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I. JURISDICTION AND VENUE

A. Subject Matter Jurisdiction

1. Exclusive original jurisdiction: [§ 24-517](#):
 - a. Decedent's Estate, including probate of Wills and construction thereof
 - b. Guardianship and Conservatorship
 - c. City Ordinances
 - d. Juvenile matters where no separate juvenile court is established
 - e. Adoption
2. Concurrent jurisdiction with District Court [§ 24-517](#):
 - a. Involuntary partition of wards interest in real estate owned in common with others.
 - b. Civil actions up to \$57,000.00 (July 1, 2020) County Court must certify a case to District Court when: (1) the pleadings and discovery indicate an amount in controversy of over \$57,000.00 and a party requests transfer; or (2) the relief requested is exclusively within the jurisdiction of the District Court. [§ 24-517](#); [§ 25-2706](#); [Rule 6-1462](#)
 - i. An award of County Court greater than the jurisdictional amount is not void or unenforceable but additional filing fee must be taxed. [§ 24-517](#).
 - ii. Jurisdictional amount is adjusted every fifth year commencing July 1, 2010.
 - iii. Does amount in controversy include counterclaim?
Yes - [24-517\(5\)\(a\)](#) refers to "pleadings," which includes the answer and counterclaim. If the aggregate of complaint and counterclaim exceeds the jurisdictional limit a party may request transfer. The Legislature could have referenced "complaint" rather than "pleadings." However, a plaintiff's right to choose their forum should not be easily defeated.
 - c. Misdemeanors and infractions. (Domestic Relations & Felony IV's - see [§ 24-312\(3\)](#))
 - d. Nebraska Uniform Trust Code.

3. Types of Cases

- a. Small claims jurisdiction up to \$3,900.00 [§ 25-2801](#) and [§ 25-2802](#)
- b. Included within the Civil Jurisdiction
 - i. Replevin [§ 25-1093](#) et seq.
 - ii. Landlord/Tenant [§ 76-1407](#) et seq.
 - iii. Breach of Contract/Collection cases
 - iv. Personal Injury (commonly motor vehicle accidents)
 - v. Domestic Relations [§ 25-2740](#)
- c. Divorce actions are commenced by filing petition in District Court but may be heard by County Court or District Court. [§ 42-352](#); [§ 25-2740](#). The Petition shall state whether a party wants matter to be heard by county judge or district judge. It is a district court proceeding. [§ 25-2740](#).
 - i. Conciliation Court, Dissolution, Separation, Annulment, custody and support ([§ 42-347](#) to [§ 42-381](#))
 - ii. Child support and medical support ([§ 43-512.04](#))
 - iii. Domestic Abuse Protection Order ([§ 42-924](#))
 - iv. Harassment Protection Order and foreign Harassment Protection Orders ([§28-311.09](#); [28-311.01](#))
 - v. Paternity ([§ 43-1401](#) to [§ 43-1418](#))
 - vi. Grandparent visitation ([§ 43-1801](#) to [§ 43-1803](#))
 - vii. Temporary Restraining Orders in absence of District Judge [§25-1064](#)

4. Frequent Issues: Subject Matter Jurisdiction

- a. Equity Jurisdiction: [Iodence v. Potmesil, 239 Neb. 387 \(1991\)](#). The County Court does not have general equity jurisdiction except by specific statutory grant. The County Court has the authority to order equitable relief as to matters within its jurisdiction.
 - i. County Court has jurisdiction within its juvenile jurisdiction to order child support (an equitable remedy), but no jurisdiction exists to order support from parent when such relief is requested by conservator.
 - ii. County Court cannot impose a constructive trust or address a claim for an accounting unless done within the confines of a matter in its jurisdiction, such as probate or trust code
 - iii. Declaratory Judgment (an equitable remedy) [§ 25-21,149](#) et seq. Courts of record can enter declaratory judgment as to matters within their jurisdiction. County Courts may enter declaratory judgments in probate matters. [Rohn v. Kelley, 156 Neb 463 \(1953\)](#).
- b. Matters outside the jurisdiction of the County Court must be certified to the District Court. [§ 25-2706](#)

- c. Transfer case if counterclaim is in equity. Counterclaim is relief requested. [§ 25-2706](#) “ . . . “if it is determined that . . . the allegations of either party . . .” [§ 25-2706](#)
- d. Subject matter jurisdiction cannot be waived. The parties cannot confer jurisdiction upon the court by stipulation or agreement. The power to hear cases is controlled by constitution and legislation.

B. Personal Jurisdiction and Service – in all cases, the Court should inquire: Does the Court have personal jurisdiction over all the parties?

1. Has the defendant(s) been served or has the defendant(s) made a voluntary appearance?
 - a. Have all defendants been served? [§ 25-527](#).
 - b. Methods of service are set forth at [§ 25-505.01](#)
 - i. Personal service
 - ii. Residential service – may leave summons at residence with person of suitable age and discretion who resides there. Assume that means age 14. See [§ 25-508.01](#) NOTE: can’t serve person who happens to be at residence and is picking up mail while defendant on vacation, unless person resides there.
 - iii. Certified mail shall be made within 10 days of issuance
 - iv. Designated delivery service shall be made within 10 days of issuance. The State Court Administrator maintains website of designated delivery services.
 - c. Substitute service. [§ 28-517.02](#)
 - i. Motion and affidavit required that service cannot be otherwise made (suggestion: require 3 attempts at personal/residential service)
 - ii. Methods: leaving at residence and first class mail; publication; or other manner reasonably calculated to provide party with actual notice of case.
 - iii. Judgments obtained by constructive service can be reopened. [§ 25-525](#).
 - iv. Service on Individuals. [§ 25-508.01](#)
 - v. Note age requirement of 14. Must try to serve adult.
2. Does the defendant have minimum contacts required under [§ 25-536](#)?
 - a. Transacts business in this state;
 - b. Contracts to supply services in this state;
 - c. Caused tortious injury in this state;
 - d. Interest in real estate in this state;

- e. Contracts to insure any person or property located within state.
If so, does defendant maintain a relationship with this state sufficient to exercise personal jurisdiction consistent with due process standards. (See examples of Orders on Motions to Dismiss in [Appendix](#))
- 3. Personal jurisdiction objections can be waived.

C. **Venue**

1. Types of Cases

- a. [§ 25-401](#). Actions involving real estate
 - i. in county where land situated
 - ii. some exceptions (if land in two counties, in either county unless separate tracts)
- b. [§ 25-403](#). Specific performance: real estate
 - i. county where defendant (or any defendant) resides
 - ii. county where land situated if all defendants non-Nebraska residents 3.
[§ 25-403.01](#). All other actions:
 - aa. county of defendant's residence
 - bb. county where cause of action arose
 - cc. county where transaction occurred
 - dd. any county if all defendants non-Nebraska residents

2. Objections/Waiver:

- a. Any county in which action brought shall have jurisdiction unless a timely motion seeking to change venue is filed. [§ 25-403.01](#) (If venue is found to be improper, Court in county to which action is transferred has discretion to award attorney fees and expenses to defendant for filing and prosecuting the motion for change of venue.)
- b. Venue can be waived, or parties can, by contract, agree on a forum, see Choice of Forum Act. [§ 25-414](#).

3. Transfer [§ 25-410](#) - Actions may be transferred for convenience.

II. RULES OF PROCEDURE APPLICABLE TO CIVIL CASES

A. General Information

1. Unless there is a specific statute governing the county court, the rules governing district court procedure govern. [§ 25-2701](#).
2. Familiarize yourself with the County Court General Rules promulgated by Supreme Court, [Rules 6-1401](#), et seq., and the provisions of [§ 25-2701](#) et seq. and [§ 24-501](#) et seq. which are specifically applicable to the County Court.
3. Nebraska Rules of Pleading in Civil Action now govern. [Rules 6-1101](#), et seq.
4. Demand for jury - [§25-2705 \(1\)](#)
 - a. The plaintiff, counterclaimant, 3rd party claimant and cross claimant must demand jury trial on the date their claim is filed.
 - b. The defendant, counter-defendant, 3rd party defendant and cross-defendant must demand jury trial on or before their answer date.

B. Pleadings in Civil Actions

1. [Rule 6-1103](#) – The action is commenced upon filing of the complaint. [§ 25-501](#).
2. The action shall stand dismissed without prejudice if complaint not served within six months of filing. [§ 25-217](#). (Dismissal is mandatory and requires no action by the Court; any order issued thereafter is a nullity.)
3. [Rule 6-1105](#) - Service of Pleadings - Unless otherwise provided, all pleadings shall be served on each of the parties. No service need be made on parties in default unless new claims are made. (A defendant who has not answered the complaint is not yet a party to the action, therefore no service is needed on the defendant when filing a motion for default judgment.)
 - a. In rare cases of numerous defendants, the court may order the service of pleadings and replies not be made between defendants, and that cross-claims, counterclaims or matter of avoidance or affirmative defenses shall be deemed denied or avoided.
 - b. A Certificate of Service must be attached to each pleading filed with the court.

4. Residency criteria are set forth at § 25-403.02 (Any private corporation organized under the laws of Nebraska and any foreign corporation authorized to transact business in Nebraska is a resident of any county in which it has its registered office or other office or is doing business.)
5. [Rule 6-1106](#) – Enlargement of Time
6. [Rule 6-1107](#) – Pleadings Allowed
 - a. Complaint; answer; reply to counterclaim if answer contains counterclaim; answer to cross-claim if answer contains cross-claim; third-party complaint if person not an original party is summoned as a third-party defendant; and a third-party answer if a third party complaint is filed.
7. [Rule 6-1108](#) – General Rules of Pleading
 - a. Claims for Relief shall contain
 - i. a caption;
 - ii. a short plain statement showing pleader is entitled to relief; and
 - iii. a demand for judgment.
 - b. Relief in the alternative or of several types may be demanded.
 - c. If money damages sought, special damages shall be stated, but general damages not stated. If interest claimed, the time from which it is to be computed shall be stated.
 - d. Affirmative Defenses – must be specifically enumerated and pled.
 - e. Matters not denied in answer are deemed admitted.
 - f. Alternative theories allowed.
 - g. Frivolous and bad faith pleadings may be stricken and attorney fees awarded under [§ 25-824](#).
8. [Rule 6-1109](#) – Pleading Special Matters
 - a. Need not aver capacity.
 - b. Fraud, mistake, undue influence must be stated with particularity.
9. [Rule 6-1110](#) – Every pleading must contain a caption with the name of the court, title of action, file number and a designation as in [Rule 6-1107\(a\)](#).
10. [Rule 6-1111](#) – Pleading must be signed by party or his/her attorney.
11. [Rule 6-1112](#) – Defenses and Objections, Motions.

- a. Answer must be served within 30 days.
 - b. Every defense must be asserted in the answer except the following which may be made by motion (in lieu of filing answer):
 - i. lack of jurisdiction over subject matter or person;
 - ii. insufficiency of process or service of process;
 - iii. pleading fails to state claim – A motion asserting failure to state a claim may be treated as Motion for Summary Judgment if the court allows matter outside the pleadings; and/or
 - iv. failure to join necessary party.
 - c. Motion for Judgment on the Pleadings (after answer filed by defendant, i.e., where defendant's answer admits debt but states he is without funds to pay).
 - d. Preliminary Hearings may be had on specific defenses: Statute of limitations.
 - e. Motion for More Definite Statement (if granted, Plaintiff given 10 days to amend).
 - f. Motion to Strike is allowed.
 - g. Consolidation of Defenses in Motion.
 - h. Waiver of Preservation of Certain Defenses.
12. [Rule 6-1113](#) – Counterclaim and Cross-Claim.
13. [Rule 6-1115](#) – Amended and Supplemental Pleadings.
- a. May amend once as matter of right before responsive pleading is served or within 30 days if no response pleading permitted, otherwise by leave of court
 - b. May amend to conform to the evidence (liberally granted)
14. County Court General Rules.
- a. [Rule 6-1418](#) – if oral arguments waived or the moving party fails to appear, motions are deemed submitted.
 - b. [Rule 6-1424](#), [1425](#), [1426](#), [1427](#) – district court rules govern the procedure for county court jury trials, etc.
 - c. [Rule 6-1428](#) – after judgment is final, exhibits are to be claimed by the party. After 60 days they may be destroyed after written notice.
 - d. [Rule 6-1432](#) – Default Judgments.
 - i. When defendant fails to plead or answer, default may be taken on verified petition, affidavit, or sworn testimony.

- ii. No judgment may be entered on negotiable instrument unless original is surrendered for cancellation to the court.

C. Discovery

1. Discovery is governed by [Rules § 6-301](#), et seq.
2. The court is usually not aware of the ongoing discovery in a case unless a dispute arises, or if a party has failed to answer. Sanctions are described in [Rule § 6-337](#).

D. Pretrial Conferences (usually for jury cases)

1. A form pretrial order is enclosed – exhibit list, witness list, stipulations or waiver of foundation for exhibits. You can also do a pretrial order in docket.
2. Pretrial conferences are to be held according to the rules of the local district court. [Rule § 6-1421](#).
3. A Progression Order, issued after the Complaint and Answer (or all responsive pleadings) have been filed is attached in the [Appendix](#). The Progression Order specifies important deadlines such as discovery cutoffs, disclosure of witnesses and exhibits and the date of the pretrial conference.
4. At the pretrial conference, ask counsel for a good faith time estimate so that sufficient time can be reserved. Let them know whether they are first set or a backup.

E. Trial

1. Jury Trial – a dialogue is enclosed in the orientation materials and [Appendix](#). Jury Trials and verdicts are governed by [§ 25-1107](#) et seq.
2. Civil cases can be tried to a jury. [§ 25-2705](#). Demand must be made in writing on or before answer day [§25-2705 \(1\)](#).
3. The Court may order any issue of fact to be tried by a jury [§ 25-1105](#).
4. Trial may be held on stipulated facts submitted on the record to the court. [§ 25-903](#).
5. Site visits may be made in jury or bench trials within discretion of the court.

6. Trial by referee – County Court cannot appoint a referee except by consent of party and referee. [§ 25-1129](#).
7. Jurors are permitted to take notes. [§ 25-1107.01](#).
8. Summary Jury Trials: may be granted upon Motion of the parties. [§ 25-1154](#).
9. Mediation: Court may refer civil cases to Mediation. [§ 25-2943](#).
 - a. Any agreement must be voluntarily entered into
 - b. *Court cannot force participation.*

F. Motions

1. General Information [§§ 25-908 – 915](#).
 - a. A "motion" is any request for an order. [§ 25-908](#).
 - b. Motions to be served not less than 10 days before hearing. [Rule 6-1417](#)
NOTE: [§ 25-910](#) requires motion to be served a reasonable time before the hearing.
 - c. Court can set motion for hearing or can establish regular motion date. (See example of motion day schedule in [Appendix](#)).
2. Common Motions
 - a. Discovery Motions
 - i. Motion to Compel: A request for an order compelling discovery: including production of documents, depositions, interrogatories, inspections and requests for admissions. [Rule 6-337](#).
 - ii. Motion for Protection Order: A request for an order prohibiting or limiting discovery. The court can impose terms requiring the parties to limit the scope of discovery or to protect the confidentiality of materials produced. [Rule 6-326\(c\)](#).
 - aa. Typically in the form a motion to limit number of interrogatories ([6-333](#)) or a claim that it is burdensome to require answers.
 - bb. Use discretion – liberal attitude – allow adequate preparation
 - iii. Motions for Sanctions: The court can impose a variety of sanctions for a party's failure to comply with the discovery orders of the court. [Rule 6-337](#).

- b. Continuances: The grant or denial of a request to continue lies within the discretion of the court:
 - i. Motion must be made in writing and be supported by an affidavit. [§ 25-1148](#).
 - aa. Customary – guidelines for case progression – consistent
 - bb. If contested movant must submit evidence and set hearing
 - ii. Special rule for continuances in Restitution of Premises cases in which you must show extraordinary good cause. [§ 76-1443](#). If action is one of forcible entry and detainer for tenant holding over their term the continuance may not be more than 7 days. [§ 25-21,225](#)
- c. Motion to Consolidate. Defendant can file motion requesting cases be consolidated [§ 25-703](#) and [25-704](#). Court should enter order in both cases granting the consolidation.
- d. Motion to Dismiss. Defendants may file motion to dismiss in lieu of filing an answer. May make motion to dismiss at the close of evidence.
- e. Motion for Withdrawal of Counsel. Application must be timely and must demonstrate that good cause exists. Counsel must include an affidavit that service has been made on the client. County Court [Rule 6-1406](#).
- f. Motion for New Trial. Grounds therefore are set forth at [§ 25-1142](#). Must be filed within 10 days after entry of the judgment. [§ 25-1144.01](#).

III. JUDGMENTS AND DISMISSALS

A. Judgments - General Information

1. A judgment is the final determination parties' rights. [§ 25-1301](#).
2. Must be entered on the journal of the court and must clearly specify the relief granted or other determination made. [§ 25-1318](#).
3. Judgment must address all counterclaims, cross-claims or setoffs. [§ 25-1316](#).
4. Entry of Judgment occurs when the clerk of court places the file stamp and date on the judgment, decree, or final order.

B. Default Judgments

1. Available when defendant failed to answer or appear for trial. [§ 25-1308](#).
2. County Court [Rule 6-1432](#). The claim must be established by verified petition, affidavit or sworn testimony. *NOTE: Negotiable instrument must be surrendered to court for cancellation before default can be entered.*
3. Amount of Damages. [§ 25-1308](#).
 - a. If the court cannot establish the amount of damages from statements in the affidavit in support of motion for default judgment then the issues of damages must be set for hearing.
4. Notice and Hearing.
 - a. The rules do not require that the defendant in default must be served with notice of the hearing. [Starr v. King, 234 Neb. 339 \(1990\)](#).
 - b. The rules do not require that the motion be set for hearing, although some courts set them on a routine motion day. *NOTE: Usually sign on JUSTICE without hearing.*
5. Allow default for the amount alleged in the complaint only. If an affidavit alleges additional damages it must be set for hearing with notice to defendant.

6. Setting Aside a default judgment – defendant must tender an answer setting forth meritorious defense with the motion. *NOTE: If within 30 days of judgment, a motion to vacate is usually granted if defendant tenders a meritorious defense.*

a. Cases involving failure to answer.

- i. Has the defendant been properly served? (if no, do not enter a default).
- ii. Has an answer been filed? (if the defendant has responded in a fashion that could be construed as an answer, default is not appropriate).
- iii. Is there an affidavit on file?
 - aa. military service
 - bb. *can amount of damages be ascertained without further hearing? (if no, set for hearing, if yes, proceed).*
- iv. Enter order of default. Determine interest and attorney's fees. See *infra*.

b. Cases involving failure to appear.

- i. Has the defendant been properly notified of the hearing/trial? (if yes, proceed).
- ii. Has the plaintiff put on sufficient evidence to establish a claim? (if yes, proceed).
- iii. Is a further hearing necessary to establish damages? (if yes, set for hearing, if no, proceed). Enter order of default. Determine interest and attorney's fees.

7. Default Checklist (collection cases)

a. Cases involving failure to answer.

- i. Has the defendant been properly served? (If no, do not enter a default).
- ii. Has an answer been filed? (if the defendant has responded in a fashion that could be construed as an answer, default is not appropriate).
- iii. Is there an affidavit on file?
 - aa. military service
 - bb. *can amount of damages be ascertained without further hearing? (if no, set for hearing, if yes, proceed).*
- iv. Enter order of default. Determine interest and attorney's fees. (see [Appendix](#))

b. Cases involving failure to appear.

- i. Has the defendant been properly notified of the hearing/trial? (if yes, proceed).
- ii. Has the plaintiff put on sufficient evidence to establish a claim? (if yes, proceed).

- iii. Is a further hearing necessary to establish damages? (if yes, set for hearing, if no, proceed).
- iv. Enter order of default. Determine interest and attorney's fees.

C. Summary Judgment – [§ 25-1330](#).

1. Criteria – A motion for summary judgment seeks a judgment on all or part of the issues in a case on the basis that:
 - a. A party is entitled to judgment as a matter of law and that no material issue of fact exists.
 - b. A party can seek summary judgment on a counterclaim, and/or a cross-claim. Cross summary judgment motions can be filed
 - c. Summary judgment may also be appropriate when a party has failed to answer requests for admissions. Under [Rule 6-336](#), matters not answered are deemed admitted and such admissions may satisfy the requirement that no material issue of fact exists. See [Wibbels v. Unick, 229 Neb. 184 \(1988\)](#). *(If it is against a pro se party, you can explain the procedure and, if they are disputing the debt, allow a continuance for week or two for them to respond to requests for admission; also withdraw admissions deemed admitted by failure to answer).*
2. When to File ([§ 25-1330](#) and [1332](#))
 - a. A party may file a motion for summary judgment at any time after the answer is filed.
 - b. A party may file a motion for summary judgment at any time after a summary judgment motion has been filed by an adverse party.
 - c. The motion must be filed at least 10 days before hearing date.
 - d. The party asserting a fact is genuinely disputed must support the assertion by citing the particular parts of materials in the record or showing that materials cited do not establish the absence or presence of a genuine dispute or the adverse party cannot produce admissible evidence to support the fact.
 - e. If a party fails to properly support an assertion of fact or fails to address another party's assertion of fact, the court may allow an opportunity to address it, consider the fact undisputed or grant summary judgment. See [§ 25-1332](#) (Reissue 2017)
3. Contents of Motion: Affidavits [§§ 25-1330](#), [1332](#), [1334](#), and [1335](#).
 - a. The motion may be filed with or without supporting affidavits.

- b. Opposing affidavits may be filed prior to day of hearing. [§ 25-1332](#)
 - c. The court may, upon a proper motion, order a continuance to grant party to do discovery or obtain adverse affidavits. [§ 25-1335](#)
 - d. Requirements for affidavits:
 - i. personal knowledge as to be admissible in trial;
 - ii. must show competence;
 - iii. sworn;
 - iv. may attach copies of papers referred to; and
 - v. may later be supplemented [§ 25-1334](#), [§ 25-1335](#) (*all evidence considered by the court must have been received at a hearing where both parties have the opportunity to make objections—hearing can be telephonic if supplementing*)
 - vi. Summary Judgment Procedure. See [§ 6-1471](#). The moving party for summary judgment must simultaneously file an evidence index listing all evidence to be offered in support of the motion and an annotated statement of proposed material facts the party contends is undisputed. Failure to file the same may result in a denial of the motion. Each party opposing a motion for summary judgment must file an index in opposition listing all evidence to be offered in opposition to the motion and an annotated statement of material facts reciting each material fact in dispute. Failure to do the same may constitute grounds to sustain the motion.
4. Notice and Hearing. The motion must be set for hearing and the defendant must be given notice of hearing
5. Conduct of Hearing
- a. Any evidence relied upon, including affidavits, should be offered and made a part of the record.
 - b. A summary judgment is viewed as a summary proceeding, thus evidence received by affidavit, not live testimony.
 - c. Any stipulations should be made a part of the record. (*require in writing*)
 - d. Any failure to admit must be demonstrated by making the requests a part of the record.
6. A summary judgment is an extreme remedy. It may be granted when the evidence presented discloses that there is no genuine issue as to any material fact, or as to the inferences that may be drawn from those facts, and that the moving party is entitled to judgment as a matter of law. [Spear T Ranch v. Nebraska Dept. of Nat. Resources, 270 Neb. 130, 699 N.W.2d 379 \(2005\)](#). The moving party has the burden to show that no genuine issue of material fact

exists and that judgment should be entered as a matter of law. [Wolfe v. Becton Dickinson & Co., 266 Neb. 53, 662 N.W.2d 599 \(2003\)](#)

7. Motions for summary judgment can be heard telephonically if all parties of record have so stipulated and the judge agrees. [§ 25-2704](#). Before granting such a request you should consider your ability to create a record that will stand up on appeal. Identification of exhibits, swearing of witnesses, and the general integrity of the proceedings.
 - a. [§ 25-2704](#). Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.
 - b. [\(2\)](#) All nonevidentiary hearings, and any evidentiary hearings approved by the county court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.
 - c. Many times evidence is submitted as a “business record” at motions for summary judgment.
8. BUSINESS RECORDS: [27-803\(5\)](#)
 - a. Memorandum, report, record, or data compilation, in any form.
 - b. Of acts, events, or conditions (no opinions or diagnoses).
 - c. Made at or near the time of such acts.
 - d. In the course of a regularly conducted activity (the acts themselves).
 - e. And it was the regular course of such activity to make such memorandum, report, record, or data compilation.
 - f. testimony of a custodian or other qualified witness (sources must be trustworthy/authenticated).
 - g. The circumstances of the making of such memorandum, report, record, or data compilation, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight not admissibility.
 - h. References: [Misle v. Misle, 247 Neb. 592 \(1995\) and 61 A.L.R. Fed. 359](#)

D. Judgment on the Pleadings

1. Allowed by [Rule 6-1112\(c\)](#), Pleading in Civil Actions.
2. The motion requests that the court review the pleadings to determine whether a material issue of fact exists. For example, defendant debtors often

write letters admitting that they owe the debt. Thus, there is no issue of fact to resolve, the court need only resolve the legal issue that the judgment should be entered against the defendant.

3. Notice and Hearing. The defendant is entitled to notice of the hearing date and the matter should be set for hearing.

E. Judgment by Confession [§ 25-1309](#)

1. A defendant may personally appear and stipulate to a judgment being entered against him. Plaintiff must consent.
2. Usual scenario is that plaintiff files a confession of judgment signed by the debtor to the court with an order of judgment.
3. Parties want to stipulate to payment plan and have case continued for 6 to 12 months – consider progression standards.

F. JNOV [§ 25-1315.02](#) - if a motion for directed verdict was made, that moving party may, within 10 days after the date of judgment, move to have verdict set aside and have judgment entered in accordance with the motion for directed verdict.

G. Setting Aside Judgment – General Information

1. The provisions for setting aside judgments after term can be found at [§ 25-2001](#) et seq.
2. [§ 25-2009](#) makes these provisions applicable to the county court.
3. [§ 25-2720.01](#) also provides for the same procedure used in District Court.
4. Court can set aside judgments during the term as part of inherent power of the court [§ 25-2001\(1\)](#) A request made after the term must comply with [§ 25-2001\(4\)](#).
5. Movant must also file petition to set aside or modify within the statute of limitations period described in [§ 25-2008](#).
6. The County Court term starts January 1 of each year. [§ 25-2009](#)
7. Prerequisites:

- a. Grounds. The grounds for setting aside are set forth at [§ 25-2001](#), moving party must also allege good cause and his non-fault that he failed to secure a proper decision.
 - b. Petition to vacate a judgment. [§ 25-2002](#) sets forth requirements for petition to vacate. Petition must be verified by affidavit and served by summons.
 - c. Movant must demonstrate that a valid defense exists in order for court to grant the motion. [§ 25-2005](#).
 - d. Court must enjoin enforcement of earlier judgment when motion to vacate is entered if it is probable that movant is entitled to have judgment vacated. [§ 25-2006](#).
8. Mistakes contained in a judgment can be corrected by the court's own motion in an order nunc pro tunc ("now for then") provided the corrected order does not exceed the scope of the original order. [§ 25-2001\(3\)](#). If the mistake is a party's own, the Court does not have the authority to correct it. See [Bevard v. Kelly, 15 Neb. App. 960, 965 \(2007\)](#).
9. Special Types of Proceedings:
- a. Where service is made by Publication: The Court shall re-open a judgment if proper application is made, at any time within 5 years after the entry of the judgment. [§ 25-525](#).
 - b. Small Claims Cases: Judgments in small claims cases can be appealed and set to district court. [§ 25-2804\(7\)](#). Additionally, a motion for new trial can be filed using procedure provided in [§ 25-1142](#) and [1144](#). If filed within ten days, court may act upon it without a hearing. If after ten days, set it for hearing. [§ 25-2720.01](#) "The County Court, including the Small Claims Court has the power to set aside default judgments and to vacate or modify its judgments or orders in the same manner as provided for actions filed in the district court.

H. Dismissals [§§ 25-601 - 603](#)

1. [Tyler v. Heywood, 258 Neb. 901 \(2000\)](#). Petitioner, a prisoner, filed a suit against various state officials. During a telephone hearing, the petitioner unleashed expletives at the judge who found him in contempt. As a result, the judge dismissed the suit and this was affirmed by the Supreme Court. The court's inherent authority to punish for contempt is inherent and not derived or circumscribed by statute. This case presents a very narrow authority for dismissal of a civil case for contempt.

I. Dormant Judgments [§25-1515](#); [§§25-1406-1420](#)

1. If no execution sued out on judgment after 5 years, the judgment goes dormant and is no longer a lien on real estate. (County Court judgments are not a lien on real estate. Must be transcribed to the district court). If dormant, judgment must be revived to initiate executions, garnishments, etc.
2. If dormant, judgment must be revived through an order of the court within 10 years after judgment became dormant.

IV. ENFORCEMENT AND COLLECTION OF JUDGMENTS

A. Executions Against Personal Property [§ 25-1516](#) et seq.

1. Judgment creditor may file praecipe for writ of execution with court for execution against personal property, and writ is issued by clerk. Writ must be served in manner provided for service in all civil cases, except certified mail is only allowed for nonresidents of Nebraska. State Court Administrator has prepared a uniform writ of execution and notice of exemption form as required by statute [§ 25-1516\(3\) and \(4\)](#).
2. Hearings
 - a. Judgment debtor, after receiving writ and notice of exemption form, may request a hearing. No hearing shall be held unless specifically requested by judgment debtor. Clerk shall give notice of hearing to all parties, with hearing to be held within ten days, or earlier if need for hearing is an “emergency.”
 - b. If debtor is claiming property as exempt under [§ 25-1552](#), or [§ 25-1556](#), debtor’s request for hearing must contain a complete list of the Judgment Debtor’s property and a list of all property claimed as exempt along with a value for each item. ([§ 25-1552](#)).
 - c. At the hearing, the court shall determine the debtor’s entitlement to the claimed exemption, whether the amount is owed on the judgment, and the value of the property claimed to be exempt and shall issue an exemption order after the hearing ordering the officer to sell the nonexempt property according to law and return the exempt property to the debtor [§ 25-1516\(7\)](#).

B. Garnishments [§ 25-1056](#)

1. When a judgment has been entered, judgment creditor may file an affidavit setting forth the amount due on the judgment as well as interest and costs with the clerk. Affidavit must state that another person or entity is holding property belonging to judgment debtor.
2. INTERROGATORIES: Upon filing of affidavit, Clerk shall issue interrogatories to person or entity holding such property, and interrogatories must be answered and returned within ten days.
3. WAGE GARNISHMENTS [§ 25-1056\(2\)](#) – if judgment debtor is employee of garnishee the court shall order that the nonexempt earnings of the debtor be transferred to the court for delivery to the judgment creditor.

- a. Continuing liens:
 - i. Application: The court shall, upon application of the judgment creditor, order that such garnishment is a continuing lien against the nonexempt earnings of the debtor.
 - ii. Continuing lien shall continue until any of the following happen:
 - aa. The judgment is satisfied in full or vacated or expires;
 - bb. The judgment debtor leaves the garnishee's employ for more than sixty days;
 - cc. The judgment creditor releases the garnishment;
 - dd. The proceedings are stayed by a court of competent jurisdiction, including the US Bankruptcy Court;
 - ee. The judgment debtor has not earned any nonexempt earnings for at least sixty days;
 - ff. The court orders such garnishment be quashed; or
 - gg. Ninety days have expired since issuance of writ.
 - iii. Extension – The judgment creditor may extend the lien of a second ninety-day period by filing with the court a notice of extension during the fifteen days immediately prior to the expiration of the initial lien.
 - b. Priority of Garnishment [§ 25-1056\(5\)](#) – Only one garnishment can be in effect at any time. Once garnishment is satisfied, the next in time by date of service will be in effect.
 - c. Rate of garnishment – if judgment debtor is head of family, garnishment rate shall be 15%; if debtor is not head of family, garnishment rate shall be 25%.
4. OTHER GARNISHMENTS [§ 25-1056\(1\)](#) – After receiving summons and interrogatories, garnishee shall hold the property of the debtor until further order of the court. If amount of property held by garnishee exceeds amount of judgment, then garnishee shall only hold property sufficient to satisfy judgment.
- a. This section is commonly used for bank accounts.
 - b. This section also applies to wages held by an employer if the employee is no longer employed by that employer, and to any other funds owned by a judgment debtor but held by a garnishee.
 - c. If funds or property are not found to be exempt, judgment creditor shall file a motion for order of delivery of non-exempt assets.
5. Hearing – Judgment debtor shall receive notice of garnishment, and shall have right to request a hearing. At hearing, the following issues are considered:
- a. Whether the judgment debtor owes the amount of the judgment (i.e. whether the judgment has already been satisfied) --Judgment debtor

cannot use the hearing to attempt to set aside a default judgment or re-litigate the case.

- b. Whether property held is exempt from garnishment.
- c. Whether judgment debtor is “head of a family”- [§ 25-1558\(1\)\(c\)](#).
 - i. “Head of Family” status is only applicable to wage garnishments, not any other garnishments
 - ii. “Head of Family” shall mean an individual who actually supports and maintains one or more individuals who are closely connected with him or her by blood relationship, relationship by marriage, by adoption, or by guardianship, and whose right to exercise family control and provide for the dependent individuals is based upon some moral or legal obligation. [§ 25-1558\(4\)\(d\)](#)

C. GARNISHEE LIABILITY [§ 25-1030](#), et seq.

- 1. If garnishee (employer, bank, etc.) fails to satisfactorily answer the interrogatories served on it, or garnishee otherwise fails to comply with the order of the court, garnishee may be liable to judgment creditor, pursuant to [§ 25-1030](#) et seq.
- 2. Judgment creditor may file an application within twenty days for determination of the liability of the garnishee, and give notice to garnishee and defendant. [§§ 25-1030](#) and, [25-1030.01](#).
 - a. If judgment creditor fails to file such application within twenty days, garnishee is released and discharged from liability. [§ 25-1030](#).
 - b. The application may controvert the answer of the garnishee, or may allege facts showing the existence of indebtedness of the garnishee.
 - c. The application of the judgment creditor and the answer of the garnishee shall constitute the pleadings upon which trial on the issue of garnishee liability shall be had.
- 3. The trial of the determination of the liability of the garnishee shall be conducted the same as in a civil action. [§25-1030.02](#).
 - a. Garnishee shall be liable to judgment creditor if it should appear upon the trial:
 - i. That the garnishee was indebted to the defendant at the time garnishee failed to satisfactorily answer interrogatories; or
 - ii. That the garnishee had any property or credits of the defendant in his possession or under his control at the time garnishee failed to satisfactorily answer interrogatories.
 - b. If garnishee is found liable, judgment creditor shall have judgment against garnishee:

- i. For the amount of money due from the garnishee to the defendant in the original action, or
 - ii. For the delivery to the sheriff or to the clerk of the court of any property in the garnishee's hands belonging to the defendant in the original action within a time to be fixed by the court, or for the value of the same as fixed in the judgment if not delivered within the time fixed.
- D. EXEMPTIONS – Judgment debtor can claim property as exempt in garnishment proceedings and execution proceedings. A [non-exhaustive list of exemptions](#) is as follows:
 - 1. [§ 25-1552](#) – Personal Property except wages up to \$2,500;
 - 2. [§ 25-1553](#) – The full amount of any federal or state earned income tax credit refund;
 - 3. [§ 25-1556](#) – Specific Personal Property, as follows:
 - a. The immediate personal possessions of the debtor and debtor's family;
 - b. All necessary wearing apparel of debtor and family;
 - c. Debtor's interest, not to exceed \$1,500, in household furnishings and household goods;
 - d. Debtor's interest, not to exceed \$2,400 in tools of trade, which can include a vehicle used for work or to commute to work;
 - e. Debtor's interest in any professionally prescribed health aids.
 - 4. [§ 40-101](#) et seq. – Homestead exemptions – Equity in home
 - a. Not to exceed \$60,000;
 - b. Must be married (have lived in house with spouse at any time), or head of household (have lived in house with child or dependent at any time), or over 65 years of age to claim exemption
 - c. [§40-116](#) – proceeds of homestead sale are exempt for 6 months.
 - 5. [§ 25-1558](#) – **Disposable earnings** over 25% if not head of family, and 15% if head of family — see statute for definitions of “disposable”, “earnings” and “head of family.”
 - 6. [§ 25-1559](#) –All **pensions of disabled soldiers and sailors**, and property not to exceed \$2,000 in value purchased therewith.
 - 7. [§ 25-1563.01](#) – Debtor's interest in **pension or retirement plan**;

- a. Applies to stock bonus, pension, profit-sharing or similar plans, and to contracts payable on account of illness, disability, death, age, or length of service;
 - b. **Unless** Debtor established or increased contributions to the plan within two years prior to entry of judgment ([§ 25-1563.01\(1\)](#)); or
 - c. **Unless** plan does not qualify under specific sections of IRS code ([§ 25-1563.01\(2\)](#)).
 - d. **See also** - [§ 79-9,104](#); [§81-2032](#); [§84-1324](#) for additional information regarding exemption of retirement benefits.
8. [§ 25-1563.02](#) – **Lump sum settlements and structured settlements**, including all proceeds and benefits, including interest, with certain exceptions as set out in the statute.
 9. [§ 68-1013](#) – generally, any **public benefits**;
 10. [§ 48-149](#) – **workers compensation benefits**;
 11. [§ 48-647](#) – **unemployment benefits**;
- E. Debtor's Exam (Proceedings in Aid of Execution)
1. At any time after entry of judgment, judgment creditor is entitled to an order requiring debtor to appear and answer questions concerning debtor's property ([§ 25-1565](#)) (See statute for proper venue).
 2. The court may swear the debtor to truthfully answer questions about his assets. Counsel may conduct the examination on the record; the judge is not required to supervise the examination after swearing in the witness.
 3. If judgment debtor was personally served, but fails to appear at hearing he may be held in contempt ([§ 25-1577](#)).
 4. How contempt for failure to appear is handled may vary by judicial district. Court may issue capias if requested by judgment creditor, and court may set bond on capias. At capias hearing creditor may request the court to order the bond for payment toward the judgment.
- F. Revivor of Dormant Judgments
1. A Judgment shall become dormant after five years have passed since the last execution has been filed to collect the judgment. [§ 25-1515](#).
 2. Dormant judgment can be revived pursuant to [§ 25-1403](#) et seq. ([§ 25-1420](#))

3. Judgment creditor files motion for revivor. Upon filing of motion, court shall issue a conditional order of revivor, which shall set a hearing on request for order for revivor. Conditional Order shall require judgment debtor to appear and show cause why matter should not be revived. If sufficient cause not shown, "the matter shall stand revived." [§ 25-1408](#)
 4. Conditional order must be served on the judgment debtor in same manner as serving a summons. [§ 25-1408](#).
 5. No judgment shall be revived unless action to revive the same be commenced within ten years after such judgment becomes dormant. [§25-1420](#).
- G. A [Non-Exhaustive List of Useful Exemptions Bench Card](#) can be found in the [Appendix](#).

V. SMALL CLAIMS ACTIONS

A. General Information

1. The small claims trial is often a difficult one to manage and to decide. The parties are sometimes hostile, are unschooled in the finer points of pleadings and proof, and are, more often than not, somewhat intimidated by the court system. A concern to be aware of is that small claims cases generate a number of complaints about judges each year. These proceedings are now required to be recorded and preserved for 9 months [Rule 6-1405](#).
2. The goal is to decide these matters on the best legal and factual information available under the circumstances; to maintain order; and to make sure each of the parties feels they have had a fair opportunity to be heard.
3. Some judges begin by advising the parties what the "GROUND RULES" are: one representative per side may speak, any documents to be shown to the court must be shown to the other side, witnesses may be permitted but each side will be given the opportunity to put questions to the witness, the court may take the matter under advisement (we generally take the small claims cases under advisement to prevent any disruption in the courtroom; also, if both parties have presented documents you will need some time to review them) and finally directs that all comments be made to the court and not each other. You may also require them to negotiate (mediation is available in some counties) before hearing the case.
4. Two final points: People often ask how to enforce their judgment. Obviously, the judge is not permitted to give legal advice. Consider telling the people that they can begin their inquiry into this matter at the counter. Appeals are now on the record. A Bill of Exceptions must be prepared. [§ 25-2733](#) (effective Jan 1, 2009). (we have a sheet with information on it about how to collect on a judgment which can be handed out at the counter or in the courtroom)
5. Collection action for previously ordered child support from District Court. Some have dismissed these cases as being subject to a plea in abatement because a judgment has already been entered in District Court.
6. Rules of Evidence do not apply. [§ 27-1101\(4\)\(d\)](#); [§ 25-2806](#)
 - a. Affidavits allowed.

B. Jurisdiction

1. Civil cases involving damages up to \$3,900.00 excluding interest and costs.

- a. Evidence may establish damages above jurisdictional amount but the judgment is limited to \$3,900.00.
- b. Supreme Court will adjust the limit every 5th year commencing July 1, 2000. [§ 25-2802](#)

2. Defendant must reside or do business in the county.

3. Equitable jurisdiction to rescind contract. [§ 25-2802\(2\)](#)

4. Replevin – property must be less than jurisdictional amount [§ 25-2802\(1\)](#)

C. Special Rules

1. No assigned claims.

2. No lawyers (Corporations or other entities do not need to be represented by an attorney unlike cases on the regular county docket)

3. Not more than 2 filings per week or 10 per year.

D. Procedural Rules

1. Service at least 5 days before trial

2. Setoff or counterclaim can be filed at least 2 days before trial.

3. If counterclaim exceeds jurisdictional limit, transfer to civil docket.

4. No formal pleadings other than the claim and counterclaim. Pleadings are to be construed liberally

5. Trial is informal.

6. Setoff or counterclaim can be filed at least 2 days before trial.

7. Court can enter order for return of property (effective after appeal time).

8. Appeal is now on the record in District Court (no longer de novo).

E. Transfer to Civil Docket

1. Defendant must file notice and pay fee at least 2 days before trial. [§ 25-2805](#)

2. If defendant has right to jury trial the demand for jury trial must be filed with notice to transfer. [§ 25-2805](#)
3. There shall be no motions challenging pleadings, unless ordered by the Court upon showing that it is necessary to prompt and just determination of the action.
4. The defendant shall file an answer.

F. Setting Aside

1. A party may file a motion for new trial or to set aside a default judgment. If filed within 10 days, the court may act without hearing. If more than 10 days have passed, the court may set aside, vacate or modify as provided in [§ 25-2720.01](#) ([§ 25-2804](#)). The party may retain an attorney for this purpose.

- G. Sample Script for Small Claims Cases: Small Claims cases are scheduled differently throughout the State. Some jurisdictions give each case a separate date and time while others will schedule several at a time. The following recommended script is for those jurisdictions that schedule multiple cases for the same date and time and can be easily modified if you are only addressing one case.

"Ladies and Gentlemen, we are here today for small claims cases. I have _____ cases scheduled for trial today. I am going to call the cases one at a time to find out which parties are present and determine if there is an actual dispute in your case. Once I have established who is here, I will explain the procedure I will use to conduct your trial. Any tangible evidence offered today in support of your case will be kept by the court for a minimum of 30 days. At the end of 30 days you may make a written request for the return of the evidence."

-> Call each case and find out if the parties are present. Ask the Defendant if he/she actually disputes the Plaintiff's claim that he/she owes the Plaintiff money. If so, ask the parties how many witnesses they plan on calling.

-> Once you have determined which parties are present and which cases are disputed, you can proceed with the trials.

-> Call the cases, one at a time, in which only one party has appeared.

1. If Plaintiff failed to appear: Dismiss Plaintiff's case without prejudice at Plaintiff's cost and excuse the Defendant.
2. If Defendant failed to appear: Make sure there is service on the Defendant. Place the Plaintiff under oath and ask the following:

- a. *"Has the defendant made any payments since the date you filed the petition?"*
- b. *"Tell me why the Defendant owes you money as set forth in the petition."*
(You must hear enough evidence for a default judgment).
- c. Enter judgment for the Plaintiff.
- d. If the defendant was not served, explain to the plaintiff that he/she will have to get a new trial date and serve the defendant with the new trial date. Tell them that a judgment cannot be entered unless the defendant has notice of the trial.

Recommended script is for contested cases:

"Ladies and Gentlemen, the remainder of the cases will be contested trials. Please listen carefully. This is the way each case will be tried:

*The Plaintiff will go forward with his/her case first. He/She may testify himself/herself, call other witnesses and ask his/her witnesses questions, he/she may also offer tangible evidence like photos or written agreements. Once the plaintiff has completed asking a witness questions, or testifying himself/herself, the **Defendant must ask questions** of that witness. The Defendant must ask questions and cannot argue with the witness. The Defendant will have a chance to tell me his/her side of the story once the plaintiff's case is complete.*

When the Plaintiff has finished with his/her case the Defendant will be allowed to go forward with his/her case. The order of the Defendant's case will be treated the same way as the Plaintiff's case. The Defendant will also present his/her counterclaim or setoff at this time if one has been filed.

The Plaintiff will be allowed to present evidence in response to the Defendant's case if he/she wants to.

At that point, the evidence part of the trial is over. Each of you will be allowed to give a short summary of what you believe the evidence is and what you think the court should do.

During this case you will not argue with each other. The best evidence is what you personally know and not what other people told you. I want you to stay focused on the facts relevant to this claim. If you start talking about other matters I will stop you and redirect you. I may also ask you or your witnesses questions if I need to."

-> After you place a party under oath to testify, ask them, "what do you want me to know about your claim?" or "what do you want me to know about your defense?"

-> After swearing a witness to testify, tell the litigant, *"make sure you only ask questions,"* and tell the witness, *"make sure you only answer the question and then wait for the next question."*

-> On cross examination tell the litigant, *"Only ask questions. Don't argue. I will not allow you to argue with the witness."*

*****Trial*****

Litigants may offer tangible evidence. The court must ensure the evidence is properly marked and identified.

*****Decision*****

"A copy of this order will be available at the same place that you checked in. Thank you, you are excused."

NOTE: If you are concerned about the emotions of the parties you can take the matter under advisement and send them the decision. This may help you avoid any immediate problems.

****Call the next case and begin trial*****

"Were you both in the courtroom and heard me explain how this trial will be handled? Plaintiff, you may begin with your first witness."

3. Additional Recommendations and rules:

- a. There are two documents that are available from the Supreme Court website that are very helpful to small claims litigants; 1) [Filing a Small Claims Case in Nebraska](#) and 2) [Collecting your Money After a Judgment Debtor](#). Providing these documents to pro se litigants when they file a small claims case may answer many of the questions pro se litigants like to ask court staff or judges.
- b. Judges cannot answer legal questions (example: *"so how do I collect this judgment?"* or *"how do I appeal this stupid decision?"*)
- c. No assignment of cases, service must occur at least 5 days prior to trial, counter
- d. claims and set offs must be filed at least 2 days before trial; pleadings are to be construed liberally.
- e. Jurisdictional amount \$3,900.00 (2020).
- f. Rules of evidence DO NOT apply.

4. Applicable Statutes:

- a. [§ 25-2801](#). Designation
- b. [§ 25-2802](#). Jurisdiction
- c. [§ 25-2803](#). Parties; representation
- d. [§ 25-2804](#). Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment.
- e. [§ 25-2805](#). Trial without jury; transfer to county court; fee; jury demand; timeframe.
- f. [§ 25-2806](#). Pleadings required; informal disposition; judgment.
- g. [§ 25-2807](#). Appeal.

VI. LANDLORD/TENANT CASES

- A. **Forcible Entry and Detainer** - [§ 25-21,219 et seq.](#) Forcible Entry and Detainer (FED) petitions are generally filed when there is a commercial lease or a post Trust Deed Sale. It is never used for residential lease actions. The landlord is required to send a three day notice to the tenant prior to an action being filed, [§ 25-21,221](#). If the defendant fails to appear, the trial on the case proceeds as if the tenant were present, [§ 25-21,224](#). The Plaintiff may provide in affidavit form the testimony of the landlord which proves up plaintiff's cause of action. The affidavit should set forth the terms of the lease, how the tenant breached the lease and how the three day notice was served upon the tenant. If the plaintiff does not have an affidavit, the plaintiff must be sworn and provide testimony to prove up the complaint. Neither party may get a continuance beyond seven days, except for extraordinary circumstances and an undertaking and surety, [§ 25-21,225](#). If, after trial, an appeal is taken, it does not operate as supersedes unless appellant deposits a cash bond or undertaking, [§ 25-21-234](#). A judgment for restitution may be enforced, in discretion of the court, on execution of a bond by the plaintiff, [§ 25-21,235](#). In a FED action, either party may request a jury trial, [§ 25-21,227](#).
- B. **Landlord Tenant Act Cases** - In cases involving leases of residential property, the Residential Landlord Tenant Act, Neb. Rev. Stat. [§ 76-1401](#), et seq., applies, and not the general FED statutes.
1. **Restitution of the Premises for Non-Payment of Rent**, [§ 76-1431](#). If the tenant fails to pay rent as it becomes due, the landlord serves a 7 day notice that the lease shall terminate, if rent is not paid in 7 days from receipt of the notice. The notice includes the landlord's intention to terminate the rental agreement if the rent is not paid within the 7 day time period. After expiration of the 7 day notice, the landlord may file suit for restitution of the premises as well as payment for back rent and actual damages. [§ 76-1441](#). If the landlord accepts the rent during the day 7 period or after the 7 day period, the landlord is prohibited from terminating the lease. [§ 76-1433](#) and [§ 76-1435](#). Trial for an action for possession is tried to the court without a jury, not less than 10 days not more than 14 days after issuance of summons. [§ 76-1446](#).
 2. **Service of Process**. Pursuant to [§ 76-1442](#) in matters of restitution of residential premises, the summons must be served in 3 days, excluding non-judicial days, from the date of issuance and shall be returnable with 5 days of issuance. Diligent service may be made by leaving a copy of the summons at the last known address of the defendant. An affidavit of the landlord must be filed with the court that service was attempted as required in [§ 25-505.01](#) to [§ 25-516.01](#) and [§ 76-1442.01](#). [§ 76-1442.01](#), when authorized by the Court, permits service of summons by posting a copy on the front door of the

dwelling unit AND mailing a copy of the summons, by first class mail, to the defendant's last known address. The plaintiff MUST file an affidavit of first class mailing and describe diligent efforts. Forcible entry and detainer, the summons may be served as provided in [§ 25-501.01](#) to [§ 25-516.01](#) and served within 3 days, excluding non-judicial days, from the date of issuance and shall be returned in 5 days of issuance. [§ 25-21,223](#). If plaintiff is unable to serve the defendant after reasonable diligence, plaintiff may request from the court alternate service as provided in [§ 25-21,223](#).

3. **Trial.** Trial on both types of cases must proceed as if the defendant is present. The plaintiff must present either an affidavit of the landlord/property manager to prove up the complaint or testimony of the landlord/ property manager of the premises. The evidence must establish the ownership of the premises, the terms of the lease and that the tenant breached the lease for failure to pay rent. The evidence must also establish that the landlord served the 7 day notice to pay rent or terminated the premises and that the tenant failed to pay the past due rent within the time frame. The landlord/property manager must show no payments were received since service of the 7 day notice.
4. **Continuances.** Either party may ask for a continuance for good cause shown but no subsequent continuance shall be granted except by agreement or unless extraordinary cause be shown to the court. For any subsequent continuance extending the initial trial date into the next periodic rental period, the court may require the tenant to deposit into the court such rental payments as accrue during the pendency of the suit. [§ 76-1443](#) (effective August 28, 2021). No continuance shall be granted in FED cases beyond 7 days, absent a showing of extraordinary cause and not unless the defendant shall give an undertaking, with sufficient surety and pay rents and other damages. [§ 25-21,225](#).
5. **Defenses.** If the tenant complains about the condition of the rental property, the tenant must provide evidence that the landlord received a 14/30 day notice to fix the complained of condition. [§ 76-1428](#) and [§ 76-1425](#). The tenant must pay into court all or a part of the past due rent and accruing rent. The court shall then determine amounts owed to each party. If, after determining whether any amounts are owed, the court shall enter judgment accordingly. [§ 76-1428\(1\)](#). Other less common defenses by the tenant include unconscionable lease provisions ([§ 76-1412\(2\)](#)), failure to supply essential services ([§ 76-1427\(1\)](#)), and waiver of the landlord for acceptance of rent ([§ 76-1433](#)).
6. **Appeal.** An appeal stays the execution of the writ of restitution; however, the tenant must post an appeal bond in the amount of the past due rent and pay the monthly amount of accruing rent into the court. [§ 76-1447](#).

7. **Bankruptcy** – 15 USC [§ 362](#). Upon the filing of a bankruptcy, the restitution action is stayed pending the dismissal of the bankruptcy, discharge of the debtor or the landlord obtains an order for relief from the stay from the Bankruptcy Court. If the order for restitution was entered prior to the bankruptcy filing, the stay does not apply. [§ 362\(b\)\(22\)](#). This provision only applies to Landlord/Tenant and not Deeds of Trust Foreclosures.
8. **Personal Property of the Tenant**. When tenant's personal property remains on the premises after termination of the lease and is vacated by the tenant, the landlord must give written notice to the tenant or owner of the personal property. [§ 69-2301](#). The notice must list an inventory of the property and describe each item left in the unit, specify a deadline the tenant must reclaim the property, not less than 7 days after the notice is personally delivered, or, if mailed, not less than 14 days the notice is deposited in the mail. The notice must state that storage costs may be charged, and the location where the property can be reclaimed. The notice shall be given within 6 months of the expiration of the lease or abandonment of property, whichever is later. The notice shall further state that if property, up to \$1,000.00 in value, is not reclaimed, it will be sold at a public sale after notice given by publication. The tenant also has the right to bid on the property. §§ [69-2301](#) – [69-2314](#).
9. **Action for Damages by the landlord**. If the landlord filed an action for damages following restitution for past due rent and damages, he must prove up on those damages even if the tenant defaults. The landlord/property manager must submit an affidavit that specifies the actual damages claimed due from the defendant. When the landlord seeks damages for failure to pay rent and damage to the premises, he is entitled to actual past due rent, actual damages to the premises which exceed ordinary wear and tear and to consequential damages that were foreseeable by the parties at the time the contract was entered into. The landlord bears the burden of proof. Costs of repairs must be reasonable. Furthermore, the landlord must mitigate damages for See [§ 76-1421](#) for a list of the tenant's duties. The tenant is ordinarily entitled to offset damages in the amount of the security deposit. The tenant may raise any counterclaim that the premises were uninhabitable or that an agreement was otherwise breached causing damage to the tenant. The amount of the counterclaim award, if any, may be offset against other damages. Attorney fees may be awarded by the court if the tenant's breach is found to be willful. [§ 76-1431\(3\)](#).
10. **Return of the security deposit**. The tenant may bring an action against the landlord seeking return of the security deposit following termination of the lease. Once the tenancy terminates, money held by the landlord may be applied to the payment of rent and the amount of damages the landlord suffered as a result of the tenant's noncompliance of the rental agreement or

of tenant's duties pursuant to [§ 76-1421](#). The balance, together with a written itemization shall be delivered and mailed to the tenant within 14 days to the address provided by the tenant or tenant's last known address. If the deposit is returned, the landlord must turn over the deposit to the Secretary of State as unclaimed property after one year. Should the landlord fail to comply, the tenant may sue for damages including money due, court costs, attorney fees, and if willful, one month's rent or 2 times the security deposit, whichever is less, as liquidated damages. [§ 76-1416](#). The landlord may take a security deposit in the amount of one month's rent. [§ 76-1416](#). The security deposit and/or a list of any withholding made for damages or back rent must be provided to the tenant within 14 days after tenant's demand. [§ 76-1416](#). The landlord has the burden of proof to demonstrate reasons for the withholding and show damage to property beyond ordinary wear and tear. The landlord may counterclaim for damages in excess of the security deposit. If the landlord alleges tenant failed to give adequate notice and thereby the security deposit was retained by the landlord, check the lease for notice requirements and a liquidated damages clause. The landlord has a duty to mitigate damages and shall make reasonable efforts to rent the property at a fair rental. [§ 76-1432](#).

11. **Unlawful Ouster.** If the landlord unlawfully removes the tenant or willfully or wrongfully diminishes services to the tenant, the tenant is entitled to damages in an amount equal to three months' periodic rent and reasonable attorney fees. [§ 76-1430](#).

- C. **Noncompliance; failure to pay rent; violent criminal activity upon premises; landlord; powers.** [§ 76-1431](#) (Reissue, 2021). Effective August 28, 2021, Neb. Rev. Stat. [§ 76-1431](#) provides as follows:

76-1431.

Noncompliance; failure to pay rent; effect; violent criminal activity upon premises; landlord; powers; exceptions.

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section [76-1421](#) materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the

landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven calendar days after written notice by the landlord of nonpayment and his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 76-1421](#). If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

(4) Notwithstanding subsections (1) and (2) of this section or [section 25-21,221](#), and except as provided in subsection (5) of this section, a landlord may, after five days' written notice of termination of the rental agreement and without the right of the tenant to cure the default, file suit and have judgment against any tenant or occupant for recovery of possession of the premises if the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent, engages in any violent criminal activity on the premises, the illegal sale of any controlled substance on the premises, or any other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents. Such activity shall include, but not be limited to, any of the following activities of the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat of illegal use of a firearm or other weapon; (c) possession of a controlled substance if the tenant knew or should have known of the possession, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner legally authorized to prescribe while acting in the course of his or her professional practice; or (d) any other activity or threatened activity which would otherwise threaten the health or safety of any person or involving threatened, imminent, or actual damage to the property.

(5)(a) A landlord shall not take action under subsection (4) of this section if the violent criminal activity, illegal sale of any controlled substance, or other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents, as set forth in subsection (4) of this section, is conducted by a person on the premises other than the tenant or a household member and the tenant or household member takes at least one of the following measures:

(i) The tenant or household member seeks a protective order, restraining order, or other similar relief which would apply to the person conducting such activity;

(ii) The tenant or household member reports such activity to a law enforcement agency in an effort to initiate a criminal action against the person conducting the activity; or
(iii) If the activity is an act of domestic violence, the tenant or household member receives certification of the activity from a qualified third party as set forth in the housing protection provisions of the federal Violence Against Women Reauthorization Act of 2013.
(b) This subsection shall not apply to a tenant who is a perpetrator of an act of domestic violence. If both the victim who takes measures under this subsection and perpetrator of an act of domestic violence are parties to a rental agreement, a landlord shall only take action under subsection (4) of this section against the perpetrator.

The notice by the landlord must include the landlord's intention to terminate the lease and, for nonpayment of rent, must include the amount to be paid within 7 days. After the expiration of the 7 days, the landlord may file suit for restitution of the premises as well as payment for back rent and actual damages. The complaint MUST contain the specific statutory authority under which possession is sought as well as the facts which the landlord seeks possession, description of the premises, and compliance with the notice requirements. [§ 76-1441](#). If the landlord accepts the entire amount owed during the 7 days or the entire amount or a portion of the same, after expiration of the 7 days, the landlord is prohibited from terminating the lease. §§ [76-1433](#) and [76-1435](#). Trial for an action for possession of a residential lease is tried to the court, without a jury, not less than 10 days and not more than 14 days after issuance of the summons. [§ 76-1446](#)

D. Sample script for Landlord/Tenant Cases:

"The Court has several Landlord – Tenant cases scheduled today. Some of you are represented by an attorney and the procedures I am about to explain have already been explained to you. For the rest of you, I will now explain to you how these cases will be addressed.

Today's proceedings are for "restitution of premises." The only issue I will consider today is "who has the right to possess the property?" In other words, whether or not the tenant must leave the property and surrender the property to the landlord. If you, as the tenant, believe you should be allowed to stay in the property, we will have a trial today and I will decide who has the legal right to possess the property.

If you, as the tenant agree you have to leave the property and return control to the landlord then we won't have a trial today. I will sign an order giving the landlord the right to possess the property and I will sign a "writ of restitution." The writ will order the sheriff to make sure the tenant has surrendered the property. The sheriff is required by statute to make sure the tenant is out of the property within 10 days.

Now, the sheriff may serve the writ earlier and remove the tenant sooner than 10 days, but the sheriff must complete that duty within 10 days.

*The court will not consider any other issues today. The court will not make a decision about whether either of the parties should pay the other any money **other than for court costs**. Money damages for rent, property damage or other damages will be scheduled for a separate trial at the request of the parties.*

Now, I will try to address the cases that will take the least amount of time first. Are there any tenants here that agree they do not need a trial and will vacate the property?"

*****Call the cases that don't need a trial and ask the Tenant the following questions*****

1. *"Do you agree with the landlord that you should leave the property and return possession to the landlord? If not we can have a trial today."*
2. (IF YES) *"I am signing the writ of restitution. It will be delivered to the sheriff today."*

Thank you, next case."

Recommended script for disputed cases:

"All remaining cases are disputed. Are there any remaining cases in which the tenant agrees that their landlord should have possession of the property? For the remaining cases we will proceed with trial. This is how we will conduct trial:

The landlord will present evidence first. The landlord has the burden of proving he/she is entitled to possession of the property. The tenant may ask questions of all of the landlord's witnesses. I will tell you when that opportunity presents itself. You must ask questions, you cannot argue with witnesses. If you do, I will stop your questioning.

When the landlord is done with his/her case, the tenant may present his/her case. The tenant may call witnesses and present other evidence. Of course, the landlord may ask questions of the tenant's witnesses. However, the landlord cannot argue with the witnesses.

The landlord has the opportunity to present evidence in response to the tenant's evidence.

I may have questions for you or your witnesses.

Any evidence presented here today will be kept by the court for at least 30 days. That includes cell phones and cameras."

***Docket has options for the writ of restitution and the judgment of restitution. Do not sign a judgment of restitution that awards money.

Recommended final comments to each defendant:

"If you dispute anything else in the Landlord's complaint against you, specifically that you owe him/her any money, you must file a written response with this court to the petition within 30 days from the date you were served with summons. If you do not file a written response, the Landlord can ask for a money judgment against you without any further hearings."

VII. Awarding Attorney's Fees, Costs and Interest

A. Attorney's Fees

1. Attorney's fees may not be awarded unless authorized by statute. When there is authority, the requesting party should provide an itemized statement of such charges. In most instances, the court has discretion to determine what amount is reasonable.
2. Cases in Which Attorney's Fees are Recoverable (an exhaustive list is found in the [statutory index](#) under "Attorney's Fees"):
 - a. Claims of less than \$4,000.00. [§ 25-1801](#). JUSTICE – staff indicates under \$4,000.00. Most common case involves when a claim was made on defendant 90 days before suit was filed, and the claim was not paid. If the plaintiff prevails, then plaintiff is entitled to an attorney's fee calculated as \$10.00 plus 10% of the judgment in excess of \$50.00 up to \$4,000.00 and 6% interest if the services were necessities of life. See [§ 25-1801](#) (*normally grant interest at the default rate for default judgments that go through the cue unless a plaintiff requests otherwise*)
 - b. Claims for wages. [§ 48-1231](#).
 - c. Frivolous pleadings. [§ 25-824](#).
 - d. Landlord & tenant, several sections in [Chapter 76](#).
 - e. Lease agreement cannot contain provision for attorney's fees, see [76-1415\(c\)](#)
 - f. NOTE: Supreme Court has held that a contractual provision in a lease which allows prevailing party to recover all costs of suit, including reasonable attorney fees, was contrary to public policy and void. [GFH Financial Services v. Kirk, 231 Neb. 557, 437 N.W.2d 453 \(1989\)](#).
 - g. Generally, attorneys' fees may be recovered when the provision in a non-adhesion contract provides for the recovery of fees in the event of breach or default.

B. Costs - When should they be awarded?

1. [§ 25-1708](#). Generally plaintiff is entitled to costs when judgment is in his/her favor; when defendant pays after case filed and before judgment; or when a return of real property is ordered.
2. [§ 25-1710](#). Defendant is entitled to costs when judgment for money or return of real property is in his/her favor.

3. [§ 25-1711](#). In all other cases, court may award and tax costs as it believes equitable e.g. each party shall bear its own costs. QUERY: When does this apply?
4. [§ 25-1715](#). Award on motions and demurrers shall not exceed \$10.00.
5. [§ 25-1801](#). When a claim of \$4,000.00 or less was made on defendant 90 days before suit was filed, and the claim was paid after suit was filed, the plaintiff is entitled to costs.
6. [§ 25-2711](#) requires that civil fees be paid in advance. The clerk magistrate is charged with collecting fees.
7. [§ 25-2301](#) civil filing fees may be waived upon the showing of indigency. Court may refuse to grant an application to proceed in forma pauperis if 1) the party has sufficient funds to pay or 2) the party's legal position is frivolous or malicious. If no hearing is held and the Court denies the application - court must provide statement of reasons, findings and conclusions.
8. [§ 25-2804\(3\)](#) – costs shall be added to any judgment in small claims.

C. Interest

1. Post judgment Interest

- a. A court should award judgment interest at the time it enters judgment. Interest runs from date of judgment until paid. [§ 45- 103.01](#).
- b. The rate of post judgment interest is calculated regularly and current rate can be found in the most recent Advance Sheets. [§ 45-103](#)
- c. Types of Cases
 - i. Where there is a written agreement, give the prevailing party the benefit of his bargain and award the contractual rate. [§ 45-103\(2\)](#).
 - ii. Where rate is set by statute, use statutory rate. [§ 45-103 \(1\)](#)
 - iii. Where judgment is for \$4,000.00 or less, rate is 6% if necessities of life [§ 25-1801](#) (*most request legal/default rate*).
 - iv. Where judgment is on written instrument or upon settlement of account, rate is 12%. [§ 45-104](#).
 - v. All other cases, apply legal/statutory rate. [§ 45-103](#).
 - vi. Where a plaintiff requests 0%, can order 0% interest. Otherwise must award interest per statute.

2. Prejudgment Interest

- a. [§ 25-1801](#) – claims under \$4,000.00 – 6% interest from date claim presented.
- b. [§ 45-103.04](#) – no prejudgment interest available in cases under [Chapter 42](#) (divorces) and cases involving governmental entities.
- c. [§ 45-104](#) – legal interest rate of 12% awardable as follows:
 - i. on instrument in writing (unless otherwise agreed).
 - ii. on settled account – an agreement as to the balance due – from date of agreement.
 - iii. on money retained without owner's consent – from date of receipt.
 - iv. on money loaned and withheld by unreasonable delay in payment.
 - v. on unsettled account – unless otherwise agreed or provided by law – from date of billing unless paid within 30 days after billing.

NOTE: in order to obtain prejudgment interest, claim amount must be reasonably ascertainable, i.e. liquidated.

- d. [§ 45-103.02](#) – prejudgment interest when plaintiff has made offer of settlement and judgment exceeds offer. Must follow all rules.
- e. [§ 45-101.04 \(7\)](#) – open credit accounts – may not exceed 1 1/3% per month (16% per annum) – *must be in writing or limited to 6%, judgment rate, etc.*
- f. [§ 45-105](#) – usury – interest greater than allowed by [§ 45-101.03](#) (16%) results in plaintiff recovering principal only.

NOTE: Do not award compound interest unless it is agreed to by the parties.

VIII. OTHER ISSUES

A. Liability for debts of another

1. Medical expenses incurred during the marriage are the joint debts of the parties. [McGuire v. McGuire, 11 Neb. App. 433, 447 \(2002\)](#). This is true even if a dissolution decree states otherwise – a divorce decree is not binding on third parties.
2. [§ 42-201](#) separate property of the wife owned at the time of the marriage or coming to her by descent, devise or gift except from her husband, as her separate property and not subject to his disposal or liable for his debts, except necessities for the family after execution against the husband returned unsatisfied. [Nichol v. Clema, 188 Neb. 74, 195 NW2d 233 \(1972\)](#) (medical expenses are necessities). (*But see Order on Motion to Dismiss in Bryan v. Cloet in Appendix*)
3. Minors leasing an apartment when they could be living at home with parents. Rent is not a necessary of life. [Webster Street Partnership v. Sheridan, 220 Neb. 9, 328 NW2d 439 \(1985\)](#).
4. Parents are jointly and severally liable for the willful and intentional infliction of personal injury to any person, or destruction of real and personal property caused by their minor or unemancipated children residing with them; however, in the event of personal injuries damages shall be recoverable only for hospital and medical expenses not exceed one thousand dollars (\$1,000.00). [§ 43-801](#)
5. [§ 43-2101](#) provides that an individual 18 years old or older “who is not a ward of the state may enter into a binding contract or lease of whatever kind or nature and shall be legally responsible therefor.”

B. Oral Contracts

1. Oral contracts must be proved by clear satisfactory and unequivocal evidence. [Eggers v. Rittskler, 247 Neb. 648 \(1995\)](#), [Wells v. Wells, 3 Neb. App.117 \(1994\)](#). [Gerdes v. Klindt, 253 Neb. 260 \(1997\)](#).

C. Gifts

1. Essential elements of inter vivos gift are intent, delivery, and acceptance. [Lewis v. Poduska, 240 Neb. 312 \(1992\)](#). An engagement ring given by a man to his fiancé becomes unconditionally the wife's upon marriage, and it is not marital property upon dissolution of that marriage. [Ward v. Ward, 7 Neb. App. 821 \(1998\)](#). If no

marriage takes place, it must be returned to the man, since it was a conditional gift.

D. Statute of Limitations

1. An affirmative defense which must be raised in the answer. [Welch v. Graves, 255 Neb. 62 \(1998\)](#).

E. Subrogation

1. An insurance company has no right of subrogation against its own insured. [Stetina v. State Farm Mutual, 196 Neb. 441, 243 NW2d 341 \(1976\)](#). This rule may even apply to relatives who are house guests. [Reeder v. Reeder, 217 Neb. 120, 348 NW2d 832 \(1984\)](#). (regarding tenant liability for negligently started fires); [Jindra v. Clayton, 247 Neb. 597, 529 NW2d 523 \(1995\)](#).

F. Civil Jury Trial Dialogue (the following procedure may be altered by stipulation of parties' counsel):

1. OPENING OF COURT:

- a. **Bailiff:** Before entrance into the Courtroom of the trial judge, the Bailiff will ascertain that all is in readiness for the opening of Court; that all Court officers are in the proper places; that all prospective jurors are seated in the Jury box or the front rows of the spectator section; that no one is smoking, and that all is in order.
- b. **Entrance of the Trial Judge:** When all is ready, the Bailiff will advise the judge. When the judge enters the Courtroom and mounts the bench, the Bailiff will announce:
"Everyone will rise and remain standing, Seward County Court, Seward County, State of Nebraska, is now in session with The Honorable C. Jo Petersen, Judge, presiding."
The judge will stand during the introduction, will then be seated; and the Bailiff should then direct all persons to do likewise.

2. OPENING REMARKS TO JURY PANEL:

"I welcome you here this morning as the Jury panel selected for this Jury term of the County Court. For most of you, this will be the first time you have been called on to perform this important service."

"This call upon your time does not frequently come to you and may never be repeated in your life. It is a service that should command pride in the performance of your duties."

"Your initial selection was made by law and after the Court is satisfied that each of you can, without fear, favor, prejudice, or sympathy, and in sound judgment, render a just and fair verdict on the evidence presented and the instructions given by the Court, you will be sworn and seated as a juror."

"After taking the juror's oath, you will become, in effect, officers of the Court. It will be the duty of the judge to conduct the trial in accordance with the rules of law and procedure, to maintain order and decorum, and to instruct you on the law that you are to apply to the facts as you find them."

"The demands upon your time will not be unreasonable nor unduly prolonged, and the Court will always be open to hear and discuss any problems of discomfort, distress, or embarrassment that you have. It is anticipated this trial will take one (1) day."

3. INTRODUCTION:

Judge:

"Also, I would like to introduce you to _____, the Clerk/Deputy Clerk of the District Court. In addition, I want to introduce to you _____ who will be acting as the Court Bailiff. A Bailiff is a representative of the Court who is to supervise and protect the Jury while the case is being tried. The Bailiff will be your official link with the Court while you are in the Jury room. The Bailiff will perform such tasks as taking you to meals and see that no one speaks to you about the case while you are serving as jurors. The Bailiff will also carry messages from you to the Court."

"At this time, I will ask the Clerk to swear in the Bailiff."

Clerk:

"Will the Bailiff please stand and raise his/her right hand to be sworn?"

"Do you solemnly swear that you will keep this Jury together in some private and convenient place; that you will not permit any person to speak or communicate with them, nor do so yourself, except by order of the Court; that you will return them into Court when a verdict has been reached or you are ordered by the Court to do so; and that you will not communicate to any person the state of their deliberations or the verdict agreed upon, so help you God?"

4. CALL THE CASE:

Judge:

"The case set for trial on this date is Robert Bruha, Plaintiff vs Dean Bruha, Defendant."

"Is counsel for the Plaintiff ready to proceed to trial?"

"Is counsel for the Defendant ready to proceed to trial?"

*"Ladies and gentlemen of the Jury, this is the case of _____
_____ vs _____. The Plaintiff, _____
_____, is seated at this table to the _____, with his/her attorney, _____
_____. The Defendant, _____, is seated at
this table to the _____ with his/her attorney, _____."*

*"This case is a civil case in which the Plaintiff, _____ has filed this action
against the Defendant, _____, for monetary damages alleging that the
Defendant has wrongfully _____

_____*

*The Defendant, _____, denies that he/she _____

_____. It will be those issues of _____
_____, that you will be asked to decide if you are selected as jurors
in this case."*

5. QUALIFICATION OF JURY:

Judge:

*"We will now proceed with qualification of Jury. Members of the Jury panel, as
your name is called by the Clerk, please remain seated and answer to the roll call."*

"Will the Clerk call the roll of prospective jurors?"

Clerk:

"Will the people answer, 'Present', as I call your name."¹

¹ Have all prospective jurors in the Jury box or in the front row of the Courtroom to separate them from the public.

Judge:

“Will the Clerk swear the jurors, touching on their qualifications to serve as prospective jurors of this Court.”

Clerk:

“You and each of you do solemnly swear (or affirm) that you will true answers make to all questions propounded to you by the Court or its authority touching on your qualifications to serve as a juror. So help you God.”

(AFFIRMATION: the clause, “SO HELP YOU GOD,” shall be omitted.)

Judge: (Qualifies Jurors)

“Ladies and gentlemen, I have certain questions to ask you to determine your qualifications to serve as prospective jurors in this Court. Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked of each of you as though each of you were being questioned separately. Each question requires an answer that can be heard, not just a nod or silence. Unless you can answer properly each of these questions, you are not qualified to serve as a juror in this Court.”

“Answer audibly for each of the following questions:

- 1. Are you a U.S. citizen?*
- 2. Are you each over the age of 19?*
- 3. Were you each summoned by your proper name?*
- 4. Do any of you hold an official position with the county, state, or federal government? (Disqualify following positions: Judges, Court Clerks, Sheriffs, and Jailers.)*
- 5. Are you physically and mentally capable of serving as a juror?*

6. *Have any of you ever been convicted of a felony and do not have your civil rights restored?*
7. *Are there any criminal charges pending against you of which you are aware?* [[Neb. Rev. Stat. § 25-1601\(1\)\(a\)](#)]
8. *Are you or your spouse involved in a civil or criminal suit that will be heard before this same Jury panel?*
9. *Are each of you either registered voters of Seward County or holders of valid Nebraska driver's licenses from Seward County?"*

*Jury service may be postponed by the Judge upon showing undue hardship, extreme inconvenience, or public necessity.

*Persons over 70 years of age may request an exemption at the time the juror qualification form is filed with the commissioner.

6. VOIR DIRE ORIENTATION:

Judge:

"As your name is called, please take a seat in the Jury box as directed by the Bailiff."

(Draw 12. It is recommended that if an alternate juror is necessary, three additional jurors be selected, each litigant be allowed four peremptory strikes and the last juror selected, would be the alternate. If this is not stipulated to, the statutory procedure must be followed.)

Judge:

"At this time, the Court and counsel will ask you questions. These questions are not designed to pry into your personal affairs, but to discover if you have any knowledge of the case; have any preconceived opinion which you cannot lay aside; or, if you have any experience in your personal or family life that might cause you to identify yourself with either party. These questions are necessary to assure each party an impartial Jury."

"Each side has three 'peremptory challenges,' which means each side can challenge you and ask that you be excused without giving a reason therefore. In addition, each side has challenges 'for cause', which means that each side can ask that you be excused for a specific reason. If you are excused, please do not feel offended or feel that your honesty and integrity are being questioned; they are not."

7. COURT'S VOIR DIRE:

Judge:

1. *"Has anyone heard or read anything that purports to be facts concerning this case...newspaper, television, etc.?"*

If "yes":

"Even though you have heard prior information concerning this case, can you fairly and impartially sit as a juror in this case and make your decision based solely on the evidence you hear in this case?"

2. *"Does anyone have any interest in this case?"*
3. *"Has anyone formed or expressed any opinion on the merits of this case?"*
4. *"Does anyone entertain or is anyone aware of any bias or prejudice for or against either side of this case or any of the parties previously identified as witnesses?"*
5. *"Does anyone have a law suit trial at this term?"*
6. *"Are any of you relation by blood or marriage to any of the parties or their attorneys?"*
7. *"Have you any business now pending or business dealings with any of the attorneys appearing in this case or members of their firms?"*
8. *"Has anyone had any previous experience similar to this type Court case?"*
9. *"Does anyone know of any reason why he or she cannot sit as a fair and impartial juror in this case?"*
10. *"Does anyone have any health problems which would preclude them from sitting on this Jury?"*

8. CHALLENGE OF JURY BY COUNSEL:

Judge:

"The plaintiff's attorney may examine and challenge the jurors for cause."

(Counsel may challenge each juror individually after examination or may approach the bench and make challenges to the bench.)

"The defendant's attorney (or defendant, representing himself) may examine and challenge the jurors for cause."

(If defendant is representing him/or herself he/or she will now make challenges.)

“Will both counsel approach the bench.” (Counsel should now inform the judge of a challenge, if any, alleging one or more causes enumerated below which will be entered into the minutes.

1. That the juror was a member of the grand Jury which found the indictment;
2. That the juror has formed or expressed an opinion as to the guilt or innocence of the accused;
3. That the juror is a relation within the fifth degree to the person on whose complaint the prosecution was instituted or to the defendant;
4. That the juror has served on a jury with an inter-related factual situation, was sworn in the same cause against the same defendant which Jury either rendered a verdict which was set aside or was discharged, after hearing the evidence;
5. That the juror has served as a juror in a civil or criminal case brought against the defendant for the same act;
6. That the juror has been in good faith subpoenaed as a witness in this case;
7. That the juror is a habitual drunkard; or
8. The same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

If a juror is excused, the Court then asks the Clerk to call another prospective juror. When the new juror is seated in the Jury box, the Court should then interrogate this juror as set forth in Court’s voir dire. (The Court may direct such questions as deemed appropriate toward challenged jurors with a view toward rehabilitating them.)

9. ADDITIONAL JUROR – When a juror is removed for cause, the Court shall select an additional juror and proceed with voir dire as follows:

Judge:

“Have you heard the Court’s explanation of the general nature of the issues in the case to the other jurors and the questions asked them?”

If answered in the affirmative:

“Would your answers to such questions be any different than the other jurors, if

so, in what respects?”

“Defense counsel may question this new prospective juror for cause.”

When defendant has exhausted challenges for cause:

“The plaintiff may examine the jurors for cause.”

If a juror is excused, both counsel may question a new juror for cause.

10. PEREMPTORY CHALLENGES:

a. Plaintiff exercises first peremptory followed by defendant, in sequence of three each. Judge will dismiss all challenged peremptorily at one time. No reason for the challenge need be given, and the Court must excuse a challenged juror.

b. Each side is entitled to _____ peremptories.

c. The plaintiff shall be entitled to additional peremptory challenges equal to the number of all the additional separate challenges allowed the defendant or defendants to such alternate jurors.

d. When both counsel have passed this new juror for cause (or if the plaintiff passed its first peremptory challenge), the Court announces that it is the defendant’s peremptory challenges, or both pass consecutively stating that they are satisfied with the Jury.)

Judge:

“The attorneys for the plaintiff and defense will exercise their peremptory challenges at this time.”

Have attorneys strike their respective peremptory challenges at the bench or by the Clerk-Magistrate’s table and have the Clerk call out the names of those jurors that have been excused, and excuse the balance of the jurors in the audience.

11. SWEARING THE JURY:

Judge:

“Will the Clerk now swear the Jury to try the case.”

Clerk:

“Will the Jury panel stand. You shall well and truly try, and true deliverance make, between the plaintiff and the defendant, _____ so help you God.”

Any juror shall be allowed to make affirmation and the words: “This you do as you shall answer under the pains and the penalties of perjury,” shall be substituted for the words, “so help you God.” [NEB. REV. STAT. § 29-2010.](#)

12. PRELIMINARY INSTRUCTION: Function of Judge, Jury, Counsel; Evidence (NJ12d 1.0)

Judge:

“Members of the Jury, I will now take a few moments to give you initial instructions about this case and your duties as jurors. At the end of the trial, I will give you further instructions and I may also give you instructions during the trial. Unless I specifically tell you otherwise, all instructions, those I give you now and those I give you later, are equally binding on you and must be followed. You will be given detailed instructions explaining the rules of law that apply to this case near the end of the trial. What I say now is not a substitute for those more detailed instructions, but only an introduction to this trial.

This is a civil case, not a criminal case. This is a case brought by one or more plaintiffs against one or more defendants. The plaintiff(s) make(s) various claims. The defendant(s) deny(ies) plaintiff(s) claims. It will be your duty to decide from the evidence whether the plaintiff(s) is/are entitled to a verdict against the defendant(s). Accordingly, you will not be asked to decide if someone committed a crime, but rather whether the plaintiff is entitled to a verdict.

It is my duty to see that this trial is conducted fairly and efficiently and in a manner consistent with Nebraska law. As part of that duty, I will rule upon objections and other legal questions that come up during the trial. I may also excuse the jury from the courtroom to address some of those issue during the trial. It is the duty of the attorneys to use all honorable means to protect their client(s) interest, including making objections they deem proper.

It is your duty to determine what the facts are. In determining what the facts are, you must rely solely upon the evidence that is presented here within the four walls of this courtroom and the general knowledge that everyone has. You are entitled to consider the evidence in light of your own observations and experiences in life. Other than that general knowledge and experience, you must disregard your personal knowledge of any facts in this case. When you determine what the facts are, you will then apply those facts to the law which I give you in these and other instructions and in that way reach your verdict. You and you alone are the judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not. The only reason for a trial is that there is some dispute regarding the facts. It is your duty to resolve that dispute.

Do not use any electronic device in any way to discover or share any information about this case. This includes cell phones, iPads, computers and all other electronic devices. This includes searching, blogging, emailing, texting, using Facebook, Twitter, SnapChat, Instagram, Linked In or any other such social network. Do not conduct any of your own independent research about this case. Do not consult dictionaries, other reference materials, or any electronic devices to obtain information about this case – about the parties, the issues, the locations, or anything else that has to do with this case. Do not go near any of the places discussed in this case.

Do not pay any attention to any news reports regarding this case.

Any information obtained outside this courtroom, whether through reference materials, newspapers, television, computers or any electronic devices, could be misleading, inaccurate or incomplete. The information may be wrong and the places may have changed. Relying on any such information would be unfair because the parties would not have the opportunity to refute, explain or correct it.

The evidence in this trial will consist of the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated – that is formally agreed to by the parties – and any facts judicially noticed – that is facts I say you must accept as having been proved without further evidence.

Statements and arguments of counsel are not evidence. Objections to questions are not evidence. Do not be influenced by any objection. If I sustain an objection, disregard the question and do not guess as to what the answer might have been. Testimony that I tell you to disregard is not evidence and you must not consider it.

Do not take anything that I say or do as expressing my opinion as to how this case should come out or how you should resolve any issue of fact.

Do not allow sympathy or prejudice to influence you. Do not indulge in speculation, guess or conjecture. Do not make inferences that are not supported by the evidence.

Do not make up your minds in this case until it is submitted to you for your verdict.

You alone will decide the credibility, that is, the believability, of the witnesses. You alone will decide how much weight to give each piece of evidence and how to resolve any conflicts in the evidence.

In determining all of this, you may consider: the sources of the witness's testimony, including the witness's ability to have seen, or heard, or known the things about which he or she testifies; the witness's ability to remember and to communicate accurately; the conduct and demeanor of the witness while

testifying; whether the witness has an interest in the outcome of this case, a relationship to the parties, or any bias or prejudice; any previous statement or conduct of the witness that tends to support or to contradict the witness's testimony at this trial; the reasonableness of the testimony of the witness; and any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

This case involves _____

The trial will proceed in the following order: First the attorney for the Plaintiff, _____, and the attorney for the Defendant, _____, will each have an opportunity to present opening statements; this is their opportunity to outline what they believe the evidence will show to attempt to help you understand the evidence as it is presented at trial. Next the Plaintiff will introduce evidence in support of its contentions. Following the Plaintiff's presentation of evidence, the Defendant will have the opportunity to present evidence on his/her behalf, but he/she is not obligated to do so. After all of the evidence has been presented, each party will have the opportunity to present a closing argument; that is where the attorneys tell you what they think the evidence has proved. Either just before or just after closing arguments, I will tell you what the law is, as it relates to this case. You will then begin your deliberations and consider your verdict.

You will be allowed to take notes during the trial. You will not be allowed to ask questions during the trial. A transcript of the testimony will not be provided at the close of the evidence. Your notes are to be treated as confidential between you as the juror making the notes and the other jurors. You must leave your notes in the jury room whenever you leave the courtroom. After the verdict has been received the law requires that your notes be destroyed immediately upon receiving the verdict so all notes must be turned over to the court upon reaching a verdict.

You shall not discuss this case with anyone, including the other members of the jury, until the case is submitted to you for your verdict. After that, and until the court has accepted your verdict, you may only discuss the case with other members of the jury during the deliberations in the jury room with all members present. Do not let others talk to you about his case and do not listen to any conversations on the subject. If anyone speaks to you about this case, tell that person that you are on the jury and that you are not allowed to talk about the case. If anyone keeps trying to talk to you about this case, you must let me know. During this trial you must also not talk with the lawyers, witnesses, or parties in this case. If you see any of them and they do not speak to you, do not think they are being rude.

Again, I admonish you not to discuss this case, even with each other, until such time as I instruct you to do so. You must not send, search for, or receive any communication about this case, whether in person, on the phone, through any electronic device or in any other way. And again, you must not to make up your minds regarding this case until it is submitted to you for your verdict."

12. ADMONITION TO JURY FOR RECESS (NJ12d CRIM. 1.3):

Judge:

"Members of the Jury, we will now (take a brief recess, recess for the day, recess for lunch, take a brief recess, etc.). During recesses, there are certain things you are not allowed to do:

- 1. Do not talk about or discuss this case among yourselves, or with anyone else, either in person or through the use of any electronic device.*
- 2. Do not listen to any conversation about this case.*
- 3. Do not do any of your own research into anything involved in this case. Do not consult any reference materials or use any electronic devices to obtain any information about anything involved in this case.*
- 4. Do not read, watch, or listen to any reports about this case in the newspaper, on television, on the radio, on your computer, or on any other electronic device.*
- 5. Do not go near any of the locations discussed in this case.*
- 6. And you must not form or express an opinion on the case.*

Let me say one last thing. You must not do any research or investigation of any kind on your own. If you see or hear anything about this case during a recess, tell me about it. Do not mention it to other members of the Jury or to anyone else."

13. EXCLUSION OF WITNESSES RULE: (NOTE: After sustaining a motion for sequestration, have witnesses brought into the Courtroom.)

Judge:

"Each of you has been summoned as a witness in this case. The Court has invoked a rule of procedure which requires your exclusion from the Courtroom at all times except during the time when you testify in this case."

"You are directed to remain out of the Courtroom except when you are called to testify. While you are waiting to testify, and after you have done so, you are not to discuss this case or your testimony among yourselves or with anyone else."

"However, you may discuss your testimony with counsel for either party in this case. You will not retire from the Courtroom until you are called."

"Counsel for each of the parties are instructed to advise their witnesses who are not present at this time of the direction I have just given, and each of them shall govern themselves accordingly."

"Any violation of this direction may not only subject you to contempt of Court, but may also disqualify you as a witness in this case."

14. OATH OF INTERPRETER:

Judge:

"Do you promise that to the best of your skill and judgment, you will make a true interpretation to this (hearing impaired person or) person unable to communicate the English language of all the proceedings in a language which such person understands, and that you will, in the English language, repeat the statements of such person to the Court?"

15. OPENING STATEMENTS:

Judge:

"The attorneys will now give their opening statement to tell you what their side of the case is about."

"(Plaintiff) Counsel for the Plaintiff, do you wish to make opening statements to the Jury as to what you expect the evidence to show?"

"(Defendant) Counsel for the Defense, do you wish to make an opening statement to the Jury as to what you expect the evidence to show?"

"The case will now proceed to trial. Plaintiff's attorney will proceed first, then the

defendant will proceed in turn.”

“The Plaintiff’s attorney may call the first witness.”

When the Plaintiff has rested, defense may call its first witness.

“Defense counsel, you may call your first witness.”

Rebutting testimony allowed only unless the Court, for a good reason, in furtherance of justice, permits them to offer evidence upon their original case.

16. FINAL ARGUMENT: (NOTE: Upon stipulation of counsel on the record, instructions to the Jury may be given to final arguments.)

Judge:

“Counsel, at this time, will make their final arguments to you.”

“Counsel for the Plaintiff will have the opening argument. Counsel for the defendant will then have the opportunity for argument. In conclusion, counsel for the Plaintiff will have an opportunity to reply to the argument of counsel for the defendant. The attorneys, in making these comments to you, will be commenting upon the testimony you have heard and the evidence which has been presented in this case. They, as you, will be recalling the evidence that has been presented. However, if their recollection of the evidence differs from your recollection, you must follow your own recollection.”

“These final arguments are not to be construed by you as evidence in this case or instructions on the law. However, they are intended to help you better understand the contentions of each side and the issues are yours to decide. You should give both sides your close attention.”

“Counsel for the Plaintiff may proceed with final argument.”

Dismiss Alternate Juror

“Counsel for the defendant may proceed with final argument.”

“Counsel for the Plaintiff may proceed with reply argument.”

17. PRIOR TO INSTRUCTIONS (on the record):

Judge:

“Will counsel approach the bench. Are there any objections to the instructions to be given by the Court? Does counsel wish any additional instructions?”

Give instructions.

Do not editorialize. The best practice is to give each juror a photocopy of instructions before reading.

18. AT CONCLUSION OF INSTRUCTIONS:

Judge:

“Counsel approach the bench.”

Inquire of counsel in the following manner:

“Has the Court omitted any instructions or changed any of the instructions that the Court advised counsel in the instruction conference it would give in this case?”

Judge:

“The Bailiff will now conduct the jurors to the Jury room for deliberations.”

“The Clerk-Magistrate/Court Attendant is to be on call.” (For possible replaying of some testimony or instruction.)

(The Court may exercise its discretion as to whether the jurors may separate overnight or remain locked up.)

19. RECEIVING THE VERDICT:

Judge:

“In the matter of _____ vs. _____, the record will show that the plaintiff, defendant, and their counsel are all present. All jurors are present in the Jury box.”

“Who is the foreperson (or presiding juror), please?”

Foreperson Responds

Judge:

"Mr./Ms. Foreperson, has the Jury arrived at a verdict?"

Foreperson responds

Judge:

"Please hand all the verdict forms to the Bailiff."

The Bailiff hands the verdict forms to the Judge, who reviews them to see if they are complete, and in turn, hands them to the Clerk.

Judge: To the Clerk

"Please read the verdict."

Clerk complies

Judge:

"Mr./Ms. Foreperson, is this the Jury verdict?"

"Counsel, do you wish to have the Jury polled?"

(NOTE: Some Judges prefer to automatically poll the Jury in each and every case without request of counsel.)

Plaintiff's Attorney responds

Defendant's Attorney responds

If no waiver, the Clerk must read the verdict as recorded and inquire of the jurors if it is their verdict as recorded.

Judge:

"Ladies and gentlemen of the Jury, this completes your duties on this case. Thank you for your attention and the sacrifice of your time for this important public service."

"The jury is now discharged."

20. DEADLOCKED JURY:

Judge:

"If the Court were to ask you to continue your deliberation, do you feel that there is a reasonable probability that you might yet be able to arrive at a verdict?"

- a. If the Foreperson's answer is "YES," send the Jury back to the Jury room for further deliberations.
- b. If the Foreperson's answer is "NO":

Judge:

"Is there anything further that the Court can do to assist the Jury in arriving at its verdict, such as further Jury instruction, reading of the testimony by the Court reporter?"

Foreperson responds. If the answer is still "NO":

Judge:

"Mr./Ms. Foreperson, I want you to be very careful and do not volunteer any information other than a direct response to the following question that I am going to ask you. Mr./Ms. Foreperson, tell me by a number, how many ballots have been taken by the Jury?"

Foreperson responds

"In response to this question, Mr./Ms. Foreperson, I only want two numbers, such as 3 to 3, 4 to 2, or whatever the case may be, and I do not want you, in answering this question, to give me anything but two numbers."

"I now want you to tell me what the numerical breakdown of the Jury was on its last ballot."

"Mr./Ms. Juror Number 1, the Foreperson has indicated to the Court that in his/her considered judgment, this Jury is hopelessly deadlocked and that further deliberations would not bring about a verdict in this case. Is this your personal opinion also?"

Juror Number 1 responds

"Mr./Ms. Juror Number 2, the Foreperson has indicated to the Court that

in his/her considered Judgment, this Jury is hopelessly deadlocked and that further deliberations would not bring about a verdict in this case. Is this your personal opinion also?"

Juror Number 2 responds

Ask the same question of all six jurors. If any juror indicates that further deliberations may possibly bring about a verdict, send the Jury back to the Jury room for further consideration. If no juror answers in the affirmative, that is they believe the Jury is hopelessly deadlocked, then declare a mistrial as follows:

"It now appears to the Court that this Jury is hopelessly deadlocked; I will now declare a mistrial and discharge the Jury from any further service in this case."

"Mr./Ms. Foreperson, now that I have declared a mistrial, you may tell me in which direction the last vote was of the Jury."

21. REQUEST FROM THE JURY: Note that all request from the jury must be in writing and the judge should not "Received", date and time of receipt an initial the same.

No oral response should be made. A written instruction should be prepared and file stamped and the jury should be called in and the written instruction should be given to the jury in the presence of all of the parties. (unless parties agree to have written instruction given to Bailiff to deliver to jury)

22. GENERAL INSTRUCTIONS DURING TRIAL (Possible)

a. GENERAL LIMITED PURPOSE:

"Members of the Jury, evidence of (here insert description) was received for the limited purpose of (here insert purpose); you must consider the evidence only for that limited purpose and for no other."

b. IMPEACHMENT – PRIOR INCONSISTENT STATEMENT:

"Members of the jury, the evidence that (this witness – insert name) allegedly made a statement/statements that may be inconsistent with his/her testimony in court was brought to your attention only to help you decide if you believe what the (witness – insert name) testified to in court and, if so, how much to rely on that testimony. If you believe that he/she said something different earlier, then it will be up to you to decide if what he/she said here in court is true. You may not consider what may have been said earlier as proof of any fact contained in that/those earlier statements."

Appendix

1. [Pretrial Order](#)
2. [Order on Objection to Garnishment](#)
3. [Order Overruling Motion to Dismiss for lack of personal jurisdiction](#)
4. [Order Sustaining Motion to Dismiss for lack of personal jurisdiction](#)
5. [Order Granting Summary Judgment to Defendant](#)
6. [Order Granting Summary Judgment to Plaintiff](#)
7. [Order on Motion to Dismiss - liability for medical services](#)
8. [Progression Order](#)
9. [Letter to Counsel re: pretrial conference](#)
10. [Jury Trial – Opening Remarks](#) (Sample Jury Instructions available upon request)
11. Schedule of motions
12. [Non-exhaustive List of Useful Exemptions](#)
13. [Blank Jury Instructions](#)
14. [Lawful Collection of Legal Financial Obligations Bench Card](#)

IN THE COUNTY COURT OF KEITH COUNTY, NEBRASKA

_____	)	
Plaintiff,	)	
	)	CASE NO: 13-116
vs.	)	
	)	PRETRIAL ORDER
_____	)	
Defendant.	)	

NOW on July 2, 2013, this matter comes on for pretrial conference. The Plaintiff appears by counsel, and the Defendant appears () by counsel _____ () pro se () does not appear.

1. PLEADINGS. () Pleadings are complete. () Plaintiff is granted _____ days to file an amended complaint and the defendant shall further plead according to the rules of civil procedure. () Defendant is granted _____ days to file an amended answer and the plaintiff shall further plead according to the rules of civil procedure. Further pleadings will be allowed only upon good cause shown.
2. DISCOVERY. () Discovery is complete () Discovery shall be completed within 60 days of this date. No further discovery will be allowed except for good cause shown.
3. WITNESS AND EXHIBIT LISTS. Witness and Exhibit lists shall be filed 15 days prior to the trial date. No amendments will be allowed except for good cause shown. Exhibits shall be marked prior to trial. Prior to presenting the exhibits to be marked, trial counsel shall number each page on all exhibits. Counsel shall complete the joint exhibit list, in the form prescribed by the court, which shall be presented to the court at the commencement of the trial.
4. TRIAL. Trial will commence on _____, 2014, at _____ o'clock _____.m. Trial is to () the Court () a jury. The Court will prepare standard jury instructions. Requested instructions shall be submitted to the court and counsel 7 days prior to trial.
5. PRETRIAL MOTIONS. Pretrial motions shall be filed 15 days prior to the trial date.
6. STIPULATIONS. Stipulations regarding facts, the receipt of exhibits into evidence or other matter shall be in writing.
7. TRIAL BRIEF. Trial briefs shall be file 3 days prior to trial.

BY THE COURT:

Edward D. Steenburg, County Judge

IN THE COUNTY COURT OF KEITH COUNTY, NEBRASKA

_____	)	Case No. CI _____ - _____
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
_____	)	
Defendant.	)	

On _____, 2014 this matter came before the court on the objection to garnishment filed by the defendant. The plaintiff appears by _____. The defendant is present pro se. Evidence was presented and the matter was taken under advisement.

Now on _____, 2014 this matter comes on for decision in chambers.

The plaintiff garnished the debtor's bank account at the Valley Bank and Trust, which had a balance of \$99.05. The defendant filed an objection to the garnishment.

The defendant claims that the funds represent earnings and are exempt under [§ 25-1558](#). The evidence shows that the funds can be traced to the defendant's earnings. The defendant's employer previously withheld 15% of the defendant's disposable earning pursuant to a garnishment in case no. 12-225 and then deposited the defendant's net earnings directly into the account.

[§ 25-1558](#) provides, in part, as follows:

(1) Except as provided in subsection (2) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall not exceed the lesser of the following amounts:

.....

(c) Fifteen percent of his or her disposable earnings for that week, if the individual is a head of a family.

.....

(3) No court shall make, execute, or enforce any order or process in violation of this section. The exemptions allowed in this section shall be granted to any person so entitled without any further proceedings.

(4) For the purposes of this section:

.....

(b) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld;

.....

(d) Head of a family shall mean an individual who actually supports and maintains one or more individuals who are closely connected with him or her by blood relationship, relationship by marriage, by adoption, or by guardianship, and whose right to exercise family control and provide for the dependent individuals is based upon some moral or legal obligation.

.....

The issue is under what circumstances wages lose the character of being partially exempt from execution. It has been held that exempt earnings retain that status after being deposited in a bank account. [Staton v. Vernon, 209 Iowa 1123, 229 N.W. 763 \(1930\)](#); [MidAmerica v. Miehle, 438 N.W.2d 837 \(Iowa 1989\)](#)

Exempt funds can lose that status if their form is changed by investment in other property. For instance, wages invested in the savings bond had lost their exempt character. [Iowa Methodist Hospital v. Long, 234 Iowa 843, 12 N.W.2d 171 \(1943\)](#)

The purpose of allowing wages to retain their exempt character is to facilitate payment of ordinary living expenses. In order to permit an employee to receive any benefit from [§25-1558](#), it is necessary to allow that employee to spend the funds. *MidAmerica*, supra. While [§25-1558](#) provides that only a certain percentage of earnings are subject to garnishment while in the hands of the employer, the protection of [§25-1558](#) is meaningless if creditors can levy on the exempt earnings once they reach the defendant's bank account. *MidAmerica*, supra.

This issue was expressed in [Matthews v. Lewis, 617 S.W.2d 43 \(Ky.1981\)](#): "It would be sheer, ineffectual folly to argue that compensation is exempt until it touches the the bank checking account and from that instant is completely available to a creditor possessing an attachment order. If that be the case, where is the exemption?" [General Motors Acceptance Corp. v. Falcone, 130 N.J.Super. 517, 521, 327 A.2d 699, 701 \(1974\)](#); [Daugherty v. Central Trust Co., 28](#)

[Ohio St.3d 441, 445, 504 N.E.2d 1100, 1103 \(1986\).](#)

The Court finds that the exempt character of earnings is not lost when a defendant deposits exempt earnings into a bank account; therefore, any funds which were exempt from garnishment in the hands of the employer under [§25-1558](#), continue to be exempt from garnishment so long as they can be traced to earnings. Thus, if a defendant's earnings are deposited into an account prior to any garnishment the court will allow either 25% or 15% to be withheld depending on the defendant's status as head of household. If the defendant's earnings were subjected to a garnishment at the defendant's place of employment, then the remaining funds are exempt from further garnishment.

The \$99.05 can be traced to the last deposit to the account, which came from the defendant's earnings. The funds are subject to the protections of [§25-1558](#). The funds were subjected to a garnishment before they were deposited, and are exempt from any further garnishment.

IT IS THEREFORE ORDERED that the garnishee, Valley Bank and Trust, is ordered to release the \$99.05 to the defendant.

SO ORDERED.

BY THE COURT:

Edward D. Steenburg, County Judge

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

INSITE DATA SERVICES, INC.,	)	Case No. CI 14-9904
	)	
Plaintiff,	)	
vs.	)	ORDER ON
	)	MOTION TO DISMISS
PONY EXPRESS COMMUNITY	)	
BANK, a Missouri State Banking Inst.,	)	
	)	
Defendant.	)	
	)	

This matter came on for hearing on Defendant's Motion to Dismiss on the 31st day of October, 2014. Joel G. Lonowski represented the Plaintiff, Insite Data Services, Inc. ("Insite"), and John M. Guthery appeared for the Defendant, Pony Express Community Bank ("Pony Express"). Evidence was adduced and the matter was taken under advisement pending briefing by the parties.

The Court now being fully advised in the premises, finds that this is an action for breach of a contract entered into between Plaintiff and First Bank of Troy on or about March 27, 2011, under which Plaintiff provided online banking services to First Bank of Troy. On or about May 31, 2013, First Bank of Troy and Defendant merged to become Pony Express Community Bank ("Pony Express"). Plaintiff alleges that following the merger, Defendant failed and refused to perform under the contract in that it failed to pay the amounts due to Plaintiff according to the contract.

First Bank of Troy was a bank chartered in Kansas with its principal place of business in Troy, Kansas. Defendant is a Missouri state bank organized and chartered under the laws of the state of Missouri with its principal place of business in St. Joseph, Missouri. Defendant has branch offices in Kansas and one in Nebraska.

Defendant moves to dismiss, alleging that it did not enter into the contract with Plaintiff and does not have sufficient contacts with the state of Nebraska that would allow this Court to assert personal jurisdiction over it. Plaintiff argues that it had a long standing relationship with the First Bank of Troy, including this contract, and that Defendant is liable as the surviving corporation of the merger.

The determination of whether the court has personal jurisdiction over the Defendant is a two-step process. The court must determine first, whether the Defendant had the necessary minimum contacts with the state under Nebraska's long-arm statute; and second, whether the contacts are such that the assertion of personal jurisdiction would comport with fair play and substantial justice. See [*Kugler Co. v. Growth Products Ltd.*, 265 Neb. 505, 511 \(2003\)](#). The court may exercise either general personal jurisdiction, if the contacts are substantial, continuous and systematic, or specific personal jurisdiction, if the cause of action arises out of a defendant's

contacts with the forum state. *Freeburg v. Internat'l Port Servs., Inc.*, Case No. A-08-576, p. 5 (Feb. 17, 2009).

Minimum Contacts

Nebraska's long-arm statute, [Neb. Rev. Stat. § 25-536](#), provides:

A court may exercise personal jurisdiction over a person: (1) Who acts directly or by an agent, as to a cause of action arising from the person: (a) Transacting any business in this state; (b) Contracting to supply services or things in this state; (c) Causing tortious injury by an act or omission in this state; (d) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; (e) Having an interest in using, or possessing real property in this state; or (f) Contracting to insure any person, property, or risk located within this state at the time of contracting; or (2) Who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States.

“The legislature intended to provide for the broadest allowable jurisdiction over nonresidents. As such, Nebraska's long-arm statute is to be interpreted broadly in view of the rationale and philosophy underlying its adoption.” [Freeburg, Case No. A-08-576, p. 5 \(citing Quality Pork Internat'l v. Rupari Food Servs. Inc., 267 Neb. 474, 480, 675 N.W.2d 642 \(2004\)\)](#).

The statutory requirements of the long-arm statute have been satisfied due to First Bank of Troy's and Defendant's business dealings within the State of Nebraska. Whether the exercise of personal jurisdiction meets due process standards is a separate determination.

Due Process

Plaintiff argues that this court may exercise specific personal jurisdiction over the Defendant because its cause of action arises out of First Bank of Troy's business relationship and contacts with the Plaintiff. Prior to entering into the contract which is the subject of this action, First Bank of Troy engaged in numerous discussions with Plaintiff. On several occasions, representatives of First Bank of Troy came to Lincoln, Nebraska for presentations. Plaintiff and its affiliate, Automated Systems, Inc. have provided various banking software services and products for First Bank of Troy beginning in 1993. The Plaintiff and First Bank of Troy entered into several contracts during that period, including at least one contract which provided that the agreement would be governed by Nebraska law. Discussions and negotiations for these contracts occurred in both Kansas and Nebraska, and many communications took place over the internet.

When First Bank of Troy merged into Pony Express Community Bank in May of 2013, the surviving corporation chose to discontinue use of Plaintiff's online banking services. However, under Missouri and Nebraska law, Pony Express, as the surviving corporation, is liable for all of the debts and obligations of the nonsurviving corporations involved in the merger. See [Mo. Ann.](#)

[Stat. § 347.133\(3\), Neb. Rev. Stat. § 21-20,133](#). Therefore, Defendant is liable for the debts and obligations of First Bank of Troy under its contract with the Plaintiff.

Defendant argues that the recent Supreme Court case of [Daimler AG v. Barbara Bauman, 134 S.Ct. 746, 187 L.Ed.2d 624 \(2014\)](#) has limited the exercise of personal jurisdiction over a corporation to the states in which it is incorporated and where it has its principal place of business. Because Defendant is neither incorporated in Nebraska nor has its principal place of business in Nebraska, Defendant asserts this Court cannot exercise personal jurisdiction over it.

In *Daimler*, twenty-two residents of Argentina filed suit in California against Daimler-Chrysler Aktiengesellschaft, the predecessor to Daimler AG, for injuries sustained during a “dirty war” in Argentina wherein it was alleged that Mercedes-Benz Argentina collaborated with state security forces to kidnap, detain and torture workers in Argentina. 134 S.Ct. at 751. The Supreme Court found that Daimler was not amenable to suit in California for injuries allegedly caused by the conduct of one of its subsidiaries, Mercedes-Benz Argentina, which took place entirely outside of the United States, even though another one of its subsidiaries, Mercedes-Benz USA had substantial contacts with California. *Id.* at 763. The Court rejected the theory that MBUSA was an agent or alter ego of Daimler in holding that it was error for the Ninth Circuit to conclude that Daimler could be subject to suit in California by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California. *Id.*

[Clarifying Goodyear Dunlop Tires Operations, S.A. v. Brown, 546 U.S. , 131 S.Ct. 2846, 180 L.Ed.2d 796 \(2011\)](#), the Court held that the proper inquiry to determine general personal jurisdiction is whether the corporation’s affiliations with the state are so continuous and systematic as to render it essentially at home in the forum state. *Id.* at 761 (citing *Goodyear*, 131 S.Ct. at 2851). Noting that neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there, the Court found Daimler was not “at home” in California sufficient to subject it to personal jurisdiction on a suit by foreign plaintiffs having nothing to do with anything occurring in California. *Id.* at 761-763.

Defendant argues that the *Daimler* holding changes the limits on the exercise of personal jurisdiction and that several Nebraska decisions are implicitly overruled by *Daimler*. The *Daimler* case, however, was expressly decided based on the exercise of general personal jurisdiction and not specific personal jurisdiction. *Id.* at 758. Plaintiff argues that Defendant is subjected to specific personal jurisdiction in this case. Nebraska case law concerning specific personal jurisdiction has not been overturned by the recent Supreme Court cases concerning general personal jurisdiction.

To determine whether the exercise of specific personal jurisdiction is appropriate to satisfy due process the courts have employed a three-part analysis:

- (1) [T]he nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) the claim must be one which arises out of or relates to the defendant's forum- related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

[Dunham v. Hunt Midwest Entertainment, Inc., 2 Neb. App. 969, 979, 520 N.W.2d 216 \(1994\)](#) (citations omitted). The analysis requires that the court consider the quality and nature of the defendant's activities and "that there be some act by which the defendant purposely avails himself or herself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. This requirement ensures that a defendant will not be subject to litigation in a jurisdiction solely due to random, fortuitous, or attenuated contacts." *Kugler*, 265 Neb. at 505 (citing [Crete Carrier Corp. v. Red Food Stores, 254 Neb. 323, 576 N.W.2d 760 \(1998\)](#)).

Due process does not necessarily require a defendant's physical presence in the forum before personal jurisdiction is exercised. *Crete Carrier Corp.*, 254 Neb. at 329. "To determine whether a defendant's contract supplies the contacts necessary for personal jurisdiction in the forum state, the court is to consider the parties' prior negotiations and future contemplated consequences, along with the terms of the contract and the parties' actual course of dealing. . . . It is sufficient for purposes of due process that suit is based on a contract which had substantial connection with that state." *Castle Rose, Inc. v. Philadelphia Bar & Grill of Arizona, Inc.*, 254 Neb. 299, 304, 576 N.W.2d 192 (1998).

Plaintiff and Defendant's predecessor, First Bank of Troy, had a history of contractual relationships dating back to 1993. The contract at issue in this case has significant ties to the state of Nebraska. Prior to entering into the contract the Plaintiff and First Bank of Troy engaged in numerous communications both online and in the state of Nebraska. At least one of those communications involved a presentation given to representatives of First Bank of Troy at Plaintiff's office in Lincoln, Nebraska. The agreement even provides for additional fees if a representative of Plaintiff is required to travel outside the Lincoln, Nebraska area to perform requested services.

The Plaintiff and Defendant's predecessor had repeated contact over the internet¹ and in person in both Kansas and Nebraska during their lengthy business relationship. The parties to the contract clearly contemplated that even more travel and in person contact may be required to perform the requested services. First Bank of Troy purposefully availed itself of the privilege of conducting business with the Plaintiff in Nebraska and could or should have reasonably anticipated that it might be sued in Nebraska if it failed to perform under the terms of the contract. Defendant, as the surviving corporation to the merger between it and First Bank of Troy, is potentially liable for any alleged breach of contract and it is reasonable for this Court to exercise personal jurisdiction over it.

¹ The fact that some of the negotiations took place over the internet does not negate the contact between the parties. The Eighth Circuit in *Lakin v. Prudential Secs.*, 348 F.3d 704, 710-11 (8th Cir. 2003) held that "if the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper."

As the U.S. Supreme Court noted over twenty years ago, “modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.” [*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S.Ct. 2174, 85 L.Ed.2d 528 \(1985\)](#). The court finds no compelling reason which would render it unfair to subject Defendant to the burdens of litigating in this State for disputes relating to First Bank of Troy’s economic activities in Nebraska.

Accordingly, this Court finds that there are sufficient contacts to establish personal jurisdiction over the Defendant under Nebraska’s long-arm statute, and that the assertion of personal jurisdiction is reasonable and comports with fair play and substantial justice.

It is therefore ORDERED that Defendant’s Motion to Dismiss is OVERRULED.

Dated this 26th day of November, 2014.

Susan I. Strong
Lancaster County Court Judge

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

HUNT TRANSPORTATION, INC.,	)	Case No. CI 11-5444
A Nebraska Corporation,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER ON
	)	MOTION TO DISMISS
PURDY TRACTOR AND EQUIPMENT	)	
INC.,	)	
	)	
Defendant.	)	
	)	

This matter came on for hearing on Defendant's Motion to Dismiss on the 1st day of July, 2009. Tim Young represented the Plaintiff, Hunt Transportation Inc. ("Hunt"), and Joel Nelson appeared for the Defendant, Purdy Tractor and Equipment Inc. ("Purdy"). Evidence was adduced and the matter was taken under advisement.

The Court now being fully advised in the premises, finds that this is an action for property damage which occurred when a piece of agricultural equipment fell from a trailer on or about December 18, 2008 in Michigan. Plaintiff is a Nebraska corporation and brings this lawsuit alleging that Defendant's negligence caused damage to a Case farm implement destined for Dragoon's Farm Equipment, Inc., in New York. Plaintiff settled with Dragoon's Farm Equipment and now seeks to assert its right of subrogation. Plaintiff alleges this Court has jurisdiction over the defendant pursuant to [Neb. Rev. Stat. § 25-536](#). Plaintiff's evidence shows that it has made a minimum of sixteen deliveries to the Defendant between 2004 and 2011, that the freight in question originated in Nebraska and that the damaged cargo was tendered and accepted in Nebraska.

Defendant moves to dismiss, alleging that it does not have any personal or professional contacts with the state of Nebraska that would allow this Court to assert personal jurisdiction over it. Defendant submits evidence that it does not own or possess any property in Nebraska, does not have a registered agent in Nebraska, does not contract to do business with anyone in Nebraska on a regular basis and does not direct any advertising or marketing efforts to potential customers in Nebraska. Purdy has made sales to Nebraska companies on four occasions since the year 2000 and has purchased \$4,994.40 in parts from a company within Nebraska between 2003 and 2010. Purdy is a Michigan corporation which provides sales and service of agricultural equipment and is not registered with the Nebraska Secretary of State.

The determination of whether the court has personal jurisdiction over the Defendant is a two-step process. The court must determine first, whether the Defendant had the necessary minimum contacts with the state under Nebraska's long-arm statute; and second, whether the contacts are such that the assertion of personal jurisdiction would comport with fair play and substantial justice. See [Quality Pork Internat'l v. Rupari Food Servs.](#), 267 Neb. 474, 480, 675

[N.W.2d 642 \(2004\)](#); [Kugler Co. v. Growth Products Ltd., 265 Neb. 505, 511, 658 N.W. 2d 40 \(2003\)](#). The court may exercise either general personal jurisdiction, if the contacts are substantial, continuous and systematic, or specific personal jurisdiction, if the cause of action arises out of a defendant's contacts with the forum state. *Quality Pork Internat'l*, 267 Neb. at 484; [Freeburg v. Internat'l Port Servs., Inc., Case No. A-08-576, p. 5 \(Feb. 17, 2009\)](#). **Minimum Contacts**

Nebraska's long-arm statute, [Neb. Rev. Stat. § 25-536](#), provides:

A court may exercise personal jurisdiction over a person: (1) Who acts directly or by an agent, as to a cause of action arising from the person: (a) Transacting any business in this state; (b) Contracting to supply services or things in this state; (c) Causing tortious injury by an act or omission in this state; (d) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; (e) Having an interest in using, or possessing real property in this state; or (f) Contracting to insure any person, property, or risk located within this state at the time of contracting; or (2) Who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States.

“The legislature intended to provide for the broadest allowable jurisdiction over nonresidents. As such, Nebraska's long-arm statute is to be interpreted broadly in view of the rationale and philosophy underlying its adoption.” [Freeburg, Case No. A-08-576, p. 5 \(citing Quality Pork Internat'l., 267 Neb. at 480\)](#).

There is no dispute that the incident which is the subject of this lawsuit took place in Michigan and that there was no contract or relationship between the parties upon which Plaintiff's claim is based. The fact that the freight originated in Nebraska and that the damaged cargo was eventually returned to Nebraska only proves that Plaintiff is a Nebraska corporation. Thus, there is no basis for this court to exercise specific personal jurisdiction.

Plaintiff argues that this court may exercise general jurisdiction over the Defendant because the Defendant is a national company with a Department of Transportation number, Plaintiff has made sixteen deliveries to Defendant over a seven year period and Defendant has done some business with other Nebraska companies in the past. However, the evidence does not establish that Defendant has “substantial, continuous and systematic general business contacts” with Nebraska. *Freeburg*, at 5.

Due Process

Due process requires that the court consider the quality and nature of the defendant's activities and “that there be some act by which the defendant purposely avails himself or herself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. This requirement ensures that a defendant will not be subject to litigation

in a jurisdiction solely due to random, fortuitous, or attenuated contacts.” *Kugler*, 265 Neb. at 512 (citing [*Crete Carrier Corp. v. Red Food Stores*, 254 Neb. 323, 576 N.W.2d 760 \(1998\)](#)).

In this case, Defendant did not purposefully avail itself of the privilege of conducting business with Nebraska. Defendant’s presence in the State of Nebraska is minimal, especially compared to its overall operations and business dealings. The subject incident on which the lawsuit is based is an accident that allegedly occurred in Michigan and has nothing to do with any prior or existing relationship between the parties.

Accordingly, the Court does not find that Purdy’s connection to Nebraska rises to the level that it should anticipate being haled into court here. To find otherwise would offend traditional notions of fair play and substantial justice, and would violate due process.

It is therefore ORDERED that Defendant’s Motion to Dismiss is SUSTAINED for lack of personal jurisdiction over the Defendant.

Dated this 31st day of July, 2011.

Susan I. Strong
Lancaster County Court Judge

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

ARROWHEAD INDEMNITY CO.,

Case No. CI 10-15599

Plaintiff,)

)

vs.)

)

ORDER ON MOTIONS
FOR SUMMARY JUDGMENT

)

STANLEY JONES,)

)

Defendant.)

)

This matter came on for hearing on Motions for Summary Judgment filed by both parties on the 9th day of September, 2011. Dennis Lee appeared for the Plaintiff Arrowhead Indemnity Co. and Defendant Stanley Jones appeared pro se. Evidence was adduced and the matter was taken under advisement.

The Court now being fully advised in the premises, finds that this case concerns a written contract entered into between Plaintiff's assignor and the Defendant on October 18, 2001. Plaintiff submits an affidavit stating that only one payment was made on the contract on September 29, 2009 and argues that this payment extended the statute of limitations. Defendant claims that the 2009 payment was made under duress.

Summary judgment is properly granted only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue concerning any material fact or as to the ultimate inferences deducible from such facts and that the moving party is entitled to judgment as a matter of law. [Flamme v. Wolf Ins. Agency, 239 Neb. 465, 469-70, 476 N.W.2d 802 \(1991\)](#).

The issue raised by the parties on summary judgment is that of the statute of limitations. [Neb. Rev. Stat. § 25-205](#) provides that an action on a written contract can only be brought within five years. The contract in this case was signed on October 18, 2001 and called for 120 monthly payments of \$159.49 to begin on December 1, 2001. The amount of the loan was \$7,980.00 at 20.99% interest. Plaintiff's Complaint was filed on December 3, 2010. According to the evidence, no payment or any other contact was made between the parties between 2001 and 2009.

"It is well established that in an action on an open account, where the dealing between the parties was continuous, each succeeding item is applied to the true balance, and the latest item of the account removes prior items from the operation of the statute of limitations. . . . However, not every entry in an account is an 'item' that restarts the statute of limitations.

.....

[F]or a part payment to remove the bar to recovery imposed by the statute of limitations, the payment must be made under circumstances which warrant a clear inference that the debtor recognizes and acknowledges the entire debt as the debtor's existing liability, and must demonstrate the debtor's willingness or obligation to pay the balance of the debt."

[Sodoro, Daly v. Kramer, 267, Neb. 270, 976-77, 679 N.W.2d 213 \(2004\)](#). There were no continuous dealings between the Plaintiff or its assignor and the Defendant and there was no continuous relationship between them. In addition, at the time Defendant made a payment of \$100 to the Plaintiff, the statute of limitations had long since run on any claim under the contract. The Court finds that there is no evidence that the statute of limitations was extended or renewed in this case and thus, Plaintiff is barred from recovery.

It is therefore ORDERED, that Defendant's motion for summary judgment is sustained. Plaintiff's Motion for Summary Judgment is overruled and Plaintiff's claim is dismissed with prejudice at Plaintiff's cost.

Dated this 30th day of September, 2011.

Susan I. Strong
Lancaster County Court Judge

[Capital Corp., No. 06-6273, 2009 WL 305458, at 4 \(N.D. Ill. Feb. 18, 2009\)](#) (and cases cited therein). A custodian or otherwise qualified witness may explain the record-keeping procedures of the organization and testify that she has knowledge of the procedures under which the records were created. *Id.* Further, an assignee of an account may rely on the predecessor's business records where the account information was received in the ordinary course of business upon purchasing the alleged debt. *Id.* Ultimately, the primary consideration is whether the records are reliable and trustworthy. *Id.*

Ms. Randall testifies that Plaintiff is the current owner of the account, that the records Plaintiff received from the assignor were kept in the regular course of business, that it was in the regular course of business for a person with knowledge of the event recorded to make the record or data compilation, or transmit information thereof to be included in the record, and that it was in the regular course of business for the record or compilation to be made at or near the time of the events recorded. The Court finds that the affidavit is reliable and supports Plaintiff's summary judgment motion.

The evidence shows that the Defendant failed to make payments on his credit agreement and owes a balance of \$2,704.19 plus interest on the account which continues to accrue at 6%. In short, there was a contractual agreement between Plaintiff's assignor and the Defendant, and that agreement was breached by the Defendant. Defendant has presented no evidence to the contrary.

On summary judgment, after the moving party has shown facts entitling it to judgment as a matter of law, the opposing party has the burden to present evidence showing an issue of material fact which prevents a judgment as a matter of law for the moving party. *Flamme*, 239 Neb. at 470. The undisputed evidence before the Court shows that Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's motion for summary judgment should be sustained.

It is therefore ORDERED, that Plaintiff's Motion for Summary Judgment on Plaintiff's Complaint is sustained. Judgment is entered in favor of Plaintiff in the amount of \$2,704.19, plus prejudgment interest in the amount of \$275.83, for a total judgment of \$2,980.02, post judgment interest at the rate of 6%, attorney's fees of \$303.00 under [Neb. Rev. Stat. § 25-1801](#), and costs.

Dated this 9th day of September, 2011.

Susan I. Strong
Lancaster County Court Judge

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

BRYAN LGH MEDICAL CENTER,
A Nebraska Non-Profit Corporation,

Plaintiff,

vs.

CHERYL A. CLOET and ERIC CLOET,

Defendants.

Case No. CI 06-9182

ORDER ON MOTION
TO DISMISS

This matter came before the Court on December 22, 2006 on Defendant Eric Cloet's Motion to Dismiss. Edward F. Hoffman represented the Plaintiff, Bryan LGH Medical Center, and David Barga and Jane Langan represented the Defendant, Eric Cloet. Evidence was adduced and the matter was taken under advisement pending briefing by the parties.

The Court now being fully advised in the premises, and having carefully considered the evidence and arguments of both parties, finds and orders that the Defendant's Motion to Dismiss is overruled. Defendant argues that he is not primarily liable for his wife's back surgery, that [Neb. Rev. Stat. § 42-201](#) is unconstitutional, and that, in any event, his wife's back surgery was an elective procedure and not a necessity.

Although [Neb. Rev. Stat. § 42-201](#) may be outdated and in need of legislative review, this Court need not decide the constitutionality of Section [42-201](#), since both Cheryl and Eric Cloet are named as defendants in this lawsuit. Plaintiff does not rely on [42-201](#), but seeks to hold both Defendants jointly liable for the medical bills incurred by Cheryl Cloet. "In Nebraska, medical expenses incurred during the marriage are the joint debts of the parties." [McGuire v. McGuire, 11 Neb. App. 433, 447 \(2002\) \(citing Choat v. Choat, 218 Neb. 875, 359 N.W.2d 810 \(1984\)\)](#).

Medical services furnished a spouse individually are generally considered medical necessities for which the other is liable. [Nichol v. Clema, 188 Neb. 74, 77, 195 N.W.2d 233 \(1973\)](#). Defendant Cheryl Cloet's affidavit, Exhibit 1, states that she received non-emergent medical and surgical treatment at Bryan LGH, referred to as "IDET" surgery, the purpose of which was to burn certain nerve endings on a spinal disc to control pain. Presumably, Ms. Cloet would not have had such surgery if she did not feel it was necessary to control her pain. Defendant Eric Cloet's affidavit, Exhibit 2, confirms that he knew of his wife's surgery. In short, Defendants do not dispute that Defendant Cheryl Cloet had surgery at Plaintiff's facility, that she thus incurred a debt, and that Defendants were married at the time of the surgery.

It is therefore, ORDERED that Defendant's Motion to Dismiss is overruled.

Dated this 12th day of February, 2007.

Susan I. Strong
Lancaster County Court Judge

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

MARK ADAMS,	)	Case No. CI 12-10395
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PROGRESSION ORDER
	)	
SHAWN M. TIGHE,	)	
	)	
Defendant.	)	
	)	

This matter is now considered at issue and the following case progression guidelines are hereby set by the Court:

Disclosure of Expert Witnesses	90 days from date of Order
Discovery Cutoff	120 days from date of Order
File Dispositive Motions	30 days in advance of Trial
Pretrial Conference Memorandum	3 days in advance of Pretrial
Pretrial Conference/Hearing	March 12, 2013 1:30 p.m.
Submit Trial Depos. For Ruling on Objections	7 days in advance of Trial
Submit Proposed Jury Instructions	3 days in advance of Trial
File Motions in Limine	3 days in advance of Trial

Jury Term (tentative until Pretrial Conference) April 1- 12, 2013

Parties may file a motion for the Court's consideration showing good cause why any specific deadline cannot be met or may file a joint stipulation to change any specific date.

Dated this 11th day of October, 2012.

Susan I. Strong
Lancaster County Court Judge

LANCASTER COUNTY COURT
THIRD JUDICIAL DISTRICT
575 South 10th Street
Lincoln, NE 68508

January 29, 2015

Dear Counsel:

As attorney of record, you are hereby notified that your case is set to be tried during the jury term commencing **February 2-13, 2015**. A pretrial conference has been scheduled for **January 20 at 1:30 p.m.** in Courtroom #21. All parties through their counsel shall attend said conference and at least three days in advance submit a pre-trial conference memorandum addressing the following:

- a) The issues and background of the case and any matters suitable for stipulation, admission, or other resolution.
- b) A complete list of witnesses who will be called at the trial, excluding rebuttal witnesses, as far as they may be known at that time.
- c) A listing or identification of all exhibits not impeaching in nature, both documentary and otherwise, which you intend to offer into evidence at trial.
- d) Any questions of law which, in your opinion, are of major importance or may be determinative of any issues in controversy.
- e) An estimate of the length of the trial.

Proposed jury instructions shall be provided at least three days in advance of the trial. Either provide a diskette that is compatible with Microsoft Word or e-mail the statement of the case and a list of the proposed NJI numbers to elizabeth.carpenter@nebraska.gov. If any instruction differs from the standard NJI instruction, please provide the full text of the requested instruction and the authority on which you rely.

The attached list does not constitute any priority designation of the cases to be called for jury trial.

If you have any questions, please contact Liz at 441-7655. Sincerely,

/s/

Susan I. Strong
Lancaster County Judge

OPENING REMARKS TO JURY PANEL

Welcome to County Court. You have been selected as the jury panel for this jury term of the Lancaster County Court. Your service as a juror, is one of the most important aspect of our judicial system. It is an opportunity for which you should be proud. Without persons such as yourself, willing to serve when summoned, our judicial system would not be the revered judicial system that it is.

In a few minutes we will begin the process called Voir Dire, during which the Court will determine whether you can, without fear, favor prejudice, or sympathy, and in sound judgment, render a just and fair verdict on the evidence presented and instructions given by the Court.

If you are called to the jury box, and ultimately selected as a juror, you will take the juror's oath and become, in effect, officers of the Court. It is the duty of the Judge to conduct the trial in accordance with the rules of law and procedure, to maintain order and decorum, and to instruct you on the law that you are to apply to the facts as you find them.

The demands made upon your time will not be unreasonable nor unduly prolonged. It is estimated that this trial will take 4 days.

CALL THE CASE

The case set for trial on this date is Loretta McGeisey, Mother and next friend of Isaac Kolb v. Patricia Eastman.

This is a civil lawsuit brought by the Plaintiff against the Defendant in which Plaintiff seeks to recover damages for injuries arising out of a dog bite which occurred on or about July 1, 2007 at Defendant's home in Lincoln, Lancaster County, Nebraska.

The Plaintiff Loretta McGeisey is represented by her attorney, Shannon Kelly, and the Defendant Patricia Eastman is represented by her attorney, Matthew Aerni. Is counsel for the Plaintiff ready to proceed?

Is counsel for the Defendant ready to proceed?

SELECTION OF PANEL

From all of your names, the clerk will pick, strictly by random, 12 names from the metal box containing all of your names. When you hear your name called please come forward and the bailiff will direct you to one of these 12 chairs. If you do not hear your name called please do not leave the room. You may yet be called to serve if another cannot serve. The bailiff will tell

you when you are excused and at that time you will be given your next directive as to where next to report during the remainder of the jury term.

After the 12 people have been seated, the attorneys for both sides will ask those 12 individuals some questions. This is called voir dire.

After voir dire, each side has the opportunity to strike a certain number of people from the 12, so that we end up with 6. These strikes are called peremptory challenges and we'll talk more about that later. The final 6 people will constitute the jury that will hear the case.

"Clerk – please proceed to call 12 names from the box."

SWEAR IN THE PANEL (including the audience)

OATH – Do you and each of you solemnly swear or affirm under penalty of perjury, that you will answer truly all questions put to you touching your qualifications to serve as jurors in the case of _____ vs. _____, in which this jury is being impaneled?

VOIR DIRE

Ladies and gentlemen, as I mentioned earlier the next part of jury selection is voir dire, a French term meaning "to speak the truth." The attorneys will ask you some questions about yourselves. No one is trying to pry and certainly no one is trying to embarrass anybody. They will be attempting to find out what your thoughts are about the legal system, and perhaps this particular kind of case, to assess your ability to serve as jurors in this case.

Prior to today you all filled out the juror questionnaires. The attorneys and I all have a copy. We already know some of the basic things about you but the lawyers involved here will want to follow up on some of those things as well.

Mr./Ms. _____, you may proceed with your voir dire examination.

Mr./Ms. _____, you may proceed with your voir dire examination.

Pass for cause?

BOTH ATTORNEYS MUST END BY PASSING THE PANEL FOR CAUSE. IF THEY DON'T VOLUNTARILY SAY SO, WAIT UNTIL BOTH SIDES ARE DONE AND ASK.

Does the Plaintiff pass the panel for cause? Does the Defendant pass the panel for cause?

Any challenges for cause must be done on the record and in front of the whole panel. Refer to curative questions.

PEREMPTORY CHALLENGES

Ladies and gentlemen, as I stated earlier, in the County Court system in Nebraska, we have six person juries.

In our legal system, after voir dire, each party has the absolute right to ask a certain number of people entirely of his/her choosing NOT to serve on the jury in their case. A party doesn't have to give the court or the other side a reason. Indeed the parties don't have to have a reason. Both sides have the right to simply strike the names of a certain number of people from the panel. They're called peremptory challenges. In the county court, each side gets to strike 3 people. A total of 6 people will be stricken and that gets us to the 6 who will make up the 6 person jury that will hear the case.

We have a clipboard here, and on it are 12 squares in 2 rows of 6 to match the seating arrangements. Your name appears corresponding to your position in the jury box.

The bailiff will hand the clipboard to the Plaintiff's attorney who is the first to begin and he will make a mark by one name indicating that he has stricken one name from the panel. He will then pass the clipboard to the other attorney who will do the same. They will repeat that process until each has exercised their three peremptory challenges striking three persons a piece from the panel.

When the attorney has exercised a peremptory challenge, I will ask both attorneys to state that fact out loud by simply stating "Plaintiff has exercised his/her first peremptory challenge" and so forth until you're done.

Neither you nor anyone else on the jury will know who is striking who and you should not concern yourself with any reasons or motives.

Mr./Ms. Bailiff, please give Mr./Ms. (Plaintiff's attorney) the clipboard.

[Counsel will pass clipboard back and forth until each has exhausted their challenges. Upon completion, bailiff will hand the clipboard to the judge (who will study it with impressive expression) and return it to bailiff.]

In a moment, the clerk will read the names of the people who are excused from service on this jury. Those jurors are excused, together with those people whose names were not called at the beginning.

Mr./Ms. (Clerk), please announce the names of those jurors excused from service on this jury.

[Clerk will read the names of the 6 excused jurors.]

Those individuals whose names have just been read – please check with the clerk for further instructions.

The six people whose names were not called shall now constitute the jury in this case.

SWEAR IN THE JURY – Juror’s Oath

ALTERNATE JUROR?

ALTERNATE JUROR SELECTION

[If there is to be an alternate juror, you will need at least three more from the general panel. I normally have three additional names drawn at the beginning and then seat them in three chairs in front of the jury box. I let the attorneys know they must strike one from those three so that we know which juror is the alternate, but I do not inform the alternate juror that they are the alternate.]

Explanation to the jury –

An alternate juror is a person who will sit with the jury throughout the entire case.

In the event that something happens during the course of the trial to one of the original six jurors rendering that person incapable of continuing to serve, the alternate juror is asked to step in for the disabled juror. If all six jurors are ready to serve at the end of the presentation of the case – as we all certainly hope – the alternate juror is excused.

NONEXHAUSTIVE LIST OF USEFUL EXEMPTIONS

Wage Garnishment Exemption:

Neb. Rev. Stat. §25-1558	25% of income if not head of household; 15% of income if head of household (has a dependent). <i>Only one wage garnishment at a time.</i>
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Personal Property Exemptions:

Neb. Rev. Stat. §25-1556(3)	Household Property Not Exceeding \$1,500 : <i>Includes furniture, appliances, etc.</i>
Neb. Rev. Stat. § 25-1556(1))	Immediate Personal Possessions: <i>wedding rings and limited heirlooms-irreplaceable stuff. No limit.</i>
Neb. Rev. Stat. § 25-1556 (2)	Whole family's wearing apparel. <i>No limit.</i>
Neb. Rev. Stat. § 25-1556(4)	Tool of Trade Not Exceeding \$2,400 <i>Can include a car used to drive to work or a car used to look for work. If married, only the person using the car for work can use this exemption. If both use the car, the exemption can be "stacked"-that is, \$2,400 f pr each spouse = \$4,800.</i>
Neb. Rev. Stat. § 25-1556(5)	Professionally Prescribed Health Aids: <i>e.g. a wheelchair.</i>
Neb. Rev. Stat § 25-1553	Earned Income Tax Credit refund: <i>EITC is completely exempt.</i>
Neb. Rev. Stat. § 25-1563.01	Interest in qualified retirement plan (e.g. 401(K) or IRA): <i>amount reasonably necessary for support. E.g. if person is very young and has \$300K in IRAs, the court may not find it all to be exempt.</i>
Neb. Rev. Stat. §25-1563.02	Structured settlement for personal injury/wrongful death
Neb. Rev. Stat. § 25-1552	Wildcard Not To Exceed \$2,500 : <i>can be used for anything, including vehicles, tax refunds, and \$\$ in bank accounts. See Piper case.</i>
Neb. Rev. Stat. § 44-371	Annuity contract, insurance proceeds and benefits, loan value

Exempt Benefits under Federal or State Law:

42 U.S.C. § 407	Social Security Retirement Income
42 U.S.C. § 407	Social Security Disability Income
42 U.S.C. § 1383(d)	Supplemental Security Income
38 U.S.C. § 5301	Veteran's Benefits: <i>includes inherited benefits, such as VA life insurance proceeds.</i>
45 U.S.C. §231(m)	Railroad Retirement Act Benefits
30 U.S.C. §932 and 33 U.S.C. §916	Black Lung Benefits
20 USC §1095a(d)	Student loan proceeds
Neb. Rev. Stat. §45-149	Worker's Compensation Benefits
Neb. Rev. Stat. §48-647	Unemployment Compensation
Neb. Rev. Stat. §68-148	General Assistance is unalienable!
Neb. Rev. Stat. § 68-1013	Public Assistance to the Aged, Blind and Disabled: <i>catch-all for any public benefits.</i>
Neb. Rev. Stat. § 68-1013	Temporary Aid to Needy Families

Homestead Exemption:

Neb. Rev. Stat. § 40-101-118	Not to Exceed \$60,000 in value (equity): so <i>if person owes \$100,000 on house, but assessor says it is worth \$125,000, person has \$25K equity and exemption applies. If person owes more than the house is worth, s/he has no equity and no creditor other than mortgage bank can take it. Can include mobile homes.</i>
Qualified Claimants	Married person: <i>has lived in the home at any time with a spouse</i>
	Head of Household: <i>Person has lived in the home at <u>any</u> time with a child or other dependent</i>
	Person 65 years of age or older, regardless of living companions
Homestead <u>Not</u> Applicable	On Debts Secured by Mechanics', Laborers', or Vendors' Liens
	On Debts Secured by Mortgages or Trust Deeds: <i>e.g. can't use homestead exemption to protect against mortgage company.</i>
Neb. Rev. Stat. §40-116	Proceeds of Homestead sale for 6 months

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INSTRUCTION NO 1

FUNCTION OF JUDGE, JURY AND COUNSEL

Members of the jury, now that you have heard all of the evidence and the arguments of counsel it is my duty to instruct you in the law.

(1) I am not permitted to comment on the evidence, and I have not intentionally done so. If it appears to you that I have commented on the evidence, during either the trial or the giving of these instructions, you must disregard such comment entirely.

You must not interpret any of my statements, actions, or rulings nor any of the inflections of my voice as reflecting an opinion as to how this case should be decided.

(2) It is my duty to tell you what the law is. It is your duty to decide what the facts are and to apply the law to those facts.

In determining what the facts are you must rely solely upon the evidence in this trial and that general knowledge that everyone has. You must disregard anything else you know about the case.

(3) You must apply the law in these instructions, even if you believe that the law is or should be different.

No one of these instructions contains all of the law applicable to this case. You must consider each instruction in light of all of the others.

The law demands of you a just verdict. You must not indulge in any speculation, guess, or conjecture. You must not allow sympathy or prejudice to influence your verdict.

(4) The attorneys for the parties have a duty to represent the interest of their client(s). In arguing their case, attorneys may draw legitimate deductions and inferences from the evidence.

(5) During this trial I have ruled on objections to certain evidence. You must not concern yourselves with the reasons for such rulings since they are controlled by rules of law. You must not speculate as to possible answers to questions I did not permit to be answered; you must not consider the fact that objections to evidence were overruled. You must disregard all evidence ordered stricken.

GIVEN:

JUDGE:

INSTRUCTION NO. ____

STATEMENT OF THE CASE:

This case involves an action by the plaintiff, _____, against the defendant, _____
_____ for monetary damages. In his Complaint, the Plaintiff alleges that the Defendant,

The Defendant, in his Answer, _____

BURDEN OF PROOF

Before the Plaintiff can recover against the Defendant for _____
_____, the Plaintiff must prove, by the greater weight of the evidence, each and all of the
following:

Before the Plaintiff can recover against the Defendant for _____
_____, the Plaintiff must prove, by the greater weight of the evidence, each and all of
the following:

EFFECT OF FINDINGS

If the Plaintiff has NOT met this burden of proof then your verdict must be for the Defendant.

On the other hand, if the Plaintiff HAS met this burden of proof, then your verdict must be for
the Plaintiff.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

EVIDENCE

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. The exhibits received in evidence;
3. Any facts that have been stipulated – that is formally agreed to by the parties;
and
4. Any facts that have been judicially noticed – that is facts that I say must accept
as true even without other evidence.

The following are not evidence:

1. Statements, arguments, and questions of the lawyers for the state and the
defendant;
2. Objections to questions;
3. Any testimony I told you to disregard; and
4. Anything you may have seen or heard about this case outside the courtroom
except where I specifically told you otherwise.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses. Circumstantial evidence is evidence of a fact from which another fact logically can be inferred.

A fact may be proved by direct evidence alone; by circumstantial evidence alone; or by a combination of the two.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

EVALUATION OF TESTIMONY – CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The self-interest or lack of self-interest of the witness in the result of this case;
6. The apparent fairness or bias of the witness or the witness's relationship to the parties;
7. Any previous statement or conduct of the witness that is consistent or inconsistent with the testimony of the witness at this trial; and
8. Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

EXPERT TESTIMONY

A witness who has special knowledge, skill, experience, training or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

EVALUATION OF DEPOSITION EVIDENCE

During the trial, testimony was presented to you by deposition. Such testimony is under oath and is entitled to the same fair and impartial consideration you give other testimony.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

PROXIMATE CAUSE

A proximate cause is a cause that produces a result in a natural and continuous sequence, and without which the result would not have occurred.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

BURDEN OF PROOF – GREATER WEIGHT OF THE EVIDENCE

Any party who has the burden of proving a claim must do so by the greater weight of the evidence.

The greater weight of the evidence means evidence sufficient to make a claim more likely true than not true. It does not necessarily mean a greater number of witnesses or exhibits.

Any party is entitled to the benefit of any evidence tending to establish a claim, even though such evidence was introduced by another.

If the evidence upon a claim is evenly balanced, or if it weighs in favor of the other party, then the burden of proof has not been met.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

VERDICT DETERMINED BY CHANCE – QUOTIENT VERDICT

The law forbids you to return a verdict determined by chance. You may not, for instance, agree in advance that each juror will state an amount to be awarded in damages, that all of those amounts will be added together, that the total will be divided by the number of jurors and that the result will be returned as the jury's verdict. A verdict determined by chance is invalid.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

DAMAGES – _____

If you decide that the Defendant _____, then you must decide how much money it will take to compensate the Plaintiff for that _____.

DAMAGES – _____

If you decide that the Defendant _____, then you must decide how much money it will take to compensate the Plaintiff for that _____.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

NOTES

Throughout the course of the trial, you have been allowed to take notes of the testimony. You may take your notes into the jury room for your use in your deliberations. Remember, however, your notes are not evidence.

Your notes should be used only as aids to your memory. You should not give your notes precedence over your independent recollection of the evidence. You should rely on your own independent recollection of the proceedings, and you should not be influenced by the notes of other jurors. Your notes are not entitled to any greater weight than each juror's recollection or impression of the testimony given during this trial. After you have completed your deliberations, your notes will be destroyed.

GIVEN:

JUDGE:

INSTRUCTION NO. _____

SUBMISSION TO JURY

This case is now ready to be submitted to you for your consideration.

As I said to you at the beginning of the trial, it is your duty to determine what the facts are. You must approach this task with open minds-consulting with one another, freely and honestly exchanging your views concerning this case, and respectfully considering the views of the other jurors. Do not hesitate to reexamine your own views and to change your mind if you are persuaded that you should. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

You must reach your verdict based only on the evidence presented to you during the trial, within the four walls of this courtroom, and the general knowledge that everyone has.

No matter where you are – in the jury room, at home, or anywhere else, and until you are discharged from this trial and I tell you it is alright to do so, do not talk to anyone about this case except your fellow jurors. Do not use any reference materials that are not in evidence and do not use any electronic device to obtain information about this case. Do not visit any of the places mentioned in this case.

While you are in the jury room, you may not use any electronic devices at all.

When you get to the jury room, the first thing you must do is to select one of you to be the presiding juror, the person who will preside over your deliberations. It is the job of the presiding juror to see that a verdict is fairly reached and that each juror has a chance to speak fully and freely on the issues in this case.

A verdict reached during the first six hours of your deliberation must be agreed to by all of you, that is, it must be unanimous. After six hours of deliberation, you may reach a verdict agreed to by five of you. If your verdict is unanimous, it should be signed by the presiding juror only. If your verdict is not unanimous, it should be signed by each of the five jurors who do agree to it.

If you do not agree on a verdict by _____ o'clock (this afternoon,) you may separate and return for further deliberation at _____ o'clock tonight/tomorrow morning.

If you do separate, then, during the time that you separate, you are not allowed to discuss this case with anyone, even another juror.

One form has been prepared for you, and you will have them in the jury room. You are to complete the form for each count.

In the jury room, you will have these instructions and the exhibits in this case and forms on which you are to record your verdict.

If you have any questions, please write them out and give them to the bailiff, who will give

them to me. I may need to assemble the attorneys and confer with them before I respond.

When you are in the jury room, do not attempt to contact anyone outside the jury room on your own. Do not call anyone, text anyone, or use Facebook, Twitter, MySpace or any other social network to communicate with anyone. If you need to give a message to anyone outside the jury room, for example to tell a family member that you will be working late, let the bailiff know in writing.

This case is submitted to you at ____ o'clock __. m., at which time your deliberations are deemed to commence.

Dated _____, 20__.

BY THE COURT

COUNTY JUDGE

CIVIL: SMALL CLAIMS, COLLECTIONS & LANDLORD/TENANT



County Courts of Nebraska
2021 Bench Book

Civil, Small Claims and Landlord/Tenant **BENCH BOOK 2021**



Prepared and updated by Judge Sheryl L. Lohaus, 4th Judicial District, Judge Donna F. Taylor, 7th Judicial District and Judge Wightman, 11th Judicial District.