

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**. After 90 minutes 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 90 minutes. 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 Shock, and that Shock 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!

ENJOY THE SUMMER!

## PART ONE: CLOSED BOOK

QUESTION 1 (70 points)

Space Age Products, Inc. ("Space Age") markets household products, including cleaning products and timesaving devices, through a distribution network that invites individuals, after purchasing its products, to become participants in its marketing program. After an initial investment of \$19.50, one can become an "area representative," entitling the participant to purchase Space Age products at a discount for resale to others. Purchase of \$600.00 of Space Age products entitles an Area Representative to Charter Membership in the organization. Charter Members are entitled to a higher discount and are also authorized to sell Charter Memberships, for which they receive a bonus of \$150.00. The marketing plan is described to potential participants at public recruitment meetings.

You are employed by the Division of Consumer Affairs for the State of Shock. Several complaints have been made to the Division. The complainants allege that the primary product sold by Space Age is a carpet cleaner that is sold for \$10 a bottle and turns out to be nothing more than baking soda and fragrance, worth at best \$2 based on comparison with other products. Another device that is quite popular is a salad spinner that is of poor quality and is sold for \$8 (comparable retail products, generally of higher quality, sell for \$5 to \$10). Based on these complaints, Billy Reno, a recently hired lawyer in the Division, sends two employees of the Division (Fox Mulder and Dana Scully) to attend a public recruitment meeting on April 20, 2000. At the conclusion of the meeting, Scully and Mulder served two Space Age employees with a cease and desist order that directed Space Age to "immediately cease and desist from . . . (1) solicitation of investments of money; (2) solicitation of Membership in Space Age Products, Inc.; or (3) advertising the same."

Just yesterday the Director of the Division (your supervisor) received a letter from a lawyer from Space Age claiming that the Division had no authority to issue the order, and threatening legal action against the Division for unspecified damages. Your supervisor now wants you to provide a full analysis of whether Reno's actions were justified. Please provide this analysis, addressing the types of remedies that have been covered in this class.

QUESTION 2 (15 points)

The consumer protection law of the State of Shock was developed before the decision of the Federal Trade Commission's decision in *Cliffdale Associates*, adopting more rigorous standards for proof of "unfair and deceptive" advertising. In a case pending before the state supreme court, a defendant is asking the supreme court to adopt the FTC's standard in *Cliffdale Associates*, whereas the plaintiff is asking the court to retain the pre-*Cliffdale* rule. Both sides have written to the Division of Consumer Affairs for the State of Shock, asking for an amicus brief on behalf of their position.

Assume you are an attorney with the Division of Consumer Affairs for the State of Shock. Please prepare a memo analyzing which side the Division should take.

## PART II: OPEN BOOK

QUESTION 3 (85 points)

Nancy Lozada, Bob Warren, A.D. Christian and Jeanne Uwamaliya (hereinafter "plaintiffs") were all customers of Dale Baker Olds who sought to purchase motor vehicles on credit. Because of their credit histories, Dale Baker Olds salesmen determined that plaintiffs would not be eligible for conventional auto financing. As a result, the salesmen referred plaintiffs to the Dale Baker Olds special finance department or Credit Resources Center. After selecting a vehicle, each plaintiff was introduced to the Assistant Special Finance Manager, Stormie Moore, to complete the necessary documentation to obtain credit to finance their vehicles in the sub-prime credit market. At that time, each plaintiff was presented with and signed a Retail Installment Contract which contained disclosures of the annual percentage rate, finance charge, amount financed, total sale price, and payment schedule. Those disclosures were contained under the heading "TRUTH IN LENDING DISCLOSURES" and placed immediately above the signature line.

While plaintiffs were shown the retail installment contracts at the time they signed them and while those installment contracts contained disclosures, plaintiffs were not given a copy of the contracts or disclosures until some days after they signed their agreements. Plaintiff Lozada received a copy ten days after signing the document. Plaintiff Warren received a copy two days after signing the document. Plaintiff Christian received a copy fifteen days after signing.

Plaintiffs also allege that Dale Baker's special finance department did not allow time to carefully review the contract, but rushed plaintiffs to sign. Moreover, Christian and the other plaintiffs allege that they were not permitted to have copies of their contract documents either before or after signing until the contract had been purchased in the secondary lender market. In addition, the contract contained the following provision:

You and we agree that any claims, demands or disputes that we may have against each other shall be brought in arbitration and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. The arbitration shall not be consolidated with any other arbitration. Judgment upon the award shall be final and binding on you and us and may be entered in any court having jurisdiction. Nothing in this agreement to arbitrate shall prevent Consumer Finance Corporation from obtaining a prejudgment, provisional or self-help remedy, such as replevin or repossession of collateral securing repayment of the Agreement, or exercising the right of offset for contractual debts owed by you.