



Court of Session Act 1988

1988 CHAPTER 36

PART III

ORDINARY ACTIONS

Proof

9 Allowing of proof by Lord Ordinary.

The Lord Ordinary may allow a proof—

- (a) in any action, other than an action enumerated in section 11 of this Act, without the consent of both parties and without reporting to and obtaining the leave of the Inner House;
- (b) in any action enumerated as aforesaid, if the parties to the action consent thereto or if special cause is shown.

10 Evidence on commission in Outer House.

The Lord Ordinary may grant commission in any action—

- (a) to any person competent to take and report in writing the depositions of havers;
- (b) to take and report in writing the evidence of any witness who is resident beyond the jurisdiction of the Court, or who, by reason of age, infirmity or sickness, is unable to attend the diet of proof or trial:

Provided that nothing in this section shall affect the existing practice in regard to granting commission for the examination of aged and infirm witnesses to take their evidence to lie *in retentis* before a proof or, as the case may be, trial has been allowed.

11 Jury actions.

Subject to section 9(b) of this Act, the following actions if remitted to probation shall be tried by jury—

- (a) an action of damages for personal injuries;

Changes to legislation: Court of Session Act 1988, Part III is up to date with all changes known to be in force on or before 11 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- ^{F1}(b)
- (c) an action founded on delinquency or quasi delinquency, where the conclusion is for damages only and expenses; and
- (d) an action of reduction on the ground of incapacity, essential error, or force and fear;
- and such an action which has been ordered by the Lord Ordinary to be tried by jury is hereafter in this Act referred to as a jury action.

Textual Amendments

F1 S. 11(b) repealed (8.8.2022) by [Defamation and Malicious Publication \(Scotland\) Act 2021 \(asp 10\)](#), ss. **20(1)**, 39(2) (with s. 20(2)); S.S.I. 2022/154, reg. 2

Modifications etc. (not altering text)

C1 S. 11 excluded (31.7.2020) by [Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Act 2018 \(asp 10\)](#), ss. **20(10)**, 27(3); S.S.I. 2020/167, reg. 2

Trial by jury

12 Summing of jury.

The jurors for the trial of issues in a jury action shall be summoned by virtue of an authority or precept signed by a Lord Ordinary or by any clerk of court officiating either in the Outer House or Inner House, and issued to the sheriff principal.

13 Selection of jury.

- (1) The jurors for the trial of any jury action shall be 12 persons selected in open court by ballot in accordance with the following provisions of this section from the list of persons summoned to attend the Court for that purpose.
- (2) The clerk of court shall cause the name of each person so summoned to be written on a separate piece of paper, all the pieces being of the same size, and shall cause the pieces to be rolled up as nearly as may be in the same shape, and to be put into a box or glass and mixed; and the clerk shall draw out the said pieces one by one from the box or glass.
- (3) Each party to the action may challenge the selection of any juror whose name has been drawn in the ballot, and may, without assigning any reason, challenge the selection of not more than 4 jurors; and any challenges for an assigned reason may be made at any time during the selection of the jury.

14 Application for view by jury.

Any party to a jury action may apply to a Lord Ordinary to allow the jury to view any property heritable or moveable relevant to the action; and, where the Lord Ordinary considers that it is proper and necessary for the jury to view that property, he may grant the application.

Changes to legislation: Court of Session Act 1988, Part III is up to date with all changes known to be in force on or before 11 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

15 Illness or death of juror during trial.

Where in the course of the trial of any jury action in the Court the presiding judge is satisfied that any member of the jury is, by reason of illness, unable to continue to serve on the jury or ought, for any other reason, to be discharged from further service on the jury, it shall be lawful for the judge to discharge such member, and in any such case or in any case where in the course of such a jury trial, a member of the jury dies, the remaining members of the jury (if they are not less than 10 in number) shall in all respects be deemed to constitute the jury for the purpose of the trial and any verdict returned by them whether unanimous or by majority shall be of the like force and effect as a unanimous verdict or a verdict by majority of the whole number of the jury.

16 Trial to proceed despite objection to opinion and direction of judge.

Notwithstanding any objection being taken in the course of the trial in any jury action to the opinion and direction of the presiding judge, the trial shall proceed and the jury shall return their verdict and assess damages where necessary.

17 Return of verdict.

- (1) At the end of his charge to the jury the presiding judge shall direct the jury to select someone to speak for them when returning their verdict.
- (2) The jury impanelled to try any jury action may at any time return a verdict by a majority of their members, and if the jury, after they have been enclosed for 3 hours, are unable to agree upon a verdict or to return a verdict by a majority, the presiding judge may discharge the jury without their having given a verdict and, on the jury being discharged, shall order the action to be tried by another jury.
- (3) The verdict when returned shall be declared orally by the juror selected as aforesaid in open court and taken down in writing by the clerk of court before the jury is discharged.
- (4) Where the jury in an action which concludes for damages finds a verdict for the pursuer they shall also assess the amount of the damages.
- (5) Subject to Part V of this Act, the verdict of the jury shall be final so far as relating to the facts found by them.

Judgment

18 Lord Ordinary's judgment final in Outer House.

Every interlocutor of the Lord Ordinary shall be final in the Outer House, subject however to the review of the Inner House in accordance with this Act.

Changes to legislation:

Court of Session Act 1988, Part III is up to date with all changes known to be in force on or before 11 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 27(1A) added by [2024 asp 1 s. 7\(13\)](#)