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# NOTES AND COMMENTS

## THE DEBTOR v. CREDITOR DILEMMA: WHEN DOES A CREDITOR'S COMMUNICATION WITH A DEBTOR'S EMPLOYER RESULT IN AN ACTIONABLE INVASION OF PRIVACY?

Malcom E. Calkins

The familiar story of the small snowball that is gently rolled down a steep hill, gathering size as it gains speed until it becomes almost beyond dimension, demonstrates the phenomenal growth of consumer credit since World War II. There is presently 35 times more outstanding consumer credit than in 1945.<sup>1</sup> Business interests have opened the gates of credit to such a degree that today there is an average of \$800 credit outstanding for every man, woman and child in the United States.<sup>2</sup> With no reduction in sight this avalanche of credit needs to be carefully watched, from a legal standpoint, for numerous abuses by debtors and creditors.

An easing of credit restrictions, in an effort to boost sales and profits, coupled with intensive advertising campaigns have caused middle and lower level income groups to indulge more freely in installment purchases.<sup>3</sup> Since this group is generally more susceptible to incurring greater debts than it can afford, numerous debtor-creditor problems have arisen.<sup>4</sup> Faced with a potentially greater number of defaulting

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1. 59 FED. RESERVE BULL. A54 (1973) which states: There was 5.6 billion dollars of consumer credit in 1945 with 174.8 billion as of Oct., 1973.

2. Based upon the latest official population figures there has been a 38% increase in population over the past 39 years. INFORMATION PLEASE ALMANAC ATLAS AND YEARBOOK 699 (28th ed. 1974). In comparison, credit has shot up 97%. Such an astounding gain has caused some to remark that money has now become a substitute for credit!

3. Jordan, *The UCC*, 68 COLUM. L. REV. 387, 433 (1968).

4. Caplovitz, *Consumer Credit in the Affluent Society*, 33 LAW & CONTEMP. PROB. 641 (1971).

debtors, along with accompanying lost profits, some creditors and their agents have devised new tactics, together with a more pressurized implementation of older techniques, in an endeavor to extract debtor payments.<sup>5</sup> As might be expected, a variety of abuses have resulted from excesses in creditor diligence.

Because the floodgates of credit appear to be opening even wider in the future, a closer look at the legal acceptability of one of the most popular and effective means<sup>6</sup> creditors have discovered would seem advantageous. This comment will be restricted to exploring the bounds that a creditor should be limited to in communicating with the debtor's employer concerning the debt that is allegedly owed. While there are numerous tort theories that could be used by an injured debtor-plaintiff,<sup>7</sup> this discussion will direct itself to an examination of when such a contact becomes an actionable invasion of privacy, a reflection upon the adequacy of present case law, and proposed solutions.

The basic concept underlying the rather recent<sup>8</sup> and still evolving tort of invasion of privacy is that every person has a right to be free from unwarranted intrusions and publicity—a right to be left alone.<sup>9</sup> It has been characterized as involving four different kinds of invasion "tied together with one common name."<sup>10</sup> This is to provide the individual protection from mental distress<sup>11</sup> resulting from a public disclo-

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5. For an interesting look at a variety of collection practices see, Halloran, *Collection Practices*, 26 BUS. LAWYER 899 (1971) and, Birkhead, *Collection Tactics of Illegal Lenders*, 8 LAW & CONTEMP. PROB. 78 (1941).

6. "The tactic [telling the employer of the debt of one of his employees] is, in fact, so efficacious as a collection device that it is one of the standard collection methods . . . ." Hawley v. Professional Credit Bureau, Inc., 345 Mich. 500, 76 N.W.2d 835, 840 (1956) (dissenting opinion).

7. Greenfield, *Coercive Collection Tactics*, 1972 WASH. U.L.Q. 1, 15 (1972) where the traditional tort theories of defamation, invasion of the right of privacy, intentional infliction of emotional distress, interference with contractual relations, abuse of process and others are discussed. See also, Scheinfeld, *Current Trends in Restriction of Creditor Collection Activities*, 9 HOUSTON L. REV. 615 (1972).

8. The article by Warren and Brandeis, *The Right To Privacy*, 4 HARV. L. REV. 193 (1890) was the first to fully articulate the subject.

9. Norris v. Moskins Stores, Inc., 272 Ala. 174, 132 So. 2d 321 (1961); Timperley v. Chase Collection Serv., 272 Cal. App. 2d 697, 77 Cal. Rptr. 782 (Ct. App. 1969); Brents v. Morgan, 221 Ky. 765, 299 S.W. 967, (Ct. App. 1927).

10. Prosser, LAW OF TORTS, 804-14 (4th ed. 1971) where the four types are presented as being: "appropriation, for the defendant's benefit or advantages, of the plaintiff's name or likeness; intrusion upon the plaintiff's physical solitude or seclusion; public disclosure of private facts; publicity which places the plaintiff in a false light in the public eye."

11. The intentional infliction of mental suffering is beginning to emerge as a new tort. Yonder v. Smith, 253 Iowa 505, 112 N.W.2d 862 (1962); see, comment, *Recovery For Creditor Harrassment*, 46 TEX. L. REV. 950 (1968).

sure<sup>12</sup> of private,<sup>13</sup> embarrassing facts<sup>14</sup> that are sufficiently indentifiable to the injured party.<sup>15</sup> Expressed<sup>16</sup> or implied<sup>17</sup> consent is a valid defense, while truth<sup>18</sup> or an absence of malice<sup>19</sup> is not. Recent court rulings have held that any form of communication will be sufficient to support such a cause of action whether written or verbal.<sup>20</sup> It must always be kept in mind that this right to be left alone is not an absolute one.<sup>21</sup> A person cannot expect to live in today's complex, urbanized society without experiencing some intrusions.

Accordingly, the giving of "unreasonable" publicity to a private debt results in a violation of the debtor's right to privacy.<sup>22</sup> Where only a slight invasion has occurred, or one that is warranted, it has been termed by the courts non-actionable.<sup>23</sup> Differentiating between actionable and non-actionable privacy invasions involves looking at the interests of the numerous parties involved. The interests of the creditor, debtor, employer and society must all be judicially measured and then balanced according to their relative weights. Therefore, a brief look at the interests each has should serve to put judicial decisions into

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12. *Santiesteban v. Goodyear Tire & Rubber Co.*, 306 F.2d 9 (5th Cir. 1962); *Tollefson v. Price*, 247 Ore. 398, 430 P.2d 990, (1967).

13. *Trammell v. Citizens News Co.*, 285 Ky. 529, 148 S.W.2d 708 (Ct. App. 1941).

14. Such a disclosure must be offensive to a person of reasonable sensibilities. *See, Davis v. General Fin. & Thrift Corp.*, 80 Ga. App. 708, 57 S.E.2d 225 (Ct. App. 1950).

15. *Cason v. Baskin*, 155 Fla. 198, 20 So. 2d 243, (1944).

16. *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 970 (Ct. App. 1927).

17. *Continental Optical Co. v. Reed*, 119 Ind. App. 643, 86 N.E.2d 306, (Ct. App. 1949).

18. *Cason v. Baskin*, 155 Fla. 198, 20 So. 2d 243, 252 (1944); *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 970 (Ct. App. 1927).

19. *Cason v. Baskin*, 155 Fla. 198, 20 So. 2d 243, 252 (1944); *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 970 (Ct. App. 1927).

20. *Bowden v. Spiegel, Inc.*, 96 Cal. App. 793, 216 P.2d 571 (Dist. Ct. App. 1950); *Lewis v. Physicians and Dentists Credit Bureau*, 27 Wash. 2d 267, 177 P.2d 896 (1947).

21. "Some shocks and inconveniences members of society must absorb without redress." *Davis v. General Fin. & Thrift Corp.*, 80 Ga. App. 708, 57 S.E.2d 225, 227 (Ct. App. 1950). "No individual can live in an ivory tower and at the same time participate in society and expect complete noninterference from other members of the public." *Voneye v. Turner*, 240 S.W.2d 588, 590 (Ky. Ct. App. 1951).

22. *Housh v. Peth*, 165 Ohio St. 35, 135 N.E.2d 440 (Ct. App. 1955), *aff'd* 133 N.E.2d 350 (1956) (3 dissents) (creditor contacted debtor often at place of employment in addition to telephoning the employer, landlord, and the debtor's residence many times and occasionally late at night).

23. "A single phone call to an employer advising that a certain employee was refusing to pay . . . would not constitute either 'undue' or 'oppressive' publicity and would not be an actionable violation . . ." *Lewis v. Physicians and Dentist Credit Bureau*, 27 Wash. 2d 267, 177 P.2d 896, 899 (1947).

perspective.<sup>24</sup>

The creditor's interest includes the right to collect the debt when it becomes due in as rapid and convenient a manner as possible. If the debtor should refuse to pay the debt at the agreed time, for whatever reason, it does not appear logical to conclude that the creditor now is replete with the right to punish the defaulter in any way he sees fit, as this is a function of the courts and a question for society to solve.

The debtor has both a physical and mental interest to protect, along with an interest in his property. Consequently, his self-respect, standing in the community, and employment interest must all be considered as protected. The employment relationship between an employer and employee, often thought of in terms of a property interest,<sup>25</sup> needs further protection as the curtailment of it would have drastic economic effects upon the former employee and his dependents. Clearly, a property owner would not be expected to relinquish his property interests to one who may not have a just claim to it; likewise, neither should an employee be forced to leave his job due to the yet unjustified actions of a third party.<sup>26</sup>

The debtor's employer has an interest in hiring only qualified personnel who will perform efficiently and properly represent the employer in the community, without causing undue expense or loss of time.<sup>27</sup> No doubt the debts of the employee could be a factor affecting, to a varying degree, all of the foregoing criteria which would be used

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24. For a more detailed examination of these interests refer to Greenfield, *supra* note 7, at 7.

25. *Piedmont Cotton Mills, Inc. v. H.W. Ivey Constr. Co.*, 109 Ga. 876, 137 S.E.2d 528 (Ct. App. 1964), *construing*, *Southern Ry. Co. v. Chambers*, 126 Ga. 404, 55 S.E. 37 (1906).

26. "Most jurisdictions hold that an action will lie by inducing a breach of contract by the use of moral, social or economic pressures, in themselves lawful, unless there is sufficient justification for such inducement. . . .

It is well established, however, that a person is not justified in inducing a breach of contract . . . to further his own economic interest at the expense of the other." *Imperial Ice Co. v. Rossier*, 18 Cal. Rptr. 33, 112 P.2d 631, 632 & 633 (1941).

27. *Patton v. Jacobs*, 118 Ind. App. 358, 78 N.E.2d 789 (Ct. App. 1948), *accord*, *Yonder v. Smith*, 253 Iowa 505, 112 N.W.2d 862, 867 (1962); *but see*, *Hawley v. Professional Credit Bureau, Inc.*, 345 Mich. 500, 76 N.W.2d 835, 843 (1956) (dis- sent), where it is stated:

Per contra, we are referred to certain cases in which it is said that the employer may properly be told of such debts because he has a legitimate interest in the matter, since a debt-free employee is a more efficient employee. The argument proves too much. A love-sick employee, also is far from efficient. Should we call upon the boss to scotch romance? What we are looking at, in essence, is simply a matter of human dignity, the right to live our lives without the meddling interference of others, the simple right to be left alone,

by a successful employer in selecting and retaining employees.

Society has a very definite interest underlying all of the previously mentioned ones. This naturally results in conflicts which require a resolution. For instance, there is a desire to protect the individual from harassment yet encourage debt paying and the free flow of commerce. Society desires to keep the courts uncongested yet does not want to force, as a result, an unjustified payment from one party to another. Our nation frowns upon the punitive aspects of debt punishment through imprisonment<sup>28</sup> and encourages the continuation of employment even though valid debts exist.

With such a vast array of divergent claims presented, earlier court decisions generally favored the creditor when suits were brought on an invasion of privacy theory.<sup>29</sup> However, there has been a trend, noticed by at least one early decision,<sup>30</sup> toward curbing the more abusive and offensive practices of creditors.

The flexible, yet elusive rule of reasonableness is usually cited by the courts as their guiding light,<sup>31</sup> yet the application of such a rule necessitates close scrutiny. While courts have unanimously approved the practice of a creditor's telephoning or writing a debtor's employer to inform him of a debt owed,<sup>32</sup> they have in certain cases ruled against creditors when "harassment"<sup>33</sup> or "oppressive conduct"<sup>34</sup> has been used. Just where this fine legal line is to be drawn can only be determined from the particular facts presented in each case.<sup>35</sup> For in-

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28. Comment, *Criminal Sanctions Protecting the Credit Seller*, 98 U. PA. L. REV. 230 (1949). This comment indicates that during the period debtor imprisonment was used there were three to five times as many persons imprisoned for debt as for crimes, with most of the unpaid accounts being very small. This practice was discontinued about 1830 in America and England.

29. This could be explained, in part, by the fact that the tort of invasion of privacy took time to develop and become acceptable to very many jurisdictions. In *Hamberger v. Eastman*, 106 N.H. 107, 206 A.2d 239 (1965), the court gave a capsule summary of the history of the tort concluding that since *Pavesich v. New England Life Ins. Co.*, 122 Ga. 19, 50 S.E. 68 (1905), which upheld the right of privacy, it has been given protection in a majority of the jurisdictions, usually without benefit of statute, with only a few rejecting the concept.

30. *Clark v. Associated Retail Credit Men*, 105 F.2d 62, 67 (D.C. Cir. 1939).

31. *McKenzie v. Huckaby*, 112 F. Supp. 642 (W.D. Okla. 1953); *Household Fin. Corp. v. Bridge*, 252 Md. 531, 250 A.2d 878 (Ct. App. 1969).

32. *Harrison v. Humble Oil & Ref. Co.*, 264 F. Supp. 89, 92 (D.S.C. 1967); *Yonder v. Smith*, 253 Iowa 505, 112 N.W.2d 862, 864 (1962); *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340, 344 (1956).

33. *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340, 344 (1956).

34. *Holloway v. Davis*, 77 Ala. 346, 208 So. 2d 794 (Ct. App. 1967).

35. *Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709 (Del. Super. Ct. 1967).

stance, in *Pack v. Wise*,<sup>36</sup> the court held that numerous, unnecessary communiques between creditor and debtor's employer, culminating in the debtor's being fired, was coercive to an unreasonable degree. Both the number of contacts,<sup>37</sup> their coercive content<sup>38</sup> and whether or not a release in employment was threatened or carried out<sup>39</sup> appear to be salient facts for some courts while others prefer to speak in terms of a "systematic campaign of harassment"<sup>40</sup> as being required.

When the issue of the reasonableness of a creditor's messages to a debtor's employer has been litigated, many courts ruling in the creditor's favor have accepted one or more of the following arguments: in the case of a small debt the creditor is left with no other effective legal recourse;<sup>41</sup> such communication does not constitute an invasion of privacy as an employer has a valid interest in his employee's financial status;<sup>42</sup> notification of only a few persons, such as an employer, is not sufficient to be classed as a public disclosure;<sup>43</sup> by allowing such contacts the courts are left relatively free to handle other matters;<sup>44</sup> the debtor would prefer that his employer be contacted in preference to litigation;<sup>45</sup> and finally, a debtor waived his right to privacy (at least

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36. 245 La. 84, 155 So. 2d 909 (Ct. App.), *cert. denied*, 157 So. 2d 231 (1963). The court seemed to place special emphasis on the fact that after the debtor had informed the creditor of his defense to the claim the creditor again brought the matter to the attention of the employer. This was ruled tortious conduct.

37. *Pack v. Wise*, 245 La. 84, 155 So. 2d 909 (Ct. App.), *cert. denied*, 157 So. 2d 231 (1963) (numerous); *LaSalle Extension Univ. v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934) (over forty); *Duty v. General Fin. & Thrift Corp.*, 154 Tex. 16, 273 S.W.2d 64 (1954) (numerous).

38. *Norris v. Moskins Stores, Inc.*, 272 Ala. 174, 132 So. 2d 321 (1961) (where a creditor suggested an illicit relationship on the debtor's part in an attempt to cause payment of a debt); *Quina v. Roberts*, 16 So. 2d 558 (La. Ct. App. 1944) (where a creditor used a pseudo-legal form to mislead the employer with the intention of forcing the debtor to liquidate a debt of \$1.45).

39. *Holloway v. Davis*, 77 Ala. 346, 208 So. 2d 794 (Ct. App. 1967) (demotion threatened); *Pack v. Wise*, 245 La. 84, 155 So. 2d 909 (Ct. App.), *cert. denied*, 157 So. 2d 231 (1963) (employee discharged).

40. *Biederman's of Springfield v. Wright*, 322 S.W.2d 892 (Mo. 1959); *Montgomery Wards v. Larragorite*, 81 N.M. 383, 467 P.2d 399 (1970).

41. *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340, 344 (1956); *compare*, *Household Fin. Corp. v. Bridge*, 252 Md. 531, 250 A.2d 878 (Ct. App. 1969) with *Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709 (Del. Super. Ct. 1967).

42. *Voneye v. Turner*, 240 S.W.2d 588 (Ky. Ct. App. 1951).

43. *Tolfson v. Safeway*, 142 Colo. 442, 351 P.2d 274 (1960); *but see* *Housh v. Peth*, 165 Ohio St. 35, 135 N.E.2d 440, 448 (Ct. App. 1955), *aff'd*, 133 N.E.2d 340 (1956), where the court stated that: "An invasion of privacy may result without the matter being brought to the attention of the general public. Typical of this class of cases are wiretapping and other forms of eavesdropping. In such cases, the public is not informed or involved."

44. *See*, *Household Fin. Corp. v. Bridge*, 252 Md. 531, 250 A.2d 878 (Ct. App. 1969).

45. *Voneye v. Turner*, 240 S.W.2d 588, 591 (Ky. Ct. App. 1951).

in so far as it relates to his employer being informed) when he requested the credit.<sup>46</sup>

Debtors have attempted to rebut these arguments by claiming that coercion is the primary motive behind such communication. Certain courts have pointed out the following factors favoring the debtor. The creditor anticipates a "trial by employer" where an employee's rights and defenses are lightly regarded at best. Justice is based more upon expediency and social bias than the law, with the constitutional guarantees of due process and equal protection of the laws unknown.<sup>47</sup> Even if the employee settles the debt, usually at the mercy of the creditor, to retain his job, the employer might still regard the employee suspiciously and bypass him with regard to future promotions or salary increases.<sup>48</sup> While an employer may have a valid interest in his employee's debts, even this should be curtailed to the point that a concerned employer does not attempt to usurp the legitimate function of a court—dispute settling. Not all debtors would prefer their employer being told of their obligation to a judicial settlement,<sup>49</sup> especially if they felt a valid defense was available and desired the safeguards inherent with a court of law. Lastly, it is unconscionable to allow a creditor free reign in collecting the debt just because the debtor availed himself of credit. It is very doubtful if any intelligent waiver took place, especially if no specific mention of it was given in the agreement. In any event credit procurement should not create an unlimited license to coerce.<sup>50</sup>

Even though the majority of courts have allowed creditors to contact their debtor's employer, the standard of reasonableness has been applied to limit the collector. The major problem here has been the uneven application of the rule. In *Booth v. American Finance Corporation of Shreveport*,<sup>51</sup> the court ruled that unreasonable and coercive

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46. *Gouldman-Tabor Pontiac v. Zerbest*, 213 Ga. 682, 100 S.E.2d 881 (1957).

47. Note, *Torts-Liability of Creditor for Contacting Employer of Debtor as a Collection Method*, 24 LA. L. REV. 953 (1964). See also, *Pack v. Wise*, 245 La. 84, 155 So. 2d 909 (Ct. App.), cert. denied, 157 So. 2d 231 (1963); *Quina v. Roberts*, 16 So. 2d 558 (La. Ct. App. 1944).

48. See, *Holloway v. Davis*, 77 Ala. 346, 208 So. 2d 794 (Ct. App. 1967) (where an employee was threatened with a demotion if his "debt" was not paid).

49. See, *Birkhead, Collection Tactics of Illegal Lenders*, 8 LAW & CONTEMP. PROB. 78 (1941) where it is noted that most employees are very reluctant to discuss their personal affairs with company officials. The employer does not want to be bothered with such matters and usually desires a quick settlement.

50. "But the license to pursue the debtor is not a license to outrage the debtor." *Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709, 713 (Del. Super. Ct. 1967).

51. 254 La. 782, 224 So. 2d 512 (Ct. App.), cert. denied, 226 So. 2d 771 (1969).



action resulted from repetitious letters and telephone calls to the debtor's employer. This result seems to flow from the further facts that the debt was disputed and that the nature of the communication was "intended to frighten the plaintiff into settling the debt or possibly being fired."<sup>52</sup> Similar facts were present in *Timperley v. Chase Collection Service*<sup>53</sup> where again a disputed debt existed and the collector contacted the debtor's employer. Here, however, the court ruled against the debtor, saying that even though the creditor "knew the likelihood of the appellant's (debtor) being pressured by his employer to pay"<sup>54</sup> it would still be protected as it was privileged communication. The decision in *Timperley* refused to recognize actionable coercion on the creditor's part regardless of the fact that the debt was clearly disputed,<sup>55</sup> the letter sent to the employer did not reflect this, and the debtor lost his job as a direct result of his refusal to quickly settle the debt. Such a judicial approach seems to afford the debtor little protection against the whim of an aggressive debt collector, as manifest through a cooperative employer, who has not been supplied adequate information about the debt.

In *Quina v. Roberts*,<sup>56</sup> the court ruled in the debtor's favor after the creditor sent a letter to the employer which erroneously implied that it had been issued through a legal channel. Characterizing it as "misleading" and "coercive" the decision seems to provide some remedy for harrassed employees. Where collection letters asking for the employer's assistance have strongly tended to imply dishonesty on the debtor's part, some courts have ruled in favor of the debtor.<sup>57</sup> However, these decisions have been criticized for not developing proper judicial standards.<sup>58</sup>

*Gouldman-Tabor Pontiac v. Zerbest*<sup>59</sup> involves the factual situa-

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52. *Id.* at 516.

53. 272 Cal. App. 2d 697, 77 Cal. Rptr. 782 (Ct. App. 1969). For a similar case with the same outcome refer to *Berrier v. Beneficial Fin., Inc.*, 234 F. Supp. 204 (N.D. Ind. 1964).

54. *Timperley* at 784.

55. It has been reported that "at least 20% of all debtors have valid defenses." *Bansberg, Courts Are Held Creditors' Allies*, New York Times, July 19, 1971, at 17, col. 3.

56. 16 So. 2d 558 (La. Ct. App. 1944).

57. See, *Thompson v. Adelberg & Berman, Inc.*, 181 Ky. 487, 205 S.W. 558 (Ct. App. 1918) (where the placing of a number of conspicuous cards around plaintiff's property telling that a collector had called and requesting a visit to the store was held actionable by the court); *Neaton v. Lewis Apparel Stores*, 267 App. Div. 728, 48 N.Y.S.2d 492 (Sup. Ct.), motion for leave to appeal allowed, 50 N.Y.S.2d 463 (1944).

58. *Voneye v. Turner*, 240 S.W.2d 588, 593 (Ky. Ct. App. 1951).

59. 100 S.E.2d 881 (Ga. 1957).

tion of the sending by a creditor of a letter informing the employer that he was attempting to collect an "honest debt" that was owed. The employer promptly notified the employee that the letter would be placed in his permanent employment file until the debt was settled. Even though the employee claimed no such debt existed, with the creditor being so aware when the letter was sent, the court ruled that the creditor acted in a manner reasonably designed to "persuade her to pay her bills and upon failure to persuade to force her to do so through the courts."<sup>60</sup> The court here recognizes that it is its duty to make final adjudication of a contested debt, but does not believe that any great harm will result if a job-conscious employee is, in effect, forced to pay off a debt he may not legally owe, due to the overly persuasive practices of a creditor. Such a decision puts the onus on the employee to either settle with the creditor or accept a blemished personnel record, even if no legally collectable debt exists.

In another case,<sup>61</sup> an innocuous letter telling the employer of an alleged debt of one of his employees also contained, at the bottom, a separate section to be torn off and placed in the employee's next paycheck by the employer. This stub informed the employee that he was requested to straighten out the matter immediately. The Kentucky court ruled this not to be an invasion of the debtor's right of privacy since the letter did not contain a coercive word. No discussion was made of the creditor's written stub even though this appears to indicate a siding of the employer with the creditor and an implication that the worker had better resolve the matter quickly or face the consequences, regardless of the debt's authenticity.

*LaSalle Extension University v. Fogarty*<sup>62</sup> illustrates the point that some courts consider the fact of the existence of a debt a sufficient factor to consider in limiting collection practices. This would mean that if no valid debt is found to exist a collector's tactic would be scrutinized more carefully; but not all courts agree on this.<sup>63</sup>

Oklahoma at present has little legislation affecting collection conduct. The Uniform Consumer Commercial Code has two sections

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60. *Id.* at 883; see also, *Tuyes v. Chambers*, 144 La. 723, 81 So. 265 (1919) (where a creditor attempted to "blackmail" a debtor by threatening public disclosure of a debtors list).

61. *Lewis v. Moskins Stores*, 262 S.W.2d 679 (Ky. Ct. App. 1953) (three judges dissented).

62. 126 Neb. 457, 253 N.W. 424 (1934).

63. *Pack v. Wise*, 245 La. 84, 155 So. 2d 909 (Ct. App.), *cert. denied*, 157 So. 2d 231 (1963); *Quina v. Roberts*, 16 So. 2d 558, 561 (La. Ct. App. 1944).

which speak in general terms of "unconscionable conduct."<sup>64</sup> While the UCCC has a potentially powerful weapon in the administrator, who is given authority to bring suits seeking injunctions against certain conduct,<sup>65</sup> the vagueness of the term "unconscionable" has been a continuing objection since it does not afford any reliable course of behavior for the creditor until judicially spelled out.<sup>66</sup>

Private suits do not always work well due to the relatively small amounts involved, debtor ignorance of legal resources available, and the high cost of attorney fees.<sup>67</sup> These actions should still be allowed as a safeguard against an administrator who becomes overly sympathetic to creditors or feels the debtor's claim is marginal due to budget limitations and takes no action as a result. But in the end most individuals fear losing a private suit and bypass the courts.<sup>68</sup>

The Uniform Consumer Commercial Code's administrator concept, the flexibility of the term "unconscionable", and the encouragement of private suits are all beneficial, but are not in themselves sufficient to solve the problem completely enough. What is needed is a more basic initial approach which would get to the genesis of the dilemma and fill the gaps in the previously mentioned remedies.

A partial solution to the present dilemma would be in judicial and legislative curtailment of collection letters and telephone calls directed to the debtor's employer. To completely prohibit any such contact, as some have argued,<sup>69</sup> would ignore the generally accepted belief that an employer does have a valid interest in his employee's financial obligations. However, careful guidelines need to be developed to insure that such contacts are "informational" rather than coercive. As previously noted,<sup>70</sup> it is when the communicate becomes misleading to the employer that it becomes objectionable. To remedy this a creditor should be required to clearly and conspicuously state that the fact or amount of the debt is disputed and that the employer is not expected or encouraged to exert pressure on the employee to pay the debt. Furthermore, the number of times a creditor should be allowed to com-

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64. OKLA. STAT. tit. 14A §§ 5-108(1), 6-111 (1971).

65. OKLA. STAT. tit. 14A § 6-111 (1971).

66. Jordan and Warren, *The Uniform Consumer Credit Code*, 68 COL. L. REV. 387 (1968).

67. *Id.*

68. Comment, *Enforcement Under The UCCC*, 55 MINN. L. REV. 572 (1971).

69. Hawley v. Professional Credit Bureau, 345 Mich. 500, 76 N.W.2d 835, 842 (1956) (dissent).

70. See cases cited notes 38, 51 & 57, *supra*.

municate with the employer should be limited to one. This would lessen the "systematic campaign of harassment" practice indulged in by disreputable collectors. To avoid surprise on the employee-debtor's part, prior notice of the anticipated employer contact should be required from the creditor. This should take the form of a copy of the letter that will be sent to the employer being first given to the employee. Finally, upon being informed that a debtor has retained an attorney to represent him, a collector should not be allowed to communicate directly with the debtor, unless the attorney has advised the collector otherwise.

Generally speaking, collection agencies are the groups who apply the most "pressure practices", as they are often attempting to collect from those unable or unwilling to pay. While most agencies operate in an aboveboard fashion there still exists a minority that do not hesitate to coerce and harass the debtor. In order to practically implement the previously suggested rules, legislation should be enacted to set up a Collection Agency Regulatory Board. Following the basic pattern in such states as Massachusetts<sup>71</sup> and California<sup>72</sup> the board could keep out the incompetent operator by instituting licensing requirements and determining what constitutes acceptable conduct in debt collection generally. Under such a plan there would be the needed flexibility to stop new, unacceptable practices, yet enough specificity to insure a clear course of conduct for all reputable collection agencies. A wronged party need only file a complaint with the board in the event that a licensed agency is involved. While all creditors would not be covered under such legislation, hopefully the result would be an aid in reducing offensive and unreasonable collection practices. With obvious benefits accruing to harassed debtors, such a system should also assist the collector by clearly pointing out unacceptable conduct.

In conclusion, while an upsurge in credit use has heightened collection activity and the need for knowing the legal bounds of such action, the courts have been ineffectual in delineating a clear line between honest, reasonable efforts and coercive conduct. This seems es-

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71. MASS. GEN. LAWS ANNOT. ch. 93, § 24-28 and ch. 272, § 97(a) (1972). Also of particular interest, as reported in 35 UNAUTHORIZED PRACTICE NEWS 27, (Dec., 1970), is the Massachusetts Commissioner of Banks' adoption of stringent regulations respecting the business conduct of collection agencies. Such matters as attorney involvement, company name, records, communication with anyone other than the debtor, expenses charged to the debtor, debtor lists, use of return addresses, times of communication and deceptive practices are all rather strictly curtailed.

72. CALIF. BUS. & PROF. CODE § 6947 (1974).

pecially true in the area of creditor-employer communication relating to employee debts. The Uniform Consumer Credit Code has attempted to deal with such abuses, but its shortcomings are apparent. Although not a complete solution, the establishment of a state agency to control the licensing and conduct of collection businesses seems to go one step further in better protecting the debtor from abusive collectors.