

Basic School: Small Claims Review

- I. Procedure
 - A. Small Claims Action
 - i. Summary Ejectment, \$ Owed, or Return of Personal Property
 - ii. \$5,000 or less
 - iii. At least one defendant must reside in county
 - B. Service of Process
 - i. Personal service by sheriff
 - ii. Certified mail, return receipt requested
 - iii. Voluntary appearance
 - iv. (SE cases only: Service by posting)
 - C. Counterclaim
 - i. Must be filed with clerk prior to time case is set for trial
 - ii. Written
 - iii. For \$5000 or less
 - D. Continuance
 - i. Both parties agree: allowed
 - ii. Motion by one party: allow only for good cause shown
 - E. Failure to appear
 - i. By defendant: Take plaintiff's testimony just as usual
 - ii. By plaintiff: dismiss with prejudice
 - F. Amendment of complaint
 - i. Freely allowed
 - ii. Usually only issue is whether defendant has sufficient notice
 - G. Voluntary dismissal (without prejudice)
 - i. Plaintiff has the right to take a voluntary dismissal at any time before conclusion of plaintiff's evidence
 - H. Entering judgment
 - i. May reserve judgment for up to 10 days
 - ii. Party may give notice of appeal in open court, or by seeing clerk
 - I. Clerical errors: judge may correct without notice to parties
 - J. Rule 60(b) motions to set aside judgment for excusable neglect
 - i. Must be authorized by CDCJ to hear these motions
 - ii. Requires notice to other party and hearing
 - iii. If motion by defendant, must also show meritorious defense

II. Torts:

- A. In negligence cases In North Carolina, contributory negligence is a complete defense.
- B. Conversion is an intentional tort, in which the plaintiff proves:
 - i. Plaintiff is the owner or lawful possessor of property;
 - ii. Defendant wrongfully took or wrongfully retained that property;
 - iii. Conversion, sometimes referred to as "forced sale," entitles the plaintiff to recover the fair market value of the property at the time and place of conversion as well as interest on that amount.

III. Contracts

- A. Bargained-for exchange
- B. Contracts by minors
 - i. Voidable at the option of the minor
 - ii. Exception: contracts for necessities
- C. Statutes of limitation
 - i. Contracts for the sale of goods: 4 years
 - ii. Other contracts: 3 years
 - iii. Contracts under seal: 10 years
 - iv. NOTE: Partial payment on account starts statute running over again. A creditor who accepts partial payment of a debt does not waive the right to bring an action for the remainder of a debt.
- D. Contracts that must be in writing
 - i. Contracts for the sale of goods for \$500 or more
 - ii. Retail installments sales contracts
 - iii. Security agreements
- E. Terms of a contract
 - i. Parole evidence rule: Evidence of contract terms in the form of conversation between the parties is not allowed to change or contradict a written contract, unless
 - a. That evidence is offered to clarify a term that is vague or unclear, or
 - b. The evidence is of a modification of the written contract that occurred after the written contract was completed.
 - a. Implied terms: In contracts for the sale of goods, there is an implied term (called an implied warranty of merchantability) that the goods will be fit for the ordinary purpose for which they are used, assuming the seller is someone who sells these goods in the ordinary course of business.
- F. Parties to a contract
 - 1. Husband and wife do not have authority to bind each other to contracts, unless one is acting as an agent for the other. Marriage =agency.
 - 2. An agent does have authority to enter a contract on behalf of the principal.
 - 3. Under the theory of joint and several liability, a creditor having a contract with two debtors has the option of suing either or both for the entire amount due.

IV. Actions to recover personal property

A. By a non-secured party: Requires evidence identical to conversion claim, plus evidence that defendant is in possession of property, but remedy is return of personal property, along with cost of repairing damage to property and for loss of use.

B. By a secured party:

i. SP must prove

a. Security agreement

i) Written

ii) Signed

iii) Dated

iv) Contains a description of the property.

b. Default by defendant

c. Defendant is in possession of property.

NOTE: Amount of underlying debt is not relevant.

ii. Retail Installment Sales Act

a. Applies to consumer credit purchases in which seller finances purchase

b. Seller allowed to take security interest only in property sold, or in property previously sold by same seller and not yet paid off.

c. Attempt to take security interest in other property is void.

d. FIFO rule applies to allocation of payments when several goods bought from same seller.

V. Summary Ejectment

A. Procedure

i. Property manager may sign complaint, but owner must be listed as plaintiff

ii. Service by posting? No money judgment

iii. Judgment on the pleadings available if all requirements satisfied

B. Grounds

i. Breach of lease condition (forfeiture clause?)

ii. Failure to pay rent (demand/10-day wait/tender)

iii. Holding over

a. Lease ends when it says it ends

b. Month to month: 7 days

c. Week to week: 2 days

d. Year to year: 30 days

e. Special rule for mobile home lots: 60 days

iv. Criminal activity

C. Consumer Protection Laws

i. Late fees (maximum amount, agreed-to in lease, at least 5 days late)

- ii. No self-help eviction
- iii. Security deposit
- iv. Residential Rental Agreements Act
LL has duty to keep premises in safe and habitable condition and make all repairs