

1. Dubious and Rocky, as Dubious's agent, violated the Federal Debt Collection Practices Act (FDCPA) and Texas Debt Collection Act (TDCA).

The FDCPA applies only to the collection of a consumer debt by a third-party debt collector. A third-party debt collector is one who uses the instruments of interstate commerce to collect the debt of another, or who regularly collects debts. The FDCPA has a very broad, non-exhaustive/exclusive list of improper conduct, including threats, unconscionable acts, misrepresentations, etc. The FDCPA also precludes any calls before 8 AM or after 9 PM, contacting a third-party to inform them of the debtor's debt (unless to locate the debtor), calling the debtor at work if it is known to be unacceptable, or calling at all when the debtor is known to have an attorney.

The TDCA, in contrast, is much broader in the types of defendants it applies to – ALL debt collectors. Yet, at the same time, the TDCA is also much more limited in scope than the FDCPA because it proscribes only a limited, exhaustive list of conduct by a debt collector in collecting a consumer's debt, such as claiming the amount owed is higher, annoying or profane phone calls, or threatening to take legal action or garnish one's wages when the action or remedy is unavailable. It is also a "tie-in" statute under the Texas Deceptive Trade Practices Act (DTPA).

Here, Dubious and Rocky likely committed violations of both the FDCPA and TDCA (and the DTPA as a "tie-in" claim) in their efforts to collect Patty's debts. As a third-party debt collector (and its agent), they violated the FDCPA by making numerous calls to Patty's home "early in the morning and late at night" (presumably before 8 AM and/or after 9 PM). They also violated both the FDCPA and TDCA by leaving several threatening messages on Patty's answering machine. Finally, they both violated the FDCPA (and possibly the TDCA as well) by contacting a third-party concerning Patty's debt for reasons other than location and threatening to take a seemingly improper legal action. Thus, as third-party debt collectors (and just debt collectors for purposes of the TDCA), Dubious and Rocky likely violated several provisions of the FDCPA and TDCA (and DTPA as a "tie-in" claim) in collecting Patty's consumer debt.

2. Larry and Big Box likely both violated the TDCA in their efforts to collect from Patty.

As described above (sec. 1), the FDCPA only applies to third-party debt collectors. The TDCA, though, applies to the improper actions of ALL debt collectors (see 1. Above) and a claim can be brought under the TDCA alone, or under the DTPA as a "tie-in" claim.

Here, Big Box and Larry (as Big Box's agent) probably did not violate the TDCA (and thus the DTPA) by informing Patty that a lawsuit might be filed against her if she failed to pay the amount owed because this would be a proper legal action. However, both likely violated the TDCA (and thus the DTPA) knowingly telling Patty that, despite her monthly payment agreement's provisions, she would have to pay Big Box for the fees incurred in collecting the debt. This is actionable under the TDCA because it is in the narrow list of actionable offenses – claiming that the debtor owes more than he or she actually does. Thus, both Big Box and Larry likely violated the TDCA (and thus the DTPA as a "tie-in" claim) in their efforts to collect from Patty.

3. There are numerous remedies available to Patty (and possibly Marge) under the FDCPA, TDCA, or as a TDCA "tie-in" claim under the DTPA.

First, if successful under the FDCPA, Patty could get an injunction against Dubious and Rocky, punitive damages up to \$1,000, and all actual damages she incurred. She could receive up to 3 times

her actual damages if she could prove that their actions were committed “knowingly.” Patty might have a claim for her mental or actual damages under the act as well. Reasonable attorney fees are also available to Patty.

Second, if successful under the TDCA, Patty could not get exemplary damages, but might get an injunction against Dubious, Rocky, Larry, or Big Box. She could also receive the same actual damages as under the FDCPA, up to 3 times the amount if committed knowingly. As against Larry and Big Box, Patty might also receive mental anguish damages as part of her claim, but to do so she must show a significant disruption to her daily life (the anxiety attacks would likely qualify). Finally, Patty might also have an actual damages remedy as against Dubious and Rocky. Patty, again, could get reasonable attorney fees.

Third, both could have the same remedies under the DTPA as a “tie-in” claim to their TDCA action (against all four parties), but would only receive reasonable attorneys fees and economic damages, unless committed “knowingly” (3 times economic damages plus mental anguish damages) or “intentionally” (3 times ALL damages).

END OF EXAM

1. Dubious and Rocky committed consumer law violations within the Texas Debt Collectors Act, Deceptive Trade Practices Act (DTPA), TDCA as a tie-in statute through DTPA, Federal Debt Collectors Act, and common law wrongful debt collection.

A consumer is a person with consumer debt. Here, Patty is a consumer. A debt collector collects consumer debt. Here, Dubious (principal) and Rocky (agent) are debt collectors.

Under both the Texas and Federal Debt Collector's Act (TDCA and FDCA, respectively), there are prohibited methods to collect debt. These include threats of criminal means and coercion, harassment and abuse, unconscionable acts, false and misleading representations.

Here, Rocky harassed Patty by making numerous phone calls early in the morning and late at night, which is outside of the permitted 8 AM – 9 PM range. Rocky left threatening messages on Patty's answering machine. Rocky made misrepresentations to Marge as to the nature of the debt by saying that Patty "owed his company a great deal of money and was shirking her financial obligations." Rocky used threats by criminal means by telling Marge that he would "take immediate action to have Patty arrested." All these methods are prohibited.

Under the DTPA (we are assuming Patty is a consumer), Rocky and Dubious violated the laundry list and were unconscionable. Here, under the laundry list, Rocky, as Dubious's agent, made misrepresentations as to the nature of the debt, and their legal rights and obligations. Rocky made misrepresentations that Patty "owed his company a great deal of money and was shirking her financial obligations." Rocky made misrepresentations as to his legal right, such as having her arrested for the debt. Rocky and Dubious also were unconscionable, to the point of a grossly unfair degree. They relied on Marge's lack of legal knowledge to threaten her that Patty was going to be arrested, resulting in her fainting and needing medical attention.

All the same violations exist for TDCA as a tie-in statute through DTPA.

Rocky and Dubious may also have violated common law tort for wrongful debt collection.

2. Larry and Big Box also committed consumer law violations, such as TDCA, DTPA, TDCA as a tie-in statute through DTPA, FDCA (this is unlikely, because FDCA requires that the collector be a third-party debt collector), and common law tort.

The same legal principles apply here as in Question #1, so I will not reiterate the principles.

Under TDCA, Big Box (principal) and Larry (agent) made misrepresentations of the debt's nature, when Larry told Patty that she would have to reimburse Big Box for the fees the company incurred in hiring Dubious. Larry used threats and coercion, and misrepresented Big Box & Larry's legal rights by saying that they would file a lawsuit against her. All are prohibited methods in collecting debt.

Under DTPA, and TDCA as a tie-in statute, the same misrepresentations of the nature of the debt and legal rights apply to the laundry list. As to unconscionability, Larry and Big Box both used Patty's lack of knowledge to threaten and misrepresent to a grossly unfair degree.

Larry and Big Box did not violate FDCA, but did violate common law torts of wrongful debt collection.

3. Under TDCA, Patty and Marge may recover economic damages for Patty's anxiety attacks, and Marge's medical attention. Both may recover for mental anguish, because both suffered a high degree of pain and distress by the violations, and all defendants "knowingly" made the threats and misrepresentations. Both are entitled to attorney fees. Also, both are entitled to injunctive relief, via a cease and desist order.

Under the DTPA, and tie-in statute, both may recover economic damages, mental anguish damages, punitive damages ("knowingly" = 3 times economic damages, "intentionally" = 3 times both economic damages and mental anguish damages), restitution, court costs, and attorney fees (dollar amount).

Under the FDCA, Patty and Marge only have remedies against Dubious and Rocky, including economic damages, mental anguish, punitive damages up to \$1,000, and attorney fees.

If able to prove common law tort, Patty and Marge may claim econ. damages, mental anguish, punitive, but no attorney fees.

END OF EXAM

5)

1. Dubious and Rocky committed violations of the Texas Debt Collection Protection Act as well as the Federal Debt Collection Protection Act as well as the Texas Deceptive Trade Practice's Act (DTPA) because the other two acts mentioned are tie-in statutes to the DTPA and are therefore actionable under the DTPA in addition to being actionable under their own acts.

The Federal Debt Collection Protection Act (FDCPA) protects "persons" which includes individuals as well as corporations, etc. to recover for wrongful debt collection practices by third party debt collectors. Dubious and Rocky as its agent are third party debt collectors because they use interstate commerce to collect debts of others. This act makes it wrongful to use Harrassment, unconscionable or unfair statements, or misleading, false, and deceptive practices to collect the debts of others. When Rocky called Patty early in the morning and late at night, his conduct was harrassing. Debt collectors may only call at reasonable times. Additionally, we are told that he left threatening messages on her answering machine. This specifically violates the prohibition against harrasment to obtain debts. Rocky's actions became even more problematic when Rocky contacted Patty's mother, Marge. While a debt collector may contact a third party under the federal act, he may only do so to find out where the debtor is located - whether he has correct contact information for her. Therefore, he was in violation of the act when he told Marge about Patty's debts owed to Big Box. He also misrepresented that he was actually calling from the company Patty owed money to. His threat to have Patty arrested was also a threat he couldn't follow through on since her failure to pay a couple months on the TV was not criminal behavior and would not be sufficient for police to arrest her. Rocky also threatened Marge directly if she failed to help - claiming that her failure would lead to her daughter's arrest, so Marge has a claim against him as well (as discussed below).

For the same reasons listed above, Rocky and Dubious are in violation of the Texas Debt Collection Protection Act (TDCPA). Texas has a narrower list of offenses that entitle an individual to recovery, but all of those listed above apply: threats and coercion, harrasment and abuse, unconscionable or unfair practices, and misleading, false, or deceptive practices. This statute makes it illegal to do any of these things whether collecting for third parties or for your own debts. It also has a different standard in that it applies to "individuals" only. Patty and Marge are

individuals. All of the above described conduct fits under this act as well. In addition, TDCPA provides for no threats or coercion. Marge and Patty were both threatened, and Marge was coerced by Rocky and Dubious.

Finally, because these are both tie-in statutes, their acts also fall under the DTPA. Under the DTPA, one may not engage in false, misleading, or deceptive statement made to a consumer, in violation of the laundry list which that consumer relies upon. Patty is a consumer because she purchased the TV. The statements are "in connection with" her purchase of the TV since she is buying it in installments and the debt collection agent is seeking to collect these installments from her. The laundry list includes 27 specific things that are considered deceptive or misleading. In this instance, Patty may have a claim of action for the violation of "Legal Misrepresentations" and "General Misrepresentations" under the laundry list. Rocky indicated that criminal legal action could be taken against Patty if she did not cooperate, which was not true. This was a misrep of her legal rights that he made to Marge. Knowledge is not a requirement, so it does not matter whether Rocky knew that criminal legal action was not available. The DTPA also makes it a violation to engage in unconscionable acts by relying on the consumer's lack of capacity, knowledge, or experience to induce the consumer into a transaction, and actually inducing the consumer to do so. Because Patty was not induced to pay her debts by Rocky's statements to her, however, this statement of unconscionability will not be shown.

2. Patty has a claim against Larry and Big Box, but Marge doesn't. Larry and Big Box are not in violation of the FDCPA because they are not third party debt collectors. They are however in violation of the DTPA and the TDCPA as a tie in statute. When Larry told Patty that he would file a lawsuit against her, his statement was not in violation of either act because it was a true statement about a course of action his company was entitled to take. He violated the TDCPA when he knowingly stated that Patty would have to reimburse Big Box for collection fees when her contract did not provide for such reimbursement. This was misleading, and false, so he will be liable under TDCPA. Because of the tie-in statute, he will also be liable under DTPA for a misleading statement in violation of the laundry list. This was a misstatement of Patty's contract and he knew it (even if he didn't know it, she could recover, just not get additional damages as explained below.)

3. Patty and Marge may recover economic damages, described as pecuniary damages under the DTPA, and can get damages for mental anguish since they both suffered extreme mental anguish if they can show that Dubious acted knowingly. Patty will get these for sure because of her anxiety attacks and because she has a claim against Larry, while Marge does not. Marge may have a more difficult time showing mental anguish because she merely fainted and hit her head. To recover mental anguish under the DTPA, one must show that the defendant acted knowingly. This also entitles the consumer to three times their economic damages. If they can show that the defendant acted intentionally - actual notice plus intent to induce the consumer to act on it - they can recover three times economic damages plus three times mental anguish damages.

Because Marge and Patty's claim against Dubious and Rocky falls under a tie in statute, they are entitled to actual damages - which are much broader than economic damages and include damages for mental anguish, economic loss, and well as other types of loss. Therefore, they will recover actual damages from Dubious if they can show that Rocky acted knowingly.

Patty will also be entitled to actual damages in her claim against Larry and Big Box because they were in violation of a tie-in statute as well. Since Larry did act knowingly, she will certainly recover for that. She may be entitled to three times economic damages in a claim under DTPA because of this. It is important to note however, that she cannot get a double recovery under these three statutes, just one recovery. Actual damages under the tie-in statute will probably be the best award. She can get additional damages for showing Larry acted knowingly or intentionally. She will also get attorneys fees (in an actual dollar amount, not contingency fees), and court costs.

If she refuses a reasonable offer to settle, however, her damages will be limited to the offer amount and her attorney fees will be limited to that as well. Nether of the defendant's will have the defense of not being the "producing cause" because they clearly were.

END OF EXAM