

# Welcome to

Basic School for New Magistrates  
Civil Session  
Tom Thornburg, January 2022

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A magistrate is an independent judicial official holding Constitutional office.



Nominated by the clerk of superior court, appointed by the senior resident superior court judge, and supervised by the chief district court judge.

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## Accumulated Wisdom

What have you heard?



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# Introduction to Law & Judicial Process

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## Part I WHERE DOES LAW COME FROM?

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Law you see in your work comes mostly 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(3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.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 default.

Yes for statute

No for case

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G.S. 42-37.3	§ 42-37.3. Waiver.
<b>Article 5 - Residential Rental Agreements.</b>	
G.S. 42-38	§ 42-38. Application.
G.S. 42-39	§ 42-39. Exclusions.
G.S. 42-40	§ 42-40. Dehittions.
G.S. 42-41	§ 42-41. Mutuality of obligations.
G.S. 42-42	§ 42-42. Landlord to provide fit premises.
G.S. 42-42.1	§ 42-42.1. Water, electricity, and natural gas conservation.
G.S. 42-42.2	§ 42-42.2. Victim protection - nondiscrimination.
G.S. 42-42.3	§ 42-42.3. Victim protection - change locks.
G.S. 42-43	§ 42-43. Tenant to maintain dwelling unit.
G.S. 42-44	§ 42-44. General remedies, penalties, and limitations.
G.S. 42-45	§ 42-45. Early termination of rental agreement by military personnel, surviving family members, or lawful representative. Modified by SL 2019-161 (5/4/20)
G.S. 42-45.1	§ 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.
G.S. 42-45.2	§ 42-45.2. Early termination of rental agreement by tenants residing in certain foreclosed property.
G.S. 42-46	§ 42-46. Authorized late fees and eviction fees.
G.S. 42-47 through 42-49	§§ 42-47 through 42-49: Reserved for future codification purposes.
<b>Article 6 - Tenant Security Deposit Act.</b>	
G.S. 42-50	§ 42-50. Deposits from the tenant.
G.S. 42-51	§ 42-51. Permitted uses of the deposit.

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# Case law

Comes from written opinions in specific cases decided by appellate courts.

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# Imagine a lawyer hands you this . . .

purpose doctrine our Supreme Court has explained that,

[while] performance remains possible, [it] is excused whenever a fortuitous event supervenes to cause a failure of the consideration or a practically total destruction of <sup>¶284</sup> the expected value of the performance. The doctrine of commercial frustration is based upon the fundamental premise of giving relief in a situation where the parties could not reasonably have protected themselves by the terms of the contract against contingencies which later arose.

*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 <sup>¶79</sup> the parties have contracted in reference to the allocation of the risk involved in the frustrating event, they may not invoke the doctrine of frustration to escape their obligations.” *Id.* Essentially the doctrine of frustration of purpose requires proof that: (1) there was an implied condition in the contract that a changed condition would excuse performance; (2) the changed condition results in a failure of consideration or the expected value of the performance; and (3) 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).

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).

Plaintiff?

Defendant?

What court?

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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)*
- North Carolina Court of Appeals  
*State v. Smith*, 255 N.C. App. 43, 2020-NCCOA-118, ¶ 23.  
*(official citation)*      *(parallel citation)*

Diagram labels for the Supreme Court citation: Case Name, Year of Decision, Court Abbreviation, Opinion Number, Pinpoint Paragraph Number.

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

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nc landlord tenant late fees

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About 3,020,000 results (0.34 seconds)

[North Carolina Late Fees, Termination for Nonpayment of Rent. a...](#)  
www.nolo.com > Legal Topics > Renters' & Tenants' Rights >  
Your lease or rental agreement should spell out your landlord's key rent rules, including:

[GS\\_42-46](#)  
www.ncleg.net/EnactedLegislation/Statutes/HTML/...GS\_42-46.html >  
(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 ...

[Chapter 42: Landlord and Tenant - North Carolina General Asse...](#)  
www.ncleg.net/gascripts/statutes/StatutesTOC.p?Chapter=0042 >  
Rents, annuities, etc., apportioned, where right to payment terminated by death. [RTF]

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§ 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.

.....

(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.

*\*For illustration only. This statute has been amended.*

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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 official, recognized by the North Carolina Constitution as an officer of the district court. Magistrates take the same oath as judges. They are subject to the NC Rules of Conduct for Magistrates (October 1, 2021). NC Const. Art IV, Sec. 10; and General Statutes 7A-170 and 7A-171.3.

Magistrates should strive for values listed on the next slide.

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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, 14<sup>th</sup> Amendment

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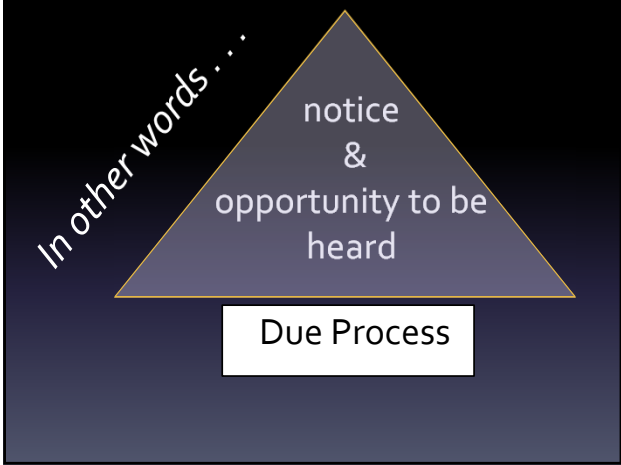
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“Important as it is that people should get justice, it is ever more important that they be made to feel and see that they are getting it.”

Lord Chancellor Farrer Herschell

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**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?

Reminder: The goals are that the law

1. will apply to everyone equally;
2. is determined by a fair process;
3. is administered by competent, impartial individuals; and
4. consists of rules that are clear, public, stable, and just, applied evenly, and protect fundamental rights.

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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  $\pi$  introduced credible evidence on every essential element?

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Essential elements:

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

"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  $\pi$  introduced credible evidence on every essential element?

## Step 2: Does $\Delta$ '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:

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

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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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Step 1: Has  $\pi$  introduced credible evidence on every essential element?

Step 2: Does  $\Delta$ 's evidence challenge an essential element?

### Step 3: Does $\Delta$ '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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