

Civil Litigation: A brief guide

Going to court is not always the most enjoyable of experiences. The rules and procedures are not easily comprehensible and the costs of lawyers may even be prohibitive. This article discusses the process of civil litigation for those who have exhausted all other avenues and therefore have no other option but to embark upon the part of judicial vindication.

COURTS & TRIBUNALS

There are a number of courts and tribunals in New South Wales. Examples are:

1. Supreme Court, Industrial Court, Land and Environment Court, District Court, Local Court and Compensation Court of New South Wales.
2. Designated courts and tribunals, usually presided over by a magistrate, which fall under various Acts. For example:
 - Children's Court; Mining warden's courts; Industrial Magistrates; Coroners' Courts; Licensing Courts.
3. Various non-magisterial tribunals, such as the Consumer Claims Tribunal, Building Services Corporation and Local Land Boards.

Court and tribunal powers and jurisdictions of the courts and tribunals are specified in legislation.¹ For example, the following characteristics are set out in the relevant Acts:

1. Local Court:-
 - relatively small criminal matters
 - civil claims up to \$40,000
2. District Court:-
 - civil jurisdiction up to \$750,000
 - criminal and special jurisdiction
 - appeals from local courts and other magistrate courts.
3. Supreme Court:-
 - unlimited jurisdiction over civil matters
 - serious indictable criminal offences
 - certain appeals from magistrates and District Court

GOING TO COURT

The most important initial decision in the process of civil litigation is to determine what is the most appropriate **venue** to file a claim. The filing of original process is then commenced.²

The type of the originating process is determined by the rules regulating the courts/tribunals.

An example of how the process works can be distilled from the standard litigation process of the District Court.

In this Court, the action is commenced by detailed pleading that is set out on all material facts in the form of a

¹ Also referred to as Acts and Statutes.

² This phrase refers to the eligibility of an individual claimant to appear before the judiciary.

Statement of Claim or Statement of Liquidated claim.

The choice between commencing proceedings with a Statement of Claim or a Statement of Liquidated Claim depends on the nature of the claim. The procedural advantage of a Statement of Liquidated Claim is that the plaintiff can obtain default judgment more quickly if the defendant fails to file a defence.

A claim is only liquidated if it can be calculated to a particular amount. Probably the most common example would be an action for recovery of a debt. On the other hand, an action for damages like personal injury action, where the value of damage is not yet known, is not a liquidated claim and an Ordinary Statement of Claim would have to be used.

The Statement of Claim must be filed in court and a sealed copy served on the defendant.

In the District Court, there is no requirement to file a defence within a particular time frame. But if 28 days have elapsed and no defence has been filed, the plaintiff may seek default judgment. Once a judgment is entered, whereby the judge has ruled in favour of the plaintiff, the plaintiff is entitled to enforce the judgment.

In the District Court, a *cross-claim* may be made by the defendant against the plaintiff while a *third party notice* can be made by the defendant against another party. Under the rules, the plaintiff may file a *reply in answer* to the defence.

In defended cases, the participating parties are entitled to start interlocutory proceedings. Some examples of *interlocutory proceedings* are: discovery and inspection, notice to admit facts, application for directions, notice for medical examinations and orders for inspection of property, interim preservation of property and other measures.

There are *interlocutory summary proceedings* whereby a party to a suit may apply to the court by way of affidavit evidence where the grounds of the application are sufficiently clear to enable the court to decide without a trial. The examples are summary judgment and striking out applications.

After all pre-trial steps are completed, parties to the action are required to set the matter down for trial.

At the trial, oral evidence will be heard by a judge and affidavit evidence may also be tendered during

the course of the trial. At the conclusion of the hearing, a verdict will be given.

From this point forward a dissatisfied party may appeal to the Supreme Court.

SETTLEMENT OUT OF COURT

Obviously, the filing of a court proceedings does not preclude settlement negotiation. Indeed, it is often the case that despite the commencement of proceedings, out of court settlements still take place.

CONCLUSION

The attendance and advice of lawyers is therefore crucial in ensuring that a successful settlement takes place. In a rush to settle, participating parties often overlook the serious implications that less than satisfactory negotiations may have upon a pending suit.

As we have discussed, the commencement and conclusion of a matter in the pursuit of judicial vindication may contain many pitfalls which evidently may be avoided from the onset of a dispute by engaging in reliable and professional advice.

Comasters Law Firm is able to act for either the plaintiff or the defendant in any legal action.

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