

# QuickLaw answers your questions

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## GET A LAWYER ON YOUR SIDE

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SACOBOTS QUICKLAW CIVIL PROCEDURE final\_2025



## QUICKLAW GUIDE





## Civil Procedure

### Civil Procedure in the Magistrate Court

- > A civil action is one in which an individual or a company wishes to sue another individual or company for a particular purpose.
- > Magistrates courts are found in every District in Botswana and the main commercial centers such as Gaborone, Francistown and Maun have more than one.
- > Claims amounting to P100 000 and below must be brought before the Magistrate Court.

Common examples:

- > Civil matters may be brought to the Magistrates due to a party's failure to fulfil the terms of an agreement known as a breach.
- > Another reason might be because of a car accident where the motor vehicle is destroyed or damaged by the other party, and the complaining party wants to sue to get their money back or car repaired.
- > A landlord may wish to sue for outstanding rentals.

### Magistrates Court Process

- > The procedure begins with the complaining party (known as the Plaintiff) filing a writ of summons against the offending party (Defendant).
- > The writ of summons will contain a particulars of claim in which the plaintiff sets out his/her story and describing to the court the claim s/he seeks from the court.
- > Once it is registered at court, the Plaintiff needs to serve/ deliver the writ of summons to the defendant.
- > The Defendant then has 7 days to respond to the claim. His response is known as an Appearance to Defend and Defendant's plea.
- > If the Defendant does not defend a claim by filing within 7 days, the Plaintiff can then apply for default judgment.
- > Should the defendant file an appearance to defend, the matter will be set or roll call before the Magistrate.
- > The Magistrate will then schedule the case management process with the parties.
- > The initial and final case management conferences are the processes by which the parties assist the court in determining the scope of the dispute. This has the effect of reducing the time needed for the trial.
- > The matter is later set for trial where parties must submit oral evidence and documentary evidence through their witnesses to support their claim.
- > After trial, the judge gives a judgement as to who has won the case.

### Civil Procedure in the High Court

- > Any dispute involving a value of more than P100 000 qualifies to be heard at the High Court.

- > Similar to the Magistrate court process, a High Court action begins with a writ of summons accompanied by a particulars of claim in which the plaintiff sets out his story and explains to the court the relief he seeks.
- > Once it is registered at court, the Plaintiff needs to serve/ deliver the summons to the defendant.
- > The Defendant then has 14 days to respond to the summons and his response is known as a Memorandum of Appearance to defend.
- > Should the Defendant not file a memorandum of appearance to defend, the Plaintiff may file a default judgment application after the expiry of 14 days to get a short cut to judgment.
- > Should the defendant file a memorandum of appearance to defend, the Plaintiff has 14 days to file a declaration. This is the full story of the Plaintiff's claim, together with any documents which are relevant to his claim. It is also accompanied by an affidavit sworn to by a person who knows the full facts of the case (usually the Plaintiff himself).
- > The declaration is then delivered to the Defendant who has 14 days to file his plea. This would be his full answer to the Plaintiff's declaration. It is his version of events. It is accompanied by an affidavit sworn by a person who knows the full facts of the case (usually the Defendant himself).
- > The case is then scheduled for roll call at the court, at which the further scheduling of the case management process is done.
- > The case management process at the High Court involves two meetings known as the initial case management meeting and the final case management meeting. A report is produced after these meetings and filed with the court. Case Management is the process by which the parties assist the court to narrow the issues between them. It is meant to reduce the length of the trial. At the end of this process the matter is then scheduled for trial.
- > Evidence is then given at trial by witnesses, who tell the court what they know of relevance to the case.
- > After trial, the judge gives a judgement as to who has won the case.

### How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.