



A Lexicon of Medieval Nordic Law

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Appendix E: Kinship

The concept and institution of kin (OSw, ODan, OGu, ON *kyn*, OSw, ODan *æt*, ON *ætt*), the (extended) family, was of fundamental importance in the medieval Nordic society; socially, economically and legally. Kinship (ON *frændsemi*, *skyldskapr*), the state of belonging to a kin, was constituted by birth. Children born in lawful wedlock belonged equally to the father's and the mother's kin, although the agnatic kinship seems to have been considered more important. Children born out of wedlock and other illegitimate children had an inferior legal status, especially with regard to inheritance.

Kinship was measured in two ways. In the inherited ON system persons equally distant from a common ancestor, numbered in generations, belonged to the same *kné* (knee). First cousins belonged to the 1st knee, sixth cousins belonged to the 6th knee. According to the canonical system, which was introduced in Norway by bishop Grimkjell, the counting started with brothers and sisters: They were related in the 1st degree, sixth cousins in the 7th degree. The rule in GuL, chapter 24, allows for marriage between sixth cousins, but prohibits marriage between persons more closely related. This corresponds to the rules of the other Norwegian Church Laws (*Frostuping*, *Eiðsifaping* and *Borgarþing*). We should have expected a wording 'sixth knee and seventh degree', but here 'knee' and 'degree' are used synonymously, either erroneously or deliberately, see Hertzberg 1895, 350.

The legal implications of kinship were manifest in three respects: 1) the duty of mutual help, protection and responsibility in case of assault or violation from outside; 2) guardianship for minors and persons without legal capacity; and 3) obligations to support family members who could not take care of themselves, i.e. children, old, sick and disabled persons (ON *ómagar*). In all three respects the kin was collectively responsible. It follows from (1) that this also applies to violations committed: the kin of the guilty person had to pay compensation to the kin of the aggrieved person.

In social and economic respects kinship was the basis for rights of inheritance. The positions of members of the kin varied according to distance/proximity (to the deceased). Closer relatives usually took precedence over more distant ones with respect to rights and duties. Gender played a role: men (sons) inherited twice as much as women (daughters), and only men were allowed to give women in marriage (ON *festa konu*). In Sweden women's and men's land brought to the marriage was kept apart during marriage. If no children were produced the land went back to where it came from. Odal right was involved in purchase and sale of land. If inherited land should be sold, members of the seller's kin had a right of pre-emption. To keep inherited land within the kin was an overriding concern, and usually men had precedence over women although they belonged to the same knee.

On the function of kinship in general, see also Vogt 2010, 9–25 with further references. On the function of kinship in practice, see also Larsson 2010, 95–108, 115–17, 140–50, 176–202, 234–37; 2012.

Refs: Helle 2001, 182; Hertzberg 1895 s.v. *kné*; KLNLM s.v. *ætt*; Larsson 2010; 2012; Robberstad 1981, 334–36; Vogt 2010, 9–25.

