Mr McConnell, a prosperous businessman, dies on the 13th December by foolishly walking out into the path of a motorcar proceeding in excess of the speed limit along Leith Walk. Even more unfortunately, he dies without making a will, having been of the opinion there was plenty of time yet for such considerations. Mr McConnell is a domiciled Scotsman and dies leaving a wife and two children. What shares in his estate will they take under the Scots law of intestate succession? Will anyone else benefit?

The Intestate Succession Adviser is a computer program which was built by the writer to solve problems of the type above, i.e. the distribution of the estate of a deceased person who has died without leaving a valid will which applies to the whole of his estate. The program deals only with the Scots law of intestate succession which is to be found primarily in the Succession (Sc) Act 1964, and differs considerably from the system found in England. This paper attempts to explain why this domain was seen as suitable both from a pragmatic and a philosophical perspective for the development of a so-called 'expert system' or decision support system, and examines certain features of the implementation of the domain which proved unexpected.

2. CHARACTERISTICS OF LEGAL DOMAIN

The characteristic expertise of the Scottish succession rules lies in understanding several interconnected elements. First, there are not one but three distinct types of right which arise out of the deceased’s estate. Secondly, these rights rank, so that prior rights are exacted from the estate before legal rights and the latter before free estate rights. Thirdly, these rights are not exacted evenly from the estate as a uniform whole but are taken differently from different aspects of the estate (e.g. the matrimonial home) and from the heritage (immoveable) and moveable portions of the estate. There is therefore a need for a certain methodology to be followed in working out the intestate succession calculation: some rights must always take precedence over other rights; the value of some rights is dependent on
whether other rights are taken; and heritage and moveables must be tallied separately till a certain point in the problem.

The example above may help clarify. Suppose Mr McConnell died leaving a house in joint title whose net value after paying off the mortgage was £150,000 and net moveables of £70,000, which include £10,000 of household contents. His widow takes the first slice of the cake in the form of an assortment of rights known as ‘prior rights’. These give her the right to (a) the deceased’s share in the matrimonial home (£75,000), (b) the deceased’s share in the furniture and plenishings of the home (£10,000), and (c) a certain financial right (cash sum) from the estate which she is in theory able to continue to maintain herself in the home just as she did before her husband died (here, £21,000). The policy of the legislation is clear but the details, shaped by the complexities of life, are not. For example, it is thought inequitable for a widow (or widower — the provisions apply without sex discrimination) to do well just because the matrimonial home is particularly opulent. So there are cash limits on the house and plenishings right. (But there are no minima where the house was, say, particularly under-furnished.) The financial right varies depending on whether there are children to consider. There are problems of two-home couples to consider, and so forth. The financial right is also not entirely straightforward to calculate since it must be derived according to the rules rateably from the heritage and moveables remaining at that stage of the game.

This last point is particularly significant because the second stage of the distribution on intestacy involves the extracting of ‘legal rights’ from the estate, which are rights only exigible from moveables not heritage. (The reason for this is that legal rights date from an early stage of development in Scots succession law when heritage was controlled by feudal law and only moveables descended according to civil law.2) So the portion of the estate that goes into the legal rights kitty varies from estate to estate according to its particular make-up and not always in accordance with what might be seen as common sense or equity. Legal rights can be claimed by the surviving spouse of the deceased and the children (including representatives of any children who pre-decease), and can be disclaimed, which can be advantageous where the alternative is to claim a legacy.

Finally if any estate remains after the prior and legal rights are taken then what remains (the ‘free estate’) is distributed among the first surviving class of relatives on a list of ranked relatives, headed by the children. Thus if, for example, a brother or sister of Mr McConnell were to ask what they would gain from the estate, the problem would be trivial if there were children...