

Lesson 1
What is litigation? Why do we need it?

Lesson Objectives

Students will be able to:

- Define litigation.
- Distinguish between criminal and civil litigation, and between state and federal litigation.
- Explain several purposes of litigation in the United States.

Materials

- Handout 1: Introduction to Litigation
- Links to or copies of current civil and criminal litigation in the news. A simple Google news search of “lawsuits” or “litigation” should yield some useful results.
- [Brown v. Board complaint](#), projected or photocopied
- [Brown v. Board redacted complaint](#)
- [Brown v. Board background information](#)

Lesson Assessments

- Student examples and explanations of civil and criminal cases
- Post-reading check for understanding

Instructional Activities

Anticipatory Set

- Provide students with the basic definition of *litigation*: The process of resolving disputes through a public court system. They may know the term “sue” or “lawsuit,” rather than or in addition to “litigation.” What do these terms bring to mind? Is litigation a good or bad thing? Ask a few students to explain why. The purpose of this exercise is to lay out the opposing viewpoints: lawsuits can be positive, because they enforce the law and provide compensation to people who are illegally harmed, or negative, because they are costly, potentially unfair, and preempt other ways of resolving disputes.
- Show students a redacted version of the [Brown v. Board complaint](#) that does not include the heading with the primary parties’ names. Don’t tell them what the case is. Explain to them that this is an example of a *complaint* initiating a lawsuit/the litigation process. Ask them if they know what civil rights case this complaint initiated. Allow a few guesses

before revealing the answer and showing an unredacted version of the [Brown v. Board complaint](#).

- Provide students with a brief explanation of [Brown v. Board](#) and its significance. Litigation like *Brown v. Board* is an essential part of American constitutional democracy. If students are interested in the decades of litigation leading up to *Brown*, they can read more at: <http://www.naacp.org/pages/naacp-legal-history>. For information on the enforcement of *Brown* and its impact on schools today, they can read more at <http://www.naacpldf.org/case/brown-v-board-education>.

Direct Instruction

- Ask students to read **Handout 1: Introduction to Litigation** and respond to the question: How does this reading support, extend, or challenge your previous understanding of litigation and its purposes?
- Do a quick written or oral check for understanding: What is litigation? What is criminal litigation? What is civil litigation? What is the difference between a factual and a legal issue? Write terms and definitions on the board (for example, in the form of a chart, shown directly below).

Intro to Litigation

Litigation is a process for using courts to resolve disputes among individuals or groups; it is characterized by formal rules, structured processes, and neutral and independent decisionmakers.

Civil Litigation

- Examples: property or contract disputes, personal injury, civil rights cases
- Type of law: civil law
- Purpose: to deal with disputes between individuals and organizations & remedy harms
- Parties: plaintiff v. defendant
- Standard of proof: preponderance of evidence (more likely than not)
- Decision: defendant can be found liable or not liable
- Potential outcome (if defendant loses): compensation from defendant to plaintiff or order to change defendant's behavior

Criminal Litigation

- Examples: theft, robbery, murder
- Type of law: criminal law
- Purpose: to maintain stability of state & society by punishing/deterring offenders
- Parties: state (prosecutor) v. defendant
- Standard of proof: beyond reasonable doubt
- Decision: defendant is convicted if guilty, acquitted if not guilty
- Potential outcome (if defendant loses): fines, imprisonment, or even death

Factual Dispute- when the parties disagree about what has happened.

Legal Dispute- when the parties disagree about the law and what it requires given the facts.

Guided Practice

- Show students articles about several current court cases in newspapers or other media and ask them to identify the cases as criminal or civil. What is the alleged legal violation? Is the main issue a legal or a factual one? What are the possible remedies the prosecutor/plaintiff seeks? Some suggested websites include:
 - ABC News, <http://abcnews.go.com/topics/news/crime.htm>
 - Associated Press, <http://bigstory.ap.org/tags/crime>
 - Chicago Tribune, <http://www.chicagotribune.com/>
 - Detroit News, <http://www.detroitnews.com/>
 - Los Angeles Times, <http://www.latimes.com/>
 - MLive, <http://www.mlive.com/#/0>
 - NBC News, <http://www.nbcnews.com/news/crime-courts>
 - New York Daily News, <http://www.nydailynews.com/news/crime>
 - New York Times, <http://www.nytimes.com/topic/subject/crime-and-criminals>
 - Wall Street Journal, <http://www.wsj.com/news/types/ny-crime>
- Ask students to discuss the purposes of civil lawsuits. Give the following scenario:
- John Prisoner is an inmate in a jail in Anywhere, U.S. John has paid \$20 for an annual subscription to Sports Illustrated magazine. But the Anywhere Jail refuses to deliver any magazines to inmates; jail officials say that magazines have been used in the past and could be used again to smuggle contraband into the jail. Accordingly, for the past year, whenever a new issue of Sports Illustrated has arrived at the jail for John, officials have confiscated it and thrown it away. John thinks that contraband can't actually be smuggled into the jails using magazines, if those magazines are run through a metal detector and a dog sniff test. He wants to bring a lawsuit, arguing that he's entitled under the U.S. Constitution's First Amendment to receive the magazine.

U.S. Constitution, Amendment 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- First, ask students to identify the factual and legal dispute(s), if any, in the above scenario. Check their understanding of these terms.
- Next, address the various purposes of civil litigation: If John Prisoner decides to sue, what would be the purpose of his lawsuit? What are the purposes of civil lawsuits in general? Ask students to fill out the chart below to help answer these questions.

THIS SCENARIO	GENERALLY
What John Prisoner wants:	What plaintiffs want more generally:
To get a refund of the \$20 subscription fee.	To get money damages.
To obtain a court order requiring jail officials to allow John to receive the magazine.	To obtain a court order that requires the defendant to stop doing the challenged conduct.
To make it clear to the defendant jail officials that they have to treat inmates fairly.	To send a message, demand fair treatment.
What society wants in this case:	What society wants in lawsuits more generally:
To resolve, factually, whether magazines present a risk of contraband.	To resolve factual disputes.
To resolve, legally, whether inmates have a First Amendment right to receive magazines.	To resolve legal disputes and articulate the meaning of constitutional provisions.
To make it clear to <i>all</i> jail officials that they have to treat inmates fairly.	To deter others from committing similar acts.

- Recall (from 1, above) that lawsuits also come with downsides: they are costly and time consuming, and may preempt other ways of resolving disputes.

Closure

- How did today's lesson support, extend, or challenge your previous understanding of litigation and its purposes? Ask students to discuss, write a journal entry, or complete an exit ticket.

Homework/Independent Practice

- Explain to students that they should find one example of a civil case and one example of a criminal case in the news and be prepared to share during the next class period. They should turn in a brief report on each case, summarizing whether it is civil or criminal; what the alleged legal violation is; whether the main issue is legal or factual or both; and what remedy the prosecutor or plaintiff seeks. In each case, they should explain the basis of their conclusion.