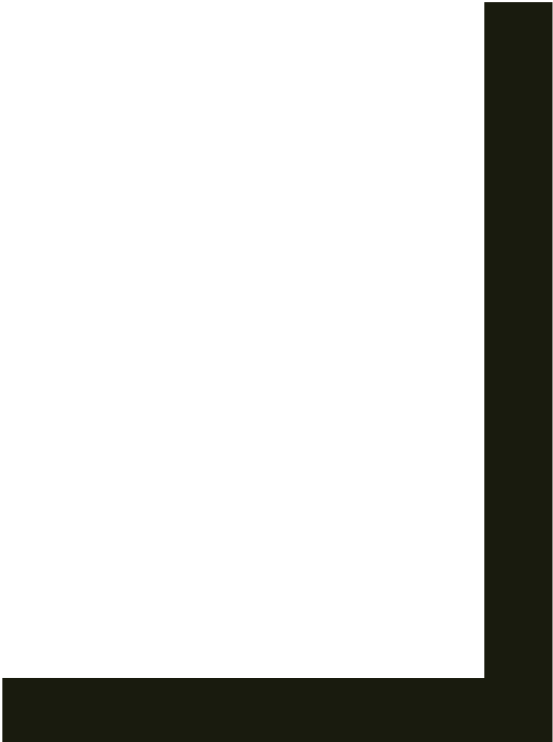




Week 9 – Spokeo / ORLTA

- 5:30 Today's agenda
 - Credit report disputes
 - Spokeo* opinion
 - Napolski* opinion
 - 6:00 Break
 - Guest Speaker Marcel Gesmundo
 - 7:20 Next Week
- 

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Napolski opinion

6:00 Break

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7:20 Next Week

Announcements

OTLA Consumer Section Meeting

March 12 – 12pm to 1pm

Downtown OTLA Office

FBA Lunch CLE – Judge Anna Brown

March 15 – 12pm to 1pm

Portland Federal Courthouse

OSB Consumer Section Meeting

March 21 – 12pm to 1pm

Downtown DOJ Building



Announcements

Consumer Law Focus Group

April 2 – 6pm to 9pm

US Bancorp Tower

Spring Course Evaluations

April 12 – 5:30pm

Class – Bring Laptop





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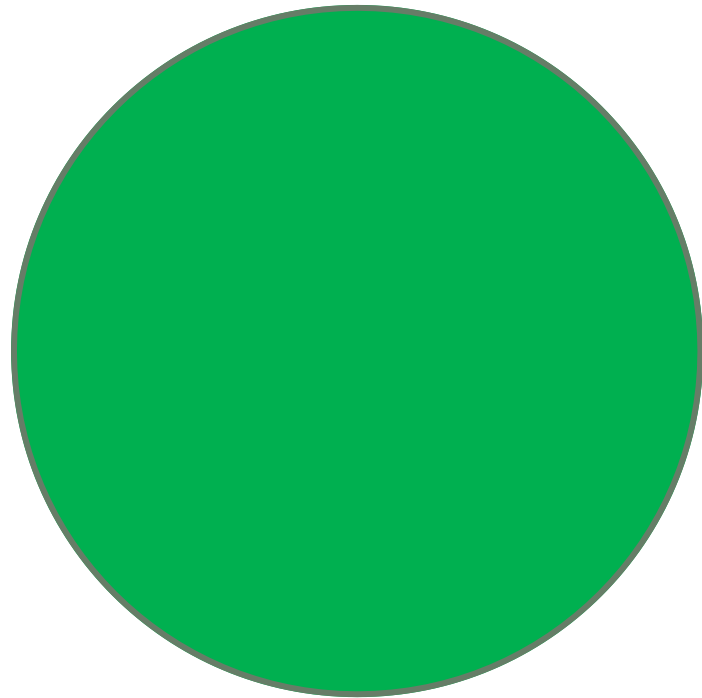
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Guest Speaker Marcel Gesmundo

7:20 Next Week

Class Break
Over



Fair Credit Reporting Act

Private Right of Action

- Duties of **CRA**s and **furnishers** to reinvestigate after a consumer **sends notice** of dispute **to a CRA** are enforceable by private right of action and federal or state agencies. 15 U.S.C. § 1681s-2(b).
- General duties regarding the initial furnishing of accurate credit information are only enforceable by **federal or state agencies**. 15 U.S.C. § 1681s-2(a), (c).

EQUIFAX®

 **Experian**™

 **TransUnion**®

Fair Credit Reporting Act

Claim Elements

- Within **5 business days** after receiving a dispute, a CRA must **provide** all **relevant** information regarding the dispute (an “ACDV form”) to the furnisher. 15 U.S.C. § 1681i(a)(2).
- If a CRA determines a dispute is **frivolous**, it must notify the consumer within **5 business days**. 15 U.S.C. § 1681i(a)(3).
- Within **30 days** after receiving a dispute, CRAs and furnishers must **investigate**, **review** all relevant information, and **delete** any incorrect credit information. 15 U.S.C. § 1681s-2(b); i(a). *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009).
- A CRA must provide reinvestigation **results** to a consumer within **5 business days**. 15 U.S.C. § 1681i(a)(6).

EQUIFAX®

 **Experian**™

 **TransUnion**®

www.AnnualCreditReport.com

Credit Dispute Letter

September 20, 2015

Equifax
PO Box 740241
Atlanta, GA 30374

RE: FCRA Credit Report Dispute Letter

Ladies and Gentlemen,

I dispute the credit information referenced below because... *[the debt was included in bankruptcy, the account belongs to someone else, the balance is incorrect, etc.]*:

Account No.: XXXXXXX1234
Original Creditor: Capital Chase Bank, N.A.

Please see the attached documents in support of my dispute: *[bankruptcy discharge order, credit reports with errors circled, collection letters, original agreement, etc.]*

Please immediately investigate this dispute and correct my credit report. This dispute is very important to me because if this credit information is not corrected immediately, ... *[I won't be able to refinance my home, I won't be able to obtain credit, I can't realize my fresh start after bankruptcy, etc.]*.

Thank you.

John Q. Public

Full Legal Name: John Quincy Public
Social Security No.: 555-55-5555
Date of Birth: 01-01-1962
Current Address: 5678 Consumer Drive, Portland, OR 97204
Current Phone No.: 555-555-5555

Results Letter

EQUIFAX

CREDIT FILE : May 25, 2016

Confirmation #

Dear Sarah :

Below are the results of your reinvestigation request and, as applicable, any revisions to your credit file. If you have additional questions regarding the reinvestigated items, please contact the source of that information directly. You may also contact Equifax regarding the specific information contained within this letter or report within the next 60 days by visiting us at www.investigate.equifax.com or by calling a Customer Representative at (888) 425-7961 from 9:00am to 5:00pm Monday-Friday in your time zone.

For an added convenience, use one of the below options to start an investigation or check the status of your dispute.

Please note, when you provide documents, including a letter, to Equifax as part of your dispute, the documents may be submitted to one or more companies whose information are the subject of your dispute.

Visit us at www.equifax.com/CreditReportAssistance or Call us at 866-349-5186.

Thank you for giving Equifax the opportunity to serve you.

The Results Of Our Reinvestigation

>>> We have reviewed the current address. The results are: The current address has been added/updated per the information you have supplied. **Salt Lake City UT 84152**

Credit Account Information

(For your security, the last 4 digits of account number(s) have been replaced by *)
(This section includes open and closed accounts reported by credit grantors)

Account History	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
Status Code	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
Descriptions	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
	4 : 120-149 Days Past Due	H : Foreclosure	

>>> We have researched the credit account. Account # - 74* The results are: Please be advised that account included in bankruptcy does not report any balance. If you have additional questions about this item please contact: **Trident Asset Management, 53 Perimeter Ctr E Ste 440, Atlanta GA 30346-2294 Phone: (866) 695-8893**

Trident Asset Management, LLC 5755 N Point Pkwy Ste 12 Alpharetta GA 30022-1136 : (866) 695-8893

Account Number	Date Opened		High Credit	Credit Limit	Terms Duration	Terms Frequency	Months Revd	Activity Designator	Creditor Classification				
774*	08/01/2011			\$0					Retail				
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of 1st Delinquency	Date of Last Activity	Date Mtd, Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balance Pay Amount	Balance Pay Date	Date Closed
11/26/2014				\$0	\$0	09/2011		11/2014					

Status - Account Included in Bankruptcy; Type of Loan - Returned Check; Whose Account - Individual Account; ADDITIONAL INFORMATION - Returned Check; Bankruptcy Chapter 7; Bankruptcy Discharged; Consumer Disputes - Reinvestigation in Process;

(Continued On Next Page)

Page 1 of 4

6146050070APPLADM-002251385- 7633 - 9859 - AS



Salt Lake City, UT 84152-6118

00000844 F0ECA0527160316480000 01 000000
002251385-7633

P. O. Box 105518
Atlanta, GA 30348

Results Letter

EQUIFAX

CREDIT FILE : May 25, 2016

Confirmation #

Dear Sarah :

Below are the results of your reinvestigation request and, as applicable, any revisions to your credit file. If you have additional questions regarding the reinvestigated items, please contact the source of that information directly. You may also contact Equifax regarding the specific information contained within this letter or report within the next 60 days by visiting us at www.investigate.equifax.com or by calling a Customer Representative at (888) 425-7961 from 9:00am to 5:00pm Monday-Friday in your time zone.

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Thank you for giving Equifax the opportunity to serve you.

The Results Of Our Reinvestigation

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Credit Account Information

(For your security, the last 4 digits of account number(s) have been replaced by *)
(This section includes open and closed accounts reported by credit grantors)

Account History	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
Status Code	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
Descriptions	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
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Status - Account Included in Bankruptcy; Type of Loan - Returned Check; Whose Account - Individual Account; ADDITIONAL INFORMATION - Returned Check; Bankruptcy Chapter 7; Bankruptcy Discharged; Consumer Disputes - Reinvestigation in Process;

(Continued On Next Page)

Page 1 of 4

6146050070APPLADM-002251385- 7633 - 9859 - AS



Salt Lake City, UT 84152-6118

00000844 F0ECA0527160316480000 01 000000
002251385-7633

P. O. Box 105518
Atlanta, GA 30348

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▲ Caution
As of: February 17, 2018 11:10 PM Z

Spokeo, Inc. v. Robins

Supreme Court of the United States
November 2, 2015, Argued; May 16, 2016, Decided
No. 13-1339

Reporter

136 S. Ct. 1540 *; 194 L. Ed. 2d 635 **; 2016 U.S. LEXIS 3046 ***; 84 U.S.L.W. 4263; 100 Empl. Prac. Dec. (CCH) P45,556; 26 Fla. L. Weekly Fed. S 128

SPOKEO, INC., Petitioner v. THOMAS ROBINS

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Subsequent History: As Revised May 24, 2016.

On remand at, Motion granted by, in part, Motion denied by, in part *Robins v. Spokeo, Inc.*, 2016 U.S. App. LEXIS 22052 (9th Cir. Cal., June 20, 2016)

Decision reached on appeal by, On remand at, Remanded by *Robins v. Spokeo, Inc.*, 2017 U.S. App. LEXIS 15211 (9th Cir., Aug. 15, 2017)

Prior History: [***] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Robins v. Spokeo, Inc., 742 F.3d 409, 2014 U.S. App. LEXIS 2136 (9th Cir. Cal., Feb. 4, 2014)

Disposition: Vacated and remanded.

Core Terms

concrete, consumer, injury in fact, requirements, rights, particularized, vindicate, courts, private right, individualized, private plaintiff, public right, consumer report, statutory right, injury-in-fact, injuries, limitations, cases, consumer reporting agency, internal quotation marks, standing doctrine, legal right, Common-law, incorrect, confer, procedural violation, reasonable procedure, credit reporting, standing to sue, judicial power

Case Summary

Overview

HOLDINGS: [1]-The injury-in-fact requirement for standing under Article III of the Constitution required a plaintiff to allege an injury that was both concrete and particularized; [2]-In the action under the *Fair Credit Reporting Act of 1970*, the appellate court's standing analysis was incomplete because it failed to fully appreciate the distinction between concreteness and particularization, and it did not address whether the particular procedural violations alleged in the case entailed a degree of risk sufficient to meet the concreteness requirement.

Outcome

Judgment vacated. Case remanded. 6-2 Decision; 1 Concurrence; 1 Dissent.

LexisNexis® Headnotes

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN1 Standing, Injury in Fact

The injury-in-fact requirement for standing requires a plaintiff to allege an injury that is both concrete and particularized.

Constitutional Law > The Judiciary > Case or Controversy

Constitutional Law > Congressional Duties & Powers

Constitutional Law > The Presidency

Michael Fuller

136 S. Ct. 1540, *1540; 194 L. Ed. 2d 635, **635; 2016 U.S. LEXIS 3046, ***1

Page 2 of 15

Constitutional Law > The Judiciary

HN2 The Judiciary, Case or Controversy

The Constitution confers limited authority on each branch of the Federal Government. It vests Congress with enumerated legislative Powers, *U.S. Const. art. I, § 1*; it confers upon the President the executive Power, *U.S. Const. art. II, § 1, cl. 1*; and it endows the federal courts with the judicial Power of the United States, *U.S. Const. art. III, § 1*. In order to remain faithful to this tripartite structure, the power of the Federal Judiciary may not be permitted to intrude upon the powers given to the other branches. Although the Constitution does not fully explain what is meant by "the judicial Power of the United States," *U.S. Const. art. III, § 1*, it does specify that this power extends only to "Cases" and "Controversies," *U.S. Const. art. III, § 2*. And no principle is more fundamental to the judiciary's proper role in the United States' system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.

Civil

Procedure > ... > Justiciability > Standing > Burdens of Proof

Constitutional Law > ... > Case or Controversy > Standing > Elements

Constitutional Law > The Judiciary > Case or Controversy > Standing

Civil

Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN3 Standing, Burdens of Proof

Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in the U.S. Supreme Court's case law to ensure that federal courts do not exceed their authority as it has been traditionally understood. The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong. In this way, the law of Article III of the Constitution standing serves to prevent the judicial process from being used to usurp the powers of the political branches, and confines the federal courts to a properly judicial role. Cases have established that the irreducible constitutional minimum of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.

The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements. Where a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

Civil Procedure > ... > Class Actions > Class Members > Named Members

HN4 Standing, Injury in Fact

That a suit may be a class action adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN5 Standing, Injury in Fact

Injury in fact is the first and foremost of standing's three elements. Injury in fact is a constitutional requirement, and it is settled that Congress cannot erase Article III of the Constitution's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing. To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN6 Standing, Injury in Fact

In the context of standing, for an injury to be "particularized,"

Michael Fuller

Spokeo v. Robins

Factual Background

- Spokeo operates a “people search engine”
- Spokeo **falsely** reported that Thomas Robins was married with children, in his 50's, **employed**, was relatively **affluent**, and held a **graduate degree**
- Thomas Robins filed a **federal** FCRA class action lawsuit against Spokeo



Search People. Reunite.

NAME

SOCIAL

PHONE

ADDRESS

Enter a First and Last Name

SEARCH



Article III of the US Constitution **limits the power of the federal judiciary** to:

Article III of the US Constitution limits the power of the federal judiciary to:

Actual cases or
controversies

federal
questions

controversies
over \$75,000

intra-state
disputes



Which of these is **NOT** an element of **standing** under the “case or controversy” requirement?

Which of these is NOT an element of standing under the "case or controversy" requirement?

an injury in fact

fairly traceable to the
challenged conduct

likely to be redressed
by a favorable decision

against a private party



Injury in fact means:

Injury in fact means:

All of the below

an invasion of a legally
protected interest

that is concrete

and particularized



Particularized means:

Particularized means:

Both C and D

able to cause ascertainable
economic loss

it must affect the plaintiff
in a personal way

it must affect the plaintiff
in an individual way



Concrete means:

Concrete means:

All of the below

real, not abstract

tangible or intangible

harm traditionally regarded
as a basis for a lawsuit

[HNS](#) Standing, Injury in Fact

Injury in fact is the first and foremost of standing's three elements. Injury in fact is a constitutional requirement, and it is settled that Congress cannot erase Article III of the Constitution's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing. To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.

COMPARE

[HN8](#) Standing, Injury in Fact

In the context of standing, "concrete" is not necessarily synonymous with "tangible." Although tangible injuries are perhaps easier to recognize, the U.S. Supreme Court has confirmed in many of its previous cases that intangible injuries can nevertheless be concrete. In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles. Because the doctrine of standing derives from the case-or-controversy requirement, and because that requirement in turn is grounded in historical practice, it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. In addition, because Congress is well positioned to identify intangible harms that meet minimum Article III of the Constitution requirements, its judgment is also instructive and important. Thus, Congress may elevate to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law. Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.

HN9 [📄] Standing, Injury in Fact

Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation. For that reason, a plaintiff could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III of the Constitution. This does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness. For example, the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure. Just as the common law permitted suit in such instances, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any additional harm beyond the one Congress has identified.

ANALYSIS

In the context of this particular case, these general principles tell us two things: On the one hand, Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk. On the other hand, Robins cannot satisfy the demands of Article III by alleging a bare procedural violation. A violation of one of the *FCRA's* procedural requirements [***18] may result in no harm. For example, even if a consumer reporting agency fails to provide the required notice to a user of the agency's consumer information, that information regardless may be entirely accurate. In addition, not all inaccuracies cause harm or present any material risk of harm. An example that comes readily to mind is an incorrect zip code. It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.⁸

9.

Defendant's conduct as alleged above caused plaintiff severe ongoing confusion about the need to continue paying defendant, fear that her credit would be unfairly harmed by defendant after bankruptcy if she did not pay, frustration and other emotional harm separate from the average stress of the normal bankruptcy process. In drafting 11 U.S.C. § 362 with a private right of action, Congress elevated the right of a consumer such as plaintiff to be completely free from collections activity during bankruptcy. The invasion of that right by defendant is a concrete injury in fact for which this Court may provide relief.

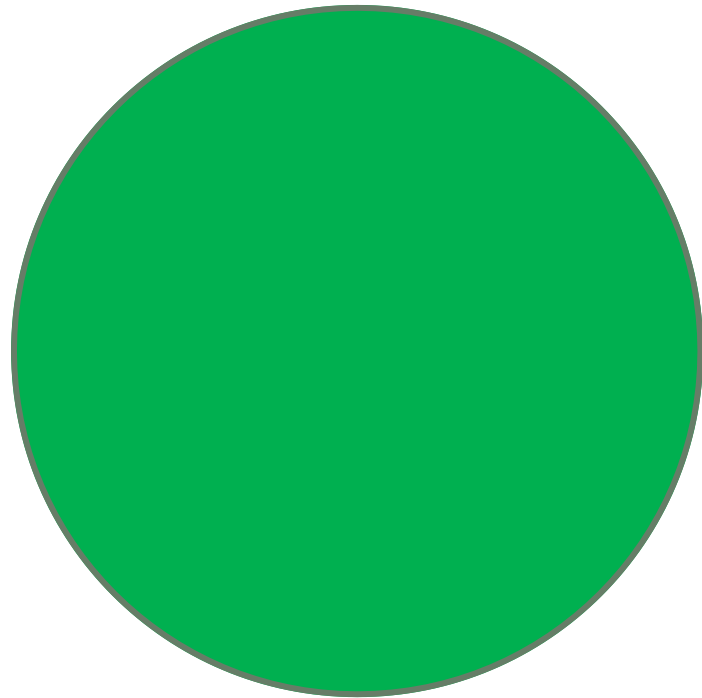
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Class Break
Over



Damages Chart

CONSUMER LAW	STATUTORY AUTHORITY	EMOTIONAL HARM	ECONOMIC LOSS	STATUTORY DAMAGES	PUNITIVE DAMAGES
UTPA	ORS 646.638				
FCRA	15 U.S.C. § 1681n				
FDCPA	15 U.S.C. § 1692k				
TCPA	47 U.S.C. § 227(b)(3)				
ORLTA	ORS 90 et seq.			*	

Fee Shifting Chart

CONSUMER LAW	STATUTORY AUTHORITY	AMERICAN RULE	PREVAILING PLAINTIFF	PREVAILING PARTY
UTPA	ORS 646.638(3)			
FCRA	15 U.S.C. § 1681o(a)(2)			
FDCPA	15 U.S.C. § 1692k(a)(3)			
TCPA	47 U.S.C. § 227(b)(3)			
ORLTA	ORS 90.255			

Statute of Limitations Chart

CONSUMER LAW	STATUTORY AUTHORITY	ONE YEAR	TWO YEARS	THREE YEARS	FOUR YEARS
UTPA	ORS 646.638				
FCRA	15 U.S.C. § 1681n		*		
FDCPA	15 U.S.C. § 1692k				
TCPA	28 U.S.C. § 1658				
ORLTA	ORS 90 et seq.				

Napolski v. Champney, 295 Or. 408, 667 P.2d 1013 (1983)

ROBERTS, Justice.

This is a Forcible Entry and Wrongful Detainer (FED) action brought by a landlord for nonpayment of rent. See ORS 105.105 et seq. The tenant filed an answer and counterclaims, and tendered into court the amount of rent she considered due. The question presented is whether the landlord is entitled to take possession if the amount of rent adjudged due exceeds the sum awarded the tenant on the counterclaim even though it does not exceed the amount that was tendered into court. The Court of Appeals held that a tenant in a FED action is entitled to retain possession "only if he recovers damages on his counterclaims that exceed the rent due the landlord." 60 Or.App. 438, 445, 653 P.2d 1311 (1982).

Landlord-tenant law had its genesis in English feudal real property law.⁹ A lease was viewed strictly as a conveyance of an estate in land rather than as a contract. As a consequence, two principles from real property law, disadvantageous to tenants, were transported into landlord-tenant law: caveat emptor and the doctrine of independent covenants. Under the first, the landlord's obligations with respect to the premises, absent lease covenants providing otherwise, were generally limited to effecting the

conveyance. The landlord was not obligated to ensure that the property leased was habitable or suitable, and was not required to maintain the property during the lease or ensure that it was supplied with services such as water. Moreover, under the doctrine of independent covenants, any obligations placed upon the landlord, either imposed by law or assumed by the lease, were deemed independent of the tenant's, particularly the obligation to pay rent. Hence, notwithstanding that the landlord might be in major breach of some legal obligation with regard to the tenant or the leased premises, the tenant was not excused from the lease or the obligation to pay rent.¹⁰ The dissatisfied tenant was relegated to suing either for damages or for some sort of injunctive relief to compel compliance by the landlord.

The limited rights of the tenant vis-a-vis the landlord were reflected in the forcible entry and detainer statutes as they were originally formulated. Such actions were intended to be expeditious and summary proceedings by which a landlord could dispossess a tenant and regain the premises without being compelled concurrently to litigate the tenant's complaints. Accordingly, in an FED action the only issue was whether the landlord was entitled to regain the premises (e.g., because the tenant was in default of rent), and, except for some limited affirmative and equitable defenses, the tenant was not allowed to counterclaim or interpose the landlord's own defaults in defense.

As examples of how the ORLTA has altered landlords' and tenants' respective rights and duties, the act affirmatively obligates residential landlords to maintain rental properties in "habitable condition," ORS [90.320], and provides that such obligation is not independent of a tenant's reciprocal obligation to pay rent ORS [90.417]. Further, under ORS [90.360] a landlord's noncompliance with his or her obligations under the act entitles the tenant either to terminate the lease or bring *416 an action for damages or injunctive relief or both terminate and bring an action. See *Brewer v. Erwin*, 287 Or. 435, 600 P.2d 398 (1979); *L & M Investment Co. v. Morrison*, 286 Or. 397, 405, 594 P.2d 1238 (1979). And under some circumstances, the tenant is entitled to a "repair and deduct" remedy if the landlord fails to maintain an "essential service," ORS [90.368].

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6:00 Break

Guest Speaker Marcel Gesmundo

7:20 Next Week

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Next Week – FDCPA

- 5:30 Today's agenda
 - FDCPA elements
 - FDCPA charts
 - Henson v. Santander*
 - Common FDCPA violations
 - Bankruptcy violations
 - 6:30 Break
 - Paul v Providence*
 - 6:45 Guest Speaker Julie Engbloom
- 