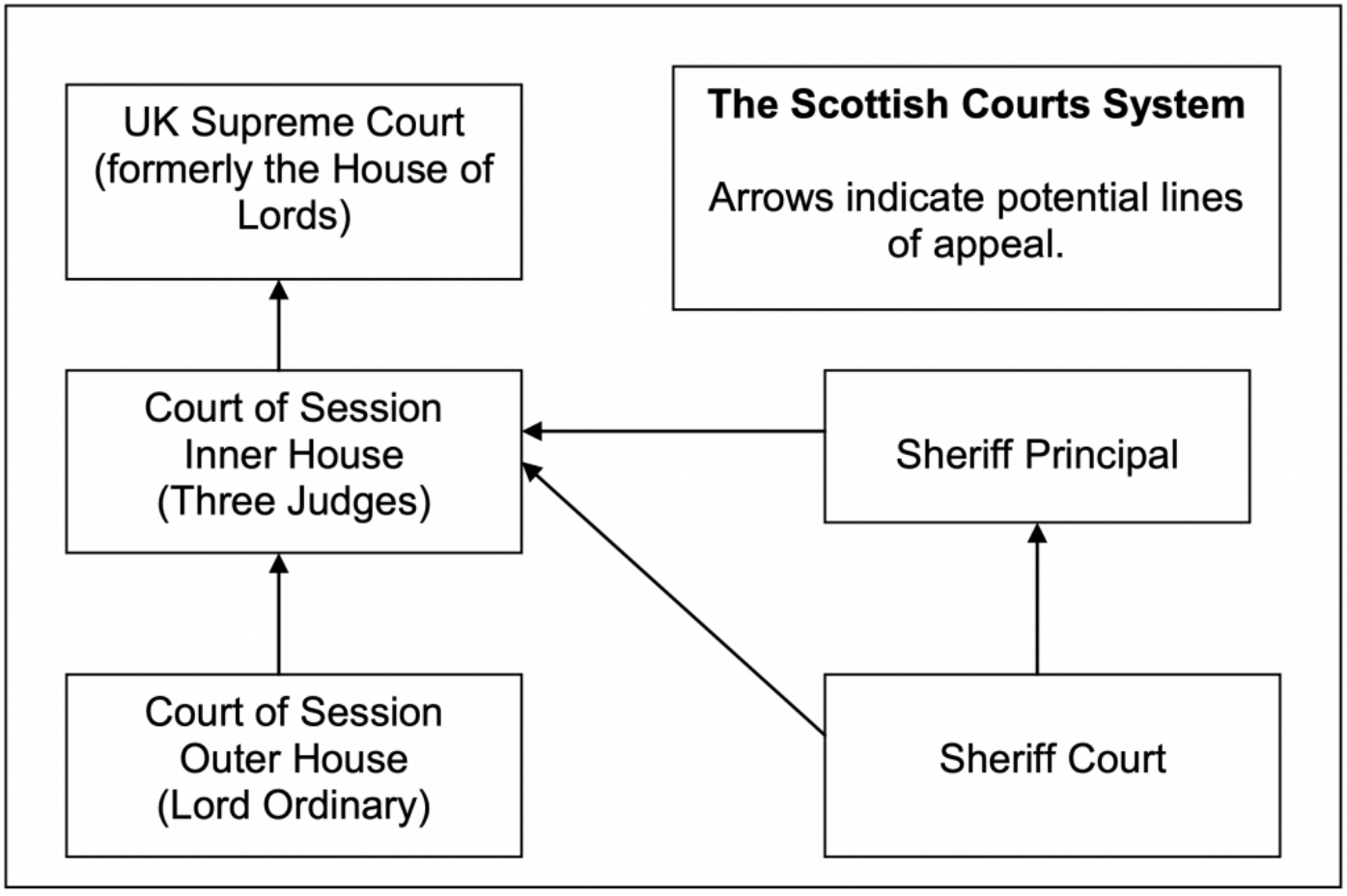
An outline of the Scottish Courts System

Court Cases on Ken · https://scotways.com/ken/outline-scottish-courts-system/

Civil court cases are initiated either in one of the many local Sheriff Courts, or in the Court of Session in Edinburgh. The Inner House of the Court of Session also acts as a court of appeal, though an appeal from a Sheriff Court can also be made to the local Sheriff Principal. It is up to the person making the appeal to decide whether to appeal to the Sheriff Principal or whether to appeal direct to the Court of Session. Until October 2009 there was a final right of appeal from the Court of Session appeal division (the Inner House) to the House of Lords. From that date, the UK Supreme Court is now the final court of appeal for the whole of the UK in civil cases.

The diagram below explains the structure of the Scottish civil courts.



In certain circumstances, there may be an application to the European Court of Human Rights if the claimant has been given no redress through the UK courts. For information about the process, see: http://www.echr.coe.int/NR/rdonlyres/37C26BF0-EE46-437E-B810-

In the case of the Land Reform (Scotland) Act 2003, there are two main processes for bringing cases to court and, in both cases, the process must start in the Sheriff Court. Under sections 14 and 15, a landowner can appeal to the Sheriff Court against a notice that the local authority has served on them in respect of an alleged obstruction of access rights. Under section 28, anyone may apply to the Sheriff Court for a court order in relation to whether access rights apply on particular land; or whether particular land managers or users have acted responsibly in relation to access; or whether there is a public right of way. Once the Sheriff has given his decision there may be appeals to higher courts.

A court decision may have an important impact on future cases because it may establish a precedent that has to be followed in other cases. A single sheriff's decision is persuasive only – it is not binding on other sheriffs. An appeal decision by a sheriff principal is binding only within his own sheriffdom. An appeal decision in the Court of Session is binding throughout Scotland unless and until overturned, either by a larger appeal division of the Court of Session convened especially for the purpose, or by the Supreme Court.

The Scottish Courts Service website provides more information about the courts system in Scotland and the Judiciary of Scotland website provides a useful glossary of legal terms used in court proceedings in Scotland.

The following is a note of some of the main technical terms used in court proceedings.

Pursuer and defender

The person who initiates the court proceedings is the pursuer, and the person defending the action is the defender. If there is an appeal, the person appealing is the appellant and the other party is the respondent.

Precognitions

These are statements, generally prepared by the solicitor in the case, setting out what a witness is likely to say in open court in response to questions. They do not form part of the evidence as such and are not lodged in court.

Pleadings

These are the written statements of each party's case, prepared by solicitors or counsel. They start with an initial writ (or application) and defences and develop over the initial procedural

stages into the ‘Closed Record’, which is lodged with the court. The object of this is to identify the factual and legal issues in dispute, which need to be resolved in the case.

Proof

This is the hearing of evidence, at which witnesses give their evidence under oath in open court.

Court Decisions

Court decisions review the facts and the legal arguments of the parties and set out what the court has decided in relation to both the facts and the law. The court can make various different orders, depending on the nature of the case.

Examples of relevant court orders:

A **‘declarator’** confirms the legal position in relation to a claimed right or status, e.g. that access rights apply over a particular area of land, or that there is a right of way along a particular line.

An **‘interdict’** prohibiting someone from doing something, e.g. obstructing a right of way. There can be an application for an interim interdict while the full court process is taking place. A final interdict may then be given when the case has been heard in full. A person who breaches an interdict may be fined or even imprisoned.

‘Damages’ compensating the claimant, e.g. for injuries he has suffered.

The normal rule with **expenses (Costs**) is that the losing party pays the winning party’s judicial expenses. They are assessed in accordance with a set table of fees by the Auditor of Court – in practice often limited to about two-thirds of the actual expenses. The court has some discretion to vary an award of expenses (e.g. to one half of the table of fees) or to make no award, but this is unusual. If the losing party has legal aid, an expenses order against him/her is likely to be almost valueless.