

Litigation

Jargon Buster

This glossary is specific to the provisions of Jersey law

Act

An order of the Royal Court, as engrossed and bearing the seal of the Royal Court.

Advocate

An officer of the Court and a member of the Jersey Bar. Advocates have a right of audience in all the Island's Courts. Advocates must pass qualifying examinations and have met other requirements set out in the Advocates and Solicitors (Jersey) Law 1997.

Affidavit

A written statement which is sworn under oath to be true by the person signing it. It is sworn before an officer of the Court.

Alternative dispute resolution (ADR)

An overall description of the various methods of resolving disputes without legal action.

Arbitration

A form of ADR where the parties appoint an impartial third party to adjudicate on a dispute. The decision of an arbitrator is usually binding. Often, and particularly in construction contracts, a contract will require parties to resolve any disputes through arbitration rather than litigation.

Attorney General (Her Majesty's)

An officer appointed by the Crown to act as constitutional and legal adviser to the States of Jersey, the Island's legislative assembly, and to the Crown and to fulfil the functions of public prosecutor in the Island. The Solicitor General performs similar functions.

Bailiff

The Chief Judge and President of the Royal Court, President of the Court of Appeal and Speaker of the States of Jersey who also has various executive powers and duties. The Bailiff is the Civic Head of the Island. The Deputy Bailiff may also preside over the Royal Court and the States of Jersey. Commissioners of the Royal Court may also preside over the Royal Court. All judges of the Royal Court will sit with Jurats unless the matter before the Court is one of law only or unless, in certain criminal trials, the judge is sitting with a jury.

Bankrupt

An individual or a company who or which has been declared en désastre by the Royal Court. The declaration signifies

that the individual or company is unable to pay his or its debts on the cashflow test and deprives him or it of his or its property, which is then realised for distribution amongst creditors according to law.

Bankruptcy

The legal process of liquidating and realising the estate of a bankrupt, defined by the Interpretation (Jersey) Law 1954 to include references to remise de biens, désastre, cession générale, dégrèvement and (effectively) creditors' winding up.

Burden of proof

The obligation of proving facts to a certain standard in order to be successful in an action. In civil claims the burden of proof is "on the balance of probabilities" whereas in criminal proceedings the burden is higher, being "beyond reasonable doubt".

Cause

An element necessary to the validity of a contract in Jersey. Broadly speaking cause replaces the concept of "consideration" as a necessary ingredient of an English contract but it is not the same and is wider than the English concept.

Commissioner

A judge of the Royal Court appointed by the Bailiff either for a particular term or to hear a particular matter under authority conferred by the Royal Court (Amendment No 4) (Jersey) Law 1995.

Creditor

An individual or company or other organisation to whom money is owed and including a party claiming repossession of goods. In Jersey insolvency, the principal categories of creditor are secured, priority and unsecured.

Crime

Can be a common law offence or a statutory offence.

Customary Law

The basis of Jersey law deriving originally from the laws, customs and procedures of the Duchy of Normandy as subsequently supplemented by writers and judgments of the Royal Court, the Jersey Court of Appeal and the Judicial Committee of the Privy Council.

Debtor

In relation to an application for a declaration en désastre, an individual or a company who, or which, is insolvent on the cashflow test and whose property is, or is liable to be, subject to a declaration en désastre.

Defendant

In civil cases it is the name given to the party who the Plaintiff claims is responsible for its' claim. It is also the term used in criminal cases.

Dégrévement

A process by which Jersey immovable property is disencumbered (i.e. freed from all charges). If a judgment remains unsatisfied and there are insufficient movable assets, after making further applications to the Royal Court, the procedure can be invoked to disencumber Jersey immovable property pursuant to the Propriété Foncière Law. The procedure may have apparently harsh consequences for the debtor in that one of his creditors will become vested of the immovable property as tenant après dégrévement in settlement of his claim and will not be bound to account for any surplus.

Désastre

The most common form of insolvency procedure, initiated by the debtor or a creditor having a liquidated claim (which does not solely relate to the repossession of goods). Under the procedure, the debtor's assets vest automatically in the Viscount.

Discovery

Discovery is the phase in litigation in which the parties must search for, identify and exchange all relevant documents to their case. Subject to certain exceptions, the parties are under an obligation to disclose all relevant documentation, whether they are helpful to their case or not. The parties must swear an affidavit confirming they have complied with their discovery obligations.

Doléance

Literally: "doleful grievance". A procedure (by petition) to have a decision of the Royal Court reviewed where no express right of appeal lies, in order to prevent an injustice.

Injunction

A court order requiring an individual to do or cease doing a specific action. It is an extraordinary remedy that courts use in special cases where preservation of the status quo or taking some specific action is required in order to prevent possible injustice. Injunctive relief is a discretionary power of the court in which the court, upon deciding that the plaintiff's rights are being violated, balances the irreparability of injuries and inadequacy of damages if an injunction were not granted against the damages that granting an injunction would cause. An individual who has been given adequate notice of an injunction but fails to follow the court's orders may be punished for contempt of court.

Insolvency

The factual situation arising when a debtor is unable to pay his or its debts on the cashflow test or when there are insufficient assets to meet all debts and liabilities on the balance sheet test. (The statutory definition provided by Article 1(1) of the Désastre Law reads: "insolvency" means the inability of a debtor to pay his debts as they fall due.)

Judicial Greffier

The Chief Clerk of the Island's courts who is responsible for the Court infrastructure and its administration. He has powers to hear and determine interlocutory procedural matters. He is assisted by a Deputy and a number of Sous Greffiers and the Master of the Royal Court.

Jurats (Jurés Justiciers)

Justices of the Royal Court who sit with the Bailiff, Deputy Bailiff or Commissioners and who determine questions of fact and, in criminal cases, sentence. Normally, two Jurats will sit with the President (Inferior Number) or the court may sit in certain cases as the Superior Number, comprising between five and twelve Jurats.

Magistrate's Court

The Magistrate's Court was first established in Jersey in 1853 and is a key component of the criminal justice system with approximately 95% of criminal cases being processed there. Cases in the Magistrate's Court are heard by a professional, legally qualified Magistrate, Assistant Magistrate or Relief Magistrate. The Magistrate and Assistant Magistrate are full time judges appointed by the Bailiff (Chief Justice). Relief Magistrates are appointed by the Bailiff from amongst experienced private sector lawyers. A Magistrate cannot impose sentences of imprisonment exceeding 12 months and/ or fines exceeding £5000. A Magistrate is obliged to commit to the Royal Court any criminal case, which is beyond the sentencing powers of the Magistrate's Court.

Master of the Royal Court

An officer of the Judicial Greffe who hears and determines certain interlocutory applications and gives directions on the management, conduct and prosecution of civil cases before the Royal Court.

Mediation

A form of ADR. A mediator (independent third party) is appointed to help both parties reach an acceptable solution. The parties can select a mediator and can have a say in the process that is followed. Unless expressly agreed otherwise, the outcome of mediation is not binding.

Order of Justice

A detailed statement of facts making a claim and setting out the relief sought such as damages, declaration, injunctions, other relief, or interest and costs. This is an originating process to commence litigation, which may otherwise proceed by demande, summons or Representation.

Petty Debts Court

The Petty Debts Court adjudicates upon civil claims and was first established in 1853. It is presided over by a single Judge (Magistrate) and currently deals with claims, which do not exceed £10,000. Since 2004, the Petty Debts Court also operates such that small claims can be resolved by mediation. Evictions are also typically heard in this Court.

Plaintiff

The name given to the party making a claim in the Jersey Courts.

Privilege

This is the right of a party to refuse to disclose a document or refuse to answer questions on the grounds of a special interest recognised by law.

Representation

A form of application to the Royal Court seeking relief where neither a summons nor an Order of Justice is appropriate.

Royal Court (Inferior Number)

In civil matters, a court of first instance over which the Bailiff, Deputy Bailiff or a Commissioner presides, sitting with two Jurats. The President determines questions of law and costs and the Jurats questions of fact, the presiding judge having a casting vote in cases where the Jurats are divided in opinion. In criminal matters, it is the court of first instance for serious offences and the appeal court from the Magistrate's Court where that court has exercised summary jurisdiction in relation to lesser offences. In certain cases, the Royal Court must sit as a Superior number which means at least 5 Jurats must sit together with the presiding Judge.

Samedi Division

A division of the Royal Court. The Samedi Division deals with all matters not within the jurisdiction of the Héritage Division, the Family Division or the Probate Division. The Samedi Division deals with both civil and criminal matters. The Samedi Court is so called because it used to sit on a Saturday. Nowadays the Samedi Division sits on a Friday.

Solicitors

Solicitors in Jersey are sometimes referred to as *ecrivains*. They have a right of audience in the Petty Debts Court, before the Master who deals with preliminary applications in civil cases, before the Registrar and Deputy Registrar of the Family Division of the Royal Court, before a single judge of the Court of Appeal and in the Licensing Assembly.

Summons

A means of commencing proceedings to claim for an account rendered or a means of seeking interlocutory relief in existing proceedings. It is signed by an Advocate or Solicitor and the Judicial Greffier or a Judge.

Viscount

The Chief Executive Officer of the Island's courts and the States of Jersey. The Viscount's Department's functions include the execution of orders, serving summonses and other legal documents on members of the public and making wage arrests, as well as other general court enforcement duties. In addition, the Viscount's Department carries out the duties of Coroner and administers *désastre* and similar proceedings.

Without prejudice

The without prejudice rule prevents statements made in a genuine attempt to settle an existing dispute, whether made in writing or orally, from being put before the court as evidence of admissions against the interest of the party which made them.

Witness statement

A signed written statement equivalent to the oral evidence which that witness would, if called, give in evidence at the hearing.

Youth Court

The Youth Court was established in 1994 to hear charges against persons under the age of 18 years. The Jersey Youth Court comprises a Magistrate (chair) and two members of a panel known as the Youth Court Panel, one of whom must be a woman. While the Youth Court has a variety of sentencing options in dealing with young offenders and to discourage offending no person under the age of 21 years can be sentenced to a term of imprisonment, although offenders aged between 15 and 21 years can be sentenced to youth custody.

For expert legal advice or more information on any of our legal services, please contact us:

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