Content Outline for Session 4: Hearing the Case
Order of Presentation & Essential Elements

§ 7A-222. General trial practice and procedure.

(a) *Trial of a small claim action before a magistrate is without a jury. . . . At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case. If a judgment of dismissal is not rendered the defendant may introduce evidence.*

Magistrates have considerable flexibility when it comes to what is formally termed "order of presentation" in conducting trial. There are only a few hard-and-fast rules:

- Plaintiffs always testify first. Plaintiffs may call witnesses (including the defendant) as part of their case-in-chief but must conclude their presentation (subject, of course, to rebuttal of any material introduced by defendant) before the defendant is required to present a defense.[1]
- If the plaintiff's testimony, assuming it is found credible, is not sufficient to entitle the plaintiff to a favorable judgment, the case may be dismissed at that point, without requiring the defendant to present a defense.
- Both parties are entitled to question the other so as to adduce evidence in support of their claim or defense, but the court is allowed to control that questioning as needed.
- The court is permitted to question witnesses as well as to call their own witnesses.

While opening and closing statements are typical in jury trials and frequent in non-jury trials, they are rarely made in small claims court, and the law does not require them.

One significant difference between small claims and other trial courts is that parties commonly testify in the narrative in small claims court.

Many magistrates choose to swear in all witnesses prior to any presentation of evidence.

When defendant has filed a counterclaim, the recommended order of presentation is that the separate claims are heard essentially as back-to-back trials, with a clear separation made by the magistrate between the two. The magistrate may elect to announce the judgment as to the first case prior to moving to the second, but I suggest you give careful thought to the possible complications arising from this approach.

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[1] In actions for summary ejectment, there is a legal issue as to the potential impact of § 42-30 on this statement. That statute provides: **Judgment by confession, where plaintiff has proved case, or failure to appear.** *The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the plaintiff proves his case by a preponderance of the evidence, (ii) the defendant admits the allegations of the complaint, or (iii) the defendant* [satisfies the requirements for judgment on the pleadings]. . . .

Small Group Exercise:

Take turns describing the procedure you follow in hearing a case. If you have any special rules (such as requiring the parties to direct their questions to you rather than the other party), state those. Explain why you're made the choices you've made. Identify one modification in this procedure you're willing to try when you return home. This may be an idea you picked up in the discussion, but it might also simply be something you've previously considered, or something else altogether.

Write your modification here: _____

Essential Elements of Plaintiff's Claim and Defendant's Defense

In order to determine whether plaintiff has made out a prima facie case or a defendant has established a legal defense, the magistrate must know what the law requires each party to establish. Sometimes the essential elements of a claim or defense are numerous and detailed (e.g., a claim for fraud), and sometimes they're so simple and straightforward that you may not even recognize them as such (e.g., many breach of contract actions), but if you're not able to articulate them prior to trial, you can't do your job. I can't say this emphatically enough. The small claims system in our state is not an alternative dispute resolution forum. That's true in many other states, and there are many otherwise well-informed people who believe that's true in NC as well – but that is not true. In NC, small claims magistrates are not charged with helping the parties "work something out" or entering a compromise judgment so as to balance the equities and accommodate the interests of both parties. They are instead charged with (1) correctly applying (2) the relevant law (3) to the facts established by the evidence (4) so as to determine whether plaintiffs have met their burden of proof and (5) then ruling accordingly.

How do you determine the essential elements of a claim or defense?

For some claims, the essential elements have been specifically identified and labeled as such by our appellate courts. For example, simply doing a Google search for "NC law essential elements conversion" turns up excerpts from several NC cases answering that question. While a Google search is in no way equivalent to in-depth legal research, it's a starting point.

For many claims commonly asserted in small claims court, NC Small Claims Law is an invaluable resource. Here's a random example: The essential elements of a claim by a secured party to recover a deficiency remaining after repossessing and selling collateral are listed on pp. 140 – 141 of that text.

And then there's the (hopefully infamous) *Essential Elements and Common Defenses in Summary Ejectment Actions* (aka *Page 7*) distributed in every Basic School for the last 15 years.

Remember that *Essential Elements* is just a term for "what the plaintiff has to prove to win." Sometimes it may be difficult to locate a list of essential elements *per se,* but reading the applicable statute or appellate opinion will allow you to make your own checklist.

And sometimes the legal answer is not yet clearly established. For example, consider the requirement that a landlord make a demand for the rent in a summary ejectment action based on the statutory ground of failure to pay rent. What are the essential elements of a proper demand?

One NC case discusses what constitutes a demand for purposes of the statutory ground "failure to pay rent" in SE cases:

Nor can we agree that Ida Snipes's conversation with plaintiff in October or November of 1976 constituted a "demand." At that time she merely informed plaintiff that she "wanted to get all this business settled."

We hold *that to constitute a "demand" under N.C.G.S. 42–3, a clear, unequivocal statement, either oral or written, requiring the lessee to pay all past due rent, is necessary. See 26A C.J.S. Demand 169 (1956). A demand is a peremptory claim to a thing as a matter of right. Black's Law Dictionary 516 (4th ed. rev. 1968). The demand must be made with sufficient authority to place the lessee on notice that the lessor intends to exercise his or her statutory right to forfeiture for nonpayment of rent. Thus we find no error in the trial court's granting a directed verdict in favor of plaintiff based upon the existence of a valid lease in force at the time of the sale.*

Snipes v. Snipes, 55 N.C. App. 498, 504, 286 S.E.2d 591, 595, aff'd, 306 N.C. 373, 293 S.E.2d 187 (1982)

Fact situation for discussion: Tommy Tenant did not make a rent payment in May, and missed another payment on June 1st. On June 2, Laura Landlord went to the rental premises and said, "Tommy, I'm not going to mince words. You know you owe the rent, and I demand that you pay it." Laura turned, walked away, got in her car, and drove off. She filed this action for SE on June 14. When you hear the case, Tommy does not appear. Laura testifies to the existence and terms of the lease and to the events described above. **How do you go about deciding this case?** In other words, describe the steps in the analysis you mentally perform.

1. _____
2. _____
3. _____
4. _____
5. _____

[add more lines if necessary]