

# Special Topics in Small Claims

## Contracts

### Module 1: Introduction

**Objectives** --By the end of this session, you will be able to:

- list the steps in analyzing a contract problem;
- easily find common topics in *Small Claims Law*; and
- identify gaps in your knowledge of general contract law.

**Resource Materials**—The following resource materials will be used for this section:

- A Basic Introduction to Contract Law
- How to Analyze a Contracts Case
- Checklist for Contracts Cases in Small Claims Court
- Contracts: Using the Textbook

**Exercises**—The following exercises will be completed in this section:

- Contracts: Self-Assessment
- Using the Textbook in a Contracts Case

# A Basic Introduction to Contract Law

Although contract law can become extremely complicated, at heart it is really very simple. A contract is nothing more than an agreement between two or more people that each will do something in exchange for receiving something. When the legal system is drawn into a dispute about a contract, the same four questions must be considered, regardless of whether the contract has hundreds of pages of fine print, or consists of a few words and a handshake. Those questions are:

1. Is there a contract?
2. What are the terms of the contract?
3. Is this contract one that the law will enforce?
4. What damages is the complaining party entitled to?

## Is there a contract?

When it comes to answering this question, your first reaction is often correct. If the evidence establishes that the parties came to an agreement, and that, under that agreement, each party gives something up and gets something in return, there was a contract.

### *Examples: Is there a contract?*

Read each of the brief examples below. After you have read each example, determine whether you believe a contract existed in the given scenario. Circle the answer that corresponds to your belief. Answers and explanations are available on the next page.

1. I promise to give my daughter a pony for her birthday.  
Contract? Yes No
2. John and I agree that I will pay him \$35 if he will cut my grass.  
Contract? Yes No
3. I make an appointment to see my doctor, and she diagnoses a cold.  
Contract? Yes No
4. I put an ad in the paper saying “sofa for sale—best offer.” Before Phil shows up at my door saying he’d like to buy it, though, I change my mind.  
Contract? Yes No

5. I agree to pay Sam \$1500 for his gently-used computer, but decide on the way to pick it up that I'd be better off buying a new one.

Contract? Yes No

6. I agree to pay Sam \$1500 for his gently-used computer, but discover after I get home with it that the same computer costs \$400 if I buy it new.

Contract? Yes No

### ***Answers and Explanations: Is there a contract?***

1. No contract.

I promised to make a gift, but my daughter didn't give up anything—there was no agreement, or bargain, here. It would be different, though, if I had said, "If you do all the work in the garden this summer, I'll buy you a pony."

2. Contract.

I agreed to give up money for the benefit of getting my grass cut, and John agreed to give up his leisure time for the benefit of being paid.

3. Contract.

Even though there was no negotiation between me and my doctor, it is common knowledge throughout our society that when you seek out treatment by a doctor, you will be charged a reasonable fee. There was agreement here, but it was *implied* from our behavior, rather than being a verbal agreement.

4. No contract.

By putting an ad in the paper, I indicated my willingness to consider offers for the sofa, but I didn't enter into an agreement with Phil. The result might be different, though, if my ad said, "I'll sell my sofa to the first person who shows up at my door with \$150 cash." In that case, I've made an offer, and indicated that a contract will come into existence if Phil shows up at my door with \$150. If I change my mind, I will have to withdraw my offer before Phil accepts—I may need to put a sign in my front yard saying, "I withdraw my offer. Keep your money. I love my sofa."

5. Contract.

Because Sam and I have entered into an agreement, in which I give up money and get a computer, and he gives up his computer and gets money, I've lost the right to change my mind. Even though the actual performance of the contract has not yet occurred, the agreement has, and so a contract has been formed.

6. Contract.

Whether a bargain is a good one or a bad one doesn't affect whether a contract has been formed. (Although in some extreme cases, it may affect whether the law will enforce that contract.) Freedom of contract means that we are all free to make a bad bargain.

Did using common sense help you answer these questions correctly? Use a highlighter to mark any that you missed, and be certain that you understand the legal principle that determines the correct answer. Be sure to ask me if you're puzzled.

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Sometimes the question for the magistrate to determine is WHO is liable under the contract. A common situation involves spouses who together enter into a contract, promising to pay the amount owed.

**Example 1:** John and Jane have been married for a little over a year, and they've decided it's time to buy furniture. They each sign an installment sales contract provided for 12 easy monthly payments of \$135. If they fail to pay the amount owed, the furniture store has a choice under the legal principle of **joint and several liability**. It can sue John and Jane together, or either of them separately. If the store sues one of them separately, it can sue for the entire amount due—each of them has promised to pay the entire amount due.

Change the facts: John buys the furniture himself, is the only person who signs the agreement, gets tired of Jane, and moves to Canada. Can the furniture store sue Jane? Check the end of this module for an answer and explanation.

## What are the terms of the contract?

Before you can decide whether a contract has been breached, you have to know what the contract requires each party to do. The details about the agreement between the parties are called the **terms** of the contract.

Judges are happiest when the terms of a contract are clear—written, preferably, and detailed enough, without being so complicated that it's hard to understand. All too often, though, it's not easy to determine exactly what the parties agreed to. In trying to figure that out, says the law, judges should have as a guiding beacon the question of what the parties **intended**.

Sometimes it is difficult to identify the terms of a contract because the agreement between the parties was oral, and the evidence is inconsistent about what the

agreement was. In these cases, an important legal principle helps a judge decide what to do: The party who has the burden of proof (usually the plaintiff) has the responsibility of producing evidence sufficient to persuade you that the terms of the contract were most likely what he says they were. If you believe him enough to decide that his version is most likely (“by the greater weight of the evidence”), then you include that term in the contract. That term does not become a part of the contract unless you conclude that it is not only possible or plausible, but in fact most likely.

**Example 2:** John is suing for money owed, saying that he lent Tom \$50 three months ago, and that Tom said he would repay the loan with interest, but has never paid him back. Tom says he borrowed the money to buy textbooks for college, and that he and John agreed that he would pay him back after this semester, when Tom begins working at his summer job. You’re not sure who to believe. What do you do? Check the end of this module for an answer and explanation.

Sometimes the problem is not that the evidence about the terms is conflicting, but instead that there was no discussion at all about a term. In this case, the law sometimes fills in the blank; sometimes it doesn’t. The rules about missing terms are complicated, and a specific case may present a situation in which you need to consult reference material or ask for help. In many instances, though, your common sense will lead you to a correct result. When it is obvious to you from the evidence that a term was not important to either party, or was obvious to both parties, the legal solution is usually to fill in the blank.

**Example 3:** I walk by a store and see a black sweater on a mannequin in the window. The mannequin is on a table containing many identical sweaters. The clerk notices my interest and asks if I would like to buy a sweater. I answer, “Yes—that’s a great looking sweater.” She boxes it up for me, and I pay for it, but when I open the box at home, I discover a polka-dot sweater. The sales clerk and I did not explicitly state that a term of the contract was that the sweater in the box would be identical to the sweater on the table. Nevertheless, that was an **implied** term of the contract, based on the evidence.

Now imagine that the same facts are true, except this time the folded sweaters on the table are variously colored and patterned. The clerk says, “Would you like to pick one out?” and I respond, “No, thanks. Just box one up for me.” Can you conclude from this evidence that one term of the contract was that the sweater would be black? Check the end of this module for an answer and explanation.

There is a special rule of evidence about deciding what the terms of a contract are. It’s called the **parol evidence rule**, which makes it sound very technical, but it

actually amounts to common sense. The rule says that if a written contract is clear, but one party wants to introduce evidence that the verbal agreement between the parties was different from what is written down, the judge must base his or her decision on what is written down. This is the case even if the given oral evidence is clearly true. The logic, of course, is that what is written down is more reliable evidence than recollections about what people said. Also, the law wants to encourage people to write their agreements down, so this rule is partially designed to support that encouragement. There are a couple of exceptions to the parol evidence rule, though. See if you can figure them out for the following examples:

**Example 4 Basic Facts:** John and Mark sign a written agreement that says, “I, Mark, will pay John \$50 for performing yard work on my yard. John will complete this work between the 1<sup>st</sup> and the 5<sup>th</sup> of this month, and I will pay him upon completion.”

**Question 1:** John has brought an action for money owed against Mark, because Mark refused to pay him. Mark says that’s because John didn’t trim the shrubbery. John wants to introduce evidence that, at the time they entered the agreement, he asked Mark what he meant by “yard work” and Mark said, “Mowing and raking the grass, edging the lawn, and using the weed eater in places where you can’t get the mower.” In this case, the judge can consider John’s testimony. Can you figure out why?

**Question 2:** In this situation, John and Mark have entered into the same written agreement, but this time Mark wants to testify that, two weeks after they signed the contract, he asked John to include trimming the shrubbery, and John agreed, with the understanding that the time for his performance would be increased from 5 days to 10. The judge can consider this testimony. Can you figure out why?

*Answers and explanations for both of the questions here can be found at the end of this module.*

There’s another situation in which a contract may have important terms even though the parties didn’t discuss them, much less agree to them. These are very similar to those discussed above, in which an unstated term was obvious to both parties, and they come up only in contracts for the sale of goods. These special terms are called **implied warranties**, and there are two of them:

The **implied warranty of merchantability** is a term that says, in essence, if you buy a product, it will do what it is ordinarily expected to do. An iron will get hot; a refrigerator will get cold. It doesn’t matter that the contract doesn’t say that explicitly (although often the contract will, and that’s called an express warranty, or guarantee). If a person buys a new television set that doesn’t work, he has a legal claim that an implied term of the contract has been breached—the term that says the TV set I’m buying from you will work.

The ***implied warranty of fitness for a particular purpose*** is another term that incorporates a buyer's reasonable assumption into a contract for the sale of goods. That assumption is that purchased goods will be appropriate for a specified use if the seller knows both (1) about that special purpose, and (2) that the buyer is relying on the seller's skill or judgment in selecting suitable goods to purchase. If I go to a store that sells running shoes and tell the clerk I'm going to run in the Boston Marathon, and I buy a pair of colorful plastic sandals based on the advice of the salesman, I have a legal claim that an implied term of the contract has been breached—the term that says these shoes will be suited for marathon running.

The rules about warranties are the first examples we've discussed of an important aspect of contract law: consumer protection legislation. This is a subject we'll return to in a few pages. For now, just notice that we sometimes write a term into (or out of) a contract, despite our society's commitment to the ideal of freedom of contract, because of a concern that consumers might otherwise be exploited by more sophisticated sellers. Implied warranties can often be at odds with the rigid, literal ideas many people have about contract law, and it can take some time to fully understand them.

There are exceptions and qualifications to the rules about implied warranties. One of the best known is that a seller may sell something "as-is" and the sale will be free of warranty. If you are confronted with a case involving a technical legal dispute about a question such as whether an attempted waiver of warranty was legally effective, or some similar complex question, it would be best to reserve judgment and consult reference material or otherwise seek assistance.

## **Is the contract one that the law will enforce?**

In discussing the questions before this, I have indicated on several occasions that common sense is a generally reliable guide in arriving at a correct legal answer. That statement is much less true when it comes to answering this question. While there are sound reasons for the legal principles to which we will now turn our attention, their application in particular cases may sometimes (although not always) seem to contradict common sense. The usual reason for this is that the principle is based on a policy decision made by our society that works well most of the time, but may yield surprising or unfair results in a particular case.

Remember: this situation comes up after you have decided that the parties have entered into a contract, you have ascertained its terms, and you have determined that one party has breached the contract. Under what circumstances might the court, in this situation, nevertheless refuse to give the complaining party a remedy?

First, the law will usually refuse to enforce a contract in which one of the parties was not able to give legal consent. Stop here and ask yourself: what is an example of a party not able to give legal consent to a contract?

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If you said minors and persons who are mentally incompetent, you were correct. The general rule is that a contract by a minor or mentally incompetent person is not enforceable **against that person**. [Note that the law is perfectly willing to enforce a contract against another person on behalf of a minor or incompetent—we don't worry about protecting the interests of those who can protect themselves.] Similarly, a person who contracts because he has been tricked or misled, or who has been coerced in an illegal way, does not truly consent to the contract, and the law will not hold him to it. This is one of those general principles that have a lot of exceptions. Let's look at the rule, and at some of the exceptions, in some examples.

***Examples: Is the contract one that the law will enforce?***

Consider the following examples and answer the question in each. Answers and explanations for all questions are available at the end of this module.

**Example 5:** John is 17 and looks 22. He bought a car from Fast Eddie, and he assured Fast Eddie that he's over 18. After he wrecks the car, he wants to return it, and get a complete refund of his money. Can he?

**Example 6:** Jane is a quiet woman with a sweet smile who gives no outward sign that she suffers from Alzheimer's and has been declared mentally incompetent. She goes to Sears and buys a refrigerator for \$900—one of the less expensive ones on the sales floor. She has purchased 3 other refrigerators this week. Sears wants to enforce its contract against Jane. Can it?

**Example 7:** Susan signed a contract with Better Bodies Gym as part of her New Year's resolution to finally knock off some weight, but like most of us, she's thought better of it now. Better Bodies Gym has sued Susan in small claims court for money owed on the contract, but Susan claims that Better Bodies Gym should not be allowed to enforce the contract. She says they used glitzy machinery and a cool smoothie bar to talk her into signing a contract when they know very well that 9 out of 10 people who sign up stop coming within 6 weeks. Susan says she was tricked. Can Better Bodies Gym enforce the contract?

**Example 8:** Robbie Robber kidnapped sweet Petunia, Abe's beloved pug dog, and demanded \$1,000 for ransom. Not only did Abe pay, but he also solemnly swore that he wouldn't cooperate in any prosecution of Robbie. Robbie says that because



Abe breached the contract, he's been severely injured—he's out dog and money, and IN jail! Abe doesn't dispute that he made the promise to Robbie, and agrees as well that he broke it. Does Robbie have a good case?

**Example 9:** After showing Miranda several sheets of fine print and explaining them to her, Snidely closes the deal on the rental furniture by asking her to sign a rental contract that he has kept concealed until now, covering the contents with other papers and talking quickly so Miranda doesn't notice. Snidely has filed an action against Miranda, but she says she never laid eyes on the contract that bears her signature, and you believe her. Is the contract enforceable?

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There are three other common reasons for a court to refuse to enforce a contract. Although they have legal-sounding names, they're pretty straightforward. As a general rule, these reasons are **affirmative defenses**, which means the defendant is responsible for bringing them to the attention of the judge and persuading the judge of their validity.

**The Statute of Frauds:** Some contracts have to be written, dated, and signed by the debtor to be enforceable. The ones you are likely to see most often are retail installment sales contracts when the seller is furnishing the buyer credit so that he can buy the goods or services.

**The Statute of Limitations:** There are legal time limits within which a person must bring a lawsuit or else lose the right to do so. There are three important rules that come up frequently in this defense:

- The statute of limitations for contracts for services or money lent is three years.
- The statute of limitations for contracts for the sale of goods is four years.
- In an action on an account, a part payment starts the statute of limitations all over again on the balance due.

**Unconscionability:** Remember when I said earlier that freedom of contract includes the right to make a bad deal? Sometimes a deal is SO bad, and the circumstances surrounding it are so troublesome, that the law refuses to enforce a contract. One judge described this kind of contract as one that “shocks the conscience.” When a contract is made between two parties who are very unequal in terms of their bargaining power and sophistication, and the contract itself strikes almost everyone as extremely unfair, the law simply refuses to lend its support and approval by

enforcing it. Instead, the contract—or often one or more of the terms of the contract—is labeled “unconscionable” and not enforced.

## What are the damages?

Assume that you’ve found a contract, identified its terms, and determined that the contract has been breached. How do you decide what to award the plaintiff? What is the measure of damages?

**General rule:** Amount of money owed plus interest from date of breach.

Special measure of damages in actions for **breach of warranty** term: Difference between fair market value of goods received and goods as warranted.

**Interest:** In all breach of contract actions, the law awards interest for the time period between the date of breach and the date of judgment. If the contract itself contains a rate of interest, that interest rate will apply (so long as it does not exceed the allowable rate under the law. See chart in binder.) If the contract does not contain an interest rate, the rate is set by statute at 8% (sometimes referred to as “the legal rate.”).

**Attorney fees** are not usually allowed as part of damages. In the case of contracts, a notable exception includes action on a note or other evidence of debt. Amount is at contract rate up to maximum of 15% of outstanding balance, and there is a notice provision that allows debtor to avoid attorney fees by paying off debt.

To consider how this works in practice, read through the following example. Answers and explanations for this example are available in the next section.

**Example 10:** I buy a pure-bred puppy from Super Intelligent Pets. I tell the salesperson I want the smartest dog in the store, and he tells me about the special Doggy IQ Test that all their dogs must take before being matched with an equally-smart owner. I agree to pay \$500 over a one-year period, with interest at 10%. I also agree that if SIP has to take me to court, I will pay an attorney fee of \$200. After I take Einstein home, I discover he’s dumb as dirt and I stop paying SIP. SIP sues me for breach of contract, and I counter-sue for breach of implied warranty of fitness for a particular purpose.

**Question 1:** Assume you rule in favor of SIP and against me on my counterclaim. What will the damages consist of? [I’m not looking for a specific amount of money—just tell me in words what you’d be thinking about.]

**Question 2:** Assume you rule against SIP and for me. How will you determine damages?

## Answers and Explanations

**Example 1** [Joint and several liability]: John buys the furniture himself, is the only one who signs the agreement, gets tired of Jane, and moves to Canada. Can the furniture store sue Jane?

*Answer:* No.

*Explanation:* Jane did not enter into the agreement with the furniture store, so she was not a party to the contract. Just being married to John doesn't mean Jane is legally responsible for all his agreements.

**Example 2** [Conflicting evidence of terms of contract]: John is suing for money owed, saying that he lent Tom \$50 3 months ago, and that Tom said he would repay the loan with interest, but has never paid him back. Tom says he borrowed the money to buy textbooks for college, and that he and John agreed that he would pay him back after this semester, when Tom begins working at his summer job. You're not sure who to believe. What do you do?

*Answer:* Dismiss the case.

*Explanation:* Tom has offered a plausible alternative story, and the credibility of the parties is such that you don't know who is telling the truth. If John has failed to persuade you that he is most likely the person whose testimony is accurate, he has failed to carry his burden of proof and the case must be dismissed. Before you become too concerned that this result may be unfair to John, remind yourself that John could have (and should have) protected himself by getting Tom's agreement in writing.

**Example 3** [Determining contract terms]: This time the folded sweaters on the table are variously colored and patterned. The clerk says, "Would you like to pick one out?" and I respond, "No, thanks. Just box one up for me." Can you conclude from this evidence that one term of the contract was that the sweater would be black?

*Answer:* No.

*Explanation:* Since the display was varied, and I refused to select a particular sweater, there is no evidence to support a finding that the color of the sweater was a term of this particular contract.

**Example 4** [Parol evidence rule]: John and Mark sign a written agreement that says, "I, Mark, will pay John \$50 for performing yard work on my yard. John will complete this work between the 1<sup>st</sup> and the 5<sup>th</sup> each month, and I will pay him upon completion."

*Question 1:* John has brought an action for money owed against Mark, because Mark refused to pay him. Mark says that's because John didn't trim the shrubbery. John wants to introduce evidence that, at the time they entered the agreement, he asked Mark what he meant by "yard work" and Mark said, "Mowing and raking the grass, edging the lawn, and using the weedeater in places where you can't get the mower." In this case, the judge can consider John's testimony. Can you figure out why?

*Explanation:* The term in the contract that refers to "yard work" is not clear—we don't know what the parties meant when they included that in the contract. Evidence about discussions they had before or at the time they entered into the agreement may be considered by the judge in deciding what the term means. The judge may or may not believe John's testimony, of course, but this is an example of a case when the parol evidence rule does not apply to prevent the judge from even hearing the evidence. Rule: Parol evidence is properly admitted to explain a term in the contract that is ambiguous.

*Question 2:* In this situation, John and Mark have entered into the same written agreement, but this time Mark wants to testify that, two weeks after they signed the contract, he asked John to include trimming the shrubbery, and John agreed, with the understanding that the time for his performance would be increased from 5 days to 10. The judge can consider this testimony. Can you figure out why?

*Explanation:* This evidence is not about the original agreement, but about a change in the agreement that happened **later**. Obviously, we can't expect later agreements (called *modifications*) to be included in the original writing. The parol evidence rule applies only to evidence about events that happened before or at the same time as the contract.

**Example 5** [Reasons not to enforce a contract]:

John is 17 and looks 22. He bought a car from Fast Eddie, and he assured Fast Eddie that he's over 18. After he wrecks the car, he wants to return it, and get a complete refund of his money. Can he?

*Answer:* Yes.

*Explanation:* John is a minor and had no legal ability to enter into this contract—as far as the law is concerned, John can enforce it against Fast Eddie if he wants to, but he can also change his mind and cancel the contract at any point. If this seems unfair to you, remember that it expresses a social policy in favor of making adults like Fast Eddie think twice before entering into a contract with a young person who may not be mature enough to make a good business decision.

**Example 6** [Reasons not to enforce a contract]: Jane is a quiet woman with a sweet smile who gives no outward sign that she suffers from Alzheimer's and has been declared mentally incompetent. She goes to Sears and buys a refrigerator for \$900—one of the less expensive ones on the sales floor. She has purchased 3 other refrigerators this week. Sears wants to enforce its contract against Jane. Can it?

*Answer:* Yes.

*Explanation:* We have a slightly different rule for contracts by people who are mentally incompetent, perhaps because the law realizes that, unlike young people, there may be no way for a merchant to tell if Jane is capable of giving legal consent. If Sears had no reason to know that Jane was incompetent, and there's no evidence that the contract was unfair or that Sears was taking advantage of Janet, courts will enforce the contract.

**Example 7** [Reasons not to enforce a contract]: Susan signed a contract with Better Bodies Gym as part of her New Year's resolution to finally knock off some weight, but like most of us, she's thought better of it now. Better Bodies Gym has sued Susan in small claims court for money owed on the contract, but Susan claims that Better Bodies Gym should not be allowed to enforce the contract. She says they used glitzy machinery and a cool smoothie bar to talk her into signing a contract when they know very well that 9 out of 10 people who sign up stop coming within 6 weeks. Susan says she was tricked. Can Better Bodies Gym enforce the contract?

*Answer:* Yes.

*Explanation:* This is the classic example of a bad bargain. Susan was not deceived by Better Bodies Gym; the company may not have provided her with facts about other customers that might have changed her mind, but it is under no duty to do so. The law distinguishes between active deception and a passive failure to inform. This situation reminds us of the old, and still often good, rule: Let the buyer beware.

**Example 8** [Reasons not to enforce a contract]: Robbie Robber kidnapped Abe's sweet Petunia pug dog and demanded \$1,000 for ransom. Not only did Abe pay, but he also solemnly swore that he wouldn't cooperate in any prosecution of Robbie. Robbie says that because Abe breached the contract, he's been severely injured—he's out dog and money, and IN jail! Abe doesn't dispute that he made the

promise to Robbie, and agrees as well that he broke it. Does Robbie have a good case?

*Answer:* I sure hope you said no.

*Explanation:* There are several problems with this contract, in addition to the main point of the question, which is that contracts made as a result of coercion or extortion are not enforceable. Neither are illegal contracts, of course. Finally, there was no real exchange here. Robbie gave up Petunia, but he had no right to her to begin with—she belonged to Abe!

**Example 9** [Reasons not to enforce a contract]: After showing Miranda several sheets of fine print and explaining them to her, Snidely closes the deal on the rental furniture by asking her to sign a rental contract that he has kept concealed until now, covering the contents with other papers and talking quickly so Miranda doesn't notice. Snidely has filed an action against Miranda, but she says she never laid eyes on the contract that bears her signature, and you believe her. Is the contract enforceable?

*Answer:* No.

*Explanation:* This is an example of a contract in which there was no real consent—Miranda's signature was obtained by a trick, and so it is not a meaningful sign that she agreed to this contract.

**Example 10** [Determining damages]: I buy a pure-bred puppy from Super Intelligent Pets. I tell the salesperson I want the smartest dog in the store, and he tells me about the special Doggy IQ Test that all their dogs must take before being matched with an equally-smart owner. I agree to pay \$500 over a one-year period, with interest at 10%. I also agree that if SIP has to take me to court, I will pay an attorney fee of \$200. After I take Einstein home, I discover he's dumb as dirt and I stop paying SIP. SIP sues me for breach of contract, and I counter-sue for breach of implied warranty of fitness for a particular purpose.

*Question 1:* Assume you rule in favor of SIP and against me on my counterclaim. What will the damages consist of? [I'm not looking for a specific amount of money—just tell me in words what you'd be thinking about.]

*Answer:* SIP is entitled to whatever portion of \$500 I haven't yet paid, with 10% interest up to the date of judgment. In addition, assuming SIP properly gave me notice of its intent to seek attorney fees, I will have to pay attorney fees, but the

\$200 fee exceeds the amount allowed by statute. Instead, I only have to pay 15% of the outstanding balance.

*Question 2:* Assume you rule against SIP and for me. How will you determine damages?

*Answer:* Damages on a breach of warranty claim are determined based on the difference between the fair market value of Einstein as warranted and as she actually is. It will be my burden to prove to you the current fair market value of a super-intelligent puppy of Einstein's breed and the usual FMV. I will be entitled to that amount, plus interest of 8% (the legal rate, which applies unless a contract specifies a different rate) from the date of breach (which in this case would be the same as the date of sale).

# How to Analyze a Contracts Case

- **Is there a contract?**
- **Who are the parties to the contract?**
- **What are its terms?**
- **Did defendant breach the contract?**
- **What damages is plaintiff entitled to recover?**



# Another Way to Think About It

The plaintiff has the burden of proving by the greater weight of the evidence each of the following essential elements:

- \_\_\_ That there was a contract
  
- \_\_\_ That plaintiff and defendant were parties to the contract.
  
- \_\_\_ That the terms of the contract were A, B, C, etc.
  
- \_\_\_ The defendant breached term A as follows: ...
  
- \_\_\_ The breach by defendant resulted in my being damaged in this particular way. . .
  
- \_\_\_ The monetary amount of my damages is X, and here's how I calculated X. . .

# Checklist for Contracts Cases in Small Claims Court

Does this case involve an agreement between  $\pi$  and  $\Delta$ ?

Who are the parties to the contract?

If parties are not identical to people who entered into contract, why not?

- Agency
- Guarantors
- Joint and Several Liability
- Husbands, Wives, and Kids

What are the terms of the agreement?

*If the agreement is in writing, ask for a copy. Read it carefully. Are the terms clear?*

*If the agreement is not in writing, listen to the testimony about the terms.*

- Do the parties agree about the terms of their agreement?
- If they don't agree, what specifically do they disagree about? What does  $\pi$  contend? In the case of a disagreement, the magistrate must decide the terms, remembering that the party seeking to enforce the contract has the B/P on its terms.
- Are there terms left out? Assuming the intent to contract is clear, the magistrate "fills in the blanks" based on evidence about what is usual and reasonable, to implement the probable intention of the parties.

What rules of evidence should the magistrate be mindful of in determining the terms?

- If a contract is written, the best evidence of what the parties agreed to is the written contract.
- If a contract is written, evidence about what the parties said before signing the contract is not relevant unless meaning is unclear (*parol evidence rule.*)
- In an action on an account, a verified itemized statement of the account is sufficient to prove that  $\Delta$  owes that amount of money in the absence of evidence to the contrary.

**Are there additional or different terms written into the agreement by the law?**

- In contracts for the sale of goods*, is  $\pi$ 's claim for breach of warranty?
- In actions based on a lease*, does the landlord have additional responsibilities under the RRAA?
- In actions involving consumer credit sales*, does the Retail Installment Sales Act affect any of the contract terms?

**Before moving to the next question, stop and decide what the terms of the agreement are.**

**Is the agreement one that the law will enforce?**

- Does it involve a bargained-for exchange?
- Is this particular defendant (rather than someone else) bound by the contract?
  - Does the contract involve a corporation?
  - Does the contract involve an agency relationship?
- Is there any question about  $\Delta$ 's ability to consent?
  - Was  $\Delta$  a minor at the time of the contract?
  - Is there doubt about  $\Delta$ 's competence to contract?
- Is there a legal rule that renders this agreement unenforceable?
  - Is this one of the contracts the law requires to be written?
  - Did  $\pi$  wait too long to file the lawsuit?
  - Are the terms of the agreement so one-sided and unfair as to be *unconscionable*?

**Did  $\Delta$  breach the contract?**

## What damages is $\pi$ entitled to?

### Common Damage Items:

- Direct damages (difference between value of promised performance and what it will cost now)
- Incidental damages (costs of preparing to perform, those incurred in response to breach, those involved in minimizing injury)
- Consequential damages (foreseeable damages resulting from breach)
- Interest from date of breach

### Special Damage Items:

- Cancelling the contract: damages for putting everything back the way it was
- Liquidated damages clauses
- Failure to return property: FMV of property
- Breach of warranty: difference between FMV of goods as warranted and FMV of goods received
- Checks NSF: Amount of check + bank charge + processing fee + amount of check x 3 (\$100-\$500)
- Attorney fees

### Be on the lookout for:

- Duty to mitigate damages
- Joint & several liability

## Contracts: Using the Textbook

| Issue Presented                                                                                               | Location in Text                          |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Whether the parties actually reached agreement                                                                | pp. 52 - 56                               |
| The asserted agreement is based on the behavior of the parties                                                | <i>Implied contracts</i> p. 56            |
| The terms of the contract don't involve mutual benefit or exchange.                                           | <i>Consideration</i> p. 57                |
| The agreement leaves out some important terms.                                                                | p. 59                                     |
| One party claims the written contract is not the complete agreement and wants to testify to additional terms. | <i>Parole evidence rule</i> pp. 61, 73-74 |
| The case is about a warranty in a contract involving a sale of goods.                                         | pp. 61 - 66                               |
| The case is about an <u>implied</u> warranty in a contract for the sale of goods.                             | pp. 63-64, 65-66                          |
| The contract involves an illegal transaction.                                                                 | <i>Illegality</i> p. 67                   |
| The contract was based on mistake.                                                                            | <i>Mistake</i> p. 67 - 68                 |
| One party did not actually give free consent to the contract terms                                            | pp. 68 - 69                               |
| One party to the contract was a minor or mentally incompetent.                                                | pp. 69 - 72                               |
| Whether a contract is required to be written.                                                                 | <i>Statute of Frauds</i> p. 73            |

|                                                                                  |                                                           |
|----------------------------------------------------------------------------------|-----------------------------------------------------------|
| Whether a contract is no longer enforceable because of a statute of limitations. | pp. 74 - 76                                               |
| Whether a contract is so unfair and one-sided as to be unenforceable.            | <i>Unconscionability</i> pp. 76 - 77                      |
| One person has contracted on behalf of another                                   | <i>Agency</i> pp. 78 - 81, 95                             |
| The contract involves purchase of goods by a consumer on the installment plan    | <i>RISA</i> pp. 81 - 84                                   |
| Determining damages to award for breach of contract                              | pp. 84 - 86                                               |
| Rule of evidence for proving amount owed on an account                           | <i>Verified itemized statement of account</i> pp. 86 - 87 |
| Damages for breach of warranty                                                   | pp. 87                                                    |
| Damages for bad check                                                            | pp. 87 - 88                                               |
| Whether injured party is required to minimize damages from breach                | <i>Duty to mitigate damages</i> pp. 89                    |
| Two debtors sign contract                                                        | <i>Joint &amp; several liability</i> pp. 89               |
| Complete cancellation of contract                                                | <i>Rescission</i> p. 90                                   |
| How to determine interest in contracts case                                      | pp. 90 - 91, (revised) 96 - 97                            |
| Attorney's fees                                                                  | p. 91-94                                                  |