

Basic School: Small Claims Review

- I. Procedure (NOTE: Also review *Mandatory Rules*)
 - A. Small Claims Action (MR#1)
 - i. Summary Ejectment, \$ Owed, or Return of Personal Property
 - ii. \$10,000 or less
 - iii. At least one defendant must reside in county
 - B. Service of Process (MR#2)
 - i. Personal service by sheriff
 - ii. Certified mail, return receipt requested
 - iii. Voluntary appearance
 - iv. (SE cases only: Service by posting)*
 - C. Parties may appear pro se or through attorney
 - i. Exception: Corporations may appear through agent.
 - ii. Exception: Property manager may sign complaint and appear on behalf of owner in SE action provided manager has personal knowledge.
 - D. Named plaintiff must be real party in interest.
 - i. Most frequent violation: property manager named as plaintiff in SE actions.
 - ii. Violation usually does not require dismissal; rpii has reasonable time to be substituted as plaintiff.
 - E. Counterclaim
 - i. Must be in writing and filed with clerk prior to time case is set for trial
 - ii. For \$10000 or less
 - F. Continuance*
 - i. Both parties agree: allowed
 - ii. Motion by one party: allow only for good cause
 - G. Failure to appear
 - i. By defendant: Take plaintiff's testimony just as usual
 - ii. By plaintiff/defendant present: dismiss with prejudice
 - iii. By both parties: dismiss, following local practice re with or without prejudice
 - H. Amendment of complaint
 - i. Freely allowed
 - ii. Usually only issue is whether defendant has sufficient notice
 - I. Voluntary dismissal (without prejudice)
 - i. Plaintiff has the right to take a voluntary dismissal at any time before conclusion of plaintiff's evidence
 - J. Entering judgment
 - i. Follow the 4 steps: clear division/ using parties' names, announce winner first/brief explanation with reference to law/provide essential info for next steps
 - ii. May reserve judgment for up to 10 days*
 - iii. Party may give notice of appeal in open court, or by seeing clerk

- K. 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 unless denied
 - iii. If motion by defendant, must also show meritorious defense

*Special rule for summary ejectment.

II. Torts

- A. Reasonable person standard applies to negligence.
- B. In negligence cases in North Carolina, contributory negligence is a complete defense.
- C. Vicarious liability applies to hold principal liable for negligence by agent.
- D. Damages based on what is required to make plaintiff "whole."
- E. Collateral source rule = defendant is not excused from paying damages by plaintiff's receipt from other sources, such as employment benefits, charitable donations, or insurance coverage by plaintiff's own insurance company.

III. Contracts

- A. Five questions:
 - i. Is there a contract?
 - ii. Who are the parties?
 - iii. What are the terms?
 - iv. Was there a breach?
 - v. What are the damages?
- B. 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
 - i) That evidence is offered to clarify a term that is vague or unclear, or
 - ii) The evidence is of a modification of the written contract that occurred after the written contract was completed.
 - ii. 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.
- C. Who are the parties?
 1. An agent does have authority to enter a contract on behalf of the principal. In this case, principal is liable (and the appropriate party in a lawsuit) and the agent is not.
 2. All contracts with LLCs, corporations, and similar business entities involve actions by agents.
 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 property owner: When plaintiff's property has been wrongfully taken or retained, plaintiff may seek to recover possession of property rather than \$ damages for FMV of property.

B. By a secured party/ Essential elements:

(i). Valid security agreement

- Written
- Signed
- Dated
- Contains a description of the property.

ii) Default by defendant

iii) Defendant is in possession of property.

NOTE: Amount of underlying debt is not relevant.

ii. Retail Installment Sales Act:

- i) FIFO rule applies to allocation of payments when each purchase over time financed from same seller and accounts consolidated.

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 (Use Essential Elements Chart!)

- i. Breach of lease condition (forfeiture clause?)
- ii. Failure to pay rent (demand/10-day wait/tender)
- iii. Holding over
 - i) Lease ends when it says it ends
 - ii) Month to month: 7 days
 - iii) Week to week: 2 days
 - iv) Year to year: 30 days
 - v) Special rule for mobile home lots: 60 days
- iv. Criminal activity

C. Defenses

- i. Waiver (statutory protection available in breach of lease condition cases)
- ii. Tender (failure to pay rent only)
- iii. Improper notice (holding over)
- iv. Failure to follow required procedure

D. Damages

- i. Pro-rated rent up to date of judgment (compare rule for tender)
- ii. Property damage which is more than normal wear and tear
- iii. Late fees & applicable administrative fee if requirements satisfied
- iv. Maybe attorney fees

E. Consumer protection laws for residential leases

- i. Late fees (maximum amount, agreed-to in lease, at least 5 days late)
- ii. No self-help eviction

- iii. Residential Rental Agreements Act
LL has duty to keep premises in safe and habitable condition and make all repairs