

1ST EUROPEAN CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF CONSUMER LAW



GIRTON COLLEGE - UNIVERSITY OF CAMBRIDGE

**THE BRAZILIAN CONSUMER CODE AND THE PREVENTION OF OVER-INDEBTEDNESS:
HOW TO PROTECT CONSUMERS SPECIAL VULNERABILITY IN DIGITAL CREDIT LENDING?
THE JOHN AND MARY CASE**

**Karen Bertoncello,
judge and professor**



ROADMAP

- 1. The case: John and Mary credit lending**
- 2. The prevention of over-indebtedness in brazilian Law**
- 3. Concluding observations**



The over-indebtedness:

Mary and her son, John (10 years old)
A single woman and a mother of 3

Income family:

John = R\$ 1.302,00/month (U\$ 240,00) from social security benefit - CID - special needs

For the minimum amount = R\$ 778,00 (as Mary declared)

Mary = used to work as a house keeper and now is unemployed

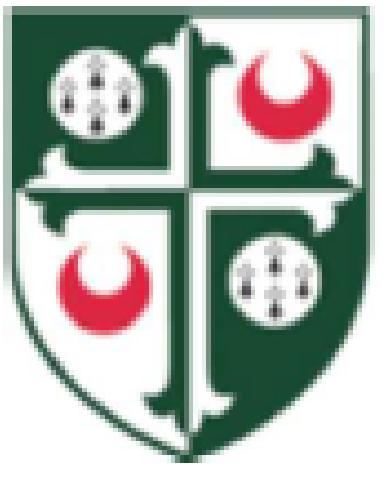
BANCO: BANRISUL	
AG: 8414 - SAO SEPE	
181 VLOR TOTAL REND MENSAL	1.302,00
137 ADIANT P/ARREDOND CREDITO	8,22
216 CONSIGNADO EMP-BANCARIO	424,18
217 EMPRESTIMO SOBRE A RMC	58,86
268 CONSIGNACAO - CARTAO	58,86
VALOR BRUTO:	
VALOR DESCONTO:	
VALOR LIQUIDO:	
AS INFORMACOES FORAM FORNECIDAS	
E SAO DE RESPONSABILIDADE DO INSS.	



John income discount:



CONTRATO	VALOR CONTRATO	FORMA DE PAGAMENTO	VALOR TOTAL	PARCELAS PAGAS/ DÍVIDA
Empréstimo consignado	R\$ 15.533,72	84 x de 424,10 12/22 a 11/29	R\$ 35.624,4	6 R\$ 33.079,8
Cartão de Crédito RMC: Nº: 0057214114	Limite cartão: R\$ 1.230,18	Valor reservado: R\$ 60,60	x	4 R\$ 50,06
Cartão de Credito RCC Nº: 0057216729	Limite cartão: R\$ 1.757,40	Valor reservado: R\$ 60,60	x	4 R\$ 50,06



John and Mary creditors: 14



Banks = 2

Financial services = 3

Credit card = 1

Health service = 1

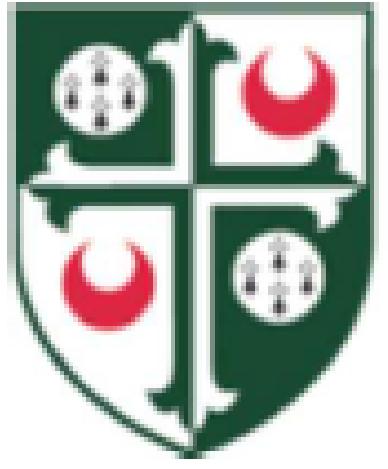
Drugstore = 1

General stores = 4

Supermarkets = 2

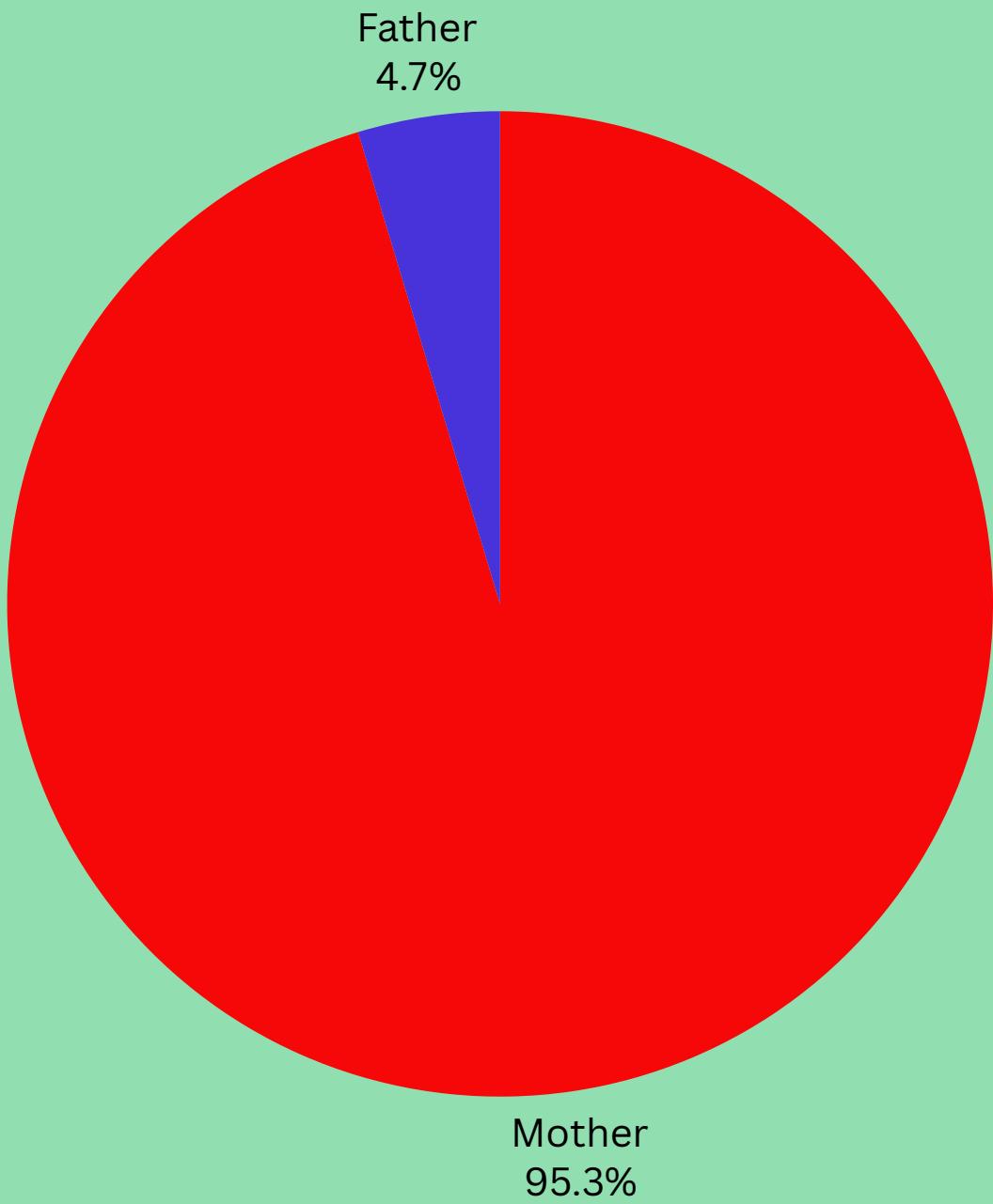
Total debts = R\$ 32.681,06

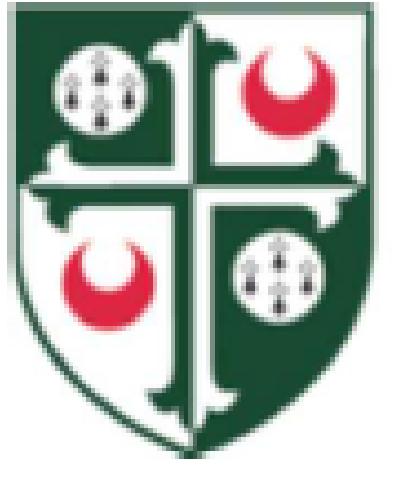
Cédula DE Credito Bancário Doc 1.01631.0650831.21 Valor: 1.1750,54 De 11/21 a 01/23 Parc: 15 x de 173,80 Pagamento: 4 (cfe bol. Cont. anexo)	R\$ 1800,00 (02/2023)	Dívida: R\$ 794,15	R\$ 794,15
Cédula de Credito Bancário 1 Valor: 886,50 (10/2022) Cédula de Credito Bancário 2 Valor: 1903,8 (11/2022) ** Notif. Extrajud	R\$ 2.790,30 (11/2022)	Dívida: 48 X R\$111,02 1ª parcela: 12/2022 3 Parcelas Pagas	R\$ 4.995,00
Novação de Dívida 1 n. 2791 Valor: R\$ 132,00 (10/2022) Novação de Dívida 2 n. 2793 Valor: R\$ 1.425,00 (11/2023)	R\$ 1.557,00 (11/2023)	Dívida: Valor total: 18.707,68 Desconto total: R\$ 14.947,55 Total a pagar: R\$ 3.760,13 (27/01/2023)	R\$ 3.760,13 (01/2023)
Dívida Saldo devedor: 2.285,10 (03/2023)	R\$ 2.285,10 (03/2023)	Cartão de Crédito R\$ 2.858,34	R\$ 901,16
Dívida – Cartão de cred Valor original R\$ 2.853,34 Valor atualizado: R\$ 3.102,15	RS 3.102,15	Empréstimo pessoal Termo de adesão: n. 10742995 09/21 a 08/22 12 x R\$ 127,46	R\$ 1.529,52
		Dívida: valor informado referente as duas dívidas ** negativa de fornecimento de extrato atualizado da dívida	R\$ 9.166,55 (09/2022)
TOTAL DE DÍVIDA: R\$ 32.681,06			



A view about child consumers credit contract:

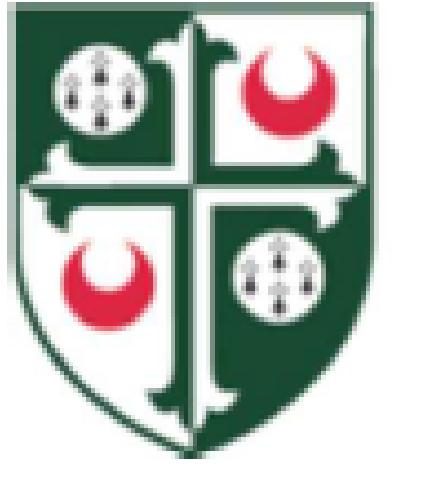
1. Must be signed by the legal guardian
2. The clear majority of single parents are mothers: in 43 lawsuits, 41 were signed by single mothers





The John and Mary case's as an “unfair credit relationship”

“A credit relationship may be unfair because of the terms of the agreement, the way in which the creditor has exercised or enforced any of his rights under the agreement, or any other things done or not done by or on behalf of the creditor, whether before or after the making of the agreement or any related agreement.”(Ian Ramsay, 2012)

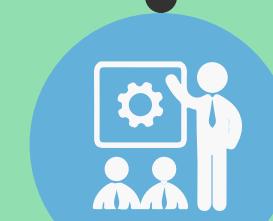


Our Updated Brazilian consumer law introduced a system for preventing and treating consumer over-indebtedness regarding the minimum amount protection.



Brazilian Consumer Code

Preventing phases

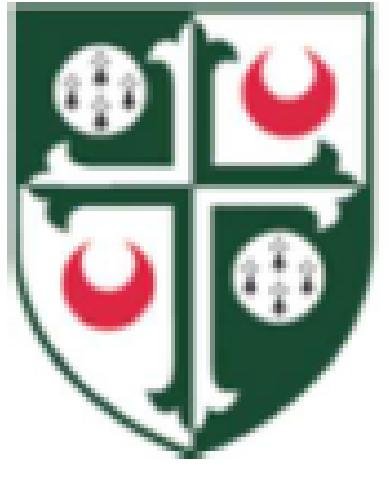


**Minimum
amount
(basic
needs)**



Treatment phases





At preventing phases the main rules are as follows:

Art.54B: duty to provide certain mandatory information to the consumer before or at the time of the offer of credit;

Art.54C: outlawing certain abusive practices and consumer harassment;

Art.54D: duty to suitable inform prospective debtor of the terms of lending and all relevant aspects of the loan agreement.

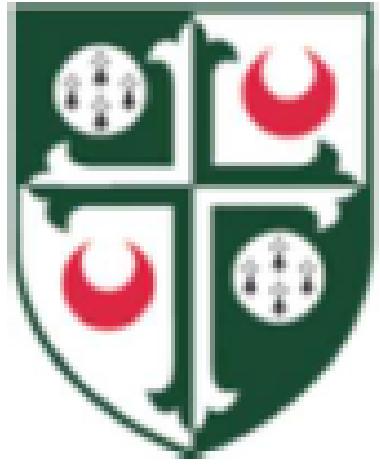


Concerning the “unfair credit relationships” in Brazilian Consumer Code....

The Art. 54C addresses the offer of credit to the consumer.
It's forbidden:

(...)

IV - to harass, pressure or, induce by offer of prizes and other incentives, the consumer to enter into a contract for the supply of a product, service or credit, especially if the consumer is *elderly, illiterate, incapacitated or in a state of aggravated vulnerability*.



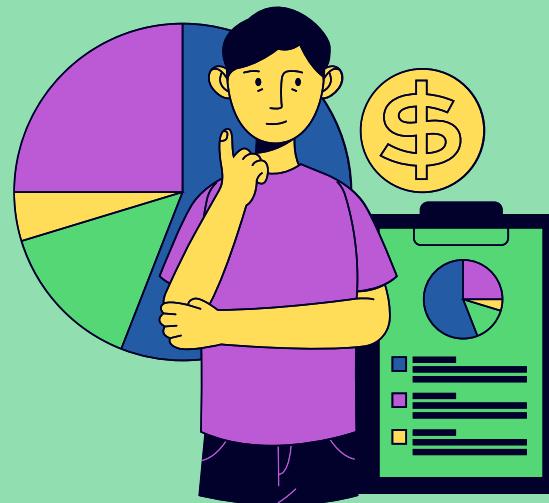
The Article 54-D is at the heart of this new responsible credit approach. It states that the credit supplier or its intermediary must:

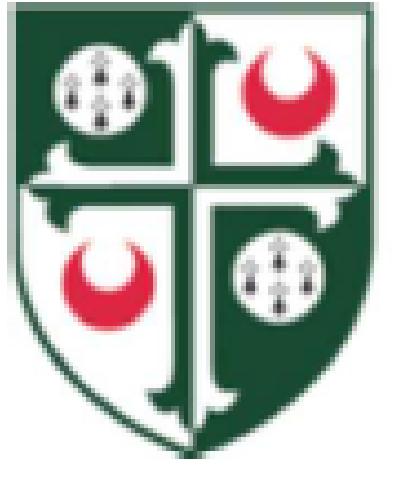


I – suitable inform and clarify the consumer, taking into consideration his/her age, about the nature and type of credit offered, all costs incurred, pursuant to the provisions of Articles 52 and 54-B of this Code, and the generic and specific consequences of default;

II – assess, in a responsible manner, the consumer's credit conditions, through the analysis of information available in credit protection databases, pursuant to the provisions of this Code and the legislation on data protection;

III – (...)

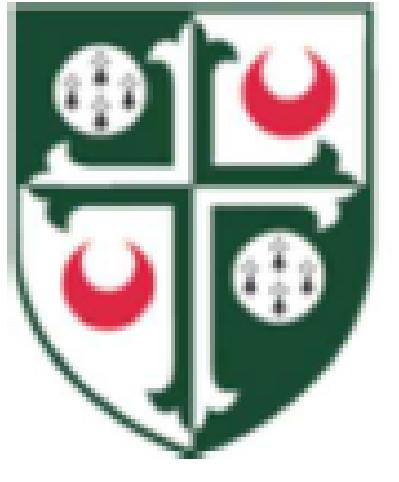




The core judicial sanction:

Single Paragraph. Failure to comply with any of the duties provided for in the main Section of this Article and in Articles 52 and 54-C of this Code **may result in a court order to reduce interest, charges or any additional charges to the main obligation and to extend the payment term provided for in the original contract, depending on the seriousness of the supplier's conduct and the consumer's financial means, without prejudice to other sanctions and compensation for losses and damages, both pecuniary and moral, to the consumer.**

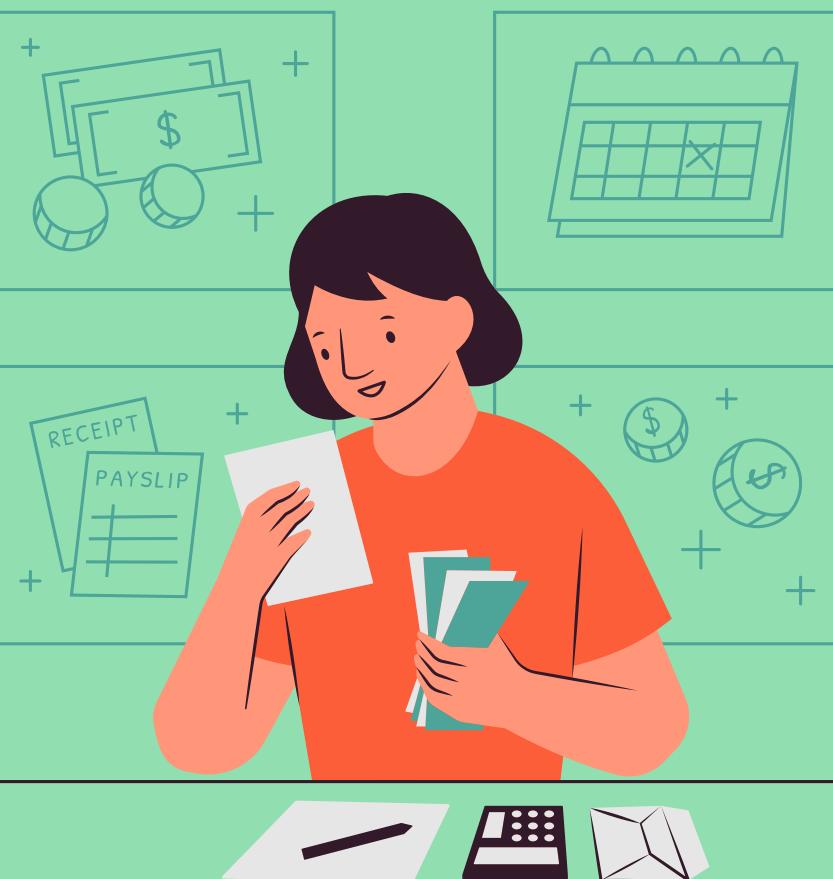


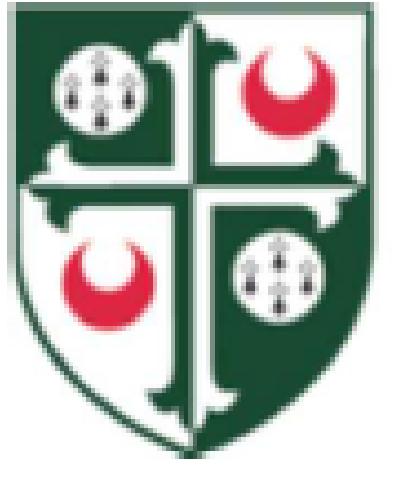


Judgement gender perspective:

Finally, it's important to say that we have a recommended policy by the National Council of Justice (n.492), stating that the lawsuit must be judged from a gender perspective. For example, when a woman is the household only provider.

A quick refresh memory: John, is 10 years old boy, and Mary, his mom, is the household only provider, unemployed and mother of 3.





These 3 ideas summarise the objective:

- 1. to investigate if the responsible credit was established by each creditor at the pre-contractual phase when offering credit.**
- 2. to respect the individual minimum amount**
- 3. to respect the individual perspectives from each family:
Consumer Code + judges continuing education agenda.**



Concluding observations:

The Brazilian law provides a judicial sanction for the irresponsible creditors, but, relating to the children credit lending, we must deliberate about:

"Do we need harder legal provision measures for creditors?"

Thank you for your attention.

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