Tsiviilõiguse valdkonnas jätkuvad ELi õiguse kohaselt need pooleliolevaid menetlused, mis on algatatud enne üleminekuperioodi lõppu. Vastastikusel kokkuleppel Ühendkuningriigiga hoiab e-õiguskeskkonna portaal Ühendkuningriigiga seotud asjakohast teavet oma portaalis kuni 2024. aasta lõpuni.

Which country's court is responsible?

Šotimaa

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

The two main civil courts in Scotland are the Sheriff Court (including the Sheriff Appeal Court) and the Court of Session. There are, however, some specialised courts which have jurisdiction in particular kinds of claims only. These include: the Court of the Lord Lyon, the Court of Exchequer, the Election Petition Court, the Sheriff Personal Injury Court (which is part of the Sheriff Court) and the Scottish Land Court. There are also a number of statutory tribunals.

Tribunals

The Tribunals Courts and Enforcement Act 2007 created a single unified structure for most UK wide tribunals, divided into the First-tier and the Upper Tribunal. The First-tier Tribunal and Upper Tribunal each have separate chambers covering different subject matter, which bring together similar jurisdictions. Details of the Tribunals can be found on the website of Her Majesty's Courts and Tribunals Service.

There are also a number of tribunals that are devolved to Scotland. Most tribunal jurisdictions are led by a separate president or chairperson and each have different powers of enforcement. Jurisdictions range from appeals against parking fines to the compulsory treatment and restraint of patients with serious mental illness. Appeals against the decisions of Scottish tribunals are heard by the civil courts in Scotland and can be considered by the Sheriff Court and the Court of Session.

The Tribunals (Scotland) Act 2014 creates a single First-tier Tribunal for Scotland and Upper Tribunal for Scotland for devolved tribunals. Scotland's most senior judge, the Lord President, is head of the Scottish Tribunals and has delegated various functions to the President of Scottish Tribunals , which is similar to the UK model described above. The Upper Tribunal for Scotland will take on responsibility for hearing most appeals from First-tier decisions, removing these from the jurisdiction of the courts. The first tribunals are due to transfer into the new structure in December 2016. The administration of the First-tier Tribunal for Scotland and Upper Tribunal for Scotland will be carried out by the Scottish Courts and Tribunals Service.

Further information can be found on the websites of the Scottish Courts and Tribunals Service and the Scottish Government.

Court of the Lord Lyon

The Lord Lyon King of Arms is one of the Officers of State of the Kingdom of Scotland and the Queen's counsellor in matters armorial, genealogical and ceremonial. He exercises the whole Crown jurisdiction in armorial matters, enforces the law of arms and adjudicates in questions of name, family representation and chiefship.

Court of Exchequer

The Court of Session sits as Court of Exchequer in Scotland when dealing with revenue cases. The business consists in the main of appeals on law from the determination of the Special Commissioners of Income Tax on issues of liability to tax.

Election Petition Court

This court consists of two judges from the Court of Session and deals with petitions presented against the election of Members of Parliament and Members of the Scottish Parliament on the grounds of illegality or improper practices.

The Scottish Land Court

This Court deals primarily with disputes relating to agricultural tenancies and crofting (a form of small landholding). Its Chairman and Deputy Chairman are legally qualified and its two other members are practical agriculturalists. It can be asked to fix rents for agricultural holdings and crofts and it deals with appeals from the body which regulates crofting. It also deals with appeals from decisions by the Scottish Government to impose penalties on farmers in receipt of payments under the EU common agricultural policy regime, as well as appeals in relation to some environmental matters.

The Lands Tribunal for Scotland

The Tribunal has a President and three members who have recognised expertise in fields of law and surveying. The President of the Tribunal is also Chair of the Scotttish Land Court.

The main areas of work are:

the discharge or variation of title conditions

tenants' rights to purchase their public sector houses

disputed compensation for compulsory purchase of land or loss in value of land caused by public works

valuations for rating on non-domestic premises

appeals against the Keeper of the Registers of Scotland

appeals about valuation of land on pre-emptive purchase

voluntary or joint references in which the Tribunal acts as arbiter

The Sheriff Personal Injury Court

The Sheriff Personal Injury Court is the national centre of expertise in personal injury cases. Personal injury cases may be brought in the specialist injury court in Edinburgh if the sum sued for is in excess of £5000. Parties also have the choice of raising personal injury claims of any value in the local Sheriff Court. Special provision is made for workplace personal injury cases: those for more than £1000 may be raised directly in the Sheriff Personal Injury Court, while workplace cases under £1000 may be remitted to the Court if the local Sheriff considers that they are of sufficient importance or difficulty. The Court of Session no longer considers personal injury actions below £100,000.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

In Scotland both the Sheriff Court (lower court) and the Outer House of the Court of Session (higher court) act as courts of first instance in civil proceedings. The civil jurisdiction of the Sheriff Court is wide and extends to all actions of debt or damages without any upper financial limit. Actions where the value, exclusive of interest and expenses, does not exceed £100,000 must be brought in the Sheriff Court. From September 2015 the exclusive competence of the Sheriff Court was increased from £5,000 to £100,000.

The subjects excepted from the Sheriff's jurisdiction and reserved to the Court of Session are judicial reviews of administrative decisions, actions of adjudication (creating a right in security over the property), reductions (but only in relation to nullifying the effect of a decree), and petitions for the winding up of companies whose paid up capital exceeds £120,000. Cases under the Hague Convention on the Civil Aspects of International Child Abduction are heard in the Court of Session.

Cases may be remitted to the Court of Session from the Sheriff Court on the motion of the party in the case, where the Sheriff considers that the importance or difficulty of the case makes it appropriate to do so. The Court of Session may in turn permit the proceedings to be remitted to it “on cause shown.” Likewise, some cases may be remitted to the Sheriff Court from the Court of Session.

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

2.2.1 The basic rule of territorial jurisdiction

In most classes of civil proceedings, questions of jurisdiction are governed by the Civil Jurisdiction and Judgments Act 1982. The central principle of the Scottish rules of jurisdiction is that persons, whether legal or natural, are to be sued in the courts in the place where they are domiciled.

2.2.2 Exceptions to the basic rule

2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?

In addition to the basic rule above, it may also be possible to choose which court to raise proceedings in.

For example:

Contract

A person may also be sued in the courts for the place of performance of the obligation in question.

Delict and quasi-delict

A person may also be sued in the courts for the place where the harmful event occurred or may occur.

Maintenance

A court has jurisdiction in matters relating to maintenance if it is the court for the place where the maintenance creditor is domiciled or habitually resident or if the maintenance claim is ancillary to proceedings before it concerning the status of a person and it has jurisdiction to entertain those proceedings.

Dispute arising out of the operation of a branch, agency or other establishment

Here there is jurisdiction in the courts where the branch/agency is situated.

Family law

Matters such as divorce, contact with and residence of children and parental responsibilities and rights will generally follow the rules of territorial jurisdiction within Scotland i.e. the case will be heard in the place where the child is domiciled, usually in the Sheriff Court. There may however be variations to this, particularly if one or both of the parties have connections with a jurisdiction other than Scotland. You should always consider seeking legal advice about such jurisdictional matters if you think this applies.

Personal Injury

Since September 2015, new jurisdictional arrangements apply in respect of the Sheriff Personal Injury Court, the Sheriff Court and the Court of Session. For details see the information provided elsewhere in this factsheet.

2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?

In certain classes of proceedings a court shall have exclusive jurisdiction regardless of domicile or any other jurisdictional rule. These are:

in proceedings which have as their object rights in rem in, or tenancies of, immoveable property, there is exclusive jurisdiction in the courts for the place where the property is situated. Although where the tenancy is for temporary private use for a maximum period of six months the courts of the defender's domicile shall also have jurisdiction, if the landlord and tenant are natural persons domiciled in the same country.

in proceedings regarding the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, there is exclusive jurisdiction in the courts for the place where the company, legal person or association has its seat.

in proceedings which have as their object the validity of entries in public registers, there is exclusive jurisdiction in the courts for the place where the register is kept.

in proceedings concerned with the enforcement of judgments, there is exclusive jurisdiction in the courts for the place where the judgment has been or is to be enforced.

2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?

Jurisdiction may be extended if a person submits himself to a court either by express agreement or by appearing in answer to a citation without taking the plea of no jurisdiction.

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

In Scotland the use specialised courts is very limited and the answer to question 1 details which types of case they deal with. In many instances a civil law case will be heard in either the Sheriff Court or the Court of Session. It is in any case advisable to seek legal advice on taking a case to court, including if it may be suitable for a specialised court.

General information about the courts in Scotland can be found on the website of the Scottish Courts and Tribunals Service.

Related links

Scottish Courts and Tribunals Service

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