

CIVIL JURISDICTION

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I. INTRODUCTION: TERRITORIAL AND PRIVATIVE JURISDICTION

(I) INTRODUCTION

1. Definition of 'jurisdiction'. Jurisdiction is the right and obligation of a court or tribunal to adjudicate on issues raised before it by a competent person in a regular manner. The authority of the court derives from the sovereign power. Subject to its territorial limits, a court or tribunal will exercise such right and carry out such obligation according to the grounds or rules set out by statute or common law, as qualified or limited by the nature of the subject matter of the proceedings before it or their value. The exercise of the jurisdiction of a court or tribunal may also be affected by the class or type of person engaged in proceedings before it¹.

This title is concerned with the exposition of the elements of jurisdiction in civil proceedings before the sheriff court and the Court of Session. The sheriff court and the Court of Session may properly be contrasted with other courts and tribunals dealing with proceedings which are civil in nature, in that those other courts and tribunals possess a jurisdiction which is limited by the particular nature of the court, especially in relation to the subject matter, in which the limitation is normally obvious from the title of the court or tribunal.

¹ D Maxwell *The Practice of the Court of Session* (1980) p 77.

2. Territorial limits of jurisdiction. With one exception, all proceedings in the sheriff court or the Court of Session are conducted on grounds or rules of jurisdiction each of which has, as a constituent part, a link with the territory of the Court of Session or of a particular sheriff court. The sole exception is where parties to a particular dispute have agreed to prorogate the jurisdiction of the sheriff court or of a particular sheriff court, and even that agreement may be linked territorially, though not necessarily so.