

Nuances of immunity and permitted violence:
interpreting quotations with glosses and commentary from the *cairde*-text

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Important legal sources on *cairde*:

Bretha Cairdi (Treaty Judgements):

MS H 3.18 (now cat. 1337), TCD = *CIH*791.5-792.23 & *CIH* 807.17-809.2.

Further material on *cairde*, possibly from *Bretha Cairdi*:

MS Rawl. B 506, Bod. Lib. Oxford = *CIH*114.8-116.23.

Of great relevance in respect of legal procedure is the text *Slán n-aitire cairde* (The immunity of a hostage-surety in a treaty), partially translated into German by R. Thurneysen, *Die Bürgschaft im irischen Recht*, 32-33; version A at *CIH*574.18-35 and version B at 892.39-893.10, MS H 3. 18.

Degrees of *cairde*:

1. *Cairde n-airdbide* (limited treaty)
2. *Cairde n-imdilsí críchi* (treaty of mutual forfeiture within territory)
3. *Cairde feine* (treaty of freemen)

Type of <i>cairde</i>	<i>Cairde feine</i> (treaty of freemen)	<i>Cairde n-airdbide</i> (limited treaty)	<i>Cairde n-imdilsí críchi</i> (treaty of mutual forfeiture within territory)
Payment for violation	wergild & honour-price	only restitution, a life for a life	any freeman is forfeit in the foreign territory
Enforcement	<i>aitire</i> (hostage surety)		

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Types of offences committed despite a *cairde*:

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| 1. Slaying | 5. Rape of women |
| 2. Taking plunder | 6. Arson |
| 3. Stealing | 7. Satire |
| 4. Murder, i.e. theft-slaying by night | |

Immunities in *cairde*:

Fer frithgona (a man who slays in self-defence) one of the following persons:

- *Fer futhbibil* (a man of secret departure)
- *Fer cairde i mesc fiallaig escairde* (a man in the *cairde* who is in the midst of a *fián*-band, [the latter one being] outside of the treaty)
- *Fer dofudmenat anfolad* (a man whom bad qualities hold fast); i.e. an outlaw?

Extracts of text:

Co ndentar cairde rig? toingthi in rig 'ænur híc ⁊ fuaslucud naitire; ni hedh tongar and na foruastar , cid foruastar, a icc.

How is a king's *cairde* made? The king swears it on his own, [namely] payment and releasing an *aitire* [hostage-surety]. What is not sworn is that violence may not be committed, but rather, if it is, compensation will be paid. [*CIH*791.35-36]

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Cair, cis *lir* cairde docuisin? Ní, a *tri* : cairde nairdbide .i. *ima* mbí airdebe cintechn .i. aithgin ⁊ anim dar eis araile, ⁊ cairde nimbilsí críchi .i. na roimthighed on tuaith doní an cairde a tuaith a ceili ar omon *gait* ⁊ braite *innte*, ⁊ cairde feine .i. cairde doni cairde iter na feineibh, beim nderb forsa saighthibh a fiachaib .i. cinne deimen foma fiachaib *innsaighter ann*.

A query: how many [types of] *cairde* are there? Not difficult: three. Limited *cairde*, (concerning which there is a definite 'cutting away'), i.e. restitution or a life for a life; and *cairde* of mutual forfeiture of territory (i.e. that there is no going round on the part of the people that makes the *cairde* among the other people for fear of theft and plundering among them), and a *cairde* of freemen, i.e. a *cairde* which makes an alliance between freemen (a 'certain cutting' inflicted on suings among debts, i.e. a definite determination concerning the debts which are sued there). [*CIH*792.5-9]

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Cair, cis *lir* cinaid fofechat hi cairde. Ní *ansae*, a .uii.: guin ⁊ brait ⁊ gait ⁊ turorguin, .i. taid-orgain i naidche, ⁊ forchorban ⁊ forloscad ⁊ ær.

A query: how many offences do they commit in a *cairde*? Not difficult, seven: slaying, and taking plunder, and stealing, and murder (i.e. 'theft-slaying by night'), and rape of women, and arson, and satire. [*CIH*791.5-6]

Enforcement of claims when a *cairde* is breached:

1. *Aitire & muiredach*

The *muiredach* (possibly accompanied by a troop) crosses over the border and seeks out the *aitire*. He states the following:¹ *‘Rombid-sa fiach lat’* (Let me have what is owed from you.) The *aitire* answers: *‘Roga’, ol inn aitire, ‘dochum na fine fodruich’* (‘I shall go’, says the *aitire*, ‘to the kindred that has committed violence against you.’) Both go to the kindred and when they reach them they ask: *‘inn biat feich? Manim bet-ni, iadfaimme for n-aitire’* (‘Shall we have what is owed from you? If we do not, we shall close in on your guarantor.’) Ideally, the kindred is ready to make the agreed payment and answers: *‘ni ricfaid a less, rodbia feich’* (‘You will not need to: you shall have what is owed.’) The next step would be to forward payment and perhaps, to offer adequate hospitality to the *cairde* friends. However, if the kindred refuses to pay even after the *aitire* prompts them, the *muiredach* takes the hostage-surety with the statement: *‘dlegar duit-si dul lium-sa’* (You are obliged to go with me.)

Compensation of the *aitire* in customary law:

Caite a sslan na *aitire*? .i. a fomeilt γ a *imluath* γ a *gnim*, γ log .iii. cumal niath iar ndithmaim .i. logh cimedha, ar is cimidh ind *aitiri* iar ndithmaim fuirri. ascomræ, ar atrean-si huile don cach fristét, amail rongab *aitire*, ar is i cairde citroibi *aitire* luigi.²

What is the compensation of the *aitire*-surety? i.e. [the price of] his maintenance and [of] his disturbance and [of] his [missed] work, and the price of the seven *cumals* of a warrior after forfeiture, i.e. the [ransom] price of a captive, for the *aitire*-surety is a captive after falling forfeit, [and double of?] what he has paid, for he pays all to each person against whom he acts as surety, as it is with an *aitire*-surety of a peace treaty, for it is in respect of a peace treaty that there first was an *aitire*-suretyship of an oath.³

Compensation of the *aitire* in treaty law:

Slan cairde .i. ma dollece nech forsín aitaire fiachu cairdi do er[aic] (?) dia chinn, is rath cin athchor sin forsán fine mana errither fo cétoir cona meth coir, nibi rath for ceile a meth-sin ond flait.⁴

The compensation of a *cairde* – that is, if anyone should cause the *aitire* to pay the fines [for a breach of] a *cairde* on his behalf, that [becomes] a fief [for which food rent is due from] the kindred that is not

¹ CIH892.41-893.8.

² CIH597.26-29.

³ R. Thurneysen, *Die Bürgschaft im irischen Recht, Abhandlungen der preussischen Akademie der Wissenschaften* (Berlin, 1928), § 67, 24-25; R. C. Stacey, “Berrad Airechta: an Old Irish Tract on Suretyship”, in Charles-Edwards, Owen & Walters (eds.) *Lawyers and Laymen – Studies in the History of Law presented to Professor Dafydd Jenkins on his seventy-fifth birthday* (Cardiff, 1986), § 67, 223.

⁴ CIH919.6-8; R. C. Stacey, *The Road to Judgment – From custom to court in medieval Ireland and Wales* (Philadelphia, 1994), 91.

(cannot be) returned unless [the fines are] paid immediately with their proper doubling-fine; that doubling-fine [itself] is not [considered as] a fief on a client from the lord.⁵

2. *Aire échta*

Aire échta, cid ara n-eperr? Arindí as n-aire cóicir **fácabar fri** dénum n-échta i cairddiu co cenn mís do dígail enechruccai túaithe dia ndéntar dédenguin duini. Mani dernat co cenn mís dotiagat for cairdde ná[d] lenat a lepthai cucai anall. Cia rogonat doini din chairddiu in cóicir cétna[e] ascomren aire échta tara cenn, na[d] té(i)t tír ná humachaire ind acht lestra[i] lóge bó. Beirthius dano dia n-airitiu(th) sechtair co cenn cairdi [i]ar lín a chomairce 7 a charat.⁶

MacNeill's translation:

The *aire échta*, why is he so called? Because he is a leader of five who **is left to do** feats of arms in [a neighbouring territory under] treaty-law for the space of a month, to avenge an offence against the honour of the *túath*, one of whose men has lately been slain. If they do not (avenge this) within a month, they come under treaty-law, so that their beds do not follow him from without. If they kill men within treaty-law, the same five, the *aire échta* must pay on their behalf, provided that land or bronze of a cauldron be not paid for it, but vessels to the value of a cow. He brings them out then to be ... till the expiration of treaty-law, (taking them) on the number of his protection and (that) of his friends.⁷

McLeod's translation:

The *aire échta*, why is he so called? Because he is the leader of a 'group of five' [i.e. of a kin-group] which **is excluded from** committing slaughter under a treaty until the end of a month, to avenge the dishonouring of a kingdom from which a person has recently been slain. Provided they do not do so before the end of the month, they go [to wreak vengeance] on the treaty-kingdom and their protection does not lie with him there. If the same five should kill a person covered by the treaty, the *aire échta* pays on their behalf. Neither land nor copper objects go for it [but] vessels of a cow's value. However, he brings them out [with him] on their way to the border of the treaty-kingdom as the [lawful] number of his protection and his retinue [i.e. while they are within his own kingdom].⁸

⁵ R. C. Stacey, *The Road to Judgment*, 91.

⁶ D. A. Binchy, *Críth Gablach*, Mediaeval and Modern Irish Series vol. XI, Dublin Institute for Advanced Studies (Dublin, 1941), lines 358-66, 14-15; *CIH* 566.34-9.

⁷ E. MacNeill, *Ancient Irish Law: the Law of Status or Franchise*, Proceedings of the Royal Irish Academy 36 C, (Dublin, 1923), 297-8.

⁸ N. McLeod, 'The Lord of Slaughter', in *The Land Beneath the Sea*, The Foundation for Celtic Studies, (University of Sydney, 2013), 110.