

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 6:00 p.m. until 7:30 p.m. At 7:30 p.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 7:30 p.m. until 9:00 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.

GOOD LUCK!

HAVE A GREAT SUMMER!

## PART ONE: CLOSED BOOK

QUESTION 1 (70 points)

You represent the Bloomsday National Bank, which has offices in Nebraska but does business in most states in the country, including Linden. One of the services that it offers is a credit card. In addition to charging interest and an annual fee for the privilege of using the card, Bloomsday also imposes a special fee of \$10 whenever the consumer charges goods or services that bring the total balance above the "credit limit" authorized at the time the card is issued (subject to later modification if the consumer's credit picture changes). This policy has been in effect for many years, and it has been clearly disclosed in the statements provided to prospective consumers, as well as in the monthly statement. However, a consumer in the state of Linden has brought an action alleging that Bloomsday's practice violates a state consumer protection statute that includes restrictions on credit card interest rates. One of the provisions limits the amount of any charge for late payment or "overlimit" accounts to a maximum of 1% of the balance owed. Many accounts have a credit limit of \$500, which would mean that the maximum overlimit charge would be \$5. Please analyze whether or not the bank would have any defense to this claim.

QUESTION 2 (15 points)

You are a legislative aide to United States Senator Washington, who is a member of the Senate Judiciary Committee. The Senate is considering new consumer legislation, and you have been assigned to evaluate a constituent's proposal that would regulate the "rent-to-own" industry. In particular, there is a proposal to declare *per se* "unfair and deceptive" any "rent-to-own" program that continued to charge the consumer after the consumer had made total payments on any item that exceeded 200% of the retail purchase price of any item. Would you recommend to Senator Washington that she sponsor such legislation? Why or why not?

## PART II: OPEN BOOK

QUESTION 3 (85 points)

Lawrence J. Hickey decided that, because of lower interest rates, he would refinance the mortgage on his home in Linden. He approached Great Western Mortgage Corporation and was provided with a disclosure form that showed the amount that he would obtain by borrowing and also showed the amounts he would have to pay in finance charges. During the course of the closing there were some wrinkles in the discharge of the previous mortgage on the house that required a \$42 charge for Federal Express and a \$25 charge for "discharge service." Hickey simply paid those fees as part of the closing, but he was annoyed at the time because he felt they were simply added on to appraisal fees and lender points that already added to the cost of the loan transaction. He has since learned that such fees are commonly incurred (and charged to the borrower) in refinancing, but that consumers rarely pay any attention to them.

Hickey has come to your law office and would like to know what remedies, if any, he might have against Great Western. Please provide a memo with your advice.