

SMALL CLAIMS COURT MOCK HEARING TEACHER'S KEY – SANTIAGO v. CASTILLO



The following chart provides some possible arguments that the plaintiff and defendant could raise during the trial. This is not an exhaustive list.

Students should keep the following questions in mind as they prepare for the trial:

- Does the principle of *caveat emptor* apply to the circumstances?
- Did the defendant misrepresent the condition of the car?
- What damages, if any, is the plaintiff entitled to?

ISSUE	PLAINTIFF ARGUMENT	DEFENDANT ARGUMENT
<p>Online Ad & Repairs</p>	<p>Defendant made representations as to quality of the car in the online ad.</p> <p>Defendant claimed that the brakes were new when they weren't.</p> <p>Defendant made representations that there were "no real mechanical issues".</p> <p>Plaintiff could use the ad to diminish the uncle's credibility and argue that he misrepresented the condition of the car. This can come in through testimony to show the uncle lied.</p> <p>Plaintiff could argue that defendant was fraudulent in representing the brakes as new. If the plaintiff can prove the defendant actively concealed this, <i>caveat emptor</i> would not apply. (<i>Wong v Wruck</i>)</p>	<p>Plaintiff never relied on the ad at the time the contract was formed. He found the ad afterwards. Therefore, he should not be able to rely on it now.</p> <p>The cost of the A/C repairs is outside of the e-test and safety that the defendant agreed to pay for. Plaintiff should only get the cost of the e-test and safety (\$500).</p> <p>The warranties and representations that the defendant made were not in relation to the air conditioning system. He assured that the car "had no real mechanical issues"</p> <p><i>Caveat emptor</i> should apply. The plaintiff should have inspected the car for repairs before buying it. The defendant has no duty to disclose defects. (<i>Rusack v Henneken; Wong v Wruck</i>)</p> <p>Plaintiff has a duty under contract law to mitigate losses. Defendant could argue that the air conditioning was not a necessary repair.</p>



<p>Bill of Sale</p>	<p>Defendant lied about the bill of sale stating “as is”. This can come out through testimony and can be used to diminish the defendant’s credibility.</p>	<p>Plaintiff should have gotten a copy of the bill of sale. It was his mistake not to do so.</p>
<p>Mechanic Inspection</p>	<p>Defendant’s mechanic, Shawn DaSilva, was biased in favour of the defendant and did not provide the plaintiff with a fair inspection. He did not check the car properly and gave the plaintiff the wrong advice.</p>	<p><i>Caveat emptor</i> should apply. The plaintiff should have gotten his own mechanic to inspect the car before buying it. It was his mistake and he should not have blindly relied upon the defendant or his mechanic, especially since he knew the mechanic was his uncle’s friend. The defendant has no duty to disclose defects. (<i>Rusack v Henneken; Wong v Wruck</i>)</p>
<p>Conduct of Parties</p>	<p>Defendant was in a position of bargaining power. He was older than the plaintiff, in a position of trust and the plaintiff looked up to him. He misused his influence by inducing the plaintiff to purchase the car.</p> <p>Defendant should have realized how little experience the plaintiff had with driving vehicles. He took advantage of his lack of knowledge.</p> <p>Defendant was irresponsible in never getting in contact with the plaintiff.</p>	<p>Plaintiff did not try very hard to contact the defendant. He could have gone to his house or tried other means of contacting him. Regardless, he should not have made any repairs to the vehicle until he was certain that the defendant would pay for them.</p> <p>The stop payment was wrongfully done. The parties made a bargain and the plaintiff was obligated to pay the full price of the car. If the plaintiff wanted to sue for repairs, he could have done so after. Defendant should receive the payment owing (\$2000).</p>