SECRETS OF THE LEGAL INDUSTRY

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AUTHOR'S NOTE

My intention is to inspire users of the book to learn about our legal system and proceed to fight their own legal wars. Although the book is a first step toward understanding our legal system and how to work within it, I advise readers to use the book as a study guide and collaterally research such valuable materials as the local state and federal rules guides. I have often been asked, "would you be mad if we used your material?" My answer – "I'll be mad if you don't!" I do, however, caution that before anyone submits any pleading in any proceeding it is not merely wise but MANDATORY that the local rules are checked. For example, some jurisdictions require a notice before filing pleadings and all jurisdictions that I am aware of require that a copy of your pleading be certified to the other side.

Richard Luke Cornforth

REVISION HISTORY

Date	*Version*	*Description*
3/13/03	1.0	Initial version.
3/14/03	1.01	Added Table of Contents, Revision history, and corrected formatting.
3/15/03	1.02	1. Added periods to several acronyms. 2. Added several more cites to the Table of Authorities.
8/16/03	1.03	1. Replaced all occurrences of "familyguardian.tzo.com" with "famguardian.org".
3/15/05	1.04	1. Added a copyright notice to the beginning and to the bottom of every page. Also added a weblink to the Family Guardian website to the bottom right on every page.

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1 SECTION ONE: INTRODUCTION

1.1 We Have a two tiered court system

In our system, we have supreme courts and courts of inferior jurisdiction. When we were children and learning in school, we were instructed that there are three branches of government, the legislative, the administrative, and the judicial. What were not told was that courts of inferior jurisdiction, regardless of their claimed origin such as The United States Constitution Article Three, Section one, can not be presumed to act judicially. Most courts of inferior or limited jurisdiction have no inherent jurisdictional authority, no inherent judicial power whatsoever. **Courts of limited jurisdiction are empowered by one source: SUFFICIENCY OF PLEADINGS – meaning one of the parties appearing before the inferior court must literally give the court its judicial power by completing jurisdiction. Federal courts are courts of limited jurisdiction, and may only exercise jurisdiction when specifically authorized to do so. A party seeking to invoke a federal court's jurisdiction bears the burden of establishing that such jurisdiction exists.** See:

1. Scott v. Sandford, 60 U.S. 393 (U.S. 01/02/1856),
2. SECURITY TRUST COMPANY v. BLACK RIVER NATIONAL BANK (12/01/02) 187 U.S. 211, 47 L. Ed. 147, 23 S. Ct. 52,
3. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936),
4. HAGUE v. COMMITTEE FOR INDUSTRIAL ORGANIZATION ET AL. (06/05/39) 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423,
5. UNITED STATES v. NEW YORK TELEPHONE CO. (12/07/77) 434 U.S. 159, 98 S. Ct. 364, 54 L. Ed. 2d 376,
6. CHAPMAN v. HOUSTON WELFARE RIGHTS ORGANIZATION ET AL. (05/14/79) 441 U.S. 600, 99 S. Ct. 1905, 60 L. Ed. 2d 508,
7. CANNON v. UNIVERSITY CHICAGO ET AL. (05/14/79) 441 U.S. 677, 99 S. Ct. 1946, 60 L. Ed. 2d 560,
8. PATSY v. BOARD REGENTS STATE FLORIDA (06/21/82) 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172,
9. MERRILL LYNCH v. CURRAN ET AL. (05/03/82) 456 U.S. 353, 102 S. Ct. 1825, 72 L. Ed. 2d 182, 50 U.S.L.W. 4457,

10. INSURANCE CORPORATION IRELAND v. COMPAGNIE DES BAUXITES DE GUINEE (06/01/82) ***456 U.S. 694***, 102 S. Ct. 2099, 72 L. Ed. 2d 492, 50 U.S.L.W. 4553,
11. MATT T. KOKKONEN v. GUARDIAN LIFE INSURANCE COMPANY AMERICA (05/16/94) 128 L. Ed. 2d 391, 62 U.S.L.W. 4313.

OKLAHOMA MAY SAY IT BEST! = **We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,". Article 7, Section 7, Oklahoma Constitution. However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of pleadings which are *sufficient* to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and *empower the court to act* has been applied to both courts of record and not of record. We determine that the mandatory language of 22 O.S. 1981 § 303 [22-303], requiring endorsement by the district attorney or assistant district attorney and verification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, *is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act.* Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it**. We therefore hold that the judgments and sentences in the District Court of Tulsa County must be REVERSED AND REMANDED without a bar to further action in the district court in that the unverified information failed to confer subject matter jurisdiction on the district court in the first instance, Chandler v. State, 96 Okl.Cr. 344, 255 P.2d 299, 301-2 (1953), Smith v. State, 152 P.2d 279, 281 (Okl.Cr. 1944); City of Tulsa, 554 P.2d at 103; Nickell v. State, 562 P.2d 151 (Okl.Cr. 1977); Short v. State, 634 P.2d 755, 757 (Okl.Cr. 1981); Byrne v. State, 620 P.2d 1328 (Okl.Cr. 1980); Laughton v. State, 558 P.2d 1171 (Okl.Cr. 1977), and ***Buis*** v. State, 792 P.2d 427, 1990 OK CR 28 (Okla.Crim.App. 05/14/1990). To invoke the ***jurisdiction*** of the ***court*** under the declaratory judgments act there must be an actual, existing justiciable controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a possible, potential or contingent dispute. *Gordon v. Followell*, 1964 OK 74, 391 P.2d 242. To be "justiciable," the claim must be suitable for judicial inquiry, which requires determining whether the controversy (a) is definite and concrete, (b) concerns legal relations among parties with adverse interests and (c) is real

and substantial so as to be capable of a decision granting or denying specific relief of a conclusive nature." *Dank v. Benson*, 2000 OK 40, 5 P.3d 1088, 1091. See also, 12 O.S. §1651. See also, *Easterwood v. Choctaw County District Attorney*, 45 P.3d 436, 2002 OK CIV APP 41 (Okla. App. 01/11/2002). Another well spoken authority: On the date specified in the notice of hearing, all parties may appear and be heard on all matters properly before the court which must be determined prior to the entry of the order of taking, including the ***jurisdiction*** of the court, the ***sufficiency*** of ***pleadings***, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated. See CITY LAKELAND v. WILLIAM O. BUNCH ET AL. (04/03/74) 293 So. 2d 66.

I hope by now, everyone understands that a court DOES NOT GET ITS JURISDICTIONAL AUTHORITY FROM THE FLAG THAT IS POSTED!!!! Court's of inferior or limited jurisdiction get their authority from ONE SOURCE AND ONLY ONE SOURCE = pleadings sufficient to empower the court to act meaning one of the parties must give the court its power to act by way of written and oral argument (the parties NOT THEIR ATTORNEYS MUST DO THIS!).

1.2 We have a common law court system.

There are two basic forms of law in the world – code law and common law. Code law means that the law as written is the law. Unfortunately, code has to be continually expanded by legislative authority. The so called Internal Revenue Service Code is an attempt to impose code law over common law – the results are disasters! Common law means that you can't read any statute, rule, or law for that matter any constitutional article and tell what it means on its face. A common law system means that what any statute, rule, law, or constitutional law means is determined by the highest court of competent jurisdiction in their most recent ruling. In America, only Louisiana uses a code law system.

DEVELOPMENT OF THE COMMON-LAW COURT SYSTEM IN AMERICA

The Supreme Court is a common-law court that operates in a system that has little "federal common law." Yet its common-law nature is important to the Court's functioning as a **constitutional**

arbiter. "Common law is a system of law made not by legislatures but by courts and judges. Although often called "unwritten law," the phrase actually refers only to the source of law, which is presumed to be universal custom, reason, or "natural law." **In common law, the substance of the law is to be found in the published reports of court decisions**. Two points are critical to the workings of a common-law system. First, law emerges only through litigation about actual controversies. Second, **precedent guides courts: holdings in a case must follow previous rulings, if the facts are identical**. This is the principle of *stare decisis*. But subsequent cases can also change the law. ***If the facts of a new case are distinguishable, a new rule can emerge***. And sometimes, if the grounds of a precedent are seen to be wrong, the holding can be overruled by later courts.

When the Constitution was drafted, American society was infused with common-law ideas. Common law originated in the medieval English royal courts. By 1776, it had been received in all the British colonies. The revolutionary experience heightened Americans' adherence to common law, especially to the idea that the principle embodied in the common law controlled the government. While there is no express provision in the Constitution stating that the Supreme Court is a common-law court, **Article III divides the jurisdiction of federal courts into law (meaning *common law*), equity, and admiralty. The Philadelphia Convention of 1787 rejected language that would limit federal jurisdiction to matter controlled by congressional statute. Thus the Constitution implicity recognizes the Supreme Court as a common-law court, as does the *Seventh Amendment in the Bill of Rights.***

The Constitution left open the question whether there was a federal common law. The Supreme Court first held, in *United State v. Hudson and Goodwin* 1812*)*, that there is no federal common law of crimes, and then, in *Wheaton v. Peters* (1834), that there is no federal civil common law. But in *Swift v. Tyson* (1842), the Court permitted lower federal courts to decide commercial law questions on the basis of "the general principles and doctrines of commercial jurisprudence" thus opening the door to later growth of a general federal common law. A century later, the Court put a stop to this development in *Erie Railroad v. Thompkins* (1938) by declaring *Swift* unconstitutional. (Yet, at the same time, it acknowledged the existence of bodies of specialized federal common law, such as, for example, it refuses to render advisory opinions, waiting instead for litigants to bring issues before it. **Precedent shapes the Court's power of judicial review; because of it, any ruling of the Court is a precedent for similar cases. Thus if one state's law is held unconstitutional, all similar statutes in other states are unconstitutional** a point the Court was obliged to underscore forcibly in *Cooper v.*

Aaron (1958) in the face of intransigent southern resistance to the Court's holding in *Brown v. Board of Education* (1954).

The Fourteenth Amendment

Under Article I, Section 2 of the Constitution, a slave had been counted as three-fifths of a person for purposes of representation. Southern states expected a substantial increase in their representation in the House of Representatives after the Civil War. The Union, Having won the war, might lose the peace. Before the war, southern states suppressed fundamental rights, including free speech and press in order to protect the institution of slavery. Though the Supreme Court had ruled in 1833 in *Baron v. Baltimore* that guarantees of the Bill of Rights did not limit the states, many Republicans thought state officials were obligated to respect those guarantees. The Fourteenth Amendment prohibited states from abridging privileges and immunities of citizens of the United States and from depriving persons of due process of law or equal protection of the laws. Early interpretations of the Fourteenth Amendment drastically curtailed the protection afforded by the amendment. Decisions such as *Twinin v. New Jersey* in 1908 and *Gitlow v. New York* in 1925 expanded the Fourteenth Amendment to the Bill of Rights meaning that Federal protections applied to protect the individual from trespass on God-given rights by states. Supreme Court decisions have also brought offense to rights done under color of law by private persons within reach of Federal protection. Source – The Oxford Companion To The Supreme Court of The United States

The essence of the Fourteenth Amendment in a nut shell

The Constitution of the United States was written to protect us from intrusion on our God Given Rights by the Federal Government. The Fourteenth Amendment was necessary to protect us from intrusion on our God Given Rights by state governments, political subunits, and individuals who act under color of law.

WORKBOOK ASSIGNMENT: Define "color of law." _____

_____

What law is found at 5 U.S.C. § 3331 and explain the significance of that law _____

_____

UNITED STATES CONSITUTIONAL AMENDMENT VII = In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the Untied States, than according to the rules of the common law.

Federal courts, in adopting rules, are not free to extend the judicial power of the Untied States described in Article III of the Constitution. *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992). Rule 28A(i) allows courts to ignore this limit. If we mark an opinion as unpublished, Rule 28A(i) provides that is not precedent. Though prior decisions may be well-considered and directly on point, Rule 28A(i) allows us to depart from the law set out in such prior decisions without any reason to differentiate the cases. This discretion is completely inconsistent with the doctrine of precedent; even in constitutional cases, courts "have always required a departure from precedent to be supported by some 'special justification.' "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). Rule 28A(i) expands the judicial power beyond the limits set by article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional. *Anastasoff v. United States of America* 223 F.3d 898 (8th Cir. 2000).

1.3 The real law is found in the annotated statutes.

Example of annotated law

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER 41--CONSUMER CREDIT PROTECTION
SUBCHAPTER V--DEBT COLLECTION PRACTICES

Current through P.L. 107-48, approved 10-12-01

§ 1692a. Definitions

As used in this subchapter--

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

CREDIT(S)

1997 Main Volume

(Pub.L. 90-321, Title VIII, § 803, as added Pub.L. 95-109, Sept. 20, 1977, 91 Stat. 875, and amended Pub.L. 99-361, July 9, 1986, 100 Stat. 768.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Acts. House Report No. 1040 and Conference Report No. 1397, see 1968 U.S. Code Cong. and Adm. News, p. 1962.

1977 Acts. Senate Report No. 95-382, see 1977 U.S. Code Cong. and Adm. News, p. 1695.

1986 Acts. House Report No. 99-405, see 1986 U.S. Code Cong. and Adm. News, p. 1752.

Amendments

1986 Amendments. Par. (6). Pub.L. 99-361 in provision preceding subpar. (A) substituted "clause (F)" for "clause (G)", in subpar. (E) inserted "and" after "creditor;", struck out subpar. (F), which excluded from the term "debt collector" any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client, and redesignated subpar. (G) as (F).

CROSS REFERENCES

Private counsel as debt collector, see 31 U.S.C.A. § 3718.

AMERICAN LAW REPORTS

Validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices. 87 ALR3d 786.

What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692A(5)). 159 ALR Fed 121.

What constitutes "debt" and "debt collector" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692(a)(5), (6)). 62 ALR Fed 552.

LIBRARY REFERENCES

Administrative Law

Fair Debt Collection Practices Act, scope and coverage, see West's Federal Administrative Practice § 3512.

Limitations on communications, see West's Federal Administrative Practice § 3514.

Encyclopedias

17 Am. Jur. 2d, Consumer and Borrower Protection § § 194, 197-199,201, 202

Law Review and Journal Commentaries

Acceleration notices and demand letters. Manuel H. Newburger, 47 Consumer Fin.L.Q.Rep. 338 (1993).

Fair Debt Collection Practices Act: Attorneys beware, you too may be a debt collector. Janet Flaccus, 1987 Ark.L.Notes 11.

Fair Debt Collection Practices Act: Emerging source of liability for attorneys. Christopher A. Golden, 69 N.Y.St.B.J. 14 (Feb. 1997).

Guidelines for consumer debt collection by attorneys under the 1986 Amendment to the Fair Debt Collection Practices Act. Michael K. Sweig, 21 New Eng.L.Rev. 697 (1985-86).

Texts and Treatises

Business and Commercial Litigation in Federal Courts § § 41.3, 61.4, 61.7 (Robert L. Haig ed.) (West Group & ABA 1998).

7 Fed. Proc. L Ed Consumer Credit Protection § § 15:67, 68, 76

NOTES OF DECISIONS

1. Communication

Notice demanding payment of rent arrearage or surrender of rented premises to landlord was "communication" to collect debt, within meaning of Fair Debt Collection Practices Act (F.D.C.P.A.). Romea v. Heiberger & Associates, S.D.N.Y.1997, 988 F.Supp. 712, affirmed 163 F.3d 111.

Collection bureau's notices to debtor qualified as "communications" in connection with the collection of a debt under this section. In re Scrimpsher, Bkrtcy.N.D.N.Y.1982, 17 B.R. 999.

2. Consumer

Customers of long-distance telephone services provider were not "consumers," within meaning of disclosure requirement of Fair Debt Collection Practices Act (F.D.C.P.A.) that provider allegedly violated when it failed to notify customers in their telephone bill that it was assisting in collection of debt owed by customers' daughter-in-law to provider's former subsidiary or affiliate, given that customers were not obligated to pay daughter-in-law's debt. Conboy v. AT & T Corp., S.D.N.Y.2000, 84 F.Supp.2d 492.

Debtor, as natural person who was obligated to pay debt to hospital for services provided in connection with her kidney infection, was "consumer" within meaning of the Fair Debt Collection Practices Act (F.D.C.P.A.). Creighton v. Emporia Credit Service, Inc., E.D.Va.1997, 981 F.Supp. 411.

Patient who had received medical services on credit, and who was primarily responsible for payment of account at medical center, qualified as "consumer" under the Fair Debt Collection Practices Act (F.D.C.P.A.). Adams v. Law Offices of Stuckert & Yates, E.D.Pa.1996, 926 F.Supp. 521.

Fair Debt Collection Practices Act, establishing liability of debt collector who fails to comply with the Act "with respect to any person," does not limit recovery to "consumers," and thus would not preclude recovery by person to whom debt collector sent letter seeking to collect debt of such person's deceased father even if such person were not a consumer; but, in any event, such person was a "consumer" when collectors admittedly demanded payment of debt from him. Dutton v. Wolhar, D.Del.1992, 809 F.Supp. 1130.

3. Debt--Generally

Unpaid administrative and other fees charged under rental agreement by automobile and truck rental company in event of accident constituted "debt" under Fair Debt Collection Practices Act. Brown v. Budget Rent-A-Car Systems, Inc., C.A.11 (Fla.) 1997, 119 F.3d 922.

First requisite element of debt under Fair Debt Collection Practices Act (F.D.C.P.A.) is existence of obligation. Ernst v. Jesse L. Riddle, P.C., M.D.La.1997, 964 F.Supp. 213.

"Debt," under the Fair Debt Collection Practices Act (F.D.C.P.A.), is transaction in which consumer is offered or extended the right to acquire money, property, insurance or services which are primarily for household purposes and to defer payment. Adams v. Law Offices of Stuckert & Yates, E.D.Pa.1996, 926 F.Supp. 521.

Filing of proof of claim in bankruptcy, even for debt whose amount is disputed, does not trigger the federal Fair Debt Collection Practices Act (F.D.C.P.A.). In re Cooper, Bkrtcy.N.D.Fla.2000, 253 B.R. 286.

Collection agency was not prohibited by this subchapter from recovering a percentage of the amount due for collection costs where such amounts were expressly authorized by agreements creating the debts. Grant Road Lumber Co., Inc. v. Wystrach, Ariz.App.1984, 682 P.2d 1146, 140 Ariz. 479.

4. ---- Business transactions

Dishonored check written in payment for consumer goods created "debt" within purview of Fair Debt Collection Practices Act (F.D.C.P.A.). Snow v.Jesse L. Riddle, P.C., C.A.10 (Utah) 1998, 143 F.3d 1350.

District court properly dismissed guarantor's state and federal consumer debt collection claims against owner of loan and guaranty, even though guarantor claimed that, because owner was not first owner of loan and guaranty, owner was engaging in collection of debt for another; guarantor's obligation, which arose out of commercial transaction, did not constitute a "debt" under either Federal Fair Debt Collection Act or Texas Debt Collection Act. First Gibraltar Bank, FSB v. Smith, C.A.5 (Tex.) 1995, 62 F.3d 133, rehearing denied.

Purchase of credit card processing unit was not transaction primarily for personal, family, or household purposes and, thus, obligation arising from such purchase did not constitute "debt" within meaning of Fair Debt Collection Practices Act (F.D.C.P.A.). Holman v. West Valley Collection Services, Inc., D.Minn.1999, 60 F.Supp.2d 935.

Debtor's obligation to pay automobile liability insurance premiums was "debt" within meaning of the Fair Debt Collection Practices Act (F.D.C.P.A.), even though debtor was compelled by state law to obtain such insurance and even though obligation benefited others in addition to debtor. Kahn v. Rowley, M.D.La.1997, 968 F.Supp. 1095.

Neither federal Fair Debt Collection Practices Act (F.D.C.P.A.) nor Texas Debt Collection Practices Act (DCPA) applied to leases for security equipment obtained and installed by lessees in their family-owned and operated stores, inasmuch as Acts applied to debts arising out of consumer transactions for personal, family, or household purposes, and lessees used equipment for business purposes, even though equipment was intended to provide security to family members working at stores. Garza v. Bancorp Group, Inc., S.D.Tex.1996, 955 F.Supp. 68.

Notes used to pay for a portion of investor's partnership interest in tax- shelter limited partnership were not a "debt" within meaning of Fair Debt Collection Practices Act. National Union Fire Ins. Co. of Pittsburgh, Pa. v. Hartel, S.D.N.Y.1990, 741 F.Supp. 1139.

Collection of purely business-related debt was not governed by Fair Debt Collection Practices Act. Bank of Boston Intern. of Miami v. Arguello Tefel, E.D.N.Y.1986, 644 F.Supp. 1423.

Debt incurred purely for business reasons is not covered by Fair Debt Collection Practices Act. Mendez v. Apple Bank for Sav., N.Y.City Civ.Ct.1989, 541 N.Y.S.2d 920, 143 Misc.2d 915.

4A. ---- Checks

Fair Debt Collection Practices Act's (F.D.C.P.A.) broad definition of "debt" as any obligation to pay arising from consumer transaction applied to dishonored checks, given that check issuers' payment obligations arose from transactions for personal or household goods; thus, check issuers stated claims under F.D.C.P.A. when they alleged that attorney and company attempting to collect payment on dishonored checks violated F.D.C.P.A.. Duffy v. Landberg, C.A.8 (Minn.) 1998, 133 F.3d 1120, rehearing denied, certiorari denied 119 S.Ct. 62, 525 U.S. 821, 142 L.Ed.2d 49.

Check writer stated claim when she alleged that check collection agency, attorney, and law firm violated Fair Debt Collection Practices Act (F.D.C.P.A.) in attempting to collect dishonored check, inasmuch as dishonored check was debt under F.D.C.P.A.. Charles v. Lundgren & Associates, P.C., C.A.9 (Ariz.) 1997, 119 F.3d 739, certiorari denied 118 S.Ct. 627, 522 U.S. 1028, 139 L.Ed.2d 607 ,on remand.

5. ---- Child support

Child support payments are not "debts" encompassed within scope of Fair Debt Collection Practices Act (F.D.C.P.A.). Mabe v. G.C. Services Ltd. Partnership, C.A.4 (Va.) 1994, 32 F.3d 86.

Former husband's child support obligation was not debt arising out of transaction with subject primarily of "personal, family, or household purposes," within meaning of the Fair Debt Collection Act, and thus, former husband's child support payments were not "debts" protected by the Fair Debt Collection Practices Act; former husband could not point to any money, property, insurance, or services he received in connection with the child support obligations. Brown v. Child Support Advocates, D.Utah 1994, 878 F.Supp. 1451.

5A. ---- Divorce actions

Fair Debt Collection Practices Act (F.D.C.P.A.) was not applicable to law firm's efforts to enforce property settlement obligations imposed by divorce decree; obligations, though based on negotiated marital termination agreement, did not arise from consumer transaction, and thus were not "debts," within meaning of Act. Hicken v. Arnold, Anderson & Dove, P.L.L.P., D.Minn.2001, 137 F.Supp.2d 1141.

6. ---- Friendly loans

Loan between friends made so that debtor could invest in software company was "business loan," not "consumer debt," and, thus, Fair Debt Collection Practices Act did not apply; debtor's intended use of funds could not be characterized as "primarily for personal, family or household purposes." Bloom v. I.C. System, Inc., C.A.9 (Or.) 1992, 972 F.2d 1067.

Personal loan between friends which was used by borrower as venture capital investment was not loan "primarily for personal, family, or household purposes" and was thus not subject to Fair Debt Collection Practices Act (F.D.C.P.A.), regardless of intent of lender. Bloom v. I.C. System, Inc., D.Or.1990, 753 F.Supp. 314, affirmed 972 F.2d 1067.

1.4 There are a two types of jurisdiction relating to people.

Personal jurisdiction is lawfully exercised over a defendant if the person lives in a jurisdiction, operates a business in a jurisdiction, owns property in a jurisdiction, or commits an injury in a jurisdiction and has had notice and opportunity (is in receipt of service and has a copy of the petition, claim, or complaint). If these elements are complete, personal jurisdiction **CANNOT BE DENIED**. Even if these elements are lacking, personal jurisdiction can be waived by appearance excepting a person, not represented by counsel entering a special appearance for the purpose of challenging the court's personal jurisdiction. Subject matter jurisdiction is the court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. Subject matter jurisdiction can never be waived, cannot attach by mutual consent of the parties, or through lapse of time or course of events other than sufficient pleadings. Once established, subject matter jurisdiction **CAN** be lost. When subject matter jurisdiction is challenged, the party asserting that the court has subject matter jurisdiction has the burden of showing that it exists on the record. Once the court has knowledge that subject matter is lacking, the court (meaning the judge) has no discretion but to dismiss the action. Failure to dismiss means that the court is proceeding in clear absence of all jurisdiction and subjects the judge to suit. Contemplation of subject matter jurisdiction harkens to the memory of Vince Lombardi, who when ask if winning was everything replied, "winning is the only thing." Personal jurisdiction is not usually

an issue, but subject matter jurisdiction is always, always an issue! Subject matter jurisdiction is not everything, it's the only thing! Incidentally, *in rem* is the power of a court over a thing so that its jurisdiction is valid against the rights of every person having an interest in the thing; *quasi in rem* gives the court jurisdiction over a property interest but only to the limit of the interest in the property and not the property entirely.

1.5 Attorneys can't testify. Statements of counsel in brief or in oral argument are not facts before the court.

This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from ***statements*** of ***counsel*** made during the appellate process. As we have said of other un-sworn statements which were *not* part of the record and therefore could not have been considered by the trial court: "*Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case.*" UNITED STATES v. LOVASCO (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752, Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting ***statements*** of ***counsel*** concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted. GONZALES v. BUIST. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463. No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not ***statements*** of ***counsel***, HOLT v. UNITED STATES. (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, Care has been taken, however, in summoning witnesses to testify, to call no man whose character or whose word could be successfully impeached by any methods known to the law. And it is remarkable, we submit, that in a case of this magnitude, with every means and resource at their command, the complainants, after years of effort and search in near and in the most remote paths, and in every collateral by-way, now rest the charges of conspiracy and of gullibility against these witnesses, only upon the bare ***statements*** of ***counsel***. The lives of all the witnesses are clean, their characters for truth and veracity un-assailed, and the evidence of any attempt to influence the memory or the impressions of any man called, cannot be successfully pointed out in this record. TELEPHONE CASES. DOLBEAR v. AMERICAN BELL TELEPHONE COMPANY. MOLECULAR TELEPHONE COMPANY V. AMERICAN BELL TELEPHONE COMPANY. AMERICAN BELL

TELEPHONE COMPANY V. MOLECULAR TELEPHONE COMPANY. CLAY COMMERCIAL TELEPHONE COMPANY V. AMERICAN BELL TELEPHONE COMPANY. PEOPLE'S TELEPHONE COMPANY V. AMERICAN BELL TELEPHONE COMPANY. OVERLAND TELEPHONE COMPANY V. AMERICAN BELL TELEPHONE COMPANY. (PART TWO THREE) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778. Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment, *Trinsey v. Pagliaro,* D. C. Pa. 1964, 229 F. Supp. 647. Factual statements or documents appearing only in briefs shall not be deemed to be a part of the record in the case, unless specifically permitted by the Court – Oklahoma Court Rules and Procedure, Federal local rule 7.1(h).