

# GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

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LESSON PLAN AND EVALUATION

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## REPRESENTING THE VICTIM OF IDENTITY THEFT

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With

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*And*

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### Program description

This program discusses a subject that is all-too-common in the digital age: identity theft. We discuss the evolution of identity theft over the last century, online auctions, 419 scams, letter of credit fraud, equity stripping and more.

## **I. Introduction**

- **Teaching and practicing law – learn a great deal**
- **Practicing law since 1968**
- **Discussing something unheard of in 1968 – not unknown but just not as commonplace**
- **Our lives now are based on such digital information – more prevalent now**
- **1968 the average person did not have a credit card – average business man had Diner’s Club or American Express card**
- **Internet created credit card theft – easier to produce = easier to steal**
- **Inability to keep things local**
- **When a wallet is stolen - without driver’s license and without credit cards – unable to conduct any business, unable to function – because don’t have these documents – you are a “person that does not exist”**
- **You need your identity to travel, if you get stopped by police, to go to the bank – need instead to use cash**
- **County identification card can be obtained for very little money – can keep as backup just in case**

## **II. How do people become victims of identity theft**

- **Usually the result of carelessness – cashing a check, letting someone see the PIN number for a credit card**
- **“skimming” – information from credit card can be taken and given to a third party**

### **A. Identity theft**

- **Clients have lost credit in business because identity is stolen**
- **Someone using your name – not uncommon**
- **Reliance on integrity of the notary if you file a mortgage and it is recorded – therefore someone can file a fake mortgage and take money from it**
- **Recording phony Deed on a property – criminal statute to prevent, not difficult to happen, Deeds don’t require photo ID**
- **Can get duplicate mortgages for the same property over and over again**

- **Takes time for mortgages to get on record but title companies can do a search instantly to insure that someone is not buying the same property multiple times**
- **Criminal statutes to deter – but nothing that the individual can do to prevent someone from “stealing” your property**
- **“Slander of Title” – if you take any activity that will effect title to one’s property, then that is civil and criminal action; if record a lien against the property, then you need a basis to do so**
- **Different credit card companies treat these situations differently**
- **People should record phone number of credit card company and the credit card number**
- **Contact police first and then contact credit card company**
- **Check credit report – notify agencies**
- **Dumpster diving – people are careless and don’t shred receipts and people will get receipts from the garbage and sell it**
- **Series of ways to get another’s identity**
  - **Senior citizens are prime victims for identity theft – attempt to sell healthcare insurance (ask for medicare number – which is the social security number)**
  - **Internet access allows people to steal the information on your computer**
  - **DHL scam – malware**
  - **AOL scam – asking for password and social security number – “to keep your account active”**
- **URL line is very close to the real organization/agency/business**
- **Stop payment does not apply – obligation to put merchant back into initial position...must return merchandise**
- **Is this a civil or criminal matter – prosecutor must decide**
- ***State v. Turetsky*, 188 A.2d 198 (NJ Super. Ct. App. Div. 1963) – a post-dated check is nothing more than an IOU, telling you that don’t have the money in the bank right now and if I don’t later then there is nothing you can do.**

- **if find that it is a civil matter, then determine whether merchandise is returned**
- **if you want to stop payment and keep the merchandise – then it is criminal**
- **usually merchant will get his money and court costs – using criminal justice system as collection system**
- **able to stop payment on a certified check if you can allege fraud**
- **“certified check” as certain requirements under UCC – same requirements not necessary for “bank check” or “cashier’s check”**
- **Identify Theft and Assumption Deterrence Act of 1998 – Pub L. No. 105-318, 112 Stat. 3007 (Oct. 30, 1998) – codified at 18 USC 1028 – recognized that there is a lot of identity theft taking place, federal government did not have the means to prosecute, this Act is the “grandfather” of all identity theft statutes that came after**
  - **Notify Department of Justice immediately – [www.consumer.ftc.gov/articles/0277-create-identity-theft-report](http://www.consumer.ftc.gov/articles/0277-create-identity-theft-report)**
- **Looking for older, naïve or very young victim – taking advantage of people’s greed**
- **“419 Scams” – a type of fraud and one of the most common types of confident trick. “419” refers to the article of the Nigerian Criminal Code dealing with fraud. Many of these scams – especially via email – originate in Nigeria.**
- **People’s own greed compels them to participate in these scams**
- **Internet auctions are big targets**
  - **Talking about Ebay**
  - **If don’t accept Paypal shows that this is a scam (Paypal is your insurance – now owned by Ebay)**
  - **Instructions to send a certified check before item is sent**
  - **Items that are not readily available**
  - **Use Paypal to avoid being scammed**
- **Letter of Credit Fraud – bank issues letters of credit (usually for international trading), your bank issues and transmits to foreign bank and says that funds are good**

- upon presentation of invoice or bill of lading and will be paid, bank's credit behind your credit, can only get that letter of credit if the money is on deposit, call the bank that issued the letter of credit to confirm it was issued and that had authority to issue and that still valid**
- **Penny Stock/Pump and Dump – internet stocks, don't know where they are from, "opportunity", only want a minimal amount, half the time never going to be issued, if issued stock is worthless, immediately after you buy it get a call to sell, broker gets commission on purchase and sale**
  - **Strawman Bond Funds – straw man will be solicited that there is a bond that cannot be cashed because there is a problem with the bank, need the person to cash it and keep 50% of the proceeds**
  - **Healthcare – new avenue for scams, companies are calling to sell "new insurance", get medicare number and that gives them social security number, send in \$50 and will get a supplemental plan**
  - **Donations – take advantage of people's good nature**
  - **Equity Stripping – person has a house and their credit is bad and going to lose their home, person comes to the door and says we know you have problems, offer to purchase the house, make payments to this person and they will work out with mortgage company to lower mortgage, then can buy your home back from us – never going to see your home or money again – dealing with people who are utterly desperate – person has no incentive to make mortgage payments – bank on likelihood that house will be in foreclosure in 18 months and will collect your payments in the meantime; house must have a bit of equity**

### **III. Advice to attorneys who represent identity theft victims**

- **Notify FTC immediately**
- **Notify postal inspectors**
- **Notify social security administration**
- **Notify the IRS**
- **Check with fraud units of local police department**
- **Notify DOJ**

- **Notify credit reporting agencies**
- **Cover all bases for your client**
- **Tell people to change all passwords and PIN numbers – new cards should be issued**
- **Advise clients to have copies of cards and numbers of credit card companies**
- **Keep alternate form of identification in a safe deposit box**
- **Check credit history**
- **Check title to your property**
- **Up hill battle for those who have already been victims**
- **Attorneys have to help people re-build their lives**
- **Offices in Runnemede, NJ**