



THE ENGLISH LEGAL SYSTEM

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PRE-TRIAL CIVIL PROCEDURE

- **Definition:** the body of law concerned with methods, procedures, and practices used in civil litigation

CIVIL PROCEDURE GENERALLY

- Governed by **Civil Procedure Rules 1998**; supplemented by **Practice Directions**
- Purpose of the **Rules** is to insure fairness to all parties
- Court (judge) is expected to manage the case—e.g., setting a timetable, identifying the major issues, limiting the evidence, encouraging the parties to use Alternative Dispute Resolution (ADR—negotiation, mediation, conciliation, arbitration)
- Uncooperative parties risk **sanctions** (judge may bar certain evidence/witnesses; impose costs; throw out the case altogether)

THE THREE “TRACKS”

Judge, with help from the parties (who must fill out an **allocation questionnaire**), assigns cases into one of three “tracks”:

1. Small claims track
2. Fast track
3. Multi-track

SMALL CLAIMS TRACK

- For cases worth 5,000 pounds or less
- Parties are sent “standard directions” beforehand
- Hearings are informal; many procedural rules are suspended
- Parties are encourage to appear without lawyers
- Limited right of appeal

FAST TRACK

- For cases valued between 5,000 and 25,000 pounds
- Also for claims for injunctive relief or specific performance
- Court also provides:
 1. “standard directions”
 2. A trial date (within 30 days)
 3. A trial window (period of up to 3 weeks during which time the trial will take place)
 4. Sanctions for non-compliance

MULTI-TRACK

- For cases in excess of 25,000 pounds; also for High Court actions
- Judge provides:
 1. “standard directions”
 2. “listing questions” (a means of checking whether the parties have complied with earlier directions, and whether new information has developed about the case)
- Judge also:
 1. Schedules a case management conference
 2. Tries to get the parties to settle pre-trial

INITIATING A CLAIM

1. The parties are the **claimant** and the **defendant**
2. Claimant completes a “**Claim Form**” (includes names of claimant/defendant; cause of action; remedy sought; damages)
3. Claim Form is served on the defendant (personal service, post, electronic transmission, etc.)
4. Simultaneously (or later) Claimant serves on defendant “**The Particulars of Claim**”

PARTICULARS OF CLAIM

Includes:

1. A summary of the facts of the claims (“allegations”)
2. Precise nature of damages sought
3. Reference to any point of law on which the claim is based
4. Any relevant documents (contract)
5. Names of potential witnesses

RESPONDING TO A CLAIM

Defendant may file any of the following:

1. An **admission** (“I did it and I’ll pay you”)
2. A **defense** (denial, with reasons—however, any allegations not specifically denied by the defendant are deemed to be admitted) (“I didn’t do it, and here are the reasons why”)
3. Defendant may also file **counterclaim** here (“I didn’t do it—you did, and I’m suing you!”)
4. A **summary** of defendant’s version of the events if they are different from those of the claimant

Claimant may thereafter respond to defendant’s material in a **reply**—but is not obligated to do so.

STATEMENT OF TRUTH

- Each of these documents must be accompanied by a “**Statement of Truth**” (“I do so solemnly swear all of the statements included herein are the truth”)
- If a party wrongfully signs the “Statement of Truth”, this is known as **contempt of court** (punishable by fines/imprisonment)

STATEMENTS OF THE CASE

- **The Claim Form; the Particulars of Claim; any responses by defendant; and any **reply** by claimant are known as “Statements of the Case”**
- All of these documents must be verified by the parties by signing a “Statement of Truth”

DISCLOSURE

- At this stage, the parties are required to exchange all relevant documents for the other party to inspect
- “Disclosure” may be **general** or **specific**
- The court may order disclosure of specific documents
- Physically sharing these documents is known as **inspection**
- The court regulates which of this evidence is **admissible/inadmissible** at trial

EVIDENCE

- Court controls the admission of evidence and decides which issues actually require evidence
- Court may also limit the number of “lay” and “expert” witnesses

JUDGMENT WITHOUT TRIAL

- “Default Judgment”—defendant fails to respond to **Claim Form** or **Particulars of Claim**
- “Summary Judgment”—granted by the judge where, based on the “**Statements of the Case**”, one party has no real prospect of winning
- Also, the parties themselves may file for summary judgment through an “**Application Notice**”, which they must support with evidence
- The party filing the “Application Notice” is the **applicant**; the party responding is the **respondent**

LEGAL AID

- Defined as “public financial assistance for parties who cannot afford legal representation”
- Subject to a strict *means* test
- Administered by the **Legal Services Commission (LSC)**

TERMINOLOGY

- P. 65, text

QUESTIONS?

