Courts are the institutions to which societies assign the job of resolving conflicts that people have been unable to settle by talking with each other. One particularly interesting and relatively unanalysed type of conflict is the dispute that occurs in small claims courts. Small claims are a self-contained type of civil court which handles disputes between parties that, whatever the actual content and complexity of the conflict, are channelled into a claim by one person for the other person to pay the first party an amount of money. Small claims courts in the United States came into existence in the early years of the 20th century, their purpose being to “provide citizens from all walks of life with quick, uncomplicated, inexpensive and just resolution of smaller civil disputes” (Ruhnka and Weller, 1978, p.xi). They were part of a broader movement that sought to increase access to and participation in the justice system for ordinary people by providing more informal, less bureaucratic procedures.

In the United States, the limit in small claims courts varies state to state but it is usually between $5,000 and $7,500. In addition to small claims courts involving restricted amounts of money, three other features deserve mention:

- disputants speak for themselves; only rarely are attorneys present
- unbeknownst to disputants, judges have considerable freedom in how they enact a small claims court. Some judges frame the occasion as a mini-trial having parties do opening statements, cross-examination and closing statements; others treat it as an occasion where the judge asks questions that he or she sees as needed to make the decision (Tracy and Caron, 2017)
- judges are expected to conclude a hearing quickly. In our corpus of small claims hearings, soon to be described, the average length was 45 minutes

First, Section 14.1 provides some definitional clarification about conflict terms and a brief overview of the small claims disputes from which we draw examples.
14.1 Conflict terms

Terms for conflict tend to be used in different contexts, point to different issues and index different emotional intensities. If a conflict is conducted primarily through violence, we label it a “war”, “fighting” or “terrorism”. If the conflict is largely verbal, we have an array of different terms. Smallish conflicts between intimates are likely to be labelled “quarrels”, “bickering” or “having an argument”, whereas societal conflicts about the best policy or course of action are likely to be named “arguments” or “debates”; if there is a significant public dimension, we may label it a “controversy” or a “question”.

For researchers who study language, communication and interaction, the terms most often used to refer to conflict are “dispute”, “disagreement” and “conflict”. Sifianou (2012, p.1554) defines “disagreement” as “the expression of a view that differs from that expressed by another speaker”. Although disagreements can be tools to hurt and oppose others, they need not be. Some disagreements are friendly and done to enhance sociability, as happens when friends argue over sports or politics (Schiffrin, 1984); others are a routine part of the activity as is the case in academic discussions (Tracy, 1997). While disagreements need not be conflicts, just about all conflicts involve disagreement. In addition, conflicts require disagreeing parties to see themselves as connected to and partly dependent on the other. Putnam and Poole (1987, p.552) for instance, define a conflict as “the interaction of interdependent people who perceive opposition of goals, aims, and values, and who see the other party as potentially interfering with the realisation of those goals”. Attending particularly to verbal conflict, Vuchinich (1990, p.118) describes conflict as involving turns at talk where one party opposes “the utterances, actions, or selves of one another”.

When a conflict moves from the interpersonal to the institutional realm, it is likely to be labelled a “dispute”. Mather and Yngvesson (1980) define “disputes” as conflicts that have been asserted publicly before third parties such as judges or mediators, for supporters or in front of an audience. In a widely cited article, Felstiner, Abel and Sarat (1980–81) suggest that disputes come into being through three steps. In the first step, a party labels some experience as an injury (naming). Second, the wrong is attributed to a specific party (blaming). The final step involves the wrong being voiced by the perceiver to the injuring party (claiming). When a claim is transformed into dollars and is made to the court, it becomes a small claims dispute.

14.2 The small claims data

This chapter is part of a larger project analysing litigant and judge discourse in small claims courts in the United States (e.g. Tracy and Caron, 2017; Tracy and Hodge, 2018). There are 12 judges in our corpus, 7 from Colorado, 3 from Washington and 1 each from New Jersey and Michigan. Each of these judges heard from 2 to 12 full cases, totalling 55 cases. The shortest trial was 12 minutes, the longest 176 minutes and the average 45 minutes. The data are digital audio files, except for Michigan in which the judge posted videos of his trials online. Trials were transcribed verbatim; all words, repetitions, ‘uh’s and ‘um’s and word cut-offs were included (Tracy, 2005). The transcripts captured accurately what was said and there was no cleaning up of errors for high-status speakers as is common in court-provided trial transcripts (Walker, 1986).

In the larger research project investigating style differences for judges, as well as litigants, we use action-implicative discourse analysis (AIDA) to construct the problems or dilemmas inherent in the practice of small claims, the discursive techniques that make visible and seek to manage the problems and the situated ideals of good conduct (Tracy, 1995, 2005). In this
chapter, we focus on describing discourse features of conflict in this institutional activity. Matters of small claims disputes focus primarily on three issues: (a) conflicts about deposits, failure to pay rent or damage costs in living situations; (b) quality of or payment for services; and (c) damages to property or person.

14.3 How the genre shapes discourse structure and strategies

A feature of the small claims trial genre is that it is an encounter between three people rather than two (Brenneis, 1988). Moreover, the third person – the judge – has power over the other two, a fact that shapes the expression and unfolding of conflict in five significant ways. First, in small claims disputes, litigants are not expected to address each other, except if the judge allows cross-examination. For most of the trial, litigants are expected to speak to the judge. This funnelling of comments through a third party, as Garcia (1991) has shown in mediation, tends to lessen the level of hostility. Hostility is typically more intense when speakers do second-person accusations: “you did X” rather than telling a third party “Jim did X”.

Second, since the rules of the court require litigants to address the judge and not each other, litigants rather regularly violate this and other conduct rules that differ from how people do conflict in non-institutional relationships. Trial discourse is peppered with judges instructing litigants not to interrupt, to wait for their turn to speak and directing them to address the judge and not the other party.

Third, in a good number of cases, conflicts involve one or both parties using presentation and interpretation of documents (e.g. leases, photographs, bills) to advance their own claim or refute the other’s. When claims are made regarding activities that are not within people’s competence (e.g. building a structure, painting, electrical wiring, car repair), the trial talk could involve extended segments where a litigant seeks to direct the judge’s gaze to the right part of a document and then instructs what the seen thing means. An example of this complexity can be seen in the case of a subcontractor who was suing a home builder for unpaid services, where the builder was arguing that the charges were added inappropriately and done without checking and getting permission. The subcontractor, in contrast, argued that errors in the drawings necessitated changes being made to build the structure to code. The parties’ dispute centred around a set of schematic diagrams that involved technical specifications about heights and lengths for walls and bases, and materials for framing different facets of the house.

Excerpt 14.1: Case 14 – TB (plaintiff, subcontractor), J (judge), in Colorado

T1 J: What is your testimony about that?
T2 TB: Although it is shown as having siding, there’s been many, many changes, your honor. He- he sent out this and what we ended up with was a lotta changes-
T3 J: Okay, so did he change that?
T4 TB: Uh, it is showing-
T5 J: What is showing?
T6 TB: On exhibit four, page four.
T7 J: Alright.
T8 TB: If we go to detail one, foundation and floor framing.
T9 J: Detail one, foundation and floor.

Fourth, in those small claims hearings that are run as trials, rather than directed questioning from the judge, litigants are expected to advance their point of view by cross-examining
the opposing party and witnesses. Cross-examining requires the person to ask questions, not testify, and this is difficult for people. Attorneys, as multiple scholars have shown (Atkinson and Drew, 1979; Harris, 2011), are experts in packaging accusations into questions. Ordinary litigants are not. When litigants are instructed to cross-examine, they want to explain what they did or counter-accuse. About an hour into the builder-subcontractor case, after the judge had explained that cross-examination required litigants to ask the other party questions, the following exchange occurred.

Excerpt 14.2: Case 14 – PB (defendant, builder), J (judge), in Colorado

T1 PB: Uh Ted mentioned the flashing on the back of the building to cover the- it was a wider flashing, but it is typical and good practice to install flashing below your siding.

T2 J: Now you’re asking questions. So, is that true?

T3 PB: I’m making a statement.

T4 J: You can’t.

T5 PB: Oh, I see. Um I’m asking Ted-

T6 J: You’re asking questions, there ya go.

T7 PB: Um is it not appropriate to install flashing on the- uh where- to cover- to protect the plate, and to carry in the water flow over the top of the foundation wall?

In T1, PB makes an assertion about the correct building practice, therein countering what the plaintiff had just asserted. Assertions, however, do not legitimately count as “cross-examination” so in T2 the judge corrects PB – “Now you’re asking questions” – and then implicitly models how PB should speak, directing him to ask, “Is that true?” The judge’s direction, though, assumes the litigant understands the discourse structure and only needs to be gently reminded. Rather than saying something like “The way you need to do cross-examination is to say, ‘Is it true that the typical and good practice’”, the judge simply says, “So”. This cue is inadequate for the litigant. In T3, we see PB interpreting the judge’s T2 as a question regarding whether he was asking a question or making a statement to which he responds that he is making a statement. In the next few turns, this confusion gets clarified and in T7 PB successfully asks a question. Moments like the one above happen commonly and even repeatedly for a single litigant in small claims trials. In essence, talk in small claims courts is full of exchanges in which judges instruct parties how to express and advance their dispute in court-approved ways.

In a classic study, Conley and O’Barr (1990a) showed that a good number of litigants used a relational rather than a rule-based style to narrate their dispute. The relational style seeks to bring the judge into the moral and relational complexity of the litigants’ world in contrast to the rules-based style which attends to the legally specified issue of dispute. When litigants used the relational style, judges regularly intervened to get them to stop talking about parts of the dispute that the judge saw as not relevant. Thus, a fifth and final way the genre constrains the conflict is with regard to the scope of the dispute. Judges want to keep the focus on the single claim identified in a plaintiff’s complaint whereas many litigants want to fill in the larger history of their conflict. Judges will stop litigants or reprimand them for being irrelevant.

An example of litigants seeking to provide the bigger picture is seen in the case of a woman (the plaintiff) who was suing her neighbour, also a woman, for medical costs incurred the evening after the two had a physical altercation in a nearby shop. The plaintiff
attributed a seizure she had that night to the physical effect of the fighting earlier in the day that she characterised as having been started by the neighbour. Towards the end of the trial when the judge described the conflict as a “she said, she said” matter that there was no way to figure out, the plaintiff’s husband asked to speak. The judge let him speak but stopped him soon after it became apparent that he was narrating the larger history of the defendant’s perceived wrong-doing in relation to them as a couple and his own reasonable actions responding to provocation.

Excerpt 14.3: Case 36 – P-H (plaintiff’s husband). J (judge), in Michigan

T1 P-H: The two and a half years that we did live there, it was a nonstop harassment (Judge: Okay) between us and them, calling the police on us uh 7 or 8 times for absolutely no reason. The police even came to our house and said, “I see no problem here, but when someone calls we have to come out”. (Judge: Okay) Okay. When she physically attacked my wife, I did not get an eviction notice that day from Pat Carney, which is my best friend’s father, who I have been in a family with since the ’70s.

T2 J: Wait- wait- wait a minute, what does that have to do with this case today?

T3 P-H: The harassment that led up to the assault.

T4 J: I don’t care what happened before the date of question.

In sum, whether a judge conducts the small claims hearing as a mini-trial or an inquisitorial session, either version of the genre will be unfamiliar to most litigants and at odds with the ways they engage in conflict with family, friends and co-workers. An upshot of this institutional unfamiliarity is that discourse in small claims courts is full of moments in which judges stop the narration of the substance of the conflict to insert their comments, which try to channel litigants’ expressions into what is defined as an appropriate court style.

14.4 Litigant strategies common in other kinds of conflict

Litigants in small claims are asked by the judge to “give their story”, “explain why they are claiming what they are” or to “provide their side of events”. Interestingly, some of these prompts may have encouraged litigants to tell the kind of relational accounts that small claims judges work to close down (Conley and O’Barr, 1990a). In these accounting narratives, participants draw on the evaluative practices that are part of everyday talk. They employ a host of discourse moves widely recognised as tools of ordinary talk that function to show the self as reasonable and opposing others as unreasonable. Among these devices, three are especially prominent. They are membership terms, extreme case formulations and reported speech.

Membership terms are used to implicate certain actions or behaviours, highlighting the positive or negative characteristics of a person and pointing to whether a person is acting (un)suitably for the category. The membership categorisation device, initially identified by Sacks (1992), involves a membership term for a category of person (e.g. teens, teachers, slackers) and some rules of application regarding how to use terms in talk. Membership terms are connected to actions and ascriptions, which in turn explain why people are likely to draw certain positive or negative inferences. Eelen (2001) points out that while classification may be a non-political activity in scientific research, in everyday life, it is always employed for a purpose. The category terms a speaker uses can help justify why someone expressed a negative attitude, as would be the case if a speaker making a
disparaging comment about gays then followed it by saying, “I’m a Christian” (Housley and Fitzgerald, 2015).

Membership terms are commonly used in complaining sequences in neighbour disputes (Stokoe, 2003, 2009), when print and broadcast news media are framing issues of public debate and assessing the accountability and morality of public actors (Housley and Fitzgerald, 2007, 2009) and more generally in any conversational situation that involves accusations and moral assessment, such as in classroom interaction (Niemi and Bateman, 2014). This device is also used by small claims disputants to show the reasonableness of their own actions or the unreasonableness of others. Small claims court is a setting in which there is a winner and a loser. The use of membership terms is a way for litigants to seek to position themselves as the morally reasonable party, the person who deserves to win.

In the following case from a court in Colorado, the plaintiff is asking for her security deposit and two weeks’ worth of rent (i.e., $1,650). Though she did not give a full 30-day notice, which the law would normally require with her kind of lease, she claims that her early move out was necessitated because the apartment was uninhabitable due to a flood. In Excerpt 14.4, she explains how she was willing to compromise with the defendant and pay part of the month she moved out. To heighten the reasonableness of her actions, she categorises herself as a “single mom”.

**Excerpt 14.4: Case 1 – plaintiff, in Colorado**

I was willing to let go of those two weeks in September. I’m- I’m a single mom. I can’t afford to just give away money. I can’t- (laughs) I just can’t do that. But I was willing to compromise. And then he decided that he would give me a check for $257 for the one week that the floor was wet, which that’s not the apar- that doesn’t equal to the apartment being habitable that the floor is dry. I mean you had- he had to cut a foot up the drywall in the entire apartment. He had fans running in there. He had my stuff in the middle of the floors piled up high. It’s- I couldn’t live there. I just couldn’t live there.

The plaintiff refers to herself as a “single mom” to highlight her character relative to the landlord. Using the category term “single mom” implies that she could be going through a financially difficult time, as single moms have dependents and only a single household salary. The category also implicates the actions of the landlord as unreasonable. Withholding a single mother’s security deposit is particularly harmful since single mothers are a category of person who generally may not have backup financial resources. Uses of this category also underscores the woman’s own reasonableness. That she “was willing to compromise” highlights how fair her actions were in this situation. Thus, the use of the category “single mom” works to not only show her financial hardship, which is underscored when she draws out the implication of that status, saying “I can’t afford to just give away money”. Additionally, it displays her patience in allowing the landlord to take a little longer to return her deposit than is legally required (not shown in the above excerpt). While positioning herself with this membership term, she is also constructing the actions of the defendant-landlord as problematic. In this instance, as is often the case, this membership term encourages a positive evaluation of the speaking plaintiff and a negative one of the defendant landlord.

Extreme case formulations are a second device used in everyday speech to convey strong positive or negative assessment of a person’s actions or proposals. These devices cut across grammatical categories and are illustrated by lexical choices such as “brand new”, “forever”, “everyone” and “every time” (Pomerantz, 1986, p.219). They are used to:
• defend against or counter challenges to the legitimacy of complaints, accusations, justifications and defences;
• propose a phenomenon is “in the object” or objective rather than a product of the interaction or the circumstances;
• propose that some behaviour is not wrong or is right by virtue of its status as frequently occurring or commonly done.

(Pomerantz, 1986, p.219–20)

Pomerantz’s initial investigation of extreme case formulations was, in fact, in the context of small claims court, but scholars have found this device common in many other sites including everyday conversation (Edwards, 2000) and a range of other institutional encounters. For example, Sidnell (2004) shows how extreme case formulations could be used as an evasive strategy to avoid blame in inquiry testimony. Robles (2015) shows how extreme case formulations are used to give individuals the opportunity to repair perceptibly racist talk and Tracy (2012) shows how state supreme court judges used extreme case formulations to justify the correctness of each judge’s written opinions in a context of marked disagreement.

In another tenant and landlord dispute, the plaintiff, who is the tenant, is asking for a deposit of $500 to be returned to her. The defendant rented the room out to the plaintiff for $500 unbeknownst to the owner of the property. Therefore, the owner never received the $500 deposit from the plaintiff because the defendant took the deposit and left the residence. The plaintiff is asking for the $500 back so she can give it to the owner and stay at the residence. In the following excerpt, the plaintiff is responding to the defendant’s accusation of her boyfriend urinating all over the room while he was intoxicated, an activity that the defendant used to justify her not returning the $500 deposit to the plaintiff.

Excerpt 14.5: Case 2 – plaintiff, in Colorado

And that’s a big fat lie about the peeing all over the walls and the carpet. Yes, my- my boyfriend did pee on the mattress. That was the only thing he peed on. The pee on the carpet was probably from the eight dogs that were living there before I moved in there. There were eight dogs and three adults- or three- three people, two- two adults, one child, and eight dogs in that room. And that’s what the pee on the carpet was from, and there was graffiti on the wall from that, that was somewhat repaired when we had moved in. But Lowell did not ever pee on any wall or any carpet, he peed on the mattress. Which is a piece of property that gets thrown away.

To challenge the defendant’s accusation about the plaintiff’s boyfriend urinating all over the room, the plaintiff responds by saying “that’s a big fat lie about peeing all over the walls and the carpet”. Using the extreme case formulation “big fat lie” to characterise the defendant’s accusation strongly frames the defendant’s claim as unreasonable. The plaintiff states that not only has the defendant lied, but the lie is “big” and “fat”. She continues to say that “that was the only thing he peed on” and he “did not ever pee on any wall or any carpet”. To further justify the unreasonable ness of the defendant’s accusation, the plaintiff reacts with another instance of extreme case formulations. She uses “did not ever” – another variation of “never” – to further counter the accusation made by the defendant.

Consider a third and final feature common to litigants’ stories: reported speech. Reported speech is stating what one or another said. “ Reported speech”, as Tracy and Robles (2013, p.226) define it, “is a rhetorical device to present what one is uttering as if it were one’s exact words or those of another”. But this stretch of talk may not be the actual words of
the other. Although not widely adopted as the preferred term, Tannen (1989) argues that reported speech is better labelled “constructed dialogue”. “Reported speech”, though, better captures one especially common function of this type of talk – to persuade that one’s words may be trusted because one is simply reporting what a person said. When people engage in reported speech, they are often recounting past events that include themselves and others. This retelling serves as a source for identity construction for the self and the told-about others. These snippets of reported speech accomplish evaluation (Buttny, 1997; Holt, 1996, 2000). To put it another way, reported speech is used to show one’s reasonableness and another’s lack of it.

In Excerpt 14.6, a plaintiff is asking for $5,000 from the defendant who sold her a car with damage that she was not made aware of at the time of purchase. The plaintiff is retelling the details of the purchase, which include her attempting to negotiate the price of the car with the defendant. In addition to accusing the defendant of misleading her about the condition of the car, she tells a lengthy story which suggests the defendant was also seeking to avoid taxes by registering the vehicle in another state. She then comments:

Excerpt 14.6: Case 47 – P (plaintiff), J (judge), in Washington

T1 P: The following day on 6-20 he took the vehicle to Montana and registered it in Montana state. *Um I bought the vehicle from him on 8-28. Um I also asked him if he’d come down on the price and he answered "not a snowball’s chance in hell".

T2 J: What was the price ma’am. What was the price?

T3 P: *Um $9,500. I asked him to come down to 7,000 he said “not a snowball’s chance in hell”.

Across her extended testimony, the defendant employs many moves to highlight the bad actions of the defendant. One device illustrated in this short excerpt is to report his speech in an exchange with her: “I also asked him if he’d come down on the price and he answered, ‘not a snowball’s chance in hell’”. Notably, she repeats the defendant’s use of the idiomatic phrase “not a snowball’s chance in hell” a second time. Her use of reported speech not only suggests that she is presenting the facts and recounting exactly what was said but also builds a portrait of a seller who was intransigent in responding to her and not at all polite. This negative portrait is further burnished by virtue of the reported speech being an idiomatic phrase, a discourse move that is particularly difficult to dispute (Drew and Holt, 1989). The plaintiff uses the words of the defendant to implicitly assess his unreasonableness and underscore his problematic way of handling the negotiation of the price of the car.

14.5 A strategy (relatively) unique to small claims disputes

In addition to discourse devices that are common in many kinds of conflict exchanges, there is a discourse practice that is part of conflict narrating that happens because it is a court setting. That practice is the use of legal language, or less frequently, a fully formed legal style – what some scholars refer to as a register – to advance a party’s position. Features of a legal style include long, complex sentences, conjoined phrases, nominalisation, frequent passive sentences and a large and distinct lexicon (Tiersma, 2008).

As noted previously, Conley and O’Barr (1990a) identify two different litigant styles: rule-based and relationally oriented. They find that litigants with business backgrounds were more likely to use the rule-based legal style and speakers using this style were also
more likely to succeed. Litigants who use the rule-based style highlight in their speech the issues perceived to be directly related to what the court must decide. In addition to limiting the topic to the designated issues, a central way to perform a rule-based style is to use legal terms such as “lease”, “contract”, “treble damages”, “in arrears” and “perjury”. The greater likelihood of a positive outcome for speakers using this style is in line with what speech accommodation theory (Giles et al., 1987; Shepherd, Giles and LePoire, 2001) would predict: communicators who take on discourse features of the more powerful conversational partner are likely to be evaluated more positively.

An example of a relatively full-blown legal style is seen in Excerpt 14.7. In this case, two male college students, now the plaintiffs, are asking for money to cover several months’ past rent that a female roommate, now the defendant, has not paid. The defendant testified that she was not liable for the rent because she followed the appropriate procedures identified in Colorado state law under the category of a domestic abuse or domestic violence victim. Put more simply, she argued that because she was a victim of “domestic abuse”, her vacation of the shared apartment and non-payment of additional rent was appropriate under Colorado law. Her reason for claiming to be a victim of domestic abuse was that when she was at work one night, one of the plaintiffs broke her bedroom door, which was directly off the living room. According to the plaintiff-roommate, he had been roughhousing with a friend and crashed into her bedroom door, broke it and got his blood on the door. The defendant describes what happened to the door as an “attack” on herself, offering it as evidence that she was a victim of domestic abuse and was living in an unsafe environment. Consider how the defendant uses not simply a handful of legal terms, but a full-blown legal register to argue that her actions were appropriate.

Excerpt 14.7: Case 21 – defendant, in Colorado
Following the meeting that took place between Office of Student Conduct and my former roommates and the issuance of the letter from Peter [legal staff in the office of student conduct] I have had no contact with either of them. And um my defense is that according to Colorado State Law um if a tenant to a residential rental agreement or lease agreement notifies the landlord in writing that he or she is the victim of domestic violence or domestic abuse and provides to the landlord evidence of domestic violence or domestic abuse in the form of a police report written within the prior 60 days or a valid protection order, and the residential tenant seeks to vacate the premises due to fear of imminent danger for self or children because of the domestic violence or domestic abuse, then the residential tenant may terminate the residential rental agreement or lease agreement and vacate the premises without further obligation except as otherwise provided. Uh if a tenant to a residential rental agreement or lease agreement terminates the residential rental agreement or lease agreement and vacates the premises pursuant to par- paragraph A of this subsection two then the tenant shall be responsible for one month’s rent following vacation of the premises, which amount shall be due in payable to the landlord within 90 days after the tenant vacates the premises. And I paid that November rent.

In her story, one she had written in advance and received approval from the judge to read because she did not feel she could speak extemporaneously, we see a good example of what a rule-based, legal style sounds like. The defendant presents the judge with information related to “Colorado State Law”, “residential rental agreement[s]” and “domestic abuse” requirements. She uses long complex sentences with conjoined phrases (e.g. “residential
Karen Tracy and Danielle M. Hodge

rental agreement or lease agreement”) and, rather than using pronouns to refer back to people and things as is typical in other forms of talk and writing, she repeats the identifying nouns phrases.

Her testimony focuses on the key legal issues of her responsibility as a tenant and why she should not be obligated to pay additional rent given her adherence to legal rules. The details she introduces specifically address her actions and obligations as a tenant at that time within the confines of the law. The account for her actions references the responsibilities of a tenant as such: “notif[y]ing the landlord in writing”, “provid[ing] to the landlord evidence of domestic violence or domestic abuse in the form of a police report” and being “responsible for one month’s rent following vacation of the premises”. She largely avoids relational discourse moves such as inserting extraneous background information. Moreover, in addition to her account being attentive to key legal questions, she also uses formulations that are rare in everyday exchanges but common in written and oral legal discourse. She “notifies” rather than “tells”, “vacates” rather than “leaves” and is “in fear of imminent danger” rather than “afraid she’s going to be beaten up”.

Although this litigant employed an extended legal register – that is, a rule-based account (Conley and O’Barr, 1990a, 1990b) – she was not successful in defending her actions. She did not fully understand the law and how it defined issues. Thus, while a rule-based style may improve success, it does not ensure success. In announcing his decision, the judge summarises the key issue in the following way:

Excerpt 14.8: Case 21 – judge, in Colorado

So the basis is whether um as set forth in the statutes there was domestic abuse. Uh to reiterate a person who is a victim of domestic violence or desti- domestic abuse may be released from a lease if uh they had been such a victim, um they get a police report, and then they report that to the landlord and pay one month’s rent. She did call the police. The police uh indicated there was no criminal conduct. And Ms L did uh pay the one month rent. The question is whether she should be released from th- the lease based on the objective facts of this case.

Quoting from the same statutes as the defendant had about domestic violence, the judge then follows the quote with what he asserts to be the correct interpretation of domestic abuse and domestic violence. The judge highlights that “domestic abuse means any act, attempted act, or threatened act of violence, stalking, harassment, or coercion that is committed by any person against another person”. Because the attack was not against her but made on the defendant’s possession – i.e. the door to her bedroom – the judge constructs her narrative as “subjective fear” and the situation as having no “objective basis for her to terminate” the lease. The judge rules in the plaintiff’s favour.

Except in cases where an attorney was present, a litigant using such a full-blown legal style was unusual. More common was for disputants to use a few legal terms. For terms that are part of everyday language as well as the legal register, it became apparent that disputants did not necessarily understand that a term might have a different legal meaning than the everyday one. Excerpt 25.9 illustrates the misuse of a legal term that is also an everyday one. The exchange comes from the case of the disputing female neighbours seen in Excerpt 14.3. The plaintiff is asking for $3,000 to pay for her hospital bills, lost wages and court costs. She claims that the defendant assaulted her at the convenience store/gas station, which caused a seizure that evening. Because she is an epileptic, she views the defendant’s grabbing of her neck and subsequent choking as the cause of a seizure and the needed hospital visit.
Although the plaintiff and defendant agree that there was an altercation, their differing versions of the story show little resemblance to each other, each placing blame squarely on the other party. What is particularly interesting is the plaintiff’s use and interpretation of the legal term “assault” to label the defendant’s action, in relation to how the judge understood the term.

Excerpt 14.9: Case 36 – plaintiff, in Michigan
I’m an epileptic. She had me by my throat like this and was shaking my head back and forth [uses illustrative gestures]. They asked if I felt that I needed to go to the amb- you know to the hospital at that time. They were trying to talk me out of anything, pressing any charges against her. I don’t know what was said between her and the police. They told me that I didn’t have a case against her. We were right underneath the video camera at the gas station when the whole assault took place.

The defendant begins by using the membership term “epileptic” to categorise herself. This term helps the plaintiff increase the seriousness of the defendant’s actions, much as one can increase the reprehensibility of a violent action by describing victims as “women” and “children” rather than “men” or “soldiers”. The actions of the defendant are described as “had me by the throat” and “shaking my head back and forth”. The woman could have described what happened as a “fight” but by labelling the defendant’s actions as an “assault” she implies that the blame should go to the defendant. In addition, by using a term that has a technical legal meaning – that is, the name for a crime – she strengthens the sense of the other’s culpability. The judge, though, rejects her description as legally warranted. Earlier in the trial, a store clerk was reported to have initially assumed the two women were playing around rather than having a fight or one attacking the other. Excerpt 14.10 occurred soon after the plaintiff claims that the defendant testified to having committed the assault.

Excerpt 14.10: Case 36 – P (plaintiff), D (defendant), J (judge), in Michigan
T1 P: Which she admitted to that. Which she just admitted to.
T2 J: What do you mean admitted?
T3 P: She just admitted right there that she grabbed me by the throat.
T4 J: But not assaulted, I mean, the witness here-
T5 P: Grabbing someone by the throat is not assault?
T6 J: Well, not enough to charge with I guess. Did you grab her by the throat?
T7 D: After she had run into me, yeah I did.
T8 J: Okay, see there we have it. It’s impossible to figure out. I don’t know what happened here. There is no way for me to figure out what happened. The two stories contradict each other OK? Um also I’ve got a real question as to whether you were damaged in the amount of $3,000, but be that as it may, you can’t win on that claim unless you can show that there was an actual assault here.

The way the judge interprets the understanding of assault is made clear when he states that throat-grabbing does not count as “assault”. The plaintiff questions the judge’s interpretation and application of the term assault when she says, “Grabbing someone by the throat is not assault?” He explains his rejection of her definition by claiming “well, not enough to charge with I guess”. Because the police did not take the encounter between the plaintiff and the defendant seriously enough to follow up and encourage the pressing of charges, the
judge does not feel it is appropriate to describe what happened as an assault. His understanding of the term “assault” is also seen when he begins to announce his decision. He states that “you can’t win on that claim unless you can show that there was an actual assault here”. The description of the attack provided by the plaintiff does not fit the legal meaning of the term “assault” and hence her claim is dismissed.

In addition to legal terms being used and misused, litigants also make use of a concept that applies in regular civil trials in which attorneys do the speaking for plaintiffs and defendants. The right to be compensated monetarily “for pain and suffering” is a mainstay of regular civil cases – i.e. those above the small claim limit – that involve, for instance, defective equipment, incompetent service by doctors or injuries sustained in auto accidents. Judges generally do not regard arguments about pain and suffering as relevant in small claims cases, but litigants do not know this. In their testimony, litigants will bring up the hardship they incurred in having to take a day off work, drive a long distance or to find and prepare all kinds of documents to legitimate their right to more money. They also claim that the emotional distress engendered by the conflict warrants some amount of money for that distress. Excerpt 14.11 illustrates an example of this discourse move.

Excerpt 14.11: Case 9 – HA (plaintiff), J (judge), in Colorado

T1 HA: ... This is a little, it’s very emotional for me.
T2 J: Well, um, Let-I. That’s fine, I’m n- I’m not worried about your emotions. What I’m worried about is my understanding. So, if she’s agreeing that she owes you.
T3 HA: Right.
T4 J: $1,849.03, do you think she owes you more than that?
T5 HA: I do, because for the, for the pain and suffering and then for the court cost. Because I had to file in Los Angeles.
T6 J: OK.

The “pain and suffering” argument is not unusual in small claims court, and, as mentioned, it is regularly disallowed by the judge. In excerpt 14.12, the judge directs a question to the defendant who had filed a countersuit. The defendant who was the plaintiff’s landlord asked for money from his former tenant for the trouble caused to him by the plaintiff bringing the suit.

Excerpt 14.12: Case 4 – RB (plaintiff), ML (defendant), J (judge), in Colorado

T1 J: OK, do you think that he owes you any money?
T2 RB: Actually, sir-
T3 ML: With- with all this time wasted, I think he owes me something.
T4 J: People don’t get compensated for coming to court, that’s part of the business of- of litigation, is you don’t get- the only time you get compensated are for example lost work if you’re injured in a car wreck, then you can get compensated but not- not as a litigant in this type of case. Neither side gets paid for coming to court. So neither- neither side can be compensated for coming to court, that’s- that’s not compensable.

The judge makes it clear that compensation is not given for “coming to court”. He then acknowledges the circumstances where litigants would get compensated such as “lost work if you’re injured in a car wreck”. Claiming that being in court is wasting the defendant’s
time and should be compensated is not a valid argument. As the judge says, “that’s part of the business of- of litigation”.

14.6 Conclusions

In this chapter, we have shown that disputes in small claims court differ from conflicts elsewhere, such as ones that occur between intimates or people working together. Because of the institutional mooring of small claims with judges as a key third party, litigants are required to “do conflict” in an institutionally specific way. Disputants are expected to follow strict turn-taking rules, to limit the topical focus and to use certain formulations while avoiding others. Because most disputants are unfamiliar with court rules, the unfolding of a conflict in small claims court includes frequent comments from the judge seeking to guide litigants towards the expected style.

Litigants express themselves in small claims conflicts in a way that is rarely seen outside law contexts: they make use of legal terms, sometimes correctly and sometimes not, that every now and then may be embedded in a full-blown legal argument style. Plaintiffs and defendants also use arguments to justify awarding money to themselves that are common in other civil settings but are given little or no weight in the small claims setting. Yet, although there are clear differences in how conflict gets done in this particular court compared with other courts and in contrast with other settings, what is equally striking is how persons’ communicative moves draw heavily on everyday ways of doing conflict.

Disputants give considerable attention to displaying their own moral reasonableness and the other person’s immorality, unfairness or unreasonableness. They work to accomplish these morally freighted goals for themselves and others by making use of discourse devices that are everywhere in ordinary conversation. They report their own and other’s speech to persuade of their own fairness. They formulate claims about their own goodness or the other’s lack of it using extreme terms and they select terms to refer to people in telling their stories that enhance their version of events. In this situation of institutionalised conflict, small claims litigants may not be able to name and describe what they are doing discursively, but these conflict-doers are experts in using language to implicate their own good moral character while implying its absence in the party they oppose.

Notes
2 In addition to the central data, which are the tapes and transcripts of 55 small claims hearings, the first author has observed small claims hearings one or two times per month for the past eight years. This observation occurs before and after small claims cases she is waiting to mediate or where mediation disputants do not settle and go to trial. This extended experience of watching small claims trials informs chapter descriptions of discourse actions as frequent or rare.
3 Italics are used in transcripts to highlight turns focused on in the analysis. Small claims hearings are public documents. We have, however, used pseudonyms or initials for judges and litigants since our focus is on discourse moves.
4 Thanks to the editors for noticing how this formulation may lead to a less preferred accounting style.

References


Discourse in small claims hearings


