

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 from 9 a.m. until 10:30 a.m. At 10:30 a.m. I will collect all of the exams. If you finish ahead of time you may read Part II (Question 3) and make notes but you may not begin writing your answer to it.

Part II is a modified OPEN BOOK exam. It will last from 10:30 a.m. until 12:00 p.m. You may use any notes you have made yourself, your textbook, the statutory supplement (West's Commercial Law Statutes) 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.

While waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin. For each of the questions, START A NEW BLUEBOOK.

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 Linden, and that Linden 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.

PLEASE DOUBLE-SPACE YOUR ANSWERS. Label the bluebooks "Question 1, Book 1"; "Question 1, Book 2"; "Question 2, Book 1"; etc.

GOOD LUCK!

HAVE A MERRY CHRISTMAS AND/OR HAPPY HOLIDAYS!

PART ONE: CLOSED BOOK

QUESTION 1 (70 points)

Sun Oil Company, Inc. ("Sun") owned property located at 225 Brockton Ave., Abington, Linden, (the "property") from 1971 to 1979. In 1972, Sun built a gasoline station with underground storage tanks on the property and operated a retail gasoline station thereafter until November 1977. On or about December 19, 1974, a leaking underground pipe leading from the underground storage tanks to the pumps released approximately 2,000 gallons of gasoline. Sun's regional manager of operations, Robert Laubinger ("Laubinger"), was on the property after the leak was discovered. On November 21, 1979, Roy Damon ("Damon") and Eleanor Damon (together, the "Damons"), purchased the property from Sun for \$90,000. The plaintiffs had a right to examine the property by terms of the Agreement of Sale. The Damons owned the property from 1979 to March 25, 1992, and operated a retail service station at the property from June 12, 1980 to January 31, 1991.

On January 31, 1991, the Damons leased the property to K. Rooney, Inc. ("Rooney"). Since then, Rooney has operated a retail service station on the property. In November 1991, Rooney began upgrading the station by installing new pumps and Stage II of a vapor recovery system. As digging commenced, the Abington Fire Department observed petroleum product pooling in the surface excavations, shut down the construction and notified the Linden Department of Environmental Protection ("DEP"). On December 19, 1991, the DEP sent a Notice of Responsibility to the Damons and Rooney, requiring that a Phase I Limited Site Investigation Report and Preliminary Assessment Report be completed. A company hired by Rooney performed the investigation and issued a report dated October 1992. As part of the Phase I investigation, monitoring wells were installed and samples of groundwater were taken and analyzed. As a result of the discovery of the pollution, Rooney refused to pay rent from November 1991 to March 1992. The lease agreement between the Damons and Rooney granted Rooney an option to purchase the property for \$600,000. Rooney did not exercise its lease option. On March 25, 1992, Rooney purchased the property from the Damons by assuming a first mortgage in the amount of \$275,000 and a second mortgage in the amount of \$50,000. Rooney also made a cash payment of \$20,000 to the Damons.

A rupture of an elbow joint in the pipe which connects the tanks and the pumps caused the 1974 spill, which closed the station for approximately six weeks. In June or July 1979, Damon attempted to reach Richard Bunnell ("Bunnell"), whose name was given on the "For Sale" sign at the station. After some unsuccessful attempts to reach Bunnell, a Sun telephone operator referred Damon to Laubinger, Sun's regional manager for service station maintenance. The questions Damon asked Laubinger about the property included an inquiry concerning the age of the building, and whether Sun had experienced any problems with the station, particularly with the underground tanks. Laubinger knew of the 1974 spill, but did not reveal it. Rather, he answered that it was a "good station" which just needed to be run by a good operator to be successful. After his phone conversation with Laubinger, Damon contacted Bunnell and, after some negotiation, accepted his offer of \$90,000. In late August 1979, Damon and Bunnell met at the property to view the property. Damon asked about a depression he noticed in the blacktop near the pumps and Bunnell explained it was caused by the installation of the first stage of a vapor recovery system. In response to Damon's question of whether Sun had had any problems with the underground storage tanks, Bunnell stated, "No, we've had no problems with it. It's all good."

In 1980 Damon had the three 6,000-gallon underground gasoline tanks tested for tightness by Getty Oil, Co., his first gasoline supplier: they tested tight, as they did in May 1984 and again in January 1991. In 1992, no holes were observed in any of the underground gasoline tanks or oil tanks. The southern end of the pit dug around the three gasoline tanks yielded the highest level of contamination; 101 cubic yards of contaminated soil were eventually removed for off-site treatment. Finally, samples of contaminated water collected and examined by the company conducting the 1992 Phase I study indicate that the contamination contained the gasoline additive

MTBE, which was not added to Sunoco gasoline until 1984.

The Damons were disappointed in the amount they were able to receive from the Rooneys for purchase of the property. Please analyze whether the Damons would have any remedy against Sun for the disappointing sales price.

QUESTION 2 (15 points)

You are a legislative aide to United States Senator Roosevelt, who is a member of the Senate Judiciary Committee. One of Senator Roosevelt's colleagues has proposed legislation that would ban all advertising for tobacco products. Someone else on the Senator's staff is worrying about the political repercussions; you have been assigned to analyze whether such a ban would be consistent with other consumer legislation. Please comment on whether you think Senator Roosevelt should support such a proposal.

PART II: OPEN BOOK

QUESTION 3 (85 points)

In November, 1995, Shirley White enrolled in the Janesville Academy of Beauty Culture, operated by Frederick Clausen. Her tuition and fees totalled \$1975. She paid \$253.00 before beginning classes and executed a retail installment contract covering the unpaid balance of \$1722. The contract provided for nine equal monthly installments of \$191.33, and included a schedule of "tuition adjustment" for students who withdraw at various times after beginning the course.

White qualified for a federal education grant and applied the first of two disbursements of \$779 toward her tuition. She was entitled to receive the second disbursement upon completion of half the course. However, White withdrew after completing slightly less than one-third of the course. Under the terms of the contract, Clausen was then entitled to receive 70% of the total tuition; \$1205.40.¹ Thus, White owed him \$426.40.

Clausen has threatened to file suit in small claims court to recover \$426.40 plus interest. How would you advise White?

¹The "tuition adjustment" clause of the contract provides in pertinent part: For students who enroll and begin classes, the following schedule of tuition adjustment is authorized:

Percentage of Enrollment Time to Total Time of Course	Amount of Total Tuition School Shall Receive or Retain
0% to 24.9%	40%
25% to 49.9%	70%
50% to 74.9%	90%
75% and above	100%

Enrollment time is defined as "the time elapsed between the actual starting date and the date on which the student formally terminates enrollment."