

Exam # _____

Professor DeWolf
Spring 2008

Consumer Law
May 3, 2008

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 3 HOURS. Part I is an OPEN BOOK EXAM. It will last from 1:30 p.m. until 3:00 p.m. During this portion of the exam you may use any notes you have made yourself, your textbook, a supplement containing statutes relevant to consumer protection, and any outlines that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use up to 50 pages photocopied from such materials.

At 3:00 p.m. the open book portion will end, and you will be required at that point to put away all of your materials. You will then receive the CLOSED book portion of the exam and you will have 1½ hours to complete that portion of the exam.

POINTS are assigned based upon the rough number of minutes it should take to complete each section. The division is as follows:

Part I (OPEN BOOK)	Question 1:	85 points

Part II (CLOSED BOOK)	Question 2:	70 points
	Question 3:	15 points
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	TOTAL	170 points

For purposes of this exam, assume that you and your clients are located in the State of Linden, and that Linden has adopted the "Linden Consumer Protection Act" that incorporates the provisions of the Uniform Consumer Sales Practices Act.

IF YOU USE BLUEBOOK(S), PLEASE DOUBLE-SPACE YOUR ANSWERS.
Label the bluebooks "Question 1, Book 1"; "Question 1, Book 2"; "Question 2, Book 1"; etc.

GOOD LUCK!

PART ONE: OPEN BOOK

QUESTION 1 (85 points)

Your client, Margarita Villagran, received the following mailing from Freeway Ford:

Dear Margarita,

Are you considering the purchase of a new vehicle but concerned about not being able to secure the financing you need?

Margarita, you received this offer due to your payment history and you have qualified to participate in the Freeway Ford Guaranteed Approval Event.

You have been Pre-Approved for \$27,525 towards the purchase of your next car or truck!

At Freeway Ford, we take great pride in helping individuals purchase the vehicle of their choice regardless of their credit situation.

At Freeway Ford we understand that bad things happen to good people. We will not promise you miracles, we do guarantee that we will do everything in our power to make you a satisfied customer by putting you in the driver's seat of the vehicle that you choose.

This is how we are different: we take your problem and make it our challenge. No gimmicks, no pressure, you deserve to be treated with honesty and dignity. Do not think that because you were turned down somewhere else or could not get the consideration you were looking for, that we too will not be able to secure financing for you. We have a 100% Approval success rate in providing financing for people with special finance needs.

Please call Mr. Greene toll free at 1-800-743-2144 before July 2nd, 2005 for more information about our programs or stop by and see us. We do appreciate your time and hope that we can earn your business.

Sincerely,

Steve Prather
President

The mailing contained the following language near the bottom, in smaller type:

This offer may not be used in conjunction with any other advertised offer or discounted plan. Only one trade in may be accepted on each purchase. You must present this offer to Freeway Ford upon arrival. Information from a consumer credit profile was used in conjunction with this offer. This offer has been extended because criteria have been satisfied for the offer. This offer may not be extended if after responding to this offer you do not meet the criteria used in this selection process. Furthermore we must verify income and employment, review recipient's and spouse's credit and analyze equity position in collateral prior to final loan approval. You have the right to prohibit recipient's credit profile from being used for similar prescreened offers by requesting by telephone to Experian at 1-888-567-8688.

Freeway Ford hired AIM Data to develop the mailing sent to Villagran. Larry Bruce, AIM Data's owner, testified in his deposition that the mailings were sent to individuals with credit scores between 500 and 599, who had at least 60% equity in a vehicle, had no pending bankruptcies, and no repossessions in their credit history. The mailing disclosed that the loan offer was subject to employment verification, a credit review of both the customer and

his or her spouse, and a review of the equity held in the collateral. When asked how Freeway Ford would finance the loans, Prather testified that the company customarily obtained financing through a third-party lender. Prather testified that Freeway Ford had the ability to finance the loans directly, depending on the circumstances. If a customer wanted to finance the purchase of a car and the customer met Freeway Ford's credit criteria, then Freeway Ford would be able to obtain financing on behalf of that customer. Consumers who received the mailing Villagran was sent, who took the steps to obtain the credit offered and who met the selection criteria, received the loans.

Please provide an analysis of the likelihood that Villagran could recover consumer remedies based on the letter she received.

PART II: CLOSED BOOK

[NOTE: This portion of the exam is to be handed out only after the open book portion of the exam has concluded and the open-book materials have been put away.]

QUESTION 2 (70 points)

In 2007, Candy Singleton filed a personal injury lawsuit in Clearwater County. Through her attorney, Singleton contacted Naegeli Reporting Corporation (Naegeli) to provide court reporters to report and transcribe oral testimony at depositions in her case.

Naegeli is a legal services firm that provides various services to legal professionals, including court reporting. It independently contracts licensed court reporters to record legal proceedings. According to Naegeli, when a party requests transcription of a legal proceeding, the court reporter transcribes the record and forwards that transcription to Naegeli. Naegeli then places the transcripts in a "standard" format. Clerk's Papers (CP) at 61, 85. Naegeli maintains that the standard format it uses:

[I]ncludes synchronization of the written transcript to the audio (or video) recording of the proceeding, key-word indexing, digital scanning of all exhibits, condensed versions of the transcript, and formatting of the text into a standardized form based on the guidelines promulgated in Linden Administrative Code 308-14-135 and the interpretations thereof disseminated by the Linden State Department of Licensing and the Linden State Attorney General's office.

Singleton employed Naegeli to record depositions occurring on August 22, 2002; December 2, 2002; December 12, 2002; and June 3, 2003. Through her attorney, Singleton requested, paid for, and received transcripts of the depositions from Naegeli.

Singleton discovered that Naegeli charged and received "payment for the additional transcript pages which would not have been produced had [Naegeli] complied with Liden regulations, industry standards, and its own standards." Singleton now believes that Naegeli inflated the number of pages in its transcripts by adding tab spaces and inserting new paragraphs, making the transcripts more expensive than they should have been.

Chapter 18.145 of the Revised Code of Linden ("RCL") regulates the practice of court reporting in Linden. It establishes requirements for certification, identifies unprofessional conduct, and provides sanctions for misconduct. Chapter 18.145 RCL authorizes the director of the Department of Licensing (DOL) to adopt rules necessary to implement the chapter. RCL 18.145.050. Following RCL 18.145.050, DOL promulgated former Linden Administrative Code 308-14-135 (1991) to address transcript preparation format. At the time that Naegeli prepared Singleton's transcripts, the regulation required:

- (1) No fewer than twenty-five typed lines on a standard 8½x11 inch paper.
- (2) No fewer than ten characters to the typed inch.
- (3) No fewer than sixty characters per standard line.

Does Singleton have any remedies available to her? Please evaluate the likelihood of success and the potential recovery.

QUESTION 3 (15 points)

You have been appointed to the governor's Commission on Consumer Affairs. The governor's husband is irate over the amount of spam that fills up his email Inbox. He has proposed the creation of a "national do not email" registry that would be similar to the "do not call" registry for telephone solicitation. You have been asked to respond to this suggestion. What advantages and disadvantages do you see to this proposal?