

## CHAPTER 37

### JURY TRIALS

#### Applications for jury trial

**37.1.**-(1) Within 14 days after the date of an interlocutor allowing issues in an action, the pursuer shall lodge in process the proposed issue for jury trial and a copy of it for the use of the court.

(2) Where a pursuer fails to lodge a proposed issue for jury trial under paragraph (1), he shall, unless-

- (a) the court, on cause shown, otherwise orders, or
- (b) a proposed issue is lodged by another party under paragraph (3), be held to have departed from his right to jury trial; and any other party may apply by motion for a proof.

(3) Where a pursuer fails to lodge a proposed issue under paragraph (1), any other party may, within seven days after the expiry of the period specified in that paragraph, lodge in process a proposed issue for jury trial and a copy of it.

(4) Where a proposed issue has been lodged under paragraph (1) or (3), any other party may, within seven days after the date on which the proposed issue has been lodged, lodge in process a proposed counter-issue and a copy of it.

(5) A proposed counter-issue lodged by a party under paragraph (4) may include any question of fact which is made the subject of a specific averment on record or is relevant to his plea-in-law notwithstanding that it does not in terms meet the proposed issue.

(6) The party lodging a proposed issue under paragraph (1) or (3) shall, on the day after the date on which the period for lodging a proposed counter-issue under paragraph (4) expires, apply by motion for approval of the proposed issue.

(7) Any party who has lodged a proposed counter-issue under paragraph (4) shall, within seven days after the enrolment of a motion for approval of a proposed issue under paragraph (6), apply by motion for approval of his proposed counter-issue.

(8) Where a proposed counter-issue has been lodged, the motion for approval of a proposed issue shall be heard at the same time as the motion for approval of the proposed counter-issue.

(9) The Lord Ordinary, on granting a motion for approval of a proposed issue or proposed counter-issue, shall authenticate with his signature the proposed issue or proposed counter-issue as

lodged or as adjusted.

(10) Where an issue or counter-issue has been approved by the court, the party whose issue or counter-issue it is shall lodge 18 copies of the approved issue or counter-issue for the use of the court; and such copies need not contain the authentication of the Lord Ordinary.

### **Citation of jurors**

**37.2.**-(1) Not less than 28 days before the diet for jury trial, the pursuer shall attend at the General Department and request the issue of a jury precept.

(2) Where the pursuer has failed to request the issue of a jury precept under paragraph (1), any other party may request a jury precept not less than 21 days before the diet for jury trial.

(3) A jury precept shall be in Form 37.2-A.

(4) Where a jury precept is issued, it shall be transmitted by a clerk of session to the sheriff principal of the sheriffdom of Lothian and Borders who shall cause a list of jurors to be prepared of an equal number of men and women in accordance with the precept.

(5) A citation of a person to attend as a juror shall be in Form 37.2-B and shall be executed by the sheriff clerk at Edinburgh (or a depute authorised by him) by post by the first class recorded delivery service.

(6) Where no party requests the issue of a jury precept under paragraph (1) or (2), each party shall be held to have departed from the application for a jury trial and inquiry into the facts of the cause shall be taken by proof.

### **Ineligibility for, and excusal from, jury service**

**37.3.**-(1) A person summoned to serve on a jury may, as soon as possible after receipt of his citation, apply in writing to the Deputy Principal Clerk to be released from his citation; and the Deputy Principal Clerk may, if he is satisfied that there are good and sufficient grounds for excusal, grant the application.

(2) The Lord Ordinary to preside at the jury trial may, at any time before the jury is empanelled, excuse any person summoned to attend as a juror from attendance if he is satisfied that there are good and sufficient grounds for doing so.

### **Application of certain rules relating to proofs**

**37.4.** The following provisions of these Rules shall apply in relation to an action in which issues have been approved for jury trial as they apply to a cause in which a proof has been allowed:-

- rule 36.2 (citation of witnesses),
- rule 36.3 (lodging productions),
- rule 36.4 (copy productions),
- rule 36.5 (returning borrowed documents before proof),
- rule 36.7 (admissions by parties),
- rule 36.8 (conditions for receiving certain written statements in evidence),
- rule 36.9 (attendance, and lists, of witnesses),
- rule 36.10 (administration of oath or affirmation to witnesses),

### **Failure of party to appear at jury trial**

**37.5.** Where a party does not appear at the diet for jury trial, then-

- (a) if the party appearing is the pursuer or the party on whom the burden of proof lies, he shall be entitled to lead evidence, and go to the jury for a verdict;
- (b) if the party appearing is the defender or the party on whom the burden of proof does not lie, he shall be entitled to obtain a verdict in his favour without leading evidence.

### **Recording of proceedings at jury trial**

**37.5A-(1)** Subject to any other provision in these Rules, proceedings at a jury trial shall be recorded by -

- (a) a shorthand writer to whom the oath *de fideli administratione officii* has been administered on his appointment as a shorthand writer in the Court of Session; or
- (b) tape recording or other mechanical means approved by the Lord President.

(2) In paragraph (1) “the proceedings” means the whole proceedings including, without prejudice to that generality -

- (a) discussions
  - (i) with respect to any challenge of a juror; and
  - (ii) on any question arising in the course of the trial;
- (b) the decision of the Lord Ordinary on any matter referred to in sub-paragraph (a);

- (c) the evidence led at the trial;
- (d) the Lord Ordinary's charge to the jury;
- (e) the speeches of counsel or agents;
- (f) the verdict of the jury; and
- (g) any request for a direction to be given under rule 37.7 any hearing in relation to such a request and any direction so given.

(3) A transcript of the record of proceedings shall be made only on the direction of the court; and the cost shall, in the first instance, be borne by the agents for the parties in equal proportions.

(4) Any transcript so made shall be certified as a faithful record of proceedings -

- (a) where the recording was under sub-paragraph (a) of paragraph (1), by whoever recorded the proceedings; and
- (b) where it was under sub-paragraph (b) of that paragraph, by whoever transcribed the record.

(5) The Lord Ordinary may make such alterations to the transcript as appear to him to be necessary after hearing the parties; and, where such alterations are made, he shall authenticate the alterations.

(6) Where a transcript has been so made for the use of the court, copies of it may be obtained by any party from the transcriber on payment of his fee.

(7) Except with leave of the court, the transcript may be borrowed from process only for the purpose of enabling a party to consider whether to reclaim against the interlocutor of the court applying the verdict of the jury or whether to apply for a new trial.

(8) Where a transcript is required for a purpose mentioned in paragraph (7) but has not been directed to be transcribed under paragraph (3), a party -

- (a) may request such a transcript from the shorthand writer, or as the case may be, from a person who might have transcribed the recording had there been such a direction, the cost of the requested transcript being borne by the agent for the requester in the first instance; and
- (b) shall lodge the transcript in process;

and copies of it may be obtained by any party from the transcriber on payment of his fee.

**Administration of oath or affirmation to jurors**

**37.6.**-(1) Subject to paragraph (2), the clerk of court shall administer the oath collectively to the jury in Form 37.6-A.

(2) Where a juror elects to affirm, the clerk shall administer the affirmation to that juror in Form 37.6-B.

### **Exceptions to judge's charge**

**37.7.**-(1) Where a party seeks to take exception to a direction on a point of law given by the Lord Ordinary in his charge to the jury or to request the Lord Ordinary to give a direction differing from or supplementary to the directions in the charge, he shall, immediately on the conclusion of the charge, so intimate to the Lord Ordinary, who shall hear counsel for the parties in the absence of the jury.

(2) The party dissatisfied with the charge to the jury shall formulate in writing the exception taken by him or the direction sought by him; and the exception or direction, as the case may be, and the judge's decision on it, shall be recorded in a note of exception under the direction of the Lord Ordinary and shall be certified by him.

(3) After the note of exception has been certified by the Lord Ordinary, he may give such further or other directions to the jury in open court as he thinks fit before the jury considers its verdict.

### **Further questions for jury**

**37.8.** The Lord Ordinary may, after the evidence has been led, submit to the jury in writing along with the issue and any counter-issue such further questions as he thinks fit.

### **Verdicts**

**37.9.** After a verdict has been returned by a jury, the verdict shall be written on the issue and dated and signed by the clerk of court.

### **Application of verdicts**

**37.10.** Any party may, after the expiry of seven days after the date on which the verdict was written on the issue and signed, apply by motion to apply the verdict, grant decree in accordance with it and make any award in relation to expenses.