

# Litigating in Ireland



WILLIAM FRY  
SOLICITORS

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This guide provides an overview of civil litigation procedures in the Republic of Ireland.

It is also an introduction to the William Fry litigation department.

For further information on any of the topics covered please contact any of the litigation partners whose contact details are listed on page 16 of this guide.

William Fry is one of Ireland's longest established and largest commercial law firms. Through its association with Tughan & Co. in Belfast it provides a full range of legal services both in the Republic of Ireland and Northern Ireland to domestic and international clients.

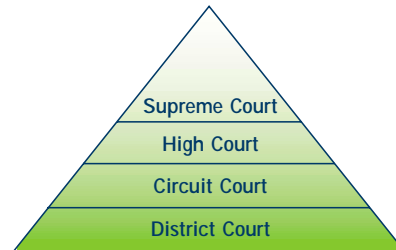


## History and Sources of Law

- Ireland is a constitutional democracy with a common law jurisdiction.
- It obtained its independence from the United Kingdom in 1922 but certain pre-1922 enactments of the United Kingdom Parliament are still in force.
- Its Constitution (Bunreacht na hEireann) was adopted by referendum in 1937 and has been amended in 20 subsequent referenda.
- Ireland was declared a republic by the Republic of Ireland Act 1948.
- It became a member of the European Economic Community (now the European Union) on 1 January 1973.
- Decisions of courts in other common law jurisdictions, have persuasive, though not binding effect in the Irish courts.
- Irish statutes are enacted by the Parliament (Oireachtas) and are signed into law by the head of the Oireachtas, the President, who can refer Bills to the Supreme Court for ruling on their constitutionality.

## The Courts

- The Irish courts have their foundation in the 1937 Constitution and various Courts Acts. The court system is divided between civil and criminal business. This guide deals solely with civil litigation.



- The **Supreme Court** consists of the Chief Justice, seven other Supreme Court Judges and, ex-officio, the President of the High Court. It can sit in two chambers simultaneously. Most Supreme Court matters are heard by a Court of three judges but in Constitutional and other cases of exceptional importance, a Court of five judges will sit.
- The Supreme Court hears appeals from the High Court and cases stated on points of law from the Circuit Court. It also has an original jurisdiction in certain Constitutional matters.
- The **High Court** is the court of unlimited original jurisdiction. It is made up of a President and twenty-three other Judges and, ex-officio, the Chief Justice

and the President of the Circuit Court. It is administered from the Central Office in Dublin's Four Courts building and ordinarily sits only in Dublin but periodically sits in Cork, Limerick, Galway, Sligo, Dundalk, Kilkenny and Waterford.

- The High Court is not divided into specialist divisions but a single judge is permanently assigned to admiralty matters.
- In addition to its unlimited original jurisdiction, the High Court also hears appeals from the Circuit Court and decides on points of law by way of case stated from the District Court.
- As a general rule, High Court decisions may be appealed to the Supreme Court.
- The lower courts - Circuit Court and District Court - have limited jurisdiction.
- The **Circuit Court** has a monetary damages jurisdiction of up to IRE30,000 in contract and tort claims and a substantial jurisdiction in property disputes and family law. It also hears appeals from decisions of the District Court. The Circuit Court sits at 29 venues throughout the country and is administered by a Circuit Court Office at each venue.
- The **District Court** has a jurisdiction in contract and tort claims limited to IRE5,000 and a limited jurisdiction in property disputes, family law and

licensing. It sits in many towns divided into 23 districts throughout the country and is administered through local District Court offices. A Small Claims procedure for dealing with disputes worth less than IRE1000 is operated through the District Court and its offices.

## Law Terms

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- The legal year is divided into law terms. The Supreme Court, High Court and Circuit Courts do not usually sit outside of these terms although vacation Judges are available to deal with urgent matters. Apart from Christmas and Easter vacations, there are also Court vacations towards the end of May for a two week period in each year (Whit) and between 1 August and the first Monday in October each year (the Long Vacation).



## Judges, Solicitors, Barristers

- The legal profession in Ireland is divided into three main branches: solicitors, barristers and judges.
  - The Law Society of Ireland is responsible for the admission, training and supervision of **solicitors**. Of the 5,000 practising solicitors in Ireland, more than half are based in Dublin. Five Dublin firms each have in excess of 70 solicitors. The majority of other firms in the country have between one and three partners.
  - Irish solicitors have a right of audience in all Irish Courts. While they will often present cases in the District Court, they rarely do so in the Circuit, High or Supreme Courts.
  - The Bar Council is responsible for the administration and training of **barristers**. There are currently in excess of 900 practising barristers in Ireland.
  - Advocacy in the higher courts is usually conducted by Barristers. As a result, Barristers generally assist in the drafting of pleadings. While they also advise both by written opinions and at oral consultations, they can do so in contentious matters only on instructions from Irish solicitors. In non contentious matters they may accept instructions from practising lawyers of other EU Member States. A barrister (Junior Counsel) with ten years experience or more may apply to become a Senior Counsel.
- Senior Counsel rarely act in court without a Junior Counsel also being briefed. Barristers in practice for twelve years or more are eligible for appointment as Judges.
- Practising barristers must be subscribers to the Law Library in Dublin. Though self employed and independent of each other, they frequently share facilities and premises adjacent to Dublin's Four Courts building. There is no chambers system in Ireland.
  - Judges are appointed by the Government after consultation with the Judicial Appointments Advisory Board. This Board consists of senior members of the judiciary, the Chairman of the Bar Council and the President of the Law Society as well as two lay representatives. The Board notifies the profession of judicial vacancies and invites applications from eligible members.
  - Solicitors have always been eligible for appointment as District Court Judges and have been eligible for appointment to the Circuit Court bench since 1995. Currently only solicitors who have been Circuit Court judges for more than four years and Senior Counsel are eligible for appointment as Judges in the High and Supreme Courts (Superior Courts) but this practise is under review. A Government working group has recommended that solicitors of not less than 12 years standing with at least 10 years litigation experience should also be eligible for appointment to the benches of the Superior Courts.

## Court Procedure

Preparation for a typical High Court or Circuit Court trial can be separated into three distinct phases:

- exchange of written pleadings;
- discovery (disclosure of documents); and
- the trial.

## Pleading

- The diagram on page 7 illustrates the sequence for the exchange of pleadings between a Plaintiff and Defendant in a typical High Court plenary action leading to an oral hearing. A similar sequence is observed in the Circuit Court. Primary pleadings (Statement of Claim and Defence) tend to be expressed in very broad terms. As a result, the parties invariably seek more detailed information from each other through notices for particulars.
- The rules applicable in the High Court provide time limits for the delivery of pleadings. These time limits, if adhered to, facilitate speedy progress towards a trial but they are often extended either by agreement of the parties or by order of the Court following an application brought against a party in default. Where a party delays unreasonably, orders for judgment or striking out of pleadings can be obtained upon application to the Court.

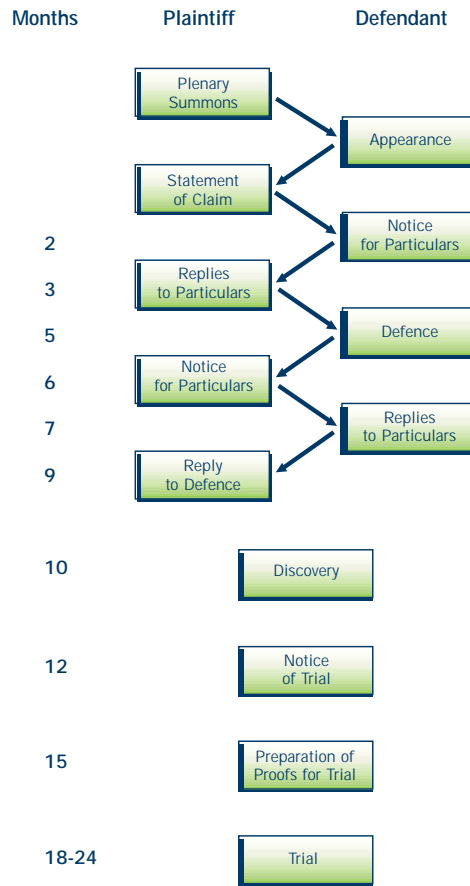
- Time for delivery of pleadings does not run during the Long Vacation.
- Orders striking out proceedings are made only in circumstances where a Court is satisfied either that there has been inordinate and inexcusable delay on the part of the Plaintiff in prosecuting the proceedings resulting in serious prejudice to a Defendant or that the claim is frivolous or vexatious or where it has no possibility of succeeding at trial.
- The rules in the High Court also provide for actions to be decided by two other types of procedure in limited circumstances:
  - A summary procedure can be used in claims for liquidated amounts. Summary proceedings are commenced by Summary Summons and evidence in such claims is presented by the parties on Affidavit to the Master of the High Court rather than in person to a Judge following the delivery of written pleadings. On hearing the Affidavit evidence, the Master can grant liberty to enter judgment to a Plaintiff or can remit the matter to a Judge of the High Court for hearing. The Master also has power to direct that the matter be remitted for full plenary hearing in the High Court in which case the parties will usually be required to revert to the normal process of delivering pleadings leading up to an oral hearing.



- A procedure by Special Summons can be used in certain claims involving wills, trusts and other cases in which facts are relatively uncontroversial. Many issues arising under the Companies Acts are also determined by the special summons procedure. This procedure, like the summary procedure, also requires the parties to give evidence on Affidavit but the proceedings are heard and determined by a High Court Judge.

Proceedings commenced by Summary and Special Summons are considerably faster than plenary proceedings.

### High Court, plenary action, pleading sequence and time frame estimate



## Equitable Jurisdiction / Pre-emptive Remedies

- The High Court has an established equitable jurisdiction and recognises a broad range of what have become known as 'pre-emptive' remedies. The most frequently resorted to are varieties of interlocutory injunction including Mareva Injunctions (freezing orders) and occasionally Anton Pillar Orders (seizure and preservation of goods or evidence pending trial).
- To obtain an interlocutory injunction in Ireland, the Plaintiff must be able to satisfy the Court:
  - that there is 'a fair question' to be determined at the trial of the action concerning the existence of the right which it seeks to protect or enforce by the injunction; and
  - that damages will not be an adequate remedy for the Plaintiff if successful at the trial; and
  - that the 'balance of convenience' favours the granting rather than the refusing of the injunction application.
- A Plaintiff to whom the Court is inclined to grant an injunction will always be required to give an undertaking as to damages to the Court to cover the possibility that at the trial of the action it is decided that the injunction should not have been granted and to compensate a Defendant which has suffered loss as a consequence of the injunction. An undertaking as to damages must therefore have substance.
- A Plaintiff applying for a Mareva injunction must in addition prove to the satisfaction of the Court that the Defendant intends to dispose of assets with a view to evading obligations to the Plaintiff and to frustrate the anticipated order of the Court.
- Under the various European Judgments Conventions to which Ireland is a party, the Irish Courts also have power to grant pre-emptive relief in aid of a Plaintiff in proceedings being conducted in other Contracting States.



## Third Parties

- A Defendant may apply to the Court for liberty to join another party as a Third Party to an action. If successful in the application, the third party is served with a Third Party Notice broadly describing the basis for the claim against the Third Party together with a copy of the Court Order under which it was joined into the proceedings. Issues between the Defendant and Third Party are normally ordered to be tried at the same time as the main action and in the High Court, the Third Party is obliged to deliver a Defence to the Third Party Notice.
- A Defendant can also pursue an independent action against a Third Party for a contribution to any award made in favour of a Plaintiff. It is imperative that any contribution action is commenced as soon as reasonably possible by the Defendant as any delay may result in relief being refused.
- The High Court has made it clear in a number of judgments that the joining of Third Parties into the main action is to be preferred over separate actions for contribution.
- A party to proceedings can obtain an order directing a Third Party to answer interrogatories or to permit inspection of documents if the Court is satisfied that the Third Party is likely to be in a position to give evidence on a relevant issue in the action.

## Discovery

- Court rules do not require automatic discovery. However, once requested, if not made voluntarily it will generally be ordered on application to the Court. Discovery is made by way of Affidavit sworn by the parties to which schedules listing all relevant documents including privileged documents are attached.
- The two main heads of privilege recognised in Ireland are similar to those in other common law jurisdictions being legal advice privilege and litigation privilege. The Irish Courts have drawn a clear distinction between the giving and receiving of legal advice and the giving and receiving of legal assistance. Only the former is truly privileged. The distinction is particularly relevant for in-house legal advisers whose separate advice and assistance functions may be difficult to isolate from one another. Contested claims to privilege are usually decided by the Court reviewing the particular documents in question and the circumstances of the claim to privilege.
- In personal injury cases in the High Court, the parties are obliged to exchange the reports of all expert witnesses intended to be called at the hearing of the action.
- Court rules also provide for obtaining discovery against Third Parties if it is established that the Third Party has or had possession custody or power of relevant documents not otherwise available to the parties.

- Parties are entitled to inspect or request not only non-privileged documents in discovery but also locations of alleged accidents and products in alleged defective product cases
- The Irish Courts are also empowered under domestic legislation implementing the Brussels Convention to order discovery from a party to proceedings in another Contracting State in respect of documents in this jurisdiction. Such an application does not require the commencement of separate proceedings in Ireland.
- Norwich Pharmacal orders (actions in which the only relief sought is discovery) are also recognised by the Irish Courts but only in circumstances where there is a very clear proof of wrongdoing and what is being sought are the names and identities of the wrongdoers rather than factual information concerning the commission of the wrong.

### Interrogatories

- Irish Court Rules provide for the raising of Interrogatories on matters of fact before trial with leave of the court (other than in fraud claims). Permitted interrogatories must be answered on affidavit.



## Trial

- Irish litigation is trial-oriented and adversarial in nature. Most actions are decided by a single Judge who sits without a jury, the only exceptions (in civil matters) being defamation and wrongful imprisonment actions.
- Except in extreme circumstances where a witness cannot attend Court, evidence at trial must be given orally. In such circumstances, evidence may be taken on commission. Deponents of Affidavits in interlocutory and summary applications can be cross examined if served with the appropriate notices.

## Trial Time Frames

- It takes on average between one and two years to process a plenary action in the High Court from the institution of proceedings to conclusion of the trial. A broad estimate of the time taken for each stage of the process from pleading through discovery to trial is set out on the left hand margin of the diagram on page 7. Personal injury and defamation cases may take up to a year longer.
- Proceedings commenced by Summary or Special Summons are generally concluded in a year or less.
- Trials in the Circuit Court are usually completed within a year of the institution of proceedings and in the District Court in approximately 6 to 9 months.

- Judgment in undefended claims can be obtained in lesser periods and in appropriate cases, may be available by applications to the appropriate court offices rather than the Courts themselves.

## Costs

- A successful Plaintiff or Defendant will ordinarily obtain an order for costs against the unsuccessful party but such orders are at the discretion of the trial Judge. A costs order is an order to recover what are called "party and party" costs only. Party and party costs usually approximate to two thirds of a party's total legal costs.
- **Payments into Court** (lodgments) can be made by a Defendant but only at certain times as provided for by the Rules of the relevant Court. If a Plaintiff ultimately recovers an award less than the amount of the lodgment then the Plaintiff automatically becomes liable for the Defendant's costs from the date the lodgment was made.
- Orders for **security for costs** can be sought against impecunious or insolvent Plaintiffs but are granted only in exceptional circumstances. Orders are more readily given in cases where a defendant can show that it has a prima facie defence, that the plaintiff will not be able to pay the defendant's costs if it is successful in its defence and there are no special circumstances which would cause the Court to exercise a discretion not to make the order such as the defendant having contributed to the plaintiff's impecuniosity or delay.

- Irish Solicitors are prohibited from operating on a contingency (percentage of damages awarded) fee basis though in exceptional circumstances will act on a “no foal no fee” basis.

## Foreign judgments

- Ireland is a signatory to the Brussels and Lugano Conventions on Jurisdiction and Enforcement of Foreign Judgments.
- Applications to enforce foreign judgments under the Brussels and Lugano Conventions are made to the Master of the High Court on Affidavit. The Master can grant protective measures (usually in the form of injunctions restraining the disposal of assets) at the same time as making an initial enforcement order. A Defendant has a limited time within which to appeal to the High Court against any initial order of the Master. If no appeal is lodged within the time specified, the initial order becomes enforceable in Ireland in the same way as a judgment of an Irish Court.

## Foreign proceedings

- The Irish Courts may assist a foreign court in examining witnesses or procuring documents in respect of issues in proceedings before the foreign Court. Such requests are made through consular or diplomatic channels and the more specific the request (particularly in relation to discovery of

documents) the more likely the Irish Courts will act to grant assistance.

- As a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, orders for discovery before foreign (i.e. non Brussels Convention) states can be enforced in Ireland.

## Enforcement of Court Orders in Ireland

- Orders obtained in Irish courts have to be processed through the relevant Court offices before they become enforceable. Once processed, orders can be enforced in a variety of ways usually dictated by the circumstances of the particular case and of the party against whom the order is made. They include:
  - execution orders (money damages);
  - possession orders (against property);
  - attachment of debts due by third parties to the party against whom the order is made (garnishee);
  - judgment mortgages over land;
  - charges over stocks and shares;
  - appointment of receivers by way of equitable execution;
  - examination orders;
  - attachment and committal for contempt of court orders.



## Alternative Dispute Resolution (ADR)

- Various forms of ADR are operated in Ireland.
- The longest established form is arbitration which is governed by the provisions of the Arbitration Acts of 1954, 1980 and 1998. These Acts amongst other things give effect to the provisions of the Geneva, New York and Washington Conventions. Awards of foreign arbitration tribunals to which these Conventions apply are therefore enforceable in Ireland.
- Arbitration awards can be appealed to the High Court but only on grounds of stated misconduct by the arbitrator. The High Court has shown little inclination to interfere with arbitration awards and appeals are therefore rare.
- Arbitrators may refer questions of law to the High Court for determination.
- Where parties have agreed a valid arbitration clause but one of them subsequently commences Court proceedings, those proceedings will be stayed pending the determination of the arbitration on application to Court by one of the other parties.
- Applications to Court for security for costs can also be brought by a respondent in Irish arbitration proceedings.
- Legal practitioners are increasingly resorting to mediation and conciliation as mechanisms for resolving commercial disputes. An International Arbitration Centre was opened in Dublin in 1998 offering facilities designed specifically to cater for dispute resolution procedures. A branch of the London Centre for Dispute Resolution also operates in Dublin. Proximity to independent expertise in certain professional disciplines (particularly in the United Kingdom) has helped promote the ADR concept.

## General points of interest

- The procedural rules applicable in the High and Supreme Courts are contained in the 1986 Rules of the Superior Courts. These Rules however have been amended on a number of occasions since 1986 to reflect changes in domestic law and to cater for procedural alterations arising from Ireland's accession to international conventions.
- Legal aid is available only in family and criminal matters.
- Damages awards in Ireland are "lump sum" awards. There is no provision which entitles a plaintiff to seek stage payments or a review of an award of damages other than by way of appeal.
- Interest currently at a statutory fixed rate of 8% per annum may be granted on a damages award at the discretion of the trial judge and will apply on any money judgment from the date of the judgment.
- The limitation period for commencement of actions founded on contract and tort matters is generally six years and three years in respect of personal injuries actions.
- Court rules do not provide for the bringing of class actions as a result of which test cases are used in circumstances where class actions might otherwise be appropriate.
- A Courts Commission now administers the court system in Ireland. Procedure in the Irish Courts is still the responsibility of the Department of Justice, Equality and Law Reform which works closely with the representative bodies for both the solicitors and barristers branches of the legal profession.
- The representative body for the solicitors profession is the Law Society of Ireland, Blackhall Place, Dublin 7. Telephone: 00 353 1 672 4802. Web site: [www.lawsociety.ie](http://www.lawsociety.ie)



## William Fry Litigation Department

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- The William Fry litigation department has a vast range of experience in commercial dispute resolution before the Irish Courts, in domestic and international arbitration and before Tribunals of Enquiry.
- We aim to achieve results for our litigation clients through:
  - providing thorough and critical analysis of contentious situations;
  - agreeing objectives with our clients in every case;
  - advising on strategy and using Court procedures creatively for the achievement of the agreed objectives;
  - drawing on our investment in resources both human and technological to pursue objectives aggressively in an effective and cost efficient manner;
  - tailoring reporting procedures to particular client needs;
  - availing of the firm's network of international contacts to provide comprehensive advice in international dispute situations.
- Areas in which we have particular litigation experience include:
  - All commercial disputes;
  - Competition law;
  - Banking and insurance law;
  - Employment law;
  - Intellectual property and licensing;
  - Property and construction disputes;
  - Product liability;
  - Personal injury claims;
  - Professional and medical negligence;
  - Revenue and tax law;
  - Trust and succession law;
  - Health and safety legislation;
  - Environmental law;
  - Defamation.
- Our litigation department also contains a specialist insolvency group. This group has been involved in many of Ireland's major corporate rescues and insolvencies representing leading liquidators, receivers and examiners. It has also advised creditors including banks, financial institutions, suppliers directors, shareholders and others on all aspects of claims against insolvent or potentially insolvent companies.

For further information contact any of our litigation partners:



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