

An introduction to the Bailiwick of Guernsey

The Bailiwick of Guernsey is part of the British Isles, but not part of the United Kingdom. The island of Guernsey has owed allegiance to the English Crown since the 11th century, when it was part of the Duchy of Normandy. When mainland Normandy was lost to the English Crown in the 13th century, Guernsey remained loyal to the English Crown. Guernsey has the right to govern itself on all internal domestic matters, although the United Kingdom Government deals with matters of defence and foreign affairs on behalf of the island.

Guernsey is neither a separate member state nor an associated member of the European Union. Guernsey has a special relationship with the European Union, as set out in Protocol 3 to the Act of Accession.

There are three separate jurisdictions that make up the Bailiwick of Guernsey, namely the islands of Guernsey, Sark and Alderney. Each of these islands is a separate jurisdiction from each other and from England and Wales. Each of them has its own legislature and judicature, although they have varying powers. The legislature of the island of Guernsey is known as the States of Deliberation and the judicature is known as the Royal Court of Guernsey.

This article will concentrate on the island of Guernsey, the largest part of the Bailiwick, as most commercial litigation within the Bailiwick will take place on the island.

Those encountering commercial litigation before the Royal Court of Guernsey (or indeed any Court within the Bailiwick) must appreciate that Guernsey possesses its own body of laws and its own rules and procedures.

A basic outline of the court system

The Royal Court of Guernsey has unlimited civil jurisdiction in respect of civil actions taking place on the island of Guernsey. Civil actions are heard before the Royal Court sitting as an Ordinary Court; criminal matters take place before the Royal Court sitting as a Full Court.

In a civil claim, the Ordinary Court is presided over by the Bailiff and two or three Jurats. The Bailiff is the sole judge of law and his position is a Crown appointment. The Jurats are elected by the States of Guernsey and can be treated as a permanent jury. They are the sole judges of fact.

Rights of appeal proceed from the Royal Court of Guernsey to the Guernsey Court of Appeal and thereafter to the Judicial Committee of the Privy Council.

The sources of Guernsey law

Enacted pieces of legislation in Guernsey are known as laws, and are passed by the States of Guernsey and confirmed by an Order in Council. The Crown may also legislate by prerogative Orders in Council. Acts of the United Kingdom Parliament can also apply to Guernsey, with their statutory instruments, although usually only after local registration. The States of Guernsey have the power to pass subsidiary legislation such as Ordinances, Regulations and Statutory Instruments.

The root of Guernsey's common law or customary law is the customary law of Normandy. In *Le Cloche v Le Cloche*, the Privy Council confirmed that the best evidence of the customary law was the 16th century work of Terrien. An Order in Council of 27 October 1583, known as the 'Approbation des lois' confirmed the status of Terrien's work as representing the state of the customary law, with certain modifications.

The customary law of Normandy is still an important influence on many aspects of Guernsey law, particularly in relation to real property, inheritance and related matters. However, in many other areas, English common law has been a more persuasive influence so that, for example, the customary law of

Guernsey in relation to the law of tort is broadly equivalent to the common law of England.

The procedure before the Royal Court of Guernsey

Civil procedure before the Royal Court of Guernsey is broadly analogous to the procedure followed in the High Court of England prior to the CPR. Actions in Guernsey progress in a manner recognisable to English practitioners, with pleadings equivalent to Statements of Claim and Defences, with the usual armoury of interlocutory tools such as requests for further and better particulars, interrogatories and discovery.

Although the detail of this procedure will be dealt with by another article, it is important to note here that pre-action discovery under Guernsey law is limited to potential defendants in personal injury claims. General discovery against third parties is only available in the context of an existing claim for damages for personal injury, and there is no procedure under Guernsey law for the exchange of witness statements prior to a trial.

The nature of litigation in Guernsey

Actions that take place before the Royal Court of Guernsey take a variety of forms. Many cases can be regarded as purely domestic cases, in that they involve a wide range of general disputes between residents and businesses in Guernsey. However, much of the commercial litigation before the Royal Court of Guernsey relates to the island's finance industry.

A survey carried out in 1996 suggested that at that time there were over 25,000 trusts administered out of Guernsey and over 18,000 companies. The total value of assets under administration in trusts and companies was estimated at over £35 bn. It was estimated that approximately one-fifth of those assets could be linked to United Kingdom residents.

In view of the substantial nature of the assets under the control of local fiduciary businesses, it is inevitable that some will become involved in disputes with settlors, beneficiaries and creditors, and those disputes will lead to litigation before the Royal Court.

Total deposits held with Guernsey banks currently stand at over £65m. Unfortunately, some of those deposits will represent the proceeds of commercial fraud. In such cases, the victims of such frauds will try to recover their property before the Royal Courts.

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BABBÉ LE PELLEY TOSTEVIN
18 -20 SMITH STREET, ST PETER PORT GY1 4BL, GUERNSEY
tel: 01481 713 371 fax: 01481 711 607
email: mail@bltguernsey.com

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