SOME NOTES ON VOCABULARY AND ON WRITS

(These may help in understanding *Glanvill* and the arguments that we will make about his work.)

I. VOCABULARY

1. *A note on the word "assize."* It is derived from the Latin word *adsedere*, "to sit down." From that it comes to mean the place where men assemble and sit down. From that it comes to mean what is decided when great men come to assemble and sit down, as in "the assize of Clarendon." From that it comes to mean the body that is authorized to make recognitions or judgments under those decisions, as in "the grand assize," the blue-ribbon jury in the writ of right, or "the assize" that decides a case of novel disseisin. Later the king's justices will be authorized to go to the county seats and "take the assizes," i.e., hear the cases under the petty assizes that are pending in that county. These sessions of the assizes justices become regular, and are known as "the assizes." Hence, the meaning of the word ultimately returns to its origins, an assembly of men sitting down.

2. *A note on the word "seisin."* The noun "seisin" is rarely used before 1164. The verb "seise" is regularly used in the first half of the 12th century, and it does not mean "seize" in the literal sense. Rather, a lord is said to seise his tenant of a particular piece of the land. In the second half of the 12th century a man who is so seised is said to have "seisin." Similarly, a lord who deprives his tenant, rightfully or wrongfully, of his land is said to "disseise" him. *Glanvill* and even more *Bracton* tend to use the word "seisin" as a synonym for the Roman "possession" and to contrast it with "right" which they take as synonymous with the Roman *proprietas* or *dominium*, i.e., "ownership," but it seems clear that this was not the original meaning of "seisin" nor of "right."

3. *A note on the vocabulary of warranty. Warranty* is an obligation of the lord to defend the title of the tenant whom he has seised. If he cannot defend the title, he must provide the tenant with an *exchange tenement* (*escambium*). The obligation to warrant arises out of *homage*, the ceremony in which the tenant puts his hands in the lord's and swears to be his man. The obligations of homage may not have been inheritable at the beginning of the 12th century. They clearly were inheritable by the end of the century, i.e., the lord's heir has no choice but to take the homage of the tenant's heir.

4. *A note on the vocabulary of alienation.* Throughout the 12th century and well into the 13th most alienations were by way of *subinfeudation* rather than *substitution*. This meant that the alienor remained obliged to the lord to perform the services that the land owed, and the alienee rendered service to the alienor. In substitution, which becomes common in the late 13th century and which is required after the statute Quia Emptores in 1290, the alienee takes the place of alienor in rendering the services directly to the lord.

II. WRITS IN REAL ACTIONS (i.e., actions concerning freehold interests in land). In such actions the plaintiff is called the "demandant" and the defendant the "tenant"):

1. The Writ of Right:

   a. *in capite*—Where the demandant claims to hold of the king *in capite*, i.e., "in chief" as a tenant-in-chief with no mesne lord

   b. *quia dominus remisit curiam*—Where the demandant claims to hold of a lord "who has remitted his court" (e.g., because he does not have a court or because he has already decided that he does not want to hear the case).

   NOTE: Both (a) and (b) are probably derived from *Glanvill*'s "writ of first summons" *Mats.* p. IV–9. They do not become common until after Magna Carta, c. 34 of which says "The

writ called *precipe* shall not be issued for anyone concerning any tenement whereby a freeman may lose his court."

c. patent—*Mats.* p. IV–19. Issues to the lord of whom the demandant claims to hold. As *Glanvill* sees it, the next thing that happens is that the lord's court defaults, and the demandant goes to the sheriff who sends four knight who watch the lord's court default and who take the plea and bring it into the county court. (The process is known as *tolt*.) We suggested yesterday in class that the reason why the lords' courts regularly default is that the lord is bound to warrant the tenant. Elsewhere *Glanvill* suggests that any land plea can be brought to the central royal courts from the county courts by a writ called *pone* (literally "place," i.e., this plea that is before you into our court). An action on the right is tried by battle, or the grand assize, at the tenant's option.

2. The Petty Assizes

a. Mort d'Ancestor—a "recognition," i.e., determination, whether the immediate ancestor (father, brother, uncle) of the demandant died seised of the land, and that the demandant is the heir. The "real defendant" is probably the lord.

b. Novel Disseisin—a "recognition," i.e., determination, whether the demandant was disseised "unjustly and without judgment" since the king's last crossing to Normandy. The "real defendant" is probably the lord.

c. *Utrum*—a "recognition," i.e., determination, whether (*utrum*) land at issue in the case is held in lay fee, in which situation the case belongs in the secular courts, or free alms, in which situation the case belongs in the church courts.

d. Darein Presentement—a "recognition," i.e., determination, who made the "last presentment" to a church, the advowson (right to present a rector of a church to the bishop) of which is issue.

All of these lead to the convening of a jury of 12 called "the assize," which answers the specific question posed in the writ.

3. Writs of Entry—"downward looking" claims in which the demandant claims that the tenant, having entered the land rightfully, is no longer entitled to remain there. In a "downward looking" claims the lord looks at his tenant and says "What are you doing there?" Typical writs of entry are *ad teminum qui preteriit* (the tenant is a termor whose term has expired), *dum infra aetatem* (the tenant received the land from the demandant's guardian while the demandant was underage and now he is of age), *cui ante divortium* (the tenant received the land from the demandant's husband before she and he were divorced). They develop in the beginning of the 13th century rather than in the 12th, though ancestors of them may be seen in *Glanvill*. In all cases a jury answers the question posed. The use of the term "downward looking" (which is modern) implies that writ of right, novel disseisin and mort d'ancestor are "upward looking" claims. In these claims, so the argument goes, the tenant or would-be tenant is looking to his lord and saying "You have done me wrong by not accepting me as your tenant."