

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. In answering this part of the exam you may not consult any outside materials.

Part II is a modified OPEN BOOK exam. It will also last 90 minutes. In answering the open-book question, you may use any notes you have made yourself, your textbook, the statutory supplement that is given to you in .pdf form (or a print-out containing the material from the statutory supplement), a paper edition of the Consumer Law Statutory Supplement, 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 100 pages photocopied from such materials. Also, you MAY NOT use any other computer resource, such as the Internet or electronic files contained on your computer, other than the statutory supplement I previously supplied to you.

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: 90 points
Part II	Question 2: 90 points
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TOTAL	180 points

For purposes of the closed book portion of this exam, assume that you and your clients are located in the State of Evergreen, and that Evergreen has adopted some version (albeit with local variation) of each of the Uniform Acts (including the Uniform Consumer Sales Practices) that are contained in your statutory supplement.

GOOD LUCK!

PART ONE: CLOSED BOOK

QUESTION 1 (90 points)

Assume for purposes of this question that you are a board member of the Evergreen (state) chapter of People for the Ethical Treatment of Animals, and that you share the organization’s philosophical outlook. However, for purposes of this question, assume that the board has asked you for your cold-eyed lawyer perspective on the prospects for a legal remedy for the following situation. In other words, while you should be prepared to view the case in a light most favorable to your client, you also need to identify any weaknesses in the case that would likely be exploited by your adversary.

One of your members has forwarded an email he received from Elsie Vache to the PETA board complaining about an advertising campaign initiated by the Evergreen Milk Producers Advisory Board (“EMPAB”). EMPAB is a non-profit corporation composed of dues-paying members. EMPAB was founded to promote the marketing of dairy products made from raw milk (such as fluid milk, cream, butter, cottage cheese, yogurt, cheese and ice cream). Recently EMPAB began an advertising campaign known as the “Happy Cows” campaign. The theme of these advertisements is to show cows grazing and wandering about in spacious, grassy pastures on beautiful rolling hills. The tag line for each of the ads is “Great Cheese comes from Happy Cows. Happy Cows come from Evergreen.” Of course the reality is quite otherwise. The vast majority of cows in Evergreen are crowded into lots of grassless dirt which are dry in the summertime and then become mud during the rainy season. The cows are repeatedly impregnated and then milked throughout their pregnancies. Their calves are taken away shortly after birth, many of whom are then condemned to veal crates. When they can no longer meet the high production demands of their owners, the cows are slaughtered. When Vache sent a letter of complaint to EMPAB, she received a response. EMPAB had previously received complaints about the treatment of dairy cows, and in response formulated a series of guidelines (purely voluntary) that promoted humane treatment of dairy cows. EMPAB made no claim as to the number of dairy farmers in Evergreen that actually followed any of these guidelines (if there are any at all), and Elsie has no knowledge of her own. However, she is quite sure that it would be a tiny minority; and certainly none of the dairy farms in Evergreen look anything like those portrayed in the “Happy Cows” advertising.

The board would like to sue – somebody – to stop this advertising campaign. Please prepare an analysis of the likelihood of success for such an effort.

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THIS CONCLUDES THE CLOSED-BOOK PORTION OF THE EXAM. AFTER ALL OF THE STUDENTS HAVE TURNED IN THEIR BLUEBOOKS / UPLOADED THEIR ANSWERS TO SOFTEST, YOU WILL BE PERMITTED TO RETRIEVE YOUR TEXTBOOK, NOTES, ETC., AND WILL THEN BE GIVEN THE OPEN-BOOK QUESTION.

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[This is the second half of a two-part exam. You may read the question and make notes for your answer, but you may not begin typing your answer into Examssoft until the closed book portion has been uploaded and you have started the second section. 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 2 (90 points)

In September 2011, Harold O. and Beryllin Gamby opened a credit-card account with First National Bank of Omaha (“FNBO”). In March 2012 they moved from their home at 309 Oak Street in Springfield, Evergreen, to an apartment in downtown Springfield. Their son Harold J. Gamby remained living at 309 Oak Street while they were trying to sell the house. In the course of their move Beryllin couldn’t find her FNBO credit card and called the 800 number on her husband’s card to report it missing. The operator took down her new address and sent new credit cards with a new credit card number. In June 2013 Beryllin decided to close the account with FNBO. She called FNBO and told them she was closing the account. The operator who took the call looked up her current balance and Beryllin sent a check that she believed covered the final account balance, \$49.79, and marked the check “Final.” However, at the same time FNBO was in the process of being purchased by Western States Bank (“WSB”). According to the records that WSB received from FNBO, the account was still “open and active.” Accordingly, WSB sent two new credit cards with the WSB logo. Instead of mailing them to Harold O. and Beryllin at their apartment, the cards were mailed to Harold. Gamby at 309 Oak Street. Harold O. and Beryllin thought the account was closed, but Harold J. Gamby began charging on the card and using it to obtain cash advances. By June 2014 the account went into default, and Harold O. and Beryllin started receiving calls from WSB demanding payment on the card. When a WSB representative called demanding payment, Beryllin told the caller that the account belonged to her son and it had nothing to do with them. The caller replied, “You just got to pay. This is your account, you’ve got to pay it.” In a subsequent call, when the conversation was repeated, the WSB representative said, “This is your account. The only way you can avoid paying it is if you file a police report claiming ID theft or fraud. If you do not press charges against your son, there is nothing we can do.”

Harold O. and Beryllin have come to your office seeking some kind of relief from this situation. What would you tell them?