

## **Legal Terms Used in Scottish Court Procedure**, Neil Kelly Partner, MacRoberts

Many recent reported adjudication decisions have come from the Scottish Courts. Therefore, as part of the case notes update, we have included a brief explanation of some of the Scottish Court procedures.

There are noted below certain legal terms used in Scottish Court Procedure with a brief explanation of them. This is done in an attempt to give some readers a better understanding of some of the terms used in the Scottish cases highlighted on this web-site.

1. **Action:** Legal proceedings before a Court in Scotland initiated by **Initial Writ** or **Summons**.
2. **Adjustment** (of Pleadings): The process by which a party changes its written pleadings during the period allowed by the Court for adjustment.
3. **Amendment** (of Pleadings): The process by which a party changes its written pleadings after the period for adjustment has expired. Amendment requires leave of the Court.
4. **Appeal to Sheriff Principal:** In certain circumstances an appeal may be taken from a decision of a **Sheriff** to the **Sheriff Principal**. In some cases leave of the **Sheriff** is required.
5. **Appeal to Court of Session:** In certain circumstances an appeal may be taken from a decision of a **Sheriff** directly to the **Court of Session** or from a decision of the **Sheriff Principal** to the **Court of Session**. Such an appeal may require leave of the **Sheriff** or **Sheriff Principal** who pronounced the decision. Such an appeal will be heard by the **Inner House** of the **Court of Session**.
6. **Arrestment:** The process of diligence under which a **Pursuer** (or **Defender** in a counterclaim) can obtain security for a claim by freezing moveable (personal) property of the debtor in the hands of third parties e.g. a sum at credit in a bank account.
7. **Arrestment on the Dependence:** **Arrestment** carried out before judgement of the Court in favour of the **Pursuer** (or **Defender** in a counterclaim) in order that security is obtained. This is only possible in certain limited circumstances.
8. **Arrestment in Execution:** **Arrestment** carried out to enforce a judgement of the Court.
9. **Closed Record:** The term for the **Record** produced after the period for **Adjustment** has come to an end and containing all of the parties' pleadings as adjusted.
10. **Commercial Actions:** An action in the **Court of Session** dealing with commercial matters by means of an expedited form of procedure under special Rules of Court. Note: Some Sheriffdoms have introduced commercial actions involving expedited procedure but these are not available in all Sheriffdoms.
11. **Commercial Court:** The specialised Court in the **Court of Session** which deals with Commercial Actions.

12. **Commercial Judge:** A **Lord Ordinary** of the **Court of Session** sitting in the Commercial Court.
13. **Court of Session:** The superior civil court of Scotland which sits in Edinburgh. It is divided into the **Outer House** and the **Inner House**.
14. **Debate:** A formal hearing in the **Sheriff Court** at which legal issues only are considered without leading evidence from witnesses and based upon the parties' written pleadings (see also **Procedural Roll Hearing** below).
15. **Defences:** The formal written reply by a Defender to an **Initial Writ** or **Summons**.
16. ***Defender:** The Scottish term for someone defending a claim in an action, equivalent to "Defendant".*
17. **Division:** One of the two Divisions of the **Inner House** of the **Court of Session**.
18. **Inhibition:** The process of diligence under which a **Pursuer** (or **Defender** in a counterclaim) can obtain security over heritable (real) property of the debtor by preventing the debtor from disposing of it.
19. **Inhibition on the dependence:** **Inhibition** carried out before judgement of the Court in favour of the **Pursuer** (or **Defender** in a counterclaim) in order that security for a claim is obtained. This is only possible in certain limited circumstances.
20. **Inhibition in execution:** **Inhibition** carried out to enforce a judgement of the Court.
21. **Initial Writ:** The formal Writ or paper the service of which commences an ordinary action in the **Sheriff Court**.
22. **Inner House:** The Inner House is that part of **Court of Session** which normally sits in an appellate capacity. It is divided into the First Division (presided over by the Lord President) and the Second Division (presided over by the Lord Justice Clerk). Each **Division** is of equal standing and normally comprises three judges. In exceptional cases, where important legal principles are considered or it is felt necessary to overturn an earlier decision of a **Division**, a Court of five judges (or more) can sit to hear the case.
23. **Interdict:** The Scottish equivalent of an injunction where the Court prevents a party from committing a legal wrong.
24. **Lord Ordinary:** A judge normally sitting as a judge of first instance in the **Court of Session**.
25. **Motion:** The process by which incidental applications are made to the Court during the course of proceedings usually in relation to matters of procedure.
26. **Motion for recall of diligence:** An application to the Court for the recall of diligence (**Arrestment** and/or **Inhibition**) done usually on the dependence of an action.

27. **Open Record:** The term for the **Record** used by the parties during the period of **Adjustment** of pleadings allowed by the Court.
28. **Outer House:** The Outer House is that part of the **Court of Session** where proceedings are dealt with at first instance by a judge known as a **Lord Ordinary**.
29. **Petition:** The less common form of writ issued in the **Court of Session** but used in proceedings such as applications for appointment of liquidators, applications for **Interdict** and judicial review.
30. **Pursuer:** The Scottish term for a claimant in an action, equivalent to “Plaintiff”.
31. **Pleas-in-law:** Brief paragraphs inserted at the end of a parties’ written pleadings which state the legal basis for the claims made or remedies sought before the Court.
32. **Procedure Roll Hearing:** The name given to a hearing on legal issues in an action in the **Court of Session** similar to a **Debate** in a **Sheriff Court** action.
33. **Reclaiming:** The process by which an appeal is taken from the decision of a **Lord Ordinary** to the **Inner House** of the **Court of Session**. A Reclaimer is the appellant in an appeal.
34. **Reclaiming Motion:** An application for review by the **Inner House** of a decision of a **Lord Ordinary**. Such appeals are normally heard on the **Summar Roll**.
35. **Record:** The document which contains all of the written pleadings of parties from time to time.
36. **Sheriff:** A judge usually sitting as a judge of first instance in a **Sheriff Court**.
37. **Sheriffdom:** Scotland is divided geographically into six sheriffdoms. In each sheriffdom there are a number of Sheriff Courts in which judges known as Sheriffs sit.
38. **Sheriff Court:** The Court over which a **Sheriff** presides. Monetary claims below £2,000 fall within the exclusive jurisdiction of the **Sheriff Court**. Above that limit the Sheriff has concurrent jurisdiction with a judge sitting as a **Lord Ordinary** in the **Court of Session**.
39. **Sheriff Principal:** One judge in a **Sheriffdom** normally sitting in an appellate capacity who hears appeals from decisions of Sheriffs. He is also responsible for the administration of Sheriff Courts within his **Sheriffdom**.
40. **Single Bill:** the name given to a motion or other matter which can be dealt with in a short period of time by the **Inner House** of the **Court of Session**.
41. **Summar Roll:** The list of appeals and other business conducted by the **Inner House** of the **Court of Session**.
42. **Summons:** The formal writ or paper the service of which commences an action in the **Court of Session**.