

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 CONTRACT CASES IN SMALL CLAIMS COURT

DOES THIS CASE INVOLVE AN AGREEMENT BETWEEN π AND Δ ?

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 π contend? What does Δ contend? In the case of a disagreement, the magistrate must determine the terms, remembering that the party seeking to enforce the contract has the B/P on its terms.
- Are there terms they 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 Δ 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 π '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 Δ 's ability to consent?
 - Was Δ a minor at the time of the contract?
 - Is there doubt about Δ 's competence to contract?
- Is there a legal rule that renders this agreement unenforceable?
 - Is this one of the kinds of contracts the law requires to be written?
 - Did π wait too long to file the lawsuit?
 - Are the terms of the agreement so one-sided and unfair as to be *unconscionable*?

DID Δ BREACH THE CONTRACT?

WHAT DAMAGES IS π 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 cases:

- 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 competent.	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 pp. 81 - 84</i>
Determining damages to award for breach of contract	<i>pp. 84 - 86</i>
Rule of evidence for proving amount owed on an account	<i>Verified itemized statement of account pp. 86 - 87</i>
Damages for breach of warranty	<i>pp. 87</i>
Damages for bad check	<i>pp. 87 - 88</i>
Whether injured party is required to minimize damages from breach	<i>Duty to mitigate damages pp. 89</i>
Two debtors sign contract	<i>Joint & several liability pp. 89</i>
Complete cancellation of contract	<i>Rescission p. 90</i>
How to determine interest in contracts case	<i>pp. 90 - 91, (revised) 96 - 97</i>
Attorney's fees	<i>p. 91-94</i>