

UDAAP & Debt Collection – In-Depth Lesson Plan

Objective:

- Understand **Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)** and **Unfair or Deceptive Acts or Practices (UDAP)** in debt collection.
- Learn how these laws apply at both the **state and federal levels** and how to **ensure compliance**.
- Discuss **legal strategies** for evaluating and pursuing UDAP claims.

 **Total Training Time: 1 Hour**

1. Introduction to UDAP & UDAAP (5 min)

What is UDAP?

- **UDAP = Unfair or Deceptive Acts or Practices** under state consumer protection laws.
- Found in all **50 states, D.C., Puerto Rico, and U.S. territories**.
- Modeled after **Section 5 of the Federal Trade Commission (FTC) Act**.
- Different names by state (e.g., **Consumer Protection Acts, Unfair Trade Practices Acts**).
- Enforced by **state attorneys general and private lawsuits**.
- In **debt collection lawsuits**, UDAP laws provide an **extra layer of protection beyond FDCPA**, especially when **debt buyers, collection agencies, or even original creditors engage in deceptive practices**.

What is UDAAP?

- **UDAAP = Unfair, Deceptive, or Abusive Acts or Practices** under federal law.
- Enforced by the **Consumer Financial Protection Bureau (CFPB)** under the **Dodd-Frank Act**.
- Applies to **financial services, including debt collection, lending, and credit reporting**.

Key Difference Between UDAP & UDAAP:

UDAP (State Laws)

Unfair or deceptive acts

UDAAP (Federal, CFPB)

Unfair, deceptive, AND abusive acts

Covers **general business practices** Applies specifically to **financial services**

State-by-state enforcement **CFPB enforces at the federal level**

2. What Qualifies as Unfair, Deceptive, or Abusive? (10 min)

✓ Unfair Practices:

A practice is **unfair** if:

- It **causes substantial harm** to consumers.
- The harm is **not reasonably avoidable** by the consumer.
- The harm is **not outweighed by benefits** to consumers or competition.

Examples in Debt Collection:

- ⊘ Charging **unauthorized fees** or inflated interest rates.
- ⊘ Attempting to **collect time-barred debt** without disclosing its status.
- ⊘ Threatening **wage garnishment** or lawsuits **without legal authority**.

✓ Deceptive Practices:

A practice is **deceptive** if:

- It misleads or is **likely to mislead** the consumer.
- The consumer's **interpretation is reasonable** under the circumstances.
- The misleading act is **material** (affects decision-making).

Examples in Debt Collection:

- ⊘ Misrepresenting **debt ownership** (e.g., a third-party collector claiming to be the original creditor).
- ⊘ Sending **fake court notices** to intimidate consumers.
- ⊘ Falsely claiming **nonpayment will result in arrest**.

✓ Abusive Practices (UDAAP-specific):

A practice is **abusive** if:

- It **materially interferes** with a consumer's ability to **understand a financial product**.
- It **takes unreasonable advantage** of:
 - A consumer's **lack of understanding**.
 - A consumer's **inability to protect their interests**.
 - A consumer's **reasonable reliance** on a company's statements.

Examples in Debt Collection:

- ❌ **Pressuring vulnerable consumers** (elderly, disabled, non-English speakers) to pay immediately.
 - ❌ **Obscuring dispute rights** in communication.
 - ❌ **Withholding important terms or debt details** to mislead the consumer.
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3. Burden of Proof & Waiver in UDAP Cases (5 min)

✅ Proving a UDAP Violation:

- The **consumer must prove** that the UDAP statute applies.
- If a statute only applies to "consumers," the plaintiff must show they meet the definition.
- Courts may **infer consumer status** from the totality of the pleadings or facts.
- The **defendant (debt collector or lender) bears the burden of proving any exemptions** from UDAP liability.

✅ Waiver & Jurisdictional Considerations:

- UDAP limitations **are not jurisdictional** and can be **waived** if not properly raised.
 - If a business fails to claim a **UDAP exemption early in the case**, it **may lose the ability to argue it later**.
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4. Determining Whether to Pursue a UDAP Claim (5 min)

✅ Strategic Considerations for Bringing a UDAP Claim:

- **Is the case legally significant?**
 - A case of first impression (no previous rulings) **could set new legal precedent**.
- **What damages are available?**
 - UDAP laws often allow for:
 - **Attorney's fees** (critical for consumer lawsuits).
 - **Treble damages (triple compensation in some states)**.
 - **Punitive damages** in extreme cases.
- **Does the state's UDAP law allow two-way fee-shifting?**
 - Some states **require consumers to pay the business's legal fees if they lose**, making litigation riskier.

5. Key UDAP Violations in Debt Collection Lawsuits (15 min)

Violation	Why It's a UDAP Issue	How UDAP Applies
Bad Service (Improper Notification of Lawsuit)	Debt collectors fail to properly notify consumers of lawsuits (e.g., sewer service – claiming they served the debtor when they didn't).	UDAP prohibits fraudulent or deceptive service of process that prevents consumers from defending themselves.
Bad Affidavit	Debt collectors submit false or misleading affidavits in court, often with robo-signed or fabricated information.	UDAP prohibits the use of false evidence in legal proceedings.
Bad Complaint	The lawsuit itself contains false or misleading information , such as incorrect creditor names or inflated amounts.	Filing a lawsuit with inaccurate or misleading details is a deceptive practice under UDAP .
Failure to Include Contract	Debt buyers fail to attach the original contract , making it unclear whether they even have the right to sue.	UDAP prohibits misrepresenting debt ownership and attempting to collect without proof .
Failure to Include Assignment of Contract	Debt buyers sue without showing proof that the debt was legally transferred to them.	Suing without documented authority is a deceptive act .
No Legal Standing to File Lawsuit	The plaintiff doesn't have the legal right to sue because they lack proper documentation.	UDAP prohibits misrepresenting one's authority in court.

Bad Certificate of Conformity	The documents presented to validate debt are not properly certified under state law.	A misleading legal document is a deceptive practice under UDAP.
Bad Bill of Sale	The bill of sale used to prove ownership doesn't actually identify the consumer's debt .	UDAP prohibits misleading documentation in debt collection.
Incorrect Amount	Debt collectors attempt to collect inflated amounts , including unauthorized fees or incorrect interest calculations.	UDAP prohibits false or misleading representations of the amount owed.
Expired Statute of Limitations (SOL)	Collectors attempt to sue or threaten lawsuits on time-barred debts .	UDAP requires full disclosure of time-barred debt status— suing on expired debt is deceptive .
Breach of Contract (Mandatory Arbitration Clause Ignored)	Debt collectors file lawsuits even though the original contract requires arbitration , violating the consumer's contractual rights.	UDAP prohibits misleading representations of legal rights .

6. How UDAP Strengthens Consumer Defenses (5 min)

✓ Why Consumers Should Raise UDAP Claims in Debt Collection Cases

✚ Gives Consumers More Leverage:

- Many debt collection lawsuits are dismissed when UDAP claims expose deceptive practices.

- Courts take **false affidavits, lack of documentation, and misrepresentations** seriously under UDAP.

Can Lead to Counterclaims Against Collectors:

- Consumers **can sue** for **damages, attorney's fees, and even punitive damages** under state UDAP laws.

Protects Against “Phantom Debt” Lawsuits:

- Debt buyers often sue for debts **they cannot prove they own**.
- UDAP laws **force them to provide proper documentation** or risk violating consumer protection laws.

Example of UDAP Defense in Action:

1. A debt collector sues a consumer without attaching the **original contract or proof of assignment**.
 2. The consumer **countersues under UDAP**, arguing that:
 - The lawsuit is based on **deceptive and misleading representations**.
 - The collector **failed to disclose that they lacked proof of ownership**.
 3. The court **dismisses the case** due to **lack of standing** and the **UDAP violation**.
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6. Q&A & Discussion (15 min)

1. **What is one way UDAP protects consumers from wrongful debt collection lawsuits?**
 2. **How does UDAP apply when a collector sues on an expired debt?**
 3. **Why is “bad service” (sewer service) considered a deceptive act under UDAP?**
 4. **What type of documentation must a debt collector provide to avoid violating UDAP?**
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Final Notes & Next Steps:


- ✚ Stay updated with **state UDAP law developments**.
 - ✚ Understand **burden of proof rules** to effectively challenge or defend UDAP cases.
 - ✚ Consider **alternative dispute resolution strategies** if court litigation isn't viable.
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Day 3 – Q&A & Discussion Answer Key

1 What is one way UDAP protects consumers from wrongful debt collection lawsuits?

✓ Answer:


- **UDAP laws prohibit deceptive and unfair practices** in debt collection lawsuits, including **false affidavits, misrepresentation of debt ownership, and improper service of process.**
- Many states allow consumers to **counterclaim under UDAP**, which can result in **case dismissals, injunctions, and monetary damages.**
- **Example:** If a collector sues **without legal standing** (e.g., they can't prove they own the debt), UDAP can be used to challenge the lawsuit.

 **Real-World Example:** A debt collector **failed to attach a contract or proof of assignment** when suing a consumer. The court dismissed the case under **state UDAP laws** because the lawsuit was **based on deceptive representations.**

2 How does UDAP apply when a collector sues on an expired debt?

✓ Answer:


- **Suing on a time-barred debt is deceptive** because the consumer **has no legal obligation to pay**, and many don't know their rights.
- **UDAP requires full disclosure** if a debt is **beyond the statute of limitations (SOL)**—some states mandate a clear warning before any collection attempt.
- If a collector **threatens a lawsuit or actually sues** on an expired debt, it violates **UDAP** and possibly **FDCPA.**

 **Real-World Example:** A debt buyer **filed a lawsuit on a debt that was 7 years old** (past the state's 4-year SOL). The judge **threw out the case** because the lawsuit **misrepresented the debt's enforceability**, violating UDAP.

3 Why is “bad service” (sewer service) considered a deceptive act under UDAP?

✓ Answer:

- “Sewer service” occurs when a debt collector intentionally fails to serve court documents properly, preventing the consumer from defending themselves.
- This leads to **wrongful default judgments**, where consumers only find out about the case **when their wages are garnished** or their bank accounts are frozen.
- UDAP prohibits **fraudulent legal processes**—bad service **misleads the court** and **harms consumers unfairly**.


 **Real-World Example:** A debt collector **claimed to have served** a consumer **at an address they hadn’t lived at for years**. The court **vacated the judgment** because the service **was fraudulent and violated UDAP**.

4 What type of documentation must a debt collector provide to avoid violating UDAP?


Answer:

To comply with UDAP, a debt collector must provide:


- ✓ **Proof of debt ownership** (Assignment of Contract/Bill of Sale).
- ✓ **The original contract** that created the debt.
- ✓ **An accurate accounting of the debt amount**, including itemized fees and interest.
- ✓ **Verification of debt upon dispute** (if challenged, the collector must provide supporting documents within the required time).

 **Real-World Example:** A debt buyer sued a consumer but **failed to provide the original contract** or a **valid chain of assignment** showing they owned the debt. The lawsuit was dismissed under **UDAP and FDCPA** for **misrepresentation of debt ownership**.

Day 3: Homework

 **Objective:** Apply knowledge of UDAP laws

Fact Pattern – Debt Collection Lawsuit Gone Wrong


 **Scenario:** Lisa Carter, a resident of [California], recently received a **default judgment** against her from a debt collection agency, Apex Recovery Solutions, for an old credit card debt. Lisa was **never properly served** with the lawsuit, meaning she was unaware of the case and had no chance to defend herself.

After reviewing the court file, Lisa finds that:

- ✓ The debt **was originally owed to Capital First Bank**, but Apex Recovery Solutions **never provided proof of assignment** in their lawsuit.
- ✓ The **affidavit Apex submitted was robo-signed**, containing **incorrect information about the amount owed**.
- ✓ The **statute of limitations had already expired**, making the lawsuit unlawful.
- ✓ Apex continued to **report the debt on Lisa's credit report, even after she disputed it** under FCRA.

Lisa believes Apex engaged in **deceptive practices under UDAP** and now wants to **challenge the judgment and file a counterclaim**.

Draft a Complaint

 **Task:** Based on the facts, draft a **complaint** that Lisa could file in **state court** (or a motion to vacate judgment with a counterclaim). Your complaint should:

- ✓ **Allege UDAP violations** based on Apex's conduct.
- ✓ Cite **at least two** specific legal claims from the lesson (e.g., bad service, expired SOL, bad affidavit).
- ✓ Include a **request for relief**, such as damages, removal of the debt from her credit report, and attorney's fees.

 **Bonus:** If applicable, add **FDCPA and FCRA claims** based on Apex's credit reporting violations.

General Questions

① **Why is failing to properly serve a consumer with a debt collection lawsuit considered a UDAP violation?**

2 How does UDAP apply when a collector sues on a debt that is past the statute of limitations?

Answer Key – Day 3 Homework

Model Complaint – Lisa Carter v. Apex Recovery Solutions

1. Introduction

1. Plaintiff, **Lisa Carter**, files this action against **Apex Recovery Solutions** for **violations of [Your State’s UDAP Law], the FDCPA (15 U.S.C. § 1692), and the FCRA (15 U.S.C. § 1681 et seq.)** in connection with Defendant’s deceptive and unlawful debt collection practices.

2. Jurisdiction & Venue

2. Plaintiff resides in **[Your State]**, and Defendant conducts business in this jurisdiction.
3. The amount in controversy **exceeds the statutory threshold** for this Court’s jurisdiction.

3. Facts

4. Defendant **sued Plaintiff on a time-barred debt**, violating state **UDAP and FDCPA laws**.
5. Defendant **failed to properly serve Plaintiff**, leading to an improper **default judgment**.
6. Defendant submitted **false affidavits** with incorrect information about the debt.
7. Defendant **failed to provide proof of assignment**, meaning they had no legal standing to sue.
8. Defendant **continued to report the debt to credit bureaus** despite the dispute, violating **FCRA**.

4. Causes of Action

Count I – Violation of [Your State] UDAP Law

9. Defendant engaged in **unfair and deceptive acts**, including:
 - Filing a lawsuit without legal standing.
 - Submitting **fraudulent affidavits** in court.
 - Suing on a **time-barred debt** without disclosing the expiration.

Count II – Violation of FDCPA (15 U.S.C. § 1692 et seq.)

10. Defendant falsely represented the **amount, legal status, and ownership of the debt** in violation of **15 U.S.C. § 1692e(2)(A) and (10)**.
11. Defendant engaged in **unfair litigation tactics** under **15 U.S.C. § 1692f**.

Count III – Violation of FCRA (15 U.S.C. § 1681s-2)

12. Defendant **failed to properly investigate a disputed debt and continued to report inaccurate information.**

5. Request for Relief

WHEREFORE, Plaintiff requests:

- ✓ **Damages for emotional distress, financial harm, and attorney's fees.**
- ✓ **An order vacating the default judgment.**
- ✓ **An injunction prohibiting Defendant from future deceptive practices.**

General Question Answers

1 Why is failing to properly serve a consumer with a debt collection lawsuit considered a UDAP violation?

✓ Answer:

- **“Bad service” (a.k.a. sewer service) is deceptive** because it denies consumers their right to **respond and defend themselves.**
- **It results in wrongful default judgments,** often leading to wage garnishment or credit damage.
- UDAP prohibits **misleading legal practices,** making fraudulent service of process **an unfair act under consumer protection laws.**

 Example Case:

- A debt buyer obtained a **default judgment** against a consumer because they **intentionally sent court papers to the wrong address.** The court later **vacated the judgment** under UDAP because the **lawsuit was fundamentally deceptive.**

2 How does UDAP apply when a collector sues on a debt that is past the statute of limitations?

✓ Answer:

- It is **deceptive and misleading** to file a lawsuit on a **time-barred debt** because the consumer **no longer has a legal obligation to pay.**
- Many consumers **don't know their rights,** so they **end up paying debts that they don't legally owe.**
- Some debt collectors **use tricks to restart the statute of limitations,** such as **convincing consumers to make a small payment.**

- UDAP **requires full disclosure** of time-barred debts and can be used to **invalidate the lawsuit**.



Example Case:

- A collector sued a consumer for a **debt that was 10 years old** (well beyond the **4-year statute of limitations** in the state).
- The court **dismissed the case** under UDAP because the lawsuit **misrepresented the debt's legal status**.