

WHAT IS LITIGATION?

In Malaysia, every citizen has the right to seek satisfaction for his or her grievances in the courts, generally by way of resolving conflicts and disputes through court processes known as litigation. Litigation is the legal process in which a party may seek to enforce and/or defend their legal rights before a judge in a court of law where the party who seeks to claim and well known as the Plaintiff, proceeds to file a written claim in court to seek for certain reliefs from a named defendant or defendants. In simpler words, litigation refers to a lawful way of resolving conflicts between the various parties such as individuals, businesses, organizations, and governments among others.

Generally, there are four main stages in a civil proceeding, namely the filing and closing of pleadings, pre-trial case management, trial and post-trial submissions. First and foremost, a civil action is generally commenced by way of filing and service of a Writ of Summons together with a Statement of Claim in which the Defendant would then has fourteen (14) days to enter appearance to dispute and/or defend the action or claim filed against him. If no Statement of Claim was filed together with the Writ of Summons, the Plaintiff has fourteen (14) days after the entry of appearance by the Defendant, to file and serve the Statement of Claim. After a Writ and Statement of Claim has been properly served on the Defendant, the Defendant has fourteen (14) days to file and serve a Defence and Counterclaim (if any). Thereafter, the Plaintiff would then has another fourteen (14) days to proceed to file and serve a Reply to Defence and Defence to Counterclaim (if it is required) on the Defendant.

After all pleadings have been properly filed and served on all disputed parties in the proceedings, the pleadings will be deemed to be close and that the action will then be set down for pre-trial case management as laid down in Order 34 of the Rules of Court 2012, where directions will be given by the court to all disputed parties to have the matter prepared and ready for trial. The court is hence of the role to monitor the preparatory measures of the

parties in gathering documentary evidences, arrangement of the documentary evidences, preparation in relation to witnesses and other relevant interlocutory applications, which would take approximately two to three months.

During this stage of pre-trial case management, the court under Order 34 Rule 1(1) of the Rules of Court 2012, may by its own motion direct the parties of the proceedings to appear before the court and give such orders and/or directions as it thinks fit, including giving directions to have the matter to be resolved through settlement of all or any of the issues in the action or proceedings in order to secure the just, expeditious and economical disposal of the case without having to proceed to trial. Further, the court would also give directions to the parties to file the statement of agreed facts, statement of issues to be tried, to exchange and file their lists of witnesses, exchange and file the witness statements of all witnesses who are to give evidence at the trial. The court may also give directions as to the number of witnesses, expert witnesses, the estimation on the length of trial as well as fixing the date for trial in this stage. Once all directions given by the court during the pre-trial case management have been complied with by the parties, the trial date will be determined and fixed and the parties are deemed to be ready for trial.

At the conclusion of the trial, the court will in its usual course of practice, allowing the counsels a time frame of one to two months to prepare their submissions and submissions in reply before a post-trial submissions hearing is fixed. Thereafter, a judgment will then be delivered by the court.

In a nutshell, litigation is well-known as a complicated, lengthy and an enormously costly process for one to choose to resolve his or her disputes in which a party has to go through many steps and stages before the trial could take place. Therefore, it is crucial for one to understand the entire process of litigation before chooses to proceed in filing a suit in the courts.