

Exam Number _____

Professor DeWolf
Spring 2016

Consumer Law
May 3, 2016

EXAM

Instructions

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

THIS EXAM WILL LAST 3 HOURS. Part I is open book. It will last 90 minutes. You may consult your textbook, any notes you have taken yourself, and photocopies of up to 100 pages of other material. No bound volumes other than your text are permitted. In answering this part of the exam you may use your computer to access the .pdf file of statutes I have previously supplied to you, any notes you have taken yourself, and files containing previous exams (and sample answers) given in this course. You may not copy and paste portions of any answers either from previous years or drafts of answers composed prior to the exam. You may, however, copy and paste sections of a statute or regulation that you think applicable.

Part II is CLOSED BOOK. It will also last 90 minutes. After all of the answers to Part I have been uploaded and any bluebooks collected, and your notes, textbook, etc. have been put away (you may place them at your feet – no need to bring them to the front of the room), I will hand out the second question. In answering this question you may not consult any materials and Examsoft will be in secured mode.

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: OPEN BOOK

QUESTION 1 (90 points)

Gregory King signed up for a credit card issued by BigBank. Included in the customer agreement for the credit card were the following provisions:

You promise individually and jointly to pay us all amounts due on your Account.... You must inspect each Statement you receive and tell us about any errors or questions you have as described in the "Billing Rights Summary" part of your Statement and other Truth in Lending Disclosures. If you do not notify us as provided in those disclosures, we may assume that all information in the Statement is correct. * * *

If you think your bill is wrong, or if you need more information on a transaction or bill, write to us on a separate sheet as soon as possible to the address for inquiries shown on the front of this statement. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can call our Customer Relations number or notify us by email or website, but doing so will not preserve your rights. In your letter, give us the following information: your name and account number, the dollar amount of the suspected error, a description of the error and an explanation, if possible, of why you believe there is an error; or if you need more information, a description of the item you are unsure about. You do not have to pay any amount in question while we are investigating it, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

From January 2015 to March 2015, King's monthly statements contained unauthorized charges to his account. He called BigBank's customer service representatives several times in an attempt to rectify the illegitimate charges and to receive a corrected billing statement. King had a difficult time getting through to customer service because King says that the customer service representatives did not speak fluent English and did not seem able to adequately address his problem. King claims that he then began writing directly to BigBank (but BigBank claims that they did not receive any written correspondence prior to July 2015).

Beginning in February 2015, King stopped paying on his account. Although only some of the charges on his account were disputed, he believed that until BigBank sent him a correct statement of what he owed, he was not obligated to pay on his account. Because King did not pay the account balance, BigBank began charging him interest and late payment fees. In April 2015 BigBank credited all but one of the disputed charges to King's account. They also adjusted the interest, past due fees, and late payment fees in accordance with the credited amounts. Beginning in October 2015 King's billing statements reflected a credit for the final disputed charge.

In the meantime, BigBank reported King's account as delinquent to consumer reporting agencies. King filed credit dispute information with several of the reporting agencies, and as a result the credit reporting agencies sent BigBank requests for Credit Dispute Verification. BigBank responded to these inquiries by indicating that the account was correctly reported as delinquent and there was no dispute.

King is furious with BigBank and has come to you asking if he has any remedy. Ignore the potential for a class action. Please prepare a memo with your analysis.

THIS CONCLUDES THE OPEN-BOOK PORTION OF THE EXAM. WHEN ALL STUDENTS HAVE UPLOADED THEIR ANSWERS (OR BLUEBOOKS TURNED IN) AND MATERIALS HAVE BEEN PUT AWAY, YOU WILL BE GIVEN THE CLOSED-BOOK QUESTION.

[This is the second half of a two-part exam. 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: CLOSED BOOK

QUESTION 2 (90 points)

You are a law clerk in the firm of Black & Blue, P.S., which engages in general practice in the state of Evergreen, including debt collection.

On December 14, 2012, Nelson Wexler was the subject of an arbitration proceeding conducted by the National Arbitration Forum. The result of that proceeding was an award in favor of CACV of Colorado (“CACV”) in the amount of \$15,000.

CACV subsequently hired Black & Blue to collect this debt. Black & Blue prepared a summons and complaint alleging that Wexler owed CACV \$15,000, plus interest and attorneys fees. On February 27, 2013, Black & Blue hired I-5 Legal, a process server, to serve Wexler with the summons and complaint. I-5 Legal was given the address where Wexler resided in Springfield, Evergreen. On March 2, 2013, Rich Marlow, a process server for I-5 Legal, sent a “Declaration of Service” to Black & Blue, stating under oath that on that date Marlow had served the summons and complaint upon a “John Doe” at the stated address. Marlow described John Doe as a white male, aged 50, with brown hair, who was 5’10” tall and weighed 200 pounds.

Wexler claims that he was not home on March 2, 2013, and moreover he was in Palm Springs, California between February 15, 2013 and April 1, 2013. He had given a key to his residence to his mother and a female friend, but Wexler claims that he knows of no man fitting the “John Doe” description who would have been home to receive service on March 2, 2013.

Based on the Declaration of Service, Black & Blue filed the complaint in Superior Court, and when no answer or appearance was forthcoming, Black & Blue prepared a default judgment against Wexler, which the court entered in August 2013. In September 2013 Black & Blue placed phone calls to Wexler, leaving messages on his answering machine telling him that there was a judgment against him. In October 2013 Wexler called Black & Blue and told them that the debt was in dispute, that he had not been in town when the complaint was allegedly served, and asked for a copy of the court documents. Black & Blue sent Wexler a copy of the court documents. Wexler did not call Black & Blue thereafter. Black & Blue tried to call Wexler from October 2013 until December 2014, but Wexler never took their call. In January 2015 Black & Blue obtained a writ of garnishment and began collecting from Wexler’s bank account.

In June 2015 Wexler filed a lawsuit against Black & Blue, alleging that they violated the Fair Debt Collection Practices Act and the Evergreen Consumer Protection Act.

Please prepare a memo analyzing the likelihood that Wexler will succeed.