

UNIFORM CONSUMER CREDIT CODE

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§ 1.301 [General Definitions] . . .

(12) “Consumer credit sale”:

(a) Except as provided in paragraph (b), “consumer credit sale” means a sale of goods, services, or an interest in land in which:

(i) credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;

(ii) the buyer is a person other than an organization;

(iii) the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose;

(iv) the debt is payable in instalments or a finance charge is made; and

(v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

(b) A “consumer credit sale” does not include . . .

(ii) . . . a sale of an interest in land if the finance charge does not exceed 12 per cent. . . .

(13) “Consumer credit transaction” means a consumer credit sale or consumer loan. . . .

§ 5.108 [Unconscionability; Inducement by Unconscionable Conduct . . .]

(1) With respect to . . . a consumer credit transaction, if the court as a matter of law finds:

(a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result. . . .

(4) In applying subsection (1), consideration shall be given to each of the following factors, among others, as applicable. . . .

(b) ... knowledge by the seller ... at the time of the sale ... of the inability of the consumer to receive substantial benefits from the property or services sold or leased;

(c) ... gross disparity between the price of the property or services sold ... and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like consumers....

(e) the fact that the seller, lessor, or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors....

Comment ...

4. [Subsection (4) lists] a number of specific factors to be considered on the issue of unconscionability. It is impossible to anticipate all of the factors and considerations which may support a conclusion of unconscionability in a given instance so the listing is not exclusive. The following are illustrative of individual transactions which would entitle a consumer to relief under this section....

Under subsection (4)(b), a sale to a Spanish speaking laborer-bachelor of an English language encyclopedia set, or the sale of two expensive vacuum cleaners to two poor families sharing the same apartment and one rug;

Under subsection (4)(c), a home solicitation sale of a set of cookware or flatware to a housewife for \$375 in an area where a set of comparable quality is readily available on credit in stores for \$125 or less;

Under subsection (4)(e), a sale of goods on terms known by the seller to be disadvantageous to the consumer where the written agreement is in English, the consumer is literate only in Spanish, the transaction was negotiated orally in Spanish by the seller's salesman, and the written agreement was neither translated nor explained to the consumer, but the mere fact a consumer has little education and cannot read or write and must sign with an "X" is not itself determinative of unconscionability....