

The Danish Civil Lawsuit in First Instance

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Niels Waage
Ex president of the District Court of Roskilde
May 14, 2013, Trier





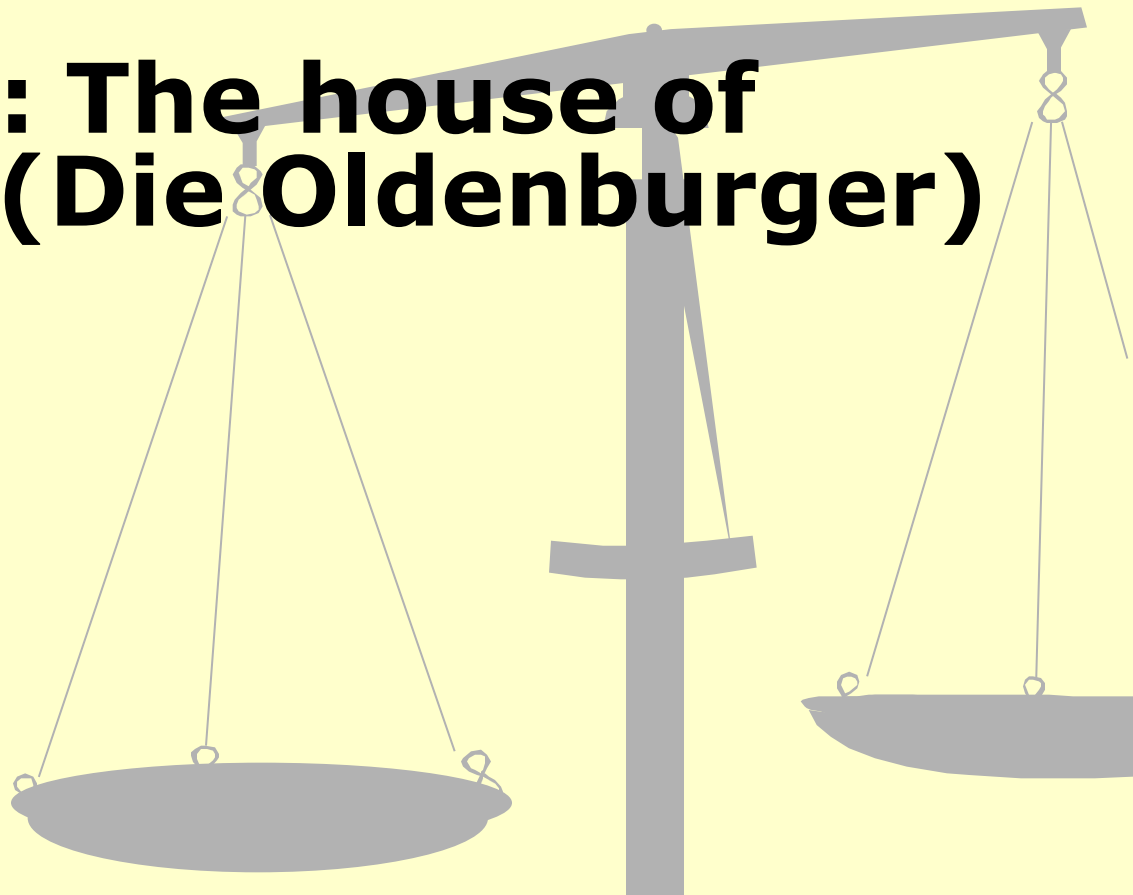
Dänemark/Denmark

- 5,5 mio inhabitants
- 43.000 km²

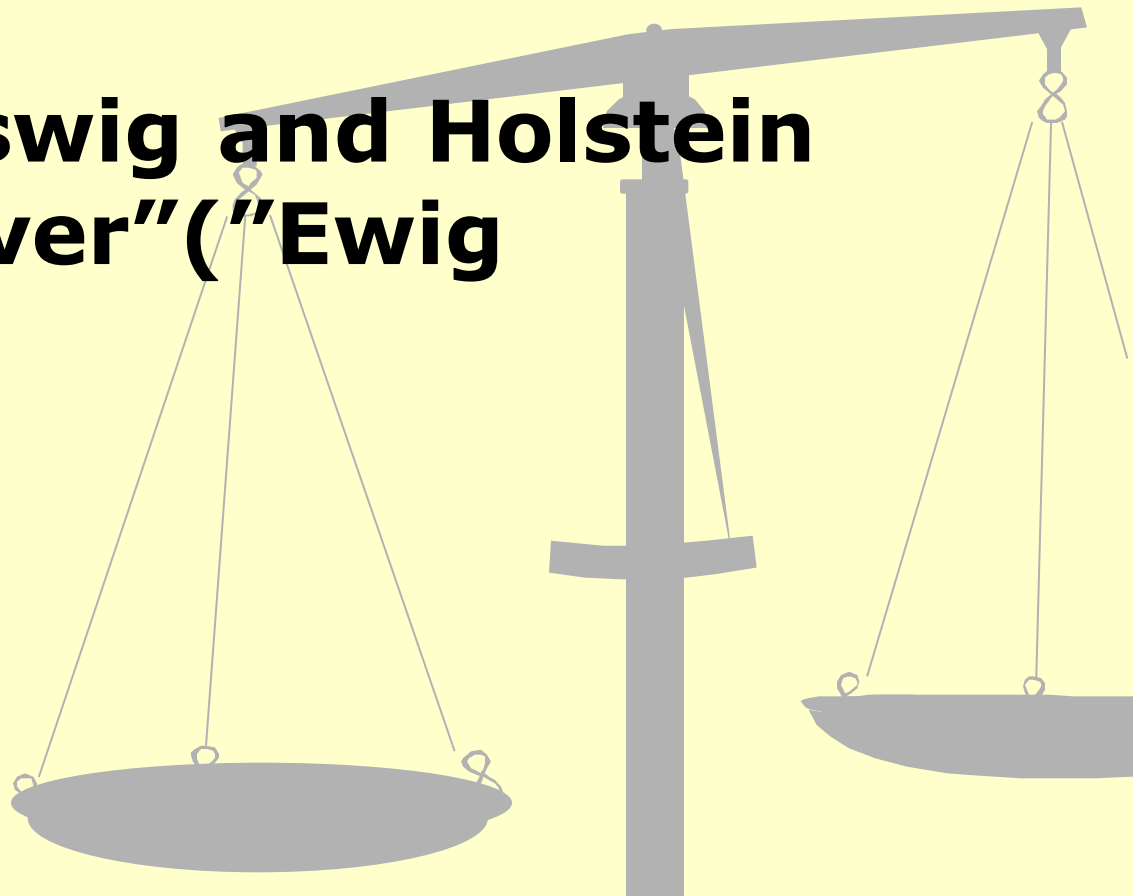




■ 1448-1863: The house of Oldenburg (Die Oldenburger)

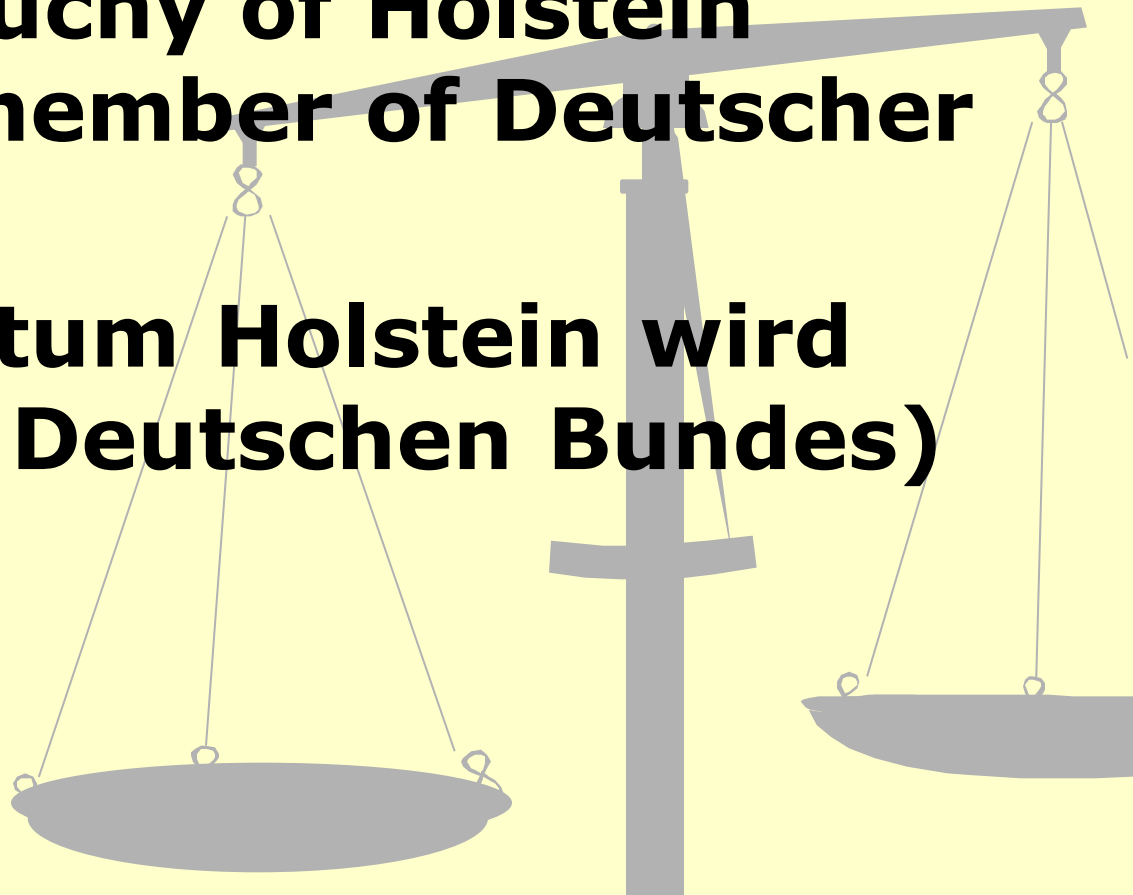


- **1460: Schleswig and Holstein
"united forever" ("Ewig
verbunden")**



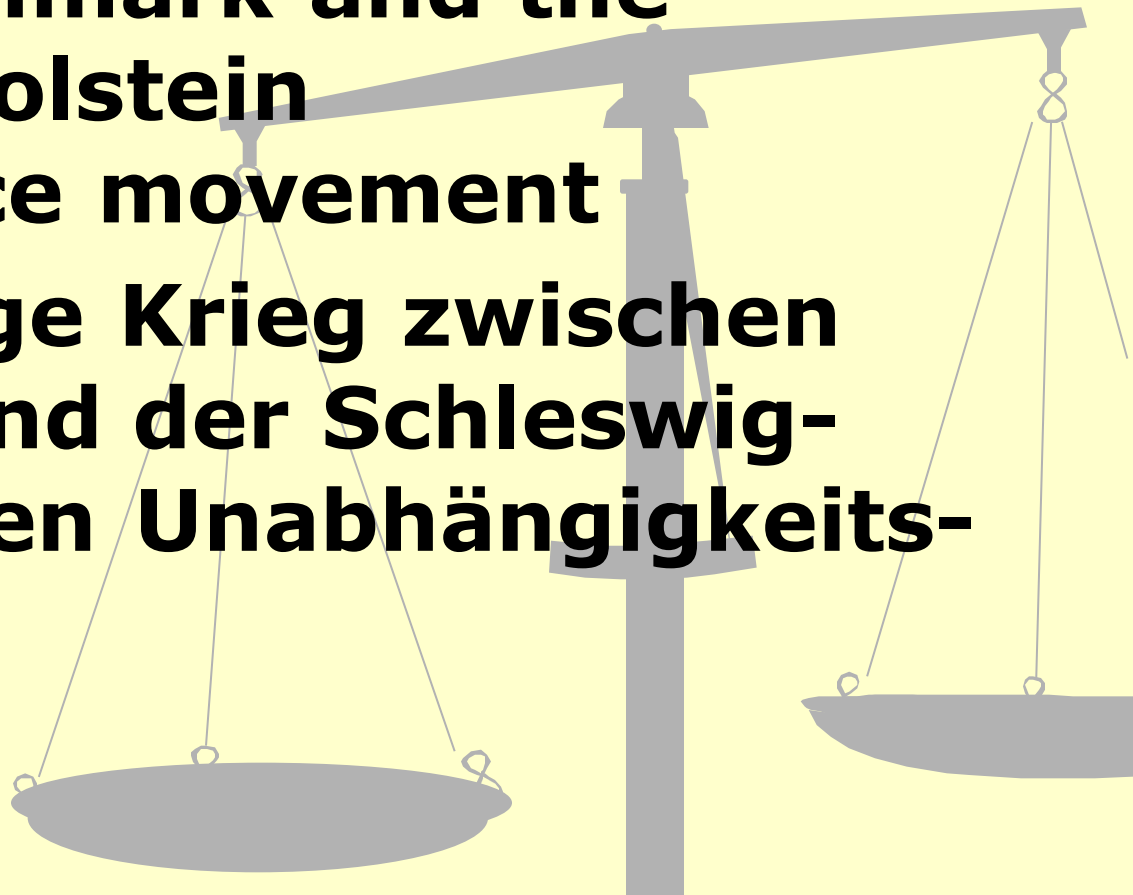


- **1815: The Duchy of Holstein becomes a member of Deutscher Bund**
- **(Das Herzogtum Holstein wird Mitglied des Deutschen Bundes)**





- **1848-1850: The 3 years' war between Denmark and the Schleswig-Holstein independence movement**
- **(Der 3-jährige Krieg zwischen Dänemark und der Schleswig-Holsteinischen Unabhängigkeitsbewegung)**



- **1864: The Prussian/Austrian-Danish war (Der preußische/österreichisch-dänischen Krieg)**





- **1920: The access of Northern Schleswig to Denmark (Der Zugang von Nordschleswig an Dänemark)**

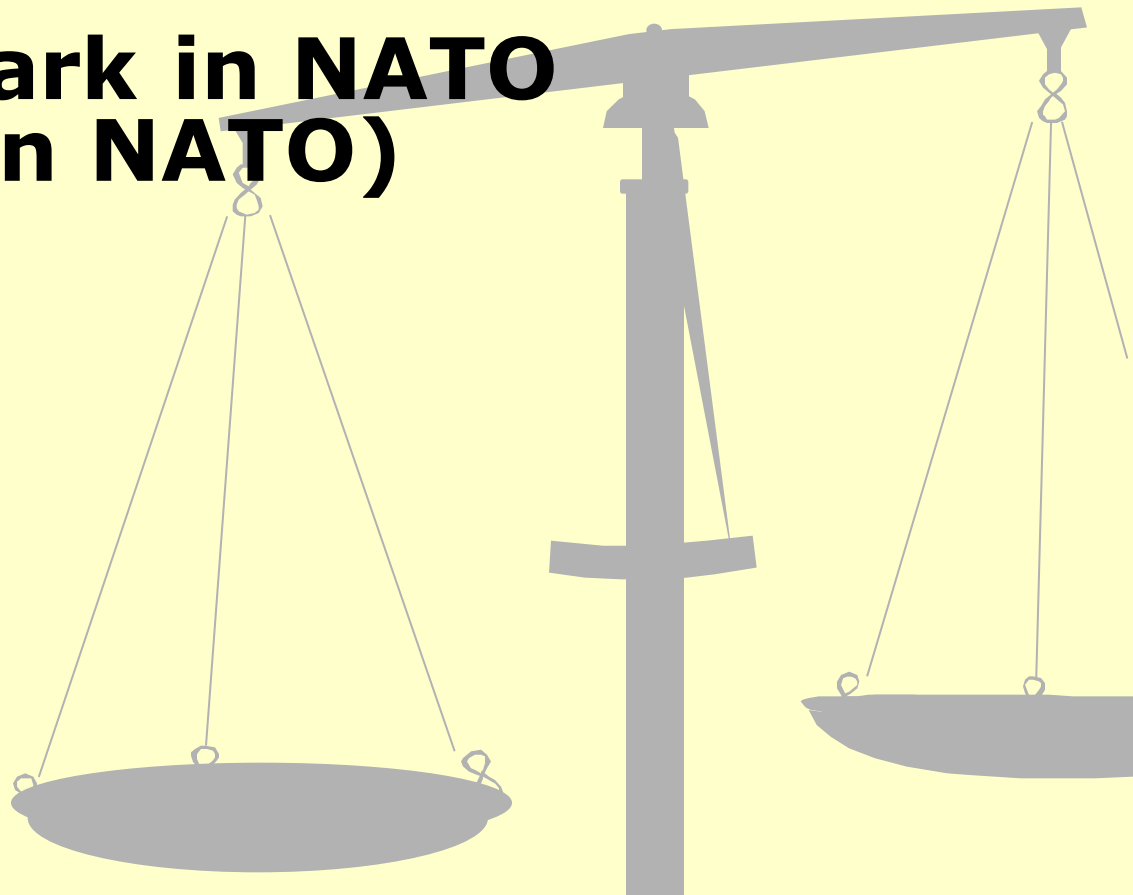




- **1940-45 Denmark occupied by Germany (Dänemark von Deutschland besetzt)**

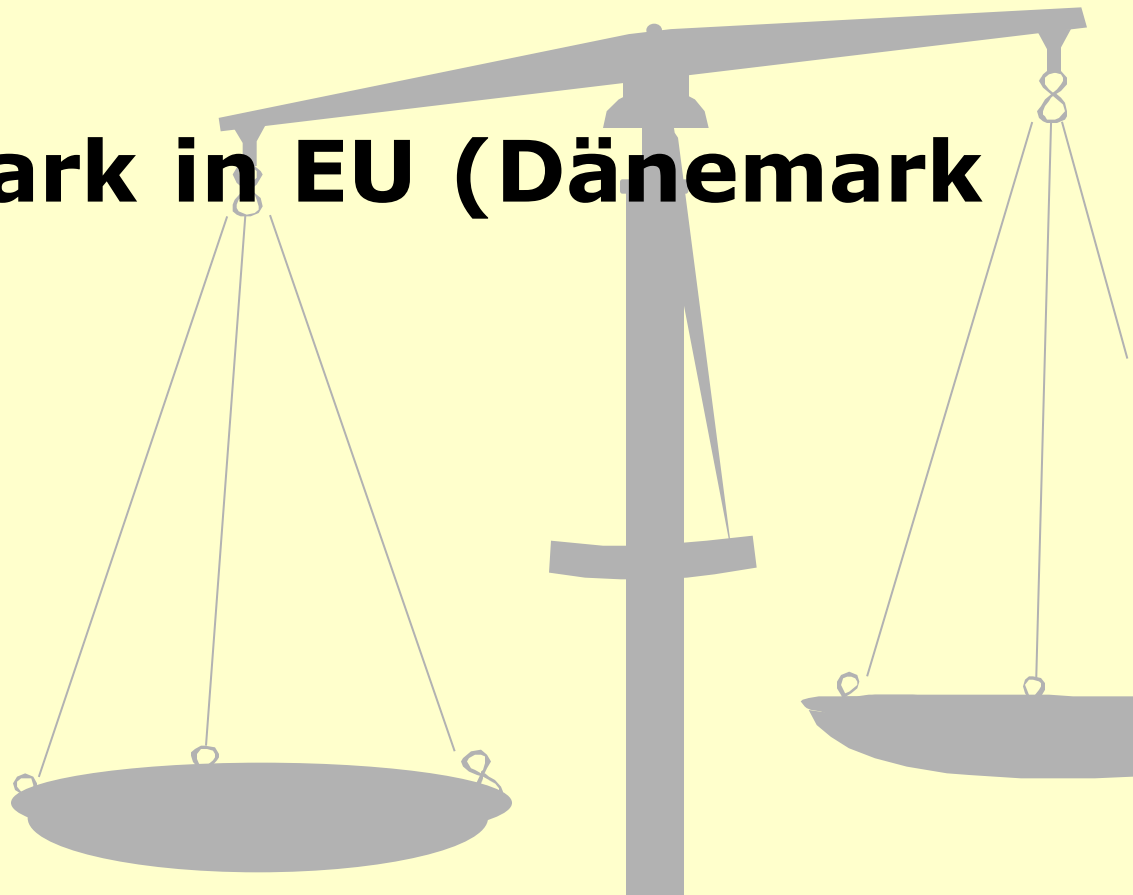


- **1949: Denmark in NATO
(Dänemark in NATO)**





- **1973: Denmark in EU (Dänemark in EU)**



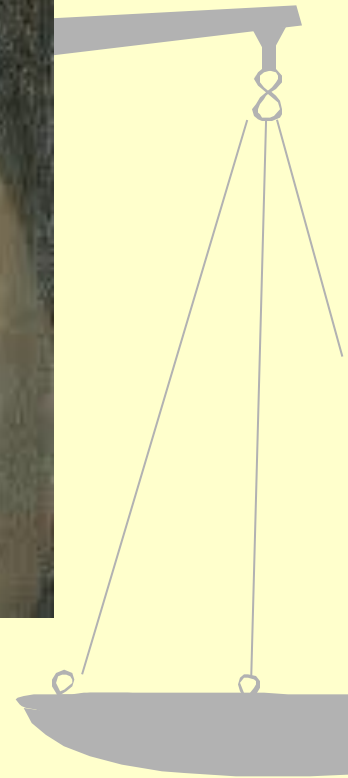
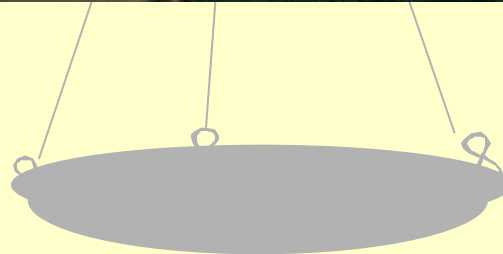


- **1992, Göteborg:**
- **Denmark – Germany 2-0**



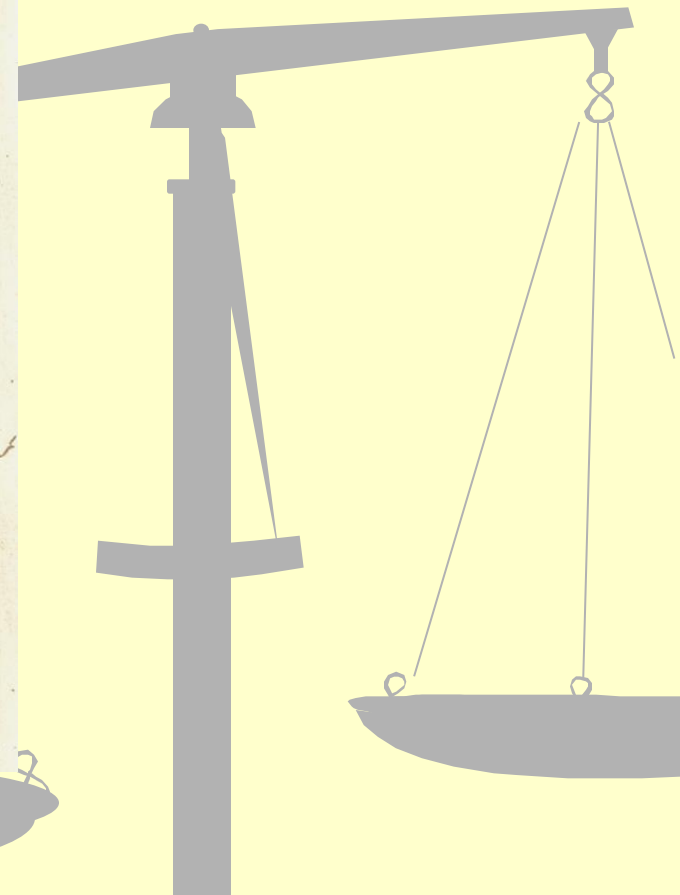


Der alte Fritz





Gönner





Danish Constitution 1849

- The Judiciary should be separated from the administration.
- Oral communication in court
- Public access to the court hearings





Entwurf

einer

Prozess - Ordnung

in

bürgerlichen Rechtsstreitigkeiten

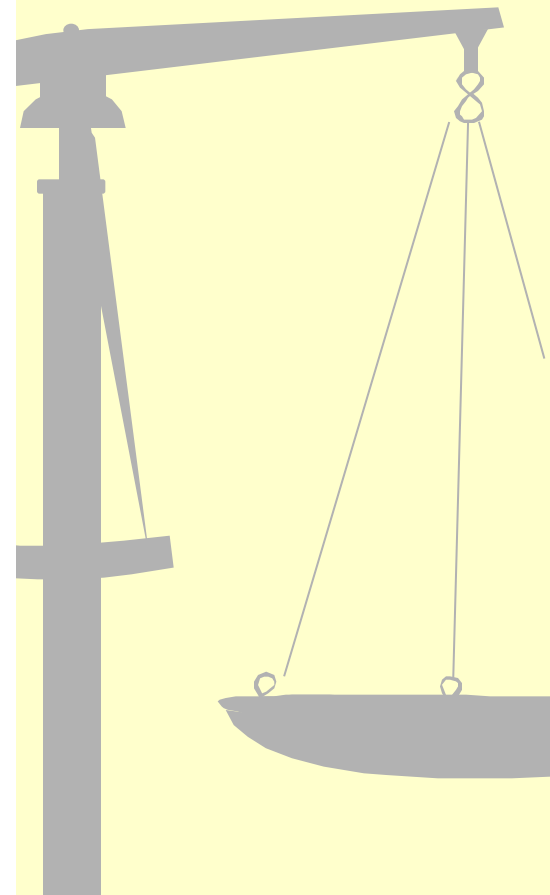
für den

Preussischen Staat.



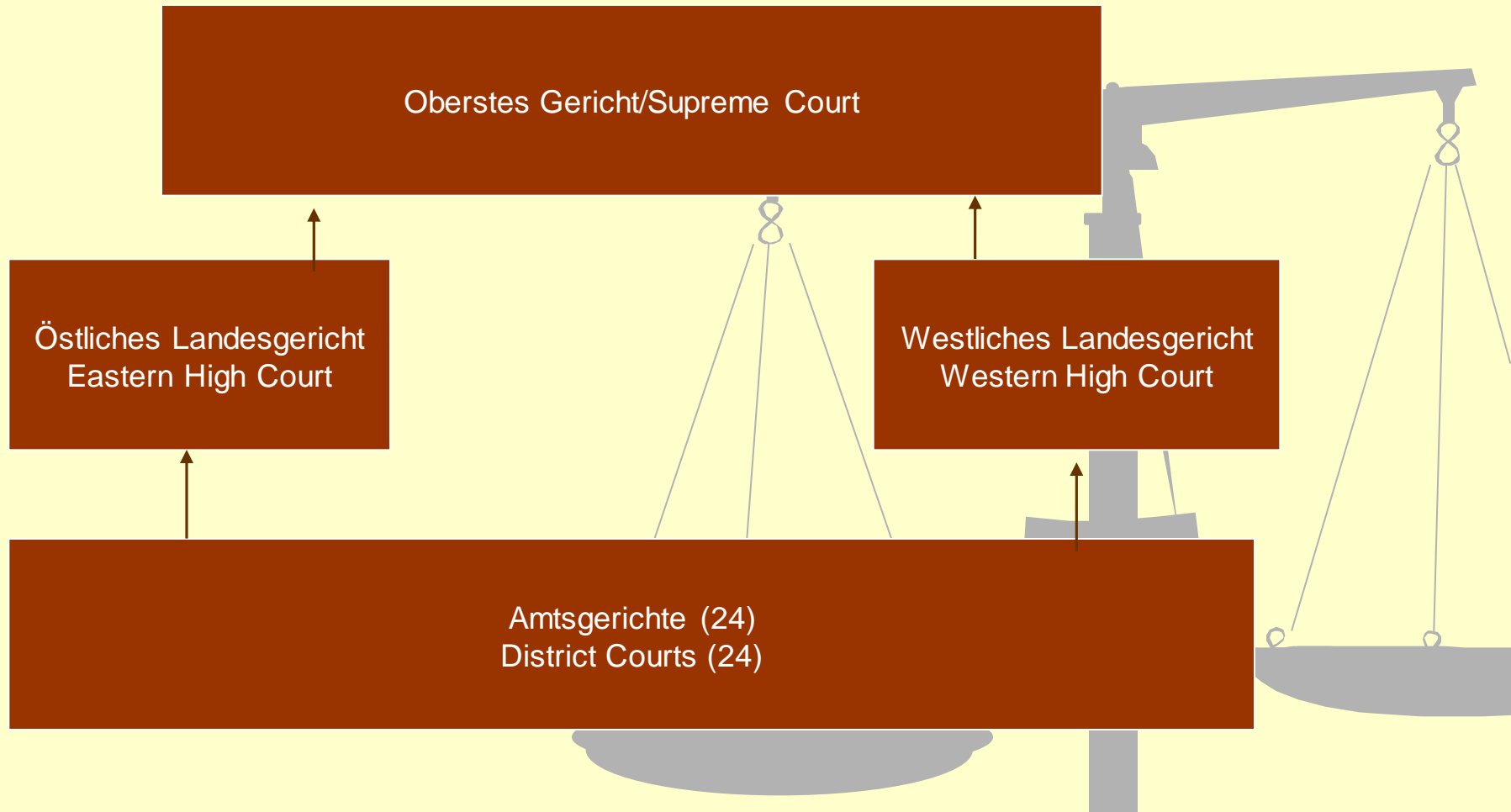
Berlin 1864.

Verlag der Königl. Geheimen Ober-Postdruckerei
(H. v. Deder).





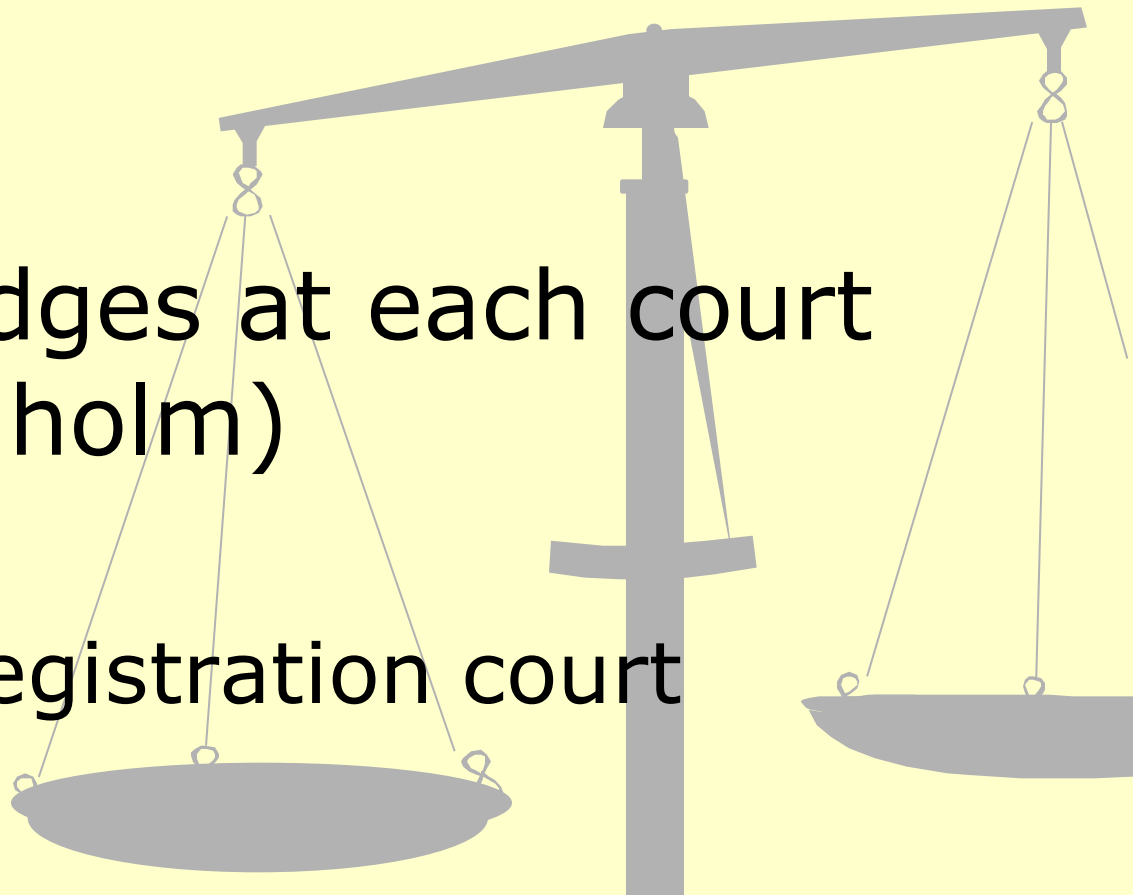
Structure of the Danish Court System (simplified)





2007: Rechtsreform II/Reform of the Judiciary II

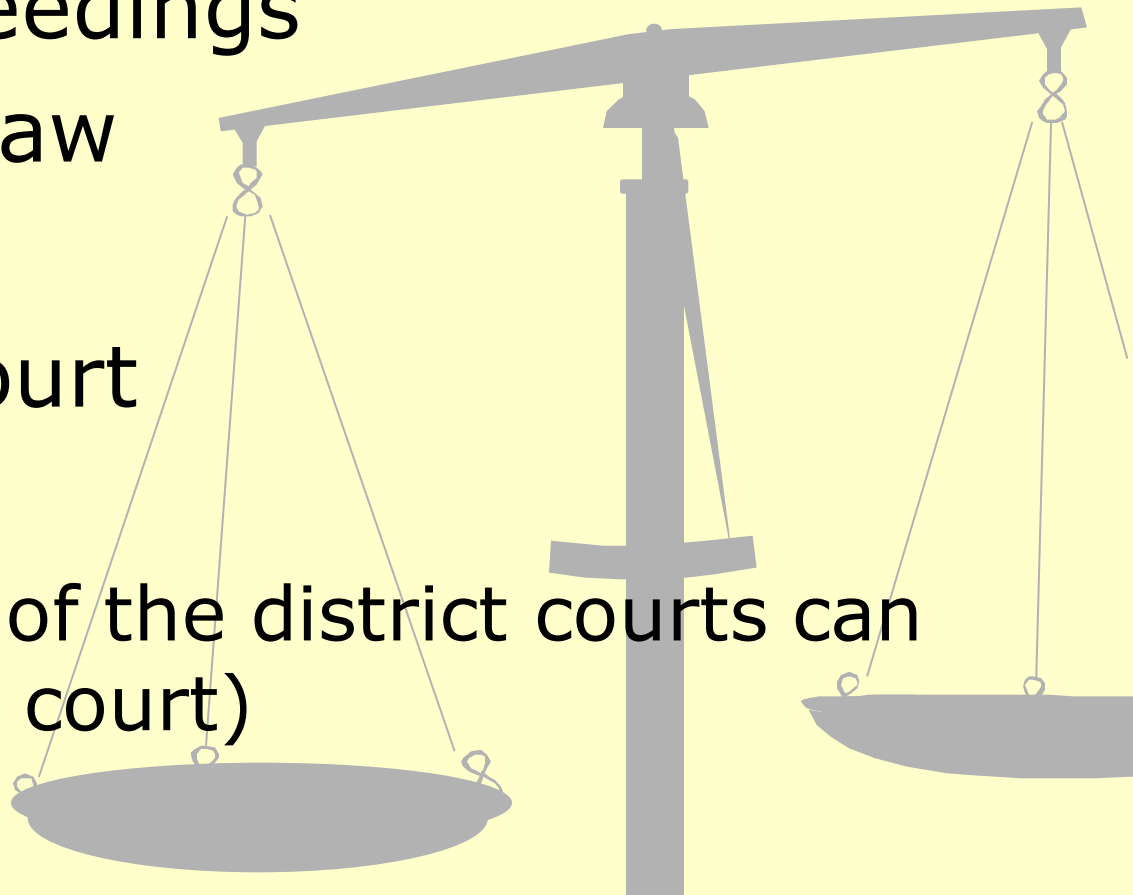
- The number of district courts is reduced from 82 to 24 from January 1st 2007
- At least 6 judges at each court (except Bornholm)
- Central land registration court





Tasks of the district courts

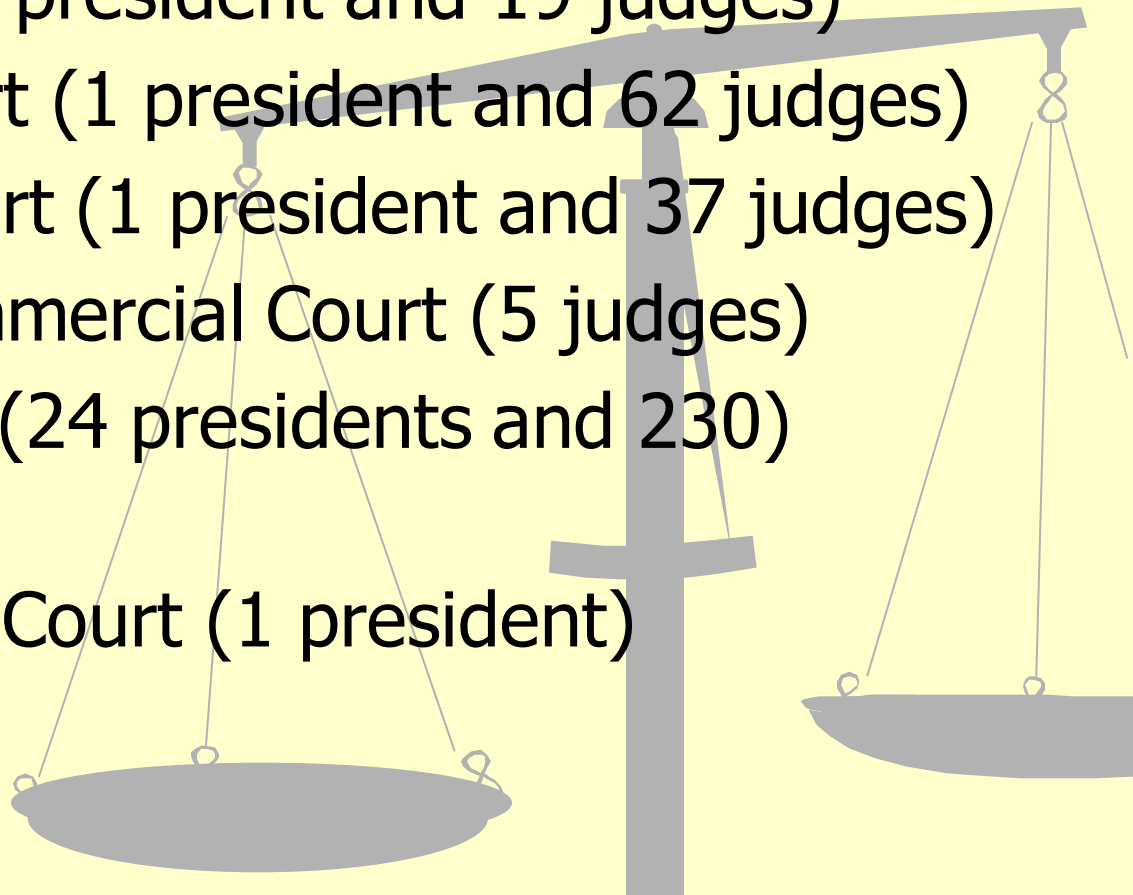
- Civil proceedings
- Criminal proceedings
- Enforcement law
- Probate court
- Bankruptcy court
- Notary public
- (Most decisions of the district courts can be tried by high court)





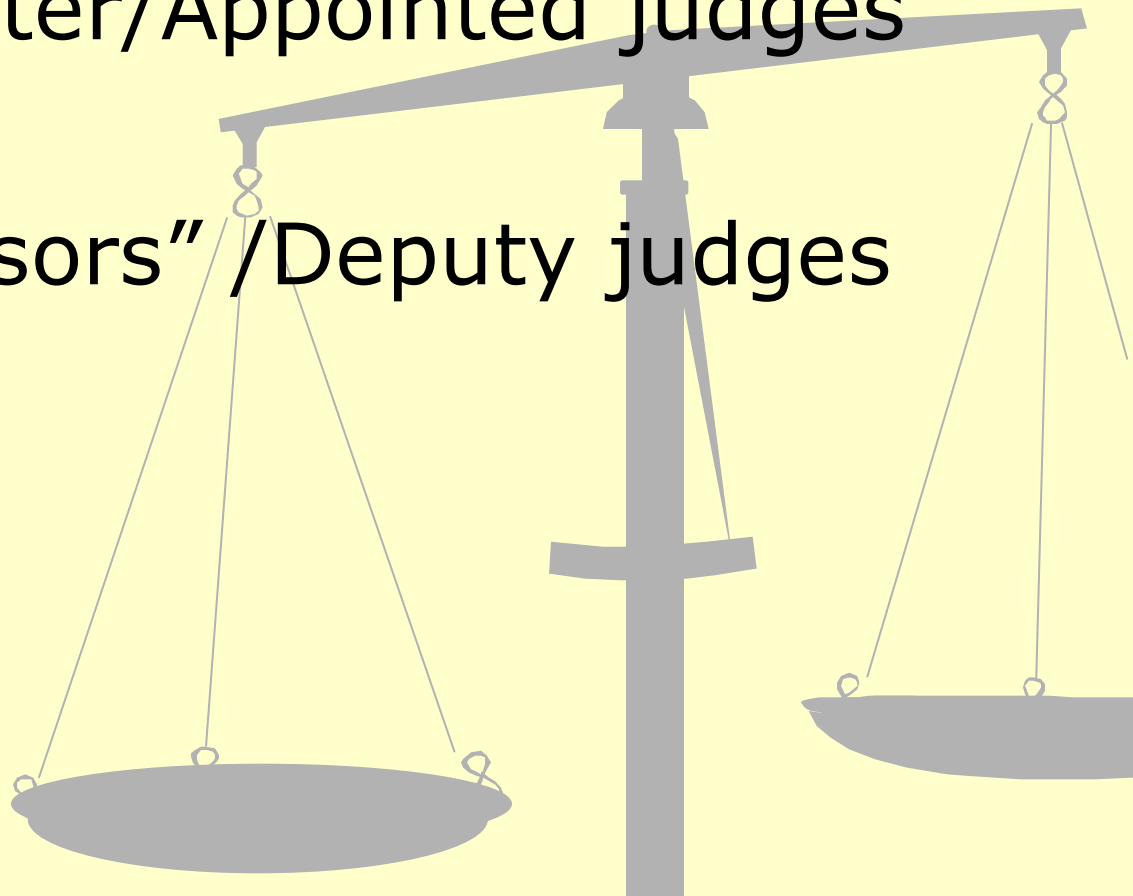
Number of judges

- Supreme Court (1 president and 19 judges)
- Eastern High Court (1 president and 62 judges)
- Western High Court (1 president and 37 judges)
- Maritime and Commercial Court (5 judges)
- 24 District Courts (24 presidents and 230 judges)
- Land Registration Court (1 president)





- Ernannete Richter/Appointed judges
- "Gerichtsassessors" /Deputy judges





Danish Constitution 1849

- The Judiciary should be separated from the administration.
- Oral communication in court
- Public access to the court hearings





Entwurf

einer

Prozess - Ordnung

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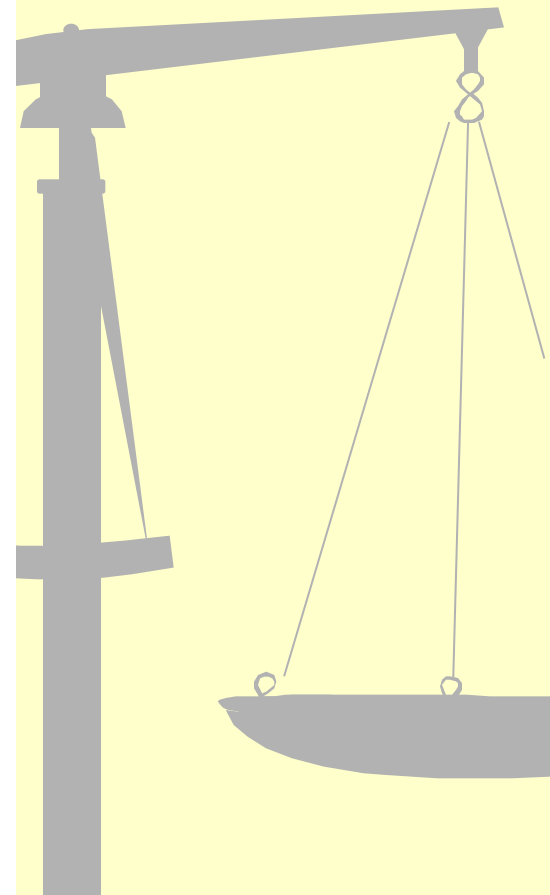
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Berlin 1864.

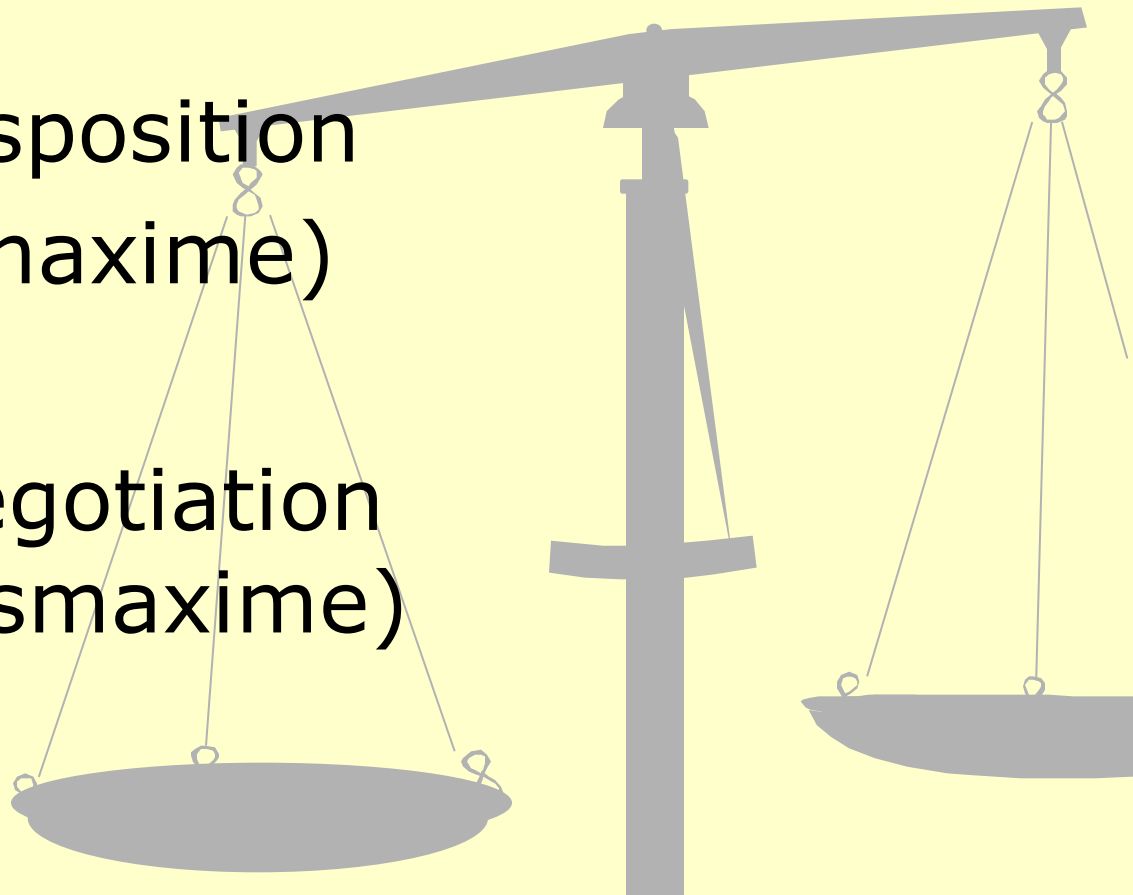
Verlag der Königlich Preussischen Ober-Hofbuchdruckerei
(H. v. Deder).





Administration of justice act 1919

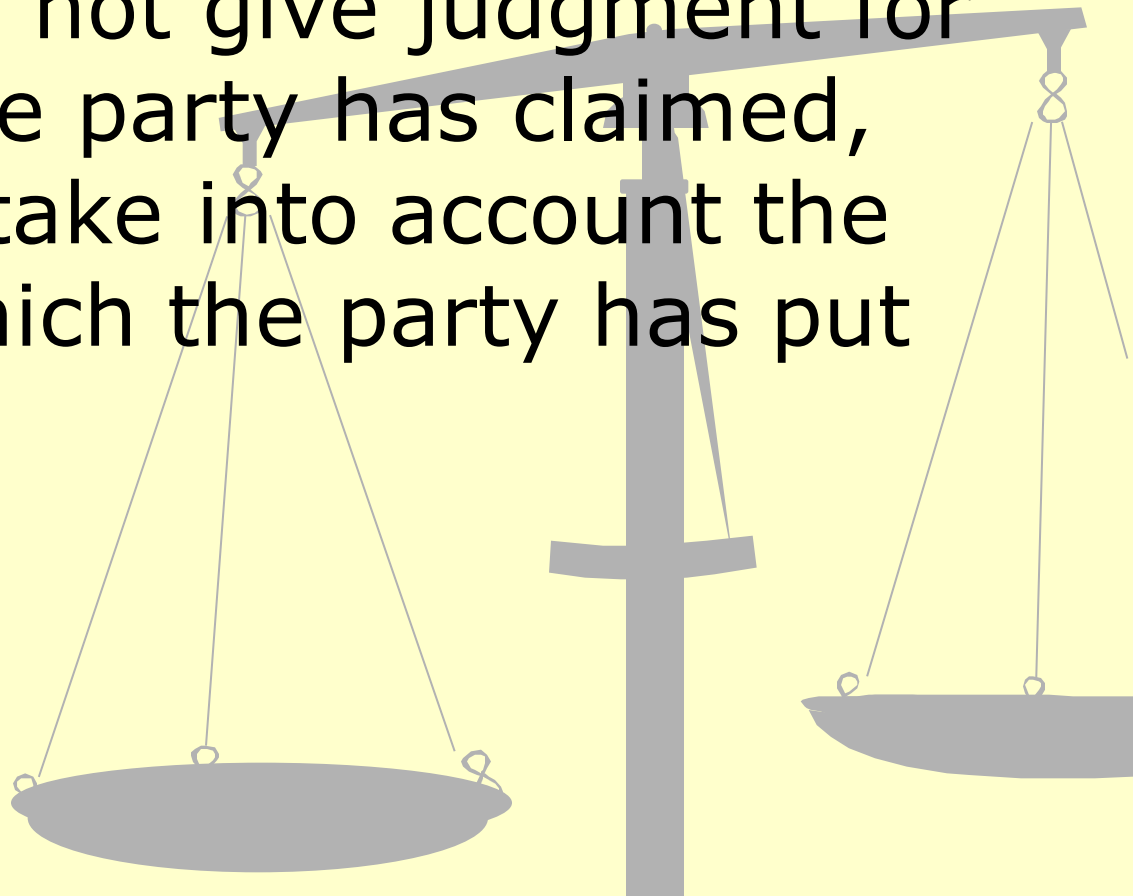
- Civil procedural principles:
- Principle of disposition
(Dispositionsmaxime)
- Principle of negotiation
(Verhandlungsmaxime)





Administration of Justice Act

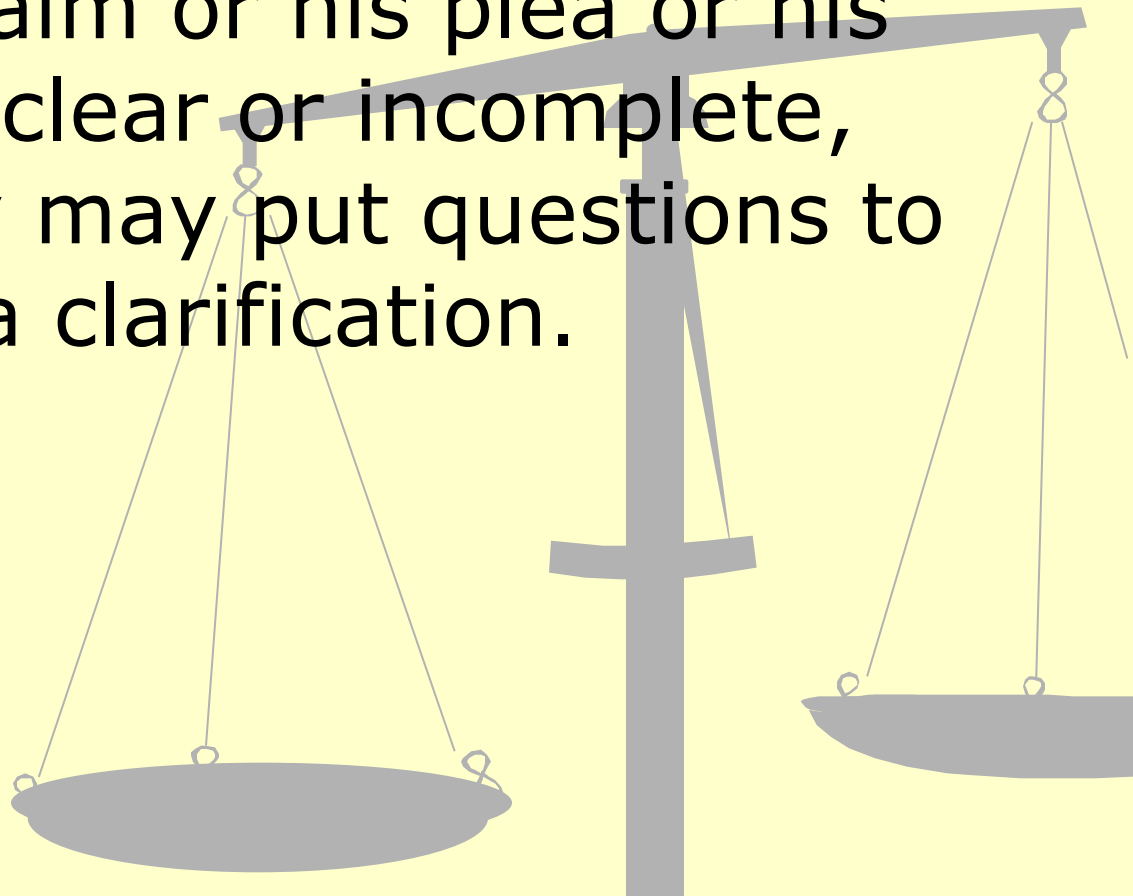
- § 338:
- The Court can not give judgment for more, than the party has claimed, and can only take into account the arguments which the party has put forward.





Administration of Justice Act

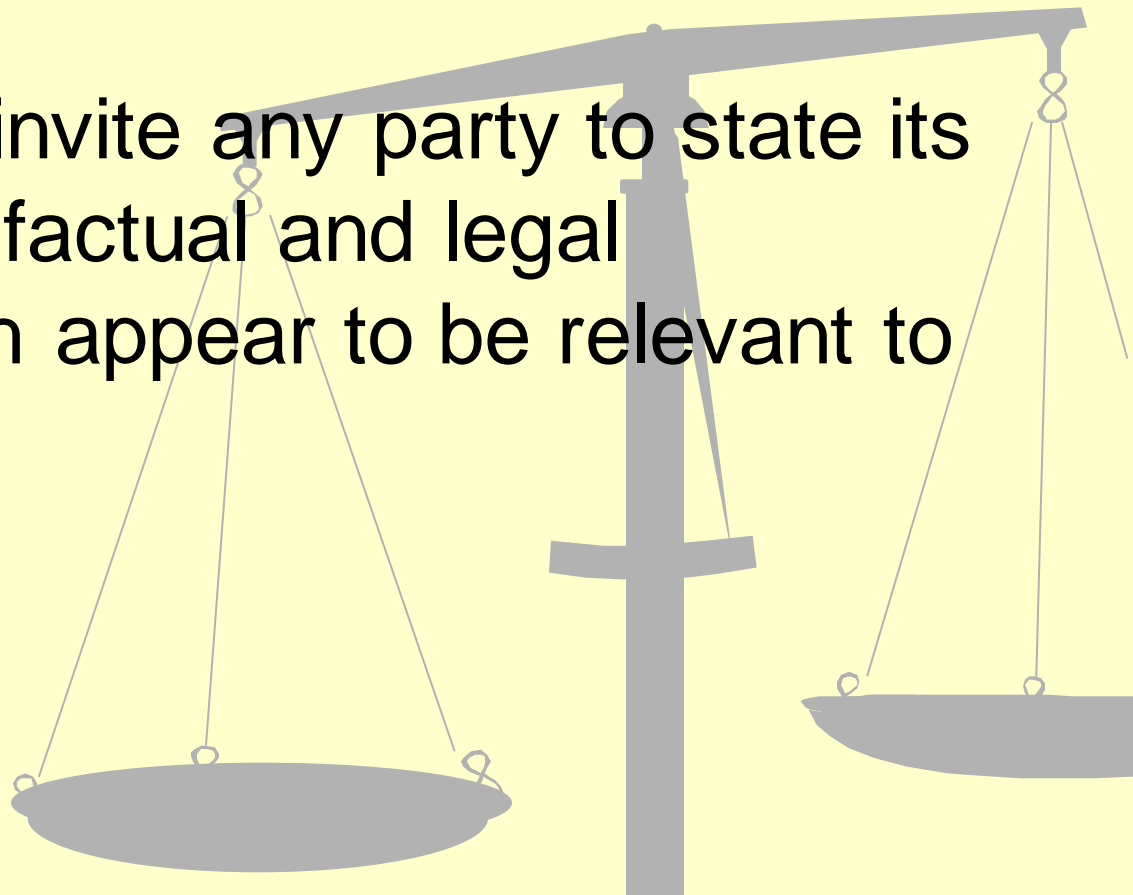
- § 339 (1):
- Is a party's claim or his plea or his arguments unclear or incomplete, the court may put questions to the party for a clarification.





Administration of Justice Act

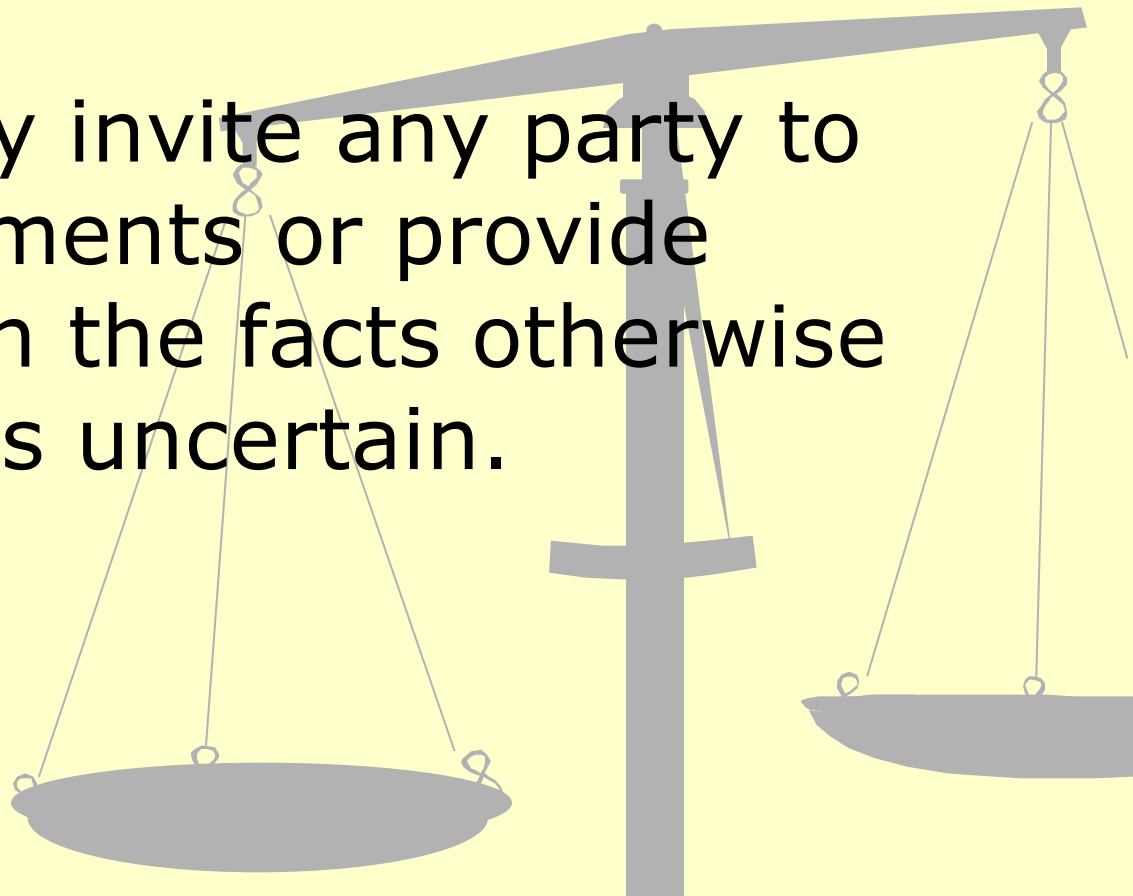
- § 339 (2):
- The Court may invite any party to state its position both to factual and legal questions, which appear to be relevant to the case.





Administration of Justice Act

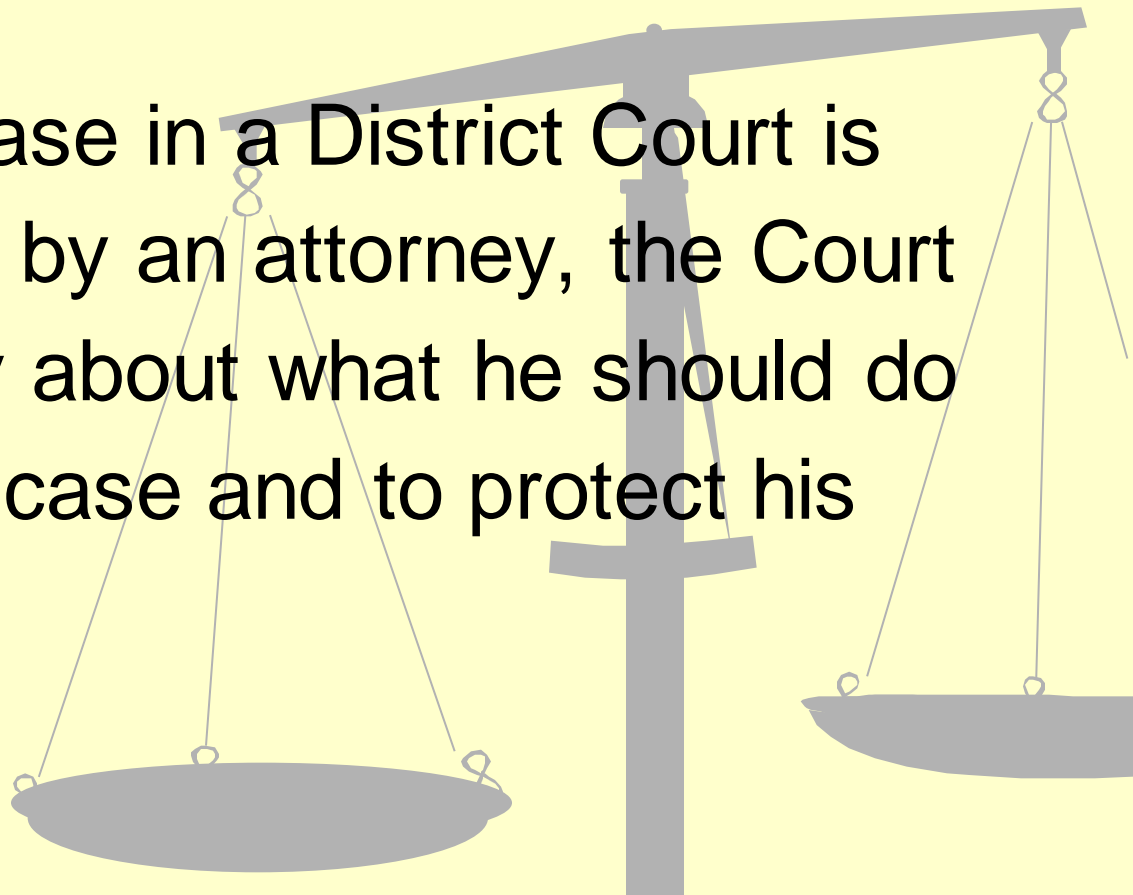
- § 339 (3):
- The Court may invite any party to produce documents or provide evidence when the facts otherwise would stand as uncertain.





Administration of Justice Act

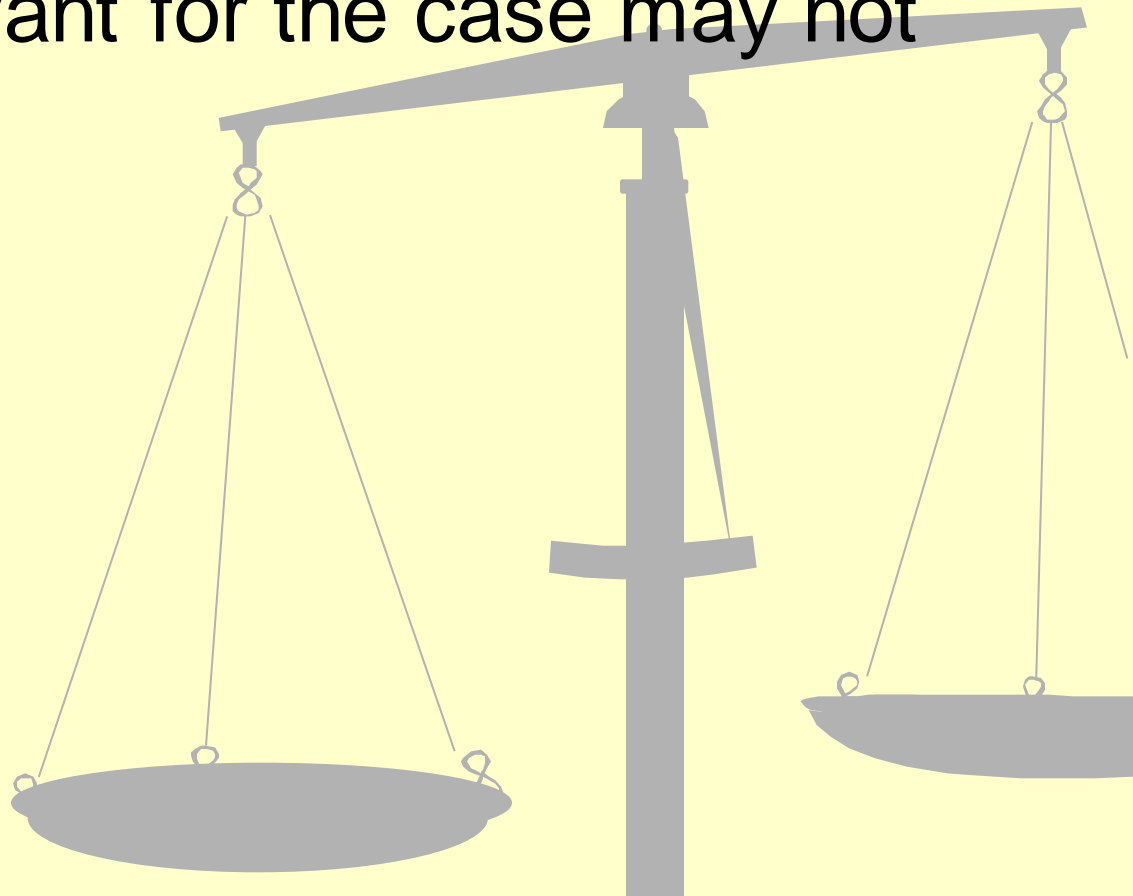
- § 339 (4):
- If a party in a case in a District Court is not represented by an attorney, the Court guides the party about what he should do to elucidate the case and to protect his interests.





Administration of Justice Act

- § 341:
- Evidence irrelevant for the case may not be produced.

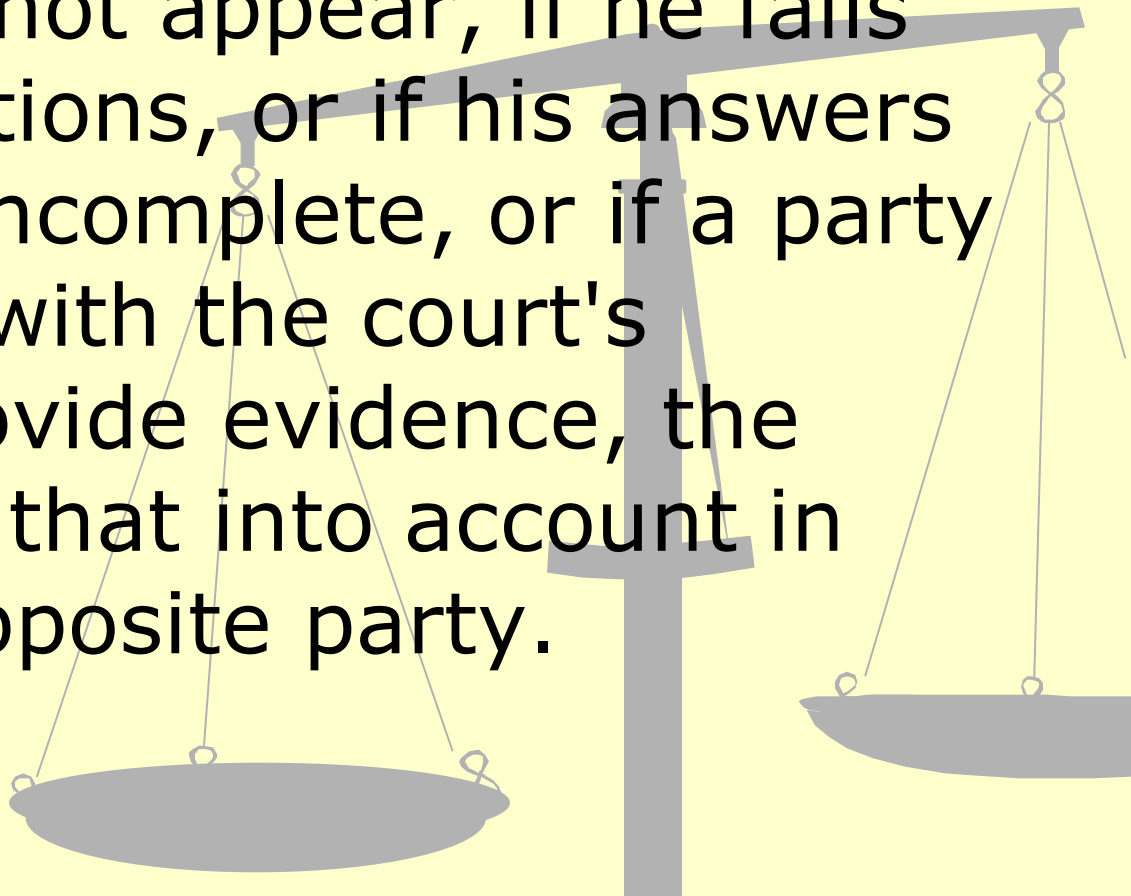




Administration of Justice Act

■ § 344

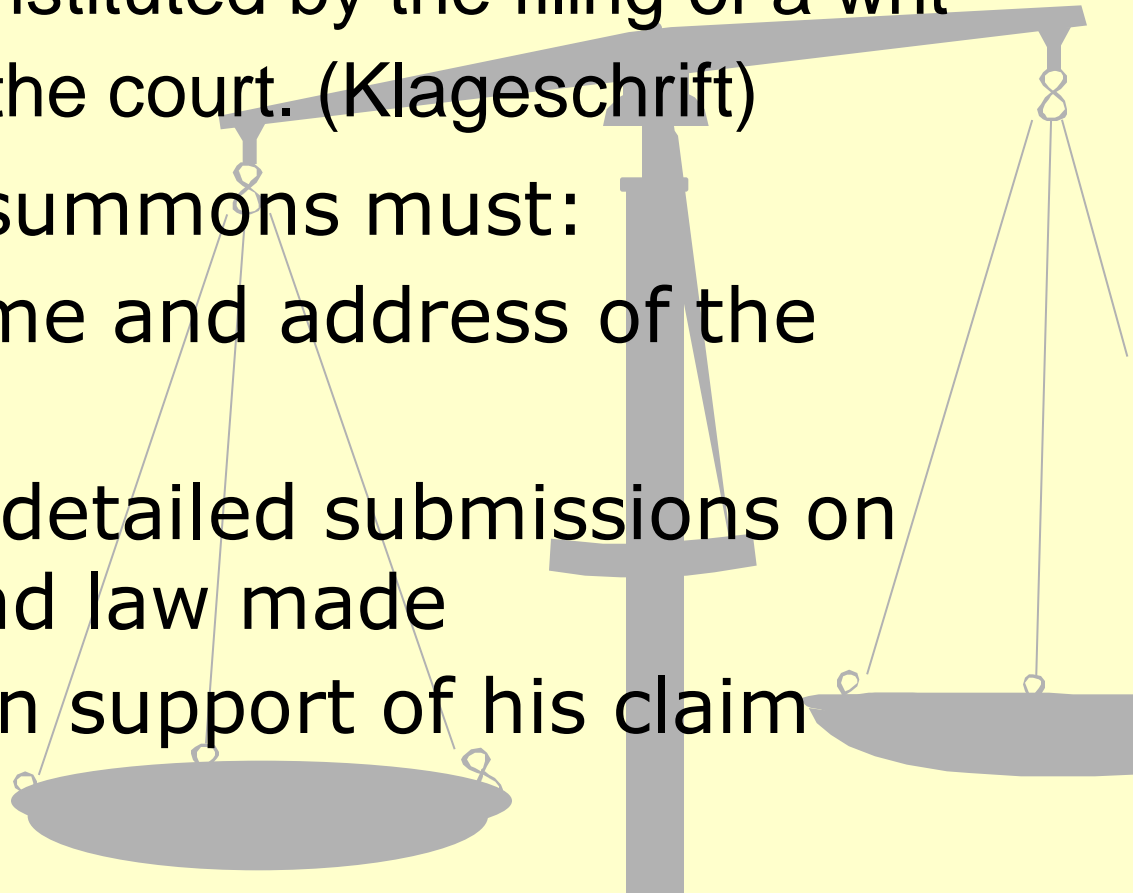
If a party does not appear, if he fails to answer questions, or if his answers are unclear or incomplete, or if a party fails to comply with the court's invitation to provide evidence, the court may take that into account in favour of the opposite party.





Administration of Justice Act

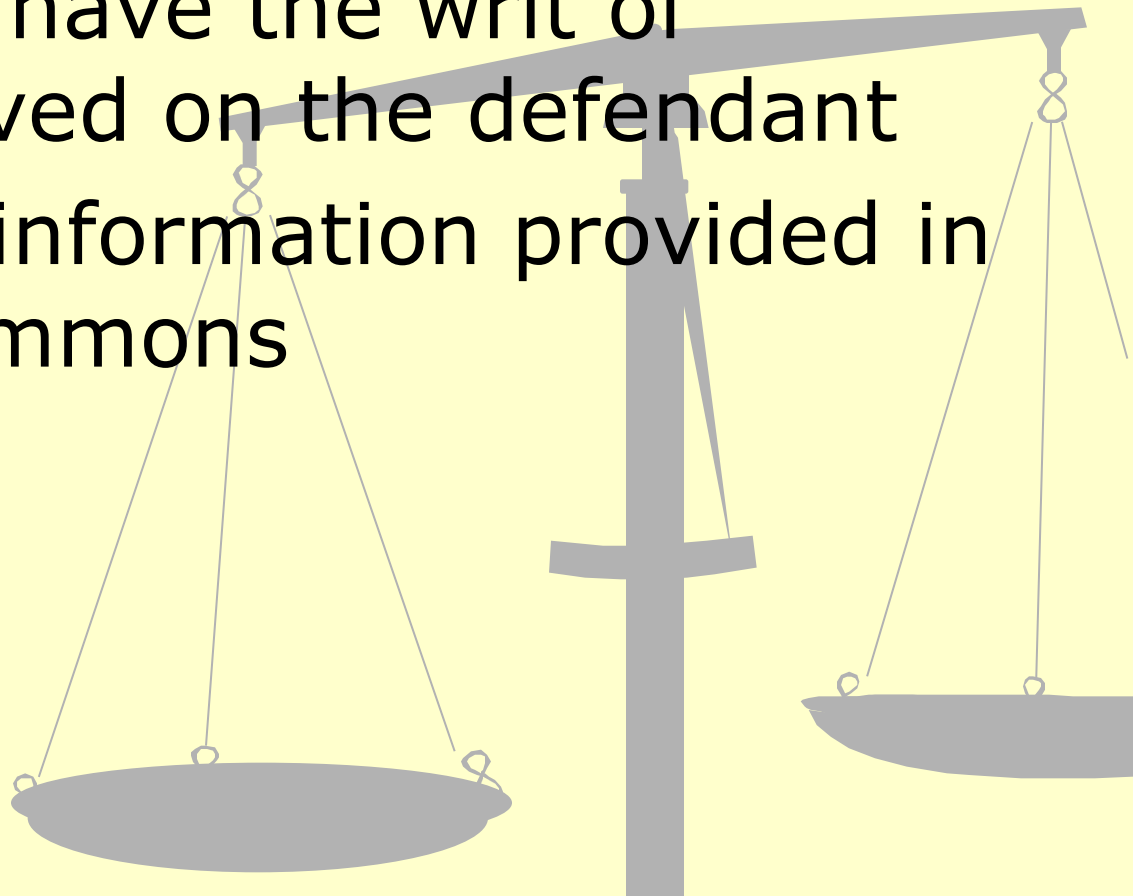
- § 348:
- Proceedings are instituted by the filing of a writ of summons with the court. (Klageschrift)
- (2) The writ of summons must:
 - (i) state the name and address of the parties...
 - (iv) include the detailed submissions on points of fact and law made
- by the plaintiff in support of his claim





Administration of Justice Act

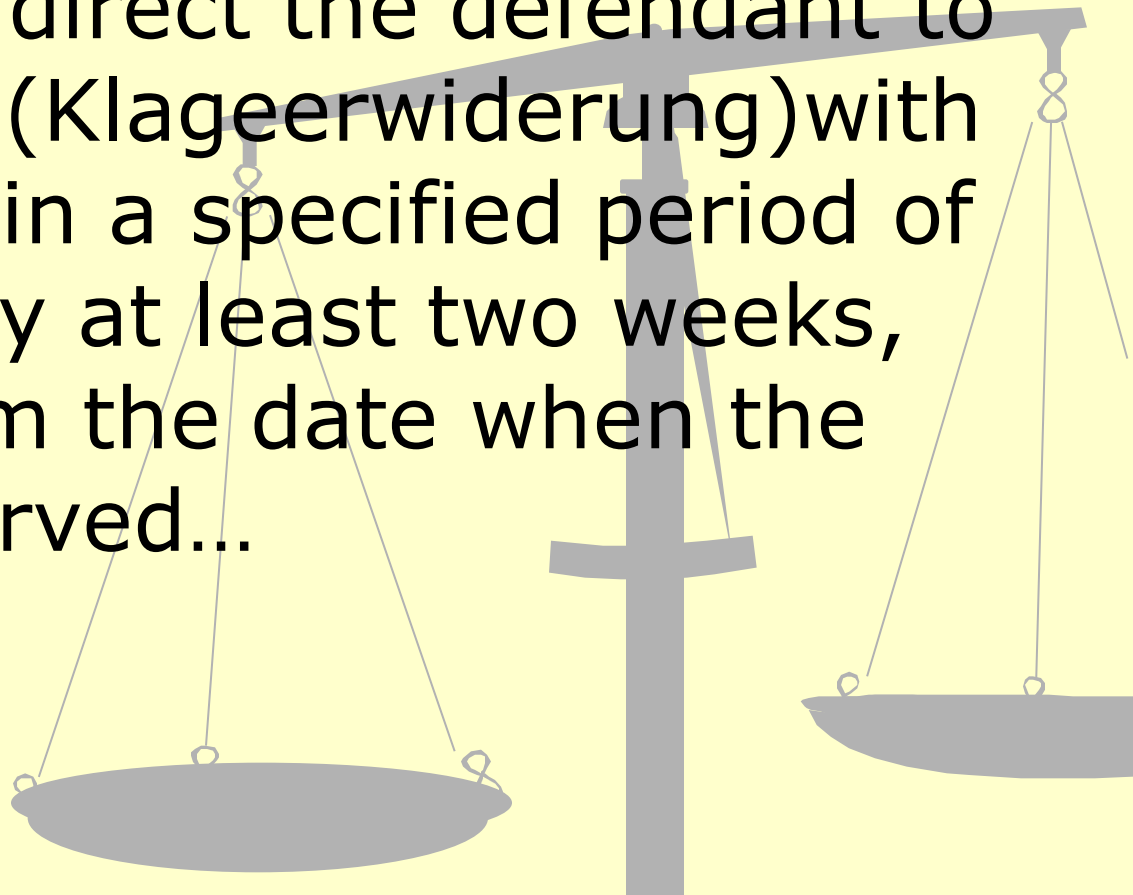
- § 350:
- The court will have the writ of summons served on the defendant
- based on the information provided in the writ of summons





Administration of Justice Act

- § 351:
- The court will direct the defendant to file a defence (Klageerwiderung) with the court within a specified period of time, generally at least two weeks, which run from the date when the direction is served...

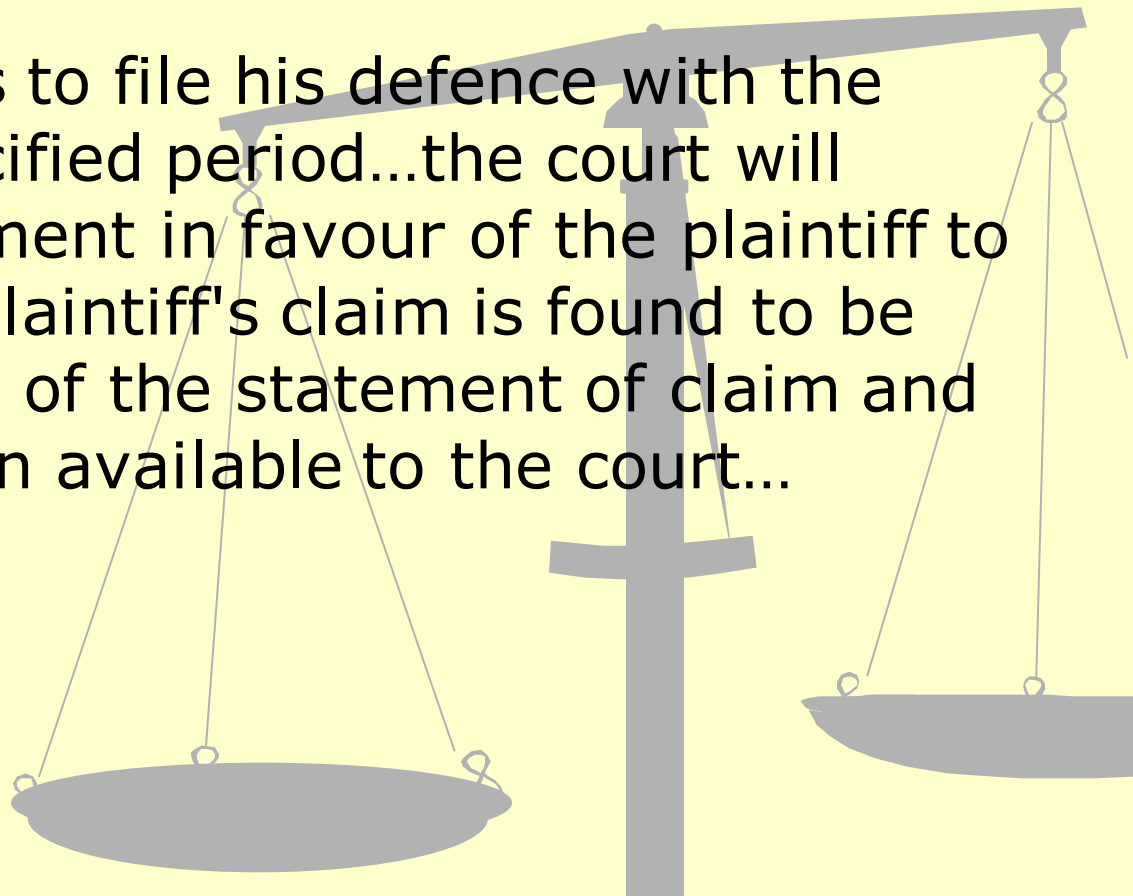




Administration of Justice Act

§ 352:

If the defendant fails to file his defence with the court within the specified period...the court will enter a default judgment in favour of the plaintiff to the extent that the plaintiff's claim is found to be justified on the basis of the statement of claim and any other information available to the court...



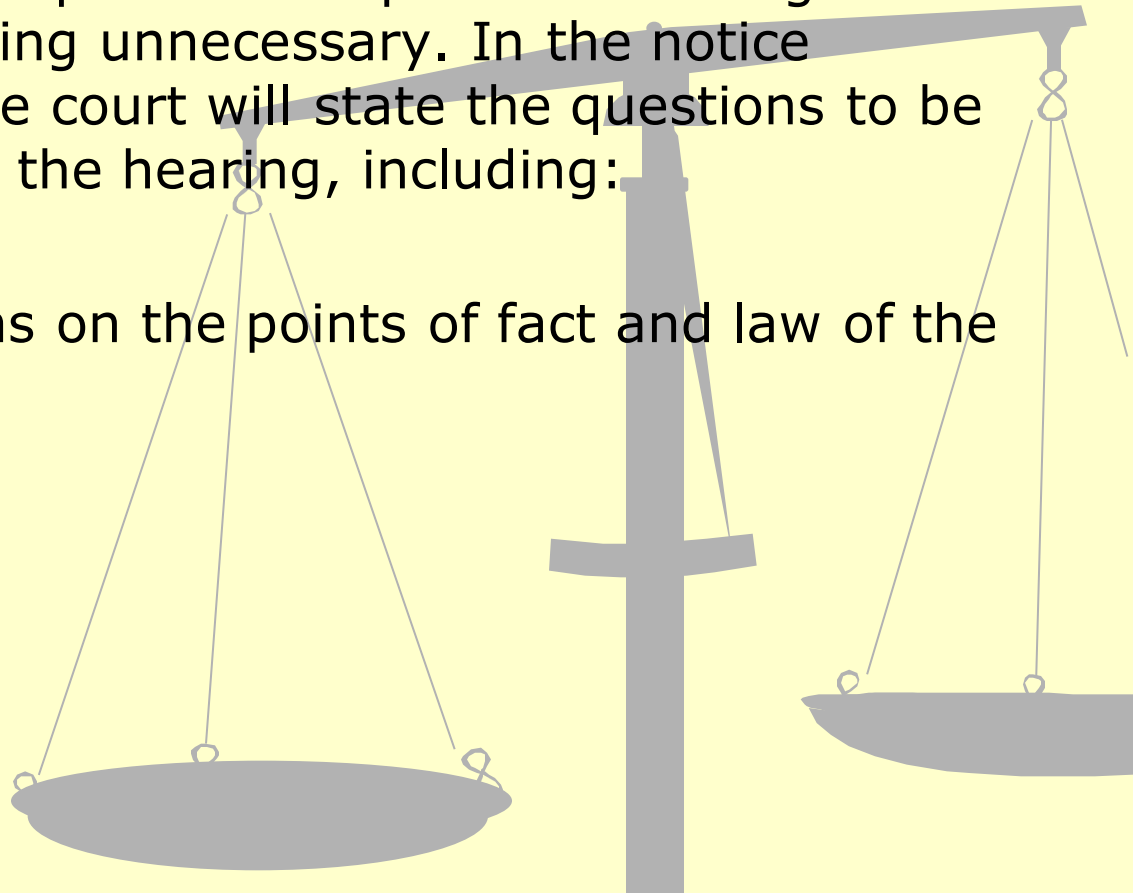


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- 1) the parties' positions on the points of fact and law of the case;



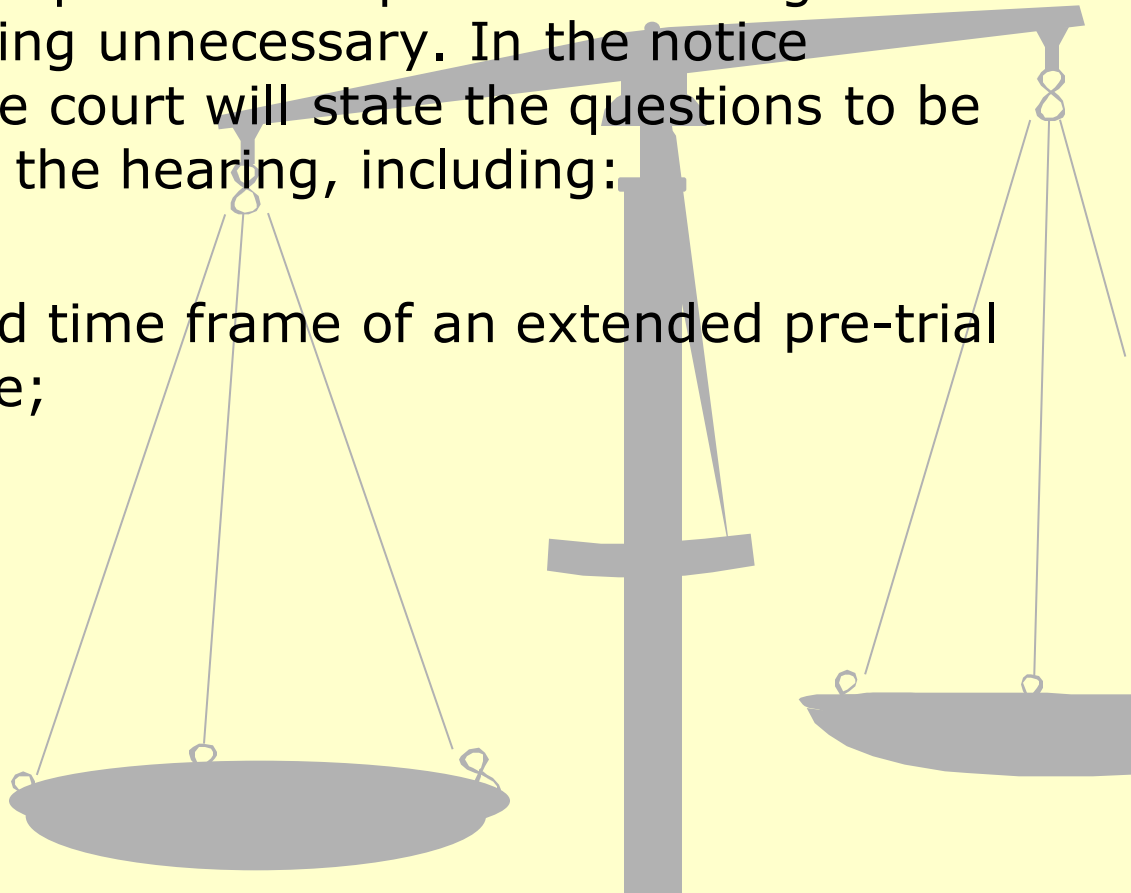


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- 2) the organisation and time frame of an extended pre-trial procedure, if applicable;



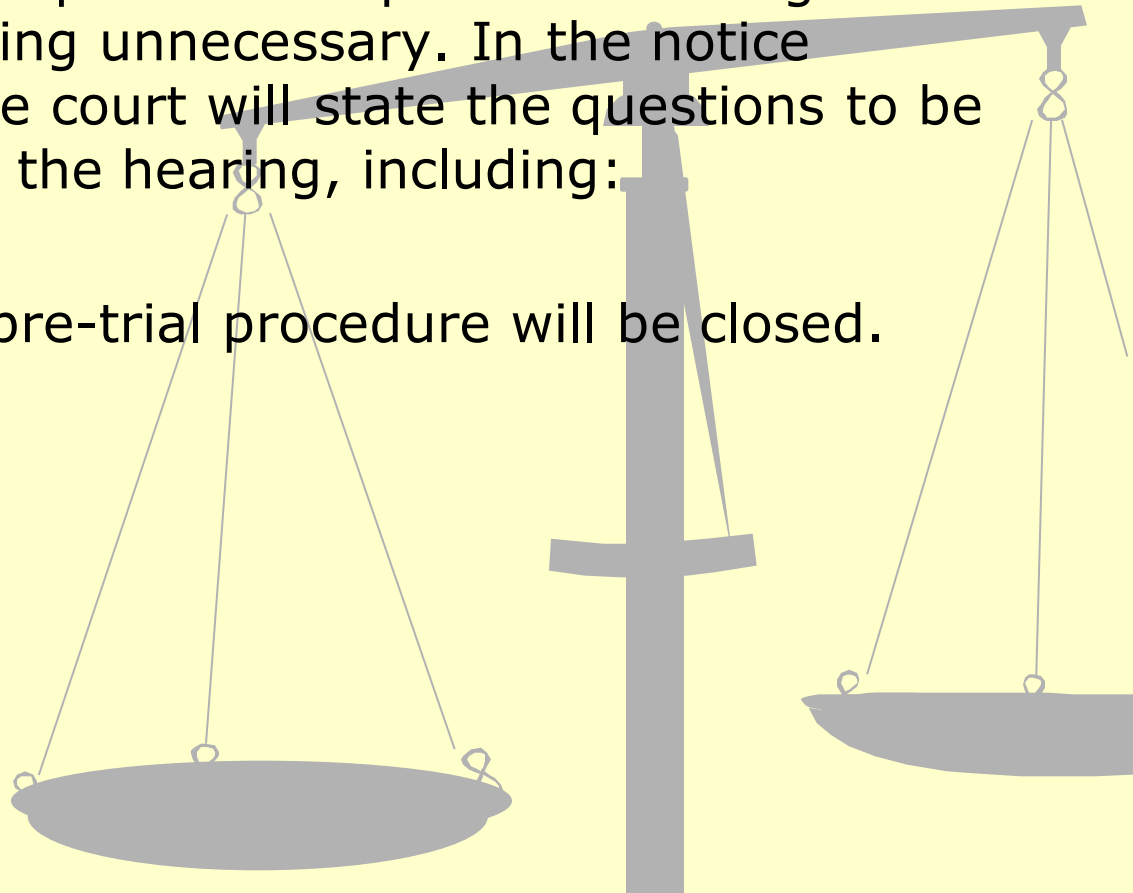


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- 3) the date when the pre-trial procedure will be closed.





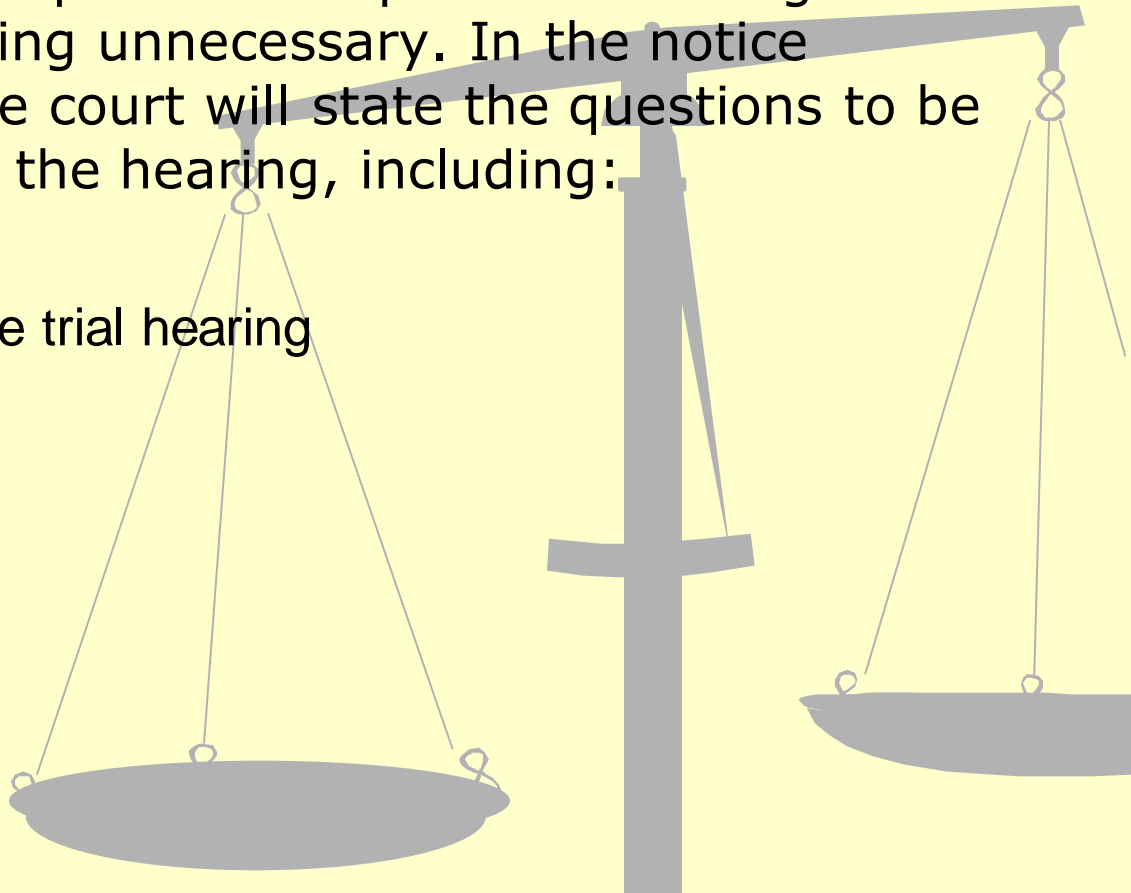
Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- 4) the date or period of the trial hearing

- .



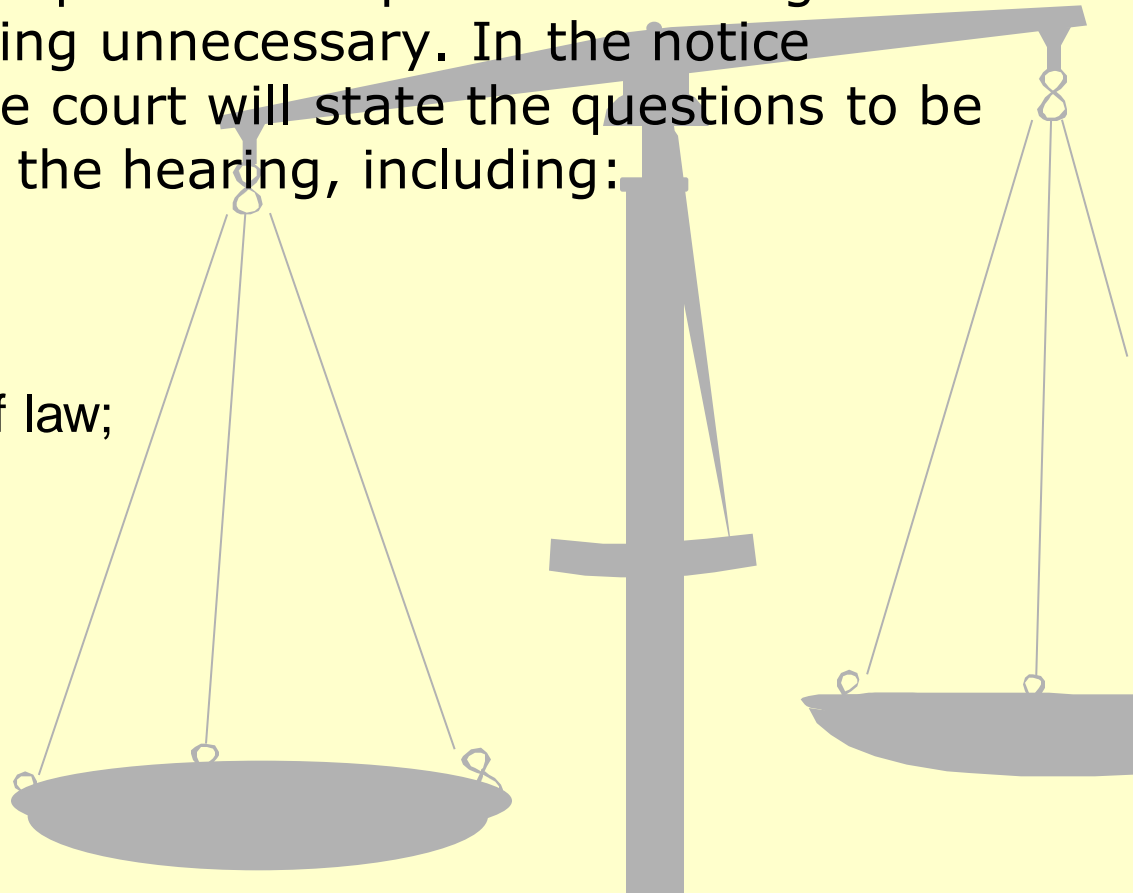


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 5) objections on points of law;
- .



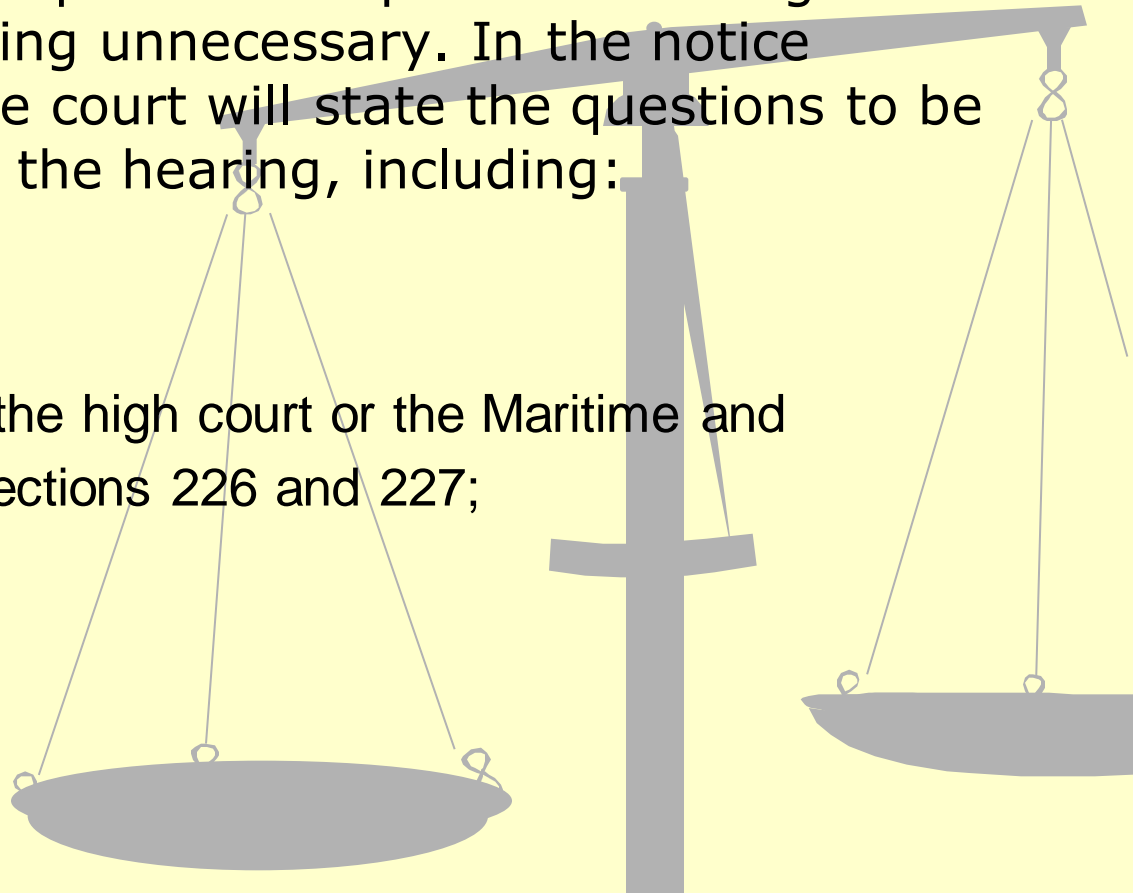


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 6) transfer of the case to the high court or the Maritime and Commercial Court, see sections 226 and 227;
- .



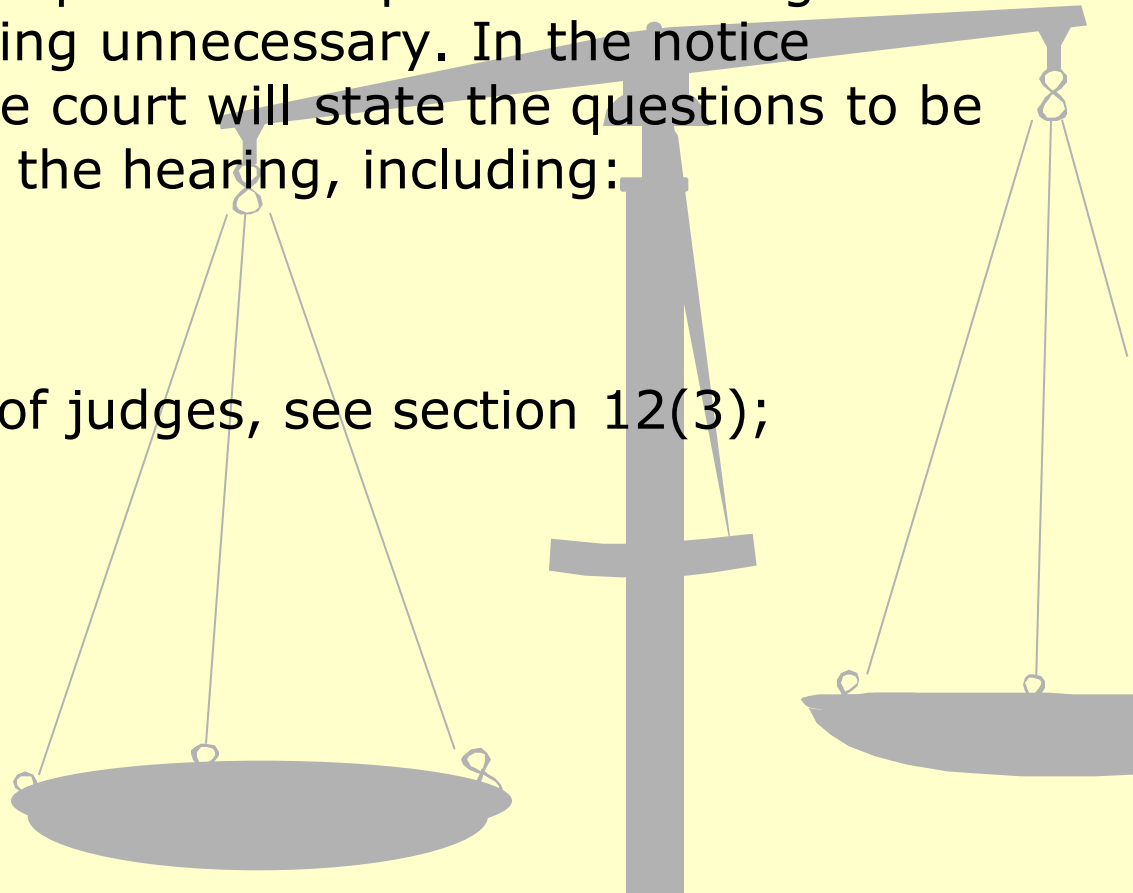


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 7) hearing by a panel of judges, see section 12(3);
- .



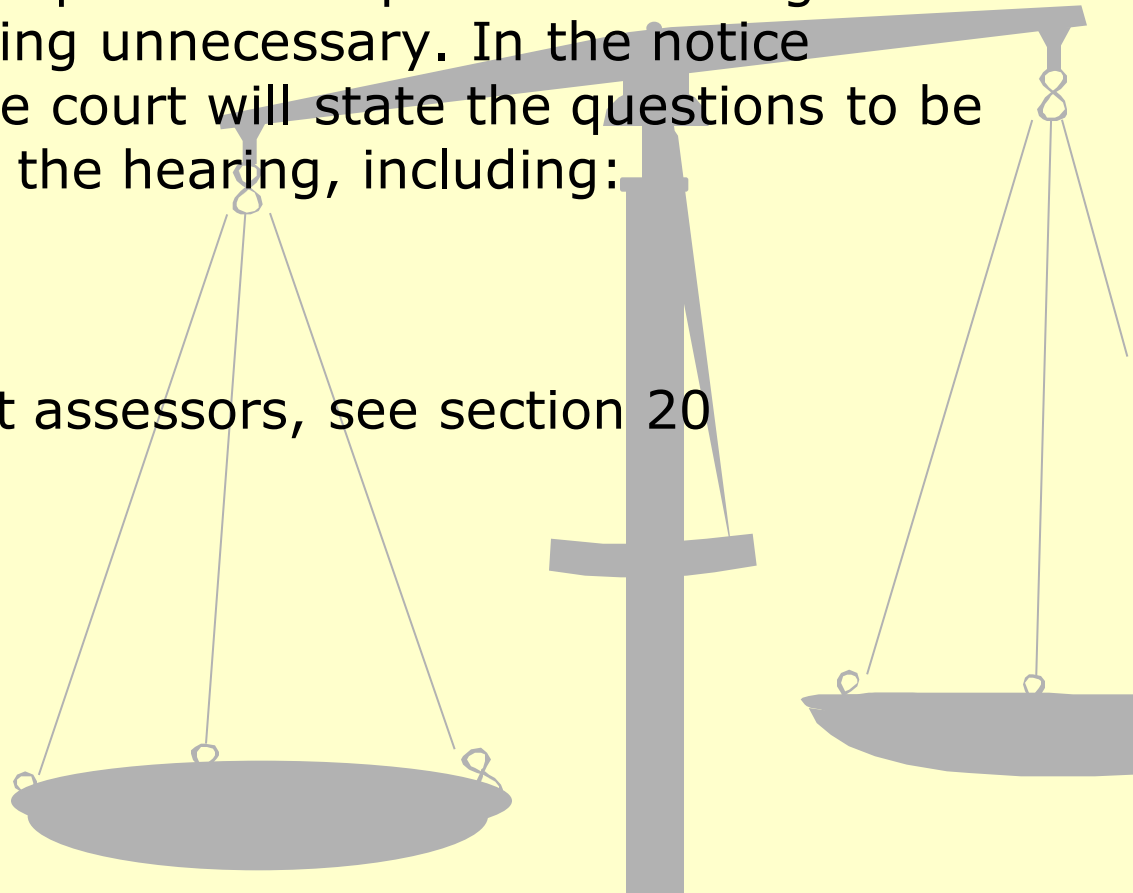


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 8) assistance of expert assessors, see section 20
- .



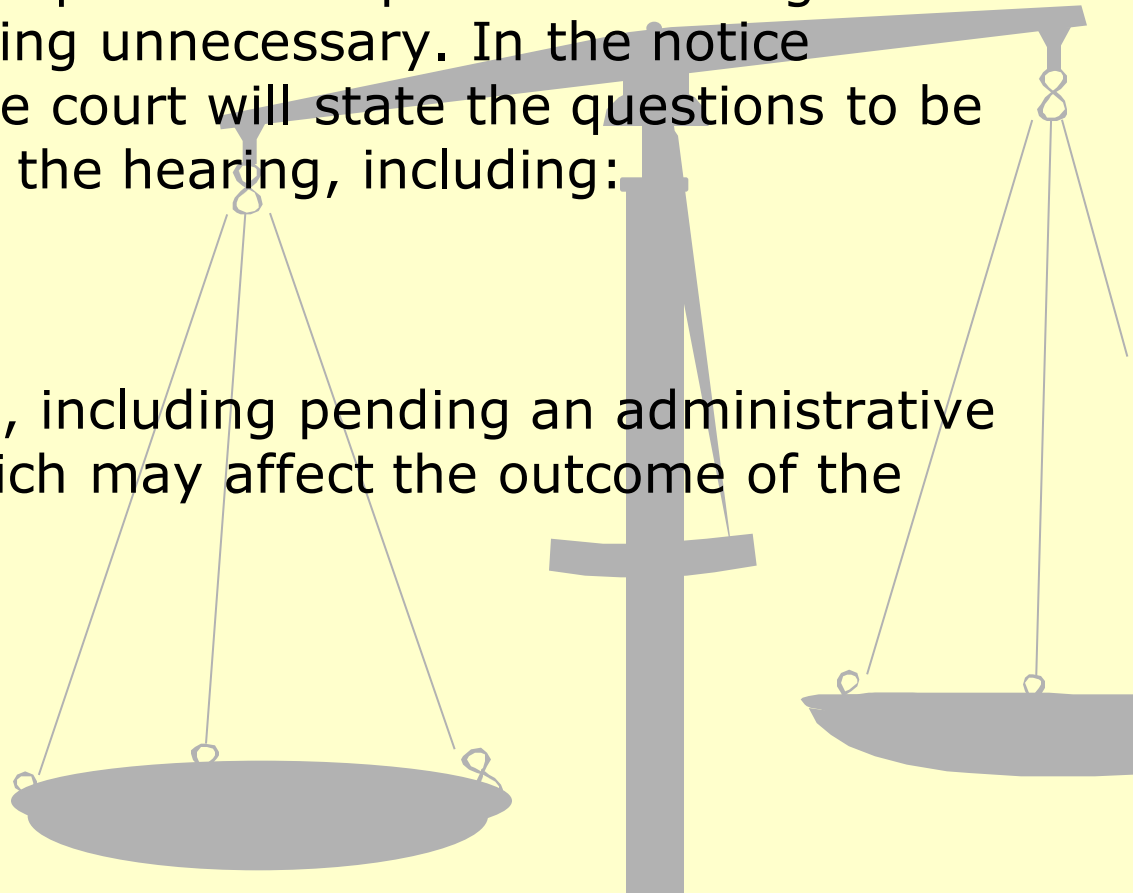


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 9) stay of proceedings, including pending an administrative or judicial decision which may affect the outcome of the case, see section 345;



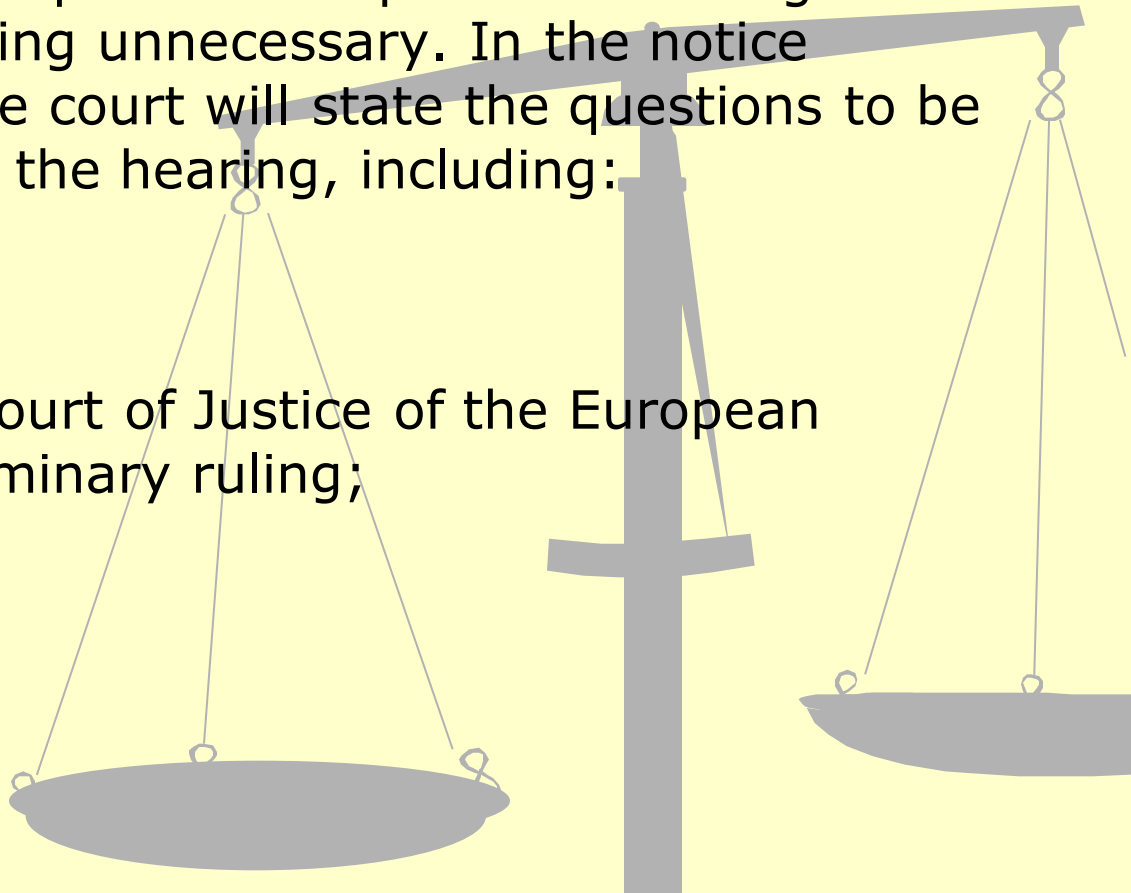


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 10) reference to the Court of Justice of the European Community for a preliminary ruling;



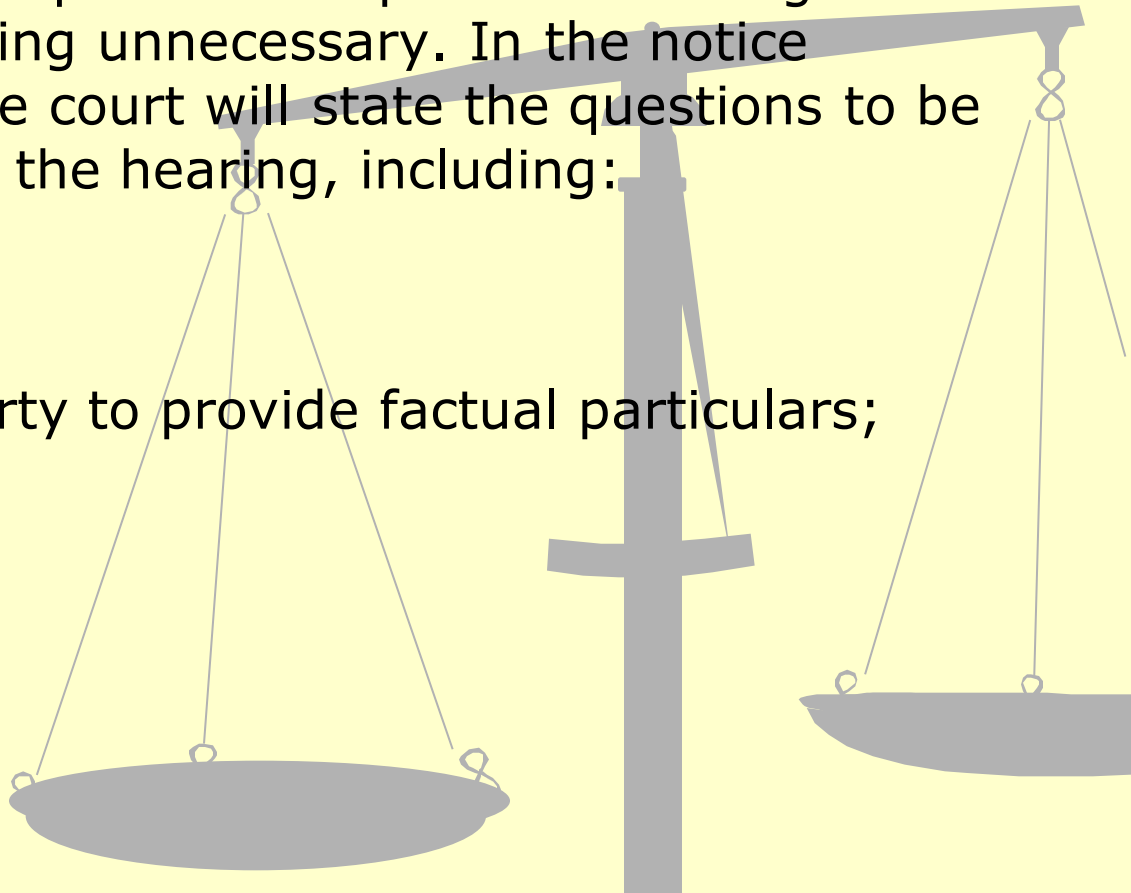


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 11) invitations to a party to provide factual particulars;



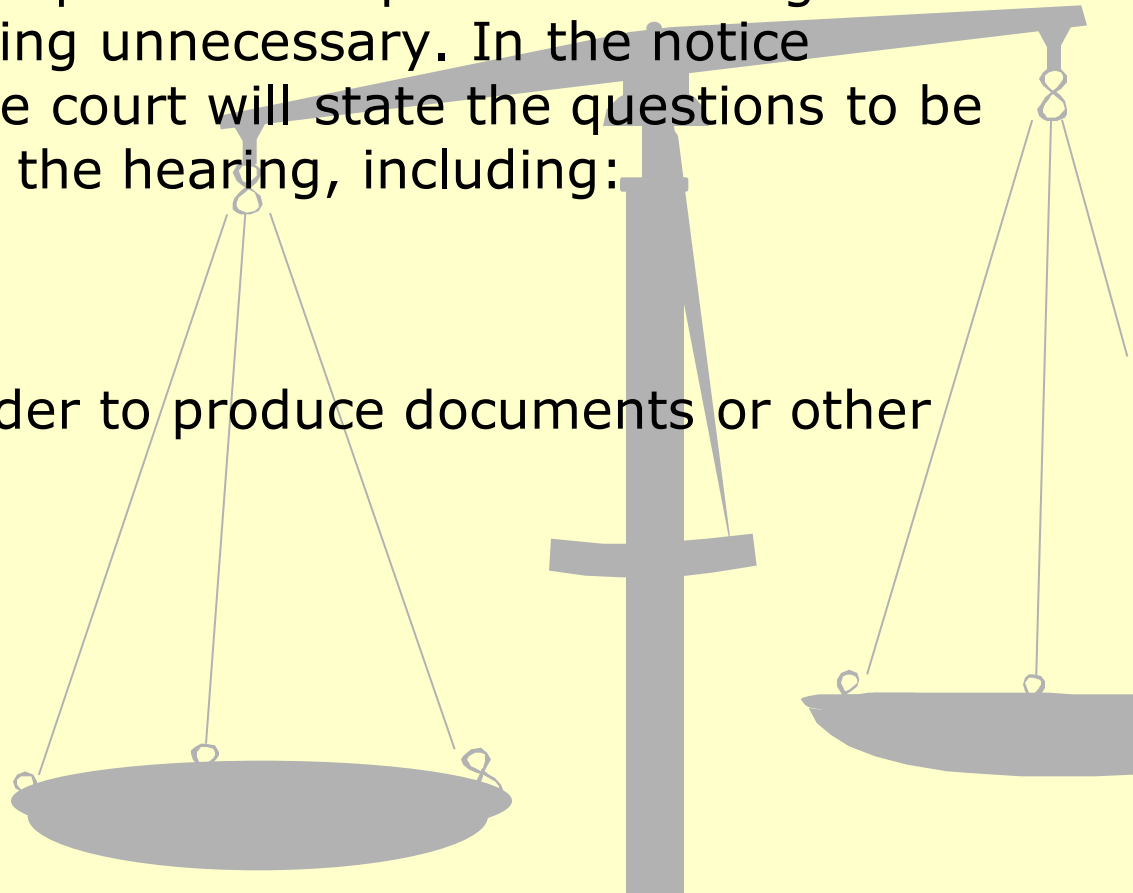


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 12) requests for an order to produce documents or other evidence...



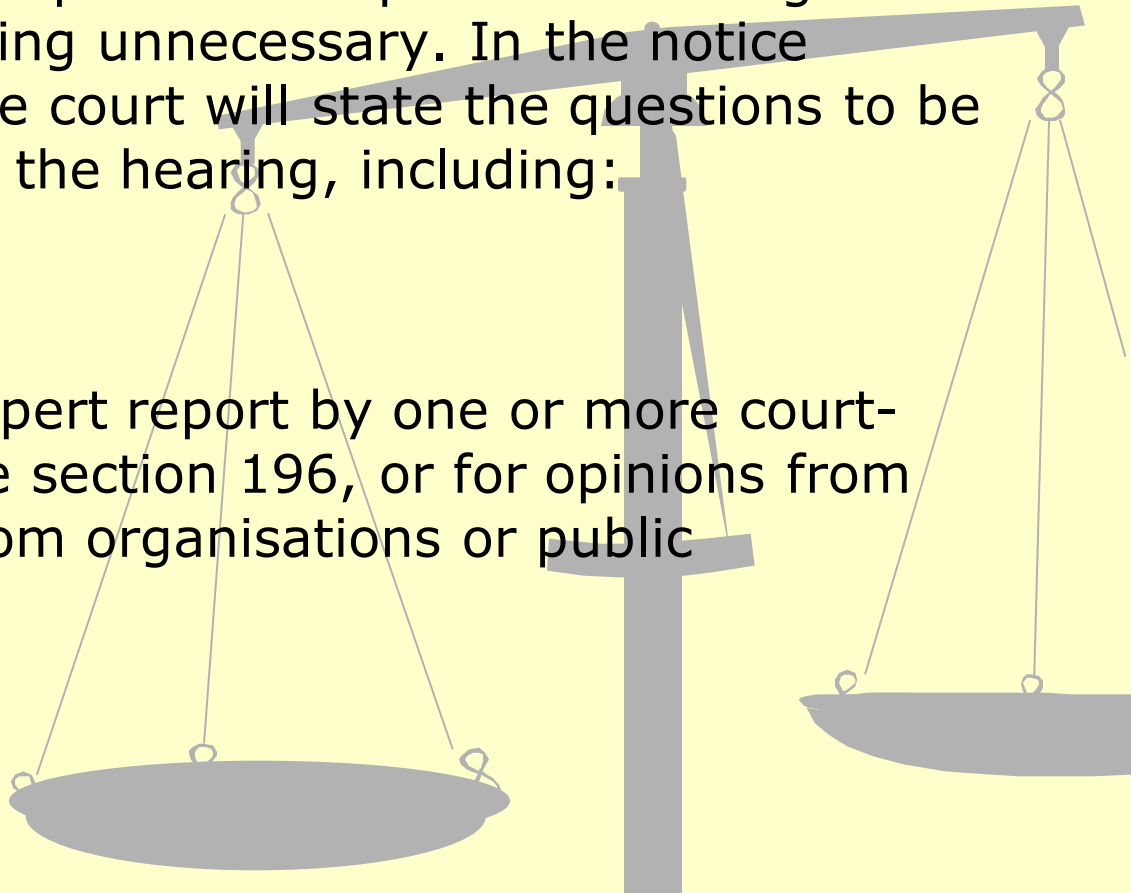


Administration of Justice Act

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- If applicable, any
- 13) requests for an expert report by one or more court-appointed experts, see section 196, or for opinions from expert witnesses or from organisations or public authorities;



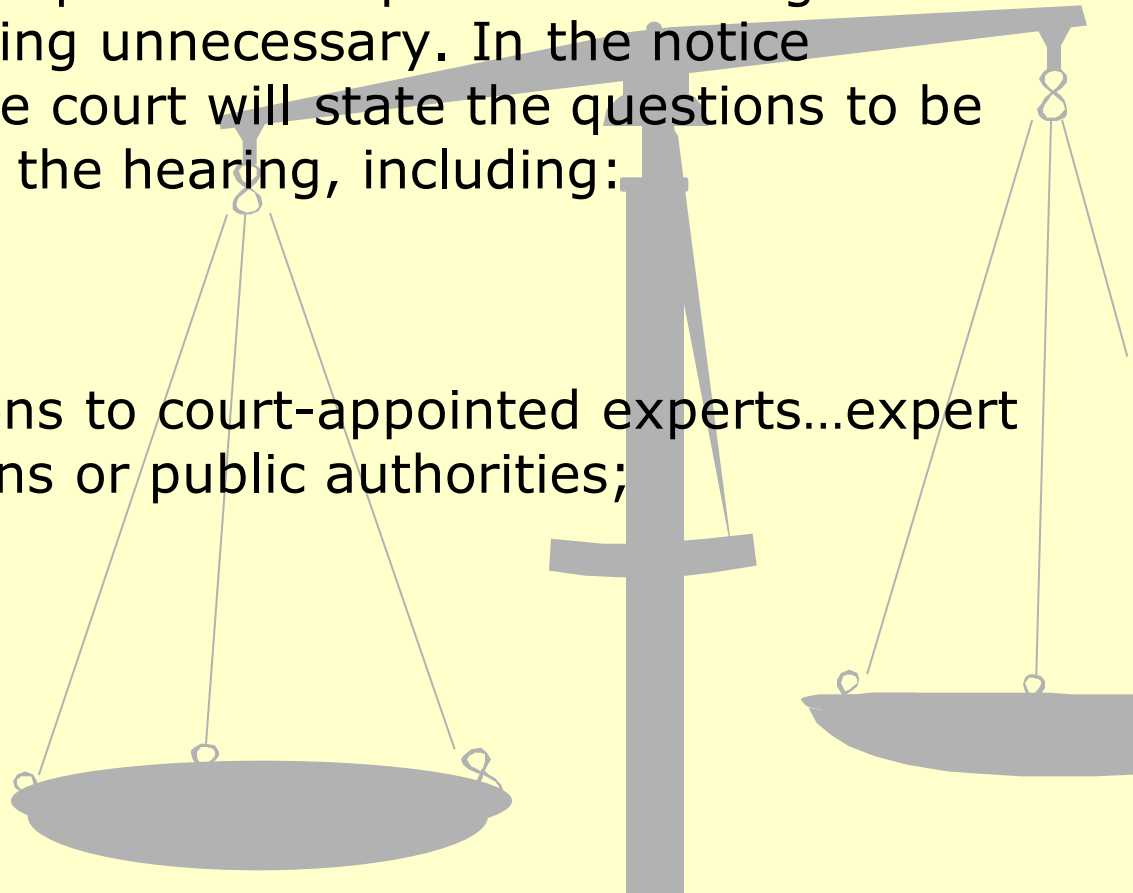


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 14) drafting of questions to court-appointed experts...expert witnesses, organisations or public authorities;



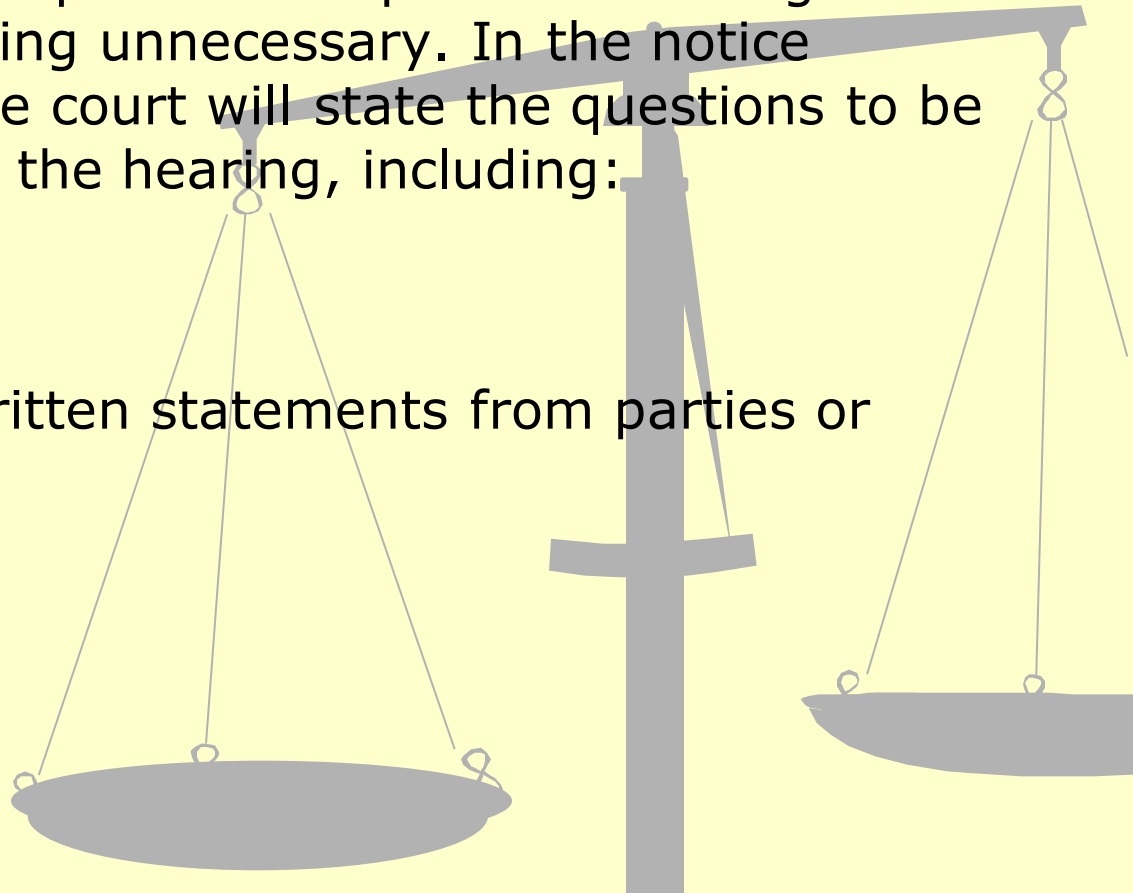


Administration of Justice Act

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- If applicable, any
- 15) procurement of written statements from parties or witnesses...



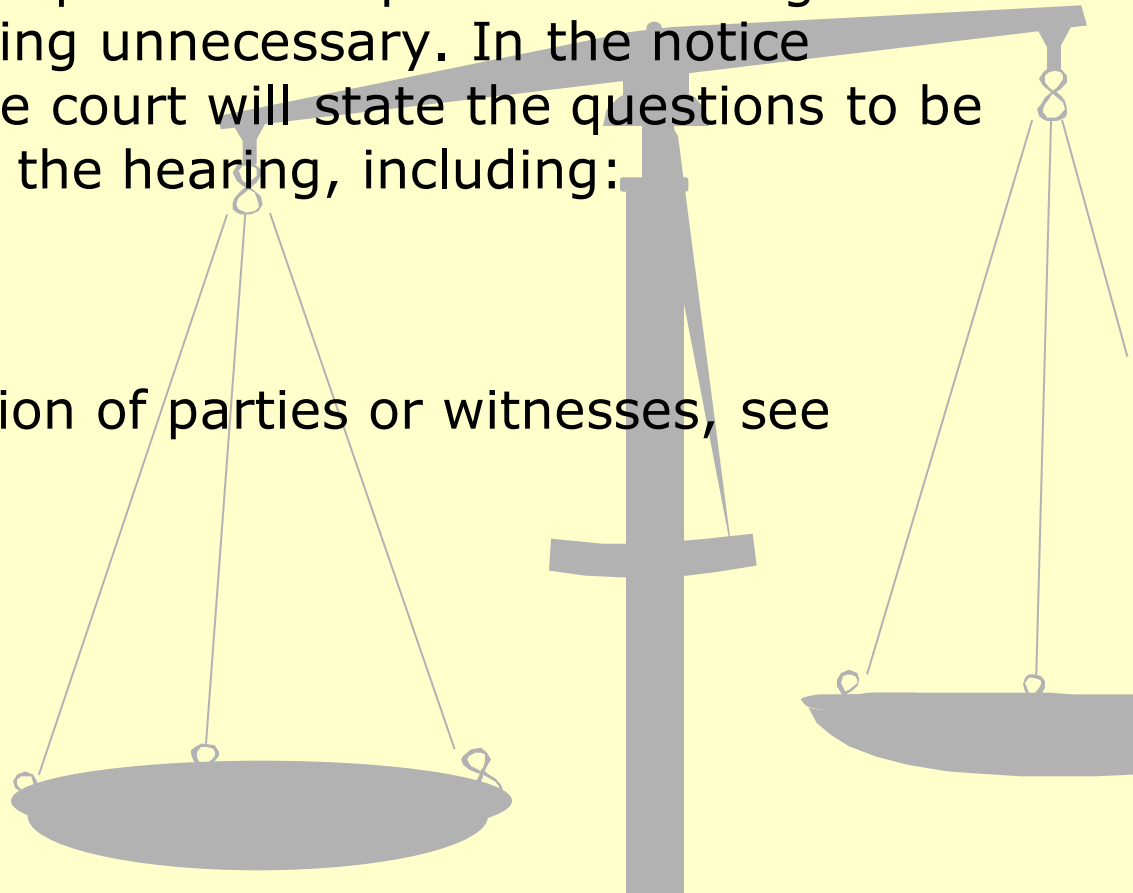


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 16) pre-trial examination of parties or witnesses, see section 340,



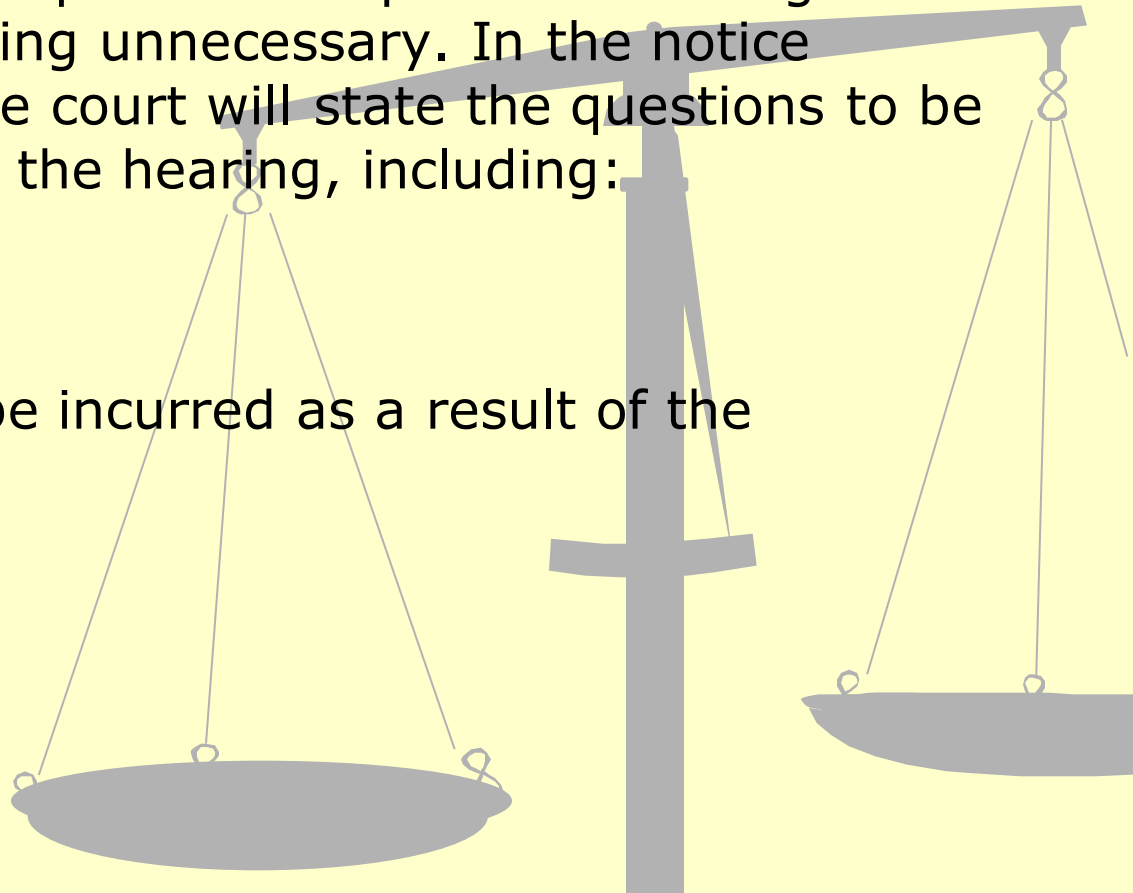


Administration of Justice Act

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The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 17) costs which may be incurred as a result of the proceedings;



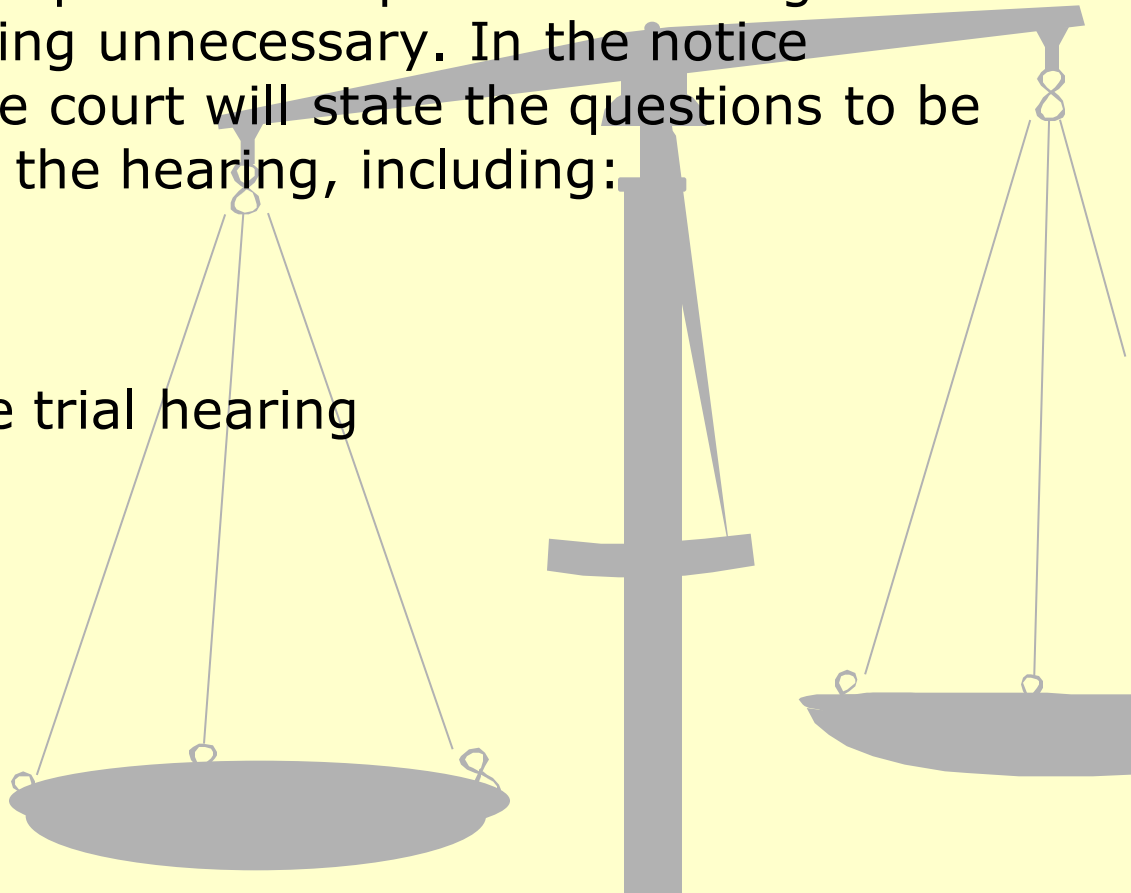


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 18) organisation of the trial hearing



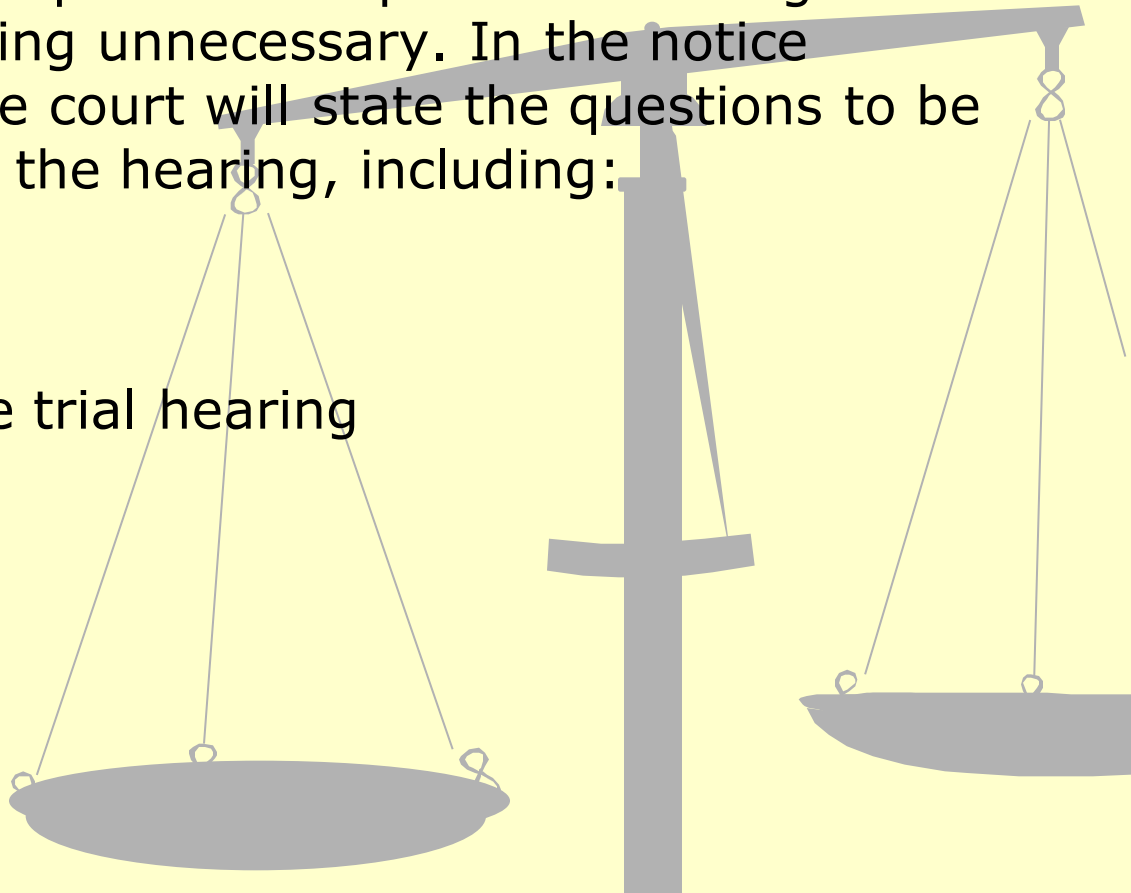


Administration of Justice Act

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- If applicable, any
- 18) organisation of the trial hearing



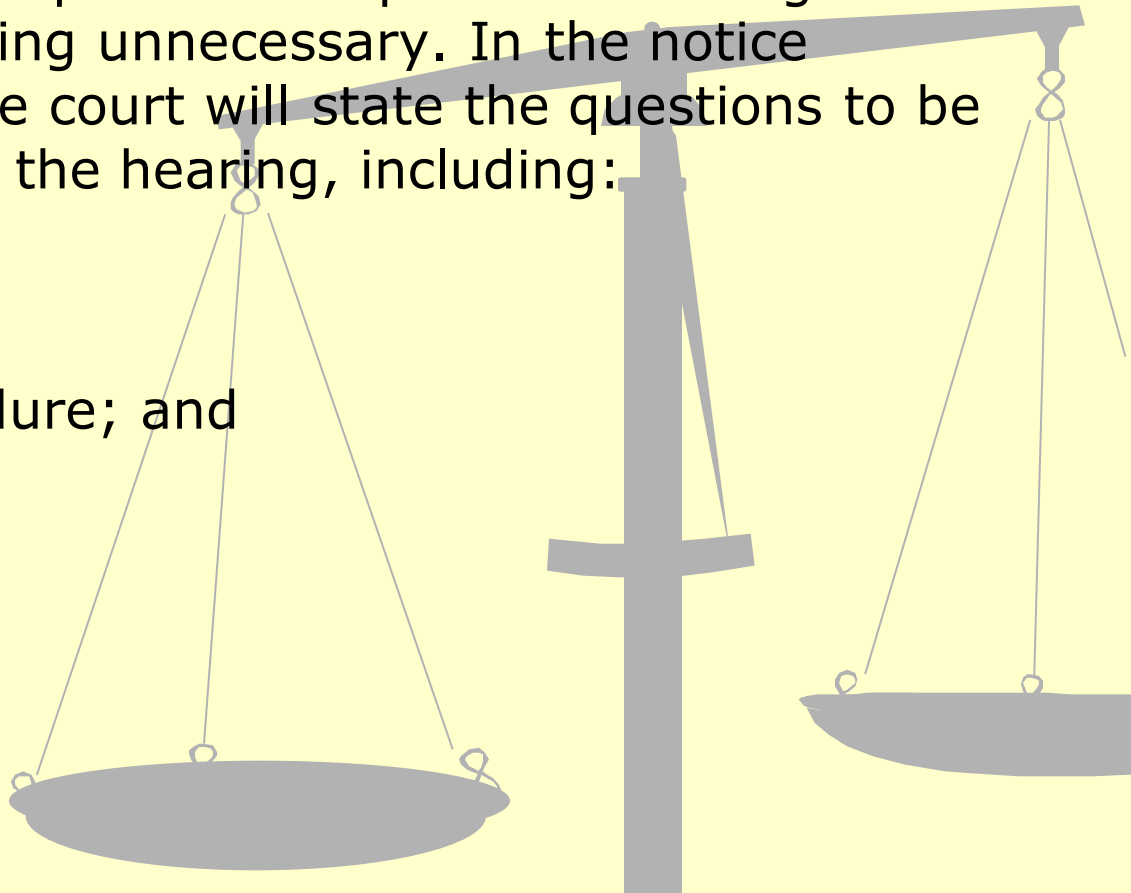


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 19) conciliation procedure; and



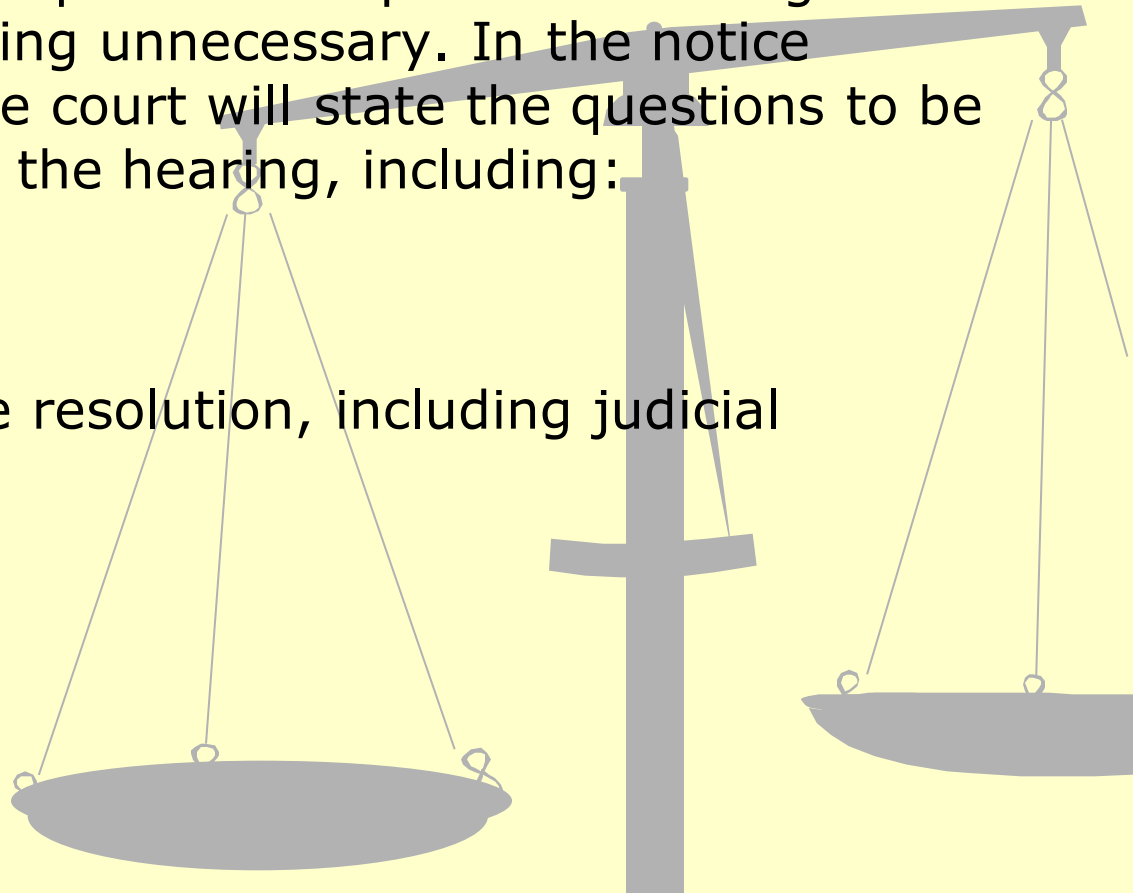


Administration of Justice Act

■ § 353:

The court will convene the parties to a pre-trial hearing unless the court finds such hearing unnecessary. In the notice convening the hearing the court will state the questions to be discussed in particular at the hearing, including:

- If applicable, any
- 20) alternative dispute resolution, including judicial mediation.



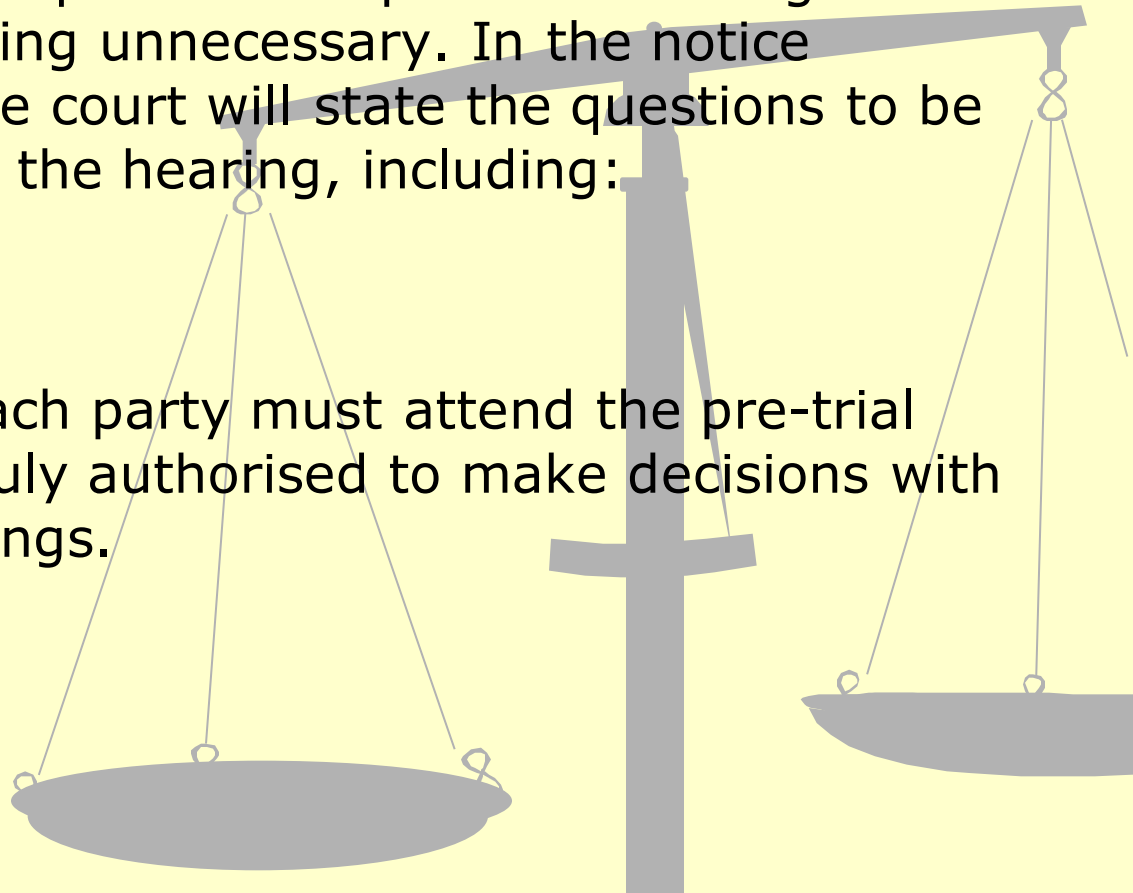


Administration of Justice Act

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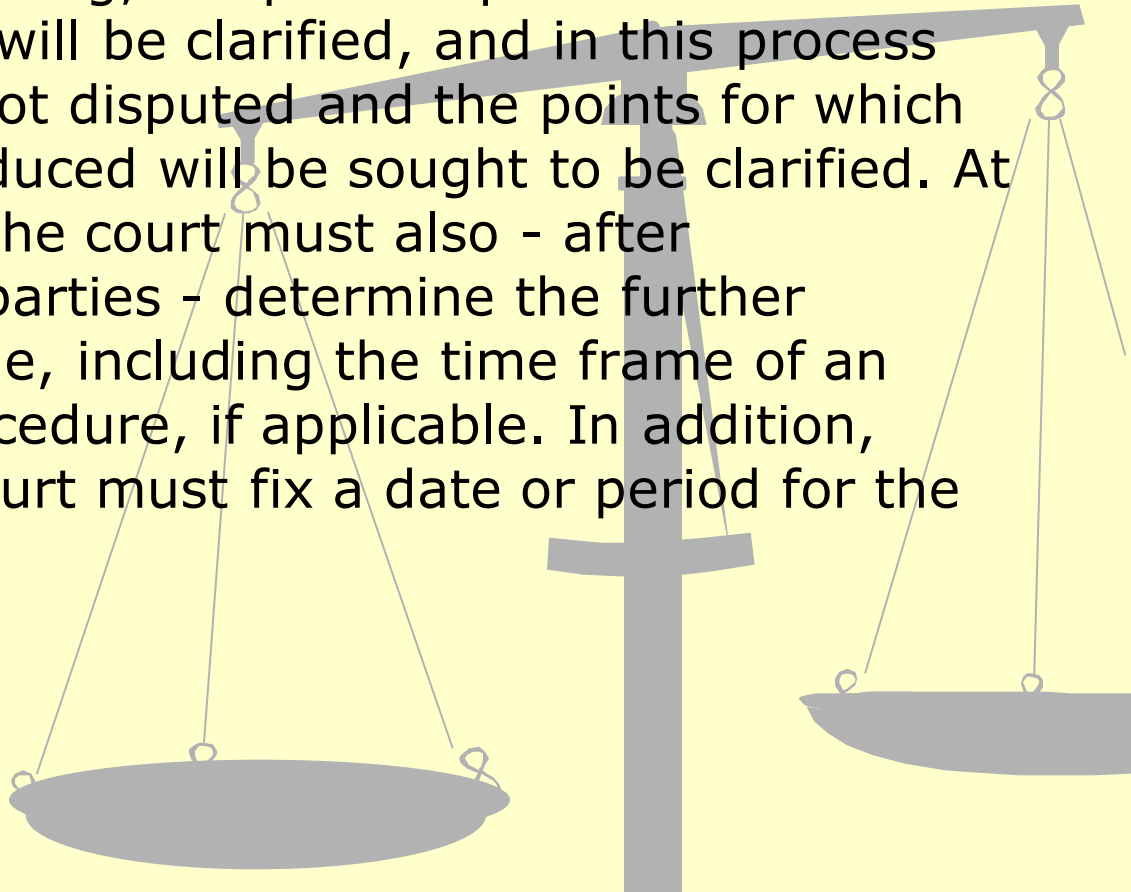
-
- (2) Where possible, each party must attend the pre-trial hearing by a person duly authorised to make decisions with regard to the proceedings.





Administration of Justice Act

- § 353:
- (5) At the pre-trial hearing, the parties' positions on the points of fact and law will be clarified, and in this process the points which are not disputed and the points for which evidence must be produced will be sought to be clarified. At the pre-trial hearing, the court must also - after consultation with the parties - determine the further process, where possible, including the time frame of an extended pre-trial procedure, if applicable. In addition, where possible, the court must fix a date or period for the trial hearing.

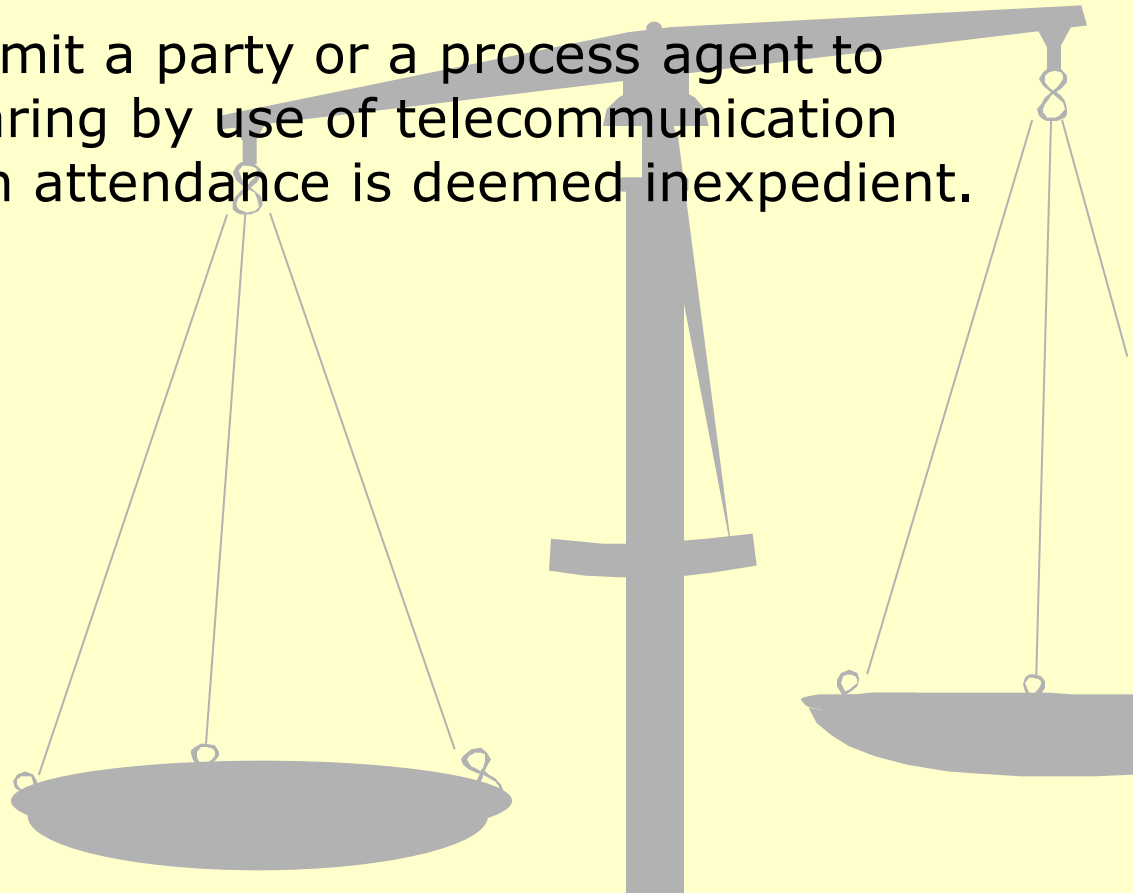




Administration of Justice Act

■ § 353:

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- (6) The court may permit a party or a process agent to attend the pretrial hearing by use of telecommunication equipment unless such attendance is deemed inexpedient.
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Administration of Justice Act

- § 365:
-
- The trial hearing begins by the parties stating their claims and pleas...

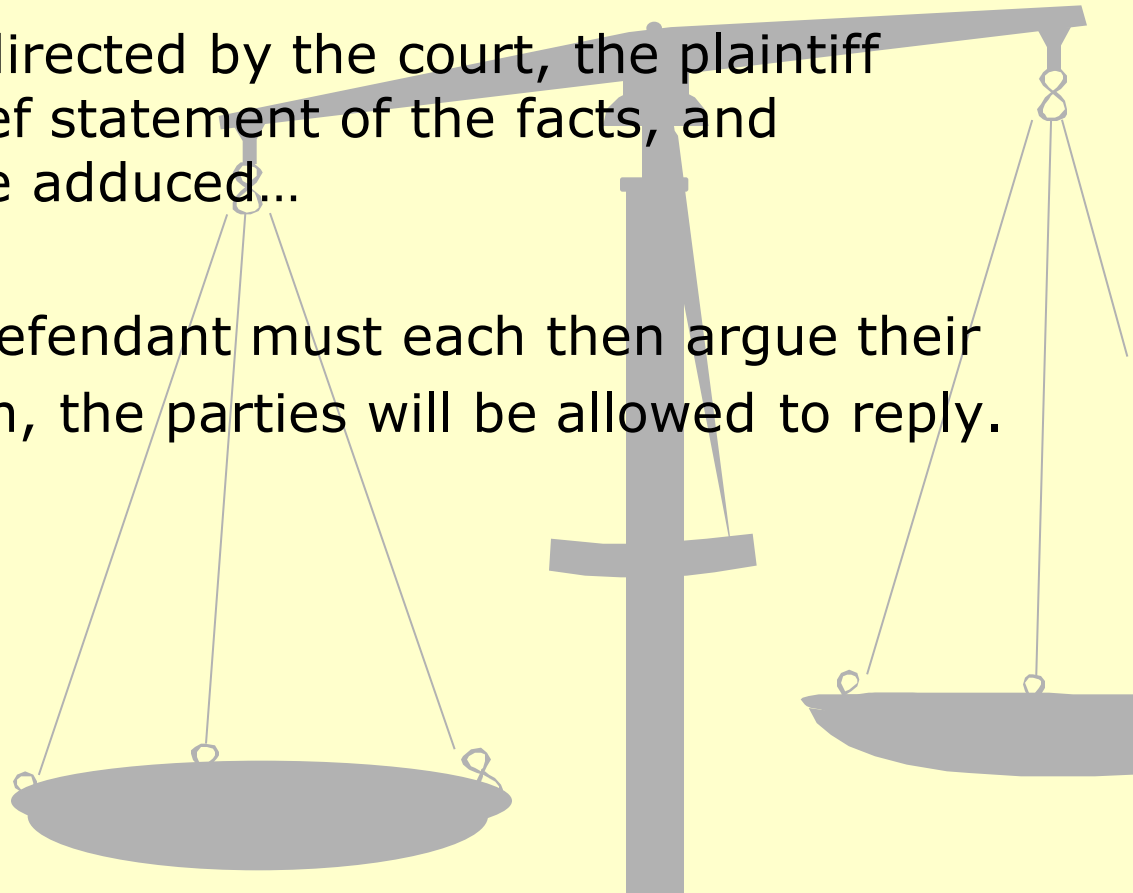




Administration of Justice Act

■ § 365:

-
- (2) Unless otherwise directed by the court, the plaintiff must then make a brief statement of the facts, and evidence must then be adduced...
- The plaintiff and the defendant must each then argue their
- case and, in conclusion, the parties will be allowed to reply.

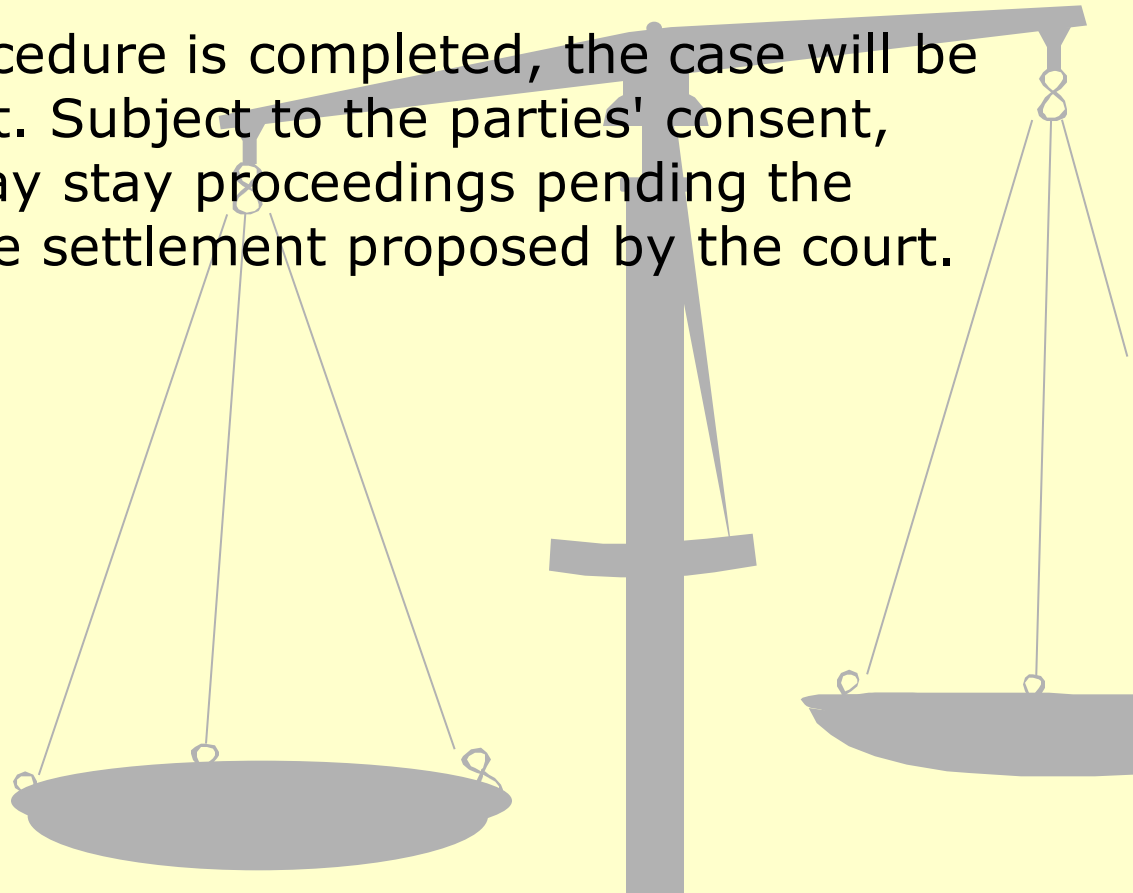




Administration of Justice Act

■ § 365:

-
- (3) When the oral procedure is completed, the case will be set down for judgment. Subject to the parties' consent, however, the court may stay proceedings pending the parties' decision on the settlement proposed by the court.



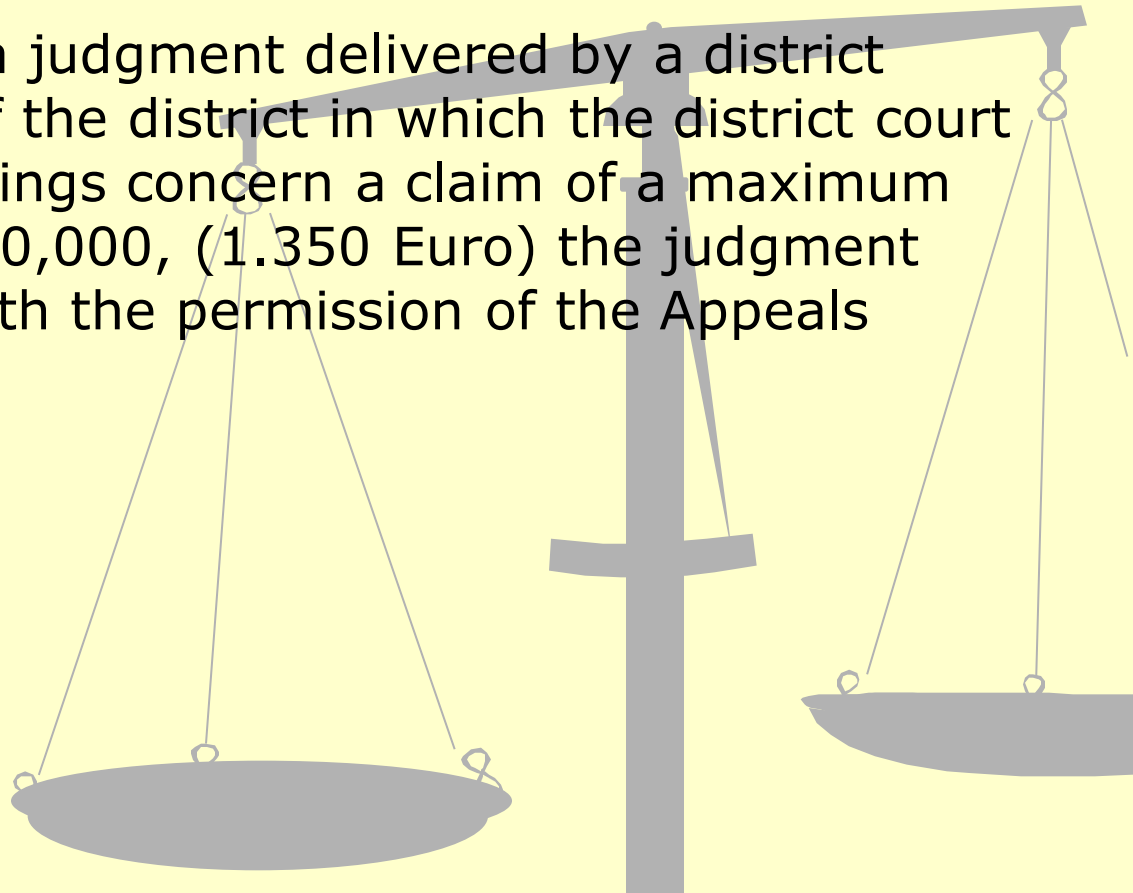


Administration of Justice Act

■ § 368:



The parties may appeal a judgment delivered by a district court to the high court of the district in which the district court is located. If the proceedings concern a claim of a maximum economic value of DKK 10,000, (1.350 Euro) the judgment may be appealed only with the permission of the Appeals Permission Board



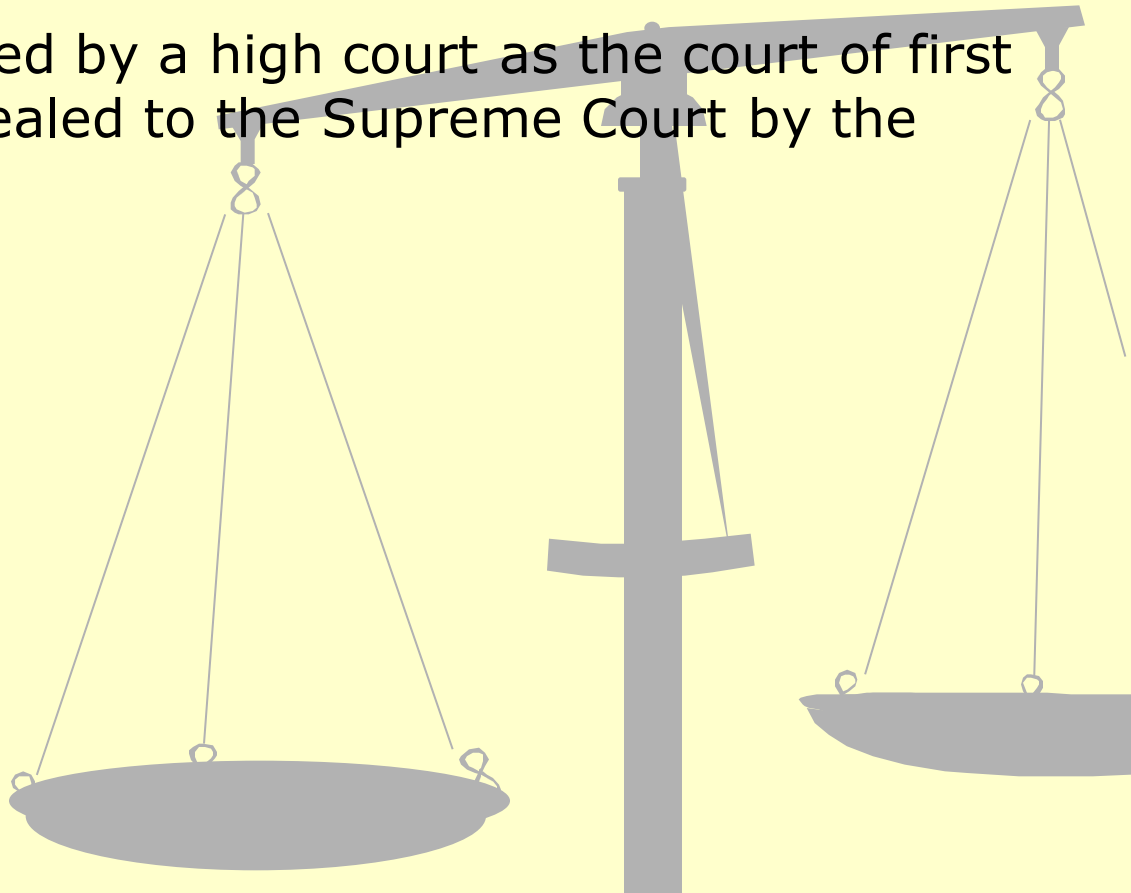


Administration of Justice Act

■ § 368:



- (3) Judgments delivered by a high court as the court of first instance...may be appealed to the Supreme Court by the parties...



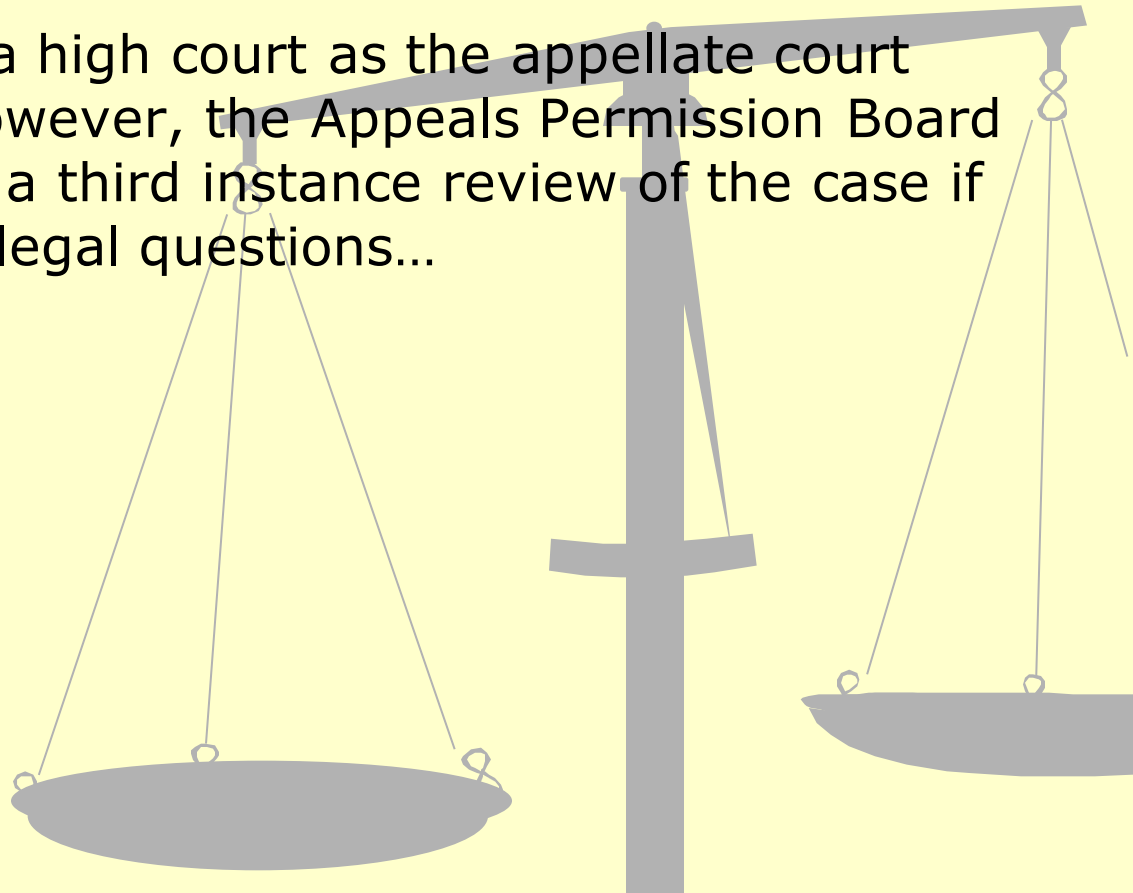


Administration of Justice Act

■ § 371:



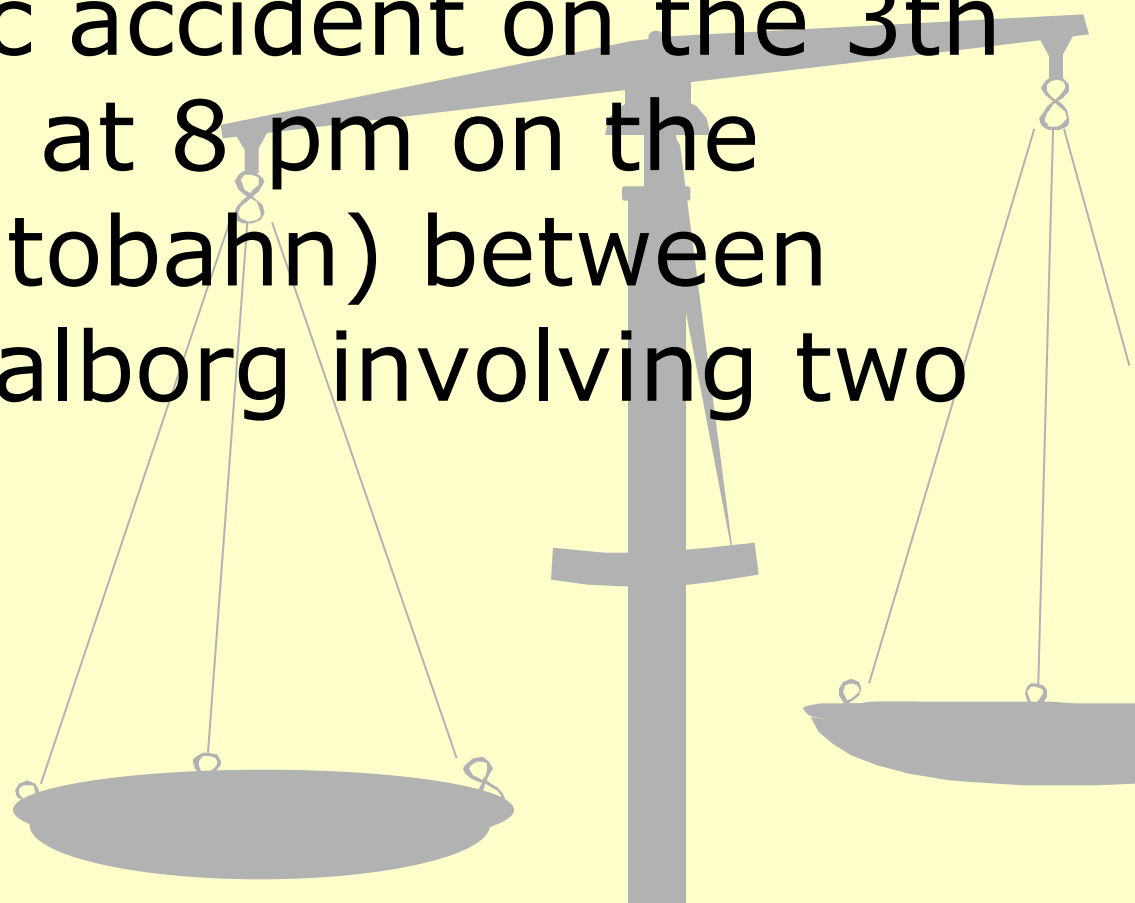
Judgments delivered by a high court as the appellate court may not be appealed. However, the Appeals Permission Board may grant permission to a third instance review of the case if it concerns fundamental legal questions...





THE CASE:

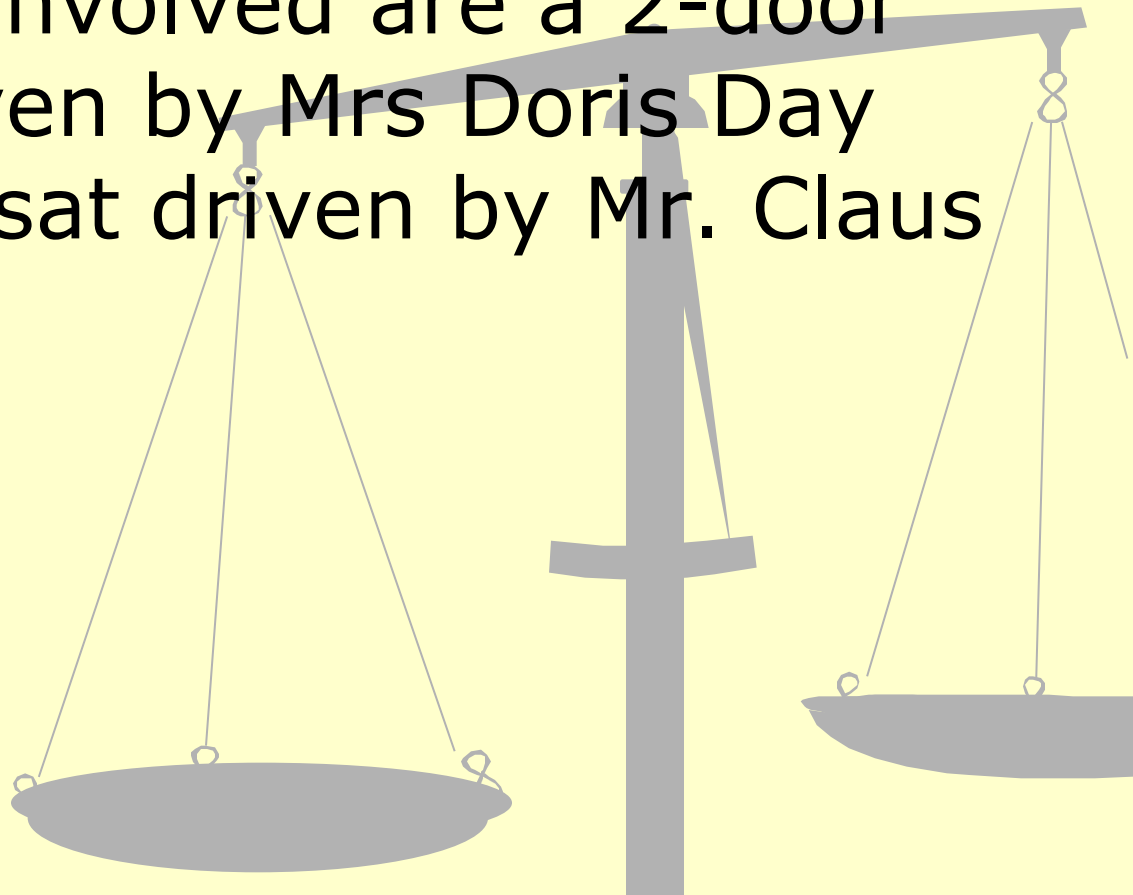
- A road traffic accident on the 3th March, 2013 at 8 pm on the highway (Autobahn) between Århus and Aalborg involving two cars.





THE CASE:

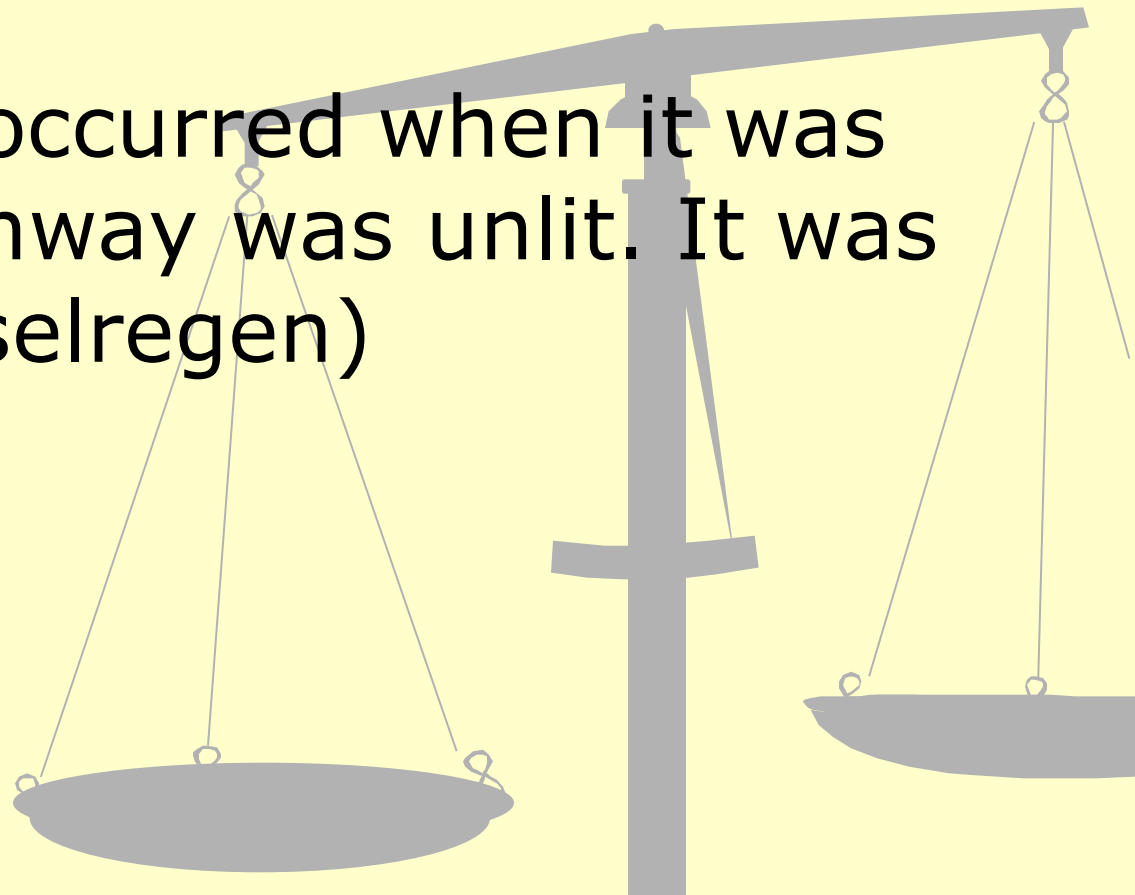
- The two cars involved are a 2-door rental car driven by Mrs Doris Day and a VW Passat driven by Mr. Claus Clausen.





THE CASE:

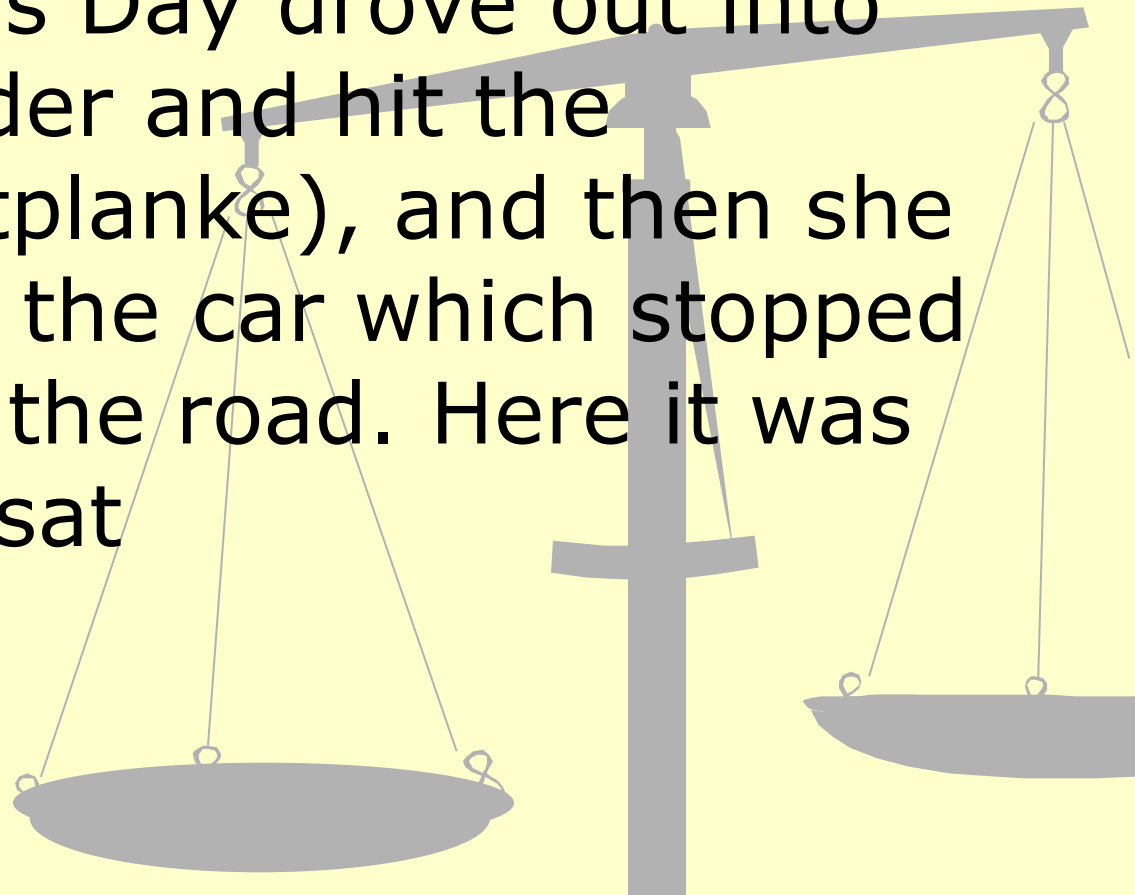
- The accident occurred when it was dark. The highway was unlit. It was drizzling (Nieselregen)





THE CASE:

- At a time Doris Day drove out into the grass border and hit the guardrail (Leitplanke), and then she lost control of the car which stopped across (quer) the road. Here it was hit by the Passat





THE CASE:

- At least two of the passengers and Doris Day herself managed to get out of the car, before it was hit by the Passat.
- It is unclear whether Claus Clausen was driving with low beam (Abblendlicht) or high beam. The accident caused material damage. A



THE CASE:

- The parties are the insurance companies involved i.e. the companies which have insured the liability of the drivers of the cars.
- The rental car was insured by the **Codan** Insurance company and the Passat was insured by the **Tryg** Insurance Company.

