En matière de justice civile, les procédures en cours et les procédures ouvertes avant la fin de la période de transition se poursuivront en vertu du droit de l'Union. Sur la base d'un accord mutuel avec le Royaume-Uni, le portail e-Justice conservera les informations relatives au Royaume-Uni jusqu'à la fin de 2024.

Taking of evidence

Irlande du Nord

1 The burden of proof

1.1 What are the rules concerning the burden of proof?

In general, the evidential burden of proof falls on the party seeking to rely upon any particular fact. The applicant (in Northern Ireland called 'the plaintiff') must prove the facts which give rise to the claim and the defendant must prove those facts which he wishes to rely upon in defending the claim.

1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?

Facts may be exempted from the burden of proof by the law or by a pre-existing contract between the parties. Additionally, the court may consider certain facts proved by 'taking judicial notice', for example, matters of general knowledge. Some presumptions are taken as conclusively presumed, for example, if a statute provides this to be so and others may be rebutted, for example, the presumption that a person is sane.

1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?

The court must be convinced of a fact on the 'balance of probabilities' i.e. that it is at least 51% likely to be true as against 49% likely not to be true. Once a fact is proved on the balance of probabilities, it is taken to be established.

2 The taking of evidence

2.1 Does the taking of evidence always require the application by a party, or can the judge in certain cases also take evidence on his/her own initiative?

It is the general rule that a judge may not require the attendance of a witness, except in limited circumstances, but he can call a witness and recall a witness already called. By virtue of the rules which govern court procedure in Northern Ireland, the court has discretion to order any person to attend proceedings and produce a document.

2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?

If a party, usually through his lawyers, is permitted to call a particular witness to give evidence, his own lawyer will question the witness (this is called 'evidence-in-chief') and then the other party's lawyer will cross-examine the witness. The Judge may ask questions of the witness and he will invite the lawyers, to follow up, if they wish, on anything that arises from what he has asked.

2.3 In which cases can the court reject an application by a party to obtain evidence?

In certain cases, for example, where a witness is to attend a hearing in private, the court's permission must be sought before the witness can be officially summoned to attend. Otherwise, the court has no control over which witnesses are called to give evidence although it may impose costs penalties on parties which call unnecessary witnesses.

2.4 What different means of proof are there?

The main method of proof is by oral testimony. Written testimony, such as reports from an expert, and documentary evidence, such as maps, may also be used.

2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports/opinions?

The principle means is proof is by oral evidence of the parties and their witnesses. The evidence of expert witnesses, for example, doctors and engineers, may be taken from a written report by agreement. The witness may then be questioned on particular points. Court rules in Northern Ireland restrict the number of expert witnesses who may give oral evidence to two medical experts and one other expert unless leave is granted by the Court to call more. Maps and documents may also be used as evidence and their authenticity must be proved to the court's satisfaction. Additionally, the court may wish to go to a scene or look at an actual item if it feels that doing so has some probative value.

2.6 Are certain methods of proof stronger than others?

It is always a matter for the court to decide what weight to attach to any particular piece of evidence.

2.7 In order to prove certain facts, are certain methods of proof obligatory?

There is a presumption that facts will be proved orally and in open court.

2.8 Are witnesses obliged by law to testify?

A competent witness who has been summoned to give evidence is obliged to appear at the hearing and failure to do so is contempt of court.

2.9 In which cases can they refuse to give evidence?

A party may claim 'privilege' from having to give evidence on the grounds of the existence of a legal professional relationship; self- incrimination of him or his spouse; public interest and administration of justice. There are other forms of privilege which are guaranteed by statute e.g. diplomatic privilege. Also, there is discretionary privilege, for example, in relation to information given in confidence.

2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?

Yes. A witness would be guilty of contempt of court if he failed to appear having been duly served with a witness summons or 'subpoena'. The Judge could then impose a fine or period of imprisonment and require the witness to purge the contempt by attending and giving evidence.

2.11 Are there persons from whom evidence cannot be obtained?

Capacity is the general criterion for giving evidence. A person is considered to be capable of given evidence unless he is incapable of understanding the duty imposed by the oath due to infancy or, for example, insanity; he is the judge in the case or he is able to claim privilege.

2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?

The role of the parties, usually represented by lawyers (although there is provision to represent oneself) is to present evidence to the court to prove their case on the balance of the probabilities. The Judge acts as umpire to ensure the questioning of witnesses is fair, lawful and relevant to the points at issue in the case. The Judge can question the witnesses himself but will allow the parties' lawyers to pursue anything that arises from the witness in response to his questions.

Some limited use is now made, for example in the High Court in Belfast, to facilitate expert evidence via video link or Skype where the expert cannot readily come from another jurisdiction.

3 The evaluation of the evidence

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

The court does not have a general discretion to exclude evidence that has been obtained unfairly. Evidence may only be excluded where there is statutory authority to do so or where it is struck from the record because it is scandalous or an abuse of process.

3.2 As a party to the case, will my own statement count as evidence?

Yes, parties to a case may give evidence on their own behalf.

Related links

Northern Ireland Courts and Tribunals Service

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