

Chapter 1

All About Our Legal System

In This Chapter

- ▶ Defining laws
 - ▶ Drawing the line between civil law and criminal law
 - ▶ Breaking down the court system
 - ▶ Diving into contracts
 - ▶ Following the lawsuit process
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What do you think of when you hear the words *legal system*? If you're like many Americans, you probably think of a courtroom where lawyers, using language you can't understand, argue with one another, and where a jury of people you don't know, or a judge in a black robe behind an imposingly high desk, makes decisions about your life using laws you know little or nothing about. That's an intimidating image, but it's only a very small part of the picture! Our legal system is much more than just courtroom action.

This chapter expands your definition of what our legal system is by providing you with information you probably never got in high school — or don't remember learning, anyway. Maybe you slept through class the day these things were covered! With a more complete understanding of our legal system, you're better able to avoid getting into legal hot water, and you feel more confident about exercising your legal rights when you do.

And now for your remedial crash course on our legal system. . . .

What Are Laws and Where Do They Come From?

Our laws reflect society's standards, values, and expectations. They establish "the rules of the game" in our personal interactions and in our business dealings, helping to ensure that we're treated fairly and that we treat others fairly, too. Laws establish our responsibilities and our rights and help us both avoid problems and resolve problems.

The laws that govern our lives come from six basic sources: the U.S. Constitution, the Bill of Rights, statute law, administrative law, common law, and case law.

The Constitution

The Constitution is the granddaddy of all U.S. law, the supreme law of the land, and the standard against which all other laws are measured. It established this country as a republic and determined the structure of our Congressional system. The Constitution applies to all Americans.

The Constitution is a “living” document because our lawmakers can amend it to respond to changes in our country’s needs, concerns, and values. Presently, the Constitution consists of 7 articles, 10 amendments that make up the Bill of Rights, and 17 other amendments that have been adopted over the years.

The Bill of Rights

The Bill of Rights defines the fundamental rights of all Americans. It places limits on how much control the federal government can exercise over our lives by guaranteeing certain freedoms, which include the following:

- ✓ The right to free speech
- ✓ The right to freedom of religion
- ✓ The right to freedom of the press
- ✓ The right to a speedy and public trial
- ✓ The right to bear arms
- ✓ The right to protection against unreasonable searches and seizures

State law

In addition to the U.S. Constitution, each of the 50 states has its own constitution, which provides the basis for the states’ own laws. States can make their own laws as long as those laws don’t conflict with federal laws and don’t violate the tenets of the U.S. Constitution. In fact, state laws frequently expand or enhance federal laws. For example, the federal Fair Credit Reporting Act says that consumers have the right to receive a free copy of their credit report if they apply for credit, employment, or insurance and are denied it due to information in their report. Some states have passed their own laws related to credit bureaus; such laws specify that consumers are entitled to a

free copy of their credit report every year, whether or not they're turned down for credit, insurance, or employment.



When a federal law applies to a legal problem you're faced with, check with your state attorney general's office to find out if your state has an additional law that can help you.

Statute law

Another basic kind of law is *statute* law — laws adopted by the U.S. Congress and by state and local elected officials. These laws most affect our daily lives, which is why we really should be familiar with them. They apply to such things as our credit rights, our rights when we're contacted by a debt collector, the right to leave our property to others, our rights and responsibilities as married couples or parents, the rules of the road, and so on. Many of these laws are covered in this book.

Administrative law

Administrative law is perhaps better described as rules and regulations created and enforced by regulatory agencies. For example, the Internal Revenue Service has the power to tell us what we can and can't deduct on our tax returns and can fine us when we violate its rules; the Federal Trade Commission can establish rules governing what telemarketers and debt collectors can and can't do when they contact us, and it can take legal action against businesses that ignore its rules; and the Environmental Protection Agency has the power to control the kinds and levels of emissions that businesses may release into the environment and to impose penalties and other sanctions on companies that endanger our water supply and clean air.

Common law

We can trace the origins of common law all the way back to 12th century England, when there were no legal precedents to guide the decisions of judges. These early judges used the customs of the time and their own common sense to help them decide how to resolve legal controversies. Their decisions created legal precedents that guide our judges even today.

Case law

When a judge interprets and applies the law to a particular case, he or she creates a legal precedent. That precedent is expected to guide other judges in

that same court and all lower courts within the same jurisdiction when they are deciding similar cases in the future.



The FindLaw Web site at www.findlaw.com is a good resource for more information on all aspects of the law, including federal and state law. You can also obtain information about a wide variety of legal topics and download sample legal forms, among other things.

Civil Law versus Criminal Law

The American legal system has two major categories of law: civil and criminal law. Each has its own court systems and procedures.

The vast majority of legal problems in the United States involve civil law: consumer problems, spats between neighbors, family problems, and so on. In fact, family problems such as divorce, child custody, and child support represent the majority of civil law cases.

You can file a civil lawsuit yourself, or your attorney can do it for you. When you initiate a lawsuit, you become the *plaintiff* and whomever you sue becomes the *defendant*. You may file a civil lawsuit because you want to receive monetary compensation for a perceived wrong or because you want to force someone to do or not do something. By the way, when you try to force someone not to do something, you're seeking *injunctive relief*.

Criminal law, on the other hand, deals with crimes against society: murder, theft, assault, embezzlement, abuse, arson, and much more. You can't initiate a criminal lawsuit yourself; only a federal or state prosecutor can do that. Defendants found guilty in criminal cases face monetary penalties, public service, prison time, or even death, depending on the defendant's past criminal history, the seriousness of the crime, and the state in which the trial takes place.

Because the potential penalty in a criminal case is so much more serious than what a defendant faces in a civil case, the burden of proof in a criminal case is much higher than in a civil case. In criminal court, the prosecuting attorney must prove "beyond a reasonable doubt" that a defendant is guilty. In a civil case, however, a defendant is guilty if the "preponderance of the evidence" points to guilt.

Our Court Systems

Our court system is actually made up of many court systems — a federal system and 50 state systems. Each system has its own structures and procedures, and all systems are multi-tiered. Legal cases begin in a lower

court and sometimes work their way up to a higher court. In fact, some cases initiated in a state court system ultimately end up in the federal court system.

State courts

Most legal issues are resolved in state trial courts, which are the courts at the lowest tier in a state's court system. For example, O.J. Simpson's infamous criminal and civil trials were both conducted in California trial courts. Depending on how your state court system is structured, the trial courts may be city or municipal courts, justice of the peace (or *jp*) courts, county or circuit courts, superior courts, district courts, or even regional trial courts.

Most states have two levels of trial courts: trial courts with *limited jurisdiction* and trial courts with *general jurisdiction*. *Jurisdiction* simply refers to the types of cases a court can hear. For example, trial courts of limited jurisdiction — which can include municipal courts, magistrate courts, county courts, and justice of the peace courts — hear some types of civil cases, juvenile cases, minor criminal cases, and cases relating to traffic violations. Most legal problems are resolved in trial courts of limited jurisdiction.



Some trial courts with limited jurisdiction also hold pretrial hearings for more serious criminal cases.

Courts of general jurisdiction include circuit courts, superior courts, district courts, or courts of common pleas, depending on your state. Courts of this jurisdiction hear lawsuits that involve greater amounts of money or more serious types of crimes than the cases heard in trial courts of limited jurisdiction.

Many states also have specialized trial courts that hear cases related to a very specific area of the law. These courts can include probate courts, family law courts, juvenile courts, and small claims courts.

On the next tier up in the typical state court system are the appellate courts. These courts don't hold trials but instead review the decisions and procedures of the trial courts in their systems and either uphold or reverse their decisions or modify the amount of a monetary reward. Sometimes appellate courts order retrials.



Lower court decisions aren't automatically appealed. You must initiate an appeal and provide a legal basis for appealing. Thinking that you "got a raw deal" is not enough.

Every state has a court of last resort, generally called the "supreme court." Although supreme court decisions are final within a state court system, sometimes they can be appealed to the U.S. Supreme Court. Like appellate courts, supreme courts review the decisions and the procedures of lower courts; they don't hold trials.

Federal courts

Most of the federal court system is divided into districts and circuits. Every state has at least one federal district, but populous states can have multiple districts. For example, Texas has a northern, western, southern, and eastern district.

Generally, federal lawsuits begin at the district level in a federal court. Most are civil, not criminal, cases involving legal issues that fall within the jurisdiction of the federal, not state, government. A lawsuit dealing with certain types of federal law is heard in a special federal court. Tax court, bankruptcy court, court of federal claims, and court of veteran appeals are all examples of special federal courts.

Each federal circuit includes more than one district and is home to a Federal Court of Appeal. This court plays a role analogous to a state appellate court.

At the very top of the federal court system is the U.S. Supreme Court. Its legal interpretations are the final word on the law in this country. The nine justices who sit on the Supreme Court are nominated by the President and approved by the U.S. Senate. They remain on the court until their death or until they resign.

Only a very small number of cases are ever heard by the U.S. Supreme Court. To get to that level, a case must usually work its way up through the lower tiers of a state court system and/or the federal system. The justices choose the cases they hear every year based on a case's implications for Americans in general or for a certain group within society, not just on the impact on the parties actually involved in the lawsuit itself. What follows are some of the more famous Supreme Court cases that meet these criteria.

- ✓ *Brown vs. The Board of Education of Topeka*: This ruling was the beginning of the end of racial segregation in America's public schools.
- ✓ *Roe vs. Wade*: This ruling gave all American women the right to decide for themselves, in consultation with their doctors, whether or not to have an abortion.
- ✓ *Miranda vs. Arizona*: This ruling gave persons who are arrested the right to be informed of their legal rights at the time of their arrest: "You have the right to remain silent. . . ."

The Constitution only allows certain kinds of cases to be heard by the federal courts. In general, these courts are limited to cases that involve the following:

- ✓ Issues of Constitutional law
- ✓ Certain issues between residents of different states
- ✓ Issues between U.S. citizens and foreigners
- ✓ Issues that involve both federal and state law

Our legal system is based on the *adversarial process*, which means that fundamental to all court procedures, regardless of the court, is the belief that all parties in a legal dispute must have an equal opportunity to state their case to a neutral jury or judge and to poke holes in what the other side says. Attorneys usually do most of the case-stating and hole-poking.

So that everyone has an equal chance to win in a lawsuit, both sides are required to play by the same set of rules. This requirement helps level the playing field, ensuring that everyone is treated fairly. Attorneys learn these rules in law school.



For a humorously irreverent but fact-filled tour of the legal system and many of the important laws that affect our lives as consumers or businesspeople, check out Inter-Law's 'Lectric Law Library at www.lectlaw.com. From this location, you can download legal software and sample legal forms, learn about court rules and state and federal laws affecting many of the topics covered in this book, refer to a legal encyclopedia and dictionary, read the transcripts of actual legal cases, and even get a few laughs at the expense of the legal establishment by reading lawyer jokes!

All about Contracts

Written and unwritten contracts are essential parts of our legal system and form the basis of many of our personal and business transactions. To protect yourself, especially when money is involved, and to avoid legal entanglements, a basic understanding of contracts is essential.

Contracts are voluntary, legally binding agreements between two or more people to do or not do something. Whether you realize it or not, you enter into contracts all the time: when you borrow money from a bank, enroll in a health club, get married or divorced, sign for a home loan, lease office equipment, buy a car, hire a roofer, sign a credit card agreement, and so on.



Legally binding contracts have certain characteristics. At the risk of losing you with too much legalese, here they are:

- ✔ All parties to a contract must be mentally capable of understanding what they're agreeing to. So if your 4-year-old son or your senile Uncle Al agrees to a contract, the contract is not legal and won't stand up in court. Although there are exceptions, all parties to a contract must be legal adults — 18 or 21 years of age depending on your state.
- ✔ The contract can't involve doing or selling anything illegal. So for example, if you sign a contract to invest in your friend's marijuana field and don't get the return on investment you were promised, you're out of luck because your contract isn't legal.

- ✔ You must be able to prove that a contract exists. Doing so shouldn't be difficult if you have a written contract and you've kept a copy (as you always should, for this very reason). If the contract is oral or "understood," however, proving its existence may be a challenge and may require the help of an attorney.
- ✔ The contract must involve an offer, an acceptance, and consideration. Here's where the legalese begins to get tough. Keep reading for an explanation.

You have an *offer* if you clearly indicate to someone else (the *offeree*) your intention to enter into a contract. Suggesting to someone that you want to talk about a transaction or negotiate something is not an offer. You have to "put an offer on the table" so that someone else can respond by accepting or rejecting it.

If your offer is accepted voluntarily, then you've got an *acceptance*.

If both you and the other party to a contract voluntarily give, exchange, perform, or promise one another something of value, then you've got *consideration*.



ANECDOTE

Here's a real-life example of the offer-acceptance-consideration process. Over dinner one night, you and a friend casually discuss the possibility of your buying your friend's sailboat, but you don't make an offer. So far, no contract. Later, after talking with your spouse, you decide to make your friend an offer, and after some back and forth negotiating, you and your friend agree on a purchase price and the terms of the purchase. You agree to buy the boat for \$6,000 and to pay that amount over six months. So far, you've got an offer and an acceptance. To clinch the deal, you give your friend a check as a deposit on the cost of the boat and make arrangements to pick up the boat the following week. With that, you now have a consideration and a legally binding contract. So if the following week you go out to get the boat only to find it gone because your friend sold it to someone else for more money, or if you take the boat but after two months stop making payments on it, then each of you in your own way has broken your contract, and you have grounds for taking legal action against one another. (By the way, even though you were dealing with a friend, this transaction really needed a written contract, not an oral one.)



REMEMBER

Although legally valid contracts are most often thought of as written, they can also be oral or "implied."

By the way, if you behave as though you have accepted an offer but you don't actually say that you accept it, then from the law's point of view, you have legally accepted it.

Written contracts

The best contract is always a written one in which all the things that have been agreed to — the *terms* of the contract — are spelled out, right there in black and white. Terms usually include the following:

- ✔ Who's obligated to do what and for how much
- ✔ Applicable deadlines
- ✔ Answers to questions such as “What happens if . . .?”

As important and helpful as written contracts are, they're not necessary for every single agreement or transaction you make in life. But if money is involved, or if you have a lot at stake emotionally, a written contract is essential. That's true even if you're dealing with a close friend or relative.



The story of small business owner Mike helps illustrate why written contracts are so important. Mike sold his business to his brother for \$20,000 and a handshake — no contract. After all, if he couldn't trust his brother, whom could he trust? During the first couple months of their agreement, Mike's brother had some health problems that prevented him from paying Mike the monthly installments they'd agreed on. Six months came and went, and Mike still hadn't received one red cent from his brother. Then his brother sold the business and recouped his investment. Mike felt certain that finally he'd get his money. Yet two months later, he was still waiting to get paid. His brother claimed he needed every dollar he made from the sale. Mike was left with a difficult dilemma: Take his brother to court or forget about his \$20,000? If he went to court, it would be his word against his brother's because they had not put the terms of the sale in writing. No matter what Mike decided to do, his relationship with his brother would never be the same.

In some states, certain kinds of contracts must be in writing to be legally enforceable. They usually involve promises to

- ✔ Guarantee someone else's debt. For example, you might sign a contract to help a close relative secure a bank loan.
- ✔ Sell real property.
- ✔ Buy or sell goods worth more than \$500 or lease goods worth more than \$1,000.
- ✔ Do something that can't be completed in a year.
- ✔ Give someone certain property after your death (which is why you write a will or set up a living trust).



Implied contracts: How can I be held to something I didn't agree to?

When you do something under an unstated expectation that you will follow your initial action with another action, you've entered into a special, legally enforceable contract called an *implied* or *understood* contract. For example, if you go to a grocery store and fill up your cart with chicken and vegetables, you've implied

that you'll pay for your groceries at the cash register. In other words, you and the store have an implied contract. If you break that contract by shoplifting, the store can take legal action against you because this kind of contract is legally enforceable.

Form contracts

Fill-in-the-blanks contracts are only appropriate for very straightforward agreements; they're not a good idea if your agreement must address unusual or special situations or concerns.

Now you can e-sign on the dotted line

With 2001's passage of the federal Electronic Signatures in Global and National Commerce Act (ESGNA), entering into legally binding contracts can be as easy as a click of a mouse on your computer screen. Rather than signing a hard copy of a contract related to the purchase of an insurance policy, a new car, your mortgage closing, or a stock purchase, for example, some Web sites allow you to click on a hyperlink or button that says "I agree" or "I accept," and voila!, you've signed a contract. However, the law also gives you the right to sign an old-fashioned paper contract with the company you're doing business with if you prefer. In addition, the law requires the use of paper contracts for certain types of contracts and legal documents, including:

- ✓ Wills and testamentary trusts
- ✓ Court orders and other court documents
- ✓ Family law-related documents, including paperwork related to divorces and adoptions
- ✓ Notices regarding the cancellation of residential utility service
- ✓ Notices regarding a repossession or foreclosure

- ✓ Eviction notices
- ✓ Notices about the recall of products that affect consumer health and safety



Your state may have its own electronic signature law or it may have adopted the federal Uniform Electronic Actions Act, which also makes electronic signatures legally binding. If your state has its own law, the ESGNCA can't preempt or override that law as long as there are no major differences between your state's law and the federal law.

The federal law also requires businesses to

- ✓ Inform you before you sign an e-contract of the kind of software and hardware you need to read and save the contracts.
- ✓ Let you know if a paper contract is available.
- ✓ Let you know what fees or penalties may apply if you don't want to use an electronic contract.
- ✓ Notify you that you can ask for a paper contract if you use an e-contract and later decide that you would prefer a paper one.

What if I want out?

The fact that a legal contract is binding on everyone who signs it provides society with an important benefit. To understand that benefit, stop and think for a moment what life would be like if contracts could be canceled willy-nilly just because someone decided that an agreement was inconvenient or because a better deal came along. Imagine the chaos! Banks could begin changing the terms of our loans whenever they wanted; we could no longer be assured that the price we were quoted for something would be what we'd actually have to pay; marital and divorce agreements "wouldn't be worth the paper they're written on." Talk about lack of trust!

Notwithstanding its binding nature, however, a contract can be broken under certain conditions, which include the following:

- ✓ You're defrauded by another party to the contract. For example, you sign a contract to buy a majority interest in a Texas oil well with promises that you'll soon be making barrels of money. You, however, are never told one critical detail — the well hasn't produced in years, and geologists don't expect it to produce anytime soon.
- ✓ One party to the contract *breaches* the contract — a fancy phrase for not living up to the terms of the agreement. If the company you hire to put a new roof on your house never completes the job, it has breached your contract.



If a contract you sign is breached, you may have the right to sue for monetary damages and/or to sue to compel the other party to meet the terms of the contract.

- ✔ You sign the contract because you're being threatened. For example, if you sign a contract because someone holds a gun to your head, the contract isn't legally binding.
- ✔ You and the other parties to the contract agree to cancel it.



Contract dos and don'ts

Here's some general information that can help you when drafting or getting ready to sign a contract.

- ✔ If you don't want to agree to something in a contract, before you sign it, cross out what you don't like and initial what you're deleting. If you want to add something, write it in and initial it. Although the other party to the contract may not want to go through with the deal after seeing your changes, at least you aren't agreeing to something you're not comfortable with.

Whether you're adding or deleting, be sure your changes appear on every copy of the contract before you sign it. The same goes for contract changes made by someone else. Don't trust someone who says, "Just sign here, and I'll make those changes on the other copies later" because the changes may never get made. Even so, if you sign the contract, you're obligated to meet its terms.

- ✔ If you don't feel comfortable negotiating a contract or even discussing its details, ask someone you trust implicitly to do it for you.

For contracts that involve a lot of money or that obligate you to do something really important, it's a good idea to hire an attorney to help with the negotiations.

- ✔ Don't (that means NEVER, EVER!) sign a contract without reading it completely.
- ✔ Don't be pressured into signing a contract. Take the time you need to think about it.
- ✔ Never sign a contract that you're not happy with or don't understand. If you ask for an explanation of something in a contract and the answer you get is unsatisfactory, don't be embarrassed to say, "You didn't answer my question" or "I still don't understand." Remember, after you've signed on the dotted line, it's usually too late to back out.
- ✔ If the contract is important and you want to minimize the potential for problems with it later, ask an attorney to review the contract before you sign it. The attorney can point out any weaknesses in the contract and suggest changes to give you more legal protection.

What to Expect If You're Involved in a Lawsuit

Most litigation stems from allegations relating to breaches of contracts. No matter whether you sue over a contract problem or you're the defendant in such a lawsuit, knowing what to expect, if nothing more, makes the process less stressful for you.

Incidentally, because most legal problems are matters of civil, not criminal, law (thank goodness), this chapter focuses on describing a civil lawsuit. If you want to know about criminal lawsuits, just flip ahead to Chapter 17.

In the beginning . . .

To initiate a lawsuit, you must file a *complaint* with the court that has jurisdiction over your particular legal problem — within a certain period of time. That period of time is called the *statute of limitation*, and it's a different length for different kinds of legal problems. If you wait until after the statute of limitation has run out, you're out of luck no matter how serious the legal problem.

You can file a complaint yourself as you would if you were using small claims court, or your attorney can file one for you. The complaint explains the reason for your lawsuit, cites the relevant law, and states what you want the court to do for you.

After a complaint is filed, the defendant in your lawsuit receives a *summons*, which is an official notification of the lawsuit. Usually, a summons is *served*, or personally delivered, by a sheriff or marshal, although it may be sent via certified or registered mail.

The plot thickens . . .

The defendant must file an *answer*, or formal response, to the charges in your complaint by a deadline specified in the complaint. If the defendant doesn't meet the deadline or ignores the complaint, your attorney files a motion for a default judgment against the defendant, which means that you win your case without any more time or expense (if the motion is not opposed).

Before filing an answer, however, the defendant's attorney may try to end the lawsuit by filing a *motion to dismiss*. If the court denies the motion, the lawsuit moves forward, and the defendant must file an *answer*. The defendant can also respond by filing a counterclaim against you. The defendant may take this action in order to pressure you into dropping your lawsuit or to get you to settle quickly knowing that dealing with one lawsuit is expensive but having to deal with a counterclaim as well can be a bank breaker.

Compromise, compromise

The court may encourage, if not require, you and the defendant to try to resolve your differences outside of court through *mediation*. Mediation is an opportunity for you to talk things over with the help of a trained mediator in an effort to identify a solution both you and the defendant can accept. (I talk more about mediation in the next chapter.)

Just the facts! Nothing but the facts!

If mediation doesn't work, your case moves into the *discovery* phase, a potentially time-consuming and expensive part of a lawsuit. In fact, when your attorney's bills from this phase start coming in, you may think back on your mediation session and regret that you hadn't been more willing to compromise! Take heart, however, because at this stage in the lawsuit you can still settle. In fact, you or the defendant can propose a settlement at any time during the lawsuit. Often, a settlement is proposed during discovery, when both sides have begun laying their cards on the table and it has become obvious to one side or the other that the cards are stacked against them. The judge may also encourage you to settle by scheduling a pretrial conference to talk things over. Ninety percent of all civil lawsuits are settled before going to trial.

Either you or the defendant can also end the lawsuit early by filing a *motion for summary judgment* before or during discovery. This action is appropriate when there's no disagreement over the facts of your case, so there's no need for witnesses to be called or evidence to be introduced. If the court grants the motion, the lawsuit is decided based on the facts of the case and relevant law.

Discovery is when the lawyers for each side in your lawsuit do much of the formal information gathering that they need in order to develop their case and prepare for trial. They may collect their information by

- ✔ **Taking depositions:** Potential witnesses are asked to answer oral or written questions under oath.
- ✔ **Filing interrogatories:** You and/or the defendant respond under oath to a set of written questions from the opposing side.
- ✔ **Filing motions to produce documents:** Each side asks the other to produce documents related to the case.
- ✔ **Filing requests to admit:** Each side asks the other to admit or deny certain facts about the case so that those facts won't have to be proved during the trial. Doing so saves time and money.

It's show time!

If your case has gone through the discovery phase and you still haven't reached a settlement, a trial date is set. The trial can either be a *bench trial*, heard and decided by a judge, or a *jury trial*. A bench trial is usually cheaper, but your attorney may feel that a jury is more apt to decide in your favor.



Some states prohibit jury trials for certain kinds of cases, such as divorce and probate.

Usually, to have a bench trial, both parties in a lawsuit must waive their constitutional rights to a trial by jury.

If you opt for a jury trial, the judge plays an important role in the trial by deciding questions of law, making decisions regarding what is and isn't admissible in court (evidence that an attorney can or cannot introduce for the jury's consideration), advising the jury about the law, and providing the jury with guidelines that they must use to help them arrive at a verdict.

Winning isn't everything

If you're a lawsuit novice, you may be surprised to find out that even if you win your case and you're awarded money by the court, you may never see a dime of it. No, you don't get to leave the court with a check for the amount of the judgment!

It's up to you and your attorney to make sure that you get paid. If the defendant doesn't write you a check for the full amount, you can try to negotiate an installment payment plan with the defendant. But if the defendant won't

agree to the plan or can't afford to pay you anything, your attorney must ask the court to help enforce the judgment by allowing you to do one of the following:

- ✔ Garnish the defendant's wages. A percentage of the defendant's paycheck automatically goes to you. Only some states allow this form of collection.
- ✔ Seize and sell assets that the defendant owns, and apply the proceeds toward your award.
- ✔ Place a lien on an asset that the defendant owns so that it can't be sold or used as loan collateral without you being paid first.
- ✔ Levy against the defendant's bank accounts. You get access to the money in those accounts up to the amount of your award.

If your attorney feels that the defendant is trying to hide money or assets that may be used to satisfy the judgment in your favor, your attorney can ask the court to issue a subpoena requiring the defendant to appear in court to answer certain questions under oath. If the subpoena is issued and the defendant fails to show up, your attorney can ask the court to find him or her in contempt of court. If the defendant is found in contempt, he or she is fined or sent to jail.



Be careful that you don't get so carried away with collecting your judgment that when you do finally collect your money, you have little to show for your efforts after paying filing fees, attorney fees, and other legal expenses.

If justice wasn't done

If either you or the defendant are unhappy with the outcome of the lawsuit, and if there are sufficient grounds, either of you can appeal the final verdict. Grounds for appeal must be based on errors in courtroom procedure that caused the trial to be unfair to one party or the other or on questions regarding the judge's interpretation of the law. No, you can't appeal just because you don't like a trial's outcome!



You have only a limited period of time to file your appeal — as little as ten days after a judgment is entered depending on your case and the court you're dealing with.