Professor DeWolf — Consumer Law
Spring 2010 — May 8, 2010

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
	=================	
	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 (70 points)

Martin McCarthy purchased a new 2010 Nissan Maxima from Quirk Motors. Within a day of McCarthy's purchase of the car on March 8, 2010, the car's "check engine" light came on. As a result of the illuminated warning light, the car failed inspection. On March 18, 2010, McCarthy brought the car back to Quirk for repair; Quirk replaced the car's air flow sensor and told McCarthy that the car was fixed. Despite this repair, the car continued to evidence mechanical problems, including a fluctuating RPM and stalling during operation. McCarthy again returned the car to Quirk on March 26, 2010; Quirk again replaced the air flow sensor. The car's mechanical problems persisted, however, and the "check engine" light continued to come on. On April 30, 2010, McCarthy returned the car to Quirk a third time for repair. This repair was no more successful than Quirk's prior efforts.

It is now May 8, 2010. McCarthy comes to your office seeking advice. He wants to return the car and get his money back, but all that Quirk has offered is to reimburse McCarthy for the $29.00 cost of inspecting the car, and "to accept the vehicle in trade towards the purchase of another automobile should [McCarthy] be unhappy with the vehicle's purchase."

What legal advice would you offer McCarthy?

QUESTION 2 (15 points)

You are working in the Consumer Protection Division of the Evergreen State Attorney General. A consumer, Christopher Conyers, has brought a lawsuit based on allegedly deceptive television commercials supporting the launch of Aleve, a non-prescription pain relief product developed, manufactured and marketed by Procter & Gamble. Conyers alleges a violation of the Evergreen UDAP statute, which was adopted in 1953. Conyer points to an explicit claim in the ads that "Aleve is gentler to the stomach lining than aspirin." Conyers alleges this statement was false and/or likely to mislead members of the public because the advertisements contained an implicit and false message that Aleve was gentle to the stomach and would not cause stomach upset. Conyers in fact suffered from an ulcer, which his doctor believes resulted from using Aleve. Conyers' lawyer has contacted the Evergreen AG to enlist her support in defining the appropriate standard for advertising under the Evergreen UDAP statute. Please provide an analysis of whether the Evergreen Attorney General should intervene in the lawsuit and what position she ought to take.

++

[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 two questions. 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 3 (85 points)

Yer Song Moua and Manisy Moua are husband and wife. For six years, they owned and lived in a house located at 2438 Arlington Avenue East, Maplewood, Evergreen. The Mouas initially obtained a loan for the home from Mortgage Electronic Registration System, Inc. (MERS), but fell behind on loan payments and MERS commenced foreclosure. A sheriff's foreclosure sale occurred on December 2, 2008, subject to a six-month redemption period expiring June 2, 2009.

During the redemption period, the Mouas met Pat Aylward, a realtor, who offered to help them out of foreclosure by obtaining a loan with lower payments. On January 5, 2009, the Mouas met Aylward at a Rand office and applied for a loan with Rand to refinance their existing loan and redeem from the sheriff's foreclosure sale.

On April 22, 2009, the Mouas closed on the loan and secured it with a mortgage on their primary residence. Rand hired Excel Title to conduct the closing. The Mouas executed a promissory note in the amount of $245,000, listing the interest as "13.990% until May 1, 2010 at which time I will pay 14.990% yearly." The amount of monthly payments was listed as "$2,883.55 until June 1, 2010 at which time my payment will increase to $3,272.04" until July 1, 2014.

At the closing, Manisy claims the closer told her to copy a typed statement in her own handwriting. She contends she did not understand the statement and did not know why she was asked to copy it. The typed statement, which Manisy copied in her own handwriting, read:

> We are aware that we are entitled to a 3 day review of the disclosures prior to closing of this transaction. Because we are aware that the county has not been timely in returning the payoff statement on our mortgage and the current foreclosure proceedings we request that this 3 day review period be waived.
>
> We are further aware that we have a 3 day recession [sic] after signing the closing docs to review all the final documents. We feel that this will allow us time to address any concerns or questions.
>
> Please accept our request to waive the 3 day review period.[1]

---

[1]Rand provided the following instructions to Excel Title:

"KAREN

PRIOR TO STARTING THIS CLOSING THE CUSTOMER NEEDS TO MAKE A STATEMENT SIMILAR TO THE FOLLOWING IN THEIR OWN HANDWRITING, SIGN AND DATE: "

Additionally, the Mouas were given a Notice of Right to Cancel (Notice) at the closing, which advised them they had until midnight on April 26, 2009, to cancel the transaction. There are two versions of the Notice. On one version, the Mouas signed and dated the section entitled "Receipt," acknowledging they received the Notice. On the other version, the Mouas signed and dated the "Receipt" section as well as a section entitled "Confirmation" which states: "More than 3 business days have elapsed since the date of the new transaction and I/We received this Notice and Truth-In-Lending disclosures with regard to the new transaction. I/We certify that the new transaction has not been rescinded." The Mouas contend they signed the Receipt and Confirmation sections simultaneously. Their assertion is borne out by the fact all the signatures are dated April 22, 2009. Rand does not dispute the Confirmation section was signed before the three-day rescission period expired. Rather, it contends the Mouas were directed to sign it by Excel Title, without authorization or direction from Rand.

After the closing, the Mouas returned home and reviewed the loan documents with their son. The Mouas allege they learned then the new loan payments were much higher than their previous payments, they had waived their right to the 3-day advance HOEPA disclosures, and had forfeited the opportunity to cancel by signing the Confirmation portion of the Notice.

On December 1, 2009, the Mouas failed to make their monthly loan payment and have not since made any payments. Rand sold the loan to JumboLoans, Inc., which has notified the Mouas of their intent to foreclose.

The Mouas have now come to your law office seeking advice as to what they should do. Please identify any consumer remedies that might be available to them and assess the likelihood that they will be able to avoid foreclosure.