

# Fundamentals of Contracts

1

## Resources

- Contracts: <https://lawshelf.com/courseware/topic/contracts>

2

## What We Will Cover

- Case Scenario 1
- What is a Contract?
  - Express and Implied Contracts
- Do All Contracts Have to be in Writing?
- How is a Contract Created?
  - Offer and Acceptance
  - Mutual Assent
  - Consideration
  - Legal Capacity
  - Legality

3

## What We Will Cover

- Elements of a Contract Case
- Defenses to Breach of Contract
- Case Scenario 2
- Case Scenario 3
- Damages
- Case Scenarios 4 - 5

4

Case Scenario 1:  
Lucy Snearly v.  
John Wallace,  
Justice Court, Pct.  
3, Tarrant County

SMALL CLAIMS PETITION

PLEASE TYPE OR PRINT

CAUSE NO. SC23946 CITN TO BE SERVED BY 19 JAN 14 AM 9:03

PLAINTIFF: LUCY SNEARLY

ADDRESS 1824 GETTYSBURG PL

CITY/STATE BEDFORD TX ZIP CODE 76022

PHONE 817-342-5527 ALT. PHONE ( )

DEFENDANT(S): JOHN WALLACE

SERVE JOHN WALLACE

SERVICE ADDR 924 DEG LANE

CITY/STATE BEDFORD, TX ZIP CODE 76022

ALT. ADDR

CITY/STATE ZIP CODE

PHONE ( ) 817-721-4868 ALT. PHONE ( )

IF KNOWN DEFENDANT(S) DOB / / LAST 3 OF SSN LAST 3 OF DLN

I hereby state that I am filing a Small Claims Case. A small claim case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property or other relief allowed by law. The claim may be filed for no more than \$10,000 excluding statutory interest and court costs but including attorney's fees, if any.

PLAINTIFF BEING DULY SWORN, ON HIS/HER OATH DEPOSES AND SAYS THAT DEFENDANT(S) IS JUSTLY INDEBTED TO HIM/HER IN THE SUM OF

\$ 9231.00 DOLLARS FOR IMPROPER INSTALLATION OF A LAWN SPRINKLER SYSTEM - INOPERABLE - LEAKS - SUBSTANDARD EQUIPMENT

\$ 7231.00 TO REMOVE AND REPLACE ENTIRE SYSTEM

\$ 2000.00 PUNITIVE DAMAGES - AS REQUIRED BY TEXAS LAW A LICENSEE IS REQUIRED TO DO THIS WORK. PLAINTIFF HAS NO PLUS COURT COSTS. PLAINTIFF DID NOT OBTAIN REQUIRED PERMIT FROM THE CITY

Lucy Snearly

ATTORNEY IF APPLICABLE BAR #

I hereby give my consent for the answer and any other motions or pleadings to be sent to my e-mail address which is:

LucySnearly@aol.com

Rev 10-13

5

## Case Scenario 1

- Lucy Snearly v. John Wallace, Justice Court, Pct. 3, Tarrant County:
  - What is the plaintiff claiming?
  - What is the defendant claiming?
  - Is there a valid and enforceable contract?
  - What would you want to know to decide this case?
  - Will you need to hear from an expert witness?
  - Can you award punitive damages?

6

## What is a Contract?

- **An agreement** between two or more parties (either people or organizations) which the law recognizes and will enforce.
- It may require a party to do something or **not** do something (aka “**refrain from**” doing something).

7

## Express or Implied Contracts

- For a contract to be formed, there must be **mutual assent** (discussed more below).
- Mutual assent just means that both parties agree to enter into a contract.
  - If mutual assent is explicitly stated or expressed, either orally or in writing, then the resulting contract is an **express** contract.
  - If mutual assent is present but not explicitly stated or expressed, then the resulting contract is an **implied** contract.
- See Handout 1

8

Amber tells Travon that for \$500 plus the cost of paint, she will paint Bronson's office walls burnt orange. Travon accepts. He types up the agreement and both Amber and Travon sign it. This contract is:

- A. Express
- B. Implied

9

Seeing what a great painter she is, Travon sends an email to Amber asking her to paint his house yellow for \$1,000. Amber doesn't respond to the email but the next weekend when Travon is out of town, Amber comes over and paints Travon's house yellow. This contract is:

- A. Express
- B. Implied

Does Travon owe  
Amber \$1,000?

10

## Do All Contracts Have to Be in Writing?

**NO!**

This is a common misconception!

**Most** contracts can be either oral or written.

11

## Statute of Frauds

- But some contracts must be in writing to be enforceable.
- These include:
  - A contract for the sale of real estate.
  - A lease of real estate for more than one year.
  - A contract which cannot be performed within one year from the date the contract was made.
  - A contract for the sale of goods for more than \$500
- Business & Commerce Code §§ 2.201 and 26.01
- See Handout 2

12

## Statute of Frauds

- For a contract that cannot be performed within one year:
  - If there is any theoretical possibility that the contract can be performed within one year, then the contract does not need to be in writing.

13

The City of Houston and Yahoo Builders make an oral agreement on January 1, 2020, that the city will pay Yahoo \$1 million to build a 100 story building in Houston.

This agreement:

- A. Has to be in writing because it cannot be performed within one year.
- B. Does not have to be in writing because it is **theoretically** possible that Yahoo could complete the building within one year. .

14

The Broken Spoke makes an oral contract with Judge David Beebe on January 1, 2020, to sing there on January 1, 2024.

This agreement:

- A. Has to be in writing because it cannot be performed within one year.
- B. Does not have to be in writing because Judge Beebe might decide to show up early.

15

How is a  
Contract  
Created?

- Offer and Acceptance
  - Someone makes an **offer**.
  - The person to whom the offer was made **accepts** the offer.
- If there is no **offer** and **acceptance**, then a contract was not formed.
- **But** even if we do have a valid offer and acceptance, the contract may not always be enforceable for reasons we'll discuss.

16



What is  
Required for  
an Offer to be  
Binding?

### 1. Intent

The offeror must intend for the offer to be legally binding.

### 2. Communication of the Offer

The offer must be delivered to the other party. If it is never received, there is no acceptance or mutual assent.

### 3. Definite Terms

Clearly defined terms are required to establish the parties' intention.

17

How Long  
Does the  
Offer Last?

- An offer remains open until:
  - Rejection by the offeree
  - **Revocation**, or withdrawal, of the offer before it is accepted
  - Expiration of a specified or "reasonable" time
  - Counteroffer with different terms
  - Death, incapacity, or insanity of either party
  - Destruction of the subject matter

18

## Acceptance of the Offer

A party may accept an offer by communicating their acceptance, or by beginning performance in some cases.

- An offer may communicate how it must be accepted. If so, that is the only valid way to accept the offer.

A risk of beginning performance without communication is that the offer may have been withdrawn before you begin performance.

- The mailbox rule makes an **acceptance** valid when it is deposited in the mail (**revocation** valid when received.)

19

Thea offers Bronson \$100 to paint her office green and gold. Bronson says “No, but I’ll paint it crimson and cream for \$400.” Bronson has:

- Modified and accepted the offer
- Made a counteroffer
- Terrible taste in paint colors

20

Bob offers ABC Tree Trimming \$600 to remove two trees from his yard. He says he's "not in a hurry," but would like it done as soon as possible. ABC doesn't respond to Bob's email. Six months later, Bob comes home and finds the trees removed and a bill for \$600 taped to his front door. Was the offer still valid?

**A. Yes**

**B. No**

21

Requirements  
for an  
Enforceable  
Contract

- All contracts, whether express or implied, are enforceable only if the following factors are present:
  - Mutual assent
  - Consideration
  - Legal capacity
  - Legality

22

## Requirement 1: Mutual Assent

- Any contract must be entered into freely and with an intent to be bound by its terms. Mutual assent can be viewed as the “agreement” and is often called the “**meeting of the minds.**”
- Therefore, both the offer and acceptance must be free, knowing, and voluntary.

23

## Mutual Assent

- We don't expect people to be bound by unintended promises, promises made in response to “force,” or promises that arise out of mistakes about the facts.
- We DO expect parties to follow through on intended promises so that the reasonable expectations of all parties are met.

24

## Things That Affect Mutual Assent

- ***Duress***
  - The use of force, threat of force, or mental stress can create duress.
- ***Undue Influence***
  - An abuse of a relationship of trust by the trusted person, causing the other party to act against his or her own free will.
- ***Fraud or misrepresentation***
  - A misrepresentation of information or terms or the inducement of another party by deceit.
- ***Mutual mistake***
  - Where both parties are mistaken about the subject matter of the contract.

25

Amber helps her elderly and wealthy Grandmother around the house and with her finances. Grandma has dementia. Grandma's other grandchildren discover that Grandma has contracted to pay Amber's Yard Service \$4,500 per month for mowing the lawn. Is this a valid contract?

**A. Yes**

**B. No**

26

Rebecca has a collection of Michael Kors purses. Jessica sees her carry them at work and is very jealous. Jessica offers Rebecca \$1000 for “that sparkly one with the bedazzled cross.” Jessica means one that she saw Rebecca carrying, but Rebecca can’t remember which ones Jessica has seen, and thinks she means a different one with silver bedazzles instead of pink. Rebecca responds “Sure, it’s a deal.”

Is there mutual assent?

- A. Yes, there was an offer and acceptance
- B. No, there was mutual mistake.

27

Requirement 2:  
Consideration

- **Consideration** is the **value** that parties give or receive from each other under the contract.
- This can be mutual promises, and usually takes the form of money, property or services given or received.
- If there is no consideration, an enforceable contract does not exist.

28

## Consideration

Past consideration is *not valid*. Any goods or services to be exchanged must be exchanged at or after the time of contract formation.

A pre-existing duty *does not* count as consideration.

29

Thea offers to stain and seal Travon's deck if Travon will paint Thea's back porch. Travon agrees. Was the agreement made for consideration?

- A. Yes
- B. No

30

Amy is stressed out with wedding planning and is complaining to her mom about it. Her mom says: "Let me send you \$1,000 to help ease your stress." Amy's mom didn't send the money. Is there an enforceable contract?

A. Yes

B. No

31

Requirement 3:  
Legal Capacity

- You must have the power and authority to enter into a contract. "**Legal capacity**" means capacity that is approved by law.
- A person or entity who does not have legal capacity to enter into a contract will not be bound by the terms of the contract.

32



## What Affects Legal Capacity?

**Mental Capacity** - If you are mentally incompetent, or under the influence of drugs or alcohol, you lack the requisite capacity to contract. Guardians may contract for wards.

**Legal Age** – Usually 18 years of age. Contract entered into by minors are voidable, but may be enforceable if for necessities.

**Authority to act** – All parties must have authority to act. This comes into play when persons sign for others or for companies.

33

James, a 16 year old high school junior, is a budding entrepreneur. He decides to sell snacks to other students at his high school. To do this he enlists the help of other students; he gives them a bag of snacks to sell and they are supposed to return any that are not sold and give him half the proceeds of the sales. Joe, who is 18, takes a bag of snacks but never gives James any money or unused snacks. Is there a binding contract?

- A. Yes
- B. No
- C. Binding on Joe but not on James

34

## Requirement 4: Legality

- The subject matter must not be illegal in light of statute or public policy (*e.g.*, crimes, obstruction of justice, usury).
  - “I will pay you \$5000 not to testify in this case.”
  - “I will deliver 8 ounces of marijuana for \$1700.”
- Such contracts are unenforceable, and the offeror and offeree may be subject to criminal penalties.

35

## Elements of a Contract Case

In order to recover for breach of contract, the plaintiff must show:

1. The existence of a valid and enforceable **contract**.
2. The plaintiff **performed** their obligation under the contract or were excused from doing so (for example, because the defendant breached).
3. That the defendant **breached** the contract, that is they did not live up to their end of the agreement.
4. The breach **caused** the plaintiff economic **injury**.

36

Did the  
Defendant  
Breach the  
Contract?

- If the contract is valid and enforceable, then the next question is whether the parties performed their obligations.
- Sometimes the defendant will file a **counterclaim**, saying that in fact it is the plaintiff who has breached the contract.
  - In a case like this, both parties may **stipulate**, or agree, that there was a contract. If so, we can ignore the previous steps on mutual assent, consideration, etc., and jump right to this question.
  - *Remember the benefits of pretrial hearings!*

37

## Deciding if There Was a Breach of Contract

- Information that you use to decide if there was a breach of contract could include:
  - The contract language itself
  - Testimony regarding any discussion between the parties
  - Testimony regarding the conduct of the parties

38

## Defenses to Breach of Contract Include:

Standing  
(wrong plaintiff)

Fraud or Duress

Mutual Mistake

Impossibility  
(contract couldn't  
be performed)

Unconscionability  
(contract was  
**legally** unfair)

Modification

39

## Defenses to Breach of Contract Include

Statute of  
Limitations  
(four years)

Statute of Frauds

Excuse  
(e.g. plaintiff  
prevented  
performance)

40

Case Scenario 2:  
 Alysa Leyba v.  
 Juan Sierra,  
 Justice Court,  
 Pct. 1, Bexar County

**PETITION: SMALL CLAIMS CASE**

CASE NO. (court use only) 125 1900 223  
 In the Justice Court, Precinct 1, Bexar County, Texas

PLAINTIFF Alysa Leyba

VS.  
 DEFENDANT(S): Juan Sierra III  
 Defendant(s) address: 7115 Walnutport Way, San Antonio, TX 78227

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:  
I gave Juan \$7,600 for a 2010 Dodge Charger which he was going to sell to me for \$7,600. He did not give me a receipt and did not disclose to me that the money I gave was non-refundable. When I told Mr. Sierra that I was changing my mind, he told me that he would give me my \$7,600 back. He did not sign a bill of sale for the car. I gave him a \$200 deposit. There was no contract or official bill of sale for the vehicle. Mr. Sierra also does not have a valid reason for not giving me my money back.

RELIEF: Plaintiff seeks damages in the amount of \$ 0, and/or return of personal property as described as follows (be specific): cash/personal services, which has a value of \$7,600.  
 Additionally, plaintiff seeks the following: I also ask he pay me \$200, which was the fee I had to pay to file this claim against him.

SERVICE OF CITATIONS: Service is requested on defendant(s) by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address:

Alysa Leyba  
 Petitioner's Printed Name

[Signature]  
 Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):  
 Address of Plaintiff's Attorney, if any, or Plaintiff if none  
1507 Bald Mountain  
 City San Antonio State TX Zip 78245

\*LAST 3 NUMBERS OF DRIVER LICENSE \_\_\_\_\_  
 \*LAST 3 NUMBERS OF SOCIAL SECURITY \_\_\_\_\_  
 DEFENDANT'S PHONE NUMBER 710-584-9766 Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none \_\_\_\_\_

Small Claim Petition, 7/2013

Sworn to and subscribed before me this JUL 29 2019 day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_  
 CLERK OF THE JUSTICE COURT OR NOTARY

41

## Case Scenario 2

- Alysa Leyba v. Juan Sierra, Justice Court, Pct. 1, Bexar County:
  - What is the plaintiff claiming?
  - Was there a valid and enforceable contract?
  - What would you want to know to decide this case?
  - Are there grounds for rescission?
  - Does the Texas Lemon Law apply?

42

Case Scenario 3:  
 Larry Parker/Ramon  
 Parker dba Ramon's  
 Parrots v. Gilmore,  
 Justice Court, Pct.  
 2, Limestone  
 County

CAUSE NO. SC19-005-582 COURT FILED: PCT. 2  
 2019 OCT -7 AM 10:36  
 FILED  
 10/7/19  
 10:36 AM  
 PG

Larry Parker/Ramon Parker  
 DBA Ramon's Parrots  
 PLAINTIFF

§ IN THE JUSTICE COURT  
 §  
 §  
 §  
 §

v. Natalie Gilmore  
 DEFENDANT

PRECINCT NO. 2  
 Limestone COUNTY, TEXAS

**PETITION: SMALL CLAIMS CASE**

Defendant(s) address: 1321 S. 11<sup>th</sup> St. apt. 211  
Waco, TX 76706

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is: Boarding fees for 2 parrots + food for 17 months & 5 days as of Oct 7, 2019.

RELIEF: Plaintiff seeks:  damages in the amount of \$430.00  return of personal property as described as follows (be specific): \_\_\_\_\_ which has a value of \$ \_\_\_\_\_. Additionally, Plaintiff seeks the following: \_\_\_\_\_

SERVICE OF CITATION: Service is requested on Defendant(s) by:  personal service at home or work,  registered mail,  certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: \_\_\_\_\_

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.  
 I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: \_\_\_\_\_

43

Case Scenario 3:  
 Larry Parker/Ramon  
 Parker dba Ramon's  
 Parrots v. Gilmore,  
 Justice Court, Pct.  
 2, Limestone  
 County

Date: 10/24/2019  
 Attn: Mike Bell/or appointed Attorney  
 RE: Response to accusations by Ramona/Larry Parker of Ramona's Parrots

This case has informed me that I owe Ramona's Parrots \$4100 for the boarding of my two parrots, Lola, my blue and gold macaw, and Babe, my Timneh African Grey. Ramona's Parrots stated an extra 5 days of boarding or longer now because I could not remove my 2 parrots on October 1<sup>st</sup>, 2019. I am going to deny that I owe Ramona's Parrots any money until I receive my 2 parrots back from them. Ramona's Parrots still have my 2 parrots and would not return them to me or make arrangements so that the boarding would end.

Key Points:  
 1) I would like to counter-sue Ramona's Parrots, Ramona and Larry Parker for emotional suffering on 2 occasions.  
 a) First occasion was a phone call from Ramona, on a late Saturday night while I was working; Larry Parker could be heard in the background pretending to be the 'banker' on the phone and was asking me to pay \$300/month for the birds to continue to be boarded with them in lieu of them bringing my birds to me right at that time. This was around March 2019 that this phone call was made to me. They made the suggestion around May 2019, that they would deliver my parrots to me in Austin in lieu of me owing them any money.  
 b) The second occasion, is the disturbing remarks made to me in an aggressive hostile manner on October 1<sup>st</sup>, 2019. I was verbally threatened and treated like a criminal trespassing at Ramona's Parrots, their place of business. I was verbally assaulted with the statement made by Larry Parker saying "I will shoot you off my property!" It was awful! This place of business I did not know was on 1) private property and 2) I do not have anything saying I could not be there ever to visit my parrots. 3) Nor did I know that there was any issues going on with my payments. I did not receive any late notices or mail, email, regarding this.  
 2) Not only was I harassed by Larry Parker, but also two of Ramona's Parrots colleagues, Dawn, and Ramona's granddaughter, I believe her name was Ramona also. They did not treat me like a customer of their shop whatsoever. They were rude but answering via Facebook. Note: there is a true lack of communication going on with Ramona's Parrots.  
 3) I paid Ramona's parrots \$1100 for boarding fees so far. I again do not claim to owe them any more fees until the return of my two parrots, Lola, my blue and gold macaw, and Babe, my Timneh African Grey.  
 4) I was prepared to pay Ramona much earlier in my parrots boarding, but she actually told me "Just to wait until you are settled". That was late last October 2018 when I was just starting my new job and had to relocate from Waco, TX to Austin, TX working for Applied Materials via Modis as a contractor in Engineering Technology.  
 5) In an effort to communicate with Ramona's Parrots and my 2 parrots, I would visit often while I lived in Waco, TX and I would call or text asking how my birds were. I was even put on speaker phone to talk to them when Ramona had time. I am asking for a counter-lawsuit for the return of my 2 parrots, Lola, my blue and gold macaw, and Babe, my Timneh African Grey. I cannot accept paying Ramona's Parrots until I have my parrots back in my possession.

44

Case Scenario 3:  
 Larry Parker/Ramon  
 Parker dba Ramon's  
 Parrots v. Gilmore,  
 Justice Court, Pct.  
 2, Limestone  
 County

Final Point:

I am actually scared to go back to the property where my parrots are located or even make a phone call to Ramona's Parrots because of the bad behavior of Larry Parker, Dawn, and the granddaughter Ramona. This is bullying if not criminal for them to continue holding my 2 parrots at their store. I was notified that the store is located on private property for the first time ever on October 1<sup>st</sup>, 2019. I witnessed the final location of Lola, my blue and gold macaw, on October 1<sup>st</sup>, 2019 at Ramona's Parrots in a barn next to the store. Below is a picture of Lola in their possession. I was informed by Ramona herself that she "did not know where Babe was."

I am sad to be treated so disrespectfully by Ramona's Parrots. I would often visit Ramona's and enjoy time with the birds and talk. I am not sure what has happened to Ramona's Parrots. It was a kind store and I recommended the store to colleagues of mine who have parrots. Now I am worried for the welfare of my parrots and it is emotionally upsetting. On October 1<sup>st</sup>, 2019, I was also threatened to be shot off the property if I did not leave by Larry Parker. Please help me 1) to get my parrots back to me and 2) to reduce the costs associated with my parrot's boarding and remind them of who the customers are because I was treated terrible. I also lost a good friend named Ramona Parker. 3) I would gladly help Ramona out if she wanted me too. Please return my parrots!

Signed  
 Natalie Gilmore  
 512-813-0425 leave message if necessary

45

## Case Scenario 3

- Larry Parker/Ramon Parker dba Ramon's Parrots v. Gilmore, Justice Court, Pct. 2, Limestone County:
  - What is the plaintiff claiming?
  - What is the defendant claiming?
  - Is there a valid and enforceable contract?
  - Did the plaintiff prevent the defendant from taking the parrots?
  - Can the plaintiff just sell the parrots?
  - What if the plaintiff gets a judgment?
    - Can they execute the judgment on the parrots?

46

# Damages

47

## What are Damages?

Damages are one of the main elements of ANY civil case

Same burden as all of the other elements – plaintiff must prove by a preponderance of the evidence

- You should develop the facts of the case and ask questions designed to determine the amount of damages.

Plaintiff may have a valid cause of action, but no damages

48



## Available Damages – CONTRACTS

Compensatory Damages	Attorney's Fees	Pre-Judgment Interest (if specified in the contract)
	Court Costs & Post- Judgment Interest (available in all cases)	Exemplary (Punitive) Damages are <b>not available</b> .

49

### Measure of Compensatory Damages – CONTRACTS

The main idea of **compensatory damages in a contract case** is to give a party “the benefit of their bargain” by placing them in the economic position they would have been in if the contract had been performed.

They include **loss of value** and **consequential losses**, which are losses that naturally flow from the breach of the contract and were foreseeable by the parties.

50

Compensatory  
Damage  
Scenario –  
CONTRACTS

Willie agrees to purchase 2000 widgets from Widgets R Us for \$2 each. In the contract, he specifies that he uses those widgets to create WidgetSpinners©, and he is having a WidgetSpinner© convention where he will sell the spinners for \$10 each.

Widgets R Us breaches and provides 0 widgets. If Willie has to pay \$3 each for widgets, what are his compensatory damages?

What if no other widgets are available, so he has no WidgetSpinners© at the convention? Do his lost profits flow from the breach of contract? If so, would he recover \$10 x 2000? If not, how much?

51

Damage  
Calculation  
Issues -  
CONTRACTS

Many contracts contain clauses that specify what the amount of damages will be in the event of the breach. These are called **liquidated damage clauses**, and they fall under compensatory damages.

Parties cannot recover compensatory damages for inconvenience or delay, unless there is a specific clause in the contract stating that there is a certain time by which the work must be complete.

- This is called a “**time is of the essence clause.**”

52

## Court Costs/Fees

The winning party is entitled to recover the costs involved with the case, such as filing fees, service fees, jury fees, interpreter fees if appropriate, etc.

They do not have to request this explicitly; the Rules of Civil Procedure say the court must award costs.

- TRCP 505.1(d)

53

## Attorney's Fees

Attorney's fees are awardable in breach of contract cases but they must be "reasonable and necessary."

Unlike court costs, the plaintiff **does** have to specifically request attorney's fees, and must prove they are reasonable and necessary, either with affidavits or live testimony from the attorney.

To determine if the fees are reasonable and necessary, look at hours worked, and rate charged. If those numbers are reasonable and necessary, the fees are as well.

54

## Attorney's Fees

- The court must not award attorney's fees based on an "average case" basis.
  - For example, "usually these cases take 5 hours at \$250 an hour, so just award me \$1250 per case."
  - This is not fair, because a defendant whose case took 3 hours is paying extra fees because of a completely unrelated case.

55

## Pre-Judgment Interest

- This is interest that begins accruing on the plaintiff's damages when the injury occurs.
- It is only awarded on actual damages, not exemplary damages, court costs, or attorney's fees. It is calculated as **simple interest** (meaning it accrues only on the principal and not on accrued interest) and is the same rate as post-judgment interest.

56

## Post-Judgment Interest

All money judgments **must** include an interest rate that applies to the judgment.

- Finance Code Sec. 304.001.

Unless a contract specifies otherwise (with a maximum of 18%), the court should use the rate located at:

[http://www.occc.state.tx.us/pages/int\\_rates/Index.html](http://www.occc.state.tx.us/pages/int_rates/Index.html)

- Currently 5.0% as of November 2019, changes monthly, so court needs to check it every month.

57

Case Scenario 4:  
Kili Harkins v.  
Rick Woods,  
Justice Court, Pct.  
3, Wise County

CAUSE NO. SC-19-0012-3

KILI HARKINS Plaintiff,	VS	IN THE JUSTICE COURT
V.		PRECINCT 3
RICK WOODS Defendant.		WISE COUNTY, TEXAS

AMENDED PETITION: SMALL CLAIMS CASE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, KILI HARKINS, Plaintiff, who files this Amended Petition: Small Claims Case and would respectfully show the Court as follows:

I.

On May 7, 2019, Plaintiff paid to Defendant the sum of Eight Hundred Dollars and Zero Cents (\$800.00) as a deposit for a rental property owned by Defendant located at 203 West Highway 114, Aurora, Texas. Defendant dated receipt #115556 May 9, 2019 and provided the receipt to Plaintiff, a copy of which is attached hereto as Exhibit "A." Defendant notified Plaintiff that she could move in within two (2) weeks of May 7, 2019.

II.

Before Plaintiff could move into the property at 203 West Highway 114, Aurora, Texas, the property required substantial repairs to make it habitable

AMENDED PETITION: SMALL CLAIMS CASE  
FC:\08\4.m. Kili.Landford.Tonam.Digout\Amended Petition PAGE 1

58

## Case Scenario 4

- Kili Harkins v. Rick Woods, Justice Court, Pct. 3, Wise County:
  - What is the plaintiff claiming?
  - What is the defendant claiming?
  - Is there a valid and enforceable contract?
  - What was each party's expectation?
  - Does the return of the \$400 amount to "accord and satisfaction"?
  - Are the defendant's damages what he would have had to spend to make the dwelling habitable?
  - What would you want to know to decide this case?

59

Case Scenario 5:  
Fellowship of the  
Nations Church v.  
Rodrigo Becera d/b/a  
Rico Signs & Graphics,  
Justice Court, Precinct 3,  
Place 1, Harris County

NO. CW310077291

FELLOWSHIP OF THE NATIONS CHURCH Plaintiff	§	IN THE JUSTICE COURT
	§	
VS.	§	PRECINCT 3, PLACE 1
	§	
RODRIGO BECERRA D/B/A RICO SIGNS & GRAPHICS Defendant.	§	HARRIS COUNTY, TEXAS
	§	

#### PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME FELLOWSHIP OF THE NATIONS CHURCH, hereinafter called Plaintiff, complaining of and about RODRIGO BECERRA D/B/A RICO SIGNS, hereinafter called Defendant, and for cause of action show unto the Court the following:

#### DISCOVERY CONTROL PLAN LEVEL

1. Plaintiffs intend that discovery be conducted under Discovery Level 2.

#### PARTIES AND SERVICE

2. Plaintiff, FELLOWSHIP OF THE NATIONS CHURCH, is a religious organization, whose address is 13305 Woodforest Blvd., Houston, Texas 77015.
3. Defendant RODRIGO BECERRA, an individual doing business as RICO SIGNS & GRAPHICS, who is a resident of Texas and doing business in Texas, may be served with process at the following address: 12640 Greens Bayou, Houston, Texas 77015. Service of said Defendant as described above can be effected by personal delivery.

#### JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

1

60

Case Scenario 5:  
Fellowship of the  
Nations Church v.  
Rodrigo Becera d/b/a  
Rico Signs & Graphics,  
Justice Court, Precinct 3,  
Place 1, Harris County

5. Plaintiffs seek:
- a. only monetary relief of \$15,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.
6. This court has jurisdiction over the parties because Defendant is a resident of Texas and is doing business in Texas.
7. Venue in Harris County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

FACTS

8. That on or about November 7, 2011, Plaintiff and Defendant entered into a contract wherein Defendant was to supply Plaintiff with a sign for a total price of \$29,000.00.
9. That Plaintiff paid Defendant \$14,500.00 and Defendant delivered a partially completed sign at the end of 2013, but did not and has not completed the sign, although asked to do so on several occasions.
10. That as a result Plaintiff contacted another sign company who examined the partially completed sign, and found it to be totally constructed with out-of-date and defective materials.
11. That the value of the work done by Defendant is approximately \$5,000.00 and as a result Plaintiff has been damaged in the amount of \$9,500.00 for which it now sues.

PLAINTIFF'S

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, FELLOWSHIP OF THE NATIONS CHURCH, respectfully prays that the Defendant be cited to appear and answer

61

## Case Scenario 5

- Fellowship of the Nations Church v. Rodrigo Becera d/b/a Rico Signs & Graphics:
  - What is the plaintiff claiming?
  - Does the court have jurisdiction?
  - Is there a valid and enforceable contract?
  - What would you want to know to decide the case?
  - What if the new contractor could fix the sign to the specifications of the contract for only \$3,000?

62

Questions?