

## SCHEDULE FOR TODAY

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- 8:30 Revisiting Yesterday
- 8:45 The Crux of Contracts
- 9:45 Break
- 10:00 Landlord-Tenant Law
- 10:45 Break
- 10:50 Landlord-Tenant, cont'd
- 12:00 Lunch
- 12:45 Small group discussions & Videotaping
- 4:00 Small Claims Bench Skills
- 5:30 Recess

## OBJECTIVES FOR DAY 2

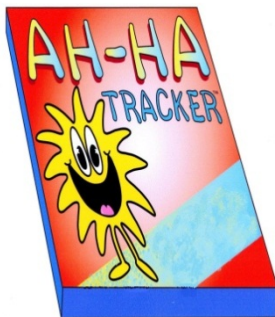
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Today you'll learn and practice applying a basic analytical approach to cases involving contracts. We'll also briefly introduce basic principles for calculating the amount of judgment in a money-owed case. We'll end today's coverage of substantive law by practicing using a job aid to hear an action in summary ejection.

After lunch, we'll spend the afternoon in a series of small group discussions and videotape exercises. We'll come back together at the end of the day to review and discuss Bench Skills in small claims court.

## ACTIVITY: CHECK-IN

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Discuss with your tablemates what struck you most about our time together yesterday. -

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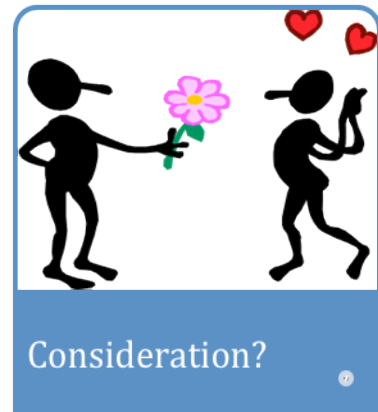
## THE CRUX OF CONTRACTS: HOW TO ANALYZE A CONTRACTS CASE

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1. Is there a contract?
2. Who are the parties to the contract?
3. What kind of contract is it?
4. What are its terms?
5. Did defendant breach the contract?
6. What damages is plaintiff entitled to?

IS THERE A CONTRACT?

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NOTES:


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## WHO ARE THE PARTIES TO THE CONTRACT?

Begin by asking the question “who agreed to this contract?” Who signed it, or who shook hands, or who was present at the conversation when the deal was struck?

Complicating matters:

1. Business entities \_\_\_\_\_

\_\_\_\_\_

2. Agency \_\_\_\_\_

\_\_\_\_\_

3. Joint and several liability \_\_\_\_\_

\_\_\_\_\_

4. Guarantors \_\_\_\_\_

\_\_\_\_\_

5. Spouses and kids \_\_\_\_\_

\_\_\_\_\_

## WHAT KIND OF CONTRACT WAS IT?

There are special rules for special kinds of contracts:

Breach of warranty (pp. 61-65)

Installment sales contracts (pp. 81-84)

Loans (pp. 90-91, 96-97)

Worthless check (pp. 87-89)

Actions on security agreement (pp. 125-144)

Residential lease agreements (see numerous special provisions in Ch.VI, Landlord-Tenant Law)

Miscellaneous consumer protection provisions

The most common impact of these special rules is the revision or even removal of contract provisions inconsistent with them. For example, a landlord who contracts for a late fee that exceeds the statutory maximum loses the right to collect the fee at all.

NOTES:


## WHAT WERE THE TERMS OF THE CONTRACT?

**Best Evidence Rule:** When an action by a party is based on a right created by a written contract, and the content of that contract is in dispute, the party must either produce the contract or adequately explain why he is unable to do so.

**Parol Evidence Rule:** “The parol evidence rule . . . prohibits the admission of parol evidence to vary, add to, or contradict a written instrument. . . . In substantive terms, the rule is stated as follows: ‘Any or all parts of a transaction prior to or contemporaneous with a writing intended to record them finally are superseded and

made legally ineffective by the writing.'" Van Harris Realty, Inc. v. Coffey, 41 NC App 112.

**Verified Statement of Account:** G.S. 8-45 provides that in an action on an account for goods sold, rents, services rendered, or labor performed, or any oral contract for money loaned, a verified itemized statement of the account is admissible into evidence and is deemed correct unless disputed by the defendant.

"Itemized": describes each item with price and item number, if there is one.

"Verified": Accompanied by an affidavit from a person who (1) would be competent to testify at trial; (2) has personal knowledge of the particular account, or of the books and records of the business in general; and (3) swears that the account is correct and presently is owed by defendant to plaintiff.

**Business records exception to hearsay rule:** "Writings or records of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge are admissible if kept in the regular course of business and if it was the regular course of business to make that record, unless the source of information or circumstances of preparation indicate a lack of trustworthiness."

## WHAT DAMAGES IS PLAINTIFF ENTITLED TO?

Common damage items:

1. Direct damages (difference between value of promised performance and what it will cost now)
2. Incidental damages (costs of preparing to perform, those incurred in response to breach, those involved in minimizing injury)
3. Consequential damages (foreseeable damages resulting from breach)
4. Pre-judgment interest from date of breach (see Appendix)
5. Attorney fees (requires contract + authorizing statute; see Appendix)

Less common: Rescission (cancelling contract and returning all parties to original condition.

Special cases:

1. Failure to return property: FMV of property

2. Breach of warranty: difference between FMV of goods as warranted and FMV of goods received
3. Checks NSF: Amount of check + bank charge + processing fee + amount of check x 3 (\$100-\$500)

Be aware of law regulating duty to mitigate & liquidated damages provisions (see Appendix).

NOTES:


**GENERALIZED STATEMENT OF ESSENTIAL ELEMENTS IN CONTRACT CASES:**

Plaintiff in breach of contract case must prove each of the following essential elements by the greater weight of the evidence:

- \_\_\_ There was a contract (aka agreement, bargain, bargained-for exchange)
- \_\_\_ The defendant and I were the parties to the contract.
- \_\_\_ The terms of the contract were A, B, C, and D.
- \_\_\_ Defendant breached term A as follows: . . . .
- \_\_\_ The breach by defendant resulted in the my being damaged in this particular way.
- \_\_\_ The monetary amount of my damages is X, and here's how I calculated X.

## ESSENTIAL ELEMENTS AND COMMON DEFENSES IN SUMMARY EJECTMENT ACTIONS

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### BREACH OF A LEASE CONDITION

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Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- lease contains a forfeiture clause;
- tenant breached lease condition for which forfeiture is specified;
- LL followed procedure set out in lease for declaring a forfeiture and terminating the lease.

Most common defenses: failure to follow proper procedure, waiver

### FAILURE TO PAY RENT

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Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- terms of the lease related to obligation to pay rent;
- lease does NOT contain forfeiture clause;
- LL demanded that tenant pay rent on certain date;
- LL waited at least 10 days after demand to file this action;
- tenant has not yet paid the full amount due.

Most common defenses: failure to make proper demand and wait ten days, tender

### HOLDING OVER

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Plaintiff/LL must prove:

- existence of a landlord-tenant relationship;
- terms of lease related to duration;
- if lease is not for a fixed term, that proper notice was given of intent to terminate;
- tenant has not vacated.

Most common defenses: waiver, improper notice.

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# Checklist for Summary Ejectment Actions

*Service of process?*     Personal service     Substitute service     Registered mail     Posting

If none of the above, has  $\Delta$  appeared?     by filing an answer     by being present for trial

*Check complaint.*     Has it been signed by plaintiff or agent?

Is the owner of the property listed as the plaintiff?

Does  $\Delta$ 's address indicate county residence?

Is the rental property adequately identified and described? (Watch out for commercial property.)

If complaint indicates a written lease, ask  $\pi$  for a copy.

Does any information on the complaint suggest that either of the parties is a corporation? If so, remember rules about serving corporations and listing name correctly on complaint.

Does any information on the complaint suggest an issue about existence of landlord-tenant relationship?

Special attention to #'s 5 & 6: Is  $\pi$  seeking a money judgment? Was service by posting? Is the amount requested within your jurisdictional limit? Does  $\pi$  need to amend his complaint?

*Judgment on the pleadings?*  $\pi$  is entitled to judgment on the pleadings if all of the following are true:

Block #3 is checked on the complaint.

$\pi$  requests judgment on the pleadings in open court

$\Delta$  is not present in court

$\Delta$  has not filed an answer.

If  $\pi$  is entitled to judgment on the pleadings, you will not take testimony, but instead will enter judgment based on the facts set out in the complaint.

*If lease is written:*     Does it contain a forfeiture clause?



If lease is oral, listen for testimony about  duration of lease  amount of rent  date due

There are *four possible reasons* a landlord might be entitled to possession. Your next task is to figure out which one applies to this particular case. [Note: The  $\pi$  may not know enough about the law to know the answer to this, and the block checked on the complaint is not binding on the  $\pi$ .] After you identify the reason, turn to the appropriate checklist for that reason.

- Reason #1: The tenant has missed a rent payment. This is known as failure to pay rent.
- Reason #2: The lease has ended, and the tenant has not moved out. This is known as holding over.
- Reason #3: The tenant breached a condition of the lease **that the parties have agreed will allow the landlord to end the lease**. This is known as breach of a lease condition.
- Reason #4: The tenant has engaged in criminal activity.

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Listen to the testimony of both parties with the appropriate checklist in front of you. When you've decided whether the  $\pi$  or  $\Delta$  wins, the next step is *filling out your judgment form*:

- Be certain to copy the names of the parties and the address of the property correctly, and if you haven't already heard testimony to this effect, verify that the address on the complaint is in fact the rental property.
- Under **Findings**, indicate whether  $\pi$  won or lost, whether judgment was on pleadings, whether defendant was present, and whether service was by posting.
- In every case, fill out #3. Remember that your finding about the undisputed amount of rent due may differ from the damages you award.
- Under **Order #1**, note that judgment form refers to "premises described in complaint." Amend complaint if necessary to be certain correct premises are identified.
- If  $\pi$  did not seek money damages, do not check " 4." Instead, check " 5." and write in "Plaintiff did not seek money damages and so the court did not consider this issue."
- Check for local policy on awarding costs in cases in which there is no money judgment.
- For record-keeping purposes, always fill out the block titled Rate of Rent.
- If you award rent, determine daily rate and award up to date of judgment.
- Briefly explain judgment and right to appeal. Give both parties "What Happens After Small Claims Court" handout.

## The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

### What Does the Law Provide?

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The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
  - a. Unsafe wiring.
  - b. Unsafe flooring or steps.
  - c. Unsafe ceilings or roofs.
  - d. Unsafe chimneys or flues.
  - e. Lack of potable water.
  - f. Lack of operable locks on all doors leading to the outside.
  - g. Broken windows or lack of operable locks on all windows on the ground level.
  - h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
  - i. Lack of an operable toilet.
  - j. Lack of an operable bathtub or shower.
  - k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
  - l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

There is something a little confusing about this: some of these overlap. Rental premises might, for example, have a broken furnace that violates obligation #4 above, but the fact that it's

below-freezing in the house also means the premises are not habitable. The reason it matters is that different rules apply as far as the notice that's required. Let's look at that more closely.

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### Notice Requirements

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Only one of the obligations has a notice requirement written specifically into the statute: a landlord's obligations with regard to electrical, plumbing, and other "facilities and appliances" arise only if he has written notice that repair or maintenance is necessary. After receiving notice, the landlord is entitled to a "reasonable time" to make repairs. The exception to this requirement is when there is an emergency. If the shower handle breaks off and water is pouring out of the tub onto the floor, the law will not require the tenant to notify the landlord in writing and then wait a few days before imposing an obligation on the landlord to make a repair.

A common-sense rule applies to the other obligations: the tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations. If there's a leak in the roof, for example, the tenant must notify the landlord before it's reasonable to expect the landlord to repair it. In that case, however, oral notice is acceptable. It may be that in some cases, no notice at all is required, when the evidence demonstrates that the landlord actually knew of the problem (for example, there were holes in the floor before the tenant moved in).

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### Waiver

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The RRAA is a consumer-protection statute. Like other consumer protection legislation, the rights of the parties are not created by contract—or agreement—in these cases. Instead, the obligations of the landlord are imposed by law—even if the contract says nothing about them, **or even if the lease says the tenant waives those rights**. The statute is clear that a tenant doesn't waive his rights by signing a lease providing for waiver; nor does a tenant waive his rights to fit and habitable housing by agreeing to rent a place with obvious defects, even if the landlord specifically tells him about them. If a tenant rents a house without air conditioning,

that's fine. But if a tenant rents a house with air conditioning and then the air conditioning tears up, the landlord has a statutory obligation to repair the air conditioning, even if the lease says otherwise.

Sometimes a landlord will say, "I know the house wasn't up to code, but that's why the rent was so low. I agreed to let him live in the house for low rent, and he agreed that he would do some work on the house for me." The RRAA anticipated this, and sets out the following rule: An agreement between the landlord and tenant that the tenant will work on the house and be paid by the landlord is fine, so long as the agreement is entered into AFTER the lease agreement is complete, and the arrangement for payment by the landlord for the tenant's work is separate from the rent payment.

Sometimes a landlord will say, "The reason the house isn't up to code is that the tenant himself keeps damaging it." This allegation, if true, is a valid defense to the landlord's violation of the Act. The tenant also has obligations under the Act, including refraining from deliberately or negligently damaging any part of the premises.

### **Procedure:**

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The Act states that a tenant may enforce his rights under the Act by civil action, including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession." Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.
2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.
3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.
4. The tenant files an action for rent abatement.

### **Damages**

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The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

How are damages proven? No expert testimony is required. Witnesses may offer their opinion about the FRV of property, and the magistrate may also rely on his own experience in determining reasonable damages.

Are punitive damages allowed? No, punitive damages are not authorized in actions for breach of contract. Treble damages under G.S. 75-1.1 (prohibiting unfair or deceptive acts or practices affecting commerce) are available, however, if the tenant is able to demonstrate the essential elements of that claim.

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### **Retaliatory Eviction**

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G.S. 42-37.1 to 42-37.3: North Carolina has a strong public policy protecting tenants who exercise their rights to safe housing. When a landlord files an action for summary ejectment, a tenant may *defend* against ejectment by proving by the *greater weight of the evidence* that the landlord's action is *substantially in response* to one of several listed events that has occurred within the last 12 months.

*What are those events?*

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1. Asking landlord to make repairs;
2. Complaining to government agency about violation of law;
3. Formal complaint lodged against landlord by government agency;
4. Attempting to exercise legal rights under law or as provided in lease;
5. Organizing or participating in tenants' rights organization.

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## *Remedy*

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If a tenant successfully demonstrates retaliatory eviction, the magistrate must deny the landlord's request for possession (although the landlord is entitled to back rent in any case). Furthermore, a tenant may have an independent action for an unfair or deceptive act or practice (with treble damages) under G.S. 75-1.1.

Note that this law is based on public policy. It won't surprise you, then, to learn that the statute specifically provides that any attempted waiver by the tenant of his rights under this law is void.

What's the obvious concern here? That a tenant will seek the protection of this law without really deserving it—in bad faith. If my lease has a forfeiture clause related to keep pets, and I get caught with my dog when the landlord drops by, I might quickly begin to organize a tenant's rights organization. That way, I think, if the landlord tries to evict me, I'll be able to claim it was because of my organizational efforts, and not the real reason—that I have a dog.

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## *Rebuttal by the Landlord*

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When a tenant defends in an action for summary ejectment by asserting that the landlord is actually retaliating against him or her for an action protected under the statute, the landlord may rebut that argument by showing one of the following things:

1. Tenant failed to pay rent or otherwise broke the lease in a manner that allows eviction, and the violation of the lease is the reason for the eviction.
2. Tenant is holding over after termination of lease for definite period with no option to renew.
3. The violations the tenant complained about were caused by willful or negligent act of tenant.
4. Displacement of tenant is required in order to comply with housing code.
5. Landlord had given tenant a good-faith notice of termination before protected conduct occurred
6. Landlord plans in good faith to do one of the following after terminating tenancy:
  - 1) Live there himself;
  - 2) Demolish the premises, or make major alterations;
  - 3) Terminate use of premises as a dwelling for at least 6 months.

## Self-Help Eviction

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Back in the old days, a landlord who wished to evict a tenant simply changed the locks, or put their property out on the sidewalk. In 1981 the North Carolina General Assembly put G.S. 42-25.6 on the statute books:

“It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed, or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in [the remaining provisions of the statute].”

--Note: This rule applies only to *residential tenancies*. Self-help eviction is perfectly permissible in commercial lease situations.

--Note also the reference to “constructively . . . removed.” The law applies not only to actual removal of a tenant from rental premises, but also to actions taken by a landlord to make continued occupancy unpleasant: turning off utilities would be the most common example.

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The General Assembly took aim at another common practice in 1981:

“It is the public policy of the State of North Carolina that distress and distraint are prohibited, and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with [other provisions of the statute].”

This law put an end to the practice of some landlords of either seizing property owned by the tenant to compensate for unpaid rent or refusing to release a tenant’s property until that tenant paid past-due rent. As you well know (since you get hundreds of questions a year about it), landlords are now required to comply with specific legal requirements in dealing with property left behind by tenants.

As is typical of laws based on public policy, the statute provides that any attempted waiver of the legal prohibition against self-help eviction is void.

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## *Tenant's Remedies*

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What remedies does a tenant have when a landlord violates the prohibition against self-help eviction?

The law provides that a tenant in this circumstance is

“entitled to recover possession or to terminate his lease and the . . . landlord. . . . shall be liable to the tenant for damages caused by the tenant’s removal or attempted removal.”

Further, if a landlord takes possession of a tenant’s personal property, or interferes with a tenant’s access to his personal property, the statute provides that a tenant is entitled to recover possession of the property, or compensation for its value (as in an action for conversion). In addition, a landlord is liable for actual damages caused by his wrongful interference.

In addition to the actions authorized by this statute, our courts have held that a tenant may bring an action for unfair or deceptive acts or practices when a landlord violates these provisions.

## **Other Tenants’ Rights Statutes**

*Security deposit* (pp. 189-190): In residential leases, maximum security deposit established by statute (month-to-month maximum is 1 ½ months rent). Specifies permitted uses of security deposit, requires accounting by landlord within 30 (extension to 60 possible) days. Failure to do so, if willful, results in loss of deposit altogether in addition to responsibility for tenant’s attorney fees.

*Late fees* (pp. 169-170): In residential leases, maximum established by statute (GS 42-46). Fee must be contained in written contract, payable only if rent is more than 5 days late. Violation of statute results in loss of fee.

*Administrative fees* .(Small Claims Law is out-of-date on this point): GS 42-46 provides for specific fees for various stages of litigation, which will be an issue before a magistrate infrequently. Any fees associated with litigation not in compliance with statute are void as against public policy.



## Small Group Discussion: Sharing Ideas and Strategies

Our goal this afternoon is to revolve through small group discussions devoted to exploring several topics in some depth for a limited period of time. For each of the three sessions, follow this procedure:

1. Select a note-taker/spokesperson. (Your discussion leader has been pre-selected.)
2. The discussion leader's first task is to solicit input about which **two** sub-topics your group will discuss and then make a decision. Let me repeat: the discussion leader should select **two** of the sub-topics for each discussion. **Not all of them.** Two. Two of them. Just two. The purpose here is to encourage an in-depth consideration of two sub-topics in each discussion, with everyone contributing.
3. Your discussion leader is responsible for keeping you on track and has been authorized to utilize lethal force if that's what it takes. Remember that everyone should participate, and that courteous-but-strong disagreement is a GOOD thing.
4. Your note-taker/spokesperson is responsible for recording the opinions and ideas expressed and being prepared to share them when we reconvene. Beginning with which TWO of the sub-topics you selected, for each discussion.

| Schedule     |                        |
|--------------|------------------------|
| 12:45 – 1:35 | Discussion of Topic #1 |
| 1:45 – 2:35  | Discussion of Topic #2 |
| 2:45 – 3:35  | Discussion of Topic #3 |

| Group #1  | Group #2 | Group #3 |
|-----------|----------|----------|
| Hart      | Pearce   | Vann     |
| Antonelli | Morrison | Goodwin  |
| Avery     | Long     | Wood     |
| Ray       | Evans    | Hollar   |
| Wike      | Prelipp  | Jones    |
| Hodges    |          | Wilkins  |
|           |          |          |

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□ Discussion leader:

Spokesperson:

*Topic # 1: Overall discussion topic is whether, and to what extent, a small claims magistrate should modify traditional courtroom practices and enforcement of legal rules when holding small claims court? If so, in what ways?*

*Select two of the following sub-topics to discuss in light of the above topic:*

- ❖ Adaptations for pro se parties who are not knowledgeable about the law
- ❖ Treatment of attorneys who are knowledgeable about the law, but not about small claims court and procedure
- ❖ Treatment of plaintiffs who frequently appear in small claims court
- ❖ Dealing with cantankerous people whose manner is challenging to the court
- ❖ How active a role should the judge play in
  - eliciting evidence ?
  - assisting plaintiffs with identifying essential elements they must prove to win?
  - informing parties about available legal defenses?
- ❖ How strictly should the rules of evidence be enforced? Are some rules more important than others? Should a judge follow a different practice when an attorney is present? When both parties are represented?
- ❖ What are the advantages and disadvantages of following the traditional practice for order of presentation? Are there modifications in the way evidence is presented that work better in small claims court? Are there disadvantages to these modifications?

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Discussion leader:

Spokesperson:

*Topic # 2: Overall discussion topic is the judge's role in conducting small claims court. How important is judicial style and demeanor, and what factors influence litigant's perceptions of the judge?*

*Select two of the following sub-topics to discuss in light of the above topic:*

- ❖ Is it important, or even appropriate, for the judge to attempt to mediate a dispute so as to help the parties reach a mutually beneficial agreement?
- ❖ Is it important, or even appropriate, for the judge to point out or comment on a party's out-of-court behavior or flawed decision-making?
- ❖ Is it important, or even appropriate, for the judge to have as a first priority the consistent enforcement of procedural rules for all parties?
- ❖ What is the proper balance between reaching a fair result and reaching a result consistent with the strict application of legal principles?
- ❖ Which of the following attributes are **most** important, in terms of the parties' perceptions of the judge?

|               |               |                           |
|---------------|---------------|---------------------------|
| Professional  | Friendly      | Neutral & Detached        |
| Helpful       | Business-like | Approachable              |
| Kind          | Strict        | In Control                |
| Formal        | Informal      | A Person Like Anyone Else |
| Knowledgeable | Efficient     | Fair                      |

- ❖ What specific aspects of a judge's demeanor and behavior are likely to influence those attributes identified by the group as most important?

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□ Discussion leader:

- Spokesperson:

*Topic #3: Overall discussion topic for this session is the impact of special circumstances on the organization of your courtroom, the way you hold court, and the development of specific policies and procedures for your county. Are there changes you might make that would help you accomplish your goals?*

*Select two of the following sub-topics to discuss in light of the above topic:*

- ❖ How to best deal with ex parte contact and other ethical concerns arising out of holding court in a small community
- ❖ Is the need for formality reduced—or is it simply altogether inappropriate—in a county in which small claims court is held infrequently and the number of litigants appearing on any given day is small?
- ❖ How to best deal with having many cases calendared, (a typical concern of urban counties). Who should be allowed to “go first”?
- ❖ Whether and how to coordinate with other magistrates in a county in which more than one magistrate holds court
- ❖ How to keep current on law and practice as a magistrate who holds court infrequently (for example, filling in for the regular small claims magistrate)
- ❖ How should the need for consistency in the law be balanced against each magistrate’s role as an independent judicial official?
- ❖ Is magistrate-shopping a bad thing? Is it inevitable? Are there steps that should be taken to reduce it?
- ❖ Is it important—or even appropriate—for magistrates to discuss litigants who have appeared in court previously? If a magistrate continues a case, should it be re-calendared in front of the same magistrate? A different magistrate? If the latter, should there be communication between the first judge and the second?