"Addressing the Duke and Inheriting his Loot," a guide to English titles, forms of address and inheritance laws during the Regency period

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Normal Rules for Inheritance of Titles of Nobility

At the death of the titleholder, the title passes to:

- 1. Eldest son
- 2. Eldest son's eldest son
- 3. Eldest son's eldest son's eldest son (etc.)
- 4. Second son
- 5. Second son's eldest son
- 6. Second son's eldest son's eldest son (etc.)
- 7. Remaining sons in order (etc. etc.)
- 8. Eldest brother
- 9. Eldest brother's eldest son (etc. etc.)
- 10. Second eldest brother (etc. etc. etc.)
- 11. Eldest surviving male directly descended through the male line from the original titleholder (not the closest male relative) This statement is a gross simplification, but this is how uncles, great-uncles or distant cousins inherit. The heir is sometimes very difficult to determine-- imagine the difficulty of tracing back several generations. The process occasionally results in long and costly fights in Lords with different branches of the family presenting conflicting pedigrees, parish birth records etc. as evidence. (Like dogs and horses, nobles have pedigrees).

Some ancient titles created by writ rather than patent (some baronies and a very few earldoms) can pass through the female line (i.e. to daughters), but only in the absence of direct male heirs (i.e. sons, grandsons etc.) There has been only one instance in history where a female was allowed to inherit a duchy, marquessate or viscountcy. A waiver was granted by Lords to the first Duke of Marlborough, a war hero, on the death in battle of his only son. His daughter Henrietta was allowed to accede to the title. Titles that can pass through the female line differ according to the writ under which they were created. Some are held by the female "in her own right," others are "held in trust" for the next male heir. It is a technical differentiation; in practice it makes no difference.

The above are the normal rules. There are exceptions, of course; for instance the fourth Duke (Earl etc.) of Anyland, lacking direct male heirs, can by waiver (Act of Lords) "adopt" his eldest daughter's husband and make him the heir either to his own title or to a newly-created title with the same title-name. The son-in-law holds no courtesy title while the titleholder is alive, but at the title-holder's death he becomes the 1st Duke (Earl, etc.) of Anyland, second creation. This is how some of the hyphenated family names came into existence; the son-in-law thus "adopted" usually adds the titleholder's family name to his own. (Jeremy Juzzlewit marries Priscilla Primrose and takes the name Jeremy Juzzlewit-Primrose).

Note: illegitimate offspring can not inherit titles of nobility. Ever! Don't try it! There was no legal way to legitimize a bastard son or daughter.

Normal Rules for Inheritance of Property

Under English Common Law all property descended to the eldest surviving son, or if there were no surviving sons, then was equally divided among the surviving daughters. If there were no daughters it fell to the eldest brother. If there were no brothers it was equally divided among sisters. If there were neither brothers nor sisters it could not ascend to the father, uncles, grandfather etc. It always descended, never ascended. Note that this differs from the rules for titles, which could ascend (to an uncle, for instance).

Common Law made no provision whatever for a man's younger descendants other than the eldest's obligation by honor to care for them. Not all were honorable, however, and Common Law could and sometimes did leave the younger descendants in dire straits, as all regency romance readers are well aware (a favorite plot). Thus the origin of entails, settlements and (later) wills. Major landowners (the nobility and the landed gentry) needed a way to ensure that their younger children were not left completely dependent on the primary heir.

Patents

The patent comes from the Crown and grants the title (Duke, Marquess, Earl etc). Along with the title comes outright ownership of certain real property (the titleholder's seat of power). All real property

included with the patent is automatically entailed to the titleholder and his rightful heirs in perpetuity. That property cannot be separated from the title. Some Baronies and Viscountcies and also an occasional Earldom (for example Earl Spencer), are "naked," i.e., without property attached.

Entails:

This subject proved to be more complex than I had imagined, and is also, judging from the number of questions raised, the most confusing. Part of the problem is that there are two different types of entailment, and most people try to lump them together.

- 1. The real property granted with the patent is granted in tail to the titleholder in perpetuity. It cannot be separated from the title, nor can it be confiscated for debt or nonpayment of taxes. (The income from that property can be seized, however.)

- 2. Other real property owned by a peer or major landowner (the landed gentry) can be entailed by the titleholder/landowner himself, in a document that carries the force of civil law. Originally these entailments were either in perpetuity or for as long as four hundred years or many generations, but this was later outlawed and by the time of the Regency entailments had to be renewed by succeeding titleholders/landowners.

Entails were a legal contract under civil law. If the landowner or titleholder wished all of his property to go to his primary (male) heir there was no need for a document outlining the entails, as under Common Law that would automatically be the case. If on the other hand he wanted the option to provide for his wife, younger sons or his daughters either by settlement or later by will, he (rather his solicitor) drew up the entails, including some of the property not granted with the original patent, but leaving some property unentailed for the benefit of his daughters, younger sons and his wife.

My sources differed on the exact date, but sometime before the Regency perpetuities were outlawed and all entailments became barrable (i.e. subject to court action). Note: that sentence does not apply to the "entails" granted in perpetuity with the original patent. Entails containing a perpetuity or an unreasonable period of time or number of generations had to be renewed stating a specific reasonable period of time or a specific reasonable number of generations. My sources differed here, too, but one hundred years or three generations seems to have been considered reasonable. Entailments then had to be renewed again upon expiration of the time period or number of generations specified. Entailments, especially those that specified an unreasonable period of time or an unreasonable number of generations, could be broken by the courts, but it was a costly and time-consuming process. Newly-acquired property could be added to the entails by addendum at any time. Entailed property not included with the original patent could be deleted, but only at the time of renewal.

It was expected that each succeeding landholder or titleholder would purchase or otherwise acquire additional real property, and usually that was the case despite the number of regency romances you read where the titleholder has gambled away or otherwise lost all of the unentailed property (another favorite plot). This additional property could be added to the entailments as an addendum or left unentailed to be settled on (or later left by will to) his wife, daughters or younger sons.

No entailed property could be foreclosed on, and the property included with the original patent could not be confiscated for nonpayment of taxes. The income from entailed property could be seized, however, either by creditors or by the crown. Entailed property always followed the titleholder; unentailed property could be sold, disposed of, mortgaged etc. at will. Entailed property could also be mortgaged, but who in their right mind would give anyone a mortgage on property on which they couldn't foreclose?

Don't mess around with the entails-- during the Regency they were pretty cut and dried. Entailed property, whether included with the patent or not, went with the title, period. Though the courts could set the entailments aside they seldom did, and only for very compelling reasons. When they did, it was usually over the term of entailment rather than the property entailed.

Settlements and Wills

The two most common methods of disposal of unentailed property (other than sale or foreclosure) were by settlement (landowner/titleholder still alive) or later by will (at his death). If a landowner/titleholder died intestate (without a will) his unentailed property was distributed in accordance with the Common Law, not the rules applying to the title, but this did not often happen, as wealthy landowners and titleholders with unentailed property were careful to draw up settlements or wills covering all of the unentailed property.

Settlement: Both unentailed real property (land, estates etc.) and personal property (money, income etc.) could be disposed of by means of the strict settlement, also known as the family settlement. This was a complex document (drawn up by a solicitor, of course, at great cost) basically granting real property (either in fee simple or for lifetime use) or personal property (usually in the form of an income from estates or investments) to wives, younger sons, daughters, or sometimes a retiring senior servant. A settlement might be drawn up prior to a marriage (a dowry for example, settled on a woman's husband

by her father), at the birth of a child, when a younger son reached maturity etc. Note that the settlement has nothing to do with inheritance; it is a gift of real or personal property from a living person.

Will: Before the reign of Henry VIII unentailed real property and all personal property were disposed of either by settlement during the owner^Òs lifetime or according to Common Law at his death. Henry instituted the use of wills. Regency wills were similar in purpose to those we use today, but much more complex in their language (again, the solicitor grew rich). Unentailed real property could be left either in fee simple or for lifetime use, reverting to the titleholder's primary heir at the death of the grantee. A dower house is an example, left to the widow for her lifetime use and usually accompanied by an income. (The dower house is also one case where entailed property could be disposed of by will, but only for the widow's lifetime.) The income from an investment or estate could be left for lifetime use or for a specified number of years, or it could be left outright. Cash money or investments in "the funds" were generally left outright.

Al Lansdowne's Rule for Writers: KISS (keep it simple, stupid!) To stay out of trouble with your more knowledgeable readers (and those who think they are knowledgeable) stick with the normal rules regarding the inheritance of titles and property. Avoid the exceptions and you will be safe from criticism and scorn. Don^Òt let the old Duke choose to leave the title to Cousin Henry. Keep all entailed property with the title and don^Òt put mortgages on it. Do as you wish with unentailed property-- mortgage it, sell it or gamble it away at will.

Sources:

- Trumbach, Randolph. *The Rise Of The Egalitarian Family*. Academic Press 1968
- Spring, Eileen. *Law, Land and Family: Aristocratic Inheritance In England 1300 to 1800*. University of North Carolina Press 1993
- Hendrickson, Doris E. *The Regency Reference Book*
- Wallace, Laura http://laura.chinet.com:8080/html/titles01.html
- Other web sites too numerous to mention

Please note: I am neither a historian nor a scholar, and thus may have misinterpreted some data. While I have done my best to sift and winnow diligently, I cannot guarantee the absolute accuracy of the result. Caveat lector!
Al Lansdowne

Some random notes

During the feudal period there was no concept of property ownership. When ownership was finally instituted land was granted by the Crown based on military service.

Hereditary peeresses were not granted the privilege of sitting in Lords until 1963, but life peeresses had that privilege beginning in 1958.

Minor heirs are granted the title and property under a trustee or trustees at the time of the titleholder's death, but are not "called to Lords" until they reach majority.

Heirs do not immediately accede to a title on the death of the titleholder. Even if there is no challenge, their pedigree is carefully examined at length, the new letters patent are prepared and the title is "gazetted" (published) before they are "called to Lords."

Before and during the Regency there were no formal, legal adoption procedures. Adoption was an informal arrangement carrying no legal rights.

Pure gossip: During the Regency the richest man in England was purported to be the second Earl Spencer, ancestor of Diana, Princess of Wales. The Rothschilds were supposedly the richest family, but were not the richest men individually.

Royal patents are not just for the nobility. It's quite common in England to see signs that proclaim "By Appointment, Plumber (or Hosierer, or Bootmaker etc.) to Her Majesty Queen Elizabeth II." Though it's not legal, these patents are sometimes purchased.

Titles do not often die out, as those responsible for finding the heir go to great lengths. An example is one title that after several years of searching went to a sixteenth cousin. When all hope for a male heir is exhausted they have usually fallen back on the "adoption" method cited earlier. One noble family had a problem conceiving male heirs; that title is now in its fourth creation, having been passed by adoption three times.

When a title passes to females, it does not pass to the eldest daughter, but rather to all the daughters in common (similar to common law regarding property). The title then goes into abeyance unless the daughters successfully petition the sovereign (through Lords) to decide who is the actual titleholder.

There has been a great deal of discussion regarding the purchase of titles. No one can legally purchase a peerage, but some honorary or courtesy titles can be purchased. Kathryn Falk, founder of *Romantic Times Magazine*, holds the title "Lady of the Manor of Barrow," commonly shortened to "Lady of Barrow." It is an honorary title, not a title granted by patent. The title was included when she bought the Barrow Township manor house. One of her perks is an annual stipend for each and every utility pole in the township. She and some friends once tried to count them, but lost track and gave up.

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