

Consumer Law 326
Spring Term 2016 - Lewis & Clark Law School
Thursdays 5pm to 6:50pm

SAMPLE FINAL EXAM I

For every multiple choice question below, circle the most correct answer. Each fact pattern should be used to answer the five questions that follow it.

Fact Pattern A

In January 2015, a consumer bought a laptop from Best Buy. Best Buy assured the consumer that the laptop came installed with an operating system. The consumer later discovered the laptop did not have an operating system, and had to spend another \$100 to install one.

1. Which consumer protection law contains the most relevant private right of action?
 - a. 15 U.S.C. § 1681 et seq.
 - b. 15 U.S.C. § 1692 et seq.
 - c. 47 U.S.C. § 227 et seq.
 - d. ORS 646.608 et seq.

2. Which of the following is **not** a claim element under the UTPA?
 - a. Defendant must have knowingly violated the law
 - b. Defendant must have willfully violated the law
 - c. Defendant must be a person in a business, vocation or occupation
 - d. Defendant's violation must have caused plaintiff ascertainable loss

3. What damages are potentially available under the UTPA?
 - a. Only actual damages and attorney fees
 - b. Actual damages or statutory damages, punitive damages, and attorney fees
 - c. Only actual damages
 - d. Only actual damages and statutory damages

4. What is the applicable fee shifting scheme under the UTPA?
 - a. The American rule
 - b. Prevailing party
 - c. Prevailing plaintiff
 - d. Prevailing defendant

5. What is the applicable statute of limitations under the UTPA?
 - a. One year
 - b. Two years
 - c. Three years
 - d. Four years

Fact Pattern B

In January 2015, a consumer mailed Equifax a detailed dispute letter asking it to remove false derogatory credit information from her credit report. Equifax received the dispute letter but hoped the consumer would just go away. By June 2015, Equifax had willfully failed to timely remove the false information or perform any reinvestigation.

6. Which statute contains the most relevant private right of action?
 - a. 15 U.S.C. § 1681s-2
 - b. 15 U.S.C. § 1692 et seq.
 - c. 15 U.S.C. § 1681n
 - d. 15 U.S.C. § 1681o

7. How soon was Equifax required to notify the furnisher that the consumer had disputed its false derogatory credit information?
 - a. Within 5 days
 - b. Within 5 business days
 - c. Within 30 days
 - d. Within 30 business days

8. What damages are potentially available under the FCRA?
 - a. Actual damages, statutory damages, punitive damages
 - b. Only actual damages and attorney fees
 - c. Only actual damages
 - d. Only statutory damages and punitive damages

9. What is the applicable fee shifting scheme under the FCRA?

- a. The American rule
- b. Prevailing party
- c. Prevailing plaintiff
- d. Prevailing defendant

10. What is the applicable statute of limitations under the FCRA?

- a. One year
- b. Two years after the discovery of the violation, or five years after the date on which the violation occurred, which ever is earlier
- c. Two years, regardless of when the violation occurred
- d. Two years after the discovery of the violation, or five years after the date on which the violation occurred, which ever is later

Fact Pattern C

In January 2015, an individual's defaulted personal credit card debt was transferred to a national third party debt collector. In May 2015, the third party debt collector called the individual and said, 'If you raise your kids like you pay your credit card debts, I feel sorry for them. You need to make a payment now.'

- 11.** Which consumer protection law contains the most relevant private right of action?
- a. 15 U.S.C. § 1681 et seq.
 - b. 15 U.S.C. § 1692 et seq.
 - c. 47 U.S.C. § 227 et seq.
 - d. ORS 646.608 et seq.
- 12.** Which of the following is **not** a claim element under the FDCPA's private right of action?
- a. The transaction must have been for personal, family, or household purposes
 - b. Defendant must have violated the law
 - c. Defendant must be a debt collector
 - d. Defendant's violation must have caused plaintiff ascertainable loss
- 13.** What damages are potentially available under the FDCPA?
- a. Only actual damages and statutory damages
 - b. Actual damages, punitive damages, attorney fees, and statutory damages
 - c. Only actual damages
 - d. Only actual damages or statutory damages

14. What is the applicable fee shifting scheme under the FDCPA?

- a. The American rule
- b. Prevailing party
- c. Prevailing plaintiff
- d. Prevailing defendant

15. What is the applicable statute of limitations under the FDCPA?

- a. One year
- b. Two years
- c. Three years
- d. Four years

Fact Pattern D

In January 2012, a consumer received an autodialed call on her cell phone from her mortgage company. The consumer called her mortgage company back and revoked consent to receive future calls on her cell phone. In July 2015, the consumer received another autodialed call on her cell phone from her mortgage company.

16. Which consumer protection law contains the most relevant private right of action?

- a. 15 U.S.C. § 1681 et seq.
- b. 15 U.S.C. § 1692 et seq.
- c. 47 U.S.C. § 227 et seq.
- d. ORS 646.608 et seq.

17. Which of the following is a claim element under the TCPA's private right of action?

- a. The call must have concerned a consumer debt
- b. Defendant must have used an automatic telephone dialing system or artificial or prerecorded voice
- c. Plaintiff must have suffered actual emotional harm damages
- d. Defendant's violation must have been intentional or malicious

18. What damages are potentially available under the TCPA?

- a. Only actual damages or statutory damages
- b. Actual damages or statutory damages, and attorney fees
- c. Only statutory damages
- d. Only actual damages and punitive damages

19. What is the applicable fee shifting scheme under the TCPA?

- a. The American rule
- b. Prevailing party
- c. Prevailing plaintiff
- d. Prevailing defendant

20. What is the applicable statute of limitations under the TCPA?

- a. One year
- b. Two years
- c. Three years
- d. Four years

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SAMPLE FINAL EXAM - II

For every multiple choice question below, circle the most correct answer. Each fact pattern should be used to answer the five questions that follow it.

Fact Pattern A

In July 2000, a consumer bought a mattress advertised as “new” from a mattress store. In July 2015, the consumer cleaned his bedding for the first time. While changing his sheets, the consumer saw the mattress tag for the first time, and learned for the first time that the mattress was not “new” but was instead a returned mattress the store had been using as its floor model.

1. Who may bring an enforcement action against the mattress store under the UTPA?
 - a. Only the DOJ
 - b. The DOJ or the consumer
 - c. Only the consumer
 - d. Either the DOJ or the consumer but not both

2. The attorney for the mattress store later argued that the mattress store cannot be liable under the UTPA unless it had actual knowledge that its conduct violated the UTPA. Is this argument correct?
 - a. Yes, only a jury can evaluate whether the mattress store had the proper scienter
 - b. No, the mattress store is liable if it knew or should have known its conduct violated the UTPA
 - c. No, the UTPA is a strict liability statute
 - d. Yes, it is unreasonable to hold a business accountable for conditions it didn't know about

3. The consumer later sued the mattress store for \$200 statutory damages and \$200 million punitive damages. Will the consumer succeed on his \$200 million punitive damages claim?
 - a. Probably not, if the mattress store can prove that its violation was an unintentional and isolated incident.
 - b. Probably, if the jury finds the mattress store's violation was "willful".
 - c. Probably not, because the proportionality of the actual damages claim to the punitive damages claim is likely excessive, in violation of the due process clause of the 14th amendment.
 - d. Both A and C are correct, B is wrong.

4. After filing suit against the mattress store, the consumer fails to appear at two properly scheduled depositions, in violation of the discovery rules. As a result, the attorney for the mattress store asks the court for an award of reimbursed attorney fees against the consumer for the attorney's wasted travel time to and from the deposition location.
 - a. The court cannot award the mattress store attorney's fees against the consumer because the defendant has not yet prevailed in the case.
 - b. The court can award the mattress store attorney's fees against the consumer because the consumer violated the discovery rules which required the consumer to attend the depositions.
 - c. The court can award the mattress store attorney's fees against the consumer only if the court finds the consumer intentionally missed the depositions and intended to waste the mattress store attorney's time.
 - d. The court cannot award the mattress store attorney's fees against the consumer because the UTPA is a prevailing-plaintiff statute.

5. What is the best argument in support of the mattress store's statute of limitations defense?
 - a. The mattress store had no actual knowledge that the mattress it sold the consumer was not "new".
 - b. A reasonable consumer would have and should have seen the tag on the mattress before July 2014.
 - c. The consumer had a duty under the UTPA to promptly inspect the mattress tag.
 - d. The statute of limitations ended in July 2001, regardless of when the consumer actually knew or should have known the mattress was not "new".

Fact Pattern B

In January 2010, Chase Bank furnished false credit information to Trans Union concerning a consumer. The consumer discovered the false information for the first time in January 2014 and sent a dispute letter directly to Chase Bank in February 2014. In January 2015 the consumer discovered the false information was still on her Trans Union credit report. In February 2015 the consumer sent a dispute letter to Trans Union for the first time. Trans Union never provided notice of the dispute to Chase Bank. Instead, Trans Union determined the dispute was frivolous in May 2015 and notified the consumer of its determination for the first time in July 2015. The consumer sued Chase Bank and Trans Union in Oregon district court under the FCRA in August 2015.

6. Why will the consumer's FCRA claim against Chase Bank fail?
 - a. General duties regarding the initial furnishing of accurate credit information are only enforceable by federal or state agencies
 - b. Trans Union never sent Chase Bank notice of the dispute
 - c. No private right of action exists for a furnisher's violation of 15 U.S.C. § 1681s-2(a)
 - d. All of the above

7. How soon was Trans Union required to notify the consumer that it determined her dispute was frivolous under the FCRA?
 - a. Within 5 business days
 - b. Within 5 days
 - c. Within 30 business days
 - d. Within 30 days

8. Will the State of Oregon take 70% of any punitive damages award against Trans Union under the FCRA?
 - a. Yes, under ORS 31.735
 - b. No, because the claim arises under federal law and was filed in federal court
 - c. No, because Trans Union is not an Oregon company
 - d. Both B and C are correct

9. Under what circumstances may Chase Bank recover its attorney fees against the consumer?
- a. Under no circumstances
 - b. If Chase Bank succeeds in defending against the lawsuit and proves the lawsuit was filed in bad faith
 - c. If Chase Bank succeeds in defending against the lawsuit and proves the lawsuit was filed for purposes of harassment
 - d. Either B or C
10. Trans Union's attorney argues that the consumer's 15 U.S.C. § 1681i claim against Trans Union is barred by the statute of limitations. Is this argument correct?
- a. No, because Trans Union's violation occurred in the two years before the lawsuit was filed.
 - b. Yes, because Chase Bank's initial reporting occurred more than two years before the lawsuit was filed.
 - c. Yes, because Chase Bank's initial reporting occurred more than five years before the lawsuit was filed.
 - d. Yes, because the consumer sent her initial dispute letter to Chase Bank, not Trans Union.

Fact Pattern C

US Bank assigned a consumer's overdrawn checking account balance to a national third party debt collector. The debt collector then placed a collection call to the consumer's cell phone at 7am. During the call, the consumer informed the collector that she was represented by an attorney and asks to receive no further calls. The collector called the consumer again the next day by mistake. The consumer then filed an action against US Bank and the debt collector under the FDCPA.

- 11.** Which FDCPA subsection contains the most relevant basis for liability against the debt collector?
- a. 15 U.S.C. § 1692b
 - b. 15 U.S.C. § 1692c
 - c. 15 U.S.C. § 1692e
 - d. 15 U.S.C. § 1692i
- 12.** Is US Bank likely a "debt collector" as defined at 15 U.S.C. § 1692(a)(6)?
- a. No, assuming US Bank's principal purpose is not debt collection
 - b. No, assuming US Bank does not regularly collect debts owed to others
 - c. Yes
 - d. Both A and B are correct
- 13.** If the consumer prevails in her FDCPA action against the debt collector, what damages may she recover under 15 U.S.C. § 1692k?
- a. Actual damages and additional statutory damages up to \$1,000
 - b. Actual damages or statutory damages, plus punitive damages
 - c. Only statutory damages of up to \$1,000
 - d. Only actual damages or statutory damages

14. The attorney for the debt collector argues that the debt collector is not liable under the FDCPA because the collections activity at issue did not concern a “debt” as defined at 15 U.S.C. § 1692a(5). Which of the following facts, if true, would most support this argument?

- a. The consumer never signed her checking account agreement with US Bank
- b. The consumer opened the US Bank checking account solely for use in her small business
- c. The consumer never actually owed a debt to US Bank
- d. US Bank doesn’t generally issue small business checking accounts

15. Which of the following arguments are correct?

- a. The debt collector likely violated the FDCPA by calling the consumer at 7am
- b. The debt collector likely violated the FDCPA by calling the consumer after the debt collector learned the consumer was represented by an attorney
- c. The debt collector likely violated the FDCPA by calling the consumer after the consumer verbally asked to receive no further calls
- d. Both A and B are correct; C is incorrect

Fact Pattern D

LA Fitness wanted to text message its customers occasional notices about new promotions using its automated cell phone texting software. The software did not have the present capacity to use a random or sequential number generator to dial numbers but the software could have been configured to do so in the future. In January 2016, LA Fitness began using its software to text customers at the cell phone numbers the customers previously provided on their gym membership applications.

16. The attorney for LA Fitness advised that its software may still be considered an “automatic telephone dialing system” under 47 U.S.C. § 227(b) based on its potential to be configured to generate and dial random or sequential numbers in the future. Is this argument correct?

- a. No, because the gym’s software is only used to send texts
- b. Yes, as confirmed by the FCC’s July 10, 2015 order
- c. No, 47 U.S.C. § 227 et seq. requires an ATDS to have the present capacity to dial random numbers
- d. No, so long as the software can’t also be configured to make calls using artificial or prerecorded voices

17. After receiving a text from LA Fitness’ software, a consumer texted back asking to receive no future texts. Has the consumer effectively revoked consent under the TCPA?

- a. No, a consumer must revoke consent in the same medium that consent was initially provided
- b. Yes, a consumer can revoke consent at any time in any reasonable way
- c. No, consent cannot be revoked after it is expressly given
- d. No, consent may only be revoked in writing

- 18.** On February 1, 2016, LA Fitness used its software to send a text to a cell phone number that had been reassigned to a non-customer. The non-customer never consented to receive the text. On March 1, 2016, LA Fitness used its software to send a second text to the non-customer at the reassigned number. On April 1, 2016, LA Fitness learned for the first time that the non-customer's number had been reassigned and removed the reassigned number from its database. Which of the following is correct?
- a. Under the safe harbor rule, LA Fitness was not liable under the TCPA for its first text to the reassigned number
 - b. Under the safe harbor rule, LA Fitness was not liable under the TCPA for its second text to the reassigned number
 - c. Under the safe harbor rule, LA Fitness was not liable for texting reassigned numbers without consent unless and until LA Fitness had reason to know the number was reassigned
 - d. A and B are correct, C is not correct
- 19.** Under the scenario in question 18 above, on what date would the statute of limitations expire on the non-customer's TCPA claim against LA Fitness?
- a. February 1, 2020
 - b. March 1, 2020
 - c. April 1, 2020
 - d. May 1, 2020
- 20.** Under the scenario in question 18 above, what amount of statutory damages could the non-customer potentially recover under the TCPA?
- a. Between \$500 and \$1,500 statutory damages
 - b. No more than \$200 statutory damages
 - c. No less than \$1,000 statutory damages
 - d. None of the above

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SAMPLE FINAL EXAM – III

For every multiple choice question below, check the most correct answer in Examssoft. Each fact pattern should be used to answer the five questions that follow it.

Fact Pattern A

On January 1, 2016, a consumer bought a Honda Civic from a car dealership. The salesperson assured the consumer that the Honda Civic had only one prior owner. However, the salesperson had knowledge that the Honda Civic actually had two prior owners. On February 1, 2016, the consumer looked the Honda Civic up on Carfax and discovered for the first time that the Honda Civic actually had two prior owners.

1. Of the following, which subsection of the UTPA's 'laundry list' did the car dealership most likely violate?
 - a. ORS 646.608(1)(a)
 - b. ORS 646.608(1)(e)
 - c. ORS 646.608(1)(h)
 - d. ORS 646.608(1)(m)

2. Which of the following is **not** a claim element under the UTPA?
 - a. Defendant must have willfully violated the law
 - b. Defendant must be a person in a business, vocation or occupation
 - c. Defendant's violation must have caused plaintiff ascertainable loss
 - d. Defendant must have intentionally violated the law

3. The lawyer for the car dealership argued that the consumer suffered no ascertainable loss. Which fact, if true, best supports this argument:
 - a. A Honda Civic with one prior owner is worth the same as a Honda Civic with two prior owners
 - b. The consumer suffered no actual emotional harm
 - c. The car dealership is not vicariously liable for the acts of its employees
 - d. The consumer suspected the salesperson might be lying about the Honda Civic having only one prior owner but bought the Honda Civic anyway

4. What is the applicable fee shifting scheme under the UTPA?
 - a. The American rule
 - b. Prevailing party
 - c. Prevailing plaintiff
 - d. Prevailing defendant

5. On which date would the statute of limitations for the consumer to bring a UTPA claim against the car dealership likely expire under ORS 646.638(6)?
 - a. January 1, 2018
 - b. February 1, 2018
 - c. January 1, 2017
 - d. February 1, 2017

Fact Pattern B

In January 2016, a consumer mailed Experian a detailed dispute letter asking it to remove false derogatory credit information from her credit report. Experian received the dispute letter but negligently misfiled it under a different person's name. By April 2016, Experian had negligently failed to timely remove the false information from the consumer's credit report or perform any reinvestigation.

6. Of the following, which subsection contains the consumer's most relevant private right of action against Experian under the FCRA?
 - a. 15 U.S.C. § 1681s-2
 - b. 15 U.S.C. § 1692k
 - c. 15 U.S.C. § 1681n
 - d. 15 U.S.C. § 1681o

7. How soon was Experian required to notify the furnisher that the consumer had disputed its false derogatory credit information?
 - a. Within 5 days
 - b. Within 5 business days
 - c. Within 30 days
 - d. Within 30 business days

8. In the case of a willful violation, what damages are potentially available under the FCRA?
 - a. Actual damages, statutory damages, punitive damages
 - b. Only actual damages and attorney fees
 - c. Only actual damages
 - d. Only statutory damages and punitive damages

9. What is the applicable fee shifting scheme under the FCRA?

- a. The American rule
- b. Prevailing party
- c. Prevailing plaintiff
- d. Prevailing defendant

10. What is the applicable statute of limitations under the FCRA?

- a. One year
- b. Two years after the discovery of the violation, or five years after the date on which the violation occurred, which ever is earlier
- c. Two years, regardless of when the violation occurred
- d. Two years after the discovery of the violation, or five years after the date on which the violation occurred, which ever is later

Fact Pattern C

Capital One assigned a consumer's defaulted credit card account to a national third party debt collector. The debt collector then mailed a letter to the consumer's employer in an envelope with "This Communication is from a Debt Collector" printed on the outside of the envelope. The consumer then hired an attorney and filed an action against Capital One and the debt collector under the FDCPA.

11. Of the following, which FDCPA subsection contains the most relevant basis for liability against the debt collector?

- a. 15 U.S.C. § 1692b
- b. 15 U.S.C. § 1692i
- c. 15 U.S.C. § 1692e
- d. 15 U.S.C. § 1692h

12. Is Capital One likely a "debt collector" as defined at 15 U.S.C. § 1692(a)(6)?

- a. No, assuming Capital One's principal purpose is not debt collection
- b. No, assuming Capital One does not regularly collect debts owed to others
- c. Yes
- d. Both A and B are correct

13. If the consumer prevails in her FDCPA action against the debt collector, what damages may she recover under 15 U.S.C. § 1692k?

- a. Actual damages and additional statutory damages up to \$1,000
- b. Actual damages or statutory damages, plus punitive damages
- c. Only statutory damages of up to \$1,000
- d. Actual damages and additional statutory damages up to \$1,500

- 14.** The attorney for the debt collector argues that the debt collector is not liable under the FDCPA because the collections activity at issue did not concern a “debt” as defined at 15 U.S.C. § 1692a(5). Which fact below, if true, would most support this argument?
- a. The consumer never signed her credit card agreement with Capital One
 - b. The consumer opened the Capital One credit card account solely for use in her small business
 - c. In court pleadings, the consumer denied ever owing money to Capital One
 - d. Capital One doesn’t generally issue small business credit card accounts
- 15.** Assume the consumer prevailed on her FDCPA claim against the debt collector. In addition to the time expended by her attorney, what second factor would the Court consider in determining a reasonable attorney fee award using the lodestar method?
- a. The reprehensibility of the debt collector’s conduct
 - b. The debt collector’s net worth
 - c. The reasonable hourly rate of the attorney
 - d. Both A and C are correct; B is incorrect

Fact Pattern D

Chase Bank wanted to text message its customers occasional notices about new credit offers using its automated cell phone texting software. The software did not have the present capacity to use a random or sequential number generator to dial numbers but the software could have been configured to do so in the future. In December 2015, Chase Bank began using its software to text customers at the cell phone numbers the customers previously provided on their credit applications.

- 16.** The in-house attorney for Chase Bank advised that its software may still be considered an “automatic telephone dialing system” under 47 U.S.C. § 227(b) based on its potential to be configured to generate and dial random or sequential numbers in the future. Is this argument correct?
- a. No, because the bank’s software is not being used to dial phone numbers
 - b. Yes, as confirmed by the FCC’s July 10, 2015 order
 - c. No, 47 U.S.C. § 227 et seq. requires an ATDS to have the present capacity to dial random numbers without human intervention
 - d. No, so long as the software can’t also be configured to make calls using artificial or prerecorded voices
- 17.** After receiving a text from Chase Bank’s software, a consumer called Chase Bank back at its 1-800 number and asked to receive no future texts. Has the consumer effectively revoked consent under the TCPA?
- a. No, a consumer must revoke consent in the same medium that consent was initially provided
 - b. Yes, a consumer can revoke consent at any time and by any reasonable means
 - c. No, in the Ninth Circuit, consent cannot be revoked after it is expressly given
 - d. No, consent may only be revoked using the cell phone that was the subject of the TCPA claim

- 18.** On January 1, 2016, Chase Bank used its software to send a text to a cell phone number that had been reassigned to a non-customer. The non-customer never consented to receive the text. On February 1, 2016, Chase Bank used its software to send a second text to the non-customer at the reassigned number. On March 1, 2016, Chase Bank learned for the first time that the non-customer's number had been reassigned and removed the reassigned number from its database. Which of the following is correct?
- a. Under the safe harbor rule, Chase Bank was not liable under the TCPA for its first text to the reassigned number
 - b. Under the safe harbor rule, Chase Bank was not liable under the TCPA for its second text to the reassigned number
 - c. Under the safe harbor rule, national banks like Chase Bank are exempt from TCPA liability
 - d. A and B are correct, C is not correct
- 19.** Under the scenario in question 18 above, on what date would the statute of limitations likely expire on the non-customer's TCPA claim against Chase Bank?
- a. February 1, 2020
 - b. January 1, 2020
 - c. February 1, 2017
 - d. January 1, 2017
- 20.** Under the scenario in question 18 above, what amount of statutory damages could the non-customer potentially recover under the TCPA for the text received on February 1, 2016?
- a. Between \$500 and \$1,500 statutory damages
 - b. No more than \$200 statutory damages
 - c. No less than \$1,000 statutory damages
 - d. No more than \$1,000 statutory damages