Professor DeWolf | Consumer Law
Summer 2013 | June 21, 2013

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.

Part II is a modified OPEN BOOK exam. It will also last 90 minutes. You may use any notes you have made yourself, your textbook, the statutory supplement (or a print-out containing the material from the 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 75 pages photocopied from such materials.

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 (50 points)

Amelia Amherst was a patient at the "Bright Smiles" dental clinic. She was told by a dental hygienist that she should seriously consider getting a variety of procedures done in order to reduce the likelihood that she would suffer gum disease, loss of teeth, and other health problems. She was given a brochure that described how poor dental hygiene can lead to infection and complications after heart surgery.

Amelia told her grandmother that she needed extensive dental work and persuaded her grandmother to "loan" her (Amelia hoped that grandmother wouldn't actually require her to pay it back) $2,000 in order to have the dental work done. After several trips to the dentist Amelia incurred $2,400 in fees, and paid for it from her own money and the money that her grandmother had loaned to her.

Amelia subsequently talked to a friend of hers, Jackie, who worked at another dental office in town. Jackie told her that "Bright Smiles" was known to be a place that overcharged patients and performed dental work that was of questionable value. When Amelia described the work that had been done by Bright Smiles, Jackie told her that was consistent with what she had heard from other patients.

Amelia has now come to your office asking if there are any consumer protection remedies that would help her recover for the money she thinks was wasted on the dental work that was done. Disregard potential class action remedies. What would you tell her?

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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. It should be handed out only after the closed book portion of the exam has been completed and the student has turned in (or uploaded) the answers to the first question. 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 (50 points)

James A. Faulkner, 62 years of age, has been a dairy farmer for some 30 years in both Caroline and Cecil County. He recently sold his cows and is now working as a maintenance man in a poultry house. Ever since he began dairy farming, Faulkner has been a borrower from Farmers Credit and Savings Bank (FCSB). Over the past 30 years, Faulkner has received fourteen loans from the FCSB, four of which remain outstanding today. At the present time, Faulkner is indebted to the FCSB in the amount of some $130,000. Prior to the occurrence of the events described below, Faulkner had never had any delinquencies in connection with his borrowing from FCSB or any other creditor.

In the summer of 2010, Faulkner began having financial difficulties because of a drought and the low production of his cows due to excessive heat. In August of 2010, he contacted the Caroline County office of FCSB and spoke with Austin Spray, who was then the government agent responsible for making new loans and servicing old loans in Caroline County. Under Faulkner's loan agreements, a payment in the amount of $15,019 was due on January 1 of each year. Faulkner had been making monthly installment payments to FCSB in the amount of $1,252 by way of assignments of the proceeds of his milk sales, and he requested that FCSB temporarily release his milk assignments so that he would be able to use those funds to pay other creditors. This request was granted by Spray. According to Faulkner, Spray also told him that his loans would be deferred during the period when the milk assignments were being released. Spray denies that any such agreement was reached between the parties, and Faulkner was not thereafter granted a deferral of payments on his loans. As result, Faulkner later became delinquent. Faulkner contends that Spray misled him and that Spray's refusal to defer his loans was the initial occurrence in a series of harmful acts of mistreatment and discrimination undertaken against him by the FCSB.

At the time, Faulkner was having marital difficulties with his wife. Faulkner and his wife separated on April 1, 2008, and they are now divorced. As a part of the marital settlement, Faulkner had planned for his wife to receive a 26.5 acre tract of land which he had purchased in 2000. Although requested to do so, Faulkner did not permit the FCSB to obtain a lien on that property to serve as collateral for the operating loan later requested by him. Beginning in the early fall of 2008, Faulkner began working with Mark G. Davis ("Davis"), an agribusiness management specialist who was under contract with the FCSB. On November 6, 2008, Faulkner applied to the FCSB for a $30,000 operating loan to be used to purchase some thirty high quality cows. On December 14, 2008, Spray sent Faulkner a letter indicating that his application was "still incomplete." This letter informed Faulkner that his application would be withdrawn if the additional requested information was not received by December 22, 2008, 8 days later. Faulkner submitted the requested information on December 21, 2008, but did not furnish a legal description of the 26.5 acre parcel. On January 1, 2009, because the milk assignments had been released, Faulkner was in partial default on his loan, and he was then considered by the FCSB to be a delinquent borrower as of January 31, 2009, because his account was past due by over 30 days. On February 27, 2009, Spray sent a letter to Faulkner informing him that his application for a loan had been withdrawn.

Spray did not send Faulkner a delinquency notice until September 6, 2009 when he also provided Faulkner with information regarding servicing options. On October 18, 2009, Faulkner submitted a document on an FCSB form requesting consideration for FCSB loan servicing. On November 6, 2009, Spray sent a notice to Faulkner advising him that his servicing request was incomplete. During this time period, comments were made by Spray in a meeting between him and Davis, indicating that Faulkner was getting too old for farming. In early January of 2010, Faulkner called Voss, then the Regional Credit Manager of the FCSB, and requested assistance. As the Regional Credit Manager, Voss was authorized to make exceptions to the FCSB requirement that a borrower's loan servicing request had to be completed within 60 days. Voss returned Faulkner's call and informed him that he would not authorize an extension of the date for completion of the servicing request. During this conversation, Voss asked Faulkner how old he was, and when told that Faulkner was 60, Voss replied, “Well Jim, the age you're getting, you're getting too old to fool with cows.” On January 23, 2010, Spray sent Faulkner letters informing him that the FCSB was going to accelerate his loans because he had not properly requested loan servicing.

Faulkner has come to your office inquiring as to whether or not he has been discriminated against, and what his remedies might be. Please analyze his prospects.