the debt existed and clarified the rights and duties of the parties in case of default.

Rabinowitz finds in these and other early Jewish **devices** for avoiding *amishka* both the structural and substantive **roots of the English mortgage**, and later developed equitable right of redemption. Compare ... *Leviticus 25:29*: "And if a man sell a dwelling house in a walled city:

then he may redeem it within a whole year after it is sold; for a full year shall he have the right of redemption.

"The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of *land* from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services ..."

(Jews liquidation of land obligations broke down rigidity of feudal land tenure and facilitated transfer of land to new capitalist class.)