



Free information sheet on Going to Court

This is not legal advice!

Freesheets and the answers to frequently asked questions
Is not legal advice.

They are simply help notes to give somebody a basic grasp and understanding of legal procedures in different areas in an informative way that does not use "Legal Language".

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Some general points with respect to going to court

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1. Family Law Matters

People should be reassured that their family Law case will be dealt with **privately**.

How is this done?

The courts have a separate section for dealing with family law cases and it hears these cases on different days and at different times to other business.

Secondly the public are not allowed into such courts. The Judge will have a clerk or registrar to attend her or him, and there will be a Garda on duty to exclude the public. This is what they mean when they say that the hearing is "**in camera**".

It is an exception to the rule that **justice must be administered in public**. There are very few such exceptions.

a. Publishing decisions

Other ordinary (or Non-private cases) are dealt with in public before the courts, and many of these decisions are "**Reported**" or published. So the public and legal advisers can learn from previous decisions of the courts, and so conduct their cases accordingly in light of what courts have previously decided.

But because of the privacy rule, traditionally there has been very little learned about the proceedings in the family Law Courts. While this has the benefit of protecting the privacy of individual families, it does sometimes cause difficulties with respect to letting people know about how the Courts might be expected to make certain decisions in the family Law area. This has made it all the more important that people consult with experienced professionals so that they can benefit from some knowledge that the solicitor would have with respect to how their individual case might be conducted.

In recent years though, it has become easier to get some report of family law decisions, and this is done without any loss of privacy to the individuals concerned with the particular case.

b. Who is at fault?

It does surprise some people, but more often than not, the courts do not want to know about fault or the private details which led to the breakdown of a particular marriage. Perhaps people expect that the Judge wants to find one person at fault, and perhaps they also expect to have to tell their story, and show that their former spouse was the real problem.

But it is a fairer reflection of what normally happens to say that the Court's generally accept that there has been a material break down between the parties, otherwise the parties would not be here.

The courts generally move on to deal with more practical decisions of what has to be done about a variety of matters on the conclusion of the marriage in relation for example to the children, the family home, others assets and maintenance and support. There is a lot to be decided.

c. Agreement is reached One-Party must still Give Evidence

Say that there has been an agreement reached between the parties, and all that the Court is now required to do is to accept that agreement, and move on and make the necessary court orders, it will still be necessary for at least one party to give evidence, simply to inform the court that this agreement has been reached.

So just to conclude family law for the time being on a lighter note keep in mind an old maxim:

“ If you love something, set it free.

If it comes back, it was, and always will be yours.

*But if it just sits in your living room, messes up your stuff, eats your food, uses your telephone, takes your money, and never behaves as if you actually set it free in the first place, it means that you are probably married to it **and it's time to hire a lawyer!***

2. Criminal Law or Offence Type Cases

We won't discuss "offence" type case except to say that is if you have received a charge sheet or a summons to attend court about an offence that it is alleged you have committed, you should consult a solicitor immediately.

Don't leave it until the day before the court, when the solicitor will have little opportunity to advise you or to do advance work on your behalf. If you are going to pay a solicitor you may as well give her or him a reasonable opportunity to get the best possible result on your behalf. So people need to understand that this may often involve advance work on your behalf, **well before the Court.**

That advice of course also applies to all people facing any court matter it is simple practical advice:

If you are going to engage a solicitor, give him the time and opportunity to work on your behalf, in order to get the best results for you.

3. Why People go to Court:

When people think of what the courts do I think one area that most often comes to mind is the **Personal Injury Claim** arising from a road accident or an accident at their place of work. We will return to a detailed discussion of personal injury claims on another day, but in the meantime **if you have had an accident** and you want to legal advice with reference to whether or not you may be entitled to compensation, you can [Download instruction forms from our website](#), giving us particulars of the circumstances of your accident and we will review same for you and send you our preliminary views.

People go to Courts for a hundred reasons:

- They may say that someone has broken an agreement with them;
- Or that someone is trespassing on their property;
- or that someone has damaged their reputation or slandered them;
- Or that they have been Wrongfully Dismissed from their Job.

The courts are the places that people come to for a remedy when they consider that they have been wronged, or else to defend complaints or allegations made against them in turn.

Very interesting stuff can turn up in courtrooms. Some of the more interesting cases that our own firm has been involved in within the past few years include:

- A claim by the finders of the **Derrynaflan Hoard** that they were entitled to reasonable compensation from the state for finding same;

A case by the directors and shareholders of the **Kentz Group** for the court's protection and assistance in order to save their business, and the jobs of thousands of employees. Fortunately this major case was very successful.

4. What happens when you go in to Court?

At the risk of stating the obvious I should firstly remind you that there will be **Two parties** - sometimes people forget this (when they are wrapped up in their own case), and that Both parties will get an opportunity to be heard and it is one of the jobs of the Court to ensure that each party does get a fair hearing – this is called *audiam alteram partem* – which simply means to listen to the other side.

There is a whole series of strict procedures and protocols in a Courtroom to ensure that both parties get a fair chance of a hearing.

So it is important to understand and to keep in mind at all times that there is a risk attached to any court case, the risk that the other side's version may be preferred by the Court and that you will lose the case, and then you may have to pay the other sides costs.

Even when your lawyers say to you that you are reasonably certain of being successful you do have to bear in mind that it's not over until the Court Hearing or else there is a deal or a settlement made. And very often careful preparation for the Court is essential in order for either side to be able to maximise their chances of success and minimize their risks.

5. Preparation beforehand for your Case:

a. Preparing the papers for your court hearing:

The early stages of your court case will be concerned with preparing the case, investigating matters, taking statements, and preparing the papers for Court, setting out the claim in your individual case, and the various other documents they have to be prepared for same. In the meantime the other side to have prepared a defence and their other documents. A great deal of this work is done on this area in the first 12 months, and sometimes two to three years in much heavier cases.

In fact sometimes in the **timetable** for going to Court **can be quite prolonged** not just because of long court lists but also for outside reasons. Say that you have suffered **serious injuries** in an accident. Before you can go to court you have to have final prognosis or advice from your doctor's with respect to your future medical condition and health.

This is important because **you can only go to Court for compensation once for the same accident**. So if you don't know the final position, you are ill advised to look for a final hearing in the matter. You only get one shot!

The more serious cases are conducted in the High Court. Generally the circuit court that travels in your area has a jurisdiction in the order of €38,000. For larger sums you would normally have to go to the High Court. (There are discussions at present taking place with respect to increasing the jurisdiction of the circuit court to €70,000). At an early point in the conduct of your case you and your solicitor will have to decide what is the correct court to go to, for the kind of compensation that may be payable with respect to your claim.

b. Discussing your case with your solicitor:

As the case progresses it is important to discuss with your solicitor **your expectations** about the outcome of the case beforehand. Generally as the case progresses closer to hearing, your solicitor will have formed a view about your chances of success, and the risks in the case.

It is very important that you know about these aspects of your case and that you have a good understanding of what is being done on your behalf, before the day of the court hearing.

c. Discuss the risks:

It is particularly important that you should have a really good grasp of the risks that may be involved in your case. You see the Judge hears both sides, for the very first time on the day of the hearing, and must make a decision in one person's favour. If you lose the case it very often means that you may be exposed to the costs of the other side, because having lost, the other side are entitled to ask the court for an order that you would pay their costs.

d. Discuss the Costs involved – S68 quote or assessment of Costs:

When your solicitor has had a reasonable opportunity to assess your case, he is bound to give you a written estimate with respect to costs in the matter. That is the law. Sometimes this can be quite difficult, but it is none the less a very important exercise. We often find that clients can be very reassured by this part of the discussion, and where there is a real and a material risk, clients certainly prefer to know beforehand, so that they can plan for this costs risk in advance, and not have it come upon them by surprise.

6. On the day of the court:

This is your big day but in fact the advices that I am going to give you with respect to same are very simple and should be followed pretty well to the letter:

1. **Be in touch** with your solicitor and available to him well in advance of the day. There is much work to be done in the three to four months before the hearing, and it is not a time to be out of touch with your solicitor.
2. You might be asked to **contact** certain witnesses and assure their attendance. Do this early and keep in touch with them. There is nothing worse than learning that a witness "cannot come". You could find that the court won't grant you an adjournment and then you are in real trouble. If someone says they cannot come you should contact your solicitor immediately.
3. **Be there early on the day.** Sometimes even if your case is "down the list", the cases in front of you can collapse, and you could find yourself taken by surprise and going in for an early hearing. Otherwise, it is like everything else, and "the early bird catches the worm". In a busy Court List, the parties who are ready to go on can sometimes steal a march on another case, and get on for that much sought for hearing.
4. **Try and get an early consultation on the day.** This is not always possible, but it is certainly better for the client to get to meet their solicitor and barrister before the day gets too busy. Take the chance to go through the evidence with the barrister, clarifying any points that you feel are important. Don't be afraid to ask questions, and try and ensure the barrister fully understand your position. But remember he will have been fully briefed beforehand by your solicitor, and really the consultation is about the barrister trying to tease out aspects of the matter that he would wish to clarify with you before going into a hearing. He will have to interview your other witnesses as well so "don't hog" his time. Remember that you are dealing with professionals and to some extent you do of course have to trust in the system, and the solicitor that you have worked with over the past few years to prepare your case.
5. **Don't go too far from the court!** Sometimes people "disappear". I have had the experience of being in Waterford Circuit Court and ringing my client on his mobile only to learn that he had gone as far as Wexford! On another occasion a lady actually went shopping for clothes! I think she must have thought the compensation was guaranteed! When you are in the list, I know it takes patience, but you should not leave the vicinity of the court without getting the express permission from your solicitor. Otherwise there could be a very real problem if the cases called while you have gone out for coffee.

6. **Never mislead your solicitor!** There is a lot of talk these days about people making too much of their injuries and undoubtedly this does happen. But other times people can "forget to mention" something that their solicitor should be aware of with respect to the case, or they might quite simply forget. Almost every practising solicitor can tell you a "war story" of where this has happened to them, and where the consequences have been far from funny for the client and the case. Make sure that you have given your solicitor all information relevant to your case.

7. **Your contract of insurance (for your car) and young drivers**

One thing that people should be very much aware of these days is that insurance companies are getting very determined to stamp out what they say is a consistent abuse of insurance policy contracts at the moment. They say that policies are sometimes being taken out in the name of the parent, which name the son or daughter as a driver, whereas the real driver of the car who will use the car every day is in fact the son or daughter.

People should be very aware that insurance companies are pursuing such matters aggressively. If they find such a case, and consider that they can prove it, then the insured are in no position to argue for cancellation of the insurance policy. And this in turn could lead to the parents being sued for very substantial damages. When taking out a contract of insurance you are obliged to engage in full and complete disclosure to the insurance company. If you don't do so, then serious consequences can follow.



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