



what you need to know to start and grow your business

disputes

When can legal disputes arise?

Disputes arise in a huge variety of circumstances. Here, we'll look at some typical commercial disputes, such as:

BREACH OF CONTRACT	NEGLIGENCE (TORT)	INTELLECTUAL PROPERTY (IP)
<ul style="list-style-type: none">• Non payment• Failure to provide goods/services as agreed	<ul style="list-style-type: none">• Breach of duty of care owed to someone even if there's no contract	<ul style="list-style-type: none">• Opposing registration of trade mark/design right/patent• Infringement of IP right• Counterfeiting
DOMAIN NAMES	EMPLOYMENT	COMPLIANCE
<ul style="list-style-type: none">• Right to own and use a particular domain name	<ul style="list-style-type: none">• Unfair dismissal• Redundancy• Discrimination	<ul style="list-style-type: none">• Breach of competition or other regulations• Personal data breach

Where can I resolve these disputes?

Whatever the nature or subject matter of a dispute, the routes to resolution are usually either informal discussion between the parties (maybe escalating to senior management), or mediation, or formal proceedings via arbitration, court, or a specialist tribunal or body such as those set out below

MEDIATION	COURTS	ARBITRATION
<ul style="list-style-type: none">• The parties jointly select and pay for an accredited mediator to work with each party to try to find a solution acceptable to both parties.• A private process.• Courts will want to see evidence that you have attempted mediation even if not successful - otherwise you may be penalised in any award of costs.	<ul style="list-style-type: none">• The usual default unless arbitration is stipulated in the contract or one of the specialist tribunals/bodies (see below) is appropriate.• Proceedings and judgment are usually public.• There is scope to ask for the right to appeal to a higher court if the decision is against you.	<ul style="list-style-type: none">• The parties may choose in their contract to have any disputes settled not in Court but by one (sometimes three) qualified arbiter(s) using agreed arbitration rules in a given (often neutral) location and language.• Unlike Court proceedings/ judgments the process and decision are private• There is no route to appeal against the decision. If a party refuses to comply with an arbitration decision, you may need to try to enforce it in a Court.
BREACH OF CONTRACT	INTELLECTUAL PROPERTY	
<ul style="list-style-type: none">• ‘Small claims’ (<£10k in England & Wales/<£5k in Scotland)<ul style="list-style-type: none">- Trading Standards or Consumer Ombudsman before going to Court- Consider trying small claims court mediation service• For money claims <£100k (for non-payment or damages suffered) use Money Claim Online Service	<ul style="list-style-type: none">• Opposing someone else’s application to register trade mark/design/patent: submit to relevant IP Office eg UK/EU• Infringement on social media/online marketplace : try service provider’s in-house ‘take down’ process first.• Claims <£500k: Intellectual Property Enterprise Court• Counterfeiting: criminal (rather than civil) courts• Complex claims or claims > £500k: High Court	
DOMAIN NAME	EMPLOYMENT	
<ul style="list-style-type: none">• UK (e.g. ‘.co.uk’): Dispute Resolution Service run by Nominet• Top level domains (e.g. ‘.com’): Uniform Dispute Resolution Process under ICANN (Internet Corporation for Assigned Names and Numbers), arbitration at World Intellectual Property Organisation	<ul style="list-style-type: none">• Mediation via ACAS• Employment (Appeal) Tribunal rather than Court	
COMPLIANCE/REGULATORS		
<ul style="list-style-type: none">• Competition: Competition & Markets Authority and Competition Appeal Tribunal• Data Protection: Information Commissioner’s Office First Tier & Upper Tribunals		

How to handle disputes

PROCESS	WHAT TO THINK ABOUT
<ul style="list-style-type: none">• Gather evidence: begin before you launch a claim (before other party is put on notice)• Once in a dispute, consider need to preserve relevant documentation/evidence (for and against your case)• Consider no direct contact with other side except via lawyers• Need to show your case 'on balance of probabilities' (except criminal eg counterfeiting: 'beyond reasonable doubt', a higher bar)	<ul style="list-style-type: none">• Don't panic• Instruct lawyer, certainly for larger claims• Can claimant show all aspects of claims?• Any defences available?• Sufficient evidence?• Possible counterclaims?• What do you want to achieve?• Do you have time/energy/resources to fight all the way?• Competition/IP 'raids' at office: confirm scope of the officials' mandate, make copies of all documents seized, offer officials separate office but accompany them at all times, call your lawyer.

What remedies are available?

- Settlement agreement • Coexistence agreement • Payment of damages/account of profits
- Court order stopping/requesting specific act • Delivery up/destruction of articles infringing IP rights
 - Transfer of ownership and cancellation of domain name
 - Freezing of assets • Seizure of goods

Also think about

• Contracts • Selling Online • Domain Names • Patents • Trade Marks • Copyright • Design Rights • Employees & Other Staff • Data Protection

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