

EXAM

Instructions

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

THIS EXAM WILL LAST 3 HOURS. Part I is a CLOSED BOOK EXAM. It will last 90 minutes. You must turn in your answer (or upload it to ExamSoft) before you begin the open book portion of the exam. (If you finish early you may read the open-book question and make notes in preparation for writing the answer.)

Part II is a modified OPEN BOOK exam. It will also last 90 minutes. You may access any material on the hard drive of your laptop computer, as well as any notes you have made yourself, your textbook, the statutory supplement and any outlines that I have distributed to you. YOU MAY NOT access the internet, except to the extent of uploading your answer to ExamSoft.

Please follow the directions of the proctor regarding Examsoft, or if you are using bluebooks, make sure you have written your EXAM NUMBER on each bluebook. In addition, make sure that you have read these instructions, and that you are otherwise ready to begin.

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

Part I	Question 1: 70 points
	Question 2: 15 points
Part II	Question 3: 85 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 Evergreen, and that Evergreen has adopted all of the Uniform Acts (including the Uniform Consumer Sales Practices Act and the Uniform Consumer Credit Code) that are contained in your statutory supplement.

GOOD LUCK!

PART ONE: CLOSED BOOK

QUESTION 1 (70 points)

You are a new associate in a law firm that mostly represents corporate clients. Carl Chester, a friend you went to high school with, passed up the opportunity to attend college and has been working on an invention for use by ceramics hobbyists. Basically it is a device that allows someone working on a pottery wheel to hold the clay securely while the pottery wheel is spinning. He already has a patent on the device and has sold some to people who have heard about it, but he wants to go national with the product. He telephoned you recently and wants to set up an appointment to discuss his marketing campaign and how to avoid problems he might run into.

Chester has already contacted a magazine that caters to ceramics enthusiasts, and they will sell Chester a list of 240,000 email addresses for about \$.01 per address. Chester already has a credit card account with Mastercard in order to process orders he has already received. Chester would like to obtain from Mastercard a list of any Mastercard customers who have purchased ceramics products, and then he will direct mail them promotional material.

Chester also wants to start selling his product on credit. It costs \$1,500, and although some customers will pay for his product outright, he thinks some will be more inclined if he is able to offer credit. He'd like to include the advertising regarding credit terms in his promotional mailing.

Please prepare a memo outlining the kinds of steps Chester should take to avoid legal problems from his projected marketing campaign.

QUESTION 2 (15 points)

You are working in the Consumer Protection Division of the Evergreen State Attorney General. You received a letter from a lawyer who enclosed a copy of a complaint filed against Innovation Ventures ("IV"), which makes "5-Hour Energy" ("5HE"). The complaint alleges:

- IV advertises 5HE as providing "Hours of energy now—No crash later."
- The label on 5HE represents that two ounces of the product will, within minutes of ingestion, provide five hours of sustained energy without the negative side effects of a subsequent crash.
- IV advertises 5HE as superior to related products because it lasts longer, performs better, and wears off without a crash. Defendant makes claims such as "coffee and soda help a little, but how long do they last before you're back for more?"
- IV's representations regarding 5HE are false. 5HE does not provide five hours of energy but does create a subsequent crash. It wears off as quickly as—or more quickly than—less expensive competing products while delivering the same crash as those products.
- IV has knowledge of studies confirming that 5HE does not outperform competing products. IV places on the back of each bottle an admission that "no crash means no sugar crash." IV places that language on the back of each bottle in tiny print in an attempt to conceal the true meaning of the "no crash" representation.
- IV successfully charges higher prices for 5HE because consumers believe IV's claims that 5HE will last longer than alternative energy drinks without producing a crash.

Instead, the product's effects wear off within one hour, and consumers suffer the crash normally caused by less expensive energy drinks.

The letter asks for the Attorney General to intervene in the suit on the side of the plaintiff. Would you recommend doing so? Why or why not?

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[This is the second half of a two-part exam. You may begin reading the question and outlining your answer on scratch paper, but you may not begin actually writing your answer until the 90-minute time period has been commenced by the proctor. The instructions from the front page of the first half of the exam address the second half as well. Please refer to them if necessary.]

PART II: OPEN BOOK

QUESTION 3 (85 points)

Debra Middleton bought approximately \$4,000 worth of jewelry from Defendant Rogers Ltd., Inc. (“Rogers”) in November 2011. She financed her purchase with a Rogers “24 Karat Preferred Card” that she applied for and received the day of purchase. The credit card was interest-free as long as Middleton paid off her purchase within 18 months. The credit card was issued by Defendant Citibank (South Dakota), NA (“Citibank”). Middleton paid off the entire amount of this purchase before the 18-month interest-free period expired. In October 2012, Middleton received a call from Citibank's customer service department informing her that she was delinquent on her payments. In fact, Citibank informed her that the balance on her credit card was \$13,000. Middleton, however, stated that she was not delinquent and had paid the original balance on the account in full.

Middleton then contacted Citibank's fraud division, who informed her about significant charges to her account in April and August of 2012. Middleton, however, denied that she made those purchases and stated that she had not received a statement from Citibank since April 2012. Middleton disputed these charges with Citibank by phone in November 2012 and in writing in December 2012 and February 2013. In March 2013, Citibank informed Middleton that it was closing its investigation because she failed to provide requested information. Middleton also received a second letter from Citibank in March 2013 stating that it had not received her previous fraud report. In response to these letters, Middleton resubmitted to Citibank all of the documentation related to the disputed charges and sent the same documentation to Rogers.

On April 8, 2013, Middleton received a letter from Rogers informing her that her account balance was \$0.00. Middleton then received a statement with a closing date of April 16, 2013, indicating that her account balance was \$13,534.25. Middleton then sent a letter to Rogers disputing any charges above her original \$4,000 purchase. Middleton then received a statement with a closing date of May 18, 2013 indicating that her account balance was \$2,126.75. On May 19, 2013, Middleton received a letter from Rogers asking her to contact its customer service department. When she did, Rogers informed Middleton that her account balance was \$0.00.

Middleton has come to your office wondering if she is entitled to any compensation for the frustration she has experienced. What would you tell her?