

GENERAL INFORMATION

What is a Civil Claim?

A civil claim is a legal and factual dispute between two or more parties claiming for remedies, damages or compensation.

Filing a Civil Claim

- A claim by an individual not more than RM5,000.00 can be filed in the Small Claims Court.
- The Magistrates' Court will hear all civil claims up to RM100,000.00.
- The Sessions Court will hear all civil claims between RM100,001.00 to RM1,000,000.00
- The High Court can hear all monetary claims (unlimited jurisdiction).

Examples of Civil Claims

- Personal Loan
- Housing Loan
- Hire Purchase
- Study Loan
- Credit Card
- Breach of Contract
- Dispute involving Movable and Immovable Property
- Dispute between Landlord and Tenant
- Civil claims involving motor vehicle accidents
- Personal Injury Claims

Mode of Commencement

1. Writ of Summon
2. Originating Summons

1. Writ of Summons

If your claim involves a substantial dispute as to the facts, then it must be commenced by way of Writ.

- The writ must be endorsed with a Statement of Claim or a concise statement of what your claim or the relief or remedy you seek.
- There must be sufficient information and particulars in the statement for the Defendant to be clear about what it is you are claiming against him/her for.
- State the number of days that the Defendant(s) has to enter an appearance to your Writ.

1.1. Service of Writ

The writ can be served in the following manner:

- Personal Service / by way of Prepaid AR Registered Post addressed to his last known address
- If personal service failed, an application for substituted service shall be filed

1.2. Important Information to be stated on your Writ

- The address of your residence
- If your address is not in Malaysia, or if you do not have a place of residence in Malaysia, then give an address within Malaysia that documents may be delivered to you at.
- Your occupation

2. Originating Summons

i) What is Originating Summons (“OS”)

OS is to be used when it is required by a statute, a dispute which is concerned with matters of law and where there is unlikely to be any substantial dispute of facts. Hence, OS should not be used if there are dispute of facts.

ii) Features of OS

- The OS must be filed together with an Affidavit in Support exhibiting documentary evidence intended to be relied on
- It is heard by a Judge
- No pleadings are required.

iii) Contents of an OS

A statement for determination or for direction or a concise statement of the relief or remedy claimed, particulars to identify cause or causes of action in respect of which the Plaintiff claims that relief or remedy.

How to file a Claim?

Before you file a claim in Court you should first consider the following:

- a. Cause of action. Is there a proper basis for your claim?
- b. Limitation period. Are you within time to file your claim?
- c. Evidence. How will you back up your claim? Do you have the necessary evidence in the form of documents or witnesses?
- d. Costs of litigation. You will need to incur Court filing fees and litigation may take up a substantial amount of your time. You should also consider the possibility of losing your case and the consequences of that - such as being ordered to pay your opponent's costs.

Filing

Filing of a case can be done manually or via online registration.

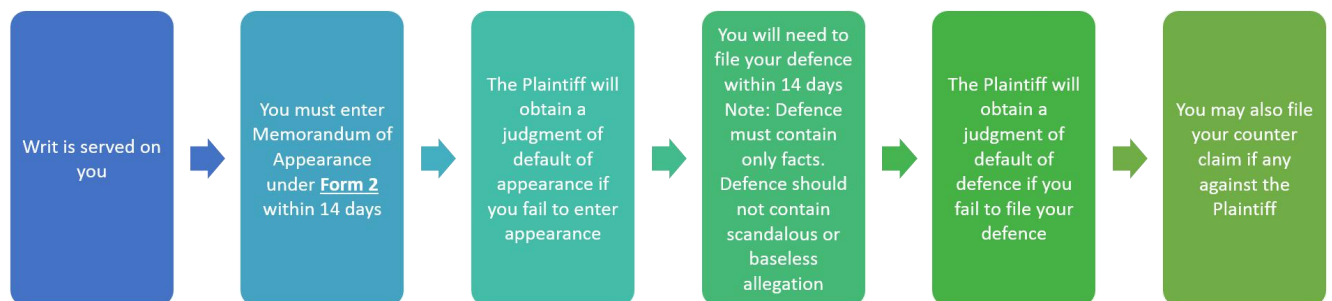
For manual process, you can go to the Court Registry to seek further assistance. Once the case is registered, you will then need to extract a sealed copy of the same and serve your Court papers to the Defendant within 6 months.

As for the online registration, the steps are as follows:-

- Subscribe as a user. The subscription is free of charge.
You can visit the website at: <https://judiciary.kehakiman.gov.my/portals/>
- Fill in the pre-registration steps by login into the system. You can either fill in the e-form/template or upload the documents into the system.
- Reference slip will be emailed to your registered email once you have fill in all required details of the case.
- Bring the reference slip to the counter of the Subordinate Court's Registry and pay the prescribed fees.
- The Court staff will assist in completing the registration process.
- All notifications of the case will be done through email.
- The case number will be used as reference for future dealings.
- Secondary filings must be done via online.

How to defend a Claim

1. Steps to take after you are served with a Writ of Summons



2. Steps to take after you are served with an Originating Summons



3. When do the Pleadings closed?

The pleadings (in the case of a Writ action) or exchange of Affidavits (in the case of an OS action) will be closed when the respective parties have filed the following:

For Writ of Summons	For Originating Summons
Plaintiff's Writ	Plaintiff's Originating Summons
Plaintiff's Statement of Claim	Plaintiff's Affidavit in Support
Defendant's Statement of Defence	Defendant's Affidavit in Opposition
Defendant's Counterclaim (if any)	Plaintiff's Affidavit in Reply
Plaintiff's Reply to Defence (if any)	
Plaintiff's Defence to Counterclaim (if any)	
Defendant's Reply to Plaintiffs' Reply to Defence	

What to do in Trial

Before a trial begins, you will have to attend pre-trial case management.

On the Hearing Date Pre Trial Case Management (PTCM)

- Upon the close of pleadings, the Court will call the parties up for a PTCM.
- You must compile all your documents and identify your witnesses.
- At the PTCM, the Court will inquire on the issues, documents and witnesses of the case.

- The Court will then give direction as to what documents are needed to be filed in Court together with the timelines for all the filings.
- You must comply with the timelines unless an extension of time is allowed by the Court.
- Failure to comply with the directions may result on the dismissal of your claim.

On the Hearing Date

- If you require the court to issue a subpoena to your witnesses, an application should be made earlier to the court.
- Remind witnesses of the trial date.
- Arrive at the court complex 15 minutes earlier than the stipulated time. The court will convene at 9:00 am.
- Dress appropriately. You must comply with the court dress code.
- Upon arrival, please check your case in the cause list displayed at the court notice board or inform the court interpreter of your attendance.
- Bring along documents to be used during trial.
- Speak and conduct yourself in a courteous manner. If you are addressing a Judge in the Sessions Court, you should refer the Judge as "Tuan Hakim" or "Puan Hakim". For Magistrates Court, you should refer the Judge as "Tuan Majistret" or "Puan Majistret" or "Your Honour".

Trial Procedure

- If you are the Plaintiff you will start first. You can call witnesses or testify yourself. You must also produce your documents for you and your witnesses to identify.
- You and your witnesses can be cross examined by the Defendant.
- After cross examination, you may re-examine the witness to explain what he or she had said during cross examination. You cannot bring up additional issues that was not raised during the cross examination.
- After you have called all your witnesses the Defendant will then start his case by calling his witnesses and by repeating the same process.
- Submission can be done by way of oral or written at the end of the case :

- Reply by the plaintiff.
- Defendant's submission ; and
- Plaintiff's submission ; followed by
- Decision of the Judge/ Magistrate.
- The judgment is the decision of the Court at the conclusion of the trial. The Court may either allow or dismiss your claim.
- Costs – usually the losing party will have to pay the cost of the successful party.

Filing of Judgment

- If you are the successful party, you have to file a draft judgment / order of the Court according to Form 75 Rules of Court 2012.
- After extracting the draft judgment / order you need to file the fair copy of the draft judgment / order.
- After filing the fair copy of the judgment / order, you have to serve it to the losing party.

What to do with Court Order?

- When you obtained a judgment against the opposing party, you are first required to serve the judgment.
- Upon receiving the judgment, the opposing party must obey the terms ordered against him/her by the Court.
- If the opposing party fails or refuses to comply with the order, our legal system provides several types of enforcement procedures.

What if I Disagree with the Decision of the Judge?

- If the Judge decides against your case, do not argue with him or her in the Courtroom.
- You may appeal against the decision.
- The appeal must be filed within 14 days after it is pronounced.

Enforcement of Judgment

If you are enforcing the judgment you are referred to as the judgement creditor and the opposing party as the judgment debtor.

Judgment Debtor Summons

- i) This is an application which can be used for discovery of information on the assets and financial means of the judgment debtor.
- ii) The judgment debtor will be called to appear before the Judge/Magistrate.
- iii) The Court can order the judgment debtor to pay the judgement sum either in one lump sum or instalments.
- iv) If the judgment debtor fails to comply with the Court order, he will be called upon again to show cause why he should not be imprisoned.

Writ of Seizure and Sale

- i) This application is applicable to movable properties.
- ii) The Court will command the Sheriff or Bailiff to seize and sell of the property of the judgment debtor to satisfy the judgment sum due.
- iii) This process will be carried out through an auction of the seized items.
- iv) The proceeds will be channeled to the Judgement Creditor.

Writ of Possession

- i) This application is exclusively for immovable properties.
- ii) The Court directs the Sheriff/Bailiff to enter and take possession of the Judgment Debtor's property.
- iii) The seized property will be auctioned off to satisfy the judgment debt.

Garnishee Proceedings

- i) A Garnishee application may be applied to attach monies owed from a judgment debtor's bank account to satisfy the sum due.
- ii) The Court will order the judgment debtor's banks to attach whatever amount in the Judgment debtor's bank account to satisfy the judgment debt owed to the judgment creditor.
- iii) In the first process the judgment creditor may obtain an order to attach/ freeze the judgment debtor's bank account.
- iv) In the second stage the Court will order the Bank to remit the monies in the account to the judgement creditor to satisfy the judgment.