



## DISPUTE RESOLUTION THROUGH LAWSUITS FILED IN COURTS OF LAW

Disputes are still resolved by courts of law, although the recent trend has moved toward arbitration being required by contracts and the waiver of jury trials. A contractor, designer, or project owner involved in resolving a dispute in court should consider a two-part question at the start of the process, and build a strategy around the answers to those questions. What do courts do well? What are they incapable of doing well?

A court can choose to award monetary judgments for damages caused by a breach of contract or negligence, it can declare the rights of the parties in some disputes where the damages are hard to calculate, and it can issue injunctions to stop harmful action or to compel the performance of certain acts.

Courts are good at imposing their will on the participants. As the third branch of state and federal government systems, they have the resources and right to initiate judicial proceedings and find a resolution, by force, if necessary. Courts have the ability to compel witnesses and parties to show up and be examined during a dispute and even after the dispute is resolved. They can enforce their decisions by the seizure and sale of property, or require a liable party to hand over property and disclose confidential and embarrassing information to a party's most bitter opponent.

A party with a claim against a wrongdoer will plan to use the force of the court to compel answers and disclosures that will support the claim. The party will want a court date to be set as soon as possible, while it is still possible to prove the circumstances.

Courts are inefficient. Resolving disputes takes time and money. Procedures designed to allow the parties to discover facts and prepare for trials are routinely gamed by opposing parties. The party at fault will defend itself by all means available, including delay and obstruction, to achieve a stand-off or a favorable settlement.

Fortunately, state and federal legislators, as well as the courts, are constantly revising procedures to make the courts accessible and effective at reduced costs to the participants. The goal is to allow cases to reach the point of trial sooner and at lower costs.

A party has to develop a strategy to prove or defend its claims. While the strategy is developed, it is beneficial to avoid unnecessary skirmishes along the way. The point is to begin with an understanding of the claimant's rights and to not waste time with objections that those rights are either too restricted or too broad. Next, evaluate how to prove and explain the events leading up to a dispute, and finish by presenting the facts in the dispute as a believable story by educating and persuading the judge or jury.

In later posts, we might consider in more detail some important and interesting aspects of the preparation for trial, and how trials are conducted. In the beginning, it's more important to start with a definite idea of the desired outcome and the facts of the dispute, so that the desired outcome can become the actual result.

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