

Welcome to

Basic School for New Magistrates

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Accumulated Wisdom

What have you heard?



2

Introduction to Law & Judicial Process


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Part I


WHERE DOES LAW COME FROM?

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Law comes from two sources.



Statutes are laws enacted by the legislature.



Case law comes from the decisions of appellate courts in specific lawsuits.

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Imagine a lawyer hands you this . . .

§ 42-46. Authorized late fees and eviction fees.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.
- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(b) A late fee under subsection (a) of this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in . . .

Yes for statute No for case

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Brenner v. Little Red School House, Ltd., 302 N.C. 207, 211, 274 S.E.2d 206, 209 (1981). However, the doctrine is inapplicable where the frustrating event is reasonably foreseeable. *Id.* Additionally, "if

[Plaintiff] v. [Defendant], [Vol #] [Court] [Page #] [Year]

[Brenner] v. [Little Red School House, Ltd.], [302] [NC Supreme Court] [207] [quoted language appears on p. 211] [alternative publication citation] [1981]

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the changed condition was not reasonably foreseeable. *Faulconer v. Wysong and Miles Co.*, 155 N.C.App. 598, 602, 574 S.E.2d 688, 691 (2002).

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Change to Universal Citation as of 1/1/2021

• Example citations

- Supreme Court of North Carolina

State v. Smith, 375 N.C. 152, 2020-NCSC-45, ¶ 16.

(official citation) (parallel citation)

Case Name ↑
 Year of Decision ↑
 Court Abbreviation ↑
 Opinion Number ↑
 Pinpoint Paragraph Number ↑
- North Carolina Court of Appeals

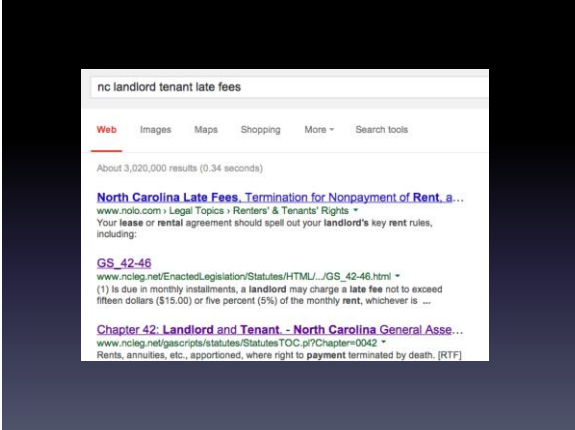
State v. Smith, 255 N.C. App. 43, 2020-NCCOA-118, ¶ 23.

(official citation) (parallel citation)

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Part 2
**HOW DO STATUTES AND CASES
WORK TOGETHER?**

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.....

(4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.

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Friday v. United Dominion

- Landlord used computer program to generate individualized leases, including 5% late fee clause.
- Lease called for monthly rent of \$610, and late fee of \$31 (rounded up from actual calculation of \$30.50).
- In actual practice, LL charged \$30 late fee.

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Who wins?

Yes

Landlord entitled to late fees of \$30/month.

No

Tenant, because landlord has forfeited right to charge late fees.

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Friday Court held:

- "We hold that although Northwinds only charged and Ms. Friday only paid a \$30 late fee each time her rent was late, the \$31 late fee provision of the Northwinds lease agreement is contrary to the provisions of G.S. § 42-46(a) and therefore void and unenforceable as against North Carolina public policy."

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Part 3
WHAT'S YOUR ROLE IN ALL THIS?

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ABOUT THE MAGISTRATE
A magistrate is an independent judicial officer, recognized by the North Carolina Constitution as an officer of the district court. Magistrates take the same oath as judges and are subject to the Code of Judicial Conduct, N.C. Const., Art. IV, §10; N.C.G.S. §§7A-170 and 7A-143.

Neutral **Detached**
Objective **Impartial**

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What is "the rule of law?"

Involves 4 basic ideas:

- Applies to everyone equally
- Is determined by a fair process
- Is administered by competent, impartial individuals
- Rules are clear, public, stable, & just, applied evenly, and protect fundamental rights

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No State shall deprive any person of life, liberty, or property, without due process of law.
U.S. Constitution, 14th Amendment

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In other words . . .

notice
&
opportunity to be
heard

Due Process

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“Important as it is that people should get justice, it is ever more important that they be made to feel and see that they are getting it.”
Lord Chancellor Farrer Herschell

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Small Group Discussion

What does a magistrate do that advances our system toward these 4 goals? What common errors by a magistrate have you observed that cause us to be further away?

10 minutes

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HOW JUDICIAL OFFICIALS MAKE DECISIONS

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The Judicial Process


Crime?

- Is there evidence sufficient to establish PC on each essential element of offense?

Cause of Action?

- Is there prima facie evidence on each essential element of claim?
 - Does defendant's evidence successfully weaken an essential element
- OR
- Establish an affirmative defense?

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Defendant's behavior has caused me damage:

- D broke an agreement with me.
- D behaved negligently toward me.
- D deliberately injured me.
- D has my property and won't give it back.

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Action for conversion



"My neighbor took my lawnmower without my permission and junked it!"

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Action for conversion



Essential elements:

- I own the property.
- D wrongfully took or retained the property.
- I suffered damages as a result.

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"I came home and my lawnmower was gone. When I asked D if she'd seen anyone around my house, she told me she'd borrowed it. I told her I wanted it back, and she said it was broken, and she'd taken it to the dump for me. I told her I'd see her in court."

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Step 1:
Has π introduced credible evidence on every essential element?


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Essential elements:

- I own the property.
- D wrongfully took or retained the property.
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"I came home and my lawnmower was gone. When I asked D if she'd seen anyone around my house, she told me she'd borrowed it. I told her I wanted it back, and she said it was broken, and she'd taken it to the dump for me. I told her I'd see her in court."

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That mower was old, but they don't make them like that any more. I could have gotten at least \$300 for it. Also, I had to pay a lawn guy \$50 3 times before I finally found a new mower. So I'm asking for \$450.

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Step 1: Has it introduced credible evidence on every essential element?

Step 2: Does Δ's evidence challenge an essential element?



"The mower actually belongs to plaintiff's mom, and she gave me permission to use it."

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Action for conversion



Essential elements:

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- D wrongfully took or retained the property.
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Action for conversion



Essential elements:

- I own the property.
- I wrongfully took or retained the property.
- I suffered damages as a result.

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Step 1: Has π introduced credible evidence on every essential element?

Step 2: Does Δ 's evidence challenge an essential element?

Step 3: Does Δ 's evidence raise new material in defense?



"This all happened 8 years ago."

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What Did We Learn This Morning?

The appointment procedure for magistrates.

Legislatures "make" law by enacting statutes, and appellate courts interpret (and sometimes make) law by writing opinions explaining their decisions in specific cases.

NC has two appellate courts: The NC Court of Appeals (identified as *N.C. App.*) and the NC Supreme Court (identified as *N.C.*).

A magistrate is a judicial official holding office under the NC Constitution.

Fundamental due process = notice + opportunity to be heard.

Judicial officials make decisions using a specific analysis, beginning with whether the plaintiff has offered evidence related to each essential element and (sometimes proceeding to whether) the defendant has offered evidence establishing a defense.

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