



Rural Disputes Conference 2026

9 September 2026

Meet the speakers



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Scene setting

We are going to look at some of the disputes experienced by the ShepWedd Estate in the last year and covered in the A-Z, and turn to you, our audience, and you, our panel, to help us resolve them. Our aim is not to turn you into legal experts but to help you:

- spot the warning signs that a dispute may be brewing;
- recognise where problems tend to arise;
- understand the practical options for resolving disputes; and
- know when specialist advice might be needed.

Throughout today's session I would encourage you to participate, challenge us and share your experiences.





Let's take a quick vote

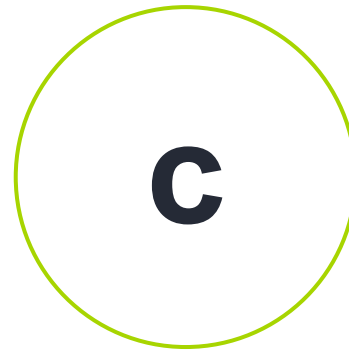
Audience Poll – Who causes more disputes....



Neighbours



The public



Family member



Business partners



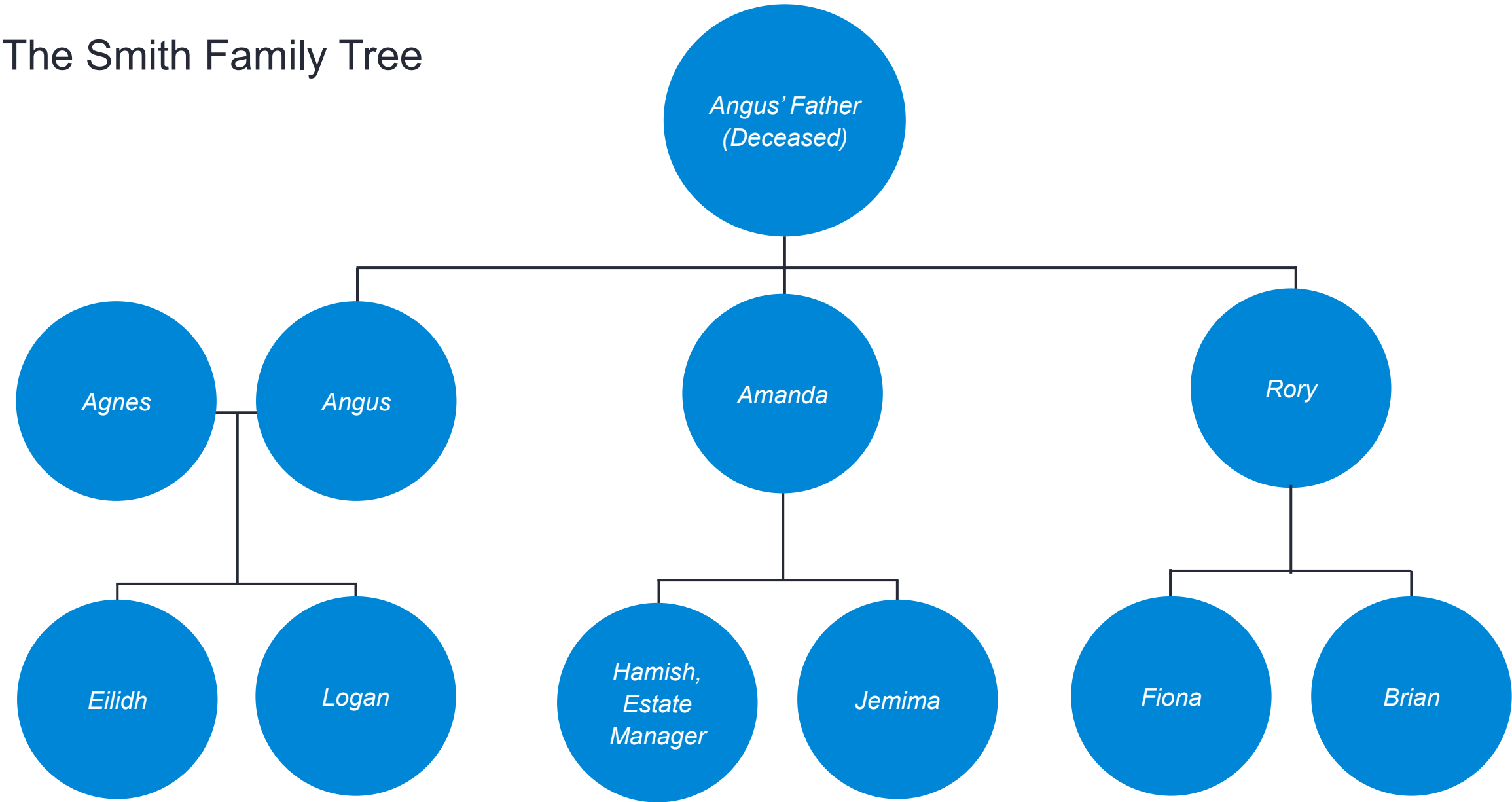
Tenants

The disputes

- **Chapter 1:** Disputes with neighbours and access takers
 - **Chapter 2:** Disputes with tenants
 - **Chapter 3:** Disputes with third parties
 - **Chapter 4:** Inter-family disputes
-
- What was the warning sign?
 - And could this have been avoided?



The Smith Family Tree





A is for Access



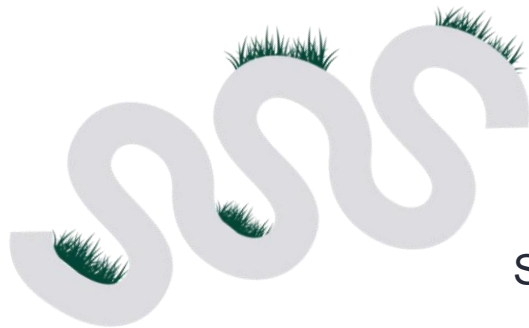
G is for Gates



N is for Neighbours



R is for Right to Roam



S is for Servitudes

Dispute 1: The locked gate

Chapter 1

The locked gate

- Delivery drivers using Estate driveways as a shortcut to the neighbouring estate
- The estate manager locked an existing gate and gave the neighbour a key
- Delivery drivers have stopped – but the neighbours are now unhappy
- Local rambling club is complaining; social media posts allege the estate is blocking the right to roam
- A local Tiktoker claims that they cannot livestream from the estate's ruins
- Uncle Angus is adamant that the lock should stay



Let's take a quick vote

Audience Poll - Who thinks the estate should....



a

Remove the lock

b

Leave the lock

c

Negotiate

d

Call their lawyer
immediately

e

Go straight to court

Creation of servitude rights

The Law

- **Private Servitude Rights:**
 - A right running with the land that allows one landowner to do something on another landowner's land such as using a neighbour's path or run piping or cabling through it
 - Can be created in many ways: written in deed, implied or via positive prescription, or in some cases, necessity.
- **Right of responsible access:**
 - Statutory right for the public to **walk or cycle** across private land, or stay on land for picnicking etc, provided that they act responsibly
 - Better known as a "right to roam" - Land Reform (Scotland) Act 2003

Prescription and limitation

Section 3: Prescription and Limitation (Scotland) Act 1973

- continuously
- openly
- peaceably
- without judicial interruption
- for a period of 20 years
- “as of right” - not merely with the consent or tolerance of the landowner



Audience

Dispute 1: The Locked Gate

Servitudes

- free from “unreasonable obstruction”.
- facts and circumstances specific
- Gates cannot not cause a material interference or inconvenience to the average person.





Yes

No

It
depends...



Dispute 1: The Locked Gate

The right to roam

- Gates may be installed for legitimate land management (e.g. livestock control, crop protection)
- Gates **must not** be locked or designed to prevent public access
- Obstructions or barriers whose sole purpose is to deter responsible access are prohibited (**s.14**)
- Local authorities may investigate and issue enforcement notices (**s.28**)

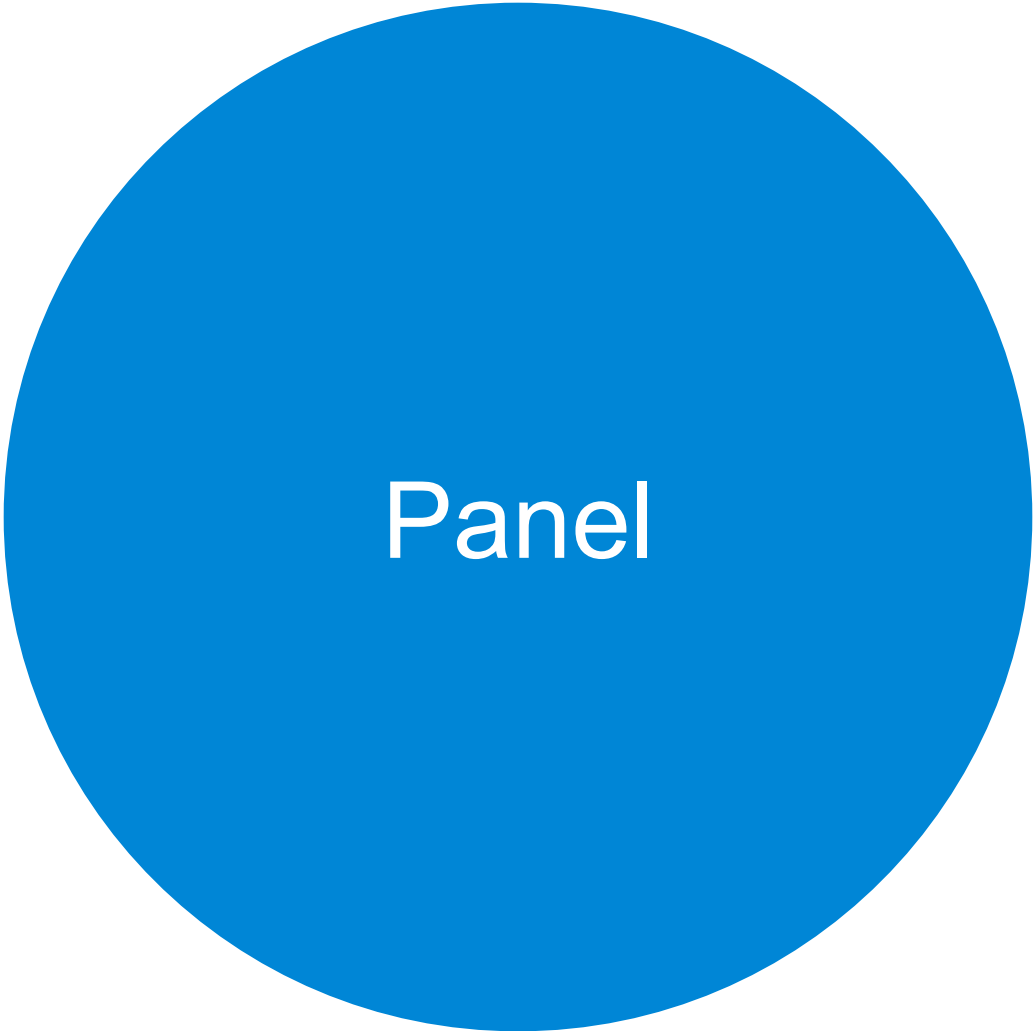


Dispute 1: The Locked Gate

Case Law

- ***Drury v McGarvie 1993 SC 95***
 - Elderly proprietors argued installed gates too heavy
 - Objective test: can an average person open the gate?
 - Locked gates acceptable if a key provided to neighbours
- ***Skene v Braveheart Hotels Ltd [2021] SC DUN 25***
 - Gates at Fernie Castle for guest safety; heavy gates
 - Reaffirming of objective test in *Drury*
 - Servitudes attach to property, not personal circumstances
- ***Renyanan Stahl Anstalt v Loch Lomond & Trossachs National Park Authority [2018] CSIH 22***
 - Public access to National Park blocked by signs and locked gates
 - Access rights must be freely exercisable without reliance on keys or codes
 - Gates must support the statutory right to roam





Panel





T is for Trees



N is for Neighbours



N is for Natural Capital

Dispute 2 – The escaped sheep

Chapter 1

The escaped sheep

Bovine gastronomy!

- Estate planting saplings to improve natural capital
- Fencing to protect saplings was **not yet complete**
- Sheep from the neighbouring estate ate and destroyed hundreds of saplings
- An arboriculturalist confirmed the damage was caused by sheep, not deer
- Estimated loss in the hundreds of thousands
- Relations already strained from the gate dispute





Audience

Liability for escaped animals who eat trees

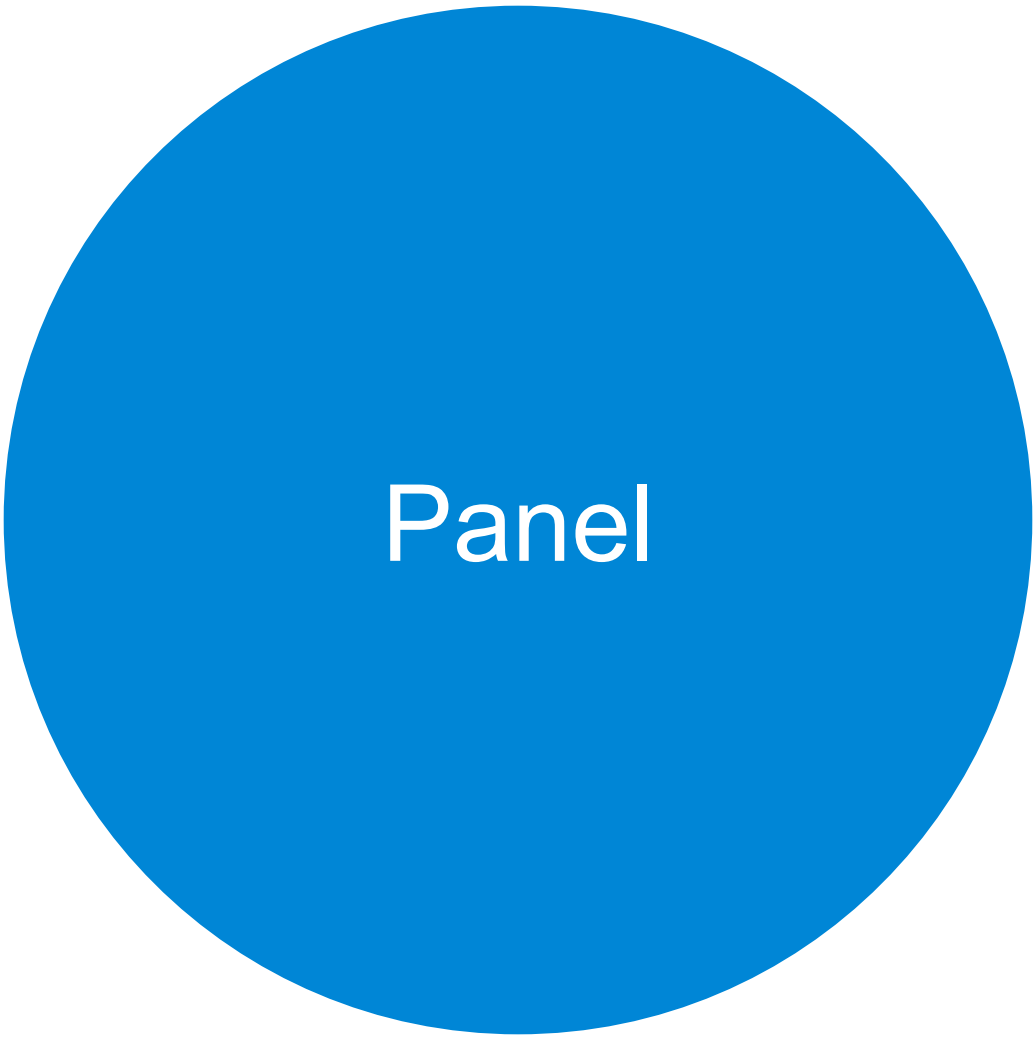
The Law

Animal (Scotland) Act 1987

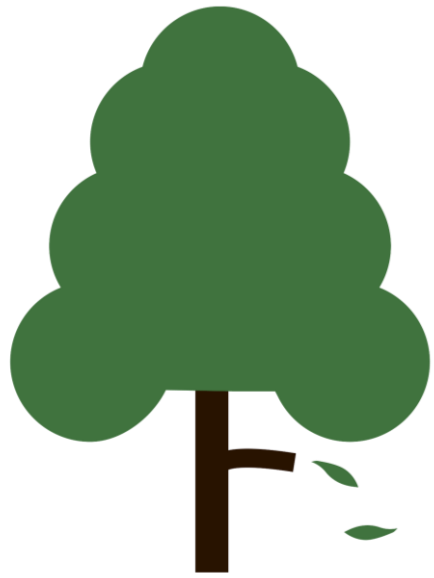
A person can be liable for any injury or damage caused by an animal if:

1. They were the keeper of it at the relevant time;
2. The animal belongs to a species which by virtue of its physical attributes or habits, if not properly restrained, is likely to injure or kill persons or animals, or damage property, and
3. The injury or damage is directly referable to such physical attributes or habits





Panel



F is for Forestry



N is for Neighbours



P is for Private water supply



S is for Servitudes

Dispute 3: The Disrupted Water Supply

Chapter 1

The Disrupted Water Supply

- Uncle Angus has felled woodland to sell timber and create space for eco lodges
- Wish to keep costs down and profits up
- Neighbour Mrs Johnstone has reported that she was **without water** and blamed the felling works
- Mrs Johnstone has a **servitude in her title** for the use of a private water supply in the Estate's woodlands
- Mrs Johnstone is demanding the estate remedies the problem and compensates her for her losses
- Potential claim could outstrip any profit from the timber sale





Have you been
involved in a
water supply
dispute?

Water Supply Disputes

The Law

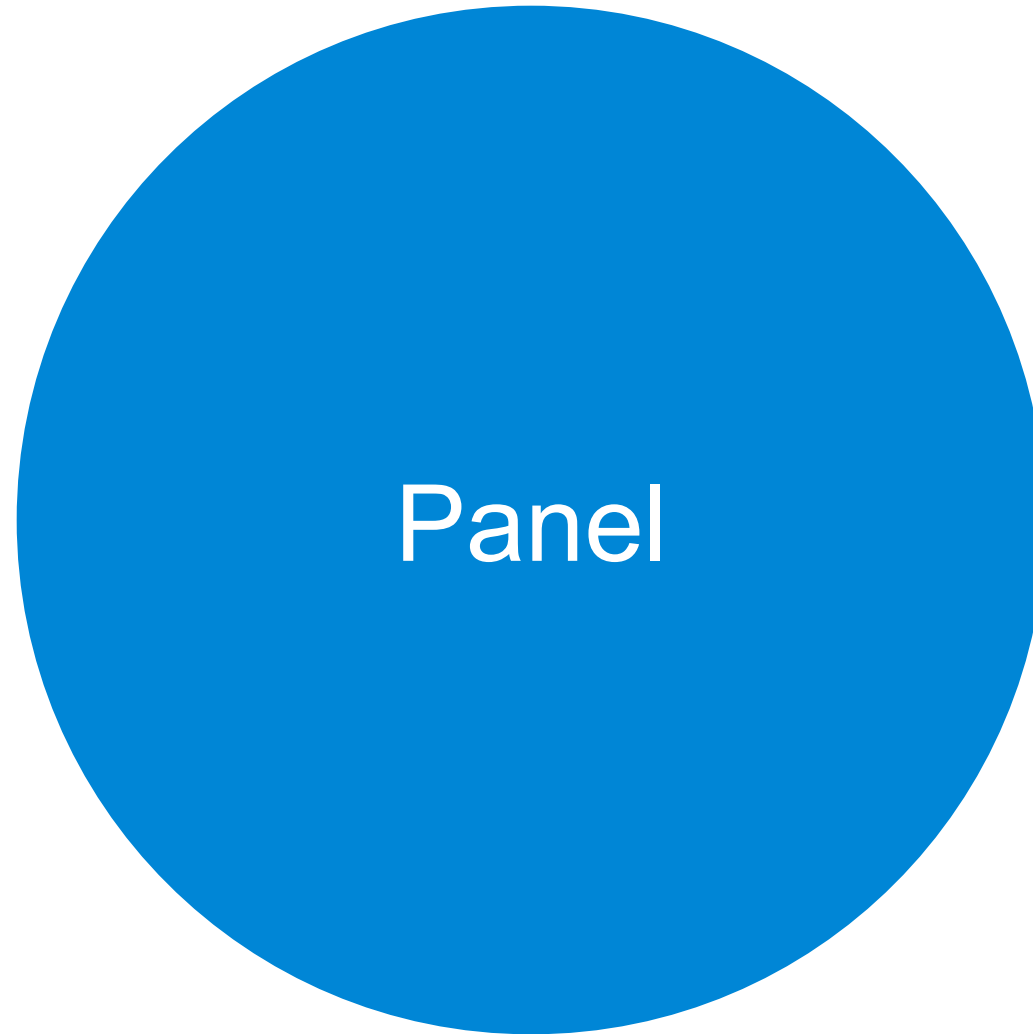
- Extremely common on rural estates
- Where there is a servitude right, interference with *quantity* or *quality* of supply likely to count as material interference
 - Any actual or reasonably anticipated reduction or interruption likely to count as material interference
 - Interference can give rise to claims for reinstatement, damages and expenses
- Even if no servitude right, the affected party **could still** raise a claim in nuisance or negligence





Audience

SH1



Panel



Water Supply Disputes

Defending a Claim

- **The key issue is causation**
 - Instructing a suitably qualified expert, like a hydrologist
 - Rebutting a neighbour's report and showing reasonable steps were taken in advance
 - Expert advice may be able to fully rebut the claim
 - Will shape whether it is better to settle or fight a matter
- **Results of a successful claim – damages**
 - Putting the wronged party back in original position
 - Costs of temporary water supply, temporary alternative accommodation and repairs
 - Any losses must be mitigated





T is for (agri-)Tenancies



Y is for Young Farmers

Dispute 4: The New Farmer

Chapter 2

The New Farmer

- An existing agricultural tenant, Farmer Fred, is wanting to assign his tenancy to Neil, a friend's son in his early 20s
- Fred has farmed the holding for many years and holds a 1991 Act tenancy
- The Estate trusts Fred and has no relationship with Neil
- Neil has never held an agricultural tenancy before
- The estate manager assumes that Farmer Fred cannot assign his tenancy without the estate's consent



New Entrants and Persons Progressing in Farming

Types of Agricultural Tenancies

- **1991 Act Tenancy**
 - Also called a “secure tenancy”
 - The tenant farmer’s security of tenure is protected by the current agricultural holdings legislation
- **Limited Duration Tenancies**
 - An unfixed agricultural tenancy for a period of not less than 15 years
 - Replaced by Modern Limited Duration Tenancies under 2017 Act
 - Can no longer be created but existing agreements still valid
- **Short Limited Duration Tenancies**
 - A fixed duration agricultural tenancy for a period not exceeding five years
- **Modern Limited Duration Tenancies**
 - A fixed duration agricultural tenancy for a period of ten years or more



New Entrants and Persons Progressing in Farming

1991 Act Tenancies – Notification Procedure

- The tenant serves a notice on Estate offering compensation to quit tenancy
- A copy of the notice is also sent to the Tenant Farming Commissioner
- Estate can take up on offer and pay compensation. If so, the agricultural tenancy will end
- If the Estate does not take the offer, the tenant can assign their tenancy to:
 - A new entrant in farming, or
 - A person progressing in farming
- If complying with the statutory procedure, there is **no need for consent** of the Estate to assign their interest



Dispute 4: New Entrant to Farming and Person Progressing in Farming

(1) An individual ("A") is a new entrant to farming for the purposes of section 32U(2) of the 1991 Act if A—

(a) does not hold a relevant interest and will not, immediately before the assignation date under that section, have held a relevant interest at any point in the preceding 5 years,

(b) will not, by virtue of that assignation, become the holder of more than one relevant interest.

(2) Subject to paragraph (3), for the purposes of paragraph (1), A holds or, as the case may be, held a relevant interest if A, or any legal person in respect of which A has or has had control, is or was—

(a) a tenant under a lease constituting—

(i) a limited duration tenancy (within the meaning of section 5 of the 2003 Act¹),

(ii) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),

(iii) a 1991 Act tenancy,

(iv) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act) (but ignoring any such tenancy under 3 years in duration, whether continuous or in aggregate),

(b) a small landholder (construed in accordance with section 124(3) of the 2016 Act) of a small landholding of more than 3 hectares,

(c) a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993) of a croft of more than 3 hectares,

(d) the owner of more than 3 hectares of agricultural land in aggregate, wherever such land is located.

(3) For the purposes of paragraph (1) and (2), A holds or, as the case may be, held a relevant interest if A, or any legal person in respect of which A has or had control, holds or held a share of 50% or more in that relevant interest.

(1) An individual ("B") is a person progressing in farming for the purposes of section 32U(2) of the 1991 Act if B—

(a) does not hold two or more relevant interests, and

(b) will not, by virtue of the assignation under that section, become the holder of more than two relevant interests.

(2) Subject to paragraph (3), for the purposes of paragraph (1) B holds a relevant interest where B, or any legal person in respect of which B has control, is—

(a) a tenant of more than 3 hectares under a lease constituting—

(i) a limited duration tenancy (within the meaning of section 5 of the 2003 Act¹),

(ii) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),

(iii) a 1991 Act tenancy,

(iv) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),

(b) a small landholder (construed in accordance with section 124(3) of the 2016 Act) with a small landholding of more than 3 hectares,

(c) a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993) with a croft of more than 3 hectares,

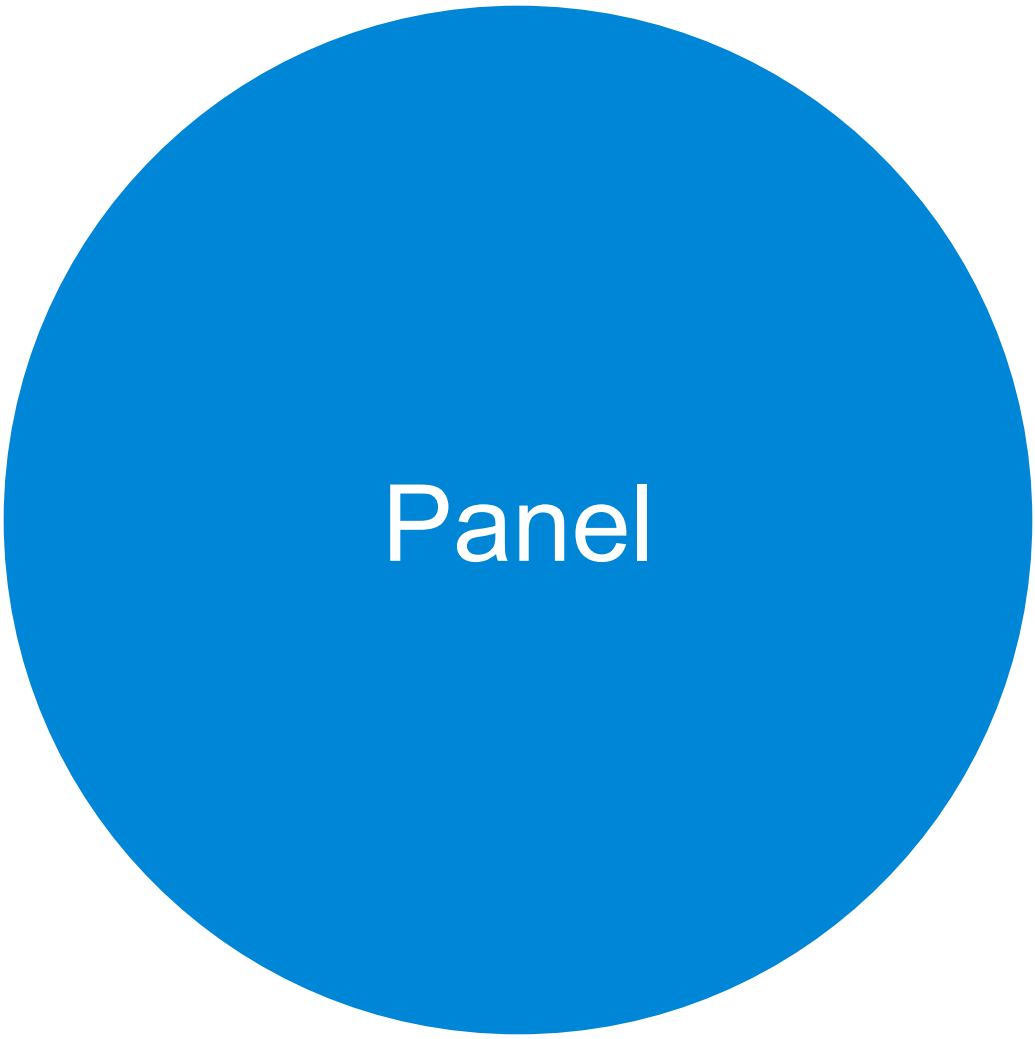
(d) the owner of more than 3 hectares of agricultural land on a single title.

(3) For the purposes of paragraphs (1) and (2), B holds a relevant interest if B, or any legal person in respect of which B has control, holds a share of 50% or more in that relevant interest.

(4) But paragraphs (2) and (3) do not apply to any lease constituting a limited duration tenancy, a modern limited duration tenancy, a 1991 Act tenancy or a short limited duration tenancy if the term of the tenancy will, at the assignation date, expire in less than 1 year.



Audience



Panel

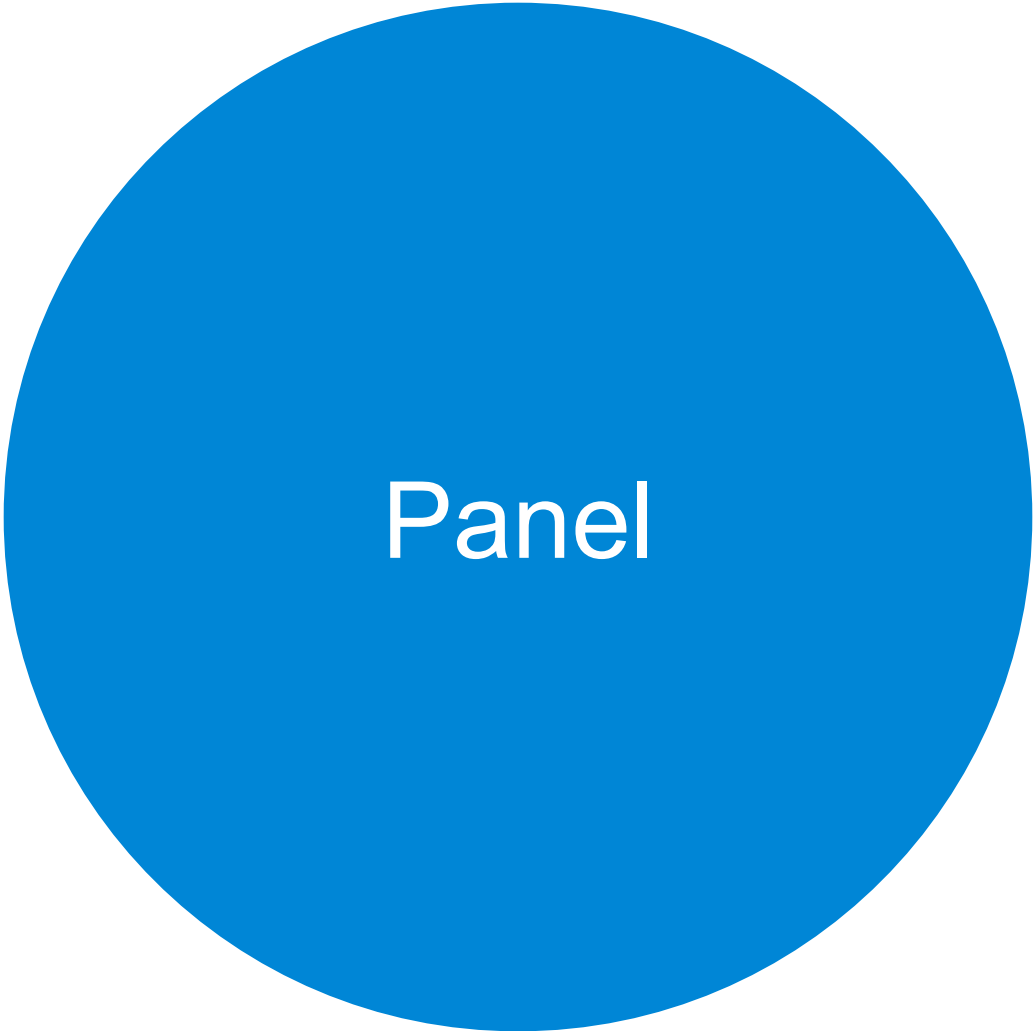
Dispute 4: New Entrant to Farming and Person Progressing in Farming

How to Avoid Court

- **Tenant and Landlord taking advice**
 - Tenant taking advice on suitability of purported assignee
 - Landlord also taking advice on suitability to avoid an unsuccessful objection
- **Proactivity on taking advice early**
 - Strict timescales for notices and counter-notices
 - Allows the opportunity for early negotiations
- **Keep clear communication and good relations between landlord and tenant**



*Remember – parties
can be stuck
together for better or
worse!*



Panel



Break



A is for Agritourism



W is for Warranty Claims

Dispute 5: The Wedding Venue Sale

Chapter 3

The Wedding Venue Sale

- The Estate is wanting to sell land to a company planning an upmarket events and wedding venue
- The purchaser wants to **convert the barn** into an events venue with eco-lodges, a battery-powered glamping site and alpaca walks
- A previous title review has flagged a potential real burden that would restrict the use
- Parts of the land are used for waste dumping and other parts are prone to flooding
- Estate manager thinks that the eco lodges may have been built without planning permission or building warrants





Audience

The Wedding Venue Sale

Title Deeds and Real Burdens

- **Always check title deeds first – failure to do so may stall a sale**
 - Title Deeds may list things an owner can or cannot do
 - A real burden is a direct rule or restriction imposed on the land,
- **Real burdens**
 - Often an attempt to protect the amenity or rural characteristics of the land
 - Rooted in environmental and conservation concerns
 - Can restrict developments
- **Enforceability**
 - Is the burden likely to be enforceable?
 - Application to the Lands Tribunal for variation or discharge



The Wedding Venue Sale

The Law

- General rule is *caveat emptor* – buyer beware
- Residential transactions typically incorporate the Scottish Standard Clauses
 - Includes standard warranties
 - Solicitors also typically negotiate missives containing warranties containing planning, environmental matters and flooding
- Seller **could be exposed** to a claim that missives have been breached if warranty is untrue
- Warranties prevent a seller's exposure from ending after the sale



Planning and Building Control

The Seller warrants that all necessary consents and warrants, including without prejudice to the foregoing generality, all necessary prior notifications of planning proposals, planning permissions, building warrants, completion certificates have been obtained and complied with for any work undertaken on the Property or for any change of use thereof and satisfactory evidence to substantiate this will be exhibited to the Purchaser before and delivered to the Purchaser on the Date of Entry, which evidence shall include the originals of the aforementioned notifications, consents, certificates, warrants and permissions together with all relevant certified supporting plans and other documentation. All such planning permissions and others are free from conditions as to occupancy, use or otherwise and from other onerous conditions.

Environmental

The Sellers warrant that no part of the Property has been used for the deposit of waste or for a potentially contaminative use which might lead to a remediation notice under the Environmental Protection Act 1990 and no part of the Property contains any materials or substances which (a) are known, as at the date hereof, to be deleterious; (b) may give rise to action or censure under the Control of Pollution Act 1974, the Environmental Protection Act 1990, the Environment Act 1995 and any other environmental or public health legislation and all relative codes of good practice, official circulars, and guidance notes ("the Pollution Legislation").

The Sellers have not used the Property nor, to the Sellers' knowledge have others used the Property for the storage, disposal, dumping or burial of waste, scrap metal, effluent, contaminated or spoiled substances of any kind at any time prior to the Date of Settlement; and

There have not been, to the Seller's knowledge, any deposits, spills, discharges, or escapes of any quantities of any polluting agents, dangerous substances, controlled waste or other material which may be hazardous or harmful to human or animal health which may affect the Property.

Flooding

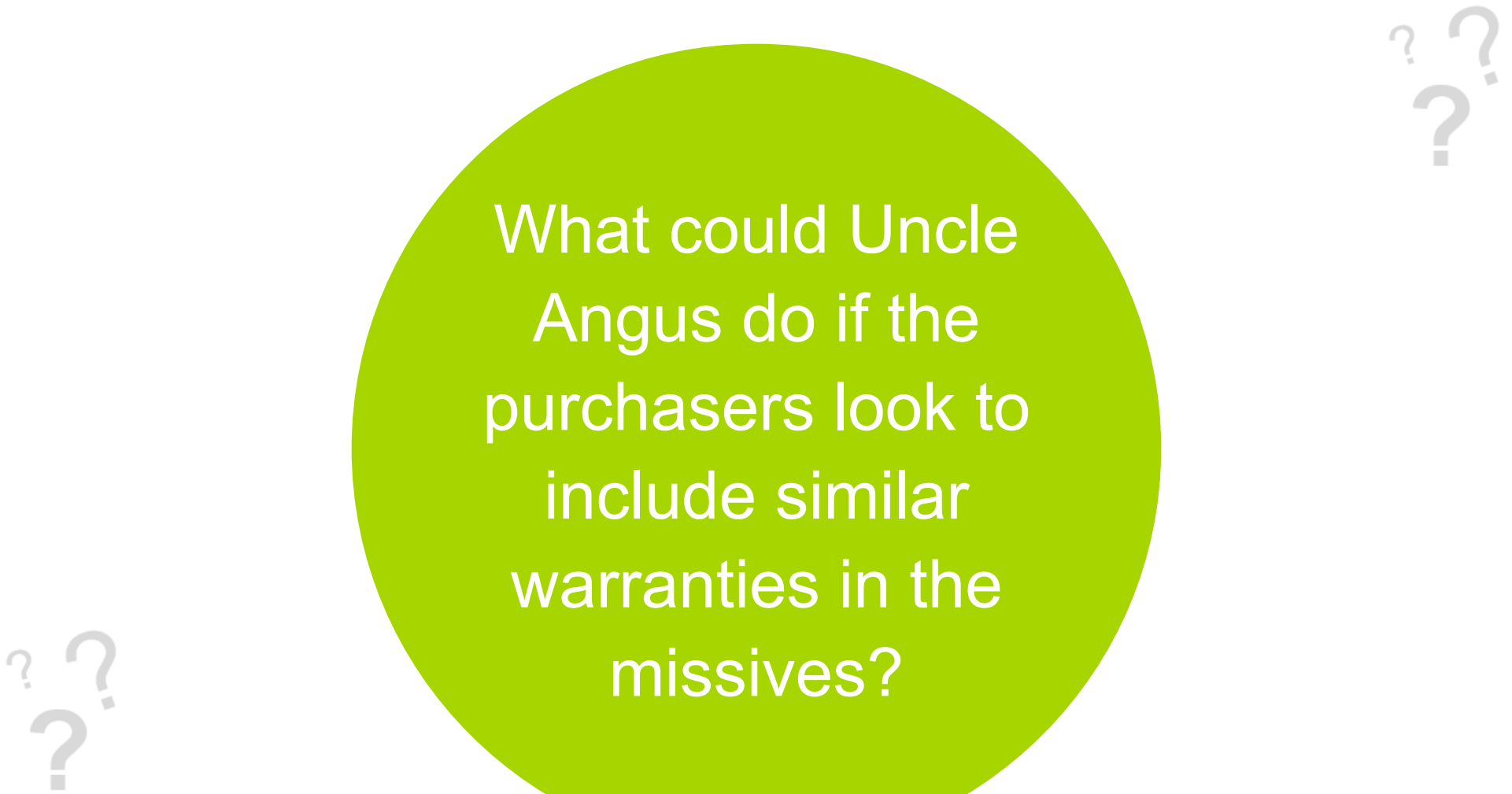
The property has not been affected by flooding from any river or watercourse in the last 5 years.

The Wedding Venue Sale

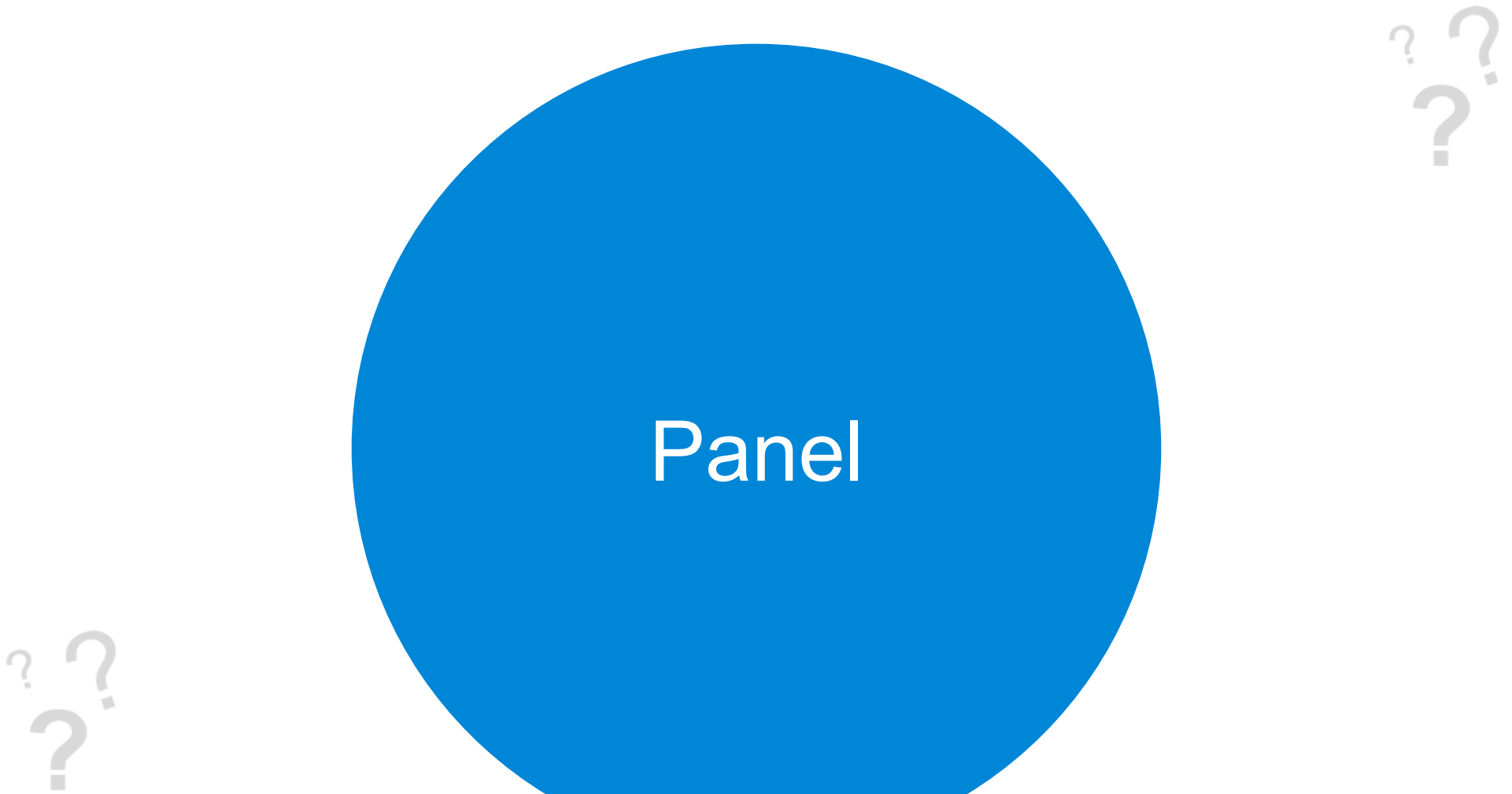
The Law

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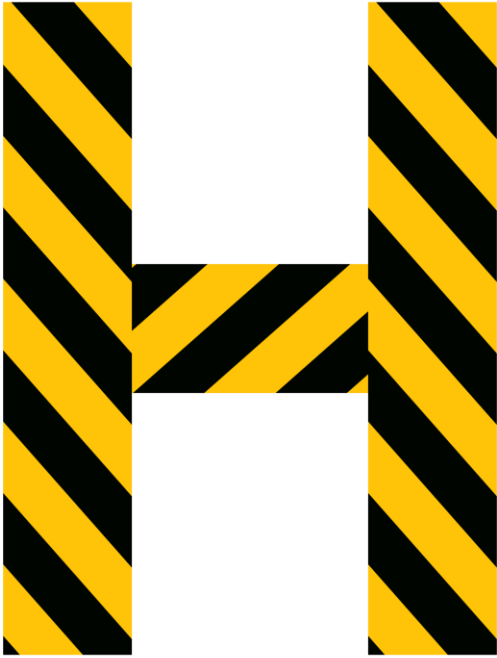




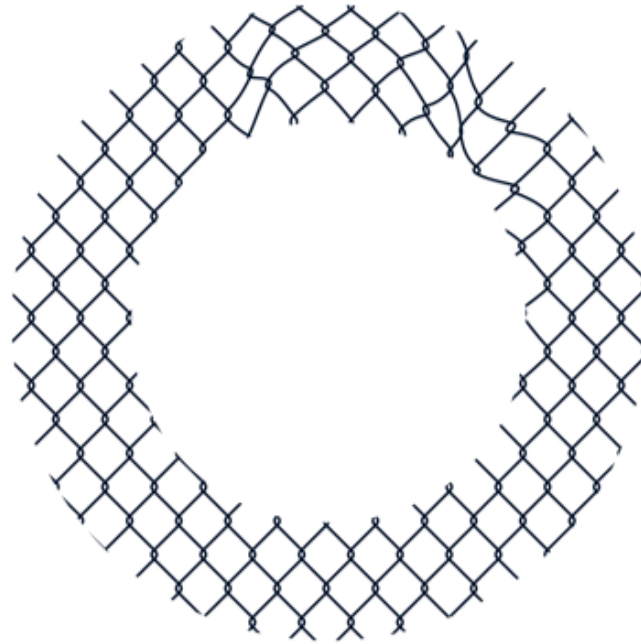
What could Uncle
Angus do if the
purchasers look to
include similar
warranties in the
missives?



Panel



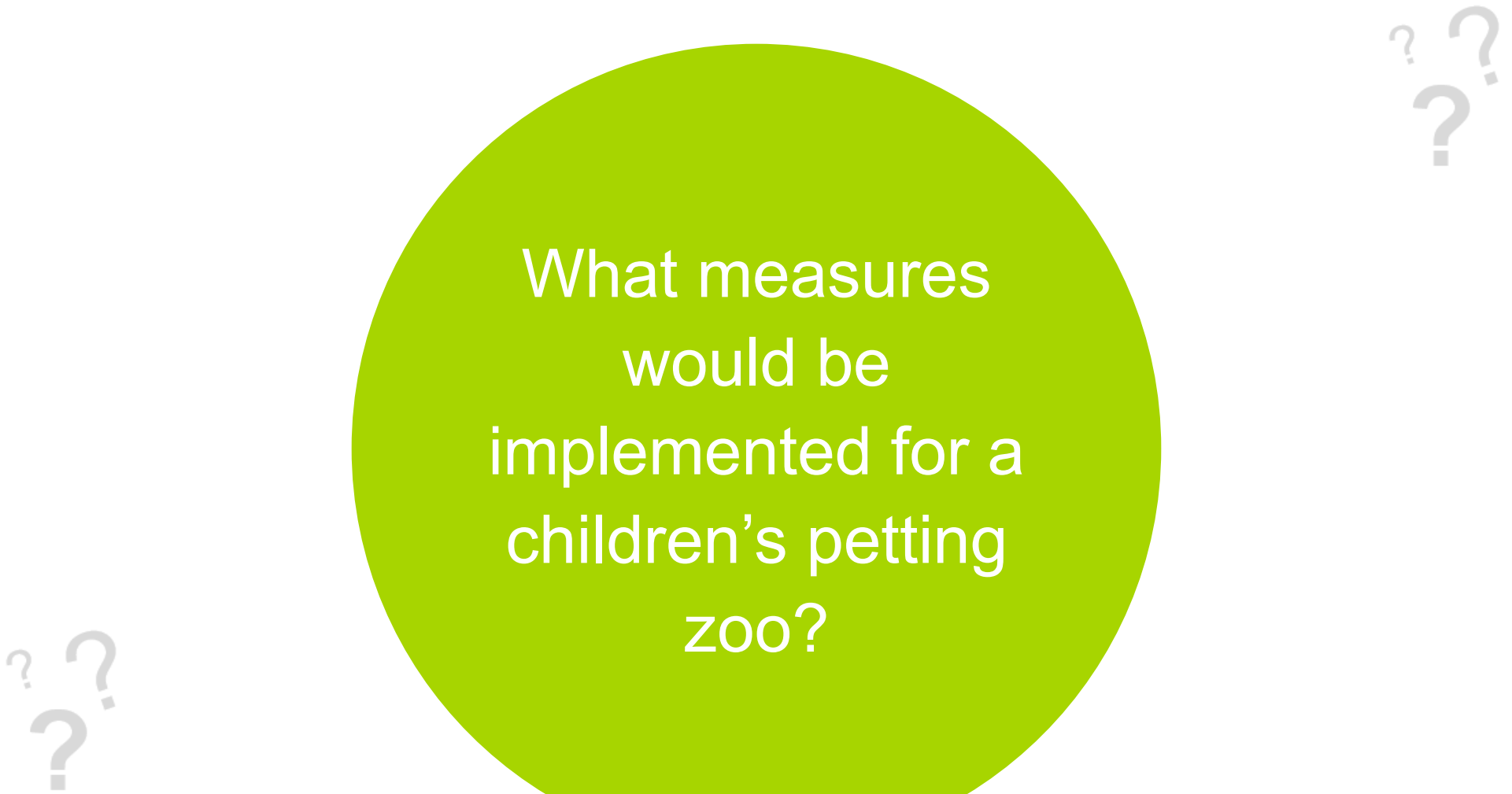
H is for Health and Safety



O is for Occupiers' Liability

Dispute 6: Afternoon Tea with the Goats

Chapter 3



What measures
would be
implemented for a
children's petting
zoo?

Petting zoo – health and safety

Health and safety

1. Put in place adequate signs that warn about animal contact and infection. Legal duties increase where children may be at risk, so if that is the case then signs should also target child-specific behaviours, such as thumb-sucking, and should be supplemented by verbal warnings and demonstrations from staff.
2. Implement control measures in common infection sites. For example, maintain fences and gates where animals are kept, and encourage children to avoid hand-to-mouth contact
3. Install useable handwashing facilities – with water, soap and/or antibacterial gel – at all exits from animal contact areas.
4. Clearly segregate eating/drinking zones from petting stations. Marking out separate 'dirty' and 'clean' areas also helps to ensure that those who have touched animals do not mix with those who have not before having had the chance to appropriately wash their hands.



Afternoon Tea with the Goats

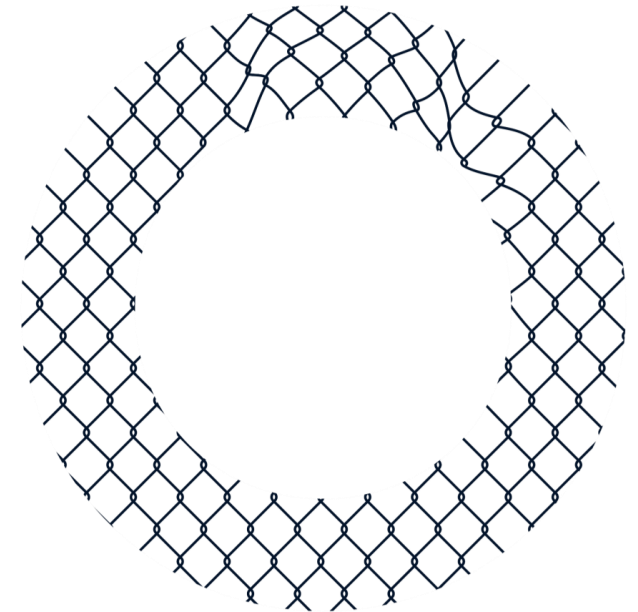
- The petting zoo has been a huge success, H&S measures that needed to be implemented have paid off
- Success has inspired a new event: “Afternoon Tea with the Goats” experience
- Cousin Fiona is helping and has set up tables next to **derelict cottages** with crumbling stonework and a **ha-ha ditch**
- During the first Afternoon Tea, a parent broke her ankle tripping over the ditch
- A child also climbed on the loose stonework, a section of which collapsed causing a minor injury
- The Afternoon Tea with the Goats experience has **now been shut down**



Afternoon Tea with the Goats

Occupiers' Liability (Scotland) Act 1960

- 1960 Act imposes a duty of care on anyone **occupying or controlling** land or premises
 - Includes tenants or contractors
- Section 2: Occupier owes a duty to take reasonable care to see that visitors do not suffer injury or damage by reason of any danger due to state of the Premises
- Heightened duty to children – occupiers must expect children to be less careful



O is for Occupiers' Liability

Afternoon Tea with the Goats

Two distinct hazards

Hidden Ha-Ha Ditch

A concealed danger that the estate knew about but visitors would not

Crumbling cottages

A structural danger near an area where the public had been invited

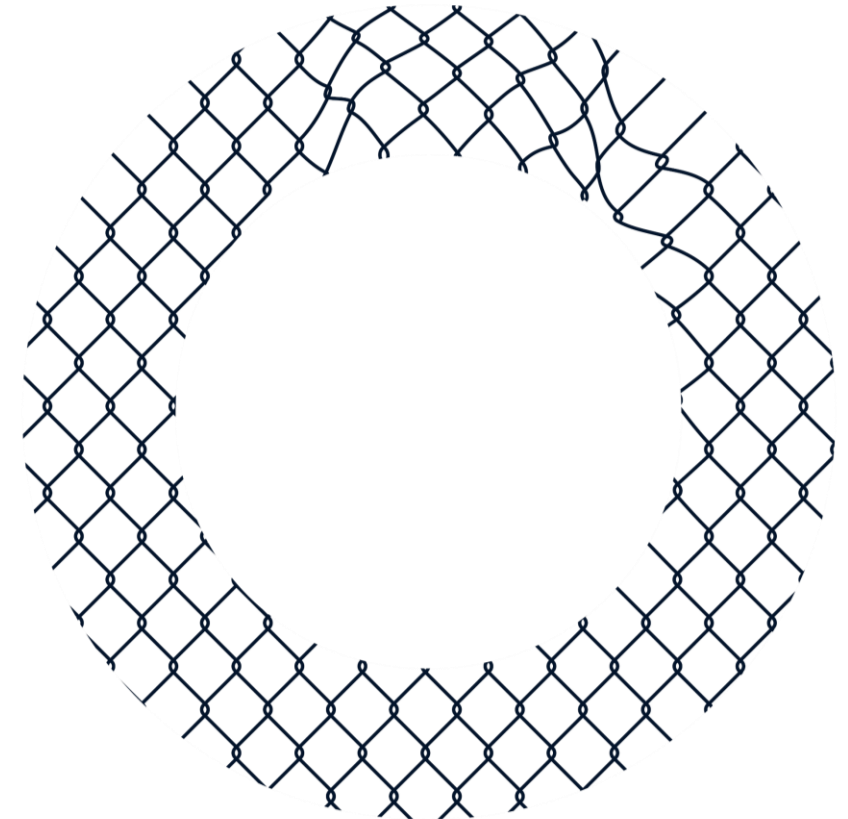


Audience

Afternoon Tea with the Goats

Occupiers' Liability

- Delegation to an inexperienced person is not a defence
- No duty for dangers inherent in the ordinary, familiar features of the landscape
 - Natural or man-made features
- Situations where reasonable to fence off features to prevent accidents
 - Lighting or signage if fencing off not possible or unreasonable



Occupiers Liability

Cowan v Hopetoun House Preservation Trust [2013] CSOH 9

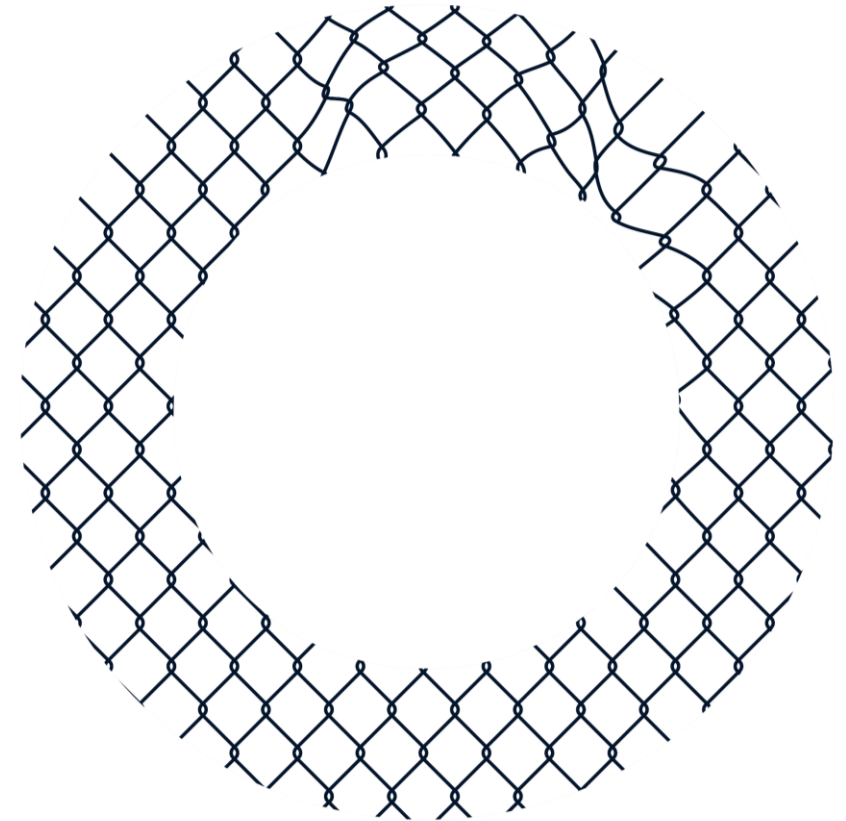
- Member of the public suffered a fractured ankle during an evening bat walk
- Ha-ha was distinguished from other natural features as an unusual, concealed feature
- A feature that someone crossing the land would be unaware of



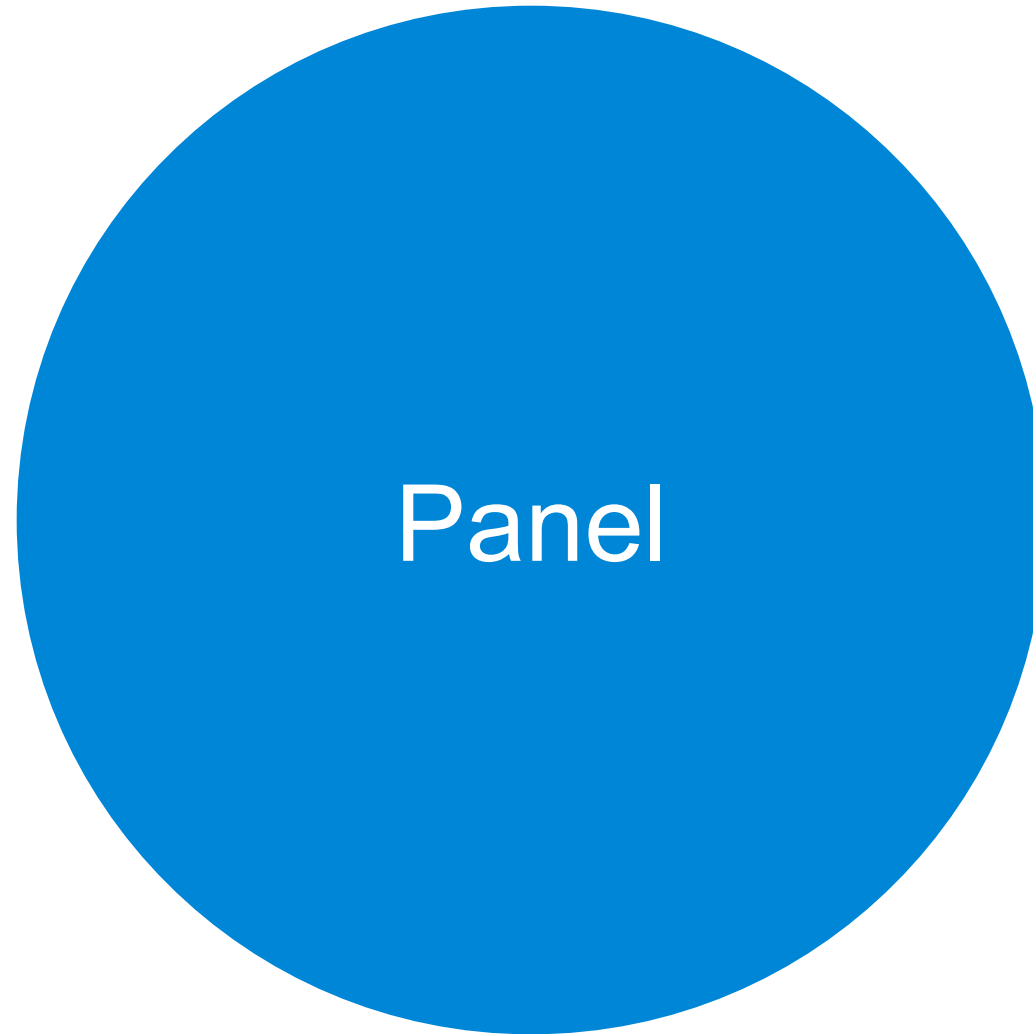
“Reasonable” Care

Voluntary Risk

- Fact-dependent
- 1960 Act excludes any obligation for risks “willingly accepted”
- Courts have recognised certain risks are obvious – diving, swimming etc.



SH1



Panel





F is for Family farming
partnerships



X is for eXit
Disagreement

Dispute 7: The Family Partnership

Chapter 4

The Family Partnership

- Uncle Angus wishes to retire from the family farming partnership
- However, no signed partnership can be found
- Angus and his brother Rory remember a draft agreement but the acting firm has now closed
- Angus and Rory's children have since joined the partnership but cannot remember a written agreement
- There have been no previous issues





Audience

The Family Partnership

The Draft Agreement

- A draft partnership agreement from 1958 has been found
 - Staple holes and no third page
 - Coffee cup stains and handwritten comments
 - Unsigned
- Letters confirm that the children joined the partnership when 18 and would each receive 5% of the profit – rest to Angus and Rory
- Accounts state that Angus is receiving 40% of profits
- No provision on partnership ending in Draft Agreement





Have you seen
something
similar?

Formation of Partnerships

The Partnership Act 1890

- Very old Act that governs UK partnership law
- Under 1890 Act, partnerships can exist without a formally written agreement
- Default rules if there is no written agreement
- Gap-filler where a partnership agreement is silent



Unwritten Partnership Agreements

The Law

- Draft generally has no legal effect by itself
- Partnership at Will: a partnership that acts based on conduct without a written agreement in place
- Personal bar?
- Acting on express terms of a draft = no ability to revert to 1890 Act rules



Terminating an Unwritten Agreement

The Law

- 1890 Act: a partnership dissolves on the death of a partner unless otherwise agreed
- New partners joining?
 - *Cheema v Jones and others* [2017] EWCA Civ 1706: A written partnership can become a partnership at will if later partners join without a written agreement
- If no fixed term, any partner can terminate a partnership at will by giving written notice to all other partners



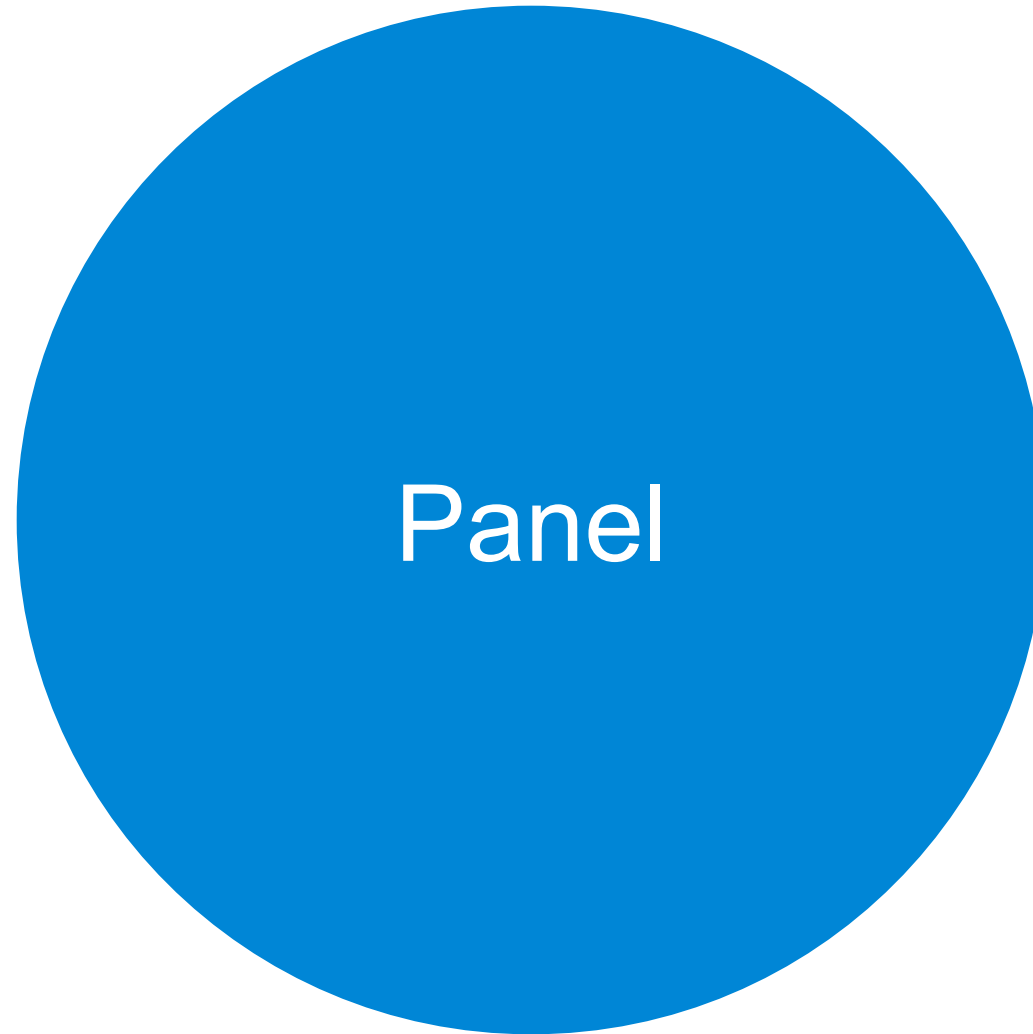
Payment on Dissolution

The Law

- Unless otherwise agreed, assets are to be applied in the following order:
 1. External Creditors: Partners must pay off all third-party debts and liabilities.
 2. Partner Advances: any loans or advances made by partners to the firm (this is different to the partner's capital contributions).
 3. Capital Repayment: payment to each partner rateably what is due to them regarding their capital contributions.
 4. Ultimate Residue (The Surplus): Any remaining assets are split among the partners in the proportion in which profits are divisible (equally, by default)



SH1



Panel





E is for Executives



G is for Green Burials

Dispute 8: The Will and the Burial

Chapter 4

The Will and the Burial

- Jemima, Uncle Angus' financial power of attorney, has been using Angus' credit card
- Uncle Angus has reportedly changed his Will to leave a piece of land to a rambling companion
 - Out of character given his views against the right to roam
- Uncle Angus has recently made a DIY Will online
- Green burial wish under an estate Rowan tree rather than the family plot





Audience

Duties of a Financial Attorney

The Law

- Adults with Incapacity (Scotland) Act 2000: Attorneys should follow the Code of Practice for Attorneys
- **Attorneys have a fiduciary duty – they cannot:**
 - Take advantage of their position of trust; or
 - Act in a conflict of interest
- **Potential actions for breach**
 - Action by granter or Office of the Public Guardian
 - Potential action from Executors on death
 - Beneficiaries can compel if the attorney becomes an Executor



Grounds for challenging a Will

The Law

1. Lack of formal or essential validity

A DIY Will may not meet requirements for signing and witnessing

2. Incapacity

Failing memory and out-of-character behaviour may indicate a lack of testamentary capacity

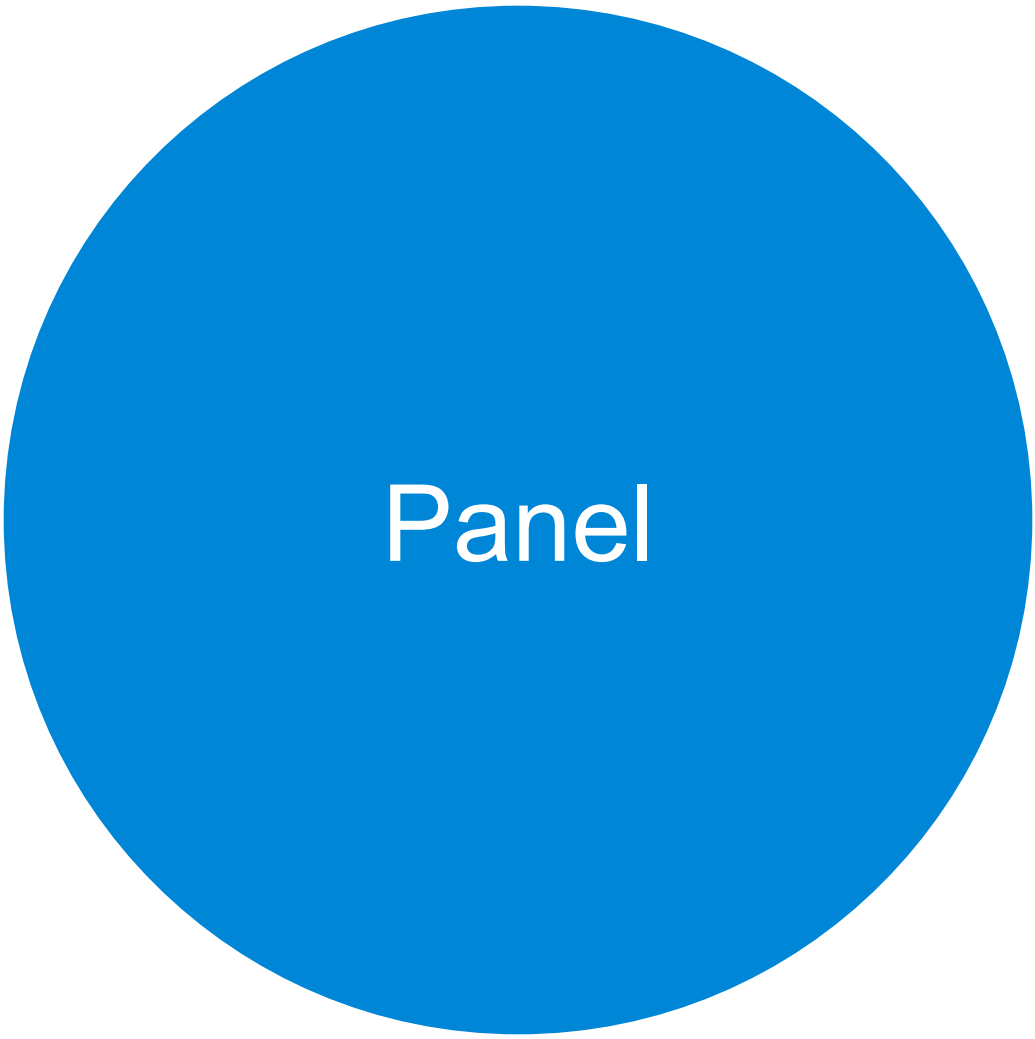
3. Facility and circumvention

A weakness of mind, falling short of incapacity, that is exploited by another person

4. Undue influence

Someone in a position of trust takes advantage to secure a benefit under the Will





Panel



Have you
encountered
green burials?

Green Burials

The Law – Burial and Cremation (Scotland) Act 2016

- Section 65: A valid “Arrangements on Death Declaration” should be followed unless not reasonably practicable
 - Declaration must state funeral instructions and who is to implement them
 - Can be made orally or in writing
- If no valid declaration, the “nearest relative” may make arrangements
 - Hierarchy of relations set out in 2016 Act
- Disputes between relatives of an equal rank can be determined by the Sheriff Court



Framework for Green Burials

Burial and Cremation (Scotland) Act 2016

- Different process in each local authority
- **Compliance:**
 - 2016 Act
 - Local byelaws or policies
 - SEPA requirements
- **Factors to consider**
 1. Title conditions – check for burdens preventing use as a burial site
 2. Environmental concerns –proximity to water sources, impact on groundwater and soil
 3. Future development – Potential impact on future use of the land
 4. Access – current and future access to the burial site





Key takeaways

Lunch

Thank you

Meet the speakers



Stephanie Hepburn
Partner
Litigation and Dispute
Resolution



Hamish Lean
Partner
Rural Property



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