

Kilting a Contract



Transparency

Formation and Execution

- ❑ The concept of documents executed as deeds and those that are not (and corresponding limitation periods) does not exist in Scots law.
- ❑ A Scots law contract can be self-proving if it is executed in accordance with the Requirements of Writing (Scotland) Act 1995.
- ❑ Consideration is not essential for a contract to be effective under Scots law, rather to be concluded it must contain agreement on the essential provisions which may or may not include a price.
- ❑ Legal Writings (Counterpart and Delivery) (Scotland) Act 2015 has introduced the concept of signing in counterpart into Scots law for the first time.
- ❑ Different rules for Scots law documents on signing requirements and incorporation of schedules/appendices.

Limitation

- ❑ Prescription and Limitation (Scotland) Act 1973 applies.
- ❑ The period in which a breach of contract claim must be brought in Scotland is 5 years from the concurrence of the breach and loss - known as short negative prescriptive period.
- ❑ This is subject to a long negative prescriptive period of 20 years - commonly adjusted to 12 years in construction contracts.



Key clauses

- Differences in Scots law around the law of assignation, novation and intimation of any assignments.
- No equivalent distinction in Scots law between warranty and condition as there is in English law.
- Key differences in Scots law if using 'jointly' without 'severally' and vice versa.
- Contract (Rights of Third Parties) Act 1999 does not apply in Scots law – instead there is the common law doctrine of *jus quaesitum tertio*.
- Property law is very different under Scots law – beware if your contract deals with ownership of property (either heritable or moveable).
- Dispute resolution provisions can differ and there is the Arbitration (Scotland) Act 2010 which contains both mandatory rules which apply to every arbitration and default rules which need to be dis-applied on a case by case basis.

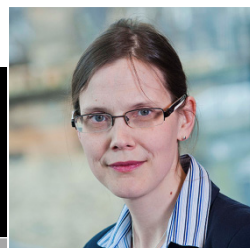
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