

**Assise d'Héritage**  
**Monday 23<sup>rd</sup> September 2019**

Your Excellency, members of the Court, my Lord, ladies and gentlemen

1. The Assise d'Héritage is always a special occasion, and not just because, as far as I can tell, outside the Channel Islands it is the oldest surviving land court in Europe where the attendance at court of the seigneurs to acknowledge their fealty to Her Majesty The Queen is required. This year, it is particularly special because it is with great pleasure that I am able to welcome some highly distinguished visitors.
2. First of all, I am pleased to welcome His Excellency the Lieutenant Governor. As the personal representative of Her Majesty the Queen, he is always a most welcome guest in this court, but his functions today mean that he is not perhaps a guest at all because he is required to appear to acknowledge Her – still, it gives His Excellency a rare speaking role in this Court, if brief and to the point! In both capacities, Your Excellency, you are welcome.
3. Today it is a privilege to welcome the Lord Chief Justice, Baron Burnett of Maldon, who was appointed to that position in 2017 and previously served in the Court of Appeal of England and Wales and as a judge of the High Court. Lord Burnett, you do us a great honour in joining us today for this ceremony which is very much

part of the Island's traditions. You will already have noticed both similarities and differences from proceedings in the High Court – and the different jurisdiction is emphasised by looking at the ceiling of this ancient court room, where you will see the names of the commentators on the customary law of Normandy and Jersey, whose writings would perhaps be only very rarely be referred to in the English courts. At all events, I hope you will enjoy your day with us.

4. Leaving aside me and the Deputy Bailiff, we have five judges here today from our Court of Appeal, three of whom are sitting this week - Mr James McNeill QC, our senior judge in that Court, having been first appointed in September 2005, Mr John Martin QC, and Sir Wyn Williams, all of whom are I believe attending the Assise for the first time. The stellar contribution to the development of Jersey law which all the members of that Court make is very much appreciated by the local judiciary and Bar, and I am pleased to have the opportunity of expressing publicly our thanks to them.
5. I am also very pleased to welcome my opposite number from Guernsey, Sir Richard Collas, who also sits in our Court of Appeal, and with whom naturally I have many dealings over the course of the year in respect of matters of mutual interest. Sir Richard is due to retire in May next year, and this is surprisingly also his first attendance at the Assise d'Héritage. I was honoured to attend the

Guernsey Court of Chief Pleas last October. As with so many things in the Channel Islands, there are points of similarity and points of difference, and I hope that Sir Richard enjoys today as much as I enjoyed my attendance in Guernsey last year.

6. Our last Court of Appeal judge is of course the former Bailiff Sir Michael Birt, who also sits as a Commissioner. His contribution to this court and in the Court of Appeal has been immense, and I am pleased to welcome him. May I add that although he and Commissioner Sir John Saunders are both probably included within the generic description of “members of the court” and therefore do not strictly need a welcome, it is very good to see Sir John here today. He has already helped us considerably on a number of occasions and attendance at the Assise is perhaps a first step for him towards presiding over the Samedi Court or *in extremis* even the more challenging Visite Royale!
7. Finally I am pleased to welcome the Chief Minister who is also the Minister for Justice. He has much to keep him busy as we all know, and I am very grateful to him for taking time out of the government schedule to be here.
8. I mentioned earlier that this was the oldest surviving land court in Europe as far as I was aware. The Chefs Plaids d’Héritage goes back at least as far as the Middle Ages, presided over by the Warden during the 13<sup>th</sup> century. The sessions were held three

times a year, at Hilary-tide, Easter and the feast of St Giles when all the officers of the Court were present, accompanied by the free tenants who owed suit to the Crown. The sittings of the Court were fixed by the custom – and even as late as 1962, it was necessary to have a formal act of the full Court in order to change the first day of the legal year from the Thursday prescribed by the customary law. The customary law is of course part of our constitutional freedom and inheritance. I was interested to see that there was a sitting of the Court in 1915 when it decided to abandon its right to the Assise d’Héritage dinner during the continuation of hostilities, and indeed a further sitting in 1921 when the Act of Court suspending the dinner was revoked. Either it took time for the news of the Treaty of Versailles to reach the Island, or the Court was in no hurry to resume its customary dining rights.

9. I am aware that the Law Society has recently passed a resolution calling for reform of the Assise d’Héritage. I and my successor will be having discussions with the President of the Law Society and the Bâtonnier in this connection and I am sure those discussions will be constructive. There are though two points in connection with this subject. The first is that ultimately it is a matter for the Court to decide what the process should be in relation to the Assise d’Héritage, as is clear from some of the previous decisions which I have mentioned. The second is that while some lawyers may think that this day has nothing to do with

them and is simply an intrusion on their ability to get on with their work, their attendance in court, with that of the court room advocates, is a physical reminder of the connection which all lawyers have with the Court both as members of the Court and as practitioners reliant upon the Court's judgments. The rule of law, so important to commercial practices, only works because there is a court which gives those commercial practices foundation, and in my view, this is too easily overlooked for the sake of the mild inconvenience of an hours attendance here once a year. But if change there must be, perhaps the solution is an amendment to the Advocates and Solicitors Law which would allow conversion from advocate to solicitor, and those who do not feel connected with the Court need not then appear and take the customary oath.

10. Some of you may have hoped that my last address to you at an Assise d'Héritage would contain some short gooey platitudes, but, as will be apparent, that is not my way. I want to say something about the Jersey law of contract about which there has been debate and, some would say, some confusion - created, perhaps, as much by the judiciary as by the Bar. It is time that this confusion was removed. The lawyers in this court all know that the essential challenge has been to reconcile the views of those who see the English law of contract as a means of securing commercial certainty which will permit business to flourish, with those who take the view that the customary law, developed over the centuries,

cannot simply be consigned to the history books because to some it is no longer convenient. The tension lies in how the different views can be brought together.

11. I very much hope that the Restatement of the law of contract which I understand the Institute of Law has commenced and which has the full support of both me and the Deputy Bailiff will make speedy progress. I see it as the best way forward. It is not guaranteed of success, but to have the best chance, it needs the engagement of both the judges and the profession and I very much hope that whatever the views, the profession will help take this on.
12. The one thing which I think would not be helpful is to leave the matter to the legislature, because, with all respect to the Assembly of the States, that is not the place in which specialised professional debate can be expected to take place. We can expect the result of any Restatement to be given serious judicial consideration in cases in the future. It is possible of course that the Restated Jersey law of contract will not be exactly the same as the English law of contract, whether as it is today or was at some point in the past. Indeed, even if one adopted the present day English law of contract, then unless one conceded to the Westminster Parliament or to the courts of England and Wales the island's independent legal system, our law of contract would always be likely to be out of step with developments over the water. Unless you are frightened of Jersey's

separate identity - and I am proud of it as all Jersey lawyers should be given the oath which you have just taken – that is not a problem.

13. However, I would like to touch on perhaps some more uplifting news. I am very pleased to announce that Her Majesty approved at the end of last week the recommendation of the island that Mr Mark Temple QC be appointed her next Attorney General. We had applications from 7 very talented Jersey lawyers and there was a rigorous selection process, as those participating would I am sure agree. Lawyers present will recognise that as a result of Mr Temple's appointment, there will be a vacancy as Solicitor General and a formal advertisement of that vacancy will be made shortly. In the meantime, I offer Mr Temple warm congratulations on behalf of us all.
14. The legal year is now formally open. I have to say that I had not really noticed that the last legal year had ever really closed. Such is the nature of legal business, whether for litigators, commercial lawyers or, as *avocats* and *écrivains* used to be described but amended with a little 21<sup>st</sup> century gender neutrality, *les hommes et les femmes d'affaires*, I am quite sure that most of you will be kept busy!
15. Monsieur le Procureur, la parole est à vous.