



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, Cross Heading: Proof is up to date with all changes known to be in force on or before 30 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- F1** S. 11(b) repealed (8.8.2022) by Defamation and Malicious Publication (Scotland) Act 2021 (asp 10), ss. 20(1), 39(2) (with s. 20(2)); S.S.I. 2022/154, reg. 2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

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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\(13\)](#)