

## **Lesson 11: Litigation**

### **Script:**

Litigation it's probably the most glorified area of a lawyer's job. Almost all movies and TV shows always contain an element of litigation meaning showing lawyer in action in court.

We have already mentioned in the previous two modules the names of the parties involved in litigation. To review we talked about plaintiffs or claimants or applicants on one side (meaning the party who initiates litigation) and the defendants or respondents on the other side depending on whether the case is civil or criminal in nature.

I would like to talk about different stages in a typical litigation case. The first stage is the **pre-trial** stage; this is when the dispute between the parties arises. Often the parties will try to reach a **settlement**, meaning an agreement between them that will prevent having to go to trial. However if a settlement cannot be reached the parties will **file or submit** or bring a lawsuit (you can use any of these verbs). By the way as we have already seen there are many synonyms in legal English for lawsuit; we can talk about actions or claims in civil cases; we can simply talk about a suit, but these words all mean the same thing.

There are many different documents that must be filed with the court in support of the suit. One of them is an affidavit. **Affidavit** is basically a statement of facts relevant to the case with evidence supporting these facts attached as **exhibits** to the affidavit. This is one of the most important documents filed in any litigation as it presents each party's version of what happened. Another key document that must be filed is a Memorandum of Argument where the party that initiates litigation outlines their key legal arguments and the **Order Sought** meaning the remedy they are seeking from the court. The defendant or respondent will then file their **Reply** to the memorandum where they will address the same things. The plaintiff will later also be able to file an **Answer** to the respondents reply. Before the trial, both parties may also file a Book of Authorities which contains all the relevant **case law** (meaning precedents) in support of their legal arguments.

Moreover at this stage both parties may also file with the court different types of motions. **Motion** is basically a petition asking the court to do a specific thing for either party for example a motion to postpone the trial date or a motion to extend time for filing of certain documents.

The next stage in litigation is the discovery stage. This is when the evidence is gathered by both parties; when testimony of different witnesses is taken and when documents and physical evidence is examined and exchanged between the parties.

Then we enter the third stage which is the trial itself; the matter is heard by a judge who **presides over** a case meaning a judge is assigned to a case. This judge will hear evidence and arguments of both parties and will then make a decision. There are different ways in legal English of saying this. We can talk about a judge **delivering or issuing or handing down a decision or ruling or a judgement**. All of these mean exactly the same thing. In decision or judgment a judge will **find or rule in favor** of one party or will find or rule against the other party. Within the decision, the judge may also make findings on more specific factual or legal points.

Finally we enter the last litigation stage which is the **enforcement** of the judgment. This means that the winning party will have to **collect** the judgment from the losing party. What can often happen at this stage if either party doesn't agree with the decision of the court is the filing of an appeal to a higher Court often called a **Court of appeal or Appellate court**. This court will then have to decide whether they wish to **uphold or affirm** the decision of a lower court (meaning maintain it as is) or whether they will want to **overturn or reverse** the decision of the lower court (meaning change it).

We must also mention that nowadays in many types of disputes, before parties may initiate litigation they must go through ADR which stands for **Alternative Dispute Resolution**.

ADR basically consists of mediation or arbitration. In a **mediation** proceeding, the parties to dispute appoint a mutually agreeable mediator who will oversee the negotiations between the parties with the goal of reaching a settlement. This is a quite informal proceeding and the job of a mediator is basically limited to ensuring that the negotiations between parties move forward, however, the mediator doesn't necessarily become too involved in the details of the agreement between the parties. Such agreement, if reached, is not binding meaning that either party after the conclusion of mediation can still bring a suit against the other party if they're unhappy with the outcome.

In an **arbitration** proceeding, the parties to a dispute go to an **Arbitration Board or Tribunal** where an Arbitrator is appointed to decide the dispute. This Arbitrator is much more actively involved in trying to reach an agreement between the parties that will be binding on both of them thereafter. This is a more formal proceeding that, in some cases, may be the only avenue available to resolve a dispute between parties, especially in cases that are subject to a contractual provision that states that in case of a dispute, the parties surrender themselves to an arbitration procedure instead of litigation.