

TEACHING ABOUT SMALL CLAIMS COURT

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Small claims court is a dispute-settling mechanism which is relatively quick and inexpensive to use since claims for money damages can be heard without the aid of an attorney. Most states have some form of small claims court although rules and procedures vary from state to state. Although the description below applies most specifically to Illinois, various aspects are applicable to other states as well.

The limit for claims in Illinois is \$2500.¹ To initiate the process, the person bringing suit (the plaintiff) completes the complaint form provided by the county clerk and pays a small filing fee. The clerk will then schedule the case, which will usually be heard within 30 days. A copy of the complaint and the summons with the trial date will be delivered to the person against whom the claim is made (the defendant). The only response required of defendants who want to contest claims is to appear in court at trial time. Defendants who choose not to appear will lose by default. Either party may be represented by legal counsel, but hiring an attorney is not necessary since the court proceeding is informal. In fact, small claims court was established to provide a form for individuals to plead their own cases.

On the day of the trial, after giving the litigants a chance to settle their disputes outside the court chambers, the judge first hears the plaintiff who must show that a valid claim exists. Then the defendant is called to present his side of the case. The judge usually renders a verdict immediately. If awarded a judgment, the plaintiff bears the burden of collecting the award. If the defendant is uncooperative, the only service most courts offer to aid in collection is the issuance of a memorandum of judgment. This document, which places a lien on the defendant's property for seven years or until the debt is paid, only prevents the transfer of property if the judgment has not been satisfied.

CRITICISMS OF THE SYSTEM AND PROPOSED REFORMS

Several aspects of the small claims court system have been criticized as creating roadblocks to use by individual consumers. One is that suits by businesses (and particularly collection agencies) often dominate the docket. When true, an original purpose of the court, to serve the individual consumer, is subverted.

Dominance of the court by business plaintiffs may have negative impacts on individuals. If trials are not scheduled for specific times,

consumers may often find that they must wait several hours before their cases are heard. Since time spent in waiting has an opportunity cost, some litigants may leave before their trials. Furthermore, witnesses may be unable or unwilling to stay to give their testimony. Moreover, when businesses dominate the court docket the majority of cases a consumer observes will involve attorneys, since Illinois requires incorporated businesses to be represented by legal counsel. Consumers who are unaware of this requirement may be confused and intimidated by the presence of so many attorneys in an "informal" court proceeding.

Although most states do allow business filings, some have addressed this problem by barring collection agencies from small claims courts. Research does indicate that suits filed by individuals do represent a higher percentage of the total in courts where collection agencies are not allowed [1, p. 42]. However, when these agencies are banned consumers who are defendants in collection cases are penalized since their cases must be heard in formal civil court where representation by an attorney is necessary.

Another frequent criticism of small claims courts is that plaintiffs are often unable to collect the judgments awarded them, particularly when the defendant defaults. Ruhnka and Weller [1, p. 166] found that collection rates for plaintiffs in contested trials averaged 69 percent across 15 courts but only 31 percent when the defendant defaulted. Measures which require an attorney's services, such as garnishing wages or attaching a bank account, may be necessary to collect the judgment. Consequently, plaintiffs may not persevere in collection efforts since the total time and money costs may exceed the amount of the award if the defendant is uncooperative.

Several measures have been proposed to assist plaintiffs in their collection efforts. One proposal would require court personnel to provide information to the plaintiff about legal collection procedures at the time the claim is filed. To remain impartial, it would also be necessary to inform defendants about assets exempt from attachment. Some clerks might object to this expansion of responsibility.

A more drastic recommendation would require that a court official be employed with the responsibility of collecting the awards (for a fee) once the plaintiff has made a reasonable effort to collect on his own. Opponents argue that this recommendation would be expensive and put the court in the middle of the collection process.

Several other reforms have been suggested to enhance consumers' use of small claims courts. When courts operate only during weekday business hours, the time costs to employed individuals involved in the cases may discourage their use of the system. Periodic weekend or evening sessions would not only lower the time costs for

many litigants but would also increase the likelihood that witnesses would agree to appear.

Another problem consumers frequently encounter is that in certain types of cases it is difficult to present concrete evidence in the courtroom. Although the rules of evidence are relaxed compared to formal proceedings, some judges are more flexible and creative than others in encouraging litigants to establish or refute a claim. A number of techniques might be used by judges to assist consumers when evidence is difficult to present. Judges might go to the parking lot to verify automobile damages or inspect paint jobs when estimates are lacking. When a witness is unable to appear in court due to illness, distance, or employment, testimony could be given over the telephone. Conference calls would allow both litigants to question the witness.

Lastly, consumers often find that the court's assistance to litigants in preparing cases is inadequate. While some courts employ legal clerks who assist litigants in pre-trial preparation, others do no more than to help the plaintiff file the complaint. At a minimum, an information sheet should be available stating definitions of relevant legal terms, types of proof generally required for specific types of cases, information on subpoenaing witnesses, legal rights of plaintiffs and defendants, and available collection procedures.

LEARNING ACTIVITIES

There are several informative and interesting activities which could be used in an advanced unit by consumer educators:

1. Arrange for the class to visit small claims court and talk with the judge after viewing a court session. Previous arrangements will be necessary to identify when court meets and when the judge is available. In counties where courtroom space is limited, invite the judge to school as guest speaker.
2. After the visit provide students with sample cases for a mock small claims court session. Students can assume the roles of judge, litigants, and witnesses. To prepare for their roles as litigants, they could be required to identify types of evidence (including witnesses) appropriate for proving or refuting the claim. Good sample cases can be found in *How You Can Sue Without Hiring a Lawyer* by John M. Striker and Andrew O. Shapiro (Simon & Schuster, 1981).
3. After visiting the court and role playing as court participants, students could be exposed to the problems identified earlier in this paper and the proposed reforms. Students could discuss or debate the merits of the suggested improvements from various perspectives — taxpayers, the plaintiff, the defendant, the judge.

Small claims court is not a perfect dispute setting mechanism. However, students who are aware of its intricacies may be more likely to feel it is a viable resource when they have difficulty resolving consumer problems.

REFERENCES

1. Ruhnka, John C. and Steven Weller. *Small Claims Courts: A National Examination*. Williamsburg, Virginia: National Center for State Courts, 1978.

RESOURCES FOR TEACHERS

Model Consumer Justice Act. Chamber of Commerce of the United States, 1976.

Ruhnka, John C. *Housing Justice in Small Claims Courts*. American Bar Association, 1979.

Warner, Ralph. *Everybody's Guide to Small Claims Court*. Addison-Wesley Publishing Company, 1980.

RESOURCES FOR STUDENTS

Consumers Tell It to the Judge: Small Claims Courts and Consumer Complaints. U.S. Department of Justice, Office of the Attorney General, 1980. (A free 24-page brochure)

"Could You Win in A Small Claims Court?" *Changing Times*, November 1982, pp. 18, 22.

FOOTNOTES

1. The exception is the Chicago **Pro Se** Court where claims may not exceed \$500. The court also differs from others in Illinois in that corporations are not allowed to file claims and only defendants may be represented by attorneys.

WHAT WE ARE TEACHING ABOUT DISABILITY INCOME PROTECTION

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For persons younger than 65, a disabling illness or injury lasting three months or more is much more likely than death. A 22 year old is seven times more likely to be disabled than to die, while the ratio is 3:1 for 35 year olds [2]. One in four workers will be disabled for at least a year prior to retirement. [7]. Although the possibility of severe disabili-