

**"CHAPTER 633
SMALL CLAIMS, DISTRICT COURTS**

Section

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- 633-8 Order to show cause
- 633-11 to 15 Repealed
- 633-16 Unauthorized removal of shopping carts, etc.; notice; exceptions
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Revision Note

Throughout chapter, "this chapter" is substituted for "sections 633-27 to 633-37" pursuant to §23G-15.

Law Journals and Reviews

Measuring the Scales: An Empirical Look at the Hawaii Small Claims Court. 12 HBJ, no. 2, at 3 (1976).

The Hawaii Small Claims Court: An Empirical Study. 12 HBJ, no. 2, at 19 (1976).

" **§§633-1 to 633-7 REPEALED.** L 1971, c 144, §§9 to 15.

" **§633-8 Order to show cause.** [*Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.*] Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than five days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 commanding the sheriff, deputy sheriff, police officer, or independent civil process server to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit. [L 1980, c 171, §2; am L 1981, c 176, §2; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2012, c 142, §5; am L 2013, c 116, §§7, 25(6)]

" **§§633-11 to 633-15 REPEALED.** L 1971, c 144, §§16 to 20.

" **[\$633-16] Unauthorized removal of shopping carts, etc.; notice; exceptions.** (a) A person shall not remove, without proper authorization, a shopping cart, shopping basket, or similar device from the premises of any business establishment, including any parking area maintained for the customer of the business establishment, or any sidewalk or passageway adjacent to the business establishment, for any purpose whatsoever.

(b) This section shall not apply unless:

- (1) The shopping cart, shopping basket, or other similar device has securely affixed to it a conspicuous sign identifying it as belonging to the business establishment; and
- (2) There is posted at the place or places where the shopping carts, shopping baskets, or other similar devices are stored for customer use, a sign or signs conspicuously positioned in order to be seen by an ordinarily observant person, to notify customers and the general public that the carts, baskets, or devices shall not be removed from the premises, parking areas, sidewalks, or passageways adjacent thereto.

(c) The following shall not be subject to this section:

- (1) The owner of the shopping cart, shopping basket, or similar device;
- (2) Any agent of the owner;
- (3) Any employee of the business establishment;
- (4) Any person possessing the written consent of the owner or manager of the business establishment.

(d) Any business establishment which is damaged in its business or property by reason of a violation of subsection (a):

- (1) May sue in the small claims division of the district court in the circuit where the business establishment is situated for damages sustained, and if the judgment is for the business establishment, it may be awarded a sum equal to the replacement value of the shopping cart, shopping basket, or similar device together with the costs of the suit; and
- (2) May bring proceedings to enjoin further unauthorized removal of shopping carts, shopping baskets, or similar devices.

(e) In the case of repossession proceedings, the business establishment entitled to the possession of the shopping cart, shopping basket, or other similar device, shall bring and prosecute its action in the small claims division of the

district court in the circuit where the business establishment is situated.

(f) The court in the small claims division shall grant judgment in favor of the business establishment if:

- (1) The plaintiff is the lawful owner of the shopping cart, shopping basket, or similar device which has been adequately identified;
- (2) The plaintiff has given notice as provided in subsection (b)(2) that the unauthorized removal of shopping carts, shopping baskets, or similar devices is prohibited;
- (3) The shopping device has been removed from the premises of the business establishment without proper authorization; and
- (4) The defendant is in possession or has control of the shopping devices.

(g) A person who has been found by court to have removed, without proper authorization, a shopping cart, shopping basket, or similar device may be liable for payment of an award under this section or a criminal fine under section 706-640, but not both. [L 1983, c 279, §1]

" **§§633-21 to 633-26 REPEALED.** L 1970, c 182, pt of §1.

" **§633-27 District courts; powers.** (a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
- (3) Cases for the return of leased or rented personal property worth less than \$5,000 where the amount claimed owed for that lease or rental is less than \$5,000 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the

small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2), the jurisdiction of the small claims division of the district court shall be exclusive; provided that the district court, having jurisdiction over a civil action involving summary possession, shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between landlord and tenant in a residential landlord-tenant relationship. This subsection shall not abrogate or supersede sections 604-5, 633-30, and 633-31.

(b) Actions shall be commenced in the small claims division of the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose, unless service cannot be made on all of the defendants in that circuit, in which case action may be commenced in any circuit in which all of the defendants can be served; provided that actions arising under paragraph (2) of subsection (a) of this section shall be commenced in the circuit wherein the rental premises are situated.

(c) The small claims division of the district court may grant monetary relief and equitable relief except that:

- (1) Monetary relief shall not include punitive damages; and
- (2) Except as specifically provided in section 633-8, equitable relief shall be granted only as between parties to a landlord-tenant disagreement pursuant to chapter 521, and shall be limited to orders to repair, replace, refund, reform, and rescind.

(d) Class actions are prohibited in the small claims division of the district court. [L 1970, c 182, pt of §1; am L 1971, c 144, §21; am L 1972, c 142, §1; am L 1979, c 172, §1; am L 1980, c 169, §1, c 171, §1 and c 232, §31; am L 1981, c 176, §1; am L 1983, c 52, §1 and c 249, §3; am L 1991, c 6, §1; am L 1992, c 233, §1; am L 2005, c 12, §1; am L 2011, c 141, §1]

Rules of Court

Applicability of District Court Rules of Civil Procedure, see DCRCP rule 81(a)(1), (c.1). Place of filing, see DCRCP rule 3(c).

Generally, see Rules of Small Claims Division.

Case Notes

Subsection (a)(2) is plain and clear and confers exclusive jurisdiction upon the small claims court; thus, the circuit court has no jurisdiction over causes of action involving security deposits. 63 H. 55, 621 P.2d 346 (1980).

" **§633-28 Small claims, no appeal; appearance by whom.** (a) Actions shall be commenced and conducted in the small claims division of the district court as provided by the rules of court. The clerk of the court, at the request of an individual, shall prepare the papers required to be filed in an action in the court, but the clerk's services in the preparation of these papers shall not be available to a corporation, partnership, or association, or to any individual proprietorship. The mode of service shall be:

- (1) As provided by law or rule of court for cases in the district courts; provided that for any small claims action, service may be made by one of the parties to the action by means of personal service to the other parties, on the condition that:
 - (A) The party being served signs that party's name to indicate actual receipt of service; or
 - (B) A competent witness, who is not an employee, family member, or agent of the plaintiff appears at a hearing on the matter or provides a notarized affidavit testifying that personal service on the party sought to be served was accomplished in the witness' presence;
- (2) As to actions arising under paragraphs (1) and (3) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery within the circuit; or
- (3) As to actions arising under paragraph (2) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery at any place within or without the State.

There shall be no appeal from a judgment of the small claims division, but the court, sitting as the small claims division, may alter or set aside any judgment as provided by the rules of court.

(b) Notwithstanding any provision of law requiring the licensing of practitioners, any person, with the approval of the court, may appear on behalf of the person or another person in the small claims division of the district court; provided that, in cases in the small claims division of the district court involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship, licensed practitioners are prohibited from appearing on behalf

of another person. The services of an unlicensed person appearing under this subsection shall be without compensation, either by way of direct fee, contingent fee, or otherwise. In the event representation services are rendered for compensation, this subsection is inapplicable and the rendering of the services constitutes the unlawful practice of law, except as otherwise provided. [L 1970, c 182, pt of §1; am L 1971, c 144, §22; am L 1972, c 142, §2; am L 1983, c 249, §4; gen ch 1985; am L 1997, c 138, §2; am L 2005, c 12, §2]

Rules of Court

Appeal, see RSCD rule 12.

Service, see RSCD rules 3, 5.

Case Notes

Appeal is purely statutory, and under this section there is no appeal from judgment of small claims division. 60 H. 52, 587 P.2d 807 (1978).

Mandamus cannot be used to perform the office of an appeal. 60 H. 52, 587 P.2d 807 (1978).

" **§633-29 Fees and costs; waiver.** The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the small claims division of the district court shall be not more than \$35. Other fees shall be as prescribed by statute or rule of court. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of the plaintiff's inability to pay the costs. [L 1970, c 182, pt of §1; am L 1971, c 144, §23; gen ch 1985; am L 1990, c 235, §1; am L 1998, c 128, §5]

" **§633-30 Counterclaim; retention of jurisdiction.** When the limit of the district court as provided by section 633-27 is exceeded in a counterclaim but within the jurisdictional limit of the court as provided by section 604-5, the action shall nevertheless remain in the small claims division of the district court and be tried therein in its entirety; provided that the district court having jurisdiction over a civil action involving summary possession shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between landlord and tenant in a residential landlord-tenant relationship. [L 1970, c 182, pt of §1; am L 1971, c 144, §24; am L 2005, c 12, §3]

" **[§633-31] Jury trial; demand; assignment to other court.** In a case filed or pending in the small claims division of the district court in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the circuit court under the procedure provided for jury trials. [L 1970, c 182, pt of §1]

" **§633-32 Evidence.** In a case tried in the small claims division, the court shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the rules of evidence, whether or not set out by statute, except provisions relating to privileged communications. [L 1970, c 182, pt of §1; am L 1971, c 144, §25]

" **§633-33 Judgment for wages; oral examination; payment.** When a judgment in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the court shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the court shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms. [L 1970, c 182, pt of §1; am L 1971, c 144, §26]

" **§633-34 Award of costs.** In any action pursuant to this chapter, the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorney's fees or commissions shall be allowed or awarded under section 607-14 by any judgment of the small claims division. [L 1970, c 182, pt of §1; am L 1971, c 144, §27; am L 2016, c 55, §25]

" **§633-35 Other rights of judgment creditor.** Except as otherwise provided by this chapter, or in the rules of court, a party obtaining a judgment in the small claims division of the district court is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. [L 1970, c 182, pt of §1; am L 1971, c 144, §28]

" **§633-36 Forms and public information.** For the more effective carrying out of this chapter, the chief justice, as

administrative head of the judiciary department, shall cause to be published a booklet or pamphlet describing, in language readily understandable by a layperson, the procedures of the small claims division of the district court, the remedies available upon judgment in the small claims division of the district court and such other information as will facilitate the utilization of the small claims procedure and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon and after judgment. [L 1970, c 182, pt of §1; am L 1971, c 144, §29; gen ch 1993]

" **§633-37 REPEALED.** L 1971, c 144, §30.