



Aleksandra Łuczak (PhD)

Lektor i wykładowca Akademii Leona Koźmińskiego w Warszawie.
Zajmuje się nauczaniem języków specjalistycznych Business English oraz
Legal English.

Prowadzi wykłady w zakresie Business Culture i Academic Skills.
Współpracuje jako metodyk i trener ze szkołami języków obcych.

Lesson Eight

Litigation

When alternative methods of resolving conflicts (see lesson seven) fail, people will start **litigation** process, i.e. **bring argument to trial**, **start proceedings** or **file a lawsuit** against another party to **seek damages**.

The Complaint

The first stage of the litigation process is the pleading stage during which the complaint or the claim is filed, issued or made.

The Complaint is a formal legal document describing the facts and legal basis in support of the claim by **the aggravated party** (now known as the **claimant** and earlier as the **plaintiff**) for **relief** against another party (known as the defendant) **alleged** to be responsible for causing the legal **harm** about which the plaintiff is complaining.

In a **Tort** case this relief usually takes the form of a demand for monetary **damages**. After the Complaint is officially filed with the **clerk** of the court in the jurisdiction where the lawsuit has been brought, a copy is also personally delivered to the defendant by the authorized official of the court.

The Answer

After the Complaint has been **served against the defendant**, that party has a specified period of time within which to file a formal written response to the claimant's Complaint with the court. In most jurisdictions this period of time is about thirty days. The most typical form of written response to a Complaint in a Tort case is referred to as an **Answer**, in which the defendant formally must either agree or disagree with each specific **allegation asserted** in the claimant's Complaint.

In addition to any defensive pleadings, the defendant at this time may also wish to assert a *Counterclaim* (a separate Complaint against the plaintiff), or even a *Cross Claim* (a separate Complaint against some third party that arises out of the same factual occurrence).

Taken together, the claimant's Complaint and the defendant's Answer and all other related filings are commonly referred to as the **pleadings** in the case.

Discovery

After the Complaint has been issued and the defendant has drafted the Answer or other responsive pleadings, the **pre-trial stage** of the litigation process begins.

In most jurisdictions, both parties are then permitted to engage in a series of procedures (known generally as the process of **Discovery**) during which they may seek further details about the opposing party's case. In Discovery, each party may ask written questions (known as **interrogatories**) to which the other party must respond in writing and **under oath**. Each party is also permitted to ask

questions in person to the other party and their **witnesses** to which the other party must also respond under oath. These questions and answers are often transcribed into documents called **depositions** that can then be used at the trial for a variety of different purposes.

The basic purpose of this period of discovery is to avoid situations where either party might be unfairly surprised at the actual trial by the introduction into **evidence** of some evidence or by the **testimony** of some surprise witness about which they were unaware.

The Trial

The trial stage begins on the date set in the court's calendar which has been fixed and is known by the court, as well as all parties in any way involved with the litigation.

The trial date is important because it usually marks the end of the formal pre-trial discovery period. All discovery must be concluded by this date. This means that both parties must have completed all of their depositions, interrogatories, requests for admissions, etc, as well as any other formal requests for information by this date. The trial date is usually also the deadline for making any **motions** or other formal requests for **rulings** from the court **prior to** the start of the trial.

Jury Trial

In any jury trial the first step is the selection of the jury. Jurors are selected (usually by the clerk of the court) from a pool of local citizens. Each party is also permitted to remove a limited number of potential jurors even without a showing of prejudice or other cause. The entire jury panel will consist of between six or eight and twelve persons. This group (now typically referred to as a *petit jury*) is given an oath. Once this process is complete (often known as **empanelling the jury**), the formal part of the trial begins.

During the trial the jury will **hear the** claimant's **case** and the defendant's case. During the stage of **cross-examination** each witness is questioned by the lawyers representing the **opposing parties**.

Before the jury begins **deliberations** in the case, they are instructed by the judge as to the law that they will apply in the case. Then the jury leaves the **courtroom** to discuss the case and **deliberate their verdict**. The **jury's deliberations** take place in secret. When the jury **reaches their decision**, they then **report their verdict** to the trial judge.

The verdict of the jury is not final until it has been formally approved by the trial judge.

Appeal

After the judgment of the trial court has become final, the case may be sent to an **appellate court** for further **review**. This process is known as an **appeal**. Although either party may bring an appeal to challenge some **ruling** that was made by the trial court, usually an appeal is only brought by the party that actually lost in the trial court proceeding.

The party who brings the appeal is called an **appellant** and the party against whom the appeal is brought is referred to as the **appellee**. An appellate court decision can **affirm** (i.e., **uphold**), **reverse** (i.e., **overrule**) or modify the decision entered by any lower court. The decision of the appellate court is **binding** on all lower courts.

GLOSSARY

to affirm – utrzymywać w mocy
aggravated party – strona poszkodowana
allegation – zarzut, domniemanie
alleged – domniemany, rzekomy
answer – odpowiedź na zarzut

appellant - apelant
appellee - strona w procesie apelacyjnym,
która nie składa apelacji
to assert – domagać się, dochodzić
to bind - obowiązywać

to bring argument to trial – złożyć pozew
 claimant - powód
 clerk – urzędnik, sekretarz
 courtroom – sala sądowa
 cross-examination – pytania strony przeciwnej
 damages - odszkodowanie
 to deliberate the verdict – naradzać się nad wyrokiem
 deliberation - narada
 deposition – zeznanie pod przysięgą
 discovery - dostarczanie dokumentów i odpowiedzi przez stronę postępowania na pisemne zapytania strony przeciwnej (postępowanie dowodowe)
 to empanel the jury – powołać ławę przysięgłych
 evidence – dowód, zaznanie
 to file a lawsuit – złożyć pozew
 to harm - skrzywdzić
 to hear the case – wysłuchać sprawy
 interrogatory - zapytanie
 litigation – spór sądowy
 motion - wniosek

opposing party – strona przeciwna
 to overrule - odrzucić, uchylić
 plaintiff - powód
 pleadings – pisma procesowe
 pre-trial stage – etap przedprocesowy
 prior to - wcześniej
 to reach the decision – podjąć decyzję
 relief - rekompensata
 to report the verdict – przedstawić wyrok
 to reverse – odrzucić, uchylić
 ruling - orzeczenie
 to seek damages – ubiegać się o odszkodowanie
 to serve (a document upon sb.) – dostarczyć (komuś) pismo
 to start proceedings – rozpocząć postępowanie
 testimony - zeznanie
 tort - delikt
 under oath – pod przysięgą
 to uphold - utrzymywać w mocy
 witness - świadek

EXERCISES

1. Read the text and complete the graph below with:

a. the names of the stages in the litigation process:

Pre-trial stage Filing stage / Discovery Appellate stage Trial stage

b. the correct form of the given verbs:

bind send empanel approve issue hear make pay answer question serve
 uphold deliberate prepare overrule

•Claim is

• Fee is

•Claim isupon the respondent.

•Answer to the claim is

•Interrogatories are

•Interrogatories are under oath.

•Witnesses are

•Jury is

•The case is

•Jury the verdict.

•Jury's verdict isby the judge.

•An appeal is

•Court of Appealorthe verdict.

•The decision ison all lower courts.

2. Make a list of people involved in the litigation process.

1. issues a claim.
2. responds to the claim.
3. collects the evidence and interrogates the witnesses.
4. hears the case.
5. approves the jury's verdict.
6. lodges an appeal to the appellate court.

3. a) Read the text and find the names of different documents that you can file with the court.

.....
.....
.....

b) Now find in the text or brainstorm the list of verbs that can be used with the selected nouns.

.....
.....
.....
.....

4. Match the collocations

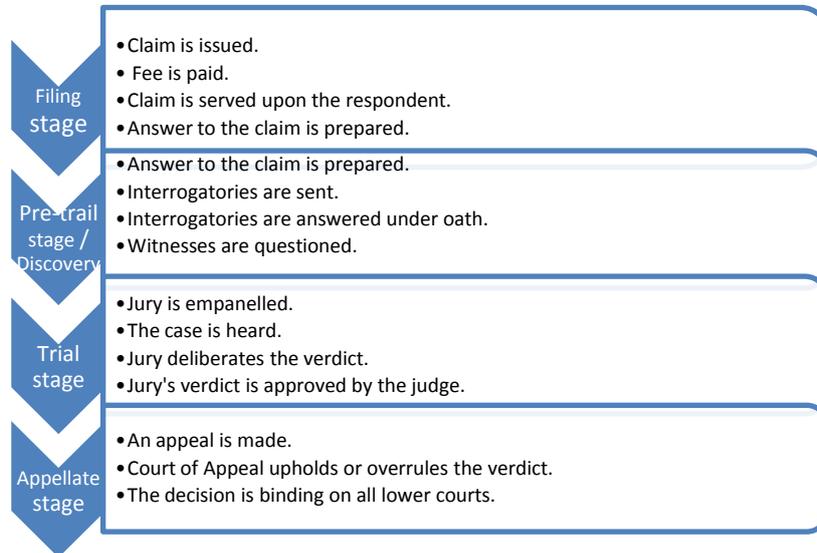
to uphold	a complaint
to file	the verdict
to bring	the decision
to seek	the verdict
to deliberate	a lawsuit
to serve	the case
to reach	argument to trial
to hear	damages

5. Fill the gaps with the missing prepositions

1. The complaint was served the defendant.
2. The defendant was servedthe complaint.
3. Court of Appeal's decision is bindingall lower courts.
4. The complaint is filedthe court.
5. The party which loses the case can appeal the verdict.
6. The defendant gave testimonyoath.
7. When alternative methods of resolving conflicts fail, people will bring argumenttrial.
8. In Tort law case relief usually takes the forma demand
.....monetary damages.
9. The entire jury panel consists between six or eight and twelve persons.

ANSWERS

1.



2.

1. claimant 2. respondent 3. lawyer 4. jury 5. judge 6. appellant

3.

a) complaint claim counterclaim answer pleadings motion

b) to file (a document with an authority)
to issue (a document)
to deliver (a document)
to serve (a document on sb. or to serve sb. with a document)
to submit (a document to an authority)
to draft (a document)

4.

to uphold	the verdict
to file	a lawsuit
to bring	argument to trial
to seek	damages
to deliberate	the verdict
to serve	a complaint
to reach	the decision
to hear	the case

5.

1. on/upon/against
2. with
3. on
4. with
5. against
6. under
7. to
8. of for
9. of