



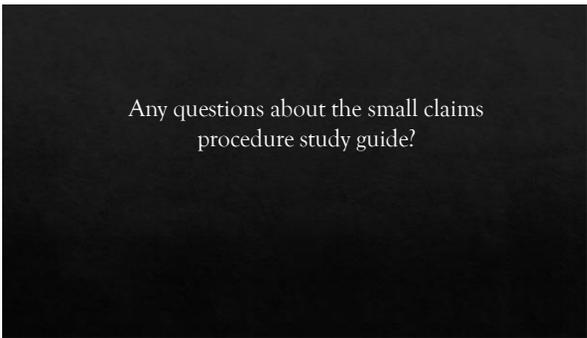
What New Magistrates
Should Know About
Contracts

1



But first, a look back . . .

2



Any questions about the small claims
procedure study guide?

3

Memorize the 5 questions . . .

and ask them in order!

4

Is there a contract? (aka, *contract formation*)

- ◆ Promise to make a gift?
- ◆ Exchange of promises?
- ◆ Contract by implication?
- ◆ I changed my mind?

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Who are the parties?

Lawsuits for breach of contract have a fundamental requirement that the parties who are bound by the contract should be the parties who are sue and are sued.

So it's important to figure out who is actually bound by the contract.

The answer to THAT question ≠ (necessarily) the people who signed it.

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You bought the fridge
from . . .

Williams Fine Appliances,
Inc.



7

Basic Rule About Agency

Principal is liable on contract.
Agent is not liable on contract.

8

Who are the parties?

When there are two . . .

9

Joint & Several Liability

John and Sam sign the lease on a nice apartment, agreeing to pay \$2000/month for a year.

They fight, and Sam moves out – actually, to Australia.

John can't afford the rent without Sam's help, and he moves out too, to a cheaper place down the street.

At the end of the year, the LL sues both John and Sam for money owed due to their failure to pay rent for the last six months of the lease. (LL re-rented, but it took a while.) He wants \$6000.

When you call the case, John is present, but Sam has not been served.

What happens next?

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Questions about procedure

Because only John continues to live in the county, can this case be heard in small claims court?

Can you go ahead and hear it, but just for John?

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Contract law question

Assuming you rule in favor of the landlord, do you enter judgment against John for:

\$6000 (YES)

\$3000 (NO)

Rule: No problem with double judgments. Double recovery is not allowed.

Rule: John can sue Sam for whatever Sam owes --- which will depend on what the contract between THEM said.

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What are the terms?

13

What are the terms?

John signs up with a health club, agreeing to pay \$47/month for the next three years to have "a body that will WOW!!!!"

John decides he likes ice cream better than WOW!!! and stops paying. When the health club sues, John tells you that he anticipated this possibility and specifically asked the employee who signed him up if he could change his mind. He says the response was, "Absolutely! People do it all the time!"

That's not in the written contract, though. If you believe John is telling the truth, can you rule in his favor and deny the Club a judgment?

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Parol Evidence Rule

When a contract is in writing, a court will not consider evidence contradicting the written terms.

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NOT the Parol Evidence Rule

◆ Evidence to explain an ambiguous term

◆ Evidence of modification

John wants to testify that the Club offered him a "buy-out," allowing him to pay \$250 and be released from liability.



What is "yard work?"

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What are the terms?

Implied terms

17

Contracts for the sale of goods

◆ Implied warranty of merchantability:

- ◆ Sale by merchant in ordinary course of biz
- ◆ Promise that item will do whatever it is supposed to do
- ◆ Can be waived

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What are the damages?

- ◊ The standard measure of damages in an action for breach of contract is that amount of money necessary to restore the non-breaching party to the position s/he would have occupied in the event there had been no breach.
